

# Niagara Moot Court Competition 2010-2011

[August 8 Draft]

**Canada (Applicant)**

**v.**

**The United States (Respondent)**

## **Case Concerning Certain Arctic Waters**

*Author's note: Though grounded in reality, the stipulated facts below include some fictional legislative and executive acts designed to crystallize the legal disputes relating to the Beaufort Sea and Northwest Passage. To the extent the facts set forth below depart from the real world, the provisions of the Compromis are to be considered controlling for purposes of the Niagara Competition.*

1. This case has been jointly submitted by Canada (Applicant) and the United States (Respondent) under the International Court of Justice's ad hoc jurisdiction pursuant to Article 36(1) of the ICJ Statute. This *Compromis* reflects the agreed facts as negotiated by the Parties.

### **The Beaufort Sea Dispute**

2. The Beaufort Sea (French: *Mer de Beaufort*) is the portion of the Arctic Ocean located north of the Northwest Territories, the Yukon, and Alaska and west of Canada's Arctic islands. It is about 450,000 km (170,000 miles) in area. **See Map at Annex 1.** Canada and the United States dispute the delimitation of part of the maritime section of the International Boundary in the Beaufort Sea. Canada claims the maritime boundary to be along the 141st meridian west out to a distance of 200 nautical miles (370 km), following the Alaska-Yukon land border. The United States claims the boundary line to be perpendicular to the coast out to a distance of 200 nautical miles (370 km), following a line of equidistance from the coast. This difference creates a half-moon shaped wedge that is claimed by both nations. The disputed area covers 21,436 square kilometers of ocean and seabed (about the size of Lake Ontario). **See Map at Annex 2.**
3. Historically, the surface of the Beaufort Sea was frozen during much of the year. However, during the past five years, as a result of global warming trends, the icepack has been thinning and receding, and southern fish populations (including cod, flounder, pollock, halibut, salmon, snailfish, and sculpin) have been migrating into the area in large numbers to take advantage of the warming ocean temperatures, melting ice cover, and nutrient rich waters.

4. As a conservation measure, on April 10, 2010, the U.S. Government announced that it was implementing a plan to close 200,000 square miles of the waters off the north coast of Alaska to commercial fishing. The plan, which was recommended by the North Pacific Fishery Management Council, entails a ban on commercial fishing in the American sections of the Beaufort Sea until further scientific studies are done of the region to assess its vulnerability. Only subsistence fishing by native Inuit is exempted from the ban. The moratorium includes the 21,436 square kilometer expanse of water that is currently being claimed by both the U.S. and Canada.
5. The Government of Canada responded to the US-imposed Beaufort Sea fishing moratorium by sending a Diplomatic Note, dated April 12, 2010, stating: "Canada protests the U.S. unilateral imposition of a fishing moratorium in the disputed area of the Beaufort Sea. This constitutes nothing less than the largest encroachment on Canadian territory in our history. While Canada shares concerns with the United States on proper management of living marine resources in the Beaufort Sea, Canada will pursue a different conservation strategy in its portion of the region (including in the 21,436 square kilometer disputed expanse) notwithstanding the unilateral action by the U.S. Rather than a complete moratorium, Canada will allow continued commercial fishing in its portion of the Beaufort Sea subject to catch limits and methods restrictions."
6. The US Department of State replied in a Diplomatic Note the next day (April 13), which stated: "Until Canada and the United States resolve the Beaufort Sea boundary dispute, consistent with the precautionary principle the United States has every right to implement the fishing ban even in the disputed waters in order to protect the sensitive and vital Beaufort Sea eco-system."
7. In the aftermath of the April 20, 2010 Transocean Deepwater Horizon disaster in the Gulf of Mexico, the government of the United States decided to impose a two-year moratorium on exploratory oil drilling in its exclusive economic zone off the coast of Alaska, to include the U.S. claimed portion of the Beaufort Sea. On April 30, the Obama Administration announced the moratorium, stating in a press release: "We simply will not allow any more deepwater drilling in our waters until we can ensure it is done safely." Immediately thereafter, the United States suspended the lease it had previously provided to Royal Dutch Shell Oil Corporation to conduct exploratory drilling in the U.S. portion of the Beaufort Sea (including the disputed expanse).
8. On June 15, 2010, the Government of Canada responded to the U.S.-imposed moratorium of oil exploration in the disputed waters by sending a Diplomatic Note, stating: "The development of the Beaufort Sea oil reserves is essential to Canada's economy and national security. We are convinced that Shell Oil Corporation can proceed safely, and have thus decided to permit Shell to continue with its plans to drill exploratory wells on the Canadian portion of the Beaufort Sea." Canada further informed the United States that three of the proposed Shell Oil exploratory wells that

had been approved by Canada were in the disputed expanse, and that drilling of these wells was scheduled to commence in August 2010.

9. In a Diplomatic Note delivered to the Canadian Embassy on July 30, 2010, the United States protested Canada's decision to allow Shell Oil Corporation to conduct drilling in the disputed expanse, stating: "The Gulf of Mexico tragedy has shown that what we previously considered safe is not as safe as we had been informed. We will use all necessary means to prevent any exploratory drilling in our portion of the Beaufort Sea, including in the disputed expanse, until we can be sure that oil drilling can be done without risk to these uniquely pristine and vulnerable waters."
10. During the first week of August 2010, the United States Coast Guard Cutter *Munro* intercepted and turned back three Dutch-flagged Shell Oil deepwater drillships that were attempting to enter the disputed expanse of the Beaufort Sea. That same week, the United States Coast Guard began patrolling the disputed expanse to enforce the U.S. commercial fishing moratorium. Despite protests from Canada, and some tense moments at sea, to date US Coast Guard enforcement of the oil and fishing bans in the disputed area has been conducted without any shots fired.

### **The Northwest Passage Dispute**

11. The body of Arctic water between the Davis Strait and Baffin Bay in the east and the Bering Strait in the west is commonly referred to as the "Northwest Passage." **See Map at Annex 3.** Historically, the Northwest Passage was covered with too much ice to be navigable, but on September 14, 2007 the European Space Agency reported ice loss due to global warming trends had rendered the Northwest Passage "fully navigable to commercial shipping ... for the first time since records began." In comparison to the route through the Panama Canal, the transportation of goods through the Northwest Passage saves approximately 4000 km from Europe to the Far East.
12. Canada has long maintained that the Northwest Passage is part of Canada's internal waterways. Consistent with this position, and in order to enable the Canadian Coast Guard to prevent pollution and ensure safety of navigation in the increasingly ice-free waters of the Northwest Passage, on July 1, 2010, Canada enacted the "Northwest Passage Act." This federal legislation: (1) renamed the Northwest Passage, the "Canadian Northwest Passage"; (2) required that any ship of 300 tonnes or more passing through the Northwest Passage must first report its identity, purpose, and intended route to NORDREG -- a registration system maintained by the Canadian Coast Guard; and (3) provided that non-complying vessels and personnel would be detained at the next Canadian port of call and liable to pay up to CAN\$100,000 or face one year in jail. To enforce the Northwest Passage Act, the Government of Canada announced that by 2011 it would triple the number of personnel at its Canadian Forces Northern Area (CFNA) headquarters in Yellowknife and add five new ice breakers and ten armed coast guard vessels associated with CFNA.

13. The United States has historically maintained that the Northwest Passage represents an international strait, which allows the right of transit passage. Consistent with this position, in August, 2010, the United States responded to the enactment of the Canadian legislation by sending two of its armed ice-breakers, the USCGC *Polar Sea* and the USCGC *Healy*, through the Northwest Passage, entering from the west at Barrow Alaska. A US Diplomatic Note delivered to the Government of Canada on August 10, 2010, stated: "The United States stands firm in its position that the waterways known as the Northwest Passage are an international strait. As such, we do not accept this infringement of the right of transit passage through the area under customary international law. We have therefore sent the USCGC *Polar Sea* and the USCGC *Healy* to traverse the Northwest Passage. We do not intend to file a report to NORDREG or seek the consent of the government of Canada for their transit through the strait. We expect our vessels will not be troubled during their voyage. The United States is sympathetic to the goals behind the Canadian legislation, but believes they can be better achieved by seeking development of internationally accepted standards for protecting the strait at the International Maritime Organization."
14. Though protesting vigorously, Canada did not resort to force to halt the transit of the *Polar Sea* and *Healy*.

#### **Dispute Resolution**

15. By late August, 2010, the Beaufort Sea and Northwest Passage disputes were straining the relations between the governments of Canada and the United States. High-level delegations from the two countries met in Ottawa from August 26-29, 2010, in an effort to negotiate a resolution to these disputes.
16. Once it became clear that no negotiated resolution was possible, the two sides agreed to submit this *Compromis* and the following legal two questions to the International Court of Justice for resolution:
  - (a) Whether the US-imposed bans on fishing and oil exploration in the Beaufort Sea, including the disputed 21,436 square kilometers of ocean and seabed, are consistent with international law? and
  - (b) Whether U.S. military vessels have a right under international law to transit the area known as the Northwest Passage without obtaining the consent of Canada?

Although Canada is designated the Applicant and the United States the Respondent, the two sides agree that the second issue is in the nature of a counter-claim.

17. The United States and Canada have also agreed to take no further action to enforce their positions with respect to the Beaufort Sea and Northwest Passage disputes pending the outcome of this case. Further, both countries have agreed to fully and immediately implement whatever decision the ICJ renders in the case.

18. The Netherlands, where Royal Dutch Shell Oil Corporation is headquartered, and the United Kingdom, where Shell has its registered office, have declined the invitation of the Parties to intervene in this Case before the ICJ.

**Signed this 29th day of August 2010 in Ottawa, Canada**

**/S/ Lawrence Cannon  
Minister of Foreign Affairs, for Canada**

**/S/ Hilary Rodham Clinton  
Secretary of State, for the United States of America**

# Annex 1

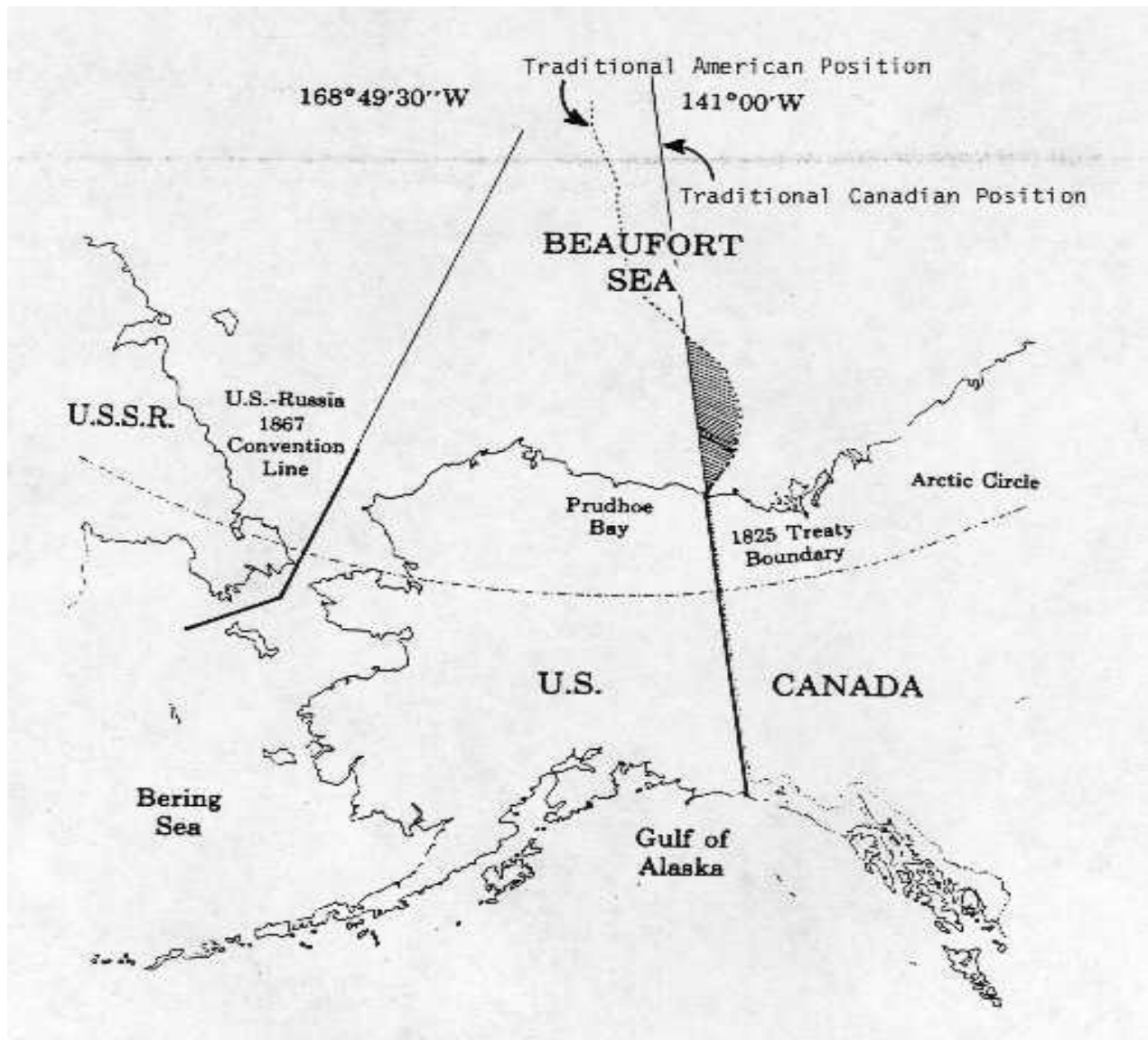
## Map of the Area



Source: <http://www.arcticcalling.net/home.html>

## Annex 2

### Disputed Area in the Beaufort Sea



Source: Modified from Rothwell, *Maritime Boundaries and Resource Development: Options for the Beaufort Sea*, Can. Inst. of Resources Law, 1988.

## Annex 3

### MILITARY POSTS ALONG THE NORTHWEST PASSAGE



