

## How do we Divide the Barents Sea?

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Russia's appeal to the UN International Court of Justice can aid in a civilized resolution of its dispute with neighboring Norway.

In 2001, the Norwegian Coast Guard detained the Russian fishing boat Chernigov in the Spitzbergen Fishery Protection Zone. Russia's Northern Fleet dispatched the warship Severomorsk to rescue it. The Norwegians did not want an armed conflict and the Chernigov was released.

Our statisticians hailed the precedent and, when the Norwegian Coast Guard chased the trawler Elektron last year, they called for not standing on ceremony and showing the Norwegians the might of Russian arms instead. Some even went as far as to say that, sooner or later, Russia would have to go to war against Norway for the Barents Sea.

Of course, the authors of such declarations can hardly think that such developments are possible. It must be recognized, however, that the delimitation of the Barents Sea remains the most complex problem in relations of the two countries. The complexity is not only in that Russia and Norway have different approaches to sea border delimitation, but in that they are in a controversy over the 200-mile area of sea around the Spitzbergen Archipelago.

### Dividing the Barents Sea

The root of the Russia-Norway dispute over the division of the Barents Sea can be traced back to the early 1970s. In 1975, the UN initiated an exclusive economic zone extending 200 nautical miles (370 km.) from the shoreline. The coastal nations thus received sovereign rights to control economic activities within vast territories. Then, in 1982, the UN Convention on Maritime Law allowed continental shelf limits to be extended up

to 350 nautical miles. Its Clause 77 states that the coastal nations can realize their sovereign rights over the continental shelf for the purpose of investigation and development of natural resources<sup>1</sup>.

Even before the general international recognition of the 200-mile water rights, several countries accepted Great Britain's proposal to divide the Northern Sea with a median line, that is, a line equidistant from land borders. As a result, the Norwegians got Ekofisk field (1965), where they discovered the first oil four years later and thus Norway became fabulously rich in a very short time. After making such profitable agreements, Norway wished to extend the median line to the Barents Sea and, so, proposed to the USSR to mark out a sea border along a line equidistant from the two eastern islands of Norway's Spitzbergen Archipelago and the Soviet islands of Novaya Zemlya and Franz Josef Land Archipelago<sup>2</sup>.

But the USSR did not agree to delineate the sea borders by a median line. In 1926, it had unilaterally defined the borders of its Arctic possessions. The Arctic territories division was based on the sector principle, with the sea border extending along the meridian from the border point on the shore to the North Pole. Nobody disputed the borders of the Soviet Polar possessions (nor were they recognized) till the convention of 1982 came in force. By the way, the USSR was not the only claimant to the Arctic. In the 19th century, Canada had proclaimed the sector principle of littoral waters division.

### Who is the Owner of Spitzbergen?

While the Cold War was going on, the Soviet Union and Norway could not come to an agreement on the division of the waters, and the two countries established the borders of their economic zones unilaterally in 1976. That was how a water area of 175,000 sq. km. came into

dispute. It is a rich area and, consequently, negotiations on the division of the Barents Sea waters continue to this day. The only tangible result achieved in 30 years is the precedent of joint management of a part of the disputed territory called the gray zone. In January 1978, the two countries signed a provisional agreement on fishing that is prolonged every year<sup>3</sup>. Many publications on Russia-Norway relations erroneously apply the description of “gray” to all the disputable water area. Actually, the gray zone is 67,500 sq. km. and includes 23,000 sq. km. of Norway’s economic zone and 3000 sq. km. belonging to Russia.

On behalf of the Norwegians the gray zone negotiations were led by Minister Jens Evensen. At that time, his office served as a kind of alternative ministry of foreign relations. Many people in Norway believe that the gray zone agreement was a concession to the Russians and that Evensen signed the agreement under the pressure of his deputy Arne Treholt, who was unmasked as a Soviet intelligence agent in 1984.

The catching of fish, crabs and other sea products is allowed in the disputed area. But a Soviet attempt in the 1980s to undertake oil and gas extraction there was met with Norway’s sharp protest. Since then, geological prospecting in the area has been under a moratorium. But the Soviet geologists’ discoveries and the evaluations by Norwegian experts indicate that the disputed area, especially its southern part, has tremendous hydrocarbon reserves.

Russia does not accept the Norwegian principles of the water area division not only because it goes against the historic fairness. We stress the unique status of the Spitzbergen Archipelago. Before the 20th century, the Spitzbergen Archipelago was considered a no man’s land, with room enough for Norwegians, Russians and others. But even then, the land was claimed by both Russia and Norway. Russia dropped out of the race for the possession of the islands because of the Great War and, most of all, because of the Revolution of 1917. Other matters were more important to it then. The current status of the archipelago was defined in Paris on February 9, 1920, without Russian participation<sup>4</sup>. Article 1 of the Paris Agreement recognized the “complete and absolute sovereignty of Norway” over the Spitzbergen Archipelago.

In 1935, Russia, already the USSR, was more-or-less emerging from its economic dislocation and joined the Paris Agreement. Today, it has 42 signatory states, some of which (Afghanistan, Slovakia, the Czech Republic and Switzerland) are landlocked. Before the Soviet Union joined the Paris Agreement, it had bought several

coal mines in Spitzbergen and undertook coal delivery to the continent. The operation of the mines was suspended only during World War II. It was resumed after the victory and continues to this day. However, coal is produced only by one mine today. It has turned out that mining is unprofitable in free market economy conditions.

## The Dispute is Just Beginning

Important as sovereignty is, it must be remembered that Articles 2 and 3 of the Paris Agreement placed certain limits on Norway’s sovereignty over Spitzbergen. Under Article 2, ships and citizens of all High Contracting Parties are permitted to realize fishing and hunting rights in the territories listed in Article 1 and in their territorial waters on an equal basis. Article 3 establishes equal access for the countries to economic activities in the archipelago.

In 1977, Norway extended the so-called fishery protection zone to a 200-mile area around Spitzbergen<sup>5</sup>. The fishery protection regime was introduced without obtaining the consent of the signatory countries of the Paris Agreement. Today, Norway’s right to control the 200-mile zone around Spitzbergen is recognized only by Canada and Finland, which do not fish there.

It seems quite evident that the fishery protection status contradicts Articles 2 and 3 of the Paris Agreement, which Russia points out. But Norway holds a different opinion. Norwegian politicians assert that the agreement is effective exclusively for the Archipelago islands and the territorial sea within 12 nautical miles off the shore.

Oslo’s position seems convincing, but is it unquestionable? First of all, the status of the fishery protection zone does not regulate other kinds of economic activities, like, for example, the mining of mineral resources. For that reason, which is recognized even by some Norwegian experts, Norway at present has no legal tools to prevent Paris Agreement signatories from developing oil or gas in the archipelago waters. Secondly, some countries, including Spain and Iceland, are warning they would contest the lawfulness of Norway’s introduction of the fishery protection zone in the UN International Court of Justice in The Hague.

Norway stated it did not mind suits and was confident that it had every chance of winning a trial in The Hague court, though it did not find it necessary to be the initiator of the suit<sup>6</sup>. But even the fact that such a discussion of Norway with the Paris Agreement signatories is possible is proof of an ambiguity in international sea law

and that a multilateral discussion of the status of the waters around Spitzbergen is needed<sup>7</sup>.

During last year's incident with the Elektron, Russian Foreign Minister Sergei Lavrov stressed that our country "has never accepted Norway's claims to the fishery zones around Spitzbergen." Regrettably, Russia's non-recognition of Norway's claims has not yet produced tangible results at the negotiations on the demarcation of the sea areas<sup>8</sup>.

## All Roads Lead to The Hague

The very existence of the agreement on the gray zone brings to mind the possibility of joint management of all the territory in dispute. The Soviet side made such a suggestion for the first time in 1990, when the then Prime Minister Nikolai Ryzhkov visited Norway. Joint extraction of oil and gas was also suggested to the Norwegians before a sea border treaty was signed. But such suggestions were resolutely turned down. Norway was willing to cooperate in hydrocarbons extraction only within "undisputed" water areas. Nevertheless, the idea of joint management of sea resources is gaining support of some Norwegian scientists of late. That is something that was never evidenced before<sup>9</sup>.

Russia will have stronger positions in the border dispute and the dispute around the continental shelf if it succeeds in proving to Norway the latter's error of unilaterally claiming the 200 mile sea area around Spitzbergen. This point was indirectly confirmed by Deputy Secretary of Russia's Security Council Nikolai Spassky, who visited Spitzbergen last March. He said, in part, that Russia's weakening presence in the archipelago would also undermine Russia's positions in the talks with Norway on fishing and delimiting the water area, and that Russia would have to make very serious decisions to prevent that<sup>10</sup>.

All signs indicate that such a "very serious decision" should be bringing of a suit in the UN International Court of Justice in The Hague. The subject of the suit can be the lawfulness of Norway's declaration of a 200-mile fishery protection zone around Spitzbergen Archipelago in light of the Paris Agreement. It should be stressed that the UN Convention, signed by 149 countries, makes no mention of fishery protection zones at all. Talks on demarcation of the water area should not be insisted on until the suit is brought to the International Court.

One would hope that history will teach the powers that be to respect the opinions of its experts. In the 1980s, Soviet diplomats suggested to the political leadership that the Soviet-American dispute on the division of the Bering Sea water areas be taken to the UN International Court of Justice. But the leadership of the time considered the Court "an obedient tool of the American imperialists" and made a "political" decision that resulted in Russia losing vast water areas<sup>11</sup>. However, modern Russia has already gained experience in winning cases in the UN International Court, though the cases were not that big. It will not be easy to win the case against the Norwegians, but there seems to be no reasonable alternative.

After all, we cannot even stop gas deliveries to the Norwegians. They have gas of their own.

## Notes

1 United Nations Convention on the Law of the Sea of 10 December 1982. <http://www.un.org/russian/document/convents/lawsea.html>

2 Nyheten som endret Norge. Nordlys, 16.03.2005. <http://www.nordlys.no/nyheter/article1505551.ece>

3 Соглашение о совместных мерах контроля за рыбным промыслом и регулировании рыболовства в смежном участке Баренцева моря, прилегающем к материковому побережью Норвегии и СССР от 11.01.1978г. - <http://faolex.fao.org/docs/texts/bi-53395.doc>

4 Traktat mellem Norge, Amerikas Forente Stater, Danmark, Frankrike, Italia, Japan, Nederlandene, Storbritannia og Irland og de britiske oversjøiske besiddelser og Sverige angående Spitsbergen. <http://www.lovdato.no/all/nl-19200209-000.html>

5 Forskrift om fiskevernsoner ved Svalbard. Utenriksdepartementet, 16.03.1977.

6 Norge klar til å opprette økonomisk sone ved Svalbard. Fiskaren, 03.02.2006. <http://www.fiskaren.no/incoming/article100249.ece>

7 Utenriksminister Jonas Gahr Støre. Perspektiver på Nordområdene. Norges Fiskarlags Sekretærkonferanse, Oslo, 07.03.2006. [http://www.odin.no/ud/norsk/aktuelt/taler/minister\\_a/032121-090028/dok-bn.html](http://www.odin.no/ud/norsk/aktuelt/taler/minister_a/032121-090028/dok-bn.html)

8 П.М. Прохоров. В поиске срединной линии. Эксперт Северо-Запад, №44(249), 21.11.2005. <http://www.expert.ru/printissues/northwest/2005/44/44no-8/>

9 Vil ta ledelsen i nord. Dagens Næringsliv, 04.01.2006. <http://www.dn.no/for-siden/politikk/Samfunn/article687520.ece>

10 Николай Спасский: Москва не ослабит позиций на Шпицбергене. Российская газета, 23.03.2006. <http://www.rg.ru/2006/03/23/shpitzbergen.html>

11 Прохоров П.М. «Гаагская вакцина» от «синдрома Сьюарда». Санкт-Петербургские ведомости, выпуск № 137 от 28.07.2006. [http://www.spbvedomosti.ru/print.htm?id=10237723@SV\\_Articles](http://www.spbvedomosti.ru/print.htm?id=10237723@SV_Articles)