

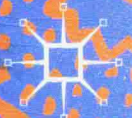


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ARCTIC POLITICS, THE LAW OF THE SEA AND RUSSIAN IDENTITY

The Barents Sea Delimitation
Agreement in Russian Public Debate

Geir Hønneland



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Geir Hønneland

Research Director, Fridtjof Nansen Institute, Norway

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**Arctic Politics, the Law of the Sea and
Russian Identity**

Also by Geir Hønneland

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For Kasper

Preface

In the late winter of 2012–13 I came across an article doing the rounds in Russian newspapers which asked ‘What Can Putin Do to Get the Barents Sea Back?’ The source of the article was an old Russian acquaintance of mine. I wrote an article in response and gave it the same title; it was printed by several Norwegian newspapers, translated into Russian and posted on various websites. Both the Russian article and my Norwegian rejoinder touched on topics of some importance, such as the relationship between the President (and Former Prime Minister) Vladimir Putin and Prime Minister (and Former President) Dmitri Medvedev. What I wanted to say was that the idea that Putin should take back what Medvedev had given Norway by signing the 2010 Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, which established the maritime boundary between Norway and Russia in the Barents Sea, was frankly astonishing.

This book is a revised and extended version of my book *Hvordan skal Putin ta Barentshavet tilbake?* [‘What Can Putin Do to Take the Barents Sea Back?’] (Akademika, 2013). I draw on 20 years of personal and professional experience of the Russian studies industry, but the book does contain new data, especially from the Russian media. The events I describe actually happened, but I have fictionalized the names of Russians who spoke to me in a personal capacity. The same applies to some of the professional titles of my Russian acquaintances, who are mentioned in the introduction to Chapter 5. The professional titles of all the other interviewees in Chapter 5 are correct, however. Apart

from those interviews, which my colleague Anne-Kristin Jørgensen has translated from the Russian, translations from Russian are my own. I have kept to the translator's maxim 'as accurate as possible, as freely as necessary'. That is, I have tried to express the meaning of the original text using words and phrases that would have been chosen in English, while retaining some of the original connotations. I conducted most of the interviews myself, sometimes together with colleagues. Some of the interviews in Chapter 5 were done by Natalia Metanovskaya and Sergei Klimashevich without my participation. Private conversations are reproduced from memory. All interviewees are anonymized.

In my transliteration of Russian letters into English, I have generally kept to -y instead of -i for the Russian 'short -i' (except following a vowel at the end of a name, such as Nikolai) and the letters -yo, -yu and -ya, and -e instead of -ye for the Russian -e (which is actually pronounced -ye). Hence *Vzglyad* instead of *Vzgljad* and *russkie* instead of *russkiye*. I have also omitted the 'short -i' at the end of words when it follows a regular -i. I have, however, made exceptions for personal names whose English spelling is more or less standardized. I write Natalia instead of Nataliya, Yeltsin instead of Eltsin and Zhirinovskiy instead of Zhirinovski. For the sake of readability – and to avoid non-Russian speaking readers believing an error has been made – I don't use the Russian soft sign in the English translation of the transcripts. Due to the relatively informal tone of the text, I have kept the use of capital letters in proper nouns to a minimum, hence 'fishery protection zone around Svalbard' (but the 'Grey Zone').

I have opted for an 'easy' reference system. This is not a legal treatise and I do not provide references to international agreements, laws and regulations. Nor is it a historical dissertation: events and facts are not substantiated by reference to archives. I adhere in the main to the (not always particularly lucid) norms of the social sciences on source attribution. When I quote the same source several times, reference is provided just once, appended to the first quotation. The source of a non-referenced direct quote can be found in the immediately preceding endnote. When I cite interviews conducted by myself that have appeared in other books and articles of mine, details concerning time, place and interviewee (who are usually identified by job category rather than name) can be found in those publications.

I would like to take this opportunity to thank Anne-Kristin Jørgensen, Jørgen Holten Jørgensen, Arild Moe and Lars Rowe for the many conversations we have had over many years on issues to do with the

subject of this book. Thanks to their meticulous reading and comments on the entire manuscript, the book is incomparably better. Thanks also to Øystein Jensen, who read and commented on different parts of the manuscript, and to my eminent language consultant Chris Saunders. A special token of gratitude is due to a former student of mine, Torstein Vik Århus, who collected the media material used in parts of Chapters 3 and 4.

The book was conceived and written while we were waiting for our son Kasper to be born. He arrived just as I was about to type the final full stop. As a future memorial to what his father was doing while he was in his mother's womb, I dedicate this book to him.

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1

Arctic Scramble, Russian Compromise

Abstract: Russia's flag planting at the North Pole in 2007 unleashed a surge of media attention and political interest in the Arctic. A scramble for the Arctic was underway, with Russia as the wild card. This chapter draws attention to the internal Russian criticism of the delimitation agreement that Russia entered into with Norway in the Barents Sea in 2010. The agreement was a compromise which split the formerly disputed area into two equal parts. Critics call for President Putin to establish an international expert commission to assess the validity of the agreement. The author argues that international agreements cannot be annulled by commissions or experts, so the question is not so much how, but why Putin should claim the Barents Sea back.

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In August 2009, Russia planted a titanium flag on the seabed at the North Pole. It was actually accomplished by a Russian scientific expedition collecting data for Russia's submission to the Continental Shelf Commission – in accordance with the Law of the Sea – but was widely perceived as Russia flexing its muscles in the Arctic. At the same time, the summer ice sheet in the Arctic had shrunk to ominous proportions amid growing interest in the possibility for commercial oil and gas production in the Arctic. Scott G. Borgerson famously captured the atmosphere in his seminal article 'Arctic Meltdown':¹ 'The Arctic Ocean is melting, and it is melting fast. ... It is no longer a matter of if, but when, the Arctic Ocean will open to regular marine transportation and exploration of its lucrative natural-resource deposits.'² But the situation is especially dangerous, he adds, 'because there are currently no overarching political or legal structures that can provide for the orderly development of the region or mediate political disagreements over Arctic resources or sea-lanes.'³ '[T]he Arctic countries are [therefore] likely to unilaterally grab as much territory as possible and exert sovereign control over opening sea-lanes wherever they can. In this legal no man's land, Arctic states are pursuing their narrowly defined national interests by laying down sonar nets and arming icebreakers to guard their claims.'⁴

Russia's flag-planting and Borgerson's article unleashed a surge of media attention and political interest at the highest levels in the Arctic. To many it looked as if Russia had laid claim on the North Pole itself, a claim one assumed other states would contest. The scramble for the Arctic was allegedly underway, with Russia as the wild card. On the one hand, the relations between the other Arctic states – those bordering the polar waters, that is, Canada, Denmark (Greenland), Norway and the United States – are excellent and sustained strategically by their common membership in NATO. Russia, on the other hand, is the successor state of the erstwhile Soviet Union, NATO's declared enemy during the Cold War. What happens in the country is often shrouded in mystery – Russia, in Winston Churchill's characterization of it, is 'a riddle, wrapped in a mystery inside an enigma' – and one aspect of its multi-hued national identity is also as a state with a stake in the North: who doesn't think of snow, long winters and endless Siberian forests in connection with Russia? Some expect Russia to do as it pleases in the Arctic, whatever international law and other norms of civilized political behaviour dictate. Much of the 'Arctic fuss', then, is about what Russia wants.

‘What can Putin do to get the Barents Sea back?’ ran the headline of an article printed in several Russian newspapers in late winter 2013.⁵ The author wanted the border between Norway and Russia in the Barents Sea, established by treaty in 2010, revoked forthwith. What’s more, it’s time the international community stood up to Norway and its management of the waters around Svalbard. The article attracted a lot of attention in the Norwegian media, too, as winter progressed into spring. It just goes to show, some said, we still have a Russian bear as a neighbour – it’s best to be on our guard and expect the worst. The viewpoints expressed in the article were pretty eccentric, commentators suggested, but an anomaly, even a misunderstanding. What more could you say about such obvious absurdities? Let’s be clear, the maritime delimitation treaty is a binding agreement between two sovereign states. It was entered into in accordance with the principles of the Law of the Sea – it’s not something you withdraw from, they said, at the drop of a hat.

Vyacheslav Zilanov, formerly Soviet deputy fisheries minister and now a prominent political commentator in northwest Russia, is cited as the article’s main source. Zilanov has been up in arms against what he sees as Russia’s weakness in its dealings with Norway since the 1990s. To those of us who know him he is affable and affectionate, a sort of wise grandfather figure – and he is also a friend of Norway. It’s not the Norwegians he’s irritated with, but his own countrymen. The Russians have recklessly let Norwegians trick them into signing deals and agreements which weren’t in Russia’s best interest, like the fishing quota system and new regulatory standards for the fisheries (see Chapter 2). The Norwegians led the way – savvy, prescient and not a little crafty – while Ivan dozed on his ‘shopping trip abroad’ (a Russian euphemism for spending time at conferences abroad). Now, to top it all, there is this delimitation treaty. It takes the madness to new heights. Russia has gambled away the oil and gas deposits in the Barents Sea.

* * *

Hailed by Norwegians as a great example of what friends can achieve when they put their heads together to reach a compromise that protects the interests of both, the 2010 delimitation treaty which gives Norway and Russia equal halves of the formerly disputed area in the Barents Sea was not greeted with the same unqualified enthusiasm in Russia. Circles in the Russian fishing industry – in Murmansk as well as in Moscow – were clearly dismayed. Russian negotiators, they intimated, had bent

over backwards to give Norway whatever it wanted, and ignored the interests of the Russian people. Even members of the State Duma, which adopted the treaty by a slender majority in 2011, were critical. In fact, it was only due to the votes of the president's party, United Russia, that the treaty was approved; all the other parties abstained.

Criticism has not abated since – on the contrary, it is even louder. The Russian negotiators were guilty of a sin of omission, in the opinion of the article's author and of many others in the Russian media. 'In their talks with Norway, the Russian delegation failed to invoke Russia's preferential right to a coastline under the 1920 Svalbard Treaty, or to mention the historic borders of Russia's Arctic areas determined in 1926, or various other arguments speaking in our favour.' The agreement, in other words, is seen as the result of negotiations between more or less equal parties – and the Russian side was under no compulsion when it signed over waters rightfully belonging to Russia. The effect of this 'outrageous' treaty could easily be to close off the entire western part of the Barents Sea where the biggest fish stocks are to the Russian fishing industry, leaving it to fish in the much poorer waters further east. It would also allow Norway to tighten the thumbscrews on Russian fishing vessels within the fisheries protection zone around Svalbard, a zone Norway unilaterally put in place in 1977 and Moscow has never officially recognized. What the critics do not explain, however, is precisely how the delimitation agreement has caused all these problems. We will have something to say about it later (see Chapter 3).

Not only will the treaty cost the Russians a great deal of money but also it is patently *unfair*. Vyacheslav Zilanov wants a 'roadmap for the President', with instructions on how 'to repossess the Barents Sea'. It should include the appointment of a commission of Russian and foreign experts to assess whether the treaty can be said to be *reasonable* in the sense of the Law of the Sea. When the commission presents its conclusions, the President may then consider whether to have the treaty modified or amended, or even annulled. There should be a new 'Spitsbergen Conference' of the original signatories to the Svalbard Treaty (1920) with a view to assessing the validity of Norway's fisheries protection zone around Svalbard. Both ideas are exceptionally controversial from the Norwegian point of view, to put it mildly. The delimitation treaty is, as mentioned, a binding agreement based on the principles of international law on the delimitation of areas of sea between states. Of course, national parliaments do not always ratify treaties, but to go so far as to annul

one is virtually unheard of. Nor are commissions usually appointed to consider an agreement's soundness in light of international law. States can agree to whatever boundaries they like, but once the agreement is in force they have to respect it. If being bound by the treaty becomes a cause of concern to one of the signatories, it can withdraw from the agreement if the procedures for doing so are in place. The usual option, however, is simply not to ratify the treaty rather than taking the trouble to annul it. In the event of interpretative disputes, the parties can bring the case before an international court, assuming both agree – either for this particular dispute or by prior agreement – to let the court, such as the International Court of Justice at the Hague, decide the issue. It is the courts that decide whether an agreement complies with the guidelines in international law, not an international commission of experts of the sort Zilanov proposes. To call for a new 'Spitsbergen Conference' is also a radical ploy politically speaking, even though opinion is divided on whether the treaty applies to the *waters* around Svalbard (see Chapter 2). The points in the proposed roadmap do not represent official Moscow policy. So the issue is not so much *what* Putin should do to recover the Barents Sea, but *why* he would want to.

Former president and current Prime Minister Dmitri Medvedev is the implied villain of the piece. The article starts by noting that the agreement 'which was signed during the presidency of Dm. Medvedev in 2010', meant that Russia lost 'huge fishing grounds to Norway'. 'The document', the article continues, 'which was approved by Dm. Medvedev, fails to satisfy the basic principles [under the Law of the Sea] of *justice and fairness*' (emphasis in original). Vladimir Putin, Russia's strong man over the past 15 or so years, you are needed. 'Putin, clear up the mess Medvedev left behind!', the article suggests. To an untrained eye, what the article says about Putin and Medvedev is a mixture of fact and ordinary political opinion. Medvedev happened to be president when Russia and Norway signed the agreement. Putin is in charge now. It was a bad deal for Russia – end of story. But to an eye trained in observation of Russian affairs, there's more to it. The article's author need not have mentioned the presidents by name, or at least to repeat their roles as if to emphasize a point. Medvedev was not personally involved in the negotiations, apart possibly from the run-up to the signing in Oslo a few days in spring in April 2010. The author could have asked the Russian government to look at the agreement again without calling on Putin himself. Medvedev and friendly relations with the West (represented here by Norway) are linked

together in the article; reading between the lines, Medvedev comes across as at best naive, at worst a traitor – weaknesses to which Putin, apparently, does not succumb. True, many Russians, it is alleged, prefer having a ‘strong man’ at the helm – macho Putin against brainy, flabby Medvedev – but there is more to it than that. Putin is a ‘real Russian’ – indeed, many would call him an ‘ideal Russian’, echoing the sentiments of a song performed by a female singer during Putin’s first term as president. Russian men are hopeless, she sings, ‘What I want is a man like Putin, a man like Putin, full of strength, a man like Putin, who keeps off the bottle.’⁶ Now, Medvedev is not known to be a drunkard either, but many Russians do feel there is something indefinably alien about him. Like the last Soviet leader, Mikhail Gorbachev, he is a man ‘we can do business with,’ to quote Margaret Thatcher’s famous remark after her first meeting with Gorbachev.⁷ Can the Russians trust someone who gets on so easily with foreigners? Is he really one of them?

* * *

I met Zilanov, the chap with the roadmap for Putin, in Moscow in the mid-1990s. He was a fisheries adviser to the Russian parliament; I was a young social scientist specializing in the study of Russian fisheries management, though I had spent a few years as a Russian interpreter for the Norwegian Coast Guard and fisheries authorities. Zilanov was sympathetic, interested, receptive, forthcoming. I was used to officials of Zilanov’s rank badgering me when I used to work as an interpreter, though to be honest, nothing really changed when I became a researcher. These were the elderly men who used to fill senior positions in the Soviet civil service. The collapse of the Soviet Union had robbed many of them of their prestige, and they were far from happy to see youngsters pouring into the new Russia from the West, doing whatever they got up to. The job of interpreter, I realized soon enough, was considered menial work in Russia, on a par with serving coffee. Fluency in Russian did not merit much respect either. Comrades from non-Russian Soviet republics and satellite states were typically expected by citizens of the superpower to at least make themselves intelligible in the main language of the commonwealth. Russians are not easily moved by linguistic prowess, though they do take offence at the hordes of Westerners proliferating across the country. I experienced an extreme case of irritation with Russian-speaking Westerners during an interview (an eventually quite heated