

GOING BOLDLY WHERE NO COUNTRY HAS GONE BEFORE: UNCLOS AND THE RUSSIAN FEDERATION'S CLAIM TO THE ARCTIC CIRCLE

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ABSTRACT

The United Nations Convention on the Law of the Sea (UNCLOS) allows a coastal nation to extend its maritime borders up to 200 nautical miles¹ from its coastline, giving rights to the seabed and the materials that may lie beneath. The same laws allow coastal nations to extend their borders along the nation's "continental shelf," which may exceed 200 nautical miles. Several coastal states surrounding the Arctic Circle, however, claim the same continental shelves as part of their state's nautical border, testing the dispute framework of UNCLOS and the law's applicability in territorial conflict. This article will examine and analyze the effects of UNCLOS and the Commission on the Limits of the Continental Shelf (CLCS) on the Russian Federation's Arctic Circle territorial claims and examine their effectiveness in providing an international framework for negotiations.

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¹ 1 mile is 0.868976 nautical miles.

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INTRODUCTION

In an age of concerted efforts to study climate change, scientific evidence suggests an accelerated warming of our planet.² The past three years have been some of the warmest on record and 2015 was registered as the hottest year in history.³ As the planet warms, so has the Arctic, resulting in thinning and receding ice.⁴ The climate crisis, however, has its own unforeseen benefit; the melting Arctic sea ice offers possible new routes of transportation.⁵ Furthermore, new economic opportunities mean new competition.⁶ For over fifteen years, nations with Arctic borders have pursued a focused territory grab under UNCLOS.⁷ In 2001, the Russian Federation, under UNCLOS, submitted an Arctic territorial claim to the United Nations (UN) that was later denied due to a lack of scientific data supporting the claim.⁸ The Russian Federation recently updated its Arctic claim under UNCLOS, claiming an area roughly 1.2 million square kilometers (463,000 square miles) thought to contain large

² *Global Warming is Accelerating*, NAT'L WILDLIFE FOUND., <https://www.nwf.org/Wildlife/Threats-to-Wildlife/Global-Warming/Global-Warming-is-Accelerating.aspx>.

³ *State of the Climate Global Analysis—Annual 2015*, NAT'L CTRS. FOR ENVTL. INFO., <https://www.ncdc.noaa.gov/sotc/global/201513>.

⁴ Dianne Depra, *Arctic Sea Thinning At Alarming Rate Says Study*, TECH TIMES (Mar. 5, 2015, 10:23 AM), <http://www.techtimes.com/articles/37488/20150305/arctic-sea-ice-thinning-at-alarming-rate-says-study.htm>.

⁵ Jonathan Amos, *Arctic Ocean shipping routes 'to open for months'*, BBC (Sept. 6, 2016), <http://www.bbc.com/news/science-environment-37286750>.

⁶ Elisabeth Rosenthal, *Race Is On as Ice Melt Reveals Arctic Treasures*, N.Y. TIMES (Sept. 18, 2012), <http://www.nytimes.com/2012/09/19/science/earth/arctic-resources-exposed-by-warming-set-off-competition.html>.

⁷ Associated Press in Moscow, *Russia lays claim to vast areas of Arctic*, GUARDIAN (Aug. 4, 2015 10:12 EDT), <https://www.theguardian.com/world/2015/aug/04/russia-lays-claim-to-vast-areas-of-arctic-seabed>.

⁸ Editorial Board, *Russian Arctic? A new reason for the U.S. to ratify Law of the Sea*, PITTSBURGH POST-GAZETTE (Aug. 6, 2015, 12:00 AM), <http://www.post-gazette.com/opinion/editorials/2015/08/06/Russian-Arctic-A-new-reason-for-the-U-S-to-ratify-Law-of-the-Sea/stories/201508060025>.

reserves of oil, gas, and minerals.⁹ The Russian Federation claims the territory is an extension of its continental character,¹⁰ allowing the territory to fall under the UNCLOS rule that allows a nation to maintain an exclusive economic zone (EEZ) over the continental shelf¹¹ abutting its shores.¹² Under UNCLOS, the Russian Federation may claim possession of areas up to 350 nautical miles from its shores,¹³ but exceptions to the 350 nautical mile limit can be made.¹⁴ One exception allows a more expansive territorial claim if the Russian Federation can prove the claimed continental shelves extending from its existing land mass expand past the given limits of the EEZ.¹⁵ Despite its claims under the UNCLOS framework, the Russian Federation's revised claim is largely interpreted by the international community as an act of aggression, and coincides with the country's reopening of military bases in the Arctic Circle that were abandoned during the fall of the Soviet Union.¹⁶

⁹ Andrew Revkin, *Oil, Oligarchs, Climate and Obama's Arctic-Focused Alaska Trip*, N.Y. TIMES, (Aug. 30, 2015, 9:14 AM), [http://dotearth.blogs.nytimes.com/2015/08/30/oil-oligarchs-and-other-subtexts-on-obamas-arctic-focused-alaska-trip/?smid=tw-dotearth&smtyp=cur&r=0](http://dotearth.blogs.nytimes.com/2015/08/30/oil-oligarchs-and-other-subtexts-on-obamas-arctic-focused-alaska-trip/?smid=tw-dotearth&smtyp=cur&r=0;); Emily Moulton, *Russia claims vast amounts of the North Pole are part of its territory*, NEWS.COM.AU (Aug. 6, 2015, 11:49 AM), <http://www.news.com.au/technology/environment/russia-claims-vast-amounts-of-the-north-pole-are-part-of-its-territory/story-e6frlp0-1227472211750>.

¹⁰ According to UNCLOS, "the continental shelf of a coastal State comprises the submerged prolongation of the land territory of the coastal State - the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend up to that distance. The continental margin consists of the seabed and subsoil of the shelf, the slope and the rise." U.N. Div. for Ocean Affairs and the Law of the Sea, Commission on the Limits of the Continental Shelf (CLCS): The Continental Shelf, http://www.un.org/Depts/los/clcs_new/continental_shelf_description.htm.

¹¹ Per *Merriam-Webster*, a continental shelf is defined as "a shallow submarine plain of varying width forming a border to a continent and typically ending in a comparatively steep slope to the deep ocean floor." *Continental Shelf Definition*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/continental%20shelf> (last visited Jan. 26, 2017).

¹² Andrew Kramer, *Russia Stakes New Claim to Expanse in the Arctic*, N. Y. TIMES (Aug. 4, 2015), <http://www.nytimes.com/2015/08/05/world/europe/kremlin-stakes-claim-to-arctic-expanse-and-its-resources.html>.

¹³ Carol Williams, *Russia Claims Vast Arctic Territory, Seeks U.N. Recognition*, L.A. TIMES (Aug. 31, 2015, 12:23 PM), <http://www.latimes.com/world/europe/la-fg-russia-arctic-claim-un-20150804-story.html>.

¹⁴ See United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, IV Art. 76 [hereinafter UNCLOS].

¹⁵ *Id.*

¹⁶ Steven Lee Meyers, *U.S. is Playing Catch-Up With Russia in Scramble for the Arctic*, N. Y. TIMES (Aug. 29, 2015), <http://www.nytimes.com/2015/08/30/world/united-states-russia-arctic-exploration.html>.

This article will examine the effectiveness of UNCLOS in the situation it was meant to dictate: the Russian Federation's claim and territorial action in the Arctic. Part I of this paper will examine the Russian Federation's first Arctic claim made under UNCLOS by the Russian Federation, Part II will analyze the current Arctic claim of the Russian Federation in comparison to its first claim and Part III will predict future results and argue that new international protocols and monitoring of Arctic claims must be established.

I. BACKGROUND

A. THE WARMING ARCTIC SHOWS SIGNS OF ACCESSIBILITY

Oceans have been a major player in the fate of societies; they provide sustenance, a means of transportation, and commerce.¹⁷ The Northern Hemisphere is home to the smallest, and perhaps most unique, ocean in the world.¹⁸ With the exception of summer, the Arctic Ocean possesses more than 2,100 nautical miles of sea ice during the entire year.¹⁹ Historically, the permanent ice cover has limited travel in the Arctic region during the winter months but that may be rapidly changing. During the second half of the twentieth century and into the twenty-first century, the extent and thickness of the Arctic Ocean sea ice decreased.²⁰ The Arctic's temperature increase in recent years is twice of the rest of the globe.²¹ Arctic warming has led to an overall decline in the region's sea ice, snow cover, glaciers, and permafrost.²² Experts have suggested that the existence of an entirely ice-free Arctic Ocean in the summer months could occur as early as 2040.²³

Year-round navigation of the peripheries of the Arctic Ocean has taken place since 1978-79, but receding ice could allow a larger freedom

¹⁷ *How much of the ocean have we explored?* NAT'L OCEAN SERV., <http://oceanservice.noaa.gov/facts/exploration.html>.

¹⁸ Ned Allen Ostenso, *Arctic Ocean*, ENCYC. BRITANNICA, <http://www.britannica.com/place/Arctic-Ocean> (last updated Jan. 16, 2015).

¹⁹ Arctic Council, *Arctic Marine Shipping Assessment 2009 Report*, at 102 (2009), http://www.pmel.noaa.gov/arctic-zone/detect/documents/AMSA_2009_Report_2nd_print.pdf.

²⁰ *Id.* at 8.

²¹ *Environment and Climate*, ARCTIC COUNCIL (May 13, 2015), <http://www.arctic-council.org/index.php/en/our-work/environment-and-climate>.

²² *Id.*

²³ Arctic Council, *supra* note 19, at 25.

to navigate in the summer months.²⁴ More importantly, the melting ice could mean a longer open season for international shipping through the Northwest and Northeast Passages.²⁵ The melting comes at a time when nations across the globe are racing to claim their part of the Arctic, seeing potential for future sea-lanes and vast untapped natural resources. Pushed by high commodity prices and growing worldwide demand for natural resources,²⁶ coastal states bordering the Arctic region are looking for ways to explore the Arctic for oil, gas, and hard minerals.²⁷ The Arctic Ocean features multiple coastal seas and broad continental shelves.²⁸ The shelves extend one hundred to two hundred kilometers from the United States and Canada, and more than one thousand kilometers in places extending north from the Russian Federation.²⁹ States are supposed to follow UNCLOS when claiming territory in the Arctic, one of the last remaining frontiers, as its ice melts away due to global warming.

B. THE ARCTIC'S UNLOCKED POTENTIAL

With a global economy driven by fossil fuels, the Arctic has become a new ground for competitive superpowers seeking to expand their energy resources.³⁰ The US Geological Survey estimates that the Arctic holds twenty-two percent of the world's undiscovered energy resources, thirteen percent of the world's undiscovered oil, thirty percent of the world's undiscovered gas, with eighty-four percent of those resources expected to exist under the Arctic Ocean.³¹

²⁴ *Id.*

²⁵ See Marco Evers, *Russia Moves to Boost Arctic Shipping*, SPIEGEL (Aug. 22, 2013, 1:21 PM), <http://www.spiegel.de/international/world/russia-moves-to-promote-northeast-passage-through-arctic-ocean-a-917824.html>; see also Hobart King, *What is the Northwest Passage*, GEOLOGY.COM, <http://geology.com/articles/northwest-passage.shtml> (last visited Jan. 29, 2017).

²⁶ Arctic Council, *supra* note 19, at 8.

²⁷ *Id.*

²⁸ *Id.* at 16.

²⁹ *Id.*

³⁰ See generally *Arctic Resources: The Fight for the Coldest Place on Earth Heats Up*, RT (Apr. 15, 11:16), <https://www.rt.com/news/arctic-reclamation-resources-race-524/>.

³¹ *The Arctic — America's Last Energy Frontier*, AM. SEC. PROJECT, <http://www.americansecurityproject.org/energy-security/the-arctic-americas-last-energy-frontier/>.

The US Geological Survey also estimates the Arctic may hold 90 billion barrels of oil,³² with 25 billion barrels in Alaskan waters alone.³³ The amount of oil and natural gas estimated in the Arctic is enough to satisfy the energy demands of the entire world for 1.4 years and the United States' for six years.³⁴

Difficulties lay in front of any State hoping to gain access to undiscovered Arctic resources, as 80 percent lay offshore.³⁵ The reality of Arctic conditions delayed the most recent, private, large-scale exploration of the Arctic for natural resources.³⁶ The Arctic's waters, however, are seemingly open for natural resource exploration, with 2.7 million miles of Arctic sea featuring continental shelves covered by depths of 500 meters or less.³⁷ UNCLOS defines continental shelf as the seabed and subsoil of submarine areas, which are considered the natural continuation of the continental landmass due to their geological characteristics.³⁸ The continental shelf definition under UNCLOS, in the alternative, is the natural prolongation of the landmass up to 200 nautical miles (230 miles).³⁹ The continental shelf consists of the shelf, the slope, and the rise and not any deep ocean floor with its oceanic ridges or subsoil.⁴⁰ This determination of the two hundred nautical mile limit was meant to manifest that beyond national jurisdiction, the sea, and all of the resources it held within was a common heritage to all of humanity.⁴¹

The Russian Federation is not the only nation that has a vested interest in the Arctic: the United States, Canada, Denmark, and Norway also have territorial jurisdiction in the region.⁴² The Arctic, however, may

³² Ariel Cohen, *Russia in the Arctic: Challenges to U.S. Energy and Geopolitics in the High North*, STRATEGIC STUDIES INST. 3 (Stephan J. Blank ed., July 2011), <http://permanent.access.gpo.gov/gpo10677/PDF%20version/PUB1073.pdf>.

³³ Rakteem Katakey, *Shell's Alaska Exit Means Arctic Oil Reserves Remain Locked Away*, BLOOMBERG BUS. (Sep. 28, 2015, 8:57 AM), <http://www.bloomberg.com/news/articles/2015-09-28/shell-s-alaska-exit-means-arctic-oil-reserves-remain-locked-away>.

³⁴ Cohen, *supra* note 32, at 3.

³⁵ *Id.*

³⁶ Katakey, *supra* note 33.

³⁷ U.S. DEP'T OF THE INTERIOR, CIRCUM-ARCTIC RESOURCE APPRAISAL: ESTIMATES OF UNDISCOVERED OIL AND GAS NORTH OF THE ARCTIC CIRCLE (2008), <https://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>.

³⁸ Press Release, U.N. Comm. on the Limits of the Continental Shelf, Russian Federation First To Move To Establish Outer Limits of its Extended Continental Shelf, U.N. Press Release SEA/1729 (Dec. 21, 2001).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Arctic Resources, *supra* note 30.

hold the most significance to the Russian Federation, because the region represents both national and economic interests. The Russian Federation currently earns close to half their government revenue from oil and gas sales, making the potential vast energy resources of the Arctic a priority of national concern.⁴³

C. EARLY THEORIES ON SEA OWNERSHIP

The international legal theory that nations have an extended territorial claim and possess the seas surrounding their continental land mass first emerged in the Renaissance; notably, through the Italian maritime cities identification of international power through naval power.⁴⁴ Bartolus de Saxoferrato, a prominent Italian law professor (1313-1357), developed a theory reasoning coastal states could control up to one hundred miles of the sea that extended from the nation's coastline.⁴⁵ Saxoferrato's theory of oceanic possession eventually yielded to another, more liberal idea.

The "Freedom of the Seas" doctrine can be traced back to Hugo Grotius, a seventeenth century Dutch philosopher.⁴⁶ In 1608, Grotius anonymously published the book, *Mare Liberum*, while serving as the Attorney-General of the Dutch Republic.⁴⁷ Grotius had his own motivation for the creation of his doctrine: protecting the Dutch right to navigation and commerce in Southeastern Asia in the face of an emerging Portuguese naval threat.⁴⁸ Grotius argued that all nations had a right to navigate the seas freely and uninhibited by others.⁴⁹ The Freedom

⁴³ Katakey, *supra* note 33.

⁴⁴ Alison Reppy, *The Grotian Doctrine of the Freedom of the Seas Reappraised*, 19 FORDHAM L. REV. 243, 276 (1950).

⁴⁵ Augusto P. Miceli, *Forum Juridicum: Bartolus of Sassoferrato*, 37 LOUIS. L. REV. 1027, 1033-34 (1977).

⁴⁶ *History of the Maritime Zones Under International Law*, N.O.A.A.: OFFICE OF THE COAST SURVEY, http://www.nauticalcharts.noaa.gov/staff/law_of_sea.html; Jon Miller, *Hugo Grotius*, STANFORD ENCYC. OF PHILOSOPHY (Jul. 28, 2011), <http://plato.stanford.edu/entries/grotius/>.

⁴⁷ Reppy, *supra* note 44, at 244.

⁴⁸ NATALIE KLEIN, DISPUTE SETTLEMENT IN THE UN CONVENTION ON THE LAW OF THE SEA 5-6 (James Crawford et. al. eds., 2005).

⁴⁹ HUGO GROTIUS, THE FREEDOM OF THE SEAS 53 (1608), http://lfo-oll.s3.amazonaws.com/titles/552/Grotius_0049_EBk_v6.0.pdf.

of the Seas doctrine essentially limited a nation's rights and jurisdictions on the ocean to a small belt of sea extending from a nation's coastline.⁵⁰

Grotius also recognized that a nation had jurisdiction to the coastal waters it could control by land.⁵¹ Outside of the belt of a nation's coastal holdings, the rest of the ocean and its resources were to be free to all and ruled by none, held as a common heritage for all of the world and its population.⁵² Grotius's ideology was the conviction that the oceans were an inheritance that belonged to all citizens of the world, regardless of nationality.⁵³ Central to Grotius's reasoning was the idea that concepts or objects that cannot be seized, enclosed, or captured cannot be held as property.⁵⁴ In reality, Grotius's philosophy of *mare liberum* led to the naval domination of select nations, with rights to the sea controlled by those with the largest, most powerful naval fleets.⁵⁵

D. MARE LIBERUM, THE RIGHT OF MIGHT AND THE NEED FOR CODIFICATION

In the *mare liberum* system, States had a minimal interest in cooperation and were bound only to the laws to which they consented, creating a system of hostility and aggression where nations enforced their oceanic interests.⁵⁶ The system that existed became "the right of might."⁵⁷ After the conclusion of World War I, the need emerged for a series of international laws governing several areas, including the ocean, as demonstrated by the creation of the League of Nations.⁵⁸ The League of Nations initiated a project for the progressive codification of international law in 1924.⁵⁹ The topic of territorial waters was considered an important subject for codification.⁶⁰ Indeed, US Secretary of State,

⁵⁰ U.N. Division for Ocean Affairs and the Law of the Sea, The United Nations Convention on the Law of the Sea (A Historical Perspective) (2012), http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

⁵¹ NOAA: OFFICE OF THE COAST SURVEY, *supra* note 46.

⁵² U.N. Division for Ocean Affairs and the Law of the Sea, *supra* note 50.

⁵³ KLEIN, *supra* note 48, at 5.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 7.

⁵⁷ *Id.*

⁵⁸ *Id.* at 9.

⁵⁹ *Id.* 10

⁶⁰ *The First Conference for the Codification of International Law*, 41(4) AM. J. INT'L L. 29, 83 (1947), http://legal.un.org/ilc/documentation/english/ASIL_1947_study.pdf.

Henry L. Stimson, understood the importance of sending a representative to the League of Nations' 1930 Conference, writing in a letter to then-President Herbert Hoover:⁶¹

The conference will consider . . . the breadth of the territorial waters under the sovereignty of the coastal state; the distance to which the coastal state may exercise authority on the high seas . . . the points from which the belt of territorial waters is to be measured . . . and the continuation on the high seas of pursuit begun within territorial waters.⁶²

Codification and rulemaking failed under the eventually doomed League of Nations, but at the conclusion of World War II, the U.N. was established in the interest of obtaining international standards and preventing another global conflict.⁶³

With the advent of technology and post-war economic boom, national interests for controlling oceanic resources and larger swaths of the seas reached an apex.⁶⁴ Military advances ushered in a new age of oceanic exploration, marked by the widespread use of the submarine in World War II.⁶⁵ The discovery of rich deposits of offshore hydrocarbons in the seabed and subsoil led to wider and increasing claims of exclusive control by coastal states.⁶⁶ Claims to continental shelves led several coastal states to assert claims to ocean resources.⁶⁷ At the time of its establishment, the U.N. faced nations concerned with protecting fishing rights.⁶⁸ During this same period, several coastal states had developed highly sophisticated long-range fishing fleets, putting underdeveloped nations on notice of their inability to protect offshore resources under the *mare liberum* doctrine.⁶⁹ With developed nations free to travel and exploit the seas, underdeveloped coastal nations struggled to contemplate a world where they could compete on an even economic footing.⁷⁰

⁶¹ Hunter Miller, *The Hague Codification Conference*, 24 AM. J. INT'L L. 674, 674–75 (1930).

⁶² *Id.* at 675.

⁶³ Sir Michael Wood, Statute of International Law Commission, (Nov. 21, 2009), <http://legal.un.org/avl/ha/silc/silc.html>.

⁶⁴ *Id.*

⁶⁵ KLEIN, *supra* note 48, at 12.

⁶⁶ *Id.*

⁶⁷ *Frozen Conflict*, ECONOMIST (Dec. 20, 2014), <http://www.economist.com/news/international/21636756-denmark-claims-north-pole-frozen-conflict>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

The United Nations General Assembly (General Assembly) established the International Law Commission (Commission) with the intent to codify and develop international law.⁷¹ In 1949, the Commission met for the first time and identified that the laws of the sea needed to be codified.⁷² The draft articles from the Commission formed the basis for discussions at the United Nations Convention on the Law of the Sea I (UNCLOS I), where the General Committee convened to examine the law of the sea, taking account not only of the legal but also the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions that the conference deemed appropriate.⁷³ Delegates from 86 nations met in Geneva, Switzerland, for the conference from February 24 through April 28, 1958.⁷⁴ The conference hoped to codify the law of the seas in four areas,⁷⁵ which were adopted by the participants of the conference.⁷⁶ The Convention on the Continental Shelf, the most vital group for determining territorial claims, was charged with the monumental task of analyzing the claims of nations including the methodology, science, and all other respective factors in a nation's claim.

The successful codification during the 1958 Conference displays the failure of the attending nations to reach an agreement on the most important issues, (1) the breadth of territorial seas, and (2) fishery limits.⁷⁷ The issue was handed to the General Assembly, with a call for the Assembly to convene another international conference in the future to address these undecided issues.⁷⁸ The Second United Nations Conference on the Law of the Sea (UNCLOS II) was held from March 17 to April

⁷¹ James Harrison, *Evolution of the law of the sea: developments in the law-making in the wake of the 1982 Law of the Sea Convention*, (Jul. 5, 2007) (unpublished Ph.D. dissertation, University of Edinburgh Law School), <https://www.era.lib.ed.ac.uk/bitstream/handle/1842/3230/J:jsessionId=50DE03FD9F5F3C89C7583E2E8BB52047?sequence=1>.

⁷² *Id.*

⁷³ G.A. Res. 1105 (XI), UN GAOR, 11th Sess., Supp. No. 17, U.N. Doc. A/3572 (Vol. I), at 54 (Feb. 21, 1957).

⁷⁴ Charles Swan & James Uberhost, *The Conference on the Law of the Sea: A Report*, 56 MICH. L. REV. 1132, 1132 (1958).

⁷⁵ Treves, *supra* note 63; Swan, *supra* note 74, at 1132.

⁷⁶ KLEIN, *supra* note 48, at 13.

⁷⁷ *Id.*; Swan, *supra* note 74, at 1134–35.

⁷⁸ Swan, *supra* note 74, at 1134–35.

26, 1960.⁷⁹ Similar to UNCLOS I, the representatives of 88 nations were unable to reach an answer on the same two questions.⁸⁰ Therefore, the question of breadth of territorial seas and fishery limits were passed to the General Assembly.⁸¹

E. THE LAW OF THE SEA COMES TO FRUITION

The next notable event occurred November 1, 1967, when Malta's Ambassador to the U.N., Arvid Pardo, made a passionate plea for new laws reflecting the advancing technologies of the times to protect the ocean from occurring exploitative abuses.⁸² Pardo focused on the mineral deposits in international waters, which he believed, similar to Grotius,⁸³ were a common heritage for all of mankind.⁸⁴ Pardo ended his speech with a call for an "effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction," which he advocated as the only alternative to the mounting international tensions that were growing in the background.⁸⁵

In response to Pardo's call for action, the General Assembly established an Ad Hoc Committee on December 18, 1967,⁸⁶ to examine potential proposals for laws relating to the peaceful use of the seabed and the ocean floor beyond current national jurisdictions.⁸⁷ The Ad Hoc Committee's report led to the creation of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond National Jurisdictions.⁸⁸ With the Committee in place, the General Assembly

⁷⁹ Second United Nations Conference on the Law of the Sea, 1960, United Nations Diplomatic Conferences (2009), <http://legal.un.org/diplomaticconferences/lawofthesea-1960/lawofthesea-1960.html>.

⁸⁰ *Id.*

⁸¹ Second United Nations Conference on the Law of the Sea, Geneva, Switz., Mar. 17-Apr. 26, 1960, *Final Act of the Second United Nations Conference on the Law of the Sea*, U.N. Doc. A/CONF.13/L.15, Annex I (Apr. 26 1960).

⁸² U.N. GAOR, 22d Sess., 155th Comm. mtg. at 1, U.N. Doc. A/C.1/PV.1515 (Nov. 1, 1967).

⁸³ Cohen, *supra* note 32, at 3.

⁸⁴ Treves, *supra* note 63.

⁸⁵ U.N. GAOR, *supra* note 82; U.N. Division for Ocean Affairs and the Law of the Sea, *supra* note 50.

⁸⁶ G.A. Res. 2340 (XXII), U.N. GAOR, 22d Sess., U.N. Doc. A/6951, at 14 (Dec. 18, 1967).

⁸⁷ KLEIN, *supra* note 48, at 19; the Ad Hoc Committee held three sessions during 1968 and presented its findings to the General Assembly at its twenty-third session. Ad Hoc Comm., Rep. of the Ad Hoc Comm. to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of Nat'l Jurisdiction, U.N. Doc. A/7230, at 1 (Dec. 31, 1968).

⁸⁸ G.A. Res. 2467 (XXIII), U.N. GAOR, 23d Sess., Supp. No. 18, 2467 U.N. Doc. A/RES/2467, at 15 (Dec. 21, 1968).

decided by resolution⁸⁹ to convene a third conference on the law of the sea.⁹⁰ This conference's purpose was to develop and implement Pardo's "common heritage" concept to answer the two questions UNCLOS I and II failed to set a definitive answer to.⁹¹

The Third United Nations Conference on the Law of the Sea (UNCLOS III) was convened in New York City in 1973.⁹² Eleven sessions were held over a span of eight years, which featured vigorous debate on all the undecided issues.⁹³ The United Nations Convention on the Law of the Sea was adopted April 30, 1982 in New York City by a vote of 130-4.⁹⁴ On December 10, 1982, the United Nations Convention on the Law of the Sea was opened for signature in Montego Bay, Jamaica.⁹⁵ The Convention entered into force on November 16, 1994.⁹⁶

In contrast to its predecessors, UNCLOS III struck a balance between the powers of states with oceanic interests to exercise jurisdiction and control over shipping.⁹⁷ UNCLOS III granted naval and merchant ships the right of "innocent passage" through territorial seas of a coastal state, a testament to the effectiveness of men like Pardo and Grotius and the lasting belief of the sea as common heritage.⁹⁸ As to the issue of territorial sea, the Convention adopted a twelve nautical mile zone from their coasts as territorial jurisdiction areas.⁹⁹ Coastal states were also given an established "contiguous zone" extending twenty-four nautical miles from its shores, where the area "may be used by a coast guard or its naval equivalent to pursue and, if necessary, arrest and detain suspected drug smugglers, illegal immigrants and customs or tax evaders violating the laws of the coastal State within its territory or the territorial sea."¹⁰⁰

⁸⁹ G.A. Res. 2750 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028, at 25 (Dec. 17, 1970).

⁹⁰ The hope was that the recently created Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond National Jurisdictions would serve as the preparatory body for the conference. *Id.*

⁹¹ KLEIN, *supra* note 48, at 20.

⁹² U.N. Division for Ocean Affairs and the Law of the Sea, *supra* note 50.

⁹³ KLEIN, *supra* note 48, at 20.

⁹⁴ *Id.* at 21

⁹⁵ Treves, *supra* note 75, at 4.

⁹⁶ KLEIN, *supra* note 48, at 22.

⁹⁷ Arctic Council, *supra* note 19, at 51.

⁹⁸ U.N. Division for Ocean Affairs and the Law of the Sea, *supra* note 50.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

A unique result to come out of the Convention on the Law of UNCLOS was the creation of the exclusive economic zone (EEZ). The EEZ serves as a more defined and expanded version of the “cannon shot rule,” giving a coastal state exclusive rights to explore, exploit, and manage the natural resources of its applicable territory as it sees fit.¹⁰¹ Specifically, the EEZ recognizes the right of coastal states to exploit, develop, manage, and conserve all resources found in the water, seabed, and seabed subsoil in an area extending two hundred nautical miles from its shore. This effectively solves the riddle of who owned the rights to the known fisheries in the seas.¹⁰² More importantly, the EEZ created by UNCLOS gives a coastal state the exclusive control of the “seabed and its subsoil,” giving the coastal state the natural resources its EEZ extends over both above and below the sea floor.¹⁰³ In turn, the creation and recognition of a coastal state’s EEZ makes the EEZ the predominant deciding factor on which Arctic state should be able to control the vast untapped resources of the region.¹⁰⁴

UNCLOS also sought to create the means to determine coastal states’ rights for continental shelves extending from the state’s physical land mass.¹⁰⁵ A continental shelf is the extension of a continent that lies under the ocean, which extends from the coastline of a continent to a drop-off point.¹⁰⁶ The actual boundary of a continent is not its physical coastline, but the edge of its continental shelf.¹⁰⁷ Traditionally, the waters above continental shelves are shallow, averaging two hundred feet, which allows the sunlight to reach the ocean floor to produce a very diverse and strong oceanic ecosystem.¹⁰⁸ States recognized the need to claim oceanic resources before UNCLOS. In 1945, President Harry S. Truman issued “Proclamation 2667” declaring that the natural resources

¹⁰¹ UNCLOS, *supra* note 14, at art. 56.1(a).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ As a result of the EEZ, almost nine-tenths of known sea resources have fallen under national jurisdictions. G.A. Res. 1105 (XI), *supra* note 73. The EEZ gives the coastal state the rights provided in the Convention for the establishment of artificial islands and installations, marine scientific research, and the protection and preservation of the marine environment within the two hundred nautical mile area. UNCLOS, *supra* note 14, art. 56. In full, a coastal state’s EEZ is effectively as much a part of its territory as its physical land-mass with all the rights and controls of the country extended to the sea.

¹⁰⁵ UNCLOS, *supra* note 14, at art. 76.

¹⁰⁶ *Continental Shelves*, NAT’L GEOGRAPHIC, <http://education.nationalgeographic.com/encyclopedia/continental-shelf/>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

of the subsoil and seabed of the continental shelf in the contiguous zone (twelve nautical miles) of the United States as belonging to the United States.¹⁰⁹ Subsequently, in 1953, the United States Congress enacted legislation addressing the federal and state control of the continental shelf.¹¹⁰

UNCLOS set new rules, holding the two hundred mile EEZ limit as the boundary of the continental shelf for seabed and subsoil exploitation.¹¹¹ Exceptions can be made, however, for nations that can prove their continental shelf extends beyond the two hundred mile limit.¹¹² The U.N. did not realize this potential exception would open the door to proposed land grabs of enormous quantities. Furthermore, the United States remains the only industrialized nation that has not signed UNCLOS, making recognition of any territorial claims made after the Convention's implementation difficult.¹¹³

II. ANALYSIS

A. UNCLOS FRAMEWORK FOR TERRITORIAL CLAIMS

Under various sections of the UNCLOS,¹¹⁴ coastal states are required to deposit charts showing straight baselines, archipelagic baselines, outer limits of the territorial sea, the exclusive economic zone, and continental shelves with the UN Secretary-General.¹¹⁵ These charts and information along with all other pertinent information relating to claims of a continental shelf extending beyond two hundred nautical miles, must be given "due publicity."¹¹⁶

¹⁰⁹ Proclamation No. 2667, 10 FED. REG. 12305 (Sept. 28 1945).

¹¹⁰ NOAA: OFFICE OF THE COAST SURVEY, *supra* note 46.

¹¹¹ UNCLOS, *supra* note 14, at art. 76.

¹¹² U.N. Division for Ocean Affairs and the Law of the Sea, *supra* note 50.

¹¹³ See Steven Groves, *Why Reagan Would Still Reject the Law of the Sea Treaty*, HERITAGE FOUND. (OCT. 24, 2007), <http://www.heritage.org/research/reports/2007/10/why-reagan-would-still-reject-the-law-of-the-sea-treaty>; see also Christopher Mirasola, *Why the US Should Ratify UNCLOS: A View from the South and East China Seas*, HARV. L. SCH. NAT'L SECURITY J. (Mar. 15, 2015, 5:53 PM), <http://harvardnsj.org/2015/03/why-the-us-should-ratify-unclos-a-view-from-the-south-and-east-china-seas/>. The United States has not signed UNCLOS because it gives a foreign governing body too much control over the US's EEZ claims. *Id.*

¹¹⁴ UNCLOS, *supra* note 14, art. 16, para. 2; UNCLOS, *supra* note 14, art. 47, para. 9; UNCLOS, *supra* note 14, art. 75, para. 2; UNCLOS, *supra* note 14, art. 84, para. 2.

¹¹⁵ U.N. Secretary-General, *Oceans and the Law of the Sea*, U.N. Doc. A/57/57 (Mar. 7, 2002).

¹¹⁶ UNCLOS, *supra* note 14, art. 16, para. 2.

The decision making body for all claims for territory under UNCLOS is the Commission on the Limits of the Continental Shelf (CLCS or the “Commission”).¹¹⁷ This commission was elected following the enactment of UNCLOS.¹¹⁸ The Commission enforces provisions on the establishment of the outer limits of the continental shelf beyond two hundred nautical miles from the coast.¹¹⁹ The ruling of the Commission on the Limits of the Continental Shelf in regards to the Russian Federation’s claim is final and binding.¹²⁰ The Secretary-General then gives due publicity to the Commission’s decided limits.¹²¹ The Commission, under UNCLOS, is charged with the duty to examine the submission and make recommendations to the coastal state.¹²² The Commission is also required to provide scientific and technical advice, if requested by the coastal state concerned during the preparation of that submission.¹²³

B. THE FIRST RUSSIAN CLAIM UNDER UNCLOS

On December 20, 2001, the Russian Federation delivered a proposal to the U.N. to extend the outer limits of its continental shelf.¹²⁴ The submission was made pursuant to article 76, paragraph 8 of the UNCLOS.¹²⁵ In addition, the Russian Federation circulated a note verbale to all Member States of the U.N. under Rule 49 of the Rules of Procedure of the Commission on the Limits of the Continental Shelf.¹²⁶ The note verbale contained the information on the outer limits of the Russian continental shelf in the Arctic, including geographical coordinates of points defining the proposed outer limits, and illustrative maps.¹²⁷ The

¹¹⁷ *Id.*; UNCLOS, *supra* note 19, at 143.

¹¹⁸ UNCLOS, *supra* note 19, at 30.

¹¹⁹ UNCLOS, *supra* note 19, at Annex II, art. 3.

¹²⁰ UNCLOS, *supra* note 14, at art 76.

¹²¹ U.N. Secretary-General, *supra* note 115.

¹²² UNCLOS, *supra* note 19, at Annex II, art. 3.

¹²³ *Id.*

¹²⁴ U.N. Comm. on the Limits of the Continental Shelf, *supra* note 37.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

CLCS took the Russian Federation's claim into consideration during its tenth session on March 25 to April 12, 2002, in New York.¹²⁸

In accordance with article 5 of annex II of UNCLOS,¹²⁹ a subcommission was elected to examine the Russian submission and formulate recommendations.¹³⁰ The seven-member subcommission, made up of members from Brazil, Nigeria, Mexico, Ireland, Germany, New Zealand, and South Korea, took into account specific scientific elements of the Russian Federation's claim.¹³¹ The subcommission quickly realized it was overwhelmed by the complexity and volume of data involved.¹³² While sessions of the Committee usually lasted one to two weeks, the consideration for the Russian claim lasted three weeks.¹³³ The Commission in its eleventh session continued to consider the Russian claim.¹³⁴ Although the rules of the Commission state that all submissions, deliberations, and rulings made in accordance with these claims must be held in private,¹³⁵ the Commission publicly told the Russian Federation to submit clearer data to substantiate its claim, effectively denying and ending their 2001 claim to extend their recognized continental shelf.¹³⁶

C. RUSSIAN TERRITORIAL CLAIMS IN WAKE OF DENIAL

In response to the denial, the Russian Federation wrote a letter to the Chairman of the Commission asking for a more detailed explanation of the Commission's ruling.¹³⁷ The Russian government hoped that the explanation of the Commission would help it guide its research and future plans.¹³⁸ The Russian Federation's request brought up a valid point. Because it was the first country to bring a claim to extend its continental shelf to a length that was recognized past the two hundred

¹²⁸ Comm. on the Limits of the Continental Shelf, Statement by the Chairman of the Commission of the Limits of the Continental Shelf on the progress of work in the Commission, U.N. Doc. GEN/N02/327/68 (2014).

¹²⁹ UNCLOS, *supra* note 19, at Annex II.

¹³⁰ U.N. Secretary-General, *supra* note 115, para. 30.

¹³¹ U.N. Secretary-General, *supra* note 115, para. 30; for guiding criteria on the claim, see Comm. on the Limits of the Continental Shelf, Scientific And Technical Guidelines of the Commission On The Limits Of The Continental Shelf, U.N. Doc. CLCS/11 (1999).

¹³² U.N. Secretary-General, *supra* note 115, at 16.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at ¶38–43.

¹³⁷ U.N. GAOR, 58th Sess., Supp. No. 49, U.N. Doc. A/58/65/Add.1, at 16 (Aug. 29, 2003).

¹³⁸ *Id.*

nautical mile limit, it was essentially a testing ground for UNCLOS. The subcommission assigned to the Russian claim had to ask the Russian Federation to clarify several issues that came up during their delegations.¹³⁹ There is also a distinct problem with making the delegations and recommendations of the subcommission private. By doing so, outside observers of the process with interests in the outcome of the case are left in the dark. Furthermore, leaving members who have a direct interest in the outcome of the ruling—in this case, the Russian Federation and the competing nations with Arctic claims—with a limited role in the decision-making results in a lack of international dialogue that is necessary for a legitimate, enforceable outcome.

Not deterred by an adverse outcome, the Russian Federation took steps to make a second claim.¹⁴⁰ While performing the necessary research for their revised claim under UNCLOS, the Russian Federation began to expand its Arctic military presence to a level not seen since the Cold War.¹⁴¹ In December 2015, Russia finished equipping six new military bases in the Arctic, located at Nagurskoye, Rogachevo, Sredny Ostrov, Temp, Mys Shmidta, and Zyvozny.¹⁴² The placement of the air bases constructed on Nagurskoye, Sredny Ostrov, Temp, and Zyvozny encompass a semi-circle around the area of the Federation's revised claim under UNCLOS.¹⁴³ Adding on to the military presence situated around the Arctic Circle, the Russian Federation also revitalized an old military installment on Alexandra Island¹⁴⁴ and built a new installment on Kotelny Island.¹⁴⁵ The Russian Federation Defense Minister Sergey

¹³⁹ Comm. on the Limits of the Continental Shelf, U.N. Doc. CLCS/32, at para. 30–31 (2002).

¹⁴⁰ Tom Parfitt, *Miles below the North Pole, Russian mini-sub lay claim to Arctic wealth*, GUARDIAN (Aug. 3, 2007, 1:48), <https://www.theguardian.com/world/2007/aug/03/russia.oil>.

¹⁴¹ Jeremy Bender, *Russia just put the finishing touches on 6 Arctic military bases*, BUS. INSIDER (Dec. 7, 2015, 4:15 PM), <http://www.businessinsider.com/russia-equipped-six-military-bases-in-the-arctic-2015-12>.

¹⁴² *Id.*

¹⁴³ Compare Durham University Centre for Borders Research, *Maritime Jurisdiction and Boundaries in the Arctic Region*, DURHAM UNIV. (Aug. 4, 2015), <https://www.dur.ac.uk/resources/ibru/resources/Arcticmap04-08-15.pdf> with Ministry of Natural Resources and Environment of the Russian Federation et. al, *Partial Revised Submission Of The Russian Federation To The Commission On The Limits Of The Continental Shelf In Respect of The Continental Shelf Of The Russian Federation In The Arctic Ocean*, UNITED NATIONS (2015), http://www.un.org/depts/los/clcs_new/submissions_files/rus01_rev15/2015_08_03_Exec_Summary_English.pdf.

¹⁴⁴ *Russia in the Arctic: A Different Kind of Military Presence*, STRATFOR (Nov. 11, 2015, 9:58 GMT) <https://www.stratfor.com/analysis/russia-arctic-different-kind-military-presence>.

¹⁴⁵ *Russia nearly done building its biggest Arctic military base*, RT (Oct. 22, 2015, 14:45), <https://www.rt.com/news/319394-arctic-military-base-islands/>.

Shoigu has stated publicly that Russian troops will be deployed in the Arctic by 2018.¹⁴⁶ Other sources have claimed that the Russian Federation is moving military service members to the bases starting in 2016.¹⁴⁷

In full, the Russian Federation's plan for the militarization of the Arctic involves opening "Arctic search-and-rescue stations, 16 deep-water ports, 13 airfields, and 10 air-defense radar stations across its Arctic periphery."¹⁴⁸ The Russian Federation's increased activity has triggered warning alarms for many of its neighbors. In a speech in Montreal, former US Secretary of State Hillary Clinton urged a united front by Canada and the United States against Russian Federation President Vladimir Putin and his country's aggressive Arctic strategy.¹⁴⁹ To counter the Russian military build-up, Norway announced plans to modernize and expand its forces just two weeks after the Russian Northern Fleet wrapped up a massive wargames exercise in the Arctic featuring close to fifty warships.¹⁵⁰ The United States also cancelled a scheduled joint naval exercise in the region with the Russian Federation in early 2014 in the wake of the Russian Arctic expansion.¹⁵¹ There is a real fear that the Russian Federation is pursuing a "no access" policy in their region of the Arctic, pursuing a long-term massive operation of fortification in its Arctic region rather than acts of short-term aggression.¹⁵²

D. THE SECOND RUSSIAN CLAIM

On August 3, 2015, the Russian Federation submitted its revised claim to the CLCS, proposing a recognized continental shelf of the original request from 2001 encompassing essentially the same 386,000

¹⁴⁶ *Id.*

¹⁴⁷ Bender, *supra* note 141.

¹⁴⁸ *Id.*

¹⁴⁹ Ingrid Peritz, *Hillary Clinton warns Montreal crowd of Russia's increased activity in the Arctic*, GLOBE & MAIL (Mar. 18, 2014, 10:22 PM), <http://www.theglobeandmail.com/news/politics/clinton-warns-montreal-crowd-of-russias-increased-activity-in-arctic/article17560676/>.

¹⁵⁰ Jennifer Peters, *Russia Isn't Trying to Start a War in the Arctic — It's Just Keeping Out the Riffraff*, VICE NEWS (Oct. 2, 2015, 1:40PM), <https://news.vice.com/article/russia-isnt-trying-to-start-a-war-in-the-arctic-its-just-keeping-out-the-riffraff>.

¹⁵¹ Uri Friedman, *The Arctic: Where the U.S. and Russia Could Square Off Next*, ATLANTIC (Mar. 28, 2014), <http://www.theatlantic.com/international/archive/2014/03/the-arctic-where-the-us-and-russia-could-square-off-next/359543/>.

¹⁵² *Id.*

nautical miles, with an additional claim of 30,000 nautical miles.¹⁵³ During the period between their rejected 2001 claim and their revised 2015 claim, a group of explorers, logistically spearheaded by the famed Russian explorer Dr. Artur Chilingarov, dove two small submersibles, *Mir I* and *Mir II*, to the bottom of the Arctic seafloor at the North Pole.¹⁵⁴ When one of the submersibles landed on the seafloor of the North Pole it planted a titanium Russian flag staking the Russian Federation's claim to the oil and gas reserves of the Arctic.¹⁵⁵ The flag planting drew ire from competing countries in the Arctic, with the United States claiming the move was legally meaningless whether Russia planted "a metal flag, a rubber flag, or a bed sheet."¹⁵⁶ The submarines also collected geological, biological, and hydrological samples of the sea floor.¹⁵⁷ These samples, taken from the Lomonosov ridge—a 1,240-mile underwater mountain range that crosses the Arctic¹⁵⁸—were part of the evidence that the Russian Federation cited in its renewed Arctic claim which the Russian Federation and Canada both assert are part of their territories.¹⁵⁹

The paper accompanying the renewed claim of the Russian Federation noted and expanded upon the recommendations of the CLCS that its previous claim lacked scientific merit to be approved.¹⁶⁰ Among the activities the Russian Federation conducted to further its research were deep seismic sounding, multichannel seismic data bathymetry surveys, and 120 stations dedicated to geological samples.¹⁶¹ The Russian Federation claimed that the evidence it collected showed "Lomonosov Ridge, the Mendeleev Rise, the Chukchi Rise and separating them the Podvodnikov Basin and the Chukchi Basin form a single consolidated

¹⁵³ Durham University Centre for Borders Research, *supra* note 143, at 2; Phillip Steinberg, *Mapping international claims to the Arctic seabed*, PHYS.ORG (Aug. 14, 2015), <http://phys.org/news/2015-08-international-arctic-seabed.html>.

¹⁵⁴ Mike McDowell & Peter Batson, *Last of the Firsts: Diving to the Real North Pole*, EXPLORERS CLUB, 2 (2007), https://explorers.org/flag_reports/Mike_McDowell_Flag_42_Report.pdf; *Russia plants flag on North Pole Seabed*, GUARDIAN (Aug. 2, 2007, 13:01 EDT), <http://www.theguardian.com/world/2007/aug/02/russia.arctic>.

¹⁵⁵ *Russia plants flag on North Pole Seabed*, *supra* note 154.

¹⁵⁶ Associated Press, *Russia defends North Pole flag-planting*, USA Today (Aug. 8, 2007), http://usatoday30.usatoday.com/tech/science/2007-08-08-russia-arctic-flag_N.htm.

¹⁵⁷ *Id.*

¹⁵⁸ *Russian research vessel begins Arctic shelf research*, SPUTNIK (Dec. 7, 2011, 8:01 AM), <http://sputniknews.com/russia/20110712/165157148.html>.

¹⁵⁹ *Id.*

¹⁶⁰ Ministry of Natural Resources and Environment of the Russian Federation et. al, *supra* note 143, at 5.

¹⁶¹ *Id.* at 12.

block of continental crust,” which under UNCLOS, entitled the Russian Federation to a massive swath of the Arctic.¹⁶² There are alternative claims to the Losmonov Ridge: Denmark has claimed the Russian-claimed Losmonov Ridge is actually part of Greenland,¹⁶³ which is an autonomous Danish dependent territory.¹⁶⁴ If the Danish claim is recognized it would substantially cut into the Russian Federation’s sphere of influence established by its military presence and extending from its Arctic coastline.¹⁶⁵

During his Arctic expedition, Dr. Chilingarov told Russian TV, “[t]he Arctic is ours and we should demonstrate our presence.”¹⁶⁶ Chilingarov’s sentiment was exemplified when the Russian flag was planted on the seabed of the North Pole. Furthermore, while the Russian Federation’s first claim to CLCS was rejected, it may have ended up winning the territory on its own accord. After the initial rejection of its 2001 claim, the Russian Federation took steps to control the area with military positions and strength.¹⁶⁷ Putin has openly called for a further strengthening of the Russian presence in the Arctic.¹⁶⁸ The Russian Federation’s actions in the Arctic have become increasingly aggressive. The recent openings of the Russian Federation’s Arctic military bases form along the bottom line of the Russian Arctic mainland, which coincidentally lines the area of receding Arctic ice¹⁶⁹ and Russia’s most recent Arctic claim.¹⁷⁰ Furthermore, as the Arctic presence of the Russian

¹⁶² *Id.* at 13.

¹⁶³ *Russia Just Laid Claim to a Vast Chunk of the Arctic*, VICE NEWS (Aug. 4, 2015, 12:10 PM), <https://news.vice.com/article/russia-just-laid-claim-to-a-vast-chunk-of-the-arctic>.

¹⁶⁴ *Greenland Profile — Overview*, BBC NEWS (Feb. 19, 2015), <http://www.bbc.com/news/world-europe-18249474>.

¹⁶⁵ See Krishnadev Calamur, *Denmark Claims Part of the Arctic, Including the North Pole*, NPR (Dec. 15, 2014, 1:39 PM ET), <http://www.npr.org/sections/thetwo-way/2014/12/15/370980109/denmark-claims-part-of-the-arctic-including-the-north-pole>.

¹⁶⁶ *Russians to dive below North Pole*, BBC NEWS (July 24, 2007, 6:02 GMT), <http://news.bbc.co.uk/2/hi/europe/6914178.stm>.

¹⁶⁷ See Jeremy Bender, *This map shows the massive scale of Russia’s planned fortification of the Arctic*, BUS. INSIDER (Mar. 17, 2015, 12:31 PM), <http://www.businessinsider.com/chart-of-russias-fortification-of-the-arctic-2015-3>.

¹⁶⁸ See *For Yourself: How Arctic Ice Is Disappearing*, NAT’L GEOGRAPHIC (Jan. 2016), <http://ngm.nationalgeographic.com/2016/01/arctic-ice-shrinking-graphic-environment-text>.

¹⁶⁹ See also Jonathan Amos, *Arctic Ocean shipping routes ‘to open for months*, BBC (Sep. 6, 2016), <http://www.bbc.com/news/science-environment-37286750>.

¹⁷⁰ Bender, *supra* note 141; 2015 *Index of U.S. Military Strength: Europe*, HERITAGE FOUND., <http://index.heritage.org/military/2015/chapter/threats/europe/>; 2016 *Index of U.S. Military Strength: Europe*, HERITAGE FOUND., <http://index.heritage.org/military/2016/assessments/threats/europe/>.

Federation expands, its neighbors grow weary of the military sophistication of the Russian forces in the region.¹⁷¹

These aggressive actions parallel the UK Defence Committee's findings of the Russian Federation's mindset on the global stage. In the 2015 report, the Defence Committee noted:

There is a sense within Russia of ill-treatment by the West following the demise of the Soviet Union. This perceived lack of respect by the West has led Russia to the conclusion that, if it cannot compete within the political arena, it must 'fight for its interests by whatever means available,' including a primary focus on the military sphere.¹⁷²

Furthermore, Dr. Bobo Lo, an associate fellow with the Russia and Eurasia Programme at Chatham House (UK), told the Defence Committee at a meeting leading up to the report that Putin and many in the Russian political elite take a very Hobbesian view of the world:

the world is a harsh place, the strong prosper, the weak get crushed. In this ultra-competitive world, geopolitical influence and military might are the primary virtues; great powers run the show, and smaller nations do as they are told—they are objects, rather than independent players.¹⁷³

The assessments of the Defence Committee and Dr. Lo align with the recent actions of Putin and the Russian Federation. When protesters ousted pro-Russian Ukrainian President Viktor Yanukovich due to his rejection of an agreement with the European Union in February 2014, the Russian Federation took military action, annexing territory to protect its interests.¹⁷⁴ Specifically, the territory of Crimea is inhabited by a Russian-ethnic majority and has deep historical ties to the Russian Federation; it also houses the Russian Black Sea fleet, making it a strategic area of utmost importance.¹⁷⁵ Rather than risk Russian

¹⁷¹ Paul Sonne, *Russia's Military Sophistication in the Arctic Sends Echoes of the Cold War*, WALL ST. J. (Oct. 4, 2016, 7:45 ET), <http://www.wsj.com/articles/russia-upgrades-military-prowess-in-arctic-1475624748>.

¹⁷² House of Commons Defense Committee, *Russia: Implications for UK Defense and Security* (2016-17), HC 197, 9 (UK).

¹⁷³ House of Commons Defense Committee, *Oral Evidence Russia: Implications for UK Defense and Security* (2016-17), HC 763, (UK).

¹⁷⁴ *Ukraine crisis: What's going on in Crimea?*, BBC (Aug. 12, 2016), <http://www.bbc.com/news/world-europe-25182823>; Andrew Higgins & Andrew E. Kraemer, *Ukraine Leader Was Defeated Even Before He Was Ousted*, N.Y. TIMES (Jan. 3, 2015), <http://nyti.ms/1Bu5EM0>.

¹⁷⁵ Matt Smith & Alla Eshchenko, *Ukraine cries 'robbery' as Russia Annexes Crimea*, CNN (Mar. 18, 2014), <http://www.cnn.com/2014/03/18/world/europe/ukraine-crisis/>.

interests in Crimea, “little green men,” who appeared to be unmarked Russian forces, took control of the region shortly after Yanukovych’s ouster.¹⁷⁶ The tactics used in Crimea—the Russian Federation’s use of force to ensure territorial interests¹⁷⁷—fall in line with the militarization of the Arctic, another area that the Russian Federation has stated interest.¹⁷⁸ When the Russian Federation feels those interests threatened, it has shown the propensity to use military force to secure them.

Recognition of territorial holdings by the U.N. is a mere formality, realistically the Russian Federation’s military presence is strategically positioned around the country’s section of the Northern Sea Route.¹⁷⁹ While UNCLOS was aimed to foster international cooperation in deciding the territorial limits of coastal states, in the case of the Russian Federation, the uncertainty with the claims process may have expedited the Russian commitment to fortifying the Arctic. Regardless of what the CLCS rules, states following a Darwinistic approach around the Arctic will find it difficult to abide by any ruling made by CLCS. Simply, states like the Russian Federation can stake their claim with a strong military presence rather than recognition under international law. If the Russian Federation conflicts with the Arctic claims of other nations, it is uncertain what will occur. The only certainty is that the Russian Federation has boots on the ground and is aiming to deploy a combined armed force in the Arctic by 2020,¹⁸⁰ effectively militarizing the region before any international recognition by CLCS under UNCLOS can occur.

¹⁷⁶ Vitaly Shevchenko, “Little green men” or “Russian invaders”?, BBC (Mar. 11, 2014), <http://www.bbc.com/news/world-europe-26532154>; *Putin reveals secrets of Russia’s Crimea takeover plot*, BBC (Mar. 9, 2015), <http://www.bbc.com/news/world-europe-31796226>.

¹⁷⁷ Kathy Lally, Will Englund & William Booth, *Russian parliament approves use of troops in Ukraine*, WASHINGTON POST (Mar. 1, 2014), https://www.washingtonpost.com/world/europe/russian-parliament-approves-use-of-troops-in-crimea/2014/03/01/d1775f70-a151-11e3-a050-dc3322a94fa7_story.html?utm_term=.3090ff46e740; Office of the Prosecutor, *Report on Preliminary Examination Activities*, ICC 1, 35, https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

¹⁷⁸ Putin told a youth camp outside Moscow “[o]ur interests are concentrated in the Arctic. And of course we should pay more attention to issues of development of the Arctic and the strengthening of our position (there).” Alexei Anishchuk, *Putin says Russia must strengthen its economic, military position in Arctic*, REUTERS (Aug. 29, 2014, 12:11 pm BST), <http://www.reuters.com/article/russia-putin-arctic-idINL5N0QZ2UL20140829>.

¹⁷⁹ Compare U.N. Secretary-General, *supra* note 115, at 16 with *What are the Northwest and Northeast Passages?*, DISCOVERINGTHEARCTIC.ORG, http://www.discoveringthearctic.org.uk/1_northwest_northeast_passages.html.

¹⁸⁰ 2015 Index of Military Strength, *supra* note 170.

III. CONCLUSION

A major problem facing UNCLOS is the lack of an enforcement mechanism to prevent actions such as the Russian Federation's Arctic expansionism.¹⁸¹ While UNCLOS does serve as a strong framework for nations to assert borders under international guidelines, ultimately the best measures of countries coming to agreement on Arctic borders lies within negotiating with themselves, as demonstrated by the Illulissat Declaration.¹⁸² Diplomacy may be in vain, however, as the Russian Federation now has the upper hand in controlling the largest region of the Arctic.¹⁸³ While the thawing and melting of the Arctic ice is gradual, and new and permanent shipping lanes will not be open for an undetermined amount of time, the Russian Federation has effectively fortified any potentially new opening shipping lanes in the area.¹⁸⁴

Even if the CLCS rebuffs the Russian Federation's claim, it is moot point. International legal treaties are only effective as long as nations actually follow them. Therefore, UNCLOS is in itself a powerful tool for lending a framework to territorial waters disputes, but falls short as an effective mechanism of enforcing any rulings. Regardless of the intentions of the Russian Federation in the Arctic, the question remains "how much is too much" for a nation to claim in a region of the world shared by several coastal states. UNCLOS's continental shelf provision allows for countries to claim territories that are incredibly expansive and perhaps, in a way, unrealistic in a global economy where, more than ever, neighboring nations need the right of travel, trade, and predictability of oceanic commerce.

The science and research behind continental shelves is still developing and the Arctic is perhaps the last truly pristine part of the planet. In a perfect world, all countries would agree that the Arctic, like Pardo claimed about the oceans, is the "common heritage" of humanity

¹⁸¹ See Eric Posner, *The New Race for the Arctic*, WALL ST. J. (Aug. 3, 2007, 12:01 AM ET), <http://www.wsj.com/articles/SB118610915886687045>.

¹⁸² The Illulissat Declaration involved Russia, Norway, Canada, Denmark and the United States, where the five nations agreed to commit to civil settlement of any disputed Arctic borders using UNCLOS as legal framework and through "bilateral and multilateral" agreements. See The Illulissat Declaration, Can.-Den.-Nor.-Russ.-U.S., May 28, 2008, http://www.oceanlaw.org/downloads/arctic/Illulissat_Declaration.pdf.

¹⁸³ Laura Neilson Bonikowsky, *The Arctic, country by country*, DIPLOMAT & INT'L CANADA (Oct. 4, 2012), <http://diplomatonline.com/mag/2012/10/the-arctic-country-by-country/>.

¹⁸⁴ 2015 Index of Military Strength, *supra* note 170.

and thus should be treated uniquely.¹⁸⁵ That is unrealistic. Instead, the Arctic nations must pursue a renewed commitment to working with each other through treaties and informal agreements, balancing the cultural importance of the Arctic to the various nations with the economic realities of countries vying for the untapped resource potential of the region. Nations interested in the Arctic and its resources should declare a moratorium on expansive claims under UNCLOS and, instead, stay at their current internationally recognized territorial holdings. Furthermore, the United States and the Russian Federation, as the two leading superpowers in the Arctic, must find some grounds for cooperation to ensure that the region can remain peaceful and open to all while the science needed to validate territorial claims develops.

¹⁸⁵ UNCLOS, *supra* note 81.