THE UNCLOS NEGOTIATIONS ON ICE-COVERED AREAS

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Abstract

The Arctic is, of course, an ocean. As such, the United Nations Law of the Sea Convention (UNCLOS) fully applies. One of the most important negotiations during the Law of the Sea Conference, in fact, related to Arctic issues. Thus, Article 234 specifically deals with ice-covered areas. This presentation will discuss the background and importance of the ice-covered area negotiation by Ambassador Moore who carried out the negotiations on this article. It will also note the normal applicability of the other provisions of UNCLOS as they apply to the Arctic including the Exclusive Economic Zone, the extended continental shelf, the high seas provisions, boundary delimitation, and dispute resolution.

The Arctic and the rule of law in the Arctic are of course important in getting it right for the international community, but in recent months there has been a great deal of silliness associated with the Arctic.

I was struck, just picking one example, by the press reaction in the United States in finding something quite sinister in what was a remarkable adventure by the Russian Federation in taking two Mir mini-sub to the seafloor at the North Pole. Anyone that knows anything about oceans law knows that this is not a practice justifying a legal claim, and yet the press found this quite sinister. My reaction is this was a remarkable adventure, and nothing more.

I was also struck by a wonderful parallel, in which an American officer in World War II at the end of the war found himself in this great state of Alaska with surplus aircraft, and in that setting, he decided it would be interesting to try to land on the North Pole. Remember prior to that, the only ones who had ever been to the North Pole were members of Perry’s expedition and, by the way, we are still to this day I suppose not entirely sure that Perry made it, but probably he

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or another member of his expedition did. But, if Perry didn’t make it, the individual I’m going to tell you about, Joseph Fletcher, is the first person who actually made it to the North Pole. And what did Fletcher do? Well he flew to the North Pole in 1952, an extraordinary adventure, they landed on the ice, had a difficult time getting off again at 30 degrees below—they even had to light fires under the engines of the plane, which is probably a pretty hairy thing to do—indeed this was really an amazing adventure. We talked about Joe Fletcher some months ago on Capitol Hill to expose members of Congress to him and showed clips of his adventure.

But the next thing that I thought was interesting was the then-Soviet reaction to this adventure by Joe Fletcher. He was called to Moscow and he was given a medal by the Soviet Union. So I found myself thinking of the comparison, you know this is really quite remarkable, there were the Soviets giving him a medal, and here was our press viewing a comparable modern adventure on the part of the Russian Federation as something quite ominous.

Now why this silliness concerning the Arctic? Well I think one of the problems is simply that we are overlooking the obvious, one of the very important points in rule of law about the Arctic Ocean. That obvious point is that the Arctic is an ocean. And as an ocean, the Law of the Sea Convention applies as fully to the Arctic as it does to every other ocean. So, baseline provisions, provisions dealing with straits, provisions dealing with Exclusive Economic Zones, how to run the extended continental margin, and all the rest fully apply to the Arctic.

But there is one respect in which ice-covered areas in the Arctic are treated differently, and I’m going to go through the history of that one difference that is set out principally in Article 234 of UNCLOS. What I will be doing first is to give you a little bit of the brief history of where this remarkable clause came from. Second, I will discuss the negotiations and what was involved in those negotiations; and third, I will run through some subsequent history that has complicated the issue, I think, for the Arctic rather considerably. Then I’m going to give you a quick legal analysis of some of the claims that are made about the Arctic particularly concerning navigational freedom through the Northwest Passage. Finally, I would like to say some good words about our Canadian neighbors we are so blessed to have to our North, because I am going to be picking on some of their legal arguments as we go through this. And since I feel strongly that we are very fortunate to have Canada as our friend to the North, I