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# Russia's Strive from the Land to the Sea Based on International Law and Doctrine of Sovereignty

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# RUSSIA'S STRIVE FROM THE LAND TO THE SEA BASED ON INTERNATIONAL LAW AND DOCTRINE OF SOVEREIGNTY

## ABSTRACT

This article aims to research Russia's legal behaviour in its maritime domains and the extent to which Russia's legal claims in the sea are based on the international law of the sea. In other words, the article shall look at how Russia "speaks" the universal language of the international law of the sea proceeding from examples of the Arctic Ocean, the Caspian Sea, the Sea of Azov and the Baltic Sea. In order to find the answers, an extract of Russia's historical positions and contemporary claims, interests and legal policies in chosen maritime areas shall be introduced, followed by an analysis of the legality of the Russian state's practice in the light of universally recognized norms and principles of the international law of the sea. On the basis of empirical knowledge, the article draws general conclusions on understanding the Russian territorial expansion from the land to the sea through the prism of the concept of state sovereignty. Finally, a new meaning to Russian modernized, *extensive*, approach to the notion of sovereignty in maritime areas and its possible implications for the international arena shall be introduced.

## RUSSIA'S APPROACH TO THE INTERNATIONAL LAW OF THE SEA

The Russian Federation, the largest country in the world today in terms of land size, lies between the Arctic and Pacific Oceans and borders twelve seas and the Caspian Sea. The voice of the Russian state in maritime areas has recently become loud and demanding. Russia has laid claims over additional water and underwater spaces in many adjacent oceans/seas. In the contemporary world, where control over maritime spaces entitles the state to "ownership" of water and subsoil resources and, consequently, entails economic, territorial, strategic, political and military supremacy, many of Russia's legal claims and the state's behaviour have raised anxiety among other states and members of the international community.

As an independent state in relation to other states, Russia is subject to international law. In order to legally justify its claims and legal behaviour in the maritime areas in the eyes of other states and the world community, Russia is relying on the international law of the sea. But how does contemporary Russia understand and apply the international law of the sea? How do Russian authorities "speak" the universal language of the law of the sea in the international arena? Does Russia's legal behaviour in the realm of international law of the sea differ depending on the maritime area and potential outcomes that the state aims to achieve?

To answer these questions one needs to look closer at Russia's legal claims, ongoing debates and the state's practice in water reservoirs that wash Russian coasts and preoccupy world's legal and political minds. Russia's recent legal practice has been most considerable, intriguing, controversial and ambitious in the four maritime regions adjacent to the Russian Federation: the Arctic Ocean, the Caspian Sea, the Sea of Azov and the Baltic Sea. The Russian Federation is a littoral state to all of the chosen maritime areas, and all four regions bear significant importance for the rest of the world community. Thus, the Arctic Ocean and the Caspian Sea are especially important for the world economy and energy resources; the Sea of Azov plays a decisive role as an essential transportation route in the region; and the Baltic Sea is one of the most intensely trafficked shipping areas in the world, being also the only sea-route connection to the world ocean for most of the Baltic Sea coastal states. Historically, Russia has enjoyed full or close to full dominion in all four regions, whereas its presence and interests in the chosen areas have been long-lasting and extensive. Finally, at present the Russian Federation has presented certain maritime claims or is involved in maritime disputes in each and every specified region, and Russia's state practice cannot be ignored by the international community.

Proceeding from the facts listed above, one could presume that in the cases of the Arctic Ocean and the three adjacent seas something generally valid about Russian practice in the field of international law of sea can be concluded, providing a key for a proper, adequate and competent response to Russian legal claims in its adjacent seas. The following article aims to introduce Russia's historical positions and contemporary claims, interests and legal policies in the Arctic Ocean, the Caspian Sea, the Sea of Azov and the Baltic Sea, followed by an analysis of legality of Russian state practice in the light of universally recognized norms and principles of the international law of the sea. Thereafter, general conclusions on Russia's expansion from the land to the sea under the doctrine of state sovereignty – as understood by Russian academics and applied by the state authorities in subsequent legislation – shall be drawn. Hence, it is essential to note that by choosing the Arctic Ocean and the three seas for discussion, this article does not attempt to be comprehensive about Russia's practice in the field of the international law of sea. In particular, the contested issue with land and maritime borders with Japan, as well as Russia's stand on the Bering Sea shall not be dealt with here.

## RUSSIAN FEDERATION IN THE ARCTIC OCEAN

Russia's historic and current legal stand in the Arctic Ocean has been very intriguing and controversial. Thus, the Russian Federation is one of the largest players, if not the largest player, in the Arctic. For instance, the length of the Russian Arctic coastline stretches for about 16 000 kilometres and exceeds in length the coastlines of the other Arctic states.<sup>1</sup> The surface of the Russian Arctic, including its continental territories, is about six million square kilometres. It hosts a population of one million, which produces 20% of Russia's GDP, 22% of its exports, 90% of its nickel and cobalt, 60% of its copper, and 96% of its platinum. It comprises 15% of the Russian fishery. According to existing data, the part of the Arctic Ocean legally claimed by the Russian Federation contains between 25 and 30% of the world's anticipated oil, and especially gas, resources.<sup>2</sup> Approximately 70% of all undiscovered gas resources are located on the Russian continental shelf in the Barents and Kara Seas. Out of all Arctic states, Russia is the first one to start the discovery of hydrocarbon resources in ice-covered areas.<sup>3</sup>

Official Russian claims to the Arctic can be traced back to fourteenth century when Russian tsar Ivan the Terrible refused to satisfy the claims presented by England to grant the latter with an exclusive right of trade in the mouths of northern rivers.<sup>4</sup> Russian Tsar's orders or ukases from 1616–1620 envisaged exclusive rights of the Russian Empire in certain Arctic areas. Russian rights to northern lands and waters were also reflected in the Russian-Swedish treaties from 1806 and 1826, the Russian-American convention from 1824, the Russian-English convention from 1824 and 1825<sup>5</sup> and the Treaty concerning the Cession of the Russian Possessions in North America concluded in 1867.

Russian legislation concerning the Arctic started to develop in the beginning of the twentieth century with a Note of the Russian Government of 20 September 1916 in which it was communicated that the islands of Henrietta, Jeanette, Bennett,

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1 Kovalev, A. (2004), *Contemporary Issues of the Law of the Sea: Modern Russian Approaches* (translated and edited by Butler, W. E.), Eleven International Publishing, p. 178.

2 Piskunova, J. (2010), 'Russia in the Arctic. What's lurking behind the flag?', *International Journal*, vol. 65, no. 4, p. 853.

3 Паничкин, И. (2012), 'Экономические оценки состояния и перспектив разработки морских нефтегазовых ресурсов Арктики', *Арктика: экология и экономика*, vol. 7, no. 3.

4 Паламарчук, П. (1981), 'Международно-правовой режим морей советского сектора Арктики' in Менжинский, В., Славкин, М. and Ушаков, Н. (eds.), *Международное право и международный порядок*, Издательство ИГиП АН СССР, p. 113.

5 The Conventions of 1824 and 1825 between Imperial Russia and England provided for a line of demarcation between the Russian and British North American territories that would extend beyond their respective Arctic coasts and would continue in its prolongation "as far as the Frozen Ocean". Olenicoff, S. M. (1972), 'Territorial Waters in the Arctic: The Soviet Position. A Report Prepared For Advanced Research Projects Agency', p. 3, available from <http://goo.gl/rNSc2F>.

Herald, Uedinenie, Novosibirsk, Wrangel, Novaia Zemlia, Kolguev, Vaigach, and others are part of Russia, comprise the territories of Russia “in view of the fact that their affiliation to the territories of the Empire has been generally recognized for centuries.”<sup>6</sup> Later on, by Decree of the Presidium of the Central Executive Committee of the USSR “On the Proclamation of Lands and Islands Located in the Northern Arctic Ocean as Territory of the USSR” of 15 April 1926<sup>7</sup>, the affiliation of all lands and islands in the Northern Arctic Ocean to the Soviet Union was confirmed. Under the Decree, “all lands and islands previously discovered and also lands and islands that might be discovered were proclaimed to be the territory of the Soviet Union,”<sup>8</sup> with its total polar area of around 5.8 million square kilometres. Having stated that, the Soviet Union had established its rights to a sector of polar waters in the Arctic Ocean under the so-called “sector theory,”<sup>9</sup> according to which every Arctic state is entitled with specific rights in its national polar sector: a triangle territory with its footing on the coastline of the state and its borders falling on the meridians headed to the North Pole.<sup>10</sup>

The Soviet position to apply sectoral division to the Arctic was grounded in the firm belief of Soviet legal scholars that an international-legal customary norm of dividing the Arctic into sectors between the five Arctic countries has been formed.<sup>11</sup> The Arctic Ocean was viewed as a specific kind of state territory belonging to five Arctic countries that have divided it into polar sectors, whereas all land and islands as well as ice-covered areas within the national sector belong to the state territory<sup>12</sup> over which the state exercises full sovereignty.<sup>13</sup> The described sectoral division of the Arctic, at the time it was done, was *de facto* accepted by many states (excluding the US) and has been reflected on all geographical maps issued in the Soviet Union during the twentieth century. In recent decades, however, the sector method for the delimitation of national interests in the Arctic has been subject

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6 Kovalev, A., *op. cit.*, p. 178.

7 *Ibid.*

8 Вылегжанин, А. (2007), *Международно-правовые основы недропользования. Норма*, p. 124.

9 The Arctic sector theory is rightly associated with Canada for it was first publicly propounded by Pascal Poirier, a Canadian Senator, in 1907. Officially, Senator Poirier’s Arctic sector theory was a one-man idea, but it rapidly attracted attention disproportionate to the importance attached to it by Poirier himself. Head, I. L. (1963), ‘Canadian Claims to Territorial Sovereignty in the Arctic Region’, *McGill Law Journal*, 1963, no. 3, pp. 202–203.

10 Гуцуляк, В. and Шинкаревецкая, Г. (2010), ‘Проблемы современного режима Арктики и интересы России’, *Интернет-журнал “Морское право”*, no. 1, available from <http://goo.gl/rbCxA>.

11 Вылегжанин, А., *op. cit.*, pp. 124–125.

12 Ковалев, А. (2007), *Международно-правовой режим Арктики и интересы России. Международное публичное и частное право: проблемы и перспективы*, Liber amicorum в честь профессора Л. Н. Галенской. Издательский Дом Санкт-Петербургского Государственного Университета, p. 224.

13 Timtchenko, L. (1997), ‘The Russian Arctic Sectoral Concept: Past and Present’, *Arctic*, vol. 50, no. 1, p. 30, available from <http://goo.gl/My0g5J>.

to severe criticism.<sup>14</sup> According to the Russian State authorities today, current Russian international actions in the Arctic are based on the 1982 United Nations Convention on the Law of the Sea<sup>15</sup> (hereinafter “UNCLOS” or the “Convention”) and there are no legal grounds for further application of sectoral division of the Arctic.<sup>16</sup>

In applying UNCLOS to the Arctic, Russia has determined its territorial sea of 12 nautical miles, established an exclusive economic zone (hereinafter “EEZ”) of 200 nautical miles and has claimed its rights over the Arctic continental shelf. In 2001 the Russian Federation became the first Arctic state to file a submission with the Commission on the Limits of Continental Shelf (hereinafter the “CLCS”) pursuant to Article 76 (8) of UNCLOS. In total, the claimed Russian extended continental shelf amounts to 460,000 square miles or 1.2 million square kilometres. The Russian submission to CLCS resulted in protests by many Arctic States. Thus, Canada, Denmark, Japan, Norway, and the United States filed responses to the Secretary General’s published executive summary of the Russian submission, all in one way or another stating that Russian submission lacked sufficient data to consider the Lomonosov Ridge a natural prolongation of Russia’s continental margin. In response to the protests, Russia has planted a titanium Russian Federation flag at a depth of some 4200 meters at the geographic North Pole,<sup>17</sup> a stunning technological achievement which born no legal significance, but nevertheless accelerated a media obsession with the Arctic.

Hence, the Arctic states were not alone in criticizing Russia’s 2001 submission to the CLCS. Many authoritative Russian experts, led by the head of International Law Department of MGIMO University Professor A. N. Vylegzhanin, strongly proposed that the Russian 2001 Submission should be withdrawn from the CLCS and that

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14 Kovalev, A., op. cit., p. 178.

15 United Nations (1982), *United Nations Convention on the Law of the Sea of 10 December 1982*, available from <http://goo.gl/XkG7Y>.

16 This position, in turn, is severely criticized by several leading Russian academics. The scholars (e.g. I. N. Bartsits) claim that strict adherence to international law, including the Convention does not deprive Russia of arguments under the sectoral method, as neither UNCLOS nor anyone else has explicitly cancelled the applicability of the sectoral division of Arctic territories. Others (like Professor A. N. Vylegzhanin) believe that the Decree of 1926 remains a valid legal act of Russian legislature today, and should be fully applied.

17 Just recently, A. N. Chilingarov has published an article on brief memories from the 2007 expedition to the sea bottom of the North Pole. According to the article, the expedition was a great achievement of Russian science and technology. “We were able to crush the ice, to come to the North Pole and on a submarine engineered by ourselves dive to the sea bottom of our planet”, writes Chilingarov. “This achievement proves that Russia was and is the world leader of polar discoveries”. However, Chilingarov confesses that the samples of soil taken from the seabed of the Arctic Ocean “helped a little to gain direct or even indirect proofs that can be used in Russian submission to the CLCS”. Чилингаров, А. (2012), ‘О погружении на дно Северного Ледовитого океана в географической точке Северного полюса’, *Арктика: экология и экономика*, vol. 7 no. 3.

Russia should claim rights over the Arctic sector established in the Soviet period.<sup>18</sup> Notwithstanding the opposition, the official Russian approach favours application of the UNCLOS to the Arctic. In response to the Russian 2001 submission, the CLCS has requested additional scientific data, and currently Russia is collecting new material to ascertain its legal rights over the extended continental shelf in the Arctic.

## **RUSSIAN FEDERATION IN THE CASPIAN SEA**

Not less heated and ambiguous has been the dispute around the legal status, regime and maritime boundaries in the Caspian Sea. The most provocative mystery of the Caspian Sea has throughout centuries been its legal status – whether a “sea” or a “lake”? Legal opinions regarding the status of the Caspian Sea have been different and there is no general understanding neither between Western nor Russian experts. Whilst a majority of Russian scholars (including a remarkable jurist in service of the Russian empire F. F. Martens) consider the Caspian to be “enclosed or semi-enclosed sea” under Article 122 of UNCLOS, others (R. Mamedov, A. L. Kolodkin) believe the Caspian Sea to be a frontier international lake. The legal status of the Caspian Sea is essential to determine the applicable legal regime. Namely, if the Caspian Sea is to be considered a “sea”, UNCLOS and its guidelines for determination of national maritime zones would be applicable. UNCLOS would provide for division of water and seabed into national zones roughly proportional to the length of each maritime state’s coastline, thus benefitting the states with longest coastline. According to one calculation for such division, Kazakhstan would control 29.9% of the Caspian, Azerbaijan 20.7%, Turkmenistan 19.2%, and Russia and Iran – only 15.6% and 14.6%, respectively.<sup>19</sup>

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18 This opinion was expressed in the scientific-expert memorandum prepared by the Council on Studies of Productive Efficiency by Russian Academy of Sciences and Ministry of Economic Development of the Russian Federation [Совет по Изучению Производительных Сил при Президиуме РАН и МИНЭКОНОМРАЗВИТИЯ России] in 2012 for the Administration of the President of the Russian Federation. The Memorandum has been prepared using the publications and expert opinion of the leading Russian maritime and international law experts: academic A. G. Granberg, Professor I. N. Bartsits, Professor G. M. Veljaminov, Professor G. K. Voitolovskiy, Professor A. N. Vylegzhanin, Professor S. A. Gureev, Professor A. A. Kovalev, Professor V. I. Kulebyakin, Professor Y. N. Maleev, Professor G. M. Melkov, Professor P.V. Savasskov, doctor jur candidate I.V. Bunik, doctor jur candidate A. M. Oreshnikov, doctor jur candidate B. P. Shapovalov, doctor jur candidate E. F. Pushkarev. Выегжанин, А. (2012), ‘Совет по Изучению Производительных Сил при Президиуме РАН и МИНЭКОНОМРАЗВИТИЯ России. Научно-экспертный меморандум. “О возможности сохранения в качестве континентального шельфа России района “А” в пределах Российского Арктического сектора, утрачиваемого согласно представлению (“заявке”) России 2001 года”’, p. 10.

19 Clagett. B. M. (1995), ‘Ownership of Seabed and Subsoil Resources in the Caspian Sea Under the Rules of International Law’, *Caspian Crossroads Mag*, referenced by Dunlap, B. (2004), ‘Divide and Conquer. The Russian Plan for Ownership of the Caspian Sea’, *Boston College International and Comparative Law Review*, vol. 17, no. 1, p. 121.

This approach is strongly rejected by the Russian Federation as it would deprive it of a huge portion of the continental shelf and its resources and would enable third countries to exercise freedom of navigation in the Caspian basin. According to Russia's official position, the Caspian Sea is a "unique landlocked body of water", which falls outside the scope of UNCLOS and should be used jointly and divided according to bi- and multilateral agreements between its littoral States. As such, Russia proposes to delimit the seabed of the Caspian Sea amongst neighbouring and opposite Caspian states along the modified median line for the purpose of the exercise of sovereign rights over subsoil use (that is, resource jurisdiction) while retaining the water expanse in common use, freedom of navigation, agreed norms in the domain of fishing, and protection of the environment.<sup>20</sup> If this method is to be applied, Iran shall be entitled to 14%, Russia – close to 19%, Azerbaijan – to more than 19%, Kazakhstan – to more than 29% and Turkmenistan to more than 19% of the Caspian seabed.<sup>21</sup> The same stand on the legal regime of the Caspian Sea is shared by Azerbaijan and Kazakhstan, whereas Turkmenistan supports sectoral division of the Caspian Sea and Iran envisions the application of the condominium approach.

Hence, it is generally agreed that the legal future of the Caspian Sea lies behind cooperation of all littoral states (for example, in the form of Caspian Convention). Until then Russia is intended to regulate the use of Caspian waters and resources by bi- and tripartite agreements that favour Russian position in the area.

## **RUSSIAN POSITION IN THE SEA OF AZOV**

The Sea of Azov, located southeast of Ukraine and south of Russia, has always been treated by Russians as an integral part of Russian and later Soviet territory. After the collapse of the Soviet Union, with the emergence of new independent states on the shores of the sea and the strait, the Russian Federation and Ukraine, the dispute over the delimitation of the Kerch Strait has arisen. Ukraine claims that the Kerch Strait should be delimited according to Soviet administrative border between the Crimean oblast of the Ukrainian SSR and Krasnodar krai of the RSFSR that would grant approximately 60% of the aquatorium and the seabed of the Sea of Azov and the navigated Kerch-Yenikalskiy Channel to Ukraine. Russia, in turn, has repeatedly denied the existence of Soviet administrative borders and has insisted on drawing

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20 Kovalev, A., op. cit., p. 173.

21 Калюжный, В. (2001), 'Медлить с определением статуса Каспия опасно', *Независимая газета*, no. 10, available from <http://goo.gl/ls6YW7>.

a modified median line that would be equidistant from both state coasts and would entitle both states with equal rights to the Kerch-Yenikalskiy Channel.

As recent developments in the dispute show, it seems that the balance is inclining towards Russia's interests. Thus, on 12 July 2012 Russian President Vladimir Putin and his Ukrainian counterpart Viktor Yanukovich signed a preliminary agreement on the delimitation of the maritime border between the two countries in the Kerch Strait, according to which the island of Tuzla and the Kerch-Yenikalskiy Channel would be considered Ukraine's territory, while Russia maintains its "right of the key" to the Kerch Strait meaning that Russian vessels shall enjoy the right of free and unimpeded passage through the strait waters.<sup>22</sup>

## **RUSSIAN FEDERATION IN THE BALTIC SEA**

Since the early eighteenth century, when Russian Tsar Peter the Great opened Russia's "window on Europe" by establishing the port of St. Petersburg on the coast of the Baltic Sea, Russia became the leading power in the Baltic region. After the Second World War the Soviet Union controlled almost the entire southern coast of the Baltic Sea. It was at that time that the Soviet Union introduced the 12 miles territorial sea<sup>23</sup> to the Baltic Sea, notwithstanding the protests of other littoral states (Denmark, Sweden) and their claims that the width of the territorial sea had for centuries been 3 nautical miles and in a few cases 4 nautical miles<sup>24</sup> – not 12 sea miles as the USSR claimed.

With the dissolution of the Soviet Union the situation changed drastically and as a result, a whole set maritime boundaries that were to be newly delimited surfaced overnight in areas where no such boundaries had ever existed in the past.<sup>25</sup> Starting from the South, the maritime boundaries between Russia and Lithuania, Lithuania and Latvia, Latvia and Estonia, and finally Estonia and Russia needed to be agreed upon. The delimitation of the abovementioned maritime boundaries was never easy, because in some instances the very land frontier was under dispute. Also, an interesting solution for the delimitation of maritime

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22 *Ria Novosti* (2012), 'Russia, Ukraine Agree on Maritime Border Delimitation', 13 July 2012, available from <http://goo.gl/Qx78oU>.

23 Taska, A. (1965), 'Dominium Maris Baltici und die Sowjetunion', in Poska, J. G. (ed.), *Pro Baltica. Mélanges dédiés à Kaarel R. Pusta*, Stockholm: Comité des Amis de K.R. Pusta, p. 207.

24 This was the case in the Gulf of Finland where under Peace Treaty of 1920 between the USSR and Finland a 4 mile outer limit of the territorial sea was applied.

25 Franckx, E. (2001), 'Current Legal Developments. Baltic Sea. New Maritime Boundaries Concluded in the Eastern Baltic Sea Since 1998', *The International Journal of Marine and Coastal Law*, no. 4, vol. 16, p. 645.

boundaries in the Baltic Sea was achieved between Estonia and Finland, which, “in order to maintain free passage through the Gulf of Finland”, agreed that they would not expand their territorial sea in the Gulf of Finland so as to infringe a 3 nautical miles zone from the centre line, unless prior notice is given to the other party.<sup>26</sup> Consequently, a 6-mile channel extending to both sides of the middle of the Gulf of Finland was created, in which all ships and aircraft would enjoy the rights of the high seas with respect to navigation and overflight. This corridor has proven to be profitable to many countries, primarily to Russia, for the construction and operation of the Russian-German joint project, the Nord Stream Gas Pipeline.

The Nord Stream project is a 1,224-kilometer twin pipeline system lying on the floor of the Baltic Sea running from Vyborg, Russia to Lubmin near Greifswald, Germany, that became operational in October 2012. The pipeline, while bypassing the Baltic countries and Poland<sup>27</sup> and substantially diminishing Russian gas transit through Ukraine and Belarus, provides for a reliable gas export market for Russia and grants relatively cheap gas supplies to Germany, therefore being often referred to as “Russian-German” pipeline. As a submerged pipeline, both the marine scientific research preceding the realization of the project as well as the laying of the gas pipeline and its functioning are subject to UNCLOS, and through the reference in the latter, to national jurisdiction of other Baltic countries. Thus, the Nord Stream group could not build the pipeline in Estonian waters, which would have benefitted the project the most, as Estonia rejected the consortium application to conduct necessary surveys in the area under Estonian jurisdiction. Also, it has been considered an advantage for the Nord Stream project that due to the narrowness of the Gulf of Finland, the outer limit of the territorial sea of Finland and Estonia had been established with the aim to never reach closer than 3 nautical miles to the maritime boundary between the two states. This voluntarily created 6-mile wide EEZ passage has of particular importance to the Nord Stream pipeline as otherwise its construction would have been subject to the explicit consent of either of the coastal states and the respective domestic regulation.<sup>28</sup>

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26 ‘Exchange of notes between Estonia and Finland constituting an agreement on the procedure to be followed in the modification of the limits of the territorial waters in the Gulf of Finland. 6 April and 4 May 1994’, available from <http://goo.gl/vN6iVM>.

27 Poland has been one of the strongest opponents to Nord Stream construction. Thus, Radek Sikorski, the Polish foreign minister, compared in 2006 the pipeline deal between Russia and Germany to the 1939 Molotov-Ribbentrop Pact that divided Central Europe into spheres of German and Soviet influence. Today, the government and press reactions in Warsaw are calm. *Natural Gas Europe* (2011), ‘Nord Stream: A View From Poland’, 9 November 2011, available from <http://goo.gl/GHNZVM>.

28 Vinogradov. S. (2009), ‘Challenges of Nord Stream: Streamlining International Legal Framework and Regimes for Submarine Pipelines’, *German Yearbook of International Law*, vol. 52, p. 276.

## **GENERAL CONCLUSIONS ON THE LEGAL BEHAVIOUR OF THE RUSSIAN FEDERATION IN THE CHOSEN MARITIME AREAS**

The factual material and the analysis of Russia's factual behaviour and legal claims as described above lead to the following conclusions. The Russian Federation has been subject to UNCLOS since 1997. The Convention is applicable to all of the maritime regions chosen herewith except for the Caspian Sea. It can be observed that the application of UNCLOS by the Russian Federation lacks universality and homogeneity. Thus, Russia insists on the implementation of the Convention to the Arctic Ocean, but rejects the application of UNCLOS to the Caspian Sea, though there is no universally accepted stand on the status of the Caspian Sea as an international lake where the Convention would not be applied. Likewise, there is no general understanding whether the Sea of Azov falls within the scope of UNCLOS regulation as a historic bay. Even in the Baltic Sea, where the country seems to duly follow the Convention, Russia has managed to violate its certain provisions (for example, in 2005 when a Russian ship *PjotrKotsov* was found by the Estonian Coast Guard conducting marine scientific research without Estonia's prior authorization in Estonian EEZ, an explicit violation of the corresponding provisions of UNCLOS<sup>29</sup>).

Moreover, there is no general agreement concerning the application and interpretation of UNCLOS within the Russian Federation itself. For example, the official position taken by the Russian Federation in the Arctic Ocean differs from the approach supported by the majority of the Russian legal scholarly elite. The position of the latter, as expressed by Professor A. N. Vylegzhanin and others, is to treat the Arctic with respect to its history and the dominant position of the Russian Federation, and consequently apply the method of sectoral division of the Arctic area and seabed. Russia's official position as expressed by the Ministry of Foreign Affairs, in turn, led by the need to play and win on the international arena, is solely relying on UNCLOS and the tools offered by it. Likewise, the stand of the majority of Russian legal scholars concerning the legal status of the Caspian Sea differs from the official position of the Russian Federation: whilst the former see the Caspian as a sea and subject to UNCLOS regulation, the latter view the area to be a completely landlocked lake open to the condominium regime of five littoral states.

Russia's ambiguous approach to the regulation of the law of the sea can further be observed in Russia's adherence to the border treaties signed by the Soviet Union. Notwithstanding its official "state continuator" status nor the principle that the change of sovereignty does not affect boundaries, Russia seems to accept the

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29 Lott, A. (2011), 'Marine Environmental Protection and Transboundary Pipeline Projects: A Case Study of the Nord Stream Pipeline', *Merkourios-Utrecht Journal of International and European Law*, no. 73, vol. 27, p. 59.

boundary agreements signed by the USSR as final and binding only in the cases when such agreements reward Russia with a favourable position. In the example of the Sea of Azov, Russia continues to reject the administrative border established in the Soviet times between the Crimean oblast of the Ukrainian SSR and Krasnodar krai of the RSFSR, as the admittance of such a borderline would deprive Russia of certain economic benefits. Here a parallel could be drawn with Tartu Peace Treaty from 1920 between the Republic of Estonia and Russian RSFSR, which established the border between two countries, and which has not been recognized by the Russian Federation today.

Though the rationale underlying Russia's legal practice appears to vary on a case-by-case basis, generally it can be concluded that Russia's approach to UNCLOS and the law of the sea is not universal and homogenous, but largely depends on the economic and political outcomes that Russia aims to achieve. For example, adherence to UNCLOS in the Arctic Ocean secures Russia with an internationally accepted legal opportunity to justify its claims over the resource-rich extended continental shelf, whereas advocating for the Russian Arctic sector would have set Russia, both in legal and political terms, apart from the rest of the world community. Division of the Caspian Sea as an international lake under the modified median line method awards Russia with a larger portion of the Caspian seabed in comparison to the maritime zones Russia would be entitled to under UNCLOS. Additionally, denial of UNCLOS' application to the Caspian Sea and the Sea of Azov eliminates the risk that third states shall gain certain rights in the area that could jeopardize Russian sphere of influence. Russia's pattern for renouncement of border treaties previously signed by the Soviet Union seems to rely on potential land or other economic losses that the acceptance of such treaties would entail to Russia.

Moreover, certain similarities in historical development of Russia's position in the four water reservoirs may be observed. For centuries the Russian Empire followed by the Soviet Union has been the dominant power in the Arctic Ocean, the Caspian Sea (though *de facto* sharing it with Iran), and the Baltic Sea. Until recently, Russia (Soviet Union) has remained the sole littoral state to the Sea of Azov and the predominant power in the region. However, in the twentieth century the balance of power began to change drastically. At the end of the millennium, Russia had to come to terms with suddenly no longer being a land and sea empire, and having to be a nation,<sup>30</sup> one out of many. More and more countries showed their vivid interest in the Arctic Ocean resulting in the necessity to divide the Arctic. The crumbling of the Soviet Union in 1991 resulted in the emergence of

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30 Lieven, D. (2000), *The Russian Empire and Its Rivals*, Yale University Press, p. 253.

new littoral states to the Caspian Sea, the Black and Azov Seas, and the Baltic Sea, all requesting a justified portion of maritime spaces as provided by the law of the sea. As a result of geopolitical changes, Russia has lost its dominant position in the areas, but nevertheless has since then been trying to re-gain its lapsed control by a number of means. Having once been the dominant power in the four oceans/seas, Russia's current state practice in the realm of the law of the sea can be seen as relatively "imperialistic", striving for continuous dominion over the adjacent water spaces and support of Russian "Great Power" position.

### **RUSSIAN APPROACH TO THE LAW OF THE SEA AS RESULT OF THE DOCTRINE OF STATE SOVEREIGNTY**

Furthermore, Russia's territorial expansion from the land to the sea and its extensive claims in the realm of the law of the sea can be seen as determined by the state's extensive concept of state sovereignty. Russian doctrine of state sovereignty is most comprehensively defined by Professor of Moscow's Diplomatic Academy A. Moiseev, according to whom it is an "inalienable juridical quality of an independent state that symbolizes its political-legal self-sufficiency, supreme responsibility and value as a primary subject of international law; necessary for exclusive leadership of the state power and assuming insubordination to the authority of another state."<sup>31</sup> Russian doctrine of state sovereignty places specific attention to the elements of state sovereignty (such as supreme, independent and indivisible state power, territorial supremacy, territorial independence and territorial integrity, state jurisdiction), speaks of internal and external state sovereignty, and differentiates between the concepts of economic and national sovereignty. The doctrine of state sovereignty is deeply embedded in the Constitution of the Russian Federation that provides for the notions of territorial integrity and independence of the state, the principle of non-intervention, exclusivity of Russian jurisdiction and economic independence of Russian state. In the mindset of the majority of Russian legal scholars, as supported by the subsequent Russian legislation, the concept of state sovereignty bears a rather *absolute* character, meaning that a sovereign state (such as the Russian Federation) is politically, legally and economically self-sufficient and independent, both internally and externally, from any other states. Sovereignty is the quality of "absolute and perpetual" Russian state power that is supreme in relation to all other types of power.

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31 Моисеев, А. (2011), *Суверенитет государства в международном праве. Учебное пособие. Восток-Запад*, p. 68.

In general, the concept of state sovereignty and a state's approach to the law of the sea are closely connected. Namely, the very development of the international law of the sea can be seen as a historical transition from the concept of *communis omnium naturali iure* or "common to all humankind" into the national maritime zones division due to the ascertainment of states of their sovereignty over world oceans and coastal waters. Dr Maria Gavouneli, lecturer of International Law at the University of Athens even calls the development of the international law of the sea a "tug-of-war between the sovereignty of the coastal State and the freedom of the high seas."<sup>32</sup> The notion of state sovereignty is enacted in the provisions of UNCLOS regarding Territorial Sea (by providing for state sovereignty of the coastal state in the adjacent belt of the territorial sea and its subsoil), Exclusive Economic Zone (by entitling the coastal state with sovereign rights for the purpose of exploration, exploitation, and preservation of natural resources), and Continental Shelf (by granting the coastal state with sovereign, exclusive and inherent rights to explore the continental shelf and exploit all its natural resources). The Convention offers legal justification for the expansion of the coastal state's sovereignty horizontally (from the land towards the high seas) and vertically (including the seabed, the subsoil and the continental shelf thereof), and serves as the legal basis for the exercise of state sovereignty in the realm of the law of the sea. In the words of Professor J. N. Moore, a leading authority in the field of the law of the sea, the Convention is a treaty that serves state sovereignty.<sup>33</sup>

The Russian Federation, having ratified the Convention and enacted its provisions into national legislation, is entitled to exercise state sovereignty over Russia's adjacent maritime areas. This explains, for instance, why Russia's submission to the CLCS on the outer continental shelf is widely considered as its "territorial expansion" and a pursuit to establish Russian state sovereignty over rich resources of the Arctic continental shelf. It is believed that should the CLCS recognize Russia's specified claim to the extensive Lomonosov Ridge, Russia will gain sovereign and exclusive rights to exploit and explore up to 60% of any hydrocarbons found in the High Arctic, which, in turn, shall significantly contribute to Russia's economic sovereignty in the Arctic. Russia's recent political steps – establishment of a border treaty with Norway in the Barents Sea in 2011 – may also be interpreted in the light of Russia's expansion of sovereignty. However, the sovereignty that Russia

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32 Gavouneli, M. (2007), *Functional Jurisdiction in the Law of the Sea*, Martinus Nijhoff Publishers, pp. 1–2.

33 Moore, J.N. (2010), Statement on the 34th Annual Conference of the Center for Oceans Law and Policy on "US Interests in Prompt Adherence to the Law of the Sea Convention" held on 21 May 2010 in Washington DC, USA. The video-recording of the Conference is available from <http://googl/nHZHrl>.

desires to exercise over the Arctic cannot bear an *absolute* character due to several restrictions, such as limitations of sovereignty enacted in UNCLOS, claims of the other stakeholders to the Arctic Ocean, and lack of sufficient financial means for the exploitation and exploration of Arctic resources.

Similarly, Russia is striving for the establishment of its sovereign interests in the questions concerning the legal status and legal regime of the Caspian Sea. Denying the application of UNCLOS to the Caspian basin – that would result in smaller portion of Caspian waters and resource-rich subsoil – and claiming the Caspian Sea to be an international lake favours Russia's territorial and economic sovereignty, as does Russia's support to the "divided bottom, common waters" regime of the Caspian Sea. By entering into bi- and tripartite agreements with the Caspian littoral states that favour Russian interests, Russia tries to assert its pre-eminence and (once *absolute*) territorial and economic sovereignty in the region.

Likewise, Russia seems to struggle to retain its lapsed full sovereignty in the region of the Sea of Azov and the Kerch Strait. Denial of the Ukrainian arguments on the Soviet administrative border and continuous support for the modified median line for the delimitation of the Sea of Azov would grant Russia a portion of the resource-rich seabed that is currently claimed by Ukraine. If Ukraine is to explore and exploit the largest portion of the continental shelf of the Sea of Azov, it will become less dependent on Russian gas and may invite competitive foreign oil and gas companies to the area. Additionally, exploration and exploitation of new oil and gas reserves shall decrease the resource price on the world market. Consequently, if Russia manages to persuade Ukraine to apply the modified median line to the delimitation of the Azov Sea, it will be Ukraine who will lose its current sovereignty over the area and Russia who will get an additional trump in support of its territorial and economic sovereignty.

Russia's extension of state sovereignty in the Baltic Sea may be seen in the historical establishment of the Soviet territorial sea of 12 nautical miles, as opposed to the traditionally applied territorial sea of 3–4 nautical miles, or in making use of the 6 nautical mile corridor created by Estonia and Finland in the middle of the Gulf of Finland in the status of coastal states' EEZ. Initially the agreement between Estonia and Finland to limit their territorial seas in the Gulf of Finland was established to maintain the route for free passage of ships and aircrafts through the channel, especially those travelling to the port of St. Petersburg and from St. Petersburg to Russian Kaliningrad. As of today, this agreement specifically profits the Russian-German Nord Stream gas pipeline project, which is essential for Russian internal (being one of the major pipelines to transport Russian gas to Europe) and external economic sovereignty.

Thus, having considered Russia's behaviour in the Arctic Ocean and the three seas as influenced by the doctrine of state sovereignty, one can conclude that Russia may be said to apply a modern, *extensive* approach to the notion of sovereignty over seas and oceans. Russia's strive for *extensive* territorial and economic sovereignty over maritime spaces, in turn, sees as its utmost goal the establishment of *absolute* control over vast supplies of hydrocarbons, mostly oil and gas. Thus, Russia aims to reach *absolute* sovereign control over oil and gas fields by presenting legal claims over the resource-rich Arctic continental shelf, plays cooperation games in the Caspian in order to agree with the littoral states on a larger portion of resource-rich Caspian seabed, purports to retain its economic control in the Sea of Azov by influencing Ukraine to enter into agreements that favour first and foremost Russian interests, and finally, uses the Baltic Sea seabed to maximize its present and potential economic benefits via the Nord Stream gas pipeline project. Therefore one could speak of the contemporary Russian notion of sovereignty over seas and oceans as dependent on supremacy over hydrocarbons that, in turn, shall grant political-legal self-sufficiency of the Russian Federation on the international arena.

As a rational player restricted by the presence and actions of other rational players on the international arena, Russia uses the tools of the international law of the sea as an instrument for justifying Russia's claims and state practice in its maritime areas. The ways Russia uses tools of the international law of the sea depend on the sovereign interests that Russia wants to achieve. In this sense Russian legal behaviour in the realm of the law of the sea is similar to another "Great Power", the United States, who acts rather arbitrarily regarding the ratification of UNCLOS.

Nevertheless, in the exercise of its *extensive* sovereignty in the realm of the law of the sea, Russia is limited not only by other states, but also by the generally sensed fear for the future of ocean ecosystems that is enacted in many comprehensive environmental regulations and legal frameworks that Russia is bound by. Therefore the danger that Russia may abuse its strive for *extensive* sovereignty over the seas and oceans and may somehow damage the Earth ecosystems and the future of following generations by exercise of extensive and absolute supremacy over supplies of hydrocarbons, is minimal.

Notwithstanding their imperial ambitions, the Russian Federation and its leaders today seem to understand that only cooperation can lead to circumstances that shall grant Russia its desired resources and control over hydrocarbons. Thus, despite some rather emotional actions (such as the one involving the titanium flag at the North Pole) or loud political statements, there are sufficient grounds to expect Russia to be open to negotiations over the new treaties (perfect examples

being the Russian-Norwegian border treaty or the Caspian bi- and tripartite agreements), to hold back some of its demands, and to remain in line with its legal obligations and grounded promises (like the law-obedient project of Nord Stream gas pipeline). Therefore Russia seems to be open to initiate dialogue, engage in cooperation and hold back some of its pretentious claims in the realm of law of the sea – all these in order to reach solutions that shall in one way or another maximize Russia's benefits.

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