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End of the Common Arctic Seabed: Recent State Practice in the Establishment of Continental Shelf Limits Beyond 200 nm

Abstract

The Arctic has been the focus of considerable attention over the past 10–15 years, often in connection with the alleged "race" for the region's natural resources. This article focuses on the extension of sovereign rights beyond 200 nm in the Arctic Ocean – in particular, the criteria and procedures for delineating the continental shelf under the UN Convention on the Law of the Sea and the most recent developments in state practice. As coastal states continue to update their shelf submissions before the Commission on the Limits of the Continental Shelf (CLCS), there would be little, if any, international seabed area left in the central Arctic Ocean.

KEYWORDS: Arctic – continental shelf limits – Russia

Introduction

The Arctic region has become a geopolitical hotspot during the last 10–15 years. The effects of global warming and the assumption that a significant proportion of the world's undiscovered seabed minerals and oil and gas deposits lie beneath the Arctic Ocean seabed have fuelled an expansion of interest in the region. In recent years, the USA and Russia have revived their military presence in the strategically important Arctic Ocean, giving rise to new security concerns and recalling the fragility and East/West tensions of the Cold War era.

Ongoing legal processes have also developed in the High North. With the exception of the USA, all coastal states bordering the Arctic Ocean are party to the 1982 United Nations Convention on the Law of the Sea (LOSC, "the Convention").¹ According to LOSC Article 76, a coastal state which intends to establish the outer limits of its continental shelf beyond 200

¹ 1833 UNTS 397.

nautical miles (nm) from the territorial sea baselines shall submit the particulars of such outer limits to the Commission on the Limits of the Continental Shelf (CLCS, “the Commission”). The Commission shall review the submitted information and provide recommendations on the proposed outer limits to the submitting state.² As of October 2021, the CLCS has issued final recommendations on one submission related to the Arctic Ocean: the submission filed by Norway in 2006.³ Two other submissions (those of Canada, and Denmark/Greenland)⁴ and one re-submission (that of Russia)⁵ are currently pending.

The focus of this study is on legal aspects relating to the extension of sovereign rights beyond 200 nm in the Arctic Ocean. Emphasis is on the ambiguous criteria and procedures for delineating the continental shelf under the Convention, and the most recent developments in state practice. As coastal states continue to update their shelf submissions before the Commission, it seems now there is little, if any, international seabed area left in the central Arctic Ocean at all.

Legal context

Under Article 76 of the LOSC, the coastal state may determine the outer limits of its continental shelf by means of two criteria – based on either natural prolongation to the end of the continental margin, or at a distance of 200 nm from the territorial sea baselines. The latter option is a geographical limit, which need not correspond to that part of the continental shelf which is a natural undersea prolongation of the continent. The outer edge of the continental margin denotes a geo-morphological feature that can be determined geologically and is susceptible to the natural prolongation test.⁶

If a coastal state decides to claim a shelf of 200 nm, Article 76 is easy to apply. However, if a state makes a claim beyond that distance, certain complications may arise. First, Article 76 allows the coastal state to claim as its continental shelf all parts of the ocean floor extending “beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin”.⁷ This definition creates difficulties in applying Article 76, as

² LOSC Art. 76(8).

³ Doc. CLCS/62, paras. 15–19.

⁴ For Denmark (Greenland), see doc. CLCS/95, paras. 88–91. For Canada, executive summary of the submission is available at the website of the Division for Ocean Affairs and the Law of the Sea (DOALOS) at https://www.un.org/depts/los/clcs_new/submissions_files/submission_can1_84_2019.html (accessed 1 October 2021).

⁵ Doc. CLCS/93, paras. 62–68.

⁶ Mahmoudi, 1987, p. 73.

⁷ LOSC Article 76(1).

does application of the maximum constraint lines for determining the seaward extent of the continental shelf.⁸ Furthermore, Article 76 does not operate with the standard definitions used by scientists for establishing the outer edge of the continental margin: states cannot rely on pre-existing scientific understandings of the ocean floor when they delineate their outer limits – they must gather and interpret fresh data according to Article 76.⁹

The second peculiarity concerns the procedures by which the outer limits of the continental shelf beyond 200 nm are to be established. To support its claim to a continental shelf extending beyond 200 nm, a coastal state must, within a determined deadline,¹⁰ present a factual submission to the specialised treaty body set up to oversee the application of Article 76: the CLCS. The CLCS shall consider the data and other material submitted by the coastal state and make recommendations in accordance with Article 76.¹¹ In turn, the coastal state shall proceed to establish the outer limits of its continental shelf "on the basis of" these recommendations, and deposit charts and geodetic data describing the outer limits with the UN Secretary-General.¹²

The continental margin beyond 200 nm in the Central Arctic Ocean

Five coastal states border the Central Arctic Ocean: Canada, Denmark (Greenland), Norway, Russia and the USA. These respective states have established maritime zones as permitted under international law.¹³ One fundamental issue remains, however: to determine the exact location of the outer limits of the continental shelf beyond 200 nm. In light of LOSC Article 76, two legal issues stand out: the application of the concept of natural prolongation; and the application of constraint lines for determining the maximum seaward extent of the continental shelf on seafloor highs.

⁸ See LOSC Article 76(5) and (6), according to which the maximum extent of the continental shelf is 350 nm from the baselines from which the territorial sea is measured, or 100 nm from a depth of 2,500 metres.

⁹ Cavnar, 2009, pp.: 398–399.

¹⁰ LOSC Article 4 of Annex II. The deadline was modified in 2001 by a decision of the Meeting of the States Parties as "having commenced on 13 May 1999" for states for which the LOSC had entered into force before that date (UN doc. SPLOS/72). In 2008, the Meeting further decided that the 2009 deadline could consist only in the submission of "preliminary information" and description of the status of preparation and intended date for making a full submission (UN doc. SPLOS/184). Thus the States Parties to the LOSC have decided that a state's deadline can be met by the provision of preliminary information signalling the state's intent to make a full submission later. Under the Commission's Rules of Procedure, also a submission relating to only one portion of a state's continental shelf – a "partial" submission – can satisfy the prescribed deadline (Rule 3 of Annex I to the Rules of Procedure of the Commission. Doc. CLCS/40/Rev. 1).

¹¹ LOSC Article 3 of Annex II.

¹² LOSC Art. 76(9).

¹³ Churchill, 2001.

Natural prolongation

The criterion "natural prolongation" is contained in Article 76(1) of LOSC. It implies that as long as the submerged seabed is a "natural prolongation" of a land territory, this seabed may be part of the legal continental shelf. However, discontinuities in the continental margins may be an acute problem in relation to the seafloor highs that extend across the Arctic Ocean, conjoining Canadian, Greenlandic and Russian territory: the Lomonosov, Alpha and Mendeleev seafloor highs. Even a cursory glance at maps of the Arctic Ocean seabed will reveal the contours of morphological ruptures separating the seabed outside Russia, Canada and Greenland from the seabed comprising the above-mentioned seafloor highs.

This issue came into focus in 2001, when Russia made its submission to the CLCS. Russia laid claim to a continental shelf stretching all the way to the central Arctic Ocean, thereby encompassing parts of the Lomonosov, Alpha and Mendeleev seafloor highs. This submission caused several other states to react. The Lomonosov, the USA argued, is a "freestanding feature in the deep, oceanic part of the Arctic Ocean basin, and not a natural component of the continental margins of either Russia or any other State".¹⁴ The USA also questioned Russia's classification of the Alpha and Mendeleev for the purpose of establishing the outer limits.¹⁵

It has been reported that the Commission itself took issue with regard to whether these seafloor highs could be considered submerged prolongations of Russia's adjacent landmasses.¹⁶ And in its recommendations to Russia in 2002, the CLCS concluded that Russia would have to make a new and revised submission with respect to the central Arctic Ocean.¹⁷ At the time, the CLCS therefore neither disagreed nor agreed with the Russian delineation of its extended continental shelf: additional research would be needed.¹⁸ As shown below, it remains to be seen what the Commission will recommend in respect of the revised Russian submission and the submissions of Denmark (Greenland) and Canada. Basically, however, all three coastal states

¹⁴ Murphy, 2002.

¹⁵ Ibid.

¹⁶ Macnab, 2004, p. 303.

¹⁷ A brief summary of the recommendations is contained in the UN Secretary-General's annual report on oceans and the law of the sea (UN doc. A/57/57/Add.1, para. 41).

¹⁸ See press release from the Ministry of Foreign Affairs of the Russian Federation, 30 July 2007: "Commentary Regarding a Question from RIA Novosti Concerning the Russian expedition in the Arctic Ocean Area". Retrieved from <www.un.int/russia/new/MainRoot/docs/off_news/300707/newen1.htm> (accessed 1 October 2021).

hold that the vast seabed beyond 200 nm in the central Arctic Ocean constitutes the natural prolongation of their respective continents and thus fulfils the test of appurtenance.

Maximum constraint lines and classification of seafloor highs

If the seafloor highs stretching across the Arctic Ocean are to be considered submerged prolongations of the surrounding coastal state's land territory, should they be considered submarine "ridges" or submarine "elevations"? This distinction is critical, as the category of "elevation" confers a more favourable maximum limitation on the extent of the continental shelf. According to Article 76 (5) and (6) of the Convention, the continental shelf may extend to 350 nm from the baselines on submarine ridges, and to either 350 nm or 100 nm beyond the 2,500-metre isobath on submarine elevations. If the Arctic seafloor highs are classified as elevations, estimates have indicated that only a relatively small enclave in the entire Arctic Ocean would remain part of the International Seabed Area: the Gakkel Ridge.¹⁹

The distinction between "ridges" and "elevations" is not clearly established under Article 76. Nor is the difference between ridges and elevations clearly established by the CLCS's Scientific and Technical Guidelines.²⁰ Based on the shelf submissions by Russia (both its original submission of 2001 and its revised submission of 2015), Canada and Denmark (Greenland), most seafloor highs in the central Arctic basin are to be considered as submarine elevations that are natural components of the continental margin. These submissions clearly indicate that the continental shelf extends to the North Pole and beyond, and thus at more seaward positions than 350 nm from the territorial sea baselines. As will be seen below, Russia now considers also the Gakkel Ridge to be a submarine ridge under Article 76(6) and thus part of the continental shelf in the legal sense. To the non-party USA – which also uses Article 76 as the basis for delineating its continental shelf beyond 200 nm – this issue is also important, notably in relation to the Chukchi Plateau off the north coast of Alaska. The USA has since the negotiations of the LOSC argued that seafloor highs such as the Chukchi plateau are covered by the term "submarine elevations", and thus not subject to the 350 nm limitation provided for under Article 76(6).²¹

¹⁹ See generally Kunoy, 2020, and Baumert and Mayer, 2020.

²⁰ See paras. 7.2. and 7.3. of the Scientific and Technical Guidelines of the Commission (Doc. CLCS/11).

²¹ Senate Treaty Document 103–109, at p. 56. Reprinted in *Third United Nations Conference on the Law of the Sea, Official Records*, Vol. VIII (New York: United Nations, 1977), p. 36.

Norway – towards finalisation

Norway lodged its submission to the CLCS on 27 November 2006.²² The submission was intended to support Norway's claim that its continental shelf extended beyond 200 nm in three distinct areas: the Banana Hole in the Norwegian and Greenland Seas, the Loophole in the Barents Sea, and the Western Nansen Basin in the Arctic Ocean. On 27 March 2009, the Commission issued its recommendations concerning the case.²³ The Commission generally agreed with the way Norway had established the outer edge of the continental margin in both the Banana Hole area and the Loophole in the Barents Sea.²⁴ Notably, the entire seabed in the Loophole was seen as forming part of the submerged prolongation of the landmasses of mainland Norway and Svalbard.

In the Western Nansen Basin, however, the CLCS disagreed with Norway concerning one of the two critical "foot-of-the-continental-slope points" intended to form the basis for the establishment of the outer edge of the continental margin.²⁵ A revised foot-of-the-slope point was therefore defined – at a more seaward position, in fact – following a series of communications between Norway and the sub-commission.

In the easternmost part of the Nansen Basin, Norway's shelf extends into that of Russia. Whereas the 2010 Barents Sea Treaty resolves the northwards direction of the maritime boundary between the two states,²⁶ the intersection of the last segment of the eastern outer limit and the delimitation line between Norway and Russia in the Arctic Ocean is pending Russia's finalisation of the Article 76 process. In respect of the westernmost parts of the Nansen Basin, there are potential overlapping claims to seabed areas between Norway and Denmark (Greenland). Only an agreement for the delimitation of maritime areas within 200 nm has been concluded between the two states.²⁷ In that agreement, however, they declare their intention to revert to the delimitation of the continental shelf beyond 200 nm once the outer limits have been determined. Finalising the demarcation of the seabed in this area will thus not take place

²² Norway had ratified the Convention on 24 June 1996.

²³ Summary of the recommendations is available on the website of DOALOS: www.un.org/Depts/los/index.htm (accessed 1 October 2021).

²⁴ The Commission did not, however, agree with Norway's use of the combined constraint line for a small part of the Banana Hole (Jensen, 2010, pp. 532–534).

²⁵ Under Article 76(4), the foot of the slope is a key reference for both formulae used to identify where exactly the continental rise ends as it meets the deep seabed. Para. 4 (*litra b*), defines the foot of the slope as 'the point of maximum change in the gradient at its base'.

²⁶ Treaty between Norway and the Russian Federation Concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean. Done in Murmansk 15 September 2010, in force 7 July 2011. Reprinted in *Law of the Sea Bulletin*, Vol. 77 (2012), p. 24.

²⁷ Oude Elferink, 2007.

before the CLCS has adopted recommendations in relation to Denmark's 2014 submission in respect of the Northern Continental Shelf of Greenland.²⁸

What remains for Norway is the incorporation of the outer limits of the related segment of Norway's continental shelf in domestic law. Detailed regulations will be incorporated in a new law on the definition of Norway's continental shelf, expected to be adopted and to enter into force in 2022.²⁹

Denmark (Greenland) and Canada – at the end of the line

On 15 December 2014, Denmark submitted to the Commission information on the limits of the continental shelf beyond 200 nm in respect of the northern continental shelf of Greenland.⁹³ In this submission, the outer limits of the northern continental shelf of Greenland on the Eurasia side of the Lomonosov Ridge are presented as extending to the 200-nm limit of Norway (Svalbard) at one end and to the 200-nm limit of Russia at the other; and, on the Amerasia side of the Lomonosov Ridge, as extending to the 200-nm limit of Canada at one end and to the 200-nm limit of Russia at the other.

In its submission, Denmark thus contends that the seafloor highs and other features in the central Arctic Ocean – including the Lomonosov Ridge, parts of the Gakkel Ridge, the Alpha-Mendeleev Ridge complex and the Chukchi Borderland – are all morphologically continuous with the land mass of Greenland, and thereby constitute integral parts of the northern continental margin of Greenland. Notably, the submission argues that the Lomonosov Ridge shares a common geological history with the onshore areas of Greenland and the Canadian Arctic Archipelago, and that the central Arctic Ocean seabed, including the area around the North Pole, is to be seen as "continental shelf" in terms of Article 76.

Further, the submission refers to the potential overlaps of shelf entitlement, adding that any final delimitation will be determined through bilateral agreements. It is noted that the overlap of the continental shelf of Canada and Greenland is a matter already subject to

²⁸ Doc. CLCS/95.

²⁹ A new law for the continental shelf, dealing specifically with the physical demarcation of Norway's continental shelf areas, is currently on public hearing in Norway. The definition of the continental shelf in Norwegian legislation is today contained both in the 1996 Act relating to petroleum activities (§ 1-6, *litra* 1) and the 1963 Act relating to scientific research and exploration for and exploitation of subsea natural resources (§ 1, second sentence). The new law is intended to provide a single legal basis for the definition of Norway's continental shelf in line with international law. Under the forthcoming law, Norway will adopt a series of decrees that delimit the shelf's limits and boundaries precisely. See statement available on the website of Norway's Ministry of Foreign Affairs at https://www.regjeringen.no/no/dokumenter/ny_sokkellov/id2837023/ (accessed 6 April 2021).

consultations between the parties. As to the seabed between Greenland and Svalbard, the submission refers to the aforementioned 2006 delimitation agreement between Denmark and Norway. The submission also refers to an agreement of 27 March 2014 between Denmark and Russia regarding overlaps of shelf entitlements in the central Arctic Ocean. Further, it is noted that the potential claimed entitlement of the USA to continental shelf in the Arctic Ocean is a matter for to bilateral consultations.

Denmark's submission was the 76th submission to be lodged before the CLCS. A presentation of the submission to the CLCS was made on 18 August 2016.³⁰ However, as of October 2021 – five years later – no sub-commission has been established. Thus many years will pass before the CLCS starts its consideration of the Danish submission.

Canada, which ratified the Convention on 7 November 2003, is basically in the same position as Denmark (Greenland). Through its "Extended Continental Shelf Program" (ECSP), Canada has since 2004 aimed to prepare a submission to the CLCS, including for continental shelf areas in the central Arctic Ocean. The ECSP has been a joint federal effort involving several departments, including the Department of Foreign Affairs and International Trade, which has been responsible for ensuring the legality of the content of the submission as per Article 76.³¹ In 2005, Canada and Denmark (Greenland) signed an agreement on joint data acquisition.³² This agreement formed the basis for extensive collaboration between the two states for acquiring the necessary data regarding an extended continental shelf claim. Several Canadian–Danish data-collection projects have been conducted in the Arctic Ocean since 2009.³³ Canada has also worked with Russia and the USA in mapping the Arctic seafloor for the purpose of submitting information on the outer limits.³⁴

Then, on 23 May 2019, Canada submitted to the CLCS information on the limits of its continental shelf beyond 200 nm in the Arctic.³⁵ The submission – approximately 2100 pages long – was the 84th to be lodged before the Commission. The proposed outer limits cover a continental shelf area of approximately 1.2 million km², with the shelf extending beyond 200 nm northward of both Canada and the USA. This massive shelf area comprises two segments:

³⁰ Doc. CLCS/95, paras. 88–91.

³¹ Information retrieved from <www.international.gc.ca/continental/index.aspx> (accessed 1 October 2021)

³² Information from the website of Denmark's continental shelf project: <a76.dk/greenland_uk/north_uk/index.html> (accessed 1 October 2021).

³³ Final report of 'Canada's Extended Continental Shelf Program'. Available at <www.international.gc.ca/about-a_propos/oig-big/2011/evaluation/cecsp_ppcec11.aspx?lang=eng> (accessed 1 October 2021)

³⁴ Ibid.

³⁵ Executive summary of the Canadian submission retrieved from the website of DOALOS at https://www.un.org/depts/los/clcs_new/submissions_files/submission_can1_84_2019.html (accessed 1 October 2021).

one within Canada Basin and one within Amundsen Basin. The two segments are joined by a straight line.³⁶ Canada chose not to delineate the outer limits of its shelf beyond this line. Thus, in contrast to the submission by Denmark, the proposed outer limit of Canada does not extend to Russia's 200 nm zone. However, one implication of the Canadian submission – and given that the USA will document that the Chukchi Plateau is part of its continental shelf beyond 200 nm – is that parts of the Gakkel Ridge are the only seabed area of the central Arctic Ocean *not* claimed as continental shelf state shelf (see below in regard to Russia).

The continental shelf areas included in Canada's submission overlap with continental shelf areas included in Russia's and Denmark's submissions. The Canadian submission also indicates that there is an area of continental shelf adjacent to the Chukchi Plateau and in the Canada Basin which the USA can be expected to assert. Thus the final fixation of Canada's outer limits will ultimately depend on delimitation with these states.

As of October 2021, the initial consideration of the Canadian submission has not yet been included in the Commission's provisional agenda. As the Commission proceeds by dealing with submissions in the order in which they are received, Canada's submission will be among the last to be examined by the CLCS.

Russia – claiming the remains of the common seabed

On 3 August 2015, Russia made a submission to the CLCS on the limits of its continental shelf beyond 200 nm in the Arctic Ocean.³⁷ The seabed area had been included in the Russian submission of 2001, for which the Commission in 2002 had recommended that Russia should make "a revised submission [...] based on the findings contained in the recommendations".³⁸ In the revised submission, the area of continental shelf beyond 200 nm covers 1,191,347 km² – approximately 100,000 km² more than in Russia's 2001 submission.³⁹ Segments of the outer limits and the seafloor areas bounded by these limit were divided into six main areas. In addition, one section of the submission was devoted to describing the intersection of the final

³⁶ On the extent of Canada's submission, see map on p. 15 of the executive summary (ibid).

³⁷ "Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in Respect of the Continental Shelf in the Arctic Ocean", Executive Summary, 2015, available on the website of DOALOS at www.un.org/depts/los/clcs_new/clcs_home.htm (accessed 1 October 2021). On the Russian revised seabed submission, see Jensen, 2016.

³⁸ UN Doc. A/57/57/Add.1, para. 41.

³⁹ *Supra* n. 37.

segment of the western outer limit and the delimitation line between Norway and Russia in the Barents Sea and the Arctic Ocean.

Certain substantive issues are put to the test, including the application of the concept of "natural prolongation" and the classification of seafloor highs into the categories of Article 76(6). Also with respect to the easternmost seabed area (Chukchi Sea), questions may arise. Here, it seems as if Russia has not applied Article 76, but operates with a straight line coinciding with the "sector line" of Russia in the Arctic Ocean. That is indeed surprising, since Russia, when ratifying the LOSC, abandoned any legal support that might have existed for a pie-shaped section of the Arctic Ocean extending from its eastern and western borders to the North Pole based on a sector-principle argument.

Russia's revised 2015 submission appears to be founded on more extensive scientific documentation than its 2001 predecessor. Indeed, the complexity of this submission may prove to be the biggest challenge for the Commission yet. It also seems that Russia is preparing for all possible outcomes, including that the Commission concludes that the Lomonosov Ridge is a natural prolongation of the Asian continent only. Here it should be noted that Russia has continued to pursue its scientific exploration of the Arctic seafloor after 2015. In 2020, for instance, Russian vessels mapped the topography in seabed areas of the Arctic Ocean far from its existing shelf claim to take samples of sediments of the ocean floor.⁴⁰

And these efforts seem to have paid off. On 31 March 2021, Russia submitted two addenda to its 2015 partial revised submission. These addenda will be dealt with as part of Russia's existing claim and are not expected to delay the process.

The first addendum concerns the Lomonosov Ridge, Alpha Ridge, Mendeleev Rise, Amundsen and Makarov Basins, and the Canadian Basin. New data indicate that the outer limits of the continental shelf in these seabed areas extend somewhat further than indicated in the 2015 revised submission.⁴¹

It is the second addendum that is of most interest here. It concerns the Nansen and Amundsen Basins, and the Gakkel Ridge. In the addendum, Russia holds:

The data obtained since lodging the Submission of the Russian Federation in 2015 indicate that the Gakkel Ridge is a submarine ridge that is a natural component of the continental margin of

⁴⁰ 'Russia considers extended claim to the Arctic seabed'. Retrieved from <https://www.highnorthnews.com/en/russia-considers-extended-claim-arctic-seabed> (accessed 1 October 2021).

⁴¹ Addendum (p. 6) retrieved from the DOALOS website: https://www.un.org/Depts/los/clcs_new/submissions_files/rus01_rev15/Addendum_2_2021_Executive_Summary_Lomonosov_Ridge_English.pdf (accessed 7 April 2021).

the Russian Federation in accordance with paragraph 6 of Article 76 of the Convention. On this basis, a constraint line of 350 nautical miles from the baselines of the Russian Federation has been used.⁴²

Basically: in 2015, Russia considered the Gakkel Ridge to be an oceanic ridge of the deep ocean floor, but it now argues that the Gakkel Ridge is a submarine ridge, and thus also ‘continental shelf’ in the sense of Article 76. Indeed, the Gakkel Ridge has been an area of the central Arctic Ocean seabed expected to fall beyond national jurisdiction. A prominent former member of the Commission has argued that the Gakkel Ridge “is an active ocean spreading ridge that does not seem to connect with any of the continental margins”.⁴³ Also other experts have held that the Gakkel Ridge is an oceanic ridge under Article 76 (3) of the Convention and therefore not eligible to generate entitlement to continental shelf beyond 200 nm.⁴⁴ Now, however, Russia has added new scientific data to its resubmission, indicating that the Gakkel Ridge is a submarine ridge and thus also part of the continental shelf.⁴⁵ Taken together with Canada and Denmark’s submissions – and that the USA is expected to document that the Chukchi Plateau is part of its continental shelf beyond 200 nm – this recent development implies that almost the entire Arctic Ocean seabed, if not all of it, is subject to coastal state jurisdiction. It remains to be seen whether the Commission will agree – in which case, there will be no common seabed area left in the Arctic Ocean at all’. True, the exercise of the rights of the coastal state over continental shelf areas is not to infringe on or result in any unjustifiable interference with navigation and other rights and freedoms of other states.⁴⁶ Coastal states are even obliged to share revenues from resource exploitation on the continental shelf beyond 200 nm.⁴⁷ Moreover, third states not directly involved in the process of delineating the continental shelf in the Arctic may even defend the scope of the International Seabed Area under the rules on state responsibility in international law.⁴⁸ Importantly, however, these new developments in regard to Russia’s submission underscore how “coastal-state friendly” Article 76 of the Convention is: while that provision has halted the gradual extension of coastal state jurisdiction over

⁴² Addendum (p. 6) retrieved from the DOALOS website: https://www.un.org/Depts/los/clcs_new/submissions_files/rus01_rev15/Addendum_1_2021_Executive_Summary_Gakkel_Ridge_English.pdf (accessed 7 April 2021).

⁴³ Brekke 2014, p.3.

⁴⁴ Gao 2011, p. 730.

⁴⁵ See updated map of Russia’s continental shelf submission by Philip Steinberg, Professor of Political Geography at the Centre for Border Research at the University of Durham, at the Arctic Today website: <https://www.arctictoday.com/russia-extends-its-claim-to-the-arctic-ocean-seabed/> (accessed 7 April 2021).

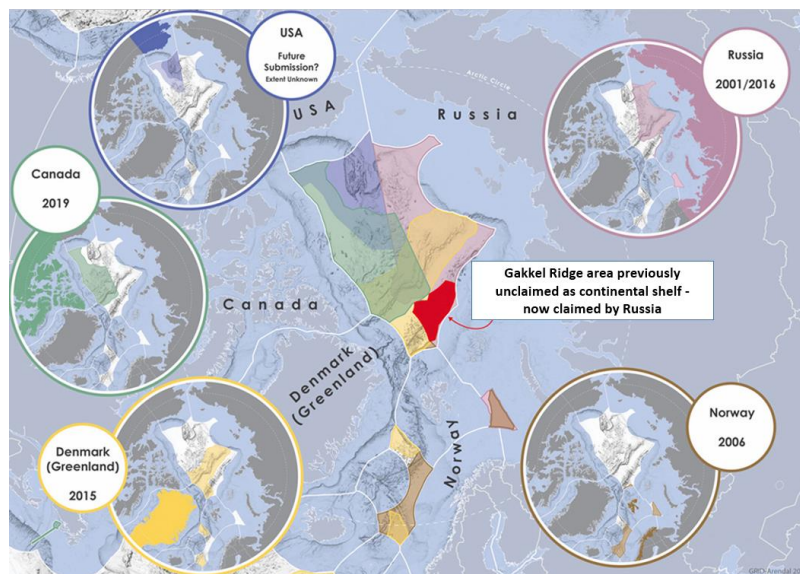
⁴⁶ LOSC, Art. 78.

⁴⁷ LOSC, Art. 82.

⁴⁸ Jensen and Magnusson, forthcoming 2022.

continental shelf areas, the limits to that extension are potentially still at a very seaward position.

In line with the Commission's practice, Russia's revised submission will be prioritised notwithstanding the submissions queue.⁴⁹ Russia and the Commission are currently engaged in consultations on the resubmission; and recommendations to Russia may be forthcoming in not so many years – at least well before the Commission issues recommendations respecting the submissions from Denmark and Canada.



Map 1: According to Russia, new scientific evidence proves that a large area of the Gakkel Ridge – previously unclaimed as continental shelf – is a submarine ridge that is a natural component of the continental margin of Russia in accordance with paragraph 6 of Article 76 of the Convention. The map is used by permission from GRID Arendal and first appeared in Kullerud, L., and O. Young, 'Adding a Gakkel Ridge regime to the evolving Arctic Ocean governance complex', *Marine Policy* 122 (2020): 1–6.

The United States – still on the side-lines

Although the USA was an original architect of the LOSC, it has remained off the list of the 168 State Parties to the Convention. When the LOSC was adopted in 1982, President Ronald Reagan not only very publicly refused to sign it: he also sent Donald Rumsfeld, then Special Envoy to the Middle East, on a globetrotting mission to explain the US opposition to the new Convention, on the grounds that "no national interest of [the USA] could justify handing sovereign control

⁴⁹ See Docs. CLCS/68, para. 57 and CLCS/72, para. 49.

of two-thirds of the Earth's surface over to the Third World", and that it was "apparent that the underdeveloped nations who [...] control the General Assembly were looking for a free ride at [US] expense, again".⁵⁰ More specifically, the USA, with several other industrialised states, took issue over Part XI of the Convention: the regime of the deep seabed. But even though the deep seabed issues were resolved through the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea,⁵¹ and the LOSC since has had the backing of the US military, the US Chamber of Commerce and most (if not all) Secretaries of State, the Convention has not yet been ratified by the US Senate. Fierce opposition from powerful conservatives – who argue that the LOSC represents an unacceptable form of global collectivism, is a threat to US sovereignty, and is full of unwieldy environmental regulations – has successfully blocked ratification. As a result, the LOSC remains one of some forty treaties still awaiting Senate action.

With respect to delineating the outer limits of its continental shelf, the USA is formally still bound only by the 1958 Convention on the Continental Shelf,⁵² whose Article 1 gives a different definition of the continental shelf from that contained in Article 76 of the LOSC.⁵³ This also means that the USA has no obligation to file a submission to have its provisional delineation of the outer limits adjacent to the coast of Alaska examined by the Commission.

Despite formally being excluded from the Article 76-process, the US government has been mapping its continental shelf beyond 200 nm in the Arctic Ocean. This work is directed and coordinated by the "US Extended Continental Shelf Task Force", an inter-agency body chaired by the Department of State, with co-vice-chairs from the National Oceanic and Atmospheric Administration and the Department of the Interior. Ten additional agencies participate in the Task Force, whose mandate is to establish the full extent of the continental shelf of the USA, in line with international law.⁵⁴

The USA has previously stated that the substantive elements of Article 76 reflect customary international law, and that it intends to delineate the seaward limits of its continental shelf in conformity with Article 76:

[T]he Interagency Group on Ocean Policy and Law of the Sea has determined that the proper definition and means of delimitation in international law are reflected in Article 76 [...] At such

⁵⁰ Meese, 2012.

⁵¹ 1836 UNTS 3.

⁵² 499 UNTS 311.

⁵³ The USA ratified the Convention on the Continental Shelf in 1961.

⁵⁴ Information retrieved from the website of the US Extended Continental Shelf Task Force at <https://www.state.gov/u-s-extended-continental-shelf-project/> (accessed 1 October 2021).

time in the future that it is determined desirable to delimit the outer limit of the continental shelf of the United States beyond two hundred nautical miles ... such delimitation shall be carried out in accordance with paragraphs (4), (5), (6) and (7).⁵⁵

Furthermore, before George W. Bush left office in 2009, he issued a Presidential Directive establishing US policy with respect to the Arctic region.⁵⁶ The Secretary of State was called upon to continue to seek the consent of the US Senate to accede to the LOSC.⁵⁷ In anticipation of US ratification, however, US Arctic policy is to be implemented, according to the Directive, in a manner "consistent with customary international law as recognized by the United States, including with respect to the law of the sea".⁵⁸ Section D of the Directive – titled "Extended Continental Shelf and Boundary Issues" – underscores that defining with certainty the area of the Arctic seabed and subsoil in which the USA may exercise sovereign rights over natural resources is critical to national interests, and that the most effective way to achieve international recognition and legal certainty for an extended continental shelf is through the procedures available to States Parties to the LOSC.⁵⁹ All actions shall thus be taken by the Secretary of State to "establish the outer limit of the continental shelf appertaining to the United States, in the Arctic and in other regions, to the fullest extent permitted under international law".⁶⁰

To this end, the definition of the continental shelf in LOSC Article 76 forms the basis of the work of the Task Force, which has been conducting surveys in the Arctic Ocean aimed at giving the USA a head-start in collecting and analysing data for its extended continental shelf, if the Senate at some point should act favourably on US accession to the Convention. According to the Task Force, these research trips have resulted in "fascinating scientific discoveries such as the existence of previously unknown seamounts in the Arctic Ocean".⁶¹ That could well affect the placement of the outer limit related to the Chukchi Plateau north of Alaska – the legal classification of which is the main concern of the USA with regard to a continental shelf beyond 200 nm in the High North.

⁵⁵ See the 'United States Policy Governing the Continental Shelf of the United States of America,' issued 17 November 1987, in Roach and Smith, 1996, pp. 201–202. See also Churchill and Lowe, 1999, p. 150: '[it] would be difficult to argue that any continental shelf claim consistent with the article 76 formula was not compatible with customary international law'

⁵⁶ 'National Security Presidential Directive and Homeland Security Presidential Directive' (Doc. NSPD-66/HSPD-25). Retrieved from www.fas.org/irp/offdocs/nspd/nspd-66.htm (accessed 1 October 2021).

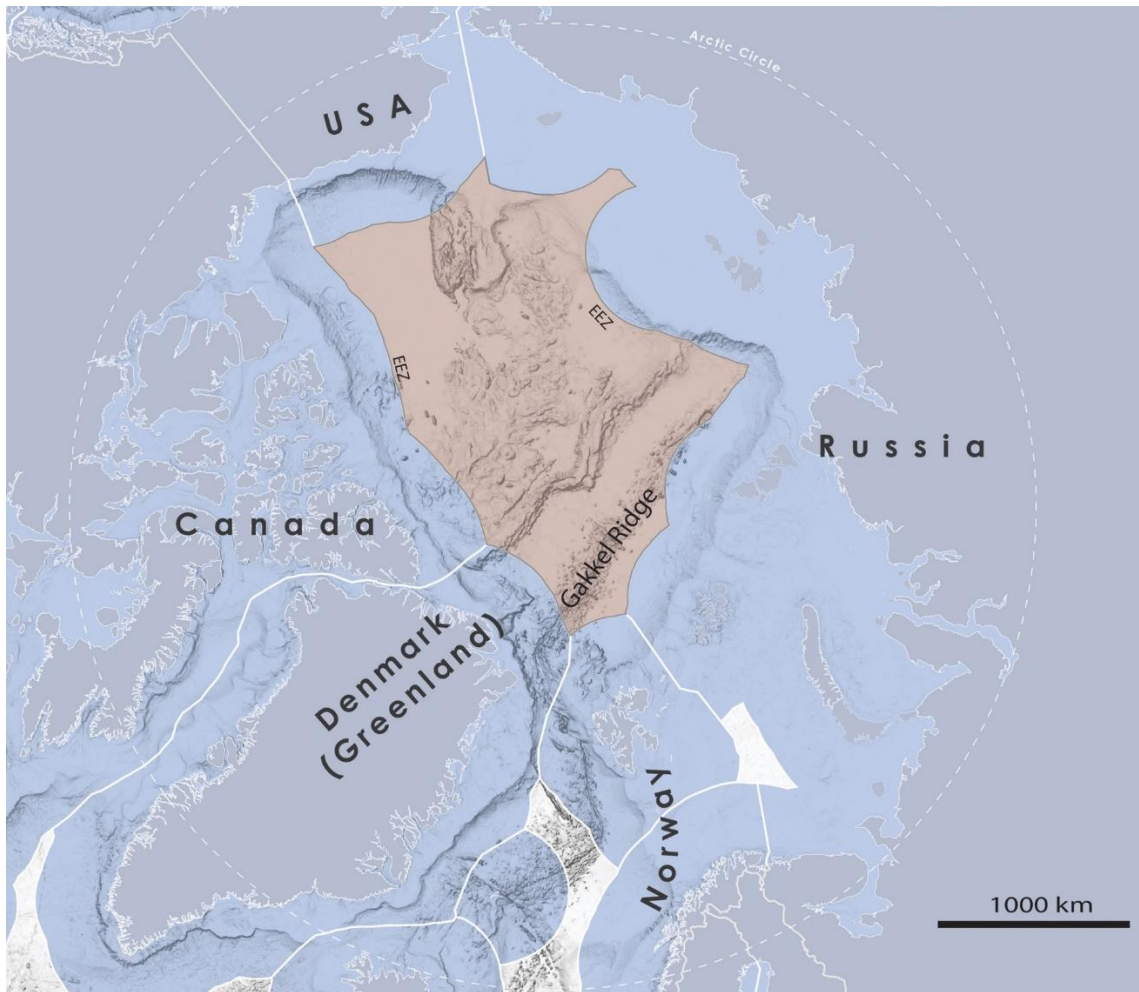
⁵⁷ Ibid, Section III (C, 5, *litra d*).

⁵⁸ Ibid, Section I (B).

⁵⁹ Ibid, Section III (D, 1).

⁶⁰ Ibid, Section III (D, 4, *litra a*).

⁶¹ *Supra* n. 53.



Map 2: Coastal state's continental shelf submissions now covers the entire seabed area beyond 200 nm from the territorial sea baselines, including the Gakkel Ridge. The map is used by permission from GRID Arendal and first appeared in Kullerud, L., and O. Young, 'Adding a Gakkel Ridge regime to the evolving Arctic Ocean governance complex', *Marine Policy* 122 (2020): 1–6.

Final remarks

All Arctic coastal states, including the USA, abide by the LOSC's definition of the continental shelf as regards delineating the outer limits of the continental shelf beyond 200 nautical miles in the Arctic Ocean. In the unsynchronised process of submissions, recommendations and national implementation, Norway is currently at the most advanced stage in implementing Article 76, and is about to complete the process of prescribing the limits to the north of the Svalbard archipelago in its national legislation. Russia's 2015 revised submission is currently being processed by the Commission. Given the Commission's practice of handling submissions

in the order in which they are received, the Danish and the Canadian submissions will not be examined for many years from now.

The material point with regard to the extent of the continental shelf beyond 200 nm in the Arctic Ocean depends on whether the seafloor highs that stretch across the Arctic basin comprise natural extensions of the North American and the Asian continents. And if so, should they be legally classified as submarine ridges or submarine elevations? Here the Commission will play a key role in assessing coastal states' tentative delineations, and will thereafter issue recommendations. As the Commission has yet not adopted recommendations to Russia, Denmark nor Canada, it remains to be seen how the Commission and, ultimately the coastal states, will deal with the many complex issues arising in connection with Article 76 of the Convention. Objective scientific criteria are not the only thing in focus. Article 76 is a work of law which must be interpreted and applied by coastal states applying the rules on treaty interpretation.

The most recent developments concerning Russia's resubmission regarding the Gakkel Ridge are not only in contradiction to earlier views held by the legal and scientific community that this portion of the Arctic Ocean seabed is part of the International Seabed Area and thus the common heritage of mankind.⁶² Symbolic values are also involved, as almost all (if not all) of the Arctic Ocean seabed now may become subject to coastal state jurisdiction. In that case, it will ultimately be up to the coastal states to divide up the entire Arctic ocean floor amongst themselves. Whether the Commission on the Limits of the Continental Shelf will agree, however, is another matter.

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⁶² LOSC, Art. 136.

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