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THE NORTH POLE – fate decided by scientists or diplomats?

When Russia dropped a titanium flag on the seabed at the North Pole earlier this year and attempted to declare its sovereignty up to the Pole itself, it was seen more as a symbolic gesture aimed at Russian domestic consumption than a realistic declaration of rights to further seabed territory and resources and the waters above them. But lightly dismissing symbolic gestures of this nature and gravity is done at peril. The following articles from Denmark, U.S.A. and Norway, who along with Russia and Canada jointly and severally claim sovereignty over the Arctic land mass, discuss the competing claims and political implications on what is still a speculative issue.

Denmark

Danish Foreign Minister, Per Stig Møller, was quoted in Danish newspapers on 13 September 2007, saying - "It is not useful to divide the Arctic region based on who plants the first flag. That is not the way to solve the issue."

The quote from the Minister came as Denmark announced it has invited Canada, Russia, Norway and the United States to a meeting in 2008 in the Greenland city of Illusissat to discuss claims by neighbouring countries on the North Pole. There is growing speculation and expectation that the seabed of the North Pole holds vast natural resources of oil and minerals and this has attracted the attention of countries whose interest hitherto has been scientific research into extinct polar life and studying the extent and progress of global warming.

All claims to the North Pole are based on the principles laid down in the 1982 United Nations Convention on the Law of the Sea. Russia submitted a formal claim under the Convention in 2001, and Denmark and Norway followed in 2004 and 2006. Canada's assertions that its claims to sovereignty have long been established are not widely recognized by other claimants. The USA has not ratified the Convention and therefore has not submitted a claim under the Convention thus far.

The race for claims on the North Pole gained momentum around 1999 when it became clear that global warming could open up access to the North Pole itself. In August 2007 Russia dropped a titanium flag on the seabed of the North Pole which engaged the interest of politicians and the national media in many countries. Following Russia's actions Denmark's Prime Minister, Anders Fog Rasmussen, commented that he supported the idea that the North Pole belonged to the world and not to an individual nation.

Denmark, Norway, Canada and Russia claim their rights to the North Pole under the Convention based on the extended continental shelf of their regional coastlines. It is argued that there is a natural prolongation of the respective countries' land territory which extends beyond the 200 nautical mile baseline, and therefore gives a right to at least part of the North Pole. Denmark is in the race because of Greenland, which is Danish territory.

Scientific proof of the extent of a claimant's continental shelf will therefore primarily decide rights to the North Pole based on the Convention on the Law of the Sea. So far no nation has successfully convinced the Commissioners in the UN that their claim is valid, and sufficient proof in any claim is some years from being available.

The thought that Denmark could "lose"



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the North Pole if it is not possible to provide adequate proof of the extent of her continental shelf may have sparked the Foreign Minister's comments, and is an excellent incentive for seeking settlement with competing claimants. A settlement would be negotiated between diplomats of the nations concerned and perhaps only partly based on actual scientific evidence.

It will be interesting, therefore, to see whose will be the deciding influence, the scientists or the diplomats.

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Lost at sea - United States and the Law of the Sea Treaty

In December 1982, after nine years of intensive discussions and negotiations, the United Nations finalized a legal "constitution" for regulating activities on, over and under the world's oceans known as the U.N. Convention on the Law of the Sea (the "Treaty") and submitted it to its member nations for signature. By May 31, 2007 Lesotho, a small land-locked country on the southern tip of Africa, had become the one hundred and fifty fifth nation to ratify the Treaty. However, the United States, the world's last remaining superpower, has yet to adopt it.

When the Treaty was initially opened for signature in December 1982, the United States and a number of other nations did not sign on the basis that important changes were needed to Part XI of the Treaty relating to deep seabed resources beyond national jurisdictions. An Agreement Relating to Implementation of Part XI of the Treaty (the "Agreement") addressing many of these concerns was adopted in July 1994, allowing the US to participate in the organization and implementation of institutions within the International Seabed Authority for a limited time (which has since expired). The Treaty then went into effect in November 1994 and the Agreement went into effect in July 1996.

The political history of the Treaty in the U.S. begins with Ronald Reagan. When adopted, the Treaty enshrined the principle that the seabed area beyond the jurisdictional boundaries of the nations be declared the "common heritage of mankind" and that any resources retrieved from that area ought to be shared in a fair and distributive manner.

This political philosophy did not sit well with then President Reagan who ordered a comprehensive review of U.S. policy on the law of the sea and the draft Treaty. On the grounds that the Treaty was anti-competitive and did not give the U.S. decision-making authority commensurate with its size, President Reagan announced that the U.S. would act generally in accordance with the terms of the Treaty, but would not become a party to it until specific issues were addressed relating to deep-sea mining and the issue of private property.

In 1994, President Clinton forwarded both the Treaty and the Agreement to the U.S. Senate for its "advice and consent", a step required by the U.S. Constitution for domestic ratification of international treaties. The then Chairman of the Senate Committee on Foreign Relations lent his strong support, and ratification of the Treaty and related Agreement was looking extremely favorable.

However new elections in the United States shifted control of the Senate to the Republicans, and as a result shifted control of each of the Senate's committees. The new Chair of the Senate Committee on Foreign Relations refused to hold any hearings on the Treaty and Agreement thereby blocking consideration of the Treaty for a further ten years.

With the November 2006 elections, the Democrats once again gained control of the Senate. With the Democrats back in control the ratification of the Treaty and the Amendment may still well happen but whether or not the Senate will give its "advice and consent" in the current session of Congress remains unclear. However, the current Bush Administration in the Republican-controlled White House has indicated strong support for ratification. On May 15, 2007, President Bush "urged the Senate to act favorably on U.S. accession" to the Treaty and the Agreement.

Despite the checkered political history of ratification of the Treaty and its related Agreement, it seems that the U.S. has a number of compelling reasons to finally ratify both the Treaty and the Agreement.

1. Seabed mining and concerns that the United States is being left out of important decision-making bodies.

- The Agreement provides that the United States will have guaranteed membership of the International Seabed Authority, allowing it to influence the important decision-making processes relating to deep-sea mining. However, unless the U.S. adopts the Treaty and Agreement the U.S. will not have any official role in the Authority.

- Becoming a signatory to the Treaty and the Agreement would also allow the U.S. to assert its rights against other nations that have made claims to jurisdiction that have affected U.S. shipping interests, and to specifically challenge the designation of certain exclusive zones that may be asserted by other nations under the Treaty and Agreement.

- While the Treaty allows for continental shelf claims up to 350 miles from a nation, and in some cases beyond this, the United States has no treaty-based means for making a claim beyond the 200 nautical miles currently claimed by the U.S. and a number of other nations, as being part of its geographic territory.

2. U.S. National Security Concerns.

- Following the events of September 11, 2001 both the U.S. Defense Department and the military community have been strong supporters of

the Treaty on the basis of increased U.S. global military requirements, and reliance on the right of transit passage through international straits and sea lanes passage to conduct military exercises and surveys in coastal zones and on the high seas, with the belief that as a party to the Treaty, the U.S. would be in a stronger position to assert its rights.

It remains highly incongruous that the U.S. has not taken a more active role in pursuing its interests on the high seas by adopting the Treaty and Agreement. However, aside from increased ocean-going commercial and military activity, the U.S. has not completely neglected its interests, engaging in ongoing survey efforts with respect to its continental shelf which may lay the groundwork for future claims. Non-ratification has also had its unintended consequences. The U.S. courts have been developing a convoluted maritime jurisprudence in this area relating to traditional law of the sea principles and "reflections" of the Treaty, and it has been sometimes difficult for U.S. shipping interests to claim rights under the Treaty that only may exist for its signatories.

Perhaps events such as the much-publicized recent planting of a Russian flag two miles under the polar icecap in the Arctic Sea on August 2, 2007 will finally spur the U.S. to take a more active role in ratifying the Treaty. However, as recent U.S. political history has shown, ratification of the Treaty and U.S. policies on the law of the world's oceans may very well remain "lost at sea" until the political constellations align once more.

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The Arctic Ocean and the North Pole - Norway's legal position on sovereignty

Norway signed the 1982 United Nations Convention on the Law of the Sea on the day it was opened for signature and ratified it on 24 June 1996. It entered into force for Norway on 24 July 1996.

The Arctic Ocean is bordered by five coastal states, four of which are party to the Convention on the Law of the Sea - Norway ratifying in 1996, Russia in 1997, Canada in 2003 and Denmark in 2004. The USA has yet to ratify the convention, but the Administration has submitted a Bill to the Senate proposing that it do so.

Norway and Russia have until 2009 to submit their data to the Commission, whereas Canada and Denmark are not required to do so until 2013 and 2014 respectively, as these two states ratified the Convention on the Law of the Sea at later dates. The dates are deadlines for submitting claim documentation based on scientific surveys and analyses. It is then for the Commission on the Limits of the Continental Shelf in dialogue with the state concerned, to assess the data submitted.

So far only Russia in December 2001 and Norway in November 2006 have submitted data to the Commission identifying the extent of their continental shelves in the Arctic Ocean. Russia's claim was posted on the United Nation's website in 2001 and, according to charts that have been made public, the area claimed by that country includes the North Pole. The Commission's response has been to request additional documentation.

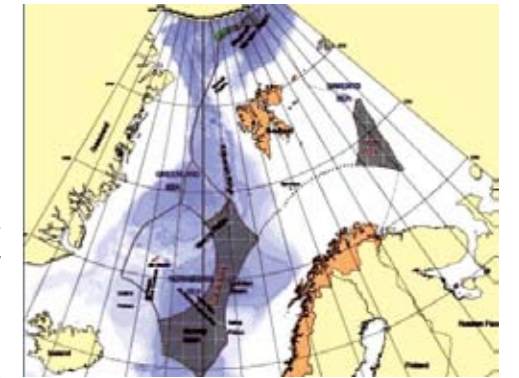
Norway's continental shelf does not extend anywhere near as far north as the North Pole itself. There is a presumption that the northernmost point on the Norwegian continental shelf is located at approximately 84° 41' N, i.e. well south of the Pole. Norway's main focus has been on areas further south, in the Banana Hole in the Northeast Atlantic, but also the Nansen Basin north of Spitsbergen and the Loop Hole, the area south-east of Spitsbergen. In preparing its submission Norway attached importance to maintaining regular contact with all neighbouring countries, and keeping them informed about Norway's views. These neighbouring countries have consented to the Commission considering the Norwegian data. This also applies to areas where a bilateral delimitation line has yet to be determined, as is the case in the Barents Sea and the Banana Hole. As regards the Banana Hole, Denmark (which includes the Faroe Islands) Iceland and Norway have agreed in advance on all the procedures for determining the delimitation lines in the event that the Commission confirms that there is a continuous continental shelf in that area.

In Norway's view it is also important that coastal states in other sea areas fulfill the requirements set out in the Convention on the Law of the Sea. The clarification of questions involving maritime jurisdiction potentially have an important development policy dimension. A number of developing countries are also required to meet the documentation criteria discussed above within specified deadlines. With this in view Norway has helped to establish a UN fund and other measures to assist developing countries in documenting the extent of their continental shelves.

At the invitation of the Norwegian Government representatives of the five coastal States of the Arctic Ocean - Canada, Denmark, Norway, the Russian Federation and the United States of America - met at the level of senior officials on 15 and 16 October 2007 in Oslo, Norway, to hold informal discussions.

The participants noted recent scientific data indicating that the Arctic Ocean stands at the threshold of significant changes, in particular the impact of melting ice on vulnerable ecosystems, livelihoods of local inhabitants, and potential exploitation of natural resources. In this regard they recognized the applicability of the extensive international legal framework to the Arctic Ocean including, notably, the Law of the Sea. They discussed in particular the application and national implementation of the Law of the Sea in relation to protection of the marine environment, freedom of navigation, marine scientific research and the establishment of the outer limits of their respective continental shelves. They considered cooperative efforts on these and other topics and emphasized the commitment of their states to continue cooperation among themselves and with other interested states, including collaboration on scientific research.

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May 2007 – New York. Members at a working lunch in the United Nations Building, addressed by Warren Hoge, New York Times Chief Bureau Correspondent to the UN, who spoke about the way the UN, and in particular the Secretary General's office, operated in the 21st century.

