



BULLETIN

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Arctic Claims—Political and Legal Aspects

by Rafał Tarnogórski

One of the first challenges to face the international community as a result of the ongoing global warming will be the exploitation of an ice-free Arctic Ocean. Given the region's economic and military importance and the potential of the countries involved, this question will be gaining in importance in the coming years, generating political and legal disputes that will also engage the European Union and NATO.

Introduction. Technological change has opened up new opportunities for the exploration of ocean resources and the continental shelf—a fact that has not been lost on states drawing up development strategies and undertaking actions and legal steps to press their claims. New challenges are rooted in natural processes, including those initiated by human activity. The most profound consequences stem from climate change and the resulting global warming. These are most conspicuous in the planet's polar areas, where rising temperatures have led to ice melting. In the north this is going to free the Arctic of the ice cap during the summer; while in the south water from the melting ice sheet will considerably raise the sea level around the globe. The research conducted as part of the 4th International Polar Year 2007–2008 indicates that in the Arctic this change may proceed at a faster pace than originally expected, so the 2030 projections should now be moved forward to 2013–2015. This in turn has attracted the interest and initiatives of the Arctic Ocean's coastal states, i.e. Russia, the United States, Canada, Norway and Denmark.

Consequences of Global Warming. There are two major consequences of the disappearance of the Arctic ice cap: increased opportunities for the exploitation of natural resources and new shipping routes. Access to the Arctic sea fauna and mineral resources (metal ores, diamonds), and especially energy sources (oil and gas), opens up new raw materials reserves for the world economy. Assessments of the region's abundance are highly promising: in the case of energy sources, for example, they range from 25% to 50% of undiscovered and unexplored global resources. The opening of new shipping routes has the effect of shortening the existing sea connections. The Northwest Passage, running along the Canadian coastline, cuts the Pacific–Atlantic journey by some 7,000 kilometers, bypassing the Panama Canal or Cape Horn, while the Northern Sea Route (Sevmorput in Russian) along the Russian coast shortens the Europe–Asia connection by 40%, bypassing the Suez Canal.

Political and Legal Aspects. Historically, national claims based on the sector principle extended up to the North Pole. But after the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994, internationally sanctioned limits were drawn up for various sea areas. Coastal states then rushed to conduct geological studies to tap the legal opportunities for exploiting the sea shelf (also extending up to the Pole), and their exclusive economic zones were so defined as to cover even up to two-thirds of the historical sectors. The Arctic warming has sharpened up the already existing regional conflicts, particularly over territory. Each of the Arctic states is involved in delimitation disputes with its neighbors, and additionally Greenland has seen a surge in pro-independence sentiments. Regarding rivalry for access to raw materials, the most profound conflicts are about the 200–nautical mile exclusive economic zone provided for under UNCLOS, and about the right to the continental shelf beyond these zones (subject to submission of documents substantiating the claims).

The first country to press its claims at the UN Commission on the Limits of the Continental Shelf was Russia, but the Commission requested its application to be supplemented. In 2007 Norway presented its claims, which were granted in 2009, with the Commission authorizing Norway to define the shelf limits. This right will also be enjoyed by Canada (to 2013) and Denmark (to 2014). The U.S., being no party to UNCLOS, is not bound by any deadline, but the situation may change (in connection with the recommendation made in George W. Bush's presidential directive on Arctic region policy of January 2009). The question of the shelf under the North Pole remains a problem: the area is claimed by Russia but, in view of possible counterclaims by Canada and Denmark, Russia has confined its own claims to the bounds of the Russian sector. There is a difference of opinions about the Northwest passage, which Canada considers its internal sea route—a position objected to by the United States and most other states (Russia declared the Northern Sea Route open to foreign vessels in 1991).

The Arctic region is also turning into a venue for military rivalry. The northern areas' military aspects have increasingly been noticed, with Russia and Canada starting the construction of new craft capable of operating in Arctic conditions. Similar plans have also been announced by the U.S. In March NATO held maneuvers in Norway, codenamed Cold Response, which clearly worried Russia. Faced with potential conflicts, the states concerned have established dialogue in multilateral fora. In the Ilulissat Declaration of 28 May 2008, the circumpolar states expressed the will to cooperate and resolve contentious issues in accordance with the international law of the sea, and similar declarations were made at the Arctic Council. The European Union also expressed its position, with the European Commission noting in a communication to the Council and Parliament of 20 November 2008 that the EU was inextricably linked to the Arctic region. The territories of three EU member states—Denmark (Greenland), Finland and Sweden—are located in the Arctic, while two other Arctic states—Iceland and Norway—are partners in the European Economic Area. The European Arctic areas, it was stressed, are of priority importance within the Northern Dimension, which may lead to the emergence of an EU Arctic policy. As for the legal status of areas outside national jurisdictions, the communication reiterated that the Arctic Ocean embraced the open sea and the seabed controlled by the International Seabed Authority.

Conclusions. If past experience is to be a guide, the prospect of having final and binding limits of the Arctic shelf is pretty distant. According to Article 83 of UNCLOS, the delimitation of the continental shelf must be effected by agreement in order to achieve an equitable solution. When joining the convention, Russia and Canada opted out of binding overlapping-claims dispute resolution. An alternative to the time-consuming process could be provided by the EU-proposed status, retaining parts of the Arctic Ocean and the North Pole as the open sea with the seabed which is mankind's common heritage. This could provide a starting point for regulating the Arctic question (including navigation) by a multilateral international agreement, along the lines of the Antarctic Treaty. Such an arrangement is highly desirable as least conflictual and protecting the interests of all interested parties in the spirit of the international law of the sea; it could eventually help to win over those U.S. senators who shun UNCLOS, making it ultimately easier for the United States to join the Convention. But an escalation of the conflict in the north could adversely affect Antarctica's status, with the raw materials race possibly even taking a form threatening global peace and security. As a member state of the EU and NATO, Poland will have to draw up its own position on Arctic issues. The interested states are going to canvass support for both organizations' increased involvement in the area. All joint decisions, however, should be based on a realistic analysis of priority goals and capacities of both the EU and NATO.