

CENTER FOR OCEANS LAW AND POLICY

INTERNATIONAL ENERGY
POLICY, THE ARCTIC AND THE
LAW OF THE SEA

Edited by
Myron H. Nordquist, John Norton Moore
and Alexander S. Skaridov



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Preface

The Twenty-Eighth Annual Conference sponsored by the Center for Oceans Law and Policy, University of Virginia School of Law was held at the Palace of the Grand Duke Vladimir in St. Petersburg, Russia from June 23-26, 2004. The co-sponsors were the Russian Institute for Ocean Law Studies, Russian Academy of Liberal Arts Education, Russian Humanitarian State University and the Russian Law of the Sea Association. The overall focus of the conference was on Russia's ocean interests with particular reference to international energy policy, the Arctic and the law of the sea.

Payel Dzubenko, Deputy Director, Law Department, Russian Ministry of Foreign Affairs, spoke on Russia's continental shelf limits and the navigation regime in the Arctic. He commented upon Russia's recent submission to the Commission on the Outer Limits of the Continental Shelf and emphasized the importance of freedom of navigation in the Arctic. Professor Kuen-chen Fu of Xiamen University Law School addressed himself to China's growing demand for energy resources, much of which must be supplied from rich offshore oil and gas fields in the region. Among other matters, Dr. Fu reviewed China's 1982 regulations that govern foreign enterprises doing business with the China National Offshore Oil Corporation. Boris A. Smuslov, who holds the Maritime Law Chair, Maritime State Technical University in St. Petersburg, identified many inadequacies in the global fight against terrorism at sea. The Director of the Aberdeen Institute of Coastal Science and Management, William Ritchie, explained the implications of the environmental policy of the "transfer of good practice" in major offshore oil and gas developments. Russia's environmental regulations pertaining to offshore oil exploration were detailed by Richard N. Dean and Michael P. Barry, lawyer and economist respectively for the international law firm, Coudert Brothers LLP. The co-authors reviewed the incentives for Russia to further develop its vast energy resources, which must be balanced with the potential harm to the environment. They cited risks posed by tanker accidents, discharge of drilling muds and cuttings, pipeline spills, high energy seismic surveys, and especially sensitive environments. Lastly, Dean and Barry offered three approaches to environmental regulation: public law, multilateral institutions and private contractual arrangements. Professor Paul B. Stephan of the University of Virginia School of Law

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spoke on the challenges law faces in dealing with the large capital investment and huge economic risk that accompanies energy development and distribution. He selected discrete legal issues to illustrate ways in which transactional lawyers could assist in strengthening the legal protections for their clients while advising on the limits of such protections.

The Black Sea and the straits connecting it to the open ocean play a significant role in the transportation of energy resources from the region, including the states bordering the Caspian Sea. Vladimir S. Kotliar of Moscow's Diplomatic Academy criticized Turkish policy in taking what he characterized as unilateral actions concerning commercial navigation through the Straits. Dr. Nilüfer Oral, Assistant Director of the Istanbul Bilgi Marine Law and Policy Research Center, countered with a defense of Turkish policy outlining the steps taken in the International Maritime Organization (IMO) and in the region to enhance safety of navigation and the regulation of maritime traffic. Cooperation between Vessel Traffic Services in the Black Sea was explained by Captains Robert Hofstee and Ozkan Poyraz. They concluded with an appeal for even greater coordination between port States, flag States, classification societies, and other entities charged with the safety of shipping in the Black Sea area. An up-to-date report on oil spill contingency planning and technical cooperation in this area was next given by John Østergaard, Senior Advisor on Marine Pollution, Marine Environmental Division, IMO. With IMO's technical support, all Black Sea States have or are finalizing a modern national oil spill contingency plan based on internationally adopted standards.

The unique challenges in the Arctic region were highlighted by Ambassador Sverrir Haukur Gunnlaugsson, Chairman of the Board of the Law of the Sea Institute of Iceland. Dr. Larry Mayer and several colleagues at the University of New Hampshire's Center for Coastal and Ocean Mapping looked at collecting data to support potential claims in the Arctic under Article 76 of the 1982 Convention on the Law of the Sea (UNCLOS) for Canada, Denmark, Norway, Russia and the United States. The authors concluded that despite the progress in the compilation of gravity, magnetic, seismic and bathymetric data in the Arctic, compilations were still inadequate to support a claim under UNCLOS. Alexander S. and Mariya A. Skaridov surveyed the legal aspects of Russia's Arctic continental shelf claims. Several issues raised in Russia's submission to the Commission on the Limits of the Continental Shelf were

noted, including the high potential for hydrocarbon deposits in the area likely to be claimed by Russia in the Arctic. Alexander Klepikov of the Ocean and Atmosphere Department, Arctic and Antarctic Research Institute, St. Petersburg and two colleagues covered the research studies on rapid Arctic climate change undertaken as part of the Arctic Monitoring and Assessment Program. An Icelandic perspective on climate change and a northern sea route was given by Thor Edward Jakobsson of the Icelandic Meteorological Office. Dr. Jakobsson described the possibility of a trans-Arctic sea route and the implications for the future. Franklyn Griffiths, an emeritus professor of political science at the University of Toronto, argued that the Northwest Passage was not a live option for intercontinental navigation. He proposed several areas where the United States and Canada should, as a practical matter, cooperate much more than they have to date but was skeptical of those with an “overwrought view of climate-change effects on archipelagic sea ice.” The Chair of the U.S. Arctic Research Commission, George B. Newton, examined several plans for Arctic transportation systems under existing and possible future developments. He urged greater attention to oil spill response methodologies based on research and international cooperation.

The third cluster of themes at the St. Petersburg Conference dealt with the current law of the sea and the status of UNCLOS. No one is better qualified to speak on the current and emerging issues in the law of the sea than Satya N. Nandan, Secretary-General of the International Seabed Authority. In his keynote remarks to the Gala Dinner audience, Ambassador Nandan noted that 2004 marked the 10th Anniversary of the entry into force of UNCLOS and that 145 States were party to the Convention. He mentioned the importance of the 1994 Part XI Agreement and the 1996 Fish Stocks Agreement, both of which were negotiated under his leadership. Nandan was critical of the use of flags of convenience to escape responsibilities under the Convention, especially in the field of fisheries. He pointed out that there are emerging threats to biodiversity in the deep ocean and no agreement in the international community on how to handle the problems posed by human activities. Lastly, Nandan flagged the increasingly serious issues of piracy and armed robbery at sea and the related question of the prevention and suppression of terrorism against shipping. The perspectives of the United States were provided by Margaret F. Hayes, who directs the Office of Ocean Affairs, U.S. Department of State. She reviewed major global and regional developments in ocean policy, with particular attention to the Arctic

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region. The prospects for U.S. accession to the Convention were covered by Michael J. Mattler, Deputy Chief Counsel, U.S. Senate Committee on Foreign Relations. He reported that the efforts in the U.S. Senate during the past year have placed the United States closer to joining the Convention than previously. Professor Aldo Chircop, presently holding the Canadian Chair in Marine Environment Protection, World Maritime University, Malmo, Sweden also spoke on a leading edge issue in the law of the sea, namely Article 82 of UNCLOS. This article lays out the manner in which coastal States are to make payments to the International Seabed Authority for the exploitation of non-living resources on the continental shelf beyond the 200-mile zone.

The St. Petersburg meeting closed with remarks by Professor John Norton Moore, who highlighted the great importance of the rule of law in the oceans and the contribution to that end made at this conference.

Note by the Editors

The Conference on International Energy Policy, the Arctic and the Law of the Sea naturally focused on Russia since the meeting was held in the beautiful and historic international port of St. Petersburg. Local arrangements were almost entirely personally made by Professor Skaridov, who heads the Russian Academy of Liberal Arts Education and directs its Institute for Ocean Law Studies. Dr. Skaridov was given invaluable help from Judge Anatoliy L. Kolodkin, who chairs the Russian International Law Association as well as the Russian Association of the Law of the Sea. Their combined efforts resulted in attracting panelists and participants with first-class expertise, especially from within Russia. Not all speakers were able to submit papers in English text and we regretfully note that the proceedings capture most but not all of the content actually presented at the Conference.

Judge Kolodkin and Professor Skaridov were assisted in St. Petersburg by Alexander Etimal, Glendamer Ivanov, Tatiyana Mordvinova, Anatoli Butkoca and Nabila Notiava. Alina Ilyina deserves to be singled out for her brilliant simultaneous translations that garnered universal accolades. The conference site was impressive taking place as it did in the palace of the Grand Duke Vladimir in the heart of the largely preserved 18th century buildings and gracious canals of St. Petersburg. No one who attended the meeting will ever forget the Russian artistic heritage and cultured atmosphere we found. St. Petersburg is truly one of the great cities in the world.

The Virginia team is led by Professor John Norton Moore, who directs the Center for Oceans Law and Policy, and by Professor Myron H. Nordquist, the Center's Associate Director and Editor. The real work on administrative arrangements, however, was done by Donna D. Ganoë, who is the Center's Executive Administrator, and her assistants, Kay W. Wood and Kathy H. Wood. While responsibility for the final text in this volume rests with the three co-editors, Myron H. Nordquist, John Norton Moore and Alexander S. Skaridov, Elyse H. Hunter of the Center deserves particular recognition for her conscientious technical editing that was indispensable for a camera-ready finished product.

Most of the funds to sponsor the Conference were provided either by the Russian hosts or by the Center for Oceans Law and Policy. Additional support was given, however, by the Law of the Sea Institute of Iceland, the World Maritime University in Malmo and Istanbul Bilgi University.

Note by the Editors

Our collective thanks to all sponsors, hosts and individuals who helped make the Twenty-Eighth Annual Conference a memorable success. We hope that our modest efforts will foster greater understanding between Russia and the West about international energy policy, the Arctic and the law of the sea and thereby contribute to rule of law in the world's oceans, whether liquid or frozen.

THE EDITORS

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**INTRODUCTION
AND
WELCOMING REMARKS**

Introduction and Welcoming Remarks

*John Norton Moore**

Welcome Deputy Director Dzubenko, Secretary-General Nandan, Judge Kolodkin, Ambassador Larsen, Professor Skaridov, and distinguished participants and guests. I am John Norton Moore of the Center for Oceans Law and Policy of the University of Virginia and I would like to welcome all of you to this conference on International Energy Policy, the Arctic and the Law of the Sea. A special thanks to the co-sponsors of this conference, the Russian Academy of Liberal Arts Education and the Russian Law of the Sea Association. On a more personal level, we owe special thanks to our Russian hosts. We especially thank Judge Anatoliy L. Kolodkin, a Judge of the International Tribunal on the Law of the Sea, President of the Maritime Law Association and the Russian International Law Association, Chairman of the Russian Law of the Sea Association, Deputy Director General of State Research Institute of Marine Transport, and a Member of the Scientific Council to the Minister of International Affairs of the Russian Federation. Today the world acknowledges Judge Anatoliy Kolodkin as the best-known international lawyer in Russia.

Secondly, I would like to thank Captain Alexander S. Skaridov, formerly head of the legal department of the Russian Naval Academy and current head of the Academy of Liberal Arts of Communications Technologies Education, St. Petersburg, of the Russian Academy of Humanitarian Sciences. It is Professor Skaridov who has done most of the wonderful work that has produced this conference, along with Myron Nordquist of the Center for Oceans Law and Policy.

It is a special pleasure to hold this conference in Russia and particularly in St. Petersburg. The world has long admired the rich cultural and artistic heritage of the people of Russia, a heritage including writers, poets and composers, such as Tolstoy, Chekhov, Pushkin, Dostoevsky, Tchaikovsky and Bronski and, of course, the artistic brilliance of a Bolshoi Ballet. In St. Petersburg, one of the great cities of the world, it is especially appropriate to recall the great contribution of Alexander

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Sergeevich Pushkin, who died here in 1837. His magnificent works stand as the cornerstone of Russian literature or, as Gorsky put it, “the beginning of beginnings.”

It is also altogether appropriate that United States and Russian institutions jointly collaborated on this conference. Even during the height of the Cold War, we worked together on the Law of the Sea. And we have long shared an interest in the protection of navigational freedom, among other oceans issues. Indeed, in common we have understood that the community interest in navigational freedom is the most important common heritage of mankind in the ocean. I had the privilege of working from the U.S. side in our Law of the Sea collaboration. But for that robust collaboration, which sometimes surprised our colleagues in Washington and Moscow, there would likely never have been a third United Nations Conference and successful treaty on the Law of the Sea.

More recently, I am especially pleased to say that our nations have shared a common interest in democracy and the rule of law. Indeed, in 1990 it was my privilege again to represent the U.S. side in our first joint talks on the rule of law in Moscow, and in this beautiful city, St. Petersburg.

The subject of our conference is a dual focus on issues relating to the Law of the Sea in both parts of that focus: international energy policy and the Arctic. The importance of international energy policy hardly needs discussion. Oil is the number one commodity in world trade and is essentially linked to economic development and economic growth around the world. Enhancing stable supply is of great importance to every nation on earth. Indeed, perhaps nothing is more important economically to our joint economic development than stable supplies of oil and energy for the world. We have seen what has happened in the oil shocks in the 1970s, first the doubling of oil prices in 1973-74 followed with a doubling of oil prices again in 1978-79. Once again we saw a huge spike in oil prices associated with the Gulf War in 1990 and, to a lesser extent, we are witnessing an oil spike associated with events in the Middle East in 2003 and 2004. The doubling of the oil price in the two oil shocks of the 1970s had a particularly devastating effect on the global economy. If you look at India and the second oil shock of 1978-79, India had a greater outflow of wealth in that one year of the second oil shock than it did in the entire period of colonialism. And many of the developing countries of the world went into severe debt that still lingers. The question of international energy policy is of enormous importance and the importance of Russia to

that subject is without question. Russia has perhaps the greatest reserves of oil in the world and is the largest producer of oil in the world.

Let me shift to the Arctic issues. There are many different components of this: navigation, technological challenges of working in ice-covered areas, either in relation to navigation and maritime interests or in relation to oil and natural gas platforms (for example, issues of the environment), issues of science, and many others, though Arctic issues are not the immediate concerns of people around the world as much as international energy policy. However, the Arctic is very important, and the great importance of Russia in relation to the Arctic is evident. Russia has, with the Northern Sea Route, the greatest interest in navigation in ice-covered areas of any nation in the world. It is the only nation in the world that has developed nuclear-powered icebreakers. Since the United States also shares an Arctic boundary, we have a shared interest in things Arctic.

We have a world-class group of experts to address these issues of international energy policy and Arctic matters related to the Law of the Sea, and I am confident that this conference will make a contribution to the understanding of both issues. At this point it is my privilege to call on the honorable Judge Anatoliy Kolodkin, to welcome you on behalf of the Russian Association of the Law of the Sea and our Russian Hosts.