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A REVIEW OF WHO OWNS THE ARCTIC?

*Stephanie Showalter Otts**

WHO OWNS THE ARCTIC? Michael Byers. Vancouver, Canada: Douglas & McIntyre. 2009.

In the summer of 2007, the issue of Arctic sovereignty hit the American mainstream press. During a Russian government-sponsored expedition, a deep-sea submersible descended 14,000 feet to plant a one-meter-high titanium Russian flag on the 1,100 mile-long Lomonosov ridge.¹ Given the existing legal regime for resolving boundary disputes in the Arctic, Russia's flag planting was dismissed by many as a publicity stunt. While the act itself may not have been a substantive territorial claim, Russia has for almost a decade argued that the Lomonosov ridge is an extension of its continental shelf and, therefore, resource exploration and extraction is subject to its control.²

Much is potentially at stake. The U.S. Geological Survey estimates that "the area north of the Arctic Circle has an estimated 90 billion

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1. Tom Parfitt, *Russia Plants Flag on North Pole Seabed*, THE GUARDIAN, Aug. 2, 2007, available at <http://www.guardian.co.uk/world/2007/aug/02/russia.arctic>.

2. Russia first made this claim in December 2001 in its submission to the UN Commission on the Limits of the Continental Shelf in accordance with Article 76(8) of the United Nations Convention on the Law of the Sea. Marc Benitah, *Russia's Claim in the Arctic and the Vexing Issue of Ridges in UNCLOS*, ASIL INSIGHTS, Nov. 8, 2007, available at <http://www.asil.org/insights071108.cfm>. Under the U.N. Convention on the Law of the Sea, coastal states have sovereign rights to control the exploration and exploitation of the natural resources of their continental shelves. United Nations Convention on the Law of the Sea, art. 77(1), Dec. 10, 1982 21 I.L.M. 1261.

barrels of undiscovered, technically recoverable oil.”³ Oil and gas companies have already made significant investments in the Arctic region. During a 2008 lease sale by the U.S. government, Royal Dutch Shell and ConocoPhillips paid \$2.1 billion and \$506 million, respectively, to acquire leases in Alaska’s Chukchi Sea.⁴ That same year, during a Canadian auction of leases in the Beaufort Sea, BP Exploration Ltd. paid \$1.2 billion for five leases.⁵ While Royal Dutch Shell’s drilling plans for the Chukchi Sea suffered a setback when the Obama Administration suspended offshore drilling in the wake of the April 2010 blowout of BP’s Macondo well in the Gulf of Mexico, the company is lobbying heavily for permission to proceed with drilling operations in the Alaskan portion of the Beaufort Sea.⁶

The summer of 2007 also marked the first time on record that Arctic sea ice receded to such an extent that a standard ocean-going vessel could have sailed safely through the Northwest Passage, the legendary shortcut connecting the North Atlantic and Pacific Oceans.⁷ A cargo ship travelling from Europe to Asia via the Northwest Passage, as opposed to the Panama Canal, could shave an estimated 4,700 nautical miles off the trip.⁸ In September 2010, a Danish cargo ship travelled through the Northwest Passage, via Russian waters, on its way to deliver iron ore from Norway to China.⁹

As the ice recedes, tourism is also increasing in the Arctic with cruise lines and other operators offering more trips to more destinations.¹⁰ Cruising in the Arctic, even in the warm summer months, is not without its dangers. On August 27, 2010, the MV *Clipper*

3. Press Release, U.S. Geological Survey, 90 Billion Barrels of Oil and 1,670 Trillion Cubic Feet of Natural Gas Assessed in the Arctic (July 23, 2008), http://www.usgs.gov/newsroom/article.asp?ID=1980&from=rss_home.

4. Ed Struzik, *The Arctic age*, in GREAT DECISIONS, 2009 ED. 41, 47 (Foreign Policy Associates ed. 2009).

5. *Id.*

6. Clifford Krauss, *Shell Presses for Drilling in Arctic*, N.Y. TIMES, Nov. 5, 2010.

7. Press Release, U.S. National Snow and Ice Data Center, Arctic Sea Ice Shatters All Previous Record Lows, (Oct. 1, 2007), http://nsidc.org/news/press/2007_seaiceminimum/20071001_pressrelease.html.

8. Rebecca Dube, *As ice melts, debate over Northwest Passage heats*, USA TODAY, April 4, 2006, available at http://www.usatoday.com/news/world/2006-04-03-nwpassage-debate_x.htm.

9. George Kerevan, *Why Scotland must not miss the High North boat*, THE SCOTSMAN, Sept. 23, 2010.

10. See, E.J. Stewart and D. Draper, *The Sinking of the MS Explorer: Implications for Cruise Tourism in Arctic Canada*, 61 INFO NORTH ARCTIC 224, 225 (June 2008), available at <http://pubs.aina.ucalgary.ca/arctic/Arctic61-2-224.pdf>.

Adventure, a commercial cruise ship bound for the Northwest Passage with approximately 200 passengers and crew onboard, ran aground on an “uncharted rock” about 55 nautical miles east of Kugluktuk, Nunavut near the border of the Northwest Territories.¹¹ Fortunately no one was injured in the grounding, but the passengers and crew remained stranded for three days while they waited for a Canadian Coast Guard icebreaker to arrive and ferry them to shore.¹² The plight of the *Clipper Adventure* raises a number of serious questions about the safety of the burgeoning arctic tourism industry including the adequacy of nautical charts in the region and the feasibility of search and rescue operations.

Given the recent surge in activities, answering the question of “who owns the Arctic” takes on some urgency. Despite the title, Michael Byers is not suggesting that someone or some country “owns” the Arctic Ocean, its resources, or the seabed. That said, five Arctic states—Russia, Norway, Canada, Denmark, and the U.S.—do have sovereign rights under the U.N. Convention of the Law of the Sea to large portions of the Arctic Ocean. How the resources of the Arctic are used and its fragile environment protected in the future will depend on how these five nations view their roles in the region, negotiate their disputes, and exercise their sovereignty.

Who Owns the Arctic? is Michael Byers’ “contribution to helping Canadians understand the highly charged issue of Arctic sovereignty and the complex interface between international law and politics it involves.”¹³ By providing both the historical background and political context of the existing disputes, Byers is encouraging Canadians to engage in the debate. Byers focuses primarily on four issues: (1) Canada and Denmark’s dispute over ownership of Hans Island, (2) designation of the Northwest Passage routes near Canada as international straits or internal waters, (3) ownership of the seabed including Russia’s claim to the Lomonosov Ridge and overlapping claims of Canada with the U.S. in the Beaufort Sea and Denmark in the Lincoln Sea, and (4) the role of the Inuit in Canada’s sovereignty claims. The Northwest Passage gets by far the most attention, with Byers dedicating three of the book’s seven chapters to its governance and associated environmental and security issues.

11. Tobi Cohen, *Cruise Ship Runs Aground in Nunavut*, NATIONAL POST Aug. 29, 2010, available at <http://www.nationalpost.com/news/canada/Cruise+ship+runs+aground+Canadian+Arctic/3457290/story.html>.

12. *Stranded Arctic Cruise Passengers Head Home*, CBC NEWS (Aug. 30, 2010), <http://www.cbc.ca/consumer/story/2010/08/30/arctic-ship-stranded-home.html>.

13. MICHAEL BYERS, *WHO OWNS THE ARCTIC?* 4 (2009).

In keeping with its stated mission, *Who Owns the Arctic?* is written for a lay audience and Byers is quite adept at explaining technical international legal concepts in a very accessible way. For example, when laying the foundation for an extensive discussion of the extended continental shelf claims being made by the Arctic nations, Byers summarizes the pertinent UNCLOS provisions as follows:

As discussed, under the law of the sea each coastal state has a 12 nautical mile (22 km) territorial sea. Each state also has an Exclusive Economic Zone (EEZ) from 12 to 200 nautical miles (370 km) offshore where, as the name suggests, it holds exclusive rights over the natural resources of the water column, ocean floor, and seabed. A parallel rule accords coastal states sovereign rights over resource exploitations on their adjoining continental shelves, the relatively shallow areas of ocean floor alongside most land masses. By the early 1980s, it had become clear that new technology and higher prices would eventually lead to the exploitation of oil and gas reserves more than 200 nautical miles from shore. As a result, Article 76 of UNCLOS specifies that coastal states may claim rights over an “extended continental shelf” beyond the EEZ, if the depth and shape of the seabed and the thickness of underlying sediments indicate a “natural prolongation” of the shelf closer inshore.¹⁴

Given the level of detail and the writing style, *Who Owns the Arctic?* is best suited for a reader with only a passing familiarity with the Arctic sovereignty issues looking for a 1,000-foot view of some of the major governance issues or an entry point to further research. Byers covers the basics of many of the key treaties, government documents, and International Court of Justice rulings governing boundary and sovereignty disputes in the Arctic, while highlighting how the current actions of the five Arctic nations can affect the resolution of those disputes. Without this foundational knowledge, it is often hard for those who are not international law scholars or involved in the negotiations to understand some of the posturing and actions of the Arctic nations.

For instance, as of July 1, 2010, compliance with NORDREG, the Canadian Coast Guard’s Arctic Canada Traffic System, which monitors and supports vessel traffic north of 60° latitude, became mandatory for large ships.¹⁵ While the Canadian government’s action was undoubtedly

14. *Id.* at 91.

15. Christopher Knight, *NORDREG now Mandatory Within the Northwest Passage*, MONDAQ, Nov. 8, 2010.

motivated by maritime safety and environmental concerns, Arctic sovereignty concerns most likely played the more significant role. Although the system had a 98% voluntary compliance rate, Michael Byers forcefully makes the argument that a compulsory reporting scheme would strengthen Canada's claim that the Northwest Passage is Canadian internal waters.¹⁶ As Prime Minister Stephen Harper has frequently stated, "[t]he No. 1 priority of [Canada's] northern strategy is the promotion and protection of Canadian sovereignty in the North,"¹⁷ it seems clear that the change in the reporting requirement was primarily an assertion of sovereignty.

For professors interested in incorporating Arctic governance into an international law course or Law of the Sea seminar, *Who Owns the Arctic?* could work very well as a supplementary text. As the leading international environmental law and policy casebook contains only ten pages on the Arctic region,¹⁸ assigning excerpts or chapters from *Who Owns the Arctic?* would introduce the students to the major issues, while also providing an interesting comparative perspective to U.S. positions on the Northwest Passage and Alaska's maritime boundaries. Professors wishing to explore the issues in more depth could require the students to read the full text of treaties, court opinions, and other documents discussed by Byers. *Who Owns the Arctic?* would also be an invaluable resource for students searching for paper topics, as it contains a list of recommended websites and recommended readings for those interested in digging a little deeper.

Because Byers is writing for a Canadian audience, non-Canadians may struggle a bit with Chapter 7 "Sovereignty and the Inuit." Byers does a good job of explaining how the presence of the Inuit in the Arctic strengthens Canada's sovereignty claims, but he assumes a high level of knowledge with respect to their history in the region and relations with the federal government. Rather than impeding the reader's understanding of the issue, the lack of background information may simply leave the reader wanting more.

Overall, *Who Owns the Arctic?* should be viewed as a bridge between press coverage of Arctic sovereignty issues and legal academic literature. By presenting the key aspects of current disputes and offering potential solutions to improve the regional governance framework, Byers

16. BYERS, *supra* note 13, at 70-73.

17. John Ibbitson, *Canada's troubled Arctic waters, and how they could be calmed*, GLOBE AND MAIL, Aug. 21, 2010 at A4.

18. See, DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAELEKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, 1150-60 (3rd ed. 2002).

clearly articulates a path forward for Canadians. Other Arctic nations are also moving forward to address their sovereignty disputes. On September 15, 2010, Russia and Norway signed a treaty delineating their maritime borders in the Barents Sea, resolving a 40-year dispute and opening the door for oil and gas exploration in the region.¹⁹ If the fragile environment of the Arctic is to be protected from the inevitable increase in development and shipping as the ice melts, all five Arctic nations must work together to resolve their disputes and overlapping claims. Byers' concluding thought to Canadians should be a challenge to all Arctic nations: "[i]n the end, the important question isn't 'Who owns the Arctic?' It is instead 'Are we, as a country, up to the task?'"²⁰

19. Luke Harding, *Russia and Norway finally resolve Arctic border dispute*, THE GUARDIAN, Sept. 15, 2010 at 22.

20. BYERS, *supra* note 13, at 130.