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Role of International Law and an Evolving Ocean Law  
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## THE SOVIET NAVY AND OCEAN LAW

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Russian naval policy regarding the law of the sea is in an interesting dilemma. The Soviet state is a considerable maritime power with a strong navy, a large merchant marine, and a very sizable fishing fleet. In order to exploit these assets to the full, the Russian Navy supports traditional legal freedoms of the high seas, so as to give her ships the greatest access to the world's oceans. Such support for traditional laws of the sea puts the Soviet Union alongside other maritime powers like the United States and the United Kingdom, all resisting claims of less developed states to greater national jurisdiction in the oceans. But the Soviet Union is unhappy with a "conservative" label and wants to disassociate herself from Western "imperialists." The Russians seek to demonstrate their solidarity with underdeveloped states which

attack great power control of the seas. Russian naval policy thus attempts to reconcile support for traditional sea law with sympathy for the complaints of the underdeveloped states. This reconciliation is, of course, difficult and not altogether successful.

An indication of the problems which Soviet naval ocean policy faces is to be found in the concluding number of a series of articles by the commander in chief of the Russian Navy, Admiral of the Fleet S.G. Gorshkov. The articles, entitled "Navies in War and in Peace," are published in the *Russian Naval Digest (Morskoy Sbornik)* and are an authoritative expression of Soviet naval policy meant for Russian naval officers and those others concerned with Russian maritime strategy. The final installment of "Navies in War and in Peace" appeared in the February 1973 issue of

the *Naval Digest* and was composed of two subsections, "Some Problems of Mastering the World Ocean" and "The Problems of a Modern Navy."<sup>1</sup> The first of these is almost exclusively concerned with law of the sea questions, while the second is a general resumé of all the articles in the series and does not concern us here. "Some Problems of Mastering the World Ocean" has essentially three themes: that the imperialist states are responsible for the crisis in ocean law, that traditional freedoms of the high seas should be preserved, and that a powerful international regime for the high seas is a dangerous proposal.

Admiral Gorshkov argues that the challenge to traditional freedoms of the high seas comes from the imperialist states who seek to divide the resources of the oceans:

In analyzing the essence of imperialism, Vladimir Ilich Lenin pointed out that financial capital, being afraid of lagging behind in the furious struggle for the still underdeveloped part of the world, is striving to seize as many different expanses of the globe as possible, assuming that they will later become a source of raw materials . . .

In recent decades in the era of the exploitation of the resources of the World Ocean, an ever increasing struggle has begun between imperialist countries for the division of it for economic and military aims, since it is becoming an immediate objective of their expansion.<sup>2</sup>

One would assume from Gorshkov's analysis that it is the Western "imperialist" states which have made large claims to national maritime jurisdictions:

. . . already today attempts are being made to usurp individual areas of it (the World Ocean) by certain capitalist states and to divide up spheres of influence in

it. Thus, voices are being heard in the U.S. Congress calling on Americans to move to the east and by 1980 to occupy the Atlantic Ocean bottom to the Mid-Atlantic ridge, for according to the authors of these statements, when it is a question of the ocean bottom, no one mentions borders: he who takes is right. A highly alarming symptom is the practice of the extension by certain states of the limits of their territorial sea up to 200 miles, which is nothing other than an attempt to seize great expanses of the ocean.<sup>3</sup>

Thus, Gorshkov bends the facts to demonstrate that Leninist theory explains current world ocean problems. Since the imperialist states are forced, in theory, to seize underdeveloped areas of the globe, it must be the imperialist states which are mounting the attack on the freedoms of the high seas by claiming extensive national slices of the seas. But, in fact, the challenge to the traditional freedoms of the high seas is being mounted by the underdeveloped nations. The first claim to a 200-mile territorial sea came from Chile in 1947 when that state established her "protection and control . . . over all the sea included between the perimeter formed by the coast and a mathematical parallel projected out to sea at a distance of two hundred marine miles."<sup>4</sup> In their Santiago "Declaration on the Maritime Zone" of 1952, Chile, Ecuador and Peru proclaimed: ". . . as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast."<sup>5</sup>

Far from encouraging the 200-mile claims, the Western maritime powers have protested vigorously when the claims have been made. When Chile made her original 200-mile claim in 1948, the United States responded with

a protest note, complaining the "principles underlying the Chilean Declaration . . . appear to be at variance with the generally accepted principles of international law."<sup>6</sup> The continuing American refusal to accept 200-mile claims off the west coast of Latin America is reflected in the conflict between American tuna boats and coastal patrols which surfaces regularly in the daily press. Similarly, the British Government has resisted greater fishing zones off of Iceland and may only be conceding her case now because of NATO pressure.

The Western states have contributed to the crisis in ocean law, but not by making 200-mile claims. The beginning of the challenge to traditional freedoms of the high seas came with the Truman Proclamation of 1945, when the United States claimed jurisdiction over the resources of the Continental Shelf. But the American claim to the shelf was echoed by other nations and finally embodied in the Convention on the Continental Shelf of 1958, which has been signed by most of the nations, including the Soviet Union. The Soviet Union has its own interest in ocean resources. As Admiral Gorshkov puts it:

The CPSU program calls for not only the utilization of known natural resources, but also prospecting for new ones. The World Ocean is assuming extreme importance in connection with this. The study of it and utilization of resources is becoming one of the greatest state problems aimed at supporting the economic might of the Soviet Union.<sup>7</sup>

Can the Russian "utilization of resources" be distinguished from the imperialists' "seizure" of raw materials? Yes, if you assume that: ". . . the imperialist states are no longer restricting themselves by their own laws on the exploitation of the natural riches of the continental shelf: they are striving to extend their national jurisdictions to the

open waters of seas and oceans located vast distances from their shores."<sup>8</sup> But the real challenge to traditional legal freedoms of the high seas comes not from the "imperialist"; rather, it is the voice of the underdeveloped states which is demanding national control over "seas and oceans located vast distances from their shores." As the Asian-African Legal Consultative Committee reported at Colombo in 1971: "Most delegations felt able to accept twelve miles as the breadth of the territorial sea, while supporting, in principle, the right of a coastal state to claim exclusive jurisdiction over an adjacent zone for economic purposes."<sup>9</sup> This demand for an economic zone beyond territorial waters was seconded by the African States Regional Seminar on the Law of the Sea at Yaoundé in 1972:

The African states have equally the right to establish beyond the territorial sea an economic zone over which they will have an exclusive jurisdiction for the purpose of control regulation and national exploitation of the living resources of the sea and their reservation for the primary benefit of their peoples and their respective economies, and for the purpose of the prevention and control of pollution.<sup>10</sup>

The motivation for the Santiago Declaration, the Colombo Declaration, and the Yaoundé Declaration is the same. The less developed states want to reserve ocean resources to themselves, fearing that the more developed states, "imperialist" or "socialist" alike, will be able to use the traditional freedoms of the high seas to acquire an unduly great proportion of the sea's fish, oil, and minerals. Unless the underdeveloped states restrict the freedoms of the high seas, the rich states with the most advanced techniques will be able to exploit the resources of the oceans most effectively.

In fact, if not in theory, Gorshkov

aligns the Soviet Union with the "imperialists" and not with the underdeveloped world. As the article makes clear, Russian policy is "conservative." The Soviet Navy is in favor of restricting greater claims to national jurisdiction:

The key to the solution of this question is the strict establishment of limitations on the breadths of territorial seas, since a further extension could create the danger of an actual division of the high seas. Such a danger is already taking shape today, if you consider scientific technical progress and the modern means and practical capabilities which states presently have at their disposal. Based on existing practice and a sensible unity of interests of the coastal states and of the principle of freedom of the high seas, it would seem completely acceptable to limit the breadth of the territorial sea to limits of up to 12 miles.<sup>11</sup>

As we have seen, even if some non-Latin American developing countries might endorse a maximum of 12-mile territorial seas, they are, generally, unwilling to prohibit the extension of an economic zone which would reserve resources to the coastal state. Such an economic zone would not only threaten "imperialist" "seizure" of raw materials but Russian "utilization" of the same.

Even the extension of territorial seas to 12 miles poses problems for the Soviet Union. Key straits, like Gibraltar, would fall within territorial seas. Accordingly, Gorshkov proposes: "... in those straits which connect the open seas and are used for international shipping, all transiting ships (and in the wider straits also passing aircraft) must be accorded equal freedom of transit and overflight."<sup>12</sup> It is not surprising that, in this matter, the interests of the two great naval powers should coincide and that Gorshkov's call for "equal freedom of transit and overflight"

through straits is matched by President Nixon's preference for "free transit through international straits."<sup>13</sup> The Third World, however, does not generally accept the notion of free transit:

(From the Colombo Declaration)

While all delegations were in agreement that a strait used for international navigation should in times of peace remain free for the innocent passage of merchant ships of all countries, subject to rules and regulations of the riparian states, many delegations rejected both the "corridor of high seas" and "free transit" concepts.<sup>14</sup>

For a naval power, innocent passage is less satisfactory than free transit because on an innocent passage submarines must surface and no overflights are permitted. Some states, including the Soviet Union, maintain that innocent passage by warships is only permitted with notice. Thus, once again, the common maritime interests of the United States and the Soviet Union find them linked against the less powerful underdeveloped states.

Gorshkov calls the freedom of the high seas "the main legal instrument ensuring the regulation of the mutual relations between sovereign states whose interests come into contact with one another in the international waters of the World Ocean."<sup>15</sup> How does Soviet policy attempt to reconcile this freedom with the demands of the Third World for a new international maritime order? First, as seen above, the argument is made that the real challenge to maritime order is not a challenge from the underdeveloped states but from the "imperialist" states. This argument fails to properly account for the realities of the situation. Second, Gorshkov contends that Third World states are mistaken in promoting a revision of the law of the sea:

There are also statements even against freedom of the high seas

on the ground that this principle is outmoded and is being used by the imperialists to the detriment of the interests of the developing countries. Our position on this question is very clear. The imperialists' violation of the legal norms attests not to the insufficient effectiveness of these norms, but rather to the strengthened aggressiveness of imperialism itself, which is stressed in the decisions of the 24th CPSU Congress. Therefore, it is not the norms themselves which must be changed, but first of all cooperation must be achieved between peace-loving forces in order to force the imperialist to strictly observe existing regulations.<sup>16</sup>

But existing regulations mean that modern fishing fleets, American, Japanese or Russian, can fish within the 200-mile limits which several Third World countries demand. Existing regulations mean that any nation can sail its naval fleets within close proximity to Third World coasts. Accordingly, many underdeveloped countries are insisting that existing regulations be changed. As the Latin American countries declared at Montevideo in 1970: "The right to establish the limits of their maritime sovereignty and jurisdiction in accordance with their geographical and geological characteristics and with the factors governing the existence of marine resources and the need for their rational utilization (is a basic principle of the Law of the Sea)."<sup>17</sup>

As an alternative to either maintaining the embattled traditional freedoms of the high sea or permitting national claims to carve the oceans into national lakes, the United States, among others, has proposed the establishment of an international ocean regime. The character of the American proposal was outlined in an important Presidential announcement in 1970:

Therefore, I am today proposing that all nations adopt as soon as possible a treaty under which they would renounce all national claims over the natural resources of the sea-bed beyond the point where the high seas reach a depth of 200 metres (218.8 yards), and would agree to regard these resources as the common heritage of mankind. The treaty should establish an international regime for the exploitation of sea-bed resources beyond this limit. The regime should provide for the collection of substantial mineral resources to be used for international community purposes, particularly economic assistance to developing countries. It should also establish general rules to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investment necessary for such exploitation and to provide for peaceful and compulsory settlement of disputes.<sup>18</sup>

The idea of an international regime has generally been endorsed by Third World states. For example, it received the support of the Third Conference of Heads of State or Government of Non-Aligned Countries in Lusaka in 1970:

... an international regime, including appropriate international machinery to give effect to its promises should be established by an international treaty. The regime should provide for the orderly development and rational management of the area and its resources and ensure the equitable sharing by the international community in the benefits derived therefrom. It should also make adequate provisions to minimize fluctuation of prices of land minerals and raw materials that may result from such activity.<sup>19</sup>

But Admiral Gorshkov feels that proposals for an international ocean regime are unwise:

Several developing countries are steadily advancing the idea of developing a convention on the seabed regime and on creating an international organ with very extensive powers which would become, essentially, a supranational organ and would control all exploitation of the seabed conducted by different countries. It is quite evident that such an approach is not very realistic, since it actually envisions an institution of some sort of international consortium in which inevitably, due to the objective laws of the capitalists' market, the largest imperialist monopolies would play the major role. Therefore, regardless of the good intention of the authors of this idea, the power in it would belong to precisely those forces against whom the creation of such an organ is intended to protect.<sup>20</sup>

Thus, Soviet naval policy, as reflected in Admiral Gorshkov's article, appears unable to satisfactorily resolve the dilemma of supporting the freedoms of the high seas while satisfying the demands of the underdeveloped world for a greater share of ocean resources. Gorshkov's argument attempts the reconciliation by pretending that the real challenge to the traditional law of the sea is being mounted by the "imperialist" states. Seemingly, then, the Soviet Union can both support the traditional rules and take an anti-imperialist stand. But the facts belie the Gorshkov approach because the imperialist states are supporting, not attacking, the traditional rules. It is in American interests, as it is in Soviet interests, to keep territorial waters narrow and permit free transit through straits. In this fashion we both protect the maneuverability of our naval fleets

and leave the oceans open to our economic use. The challenge to traditional rules of international sea law comes from the underdeveloped states which, naturally, prefer to protect a share of ocean resources through the exercise of sovereignty because they do not have the technological wherewithal to exploit them in an ocean free-for-all and which stand to gain little from greater mobility for great power navies.

In defending the existing maritime system, the Soviet Union finds itself in a theoretical predicament. The Russians are now aligned with the "imperialist" powers, resisting the attempt of the Third World to rewrite ocean law in favor of developing states. The United States has moved somewhat over toward the demands of the Third World by offering to trade an international regime with control and/or proceeds from ocean exploitation for narrow territorial seas and free transit through straits. Fearing that an international regime would be in the control of the "imperialists" or, perhaps, because actual control might lie with the developing states, the Soviet position, as stated by Gorshkov, is to oppose a powerful international ocean regime. Instead, the Soviet Union insists that "existing regulations" should be more conscientiously obeyed. But an international regime which would donate proceeds to the needs of the developing states is more to the benefit of the Third World than an "improved" status quo because the underdeveloped states cannot hope to effectively compete with the exploiting technology of the developed states. Accordingly, the Third World supports either an extension of national jurisdiction or an international regime or some combination of the two. Neither alternative is fully acceptable to Admiral Gorshkov.

Ironically, then, Gorshkov finds himself in a more "conservative" position than the United States. While both superpowers favor maximum mobility

for their fleets, the United States is willing to trade this mobility for an international regime. Gorshkov seems unwilling to accept the regime alternative. Despite Soviet protestations and frustrations, the Soviet Navy is committed to traditional freedoms of the

high seas for reasons befitting a maritime power; it is little served by a radical change in the status quo. As a consequence, Admiral Gorshkov finds himself opposed to the demands of the Third World bloc, no matter how much he doth protest.

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### NOTES

1. S.G. Gorshkov, "Navies in War and Peace," *Morskoy Sbornik*, No. 2, 1973, pp. 13-25.
2. *Ibid.*, p. 13.
3. *Ibid.*
4. "Declaration of President of Chile Claiming Jurisdiction over Seas to a Distance of 200 Miles," 25 June 1947, in Norman J. Padelford, *Public Policy for the Seas* (Cambridge, Mass.: MIT Press, 1970), pp. 85-86.
5. United Nations, General Assembly, *Agreement (Declaration on the Maritime Zone) Between Chile, Ecuador and Peru, Signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Santiago, 18 August 1952 (A/AC 135/Rev. 1), 12 August 1968*, pp. 11-12.
6. "United States Note of Protest to the Government of Chile," 2 July 1948, Padelford, p. 87.
7. Gorshkov, p. 15.
8. *Ibid.*, p. 14.
9. United Nations, General Assembly, *Asian-African Legal Consultative Committee, Twelfth Session, Colombo, Report of the Sub-Committee on the Law of the Sea, 18-27 January 1971 (A/AC 138/34)*, 30 April 1971, p. 7.
10. "Conclusions in the General Report of the African States Regional Seminar on the Law of the Sea, Held in Yaoundé," 20-30 June 1972, *International Legal Materials*, vol. XII, No. 1, p. 210.
11. Gorshkov, p. 16.
12. *Ibid.*, p. 17.
13. United Nations, General Assembly, R.M. Nixon, *Announcement on United States Oceans Policy, 23 May 1970 (A/AC 138/22)*, 25 May 1970, p. 4.
14. United Nations, General Assembly, Colombo, p. 13.
15. Gorshkov, p. 14.
16. *Ibid.*, p. 16.
17. United Nations, General Assembly, *Montevideo Declaration on the Law of the Sea, 8 May 1970 (A/AC 138/34)*, 30 April 1971, p. 3.
18. United Nations, General Assembly, Nixon, p. 2.
19. United Nations, General Assembly, *Lusaka Declaration of Peace, Independence, Development, Co-operation and Democratization of International Relations and Resolutions of the Third Conference of Heads of State or Government of Non-Aligned Countries, 8-10 September 1970 (A/AC 138/34)*, 30 April 1971, p. 5.
20. Gorshkov, p. 16.