

# The delimitation process in the Central Arctic Seabed: Sovereign rights or a condominium or *res communis omnium*?

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## 1. Introduction

In 2005 the then chairman of the UN Commission on the Limits of the Continental Shelf (CLCS), Sir Peter Croker, affirmed during an interview for the BBC News that the Arctic is ‘the only place where a number of countries encircle an enclosed ocean. There is a lot of overlap. If you take a normal coastal State, the issues are limited to adjoining States and an outer boundary. In the Arctic, it is quite different.’<sup>2</sup>

Contrary to some academic legal theories,<sup>3</sup> what is happening in practice in the Arctic

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<sup>2</sup>Cf. <http://news.bbc.co.uk/2/hi/business/4354036.stm>. As introductory considerations, it might be useful to provide here a brief description of the Arctic Region which covers land areas and spans the Arctic Ocean. It seems generally accepted that within the Arctic Region there are territories belonging to eight States, commonly called ‘Arctic States’ according with the article 2 of the Declaration on Establishment of the Arctic Council ([www.arctic-council.org/](http://www.arctic-council.org/)). They are: Canada, Denmark (for Greenland), United States, Russian Federation, Norway, Finland, Sweden and Iceland. Five of them are commonly classified as coastal States of the Arctic sea basin –Canada, Denmark (for Greenland), United States, Russian Federation and Norway–, while two of the remaining three –Finland and Sweden –, are partly in the space delimited by the Arctic Circle, but land-locked in the corresponding Arctic sea basin. On the other hand, Iceland is an island country in the North Atlantic Ocean, partly situated within the Arctic space defined by the tree-line which is usually bigger than the space defined by the Arctic Circle. Therefore, it is not formally considered as an Arctic coastal States because it is positioned out of the line of the Arctic Circle which defines the Arctic sea basin. Beyond formal geographic line and because of its proximity to the Arctic basin, Iceland is anyhow inevitably involved in issues regarding fisheries in the Arctic high seas as well as, mainly important for the end of this paper, issues regarding the Arctic outer limits of the continental shelf. Finally, one has to bring in mind that the Arctic Ocean is the smallest of the Earth’s five oceans with the largest continental shelves, namely what is commonly known as the Siberian Shelf. There is not yet consensus on the exact definition of physical space of what is generally considered as ‘Arctic Ocean.’ See, *UArctic Atlas*: <http://www.uarctic.org/AtlasMapLayer.aspx?m=642&amid=5955>; or the geographical coverage of the *IMOGuidelines for Ships Operating in Arctic Ice-Covered Waters [IMO Doc. MSC/Circ. 1056-MEPC/Circ. 399]*, or the FAO Arctic Fisheries Zone: Zone No. 18: <http://www.fao.org/fishery/area/Area18/en>. The author follows the Arctic Circle definition for defining the Arctic sea basin.

<sup>3</sup>The academic debate is still marked by two essentially opposing lines of thought: on one side, the proponents, are those advocating an *ad hoc* regime for the Arctic (as distinct from the Antarctic regime); while their opponents are advocating the application of the existing Law of the Sea framework, notably 1982 UN Convention on the Law of the Sea (UNCLOS). In brief the proponents argue alongside, *inter alia*, Borgerson, that the ‘UNCLOS cannot be seamlessly applied to the Arctic. The region’s unique geographic circumstances do not allow for a neat application of this legal framework. The Arctic is home to a number of vexing problems that, taken in their entirety, make it a special case’ [«Arctic Meltdown: The Economic and Security Implications of Global Warming», *Foreign Affairs*, 2008]. On the other side, the opponents, – in accordance with the EU position, draw attention to the need for an extensive interpretation of the

Ocean seems to be no different from any other ocean, *i.e.* governed by the general international law of the sea, so there is not, nor does it seem there will be, an *ad hoc* regime that provides a specific solution to the exigencies of the changing Arctic Ocean.

The increasing economic importance of the natural resources on the Arctic seabed in the decades to come will essentially be determined by the level of accessibility to these resources in line with ongoing technological developments which lower the cost of exploration and exploitation and increase benefits in economic terms.

Whereas it is true that the Arctic contains approximately 25% of the world's undiscovered oil and gas reserves,<sup>4</sup> in 2007 the planting of a Russian flag on the seabed—namely the *Lomonosov* ridge—below the current position of the North Pole (4,261 m) was the evidence that the existence of rich deposits at relevant depths is not of purely theoretical interest. Several of the Arctic coastal States have indeed already strengthened their presence in the Arctic, moving toward a claim of sovereign rights over the North Pole.

Even though the North Pole is just a geographical point situated in the Arctic Ocean—considered to change position progressively in accordance with terrestrial rotation—its importance is symbolic within the context of delimitation of the continental shelf beyond national jurisdictions.

It is important to underline that the aim of this paper is not to deal with the general study of the CLCS legal nature and its functions, nor to be a study of any general definition of the continental shelf nor the general matters related to the establishment of the outer limits of continental shelf beyond national jurisdictions nor, alternatively, rules applicable to the International Seabed Area. Rather, it focuses briefly on the positions and practices of the Arctic coastal States within the ongoing process of delineation of the outer limits of their continental shelves in the Arctic seabed. Namely, it particularly takes into account the seabed under the North Pole (the *Lomonosov* ridge) rich with energy resources which stretch across the Arctic Ocean and separate the Amerasian Basin from the Eurasian Basin.

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UNCLOS in light of the new conditions and specificities of the Arctic Ocean, without precluding any further work developing some of the existing frameworks. This extensive interpretation will take into particular account the work of the EU and of the International Maritime Organization as well as of specific international forum, such as the Arctic Council [See, *inter alia*, C. Cinelli, *El Ártico ante el Derecho del Mar Contemporáneo* (Tirant lo Blanch, Valencia) 2012].

<sup>4</sup> Cf. US Geological Survey: <http://www.usgs.gov/>. For dissenting opinions of the those data: [http://benmuse.typepad.com/arctic\\_economics/2008/07/how-much-oil-and-gas-in-the-arctic.html](http://benmuse.typepad.com/arctic_economics/2008/07/how-much-oil-and-gas-in-the-arctic.html)

This paper will start with a brief analysis of the ‘Arctic question’ and the applicable law thereto (2), it will then proceed by studying the current work of the CLCS on the Arctic seabed (3) and it will conclude with final reflections (4).

## 2. The ‘Arctic question’ and the applicable law

The ‘Arctic question’ deals with a classical dilemma of international law: on one hand, it addresses individual State interests in the Arctic, and on the other hand, it is concerned with safeguarding the Arctic commons. At present, priority seems to be given to a selective application of international norms that ensure particular interests.<sup>5</sup>

From an historic and contemporary perspective, the law of the sea has generally been applied to the Arctic Ocean. Indeed, some of the claims by Arctic States have been resolved by the International Court of Justice (ICJ),<sup>6</sup> while other solutions have been reached through international agreements.<sup>7</sup> Indeed, the 2008 Ilulissat Declaration<sup>8</sup>—and the 2010 Chelsea ministers meeting—<sup>9</sup> clearly reaffirm the five Arctic coastal States’ commitment to international law of the sea which in fact ‘provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf,’ including an ‘orderly settlement of any possible overlapping claims.’

All Arctic States indeed agreed to apply the existing framework of the international law of the sea, mainly codified by the 1982 United Nations Convention on the Law of the Sea (UNCLOS) to which all Arctic States—except for the United States—, are State Parties.

However, none of the Arctic coastal States Parties to the UNCLOS made a reference

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<sup>5</sup>Cf., C. Cinelli, *El Ártico ante el Derecho del Mar Contemporáneo*, Valencia, 2012; F. Borgia, *Il regime giuridico dell’Artico*, Napoli, 2012.

<sup>6</sup>For examples see: *Fisheries case (United Kingdom v. Norway)*, Judgment, ICJ Reports 1951; *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Judgment, ICJ Reports 1974; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, Judgment, ICJ Reports 1974; *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, ICJ Reports 1993.

<sup>7</sup>Among the most recently reached agreements, on 15 September of 2010 Norway and the Russian Federation signed the Treaty concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean. According with the Law of the Sea and the rules and principles for maritime delimitation, the Treaty ensures the continuation of fisheries cooperation in the whole of the Barents Sea. Therefore, the Grey Zone Agreement, for fisheries control and enforcement in a specified area of the Barents Sea, will no longer apply when the maritime delimitation Treaty comes into force. In addition, the Treaty ensures efficient and responsible management of hydrocarbon resource cases, should any single oil or gas deposit extend across the delimitation line. More information is available at the Norwegian Ministry of Foreign Affairs website: <http://www.regjeringen.no/en/dep/ud/campaign/delimitation.html?id=614002>

<sup>8</sup>Text of the Ilulissat Declaration is available at *Greenland Home Rule Government*: <http://uk.nanoq.gl>.

<sup>9</sup>Cf. [http://www.international.gc.ca/polar-polaire/arctic-meeting\\_reunion-arctique-2010\\_index.aspx](http://www.international.gc.ca/polar-polaire/arctic-meeting_reunion-arctique-2010_index.aspx)

to any commitment to Part XI of UNCLOS and its implementation agreement regarding the common heritage of mankind regime in the Central Arctic Ocean, in case the International Seabed Area eventually becomes delimited.<sup>10</sup>

The applicable law in the Arctic Ocean should be the comprehensive existing law of the sea framework, including any norms that do not rely on the geographic location of States and that promote cooperation for protecting the general interests of the international community, particularly to the benefit of mankind as a whole.

#### *A. The “Soft Law” Approach to Common Concerns for the Arctic Ocean*

Significant changes in the Arctic Ocean have led to the growing development of international cooperation at circumpolar and sub-circumpolar levels. Here the prospect of common concerns among the Arctic States, and between them and other entities, has mainly been addressed by a “soft law” approach, based on the establishment of new specific programs for regulating the Arctic, but which are not legally binding. At the circumpolar level, cooperation has materialized through the scientific and political role of the Arctic Council,<sup>11</sup> where the Arctic Council participates directly and indirectly with sub-circumpolar Councils (particularly, the Nordic Council and the Barents Euro-Arctic Council).<sup>12</sup>

Throughout the development of Arctic international cooperation, new techniques and tools for regulating the activities of various sectors of economic and social relevance have been implemented (in the pioneering fields of science, fishery management, maritime and air navigation, and hydrocarbons).<sup>13</sup> Increasingly they aim towards cross-sectorial activities from the perspective of environmental impact assessment and an integrated

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<sup>10</sup>The UNCLOS was adopted in 1982 and entered into force in 1994. It was integrated by two implementation agreements, i.e. the Agreement relating to the Implementation of Part XI of the United Nations Convention of the Law of the Sea of 10 December 1982 adopted on 28 July 1994 and entered into force on 28 July 1996; and the Agreement for the Implementation of the Provision of the United Nations Convention of the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted on 4 August 1995 and entered into force on 11 December 2001.

<sup>11</sup> See, among other activities within the Arctic Council, the ongoing Arctic Ocean Review Project by the PAME Working Group at: <http://www.aor.is/>

<sup>12</sup> See, respectively, *Nordic Cooperation*: <http://www.norden.org/en>; *Council of Baltic Sea States*: <http://www.cbss.org/>; *Barents Euro-Arctic Council*: <http://www.beac.st/>.

<sup>13</sup> T. Koivurova and E.J. Molenaar, “International Governance and Regulation of the Marine Arctic. Overview and Gap Analysis,” World Wildlife Fund 2009; Young, Oran R., “The Arctic in Play: Governance in Time of Rapid Change,” *IJMCL* (24) 2009 pp. 423-442; Stokke, Olav S., “Protecting the Arctic Environment: The Interplay of Global and Regional Regimes,” *YPL* (1) 2009 pp. 349-371.

ecosystem approach.<sup>14</sup> The areas of cooperation within and across sectors are characterized by a disordered interaction between hard and/or soft law, which is applied when appropriate in the entire circumpolar area or in specific sub-circumpolar areas.

This interaction seems to lead to a legal impasse: on one hand, there is the existing patchwork of general hard law which, while binding, does not deal with unique characteristics of the Arctic, and mostly ensures State sovereignty, sovereign rights, and jurisdiction. On the other hand, the impasse is embodied in the soft law approach to common concerns which, while specifically dealing with new conditions and needs of the Arctic Ocean and their impact at a global level, is not legally binding. And this impasse reflects the fact that the new international visibility of the Arctic encourages State self-interest, while leaving common interests and concerns in the shadows.

However, despite the legal impasse, or perhaps because of it, the international significance of the soft law approach lies in the fact that it provides immediately different instruments for regulation which, to some extent, lead to the proliferation of international actors in the Arctic Ocean, including non-Arctic actors, *in primis* the European Union.

#### *B. The emerging role of the European Union in the Arctic and the strategic importance of developing resources in Arctic seabed*

In 1998, the EU opened an ‘Arctic Window’ through the external actions of its Northern Dimension Policy. Today, the EU continues to be involved on these matters together with actively moving forward on other issues concerning an internal dimension. Indeed, looking at the geopolitical consequences of Arctic warming, the EU has recently changed its Arctic Climate Change Policy into a challenge for its Integrated Maritime Policy.<sup>15</sup> Following the European Parliament resolution on *Arctic governance*, in 2008 the EU realized that awareness about the Arctic’s importance in a global context needs to

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<sup>14</sup> As for environmental impact, see Koivurova, T., *Environmental Impact Assessment in the Arctic: A Study of International Legal Norms*, Ashgate, Aldershot, 2002; “The Regime of the Espoo Convention in the Arctic: Towards a Strategic Environmental Assessment Procedure” in T. Koivurova, *Arctic Governance*, Rovaniemi, 2004, pp. 61-87; *Arctic Environmental Impact Assessment (AEIA)*, available at: <http://arcticcentre.ulapland.fi/aria/>. For an integrated ecosystem approach, see *Norwegian, Danish, Swedish common objectives for their Arctic Council chairmanships 2006-2012, Integrated Management Resources*: [http://arctic-council.org/article/2007/11/common\\_priorities](http://arctic-council.org/article/2007/11/common_priorities). In addition, regarding with the techniques and tools developed for ecosystem-based oceans management in the Arctic, see: <http://www.pame.is/ecosystem-approach>.

<sup>15</sup> Green Paper, *Towards a future Maritime Policy for the Union: A European vision for the oceans and seas*, COM (2006) 275 final, at 14.

be raised further by delivering a stand-alone EU Arctic Policy.<sup>16</sup> Furthermore, following another European Parliament resolution of 20<sup>th</sup> January 2011 on a *Sustainable EU policy for the High North*, and more recently, on 26<sup>th</sup> June 2012, the European Commission and the EU High Representative for Foreign Affairs and Security Policy adopted the document, *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps*,<sup>17</sup> which is accompanied by other two documents, –firstly *The inventory of activities in the framework of developing an European Union Arctic Policy* and,<sup>18</sup> secondly, *Space and the Arctic*–<sup>19</sup>. The EU pillars of actions can be summarized in three words: ‘Knowledge, Responsibility, Engagement’ which support the *ratio* behind of several initiatives that contribute, *inter alia*, to research and sustainable development in the Arctic and promote environmentally friendly technologies that could be used for sustainable activities, including oil and gas prospection, exploration and production.

In this sense, already in the 2008 Communication, the EU proposed, among other, actions in order to ‘[a]ssess the effectiveness of Arctic-relevant multilateral agreements to determine whether additional initiatives or measures are needed. Closely follow the processes of maritime delimitation and of the establishment of the outer limits of the continental shelves to assess their impacts on EU interests.’<sup>20</sup>

However, it seems that the Arctic (coastal) States emphasizes that the best way to solve circumpolar question, including the establishment of the outer limits in the Central Arctic seabed, is to develop circumpolar cooperation, which difficulties access for not-Arctic States and entities. It is demonstrated, for example, by the rejection of the Chinese, Italian, South Korean and the EU application for observer status of Arctic Council during the sixth Ministerial Meeting in April 2009.

### **3. The Current Work of the UN Commission on the Limits of Continental Shelf in the Arctic Seabed**

At the very beginning of the 21<sup>st</sup> century, on the 20th December 2001 to be precise, the CLCS –whose first election was in 1997– formally opened its doors by taking its first submission. It was presented by the Russian Federation in respect of, *inter alia*, the

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<sup>16</sup>P6\_TA(2008)0474 and COM (2008)763 final, respectively.

<sup>17</sup> JOIN (2012) 19 final.

<sup>18</sup> SWD (2012) 182 final.

<sup>19</sup>SWD (2012) 183 final.

<sup>20</sup>COM (2008)763 final, 11.

Central Arctic Ocean and, to some extent, it opened the premise for an ‘Arctic’s new gold rush’, definitely intensified by the successful outcome of the expedition *Arktika 2007*.

Currently, the Russian Federation and Norway are the only two Arctic States which have presented their submissions to the CLCS (Sections A and B, respectively), while other Arctic States submissions are partial and /or still in progress (C

#### *A. The 2001 Russian Federation Submission, the Reaction of Other Arctic Coastal States and the Arktika2007 Expedition*

On 20 December, 2001, the Russian Federation presented its submission to the CLCS in accordance with Article 76 (8) UNCLOS. It contained the information on the proposed outer limits of the continental shelf of the Russian Federation beyond 200 nautical miles from the baselines of which the breadth of the territorial sea is measured in four regions, among them, the Central Arctic Ocean.<sup>21</sup>

The Russian Federation claimed a large extended continental shelf as far as the North Pole within the Arctic sector (about 1.2 million sq. km) which includes the *Lomonosov*, *Mendeleyev* and *Alpha* ridges.<sup>22</sup>

Once the UN Secretary-General gave due publicity to the Russian submission, Canada and Denmark –at that time not yet party to the UNCLOS– adopted a similar position as their respective Diplomatic Notes show. Both of them clarified that they were unable to comment upon the Russian submission, specifying that this inability was not to be interpreted as an agreement or acquiescence to the Russian submissions. In addition, they emphasised that any recommendations by the CLCS in response are without any prejudice to the question of delimitation of the continental shelf between Canada and the Russian Federation, and Denmark and the Russian Federation, respectively.<sup>23</sup>

In the face of the Russian submission, American efforts to legally extend claims to the Arctic continental shelf may be complicated by the fact that the United States has yet to ratify the UNCLOS. Alternatively, maybe there is no complication for the United States,

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<sup>21</sup>Ref.No.CLCS01.2001.LOS.

<sup>22</sup>Cf. M. Benith, ‘Russia’s claim in the Arctic and the vexing issue of ridges in UNCLOS,’ 27 *ASIL Insight*, (2007) 11.

<sup>23</sup> Cf. respectively, CLCS.01.2001.LOS/CAN, 26 February 2002; Doc. CLCS.01.2001.LOS/DNK, 26 February 2002. *Mutatis mutandis*, Norway adopted a similar position, cf. Doc. CLCS.01.2001.LOS/NOR, 2 April 2002.

simultaneously implementing the fullest extent of the outer limits permitted under general international law, whilst thus far avoiding the CLCS procedure as set out by the UNCLOS.<sup>24</sup>

Nevertheless, in a more incisive manner than other Arctic coastal States, the United States affirmed in its Verbal Note after the UN Secretary-General gave notice of the Russian submission to the CLCS: '[t]he Russian submission is particularly complex and should be considered in a deliberate manner. A significant period of debate and reflection will be required for the Convention to be carefully applied in a manner to promote stability.'

In addition, even though their strong disagreement regarding the existence of a common heritage of mankind regime for the seabed, on this occasion, the United States observed: '[i]nsofar as no applications to explore or exploit the Area have been made or are likely to be made in the Arctic for the foreseeable future, no prejudice is likely to result from a deliberative process.'<sup>25</sup>

In 2002 the CLCS, having carefully and considered the Russian submission, declared it to be an improperly documented for lack of geodetic data and technical information, and the Russian Federation was asked to review its submission within a reasonable time.<sup>26</sup>

Five years later, the discussion about who owns the North Pole was intensified by the

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<sup>24</sup> Cf. *National Security Presidential Directive and Homeland Security Presidential Directive NSPD-66 / HSPD-25*, adopted on 9 January 2009. Text available at: <http://www.fas.org/irp/offdocs/nspd/nspd-66.htm>. Please, take note of point D in the aforementioned document (quoted below). If it is true that, on the one hand, the document makes a reference to the necessity of ratifying the UNCLOS, then on the other hand, in the implementation phase nothing is said about that, leaving such necessity as *lettera morta*. Cf. Point D NSPD-66 / HSPD-25 (the emphasis is mine): 'D. Extended Continental Shelf and Boundary Issues. 1) Defining with certainty the area of the Arctic seabed and subsoil in which the United States may exercise its sovereign rights over natural resources such as oil, natural gas, methane hydrates, minerals, and living marine species is critical to our national interests in energy security, resource management, and environmental protection. *The most effective way to achieve international recognition and legal certainty for our extended continental shelf is through the procedure available to States Parties to the U.N. Convention on the Law of the Sea.* 2) The United States and Canada have an unresolved boundary in the Beaufort Sea. United States policy recognizes a boundary in this area based on equidistance. The United States recognizes that the boundary area may contain oil, natural gas, and other resources. 3) The United States and Russia are abiding by the terms of a maritime boundary treaty concluded in 1990, pending its entry into force. The United States is prepared to enter the agreement into force once ratified by the Russian Federation. Implementation: In carrying out this policy as it relates to extended continental shelf and boundary issues, the Secretary of State, in coordination with heads of other relevant executive departments and agencies, shall: a). Take all actions necessary 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; b). Consider the conservation and management of natural resources during the process of delimiting the extended continental shelf; and c). Continue to urge the Russian Federation to ratify the 1990 United States-Russia maritime boundary agreement.'

<sup>25</sup> CLCS.01.2001.LOS/USA, 18 March 2002.

<sup>26</sup> CLCS/32 - *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission - Tenth session*, 12 April 2002.



Russian expedition *Arktika 2007* which was basically conducted in order to collect additional technical information and geodesic data for preparing a new submission –it is expected in 2012– in support of their 2001 submission.

The Russian flag dropped in the seabed under the North Pole is the clearest evidence of Russian ambition in the North Pole and reflects old tensions in the American-Russian relationship. Russians compare the success of *Arktika 2007* with man's first step on the Moon: '[t]hat one small step for a man, one giant leap for mankind'<sup>27</sup> which was historically marked by the expedition *Apollo XII* and the American flag.<sup>28</sup>

But, perhaps, leaving aside the rhetoric about the common benefit for mankind and looking at the facts, the Russian flag seems to be a symbolic support for the 2001 Russian submission on the expanded continental shelf towards the North Pole; a very extensive zone that is extremely rich in natural resources, and which would be fully under the sovereign rights of the Russian Federation.

### *B. Norwegian Arctic Outer Continental Shelf and Other Developments*

At the international level, Norway is the only Arctic coastal State which has defined its Arctic outer continental shelf. In March 2009, the CLCS made its recommendations regarding the 2006 Norway submission, in which it accepted, with some refinements, the outer continental shelf limits that Norway had proposed, including those related to the continental shelf of Svalbard.<sup>29</sup> That has raised new discussions between Norway and other States, Arctic and non-Arctic (Spain, for example)<sup>30</sup> on the implementation of the Svalbard Treaty of 1920 in the continental shelf of the archipelago of Svalbard in light of contemporary International Law of the Sea.<sup>31</sup>

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<sup>27</sup> « "C'est comme le premier pas sur la lune!" Il n'est pas peu fier, le géologue Artur Chilingarov... », «La Russie mène la ruée vers l'or noir de l'océan Arctique», *Tribune de Genève*, 3 August 2007.

<sup>28</sup> Among others comments and criticisms, the Canadian Foreign Affairs Minister, Mr Peter MacKay, affirms: «This isn't the 15th century. You can't go around the world and just plant flags and say "We're claiming this territory"», *BBCNews*, 2 August 2007.

<sup>29</sup> *Summary of the Recommendations of the Commission on the limits of the Continental shelf in regard to the submission made by Norway in respect of areas in the Arctic Ocean, The Barents Sea and the Norwegian Sea on 27 November 2006*. No legal Act on the outer limits of the Norwegian continental shelf has been adopted yet, but a White Paper to the Parliament for delineating them in accordance with CLCS Recommendations is in progress.

<sup>30</sup> See, Spanish Verbal Diplomatic Note, dated 3 March 2007 and Norwegian Verbal Note, dated 28 March 2007 referring to the note dated 3 March 2007 from Spain. Both of them are available at: [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_nor.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm); Cf, C. Cinelli, 'Spain in the Arctic', *Spanish Yearbook of International Law* (forthcoming).

<sup>31</sup> *Mutatis mutandis*, it reflects old discussion over the Fisheries Protection Zones around Svalbard See,

However, according to the aforementioned recommendations, the part of the Norwegian continental shelf in the High North extending beyond the 200-mile zone covers areas and measuring some 235 000 square kilometres and it does not lie anywhere near the North Pole. Therefore, the CLCS recommendations have clarified that, in the words of the Norwegian Foreign Minister Jonas GahrStøre: ‘In the discussion about who owns the North Pole - it’s definitely not us.’<sup>32</sup>

While the United States is not a party to UNCLOS, neither Canada nor Denmark (for Greenland) has presented any submission for the proposed outer limits of their continental shelves in the Central Arctic Ocean to the CLCS yet.<sup>33</sup>

Currently, the work of the CLCS in the Arctic Ocean is being developed in the submarine area situated beyond two hundred nautical miles from the baselines of Norway, the Faroe Islands, Iceland, Jan Mayen, Greenland and the Svalbard archipelago in accordance with the submissions presented on 29 April, 2009 by Iceland and Denmark in conjunction with the government of the Faroe Islands.<sup>34</sup>

These submissions were made in implementation of the Agreed Minutes of 20 September 2006 as adopted by Norway, Denmark and Iceland that set out an agreed procedure for determining future delimitation lines in the aforementioned submarine area. According to the Agreed Minutes,<sup>35</sup> the definitive demarcation of the limits should be determined by bilateral agreements which will then be signed after each concerned State requests the CLCS to consider them and to make its recommendations.

## 5. Conclusion

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Ulfstein, Geir, *The Svalbard Treaty: From Terra Nullius to Norwegian Sovereignty*, Oslo 1995; Pedersen, Torbjørn, and Henrisken, Tore, ‘Svalbard’s Maritime Zones: The End of Legal Uncertainty?’, 24 *IJMCL*2009, 141-161.

<sup>32</sup>*Limits of Norway’s Arctic seabed agreed*, BarentsObserver.com, 16 April 2009.

<sup>33</sup>Under article 4 of Annex II UNCLOS, a coastal State intending to establish the outer limits to its continental shelf beyond 200 nautical miles is obligated to 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 of the entry into force of the UNCLOS for that State. As far as Canada, the ten-year time limit for making submissions is 2013, while for Denmark is 2014.

<sup>34</sup>See, respectively, *The Icelandic Continental Shelf, Partial Submission to the Commission on the Limits of the Continental Shelf pursuant to article 76, paragraph 8 of the United Nations Convention on the Law of the Sea in respect of the Ægir Basin area and Reykjanes Ridge*; and, *The Partial Submission of the Kingdom of Denmark together with the Government of the Faroes to the Commission on the Limits of the Continental Shelf: The Continental Shelf North of the Faroe Islands*.

<sup>35</sup> Doc. CLCS/64, 1 October 2009.

Claims are purely subjective because States can make whatever claim they decide including a discretionary division into converging sectors of the Arctic seabed which is the result of considerations of convenience of the States. It is sufficient to look at the Russian sector whose apex is currently characterized by the white, blue and red Russian flag over the seabed under the North Pole or the ambition of the Danish and/or Canadian explorations, or those of the United States which might aim to reach the North Pole.<sup>36</sup>

The overlapping claim areas don't always correspond to the area of overlapping entitlements. Following, *mutatis mutandis*, the argument presented by Professor Lowe before the ICJ in the *case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, a correct approach to the delimitation of the Arctic seabed would be to look at the area of possible overlapping entitlements (not claims) of States' sovereign rights.

The distinction between overlapping entitlements and overlapping claims is important in order to correctly determinate the relevant maritime area in the Central Arctic Seabed to be delimited according with article 76 UNCLOS.

Generally speaking, the basic premise for delimitating the continental shelf is the entitlement of the State to the relevant maritime area which constitutes a natural prolongation of its land territory into and under the sea which exists by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources.

Reviewing and analyzing geographical and morphological features of the Arctic seabed beyond national jurisdiction on the bases of the States proposed submissions, is the primary task of the CLCS, without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

It seems to be expected that a long time will pass before the CLCS will complete its work on the Arctic seabed as well as the delimitation of the continental shelf between States with opposite or adjacent coast shall be effected by agreements, as referred to article 38 of the Statute of the International Court of Justice, on the basis of international law, in order to achieve an equitable solution.

The final question is not 'who owns the North Pole,' but whether any seabed beyond national jurisdiction is left in the Central Arctic Ocean.

Far from being fully delimited, one can imagine three different scenarios for the

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<sup>36</sup>Cf, The map elaborated by the International Boundaries Research Unit at Durham University in the United Kingdom: <http://www.dur.ac.uk/ibru/resources/arctic/>

Arctic seabed beyond national jurisdiction and under the North Pole.

Firstly, just one Arctic coastal State –Russian Federation, Denmark, Canada or USA?– is entitled of its sovereign rights on the seabed of the Central Arctic Ocean, including the part under the North Pole where the Russian flag was planted.

Secondly, the seabed under the North Pole, it is effectively an area of overlapping entitlements in so far creating a scenario which may lead to a sort of jointly exploitation reached by an agreement or by a judgment of the ICJ.... *a condominium?*

Thirdly, the application of all norms of the UNCLOS, including those related to the benefit of mankind, and the overlapping entitlements approach to the delimitation of the outer limits of the Arctic continental shelf, leaves open the possibility to think about the potential existence of an Arctic Area, i.e. *res communis omnium*. However, if it is finally delimited, it would be a very small area.

Already by 1995, Admiral Aleskin affirmed that ‘whoever controls the Arctic controls the world.’ However, it is to be hoped that it will be the International Seabed Authority who ‘controls the Arctic’ pursuant to the implementation of the common heritage of mankind regime in the Arctic Area by becoming a vehicle for the equitable distribution of the Arctic seabed wealth in line with its use exclusively for peaceful purposes.<sup>37</sup>

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<sup>37</sup>Cf. the original idea of such regime in general terms, A. Pardo, *The Common Heritage – Selected Papers on Oceans and World Orders*, 1967-74, Malta, 1975.