universität wien

MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

„Legal and Political Aspects of the Beaufort Sea Maritime Boundary Dispute between The United States of America and Canada"

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Arts (MA)

Wien, 2016 / Vienna 2016

Studienkennzahl lt. Studienblatt / degree programme code as it appears on the student record sheet:	A 066 805
Studienrichtung lt. Studienblatt / degree programme as it appears on the student record sheet:	Globalgeschichte und Global Studies
Betreut von / Supervisor:	ao. Univ.-Prof. Mag. Dr. Friedrich Edelmayer, MAS

Acknowledgements

I would like to thank my advisor Professor Dr. Friedrich Edelmayer for guiding and supporting me over the years.

Special thanks go to my parents, friends and fellow graduate students who constantly encouraged and motivated me.

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Abstract

This Master Thesis analyzes the Beaufort Sea maritime boundary dispute between the United States of America and Canada that has remained unresolved for many years. Canada claims the maritime boundary to be along the 141st meridian west out to a distance of 370 km, following the Alaska-Yukon land border. On the contrary, the position of the United States is that the boundary line is perpendicular to the coast out to a distance of 370 km, following a line of equidistance from the coast. This difference creates a wedge with an area of about 21,000 km^2 that is claimed by both nations and contains a great amount of natural resources.

The objective of this paper is to examine the legal and political aspects of the dispute, the strategies of both disputing parties and the future scenarios of a possible evolution of the dispute. The guiding research question targets the evolution of the dispute and the efforts of the USA and Canada to resolve it. This master thesis familiarizes the reader with relevant aspects of the law of the sea. Further, the integration of the two neighboring countries into the global legal regime established by the law of the sea will be explored to deepen the understanding of the dispute.

Since the Beaufort Sea is a part of the Arctic region, the Arctic engagement of both countries will be analyzed along with other interlinked border disputes between Canada and the USA. Finally, this paper identifies the contributing and complicating factors in the dispute settlement process and evaluates the spheres of possible cooperation in the Beaufort Sea despite the boundary dispute.

This thesis contains an interdisciplinary approach to analyzing the dispute. This paper is written from a point of view of an uninvolved third-party and remains neutral by taking an unengaged position while exploring the dispute. It is hoped that this unengaged position may reveal new perspectives on the conflict and its eventual resolution.

Abstrakt

Die vorliegende Masterarbeit analysiert den Grenzstreit zwischen den Vereinigten Staaten von Amerika und Kanada in der Beaufortsee, der seit vielen Jahren ungelöst bleibt. Kanada beansprucht die Seegrenze entlang des 141. westlichen Meridians bis zu einer Entfernung von 370 km nach der Alaska-Yukon Landgrenze. Im Gegensatz dazu ist die Position der Vereinigten Staaten, dass die Grenzlinie bis zu einer Entfernung von 370 km perpendikulär zur Küste nach dem Prinzip der Äquidistanz verläuft. Dieser Unterschied erzeugt einen Keil mit einer Fläche von etwa 21.000 km2, die von beiden Staaten beansprucht wird und eine große Menge von Rohstoffen lagert.

Das Ziel dieser Arbeit ist die rechtlichen und politischen Aspekte des Konflikts zu analysieren, die Strategien der beiden streitenden Parteien darzustellen und künftige Szenarien einer möglichen Weiterentwicklung des Grenzstreits zu prüfen. Die Hauptforschungsfrage zielt auf die Entwicklung des Grenzstreits und die Bemühungen der USA und Kanada ihren Streit zu lösen. Diese Masterarbeit versucht die Leserinnen und Leser mit den relevanten Aspekten des Seerechts vertraut zu machen. Um ein tieferes Verständnis über den Grenzstreit zu vermitteln, wird die Integration der beiden Nachbarländer in das globale Rechtssystem analysiert, das auf dem aktuellen Seerecht basiert.

Da die Beaufortsee ein Teil der arktischen Region ist, wird die Teilnahme beider Länder an den internationalen Angelegenheiten der Arktis untersucht und die anderen verwandten Grenzstreitigkeiten zwischen Kanada und den USA dargestellt. Schließlich werden die beitragenden und erschwerenden Faktoren im Konfliktlösungsprozess präsentiert und mögliche Bereiche der weiteren Zusammenarbeit in der Beaufortsee trotz des Grenzstreites vorgeschlagen.

Diese Masterarbeit verfolgt einen interdisziplinären Ansatz und wurde aus einer unbeteiligten und neutralen Sicht geschrieben. Es wird gehofft, dass die neutrale Position bei der Konfliktforschung neue Perspektiven und auf den Grenzschreit in der Beaufortsee bringen und zur eventuellen Konfliktlösung beitragen wird.

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1. Introduction

The Arctic is a region of vast opportunities and challenges for the United States of America, Canada and the whole world. The North of our planet has long been neglected; however, due to the climate change and the melting of the Arctic ice, politics are giving more and more attention to the region. The enormous amount of natural resources, primarily oil and gas, as well as the new transportation routes through the ice-free Arctic in the near future are a reasonable incentive for governments to act. One of the major Arctic issues is the sovereignty. "Who owns the Arctic?" – is a vehemently debated question among Canada, the United States of America, the Russian Federation, Denmark (through Greenland) and Norway. Currently, those countries are actively increasing their capacity to protect and exercise their sovereign rights in the Arctic. At the same time, a number of areas north of the Arctic Circle remain disputed. One of them is a triangle in the Beaufort Sea, which is claimed by both the United States of America and Canada.

The Beaufort Sea maritime boundary dispute is a highly intriguing and challenging case that has remained unresolved for a number of years. Despite strategic and traditionally friendly relations between the USA and Canada, the two neighbouring countries have not come to an agreement as to a suitable boundary line in the Beaufort Sea. Canada claims the maritime boundary to be along the 141st Meridian West out to a distance of 370 km, following a straight line of the Alaska-Yukon land border. On the contrary, the position of the United States is that the boundary line is perpendicular to the coast out to a distance of 370 km, following a line of equidistance from the coast of the Beaufort Sea. This difference creates a wedge with an area of about 21,000 km^2 that is claimed by both nations. The area is known for having reach natural resources.

Currently, the conflict is well-managed and does not pose any immediate threat to the region or USA-Canada relations. These two countries adhere to diplomacy and principles of peaceful dispute resolution set in the UN Charter. They intend to find a win-win solution. Taking into account the manifold interrelated issues involved, the fact that almost 40 years of history concerning the dispute settlement process have not brought either party closer to an agreement, a win-win solution is certainly an ambitious goal, one which may take some time to be reached.

The guiding research question of this thesis targets the dispute settlement process and its main actors – Canada and the United States of America. Namely, what factors guide the dispute settlement process and which resolution scenarios may arise in the future? Further, this thesis will examine the factors that contribute to a win-win solution and factors that deepen and complicate the dispute settlement process.

The thesis will also contain an interdisciplinary approach with a strong focus on history, politics and the international law. The literature situates the current study primary within the North American conversation. Uninvolved as a third party, I try to remain neutral, taking an unengaged position while exploring the conflict. It is hoped that my unengaged position, while exploring in depth the dispute, will bring a better clarification and understanding of the dispute as well as reveal new perspectives on an eventual resolution.

Following the introduction chapter, Chapter II familiarizes the reader with the relevant aspects of the law of the sea that are crucial for understanding any maritime boundary dispute. It focuses on the established division of oceans and the legal framework of the maritime boundaries delimitation. It focuses on the UNCLOS and its institutions in view of their role to provide certain rights over the sea space. Since this particular aspect of law of the sea is closely interrelated with international cooperation, this chapter examines the integration of Canada and the United States into the global legal regime established by the law of the sea.

The third chapter presents the natural resources of the Beaufort Sea as the main incentive of the disputing parties to gain the right to exploration and exploitation of them as result of a successful dispute settlement. In particular, this chapter demonstrates the value of the resources and their economic importance for Canada and the USA.

Chapters four and five are deeply grounded in history and intend to bring understanding of the conflicting positions from a historical perspective. They describe the relevant events from the past that will help to evaluate the shortcomings of the negotiations and politics. In particular, those chapters place the Beaufort Sea dispute in the context of the Arctic relations and demonstrate their relation to other unresolved disputes in the Arctic and between Canada and the USA.

Chapter six sets attention on the current national Arctic strategies of the USA and Canada. It examines their interest in the Arctic region and the public support of policies

concerning the Arctic-related issues. Examination of the relevant documents presents a clearer view for the reader that countries have on the Arctic region and the dispute. Further, this chapter discusses the current positions of the USA and Canada with regard to the Beaufort Sea dispute and evaluates their flexibility to cooperate.

Chapter seven identifies the most relevant contributing and complicating factors in the dispute settlement process. It presents the importance of the USA-Canada relations with a focus on the Arctic cooperation and explores the already existing common initiatives and projects that both countries work on together. Since Canada has binding commitments involving the indigenous population in the Arctic, this chapter explores the ethnic composition and its role in the dispute settlement process. Further, geography and climate change are inevitable factors that constitute both challenges and opportunities for the disputing parties. This chapter analyzes the relevance of these factors for the negotiations. Finally, the international institutions and organizations as well as other Arctic players will be introduced in terms of their role to influence the interstate cooperation in the Arctic and the ability to influence the dispute settlement process.

The concluding chapter looks to the future, while remaining analytical. It presents several possible scenarios that Canada and the USA may chose as a possible peaceful dispute settlement. Other cases and outcomes of past disputes will be taken into account and compared to the Beaufort Sea dispute. The final chapter identifies spheres of further possible cooperation that might be successfully introduced without finding a solution to the dispute and consequently bring two parties closer to a win-win solution.

2. The Law of the Sea

The current maritime legal regime regulates the usage of resources in the seas and oceans. The regime is based on the United Nations Convention on the Law of the Sea (UNCLOS) which was adopted in 1982. The law of the sea involves consideration of matters of state sovereignty, state jurisdiction and state rights over the water, the sea bed as well as subsoil and airspace above the sea. The goal of the Convention "was to create one legal instrument in which all peacetime ocean regulations could be consolidated, to prevent contradictions among or gaps between existing international laws pertaining to the oceans."[1]

The Convention is composed of 320 articles and 9 annexes based on codified customary international law and its developments. This legal document divides the sea in different areas and defines rights and powers of states. As of January 2016, 167 countries are parties to the Convention. Canada ratified the Convention on November 7, 2003. The USA, however, has neither signed nor ratified the Convention.[2]

The following section focuses on aspects of the international sea law that are relevant to the Beaufort Sea maritime boundary dispute. In particular, the terms of territorial sea, contiguous zone, exclusive economic zone, and continental shelf will be explained to facilitate the understanding of the conflict and its legal foundation.

2.1. Division of the Ocean

The UNCLOS Agreement defines the degree of sovereignty a country may have over the oceans and its resources. Regarding this, a territorial sea is limited to an area of 12 nautical miles long from the baseline (Article 3)[3]. The Convention provides an answer as to where to measure the territorial sea in article 5: "The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by

[1] Wurm, „*Die EU-Arktispolitik."*
[2] "Chronological lists of ratifications, accessions and successions to the Convention and the related Agreements as of 02 January 2015," United Nations Division for Ocean Affairs and the Law of the Sea, accessed January 19, 2016. http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm
[3] "*United Nations Convention on the Law of the Sea of 10 December 1982",* United Nations Division for Ocean Affairs and the Law of the Sea, available from http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

the coastal State."[4] Within the territorial sea the coastal State enjoys full sovereignty. This area is subject to the right of innocent passage of foreign merchants' ships and warships. However, submarines are required to navigate on surface showing their flag. Any foreign ships may pass through the territorial waters if their passage is not "prejudicial to the 'peace, good order or security of the coastal State'"[5].

In the 19th century, the practice to define the territorial sea was three nautical miles based on the cannon-shot rule. Most countries accepted the three miles rule, although Scandinavian countries claimed four miles, and Spain and Portugal claimed six nautical miles of territorial sea. The current 12-mile rule is accepted only by the current UNCLOS Agreement.[6]

The contiguous zone is area beyond the territorial sea and extends up to 24 nautical miles from the baselines. The coastal states possess here the right of supervision by the law enforcement authorities to prevent persons who committed offences in the territorial waters escaping into the high waters. In the contiguous zone the coastal states may prevent and punish infringements in the area of customs, fiscal or immigration regulations which are committed within its territory or territorial sea.[7]

It has become practice of states to claim jurisdictional rights in the zone of waters beyond the outer edge of the territorial sea, that is, the Exclusive Economic Zone. The EEZ is a belt of sea, adjacent to the coast, extending 200 miles from the baselines of the territorial sea. Within this area, the costal state is given sovereignty rights for purpose of exploring and exploiting the living and non-living natural resources. The continental shelf rights are inherent in each state. The rights that a coastal state exercises over the shelf do not have to be recognized or claimed by other states.[8]

When oil and gas were discovered in the 1930s in the seabed beyond the territorial sea, many countries began claiming exclusive rights of exploration in those areas. This right was confirmed in the 1982 Convention. In this regard, the shelf is a part of underwater land and is a

[4] "*United Nations Convention on the Law of the Sea of 10 December 1982."*
[5] Antonio Cassese, *International Law*, Second Edition (Oxford University Press, 2005), 85.
[6] Peter Malanczuk and Michael Barton Akehurst. *Akehurst's modern introduction to international law*. (London: Routledge, 1997), 178.
[7] Cassese, *International Law*, 87.
[8] Martin Dixon, *Textbook on International Law.* (Oxford University Press, 2013), 248.

natural prolongation of it. The length of the shelf depends on the geology of the coast and is covered by shallow waters usually between 150 and 200 meters.[9]

The coastal state has sovereignty rights to explore and exploit the natural resources, but cannot exercise the sovereignty over the shelf. Consequently, the waters above the shelf remain in the status of high seas. Natural resources are defined in the Convention as all non-leaving resources of the sea bed and subsoil and additionally species that are immobile on or under the sea floor. Those are corals, oysters, sponges, lobsters, and crabs.[10] The legal limits of the continental shelf are a vital issue as the deep seabed will be of a great economic importance. The large areas of the ocean are covered with manganese nodules, containing such metals as copper, nickel and cobalt.[11]

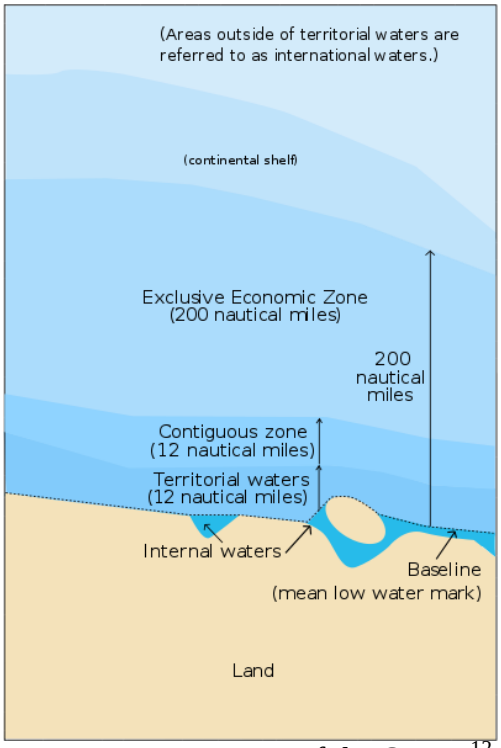

Diagram: Division of the Ocean.[12]

[9] Cassese, *International Law*, 89.
[10] Dixon, *Textbook on International Law*, 228.
[11] Malanczuk and Akehurst. *International law*, 192.
[12] *Diagram of the various regions of the ocean over which a State may exercise sovereignty* [diagram]. "United Nations Convention on Law of the Sea (UNCLOS), 1982". http://www.eoearth.org/view/article/156775/ (25 February 2016).

The continental shelf is a geological and legal conception. Geologically, it is absurd to argue that the deep seabed forms a part of the continental shelf.[13] However, from a legal point of view, the 1982 Convention under the Article 76 determines that "[All] states, regardless of the physical shape of the shelf, have a continental shelf by law up to 200 nautical miles from the baselines of the territorial sea. This is because even if there is no physical shelf or if it stops short of 200 miles"[14].

In case physical shape of the shelf extends 200 nautical miles, the coastal state has the rights to the outer edge of the continental rise. However, the continental shelf cannot go beyond 350 nautical miles from the baseline of the territorial sea or 100 nautical miles from the 2,500th metre of the depth line. This rule was the result of the Irish-Soviet suggestion to limit the coastal state jurisdiction.[15]

Another rule, regulating the exploiting resources beyond 200 miles, is set in article 82 of the Convention, stating that, exploiting resources in this area, the coastal state shell make payments to the International Sea Bed Authority for distribution among other states. The Convention recognizes that shelf rights beyond 200 miles constitute derogation from the common heritage principle.[16]

The International Sea Bed Authority (ISA) is an autonomous international organisation that was established by the UNCLOS in 1982. Its principal function is to "regulate deep seabed mining and to give special emphasis to ensuring that the marine environment is protected from any harmful effects which may arise during mining activities, including exploration"[17]. The ISA members are the same countries as the state parties to the UNCLOS. Two principle organs of the ISA are the Assembly and the Council. The Assembly includes all member states and has the power to establish general policies, including the decisions on sharing of mining revenues received by the ISA. The Council consists of 36 states establishes environmental standards and approves contracts for exploration and exploiting the deep-sea. The USA has currently an observer status in the ISA.[18] A very significant part of its work, the ISBA maintains a specialized

[13] Malanczuk and Akehurst. *International law*, 193.
[14] Dixon, *Textbook on International Law*, 229.
[15] Dixon, *Textbook on International Law*, 229.
[16] Dixon, *Textbook on International Law*, 230.
[17] International Sea Bed Authority. "Scientific Activity and Promotion," accessed January 21, 2016. https://www.isa.org.jm/scientific-activities
[18] Packard C. Trent, "*An Evaluation of the Arctic* – Will It Become an Area of Cooperation or Conflict?" (Master thes., Naval Postgraduate School, 2011).

Database (POLYDAT) of data and information on the resources of the international seabed area and monitors the current status of scientific knowledge of the deep sea marine environment.[19]

The Convention creates, therefore, an opportunity for coastal states to explore and exploit the sea beyond the 200 mile limit. In particular, if the continental shelf's geography allows, a state may benefit an additional 150 miles of the high sea to explore resources (200 nautical miles are guaranteed under Article 76(1) plus the option to extend it to 350 miles guaranteed under Article 76(1)). However, to be allowed to extend the area beyond 200 nautical miles for exploiting natural resources on the continental shelf, the coastal states have to submit claims to the Commission on Limits of the Continental Shelf (CLCS). After the state's submission, the Commission makes a recommendation regarding the establishment of limits that will be final and binding.[20]

The Commission on the Limits of the Continental Shelf has the purpose to facilitate the implementation of the UNCLOS "in respect of the establishment of the outer limits of the continental shelf beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured."[21] Each party to the UNCLOS has ten years after signing the Convention to submit their geological arguments to the Commission on Limits of the Continental Shelf.[22]

The CLCS then makes recommendations to the states that submitted their claims. Those recommendations are final and binding. The CLCS helps delineate which territories that belong to each country so there is no discrepancy in disputes. Such activities of the CLCS enormously facilitate the cooperation between states.[23]

Even when a country submits its findings to the Commission, it takes decades to review the data. For instance, by 2011 the Commission received only 56 submissions and sent its recommendations to only 11 states. This means that Canada's submission will take many more years to review. This could hinder efforts at a potential reconciliation.[24] Moreover, according to the CLCS, as of January 2016, four of five Arctic countries have made their submission to the

[19] "Scientific Activity and Promotion."
[20] Daniel Pomerants, "*The Beaufort Sea Maritime Boundary Dispute:* High Strikes for Canadian Arctic Sovereignty and Resource Extraction in a Changing Climate." (Master Thes., York University, 2012).
[21] United Nations Division for Ocean Affairs and the Law of the Sea. "Commission on the Limits of the Continental Shelf," accessed January 21, 2016. http://www.un.org/Depts/los/clcs_new/commission_purpose.htm
[22] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute*".
[23] Trent, "*An Evaluation of the Arctic."*
[24] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute*".

Commission: Canada (2013), Denmark (2013), Norway (2006) and Russia (2001 with a partial revision in 2015).[25]

To exercise the sovereign right to explore undersea resources even beyond the exclusive economic zone, the coastal state is supposed to make also financial contributions for the exploration or acquiring resources beyond the continental shelf to the International Seabed Authority (ISA). Those financial contributions are to be made "annually on an escalating scale after the first five years of production at a particular site, beginning at one percent of the value or volume of production at the site, up to seven percent after twelfth year."[26] The ISA distributes the funds to the UNCLOS "on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them."[27]

Since the USA is not yet part of the Convention and the question remains open whether the limit of 350 miles or 2,500 metre maximum limit is a customary law.[28] Could the USA in this case claim more area than provided by the Convention? This question remains very speculative, obviously highly depending highly on various political aspects and needs further research by legal experts.

Again, as the USA is not part of the UNCLOS, the Convention of the Continental Shelf (CCS) is the authority for the USA to determine jurisdiction of the coastal seabed. The USA has ratified the CCS in 1961. This document indicates that countries must seek agreement on the boundary. In case there is no agreement between countries, the boundary is the median line or the so called equidistance line. Some additional circumstances may apply. Interesting is the fact that the UNCLOS does not give significance to the equidistance principle in determining continental shelves. The UNCLOS specifies that in case parties cannot agree on a solution, the ICJ may be the last option to reach a solution.[29]

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[25] United Nations Division for Ocean Affairs and the Law of the Sea. Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982. Accessed January 19, 2016. http://www.un.org/depts/los/clcs_new/commission_submissions.htm

[26] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute*".

[27] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute*".

[28] Dixon, *Textbook on International Law*, 230.

[29] Dovile Petkunaite. "*Cooperation or Conflict in the Arctic?* UNCLOS and the Barents and Beaufort Sea Disputes." (Master thes., City College of New York. 2011).

The Convention provides a mechanism for settling disputes and indicates options for countries' actions. First, conflicting parties have to start with the conciliation process. If there is no result, parties may submit to the International Tribunal for the Law of the Sea. This independent juridical body was established to adjudicate disputes arising from interpretation and application of the UNCLOS and requires states to settle their disputes in a peaceful way.[30]

In this regard, an option may be the International Court of Justice (ICJ). The conflicting parties have a right to submit their case to binding international arbitration procedures. However, the case may be submitted to special tribunals with an expertise to interpret customary international law.[31]

Experts agree that the "development of the Beaufort Sea maritime boundary dispute demonstrates the importance of the development of the international law in territorial disputes, especially so given environmental change, evolving legal principles, and the natural resources to be claimed by coastal states."[32]

2.2. USA and UNCLOS

As already mention above, the USA is not a party to the Convention and is, therefore, not obliged to accept the UNCLOS decisions. The provisions of the Convention cannot apply to the USA. Pomerants analyzed the relations between the United States and the international maritime law, coming to the conclusion that the USA would definitively benefit from becoming a party to the UNCLOS as its energy sector would decrease its dependency on imported resources.[33]

However, due to the domestic politics, the USA has not yet been able to ratify the Convention and the discussion in the Government and among experts is still ongoing. President Reagan refused to sign the Convention right at the beginning in 1982 as he was not convinced that the accession would serve his country's interest. After him, several US presidents expressed their support of the Convention, however, according to the US Constitution, two-thirds of the Senate has to vote in favour in order to ratify an international treaty and it was not the case up to

[30] Trent, "*An Evaluation of the Arctic."*
[31] Petkunaite, "*Cooperation or Conflict in the Arctic?"*
[32] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[33] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"

now. Primarily, the Republican senators block the ratification due to its ideological opposition to the United Nations and its considerations of sovereignty issues.[34]

President Obama called in 2014 the US Senate to ratify the UNCLOS, arguing that it would help in resolving maritime disputes. Further, he stated that it is much harder to call on China to resolve its maritime disputes under the Law of the Sea Convention, when the USA has refused to ratify it.[35] Currently, the situation reveals that the USA will not ratify the UNCLOS under the Obama Presidency.

Looking into the future, the Arctic expert Alan L. Kollien suggests that the USA has three options to develop its attitude to the UNCLOS. First, the USA may seek to modify the Convention; however, many countries would not accept it being as they are already members to the UNCLOS. Second, the USA may ratify the document without any changes. Finally, the USA may identify and codify the provisions that it would treat as customary international law and reject the rest of the provisions. This option gives the USA the opportunity to conduct its operations without giving up its sovereignty, however, reinforces a negative image of the USA abroad.[36]

In any modern-day international border dispute, conflicting parties are concerned about their sovereignty over a section of territory. The state sovereignty is "the most extensive form of jurisdiction under international law. It denotes full and unchallengeable power over territory."[37]

In the international law, a defined territory is one of the qualifications of the state according to the 1933 Montevideo Convention on Rights and Duties of States. The control over territory is part of the essence of what makes a state. Territorial sovereignty means states' excusive competence of legal and factual measures on a territory and prohibition to foreign governments to exercise the same rights in the same area without consent.[38]

Antony Anghie, Professor of Law at the University of Utah, argues that "the term sovereignty was shaped by the colonial experience, reproducing the inequalities associated with

[34] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[35] Jose Katigbak, "Obama calls on US Senate to ratify UNCLOS." *The Philippine Star,* May 30, 2014, accessed January 21, 2016. http://www.philstar.com/headlines/2014/05/30/1329020/obama-calls-us-senate-ratify-unclos
[36]Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[37] Dixon, *Textbook on International Law,* 181.
[38] Malanczuk and Akehurst. *International law,* 75.

that type of systematically abusive relations in the name of progress, emancipation, and rights."[39] Further, the leading international lawyer Michael Barton Akehurst argues that in the time of increasing international interdependence, the doctrine of sovereignty has been losing its significance among the Western countries compared to the developing countries that still highly value it to protect its political independence.[40] Antony Anghie states in this regard that "sovereignty is a flexible instrument which readily lends itself to the powerful imperative of the civilizing mission, in part because it is through engagement with that mission that sovereignty can be reconstituted and applied to governance questions as the rule of law continues to evolve, though still reflecting historical tendencies."[41]

Canada and the USA have obviously a very traditional perception of sovereignty as defined by the international law. However, how flexibly two countries might use their sovereignty in the Beaufort Sea triangle, this will be discussed in the coming chapters and certainly should gain the attention of further research.

3. Natural resources in the Beaufort Sea

The dispute between the USA and Canada in the Beaufort Sea is guided to a great extent by the interest to explore and exploit the natural resources within the disputed area. Director of the United States Geological Survey Mark Myers stated in 2008: "Before we can make decisions about our future use of oil and gas and related decisions about protecting endangered species, native communities and health for our planet, we need to know what's out there."[42] The Arctic region has tremendous resources not only of oil and gas, but also of water, gold, silver, uranium, coal and other energy sources. The natural resources have become the currency of political and economic power and the access to it has emerged as imperative of the 21st century.[43] This chapter reviews the natural resources of the Beaufort Sea and their relevance to the border dispute between the USA and Canada.

[39] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[40] Malanczuk and Akehurst. *International law*, 18.
[41] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[42] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[43] Moritz Haller, „*Zwischen Recht und Macht* - wem gehört die Arktis?" (Master Thes., University of Vienna, 2008).

According to Canada's National Energy Board, the disputed area may contain 1,700,000,000 m^3 of gas, which would cover the national consumption of Canada for 20 years.[44] In this regard, it is worthwhile to compare the estimates of natural resources in the dispute for both countries and to calculate the significance of those resources for the USA and Canada.

The US Geological Survey (USGS) estimates that, according to the present industry practice and technology, the entire area north of the Arctic Circle contains approximately 90 billion barrels "of undiscovered, technically recoverable oil, 1,670 trillion cubic feet of technically recoverable natural gas, and 44 billion barrels of technically recoverable natural gas liquids."[45] Further, the USGS suggests that approximately half of these resources can be found in the Amerasia Basin, the East Greenland Rift Basins, and the Arctic Alaska. The last one borders directly the Beaufort Sea. Given very similar patterns, ice floes and sea currents in the Yukon and Alaska parts of the Beaufort Sea, one can assume that the possibility to find similar resources close to the Canadian coast is very high.[46]

The interest of major international oil companies in the area geographically closed to the disputed has grown in the recent years. According to Devon Canada, in 2006 "a potential 250 million barrels of oil north of Tuktoyaktuk, a small Inuvialuit community in the Northwest Territories"[47] has been discovered. In 1968, in the Prudhoe Bay, around Tuktoyaktuk, was already a major discovery of the largest oil field in North America, being measured of 86.418 hectares and containing 25 billion barrels with 13 billion barrels recoverable. Moreover, the Prudhoe Bay contained 26,000 billion cubic feet of natural gas.[48]

Imperial, Exxon Mobil and BP obtained leases for the right to drill in the Beaufort Sea in 2007 and 2008. These companies united their programs for the Beaufort Sea and created a joint venture called Imperial Oil Resources Ventures Ltd. In 2015, the consortium suspended its Beaufort Sea exploration program due to the lack of time for the test drilling before the lease expiration in 2020. At the same time, the oil companies asked the Canadian authorities to extend their leases to 16 years. The Imperial Oil Resources Ventures Ltd planned to drill a well 6 miles

[44] BBC, "US-Canada Arctic border dispute key to maritime riches," accessed on February 27, 2016. http://www.bbc.com/news/world-us-canada-10834006
[45] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[46] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[47] Baker and Byers, "Crossed Lines," 71.
[48] Andrew Jon Hund, *Antarctica and the Arctic Circle: A Geographic Encyclopedia of the Earth's Polar Regions*. Volume I. (Santa Barbara: ABC-Clio, 2014), 138.

under the floor of the Beaufort Sea that would be one of the deepest drillings in the world and the deepest in the Arctic.[49] On the American side, Shell was ready to start drilling in 2010 after spending billions of US dollars. However, the BP spill in the Gulf of Mexico raised regulatory concerns about the safety standards and possibilities of moving the oil to the market.[50]

The interest on the Beaufort Sea as a potential source of hydrocarbon is relatively recent. However, the first oil from the Arctic region was sold even in 1619 for lighting lamps in America and Europe. Only in 1888, the area around the Mackenzie River was determined as potentially rich on hydrocarbon reserves. Later, in 1920, Theodore August Link led an American expedition in Northwest Territories and discovered oil. This oil reserve is located not far from the Beaufort Sea and was considered at that time as the largest potential oil field in the world. However, the discovery faced difficulty as the oil transportation at that time was possible only through rail. There was also no interest in constructing a railway or pipeline facing very low production capacity and high demand. The supply from the American West was more attractive. This changed after the World War II, when the technological progress allowed a greater amount of oil to be drilled in the north. Consequently, in 1982, oil companies paid $2.07 billion for drilling rights in the Beaufort Sea.[51]

Environmental security is an issue that has to be considered very seriously while drilling in the Beaufort Sea. The sea is predominantly frozen and opening occurs only between July and October with still high winds and the danger of the floating ice. Those conditions endanger the transportation and drilling facilities. Moreover, almost complete darkness during the period from October to March makes the drilling conditions even more difficult. Under such circumstances spill of any scale is very possible. To protect the environment the Same Season Relief Well Policy was released. According to this policy, if a drilling season is 100 days long, the first 50 days would be used to drill the first and main well, the next 50 days to build the relief well.[52]

The Same-Season Relief Well Standard, set by the National Energy Board of Canada (NEB), has required securing backup relief-well rigs in all Arctic drilling projects for the last 20 years. The oil companies argue that short open-water seasons and very deep waters require

[49] "Exxon Mobil, BP Suspend Canadian Arctic Exploratory Drilling Program in Beaufort Sea," The Wall Street Journal, accessed on February 27, 2016.
[50] Baker and Byers, "Crossed Lines," 71.
[51] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[52] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"

several seasons for exploration and drilling, making the same-season relief wells policy impractical. Therefore, the NEB considers alternative safety measures that still meet the fundamental goal to protect the environment. Currently, ninety-two wells were drilled in the Canadian part of the Beaufort Sea since the 1970s. The last well was drilled in 2005 and 2006 by Devon Energy.[53]

A dramatic event, taking place on April 20, 2010 in the Gulf of Mexico, couldn't have left unshaped also the developments in the Arctic. The spill of British Petroleum's Macondo Well forced governments of Canada and the USA to review their environmental policies. In Canada, the NEB created the Arctic Offshore Review and suggested increasing the liability limits for Arctic exploration. Further, a new amendment to the Bill-38 requires the NEB to submit all future decisions on major projects to the Cabinet for approval.[54]

The USA responded to the Deepwater Horizon catastrophe in the Gulf of Mexico by increasing the environmental safety for drilling. The former Minerals Management Service (MMS) was reorganized and renamed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) that separated the revenue collection function from safety enforcement. The news Bureau is responsible for "overseeing and the safe and environmentally responsible development of energy and mineral resources"[55] on the U.S. Outer Continental Shelf.

The Beaufort Sea contains a significant number of living maritime resources such as walrus, seals, whales, and, of course, fish. Over 70 species of fish are present in the region: dolly varden, Wolfish, arctic cod, Arctic char, cisco, whitefish, and Pacific herring. The Beaufort Sea region has a large population of belugas and is the destination for migrating bowhead whales. Not to mention a significant population of birds that live within the coastal zone. The living resources have been exploited very little up to now; however, it is likely that both governments will make use of them in the future.[56] Fishery is valuable resource in the Arctic. However, this

[53] "Canada ponders exceptions to relief well rule for Arctic oil drilling," Arctic Newswire, accessed February 27, 2016. http://www.adn.com/article/20140725/canada-ponders-exceptions-relief-well-rule-arctic-oil-drilling
[54] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute*".
[55] Ian Sutton, *Offshore Safety Management: Implementing a SEMS Program* (Norwich: William Andrew Publishing, 2011), 33.
[56] Emmanuel Brunet-Jailly, *Border Disputes: A Global Encyclopedia. Volume I: Territorial Disputes* (Santa Barbara: ABC-Clio, 2015), 509.

sphere is not regulated yet by national or international law. There is a need for clear established rules and control over fishery in this region.[57]

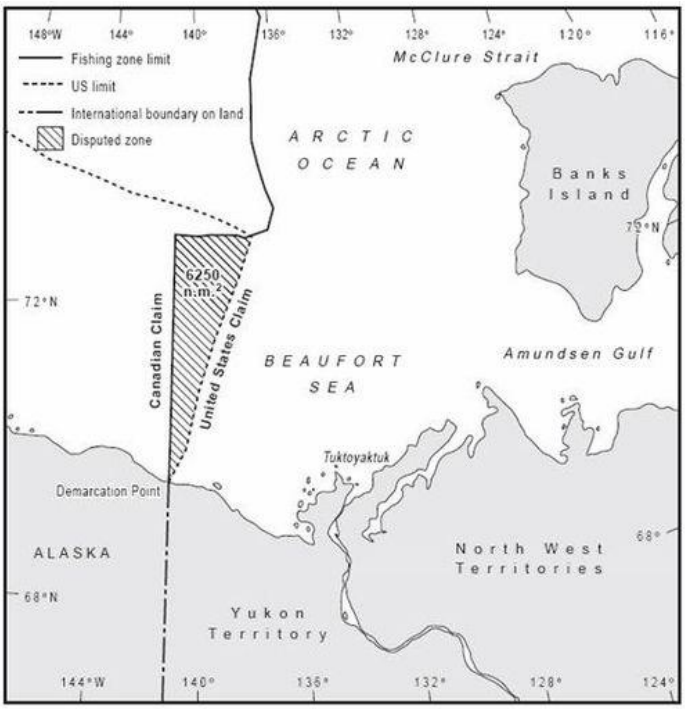
4. History and evolution of the Beaufort maritime dispute

The Beaufort Sea maritime boundary dispute between Canada and the United States of America started in 1976 when two countries disagreed over the boundary line of where to explore the natural resources in the Beaufort Sea. The USA proclaimed in 1977 a 200-nautical mile Fishery Conservation Zone.[58] The dispute was officially confirmed a year later, in 1977, when Canada and the USA delineated exclusive fishing zones out to 200 nautical miles, using different lines.[59] This chapter explores the history and evolution of the dispute and its negotiation process. The Beaufort Sea disputed has its roots in the Treaty of St. Petersburg in 1825, which established the land boundary between the territories of the United Kingdom and the Russian Empire. At that time Canada belonged to the United Kingdom and Alaska was a Russian territory. There was no explicit delimitation of the Beaufort Sea in the Treaty. However, we know that the international law of the 19th century, in general, did not allow the establishment of the maritime boundary exceeding 3 nautical miles.[60]

According to the Treaty of St. Petersburg, the eastern border of Alaska is set "at the meridian line of the 141st degree, in prolongation as far as the frozen ocean."[61] Canada claims that 141st meridian is the legal boundary for the land and the sea. In contrast, the USA disagree and claim that "regular methods of maritime boundary delimitation apply beyond the coastline."[62] The USA bases its position on the equidistance line approach that shifts the boundary line progressively further east of the 141st W meridian. As result, within that distance from shore, an approximately 6,250-square-nautial-mile or 21,000 km^2 sector is claimed by both sides.[63] The disputed area today is equal to the size of Slovenia.

[57] Wurm, „*Die EU-Arktispolitik."*
[58] Brunet-Jailly, *Border Disputes,* 507.
[59] Baker and Byers, "Crossed Lines," 71.
[60] Brunet-Jailly, *Border Disputes,* 506.
[61] James S. Baker and Michael Byers, "Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute", *Ocean Development & International Law*, 43:1 (2012): 71, accessed January 20, 2016. DOI: 10.1080/00908320.2012.647509.
[62] Baker and Byers, "Crossed Lines," 71.
[63] Baker and Byers, "Crossed Lines," 71.

There is no dispute over the land border between Alaska and Yukon. Both sides agree that the border is along the 141st meridian as stated in the Treaty of St. Petersburg. However, Canada and the USA do not agree whether the 141st meridian creates the border also at sea. Unfortunately, the Treaty provides no answer to this question. The USA argues instead that the Treaty of St. Petersburg does not establish maritime boundary. Americans base their positions on the 1958 Geneva Convention on the Continental Shelf and customary international law.[64]



Map: Beaufort Sea Maritime Dispute[65]

In 1867, the United Stated purchased Alaska and Canada assumed British rights in 1880. Obviously, Russia and Britain were not yet aware of the richness of natural recourses at sea when signing the Treaty of St. Petersburg. They were primarily interested in possession of land and not of sea. This was the reality of international relations when the Treaty of St. Petersburg in 1825 was signed and the international relations were based on the principle of the balance of power. In the 19th century, a country was considered to be more powerful when it possessed a large territory. On this subject, further research of the circumstances, perception of world order

[64] Brunet-Jailly, *Border Disputes*, 507.
[65] "Where is the Beaufort Sea boundary between the U.S. and Canada?"[map]. http://benmuse.typepad.com/arctic_economics/2009/08/us_canada_beaufort_sea_boundary.html (February 25, 2016).

and other related treaties setting borders in the 19th century might reveal more clarity and understanding of parties' intentions when signing the St. Petersburg Treaty.

The summer of 1968 reminded the USA and Canada of their unresolved Beaufort Sea boundary dispute, when large oil reserves were discovered at Prudhoe Bay, Alaska. In light of this event, John Lichtblau from the Petroleum Industry Research Foundation evaluated then the discovery as "the most significant development in the domestic petroleum industry since before the World War II."[66] Moreover, economics expert Walter J. Levy stated at that time, that "the center of gravity of oil exploration has begun to shift from the Middle East to the Arctic."[67]

Ostensibly, not by coincidence, in 1975, exploratory talks between Canada and the USA started with a goal to present and discuss the respective legal positions on the Beaufort Sea dispute. According to a senior State Department participant, "it was not a negotiation. . . . We weren't trying to resolve the issue at that time. It was a fairly sterile diplomatic exploration of each other's position."[68]

In July 1977, Prime Minister Pierre Trudeau and President Jimmy Carter appointed Marcel Cadieux (Canada) and Lloyd Cutler (USA) as principal negotiators to reach the progress on maritime boundaries delimitation, complementary fishery and hydrocarbon resource arrangements as well as other related matters that the Governments may decide. Prior to that, in November 1976, Canada and the United States announced their intention to extend the fisheries jurisdiction from twelve to two hundred nautical miles. Both countries had extensive and long-established fishing interests in those areas. In order to avoid politization of the off coast fishery issues two neighbouring countries agreed to a short-term reciprocal fisheries agreement on 24 February 1977 that was to expire at the end of 1977.[69] The Agreement permitted fishermen from both countries fishing in the newly proclaimed 200-mile zones and waved foreign licensing requirements. [70] It was hoped that the Pact would provide more time for governments to reach an agreement on maritime boundary disputes, hydrocarbon and fisheries issues.[71]

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[66] William D. Smith, "Prudhoe Bay Changes International Oil Picture," *Eugene Register Guard* 270 (1969): 13.
[67] Smith, "*Prudhoe Bay*," 13.
[68]Kirkey, "Delineating Maritime Boundaries".
[69]Kirkey, "Delineating Maritime Boundaries".
[70]Parsons L. S. *Management of Marine Fisheries in Canada.* (Ottawa: National Research Council Canada. Department of Fisheries and Oceans, 1993), 322.
[71]Kirkey, "Delineating Maritime Boundaries".

In the discussion of the Beaufort Sea dispute, Canada expressed its willingness to accept a compromise on the equidistance line approach, provided that Americans would grant Canada concessions in the Dixon Entry region and the dispute over the A-B line in the Juan de Fuca Strait. Strong pressure on the federal government from the provincial government of British Columbia has been identified that lobbied the trade-off deal.[72]

The shared access zone for joint hydrocarbon exploitation in the Beaufort Sea was also discussed. Canada was willing to agree on a shared zone in the Gulf of Maine, primarily configured on the Canadian side of a "mutually agreed maritime boundary, provided that the United States was willing to accept a shared access hydrocarbon zone in the Beaufort Sea that would be largely on the American side of an agreed boundary."[73]

In response, the USA presented a different view on the Beaufort Sea maritime boundary, insisting on the application of the equidistant principle in delimitation of the Beaufort Sea. The USA opposed the package deal that would link a possible settlement of one case to another and suggested resolving each dispute independently from one another. Regarding the shared access zone in the Beaufort Sea, the USA suggested configuring the area on the American side of the boundary, if Canada was willing to delimit the Beaufort boundary according to equitable principles. The USA was flexible on this issue since the location of oil was not yet explored.[74]

At the beginning of the negotiations in 1977, Canada and the USA formed the agenda of the talks to settle not only the Beaufort Sea boundary dispute, but equally also other disputes with the USA. So was it publicly announced by the US press in 1977: "[at] stake are a valuable chunk of the Georges Bank off southern Nova Scotia, fishing grounds off the Strait of Juan de Fuca, territory between British Columbia and the Alaskan panhandle and potential hydrocarbon resources in the Beaufort Sea between the Yukon and Alaska."[75] Therefore, it seems to be very obvious that the excising disputes interlink among each other and a package deal expressed explicitly or not will be a solution. Further, a review of the Canadian and American newspaper in 1977-1978 has shown that the negotiations gained a much greater attention of the Canadian press than the newspapers in the USA.

[72]Peter Calamai, "U.S. may get chunk of the Beaufort Sea," *Ottawa Citizen* 119 (1978): 10.
[73] Kirkey," Delineating Maritime Boundaries".
[74] Kirkey," Delineating Maritime Boundaries".
[75] "Canadian Briefs," *Lewiston Evening Journal* 117 (1977), 29.

Canada was concerned that if it concedes to the US position favouring the equidistance principle in the Beaufort Sea, and three other disputes were not solved in a mutually accepted way, the Canadian legal position would be weakened should any of the three cases be brought before the International Court of Justice. Further, the USA did not offer any reasonable boundary concessions for Canada. A level of flexibility was expected by Canada on the Beaufort boundary. Thirdly, the Government of Canada could face a domestic opposition should it accept the US position on the Beaufort Sea boundary. The government would face a politically undesirable position to defend an agreement that favours American maritime interests in the North. At the same time, the USA had very similar reservations to accept the Canadian proposal of package deals and feared that the acceptance of the Canadian position would greatly weaken the US position should any of those dispute cases go before the ICJ. Further, the US Congress would not approve an agreement that favours Canadian interests over the US.[76]

In 1978, the negotiations over the settlement of hydrocarbon shared access zones and the four maritime boundary disputes ended with a neutral outcome that did not satisfy national goals of any the disputing countries. The outcome is "principally a product of a strong interdependent relationship and the differing economic, political, and legal concerns harboured in Ottawa and Washington."[77]

Under those circumstances, Canada and the USA had two principal choices to resolve the dispute: continue bilateral negotiations or bring the case before the International Court of Justice. Both partners were aware that an eventual ICJ ruling would be injurious to either the Canadian or US legal position. Also the bilateral negotiations did not fulfill either side's national interests. Canada was willing to cooperate in the Beaufort Sea in the case that the USA would grants concessions on other disputes. The USA did not consider the Canadian suggestion, insisting on the independent settlement of each maritime boundary dispute. Canadian Deputy Negotiator Lorne Clark admitted that two delegations had diametrically opposed legal positions where it was very difficult to split the difference as it would derogate from the legal position of one side or another."[78] Professors Baker and Byers admit that the two countries were unwilling to

[76] Kirkey, "Delineating Maritime Boundaries".
[77] Kirkey, "Delineating Maritime Boundaries".
[78] Kirkey, "Delineating Maritime Boundaries".

„compromise its legal position for fear of prejudicing its approaches to other delimitations“[79]. Finally, the negotiators focused on the Gulf of Maine dispute and then referred the case to the International Court of Justice.

In 1986, the United States suggested a new round of comprehensive diplomatic discussions; however, they ended again without a satisfactory result.[80] Two years later, in 1988, two governments signed in Ottawa the USA-Canada Arctic Cooperation Agreement, stating the willingness to cooperate in order to advance in their shared interest in the Arctic, particularly, in the area of navigation, research and environment. The agreement does not mention the disputed area and highlights the friendly relations of the two neighbouring countries.[81] This document demonstrates that Canada and the USA agreed to disagree over the disputes in 1988 and decided to cooperate in areas where it might be necessary.

As mentioned in previous chapters, Canada ratified the UNCLOS in 2003 and was supposed to submit its scientific findings regarding the continental shelf to the CLCS committee in 2013. The information, gathered about the shelf in the Beaufort Sea to be submitted to the Commission on Limits of the Continental Shelf, might have stimulated the efforts to resume the negotiations. Moreover, the rising oil prices and the need for additional energy sources was also a significant reason for both countries to seek ways to access the disputed area of the Beaufort Sea.

In 2010, Canada and the USA renewed their efforts to resolve the dispute. Canada announced publically its intention to "work with other northern countries to settle boundary disputes"[82]. The former Foreign Minister of Canada, Lawrence Cannon, traveled to Washington in May 2010 and mentioned that "[he and Secretary of State Clinton] also agreed that it was important to complete the mapping of the continental shelf, particularly in the area, before we engage in a formal type of what one would assume to be discussions or negotiations."[83]

[79] Baker and Byers, "Crossed Lines," 73.
[80] Besty Baker, "Filling an Arctic Gap: Legal and Regulatory Possibilities for Canada-U.S. Cooperation in the Beaufort Sea." *Vermont Law Review* 34:057 (2009): 71, assessed January 20, 2016. 71.
[81] "Canada and United States of America Agreement on Arctic cooperation. Signed at Ottawa on 11 January 1988," United Nations Treaty Collection, accessed January 30 2016, https://treaties.un.org/doc/publication/unts/volume%201852/volume-1852-i-31529-english.pdf
[82] Baker and Byers, "Crossed Lines," 74.
[83] "Sovereignty and Security in Canada's Arctic. Interim Report," Senate Canada, accessed January 30, 2016. http://www.parl.gc.ca/Content/SEN/Committee/403/defe/rep/rep07mar11-e.pdf

Currently, Canada and the USA issued leans for oil and gas exploration the disputed area, however, neither country allowed exploration or development.[84]

One of the features of the Beaufort boundary dispute is that the resolution process is very slow. There are several reasons for this. First, the dispute is very much contentious, however, considered to be well managed. There is certainly no danger of any escalation of the conflict. Second, neither side shows any strong interest in a model of joint management of the disputed triangle. Parties tend to seek a resolution that clarifies the question of undisputed sovereignty over a territory at sea. Third, the USA and Canada agreed to a memorandum on hydrocarbon exploration in the disputed area of the Beaufort Sea.[85] Consequently, it is a common interest of both countries not to rush with the resolution process as long as it is not necessary. Neither country has an urgent need to explore the natural resources from the disputed triangle in the near future. Moreover, the future of Arctic remains an unexplored area of our planet where it borders also with other countries have not yet been set. Both countries are willing to win time and keep the trade-off options open for the general discussion of the borders in the Arctic.

When the Treaty of St. Petersburg was signed in 1825, the sea did not have the name "Beaufort sea". This large body of water was named by the explorer of the Arctic Sir John Franklin after his friend and hydrographer Sir Francis Beaufort in 1826.[86] Before that the sea was known in English as the Arctic Ocean. The English translation of the Convention between Great Britain and the Russia in 1825 uses the name "Frozen Ocean" which is another name of the ocean known in the 19th century. At least the Scottish writer Alexander Jamieson puts in his *"A Treatise on the Construction of Maps"* in 1814 the name *"*Frozen Ocean*" as a synonym to "Arctic Ocean"*[87]. This is the most appropriate term to use in the English version of the Convention as the original French version uses the common for that time name "la mer *la mer Glaciale*" and the Russian version "Ледовитаго моря"[88] [Frozen Sea]. Therefore, the "Frozen Ocean" is the real name of the sea and does not literally mean frozen water. Moreover, the name

[84] "Sovereignty and Security in Canada's Arctic."
[85] Baker, "Filling an Arctic Gap," 70.
[86] Daniel J. Orth, *Dictionary of Alaska place names*: U.S. Geological Survey Professional Paper 567. (Washington: United States Gouvernement Printing Office, 1967), p. 117.
[87] Alexander, Jamieson. *A Treatise on the Construction of Maps.* (London: Darton, Harvey, and Co., 1814), p. 25.
[88] Konvencya s korolom Velikobritanskim v Sanktpeterburge [St. Petersburg Convention with the King of Great Britain]. February 28, 1825. Polnoe Sobranie zakonov Rossiiskoi Imperii [The complete collection of laws of the Russian Empire], P.72-74. Accessed January 19, 2016. http://www.nlr.ru/e-res/law_r/show_page.php?page=72&root=1/40/

"Frozen Ocean" was written with first capital letters, indicating a proper name and not an adjective.

The analysis of the name "Frozen Ocean" brings me to the conclusion that signatures to the Convention were primarily concerned about the demarcation of the territory on the ground and not at sea. Therefore, the Meridian Line of the 141st Degree and its prolongation "as far as the Frozen Ocean", which formed the boundaries between the Russian and British possessions in North America most probably might be the line demarcating the border only up to the shore of Alaska. This leaves the question of the maritime boundary at sea open. The sea is literally "frozen" as it remains so during almost the entire year except for the summer season.

The argument mentioned by J.S. Baker and M. Byers that, in 1821, the Russian Czar had made a claim to exclude foreigners from within 100 Italian miles from the coast of North America, does not seem to support the Canadian position for a number of reasons. J.S. Baker and M. Byers suppose that the Russian Czar was willing to exclude foreigners from the coast in North America also while signing the Convention in 1825 as it is consistent with the "object and purpose"[89]. However, this argument cannot be reasonable as the Czar abandoned his claim in 1824, allowing free Passage by the coast of Russian America, as well as fishing and trade with aboriginal population there. The Czar wanted to give Russians of Alaska the chance to trade with American traders.[90]

The Russian historian L.N. Garusova argues that the Russian Czar took very seriously the American declaration of the Monroe doctrine in 1823. In particular, at that time US Secretary of State, John Adams stated in the Congress that Russia and France need to know about the US principles, meaning the ones of Monroe doctrine. This political declaration urged European powers not to interfere with the American continent as it might be perceived by the USA as an attempt to jeopardize American security. The Monroe doctrine certainly had an impact on the USA-Russian relations that resulted in the Czar's decision to lift the ban for foreigners to navigate close to the Russian coast in North America.[91] Therefore, it is very likely that the

[89] Baker and Byers, "Crossed Lines," 74.
[90] "Rossijsko-Amerikanskie regionalnye otnoshenia na Dalnom Vostoke: istoriya i sovremennost."[Russian-American Regional Relations in the Far East: History and Present]. Garusova. L.N, accessed January 20, 2016. http://abc.vvsu.ru/Books/m_rosamo/page0003.asp#_ftn9
[91] "Rossijsko-Amerikanskie regionalnye otnoshenia Dalnom Vostoke".

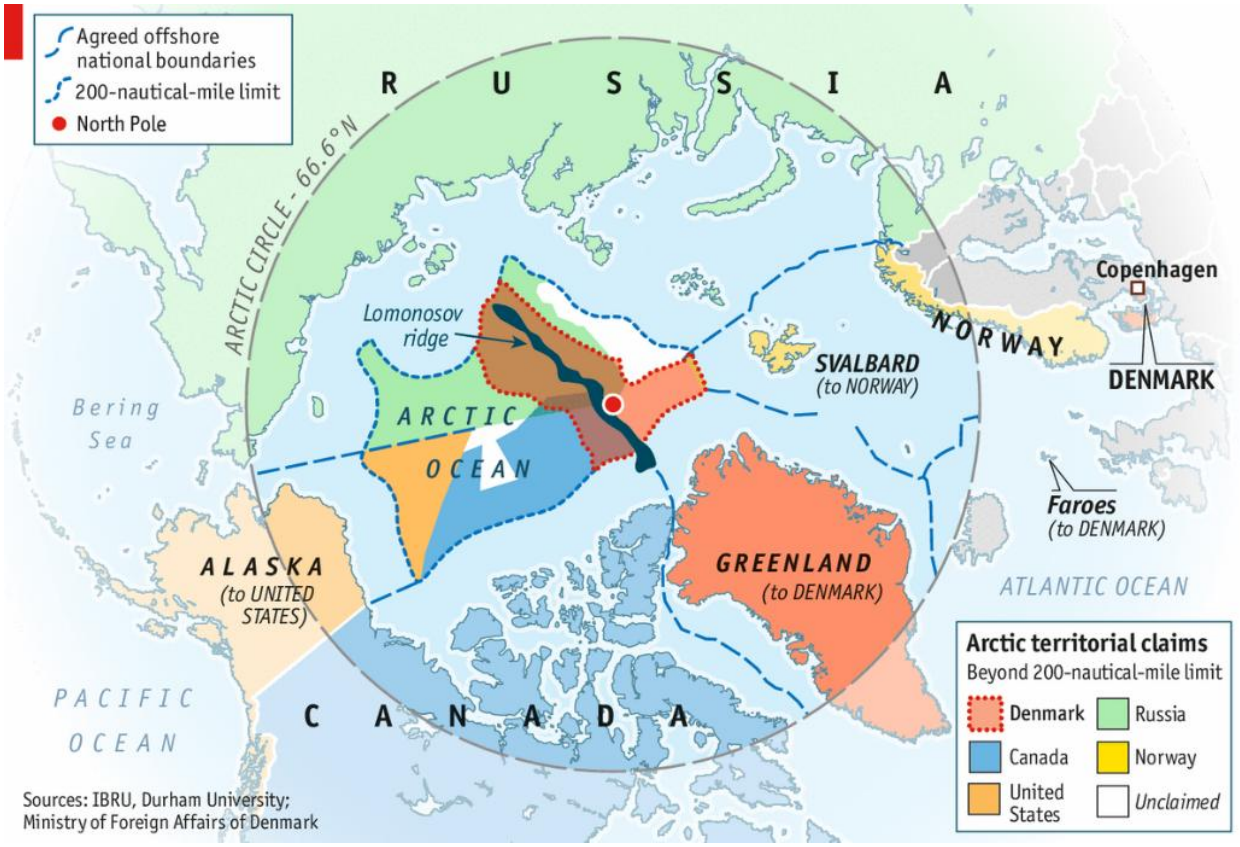
navigation in the Arctic Ocean in 1825 was free for any nation and the delimitation of the maritime boundary was not an issue on the agenda.

5. Relevant unresolved disputes in the Arctic

The Arctic consists of five countries: the United States of America, Canada, Russia, Norway, and Denmark (Greenland). In the last decade, climate change and the vast amount of natural resources in the Arctic encouraged these countries to activate their policies to resolve the disputed issues in the region. Aside from the Beaufort Sea maritime dispute there are other disputes between the Arctic countries. Since all disputes are politically interconnected, it is worth tame taking to review them shortly.

The acquisition of natural resources is the main interest of Arctic states. Since the climate is changing, technologies are becoming more efficient and the demand for energy sources is growing, thus, the Arctic region gets more and more attention. Some estimation argues that the Arctic may have 2/3 of all resources remaining on the planet.[92] Whom does the Arctic belong to? – is the main question these states are trying to answer. Since international law cannot provide a clear answer, Arctic states are seeking a solution in a political way.[93] At the present time, in the international law there is no treaty regime comparable to the regimes in Outer Space or Antarctica. Currently, the Arctic Sea is subject to the same legal regime as the high seas.[94]The Arctic region was not a troublesome issue before the Cold War. Given the comparably close distance between the USA and the USSR, the Arctic was interesting from a military perspective. The USA has installed the "Distant Early Warning Line"[95]. It was a "system of radar stations in the far northern Arctic region of Canada, with additional stations along the North Coast and Aleutian Islands of Alaska, in addition to the Faroe Islands, Greenland, and Iceland. It was set up to detect incoming Soviet bombers [...], and provide early warning of a land based invasion."[96]

[92] Wurm, „*Die EU-Arktispolitik."*
[93] Wurm, „*Die EU-Arktispolitik."*
[94] Dixon, *Textbook on International Law*, 178.
[95] Wurm, „*Die EU-Arktispolitik."*
[96] Canadian Geographic. "Distant Early Warning Line," accessed January 21, 2016. http://www.canadiangeographic.ca/magazine/back_issues/search.asp?tagID=539&tag=Distant_Early_Warning_%28DEW%29_Line



Map: Lomonosov Ridge Dispute and other Arctic Claims[97]

The Lomonosov Ridge is an unseen chain of mountains that splits the Arctic floor in two parts. Canada, Russia, and Denmark argue that the ridge is an extension of their continental shelf, claiming the right to exploit the natural resources underneath the Arctic floor. Denmark claims an approximate area of 895,000 sq km beyond Greenland's nautical borders that is roughly 20 times the size of Denmark. All conflicting parties agreed in 2008 that the territorial dispute should be settled under the United Nations Convention on the Law of the Sea.[98] In August 2015, Russia submitted to the UN a claim over approximately 1.2 million square kilometres of the Arctic seabed. Russia claims that the "Lomonosov Ridge Mendeleev-Alpha Rise, and Chukchi Plateau, have the continental origin which belongs to submarine elevations that are natural components of the continental margin.[99] Canada's claims overlap with the

[97] Arctic Circles [map]. "Musings on Maps". http://dabrownstein.com/tag/mapping-the-north-pole/ (25 February 2016).
[98] "Denmark challenges Russia and Canada over North Pole," BBC, accessed January 19, 2016, http://www.bbc.com/news/world-europe-30481309
[99] Federal Authorities of the Russian Federation. Partial Revised Submission of the Russian Federation to the Commission of the Limits of the Continental Shelf in Respect of the Continental Shelf of the Russian Federation in

Russian and Danish submissions. After a Russian expedition planted its flag on the seabed of the North Pole, Canada and the other Arctic countries protested against such symbolic actions.[100]

The border dispute over the Barents Sea between the Russian Federation and Norway was resolved in 2010 in a peaceful way and may serve as a model for other nations. The disputed area constituted almost 175,000 square kilometres and dated back to the 1920s when the USSR issued a decree on its borders in the Arctic that was protested by Norway and other countries. Russia has traditionally based its arguments on a sector line, running from the Russian coastline, while Norway claimed the application of the equidistance line between the coasts on either side of the border.[101]

The previously disputed area probably contains most large natural resources such as oil and gas. In this regard, for Norway it was strategically important to resolve the dispute and get access to new fields as other regions face a decline in production. This is not the case for Russia, as it still has plenty of other rich fields, however, Moscow was interested in legitimizing its own territorial ambitions. By concluding this treaty, Norway and Russia reaffirmed their commitment to the peaceful settlement of disputes through adopting a common policy based on international law. Moreover, they demonstrated their leadership on Arctic affairs against other players. The Russian-Norwegian Agreement is a compromise of territorial claims that will not have any unintended adverse effects.[102]

The dispute dates back to 1867 when the USA purchased Alaska from Russia. The border line at sea was not defined clearly; therefore, two countries used different delimitation approaches. The USSR depicted the Bering Sea "marine boundary as a rhomb line on a Mercator projection, whereas the USA used a geodetic line on a colonial projection"[103]. The disputed area today constitutes the size of 15000 square nm. The negotiations ended after a decade with the 1990 Maritime Boundary Agreement that split the difference between the US and USSR claims. As result the USA got a smaller portion of the claimed territory, however, it could have acquired an even smaller area if the agreement applied the widely used equidistance line. The USA

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the Arctic Ocean. Executive Summery. Accessed January 19, 2016. http://www.un.org/depts/los/clcs_new/submissions_files/rus01_rev15/2015_08_03_Exec_Summary_English.pdf

[100] O'Rourke, Ronald, "*Changes in the Arctic*: Background and Issues for Congress" (Congressional Research Service, 2016).

[101] Konyashev, Sergunin, Russia's Policies on the Territorial Disputes in the Arctic. Journal of International Relations and Foreign Policy. http://jirfp.com/journals/jirfp/Vol_2_No_1_March_2014/4.pdf P. 68

[102] Brunet-Jailly, *Border Disputes*, 390-392.

[103] Trent, "*An Evaluation of the Arctic."*

ratified the agreement, but the USSR/Russia did not, facing a strong opposition to the Soviet era agreement.[104]

From a legal point of view, there is a clear evidence of "opinion juris" as Russia cannot undermine the 1990 Treaty, even if it refuses to ratify it. Moreover, Moscow and Washington have observed the agreed boundary line for more than 20 years, demonstrating "general state practice". From the political point of view, the USA has no intention to reopen the negotiation of the boundary line in the Bering Sea. Furthermore, it is not in Moscow's interest to question the legitimacy of the 1990 Treaty as it would undermine Russia's reputation as international actor. As the region is a strategically important region for the fishing industry and transit transport between North America and Asia, Russia could try to negotiate better fishing rights.[105]

The Hans Island is a small uninhabited island located in the middle of the Nares Strait, separating Greenland (Denmark) from the Canadian island of Ellesmore. In 1973 Canada and Denmark established a Delimitation Treaty, dividing the ocean floor, using the equidistance line. However, the two countries could not agree on the ownership of the Hans Island and left it out of the Treaty. Only in the 1980s the dispute erupted "when Canada issued a permit for Dome Petroleum to study the effect of the sea ice being pushed up against Hans Island."[106]

Denmark responded by planting a Danish flag on Hans Island. Later, both governments recognized a possibility for the dispute to escalate and met in New York in 2005, agreeing that each side would inform each other of any actions they plan regarding the island. The dispute remains unresolved and both sides still admit that there is potential for a conflict, even though the island has little to offer to either side.[107] Over the past years, Hans Island has become a "symbol of Arctic sovereignty for the two countries because of the additional potentially resource-rich access it could grant to either nation."[108]

The Northwest Passage is an over 6,500 km sea route that connects the Pacific and the Atlantic Oceans. Canada sees the route as "internal waters" as the Passage goes between many small Canadian islands. The USA considers the Northwest Passage as international water, claiming the right of transit passage for foreign vessels. Currently, USA and Canada have an

[104] Trent, "*An Evaluation of the Arctic."*
[105] Valery Konyashev and Alexander Sergunin, "Russia's Policies on the Territorial Disputes in the Arctic," *Journal of International Relations and Foreign Policy*, March 2014, Vol. 2, No. 1, pp. 55-83, accessed January 19, 2016, http://jirfp.com/journals/jirfp/Vol_2_No_1_March_2014/4.pdf
[106] Trent, "*An Evaluation of the Arctic."*
[107] Trent, "*An Evaluation of the Arctic."*
[108] Wurm, „*Die EU-Arktispolitik."*

agreement that allows traveling through the Passage that dates back to 1969. That year, an American tanker tried to pass through the Passage, however, was not able to do so without the assistance of a Canadian icebreaker. Because of pollution fear, Canada adopted an Act, imposing environmental and safety requirements 100 nautical miles from the coast. At that time it was illegal as the international law did not recognize coastal state rights beyond 12 nautical miles. The USA accepted that after the adoption of the UNCLOS in 1982.[109]

In 1985, another controversy arose when the USA did not notify Canada about the passage of its icebreaker, stating that it is the exercise of its rights and freedoms. As result, Canada and the USA signed the Arctic Cooperation Agreement in 1988, allowing US vessels and nuclear submarines to travel through the Passage. This agreement allows for practical cooperation regarding matters relating to the Northwest Passage while affirming that "the two countries agree to disagree about the status of the passage under applicable international law."[110] This pragmatic approach demonstrates the ability of Canada and the USA to work together even when legal differences remain unsolved. At the same time "the 1988 Agreement did not eliminate the possibility of confrontation. It simply postponed it. "[111]

The former US Ambassador to Canada, Paul Cellucci, stated that it is in US interest that Canada has sovereignty over the Northwest Passage. However, the US government officials reaffirmed its position that the Passage is international water. This view is shared by the European Union and Russia. As a reaction, Canada passed in 2009 a unilateral bill renaming the Passage the Canadian Northwest Passage, however, it does not secure Canada's interest and the conflict has its future potential for evolution.[112]

In order to acquire the status of international water, the Northwest Passage has to have been crossed regularly for a long period of time. Currently, this is not the case, since the transit is not always possible due to the climate conditions and is being used rather rarely. However, the melting ice and the climate change will soon enable the passage of transit vessels. Therefore, the sovereignty issue of Northwest Passage will become even more concerning for Canada. Currently, no other country in the world openly supports Canada's view on the issue. Russia has

[109] Packard C.Trent, "*An Evaluation of the Arctic* – Will It Become an Area of Cooperation or Conflict?" (Master thes., Naval Postgraduate School, 2011).
[110] Arctic Governance. "The Canada-US Arctic Cooperation Agreement, "accessed January 21, 2016. http://www.arcticgovernance.org/the-canada-us-arctic-cooperation-agreement.4668242-142904.html
[111] Petkunaite, "*Cooperation or Conflict in the Arctic?"*
[112]Trent, "*An Evaluation of the Arctic."*

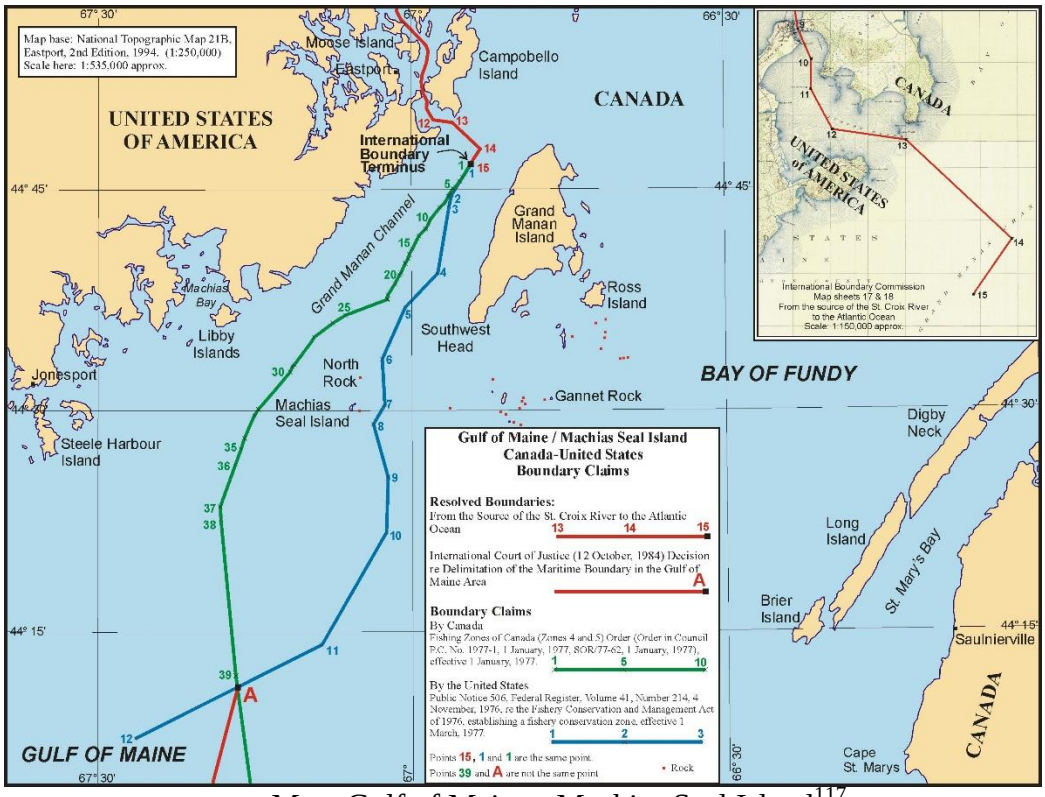
the Northeast Passage; however, politically it has different position, welcoming international transit vessels close to its territory.[113]

The Government of Canada is obviously aware of the economic benefits of an open Northwest Passage; however, a viable option for free commercial transportation seemingly will not become a reality soon. First, the ice is still a natural obstacle. Second, the infrastructure, reliable maps and capable vessels are not available yet. Finally, Canada vehemently insists on its right to consider the Northwest Passage as its internal waters and not as international strait as the rest of the world would prefer.[114]

Another dispute emerged for the first time between Canada and the USA in the 1960s, when the petroleum exploration on the continental shelf in the area of the Grand Banks was launched. Two neighbouring countries could not agree over the delimitation of the maritime border and submitted the case to the International Court of Justice (ICJ) in 1981. Three years later, in 1984, the ICJ ruled out the boundary dispute by dividing the continental shelf and the fishing zones. Canada obtained fishing rights in about one-sixth of the Georges Bank. However, the agreement did not take into account the area around Machias Seal Island, the ownership of which is still disputed. Moreover, the fishery relations continue to be testy as Canada claims that US fishermen ignore the boundary and cross it.[115]

Machias Seal Island has been claimed by the USA under the 1788 Treaty of Paris and the 1816 Treaty of Ghent that defined the boundary in the aftermath of the war of 1812. Canada claims their sovereignty over the island based on a later treaty and installed a lighthouse on the island in 1832. Britain and then Canada's sovereignty over the island has never been recognized by the USA. The disputed area is known as a 'gray zone' and is not abundant in any known significant mineral or petroleum resources except the valuable lobster fishing opportunities.[116]

[113]Bernadette Wurm. „*Die EU-Arktispolitik* im internationalen Kontext. Eine Analyse der europäischen und kanadischen Positionen." (Master Thes. University of Vienna, 2010).
[114] The Arctic policies of Canada and the United - SIPRI books.sipri.org/files/insight/SIPRIInsight1201.pdf
[115] Moran, Daniel et al., "The A–Z Glossary of Maritime Power," in *The Politics of Maritime Power: A Survey* ed. Andrew T. H. Tan. (London: Routledge, 2011),184.
[116] Moran, "The A–Z Glossary," 209.

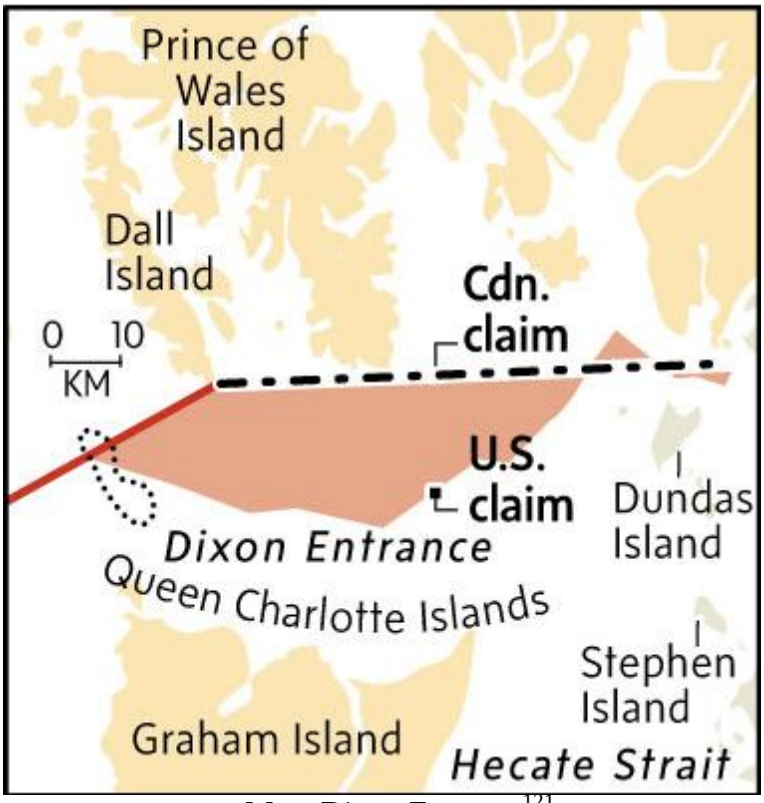


Map: Gulf of Maine - Machias Seal Island[117]

The Strait of Juan de Fuca dispute is a boundary dispute between the State of Washington (USA) and the Canadian Province of British Columbia. In 1977, Canada declared a 200 nm-wide "Exclusive Economic Zone 5" by using an equidistance line based on territorial sea straight baselines. The same year, the USA claimed "Fishery Conservation Zone" also using the equidistance line, however, based on the low water line. The difference amounts in 1.5 sq. nm. This area is known for limited hydrocarbon resources, however, is important for the fishery industry, especially for salmon. Those species are being intercepted when they return from Pacific to the rivers to spawn.[118] Besides salmon, in the Juan de Fuca area polymetallic sulphides have been discovered that are at stake between Canada and the USA. Natural resources and political willingness to compromise constitute the main challenge for the diplomacy to resume negotiations over the maritime boundary delimitation.[119]

[117] Calderbank, Bruce, MacLeod, Alec M., McDorman, Ted L. and Gray, David H. Gulf of Maine - Machias Seal Island [map]. "Canada's Offshore: Jurisdiction, Rights & Management". https://www.acls-aatc.ca/fr/node/304 (February 25, 2016).
[118] David H. Gray, "Canada's Unresolved Maritime Boundaries," *IBRU Boundary and Security Bulletin* Autumn (1997):62, accessed January 30, 2016, https://www.dur.ac.uk/resources/ibru/publications/full/bsb5-3_gray.pdf
[119] Johnston and Valencia, *Pacific*, 101.

In the Dixon Entrance dispute the State of Alaska and the Canadian province of British Columbia cannot agree on a boundary line. In 1903, the Court of Arbitration between the USA and Great Britain had one British, two Canadian and three American judges. The British court member sided with his American colleagues to create the majority decision favouring the State of Alaska. Two Canadian judges protested and refused to sign the final Agreement.[120] The area of the Dixon Entrance is abundant in fish and mineral deposits. Most especially, the Dixon Entrance is a point of interception of salmon that makes the region economically attractive.



Map: Dixon Entrance[121]

The USA and Canada dispute over the status of the so-called "A-B line" that was drawn by the mentioned arbitration court in 1903. This line joins Cope Muzon on Dall Island at the south-westerly tip of the Prince of Wales group of islands, which belong to Alaska, to the point

[120] Gray, "Canada's Unresolved Maritime Boundaries," 62-63.
[121] Dixon Entrance [map]. "GeoGarage blog : press review with marine general thematic." http://blog.geogarage.com/2012/12/canadas-territorial-disputes.html (February 26, 2016)

"B" at the mouth of the Portland Channel on the mainland. Today, the dispute is around the line interpretation. Canada claims that the "A-B" line is the maritime boundary line, where the USA argues that the line divides the land territories. Therefore, the USA defends the position that a median line should constitute the boundary line in the Dixon Entry.[122] Different interpretation of the "A-B" line results in a disputed area of 806 sq. nm.[123]

Another issue in the Dixon Entry dispute the geography of archipelago as well as the unusual feature of the US mainland that complicate the dispute settlement. A reasonable solution would be a trade-off compromise where an equitably adjusted line would serve as an international border (concession to the USA) and the seaward extension line would be drawn northerly (concession to Canada). Additionally, such an arrangement should be supplemented by cooperation in the fishery and environment management.[124]

In summer 2007, the Russian expedition to the North Pole boosted debates on the ownership of the Arctic among many governments. The Russian expedition to the North Pole, with two members of Russia's lower house of Parliament on board, planted a Russian titanium flag on the seabed at the point that is believed to be the North Pole. The aim of the demonstrative action was to seek evidence that would reinforce Russian claims in the Arctic. Russia asserts the Lomonosov Ridge to be an extension of the Russian continental shelf. Other Arctic countries reacted in a very worried matter, protesting at the highest governmental level by arguing that such an action undertaken by Russia is contradictory to the present-day international legal regime.[125]

Russian Foreign Minister Sergei Lavrov explained that that flag planting was a publicity stunt without Kremlin's approval. He compared the flag plant to the American moon landing in 1969. As the US astronauts did not claim the sovereignty on the moon, so the Russian scientists were not claiming the sovereign territory of the North Pole just by planting the flag. Canadian

[122] Johnston and Valencia, *Pacific*, 100.
[123] Gray, "Canada's Unresolved Maritime Boundaries," 62.
[124] Douglas M. Johnston, Mark J. Valencia, *Pacific Ocean Boundary Problems: Status and Solutions*. (Dortrecht: Martinus Nijhoff Publishers, 1991), 100-101.
[125] C.J. Chivers, "Russians Plant Flag on the Arctic Seabed." *New York Times*. August 3, 2007, accessed January 20, 2016. http://www.nytimes.com/2007/08/03/world/europe/03arctic.html?_r=0

Foreign Minister Peter MacKay reacted by stating that claiming territorial sovereignty by planting a flag belongs to the fifteenth century.[126]

Other cases of planting flags on disputed territories have been known even in recent history. As for example, Canada planted its flag on the disputed Hans Island in 1984 and left a bottle of Canadian whisky. In response, a Danish official visited the island, replaced the flag with a Danish one and left and bottle of Danish brandy.[127] Committing symbolic acts as planting flags on disputed territories certainly does not contribute to the diplomatic settlement. However, it intensifies the negotiations, raises awareness of the public and political support of own constituents. This was the case in Russia which used the expedition for purposes of the domestic politics.

To clarify and avoid misinterpretation of Russian action at the North Pole, the Danish government called a summit of the Arctic foreign ministers in Ilulissat, Greenland, in May 2008. The meeting concluded with the Ilulissat Declaration that reaffirmed the political commitment of five Arctic states to work together within the framework of international law and resolve all differences through negotiations.[128]

In any case, the incident intensified the discussions over Arctic sovereignty among the state actors and had an impact on their domestic politics. With regard to the Beaufort Sea dispute, it is important to note that Canada and the USA intensified their talks on the dispute in 2010 when this issue was publically on the agenda between ministers of foreign affairs after over a decade of silence.

[126] Michael Byers. *Who Owns the Arctic? Understanding Sovereignty Disputes in the North*. (Vancouver Douglas & McIntyre, 2010), 88.
[127] "Canada, Denmark wage 'whisky war' on the rocks," Mother Nature Network, accessed January 30, 2016. http://www.mnn.com/earth-matters/wilderness-resources/blogs/canada-denmark-wage-whisky-war-on-rocks
[128] Byers "*Who Owns the Arctic*?" 89.

6. National Arctic Strategies

6.1. Canada's Arctic Strategy

Canada has a large part of its territory in the Arctic. Approximately 110,000 Canadian citizens live in its Arctic region.[129] Canada's coastline is the second longest in the Arctic and constitutes about 40 percent of the Canadian territory. Thus, the Arctic issues are closely interlinked with sovereignty concerns for Canada, and are parts of both foreign and interior policy.[130] The core issue of Canada's Arctic strategy is the sovereignty that Canada regards as "the foundation for realizing the full potential of Canada's North."[131]

After the political discovery of the Arctic in the 19th century, Canada started the process of integration of its territory. To secure sovereignty, Canada entitled the Eastern Arctic Patrol, the Royal Canadian Air Force and the Royal Canadian Mounted Police in the 1920s. The Northwest Territories Council and the Northern Advisory Board were responsible for the administrative governance of the region.[132]

Canada has had territorial claims in the Arctic since 1925, when the theory of sectors was legitimized. According to this theory, the territorial boundary lines on land continue directly to the North Pole. The police were responsible for the wide range of administrative tasks in the Arctic region of Canada. Thus, the sector approach in defining the boundaries was implemented.[133]

The so-called sector theory stresses that "a State close to a pole may claim all territory – land, water and ice – found between a line drawn from the easternmost point to the pole and second line drawn from the westernmost point to the pole"[134]. However, this theory was not used widely in practice or international law: "[the] sector theory was commonly accepted by a long time, even though other countries did not apply it. However, its original formulation did not

[129] Kristopher Bergh, "The Arctic policies of Canada and the United States: Domestic Motives and International Context," *SIPRI Insights on Peace and Security* 1 (2012):6, accessed January 30,2016, books.sipri.org/files/insight/SIPRIInsight1201.pdf
[130] Wurm, „*Die EU-Arktispolitik."*
[131] Bergh, "The Arctic policies of Canada and the United States, " 3.
[132] Wurm, „*Die EU-Arktispolitik."*
[133] Wurm, „*Die EU-Arktispolitik."*
[134] Christopher C. Joyner C, "The status of ice in international law," in *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, ed. Alex G. Oude Elferink et al. (The Hague: Kluwer Law International, 2001), 26.

address matters such as the annexation of frozen waters. It was later hardly criticized and it ceased to be used to justify the occupation of territories."[135]

Canadian Senator Pascal Poirier suggested in 1909 that Canada apply the sector theory when dealing with claims in the maritime areas at the North Pole in the Arctic. However, this approach was never adopted officially. At that time the problem of Canadian sovereignty was rather ignored due to the belief that the severe northern climate would prevent foreign incursions to Canada.[136]

During the Second World War, the Arctic was also in focus internationally. Since Denmark was occupied by Nazi Germany, neighboring Greenland was a potential threat to Canada. Further, the Canadian Arctic became a transit region for the United States Military that provided airplanes for the Soviet Union and so was the shortest way. It was a challenge for Canada to patrol the territory. In this view, North American cooperation was a solution to the problem. However, the intense presence of the US military in the region raised a number of general questions over the sovereignty of Canada. After World War II Canada was able to take responsibility for the administration of its Arctic. Moreover, NATO became an engaged actor in the Arctic as the region is of its security interests. In this regard, the Advisory Committee on Northern Development (ACND) was established to formalize the North American Cooperation.[137]

In 1954, the first icebreaker crossed the Northwest Passage in the Arctic to collect scientific data. At the same time it was a symbolic trip to demonstrate Canada's sovereignty in the region. In the 1960s, Prime Minister Diefenbaker made the first attempt to declare the Northwest Passage as Canada's internal water, however, the USA did not recognize it, and this constitutes another dispute as already mentioned. In spite of the disagreement over the Northwest Passage, both the USA and Canada remained very close allies during the entire Cold War.[138]

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[135] Alexandre Piffero Spohr, and Jéssica da Silva Höring, "The Militarization of the Arctic: Political, Economic and Climate Challenges," *UFRGS Model United Nations Journal* 1 (2013): 23, accessed February 25, 2016, http://www.ufrgs.br/ufrgsmun/2013/wp-content/uploads/2013/10/The-Militarization-of-the-Arctic-Political-Economic-and-Climate-Changes.pdf

[136] Rob Huebert, "Article 234 and maritime pollution jurisdiction in the Arctic," in *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, ed. Alex G. Oude Elferink et al. (The Hague: Kluwer Law International, 2001), 252.

[137] Wurm, „*Die EU-Arktispolitik."*

[138] Wurm, „*Die EU-Arktispolitik."*

The 1970s brought the oil crisis and the drilling of new wells in the Canadian Arctic. In this regard, the "Arctic Waters Pollution Act" had been adopted that introduced safety areas around the Arctic islands to prevent environmental pollution and to legitimize the Arctic sovereignty policy.[139] For example, the Act provided Canada with the right to establish environmental standards for vessels seeking to cross the Northwest Passage. The government of Canada admitted that the standards are non-discriminatory but also acknowledged that they exceed the international law.[140] In 2000, Canada made public its goals in the foreign policy of the Arctic, called "the Northern Dimension of Canada's Foreign Policy" (NDFP). The strategy contains the following points: (1) to ensure the security of Canadians, especially the population settled in the Arctic, (2) ensure and guarantee Canadian sovereignty, (3) inclusion of the Arctic region into the international law, (4) promotion of human and environmental security in the region.[141]

Former Prime Minister of Canada Stephen Harper (2006-2015) made the Arctic region a national priority and a key part of his foreign and domestic policy. He repeatedly brought to public attention the Arctic issues and stated with regard to the Arctic region - "use it or lose it"[142]. Politically, "[the] main body through which Canada develops this foreign policy is the Arctic Council, […] whose first chairmanship was held by Canada in 1996. The year of 2013 sees for the second time Canada as the Arctic Council's chair, a position through which Canada aims to use to enhance its projects to the region."[143]

The Harper government placed emphasis on military aspects to protect Canada's territory in the Arctic, as well as demonstrate its sovereignty. The Ministry of Defence became actively involved into the Arctic policy of Canada. The government made large investments in military bases in Nunavut, including patrol ships, docking and refueling facility in Nanissivik and a Canadian Forces Arctic Training Centre in Resolute Bay.[144]

In 2006, Canada presented its First Defence Strategy where the Arctic took a prominent place. The document stated that "the Canadian Forces must have the capacity to exercise control

[139] Wurm, „*Die EU-Arktispolitik."*
[140] Huebert, "Article 234," 254.
[141] Wurm, „*Die EU-Arktispolitik."*
[142] Virtanen, Visa "*The Arctic in world politics*. The United States, Russia, and China in the Arctic – implications for Finland." (Paper, Harvard University, 2013.)
[143] Spohr and Höring, "The Militarization of the Arctic," 52.
[144] Bergh, "The Arctic policies of Canada and the United States," 7.

over and defend Canada's sovereignty in the Arctic"[145]. The official mission statement of the government elevates the military in its Arctic strategy: "As activity in Canada's Arctic accelerates, the military will play an increasingly vital role in demonstrating a visible Canadian presence in this potentially resource-rich region. The Canadian Armed Forces (CAF) must have the capacity to conduct training exercises and execute operations in the Arctic, and to continue to help other government agencies respond to any challenges that may arise."[146] On the international level, a military presence in the Arctic has been regularly advocated by politicians. For instance, since 2012 the defence ministers of the eight Arctic countries have met annually at Goose Bay in Labrador to discuss the current Arctic-related issues as well as civil-military cooperation.[147]

Also well-known, during the Harper Government, Canada prioritized investments into its resources industry. The late 2000s were very profitable for trade in natural resources. As Canada made remarkable economic profits, it was a logical step for the Harper's government expand the energy sector of Canada's economy and promote the North as a potential region for the natural resource industry.

The Arctic has been successfully incorporated into the Canadian identity. Lawrence Cannon, Minister for Foreign Affairs and International Trade between 2008 and 2011, stated several times that "the Arctic is an essential part of the Canadian national identity"[148]. This claim is widely supported by the public that considers the Arctic as a part of national identity. A Canadian survey in 2012 suggested that more than 50 percent of Canadians are concerned about security in the North.[149]

An active promotion of the Arctic issues and campaigns to raise awareness took place in Canada. An example of the Arctic promotion is the Canadian coat of arms "A Mari Usque Ad Mare", which means "from the Pacific to the Atlantic". In the last years, Canadian officials and the media began referring more often to the Arctic by adding that Canada is a country "from sea, to sea, to sea" or "from coast, to coast, to coast", highlighting Canadian ownership of the Arctic.

[145] Bergh, "The Arctic policies of Canada and the United States," 8.
[146] "Canadian Armed Forces Arctic Training Centre," National Defence and the Canadian Armed Forces, accessed February 26, 2016. http://www.forces.gc.ca/en/news/article.page?doc=canadian-armed-forces-arctic-training-centre/hkdons6l
[147] Bergh, "The Arctic policies of Canada and the United States," 8.
[148] Bergh, "The Arctic policies of Canada and the United States," 15.
[149] Virtanen,"*The Arctic in world politics*."

Today, the Arctic region of Canada remains relatively poor and heavily subsidized by the government in spite of its tremendous natural resources. Most Arctic-related work is done in the Department of Aboriginal Affairs and Northern Development Canada (AANDC) as well as the Department of Foreign Affairs and International Trade (DFAIT). In addition to that, Canada created the Canadian International Centre for the Arctic Region (CICAR) that is located in Oslo, Norway with staff in Washington, DC, Anchorage, and Moscow. The purpose of the Centre is to coordinate and improve diplomatic efforts in the Arctic as well as conduct strategic regional analysis to assist the DFAIT in its decision making.[150]

Canada's approach in the Arctic is based on cooperation, diplomacy, and international law. However, the military means are not neglected as stated in Canada's Northern Strategy: "putting more boots on the Arctic tundra, more ships in the ice water and a better eye-in-the-sky"[151]. To strengthen the sovereignty in the Arctic, there is a need of military presence in the region. Currently, Canada has 5 icebreakers at its disposal and the Canadian Forces Northern Area (CFNA) that are in cooperation with the army maintain the security. However, the icebreakers have to fulfil duties also in the Atlantic, therefore, their capacity is limited. In this view, Canada conducts in the first place maneuvers and patrol operations of the Canadian Rangers.[152]

The issue of Canada's sovereignty in the Arctic has been taken especially seriously in the last several years. As first Prime Minister of Canada ever, Stephen Harper visited the far north of Canada to demonstrate Canada's engagement and strong position on its sovereignty. Canada increased investment into research projects to ensure Canada's belongings in the North. For instance, "Canada has invested over $100 million for research in the Arctic to verify seabed and extended continental shelf claims"[153]

The Statement on Canada's Arctic Foreign Policy: Exercising Sovereignty and Promoting Canada's Northern Strategy Abroad extensively addresses the environmental issues: "Canada is committed to planning and managing Arctic Ocean and land-based activities domestically and internationally in an integrated and comprehensive manner that balances conservation,

[150] Bergh, "The Arctic policies of Canada and the United States," 9.
[151] Trent, "*An Evaluation of the Arctic."*
[152] Wurm, „*Die EU-Arktispolitik."*
[153] Trent, "*An Evaluation of the Arctic."*

sustainable use and economic development—ensuring benefits for users and the ecosystem as a whole."[154]

Canada deems the submission to the CLCS as critically important in the implementation of its Arctic policy. The 2009 Northern Strategy: Our North, Our Heritage, Our Future ensures that the government's study of the continental shelf is "a lengthy process that is 'not adversarial and not a race' but is 'a collaborative process based on a shared commitment to international law'"[155]. Canada regards this process as a tool to secure international recognition of the extended shelf that will lead to unquestionable right to exercise its sovereignty over the natural resources on the seabed and subsoil. The process of collecting data for the CLCS submission was accompanied by close cooperation other Arctic states to maximize data collection, enable exchange of information and minimize future differences.[156]

The overall interest of Canada in the Arctic is to maintain its sovereignty over the extensive archipelago. However, it has difficulties such as a capacity gap, having not enough economic and military tools to keep control and explore the North. Further, the USA is often a counter-player in the Arctic discussion. It fears that some area might become international routes.[157] However, Canada "made it clear that it will act unilaterally to protect its interests."[158]

6.2. United States of America's Arctic Strategy

The United States of America is an Arctic county by virtue of the State of Alaska. During the Cold War, Alaska and the Arctic were regions under high security priority. The USA feared a trans-Arctic attack by ballistic missiles from the Soviet Union. In 1961, Ballistic Missile Early System radar was installed at the Thule Air Base in Greenland.[159]

The USA, having mainly Alaska as its entry point to the Arctic, is in this regard a rather small player, however, politically the most powerful and influential in international relations. It is in America's interest to act as a superpower and maintain this political status in the north.

[154] Tim Stephens, "Polar continental shelves: Australian and Canadian challenges and opportunities," in *Polar Oceans Governance in an Era of Environmental Change*, ed. Tim Stephens er al. (Cheltenham: Edward Elgar Publishing, 2014), 161.
[155] Stephens, "Polar continental shelves," 161.
[156] Stephens, "Polar continental shelves," 161.
[157] Moritz Haller, „*Zwischen Recht und Macht.*"
[158] Trent, "*An Evaluation of the Arctic.*"
[159] Virtanen, "*The Arctic in world politics*."

Needless to say, the free access to the far Arctic and the right to benefit of natural resources there is also America's priority.[160]

The United States of America started claiming territories in the Arctic for the first time in 1924. Since the end of the Cold War a lot has changed with regard to the political approach of the USA in the Arctic. The foreign policy agenda and threats have shifted to other regions. Since 1991, Thule Air Base in Greenland is the only remaining military base after a whole network of 4 bases operating during the Cold War. Today, the base is used as radar station and satellite-tracking installation, employing only around 100 personnel compared to several thousand during the Cold War. Moreover, in 2006, the USA closed its last base in Iceland. The reduction of the US presence in the Arctic, demonstrates how little the USA pays attention to the Arctic region.[161]

Climate change, melting of the Arctic ice, opens new opportunities for the USA with regard to the accessibility of natural resources and transit of ships not only for the US, but for the whole world. This development brings new possible threats to US security, as well as heating the ongoing boundary disputes. Moreover, The Russian flag planted by an expedition in 2007 raised awareness of the US government to the importance of the Arctic. In this view, recognizing the future uncertainty of the region, the USA issued in 2009 the National Security Presidential Directive (NSPD) 66 and the Homeland Security Presidential Directive (HSPD) 25 as basis for its Arctic policy[162].

Those directives of the US-Government pursue the following goals: (1) to ensure national security, (2) to respect the resources and environment, (3) sustainable economic development, (4) reinforced international cooperation with eight Arctic states, (5) engagement with indigenous population, (6) promotion of science and research. The directives have recognized the dispute in the Beaufort Sea with Canada, admitting that certain intensification might be possible.[163] This directive calls the US Senate to ratify the UNCLOS as "it will give the United States a seat at the table when the rights that are vital to our interests are debated are interpreted."[164] In its diplomacy, the USA often prefers bilateral rather than multilateral methods of resolving

[160] Moritz Haller, „*Zwischen Recht und Macht.*"
[161] Virtanen, "*The Arctic in world politics*."
[162]Trent, "*An Evaluation of the Arctic."*
[163] Wurm, „*Die EU-Arktispolitik."*
[164] Trent, "*An Evaluation of the Arctic."*

conflicts. This may be the reason why the UNCLOS has not yet been ratified.[165] Some experts argue that "until the U.S. ratifies the UNCLOS and moves forward with the U.S. in the Arctic, the U.S. will not become a major benefactor from the Arctic."[166]

The US Arctic policy is also based on the Navy-related documents as "A Cooperative Strategy for 21st Century Seapower" that calls for the USA to "foster and sustain cooperative relationships with an expanding set of international partners, and prevent or mitigate disruptions and crisis."[167] In this view, the spirit of the Strategy seems to favour the ratification of the UNCLOS as the 2010 US Quadrennial Defence Review Report (QDR) does: "to support cooperative engagements in the Arctic, the QDR states that DOD 'strongly supports accession to the UNCLOS."[168]

Currently, the missile defense and early warning are the first security interest of the USA in the Arctic. The USA has two air force bases in Alaska and one in Greenland that plays an important role as a strategic outpost in the Arctic. The United States seems to have sufficient resources and military capacity to defend it. The US aircraft carriers, major combat ships and warships are capable of operating in Arctic weather conditions. The Northern Warfare training Center in Black Rapids conducts cold weather trainings for the US Army.[169]

At the same time, the USA is limited in actively operating in the Arctic. The United States operate with one icebreaker, lacking deep water port facilities, airfields and aids to navigation. The US Coast Guard operates three icebreakers in regions adjacent to the Arctic. According to a Coast Guard study, the USA will need at least six heavy-duty and four medium-duty icebreakers to meet the mission requirements.[170]

Caitlyn L. Antrim, expert in the Law of the Sea, suggests that the USA should reach its objectives in the Arctic through collaboration, particularly with Russia. Such a partnership should include: reinforcement of the rule of law, military cooperation and emergency response,

[165] Wurm, „*Die EU-Arktispolitik."*
[166] Trent, "*An Evaluation of the Arctic."*
[167] Trent, "*An Evaluation of the Arctic."*
[168] Trent, "*An Evaluation of the Arctic."*
[169] Virtanen, "*The Arctic in world politics*."
[170] Virtanen, "*The Arctic in world politics*."

maritime safety and security, Arctic domain awareness, science and policy of regional and transiting states.[171]

Ernie Regehr, an Arctic expert at the Simons Foundation, argues that the USA is a global power, but not an Arctic power. A small portion of the Arctic geography is of less importance in its security after the end of the Cold War, political and psychological distance from the centers of the US economic interest diminish the role of the Arctic in American politics. The role of the Arctic in the USA is certainly incomparable to the importance of the Arctic in Canada and the Russian Federation. One of the Russian ministers claimed the Arctic to be "a Russian Mecca"[172]. For Canada the Arctic is even a part of national identity.

The general public awareness of Arctic affairs and concern in the USA is rather modest. This thesis confirms the EKOS survey which the Gordon Foundation undertook in 2015, a research in eight Arctic countries. The survey found that Americans outside Alaska are less likely to think about a possible rising threat of a military conflict in the Arctic. At the same time, 24 percent of Americans felt the threat of military conflict had increased in the last year, while 30 percent of Canadians are concerned with increased tensions and 50 percent of Russians. With regard to the Arctic Council, where the USA holds currently the Chairmanship, 32 percent of Americans declared having never heard about it.[173]

The attention of Washington to Alaska, the American door to the Arctic, has never been the first priority. President Barack Obama visited Alaska beyond the Joint Base Elmendorf-Richardson for the first time as president only in August 2015. He met with the public highlighting the issues of climate change and natural resources. As experts admit, the issue of climate change which is being discussed during the US presidential election 2016 that automatically brings attention to Alaska.[174]

William L. Brooks, expert at the John Hopkins University, argues that it is misleading to conclude that Washington pays little attention to the Arctic. He highlights the US military

[171] Virtanen, "*The Arctic in world politics*."
[172] Ernie Regehr, "America's Arctic Security Strategy," in *Disarming Arctic Security*. Briefing Paper. The Simons Foundation, May 2015, p. 1.
[173] Regehr, "America's Arctic Security Strategy."
[174] Anderson Tom, "Alaska is suddenly relevant to the presidential election." *The Hill*, August 21, 2015, accessed January 19, 2016. http://thehill.com/blogs/pundits-blog/energy-environment/251620-alaska-is-suddenly-relevant-to-the-presidential

leadership and the importance of the Thule Air Base in Greenland. During the Cold War the Thule Air Base was most capable to reach Moscow or other targets, as the best way from the North Pole. Today, "if the U.S. were not present in the Arctic, another country like China or Russia would likely take its place."[175]

In the future, when the energy resources become even scarcer, the Arctic will gain more attention in the USA. This might not happen before 2030, as thanks to modern technology North America will become self-sufficient in the 2020s. The USA has enough shale oil and gas to power itself for 90-100 years that makes expensive drilling in the Arctic unattractive.[176]

6.3. Policies to resolve the Beaufort Sea boundary dispute

6.3.1. United States of America's current position

The United States bases its position in the dispute on the rules contained in the 1958 Continental Shelf Convention, its interpretation of customary international law, and criteria established by the International Court of Justice (ICJ). In this regard, the United States insists that the maritime boundary in the Beaufort Sea between Alaska and Yukon must be drawn using equitable principles, particularly, the equidistant line. The USA does not recognize the 141st meridian as Canada does according to the 1825 and 1867 treaties.[177]

Up till now, the USA has not yet explicitly countered the Canadian legal position, but according to Dr. Byers, the USA could certainly present several counter-arguments. First, the USA might argue that the English translation of the 1825 Treaty should be treated as authoritative and clearly sets the border at the coastline where the water is frozen. Moreover, the USA could argue that the national jurisdiction in the 19th century had only a short distance offshore and it is very unlikely that the 1825 treaty would go beyond that practice.[178] Finally, the USA could argue that the language formulation between the treaties of 1825 and 1867 is different. Namely, the 1825 treaty sets the line between Alaska and the Yukon "jusqu'a la Mer Glaciale", "the 1867 treaty establishes boundary between Alaska and Russia 'into the same

[175]Kent E. Calder, edit., *A changing Arctic and the Trans-Pacific Relationship. Asia-Pacific Policy Papers Series*, No.13. (Washington, D.C.: John Hopkins University, 2012), p. 2.
[176] Virtanen, "*The Arctic in world politics*."
[177] Kirkey, "Delineating Maritime Boundaries."
[178] Byers. *International Law and the Arctic*, 67.

Frozen Ocean.' The latter formulation is clearly intended to delimit a maritime boundary, while the former is hardly clear."[179]

In any case the USA might counter, even unofficially, Canadian arguments by highlighting that the 1825 Treaty ends at the coast line of the Beaufort Sea where the water is frozen. This natural state is observed during almost the entire year. The USA questions the terms used in the treaty of 1825 and does not accept its application to the maritime boundary, and claims that the concept of "territorial sea" was accepted only in 19th century after the adoption of the 1825 Treaty.[180]

Further, the US position can be supported by the argument that the negotiators in 1825 were not able to consider far situated areas where they could not reach and did not know much about its existence. This could be a counterargument to the sector delimitation approach by Canada. Furthermore, the USA can even further support this argument by stating that the frozen sea in 1825 is not very different that almost 200 years ago. However, the most important point for the United States is that its position is based on legal arguments and not on long-standing political ones.[181]

The United States of America stands strongly on the principle that unrestricted mobility should be provided in the High North. Therefore, the 141st meridian as a division line up to the North Pole will continue to be rejected by the USA.[182] The arguments presented by the US concerning the Northern Passage reveal the strong interest of the USA in this regard.

Considering the current Canadian position in the dispute, namely the delimitation of the maritime border along the 141st meridian, it satisfies the US ambition to extend its rights on sea much further north. In this case, the US boundary may eventually reach as far as the North Pole. If the parties agree to apply the equidistance line, the Canada-USA maritime boundary turns sharply westwards, due to the Canadian archipelago, into direction of the boundary with Russia, cutting a large space in the north and giving it to Canada. Therefore, the question remains open which part of the water space is more attractive for the USA: the one closer to the shore within the 200 nm or the larger space far in the North.

[179] Michael Byers. *International Law and the Arctic*. (Cambridge University Press, 2013), 67.
[180] Petkunaite, "*Cooperation or Conflict in the Arctic?"*
[181] Baker and Byers, "Crossed Lines," 75.
[182] Petkunaite, "*Cooperation or Conflict in the Arctic?"*

Certainly, the USA and Canada agree on keeping the Beaufort Sea dispute an issue of bilateral relations. An involvement of other mediation parties would only weaken the two strategic partners. Moreover, the outside interest of other countries is rather limited, since any solution of the dispute does not have any major effects on other countries, except for Russia which may become a neighbor with Canada, should the equidistance line be used to delimit the space of the Beaufort Sea.

Thus far, there is no explicit official argument from the USA with regard to the Canadian legal arguments. The issue of the Beaufort Sea dispute is not often an issue of public debate in the USA. Strategically, the USA may be interested in the maintaining status-quo at the moment and wait up until other Arctic countries, especially Canada, publically reveal their claims to the Arctic continental shelf. Since the USA has not yet ratified the UNCLOS, and after an eventual ratification will still have at least 10 years to submit its claims to the Commission on Limits of the Continental Shelf, there is plenty of time and legal framework to formulate the Arctic strategy and adapt to the future circumstances. The US military and political predominance in the world support the maintenance of the status quo in the dispute and in the Arctic in general. Friendly comprehensive relations with Canada allow the USA to cooperate with Canada without major impact of the dispute.

6.3.2. Canada's current position

Canada bases its position in the Beaufort Sea maritime boundary dispute on the principles of treaty interpretation and historical jurisdiction. As already mentioned, Canada argues that the offshore boundary is an extension of the 141st meridian of west longitude, which onshore divides Yukon and Alaska. The Canadian governments have been arguing that the 1825 treaty between Russia and Great Britain, and the 1867 Cession of Alaska Treaty, clearly suggest that the 141st meridian applies also delineation to the Beaufort Sea. This boundaries Canada has used when granting of hydrocarbon exploration licenses since January 1965.[183]

Dr. Michael Byers from the University of British Columbia brings four legal arguments in support of the Canadian position in the Beaufort maritime dispute. Namely, that the St. Petersburg Treaty of 1825 delimits also the maritime boundary in addition to the land border. The first argument is that the boundary lines claimed by Canada are consistent with the 'object

[183] Kirkey, "Delineating Maritime Boundaries."

and purpose' of the 1825 Treaty. His argumentation is based on the comment of British Foreign Secretary George Canning (1770-1827) who said that negotiations are not about limits, but "it is a demand of the repeal of an offensive and unjustifiable allegation of exclusive jurisdiction over an ocean of unmeasured extent...We negotiate about territory to cover the remonstrance of upon principle."[184]

The second argument addresses the linguistic interpretation of the text of the 1825 Treaty. Since the original version is in French and the phrase "dans son prolongation jusqu'a la Mer Glaciale" would be usually interpreted including the object, meaning "as far as the frozen ocean" including the ocean. Dr. Byers' third argument claims that the 1867 Treaty of Cessation of Alaska to the USA repeated the boundaries of the 1825 Treaty. After that, for more than a century, parties accepted the defined maritime boundary and in 1990 the USSR and the USA updated the Treaty delimiting the Bering and Chukchi Seas. In this case the equidistance approach has not been used, but rather the meridian line. The Canadian position was complicated by another argument until 2006, when it was rejected by the government. It was previously hoped to claim the sector boundary limitation, leading the 141st meridian up to the North Pole.[185]

Finally, Canada could argue that the USA initially did not protest against the use of the 141st W meridian as the maritime boundary when Canada issued the exploration of natural recourses in the 1960s in the currently disputed area of the Beaufort Sea. Moreover, when Canada adopted the Arctic Waters Pollution Prevention Act in the 1970s, the USA did not protest against the boundary either, but against the Act. At the same time, Byers admits that it might be questionable whether the USA should have been more specific to a small area in addition to protesting against the whole Act.[186]

The Foreign Policy Statement on the Beaufort Sea admits that dispute "is well managed, neither posing defence challenges for Canada nor diminishing Canada's ability to collaborate and cooperate with its Arctic neighbours."[187] Although the positions in the dispute very much differ in the USA and Canada, it does not negatively influence general relations with the USA. Canada prefers to keep the dispute within the bilateral relations and seems to be open to developing new

[184] Byers. *International Law and the Arctic*, 63.
[185] Byers. *International Law and the Arctic*, 65.
[186] Byers. *International Law and the Arctic*, 65.
[187] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute*".

solution options and reframing its position. However, the issue of territorial sovereignty still enjoys a high priority of Canada in the dispute and in the Arctic in general. Therefore, concessions in this regard are rather difficult to make and have to be justified before the Canadian public.

7. Relevant factors in the dispute settlement process

The USA-Canada relations have a tremendous impact on their cooperation in the Arctic, their boundary disagreements, and the entirety of Arctic politics. Many features build a stronghold for this relationship. The respective societies in the USA and Canada are closely intertwined, sharing the longest border in the world. Each country is the most important trading partner to its neighbor.[188] It is noticeable that "[although] there are some divergences regarding territorial delimitation, U.S. and Canada have made advances on military cooperation through the North American Aerospace Defense Command (NORAD), region with higher relevance since Russia resumed its bombers incursions."[189]

The Arctic region is an important issue in the USA-Canada relations. There are numerous spheres in this regard where two neighboring countries work closely together; however, at the same time there are policies where USA and Canada have differing views. In both countries the Arctic agenda is set high on the political agenda. In Canada the Arctic policy is a highly politicized issue and, as already discussed, a part of the Canadian national identity. Therefore, the Arctic policy is strongly influenced by public opinion. This phenomenon is not present in the USA. The domestic political stakes and public opinion is relatively law.[190]

Canada and the USA disagree on participation of non-Arctic states in the discussion of the Arctic issues. This is the position Canada takes in the Arctic Council. Canada openly opposed granting the European Union a permanent observer status in the Arctic Council. China's application to become a permanent observer in the Arctic Council was met with Canada's opposition. This position is strongly supported by Canadian public opinion which opposes allowing outsiders' participation in the Arctic Council. On the contrary, the USA, Sweden and

[188] Bergh, "The Arctic policies of Canada and the United States," 11.
[189] Spohr and Höring, "The Militarization of the Arctic," 47.
[190] Bergh, "The Arctic policies of Canada and the United States," 17.

Finland do not have very strong Arctic identity and influence in domestic politics. This allows them to be supportive of more inclusive participation of other countries in the Arctic Council.[191]

Canada and the USA are strong partners within NATO. The United States of America is in favor of the Arctic issue to be included into NATO agenda. However, Government of Canada opposes it, preferring the bilateral North American Aerospace Defence Command (NORAD) to be extended. Canada would prefer to exclude other nations from policing the region.[192]

This position could be explained through a number of aspects. First of all, being a NATO country, Canada can use at any time Article 5 of the NATO treaty that regards an attack on one country as attack on all NATO members. This means that Canada is protected by NATO in any case. The Arctic, being on the NATO agenda, would be influenced by a number of other states that do not have paramount interests in the Arctic and would politicize the issue. This might be in the interest of the USA as a distinguished leader in this Organization. Through NATO, the USA would certainly have more influence in the regions and more tools to challenge Arctic politics and even Canada's position. In a discussion prior to the Ukraine crisis, Stephen Harper mentioned that he is not in favor of NATO's participation in the discussion of the Arctic agenda as NATO had good relations with Russia.

One of the most important questions to consider in Arctic policy is the building of political blocks. Ms. Bernadette Wurm, an Austrian expert on Arctic policy, represents an opinion that there may be no clear creation of groups of countries one against another. There are different lines of interest that are not conflicting against all countries at the same time. For instance, Norway and Russia disagree in the Barents Sea that is irrelevant to any other Arctic player. The disagreement over the North-West-Passage is mainly between Canada and the USA. However, other countries might be favorable of the US position, since it stands for an international status of the passage. The dispute over the Lomonosov Ridge is relevant only to Denmark, Canada and Russia. Therefore, building alliances in the Arctic may be under a time constraint and occur only in specific situations.[193]

[191] Bergh, "The Arctic policies of Canada and the United States," 17.
[192] Deutsche Welle. "Ukraine crisis reaches into the Arctic," accessed January 21, 2016. http://www.dw.com/en/ukraine-crisis-reaches-into-the-arctic/a-17640376
[193] Wurm, „*Die EU-Arktispolitik."*

Public opinion on the two ongoing maritime disputes in the Arctic strongly differs in the USA and Canada. "The number of Canadians who think that Canada should 'assert full sovereignty' over the area rather than strike a deal with USA is around 50 percent while the corresponding number in the USA is only 10 percent."[194] Both countries have strong ambitions to become a regional leader in the Arctic, however, the disinterest to find a solution undermines those policies. The possibility to settle the disputes as Russia and Norway did remains very unlikely at the moment.[195]

Given the interstate relations between the USA and Canada which have been long and traditionally friendly neighboring relations; it is an important and forward-looking factor for finding a solution that is agreeable to both sides. In this regard, it is worthwhile to explore the common interests and mutually agreed principles for negotiations. For instance, both the U.S. and Canada agree that they are bound by the 1958 Convention on the Continental Shelf; and they both agree that the boundary should be "equitable", as determined by the International Court of Justice. Furthermore, both countries have their common resources market regulated by the NAFTA treaty that makes the eventual resources from the disputed area accessible to both sides of the conflict.

The Arctic countries face a major challenge to find a balance between economic development and environmental protection in the Arctic. Since the Arctic Ocean has warmed and becomes more navigable, this brings Canada and the USA to closer cooperation to protect their own interests. The Arctic environmental issues have been not only on the Arctic Council's Agenda, but also a part of bilateral relations between the USA and Canada.[196]

Administratively, Canada and the USA spread their responsibility over oceans in different departments and ministries. In Canada, the Department of Fisheries and Oceans obtained the ministerial status in 1979 and aimed at facilitating and coordinating the government on oceanic issues, but does not directly supervise. In the United States, the National Oceanic and Atmospheric Administration in the Department of Commerce oversees the broad range of divisions on different relevant thematic scopes, but does not coordinates them.[197] Therefore, an

[194] Bergh, "The Arctic policies of Canada and the United States," 18.
[195] Bergh, "The Arctic policies of Canada and the United States," 18.
[196] Petkunaite, "*Cooperation or Conflict in the Arctic?"*
[197] Baker, "Filling an Arctic Gap," 85.

enhanced thematic cooperation between relevant departments in ministries of both countries as well as a better coordination of relevant national branches dealing with oceans can still be improved to create more opportunities to cooperate between the Arctic policies of both states. Betsy Baker argues that Canada through its numerous initiatives in the Arctic shows a greater interest in the region than the USA. Canadian initiatives include not only governmental projects, but also academic activities on climate change, human health, natural and social science in aboriginal communities.[198]

In the last 30 years both countries took important steps in their domestic policies giving more attention and engagement in the Arctic region. Canada passed in 1970 the Arctic Pollution Prevention Act. In 1996, the Canada Oceans Act was passed and later in 2002 the Canada's Ocean Strategy: Our Oceans, Our Future. The Canadian Oceans Action Plan of 2005 and 2007 included the Beaufort Sea as a priority. The United States of America faced similar increase of interest in the Arctic in the last few decades. In 1969, the USA issued the Stratton Commission Report, Our Nation and the Sea. One year later, the National Oceanic and Atmospheric Administration were established. In the following decade the Coastal Zone Management Act (1972) and the Marine Mammal Protection Act (1972) were passed. In 1975, the USA started the assessment program of the continental shelf in the Beaufort Sea. The most recent documents include the Oceans Action Plan (2004) and the Committee on Ocean Policy (2004).[199]

Canada and the USA established in 1974 the Joint Marine Pollution Contingency Plan that addresses the accidental and unauthorized release of pollutants that damage to the environment along the shared maritime boundary. The agreement was updated in 2003 as a memorandum of understanding covers today all potential sources of marine pollution and provides procedures for response efforts to spills in contiguous waters between Canada and the USA. The document established the provision of mutual aid in waters. Through the Plan both countries expect to meet their commitments under the International Convention for Oil Pollution Prevention Response, and Cooperation (OPRC) in 1990 that addresses the marine spills and encourages establishing cooperation agreements to give response to them. As result of the cooperation in 2014, coastguards from Canada and the USA participated in an oil spill response

[198] Baker, "Filling an Arctic Gap," 97.
[199] Baker, "Filling an Arctic Gap," 85.

exercise concerning a spill into the waters of the Beaufort Sea.[200] Since 1983, there is an agreement between Canada and the USA on geographic annexes that provide the necessary information to respond effectively in contiguous waters in the Atlantic and Pacific including the Beaufort Sea and the Dixon Entrance.[201]

With regard to the shipping sector, the US and Canadian Coast Guards participate annually in bilateral summits and conduct various joint operations to respond to incidents in the contiguous water of both countries.[202] Together they participate in the Arctic Marine Shipping Assessment (AMSA) initiative called by the Arctic Council Ministerial Meeting in 2004. The AMSA was set to analyze the current and future marine activity in order to advance the marine safety, environmental protection and sustainable development. For that purpose, Canada and the USA provided data about their marine operations and shipping in the Arctic.[203]

A rather problematic issue is the fishery cooperation in the Arctic. Up to now this area cooperation in Beaufort Sea between Canada and the USA remains at the level of potential bilateral discussions. However, the publication of the United States Arctic Fishery Management Plan issued in 2009, might encourage Canada to provide to respond. Currently, there is a temporary ban commercial fishing the US national waters of the Beaufort and Chukchi Sea.[204]

The US Plan on Arctic fishery management acknowledges the climate change in the Arctic, in particular the warming ocean temperatures, migrating fish stocks, and melting of the sea ice favor the conditions for commercial fisheries. The plan provides a framework for sustainable management of the Arctic marine resources. The prohibition of commercial fishing in the Arctic will remain valid until there is more information on the possible sustainable fisheries management.[205]

The fishery is often an "apple of discord" in the border areas between the USA and Canada. As already mentioned in this paper, two countries face three other maritime boundary

[200] "Canada–United States Joint Marine Pollution Contingency Plan 2013," Environment and Climate Change Canada, accessed January 30, 2016, http://ec.gc.ca/international/default.asp?lang=En&n=0DEBF8A7-1
[201] Baker, "Filling an Arctic Gap," 77.
[202] Baker, "Filling an Arctic Gap," 77.
[203] Davor Vidas, Peter Johan Schei, *The World Ocean in Globalisation: Climate Change, Sustainable Fisheries, Biodiversity, Shipping, Regional Issues.* (Leiden: Martinus Nijhoff Publishers, 2011), 310-311.
[204] Baker, "Filling an Arctic Gap," 77.
[205] "Arctic Fisheries Management," NOAA Fisheries, accessed July 30, 2016, https://alaskafisheries.noaa.gov/fisheries/arctic

disputes, where the living resources and fishery are disputed in the areas contested. Moreover, fishing is the traditional activity of the indigenous population of Canada protected by the Inuvialuit Final Agreement. Therefore, taking into account the enormous living resources of the Beaufort Sea, the fishing rights and commercial fishery management will be an inevitable issue during the negotiations of the Beaufort Sea dispute.

There is successful sub-state agreement between indigenous people of Canada and the USA on protection of the polar bears in the Arctic region. In 1988, the Inuvialuit-Inupiat Polar Bear Management Agreement was signed between Inuvialuit of Canada and Inupiat of the USA. Since those two groups are closely related indigenous people, it is evidently that cooperation between them on matters of common concern is desirable. The commission sets hunting and harvest seasons for both parties and responsible scientists annually review the process. The representatives of local traditions are involved in the management process and regular consultations. Neither the federal government nor the state representatives of Canada and the USA are signatories to the sub-state agreement; they did, however, give their consent.[206]

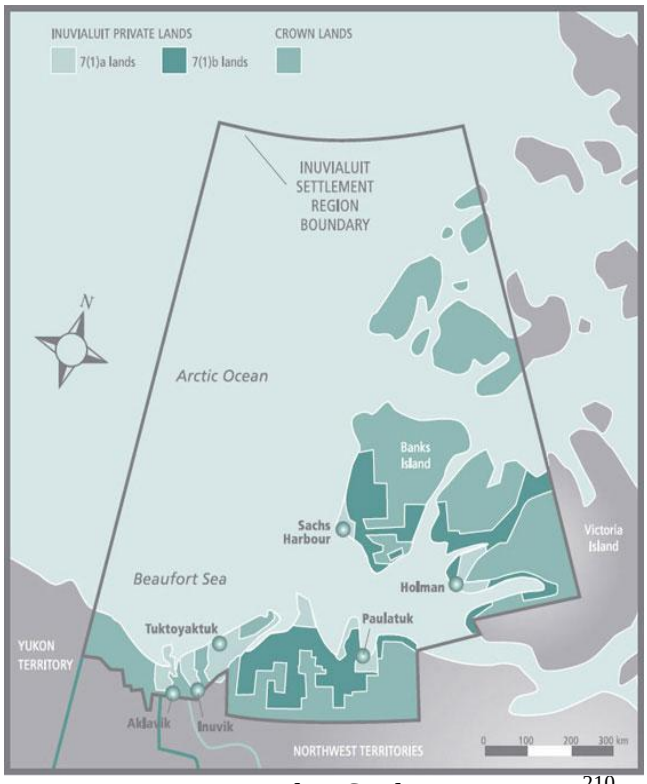
Successfully established long-standing cross-border cooperation between indigenous people of Yukon and Alaska gives an impulse for further more comprehensive cross-border management of the ecosystem. As, for instance, the State of Alaska could work jointly with Yukon to manage the protection of belugas in the Beaufort Sea. The Inuvialuits declared unilaterally the Inuvialuit Beluga Management Plan that applies in Canadian waters. This is only one example of an opportunity to expand the cooperation between Alaska and Yukon that might eventually result in a joint management of the disputed triangle.[207]

7.1. Role of the indigenous population in the dispute settlement process

The history of the population in arctic region of Western Canada goes back as far as four thousand years, when people with ancestry in the Siberian Neolithic period appeared on the Yukon North Slope. These people and their Inuit descendants were the "first to successfully adopt a way a life that allowed for survival in this severe environment"[208]. Hunting and fishing

[206] Byers. *International Law and the Arctic*, 226.
[207] Baker, "Filling an Arctic Gap," 81.
[208] "The Inuvialuit," Wildlife Management Advisory Council, accessed January 30, 2016, http://www.wmacns.ca/north_slope/inuvialuit/

were their main activities. Ostensibly, some 1000 years ago, they were displaced by another new group of Thule people who migrated eastward. Today in Canada, the Western Thules are deemed to be the ancestors of the Inuit people.[209]



Map: Inuvialuit Settlement Region[210]

In Canada, the disputed area of the Beaufort Sea is a part of the Inuvialuit Settlement Region (ISR) that is populated by the Inuvialuit sub-group of the Inuit population of Canada. Inuvialuit means in Siglitum (the aboriginal Inuit dialect) "the real people". Even today they "continue to rely upon local wildlife for a large part of their subsistence, just as their ancestors

[209] "The Inuvialuit," Wildlife Management Advisory Council, accessed January 30, 2016, http://www.wmacns.ca/north_slope/inuvialuit/

[210] Inuvialuit Settlement Region [map]. "Inuvialuit Implementation of the Inuvialuit Final Agreement Coordinating Committee - Annual Report April 1, 2005 to March 31, 2007". http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-LDC/STAGING/images-images/ldc_cc_farim_inuvialuit_2005-07_map_1374514012183_eng.jpg (January 30, 2016).

did. The harvesting of sea mammals is particularly important. Hunting and whaling are two ongoing traditions that are the basis of the Inuvialuit life"[211].

According to the Canadian census of 2006 the population of the region was 5,710 people; 4,185 people had aboriginal identity and, in particular, 3,115 inheritances of the ISR identified themselves as Inuit.[212] The region is part of the Yukon and Northwest Territories of Canada. This tiny populated region has 435,000 sq.km.[213]

The Arctic Encyclopedia defines that Inuvialuit as a "new Inuit group born from a political project in the 1970s economic context"[214]. At that time, oil exploration boosted in the Arctic and the local Inuit population had little recognition, financial resources, and control over the land. This forced them to declare themselves a subgroup of the Inuit population and autonomously negotiate land claims with the federal government of Canada. The negotiation resulted in signing of the Inuvialuit Final Agreement in 1984 that created the Inuvialuit Settlement Region. However, the thereby created cohesion and the Inuvialuit identity were driven primarily by political and economic terms rather than by cultural and linguistic features. The region counts only six communities with majority aboriginal population whose three dialects strongly differ. For instance, the Uummarmiutum dialect is spoken by Aboriginals in Aklavik and Inuvik; Siglitum in Tuktuyaktuk and Paulatuk; Inuinnaqtun in Ulukhaktok and Sachs Harbour.[215]

Inuvik is a regional center with headquarter of the Inuvialuit Regional Corporation (IRC). The Cooperation was established with the purpose of managing the affairs of the Inuvialuit Settlement Region. The IRC has the mandate to improve the economic, social and cultural well-being of the Inuvialuit through implementation of the IFA.[216]

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[211] "The Inuvialuit," Wildlife Management Advisory Council, accessed January 30, 2016, http://www.wmacns.ca/north_slope/inuvialuit/

[212] "2006 Aboriginal Population Profile," Statistics Canada, accessed January 30, 2016. http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-594/details/page.cfm?Lang=E&Geo1=BAND&Code1=61640004&Geo2=PR&Code2=61&Data=Count&SearchText=Inuvialuit&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=61640004

[213] Mark Nuttall, ed, *The Encyclopedia of the Arctic* (NY: Routledge, 2005), 1013.

[214] Mark Nuttall, ed, *The Encyclopedia of the Arctic* (NY: Routledge, 2005), 1008.

[215] Mark Nuttall, ed. *The Encyclopedia of the Arctic* (NY: Routledge, 2005), 1008.

[216] "Brief History," Inuvialuit Regional Cooperation, accessed January 30, 2016, http://www.irc.inuvialuit.com/about/history.html

Another example of strong interest in regional political and economic integration is Ulukhaktok (former Holman). This community demonstrated the strength of the Inuvialuit Settlement Region in 1992 when it decided to remain within the grouping even though linguistically it has more in common with its Inuinnait people in the Nunavut Final Agreement.[217]

As the following table demonstrates, the aboriginal population makes the majority of population in the ISR communities. However, not all Aboriginals there are able to speak an Aboriginal language, whereby only in Ulukhaktok this skill has more than the half of the Aboriginal population.

Table 1 Population in the Inuvialuit Settlement Region, 2014

Community	**Total**[218]	**Aboriginal**[219]	% Aboriginals Speaking an Aboriginal Language[220]
Aklavik	663	612	11.5
Inuvik	3,358	2,294	20.5
Paulatuk	315	294	21.3
Sachs Harbour	129	106	39.1
Tuktoyaktuk	927	844	24.4
Ulukhaktok	438	407	52.7
Total Inuvialuit Settlement Region	5,830	4,557	---

As mentioned above, the Inuvialuit Final Agreement in 1984 created the Inuvialuit Settlement Region. It was a historic moment in the Inuit history and has today remarkable implications for the future of the Beaufort Sea maritime dispute.

In the 1984 Inuvialuit Final Agreement government of Canada used the 141st W meridian to define the western edge of the Inuvialuit Settlement Region. The document recognizes

[217] Mark Nuttall, ed. *The Encyclopedia of the Arctic* (NY: Routledge, 2005), 1008.
[218] "Population Estimates by Community 2014," Northwest Territories. Bureau of Statistics, accessed January 30, 2016, http://www.statsnwt.ca/population/population-estimates/ExcelFiles/commethnicity_2001-2015.xlsx
[219] "Population Estimates by Community 2014," Northwest Territories. Bureau of Statistics, accessed January 30, 2016, http://www.statsnwt.ca/population/population-estimates/ExcelFiles/commethnicity_2001-2015.xlsx
[220] "Language by community," Northwest Territories. Bureau of Statistics, accessed January 30, 2016. http://www.statsnwt.ca/language/Language%20by%20Community.xlsx

constitutionally the Inuvialuit harvesting and fishing rights. The government of Canada also commits itself to protection of the area. Currently, the disputed territory in the Beaufort Sea is part of the Inuvialuit Settlement Region. Under Canadian law, the government has to control any infringement of aboriginal rights as much as possible. In case of limitations, the government has to state it in an Act of Parliament and provide compensations. Therefore, any boundary limitation of the Inuvialuit Settlement Region has to be closely consulted with the Inuvialuit population. At the same time, Canada could argue that the Final Agreement recognizes long-established rights of the aboriginal population.[221] As fishing has been a traditional profession of the Inuvialuit population, Canada has to protect this tradition and would break the agreement if the maritime boundary does not take the 141st meridian. Rob Huebert, Arctic expert at the University of Calgary, argues that should "Canada have to surrender its claim, it will need to redraw the boundary for the agreement, which will be politically sensitive."[222]

To support its own position claim, Canada may refer to the Western Sahara Case of the International Court of Justice that recognized the ability of indigenous people to acquire and transfer sovereign rights. However, this case does not involve the maritime boundaries. Further, there is the Barbados-Trinidad and Tobago Arbitration that stated that "historical usage of an area was an insufficient reason to modify an equidistance line except when the population on the side is overwhelmingly dependent on fisheries there."[223] Furthermore, the tribunal also concludes in the Qatar-Bahrain Case that "it would be appropriate, indeed legally required, for transboundary access rights to be negotiated after the drawing of the boundary"[224].

Consequently, Canada and the USA might reach an agreement that does not violate the rights of indigenous population of Canada in the Beaufort Sea. The outcome is currently unknown; however, evidently, the Inuvialuit population will be involved in the dispute negotiations. Similar arguments with regard to the indigenous population's right could be valid for the USA, as north of Alaska is inhabited by Inupiat population also with a tradition of hunting and fishing in the area. As in Canada, the USA also takes steps to include the Alaska Natives to its Arctic affairs.

[221] Byers. *International Law and the Arctic*, 81.
[222] Rob Huebert, "Canada and the Newly Emerging International Arctic Security Regime," in Arctic Security in an Age of Climate Change, ed. James Kraska (New York: Cambridge University Press, 2011), 197.
[223] Byers. *International Law and the Arctic*, 82.
[224] Byers. *International Law and the Arctic*, 82.

The Inuit population of the Arctic is aware of its rights and actively applies them. The leaders and environmentalists "sued American regulators for not following a 1970 law on environmental impacts. This allowed them to wrest a number of concessions from Shell, including a commitment to stop all offshore operations during the bowhead migration and hunt, should drilling ever proceed."[225]

In recent years, Canada has taken several further policy measures towards its indigenous people and the Arctic territories. Policy of devolution is one of the examples and is an "empirical phenomenon involving the transfer of powers and responsibilities from the federal to the territorial governments"[226]. This policy has been implemented already in Yukon in 2003 and in April 2014 in Northwest Territories. Nunavut is currently negotiating its devolution with agreement with Ottawa.[227] One of the key issues rising from the Yukon Devolution Agreement is autonomous management of its natural resources. This improves efficiency and accountability of governance in the territories, granting the authorities province-like responsibilities.[228]

In general, it is believed that granting responsibility over natural recourses to the territories has a positive impact of the local development and within the strengthening of the Arctic sovereignty. Thus, Yukon is directly affected by the Beaufort Sea dispute and has great interest in a positive outcome of the dispute for Canada. Therefore, Canada and its indigenous people of the Arctic are bound to work together towards this goal. At the same time, this strengthens ties between the Canadian North and Ottawa, which in turn strengthens the Canadian position in the dispute and generally in the Arctic.

7.2. Relevance of Geography

The coastal geography is very likely to play a role in the negotiations as it has been already taken into account in several cases of maritime boundary delimitations. In the cases of Jan Mayen Case, Libya-Malta, Gulf of Maine International Court of Justice and the Tribunal in the Barbados-Trinidad and Tobago Arbitration the significance of the coast length was

[225] The Economist. "Now It's Their Turn. The Inuit prepare to defend their rights," accessed January 20, 2016. http://www.economist.com/node/18277141

[226] Christopher Alcantara, Kirk Cameron, Steven Kennedy, "Assessing Devolution in the Canadian North: A Case Study of the Yukon Territory," *Arctic* 65/3 (2012): 329, accessed February 25, 2016, http://dx.doi.org/10.14430/arctic4220

[227] CBC. "Northwest Territories devolution officially takes hold," accessed January 21. 2016. http://www.cbc.ca/news/canada/north/northwest-territories-devolution-officially-takes-hold-1.2593612

[228] Alcantara, Cameron, Kennedy, "Assessing Devolution," 334.

recognized. In those cases, the Court and the Tribunal calculated the ratio of coastal lengths and compared it to the extent of the maritime areas that were awarded to the parties by the proposed delimitation.[229]

The geography of the coastline has a strong effect on the calculation of the equidistance line when delimiting the maritime boundary. Ostensibly, this approach will be an inevitable agenda item during the negotiations of the Beaufort Sea dispute. In the past, the effect of concave coastlines has been recognized by the International Court of Justice in the North Sea Continental Shelf Cases between Germany and Denmark and Germany and the Netherlands. The Court decided that it is unacceptable that "a State should enjoy continental shelf rights considerably different from those of its neighbours merely because in the one case the coastline is roughly convex in form and in the other it is markedly concave, [...]"[230]. The International Court took into account the concave coastline of Germany and decided to provide Germany a bigger sea area.

The argument of coastline length in delimiting the continental shelf has been criticized by international experts. Thomas Rothpfeffer, a lawyer from Sweden, argues with regard to the North Sea Continental Shelf Case that the "Court's criterion for qualifying the three States as equal, namely the length of the coastlines, has no other apparent theoretical basis of validity than the fact that the Court classified this criterion as being determinative of equalness."[231]

Similarly, German-American lawyer Wolfgang Friedmann criticized the Court's approach that "regards the inequalities caused by the differences between [...] states with long and short coastlines, as fact of nature while the fact that one state's coastline is straight or convex, and another's concave is 'unnatural'."[232] In opposition to this view, Swiss lawyer Thomas Cottier critically responded to Friedmann's argument and pointed out that "[t]here cannot be an 'unnatural coastal configuration, just as there cannot be 'irregular' island situated off a coast'."[233]

[229] Baker and Byers, "Crossed Lines," 81.
[230] Baker and Byers, "Crossed Lines," 82.
[231] Owen McIntyre, *Environmental Protection of International Watercourses under International Law* (Hampshire: Ashgate, 2007), 142.
[232] McIntyre, *Environmental Protection*, 142.
[233] Thomas Cottier, *Equitable Principles of Maritime Boundary Delimitation: The Quest for Distributive Justice in International Law* (Cambridge: University Press, 2015), 379.

The argument of the coastal length might be favourable for Canada as it could argue that "discrepancy between the length of the northwest flank of its Arctic archipelago and the length of the northern coastline of Alaska requires and adjustment of the provisional equidistance line"[234]. In response, the USA may oppose this argument by stating that "the breaks between the Canadian islands cannot be counted as coastline for the purpose of length, and only a much shorter stretch of Canadian coastline is relevant to the delimitation"[235].

The concavity of the Beaufort Sea coastline may favor Canada's position if taken into account when determining the equidistance line. The mainland coast is especially concave in the region of the Mackenzie River. Moreover, the concavity is even more arguable when the Bank Island is also taken into account. If Canada effectively uses the coastline concavity argument, another issue would arise "as to where the endpoints of such a 'closing line' should be placed since it is those points which determine the line's seaward reach."[236]

With regard to the coastal configuration of concavity, there are two questions that have to be noted. First, it is generally difficult to define concavity and convexity of the coast and it is always up to the courts to decide. The configuration of the coast may have several interpretations depending on scale of the map and whether the third neighboring countries' coasts are considered. Second, the corrective-equity approach will not exclude the application of the equidistance method as the distorting effect may be remedied in the delimitation process.[237]

Considering the equity approach, one of the options might be the Cape Bathurst as the eastern starting point to draw a line westward to the point where Canada meets the USA at the land border. In the case that the Canadian closing line and the Alaska coast on the US side are considered relevant coasts to determine the equidistance line, it would favor the Canadian position within 200 nm from the mainland. This approach would be possibly beneficial for the USA beyond the 200 nm area, since Bank Island would not be taken into account and the equidistance line would apply. However, a counterargument against this approach might be that

[234] Baker and Byers, "Crossed Lines," 81.
[235] Baker and Byers, "Crossed Lines," 81.
[236] Baker and Byers, "Crossed Lines," 82.
[237] Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (Oxford and Portland, Oregon: Hart Publishing, 2006), 156-157.

the North Sea Continental Shelf Cases cannot be applied to the Beaufort Sea dispute since Canada is not disadvantaged on any of the delimitation sides.[238]

The International law grants islands with own maritime zones as they can be populated and provide conditions for living and economic activity. Article 10(1) of the 1958 Geneva Convention on Territorial Sea and the Contiguous Zone defines an island as "a naturally-formed area of land, surrounded by water, which is above water at high tide."[239] Therefore, Bank Island of Canada has its own continental shelf and EEZ that has a strong effect on the placement of the boundary line in the Beaufort Sea. The geography of Bank Island creates a major anomaly in the equidistance line that otherwise countries would define on the basis of the mainland.[240]

The effect of Bank Island is unquestionable and favors the Canadian position when delimiting the boundary in the Beaufort Sea beyond the EEZ by applying the equidistance line. In that case, Canada would have sovereign rights over the largest part of the Beaufort Sea. According to J.S. Baker and M. Byers, the Canadian boundary line would meet the Russian waters at some point in the North West of the Beaufort Sea.

Another significant geographic factor having an impact on delimitation in the Beaufort Sea is the scientific data about the natural prolongation of the continental shelf that Canada collected and submitted to the Commission on Limits of the Continental Shelf at the end of 2013. However, since the government of Canada did not reveal the data to the public, its maritime experts can only hypothesize about the possible options and developments as to how the boundary might change. It may take several years for the Commission to review the data and state its opinion.

If the data indicates that the continental shelf on the American side of the 141st meridian is naturally longer than on the Canadian side, Canada may claim that the same delimitation principles apply within and beyond the 200 nm areas. Geological and geomorphologic principles will play a role only when opposite states have clearly distinct continental shelves and when there is a break in shelves of neighboring countries. As it currently looks, those two exceptions do not apply to the Beaufort Sea. If there are no other constraints beyond 200 nm, Canada would be entitled to at least a part of the Chukchi Plateau and the equidistance line would cut across the

[238] Baker and Byers, "Crossed Lines," 83.
[239] Tanaka, *Predictability and Flexibility*, 184.
[240] Baker and Byers, "Crossed Lines," 82.

projection. For instance, the Guinea-Guinea-Bissau Arbitration decided that the shelf is an extension of the territory of both states.[241] This arbitration also decided that the equidistance line is the starting point for the delimitation of the territorial sea, however, the case indicates that this does not apply to the delimitation of the EEZ or continental shelf between adjacent states.[242]

The USA could insists that only the equidistance line applies within 200 nm area and geomorphologic and geological factors determine the boundary further beyond this area. In case, Canadian and American projections of extended continental shelf are sufficiently separated, the unified character of the continental shelf regime might not apply. This option seems to be true since the segments of the Mackenzie River might be contributing to the natural prolongation to the continental shelf. Therefore, the prolongation of the continental shelf beyond the 200 nm zone might look different, depending which approach countries chose to apply and which scientific data will be collected.[243]

7.3. Relevance of Climate Change in the Arctic

The environment and climate change have an impact on international relations, especially in the Arctic and between neighboring countries as the USA and Canada. Under those circumstances countries face multiple common challenges and are forced to address them through bilateral and multilateral cooperation. At the same time, climate change in the Arctic has an accelerating factor for intensification of international cooperation in the sphere of environment protection. Thus, this thesis argues that climate change in the Arctic will boost the collaboration between the USA and Canada in the Beaufort Sea and possibly create models of governing the disputed triangle. This chapter identifies areas for further cooperation in the Arctic in the near future between Canada and the USA.

The Arctic is a very complex region and has multiple definitions. Different disciplines adopt their own criteria to define the Arctic. As, for instance, biogeography uses boundaries between tundra and forest to define ecological zones. Climatology uses isotherms to identify climatic region. Political scientist use regime theory in the international relations. Lawyers analyze tries and covenants. Sociologists examine the social activity of people living in the

[241] Baker and Byers, "Crossed Lines," 83.
[242] Alex G. Oude. Elferink, "Arctic Maritime Delimitations The Prepondarence of Similarities with Other Regions," in *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, ed. by Alex G. Oude Elferink et al. (The Hague: Kluwer Law International, 2001), 193.
[243] Baker and Byers, "Crossed Lines," 83.

Arctic. Finally, the oceanography examines the extent of ice and water bodies to define the marine environment. Traditionally, the Arctic Circle has been acknowledged at 66*33' north latitude as southern boundary of the Arctic. The Arctic includes approximately eight per cent of planet's surface and the North Pole.[244]

The Arctic region is extremely vulnerable to climate change that has global and regional ramifications. During the twentieth century air temperature in the Arctic increased by up to 5°C that led to the ice decline. Spring snow and permanently frozen soil in polar regions decreased. There are noticeable implications for the Arctic environment, its animals, plants, and humans. [245] Between 2004 and 2005, scientists observed the Arctic and argued that the region "lost fourteen percent of its perennial ice, a huge obstacle to shipping, and, in the last twenty-three years, forty-one percent of this hard, multiyear ice has vanished."[246]

The Arctic freshwater system is particularly vulnerable to climate change. The Greenland Ice Sheet (GIS) is the largest bulk of freshwater in the northern hemisphere. Its melt zone constantly increases and contributes to the rise of the global sea level that also brings fresh water to the oceans that become less saline. This development has implications for regional climate and ocean circulation. The world's largest rivers as Yenisei and Mackenzie River transport fresh water into the Arctic Ocean that makes the water naturally less saline. At the same time those rivers transport discharge that may have implications for fishing, migrations routes and food.[247]

The increasing temperatures on the global surface lead to more and active biological productivity in the Arctic. The tree line has moved far to the North. This change results in decreasing surface albedo – the reflectivity of the surface. Ice has a high albedo and reflects the sun, while soil has low albedo and absorbs the sun. Further, forests colonize tundra and tundra moves northward to the polar deserts, absorbing solar energy. Consequently, scientists observe the vegetation replacements and changes in the lives of animals.[248]

Conserving terrestrial biodiversity is an important issue within the Arctic Council. Its biodiversity working group Conservation of Arctic Flora and Fauna (CAFF) consists of National

[244] Lorne K. Kriwoken, "Environmental Change in the Arctic Region," in *Polar Oceans Governance in an Era of Environmental Change*, ed. Tim Stephens et al. (Cheltenham: Edward Elgar Publishing, 2014), 44.
[245] Kriwoken, "Environmental Change," 42-43.
[246] Spohr and Höring, "The Militarization of the Arctic," 29.
[247] Kriwoken, "Environmental Change," 52-53.
[248] Kriwoken, "Environmental Change," 53-54.

Representatives of eight Arctic Council Member States representatives of Indigenous Peoples' organizations that are Permanent Participants to the Council, and Arctic Council observer countries and organizations. CAFF provides a mechanism to tackle issues of the Arctic ecosystem such as development and economic pressures, conservation opportunities and political commitments. The working group collects data to resolve challenges of conservation the natural environment and regional growth.[249]

The marine biodiversity is also vulnerable to the change in temperatures. The core issue is this regard is the reduction of sea ice and the northern movement of the ice edge. Scientists predict that the Arctic Ocean will be ice-free in summer in the coming decades and likely already in 2020. The consequences include krill abundance, crustaceans and foraging fish species will have to migrate to other places. Not only the fish industry, but also the ice-dependent wildlife and coastal ecology will be impacted by those changes. Polar bears and seals are particularly vulnerable as they use the sea ice for feeding and breeding. Ice-free water will cause a challenge for their navigation. An intensified shipping transportation in the Arctic will increase the marine pollution. It is estimated that there are 20,000 – 25,000 bears in the Arctic with a tendency to decline. The temperature change and reduction of the sea ice are deadly to the polar bears.[250]

Five polar bear nations (Canada, Greenland, Norway, the USA, and Russia) are bound by the International Agreement on Conservation of Polar Bears and their Habitat signed in 1973. This agreement protects polar bear habitat, especially denning areas, feeding areas, and migratory routes; bans hunting of bears from aircraft and large motorized boats; conducts and coordinates management, research efforts, and exchange of data. Following the Agreement, each nation voluntarily established own regulations and conservation practices.[251]

The precipitation in the Arctic increases to a greater extent than elsewhere. The decrease of surface albedo has a negative impact on the exchange of greenhouse gases between the terrestrial environment and the atmosphere. The persistent organic pollutants (POP) are harmful contaminants to the environment because of their stability and high chronic toxicity. They are delivered through industrial transport. Acidification from sulphur and nitrogen compounds is a

[249] "About CAFF," Conservation of Arctic Flora and Fauna, accessed January 30, 2016, http://www.caff.is/about-caff
[250] Kriwoken, "Environmental Change," 55-56.
[251] "Polar Bears," SeaWorld Parks & Entertainment, accessed January 30, 2016, https://seaworld.org/Animal-Info/Animal-InfoBooks/Polar-Bears/Conservation-and-Research

result of the coal- and oil-based industry and transport. Warming increased precipitation leading to a higher contaminant transfer as POPs and mercury in the Arctic. Consequently, the contaminant level increases in lakes, accumulates in fish and will be transferred to the food chain.[252]

The issue of acidification and the atmospheric changes is addressed by the Arctic Council and particularly within its working group Arctic Monitoring and Assessment Programme (AMAP). The Group was established by the eight Arctic Countries in 1991 to coordinate monitoring and perform scientific assessments of pollution and climate change issues in the circum Arctic area. AMAP documents trends and effects in Arctic ecosystems and humans, identifying possible actions for consideration by policy-makers. In 2013, AMAP organized in Bergen (Norway) a major international conference on Arctic Ocean Acidification.[253]

The Indigenous population is also affected by the climate change in the Arctic. The change of salinity of the Arctic Oceans negatively influences the harvestable biota and therefore the fishery. This changes also the traditional nutrition of the indigenous people. Cases of diabetes, cardiovascular disease, suicide, and violence are identified in the Indigenous communities. The sea level rise, coastal erosion and flooding may force several affected communities to migrate and abandon their places.[254]

The United Nations Climate Change Conference (COP 21) was held in Paris from 30 November to 12 December 2015. The outcome of the conference was the Paris Agreement that constitutes a new course in the global climate efforts. The Agreement reaffirms the goal of limiting global temperature increase well below 2 degrees Celsius. Parties agreed to establish binding commitments to make "nationally determined contributions" and reaffirm the binding obligations to support the efforts of developing countries. The Agreement created a climate fund with a goal to mobilize $100 billion a year in support by 2020 through 2025.[255]

Certainly, the ambitions, commitments, and goals of the international community might have a positive impact on environment, including the Arctic. Since the Arctic region produces

[252] Kriwoken, "Environmental Change," 57-58.
[253] "About the Conference," Arctic Ocean Acidification International Conference, accessed January 30, 2016, http://www.amap.no/Conferences/aoa2013/about.html
[254] Kriwoken, "Environmental Change," 59.
[255] "Outcomes of the U.N. Climate Change Conference in Paris," Center for Climate and Energy Solutions, accessed January 30, 2016, http://www.c2es.org/international/negotiations/cop21-paris/summary

very little emissions, it is one of the most affected by the climate change regions in the world. Mia Bennett, manager of the Cryopolitics news argues that the COP 21 is only indirectly related to the Arctic and the climate change issues of the Arctic are not often being discussed internationally.[256]

Sébastien Duyck, a visiting researcher at the University of Lapland, argues that the Arctic is largely absent at the international climate negotiations because the region is the jurisdictions of eight countries and the decisions about the priorities of international negotiations are made far away from the Arctic Circle. Moreover, as the Arctic is in the jurisdictions of large emitters' countries, it is more difficult for the issue to get more international priority.[257]

7.4. Intergovernmental cooperation in the Arctic

The Arctic countries collaborate on bilateral and multilateral level. This chapter explores the framework of the intergovernmental cooperation the role of the NGOs in the Arctic. In general, this paper supports a stronger role of institutions of the intergovernmental cooperation in the Arctic and believes that an enhanced cooperation between the Arctic states will have a positive impact on the Arctic governance and the boundary dispute settlement process between.

The Arctic Council is a high level intergovernmental forum promoting cooperation, coordination and integration among the Arctic states, indigenous communities, and other Arctic inhabitants on common Arctic issues, especially on sustainable development and environmental protection. The institution has its roots in the climate change issues and derived from the process known as Arctic Environment Protection Strategy.[258] The Ottawa Declaration of 1996 gave ground for the Organization to be established and counts today eight member countries, namely, Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States of America. Additionally, six organizations represent indigenous communities of the Arctic and have the status of Permanent Participant. Thus, the indigenous population is being consulted and have their voice with regard to the Arctic affairs. The Arctic Council is open also to non-Arctic states and already granted the Observer Status to China, France, Germany, India, Italy, Japan, South Korea, the Netherlands, Poland, Singapore, Spain, and the United Kingdom. The six working

[256] "Alaska, COP21& the Arctic Council: 2015 Year in Review," Radio Canada International, accessed January 30, 2016, http://www.rcinet.ca/en/2016/01/08/alaska-cop21-the-arctic-council-2015-year-in-review-part-2/
[257] "Q&A: What's at stake for the Arctic at COP21?" Radio Canada International, accessed January 30, 2016. http://www.rcinet.ca/eye-on-the-arctic/2015/12/04/qa-whats-at-stake-for-the-arctic-at-cop21/
[258] Baker, "Filling an Arctic Gap," 75.

groups of the Arctic Council addresses issues as national emission reduction, monitors the Arctic environment, ecosystems, human population, as well as provides scientific advice to governments on effects of climate change. Moreover, the bodies of the Arctic Council address the conservation of the biodiversity and environmental protection.[259]

The Arctic Council is not a formal international organization and has no legal personality. Therefore, the issued documents have no binding character. The main purpose of this institution is to serve as an informal consultative forum for the Arctic states. The Council brings together not only governmental officials, but also representatives from relevant civil society organizations. The achievements of the Council are numerous elaborations of recommendations and guidelines that help policy makers and researchers in the Arctic region and beyond it.[260]

Up to now, the Arctic Council has achieved two major accomplishments. Firstly, the Ministerial Meeting in 2011 signed the legally binding Agreement of Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic. Second, the Ministers of the Arctic states' signed in 2013 the Agreement on the Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic that is also legally binding.[261]

The Inuit Circumpolar Council (ICC) is an international non-governmental organization that represents approximately 160,000 Inuit in the United States America, Canada, Greenland (Denmark) and the Russian Federation. The ICC was founded in 1977 and has a vision to protect and promote the way of life of indigenous people. The main goals of ICC is strengthen unity among Inuit people; promote their rights and interests; develop policies to safeguard the Arctic environment; seek active partnership in the political, economic, and social development of the Arctic. ICC has the Consultative Status II at the United Nations Economic and Social Council since 1983. Moreover, ICC is one of the permanent participants in the Arctic Council.[262]

One of the major historic documents of the ICC was the Circumpolar Inuit Declaration on Sovereignty in 2008. Back in that year, the five big Arctic coastal states gathered in Iluissat

[259] http://arctic-council.org/images/PDF_attachments/2015-07-03_Arctic_Council_Backgrounder_PRINT_VERSION_NO_LINKS.pdf
[260] Baker, "Filling an Arctic Gap," 75.
[261]http://arctic-council.org/images/PDF_attachments/2015-07-03_Arctic_Council_Backgrounder_PRINT_VERSION_NO_LINKS.pdf
[262] "Inuit Circumpolar Council,"Arctic Council, accessed January 30, 2016, http://www.arctic-council.org/index.php/en/about-us/permanent-participants/icc

(Greenland) for the Meeting of the Arctic Council without inviting the six permanent participants along with Iceland, Sweden and Finland. As result, the ICC responded by issuing the Declaration. Above all, it is important to highlight that the Declaration is a strong argument to include the Inuit in any decisions of the Arctic Council; however, the Declaration is not a declaration on sovereignty, but a declaration of sovereignty without any claims to sovereignty in terms of statehood. The document reiterates the sovereign rights of indigenous people recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration of the ICC was rather a declarative character and no legal ground; however, it proved to be successful in voicing the rights of indigenous people and their claim to be engaged politically. As result, no other Arctic-Five meetings of the Arctic Council took place without inviting the permanent participants.[263]

Geographically, the Arctic is the region to the north above the 66.33 parallel. Politically the following states have territory in the polar circle: Canada, the United States of America, Russia, Norway, Iceland, Finland, Sweden and Denmark with Greenland. There is a group of Arctic-Five (A5) with a direct access to the sea: Canada, the USA, Russia, Denmark and Norway. The group of Arctic-Eight (A8) forms the rest of countries that have just territories above the polar circle: A5 and Iceland, Sweden and Finland.[264] Together they are often referred to as Arctic eight. Politically and publically, the concept of the Arctic-Five came into being with the Ilulissat Declaration on 28 May 2008. Then, representatives of the mentioned five coastal states met in Ilulissat in Greenland. Some countries attempted to establish a forum in such a format, however, it has been criticized by the remaining Arctic countries and soon it became clear that the Arctic Council is the main multilateral forum for Arctic discussions.[265]

The High North has been an important direction of the foreign policy of Norway. Given its strategic geographic location close to the borders of the USSR and the vast expansion of the continental shelf, Norway took an important role in relations with the global powers. However, after the dissolution of the Soviet Union, this strategic role has lost its importance.[266]

[263] Byers. *International Law and the Arctic*, 230-234.
[264] Wurm, „*Die EU-Arktispolitik."*
[265] Kristine Offerdal, "Interstate Relations: the complexities of Arctic Politics," *in Geopolitics and Security in the Arctic* ed. Rolf Tamnes and Kristine Offerdal, (London: Routledge, 2014), 73-74.
[266] Offerdal, "Interstate Relations," 83.

The current Norwegian High North Strategy opens with a statement that "one of the Government's most important priorities in the years ahead will be to take advantage of the opportunities in the High North."[267] To achieve this goal, Norway emphasizes the importance of international cooperation, especially with Russia in all Arctic-related areas as fisheries, petroleum, environment, maritime safety, and emergency and rescue operations. [268] Recently, two countries solved a long-standing boundary dispute in the Barents Sea that creates enhanced opportunities for the future Arctic cooperation.

Norway promotes a strong and visible NATO commitment in the north and more engagement of international community in Arctic affairs. As part of Norway's Northern Strategy, it pursues the development policies of its most northern regions, where only 10 percent of the population live. After the successful resolution of the dispute with Russia, Norway enjoys a strong public support for its Arctic policy.[269]

Russia has a long tradition of exploring the Arctic that goes back to 1937 when Stalin installed research stations on the Arctic ice. [270] Obviously, being heavily economically and politically dependent on natural resources, Russia is very much interested in gaining new sources of oil and gas. Moreover, explaining the action of flag-planting, Russian Foreign Minister Sergei Lavrov stated that "the expedition will allow us to get the extra scientific proof for what we are planning to achieve."[271]

The statement made by the head of Russian diplomacy in the style of the "Realpolitik" proves strong interests of Russia in the Arctic. Even though the planting of a flag is a rather symbolic and according to the international law cannot have any legal justification for claiming a territory, this event sends out an important message to the public in Russia and other Arctic states. This event confirms a strong state policy in the Arctic that is strongly supported by the Russian public.

In 2008, the Russian government approved the National Security Strategy until 2020 that emphasizes the importance of the international cooperation and strengthening of relations with

[267] Trent, "*An Evaluation of the Arctic."*
[268] Trent, "*An Evaluation of the Arctic."*
[269] Offerdal, "Interstate Relations," 84.
[270] Chivers, "Russians Plant Flag on the Arctic Seabed."
[271] Tom Parfitt, "Russia plants flag on North Pole seabed." *The Guardian*, August 2, 2007, accessed January 20, 2016. http://www.theguardian.com/world/2007/aug/02/russia.arctic

other countries, in particular the "Arctic five". Obviously, as other Arctic countries, Russia seeks cooperation in the areas of surveillance, navigation, rescue capabilities and security. The Arctic is of paramount importance for the Russian economic stability and Russia intends to maximize the benefits from the region.[272]

In the 2000s, Russia increased its military presence in the Arctic and resumed bomber lights over the region. This region is symbol for Russia's status as a great power after the dissolution of the Soviet Union. Today, Russia attempts to establish a leading role in the Arctic and factors as largest Arctic population, the longest Arctic coastline and enormous living resources, oil, gas and minerals support this political claim.[273]

Through Greenland, the largest island in the world, Denmark holds the status of an Arctic country and takes actively part in the Arctic affairs. In 2009, Greenland obtained the status of self-governing overseas division of Denmark that allows it to keep a greater percentage from oil and gas revenues and autonomously manage all domestic affairs. Denmark retains the management of foreign policy, defense, and security affairs of Greenland.[274] Since Greenland has on numerous occasions voiced its willingness to become an independent country, an effective foreign policy together with a coordinated Arctic policy is an important issue for the Danish domestic politics and its relations with the dependent Greenland.

Active climate policy is a key component of the Arctic strategy of Denmark. During the Danish chairmanship in the Arctic Council (2008-2010), Denmark prioritized the issues of climate change and mitigation of global warming. Denmark is also strongly interested in strengthening the role of the Arctic Council and closely collaborates with Norway and Sweden in this regard. Moreover, Denmark supported the EU's efforts to acquire the permanent observer status in the Arctic Council. The major boundary dispute with Canada over the sovereignty of Hans Island does not prevent the two countries from collaboration on the mapping of the Arctic continental shelf.[275]

The Danish Arctic strategy highlights primarily the security, sovereignty, and surveillance issues. There is an intention to enforce the sovereignty with a visible military

[272] Trent, "*An Evaluation of the Arctic."*
[273] Offerdal, "Interstate Relations," 85.
[274] Trent, "*An Evaluation of the Arctic."*
[275] Offerdal, "Interstate Relations," 82.

presence in the Arctic. This policy might strengthen and defend Greenland's self-governance and Danish interests in the North. The Arctic Command was established in 2012 with headquarters in Nuuk, however, the engagement remains rather modest. At the same time, Denmark does not see any immediate military threat in the North and seeks to increase its military capabilities to perform the policing tasks.[276]

Arctic politics is not only a regional, but also a global issue. There are major geopolitical players involved, namely the USA, Canada, Russia and three member states of the European Union. Therefore, the global relations between those powerful states have also an impact on cooperation with the Arctic. The Crimea crisis in Ukraine has also largely affected relations between those countries and also their Arctic politics. Canada, being chair of the Arctic Council boycotted a working meeting planned to be held in Moscow in 2013 in response to the Russian actions in Ukraine. The USA issued also a similar statement cancelling official meetings with the government of Russia.[277] This is only one example of the involvement of the Arctic into the international affairs and global issues.

Asian countries became increasingly interested in the Arctic in the last few years. The melting ice brings Asia closer to North America and provides new opportunities for businesses. This includes the global warming affects the Asian regions. A number of Asian countries conduct the research activities in the North. China is ostensibly the most significant Asian actor in the Arctic. Still back in 1993, China bought the world's largest icebreaker from Ukraine and is building another one. Extended natural resources of the Arctic are of great interest for China. The future strategy and position of China is still unknown, but it very unlikely that it may pose a threat.[278]

All those factors combine to generate an increased interest in the Arctic and urge the Arctic states to be more pragmatic in solving the disputes and boost cooperation. To sum up, the general assumption for the future is that "the Arctic will continue to pose economic, military and environmental challenges to the governance of the region. "[279]

[276] Offerdal, "Interstate Relations," 82.
[277] DW Ukraine crisis reaches into the Arctic.
[278] Offerdal, "Interstate Relations," 90.
[279] Wurm, „*Die EU-Arktispolitik."*

8. Future Scenarios

As already mentioned, the Beaufort boundary dispute is very well managed and does not pose any threat to the region or any of the disputing countries. Having traditionally friendly relations, as well as being NATO member countries, Canada and the USA are committed to peacefully resolving any issues arising among them. At the same time, both sides take into account the economic and military power of the USA which is a significant factor in the negotiations.[280] In the dispute settlement process "Americans and Canadians 'are committed to a win-win' agreement that satisfies both sides that their interests have been protected."[281] This chapter is forward-looking and analyzes possible future scenarios and outcome options of the dispute.

First of all, the dispute might be further complicated and prolonged for a long time if the USA decides to ratify the UNCLOS agreement in the near future. Such a development would reframe the positions of both sides. The ratification of the UNCLOS would provide the USA additionally at least ten years to submit their scientific findings to the Commission on the Limits of the Continental Shelf and officially make claims with regard to the continental shelf delimitation. It is very likely that US would do it in the near future. According to the Associated Press "the Obama administration is looking for the US Senate approval of the UNCLOS, particularly in order to identify and utilize the oil, gas, and mineral reserves located there."[282]

Even though the USA has not yet ratified the UNCLOS, American scientists together with Canadians take part in gathering data for national submission to the Commission on the Limits of the Continental Shelf. On two icebreakers in the Arctic scientists and coastguards from both countries work around the clock.[283] At the current stage, the USA and Canada are not under time pressure to solve the Beaufort Sea Maritime dispute and keep the status quo. Particularly, the US strategy is to win more time for analyzing new options and reframing its position

[280]Moritz Haller, „*Zwischen Recht und Macht.*"
[281]John, Ibbitson, "Dispute over Hans Island nears resolution: Now for the Beaufort Sea." *The Globe and Mail*, January 26, 2011, accessed January 20, 2016. http://www.theglobeandmail.com/news/politics/dispute-over-hans-island-nears-resolution-now-for-the-beaufort-sea/article563692/
[282]Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[283] Baker, "Filling an Arctic Gap," 57.

according to the data on the continental shelf gathered in the Beaufort Sea. In this regard, winning time to reframe positions and develop further options for an outcome is also Canada's interest. Ostensibly, both countries use the process of exploring the shelf not only in terms of geomorphology, but at the same time also to identify the eventual natural resources there.

One of the possible future options is an agreement that applies the equidistance line to the USA-Canada maritime boundary in the entire Beaufort Sea. In this case, at least beyond the 200 nm area, the US boundary line in the Beaufort Sea will take another shape. As Professors Baker and Byers admit "[i]f one extends the equidistance line preferred by the United States beyond 200 nautical miles, it soon changes direction and begins tracking toward the northwest.[284]" The reason for that turn is the effect of Bank Island in the east of the Beaufort Sea. Under this approach, the "equidistance line crosses over 141st meridian (which continues straight to the Pole) and heads toward the maritime boundary between the United States and Russia."[285] In simple words, the US approach favors Canada beyond 200 nautical miles as it guarantees Canada a larger part of the Beaufort Sea than Canada would get defining the boundary along the 141st meridian. Similarly, several Arctic experts as Randy Boswell from Canada and Ted L. Mcdorman from the USA note that "beyond 200 nm strict equidistance rather than an extension of the 141st meridian becomes more favorable to Canada and less favorable to the United States."[286]

In 1991, the USA and the USSR agreed on their maritime boundary. However, if USA and Canada decide to use the equidistance line approach to delimit the Beaufort Sea, maritime boundaries of Canada and Russia will meet far in the Northern Arctic. Further, if Canada proves that its scientific data demonstrate the extension of the continental shelf farther westward, a new dispute in the Arctic might rise in the future between Canada and Russia as it would legitimize Canada's maritime boundary claims against Russia. Even if the border has been already set by the 1990 Treaty, it is not prohibited for Canada to seek further extension of its maritime boundaries.[287]

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[284] Baker and Byers, "Crossed Lines," 72.
[285] Baker and Byers, "Crossed Lines," 72.
[286] Ted L. McDorman, "Setting the Stage: The Continental Shelf and Marine Science in the Arctic Ocean," in *Arctic Science, International Law and Climate Change - Legal Aspects of Marine Science in the Arctic Ocean*, ed. Susanne Wasum-Rainer et al. (Berlin, Heidelberg: Springer, 2012), 135.
[287] Baker and Byers, "Crossed Lines," 83.

Currently, this option remains speculative and academic. Neither officials from Ottawa nor from Moscow commented on the possibility of a Canada-Russia maritime boundary dispute resulting from an application of the equidistance line approach to delimit the Beaufort Sea between the USA and Canada. This news gained little attention of the Russian media that hardly mentioned Michael Byers' reasoning. However, the Canadian journalists evaluated such a history-making situation as a "result of very good news for Canada"[288] as the natural prolongation of the Canadian land mass that reaches as far as Russia possibly contains natural resources.

Another theoretically possible option for a solution is to bring the dispute before the International Court of Justice (ICJ). However, it is quite clear that such a development would not be a common interest of the USA and Canada and does not provide a desired win-win outcome than solving the dispute through bilateral negotiations.

In this regard, the Blake Sea Case between Romania and Ukraine in 2009 offers some elements for a precedent. As the delimitation of the maritime boundary wasn't clearly defined between two countries in the Black Sea, Romania filed an application against Ukraine. In the front of the debate was the role of Serpent Island in delimiting the border. Ukraine regarded it as an island, while Romania claimed it to be a rock. The ICJ decided that "given that there are no real hostilities between the countries and that existing maritime treaties delimiting other areas with Ukraine [...], the court decided a boundary for the two nations [...], giving both nations access based on equidistance lines."[289] Countries have to take into account that the ICJ established through the Black Sea case "the drawing of a provisional equidistance line as the default starting point for the delimitation of the continental shelf, [...][leaving] open the possibility that 'compelling reasoning' might make this 'unfeasible in the particular case.'"[290]

The ICJ established a three-part process in the Black Sea case, including the determination of an equidistance line, considerations about its adjustment and ensuring that no state disproportionately benefits.[291] In this regard, in case the equitable delimitation approach should be applied in the ICJ, the court will have to take into account configuration of the coasts,

[288] Boswell, "Russia, Canada neighbours?"
[289] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"
[290] Suzanne Lalonde, "Donat Pharand: The Arctic Scholar," *in International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand,* ed. by Suzanne Lalonde et al. (Leiden: Brill Nijhoff, 2015), 16.
[291] Pomerants, "*The Beaufort Sea Maritime Boundary Dispute.*"

its convexity and concavity, the length of the baselines across the Arctic archipelago of Canada, which is assimilated to territory, providing Canada a large coastline in the Arctic.[292] Therefore, it may not be Canada's first choice to bring the dispute before the International Court or a tribunal and it is very unlikely that the two neighboring countries will do so in the future, but rather negotiate a solution bilaterally.

The third possible solution of the dispute could be a modification of the equidistance line that will be a median line, dividing the disputed triangle into two equal parts. This option would partially favors claims by both sides, however, is neither a win-win nor a loser situation. This solution worked out in the Barents Sea dispute, where parties agreed to approximately equal areas.[293] This option seems to be, however, not acceptable to either side. The Barents Sea is a different case, as two sides – the USSR and the USA were reviving global players interested in a quick solution for the sake for own and regional security. Canada and the USA are not in this situation and seek a solution that maintains friendly relations and guarantees best benefits for its economies.

In any case two neighbors will have to take into account their commitments to protect the indigenous population. Canada and the USA may agree on special rights entitled to the indigenous population who might be allowed exercising their traditional rights of fishing and hunting up to the 141st W Meridian regardless of the international boundary. This might be an option for Canada, should two countries agree on the boundary that favors the American position within the 200 nm area. Such an agreement would largely secure the Inuvialuit Final Agreement in a new boundary treaty. Partially, this is already in practice that exists along the coastline between Alaska and Yukon which tolerate the freedom of movement of indigenous people across the border for hunting and fishing purposes.[294]

In the past, a similar approach was used by Australia and Papua New Guinea with regard to the Torres Strait in 1978. Two countries agreed on separate boundaries for rights to exploit resources of water and seabed. This model would satisfy the rights of indigenous population in Canada and their rights under the Inuvialuit Final Agreement that entitles sovereign rights to resources exploitation up to the 141st W Meridian and out to 200 nm. However, the agreement

[292] Lalonde, "Donat Pharand," 16.
[293] Petkunaite, "*Cooperation or Conflict in the Arctic?"*
[294] Baker and Byers, "Crossed Lines," 87.

would not protect the hunting and fishing rights of the Inuvialuit from the oil and gas exploration effects. Moreover, the Torres Strait Treaty is rather a rare case in negotiating the maritime boundaries.[295]

Joint development and administration might be another option for Canada and the USA in the Beaufort Sea. Dr. Betsy Baker argues that Canada and the USA should see the Beaufort Sea triangle as a prime opportunity to work on steadily improving understanding of the Arctic Ocean that is important to their national security, economic potential, and environmental protection.[296] Based on the idea of reconciliation, Ms. Betsy Baker proposes that cooperation in the Beaufort Sea triangle is possible even without resolving the maritime boundary.[297]

Joint development agreements with regard to hydrocarbon resources are popular arrangements to apply in the maritime boundary dispute areas and can be adopted independently of the maritime delimitation treaty. One of the greatest strengths of the model is its potential to provide stringent standards, strong enforcement, and effective implementation that can be achieved more easily through cooperation.[298] Rizal Adbul Kadir, Arctic expert from the University of Sydney, argues that joint development arrangements may be "a catalyst for negotiated delimitation [and] […] may therefore advance mutual interests of the Arctic states, interests which might not otherwise be addressed if overlapping shelf claims are allowed to persist."[299]

Ms. Hazel Fox, former director of the British Institute of International and Comparative Law, identified three types of models of joint development arrangements. First, a system of compulsory joint ventures; second, a joint authority based on licensing and regulatory powers managing the development of the zone on behalf of the States; third, one state manages the joint zone on behalf of both partners with agreed procedure of monitoring and revenue sharing.[300]

American Arctic expert Kurt M. Shusterich considers that a joint development zone in the disputed triangle of the Beaufort Sea may be workable if parties agree to disagree over the

[295] Baker and Byers, "Crossed Lines," 86-87.
[296] Baker, "Filling an Arctic Gap," 64.
[297] Baker, "Filling an Arctic Gap," 69.
[298] Baker, "Filling an Arctic Gap," 61.
[299] Rizal Adbul Kadir, "Is Joint Development Possible in the Arctic?" in *Polar Oceans Governance in an Era of Environmental Change*, ed. Tim Stephens et al. (Cheltenham: Edward Elgar Publishing, 2014), 124.
[300] Baker and Byers, "Crossed Lines," 87-88.

juridical status of the disputed area. However, Kurt M. Shusterich argues that Canada may not accept the equidistance approach it would compromise its theoretical sector principle in other Arctic regions. However, he argues that Canada may accept such an option in return for US acceptance over Canada's claims of the Northwest Passage.[301]

There are several examples of implemented models of joint development as, for instance, the joint development zone between Thailand and Malaysia or the 2010 Norway-Russia Barents Sea Treaty creating a system of joint development in cases when natural resources overlap the boundary. With regard to the Beaufort Sea dispute, Canada and the USA might consider the third model of joint development to implement the commitments of the Inuvialuit Final Agreement. At the same time, joint development arrangements require a lot of legal and political efforts to create an effective regulatory mechanism. Sometimes it might be easier to solve a boundary dispute than create a joint development arrangement.[302]

The concept of ecosystem-based management is an approach that addresses interactions and interdependence of human, plant, and animal communities and their environment. There are mainly three concepts of the ecosystem based international governance of the marine Arctic: Integrated Ocean Management (IOM), Marine Protected Area (MPA) and Environmental Impact Assessment (EIA). Implementation of the IOM is a difficult process and has of lot of future potential for bilateral cooperation between the USA and Canada. Currently, two countries work on implementation of the LME approach (Large Marine Ecosystem) in the Beaufort Sea with assistance of the Arctic Council. The LME model intends to manage multiple human and natural transnational uses in the ecosystem regions. There are already examples of the shared water management as, for instance, the Bay of Fundy-Gulf of Maine in the Atlantic Ocean and the Georgia Basin-Puget Sound in the Pacific Ocean. Moreover, there is a successful cooperation between Canada and the USA in the Great Lakes.[303]

In 2004, the Arctic Council adopted an ecosystem approach as a part of the Arctic Marine Strategic Plan. This approach recognized the necessity of knowing the geographical scope over which the negative consequences of human activities are to be identified, assessed, and

[301] Kurt M. Shusterich, „International Jurisdictional Issues in the Arctic Ocean," in *United States Arctic Interests: The 1980s and 1990s*, ed. W.E. Westermeyer et al. (New York: Springer-Verlag, 1984), 249.
[302] Baker and Byers, "Crossed Lines," 88.
[303] Baker, "Filling an Arctic Gap," 78-79.

addressed.[304] The members of the Arctic Council identified 17 Arctic LMEs. The Beaufort Sea LME is one of the projects and is been managed jointly by the USA and Canada. The jointly conducting of the seabed mapping is a basis for further gradual introduction of joint activities. According to Betsy Baker, this is one of the "concrete examples of how national legal systems can interrelate to fill gaps in arctic governance and regulations."[305]

Canadian Arctic Expert from the University of Waterloo P. Whitney Lackenbauer argues that Canada's „'all or nothing' approach to maritime boundary delimitation negotiations is unrealistic.[...] [The] government should explore the potential of treating the disputed area as a joint-development zone, without prejudice to its claim, allowing exploration and exploitation to occur and generating a deeper knowledge of the area."[306]

The ecosystem based management model would strengthen the sovereignty of Canada and the USA over the respective maritime zones in a number of ways. First, it would allow both states to better understand and manage the located resources. Second, it would ensure jurisdiction over the area for parties interested in exploring the resource. Finally, it would provide harmonization and improvement of the best regulatory practices.[307] The Progress Report on the Ecosystem Approach to Arctic Marine Assessment and Management 2006-2008 evaluated advantages of the ecosystem based management and the LME that coordinated development activities minimize the impact on the environment and integrates thinking across environmental, socio-economic, and political issues.[308]

[304] "Large Marine Ecosystems (LMEs) of the Arctic area - Revision LME map 15th of May 2013," Arctic Council, accessed January 30, 2016, https://oaarchive.arctic-council.org/handle/11374/61
[305] Baker, "Filling an Arctic Gap," 59.
[306] Whitney P. Lackenbauer, *From Polar Race to Polar Saga: An Integrated Strategy for Canada and the Circumpolar World*, Foreign Policy for Canada's Tomorrow. No. 3, (Toronto: Canadian International Council, 2009), 41.
[307] Baker, "Filling an Arctic Gap," 59.
[308] Baker, "Filling an Arctic Gap," 87.

9. Conclusions

The Arctic region gained more attention in the last few years due to the opportunities and challenges deriving from the climate change and the unified sovereignty of several areas north of the Arctic Circle. The vast natural resources are an incentive to engage in Arctic politics to gain the exploration and exploitation rights. For Canada and the United States a major obstacle in the Arctic is the unresolved boundary dispute in the Beaufort Sea. Although the dispute is a regional and bilateral dispute, it is guided by numerous factors that have a global dimension.

The international legal framework of the law of the sea set by the UNCLOS is to help countries to settle disputes and define the rights over certain space of the sea. Canada is a party to the Convention and already submitted its scientific data to the CLSC. Due to the domestic politics, the USA is not yet the UNCLOS that allows it only limited participation in the global maritime legal framework. At the same time, it provides the USA additional time resources to develop its Arctic strategy and possible reframe its position in the Beaufort Sea dispute. This thesis supports the US future ratification of the UNCLOS and believes that it will positively contribute to the solution of the dispute.

This thesis has identified numerous contributing factors that bring the disputing parties closer to a solution. The review of the past attempts of the dispute settlement process has shown that disputing parties have very contrasting positions. The main shortcoming of the negotiations in the 1970s was a zero-sum-game approach to the solution that proved to be wrong. This thesis identifies a need of a more creative approach in the dispute settlement process based on common interests rather than different positions. Joint management and development of the disputed triangle based on the sustainable ecosystem governance to create new opportunities for a more comprehensive cooperation and the chance to address the challenges in a more effective way.

This thesis strongly advocates a closer cooperation between Alaska and Yukon especially in the area of climate change, security, environmental and animal protection, as well as guaranteeing the protection of indigenous peoples' rights and supporting the urbanization of the region. The Arctic Council and other international organization provide an excellent platform for those purposes and generally also indirectly positively impact the dispute settlement process. Especially valuable are initiatives that manage cooperating regardless of the status of the dispute. The traditionally friendly and strategic relations between the USA and Canada are some of them.

Although the Arctic plays a different role of in its domestic politics of countries, their economies and security frameworks are greatly integrated and facilitates the negotiations over a joint management of the disputed area. Splitting the disputed area or trading territories in a package linked to other border disputes would provide a quicker solution, however, those options already proved to be unsatisfying and that do not maximize the benefits from a resolution.

It is likely that the USA and Canada will maintain the status quo in the Beaufort Sea maritime dispute at least in the coming ten years. There are a number of reasons to argue so. First, both countries recognized in their Arctic strategies the need to collect scientific data, increase research and update their knowledge of the Arctic as well as intensify the cooperation with other Arctic countries. Those goals do not require an urgent solution to the Beaufort Sea dispute. Second, in the current global political situation and with a decreasing oil and gas prices, the exploitation in the Arctic is not economically attractive. This makes the natural resources less relevant. Third, ostensibly, the USA may ratify the UNCLOS in the near future. Since the USA has not yet done so, it will have an additional 10 years after an eventual ratification to submit its data about the continental shelf claims. The issue of the continental shelf delimitation and the solution of the boundary dispute within the 200 nm are closely interlinked. The dispute cannot be solved before the agreement on the continental shelf delimitation beyond 200 nm. Therefore, the USA has time on its side in the continental shelf delimitation process and will continue guiding this process at least with regard to Canada.

At the same time, both countries already feel a growing time pressure coming from the new interested actors as the European Union and especially China that actively develop their Arctic policies. This is an incentive for the USA and Canada to integrate their Arctic strategies and conduct the policy of containment of others' non-Arctic countries engagement in the region.

It is very likely that a more comprehensive research in the Arctic and the growing role of the public in both countries will accelerate the cooperation and reveal new creative approaches to a joint management and the settlement process. "In the end, the battle for the Arctic will be fought by scientists and lawyers. The weapons will be information and scientific data, and the battleground will be conference rooms and courtrooms. Stephen Carmel, Maersk Limited."[309]

[309] "Sovereignty and Security in Canada's Arctic."

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