



**WHAT'S LAW GOT TO DO WITH IT?
THE IMPORTANCE OF THE LEGAL FRAMEWORKS FOR
NATURAL RESOURCES EXTRACTION**

**Opening of the Research Centre for Arctic Oil and Gas
University of Greenland, March 2016**

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Rachael Lorna Johnstone

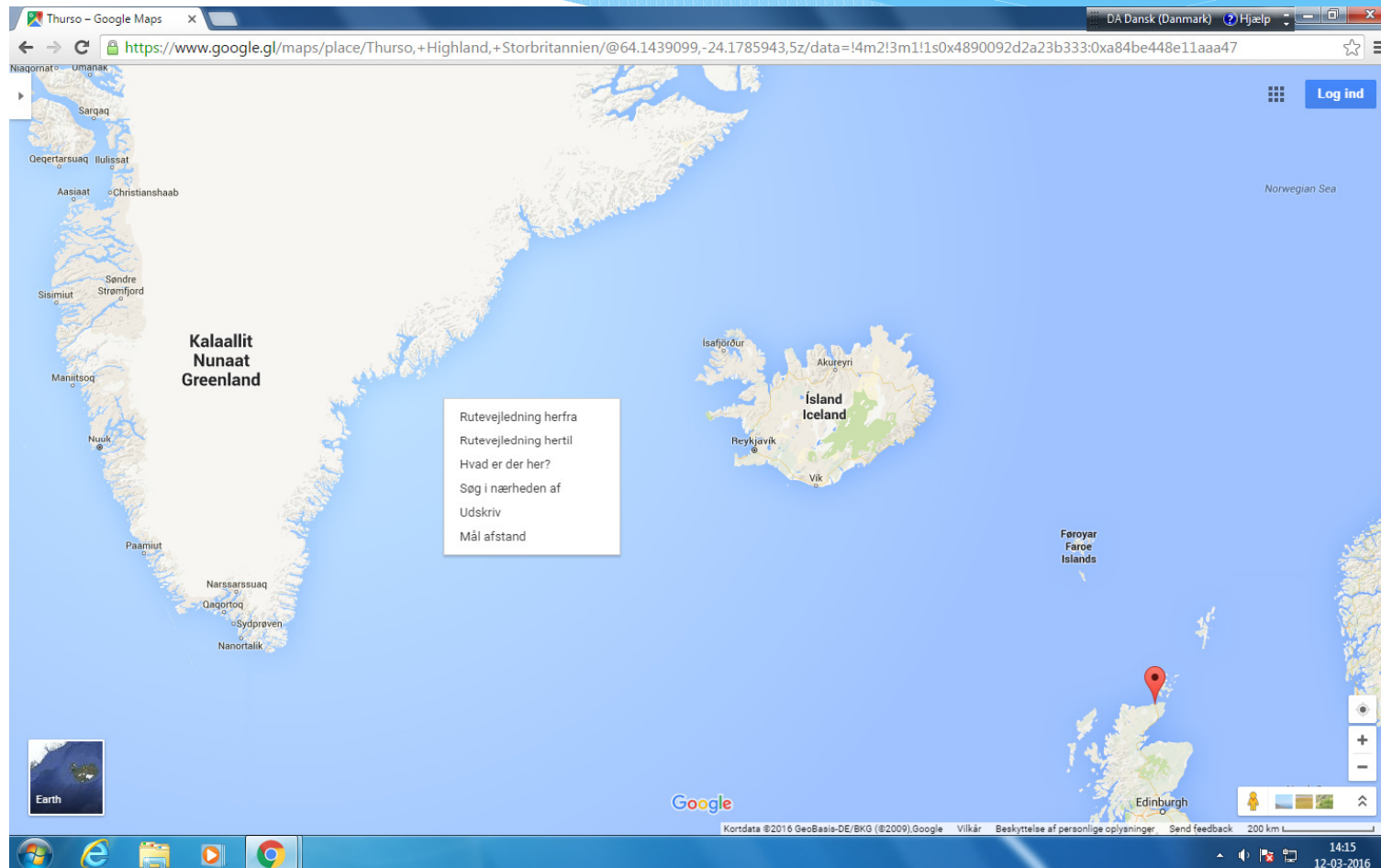


Born 1977, Glasgow, Scotland

Parents: Ronnie & Freda Johnstone

Older Sister: Pauline Johnstone

1984: Moved to Thurso





University of Glasgow
LL.B.(Hons) 1999

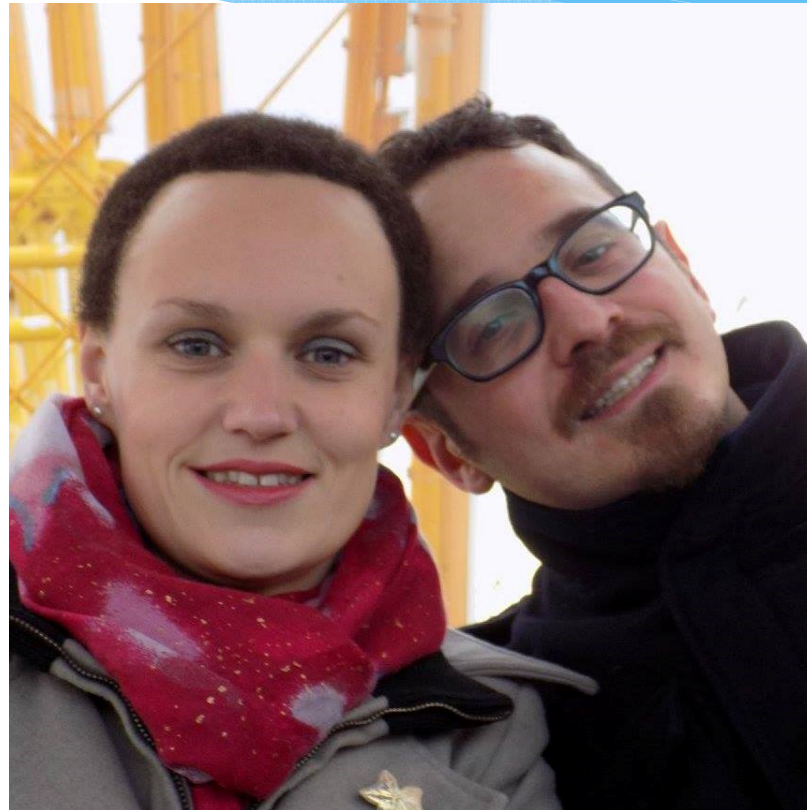
European Academy of
Legal Theory, Brussels
LL.M.(Magna) 2000



University of Toronto
S.J.D. 2004



Giorgio Baruchello, Professor of Philosophy

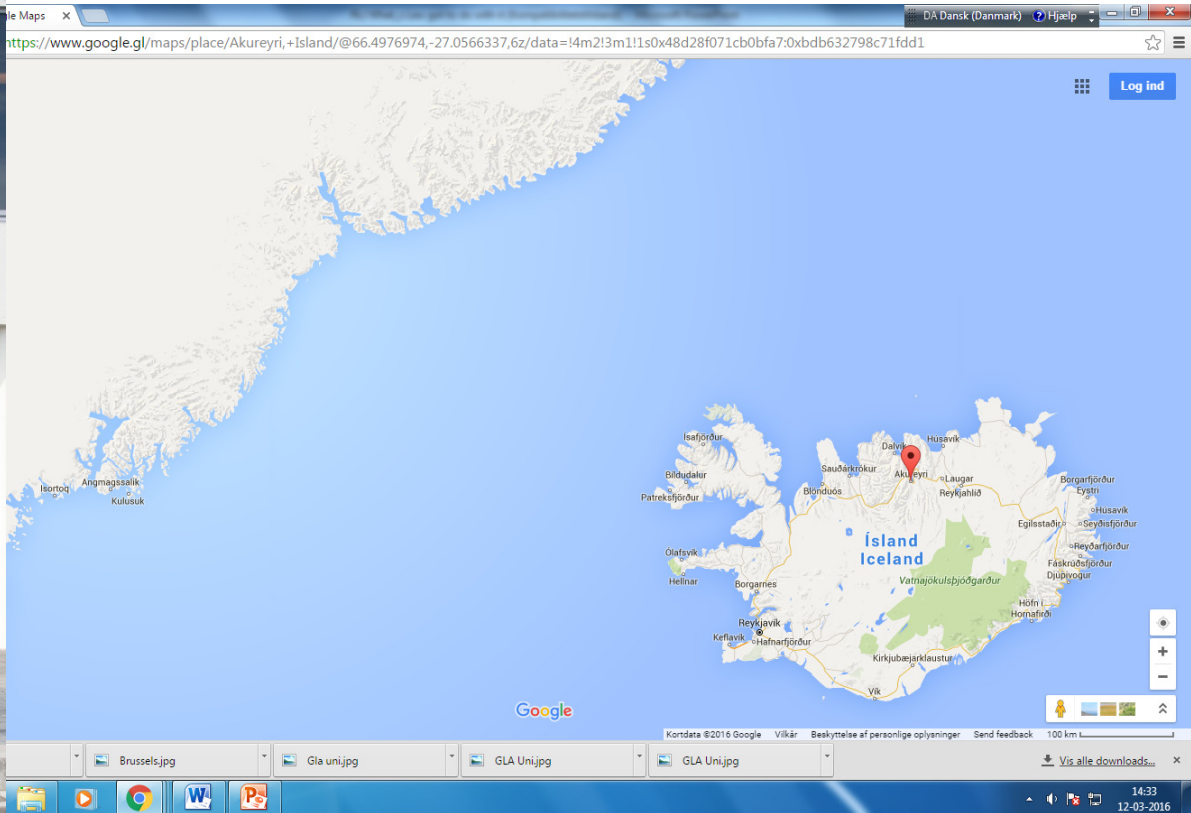


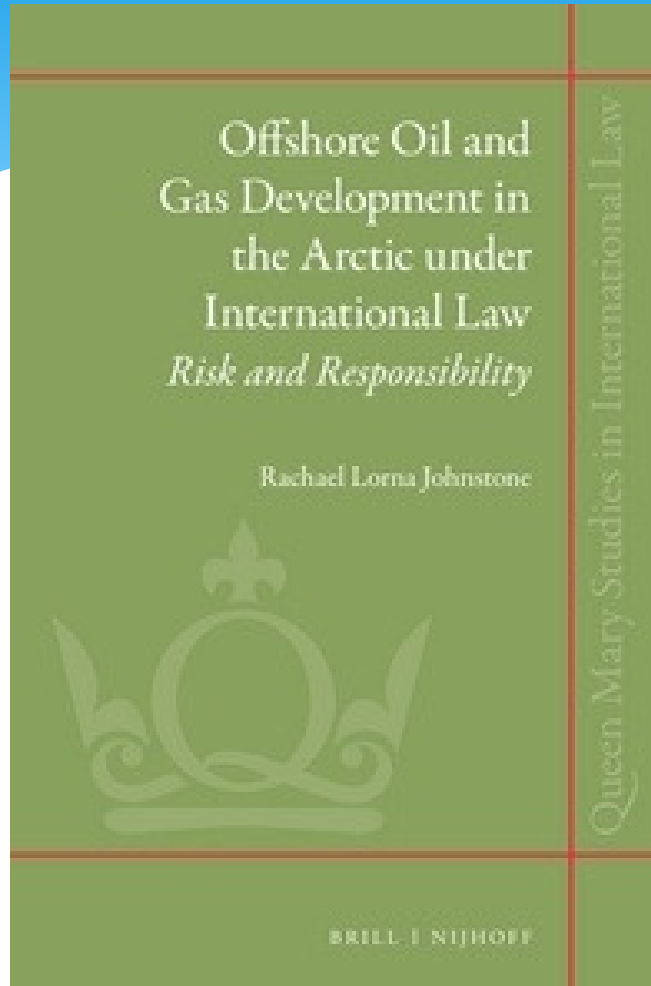
Lorenzo Kiljan & Kieran Logi



University of Akureyri, 2003 – present

M.A. Polar Law 2014





If we drill for oil and gas in the marine Arctic, what are the requirements to do so in accordance with international law?

If those requirements are not met and/or *if* there is damage from hydrocarbon activities, what are the consequences?

The Arctic Resource Frontier

The screenshot shows a web browser window with two tabs: "Denmark Makes Land Grab" and "The Arctic land grab underway". The address bar displays the URL: www.petroleum-economist.com/Article/3311350/The-Arctic-land-grab.html. The browser's bookmark bar includes folders for "Apps", "History", "Email and stuff", "News and stuff", "Sports", "Learning English", and "Other stuff".

The website header features the "PETROLEUM ECONOMIST" logo with the tagline "THE AUTHORITY ON ENERGY". To the right, there is a promotional banner for the "OFFSHORE TECHNOLOGY CONFERENCE ASIA" (OTC Asia 2016), held from 22-25 March 2016 at the Kuala Lumpur Convention Centre. The banner also mentions "25,000+ energy professionals", "80+ countries", and "2,500+ organisations". A "REGISTRATION" button is visible on the right side of the banner.

Below the header, the user is logged in as "guest" and has options for "Login", "Subscribe", and "Free Trial". A search bar is located on the right with the placeholder text "(Search Keywords)". The main navigation menu includes links for "Petroleum Economist", "Outlook", "PE Unconventional", "Blog", "About Us", "Events", "Training", "Store", "Resources", "Digital Maps", "App", and "Mobile". A secondary navigation bar includes "Regions", "Sectors", "Magazine Archive", and "Follow us on".

The article title is "The Arctic land grab underway as the region opens up". Below the title, there are social media sharing buttons for LinkedIn (Share), Twitter (Tweet), and Facebook (Like). The article is dated "20 February 2014". The first sentence of the article is "A region rich in oil and gas has many suitors, each with rival claims to the icy north".

At the bottom of the browser window, there is a "CUSTOMER SUPPORT ONLINE" button and a "PETROLEUM ECONOMIST" logo with the tagline "THE AUTHORITY ON ENERGY". A "NEW" banner is partially visible at the bottom right.

The Windows taskbar at the bottom shows various application icons, including Internet Explorer, Google Chrome, Microsoft Word, Excel, PowerPoint, and several utility programs. The system tray on the right shows the date and time as "10:52 3.3.2016".

The Arctic Resource Frontier

The screenshot shows a web browser window displaying the Al Jazeera website. The address bar shows the URL: www.aljazeera.com/indepth/features/2012/09/2012916133717451622.html. The page features the Al Jazeera logo and navigation menus for NEWS, PROGRAMMES, OPINION, INVESTIGATIONS, ABOUT, and video. A search bar is located on the right. Below the navigation, there are several featured stories in orange boxes: "The Syrian refugees of Gaza", "WATCH NOW News", "TV SCHEDULE Inside Story [IN 5 MIN.]", and "Conflicted: The Fight over Congo's Minerals". The main article is titled "Melting Arctic heats up resource scramble" under the "ENVIRONMENT" category. The sub-headline reads: "Interactive map shows countries positioning to gain access to shipping lanes and oil deposits as ice coverage shrinks." The author is Chris Arsenault, dated 20 Sep 2012 10:54 GMT. Below the text are social media sharing icons (Facebook, Twitter, YouTube) and an engagement count of 689. A map of the Arctic region is shown with several blue location pins. To the right of the main article is a featured image of a futuristic flashlight with the headline "Controversial Military Flashlight Now Available" and a sub-headline: "The Military has recently released technology that is now available to the public. Get yours before they run out - limited supply!". Below this is a "RELATED" section with a link to "WikiLeaks: A battle to 'carve up' the Arctic" and a brief description: "Resource wars are possible as global warming melts polar ice - opening new areas to oil exploitation, cables indicate." The Windows taskbar at the bottom shows various application icons and system tray information including the date 3.3.2016 and time 11:18.

The Arctic Resource Frontier

The screenshot shows a web browser window displaying a CNBC article. The browser's address bar shows the URL www.cnbc.com/2014/09/26/the-arctic-oils-final-frontier.html. The page features the CNBC logo and navigation icons. A prominent banner for 'SQUAWK BOX' is visible, with the text 'UNSCRIPTED. DYNAMIC. ESSENTIAL WEEKDAYS 6-9AM GMT' and images of the show's hosts. Below this, the article title 'The Arctic: Oil's final frontier?' is displayed, along with the author 'Anmar Frangoul, special to CNBC.com' and the date 'Friday, 26 Sep 2014 | 2:22 AM ET'. Social media sharing icons for Twitter, Facebook, Reddit, LinkedIn, and Email are present. A comment section shows '1 COMMENT' and a link to 'Join the Disc'. The Windows taskbar at the bottom includes icons for various applications and system tray elements like the clock and battery level.

The Arctic Resource Frontier

Scramble is on for Arctic

www.theguardian.com/guardianweekly/story/0,,1756812,00.html

Apps History Email and stuff News and stuff Sports Learning English Other stuff

Sign in Register

guardian.co.uk

News Sport Comment Culture Business Money Life & style Travel Environment

News Guardian

Guardian Weekly

Home	Free trial	Gift offer	Guardian Monthly	Games	Email services
Outlook	Students	Learning English	Guardian Abroad	Contact us	Other publications

International News

Scramble is on for Arctic oil

David Adam
Guardian Weekly

the guardian weekly
From the latest issue

11:00 3.3.2016

The Arctic Resource Frontier

The screenshot shows a web browser window displaying the FT Magazine website. The browser's address bar shows the URL: www.ft.com/cms/s/2/8c2b6a12-5c71-11e3-931e-00144feabdc0.html#axzz3Gsip5QBv. The page features a navigation menu with categories such as Home, UK, World, Companies, Markets, Global Economy, Lex, Comment, and Magazine. The main content area displays the article title "The grab for Greenland" by Philip Stephens, dated December 6, 2013, at 12:07 pm. Below the title is a small profile picture of Philip Stephens and a row of social sharing and utility icons including Share, Author alerts, Print, Clip, and Comments. The beginning of the article text is visible: "The world's great powers have the Arctic's natural resources and". On the right side of the page, there is a partial view of an "EMAIL" sign-up section with a large letter "F" and the text "Sign up selecti". The Windows taskbar at the bottom shows various application icons and system tray information including the time 10:48 and date 3.3.2016.

The Arctic Resource Frontier

The screenshot shows a web browser window displaying a news article. The browser's address bar shows the URL: news.discovery.com/earth/oceans/denmark-makes-land-grab-for-north-pole-141215.htm. The browser's bookmark bar includes folders for 'Apps', 'History', 'Email and stuff', 'News and stuff', 'Sports', 'Learning English', and 'Other stuff'. The news website's navigation bar features the 'D NEWS' logo and a menu with categories: TECH, SPACE, HUMAN, EARTH, HISTORY, ANIMALS, ADVENTURE, and VIDEO. The main headline of the article is 'Denmark Makes Land Grab for North Pole', dated 'DEC 15, 2014 01:00 PM ET // BY AFP'. The article's main image is a satellite view of the Arctic region, showing a large expanse of white ice and snow surrounding a dark blue sea. To the right of the main image is a video player titled 'DNEWSvideo' with a thumbnail of a green snake and the text 'DNews: How Snakes Get Around Without Any Legs'. A vertical 'feedback' button is located on the right side of the article. The Windows taskbar at the bottom shows various application icons, including Internet Explorer, Google Chrome, Word, Excel, and Photoshop, along with system tray icons for network, volume, and battery, and a clock showing 10:51 on 3.3.2016.

The Arctic Resource Frontier

The screenshot shows a web browser window displaying a news article from news.com.au. The browser's address bar shows the URL: www.news.com.au/technology/innovation/military/predictions-of-an-icefree-arctic-by-2020-spur-northern-nations-into-a-race-to-grab-fresh-territory/news-story/b6c. The news site's navigation bar includes categories like National, World, Lifestyle, Travel, Entertainment, Technology, Finance, Sport, and Video. The main headline reads: "Predictions of an ice-free Arctic by 2020 spur northern nations into a race to grab fresh territory". Below the headline, the date and time are listed as "AUGUST 9, 2015 1:06PM". The article's main image shows several red and white missiles pointing upwards against a blue sky with clouds. A circular callout with the number "2" is overlaid on the image. To the right of the article is a Palantir advertisement featuring an oil pumpjack in a field and the text: "Reduce the Capital Cost of Adding New Reserves To Increase Earnings & Return on Capital." Below the advertisement is a section titled "RIGHT NOW IN TECHNOLOGY". The Windows taskbar at the bottom shows various application icons, including Chrome, Word, and PowerPoint, along with system tray icons for network, volume, and battery status.

The Arctic Resource Frontier

How to take a screenshot x Russian President Vladimir x

www.spiegel.de/international/europe/russian-president-vladimir-putin-plans-military-expansion-in-arctic-a-938387.html

Apps History Email and stuff News and stuff Sports Learning English Other stuff

SPIEGEL ONLINE INTERNATIONAL

Front Page | World | Europe | Germany | Business | Zeitgeist | Newsletter

English Site > Europe > The Race for the Arctic > Russian President Vladimir Putin Plans Military Expansion in Arctic

Arctic Scramble: Russia to Flex Military Muscle in Far North

10:50 3.3.2016

The Arctic Resource Frontier

The screenshot shows a web browser window with two tabs. The active tab is titled "Russia's legal land grab is" and the address bar shows the URL "www.thetimes.co.uk/tto/news/world/europe/article4086807.ece". The browser's menu is open, displaying options such as "New tab", "New window", "New incognito window", "History", "Downloads", "Bookmarks", "Zoom", "Print...", "Find...", "More tools", "Edit", "Cut", "Copy", "Paste", "Settings", "Help", and "Exit".


The webpage content includes the "THE TIMES" logo, navigation links for "THE SUNDAY TIMES" and "TIMES+", and a header with "Login", "Subscribe", and "Contact us". Below this is a navigation bar with categories: "News", "Opinion", "Business", "Money", "Sport", "Life", "Arts", "Puzzles", "Papers", and "Irish news".

The main headline reads: "Welcome to your preview of The Times" followed by "Russia's legal land grab is dress rehearsal for Arctic showdown". A "SUBSCRIBE" button is partially visible on the right.

At the bottom, a cookie consent banner states: "By continuing to use the site, you agree to the use of cookies. You can change this and find out more by following [this link](#)." An "Accept" button is on the right.

The Windows taskbar at the bottom shows various application icons, including Internet Explorer, Google Chrome, Word, Excel, PowerPoint, and Photoshop. The system tray on the right shows the time as 10:56 and the date as 3.3.2016.

The Arctic Resource Frontier



The screenshot shows a web browser window displaying a news article. The browser's address bar shows the URL <https://www.rt.com/op-edge/arctic-disputes-no-rules-055/>. The page features the RT logo and navigation links for 'QUESTION MORE' and 'LIVE'. The main headline is '‘No rules’ in international scramble for Arctic resources', with a sub-headline 'Published time: 11 Dec, 2013 12:13' and 'Edited time: 11 Dec, 2013 13:30'. A video player is embedded in the article, showing a landscape of snow-capped mountains and a frozen body of water. The video player includes a play button and social media sharing icons. The Windows taskbar at the bottom shows various application icons and system tray information, including the time 11:09 and date 3.3.2016.

‘No rules’ in international scramble for Arctic resources

Published time: 11 Dec, 2013 12:13
Edited time: 11 Dec, 2013 13:30 [Get short URL](#)

Arctic Law

USA (State of Alaska)
Canada (3 territories)
Denmark, Greenland &
Faroe Islands)
Iceland
Norway
Sweden
Finland
Russia

Public International Law



Map ©
<http://geology.com/world/arctic-ocean-map.shtml>

Arctic Oil and Gas

Sites of greatest interest & potential resources



Map ©
<http://geology.com/articles/arctic-oil-and-gas/>

International Law: Self-determination of Peoples

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

2. ***All peoples may, for their own ends, freely dispose of their natural wealth and resources*** without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. *In no case may a people be deprived of its own means of subsistence.* (International Covenant on Civil & Political Rights 1966; International Covenant on Economic, Social and Cultural Rights 1966, Article 1)

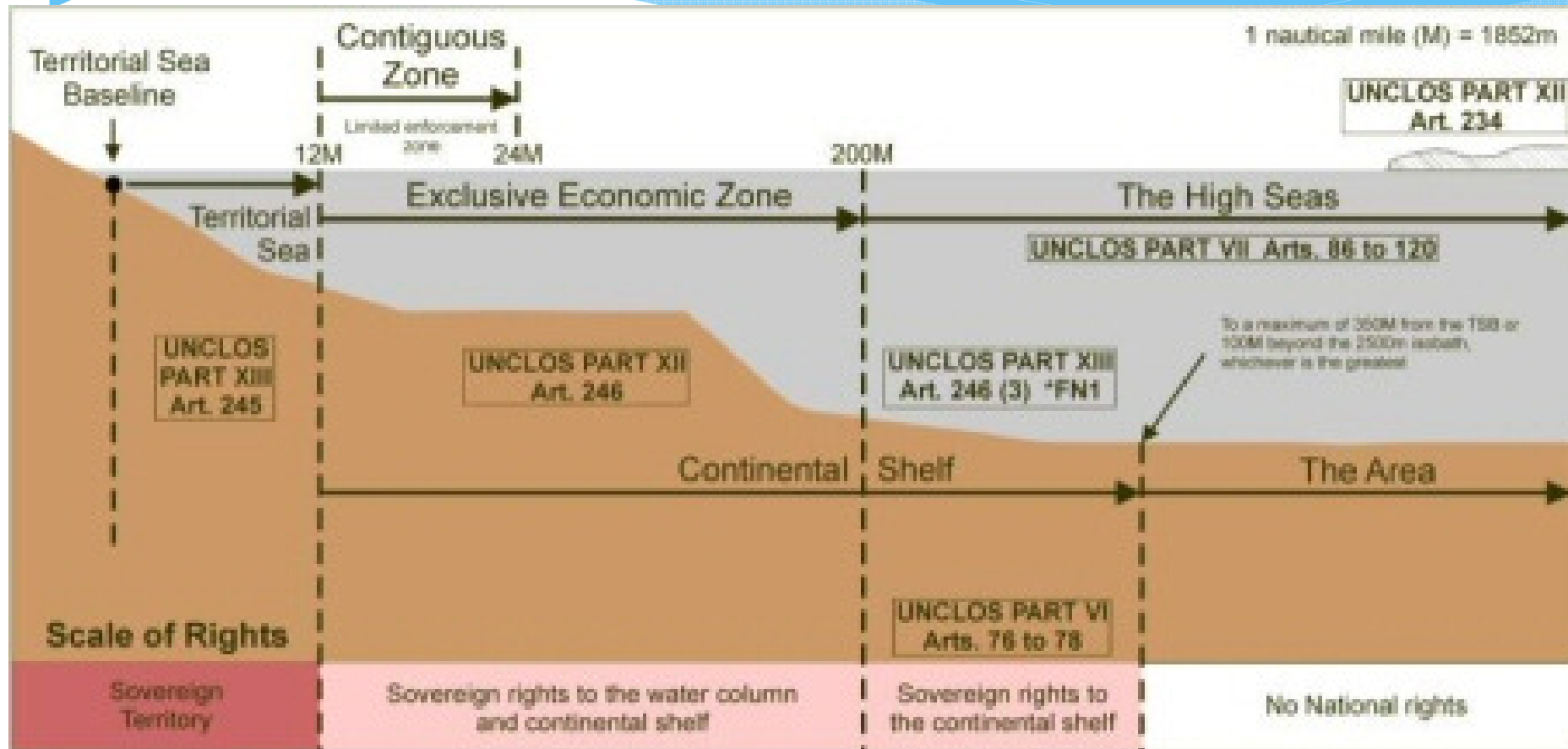
It is for the people to determine the destiny of the territory and not the territory the destiny of the people. (*Western Sahara* (advisory opinion) 1975, International Court of Justice, Dillard, concurring opinion, p. 122)

International Law: No Harm Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

(Stockholm Declaration on the Human Environment (1972) 11 ILM 1416, Principle 21)

Maritime Zones (National Geographic)



*Footnote 1 - only applies where the coastal state has had a successful claim under Article 76 and this claim has been embodied in that coastal states law.

Sovereign Rights not Sovereignty

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment. (UNCLOS, art 193)

Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction. (UNCLOS art 208(1)).

Human Rights & Rights of Indigenous Peoples

- * Universal Declaration of Human Rights 1948
- * International Covenant on Economic, Social and Cultural Rights 1966
- * International Covenant on Civil and Political Rights 1966
- * European Convention on Human Rights 1950
- * American Convention on Human Rights 1969
- * American Declaration on the Rights and Duties of Man 1948
- * Convention on the Elimination of Racial Discrimination 1965
- * Indigenous and Tribal Peoples Convention 1989 (ILO C169)
- * United Nations Declaration on the Rights of Indigenous Peoples 2007

“Due diligence” & international environmental law

- * Precautionary Approach
- * Environmental Impact Assessment
- * Monitoring

Precautionary Approach

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation

(Rio Declaration on the Environment and Development 1992, Principle 15)

Environmental Impact Assessment

Pulp Mills (International Court of Justice 2010)

Border Area/ Road along San Juan River
(International Court of Justice 2015)

Convention on Environmental Impact Assessment in
a Transboundary Context (Espoo, 1991)

Emphasis on *inter-State* consultation; treaty regimes
and guidelines do not extend BNJ (except UNCLOS)

Environmental Impact Assessment

Process

- * Good Faith
- * Conducted when possibility of significant harm
- * Conducted early, but kept up to date
- * State duty
- * Based on Science
- * Wide consultation
- * Non-discriminatory
- * Cover all impacts, irrespective of location (including BNJ)

Contents

- * Baseline data
- * Non-technical summary
- * Consideration of alternatives
- * Cumulative impacts and SEAs
- * Human rights impacts

Monitoring

The *continuous* EIA:

Gabčíkovo-Nagymaros Project (Hungary/Slovakia)
(Weeramantry Sep Op) 1997

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) 2015

Human rights monitoring (United Nations Human Rights Treaty Committees)

Responsibility and Liability

Responsibility

Of State

For wrongful conduct

Liability

For Harm

(usually) irrespective of
fault

“Risk” of International Claim

- * Violation of human rights or rights of indigenous peoples (procedural and substantive)
- * “Uncertain” risks not considered (precautionary approach)
- * Inadequate EIA; or EIA not taken adequately into account in decision-making process
- * Inadequate monitoring by State organs
- * Inadequate liability regime in place

RESPONSIBILITY DOES NOT PIVOT ON MEASURABLE
DAMAGE

Law as a Political Choice

- * Who makes the decision?
- * What considerations can the decision-maker take into account?
- * What conditions do operators have to meet?
- * How are negative impacts compensated, if at all?
- * How are proceeds shared?
- * How can a finite resource be exploited 'sustainably' taking into account the needs of future generations?
- * What happens if a project fails?
- * What happens if a major incident occurs?



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THANK YOU!

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