

OUTER LIMITS OF CONTINENTAL SHELF IN THE ARCTIC OCEAN: POTENTIAL OVERLAPPING CLAIMS

Dita Liliansa*

Abstract

To legally exercise its sovereign rights over extended continental shelf, coastal States have to obtain recommendation from the Commission on the Limits of the Continental Shelf by submitting information on the limits of its extended continental shelf to the Commission. In some cases, such submission overlaps with other submission which leads to deferred submissions. This paper will address some potential overlapping submissions in respect of the Arctic Ocean which is carried out through a normative legal study. At the end, this paper suggests that Arctic coastal States may agree on establishing a joint submission to avoid any overlapping submissions in the Arctic Ocean.

Keywords: *arctic; submission; extended continental shelf; ice-covered areas*

I. INTRODUCTION

It is believed that the global climate is changing. This changing is portrayed by the melting of ice covering the pole region, notably in the Arctic region. Arctic ice caps have dropped dramatically corresponding with the Arctic warming trend. A warming Arctic will have substantial environmental and health consequences for the entire world, including sea level rise, release of stored chemicals and greenhouse gases into the environment, and impacts on biodiversity including migratory species that live in the Arctic at key parts of their life cycles.¹

In spite of the imminent drawbacks resulting from the warming Arctic, the melting ice caps have unlocked a variety of economic opportunities, such as the availability of navigation, fish stocks, and minerals.

*Author is an Assistant Lecturer at the Department of International Law, Faculty of Law Universitas Indonesia and Researcher at the Center for International Law Studies. She obtained her Bachelor of Law (Sarjana Hukum) from Universitas Indonesia. She can be reached at dita.liliansa@gmail.com.

¹ UNEP, "New Awareness of and Opportunities for UNEP to Address Climate Change in the Arctic," (paper presented in the *Arctic Side Event at the Governing Council/Global Environmental Ministerial Forum*, Nairobi, February 18, 2013), p. 4.

Although many known mineral reserves are not exploited because of their inaccessibility, Arctic region contains abundant mineral resources, such as oil, gas, coal, iron ore, nickel, titanium, gold, diamonds, and many more. Of the total global proven reserves of oil and gas, 5.3 and 21.7 per cent, respectively, are located in the Arctic.² However, when adding total proven reserves and undiscovered oil and gas resources, around 13 and 25 per cent, respectively, are located in the Arctic. In addition to mineral reserves, Arctic warming trend has unlocked new shipping routes through the Northwest Passage and Northern Sea Route. In contrary to the current routes via the Panama Canal and Suez Canal, transit from the Pacific Ocean to the Atlantic Ocean through the Northwest Passage could save two weeks of travel³ which translates into lower fuel costs, saved ship streaming time, and a reduction in labor costs for the commercial shipping industry.⁴ On the other hand, the Northern Sea Route which is located along the northern coast of Eurasia is about 40% shorter than the Suez Canal.⁵

As the decline in the Arctic sea ice opens a variety of economic opportunities, questions are likely to arise regarding coastal state's sovereignty particularly over minerals that lie beneath the Arctic sea floor. Unlike Antarctic region in which an ice-covered continent is surrounded by ocean, Arctic region consists of vast ice-covered ocean surrounded by land that belongs to sovereign states. In contrast to Antarctic region that is regarded as a *res communis*, Arctic region remains subject to United Nations Convention on the Law of the Sea ("UNCLOS"). In consequence, Arctic Ocean is divided into maritime zones as stipulated under UNCLOS which consists of: internal waters, archipelagic waters, territorial sea, contiguous zone, exclusive economic zone ("EEZ"), and continental shelf. UNCLOS also provides two common marine areas which are the high seas and the so-called 'Area'.

² Lars Lindholt, "Arctic Natural Resources in a Global Perspective" in *The Economy of the North*, Glomsrød and I. Aslaksen (eds), (Oslo: Statistics Norway, 2006), p. 27.

³ James Kraska, "International Security and International Law in the Northwest Passage," *Vanderbilt Journal of Transnational Law*, Vol. 42 (2009), p. 1124.

⁴ *Ibid.*

⁵ Kathryn Isted, "Sovereignty in the Arctic: An Analysis of Territorial Disputes & Environmental Policy Considerations," *Journal of Transnational Law & Policy*, Vol. 18 (2) (2009), p. 347.

According to Article 76 of UNCLOS, continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles (“n.m.”) from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.⁶ However, UNCLOS provides a possible extension of a coastal State’s rights over exploration and exploitation of marine natural resources⁷, which comprise living and non living resources, provided that it does not extend more than 350 n.m. past a coastal State’s baseline. Nevertheless, these sovereign rights do not continue to the water column above the continental margin.⁸

In order to acquire sovereign rights over an extended continental shelf, coastal State shall file information describing the limits of its extended continental shelf to the Commission on the Limits of the Continental Shelf (“Commission”)⁹. In some cases, a coastal State’s submission often overlaps with one or more submissions as a result from an unresolved maritime delimitation or any maritime dispute. Overlapping submissions have a significant cost for the submitting States. One of the potential overlapping submissions in the current discussion is experienced by Arctic coastal States over extended continental shelf in the Arctic Ocean. Arctic’s abundant resources and strategic location for shipping industry has lured Arctic states to expedite their submission over potential continental shelf beyond 350 n.m. in the Arctic region.

Geographically, there are eight countries that have territory above the Arctic Circle¹⁰: United States (“US”), Canada, Russia, Norway, Denmark, Finland, Sweden, and Iceland (“Arctic states”). Yet

⁶ United Nations, *United Nations Convention on the Law of the Sea 1982*, art. 76 (1).

⁷ *Ibid.*, art. 77 (1).

⁸ *Ibid.*, art. 78 (1).

⁹ *Ibid.*, art. 76 (8).

¹⁰ Arctic Circle is an imaginary line that marks the latitude above which the sun does not set on the day of the summer solstice (usually 21 June) and does not rise on the [sic] day of the winter solstice (usually 21 December) [Kathryn Isted, “Sovereignty in the Arctic: An Analysis of Territorial Disputes & Environmental Policy Considerations,” *Journal of Transnational Law & Policy*, Vol. 18 (2) (2009), p. 353].

only five of those Arctic states have coastline above the Arctic Circle and thus have the potential to make a submission over Arctic's extended continental shelf. Finland, Iceland, and Sweden have either no coastline or no extended continental shelf above the Arctic Circle.¹¹ Considering what is at stake, Arctic's potential overlapping submission may escalate to an armed conflict which may hinder regional and international security. Therefore, any potential overlapping submission in the Arctic should be carried out by peaceful means in accordance with international law.

II. ARCTIC OCEAN AS AN ICE-COVERED REGION

The only direct reference of ice-covered areas in the UNCLOS is merely Article 234. Drawing a conclusion from this provision, ice-covered areas are defined as areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year.¹² On the contrary, glaciology classifies ice into two main categories: ice deriving from land and ice deriving from ocean. Based on this classification, ice deriving from land comprises of four types: glacier ice, ice shelf, iceberg, and ice-island, whereas ice that is formed by freezing of sea water is called sea ice. All of ice deriving from land is primarily made out of snow piles that continuously fall on land. At first, those snow piles form a glacier ice or ice sheet for the smaller size. Whereas an ice shelf is a floating ice sheet, attached to land where ice is grounded along the coastline,¹³ icebergs are large blocks of freshwater ice that break away from marine glaciers and floating ice shelves of glacial origin.¹⁴

The number of present international law governing ice-covered areas is relatively narrow. Other than Article 234 UNCLOS, ice is merely stipulated in the Article 6 of Antarctic Treaty. However, this

¹¹ Betsy Baker (1), "Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian - U.S. Cooperation in the Beaufort Sea," *Vermont Law Review Vol. 34 (57) (2012)*, p. 64.

¹² United Nations, *Op. Cit.*, art. 234.

¹³ C. S. M. Doake, *Ice-Shelf Stability*, (Cambridge: Academic Press, 2001), p. 1282.

¹⁴ Coriolis D. Diemand, *Iceberg*, (Shoreham: Academic Press, 2001), p. 1255.

provision does not settle the legal regime of ice-covered areas comprehensively and only provides a reference for ice shelf. Antarctic Treaty is conceived as the only legal regime which particularly applies for Antarctic region. The most significant matter resulted from Antarctic Treaty is the enactment of *res communis*¹⁵ principle which preserves the continent as a natural reserve dedicated to peace and science. Thus, despite sharing a similar climatic condition with Antarctic, *res communis* principle other than stipulated under UNCLOS shall not prevail for Arctic.

The two Polar Regions are opposites in many aspects. In Arctic, the legal regime concentrates on the ocean rather than land as in the Antarctic. Arctic legal regime is composed of non-binding agreements. It began in 1991 with the Declaration on Protection of the Arctic Environment and the Arctic Environmental Protection Strategy (“AEPS”),¹⁶ which later was incorporated into the work of Arctic Council.¹⁷ Due to its geographical feature, UNCLOS also applies to the Arctic. Although in 2008 the European Parliament proposed a resolution calling for an international Arctic treaty, the five Arctic states do not believe that a new legal regime to govern the Arctic is required.¹⁸ Instead, in the same year, they issued the *Iulissat Declaration* stating their commitment to the existing legal regime.

Despite the presence of ice-covered areas provision in Article 234, UNCLOS does not distinguish between frozen and unfrozen waters other than provision on marine environment protection applicable to frozen waters. Although the issue of ice was proposed during the

¹⁵ The *res communis* principle originated with Roman property rights and holds that the commons does not belong to any country. All states, their citizens, and international legal entities are free to explore, use, and exploit the commons and its resources [Scott J. Shackelford, “The Tragedy of the Common Heritage of Mankind,” *Stanford Environmental Law Journal Vol. 28 (1) (2009)*, p. 3].

¹⁶ Linda Nowlan, “Arctic Legal Regime for Environmental Protection,” *IUCN Environmental Policy and Law Paper 44 (2001)*, p. 5.

¹⁷ Arctic Council is a high-level circumpolar forum for political discussions on Arctic issues initiated by the government of Finland in 1989, but established in Ottawa in 1996. See more on the Declaration of the Establishment of Arctic Council 1996.

¹⁸ Ondotimi Songi, “Current Legal Regime Governing the Arctic Region and Investment by Oil and Gas Companies,” *Center for Energy, Petroleum and Mineral Law & Policy Internet Journal (2010)*, p. 4.

League of Nations Conference, the League of Nations Committee of Experts decided “not to include the question of ice in the discussion of baselines and the extension of territorial sea.”¹⁹ This issue was also kept outside of the Law of the Sea Conferences for the same causes it was excluded from the League of Nations Conference.²⁰ For these reasons, it is assumed that the drafters of UNCLOS deliberately disregard the presence of ice features in the Arctic.

Ultimately the Arctic ice-covered marine areas have generally been considered the same as any other marine area.²¹ In fact, the presence of Article 234 UNCLOS is regarded as the exception that proves the rule is in UNCLOS. The legal status of the sea does not shift merely because it has become frozen temporarily and capable of physical occupation.²² In other words, the *de facto* presence of ice in the Arctic Ocean does not determine any change *de jure* of its legal regime. Therefore UNCLOS shall prevail *lex generalis* over Arctic Ocean.

III. EXTENDED CONTINENTAL SHELF'S SUBMISSION ACCORDING TO INTERNATIONAL LAW AND STATE PRACTICES

The need for establishing international maritime boundaries occurs when two or more coastal States claim a certain portion of sea or sea floor and those claims overlap. Generally, coastal State do not claim concurrently, and most of the times a claim by one coastal State will give rise to a claim from opposite or adjacent States to protect their interests.²³ Therefore, the main hurdle for a coastal State attempting to

¹⁹ Kaare Bangert, “The Arctic Challenge: UNCLOS and a New Climate Generated Arctic Regime,” (paper presented in the 6th International Hydrographic Organisation (IHO) – International Association of Geodesy (IAG) Advisory Board on Scientific and Technical Aspects of the Law of the Sea (ABLOS) Conference, Monaco, October 25-27, 2010), p. 9.

²⁰ *Ibid.*, p. 11.

²¹ Claudia Cinelli, “The Law of the Sea and the Arctic Ocean,” *Arctic Review on Law and Politics*, Vol. 2 (2011), p. 8.

²² Christopher C. Joyner, “Ice-Covered Regions in International Law,” *Natural Resources Journal*, Vol. 31 (1991), p. 224.

²³ John R. V. Prescott, *The Maritime Political Boundaries of the World*, (New York: Methuen & Co., 1986), p. 83.

file a submission to the Commission is the status of the outer limits of its submitted continental shelf, whether there are overlapping submissions caused by unresolved maritime delimitation issues or a maritime dispute with opposite and/or adjacent States.

Pursuant to Article 9 Annex II of UNCLOS, the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts. In practice, the Commission will not consider a submission in case there is an expressed objection from opposite or adjacent non-submitting State due to an unresolved maritime dispute or significant overlapping submissions. In communications related to unresolved disputes, States have either (1) expressly consented to the Commission's consideration of the submission, notwithstanding the unresolved dispute, (2) reserved their position without giving express consent, or (3) expressly objected to the Commission consideration of the submission.²⁴ Where there have been objections from non-submitting State, the Commission would defer the submission. In practice, the Commission has used the language:

*“Taking into account these notes verbales and the presentation made by the delegation, the Commission decided to defer further consideration of the submission and the notes verbales until such time as the submission is next in line for consideration as queued in the order in which it was received”.*²⁵

The matter of overlapping continental shelf submission and the approach carried out by States are interrelated. In determining which approach taken by submitting State can be very political. If an unresolved dispute is present in the area encompassed by a submission, the submitting State must be cognizant of the possibility that its submission could be blocked.²⁶ According to Lathrop, there are several approaches taken by States with regards to making a submission to the Commission: (1)

²⁴ Coalter Lathrop, “Continental Shelf Delimitation Beyond 200 Nautical Miles: Approaches Taken by Coastal States before the Commission on the Limits of the Continental Shelf” in David A. Colson and R.W. Smith (eds), *International Maritime Boundaries*, (T.k.: The American Society of International Law, 2011), p. 4146.

²⁵ See *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission*, CLCS/64 (Oct 1, 2009).

²⁶ Lathrop, *op. cit.*, p. 4147.

settle unresolved delimitation prior to a submission; (2) file partial submission that excludes disputed areas; (3) make a joint submission along with the parties to the disputes; (4) prior consultation with neighboring States before lodging a separate submission; and (5) make a separate submission without consultation.²⁷ These approaches will be addressed thoroughly below:

A. DELIMITATION BEFORE SUBMISSION

The need to make a submission often becomes a sole motive for the coastal State to promptly delimit its maritime boundaries with its neighboring States. By resolving delimitation issue in advance of the submission, it is expected to avoid any objections from non-submitting States. For instance is the completion of maritime boundaries beyond 200 n.m. between Australia and New Zealand for the sake of Australia's submission in November 15, 2004.²⁸ Before making the submission to the Commission, Australia discovered a potential overlap with New Zealand's submission over three areas: Lord Howe Rise, Macquarie Ridge, and Three Kings Ridge.²⁹ Later on, Australia and New Zealand signed a bilateral treaty establishing certain boundaries defining their exclusive economic zone and continental shelf in the three areas.³⁰ Another example of cooperation resulting in delimitations in anticipation of submission was demonstrated by the United States and Mexico in the western gap in 2000.³¹ There is no evidence that this delimitation was carried out in anticipation of submission to the Commission, nonetheless, in 2007 Mexico lodged a submission in respect of this same area and used the negotiated boundary as its outer limit.³²

²⁷ *Ibid.*

²⁸ See *Receipt of the Submission made by Australia to the Commission on the Limits of the Continental Shelf*, (November 15, 2004).

²⁹ Australia and New Zealand, *2004 Treaty between the Government of Australia and the Government of New Zealand Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries*, (July 25, 2004).

³⁰ *Ibid.*, art. 2 (1).

³¹ See *Executive Summary – A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the United Mexican States Pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea* (Dec 13, 2007), p. 3.

³² Lathrop, *op. cit.*, p. 4150.

Unresolved delimitation issue has proven to have the power to block coastal State's attempt in acquiring its sovereign rights over continental shelf beyond 350 n.m.. It has turned out to be true for Chinese submission over East China Sea. Due to the presence of maritime dispute and unresolved maritime boundaries between China, Japan, and South Korea, Japan had sent a *note verbale* to the UN Secretary General stating that Japan objected to the Chinese submission and asked the Commission not to consider that submission.³³ Responding to Japan's objection, the Commission subsequently decided to defer Chinese submission.³⁴

B. PARTIAL SUBMISSION

Partial submission aims to avoid disputed areas or potentially disputed areas. This approach is accommodated in paragraph 3, Annex I of Rules of Procedures of the Commission which states that:

“a submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later.”

Mexico, in its submission regarding Gulf of Mexico, ruled out its potential extended continental shelf in the eastern polygon because of unresolved delimitation issues.³⁵ For that reason, Mexico decided to make a partial submission but limited to western polygon, while its partial submission over eastern polygon was made in the following years after completing its delimitation.³⁶

C. JOINT SUBMISSION

³³ Japan, *Note Verbale Permanent Mission of Japan to the United Nations*, SC/12/372 (December 28, 2012), p. 2.

³⁴ See *Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the Progress of work in the Commission* (CLCS/80), 24 September 2013, para. 61.

³⁵ See *Executive Summary – A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the United Mexican States Pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea* (Dec 13, 2007), p. 5.

³⁶ See *Receipt of the Submission made by Mexico to the Commission on the Limits of the Continental Shelf*, (Dec 19, 2011).

Joint submission approach is accommodated by the Commission in paragraph 4, Annex I of Rules of Procedures of the Commission which states that:

“Joint or separate submissions to the Commission requesting the Commission to make recommendations with respect to delineation may be made by two or more coastal States by agreement.”

In the first joint submission, and the only one for which recommendations have been adopted, the spokesperson for the four submitting States – France, Ireland, Spain, and the United Kingdom – noted “that all four coastal States could have made potentially overlapping, separate submissions. However, they considered it more appropriate to avail themselves of the possibility of making a joint submission since, upon the issuance of recommendations by the Commission; the four coastal States would be able to establish the outer limit of their continental shelf in the region prior to its delimitation among themselves.³⁷ The result of this approach is that the four States have moved quickly through the Commission process, ascertained the size and scope of their shared are, and may now set about splitting it up through the usual bilateral processes and at their leisure.³⁸

However, the outcome is not necessarily the same for all joint submissions. Unless involving all interested parties, a joint submission remains susceptible of being blocked by non-involved parties. Pulling in an example in the South China Sea case, the joint submission by Malaysia and Vietnam in the southern part of South China Sea received an objection from China and Philippines as parties to the dispute but not involved in the joint submission.³⁹ The Commission then decided to defer further consideration of the submission. Therefore without all necessary parties, a joint submission may still fail to dispose of the risk being objected by neighboring States.

³⁷ Lathrop, *op. cit.*, p. 4152 – 4153.

³⁸ *Ibid.*

³⁹ See *Note Verbale Permanent Mission of the People’s Republic of China to the Secretary General of the United Nations* (May 7, 2009) and *Note Verbale Permanent Mission of the Republic of the Philippines to the Secretary General of the United Nations* (August 4, 2009).

D. SEPARATE SUBMISSION

Separate submission allows coastal States to make a submission separately from its neighboring States without avoiding disputed area or unresolved delimitation issue. However, there are two distinct approaches for separate submission. The first approach requires cooperation among neighboring States in advance of submissions, therefore allowing any exchange of data and views on technical issues, and leading to negotiations for a no-objection agreement. On the other hand, the second approach is carried out without prior consultation or assurance of no-objection agreement. This approach is therefore susceptible of being blocked by neighboring States on the grounds that it does not satisfy paragraph 5(a) Annex I of Rules of Procedures of the Commission. The Commission may consider submission in the disputed areas provided that there is prior consent given by all States that are parties to the dispute. In this sense, it can be assumed that the Commission will regard an objection by non-submitting States as a notice of the existence of a dispute.

The adverse effect resulting from the absence of necessary cooperation or communication with interested parties was experienced by United Kingdom in its submission regarding the Falkland Islands, South Georgia and South Sandwich Islands on May 11, 2009 which was already lodged by Argentina on April 21, 2009.⁴⁰ Both mutually reject the other submission. Although the submissions appeared to be the same, the Commission, however, provided two different decisions. Regarding the Argentine submission, although the Commission does not clearly state its decision, this submission appears to be on hold.⁴¹ On the contrary, the Commission decided that: “it was not in a position to consider and qualify the British submission.”⁴²

The Commission’s review process will be unlikely to move forward

⁴⁰ See *Receipt of the Submission made by the United Kingdom of Great Britain and Northern Ireland to the Commission on the Limits of the Continental Shelf* (May 14, 2009) and *Executive Summary – Submission in respect of the Falkland Islands, and of South Georgia and the South Sandwich Islands* (May 11, 2009).

⁴¹ See *Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission* (CLCS/66), 30 April 2010, para. 37.

⁴² *Ibid.*, para. 60.

when non-submitting state files an objection. Therefore, in order to avoid deferred submissions resulting from objections from non-submitting states, prior communication or negotiation with opposite or adjacent coastal States is highly encouraged. Particular approaches, as mentioned above, are also necessary to be carried out as a precaution measure.

IV. POTENTIAL OVERLAPPING SUBMISSIONS IN THE ARCTIC OCEAN

As a vast ice-covered ocean with abundant natural resources, Arctic Ocean is one of the most disputed marine areas in the history. Since UNCLOS caters the need of coastal States wishing to acquire sovereign rights to explore and exploit resources beneath the Arctic Ocean, potential submitting States have taken necessary means to collect and analyze data required for continental shelf's submission. Mapping the outer limits of continental shelf is not an easy matter, let alone the Arctic Ocean as ice-covered waters with severe climatic condition. Coastal States are also bound to ten-year time limits stipulated by Article 4 Annex II of UNCLOS which is reaffirmed in Rule 45 (a) Rules of Procedures of the Commission. The implementation of international law of this importance should not require coastal States to embark on what would seem to be a race against the clock.⁴³

Mapping Arctic continental shelf will ultimately define the position of Arctic seabed which is subject to common heritage principle. For the time being, there are four players intending to lodge a continental shelf submission regarding Lomonosov Ridge, a 1,800 km long ridge dividing the Arctic Ocean into two major basins: the Eurasia Basin and the Amerasia Basin.⁴⁴ Leading the way in 2001, Russia made a submission over four different areas. With regards to the Central Arctic Ocean, including part of Lomonosov Ridge, the Commission gave its recommendation that Russia shall produce a revised submission.⁴⁵

⁴³ Øystein Jensen, "Limits of the Continental Shelf in the Arctic Ocean," *ESIL Reflections Vol. 2 (4) (2013)*, p.3.

⁴⁴ "Lomonosov Ridge", <<http://arcticcontroversy.weebly.com/lomonosov-ridge.html>>, accessed October 25, 2014.

⁴⁵ See *Oceans and the Law of the Sea – Report to the Secretary General (A/57/57/*

Earlier, on August 3, 2015, Russia has finally submitted its partial revised submission in respect of the Russia's continental shelf in the Arctic Ocean.⁴⁶ In its executive summary, Russia based its claim on the natural prolongation principle⁴⁷ where it argues that Central Arctic submarine elevations are "natural components of continental margin" under Article 76 (6) of UNCLOS therefore the 350-nautical-miles rule is inapplicable.⁴⁸ In its revised submission, Russia also recognized the presence of unresolved maritime delimitation with both Denmark and Canada.

Whereas Denmark has already filed its submission in respect of the continental shelf in the north of Greenland,⁴⁹ Canada is undertaking vigorous attempts, as stated in its preliminary information to the Commission, to lodge a submission over Canada Basin, Alpha Ridge, and Lomonosov Ridge in the Arctic Ocean.⁵⁰ Understanding the potential overlap areas, Russia already held consultations with both Denmark and Canada, and each has agreed to a no-objection agreement but they requested that the Commission shall not make recommendations that are prejudice to the unresolved delimitation.⁵¹ On the other hand, US as the only Arctic States with direct interests on Arctic resources yet it has not acceded to UNCLOS, has carried out necessary means to collect one million square kilometers of bathymetric data from thirty-four cruises, including six cruises on Arctic Ocean, since 2003.⁵² Since coastal State

Add.1), October 8, 2002, para. 41.

⁴⁶ See *Receipt of the partial revised submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf* (August 4, 2015).

⁴⁷ Russia, *Executive Summary of Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in respect of the Continental Shelf of the Russian Federation in the Arctic Ocean*, (2015), p. 5

⁴⁸ *Ibid.*, p. 6.

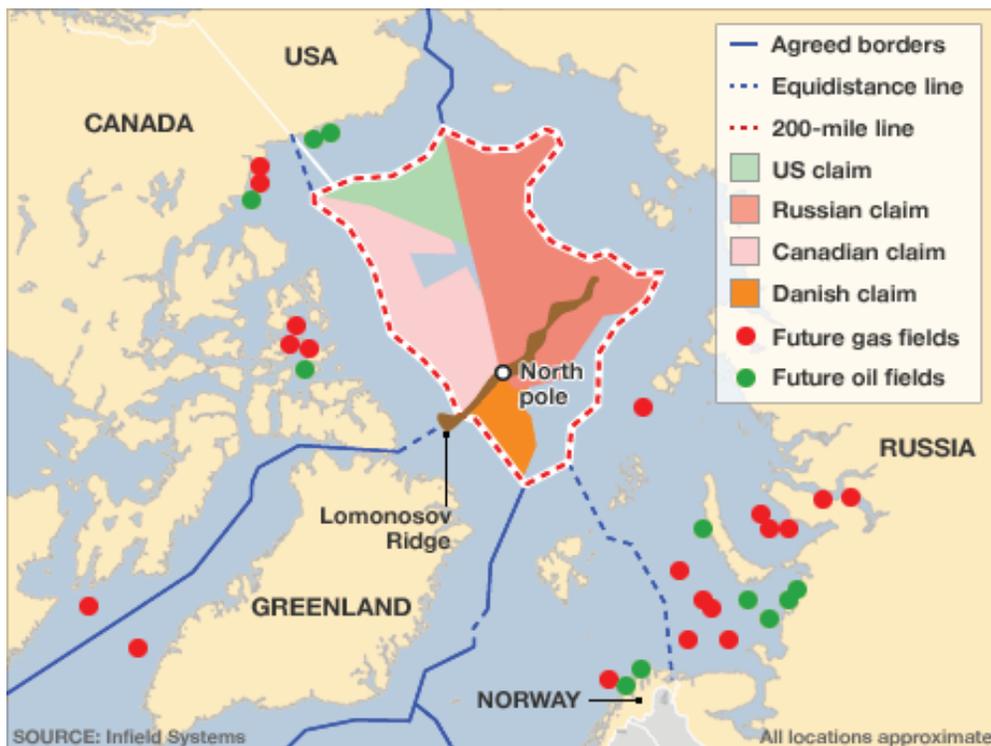
⁴⁹ Denmark is also allocating 150 million Kroner, which equals to 25 million Dollars, to prepare its submission over Lomonosov Ridge (See more on BBC, "Denmark Hopes to Claim North Pole," <<http://news.bbc.co.uk/2/hi/europe/3716178.stm>>, accessed June 20, 2014).

⁵⁰ UN, "Preliminary Information Indicative of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles," <http://www.un.org/depts/los/clcs_new/commission_preliminary.htm>, accessed June 8, 2014.

⁵¹ Russia, p. 11.

⁵² "Extended Continental Shelf Summary of Mission," <<http://continentalshelf.gov/missions.html>>, accessed June 16, 2014.

has inherent rights in the continental shelf, question remains whether US as a non-party to UNCLOS can make a submission to the Commission.



Source: “The Struggle for Arctic Riches,” <<http://www.bbc.com/news/world-11388654>>

V. CONCLUSION

The regime of ice-covered areas, either the water column or the ocean floor, has not been much explored in the discussion between legal scholars. Even UNCLOS as the “Constitution of the Ocean” only contains a single provision with regards to pollution and safety of navigation in the ice-covered areas. Unlike Antarctic which is regarded as *res communis*, Arctic ice-covered areas are deemed as ocean therefore UNCLOS applies. As five Arctic States are competing to provide proof that there is an extension of their continental shelf beneath the Arctic Ocean, Arctic becomes a pivotal arena for legal wrestling in the frozen

region. The prize is the mineral wealth of the Arctic and trade routes which climate change makes it more accessible.

To elude any overlapping submissions in respect of the outer continental shelf in the Arctic Ocean, which is imminent unless coastal states carry out particular approaches, joint submission approach is suggested. As Ilulissat Declaration reflects a statement of cooperation among the Arctic nations, where five Arctic states declared that they each “*remain committed ... to the orderly settlement of any possible overlapping claim*,”⁵³ it could pave the way for Arctic states to initiate further consultations to produce a joint submission for Lomonosov Ridge in the Arctic Ocean. In fact, some Arctic states have already established technical cooperation with one another. For instance, while Russia and Canada are sharing information to ensure whether Lomonosov Ridge is a natural prolongation of the continental landmass or not, Canada and Denmark are pursuing joint seismic operations to answer the same enigma.⁵⁴ In the eastern part of its Arctic, Canada collaborated with Denmark in an expedition to claim part of the Lomonosov Ridge.⁵⁵ Furthermore, since 2008, US and Canada have conducted joint mapping cruises in the Arctic Ocean and intended to carry on such collaboration.⁵⁶ The idea of a joint submission over Lomonosov Ridge will likely be supported by the Danish government. In its strategy, Denmark stated that the Kingdom will retain the “Arctic 5” format consisting of Arctic coastal States – Canada, Denmark/Greenland, Norway, Russia, and the US – as a forum for issues primarily relevant for the five coastal states, currently the continental shelf issue.⁵⁷

⁵³ Timothy J. Lindsay, (Un)Frozen Frontiers: A Multilateral Dispute Settlement Treaty for Resolving Boundary Disputes in the Arctic, “*Oil, Gas & Energy Law Intelligence*, Vol. 10 (2), (2012), p. 10.

⁵⁴ Betsy Baker (2), “Law, Science, and the Continental Shelf: The Russian Federation and the Promise of Arctic Cooperation,” *American University International Law Review*, Vol. 25, (2010), p. 276.

⁵⁵ Robert Dufresne, “Canada’s Legal Claims Over Arctic Territory and Waters,” *PRB 07-39E Parliamentary Information and Research Service – Library of Parliament*, Ottawa, December 6, 2007, p. 18.

⁵⁶ Baker (2), *Loc. Cit.*

⁵⁷ Denmark, “Kingdom of Denmark Strategy for the Arctic 2011-2020,” <http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/mss-denmark_en.pdf>, accessed June 25, 2014, p. 52. Arctic 5 have met twice at ministerial level in 2008 and 2010, and in some cases at departmental level.

By making a joint submission, Arctic coastal states will be able to delimit their maritime boundaries following the Commission's recommendation. This approach is suggested based on several reasons: time and cost efficiency, and to deter any possibility of getting an objection from non-submitting states. Notwithstanding the ten-year time period referred to in Article 4 Annex II of UNCLOS and the decision in paragraph (a) of SPLOS/72, paragraph 1(a) of SPLOS/183 stipulates that the time period may be satisfied by submitting a preliminary information to the UN Secretary General, indicative of the outer limits of the extended continental shelf and a description of the status of preparation and intended date of making a submission.⁵⁸ The preliminary information is deemed as a temporary tool to postpone the time limit prescribed to lodge a full submission to the Commission.⁵⁹ However, currently, there have been 44 submissions lodged to the Commission and waiting to be examined.⁶⁰ Based on the current examining speed of the Commission, the full examination of 42 ongoing-cases is expected to complete in the next couple of decades, 2091 to be exact.⁶¹

If Arctic coastal states insist on filing separate submission over Arctic Ocean in which there is a clear potential of overlapping submissions, it will eventually culminate with the Commission deferring the

⁵⁸ CLCS. *Decision Regarding the Workload of the Commission on the Limits of the Continental Shelf and the Ability of States, particularly Developing States, to fulfill the Requirements of Article 4 of Annex II to the United Nations Convention on the Law of the Sea, as well as the Decision contained in SPLOS/72, paragraph (a), SPLOS/183, para. 1 (a).*

⁵⁹ Jongseong Ryu and Vladimir Kaczynski, "Review on Some Aspects of Legal and Scientific Understandings regarding Outer Continental Shelf Limits in the Arctic Ocean," *KMI International Journal of Maritime Affairs and Fisheries, Vol. 1 (1),* (2009), p. 14.

⁶⁰ See more on "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to Article 76, Paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982," <http://www.un.org/depts/los/clcs_new/commission_submissions.htm>, accessed on June 16, 2014.

⁶¹ Jongseong Ryu and Vladimir Kaczynski, *loc. cit.* Ryu and Kaczynski described that the Commission holds two 6-week examining sessions (March and August) in a year and usually spends four sessions (equivalent of two years) for one case. Therefore, according to Dr. Park Yong-Ahn, a member of the Commission, given 41 cases of preliminary information, the Commission examination would be ended in 2173.

submissions which only means wasting considerable amount of time and money. Each submission filed to the Commission is considered according to the priority of order. It will be unfortunate if the submission's long and painstaking attempt leads to deferred submissions caused by an objection raised by non-submitting states on the ground of overlapping submissions or for the purpose of paragraph 5 (a) Annex I of Rules of Procedure of the Commission; therefore, such submissions are regarded as a "maritime dispute".

The good faith and affiliated relations developed from the preparation until the presentation of a joint submission will be beneficial for delimitation discussions between involved parties in the future. Although a joint submission will increase some transaction costs, but it may result in efficiencies as well. It only requires a single submission on behalf of all involved parties and presented through a single joint delegation. This condition would benefit a coastal state when its potential submission may overlap with more than one submission, particularly those encountering unresolved maritime boundaries. A joint submission can offer substantial number of benefits as well as a number of technical advantages from combined datasets, pooled expertise, and division of labor, and to provide experience for States who have other submissions to make.⁶² In the end, a joint submission is preferable to a separate submission that could last decades before Arctic States can obtain a recommendation from the Commission.

REFERENCES

- Australia and New Zealand. *2004 Treaty between the Government of Australia and the Government of New Zealand Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries*, (July 25, 2004).
- Baker, Betsy. "Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian - U.S. Cooperation in the Beaufort Sea." *Vermont Law Review Vol. 34 (57)*.2012.
- _____. "Law, Science, and the Continental Shelf: The Russian Federation and the Promise of Arctic Cooperation." *American University International Law Review Vol. 25*. 2010.

⁶² Alain Murphy, "Coordinated, Harmonized or Joint Submissions to the Commission on the Limits of the Continental Shelf," (paper presented in the 5th *International Hydrographic Organisation (IHO) – International Association of Geodesy (IAG) Advisory Board on Scientific and Technical Aspects of the Law of the Sea (ABLLOS) Conference*, Monaco, October 15-17, 2008), p. 8.

- BBC. "Denmark Hopes to Claim North Pole." <<http://news.bbc.co.uk/2/hi/europe/3716178.stm>>. Accessed on June 20, 2014.
- China. *Note Verbale Permanent Mission of the People's Republic of China to the Secretary General of the United Nations* (May 7, 2009) and *Note Verbale Permanent Mission of the Republic of the Philippines to the Secretary General of the United Nations* (August 4, 2009).
- CLCS. Decision Regarding the Workload of the Commission on the Limits of the Continental Shelf and the Ability of States, particularly Developing States, to fulfill the Requirements of Article 4 of Annex II to the United Nations Convention on the Law of the Sea, as well as the Decision Contained in SPLOS/72, paragraph (a). SPLOS/183.
- _____. *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission*, CLCS/64 (Oct 1, 2009).
- _____. *Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission* (CLCS/66), 30 April 2010.
- _____. *Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the Progress of work in the Commission* (CLCS/80), 24 September 2013.
- Denmark. "Kingdom of Denmark Strategy for the Arctic 2011-2020." <http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/mss-denmark_en.pdf>. Accessed on June 25, 2014.
- Dufresne, Robert. "Canada's Legal Claims Over Arctic Territory and Waters." *PRB 07-39E Parliamentary Information and Research Service – Library of Parliament*, Ottawa, December 6, 2007.
- "Extended Continental Shelf Summary of Mission." <<http://continentalshelf.gov/missions.html>>. Accessed on June 16, 2014.
- Isted, Kathryn. "Sovereignty in the Arctic: An Analysis of Territorial Disputes & Environmental Policy Considerations." *Journal of Transnational Law & Policy*, Vol. 18 (2).2009.
- Japan. *Note Verbale Permanent Mission of Japan to the United Nations*, SC/12/372 (December 28, 2012).
- Jensen, Øystein. "Limits of the Continental Shelf in the Arctic Ocean." *ESIL Reflections Vol. 2 (4)*. 2013.
- Kraska, James. "International Security and International Law in the Northwest Passage." *Vanderbilt Journal of Transnational Law*, Vol. 42. 2009.
- Murphy, Alain. "Coordinated, Harmonized or Joint Submissions to the Commission on the Limits of the Continental Shelf." Paper presented in the *5th International Hydrographic Organisation (IHO) – International Association of Geodesy (IAG) Advisory Board on Scientific and Technical Aspects of the Law of the Sea (ABLOS) Conference*, Monaco, October 15-17, 2008.
- Lathrop, Coalter. "Continental Shelf Delimitation Beyond 200 Nautical Miles: Approaches Taken by Coastal States before the Commission on the Limits of the Continental Shelf" in *International Maritime Boundaries*. Edited by David A. Colson and R.W. Smith, T.k.: The American Society of International Law, 2011.
- Lindholt, Lars. "Arctic Natural Resources in a Global Perspective" in *The Economy of the North*. Edited by Glomsrød and I. Aslaksen, Oslo: Statistics Norway, 2006.

- Lindsay, Timothy J. “(Un)Frozen Frontiers: A Multilateral Dispute Settlement Treaty for Resolving Boundary Disputes in the Arctic.” *Oil, Gas & Energy Law Intelligence Vol. 10 (2)*. 2012.
- “Lomonosov Ridge.” <<http://arcticcontroversy.weebly.com/lomonosov-ridge.html>>. Accessed on October 25, 2014.
- Mexico. *Executive Summary – A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the United Mexican States Pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea* (Dec 13, 2007).
- “Preliminary Information* Indicative of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles.” <http://www.un.org/depts/los/clcs_new/commission_preliminary.htm>. June 8, 2014.
- Prescott, John R. V. *The Maritime Political Boundaries of the World*. New York: Methuen & Co., 1986.
- Russia. *Executive Summary of Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in respect of the Continental Shelf of the Russian Federation in the Arctic Ocean*. 2015.
- Ryu, Jongseong and Vladimir Kaczynski. “Review on Some Aspects of Legal and Scientific Understandings regarding Outer Continental Shelf Limits in the Arctic Ocean.” *KMI International Journal of Maritime Affairs and Fisheries Vol. 1 (1)*. 2009.
- “Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982.” <http://www.un.org/depts/los/clcs_new/commission_submissions.htm>. Accessed on June 16, 2014.
- UNEP. “New Awareness of and Opportunities for UNEP to Address Climate Change in the Arctic.” Paper presented in the *Arctic Side Event at The Governing Council/Global Environmental Ministerial Forum*, Nairobi, February 18, 2013.
- United Kingdom. *Executive Summary – Submission in respect of the Falkland Islands, and of South Georgia and the South Sandwich Islands* (May 11, 2009).
- United Nations. *Receipt of the Submission made by Australia to the Commission on the Limits of the Continental Shelf*, (November 15, 2004).
- _____. *Receipt of the Submission made by Mexico to the Commission on the Limits of the Continental Shelf*, (Dec 19, 2011).
- _____. *Receipt of the partial revised submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf* (August 4, 2015).
- _____. *Oceans and the Law of the Sea - Report to the Secretary General (A/57/57/Add.1)*, (October 8, 2002).
- _____. *Receipt of the Submission made by the United Kingdom of Great Britain and Northern Ireland to the Commission on the Limits of the Continental Shelf* (May 14, 2009) and *Executive Summary – Submission in respect of the Falkland Islands, and of South Georgia and the South Sandwich Islands* (May 11, 2009).
- _____. *United Nations Convention on the Law of the Sea 1982*.