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SCRAMBLE FOR RESOURCES OR ORDERLY DEVELOPMENT – WHAT IS HAPPENING IN THE ARCTIC?

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Considerable media attention has been focused on the polar areas in recent times. Much of this attention has concentrated on the perceived competition between the Arctic coastal states as they seemingly view each other as claiming the biggest stake over territory in the Far North. One area of contest and assertion of territorial claims is the continental shelf in the Arctic. Media narratives suggest that control over the Arctic will give states rights of access to lucrative and plentiful hydrocarbon resources lying underneath the seabed. Such reporting of a race to riches presents the Arctic states as positioning themselves to exploit oil and gas reserves. The Arctic is often represented as one of the last resource frontiers on Earth. The storyline is built on the idea that since climate change is opening this previously inaccessible region to natural resource development – region in which resources are supposedly plentiful – the states are engaging in typical power-politics as to who is the first to access these resources. Even though the storyline seems extremely appealing (and newsworthy), I argue in this paper that it is a simplified account of what is really taking place in the Arctic. In contrast with the opposite view, the whole development related to the continental shelf claims in the Arctic Ocean seabed can actually be explained by states observing their duties in accordance with law of the sea.

To argue this, I proceed in this paper as follows. First, I suggest that it is important to take the "race to resources" storyline seriously, because it is not only various media that perceive that such a development is going on in the Arctic as a knee-jerk reaction to climate change. Also many academic and policy researchers share this point of view. The scheme needs to be taken seriously, because it distorts public understanding on the Arctic. In addition, it has implications for how researchers draw policy recommendations. This paper aims at analysing why this storyline has become so popular in explaining the continental shelf claims in the Arctic. Before explaining why the continental shelf claim development can be seen as an orderly process (which would perhaps not make it so interesting to many news media) rather than a situation of geopolitical posturing, it is useful to discuss

some basic concepts related to the seabed from the geophysical point of view. This helps to grasp how the law of the sea regulates the ocean floor and its resources. Thereafter, a brief overview on how the seabed law has evolved in the law of the sea is offered. The overview is later followed by an attempt to prove why the law of the sea can indeed be seen as the best explanation for the current continental shelf claims in the Arctic Ocean.

The "Race to Resources" storyline

For many who support the rationalist and realist thinking of international relations, it must have seemed only a matter of time when the natural resources of the Arctic would be exploited. Indeed, in a low inhabited area there would not be many to stand against natural resource development. Only the inaccessibility of this region created barriers in utilizing the vast natural resources. As soon as the necessary technology would be developed, states along with domestic and international companies would arrive to harness these tempting resources.

However, the news soon revealed the scientific findings that stated the Arctic to be the region to suffer the most from climate change. Since ice and snow are first to react to global warming, researchers have noted that the climate change has already had an impact on the Arctic. Further change in the Arctic will be more intense than in other regions of the world.[1] It has been argued that one of the major consequences of climate change is that this previously inaccessible region will open to resource development. To concur, there certainly are several compelling reasons why the world should make use of the supposedly vast hydrocarbon deposits in the Arctic seabed.

First of all, despite the growing international demands for the development of renewable energy resources, fossil fuels still seem to have a future in the energy markets. The International Energy Agency (IEA) has recently estimated that despite the efforts of the climate regime to convert our energy use towards renewables, our dependence on fossil fuels will continue to grow until 2030, if the present energy development scenarios realize.[2] The Arctic hydrocarbon resources as a way to meet future demand seem tempting from two perspectives. Firstly, they are estimated to be excessive. Secondly, the deposits are located in areas with no on-going political conflict making the region safe for companies operate in. Thus to conclude, the

[1] *Impacts of a Warming Arctic*, ACIA Overview Report, Cambridge University Press: Cambridge, 2004, [ACIA Synthesis Report]; see generally the Arctic Climate Impact Assessment Final Scientific Report, [http://www.acia.uaf.edu/].
[2] See the IEA's *World Energy Outlook* website, [http://www.worldenergyoutlook.org/].

combined effect of climate change and commercial interests might be the driving force behind the recent efforts of states to stake their claims over seabed areas in the Arctic Ocean.

The current political interest in high latitudes accompanied with a burst of state activity in mapping the geology of the region, started with the vast claim of the Russian Federation in 2001. The object area of the claim covered almost half of the Arctic Ocean seabed.[3] There was an immediate official response to Russia's action from all of the other littoral states of the Arctic. In particular, the United States criticised many aspects of the Russian claim, especially Russia's attempt to assert sovereign rights over the Lomonosov Ridge that runs through the Central Arctic Ocean Basin. According to the US the Lomonosov Ridge "is oceanic part of the Arctic Ocean basin and not a natural component of the continental margins of either Russia or of any State"[4]. It was exactly underneath the North Pole on the Lomonosov Ridge where the Russians planted their flag in August 2007, provoking heavy protests from the other Arctic coastal states. As reported by the British *Guardian* newspaper:

> Russia symbolically staked its claim to billions of dollars worth of oil and gas reserves in the Arctic Ocean today when two mini submarines reached the seabed more than two and a half miles beneath the North Pole. In a record-breaking dive, the two craft planted a one metre-high titanium Russian flag on the underwater Lomonosov ridge, which Moscow claims is directly connected to its continental shelf. However, the dangerous mission prompted ridicule and scepticism among other contenders for the Arctic's energy wealth, with Canada comparing it to a 15th century colonial land grab.[5]

In a 2007 edition of *Foreign Affairs*, Scott G. Borgerson, an International Affairs Fellow at the Council on Foreign Relations and a former Lieutenant Commander in the US Coast Guard, argued that even military conflict of some sort may be possible:

> The situation is especially dangerous because there are currently no overarching political or legal structures that can provide for the orderly development of the region or mediate political disagreements over Arctic resources or sea-lanes. The Arctic has always been frozen;

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[3] Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Russian Federation 2001, 20 Dec 2001, [http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm].

[4] See the US official reaction, [http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_USAtext.pdf].

[5] "Russia plants flag on North Pole seabed", *The Guardian*, 2 Aug 2007, [http://www.guardian.co.uk/world/2007/aug/02/russia.arctic].

> as ice turns to water, it is not clear which rules should apply. The rapid melt is also rekindling numerous interstate rivalries and attracting energy-hungry newcomers, such as China, to the region. The Arctic powers are fast approaching diplomatic gridlock, and that could eventually lead to the sort of armed brinkmanship that plagues other territories, such as the desolate but resource-rich Spratly Islands, where multiple states claim sovereignty but no clear picture of ownership exists.[6]

As a response to a recent NATO Advance Research Workshop on "Environmental Security in the Arctic Ocean", the media again came up with unexpected explanations over what was happening in the Arctic. The Guardian reported in a news release titled "Climate change could lead to Arctic conflict, warns senior Nato commander" the following:

> One of Nato's most senior commanders has warned that global warming and a race for resources could lead to conflict in the Arctic. The comments, by Admiral James G Stavridis, supreme allied commander for Europe, come as Nato countries convene on Wednesday for groundbreaking talks on environmental security in the Arctic Ocean. The discussions, in the format of a "workshop", with joint Russian leadership, are an attempt to create dialogue with Moscow aimed at averting a second cold war […] Berkman, a key figure in organising the workshop, with funding from the Nato science for peace and security programme, said the challenge is to balance national and common interests in the Arctic Ocean in the interests of all humankind. "Strategic long-range ballistic missiles or other such military assets for national security purposes in the Arctic Ocean are no less dangerous today than they were during the cold war. In effect, the Cold War never ended in the Arctic Ocean."[7]

The news release took the present author and many of the conference participants by a surprise. There was a general agreement among the members of the workshop that if anywhere in the globe it is in the Arctic that peaceful orderly development proceeds.[8]

Overall however, I do feel that the "race to resources" storyline explains the behaviour of states to a certain degree. In this frame-up, unprecedented and rapid climate change re-opens the Arctic as a power politics terrain where states compete over exclusive first access to the hydrocarbon re-

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[6] Scott Borgerson, "Arctic Meltdown: The Economic and Security Implications of Global Warming", *Foreign Affairs*, March/April 2008, [http://www.foreignaffairs.com/articles/63222/scott-g-borgerson/arctic-meltdown].

[7] "Climate change could lead to Arctic conflict, warns senior Nato commander", *The Guardian*, 11 Oct 2010, [http://www.guardian.co.uk/environment/2010/oct/11/nato-conflict-arctic-resources].

[8] Personal observations by the author, during the Workshop (13.–15.10.2010).

sources of the Arctic Ocean seabed. Nonetheless, this straightforward yet simplified account does not explain what is currently taking place in the Arctic. The reasons for this will be discussed in the next chapter.

The rights of states over the seabed riches in the Arctic

Before moving to consider how the present law of the sea regulates the ownership and the use of sea bed and its resources, it is useful to clarify the difference between the terms used in geophysics and international law over the various portions of the seabed. In addition to this, a short account of how the law relating to seabed has evolved will be provided. Because geophysics tries to examine the physical formation and reality of the sea bed, it has much more nuanced concepts for describing it: the continental shelf proper adjacent to the coast dives down till an average depth of 180 metres, which then gives way to a steep slope averaging up to 2,500 metres in depth and continues with the less steep continental rise, which then transforms into the ocean floor. As a result, geophysics materializes the seabed with the concepts of a continental margin covering the continental shelf, the continental slope and the rise. The present law of the sea, as mostly codified in the 1982 UN Convention on the Law of the Sea (UNCLOS),[9] grants the coastal state sovereign rights over the resources of the legal continental shelf, which can in most cases be equated with the continental margin (which is not the geophysical continental shelf).

Before World War II, coastal states enjoyed sovereignty only over a narrow strip of territorial seas extending 3–4 nautical miles. After the war, the situation dramatically changed with the 1945 Truman Proclamation by the US which declared the following: "Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control"[10] The declaration initiated an era of creeping coastal state jurisdiction, especially in regard to the seabed. The outer limit of the seabed was defined in Article 1 of the 1958 Continental Shelf Convention as follows:

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[9] United Nations Convention on the Law of the Sea of 10 Dec 1982, [http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm].

[10] 150 - Proclamation 2667 - Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf. The President of the United States of America Harry S. Truman, 28 Sep 1945, [http://www.presidency.ucsb.edu/ws/index.php?pid=12332&st=truman&st1=sea=].

> For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.[11]

The problem with this definition was that it effectively permitted the coastal states with the possibility to claim larger seabed areas with the development of technology, to the extent that even ocean floors could have been divided between the coastal states. A counterforce to this trajectory came from Maltese ambassador Arvid Pardo who in 1967 proposed in the UN General Assembly that the ocean floor should be designated as a common heritage of humankind. Pardo argued that the ocean floor should be administered and overseen by an international governance mechanism, whereby the economic benefits of the ocean floor riches could be shared equitably between developing and developed states. Pardo's proposal was one of the major reasons for why the third United Nations Conference on the Law of the Sea (UNCLOS III) was convened in New York in 1973 (UNCLOS I and UNCLOS II were held in Geneva in 1958 and 1960 respectively). The aim of the 1973 conference was to produce a comprehensive "constitution" of the oceans, which later became the UNCLOS.[12]

The Convention was negotiated over an extended period of time – from 1973 to 1982 – as a package deal, permitting no reservations to the Convention.[13] UNCLOS was able to achieve a compromise between various groupings of states having differing kinds of interests related to the seabed. For instance, broad continental margin states were able to have rules accepted, which allowed the whole continental margin to be subjected to the sovereign rights of the coastal states. On the other hand, the geologically disadvantaged states (those whose continental margin was minimal) managed to push for a rule that entitles all states to a minimum of 200 nautical miles along the continental shelf (meaning that these states effectively exercise powers over the ocean floor as well). UNCLOS was successful also in defining more clearly the outer limit of the continental shelf than its 1958 predecessor convention, and in designating the ocean floor as part of the common heritage of mankind and being under the governance of International Sea-Bed Authority (ISBA).

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[11] Convention on the Continental Shelf. Geneva 29 Apr 1958, Found at Environmental Treaties and Resource Indicators, [http://sedac.ciesin.org/entri/texts/continental.shelf.1958.html].

[12] The earlier attempts produced four separate law of the sea conventions (I of 1958) and the second was a failure (1960).

[13] See Article 309 of the UNCLOS.

During the negotiations, even though broad continental margin states were able to extend the outer limit of the continental shelf to cover the whole geophysical continental margin (and in some exceptional cases beyond), they also had to make compromises. For example, the broad continental margin states had to submit to rules requiring them to transfer some of the revenues from offshore hydrocarbon exploitation in their extended continental shelf to developing states via the ISBA[14] and, more importantly, they had to prove the extent of their continental shelf scientifically in the Commission on the Limits of the Continental Shelf (CLCS or Commission). CLCS is a scientific body with 21 members.[15] If a coastal state perceives that its continental margin exceeds 200 nautical miles, the submission must be made within 10 years when the state became a party the UNCLOS.[16] The Commission can only make recommendations. However, the recommendations it gives are legally influential, because the outer limits of the continental shelf become final and binding only, when they have been enacted on the basis of the recommendations.[17] The deadline for such submissions is fairly tight given that states need to provide the Commission with vast amounts of scientific and technical data. This was done because it was seen as necessary to define the outer limits of continental shelves as quickly as possible. Only after knowing the outer limits, it is possible to know where the boundary between states' continental shelves and the area, which is under the jurisdiction of the ISBA, lies.

Which explains the continental shelf activity better – A scramble for resources or UNCLOS?

Even though the "race to resources" storyline appears to be a more popular explanation for why states are engaged in staking continental shelf areas, my argument is that this is not the case at least for now. Two arguments will be offered to prove the point.

States are arguing that they only abide with their UNCLOS duties. This is supported by the fact that at least for the time being, states have followed their duties under the UNCLOS in an ideal manner. Russia was the first country to make the submission to the CLCS. Russia was also the first country to which the Commission issued recommendations that required

[14] See Article 82 of the UNCLOS.
[15] See Article 76 of the UNCLOS.
[16] This date was postponed by the parties to the Convention to those states that had become parties before May 1999, thus extending their submission deadline to May 2009. See Annex II to the Convention, Article 4.
[17] Article 76 (8) of the UNCLOS.

the country to revise its submission in the Central Arctic Ocean Basin.[18] Although the flag planting may have had some symbolic importance for Russia's domestic policy, the country has not indicated that the act would have any legal effect.[19] The Russians have assured that the revised submission will be returned to the Commission within the new deadline. Norway made a submission in 2006 to three separate areas in its North East Atlantic and Arctic continental shelves, which invoked some reactions from other states towards the status of the sea bed around the islands of the Svalbard archipelago.[20] Yet, as explained by the Norwegian foreign ministry, this is an issue unrelated to the outer limits of continental shelf.[21] The CLCS has now made recommendations to Norway as to how to draw the outermost limits of its continental shelf.[22] Canada and Denmark (Greenland) face their deadlines in 2013 and 2014 respectively. Both states are desperately trying to collect the necessary data and information to meet these tight timeframes. According to news sources, the US has also started to develop its continental shelf submission, even though it is not a party to the UNCLOS. Already the Clinton and Bush Administrations aimed at making the country a party to the convention. However, as both efforts failed also the current Obama Administration continues to pursue this policy objective.[23]

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[18] See short summary of these recommendations, available at: http://daccessdds.un.org/doc/UNDOC/GEN/N02/629/28/PDF/N0262928.pdf?OpenElement (12.6.2008).
According to paragraph 41: "As regards the Central Arctic Ocean, the Commission recommended that the Russian Federation make a revised submission in respect of its extended continental shelf in that area based on the findings contained in the recommendations". For an overview, see Mel Weber, "Defining the Outer Limits of the Continental Shelf across the Arctic Basin: The Russian Submission, States' Rights, Boundary Delimitation and Arctic Regional Cooperation", *The International Journal of Marine and Coastal Law*, 24, 2009, pp. 653–681.

[19] Article 77 (3) of the UNCLOS.

[20] Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Kingdom of Norway, 27 Nov 2006,
[http://www.un.org/depts/los/clcs_new/submissions_files/submission_nor.htm].
See, e.g. the reaction of Spain,
[http://www.un.org/depts/los/clcs_new/submissions_files/ nor06/esp_0700348.pdf].

[21] E-mail response 8 April 2008 from the official of the Ministry (on file with the author).

[22] 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, 27 Mar 2009,
[http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf].

[23] "Continental Slope Off Alaska 100 Nautical Miles Further Off Coast Than Assumed", *ScienceDaily*, 12 Feb 2008,
[http://www.sciencedaily.com/releases/2008/02/080211134449.htm].

The UNCLOS was negotiated during a time period when there was not much awareness of climate change. Without the globally affecting phenomenon, would the states behave in the same way in deciding whether to submit a claim to the CLCS? I argue that any rational state would make their submission exactly as wide as possible on the basis of UNCLOS, and they would be compelled to do it now since the UNCLOS entered into force in 1994. Since we cannot predict how fast and in which direction technology will develop, it would only be rational for a state to act this way. Even without any impacts of climate change, the advancements in technology might have opened these regions for resource development. With this in mind, I maintain that the onset of the competition over hydrocarbon resources is not only linked with the upcoming changes in the atmosphere.

Are the Arctic states just blindly following the rules?

What I have argued in this article is that the underlying factors motivating state activity in claiming continental shelf areas in the Arctic are in fact legal. So far, the states have acted according to their UNCLOS and law of the sea commitments in a textbook manner. This does not mean that the process would come to an end in an orderly fashion (e.g. with states settling their overlapping continental shelf claims via the UNCLOS dispute settlement mechanisms). It only means that the development so far has been orderly and fully in accordance with international law, and thus there is also no reason to presume that the process would naturally finish in a conflict. Yet, it is also important to ask why the states are observing these rules. Territorial enlargement is one of the core policy areas for any state. Accordingly, it would seem fairly unrealistic to think that states would completely disregard their strategic interests. It is however, important to keep in mind what states are in effect observing. The broad continental margin states were able to negotiate as flexible rules as possible for drawing the outermost limits of their continental shelves. They benefit to a large degree from the settled standards: They have considerable discretion in drawing their outermost limits as far out onto the seabed as possible. At the same time the states gain legitimacy and finality for those limits.

Even if following the rules has clearly dominated the actions of Arctic Ocean coastal states, it is by no means given that such development will continue. It is important to keep in mind that Norway is the only one that has received a full set of recommendations from the Commission. Most of the difficult issues still remain fully unresolved. The Lomonosov Ridge is a good example of this. Russia considers the ridge to be a natural prolongation of its land areas, as symbolized by the flag planting in 2007. Russia also made its stand clear in the 2001 submission to the CLCS. The US re-

acted swiftly to this arguing that Lomonosov Ridge is of oceanic origin and cannot be part of the continental shelf of any state. Canada and Denmark have also made it clear that they consider the Lomonosov Ridge to be part of their continental shelves. However, their submissions are not due until 2013 and 2014.[24] Moreover, the Commission returned Russia's submission in 2002 for further scientific-technical studies as regards the Central Arctic Ocean Basin, signalling that it may not endorse Russia's view on the Lomonosov Ridge.

It is necessary to note that the UNCLOS and law of the sea in general are not understood similarly by all. International lawyers are very careful when defining the types of sovereign rights that coastal states enjoy over their continental shelf. States are only entitled to explore and exploit the natural resources (mainly hydrocarbons) of the continental shelf. Beyond the Exclusive Economic Zone, state action is limited mainly to drilling oil and gas. However, it is easy to understand why the military establishments of the world do not share the same perspective. They do not primarily think of what specific rights and obligations a state has in its nearby waters, but see lines on a map indicating an area which they are meant to protect. These areas are often taken by the navy as parts of state territory rather than a joint zone where the coastal and other states have various kinds of privileges and responsibilities. If navies are given a stronger role in the high Arctic, it can be argued that military-strategic calculations prompt states to establish spheres of influence, a scenario which may lead more easily to controversies, even military ones. Russia for example published a strategy paper in 2009 where it outlined plans to create a new military force to protect its interests in the disputed Arctic maritime regions.[25]

Concluding remarks

The reasons for media and many International Relations scholars to read too much into climate change and an irresistible temptation to utilize the Arctic hydrocarbon resources, are probably due to the readership pressures and the desire to tell a good story (whether it is a popular news story or an academic one). Another reason is that it has taken so long time for the UNCLOS continental shelf process to unfold. UNCLOS was negotiated

[24] "Natural Resources Canada: Government of Canada Welcomes New Mapping Data on Canada's North", *Canadian Business*, 8 Aug 2008, [http://www.canadianbusiness.com/markets/ccn/article.jsp?content=20080808_125504_2_ccn_ccn]. See generally Alex G. Oude Elferink, "The Continental Shelf in the Polar Regions: Cold War or Black-Letter Law?", *Netherlands' Yearbook of International Law*, vol. xl, 2009, pp. 121-181.

[25] "Russia plans to create Arctic military force", Associated Press, 27 Mar 2009, [http://www.msnbc.msn.com/id/29916834/].

over a long period of time, from 1973 till 1982, and it entered into force as late as 1994. The year 2004 was the first deadline for countries to submit the required additional information over their claims of extended continental shelf. It is exactly now when the submissions need to be made, and many states are increasingly working on them. It might be difficult for a person without legal background to imagine that a process starting from 1973 still constitutes the main cause for present state activity towards the continental shelf, especially when climate change is offering other rather compelling explanations.

From a disciplinary perspective, it is sometimes difficult for an international lawyer to understand why orderly processes are often dramatized, especially in the media. Evidently, media has its own pressures, and they many times need to dramatize stories to gain readership. Yet, when distributing close to completely false information as in the crudest forms of news stories about the continental shelf claims, it does pose difficult questions for the credibility of the media. In contrast, International Relations scholars have their own dominant schools of thought where they often seem to disregard the power of rules and regulations shaping state behavior. However, as has been pointed out in this paper, sometimes rules do matter. Rules especially matter in explaining how international processes unfold, a task which International Relations, not international law, is supposed to do. On the other hand, international lawyers should also be cautious when arguing that all what is happening is blind observance of international law. International lawyers have been busy explaining that the "scramble for resources" storyline is just a media stunt and that states behave very much in line with law of the sea. Nonetheless, when thinking about the way ahead, nothing is self-evident. Only with on-going and open inter-disciplinary dialogue we can provide better accounts of important international developments.

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