



Marine and Environmental Law Institute
Schulich School of Law
Dalhousie University

Resolution of Jurisdictional Entitlements in The Arctic Ocean under the LOS Regime: Patterns of Conflict and Cooperation

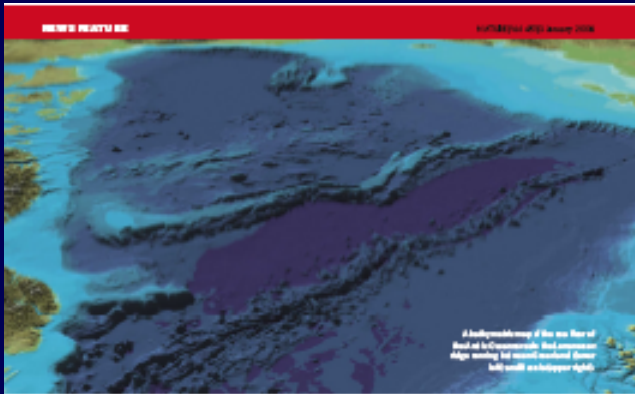
6th Asia Maritime Security Forum
Haikou, Nov. 15, 2018

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Schulich School of Law - MELAW



Outline

- Arctic Ocean States: The fabled “land rush” and forecasts of conflict
- Legal and Institutional Structures
- Claims and Boundaries
- Summary and Conclusions



A photograph of the sea floor of the Arctic Ocean. The image shows a deep, dark, and somewhat flat seabed with some rocky outcrops and a small, dark structure, possibly a submarine, visible in the distance.

The next land rush

As countries race to file claims to areas of the sea floor before a United Nations deadline, geo logists and geophysicists are getting caught up in the frenzy. Daniel Cloman reports.

Russia's Arctic ambitions are on par with the most aggressive nations in the world. In 2007, it was the first to plant a flag on the seabed, and now it's pushing to expand its claims. The government is sending a message to the world: "We are not just a power in the Arctic, we are a power in the Arctic." The Arctic is a region of high strategic value, and the stakes are high. The Arctic is a region of high strategic value, and the stakes are high. The Arctic is a region of high strategic value, and the stakes are high.

Canada is also making a move. In 2009, it planted a flag on the seabed. The Arctic is a region of high strategic value, and the stakes are high. The Arctic is a region of high strategic value, and the stakes are high. The Arctic is a region of high strategic value, and the stakes are high.

The United States is also making a move. In 2009, it planted a flag on the seabed. The Arctic is a region of high strategic value, and the stakes are high. The Arctic is a region of high strategic value, and the stakes are high. The Arctic is a region of high strategic value, and the stakes are high.

"The race for the Arctic is changing as a result of the new actions"
— Ronald Maxfield



"The Russians sent a submarine to drop a small flag at the bottom of the ocean... We're sending our prime minister to reassert Canadian sovereignty."





The Arctic Ocean

- 5 Arctic Ocean states: Russia, Norway, Canada, Denmark (Greenland), U.S.
(Iceland?)
- 8 “Arctic” states: Russia, Norway, Canada, Denmark (Greenland), US, Sweden, Finland, Iceland
- Focus here is on the Arctic Ocean States

Legal and Institutional Structure

- **Primary: National Jurisdiction**
 - Internal Waters; Territorial Sea; EEZ; ECS
 - Plus ABNJ: High Seas (including ECS Areas), and any areas of non-ECS: Seabed
- **Arctic Council:** established 1996; cooperation and coordination among states
 - Eight Members, Arctic States: Canada, Russia, Norway, Denmark, Finland, Sweden, USA, Iceland.
 - Participants: Six Indigenous Organizations
 - Observers: 13 states and IGOs



Stated Relationship to the Law of the Sea 1982

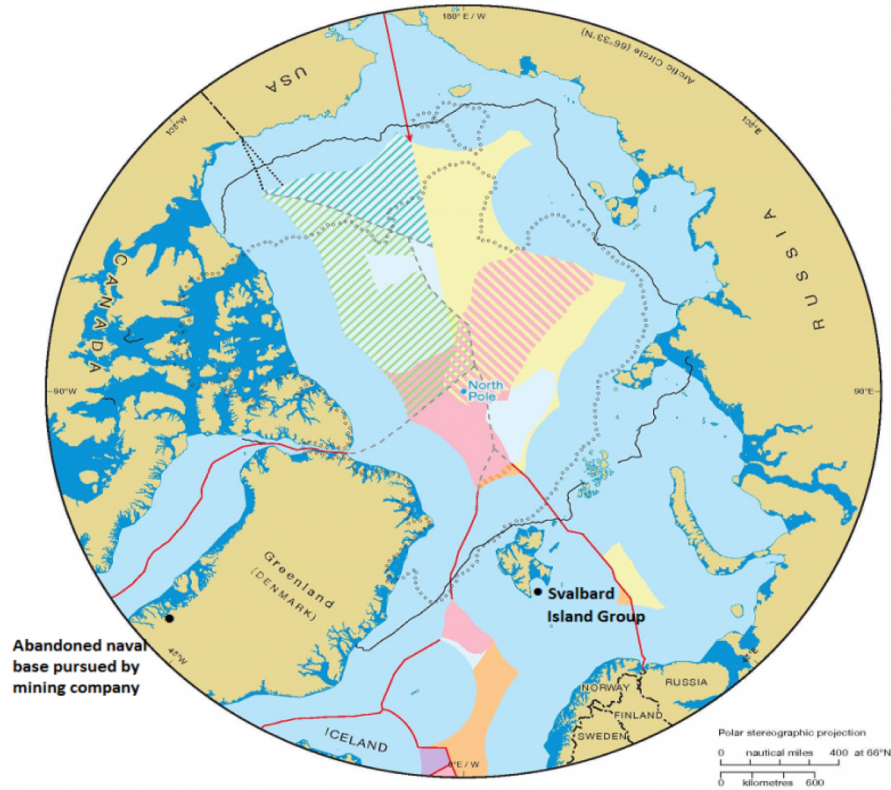
- Ilulissat Declaration of 2008 – Arctic Ocean States
 - Reaction to calls for special regime for the Arctic
 - Takes the view that existing UNCLOS structure – including national jurisdiction and associated regimes such as IMO – are sufficient to provide for management of Arctic Ocean

- “Notably, the **law of the sea provides for important rights and obligations** concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea.
- “We remain committed to this legal framework and to the **orderly settlement of any possible overlapping claims**”

Arctic Ocean Claims and Boundaries

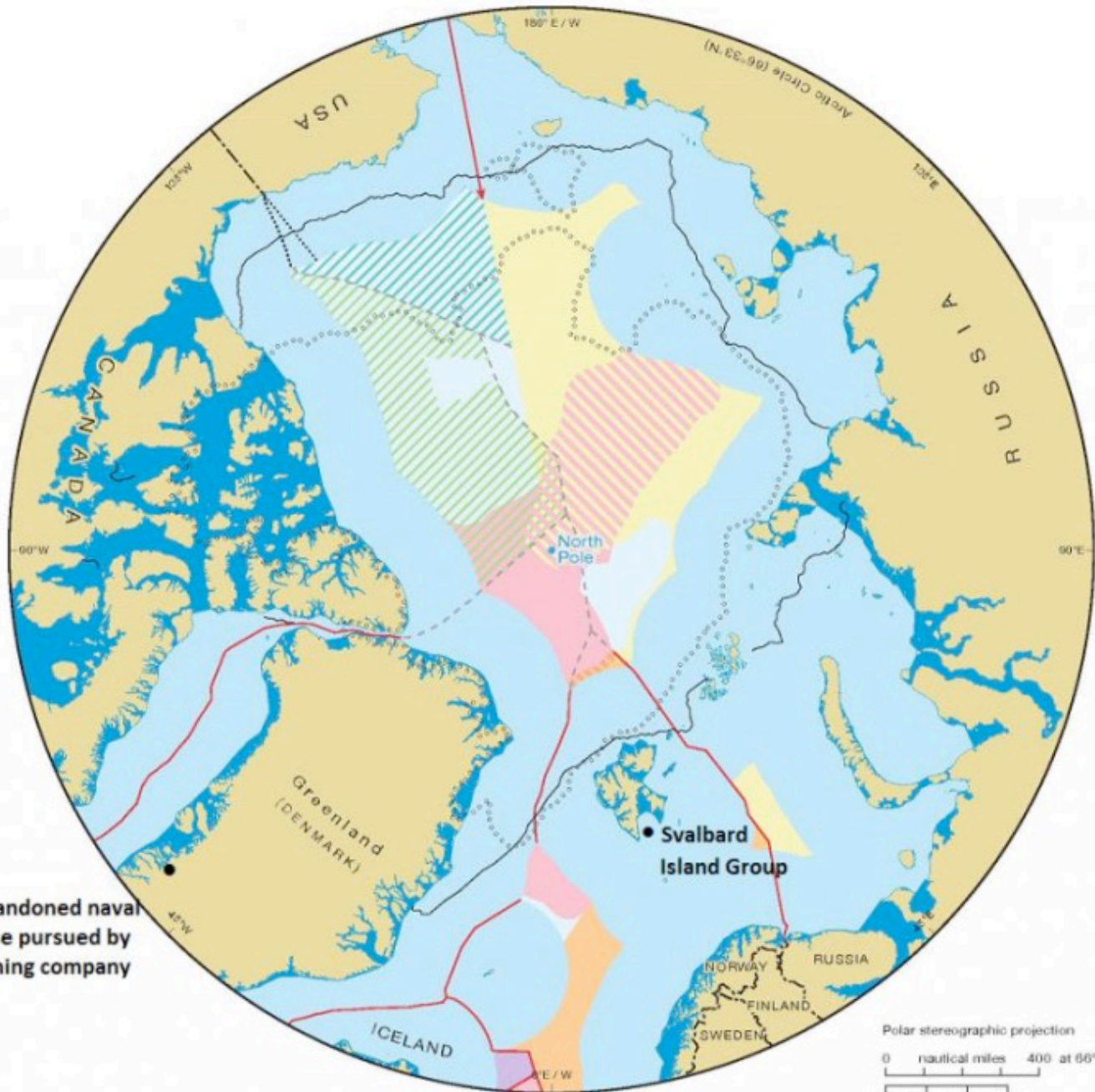


Status of Arctic Waters



Abandoned naval base pursued by mining company

- | | | |
|--------------------------------------------|------------------------------------------------------------------------|---------------------------------------------|
| Internal waters | Norway claimed continental shelf beyond 200 nm (approved by CLCS) | Agreed boundary |
| Territorial sea or exclusive economic zone | Russia claimed continental shelf beyond 200 nm (under review by CLCS) | Equidistance line |
| Unclaimable or unclaimed continental shelf | Potential Canada continental shelf beyond 200 nm | Disputed maritime boundary |
| | Potential USA continental shelf beyond 200 nm | Median September Sea Ice extent (1981-2010) |
| | Denmark claimed continental shelf beyond 200 nm (under review by CLCS) | Mean September Sea Ice extent (2016) |
| | Iceland claimed continental shelf beyond 200 nm (approved by CLCS) | |



Abandoned naval base pursued by mining company

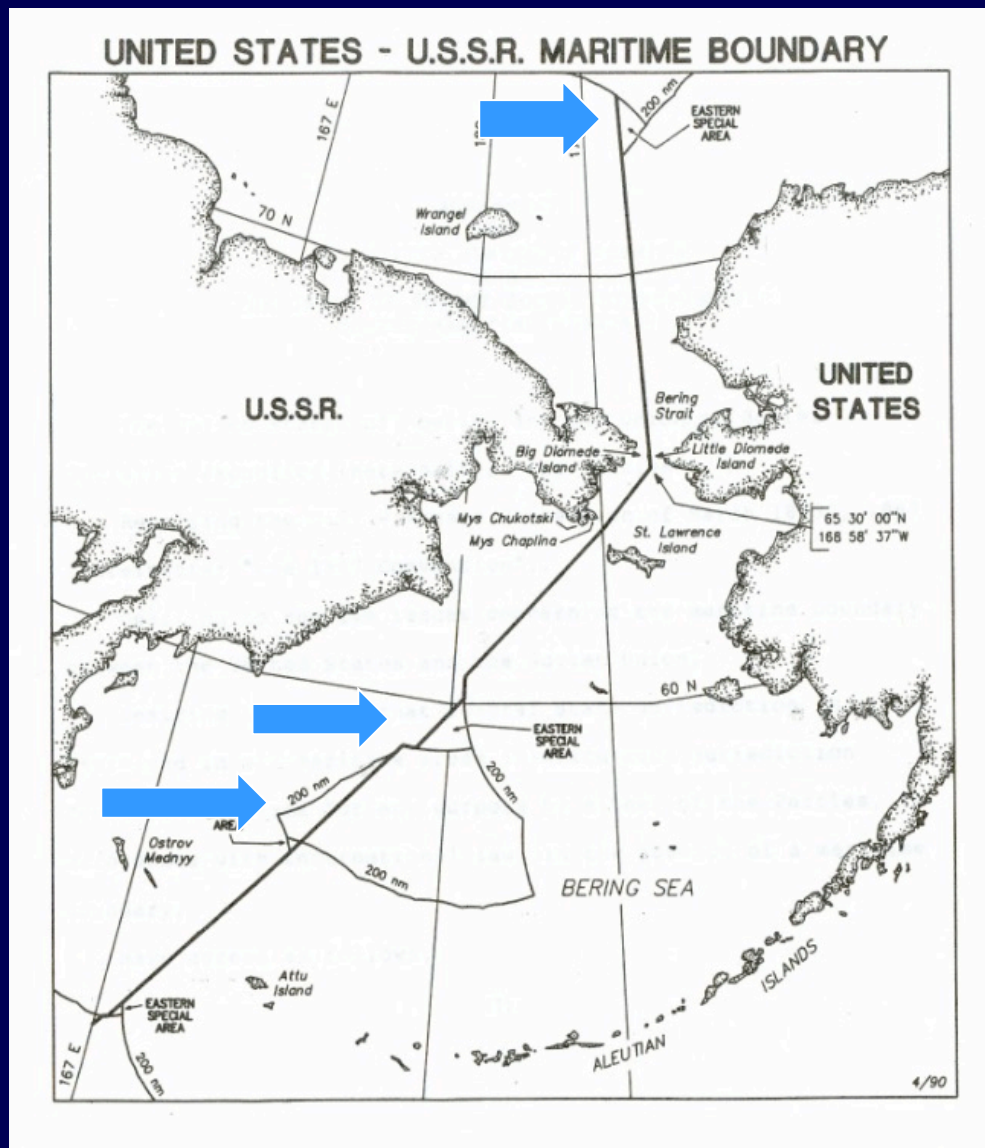
Polar stereographic projection
0 nautical miles 400 at 66°N
0 kilometres 600

Resolved Boundaries

- Canada-Denmark (Greenland): continental shelf boundary 1973 – extended 1994; matches fishing zones
- Denmark (Greenland)-Iceland: continental shelf and fisheries boundary 1997.
- Denmark (Greenland)-Norway (Jan Mayen): continental shelf/fisheries 1995(ICJ)
Denmark (Greenland)-Iceland-Norway (Jan Mayen) tripoint - 1997.
- Denmark (Greenland)-Norway (Svalbard): continental shelf and fisheries 2006.



- Iceland-Norway (Jan Mayen): fisheries boundary 1980; continental shelf joint zone 1981
- Norway-Russia: territorial sea 1957, 2007. Barents Sea and Arctic Ocean 2010 (entered into force on 7 July 2011)
- Russia-USA: single maritime boundary 1990 (pending ratification by Russian Parliament)



US-Russia Boundary – with “special areas”

Russia – USA Legal Text

- Article 3(1) of treaty provides:
 - “...the Soviet Union agrees that henceforth the United States may exercise the sovereign rights and jurisdiction derived from exclusive economic zone jurisdiction that the Soviet Union would otherwise be entitled to exercise...”
- Same provision in reverse for US on other side
- NOT an extension of EEZ beyond 200

Russia-Norway 2010



Used similar text as in Russia-USA

Canada – Denmark (Greenland)



Source: A. Roach

Unresolved Boundaries



- Canada – Denmark:
 - Residual areas Lincoln Sea - tentative agreement 2012 – referred to Joint Task Force May 2018
 - Sovereignty dispute over Hans Island – Task force
- Canada – US: Beaufort Sea Boundary



Potential New Boundaries (ECS)

- Norway (Svalbard) – Denmark (Greenland)
- Denmark - Russia
- Canada –Denmark
- Canada – Russia
- Canada – USA (extension in Beaufort)

Sovereignty “Dispute”

Canada-Denmark: Hans Island





“I can assure this House, this government will not surrender any sovereignty of any of Canada’s lands in the Arctic or anywhere else in the world.” Bill Graham MFA –

May 2018: Bilateral Task Force to resolve

Extended Continental Shelf Claims

Process

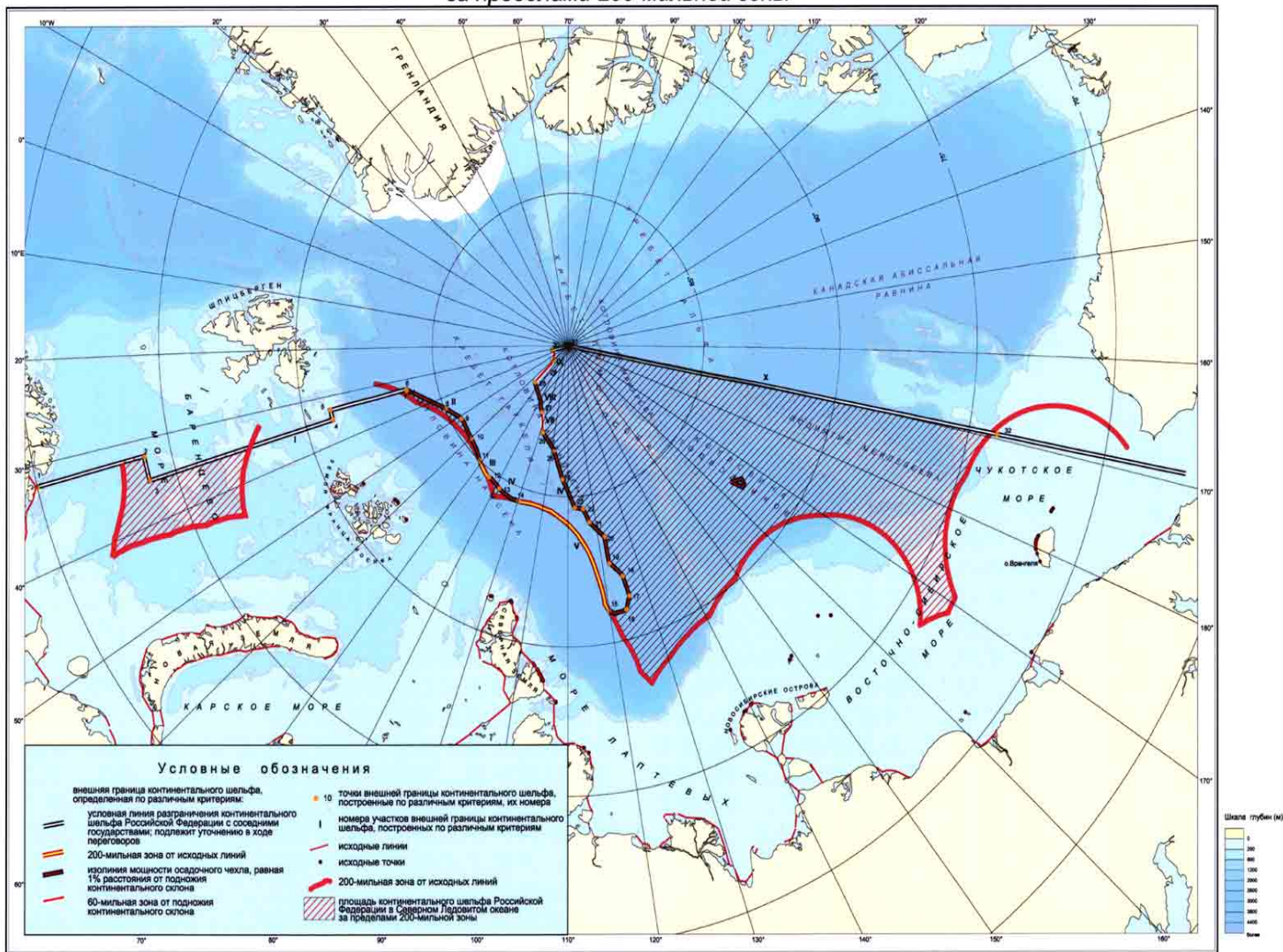
- Commission on the Limits of The Continental Shelf (CLCS)
 - Established Under Annex II of LOS 1982
- Receives Submissions on Proposed Limits of Continental Shelf
 - Makes Recommendations
 - No role in boundaries

ECS Claims in Arctic Ocean

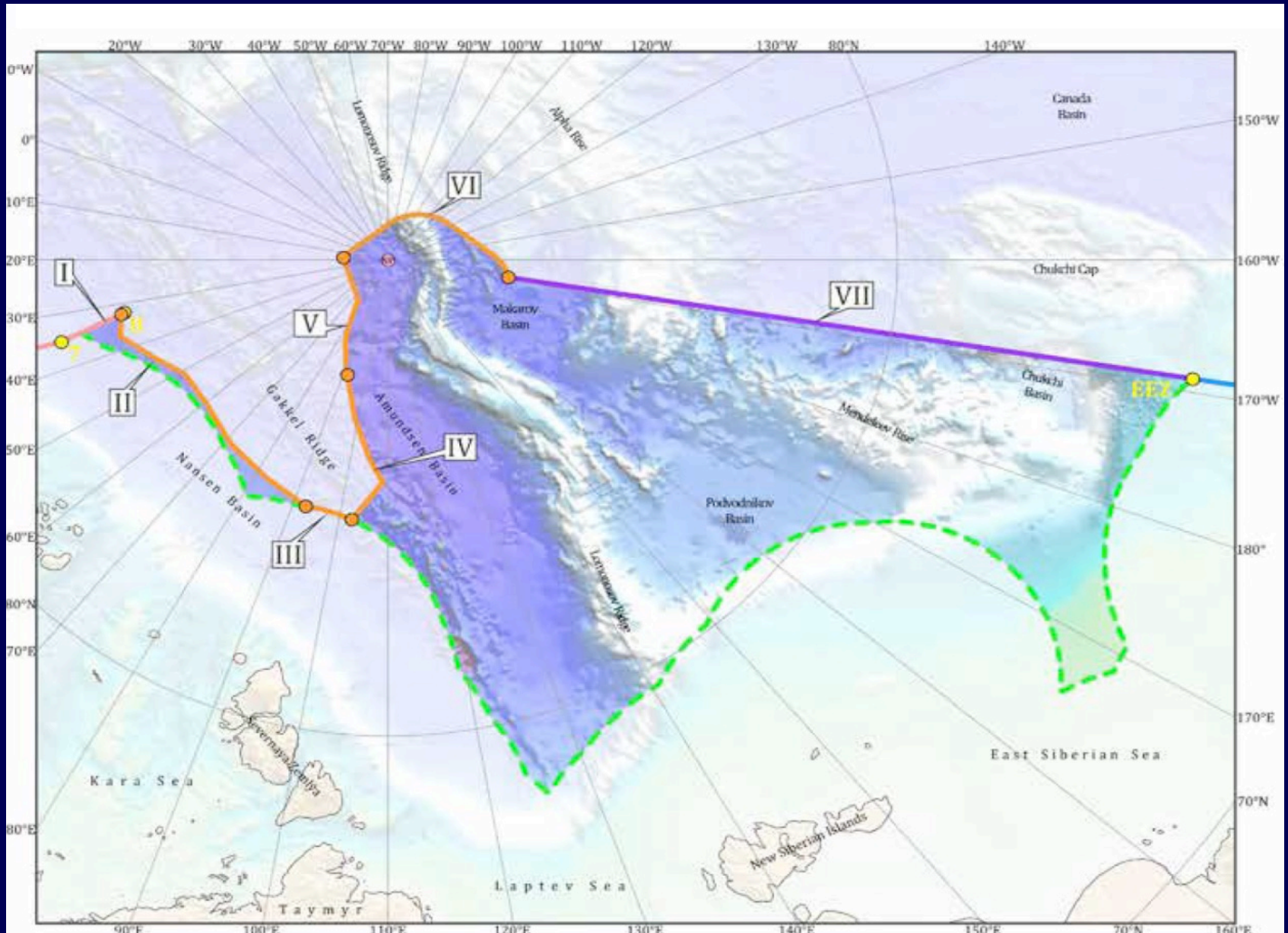
- **Russia** – 2001 & revised Central Arctic 2015
- **Norway** – 2006 – approved subject to Barents delimitation (completed 2010)
- **Denmark** – i) Faroes (reccs.); ii) Faroes-Rockall; iii) Southern Greenland; iv) Northern Greenland; v) North-eastern Greenland
- **Canada** – pending (2013 held back)
- **USA** – in preparation (non-party, but following process and criteria)

Russia - 2001

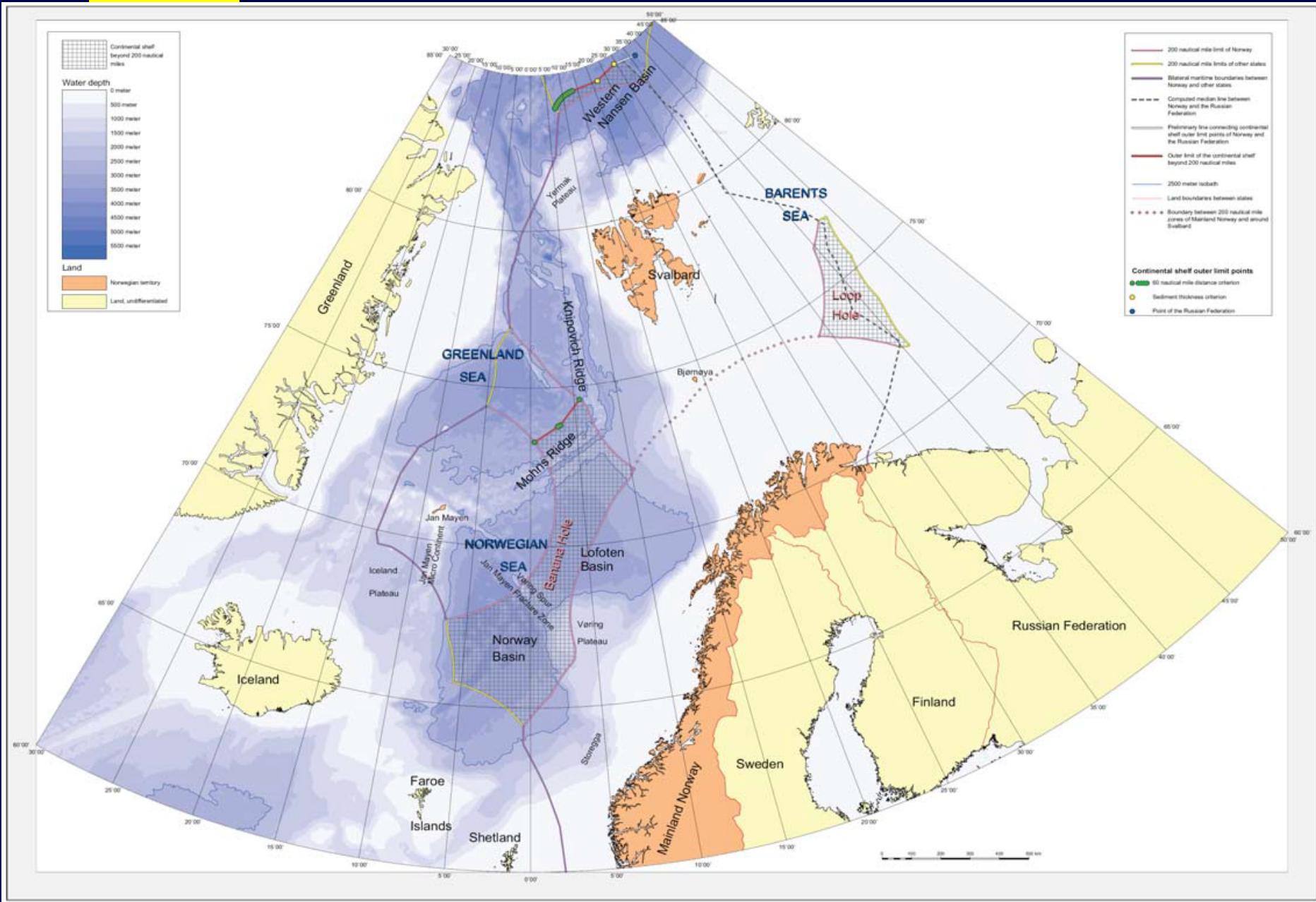
Площадь континентального шельфа Российской Федерации в Северном Ледовитом океане за пределами 200-мильной зоны



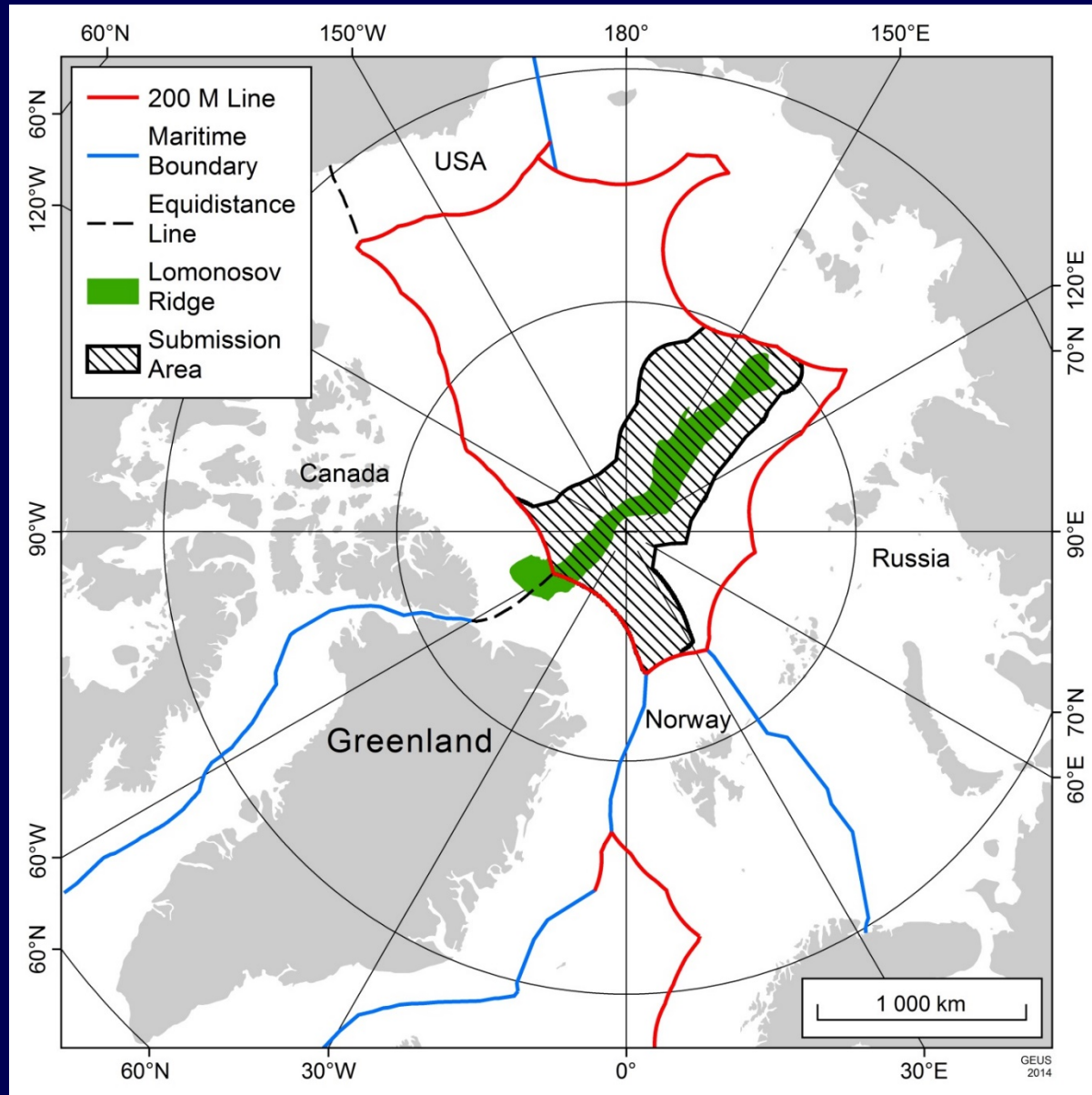
Central Arctic – Revised 2015



Norway



Denmark – North of Greenland



Source: “The Local”



Remaining

- Canada – submission prepared – held back
- USA – extensive work completed
- **Cooperation in research**, Canada-USA; pre-consultation, Denmark-Canada
 - Avoidance of overlap with 200 M claims

Summary and Conclusions

- Forecasts of serious conflict over jurisdictional regimes and sovereignty have not proved accurate
- LOS provides adequate framework
 - Boundaries – bilateral resolution as usual – and some creativity in evidence
 - ECS – all parties – including USA – committed to the Art 76 criteria and processes (*even USA*)
- One land sovereignty dispute: little impact but periodic silly press hysteria
- Overall – validation of UNCLOS structures?

Other Areas of potential conflict?

- O&G exploration and exploitation: NOT a basis for international conflict if conducted in national jurisdiction
 - A policy debate, not a “land grab” dispute
- Navigational rights: interpretation and implementation of UNCLOS regime
- ABNJ regimes and living resource exploitation?
In process
- ECS Boundaries: now or later?
 - Difficulties in *opposite* ECS boundaries until limits set