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Current Legal Developments

The Barents Sea

Treaty between Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean

Introduction

On 15 September 2010, Norway and the Russian Federation signed the Treaty Concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean (hereinafter the Treaty).¹ The Treaty applies to Norway's and Russia's respective exclusive economic zones (in addition to the Fisheries Protection Zone around Svalbard) and the continental shelf within and beyond 200 nautical miles. This note puts the Treaty into context, and discusses its key features, as it pertains to delimiting the maritime boundary between Norway and Russia in the Barents Sea and the Arctic Ocean.

Background

The Norwegian authorities first approached the USSR with a view to resolving the issue of the delimitation of the continental shelf in the Barents Sea in 1967.² Formal negotiations began in 1974. From the start, the Parties held different opinions on where the demarcation line should lie.³ The Norwegian position was that the boundary line should follow the median line. This position applied originally to the continental shelf and was based upon the principles set out in Article 6 of the 1958 Continental Shelf Convention.⁴ Norway subsequently advocated the median-line principle with regard to the maritime delimitation of sea areas, i.e., the exclusive economic zone (EEZ) and Fisheries Protection Zone around the Svalbard archipelago. Norway thus wanted to see the waters and seabed areas alike divided equally between the two States.⁵

¹ The text of the Treaty is appended to this article. It is also available at:

<www.regjeringen.no/upload/UD/Vedlegg/Folkerett/avtale_engelsk.pdf>. Retrieved 16 September 2010.

² Theodor Schweisfurth, 'Barents Sea', in: R. Bernhardt (ed.) *Encyclopedia of Public International Law*, Volume I (Elsevier Science Publications, Amsterdam, 1992) at 351.

³ *Ibid.*

⁴ Convention on the Continental Shelf, Geneva, adopted 29 April 1958; in force 10 June 1964; 499 UNTS 311.

⁵ For Norwegian law, see the Act Relating to Scientific Research and Exploration for and Exploitation of Subsea Natural Resources other than Petroleum of 21 June 1963, Section 1, second sentence. See current legislation, Act Relating to the Economic Zone of Norway of 17 December 1976, Section 1, and Act Relating to Petroleum

In the opinion of the then USSR (and later Russia) the demarcation line should coincide with the western limit of Russia's Arctic possessions. This was to be drawn along a sector line along the 32nd meridian east, as decreed by the Russian Federation on 15 April 1926.⁶ Apart from invoking the sector principle, Russia also referred to numerous "special circumstances" as per Article 6 of the 1958 Continental Shelf Convention. In Russia's opinion, these circumstances, which included demographic and security issues, justified deviating from the median line, with the result that the maritime boundary should lie further to the west.

A number of temporary agreements regulating the management of fishing resources in parts of the Barents Sea have refrained from trying to settle the question of the delimitation of the respective States' maritime zones.⁷ Both States ratified the United Nations Convention on the Law of the Sea (the LOS Convention),⁸ and this provides the basis for domestic legislation and international cooperation relating to the delimitation issue. Nevertheless, Norway and Russia were unable to reach an "equitable solution on the basis of international law" according to Articles 74 and 83 of the LOS Convention.⁹ A decisive breakthrough in the negotiations was finally announced during President Medvedev's visit to Norway on 27 April 2010, when the Norwegian and Russian Foreign Ministers signed a joint statement that the two negotiating delegations had reached a tentative delimitation agreement.¹⁰ The new Treaty thus marks the end of a process lasting several decades and involves a maritime delimitation that divides an overall disputed area of about 175,000 square kilometres.

The 2010 Delimitation Treaty

Article 1 of the Treaty states that the delimitation line shall be defined by geodetic lines connecting points defined by a given set of coordinates. The delimitation line is multi-functional; it applies both to the water areas and the continental shelf (see the attached map). The southernmost point of the delimitation line corresponds to the northernmost point in the agreement between Norway and Russia on the maritime delimitation of the Varangerfjord area.¹¹ The terminal point of the delimitation line connects the easternmost point of the outer limit of the continental shelf of Norway and the westernmost point of the outer limit of the continental shelf of the Russian Federation, i.e., the submarine area beyond 200 nautical miles from the baselines on the Norwegian and Russian sides. Both Parties consider these limits to be in accordance with Article 76 and Annex II of the LOS Convention.¹²

Activities of 29 November 1996, Section 1–6, subsection 1. Published in H. Flock and B. S. Lassen (eds.), *Norges Lover* (St. Michel Print, Mikkeli, 2007).

⁶ Decree of the Supreme Soviet of 6 February 1968, *Sbornik Zakanov SSR I Ukazov*, Vol. 2 (1938-1975) at 404.

⁷ See in particular the Agreement between Norway and the Soviet Union on provisional practical arrangements for fishing in an adjacent area of the Barents Sea. Reprinted in *Overenskomster med fremmede stater* (Royal Norwegian Ministry of Foreign Affairs, Oslo, 1978) at 436 (hereinafter *Overenskomster [date]*).

⁸ United Nations Convention on the Law of the Sea, Montego Bay, adopted 10 December 1982; in force 16 November 1994; 21 ILM 1261 (1982)

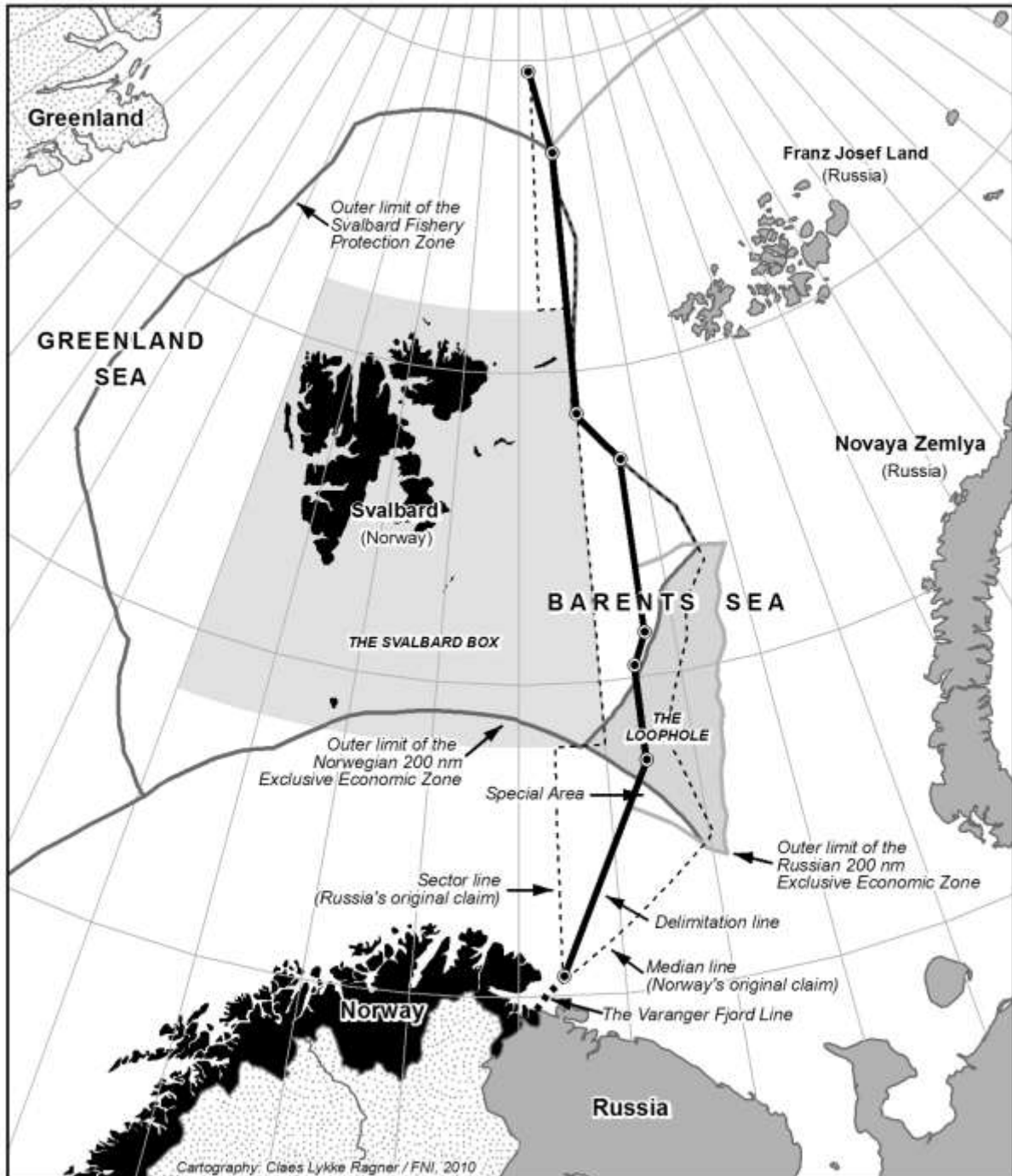
⁹ For current Russian legislation, see Article 2 of the 1995 Federal Law on the Continental Shelf of the Russian Federation and Article 2 of the 1998 Federal Act on the Exclusive Economic Zone of the Russian Federation. Available at: <www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm>. Retrieved 16 September 2010.

¹⁰ Available at: <www.regjeringen.no/upload/UD/Vedlegg/Folkerett/030427_english_4.pdf>. Retrieved 16 September 2010.

¹¹ Available at: <www.regjeringen.no/nb/dep/ud/dok/regpubl/stprp/2007-2008/Stprp-nr-3-2007-2008-.html?id=488644>. Retrieved 16 September 2010.

¹² Russia is in the process of mounting a new submission concerning the shelf's outer limits in the Arctic. See further T. McDorman, 'The Outer Continental Shelf in the Arctic Ocean: Legal Framework and Recent

The definitive delimitation solution is generally a modified version of Russia's and Norway's original positions. Under Article 1 of the Treaty, the former disputed area in the Barents Sea is now divided into two areas of almost equal size. The agreed demarcation line lies, apart from certain deviations, practically half-way between Norway's old median line claim and Russia's sector claim. The agreement is thus clearly a compromise solution. Both Norway and Russia have made concessions in relation to their original positions.



Developments', in: D. Vidas (ed.) *Law, Technology and Science for Oceans in Globalization* (Martinus Nijhoff Publishers, Leiden-Boston, 2010) 499-520 at 512-515. Norway is currently finalizing the work to enshrine the outer limits of its continental shelf in domestic law. See further Ø. Jensen, 'Towards Setting the Outer Limits of the Continental Shelf in the Arctic: On the Norwegian Submission and Recommendations of the Commission', in Vidas, *ibid.*, at 521-538.

The Treaty includes a special provision for the area east of the maritime delimitation line and within 200 nautical miles of the baselines from which the breadth of the territorial sea of mainland Norway is measured, but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the Russian Federation is measured. It is referred to as the 'Special Area' in Article 3 of the Treaty. The Treaty thus creates what is commonly referred to as a "grey area".¹³ An undisputed part of Norway's EEZ is placed on the Russian side of the maritime boundary. However, although Norway is excluded from exercising jurisdiction because this Special Area lies beyond the maritime boundary, Russia is excluded from exercising the jurisdiction normally associated with a 200-nautical-mile zone because this Special Area lies beyond 200 nautical miles from its coast.

In the Special Area, Article 3 of the Treaty thus provides that Russia will enjoy sovereign rights and jurisdiction derived from EEZ jurisdiction that Norway would otherwise be entitled to exercise under international law. The Parties have agreed to transfer jurisdiction from the State possessing undisputed title to the maritime area in question to the State on whose side of the boundary the area is located. Russia's exercise of jurisdiction in the Special Area shall, however, derive from an agreement between the Parties. It is stated specifically that this does not imply any formal extension of Russia's EEZ. Russia is also under an obligation to take the action necessary to ensure that any Russian exercise of sovereign rights or jurisdiction in the Special Area shall be so characterized in its relevant laws, regulations and charts.

The designation of this specialized area raises legal questions concerning the relationship between continental shelf and EEZ rights and the rules applicable to the delimitation of maritime areas within and beyond 200 nautical miles. Also, little is known of the arguments which possibly have been employed in the negotiations and whether the provisions on the Special Area are due to practical reasons and political compromises only. The overriding aim of the Parties might have been to settle on a multi-functional boundary harmonizing the exercise of jurisdiction over the water column and the seabed areas on both sides. Most likely, diverging EEZ and continental shelf boundaries – resulting in the attribution of sea-bed and subsoil areas to Russia and the water column to Norway – did not appear very attractive.

The provisions of the Treaty ensure that cooperative relations between the Parties in the sphere of fisheries continue. Article 4 and Annex I of the Treaty contain provisions whose aim is to ensure continued close cooperation between Norway and Russia in matters relating to fishing activities and to ensure that both parties maintain their respective shares of total allowable catch volumes for the stocks concerned. As Article 1 of Annex I states, the Agreement between Norway and the Union of Soviet Socialist Republics on co-operation in the fishing industry of April 11 1975¹⁴ and the Agreement between Norway and the Union of Soviet Socialist Republics concerning mutual relations in the field of fisheries of October 15 1976¹⁵ shall remain in force for a period of fifteen years after the Treaty has entered into force. At the end of the fifteen years, the agreements shall remain in force for periods of six years at a time (unless or until revoked). Furthermore, as provided under Article 3, the total allowable catch volume, mutual quotas and other regulatory measures on fishing activities shall continue to be negotiated in the Joint Norwegian–Russian Fisheries Commission. As

¹³ See in general A. Oude Elferink, 'Does Undisputed Title to a Maritime Zone Always Exclude Its Delimitation: The Grey Area Issue' (1998) 13 *International Journal of Marine and Coastal Law* 143-192.

¹⁴ Available at: <www.regjeringen.no/upload/UD/Vedlegg/Folkerett/Avtale1975_fiskeri.pdf>. Retrieved 18 September 2010.

¹⁵ Reprinted in *Overenskomster 1977* (see *supra* note 7) at 974.

remarked in point 8 of the Treaty's preamble, Norway and Russia have basically agreed to continue traditional collaboration on fishing activities in the Barents Sea.¹⁶

The Agreement between Norway and the Soviet Union on provisional practical arrangements for fishing in an adjacent area of the Barents Sea (the so-called Grey Zone Agreement) will cease when the Delimitation Treaty comes into force.¹⁷ Norway and Russia concluded the Grey Zone Agreement in 1978 as an interim arrangement pending agreement on the demarcation of the disputed maritime areas in the Barents Sea. The Agreement is a practical enforcement and control instrument within a limited area of the Barents Sea and has been extended for a year at a time, most recently on 30 June 2010. When the Treaty enters into force, the Grey Zone Agreement will have outlived its purpose.¹⁸

The Treaty contains provisions of equal importance on cooperation in the exploitation of possible hydrocarbon deposits straddling the maritime border. If such deposits are found on the continental shelf of one of the Parties, and the other Party has reason to believe the deposit extends into its own continental shelf, the latter can make this known to the former (see Article 5(2) of the Treaty). Discussions will then be initiated to establish the extent of the deposits and whether the discovery can be exploited as a unit. The Party calling for discussions to take place shall substantiate its opinion on the basis of geophysical and/or geological data. Both Parties shall take steps to ensure all relevant information is made available for the discussions.

Furthermore, if the deposits can be shown to extend across both Parties' continental shelves, and the deposits can be exploited from either Party's shelf – or could affect the possibility for the other Party to exploit the deposits in its own shelf – under the provisions of Annex II, the Parties shall conclude an "Unitisation Agreement". This is an agreement regulating the exploitation of hydrocarbon deposits as a unit, including the apportionment of the deposits between the Parties. Hence, the exploitation of the deposits in question may only start as provided for under the Unitisation Agreement (see Article 5(3) of the Treaty). Article 5(4) of the Treaty refers to Annex II, which includes detailed regulations for this purpose, together with separate provisions in the event of disputes arising between the Parties.¹⁹

According to Article 8, the Treaty will have to be ratified by the two countries' national assemblies and will enter into force on the thirtieth day after the exchange of instruments of ratification has taken place.

¹⁶ On Norwegian and Russian fisheries cooperation in the Barents Sea, see in general G. Hønneland, *Kvotekamp og kyststatsolidaritet: Norsk-russisk fiskeriforvaltning gjennom 30 år* {'Quota Battles and Coastal State Solidarity: 30 Years of Norwegian-Russian Fishery Management'} (Fagbokforlaget, Bergen, 2006).

¹⁷ *Supra*, note 7.

¹⁸ However, according to Article 2 of Annex I to the Treaty, in the formerly disputed area within 200 nautical miles from mainland Norway and Russia, technical regulations, particularly regarding mesh size and minimum catch sizes, shall continue to apply for Norwegian and Russian fishing vessels respectively for a period of two years starting from the date on which the Treaty enters into force. The exact coordinates of this area have been established through an exchange of notes between the Parties. The exchange of notes is available at: <www.regjeringen.no/upload/UD/Vedlegg/Folkerett/100915Noteveksling.pdf>. Retrieved 18 September 2010.

¹⁹ On this point, the Treaty is in line with Norway's and other States' practice. All agreements on delimitation of the continental shelf between Norway and neighbouring States contain provisions on unitisation of potential trans-boundary petroleum deposits. See for instance the Agreement between Norway and Sweden concerning the delimitation of the continental shelf, Stockholm, 24 July 1968 (reprinted in *Overenskomster 1969* at 324 (see note 7, *supra*), Agreement between Norway and the United Kingdom relating to the delimitation of the continental shelf between the two countries, London, 10 March 1965 (reprinted in *Overenskomster 1965* at 536; *ibid.*) and Agreement between Norway and Denmark concerning the delimitation of the continental shelf, Oslo, 8 December 1965 (reprinted in *Overenskomster 1966* at 1362; *ibid.*).

Concluding Remarks

The Treaty is important for both Norway and Russia. Yet it remains to be seen how it will work in practice. The success of the negotiations can be ascribed to several factors. First, there is the regulatory framework under international law. The substance of the law of the sea appears to have provided important principles informing the delimitation solution. Although the actual circumstances that persuaded Norway to accept a moderate westward deviation from the median line in favour of Russia's sector claim are unknown to the authors, the definitive solution does not deviate signally from an equidistance line. Thus, the location of the delimitation line is justified with reference to recent international case law. Judgments in comparable cases have shown the median line to be simply a starting point for a definitive solution to the delimitation issue. The International Court of Justice has notably applied the median line in several cases as a first step, adjusting the final line of demarcation to the relevant circumstances of the case at hand.²⁰ It is assumed here that one of the Russian arguments for the westward shift of the delimitation line may have highlighted the significant differences in the length of the respective Parties' coastlines.

Second, changes of a foreign policy nature seem to have provided much of the driving force. Bilateral border solutions – also with regard to functional zones at sea – are achieved essentially because States both want and are willing to make concessions. Norway and Russia have reached a compromise which respects, within reason, both Parties' original positions. As the law of the sea stands today, it merely encourages Parties to sit down and work out lines of demarcation that are acceptable to both. One can hardly read the law as requiring States to gather round the negotiating table. However, Norway and Russia are, for the time being, examples of stable foreign policy actors with good relations that manage to unify the various power interests and achieve mutual, long-term solutions. It would have been difficult to say the same of Russia of the 1990s.

There are economic reasons as well for agreeing a border. An agreed maritime boundary allows States to enact domestic legislation on a secure basis in international law, enabling, for instance, activities related to the oil and gas industry, not only in the previously disputed area, but in the wider Barents Sea as well.

Finally, there is the mutual trust between the Parties. Relations between Norway and Russia have been characterised in recent years by respect and willingness to envisage a definitive solution. Daring to think aloud about compromises and concessions may have been particularly important and perhaps paves the way for other States – both in the Arctic and elsewhere – to resolve outstanding issues based on international law and to work on what at the end of the day is the most important question: to establish a management regime for the vulnerable and limited resources in the Barents Sea that is as robust as possible.

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²⁰ See for instance *Land and Maritime Boundary between Cameroon and Nigeria*, Judgment, ICJ Reports 2002, at 303, para. 288, and *Case Concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, ICJ Judgment of 3 February 2009, para. 116.

Appendix
English translation

Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean

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

Article 1

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

1. 70° 16' 28.95" N 32° 04' 23.00" E
(This point corresponds to point 6 of the delimitation line as defined in the 2007 Agreement.)
2. 73° 41' 10.85" N 37° 00' 00.00" E
3. 75° 11' 41.00" N 37° 00' 00.00" E
4. 75° 48' 00.74" N 38° 00' 00.00" E
5. 78° 37' 29.50" N 38° 00' 00.00" E
6. 79° 17' 04.77" N 34° 59' 56.00" E
7. 83° 21' 07.00" N 35° 00' 00.29" E
8. 84° 41' 40.67" N 32° 03' 51.36" E

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

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

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

Article 2

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

Article 3

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

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

Article 4

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

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

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

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

Article 5

1. If a hydrocarbon deposit extends across the delimitation line, the Parties shall apply the provisions in Annex II.
2. If the existence of a hydrocarbon deposit on the continental shelf of one of the Parties is established and the other Party is of the opinion that the said deposit extends to its continental shelf, the latter Party may notify the former Party and shall submit the data on which it bases its opinion. If such an opinion is submitted, the Parties shall initiate discussions on the extent of the hydrocarbon deposit and the possibility for exploitation of the deposit as a unit. In the course of these discussions, the Party initiating them shall support its opinion with evidence from geophysical data and/or geological data, including any existing drilling data and both Parties shall make their best efforts to ensure that all relevant information is made available for the purposes of these discussions. If the hydrocarbon deposit extends to the continental shelf of each of the Parties and the deposit on the continental shelf of one Party can be exploited wholly or in part from the continental shelf of the other Party, or the exploitation of the hydrocarbon deposit on the continental shelf of one Party would affect the possibility of exploitation of the hydrocarbon deposit on the continental shelf of the other Party, agreement on the exploitation of the hydrocarbon deposit as a unit, including its apportionment between the Parties, shall be reached at the request of one of the Parties (hereinafter “the Unitisation Agreement”) in accordance with Annex II.
3. Exploitation of any hydrocarbon deposit which extends to the continental shelf of the other Party may only begin as provided for in the Unitisation Agreement.
4. Any disagreement between the Parties concerning such deposits shall be resolved in accordance with Articles 2-4 of Annex II.

Article 6

The present Treaty shall not prejudice rights and obligations under other international treaties to which both the Kingdom of Norway and the Russian Federation are Parties, and which are in force at the date of the entry into force of the present Treaty.

Article 7

1. The Annexes to the present Treaty form an integral part of it. Unless expressly provided otherwise, a reference to this Treaty includes a reference to the Annexes.
2. Any amendments to the Annexes shall enter into force in the order and on the date provided for in the agreements introducing these amendments.

Article 8

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

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

For the Kingdom of Norway

For the Russian Federation

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

Fisheries matters

Article 1

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

Article 2

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

Article 3

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

Article 4

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

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

Transboundary Hydrocarbon Deposits

Article 1

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

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

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

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

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

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

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

Article 2

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

Article 3

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

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

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

Article 4

1. In the event that a failure to reach agreement concerns the apportionment of the hydrocarbon deposit between the Parties, they shall appoint an independent expert to decide upon such apportionment. The decision of the independent expert shall be binding upon the Parties.
2. Notwithstanding the provisions contained in paragraph 1 of this Article, the Parties may agree that the hydrocarbon deposit shall be reapportioned between them.