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Polar complications in the law of the sea: A case study of the regime for research and survey activities in the Arctic Ocean

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Outline

- 1. Introduction
- 2. Existing activities
- 3. Governance structure
- 4. The regime for research and survey
- 5. Special features
- 6. Conclusions

1. Introduction

- Melting of sea ice
 - Commercial shipping
 - Oil and gas
 - New fishing grounds

 - Research and survey activities

2. Existing activities

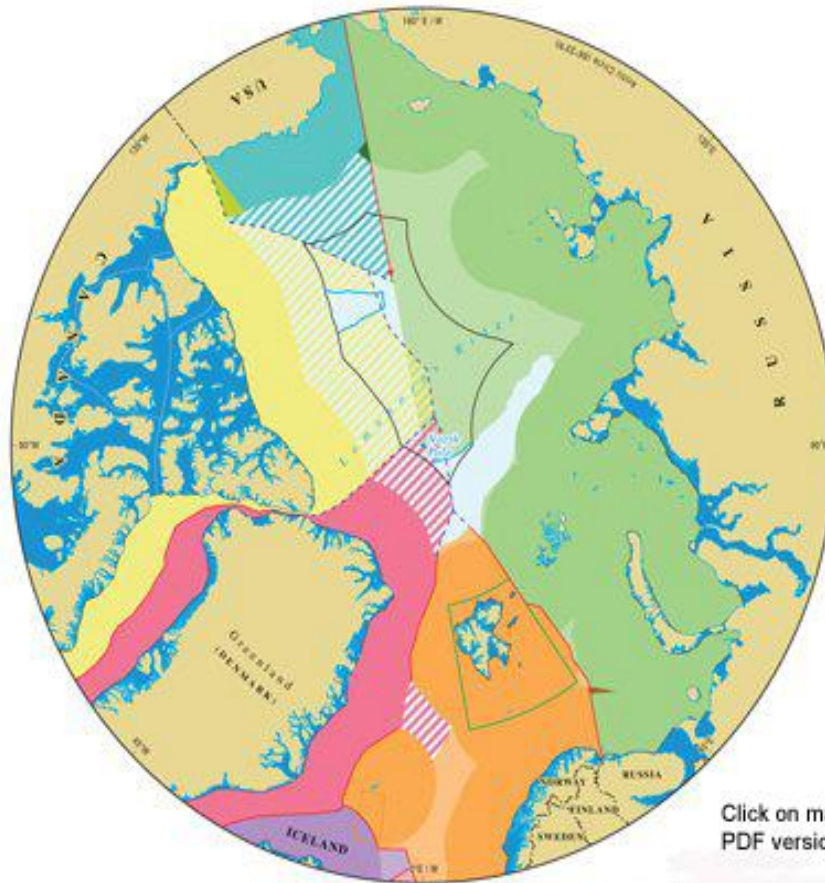
- Recent research and survey activities, in particular:
 1. Survey for the establishment of the outer limit of the continental shelf beyond 200 miles
 2. Resource exploration (fisheries, oil and gas, and bioprospecting)

3. Governance structure

- The Southern Ocean
 - LOSC
 - Antarctic Treaty System (ATS)
 - Others

- The Arctic Ocean
 - LOSC
 - Others

Map: the Arctic Ocean



Click on map for high resolution
PDF version plus briefing notes

Source: International Boundaries
Research Unit, Durham University

3. Governance structure (cont.)

- The Arctic Council
 - 8 member states & permanent participants
 - Biennial ministerial meetings, SAO meetings & working groups
- Scientific organizations
 - ICES
 - IASC
 - European Polar Board

4. The regime for research and survey

- MSR: Part XIII and other Parts of the LOSC
- Hydrographic survey: Parts II-IV and?
- Marine environmental protection: Part XII, including Article 234

5. Special features

- Sea ice
- Article 234
- Semi-enclosed sea
- Svalbard
- Indigenous peoples

Sea ice

- Drifting ice islands
 - Islands?
 - Ships?
 - Natural resources?
- Research stations built on ice islands
 - Research vessels?
 - Installations and structures?
 - Profiling floats?

LOSC Article 234 (Ice-covered areas)

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

LOSC Article 1 (Use of terms and scope)

1. For the purposes of this Convention:

[...]

(4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, [...], which results or is likely to result in such deleterious effects as harm to living resources and marine life, [...] hindrance to marine activities, including fishing and other legitimate uses of the sea, [...];

LOSC Part IX (Enclosed or semi-enclosed seas)

Article 122 (Definition)

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123 (Cooperation of States bordering enclosed or semi-enclosed seas)

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

[...]

(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

Treaty of Spitsbergen, Article 1

- The High Contracting Parties undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen, comprising, with Bear Island or Beeren-Eiland, all the islands situated between 10deg. and 35deg. longitude East of Greenwich and between 74deg. and 81deg. latitude North, [...], together with all islands great or small and rocks appertaining thereto.

Map: Svalbard Archipelago



Source: Ministry of Foreign Affairs of Norway HP

Treaty of Spitsbergen, Article 5

- [...]
- Conventions shall also be concluded laying down the conditions under which scientific investigations may be conducted in the said territories.

6. Conclusions

- Complications?
 - LOSC framework
 - Special features
- Recent developments
 1. Legislation for bioprospecting
 2. OSPAR
 3. ICES

6. Conclusions (cont.)

- A new comprehensive treaty?
- A new instrument for Arctic-wide environmental protection? (cf. Madrid Protocol to the Antarctic Treaty)