

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

Erzsébet Csatlós

Hot Situation in the Icy North: Security Implications in the Arctic

I. INTRODUCTION

As the Arctic sea-ice melts, the world is looking northward: now the Arctic is not just a new strategic base for military and commercial activity but a new potential source of oil and gas.

The planting of a titanium Russian flag on the North Pole seabed on 2nd August, 2007 generated significant global media coverage.^[1] Recent attention on the Arctic, however, has typically covered climatic changes, natural resources, sovereignty claims, and new shipping routes.

The Arctic has been covered by a vast and nearly continuous icecap for long centuries and it was almost impossible to even ship through the territory not to mention other kind of exploitation of the region.^[2] That is the reason why it was neglected for long and States did not care about it at all and let the territory be symbolically divided by five coastal States: Russia, Denmark, Norway, the USA and Canada without respect of the existing law of the sea.^[3] However, increasing climate change and global warming has already let the world know the real values of the icy territory and States began to submit their claims and to protect their presumed rights in the Arctic; even by military means if it is necessary.

II. THE ATTRACTIVE FORCE OF THE ARCTIC

2.1. Undiscovered resources

As the oil wells run dry, the last, untapped great energy reserves of the planet lie miles beneath the Arctic.^[4] Approximately 100-200 billion barrels of crude oil and up to 2,000-3,000 trillion cubic feet of natural gas is estimated to be hidden here.^[5] And as some States race to grab them at any cost, the stage is set for a new,

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

really cold war. According to estimations, by 2020 the world will be convulsed by a series of conflicts over dwindling energy supplies.

A part of the Arctic offshore resources are located in the exclusive economic zone of Arctic States, but the expansion tendency turns to acquisition of outer territories and hydrocarbon stores, too,^[6] and from time to time the sovereignty over the region is questioned despite the fact that according to existing law of the sea its status in international law is the same as that of other high seas of the world.^[7]

2.2. Sea routes

Owing to the reduction of ice new shipping routes open,^[8] fishing facilities widen out and the exploitation and transport of resources hidden in the continental shelf will probably increase in the foreseeable future.^[9]

Two major sea routes exist in the Arctic: the *Northwest Passage* along Canadian territories connecting the Atlantic and Pacific Ocean and the *Northeast Passage* from the Atlantic Ocean to the Pacific Ocean along the Russian Arctic coasts. The possibility of navigation drastically shortens the distance between continents, which means time and cost reduction of transportation of exploited oil and gas in the region.^[10]

2.2. Strategic importance

The Arctic has significant military value and it might also be an attractive place for crimes like trafficking and illegal migration.^[11] As the summer ice retreats, opportunities for commerce, tourism, and transportation advance. Naval bases and aviation patrol routes, economic interests, natural resources, and major transport communications of the shorter sea routes are here in the region. It results from these facts, that the State territory in this region is important in connection with defending national territory and interests. It is just enough to remember the first

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

submarine navigation test in 1957 with the *Nautilus* in order to test a possible submarine warfare with the USSR exploiting the rough conditions to hide.^[12] Nowadays the military importance might increase with the commencement of oil rush in the region. Soviet and US Cold Warriors spent decades fantasizing about how to militarize the Arctic. *Joseph Stalin* sent millions of gulag prisoners to build an insane railway between the Arctic towns of *Salekhard* and *Igarka*. *Leonid Brezhnev* built fleets of monster, nuclear-powered icebreakers in an attempt to keep a passage around northern Siberia open year-round. Today, Russia, Canada and the USA keep isolated military posts dotted across the Arctic Circle supplied by helicopters and, in Russia's case, manned by shifts of shivering conscripts in tall felt boots and sheepskin coats.^[13] All these States are ready to defend their interests.

III. TRADITIONAL ARCTIC PLAYERS IN THE CONFLICT

3.1. Conflict over sea routes

The Canadian government claims that the waters of the Northwest Passage, particularly those in the Canadian Arctic Archipelago, are internal to Canada, giving Canada the right to ban transit through these waters. Contrarily, most maritime powers like the USA or the EU consider the passage to be an international strait where foreign vessels have the right to innocent passage.^[14] Canada counters that it has sole jurisdiction over the Northwest Passage and wants to enforce its own laws on ships in the Arctic waters. Canadian officials argue that their authority is the best way to minimize unsafe ships and accidental spills in the pristine North.^[15] To put an emphasize to their words on 9th April, 2006 declared that the Canadian military will no longer refer to the region as the Northwest Passage, but as the *Canadian Internal Waters*.^[16]

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

On the other side Russia did not dissipate its claims by making such declarations concerning the Northeast Passage: the State simply demands the whole sector from the coast to the North Pole.^[17]

In 2007 Canada sent armed ships, which were declared to be the first element in a plan to secure the far north,^[18] but it was Russia, who declared that the State had adapted training plans for units that might be called upon to fight in the Arctic.^[19]

3.2. Conflict over oil and gas

As the oil, gas and minerals of this frontier become more valuable, northern-resource development will grow ever more critical. It is doubtless, that the planting of Russian flag in 2007 was governed by the economic interests concerning oil and gas resources underneath.

Peter MacKay, the foreign minister of Canada condemned it saying: “*This isn’t the 15th century. You can’t go around the world and just plant flags and say ‘We’re claiming this territory’.*”^[20] Regarding Canadian Arctic policy, this reaction is a weird interpretation of the territory acquisition rules of international law.

IV. NEW POSSIBLE ARCTIC-PLAYERS: CHINA AND KOREA

China has no Arctic territory but it has a voracious appetite for oil and natural gas. It is also among largest shipping nations, eager for shorter routes and greater efficiencies. To be sure, China displays a real interest in the Arctic, as attested by its applying for observer status at the Arctic Council in 2008 and by its developing research programs in the area.^[21]

Concerning the sovereignty debate over the Arctic China asserted that the questioned territory of the Arctic belongs to all peoples and is part of the *common heritage of mankind*.^[22]

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

As for oil and gas, China supports the right of the Arctic Ocean coastal states to assert exclusive jurisdiction over the continental shelf beyond 200 nautical miles, if the shape and geology of the seabed make it a "natural prolongation" of the shelf closer inshore. China has a strong reciprocal interest in the rules set out in the UN Convention on the Law of the Sea because they constitute the basis for its own extensive claims in South and East China Seas.^[23]

China, an indispensable actor in the global economy, also knows that it can access Arctic hydrocarbons through foreign investments, joint ventures and international markets. China already has the largest non-nuclear powered icebreaker of the world, the *Snow Dragon*, but – until now, it has been used solely for scientific research - and with good reason.^[24]

One of the major Arctic interests of China concerns the shipping routes being opened by the melting sea-ice. Different routes will be used depending on origins and destinations: liquefied natural gas from the Barents Sea will be sent to Shanghai through the Russian Northern Sea Route; luxury German cars will go straight "over the top"; and Chinese goods headed for the eastern US will use the Northwest Passage.^[25]

But even when the ice disappears, these routes will remain remote, poorly charted and often stormy. These risks provide the key to constraining China in the North. If coastal States provide world-class charts, navigation aids, ports of refuge, weather and ice-forecasting, search-and-rescue and policing aimed at pirates, terrorists and smugglers, Chinese shipping companies will voluntarily comply with reasonable laws concerning ship safety, navigation lanes, insurance coverage and the provision of crew lists and cargo manifests. In other words, if Arctic States provide incentives for China to work with rather than against them, there is every reason to expect that Beijing will recognize their considerable power as coastal States including in currently contested waters. The same aim moves the shipping power of South Korea. South Korea refers that being an observer of the Arctic Council will help to be able to enter the discussion among the Arctic nations over preservation and development of the area and this will probably also help their government brainstorm policies on development of marine transportation.^[26]

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

Summing up, the two Asian States have significant plans for using the Arctic sea routes in conformity with the freedom of the seas and neglect internal water claims of the above mentioned coastal States, which are determined to protect their presumed territory with armed forces if it is necessary. It seems that a conflict is maturing. What can be done to avoid a potential armed conflict and protect the area from the consequences of a vehement exploitation vague?

V. CONCLUSION: WHAT CAN BE DONE IN ORDER TO PROTECT THE ARCTIC FROM THE NEGATIVE CONSEQUENCES OF CONFLICTS?

As long as the special status of the Arctic is not defined *erga omnes* and it can be the playground of national interests of the coastal States even contrarily to the existing law of the sea only superficial solutions are able to avoid or at least delay the burst out of a really big conflict, but that is only one side of the problem. Another major danger is the oil and thus the resource exploitation in the area without the necessary precautionary measures. Since coastal States could have experiences only in offshore exploitation near their coasts, there are many precautions that in the outer harsh and icy conditions the exploitation and the transport is more dangerous and the clean up and degradation of oil spill needs special treatment.^[27]

In order to avoid a potential military conflict over the territory and to prevent the negative, undesirable impacts of the future exploitation vague in the less icy area, there are two major initiatives.

5.1. A nuclear-weapon-free zone (NWFZ) in the Arctic

The key to a peaceful future in the Arctic is innovative co-operation. One important step would be to initiate and lead international discussions on a nuclear-

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

weapon-free zone treaty in the Arctic, involving all the circumpolar nations.^[28] According to rules established by the UN, an Arctic NWFZ would prohibit the possession, development, testing, manufacture or production of nuclear weapons within the zone; prohibit the use of nuclear weapons against any territory within; and establish permanent measures to ensure compliance with the treaty.^[29]

There are many regional nuclear-weapon-free treaties in force, covering the entire southern hemisphere, Central and Latin America, Africa, Central Asia, and large swathes of Southeast Asia. Already, a majority of UN members have signed or ratified NWFZ treaties, and 50% of the world (including Antarctica) is governed by these treaties.^[30]

Existing treaties relevant to the Arctic case include the UN Convention on the Law of the Sea, where exclusive economic zones are to be defined by undersea measurements of the continental shelves of each nation; the *Antarctic Treaty of 1959* prohibiting all nuclear activity on that continent; and the *1971 Seabed Treaty* prohibiting the stationing of nuclear weapons or support facilities outside territorial waters. The main obstacle to turn the Arctic into a nuclear-weapon-free zone is that the region served as a key arena of US-Russian military confrontation during the Cold War. The USA and the Russian Federation still routinely conduct submarine patrols in the Arctic Ocean, and both have nuclear-capable aircraft that can over fly the Arctic.^[31]

5.2. Reasonable exploitation

“*Don’t do the drill if you can’t clean up the spill!*” That is the slogan of the Canadian initiative.^[32] Canada is drilling in some of the world’s roughest, coldest and least-serviced oceans. According to estimations, if a spill like in the Gulf of Mexico occurs in the Beaufort Sea for example, the impact would be far worse.^[33] The policy and intention of Canada is clear. A risk that cannot be mitigated should not be taken. It is an understandable demand; the only problem

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

is the enforcement of such provision. It should be implemented into the rules of the law of the sea and an effective cooperation would be able to enforce the respect of the regulations. Many regional approaches are on the way to realize this aim, so possibilities are here to fight the problem; the only doubt lies in the intention of the States. This will be the main battle in every State: environmental protection v. industrial and economic interests.

^[1] HANSEN, Jesper: "Russia Plants Flag at the Bottom of the North Pole." 3rd August 2007, Arctic Council. org. <http://arctic-council.org/article/2007/11/1194730306.79> (19.10.2010.)

^[2] PATCH, John: "Cold Horizons: Arctic Maritime Security Challenges." *U.S. Naval Institute Proceedings*, 0041798X, Vol. 135. No. 5. 2009.

^[3] PHARAND, Donat: "The Legal Status of the Arctic Regions." *RCADI*, Vol. 163. 1979: II. p. 62-65.

^[4] The Unexplored Arctic. *Oil & Gas Journal*, 4th August, 2008.

^[5] *Arctic Geological Survey: estimation of undiscovered oil and gas North of the Arctic Circle*. A USGS fact sheet from July 2008. The U.S. Geological Survey (USGS) <http://geology.com/usgs/arctic-oil-and-gas-report.shtml> (07.06.2010.); See also, Arctic Council: Arctic Offshore Oil and Gas Guidelines 2009. <http://arctic-council.org/filearchive/Arctic%20Offshore%20Oil%20and%20Gas%20Guidelines%202009.pdf> (19.10.2010.)

^[6] *Russia Plants Flag on Arctic Floor*. <http://www.cnn.com/2007/WORLD/europe/08/02/arctic.sub.reut/index.html> (01.12.2009.)

^[7] BYERS, Michael: "Who owns the Arctic?" *New Internationalist*, July/August 2009. p. 16-17.

^[8] Warming Opens Northwest Passage.

<http://news.bbc.co.uk/2/hi/americas/6995999.stm> (26.04.2009.)

^[9] THEOLOGITIS, Dimitrios: The EU Perspective for Energy and Maritime Transport. Speech at Conference „Common Concern for the Arctic” Ilulissat, Greenland, 9th September 2008. p. 113. http://www.norden.org/sv/publikationer/publikationer/2008-750/at_download/publicationfile (02.12.2009.)

^[10] CHRISTENSEN, Aage, Svend: "Are the Northern Sea Routes Really the Shortest?" *Danish Institute for International Studies*, March 2009. http://www.diis.dk/graphics/Publications/Briefs2009/sac_northern_searoutes.pdf (19.11.2010.)

^[11] HANSEN, Jesper: "Crime in the Arctic." 14th August 2009. Arctic Council.org http://arcticcouncil.org/article/2009/8/crime_in_the_arctic (19.10.2010.)

^[12] PHARAND (1979): i.m. p. 60.; ROSENKRANZ, Rolf: "The Northern Drift of the Global Economy: the Arctic as an Economic Area and Major Traffic Route." *World Customs Journal*, Vol. 4. No. 1. 2008. p. 23.

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

^[13] MATTHEWS, Owen: "The coldest war: Russia and U.S. face off over Arctic resources." 19th May, 2009.

<http://www.dailymail.co.uk/news/article-1184291/The-coldest-war-Russia-U-S-face-Arctic-resources.html#ixzz12oU1xmKG> (19.10.2010.)

^[14] STRUCK, Doug: "Dispute Over NW Passage Revived: U.S. Asserts Free Use by All Ships; Canada Claims Jurisdiction." *The Washington Post*, Monday, 6th November, 2006. <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/05/AR2006110500286.html> (07.10.2010.) See also, HOWSON, Nicholas C.: "Breaking the Ice: The Canadian-American Dispute over the Arctic's Northwest Passage." *Columbia Journal of Transnational Law*, Vol. 26. No. 2. 1988. p. 338-375.

^[15] See, Arctic Waters Pollution Prevention Act from 1970. BEESLEY, J. Alan: "The Arctic Waters Pollution Prevention Act: Canada's Perspective." *Syracuse Journal of International Law and Commerce*, Vol. 1. 1973. p. 226-235.

^[16] *Northwest Passage gets political name change. Edmonton Journal*, 9th April, 2006 <http://www.canada.com/edmontonjournal/news/story.html?id=6d4815ac-4fdb-4cf3-a8a6-4225a8bd08df&k=73925> (07.10.2010.)

^[17] CHIVERS, C. J.: "Russians Plant Flag on the Arctic Seabed." 3rd August, 2007, *The New York Times*. http://www.nytimes.com/2007/08/03/world/europe/03arctic.html?_r=1 (07.10.2010.)

DEHNER, Joseph, W.: Creeping Jurisdiction in the Arctic: Has the Soviet Union Joined Canada? *Harvard International Law Journal*, Vol. 13. 1972. p. 280-285.

^[18] MILLER, Hugo: "U.S. Bolsters Arctic Presence to Aid Commercial Ships." July 2007. <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aK9JSBhBiJMg&refer=canada> (07.10.2010.)

^[19] COOK, Bradley: "Russian Army Trains for the Arctic Combat to Defend Resource Claim." 24th June 2008. Bloomberg. <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aWWcSYKqThp8> (2011.04.17.)

^[20] CHIVERS: i.m.

^[21] LASSERRE, Frédéric: "China and the Arctic: Threat or Cooperation Potential for Canada?" *Canadian International Council, China Papers*, No. 11. June 2010. www.onlinecic.org/download/.../cic_china_paper_n11_lasserrepdf?...1 (19.10.2010.) p. 3.

^[22] JAKOBSON, Linda: "China Prepares for an Ice-Free Arctic." *SIPRI Insights on Peace and Security*, No. 2. March 2010. p. 10.

^[23] See, SHACKELFORD, Scott J.: "The Tragedy of the Common Heritage of Mankind." *Stanford Environmental Law Journal*, Vol. 27. 2008. p. 103.

^[24] SPEARS, Joseph: "China and the Arctic: The Awakening Snow Dragon." *China Brief*, Vol. 9. No. 6. 2009. p. 10-11.

^[25] JAKOBSON: i.m. p. 5-9.

Forrás:

Jogelméleti Szemle, 12 (4) 2011 <http://jesz.ajk.elte.hu/csatlos48.html>

^[26] SE-JEONG, Kim: “Korea Wants to Join in Arctic Projects.” *Korea Times*, 24th August, 2008 Sunday, http://www.koreatimes.co.kr/www/news/special/2009/11/176_29902.html (19.10.2010.); See also, *Polar research in Korea and Sweden - areas of common interest*. Summarized by the Swedish Polar Research Secretariat, Stockholm, 26th May, 2010. [www.polar.se/.../korea/Korea-Sweden%20Letter%20on%20polar%20research%20cooperation%](http://www.polar.se/.../korea/Korea-Sweden%20Letter%20on%20polar%20research%20cooperation%20) (19.10.2010.)

^[27] SCHACTER, Oscar-SERWER, Daniel: “Marine Pollution and Remedies”. *AJIL*, Vol. 65. No. 84. 1971. p. 89.

^[28] Canada, the United States, Denmark (Greenland), Iceland, Norway, Sweden, Finland and Russia. *A nuclear-weapon-free zone in the Arctic*. 15th September 2010.; *Status Report on Korean Arctic Research in 2008*. FARO Business meeting, Bergen, Norway. <http://faro-arctic.dmu.dk/NR/rdonlyres/B5155E2E-50E7-4E70-BC31-50BD0517C518/0/2009StatusReportonKoreanArcticResearchin2008rev.pdf> (19.10.2010.) <http://www.arcticsecurity.org/?p=421> (18.10.2010.)

^[29] See, BUCKLEY, Adele: “Nuclear-Weapon-Free Zones.” *Civil Society Forum United Nations*, New York 29th April, 2010. <http://www.arcticsecurity.org/wp-content/uploads/2010/05/ARCTIC-NWFZ-Apr-29-2010-UN-Civil-Soc-Forum-final.pdf> (18.10.2011.)

^[30] MCDONOUGH, Alexa: “Freeing the Poles of Nuclear Conflicts? Time for an Arctic Nuclear Weapon-Free Zone!” *Global Security Institute*. p. 19-21. <http://www.gsinsitute.org/pnnd/docs/ArcticEuroNWFZs.pdf> (18.10.2010.)

^[31] WALLACE, Michael – STAPLES, Steven: “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue.” March 2010. p. 12-14. <http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf> (19.10.2010.)

^[32] Don’t do the drill if you can’t clean the spill. 13th June, 2010. ArcticSecurity.org. <http://www.arcticsecurity.org/?p=391>(11.10.2010.)

^[33] *An Arctic spill would be even worse*. Gerald Butts, *Globe and Mail*, 11th June, 2010. <http://www.theglobeandmail.com/news/opinions/an-arctic-spill-would-be-even-worse/article1599718/> (07.10.2010.); ZELLER, Dirk: *From Mare Liberum to Mare Reservarum: Canada’s Opportunity for Global Leadership in Ocean Resource Governance*. *Ocean Yearbook*, Vol. 19. 2005. p. 1-18.