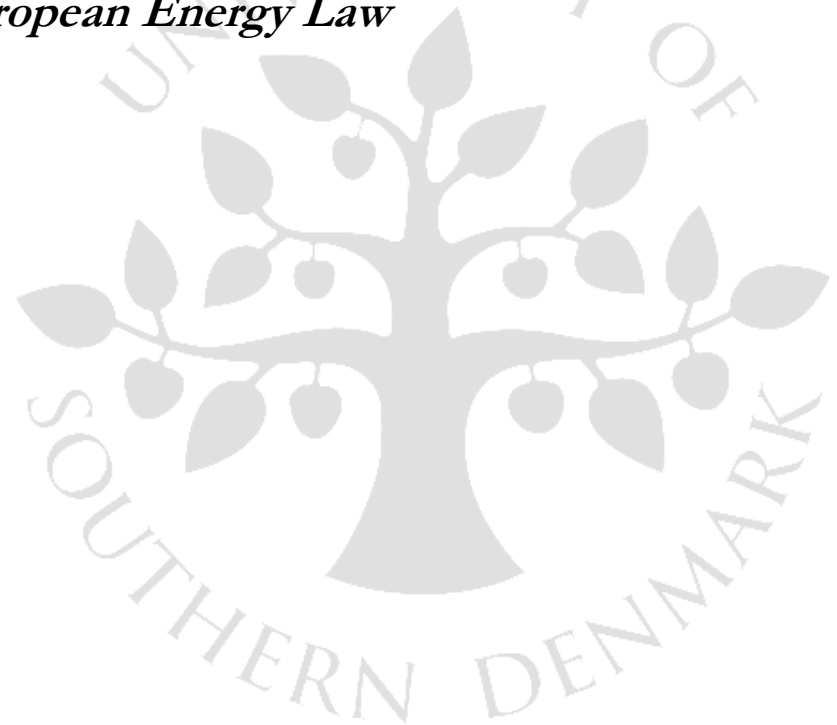




Denmark's Permitting Process & Nord Stream 2

Legal considerations

7th Vienna Forum on European Energy Law

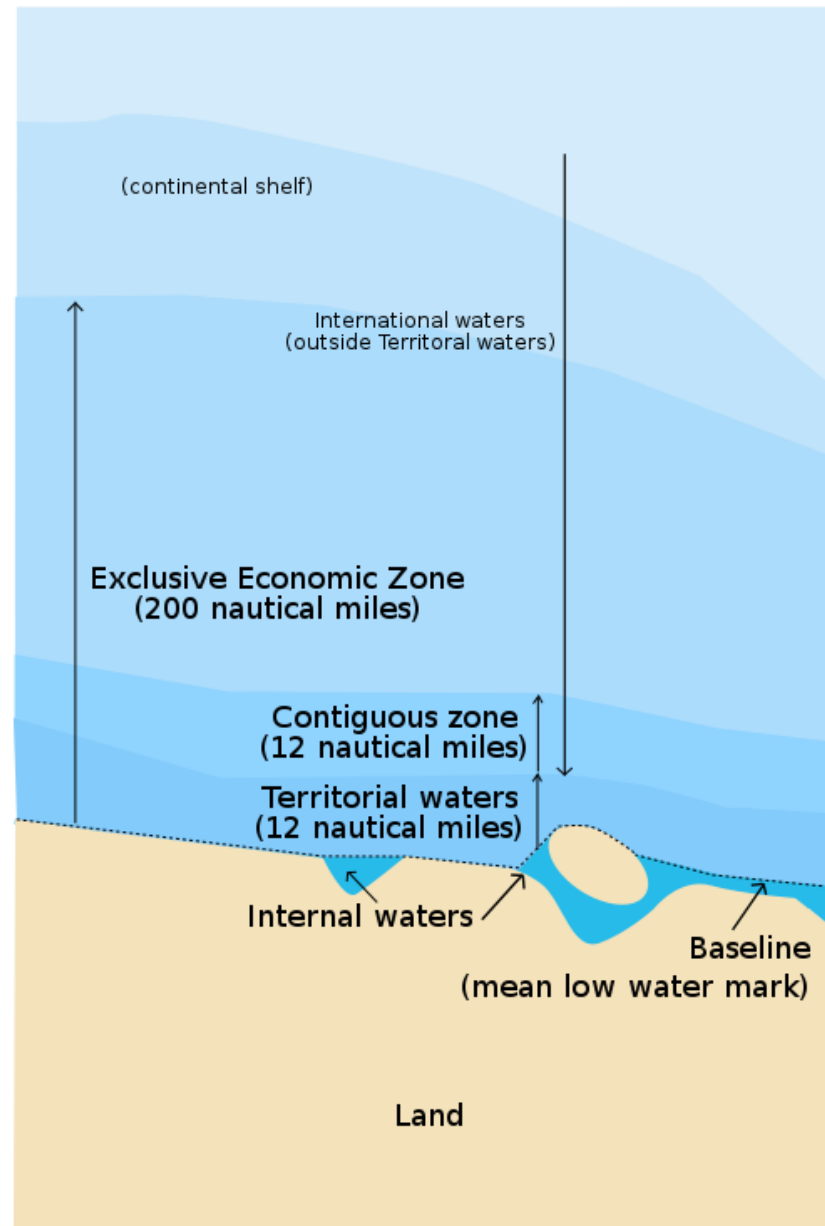


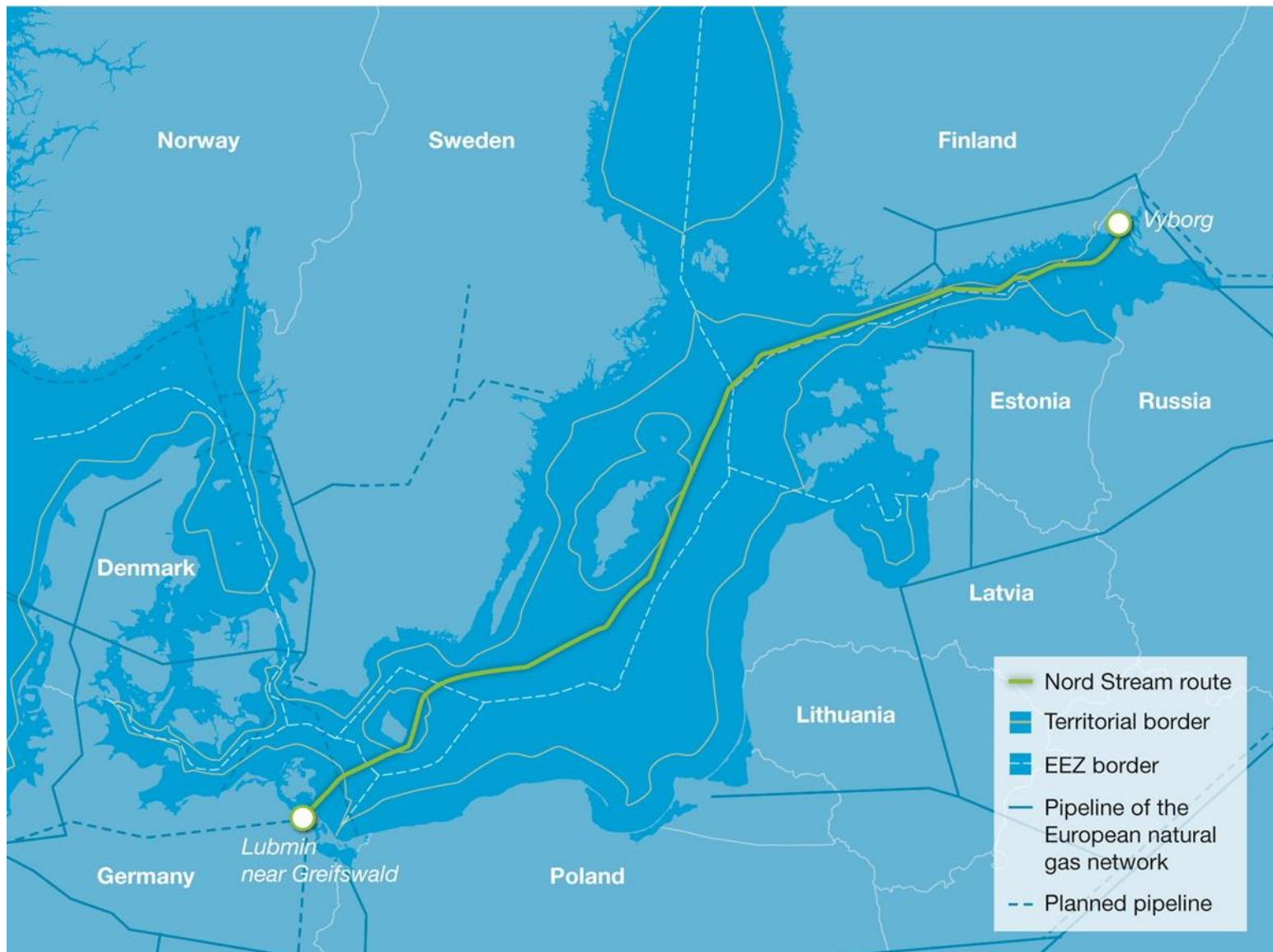
International Law

UNCLOS

Basic principles

- Full sovereignty of the coastal state within the territorial waters
- The freedom of the sea is the main principle outside the territorial waters
- As a general rule, States are entitled to lay pipelines in the exclusive economic zone (Article 58(1)) and on the continental shelf (Article 79(1)) of other States





Route – Nord Stream (1)

Bent Ole Gram Mortensen



After the NSP2 Application

- April 2017: Application for a route parallel with NS(1) (inside Danish territorial waters)
- January 2018: Amendment of the Danish Act on the Continental Shelf
- End January 2018: The Danish Energy Agency ask the ministry of foreign affairs for a recommendation
- August 2018: Application for a route north of Bornholm and outside Danish territorial waters
- March 2019: The Danish Energy Agency ask for a new route
- June 2019: The application for the first route is withdrawn

Amendment of the Danish Act on the Continental Shelf

- Entered into force: 01.01.2018
 - Amendment proposal : 04.10.2017
 - Passed as Amendment Act: 05.12.2017
- Apply only to application inside territorial waters
 - veto-like provision for the Danish foreign minister
 - No justification needed
 - No consultation of parties needed
 - Since the foreign minister makes not a decision but only a recommendation



The three transit countries

- Finland (NSP2):
 - Application: Sept. 2017
 - Permit: Apr. 2018
 - Note: EIA procedure completed prior to permit application
- Sweden (NSP2):
 - Application: Apr. 2017
 - Permit: Jun. 2018
- Denmark (NSP1):
 - Application: 03.03.2009
 - Permit: 20.10.2009
 - Approval (EBA): 31.05.2010
 - Constructed in: 2010/2011
- Denmark (NSP2):
 - Application: 03.04.2017
 - Permit: ???????????
 - Complaint (EBA): 17.04.2019

The Three Routes

1. South of Bornholm (inside TW): Withdrawn
 - No answer from the ministry of foreign affairs
2. North of Bornholm (outside TW): Pending
 - EIA and Espoo process finished
 - Permit denied until the third route have been processed
3. South of Bornholm (outside TW): Pending
 - EIA and Espoo process to be finished in 2019

The Rule of Law?

- The Danish Government have acted against normal practise for good administrative behaviour
- The Danish Governments behaviour are hardly in accordance with the intensions of UNCLOS
- NSP2 has been postponed but no legal basis to deny a permit exists
- The Danish Government may have acted in a way giving NSP2 AG reason to claim damage

Thank you for your attention

Bent Ole Gram Mortensen

Professor of Law, LL.M., Ph.D.

University of Southern Denmark

Department of Law

Campusvej 55 – DK-5230 Odense M

Phone +45 6550 2160 (direct), Fax +45 6593 0726

E-mail: bom@sam.sdu.dk

<http://www.sam.sdu.dk/staff/bom>

