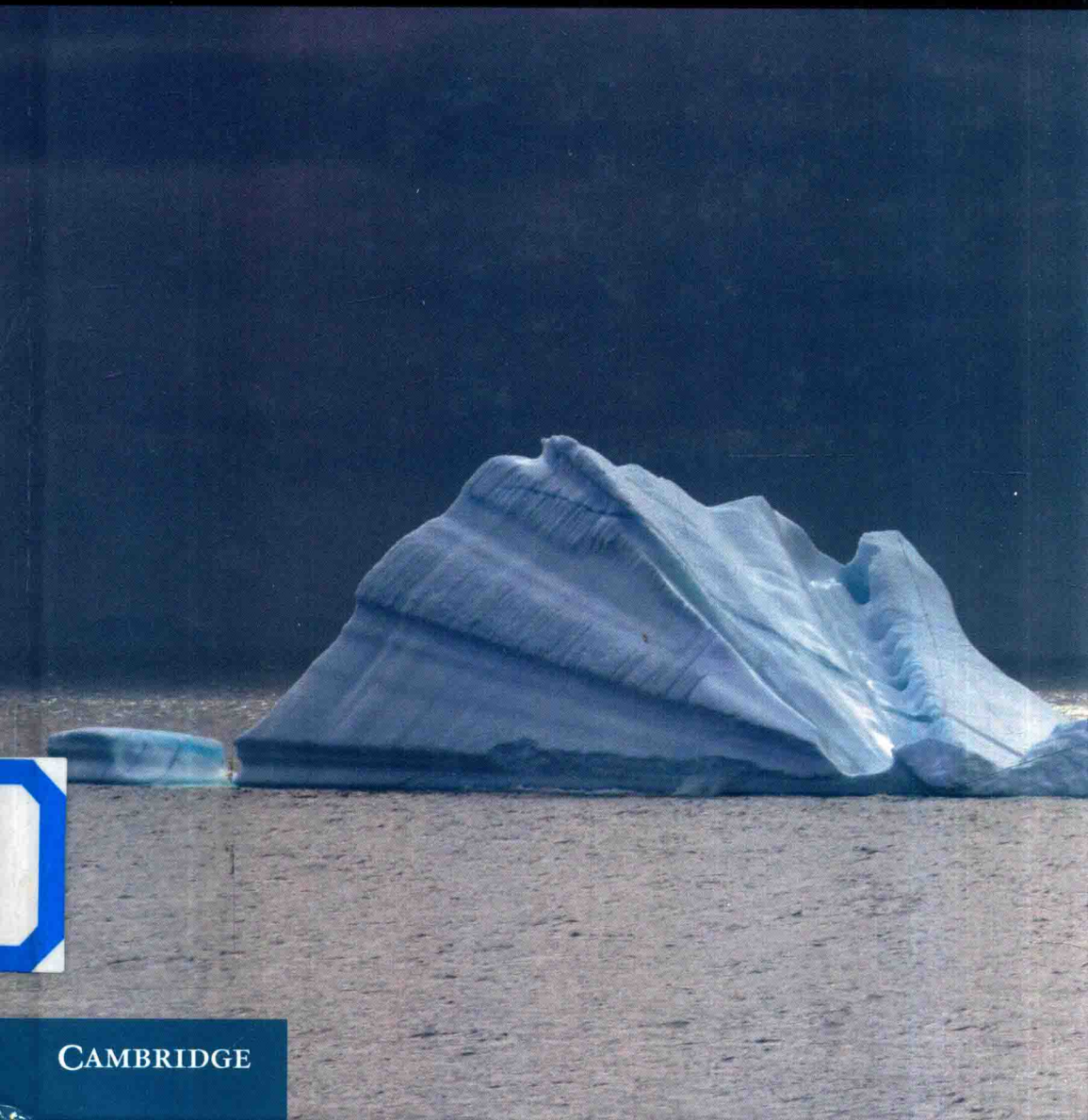


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# International Law and the Arctic

MICHAEL BYERS



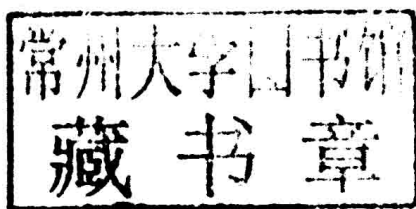
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# International Law and the Arctic

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Michael Byers

With James Baker



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The second partnership is with James Baker, who is in the final stages of a Ph.D. at the University of British Columbia. Chapter 3 is based on a paper that James and I co-authored in *Ocean Development and International Law*, while the section on the Lomonosov Ridge is based on a workshop paper that was likewise co-authored with him.

Several other sections draw on an earlier book of mine entitled *Who Owns the Arctic?* That much slimmer volume, published in 2009, was written for a non-academic Canadian audience. I am grateful to Scott McIntyre for his support of that effort, as well as the idea of a follow-up academic book on the international law of the circumpolar Arctic.

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## Note on maps and measurements

This book contains only one map, specially prepared by Coalter Lathrop at Sovereign Geographic. It shows the different boundary lines preferred by the United States and Canada in the Beaufort Sea, and how those lines would continue beyond 200 nautical miles onto the extended continental shelf. Links to several other maps are provided in the footnotes. In particular, readers are encouraged to spend some time studying the following two maps:

- (1) The International Boundary Research Unit at Durham University maintains a superb map on “Maritime jurisdiction and boundaries in the Arctic region,” available at [www.dur.ac.uk/resources/ibru/arctic.pdf](http://www.dur.ac.uk/resources/ibru/arctic.pdf).
- (2) The “International Bathymetric Chart of the Arctic Ocean” has been produced with input from researchers from ten countries, including Canada, Denmark, Iceland, Norway, Russia, Sweden, and the US. It provides an up-to-date and relatively comprehensive picture of the ocean floor, including the main “seafloor highs,” and is available at [www.ngdc.noaa.gov/mgg/bathymetry/arctic/arctic.html](http://www.ngdc.noaa.gov/mgg/bathymetry/arctic/arctic.html).

As for measurements, this book uses nautical miles for maritime distances and areas, as is standard in the law of the sea. All other distances and areas are in kilometers, while depths are measured in meters.

# Abbreviations

AIBWC	Alaska and Inuvialuit Beluga Whale Committee
AMAP	Arctic Monitoring and Assessment Program
ASRC	Arctic Slope Regional Corporation
AWPPA	Arctic Waters Pollution Prevention Act
BEAC	Barents Euro-Arctic Council
BRC	Barents Regional Council
BWM	ballast water management
CITES	Convention on International Trade in Endangered Species
CLCS	Commission on the Limits of the Continental Shelf
ECOSOC	Economic and Social Council (UN)
EEZ	exclusive economic zone
EPA	Environmental Protection Agency
GATT	General Agreement on Tariffs and Trade
ICC	Inuit Circumpolar Council
ICJ	International Court of Justice
IMO	International Maritime Organization
INSROP	International Northern Sea Route Program
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IWC	International Whaling Commission
NAFO	Northwest Atlantic Fisheries Organization
NATO	North Atlantic Treaty Organization
NEAFC	North East Atlantic Fisheries Commission
NEB	National Energy Board (Canada)
NOAA	National Oceanic and Atmospheric Administration
NORAD	North American Aerospace Defense Command

NORDREG	Northern Canada Vessel Traffic Services Zone Regulations
OPRC	Convention on Oil Pollution Preparedness, Response and Cooperation
OSCE	Organization for Security and Cooperation in Europe
PEARL	Polar Environment Atmospheric Research Laboratory
POAC	International Conference on Port and Ocean Engineering under Arctic Conditions
PSI	Proliferation Security Initiative
RAIPON	Russian Association of Indigenous Peoples of the North, Siberia and Far East
SAR	search and rescue
SIPRI	Stockholm International Peace Research Institute
SLCP	short-lived climate pollutant
SRR	search-and-rescue region
TBT Agreement	Technical Barriers to Trade Agreement
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WMD	weapon of mass destruction
WTO	World Trade Organization



## **International Law and the Arctic**

Climate change and rising oil prices have thrust the Arctic to the top of the foreign policy agenda and raised difficult issues of sovereignty, security, and environmental protection. Improved access for shipping and resource development are leading to new international rules on safety, pollution prevention, and emergency response. Around the Arctic, maritime boundary disputes are being negotiated and resolved, and new international institutions, such as the Arctic Council, are mediating deep-rooted tensions between Russia and NATO and between nation states and indigenous peoples. *International Law and the Arctic* explains these developments and reveals a strong trend toward international cooperation and law-making. It thus contradicts the widespread misconception that the Arctic is an unregulated zone of potential conflict.

**Michael Byers** holds the Canada Research Chair in Global Politics and International Law at the University of British Columbia.

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It is often said there are few truly untamed places left on Earth, but the windswept horizons of the Arctic surely qualify. Some political analysts maintain that the geopolitical landscape is equally harsh – a lawless region poised for conflict due to an accelerating “race for the North Pole.”

We disagree. Instead, we firmly believe that the Arctic can be used to demonstrate just how much peace and collective interests can be served through the implementation of the international rule of law. Moreover, we believe that the challenges in the Arctic should inspire momentum in international relations, based on co-operation rather than rivalry and confrontation, and we believe that important steps have already been taken toward this goal.

Russian Foreign Minister Sergei Lavrov and Norwegian Foreign Minister Jonas Gahr Støre, “Canada, Take Note: Here’s How to Resolve Maritime Disputes,” *Globe and Mail*, September 21, 2010

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# Introduction

Resolute Bay, an Inuit hamlet on Canada's Cornwallis Island, is a desolate but remarkable place – especially in mid-summer, as I discovered in June 2008. During a midnight stroll across a moonscape of frozen gravel, a powerful wind drove flecks of ice and sand into my face. At the same time, the sun was shining high in the sky, for Resolute Bay is located at 74 degrees north. I remember thinking that it was midday in India, and people there were enjoying the same sunlight as me. The only difference was that, in Resolute Bay, the light was shining directly over the North Pole.

No country will ever “own” the North Pole, which is located about 400 nautical miles north of Greenland and the northernmost islands of Canada and Russia. Although the water and seabed close to shore belong to the coastal states, the surface, water column, and at least some of the seabed of the central Arctic Ocean belong to all humanity. At the same time, many of the challenges there – including life-threatening accidents, oil spills, and overfishing – will necessarily be addressed first and foremost by the geographically proximate Arctic states. These challenges will increase rapidly in the years and decades ahead, as the climate changes, the sea-ice melts, and ships of all kinds gain access.

During the Cold War, the US and the Soviet Union squared off across the Arctic Ocean. Nuclear submarines prowled under the ice while long-range bombers patrolled high overhead. A more peaceful and cooperative approach emerged in 1990 when the two superpowers negotiated a maritime boundary in the Bering Sea, Bering Strait, and Chukchi Sea.<sup>1</sup>

<sup>1</sup> Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary (1990) 29 ILM 941, available at [www.state.gov/documents/organization/125431.pdf](http://www.state.gov/documents/organization/125431.pdf).