Diplomacy and the Lomonosov Ridge: Prospects for International Cooperation in the Arctic

by

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A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts in

The Faculty of Graduate Studies
(Political Science)

The University of British Columbia
(Vancouver)

August 2010
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Abstract

This paper examines the politics of continental shelf delimitation and cooperation in the central Arctic Ocean, where media and political rhetoric often point to the possibility for conflict. This analysis is divided into two main sections. First, the current political and legal situation is outlined, with a focus on the Lomonosov Ridge which traverses the ocean floor near the North Pole. While several countries including Russia, Denmark, and Canada may have adjacent and even overlapping claims to the continental shelf in this area, these players have also pursued significant scientific and political cooperation concerning the continental shelf, and an elaborate regime of international law, centred on the United Nations Convention on the Law of the Sea, has been largely respected by the players in the region.

Second, the paper argues that a number of measures, including many interim approaches, are available to avert potential political disputes. The research examines the feasibility of such cooperation towards a political agreement, which could take the form of a joint or coordinated submission to a UN body, a provisional delimitation arrangement, or a joint development zone. The paper argues that in light of the degree of cooperation so far, as well as the existence of political accords elsewhere which may serve as useful models, the countries in the region should consider preempting disputes over the continental shelf by pursuing an interim political agreement in the central Arctic Ocean.
# Table of Contents

Abstract ........................................................................................................................................... ii

Table of Contents .......................................................................................................................... iii

Acknowledgements ......................................................................................................................... iv

Introduction ......................................................................................................................................... 1

Legal regime ......................................................................................................................................... 2

National claims to the Arctic Ocean ................................................................................................. 5

What is at stake in the central Arctic Ocean? ..................................................................................... 8

Current state of cooperation .............................................................................................................. 13

Possibilities for cooperation: Joint and coordinated submissions ................................................. 16

Possibilities for cooperation: Provisional delimitation arrangement ............................................. 22

Possibilities for cooperation: Joint development zones ................................................................. 28

Conclusion .......................................................................................................................................... 32

Notes .................................................................................................................................................. 33

Bibliography ....................................................................................................................................... 38
Acknowledgements

I would like to express my sincere appreciation to my supervisor, Dr. Michael Byers, for his insight, suggestions, patience, and ongoing support. Thank you to Dr. Ian Townsend-Gault for his willingness to serve as my second reader.

Thank you to my family and to Lauren Hurst for all their support.

This article reflects the views of the author only, and does not represent the official views of the Department of Foreign Affairs and International Trade Canada or of the Government of Canada.
Introduction

As the Arctic continues to undergo significant changes as a result of climate change, adjacent countries are increasingly turning their attention to their interests in the region, including their respective claims to extended continental shelves. One area of potentially overlapping claims involves the Lomonosov Ridge—an underwater mountain range traversing much of the Arctic Ocean—and its environs. Various media outlets and commentators have described this situation in confrontational terms, depicting it as a “final race” or as “a highly competitive scramble to stake claims.” In light of the supposed high stakes, this study assesses the current state of affairs, opening with a focus on the pertinent legal regime, the background on the respective national claims, the interests at stake, and the general potential benefits of cooperation. I then examine the extent of current cooperation before analyzing the feasibility of a political agreement to ward off any future dispute, including (1) a possible joint or coordinated submission to the United Nations body that oversees the limits of the continental shelf, (2) a provisional delimitation arrangement, or (3) a joint development zone. Such an analysis includes a discussion of what such an agreement would entail, as well as an overview of previous examples of diplomatic cooperation on continental shelf cases, which could serve as models for an agreement in the Arctic. I argue that a political agreement to address this situation of potentially growing tensions—building upon technical cooperation so far and modeled on previous continental shelf cooperation initiatives—could be considered by the concerned governments, and that the benefits of such an agreement would be significant.
Legal regime

Notwithstanding the alleged potential for conflict concerning the seabed in the Arctic, the current state of affairs is hardly one of lawlessness. A complex regime of international law applies to the Arctic Ocean and its seabed, encapsulated in the United Nations Convention on the Law of the Sea (UNCLOS). Most importantly for the matter at hand, this international treaty contains several clauses concerning sovereign rights over the continental shelf, and the process by which claims to such rights may be submitted to a panel of experts. According to Article 76 of this convention, a country’s sovereign rights do not necessarily end at the extremities of its 200 nautical mile Exclusive Economic Zone. Rather, where its continental shelf—that is, “the submerged prolongation of its land mass”—extends beyond this zone, the country has jurisdiction over “non-living resources of the seabed and its subsoil, and to bottom-dwelling species.”ii The Arctic Ocean is one area in which such prolongations occur.iii

While David Gray’s characterization of the process to determine the limits of the shelf as “a complicated thing” is an understatement, the processes by which a state can establish its area of jurisdiction may be described here in brief.iv A state may either measure 60 nautical miles seawards from the foot of the “continental slope,” or determine its limits based on the thickness of sediment past the foot of the slope. In the latter case, “the continental shelf ends when the thickness of the sediments drops below 1 per cent of the shortest distance to the foot of the slope.”v In either case, the coastal state is limited to one of two absolute limits, between which the state may choose to its advantage. The limit is “either 350 nautical miles from shore, or 100 nautical miles beyond the point where the depth of the
In short, a variety of measurements and criteria may be used to establish a state’s extended continental shelf, thereby rendering scientific data critical. This evidently complex process is rendered more challenging in difficult-to-access areas, such as the Arctic Ocean.

Maritime states eager to establish the outer limits of their respective continental shelves past the 200 mile EEZ are able to do so according to the procedures outlined in Article 76. Specifically, such states may gather scientific mapping data and submit it to the UN Commission on the Limits of the Continental Shelf. Although UNCLOS stipulates that states are to submit this data “within 10 years of the entry into force of this Convention for that State,” the Convention does not provide for consequences of missing this deadline, and thus it should not be assumed that a state’s sovereign rights to its continental shelf would simply lapse in such an eventuality. Once the submission is made and considered by the Commission, Rob Huebert argues that if it gives rise to “no counterclaims from neighbouring states, the claim is granted.” It should be added, though, that a submission that was based on insufficient science, or was evidently in bad faith, would likely not be approved by the Commission. It must be noted that the Commission is not a final adjudicating body, but can only make non-binding recommendations. As Ron Macnab and P.K. Mukherjee have pointed out, if the submitting state disagrees with the recommendations of the Commission, “it is nowhere stated that the recommendation must be accepted by the coastal state.” Furthermore, the Commission is not empowered to dictate solutions to conflicts arising from overlapping claims, and such conflicts may instead be resolved through bilateral negotiations, at the International Court of Justice, or through ad hoc arbitration, not to mention more belligerent means of asserting sovereignty. Thus, although the Commission’s
recommendations “shall not prejudice matters relating to the delimitation of boundaries between States,”

the process of making submissions to the Commission is still taken seriously by concerned states. As Professor Michael Byers points out, because the Commission’s recommendations “are based on geographic and geological facts, [they] are treated as having considerable weight.”

UNCLOS has been signed and ratified by four of the five Arctic Ocean states. Although the US is the one holdout, the White House has actively sought Senate ratification, and according to Elizabeth Riddell-Dixon, the US is of the “belief that, in accordance with the norms enshrined in the LOS Convention, it is entitled to the prolongation of its continental shelf.” The United States was also a party to the Ilulissat Declaration affirming the law of the sea (discussed further below), and the legal adviser to Secretary of State Condoleezza Rice encouraged US ratification of the Convention in a June 2008 New York Times op-ed article. In short, the US accepts and abides by many of the rules set out in this international convention.
National claims to the Arctic Ocean

Having established the legal regime covering the extended continental shelves in the Arctic, attention may now be turned to the respective claims of the Arctic states to the region surrounding the Lomonosov Ridge. Because Russia has already made a submission to the Commission, its claim may be analyzed in some detail. After ratifying the treaty in 1997, Russia submitted its scientific data to the Commission in 2001, arguing that massive swaths of seabed constituted its extended continental shelf. Although the Commission deemed the evidence insufficient and therefore recommended that Russia re-submit more detailed data, several authors have relied on the initial claim to analyze the extent of Russia’s interests in the central Arctic Ocean. Ted McDorman, for instance, notes that speculation exists that the large Russian claim relies on the notion that the Lomonosov Ridge and other underwater formations are part of Russia’s “continental margin.”

Notably, the Russian claim extends “to an area that might possibly be claimed by Canada and/or is part of the deep ocean floor,” and in fact, the Russian claim abuts the North Pole. Following Russia’s submission, Canada transmitted in 2002 a note verbale to the UN Secretary General indicating that in the absence of further details, it was not necessarily in “agreement or acquiescence” with the claim, and that the submission could not be used to prejudice delimitation issues between the two countries. Since Russia has made its initial submission, it is no longer bound by the ten year window, but rather must re-submit within a “reasonable” amount of time; Russia has indicated that this may be as late as 2013.

Canada, meanwhile, has not yet submitted its data to the Commission, as its 2003 ratification allows it a timeline ranging until 2013. Consequently, Canada’s potential claims
cannot be analyzed definitively, but several initial comments may be made. Canada has released a map indicating its potential continental margins, and these rely in part on the notion that the Lomonosov Ridge is an extension of Canada. In an explicit statement in August 2008, Natural Resources Canada announced that recent scientific mapping data demonstrates that the undersea Lomonosov Ridge is attached to the North American and Greenland plates. In short, then, Canada (along with Denmark) and Russia consider that the two extremities of the Lomonosov Ridge constitute natural prolongations of their respective landmasses. Notwithstanding this disagreement as to the nature of the Ridge, Huebert maintains that “[w]e do not yet know whether Canada’s claim to its continental shelf in the Arctic region will overlap those of Russia, the US or Denmark.” One official also noted that it is not yet determined whether national claims will overlap in the central Arctic Ocean. However, Huebert indicates by means of several maps that the potential for overlapping claims is very real, and that the most likely site of conflicting claims is along a section of seabed near the North Pole and the Lomonosov Ridge.

Denmark, meanwhile, ratified the Convention in 2004, and for it the Lomonosov Ridge along with other features are “assumed natural prolongations of northern Greenland.” Finally, the United States does not have claims along the Ridge, as its continental shelf claims are found directly north of Alaska and do not approach the Ridge nor the North Pole. However, it is noteworthy that the US indicated several years ago its perspective that the Lomonosov Ridge is “not a natural component of the continental margins of Russia or any other State.” The consequences of such a belief, if still held, would be that in the US view, neither Canada, Russia, nor Denmark could rely upon the Lomonosov Ridge to extend its continental shelf claims.
In short, an overview of the Arctic countries’ respective claims reveals two key points. First, it is clear that the potential exists for overlapping claims and thus disputes in these areas. Second, and on a more encouraging note for international cooperation, this situation is very much in its early stages, since much of the research to back the claims is ongoing (as detailed below), and since the claims that have been advanced are not necessarily deeply and intractably entrenched in the foreign policies of the respective countries.
What is at stake in the central Arctic Ocean?

While the Arctic Ocean states have endeavoured to clarify and establish their respective claims in the central Arctic Ocean, the reasons for their interest in the region must be examined. In other words, what is at stake in the central Arctic Ocean? Just as importantly, what is not at stake? In discussions of the so-called “race” for the Arctic, one of the most commonly invoked reasons for this race is the alleged presence of valuable resources in the Arctic Ocean. For example, Huebert explains that sovereignty over the seabed and the subsoil would include any deposits of oil and gas found within the continental shelf. A much-cited estimate from the US Geological Survey (USGS) that the Arctic contains “up to 25 percent of the world’s undeveloped oil and gas reserves,” has since been retracted, but other experts continue to place high hopes in the Arctic’s capacity to provide for some of the world’s energy needs. One energy consultant, for instance, estimates that one-fifth of the global reserves of oil and gas may be in the Arctic.

However, such all-encompassing estimates, cited as such, often neglect to mention the approximate location of the alleged energy reserves. In fact, many of these oil and gas stocks are likely near Arctic coastlines and thus within already-established areas of jurisdiction and not along the Lomonosov Ridge in the central Arctic Ocean, where claims may overlap. A 2008 study by the USGS mapped the probability of finding recoverable oil and gas in amounts greater than 50 million barrels; most of the central Arctic Ocean, including along the Lomonosov Ridge and the area surrounding the North Pole, was coded either as less than 10 percent probability, or as “area[s] of low petroleum potential.” McDorman asserts that “the possibility of hydrocarbon and other energy
resources” is a large motive for Arctic Ocean states to stake their claims to the continental shelf, xxxvii but the Lomonosov Ridge is likely far less of an interest than the Beaufort and Barents Seas. In short, the isolated area under discussion has not been shown to have vast quantities of oil or gas, but the countries in the region do not appear willing to take any chances in this regard.

Despite the unlikelihood of imminent exploitation of oil and gas in the central Arctic Ocean, it remains the case that economic interests continue to inform states’ approach to this region. As Macnab points out, methyl hydrates may be present in this area in significant amounts, and to the extent that this energy source may be feasibly extracted and used in the distant future, countries are reluctant to give up any possible claims to the seabed without full knowledge of its current or future value. xxxviii Likewise, because UNCLOS grants the coastal state sovereignty over living resources directly on its continental shelf, the lack of scientific knowledge of such resources renders states disinclined to restrict any claims. xxxix Thus, the Arctic Ocean countries are in part driven by a precautionary motive, whereby they wish to establish and maintain control over areas that may be economically valuable in the future.

Quite apart from purely economic motives, however, Arctic Ocean states are also driven by what may variously be labelled as patriotism, national pride, or domestic political interests. To take one national example, Ken Coates et al. explain that Canada has for so long adhered to the assumption that its sovereignty extends to the North Pole that it has “prepared minimally ... for any challenge to its sovereignty in the area.” For this reason, it has consistently appeared unable to “acknowledge that our Arctic counterparts also [have] interests, and that we’d have to negotiate with them when those interests conflicted with
ours.” Historian Jack Granatstein, in discussing the Danish claim to the North Pole, emphasized that the “protection of the Arctic is a key [Canadian] national interest.”

Tellingly, when Russian officials planted a titanium flag on the ocean floor at the North Pole in 2007, they clearly touched a nerve in Canada, as this was perceived as an unwelcome act near Canada’s own backyard. Just as important, though, is the reality that this Russian action was designed in part for domestic consumption, as Russia is subject to similar concerns of defending notions of national pride in the Arctic. This combination of economic and political concerns contributes to the importance of warding off any potential conflicts in the central Arctic Ocean. Although maritime boundary and continental shelf uncertainties exist elsewhere, the prospect of boundary disputes between Russia and North Atlantic Treaty Organization (NATO) states in such a politically sensitive region under ever-increasing scrutiny warrants dedicated efforts to maintain and increase cooperation between the states involved.

However, these same national pride concerns may also clash somewhat with the case for increased cooperation in the central Arctic Ocean, for any collaborative political measures could be mischaracterized as countries’ willingness to “give up” their claims to the Arctic. On this note, it is critical to emphasize that regardless of the outcome concerning the continental shelf in the central Arctic Ocean, Canada, for one, will not lose sovereignty over any lands or waters over which it currently has ownership. The extended continental shelf clauses of UNCLOS pertain only to the seabed and subsoil beyond 200 nautical miles from shore. They do not apply to the water column above it nor to any control over shipping on the ocean surface, nor do they concern rights closer to shore – which are much more clearly established and, for the most part, uncontested as between the Arctic countries. Where
sovereignty in these areas exists, it will continue, and any diplomatic cooperation in the area along and near the Lomonosov Ridge will not derogate from this existing sovereignty.

While national pride is invoked by some as a reason for “standing up” for one’s claims of sovereign rights, I argue that patriotism need not dictate a boisterous approach to claims in the Arctic. Rather, cooperation as opposed to confrontation may be rooted in, and further nurture, certain longstanding national traditions of seeking peaceful resolutions to conflicts. Canada, in particular, is well-placed to play a constructive role in the Arctic, including by encouraging and even leading multilateral cooperation to resolve any potential continental shelf dispute in the central Arctic Ocean. As a well-respected middle power that has a legitimate role in the Arctic, Canada could justifiably mediate and facilitate a multilateral diplomatic solution.

Importantly, the benefits of such cooperation could extend beyond the central Arctic Ocean, as two major powers, the US and Russia, have clear interests in the region. While the US may not have specific claims along the Lomonosov Ridge, it could nevertheless play a crucial role in cooperating scientifically and politically in the Arctic at large. According to one observer, for example, the US is “the only country to have the resources and political weight that can get a handle on the development of the region.” More dramatically, author Scott Borgerson opines that “[u]nless Washington leads the way toward a multilateral diplomatic solution, the Arctic could descend into armed conflict.” More dramatically, author Scott Borgerson opines that “[u]nless Washington leads the way toward a multilateral diplomatic solution, the Arctic could descend into armed conflict.” While the Arctic situation certainly could strain the important US-Russia relationship, it also presents an opportunity. The Obama administration has made clear its desire to “reset” US relations with Russia, including concerning crucial international problems such as Iran’s and North Korea’s
nuclear programs and missile defence. Although the Arctic is often omitted from lists of major US-Russia concerns, the relatively less tense nature of the Arctic may make it a key step in resetting this relationship. In other words, the US is eager to cooperate with Russia in many areas, and a resolution to any dispute in the central Arctic Ocean—with Canada’s active encouragement and participation—would help to attain this objective and potentially lead to greater cooperation on pressing matters elsewhere. In the sections that follow, I outline the degree of cooperation so far, as well as the possible forms that interim political cooperation could take.
Current state of cooperation

Despite the rhetoric found in much media coverage of the Arctic, the concerned countries have a history of scientific cooperation, which has more recently extended to diplomatic cooperation. According to Macnab, international cooperation in the Arctic was largely initiated by scientists, who met in 1996 to share scientific information.\textsuperscript{xlvii} On the matter of mapping the continental shelf in the central Arctic Ocean, the Canadian Department of Foreign Affairs and International Trade identifies several examples of cooperation with neighbouring states. In one example of extensive bilateral cooperation, Canada and Denmark have undertaken joint efforts to survey the Lomonosov Ridge. Subsequently, the “results of that expedition were interpreted jointly” and formed the basis of the aforementioned Canadian claim that the Ridge is an extension of the North American and Greenland plates.\textsuperscript{xlviii} Meanwhile, Canada has also cooperated on scientific mapping with the US, albeit not in the central Arctic Ocean. Icebreakers from these two countries have cooperated to map the continental shelf in the northern Beaufort Sea.\textsuperscript{xlix} Canadian-Russian cooperation has also occurred in the scientific domain. As Riddell-Dixon points out, Canadian, Russian, and Danish scientists met in 2007, and the Russians shared with their colleagues the detailed scientific data that accompanied their previously confidential submission to the Commission in 2001.\textsuperscript{1} Furthermore, the prime ministers of Canada and Russia released a statement in 2007 noting “the need for cooperation and collaboration in the mapping work in the Arctic Ocean.”\textsuperscript{ii} Concretely, a Russian icebreaker was employed by one Canadian and several Danish scientists for surveying near Greenland in 2007.\textsuperscript{iii}
As the Canada-Russia declaration indicates, cooperation in scientific matters can be an impetus for political cooperation. Importantly, the five Arctic Ocean states signed the Ilulissat Declaration in May 2008, wherein they acknowledge the existing cooperation—including that concerning the continental shelf—and agree to expand this cooperation moving forward. Ron Macnab agreed that scientific cooperation can make political cooperation more likely, as working level relationships between scientists can help to build trust between countries; by witnessing strong technical collaboration, national governments may be more inclined to attempt to cooperate politically.

Indeed, it appears that the Arctic states have taken some significant steps towards exploring a potential political agreement concerning the continental shelves in the central Arctic Ocean. Until recently one could reasonably assume that the scientific exploration—even when carried out cooperatively—would be used by national governments to inform their own, separate submissions to the UN Commission. However, recent developments may challenge this assumption. Last year, the New York Times reported that “diplomats from Arctic nations are now even discussing the possibility of a joint Russian-Canadian-Danish submission to the United Nations' continental shelf commission, suggesting an orderly division of the area.” Indeed, discussion of such a possibility may be traced back to a February 2009 meeting, where the senior legal advisers from the Canadian and Russian foreign ministries discussed a “joint Russia-Canada-Denmark” submission to the Commission, which in reporter Randy Boswell’s estimation is “a surprisingly genial proposal that would defuse potentially explosive questions about where each country's Arctic territory ends, what offshore oil domains each would possess, and who owns the seabed at the North Pole.”
This development is particularly encouraging for the prospects of international cooperation regarding the continental shelf in the central Arctic Ocean, and the proposal appears to have maintained momentum and to have expanded to possibly include other countries. Indeed, Professor Michael Byers reported that a fall 2009 meeting of lawyers from the foreign ministries of Canada, Russia, and Denmark, along with the US and Norway, considered “a proposal to co-ordinate claims to the Arctic seabed.”

In light of these significant developments, and the potential for confusion in this area, it is important to understand exactly what a joint or coordinated submission would entail. Notably, would such an approach necessarily solve all matters of continental shelf delimitation, as Boswell argues? What benefits would such an approach bring to the concerned states, and what challenges would need to be overcome? What models might the Arctic Ocean states turn to in order to develop their own submission(s)?
Possibilities for cooperation: Joint and coordinated submissions

In order to answer these questions, I consider the concepts of joint submissions and coordinated submissions, including their advantages and disadvantages, as well as any pertinent examples. First, I examine the idea reportedly discussed by the Russian and Canadian legal advisers early last year – a joint submission to the UN Commission. Simply put, a joint submission is the culmination of a cooperative process between two or more states that results not in separate, individual state submissions, but rather a single submission to the UN Commission. As a result, continental shelf consultant Alain Murphy asserts that a joint submission is “the most integrated form of submission made by two or more coastal States.” In order to make possible a joint submission, the states involved would typically ensure “full disclosure of submission data and materials,” with the result that there would be effectively “a single technical team cooperating on all facets of the submission.” Such an approach, if adopted in the central Arctic Ocean, would result in far more integrated and consistent communication and interaction by the states involved.

Notwithstanding the evidently deep integration between the various parties to a joint submission, this option does not necessarily involve finalizing the delimitation of continental shelf boundaries, and therefore does not necessarily resolve any overlapping claims. Indeed, as discussed above, the UN Commission on the Limits of the Continental Shelf has no mandate to resolve such overlaps. On this point, Murphy notes that joint submissions are often seen as useful precisely because they are a method by which states may set aside their unresolved boundaries in order to make a submission to the Commission. The first and most
cited example of a joint submission makes this point abundantly clear. In 2006, the United Kingdom, France, Spain, and Ireland made a joint submission to the UN Commission concerning the Celtic Sea and the Bay of Biscay. While this joint submission emerged following intense collaboration among the four countries, they did not intend for it to resolve any overlaps. In fact, the joint submission only represented a partial submission, and deliberately excluded those portions of the continental shelf where there existed “unresolved questions pertaining to the delimitation of boundaries,” submissions for which will be made at “a later date.”

This four-country example is not the only means by which a joint submission may be employed by adjacent states. Rather, two or more states could make a joint submission to the Commission that includes all areas of the continental shelf that they each claim, including any overlaps. In such a case, the states acting in concert would simply indicate that any recommendations from the Commission as to delineating the continental shelf would be sought and received “without prejudice” to the eventual delimitation of boundaries. Thus, the jointly submitting states would be seeking the Commission’s recommendations on the submission based on its scientific merits, while the political matter of boundary delimitation would be dealt with separately.

If a joint submission does not necessarily resolve overlaps by itself, why would states—including, potentially, the Arctic Ocean states—pursue this option? The potential benefits of such an approach, while falling short of a direct boundary settlement, are numerous. On a technical level, a joint submission can result in higher quality data and a stronger overall submission, by allowing for different data, as well as expertise, to be combined in pursuit of
one objective.\textsuperscript{lxiii} A division of labour also becomes possible,\textsuperscript{lxiv} which could presumably lower costs of data collection and analysis in some instances. On a more fundamental level, a key benefit of a joint submission is that such an approach may actually ensure that the submission is considered by the Commission. As outlined in the Rules of Procedure of the Commission on the Limits of the Continental Shelf, if a submission by one or more states is explicitly objected to by another state owing to a boundary dispute, the Commission will not consider the submission at all.\textsuperscript{lxv} One clear example of this outcome is the submission made by Vietnam and Malaysia concerning the continental shelf in the South China Sea. Almost immediately, China objected to this submission as an infringement of its sovereignty, and therefore “seriously requests the Commission not to consider” it.\textsuperscript{lxvi} While this blocked submission was itself a joint submission, it did not include all concerned states. If, however, a joint submission included all concerned states, it would have the significant benefit of guaranteed consideration by the UN Commission.

In addition to these technical benefits, joint submissions present clear benefits in relation to the focus of this paper, namely political cooperation to resolve disputes. While a joint submission need not be accompanied by efforts to resolve overlaps, and may even avoid such discussions, such a joint approach could also greatly increase the likelihood of greater cooperation in resolving boundary disputes. As a first step, a joint submission would downplay any dispute by “lowering the temperature” of those who may see every dispute as a serious conflict.\textsuperscript{lxvii} Such an approach would require explicit political buy-in, such that political relations between the protagonists would less likely be strained. Discussing the intense interactions involved in a joint submission, Murphy argues that “the goodwill and working relationship developed during the process can be beneficial in future delimitation
Herein lies perhaps the single greatest advantage of making a joint submission: while overlaps may be left to separate negotiations, these delimitation talks are more likely to begin on solid ground, and may draw on positive past experiences in order to arrive at a desirable outcome. As such, this approach is worthy of consideration by the states with an interest in the central Arctic Ocean.

In order to make a joint submission possible, however, several significant barriers must be overcome. One such challenge is domestic, rather than international, in nature. It has been pointed out that any collaborative agreement could be mischaracterized as a willingness on the part of national governments to give up some claims to sovereignty. Thus, even though there is no legal downside to such a joint approach, and although it would not involve conceding sovereignty, a major concern for the states involved is the perception of “selling out” to other countries. In order to make any joint submission feasible, therefore, a critical element would be a communications strategy making clear to the media, the public, and other stakeholders the reality of the situation.

Other scholars have raised concerns about the technical and international political feasibility of a joint submission. For instance, while scholar Mel Weber raises the “possibility of a joint submission between Russia, Canada, and Denmark” in the central Arctic Ocean, she contends that this would be an “unlikely option” for technical, political, and process reasons. Her technical concerns revolve around the difficulty of consolidating data from three countries at different stages of scientific research. While the enormity of this task raises valid concerns, the aforementioned argument that combining data and expertise may bolster the validity of the scientific results might render such an effort
worthwhile. Weber’s invocation of “political differences,” as well as her argument that Russia will likely wish to resubmit to the Commission before Canada and Denmark do, are largely addressed by the facts that Russia was the country to propose a joint submission, and that Russia will likely not resubmit until 2013 in any case. In short, then, although any joint submission in the Arctic will be confronted with domestic and international political concerns, as well as technical challenges, the benefits of such an approach—especially the prospect of laying the groundwork for formal delimitation negotiations—means that such an approach should not be dismissed out of hand.

A joint submission is simply one means by which adjacent states may cooperate with regard to their submissions to the UN Commission on the Limits of the Continental Shelf. Indeed, as indicated above, the September meeting of the legal advisers for the five Arctic Ocean states reportedly discussed the possibility of coordinated submissions to the Commission. While similarities exist between joint and coordinated submissions, the differences are worth explaining here. Most notably, the coordinated option allows for individual submissions from each state, and is therefore a less formal type of cooperation. Furthermore, each coastal state would retain “its own technical team,” and data sharing would be “limited to the ... area of [mutual] interest.” This option would likely require a “limited diplomatic agreement,” not only because some data would be shared, but also because each country’s submission may include segments that overlap with other countries’ claims. Thus, countries would be free to submit their own separate submissions, while explicitly recognizing that the neighbouring state may make its own submission concerning the same general region, and as in the case of joint submissions, the states would agree to allow the Commission to consider the evidence. For example, in the case of coordinated
submissions concerning the central Arctic Ocean, the Russian, Danish, and Canadian submissions may identify an overlap near the Lomonosov Ridge and the North Pole, but they, along with the US, would call on the Commission to make recommendations on the extended continental shelf “without prejudice” to any eventual delimitation. While the Commission would be unable to explicitly identify or attempt to resolve an overlap, they could indicate whether the data is credible for each country, and such a determination could indirectly confirm whether an overlap exists, thereby identifying any need for delimitation negotiations.\(^{\text{lxxvii}}\) Because of the similarities between joint and coordinated submissions, many of the same advantages and challenges apply in both cases.
Possibilities for cooperation: Provisional delimitation arrangement

As noted above, a joint or coordinated submission to the UN Commission is not synonymous with an effort to divide the seabed and subsoil between the protagonists. However, such options do not preclude diplomatic efforts to agree on the delimitation of the continental shelf. Indeed, it was suggested above that joint or coordinated submissions may help make a negotiated arrangement more likely, and I argue that the two initiatives—a cooperative submission and negotiations on delimitation—may even occur in tandem, given the right circumstances. Looking beyond cooperation in making submissions to the Commission, what would a multi-party delimitation arrangement look like?

Weber has argued that “boundary negotiations in the central Arctic may be initiated before (or after)” Russia, Canada, or Denmark make their submissions, with the aim of arriving at “provisional, transitional arrangements” concerning their boundaries. For instance, Canada and Denmark could provisionally extend their existing boundary line seawards until it reaches the overlapping area with Russia near the North Pole, while the provisional boundary between Canada’s and Russia’s continental shelf could be drawn through their overlapping section, such that each country retains some jurisdiction. While Weber makes clear that the Commission has no role in boundary delimitation, she also alludes to the possible influence of the Commission in this regard. For instance, “if the scientific data do not support entitlement to extended continental shelf for each of the involved states, the provisionally agreed boundary would need to be altered accordingly.” Thus, if the Commission recommends that the outer limits of one state’s continental shelf are
not as extensive as indicated in its submission, a provisional boundary established according to the previous claim may be modified to reflect this reality. That being said, it must be emphasized that final boundary delimitation is the responsibility of the adjacent states. Thus, any transitional boundaries—whether established before or after any submissions—would still be subject to final bilateral (or multilateral) negotiations. These negotiations could not, however, extend sovereign rights if the science does not support their extension beyond a certain point.

An example from outside the central Arctic Ocean illustrates how provisional boundary delimitation may reduce uncertainty, increase the likelihood of arriving at a final solution, and re-affirm diplomatic cooperation both in terms of delimitation and possibly other matters. In 2006, Norway, Iceland, and Denmark (Faroe Islands) reached a provisional agreement on the delimitation of the continental shelf in the “Banana Hole,” a section of the Northeast Atlantic Ocean. This agreement was hailed as a means of providing “clarity and predictability” concerning the exploitation of natural resources, and as a way to “contribute to the development of international law.” Simply put, the agreement states that the eventual delimitation lines between the three states will be based on specified straight lines. The agreement recognizes the importance of the UN Commission, but is not a formal agreement for a joint or coordinated submission. Rather, the states are free to make their separate submissions, but in doing so, they are obligated to indicate to the Commission that any of its recommendations are “without prejudice ... to delimitation of the continental shelf between the three States,” and in turn, the other states agree not to block the Commission’s work. However, the parties also explicitly agree that if, upon receiving the Commission’s recommendations, the submitting state has not successfully demonstrated that
its portion of the continental shelf is as large as initially claimed, then that state’s boundary lines will be adjusted accordingly in the final boundary negotiations.\textsuperscript{Ixxvi} Importantly, the agreement ends with the assertion that “[t]hese Agreed Minutes constitute a historic step that reflects the extremely close and good neighbourly relations between Denmark/the Faroe Islands, Iceland and Norway, [and] their common commitment to promoting the international law of the sea.”\textsuperscript{Ixxxvii} In other words, this development represents not only a method of resolving a relatively small area of disagreement, but also represents an opportunity for these countries to work together peacefully and to reaffirm their strong relationship and history of cooperation. As noted above, a multilateral solution advanced by Canada could similarly strengthen relationships, including that between the US and Russia. In short, the benefits of such an agreement are likely immediate, in terms of solving a potential continental shelf dispute, and also longer term, in strengthening a rapport that will presumably be useful in other areas of international relations.

The feasibility of a similar agreement in the central Arctic Ocean is a matter of debate. As one law professor indicates, an agreement in this form may not be likely here, as the Banana Hole was an area of overlapping claims that was entirely surrounded and demarcated by the concerned states, whereas the central Arctic Ocean will likely have at least several areas where no state is able to claim sovereignty over the seabed.\textsuperscript{Ixxxviii} Thus, whereas any boundary adjustment reducing one state’s jurisdiction in the Banana Hole would likely result in another state gaining jurisdiction, and vice-versa, similar adjustments in the Arctic—based on findings as to which state or states are able to establish jurisdiction over the Lomonosov Ridge, and over how much of the region surrounding the Ridge—may simply increase or decrease the amount of the seabed categorized as the “Area” that belongs to the common
heritage of mankind. Notwithstanding this difference, however, there is no fundamental barrier to such a provisional agreement in the central Arctic Ocean. Admittedly, one serious drawback is the lack of scientific data at this point concerning the Arctic Ocean seabed, such that states may still be unclear as to which sections of the seabed they may ultimately be able to claim. As such, it may be necessary to continue data collection—as part of a joint submission effort or not, as is currently the case—for several years before any provisional delimitation agreement is feasible.

A second type of interim agreement, meanwhile, would see the parties agree not to provisional boundaries, but rather to the notion that boundaries will eventually be established according to certain mutually established principles and rough geographical allocations. In other words, the parties would agree in the near term to the broad aspects of a delimitation treaty that would itself be completed at a later date. Such a strategy would allow the countries to demonstrate tangibly and publicly their commitment to political cooperation and even compromise, effectively addressing much of the political uncertainty while providing clear direction for an eventual settlement. A recent agreement between Russia and Norway provides a concrete example of such an approach.

For decades, the Norwegian and Russian governments have clashed over the nature of their respective sovereignty over the seabed in the Barents Sea. North of the Russian-Norwegian land border are found Norway’s Svalbard archipelago as well as the Russian islands comprising Franz Josef Land. While Norway has long contended that the extended continental shelf should be divided roughly midway between these two land masses, Russia sought a line that would have extended the land border northward, thereby granting it
sovereignty over a much larger portion of the seabed. In a recent break from their respective longstanding positions, however, both countries have agreed that the disputed area should be allocated to each country in roughly equal measures, with each country securing approximately 88,000 square kilometers of seabed. Consequently, the two countries’ foreign ministers were able to affirm in a joint statement, the document embodying the agreement, their “mutual determination to strengthen our good neighbourly relations, secure stability and enhance cooperation in the Barents Sea and the Arctic Ocean” as well as their “bilateral cooperation with regard to the determination of the outer limits of the continental shelf, in accordance with the United Nations Convention on the Law of the Sea.”

Importantly for the purposes of this paper, this agreement deliberately stopped short of establishing the exact location of the delimitation line, confirming instead the general principles that the disputed area should be divided in half and that the final delimitation is to be enshrined in a later treaty following “some technical control work.” Thus, by arriving at an interim political agreement, the two parties were largely able to remove a sensitive matter from contention while making significant progress towards a final agreement.

This agreement between Russia and Norway is not only a model for possible duplication elsewhere in the Arctic, but is also evidence that Russia, one of the parties with claims to the area around the Lomonosov Ridge, may be willing to cooperate and enter into political agreements. As such, this type of interim agreement could conceivably be pursued in the area of the Lomonosov Ridge. In this case, the three parties could agree that any eventual areas of overlap would be allocated equitably between them in a later treaty. Thus, while the parties await the recommendations of the UN Commission, there would be a base level of certainty that overlaps, should they arise, would be settled peacefully and fairly. As in the case of the
Barents Sea agreement, the key would be a degree of willingness to compromise, whereby each party would relax somewhat its staunch position so as to achieve an element of certainty and stability for all involved.

Given that any tentatively established boundary may need to be adjusted based on the UN Commission’s recommendations, or that a temporary agreement may leave final delimitation to a later treaty, one may reasonably ask why a provisional agreement is desirable. To this end, it is important to note that the UN Commission has received dozens of submissions in 2009, and its pace of making recommendations may decline. Furthermore, given that the Commission may request further details—as it did concerning Russia’s 2001 submission—final recommendations may be years or even decades away. Indeed, Macnab estimates that it may be up to fifty years before the Arctic continental shelf is fully allocated. In light of this potentially lengthy state of uncertainty, a provisional agreement, based on the most accurate data possible, may have the advantage of defusing a potential dispute in the near- and mid-term, while also reaffirming in a tangible manner the cooperative and peaceful relations between the Arctic Ocean countries. While a provisional agreement has not been actively discussed publicly, and is perhaps less probable than the aforementioned forms of diplomatic cooperation, precedents elsewhere demonstrate that given sufficient political will, cooperative political agreements are feasible.
Possibilities for cooperation: Joint development zones

While this paper focuses on interim solutions that may help lead to final delimitation of boundaries, it is important to mention in brief the possibilities for alternative solutions. As noted in the discussion above, the more conventional approach is for countries to enter into bilateral or multilateral delimitation negotiations in order to determine the final boundaries between them. As Vivian Forbes asserts, “[t]he settlement of boundary disputes involving resources has traditionally centred on the demarcation of specific lines ... dividing the disputed resource area between the States involved.” In addition to this approach, however, another option exists—one that has been adopted by several countries worldwide when faced with continental shelf delimitation disagreements. Specifically, it is possible for two or more states to effectively share jurisdiction indefinitely, by enacting arrangements that are variously called joint development zones, areas, or regimes. Joint development has been defined as “cooperation between States with regard to the exploration for and exploitation of certain deposits ... of non-living resources, which ... lie in an area of overlapping claims.” It is informative to examine in brief several existing examples of joint development before discussing the prospects of such a regime in the central Arctic Ocean.

A number of joint development regimes exist in various situations of maritime or continental shelf delimitation disputes worldwide, such that Forbes posits that these regimes “have gained universal acceptance.” An oft-cited example concerns the overlapping claims to the continental shelf that existed between Australia and Indonesia, and now between Australia and East Timor. After years of disagreement over control of the
resources in this area, Australia and Indonesia reached in 1989 “an elaborate compromise: the two sides set aside the question of permanent boundaries and agreed, instead, to the establishment of a zone of joint development” under which any government revenues from petroleum exploitation were equally shared by the two countries. Thus, while this agreement did not determine final areas of exclusive sovereignty, it did effectively neutralize a longstanding dispute by creating an arrangement that could be adhered to indefinitely. In other words, while final delimitation was not achieved, delimitation was no longer seen as a pressing matter as long as the joint development agreement was respected. When East Timor gained independence from Indonesia, it renegotiated the treaty in such a way that the concept of joint development was maintained, albeit in a manner far more beneficial to this small developing country.

In another example, Thailand and Malaysia formally created a Joint Development Area (JDA) in 1990. Forbes points out that the two countries’ belief that hydrocarbon resources existed in the area made delimitation more difficult, but that the perceived “economic benefits” of exploitation was a driving factor behind the states’ willingness to pursue a joint development arrangement. This factor may be relevant in the case of the central Arctic Ocean, as discussed below. Finally, a third example of joint development may be mentioned – this one on the southern fringes of the Arctic. In 1980, when negotiations on a maritime boundary between Iceland and Jan Mayen (Norway) failed to delimit the continental shelf, a Conciliation Commission recommended the creation of a joint development zone for “an area of the shelf which had the greatest resource potential.” Since adopting the recommendations, cooperation between the two states typically “takes the form of joint venture contracts.” In short, then, the concept of joint development is well-established in
relations between countries, and in several cases has effectively removed from contention disputes over the continental shelf.

In light of these concrete examples, it is possible to discuss the feasibility of a joint development regime as a method of defusing any disputes in the central Arctic Ocean. On the one hand, some of the factors that seem to facilitate joint development are present in the central Arctic Ocean, including areas of potentially overlapping claims, belief that resources may be found in these areas, and a history of some cooperation. Therefore, if eventual delimitation negotiations are found to be intractable, a joint development regime in the Arctic could attain the benefits that such regimes have facilitated elsewhere, particularly by providing "a management tool in situations which otherwise would lead to disputes and confrontations." Such a regime could be established through a series of bilateral agreements, or through one multilateral agreement.

On the other hand, however, it was noted above that the perceived economic benefits of joint exploitation were in at least one case a major factor behind the push for a joint development area. Given that few oil and gas resources may exist in the area of potential overlap, and that their exploitation would be very costly, the drive for a joint development zone may be less urgent along the Lomonosov Ridge in the near term. It should be noted, however, that while resource exploitation is typically the main reason for joint development regimes of shared jurisdiction, other issues may be covered by such agreements. For example, Francisco Orrego Vicuna points out that some agreements on shared development jurisdiction “have included clauses on cooperation regarding living resources, the environment, scientific research, search and rescue, and other issues.” Thus, even if
shared resource exploitation does not present an immediately compelling reason for pursuing a zone of joint jurisdiction, such an agreement could also increase the possibility of cooperation on other matters in the central Arctic Ocean. It should be noted as well that as in the case of a provisional delimitation arrangement, more information on the seabed may be needed in the central Arctic Ocean before the establishment of a joint development regime is feasible.

In short, then, several potential forms of political cooperation could be pursued in the central Arctic Ocean. In an assertion that addresses potential concerns about the difficulties of diplomatic relations, Riddell-Dixon argues that “[t]he prospects of dealing with [probable overlaps] in an orderly manner appear promising in light of the high degree of cooperation evident in Canada’s relations with Denmark, the United States, and Russia in the preparations of their respective submissions.” While she does not advocate one form of cooperation or another, by formalizing such cooperation by means of a joint or coordinated submission, through a provisional delimitation agreement, or potentially through a joint development zone in the future, the concerned states could further enhance the prospects of dealing with overlaps peacefully and fairly.
Conclusion

The Arctic Ocean is often portrayed as an area of potential international conflict. Despite the possibility of overlapping continental shelf claims along the Lomonosov Ridge, however, the Arctic Ocean is subject to an established and well-respected regime of international law, and the Arctic Ocean states have exhibited a substantial degree of cooperation, both scientifically and politically. The concerned states could consider expanding this cooperation to pursue a formal political arrangement in the Arctic, as the challenges facing any such agreement are countered by the potential benefits of defusing tensions and strengthening relations, both in the region and further afield. In the nearer term, particularly feasible options include a joint or coordinated submission to the UN Commission, which would formalize international cooperation, thereby increasing the quality of the data, ensuring that the submission is considered, and laying the foundation for future delimitation negotiations. Other options, which may be more feasible after more data is gathered, include a provisional delimitation arrangement to reaffirm strong relations, or even a joint development zone, which would indefinitely bypass the sensitive question of delimitation between countries. The situation in the Arctic Ocean is not as explosive as sometimes portrayed, and options exist to ensure that strong bilateral and multilateral relations are maintained, including a collaborative political arrangement as outlined above that could help to solidify the propensity for cooperation.


Ibid., 25.


Ibid., 92.

Macnab and Mukherjee, 28.


Ibid., Annex II, article 4.


Ibid., 42.


Byers, *Who Owns the Arctic?,* 92.

Riddell-Dixon, “Canada’s Arctic Continental Shelf,” 40.


xxv Huebert, 96.

xxvi Personal communication with Evgeny Avdoshin, Nov. 17, 2009.

xxvii Huebert, 97.


xxxi However, at a Centre for Oceans Law and Policy (COLP, University of Virginia School of Law) conference in Seward, Alaska in May 2009, Margaret Hayes of the US State Department all but repudiated the position taken by the USA in 2002. See http://arctic-healy-baker-2008.blogspot.com/2009_05_01_archive.html. Thank you to Ron Macnab for this information.

xxxii Huebert, 95.

xxxiii Coates et al., 152.

xxxiv Ibid., 152.

xxxv Personal communication with Ron Macnab, Geological Survey of Canada (retired), Nov. 12, 2009; see also Coates et al., 152; an exception to this is the Beaufort Sea dispute between Canada and the US.


xxxviii Personal communication with Ron Macnab, Nov. 12, 2009.
xxxix Personal communication with Ron Macnab, Nov. 12, 2009.
xl Coates et al., 168.
xli Jack Granatstein cited in Coates et al., 171.
xliii See Coates et al., 163.
xlvii Personal communication with Ron Macnab, Nov. 12, 2009.
xlix Ibid.


2 Byers, Who Owns the Arctic?, 97.

3 Ibid., 94.

4 McDorman, “The Continental Shelf beyond 200 nm,” 183-184; see para. 7 of the Ilulissat Declaration, which is available as an appendix to this same source at 186-187.

5 Personal communication with Ron Macnab, Nov. 12, 2009.


7 Randy Boswell, “Thaw May be Underway in Ottawa-Moscow Arctic Issues,” Vancouver Sun, May 12, 2009, available at: <http://www.vancouversun.com/Technology/Thaw+underway+Ottawa+Moscow+Arctic+issues/1589395/story.html> (accessed Dec. 13, 2009); minutes of the meeting may be found at “Russia-Canada Consultations.”


10 Ibid., 8.

11 Ibid., 8.

12 United Nations Commission on the Limits of the Continental Shelf, “Joint submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland,” New York, May 19,

lxii Murphy, 8.
lxiii Murphy, 8-9.
lxiv Murphy, 9.


lxvii Personal communication with anonymous law professor, Nov. 13, 2009.

lxviii Murphy, 12.

lxix Personal communication with anonymous law professor, Nov. 13, 2009.

lxx Personal communication with anonymous law professor, Nov. 13, 2009.

lxxi Weber, 676.

lxxii Ibid., 676.

lxxiii Ibid., 676; “Russia-Canada Consultations.”

lxxiv Murphy, 6.

lxxv Ibid., 7.

lxxvi Personal communication with anonymous law professor, Nov. 13, 2009.

lxxvii Personal communication with anonymous law professor, Nov. 13, 2009.

lxxviii Weber, 675.

lxxix Ibid., 675.

lxxx Ibid., 653-654.

lxxxi Ibid., 675.


lxxxc Ibid.


lxxxcx Ibid.

lxxxcxi Ibid.

lxxxcxii Ibid.

lxxxcxiii Personal communication with anonymous law professor, Nov. 13, 2009.

lxxxcxiv E.g., personal communication with anonymous law professor, Nov. 13, 2009.


See, for e.g., Gronewold.


Forbes, 225.


Forbes, 226.


Orrego Vicuna.

Forbes, 226.

Orrego Vicuna.

Riddell-Dixon, “Canada and Arctic Politics,” 351.
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