

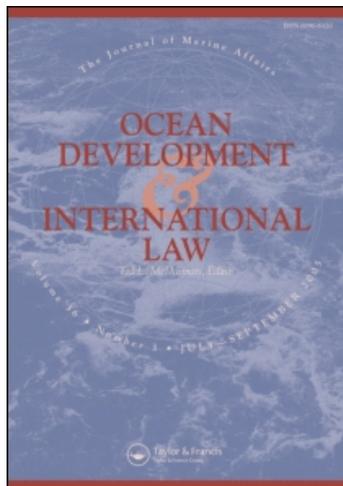
This article was downloaded by: [University of Oslo Library]

On: 20 February 2011

Access details: Access Details: [subscription number 907468053]

Publisher Taylor & Francis

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Ocean Development & International Law

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713774325>

### Maritime Delimitation in the Arctic: The Barents Sea Treaty

Tore Henriksen<sup>a</sup>; Geir Ulfstein<sup>b</sup>

<sup>a</sup> Faculty of Law, University of Tromsø, Tromsø, Norway <sup>b</sup> Faculty of Law, University of Oslo, Oslo, Norway

Online publication date: 18 February 2011

**To cite this Article** Henriksen, Tore and Ulfstein, Geir(2011) 'Maritime Delimitation in the Arctic: The Barents Sea Treaty', Ocean Development & International Law, 42: 1, 1 – 21

**To link to this Article:** DOI: 10.1080/00908320.2011.542389

**URL:** <http://dx.doi.org/10.1080/00908320.2011.542389>

## PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

# Maritime Delimitation in the Arctic: The Barents Sea Treaty

TORE HENRIKSEN

Faculty of Law  
University of Tromsø  
Tromsø, Norway

GEIR ULFSTEIN

Faculty of Law  
University of Oslo  
Oslo, Norway

*During a visit to Norway by the Russian president in the spring of 2010, the president and the Norwegian prime minister surprisingly announced agreement on a delimitation line in the Barents Sea ending almost 40 years of negotiations. The agreement was signed in Murmansk on 15 September 2010. This article presents the background of the dispute and undertakes an assessment of the agreement and its implications for the Barents Sea, Svalbard, and other Arctic maritime delimitations.*

**Keywords** Barents Sea, delimitation, Norway, Russia

## Introduction

During a state visit to Norway in April 2010 by Russian president Dmitry Medvedev, the president and Norwegian prime minister Jens Stoltenberg surprisingly announced agreement on the delimitation of the maritime zones in the Barents Sea.<sup>1</sup> The delimitation treaty was signed in Murmansk on 15 September 2010, bringing 40 years of negotiations to an end.<sup>2</sup>

In the April 2010 joint statement, it is recommended that there be “a line that divides the overall disputed area in two parts of approximately the same size.”<sup>3</sup> The disputed area in the Barents Sea covers approximately 175,000 km<sup>2</sup> between the median line in the east, asserted by Norway, and the sector line in the west, claimed by the Russian Federation.<sup>4</sup> The disputed area can be divided into three parts.<sup>5</sup> The first starts at the mouth of the Varangerfjord and extends to 200 nautical miles from the mainlands of Norway and Russia. A boundary both for the continental shelf and 200-mile exclusive economic zone (EEZ) was needed. The second area is in the middle of the Barents Sea beyond 200 miles (the Barents Sea loophole) where a boundary for the continental shelf between the opposite coasts of the mainland of Norway and Svalbard and of Russia (Novaya Zemlya) was required. The third area is in the northern Barents Sea, where a boundary for the continental shelf and

Received 17 June 2010; accepted 22 June 2010.

Address correspondence to Tore Henriksen, Faculty of Law, University of Tromsø, Tromsø, Norway. E-mail: [tore.henriksen@uit.no](mailto:tore.henriksen@uit.no)

between the Russian EEZ and the Svalbard fisheries protection zone outside the opposite coasts of Svalbard (Norway) and Franz Josef Land and Novaya Zemlya was necessary.<sup>6</sup> Article 1 of the September 2010 treaty identifies eight coordinates defining the delimitation line. In addition, an illustrative map is annexed to the treaty (see Figure 1).

The purpose of this article is to evaluate the delimitation treaty on the basis of applicable international law and to assess the possible implications of a future agreement on the uses of the Barents Sea and on the status of the maritime areas adjacent to the Svalbard archipelago. A few brief comments will also be made about the implications of the Norwegian-Russian accord for other Arctic maritime delimitations. The first step, however, is to provide the background of the long-running Barents Sea dispute.

## Background

The history of the delimitation dispute in the Barents Sea dates back at least to the 1957 Varangerfjord Agreement, which established the boundary between the territorial seas of mainland Norway and the Soviet Union.<sup>7</sup> Since then, the maritime boundary issue has followed the developments of the law of the sea. Following the adoption of the 1958 UN Convention on the Continental Shelf,<sup>8</sup> in 1963 Norway claimed sovereign rights to the seabed and the subsoil adjacent to its coasts.<sup>9</sup> The Soviet Union made a similar claim in 1967.<sup>10</sup> Large parts of the seabed of the Barents Sea were seen as being continental shelf pursuant to the 1958 Convention and, thus, a need for bilateral delimitation between Norway and Soviet Union existed. Formal negotiations started in Moscow in 1974, following informal meetings held in 1970.<sup>11</sup> In 1977, the negotiations became more extensive when both Norway and the Soviet Union established 200 mile EEZs in the area. In addition to the continental shelf boundary, now the two coastal states had to deal with overlapping EEZ claims. Because fishing was the most pressing issue, they agreed on a temporary arrangement to regulate fishing in the disputed area, the so-called Grey Zone Agreement, which was signed in January 1978.<sup>12</sup> The Grey Zone Agreement covered a large part of the southern area of the disputed waters as well as including undisputed Norwegian and Soviet EEZs.<sup>13</sup> Under the agreement, each party was to exercise jurisdiction solely over fishing vessels flying its own flag and over vessels flying the flag of third states that had access to the area under license. The agreement has been subsequently extended for 1-year periods.

The point of departure for the negotiations on the delimitation of the continental shelf was Article 6 of the 1958 Continental Shelf Convention to which both states were parties, which stipulated that the boundary is the median line unless another boundary is justified by "special circumstances." Both states later became parties to the 1982 UN Convention on the Law of the Sea (hereafter LOS Convention) making its Articles 74 and 83 the applicable law.<sup>14</sup> Both parties argued that these new provisions upheld their reading of Article 6 of the Continental Shelf Convention.<sup>15</sup>

The two parties agreed that the negotiating objective was to establish a single boundary for the EEZ and the continental shelf in areas within 200 miles from their relevant coastlines.<sup>16</sup> Norway's position was that there were no special circumstances in the overlapping claimed area and that the boundary should be the median line between the mainland coasts and of Svalbard and the islands of Novaya Zemlya and Franz Josef Island.<sup>17</sup> The Soviet Union (and its successor the Russian Federation) has maintained that there are special circumstances and that the maritime boundary should follow the so-called sector line from the Varangerfjord toward the North Pole only adjusted eastward in the Svalbard area to avoid infringing on the area defined in Article 1 of the Svalbard Treaty.<sup>18</sup> The Russian



sector line originated in a 1926 decree, which declared that all land territory within two designate eastern and western meridians were part of the Soviet Union, but was adapted to and used in the maritime boundary delimitation discussions with Norway.<sup>19</sup> Norway consistently objected to Russian assertion of the sector line as the maritime boundary.<sup>20</sup> In addition to geographical special circumstances such as the configuration of the coast and disproportionality between the comparative lengths of coastlines, the Soviet Union (and Russia) supported its position by referring to several nongeographical special circumstances, including the greater population in Russia, geological conditions, economic interests, special environmental risks, and security interests.<sup>21</sup> These circumstances were mainly argued in relation to the southern part of the disputed area, but these and other circumstances were also advanced in relation to the middle and northern segments. The Soviet Union (and Russia) also argued that the special status of Svalbard should result in the archipelago not having a full effect in the delimitation.<sup>22</sup> The Soviet Union argued that the special status of Svalbard restricted the capacity of Svalbard to generate maritime zones.<sup>23</sup> Other special circumstances that might be said to exist included the presence of islands and rocks, ice conditions, and an unequal distribution of marine living resources.<sup>24</sup>

Over the years there was seemingly slow, if any, progress in the negotiations. A proposal in 1988 by the Soviet Union for cooperation on petroleum resources in a joint development zone was rejected by Norway.<sup>25</sup> Progress was made in 2007 when the parties agreed to revise the 1957 Varangerfjord Agreement to extend the maritime boundary to a point approximately 30 kilometers from the terminus of the Varangerfjord, where the median line and sector line cross and the southern part of the disputed area began.<sup>26</sup> The boundary agreed on is consistent with a simplified median line.<sup>27</sup>

## Assessment of the Barents Sea Treaty

### *Applicable Law*

Under both the 1958 Convention on the Continental Shelf and the 1982 LOS Convention, coastal states can agree on how their maritime delimitation disputes should be resolved.<sup>28</sup> Not surprisingly, however, the parties to the Barents Sea dispute referred to international law in their negotiations and in the 2010 joint statement as well as in the preamble of the delimitation treaty. The purpose of this section is to identify the applicable law and to assess, based on the limited information available, the extent to which international law may have affected the outcome.

As already noted, at the outset of negotiations in the 1970s the applicable law was Article 6 of the 1958 Continental Shelf Convention, which was superseded by Articles 74 and 83 of the 1982 LOS Convention. The wording in the latter two provisions is identical:

The delimitation of the exclusive economic zone [continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

The reference in the provision to the sources of international law and equity implies, as pointed out by Stuart Kaye, the lack of objective criteria for delimitation of these two maritime zones.<sup>29</sup> The background was the multilateral disagreement during negotiations between those who favored the median line (equidistance) as the primary rule and those

who argued that the delimitation should be governed by equitable principles.<sup>30</sup> In effect, Articles 74 and 83 directed that the International Court of Justice and arbitral tribunals were to develop this area of international law.<sup>31</sup> In the 2006 case between Barbados and Trinidad and Tobago, the arbitral tribunal in laying out the applicable law stated about these provisions that

in a matter that has so significantly evolved over the last 60 years, customary law also has a particular role that, together with judicial and arbitral decisions, helps to shape the considerations that apply to any process of delimitation.<sup>32</sup>

The method applied in maritime delimitation by the international courts and tribunals has become specific in recent years. Delimitation has been undertaken in two phases or steps: first, a provisional equidistance line is drawn based on the relevant coast lines and, second, relevant circumstances that call for adjustment are identified.<sup>33</sup> The function of relevant circumstances, as stated by the International Court in the *Romania v. Ukraine Case*, is “to verify that the provisional equidistance line, is not, in light of the particular circumstances of the case, perceived as inequitable.”<sup>34</sup> Thus, recent case law strengthens the status of equidistance.<sup>35</sup> Further, as noted by the arbitral tribunal in the *Barbados/Trinidad and Tobago Case* the relevant circumstances have “increasingly been attached to geographical considerations.”<sup>36</sup> The reason is that in the determination of a single line for the continental shelf and the EEZ geographical circumstances were perceived as neutral compared to geological- and resource-related circumstances.<sup>37</sup> International courts and tribunals have certain discretion to define and weigh these circumstances within the overall requirement of achieving an equitable solution in the particular case.<sup>38</sup> A third phase or step was employed in the *Romania and Ukraine Case*, which requires a court to evaluate whether the line emerging from steps one and two leads to an “inequitable result” by a “marked disproportion between the ratio of respective coastal lengths and the ratio of relevant maritime area of each State.”<sup>39</sup> This step, which resurrects the proportionality calculation, seems to strengthen the emphasis on geographical criteria in maritime delimitation.

Possible relevant or special circumstances can be divided into two groups: geographical and nongeographical. The presence of islands may be a relevant geographical circumstance where small islands are either not taken into account or not given full effect because they would have a “disproportionate effect on the delimitation line.”<sup>40</sup> Another relevant circumstance may be situations where the configuration of the relevant coasts creates encroachment or cutoff effects.<sup>41</sup> Relevant nongeographical circumstances might include different types of economic factors. The International Court has, however, rejected disparity in wealth between states as a relevant circumstance.<sup>42</sup> Courts and arbitral tribunals have been reluctant to consider the existence and location of natural resources in disputed areas as a relevant circumstance.<sup>43</sup> One exception to this arose in the *Jan Mayen Case* where the International Court considered access to the capelin fishery as a relevant circumstance.<sup>44</sup> However, in the 2009 *Romania v. Ukraine Case* the Court, referring to the dicta of the 1984 *Gulf of Maine Case*,<sup>45</sup> concluded that there was no evidence that the adopted median line entailed “catastrophic repercussions for the livelihood and economic well-being of the population.”<sup>46</sup> Another circumstance that may be relevant is security.<sup>47</sup> However, this is unlikely to be relevant where the disputed area is at a distance from the coastlines of the parties.<sup>48</sup> Finally, geographical circumstances include disproportion between lengths of coasts, although not any disproportion will qualify. In the case of *Cameroon v. Nigeria*, the International Court stated that “a *substantial* difference in the

lengths of the parties' respective coastlines" (emphasis added) could qualify as a relevant circumstance.<sup>49</sup>

### *The Barents Sea Treaty*

Under the treaty, Russia and Norway have established a single delimitation line for their EEZs and continental shelf in areas within 200 miles of their coasts and a delimitation line between the Norwegian and Russian continental shelf where it extends beyond 200 miles.<sup>50</sup> The United Nations Commission on the Limits of the Continental Shelf has concluded that the seabed beyond 200 miles in the Barents Sea is within the outer limits of the continental shelf as defined in Article 76 of the LOS Convention.<sup>51</sup>

The delimitation line is, according to the April 2010 joint statement, based on "international law in order to achieve an equitable solution."<sup>52</sup> The two parties further confirm that they have applied "relevant factors identified in this regard in international law,"<sup>53</sup> which reasonably may be read as referring to the extensive maritime boundary delimitation case law. The joint statement, however, includes few references to specific principles or normative statements that have been developed by international courts and arbitral tribunals. The only relevant factor mentioned is "the effect of major disparities in respective coastal lengths." It is especially worth noting that there is no reference in the joint statement to the median or the equidistance line or to the sector line. Use of the less descriptive wording "relevant factors" rather than the established concepts of "relevant or special circumstances" could suggest that the delimitation process has been different from that used in recent third party adjudications. In addition to international law, the two parties "have taken into account the progress achieved in the course of long-standing negotiations between the parties." This formulation also suggests that nonlegal factors may have been relevant and accorded weight in establishing the final delimitation line.

At a press conference following the announcement of the breakthrough agreement, the Norwegian prime minister denied that Norway had abandoned its long held median or equidistance line position.<sup>54</sup> The prime minister stated that the median line had been used as a point of departure, but had to be adjusted to accommodate for the longer coastlines of Russia. The prime minister further claimed that this had been the long-standing position of Norway. This, however, can be contrasted with Norway's previous statements that there were no relevant circumstances and that the delimitation line should be the median line. At the signing ceremony in September 2010, it was underlined by the Norwegians that the solution is "based on modern principles of international law."<sup>55</sup> The Ministry of Foreign Affairs of the Russian Federation stated that the treaty "fully comply with the norms and principles of international law."<sup>56</sup>

A map is annexed to the treaty as a way of illustration of the delimitation coordinates referred to in Article 1, paragraph 3 of the treaty. Based on the map, it is difficult to evaluate to what extent the line is an adjusted line based on the median line and the treaty provides little information on what principles were used to obtain the line. The April 2010 joint statement is more informative as the disputed area (between the median line and the sector line) is said to be divided "in two parts of approximate the same size."<sup>57</sup> This was stated more explicitly by the Russian Foreign Ministry: "about 88000 square kilometres for either parties."<sup>58</sup>

The joint statement's explicit reference to "the effect of major disparities in respective coastal lines" refers to a disproportion between the lengths of coasts recognized as one of the most important geographical relevant circumstances. But, according to the case law, not all coastlines are relevant. Only the coastline in the disputed area should be taken

into account, according to the 2009 *Black Sea Case*.<sup>59</sup> There is a question of whether the whole coastline in the disputed area is to be measured for disproportionate effect or only that coastline in the southern part between the adjacent mainland coasts.<sup>60</sup> Due to lack of information about the chosen relevant coasts and the calculation of their lengths, it is not possible to assess this circumstance and its effect on the delimitation. The delimitation line on the map appears to indicate that the largest effect of coastline disproportion is in the southern part, probably combined with reducing the encroachment of the Varanger peninsula on the Russian maritime zones. In the midsection, where the continental shelf beyond 200 miles is delimited, it is difficult to assess whether geographical or geological factors have been applied. Concerning the delimitation of the maritime areas where the coastline of the Svalbard archipelago is relevant, it is sufficient to note that the delimitation line is not identical with the modified sector line argued by Russia.

Access to natural resources does not seem to have been used as a relevant factor or circumstance. In the joint statement, there is a reference to the economic importance of marine living resources to Norway and Russia and their coastal communities as well as their historical exploitation by fishermen of both states. This is reiterated in the preamble of the treaty. The parties have agreed that the treaty is not to adversely affect the fishing opportunities of the two states.<sup>61</sup> The treaty includes also provisions on rules and procedures for shared petroleum resources.<sup>62</sup>

An earlier study suggested that international law would indicate a modified median line to take account, first, of

the further projection of the Norwegian mainland coast seawards; second, to reflect a reasonable degree of proportionality between the lengths of the parties' respective coastlines and the areas of continental shelf belonging to each; and third, to discount, wholly or partially, the effect of various off-lying islands in the Svalbard and Franz Josef Land archipelagos.<sup>63</sup>

The treaty's approximate equal division of the disputed area, however, raises the question of whether the agreed boundary is best described as a modified median line (as argued by Norway) or a modified sector line (as argued by Russia).

A special feature of the treaty is the fact that Russia is entitled to exercise sovereign rights and jurisdiction in an area east of the delimitation line within 200 nautical miles of Norway, but beyond 200 miles of Russia.<sup>64</sup> This is an interesting example of a state transferring its sovereign rights to another state, and makes it possible for Russia to exercise such rights beyond its 200-mile EEZ.

## Implications of the Barents Sea Treaty

### *General*

The treaty is described in the joint statement as comprehensive, which is confirmed by its title "Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean." While it will be certain which areas are firmly part of the EEZ or the continental shelf of each state, there is a need for the two states to deal with the new questions, especially concerning the resources that are shared or will be shared between them. The disputed area of the Grey Zone (defined in a subsequent exchange of notes<sup>65</sup>) will now be absorbed partly by Norwegian and partly by Russian EEZs, thus providing the coastal states with clear

jurisdiction over foreign-flagged fishing vessels and the protection and preservation of the marine environment.

### *Access to and Management of Natural Resources*

The treaty includes provisions on how to deal with the shared resources in the Barents Sea and the wider Arctic Ocean.<sup>66</sup> When it comes to marine living resources, the implications are significant as the Grey Zone, within which both states operated, will disappear and the waters (and resources) become subject to the sovereign rights of a single coastal state. The reservation in the treaty that the delimitation will not prejudice the fishing opportunities of the parties<sup>67</sup> needs to be read in this context. This is specified as the parties are to pursue their close cooperation with the view to maintaining their shares of the total allowable catches and to ensuring the relative stability of their fishing activities for each of the relevant stocks.<sup>68</sup> The concept of relative stability is known in the European Union Common Fisheries Policy as the principle of allocation of fishing opportunities based on predictable shares.<sup>69</sup> The two states are also to commit themselves to continuing their cooperation through the Norwegian-Russian Joint Fisheries Commission as set out in Article 1 of Annex I of the treaty. The Joint Fisheries Commission has been responsible for the management of shared fish stocks since the 1970s. The treaty provides for its continuation as the 1975 and 1976 Agreements<sup>70</sup> establishing and defining the tasks of the Joint Fisheries Commission are to remain in force for 15 years after its enter into force.<sup>71</sup> Further, the central functions of the Joint Fisheries Commission have been reiterated in the Annex to the treaty.<sup>72</sup> The two agreements from the 1970s are amended through the requirements to ensure relative stability<sup>73</sup> and to apply the precautionary approach widely to the conservation, management, and exploitation of the shared fish stocks.<sup>74</sup> The last mentioned is a literal repetition of Article 6, paragraph 1 of the 1995 UN Fish Stocks Agreement.<sup>75</sup> The objective of the application of the precautionary approach is to protect the living marine resources and preserve the marine environment. The preservation of relative stability likely means that the practice of allocating the quotas for shared fish stocks will continue.<sup>76</sup> Such a guarantee of stability would have been an important element in the reaching of an agreement on the delimitation line. The zonal attachment allocation criteria (based on geographical distribution) developed in international fishery law could otherwise be claimed as a basis for redistributing the quotas, which would constitute a shift from the use of the criteria of traditional fishing patterns and practices used between Norway and Russia.<sup>77</sup>

With regard to petroleum resources, matters were probably simpler since the delimitation line does not affect existing activities. The treaty includes provisions similar to those of the 2007 Varangerfjord Agreement<sup>78</sup> setting out rules and procedures for shared resources.<sup>79</sup> Such provisions are common in the maritime delimitation agreements of Norway, such as the 1965 Agreement Between Norway and the United Kingdom on Delimitation of the Continental Shelf.<sup>80</sup> If it is established that a hydrocarbon deposit is shared between the continental shelf of each of the parties, either may request that an agreement on its exploitation and allocation (so-called unitization agreement) be reached.<sup>81</sup> Annex II to the treaty includes provisions setting out the main elements of a unitization agreement. The annex also includes procedures to resolve disputes between the parties on a unitization agreement. If they are not able to resolve disagreements or reach an agreement within certain time limits, either of the parties may submit the dispute to an ad hoc arbitral tribunal for a binding decision.<sup>82</sup> Minor disagreements about allocation of the rights to the deposit shall be decided by an independent expert appointed by the parties.<sup>83</sup> While there is no reason to

expect changes in the fisheries cooperation between the two countries, except for the end of the Grey Zone Agreement, the agreement on the boundary may have the important effect of opening formerly disputed areas for petroleum exploration and exploitation.

### *The Status of Maritime Zones off Svalbard*

The treaty establishes a delimitation line between the Svalbard Fisheries Protection Zone and the Russian EEZ, and delimits the continental shelf in the mid- and northern Barents Sea. Parts of the continental shelf, according to the Commission on the Limits of the Continental Shelf, constitutes a “submerged prolongation of the landmasses of Mainland Norway and Svalbard.”<sup>84</sup> Neither the joint statement nor the treaty include references to the Svalbard archipelago or any of its islands. Russia, however, by accepting to draw the delimitation line east of its previously asserted adjusted sector line, can be read as recognizing that the Svalbard archipelago can generate normal maritime zones, and that such zones are not prevented by the 1920 Svalbard Treaty. Norway has traditionally argued that the continental shelf around Svalbard is a prolongation of mainland Norway rather than generated by Svalbard.<sup>85</sup> When the agreement is examined, together with other processes Norway has been involved in to identify the boundary of its continental shelf in the Arctic, it is, however, apparent that parts of the Norwegian shelf are based on the landmass of Svalbard. As with the 2006 Agreement Between Denmark and Norway on the Delimitation of Fisheries Zones and the Continental Shelf Between Greenland and Svalbard,<sup>86</sup> the Norwegian-Russian delimitation treaty would be based on the relevant coastline of Svalbard.<sup>87</sup> In the process of delineating the outer limits of the continental shelf in the Arctic, Norway has based its claims on the coastline of Svalbard.<sup>88</sup> All this goes to support the view that Svalbard can and does generate a continental shelf in the same manner as other groups of islands. However, this does not solve the question of whether the Svalbard Treaty, including its requirements on nondiscrimination, applies in the maritime zones beyond the territorial sea. The reservation of rights and obligations under other treaties to which Norway and Russia both are parties confirm this.<sup>89</sup>

### *Implications for Other Arctic Maritime Delimitations*

While a maritime delimitation agreement is binding only on the contracting parties, agreements are part of the state practice that is important for all states. Hence, the Norwegian-Russian treaty will be relevant for other delimitation processes. Maritime boundaries have been established in the Arctic region in some areas, but there are unresolved delimitation disputes such as that between the United States and Canada in the Beaufort Sea.<sup>90</sup> Moreover, new boundary disputes may arise as the coastal states establish their outer continental shelf limits.<sup>91</sup> Whether the Norway-Russia treaty will have implications on the existing disputes is dependent, in part, on how clearly the treaty signals the application of international law. As documented above, neither the joint statement nor the treaty provide much information on the process used for establishing the delimitation line and what circumstances the parties agreed to be relevant and the weight given to these circumstances. The Norway-Russia delimitation includes shelf areas beyond 200 nautical miles, thus adding to the small number of bilateral agreements dealing with the shelf beyond 200 miles. Neither the joint statement nor the treaty provide any information on whether the delimitation in this area was based on the predominant geographical circumstances or geological (e.g., prolongation) circumstances, which could be relevant for other continental shelf delimitation processes in the Arctic and elsewhere.

The Norway-Russia delimitation treaty will probably have few concrete implications for other existing and future maritime delimitation disputes. Nevertheless, the treaty confirms the statements of the five Arctic coastal states (the United States, Canada, Denmark, Russia, and Norway) in the 2008 Ilulissat Declaration that the Arctic Ocean and its adjacent seas are subjected to a comprehensive legal framework through the law of the sea and their commitment to settle overlapping claims in an orderly way.<sup>92</sup> Norway and Russia stressed this point at the signing ceremony.<sup>93</sup>

## Conclusion

The agreement between Norway and Russia on a maritime boundary in the Barents Sea marks an end to an almost 40-year process. It is not coincidental that agreement was reached in a period of significant international attention on the Arctic. The prospect of the sea-ice loss, the opening of the region to maritime transport and access to natural resources, particularly potential petroleum deposits, was probably influential for the parties to reach agreement at this stage. The coastal states needed to sort out their differences to meet these new challenges and to ensure consolidation of their sovereign rights over natural resources and jurisdiction over international shipping. The removal of overlapping claims has also clarified the rights and obligations of third states.

The settlement of the maritime boundary with Russia will likely contribute to the consolidation of the maritime zones claimed or established by Norway on the basis of Svalbard. But the two parties have formally reserved their rights by including a clause in the September 2010 treaty ensuring that their rights and obligations under multilateral treaties are not prejudiced by the delimitation.<sup>94</sup> The focus in coming years will be on the question of the application of the Svalbard Treaty within these zones. The wider impact of the Norwegian-Russian treaty on Arctic maritime delimitation is more uncertain. The treaty will, however, add to the orderly governance of the Arctic region.

## Appendix 1

### **Joint Statement on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean**

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

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

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

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

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

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

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

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

Oslo, 27 April 2010

Jonas Gahr Støre

Foreign Minister of the Kingdom of Norway

Sergey Lavrov

Foreign Minister of the Russian Federation

English translation

## Appendix 2

### **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.

### Notes

1. "Joint Statement on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean," available at [www.regjeringen.no/en/dep/ud/Whats-new/news/2010/statement-delimitation.html?id=601983](http://www.regjeringen.no/en/dep/ud/Whats-new/news/2010/statement-delimitation.html?id=601983) (June 2010) and see Appendix 1.
2. An English translation of the Treaty Between the Kingdom of Norway and the Russian Federation Concerning Maritime Delimitation and Cooperation is available at [www.regjeringen.no/en/dep/ud/campaign/delimitation/treaty.html?id=614006](http://www.regjeringen.no/en/dep/ud/campaign/delimitation/treaty.html?id=614006) (October 2010) and see Appendix 2. The authentic Russian and Norwegian texts of the treaty are available at [www.regjeringen.no/nb/dep/ud/kampanjer/delelinje/avtalen.html?id=614006](http://www.regjeringen.no/nb/dep/ud/kampanjer/delelinje/avtalen.html?id=614006) (October 2010).
3. Joint Statement, *supra* note 1, para. 4.
4. Robin Churchill and Geir Ulfstein, *Marine Management in Disputed Areas: The Case of the Barents Sea* (London: Routledge, 1992), 63–65.
5. *Ibid.*, at 69.
6. The northernmost part of the delimitation involves delimitation of the continental shelf between Svalbard and the Russian Franz Josef Islands. See "Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission Made by Norway in Respect of Areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea on 27 November 2006," adopted by the Commission on 27 March 2009, with amendments, pp. 15–16 (item 5.3), available at [www.un.org/Depts/los/clcs\\_new/submissions\\_files/nor06/nor\\_rec\\_summ.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf) (June 2010).

7. Agreement Concerning the Sea Frontier Between Norway and the USSR in the Varangerfjord, signed in Oslo on 15 February 1957, in force 24 April 1957, 312 *U.N.T.S.* 322.
8. Convention on the Continental Shelf, signed in Geneva on 29 April 1958, in force on 10 June 1964, 499 *U.N.T.S.* 311.
9. Norway, Royal Decree of 31 May 1963 No. 1 Relating to the Sovereignty of Norway over the Sea-bed and Subsoil Outside the Norwegian Coast, available at [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR\\_1963\\_Decree.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_1963_Decree.pdf) (June 2010).
10. Note in Churchill and Ulfstein, *supra* note 4, at 63.
11. *Ibid.*
12. Avtale mellom Norge og Sovjetunionen om en midlertidig praktisk ordning for fisket i et tilstøtende område i Barentshavet med tilhørende protokoll og erklæring (translated to "Agreement Between Norway and the Soviet Union on a Temporary and Practical Arrangement for the Fishery in an Adjacent Area of the Barents Sea") Oslo 11 January 1978, in force 27 April 1978, *Overenskomster med fremmede stater* (1978), 436.
13. Churchill and Ulfstein, *supra* note 4, at 65.
14. United Nations Convention on the Law of the Sea (hereafter LOS Convention), signed in Montego Bay on 10 December 1982, in force 16 November 1994, 1833 *U.N.T.S.* 397. The status of ratifications and accessions is available at [www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm) (June 2010).
15. See Alex G. Oude Elferink, "Arctic Maritime Delimitations: The Preponderance of Similarities with Other Regions," in *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, ed. A.G. Oude Elferink and D. Rothwell (The Hague: Martinus Nijhoff, 2001), n. 33, 186–187.
16. Churchill and Ulfstein, *supra* note 4, at 70.
17. *Ibid.*, at 63; Oude Elferink, *supra* note 15, at 187.
18. Treaty Concerning the Archipelago of Spitsbergen, signed in Paris on 9 February 1920, in force 14 August 1925, 2 *L.N.T.S.* 7.
19. See Churchill and Ulfstein, *supra* note 4, at 75.
20. *Ibid.*, at 75; Oude Elferink, *supra* note 15, at 188.
21. Churchill and Ulfstein, *supra* note 4, at 73.
22. *Ibid.*, at 78–79.
23. T. Pedersen and T. Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?" *International Journal of Marine and Coastal Law* 24 (2009): 144, n. 11.
24. Churchill and Ulfstein, *supra* note 4, at 78–80; Oude Elferink, *supra* note 15, at 189.
25. See Churchill and Ulfstein, *supra* note 4, at 68; and Oude Elferink, *supra* note 15, at 185; for further references.
26. Agreement Between the Russian Federation and the Kingdom of Norway on the Maritime Delimitation in the Varangerfjord Area (with map), signed in Moscow on 11 July 2007, *U.N.T.S.* Reg. No. 45114; and 67 *U.N. Law of the Sea Bulletin* 42, art. 2.
27. Norway, Proposition No. 3 (2007–2008) to the Storting on Consent to Ratification of Agreement Between the Russian Federation and the Kingdom of Norway on the Maritime Delimitation in the Varangerfjord Area, 2, available in Norwegian at [www.regjeringen.no/nb/dep/ud/dok/regpubl/stprp/2007-2008/stprp-nr-3-2007-2008.html?id=488644](http://www.regjeringen.no/nb/dep/ud/dok/regpubl/stprp/2007-2008/stprp-nr-3-2007-2008.html?id=488644) (June 2010).
28. Continental Shelf Convention, *supra* note 8, art. 6(1); LOS Convention, *supra* note 14, arts. 74(1) and 83(1).
29. Stuart Kaye, "Lessons Learned from the Gulf of Maine Case: The Development of Maritime Boundary Delimitation Jurisprudence since UNCLOS III," *Ocean and Coastal Law Journal* 14 (2008): 74.
30. R. R. Churchill and A. V. Lowe, *The Law of the Sea*, 3rd ed. (Manchester: Manchester University Press, 1999), 191.
31. Kaye, *supra* note 29, at 74.
32. *Arbitration Between Barbados and the Republic of Trinidad and Tobago, Relating to the Delimitation of the Exclusive Economic Zone and the Continental Shelf Between Them*, 11 April 2006,

*Reports of International Arbitral Awards*, vol. 27, 147–251, para. 223, available at [untreaty.un.org/cod/riaa/cases/vol\\_XXVII/147-251.pdf](http://untreaty.un.org/cod/riaa/cases/vol_XXVII/147-251.pdf) (June 2010).

33. The concepts of “relevant circumstances” in customary international law, as identified in case law and “special circumstances” in treaty law, the LOS Convention, *supra* note 14, art. 15; and the Continental Shelf Convention, *supra* note 8, art. 6; have gradually become intertwined. See *Barbados v. Trinidad Case*, *supra* note 32, para. 265; and *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*, Judgment, 16 March 2001, [2001] *I.C.J. Reports* 111, para. 231.

34. *Case Concerning Maritime Delimitation in The Black Sea (Romania v. Ukraine)*, Judgment, 3 February 2009, para. 155, available at [www.icj-cij.org/docket/files/132/14987.pdf](http://www.icj-cij.org/docket/files/132/14987.pdf) (June 2010).

35. Kaye, *supra* note 29, at 81–82; Malcolm Evans, “The Law of the Sea,” in *International Law*, ed. M. Evans (Oxford: Oxford University Press, 2003), 648–649.

36. *Barbados v. Trinidad and Tobago*, *supra* note 32, para. 233.

37. *Ibid.*, para. 228.

38. *Ibid.*, para. 244.

39. *Romania v. Ukraine*, *supra* note 34, para. 122.

40. *Ibid.*, para. 185; Kaye, *supra* note 29, at 82–85.

41. Kaye, *supra* note 29, at 86–88.

42. *Ibid.*, at 90–91.

43. *Barbados v. Trinidad and Tobago*, *supra* note 32, para. 241; Kaye, *supra* note 29, at 92–94.

44. *Maritime Delimitation in the Area Between Greenland and Jan Mayen*, Judgment, [1993] *I.C.J. Reports*, paras. 72–76, 70–72.

45. *Gulf of Maine Case (Canada v. United States)*, Judgment, [1986] *I.C.J. Reports* 246.

46. *Romania v. Ukraine*, *supra* note 34, para. 198.

47. Kaye, *supra* note 29, at 98.

48. *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, [1985] *I.C.J. Reports*, para. 51, p. 42.

49. *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, Judgment, [2002] *I.C.J. Reports*, 446–447, para. 301.

50. Norway-Russia Treaty, *supra* note 2, art. 2.

51. “Recommendations of the Commission to Norway,” *supra* note 6.

52. Joint Statement, *supra* note 1, para. 4.

53. *Ibid.*

54. *Aftenposten*, 27 April 2010, available at [www.aftenposten.no/nyheter/iriks/article3625442](http://www.aftenposten.no/nyheter/iriks/article3625442). *ecc.*

55. Press release 15 September 2010, No. 118/10, “Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean Signed Today,” available at [www.regjeringen.no/en/dep/smk/press-center/Press-releases/2010/treaty.html?id=614254](http://www.regjeringen.no/en/dep/smk/press-center/Press-releases/2010/treaty.html?id=614254) (October 2010).

56. “MFA Information and Press Department Comment in Relation to the Signing of a Russian-Norwegian Treaty on Maritime Delimitation,” 1225–16-09–2010, available at [www.mid.ru/brp\\_4.nsf/e78a48070f128a7b43256999005bcb3/f667f47638157ab7c32577a1001cf3e1?OpenDocument](http://www.mid.ru/brp_4.nsf/e78a48070f128a7b43256999005bcb3/f667f47638157ab7c32577a1001cf3e1?OpenDocument) (October 2010).

57. Joint Statement, *supra* note 1, para. 4.

58. “Russian MFA Spokesman Andrei Nesterenko Response to Media Question Regarding Russian-Norwegian Agreement on Delimitation in the Barents Sea and the Arctic Ocean,” 556–28-04–2010, available at [www.mid.ru/brp\\_4.nsf/e78a48070f128a7b43256999005bcb3/28a6508288dace24c32577140029dbdc?OpenDocument](http://www.mid.ru/brp_4.nsf/e78a48070f128a7b43256999005bcb3/28a6508288dace24c32577140029dbdc?OpenDocument) (October 2010).

59. *Romania v. Ukraine*, *supra* note 34, paras. 77–78.

60. See Churchill and Ulfstein, *supra* note 4, pp. 71–72.

61. Norway-Russia Treaty, *supra* note 2, art.4, para. 1.

62. *Ibid.*, art. 5 and Annex II.

63. Churchill and Ulfstein, *supra* note 4, at 89.
64. Norway-Russia Treaty, *supra* note 2, art. 3, para. 1.
65. Exchange of Notes Verbales in Relation to the Signing of the Delimitation and Cooperation Agreement, available at [www.regjeringen.no/upload/UD/Vedlegg/Folkerett/100915Noteveksling.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/Folkerett/100915Noteveksling.pdf) (October 2010).
66. Norway-Russia Treaty, *supra* note 2, arts. 4 and 5 and Annexes I and II.
67. *Ibid.*, art. 4, para. 1.
68. *Ibid.*, art. 4, para. 2.
69. Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the Conservation and Sustainable Exploitation of Fisheries Resources Under the Common Fisheries Policy, Recital 16 and Article 20(1), *Official Journal of the European Communities*, 31 December 2002 L 358: 59.
70. Agreement on Co-operation in the Fishing Industry Between Union of Soviet Socialist Republics and Norway, signed at Moscow on 11 April 1975 (Avtale mellom Norge og Sovjetunionen om samarbeid innen fiskerinæringen 11 April 1975), 983 *U.N.T.S.* 8; and Agreement Concerning Mutual Relations in the Field of Fisheries Between Union of Soviet Socialist Republics and Norway, signed at Moscow on 15 October 1976 (Avtale mellom Norge og Sovjetunionen om gjensidige fiskeriforbindelser 15 October 1976) 1157 *U.N.T.S.* 147.
71. Norway-Russia Treaty, *supra* note 2, Annex I, art. 1.
72. *Ibid.*, Annex I, arts. 3–4.
73. *Ibid.*, art. 4, para. 2.
74. *Ibid.*, art. 4, para. 3.
75. The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York (4 August 1995), entered into force 11 December 2001, 2167 *U.N.T.S.* 3.
76. Norway, Report to the Storting No. 18 (2009–2010) on the Fisheries Agreements Norway Has Concluded with Other Countries for 2010 and on the Fisheries Under 2008 and 2009 Fisheries Agreements, 29, available in Norwegian at [www.regjeringen.no/en/dep/fkd/dok/regpubl/stmeld/2009–2010/Meld-St-18–2009-2010.html?id=606814](http://www.regjeringen.no/en/dep/fkd/dok/regpubl/stmeld/2009–2010/Meld-St-18–2009-2010.html?id=606814) (June 2010).
77. Alf Håkon Hoel and Ingrid Kvalvik, “The Allocation of Scarce Natural Resources: The Case of Fisheries,” *Marine Policy* 30 (2006): 347–356.
78. The 2007 Varangerfjord Agreement, *supra* note 26, art. 3.
79. Norway-Russia Treaty, *supra* note 2, art. 5 and Annex II; and see Joint Statement, *supra* note 1, para. 7.
80. Agreement Between the United Kingdom and Norway Relating to the Delimitation of the Continental Shelf Between the Two Countries, signed at London on 10 March 1965, in force 10 March 1965, 551 *U.N.T.S.* 213, art. 4.
81. Norway-Russia Treaty, *supra* note 2, art. 5, para. 2.
82. *Ibid.*, Annex II, art. 3.
83. *Ibid.*, Annex II, art. 4, para. 1.
84. “Recommendations of the Commission to Norway,” *supra* note 6, at 7, item 4.
85. See Churchill and Ulfstein, *supra* note 4, at 40.
86. Agreement Between Norway and Denmark Together with the Home Rule Government of Greenland, Concerning the Delimitation of the Continental Shelf and the Fisheries Zones in the Area Between Greenland and Svalbard, signed at Copenhagen on 20 February 2006, *U.N.T.S.*, Reg. No. 42887.
87. See Alex G. Oude Elferink, “Maritime Delimitation Between Denmark/Greenland and Norway,” *Ocean Development and International Law* 38 (2007): 376.
88. Pedersen and Henriksen, *supra* note 23, at 151.
89. Norway-Russia Treaty, *supra* note 2, art. 6.
90. See an overview of maritime boundary issues in the Arctic Ocean in Oude Elferink, *supra* note 15, at 185–197.

91. Mel Weber, “Defining the Outer Limits of the Continental Shelf across the Arctic Basin: The Russian Submission, States’ Rights, Boundary Delimitation and Arctic Regional Cooperation,” *International Journal of Marine and Coastal Law* 24 (2009): 670–673.

92. Ilulissat Declaration, adopted at the Arctic Ocean Conference, Ilulissat, Greenland, 27–29 May 2008, available at [arctic-council.org/article/2008/6/after\\_the\\_ilulissat-declaration](http://arctic-council.org/article/2008/6/after_the_ilulissat-declaration) (June 2010). See the reference to the Ilulissat Declaration in the Joint Statement, *supra* note 1, para. 2.

93. Press release 15 September 2010, No. 118/10, *supra* note 55.

94. Norway-Russia Treaty, *supra* note 2, art. 6.