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Framework Agreements for Transboundary Hydrocarbon Resources: Norway\Russia Agreement in the Barents Sea

Nigel Bankes

ndbankes@ucalgary.ca

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Outline

- Traditional approach to transboundary reservoirs in delimitation agreements
- Recent framework agreements
 - Typical scope and key concepts
- Key concepts as applied to the Barents Agreement
 - Agreement as to the existence of a TB reservoir
 - Unitization & reserves apportionment
 - Dispute settlement and institutions of the agreement
- Comparative observations and conclusions

Traditional approaches

- Step one

- Unity of deposit clause in delimitation agreement (UK\Norway, 1965)
 - [1] If any single geological petroleum structure or petroleum field ...extends across the dividing line and the [2] part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, [3] the Contracting Parties shall, in consultation with the licensees, if any, [4] seek to reach agreement [4a] as to the manner in which the structure or field shall be most effectively exploited and [4b] the manner in which the proceeds deriving therefrom shall be apportioned

Traditional approach

- Still commonly used (eg NZ\Australia, 2004)
- But many agreements completely silent
- Some unity of deposit clauses in delimitation agreements are more complex
 - Germany\Netherlands (post *N Sea CS Cases*)
- Step two
 - Supplementary, field-specific North Sea agreements
 - Frigg (1976), Statfjord (1979), Murchison (1979), and Markham (NL) (1992)

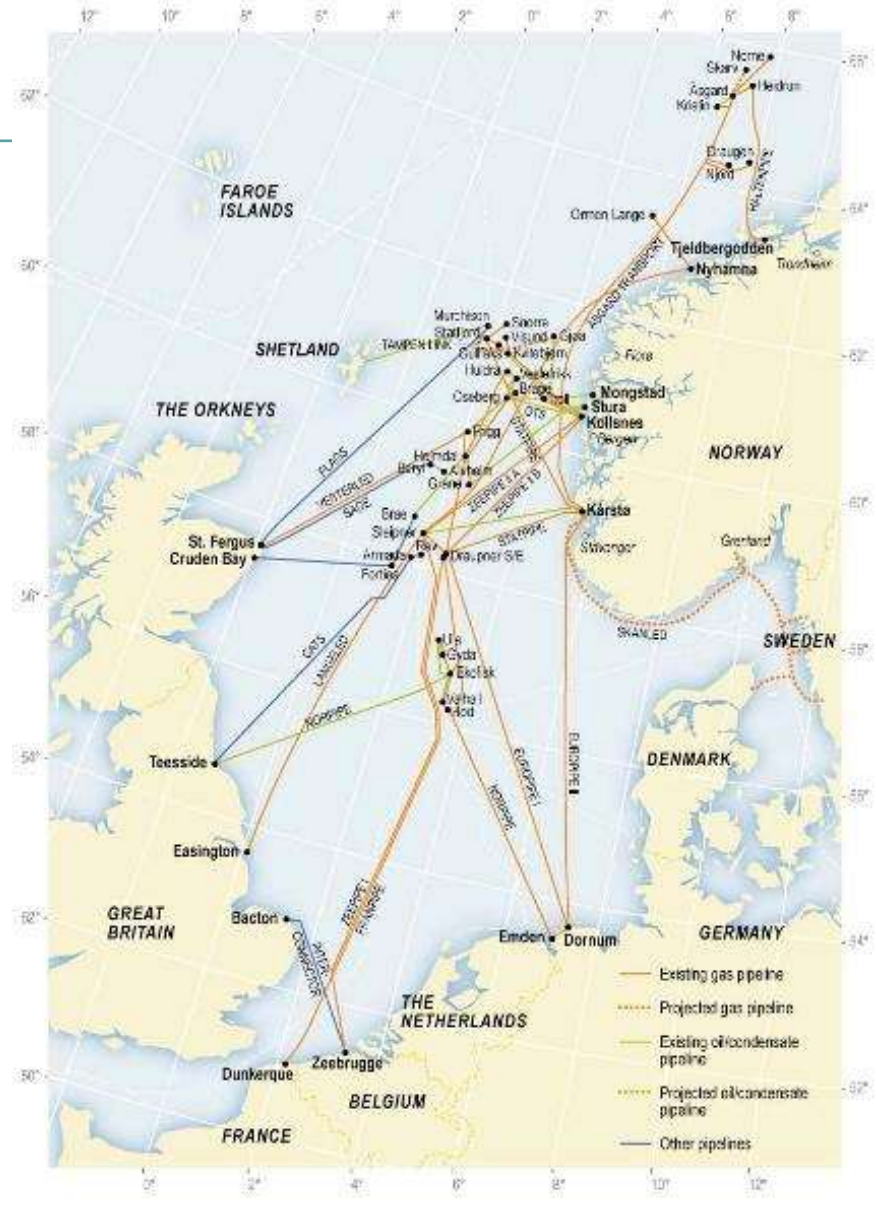
Recent framework agreements

- Framework Agreement between the UK and Norway concerning Cross-Boundary Petroleum Co-operation (2005)
- Agreement between Canada and France Relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields (2005)
- Framework Treaty relating to the unitization of hydrocarbon reservoirs that extend across the delimitation line: Trinidad & Tobago\ Venezuela (2007)
- Treaty between Norway & Russia concerning Maritime Delimitation and Cooperation in the Barents Sea and Arctic Ocean (2010)
 - Annex II deals with Transboundary Hydrocarbon Deposits
- Agreement between the US and Mexico Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico (2012)
- Premise in each case is an agreed boundary; these are not JDZs (Art 74(3) and 83(3), LOSC).
- A framework agreement is an agreement that establishes a detailed procedure for confirming the existence of, and the procedure for developing and operating, a transboundary petroleum resource.

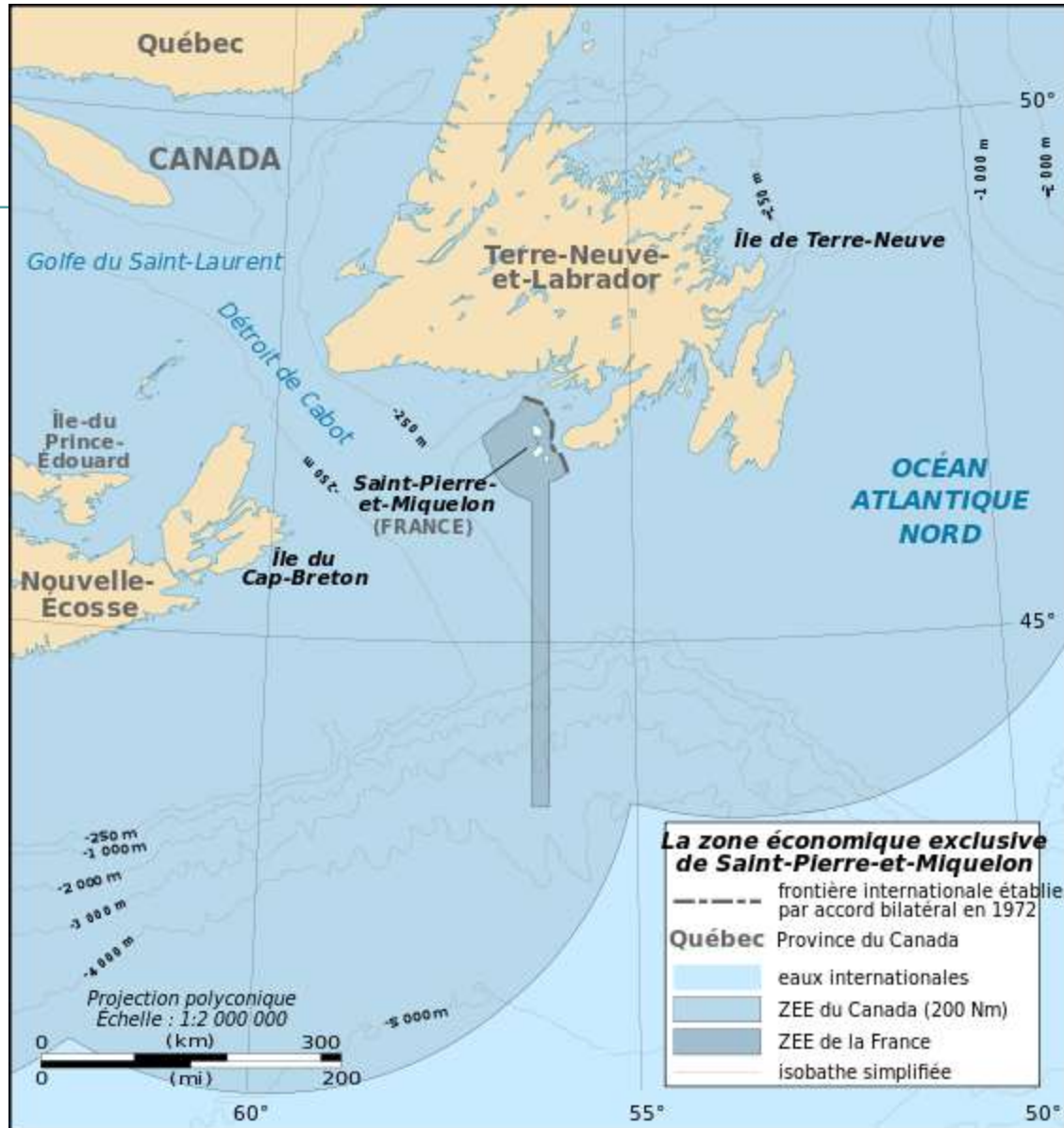
- 35pp (UK\Norway); 3pp (Norway\Russia)

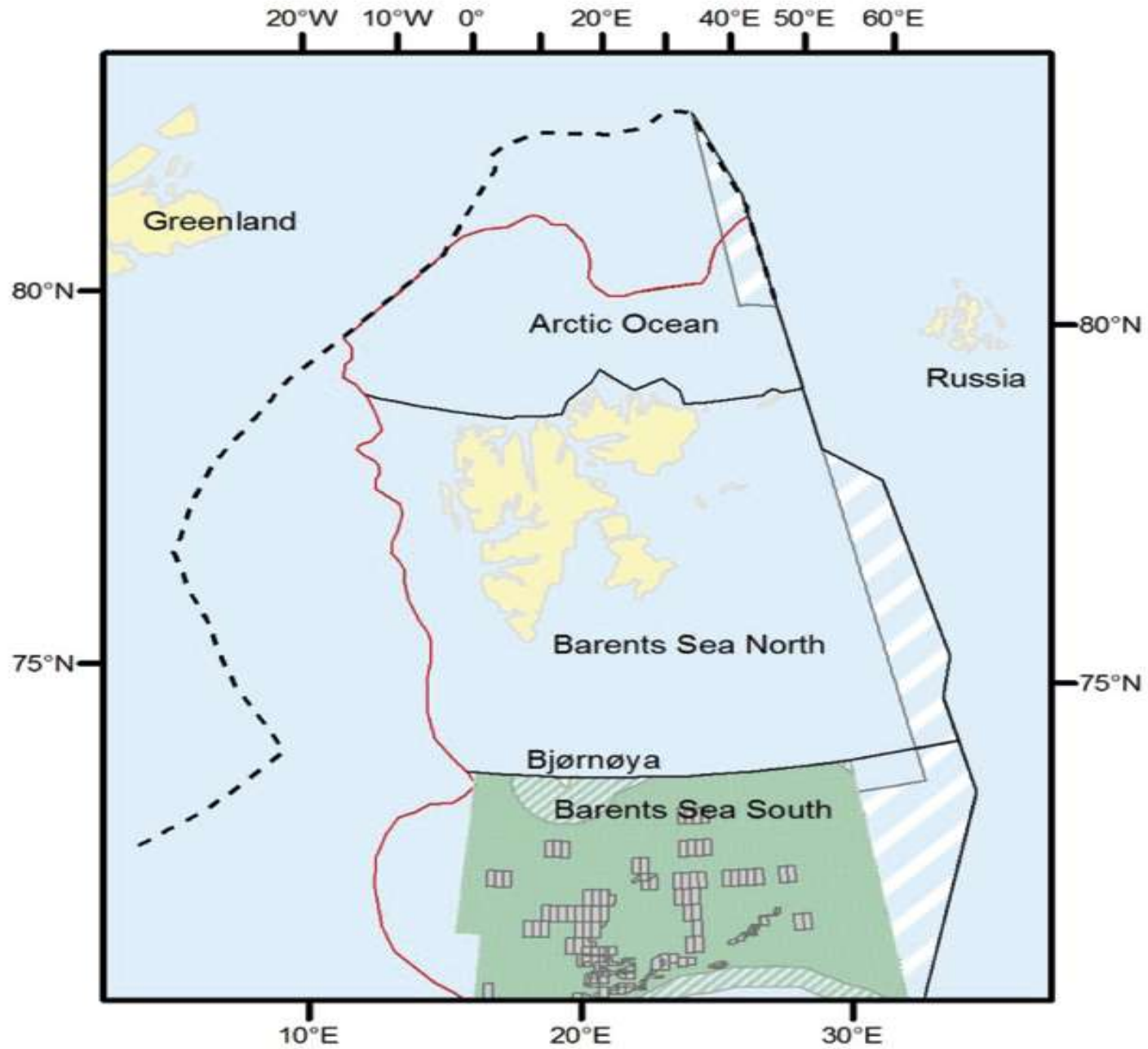
Not all similarly situated

- UK\Norway
 - Mature basin; transboundary infrastructure
 - A number of existing agreements
 - How to optimize production and infrastructure in the median line corridor
 - Goes beyond just transboundary deposits
- Other agreements
 - Little or no exploration
 - The goal is to provide certainty & a clear framework
 - Confined to transboundary deposits



The baguette or key delimitation (1992)





- Maritime delimitation Norwegian shelf
- Area with sedimentary rocks
- Awarded acreage (Sept 2011)
- Previous area of overlapping claims west of the delimitation line

Topics typically addressed

- (1) Scope
- (2) Purpose and objectives
- (3) Identification of transboundary accumulations **
- (4) Authorization of production **
- (5) The role of unitization **
- (6) Determination of reserves & apportionment **
- (7) Technical issues (measurement etc.)
- (8) Fiscal issues (royalties and taxation)
- (9) Infrastructure issues
- (10) Environmental issues
- (11) Institutions and dispute resolution **
- (12) Decommissioning
- (13) Duration and termination.

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- Key concepts as applied to the Barents Agreement
 - Agreement on the existence of a TB reservoir
 - Unitization & Reserves apportionment
 - Dispute settlement and institutions of the agreement
 - Text of treaty: Norwegian and Russian with English translation

(1) Agreement on the existence of a TB reservoir

- Treaty, Article 5(2)

- Discovery on A's shelf
- B considers that discovery may extend to its shelf
 - B submits data
- Parties to engage in discussions
 - Both A & B to use best efforts to ensure that all information shared
- If deposit extends and if it can be exploited from either side, or if exploitation by A would affect exploitation by B then, the Parties must reach agreement on exploitation and apportionment
- Disputes submitted to ad hoc arbitration

(2) Unitization and reserves apportionment

- Treaty Article 5; Annex II, Article I
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- The Annex provides minimum content for a unitization agreement between the Parties
 - Definition of the deposit, total amount of reserves and apportionment
 - Duty of each Party to require its licensees to enter into a JOA & appoint an operator for approval by both Parties
 - Duty not to withhold approval for wells required to facilitate delineation and apportionment of reservoir
 - No changes to licences and licensee without prior consultation
 - No production absent unitization (8)
 - Failing agreement on the terms of Unitization?
 - Ad hoc arbitration (annex II, Article 3)
 - Failing agreement on apportionment?
 - Expert determination (annex II, Article 4)

(3) Dispute settlement and institutions

- Ad-hoc Arbitration
- Expert Determination
- Joint Commission

Ad hoc Arbitration

- Annex II, Article 3
 - A failure to reach agreement on the terms of unitization
 - Referred by either Party to an ad hoc arbitral tribunal
 - Clear, enforceable procedure for appointing
 - Decisions of the tribunal are binding on the Parties and a unitization agreement is to be concluded in accordance with the decision(s)

Expert Determination

- Annex II, Article 3
 - If the parties fail to reach agreement on apportionment
 - “They” shall appoint an expert
 - The decision of the expert shall be binding
 - Procedure for appointment and whether requires a joint trigger not clear

Joint Commission

- Annex Article 1 (13)
 - Each unitization agreement should establish a Joint Commission for consultation between the Parties
 - Objective is to facilitate continuous consultation and exchange of information

Comparative Observations & Conclusions

- A detailed set of rules for dealing with the possible existence of transboundary hydrocarbon deposits
- More state-centric than other framework agreements
- Demonstrates a sophisticated approach to institutions and dispute resolution but:
 - No overarching standing institutional body
 - Ad hoc arbitration
 - The Joint Commission is deposit-specific
- The independent expert procedure seems to require joint referral from both Parties
- Arbitration provisions
 - Better developed than the expert procedure
 - Broad in scope with the exception of apportionment decisions

Observations (continued)

- The practice paradox in delimitation agreements (no trend)
 - Many modern delimitation agreements silent
 - Many modern agreements use a simple unity of deposit clause
 - At the same time we see a series of complex framework agreements
- The ILC paradox
 - There is some opportunity to develop “best practice” provisions for transboundary hydrocarbon resources for delimitation agreements
 - UN ILC and shared resources
 - Watercourses Convention
 - Shared aquifers
 - Declined to proceed with consideration of transboundary petroleum resources
 - Too political