

## Russia's Policies on the Territorial Disputes in the Arctic

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### Abstract

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The territorial disputes in the High North are seen by Russian strategists as a significant threat to the country's security. Some of these conflicts were successfully settled down while others are still waiting for their resolution. This study examines four cases – the U.S.-Soviet/Russian dispute on the Bering Sea, Norwegian-Russian dispute on the Barents Sea, Svalbard issue and the Russian claim on the extension of its continental shelf in the Arctic Ocean. The paper argues that currently Russia's Arctic strategy represents a mixture of the expansionist/revisionist and soft power policies. On the one hand, Moscow is quite assertive as regards its claims on the Arctic continental shelf as well as demonstration of its sovereignty over the Russian part of the Arctic and military presence in the region. On the other hand, the Kremlin underlines that all territorial disputes should be resolved peacefully – through negotiations and on the basis of international law and institutions

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**Keywords:** Russia, the Arctic, territorial disputes, conflict resolution

### 1. Introduction

Russia has important economic, societal, environmental and military-strategic interests in the High North. These interests include the access, exploration and development of the Arctic natural resources (especially the hydrocarbon ones).

Russia tries to modernize and further develop the industrial base of the Arctic Zone of the Russian Federation (AZRF) which makes a significant and valuable contribution to the country's economy.

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Moscow is also interested in opening up of the Northern Sea Route (NSR) for international commercial traffic and developing circumpolar air routes. Moscow is deeply concerned about the debilitating ecological system in the AZRF and trying to stop and reverse the negative trends in this sphere. Russia still has considerable military-strategic interests in the region. These have not lost their relevance with the end of the Cold War. This continuity can clearly be seen in Russia's security perceptions of the Arctic as a region of both challenges and opportunities.

The territorial disputes in the High North are seen by Russian strategists as a significant threat to the country's security. It should be noted that the Arctic region has inherited a number of territorial disputes from the Cold War era and Russia was a party to them. Some of these conflicts were successfully settled down while others are still waiting for their resolution. The analysis below addresses four cases – the U.S.-Soviet/Russian dispute on the Bering Sea, Norwegian-Russian dispute on the Barents Sea, Svalbard issue and the Russian claim on the extension of its continental shelf in the Arctic Ocean.

## **2. The U.S.-Russian dispute on the Bering Sea**

Named for the Danish-born Russian explorer Vitus Bering, the Bering Sea is an 885,000 nautical mile<sup>2</sup> (2,292,150 km<sup>2</sup>) extension of the Pacific Ocean that lies between Russia and Alaska. It is bordered to the South by the Aleutian Islands, and the northern Bering Strait separates it from the Arctic Ocean. It is the third largest sea in the world. The combination of its natural characteristics, such as shallow continental shelves and seasonal ice, has created one of the richest fisheries in the world. The sea is connected to the Arctic Ocean by the Bering Strait, which separates Asia from North America and is believed to have been a land bridge during the Ice Age that enabled migration from Asia to North America.

### **2.1. The Sources of the Dispute**

There were three major causes of the conflict:

- The Bering Sea constitutes a strategically important area for both the U.S. and Russian fishing industries. It supplies a third of Russia's and a half of the United States' total annual catch (Conley & Kraut 2010). On the Russian side, commercial fisheries catch approximately \$600 million worth of seafood annually, while the U.S. Bering Sea catches are \$1 billion worth approximately each year

(The International Bering Sea Forum 2006). Both for the Alaskan and Russian Far East's regional economies, fishery is important in terms of revenues, employment and sustainable development. For example, in case of Russia the fishing industry directly employs over 100,000 people and around one million indirectly (Laruelle 2014: Ch. 7). The Bering Sea catch is important not only for the U.S. and Russian domestic seafood consumption but also for the two fishing industries' expansion on the East Asian markets.

It should be noted that along with the legal market a quickly developing black market of Alaska pollack and Bering crab exists in the region, one which involves not only the Russian Far East but also China, Japan and South Korea. It is estimated that the fish caught in Russian waters exceeds the official quota by at least 150% (The International Bering Sea Forum 2006). This is because poaching is rampant, and the Russian organized crime is heavily involved in the fish trade. The Russian "fish, crab and caviar mafias" not only aim at expanding its commercial activities and sidelining their foreign rivals but also at establishing control over the regional governments and federal agencies in the Russian Far East.

Overfishing creates numerous ecological problems in the region. According to some accounts, as a result of intensive trawling, species such as crab and perch are in serious decline in the entire Bering Sea, while the stocks of pollack fluctuate in an unpredictable manner from year to year. The once-plentiful pollack have had especially dramatic declines on the Western (Russian) side of the Bering Sea because of illegal fishing. In the Eastern (U.S.) Bering Sea, harvests of snow crab have declined by 85% since 1999 (The International Bering Sea Forum 2006).

In turn, the ecological problems serve as another source of the U.S.-Russia tensions because they increase competition between American and Russian fishermen and lead to mutual accusations of inability to effectively regulate commercial fisheries in the region.

- The 'hydrocarbon factor' also plays some role in keeping the dispute alive. First, oil and gas deposits have been discovered in both the offshore and onshore territories near the Bering Sea. But the main 'apple of discord' is not the Bering Sea itself but the adjacent Chukchi and East Siberian Seas (parts of the Arctic Ocean) where the U.S. and Russian maritime and continental shelves' boundaries are not settled.

According to the recent U.S. Minerals Management Service's estimates, the potential oil and gas reserves in the Bering and Chukchi Seas comprise some 24 billion barrels of oil and 126 trillion cubic feet of natural gas (Kaczynski 2007: 2).

- Moreover, the Bering Sea is an important transport junction between the Russian Far East and East Asia, on the one hand, and Alaska, on the other. Additionally, with growing importance of the NSR (controlled by Russia) and North-West Passage (controlled by Canada) the Bering Sea (and especially the Bering Strait) constitutes an important transit area for the future traffic from East Asia to Europe and North America (and back).

## **2.2. The Historical Dynamics of the Conflict**

Historically, the roots of the dispute can be detected as early as in the Russo-American accord on the cession of Alaska. The Convention of 1867 determined two geographical lines – one in the Bering Sea and the second one in the Arctic Ocean – to delimit American and Russian territories. However, in case of the Bering Sea the 1867 Agreement actually only applied to maritime territories and was not intended for the delimitation of exclusive economic zones (EEZs) or continental shelf, the concepts that did not exist at that time.

Being concerned about the possible discovery of unknown lands by Western countries in the Arctic Ocean and repeated U.S. claims on some islands in this ocean (such as Wrangell, Herald, Bennett, Jeannette, and Henrietta Islands), the Bolshevik Russia tried to fix its control over the remote northern territories.

On April 15, 1926, the Central Executive Committee of the Soviet Union issued a decree entitled "On the Proclamation of Lands and Islands Located in the Arctic Ocean as Territory of the USSR". According to the decree, the Western boundary of the Soviet sector was defined as the meridian 168°49' 30" W. long. from Greenwich, bisecting the strait separating the Ratmanov and Kruzenstern Islands, of the Diomedede group in the Bering Sea (The Central Executive Committee of the Soviet Union 1964).

As some U.S. legal experts believe, in practical terms, this decree led to establishing the Soviet control not only over the five islands in the Arctic Ocean but also on the Copper Island (with Sea Lion Rock and Sea Otter Rock) which, according to this school, should belong to the U.S. under the 1867 Convention (Olson et al. 1998). However, as the U.S. State Department's official document emphasizes, none of the islands or rocks above were included in the U.S. purchase of Alaska from Russia in 1867, and they have never been claimed by the U.S., although Americans were involved in the discovery and exploration of some of them (U.S. Department of State 2009).

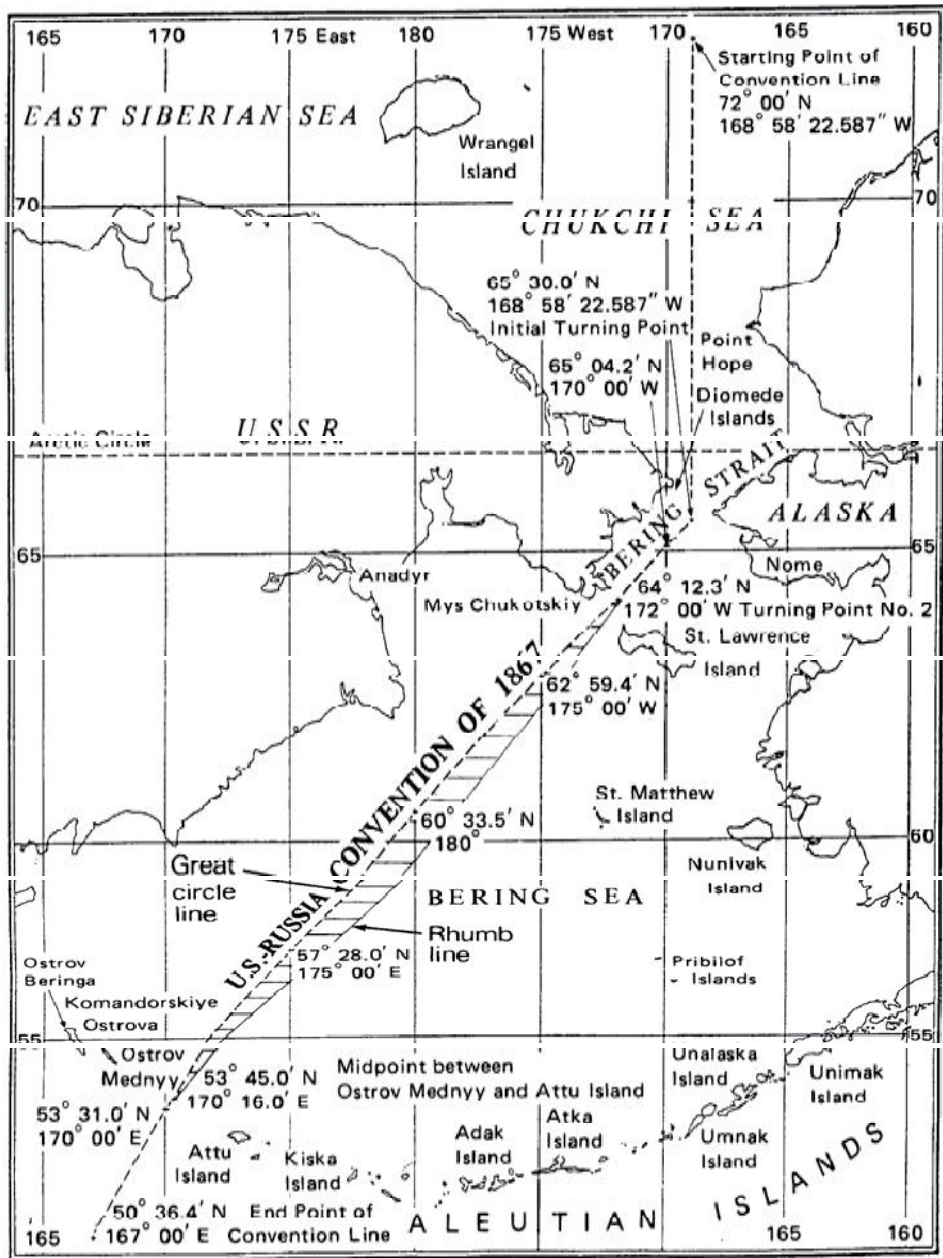
Over time, and in particular when in 1976 both the USSR and U.S. decided to define the limits of their EEZs in the economically important region, the 1867 Convention line in the Bering Sea became the contentious marine boundary between the two countries. In 1977 the U.S. and USSR exchanged diplomatic notes indicating their intent "to respect the line set forth in the 1867 Convention" as the limit to each countries' fisheries jurisdiction where the 200 nautical mile boundaries overlapped. However, the differences in each country's interpretation of the 1867 Convention became apparent very soon, making an area of nearly 15,000 nautical miles<sup>2</sup> a subject of a dispute. While the two countries agreed to continue respecting each other's interpretation of the Alaska purchase agreement as an interim measure, the U.S.-Soviet talks began in the early 1980s to resolve the differing interpretations. Unfortunately, the language of the 1867 Convention was silent on the type of line, map projection and horizontal datum used to describe this boundary. Moreover, neither Moscow nor Washington has produced the authenticated maps used during the negotiations to resolve the issue.

It should be noted that cartographers normally use two types of lines to demarcate marine boundaries. There are rhomb lines, on the one hand, and geodetic lines (also known as great circle arcs), on the other (Kaczynski 2007: 2). Both lines are used on two common map projections, Mercator and conical. Depending on the type of line and map projection used, lines will be either straight or curved. For instance, a rhomb line will appear as a straight line on a Mercator projection, whereas a geodetic line will be a curved one (see figure 1).

Because both Washington and Moscow interpreted the 1867 line as a straight line, the USSR defined the Bering Sea marine boundary as a rhomb line on a Mercator projection while the U.S. opted for a geodetic line on a conical projection. As a result of these differences each country's claim included a maximal part of the disputed maritime area.

It took nine years of negotiations to conclude an agreement on a new U.S.-Soviet maritime boundary in the Bering Sea. According to some speculations, Soviet negotiators may have ceded territory in the Bering Sea to the U.S. in order to waive the U.S. objections to the Soviet proposals to divide the territory north of the Bering Strait (in the Arctic Ocean). Furthermore, Moscow probably hoped that agreement with Washington could help the USSR to accelerate its talks with Norway on their maritime boundary in the Barents Sea. Other reports suggested that Washington promised some 150,000 tons of pollack compensation in an annual quota from the U.S. side of the Bering Sea if the treaty was to be signed and ratified by Moscow. Such a practice has actually existed in late 1970s but the U.S. stopped it as a part of economic sanctions against the USSR after the Soviet invasion of Afghanistan in 1979. Finally, some authors speculated that the Soviet Foreign Minister Eduard Shevardnadze simply exceeded his authority by signing the maritime boundary agreement with his U.S. counterpart James Baker (Kaczynski 2007: 4; Palamar' 2009). However, the Russian Foreign Minister Sergey Lavrov has repudiated these speculations in 2005 by saying that the draft of the treaty was endorsed by the Soviet government (Palamar' 2009).

Figure 1. Differences Between the Bering Sea U.S.-Russian Marine Boundary of 1867 Using Rhomb and Geodetic Lines on a Mercator Projection



Source: Kaczynski 2007: 3

The agreement which was signed on June 1, 1990 (Agreement between the United States of America and the Union of Soviet Socialist Republics 1990) split the difference between the US claim to a geodetic line and the Soviet claim to a rhomb line as shown on a Mercator projection (see figure 2). The section between the Russian and U.S. sectors, which lies 200 miles out from the coastlines of both countries, is known as "The Donut Hole," and is considered international waters, or a global commons. This comprises 10% of the Bering Sea. The 1990 Agreement also created several "special areas." Special areas were areas on either country's respective side of the 1867 line but beyond 200 nautical miles from the baseline. There were three such areas on the U.S. side of the marine boundary called "eastern special areas" and one on the Soviet side called the "western special area." The USSR ceded all claims to sovereign rights and jurisdiction in the eastern special areas to the U.S. and respectively Washington ceded all claims to sovereign rights and jurisdiction in the western special area to Moscow.

Figure 2. The U.S.-Soviet Maritime Boundary, as of 1990 Agreement



Source: <http://www.state.gov/p/eur/rls/fs/128740.htm>



The same day (June 1), in a separate exchange of diplomatic notes, the two countries agreed to apply the agreement provisionally (State Department Watch 2009). This agreement took effect on June 15, 1990. Being an executive agreement, it can be rescinded at any time by either party unilaterally.

Although both countries ceded territory from their previous claims, the US still controlled a far greater amount of area in the Bering Sea than if the new agreement had been based on the equidistant line principle normally used in international boundary disputes. It was quickly ratified by the U.S. Senate (on September 16, 1991), which was eager to keep control on the area rich in fish and to begin the sale of offshore oil and gas leases.

### 2.3 . Criticism of the 1990 Agreement

The 1990 Agreement has evoked a heavy criticism both in the Soviet and Russian parliaments for rushing the deal by the Gorbachev-Shevardnadze tandem, ceding the Russian fishing rights and other maritime benefits. Many Russian politicians and analysts called for renegotiation of the agreement.

The opponents to ratification have put forward multiple arguments. According to one legal expert, the Baker-Shevardnadze line (which was mainly based on the 1867 Convention line) brought 70 percent of the disputed areas of the Bering Sea under American jurisdiction. If instead the median line principle had been used, it could have provided the USSR with an additional 25,000 km<sup>2</sup> of sea (Vylegzhanin 2010). According to the State Duma's (Russian legislature) resolution of July 14, 2002, because of the 1990 Agreement, Moscow had lost two sectors of the Soviet EEZ in the Bering Sea (23,700 km<sup>2</sup> and 7,700 km<sup>2</sup>) and 43,600 km<sup>2</sup> of its continental shelf in the central part of the Bering Sea (beyond the 200 nautical mile EEZ). Russia has also lost between 1.6 and 1.9 million tons of fish in the 1990s (State Duma of the Russian Federation 2002). The Navarinsk and Aleut fields which are potentially rich in hydrocarbons were also ceded to the U.S.

The opponents of the Treaty have also questioned the legal status of the Baker-Shevardnadze executive agreement because the Soviet treaty law did not allow the procedure of an international agreement's 'provisional implementation' (Palamar' 2009).

As result of the above criticism first the Soviet Supreme Council and then the Russian State Duma had postponed the ratification of the 1990 Treaty for indefinite time.

There were the U.S. critics of the 1990 Agreement as well. They believed that this treaty has legitimized Russia's control over eight islands in the Arctic Ocean and Bering Sea as well as deprived Alaska from the maritime area which is rich in fish and – potentially – oil and gas.

The American opponents of the 1990 Treaty insisted that it has been concluded with numerous violations of the U.S. legal procedures. Particularly, it was prepared secretly, without consultations with the U.S. Congress. They also noted that the U.S.-Soviet executive agreement on provisional implementation of the delimitation treaty has not been disclosed in any public news release when it has been signed on June 1, 1990. It was not mentioned neither in the President George Bush's transmittal of the proposed treaty to the Senate nor at the Senate committee hearings or in the full house debate in September 1991 (Olson et al. 1998).

It should be noted, however, that in contrast with the Russian opponents to the 1990 Agreement their American 'counterparts' were marginal and unable to get significant support at the federal level (neither in Congress nor President's Administration).

### **2.3. Current status of the Dispute**

Given the Russian dissatisfaction with the 1990 Treaty, under the Clinton administration the talks between the U.S. State Department and Russian Foreign Ministry have begun in an attempt to resolve the issue. There was even an offer to concede some fish quotas to Russia as an incentive for ratification in 1997 but it has been withdrawn by the U.S. side without any explanation (Kaczynski 2007: 5).

Washington maintains its firm position that the 1990 Treaty is binding and the Baker-Shevardnadze line constitutes the maritime boundary between the two countries. The U.S. policy aims at providing evidence of a continued "general state practice" that the boundary delineated by the 1990 Agreement is the actual marine border between the U.S. and Russia.

Such evidence as well as "*opinio juris*" – a sense of obligation to comply with the practice - are required by the customary international law to legitimize an international agreement that did not fully come into force.

As some experts believe, Russia cannot legally undermine the 1990 Treaty, even if it refuses to ratify it (Laruelle 2014: ch. 5). Moscow has observed the Baker-Shevardnadze line for more than 20 years and thus helped Washington to provide both the evidence of a continued "general state practice" and "*opinio juris*". As some Russian international law experts suggest, it is not in Moscow's interest to question the legitimacy of the 1990 Treaty because, on the one hand, such a negative policy can undermine Russia's reputation of a responsible international actor and, on the other hand, the 1867 line (on which the 1990 document is based) can be both mutually beneficial and helpful for reaching a U.S.-Russian compromise on the division of the Arctic maritime territories (Vylegzhanin 2010: 9).

As far as Russia's future policies on the 1990 Treaty is concerned Moscow can at best hope to negotiate some new, more favorable, fishing rules to compensate the losses incurred in fishing because of this agreement and create new bilateral mechanisms to open the U.S. fishing zones up to Russian fishermen. There are also some plans to create a U.S.-Russian natural park for the protection of biodiversity in the Bering Strait region with a provisional name of *Beringia* and thus to settle the problem in a friendly way (Laruelle 2014: ch. 5; Palamar' 2009). Such a park could be based on the experiences of the existing ethno-natural park with the same name on the Russian side of the Bering Strait (established in 1993) (<http://beringiapark.ru/>).

The two countries acknowledge the positive experiences got from the implementation of "The Convention on the Conservation and Management of Pollack Resources in the Central Bering Sea", which was signed in 1994 by China, South Korea, Russia, the U.S., Japan and Poland and was designed to regulate fisheries on the "Donut Hole."

On the formal level, the U.S. and Russia regularly holds discussions on Bering Sea issues, particularly issues related to fisheries management, but, as the American side emphasizes, these discussions do not affect the placement of the U.S.-Russia boundary or the jurisdiction over any territory or the sovereignty of any territory.

The U.S. has no intention of reopening discussion of the 1990 Maritime Boundary Agreement.

### **3. The Russian-Norwegian dispute on the Barents Sea**

#### **3.1. The Sources of the Dispute**

The Barents Sea is the part of the Arctic Ocean. Named for the Dutch explorer Willem Barents, it is bounded by the Norwegian and northwestern Russian mainland (south), the Norwegian Sea and Svalbard (west), Franz Josef Land (north), and the Kara Sea and Novaya Zemlya (east). It is 1,300 km long and 1,050 km wide and covers 1,405,000 sq km. Its average depth is 229 m, with a maximum depth of 600 m in the major Bear Island Trench.

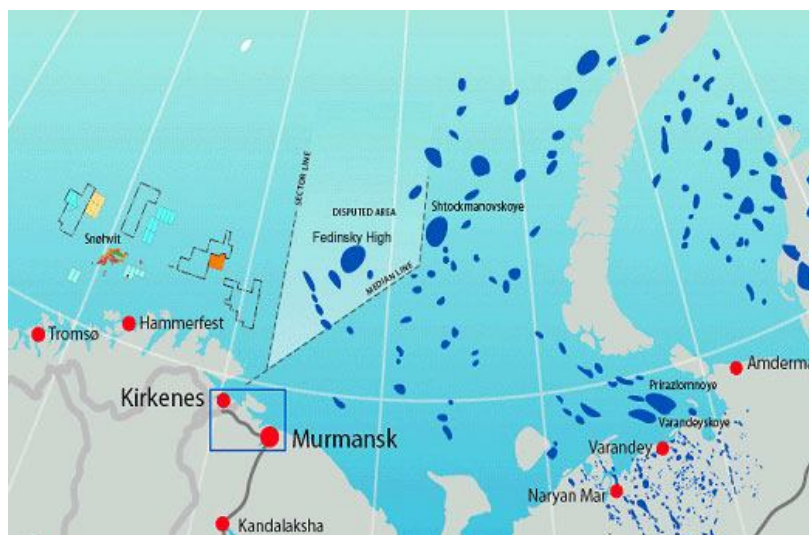
The Barents Sea is rich in various natural resources. First, due to the North Atlantic drift, it has a high biological production compared to other seas and oceans of similar latitude. The fisheries of the Barents Sea, in particular the cod fisheries, are of great importance for both Norway and Russia.

Second, according to some accounts, the Barents Sea may hold vast hydrocarbon resources. A recent assessment by the U.S. Geological Survey estimated the mean undiscovered, conventional, technically recoverable petroleum resources in the Barents Sea Shelf include 11 billion barrels of crude oil, 380 trillion cubic feet of natural gas, and two billion barrels of natural gas liquids (Klett and Gautier 2009).

Norway and the USSR started their exploration activities in the region in the late 1970s, but in the 1980s they agreed not to carry out exploration or exploitation activities in the previously disputed area. Deposits discovered so far in the Barents Sea outside the formerly disputed area include the Norwegian Snøhvit gas field and Goliat oil field and the Russian Shtokman gas field (see figure 3).

The Barents Sea is also an important transport junction between Russia, on the one hand, and North Europe and North Atlantic, on the other. Moreover, the Northern Sea Route starts on the border of the Barents and Kara seas and continues eastward.

Figure 3. Oil and gas resources in the Barents Sea



Source:[http://images.yandex.ru/yandsearch?source=psearch&text=norwegian-russian%20dispute%20in%20the%20barents%20sea&noreask=1&pos=3&rpt=simage&lr=47&uinfo=sw-953-sh-419-fw-765-fh-448-pd1&img\\_url=http%3A%2F%2Fbarentsobserver.com%2Fsites%2Fbarentsobserver.com%2Ffiles%2Fimages%2Farticles%2FBarentsSea.fieldResources\\_0.jpg](http://images.yandex.ru/yandsearch?source=psearch&text=norwegian-russian%20dispute%20in%20the%20barents%20sea&noreask=1&pos=3&rpt=simage&lr=47&uinfo=sw-953-sh-419-fw-765-fh-448-pd1&img_url=http%3A%2F%2Fbarentsobserver.com%2Fsites%2Fbarentsobserver.com%2Ffiles%2Fimages%2Farticles%2FBarentsSea.fieldResources_0.jpg)

The pursuit of control over the economically and strategically important region as well as the lack of a proper legal regime in the Barents Sea were conducive to the Norwegian-Russian dispute on these maritime territories.

### 3.2. History of the Dispute

The Norwegian-Russian dispute on the Barents Sea dates back to the 1920s. The above mentioned 1926 Soviet decree "On the Proclamation of Lands and Islands Located in the Arctic Ocean as Territory of the USSR" has reiterated the Tsarist Russia's legal tradition that had been characterized by the notion of the sectoral line, that was, the line of longitude that starts from the terminus of the land boundary and intersects with the North Pole. The sectoral principle of demarcation of the Arctic territories, however, was not supported by some other coastal states, including Norway.

In 1957, Norway and the USSR agreed on their first maritime boundary in the Arctic. This boundary runs from the northern end point of the land boundary in a northeastern direction through the Varangerfjord and terminates on the Varangerfjord's closing line, thereby not extending into the Barents Sea. It was not until after each country claimed exclusive rights to the continental shelf in 1963 and 1968 that Norway and Russia entered into informal talks about their maritime boundary in the Barents Sea in 1970. Oslo and Moscow agreed to conduct negotiations on the basis of Article 6 of the multilateral Convention on the Continental Shelf of 1958 (United Nations 1958). However, Norway's and Russia's different perceptions of delimitation of the maritime territory in the Barents Sea brought negotiations to a halt.

Moscow has traditionally based its position on a sector line, running roughly along longitude 32 E northwards from the Russian coastline. Oslo, on the contrary, has based its position on an equidistance (median) line between the coasts on either side of the border. It was the continental shelf between these two lines, of approximately 155000 km<sup>2</sup> (and the overlapping exclusive economic zones within this area) that constituted the disputed area in the Barents Sea. In addition to this, there were overlapping claims further north in the Arctic Ocean, of approximately 20000 km<sup>2</sup>. Altogether the disputed area was approximately 175000 km<sup>2</sup>.

In 1977, the talks between Oslo and Moscow became further complicated by the establishment of a 200 nm (nautical mile) Norwegian EEZ and a 200 nm Soviet Fishery Zone. These zones were not completely identical with the countries' continental shelf claims in the region. The so-called "Loop Hole" in the middle of the Barents Sea constituted an area of some 62400 km<sup>2</sup> of high seas that was completely surrounded by the Norwegian and Russian 200 nm zones. Both Oslo and Moscow agreed to draw a single maritime boundary for the continental shelf and the EEZ, but they still were unable to agree on the boundary line.

However, Oslo and Moscow realized the necessity of regulating foreign fishing activities in the Barents Sea and, for this reason, signed a provisional fishing agreement in 1978 (the so-called "Grey Zone Agreement"). This agreement was initially designed for one year, but it remains in force, having been renewed annually. Its geographical scope is different from the previously disputed area.

It applies to a total area of 67500 km<sup>2</sup>, of which 23000 km<sup>2</sup> were in undisputed Norwegian waters and 3000 km<sup>2</sup> were in undisputed Russian waters.

There were ups and downs in the Norwegian-Soviet/Russian negotiations over the following years. For example, in 1991 there were official announcements that the talks were to be finalized soon, but no early agreement was achieved. Through the 1990s and 2000s, regular conflicts between Oslo and Moscow took place because Norway, for ecological reasons, has introduced strict rules and fixed quotas to regulate the fishery in the region which were never been accepted by the Russian side. This led to numerous tensions over the inspection and boarding of Russian fishing boats by the Norwegian Coastal Guards.

Several factors have eventually caused the Norwegian-Russian compromise:

- First, Norway and Russia signed and ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (United Nations 1982) in 1996 and 1997, respectively. By doing this they modified the rules applicable to the delimitation of the continental shelf and the EEZ because the UNCLOS provides identical rules for these legal procedures, thus favoring the median rather than sectoral principle of demarcation of maritime territories.
- Second, in the 1990s and 2000s the International Court of Justice (ICJ) in The Hague and specially appointed arbitration tribunals have issued decisions that clarified important principles and provided guidance for coastal states. Particularly, the ICJ has specified that the solution is to be based on objective geographical features where any major disparities in the respective coastal lengths may be of significance. Both Norway and Russia took a notice of the ICJ's decisions to solve their dispute in the Barents Sea.
- Third, in addition to the above legal factors, both Oslo and Moscow had some serious political reasons to finally strike a deal. For Norway, such a compromise was important because the dispute with Russia was one of the last ones of that sort in its relations with the Arctic neighbors. In 2006 an agreement between Norway, Iceland, Denmark, and the Faroe Islands on a *modus vivendi* on the delimitation of their common continental shelf beyond 200 nm in the Northeast Atlantic was signed. In 2009 Oslo got a decision from the UN Commission on the Limits of Continental Shelf (CLCS) that formally defined the limits of the Norwegian shelf and EEZ in the Arctic (beyond the Barents Sea).

The proposed accord with Moscow would leave the maritime boundary between the outer continental shelves of the Norwegian Svalbard Archipelago and Greenland as the last unresolved boundary issue affecting Norway in the Arctic. The legal experts believe that this issue will likely be resolved soon.

On the other hand, by solving the Barents Sea dispute Moscow could have free hands for continuation of its 'fight' for the underwater Lomonosov and Mendeleev ridges that are potentially rich in hydrocarbons and where its ambitions collide with the Danish and Canadian ones. Moreover, by striking a compromise the two countries could get great PR benefits because now they could present themselves as responsible international actors who were able to solve one of the most complicated international disputes by peaceful methods.

- Fourth, the economic interests drove the Norwegian-Russian compromise. Oslo was particularly interested in the development of hydrocarbon deposits in the disputed area because since 2001, oil production on the Norwegian shelf has declined. With the end of the 1980s moratorium on hydrocarbon exploitation and exploration activities in the disputed area, a resumption of those activities and new discoveries could be expected. In case of Russia the need for new hydrocarbon deposits was not that strong as in case of Norway because Moscow had enough fields to develop in the undisputed areas. However, in terms of strategic control over the region which is potentially rich in oil and gas Moscow was interested in reaching an agreement with Oslo to legitimize its territorial ambitions.
- Finally, the two sides were psychologically tired of 40-year-long negotiations and were eager for putting an end to the dispute, on the one hand, and having a success story in their bilateral relations, on another.

### **3.3. The 2010 Agreement**

In 2007, Oslo and Moscow signed a new document that revised the 1957 agreement by extending the maritime boundary in the Varangerfjord area northwards to the intersection of Norway's preferred median line and Russia's preference, the sector line in the Barents Sea. Norwegian Foreign Minister Jonas Gahr Støre then stated that this agreement should pave a way for an accord on the area of overlapping claims in the Barents Sea.



However, it was not until April 2010 that Norwegian Prime Minister Jens Stoltenberg and Russian President Dmitry Medvedev publicly announced that negotiations had been completed, with the exception of some technicalities. The final agreement was signed in Murmansk, Russia, on September 15, 2010, and has been subsequently approved by the two countries' national parliaments. The document came into force in July 2011.

Figure 4. Delimitation of maritime territories in the Barents Sea in accordance with the 2010 Norwegian-Russian treaty



Source: <http://www.bbc.co.uk/news/business-11299024>

Oslo has withdrawn some of its territorial claims and Moscow has consented to a shift of the 1926 demarcation line to share the 175,000 km<sup>2</sup> of disputed area in two almost equal parts defined by eight points (see figure 4). The northern terminal point of the delimitation line is defined as the intersection of the line drawn through points 7 and 8 and the line connecting the easternmost point and the westernmost point of the still undefined outer limits of the countries' continental shelves (Treaty between the Kingdom of Norway and the Russian Federation 2010).

The agreement allows Russia to exercise such sovereign rights and jurisdiction derived from EEZ jurisdiction that Norway could otherwise exercise in an area east of the maritime delimitation line that lies within 200 nm of the Norwegian mainland and beyond 200 nm off the Russian coast.

Being entered into force, the new agreement terminated the Grey Zone Agreement of 1978. However, this treaty will not alter or adversely affect the Norwegian-Russian cooperation in the field of fisheries. This cooperation will be continued, for example, in the Norwegian-Russian Joint Fisheries Commission.

The 2010 agreement put an end to the 1980s moratorium on the exploration and exploitation of hydrocarbon resources. However, the treaty did not provoke unhealthy competition in this field. Rather, it has some provisions for the coordinated exploitation of transboundary hydrocarbon resources.

#### **3.4. Implications of the 2010 Norwegian-Russian Agreement**

In Norway, the Agreement has been ratified unanimously and is considered very positively, while in Russia strong debates on the documents' negative consequences ended up by the ratification by the State Duma only because of the constitutional majority of the ruling United Russia party. Both political and expert communities are split up in two almost equal parts, as well as the disputed area.

The main arguments of the Treaty's opponents boil down to the following: first, the Treaty is an "unjustified concession" of the sovereign area to Norway, and, second, the content of the Treaty is not sufficiently elaborated with regard to its future application (Baliev 2011; Reut 2011).

The first argument is rather emotional, although having its own rationale in claiming that the Russian-Norwegian relations are far from being ideal in practice. There are contradictions over fisheries and continuing discussions over the "administrative sovereignty" of Norway at Svalbard/Spitsbergen. Thus, the only reason to sign the Treaty is the possibilities of hydrocarbons extraction, which actually would be possible only in a long-term perspective.

The second argument, although being strictly judicial, partly overlaps with the first counter-Treaty argument named above. It is stated that the Treaty disregards such an important issue as the regime of sea and shelf areas adjacent to Svalbard, which might have negative effect on the work of Russian companies in the region.

On the other hand, the proponents of the Treaty maintain that by signing the agreement both Norway and Russia clarified their maritime boundary in the Barents Sea, thereby ensuring predictability and legal certainty in the region. This is important for enacting and enforcing by the two countries environmental rules and fishery regulations as well as for the future exploration and exploitation of hydrocarbon resources in the area.

By concluding the 2010 agreement, Oslo and Moscow demonstrated their eagerness to settle remaining disputes that create obstacles to the international economic cooperation in the region. Particularly, the 2010 agreement can facilitate a future settlement of the residual dispute on the interpretation of the Paris Treaty on Svalbard of 1920 (see next section).

The 2010 agreement has also demonstrated that in resolving their territorial disputes Norway and Russia are committed to the international law, particularly to the UNCLOS and, in a broader context, to the principles of the Ilulissat Declaration of 2008 that confirmed the eagerness of the five Arctic coastal states (A-5) to solve disputes between them by peaceful means, on the basis of international law (Ilulissat Declaration 2008). Finally, Oslo and Moscow signaled to other A-5 states that by adopting a common policy on conflict resolution they can reinforce their claim to leadership on Arctic affairs against emerging actors such as the European Union and East Asian countries.

#### **4. Problems Pertaining to Svalbard**

The Svalbard archipelago is located halfway between mainland Norway and the North Pole. It is surrounded by the Norwegian Sea and the Greenland Sea to the west, the Barents Sea to the east and the Arctic Ocean to the north. The land territories of the archipelago cover approximately 62 700 km<sup>2</sup>, whereof about 54 per cent are ice-covered. The largest island of the archipelago is called Spitsbergen, until 1925 this name was used to refer to the whole archipelago.

The administrative centre of Longyearbyen and the other inhabited areas of the archipelago are located on this island.

The status of Svalbard is regulated by the Paris Treaty concerning the archipelago of Spitsbergen of 9 February 1920 that recognized full Norwegian sovereignty over the archipelago and required Norway to ensure certain rights for other contracting parties' nationals (Treaty Concerning the Archipelago of Spitsbergen 1920). The USSR formally recognized Norwegian sovereignty over the archipelago in 1924, in an exchange of notes with Norway. The Soviet Union became a party to the Treaty in 1935. Today, there are about 40 States Parties to the Treaty.

Although Russia and Norway have solved their 40-year dispute on the delimitation of maritime territories in the Barents Sea the two countries still have several unresolved questions concerning the Svalbard Archipelago.

Figure 5. Norwegian maritime boundaries



Source: <http://www.regjeringen.no/en/dep/ud/selected-topics/civil--rights/Spesiell-folkerett/folkerettslige-sporsmal-i-tilknytning-ti.html?id=537481>

The first problem stems from Oslo's decision to establish the Fisheries Protection Zone which is a 200-nautical-mile zone of fisheries jurisdiction zone around the Svalbard archipelago (see figure 5). It was established on 3 June 1977 pursuant to the Act of 17 December 1976 relating to the EEZ of Norway. It should be noted that Norway chose in 1977 until further notice to establish a 200-mile fisheries protection zone rather than a full exclusive economic zone. According to Oslo's official position, the main purpose of the zone was to ensure the protection and sound management of the living resources, since this is one of the most important nursery areas for important fish stocks. Norway underlines that as a coastal State, it has a special responsibility for the management of the living resources in these areas. The Norwegian legal experts maintain that rules governing the zone are formulated in such a way that they would not be in conflict with those of the 1920 Treaty. They also believe that these regulatory measures take into account previous foreign fishing patterns in the area and that even though Oslo has a legal right to reserve fishing in the zone exclusively for Norwegian fishermen, its management practices are non-discriminatory (Fife 2013).

Russia (similar to some other signatories to the Paris Treaty) does not recognize the aforementioned decision by Norway and considers this area open to international economic activities, including fishing (Portsel' 2011). Norway regarded such fishing as poaching and a number of arrests of Russian trawlers by the Norwegian coastal guards took place over the last two decades. In 2004 Russia's Northern Fleet started regular patrols of the waters around Svalbard to protect Russian trawlers. The Norwegian side interpreted such practice as illegal, viewing it as a sign of Russian imperialistic ambitions and of Moscow's unwillingness to cooperate with Oslo to settle economic disputes. The 2010 Russian-Norwegian Treaty did not solve the problem and the freedom of the Russian fishing around Svalbard remains an open question.

Another problem is related to Russia's potential economic activities on the archipelago's shelf and concerns the significant difference in taxation levels between mainland Norway and the archipelago (Portsel' 2011). Russian companies accessing the Svalbard continental shelf believe that they should enjoy the rights which are envisaged in the 1920 Paris Treaty, particularly the right to pay taxes less than 1 percent of the cost of the hydrocarbons produced.

But as Russian international law specialist Alexander Oreshenkov explained, "If a deposit beginning within the limits of the archipelago's territory extends beyond its territorial waters, the Russian companies will be expected to observe the norms of Norway's continental mainland petroleum legislation, which means that 78 percent of their earnings from the hydrocarbons produced outside Norway's territorial waters will go away in tax payments to the Norwegian treasury" (Oreshenkov 2010). These financial stakes are bound to be at the core of future negotiations.

The Russian presence on Svalbard remains the subject of conflict as well. For example, the plans to build a fish-processing plant, which will compete with Norwegian firms, were not well received. In recent years, the Norwegian governor of Spitsbergen has taken a whole series of restrictive measures: he has expanded nature conservation zones to which access by Russian scientists and tourists is restricted or prohibited, required helicopters to obtain advance permission before landing, and introduced rules for the registration of all scientific projects in a special data base. When the Russian side responded to these measures by denying Norwegian scientists investigating biological resources in the Barents Sea access to the Russian EEZ, this was viewed as a discriminatory act.

Despite these disputes both Moscow and Oslo believe that problems pertaining to Svalbard can be solved in the foreseeable future through negotiations and on the basis of international law.

## **5. Russian Claims on the Arctic Continental Shelf**

According to the UNCLOS, a coastal state has exclusive sovereign rights to explore and exploit the natural resources of its continental shelf up to 200 nautical miles from its shores. Beyond this limit, a coastal state has to provide scientific evidence to establish the extent of the legally defined continental shelf up to 150 nautical miles to exercise the same rights. According to international law, a coastal state can exploit living and non-living resources of the shelf's seabed and subsoil, but these rights do not extend to resources in the water column such as fish stocks, which are covered by a separate regime. The application should be submitted to the UN CLCS, a review body of scientists created under UNCLOS. The CLCS covers continental-shelf claims beyond the 200 nautical miles zone, up to a maximum of 350 nautical miles. It should be noted that the CLCS's ruling is final and binding one.

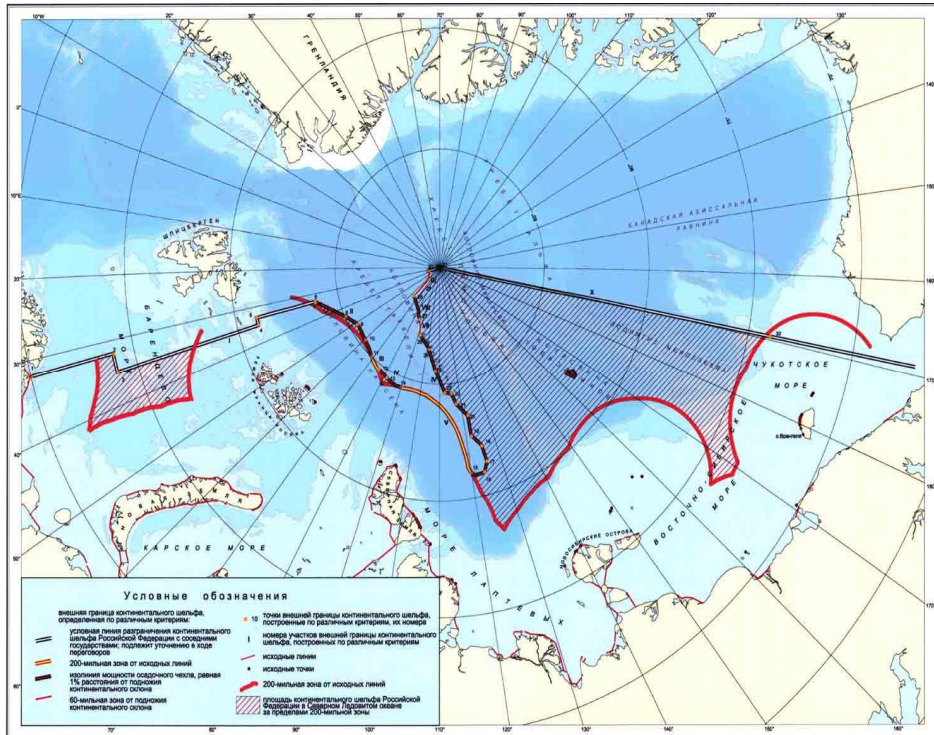
Due to marine research that has been systematically made in the High North since the Soviet time, in 2001 Russia became the first country to apply to the CLCS. Other coastal states (except the U.S. which did not ratify the UNCLOS) followed Russia. For example, Norway was the second (after Russia) to submit its application to the CLCS in 2006 and the first one among the Arctic state to get a positive decision from the Commission.

In its 2001 claim, Russia argued that the Lomonosov Ridge and the Alpha-Mendelev Ridge are both geological extensions of its continental Siberian shelf and, thus, that parts of the Central Arctic Ocean, as well as parts of the Barents Sea, the Bering Sea, and the Sea of Okhotsk, fall under its jurisdiction. In effect Russia claimed sovereign rights over resources on the seabed area of some 1.2 million km<sup>2</sup> outside the 200-mile line (see figure 6).

However the CLCS found the substantiation of the Russian claim on the shelf insufficient and asked for more information. Since then a new submission has been under preparation, reportedly to be finalized by 2015. Comprehensive research expeditions are being organized to collect data. The expedition of 2007 with flag planting as a by-product was one of them.

Interestingly, in preparing a new submission Russia uses not only the academia but also the military. For example, the objective of the Russian Navy's mission within the framework of the expedition *Arktika-2012* was to prove that its landmass extends to the North Pole by drilling into the sea floor to collect rock samples for scientific analysis. In September 2012, the *Kalitka*, a *Losharik*-class nuclear-powered auxiliary submarine, was used to guide the *Kapitan Dranitsyn* and *Dickson* ice breakers in drilling three boreholes at two different sites on the Mendeleev ridge, collecting over 500 kg of rock samples (IISS 2012).

Figure 6. The Russian claim on the Arctic continental shelf



International experts suggest several scenarios for the further developments if a second, revised submission be returned by the CLCS. One extreme would be for Moscow to withdraw from the UNCLOS and just declare unilaterally that its continental shelf reaches up to the North Pole. Russia would still retain the right to a continental shelf, and would find itself in the same position as the U.S., which remains outside the UNCLOS, and would have to rely on customary law to support its claim. However, this option is hardly acceptable for Moscow because it would provide a much less secure legal position than would a CLCS' decision which is considered as a final and binding ruling.

The strong nationalistic groupings in Russia would support such unilateralism. However, Russia's official policy undoubtedly lies within the UNCLOS framework. Russia has much to lose if it undermines the authority of the UNCLOS in the Arctic.



Moscow tries to avoid a conflict situation because any conflict, even if not armed, would prove to the world that the UNCLOS does not work and weaken the legitimacy of the Convention. Such weakening is seen by Moscow as dangerous and unacceptable.

As Moe (forthcoming) put it, the other extreme scenario would be to accept that the initial submission was too ambitious and not substantiated by geophysical research and come back to the Commission with a revised, less expansive position. On the one hand, this alternative would definitely show respect for international law. However, on the other hand, such an initiative would entail large domestic political costs for a Russian leader who would dare to abandon Russia's ambitious Arctic claim.

Both foreign and Russian experts do not exclude one more, third, scenario which, they believe, is both possible and the most likely. That option is postponement of a new submission (Moe; Zagorsky 2013). First, it will take the CLCS years or even decades to consider the existing and forthcoming applications. Even if it becomes clear that the Russian claims on the Lomonosov and Mendeleev ridges cannot be substantiated, all the Arctic states may decide that it is better to agree on disagreement and continue business as usual. Besides the need to preserve the UNCLOS in the Arctic, also a realistic assessment of their economic interests and technical capabilities prevent them from a conflict over the disputed areas. These areas are very deep and extraction of oil and gas there will not become profitable for many decades. Moreover, as the most authoritative assessment of Arctic mineral resources from the US Geological Survey maintains, most hydrocarbon resources are likely to be found in relatively shallower waters, within the 200-mile limit (U.S. Geological Survey 2008). Most of these uncontroversial continental shelves are relatively unexplored and the conflicting parties first should develop them.

In any case, as Moscow repeatedly underlined, the Kremlin plans to solve the problem within the UNCLOS framework, peacefully and on the basis of a solid research data.

## 6. Conclusion

Currently, Russia's Arctic strategy represents a mixture of the expansionist/revisionist and soft power policies. On the one hand, Moscow is quite assertive as regards its claims on the Arctic continental shelf as well as demonstration of its sovereignty over the Russian part of the Arctic and military presence in the region. On the other hand, the Kremlin underlines that all territorial disputes should be resolved peacefully – through negotiations and on the basis of international law and institutions (such as UNCLOS and UN CLCS).

More generally, it is safe to assume that in the foreseeable future Moscow's strategy in the region will be predictable and pragmatic rather than aggressive or spontaneous. In contrast with the internationally wide-spread stereotype of Russia as a revisionist power in the High North, there are some grounds to believe that Moscow will continue to pursue a double-faceted strategy in the region: On the one hand, such a strategy aims at defending Russia's legitimate economic and political interests in the region. On the other hand, Moscow is open to cooperation with foreign partners that are willing to partake in exploiting the Arctic natural resources, developing sea routes and solving residual territorial disputes and numerous socio-economic and environmental problems of the region.

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