

Russian frontiers of the maritime Arctic

Representatives of the five coastal States bordering on the Arctic Ocean – Canada, Denmark, Norway, the Russian Federation and the United States of America – met at the political level on 28 May 2008 in Ilulissat, Greenland, to hold discussions. Their participants have expressed in the joint declaration¹ their commitment to the existing international legal framework, in particular, on the delimitation of this part of the globe and no need to develop a new comprehensive international legal regime to govern the Arctic Ocean – the smallest ocean of our planet.

On the map of maritime jurisdiction and boundaries in the Arctic maritime region prepared by the University of Durham² are shown lines delimitating the maritime jurisdictional areas of the littoral Arctic States. However, it is not listed on there the oldest lines of demarcation of the Arctic Ocean, established the century before last, in particular, the line of demarcation of the Russian and British possessions in the Arctic Ocean (between Russian Alaska and British Dominion of Canada), which was defined by a bilateral Russian-British Convention of February 28/16, 1825.³ It proceeded from the Beaufort Sea along “the said Meridian Line of the 141st Degree, in its prolongation as far as the Frozen Ocean”.

The same line was mentioned in the first article of the Convention between the United States of America and Russia on March 30, 1867 for the cession of the Russian possessions in North America⁴ in area of 1.5 million square kilometers. The same article defined the line of demarcation of the Russian and American possessions, which proceeded in the Arctic Ocean from the Bering Strait “due north without limitation, into the same Frozen Ocean”.

¹ “The Ilulissat declaration” <http://www.um.dk/NR/ronlyres/BE00B850-D278-4489-A6BE6AE230415546/0/ArcticOceanConference.pdf>.

² “Maritime jurisdiction and boundaries in the Arctic region”, <http://www.dur.ac.uk/ibru/resources/arctic/>.

³ “Convention Between Great Britain and Russia”, <http://explorenorth.com/library/history/bl-ruseng1825.htm>.

⁴ “Alaska Purchase Treaty with Russia (1867)”, <http://www.historicaldocuments.com/AlaskaPurchaseTreaty.htm>.

Cession of Alaska was one of the steps of Russia towards rejection of the areas or of claims to those areas, regarding to which it had priorities or preferences comparing with its sea neighbors in the Arctic. The total land territory on the North American continent ceded by Russia to the USA counted up in the article of S.Pykhtin "How Russian America was sold".⁵ Presented facts there utterly impress – Russia forfeited 3.2 million square kilometers without any indemnity.

At the European utmost North lost Russia exactly in the same way 65,000 square kilometers to Norway (so-called common area between the Kola and Scandinavian Peninsulas, as well as Spitsbergen), if not to consider Finnmark which Moscow state surrendered under the treaty of Teusina in the year 1595.⁶ Nobody has calculated areas of the continental shelf adjacent to the above named land territories for a while, but they put together some millions square kilometers.

In the XX century it came to the delimitation of maritime areas in the Arctic Ocean. The first international treaty, determining legal appurtenance of Arctic maritime areas to littoral state, was the Parisian treaty on Spitsbergen of 1920.⁷ It is signed up nowadays by 40 states-participants including the Arctic Five. Provisions of the draft of Spitsbergen convention developed by representatives of Norway, Russia and Sweden before the World War I were used as the base in this treaty. In the article 1 of the first project of this convention, presented by Russia in 1910 at the conference in Christiania, were indicated the islands, situated between 10°/35° east longitude and 74°/81° north latitude.⁸

Russia has suggested to extend the application of environmental measures on land surface of archipelago, territorial waters and the open sea around Spitsbergen⁹ at the same conference, that is to establish local jurisdiction beyond the territory of the archipelago. This proposal, despite the fact that it was not a novelty in international law (Russia back in 1821 established, in essence, nature protected

⁵ <http://xopc.xpomo.com/rusograd/wars/alyaska2.html>.

⁶ <http://www.histdoc.net/historia/teusina.html>.

⁷ «Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas Dominions and Sweden concerning Spitsbergen signed in Paris 9th February 1920», <http://www.lovddata.no/traktater/index.html>.

⁸ «News of the Ministry of Foreign Affairs of Russia. Diplomatic correspondence. Spitsbergen 1871-1912», St. Petersburg, Printing House of V.K.Kirschbaum, 1912, p. 17.

⁹ Op.cit., p.54.

area in the Bering Sea on the basis of the decree “On enforcement of regulations on the limits of navigation and about the order of coastal affairs along the coasts of Eastern Siberia, Northwestern America and islands of the Kuril, Aleutian and so on”¹⁰) found no support among creators of the treaty, and was not included in the draft convention.

The treaty concerning Spitsbergen provides for the recognition of Norway’s sovereignty over land territory limited by coordinates referred to in art. 1 of the treaty – 10°/35° E and 74°/81° N that was similar to the Conventions of 1825 and 1867 between Russia, on the one hand, Britain and the United States, on the other, which established lines of demarcation between possessions of these states in the Arctic Ocean. However, this sovereignty was recognized provided that Norway would establish a unified regime for all nationals of countries-participants of the treaty not only on the land but also in the waters adjacent to the relevant islands.

Creators of this treaty has used the geographical and legal concepts – waters, fjords and territorial waters – to determine the spatial scope of Spitsbergen treaty’s action beyond the land territory of the archipelago, probably, with the key to the future (for the extension of regime beneficial for nationals of countries-participants of the Parisian treaty of 1920 to the areas adjacent to the land).

The first two sub-paragraphs of art. 3 of the treaty on Spitsbergen read: “The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.

They shall 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, and no monopoly shall be established on any account or for any enterprise whatever”.¹¹

¹⁰ P.G.Palamarchuk, “International Legal Regime of the Soviet sector of the Arctic”, Moscow, Publishing ISandR of AS of USSR, 1981, p. 114.

¹¹ <http://www.lovdato.no/traktater/index.html>.

Norway has freewill agreed to these provisions of the treaty, defining the spatial scope of its action, as well as to other conditions of this international agreement, despite the fact that many of them did not meet and did not comply with the norms of international customary law. This does not exempt it from observance of the principle of *pacta sunt servanda* – treaties must be respected.

Provisions of art. 3 of the treaty on Spitsbergen regarding to that nationals of countries-participants of this treaty will be admitted to engage in various economic activities in the waters and fjords of the archipelago subject to the observance of local laws and regulations, mean that for regulation of legal relations within the limits of these areas must Norway develop relevant local laws and regulations. Such an attempt was made in 1938. According to the Royal resolution adopted May 27, 1938: “Hunting and catching birds and collecting eggs and fluff on Svalbard is not allowed if they do not aim to use prey on Svalbard and in the waters of Svalbard”.¹²

Contemporary international sea law did not provide for delimitation of abstract ocean spaces (maritime areas) or geographic concepts included in their composition. However, the legal definition of ocean spaces (maritime areas) is nowhere given. On the basis of the Geneva Conventions on the Law of the Sea of 1958¹³ and the UN Convention on the Law of the Sea in 1982¹⁴ can we say that their composition is determined by both geographical and legal concepts – such as waters, seabed and subsoil also, respectively, the territorial sea, exclusive economic zone and continental shelf. If the first range of concepts has no defined spatial limits, so in respect of legal terms establishing such limits envisaged.

Convention of 1982 did not provide for delimitation of abstract maritime spaces or geographic concepts included in their composition. As its provisions and provisions of the Conventions of 1958 on the Territorial Sea and Contiguous

¹² ”Norsk Lovtidende (Samling av lover, resolusjoner m.m.)”, Oslo, ”Grøndahl & søns boktrykkeri”, 1938. Den Kongelige resolusjon av den 27. mai 1938.

¹³ “UNCLOS I”, <http://en.wikipedia.org/wiki/UNCLOS>.

¹⁴ “United Nations Convention on the Law of the Sea” of 1982,
http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

Zone,¹⁵ as well as on the Continental Shelf¹⁶ provide for delimitation only spaces and areas defined by legal concepts – the territorial sea, continental shelf and exclusive economic zones. Articles 74 and 83 of the UN Convention of 1982 containing references to art. 38 of the Statute of the International Court of Justice don't except possibility of delimitation of zones of jurisdiction over maritime areas defined by geographical terms.

Continental shelf between Greenland and Canada have been delimited in strict accordance with the above considered provision of international sea law (Agreement between the government of the Kingdom of Denmark and the government of Canada relating to the delimitation of the continental shelf between Greenland and Canada of 17.12.1973¹⁷), as well as the continental shelf, fishery protection zone of Spitsbergen and the exclusive economic zone of Greenland (Agreement between Norway and Denmark/Greenland Home Rule Government on the delimitation of the continental shelf and fishery zones in the area between Greenland and Svalbard of 20.02.2006¹⁸).

From point of view of geographical terms and legal concepts used in the art. 3 of the treaty on Spitsbergen and the exercise of jurisdiction within the limits of the relevant areas are provisions of this article almost entirely corresponding to the concepts of part V “Exclusive Economic Zone” (EEZ) of the UN Convention on the Law of the Sea of 1982. Under its provisions is EEZ an area beyond and adjacent to the territorial sea. It is composed of the waters superjacent to the seabed, the seabed itself and its subsoil, which are subject to the specific legal regime following from the relevant provisions of the Convention of 1982.

Norwegian lawmakers to bypass these inconvenient for their country provisions of the UN Convention of 1982 adopted back in 1976 a law on the

¹⁵ “Convention on the Territorial Sea and Contiguous Zone” of 1958,

http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_territorial_sea.pdf

¹⁶ “Convention on the Continental Shelf” of 1958,

http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf

¹⁷ “Agreement between the government of the Kingdom of Denmark and the government of Canada relating to the delimitation of the continental shelf between Greenland and Canada”, http://www.untreaty.un.org/unts/1_60000/26/13/00050629.pdf.

¹⁸ ”Overenskomst mellom Norge og Danmark/Grønlands landsstyre om avgrensning av kontinentalsokkelen og fiskerisonene i området mellom Grønland og Svalbard”, <http://www.lovdatab.no/traktater/index.html>.

economic zone of Norway,¹⁹ which regulates the relationship concerning only the living resources in waters beyond the territorial sea and superjacent to the seabed,²⁰ but does not affect the subsoil of the seabed. The reason of such manipulation explains by provisions of the UN Convention of 1982. Accordingly to art. 55 of this Convention the exclusive economic zone is an area beyond and adjacent to the territorial sea, and accordingly to art. 76 of this Convention the continental shelf of a coastal State ...extends beyond its territorial sea.

The Royal resolution on fishery protection zone around Spitsbergen²¹ was adopted in 1977 on its base. There was not taken into account the provisions of the treaty concerning Spitsbergen providing for the establishment within its limits of such a regime that would guarantee private persons and companies of countries-participants of this treaty the same rights in the waters adjacent to the archipelago, as in its territorial waters. The legitimacy of the adoption of such resolution, as well as the regime of fishery protection (economic) zone of Spitsbergen are not recognized by many participants of the Parisian treaty of 1920, since the application of such a national regulation is a direct violation of art. 3 of the Spitsbergen treaty.

To justify its position Norwegian officials refer to the fact that the sovereignty of Norway over Spitsbergen, as it follows from art. 1 of the treaty, was recognized just over the land territory of the archipelago, and the treaty scope of its territorial supremacy was extended by articles 2 and 3, where is mention about territorial waters of the archipelago. In addition, they argue that having the right to establishing the exclusive economic zone, they are content with less – fishery protection zone.

However the waters of Spitsbergen represent an area located beyond the territorial waters of archipelago and adjacent to these islands regardless of denominations, which can give the Norwegian lawmakers to these waters using

¹⁹ “Lov om Norges økonomiske sone”, <http://www.lovdatabank.no/cgi-wif/wifldrens?app/gratis/www/docroot/all/tl-19761217-091-0.html>; Rolf Einar Fife, Director General, Legal Affairs Department, Royal Ministry of Foreign Affairs, Oslo, “Svalbard and the Surrounding Maritime Areas”, <http://www.regjeringen.no/en/dep/ud/selected-topics/civil--rights/spesiell-folkerett/folkerettslige-sporsmal-i-tilknytning-ti.html?id=537481>.

²⁰ R.E.Fife, op. cit.

²¹ “Forskrifter om fiskevernsone ved Svalbard”, <http://www.lovdatabank.no/for/sf/ud/td-19770603-0006-0.html>.

modern maritime legal terminology. According to the treaty concerning Spitsbergen there should act the same treatment as in territorial waters of the archipelago.

The Norwegian state has needed to establish baselines (for internal waters) and limits of the territorial sea for measuring limits of economic zone (so-called fishery protection zone of Spitsbergen is as such inherently) and the Norwegian continental shelf. It is important in this regard to distinguish between the terms “territorial waters” used in the treaty on Spitsbergen and the “territorial sea” used in contemporary international sea law.

They are two completely different concepts despite the fact that they define the same area in the context of the archipelago. The reason is that foreign nationals of the other countries-participants of the treaty concerning Spitsbergen enjoy the immeasurable amount of rights in the territorial waters of the archipelago, rather than foreign citizens in the territorial sea of a coastal State under the provisions of contemporary international sea law.

Well known Russian international lawyers Alexander Vylegzhanin and Vjacheslav Zilanov clearly prescribe the differences between them in their book “Spitsbergen: legal regime of adjacent marine areas”.²² They come as a result of the research to the well-reasoned conclusion that the Norwegian lawmakers have no legal grounds for using such classical institution of contemporary international sea treaty law as the territorial sea for the definition of the spatial scope of the treaty concerning Spitsbergen.

They must obtain appropriate consent to use the term “territorial sea” for establishing the limits of the exclusive economic zone around the archipelago or its shelf in accordance with the provisions of this law of the other countries-participants of the Parisian treaty of 1920 since application of this term involves changing the volume of the rights that nationals of participating countries of the

²² Vylegzhanin A.N., Zilanov V.K., “Spitsbergen: legal regime of adjacent marine areas”, Utrecht, NL: Eleven International Pub., 2007. – 167 p. - ISBN 90-77596-24-0, 978-90-77596-24-1. Cited below accordingly to the Russian version, А.Н.Вылегжанин, В.К.Зиланов, “Шпицберген: правовой режим прилегающих морских районов”, Москва, СОПС, pages 64-65, http://www.morskayakollegiya.ru/publikacii/nauchnye_trudy/arhiv/20090318043548-3074.pdf.

named treaty have within the areas defined by this term. Such consent was not sought nor granted for a while.

Given the lack of other legal basis in international customary and contemporary sea treaty law for setting the appropriate limits around Spitsbergen can their role play geographic coordinates specified in art. 1 of the treaty on Spitsbergen – the so-called Spitsbergen square. This conclusion contained in the above-mentioned book of A.N.Vylegzhanin and V.K.Zilanov can be considered as a scientific justification for the political and legal position of the Soviet Union, expounded in the note of the Soviet Foreign Ministry on June 14, 1988, under which the actions sphere of the treaty with the spatial point of view is limited by $10^{\circ}/35^{\circ}$ E and $74^{\circ}/81^{\circ}$ N.²³

In view of the restrictions imposed on Norway by aforesaid treaty, there is any interest for it nor in the spatial scope of its action, nor in the establishment of the envisaged regime there. Differences in the approaches of Norway and other participants of the Parisian treaty of 1920 to the question of the regime of economic zone of Spitsbergen, about the presence or absence of its own shelf and regime of this shelf explains the possibility of establishing in the maritime areas adjacent to the archipelago of the same low level of taxation as well as on the land territory of the Spitsbergen.

Thus, if the tax law of Norway's mainland provides for payment by companies 78% of the revenues earned by development of deposits on the continental shelf of this country,²⁴ so according to art. 8 of the Parisian treaty of 1920 an export duty on Spitsbergen “shall not exceed 1 % of the maximum value of the minerals exported up to 100.000 tons, and beyond that quantity the duty will be proportionately diminished”.

With this in mind has Norway developed its national legislation for the areas adjacent to the archipelago basing not on the norms of the treaty on Spitsbergen, but on the principles of customary international law, simultaneously pulling out of

²³ A.N.Vylegzhanin, V.K.Zilanov, op. cit, pages 134-135.

²⁴ Enclosure to newspaper “Kommersant”, № 235 (3319) of 14.12.05, <http://www.kommersant.ru/doc.html?DocID=633371&IssueId=29866>.

the context of contemporary international treaty sea law the norms suitable for the country. As a result of it, there are different regimes in Arctic zone of Norway's maritime jurisdiction (for range of issues in this article): in the economic zone of the mainland, in the so called Spitsbergen fishery zone, and on a single "Norwegian continental shelf", which includes the seabed and subsoil of the submarine areas that extends beyond the territorial sea of the mainland Norway as well as the territorial waters of Spitsbergen.

The full regulatory framework of Norwegian "shelf" legislation contains in the submission of that country to the UN Commission on the Limits of the Continental Shelf²⁵ and represents by self the petroleum legislation of Norway. The first piece of legislation referred to in it, is a Royal resolution of 1963,²⁶ which suggests that Spitsbergen has not its own shelf and the adjacent "shelf areas" is a natural extension of the underwater part of mainland Norway.

The explanation for this phenomenon lies in the fact that the archipelago did not have the limits of territorial waters in 1963, and it was not on the continental shelf in the above-mentioned resolution but on the seabed and its subsoil, that is, the maritime spaces defined by a geographical concept. It was assumed that the seabed and its subsoil of the continental Norway under the jurisdiction of that country has subject to the provisions of the Convention on the Continental Shelf of 1958 extended from its coast by Spitsbergen further to the North to the depth which would allow to exploit their natural resources.

Only in 1970 Norway established the limits of the "territorial sea" of the archipelago without any explanation of using this term. The Soviet embassy in Oslo handed to the Norwegian Ministry of Foreign Affairs shortly before (8/27/1970) a memorandum²⁷ in which it expressed the hope that the establishment by Norway of territorial sea limits of the archipelago will not lead to unilateral

²⁵ "Continental shelf. Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea. Executive Summary". http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_exec_sum.pdf.

²⁶ "Lovgivning vedrørende den norske kontinentalsoekkel", 5. utgave, Det kongelige departament for industri og håndverk, Oslo, oktober 1977, side 8.

²⁷ A.N.Vylegzhanin, V.K.Zilanov, op. cit, p. 130.

steps that would be incompatible with the Parisian treaty on Spitsbergen of 1920. This hope however never came true.

The text of the regulations on the limit of the Norwegian territorial sea of Spitsbergen (Svalbard) approved by Royal resolution of 25.09.1970, very brief: “The limit of the Norwegian territorial sea around Svalbard (see the Royal resolution of February 22, 1812) establishes at a distance of 4 nautical miles (by straight baselines) beyond the archipelago and parallel to the following points ... (a list follows)”.²⁸

By developing this regulations Norwegian lawmakers have used approximately the same method of juridical technique as for validation in the 1920-ies the property right of Norway as a legal entity to the so-called state land of the archipelago – *domaine public* (Fr.)/public lands (English).²⁹ They developed then a complementary international gentlemen’s agreement for the mining regulations on Spitsbergen, which was given for an adjustment to the countries-participants of the Parisian treaty in 1920-1924 years in English and French. But they did not give a legal definition to the term *domaine public/public lands/statens grunn* (Norwegian)³⁰ there.

If these lands were defined in the draft convention on Spitsbergen of 1910³¹ as common property (nationals of countries-participants of the convention could purchase plots of them only for a temporary use) so in the law on Svalbard, published only in Norwegian and approved in 1925, were *domaine public/public lands/statens grunn* already defined as land under ownership of the Norwegian state.³² As a result of this manipulation has the term *domaine public/public lands/statens grunn* got two opposite meanings depending on the base used for its determination.

²⁸ ”Forskrift om grensen for det norske sjøterritorium ved Svalbard”, ”Svalbard. Samling av lover, forskrifter og bestemmelser”, Det kongelige Justis- og politidepartementet, 1985, s. 47.

²⁹ See more A.M.Oreshenkov, “Comparative terminological analysis of some documents on Spitsbergen”, “Moscow Journal of International Law”, 1996, № 1, http://www.nord-news.ru/main_topic/?mtopicid=111.

³⁰ “Bergverksordningen for Spitsbergen (Svalbard)”, § 7. 1-2 <http://www.lovddata.no/all/hl-19250807-000.html>.

³¹ “News of the Ministry of Foreign Affairs of Russia. Diplomatic correspondence. Spitsbergen 1871-1912”, St. Petersburg, Printing House of V.K.Kirschbaum, 1912, p. 37.

³² «Lov om Svalbard», § 22, <http://www.lovddata.no/all/hl-19250717-011.html>.

Thus, as in the case with so-called state lands, as well as in the case with territorial waters/territorial sea of Spitsbergen have Norwegians developed such national regulations that have not possessed the necessary legal clarity, and in these artificially created legal conditions have used sovereignty over the archipelago for the best of political line. Exactly the same methods of juridical technique were used for establishing regime of Norway's "continental shelf" and its limits.

According to Article 56, p. 3 of Part V "Exclusive Economic Zone" of the UN Convention on the Law of the Sea 1982: "The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI (Continental Shelf – Author's Note)". This provision of the Convention suggests regulation of the relations on the continental shelf of any country within its exclusive economic zone by rules of national law on the shelf. Norway has a law on economic zone, which includes only the waters superjacent to the seabed and the seabed, but there is no law on the continental shelf, which includes the seabed and its subsoil. The basis of the current regime of shelf areas of Spitsbergen is the petroleum law adopted in 1985³³ and acting now in edition of 1996.³⁴ It reads in the editions of the petroleum law of Norway of 1985 and 1996 that them does not act in the territorial sea and internal waters of Spitsbergen, and in the second edition – even on the land of the archipelago.

According to the second edition of this law, first paragraph, § 1-4 applies its provisions to petroleum activities related underwater petroleum deposits under Norwegian jurisdiction. In addition, the same paragraph states that it applies to oil and gas activities in the state and beyond it, as well as on the Norwegian continental shelf, when it follows from the norms of international law or agreement with a foreign country. And according to the fifth paragraph of that section, this Act does not apply to Svalbard, including its internal waters and territorial sea.

That is this law establishes jurisdiction of Norway in respect to the underwater petroleum deposits which represent only one component of geological

³³ "Lov nr. 11 av 22.3.85 om petroleumsvirksomhet", <http://www.ub.uio.no/ujur/ulovdata/lov-19850322-011-eng.pdf>.

³⁴ "LOV 1996-11-29 nr 72: Lov om petroleumsvirksomhet", <http://www.lovdata.no/all/hl-19961129-072.html>.

part of geographical concepts – seabed and its subsoil. This geological-geographical concepts are in turn the basis of legal concepts – EEZ and continental shelf that begin beyond territorial sea of a coastal State and have external limits measured from basic lines situated in its territorial sea. If UNCLOS provides that a coastal State exercises jurisdiction only over spaces defined by juridical concepts – sovereignty over territorial sea and sovereign rights over EEZ and continental shelf, so Norwegian lawmakers established national jurisdiction over one component of geological-geographical spaces.

Thus, within the framework of the Norwegian regulatory base with regard to the "shelf areas" adjacent to the archipelago, is constructed the following legal structure – Spitsbergen has its own "Norwegian" territorial sea and internal waters; limits and baselines in these water areas are used for measuring relevant limits of the seabed and subsoil under jurisdiction of Norway; but the Norwegian petroleum «offshore» legislation has no effect for Spitsbergen, its internal waters and territorial sea, where established base lines and limits needed for measuring Spitsbergen "shelf areas" and its economic zone.

From the first and fifth sub-paragraphs of § 1-4 of the petroleum law in edition of 1996 follow also that in the all spaces under the jurisdiction of the Norwegian State, including the land part of mainland Norway, underwater deposits within its territorial sea and beyond it, but excluding Spitsbergen, its internal waters and territorial sea, is acting a unified petroleum regime.³⁵ It must be taken into account here that under § 1 of the law on Spitsbergen (Svalbard) this archipelago is "a part of the Kingdom of Norway".³⁶

In this regard, the exclusion of the land territory of Spitsbergen from the sphere of application of petroleum law of 1996 means that Norway has jurisdiction over "underwater deposits under jurisdiction of Norway" on the basis of sovereignty over the land territory of the mainland, but not on the sovereign rights of coastal State in respect of its shelf. This provision of the Norwegian petroleum

³⁵ Op. cit , § 1-4, "Virkeområde".

³⁶ <http://www.lovdato.no/all/hl-19250717-011.html>.

law is a direct violation of part 1 of art. 77 of the UN Convention on the Law of the Sea of 1982, according to which: “The coastal State exercises over the continental shelf sovereign rights ...”.³⁷ It can be added to the above mentioned that there is the primacy of national law over international in the Norwegian legal system.

For the Norwegian state are limitary lines established by art. 1 of the treaty concerning Spitsbergen (10°/35° E and 74°/81° N) very inconvenient, since they narrow the spatial limits of its jurisdiction in the maritime Arctic reducing the sphere of the action of the treaty to the peculiar historical enclave, whose existence don't allow Norway to extend jurisdiction in this region of Arctic. Additionally it is not entitled by virtue of the norms of Spitsbergen treaty to establish within the limits of adjacent water areas that form of jurisdiction, which in full would be based on the norms of contemporary international treaty sea law.

In this connection, Norway has in addition to the above considered one-sided steps taken a series of foreign policy actions: concluded an agreement with Denmark on delimitation of the continental shelf and fishery zones in the area between Greenland and Svalbard in 2006; handed a submission to the UN Commission on the Limits of the Continental Shelf in 2006 and received from it the relevant recommendations concerning establishing the limits in 2009;³⁸ signed an agreement with Russia on the delimitation of maritime areas and cooperation in the Barents Sea and Arctic Ocean September 15, this year.³⁹

There were established lines beyond the so-called Spitsbergen square as a result of all these foreign policy actions of Norway. In the Russian-Norwegian agreement it is the line that passes through the points 2-8, referred to in paragraph 1 of Article 1 of this agreement.

³⁷ http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

³⁸ http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf

³⁹ <http://www.regjeringen.no/nb/dep/ud/kampanjer/delelinje/avtalen.html?id=614006>,
<http://www.regjeringen.no/nb/dep/ud/kampanjer/delelinje/kart.html?id=614287>.

In this case, the UN Commission on the Limits of the Continental Shelf exceeded its authority, as under the provisions of the UN Convention on the Law of the Sea of 1982, which is the basis of its activities, it develops recommendations for the establishment of the outer limits of continental shelf of any state, but does not limits of the jurisdiction of the State in respect only of underwater petroleum deposits beyond the line of its coast (See Annex II to the Convention, article 3, p. 1, and article 4).

However, basing on the principle of *pacta sunt servanda*, the spatial limits of the multilateral treaty concerning Spitsbergen, established by its art. 1, also the regime of areas adjacent to it can not be changed by unilateral actions of Norway, its bilateral agreements with neighboring countries or recommendations of the UN Commission on the Limits of the Continental Shelf. These treaties and decisions with regard to areas adjacent to the archipelago may be litigated by any country-participant of the treaty concerning Spitsbergen in the International Court of Justice in The Hague.

The absence in the Russian-Norwegian agreement on the delimitation of the provisions taking into account the legal realities of the treaty on Spitsbergen and the Norwegian national legislation, will significantly reduce the income of Russian state oil and gas companies (Rosneft, Gazprom, Zarubezhneft) which have legally permitted access to offshore deposits when an oil and gas deposit will be found at the junction of the Russian shelf in the Barents Sea and “shelf areas” around Spitsbergen.

They are entitled under the provisions of the Parisian treaty of 1920 to access on the foot of absolute equality with Norwegian companies, and should pay there for the needs of Spitsbergen taxes of less than 1% of the value of the extracted hydrocarbons. From the text of the Russian-Norwegian agreement about delimitation don't for example follow that in the case of passing the delimitation line through the field, discovered by national companies for example in the Russian part of the Barents Sea, and continuing in the area of action of the treaty concerning Spitsbergen, they have the right to work there on the basis of local laws and to pay a part of taxes to the Russian state, respectively, and a part (much smaller) to the needs of the archipelago.

The question in Annex II to the treaty on the delimitation of 15.09.2010 is solely about the norms of national legislation of both countries, but the essence of the Norwegian national legislation in force beyond the “territorial sea” of the archipelago is considered above. Because these realities are not taken into account in the bilateral agreement on the delimitation have Russian oil and gas companies

to share the relevant part of the field in the “Spitsbergen square” with the Norwegian state subject to conditions of the Russian-Norwegian agreement.

Art. 6 of the treaty on the delimitation of 15.09.2010 contains the following provision: “The present treaty shall not prejudice rights and obligations under other international treaties to which both the Kingdom of Norway and the Russian Federation are Parties, and which are in force at the date of the entry in the force of the present treaty”. But this does nothing to protect the interests of Russian oil and gas companies in connection with the fact that the Soviet Union did not react on the Norwegian oil and gas law in 1985.

For this reason, the rules of the treaty on the delimitation will not apply, when a dispute arises between parties and will be transferred to the International court, but will apply the principle of *estoppel* – a tacit consent of the participant of agreement (on Spitsbergen) with a certain status quo and, consequently, the loss of the right to refer in the future noticing the base of its invalidity. The same applies to art. 3 of Danish-Norwegian agreement on the delimitation between Greenland and Spitsbergen.

There is said in the agreements between the Soviet Union and the United States, Russia and Norway about maritime delimitation, whereas in the above mentioned Canadian, Danish and Norwegian agreements – about delimitation of areas defined by concrete legal concepts. In turn, this requires finding out about what our country really agreed with the neighbors in the Arctic Ocean.

From the Soviet-American agreement follows (not taking into account its terminological aspect) that the question there is about the delimitation of jurisdiction over the exclusive economic zones and waters or seabed and subsoil. The Soviet part concluding this agreement would like to have an influence on the political move of negotiations on maritime delimitation with Norway. What was the end of this political attempt is well known.

A.N.Vylegzhanin writes in the article “20 years of “temporary use” of the Agreement between the USSR and the USA on the maritime boundary”⁴⁰ that the Soviet Union using for delimitation of the median line would have the rights in the Bering Sea to 25 thousand square kilometers areas larger than when using the line of the Convention of 1867. If a part of this line could proceed into the Arctic Ocean to the North Pole accordingly to this Convention, then, as appears from the message of U.S. President George Bush (senior) to the Congress of this country about the ratification of the said Agreement,⁴¹ and the map attached to Russia’s submission to the UN Commission on the Limits of the Continental Shelf,⁴² this line is limited to extension of the 200-mile EEZ. It is not excluded that application of the principle of the median line for the delimitation of the continental shelf between the U.S. and Russia in the Arctic Ocean would also be more beneficial for our country.

Among the terms of the UN Convention on the Law of the Sea of 1982, defining maritime areas and used in a recently signed Russian-Norwegian treaty concerning maritime delimitation there are references to the Russian EEZ and continental shelf of two countries. Due to the absence of legal clarity in the Norwegian regulatory framework that defines «the continental shelf” of the country, as well as the limits of “shelf spaces” adjacent to Spitsbergen would have to be taken into account peculiarities of the spatial scope of the treaty concerning Spitsbergen, as well as applicable legal, rather than geographical terms used in contemporary international sea law in the delimitation agreement between Russia and Norway.

A special international legal position of «Spitsbergen square» that has, in fact, the status of the historic enclave, does not allow Norway to claim the enlargement of the Norwegian continental shelf to the North Pole on the basis of agreements with neighboring countries, using art. 83 of UNCLOS. This, in turn, suggests the possibility of delimitation of the deep shelf areas of the Arctic Ocean

⁴⁰ A.N.Vylegzhanin, “20 years of “temporary use” of the Agreement between the USSR and the USA on the maritime boundary”, “Herald of MGIMO-University”, 2010, № 1 (10).

⁴¹ <http://www.state.gov/documents/organization/125431.pdf>.

⁴² http://www.un.org/depts/los/clcs_new/submissions_files/rus01/RUS_CLCS_01_2001_LOS_1.jpg.

between Russia and Denmark/Greenland Home Rule Government on the basis of the same art. 83 of the UN Convention on the Law of the Sea of 1982.

The above mentioned provisions of the existing international law were not taken into account in Russia, not only in the treaty on the delimitation of the maritime Arctic with the Norwegians, but also in elaboration of the issue of delimitation of the Arctic Ocean between the Arctic Five in general. In the Russian submission to the UN Commission on the Limits of the Continental Shelf, in particular, on the scheme of limits of the exclusive economic zone and continental shelf of the Russian Federation⁴³ appears the eastern side of Spitsbergen square as a line delimitating the maritime areas to be defined through negotiations.

If the submission to the UN Commission on the Limits of the Continental Shelf was necessary for Norway for validation of relevancy of its position concerning its “continental shelf” as a single area with an unified regime in the international sense of justice, so Russia has all opportunities for delimitating the continental shelf with all the countries of the Arctic Five without recourse to this commission. The basis for this is art. 83 of UNCLOS.

An extremely negative reaction of the leading Russian experts in the field of international legal Arctic problems aroused the fact that submission of Russia that did not elaborated on the delimitation of the deep shelf areas of the Arctic Ocean with the countries of the Arctic Five, provides the use of art. 76 of UNCLOS, the creation here of an international “Area” of the seabed and the renunciation of claims to nearly half a million square kilometers of shelf areas, located between the limits of the Russian Arctic sector and the limits of the claims set forth in the Russian submission. In this regard, they propose to withdraw the Russian submission.

It’s difficult to verify the relevancy of provisions of the submission and the position of Russian scientists for the ordinary Russian reader, as the UN for some reason posted the Russian submission on its website in a shortened form. If the volume of the Norwegian proposal for 250 thousand square kilometers offshore

⁴³ http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/RUS_CLCS_01_2001_LOS_1.jpg.

(the text has been published in several languages, including Russian) is more than 20 pages,⁴⁴ the amount of Russian submission for 1.2 million square kilometers of the continental shelf (published for some reason only in English) is only on 5 pages.⁴⁵ The situation is aggravated by the fact that Russia's submission for extending the continental shelf do not have the status of normative regulation, so it can not be viewed in Russian electronic reference systems.

The criticism essence of Russian scientists are in a concentrated form described in the article of Professor G.K.Voytolovskiy (member of Scientific Advisory Council of the Maritime Board under the Government of the Russian Federation) "Unsolved problems of maritime using the Arctic Ocean",⁴⁶ where he writes about the inability to establish an international "Area" of the seabed and ocean floor in the maritime Arctic beyond the limits of national jurisdiction of coastal States accordingly to art. 1 of the UN Convention on the Law of the Sea of 1982 only from the Russian side because, "there is no legal obligation for Russia to fulfill art. 76 of UNCLOS (concerning the limit between the Russian shelf and international "Area") before a delimitation between the shelf of Russia and other Arctic States with opposite or adjacent coasts, on the basis of art. 83 of UNCLOS and art. 6 of the Convention on the Continental Shelf of 1958".

Due to the fact that a special international legal position of so-called Spitsbergen square does not provide for extension of jurisdiction of Norway beyond 10°/35° E and 74°/81° N, has Russia, excepting delimitation of its exclusive economic zone and continental shelf with the Norwegian economic zone and "continental shelf" also Svalbard enclave, the potential possibility to achieve an agreement on the delimitation of the continental shelf of the Arctic Ocean with Denmark/Greenland Home Rule Government. After this will remain the question on delimitation of the continental shelf with the United States of America or on complete revision of the Soviet-American agreement of 1990.

⁴⁴ http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm.

⁴⁵ http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm

⁴⁶ http://vestnik.mstu.edu.ru/v13_1_n38/articles/17_voitol.pdf