

Aug 16, 2024 5

The views expressed in this article are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.

Department of Defense  
OFFICE OF PREPUBLICATION AND SECURITY REVIEW

The appearance of external hyperlinks does not constitute endorsement by the United States Department of Defense (DoD) of the linked websites, or the information, products or services contained therein. The DoD does not exercise any editorial, security, or other control over the information you may find at these locations.

**The US Extended Continental Shelf Claim:  
The Case for a Counter Lawfare Strategy in the Arctic**

Dr. Kathryn Bryk Friedman<sup>1</sup> and Hannah Smith<sup>2</sup>

<sup>1</sup>North American Arctic Policy Advisor  
Ted Stevens Center for Arctic Security Studies

<sup>2</sup> Strategic Communications Specialist  
Ted Stevens Center for Arctic Security Studies

The authors would like to thank Dr. Kelsey Frazier, Associate Director for Research and Analysis at the Ted Stevens Center, for organizing a panel entitled, "Navigating the Limits: Debating the US Extended Continental Shelf Claim and the Impact to Alaska," which was held at Arctic Encounter 2024 on April 12, 2024.

The panel discussion set the stage for this Special Report.

**Distribution Code(s):** A-Approved for Public Release  
**Distribution Statement:** Public Release and Foreign Release  
**Citation Classification:** Unclassified  
**Report Classification:** Unclassified  
**Collection:** P40

### **Abstract**

On December 19, 2023, the United States Department of State announced the US claim defining the outer limits of the continental shelf in areas beyond 200 nautical miles from its coast. This extended continental shelf claim mostly concerns seabed and subsoil in the Arctic. In terms of next steps, the Department of State announced that the US will either file its claim with the appropriate UN Commission “when the United States joins the Law of the Sea Convention” or as a “Non-Party to the Convention” under customary international law. Both the announcement and proposed next steps have generated controversy because the US never ratified the Law of the Sea Convention. Despite the fact that myriad experts weighed in on the legality of the US claim in the December 2023 announcement, the Russian Federation and People’s Republic of China have engaged in lawfare to denounce the US claim, arguing that it is illegitimate under international law. Based on these circumstances, this Special Report argues that the time is now for the US to adopt a counter lawfare strategy in the Arctic that centers on strategic communications to counter the narratives of our competitors and adversaries. Such a step is not only critical to preserving our interests in the region. It also is critical to strengthening the international rules-based order that governs the Arctic currently and confidently in the years to come.

*Keywords:* extended continental shelf, UNCLOS, lawfare, counter lawfare, Arctic security

On December 19, 2023, the United States Department of State announced the US claim defining the outer limits of the continental shelf in areas beyond 200 nautical miles (“nm”) from its coast. This extended continental shelf (“ECS”) claim mostly concerns seabed and subsoil in the Arctic. This claim supports the 2022 National Defense Strategy, which is replete with references to supporting and upholding the rules-based order and fulfills one of the core strategic objectives set forth in the 2022 National Strategy for the Arctic Region by defining the ECS boundaries in the Arctic. By strategically announcing this claim, the US protected its sovereign rights and advanced significant interests in the region.

In terms of next steps, the Department of State announced that the US will either file its claim with the Commission on the Limits of the Continental Shelf (“CLCS”) “when the United States joins the Law of the Sea Convention” or as a “Non-Party to the Convention” under customary international law. Both the announcement and proposed next steps have generated controversy because the US never ratified the Law of the Sea Convention, more formally known as the United Nations Convention on the Law of the Sea (“UNCLOS”). The Russian Federation (“Russia”) and the People’s Republic of China (“PRC”) have engaged in lawfare to denounce the US claim, arguing that it is illegitimate under international law.

Experts have weighed in on the legality of the US claim in the December 2023 announcement (Baker 2023; Bloom 2024; Kraska 2023; Overfield 2024; Tingstad 2023). Yet little attention has been given to the legal and strategic dimensions of next steps. This Special Report 1) reviews the most relevant provisions of Article 76 of UNCLOS, which governs extended continental shelf claims; 2) describes the US claim and its overlaps with claims of other States; 3) discusses the legality of the claim under customary international law, conventions, and caselaw; 4) discusses the concept of lawfare and reviews the lawfare response of Russia and the

PRC to the US ECS claim; and 5) considers how the US can create a counter lawfare strategy in the Arctic using the ECS as the case in point.

### **UNCLOS Article 76**

UNCLOS—the “constitution for the world’s oceans” (Kraska, 2010)—is the international legal convention that governs the rights and duties of States in the use and management of oceans. Article 76(1) provides a coastal State with sovereign rights to manage, conserve, explore, and leverage natural resources of the seabed and waters within 200 nm of its coastline. Specifically, Article 76(1) defines the continental shelf of a coastal State as comprising the “seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.”

Pursuant to UNCLOS Article 76 (4)-(7), a coastal State may research, document, and claim areas of the seabed and subsoil beyond this 200 nm limit. This area is referred to as the ECS and is part of a coastal State’s maritime entitlements under the principle of natural prolongation. Practically, an ECS provides coastal States with sovereign rights and access to further resources such as critical minerals, oil, natural gas, and sea life (Bloom, 2023; Kraska, 2023). It also allows a State to prioritize conservation in the area (Overfield, 2024).

According to UNCLOS Article 76(8), a coastal State shall submit its ECS claim to the Commission on the Limits of the Continental Shelf (“CLCS”), an independent entity created under UNCLOS that serves as a “peer review” to validate the science of the ECS claim. The CLCS considers a coastal State’s submission of geological and geophysical data collected and analyzed to delineate the outer limits of the ECS. The CLCS does not approve or grant an ECS to a coastal State, rather, it makes recommendations on the outer limits of an ECS based on these

data. The CLCS has no mandate to establish boundaries or resolve boundary conflicts between two coastal States. Disputes over maritime boundaries must be resolved between the States involved in the disagreement.

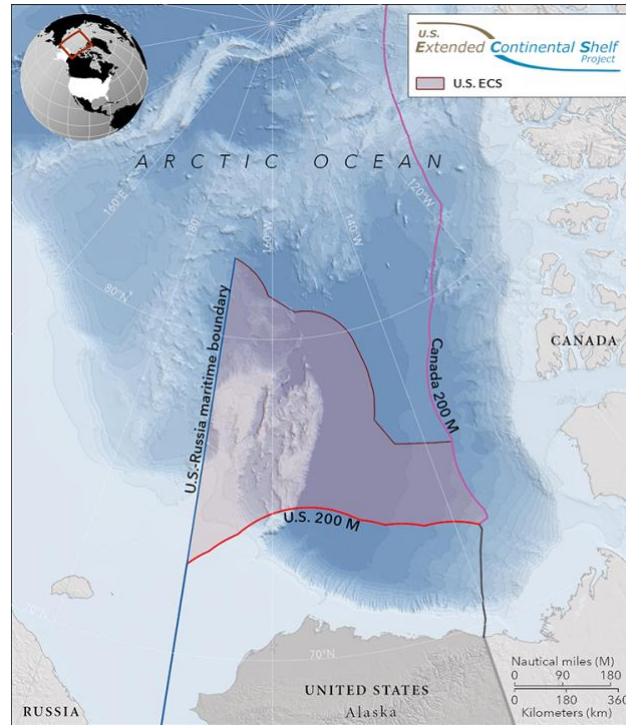
### **The US ECS Claim**

Scientific research supporting an ECS claim is a complex and time-intensive endeavor. The US ECS claim process began in 2003, led by the Department of State in collaboration with 13 other federal agencies (Bloom, 2024). For more than 20 years, scientists gathered and analyzed geological and geophysical data to determine the full extent of the continental shelf “consistent with international law” (Department of State, 2024). Specifically with regard to the Arctic, the ECS claim extends north to a distance of 350 nm in the east and more than 680 nm in the west from the territorial sea baselines of the United States (Figure 1) (Department of State, 2024).

There are some areas of the US ECS claim that overlap with those of Canada and Russia. With respect to overlap with Canada, the US claimed approximately 1 million square kilometers in the Beaufort Sea overlapping Canadian claims in the same area (Eckel & Gutterman, 2024). The US also claimed 176,300 square kilometers in the Bering Sea. Although the US claim does not cross the US-Russia maritime boundary established by a 1990 Agreement between the two countries (which has not entered into force but is nonetheless applied by both countries), in 2021 Russia extended its claims across the Arctic Ocean to Canada’s exclusive economic zone boundary, crossing the meridian, thus creating a small wedge of overlap with the US and Canadian claims in the area (Overfield, 2024).

**Figure 1**

## US Extended Continental Shelf Region



Note: Source: US Department of State Extended Continental Shelf Project <https://www.state.gov/the-us-ecs/>. In the public domain.

Canada is the only Arctic ally that publicly responded to the US ECS claim. Canada, as expected, struck a conciliatory tone, stating, “The government of Canada will continue its efforts to obtain international recognition of the outer limits of Canada’s ECS. Canada and the US are in frequent communication with regards to the continental shelf in the Arctic and have expressed their commitment along with other Arctic States to the orderly settlement of overlapping claims” (Eckel & Gutterman, 2024).

The US ECS claim has significant implications for Arctic geopolitics (Bloom, 2024). The four other littoral Arctic States—Canada, Norway, Denmark (Greenland), and Russia—have made at least one submission to the CLCS. With the US submitting its ECS claim, these

declarations by all five of the Arctic littoral States make clear that the vast majority of Arctic seabed is within the national jurisdiction of one of these States. Less than one percent of the Arctic Ocean is likely to be international seabed under the jurisdiction of the International Seabed Authority.

### **The US Announcement: Legal Foundations**

There are four legal bases that support the US announcement. Although the US never ratified UNCLOS, it historically has abided by the terms of this convention on the basis of customary international law. Under customary international law, continental shelf rights are inherent for all coastal States, whether or not they are Party to UNCLOS and whether or not they make a proclamation to those rights (Baker, 2023; Overfield, 2024). Inherent coastal State rights also are affirmed by UNCLOS itself; the 1958 Convention on the Continental Shelf, which the US ratified; and international jurisprudence. *The North Sea Continental Shelf Cases* stand for the fundamental principle that a legal continental shelf exists *ipso facto* (by the fact itself) and *ab initio* (from the beginning)—even before a coastal State charts the full extent of its entitlements, by virtue of its sovereignty over the land. Thus, the US is on firm legal ground with regard to announcing its ECS claim.

### **Lawfare in the Arctic**

So then, what is all the fuss about? The consternation stems from the wording of the State Department's announcement with regard to next steps: The US will either file its claim with the CLCS "when the United States joins the Law of the Sea Convention" or as a "Non-Party to the Convention" under customary international law. The first avenue—submitting the ECS claim as a Party to UNCLOS—is clear. As a Party, utilizing the CLCS process, the US claim would have legitimacy under international law and the current rules-based international order.

Whether the US can submit its claim to the CLCS under customary international law is a bit problematic for legal and strategic reasons. First, from a legal perspective, it is not certain whether a non-Party can submit an ECS claim to the CLCS (Kraska, 2023). Second, submitting the claim to the CLCS under the color of customary international law may undermine arguments for ratifying UNCLOS and, in fact, strengthen the hand of those who argue that the US should not ratify UNCLOS. That is, what does UNCLOS provide that customary international law does not? Third, by not ratifying UNCLOS, in the words of US Senator Lisa Murkowski R-Alaska, the US may “not be at the table” to defend the ECS claim down the road (Rosen, 2024).

Fourth, and perhaps most importantly, submitting the claim as a Non-Party may play into the hands of Russia and the PRC, which could use such a circumstance to further erode or delegitimize UNCLOS and the rules-based order by continuing to engage in lawfare in the Arctic. Lawfare is “the strategy of using or misusing law as a substitute for traditional military means to achieve a warfighting objective” (Dunlap, 2010). In the context of strategic competition, asymmetric/ non-conventional warfare techniques and the legal domain are often exploited together with other non-kinetic instruments—specifically, operations within the information environment—in order to achieve an effect (Dunlap, 2020). Lawfare provides an opportunity for our competitors and adversaries to be disruptive by using legal narratives to weaken US legitimacy. Through synchronized hybrid operations in the information environment, hostile states can further their strategic aims while remaining below the threshold of conflict.

Russian lawfare is part of a broader hybrid strategy employing propaganda to target, manipulate, and exploit public opinion on the international legal system. Russian lawfare is characterized by, “brazenly craft[ing] and deploy[ing] malign narratives by manipulating facts, distorting the meaning of international obligations, passing nonsensical domestic legislation, and



rendering ridiculous legal judgments” (Ohanesian, 2024). In the Arctic, Russia employed lawfare in drawing straight baselines to claim the Northern Sea Route; implementing domestic pollution and shipping regulations to regulate the Northern Sea Route pursuant to UNCLOS Article 234; and claiming the Lomonosov and Mendeleev Ridges (Goldenzeil, 2021). Though these arguments have been condemned by the international legal community, Russia’s pervasive disinformation, if unchecked, could create the illusion of legitimacy.

The Chinese lawfare strategy involves “arguing that one’s own side is obeying the law, criticizing the other side for violating the law, and making arguments for one’s own side in cases where there are also violations of the law” (Cheng 2012). The PRC challenges the rules-based order by intentionally establishing a revisionist interpretation of international law counter to prevailing international norms (Schiffman, 2022). The PRC then manipulates the narrative whereby any state that challenges their alternative interpretation is an aggressor. This is the blueprint for the PRC’s actions in the South China Sea, and similarly, the recent statements surrounding the ECS claim.

With respect to the ECS claim, Russia and the PRC each engaged in lawfare by releasing statements challenging the legality of the announced ECS claim, and hence, the credibility of the US. Russia announced its non-recognition of the ECS claim, stating that the US is unilaterally trying to reduce the area of the seabed under the jurisdiction of the International Seabed Authority; is selectively applying international law; and is only concerned with its rights, disregarding its obligations (Russian Federation, 2024). The PRC stated that the claim is “illegal and invalid,” and exposes the “hegemonic nature of the US in its selective application of international law” (Zhao, 2024).

### **A Counter Lawfare Strategy**

The best counter lawfare strategy would be for the US to ratify UNCLOS and present its claim to the CLCS as a State Party. This, unfortunately, is not likely for quite some time (Bloom, 2024). In the near term, Russia continues to signal its dissatisfaction with the rules-based international maritime order, and there is reason to think that this messaging will continue (Tuckett & Rolands, 2024). It is expected that Russia will engage in a disinformation campaign and continue to use lawfare to undermine US interests—perhaps denouncing participation in UNCLOS itself (Sukhankin, 2024). The same is true for the PRC.

These efforts on the part of our competitors present the US with a strategic challenge. Russia and the PRC are creating the perception that the US is circumventing the rules and norms that it established and expects other states to follow (Tingstad, 2023). Even if at this stage of the process this perception is inaccurate: *perception matters*. It erodes the credibility of the international system that the US has worked hard to promote. And we can expect this campaign to continue, particularly if the US files its ECS claim with the CLCS as a Non-Party under customary international law. Given the pervasiveness of lawfare among near-peer competitors, the joint force must develop a counter lawfare strategy that recognizes information as a warfighting function. Further, since communication is essential to shaping perceptions, the US should consider employing a whole-of-government strategic communications framework to counter adversarial disinformation and lawfare in the Arctic.

By employing elements of strategic communication and information operations in a counter lawfare strategy, the US will be better equipped to prevent a competitor or adversary from using flawed legal narratives or false legal claims to obtain military objectives (Gertz, 2024). Though these frameworks exist at the combatant command level and within the

interagency, they are disparate; U.S. strategic communications and public diplomacy are fragmented among 14 agencies and 48 commissions (Gates, 2023). A holistic approach to countering Russian and Chinese narratives would enhance our ability to seamlessly counter lawfare across the joint force, and the information environment writ large. The US has only sporadically engaged in counter lawfare, with “no lawfare strategy or doctrine, and no office or interagency mechanism that systematically develops or coordinates U.S. offensive lawfare or U.S. defenses against lawfare” (Kittrie, 2016, p. 3). By recognizing the existence of lawfare across joint doctrine, senior leaders would be better equipped to develop essential capabilities to effectively operate within the information environment.

At the highest level, the White House, through the National Security Council (NSC), should develop a global engagement plan for strategic communications and counter lawfare to explicitly advance US national security interests vis-à-vis the ECS claim. This effort can be aided by the subject matter expertise of the Arctic Executive Steering Committee. By synchronizing public diplomacy, strategic communications, and offensive information operations across the interagency, the US’ collective messaging capability and will be enhanced to counter, unmask, and discredit PRC and Russian narratives.

Additionally, the US should strengthen efforts to coordinate our joint strategic communications capabilities with our Allies and partners to ensure mutually supportive efforts. Such a strategy would focus on achieving objectives regarding Russia and the PRC, as well as broader objectives in the region to shape the operational environment. This would contribute to deterrence by reinforcing international norms, underpinning the legitimacy of the US claim, and exposing the illegitimate narratives of Russia and the PRC.

At the Department level, recognizing information as a warfighting function and tool of counter lawfare within the spectrum of competition is essential. Senior leaders need to be taught how the law interacts with armed conflict. Dunlap (2017) argues for legal preparation of the battlespace, “This means systematically analyzing the legal dimensions of a particular mission and its context and determining their potential effect on operations.” “Tactical decision aids” could be then produced, i.e., rigorous tools to establish a coordinated approach to counter lawfare in the Arctic, like those used in the Indo-Pacific region (Gertz, 2024). These aids could be used in close connection with strategic communications as to the legality of the US ECS claim to shape and control the narrative.

The ECS claim serves as an excellent example of how such an organizational construct and associated authorities would support US national security objectives. The Arctic region sits at the intersection of multiple combatant commands as well as a distinct geophysical environment, making whole-of-government coordination essential to the success of the US strategy. By elevating the role of strategic communications as an essential tool of counter lawfare within strategic competition, the US will be better equipped to thwart false narratives propagated by Russia and the PRC. Recognizing the importance of strategic communications as an essential capability within the spectrum of competition to counter lawfare will pay dividends in the Arctic region.

### **Conclusion**

By announcing its ESC claim in the Arctic, the US demonstrated that it will no longer cede the Arctic playing field to Russia and the PRC. It is preserving its sovereign rights and jurisdiction in a region that is critical to ensuring American economic prosperity and national security (Baker, 2023; Bloom, 2024; Kraska, 2023). Although there is time (perhaps decades)

before the US needs to make its next move with respect to the CLCS, steps taken in the more immediate future will set it on a path to secure US national security interests, as well as the economic interests of State of Alaska. One such step includes creating a counter lawfare strategy for the Arctic that centers on strategic communications to counter the narratives of our competitors and adversaries in the region. Such a step is not only critical to preserving our interests in the region. It also is critical to strengthening the international rules-based order that governs the Arctic currently—and confidently in the years to come.

## REFERENCES

- Baker, B. (2023, December 20). The executive summary of the outer limits of the United States. ECS in the Arctic and Beyond: Transparent and Consistent with International Law. *US Reaction to ECS: Actions and Insights*. Woodrow Wilson International Center for Scholars. Polar Institute. <https://www.wilsoncenter.org/article/executive-summary-outer-limits-united-states-ecs-arctic-and-beyond-transparent-and?collection=117654>.
- Bloom, E.T. (2024, January 3). Five takeaways from the US continental shelf announcement. *US Reaction to ECS: Actions and Insights*. Woodrow Wilson International Center for Scholars. Polar Institute. [file:///Users/kathrynfriedman/Desktop/Arctic%20Encounter%20Symposium%202024/Five%20Takeaways%20from%20the%20US%20Continental%20Shelf%20Announcement%20\\_%20Wilson%20Center.html](file:///Users/kathrynfriedman/Desktop/Arctic%20Encounter%20Symposium%202024/Five%20Takeaways%20from%20the%20US%20Continental%20Shelf%20Announcement%20_%20Wilson%20Center.html).
- Cheng, Dean. (2012, 18 May). Winning without Fighting: Chinese Legal Warfare. *Backgrounder*. The Heritage Foundation. <http://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare>.
- Department of State. (2024, March 14). *US Extended Continental Shelf Project: About the US ECS Project*. <https://www.state.gov/about-the-us-ecs-project/>.
- Dunlap, Jr., C.J. (2010). Does lawfare need an apologia? *Case Western Reserve Journal of International Law*. 43,121-143. Available at: <https://scholarlycommons.law.case.edu/jil/vol43/iss1/7>.
- Dunlap, Jr. C.J. (2017, May). Lawfare 101: A Primer. *Military Review*. Army University Press. <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/May-June-2017/Dunlap-Lawfare-101/>

- Dunlap, Jr. C.J. (2020, March 13). A warfighter's perspective on "lawfare" in an era of hybrid threats and strategic competition. *Lawfare*. <https://sites.duke.edu/lawfire/2020/03/13/a-warfighters-perspective-on-lawfare-in-an-era-of-hybrid-threats-and-strategic-competition/>.
- Eckel, M., Grojec, W. & Gutterman, I. (2024). *Under sea, under stone: How the US claimed vast new Arctic territory-in an unusual way*. RadioFreeEurope, RadioLiberty. <https://www.rferl.org/a/arctic-sea-claims-interactive-map/32793427.html>.
- Gates, Robert. (2023, April 16). The U.S. needs to relearn how to tell its story to the world. *The Washington Post*. <https://www.washingtonpost.com/opinions/2023/04/15/robert-gates-us-strategic-communications-russia-china/>.
- Gertz, B. (2024, February 6). Pacific command legal office prepares military forces for future fight with China. *The Washington Times*. <https://www.washingtontimes.com/news/2024/feb/6/pacific-command-legal-office-prepares-military-for/>
- Goldenzeil, J. (2021). Law as a battlefield: The US, China, and the global escalation of lawfare. *Cornell Law Review*. 106, 1085-1172. <https://live-cornell-law-review.pantheonsite.io/wp-content/uploads/2021/09/Goldenziel-final11234.pdf>.
- Kittrie, Orde F. (2016). *Lawfare: Law as a Weapon of War*. Oxford University Press.
- Kraska, James. (2010, July 25). The law of the sea convention: A national security success - global strategic mobility through the rule of law. *George Washington International Law Review*. 39(2007), 543-572. Available at SSRN: <https://ssrn.com/abstract=1648629>.
- Kraska, J. (2023, December 23). Strategic implication of the US extended continental shelf. *US Reaction to ECS: Actions and Insights*. Woodrow Wilson International Center for

Scholars. Polar Institute. <https://www.wilsoncenter.org/article/strategic-implication-us-extended-continental-shelf?collection=117654>.

Ohanesian, Armenak (2024, June 13). Combatting Russian Lawfare with a Cognitive Shield. *Irregular Warfare Initiative*. <https://irregularwarfare.org/articles/combating-russian-lawfare-with-a-cognitive-shield/>.

Overfield, C. (2024, January 26). Wealth on the Shelf: The US Continental Shelf Clarification. *Lawfare*. <https://www.lawfaremedia.org/article/wealth-on-the-shelf-the-u.s.-extended-continental-shelf-clarification>.

Rosen, Y. (2024, April 9). Russia objection to US territorial claims off Alaska complicates maritime relationship. *Alaska Beacon*. <https://alaskapublic.org/2024/04/09/russian-objection-to-u-s-territorial-claims-off-alaska-complicates-maritime-relationship/>.

Russian Federation. (2024, March 25). *Press release on the Russian Federation's non-recognition of the outer limits of the unilaterally established US continental shelf*. [https://mid.ru/ru/foreign\\_policy/news/1940717/?lang=en](https://mid.ru/ru/foreign_policy/news/1940717/?lang=en).

Schiffman, Stephen. (2022, October 24). Great Power Use of Lawfare: Is the Joint Force Prepared? *Joint Force Quarterly*. National Defense University Press. <https://ndupress.ndu.edu/Media/News/News-Article-View/Article/3197205/great-power-use-of-lawfare-is-the-joint-force-prepared/>

Sukhankin, S. (2024, January 2). US makes its move in the Arctic: How will Russia respond? *US Reaction to ECS: Actions and Insights*. Woodrow Wilson International Center for Scholars. Polar Institute. <https://www.wilsoncenter.org/article/us-makes-its-move-arctic-how-will-moscow-respond?collection=117654>.



Tingstad, A. (2023, December 19). The US is taking an important, but imperfect step in initiating extended continental shelf claims – what are the implications for the Arctic? *US Reaction to ECS: Actions and Insights*. Woodrow Wilson International Center for Scholars. Polar Institute. <https://www.wilsoncenter.org/article/us-taking-important-imperfect-step-initiating-extended-continental-shelf-claims-what-are?collection=117654>.

Tuckett, C. & Rowlands, K. (2024, February 9). Drifting away? Russia's dissatisfaction with the law of the sea. *RUSI*. <https://www.rusi.org/explore-our-research/publications/commentary/drifting-away-russias-dissatisfaction-law-sea>.

Zhao, J. (2024, April 2). Beijing slams Washington on illegal claims of demarcation of seabed. *China Daily*. <https://www.chinadaily.com.cn/a/202404/02/WS660bf7b1a31082fc043c010a.html>.