

Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean

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Introduction



On September 15, 2010, the foreign ministers of Norway and Russia signed a treaty on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean (“2010 Agreement”).^[1] The 2010 Agreement, which will take effect when approved by the Norwegian Storting (parliament) and the Russian Duma (assembly), puts an end to nearly four decades of extensive on-again, off-again negotiations. It defines a single maritime boundary that divides the States Parties’ continental shelves and exclusive economic zones (“EEZ”) in the Barents Sea and the Arctic Ocean; obliges the States Parties to continue their cooperation in the sphere of fisheries; and contains provisions on the coordinated exploitation of transboundary hydrocarbon

resources.

This *Insight* provides background of the dispute and analyzes the 2010 Agreement’s implications for the States Parties, the resolution of maritime claims in the Arctic, and, more generally, state practice on delimitation of the outer continental shelf.

The Treaty Area: Geographical Scope and Economic Importance

The Barents Sea is the part of the Arctic Ocean to the north of the Norwegian and Russian mainland coasts. It has an average depth of only 230 meters, and it is fully enclosed by the 200-nautical-mile (nm) limits of the Norwegian Svalbard Archipelago to the northwest, the Russian Franz Josef Land and Novaya Zemlya to the north and the east, and the adjacent mainland coasts of Norway and Russia to the south. Although the ecosystem of the Barents Sea is relatively simple, it is nevertheless highly productive and supports valuable commercial fisheries. All economically significant fish stocks have been overexploited in the past, but the introduction of fishing bans, the adoption of management measures, and the fight against illegal, unregulated, and unreported fishing have proved effective in helping stocks to recover.

Additionally, 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 eleven billion barrels of crude oil, 380 trillion cubic feet of natural gas, and two billion barrels of natural gas liquids.^[2] Norway and Russia extended their exploration activities to the potential hydrocarbon-bearing reservoirs 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.

Forty Years of On-again, Off-again Negotiations

In 1957, Norway and the Soviet Union agreed on their first maritime boundary in the Arctic (“1957 Agreement”). 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 State 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. Both States agreed to conduct negotiations on the basis of Article 6 of the multilateral Convention on the Continental Shelf (“1958 Convention”).^[3] However, Norway’s and Russia’s different perceptions brought negotiations to a halt. Norway favored the 1958 Convention default rule: a boundary line following the median line between the respective coasts. The Soviet Union argued that a number of special circumstances (i.e., geographic, geologic, demographic, strategic, and climatic factors) justified a boundary line coinciding with the meridian of longitude

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32° 04' 35" E ("sector line"), taking into account the area governed by the Svalbard Treaty of 1920.^[4] The maritime area between the median line and the sector line covered an area of some 155,000 square kilometers in the Barents Sea and another 20,000 square kilometers in the Arctic Ocean.^[5]

In 1977, the negotiations became further complicated by the establishment of a 200 nm Norwegian EEZ and a 200 nm Soviet Fishery Zone. The geographical scope of these zones is not completely identical with the States' continental shelf claims in the Barents Sea. The so-called "Loop Hole" in the middle of the Barents Sea covers an area of some 62,400 square kilometers of high seas that is completely surrounded by the States' 200 nm zones. Both States agreed to draw a single maritime boundary for the continental shelf and the EEZ, but they still could not agree on the boundary line. Nevertheless, the parties realized the necessity of regulating foreign fishing activities and agreed on a provisional fishing arrangement in 1978 ("Grey Zone Agreement"). The Grey Zone Agreement was initially limited to one year, but it remains in force, having been renewed on a yearly basis. Its geographical scope is not identical to that of the previously disputed area. It applies to a total area of 67,500 square kilometers in the Barents Sea, of which 23,000 square kilometers are in undisputed Norwegian waters and 3,000 square kilometers are in undisputed Russian waters.

The following years saw the periodic suspension and resumption of formal negotiations, the Soviet Union's dissolution, and the entry into force of the United Nations Convention on the Law of the Sea ("Law of the Sea Convention"). Norway and Russia ratified the Law of the Sea Convention in 1996 and 1997, respectively, thereby slightly modifying the rules applicable to the delimitation of the continental shelf and the EEZ.^[6] Despite official announcements in 1991 that the negotiations were to be finalized soon, no early agreement was achieved.

The 2010 Agreement

In 2007, Norway and Russia revised the 1957 Agreement, 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 "the agreement that has now been reached could contribute positively to the efforts to reach agreement on the area of overlapping claims in the Barents Sea."^[7] However, it was not until April 2010 that Norwegian Prime Minister Jens Stoltenberg publicly announced that negotiations had been completed, with the exception of some technical control work. The 2010 Agreement was signed in Murmansk, Russia, on September 15, 2010, and has yet to be approved by the States Parties' national assemblies.

The 2010 Agreement defines the maritime delimitation line by eight points and splits the disputed area nearly in half. The underlying calculation accounts for the longer Russian coastline, but other factors Russia invoked earlier do not seem to have influenced the boundary line. 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 States Parties' continental shelves.^[8] The 2010 Agreement entitles 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. The 2010 Agreement will not affect the application of agreements on fisheries cooperation between the States Parties. However, once it enters into force, the 2010 Agreement would terminate the Grey Zone Agreement of 1978 as well as the 1980s moratorium on the exploration and exploitation of hydrocarbon resources. Additionally, there are provisions for the coordinated exploitation of transboundary hydrocarbon resources.

Implications of the 2010 Agreement

By reaching an agreement on the delimitation line with Russia in the Barents Sea, Norway clarified its last maritime boundary within 200 nm off its coast, thereby ensuring predictability and legal certainty. This is important, among other reasons, for enacting and enforcing environmental rules and fishery regulations. The 2010 Agreement also defines the maritime boundary of the outer continental shelf in the Arctic Ocean. Together with a 2006 Agreement between Norway, Iceland, Denmark, and the Faroe Islands on a *modus vivendi* on the delimitation of the States Parties' common continental shelf beyond 200 nm in the Northeast Atlantic, the entry into force of the 2010 Agreement would leave the maritime boundary between the outer continental shelves of the Norwegian Svalbard Archipelago and Greenland as the last unresolved boundary issue affecting Norwegian interests in the northern hemisphere.^[9] This issue will likely be resolved soon.

It is reasonable to assume that economic interests drove the signing of the 2010 Agreement. Norway is particularly interested in the development of hydrocarbon deposits in the area because since 2001, oil production on the Norwegian shelf has declined, with much production coming from discoveries made during the 1970s and 1980s and no large recent discoveries.^[10] With the termination of the 1980s moratorium on hydrocarbon exploitation and exploration activities in the area, an increase in those activities can be expected. However, because of climate change, hydrocarbon exploitation in the Arctic may not increase as fast as some commentators predict (e.g., the melting of thin first-year sea ice might allow thicker multi-year pack ice to drift

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into exploitation zones, and melting permafrost might destabilize roads and pipelines). Additionally, it remains to be seen whether the Norwegian government will succeed in balancing the interests of the fishing and oil industries on the Norwegian shelf in the Barents Sea.

Conclusion

The 2010 Agreement suggests that the region will not experience a “Race for the North Pole” or an “Ice Cold War,” as some media reports have forecast. Instead, the region will be characterized by cooperation between the five Arctic circumpolar States (“A5-States”): Canada, Denmark, Norway, Russia, and the United States. Therefore, it is very likely that the outstanding maritime boundary issues will be solved by bilateral agreements without recourse to dispute settlement bodies. Additionally, the 2010 Agreement shows that Norway and Russia abide by the established rules of maritime delimitation. Their commitment to international law of the sea, especially the Law of the Sea Convention, was already obvious when the A5-States adopted the Ilulissat Declaration in 2008.^[11] Moreover, by resolving disputes between the A5-States and adopting a common policy, they reinforced their shared claim to leadership on Arctic affairs against emerging actors such as the European Union and China.

The States Parties’ agreement on the boundary between their outer continental shelves comports with recent emerging practice basing delimitation of the outer continental shelf on geographical factors,^[12] despite the International Court of Justice’s ruling that the basis of the States’ legal title to maritime zones provides the criteria applicable to the delimitation of these areas.^[13] Therefore, it is likely that geological and geomorphological factors, while being used to determine the outer limits of the continental shelf, will not play a significant role in future delimitations of outer continental shelves.

Finally, the 2010 Agreement might even pave the way for a future settlement of the ongoing dispute on the interpretation of the Svalbard Treaty.^[14] In 1920, the States Parties to the Svalbard Treaty recognized Norway’s “full and absolute” sovereignty over the Svalbard Archipelago. In exchange, nationals of the States Parties shall, among other rights, “be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters of the Archipelago.” Both the 2010 Agreement and a 2006 Norwegian-Danish Agreement on the delimitation of the Svalbard-Greenland maritime boundary endorse the Norwegian right unilaterally to claim a fisheries protection zone or continental shelf for Svalbard or to delimit their boundaries. Still, Norway and Russia disagree on whether equal treatment rights guaranteed by the Svalbard Treaty apply to maritime zones, the development of which could not be foreseen in 1920, and whether Norway is entitled to exercise coastal state jurisdiction in these zones that encompasses rich fishing grounds and are expected to hold hydrocarbon resources.^[15] With the conclusion of the 2010 Agreement, Norway and Russia demonstrated their eagerness to settle outstanding issues that constitute obstacles to the economic development of the region. However, Russia is not the only State Party in disagreement with Norway about the Svalbard Treaty’s geographical reach, and with the termination of the 1980s moratorium on hydrocarbon related activities outside Svalbard’s maritime zones, there is currently no pressing economic need to resolve the Svalbard question.

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ENDNOTES

[1] Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Nor.-Russ., Sept. 15, 2010, *available at* http://www.regjeringen.no/upload/UD/Vedlegg/Folkerett/avtale_engelsk.pdf.

[2] T. R. Klett & D. L. Gautier, Assessment of Undiscovered Petroleum Resources of the Barents Sea Shelf: U.S. Geological Survey Fact Sheet 2009–3037 (June 2009), *available at* <http://pubs.usgs.gov/fs/2009/3037/pdf/FS09-3037.pdf>.

[3] Convention on the Continental Shelf art. 6, Apr. 29, 1958, 499 U.N.T.S. 311, *available at* http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf [hereinafter 1958 Convention]. Article 6(1) of the 1958 Convention reads: “Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.” The same rule applies, according to Article 6(2) of the 1958 Convention, “[w]here the same continental shelf is adjacent to the territories of two adjacent States.”

[4] Treaty Concerning the Archipelago of Spitsbergen [Svalbard Treaty], Feb. 9, 1920, 43 Stat. 1892, 2

L.N.T.S. 7, *available at* http://www.sysselmannen.no/The_Svalbard_Treaty_9ssFy.pdf.file (The Svalbard Treaty recognizes the full and absolute sovereignty of Norway over the Arctic Archipelago of Spitsbergen (now called Svalbard). It is defined as all the islands situated between 10° and 35° E, and 74° and 81° N. The Soviet Union took the view that where the lines defined by these coordinates diverge from the sector line, the former should prevail.).

[5] ALEX G. OUDE ELFERINK, *THE LAW OF MARITIME BOUNDARY DELIMITATION: A CASE STUDY OF THE RUSSIAN FEDERATION* 237-46 (1994); ROBIN CHURCHILL & GEIR ULFSTEIN, *MARINE MANAGEMENT IN DISPUTED AREAS: THE CASE OF THE BARENTS SEA* 62-63, 69-77 (1992).

[6] United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, *available at* http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf [hereinafter Law of the Sea Convention]. The Law of the Sea Convention provides identical rules for the delimitation of the EEZ and the continental shelf. According to Articles 74(1) and 83(1), the delimitation of the exclusive economic zone/continental shelf “between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”

[7] Press Release No.: 083/07, Norway Ministry of Foreign Affairs, Agreement Signed Between Norway and Russia on Maritime Delimitation in the Varangerfjord Area, (July 11, 2007), *available at* <http://www.regjeringen.no/en/dep/ud/press/news/2007/Agreement-signed-between-Norway-and-Russ.html?id=476347>.

[8] According to Article 76(8) Law of the Sea Convention, every coastal State shall submit information on the limits of its continental shelf beyond 200 nm to the Commission on the Limits of the Continental Shelf (“CLCS”). The CLCS consists of twenty-one members who are experts in the field of geology, geophysics or hydrography and shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding. Up until now, only Russia and Norway have made submissions to the CLCS that include the continental shelf in the Arctic. Though the CLCS issued its final recommendations on the Norwegian submission in 2009, it still expects Russia to revise its 2002 submission.

[9] The Norwegian claim to maritime zones off Dronning Maud Land in the Antarctic meets the strong opposition of third States. For an analysis of the legality of maritime claims in the *Antarctic*, see Patrizia Vigni, *Antarctic Maritime Claims: “Frozen Sovereignty” and the Law of the Sea*, in *THE LAW OF THE SEA AND POLAR MARITIME DELIMITATION AND JURISDICTION* 85 (Alex G. Oude Elferink & Donald R. Rothwell eds., 2001).

[10] NORWEGIAN PETROLEUM DIRECTORATE, *PETROLEUM RESOURCES ON THE NORWEGIAN CONTINENTAL SHELF* 9, 12 (2009), *available at* <http://www.npd.no/Global/Engelsk/3%20-%20Publications/Resource%20report/Resource%20report%202009/Ressursrapporten%202009%20engelsk.pdf>.

[11] Arctic Ocean Conference, Ilulissat Declaration, May 28, 2008, *available at* <http://arctic-council.org/filearchive/Ilulissat-declaration.pdf>. The relevant passage in the declaration reads: “In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean . . . Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.” *Id.* at 1.

[12] David A. Colson, *The Delimitation of the Outer Continental Shelf Between Neighboring States*, 97 AM. J. INT’L L. 91, 94-96 (2003).

[13] *Continental Shelf (Libyan Arab Jamahiriya v. Malta)* 1985 I.C.J. 13, 30, 35-36, 46-47 (June 3); *Continental Shelf (Tunis. v. Libyan Arab Jamahiriya)* 1982 I.C.J. 18, 48 (Feb. 24).

[14] Recent publications on this subject include: Robin Churchill & Geir Ulfstein, *The Disputed Maritime Zones Around Svalbard*, in *CHANGES IN THE ARCTIC ENVIRONMENT AND THE LAW OF THE SEA* 551-93 (Myron H. Nordquist et al. eds., 2010); Torbjørn Pedersen & Tore Henriksen, *Svalbard’s Maritime Zones: The End of Legal Uncertainty?*, 24 INT’L J. MARINE & COASTAL L. 141 (2009).