

The Law and Politics of Canadian Jurisdiction on Arctic Ocean Seabed

Project Leader

Michael Byers (University of British Columbia)

Network Investigators

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

Collaborators

David VanderZwaag (Dalhousie University); Martin Pratt (Durham University); Roman Kolodkin (Embassy of The Russian Federation in The Netherlands); Jorgen Lilje-Jensen (Foreign Ministry of Denmark); Christian Marcussen (Geological Survey of Denmark and Greenland); Bjorn Kunoy (Ministry of Foreign Affairs, Faroe Islands); Sergey Rogov, Alexander Vylegzhanin (Russian Academy of Sciences); Coalter Lathrop (Sovereign Geographic Inc.); Betsy Baker (University of Alaska Fairbanks); Ian Townsend-Gault (University of British Columbia); James Crawford (University of Cambridge); Larry Mayer (University of New Hampshire); Geir Ulfstein (University of Oslo); Andrew Serdy (University of Southampton); Stuart Elden (University of Warwick); Elizabeth Riddell-Dixon (University of Western Ontario)

PhD Students

James Baker, Mark Stoller (University of British Columbia)

Undergraduate Students

Kelsey Franks (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 bathymetry and geology - that the area of seabed in question is a 'natural prolongation' of its landmass. Canada, which ratified UNCLOS in 2003, is 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. It will do so as a follow-up to its on-time submission, in December 2013, of data concerning the seabed off the Atlantic coast. The United States, Denmark and Russia are undertaking similar exercises. This international, interdisciplinary research project focuses on several existing and potential maritime boundary disputes - involving the United States, Denmark and potentially Russia - that could usefully be resolved before Canada submits 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

- This project has explored the law and politics of the Beaufort Sea boundary dispute between Canada and the United States, and identified a number of possible options for a negotiated settlement. Discussions between the two countries are now underway.
- This project has explored the law and politics of the Lincoln Sea boundary dispute between Canada and Denmark, and identified a number of possible options for a negotiated settlement. In November 2012, a settlement was achieved, in the form of a provisional boundary line.
- This project is now focused on 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. We are exploring the options available to the three countries, which include the possibility of coordinated or joint submissions as well as the negotiation of provisional or permanent boundaries.
- Significant work has already been done with our collaborators in Denmark and Russia, and in 2012 a workshop was held bringing together key individuals from the Canadian, Danish and Russian scientific, legal and diplomatic teams, as well as other Canadian and international experts. The workshop contributed significantly towards improving coordination and cooperation between the three countries on this complicated and politically sensitive issue.
- In December 2013, Canada chose to withhold the Arctic portion of its submission to the UN Commission on the Limits of the Continental Shelf, while meeting its deadline by submitting data with respect to the Atlantic coast. Work on the Arctic portion of the submission will continue. This development makes this research project all the more important and topical, since there is time now to re-consider and implement

other options for avoiding and resolving potential disputes, and for correcting media and public misunderstandings that could otherwise encourage diplomatic tensions.

- This project will help to avoid those misunderstandings and tensions by researching the different options available in the new situation, by bringing key individuals from the Canadian, Danish and Russian scientific, legal and diplomatic teams together again, and by organizing follow-up meetings in Moscow, Copenhagen, Nuuk, Iqaluit and Ottawa. Our ultimate goal is to contribute significantly towards improving cooperation and coordination on this complicated and politically-sensitive issue.
- This project has already resulted in the most recent and detailed publication on these topics: a 314-page book entitled “International Law and the Arctic” published by Cambridge University Press in September 2013.

Objectives

- Identify, explore and explain Canada’s options in the Central Arctic Ocean, where there are potential overlaps between 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 include the possibility of coordinated or joint submissions, the negotiation of provisional or permanent boundaries, and recourse to dispute settlement mechanisms such as the International Court of Justice.
- Bring together key members of the Canadian, Danish and Russian scientific, legal and diplomatic teams, as well as other Canadian and international experts, in order to explore the options and promote communication, coordination and cooperation.

- Explain the scientific, legal and diplomatic dimensions of the situation - including Canada’s decision to delay the Arctic portion of its submission in December 2013 - to foreign officials, northern indigenous peoples, industry, media and the general public. This explanation will include the options currently open to Canada.
- 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, multilateral relations within the Arctic Council, United Nations, International Maritime Organization, etc., and last but not least, relations with Arctic indigenous peoples.

Introduction

This project has proceeded in three stages:

First, we explored the law and politics of the Beaufort Sea boundary dispute between Canada and the United States, and identified a number of possible options for a negotiated settlement. We advised the federal government on this, and discussions between the two countries are underway.

Second, we explored the law and politics of the Lincoln Sea boundary dispute between Canada and Denmark, and identified a number of possible options for a negotiated settlement. We advised the federal government on this, and in November 2012, a provisional settlement was achieved.

Third, we turned our attention to the issue of extended continental shelves in the Central Arctic Ocean and the possibility that two or more of the eventual submissions to the UN Commission on the Limits of the Continental Shelf might overlap to some degree. Our work on this issue included research trips to Russia, Denmark, Norway, and the United States. Most notably, it included the organization of a closed-door

workshop between members of the scientific, legal and diplomatic teams from Canada, Denmark and Russia, along with other Canadian and international experts. The workshop helped to promote coordination of the different submissions, including the planned limitation of the Canadian and Danish submissions to the west and east sides (respectively) of an equidistance line north of Ellesmere Island and Greenland.

In December 2013, however, Canada chose to withhold the Arctic portion of its submission to the UN Commission on the Limits of the Continental Shelf. This unexpected development means this research project is no longer complete. If anything, it is all the more topical and potentially helpful to the Canadian government - since there is time now to re-consider and implement other options for avoiding, managing, and resolving potential disputes over seabed in the Central Arctic Ocean.

Activities

- Ted McDorman continued his secondment to the Bureau of Legal Affairs at the Department of Foreign Affairs in Ottawa until July 2013, working on the Beaufort Sea and Lincoln Sea boundaries as well as the preparation of Canada's submission concerning extended continental shelves in the Central Arctic Ocean - work that meshes perfectly with his role as a network investigator on this project.
- Michael Byers, Ted McDorman, Suzanne Lalonde and our collaborators continued to engage in follow-up analysis, writing and other communications concerning the closed-doors workshop on Central Arctic Ocean boundaries held as part of this project in 2012. The workshop was attended by two senior diplomats from the Danish Ministry of Foreign Affairs, a senior scientist from 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.
- Michael Byers, Ted McDorman, Suzanne Lalonde and our collaborators continue to attend international conferences and workshops and conduct interviews with foreign lawyers and diplomats from Russia, Denmark, Iceland, Norway, the European Union and the United States. For example, in July 2013, Michael Byers interviewed diplomats in the Foreign and Commonwealth Office in London. In January 2014, he met with the Prime Minister of Iceland and the Icelandic Foreign Ministry's Legal Advisor. The three project investigators also participated in meetings and workshops with Arctic indigenous peoples, including Inuit from Greenland and Canada as well as Saami.
- The project organized a plenary panel on Arctic Ocean extended continental shelves at the December 2013 ArcticNet Annual Scientific Meeting that included Christian Marcussen from the Geological Survey of Denmark and Greenland, Ted McDorman (fresh from his secondment at the Department of Foreign Affairs), Elizabeth Riddell-Dixon from the University of Western Ontario, and Stuart Elden, a world-leading political geographer from the University of Warwick (and the former director of the International Boundary Research Unit at Durham University).
- James Baker successfully defended his PhD thesis at the University of British Columbia in December 2013 and is now transforming the thesis into a book for publication.
- Michael Byers published a 314-page monograph entitled "International Law and the Arctic" with Cambridge University Press that includes three chapters on Arctic maritime boundaries and extended continental shelves.

Results

Our research continues to generate practical results, most notably the November 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 future Central Arctic Ocean boundaries. Our efforts to develop a comprehensive understanding of the issues, including the technical scientific and legal details as well as the geopolitical context, are enabling us to identify, explore and explain creative options for win-win solutions that might otherwise not be considered by negotiators.

In 2012, the project organized a closed-doors workshop on Central Arctic Ocean boundaries, designed to assist the governments of Canada, Denmark and Russia identify opportunities for coordination and cooperation as they prepare 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, a senior scientist from 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.

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political geographer from the University of Warwick (and the former director of the International Boundary Research Unit at Durham University).

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In short, our project is accomplishing exactly what we had hoped. Our efforts to develop a comprehensive understanding of the issues, including the technical scientific and legal details as well as the geopolitical context, are enabling us to identify, explore and explain creative options for win-win solutions that might otherwise not be considered by negotiators.

Discussion

The media often portrays the Arctic as a region of conflict or potential conflict over sovereignty, jurisdiction, and hydrocarbon resources located in the seabed. To a significant degree, this portrayal is incorrect. All of the land (with the tiny 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 drew the possibility of a win-win negotiating solution in the Beaufort Sea to the attention of the Canadian government, which opened discussions on that boundary with the United States. Providing creative legal solutions and feeding them into the diplomatic process has been a major focus of this project. At the same time, our work on the Beaufort Sea boundary included academic publishing: first, a lengthy paper published in *Ocean Development and International Law*, and then a 314-page book published by Cambridge University Press.

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 respects 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 solution to this boundary dispute, with one of our members (Ted McDorman) working on these issues while on secondment with the Legal Bureau of the Department of Foreign Affairs.

In November 2012, the foreign ministers of Canada and Denmark announced a tentative agreement on the Lincoln Sea boundary. The only outstanding matters 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 identifying options for extending the new Lincoln Sea boundary beyond 200 nautical miles along or near the Lomonosov Ridge.

Farther 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 provisional or permanent boundaries in advance of the submissions. We hosted a closed-door workshop on this issue with senior

legal, scientific and diplomatic representation from Canada, Russia and Denmark that helped to promote coordination of the different submissions, including the planned limitation of the Canadian and Danish submissions to the west and east sides (respectively) of an equidistance line north of Ellesmere Island and Greenland. More recently, we have been involved in consultations in Moscow, Copenhagen, Reykjavik, Oslo, and Washington.

In December 2013, however, Canada chose to withhold the Arctic portion of its submission to the UN Commission on the Limits of the Continental Shelf. This unexpected development means this research project is no longer complete. If anything, it is all the more topical and potentially helpful to the Canadian government, since there is time now to re-consider and implement other options for avoiding, managing, and resolving potential disputes over seabed in the Central Arctic Ocean.

Conclusion

This project has contributed significantly to knowledge-generation and policy-making. Our work on the Beaufort Sea boundary dispute between Canada and the United States contributed to the initiation of discussions between those two countries. Our work on the Lincoln Sea boundary dispute between Canada and Denmark contributed to a provisional settlement between those two countries.

More recently, we have turned our attention to the issue of extended continental shelves in the Central Arctic Ocean and the possibility that two or more of the eventual submissions to the UN Commission on the Limits of the Continental Shelf might overlap to some degree. As part of this work, we organized a closed-door workshop between members of the scientific, legal and diplomatic teams from Canada, Denmark and Russia, along with other Canadian and international experts. The workshop helped to promote coordination and cooperation during the preparation of the different submissions.

In December 2013, however, Canada chose to withhold the Arctic portion of its submission to the UN Commission on the Limits of the Continental Shelf. This unexpected development makes this project all the more topical and potentially helpful to the Canadian government, since there is time now to re-consider and implement other options for avoiding, managing, and resolving potential disputes over seabed in the Central Arctic Ocean.

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Publications

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

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