DEN NORSKE ATLANTERHAVSKOMITE
THE NORWEGIAN ATLANTIC COMITTEE

SECURITY BRIEF 4-2010

NORWAY'S OUTER CONTINENTAL SHELF LIMITS IN THE ARCTIC[1]

By: Øystein Jensen
Fridtjof Nansen Institute

This note gives an overview of the process so far related to the establishment of the outer continental shelf limits in Norway's northern maritime areas. Following a short introduction on the applicable international legal framework now in place, Norway's submission to the Commission on the Limits of the Continental Shelf – lodged pursuant to Article 76 of the 1982 United Nations Convention on the Law of the Sea – and the following recommendations adopted by the Commission, are briefly presented. Some remarks are finally dedicated to the interest of other States in respect of the law of the sea with regard to disputed continental shelf areas and pending maritime delimitations.

Background and current legal situation

Technological achievements and economic developments have for long given impulses to a trend towards the enlargement over submarine areas over which coastal States can claim sovereign rights and a certain degree of exclusive control and jurisdiction. New maritime zones have changed the identity of many coastal States, by their size, and by the fact that vast areas previously belonging to the so-called "freedom of the high seas" are now subject to several resource-orientated regimes of coastal State jurisdiction.

In the mid-1960s, a discussion emerged on the international agenda on the reservation exclusively for peaceful purposes of the seabed, the ocean floor and the subsoil thereof, underlying the high seas beyond the limits of national jurisdiction. This issue particularly emphasized the problem of how to define the maximum geographical extent of maritime zones of coastal States, i.e. how to define the outer limits of the continental shelf. As the deep seabed came into the reach of man, the criteria set forth in the 1958 Convention on the Continental Shelf had turned out to be unsatisfactory. A verbal interpretation of the 1958 Convention's "test of exploitability" could be employed in order to extend the claims of coastal States very far, perhaps even lead to a wholesale partition of the submarine areas of all oceans. This consequence, rightfully feared, could only be avoided by an agreement defining in clear terms the extension of the legal continental shelf.

The discussion prompted the Third United Nations Conference on the Law of the Sea (1973-1982) and the question of the outer limits of the continental shelf soon turned into one of the key issues of the Conference. The problem was eventually resolved through great complexity and the rules that today define the outer limits of the continental shelf are found in what came to be the result of the long-standing negotiations: Article 76 of the United Nations Convention on the Law of the Sea.

Basically, Article 76 does two things. First, it identifies – through legal terms - the outer limits of the continental shelf by reference to certain geological and geographical concepts. There are four possible outer limits: 200 nautical miles from the territorial baselines, the outer edge of the continental margin, 350 nautical miles from the territorial baselines and 100 nautical miles from the 2,500-metre isobath (i.e. a line connecting depths of 2,500 metres). Thus, in accordance with the Law of the Sea Convention, and when the continental margin in question allows, the continental shelf as a legal concept may extend far beyond 200 nautical miles from the territorial baselines.

Secondly – for coastal State's which intend to establish the continental shelf limits with such extent (beyond 200 nautical miles) – Article 76 prescribes a special type of procedure to settle the limits *in casu*. Particularly, to support its "extended" continental shelf claim, a coastal State shall first delineate the shelf areas in question and then submit coordinates, geodetic data etc. on the limits of the continental shelf to a special body which oversees the application

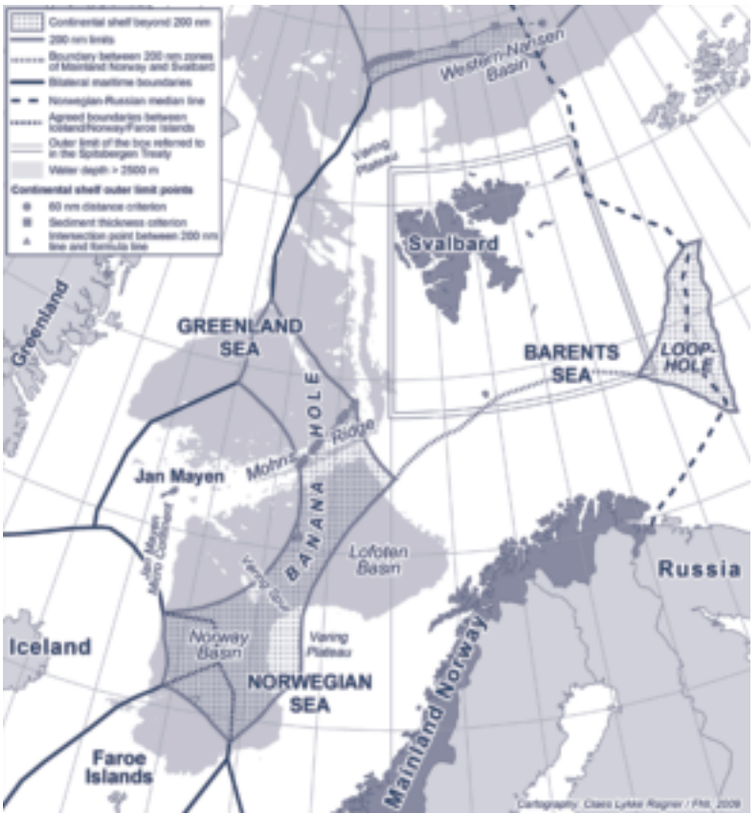
1 For a more detailed analysis of the Norwegian submission and recommendations by the Commission, see Øystein Jensen, "Towards Setting the Outer Limits of the Continental Shelf in the Arctic: On the Norwegian Submission and Recommendations by the Commission", in D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (Leiden/Boston: Martinus Nijhoff/Brill, 2010), pp. 521-538.

the legal framework: the Commission on the Limits of the Continental Shelf. The Commission – a body of 21 experts in the fields of geology, geophysics or hydrology – follows the procedures stipulated in Annex II of the Law of the Sea Convention and adopts recommendations on matters related to the establishment of the outer limits. The Commission then submits the recommendations to the coastal State which subsequently shall establish the outer limits on the basis of recommendations of the Commission.

Norway's submission to the Commission

Pursuant to Article 76 of the Law of the Sea Convention, Norway's submission for establishing the outer limits of the continental shelf beyond 200 nautical miles from the territorial baselines was lodged ten years after the entry into force of the Convention for Norway, on 27 November 2006. Work on drafting the submission had started soon after Norway ratified the Convention in 1996 and was carried out under the direction of the Ministry of Foreign Affairs. Acquisition of geological data was carried out in connection with the surveying of the extent of continental shelf areas until the year of submission in order to support the claim that Norway's continental shelf extended beyond 200 nautical miles in three separate areas: the Loop Hole in the Barents Sea, the Western Nansen Basin in the Arctic Ocean; and the Banana Hole in the Norwegian and Greenland Seas.

In accordance with Article 76 of the Law of the Sea Convention, alternative formulas for determining the location of the outer limits of the continental shelf were invoked by Norway's submission. Straight lines were delineated in each of the three seabed areas, connecting fixed points within the constraint lines prescribed by the Convention. In the Loophole in the Barents Sea, however, Norway maintained in its submission that the continental shelf covered the entire area beyond the 200 nautical mile limit of Norway and Russia; no fixed points were thus determined in order to establish the outer edge of the continental margin in the Loophole. Norway also claimed that its continental shelf extended up to the 200 nautical mile limits of Iceland and the Faeroe Islands in the southernmost part of the Banana Hole.



Map showing continental shelf areas beyond 200 nautical miles:

The Commission's recommendations – area-by-area overview

After approximately two years of consideration, the Commission adopted 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 March 2009. Pursuant to Annex II of the Law of the Sea Convention, the recommendations were submitted in writing to Norway and to the Secretary-General of the United Nations. A summary based on excerpts of the recommendations was made public by the Secretary-General – this summary is the "public face" of the Commission's recommendations.

Starting with the Banana Hole in the Norwegian and Greenland Seas – the submarine area enclosed in its entirety by the 200-mile exclusive economic zones off Iceland, Jan Mayen, the Faeroe Islands and Greenland in the south and west, and mainland Norway and the Svalbard archipelago in the north and east – the Commission in general agreed with

how Norway had established the outer edge of the continental margin, in relation to both the margins of mainland Norway and Svalbard and Jan Mayen. Also the way in which Norway had applied and combined the constraint criteria set forth in the Convention received the approval of the Commission.

In the southernmost part of the Banana Hole, however, the Commission was of the opinion that a small triangular area constituting the submerged prolongation of the territory of Jan Mayen lay beyond the constraints lines provided by Article 76 and thus could not be said to be part of the Norwegian "outer continental shelf". This has evidently been of no particular concern to Norway in the aftermath of having received the Commission's recommendations. The reason is probably that according to the "trilateral" boundary delimitation agreement between Iceland, Norway and the Faeroe Islands of 20 September 2006, this part of the seabed is located far south of the provisional maritime boundary drawn up between the latter two. The area in question would therefore most likely have formed part of the legal continental shelf of the Faeroe Islands anyway, and not Norway.

Turning to the Loophole – the central part of the Barents Sea located north of mainland Norway and the Russian Federation – Norway maintained in its submission that the entire continental shelf area was part of the natural prolongation of the landmasses of mainland Norway and Svalbard in accordance with Article 76(1) of the Law of the Sea Convention. The Commission had no need for further scientific documentation to support that conclusion. Any foot of the continental slope – i.e. the key reference under Article 76 to identify where exactly the continental rise ends as it meets the deep seabed – was deemed to lie *beyond* the Loophole. Accordingly, the entire continental shelf area formed part of the submerged prolongation of Norwegian territories. The Commission also agreed with Norway's application of the depth constraint rule provided by Article 76(5) of the Convention.

In the Western Nansen Basin in the Arctic Ocean the foot of the continental slope was determined with reference to two critical "foot-of-the-continental-slope" points. Following some clarifications, the Commission agreed with the method applied by Norway in regard to the point located in the northwestern continental margin of the Nansen Basin. Regarding the other point, however, related to the continental margin adjacent to the Barents Sea shelf, Norway had to define a revised foot-of-the-slope point. In fact, this turned out be at a more seaward position. Following the relocation, one fixed point relied upon by Norway for determening the outer edge of the continental margin pursuant to Article 76(4)(a)(i) was adjusted accordingly. The Commission subsequently affirmed that the fixed formula points clearly lie within the distance constraint criteria invoked by Norway, i.e. within 350 nautical miles measured from the baselines of the territory in question; the Svalbard archipelago.

Pending delimitations and disputed marine areas

There are potential interests of other States in each of the three seabed areas into which Norway's continental shelf extends beyond 200 nautical miles and for which the outer limits are currently being established. Notably, bilateral delimitations are still pending and Norwegian jurisdiction over large maritime spaces surrounding the Svalbard archipelago is to some extent uncertain.

As regards pending bilateral delimitation issues between Norway and Russia in the Barents Sea and Norway and Iceland/Faeroe Islands in the southermost parts of the Banana Hole, it should be emphasized, that the delimitation of the continental shelf between neighboring States – within or beyond 200 nautical miles – are not to be confused with setting the outer continental shelf limits. The outer limits of the continental shelf are not the dividing lines between States with adjacent or opposite coasts. The outer limits of the continental shelf are its limits *vis-à-vis* the deep ocean floor, or in terms of Article 1 of the Law of the Sea Convention, *vis-à-vis* the international seabed area. Accordingly, the law of continental shelf boundary delimitation – today codified in Article 83 of the Law of the Sea Convention and reflected in customary international law – makes no distinction between delimitation of continental shelf areas within or beyond 200 nautical miles. It is thus a mistake to believe that the delimitation of the "outer continental shelf" only arises in the context of Article 76. Consequently, the assessment of the physical properties of a continental margin must not be understood in legal terms as an issue of delimitation. Norway and neighboring coastal States – allthough now basically in agreement on the delimitation of the continental shelf [2] – must thus proceed to formally finalize unresolved continental shelf delimitations, observing in that regard another set of legal rules than those prescribed by Article 76. It can also be noted that States in general appear to have a greater understanding of these problems. On the occasion of Norway's submission, States only reacted diplomatically, commenting that some of the areas under consideration by the Commission were or

Returadresse:
Den Norske Atlanterhavskomité
Fr. Nansens pl. 8
0160 Oslo

B ØKONOMI ÉCONOMIQUE
DISTRIBUERT AV POSTEN NORGE
posten
NORGE P.P. PORTO BETALT

could become the object of claims from neighboring States, referring in particular to unresolved maritime borders and that the outer limits eventually may depend on delimitation between States.

Perhaps a more serious matter concerns the status of the seabed areas adjacent to the Svalbard archipelago. The interpretation of the 1920 Svalbard Treaty and clarification of its scope - not least as regards the legal status of the seabed and extraterritorial waters around the archipelago - are problematic from a legal viewpoint. Obviously, however, the issue is not a 'geological' one – and does not concern the determination of the outer limits of the continental shelf beyond 200 nautical miles. Setting the outer continental shelf limits in accordance with the procedures of the Law of the Sea Convention is about determining the maximum permitted breadth of the continental shelf, i.e. to discern exactly where the continental rise ends as it meets the deep seabed. The problem regarding the seabed (and waters) beyond the territorial sea around Svalbard is, on the other hand, about how Norway shall practice its jurisdiction over seabed areas that now are on verge to be defined as part of Norway's continental shelf in terms of the Law of the Sea Convention. The former is a question of what physical portion of the seabed belongs to Norway's continental shelf. The latter is about which rules Norway under international law are obliged to apply within parts of that area, i.e. if the substantial provisions of the Spitsbergen Treaty restrict Norway's exercise of jurisdiction, particularly so that nationals of the contracting parties to the 1920 Treaty would have equal rights to engage in oil-drilling activities as provided for in Article 3 of the 1920 Treaty. It is assumed also, when some States claim to treat the continental shelf surrounding the Svalbard archipelago as *sui generis* – demarcated by maritime boundaries towards adjacent zones of its neighboring territories or by the so-called 'Svalbard box' – this is generally not in the sense that there exist physical features at the bottom of the sea that preclude the application of the term 'natural prolongation', as contained in Article 76(1) of the Law of the Sea Convention.

Still, setting the outer limits of the shelf could perhaps be said to impinge on one aspect of the problem regarding the shelf around Svalbard. If one accepts the view that Norway has no form of jurisdiction over the shelf on which Svalbard lies, can the implementation of Article 76 of the Law of the Sea Convention be interpreted as a recognition by other States that Norway has a right to a continental shelf around the archipelago, the only substantive constraints to which would flow from the Svalbard Treaty? Should any state wish to claim that the seabed area around Svalbard is 'void of authority', it would be logical to ask that State why it had not brought its concerns to the attention of Norway in accordance with the procedure as provided under Article 76. Reactions, or rather their absence, may thus be symptomatic of what most observers consider to be the crux of the issue: Norway's *jurisdiction* is not contested – it is how that jurisdiction should be practiced that can be questioned. One should keep in mind that this does not determine whether Norway's jurisdiction should be subject to the rules set out in the Svalbard Treaty or not. Yet it does indicate a bit of a dilemma when claims are made to the effect that the seabed around the archipelago - including submarine areas beyond the 200-mile zone - cannot be subject to Norway's jurisdiction under any circumstances.

Conclusion

What now remains for Norway is the incorporation of the outer limits of the related segment of Norway's continental shelf in domestic law. They will, it is assumed, be codified in the form of a regulation issued pursuant to Act No. 72 of 29 November 1996 relating to petroleum activities, possibly not before negotiations on the delimitation of the respective seabed areas concerning the continental shelf beyond the 200 mile-limit are brought to a conclusion. The limits will then achieve final and binding legal force, as provided for under Article 76(8) of the Law of the Sea Convention.

www.hegglandtrykk.no

About Security Brief:

The DNAK Security Brief series presents current topics in foreign and security policy in a succinct way.
The series was first published in June 2001.

Editor: Neving Rudskjær
ISSN: 1502-6361