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**Legal Regime of Navigation in
the Russian Arctic**

By A.L. Kolodkin, V.Yu. Markov and A.P. Ushakov

INSROP International Northern Sea Route Programme



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Title: Legal Regime of Navigation in the Russian Arctic

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FOREWORD - INSROP WORKING PAPER

INSROP is a five-year multidisciplinary and multilateral research programme, the main phase of which commenced in June 1993. The three principal cooperating partners are **Central Marine Research & Design Institute (CNIIMF)**, St. Petersburg, Russia; **Ship and Ocean Foundation (SOF)**, Tokyo, Japan; and **Fridtjof Nansen Institute (FNI)**, Lysaker, Norway. The INSROP Secretariat is shared between CNIIMF and FNI and is located at FNI.

INSROP is split into four main projects: 1) Natural Conditions and Ice Navigation; 2) Environmental Factors; 3) Trade and Commercial Shipping Aspects of the NSR; and 4) Political, Legal and Strategic Factors. The aim of INSROP is to build up a knowledge base adequate to provide a foundation for long-term planning and decision-making by state agencies as well as private companies etc., for purposes of promoting rational decisionmaking concerning the use of the Northern Sea Route for transit and regional development.

INSROP is a direct result of the normalization of the international situation and the Murmansk initiatives of the former Soviet Union in 1987, when the readiness of the USSR to open the NSR for international shipping was officially declared. The Murmansk Initiatives enabled the continuation, expansion and intensification of traditional collaboration between the states in the Arctic, including safety and efficiency of shipping. Russia, being the successor state to the USSR, supports the Murmansk Initiatives. The initiatives stimulated contact and cooperation between CNIIMF and FNI in 1988 and resulted in a pilot study of the NSR in 1991. In 1992 SOF entered INSROP as a third partner on an equal basis with CNIIMF and FNI.

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Introduction

The ever growing interest with respect to the Arctic both on the part of the Arctic-rim states and the world community as a whole is conditioned by a number of factors and, first and foremost, by the possibility of using this region for transportation purposes; by the reserves of oil, gas and other natural riches many kinds of which can be developed already now; by the need to conduct scientific research of the region's nature, its flora and fauna, various natural processes exerting influence on the state of the earth's atmosphere; by the aggravation of the problem of preserving the ecological balance and strengthening of measures adopted by the coastal states in the field of environment protection.

Hence the nature of the legal regulation of activities relating to the use of Arctic spaces and resources is determined by a great number of heterogeneous factors: firstly, the increasing desire of the international community to participate in the region's multi-purpose development; secondly, the problem of legal regulation in the Arctic is closely linked to the priority of interests of the Arctic-rim states. It is these states that for many centuries have borne the heavy burden of exploring and rendering habitable the Arctic areas, as well as of their industrial, cultural and other development. It is with the Arctic that the economic welfare of the Arctic-rim states, their ecological security and defensive capacity are linked to a great extent. The settlement of all these questions directly depends on the solution of the transportation issue, on how effectively and safely the transport communication passing here will be used, and how rationally it is possible to administer the use of the means of transportation.

The priority of the transportation issue predetermines the need for a comprehensive study of a complex of questions, including, in particular, historical aspects associated with the legal status of the Arctic Ocean's various parts through which the seaways of the Northern Sea Route pass, and with the legal regime of navigation, the operational, commercial and environmental protection activities within the limits of the respective sea areas crossed by the Northern Sea Route.

The analysis of the Russian State's legislation, international agreements, historic archival materials, diplomatic documents, various doctrinal sources, awards of judicial bodies makes it possible to draw conclusions regarding the approach it would be expedient to adhere to in settling transportation problems associated with the uses of the Arctic. The core of the matter is that the Russian State has from time immemorial exercised control over navigation and other activities in the northern waters washing its coast. Moreover, such control acquires today new fundamental legal grounds in the context of provisions of the 1982 UN Convention on the Law of the Sea which entered into force in 1994 and which provides for the especial rights of the Arctic-rim states with a view to preserving and maintaining ecological stability in this unique part of the planet. It is very important to underline that Russia ratified the Convention in March 1997. In carrying out the research, special rights should be borne in mind, which the coastal states have with respect to the region's spaces or resources and which, account taken of the generally recognized principles and rules of international law, are stipulated by the relevant sections of their legislation, bilateral agreements, awards of international judicial bodies, or which are tacitly recognized by other states. This very important circumstance is directly linked with the assessment of the Russian position on the given issues and its inherent rights in the Arctic region.

The present monograph has been prepared at the "Soyuzmorniiproekt" Institute and the Association of International Maritime Law by the Institute's leading scientific fellows, Candidates of Sciences (Law) N.D.Koroleva; V.Yu.Markov, 1st Rank Captain (ret.); as well

as by A.P.Ushakov, Deputy Head of the Northern Sea Route Administration and Honorary Polar Explorer.

The "Soyuzmorniiproekt" Institute and the Association of International Maritime Law express deep gratitude to Russian scholars and practical specialists who rendered invaluable assistance both by their advice and by providing the required materials and documents which were used in the process of the present research preparation

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Retrospective review of the major stages of regulating the access of foreign vessels to the Russian North

The control over various kinds of marine activities exercised by the Russian State in the Arctic waters adjacent to its northern coast should be recognized as quite natural, account taken of the peculiarities of the Russian State's geographical situation: to a large extent it is a northern and eastern power which, in its turn, predetermines appropriate lines of development (northern and eastern ones). Russian Admiral S.O.Makarov expressed this idea in a very graphic way: "A simple glance at the map of Russia shows that by its main facade it faces the Arctic Ocean".¹

The existence of the northern geopolitical axis for development was perceived in the Slavonic lands in the remote past. For instance, in the *Velesova Kniga* - the ancient Slav's Holy writ describing the history of our ancestors from the legendary time of our primogenitors, as well as from the historical period, determined as early as 1st millennium B.C., up to IX century A.D., this perception is easily traced. Specifically, the following words are carved on a small plank No II 1:

*"Oh, Rus, see how great is the mind of God which is common with us! And create (glory), and proclaim it together with the Gods... Our life is perishable, so are we ourselves. And like our horses, we shall have to work living on the land with calves and sheeps in satiety and running away from the enemy to the north."*²

As early as before the elimination of the Novgorod Republic, the remote northern lands became part of the Russian centralized state headed by Moscow which gradually extended its economic influence and political power not only to the European North but also to the Asian North, from Kola in the west up to the Bering Strait and the Amur in the east. It is therefore clear that as from that time Russia assumed the leading role in the development of arctic navigation.

The entire coastline of the Siberian North was put on a map by the participants in the Great Northern Expedition (1733-1743) the idea of which belonged to Peter I. The significance of the transportation arterial route in the north of Russia which united into a single system the seaways and the totality of great rivers from the Severnaya Dvina to the Kolyma became evident.

The idea of a sea-route existing in the North and being the shortest way to India (or China - along the Ob' river) became a reason for organizing a number of foreign expeditions which, however, reached no farther than the Kara Sea. But the true incentive for Russia in the XVI-XVIII centuries lay in the desire to develop the riches of the North. Constantly moving eastwards, Russia rendered habitable and annexed to the Empire vast spaces - Grumant (Spitsbergen), Novaya Zemlya, Mangazeia, Ob', Yenisei, Piasina, Khatanga, Anabar, Olenek, Lena, Iana, Indigirka, Kolyma, Anadyr', Amur. In September 1648 S.Dezhnev's detachment reached the northeast extremity of Asia. Hence, the existence of a northeast passage was proved.

¹ Makarov S.O. "Yermak" in the Ice". Part I.2.

² *Velesova Kniga*. - Moscow: Manager, 1994. Pp.74-75.

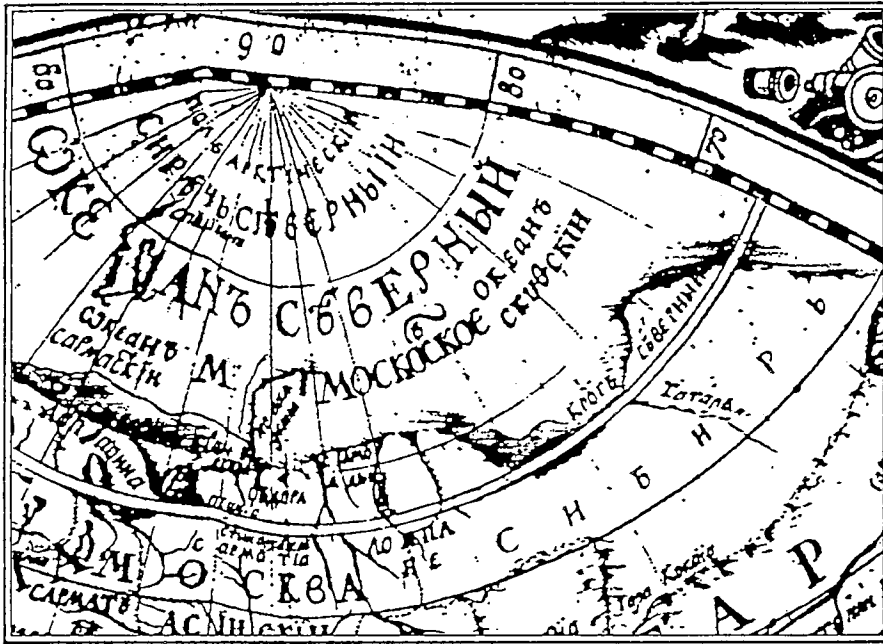


Fig.1. Fragment of a 1707 publication³

The close ties of the Russian lands with the Arctic Ocean's coast and waters were reflected in the toponymy of the Earth's polar regions. On the fragment of the map engraved by Vasilii Kiprianov in 1707 (Fig.1) the sea areas lying along the Siberian coast are called the Moscow Sea and the Scythian Ocean.

The name of the Russian Sea (*Mare Russis*) as applied to the Arctic Ocean area situated southwards of the Novaya Zemlya, the outlines of which as well as the outlines of the northern coast in general, are shown rather roughly, is given on the map by Gerard Mercator published in 1630. (Fig.2A). On the map *Mare Russis* corresponds to what we know today as the Kara Sea closely linked from time immemorial with the territory and economic life of the peoples inhabiting the Sea's shores and forming part of the Russian State.

Another Russian Sea (*Ruthenicum Mare*) situated in the northern part of the present-day White Sea is depicted on the map published by Adrian Schoonebeck in 1702 under the name of "Measured Map of White Sea" - (fig. 2 b). The existence of identical names for two vast sea areas located in different part of the Ocean testifies not so much to the lack of any precise idea of the region's geography on the part of European cartographers who received the required information indirectly and not on the basis of data obtained during voyages and expeditions. It indicates also the existence of the indisputable etymological connection of the above-mentioned toponyms with Russian lands which, in turn, may be considered a kind of recognition of Russia's rights to sea expanses lying northwards of its coast.

A similar assumption is true with regard to the Moscow Sea toponym. It is an easy matter to see that it correlates, on the one hand, much like G. Mercator's *Mare Russis*, with waters now known as the Kara Sea (Fig. 1) and, on the other hand, - with sea areas lying northwards of the White Sea and limited from the east by the Novaya Zemlya. This sea area -

³ Borisovskaia N. Ancient engraved maps and plans of XV - XVIII centuries: cosmographies, maps of land and sky, veduts and battles. Moscow: Galaktika, 1992, p. 207.

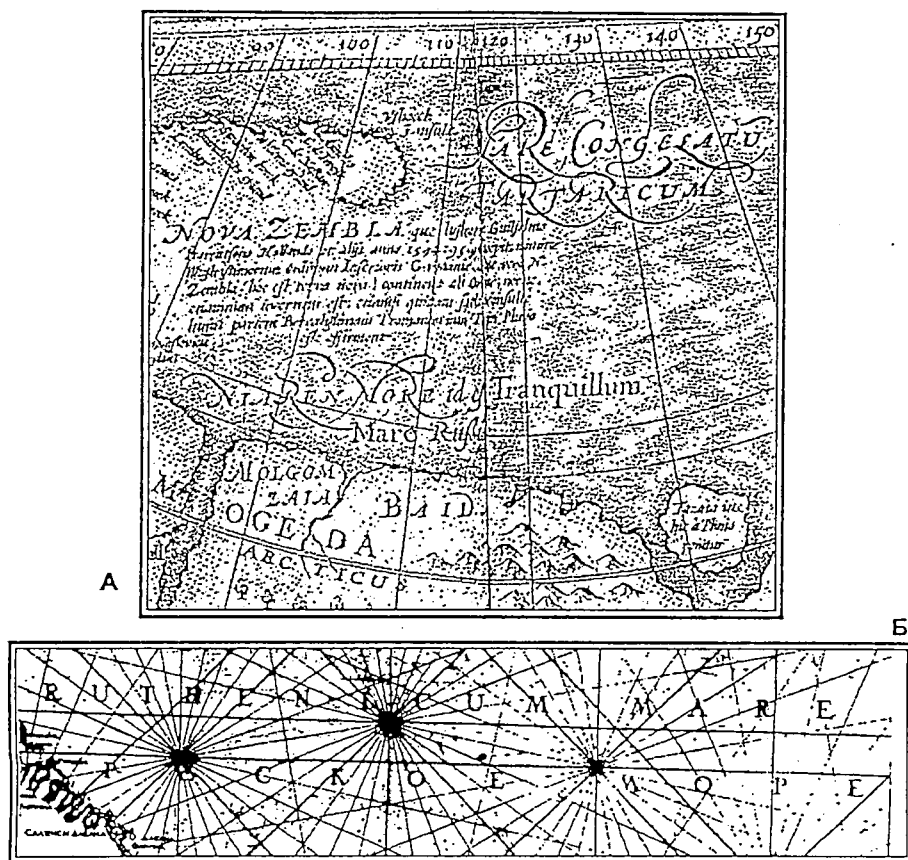


Fig. 2. The Russian Sea. (2A - Fragment of a map from the Atlas of Gerard Mercator (1630), 2B - fragment of a map drawn by Adrian Schoonebeck (1702))⁵

Mare Moscoviticum - was placed on the map of Russia by Johann Baptist Homann in 1720 (Fig.3).

The process of the Slavs settling on the northern coast of the European and Asian continents and their economic development went on for many centuries. The colonization by Russian subjects of the American continent's polar areas in Alaska, ceded to the North-American United States only by the 1867 Treaty, was relatively shortlived but nonetheless it did take place.

The fact of possessing Arctic areas, their organic incorporation into the Russian State was repeatedly noted in the titles of great princes and tsars and later on - of Russian emperors. The deed of Ivan IV dated July 1582 and addressed to the British Queen Elizabeth directly refers to the extension of his sovereign power to the lands mentioned in the deed.⁴

⁴ Collection of the Russian Imperial Historical Society. Vol. XXXVIII/ St.-Petersburg, 1889. P.9. Similar wordings concerning northern lands are contained in the titles of all subsequent Russian sovereigns, e.g. in the titles of Peter III: "By God's permissive mercy We, Peter the Third, Emperor and Autocrat of All Russia, Moscow, Kiev, Vladimir, Novgorod, Tsar of Kazan, Tsar of Astrakhan, Tsar of Siberia, sovereign of Pskov and Grand Duke of Smolensk, legatee of Norway, Duke of Schleswig-Holstein, Stormmar and Ditmar, Count of Oldenburg and Delmendorst, Prince of Estliandia, Lifliandia, Karelia, Tver, Iugora, Perm, Viatka, Bulgaria and others, Sovereign and Grand Duke of Novgorod, Nizovskie Lands, Chernigov, Riazan, Rostov, Iaroslavl, Beloozery, Udora, Obdora, Konda and Sovereign of all Northern countries; Crown Sovereign and owner of the Iverian lands, Kartalian and Georgian Tsars and Kabardin land; of the Cherkassian and Gorskii Princes and others', or in the titles of Catherine II: "By God's permissive mercy We, Catherine II, Empress and Autocrat of All Russia, Moscow, Kiev, Novgorod, Czarina of Kazan, Czarina of Astrakhan, Czarina of Siberia, Sovereign of Pskov and Grand Duchess of Smolensk, Princess of Estliandia, Lifliandia, Karelia, Tver, Iugora, Perm, Viatka, Bulgaria and others, Lady and Great Duchess of Novgorod, Nizovskie lands, of Chernigove,



Fig. 3. Fragment of the map of Russia published by J.B.Homann (1720)⁷

The development of the North by Russians was based on a century-long maritime tradition which can be characterized by the words of F. Jane, well-known British researcher. He writes in his book *The Imperial Russian Navy: its past, present and future* (London, 1899):

*There is a widely spread opinion that the Russian Navy was founded comparatively recently by Peter the Great; nevertheless it can be rightly considered to be more ancient than the British Navy. the Russians had taken part in severe sea battles one hundred years before Alfred built the first English warship, and one thousand years ago it was precisely the Russians that were the most advanced seamen of their times.*⁶

As far as the northern seas are concerned, the fact that the transit route through the Arctic Seas was traditionally designated as the route which was often navigated in ancient times proves that Russian sailors navigated these seas and there was a century-long experience to this effect. This can also be illustrated by the fragment of "The Map Showing the Inventions of Russian Navigators in the Northern Part of America and Other Adjacent Places Made During Various Voyages" which was drawn by the Imperial Academy of Sciences in 1774 (Fig. 4)⁸

The legislative acts of the Russian State and the international treaties concluded by it which regulated the legal regime of the Arctic Seas adjacent to its territory date as far back as the early period of Russian history. There are evidences confirming the existence of a sufficiently distinct maritime boundary between the Ancient Rus and the contiguous Scandinavian states. For example, for the first time such boundary was established by the

Riazan, Rostov, Iaroslavl, Beloozery, Udora Obdora, Konda and Lady and Sovereign of all Northern countries. Crown Sovereign and owner of Iverian lands, Kartalian and Georgian Tsars and Kabardin lands, of Cherkassian and Gorskii Princes, and others".

⁵ Borisovskaia N. Ibid.,p. 177.

⁶ Cited from the book by A.V.Viskovatov.The Short Historical Review of Sea Voyages Made by the Russians and of Navigation in General up to Late XVIIth century. - Sanct.Peterburg, 1994. p. 13.

⁷ N. Borisovskaia. Ibid., pp.218-219.

⁸ Description of ancient atlases, maps and plans published in XVI, XVII, XVIII centuries and in the first half of XIX century and kept in the Archives of the Navy's Hydrographic Service, 1958. p.29 (reproduction no. 86).

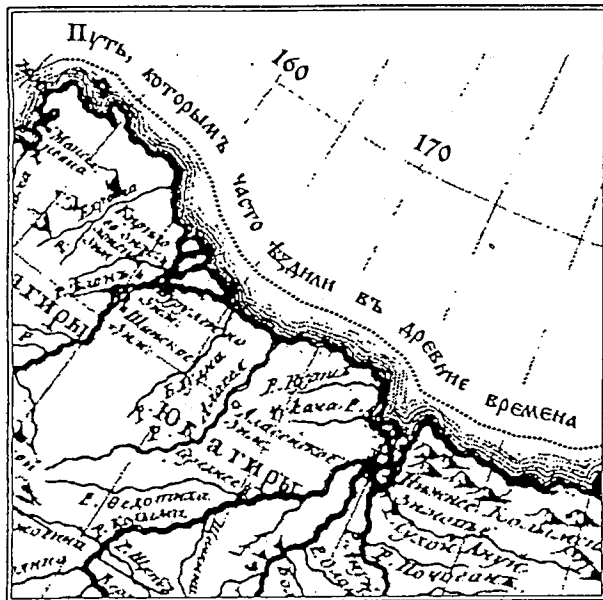


Fig.4. Fragment of Russian map of 1774

treaty concluded between Yaroslav the Wise and the Norwegian king Olaf Trygvasson in the XIth century; then there was the Orekhov Treaty of 1323 between the Novgorod Prince Yurii Danilovich and Sweden.

The diplomatic and domestic documents we have at our disposal today testify to the international recognition, already in those remote times, of the exclusive rights of Russia in the Arctic seas. For instance, in 1326 the Novgorod Republic and Norway signed an agreement whereby the Norwegian merchants, equally with the Russian ones, were allowed to freely navigate to the eastward of the boundary designated by the agreement up to the sea wharves situated on the river Severnaya Dvina.

The diplomatic correspondence in the times of Ivan the Terrible and Fiodor Ioanovich shows very clearly that as far as the northern seas were concerned, the case in point was not freedom of navigation (which is absolutely natural as the principle of the freedom of navigation was established later - in 1609)⁹ but the claims of certain Western countries for trade preferences in Russian territory and, in this connection, for access to its northern ports.

⁹ It is appropriate to mention here the events and causes inducing Hugo Grotius to write his famous treatise which contained the above-mentioned, generally recognized nowadays, principle of the international law of the sea.

On 30 July of the year six hundred and three, between eleven o'clock in the forenoon, a Siamese junk came to the town of Macao and brought the news that last March a carrack from China sailing to Malacca was seized by the Dutch in the Strait of Singapore.

The carrack taken as a result of a desperate piratical raid to the bay of Macao of small ships 'Erasm' and 'Nassau', carried one thousand four hundred bales of silk, to say nothing of other valuable goods. The carrack 'Santa Catarina' seized by the Dutchmen near Singapore had a displacement of one thousand five hundred tons. The total sum gained for the 'Santa Catarina's' cargo at the auction in Amsterdam was three and a half million guilders. The vessel also carried so much Chinese porcelain aboard that even many years later chinaware in Holland was called carrack porcelain.

The protests which this piratical raid brought about in Portugal spread so widely that the following year the Director of the Dutch West Indies Company addressed the famous lawyer Hugo Grotius with an order to write a treatise on prize law which would justify the seizure of the 'Santa Catarina' and sale of its property. A chapter from this work under the title 'On the Free Sea' was published in 1609 and became a basis for all

It is also appropriate to mention the territorial claims advanced by the Danish Kingdom which extended to a number of sea wharves on the north (Murmansk) coast of the Kola Peninsula and in estuaries of the Severnaya Dvina, Mezen', Pechora and other rivers which introduced a certain vagueness in carrying out marine trade operations. These claims, however, had no consequences and did not cause any difficulties for the sea trade. This is testified by the correspondence between Queen Elizabeth and Tsar Ivan IV. For example, the English Queen's deed dated 23 January 1581, constitutes a request to confirm that the sea wharves situated in areas the sovereignty of which was subject to claims on the part of the Danish King, are owned by the Moscow State. In his reply Ivan IV (1582) confirmed the permission, granted earlier by Russian sovereigns to English merchants, to freely use the seaways leading to the Russian northern ports, as well as to trade there.

At that time the Russian State exercised powerful control over the use of its northern ports which served as a base for further penetration of goods deep into the country. All foreign trade operations were controlled by the sovereign. He also designated areas (both on the coast and in the country's internal districts) open for foreign merchants.

Extracts from a 1583 deed containing a list of sea trade wharves, reference made to certificates granted to English merchants, are on pages 10-12 of the Russian text.

Later on Russian sovereigns pursued a tough protectional trade policy which closed all Russian northern ports on the Kola Peninsula and in the Podvin'e for foreign merchant vessels (Edict 1586, Tiavzin Treaty between Russia and Sweden 1595, etc.). The aforementioned documents even if presented in a fragmentary form, testify to the seriousness of the Russian Government's intentions and its resoluteness to suppress any attempt by foreign navigators to penetrate into the protected areas of the Russian Arctic.

The second half of the XVIIth century is characterised by the gradual transition of Russia from the policy of economic isolation to brisker trade contacts with the West European countries. These contacts were realized through Arkhangelsk - at that time the only sea port - and were manifested in a certain mitigation of limitations established for foreign merchant navigation in the North. Foreign merchant vessels were allowed access to the sea communications and ports of the Russian Arctic. Notwithstanding such mitigation, the legal regime of this part of the Arctic seas, as sea areas closed to foreigners and within which the regime of navigation and fishery completely depended upon the will of the Russian authorities, is still preserved. It should be noted that mitigation of the policy, providing for the ban on foreign navigation in the North in the second half of the XVII century, applied solely to a small part of the Russian Arctic area, largely comprising the European transpolar districts. The remaining area of the Arctic Ocean lying eastwards of the Kara Gates remained inaccessible to non-Russians. The reason lay not so much in the climatic conditions, but rather in the policy of the Russian Government which directed its efforts to the protection of the Russian State's economic and defence interests and secured this policy by means of appropriate legislation.

In 1693, for example, the Admiralty was set up in Arkhangelsk; in 1701, under the edict of Peter I, the Novodvinsk fortress was built, which hindered penetration of foreign navigators into Siberia.

During the XVIIIth century important legislative acts regulating the regime of using the Russian Arctic seas were adopted. The edict of Peter I dated 13 August 1704, besides providing monopoly rights to hunt marine animals in the coastal waters and islands of the

subsequent laws concerning navigation in the high seas' (Mozheiko I.V. In the Indian Ocean. Essays on the History of Piracy in the Indian Ocean and the South Seas (XV-XX centuries). - Moscow: Nauka, 1977. pp 84-86).

Arctic Ocean to the Prince Men'shikov's marine harvesting company, prohibited similar activities for non-Russians. Furthermore, the edict of Empress Elizabeth Petrovna dated 11 March 1753 confirmed the exclusive rights of Russia in the Arctic Ocean's waters. It also emphasized that the prohibition of merchant navigation from Europe to Siberia was still valid.

Such legal regime of the Russian Arctic seas, earlier recognized by foreign states only tacitly, received at that time a sufficiently clear-cut international recognition. This is proved by the fact that Russia concluded a number of international treaties concerning this matter (the Russian-Danish treaties of 1710 and 1730). These treaties incorporated questions regarding delimitation of the Arctic sea possessions of Russia and Denmark which became a significant stage in the history of acquisition by the Russian people of the Arctic spaces.

In the XVIIIth and XIXth centuries the legal regulation of the polar sea areas adjacent to the Russian territory was exercised by the Russian State in the northwest part of the Arctic basin by means of the Edict of Emperor Pavel I of 8 July 1799 granting monopoly rights to the Russian-American Company in trade, marine harvesting and extraction of minerals in Alaska at the time it belonged to Russia.

Among the most significant legislative acts regulating this area's legal regime, the Edict of Emperor Alexander I *"On the Enforcement of the Enactment Concerning Limits of Navigation and Procedure of Maritime Relations Along the Coasts of East Siberia, Northwest America and Aleut, Kuril and Other Islands"* dated 4 September 1821, occupies a special place. This Edict stimulated the negotiations between the region's countries which resulted in the signing of two conventions: with the United States of America (5[17] April 1824) on trade, navigation and fisheries¹⁰ and with Great Britain (16[28] February 1825) on trade, navigation and fisheries, and on the limits of joint possessions on the northwest coast of America.¹¹ These Conventions established delimitation lines between Russia, on the one hand, and the North-American United States, on the other, having completed in such a manner the conventional stipulation of the fact that the possessions of the Russian Empire in the Arctic seas and on the land of three continents constituted in total more than half of the entire Arctic region. It was only when in 1867 Russia ceded Alaska to the North-American United States that this huge sector became more narrow and acquired the outlines almost corresponding to those of today.

It should be noted that the Conventions provided for a rather long (10 years) adaptation period during which the vessels belonging to the contracting parties, their citizens or subjects proceeded to enjoy the right of unimpeded access to the internal waters, bays and harbours along the coast, subject to agreements, for the purpose of fishing and trading with the local population.

As far as the general idea of the Emperor's Edict is concerned, it seems quite clear that it meant the protection of the North Pacific region's fauna (in particular, an attempt was made in the Edict to protect sea fur-seals inhabiting the region's coast and islands from predatory extermination) and in this sense it anticipated the concept of the exclusive economic zone which is generally recognized by now and conventionally stipulated by the Third UN Conference on the Law of the Sea.¹²

Even after this however, the Russian Government, guided by ancient tradition, numerous domestic legislative acts, the efficient use of this area by the Russian people and

¹⁰ Collection of Treatises, Conventions and Other Acts Concluded by Russia with European and Asian Powers, as well as with the North-American United States. - St. Petersburg, 1845, 1985.

¹¹ Ibid.

¹² Part V of the 1982 UN Convention on the Law of Sea.

explicit or tacit international recognition of Russia's primacy, individually dealt with the legal regulation of navigation, trade, harvesting and research activities during the 19th century and the October period of the 20th century.

Amongst the many acts of legislation adopted at that time regulating to a greater or lesser extent the legal regime of the Arctic seas, of greatest interest are those which establish the outer limit of Russia's sovereignty in the sea areas of the European part of the Arctic. Among such acts there is an instruction elaborated by the Russian Naval Ministry which was handed over to all cruisers sent in 1891-1893 to patrol the Barents and White Seas and which, besides the prohibition for foreigners to engage in marine harvesting within the limits of the Russian territorial waters, declared the situation concerning the territorial waters' limits in the European part of North Russia designating their breadth as three nautical miles. Notwithstanding the fact that this instruction was not a legislative act of supreme Russian authorities and thus could not be considered as binding for foreign navigators, the Russian authorities in general proceeded from the assumption of the indisputable ownership by Russia of a considerable part of the areas of the Arctic seas adjacent to its coast in this region of the Arctic.

The secret *Instruction to the Vessels of the Military and Customs Outposts at the Shores of Finland* adopted in 1908 belongs to this series of legislative acts. In December 1909 the law *On the Extension of the Sea Customs Belt* was issued which established a 12-mile customs zone. This proposition became more concrete in the *Regulations Concerning the Individual Corps of the Frontier Guards* issued at the same time. The Regulations stated definitively that the Russian naval frontier authorities should exercise the functions of customs supervision within the territorial waters' 12-mile coastal zone in the North of Russia.

Consequently, the aforementioned legislative acts testify to the existence at the Russian State's northern shores and around its insular territories of a zone of territorial waters fixed by breadth - at first three and then 12 miles. The circular dispatch dated 20 September 1916 was one of the last documents adopted by the Russian Government during the pre-October period and concerning legal regulation of the Arctic waters regime. Its French text, sent to the governments of all large maritime powers, ran as follows:

Le grand nombre de découvertes et d'explorations géographiques dans la domaine des régions polaires situés au Nord de la côte Asiatique de l'Empire de Russie, dûes aux efforts des navigateurs et de négociants russes depuis des siècles, vient d'adoutir aux récents succès dont se termina l'activité du capitaine de frégate Wilkitski, Aide de Camp de Sa Majesté l'Empereur, chef de l'expédition hydrographique chargée en 1913 - 1914 de l'exploration de l'Océan Polaire du Nord.

Cet officier de la marine impériale russe exécuta en 1913 l'hydrographie de plusieurs sections étendues de la côte nord de la Sibérie et découvrit au 75 deg.45' une île, nommé au plus tard île du général Wilkitski; puis remontant; au nord découvrit des terres spacieuses, s'étendant au nord de la presqu'île Taimyr auxquels furent donnés les noms de Terre de l'Empereur Nicolas II, de l'île Tsésarevitche Alexei et de l'île Starokadomski.

Au course de l'année de 1914 le capitaine Wilkitski ayant fait de nouvelles et d'importantes constatations, a découvert une autre île nouvelle près de l'île Bennett. Le nom de Nowopachenni fut donné à cette île.

Le Gouvernement Impérial de Russie a l'honneur de uoti fier par la présente aux Gouvernements des Puissances aliées et amies l'incorporation de ces terres dans le territoire de l'Empire de Russie.

Le Gouvernement profite de cette occasion pour faire ressortir qu'il considère aussi comme faisant partie intégrante de l'Empire les îles Henriette, Jeannette, Bennett, Hérald et Ouyédinénié, qui forment avec les îles Nouvelle Sibérie.

Le Gouvernement Impérial n'a pas jugé nécessaire de joindre à la présente notification les îles Nowaia Zemlia, Kolgouew, Waigatch, etc. étant donné que leur appartenance aux territoires de l'Empire se trouve depuis des siècles universellement reconnue.¹³

With regard to the legislative stipulation of the Arctic area's status, certain succession is traced in the policy pursued by the Russian Imperial and the Soviet Governments. This fact is confirmed by the well-known Resolution of the Presidium of the USSR Central Executive Committee of 15 April 1926 which determined a criterion for ascribing to the territory of the Union of SSR lands and islands situated in the Arctic Ocean. (Appendix No. 1)¹⁴ This Resolution did not deal with the status of waters washing the lands and islands, which were the Resolution's case in point, and, consequently, by no way touched upon the question of the freedom of navigation in the Arctic waters.

In general, while tackling the issue of navigation in the Russian Arctic sector, one should bear in mind that in the given context freedom of navigation has never been mentioned. For many centuries, when Russia developed the Northern region and exercised control over the Arctic waters adjacent to its coast, the freedom of the high seas, about which ministries of foreign affairs appealed in their correspondence with Russia (concerning primarily Great Britain, Norway and the United States), always meant freedom of fisheries, freedom of hunting marine animals in the waters washing the northern coast of Russia and on the islands lying along the coast. In this case the urge to penetrate through the limits of Russian jurisdiction for purposes of marine harvesting was sometimes based (this is especially typical of the periods of domestic instability) on an attempt to exert pressure rather than on

¹³ "A large number of discoveries and geographical explorations in the polar areas to the north of the Asian coast of the Russian Empire, which had been done during several centuries as a result of Russian seafarers' and merchants' efforts, has been recently enriched by a new successful achievement, with which has ended the activities of aide de camp of His Emperor's Majesty, Captain 2nd rank Vil'kitskii, head of the hydrographic expedition which in 1913-1914 was commissioned with the exploration of the Arctic Ocean.

In 1913 this officer of the Russian Emperor's fleet carried out the inventory of several vast areas to the north of Taimyr Peninsula which were given the following names: Emperor Nicholas II Land, Cesarevitch Alexis Islands and Starokadamsky Islands.

In 1914 Captain Vil'kitskii carried out new important explorations and discovered one more new island near Bennett Island. That island was named 'Novopashenny Island'.

The Emperor's Government has the honour to notify herewith the governments of allied and friendly states about the inclusion of these lands into the territory of the Russian Empire.

The Emperor's Government avails itself of the opportunity to note that it regards the following islands also as an inseparable part of the Empire: Henriette, Jeannette, Bennett, Herald and Uyedinenije, which together with New Siberia, Wrangel Island and other islands form an extension of the continental territory of Siberia northward (underlined by the authors of the report).

The Emperor's Government did not deem it necessary to include the following islands in this notification: Novaya Zemlya, Kolguev, Vaigatch and smaller islands located off the European coast of the Empire, due to the fact that they have been acknowledged as part of the Empire for centuries."

A geographical map with the designation of the aforesaid places is attached to the above notification.

Published: Lakhtin V.L. "The rights with respect to northern polar areas' M.: the publishing house of the People's Commissariat for Foreign Affairs, 1928, Appendix N 1, p.43. with the Russian translation of the note attached.

¹⁴ For more details see pp.89-70.

arguments of a legal nature. In this manner attempts were made to argue against the establishment by Russia of 12-mile territorial waters and the control thereby over fisheries and hunting marine animals within their limits. A note of 4 April 1922 from the British Government to this effect ran as follows:

'In its note dated 15 March the Mission informed the People's Commissariat for Foreign Affairs that the Government of His Majesty could not agree that the British trawlers 'Magneta' and 'St. Hubert' arrested within the limits of this zone but beyond the limits of the 3-mile belt, were engaged in 'illicit fishing'.

The reply of the Commissariat No. 306 of 22 March, the content of which was handed over to His Majesty's Minister of Foreign Affairs stated that the Russian Government refused to support any claims based on the arrest of the above mentioned vessels and the death of their crew members, and cannot assure that such hindrances to British fishing vessels will not take place in future.

*In such circumstances the British Government has no choice but to take the necessary steps with a view to protecting British fishery interests in waters where the illegal arrest of these two vessels took place, and I have received an instruction from His Majesty's Minister for Foreign Affairs to inform You that measures are being taken to send without delay a British vessel the captain of which was instructed to take any measures necessary to prevent hindrances to British vessels engaged in fishing beyond the three mile territorial belt.'*¹⁵

In its return note dated 13 April 1922, the Russian Government expressed hope that the British Government would revise and cancel its totally unjustified instructions.

*'By failure to do so the only way for the Russian Government to protect the interests of the population living along the northern coast, for whom fishing has long been the main, and last year, owing to famine, was the only source of existence, will be to instruct naval vessels to escort patrol vessels guarding our northern territorial waters'*¹⁶

In 1923 a Norwegian auxiliary cruiser *Heimdal* was sent to the territorial waters of North Russia. Its task was to protect Norwegian fishing vessels illicitly acting within the 12-mile zone of Russian territorial waters¹⁷.

In autumn 1928 the British Government made an attempt to take measures which meant by their essence the extension of British jurisdiction to Russian sea areas. The statement of the British Government to this effect, handed over through the Norwegian Mission, ran as follows:

'At the request of the British Government the Norwegian Royal Mission has the honour to inform the People's Commissariat for Foreign Affairs that in connection with the resumption of fishing by British trawlers near the Murmansk coast, two

¹⁵ Documents of the USSR Foreign Policy, Vol. V,2. 1961. p.213.

¹⁶ Ibid.

¹⁷ Note of the Plenipotentiary of the RSFSR in Norway to Mykle, Norwegian Minister for Foreign Affairs, of 23 April 1923 (Documents of the Foreign of Policy the USSR, vol. VI. No 156. Pp.268-289

British inspection vessels, charged to exercise police surveillance and guarding, will escort the trawlers engaged in fishing.

This service will be executed in the same manner as has already taken place along the shores of Iceland and in remote waters.

*The British trawlers will arrive at the Murmansk coast by 1 October this year.*¹⁸

In summer 1929 the Soviet Government had to lodge a protest against violation by British vessels of the territorial waters of the Union of Soviet Socialist Republics and unlawful actions of the British trawler *PC-201* protected by a British naval vessel.¹⁹

The aforementioned example shows once again that the interests of foreign states in the seas adjacent to the Russian Arctic coast were focused not on the problems of navigation but lay within the issue of marine harvesting. As far as the status of the coast and insular territories comprising part of Russia is concerned, it has been not seriously argued against by any foreign power. There is only one exception in this respect: this is the case when the island Herald, situated 70 km west of Wrangel Island, was visited by the American whaling schooner *Herman* on 4 October 1924. The schooner was owned by the *Loman Brothers* firm from Nome (Alaska) which, according to the American press, had as its purpose declaration of the US 'rights' to the island of Wrangel.²⁰ A similar case was the expedition of the Captain Noise to this island which gave rise, in 1923 to diplomatic exchanges between the Soviet and British Governments.²¹ Therefore, during the century-long history of developing the North all measures taken in the Arctic by the Russian State (irrespective of the form of government existing at this or that stage of its development) were characterized by a consistent fight for the recognition of Russia's exclusive rights to the sea areas of the Arctic Ocean washing its coasts.

The comparative analysis of the applicable rules of international law incorporated in the 1958 *Geneva conventions on the law of the sea*, the 1982 *UN Convention on the Law of the Sea* and in other international documents leads to the conclusion that on the whole the international legal regime of the Arctic region is formed on the basis of principles and rules having common application for the entire World Ocean. In this area there are all categories of sea areas provided for by contemporary international law of the sea: internal waters, territorial sea, contiguous zone, economic and fishery zones, continental shelf, high seas and seabed areas situated beyond the shelf.

The general tendency towards spatial extension of the spheres of the coastal states' sovereignty and jurisdiction which was stipulated by the 1982 UN Convention on the Law of the Sea and which expressed itself in the legal stipulation of a 12-mile limit for territorial waters, introduction of a new institution - the exclusive economic zone extending to a distance of up to 200 nautical miles, establishment of new criteria for determining the outer limits of the continental shelf which makes it possible to have certain parts of it at the distance of up to 350 miles from the baselines, is also extended to the Arctic areas.

The seaways of the Northern Sea Route pass not only through the territorial sea but also through the exclusive economic zone, and sometimes, depending on ice conditions, through the areas of the high seas situated beyond this zone. This fact exerts great influence on

¹⁸ Documents of the Foreign Policy of the USSR, vol. XI, Moscow, 1966, p.515

¹⁹ Documents of the Foreign Policy of the USSR, vol. XII, Moscow, 1963, note 108, p.763.

²⁰ Documents of the Foreign Policy of the USSR, vol. VII, Moscow, 1963, note 85, p.722.

²¹ Documents of the Foreign Policy of the USSR, vol. VI, Moscow, 1962, pp.418-432

the legal settlement of questions concerning prevention, reduction and control of pollution of the marine environment from ships.

The 1982 Convention provides relevant jurisdiction to the coastal states with a view to protecting and preserving the marine environment from pollution in the exclusive economic zone. The volume of the coastal states' rights in connection with pollution from foreign ships depends on two major factors - location of the offending ship and gravity of offences. However, as far as the Arctic seas are concerned, the coastal states enjoy sufficient rights to take unilateral measures, irrespective of the general regulation. The 1982 Convention singles out "ice-covered areas" which are stipulated by the provisions of the Convention's Article 234.

By virtue of this Article,

"ice-covered areas" are areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance".

Such wording, without naming specific sea areas, nonetheless quite precisely determines spaces which can claim a status of "ice-covered areas". First of all, Arctic seas are undoubtedly meant here. The words that these areas must be covered by ice "for most of the year" mean that the seas freezing for a period of less than six months cannot be considered as such areas. It is quite evident simultaneously that the limit of six months does not need annual confirmation, but should be determined on the basis of average data on the presence of ice in these areas. Indeed, it would be illogical and practically unrealizable to change the legal status of pertinent sea areas depending on the specific ice conditions in this or that year.

Certain doubts, at first glance, may arise due to the words "within the limits of the exclusive economic zone": whether the participants in the III UN Conference meant to establish a special regime for the economic zone alone, leaving the territorial sea adjacent thereto under the general regime. Presumably, the aforementioned words might mean either the economic zone alone (excluding the territorial sea), or all sea areas situated coastwards of its outer limits. One can hardly doubt the fairness of the second interpretation of these words as in the opposite case one should recognize that the coastal state has more rights in its economic zone than in its territorial sea.

In the "ice-covered areas" the coastal state has the right to

"adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels".

This means that the coastal state may adopt national regulations (more strict than international ones) not only with regard to discharges and practice of navigation, but also in respect of any other questions, including design, construction, manning and equipment of vessels. Although the coastal state may hardly have the right to close such areas for navigation, it may exercise with their respect full control and, depending on meteorological or other conditions, temporarily prohibit or limit navigation along specific seaways. In that way, in "ice-covered areas" the coastal state is provided with somewhat broader rights as compared not only with the economic zone but also with the territorial waters.

Moreover, taking into account the special sensitiveness and vulnerability of the Arctic from the ecological viewpoint, a question may inevitably arise on declaring it a "special area", an "especially sensitive area" which means enhanced responsibility of Arctic-rim states for

environment protection and control over the ecological after-effects of any activity carried on within the limits of their jurisdiction which, naturally, does not exclude the need for large-scale co-operation in protecting the marine environment.

Such co-operation in taking preventive measures on a regional level manifested itself in the adoption of the *Declaration on the Protection of the Arctic Environment* which was signed in January 1993 in Rovaniemi (Finland). The Declaration provides for the strategy of protecting the Arctic environment, and the states that signed it - Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States - undertake to take appropriate measures with a view to its implementation and subsequent development.

The aforementioned facts would have been incomplete without a short review of legislative practice of foreign states adjacent to the Arctic region (Canada, United States, Denmark, Norway) relating to the establishment of the legal status of the Arctic and legal regulation within its limits of transportation and other economic activities. Such review allows to make a conclusion that the general legal regime of the region, isolated geographically and in the political and administrative respect, has been formed, and is also taking place in Russia, under the impact of a number of natural, historical, economic, demographic, military and political factors.

It has been earlier noted that access to the Arctic of people, vessels, all floating, flying and other mobile objects has been difficult at all times due to its remoteness from the centres of civilisation and owing to its climatic conditions extremely unfavourable for man's vital functions. Due to the same reasons, the very possibility for third, with regard to the Arctic, countries to advance territorial or any other claims for the Arctic areas, resources or uses for other purposes, including transportation ones, was virtually ruled out.

As far as the Arctic-rim states are concerned, the economic structures and interests of population which are closely linked with the spatial and resource potential of the Arctic, they have directed for many centuries ever increasing efforts along the lines of exploration, economic and cultural development of the region. This process was manifested in the fact that relevant countries came into possession and actually subordinated to their power land and sea areas, and also the legalisation of their ownership to continental parts, lands, archipelagoes and individual islands together with the waters of the Arctic Ocean washing them. The process took place both at the national and the international levels. As a result, all hitherto known land formations in the Arctic are covered by the jurisdiction of one of the states bordering on the Arctic Ocean - Denmark, Canada, Norway, Russia and the United States.

Nevertheless, special legislation, specifying the spatial sphere and the capacity of jurisdiction on the Arctic land territories, was adopted solely by Canada and Russia.

It should be emphasized that not a single Arctic area belonging to the Arctic-rim states has ever been officially claimed by any third state. In that way, the formed general legal status of the Arctic is characterized by the comprehensive and obvious legal priority of the region's states. It is also important to note the fact that the *status quo* which became firmly established in the region, is secured both by the legal acts of Arctic rim states and by international recognition - explicit or tacit.

Contemporary legal status of the Arctic sea areas adjacent to the Russian Arctic territories

The contemporary legal status of the Arctic Ocean sea areas adjacent to the Russian Arctic territories is based on the rules of international law formulated, in particular, by the *Geneva Conventions on the Law of the Sea* 1958 and the *UN Convention on the Law of the Sea* 1982, appropriate enactments of the USSR where they do not run counter to the Constitution and other legislation of the Russian Federation. The Russian laws proper in this field are in the process of being formed. This concerns both the laws establishing the legal regime of various kinds of sea areas, and the specific legislation that will regulate the activities in the Arctic.

In compliance with the aforesaid, the provisions of the *Law of the Russian Federation On the State Frontier of the Russian Federation* of 1 April 1993 and the *List of Geographical Coordinates of points Determining the Location of Baselines Measuring the Breadth of the Territorial Sea, Economic Zone and Continental Shelf of the USSR* (Resolutions of the USSR Council of Ministers dated 7 February 1983 and 15 January 1985), the internal waters of Russia at its northern coast incorporate, in particular, the waters of the White Sea, Cheshskaya and Baidaratskaya inlets, as well as the waters of straits separating from the continent the islands of Novaya Zemlya, Kolguev, Vaigach, Severnaya Zemlya, Anzhu, Liakhovskie and smaller ones, or separating these islands (land or archipelagos) between themselves (for more details on the legal status and regime of passage through the Arctic Russian straits see Part II below). Following the general rule, the Russian internal waters also comprise the waters of all coves and bays, the breadth of entrance to which does not exceed 24 nautical miles. The internal waters' status is fully determined by the sovereignty of the Russian Federation which establishes rules regulating the access of non-Russian warships and vessels to these waters' limits, the procedure of navigation and other questions relating to their presence in the internal waters of the Russian Federation.

By virtue of the provisions of the *Law on the State Frontier*, the breadth of the Russian territorial waters makes 12 nautical miles measured from the baselines drawn in compliance with the aforementioned *List of Geographical Coordinates*. Russia has sovereignty over these waters which is limited, in conformity with the provisions of the 1958 *Geneva Convention on the Territorial Sea and Contiguous Zone* (Section III) and the 1982 *UN Convention on the Law of the Sea* (Section 3, Part II) only by the right of innocent passage. Account taken of these conventional provisions and of the 1983 *Regulations for Navigation and Sojourn of Foreign Warships in the Territorial Waters (Territorial Sea) of the USSR, in the Internal Waters and Ports of the USSR* (Art.12), foreign warships exercise the right of innocent passage "... using sea lanes and traffic separation schemes, or along an earlier agreed itinerary".

The Decree of the Presidium of the USSR Supreme Soviet *On the Economic Zone of the USSR* dated 28 February 1984 declared the establishment along the country's coast of a 200-mile zone within which competent bodies are authorized to establish in areas covered by Art.234 of the 1982 Convention special mandatory measures for preventing pollution of the sea from vessels. In case foreign ships violate Russian legislation or the appropriate applicable international regulations, the same bodies have the right, within the economic zone limits, to take certain measures of an inspection nature, to institute proceedings or detain the offending ship.

The Decree of the Presidium of the USSR Supreme Soviet *On Strengthening the Protection of Nature in the Areas of the Far North and in the Sea Areas Adjacent to the Northern*

Coast of the USSR dated 26 November 1984 stipulated that navigation of ships and other floating facilities within the limits of sea reserves and other specially protected areas could be exercised only in cases provided for by special legislation.

As far as the continental shelf of Russia is concerned, the provisions of the Law of the Russian Federation on the Continental Shelf of the Russian Federation of October 25, 1995 are still in force. The Law contains a definition of the continental shelf as applied to the continental part and insular territories of the Russian Federation.

Straight baselines for measuring the outer limits of sea areas.

The breadth of territorial waters, contiguous zone, exclusive economic zone, continental shelf, i.e. of all kinds of sea areas in general, with respect to which the coastal state exercises full sovereignty, or has certain sovereign rights, or individual kinds of jurisdiction, is measured from baselines. The contemporary notions relating to the procedure of their establishment and employment are summarized in the *Geneva Convention on the Territorial Sea and Contiguous Zone* (section II, Articles 3-13) and in the 1982 *UN Convention on the Law of the Sea* (Part II, Articles 5-16).

A normal baseline for measuring the limits of all kinds of sea areas is the low-water line along the coast of a continent or island marked on large-scale charts officially recognized by the coastal state. In seas where low waters are practically absent, such line, in accordance with the custom and the legislative practice of the coastal states, is the line of a many-year level.

In localities where the coastline is indented and cut into or if there is a fringe of islands, as well as in the estuaries of rivers falling directly into the sea, the limits of sea areas may be measured from straight baselines joining corresponding points, the co-ordinates of which are established by the coastal state. As a rule, such geographical points as capes, islets, etc. located seawards to a longer distance than other land areas are chosen as such points.

Besides the above-mentioned provisions contained also in the *Geneva Convention on the Territorial Sea and Contiguous Zone*, the 1982 Convention incorporates a number of new regulations. They relate to drawing baselines around islands situated on atolls, or around islands having fringing reefs where the baseline is the seaward edge of the reef, and also in the areas where owing to presence of a delta or other natural conditions the coastline is highly unstable. In the latter case the baseline is established along the furthest seaward extent of the low-water line and later, due to the natural changes in the coastline, may be specified only on the basis of a special permission issued by the corresponding coastal state.

In drawing straight baselines, they must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters. The outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands are not considered as permanent harbour works. Roadsteads which are used for loading and anchoring of ships, irrespective of the extent of their remoteness from the baseline, are included in the territorial sea.

In drawing individual baselines, the coastal states are entitled to take into account their special economic interests in the given area if the presence and significance of such interests are proved by the long period of their realization.

In certain cases the Convention provides for drawing straight baselines to low-water elevations and around them. Where a low-water elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-tide line on that elevation may be used as a baseline for measuring the limits of sea areas. If a

low-tide elevation is wholly situated at a greater distance, it may not have a territorial sea, economic zone and continental shelf of its own. Drawing of straight baselines between the coast and the above-mentioned elevation is lawful only when lighthouses or similar installations which are permanently above sea level have been built on the latter, or when such elevations have received general international recognition.

In bays the coasts of which belong to a single state a straight baseline is drawn between the points forming a natural entrance to the bay if the breadth of this entrance between the low-water marks does not exceed 24 nautical miles. Such baseline is called a closing line. When the breadth of the entrance to the bay exceeds the said limit a straight baseline of 24 nautical miles is drawn within the bay in such a manner as to enclose the maximum area of water into the internal waters of the coastal state.

These rules, however, do not apply to the so-called "historic bays" the closing line of which may exceed the conventionally established limit of 24 miles. For example, a number of Norwegian coastal waters the outer limit of which is formed by straight baselines exceeding a 24-mile limit are regarded as its internal waters. The same is true with respect to Inderleia - the national ("historic") navigational route of Norway, the lawfulness of whose establishment and existence is fixed in the award of the UN International Court of Justice.

The 1982 Convention contains a provision providing for the employment of any combination of the aforementioned methods for measuring the limits of sea areas depending on which of them on a particular part of the coast a state regards as the most acceptable for itself.

The only limitation in establishing the system of baselines is that it may not be applied in such a way as to cut off the territorial sea or the exclusive economic zone of another state from the high seas.

It should be noted that the system of establishing baselines contained in the Convention is universal and in equal degree applicable in any part of the world's oceans. The Convention does not contain any provisions relating to the principles of sea areas delimitation that would specially concern the Arctic region.

All Arctic-rim states apply this system as a basis for their appropriate enactments establishing limits of their sovereignty and jurisdiction at sea.

For measuring the outer limits of sea waters washing the Arctic coast of Russia a system of baselines is used which is a combination of straight baselines and low-water lines that pass through the points established by the *List of Geographical Co-ordinates of Points Determining the Location of Baselines for Measuring the Breadth of Territorial Waters, Economic Zone and Continental Shelf of the USSR*. The List contains 424 points, including those through which there pass the lines joining capes, lying on the continental part of the country's northern coast, and the islands and islets (391 points), as well as points forming autonomous systems of baselines around the islands of Zemlya Alexandry (4 points), Zemlya Georga (14 points), Zemlya Gallia (4 points) which make part of the archipelago Franz Josef Land, the island Kolguev (2 points), the island Novaya Sibir' (6 points) and the island of Wrangel (3 points).

This system, being predetermined by the geographical features of the region, in its turn, stipulates such distribution of sea areas with various legal status (international sea waters, territorial sea, exclusive economic zone and continental shelf) which, in the long run, is the basis of the legal regime of the Northern Sea Route that might be regarded in the given context as a kind of a composition of sea areas of different legal nature which varies depending on specific hydrographic, meteorological, weather and ice conditions.

Regime of Historic uses.

The concept of "historic waters" emerged long ago as a result of the coastal states' need to secure the exclusive (from the viewpoint of ensuring the economic interests and national security) nature of their territorial claims during the delimitation of sea areas.

The legal doctrine lacks precise propositions regarding the existence of any rules of international law by virtue of which states have the right to declare certain sea areas historic. In the science of international law the concept of "historic waters" mainly meant the exposure, systematization and summarizing of criteria and arguments that are usually cited by states to substantiate their rights to certain sea areas that they annex to their territory.

As a result of general practice, rooted in the late XVIIIth century a customary international legal rule has been formed in compliance with which any state has the right to declare certain sea areas adjacent to its coast as its internal (territorial) waters on the basis of historic title.

For the first time the customary international legal rule concerning historic bays was stipulated by the *Geneva Convention on the Territorial Sea and Contiguous Zone* in compliance with which the historic bays, irrespective of the maximum breadth of their natural entrance, may be included in the internal waters (para.6, Art.7). Similar provision is stipulated by the 1982 *UN Convention on the Law of the Sea*. Certain narrowness of the conventional approach should be noted both in the list of waters which may be covered by the above-mentioned regime and in the regime proper as the legal category of "historic waters" may cover various areas adjacent to the coast of the appropriate state, including bays, straits, seas, etc. that are unequivocally expressed in the opinion of the UN Secretariat which has prepared for the first Geneva Conference on the law of the sea a special memorandum concerning "historic waters". The Memorandum emphasizes, in particular, that "the theory of historic bays has a common meaning". Historic rights are not only rights with regard to bays but also with respect to those sea areas that are not bays. Such are, for instance, water areas between the archipelagos' islands and the neighbouring continent. This also concerns straits, estuaries, etc. To cover all sea areas, "historic waters" are used more often than "historic bays".

The *Law of the Russian Federation On the State Frontier of the Russian Federation* (1993) specifies this provision. It reads that internal waters of the Russian Federation are the waters of bays, inlets, estuaries, seas and straits historically belonging to the Russian Federation the list of which is declared by the Government of the Russian Federation (Art.5, para.2). However, neither the 1958 Convention, nor the 1982 Convention contain rules formulated on the basis of criteria proposed by the international legal doctrine and elaborated by the states' practice. Notwithstanding the diversity of such criteria, it is possible to single out the compulsory minimum that is recognized as sufficient for substantiating the lawfulness of appropriate territorial claims. Among the requirements of mandatory nature there should be at least three criteria:

- first, effective and real exercise by the coastal state of its sovereignty over relevant sea areas;
- second, exercise of sovereignty should be continuous and protracted (from time immemorial);
- third, there should be a recognition (tacit or explicit) of the corresponding historic title on the part of the majority of states.

The international practice gives grounds to assume that if the coastal state with respect to any historic sea area stands out as a sovereign using all plenitude of its power, then these areas relate to internal waters where any exemptions from their legal regime (e.g. in favour of international navigation) may be effected only at the discretion of this state. When in such kind of a sea area traditionally or by virtue of existing contractual rules the right of innocent passage is recognized, then its legal regime is identical to the legal regime of the territorial sea. In certain areas of historic waters narrower special rights of the coastal state may be applied.

Historic waters, being part of the state territory, are covered by the sovereignty of the coastal state or of several states if the sea area's shores belong to two or more countries. In the latter case a regime of condominium may be introduced, i.e. the regime of joint exercise of sovereignty by countries adjacent to these bays. The fact that the exercise by the coastal state of its rights in historic waters under any circumstances should not hinder the international navigation is an essential proposition. This is why the states cannot claim the extension of their sovereignty to areas traditionally used as international seaways. Since the entire history of the Arctic development knows only exceedingly rare single cases of foreign ships' passage through the waters of the Arctic states, such waters cannot be considered as waters used for international navigation. Consequently, there are no grounds to say that in the given part of the world's oceans international navigational routes pass. Therefore, presence therein of coastal waters, ascribed to the category of historic ones, is justified. Moreover, the plenitude of control over navigation which may be practised in future, conditioned by the extension of sovereignty and jurisdiction of Russia to the waters of historic seas, bays and straits adjacent to its Arctic coast, will allow to harmonize the interests of international navigation emerging in this region with the ensurance of ecological security. This subject will be dealt with in more detail in the section devoted to the Arctic ice regime.

Legal Regime of the Arctic Straits.

In elucidating the status of the Arctic sea areas, of great importance is the regime of sea straits controlled by the Arctic-rim states.

The status of the straits situated in the coastal zone of Norway, including the area of the national Norwegian sea-route Inderleia, is similar to the legal regime of this country's internal waters. In other words, they are wholly covered by its sovereignty, although, notwithstanding this fact, Norway allows navigation therein for non-Norwegian commercial vessels and warships, with the exception of prohibited areas. The basis for establishing in these straits of the internal waters regime is the fact that they are separated from the outer sea spaces by lines from which the breadth of the territorial sea is measured.

A great number of coastal seaways in the Arctic pass through straits lying near Russian and Canadian coasts. Severe weather conditions, complicated ice situation and other circumstances limiting navigation in the Arctic seas do not allow to declare such straits as an integral part of seaways used for international navigation. The regime of waters within the straits' limits in the Arctic is determined by national legislation and special rules of navigation on the Arctic seaways.

The *Northwest Passage* passing through the straits of the Canadian archipelago and connecting the Seas of Baffin and Beaufort is limited by straight baselines and lies within the limits of the Canadian internal waters.²²

²² Arikainen A.I. In the Ice of the North-American Arctic. Stages of the Northwest Seaway Development.- Leningrad, Gidrometeoizdat, 1989. 214 p.

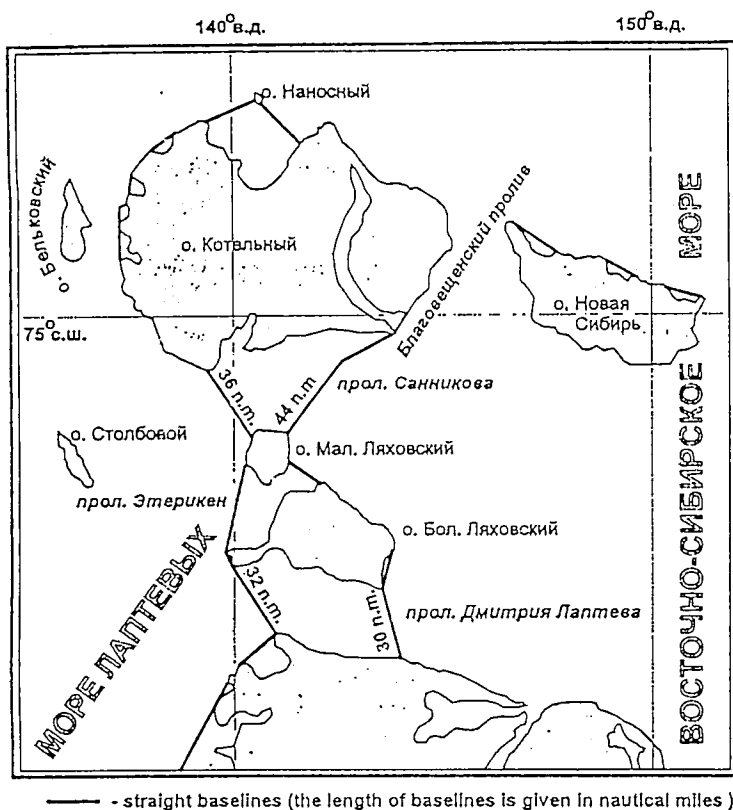


Fig. 5. The Sannikov and Dmitrii Laptev Straits

Beginning from 1 January 1986 Canada introduced for the straits forming the Northwest Passage a regime of internal waters, having established by a special enactment baselines limiting along the perimeter the entire Canadian archipelago and serving for measuring the breadth of the Canadian territorial waters and exclusive economic zone. Navigation of non-Canadian vessels through these straits is allowed provided that the passing vessels comply with Canadian legislation regulating pollution of the sea from vessels.

In a similar way, the entrances to the straits Vil'kitskii, Shokal'skii, Dmitrii Laptev, Sannikov and Eteriken are closed by straight baselines established in compliance with the *List of the Geographical Co-ordinates of Points Determining Baselines for Measuring the Breadth of the Territorial Waters, Economic Zone and Continental Shelf of the USSR* dated 15 January 1985.

Moreover, the waters of these straits, as well as those of the straits Iugorskii Shar, Karskie Vorota, Matochkin Shar, of the Red Army and others are situated within the limits of the Russian Federation's internal waters and territorial sea. All this testifies to the fact that on the whole the waters of the Russian Arctic straits lie within the limits of the territorial sovereignty of the Russian Federation.

The Arctic Ocean's straits that were formerly adjacent to the territory of the USSR and are now adjacent to the territory of the Russian Federation (as well as Canadian straits) cannot be regarded as straits used for international navigation for the entire Arctic history knows but single cases of passage through these waters of non-Russian vessels. Appearance in this area in the 1920s of foreign vessels, sometimes used as an argument in favour of the international nature of straits²³, was caused by the shortage of Russian tonnage for securing domestic car-

²³ Timtchenko L. The Legal Status of the Northern Sea Route. - In, Polar Record 30 (174). p. 197.

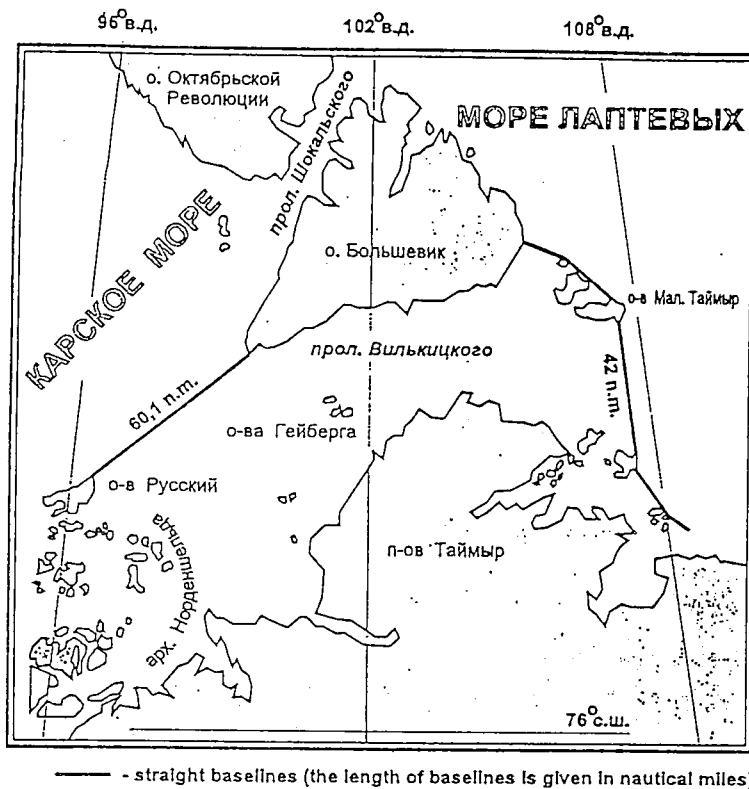


Fig. 6. The Vil'kitskii and Shokal'skii Straits

riages which, in turn, was a result of losses incurred during World War I, as well as by the internment and carrying off of Russian vessels abroad with the subsequent substitution of flag²⁴. For example, all vessels of the Voluntary Fleet established, as is known, for the purpose of reducing the expanding penetration of American industrialists into the areas of Russia's north-east and which before the revolution of 1917 made regular Arctic voyages, were carried off to foreign ports.²⁵

On the whole, the absence of grounds should be stated for asserting that in this part of the region there are international navigational routes and, in particular, seaways passing through the area's straits. Moreover, in their majority these straits, as mentioned earlier, covered by the internal waters of the Russian Federation, its territorial sea or economic zone. In combination with the severe navigational conditions typical of the entire region, but especially sensitive in narrow places, these circumstances are fraught with substantial risks of marine casualties which might be accompanied by marine environment pollution. The last factor lays special responsibility upon the coastal state predetermining in such a way the legal regime of the Arctic straits and making it completely dependent on the will of the Russian Federation. Finally, as a rule, seawards of the islands separated by such straits from the mainland, or between each other, there are areas of the high seas no less convenient for navigation; none of the said straits connects the areas of the high seas with the territorial sea of foreign states which could have been constructed in favour of foreign navigation through the straits.

²⁴ Denikin A. The March to Moscow/- In. White Movement, Beginning and End. -Moscow, Moskovskii Rabochii, 1990. P.173.

²⁵ Archives of the USSR Ministry of Foreign Affairs. Dobroflot-7625-44, 1921; Belov M.I. Soviet Arctic Navigation 1917-1932 - In: History of Discovering and Developing the Northern Sea Way. Vol. 3 - Leningrad: Morskoi Transport, 1959. p 29.

The above-mentioned circumstances testify to the lawfulness of extending to practically all straits of the Arctic's Russian part of a special legal regime excluding their uncontrolled uses by foreign ships, no matter whether this is a transit or innocent passage, as this is allowed by the 1958 Convention on the High Seas and the 1982 UN Convention on the Law of the Sea with regard to straits used for international navigation.

In view of the circumstances stated above, the Resolution of the USSR Council of Ministers of 27 April 1965 which introduces compulsory ice-breaker-assisted pilotage of all vessels in straits connecting the Kara, Laptev and East-Siberian Seas (Karskie Vorota, of the Red Army, Vil'kitskii, Shokalskii, Dmitrii Laptev and Sannikov) should be considered fully in line with the requirements of the international legal rules and the specific practice of the Arctic region.

An analogue for determining the legal regime of the Northern Sea Route may be the award of the UN International Court of Justice of 18 December 1951 concerning the Anglo-Norwegian dispute that regarded the Inderleia navigational route as part of the Norwegian international waters owing to the fact that this route was laid, developed and equipped exclusively by the efforts of Norway and also taking into account the absence of a negative response on the part of other countries to the Norwegian enactments stipulating such status.

Concept of Polar Sectors.

In the course of the historically protracted process of developing Arctic areas, discovering therein of new lands and islands, organizing numerous expeditions and exploiting natural resources in the Arctic, the spheres of interests of the Arctic-rim states have practically been delimited. In each state this process, naturally, took place first on the coast and then, on the basis of developed land areas, extended in the direction of the Pole, to the islands of the Arctic Ocean. In this manner a basis emerged of what later on received the name of a polar sectors concept.

Its essence lies in the fact that all lands and islands northwards of a state's Arctic coast within the limits of a sector formed by such coast and corresponding meridian lines crossing in the point of the Pole are considered as part of this state's territory. Simultaneously the coastal state reserves the right to declare its sovereignty to all lands and islands which might be discovered there in future. At the same time the concept does not concern the regime of sea waters and the air space within the sector. Principles and rules of international maritime and air law are in force here. Naturally, the sovereign land territories lying within the sector's limits have their own internal waters, a territorial sea, contiguous and exclusive economic zones, as well as a continental shelf. The state's sovereignty is also extended to their subsoil and the air space above such zones.

As far back as 1904, on the maps of Canada, for instance, such sector was marked between the meridians 141 and 60 degrees W. The declarations of Canadian officials many times explained that this sector determined the limits within which the Canadian Arctic lands and islands are situated, as well as the Canadian continent in the Arctic Ocean.

A similar position was reflected in the note of the Russian Government whereby in 1916 it informed the world community of the incorporation into the Russian territories of all lands making a northward extension of the Siberian continental platform.²⁶

The Soviet Union fixed its rights to the lands and islands within the polar sector by the Resolution of the Presidium of the USSR Central Executive Committee *On the Declaration of Lands and Islands Situated in the Arctic Ocean the Territory of the Union of SSR* dated 15

²⁶ The text of the note see on p. 13.

April 1926 in compliance with which the following territories were declared the territories of the Union of SSR:

"...all lands and islands which are already discovered or might be discovered in the future and which by the moment of the present Resolution do not constitute a territory of any foreign states recognized by the Government of the Union of SSR, situated in the Arctic Ocean northwards of the coast of the Union of SSR up to the North Pole within the limits between the meridian thirty two degrees four minutes five seconds western longitude from Greenwich passing along the eastern side of the inlet Vaida through the triangular marker on the Cape Kekurskii, and the meridian one hundred sixty eight degrees forty nine minutes thirty seconds of western longitude from Greenwich bisecting the strait separating the Ratmanov and Krusenstern islands of the group of islands of Diomid in the Bering Strait".²⁷

Exception was made for lands and islands which on 15 April 1926 were recognized by the Soviet Union as foreign territories. Such were the eastern islands of the Spitsbergen Archipelago situated between 32 and 35 degrees western longitude on which the regime established by the appropriate international treaty was extended.²⁸ The 1926 Resolution was accompanied by the following official statement:

"In connection with the Decree of the Presidium of the Union SSR Central Executive Committee published on 16 April this year on the notification of belonging to the Union of USSR of northern lands, our employee had a conversation on this subject with the business manager of the Council of People's Commissars N.P. Gorbunov.

Comrade N.P. Gorbunov said the following:

Lately an aspiration is being noted everywhere for settling the legal status of lands situated around the North and South Poles. An immediate impetus thereto there was the development of aeronautics and aviation owing to which the flights over the Arctic areas with a view to their scientific exploration has become possible and is already taking place.

In 1923 the local English colonial authorities were astounded by this Act having declared the annexation to the British Crown of a great number of lands lying on the Antarctic mainland proper.

In the most recent times the questions of belonging to polar lands became the subject of a rather heated dispute between the United States and Canada.

Each of these countries wishes to declare as own possessions polar lands lying northwards of the mainland territory of the given country but, in view of the protests on the part of other states, when rumours of such suppositions appear in the press, fail yet to implement this intention.

In connection with the discovery by the Russian sailors Vil'kitskii near the coasts of Siberia of the land of Nikolai II (Zemlya Svobody) and a number of other islands, the Tsar's government of Russia as far back as 1916 declared to all foreign governments that all these lands and islands were Russian possessions and simultaneously con-

²⁷ Foreign Policy of the USSR. Collection of documents. Vol. III (1925-1934). - Moscow: Gospolitizdat, 1945.

²⁸ Treaty on Spitsbergen (Svalbard Treaty) of 9 February 1920

firmed Russia's firm sovereign rights to other lands and islands lying along its northern coast.

In connection with the encroachment of foreign predators to some of the Soviet islands in the Arctic Ocean (The Wrangel Islands) the People's Commissariat for Foreign Affairs in its declaration dated 4 November 1924 declared that the Soviet Government confirmed the belonging to the RSFSR of all lands and islands constituting the northern prolongation of the Siberian continental plateau. As an extreme eastern limit of waters which this declaration concerns the 167 degree eastern longitude was taken, i.e. the line established by the Treaty concluded in 1867 between Russia and the North American United States during the sale of Alaska to America. This line passing down the middle of the Bering Strait goes into the sea in the direction of the Pole.

Such was the situation with the question of the ownership of the northern lands up to the present time.

As already mentioned, the Soviet Government has already fixed the stability of sovereign rights of the Union of the SSR to all lands and islands situated at the northern coast of Siberia.

However, it seems insufficient in the present day situation for, on the one hand, the notification of the People's Commissariat for Foreign Affairs of 1924 concerned only the Asian part of the USSR and, on the other hand, it meant only those lands and islands that were a direct continuation of the Siberian continental platform. According to the latest assumptions of scientists, although the North Pole has no hard soil around it, the possibility of the existence of land in certain places under the ice layer in the Arctic region is not excluded. Only appropriate explorations may verify these assumptions that should be expected in the near future.

At the present time the Government of the USSR considered it necessary to declare the belonging to the SSR of all lands lying northwards of the territory of the Union along the neighbouring meridian up to the crossing of these meridians at the Pole, with the exception of lands earlier recognized by the Government of the USSR as belonging to other states."²⁹

As to the eastern boundary of the Russian Arctic sector, its origin is sanctified by its nearly 130-year history and it remains unchanged to this day. In the *Treaty for Ceding of the North-American Colonies of Russia, concluded between Russia and the North-American United States in Washington on 18(30) 1967*, it was defined as a line which

"passes through a point in the Bering Strait under sixty five degrees and thirty minutes northern latitude in its crossing by the meridian separating at an equal distance the islands of Kruzenstern, or Ignaluk, from the island of Ratmanov, or Nunarbuk, and goes limitlessly along a straight line to the North until it is lost in the Arctic Ocean."

The main idea running through the Resolution and explained in the statement accompanying it consisted of the following. Carrying and developing the century-long tradition of developing the northern geopolitical line in the direction of the Arctic Ocean with a base on its own Arctic coast, Russia limited the extension of its sovereignty by the meridians crossing at the North Pole. The meridians were drawn from the points of Russian boundaries going out into the areas of the northern seas. Traditional formulas were used on the inclusion into the

²⁹ The "Izvestia of the of the Central Executive Committee and the All-Russian Central Executive Committee" of 18 April 1936 No. 87 (2728) to the Notification of the belonging of northern lands to the Union of SSR.

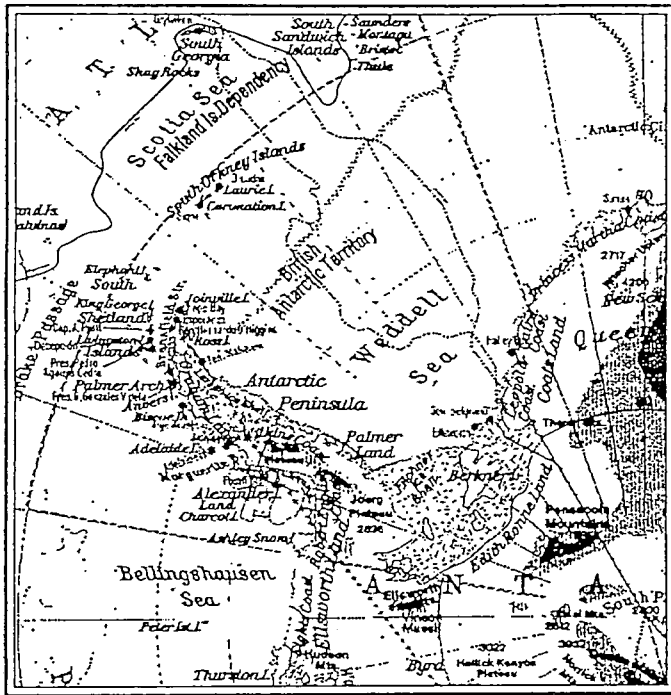


Fig 7. Territorial claims of Great Britain in the Antarctic. Fragment of the Purnell's Illustrated World Atlas. 1983.

territory of lands and islands, lying within certain geographical limits, "both discovered and which might be discovered in future" which were also used, for example, in the first and second bulls *Inter Coetera* of the Pope Alexander VI published in May 1493 and in the 1494 *Tordesillia Treaty* between Spain and Portugal which established the spheres of these states' influence. The international situation that existed in the region by the time of publication of the above-mentioned documents was also taken into account.

The direct link with the continental part of the territory, both economic and geological (in the case of Russia for example all lands and islands which are subject to the extension of territorial supremacy, are the direct continuation of its Siberian continental plateau) predetermines the fundamental difference between the problem relating to the extension of the Arctic-territorial claims in the area of the South Pole. The anxiety with respect to the latter is clearly expressed already in the statement of 1926 when the status of the Antarctic region was not yet elaborated and fixed by an international agreement.

At the present time, notwithstanding the existence of the 1959 Antarctic Treaty which entered into force on 23 July 1961, Article IV of which froze all territorial claims for the period of its validity, the territorial claims with regard to land areas of this continent on the part of a number of states are permanently confirmed. The lines demarcating the claimed territories are also designated as lines of state frontiers on the maps of mass publication intended for general use and educational purposes (Fig.7-8).

The mass nature of publications and the fact that some of them are intended for educational purposes is an objective factor aimed at the formation of corresponding public opinion. the same aims are, probably, pursued by issuing special postage stamps for the Antarctic territory (fig. 9).

As far as polar sectors are concerned, the lines determining their lateral limits, are not state frontiers. However, the special nature and significance of the Arctic seas for the coastal state gives grounds to regard the polar sectors as zones of their economic and defence

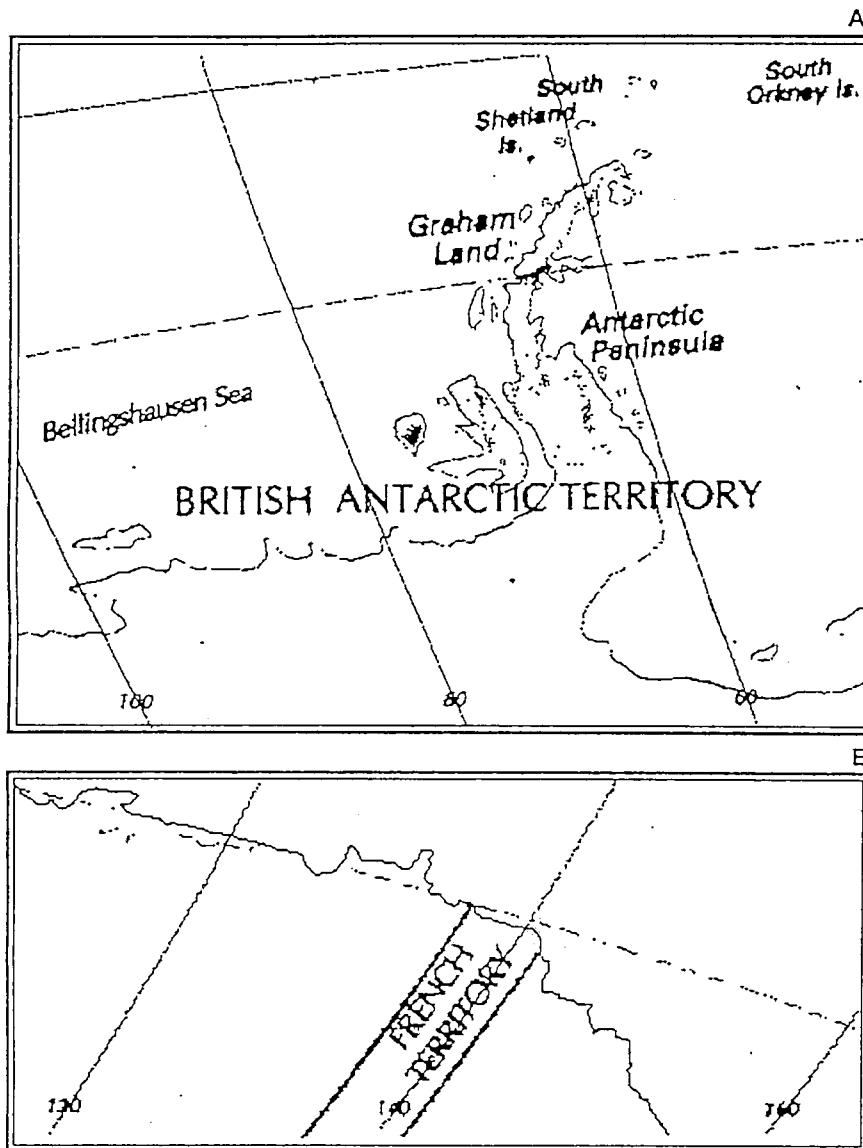


Fig. 8. Territorial claims in the Arctic. Fragments of the map published in Denmark (8A - Territories subject to claims on the part of Great Britain (marked on the map as British Antarctic territory, 8B - Territories subject to claims on the part of France (marked on the map as French territory)

interests, and to use the corresponding meridians for delimitation of exclusive economic zones and national continental shelves in this area as provided for by the 1982 Convention.

It is exactly these considerations that were underlined in the *Agreement between the USSR and the United States on the Line of Delimiting Sea Areas* signed in Washington on 1 July 1990. Article 1 of this Agreement runs as follows:

"1. The Parties agreed that the line described as "western boundary in Article 1 of the 1867 Convention and as it is defined in Article 2 of the present Agreement is the line for



Fig 9. One of the postage stamps issued for British Antarctic Territory

delimiting sea areas between the Union of Soviet Socialist Republics and the United States of America.

2. Each Party will observe the line of sea areas delimitation as limiting the confines of its jurisdiction of a coastal state, which if otherwise provided, would be allowed by international law for any purposes".

In a similar way the limits of the Canadian jurisdiction in the Arctic areas are established. In particular, in 1982 an official map was published on which the boundary of the Canadian Arctic sector was marked by a line usually used for designating a state frontier. In the opinion of Canada, the delimitation line in the Baffin Bay must pass along the meridian of 141° W, i.e. along the line of the Canadian sectoral boundary. The same meridian also serves as a limit of the special employment of the 1970 law on the prevention of pollution of Arctic waters adjacent to the continent and islands of the Canadian Arctic.

On the whole, the legal regime of sea areas within polar sectors is determined on the basis of the rules of the international law of the sea and with due account of those specific features that are typical exclusively for this part of the world's oceans, which was reflected, in particular, in the frequently cited Article 243 of the 1982 Convention.

The Arctic ice regime

In compliance with the contemporary notions that had been formed in the international law of the sea and by the determined tendencies, the hard aggregate state, in which the water is in the polar regions of the Earth (ice), does not predetermine the extension of sovereignty, sovereign rights and jurisdiction of states, the coastal waters of which permanently or for most of the year remain in such state. Nevertheless, exerting certain influence on the activities of man in the above-mentioned areas, it should be (and it is) taken into account in formulating the legal regime regulating such activities. The impact of ice, determined by its physical properties, may, depending on the specific purposes of activities, hinder or promote their implementation, or exert on it an indirect influence as a factor determining the dynamics of a natural process.

The fast shore ice is stationary sea ice edging the shores of the freezing seas. It is formed by means of natural freezing of water, or as a result of freezing to the shore of drifting ice. In the seas of the Russian Arctic the breadth of the fast shore ice varies within the limits of 20-30 kilometers in the Chukchi Sea and up to 300 kilometers in the East-Siberian Sea. The fast shore ice substantially affects the speed of coastal navigation, creates additional loads on

drilling platforms, mooring structures, etc. It is often used for transportation of cargoes and as a platform for oceanological works and geological prospecting on the continental shelf.

Being a kind of the prolongation of the coastal state land territory, the fast shore ice, nonetheless, does not affect the passage of baselines. The limits of its extension and configuration of the outer edge are subject to big seasonal changes which makes it unsuitable for using as a base for measuring the length of sea areas the limits of which should be easily determinable and stable during a long historical period. In this respect it differs in principle from the areas of river deltas and estuaries where the coastline is also unstable but the general tendency of its changes has an anisotropic nature which makes it possible for the coastal state to periodically specify the passing of the low-water line taking straight baseline still further and further from the coast (para.2, Art.7 of the 1982 Convention is the actual case in point). "Other natural conditions" mentioned in this paragraph cannot be interpreted in favour of the fast shore ice.

The contemporary international law of the sea does not contain any indications as to whether the presence of artificial ice moorages affects the determination of the limits of the territorial sea. The decision of this question, perhaps, depends on to what extent they may be considered as "permanent port structures" that are an integral part of the given port's system and, consequently, may be considered as part of the coast in compliance with the provisions of Article 11 of the *UN Convention*.

As far as artificial ice foundations for placing thereon of stationary drilling platforms and similar constructions are concerned, they may be classed as artificial islands, structures and installations. At the same time they will not have a status of islands, their own territorial sea, exclusive economic zone or continental shelf. The coastal state will exercise its exclusive jurisdiction with regard to their personnel and equipment.

In a similar way, the flag state will exercise its jurisdiction with regard to scientific and other stations situated on the drift ice.

The regime of the ice-covered areas will be determined by the regime of water lying beneath them and in no way is it associated with the regime of waters which acquired this aggregate state. For example, the sovereignty of the corresponding coastal state will extend to ice-fields formed in the territorial sea but only when they lie within the limits of the sovereignty of the state concerned. Should they, owing to drifting, get into the waters of the high seas, they will be accessible for use by any interested state. At the same time, being a hard substance, ice can demonstrate certain properties typical of land. These properties may have both physical and legal nature. First of all, this concerns the right of innocent passage which is recognized for vessels navigating through the ice-covered areas and which cannot be recognized in cases when the transit is effected on the ice surface by other means of conveyance. In the Russian Federation the regime of using means of conveyance on the ice surface within the limits of internal sea waters and territorial sea is determined on the basis of the *Law of the Russian Federation On the State Frontier of the Russian Federation* of 1 April 1993. The relevant competent authorities of the Russian Federation may establish such a procedure by which the departure of such means of conveyance from the points of basing and return to such points is communicated to the Frontier Troops; limit the time of departure, the time of staying on the ice, the distance between the points of basing and the coast.

More details on the procedure and regime of using the means of conveyance on the ice surface are given in the *Resolution of the USSR Council of Ministers No 565 of 1 June 1990 On Measures for Ensuring the Fulfilment of the Decree of the Presidium of the USSR Supreme Soviet dated 26 November 1984 "On Strengthening Nature Protection in the Areas of the Extreme North and Sea Areas Adjacent to the Northern Coast of the USSR"*.

The Resolution, in particular, stipulates that the establishment of the routes of conveyance along the ice surface within the limits of the sea areas of preserves and reserves, other specially protected territories and their protected zones is effected by ministries and departments under whose authority such specially protected territories are, and by agreement with the Administration of the Northern Sea Route, the Committee of State Security of the USSR and the Ministry of Defence of the USSR (Art.3).

The state bodies and officials are empowered with the right to stop and examine transport facilities moving on the ice surface within the limits of the sea areas of preserves, reserves, other specially protected territories and their protected zones adjacent to the northern coast of the USSR (para.11б); to examine on their board the required documents (para. 11в); as well as to detain such transport facilities and take them to one of the Russian ports in case of violation by them of the established rules of conveyance on the ice surface (para.11д).

The ice means of conveyance, engaged in conducting scientific research in sea areas adjacent to the northern coast of Russia, may be detained in case they lack the permission of corresponding competent bodies to conduct such research (para.11д).

Illicit discharge of polluting substances, when there is evidence and objective proof that such an offence caused grave damage or threat of damage to the Russian coast, to the interests associated with this coast, or any resources of the territorial waters of Russia, its exclusive economic zone, or continental shelf may also be grounds for detaining the ice means of conveyance (para.11д).

Presence of ice not only exerts influence on the terms of navigation, it is also a factor directly influencing its safety. The minimization of such factor's impact is achieved by the establishment of a special regime of navigation in ice conditions secured, in particular, by the organization of icebreaker-assisted pilotage. In the Russian Federation icebreaker-assisted pilotage is effected in compliance with the provisions of *General Regulations for Navigation and Anchoring of Vessels at Sea Ports and at the Approaches Thereto* put into force on 1 June 1993.

Much attention to securing safety of navigation on the seaways of the Northern Sea Route is paid in the aforementioned *Regulations for Navigation on the Seaways of the Northern Sea Route* 1991.

The provisions concerning navigation in the Arctic areas are transpierced by the ideas of the *Decree of the Presidium of the Union of SSR Supreme Soviet On Strengthening Nature Protection in the Areas of the Extreme North and Sea Areas Adjacent to the Northern Coast of the USSR* of 26 November 1984. Its provisions, as stated in the Preamble, proceed from the fact that in the areas of the Extreme North and in sea areas adjacent to the Northern coast of the USSR the severe weather conditions (shortage of heat and light, long period of the snow and ice conservation, permafrost) cause great vulnerability of the natural objects and a protracted period needed for the rehabilitation of the disturbed ecological systems and, consequently, make great demands regarding measures for environmental protection.

Paragraph 3 of this Decree, directly concerning the problems of navigation, runs as follows:

"in the sea areas adjacent to the North coast of the USSR, where particularly severe climatic conditions and the presence of ice create obstacles or enhanced danger for navigation, and the pollution of the marine environment could cause major harm to the ecological balance or irreversibly disturb it, the competent Soviet authorities establish special regulations for navigation of vessels and other floating means. These regulations provide for enhanced requirements to the construction of vessels and other floating means, to their equipment and supply, manning and skills of the crew, prohibition of

navigation without pilotage or other leading, establishment of periods and areas closed for navigation, as well as other measures securing the safety of navigation and prevention, reduction and control of the marine environment pollution".

These provisions of the Decree that currently form part of Russian legislation concerning northern regions of the country, were formulated with due account taken of environmental ideas formed contemporarily and stated in Article 234 of the 1982 Convention. As noted above, Article 234 is the only article relating to the Arctic regions and imparting the coastal states with the right

"to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence".

The laws and regulations adopted in compliance with this Article naturally establish (as has been done in the aforementioned Russian laws) enhanced requirements with respect to the standards of the vessels' design, their construction, equipment and manning which sometimes causes differences of opinions. Nobody doubts, however, that navigation in ice-covered areas makes high demands of both the vessels themselves and their operators. At the 1971 Conference on the Arctic Ocean it was plainly said that "in future in the formulation of any regime, among the objects under control might be the following:

1. Appropriate construction of vessels and equipment of vessels.
2. Appropriate navigational instruments.
3. Appropriate requirements to the vessels' commanders.
4. Convenient rules of navigation, e.g. recommendations regarding the itineraries and maximum speed, requirements with regard to navigation officers and pilots. ...
- 7... Liability and enforcement measures.

Such regime, seemingly tough at first glance, should not be accepted as limitation of the freedom of navigation for it is aimed at the preservation and development of the unique Arctic ecological systems, protection of its environment from pollution and artificial destruction which is the duty of an Arctic-rim state and for which it is liable before the world community and the generations to come.

Legal regime for the access of vessels to the Northern Sea Route

The Northern Sea Route (NSR) is a rather complicated communication organism; it passes from the Kola Bay in the West up to the Bering Strait in the East. On the one hand, the NSR is the major national sea route of Russia in the Arctic, the most important element of the infrastructure of the Extreme North's economic complex and a communication link between the Russian Far East and the country's western areas. It unites the largest riverways of Siberia into a single transport net.

On the other hand, there are potential possibilities to use its individual seaways for international carriages between the countries of Europe, Asia and America. However, the remoteness of the outlying Siberian seas from the world's trade routes, as well as the complicated ice conditions typical of these areas, explain the fact that these routes have practically never been used for international navigation.

Navigation in their waters depends completely on the functioning of Arctic stations and numerous services organized as far back as in the time of the Soviet power for securing safe navigation. The circumstances of historical nature are also of certain significance. They relate to the contribution of Russian and Soviet states to the exploration, development and equipment not only of the NSR as a main transportation line but also of the part of the Arctic adjacent to it, where continental and insular territories belonging to Russia are situated. The legislative acts issued in Russia also have as their purpose facilitation of navigation in the Arctic areas and ensurance of its due safety. Moreover, they elucidate the problem of the NSR definition and make it possible to remove a number of uncertainties relating to the incorrectness of the term's use and quite often - substitution of this term by another: North-Eastern Passage, or Northeast Passage.

In particular, the *Regulations for Navigation on the Seaways of the Northern Sea Route*, published in 1990, contain the following wording:

"1.2. The Northern Sea Route - the essential national transportation line of the USSR that is situated within its internal waters, territorial sea (territorial waters), or exclusive economic zone adjacent to the USSR Northern coast and includes seaways suitable for leading ships in ice, the extreme points of which are limited in the west by the western entrances to the Novaya Zemlya Straits and the meridian running north through the Cape Zhelaniia and in the east (in the Bering Strait) by the parallel 66 degrees N and the meridian 168 degrees 58 minutes and 37 seconds W."

Consequently, the NSR is characterized by the presence of three components determining its definition:

- **geographical** - determining its location strictly set by its west (the western entrances to the Novaya Zemlya Straits and the meridian running north through Cape Zhelaniia), east (the meridian 168 degrees 58 minutes and 37 seconds W) and (Northern Coast of Russia and the parallel 66 degrees N in the Bering Strait) boundaries. The north boundary of the NSR varies considerably as the Route includes both coastal seaways and the seaways that pass at high latitudes, as well as near the Pole (Fig.10);
- **international legal** - fixing the passing of its seaways through waters having different international legal status (internal waters, territorial sea, waters of the exclusive economic zone) and

- *legislative* - the essence of this component consists of the fact that as soon as the NSR is a national waterway lying in its largest part within Russian sovereignty and jurisdiction, access thereto and use thereof are regulated by acts issued by the bodies of the Russian Federation having adequate competence.

Accordingly, the *Northeast Passage* means an aggregate of seaways which can connect the ports of Europe, Asia and America and which pass outside Russian waters and are not the Northern Sea Route seaways.

The legal regime of the access of vessels to the Northern Sea Route and navigation by its seaways is based, therefore, on the provisions of Russian legislation dealing with the regulation of access and activities in such areas as internal waters, territorial sea and exclusive economic zone, for the aggregate of its seaways, no matter within what limits it might vary, as a rule, is fully situated in waters covered by the sovereignty or jurisdiction of the Russian Federation.

The fact that individual parts of the NSR seaways in this or that period of time may lie in the high seas beyond the limits of the economic zone does not affect the integrity of this transport communication as the presence of a floating transportation means in such areas is impossible without a preliminary or subsequent crossing of Russian waters.

The totality of the above-mentioned factors undoubtedly makes it possible to class the Northern Sea Route as a national transport communication of Russia. It is the last circumstance that testifies that Russia has exclusive rights to establish and regulate the regime of using both the Route as a whole and its individual seaways.

As already mentioned, current access to the Northern Sea Route is regulated by the *Regulations for Navigation on the Seaways of the Northern Sea Route* confirmed by the Minister of Merchant Marine of the USSR on 14 September 1990 and put into force from 1 July 1991.

In compliance with this document access to this communication route is open for vessels of any nationality on a non-discriminatory basis. Access is exercised under the control of special Russian navigational services - Marine Operations Headquarters acting on the basis of the Murmansk and Far East Shipping Companies and by way of subordination linked with the Administration of the Northern Sea Route (Administration).

The owner or master of a vessel intending to navigate through the Route submits to the Administration a notification and request for leading through the Route in compliance with the form and time stated in the *Guide to Navigation through the Northern Sea Route*. To navigate the Northern Sea Route, a vessel should satisfy special requirements while the master, or the person that performs his duties, must be experienced in operating the vessel in ice.

In cases where those persons have no such experience, the Administration may assign a state pilot to the vessel to assist in leading it.

One of the necessary conditions for allowing a vessel to navigate the Northern Sea Route is the presence on board of a certificate of due financial security with regard to the civil liability of the owner for damage inflicted by polluting the marine environment.

Control is exercised over vessels navigating the Northern Sea Route's seaways. In cases where unfavourable ice, navigational, hydrographic, and other conditions occur, especially where there is a threat of pollution, representatives of the State Bodies, authorized to that effect, may carry out an inspection of the vessel. Inspections may include examination of documents certifying that the vessel complies with the special requirements, cargo documents and, depending upon the particular circumstances, direct examination of the vessel's condition, her equipment, facilities, technical navigational instruments, and readiness to fulfil requirements concerning prevention of marine pollution. In his turn, the master of the vessel is

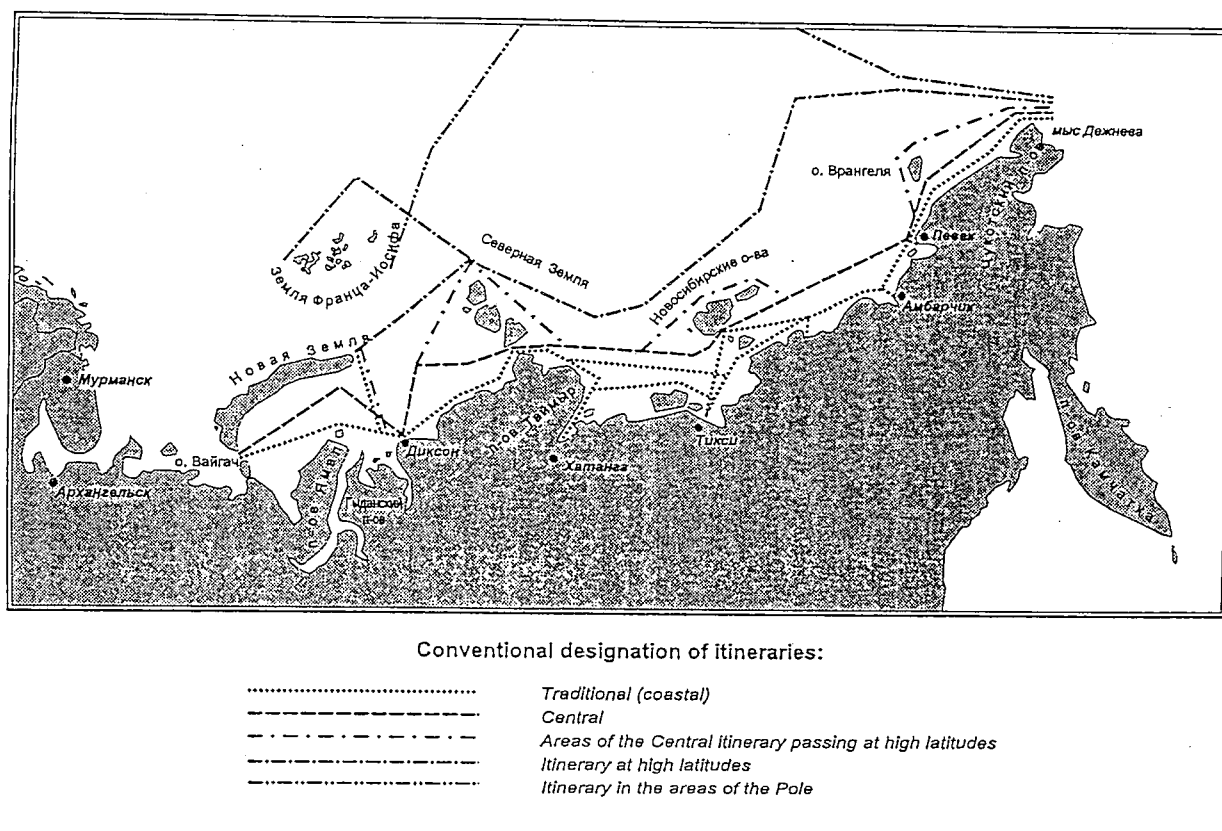


Fig. 10. Scheme of the Northern Sea Route's Seaways.

obliged to render necessary assistance to the Administration's representative in order that the examinations are completed in the most comprehensive and prompt way.

The leading of vessels through the seaways of the Northern Sea Route is performed during the navigational period the beginning and end of which are determined by the Administration and Marine Headquarters taking into account predictions and the actual state of ice, navigational, hydrographic, weather, and other conditions. A vessel that has been admitted for leading should navigate following the seaway that has been assigned for her and keeping to the routes recommended by the Marine Operations Headquarters.

The master of a vessel navigating the Northern Sea Route is obliged to carry out orders from the Marine Operations Headquarters concerning correction of the route due to changes in ice conditions and occurrence of other circumstances capable of affecting safety of navigation to bringing about a threat to the ecological situation. Proceeding from the need to ensure safety of navigation and for the purpose of providing the most favourable navigating conditions, the Marine Operations Headquarters prescribes one of the following types of leading as determined by the circumstances:

- leading along recommended routes up to a certain geographical point;
- aircraft-assisted leading;
- conventional pilotage;
- icebreaker leading;
- icebreaker-assisted pilotage.

The Marine Operations Headquarters are entitled to substitute one type of leading for another.

The Master of the vessel navigating the Northern Sea Route must maintain contacts with the Radio Centre of the appropriate Marine Operations Headquarters, depending upon the geographical position of the vessel.

Should it be required by navigation safety or environmental security considerations, the Administration or the Marine Operations Headquarters may suspend navigation in individual sections of the Northern Sea Route for the duration of the circumstances that necessitated the suspension. Vessels not complying with the Regulations' provisions may be expelled from the Northern Sea Route. The direction of the vessel's expulsion is determined by the Marine Operations Headquarters with due respect for the safety of the said vessel, its crew and cargo, as well as for required environmental measures.

The Administration and the Marine Operations Headquarters are not liable for any damage that may be incurred to the vessel or its cargo in the course of ice conveyance, should it not be specifically proved that the said damage was incurred by their own fault. In addition to the already existing requirements concerning the notification of pollution of the marine environment, the master of a vessel steering in the Northern Sea Route must immediately notify a representative of the Administration about any discharge of pollutants made or discovered by his vessel.

Conclusion

1. Notwithstanding the fact that no legislative act of Russia used or uses at present the term "Arctic or northern polar sector", the meridians mentioned in the Resolution of the Presidium of the USSR Central Executive Committee On Declaring as the Territory of the Union of SSR of Land and Islands Situated in the Arctic Ocean dated 15 April 1926, in combination with the northern coast of Russia form a sector in the geographical meaning of the word. It is this sector that is drawn on geographical maps, and its boundary is designated by a line differing from the line used for designating the state frontier.

It should be especially emphasized that both the Russian Federation and its historical predecessors never extended their sovereignty to the sea and air spaces lying within its limits. The sovereignty covered only lands and islands, both discovered and which may be discovered in future. It is clear, therefore, that beyond the 12-mile breadth of the territorial sea freedom of flight and navigation is preserved. The essential peculiarity of navigation in this area is the presence here of a special seaway - the Northern Sea Route, that is characterized by a special regime of navigation and that can pass through various sea areas - internal and territorial waters, the economic zone. In these areas navigation of foreign vessels is possible, but only if such vessels comply with the Regulations for Navigation on the Seaways of the Northern Sea Route (1991). Moreover, in these areas Russia has the right to establish, for the purpose of environmental protection, stricter laws and regulations than are provided for by international standards (for more details see above), as stipulated by the provisions of Art. 243 of the 1982 Convention on the Law of the Sea.

2. The opening of the Northern Sea Route for foreign vessels is directly linked with the prospects of international co-operation in the field of its further development. The legal aspects of such co-operation can develop along various lines among which co-operation in elaborating and settling legal issues within the Council on the Barents Sea and its working group on the Northern Sea Route, the Arctic Initiative, the Declaration on the Arctic Environment Protection and others might give the best results.

3. The system of straight baselines (in combination with regular baselines) established along the Russian coast serves as a basis for determining the length of various sea zones, with regard to which the Russian Federation exercises its sovereignty (internal sea waters, territorial sea), or has certain kinds of sovereign rights and jurisdiction (contiguous and exclusive economic zones, continental shelf). The system is based on the generally recognized principles and rules of international law. Introduction of this system did not alter the actual situation in the region and it should not be regarded, therefore, as a factor limiting the freedom of navigation in the polar waters. On the other hand, incorporation into the internal waters of a number of Arctic areas should not also be regarded as limitation of the freedom of navigation as these areas have never been used for purposes of international navigation. Due to the same reason, there are no grounds to assume that the provisions of the 1958 Geneva Convention on the High Seas and of Part III of the 1982 UN Convention on the Law of the Sea are in force in the Arctic straits for they also have never been used for international navigation.

4. The 1991 Regulations for Navigation on the Seaways of the Northern Sea Route organizationally regulate the procedure of passage of vessels of all flags along the Arctic coast of Russia and facilitate access to its seaways. Any vessel accepted for pilotage along the NSR automatically gets the right of passage through all areas of the Russian internal and territorial

waters lying on its itinerary. However, to meet the application for passage, compliance by the vessel and its crew with specific technical and qualification requirements is needed. In case a vessel had been carrying out a transit passage through the Russian Arctic waters without the knowledge of the NSR Administration, it would have been subject to enhanced risks resulting from navigation in ice and faced with the need to obtain permission for crossing each of the aforementioned sea areas under Russian control.

List of the sources

- (1) Collection of the Russian Imperial Historical Society. Vol. XXXVIII/ St.-Peterburg, 1883. P.9
- (2) Collection of Treatises, Conventions and Other Acts Concluded by Russia with European and Asian Powers, as well as with the North-American United States. - St.- Peterburg, 1985.
- (3) Part V of the 1982 UN Convention on the Law of Sea.
- (4) The Note of the Plenipotentiary of the RSFSR in Norway to Michle, Norwegian Minister for Foreign Affairs, of 23 April 1923 (The Documents of Foreign of the USSR, vol. VI. No 156. Pp.268-289
- (5) Documents of the Foreign Policy of the USSR, vol. XII, Moscow, 1963, note 108, p.763.
- (6) Arikainen A.I. In the Ice of the North-American Arctic. Stages of the Northwest Seaway Development.- Leningrad, Gidrometeoizdat, 1989. 214 p.
- (7) Timtchenko L. The Legal Status of the Northern Sea Route. - In, Polar Record 30 (174). p. 197.
- (8) Denikin A. The March to Moscow/- In. White Movement, Beginning and End. - Moscow, Moskovskii Rabochii, 1990. P.173.

DONAT PHARAND, Q.C., S.J.D., F.R.S.C.

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CONSULTANT

International Law, Law of the Sea and Arctic Affairs

22 November 1995

Dr. Douglas Brubaker
Coordinator INSROP Part IV
The Fridtjof Nansen Institute
P.O. Box 326, N-1324
Lysaker, Norway

Re: Legal Regime of Navigation in Russian Arctic Waters,
English version, pages 58 to 104

Dear Dr. Brubaker:

As requested in the Programme Secretary's letter of November 1, I have reviewed this Discussion Paper to determine if it is "ready to be published as an INSROP Working Paper". In my opinion, it is not ready for such publication for at least two reasons: first, the English is below acceptable standards and requires a complete editing and second, a certain number of points need to be clarified and further substantiated.

I will now make a general comment and, then, offer more specific comments in relation to the main points of the Paper.

General Comment

The literary form leaves much to be desired throughout the Paper and the editing must cover not only the spelling, the grammar and the vocabulary, but also, and particularly, the construction of sentences so as to attain an acceptable standard of clarity. It is on this latter point that it becomes difficult to distinguish between form and substance.

The Paper would also gain in authoritativeness and international acceptance by a certain degree of research in non-Russian sources. Although the Paper is not meant to be published in an international journal, it is difficult to understand the absence of any reference to such basic works on the subject as The Soviet

Maritime Arctic, edited by Lawson W. Brigham, 336 pages (1991) and Maritime Claims in the Arctic, Canadian and Russian Perspectives, by Erik Franckx, 330 pages (1993).

Introduction and Conclusion

The Introduction could be improved by specifying the main points dealt with in the Paper and amplifying on the reasons for the study. If the Paper is to be of practical and ready use by future users of the Northern Sea Route, the Conclusion should be much clearer on the legal regime of that Sea Route and the adjacent bodies of water.

I- Retrospective Review of the Major Stages of Regulating the Access of Foreign Vessels to the Russian North (pp 60-76)

Except for the editing, I find this historical review generally acceptable. It would facilitate matters for the reader, however, if a few headings were inserted indicating the main historical periods. On substance, reference should be made to certain authoritative sources to support the interpretation given to Article 234 of the LOS Convention, at page 75.

II- Contemporary Legal Status of the Arctic Sea Areas Adjacent to the Russian Arctic Territories (pp 77-97)

These 20 pages constitute the hard core of the Paper and is rather disappointing in its lack of clear answers to certain questions relating to the major points covered. Some of those questions are formulated below.

1- Straight baselines (78-81)

Presuming the validity of the straight baselines, is the right of innocent passage applicable? The concluding paragraph in this Section (top of page 81) limits itself to saying that the Northern Sea Route is composed "of sea areas of different legal nature".

2- Regime of Historic Uses (81-83)

The concluding paragraph (top of page 83) states that "the plenitude of control over navigation (by Russia)... will allow to harmonize the interests of international navigation". What kind of right of passage will be allowed? Innocent or transit? In what parts of the Northern Sea Route and adjacent waters will those rights of passage apply?

3- Legal Regime of Arctic Straits (83-86)

The conclusion on this point appears to be contained in the second paragraph of page 86, which states that Russia may impose "a special legal regime excluding their (straits) uncontrolled uses by foreign ships, no matter whether this is a transit or innocent passage". What is the nature of the "special legal regime" and how will it be justified, particularly if the right of transit passage applies?

As for the statement on the Northwest Passage that "navigation of non-Canadian vessels through these straits is allowed provided that the passing vessels comply with Canadian legislation regulating pollution of the sea from vessels", I am not sure that this represents the legal position of Canada since those waters are considered historic internal waters. In other words, prior consent would be necessary regardless of the applicability of the 1982 Convention on the Law of the Sea.

4- Concept of Polar Sector (86-93)

The concluding paragraph (p.93) is not clear as to the legal validity of sector lines. Do they actually represent boundaries? The use of a meridian for a boundary by the USSR and USA in 1990 (page 92) could have been for convenience and because it had been used in 1867, rather than because of the legal validity of sector lines. In a similar way, the use of 141st meridian by Canada in the Beaufort Sea (not Baffin Bay, at page 93) might be justified on other grounds: convenience and historical use.

5- Arctic Ice Regime (93-97)

Page 97 appears to represent the conclusion of the authors as to what matters may be covered by an Arctic ice regime and these could all be justified, depending on the kind of right of passage applicable. Could such matters be so regulated if the right of transit passage is applicable to the Northern Sea Route? The answer is not clear from the text.

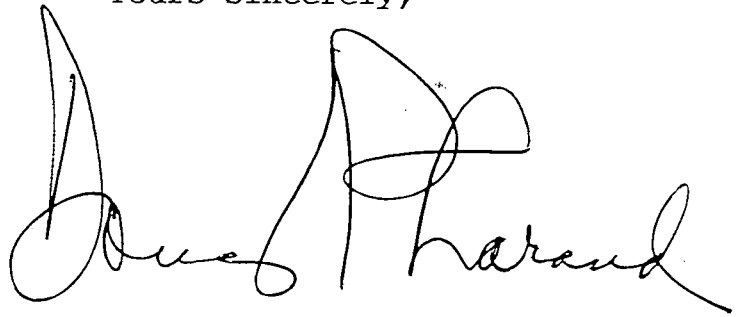
III- Legal Regime for Access of Vessels to the Northern Sea Route (98-102)

This very brief Part is essentially a concluding one and the conclusion is found at page 99, bottom half. It states that the aggregate of seaways of the Northern Sea Route "as a rule, is fully situated in waters covered by the sovereignty or jurisdiction of the Russian Federation". The question remains: which waters come under the "sovereignty" of Russia and which ones are subject to a more limited kind of "jurisdiction"? The last paragraph at the bottom of the page states that "Russia has exclusive rights to establish and regulate the regime of using both the Route as a

whole and its individual seaways". This could be interpreted as meaning that exclusive jurisdiction or sovereignty is being claimed. It is not altogether clear.

I do hope that the above comments will be of assistance to you and your colleagues.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "David P. Harand". The signature is fluid and somewhat stylized, with a large initial 'D' and 'P'.

Author's Answers

10 June 1997

A message by Professor A.L.Kolodkin
concerning comments by Professor D.Farand of November 22, 1995

Modern legal status of the Russian Arctic sea areas fully conforms to the universally acknowledged norms of international law establishing the known classification of sea areas and their legal status.

In the Arctic, as well as in other regions of the World Ocean, there are the same categories of sea areas which are provided for by the provisions of the 1958 Geneva Conventions and 1982 UN Law of the Sea Convention: internal waters, territorial sea, exclusive economic zone, high seas, continental shelf.

It is from this subdivision of sea areas that the corresponding Russian (USSR) legislative acts originate.

Russian sovereignty covers the internal waters and territorial sea according to these Acts and in strict compliance with the universally acknowledged norms of international law, and with regard to the territorial sea this regime is exercised with exemptions established by international law ("the right of innocent passage"). Russia exercises sovereign rights within the limits of the economic zone with regard to matters related to exploration and extraction of natural resources. However, taking into account specific conditions in the Arctic region, Russia is competent (art.234 of the 1982 Convention) to take special measures here aimed at preventing, reducing and keeping under control pollution of the environment. Such measures may first of all affect and limit sea shipping.

In considering the legal regime of the Russian Arctic sea areas one should bear in mind that, first, the Northern Sea Route (NSR) "sea-ways" proper are not something constant from the standpoint of physics since they constantly change their position, and, second, in spite of this fact a considerable part of the NSR is anyhow located within the limits of Russian internal waters, territorial sea and economic zone, i.e. in areas falling, under either Russian full sovereignty or jurisdiction in conformity with international law and Russian legislation.

This provision originates important consequences for the regime of foreign navigation:

- 1) within internal sea waters it is performed only with a coastal state permission, except if a merchant vessel is heading for a port open to foreign vessels or is leaving it; entry of warships into internal waters is possible only on conditions specified by Russian laws.
- 2) In principle, foreign warships and non-naval vessels enjoy the right of innocent passage in the territorial sea, however passage through the Russian 12-mile territorial sea in the Arctic is limited by certain conditions stated below;
- 3) Foreign vessels (naval and non-naval) have the right to exercise freedom of navigation in the USSR economic zone situated beyond the limits of the territorial sea to the extent within which it (freedom of navigation) must operate in that zone under the 1982 Convention.;
- 4) Freedom of navigation in the high seas beyond the economic zone is exercised without those limitations which may be established in the economic zone and which are connected with measures aimed at protecting marine environment;
- 5) Freedom of navigation is also exercised in the water layer above the continental shelf since those waters are the waters of the high seas.

Although the provisions of the 1958 Geneva Law of the Sea Conventions and 1982 Law of the Sea UN Convention are in principle applicable to the sea areas of the Soviet Arctic, there are certain peculiarities here.

Concerning the right of innocent passage through the Russian territorial sea in cases where it involves the NSR, here some additional factors work: - the NSR, whether it passes through the territorial waters or not, belongs to the category of national transportation communications. The same communication as Norwegian Inderlea, which is confirmed by the UN International Court in its decision of December 18, 1951 on the British-Norwegian dispute, as well as by the Norwegian legislation.

The positive decision of the Court in favor of Norway is fully applicable to Russia.

Besides, the grounds for Russia's possession of special rights with regard to regulating navigation in the water areas within the limits of which the NSR lies including the territorial sea and economic zone, are recognized by foreign states and the western doctrine of international law.

The second factor determining Russia's special rights on the NSR sea-ways and in other coastal areas of the Russian Arctic, is the envelopment of a number of such areas by the baselines drawn in conformity with the Decree of the USSR Council of Ministers of January 15, 1985 mentioned in the report. As a result of that a number of sea areas around groups of islands, straits and other areas have turned out to be connected with the mainland in some points. However, the main legal consequence of such delimitation consists in the fact that those areas enveloped by the base line have acquired the status of internal sea waters, which means that in innocent passage and navigation of foreign vessels in them is possible only with the permission of the coastal state. In the given case one circumstance may affect this situation. According to p.2 art.5 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, the envelopment by straight baselines of an area of internal waters before that considered to be a part of the territorial sea or high seas, does not entail a denial of the peaceful passage right. According to p.2 art.8 of the 1982 UN Law of the Sea Convention the same principle of maintaining the right of innocent passage is established where the above-mentioned marking off method is used.

Thus, if it is acknowledged that the right of innocent passage have existed in a number of coastal areas, including straits, then it is considered effective after baselines are drawn. At the same time, as follows from the interpretation of a similar decision that was adopted by Canada on September 15, 1985 and came into force on January 1, 1986, on drawing baselines around the waters in the North-West, including the North-West Passage, there have never existed the right of innocent passage in these waters. The same conclusion should be made with respect to the Russian waters.

Classifying the NSR as appurtenant to the category of a national sea transportation communication gives Russia grounds to exercise its jurisdiction in matters of regulating and controlling navigation on the NSR. For that purpose in 1991 the USSR Ministry of Merchant Marine confirmed and introduced the Regulations of Navigation on the Northern Sea Route.

The concept of a single legal status of the NSR has been proclaimed in these rules: the main principle - non-discrimination, objects of regulation - vessels of all States, aims of regulation - providing safety of navigation and preventing pollution of the marine environment from vessels by means of adopting appropriate laws and regulations. I.e., the basis on which the regulation rests, are the provisions of art. 234 of the 1982 UN Law of the Sea Convention related to areas covered with ice during a greater part of the year within the limits of the exclusive economic zone.

The Regulations extend the operation of these provisions on the entire spatial sphere of the NSR - on the internal waters, territorial sea and economic zone of Russia, and define the NSR as a single inseparable transportation main waterway with a single legal status.

The problems of “innocent passage” through the territorial sea and of crossing the internal waters in the Arctic straits are lifted for a vessel taken for leading in accordance with the Regulations.

Moreover, in accordance with art.234 of the Convention Russia has the right to establish more strict rules of navigation and performance standards for vessels using the NSR.

As far as the Arctic straits are concerned, it is evident that the NSR status as a national sea transportation communication determines the possibility of using the Russian Arctic straits by foreign vessels only in accordance with the provisions of the Russian legislation, that is the Regulations of Navigation on the NSR.

Concerning the concept of the polar sector.

On page 92 it is indicated that the lines defining the side limits of the sectors are not the state borders. The history of this issue and the positions of the circumpolar states are exhaustively covered in the respective part of the report.

Polemics concerning justification of the existing polar sectors concept does not constitute the aim of the present report.

The three main cooperating institutions of INSROP



Ship & Ocean Foundation (SOF), Tokyo, Japan.

SOF was established in 1975 as a non-profit organization to advance modernization and rationalization of Japan's shipbuilding and related industries, and to give assistance to non-profit organizations associated with these industries. SOF is provided with operation funds by the Sasakawa Foundation, the world's largest foundation operated with revenue from motorboat racing. An integral part of SOF, the Tsukuba Institute, carries out experimental research into ocean environment protection and ocean development.



Central Marine Research & Design Institute (CNIIMF), St. Petersburg, Russia.

CNIIMF was founded in 1929. The institute's research focus is applied and technological with four main goals: the improvement of merchant fleet efficiency; shipping safety; technical development of the merchant fleet; and design support for future fleet development. CNIIMF was a Russian state institution up to 1993, when it was converted into a stock-holding company.



The Fridtjof Nansen Institute (FNI), Lysaker, Norway.

FNI was founded in 1958 and is based at Polhøgda, the home of Fridtjof Nansen, famous Norwegian polar explorer, scientist, humanist and statesman. The institute specializes in applied social science research, with special focus on international resource and environmental management. In addition to INSROP, the research is organized in six integrated programmes. Typical of FNI research is a multi-disciplinary approach, entailing extensive cooperation with other research institutions both at home and abroad. The INSROP Secretariat is located at FNI.

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