**UNIVERSITY OF VAASA**

SCHOOL OF MANAGEMENT

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# WHO OWNS THE NORTH POLE?

Analysis of the territorial claims made by the Arctic states over the Continental shelf in the Arctic Ocean.

Public Law
Master's Thesis

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**ABBREVIATIONS**

| | |
|---|---|
| AAC | The Arctic Athabaskan Council |
| ACAP | Arctic Contaminants Action Program |
| ACG | Arctic Cultural Gateway |
| ACOPS | Advisory Committee on Protection of the Sea |
| AEPS | Arctic Environment Protection Strategy |
| AIA | The Aleut International Organisation |
| AINA | Arctic Institute of North America |
| AMAP | The Arctic Monitoring and Assessment Program |
| AWRH | Association of World Reindeer Herders |
| CAFF | Conservation of the Arctic Flora and Fauna |
| CCU | Circumpolar Conservation Union |
| CLCS | Commission on the Limits of the Continental Shelf |
| ECS | Extended Continental Shelf |
| EEZ | Exclusive Economic Zone |
| EPPR | Emergency Prevention, Preparedness and Response |
| EU | European Union |
| FAL | The Facilitation Committee |
| GCI | Gwich'in Council International |
| IASC | International Arctic Science Committee |
| IASSA | International Arctic Social Sciences Association |
| IBRU | International Boundaries Research Unit (Durham University) |
| ICC | Inuit Circumpolar Council |
| ICES | International Council for the Exploration of the Sea |
| ICJ | International Court of Justice |
| IFRC | International Federation of Red Cross & Red Cresent Societies |
| IHO | International Hydrographic Organization |
| IMO | International Maritime Organization |
| IPCC | Intergovernmental Panel on Climate Change |
| ISA | International Seabed Authority |
| ITLOS | International Tribunal on the Law of the Sea |
| IUCH | International Union for Circumpolar Health |

| | |
|---|---|
| IUCN | International Union for the Conservation of Nature |
| IWGIA | International Working Group for Indigenous Affairs |
| km | kilometre |
| LEG | Legal Committee |
| MARPOL | The International Convention for the Prevention of Pollution from Ships 1973 |
| MEPC | The Marine Environment Protection Committee |
| MSC | The Maritime Safety Committee |
| NAMMCO | North Atlantic Marine Mammal Commission |
| NATO | North Atlantic Treaty Organization |
| NCM | Nordic Council of Ministers |
| NEFCO | Nordic Environment Finance Corporation |
| NF | Northern Forum |
| NGS | National Geographic Society |
| NM | Nautical Mile. This abbreviation is used in this thesis, but may not be correct elsewhere. A nautical mile equals to approximately 1.852 km. |
| NOAA | National Oceanic and Atmospheric Administration (United States) |
| PAME | Protection of the Arctic Environment |
| RAIPON | The Association of Indigenous Minorities of the North, Siberia and the Far East Russian Federation |
| SCPAR | Standing Committee of the Parlimentarians of the Arctic Region |
| SDWG | Sustainable Development Working Group |
| SOLAS | International Convention for Safety of Life at Sea 1974 |
| TCC | The Technical Cooperation Committee |
| TFAMC | Task Force on Arctic Marine Cooperation |
| TFICA | Task Force on Improved Connectivity in the Arctic |
| The US | The United States of America |
| UArctic | University of the Arctic |
| UN | United Nations |
| UN-ECE | United Nations Economic Commission for Europe |
| UNCLOS | The United Nations Convention on the Law of the Sea 1982 |
| UNDP | United Nations Development Programme |

| | |
|---|---|
| UNEP | United Nations Environment Programme |
| UNGA | An Agreement Between Cooperation and Relationship Between the UN and ITLOS |
| WMO | World Meteorological Organisation |
| WNC | West Nordic Council |

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## ABSTRACT/ TIIVISTELMÄ

There has been a growing interest towards The North Pole and the Arctic Ocean Surrounding it in relation to the effects of the Climate Change. This region attracted the attention of the world media when the Federation of Russia sent down two submersibles in 2007 and planted a Russian flag in the Arctic Ocean floor, directly beneath the geographical North Pole. Soon, such headlines as "Who owns the North Pole?" emerged.

This thesis seeks the answer to the question: Who owns the North Pole? However, contrary to the headlines of the world media this thesis seeks the answer to this question through State sovereignty. After the Russian expedition in 2007, four of the other Arctic coastal States followed with their territorial claims towards the Arctic Ocean seabed. Currently Russia has an overlapping claim over the North Pole with the Kingdom of Denmark. Norway and Canada have also submitted their extended continental shelf –claims to the Commission of the Limits of the Continental Shelf. All of these claims are based on the Article 76 of the United Nations Convention of Law of the Sea 1982.

This thesis analyses the prevalent legal framework regulating these claims, the Arctic Ocean governance, and finally, the extent of State sovereignty in the Arctic Ocean.

**AVAINSANAT:** Law of the Sea, UNCLOS, Territorial Claims, the Arctic Ocean

## 1. INTRODUCTION

When the Dutch scholar Hugo Grotius' book "*Mare Liberum*", namely *Freedom of the Seas* was first published in the spring of 1609, the book caused controversy to a global extent. It was published at a time when the European States had their trade vessels sailing the high seas carrying silk, spices, porcelain and other luxury goods back to Europe and competing over the best trade routes and areas. Grotius' book introduced a principle that has since become one of the cornerstones of international law and law of the sea.[1] It has been adopted that the high seas, namely the international waters are open to all states thus cannot be claimed by any single state to own. Today this principle can be found in the United Nations Convention of Law of the Sea (hereinafter referred to as UNCLOS) article 87 which states: the high seas are open to all states, whether coastal or land-locked. The article lists all the rights including navigation, over flight, fishing and scientific research. To this day this same principle, along with the principles introduced in Chapter V of *Mare Liberum* still causes controversy and argument, although the arguments are not necessarily over silk and spices anymore but over the access to undiscovered natural resources and shorter shipping routes. This controversy will be examined in later chapters of this thesis.

Much has changed in the world since Hugo Grotius' time. Little did the crews and the captains of the wooden trade vessels sailing the high seas carrying spices, tea, and other luxury goods know about the threats that the future world would face. It wasn't, until the mid-1980s that the topic of the Climate Change entered the public agenda.[2]

The direct effects of climate change can be seen in the Arctic region and the Arctic Ocean. The Arctic has been identified as a region that potentially has vast reserves of natural resources such as oil and gas. The interest of the Arctic Nations towards the Arctic Ocean seems to grow in relation to the warming waters exposing more of the continental shelf and seabed underneath the ancient ice fields. This ancient ice in the Arctic Ocean has been an obstacle preventing mining and resourcing oil or gas from the sea-

[1] Haakonsen 2004: xi–xiii.
[2] Moser 2010: 32.

bed. However due to the effects of the climate change this obstacle is becoming less prominent[3].

The Arctic coastal states: Norway, Russia, Canada and Denmark have launched territorial claims to the Arctic Ocean and the seabed. The United States is expected to follow once it has ratified the United Nations Law of the Sea Convention (UNCLOS). When this will happen, is unknown.

This thesis analyses the prevalent legal framework that regulates the different maritime zones and State sovereignty in these zones as well the delimitation of the maritime zones, especially the delimitation of the continental shelf in the Arctic Ocean.

The research question and title of this thesis "Who owns the North Pole?" has been derived from the headlines of the world media, especially after a Russian submersible planted a Russian flag in the Arctic Ocean- seabed below the terrestrial North Pole in 2007. The event caused an international stir, and the world media added fuel to the flame by such headlines as: "Russia claims the North Pole"[4], "There is a new country claiming the sole ownership of the North Pole"[5] or "Countries in tug-o-war over Arctic Resources"[6]

Black's Law Dictionary defines ownership as "The complete dominion, title or proprietary right over a thing or a claim.[7] Whereas a "legal owner" is defined as an "entity that has an enforceable claim or title to an asset or property and is recognised as such by law.[8] Ownership as a concept forms the core of modern private-, and civil law, whereas, the concept of sovereignty forms the core of modern international- and constitutional public law. In the previously mentioned headlines, 'sovereignty' has hidden behind a

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[3] Birdwell 2016.
[4] Time 2007, Available 11.10.2018 at: http://content.time.com/time/world/article/0,8599,1642905,00.html
[5] Quartz 2014, Available 11.10.2018 at: https://qz.com/312460/theres-a-new-country-claiming-sole-ownership-of-the-north-pole/
[6] Cnn 2009, Available 11.10.2018 at: http://edition.cnn.com/2009/TECH/science/01/02/arctic.rights.dispute/index.html
[7] Black's Law Dictionary: Ownership. Available 11.10.2018 at https://thelawdictionary.org/ownership/
[8] The Business Dictionary: Legal owner. Available 11.10.2018 at: http://www.businessdictionary.com/definition/legal-owner.html

private law institution of 'ownership'. These two terms are easily confused because they both mean dominion or legal authority over something.

The aim of this thesis is to study 'ownership' through 'sovereignty' in the territorial claims made over the Arctic Ocean seabed. Sovereignty is not an easy concept to define, even though it forms the core for the modern international public law. In fact, even Hugo Grotius simulates these terms in the Chapter V of his book Mare Liberum, where he states that the sea has been seen as the property of no one (*res nullius*), a common possession (*res communis*) and public property (*res publica*).[9]

One famous definition is by Max Huber in an arbitration judgement: Island of Palmas-case 1928, he states:

> *"Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.*[10]

The purpose of this thesis is to study the territorial claims through the concept of 'sovereignty', not 'ownership', even though sometimes these two concepts overlap, as do the territorial claims in the Arctic Ocean. When the world media wants to know "Who owns the North Pole?" they should be asking "Who (or which sovereign State) will have sovereignty over the North Pole?" The latter is the question that this thesis is concerned with.

## 1.1. General background and limitations

During the recent decades, there has been a growing interest towards the Arctic region. This interest has grown in relation to climate change and its effects on the Arctic envi-

[9] Haakonsen 2004: 78.
[10] Island of Palma-case 1928: 838.

ronment. The ice in and around the Arctic Ocean is melting at a significant rate and accelerating. Due to climate change affecting this region in such a visible way, the Intergovernmental Panel on Climate Change (IPCC) has identified the Arctic region as the global barometer for climate change. [11] The Arctic region is unique and interesting in many respects. As an environment, it is also fragile.

The Arctic states have made collective and unambiguous territorial claims over the continental shelf in the Arctic Ocean in the Ilulissat Declaration in 2008[12]. These claims are based on the states' sovereign maritime zones. The growing interest in making the territorial claims arises from the potential natural resources beneath the Arctic Ocean seabed, which, due to the effects of climate change, are becoming more and more accessible. An estimated 18% of the world's undiscovered petroleum[13] and 30 % of undiscovered natural gas lies beneath the Arctic Ocean[14]. The Arctic Ocean that is examined in this thesis consists of the North Pole and its surrounding areas: the Arctic Ocean proper and its fringing seas, gulfs and bays. The Arctic States are the five littoral states to the Arctic Ocean: Canada, Denmark (Greenland), Norway, Russia, and the United States. These states will be hereinafter referred to as "the Arctic Five".[15]

When examining the Arctic region, it is evident that three other states also have territories north of the Arctic Circle: Finland, Iceland and Sweden. These states together with the 'Arctic Five' constitute the 'Arctic Eight'. The eight Arctic states for their part constitute the Arctic Council, which is a high level international forum that addresses the issues relating to the interests of the eight Arctic States.

The 'Arctic Five' consists of the five littoral states to the Arctic Ocean thus, this thesis will concentrate on their interests and claims to the territory. However, the remaining three states out of the 'Arctic Eight' also have a national interest to the Arctic region. Because of their membership to the Arctic Council and their common interests and common issues specific to the Arctic region it is likely that the three other Arctic states

[11] IPCC Fifth Assesment Report 2014: Chapter 4 at 362,Chapter 10 at 919.
[12] Ilulissat Declaration 2008.
[13] Sas 2016:7.
[14] USGS 2008.
[15] Kuersten 2016: 389.

outside of the 'Arctic Five' will also have a say in terms of sustainable development and environmental protection when it comes to the Arctic region and the Arctic Ocean.


Figure 1.1. Map of The Arctic Region. The red line marks the area where the average temperature of the warmest month is below 10°C. [16]

[16] University of Texas 2007.

## 1.2. Method and Material

This thesis will follow legal-dogmatic research method. The Arctic Ocean is subject to general rules of the international law and law of the sea, sourced in particular from customary international law[17] and the United Nations Conventions, particularly UNCLOS, which is now the principal source in this field. This thesis will be based on and will evaluate the international rules and doctrines found in the UNCLOS, and other conventions of international law where applicable. Four of the 'Arctic Five'-states are already signatories to UNCLOS, the United States being the only one yet to ratify it.

### 1.2.1 Sources of International Law

To fully understand the legal dogmatic research method used in this thesis one must understand the sources of international law itself. These sources consist of rules and principles that form the international law. One broadly accepted definition of the sources of international law emerges from the article 38.1 of the UN Charter.

> The Court, whose function is to decide in accordance with international law such disputes, as are submitted to it, shall apply:
> (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
> (b) International custom, as evidence of a general practice accepted as law;
> (c) The general principles of law recognized by civilized nations;
> (d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means of the determination of law.[18]

The first paragraph of the Article concerns international conventions, or treaties the only tools provided by the international community that lets States create international law.

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[17] Rothwell and Stephens 2010:22–26.
[18] Hakapää 2010: 25.

Treaties can be bilateral, existing between two States or multilateral existing between several States. UNCLOS is recognized as one of these international conventions. In front of International law all States are legal equals. Thus, international treaties are actually a bargain between legal equals that may cover any field of international relations. With treaties, States can create certain and specific obligations which are legally binding to them. Whether the treaties are general or particular, they remain the most important sources of international law. Treaties are voluntary in the sense that no State can be bound to it without its consent. Thus when a treaty has fulfilled the requirements of its formal existence and has entered into force, it imposes obligations to State-parties. The failure to abide by these terms will lead to international responsibility unless a defense is available.[19]

The second paragraph concerns the international custom, hence customary international law. Customary international law is a collection of norms that have evolved from the practice or customs of States. Although the principles of international conventions and treaties have replaced customary international law as the primary source of international law in recent decades, many of the international norms that still govern the States and other international entities derive from State practice. The process of customary law formation, being derived from the practice of international legal entities is an on-going phenomenon, and one of its significant advantages is that it enables the international law to develop towards the needs of the time and evolution of the whole international community. The state practice shapes the customary international law, but in order for this practice to formulate as customary law, it must be reasonably consistent. However, this consistency may vary subject to the matter at hand. In general, this consistency tends to be stronger in positive obligations when States are required to do something, and weaker in negative obligations, where a State is required to refrain from doing something.[20]

In order for this type of general principle in customary law to develop, the practice must be standard in the sense that it must be common to a significant number of States. Here again, the degree of generality varies due to the subject matter. Greater significance may

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[19] Dixon 2005: 21–25.
[20] Hakapää 2010: 56–58.

be given to States that have a greater interest in a particular case. For example, the practice of major maritime powers may have greater significance when formulating the rules of the law of the sea. Also, the duration of practice before it can be considered general and thus customary varies again due to the subject matter.[21] In addition to the generality requirement for international customary law, another requirement for the existence of customary international law is *opinion juris (sive necessitatis)*, this concept describes the subjective element in State practice, and whether this practice is carried out due to a belief of obligation of law. In this case it is not essential to examine the psychology behind this belief of a legal obligation to act a certain way, but to examine the actual acts performed by that State and the response from other States to such practice. In the Article 38.1. (b) *Opinio juris*-requirement is stated as: *International custom, as evidence of a general practice accepted as law.* (Emphasis added.[22]

The third paragraph of the Article refers to the general principles of law recognized by civilized nations. These are similar to general principles of law in national legal systems but have a strong international character. One of these principles is sovereign equality of nations, and another example could be the state's exclusive jurisdiction in its own territory.[23] In Law of the Sea, three principles hold dominance: Principle of Freedom, the Principle of Sovereignty and the Principle of common heritage of mankind.[24] This becomes evident later on when the maritime zones and the territorial claims are examined. Much like the national principles of law, the general principles of international law give latitude and room for interpretation for the official enactors of international law[25].

Finally, international law may also use judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means of the determination of law. In theory, these sources do not construct law, but they are declaratory of pre-existing law. These sources help to identify law or formulate the material sources of law.

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[21] Dixon 2005: 30–32.
[22] Hakapää 2010: 58–59.
[23] Ibid: 40.
[24] Tanaka 2012: 16–19.
[25] Hakapää 2010: 61–62.

These sources of law will be used as the material for this thesis. This thesis will emphasize the final paragraph of the Article, as this study will be based on the decisions and teachings of the most highly qualified publicist. In turn, the international conventions and case law also play a vital role as the sources of this thesis, which makes it methodologically dogmatic.

The modern international law also recognises "soft law"-sources in contrast to the "hard law"-sources of international law described in the UN Charter Article 38.1. introduced above. These are usually non-binding sources of law, such as declarations, guidelines, and resolutions. Especially in international environmental law, such sources are becoming popular, because the field needs to address quickly changing situations and events and therefore require a prompt response to avoid environmental crises[26]. The defining characteristics of "soft law"-sources are that, they are not legally binding as such, and that they are usually represented in the form of recommendations or rules of practice or procedure. The entities behind these recommendations or rules of procedure are usually international organisations, nongovernmental organisations or other international actors, such as the Arctic Council, and their recommendations can become legally binding. An example is 1970 Declaration of Principles Governing the Deep Seabed, which then formed the basis for Part XI of United Nations Convention of Law of the Sea (UNCLOS). [27]Thus, these "soft law"- sources help to shape international law and the rules governing the whole international community.[28] "Soft law"-sources will also be used throughout this thesis, where applicable.

### 1.2.2. United Nations Law of the Sea Convention (UNCLOS)

Today the existence of the current United Nations Law of The Sea Convention is obvious. This was not always the case. In fact the story of how this convention came to be has perhaps as many turns as the ocean has waves. It all began in 1967 when the then UN Delegate for Malta, Arvid Pardo gave a speech to the General Assembly calling for

[26] Fitzmaurice 2001: 96.
[27] Tanaka 2012: 14–15.
[28] Hakapää 2010: 25–26.

international regulations to ensure peace at sea, to prevent further pollution, and to protect ocean resources. Most importantly he proposed that the deep seabed area lying beneath High Seas would be declared as common heritage of all mankind, and asked that some of the wealth sourced from the oceans would be used to help to close the gap between rich and poor countries and would be used to benefit the third world nations[29]. It was Pardo who initiated the process that then led to the current United Nations Law of the Sea Convention (UNCLOS).[30]

UNCLOS defines the rights and responsibilities of nations for their use of the world's oceans. UNCLOS is often referred to as the 'Constitution for the Oceans'. This name for the convention derives from the third United Nations Conference on Law of the Sea, when President Mr Tommy Koh called UNCLOS 'the Constitution for oceans, a monumental achievement in the international community.[31]"

UNCLOS has superseded the 1958 Geneva Convention. It is one of the international conventions defined as the sources of international law in the article 38.1 of the UN charter and constitutes as the core statute in the field of Law of the Sea.

UNCLOS was adopted by the Third United Nations Conference on the Law of the Sea on April 30th 1982 and opened for signatures the following December. The convention entered into force 16th of November 1994. According to the United Nations, there are currently 168 parties to the convention. 167 states and one international organisation; the European Union have signed and become parties to the convention that governs the world's oceans.

UNCLOS forms the core of the legal framework in matters related to Law of The Sea. It defines the maritime boundaries for coastal states and lists their rights and obligations within these boundaries. As stated in the preamble chapter of UNCLOS: matters not regulated in the convention are to be governed by the rules and principles of general international law. This statute will be the primary source for this thesis as it is the primary

[29] UN 1967: 1–15, 1–3.
[30] Hakapää 2010: 376.
[31] Scovazzi 2000: 122.

source for the Law of the Sea. In addition, this thesis will explore other treaties, declarations, statutes, principles of customary international law, case law and the teachings and publications of the most highly qualified publicists as a subsidiary means of the determination of law as stated in the Article 38.1 of the UN Charter. If not otherwise stated referring to UNCLOS in this thesis means referring to 1982 UNCLOS that came into force 1994.

The French jurist R.-J. Dupuy has perhaps summarised the essence of the law of the sea, and consequently the essence of this thesis as well, as follows:

"*The sea has always been lashed down by two major contrary winds: the wind from the high seas towards the land is the wind of freedom: the wind from the land toward the high seas is the bearer of sovereignties. The law of the sea has always been in the middle between these conflicting forces.*[32] "[33]

## 1.3. Geographical Limitations

The Arctic as a region is the region located around the North Pole. The Arctic region includes the Arctic Ocean and the northern parts of Asia, Europe, and North America (see Figure 1.1.). There is no generally accepted definition of the Arctic. However, commonly it is defined as an area located north of the Arctic Circle (66°32'N). The Arctic Circle is a line of latitude (66° 32'N), which the sun does not set below on the day of the summer solstice (usually 21st of June) and does not rise above on the day of the winter solstice (usually 21st of December).[34]

This thesis is solely concerned with the North Pole and the Arctic Ocean, not both of the Polar Regions. It is important to note that the North Pole and the Arctic Ocean are very different from their southern counterpart, the South Pole, and Antarctica. The key difference between these two regions is, that the Arctic is a vast frozen ocean surrounded

[32] Dupuy 1991: 247.
[33] Tanaka 2012: 16.
[34] Golitsyn 2014: Chapter 17.

by continental landmasses and open oceans, whereas Antarctica is a vast frozen continent surrounded solely by oceans[35].[36]

Thus it can be derived that the Antarctic as a region does not form a base for territorial claims based on maritime zones such as the Arctic Ocean does (See figure 1). As this thesis aims to examine these specific territorial claims based on the maritime zones made by the littoral states. The Antarctic, in this respect, has to be ruled outside of this research because of its fundamental characteristics. In this context the Arctic Ocean could be described as an ocean surrounded by continents and inhabited states, whereas the Antarctic is a continent surrounded by an ocean. The Antarctic is an isolated continent, legally protected by The Antarctic Treaty, which was signed in 1959. Thus as legal entities, the Polar Regions are very different. Article IV of the Antarctic treaty protects the Antarctic continent surrounding the South Pole.

*"No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim or enlargement of an existing claim to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force."*

Unlike its southern counterpart, a treaty does not protect The North Pole and the Arctic Ocean surrounding it. It also seems unlikely that such treaty would exist.[37] From a legal point of view, the Arctic Ocean is an intriguing region because it consists of sovereign maritime zones and international waters as well as the deep seabed area that is deemed to be common heritage of all mankind.

The North Pole is the centre of the Northern Hemisphere. The North Pole, or the terrestrial or geographical North Pole is not be confused with the magnetic North that draws the compass needle to the North– South alignment. The world's nautical charts and maps are drawn in accordance with "true north" or "geodetic" north, a direction, which

[35] Sas 2016: 2.
[36] IPCC Report 2007: Polar Regions: 807.
[37] Lukacheva 2010: 129–130.

always points towards the terrestrial North Pole. The terrestrial North Pole is a fixed geographical point, whereas the location of the magnetic North Pole fluctuates due to magnetic changes in the Earth's core.[38] This thesis is concerned with the terrestrial North Pole, the northernmost point of the Earth, that marks the latitude 90° and from where all the lines of longitude converge. Many famous explorers in history claimed to have conquered the North Pole, and many failed to cross the ice-covered Arctic Ocean all the way to the North Pole[39]. Many of these expeditions started from the territories of Nunavut, Canada or from Greenland, which are the two closest points on land to the North Pole.[40] The North Pole is a mythical place, where many western cultures believe that Santa Claus lives[41]. The future will tell if said Santa Claus has to apply for a citizenship of one of the Arctic Five- States, depending on the result of the proceedings of the Arctic territorial claims.

### 1.3.1. The Arctic Ocean, or Enclosed- or Semi-enclosed Sea

It has been argued that the Arctic Ocean could be classified as a semi- enclosed sea as described in the UNCLOS Article 122.[42] Article 122 states the following requirements for a semi-enclosed sea:

*"A gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States".*

If the Arctic Ocean is considered as a semi-enclosed sea then the littoral states surrounding it face different responsibilities in their cooperation as defined in UNCLOS Article 123. However, The International Hydrographic Organisation (IHO) defines the term '**ocean**' as:

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[38] NOAA: Geomagnetic Poles
[39] William Edward Perry, the Polaris Expedition, Fridtjof Nansen, Fredrick Cook and Rober Peary to name a few.
[40] National Georgraphic Encyclopedia: North Pole
[41] Us Finns obviously know that he really resides in Korvatunturi, in the Finnish Lapland.
[42] Symonides 1984 315 –333.

*" The vast body of water on the surface of the GLOBE, which surrounds the LAND; the main or great SEA. One of the main areas into which this body of water is divided geographically[43]."* And,

'**Sea**' as:

*"The great body of salt water in general, as opposed to LAND; OCEAN. One of the smaller divisions of the OCEANS.[44]"*

IHO has also defined The Arctic Ocean as an Ocean in their Special Publication of 'Limits of the Oceans and Seas', 3rd Edition in 1953[45]. Whether the status of the Arctic Ocean as an Ocean has been debated between scholars or not, this thesis will address The Arctic Ocean as an Ocean, which includes sea-areas north of the Arctic Circle, namely The Arctic Ocean proper as well as its fringing seas, gulfs and bays. These include the Bering, Chukchi, Greenland, Norwegian, Barents, Kara, Laptev, White, East Siberian, Prince Gustav Adolf, Pechora, Lincoln and Beaufort Seas. This area will hereinafter be referred to as the 'Arctic Ocean'.[46] These limits will also determine the geographical limitations of this thesis.

[43] IHO 1994: 161.
[44] IHO 1994: 210.
[45] IHO 1953: 11. The 3rd Edition is currently in force.
[46] Rothwell and Stephens 2010: 86–89.

## 2. MARITIME ZONES UNDER UNCLOS

The historical tradition behind maritime zone delineation goes back a long way. Hugo Grotius' *Mare Liberum*- principle faced opposition by a British jurist and scholar John Selden. Selden published his response: *Mare Clausum*, which claims that the sea is a prolongation of a States' land territory. In 1702 onwards, a Dutch jurist and legal theorist Cornelius Van Bynkershoek introduced the ideas for territorial seas in his publications. These ideas form the base for the modern Law of the Sea and the delimitation of maritime zones. Van Bynkershoek based his ideas on the control over the surrounding waters of a coastal State and that effective control of these water areas has to correspond with the coastal State's weapons. Thus the "cannon shot rule" was invented, which meant that the territorial waters at the time would have to adhere to the range of the most advanced cannon. (At the time this meant approximately three nautical miles). After the Second World War this became twelve nautical miles and the legal framework for modern maritime delineation was formed.[47]

To better understand the topic of this study it is essential to understand the structure of the different maritime zones and the scope and extent of State sovereignty in these zones. These concepts introduced in this chapter form the basis for the territorial claims made by the Arctic states. This chapter will focus on the maritime zones defined in 1982 UNCLOS as well as its preceding convention, the 1958 convention. This chapter also aims to focus on some characteristics unique to the Arctic region and how these characteristics may be used to define the following maritime zones.

The different maritime zones are defined by breadth a criterion, which is established in UNCLOS as it addresses every aspect of the uses and resources of the sea. This chapter will introduce the different maritime zones as well as the legal regimes in each of these zones.

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[47] Hakapää 2010: 382.

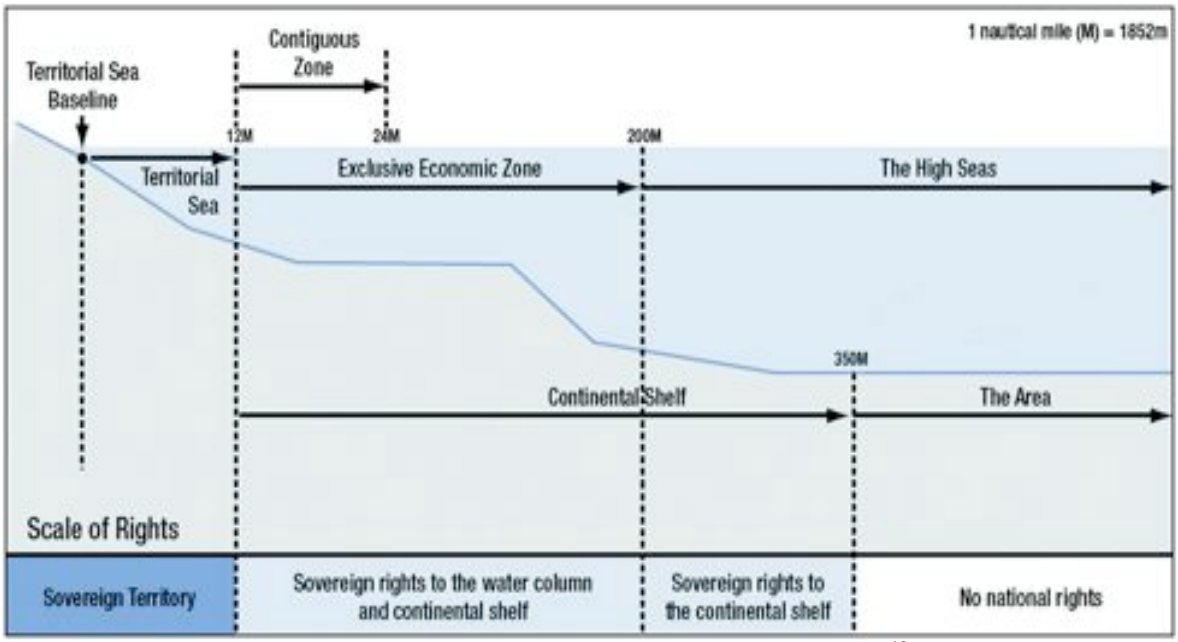


Figure 2.1. Maritime Zones as defined in UNCLOS[48]

## 2.1. Baselines

All maritime zones are defined by a breadth criterion. Before introducing the different maritime zones, it is necessary to introduce baselines from which the breadth of these zones is measured. [49]

To establish jurisdictional offshore maritime zones, coastal State must clarify three types of geographical issues. Firstly the width of the various maritime zones must be established. Secondly seaward and lateral limits of these zones need to be determined, and thirdly the baseline along the coast must be identified. A baseline is defined as the fundamental waterline from which, territorial sea, contiguous zone, exclusive economic zone, and continental shelf are measured from. Baseline also marks the border of the sovereignty of the coastal states internal waters and other maritime zones. However, all coastlines are different. Some are smooth and unbroken, whereas others are rugged and deeply concave. Some coastlines are met by river estuaries and some fringed by islands.

[48] Arctic Council 2009: 52.

[49] CLCS 2006: I-4.

The delimitation of coastlines is established in The United Nations Law of The Sea Convention (UNCLOS), and it defines the delimitation of almost all types of coastlines.[50]

### 2.1.1. Normal Baselines

Article 3 of 1958 and article 5 of 1982 United Nations Convention n Law of The Sea defines normal baselines as follows:

> *Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.*

As the article states the low water line is the crucial point of measure, which determines where the baseline rests. Article 6 determines the coastal areas where islands are situated on atolls or if island have surrounding reefs, the baseline is the seaward low–water line of the reefs. Article 9 regulates how the baseline should be measured in the case of a river flowing directly into the sea. In such case, the baseline shall be a straight line across the mouth of the river between points on the low water line of its banks.

### 2.1.2. Straight Baselines

Some coastal areas are rugged and deeply indented, in such case measuring the baseline is challenging. Article 7 of the 1982 Convention regulates measuring the baseline in such situation:

> *In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight base-*

[50] Ravin 2005: 5–8.

*lines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.*

This paragraph of the article 7 of UNCLOS is mainly based on the 1958 Convention. The following paragraphs of the article have been added concerning some coastal States, which coastlines are highly unstable. If the coastline of a State is deemed to be highly unstable because of a river–delta or other natural condition, the appropriate points may be selected along the farthest seaward extent of the low–water line. However tidal anomalies to this low–water line may not be used when measuring these points. Straight baselines may then be drawn from using these points, and they shall remain effective until changed by the coastal state in accordance with the convention.[51]

In later paragraphs, the article lists clauses on the restrictions for the states when establishing their straight baselines. Firstly the straight baseline must not depart to any appreciable extent from the general direction of the coast. Secondly, the sea areas lying within the lines must be closely linked to the land domain. Lastly, a straight baseline shall not be drawn from a low–tide elevation, unless lighthouse or similar structures are built there or if such elevation has received international recognition. Straight baselines may not be drawn from a point to extend a sea area to achieve economic gain peculiar to the region. Finally, paragraph 6 of the article 7 states that the straight baseline shall not cut off the territorial sea of another state from the high seas or an exclusive economic zone.[52] One of the defining sources of international law in relation to Straight baselines is seen the Anglo-Norwegian Fisheries- Case 1951, where the International Court of Justice (ICJ) found that the method and the actual baselines determined by using such method Norway had used in order to protect the fishing waters off the coast of Norway for the use of their own fishermen were done in accordance with the rules of international law[53].[54]

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[51] Ravin 2005: 7–8.
[52] Ibid at 8.
[53] ICJ 1951: Anglo- Norwegian Fisheries- Case (United Kingdom vs. Norway): 143.
[54] Hakapää 2010: 383–384.

### 2.1.3. Archipelagic Baselines

The 1982 convention has also taken into consideration unique archipelagic waters and the surrounding baselines. Article 50 of the convention states that within the archipelagic waters, the archipelagic State may draw closing lines across the mouth of rivers, bays or outermost harbour structures for delimitation of its internal waters. The archipelagic baselines shall be used when measuring the breadth of the states other maritime zones. The archipelagic state may draw straight baselines using the outermost island or reefs as the measuring points providing that the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1 is within this sea area. The length of such baseline must not exceed 100 nautical miles, except that up to three percent of the total number of drawn baselines enclosing any archipelago may exceed that length up to a maximum length of 125 nautical miles. IHO's dictionary defines Nautical Mile equal to 1852 meters[55].

### 2.1.4. Legal status of ice formations and permafrost for maritime zone delineation in the Arctic Ocean

Ice formations and permafrost are distinctive characteristics of the Arctic region and the Arctic Ocean. Ice is the solid form of frozen water. The unique characteristics connecting both of the polar seas (Arctic and Antarctic) are that for much of the year they are covered in ice. However, the ice cover goes through seasonal changes in both: extent and thickness. The climate change is also strongly affecting these ice-covered regions and the ice itself. Because of this distinctive characteristic to the Arctic Ocean the legal status and –regime of ice has been debated for decades amongst scholars. This topic poses interesting issues and questions relating to sovereignty and jurisdiction in the delimitation of the maritime zones.[56]

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[55] IHO 1994: 116.
[56] Sas 2016: 33, 485.

### 2.1.5. Ice Formations

Ice in the Arctic can be roughly categorized into two types. These two types of ice differ from each other in salinity levels because of their origins. Continental ice or glacial ice originates from fresh water sources, whereas, sea ice originates from seawater. When saline seawater freezes, much of its salinity dissolves in the process. Thus, even though the formation of sea ice is very different of the formation of continental and freshwater ice, especially perennial sea ice can mainly consist of freshwater.

Continental ice is fresh water ice that is formed from water sources coming from ice sheets, ice caps, glaciers and ice shelves. These terms describe the extent of the ice area.

> **Ice sheet** is a mass of continental ice covering > 50 000km2 of the surrounding terrain.
>
> **Ice cap** is a mass of continental ice covering terrain that is < 50 000km2. The most significant ice caps can be found in Canada (Ellesmere Island) as well as the offshore islands of Russia (Novaya Zemlya, Svernaya Zemlya, Franz Josef Land Archipelago, and Komsomolets Island).
>
> **Glacier** is used to describe a smaller mass of continental ice constrained in size by topographical features, namely mountains. Glaciers are very common in the Arctic Ocean and can be found in all of the five Arctic States. The effects of the climate change can be seen, in the melting of these glaciers at significant rate.
>
> **Ice shelf** is a floating continental ice mass attached to the terrain. Ice shelf is usually nourished by the surrounding ice sheets, glaciers or attached sea ice. If an ice shelf originates from a glacial fjord it can also be termed a “tongue”. Ice shelves can have a varying thickness between 100m to 1 km. In the Arctic Ocean ice shelves primarily occur near Canada or Greenland.

Ice formations as a term is generally used to describe **ice islands** or **icebergs**. These oceanic features are usually formed from fresh water derived from glaciers or ice shelves. This terrestrial origin of the water distinguishes them from the seawater-based forms of ice found in the Arctic Ocean. Thus both icebergs and ice islands can be deemed to be continental ice.[57]

Two forms of **sea ice** can be found in the Arctic Ocean: **Land-fast-ice** or **'fast ice'** is sea ice that has frozen along the coastline and is either attached to the coast or the shallow parts of the seabed or the continental shelf and extends from there towards the sea. Generally land-fast-ice is immobile, thus does not move along with winds and currents of the Arctic Ocean. Occasionally thermal or mechanical stresses can move these ice masses up to tens of meters annually. This movement can be dangerous to offshore structures, much like the movement of icebergs. Land-fast-ice generally experiences minimal horizontal movement but quite commonly floats and fluctuates vertically.[58]

**Drift ice**, on the other hand, is sea ice that floats in the ocean unattached to land or the continental shelf, or any part of the seafloor. When drift ice packs together and forms larger masses, it is called **pack ice**. If drift ice forms a floating ice mass less than 10 km in diameter, it is called **ice floe**, if it is bigger than this it is referred to as an **ice field**. All forms of drift ice move along with the ocean currents and winds. If drift ice or pack ice drifts to land-fast-ice a transitions zone, or a ridge usually forms.[59]

During the winter season, approximately 90 % of the Arctic Ocean can be covered in ice. The extent of the ice mass varies seasonally. During the winter season, the Arctic Ocean has an average sea mass of 15.5 million km2, whereas during the summer season the ice mass melts and covers an average of 3.4 million km2. In September 2018 the Arctic sea ice extent reached its sixth lowest measuring at 4.71 million km2.[60] The Arc-

[57] Sas 2016: 469– 472.
[58] Ibid at 475.
[59] Ibid at 475–476.
[60] NISDC 2018.

tic sea ice melts an estimated 3 % annually caused by climate change and global warming.[61]

Over the last forty years, the ice masses covering the Arctic Ocean have gone through a significant change. Arctic ice in all of its forms is melting into the sea, and this change is relevant to all of the Arctic Five–states and the delimitation of the maritime zones. The most relevant ice features in the process of delimitation are ice shelves, glaciers and fast ice. Ice-masses in all of the Arctic Five territory have experienced dramatic changes and reductions in the past 25 years. Most of the ice shelves have melted away or will melt away in the near future. This change also affects glacier tongues and permanent fast ice, which in most part has retreated behind the coastlines.[62]

When examining the legal status of ice features and their use as loci points when determining baselines is: whether specific ice features attached to land, such as ice shelves or glaciers can be deemed as land or should they be viewed as part of the sea?

Generally international law and UNCLOS locate territorial sea base points and the loci points of the baseline on land. One exception to this is UNCLOS Article 7 (2). The jurisdiction of UNCLOS does not provide further help when determining whether these the ice features can be viewed as land and thus used as loci point for determining baselines. However, the Antarctic Treaty of 1959, Article VI: Geographical Coverage did include ice shelves to be part of the geographical scope of the treaty. However, the treaty did not as such define such ice shelves as land or territory.[63] A further look into UNCLOS and other sources of law of the sea and international law provides no more help in this matter. It seems that international legal institutions have avoided addressing the legal status of ice formations and their use as loci points for drawing baselines. The only mention of ice found in UNCLOS is in Article 234. The Article deals with prevention, reduction, and control of marine pollution from vessels in ice-covered areas within the limits of their EEZ. However, this article does not define the legal status of such ice-covered areas.[64]

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[61] NISDC 2012.
[62] Sas 2016: 34 –35.
[63] Rothwell 2001: 49.
[64] Sas 2016 36 –37.

This topic also divides scholars in this field. The State regime in the Arctic is not very consistent either. It seems that only the United States has clearly expressed its opinion in this matter. The United States has expressed that ice should not be considered as land and thus using ice formations in the process of forming straight baselines should be very restricted in the US vs. Alaska- Case of 1997. This has also been expressed in the Submerged Lands Act of 1953.[65] The United States also formally protested against the use of straight baselines in 1985 when Canada drew straight baselines around its Arctic Archipelago deeming these enclosed waters to be historic.[66]

The nature of the Arctic Ocean coastlines provides significant challenges in locating loci points for baselines under the UNCLOS articles 5 to 7, which define the delimitation of normal– and straight baselines. Ice that is attached to the land makes it very difficult in parts of the Arctic to locate the low water mark. Thawing of the permafrost-covered coastlines also poses challenges for the Arctic States.

**Canada**: It seems that ice shelves have been used as loci points when determining normal and straight baselines, especially in the northwest coast of Ellesmere Island.

**Denmark/ Greenland:** 1973 Denmark– Canada delimitation agreement shows that the Petermann Glacier's extension beyond the fjord's closing line has not been adjusted with the melting the glacier. Also the base points on the Eastern Greenland's ice cap, the Flade Isblink are now located in the sea or on the edge of the melting ice cap.

**Norway**: has several base points located on ice caps or glaciers, or on the edge of these ice features which are partly now in the sea. Namely base points on Kviyoya, Nordlausandet, and Edgeoya.

**Russia**: has not drawn baselines along the mainland coast based on loci points situated ice features. However, it appears that few of the loci points determining the base lines

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[65] Sas 2016: 38.
[66] Ibid at: 52.

surrounding the Russian Arctic Islands have been located on glacier extension. Namely two base points on Komsomolets Island are currently found in the sea due to the melting of the glaciers surrounding the islands.[67]

**The United States**: has a policy to use low water mark baselines: Submerged Lands Act 1953. It seems that all of the loci points for determining baselines along the Alaskan coast are located on land. All of the fast ice along the coast is seasonal and there are no significant ice features along the coast.[68]

Because UNCLOS does not clearly provide that base points can be located on ice features, it can be derived that any such loci points for determining the maritime zones and the baseline are at risk of being legally invalid. Especially base points that are now located in the sea due to the melting of the ice features should definitely be seen invalid under the Article 7 of UNCLOS.[69] David Caron has stated that: *"if a baseline point… disappears the boundary generated by that point also disappears."*[7071]

The disappearance of such base points naturally affects the extent of all sovereign maritime zones. Namely, the base points on the Russian Komosolents Islands are the northernmost extent of Russian territory and thus, would impact the northern limits of Russian EEZ, ECS and potentially their other northernmost territorial claims.[72] Three other Artic states face similar challenges as stated before.

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[67] Sas 2016: 315–316.
[68] Ibid at: 50–53.
[69] Ibid at: 52.
[70] Caron 1990: 634–635.
[71] Sas 2016: 50 –58.
[72] Sas 2016: 53.

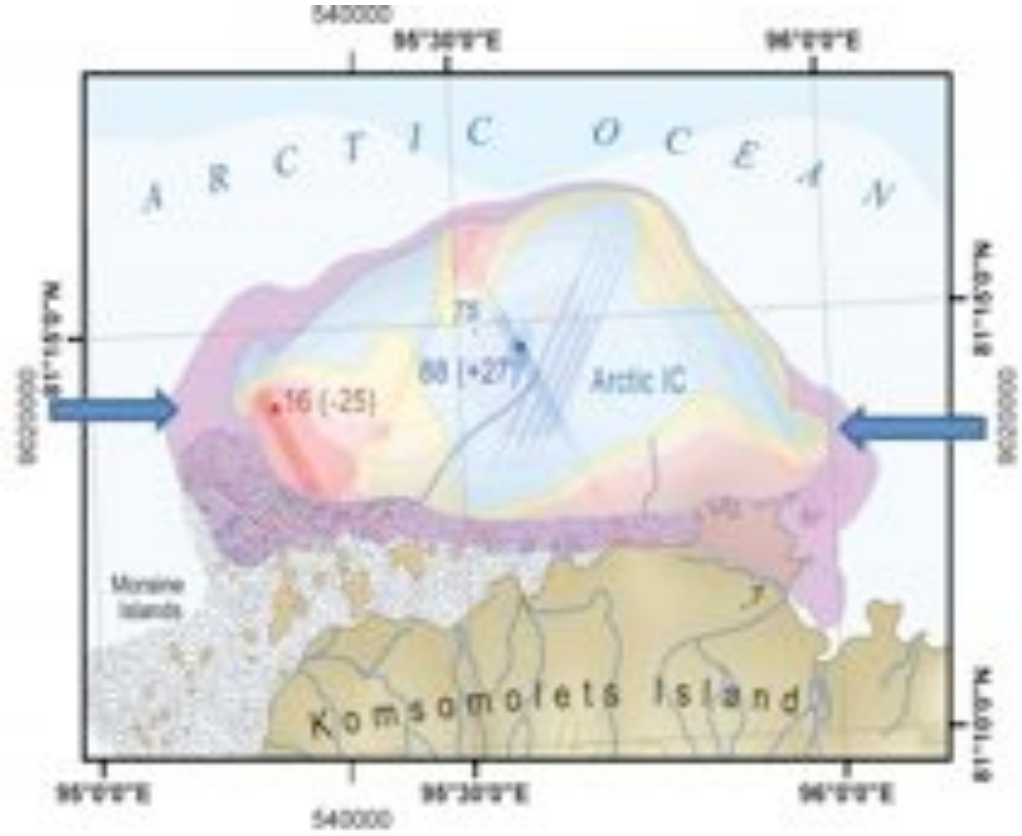


Figure 2.2. Komsomlets Island base points shown by a remote sensing map. The purple areas shown due to melting of the glacier are now sea. The arrows show the approximate location of the loci points for baseline.[73]

2.1.6. Permafrost

**Permafrost** or **"cryotic soil"** is terrain at, or below the freezing point of water at 0°C. Terrain that is permanently frozen covers 24 % of the exposed landmass in the Northern hemisphere and all of the coastal land around the Arctic Ocean is covered by permafrost. The thickness of the permafrost around the Arctic Ocean varies from 20m (Canada and Alaska) up to 1.5 km (Siberia). An estimated two-thirds of the Arctic coastline is protected and held together by some form of ice or permafrost. Permafrost protects the fragile coastlines from waves and severe weather caused by the Arctic storms. It has been documented that the temperature of the coastal permafrost has increased in the

[73] Sas 2016: 486.

Arctic; this has already caused thawing of the upper layers of permafrost and the coastline especially in Russia and Alaska. This erosion causes threats to communities and hamlets residing in these vulnerable areas. From a jurisdictional point of view, this coastline erosion could cause implications for the delimitation of maritime zones.[74]

The rapid change of Arctic coastlines covered in permafrost also raises questions relating to the legal status of these coastlines and the baselines along them. The effects of the Climate Change threaten these coastlines in many ways. Firstly the erosion of the permafrost changes these coastlines rapidly. Secondly melting of the fast ice that has previously protected these coastlines is no longer protecting them from the Arctic storms and waves causes further erosion of the coast. It has been estimated that the Arctic coastlines erode average of half a meter per annum, but this varies up to 45 meters in some areas of coastal erosion per year.[75] These changes raise the question whether the territorial baselines should follow these changes?[76] This has been a constant argument between scholars in this field for decades. It is also recognized that shifting baselines and thus shifting maritime boundaries would impose challenges for the sovereign rights of the coastal states. Namely in sourcing of the natural resources.[77]

However, it can be concluded that these particular cases where loci points for drawing baselines have been located on ice or in some cases, where the glaciers or ice shelves have melted, into the sea, are few. Generally, these Arctic Ocean base point anomalies will have a minimum effect considering the extent of the maritime zones in question. It does not seem to be common that any Arctic State has based their modern baselines in these kinds of base points. In some instances, as the case of Komosomolets Island two key loci points for drawing the baseline surrounding the island have been located firstly on a glacier, which has then, due to melting, ended up in the sea. This case is interesting because of the width of the melted area in question, which is estimated to be up to 50km to 100 km.

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[74] Sas 2016: 481 – 483.
[75] International Arctic Science Committee 2011: 11–19.
[76] Sas 2016: 55.
[77] Sas 2016:56

As the width of all sovereign maritime zones is determined from the baseline, the legality of the loci points located on ice or the sea effects the delimitation of all of these zones. Thus, it could lead uncertainty or even maritime boundary disputes especially between States with opposite or adjacent coastlines in the Arctic Ocean.

## 2.2. Internal Waters

The article 5 of the 1958 and the article 8 and 47 of the 1982 United Nations Convention state that internal waters are the water areas on the landward side of the normal baseline, straight baseline and the archipelagic baseline. The territorial sea area is measured from these baselines. As stated in the previous chapters baseline is based on the low water line along the coast as it is marked on the nautical charts recognized by the coastal state. All water areas on the landward side of this baseline are defined as internal waters of such coastal State.

The coastal state has full sovereignty over its internal waters. Any foreign vessels passing through internal water areas must obey the coastal State's rules and regulations as the internal water areas are considered land territory. However, maritime ports are usually regulated by maritime regulations as well as the regulations of the coastal state. Foreign merchant vessels and all its crewmembers are subject to the coastal State's civil, criminal and administrative jurisdiction.[78]

## 2.3. Territorial Sea

The territorial sea is defined as the water area extending from the internal waters to the seaward side, using the baseline as the landward measuring line. As well as in the internal waters, also in the territorial waters, the coastal state has full sovereignty over this water area. Foreign merchant vessels have the right to innocent passage through the territorial sea. The meaning of 'innocent passage' is defined in the Article 19 of the 1982

[78] Hakapää 2010: 383–384.

Convention, and it is described as: a passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.[79]

The 1958 convention defines the breadth of the territorial sea in Article 24, which defines the contiguous zone. In this convention, the territorial sea and the contiguous zone are defined as one, and the Article states that the territorial sea must not exceed twelve miles from the baseline. This breadth was established after the Second World War, whereas before the breadth of the territorial sea was only three nautical miles (NM).[80] The 1982 Convention lists the rights and obligations and the definition of a State's territorial sea in Articles: 2, 3 and 4 in Part II of the Convention.

The 1982 convention, Article 3 states that every state has the right to establish the breadth of its territorial sea up to the limit of not exceeding twelve nautical miles measured from the baseline. Thus, the outer limit of the territorial sea extends twelve miles seaward measured from the nearest point of the coastal state's baseline (Article 4.).

The Part II of the 1982 convention lists two exceptions when the twelve nautical mile limit could either be exceeded or limited to less than twelve miles from the baseline. Firstly, the territorial sea can be extended beyond twelve nautical miles if a roadstead, which is normally used for loading, unloading, and anchoring of ships is located wholly or partly outside the outer limit of the territorial sea. Secondly, the territorial sea can be deemed to extend less than twelve miles from the baseline in a situation where two states have opposite or adjacent coasts according to Article 15 of UNCLOS 1982. Article 15 of the 1982 convention states that if two coastal states have opposite or adjacent coastlines, neither of them is entitled to the territorial sea unless an agreement between them is reached. For example, Finland and Estonia have agreed to a settlement where neither of the nations has a "full" territorial sea, but the outer limits of the territorial sea extend three NM landwards from the centre line of the Gulf of Finland, thus maintaining a free passage in the middle of the Gulf of Finland[81].[82]

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[79] Koivurova, Ringbom, Kleemola-Juntunen 2017: 40–41.
[80] Hakapää 2010: 388.
[81] Agreement Between Finland and Estonia 1994.
[82] Hakapää 2010: 388–389.

The1982 Convention Article 22 requires the coastal States to implement laws and regulations, which comply with the international rules to ensure the innocent passage of foreign vessels. The coastal states have to meet the following requirements in their regime:

- Safety and navigation
- The protection of navigation and facilities
- The regulation of maritime traffic
- The protection of cable and pipeline
- The conservation of a living resource
- The prevention of infringement of fisheries law set by the coastal state
- The maritime scientific research and hydrographic survey
- The prevention of infringement of the customs, fiscal, immigration or sanitary law.

The coastal State must provide due publicity to these rules and regulations. The foreign vessels exercising the right of an innocent passage must follow these rules and regulations as well as generally accepted international regulations relating to the prevention of collisions at sea.

In addition, the coastal state may establish sea-lanes and traffic separation schemes on its territorial sea to ensure safe navigation.

If the passage of foreign vessels is deemed not to be innocent, the coastal state has the right to prevent such passage. Article 19 of the 1982 United Nations conventions lists the possible activities, which could give the coastal state the right to prevent a passage through its territorial sea. These activities include:

- Any threat or use of force against the sovereignty, territorial integrity or political independence or any other violation of the principles stated in the United Nations Charter.
- Any exercise or practice with weapons of any kind

- Any act of propaganda aimed at affecting the defence or security of the coastal state
- The launching, landing or taking on board any aircraft or military device
- Violating the customs, fiscal, immigration or sanitary laws by loading or unloading commodity, currency or person
- Any act of wilful and serious pollution
- Any illegal fishing activities
- Research or survey activities
- Any acts meaning to interfere with communications systems or any other facilities of the coastal state
- Any other activity not having a direct bearing on the passage

The articles 27 and 28 of the 1982 convention also list situations when the coastal state may have criminal and civil jurisdiction on board a foreign ship. These situations may be that the sequences of a crime extend to the coastal state; there is a request for assistance from the Master of the ship or drug trafficking.

In general practice of these rules stated in the convention, foreign warships passing through territorial waters usually have to obtain a permit and give prior notification to the coastal state to grant the right to innocent passage through its territorial waters. However, this is not explicitly stated in the convention and has caused international discussion emphasizing the coastal security.[83]

**Breadth**: 12NM measured from the baselines
**Entitlement**: The Coastal State does not need to proclaim its territorial sea. This zone is an inherent part of its territory and its sovereignty extends over it.
**Scope**: The rights of a Coastal State in this zone include sea, air space, seabed and subsoil.

[83] Ravin 2005: 9 –11.

**Content of Legal regime**: The Coastal State has a full Sovereignty over this maritime zone. However, innocent passage of ships from other States is allowed as described above.[84]

## 2.4.Contiguous Zone

The contiguous zone is closely related to the territorial sea. The article 33 of the 1982 convention states that the coastal state has the right to establish their contiguous zone, which is adjacent to the territorial sea and may not extend beyond 24 nautical miles from the baseline of the coastal state. The establishment of the contiguous zone is aimed to prevent the violations of laws and regulations of the coastal state on its maritime territory.[85]

The article 33 of the 1982 convention provides that the Coastal state may exercise control in the contiguous zone to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. Infringement of these laws and regulations within the territory or territorial sea may also be punished.

If the coastal state suspects that a foreign vessel is about to infringe with its interests, the coastal state has the right to stop the foreign vessel in order to inspect or punish the offenders. If there is a reasonable suspicion that the foreign vessel is intending to leave the contiguous zone and evade responsibility the coastal state has the right to pursue the foreign vessel beyond the limits of the contiguous zone. However, the pursuit must begin from internal water, territorial sea or the contiguous zone.[86]

**Breadth:** The contiguous zone extends up to 24NM measured from the baselines where the territorial sea is measured.
**Entitlement:** The Coastal State must proclaim this maritime zone.
**Scope:** The rights of a Coastal State include sea and seabed in this maritime zone.

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[84] CLCS 2006: I-7.
[85] Hakapää 2010: 398–399.
[86] Ravin 2005: 13 – 16.

**Content of the Legal Regime:** The Coastal state may exercise control in the contiguous zone to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. Infringement of these laws and regulations within the territory or territorial sea may also be punished.[87]

## 2.5. Exclusive Economic Zone (EEZ)

Exclusive economic zone (hereinafter referred to as EEZ) is perhaps one of the most important concepts established in UNCLOS. Because of the nature of the EEZ, the convention has established a set of regulations, rights, and obligations concerning the coastal States as well as foreign vessels passing through it.

Articles 55 and 57 of the 1982 convention defines the exclusive economic zone as an area beyond and adjacent to the territorial sea. It shall not extend beyond 200 nautical miles from the baseline of the coastal state where the territorial sea is measured, or up to a maritime boundary of another state. If two or more coastal states have opposite or adjacent coastlines, the extent of their exclusive economic zones can be settled in agreement based on rules and regulations of international law. If a coastal State has applied in accordance with UNCLOS that the extent of its territorial sea is twelve nautical miles, then the maximum extent of its EEZ can be 188 nautical miles measured from the baseline.[88]

The current maritime boundary agreements in the Arctic Ocean:

- Canada-Denmark (Greenland): continental shelf boundary agreed 17 December 1973.
- Denmark (Greenland)-Iceland: continental shelf and fisheries boundary agreed 11 November 1997.

[87] CLCS 2006: I-7 – I-8.
[88] Hakapää 2010: 399

- Denmark (Greenland)-Norway (Jan Mayen): continental shelf and fisheries boundary agreed 18 December 1995 following adjudication by the International Court of Justice.
- Denmark (Greenland)-Iceland-Norway (Jan Mayen) tripoint agreed 11 November 1997.
- Denmark (Greenland)-Norway (Svalbard): continental shelf and fisheries boundary agreed 20 February 2006.
- Iceland-Norway (Jan Mayen): fisheries boundary following the 200 nm limit of Iceland's EEZ agreed 28 May 1980; continental shelf boundary and joint zone agreed 22 October 1981
- Norway-Russia: maritime boundary in Varangerfjord partially delimited 15 February 1957 and extended 11 July 2007.Agreement on the maritime boundary in the Barents Sea and Arctic Ocean signed on 15 September 2010 and entered into force on 7 July 2011
- Russia-USA: single maritime boundary agreed 1 June 1990[89]

All of these treaties clearly define the boundaries of the respective EEZ for each coastal state in question. There is also a special treaty from 1920 involving Norwegian territory, namely the EEZ surrounding the Jan Mayen Island as well as Svalbard. This treaty, originally called the Spitsbergen Treaty, determines the political and economic status of Svalbard and recognises that the area agreed in the treaty falls under Norwegian sovereignty. The original treaty was titled Treaty recognising the sovereignty of Norway over the Archipelago of Spitsbergen (former name of Svalbard).

Article 56 of the convention the follows to list rights, jurisdiction, and duties of the coastal states in EEZ. In the EEZ coastal state has:

- Sovereign rights to explore, exploit, conserve and manage natural resources whether living or non–living of the water superjacent to the seabed and of the seabed and its subsoil and with regard to other activities for the economic ex-

[89] IBRU 2016: Available 11.10.2018 at: https://www.dur.ac.uk/resources/ibru/resources/ArcticmapStatusofArcticWatersbeyond200NM.pdf

ploitation and explorations, such as the production of energy from the water, currents, and winds.

- The right to establish and use the artificial island, installations, and structures
- Marine scientific research
- The protection and preservation of the marine environment
- Other rights and duties provided in the convention

As the first paragraph of the article 56 states, the EEZ is a multi-layered zone and includes the seabed and subsoil, as well as the waters on top of the seabed and subsoil in that zone. The article 56 determines the rights and duties of the coastal state that has claimed the EEZ, whereas the article 58 of UNCLOS determines the rights and duties in this zone for other states. The most important rights for the coastal state in regards to this study are determined in article 56, which include the sovereign rights over the resources of the seabed and subsoil. It is also worth mentioning that convention also lists a complex set of rules and rights over fishing activities in this zone.[90] The sovereign rights of the coastal state in EEZ in respect of the exploration and exploitation of the seabed and subsoil are closely related to the regime of the continental shelf, which will be discussed later in more detail. Similarly to the EEZ, the sovereign rights of a coastal state on the continental shelf also extend up to 200 nautical miles from the baseline.

**Breadth:** 200 NM measures from the baseline where the territorial sea is measured.
**Entitlement:** The coastal State must proclaim this maritime zone.
**Scope:** This zone includes sea, seabed, and subsoil.
**Content of Legal Regime:** The Coastal State has sovereign rights to explore and exploit, conserve and manage all natural resources and to conduct other economic activities. The State's jurisdiction covers the establishment and use of artificial islands, installations, and structures, marine scientific research as well as the protection and preservation of the marine environment.[91]

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[90] Rothwell, Stephens 2014: 84.
[90] CLCS 2006: I-8.

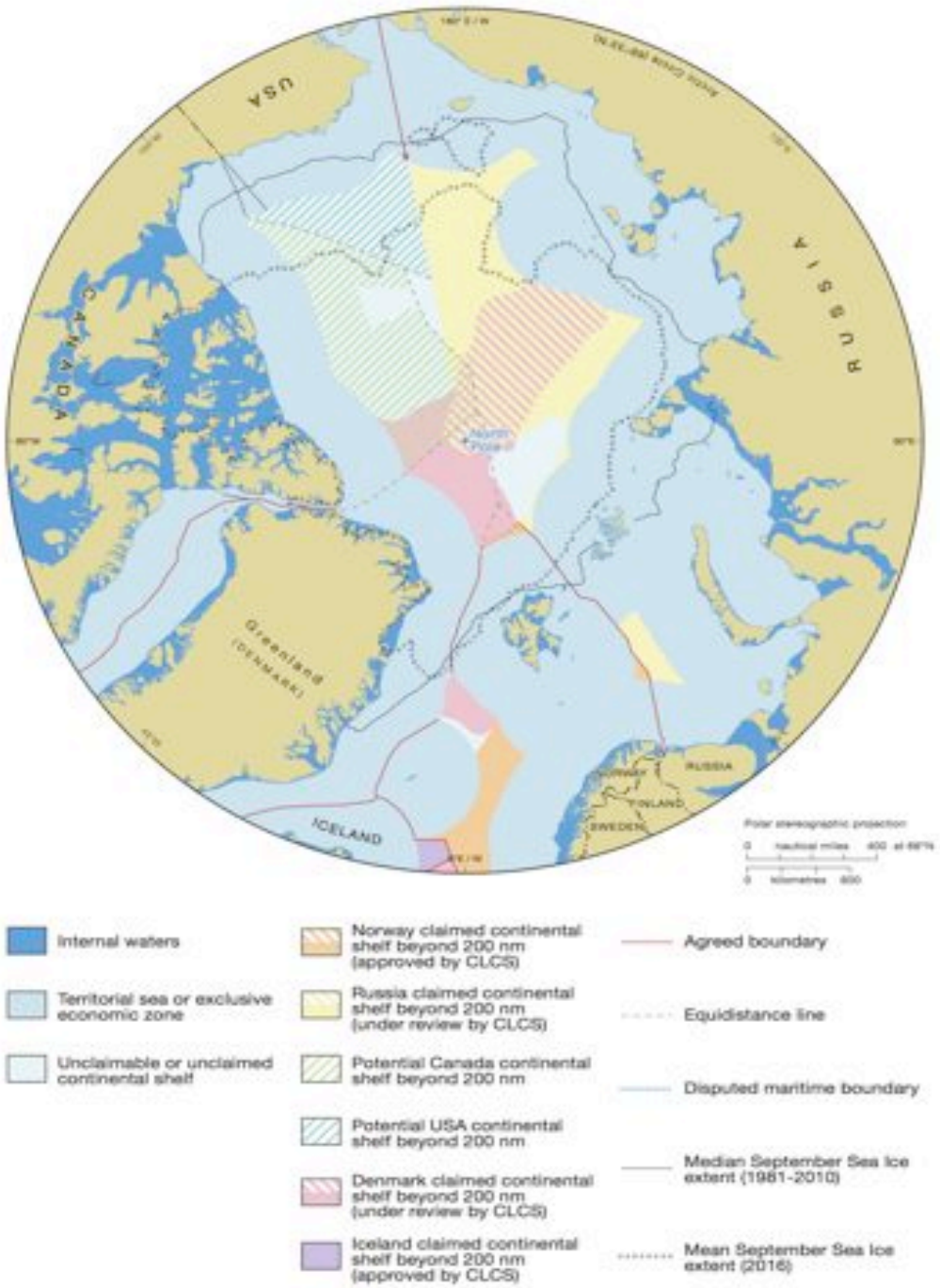


Figure 2.3. Outer limits of the EEZ and single boundary agreements between the Arctic States[92]

[92] IBRU 2016: Available 11.10.2018 at: https://www.dur.ac.uk/resources/ibru/resources/ArcticmapStatusofArcticWatersbeyond200NM.pdf

## 2.6. Continental Shelf

Continental shelf as a concept is a natural prolongation of the coastal State's land territory into the sea. Each coastal state has a continental shelf, which lies beneath its territorial and EEZ- maritime zones.[93] The continental shelf itself comprises of the seabed and the subsoil beneath the water. The coastal state has sovereign rights to its continental shelf up to 200 nautical miles from its baseline, much like the EEZ, or up to a maritime boundary of another state. However, according to the article 76 of UNCLOS, a maritime state may extend the continental shelf margin beyond its 200 nautical mile limit. The part of the continental shelf, which extends beyond this limit, is referred to as extended continental shelf.[94]

Much like the other maritime zones, the coastal state has sovereign rights and exclusive jurisdiction over its continental shelf for the purpose of exploiting and exploring it and its natural resources. These natural resources are namely mineral and non–living resources as well as living organisms or sedentary species at the harvestable stage.[95]

### 2.6.1.Extended Continental Shelf (ECS)

In general, UNCLOS provides that the continental shelf where the coastal state has sovereignty and exclusive jurisdiction can stretch up to 200 nautical miles from the baseline much like the outer limits of the EEZ. Article 76 of the convention, however, lists few exceptions to this rule, where the coastal State can make a submission to the Commission of the Continental Shelf (CLCS) to extend the outer limits of its continental shelf beyond the 200 nautical mile limit.

In order for the coastal State to extend its continental shelf, it must meet the criteria established in the article 76 of UNCLOS (paragraphs 4,5,6 and 7). At least one of four reference lines must be established for the delineation of the extended continental shelf,

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[93] Hakapää 2010: 412–413.
[94] Ibid at 13–14.
[95] NOOA, Available 11.10.2018 at: https://www.gc.noaa.gov/gcil_maritime.html#base

depending on which of the following criteria the continental shelf meets, also determines the breadth of the extended continental shelf.

- The First line can extend up to 60 nautical miles from the foot of the continental slope (Hedberg formula)
- The second line connects the outer fixed points, at each of where the thickness of the sedimentary rocks is at least one percent of the distance from such point to the foot of the slope (Gardiner formula)
- A third line, up to 350 nautical miles from the baseline where the breadth of the territorial sea is measured[96]
- Finally a fourth line, at a distance of 100 nautical miles of the 2500-meter isobaths.[97] (Isobath is a line connecting equal depths on a nautical chart.)

When the 100 nautical miles isobath is situated at a distance of more than 250 nautical miles of the baselines, in other words, beyond 350 nautical miles, and the line deducted from the formulae (60 nautical miles from the foot of the slope and 1 % of the sediment thickness) also exceeds 350 nautical miles, the outer limit can be localized beyond 350 nautical miles on the line situated at 100 nautical miles from the 2500 meter isobath.[98] This criterion will be further discussed in Chapter 3.3. of this thesis.

Because of the importance of the definition of the continental shelf to this thesis and its research question the whole Article 76 of UNCLOS should be inspected in more detail. The Article 76 of UNCLOS reads:

1. The continental shelf of a coastal State comprises the **seabed** and **subsoil** (Emphasis added) 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 from the baselines from which the breadth of the ter-

[96] Tanaka 2012:135
[97] Opinion of The Economic, Social and Environmental Council 2013: 21
[98] Ibid: 20.

ritorial sea is measured where the outer edge of the **continental margin** does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The **continental margin** comprises the **submerged prolongation** of the landmass of the coastal State, and consists of the **seabed** and **subsoil** of the shelf, the slope and the rise. It does not include the deep **ocean floor** with its **oceanic ridges** or the **subsoil** thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either: (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of **sedimentary rocks** is at least 1 per cent of the shortest distance from such point to **the foot of the continental slope**; or (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of **the continental slope**. (b) In the absence of evidence to the contrary, **the foot of the continental slope** shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the **seabed**, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on **submarine ridges**, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to **submarine elevations** that are natural 54 components of **the continental margin**, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto. 10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

The Article 76 of UNCLOS is a complex set of rules and definitions. However, the Article does not clarify these definitions. In order to understand the continental shelf, - and extended continental shelf delimitation process these definition must be clarified. The Article 76 itself does not only use legal definition, and thus, does not provide legal definition for these terms. The language used in the Article is a mixture between legal and scientific terms (geology, geodesy, geomorphology and hydrography[99]). Thus, it can be assumed that scientific terms can be used in accordance of interpreting this Article. Vienna Convention 1980 (VCLT) Articles 31 and 32 also provide help in this matter stating rules of interpretation of treaties. In accordance with these Articles these terms mentioned in Article 76 of UNCLOS can be defined with the help of International Hydrographical Organization's (IHO) dictionary 1994. IHO's Glossary (Fifth Edition) defines the following terms:

***"Continental shelf***

*A zone adjacent to a continent (or around an Island), extending from the low water line to the depth at which there is usually a marked increase of slope to greater depth.*

***Continental Rise***

[99] Johnson 1988: 91.

*A gentle rise with generally smooth surface lying between the continental slope and the deep ocean floor.*

***Continental margin***

*The zone, generally consisting of shelf, slope and rise, separating the continent from … deep ocean floor.*

***Foot of the Continental Slope***

*The point of maximum change of gradient at the base of the continental slope.*

***Continental Slope***

*The zone of declivity from the outer edge of a continental (or Island) shelf into a greater depth.*

***Slope***

*An inclined surface or line. The degree of inclination to the horizontal. Usually expressed as ratio.*

***Oceanic Ridge***

*A long elevation of the ocean floor with either irregular or smooth topography and steep sides, often separating ocean basins*

***Elevation***

*The vertical distance of a point or level, on or affixed surface of the Earth, measured from mean sea level. The term elevation is sometimes used synonymously with altitude, which in modern use refers particularly to the distance of points or objects above the Earth's surface.*

*An area higher than its surroundings.*

***Sediment***

*Particulate organic and inorganic matter which accumulates in a loose unconsolidated form. It may be chemically precipitated from solution, secreted by organisms, or transported by air, ice, wind, or water and deposited.*

***Sedimentary rock***

*Rocks formed by the accumulation of sediment in water or from air. The sediments may consist of rock fragments or particles of various sizes, of the remains of products of animals or plants, of the products of chemical action or evaporation, or a mixture of thesematerials.*

***Seabed, Sea floor***

*The bottom of the ocean when there is generally smooth gentle gradient.*

***Subsoil***

*All naturally occurring matter lying beneath the sea-bed or deep sea ocean floor.*

***Submarine ridge***

*An elongated elevation of the sea floor, which either irregular or relatively smooth topography and steep sides which constitutes a natural prolongation of land territory"*[100]

**Natural Prolongation**

IHO's dictionary does not provide a definition for 'natural prolongation'. This term has also widely been discussed, not only between scholars in this field, but also between tribunals (ICJ, ITLOS)[101]. The definition of this term is not clear or unambiguous. This term has been used in the ICJ 1985 Libya v. Malta Judgment as well as the 1969 North Sea Continental Shelf cases. The North Sea-case found that "a coastal state's title to a continental shelf relies on the existence of natural extension of its land territory".[102] Whereas, the Libya v. Malta-case found that: " The concepts of natural prolongation and distance are therefore not opposed but complementary; and both remain essential elements in the juridical concept of the continental shelf."[103][104]

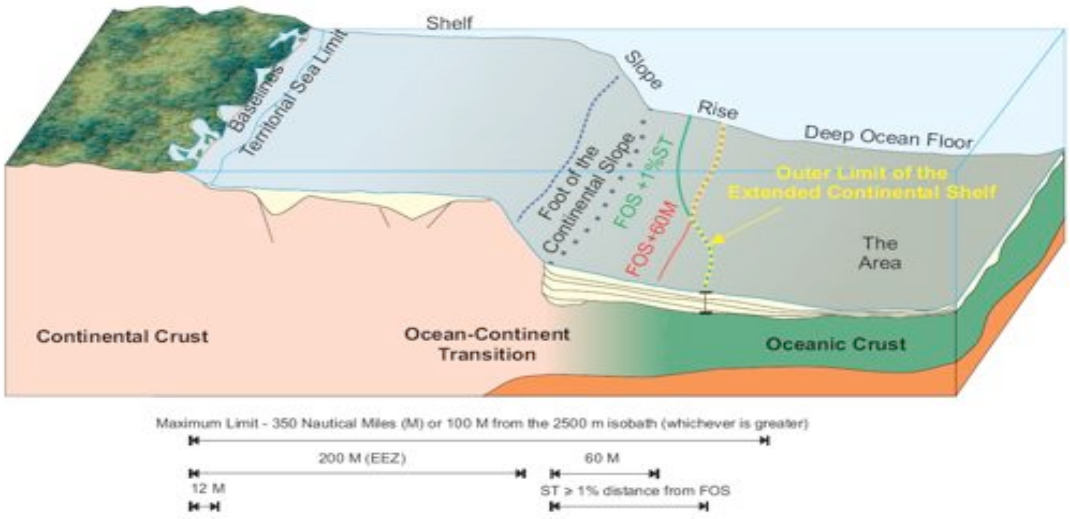


Figure 2.4. Continental Shelf[105]

[100] IHO Dictionary 1994
[101] Paik 2015: 583–584.
[102] North Sea Continental Shelf Case 1969: paragraph:19, 43.
[103]Libya v. Malta Case1985: paragraph: 34.
[104] Sas 2016: 182–226.
[105]Available 11.10.2018 at: http://www.geolimits.com/services/extended-continental-shelf/continental-shelf/

## 2.7. International Waters (High Seas)

The legal concept of the high seas derives from the Hugo Grotius' 1609 book "*Mare Liberum*", namely *Freedom of the Seas,* as well as customary international law. High seas or international waters are the seawater areas beyond the limit of national jurisdiction, and they are excluded from the state sovereignty. Thus these seawaters lie beyond the territorial sea, contiguous zone and, EEZ as well as archipelagic waters. Even though the maritime zone regime established by UNCLOS limited the area of the world's high seas, most of the world's ocean and sea areas are still under the principle of freedom.[106] The high sea is open to all states, whether coastal or land-locked and they are reserved for peaceful purposes. All states have the freedom to conduct all types of activities on the high seas in good faith and due respect of the other states. This includes conserving and managing natural and living resources as well as preventing and combating transnational crimes at sea.[107]

The article 87 of the 1982 UNCLOS lists the rights and freedom for all states in this maritime zone. The freedom of the high seas consists of:

- Freedom of navigation
- Freedom of over flight
- Freedom to lay submarine cables and pipelines
- Freedom to construct artificial islands and other installations permitted under international law
- Freedom of fishing, and
- Freedom of scientific research.

The first paragraph mentions probably the most significant right: freedom of navigation. This applies to all merchant and naval vessels (as well as leisure). The merchant vessels have the right to sail their ships flying their flag of the territory where the vessel is registered and to participate in navigation. Warships sailing the high seas have complete immunity from jurisdiction from any other State than the flag State, meaning the State

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[106] Koivurova, Ringbom, Kleemola-Juntunen 2017: 51.
[107] Ravin 2005: 18.

whose flag the ship flies and where the ship is registered in. The convention requires the flag State to exercise its jurisdiction and control in administrative, technical and social matters over the ship flying its flag as defined in article 94. This means that every state sailing the high seas shall take measures to ensure the international order and safety at sea by registration of vessels, construction, equipment and seaworthiness of ships as well as ensuring the proper manning of ships, labour conditions, the training of crews, use of signals, maintenance and communications and most importantly the prevention of collisions at sea.[108] The SOLAS Convention ensures the safety at sea.

## 2.8. The Area

The deep seabed area, which rests beneath the high seas adjacent to the continental shelf belonging to a coastal state, is generally referred to as the Area. The Area is believed to have rich resources, including different metal nodules, elements, and minerals necessary for industrial purposes. The rules governing The Area are established in the Part XI of UNCLOS. The Area is beyond national jurisdiction and all of the natural resources found within the area are the common heritage of mankind, much like the high seas, as defined in Article 136 of UNCLOS. The principle of common heritage is highlighted in relation to the Area. No state, judicial or natural person or entity shall claim or exercise sovereignty or sovereign rights over the area or its natural resources. The Area is open to use for all states, landlocked or coastal, exclusively for peaceful purposes.[109]

The concept of common heritage of mankind is defined in the article 136 of UNCLOS. It should be noted that common heritage does not mean common property in a sense that any single state could explore and exploit the natural resources of the Area. The international community encourages the exploration and research of the Area to some extent, as long as the findings are shared with the whole community. The International Seabed Authority(ISA) controls the exploration of the Area. The Authority derives its

[108] Ravin 2005: 18 –19.
[109] Ravin 2005: 19 –21.

exclusive rights from the article 156 of UNCLOS and all states parties to the convention are *ipso facto* parties to the International Seabed Authority.[110]

Article 150 of UNCLOS describes the nature of the accepted activities within the Area:

> *Activities in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States.*

The International Seabed Authority (ISA) based in Jamaica governs the Area underneath the Arctic Ocean as well as other Oceans. It was, in fact, the Part XI of UNCLOS that determines the rules governing the Area that caused the most debate among member States before UNCLOS entered into force. It was not until 1994, just before the Convention entered into force and the Part XI was amended so, that the big industrial countries agreed to ratify it. The rules established in the Part XI of UNCLOS were also the main reason why the United States did not ratify UNCLOS. Even though The US was one of the original driving forces behind the UNCLOS, the deep seabed rules governing the exploration and exploitation of natural resources from the Area ended up being too much for President Reagan's administration. The trend has consisted within the congress and the Senate. The US has declared that it accepts most of the rules set in UNCLOS as part of the international customary law, even though it has not clarified what these rules are.[111]

The topography of the deep seabed in the Arctic Ocean is very fascinating in many ways. There is an enormous submarine mountain range called the Lomonosov Ridge that divides the Arctic Ocean into two basins, stretching out from the Siberian Shelf, across the Arctic Ocean, just missing the geographical North Pole, to the other side of the Arctic Ocean. These two basins are referred to as the Eurasia Basin and the Amer-

[110] Hakapää 2010: 416–417.
[111] Koivurova, Ringbom, Kleemola-Juntunen 2017: 52–53.

asia Basin. These basins are then divided into smaller basins by other ridges.[112] The Amerasia Basin is divided by another ridge, significant to the Arctic territorial claims, the Mendeelev ridge stretches out from the East Siberian Shelf towards the terrestrial North Pole.[113]

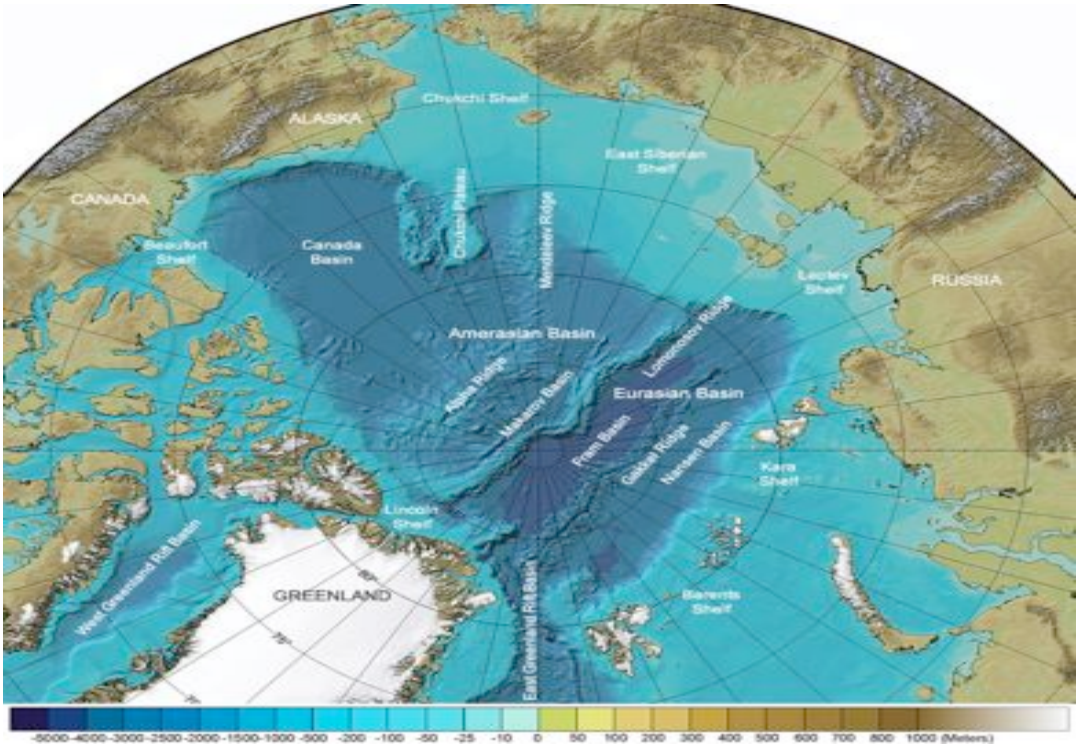


Figure 2.5. Map of the Arctic Ocean seafloor[114]

## 2.9. Regime of Islands

According to article 121 of UNCLOS an island is a naturally formed area of land, surrounded by water, which is above the waterline at high tide. Much like coastal territory; islands are also surrounded by maritime zones: territorial sea, the contiguous zone, EEZ and the continental shelf.

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[112] Encyclopedia Britannica: Arctic Ocean/ Topography of the Ocean Floor Available 11.10.2018 at: https://www.britannica.com/place/Arctic-Ocean/Topography-of-the-ocean-floor
[113] Oakey, Saltus 2016: 65–66.
[114] Available 11.10.2018 at: http://www.rcinet.ca/en/2016/05/03/canada-to-submit-its-arctic-continental-shelf-claim-in-2018/

Rocks, which cannot sustain human habitation or economic life of their own, shall have no EEZ or continental shelf.

### 2.9.1. Natural Islands

The following definition has widely accepted within international law as was first introduced in Geneva 1958 at the first conference of Law of the Sea:

> *"An island is a natural formed area of land, surrounded by water which is above water at high tide."*[115]

The above definition then formed the article 10; paragraph 1 of the 1958 convention and it was carried to the 1982 convention.

When it comes to the delimitation of the maritime zones, it does not matter whether the island in question in inhabited or uninhabited. The Coastal states use their islands for the extension of maritime zones. Islands are used in the process of delimitation of the maritime zones especially when it comes to adjacent or opposite coastlines or as discussed previously in this chapter, when the coastal states are establishing straight baselines. This practice is relatively common in customary law of the sea, and has been used by the United Kingdom in delimitation between the Channel Islands and the French coast as well as Thailand forming a straight baseline by using a rock of about 1.5 meter in diameter called Koh Losin.[116]

### 2.9.2. Artificial Islands

Artificial islands are man-made islands. They do not emerge through a natural process, and thus, they do not hold the same legal status as natural islands. The 1982 convention states that artificial islands, installations, and structures do not possess the status of is-

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[115] Ravin 2005: 22.
[116] Ravin 2005: 23.

lands. Artificial islands have no territorial sea surrounding them and their presence does not affect the delimitation of the territorial sea, the EEZ of the continental shelf.

Commonly, artificial islands are constructed to an already existing land feature, such as a reef, rock or a small islet. However, the recent development has shown that artificial islands have also been built in a manner of oil platforms using concrete, steel, stone or even piles. Artificial islands can be built for various reasons ranging from scientific research and exploration to recreational- or military purposes. To name a few artificial islands:

- Chubu Central International Airport (Japan)
- Hong Kong Exhibition and Convention Center (China, Harbour Island (USA))
- The World Island (United Arab Emirates)

The construction of artificial islands has just been legalized within the international law in this century. The practice of building artificial islands, however, has a long history.

According to the rights listed for the coastal states in their maritime zones in the previously mentioned articles of UNCLOS: coastal states have the right to build whatever installations or other structures they wish in their internal waters, territorial sea, contiguous zone, EEZ, continental shelf and in some cases even in the high seas.
The coastal states also have the right to authorize other states to construct artificial islands and other structures in its maritime zones. Considering the land-locked states, they have the rights to construct artificial islands in the high seas, as all the coastal states have the right do so. However, these artificial islands or constructions may not cause interference with sea-lanes essential to international navigation.[117]

[117] Ravin 2005: 23–24.

# 3. GLOBAL OCEAN GOVERNANCE AND THE ARCTIC REGIME

Global ocean governance is about managing the world's oceans and their resources in such way that they stay healthy, secure and sustainable. This means coordinating the various uses of the marine environment and creating sustainable procedures. Approximately 60 % of the oceans are outside of the borders of national jurisdiction.[118] This chapter of the thesis takes a closer look firstly how the international law of the sea governs our oceans and what institutions have been set up to organise and govern the use of these waters on a global level. Secondly, this chapter looks into to the Arctic regime and how specific institutions and jurisdictional frameworks have been set up to govern the use and delimitation of the Arctic Ocean in a regional level.

## 3.1. The International Maritime Organisation (IMO)

The International Maritime Organisation (IMO) was established in 1982. Before 1982 it was known as Inter-governmental Maritime Consultative Organisation (IMCO). IMO was established in the UN Geneva Convention in 1948 and came into existence ten years later in 1959. IMO has its headquarter in London, United Kingdom and currently has 174 member states and associate members.[119]

IMO is a specialised UN agency responsible for regulating global shipping and navigation as well as marine and atmospheric pollution caused by ships. IMO is a standard setting authority in the matters of safety, security (SOLAS) and environmental protection (MARPOL) of international shipping.

IMO consists of an Assembly, which is the highest governing body of the organisation. Generally, The Assembly meets every two years and has preventatives from all of the

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[118] Pyç 2016: 159.
[119] IMO: Available 11.10.2018 at: http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Convention-on-the-International-Maritime-Organization.aspx

Member States. The Assembly also elects the Council, which has a two-year-term beginning after every regular session of The Assembly. The Council is the executive organ of the organisation and supervises the work of the organisation between sessions of The Assembly. However, only The Assembly can make recommendations to governments on maritime safety and pollution prevention according to Article 15 of its Convention[120] In addition to The Assembly and The Council the IMO also has five main committees:

- The Maritime Safety Committee (MSC)
- The Marine Environment Protection Committee (MEPC)
- The Legal Committee (LEG)
- The Technical Cooperation Committee (TCC)
- The Facilitation Committee (FAL)

Additionally there are a number of sub committees to support the work of these five main committees.

The IMO plays a critical role in the implementation of the international law of the sea and ocean governance in the different pursuits of flag-, and coastal State interests through the various maritime zones. The organisation also provides an important global platform for the Member States to exchange information. The original nature of the organisation was essentially consultative and technical. Since those early days the Organisation's functions have evolved considerably. In some areas of ocean governance IMO has exclusive competence, namely in maritime safety and vessel-based pollution.[121]

Because of the jurisdiction and competency of the IMO, it is not involved in the delimitation and territorial claims of the Arctic States as such. However, because of its governance over global shipping routes and maritime safety it is involved in the matters related to the territorial claims, which involve establishing new shipping routes through the Arctic Ocean. The effects of the Climate Change are providing new opportunities for Arctic shipping routes. The agenda behind the territorial claims made by the Arctic states partly lies on the possibility of governance of these new shipping routes.

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[120] Convention of the International Maritime Organisation 1958.
[121] Chircop 2015: 427 –429.

1st of January 2017 The Polar Code entered into force. Polar Code adopted by IMO is an international code for Ships operating in Polar Waters. The Polar Code covers the shipping related matters relevant to navigation in waters surrounding the two poles. Congruent to IMO's jurisdiction, the Code covers matters relating to the maritime safety in shipping in these areas, as well as the protection of the unique environment and ecosystems of the Polar Regions.[122]

### 3.2. The International Seabed Authority (ISA)

The International Seabed Authority (ISA) is an intergovernmental organisation that was established to organise, regulate, and control all mining activities in the international seabed area (The Area) beyond the limits of national jurisdiction and sovereignty. The Authority's jurisdiction is limited to the international seabed, ocean floor, and subsoil and does not include the waters superjacent to the Area as defined in article 135 of UNCLOS.[123] The ISA is based in Kingston, Jamaica and was established in 1994 by UNCLOS. The ISA became fully operational in 1996 and resides in former UN offices in Kingston, Jamaica. All of the State parties to UNCLOS are also member of the ISA. As of 25th of July 2017 this means 168 members (167 States parties and the European Union).

Much like the IMO and other international organisations, the ISA also has an Assembly, in which all members are represented, as well as a Secretariat. The Assembly elects a 36-member Council. Council members are elected based on a formula to ensure equal representation of various groups. The Council works as an executive organ of the Authority, thus establishes policies in conformity of UNCLOS as well a general policies set by the Assembly. It supervises and coordinates implementation of the regime to explore and exploit deep-sea minerals from The Area by States, corporations and other entities. No such activity in The Area may legally take place until contracts have signed between each interested entity and the ISA itself. It is the duty of the Council to oversee

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[122] IMO: Available 11.10.2018 at: http://www.imo.org/en/MediaCentre/HotTopics/polar/Pages/default.aspx
[123] Jaeckel 2017: 90.

this whole process from drawing the terms of these contracts to oversee the actual implementation as well as establish environmental- and other standards.[124]

The Council approves a 15-year plan in the form of contracts for the governmental, and private entities for their planned mining activities in The Area. The geographical areas where these activities are planned to be carried out, must be precisely defined. The contract issued by the ISA grants exclusive, but temporary rights to the contractor.[125]

The Council members are divided into five different Regional groups that are elected for a four-year term. These Regional groups are: The African Group (47 members), Asia-Pacific Group (45 members), Eastern European Group (23 members), Latin American and Caribbean States Group (29 members) and Western European and Other States group 823 members).[126]

The ISA also consists of a Finance Committee, Legal and Technical Commission (LTC). Unlike other international organisations the ISA power structure differs slightly in that the Authority has given more power to its advisory body: Legal and Technical Commission, whose competency exceeds that of an ordinary advisory body in an international organisation.[127] The Legal and technical Commission is subsidiary to the Council and comprises of 24 experts. These experts have qualifications and expertise relevant to mineral mining, oceanography, protection of the marine environment and relevant legal and economic matters. The Council elects these experts from a pool of experts nominated by the member States. These experts do not need to represent their government according to UNCLOS Article 163, which does not regulate the nationality of the LTC-members or their ties to the represented government. The LTC somewhat exceeds its advisory mandate to the Council and most of the technical, detailed work of ISA is undertaken by the LTC, with the Council adopting decisions based on recommendations of the LTC.[128]

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[124] ISA: Available 11.10.2018 at: https://www.isa.org.jm/authority/council-structure-mandate
[125] Jaeckel 2017: 87–88.
[126] ISA: Available 11.10.2018 at: https://www.isa.org.jm/regional-groups
[127] Jaeckel 2017:90 –91.
[128] Ibid: 95–97.

The general function of the Authority is to oversee activities in the Area, particularly to administer the resources of the Area. These resources are defined in accordance with UNCLOS Article 133. Thus, these resources are: all solid, liquid or gaseous minerals in the Area at, or beneath the seabed, including polymetallic nodules. These resources derived from the Area are often referred to as 'minerals'.[129] The Authority's power affects all actors and entities involved in the seabed-mining regime.

The ISA differs from other international organisations in more ways than one. The Authority has a commercial branch called The Enterprise, which was established to carry out exploration and exploitation of seabed minerals as well as transporting, processing and marketing of these minerals initially through joint ventures with other entities. The Enterprise is established in UNCLOS Article 158, its statute is established in the convention's Annex IV.[130] However, it should be noted that before deep seabed mining becomes commercial reality, the functions of the Enterprise are to be carried out by the Secretariat.[131]

### 3.2.1. The ISA and the Arctic

Because the ISA governs the Area, which is deemed to be outside of national jurisdiction and common heritage of all mankind, (UNCLOS Article 136, and Part XI) it remains to be seen how extensive ISA's jurisdiction in the Arctic Ocean will be. This will depend on the territorial claims made by the Arctic Five-States and how successful they will be. It seems that the geomorphological characteristics of the Arctic Ocean seabed are such that the majority of it might be redeemed to be part of continental shelves of the five littoral states, which would then fall under national jurisdiction instead of the jurisdiction of the ISA.[132]

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[129] Jaeckel 2017: 88.
[130] Ibid: 99.
[131] ISA: Available 11.10.2018 at: https://www.isa.org.jm/news/nautilus-minerals-propose-joint-venture-enterprise
[132] Lodge 2012: 177–178.

### 3.3. Commission on the Limits of the Continental Shelf (CLCS)

The Commission on the Limits of the Continental Shelf is one of the institutions created under the 1982 UNCLOS. The purpose of the CLCS is to facilitate the implementation of UNCLOS in establishing the outer limits of the continental shelf beyond 200 nautical miles (NM) from the baselines, which the territorial sea is measured. Coastal States can establish the outer limits of its continental shelf where it extends beyond 200 NM according to the rules of UNCLOS and the recommendations of the CLCS. The recommendations made by the CLCS shall not prejudice matters relating to the delimitation of maritime zones between States with opposite or adjacent coasts.[133] The CLCS ordinarily meets twice a year in the United Nations Headquarters in New York, USA. The outcome of these sessions and the proposed services to be provided are subject to the approval of the General Assembly of the United Nations in its annual Law of the Sea conference. The CLCS sessions are held in private, unless it decides otherwise according to its Rules of Procedure. The information conducted in these meetings and the process of the meetings is released to the public through statements made by the Chairman of the CLCS.[134] According to UNCLOS Annex II Article 2 the CLCS shall consist of twenty-one members who shall be experts in the field of geology, geophysics or hydrography, elected by State parties to UNCLOS from among their nationals. On June 14th 2017, the 27th meeting of the State Parties to UNCLOS elected 20 members of the CLCS for a term of five years. The 21st member of the CLCS will be elected in the future. The CLCS currently has three members from three of the Arctic Five States (Denmark, Russia and Canada). A national of The United States cannot be elected as The United States has yet to ratify UNCLOS. The members of the CLCS need to be elected in such way, that equitable geographical representation is ensured. Members of the CLCS may be re-elected and most of the members have served more than one term in the Commission.[135]

The work carried out in the CLCS is scientific and technical in nature, but the recommendations made by the commission create the base for a potentially legally binding decision made by the Coastal States. However, it must be stated that the CLCS is not a

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[133] CLCS: Available 11.10.2018 at: http://www.un.org/Depts/los/clcs_new/commission_purpose.htm
[134] ibid.
[135] Suarez 2010: 137.

legal organ in itself, but serves as an advisory organ for the State Parties to UNCLOS.[136] For the CLCS recommendations to become final and legally binding they must be established by the coastal State according to UNCLOS Article 76.8.

The CLCS has been assigned to significant roles in the delimitation of the outer limits of the continental shelf beyond 200 NM from the Coastal State's baseline. Firstly, The CLCS is tasked to evaluate these territorial (ECS) claims made by the Coastal States. Secondly Coastal States may ask the CLCS for scientific of technical advise on the preparation of its submission of such territorial claim.[137]

The process of delimitation of the continental shelf and the extended continental shelf (ECS) is based on UNCLOS Article 76. This legal framework has already been introduced in the previous chapter of this thesis.

According to UNCLOS Annex II Article 4 if a costal States wishes to establish in accordance with the Article 76 of UNCLOS the outer limits of its continental shelf beyond 200 NM, it shall submit particulars of such limits to the CLCS with supporting scientific and technical data as soon as possible but in any case within 10 years from the date when UNCLOS was ratified by that State. (Emphasis added) .In the submission the coastal State shall also name the member(s) of the CLCS who has provided it with technical or scientific advice.


Figure 3.1. The Legal Path Towards ECS Sovereignty[138]

If a coastal State wishes to delineate the outer limits of its ECS it must go through a four-step process. This process is quite complex, but the following description aims to

[136] Suarez 2010: 135–137.
[137] Ibid: 132.
[138] EPRS 2017: 4.

explain it briefly. This explanation of the four-step process has been adopted from 'The 2006 Training Manual for delineation of the outer limits of the continental shelf beyond 200 NM and for preparation of submissions to the Commission on the limits of the continental shelf'. This manual was created for the 13th session of the CLCS and was intended to be used as a training manual for members of the CLCS in the process of delineation of the ECS.[139] The manual describes the four steps as:

- Firstly, the Coastal State must determine the outer edges of its continental margin according to the rules set in UNCLOS Article 76 (4) regarding 'Formulae lines'.
- Secondly, the Coastal State must demonstrate that its continental shelf extends throughout the natural prolongation of its submerged land territory. This natural prolongation must extend beyond the continental margin of 200NM. This phase is called the 'Test of Appurtenance'.
- Thirdly, if the previous 'Test of Appurtenance' has been approved, the Coastal State must prove that the formulae lines do not reach beyond so called 'Constraint Lines' defined in UNCLOS Article 76 (5,6).
- Finally, both of these newly established lines (Formulae- and Constraint Lines) must be used in delineating the outer limits of the continental shelf.[140]

In order to determine the 'Formulae Lines' a Coastal State must find a suitable formula to find these lines marking the outer edge of its ECS. These formulas have been briefly described in the previous chapter. The three formulas for establishing the 'Formulae Lines' are:

- Gardiner Formula, or the 'Irish Formula', named after geologist P.R: Gardiner who first introduced it. This formula is based on the sediment thickness of the seabed. Article 76.4 (i) describes it as follows:

[139] CLCS 2006: xvii.
[140] CLCS 2006: I-26.

> "A line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope".

To use this formula a Coastal State must:

- Identify the foot of the continental slope
- Measure the thickness of the sedimentary rocks over its continental rise
- Identify the fixed points where the sedimentary thickness is at least 1% of the shortest distance between such point and the foot of the continental slope,
- And finally connect these points.

This formula is a suitable method of finding the Formulae Lines when there are substantial volumes of sediments deposited over the continental rise. Most commonly this occurs when the outer edge of the continental margin is at a considerable distance from the foot of the continental slope.

The manual offers an example, if a fixed point is located at 130 km from the foot of the continental slope, this fixed point must sit over sediments 1.3 km thick.[141]

The second formula is called the "Hedberg Formula" (named after its author H. Hedberg) or the "Distance Formula". This formula is defined in the UNCLOS Article 76.4 (ii) as:

> "A line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope."

In order to use this formula, the Coastal State must identify the foot of the continental slope. Measure an arc of distance not exceeding 60NM from the foot of the continental slope. This method is commonly used in a situation where the thickness of the sediments is not sufficient to establish the edge of the continental margin beyond the 60NM

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[141] CLCS 2006: I-29–I-31.

from the foot of the continental slope, hence where it is not possible to use Gardiner's formula.[142]

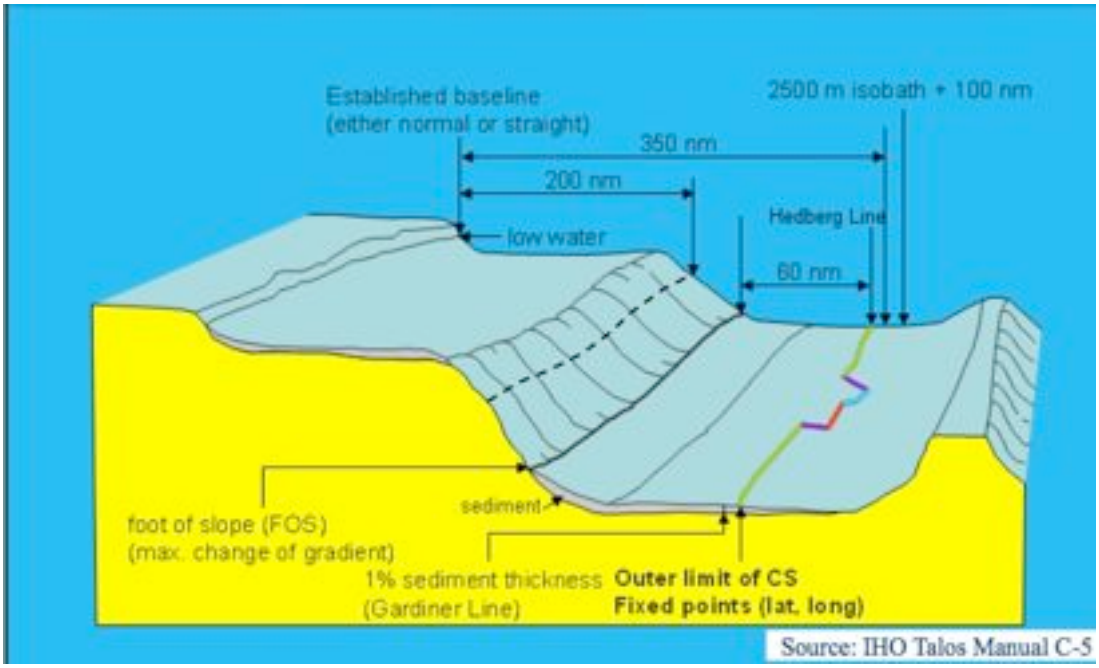


Figure 3.2. Gardiner- and Hedberg Formulae Lines[143]

Both of the methods described above are based on the foot of the continental slope. It was discovered that this would jeopardise the equality of some Coastal States because of the structure of the seabed. So a third method was developed during the drafting process of UNCLOS. It was noted that in certain areas, even though a thick layer of sediment extends hundreds of kilometres seawards, the foot of the continental slope was very close to the baselines. This characteristic would put certain Coastal States at a disadvantage. A third method was developed in order to determine the outer limits of the extended continental shelf. To address this issue, an exception was negotiated. This method is often referred to as the "Bengal Rule" as it was drafted to address the special characteristics of the Bay of Bengal. The rule is contained in the Statement of Understanding Considering a Specific Method to Be Used in Establishing the outer Edge of

[142] CLCS 2006: I-31–I-33.
[143] IHO Talos Manual 2014: 1.

the Continental Margin (Annex II of the Final Act of UNCLOS). Even though this method is not contained in the body of UNCLOS as such, the CLCS is bound to take it into consideration by Article 3.1 (a), (b) of Annex II to UNCLOS:

> (a) "To consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea; (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).

The third method thus applies in a situation where the average distance at which the 200-meter isobaths occurs is not more than 20 NM, and the greater proportion of the sedimentary rock of the continental shelf lies beneath the continental rise.[144]

### 3.3.1. The Test of Appurtenance

After the Coastal State has determined its formulae lines, the Coastal State must demonstrate the natural prolongation of its submerged land territory towards the outer edge of its continental margin, at least partly, beyond 200 NM. Only by proving this, a coastal State is entitled to an extended continental shelf. If the Coastal State fails to demonstrate this natural prolongation it is only entitled to and area where the outer limits of the continental shelf extend up to 200 NM from its baselines as described in UNCLOS Article 76.1. This also occurs if the Coastal state has proven the existence of the formulae lines. In this case, the Coastal State is not obliged to submit further information to CLCS, nor does the CLCS have to call upon by UNCLOS to make recommendations on those limits.[145]

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[144] CLCS 2006: I-32–I-35.
[145] CLCS 2006: I-35–I-36.

The third step of the process of delineating the outer edges of the extended continental shelf describes constraint lines. A constraint line is based on a distance criterion. These rules were created to ensure equality between Coastal States. The formulae lines of some sates may lie at a great distance from their baselines on their continental shelf. Thus, the drafters of UNCLOS established constraints, which mark the limit for extended continental shelves. According to UNCLOS Article 76.5 the formulae lines cannot lie beyond these two constraint lines:

- First constraint line is located 350 NM from the baselines from which the breadth of the territorial sea is measured from,
  OR
- The second constraint line is located 100NM seawards from the 2500 metre isobath.

The first constraint is simply based on a distance criterion, whereas the second constraint is based on a depth criterion. The second constraint is used in cases where the physical extent of a continental margin clearly exceeds the 350 NM-limit. The 2500 m depth contour line can be identified by hydrographic surveying.[146]

The final step of the process is to connect the formulae lines with the constraint lines and to establish the extent of the extended continental shelf.

## 3.4. International Tribunal for Law of the Sea (ITLOS)

The International Tribunal for Law of the Sea (ITLOS) is an independent judicial body established by the UNCLOS Annex VI. The ITLOS is based in Hamburg, Germany. The tribunal has jurisdiction over any dispute concerning the interpretation or application of UNCLOS amongst its member states. The tribunal is also open for organisations, private entities and States, which are not parties to UNCLOS. According to UNCLOS Annex VI Article 2: The tribunal consists of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recog-

[146] CLCS 2006: I-37–I-38.

nized competence in the field of law of the sea. Paragraph 2 assures that the representation of members should represent the world in an equitable geographical manner. Article 3 prohibits two members of the Tribunal to be nationals of the same State. The members to the Tribunal are elected for a term of nine years and shall be re-elected, according to Article 5.[147]

Some scholars argue that ITLOS cannot be seen as such as an organisation of the UN, or moreover, an organisation working under the UN. It was created by an international conference, convoked and held under the auspices of the UN, but the UN itself did not create it. In fact, the structure and budget of the Tribunal are quite separate of those of the UN. ITLOS was in fact established what was called 'an Agreement of Cooperation and Relationship between the UN and ITLOS' (UNGA), something that is typical as an agreement between equals rather than and organisation and its sub organisation.[148] The agreement recognises ITLOS as an autonomous judicial body in Article 1 of UNCLOS Annex VI. The Agreement relating to the Implementation of the Part XI of UNCLOS was adopted on 28th of July 1994, the same year that UNCLOS itself entered into force. The Agreement entered into force two years later, on 28th of July 1996.[149]

### 3.4.1. Chambers of ITLOS

ITLOS has multiple different chambers. In accordance with Part XI of UNCLOS The Sea-Bed Disputes Chamber was established 20th of February 1997. The actual Sea-Bed Chamber consists of eleven members. However, the Seabed Disputes Chamber is empowered to form an ad hoc Chamber, which can have three members in order to deal with particular disputes submitted to it in accordance with Article 188 of UNCLOS. This can be seen as a compromise between States, which supported the Sea Bed Disputes Chamber as a choice of procedure, and those States that would have preferred arbitration. According to the Article 187 of UNCLOS the Sea Bed Disputes Chamber has jurisdiction over disputes regarding the activities within the Area. The Chamber exercises jurisdiction over disputes between States, Between a State and the ISA, between

[147] ITLOS: Available 11.10.2018 at: https://www.itlos.org/en/the-tribunal/
[148] Garcia-Revillo 2015: 608–609.
[149] ITLOS: Available 11.10.2018 at: https://www.itlos.org/en/the-tribunal/

the parties to a contract, including States, a State enterprise, the ISA or the enterprise and natural or juridical persons, and lastly between the ISA and a prospective contractor. The Chamber is also open to all of the above-mentioned entities, not just States. The Chamber can give advisory opinions or binding decisions to its State Parties and other entities in accordance with ITLOS Statute Article 39.[150]

ITLOS also has other Special Chambers, such as:

- Chamber dealing with particular categories of disputes
- Chamber dealing with a particular dispute
- Chamber of Summary Procedure

The Chambers can then be further divided into chambers dealing with Fisheries disputes, Marine environment disputes, or Chamber for Maritime Delimitation Disputes.[151] The Chamber for Maritime Delimitation Disputes deals with disputes on maritime delimitation that State parties agree to submit to it. The Chamber has eleven members, the current president of ITLOS serving as the president of the Chamber.[152] In 2017 the Chamber gave its first judgement delimiting the maritime boundary between Ghana and Côte d'Ivoire. In the judgment delivered on 23rd of September 2017 the Chamber delimited the maritime boundary between these two States in the territorial sea, the EEZ and the continental shelf, including the continental shelf beyond the 200 NM limit. In this case the Chamber established a provisional equidistance line and examined whether this line required adjustments due to relevant circumstances. However, the Chamber found that such circumstances did not exist. The Chamber applied the same methodology when limiting the continental shelf beyond the 200 NM limit. The judgment was delivered to some extent to Ghana's favor.[153] As the first judgment delivered by the Special Chamber on Maritime delimitation this can be seen as somewhat groundbreaking.

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[150] Tanaka 2018:243–246.
[151] Ibid at: 245– 248.
[152] ITLOS website
[153] ITLOS 2018 Case 23 Press release: Available 11.10.2018 at: https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_264_EN.pdf

### 3.5. Dispute Settlement and Choice of Procedure

Part XV of UNCLOS, Section 1. Provides the general provisions of dispute settlement between State Parties. Firstly the State parties are bound to settle their disputes by peaceful means in accordance with the UN Charter Article 2. And they shall settle the disputes with a method of their own choice in accordance with Article 33 of the UN Charter. According to Article 283 the parties to a dispute are also bound by the obligation to exchange views regarding the settlement of the dispute through negotiation or other peaceful means. According to Article 282 of UNCLOS if State parties have a dispute concerning the interpretation or application of UNCLOS have agreed through a general, regional or bilateral agreement that such dispute shall be submitted to an agreed procedure, that entails a binding decision, the use of that procedure, and the decision delivered through that procedure shall be binding, unless the parties to the dispute otherwise agree. This Article thus gives the State parties an option to choose a dispute settlement method: these methods include: negotiation, arbitration, conciliation or mediation. However, if the State parties to a dispute cannot agree to a dispute settlement method, the dispute must be settled by the compulsory procedures established in UNCLOS Part XV, Section 2.[154]

When a State party ratifies or signs UNCLOS, it must declare in writing one or more means of dispute settlement established in Article 287 of UNCLOS. According to UNCLOS Article 287.1 the ITLOS is only one of four possible means for the State parties to settle their disputes over the application or interpretation of the rules set in UNCLOS. The other three options are The International Court of Justice (ICJ), arbitration under Annex VII of UNCLOS or special arbitral tribunal established in Annex VII of UNCLOS. If a State has not declared a dispute settlement process, the ITLOS is not a default mechanism. In this situation, Annex VII of UNCLOS establishes that such States should use arbitration to settle their disputes by peaceful means.[155] The Article 287.2 of UNCLOS however declares that the above-mentioned methods of dispute settlement shall not affect the obligation of a State party to accept the jurisdiction of the Seabed

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[154] Tanaka 2018: 230–233.
[155] Koivurova, Ringbom, Kleemola- Juntunen 2017: 146–148.

Disputes Chamber of ITLOS.[156] An exemplary case on maritime delimitation between States with adjacent coasts can be mentioned is the ICJ judgment in The Black Sea-Case 2009 between Ukraine and Romania, where the Court delimited the continental shelves and EEZs of the States by using a provisional equidistance line.[157]

For the sake of not making the selection of dispute settlement process between States too simple, the Article 297 and 298 of UNCLOS lists limitations and exceptions to these compulsory procedures. These are divided into 'Automatic exceptions' and 'Optional exceptions'. The optional exceptions established in Article 298 of UNCLOS are interesting in regard of this thesis. Article 298 concludes that a State party shall declare in writing that it does not accept any one, or more of the compulsory procedures with respect to one or more of the following categories: disputes concerning interpretation or application of Articles 15 (Delimitation of the territorial sea between States with opposite or adjacent coasts), 74 (Delimitation of the EEZ between States with opposite or adjacent coasts) and 83(Delimitation of the continental shelf between states with opposite or adjacent coasts (Emphasis added.)) relating to the maritime delimitations or those involving historic bays or title (i), disputes concerning military activities or law enforcement in regards to sovereign rights or jurisdiction (ii), or disputes where the Security Council is exercising its functions. Under this Article 298.4 A State party that has made such declaration shall not be entitled to submit any dispute falling under the declared category, to any procedure in UNCLOS against another State party without the consent of that party. This is to prevent the unilateral submission of a dispute in excluded category to be submitted to the compulsory procedures.[158] The significance of the Article 298 of UNCLOS in relation to the Arctic territorial claims remains to be seen as the State Party to UNCLOS can make such declaration any time after ratifying the convention.

[156] Tanaka 2018: 235–236.
[157] The ICJ Judgement The Black Sea-Case 2009.
[158] Tanaka 2018: 236–243.

## 3.6. The Arctic Regime

As has been already stated in this thesis there is currently no comprehensive legal regime governing the Arctic Region or –Ocean as there is for its polar counterpart the Antarctic, which is governed in the Antarctic Treaty of 1959 (ATS). The Arctic is however, governed by multiple non-binding soft law treaty systems as well as UNCLOS, which is binding to its members. The Arctic regime can be divided into the regime between the Five Arctic States (Canada, Denmark, Norway, Russia, and The United States), which have coastline along the Arctic Ocean and the regime between the eight Arctic States (in addition to the five states also: Finland, Sweden and Iceland), which all have territory above the Arctic Circle (60°N).[159]

## 3.7. The Arctic Five and the Ilulissat Declaration

Some scholars have argued that the Arctic Five- relationship began in Oslo, Norway in 1973 when the States signed 'an Agreement on the Conservation of Polar Bears'.[160]Thirty-five years later, on 28th of May 2008 The Arctic Five- States' representatives met in Ilulissat, Greenland to hold discussions and released a multilateral declaration known as the 'Ilulissat Declaration' signed by the five Arctic States: Canada, Denmark, Norway, The Russian Federation and the United States of America.

The declaration firstly recognises that the Arctic Region is going through significant changes through climate change potentially affecting the ecosystems, livelihoods of local inhabitants and indigenous communities and the potential exploitation of natural resources.

The declaration then continues to define the unique position where these five Arctic States are in accordance with these challenges and possibilities. These five states continue to declare that they respect the international legal framework (UNCLOS) that ap-

[159] Jabour, Weber 2008: 29.
[160] Kuersten 2016: 391.

plies to the Arctic Ocean; they then declare their commitment to this framework set by international conventions.

However, the third paragraph of the declaration is the part that has raised wide international discussion and critique.[161] In the third paragraph the five states declare that the international legal framework provides a solid foundation for the management of the Arctic Ocean for the five coastal States. They then continue, *"We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures."*[162]

In the following paragraph of the declaration, the five Arctic States position themselves as 'stewards' protecting the Arctic Ocean from shipping disasters and pollution and assure to take steps in accordance with international law both nationally with each other as well as other interested parties, including IMO to protect and preserve the fragile marine environment of the Arctic Ocean.

The Arctic Five States also declare to strengthen the cooperation with each other and with other interested parties, which is based on mutual trust and transparency. Finally, these five States of the Arctic Council declare that they will continue to contribute actively to the work of the Arctic Council and other relevant international entities (namely, Barents Euro– Arctic Council).

The declaration has raised some questions within the international community and scholars in this field. Some legal scholars argue that the protection of the environment, such as the Arctic Ocean, should be seen as a common interest of the whole international community as this principle constitutes the core of modern International Environmental Law. The declaration has also been criticized because the five Arctic States held the

[161] Kaufman 2017: Part 1.3.
[162] Ilulissat Declaration 2008.

meeting in ad hoc-basis outside of the established framework by any intergovernmental forum, such as the Arctic Council.[163]

These five Arctic States have since Ilulissat met in Chelsea, Canada (2010) and Oslo, Norway (2015). In the Oslo meeting the five States delivered concerning the fishing in the Arctic Ocean. This declaration is called: Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean, 2015.

It should be noted that all declarations established by the Arctic Five are nonbinding, at least to the States that are non-signatories to the declaration.[164]

## 3.8. The Arctic Council

The Arctic Council, established in 1996 is a high level international forum that addresses issues relating to the interest of the eight Arctic States. Before the Arctic council was established the Arctic Environmental Protection Strategy (AEPS) preceded it. The Arctic council promotes cooperation, coordination and interaction among the eight Arctic States, Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, namely issues of sustainable development and environmental protection of the Arctic.

The Arctic Council was established on 19th of September in 1996 in Ottawa, Canada by the Ottawa Declaration. The representatives of the declaration were the governments of the eight Arctic states: the Governments of Canada, Denmark, Finland, Iceland, Norway, the Russian federation, Sweden and the United States of America. The Ottawa Declaration also established the following programs, or working groups of the Arctic Council:

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[163] Kauffman 2017: Part 1.3.
[164] Kuersten 2016: 394.

- The Arctic Monitoring and Assessment Program (AMAP)
- Conservation of the Arctic Flora and Fauna (CAFF)
- Protection of the Arctic Marine Environment (PAME), and
- Emergency Prevention, Preparedness and Response (EPPR)

In addition to these groups established in the Ottawa Declaration, the Arctic Council currently also has established two additional working groups:

- Arctic Contaminants Action Program (ACAP)[165], and
- Sustainable Development Working Group (SDWG)[166]

Article 2 of the Ottawa Declaration establishes that the following organisations are permanent participants in the Arctic Council:

- The Saami Council
- The Association of Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation (RAIPON).
- The Article 2 also establishes that permanent participation is open to other Arctic organisations of indigenous peoples with majority Arctic indigenous constituency representing a single indigenous people resident in more than one Arctic State, or more than one Arctic indigenous people resident in a single Arctic State. It is up to the Arctic Council to determine whether such organisation meets this criterion. However, the number of permanent participants should at any time be less than the number of members (8).

The Arctic Council currently has six organisations as permanent participants; four of these have been added after the Ottawa declaration was signed. These four organisations are:

- The Aleut International Organisation (AIA)

[165] The Arctic Council: https://oaarchive.arctic-council.org/handle/11374/1
[166] The Arctic Council: https://oaarchive.arctic-council.org/handle/11374/4

- The Arctic Athabaskan Council (AAC)
- Gwich'in Council International (GCI), and
- Inuit Circumpolar Council (ICC)

The Arctic Council can also have observers. Their status is determined in Article 3 of the Declaration. The status of an observer can be granted to non-Arctic States, global and regional inter-governmental and inter-parliamentary organisations and non-governmental organisations. The Artic Council has granted the observer status to thirteen Non-arctic States, thirteen Intergovernmental and Inter-Parliamentary Organisations and Thirteen Non-governmental Organisations.

Non-arctic State Observers:

- France (Barrow Ministerial meeting, 2000)
- Germany (Iqaluit Ministerial meeting, 1998)
- Italian Republic (Kiruna Ministerial meeting, 2013)
- Japan (Kiruna Ministerial meeting, 2013)
- The Netherlands (Iqaluit Ministerial meeting, 1998)
- People's Republic of China (Kiruna Ministerial meeting, 2013)
- Poland (Iqaluit Ministerial meeting, 2013)
- Republic of India (Kiruna Ministerial meeting, 2013)
- Republic of Korea (Kiruna Ministerial meeting, 2013)
- Republic of Singapore (Kiruna Ministerial Meeting, 2013)
- Spain (Salekhard Ministerial Meeting, 2006)
- Switzerland (Fairbanks Ministerial meeting, 2017)
- United Kingdom (Iqaluit Ministerial Meeting, 1998)

Intergovernmental and Inter-Parliamentary Organisations:

- International Council for the Exploration of the Sea (ICES) - Fairbanks Ministerial meeting, 2017

- International Federation of Red Cross & Red Crescent Societies (IFRC) - Barrow Ministerial meeting, 2000
- International Union for the Conservation of Nature (IUCN) - Barrow Ministerial meeting, 2000
- Nordic Council of Ministers (NCM) - Barrow Ministerial meeting, 2000
- Nordic Environment Finance Corporation (NEFCO) - Reykjavik Ministerial meeting, 2004
- North Atlantic Marine Mammal Commission (NAMMCO) - Barrow Ministerial meeting, 2000
- OSPAR Commission - Fairbanks Ministerial, 2017
- Standing Committee of the Parliamentarians of the Arctic Region (SCPAR) - Iqaluit Ministerial meeting, 1998
- United Nations Economic Commission for Europe (UN-ECE) - Iqaluit Ministerial meeting, 1998
- United Nations Development Programme (UNDP) - Inari Ministerial meeting 2002
- United Nations Environment Programme (UNEP) - Iqaluit Ministerial meeting, 1998
- World Meteorological Organization (WMO) - Fairbanks Ministerial meeting, 2017
- West Nordic Council (WNC) - Fairbanks Ministerial meeting, 2017

Non-governmental Organisations:

- Advisory Committee on Protection of the Sea (ACOPS) - Barrow Ministerial meeting, 2000
- Arctic Institute of North America (AINA) (Formerly Arctic Cultural Gateway (ACG)) - Reykjavik Ministerial meeting, 2004 (as: Arctic Circumpolar Route)
- Association of World Reindeer Herders (AWRH) - Barrow Ministerial meeting, 2000
- Circumpolar Conservation Union (CCU) - Barrow Ministerial meeting, 2000

- International Arctic Science Committee (IASC) - Iqaluit Ministerial meeting, 1998
- International Arctic Social Sciences Association (IASSA) - Barrow Ministerial meeting, 2000
- International Union for Circumpolar Health (IUCH) - Iqaluit Ministerial meeting, 1998
- International Work Group for Indigenous Affairs (IWGIA) - Inari Ministerial meeting, 2002
- National Geographic Society (NGS) - Fairbanks Ministerial meeting, 2017
- Northern Forum (NF) - Iqaluit Ministerial meeting, 1998
- Oceana - Fairbanks Ministerial meeting, 2017
- University of the Arctic (UArctic) - Inari Ministerial meeting, 2002
- World Wide Fund for Nature-Global Arctic Program (WWF) - Iqaluit Ministerial meeting, 1998[167]

The Ottawa declaration establishes that the Council should meet on a biennial basis. The responsibility of hosting these meetings should rotate between the Arctic States. Article 3.7. of the Declaration establishes that decisions established in these meetings are to be by the consensus of the Members. (Emphasis added.)

The chairmanship of the Arctic Council rotates every two years between the eight member States. Finland currently holds the chairmanship for the term of 2017-2019. In addition to working groups the Arctic Council also establishes working groups to specialise in specific subjects and matters. The Task forces during the Finnish chairmanship are:

- Task Force on Arctic Marine Cooperation (TFAMC)
- Task Force on Improved Connectivity in the Arctic (TFICA)

[167] the Arctic Council: Available 11.10.2018 at: https://arctic-council.org/index.php/en/about-us/arctic-council/observers

The Arctic Council also has Expert Groups supporting the other organs of the organisation with their work.[168]

It should be noted that the Arctic Council is a forum that produces assessments and recommendations through the work of its organs. It can also work as an forum to provide a place for negotiations which then produce legally binding decisions, such as the Agreement on Cooperation on Aeronautical and Maritime Search and rescue in the Arctic (Nuuk, Greenland, 2011 Ministerial meeting), the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (Kiruna, Sweden, 2013 Ministerial Meeting) and the Agreement on Enhancing International Arctic Scientific Cooperation (Fairbanks, Alaska, 2017 Ministerial Meeting).[169] Because of this forum-nature of the Arctic Council it cannot implement or enforce its guidelines, assessments or recommendations to its member States or any other entities. This responsibility belongs to individually to each of the Arctic States.[170]

### 3.9. The Relationship between the Arctic Five-Sates and the Arctic Council

The relationship between these two entities has been widely discussed in the field of arctic studies. Some scholars have argued the loose union between the five Arctic States that have coastline along the Arctic Ocean and that meets in ad hoc-basis is trying to usurp the Arctic Council's central position as the main forum for Arctic governance. The Arctic Five have been accused of trying to undermine the spirit of cooperation that the Arctic council has created for the Arctic international relations, geopolitics and governance. However, it has also been established that these two groups can even complement each other, and thus, positively address the issues facing the region and the ocean at the top of the world.[171]

Because these entities have overlapping member States, it is quite evident that the work of one might influence and that of the other, negatively or positively. The Ilulissat Dec-

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[168] Idib at: https://arctic-council.org/index.php/en/about-us
[169] The Arctic Council at: https://arctic-council.org/index.php/en/about-us
[170] Ibid.
[171] Kuersten 2016: 389.

laration (as well as the other meetings) has been criticised for leaving the remaining three Arctic States outside of the decision-making process and, thus avoiding to engage with the Arctic Council's opinions. It has also been argued by scholars whether the Arctic Five could meet up to discuss narrower issues relating to the Arctic region and represent these opinions in the Arctic Council's session in such way that it would influence the decision making in the Artic Council.[172]

On the other hand, these two entities can exist in synergy, and their work can be complementary to each other. Because of the elimination of many Arctic stakeholders from the Arctic Five and the type of these stakeholders, the Arctic Five can act in more efficient fashion (than the Arctic Council). It should also be mentioned that the Arctic Five does not have the Ottawa declaration limiting its ambit. Thus the littoral States can address any and all issues that may arise in the governance, protection or use of the Arctic Ocean and –region. This efficiency was clearly displayed in the Ilulissat Declaration. Because the Declaration addresses issues more relating to the sovereignty, jurisdiction and dispute resolution rather than just sustainable development and environmental protection it is debatable whether the Arctic Council could have ever brought up these issues. Even though these issues relating to the territorial claims and the issues with overlapping continental shelves are issues that involve the whole international community, the representation of these claims: the sovereignty, jurisdiction and dispute settlement only concerns the Arctic Five- States. It is then up to the appropriate international organisations to make their recommendations on these matters to the involved States.[173]

The Arctic Council as a forum that allows a constant dialogue between its members, participants and observers. It produces important Arctic data for all of the interested entities. Currently the Arctic Council is seen to have more credibility than the Arctic Five, at lest among the Arctic States. It has been argued that there is a growing disquiet among non-Arctic States regarding to the Arctic Council's work because of their disadvantaged position within the forum.[174]

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[172] Kuersten 2016: 390 –392.
[173] Ibid at: 392.
[174] Ibid at: 392–393.

The relationship between the Arctic Council and the Arctic Five is not simple or one-dimensional.[175] It remains to be seen how this relationship will change in the future and will the governance framework that they provide be enough for the international community to govern the Arctic Ocean around the North Pole.

[175] Ibid at: 394.

## 4. TERRITORIAL CLAIMS AND THE ARCTIC FIVE-REGIME

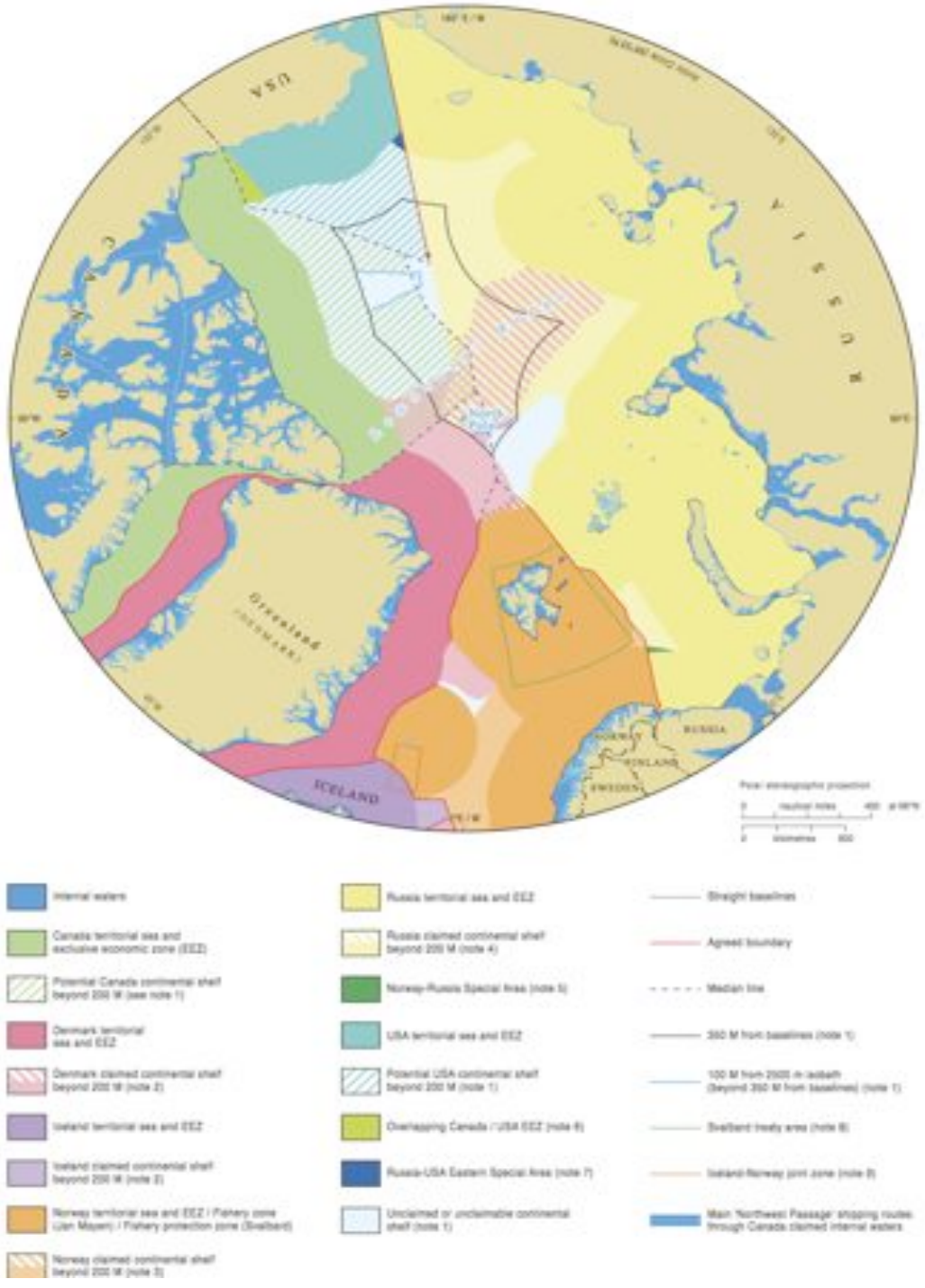


Figure 4.1. Territorial Claims made by the costal States in the Arctic Ocean[176]

[176] IBRU, Available 11.10.2018 at: https://www.dur.ac.uk/resources/ibru/resources/Arcticmap04-08-15.pdf

The Figure 4.1. perhaps best describes the current territorial claims made by the Arctic Five-States over the seabed of the Arctic Ocean. As the picture shows Kingdom of Denmark and The Federation of Russia have made overlapping claims over the territory underneath the terrestrial North Pole. Currently as well as in the future the Arctic Ocean can be seen as a region where two of the main principles of Law of the Sea will be examined and debated. It will be a question of the extent of State sovereignty, and to what extent the Arctic Ocean will remain as the common heritage of all mankind. As Article 76 of UNCLOS defines the scope of sovereignty in the continental shelf to compromise of the seabed and subsoil of the coastal State's continentals shelf and extended continental shelf.

The situation in the Arctic drives the observer to open up Hugo Grotius' book from 1609 *Mare Liberum* and look into the Chapter V, where Grotius observes that the sea has been seen as the property of no one (*res nullius*), a common possession (*res communis*) and public property (*res publica*). Arguing this by saying:

*"Which cannot be occupied, or which has never been occupied, cannot be the property of anyone, because all property has arisen from occupation.*[177]*"*

Grotius then continues to compare the sea with air, by saying:

*"For the same reasons the sea is common to all, because it is so limitless that it cannot become a possession of any one…*[178]*"*

On the other hand, looking at the map of the Arctic Ocean (Figure 1.1., 4.1.) conflicts with the ocean's limitlessness and brings in mind John Selden's work from 1635 *Mare Clausum.* The British counteract to Grotius' book was published thirty years later under the express order of King Charles. Selden wanted to establish the sovereignty and dominion of the British crown over its surrounding seas but also to prove that there was a long time tradition over the oceans. Eventually, the Grotian view of the oceans won the debate and freedom of the seas became a doctrine, which still remains a principle of in-

[177] Haakonsen 2004: 75–80.
[178] Ibid.

ternational law of the sea in regards of the freedom of the High Seas (UNCLOS Article 58.).[179]

In the Arctic Ocean the question is not about the Freedom of the High Seas as the extended continental shelf- sovereignty does not include the water areas above the ECS. It is more of a question of the extent of common heritage of mankind in respect to the deep seabed in the Arctic Ocean versus, the extent of sovereignty in the Arctic Ocean Seabed and what lies beneath it. In accordance with Chapter V of *Mare Liberum* it remains to be seen if the debated parts of the Arctic Ocean (and the seabed) will remain public property (*res publica)* and common possession (*res communis),* or whether the North Pole and its surrounding areas will be claimed as sovereign territory.

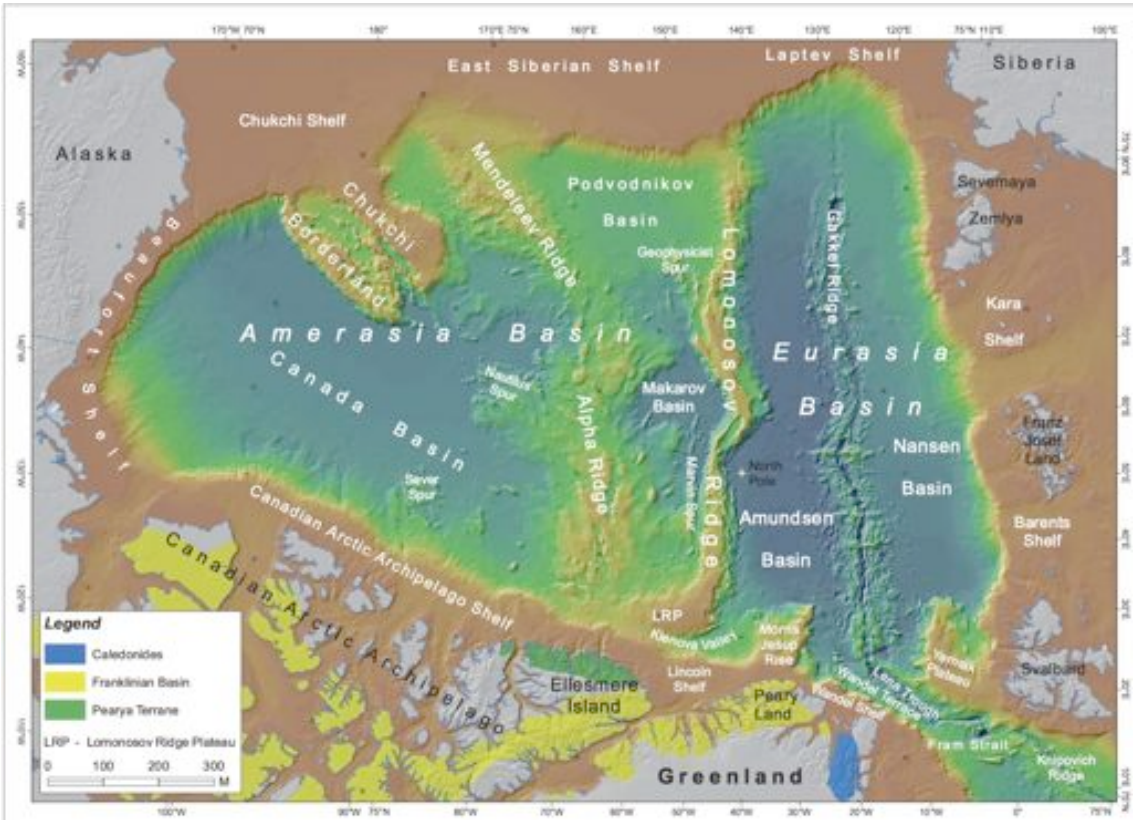


Figure 4.2. Topography of the Arctic Ocean Seabed[180]

[179] Rothwell, Stephens 2016: 36.
[180] Denmark Exec Summary 2014: 13.

## 4.1. The Russian Federation Territorial Claims – Background

In late July 2007, Russia launched a two-ship Arktika -expedition towards the North Pole. The first ship was an icebreaker that opened the path for a research vessel to follow. The two vessels carrying two Finnish made[181] submersibles MIR I, and MIR II. They sailed for seven days towards the North Pole and finally reached the geographical destination at the top of the world. At the North Pole the two submersibles were sent down through the ice, towards the ocean floor. The submersibles were sent down through a hole in the ice and they descended for three hours to a depth of approximately 4.2 km. After the submersibles had gathered some samples of the ocean floor, they were moved directly under the geographic North Pole. In a desired position, a robotic arm extended from the submersible and planted a Russian flag made out of rustproof titanium in the seabed beneath the North Pole.[182]

Planting that flag on the deep ocean floor caused an international uproar. Canada's Foreign Minister at the time: Peter MacKay has been quoted saying: "This isn't the fifteenth century - - - You can't go around the world and just plant flags and say: "We're claiming this territory"." The US State representative Tom Casey joined in the discussion by stating:" I'm not sure whether they (the Russians) put a metal flag, a rubber flag, or a bed sheet on the ocean floor. Either way, it does not have any legal standing or effect on this claim." The Russian response came from the explorer and diplomat Artur Chilingarov, who had been part of the expedition, stated: "If someone does not like this, let them go down themselves – and then try to put something there. Russia must win. Russia has what it takes to win. The Arctic has always been Russian."[183]

The significance of the planting of the flag to the North Pole may have been merely symbolic from a legal point of view. However, this move mirrors Russian geopolitical ambitions quite accurately and Russian Foreign Minister Sergei Larov later linked the flag planting to Russia's plans to claim that its territory reaches up to the North Pole.[184]

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[181] Made by Rauma-Repola in 1987, ordered by the Soviet Union.
[182] Sammartino McPherson 2015: 7.
[183] Ibid at: 7–8.
[184] EPRS 2017: 2.

The flag-planting event attracted wide international media narrative and attention and just ten months later the five Arctic states signed the Ilulissat Declaration in May 2008 reaffirming their sovereign rights and their stance in the Arctic Ocean governance.

### 4.1.1. Russian Arctic Claims

Russia dominates the Arctic geographically by controlling approximately half of the Arctic Coast line. The population of the Arctic Region has been estimated to be approximately 4 million; almost half the population live in the Russian territory.

The Federation of Russia ratified UNCLOS on 12th of March 1997 and has since worked towards expanding its territory by 1.2 million square kilometres in the Arctic Ocean reaching all the way up to the North Pole. Russia was the first Arctic Five-nation to submit its extended continental shelf claim to nearly half of the Arctic Ocean. Russia's ECS-claim includes the Lomonosov- and Mendeleev Ridges and it was first submitted to the CLCS in 2001(refer to the Figure 4.2.). The CLCS responded to the claim stating that the claim lacked geological evidence and recommended that Russia would re-submit a revised claim in respect of its ECS. The flag-planting expedition in 2007 was part of this process of determining the outer limits of the Russian ECS. Russia submitted a revised claim in August 2015, thus including the Mendeleev elevation to be part of its ECS. The 2015 submission concludes that the Lomonosov ridge, Mendeleev ridge, The Chukchi rise form a single consolidated crust with the Podvonikov Basin and the Chukci Basin, which then is component forming the continental margin of the Arctic Ocean as the natural prolongation of the continental margin of Eurasia.[185] In February 2016 Russia added the Chukchi-plains to its territorial claims and finally presented these revised claims to the CLCS in August 2016. The Russian ECS-claims overlap party with those of Denmark, and the CLCS is yet to give a recommendation in respect of these ECS- claims.[186]

[185] Russia Exec Summary 2015: 9.
[186] EPRS 2017: 2–8.


Figure 4.3. Russian Territorial Claim in the Arctic Ocean[187]

### 4.1.2. Russian Arctic Policy

The Russian Arctic Policy insists that the intentions highlighted in its Arctic Policy concerning the Arctic Zone of the Russian Federation (AZRF) is inward focused, purely defensive in nature and aimed to protect Russia's legitimate interests. The policy states that the Russian federal and regional governments have together with the private sector

[187]IBRU, Available 11.10.2018 at:
https://www.dur.ac.uk/resources/ibru/resources/ArcticmapRussianonlyclaims05_08_15.pdf

articulated plans to further develop the industries and infrastructure of the AZRF. Russia has also shown interest to develop the Northern Sea Route (NSR), the shortest shipping route between European and East Asian ports. Safely navigation through this route as of now is still unpredictable and hazardous. However, the building of search and rescue centres has along this route has already begun.[188]

As a result of heavy industrial and military activity, many Arctic areas are heavily polluted and pose serious health hazards.[189] Radioactive material from nuclear munitions has collected to the AZRF. This radioactive material has flown down to Arctic Ocean from factories namely located in Krasnoyarsk, Tomsk, and Chelyabinsk. From 1964 to 1991 fluid and solid radioactive waste was dumped to the Barents and Kara seas. The dumping of the radioactive waste has now stopped but the remaining waste is still a problem for Russia and potentially other Arctic States.[190] It should be noted that Russia is the only non-NATO nation of the Arctic Five and their military presence in the Arctic Region has grown in the recent years.

## 4.2. Norway's Territorial Claims

Under the Svalbard Treaty of 1020, Norway has sovereignty over the Svalbard (formerly known as Spitsbergen) archipelago. The treaty obligates Norway to protect the natural environment of Svalbard, but to also ensure that no fortresses or naval bases are established. The treaty also guarantees the same rights of access and residence to its party States as for Norway. These rights include fishing, hunting, maritime,-or industrial mini or trade activities are equally granted to all members to the treaty.
Norway was the second Arctic State to submit its territorial claims to the CLCS on 27th of November 2006. Norway had ratified UNCLOS just few months before on 24th of June 2006. Norway's extended continental shelf claim would extend the Norwegian territory to areas of north-eastern Atlantic and the Arctic: the "Loop Hole" in the Barents sea, the Western Nansen basin in the Arctic Ocean and the "Banana Hole" in the Nor-

[188] Konyshev 2018:136–137.
[189] Ibid at 138.
[190] Sergunin, Konyshev 2016: 30.

wegian sea. Norway and at the time, Soviet Union agreed to partial maritime boundary in Varangenrfjord in 1957. However, for many years were unable to agree to maritime boundary in the Brents Sea. Norway claimed that the boundary should follow a 'median'-line, whereas Russia wanted to establish a 'sector' boundary towards the north, deviating from the Svalbard 1920 Treaty-area. In 2007 the boundary was extended through the innermost 73 km of the disputed area. In March 2009 the CLCS recommended that Norway and Russia should pursue individual submissions. This then led to Norway and Russia ending a 40-year dispute by signing the Treaty on Maritime Delimitation in the Barents Sea on 2010, which came into force in 2011.[191] This disputed area, that was the resolved by the Barents Treaty 2011, made up a total of 12 % of the whole Barents Sea, which is the total of approximately 45 % of Norway's total land territory. The Treaty was officially signed on 15th of September 2010. It has been estimated that this vast area contains substantial amounts of biological resources as well as natural gas and petroleum. According to some experts, the economical meaning of this treaty could lead up to an income of 200 billion dollars. By this Treaty two fisheries cooperation agreements were also renewed. Originally these agreements were signed in 1975 and 1976.[192]

The Norwegian policymakers were ecstatic and only a few hours after the Barents Treaty entered into force, a Norwegian vessel set towards the Barents Sea to conduct seismic surveys. It has been reported that the Norwegian oil production has been declining in the recent years after reaching its peak in 2001. Thus, the Norwegian government has a strong interest in boosting the petroleum- and other hydrocarbon exploitation industry. The newly claimed are in the Barents Sea offered good future prospects for this.[193]

### 4.2.1. The High North Strategy

The government of Norway released its Arctic Strategy, titled: "High North Strategy" in December 2006. The Norwegian Strategy for the Russian cooperation is often referred

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[191] EPRS 2017: 5.
[192] IBRU 2015
[193] Arctic Forum Foundation, Available 11.10.2018 at: http://eu-arctic-forum.org/allgemein/delimitation-agreement-a-new-era-in-the-barents-sea-and-the-arctic/

to with a slogan: “High North, low politics”, which is to represent Norway’s attitudes and approach to the situation in the Arctic and its neighbouring States. The strategy emphasizes the cooperation, especially with Russia, in a consistent and predictable way.[194]

The High North Strategy claims “It (the Norwegian Government) considers the High North to be Norway’s most important strategic priority area in the years ahead.”[195]

The Ukraine conflict and the aftermath in 2009 however changed Norway’s tone towards Russia. In 2009 Norway released a follow up to its High North Strategy, titled: “New building blocks in the North”. In this government publication Norway’s role as a significant and responsible actor in the High North is emphasized.[196] What is perhaps most interesting, noting that Russia is the only Non-NATO State of the five Arctic States, is that Norway broadens the scope of the ‘High North’ to become a synonymous with ‘circumpolar Arctic’. The publication continues to emphasize: “NATO is present and continues to be present in the High North, where the main task of the organisation is help to maintain stability and predictability and to preserve the low level of tension that has traditionally characterised the region[197].”[198]

## 4.3. Kingdom of Denmark and Greenland Territorial Claims

Kingdom of Denmark is considered one of the Arctic Five- States because Greenland, the world’s largest island (Australia and the Antarctic are considered continents), is part of the Danish realm. Greenland has an approximate population of 56 480, which makes it the least densely populated territory in the world[199]. The Greenlandic name for the island is ‘Kallaalit Nunnaat’ and the territory has been inhabited by Arctic tribes off and on for at least 4 500 years. In 982 the island was named ‘Greenland’, to make it seem

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[194]Osthagen 2016: 1.
[195]High North Strategy 2006: 7.
[196] Norwegian Ministry of Foreign Affairs 2009: 3–5.
[197]Norwegian Minstry of Foreign Affairs 2009: at 52.
[198] EPRS 2017: 5–6.
[199] The World Bank 2017: https://data.worldbank.org/indicator/EN.POP.DNST?order=wbapi_data_value_2010+wbapi_data_value+wbapi_data_value-last&sort=asc

more attractive, by the Norwegian king Eric the Red. During the 16th century most of the Norwegian settlements had vanished from the island, leaving the Inuit people to govern and occupy this territory. In 1721 the first Danish settlement was created near, where the city of Nuuk is located currently. Denmark then began trading with the island and established full monopoly of the trade with Greenland in 1776. In 1814 the governance of Greenland shifted from Norway to Denmark with the Treaty of Kiel in the aftermath of the Napoleonic Wars[200].[201] Greenland has self-government[202], which was declared in 2009. Denmark and Greenland ratified UNCLOS in 2004. Since then Denmark together with Sweden and Canada have conducted six data acquisition projects in the area north of Greenland.[203]

### 4.3.1. Territorial Claims

On 15th of December 2014, Denmark together with Greenland filed a submission to the CLCS to define the outer limits of their ECS in the Arctic Ocean. The ECS claim consists of an area of 895 541 square kilometres, stretching beyond the 200 NM EEZ limit measured from the baselines of Greenland. In June 2012, Denmark submitted another partial submission to the CLCS regarding the area south of Greenland, and in 2013 another partial submission regarding the area northeast of Greenland. Denmark has then established the agenda for their 'Continental Shelf Project', the website of the project states that the negotiations regarding the overlapping territorial claims (ECS-claims) in the Arctic Ocean will be conducted in accordance with the rules of UNCLOS "as laid down in the Ilulissat Declaration in 2008". The first discussion are not expected sooner than 2020, and a resolution not sooner than 2027. In September 2016, Denmark rejected Russia's offer for bilateral negotiations regarding their overlapping territorial claims stating the need to "apply international rules".[204]

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[200] Thorpe 2014: 177.
[201] World Atlas 2018, Available 11.10.2018 at: https://www.worldatlas.com/webimage/countrys/namerica/greenland/gltimeln.htm
[202] Greenland Sefl Government Act 2009: 3.
[203] EPRS 2017: 4.
[204] Ibid at: 5.

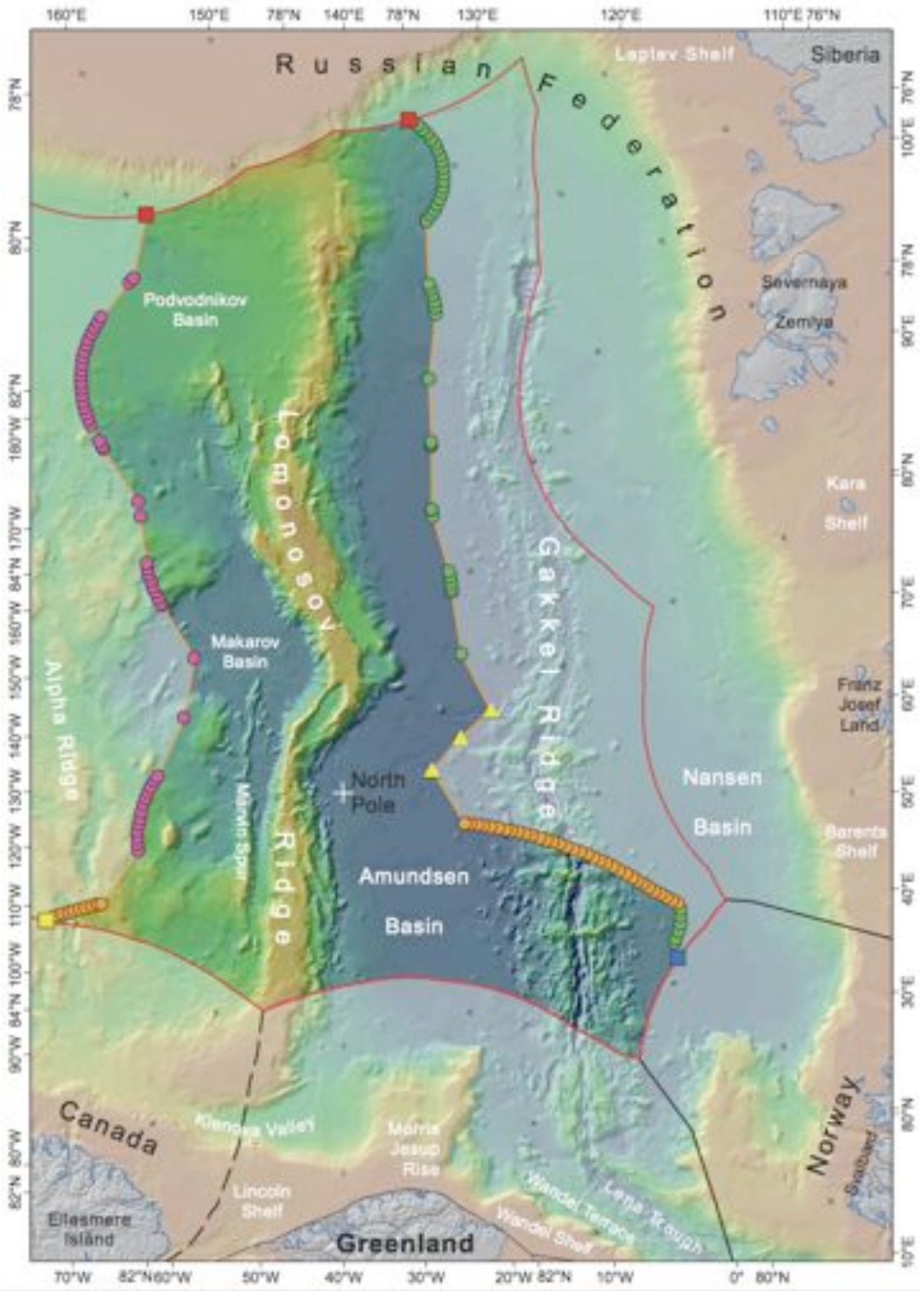
Russian Federation
Laptev Shelf
Siberia
Severnaya Zemlya
Kara Shelf
Franz Josef Land
Barents Shelf
Norway
Podvodnikov Basin
Lomonosov Ridge
Makarov Basin
Alpha Ridge
Mendeleev Ridge
Gakkel Ridge
North Pole
Nansen Basin
Amundsen Basin
Canada
Kiellaya Valley
Morris Jesup Rise
Lincoln Shelf
Ellesmere Island
Greenland
Wandel Terrace
Wandel Shelf
Lena Trough
160°E
150°E
78°N
140°E
130°E
120°E
110°E
76°N
70°W
82°N
60°W
50°W
40°W
30°W
20°W
10°W
0°
80°N


Figure 4.4. Denmark's Territorial Claims in the Arctic Ocean[205]

### 4.3.2. Kingdom of Denmark Arctic Strategy 2011 –2020

Denmark's Arctic Strategy emphasizes the equal partnership between the three parts of the Danish realm: Denmark, the Faroe Islands and Greenland. The strategy also highlights the declarations made in Ilulissat in 2008 and recalls, "the five Arctic Ocean coastal States have a political commitment to resolving disputes and overlapping (territorial) claims through negotiation, thus hopefully once an for all dispelling the myth of a race to the North Pole."[206]

## 4.4. Canada's Territorial Claims

Firstly it should be noted that Canada has a parliamentary system within the context of constitutional monarchy. The current sovereign of Canada is Queen Elizabeth II, who is also the monarch of 15 other commonwealth countries as well as all of the ten provinces of Canada. The Queen's representative in Canada is the Governor General of Canada, who carries out most of the majesty's federal royal duties. The Cabinet is led by the Prime Minister and elected by the House of Commons in Canada. The Canadian monarchy is a separate legal institution from the monarchy of the United Kingdom. Though the same individual holds both of the offices: Queen Elizabeth II.[207]

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[205] Denmark Exec Summary 2014: 8–9.
[206] Kingdom of Denmark Arctic Strategy 2011-2020 2011: 10.
[207] Forsey 2005: 3–8.

Canada ratified UNCLOS in November 2003, and submitted its ECS-claim to CLCS in December 2013. Canada's territorial claim includes an area of approximately 1.2 million square kilometres in the Arctic Ocean. The document described the continental margin of Canada in the Arctic Ocean as being part of a morphologically continuous continental margin around the Canada-, and Amundsen Basins. It includes the Lomonosov and Alpha ridges and forms the submerged prolongation of the Canadian land territory. Throughout the areas of the continental shelf extend beyond the 200 NM-limit and on the Alpha and Lomonosov ridges the continental shelf reaches beyond the 350 NM-constraint.[208] Since then Canada has continued to collect and analyse data, namely during the expeditions in 2006 and 2016 carried out together with Sweden and Denmark, to support its territorial claim. The Permanent Mission of Denmark in the UN also submitted their commentary of the Canadian claims and their overlap with those of Denmark on 6th of January 2014[209].

Canada aims to submit its final ECS-claim to the CLCS in 2018, thus claiming territory consisting of the Lomonosov ridge, Alpha Mendeleev Ridges stretching all the way to the North Pole.[210] Thus these claims would overlap with those of Russia and Denmark as has been described above. As of October 2018 Canada is yet to do so.

### 4.4.1. 2009 Northern Strategy and the Statement on Arctic Foreign Policy

The Statement on Canada's Arctic Foreign Policy begins by stating: "The Arctic is fundamental to Canada's national identity. It is home to many Canadians, including indigenous peoples, across the Yukon, the Northwest Territories and Nunavut, and the northern parts of many Canadian provinces. The Arctic is embedded in Canadian history and culture, and in the Canadian soul. The Arctic also represents tremendous potential for Canada's future. Exercising sovereignty over Canada's North, as over the rest of Canada, is our number one Arctic foreign policy priority."[211] The Canadian Arctic Policy is perhaps best described by the quotation of the Canadian Prime Minister presented in the

[208] Canadian Submission to the CLCS 2013.
[209] Denmark Exec Summary 2014: 5–7.
[210] EPRS 2017: 4.
[211] Statement 2009: 3. Available 11.10.2018 at: http://international.gc.ca/world-monde/assets/pdfs/canada_arctic_foreign_policy-eng.pdf

Statement. Canadian Prime Minister Stephen Harper stated in August 2008 in Inuvik, Northwest Territories:

*"The True North is our destiny…To not embrace its promise now at the dawn of its ascendancy would be to turn our backs on what it is to be Canadian…As Prime Minister Diefenbaker said...in 1961, 'There is a new world emerging above the Arctic Circle.' It is this world, a new world for all the peoples of the Arctic regions that we in Canada are working to build."*[212]

The Statement also quotes Prime Minister Harper saying in 28th of August 2008, in Inuvik:

*"The geopolitical importance of the Arctic and Canada's interests in it have never been greater. This is why our government has launched an ambitious Northern Agenda based on the timeless responsibility imposed by our national anthem, to keep the True North strong and free."* [213](Emphasis added.)

Under the new rule of the Prime Minister Justin Trudeau together with then president of the United States: Barack Obama a new 'partnership in the changing Arctic' was launched in March 2016. In December the two leaders jointly announced a freeze on new oil and gas drilling in their Arctic waters.[214] However, much has changed since then under the new rule of the United States of America. The British interference in the Canadian Artic politics has, thus far, been quite cautious. Whether, this will change in the future with the potential final Canadian claims, remains to be seen.

## 4.5. The United States of America

The United States became an Arctic nation by purchasing Alaska from the Federation of Russia in 1867. The United States remains the only nation out of the Arctic Five-States

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[212] Ibid: 26.
[213] Ibid: 3.
[214] Statement 2009: Available 11.10.2018 at: https://obamawhitehouse.archives.gov/the-press-office/2016/03/10/us-canada-joint-statement-climate-energy-and-arctic-leadership

that has not ratified UNCLOS. Thus, it cannot submit territorial ECS-claims to the CLCS, as this opportunity is only reserved for the member States. UNCLOS was first rejected in the US under Ronal Reagan's reign. President Reagan's administration primarily wanted to avoid UN bureaucracy over US activities such as seabed mining. The US has been a divided nation when it comes to ratifying UNCLOS. One side believes that ratifying UNCLOS would interfere with US military and intelligence activities, whereas the other side, mainly consisting of democrats and national security staff (during George W. Bush administration) calls for the ratification of UNCLOS.[215] Before the US has not ratified UNCLOS, it cannot take part to, what has become, the race for the North Pole (as stated in Danish Arctic Strategy). However, in April 2018 the Department of Interior published a 'notice of intent' for oil and gas drilling within the Arctic National Wildlife Refuge (ANWR) in Alaska. The drilling activities would be limited to the 1.6 million-acre coastal plain. This region, among with the other Arctic regions is believed to hold large oil and gas resources, but also provide habitat for polar bears and other species.[216] The notice was met with a strong opposition from the environmentalists.[217] The notice has also been the only sign from the current Trump administration to show interest towards the Arctic. The United States' The Arctic Policy was last updated under Obama's administration and the current President or his administration has not held the Arctic high on their list of topics.

### 4.5.1. The 2009 Arctic Region Policy

The Report on Arctic Policy published 21st of September 2016 by the International Security Advisory Board (ISAB) addresses the following matters:

1) Continue U.S. leadership in the Arctic.
2) Speed ratification of the United Nations Convention on the Law of the Sea (UNCLOS) as an urgent imperative for U.S. national interests;
3) Advance increased "presence" and "domain awareness" in the Arctic region;

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[215] EPRS 2017: 7.
[216] Notice of Intent 2018: 1–4.
[217] Sciencemag 2018: Available 11.10.2018 at: https://www.sciencemag.org/news/2018/04/trump-administration-takes-first-steps-toward-drilling-alaska-s-arctic-refuge

4) Increase and continue cooperation among the Arctic nations;
5) Adopt appropriate policies regarding Russian interests, policies, and activities in the Arctic; and
6) Strengthen possible 'Transparency and Confidence Building Measures' in the Arctic region.[218]

It must be noted that the ISAB only offers recommendations to the Department of State or the United States Government as well the Donald Trump administration.

### 4.6. Agreements between the Federation of Russia and other Arctic States in respect of the overlapping claims

The bilateral agreements between the Arctic Five –States have already been discussed in the chapter 2.5. of this thesis. Three of the Arctic Five States have agreed to the following in regards to the overlapping territorial claims. According to the partial revised submission of the Russian Federation to the CLCS on the limits of the continental shelf in respect of the continental shelf of the Russian Federation in the Arctic Ocean of 2015 The Kingdom of Denmark and the Federation of Russia have held consultations and agreed on the following.

> "When one State makes Submission to the CLCS, the other State shall immediately forward to the Secretary General of the UN a diplomatic note that exactly says:
> 1. A State does not object to the CLCS considering the submission of the other state and make recommendations thereon;
> 2. The recommendations made by the Commission in respect of the Submission of one State shall be without prejudice to the rights of the other State in the course of the Commission's consideration of its own Submission;
> 3. The above recommendations with respect to any State shall not prejudice the delimitation of the continental shelf between the two States.

[218]ISAB 2016: 1–7.

Each Party refers to this agreement in its Submission to the Commission; requests the Commission to make recommendations based on this agreement; and requests the Secretary-General of the United Nations to declare the content of the above-mentioned diplomatic note to Member States of the United Nations and the States parties to the Convention.“ Russia has made a similar agreement with Canada’s potential overlapping claims that have not yet been submitted to the CLCS.[219]

[219] Russian Exec Summary 2015: 11–12.

# 5. CONCLUSIONS

## 5.1. Who Owns the North Pole?

As it has been discussed in the first chapter of this thesis, the analysis done in this thesis is really not about the ownership of the North Pole but more about the sovereign status of the northernmost point of the Earth. This thesis, has at times touched the concepts of the property of no one (*res nullius*), a common possession (*res communis*), and public property (*res publica*) in a very Grotian way. However, equally throughout this thesis the Selden-way of thinking has been approached, and the thesis has evaluated the prevalent legal framework in the sense of possible State sovereignty over the North Pole.

All of the Arctic territorial claims are based on the same principles set in UNCLOS Article 76, as well as other Articles where applicable. The approach due to different circumstances on each of the Arctic coastal States might be different, but the rules are the same for everyone. However, as has been shown, the rules in Article 76 are more scientific, than legal, in nature. The evaluation of the different formulas (Hedberg, Gardiner, and the isobath formula) has already taken years in the CLCS, as it has taken years for the Arctic States to gather data and information in support of their submissions. The race for the North Pole has proven to be a slow one, and there is no finish line in sight.

Four of the Arctic Five-States have submitted their claims to the CLCS. Two of these claims (Russia and Denmark) have claimed the territory under the geographical North Pole. The government of Canada has stated that it will submit its final submission to the CLCS in 2018, but is yet to do so. It has been assumed that Canada's claim would join the overlapping claims of Russia and Denmark, thus also claiming the territory below the North Pole. Looking at the topography of the Arctic Ocean floor (Figure 4.2.), would also support this assumption as the Lomonosov ridge seems to touch the coastline of the Ellesmere Island and the Alpha ridge seems to be close to the Canadian Arctic Archipelago. Before Canada has submitted its final submission, the international community can only wait. Moreover, before the CLCS has given its recommendations, the scholars in this field (and thesis writers) are left guessing. Russia's claim should be

the first claim receiving recommendations from the CLCS, as it was the first country to submit its claims to the Commission.

What will happen after the CLCS finally gives its recommendations? Will they be accepted by the other Arctic Five- States, or will they be disputed? What dispute settlement methods will be used? Will the Arctic States negotiate in peace and in accordance with the Ilulissat Declaration of 2008 or will they take their disputes through one of the compulsory dispute settlement methods declared in Article 287 of UNCLOS? Will the parties to the dispute declare that their Arctic territorial claim-disputes will not be settled through the compulsory dispute settlement methods in accordance with Article 298 of UNCLOS. If these disputes, however, end up going through the compulsory dispute settlement methods, will they be settled by the Chamber for Maritime Delimitation Disputes of ITLOS? If so, will the Chamber, which just gave its first judgement a year ago, follow the same pattern of that judgment? Thus, will the Chamber then dissent from the CLCS's recommendations and form a provisional equidistance line to delimitate the Arctic Ocean? Will the United States ratify UNCLOS, and submit their claims to the CLCS? How much will the sea ice, and the permafrost in the Arctic Ocean melt? Will this affect the loci points for the Arctic baselines more than they have already been affected? Will the baselines be delimitated, and will this affect all of the Arctic maritime zones, and to what extent? How much of the Arctic Ocean seabed will the ISA govern in the future? What will happen to the Polar bears, and Santa Claus (see footnote: 40.)? And, finally, who owns the North Pole?

Sadly, this thesis will leave the reader wondering the answers to most of these questions, as it can only answer the last one. The answers to all of the other questions will come in due time. The answer to the last question is: no one, and no State holds sovereignty over the geographical North Pole either. As of today[220] the terrestrial North Pole is still deemed to be common heritage of mankind as described in the Article 136 of UNCLOS, and it does not belong to any one, or any sovereign State.

[220] 18th of October 2018.

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## LIST OF CONVENTIONS, TREATIES AND DECLARATIONS

1920 Svalbard Treaty (Spitsbergen Treaty)
1945 The United Nations Charter
1948 the United Nations Geneva Convention
1953 Submerged Lands Act (United States)
1957 Agreed Partial Maritime Boundary in Varangerfjord Between Norway and Russia
1958 Convention on Fishing and Conservation of the Living Resources of the High Seas
1958 Convention on the Continental Shelf
1958 Convention on the High Seas
1958 Convention on the Territorial Sea and Contiguous Zone
1958 Optional Protocol of Signature concerning the Compulsory Settlement of Disputes
1958 The Convention on the International Maritime Organisation
1959 Antarctic Treaty
1969 Vienna Convention on the Law of Treaties
1973 Agreement on the Conservation of Polar Bears (the Polar Bear Act)
1973 Agreement on the Continental Shelf Boundary Between Canada and Denmark (Greenland)
1980 International Convention on the Safety of Life at Sea (SOLAS)
1980 Agreement on Fisheries Boundary Between Iceland and Norway (Jan Mayen)
1981 Agreement on Continental shelf Boundary and a joint limitation of EEZ Between Iceland and Norway (Jan Mayen)
1982 The United Nations Convention of Law of the Sea
1983 International Convention for the Prevention of Pollution from Ships (MARPOL)
1990 Agreement on a Single Maritime Boundary Between Russia and The United States
1994 Act on the Limitation of Territorial Waters in Finland (with Estonia)
1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

1995 Agreement on the Continental Shelf and Fisheries Boundary Between Denmark (Greenland) and Norway (Jan Mayen) following adjudication by the International Court of Justice.
1996 Ottawa Declaration
1997 Agreement on the Continental Shelf and Fisheries Boundary Between Denmark (Greenland)-Iceland:
1997 Agreement on Tripoint Boundary Between Denmark (Greenland), Iceland, and, Norway (Jan Mayen)
2006 Agreement on Continental Shelf and Fisheries Boundary Between Denmark (Greenland) and Norway (Svalbard)
2007 Agreed Partial Extension on Varangerfjord Maritime Boundary Between Norway and Russia
2008 Ilulissat Declaration
2009 Greenland Self Government Act
2011 Agreement on the Maritime Boundary in the Barents Sea and Arctic Ocean Between Norway and Russia
2017 The Polar Code

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*"What is north of the North Pole?"*

-Stephen W. Hawking