

The Russian Flag on the North Pole

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A Russian state flag has been placed on the Arctic Ocean floor.

That is a truly landmark event. As part of the Arctic 2007 expedition, the Akademik Fyodorov research vessel made the first voyage to a high latitude part of the Arctic. On August 2, 2007, for the first time in history, a unique experiment was carried out: Two submersibles with daring explorers on board dived to a record depth of 4,261 meters. Over the course of almost two hours, they performed a preplanned research and exploration mission. One of the main goals of that unprecedented deed was to obtain a sample of seabed rock sediment that was to serve as conclusive evidence of the fact that the Lomonosov Ridge is an extension of the Siberian Continental Platform and therefore, the mineral deposits there belong to our state.

Russia is looking ahead. If this is proved, we will add 1.2 million square kilometers of territory where about two-thirds of all hydrocarbon reserves of the Arctic Ocean are concentrated. This means many billions of metric tons of natural gas and oil.

Indeed, this is something worth fighting for.

According to RF President V. Putin, the results of the expedition by the Russian polar explorers to the North Pole should constitute the foundation of Russia's position in determining the legal status of this part of the Arctic shelf. "As for the extension of our shelf, needless to say, that should be discussed with our colleagues and proved at international organizations. [...] It is a great success both of science and of concrete people who are working on this."

Meanwhile, the Arctic territory is also being claimed by the United States, Canada, Denmark, and Norway.

The reaction from these and some other countries has been somewhat different.

Thus, the Canadian foreign minister Peter MacKay called into question the legitimacy of the actions conducted by the Russian expedition: "This isn't the 15th century. You can't go around the world and just plant flags and say 'We're claiming this territory.'" It needs to be explained here that not a single Russian or government official has described the placement of the Russian flag on the North Pole as legal grounds for reviewing the status of the seabed in this area or as evidence of effective occupation. It may be noted that an expedition that, for example, conquered the Everest places its flag there and does not call into question Nepal's sovereignty over that mountain summit. Similarly, Canadian and U.S. officials make no distinction between

two types of space - sovereign territory and space with respect to which a state exercises its jurisdiction.

This situation can be straightened out on the basis of international law. Today, there is only one area on earth that may be subject to what can be described as national appropriation. It is the floor of the world oceans. Depending on their status, the bed of seas and oceans is divided into two types of space - deep ocean floor and the continental shelf of coastal States.

The continental shelf is not part of a state territory, and sovereignty does not extend to it. A coastal State may not have full control of it - e.g., it may not cede it to another country, sell like Alaska, or transfer it by way of gift.

The current interest in the continental shelf has to do primarily with exclusive rights to vast reserves of hydrocarbons, raw materials that can effectively ensure a state's energy security.

The Continental Shelf and International Law

Until the early 20th century, the seabed was regarded solely within the limits of res nullius, or international area. No distinction was made between the shelf and the deep ocean floor. A coastal State extended its sovereignty to the seabed only within a three mile zone of territorial sea. In the early 20th century, states began to establish their sovereign rights with respect to living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil, and the right to control sections of the seabed that have strategic importance. The rapid development of science and technology strengthened the States' interest in seabed resources beyond the limits of territorial seas.

The term "continental shelf" was introduced by Hugh Robert Mill, a British geographer and meteorologist.

The first act that exhaustively substantiated states' claims to the continental shelf was the September 28, 1945 declaration by US President Harry Truman. The US president proclaimed that the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States appertain to the United States and are subject to its jurisdiction and control.¹ The proclamation itself did not provide a clear cut definition of the term "continental shelf." The gap was filled in a White House press release accompanying the proclamation. It was noted that continental shelf was submerged prolongation of the land mass of the coastal State with a depth of not more than 200 meters.

A definition of the term "continental shelf" only appeared in 1949. F. P. Shepard, a US marine geologist and sedimentologist, defined the continental shelf as shallow water platforms and terraces, that part of the continental margin which is between the shoreline and the shelf break. The modern geological science describes the continental shelf as broad, relatively shallow submarine platform that forms a border to a continent and is a

continuation of the continental landmass: narrow, rough, and steep off mountainous coasts but broad and comparatively level offshore from plains.

The Truman proclamation, far from arousing protests within the international community, became in effect a starting point for the formulation and development of common norms of international law. The majority of national acts that were adopted by other States in the 1945 - 1957 period were in some form or other based on principles put forward in the aforementioned declaration. But those acts did not establish a uniform scope of rights (claims) to the continental shelf. Therefore, those unilateral acts were unable to create a new norm of international law.

In the early 1950s, the International Law Commission of the United Nations (ILC) started drafting articles of a future international act on the continental shelf, pertaining to the issue of natural resources and the legal grounds of the sovereign rights of coastal States with respect to the continental shelf in the interest of its exploration and development of its natural resources.

In substantiation of the sovereign rights of coastal States to the shelf, the ILC said: "It would seem to serve no purpose to refer to the seabed and subsoil of the submarine areas in question as *res nullius*, capable of being acquired by the first occupier. ["That conception might lead to chaos, and it would disregard the fact that in most cases the effective exploitation of the natural resources will depend on the existence of installations on the territory of the coastal State to which the submarine areas are contiguous."]² The ILC's original approach aroused the concern of coastal States in so far as the status of the shelf was made dependent on occupation and the possibility of effective exploitation of its natural resources, regardless of the geographic criterion, by virtue of which the shelf appertains to a State.

In light of the aforementioned, in 1956, the UN Commission offered a new definition of the continental shelf, based on two concepts: the term "continental shelf" is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters (approximately 100 fathoms) or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. As a result, the First United Nations Conference on the Law of the Sea, which met in Geneva from 24 February to 27 April 1958, adopted the Geneva Convention on the Continental Shelf (1958 Convention), which for the first time provided a clear definition of the term "continental shelf." The conference turned down UK and Dutch proposals that the term "submarine areas" be used instead of the term "continental shelf," accepting the definition of the shelf as proposed by the ILC. In accordance with the provisions of Article 1, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

The geological science of the late 1950s lacked the technology to study the shelf of deep submarine areas or to establish the outer limits of submarine areas of the seabed falling under the jurisdiction of a coastal State. Therefore, the definition of the shelf in international law was based on geological criteria: adjacency to the coast, a depth parameter - a 200 meter isobath (an imaginary line or one drawn on a map connecting all

points of equal depth below the surface of a body of water), and the principle of exploitability, in accordance with which a coastal State may develop natural resources also outside the limits of a 200 meter isobath.

However, Resolution 2474 (XXIV) of the UN General Assembly expressed concern over the fact that the definition of the continental shelf made in the 1958 Convention did not establish sufficiently clear limits of an area with respect to which a coastal State exercises its sovereign rights to develop its natural resources.

By the time of the Third UN Conference on the Law of the Sea (1973-82), the international community was determined to take into account the latest achievements and changes in the practice or regulating states' activity on the shelf. It was necessary to establish clear cut limits for the shelf and define the legal status of the seabed and its subsoil beyond the limits of national jurisdiction - i.e., beyond the limits of the shelf.

One important achievement of the 1982 Convention is the provision about the coastal State's rights to the continental shelf ipso facto, regardless of effective or fictional occupation. The rights of the coastal State to shelf resources exist regardless of whether or not they have been declared by the coastal State. This concept is based on the ruling by the International Court of Justice on the North Sea continental shelf (1969). As a result, the norms and provisions of the 1982 Convention use the principle of the submerged prolongation of the land mass of the coastal State, regardless of the geological component of the submerged edge. The coastal State holds the exclusive right to 200 nautical miles of the continental shelf from the baselines from which the breadth of the territorial sea is measured. This is a norm of international law. If the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

A modern definition of the term "continental shelf" is provided in the 1982 Convention (Article 76): "The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

Therefore, a clear distinction was made in the geological and legal approaches toward the definition of the continental shelf. Based on the criterion of distance, the definition of the continental shelf in international law is now substantially broader than the geological definition since in addition to the shelf, it also includes other areas of the seabed that are not the shelf in the geological sense, and regardless of the criterion of effective exploitability.

It is very important that the 1982 Convention introduces the principle of distance which enables a coastal State, which does not have continental shelf in the physical sense, to extend its sovereign rights to 200 miles. Such a situation is typical of Peru, Chile, Ecuador, and Russia's Kuril Islands. Prof. P. Birney (London) believes, with good reason, too, that the UN Convention contains a new definition of the shelf, which includes a 200 mile area for each coastal State, regardless of the natural prolongation of the continental territory. ³ All States today have 200 mile shelves, regardless of whether there is territorial prolongation or not. ⁴

Such is, in this case, the importance of international law and its key role in the protection of the interests of coastal States, including Russia.

Evolution of the Term "Continental Shelf"

The evolution of the international law of the sea did not end with the entry into force (on November 16, 1994) of the UN Convention enabling coastal States to extend their continental shelf beyond the limits of the ipso facto 200 miles. But unlike the 1958 Convention, the 1982 Convention limits the claims of the coastal State to a maximum distance of 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 meter isobath.

Article 76 of the Convention lays down the mechanism for extending the continental shelf of the coastal State beyond the limits of 200 miles from the baselines from which the breadth of the territorial sea is measured. It sets a number of conditions that must be observed: 1) a State shall be a signatory to the 1982 Convention; 2) the outer limits of the continental shelf beyond the 200 miles shall be established on the basis of recommendations by the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation (Commission); 3) the coastal State shall deposit with the Secretary General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf; and 4) the provisions of the article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

The evolution of the institution of the continental shelf after the UN Convention's entry into force is closely connected with the work of the Commission on the Limits of the Continental Shelf. The Commission's role is still regarded as moot. In the opinion of the present authors, its goal is to prevent encroachments by States on the resources of the deep sea floor, which belong to entire mankind. Taking into account the insufficient scientific data about the shelf, as well as the complexity of determining the thickness of sedimentary rocks and of the outer limit of the continental slope, and striving to prevent the possibility of the appropriation of the shelf area by claiming it as the continental shelf, the Third UN Conference on the Law of the Sea made the decision to set up a special oversight and consultative body - the Commission on the Limits of the Continental Shelf.

The creation of this functional body is designed to prevent disagreements between coastal States and to take into account the interests of both individual States and the international community as a whole.

The legal foundation of the Commission's activities is Article 76 of the 1982 Convention, which provides for a complex combination of clearly formulated methods and procedures for determining the outer limits of the shelf, and Annex II to the 1982 Convention: Rules of Procedure of the Commission on the Limits of the Continental Shelf, as well as the Modus Operandi and the Internal procedure of the subcommission of the Commission, and the Internal procedure of the subcommission of the Commission on the Limits of the Continental Shelf. Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf - Annexes II-IV to the Guidelines adopted by the Commission on 3 September 1999 at its sixth session. The document has become the first reliable and scientifically and technically specific act (interpretation) of

Article 76. The Procedure and the Guidelines are used as a basis for providing assistance to coastal States in filing their claims and for offering advice on the submission of data that they are required to present. The Procedure enables the Commission to have clear cut guidelines in considering claims and in making its recommendations. That has to do with the fact that knowledge about the nature of continental platforms has substantially expanded in the past two decades.

For all the controversy around the Commission's performance, its role is basically reduced to the issue of recommendations in accordance with the provisions of Article 76, Paragraph 8. The limits of the shelf established by a coastal State on the basis of the Commission's recommendations to coastal States shall be final and binding. Recommendations are by two-thirds of votes. In all, there are 21 members - representatives of the states signatory to the 1982 Convention (Commission members include representatives of Russia, China, Japan, India, and Romania, as well as other countries).

Within 10 days after the UN Convention's entry into force for a particular State or after May 13, 1999, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation.

In performing its functions - i.e., working out recommendations to an applying State, the Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by the coastal State on the basis of these recommendations shall be final and binding. The coastal State shall deposit with the Secretary General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf.

Thus, the Commission's activity suggests that the international law criterion is once again being made dependent on geological components.

Russia's Rights to the Arctic

The Russian Federation was one of the first coastal States to invoke the Article 76 mechanism. A package of materials received as a result of regional geological and physical studies in the Arctic Ocean and systematized in line with the Commission's Scientific and Technical Guidelines, was presented through the Ministry of Foreign Affairs.

The official title of the document, which the Russian media referred to as "claim," was an application by the Russian Federation in accordance with the provisions of Article 76, Paragraph 8 of the 1982 United Nations Convention on the Law of the Sea. On December 20, 2001, the UN Secretariat registered the RF application together with the geographic coordinates of the points of the limits of the continental shelf in the Arctic Ocean and the Pacific Ocean beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The mechanism established by the Convention enables the Russian Federation to claim an expanded shelf zone in the Arctic up to and including the North Pole, as well as an enclave of the continental shelf beyond 200 miles in the Sea of Okhotsk.

The importance of delimiting the outer edge of the continental shelf of the Russian Federation is reflected in a federal targeted program entitled World Oceans, which was approved by Government Resolution #919 on August 10, 1998. The rights of the Russian Federation as a successor to the USSR with respect to part of the Arctic adjacent to its coast were enshrined in a variety of acts and normative regulations. As is known, the Arctic (Lat. Arcticus, or "northern," Greek Arctos, or "Bear" (as in Ursa Major or Ursa Minor) is the region lying north of the Arctic Circle or of the northernmost limit of tree growth.

The first document defining the status of lands and islands located in the Russian Arctic zone adjacent to the Russian coast was the September 20, 1916 note of the Foreign Ministry of the Russian Empire. The note contained a provision on the inclusion of vast areas located along Siberia's northern coast, which were discovered by Capt. B. A. Vil'kitskii. Russian territory also included all islands that were the prolongation of the Siberian continental plateau and islands located near Russia's European coast. Their status as part of Russian territory has been recognized for centuries.

In a memorandum that G. V. Chicherin, the USSR people's commissar [minister] for foreign affairs, sent to all states, the Soviet Union reaffirmed the provisions of the 1916 note on the status of all aforementioned lands and islands as RFSFR territory. The USSR government stressed that "the aforementioned lands and islands, located in the waters washing the northern coast of Siberia, are positioned to the west of the line that defines, in accordance with the March 18 (30), 1867 Washington Convention between Russia and the United States of America, the boundary to the west of which the United States undertook not to make any claims."

That issue was finally resolved in a resolution by the Presidium of the Central Executive Committee of the USSR, entitled "On Proclaiming the Lands and Islands in the Arctic Ocean as the Territory of the USSR," (April 15, 1926), 5 in which "all lands and islands that have been discovered or may yet be discovered," located in the Arctic Ocean between the meridians 32°04'35" E and 168°49'30" W, were declared USSR territory. An exception was made for the eastern islands of the Spitsbergen Archipelago between 32° and 35° E. The aggregate area of the USSR's polar possessions was 5.842 millions square kilometers. In his statement of April 17, 1926, N. P. Gorbunov, the head of the USSR Council of People's Commissars Property Managing Department, confirmed the extension of the country's sovereignty to these islands and lands.

Following the breakup of the USSR, the Russian Federation's rights in the Arctic were enshrined in the Constitution of the Russian Federation, the Law of the Russian Federation on the State Border of the Russian Federation (April 1, 1993), 6 the Federal Law on the Continental shelf (November 30, 1995), 7 and the Federal Law on the Exclusive Economic Zone of the Russian Federation (December 17, 1998). 8

A draft law on the Arctic Zone is pending at the Russian State Duma's Committee on Northern Territories and Indigenous Minorities. The Russian Maritime Doctrine through 2020, approved by an RF presidential decree (July 27, 2001), proclaims the maintenance and protection of sovereign rights on the RF's continental shelf, specifically in prospecting and developing its natural resources, as one of the goals of the national maritime policy.

It should be noted in this context that Canada was the first state to reflect its presence in the region on its maps and charts (1904). On June 27, 1925, Canada adopted

a law on Northwest territories, which prohibited any activity by foreign states in the area. In 1970, it passed a law designed to prevent the pollution of that region, extending Canada's jurisdiction for that purpose to 100 miles.

One of the latest statements by the Canadian prime minister, to the effect that his country extends its sovereignty to the Arctic, including islands, lands, and sea areas, is hardly in accordance with the fundamental provisions of international law. At the same time, as is known, although Arctic sea areas differ from other seas and oceans in a more stringent approach exercised by coastal States in accordance with Article 234 of the 1982 Convention, the rights to them are still based on the generally recognized principles and rules of international law, above all the aforementioned UN Convention.

The total area of the ocean floor that is being sought in the application is 1.2 million square kilometers. Russia's application was considered at the Commission's 11th Session in April 2002. No recommendations have been issued as yet. Consideration was put off until additional essential scientific information was received.

The Commission made the following comments:

1. The problem of the geological nature of the Lomonosov Ridge and the Mendeleev Ridge. Additional geological and geophysical data are needed in order to confirm the continental nature and structural connection between the ridges and the adjacent shelf.

2. The lack of essential data about the Arctic seabed features. Without concrete bathymetric materials in the form of coordinates and digitalized values, it is impossible to determine the accuracy of the delimitation of the outer edge of the continental shelf. But this information was not provided since, in accordance with Russian standards, connected with the country's defense interests in the Arctic, such information is secret.

3. There is not a uniform understanding with respect to the origin of the Mendeleev Ridge in the geological science.

Therefore, the Russian Federation needed additional research and exploration in the Arctic, as part of which a state research vessel, the Akademik Fyodorov made an expedition to a high latitude area of the Arctic in the summer of 2007. The placement of a flag on the Arctic Ocean floor is not evidence of effective occupation. A flag on the ocean floor is a symbolic gesture by the Russian expedition, demonstrating the fulfillment of its obligations to the Commission in the search for additional proof in substantiation of its claims.

To date, the Commission has not completed consideration of Russia's application. Should a positive conclusion be made as to the conformity of the status of the expanded continental shelf in the Arctic Ocean with the provisions of Article 76 of the Convention and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, the Russian Federation will expand the area of its continental shelf to the North Pole. Due to rapid technological advancement, the development of natural resources in that zone will be possible in the foreseeable future.

Russians Are Coming North
(Comments and Judgments)

Russian President Vladimir Putin: "The mission was very interesting, responsible, important for the country, and not free of danger... It is a great success both of science and the concrete people who are involved in this."

Patriarch of Moscow and All Russia Alexy II: "For the first time in history, a Russian expedition has descended to a depth of over 4,000 meters below the North Pole and placed a Russian flag on the floor of the Arctic Ocean... The Arctic 2007 project has enhanced Russia's prestige and demonstrated to the entire world the unique capabilities of domestic submersible technology, as well as the highly professional training of the members of the expedition."

Russian Foreign Minister Sergei Lavrov: "When explorers reach some hitherto unexplored point, they leave a flag. That was the case on the Moon... No one is going around the world and just planting flags to claim some territory. As for the legal aspect of the case, this expedition is part of the extensive work that is based on the Convention on the Law of the Sea."

Artur Chilingarov, deputy of the State Duma, president of the Russian Association of Polar Explorers: "We are happy that we have placed a Russian flag on the ocean floor where not a single human has been to before. I, for one, could not care less what some foreign figures might be saying about that. If someone does not like that, let them try to descend and place something there. We have fulfilled the task that was assigned to us: A Russian flag is right on the North Pole."

Anatolii Sagalevich, professor of oceanography, pilot of the Mir 1 submersible: "We spent 90 minutes on the ocean floor. We took rock and water samples, and we took other measurements. The entire descent was very complex... Technically, it is not difficult to place a flag. What is far more difficult is to rise back to the surface, and I am glad that we have made it."

Vasilii Likhachev, deputy head of the Federation Council Foreign Affairs Committee: "In so far as the development of the Lomonosov Ridge as part of the continental shelf requires the use of advanced, high technology - maybe technology that is still in the labs or only available in the scientific and research laboratories of some countries, needless to say, that will require concerted efforts."

Tom Casey, deputy spokesman, the US Department of State: "The Russians are conducting a scientific expedition in the seabed area by the North Pole. They submitted to a technical body, under the Law of the Sea Convention, a claim to try and extend their continental shelf under the terms of the Law of Sea Convention, beyond the, sort of, 200 nautical miles that's generally traditional. There are some fairly technical arguments that they've made in that. The Russian Government is pursuing a claim under their right to do so as members of the Law of the Sea Convention."

The All Russia Center for the Study of Public Opinion on Social and Economic Questions (VTsIOM): Two-thirds of Russians (68 percent) know about the Arctic 2007

expedition. Their opinion on the goals of the Arctic 2007 expedition has divided almost in three equal parts: 32 percent of respondents believe that the goal is scientific - i.e., to study the Arctic; 30 percent think that it is political - i.e., to fight for influence in the region; 27 percent say that it is economic - i.e., the development of natural resources; 69 percent of respondents agree that Arctic development programs should be financed by the state; only 18 percent believe that these funds would be better spent on other goals.

(An all-Russian poll was conducted on August 18-19, 2007; 1,600 randomly selected respondents were interviewed in 46 regions of Russia.)

NOTES

1 Public Papers of the Presidents of the United States: Harry Truman (1945), p. 353 (1961).

2 Yearbook of the International Law Commission. 1956, v. II. N. Y., 1957, p. 256.

3 Birni P. Tendentsii v deiatel'nosti Mezhdunarodnogo suda pri rassmotrenii del, sviazannykh s delimitatsiei kontinental' nogo shel'fa. "Sovetskii ezhegodnik morskogo prava." 1991. M., 1991, # 3, p. 94.

4 Op. cit., p. 105.

5 Sobranie Zakonodatel' stva SSSR, 1926, #32, Article 203.

6 Vedomosti S'ezda narodnykh deputatov Rossiiskoi Federatsii i Verkhovnogo Soveta Rossiiskoi Federatsii 1993 goda, #17, Article 594.

7 Sobranie Zakonodatel' stva RF, 1995, #49, Article 4694.

8 Sobranie Zakonodatel'stva RF, 1995, #51, Article 6273.