

# Short Review of the Work of the CMI/IWG (Arctic & Antarctic) & Overview of UNCLOS in the Arctic

**Aldo Chircop**

Chair, CMI/IWG (Polar Shipping)

Schulich School of Law

Dalhousie University, Halifax, NS, Canada

# Outline

1. The CMI IWG (Polar Shipping)
  - a) History
  - b) Members
  - c) Chronology & tasks
2. UNCLOS Legal Regime in the Arctic
  - a) Application in the Arctic
  - b) Maritime zones
  - c) International navigation



# History

- Establishment of initial Ad Hoc WG (Arctic & Antarctic) in 2011:
  - To identify legal issues concerning the Arctic Ocean and Southern Ocean.
  - Focus on uncontroversial subjects.
  - To consider how the CMI can best contribute to issues in polar regions.
- Converted into an IWG and expanded in 2012 (Beijing).
- Name change to IWG on Polar Shipping in 2014 (Hamburg).
- Mode of work:
  - Mostly email & occasional meetings.
  - Sub-groups on specific issues (load lines, civil liability, COLREGs, polarworthiness, review of private maritime law conventions).
- Page on CMI website:  
<<http://www.comitemaritime.org/Arctic-and-Antarctic-Issues/0,2793,19332,00.html>>

# IWG (Arctic & Antarctic) composition

Frida ARMAS PFIRTER, member

David BAKER, member

Aldo CHIRCOP , *Chair*

Peter CULLEN, member

Nigel FRAWLEY, advisor

Tore HENRIKSEN, member

Kiran KHOSLA, member

Bert RAY, member

Nicolò REGGIO, member

Henrik RINGBOM, member

Lars ROSENBERG OVERBY, member

Donald ROTHWELL, member

Alexander SKARIDOV, member

David (Duke), SNIDER, technical advisor

# Chronology & tasks to date

- 2011: Establishment of initial WG:
  - WG meeting in Fairbanks, Alaska:
    - To identify matters for further study by the CMI.
    - Focus: COLREGS; LLC; STCW; SAR & Nuuk Declaration; AC/EPPR; MARPOL.
- 2012 (CMI Beijing):
  - IWG meeting.
  - Beijing papers:
    - Regulatory Challenges for International Arctic Regulation of Navigation.
    - Legal Challenges of Maritime Operations in the Southern Ocean.
  - Other papers:
    - International Regulation of Offshore Oil Business in the Arctic.
    - Comparison of Legal Regimes in the Arctic & Antarctic.
    - Legal Regime of Antarctica.

# Chronology & tasks continued ...

- 2013:
  - Sub-group meeting in Tromsø, Norway.
  - Start of four studies (under way):
    - Inventory of work of international organizations on polar regions.
    - Systematic review of all private international maritime law conventions.
    - Consideration of the pollution civil liability regime for polar regions.
    - Focused studies on selected international public maritime law conventions.
- 2014 (CMI Hamburg):
  - IWG meeting to review state of work:
    - Inventory; LLC; civil liability; COLREGS; “polarworthiness”.
  - Focused presentations/papers:
    - UNCLOS in the Arctic.
    - Civil Liability in Polar Marine Environments.
    - Load Lines when Navigating in Polar Waters.
    - The IMO Polar Code.
    - Northern Sea Route.

## 2. United Nations Convention on the Law of the Sea, 1982

### a) Application in the Arctic

A constitution for the world's oceans, including the Arctic Ocean, with an underlying theme of cooperation.

Significantly increases the coastal State's maritime zones and jurisdictions and the duty to protect and conserve the marine environment.

Produces a delicate balance between coastal State jurisdiction and international navigation rights.

Provides coastal States bordering ice-covered areas with a special marine environmental jurisdiction.

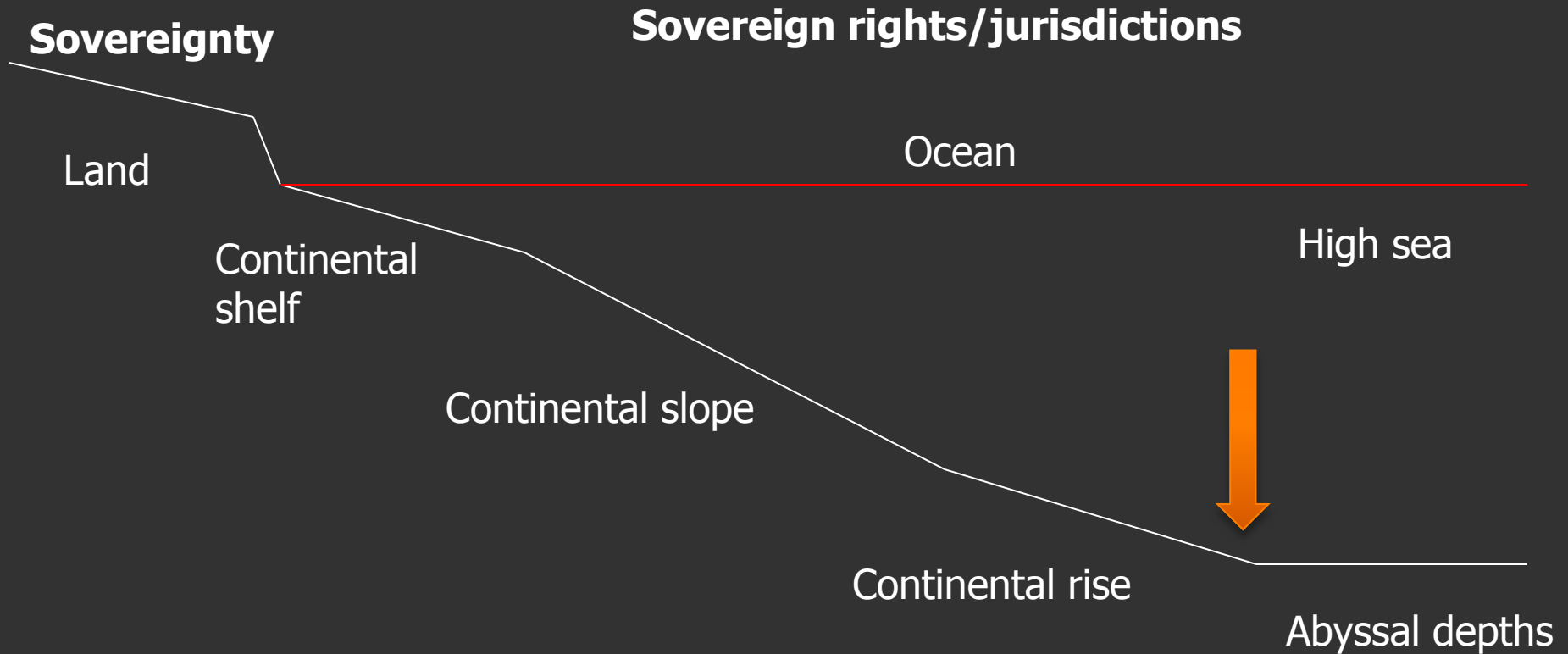


# Coastal State parties and non-parties

- State parties:
  - Canada, Denmark, Norway, Russian Federation
- Consequences:
  - UNCLOS applies
  - Any uncodified customary international law
  - Historic water claims are outside UNCLOS
- Non-party:
  - United States
- Consequence:
  - Customary international law applies (actual content may be at issue)



## b) Maritime Zones



LAND/IW/AW

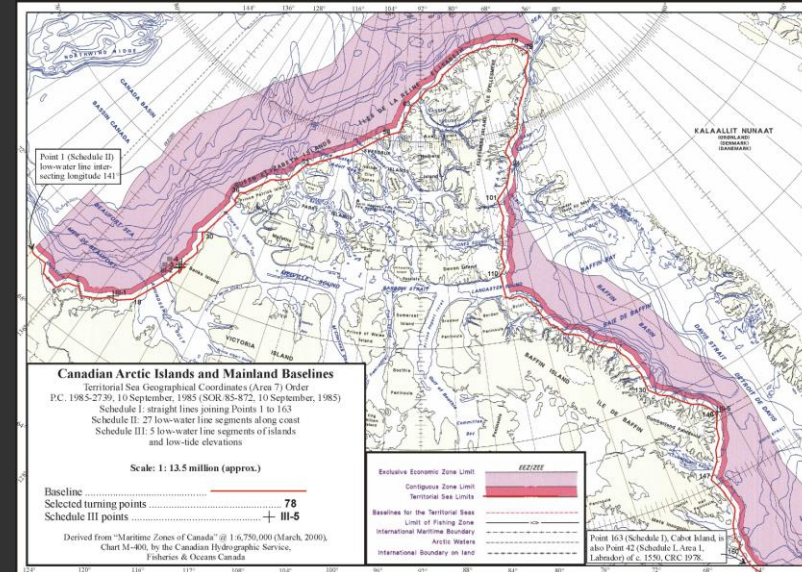
TS/12nm CZ/24nm EEZ/CS/200nm

CS

ECS/350nm or 100nm  
from the 2500m isobath

# Historic water claims

- Claims and counter-claims re legal status of some Arctic waters:
  - Claims to internal/historic waters enclosed by straight baselines (Canada & Russian Federation)
  - Counter claim re straits used for international navigation & application of transit passage: (e.g., US) (but see 1988 Canada-US icebreaker agreement)
  - Consequence: extent of legislative & enforcement jurisdiction of coastal States concerned over international navigation



Downloaded by [Dalhousie University] at 13:12 11 June 2014

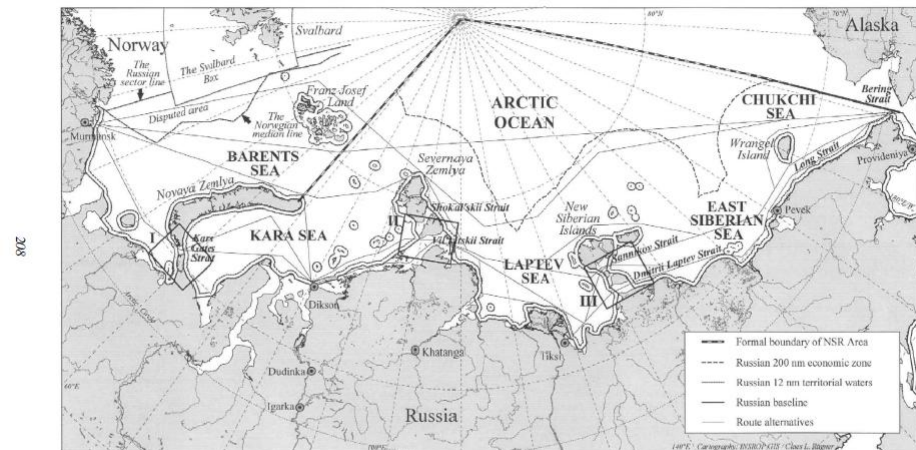
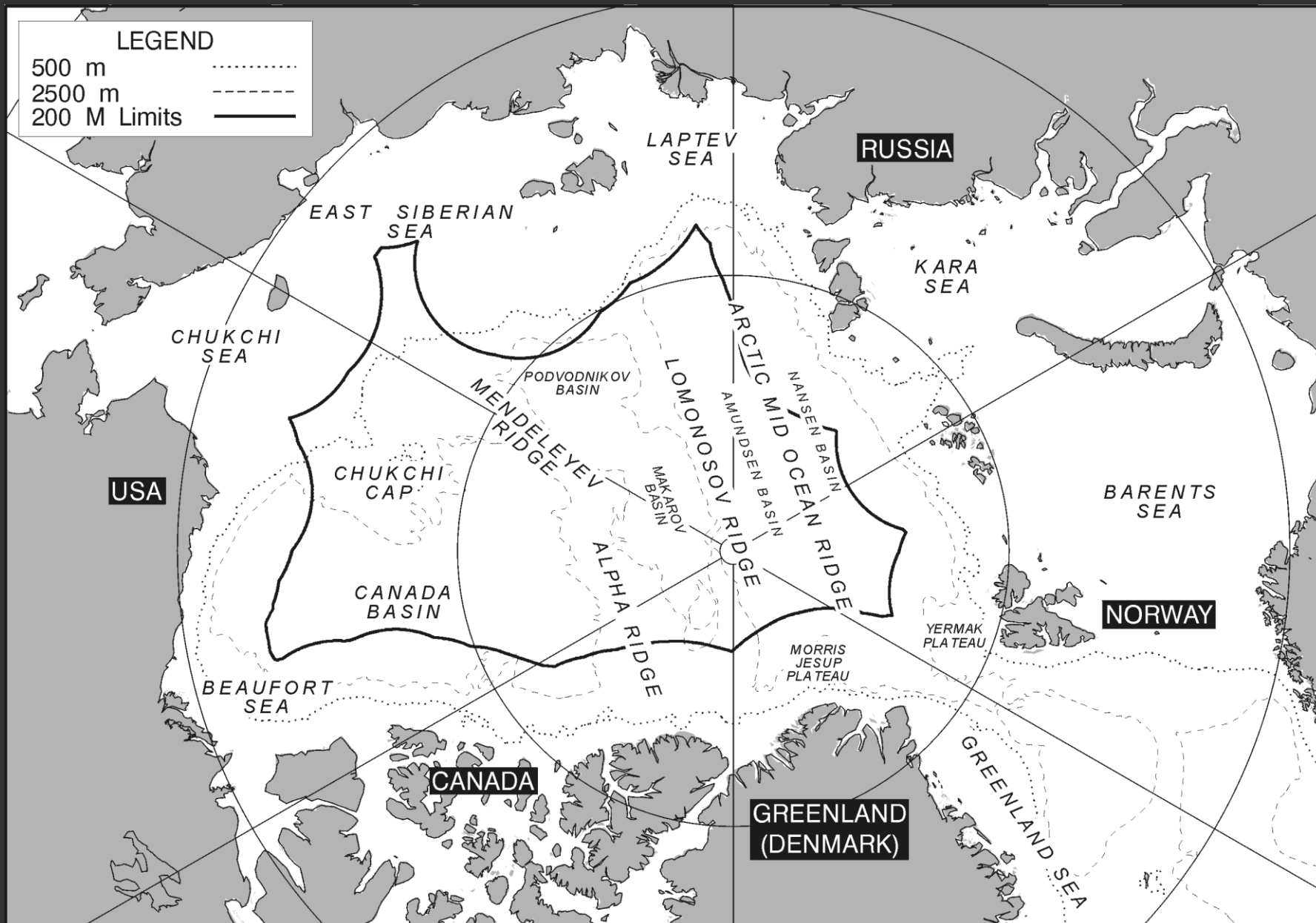


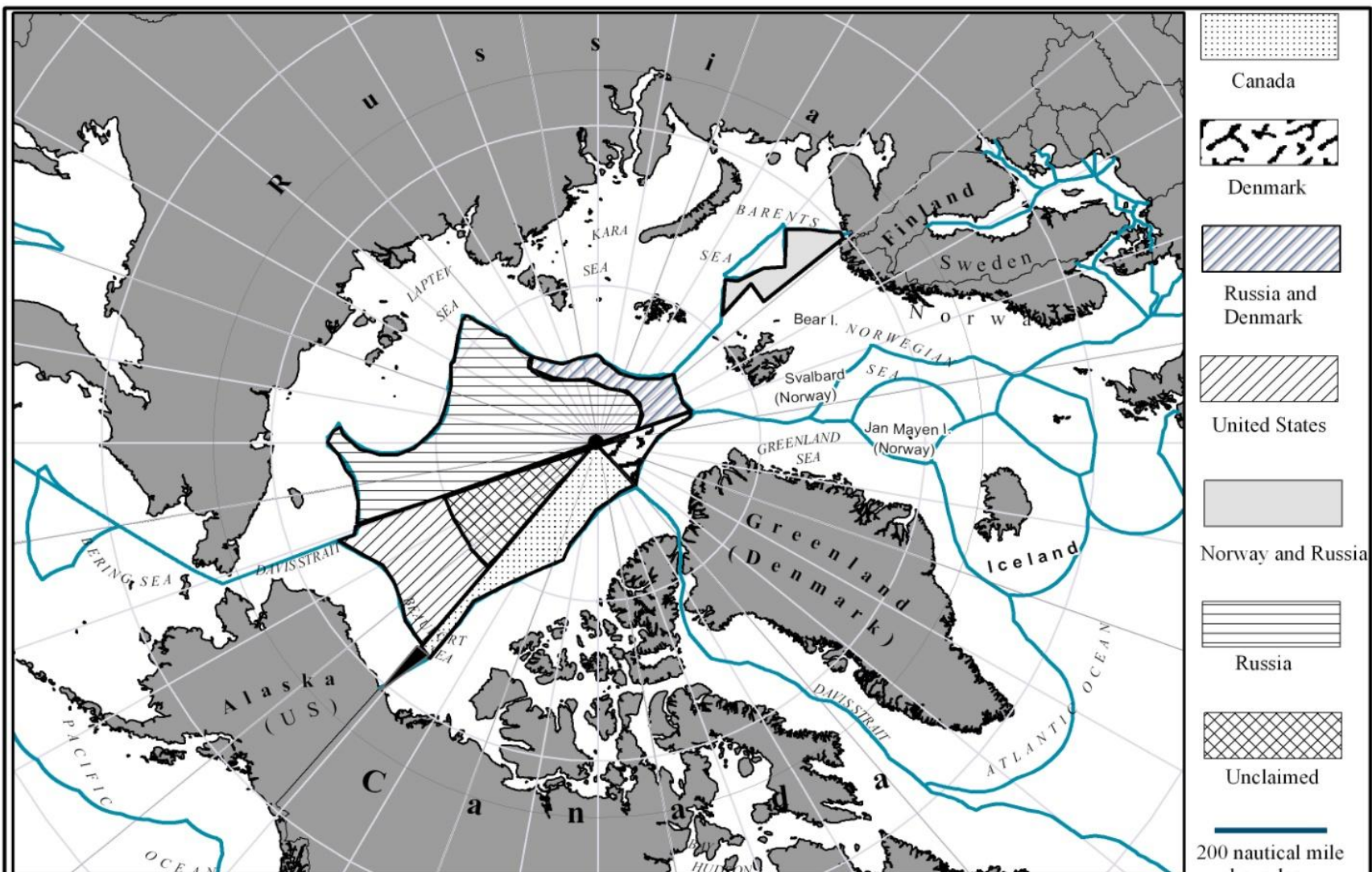
Figure 1. The northern sea route.

Brubaker, 2010

# Arctic continental shelf submissions

- Coastal States may claim extended continental shelves in the Arctic Ocean (UNCLOS, Art. 76).
- They are required to make submissions to the Commission on the Limits of the Continental Shelf in accordance with scientific and technical criteria.
- Status:
  - Norwegian submission completed and recommendations received.
  - Russian Federation first submission in 2001 and expected new submission in fall 2014 or 2015.
  - Denmark's partial submission (south of Greenland) in 2012.
  - Canada was expected to make a submission in 2013, but has postponed.
  - United States, although not a party to UNCLOS, is considering its seabed interests in the region; some uncertainty re procedure.





Maps created by the Dalhousie University GIS Centre, May 23, 2007. All data except for Maritime Boundaries are Copyright of ESRI Ltd. (1998-2008) (VLIZ (2005). Maritime Boundaries Geodatabase.

Available online at <http://www.vliz.be/vmcddata/marbound>. Consulted on 2008-05-22). All other rights are the property of the authors. No names, boundaries or other features define legal entities and are representative only.

## Overview of the Arctic Ocean and Maritime Boundaries

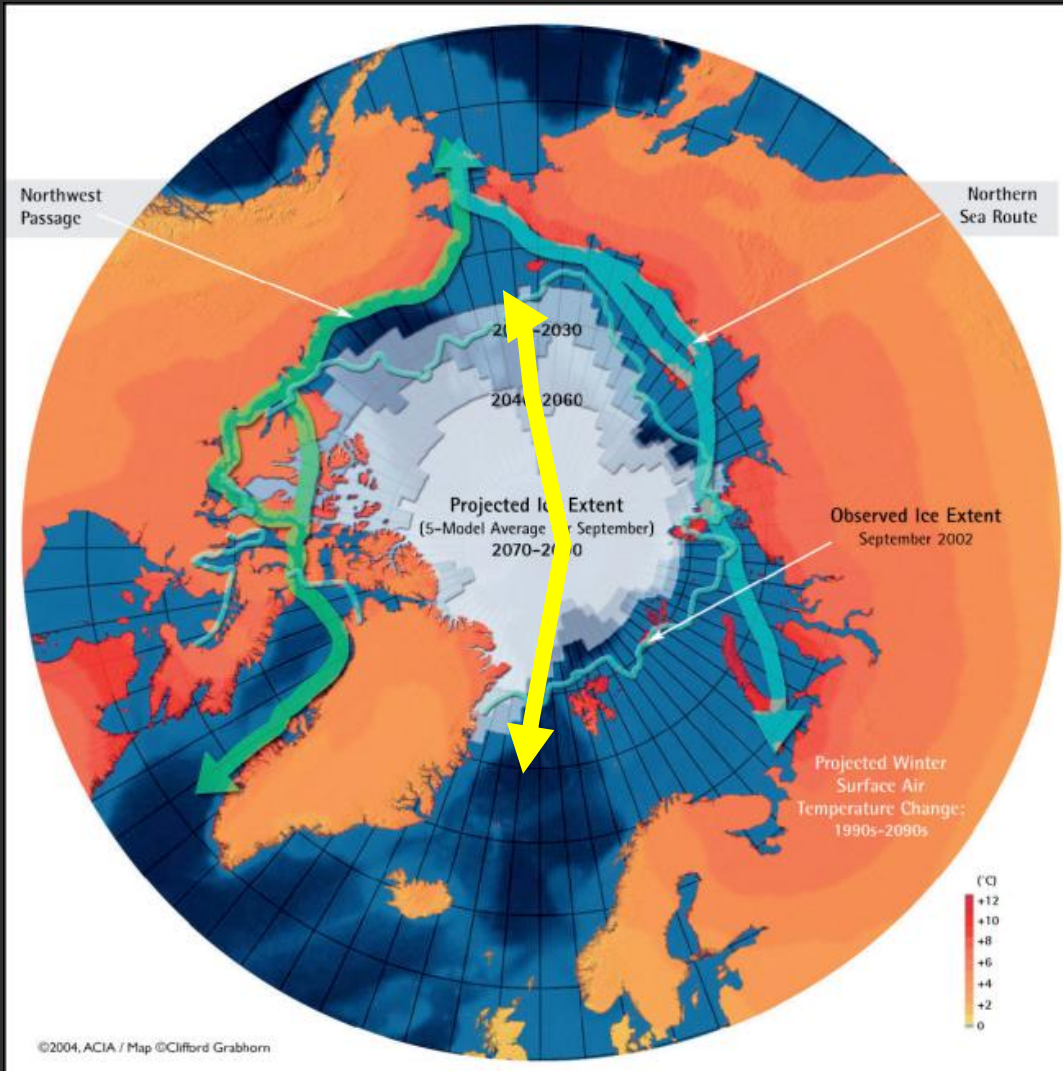
Canada-USA  
Beaufort Sea Dispute



# Potential new maritime neighbours and continental shelf boundaries

- Canada:
  - New opposite boundary with Russian Federation?
  - Extended adjacent boundaries with Denmark and US
- Denmark (Greenland):
  - New opposite boundary with Russian Federation?
  - Extended boundaries with Canada and Norway
- Norway:
  - Extended boundary with Russian Federation
- Russian Federation
  - New opposite boundaries with Canada and Denmark
  - Extended boundary with Norway
  - Unclear impact on US boundary
- United States:
  - Extended boundary with Canada
  - Unclear impact on Russian Federation boundary

# c) International Navigation



- Projections for 2030; US Navy Arctic Strategy, 2014:
  - Northeast Passage/NSR: *emerging* (9 weeks each year, with a 10-week shoulder season)
  - Northwest Passage: *long term?* (possibly for 5 weeks, with a 6-week shoulder season)
  - Transpolar route: ?

# UNCLOS, Art. 234

## Ice-covered areas

- Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the **prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone**, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have **due regard to navigation and the protection and preservation of the marine environment** based on the best available scientific evidence.



Source: UN Photo Archives , 1981



# Jurisdictional framework for international navigation

Maritime zone	Navigation Regime	Coastal State	Flag State	Int. (IMO)	Regulatory consequence
Internal waters (sovereignty; controversial claims re status of waters)	No right to navigate or enter into port (exceptions: treaty applies; areas that were formerly high seas now enclosed as internal waters; places of refuge)	x	x		National regulation  Application of international standards at discretion of coastal State
Territorial sea (12M) (sovereignty)  (controversial claims re status of straits)	Right of innocent passage  Transit passage in straits used for international navigation	x	x	x	National laws & regulations  International standards apply
EEZ (200M)  Sovereign rights + jurisdictions  (controversial use of Art 234 power)	Freedom of navigation, subject to EEZ regime & Article 234 coastal State jurisdiction	x	x	x	National regulation applies limited to EEZ powers and Article 234  International standards apply
Extended continental shelf (i.e., outside 200M)/high sea	Freedom of navigation		x	x	International standards apply
International Seabed Area (?) & high seas	Freedom of navigation		x	x	International standards apply

Thank you!  
Vielen dank!

