



# **Implications of the Barents Sea Treaty for fisheries matters**

*By: Natalia Ermolina*

*Small Master's Thesis*

*Master of Laws (LL.M.) in Law of the Sea*

*UiT The Arctic University of Norway*

*Faculty of Law*

*Fall 2013*

## **ACKNOWLEDGEMENTS**

The author wishes to thank the supervisor, Tore Henriksen,  
for his valued advices and critique,  
my family for their support, patience and inspiration.

Takk skal dere ha!

## TABLE OF CONTENTS

|  |    |
|--|----|
| List of abbreviations .....  | iv |
| 1 Introduction .....   | 1  |
| 1. 1 Object and limitations of the thesis .....  | 1  |
| 1. 2 Legal sources and method .....  | 2  |
| 1. 3 Structure .....   | 4  |
| 2 Fisheries regime of the Barents Sea .....  | 6  |
| 2. 1 The main features of the Barents Sea .....  | 6  |
| 2. 2 Legal framework of fisheries jurisdiction in the Barents Sea .....  | 7  |
| 3 Obligations of the coastal states concerning management of fish stocks in the Barents Sea  |    |
| 3. 1 Content of the obligation to cooperate in the Barents Sea .....   | 11 |
| 3. 2 Format of the cooperation in the Barents Sea .....  | 15 |
| 3. 3 Principles of the cooperation in the Barents Sea .....  | 20 |
| 3. 3. 1 Access of third states to fish stocks of the Barents Sea .....   | 20 |
| 3. 3. 2 Application of the precautionary approach through the JFC .....  | 24 |
| 3. 3. 3 Other principles of the cooperation .....  | 27 |
| 4 Implications of the Barents Sea Treaty for the coastal states' obligations .....   | 30 |
| 4. 1 Consequences for the status of maritime zones around Svalbard .....   | 30 |
| 4. 1. 1 Fisheries jurisdiction of Svalbard .....   | 30 |
| 4. 1. 2 The Barents Sea Treaty as recognition by Russia that Svalbard generates the full range<br>of maritime zones .....  | 34 |
| 4. 2 Consequences for the obligations of Norway and Russia .....   | 36 |
| 4. 3 Application of the Barents Sea Treaty to fisheries matters in consequence of climate<br>change in the Barents Sea .....   | 39 |
| 5 Conclusion .....   | 42 |
| Bibliography .....   | 44 |
| Annex 1. Joint Statement on Maritime Delimitation and Cooperation in the Barents Sea and<br>the Arctic Ocean .....   | 51 |
| Annex 2. Treaty between the Kingdom of Norway and the Russian Federation concerning<br>Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean ..... | 53 |
| Annex 3. Maritime boundaries in the Barents Sea after the entry in force of the 2010 Barents<br>Sea Treaty .....   | 59 |

## LIST OF ABBREVIATIONS

|       |   |
|-------|---|
| CBD   | Convention on Biological Diversity  |
| EEZ   | Exclusive Economic Zone   |
| EU    | European Union  |
| FPZ   | Fisheries Protection Zone   |
| FSA   | United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks |
| ICES  | International Council for the Exploration of the Sea  |
| ICJ   | International Court of Justice  |
| JFC   | Joint Norwegian-Russian Fisheries Commission  |
| LOSC  | United Nations Convention on the Law of the Sea   |
| NEAFC | North East Atlantic Fisheries Commission  |
| RFMO  | (Sub)regional Fisheries Management Organization   |
| TAC   | Total allowable catch   |
| UN    | United Nation   |
| USSR  | Soviet Union  |

## 1 Introduction

### 1.1 Object and limitations of the thesis

In April 2010 Norwegian prime minister Jens Stoltenberg and Russian president Dmitri Medvedev surprisingly announced a Treaty concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean which was signed on 15 September 2010 in Murmansk<sup>1</sup> (hereafter: Barents Sea Treaty). This Treaty ended almost forty years of negotiations between Norway and Russia and has been commonly described as historical.

According to the joint statement it is recommended to establish "a line that divided the overall disputed area in two parts of approximately the same size".<sup>2</sup> Such delimitation line is defined by only eight coordinates in Article 1 of the Barents Sea Treaty. However, this Treaty is comprehensive. Apart from the establishment of the delimitation line, the Barents Sea Treaty contains provisions concerning fisheries matters.<sup>3</sup>

Living marine resources in the Barents Sea and in the Arctic Ocean have a huge economic significance for Norway and Russia which have traditionally been involved in fisheries of various species. The Preamble of the Barents Sea Treaty underlines their primary interest and responsibility for the conservation and management of the living marine resources in these Areas.

In this thesis, the implications of the Barents Sea Treaty for fisheries management will be assessed. The main research question will be whether the provisions of the Barents Sea Treaty affect the cooperation and conservation obligations of the coastal states, Norway and Russia.

The Barents Sea Treaty has a wider geographical and subject-matter scope. This Treaty includes provisions on how to deal with the shared resources in the Barents Sea and the Arctic Ocean<sup>4</sup>. Hence, the two limitations are established in the current research. As it was said above, the focus will be made on the marine living resources, namely the fish stocks.

---

<sup>1</sup> Joint Statement on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean, Oslo, April 27th, 2010. Available at [http://www.regjeringen.no/en/dep/ud/campaigns/delimitation/treaty\\_background.html?id=614274](http://www.regjeringen.no/en/dep/ud/campaigns/delimitation/treaty_background.html?id=614274) [Visited March 25th, 2013] and Annex 1; Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Murmansk, OS - 15 September 2010, EIF - 07 July 2011. Available at [http://www.regjeringen.no/upload/ud/vedlegg/folkerett/avtale\\_engelsk.pdf](http://www.regjeringen.no/upload/ud/vedlegg/folkerett/avtale_engelsk.pdf) [Visited March 25th, 2013] and Annex 2.

<sup>2</sup> Joint Statement, supra note 1, paragraph 4.

<sup>3</sup> Barents Sea Treaty, supra note 1, Article 4 and Annex I.

<sup>4</sup> *Ibid.*, Articles 4 and 5, Annexes I and II.

Moreover, the application of the Barents Sea Treaty for fisheries matters will be related to the Barents Sea, including the FPZ around Svalbard.

## 1. 2 Legal sources and method

In order to examine the research question thoroughly, various sources of international law mentioned in Article 38 of the Statute of the International Court of Justice<sup>5</sup> will be used. There are international conventions and agreements in force between Norway and Russia, international custom and general principles of law. Judicial decisions and the publications of the most highly qualified authors are recognized as subsidiary sources.

The Barents Sea Treaty between the coastal states occupies a central place among legal sources which will be analyzed. This bilateral Treaty is aimed at the management of living marine resources within the 200 nautical miles zones of Norway and Russia.

Taking biological characteristics of fish stocks as the point of departure, the primary focus is given to the international legal regime for fisheries. The centerpiece here is the fisheries provisions of the 1982 UN Convention on the Law of the Sea<sup>6</sup> (hereafter: LOSC) to which both coastal states are parties. The LOSC contains primary rules related to the EEZ and the high seas that involve fish stocks. Furthermore, the fisheries regime of the LOSC is expanded with the 1992 UN Convention on biological diversity<sup>7</sup> (hereafter: CBD) and the 1995 UN Agreement relating to the conservation and management of straddling fish stocks and highly migratory fish stocks<sup>8</sup> (hereafter: FSA). They will be considered for identification of the obligations of the coastal state regarding to the management of fish stocks in the Barents Sea.

While the LOSC provides a general obligation to cooperate, the FSA goes relatively far in determining specific duties for how the cooperation should be.

The FSA is an implementing agreement under the LOSC. It flows from its title. Consequently, the relevant provisions of the LOSC concerning management of fish stocks are to be read and

---

<sup>5</sup> Statute of the International Court of Justice, OS - 26 June 1945, EIF - 24 October 1945, 1 UNTS xvi.

<sup>6</sup> United Nations Convention on the Law of the Sea, Montego Bay, OS - 10 December 1982, EIF - 16 November 1994, 1833 UNTS 397, Basic Documents No. 36. Norway signed on 10 December 1982, ratified on 24 June 1996. Russia signed on 10 December 1982, ratified on 12 March 1997.

<sup>7</sup> Convention on Biological Diversity, Rio de Janeiro, OS - 5 June 1992, EIF - 29 December 1993, 1760 UNTS 79. Norway signed on 9 June 1992, ratified on 9 July 1993. Russia signed on 13 June 1992, ratified on 5 April 1995.

<sup>8</sup> United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, OS - 4 August 1995, EIF - 11 December 2001. 2167 UNTS 88, Basic Documents No. 56. Norway signed on 4 December 1995, ratified on 30 December 1996. Russia signed on 4 December 1995, ratified on 4 August 1997.

applied in conjunction with the FSA.<sup>9</sup> The FSA gives particular emphasis to regional cooperation in the management of straddling fish stocks and highly migratory fish stocks in areas beyond national jurisdiction, namely on the high seas. However, some provisions of the FSA are applicable to areas under national jurisdiction<sup>10</sup>, in the EEZs or exclusive fisheries zones. Norway and Russia are parties of the FSA. Nevertheless, a state can be a party to the FSA without being party to the LOSC. The FSA includes obligations both for coastal states and for states fishing on the high seas.

The international legal regime for fisheries is supplemented with the CBD. Aside from the cooperation obligation, this Convention develops the obligation of the coastal states to conserve biological diversity. The CBD acknowledges the unity of any marine ecosystem<sup>11</sup> including different elements of biological diversity<sup>12</sup> such as fish stocks. Hence, the provisions of the CBD apply to fish stocks of the Barents Sea within the areas under national jurisdiction and the area beyond the limits of such jurisdiction.<sup>13</sup> The CBD contains binding commitments for Norway and Russia. They as parties of this Convention are required to comply with them.

Along with the main legal sources pointed out above, the 1975 and 1976 Agreements<sup>14</sup> and the fisheries agreements of Norway and Russia with other states will be analyzed. They form the basis for the Barents Sea fisheries regime.

Provisions of the 1920 multilateral Treaty concerning Spitsbergen<sup>15</sup> (hereafter: Spitsbergen Treaty) will be used to answer whether the Barents Sea Treaty can be read as Russian acknowledgement of the right of Norway to establish normal maritime zones around

---

<sup>9</sup> FSA, supra note 8, Article 4.

<sup>10</sup> *Ibid.*, Articles 2 and 3.

<sup>11</sup> According to Article 2 of the CBD, supra note 7, an ecosystem is "a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit".

<sup>12</sup> According to Article 2 of the CBD, supra note 7, biological diversity is "the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems".

<sup>13</sup> *Ibid.*, Article 4.

<sup>14</sup> Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics on cooperation in the fishing industry, Moscow, OS and EIF - 11 April 1975, 983 UNTS 8; Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics concerning mutual relations in the field of fisheries, Moscow, OS - 15 October 1976, EIF - 21 April 1977, 1157 UNTS 147.

<sup>15</sup> Treaty Concerning the Archipelago of Spitsbergen, Paris, OS - 9 February 1920, EIF - 14 August 1925 (Norway) and 07 May 1935 (USSR), 2 LNTS 7.

Svalbard. Furthermore, other pertinent international and national<sup>16</sup> legal instruments will also be taken into account.

The mentioned legal sources have been treated throughout the thesis using both a descriptive and analytical method.

### **1. 3 Structure**

This thesis divided into four main chapters.

The second chapter opens with a brief description of the Barents Sea marine ecosystem and its living marine resources. Since the Master thesis is emphasized on the obligations of Norway and Russia regarding fish stocks, it is important to outline their maritime boundaries in the Barents Sea. Status of these zones imposes certain obligations on Norway and Russia as the coastal states.

Before answering the main research question, obligations of Norway and Russia have to be defined. Hence, the third chapter examines which obligations concerning the management of transboundary fish stocks in the Barents Sea are imposed on Norway and Russia as coastal states. The assessment of how Norway and Russia have fulfilled their obligations will be given.

The obligation to cooperate forms a frame for the fulfillment of other obligations. Some questions about the cooperation between Norway and Russia through the JFC will be raised. One of them is related to how the JFC should be considered according to the FSA; whether the JFC is an example of a direct cooperation or a cooperation through a RFMO or an arrangement. Another question is referred to whether the JFC is entitled to regulate the fishing on the high seas and to what extent.

The fourth chapter deals with consequences of the Barents Sea Treaty for the management of fish stocks in the Barents Sea. In addition to the reflection of how this Treaty affects the defined obligations, the chapter brings up the questions of whether the Barents Sea Treaty can be read as the recognition of Russia that the establishment of maritime zones around Svalbard

---

<sup>16</sup> Internal law of the coastal states will be considered in the original language. Besides English, the author of the thesis has a good command of Norwegian and Russian language. Translation can be found on <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/NOR.htm> (for Norwegian legislation) and <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/RUS.htm> (for Russian legislation) [Visited August 26th, 2013].



is not prevented by the Spitsbergen Treaty; and whether the Barents Sea Treaty takes into account the effects of climate change in the Barents Sea.

Finally the last chapter contains the conclusions.

## 2 Fisheries regime of the Barents Sea

### 2.1 The main features of the Barents Sea

The Barents Sea is a high latitude shelf sea in the northeast Atlantic.<sup>17</sup> It comprises those parts of the Arctic Ocean lying between North Cape on the Norwegian mainland, South Cape on the Spitsbergen Island of the Svalbard Archipelago, and the Russian archipelagos Novaya Zemlya and Franz Josef's Zemlya.<sup>18</sup>

The natural resources of the Barents Sea, living or non-living marine resources, are the source of interest for different actors. There is the interest in exploring, exploiting, protection and managing natural resources, security interest etc. It was pointed out before that attention in the thesis is given to fish stocks of the Barents Sea.

The Barents Sea is one of the large marine ecosystems.<sup>19</sup> Its living components include not only numerous fish stocks, but marine mammals such as whales, walrus and seals. Moreover, the Barents Sea floor is inhabited by a wide range of organisms.<sup>20</sup>

The Barents Sea is highly productive oceans in the world. The rich in situ plankton production and advection from the Norwegian Sea sustain a great abundance of fish resources.<sup>21</sup> Cod, haddock, capelin, herring, saithe, redfish and other commercially important fish species occur in the Barents Sea.<sup>22</sup> It should be stressed that by no means all of these fish stocks are confined to the Barents Sea during their life cycle.

Various types of fish stocks have different migratory ranges. While some of the fish stocks, such as redfish, saithe and herring, are found within either the Norwegian or the Russian EEZs, other species migrate out of these boundaries.<sup>23</sup> Such geographical distribution which does not correspond to the jurisdictional boundaries of states or fisheries management organizations poses different problems with respect to the authority of coastal states, flag states and mentioned organizations.

<sup>17</sup> *Atlas of the Barents Sea fishes*. Edited by Rupert Wienerroither ... [et al.]. Bergen, (Institute of Marine Research) 2011, p. 7.

<sup>18</sup> Geir Hønneland, "Compliance in the Barents Sea fisheries. How fishermen account for conformity with rules", *Marine Policy*, vol. 24, 1 (2000), p. 11.

<sup>19</sup> *Atlas of the Barents Sea fishes*, supra note 17, p. 7.

<sup>20</sup> ICES. Report of the Arctic Fisheries Working Group (AFWG), 20 - 26 April 2012 (ICES Headquarters, Copenhagen), pp. 19-20. Available at <http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2012/AFWG/AFWG%20Report%202012.pdf> [Visited July 12th, 2013].

<sup>21</sup> *Atlas of the Barents Sea fishes*, supra note 17, p. 7.

<sup>22</sup> *Ibid.*, pp. 10-11.

<sup>23</sup> Report of the AFWG, supra note 20, pp. 20-21.

## 2. 2 Legal framework of fisheries jurisdiction in the Barents Sea

Legally, the ocean space where fish stocks occur is divided into various maritime zones. The LOSC as "a Constitution for the Ocean"<sup>24</sup> lays down the basic provisions on how fish stocks should be governed by coastal states concerning this zonal division.

These maritime zones determine what kind of activities different states can carry out and their authority to regulate marine activities within those areas. For the purpose of the thesis, status of various maritime zones in the Barents Sea defines obligations of the two coastal states in regard to fish stocks. In this respect, current part of the chapter aims to give a brief description of the jurisdictional boundaries according to the LOSC and explain how they apply to the Barents Sea.

The primary rule of the current international legal system is state sovereignty which means that each coastal state has supreme power to rule over its territory. Furthermore, sovereignty includes the powers to determine the breadth of the territorial sea and to establish other maritime zones measured from baselines.<sup>25</sup>

The territorial sea, the first maritime zone seawards from the baseline, is under the sovereignty of the coastal state. Foreign fishing vessels must refrain from fishing activities in the territorial sea.<sup>26</sup> Norway and Russia established a twelve nautical miles limit for their territorial seas according to Article 3 of the LOSC.<sup>27</sup> Such breadth was set by Norway both for its mainland and for Svalbard.<sup>28</sup>

The next zone beyond the territorial sea which is significant in the Barents Sea is the continental shelf. Norway and the USSR under the adoption of the Convention on the Continental Shelf<sup>29</sup> claimed sovereign rights to their continental shelves.<sup>30</sup> Later, the outer

<sup>24</sup> *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas*. Edited by David Freestone. Leiden, (Martinus Nijhoff) 2013, p. 170.

<sup>25</sup> It will be discussed in the part 4.1, see footnote 162.

<sup>26</sup> LOSC, supra note 6, Articles 19 (2) (i) and 42 (1) (c).

<sup>27</sup> Federal Law from 31 July 1998 No. 155-FZ "On the internal waters, territorial sea and contiguous zone of the Russian Federation" (Федеральный закон "О внутренних морских водах, территориальном море и прилегающей зоне Российской Федерации"), Article 3. Available in Russian at <http://base.garant.ru/12112602/> [Visited July 22th, 2013]; Law from 27 June 2003 No. 57 on Norwegian territorial waters and contiguous zone (Lov om Norges territorialfarvann og tilstøtende sone [territorialfarvannsloven]), § 2. Available in Norwegian at <http://www.lovdata.no/all/hl-20030627-057.html#1> [Visited July 23rd, 2013].

<sup>28</sup> Territorialfarvannsloven, supra note 27, § 2 and 5.

<sup>29</sup> Convention on the Continental Shelf, Geneva, OS - 29 April 1958, EIF - 10 June 1964, 516 UNTS 205.

<sup>30</sup> Royal Decree relating to the Sovereignty of Norway over the Sea-bed and Subsoil Outside the Norwegian Coast, 31 May 1963; English translation in UN Legislative Series B/15, p. 393; Decree of the Presidium of the Supreme Soviet of the USSR concerning the Continental Shelf of the USSR, 6 February 1968; English translation in UN Legislative Series B/15, p. 441. This Decree was succeeded by the Federal Law from 30

limit of the Norwegian continental shelf to the north of Svalbard has been determined in accordance with the recommendations of the Commission on the Limits of the Continental Shelf.<sup>31</sup> Russia is still making a submission to this Commission according to Article 76 of the LOSC to extend its continental shelf.

Notwithstanding the relevance of the continental shelf in the Barents Sea, it is out of our interest from the fisheries point of view. Regime of the continental shelf is not applied to the water column.<sup>32</sup> Under Article 77 of the LOSC the coastal states exercise sovereign rights over sedentary species for the purpose of their exploring and exploiting. These species are not covered in the current thesis.

In 1977 the 200 nautical miles EEZs were established by Norway and the USSR.<sup>33</sup> According to Article 56 (1) of the LOSC the coastal states has "sovereign rights for the purpose of exploring and exploiting, conserving and managing" the fish stocks within the EEZ. Along with prescriptive or legislative jurisdiction in their EEZs, Norway and Russia may exercise the enforcement jurisdiction including "boarding, inspection, arrest and judicial proceedings".<sup>34</sup>

Another area established in the Barents Sea is a 200-mile nondiscriminatory FPZ around Svalbard.<sup>35</sup> However, fisheries jurisdiction of Norway within the FPZ has been challenged by third states. This question will be discussed in the fourth chapter.

---

November 1995 No. 187-FZ "On the Continental Shelf of the Russian Federation" (Федеральный закон "О континентальном шельфе Российской Федерации"). Available in Russian at <http://base.garant.ru/10108686/> [Visited July 19th, 2013].

<sup>31</sup> Continental Shelf: Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea. Executive Summary. Available at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/nor06/nor\\_exec\\_sum.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_exec_sum.pdf) [Visited April 10th, 2013]. The recommendations are available at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/nor06/nor\\_rec\\_summ.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf) [Visited April 10th, 2013].

<sup>32</sup> LOSC, supra note 6, Article 78 (1).

<sup>33</sup> Robin R. Churchill and Geir Ulfstein. *Marine Management in Disputed Area: The Case of the Barents Sea*. London, (Routledge) 1992, p. 21. See more detailed: Law from 17 December 1976 No. 91 on the Norwegian Exclusive Economic Zone (Lov om Norges økonomiske sone [økonomiske soneloven]). Available in Norwegian at <http://www.lovdata.no/all/tl-19761217-091-0.html#3> [Visited June 27th, 2013]; Federal Law from 17 December 1998 No. 191-FZ "On the Exclusive Economic Zone of the Russian Federation" (Федеральный закон "Об исключительной экономической зоне Российской Федерации"). Available in Russian at <http://base.garant.ru/179872/> [Visited June 27th, 2013].

<sup>34</sup> LOSC, supra note 6, Article 73 (1).

<sup>35</sup> Regulations from 03 June 1977 No. 06 on the Fishery Protection Zone around Svalbard (Forskrift om fiskevernsonen ved Svalbard). Available in Norwegian at <http://www.lovdata.no/cgi-wift/ldles?doc=%2Fsf%2Fsf%2Fsf-19770603-0006.html> [Visited April 9th, 2013].

*Fisheries in the disputed area of the Barents Sea*

After the mentioned establishments the two coastal states had to deal with the delimitation of the EEZs and the continental shelf in the Barents Sea. Without the achievement of a consensus on their maritime delimitation dispute, Norway and Russia agreed on a temporary arrangement to regulate fishing activities in the disputed area.<sup>36</sup>

This arrangement, called the Grey Zone Agreement, covered an area within 200 nautical miles from the mainland coast of both countries. The "grey zone" comprised 67,500 km<sup>2</sup>, of which 41,500 km<sup>2</sup> lied in the disputed area.<sup>37</sup> Apart from the provisions stating that both countries were to refrain from conducting inspections or from exercising any form of control over fishing vessels of the other country, the Agreement also contained provisions relating to how third-country vessels shall be treated in the area.<sup>38</sup> The Agreement was valid for one year and has been extended every year since it was adopted. It was stated that the provisional arrangement was not to prejudice the final outcome of the negotiations on a maritime boundary.<sup>39</sup>

Since the start of the negotiations Norway and Russia have respected international law as the applicable law of the delimitation process.<sup>40</sup> When the negotiations started, Article 6 of the Convention on the Continental Shelf to which both states were parties was the governing law. It was stated that the median line was the boundary unless another boundary is justified by "special circumstances". Today the governing law is the LOSC, namely Articles 74 and 83. Both parties argued that these new provisions upheld their reading of Article 6 of the Convention on the Continental Shelf.<sup>41</sup>

Norway and Russia achieved the consensus on their maritime delimitation dispute by the ratification of the Barents Sea Treaty in 2011. The described "grey zone" disappeared and the

---

<sup>36</sup> Agreement on a Temporary Practical Arrangement for Fishing in an Adjacent Area in the Barents Sea with Attached Protocol, Oslo, OS - 11 January 1978, EIF - 27 April 1978, expiry - 6 July 2011. Text of the Agreement is found in the master thesis by Lars Eliassen, *Gråsonavtalen mellom Norge og Russland*, Universitetet i Tromsø, 2008, Annex. Available in Norwegian at <http://munin.uit.no/bitstream/handle/10037/1500/thesis.pdf?sequence=1> [Visited May 15th, 2013].

<sup>37</sup> Alex G. Oude Elferink. *The Law of Maritime Boundary Delimitation: A Case Study of the Russian Federation*. Dordrecht, (Martinus Nijhoff) 1994. (Publications on Ocean Development, vol. 24), p. 9.

<sup>38</sup> Robin R. Churchill and Geir Ulfstein, *supra* note 33, p. 67.

<sup>39</sup> *Ibid.*, p. 67.

<sup>40</sup> P. Tresselt, "Norsk-sovjetiske forhandlinger om avgrensning av kontinentalsokler og økonomiske soner", *Internasjonal Politikk*, vol. 46, 2–3 (1988), p. 79.

<sup>41</sup> *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*. Edited by Alex G. Oude Elferink and Donald R. Rothwell. The Hague, (Martinus Nijhoff) 2001. (Publications on Ocean Development, vol. 37), pp. 186-187.

waters became a subject to the sovereign rights of the coastal states singly. Since the Agreement expired, its subsequent consideration is irrelevant.

As it showed in the Figure of Annex 3 there is an enclave of the high seas in the Barents Sea, known as the "Loophole", which is surrounded by the Norwegian and the Russian EEZs. The high seas are open to use by all states.<sup>42</sup> The main principle of the high seas established under the LOSC is the freedom of fishing.<sup>43</sup>

However, the described entitlements of the coastal states in respect to maritime zones are coupled with some obligations which will be considered in the next chapter.

---

<sup>42</sup> LOSC, *supra* note 6, Article 87(1).

<sup>43</sup> *Ibid.*, Article 87(1) (e).

### 3 Obligations of the coastal states concerning management of fish stocks in the Barents Sea

#### 3.1 Content of the obligation to cooperate in the Barents Sea

Fisheries jurisdiction of the single coastal state was described in the previous chapter. However, many fish stocks in the Barents Sea are subjected to the sovereign rights of the two coastal states and to the freedom on the high seas. So for instance, cod, haddock and capelin are joint species which occur within the Norwegian EEZ as well as the Russian EEZ.<sup>44</sup> At the same time the Northeast Atlantic cod partly migrates outside the EEZs. These species are found in the Barents Sea Loophole.<sup>45</sup> Hence, there is a natural necessity for cooperation between relevant states in order to manage indicated fish stocks. Such obligation of a state to cooperate is stated in Articles 63, 64 and 118 of the LOSC.

The obligation to cooperate is defined differently in the LOSC, depending on the categories of fish stocks. The stocks which move across the boundary between an EEZ and the high seas are called "straddling stocks".<sup>46</sup> Those which occur within two or more EEZs are referred to "shared stocks".<sup>47</sup> The term "transboundary fish stocks"<sup>48</sup> is used under the research as a common definition for the latter two categories and also includes "highly migratory stocks"<sup>49</sup>. These species are listed in Annex I of the LOSC, whereas most of them migrate considerable distances during their life cycle, through EEZs of two or more states as well as on the high seas (e. g. tuna and swordfish).<sup>50</sup>

Cooperation between states is important to successfully govern transboundary fish stocks in the Barents Sea. However, it is necessary to distinguish between two elements of the obligation to cooperate. The format of the cooperation will be discussed after analysis of the content of the obligation to cooperate.

---

<sup>44</sup> Arne Eide ... [et al.], "Challenges and Successes in the Management of a Shared Fish Stock – The Case of the Russian–Norwegian Barents Sea Cod Fishery", *Acta Borealia: A Nordic Journal of Circumpolar Societies*, vol. 30, 1 (2013), pp. 1-2; Report of the AFWG, supra note 20, p. 21.

<sup>45</sup> *Ibid.* and Olav Schram Stokke, "Managing Fisheries in the Barents Sea Loophole: Interplay with the UN Fish Stocks Agreement", *Ocean Development & International Law*, vol. 32, 3 (2001), p. 242.

<sup>46</sup> LOSC, supra note 6, Article 63 (2).

<sup>47</sup> *Ibid.*, Article 63 (1).

<sup>48</sup> This term has been used in the literature. See, for instance, Ellen Hey. *The Regime for the Exploitation of Transboundary Marine Resources*. Dordrecht, (Martinus Nijhoff) 1989, pp. 1–2; and M. Hayashi, "The Management of Transboundary Fish Stocks Under the LOS Convention", *International Journal of Marine and Coastal Law* 8 (1993), p. 311.

<sup>49</sup> LOSC, supra note 6, Article 64.

<sup>50</sup> Robin R. Churchill and Alan V. Lowe. *The Law of the Sea*. 3rd edition. Manchester, (Manchester University Press) 1999, p. 289.

The obligation to cooperate implies the fulfillment of procedural requirements between states. Such procedural requirements are related to consultation, notification and negotiation, information sharing, the conclusion of environmental impact assessments and other actions.<sup>51</sup>

Furthermore, this obligation has been interpreted by international courts and arbitration and has probably now become part of international customary law.<sup>52</sup>

Case law states that even if the obligation to cooperate is an obligation of process, the fulfillment of the procedural requirements is not sufficient. They need to be fulfilled in good faith: "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperation, in particular in an age when this cooperation in many fields is becoming increasingly essential".<sup>53</sup>

States are not obligated to conclude any agreement on cooperation. They are "under an obligation to enter into negotiations with a view to arriving at an agreement" and "under an obligation so to conduct themselves that the negotiations are meaningful".<sup>54</sup> Thus, the obligation to cooperate remains an obligation of process, not of a result: "Where the parties are under an obligation to negotiate [...], they are under an obligation 'not only to enter into negotiations, but also to pursue them as far as possible with a view to concluding agreements [...]. But an obligation to negotiate does not imply an obligation to reach an agreement'.<sup>55</sup> In other words, there is generally no obligation to conclude any agreement. Cooperation should be pursued as far as possible, but the obligation does not exist definitely.

Case law makes clear that the duty to cooperate is an essential obligation of international law. However, it should be noted that the different cooperation provisions according to their wording indicate various scopes of specific duties to cooperate.<sup>56</sup> Under the thesis, the

---

<sup>51</sup> *Principles of International Environmental Law*. Philippe Sands ... [et al.], 3rd edition. Cambridge, (Cambridge University Press) 2012, p. 204; Richard A. Barnes, "Consolidating Governance Principles for Areas beyond national jurisdiction", *International Journal of Marine and Coastal Law*, vol. 27, 2 (2012), p. 277.

<sup>52</sup> Nico Schrijver. *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge, (Cambridge University Press) 1997, pp. 336–339.

<sup>53</sup> *Nuclear Tests Case* (New Zealand v. France), Judgment, ICJ Reports 1974, para. 49. Available at <http://www.icj-cij.org/docket/files/59/6159.pdf> [Visited May 22nd, 2013].

<sup>54</sup> *North Sea Continental Shelf Cases* (Federal Republic of Germany v. Denmark/ Federal Republic of Germany v. Netherlands), Judgment, ICJ Reports 1969, para. 85 (a). Available at <http://www.icj-cij.org/docket/files/52/5561.pdf> [Visited May 22nd, 2013].

<sup>55</sup> *Railway Traffic between Lithuania and Poland*, PCIJ Ser. A/B, No. 42 (1931), p. 116. Available at [http://www.icj-cij.org/pcij/serie\\_AB/AB\\_42/Trafic\\_ferroviaire\\_Avis\\_consultatif.pdf](http://www.icj-cij.org/pcij/serie_AB/AB_42/Trafic_ferroviaire_Avis_consultatif.pdf) [Visited May 23rd, 2013].

<sup>56</sup> Tore Henriksen and Alf Håkon Hoel, "Determining Allocation: From Paper to Practice in the Distribution of Fishing Rights Between Countries", *Ocean Developments & International Law*, vol. 42, 1-2 (2011), p. 68.



obligation to cooperation is related to the management of transboundary fish stocks in the Barents Sea.

According to case law discussed above and the wording of Article 63 of the LOSC, Norway and Russia as the coastal states have a clear obligation to conduct negotiations in good faith and in a meaningful way with a view to reach an agreement as a necessary measure. This obligation to cooperate is also related to "associated species"<sup>57</sup> exploiting of which the coastal state is not interested in, but which are essential components of the ecosystem.

Along with the similarity of provisions in Article 63 of the LOSC, there are some differences. The obligation to cooperation concerning the shared fish stocks is extensive. It includes necessary measures which aim not only to prevent overfishing, but to maintain them at a high level.<sup>58</sup> For straddling fish stocks, the geographical scope of the obligation to cooperate is limited to the areas of the high seas where such fish stocks occur.<sup>59</sup> Furthermore, states are not required to develop straddling fish stocks through the cooperation. As opposed to it, Article 63 (1) of the LOSC contains a reference to development shared fish stocks and coordination of conservation measures which implies the setting of a joint TAC in the EEZs of each state.<sup>60</sup>

Article 64 of the LOSC provides the obligation to cooperate "with a view to ensuring conservation and promoting the objective of optimum utilization" of highly migratory species both within and beyond the EEZ. In contrast to Article 63, this duty is not qualified by any terms like "seek", "try" or "endeavour". However, the wording "with a view to ensuring conservation" weakens the obligation somewhat.

#### *Joint Norwegian-Russian Fisheries Commission*

To evaluate how Norway and Russia as the coastal states have fulfilled their cooperation and conservation obligations in the Barents Sea, the 1975 and 1976 Agreements should be considered. They form the basis for bilateral management regime of the Barents Sea.

The 1975 Agreement stresses the need for conservation, rational utilization of living marine resources and neighborly relations between Norway and Russia.<sup>61</sup> To reach such goals the

---

<sup>57</sup> LOSC, supra note 6, Article 63 (1) and (2). See also the part 3.3.3 of the thesis.

<sup>58</sup> William T. Burke, *The New International Law of Fisheries: UNCLOS 1982 and Beyond*. Oxford, (Oxford University Press) 1994, pp. 52-55.

<sup>59</sup> LOSC, supra note 6, Article 63 (2): "... the conservation of these stocks in the adjacent area".

<sup>60</sup> Ellen Hey, supra note 48, p. 56.

<sup>61</sup> 1975 Agreement, supra note 14, Preamble.

JFC has been established.<sup>62</sup> The Commission convenes at least once a year<sup>63</sup> with representatives from both countries.<sup>64</sup>

Provisions of the 1976 Agreement, all of which are procedural in nature, provide the JFC's competence regarding transboundary fish stocks. Article 1 of the 1976 Agreement refers to the area beyond 12 nautical miles from the baselines in which each of the parties is engaged in the management of living resources. This means that the Agreement also applies to the management of fish stocks in the FPZ around Svalbard.

It is unclear from the text of the 1976 Agreement that its provisions deal with shared fish stocks in the Barents Sea. This is inferred from the fact that such fish stocks occur exclusively within a party's zone.<sup>65</sup> Article 7 (b) of this Agreement is related to straddling fish stocks. Article 7 (c) refers to other fish stocks which have mutual dependence with the mentioned. Thus, the 1976 Agreement is not aimed at the management of highly migratory fish stocks in the Barents Sea.

In accordance with Article 2 of the 1976 Agreement the main tasks of the Commission are to set TACs for the transboundary fish stocks and to distribute quotas.

The TACs are established for the main fish stocks, namely cod, haddock, capelin, Greenland halibut and other species, and are based on the recommendations from the ICES.<sup>66</sup> The quotas include mutual quotas in each parties' EEZs, quotas for the third countries and quotas for research and management purposes.<sup>67</sup> For instance, while mutual quotas for cod and haddock are shared between Norway and Russia on an equal basis (50-50), the quota for capelin is shared 60-40 in the favor of Norway.<sup>68</sup> Moreover, the JFC conducts exchange of quotas which is partly related to shared fish stocks and partly to exclusive fish stocks in the other country's separate waters.<sup>69</sup>

Furthermore, the JFC is involved in fisheries regulation more widely<sup>70</sup> and in enforcement and compliance control. Norway and Russia report their commercial catches and exchange

---

<sup>62</sup> *Ibid.*, Article III (1).

<sup>63</sup> *Ibid.*, Articles III (3).

<sup>64</sup> *Ibid.*, Articles III (2).

<sup>65</sup> 1976 Agreement, *supra* note 14, Articles 2-4 and 7 (a).

<sup>66</sup> The Protocols of the JFC. Available in Norwegian and Russian at <http://www.jointfish.com/rus/O-KOMISSII/PROTOKOLY> [Visited June 6th, 2013]. See more detailed in the part 3.3.2 of the thesis.

<sup>67</sup> Categories of quotas: <http://www.jointfish.com/eng/STATISTICS/QUOTAS> [Visited June 6th, 2013].

<sup>68</sup> See, for instance, the Protocol from the 42nd session of the JFC, Appendix 5, *supra* note 66 [Visited June 6th, 2013].

<sup>69</sup> Categories of quotas: <http://www.jointfish.com/eng/STATISTICS/QUOTAS> [Visited June 6th, 2013].

<sup>70</sup> 1976 Agreement, *supra* note 14, Article 2 (c).

information between the enforcement bodies<sup>71</sup> to avoid illegally fishing. In addition, the NEAFC's Port State Control was implemented (e.g. the prohibitions of landings of fish taken without a quota, the blacklisting vessels with a history of unregulated fishing).

### **3. 2 Format of the cooperation in the Barents Sea**

States shall comply with the obligation to cooperate concerning transboundary fish stocks either directly or through appropriate organizations according to the LOSC.<sup>72</sup> As regards straddling fish stocks and highly migratory fish stocks, the FSA develops the obligation to cooperate stated under Articles 63 (2), 64 and 118 of the LOSC.

In other words, shared fish stocks migrating within the Norwegian and the Russian EEZs are not subject to the FSA. However, its provisions are significant for other transboundary fish stocks of the Barents Sea. Despite of the fact that the JFC was established before the adoption of the FSA, the two coastal states are required to implement its provisions as parties of this Agreement.

Part III of the FSA contains the provisions for mechanisms of cooperation in the conservation and management of straddling fish stocks and highly migratory fish stocks. Article 8 of the FSA spells out the duty to cooperate either directly or through arrangements or (sub)regional fisheries management organizations (RFMO), which must if necessary be created.

While the paragraph 1 of this Article can be considered as a choice of states to cooperate, the following paragraphs set out some restrictions on such freedom.

If particular straddling fish stocks or highly migratory fish stocks are regulated by a RFMO or an arrangement, the relevant coastal states and states fishing for the stocks shall become members of this organization or participants of this arrangement. Although states may choose not to join the RFMO or not to participate in the arrangement, they have an obligation to apply measures adopted by such RFMO or such arrangement.<sup>73</sup>

If there is no any RFMO or arrangement competent to regulate the fishery for the target fish stocks, the relevant coastal states and fishing states are obligated to establish either a RFMO

---

<sup>71</sup> Statistics on the catches: <http://www.jointfish.com/eng/STATISTICS/CATCHES> [Visited June 7th, 2013].

<sup>72</sup> LOSC, supra note 6, Articles 63, 64 and 118.

<sup>73</sup> FSA, supra note 8, Article 8 (3).

or an arrangement. These states shall participate in the work either as members or participants or by applying the measures established by the new organization or arrangement.<sup>74</sup>

Only membership in the RFMO or participation in the arrangement or agreement to apply of their measures can grant access of states to fisheries resources to which those measures apply.<sup>75</sup> According to Article 17 (2) of the FSA states, which are non-members or non-participants and do not agree to apply the measures adopted by the RFMO or the arrangement, shall not authorize their vessels to engage in fisheries for the straddling or highly migratory fish stocks.

In summary, in accordance with the provisions of the FSA exclusive competence to regulate fisheries of straddling fish stocks and highly migratory fish stocks is given to the RFMOs and arrangements.<sup>76</sup>

A purpose of different formats of cooperation is to fulfill the obligation of states to cooperate concerning management of transboundary fish stocks. The choice between the forms can probably depend on the complexity of the regime, the number of fish stocks and states involved.<sup>77</sup> Moreover, such choice also predetermines legal consequences. For instance, implications may be related to enforcement.<sup>78</sup>

Since the FSA refers to the three ways of organizing cooperation directly or through a RFMO or an arrangement, it is a reason to assume that they have some differences. Try to distinguish between them based on the example of the JFC.

#### *Is the JFC an arrangement in accordance with the FSA?*

Consideration the JFC as an arrangement should satisfy some conditions under the FSA. Firstly, the JFC should consist of separate organs through which states can fulfill their cooperation and conservation obligations. This is a major factor which distinguishes an arrangement as well as a RFMO from a direct cooperation. Secondly, the JFC shall have the

---

<sup>74</sup> *Ibid.*, Article 8 (5).

<sup>75</sup> *Ibid.*, Article 8 (4).

<sup>76</sup> Robin R. Churchill and Alan V. Lowe, *supra* note 50, p. 309.

<sup>77</sup> Henriksen, Tore, Geir Hønneland and Are K. Sydnes. *Law and politics in ocean governance: the UN Fish Stocks Agreement and regional fisheries management regimes*. Publications on ocean development, vol. 52. Leiden, (Martinus Nijhoff Publishers) 2006, p. 18.

<sup>78</sup> FSA, *supra* note 8, Article 21; Dahl, Irene Vanja. *Norsk fiskerijurisdiksjon overfor utenlandske fiskefartøyer*. Universitetet i Tromsø, (Det juridiske fakultet) 2009. Available at <http://munin.uit.no/handle/10037/3636>, p. 287: "Den viktigste konsekvensen for håndhevelse [hvis the JFC er et direkte samarbeid] vil da være at Gjennomføringsavtalens bestemmelser om ikke-flaggstatlig håndhevelse ikke vil gjelde, jf. art. 21. nr 1" (Author's translation: If the JFC is a direct cooperation, Article 21 (1) of the FSA is not applied).

competence to adopt conservation and management measures for particular fish stocks on the high seas which are binding for states.

Since Article 1 of the FSA provides the definition of an arrangement, its wording must be emphasized. An arrangement is a cooperative mechanism established under the LOSC and the FSA by two or more states for the conservation and management of one or more straddling fish stocks or highly migratory fish stocks in a (sub)region.

Undoubtedly, the JFC is a cooperative mechanism in the Barents Sea. It is clear that this cooperative mechanism can be established by two states. Hence, it seems as an incomprehensible conclusion in the literature that the cooperation which involves only two states should be considered as a direct cooperation.<sup>79</sup> Moreover, the JFC manages such straddling fish stock of the Barents Sea as the Northeast Atlantic cod.

The criteria of an arrangement are met under the cooperation through the JFC. However, a question is whether the JFC corresponds to the meaning which the FSA puts in an arrangement. It was underlined above which requirements the JFC should satisfy to be an arrangement under the FSA. They will be considered in turn.

Norway and Russia have established a separate body, namely the JFC, to fulfill their obligation to cooperate. Furthermore, the Permanent Norwegian-Russian Committee for management and control within the fisheries sector and some working groups were established under the JFC.<sup>80</sup> Therefore, the cooperation through the JFC is more institutionalized than a direct cooperation and cannot be considered as such format of the cooperation.

The presence of the organs meets the condition that applies to a RFMO or an arrangement in conformity with the FSA. A RFMO or an arrangement should have some sort of mechanism to perform functions listed in Article 10 of the FSA, *inter alia*, to allocate TAC, to promote and conduct scientific assessment of fish stocks, to control and enforce. It is not mentioned that these functions are assigned to a direct cooperation.<sup>81</sup>

---

<sup>79</sup> Tore Henriksen. *Utviklingen av internasjonal forvaltning av vandrende fiskebestander: Mot et lukket hav?* Tromsø, (Det juridiske fakultet: skriftserie nr. 47) 2001, p. 119: "Ettersom samarbeidet bare involverer to stater, kan det være nærliggende å slutte at det dreier seg om et direkte samarbeid. Da vil ikke samarbeidet tilfredsstillende kravet om at det må ha form som et arrangement eller en organisasjon".

<sup>80</sup> See about the JFC's organization on <http://www.jointfish.com/index.php/eng/THE-FISHERIES-COMMISSION/STRUCTURE> and <http://www.jointfish.com/index.php/eng/THE-FISHERIES-COMMISSION/WORKING-GROUPS> [Visited August 15th, 2013].

<sup>81</sup> Nonetheless, states can perform some functions of Article 10 of the FSA through a direct cooperation. More can be found in Tore Henriksen, *supra* note 79, pp. 101-105.

While the definition of an arrangement is given in the FSA, neither the LOSC nor the FSA contains the content of a RFMO. However, level of a RFMO's organization is different from an arrangement. These organizations are usually established by states under a convention and are more structured by different bodies (e. g. a secretariat or headquarters) and separate decision-making mechanism. The NEAFC is a clear example for such RFMO in the Barents Sea.<sup>82</sup> One can hardly argue that the JFC can be considered as a RFMO. The 1975 and 1976 Agreements did not have the intention to provide the JFC with the status of a RFMO.<sup>83</sup>

In spite of the fact that the first condition is met, it does not allow to suggest that the JFC is an arrangement under the FSA. The second condition has to be considered. If the JFC is an arrangement, this implies its exclusive competence over transboundary fish stocks applicable also on the high seas. Bearing in mind that the concept of an arrangement was introduced in the FSA by a proposal of Norway concerning the JFC as such example<sup>84</sup>, the discussion in this direction will be continued. If the JFC can indeed be considered as an arrangement under the FSA, it means that various consequences which attach to this format of cooperation will follow.

There is no unambiguous opinion in the legal literature on how the JFC should be considered according to the provision of the FSA. Some authors have argued that the cooperation through the JFC is an arrangement.<sup>85</sup> Olav Stokke has pointed out that the Barents Sea regime, including the JFC and cluster of external agreements with other states, is clearly an arrangement according to the FSA.<sup>86</sup> This bilateral regime provides a decision-making mechanism through its organs.<sup>87</sup> However, an alternative point of view has been presented by Robin Churchill. He means that neither the JFC nor the agreements with other states are an arrangement. Arguments are that there is no decision-making mechanism and it is not established for the purpose of high seas management of straddling stocks.<sup>88</sup> Tore Henriksen has concluded that the JFC can hardly be considered as an arrangement.<sup>89</sup>

---

<sup>82</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, London, OS - 18 November 1980, EIF - 17 March 1982, Official Journal of the European Community 1981 L 227, p. 22.

<sup>83</sup> Tore Henriksen, *supra* note 79, p. 120.

<sup>84</sup> Dahl, Irene Vanja, *supra* note 78, pp. 296-297.

<sup>85</sup> Geir Hønneland. *Kvotekamp og kystsolidaritet: norsk-russisk fiskeriforvaltninggjennom 30 år*. Oslo (Fagbokforlaget) 2007, p. 116; Tore Henriksen, Geir Hønneland and Are K. Sydnes, *supra* note 77, p. 146.

<sup>86</sup> Olav Schram Stokke, *supra* note 45, pp. 251-252.

<sup>87</sup> *Ibid.*, pp. 251-252.

<sup>88</sup> Robin R. Churchill, "The Barents Sea Loophole Agreement—A 'Coastal State' Solution to a Straddling Stock Problem", *International Journal of Marine and Coastal Law*, vol. 14, 4 (1999), p. 467.

<sup>89</sup> Tore Henriksen, *supra* note 79, p. 122.

According to our discussion the conclusion that the JFC is an arrangement under the FSA context cannot be made yet.

*Is the JFC competent to regulate the Loophole fisheries?*

A question which was consequently raised is whether the JFC is competent to regulate the Loophole fisheries. Therefore, the 1975 and 1976 Agreements have to be viewed.

They refer to the areas under national jurisdiction of Norway and Russia.<sup>90</sup> In other words, it means that the JFC only deals with fish stocks that occur in the EEZs. However, there is a simplification to conclude that the JFC is not appropriate body to manage fish stocks in the Loophole and that its functions should be transferred to the NEAFC.<sup>91</sup> Interpretation of the Agreements should not be limited by this.

Norway and Russia commit themselves to cooperate concerning straddling fish stocks under Article 7 (b) of the 1976 Agreement. It can be read that the JFC was established to adopt measures also for the high seas. However, the clause of this Article that the cooperation between Norway and Russia should be "directly and through appropriate international organizations" casts doubt on such reading. Tore Henriksen has argued that this suggests that the cooperation between the coastal states should not be through the JFC.<sup>92</sup> Not sure that the wording should be interpreted this way and that two coastal states had in mind an exclusion of the JFC from the high seas.

It is important to note that the Loophole was not attractive fisheries area when the 1975 and 1976 Agreements were concluded. Fishing in such enclave of the high seas started in 1990s.<sup>93</sup> This could be a reason of the unclear wording in Article 7 of the 1976 Agreement.

Provisions of the 1976 Agreement are to be submitted by a contextual interpretation.<sup>94</sup> To this respect, the JFC practice is relevant. Tore Henriksen has pointed out that the JFC through its practice is authorized to regulate fishing in the Loophole.<sup>95</sup> In that light the Protocols of the

---

<sup>90</sup> 1976 Agreement, supra note 14, Articles 1 and 4 (2).

<sup>91</sup> P. Örebech, K. Sigurjonsson and T. L. McDorman, "The 1995 United Nations Straddling and Highly Migratory Fish Stocks Agreement: Management, Enforcement and Dispute Settlement", *International Journal of Marine and Coastal Law*, vol. 13, 2 (1998), p. 124.

<sup>92</sup> Tore Henriksen, supra note 79, p. 121: "Siden dette samarbeidet skal skje direkte eller gjennom egnede internasjonale organisasjoner, tyder det på at samarbeidet ikke skal skje gjennom Fiskerikommisjonen".

<sup>93</sup> Olav Schram Stokke, supra note 45, pp. 242-243.

<sup>94</sup> Vienna Convention on the Law of the Treaties, Vienna, OS - 23 May 1969, EIF - 27 January 1980, 8 ILM (1969) 679, Article 31 (3).

<sup>95</sup> Tore Henriksen, supra note 79, p. 121: "Fiskerikommisjonen kan likevel ha fått myndighet til å regulere fisket på det åpne hav gjennom seinere praksis".

JFC have to be considered. According to them the measures apply to the Northeast Atlantic cod (and haddock) throughout its migratory range<sup>96</sup> which implies the Loophole.

In summary, the JFC is entitled to apply its conservation and management measures to Norwegian and Russian vessels fishing in the Loophole. Besides these coastal states, other states have the freedom to fish in this part of the high seas in accordance with the LOSC. Therefore, the fisheries agreements of Norway and Russia with other non-coastal states should be analyzed. It helps to answer a question of whether the fisheries regulation of the JFC applies to third states fishing in the Loophole.

### **3. 3 Principles of the cooperation in the Barents Sea**

#### **3. 3. 1 Access of third states to fish stocks of the Barents Sea**

The first maritime zone where access of other states to fish stocks of the Barents Sea can be granted is the EEZ.

When the TACs for fish stocks within the EEZ are determined under Article 61 of the LOSC, coastal states may be faced with the question of whether the access to such stocks should be given to other states, and if so, under what conditions.

According to Article 62 of the LOSC Norway and Russia shall allow other states access to catch the surplus<sup>97</sup> (the difference between the TAC and the catch capacity of the coastal state). Even if there is no surplus of fish stocks, the coastal state can be interested in such permitting. It gives an opportunity to its vessels to catch in the EEZ of the third state if stocks are not found in the coastal state's own waters.

Despite of the mandatory wording "shall", the LOSC leaves flexibility on which states should be granted access. The relevant factors that should be taken into account in such deciding are outlined in Article 62 (3) of the LOSC. Moreover, the access to the surplus, through agreements, shall be pursuant to the terms and conditions referred to Article 62 (4).<sup>98</sup> This list is not limited as long as the laws and regulations are in conformity with the provisions of the LOSC. The terms and conditions established in the laws and regulations of the coastal state are its solely decisions. Other states are required to comply with them.<sup>99</sup>

---

<sup>96</sup> The Protocols from the 37th session of the JFC, para. 12.8, and from the 40th session of the JFC, para. 15.9, supra note 66 [Visited July 31st, 2013].

<sup>97</sup> LOSC, supra note 6, Article 62 (2).

<sup>98</sup> *Ibid.*, Article 62 (2).

<sup>99</sup> *Ibid.*, Article 62 (4).



It was underlined that other states enjoy the freedom to fish beyond the EEZs. If the JFC is entitled to adopt its measures mandatory for other non-costal states fishing in the Loophole, another condition for the JFC as an arrangement will be met.

*Fisheries agreements between the coastal states and third states*

In addition to the 1975 and 1976 Agreements between Norway and Russia, these states have fisheries agreements with other states. The EU, Greenland, Iceland, Faroe Islands have the access to allocate quotas for fish stocks in different zones in the Barents Sea.<sup>100</sup> Fish quotas of third states are set by the JFC for cod, haddock and Greenland halibut within both the EEZs of the coastal states and the FPZ.<sup>101</sup>

The trilateral Loophole Agreement between Norway, Russia and Iceland<sup>102</sup> has a central role in our discussion. In accordance with its provisions the access to fish quotas is granted in the respective EEZs.<sup>103</sup> However, Iceland has committed itself to refrain from the fishing for the Northeast Atlantic cod in the Loophole. It flows from the fact that parties of the Loophole Agreement have recognized that fish quotas should to be based "on management decisions taken by the coastal states".<sup>104</sup> Since these management decisions are adopted by Norway and Russia within the JFC, Iceland has therefore accepted the competence of the JFC to manage this straddling fish stock. In addition to a restriction of the catches by fish quotas, Article 4 of the Agreement contains deprivation of any claim for fish stocks which are allocated in the EEZs.

Any conclusion of the bilateral agreements with other states, namely the EU, Greenland and Faroe Islands, means that these states are obligated to limit themselves by the established quotas, regardless of whether they are fishing within or outside fisheries jurisdiction of

---

<sup>100</sup> See more: St. meld. nr. 25 (2011-2012), *Fiskeriavtalane Noreg har inngått med andre land for 2012 og fisket etter avtalane i 2010 og 2011*. Available in Norwegian at <http://www.regjeringen.no/pages/37899288/PDFS/STM201120120025000DDDPDFS.pdf> [Visited July 26th, 2013]; St. meld. nr. 40 (2012-2013), *Fiskeriavtalane Noreg har inngått med andre land for 2013 og fisket etter avtalane i 2011 og 2012*. Available in Norwegian at <http://www.regjeringen.no/pages/38354438/PDFS/STM201220130040000DDDPDFS.pdf> [Visited July 26th, 2013].

<sup>101</sup> Protocol from the 42nd session of the JFC, Annex 4, supra note 66 [Visited July 26th, 2013].

<sup>102</sup> Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation concerning certain aspects of cooperation in the area of fisheries, Sankt Petersburg, OS - 15 May 1999, EIF - 15 July 1999. Available at <http://www.ecolex.org/ecolex/ledge/view/RecordDetails?id=TRE-001817&index=treaties> [Visited July 29th, 2013].

<sup>103</sup> *Ibid.*, Article 2.

<sup>104</sup> *Ibid.*, Article 3.

Norway and Russia.<sup>105</sup> Furthermore, the coastal states have agreed to continue control over the third states so that their fishing is to be stopped when the quotas are fished.<sup>106</sup>

Thus, it can indirectly mean that the JFC is competent to regulate the Loophole fisheries of third states for straddling fish stocks.

Irene Vanja Dahl has argued that the conservation and management measures of the JFC are binding for third states.<sup>107</sup> If it is so, one can agree with her that the JFC is an arrangement in accordance with the FSA.<sup>108</sup> Another condition for the consideration of the JFC as an arrangement will be satisfied. However, if the measures of the Commission are not binding, it does not automatically mean that the JFC is a direct cooperation under the FSA.

Third states as well as the coastal states fishing for straddling fish stocks in the Loophole have the obligation to cooperate.<sup>109</sup> Such obligation has been fulfilled by them directly through the tri- or bilateral fisheries agreements.<sup>110</sup> These agreements aim at control by the coastal states over fishing for straddling fish stocks in the Loophole. Norway and Russia singly impose certain restrictions on other states. Third states have been permitted to fish within the Norwegian and the Russian EEZs with the assumption that they are not involved in the Loophole fisheries for straddling cod stock.

The JFC is not competent to regulate fishing on the high seas in the Barents Sea. Its measures have an indirect effect in the Loophole because third states have recognized the coastal states' responsibility to manage straddling fish stocks. Since the JFC has not an separate responsibility over straddling fish stocks in the Loophole, it is questionable to consider the Commission as an arrangement in accordance with the FSA.

Thus, I support the conclusion made by Tore Henriksen that the JFC is more a cooperation between the coastal states regarding conservation and management of shared fish than an

---

<sup>105</sup> Protocol from the 42nd session of the JFC, para. 14. 8, supra note 66 [Visited July 29th, 2013].

<sup>106</sup> *Ibid.*, para. 14. 8, supra note 66 [Visited July 29th, 2013].

<sup>107</sup> Dahl, Irene Vanja, supra note 78, p. 295 [Visited July 20th, 2013]: "Det må derimot legges betydelig vekt på hvorvidt NORUFIs [the JFC] bevaringstiltak faktisk gjelder for Smutthullet, jf. Gjennomføringsavtalen art. 8 nr. 3, og således er egnet til å oppfylle samarbeids og bevaringsplikten. Som jeg har fremholdt, får NORUFIs [the JFC] bevaringstiltak virkninger for fisket på det åpne hav, både norsk og russisk fiske og for tredjelandets fiske". She has parried the arguments of Tore Henriksen.

<sup>108</sup> *Ibid.*, p. 291: "Spørsmålet er hvorvidt reguleringene også er bindende for tredjestaters fiske i Smutthullet. Poenget er at dersom de ikke er det, trekker det i retning av at NORUFI [the JFC] ikke er et RFMA [an arrangement] etter Gjennomføringsavtalen [the FSA], men mer et direkte samarbeid, det vil si den tredje måten å organisere et samarbeid på etter avtalen art. 8 nr. 1".

<sup>109</sup> LOSC, supra note 6, Articles 63 (2); the FSA, supra note 8, Article 8.

<sup>110</sup> See also: Tore Henriksen, supra note 79, p. 124; Robin R. Churchill, supra note 88, pp. 477, 478 and 480.

arrangement under the context inferred in the FSA. It is left to the single coastal state to ensure control over the third states' fishing in the Loophole.<sup>111</sup>

It has not been concluded that the JFC is an arrangement. Otherwise, the JFC has to deal with the access of non-coastal states to fish stocks.

Under the FSA only states that join the regime or agree to apply its conservation and management measures are to have access to fish stocks.<sup>112</sup> Hence, other states have a right to be included in the fisheries management in the Barents Sea. The FSA contains a requirement that states "having a real interest in the fisheries" may become participants of the arrangement.<sup>113</sup> It is debatable what a "real interest" implies.<sup>114</sup> This thesis does not aim to analyze such wording. However, it seems that "real" indicates that states must demonstrate they have some factual or concrete interest in the fisheries. In other words, states without any intention of fishing on the fish stocks on the high seas are excluded from becoming participants from the outset.<sup>115</sup>

There are no states which demand the participation in the JFC. It may be related to the objective of the Commission. Since the JFC mainly manages shared fish stocks, the participation in the JFC is not attractive for other states.<sup>116</sup> As long as other states are not the participants of the JFC, they have no way than to consent to apply the measures of the Commission. This gives them an opportunity to be engaged in the fishing for straddling fish stocks in the Barents Sea according to the FSA. The (tri)lateral agreements may be considered as such consent.

Anyway, stability and effectiveness of the Barents Sea fisheries regime depend on perceiving by other relevant states. Different fisheries agreements of the coastal states provide such legitimate basis.

---

<sup>111</sup> Tore Henriksen, *supra* note 79, p. 122: "[The JFC] framstår mer som et samarbeid mellom kyststater om bevaring av delte fiskebestander, mens det er overlatt til de enkelte stanene å sikre kontroll over fiske på det åpne hav".

<sup>112</sup> FSA, *supra* note 8, Article 8(4).

<sup>113</sup> *Ibid.*, Article 8 (3).

<sup>114</sup> See, for instance, E. J. Molenaar, "The Concept of Real Interest and Other Aspects of Cooperation through Regional Fisheries Management Mechanisms", *International Journal of Marine and Coastal Law*, vol. 15, 4 (2000), pp. 475– 532; A. Tahindro, "Conservation and Management of Transboundary Fish Stocks: Comments in Light of the Adoption of the 1995 Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks", *Ocean Development and International Law*, vol. 28, 1 (1997).

<sup>115</sup> Tore Henriksen, Geir Hønneland and Are K. Sydnes, *supra* note 77, p. 20.

<sup>116</sup> Geir Hønneland, *supra* note 85, p. 117.

### 3. 3. 2 Application of the precautionary approach through the Joint Norwegian-Russian Fisheries Commission

Obligation to cooperate is directed at the coastal states which must implement the other conservation obligations through the JFC. States are required to ensure that their measures are based on the best scientific evidence available and to apply precautionary approach.<sup>117</sup> There are the principles on which the fisheries management in the Barents Sea should be based.<sup>118</sup>

Norway and Russia have accepted the application of the precautionary approach to the fisheries management by their ratification of the CBD, the FSA. This approach under the ICES recommendations applies to fish stocks governed by the JFC in the Barents Sea.<sup>119</sup> Moreover, the precautionary approach has been included in Article 4 (3) of the Barents Sea Treaty which will be considered in the part 4. 2 of the thesis.

Current part has a goal to examine the application of the precautionary approach to transboundary fish stocks in the Barents Sea before the analysis of the Barents Sea Treaty concerning this approach.

For the first time the precautionary approach has been introduced in the 1992 Rio Declaration on Environment and Development.<sup>120</sup> It states that scientific uncertainty should not be a reason to postpone measures to prevent environmental harm. After the endorsement of the precautionary approach, the UN Food and Agriculture Organization considered that it is important to identify its practical meaning and implications for fisheries because some organizations had started using this approach as a justification to close down fisheries and as an argument to dismiss the role of science in fisheries management.<sup>121</sup> Consequently, the precautionary approach was reflected explicitly or implicitly in numerous international instruments. There are the CBD<sup>122</sup>, the FSA and others<sup>123</sup> which provide how the precautionary approach should be applied.

---

<sup>117</sup> FSA, supra note 8, Article 5 (b) and (c).

<sup>118</sup> These principles are further elaborated in the FSA, supra note 8, Article 6 and Annex II, Article 10 (d) - (g).

<sup>119</sup> Protocol from the 42nd session of the JFC, para. 5. 1, p. 4, supra note 66 [Visited August 20th, 2013].

<sup>120</sup> Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Annex I, 31 ILM (1992) 874, principle 15.

<sup>121</sup> Garcia, S., "The precautionary approach to fisheries: A reply to Prof. Kesteven, *Fisheries Research*, vol. 28 (1996), pp. 109-110", *Fisheries Research*, vol. 31, 3 (1997), p. 275.

<sup>122</sup> CBD, supra note 7, Preamble.

<sup>123</sup> For instance, the 1995 FAO Code of Conduct for Responsible Fisheries and its four International Plans of Action (IPOAs) on fishing capacity, shark management, seabird protection, and illegal, unreported and unregulated fishing. Texts are available at [http://www.fao.org/index\\_en.htm](http://www.fao.org/index_en.htm) [Visited May 27th, 2013].

In giving effect to the obligation of coastal states to cooperate, Article 5 (c) of the FSA defines the application of the precautionary approach as one of the main principles in the conservation and management of fish stocks. It is further elaborated in Article 6 and Annex II. According to Article 6 (1) of the FSA the precautionary approach shall be applied "widely to conservation, management and exploitation of straddling and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment". Besides the absence of adequate scientific information on the fish stocks, uncertainty concerning environmental and socio-economic conditions is also relevant.<sup>124</sup> This means that states should evaluate different risks for fish stocks which can include risk of overfishing, risk of negative economic effects for fisheries communities and others.<sup>125</sup>

Thus, according to the provisions of the FSA Norway and Russia are obligated to apply the precautionary approach concerning straddling fish stocks and highly migratory fish stocks in the Barents Sea. It seems that the Northeast Atlantic cod is subject to such application through the cooperation in the JFC and shared fish stocks are uncovered by this approach. In this regard, the practice of the JFC concerning the application of the precautionary approach should be considered.

#### *The JFC's practice of the application of the precautionary approach*

When states under the obligation to cooperate establish an arrangement or an RFMO, they shall agree on the mechanism which will obtain scientific advice and review the status of the fish stock.<sup>126</sup> To this effect, a scientific advisory body can be set up. However, there is not a mandatory requirement. Scientific information can be obtained in other ways. It may be done by another body such as the ICES which performs such functions. Hence, this requirement can also be met under the cooperation directly.<sup>127</sup>

"The main principles and criteria the long-term, sustainable management of living marine resources in the Barents and the Norwegian seas"<sup>128</sup> is a basis for decision-making by the

---

<sup>124</sup> FSA, supra note 8, Article 6 (3) (c).

<sup>125</sup> Tore Henriksen, Geir Hønneland and Are K. Sydnes, supra note 77, p. 24.

<sup>126</sup> FSA, supra note 8, Article 9 (1) (d).

<sup>127</sup> Tore Henriksen, supra note 79, p. 103.

<sup>128</sup> Protocol from the 31st session of the JFC, para. 5. 1, 12. 2 and Annex 11, supra note 66 [Visited August 21nd, 2013].

JFC.<sup>129</sup> In this regard, the JFC is developing the management strategies concerning the target fish stocks under the ICES.<sup>130</sup>

Protocols of the JFC show that the JFC has applied the precautionary approach based on ICES recommendations through its practice.<sup>131</sup> Annual recommendations to the JFC are given by the ICES through its Advisory Committee for Fisheries Management. The application of the precautionary approach through the JFC is related to various fish stocks in the Barents Sea. The Commission extends this application to shared fish stocks, whereas they are not subject to the provisions of the FSA.<sup>132</sup>

The ICES is an intergovernmental organization whose main objective is to coordinate scientific research and to use this for generating advice on fisheries management.<sup>133</sup> Although the FSA contains the general provisions related to the formulation and use of scientific advice, the ICES has developed and implemented a specific procedure to provide advice for the various fish stocks in the Northeast Atlantic. However, while the FSA includes legally binding commitments to conduct and use scientific research in precautionary way, the ICES advice does not have binding nature.

Thus, the ICES recommendations can be ignored by the JFC. For instance, a Russian request for a change of a precautionary reference point for Northeast Atlantic cod was rejected by the ICES. It was made because "the data available at present give no firm basis for revision of reference points".<sup>134</sup> Even if the JFC may take a view that the ICES generates advice which is unreasonably sensitive to the socio-economic considerations, the coastal states are obligated under the FSA to establish fisheries measures in line with the precautionary approach.

Actually, the past measures of the JFC can be evaluated as insufficient. It was a tendency to set TACs far above the recommendations by the ICES.<sup>135</sup> In 1999, the JFC established a TAC for the Northeast Atlantic cod equal 480 thousand tonnes, above a recommended by the ICES

---

<sup>129</sup> Protocol from the 33rd and the 36th sessions of the JFC, para. 5. 1, p. 3, supra note 66 [Visited August 21nd, 2013].

<sup>130</sup> Protocol from the 36th session of the JFC, para. 5. 1 and 12.3, supra note 66 [Visited August 21nd, 2013].

<sup>131</sup> Protocol from the 38th session of the JFC, para. 5. 1, p. 3; Protocol from the 42nd session of the JFC. para. 5. 1, p. 4, supra note 66 [Visited August 21nd, 2013].

<sup>132</sup> See about it in the part 4.2 of the thesis.

<sup>133</sup> Convention for the International Council for the Exploration of the Sea, OS - 12 September 1964, EIF - 22 July 1968, 652 UNTS 237, Article 1. Available at [http://www.ices.dk/explore-us/who-we-are/Documents/ICES\\_Convention\\_1964.pdf](http://www.ices.dk/explore-us/who-we-are/Documents/ICES_Convention_1964.pdf) [Visited May 25th, 2013].

<sup>134</sup> ICES. Report of the ICES Advisory Committee on fisheries management. ICES Cooperative Research Report, International Council for the Exploration of the Sea, Copenhagen, Annual, issue 242, 2001. p. 12.

<sup>135</sup> ICES. Report of the ICES Advisory Committee on fisheries management. ICES Cooperative Research Report, International Council for the Exploration of the Sea, Copenhagen, Annual, issue 246, 2001. Section 3.1.2.

360 thousand tonnes.<sup>136</sup> One year later, the JFC set a TAC of 390 thousand tonnes, while the ICES recommended 110 thousand tonnes.<sup>137</sup> Possible reasons why the JFC chose to set quotas above the level ICES considered precautionary were explained by Geir Hønneland.<sup>138</sup> Distrust in these recommendations or scepticism among Russian experts towards the application of the precautionary approach might be relevant factors. While the Norwegian delegation seems to have partly supported the opinion expressed by the ICES, the Russians have opposed it.<sup>139</sup>

Such discrepancy between established and recommended TACs could lead to serious consequences. Fish stocks collapse would probably have happened. However, nowadays the JFC ended the practice of ignoring the scientific advice and started to pay more heed to the precautionary approach.

In the next chapter implications of including the precautionary approach in the Barents Sea Treaty for the management of transboundary fish stocks will be considered.

### 3.3.3 Other principles of the cooperation

The precautionary approach goes beyond the objective of Article 2 of the FSA. In accordance with Article 6 (1) of the FSA Norway and Russia shall apply this approach in order to preserve the marine environment. In addition to the general obligation to preserve the marine environment<sup>140</sup>, there is a reference to the obligation to protect biodiversity in the marine environment. It is one of the general principles set out in Article 5 of the FSA.<sup>141</sup> Reasonable to argue that this is a linkage with the CBD which defines what biodiversity is.

Besides the already discussed obligation of the coastal states to cooperate, Norway and Russia are obligated to conserve all kind of biodiversity and to ensure sustainable use of its components according to the CBD.<sup>142</sup> However, the wording of the CBD Articles such as "as far as possible and as appropriate"<sup>143</sup> or "in accordance with its particular conditions and capabilities"<sup>144</sup> reduces the significance of the established commitments.

<sup>136</sup> Protocol from the 27th session of the JFC, para. 5. 1, supra note 66 [Visited May 28th, 2013].

<sup>137</sup> Protocol from the 28th session of the JFC, para. 5. 1, supra note 66 [Visited May 28th, 2013].

<sup>138</sup> Geir Hønneland. *Russian fisheries management. The precautionary approach in theory and practice.* (Publications on Ocean Development, vol. 43) 2004, pp. 171-178.

<sup>139</sup> *Ibid.*, p. 116.

<sup>140</sup> LOSC, supra note 6, Article 192.

<sup>141</sup> FSA, supra note 8, Article 5 (g).

<sup>142</sup> CBD, supra note 7, Article 5.

<sup>143</sup> *Ibid.*, Articles 5, 7, 9 and others.

<sup>144</sup> *Ibid.*, Article 6 and others.

Fish stocks are an element of biodiversity in the Barents Sea marine ecosystem. Although the CBD recognizes the obligations of each coastal state to conserve biodiversity and to ensure sustainable use of its components, it is stated in the Preamble of the CBD that "the conservation of biological diversity is a common concern of humankind" and is a global environmental responsibility.<sup>145</sup> There is a need for joint efforts of different states because fish are no respecters of their jurisdictional boundaries.

Stated in the CBD obligations are directed at the application of a holistic approach<sup>146</sup> in fisheries management of two coastal states. The examined precautionary approach and the ecosystem approach<sup>147</sup> are developed on the basis of these obligations.

The Barents Sea marine ecosystem should be considered as a whole. Status of fish stocks is dependent on the sustainability of other elements of biodiversity. Thus, fish stocks have been protected by Norway and Russia in conjunction with other species belonging to the same marine ecosystem or associated with or dependent upon them. Both coastal states under their cooperation through the JFC are required to consider effects on such species.<sup>148</sup> Furthermore, this requirement is elaborated in order to conserve and manage straddling and highly migratory fish stocks. Several of the general principles in Article 5 of the FSA are aimed at preventing numerous effects and obligating states to adopt conservation and management measures for them.<sup>149</sup>

#### *Requirement of compatibility between measures established in the Barents Sea*

The bilateral management regime of the Barents Sea includes different jurisdictional boundaries which imply different fisheries regimes. In conditions where the geographical distribution of fish stocks does not correspond to the established maritime zones, Norway, Russia and other states fishing on the high seas are faced with the problem how to ensure the effective management of transboundary fish stocks.

Some of transboundary fish stocks are subject to the EEZ regime, but most of them are under the right of all states to fish on the high seas. In spite of difference between two fisheries

<sup>145</sup> Patricia Birnie, Alan Boyle and Catherine Redgwell. *International Law and the Environment*. Oxford, (Oxford University Press) 2009, p. 128.

<sup>146</sup> See, for instance, Gavin A. Begga, John R. Waldman, "An holistic approach to fish stock identification", *Fisheries Research*, vol. 43 (1999), pp. 35-44.

<sup>147</sup> See, for instance, Erik J. Molenaar, "Ecosystem-Based Fisheries Management, Commercial Fisheries, Marine Mammals and the 2001 Reykjavik Declaration in the Context of International Law", *International Journal of Marine and Coastal Law*, vol. 17 (2002), pp.561–595; Hanling Wang, "Ecosystem Management and Its Application to Large Marine Ecosystems: Science, Law, and Politics", *Ocean Development & International Law*, vol. 35 (2004), pp. 41–74.

<sup>148</sup> LOSC, supra note 6, Articles 61 (4) and 63.

<sup>149</sup> FSA, supra note 8, Article 5 (d) (e) (f).



regimes, it is important to acknowledge the unity of the Barents Sea ecosystem, regardless of the zonal division. To this respect, the FSA requirement of compatibility between measures within these maritime zones has an important role.<sup>150</sup>

States involved in the management of straddling fish stocks and highly migratory fish stocks in the Barents Sea are obliged not just to cooperate, they have to cooperate in order to achieve compatible measures for these stocks.<sup>151</sup> Besides taking into account different factors in such achieving<sup>152</sup>, Norway and Russia shall also ensure that the fisheries permitted through the measures shall not lead "to harmful impact of the living marine resources as a whole".<sup>153</sup>

---

<sup>150</sup> *Ibid.*, Article 7.

<sup>151</sup> *Ibid.*, Article 7 (2).

<sup>152</sup> *Ibid.*, Article 7 (2) (a) - (e).

<sup>153</sup> *Ibid.*, Article 7 (2) (f).

## 4 Implications of the Barents Sea Treaty for the coastal states' obligations

### 4.1 Consequences for the status of maritime zones around Svalbard

#### 4.1.1 Fisheries jurisdiction of Svalbard

Status of the established maritime zones around Svalbard determines the content of fisheries jurisdiction within such boundaries. This part of the chapter examines the status of these zones off Svalbard. Subsequently, it helps to suggest whether the Barents Sea Treaty can be interpreted as Russian acknowledgement that Norway is entitled to establish the full range of maritime zones around Svalbard.

The status of Svalbard is clarified under the Spitsbergen Treaty. The archipelago was a terra nullius<sup>154</sup> earlier. It means that its territory has not been subject to the sovereignty of any state. Under the Spitsbergen Treaty the full and absolute sovereignty was conferred on Norway.<sup>155</sup> Other states accepted the provisions about sovereignty subject to the several stipulations, including an equal right to fish in the "territorial waters" of Svalbard.<sup>156</sup> Furthermore, Article 3 of the Spitsbergen Treaty gives a right to exercise fisheries jurisdiction within these waters.

#### *Status of the territorial waters around Svalbard*

The concept of "territorial waters" is not specified in the Spitsbergen Treaty. The reason is that this term was widely used in international law when the Treaty was concluded. Any other maritime zones were not recognized at the time of the adoption of the Spitsbergen Treaty. The International Law Commission referred to this concept and stated that it was used for internal waters only, and for both internal waters and the territorial sea.<sup>157</sup> For instance, Norway still uses such wording in its legislation. The territorial waters of Norway include the territorial sea and internal waters.<sup>158</sup> It also applies to Svalbard.<sup>159</sup>

<sup>154</sup> "Terra nullius" is a Latin expression which means "land not legally belonging to anyone". English dictionary. Available at <http://www.allwords.com/word-terra-nullius.html> [Visited April 2nd, 2013].

<sup>155</sup> Spitsbergen Treaty, supra note 15, Article 1.

<sup>156</sup> *Ibid.*, Article 2.

<sup>157</sup> "Report of the International Law Commission to the General Assembly. Commentaries to the articles concerning the law of the sea", *Yearbook of the International Law Commission*, Vol. II, 1956 (United Nation: New York, 1957), p. 265.

Available at [http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC\\_1956\\_v2\\_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1956_v2_e.pdf) [Visited July 23rd, 2013].

<sup>158</sup> Territorialfarvannsloven, supra note 27, § 1: "Norges territorialfarvann består av sjøterritoriet og de indre farvann".

<sup>159</sup> *Ibid.*, § 5: "Loven gjelder også for Svalbard, Jan Mayen [...]".

Some Russian authors, nevertheless, make a legal distinction between the traditional institution of the territorial sea and the "territorial waters of territories".<sup>160</sup> Their point of view is that Norway cannot change the boundaries defined as a rectangle with a reference to two lines of longitude and latitude<sup>161</sup>, known as the "Svalbard box". They argue that the waters within this box are the territorial waters under the context of the Spitsbergen Treaty. There is the high seas beyond these box's limits.

However, such arguments are rather problematic. The sides of the Svalbard box do not constitute jurisdictional boundaries in the accepted sense and are irrelevant to establish maritime zones around Svalbard. The rules of international law regarding establishment of maritime zones should be applied to the regime within the box. It is sovereignty over Svalbard that includes the powers to determine the breath of the territorial sea and to establish maritime zones. This principle has been applied by the ICJ and other international tribunals in numerous cases.<sup>162</sup>

Furthermore, these arguments cannot be confirmed by the Russian official opinion. Such mention is not found. There is only Russian court practice which refers to the area beyond the territorial sea of Svalbard as the high seas.<sup>163</sup>

Thus, Russia accepts the establishment of the territorial sea off Svalbard. It logically flows from the sovereignty of Norway under the Spitsbergen Treaty. According to Article 2 of this Treaty Russia as well as other parties enjoys the equal right to fish in the Svalbard's territorial waters.

---

<sup>160</sup> See, for instance, A. N. Vylegjanin, and V. K. Zilanov. *Spitsbergen: Legal Regime of Adjacent Marine Areas*. Utrecht, (NL: Eleven International Pub.) 2007, p. 167; A. N. Vylegjanin, *Future Problems of International Law in the High North: Review of Russian Legal Literature*, p. 17. Available at <http://www.dnva.no/binfil/download.php?tid=27149> [Visited April 9th, 2013].

<sup>161</sup> Spitsbergen Treaty, supra note 15, Article 1.

<sup>162</sup> See in detail, *Arbitration regarding the Iron Rhine Railway* (The Kingdom of Belgium v. the Kingdom of the Netherlands), the Permanent Court of Arbitration, 24 May 2005, paras. 79-81. Available at [http://www.pca-cpa.org/showpage.asp?pag\\_id=1155](http://www.pca-cpa.org/showpage.asp?pag_id=1155) [Visited April 8th, 2013]; *Aegean Sea Continental Shelf* (Greece v. Turkey), Judgment, ICJ Reports 1978, paras. 77-80. Available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=81&case=62&code=gt&p3=4> [Visited April 8th, 2013]: conceptual or genetic terms in a treaty should be given the scope that they have at the time that the case is referred to the Court, not the scope that such treaty had when it was concluded. Hence, the entitlements attached to state sovereignty will follow under the developments of the law of the sea.

*Fisheries case* (United Kingdom v. Norway), ICJ Reports 1951, p. 133: "It is the land which confers upon the coastal state a right to the waters off its coasts". Available at <http://www.icj-cij.org/docket/files/5/1809.pdf> [Visited April 10th, 2013].

<sup>163</sup> The reference is related to the decision of a Murmansk court according to the Elektron case. See more: Norwegian fishermen privatized the Spitsbergen (Норвежские рыбаки приватизировали Шпицберген), *Nevskoe vremya*, 21 October 2011. Available in Russian at <http://www.nvspb.ru/stories/norvejskie-rybaki-privatizirovali-shpicbergen-46732> [Visited July 24th, 2013].

*Status of the FPZ around Svalbard*

Another maritime zone beyond the territorial sea is the FPZ established by Norway under its sovereignty over Svalbard. The FPZ is a 200 nautical miles maritime zone measured from the baselines of Svalbard.<sup>164</sup> According to the Regulations Norway refrained from the establishment of the EEZ even if the coastal state was entitled to do that.<sup>165</sup> There is a clear signal that Norway wanted to avoid confrontation with other states fishing in the FPZ.<sup>166</sup> Consequently, general ban on foreign fishing under the Law on the Norwegian EEZ<sup>167</sup> is not applied to the FPZ.

Norway adopted some measures within the FPZ. In accordance with Article 3 of the Regulations Norway may establish TACs, closed areas, minimum mesh sizes and others. Vessels fishing in the FPZ are required to keep a catch log-book and to report the commencement, the end of their fishing and the amount of catch.<sup>168</sup>

As regards to the FPZ, it has been indicated in the Note of the Embassy of the USSR on 15 June 1977 that the decision to establish the FPZ was in nonconformity with obligations assumed by Norway under the Spitsbergen Treaty.<sup>169</sup> Russia as the successor of the USSR still does not recognize this establishment. Russia takes the view that the Spitsbergen Treaty does not grant Norway the right to establish maritime zones beyond the 12 nautical miles from baselines of Svalbard.

However, not only the establishment of the FPZ has been challenged by Russia. Russia casts doubt on the jurisdiction of Norway as a coastal state in the FPZ. Russia considers that Norway is not entitled to exercise jurisdiction over non-Norwegian vessels fishing in the FPZ.<sup>170</sup>

The validity of such claim should be assessed. For this purpose, look at Article 2 (2) of the Spitsbergen Treaty which gives Norway legislative jurisdiction to adopt fisheries measures and to apply them on a nondiscriminatory basis. One can agree with Robin R. Churchill and

<sup>164</sup> Forskrift om fiskevernsonene ved Svalbard, supra note 35, § 1, para. 2

<sup>165</sup> *Ibid.*, § 2. It follows from its reference that Article 3 of the Law on the Norwegian EEZ (Økonomiske soneloven, supra note 33) is not for time being applied to the FPZ.

<sup>166</sup> Stortings forhandlinger 1976-1977 (Centraltrykkeriet), p. 4327 "[...] å oppnå kontroll med og begrensning av det fiske som drives i området [...], og at opprettelse [...] ville kunne ha ført til en konfrontasjon med enkelte andre traktatparter".

<sup>167</sup> Økonomiske soneloven, supra note 33, § 3.

<sup>168</sup> Forskrift om fiskevernsonene ved Svalbard, supra note 35, § 4.

<sup>169</sup> A. N. Vylegjanin, supra note 160, pp. 21-22 [Visited April 9th, 2013].

<sup>170</sup> Torbjørn Pedersen, "The Dynamics of Svalbard Diplomacy", *Diplomacy & Statecraft*, vol. 19, 2 (2008), pp. 245-248.

Geir Ulfstein<sup>171</sup> that although there is no clear reference to enforcement jurisdiction, Norway must have a power to enforce the possible measures together with a power to decree them. Anyway, the coastal state jurisdiction of Norway follows from its sovereignty over Svalbard under Article 1 of the Spitsbergen Treaty. There are the mentioned stipulations which prevent Norway to exercise the full coastal state jurisdiction. As it was noted above the sovereignty was recognized by other states, subject to the equal right to fish. Developments in the law of the sea have given rise to a question of whether this right applies beyond the territorial sea.

The position of Norway has been expressed in the numerous Government papers over the years.<sup>172</sup> Norway considers that the Spitsbergen Treaty applies solely to the land and the territorial sea and that Norway is entitled to exercise the normal rights of a coastal state under international law over the maritime zones beyond the territorial sea. Such view is based on a strict interpretation which should be given to the Spitsbergen Treaty when the geographical application is determined.

Thus, Norway argues that the equal right of states to fish does not apply beyond the territorial sea<sup>173</sup>, whereas a number of other states take the opposite point of view. There are Russia, Iceland, Spain and others.<sup>174</sup> It seems that there is no way in the attitudes of other states indicating their acceptance of the Norwegian position on the area of application of the Spitsbergen Treaty.<sup>175</sup>

If the Spitsbergen Treaty applies in the FPZ around Svalbard, the main consequence for the fisheries management will be that necessary measures have to be adopted on a nondiscriminatory basis.<sup>176</sup>

---

<sup>171</sup> Robin R. Churchill and Geir Ulfstein, *The disputed maritime zones around Svalbard*, pp. 584-585. Available at <http://ulfstein.net/wp-content/uploads/2012/08/ChurchillUlfstein20101.pdf> [Visited July 23rd, 2013].

<sup>172</sup> More detailed see: St. meld. nr. 30 (2004-2005), *Muligheter og utfordringer i nord*, p. 23. Available in Norwegian at <http://www.regjeringen.no/Rpub/STM/20042005/030/PDFS/STM200420050030000DDDPDFS.pdf> [Visited July 23rd, 2013]; St. meld. nr. 22 (2008-2009), *Svalbard*, p. 21. Available in Norwegian at <http://www.regjeringen.no/pages/2175676/PDFS/STM200820090022000DDDPDFS.pdf> [Visited July 23rd, 2013].

<sup>173</sup> Stortings forhandlinger 1976-1977 (Centraltrykkeriet), p. 4327: "[ ... ] Norges prinsipielle syn, at Svalbard-traktatens bestemmelse om like rett til fiske ikke kommer til anvendelse i sonen [the FPZ] ...".

<sup>174</sup> Robin R. Churchill and Geir Ulfstein, *supra* note 171, p. 245 [Visited July 24th, 2013].

<sup>175</sup> Robin R. Churchill and Geir Ulfstein, *supra* note 33, p. 119.

<sup>176</sup> Spitsbergen Treaty, *supra* note 15, Article 2 (2).

#### 4. 1. 2 The Barents Sea Treaty as recognition by Russia that Svalbard generates the full range of maritime zones

It was mentioned, Russia has challenged the establishment of maritime zones around Svalbard. The thesis raises the question of whether the Barents Sea Treaty can be read as Russian recognition that maritime zones around Svalbard are not prevented by the Spitsbergen Treaty.

To this regards, let's try to draw a parallel with the 2006 Agreement between Norway and Denmark.<sup>177</sup> This Agreement is clearly based on the relevant coastline of Svalbard<sup>178</sup> which is formed by Spitsbergen as the main island and the island of Prins Karls Forland, which lies some 10 kilometers to the west of Spitsbergen.<sup>179</sup> However, neither the joint statement nor the Barents Sea Treaty contains information about the Spitsbergen archipelago or any of its islands as the relevant coasts.<sup>180</sup>

Anyway, the Barents Sea Treaty would be based on the relevant coastline of Svalbard.<sup>181</sup> Moreover, Russia accepted the delimitation line to the east of the claimed sector line. In accordance with Article 2 of the Barents Sea Treaty both states commit themselves to abide by the agreed line and not to have claims beyond it. This allows suggesting that Russia acquiesced with the right of Norway to claim the maritime zones off Svalbard.<sup>182</sup>

Some Russian researches<sup>183</sup> support this opinion. They mean that by the signing of the Barents Sea Treaty Russia disavows its legal position and actually accepts the establishment

---

<sup>177</sup> Agreement between the Government of the Kingdom of Norway and the Government of the Kingdom of Denmark together with the Home Rule Government of Greenland concerning the Delimitation of the Continental Shelf and the Fisheries Zones in the Area between Greenland and Svalbard, Copenhagen, OS - 20 February 2006, EIF - 2 June 2006, 2378 UNTS. Available at <http://www.tandfonline.com/doi/pdf/10.1080/00908320701641586> [Visited April 11th, 2013].

<sup>178</sup> *Ibid.*, Article 1.

<sup>179</sup> Alex G. Oude Elferink, "Maritime Delimitation Between Denmark/Greenland and Norway", *Ocean Development & International Law*, vol. 38, 4 (2007), p. 376.

<sup>180</sup> Joint Statement, *supra* note 1, paragraph 4.

<sup>181</sup> *Case Concerning Maritime Delimitation in the Black Sea* (Romania v. Ukraine), Judgment, ICJ Repots 2009, para. 77 and 78. Available at <http://www.icj-cij.org/docket/files/132/14987.pdf> [Visited July 24th, 2013]; Torbjørn Pedersen and Tore Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?", *International Journal of Marine and Coastal Law*, vol. 24, 1 (2009), p. 151.

<sup>182</sup> See also: Tore Henriksen and Geir Ulfstein, "Maritime Delimitation in the Arctic: The Barents Sea Treaty", *Ocean Development & International Law*, vol. 42, 1 (2011), p. 9.

<sup>183</sup> P. G. Belov, Zilanov, V. K., Gomanov, N. D. and others, *Open letter in respect of the ratification of the Barents Sea Treaty by Russia* to D. A. Medvedev and V. V. Putin. Available in Russian at [http://www.miompraviv.ru/news/gosudarstvennaja\\_duma\\_tikho\\_ratificirovala\\_dogovor\\_s\\_norvegiej/2011-03-29-448](http://www.miompraviv.ru/news/gosudarstvennaja_duma_tikho_ratificirovala_dogovor_s_norvegiej/2011-03-29-448) [Visited May 14th, 2013].

of the FPZ.<sup>184</sup> However, the official state view is that the Barents Sea Treaty cannot be read as such recognition.<sup>185</sup> Consequently, Russia follows its court practice that the area beyond the territorial sea of Svalbard is identified as the high seas.<sup>186</sup>

Thus, Russia argues that there are no changes in its legal position regarding Svalbard. Russian Government refers to Article 6 of the Barents Sea Treaty so that this Treaty is not prejudice to the rights and obligations under the Spitsbergen Treaty.<sup>187</sup> To this effect, legal meaning of the mentioned Article should be considered: can the reservation of rights and obligations under other international treaties to which both Norway and Russia are parties be read as a hindrance to establish the maritime zones around Svalbard?

It was concluded earlier (part 4.1.1) that the right of Norway to claim the maritime zones around Svalbard flows from its sovereignty over the archipelago. Norway is entitled to establish maritime zones off Svalbard as any other state regarding its territory over which this state has sovereignty. Such conclusion is consistent with international law which the Barents Sea Treaty is based on.<sup>188</sup> Furthermore, the delimitation line is closely related to Svalbard as the relevant coast. This goes to support the view that Svalbard generates these zones. Hence, it is questionable that Article 6 needs to be interpreted in the context referenced by Russia.

Article 6 of the Barents Sea Treaty makes sense by another interpretation. The Barents Sea Treaty shall not prejudice the equal right to fish stated in the Spitsbergen Treaty. This again raises the question of whether the Spitsbergen Treaty applies to the maritime zones beyond the territorial sea. Russian recognition of the FPZ's establishment does not necessarily mean that Russia accepts full coastal state jurisdiction of Norway within such zone. The question of

---

<sup>184</sup> *Ibid.*: "Подписание Договора о разграничении фактически дезавуирует эту законную позицию нашей страны и ряда других участников Договора о Шпицбергене, поскольку лишает Россию юридических оснований не признавать указанную 200-мильную норвежскую рыбоохранную зону вокруг архипелага".

<sup>185</sup> Speech of Krainij A. A., Director of the Federal Fisheries Agency, *Verbatim report* of the State Duma's meeting from 11 May 2011: "Мы её не признавали в СССР, не признаём её и сейчас, это правда" (Крайний А. А.). Available in Russian at <http://transcript.duma.gov.ru/node/3432/> [Visited July 8th, 2013].

<sup>186</sup> Speech of Kashin B. S., a member of the Russian Communist Party, *Verbatim report* of the State Duma's meeting from 07 October 2011: "[...] это и вывод российского суда, который в 2007 году рассматривал дело капитана Яранцева, капитана траулера "Электрон" [...]. Суд оправдал Яранцева, и в приговоре зафиксировано, что суд признаёт действия корабля береговой охраны Норвегии по задержанию в открытом море траулера "Электрон" незаконными и не подлежащими исполнению, а соответственно, действия капитана Яранцева правомерными" (Кашин Б. С.). Available in Russian at <http://transcript.duma.gov.ru/node/3512/> [Visited July 9th, 2013].

<sup>187</sup> Speech of Titov V. G., official representative of the President of the Russia and Deputy Minister of Foreign Affairs of the Russian Federation, *Verbatim report* of the State Duma's meeting from 25 March 2011: "Что касается Шпицбергена, то опять ответственно заявляю, что ничего в нашей позиции по этому вопросу не меняется, поэтому в договоре есть статья 6, в которой чётко сказано, что настоящий договор не наносит ущерба правам и обязательствам по другим международным договорам" (Титов В. Г.). Available in Russian at <http://transcript.duma.gov.ru/node/3405/> [Visited July 9th, 2013].

<sup>188</sup> Joint Statement, *supra* note 1, para. 4 and the Barents Sea Treaty, *supra* note 1, Preamble.

the application of the Spitsbergen Treaty provisions for the access to fish stocks within the FPZ is still unresolved.

#### **4. 2 Consequences for the obligations of Norway and Russia**

##### *Obligation of Norway and Russia to cooperate with regard to the management of transboundary fish stocks in the Barents Sea*

The obligation of the coastal states to cooperate regarding transboundary fish stocks was discussed in the third chapter. This obligation has been reflected in the Barents Sea Treaty.

According to Article 1 of Annex I of the Barents Sea Treaty Norway and Russia commit themselves to continue their cooperation through the JFC and to keep the 1975 and 1976 Agreements in force at least for fifteen years. The same commitment is stated in the Protocols from the 39th and the 40th sessions of the JFC.

The main tasks of the Commission have been reiterated in the Barents Sea Treaty.<sup>189</sup> The JFC, since the start of its work, has dealt with technical issues regarding, in particular, mesh width in nets and minimum size of catches.<sup>190</sup> However, by agreeing on the delimitation line each of the parties got a right to set such technical regulations unilaterally within the 200 nautical miles from their baselines.<sup>191</sup> Article 2 of Annex I establishes a transitional period of two years for the implementation of this provision.

##### *Obligation to apply the precautionary approach*

This part of the current chapter aims at to show how the application of the precautionary approach examined above has been amended by the Barents Sea Treaty.

The Barents Sea Treaty reiterated the obligation of Norway and Russia to apply the precautionary approach. The wording of Article 4 (3) of the Barents Sea Treaty and Article 6 (1) of the FSA is almost identical, except for one distinction. While the precautionary approach under the FSA applies to straddling and highly migratory fish stocks, the Barents Sea Treaty extends this application to shared fish stocks.

The precautionary approach is mainly used by the JFC for the management of such straddling fish stock as cod. However, according to the Protocols of the JFC stocks of haddock are also

---

<sup>189</sup> Barents Sea Treaty, supra note 1, Annex I, Articles 3 and 4.

<sup>190</sup> See, for instance, the Protocols from the 40th and the 42nd sessions of the JFC, Appendix 7, supra note 66 [Visited July 9th, 2013].

<sup>191</sup> Barents Sea Treaty, supra note 1, Annex I, Article 2.



managed by the application of this approach.<sup>192</sup> In other words, such approach has been in fact applied to shared fish stocks in conformity with the ICES recommendations.

Under Article 4 (3) of the Barents Sea Treaty Norway and Russia are obligated to apply the precautionary approach to all categories of shared fish stocks, including capelin and others. Furthermore, the coastal states have strengthened it as a legally binding instrument through the JFC.

Besides shared fish stocks, straddling fish stocks are subject to the application the precautionary approach in accordance with Article 4 (3) of the Barents Sea. It confirms the competence of the JFC regarding these fish stocks stated in the 1976 Agreement. Moreover, the wording of the Article contains a linkage between the precautionary approach and the obligation to protect marine biodiversity. The principles of the cooperation through the JFC which were considered in 3.3.3 will follow.

The Barents Sea Treaty is a part of Russian and Norwegian legal systems equally with other national provisions which deal specifically with issues of fisheries management. While Norway includes the precautionary approach in its legislation<sup>193</sup>, Russian legislation does not mention such approach. Reference to precaution is found neither in the Federal Law on the Russian EEZ<sup>194</sup> nor in the Federal Law on fishery and conservation marine biological resources.<sup>195</sup> However, it does not mean that the Russian fisheries management regime has failed to move the precautionary direction.

The FSA and the Barents Sea Treaty have higher position in the legal hierarchy, even if they can contain other rules than those envisaged by national law.<sup>196</sup> Moreover, the Federal Fisheries Agency as Russian representative in the JFC issues Decrees for implementation of the JFC decisions based on the precautionary approach.<sup>197</sup>

<sup>192</sup> Protocols from the 36th and 40th sessions of the JFC, supra note 66 [Visited July 9th, 2013].

<sup>193</sup> Act from 6 June 2008 No. 37 relating to the management of wild living marine resources (Lov om forvaltning av viltlevande marine ressursar (havressurslova), Section 7 (a). Available at <http://www.ub.uio.no/ujur/ulovdata/lov-20080606-037-eng.pdf> [Visited July 29th, 2013].

<sup>194</sup> Федеральный закон "Об исключительной экономической зоне Российской Федерации", supra note 33.

<sup>195</sup> Federal Law from 20 December 2004 No. 166-FZ on fishery and conservation marine biological resources (Федеральный закон "О рыболовстве и сохранении водных биологических ресурсов"). Available in Russian at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=148522;fld=134;dst=4294967295;rnd=0.677795419935137;from=132965-0> [Visited July 29th, 2013].

<sup>196</sup> The Constitution of the Russian Federation, Article 15 (4). Available at <http://www.constitution.ru/en/10003000-02.htm> [Visited July 29th, 2013] and *Ibid.*, Article 4.

<sup>197</sup> See, for instance, Decree of the Federal Fisheries Agency from 5 November 2009 No. 1000 on measures regarding implementation of the decisions of the 38th session of the JFC (Приказ Росрыболовства "О мерах по выполнению решений 38-й сессии Смешанной Российско-Норвежской комиссии по рыболовству").

Thus, notwithstanding that the precautionary approach is not formally stated in Russian fisheries legislation, Russia commits itself to apply this approach cornering all categories of transboundary fish stocks in accordance with the FSA and the Barents Sea Treaty. The precautionary approach shall be applied, regardless of whether fish stocks occur within the EEZ or beyond it.

#### *Access of other states to fish stocks of the Barents Sea*

The Barents Sea Treaty generates the mutual obligations of the two coastal states. Generally, any Treaty creates neither obligations nor rights for a third state without its consent.<sup>198</sup> The Barents Sea Treaty however has implications for the access of third states to fish stocks.

Since the "grey zone" has been absorbed partly by the Norwegian EEZ and partly the Russian EEZ, the establishment of the delimitation line by the Barents Sea Treaty provides Norway and Russia with the sovereign rights over fish stocks and the jurisdiction as the coastal states over foreign-flagged fishing vessels.

The reservation of rights and obligations under other international treaties to which both Norway and Russia are parties<sup>199</sup> clearly means that these states will keep on to allocate the quotas for other states fishing in the Barents Sea. Thus, the Barents Sea Treaty refers to the already considered fisheries agreements between the coastal states and third states.

The Barents Sea Treaty expands the area of the high seas in the Barents Sea. It is stated in the Proposition of the Norwegian Government to Stortinget.<sup>200</sup> Furthermore, the Proposition confirms the conclusion of part 3.2 that the fisheries measures of the JFC apply to the Loophole.<sup>201</sup> It raises again the question of whether these measures are directly binding to third states.

The commitment of Norway and Russia to continue cooperation through the JFC is related to their "mutual quotas" in the EEZs of each other.<sup>202</sup> Since Annex I does not provide a linkage

---

Available in Russian at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=472319> [Visited July 29th, 2013].

<sup>198</sup> Vienna Convention on the Law of Treaties, supra note 94, Article 34.

<sup>199</sup> Barents Sea Treaty, supra note 1, Article 6.

<sup>200</sup> Proposisjon til Stortinget 43 S (2010-2011), *Samtykke til ratifikasjon av overenskomst av 15. september 2010 mellom Norge og Russland om maritim avgrensning og samarbeid i Barentshavet og Polhavet*, section 8. Available in Norwegian at <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/prop/2010-2011/prop-43-s-20102011.html?id=626419> [Visited August 2nd, 2013]: "Dette betyr at Fiskevernsonen i dette området reduseres med omlag 9 300 km<sup>2</sup> mot Smutthullet i forhold til full 200 milssone".

<sup>201</sup> *Ibid.*: "Til tross for at Smutthullet blir utvidet i dette området, vil de norsk-russiske fiskeriforvaltningstiltak fortsette å gjelde også her, i samsvar med prinsippene og reglene fastsatt i FN-avtalen av 1995 om fiske på det åpne hav, samt Smutthullavtalen mellom Norge, Russland og Island av 1999 og andre internasjonale avtaler".

<sup>202</sup> Barents Sea Treaty, supra note 1, Annex I, Article 3.

with the access of third states, the clause of Article 6 should be read in this context. The single coastal state controls the fishing on the high seas through its agreements with other states. Thus, it is questionable whether the conservation and management measures of the JFC are directly binding for them. Likely, these measures have an indirect effect on the high seas. Therefore, the JFC can hardly be considered as an arrangement in accordance with the provisions of the FSA.

#### **4. 3 Application of the Barents Sea Treaty to fisheries matters in consequence of climate change in the Barents Sea**

The Barents Sea ecosystem is in good shape and many of the commercial fish stocks have a high productivity.<sup>203</sup> However, air temperature in the Arctic has increased almost twice the global average.<sup>204</sup> In this situation it is predicted that seasonal sea ice in the Barents Sea will decrease or disappear.<sup>205</sup> Due to such rapid climate change, various changes in the Barents Sea marine ecosystem are expected.

A possible consequence of climate change is that the size and the number of transboundary fish stocks increase, due to a better supply of food and a large ice-free area in the Barents Sea.<sup>206</sup> Hence, fishing for the coastal states and other states within the considered maritime boundaries of the Barents Sea may be more attractive. As a result, it could lead to more conflicts over states' fishing rights. Quota regulations for other transboundary fish stocks could also be necessary. Boreal species such as blue whiting and mackerel may become common in the Barents Sea.<sup>207</sup>

Another most likely expectation is a more northeasterly distribution of fish stocks<sup>208</sup>, being less available to Norway. This change may affect the shares which Norway and Russia should have to get in order to reach a cooperative agreement in their interests.

---

<sup>203</sup> See, in detail, St. meld. nr. 8 (2005–2006) *Helhetlig forvaltning av det marine miljø i Barentshavet og havområdene utenfor Lofoten (forvaltningsplan)*. Available in Norwegian at <http://www.regjeringen.no/Rpub/STM/20052006/008/PDFS/STM200520060008000DDDPDFS.pdf> [Visited 12th July, 2013]; Report of the AFWG, supra note 20.

<sup>204</sup> Report of the AFWG, supra note 20, p. 29.

<sup>205</sup> *Ibid.*, p. 29.

<sup>206</sup> Røgnvaldur Hannesson, "Sharing the Northeast Arctic cod: Possible effects of climate change", *Natural Resource Modeling*, vol. 19, 4 (2006), p. 635.

<sup>207</sup> Report of the AFWG, supra note 20, p. 30.

<sup>208</sup> Ingrid H. Ellingsen ... [et al.], "Impact of climatic change on the biological production in the Barents Sea", *Climatic Change*, vol. 87, 1 (2008), p. 173; William W. L. Cheung ... [et al.], "Large-scale redistribution of maximum fisheries catch potential in the global ocean under climate change", *Global Change Biology*, vol. 16, 1 (2010), pp. 24–35.

The main objective of this part is to investigate how the Barents Sea Treaty will impact on the cooperation between Norway and Russia in the Barents Sea in consequence of these said changes.

According to the Barents Sea Treaty the coastal states shall abide by the established delimitation line and shall not exercise any sovereign rights or jurisdiction beyond it.<sup>209</sup> It makes clear that such maritime boundary in the Barents Sea cannot be adjusted later. Therefore, fish stocks are subject to the sovereign rights of Norway and Russia singly in conformity with international law.

As regards their fishing opportunities, Article 4 (1) of the Barents Sea Treaty states that they "shall not be adversely affected" by this Treaty. Undoubtedly, the northeasterly migration of fish stocks will negatively affect the opportunities of Norway to fish in the Barents Sea. The wording of the introductory paragraph does not provide sufficient information on how to avoid possible consequences. To this effect, the first paragraph of Article 4 should be read in conjunction with the second.

It is specified that close cooperation between Norway and Russia can ensure their fishing opportunities. While the Annex I of the Barents Sea Treaty refers to the JFC, it is not clear what its parties have meant by the term "close cooperation in the sphere of fisheries". I suggest that the second paragraph implies the JFC. Furthermore, this cooperation should be undertaken with a view to maintain the existing shares of the total allowable catches volumes and to ensure relative stability of fishing activities for each of the relevant stocks.<sup>210</sup>

The "relative stability" principle was developed by the EU Common Fisheries Policy and means that the allocation of fishing opportunities among states should be based upon a predictable share of the stocks for each state.<sup>211</sup> This principle guarantees that the available living resources should be shared fairly between states, and that although there are fluctuations of the resources themselves, these shares of total allowable catch should be maintained.

In spite of the inability to change the established boundary in the Barents Sea, the described commitments likely mean that the JFC practice to allocate the fish quotas will continue.

---

<sup>209</sup> Barents Sea Treaty, *supra* note 1, Articles 1 and 2.

<sup>210</sup> *Ibid.*, Article 4 (2).

<sup>211</sup> Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. *Official Journal L 358*, 31 December 2002. See: L 358/60 (16). Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:358:0059:0080:EN:PDF> [Visited 23rd April, 2013].

Moreover, the existing quotas will not be affected by changes in the abundance and accessibility of the fish stocks. However, the provisions of Article 4 are related to the fisheries opportunities of Norway and Russia. There is no mention about such opportunities of third states in the Barents Sea.<sup>212</sup>

---

<sup>212</sup> It was considered in the part 4.2 of the thesis.

## 5 Conclusion

The Barents Sea Treaty between the two coastal states, Norway and Russia, contains provisions on how to deal with the living marine resources in the Barents Sea and the Arctic Ocean. Its implications for fisheries matters are significant. The main of them is the disappearance of the "grey zone" in the Barents Sea which has been absorbed partly by the Norwegian EEZ and partly by the Russian EEZ. Thus, it allows Norway and Russia to exercise coastal state jurisdiction over the waters and fish stocks within them.

The main research question of whether the Barents Sea Treaty affects the cooperation and conservation obligations of Norway and Russia has been considered throughout the Master thesis. This Treaty has important implications for the obligations of the two coastal states. First of all the Treaty affects the obligation of the coastal states to cooperate which forms a basis for the fulfillment of other their obligations.

It can be concluded that Norway and Russia through the JFC have successfully fulfilled the obligation to cooperate regarding shared and straddling fish stocks. However, the cooperation through the JFC is not aimed at highly migratory fish stocks of the Barents Sea.

It has been considered that the JFC is neither a direct cooperation nor a RFMO in accordance with the provisions of the FSA. As regards the JFC as an arrangement under the FSA context, it is difficult to argue that this is so. While the conservation and management measures of the JFC are applied to the high seas, they are not directly binding for third states fishing for straddling fish stocks in the Loophole.

Although it was hard to suggest which format of organizing cooperation the JFC has, Norway and Russia have found a solution to fulfill the stated in the LOSC and the FSA obligation to cooperate. The cooperation in the Barents Sea most likely is a form of a bilateral cooperation between two coastal states concerning management of shared fish stocks. Furthermore, Norway and Russia have fulfilled the cooperation obligation with other states in respect of straddling fish stocks. Relevant states cooperate directly through the (tri)bilateral agreements.

Thus, it was reasonably to include in the Barents Sea Treaty the commitment of Norway and Russia to continue such cooperation. Norway and Russia through the JFC reached good results in the management of the target fish stocks.

Management of fish stocks in the Barents Sea was amended through the requirements to apply the precautionary approach and to ensure relative stability. The Barents Sea Treaty expands the application of the precautionary approach to shared fish stocks, while this approach is otherwise only codified in the FSA; applicable to straddling and highly migratory fish stocks. The guarantee of relative stability is an important element to ensure permanence of the bilateral regime in consequence of climate change in the Barents Sea. Moreover, the Barents Sea Treaty is reflected the access of other states to fish stocks in the Barents Sea.

The next is the implication of the Barents Sea Treaty for the status of the maritime zones around Svalbard. It was reflected in the thesis that the Barents Sea Treaty can be interpreted as Russian recognition that the establishment of full range of maritime zones around Svalbard is not prevented by the Spitsbergen Treaty. However, Russia is not openly willing to accept this fact. Even if it is natural to interpret the ratification of the Barents Sea Treaty by Russia as an acknowledgement of the right of Norway to claim these zones, this does not solve the question of whether the Spitsbergen Treaty applies beyond the territorial sea. Hence, the future discussions will be focused on the application of the Spitsbergen Treaty to these existing zones.

While it can be unambiguously concluded that the Barents Sea Treaty affects the obligations of Norway and Russia, there are no reasons to expect fundamental changes in the cooperation between Norway and Russia through the JFC in the near future.

## BIBLIOGRAPHY

**Books and articles**

Barnes, Richard A., "Consolidating Governance Principles for Areas beyond national jurisdiction", *International Journal of Marine and Coastal Law*, vol. 27, 2 (2012), pp. 261-290.

Birnie, Patricia, Alan Boyle and Catherine Redgwell. *International Law and the Environment*. Oxford, (Oxford University Press) 2009.

Burke, William T. *The New International Law of Fisheries: UNCLOS 1982 and Beyond*. Oxford, (Oxford University Press) 1994.

Cheung, William W. L. ... [et al.], "Large-scale redistribution of maximum fisheries catch potential in the global ocean under climate change", *Global Change Biology*, vol. 16, 1 (2010), pp. 24-35.

Churchill, Robin R. and Geir Ulfstein. *Marine Management in Disputed Area: The Case of the Barents Sea*. London, (Routledge) 1992.

Churchill, Robin R. and Alan V. Lowe. *The Law of the Sea*. 3rd edition. Manchester, (Manchester University Press) 1999.

Churchill, Robin R., "The Barents Sea Loophole Agreement—A 'Coastal State' Solution to a Straddling Stock Problem", *International Journal of Marine and Coastal Law*, vol. 14, 4 (1999), pp. 467-490.

Churchill, Robin R., and Geir Ulfstein, *The disputed maritime zones around Svalbard*. Available at <http://ulfstein.net/wp-content/uploads/2012/08/ChurchillUlfstein20101.pdf> [Visited July 23rd, 2013].

Dahl, Irene Vanja. *Norsk fiskerijurisdiksjon overfor utenlandske fiskefartøyer*. Universitetet i Tromsø, (Det juridiske fakultet) 2009. Available at <http://munin.uit.no/bitstream/handle/10037/3636/thesis.pdf?sequence=1> [Visited June 11th, 2013].

Eide, Arne ... [et al.], "Challenges and Successes in the Management of a Shared Fish Stock – The Case of the Russian–Norwegian Barents Sea Cod Fishery", *Acta Borealia: A Nordic Journal of Circumpolar Societies*, vol. 30, 1 (2013), pp. 1-20.

Ellingsen, Ingrid H. ... [et al.], "Impact of climatic change on the biological production in the Barents Sea", *Climatic Change*, vol. 87, 1 (2008), pp. 155-175.

*The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas*. Edited by David Freestone. Leiden, (Martinus Nijhoff) 2013.

Garcia, S., "The precautionary approach to fisheries: A reply to Prof. Kesteven, Fisheries Research, vol. 28 (1996), pp. 109-110", *Fisheries Research*, vol. 31, 3 (1997), pp. 275-277.

Hannesson, Røgnvaldur, "Sharing the Northeast Arctic cod: Possible effects of climate change", *Natural Resource Modeling*, vol. 19, 4 (2006), pp. 633-654.



Henriksen, Tore. *Utviklingen av internasjonal forvaltning av vandrende fiskebestander: Mot et lukket hav?* Universitet i Tromsø, (Det juridiske fakultet: skriftserie nr. 47) 2001.

Henriksen, Tore, Geir Hønneland and Are K. Sydnes. *Law and politics in ocean governance: the UN Fish Stocks Agreement and regional fisheries management regimes*. Publications on ocean development, vol. 52. Leiden, (Martinus Nijhoff Publishers) 2006.

Henriksen, Tore and Geir Ulfstein, "Maritime Delimitation in the Arctic: The Barents Sea Treaty", *Ocean Development & International Law*, vol. 42, 1 (2011), pp. 1-21.

Henriksen, Tore, and Alf Håkon Hoel, "Determining Allocation: From Paper to Practice in the Distribution of Fishing Rights Between Countries", *Ocean Developments & International Law*, vol. 42, 1-2 (2011), pp. 66-93.

Hey, Ellen. *The Regime for the Exploitation of Transboundary Marine Resources*. Dordrecht, (Martinus Nijhoff) 1989.

Hønneland, Geir, "Compliance in the Barents Sea fisheries. How fishermen account for conformity with rules", *Marine Policy*, vol. 24, 1 (2000), pp. 11-19.

Hønneland, Geir. *Russian fisheries management. The precautionary approach in theory and practice*. (Publications on Ocean Development, vol. 43) 2004.

Hønneland, Geir. *Kvotekamp og kystsolidaritet: norsk-russisk fiskeriforvaltninggjennom 30 år*. Oslo (Fagbokforlaget) 2007.

Oude Elferink, Alex G. *The Law of Maritime Boundary Delimitation: A Case Study of the Russian Federation*. Dordrecht, (Martinus Nijhoff) 1994. (Publications on Ocean Development, vol. 24).

*The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*. Edited by Alex G. Oude Elferink and Donald R. Rothwell. The Hague, (Martinus Nijhoff) 2001. (Publications on Ocean Development, vol. 37).

Oude Elferink, Alex G., "Maritime Delimitation Between Denmark/Greenland and Norway", *Ocean Development & International Law*, vol. 38, 4 (2007), pp. 375-380.

Pedersen, Torbjørn, "The Dynamics of Svalbard Diplomacy", *Diplomacy & Statecraft*, vol. 19, 2 (2008), pp. 236-262.

Pedersen, Torbjørn, and Tore Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?", *International Journal of Marine and Coastal Law*, vol. 24, 1 (2009), pp. 141-161.

*Principles of International Environmental Law*. Philippe Sands ... [et al.]. 3rd edition. Cambridge, (Cambridge University Press) 2012.

Schrijver, Nico. *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge, (Cambridge University Press) 1997.

Stokke, Olav Schram, "Managing Fisheries in the Barents Sea Loophole: Interplay with the UN Fish Stocks Agreement", *Ocean Development & International Law*, vol. 32, 3 (2001), pp. 241-262.

Tresselt, P., "Norsk-sovjetiske forhandlinger om avgrensning av kontinentalsokler og økonomiske soner", *Internasjonal Politikk*, vol. 46, 2–3 (1988).

Vylegjanin, A. N., and V. K. Zilanov. *Spitsbergen: Legal Regime of Adjacent Marine Areas*. Utrecht, (NL: Eleven International Pub.) 2007.

Vylegjanin, A. N., *Future Problems of International Law in the High North: Review of Russian Legal Literature*. Available at <http://www.dnva.no/binfil/download.php?tid=27149> [Visited April 9th, 2013].

*Atlas of the Barents Sea fishes*. Edited by Rupert Wienerroither ... [et al.]. Bergen, (Institute of Marine Research) 2011.

Örebech, P., K. Sigurjonsson and T. L. McDorman, "The 1995 United Nations Straddling and Highly Migratory Fish Stocks Agreement: Management, Enforcement and Dispute Settlement", *International Journal of Marine and Coastal Law*, vol. 13, 2 (1998), pp. 119-141.

### **Conventions, treaties, agreements and other documents**

- 1920 Treaty Concerning the Archipelago of Spitsbergen, Paris, OS - 9 February 1920, EIF - 14 August 1925 (Norway) and 07 May 1935 (USSR), 2 LNTS 7.
- 1945 Statute of the International Court of Justice, OS – 26 June 1945, EIF – 24 October 1945, 1 UNTS xvi.
- 1958 Convention on the Continental Shelf, Geneva, OS - 29 April 1958, EIF - 10 June 1964, 516 UNTS 205.
- 1964 Convention for the International Council for the Exploration of the Sea, OS - 12 September 1964, EIF - 22 July 1968, 652 UNTS 237.
- 1969 Vienna Convention on the Law of the Treaties, Vienna, OS - 23 May 1969, EIF - 27 January 1980, 8 ILM (1969) 679.
- 1975 Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics on cooperation in the fishing industry, Moscow, OS and EIF - 11 April 1975, 983 UNTS 8.
- 1976 Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics concerning mutual relations in the field of fisheries, Moscow, OS - 15 October 1976, EIF - 21 April 1977, 1157 UNTS 147.
- 1980 Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, London, OS - 18 November 1980, EIF - 17 March 1982, Official Journal of the European Community 1981 L 227, p. 22.

- 1982 United Nations Convention on the Law of the Sea, Montego Bay, OS - 10 December 1982, EIF - 16 November 1994, 1833 UNTS 397, Basic Documents No. 36.
- 1992 Convention on Biological Diversity, Rio de Janeiro, OS - 5 June 1992, EIF - 29 December 1993, 1760 UNTS 79.
- Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Annex I, 31 ILM (1992) 874.
- 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, OS - 4 August 1995, EIF - 11 December 2001. 2167 UNTS 88, Basic Documents No. 56.
- 1999 Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation concerning certain aspects of cooperation in the area of fisheries, Sankt Petersburg, OS - 15 May 1999, EIF - 15 July 1999. Available at <http://www.ecolex.org/ecolex/ledge/view/RecordDetails?id=TRE-001817&index=treaties> [Visited July 29th, 2013].
- 2006 Agreement between the Government of the Kingdom of Norway and the Government of the Kingdom of Denmark together with the Home Rule Government of Greenland concerning the Delimitation of the Continental Shelf and the Fisheries Zones in the Area between Greenland and Svalbard, Copenhagen, OS - 20 February 2006, EIF - 2 June 2006, 2378 UNTS.
- 2010 Joint Statement on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean, Oslo, April 27th, 2010. Available at <http://www.regjeringen.no/upload/UD/Vedlegg/Folkerett/100427-FellesuutalelseEngelsk.pdf> [Visited March 25th, 2013]
- 2010 Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Murmansk, OS - 15 September 2010, EIF - 07 July 2011. Available at [http://www.regjeringen.no/upload/ud/vedlegg/folkerett/avtale\\_engelsk.pdf](http://www.regjeringen.no/upload/ud/vedlegg/folkerett/avtale_engelsk.pdf) [Visited March 25th, 2013]
- Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. *Official Journal L* 358, 31 December 2002. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:358:0059:0080:EN:PDF> [Visited April 23rd, 2013].
- Report of the International Law Commission to the General Assembly. Commentaries to the articles concerning the law of the sea, *Yearbook of the International Law Commission*, vol. II, 1956 (United Nation: New York, 1957). Available at

[http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC\\_1956\\_v2\\_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1956_v2_e.pdf) [Visited July 23rd, 2013].

### Case law

|  |  |
|--|--|
| Romania v. Ukraine   | International Court of Justice, The Hague, Judgment of 3 February 2009, ICJ Repots 2009, p. 61.                                |
| Greece v. Turkey   | International Court of Justice, The Hague, Judgment of 19 December 1978, ICJ Reports 1978, p. 3.                               |
| New Zealand v. France  | International Court of Justice, The Hague, Judgment of 20 December 1974, ICJ Reports 1974, p. 457.                             |
| Federal Republic of Germany v. Denmark/ Federal Republic of Germany v. Netherlands | International Court of Justice, The Hague, Judgment of 20 February 1969, ICJ Reports 1969, p. 3.                               |
| United Kingdom v. Norway   | International Court of Justice, The Hague, Judgment of 18 December 1951, ICJ Reports 1951, p. 116.                             |
| Lithuania v. Poland  | Permanent Court of International Justice, The Hague, Advisory opinion of 15 October 1931, PCIJ Ser. A/B, No. 42, 1931, p. 108. |
| The Kingdom of Belgium v. the Kingdom of the Netherlands                           | Permanent Court of Arbitration, The Hague, Award of the Arbitral Tribunal of 24 May 2005.                                      |

### Internal law of Norway<sup>213</sup>

Lov 12. desember 1976 nr. 91 om Norges økonomiske sone [økonomiske soneloven]. Available in Norwegian at <http://www.lovdatab.no/all/tl-19761217-091-0.html#3> [Visited June 27th, 2013]

Lov 27. juni 2003 nr. 57 om Norges territorialfarvann og tilstøtende sone [territorialfarvannsloven]. Available in Norwegian at <http://www.lovdatab.no/all/hl-20030627-057.html#1> [Visited July 23rd, 2013].

Lov 6. juni 2008 nr. 37 om forvaltning av villlevande marine ressursar [havressurslova]. Available in Norwegian at [http://lovdata.no/cgi-wift/wiftdles?doc=/app/gratis/www/docroot/all/nl-20080606-037.html&emne=havressurslova\\*&&](http://lovdata.no/cgi-wift/wiftdles?doc=/app/gratis/www/docroot/all/nl-20080606-037.html&emne=havressurslova*&&); in English <http://www.ub.uio.no/ujur/ulovdata/lov-20080606-037-eng.pdf> [Visited July 29th, 2013].

<sup>213</sup> Translation of Norwegian legislation can be found on <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/NOR.htm> [Visited August 26th, 2013].

Forskrift 3. juni 1977 nr. 06 om fiskevernsonene ved Svalbard. Available in Norwegian at <http://www.lovdata.no/cgi-wift/ldles?doc=%2Fsf%2Fsf%2Fsf-19770603-0006.html> [Visited April 9th, 2013].

St. meld. nr. 30 (2004-2005), Muligheter og utfordringer i nord. Available in Norwegian at <http://www.regjeringen.no/Rpub/STM/20042005/030/PDFS/STM200420050030000DDDPDFFS.pdf> [Visited July 23rd, 2013].

St. meld. nr. 8 (2005–2006) Helhetlig forvaltning av det marine miljø i Barentshavet og havområdene utenfor Lofoten (forvaltningsplan). Available in Norwegian at <http://www.regjeringen.no/Rpub/STM/20052006/008/PDFS/STM200520060008000DDDPDFFS.pdf> [Visited 12th July, 2013]

St. meld. nr. 22 (2008-2009), Svalbard. Available in Norwegian at <http://www.regjeringen.no/pages/2175676/PDFS/STM200820090022000DDDPDFFS.pdf> [Visited July 23rd, 2013]

St. meld. nr. 25 (2011-2012), Fiskeriavtalane Noreg har inngått med andre land for 2012 og fisket etter avtalane i 2010 og 2011. Available in Norwegian at <http://www.regjeringen.no/pages/37899288/PDFS/STM201120120025000DDDPDFFS.pdf> [Visited July 26th, 2013]

St. meld. nr. 40 (2012-2013), Fiskeriavtalane Noreg har inngått med andre land for 2013 og fisket etter avtalane i 2011 og 2012. Available in Norwegian at <http://www.regjeringen.no/pages/38354438/PDFS/STM201220130040000DDDPDFFS.pdf> [Visited July 26th, 2013].

Stortings forhandlinger (1976-1977).

Proposisjon til Stortinget 43 S (2010-2011), Samtykke til ratifikasjon av overenskomst av 15. september 2010 mellom Norge og Russland om maritim avgrensning og samarbeid i Barentshavet og Polhavet. Available in Norwegian at <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/prop/2010-2011/prop-43-s-20102011.html?id=626419> [Visited August 2nd, 2013].

### **Internal law of Russia<sup>214</sup>**

The Constitution of the Russian Federation, 12 December 1993. Available at <http://www.constitution.ru/en/10003000-02.htm> [Visited July 29th, 2013].

Федеральный закон от 30 ноября 1995 г. N 187-ФЗ "О континентальном шельфе Российской Федерации". Available in Russian at <http://base.garant.ru/10108686/> [Visited July 19th, 2013].

Федеральный закон от 31 июля 1998 г. N 155-ФЗ "О внутренних морских водах, территориальном море и прилежащей зоне Российской Федерации". Available in Russian at <http://base.garant.ru/12112602/> [Visited July 22th, 2013].

---

<sup>214</sup> Translation of Russian legislation can be found on <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/RUS.htm> [Visited August 26th, 2013].

Федеральный закон от 17 декабря 1998 г. N 191-ФЗ "Об исключительной экономической зоне Российской Федерации". Available in Russian at <http://base.garant.ru/179872/> [Visited June 27th, 2013].

Федеральный закон от 20 декабря 2004 N 166-ФЗ "О рыболовстве и сохранении водных биологических ресурсов". Available in Russian at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=148522;fld=134;dst=4294967295;rnd=0.677795419935137;from=132965-0> [Visited July 29th, 2013].

### Web sources

Joint Norwegian-Russian Fisheries Commission: <http://www.jointfish.com/> (Protocols of the Commission and other significant information).

State Duma of the Russian Federation: <http://www.duma.gov.ru/> (parliamentary hearings and verbatim reports).

International Council of the Exploitation of the Sea: <http://www.ices.dk> (reports of the ICES).

International Court of Justice: <http://www.icj-cij.org/homepage/> (case law).

### Other sources

Belov, P. G., Zilanov, V. K., Gomanov, N. D. and others, *Open letter in respect of the ratification of the Barents Sea Treaty by Russia* to D. A. Medvedev and V. V. Putin. Available in Russian at

[http://www.mirompraviv.ru/news/gosudarstvennaja\\_duma\\_tikho\\_ratificirovala\\_dogovor\\_s\\_norvegiej/2011-03-29-448](http://www.mirompraviv.ru/news/gosudarstvennaja_duma_tikho_ratificirovala_dogovor_s_norvegiej/2011-03-29-448) [Visited May 14th, 2013].

Norwegian fishermen privatized the Spitsbergen (Норвежские рыбаки приватизировали Шпицберген), *Nevskoe vremya*, 21 October 2011. Available in Russian at <http://www.nvspb.ru/stories/norvejskie-rybaki-privatizirovali-shpicbergen-46732> [Visited July 24th, 2013].

## Annex 1

**Joint Statement on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean<sup>215</sup>**

Recognising our mutual determination to strengthen our good neighbourly relations, secure stability and enhance cooperation in the Barents Sea and the Arctic Ocean, we are pleased to announce that our negotiating delegations have reached preliminary agreement on the bilateral maritime delimitation between our two countries in these areas, which has been the object of extensive negotiations over the years.

As stated in the Ilulissat Declaration of the coastal States around the Arctic Ocean of 28 May 2008, both Norway and the Russian Federation are committed to the extensive legal framework applicable to the Arctic Ocean, as well as to the orderly settlement of any possible overlapping claims.

The negotiations have covered all the relevant issues concerning the maritime delimitation. The two delegations recommend, in addition to a maritime delimitation line, the adoption of treaty provisions that would maintain and enhance cooperation with regard to fisheries and management of hydrocarbon resources. A comprehensive Treaty concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean is thus envisaged. Such a Treaty shall not prejudice rights and obligations under other international treaties to which both the Kingdom of Norway and the Russian Federation are parties.

The two delegations recommend a delimitation line on the basis of international law in order to achieve an equitable solution. In addition to the relevant factors identified in this regard in international law, including the effect of major disparities in respective coastal lengths, they have taken into account the progress achieved in the course of long-standing negotiations between the parties in order to reach agreement. They recommend a line that divides the overall disputed area in two parts of approximately the same size.

Bearing in mind the developments in the Arctic Ocean and the role of our two States in this region, they highlight the bilateral cooperation with regard to the determination of the outer limits of the continental shelf, in accordance with the United Nations Convention on the Law of the Sea.

In the field of fisheries, the two delegations underline the special economic importance of the living resources of the Barents Sea to Norway and the Russian Federation and to their coastal communities. The need to avoid any economic dislocation of coastal regions whose inhabitants have habitually fished in the area is stressed. Moreover, the traditional Norwegian and Russian fisheries in the Barents Sea are highlighted. They recall the primary interest and responsibility of Norway and the Russian Federation, as coastal States, for the conservation and rational management of the living resources of the Barents Sea and the Arctic Ocean, in accordance with international law. The conclusion of a Treaty on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean shall therefore not adversely affect the fishing opportunities of either State. To this end, provisions to the effect of continued close cooperation of the two States in the sphere of fisheries and preservation of relative stability of their fishing activities are recommended. The same applies to provisions concerning

---

<sup>215</sup> The text is taken from <http://www.regjeringen.no/upload/UD/Vedlegg/Folkerett/100427-FellesuutalelseEngelsk.pdf> [Visited March 25th, 2013].

continued cooperation in the Norwegian-Russian Joint Fisheries Commission, as well as necessary transitional arrangements.

In the field of hydrocarbon cooperation, the two delegations recommend the adoption of detailed rules and procedures ensuring efficient and responsible management of their hydrocarbon resources in cases where any single oil or gas deposit should extend across the delimitation line.

Recalling our common desire to complete the maritime delimitation, we express our firm intention to take, in accordance with the requirements of the legislation of each State, all necessary measures to conclude a Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean at the earliest possible date.

Oslo, 27 April 2010

Jonas Gahr Støre

Foreign Minister of the Kingdom of Norway

Sergey Lavrov

Foreign Minister of the Russian Federation

English translation



## Annex 2

**Treaty between the Kingdom of Norway and the Russian Federation concerning  
Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean<sup>216</sup>**

The Kingdom of Norway and the Russian Federation (hereinafter “The Parties”),  
*Desiring* to maintain and strengthen the good neighbourly relations,  
*Bearing in mind* the developments in the Arctic Ocean and the role of the Parties in this region,  
*Desiring* to contribute to securing stability and strengthen the cooperation in the Barents Sea and the Arctic Ocean,  
*Referring* to the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter “the Convention”),  
*Referring* to the Agreement between the Kingdom of Norway and the Russian Federation on the Maritime Delimitation in the Varangerfjord area of 11 July 2007 (hereinafter “the 2007 Agreement”) and desiring to complete the maritime delimitation between the Parties,  
*Aware* of the special economic significance of the living resources of the Barents Sea to Norway and the Russian Federation and to their coastal fishing communities and of the need to avoid economic dislocation in coastal regions whose inhabitants have habitually fished in the area,  
*Aware* of the traditional Norwegian and Russian fisheries in the Barents Sea,  
*Recalling* their primary interest and responsibility as coastal States for the conservation and rational management of the living resources of the Barents Sea and in the Arctic Ocean, in accordance with international law,  
*Underlining* the importance of efficient and responsible management of their hydrocarbon resources,  
*Have agreed* as follows:

## Article 1

1. The maritime delimitation line between the Parties in the Barents Sea and the Arctic Ocean shall be defined as geodetic lines connecting points defined by the following coordinates:

1. 70° 16' 28.95" N 32° 04' 23.00" E

(This point corresponds to point 6 of the delimitation line as defined in the 2007 Agreement.)

2. 73° 41' 10.85" N 37° 00' 00.00" E

3. 75° 11' 41.00" N 37° 00' 00.00" E

4. 75° 48' 00.74" N 38° 00' 00.00" E

5. 78° 37' 29.50" N 38° 00' 00.00" E

6. 79° 17' 04.77" N 34° 59' 56.00" E

7. 83° 21' 07.00" N 35° 00' 00.29" E

8. 84° 41' 40.67" N 32° 03' 51.36" E

The terminal point of the delimitation line is defined as the point of intersection of a geodetic line drawn through the points 7 and 8 and the geodetic line connecting the easternmost point of the outer limit of the continental shelf of Norway and the westernmost point of the outer limit of the continental shelf of the Russian Federation, as established in accordance with Article 76 and Annex II of the Convention.

2. The geographical coordinates of the points listed in paragraph 1 of this Article are defined in World Geodetic System 1984 (WGS84(G1150, at epoch 2001.0)).

<sup>216</sup> The text is taken from [http://www.regjeringen.no/upload/ud/vedlegg/folkerett/avtale\\_engelsk.pdf](http://www.regjeringen.no/upload/ud/vedlegg/folkerett/avtale_engelsk.pdf) [Visited March 25th, 2013].

3. By way of illustration, the delimitation line and the points listed in paragraph 1 of this Article have been drawn on the schematic chart annexed to the present Treaty. In case of difference between the description of the line as provided for in this Article and the drawing of the line on the schematic chart, the description of the line in this Article shall prevail.

#### Article 2

Each Party shall abide by the maritime delimitation line as defined in Article 1 and shall not claim or exercise any sovereign rights or coastal State jurisdiction in maritime areas beyond this line.

#### Article 3

1. In the area east of the maritime delimitation line that lies within 200 nautical miles of the baselines from which the breadth of the territorial sea of mainland Norway is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the Russian Federation is measured (hereinafter “the Special Area”), the Russian Federation shall, from the day of the entry into force of the present Treaty, be entitled to exercise such sovereign rights and jurisdiction derived from exclusive economic zone jurisdiction that Norway would otherwise be entitled to exercise under international law.

2. To the extent that the Russian Federation exercises the sovereign rights or jurisdiction in the Special Area as provided for in this Article, such exercise of sovereign rights or jurisdiction derives from the agreement of the Parties and does not constitute an extension of its exclusive economic zone. To this end, the Russian Federation shall take the necessary steps to ensure that any exercise on its part of such sovereign rights or jurisdiction in the Special Area shall be so characterized in its relevant laws, regulations and charts.

#### Article 4

1. The fishing opportunities of either Party shall not be adversely affected by the conclusion of the present Treaty.

2. To this end, the Parties shall pursue close cooperation in the sphere of fisheries, with a view to maintain their existing respective shares of total allowable catch volumes and to ensure relative stability of their fishing activities for each of the stocks concerned.

3. The Parties shall apply the precautionary approach widely to conservation, management and exploitation of shared fish stocks, including straddling fish stocks, in order to protect the living marine resources and preserve the marine environment.

4. Except as provided for in this Article and in Annex I, nothing in this Treaty shall affect the application of agreements on fisheries cooperation between the Parties.

#### Article 5

1. If a hydrocarbon deposit extends across the delimitation line, the Parties shall apply the provisions in Annex II.

2. If the existence of a hydrocarbon deposit on the continental shelf of one of the Parties is established and the other Party is of the opinion that the said deposit extends to its continental shelf, the latter Party may notify the former Party and shall submit the data on which it bases its opinion.

If such an opinion is submitted, the Parties shall initiate discussions on the extent of the hydrocarbon deposit and the possibility for exploitation of the deposit as a unit. In the course of these discussions, the Party initiating them shall support its opinion with evidence from geophysical data and/or geological data, including any existing drilling data and both Parties shall make their best efforts to ensure that all relevant information is made available for the purposes of these discussions. If the hydrocarbon deposit extends to the continental shelf of each of the Parties and the deposit on the continental shelf of one Party can be exploited

wholly or in part from the continental shelf of the other Party, or the exploitation of the hydrocarbon deposit on the continental shelf of one Party would affect the possibility of exploitation of the hydrocarbon deposit on the continental shelf of the other Party, agreement on the exploitation of the hydrocarbon deposit as a unit, including its apportionment between the Parties, shall be reached at the request of one of the Parties (hereinafter “the Unitisation Agreement”) in accordance with Annex II.

3. Exploitation of any hydrocarbon deposit which extends to the continental shelf of the other Party may only begin as provided for in the Unitisation Agreement.

4. Any disagreement between the Parties concerning such deposits shall be resolved in accordance with Articles 2-4 of Annex II.

#### Article 6

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 into force of the present Treaty.

#### Article 7

1. The Annexes to the present Treaty form an integral part of it. Unless expressly provided otherwise, a reference to this Treaty includes a reference to the Annexes.

2. Any amendments to the Annexes shall enter into force in the order and on the date provided for in the agreements introducing these amendments.

#### Article 8

This Treaty shall be subject to ratification and shall enter into force on the 30th day after the exchange of instruments of ratification.

DONE in duplicate in Murmansk on 15 September 2010, each in Norwegian and Russian languages, both texts being equally authentic.

For the Kingdom of Norway

For the Russian Federation

### **Annex I to the Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean Fisheries matters**

#### Article 1

The Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics on co-operation in the fishing industry of 11 April 1975 and the Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics concerning mutual relations in the field of fisheries of 15 October 1976 shall continue to stay in force for fifteen years after the entry into force of the present Treaty. After the expiry of this term each of these Agreements shall remain in force for successive six year terms, unless at least six months before the expiry of the six year term one Party notifies the other Party about its termination.

#### Article 2

In the previously disputed area within 200 nautical miles from the Norwegian or Russian mainland technical regulations concerning, in particular, mesh and minimum size of catches set by each of the Parties for their fishing vessels shall apply for a transitional period of two years from the day of entry into force of the present Treaty.

#### Article 3

Total allowable catches, mutual quotas of catches and other regulatory measures for fishing shall continue to be negotiated within the Norwegian-Russian Joint Fisheries Commission in accordance with the Agreements referred to in Article 1 of the present Annex.

#### Article 4

The Norwegian-Russian Joint Fisheries Commission shall continue to consider improved monitoring and control measures with respect to jointly managed fish stocks in accordance with the Agreements referred to in Article 1 of the present Annex.

### **Annex II to the Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean Transboundary Hydrocarbon Deposits**

#### Article 1

The Unitisation Agreement between the Parties concerning exploitation of a transboundary hydrocarbon deposit, referred to in Article 5 of the present Treaty, shall provide for the following:

1. Definition of the transboundary hydrocarbon deposit to be exploited as a unit (geographical coordinates normally shown in an annex to the Agreement).
2. The geographical, geophysical and geological characteristics of the transboundary hydrocarbon deposit and the methodology used for data classification. Any geological data used as a basis for such geological characterisation shall be the joint property of the legal persons holding rights under the Joint Operating Agreement, referred to in paragraph 6 a) of the present Article.
3. A statement of the total amount of the hydrocarbon reserves in place in the transboundary hydrocarbon deposit and the methodology used for such calculation, as well as the apportionment of the hydrocarbon reserves between the Parties.
4. The right of each Party to copies of all geological data, as well as all other data of relevance for the unitised deposit, which are gathered in connection with the exploitation of the deposit.
5. The obligation of the Parties to grant individually all necessary authorisations required by their respective national laws for the development and operation of the transboundary hydrocarbon deposit as a unit in accordance with the Unitisation Agreement.
6. The obligation of each Party
  - a) to require the relevant legal persons holding rights to explore for and exploit hydrocarbons on each respective side of the delimitation line to enter into a Joint Operating Agreement to regulate the exploitation of the transboundary hydrocarbon deposit as a unit in accordance with the Unitisation Agreement;
  - b) to require the submission of a Joint Operating Agreement for approval by both Parties, as well as to issue such approval with no undue delay and not to unduly withhold it;
  - c) to ensure that the provisions contained in the Unitisation Agreement prevail over the provisions of the Joint Operating Agreement in case of any discrepancy between them;
  - d) to require the legal persons holding the rights to exploit a transboundary hydrocarbon deposit as a unit to appoint a unit operator as their joint agent in accordance with the provisions set out in the Unitisation Agreement, such an appointment of, and any change of, the unit operator being

subject to prior approval by the two Parties.

7. The obligation of each Party not to withhold, subject to its national laws, a permit for the drilling of wells by, or on account of, the legal persons holding rights to explore for and produce hydrocarbons on its respective side of the delimitation line for purposes related to the determination and apportionment of the transboundary hydrocarbon deposit.

8. Unless otherwise agreed by the Parties, the obligation of each Party not to permit the commencement of production from a transboundary hydrocarbon deposit unless the Parties have jointly approved such commencement in accordance with the Unitisation Agreement.

9. The obligation of the Parties to determine by mutual agreement in due time before the production of hydrocarbons from the transboundary hydrocarbon deposit is about to cease, the timing of cessation of the production from the transboundary hydrocarbon deposit.

10. The obligation of the Parties to consult each other with respect to applicable health, safety and environmental measures that are required by the national laws and regulations of each Party.

11. The obligation of each Party to ensure inspection of hydrocarbon installations located on its continental shelf and hydrocarbon activities carried out thereon in relation to the exploitation of a transboundary deposit, the obligation of each Party to ensure inspectors of the other Party access on request to such installations, and to relevant metering systems on the continental shelf or in the territory of either Party, as well as the obligation of each Party to ensure that relevant information is given to the other Party on a regular basis to enable it to safeguard its fundamental interests, including *inter alia* those related to health, safety, environment, hydrocarbon production and metering.

12. The obligation of each Party not to alter the right to explore for and produce hydrocarbons awarded by one Party, which applies to a field that is subject to unitisation in accordance with the Unitisation Agreement, nor to assign it to other legal persons, without prior consultation with the other Party.

13. The obligation of the Parties to establish a Joint Commission for consultations between the Parties on issues pertaining to any planned or existing unitised hydrocarbon deposits, providing a means for ensuring continuous consultation and exchange of information between the two Parties on such issues and a means for resolving issues through consultations.

#### Article 2

The Parties shall make every effort to resolve any disagreement as rapidly as possible. If, however, the Parties fail to agree, they shall jointly consider all options for resolving the impasse.

#### Article 3

1. If the Parties fail to reach the Unitisation Agreement referred to in Article 1 of the present Annex, the disagreement should as rapidly as possible be resolved by negotiations or by any other procedure agreed between the Parties. If the disagreement is not settled within six months following the date on which a Party first requested such negotiations with the other Party, either Party shall be entitled to submit the dispute to an ad hoc Arbitral Tribunal consisting of three members.

2. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall elect a third arbitrator, who shall be the Chairperson. The Chairperson shall not be a national of or habitually reside in Norway or the Russian Federation. If either Party fails to appoint an arbitrator within three months of a request to do so, either Party may request that the President of the International Court of Justice make the appointment. The same procedure shall apply if, within one month of the appointment of the second arbitrator, the third arbitrator has not been elected.

3. All decisions of the Arbitral Tribunal shall, in the absence of unanimity, be taken by a majority vote of its members. The Arbitral Tribunal shall in all other matters determine its own rules of procedure. The decisions of the Arbitral Tribunal shall be binding upon the Parties and the Unitisation Agreement referred to in Article 1 of the present Annex shall be concluded by them in accordance with these decisions.

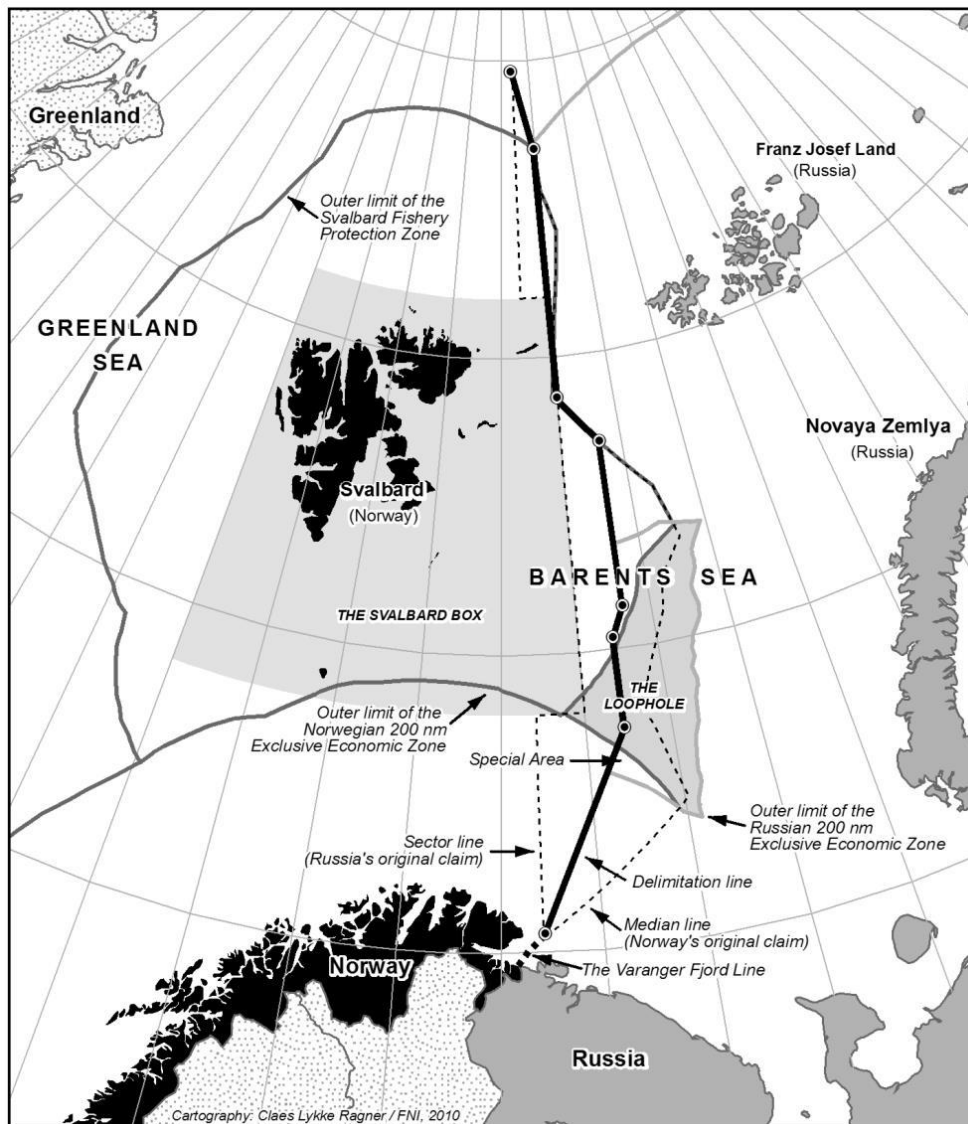
#### Article 4

1. In the event that a failure to reach agreement concerns the apportionment of the hydrocarbon deposit between the Parties, they shall appoint an independent expert to decide upon such apportionment. The decision of the independent expert shall be binding upon the Parties.

2. Notwithstanding the provisions contained in paragraph 1 of this Article, the Parties may agree that the hydrocarbon deposit shall be reapportioned between them.

Annex 3

**Maritime boundaries in the Barents Sea after the entry in force of the 2010 Barents Sea Treaty<sup>217</sup>**



<sup>217</sup> The map is made by the Fridtjof Nansen Institute and taken from the article by Øystein Jensen, "Current Legal Developments, The Barents Sea: Treaty between Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean", *International Journal of Marine and Coastal Law*, vol. 26, 1 (2011), pp. 151-168. Available at <http://www.fni.no/doc&pdf/OYJ-ESTU-2011.pdf> [Visited April 8th, 2013].

Word account: 17 498.