

## **The Influence of Provisional Arrangements on Negotiations on the Delimitation of Maritime Boundaries**

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Provisional arrangements are a common feature of all disputes over the delimitation of maritime boundaries. Such arrangements may range from refraining from activities in the disputed zone to agreement on the exercise of joint jurisdiction over fisheries resources pending the final solution of the dispute. International law, as laid down in the 1982 United Nations Convention on the Law of the Sea, provides that provisional arrangements shall be without prejudice to the final delimitation. A provisional arrangement cannot be used at a later stage by a state as a legal argument justifying a specific boundary line.

However, it is submitted that in practice the nature of provisional arrangements may exert a considerable influence on negotiations on the delimitation of maritime boundaries by influencing the political context in which the negotiations will be taking place. The nature of a provisional arrangement may influence the willingness of states to make concessions in the negotiations on the delimitation of a maritime boundary. The different role which provisional arrangements may play can be illustrated by a comparison of the boundary disputes of the former Soviet Union with Sweden in the Baltic Sea and with Norway in the Barents Sea.

Sweden and Norway started negotiations with the Soviet Union on the delimitation of the boundary of the continental shelf in respectively the Baltic Sea and the Barents Sea at the end of the 1960's. In both cases a dispute arose over the law applicable to the delimitation of the boundary, resulting in diverging claims concerning the course of the boundary. Both disputes concerned large sea areas. The area under dispute in the Baltic Sea measured some 13,500km<sup>2</sup>. The area has both a strategic significance and contains significant fisheries resources. The area under dispute in the Barents Sea measured some 155,000 km<sup>2</sup>. The area is of strategic importance because it is the access route for the Soviet, now Russian, northern fleet based at Murmansk, to the Atlantic Ocean. The area is important for fisheries and probably also contains significant hydrocarbon resources.

Though negotiations in both cases were initiated toward the end of the 1960's to establish continental shelf boundaries, a provisional arrangement for the areas under dispute became urgent only in the second half of the 1970's, when Norway, the Soviet Union and Sweden claimed fishery zones of 200 nautical miles. In the negotiations on these provisional arrangements the Soviet Union in both cases sought the establishment of a so-called grey zone for the exercise of jurisdiction over fishing activities. A grey zone is an area in which jurisdiction is exercised jointly by the two states that have a claim over the area concerned. Fishing vessels from third states can be excluded from such a grey zone. For Norway and Sweden such a solution had the disadvantage that it involved bilateral regulation of fisheries with a much more powerful neighbour. All the same, Norway and the Soviet Union concluded an agreement establishing a grey zone in 1978. Sweden, on the other hand, rejected the establishment of an area of joint management. As a provisional measure Sweden and the Soviet Union agreed not to take any measure that would prejudice future negotiations on the delimitation of their maritime boundary. In practice this implied that the disputed area was not included in the fishery zones of either Sweden or the Soviet Union, but remained part of the high seas, forming a so-called white zone.

The grey zone agreement in the Barents Sea generally has been considered to be successful in regulating fisheries. In the white zone in the Baltic the management of fisheries was not effective. As no control on catches could be exercised by the coastal states, fishing activities of third states in the 1980's led to considerable pressures on stocks. This led to renewed efforts by the Soviet Union to reach a bilateral agreement on fisheries. Although Sweden was also negatively affected by fishing activities of third states, it nevertheless supported Denmark and the Federal Republic when the Soviet Union sought to exclude them from the white zone through unilateral steps.

In 1985 Sweden and the Soviet Union reopened negotiations on the delimitation of their maritime boundary, which resulted in an agreement at the beginning of 1988. A breakthrough in the negotiations was reached when the Soviet Union offered to make substantial concessions concerning the course of the maritime boundary. It seems very likely that this would not have happened if Sweden had given in to the unilateral attempt of the Soviet Union to close the white zone for third states' fishing vessels. The delimitation agreement attributed 75 per cent of the disputed area to Sweden and 25 per cent to the Soviet Union (this area now forms part of the economic zones of the three Baltic states and the Russian Federation). In Sweden the agreement was generally viewed as a success. The change in position of the Soviet Union has been attributed to the change in foreign policy under Gorbachev. However, this change in foreign policy cannot have been decisive, because in that case a similar development might have been expected in the Barents Sea.

In 1988 the Soviet Union made a compromise proposal to Norway. Although this apparently was the first time that the Soviet Union was prepared to make concessions they were not of such a nature to produce a breakthrough in the negotiations. At present the Russian Federation and Norway are negotiating on the delimitation of a maritime boundary in the Barents Sea.

There is little doubt that the successful function of the grey zone agreement in the Barents Sea has contributed to the absence of agreement on the delimitation of a maritime boundary so far. For the Soviet Union, and now the Russian Federation, the grey zone agreement in all probability gives access to larger fisheries resources than any boundary agreement would. The grey zone does not only cover a large part of the area under dispute, but also some 20,000 km<sup>2</sup> of undisputed Norwegian economic zone area. In comparison the area of the Russian economic zone covered by the grey zone is very limited (only some 3,000 km<sup>2</sup>). Moreover, at the moment fisheries are the most important issue in the Barents Sea. Development of hydrocarbon resources in the Barents Sea is not commercially attractive under the present circumstances. A difference in comparison with the Baltic Sea may be that the influence of the military on the Russian position in the negotiations is greater, taking into account the far greater strategic importance of the Barents Sea.

The tentative conclusion that can be drawn from these two examples is that the nature of a provisional agreement can significantly influence the progress of negotiations on the delimitation of maritime boundaries. In selecting the preferable type of provisional arrangement a careful balancing will have to be made between the consequences different types of provisional arrangements have on the management of resources and the influence such arrangements have on the course of the negotiations on the delimitation of a maritime boundary. For instance, fishing was much more important for Norway than for Sweden both in relative and absolute terms. While Sweden could afford to adopt a policy that had negative drawbacks

for its fishing industry, it can be doubted that Norway could have followed a similar course. Secondly, the grey zone agreement in the Barents Sea should not be viewed only negatively because it contributed to the impasse in the negotiations on agreement delimiting a maritime boundary. It successfully regulated fisheries management in the Barents Sea, removing a possible source of conflict from a politically sensitive area.

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