



## **1.6 The Law and Politics of Canadian Jurisdiction on Arctic Ocean Seabed (International Law)**

### **Project Leader**

Michael Byers (University of British Columbia)

### **Project Team**

#### Network Investigators

Suzanne Lalonde (Université de Montréal); Ted McDorman (University of Victoria)

#### Collaborators

Ron Macnab (Natural Resources Canada - Geological Survey of Canada); Alexander Vylegzhanin (Russian Academy of Sciences); Coalter Lathrop (Sovereign Geographic Inc.); Ian Townsend-Gault (University of British Columbia); James Crawford, Martin Pratt

#### PhD Students

Solanna Anderson, James Baker, Shayna Plaut (University of British Columbia)

#### Undergraduate Students

Heiberg Dalaina (University of British Columbia)

## ABSTRACT

The possibility that the Arctic Ocean seabed contains vast deposits of hydrocarbons is attracting considerable attention. Under the 1982 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 141<sup>st</sup> 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 being 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 recently opened discussions on the matter with the United States. Providing creative solutions and feeding them into the negotiation process will be a major focus of this project during the next three years.
- On the other side of the Canadian Arctic, some opportunities for a win-win conclusion to the Lincoln Sea dispute have long been apparent, with a simple sharing of the disputed areas being the most obvious course. However, there are other options which might create even more benefits for the two countries. For example, if Canada and Denmark were simply to recognize each other’s Arctic “straight-baselines”, Denmark would prevail in the Lincoln Sea dispute but Canada would gain an important element of support for its legal

position in the Northwest Passage, where its principal disputant is of course the United States.

- 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 been and will remain a central focus of this project.

## OBJECTIVES

- To identify the relevance of the collection of scientific data concerning 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 identify and explore creative options for the resolution of the Canada-Denmark dispute in the Lincoln Sea (and relatedly over Hans Island), including options which might create more benefits for the two countries than a simple division of the disputed sector in half. For example, if Denmark and Canada were simply to recognize each other's Arctic "straight-baselines" around Greenland and the Canadian archipelago, Denmark would prevail in the Lincoln Sea dispute but Canada might gain an important element of support for its legal position in the Northwest Passage.
- 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 141<sup>st</sup> 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 141<sup>st</sup> meridian and heads towards the already delimited U.S.-Russian maritime boundary to the west. Consequently, the Canadian legal position is only being 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 recently opened discussions on the matter with the United States. Providing creative solutions and feeding them into the negotiation process will be a major focus of this project during the next three years.
- 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). Here, some opportunities for a win-win conclusion have long been apparent, with a simple sharing of the disputed areas being the most obvious course. However, there are other options which might create even more benefits for the two countries. For example, if Canada and Denmark were simply to recognize each other's Arctic "straight-baselines", Denmark would prevail in the Lincoln Sea dispute but Canada would gain an important element of support for its legal position in the Northwest Passage, where its principal disputant is over course the United States. This project will delve into this and other, complex but potentially quite fruitful negotiating options.
- 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. Working relationships with leading Russian and Danish scholars and diplomats have already 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 been seconded 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 will participate in a solutions-oriented workshop - organized as part of this project - on the Central Arctic Ocean boundaries on March 2-4, 2012. The result will be a lengthy peer-reviewed paper on that subject, which will be submitted to a top international law journal.

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. They have also attended meetings and workshops in Canada's Arctic, including in Whitehorse, Inuvik, Iqaluit, Resolute, Cambridge Bay, and also an Arctic summit hosted by ArcticNet in August 2011 on board the *CCGS Amundsen*.

Baker, J.S. has presented a paper at a major international conference in Iceland and also attended the Rhodes Academy on the Law of the Sea, a major research and networking opportunity that was supported by a further, specific grant from ArcticNet.

Our information gathering and analysis continue to generate practical results, most notably assisting the Canadian government with respect to its decision to open negotiations on the Beaufort and Lincoln Sea boundaries and to explore the possibility of negotiations on 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, is enabling us to identify and explore creative options for win-win solutions that might otherwise not be considered by negotiators.

## RESULTS

In March 2012, a major international workshop is being hosted by this project involving experts and government officials from Canada, Denmark, Russia, the United Kingdom, and the United States. The workshop will revolve around a lengthy discussion paper on Central Arctic Ocean boundaries prepared by James Baker and Michael Byers, and will provide focused high-level peer review that will improve the paper and prepare it for submission and publication to a top international law journal. The exercise and resulting paper will also 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.

Negotiations with the United States on the Beaufort Sea Boundary commenced in 2010 and our project continues to provide input to that process, most recently with a detailed consideration of the negotiating options which James Baker and Michael Byers recently published in *Ocean Development and International Law*, which is perhaps the leading international journal in this field.

Michael Byers has presented the paper on the Beaufort Sea Boundary as a Keynote Speaker at the Inuvik Petroleum Show and before the National Energy Board, Calgary.

Negotiations with Denmark concerning the Lincoln Sea and Hans Island have commenced and we continue to provide input there, 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.

In short, the project is closely involved in the three sets of inter-state negotiations that are currently taking place and fall directly within our stated scope and mandate. We are, in other words, successfully doing exactly what we proposed and hoped to do.

## 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 identify 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 have 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). Here, some opportunities for a win-win conclusion have long been apparent, with a simple division of the disputed areas being the most obvious course. However, there are other options which might create even more benefits for the two countries. For example, if Canada and Denmark were simply to recognize each other's Arctic "straight-baselines" around the Canadian archipelago and Greenland, Denmark would prevail in the Lincoln Sea dispute but Canada would gain an important element of support for its legal position in the Northwest Passage. Whether this kind of linkage between different disputes is possible and desirable deserves - and will receive - considerable attention as this project proceeds.

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 Extended 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. A lengthy discussion paper prepared by James Baker and Michael Byers will be the focus on an international workshop from 2-4 March 2012 at which government officials from the different countries will be present.

## 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.

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. Negotiations with Denmark concerning the Lincoln Sea and Hans Island have also commenced and already progressed to the point where news reports indicate that settlements of both disputes may be imminent.

Michael Byers has presented on the Beaufort Sea Boundary dispute as a Keynote Speaker at the Inuvik Petroleum Show and before the National Energy Board, Calgary.

The project has now shifted its focus to the Central Arctic Ocean and possible overlaps in submissions made by Canada, Denmark and Russia to the UN Commission on the Limits of the Continental Shelf. Discussions with Russian international lawyers and diplomats already indicate that Russia has no intention of including seabed on the Canadian side of the North Pole within its submission to the UN Commission. This creates a major opportunity for cooperative solutions, including joint or coordinated submissions or even a provisional boundary between Canadian, Russian and (ideally) Danish jurisdiction in the Central Arctic Ocean. A discussion paper scoping out these and other creative options will

be the focus of an international workshop organized by this project in March 2012; a workshop which officials from the different countries will attend.

## 2011-12 PUBLICATIONS

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

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