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Historic Rights of States to Maritime Water Areas and the Legal Status of the Sea of Okhotsk[1]

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Abstract. This article presents an analysis, based on the study of international law and doctrine and practice of states, the content of the institution of the historic rights of states to the sea areas, its correlation with the provisions of the 1982 UN Convention on the Law of the Sea, as well as the legal status of the Sea of Okhotsk and the possibility of its adjustment in the context of a possible statement by Russia that it has historic rights to this water area.

The issues raised in the article are structurally divided into three main groups. The first is related to the study of the reasons for the emergence of the institution of the historic rights of states to maritime areas in the international law of the sea, as well as its correlation with the legal mechanisms for the delimitation and use of maritime spaces defined by the 1982 UN Convention. The second group is devoted to studying the structure of this institution and the definition of the concept and content within its framework of such key notions and categories as "historic bays," "historic waters," "historic legal foundations," "historic title of the state," and others. The third group is directly connected with the definition of the fundamental possibility and potential scope of the Russian Federation extending its historic rights to the waters of the Sea of Okhotsk.

The authors proceeded from the fact that despite the incredibly limited room for manoeuvre for Russia in terms of defending its historic title to the Sea of Okhotsk, the situation is not entirely hopeless in the foreseeable future. At the same time, however, we should bear in mind that the key to success in the resolution of this issue lies not in declaring the Sea of Okhotsk an inland sea of Russia or its historic waters, but rather in legitimizing many of its exclusive historic rights in this sea area based on Russia's vital interests.

The content of the institution of the historic rights of states to maritime spaces, as well as the new political reality, give the Government and the State Duma of the Russian Federation the necessary legal grounds to broach the issue of a partial change in the country's stance on the legal status of the Sea of Okhotsk and the development of a new strategy for asserting Russia's historic rights to its water area, both through the adoption of unilateral legal acts, and through the implementation of a consistent policy to disseminate and defend this point of view in international relations within the framework of negotiations with foreign states and the activities of relevant international bodies and organizations.

[1] English translation from the Russian text: Gavrilov V. V., Nurimbetov R. M. 2022. Istoricheskie prava gosudarstv na morskie akvatorii i pravovoy status Okhotskogo morya. *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 4. P. 44–55. https://doi.org/10.24833/0869-0049-2022-4-44-55

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The main objective of Russia's national maritime strategy, according to the 2022 Maritime Doctrine, is the development of the country as a maritime power and the strengthening of its position among the world's leading seafaring states.[2] Clearly, achieving these goals is largely determined by the possibility of substantiating and consolidating the international legal status of the maritime areas directly adjacent to its territory in a form that is favourable for Russia. At the same time, in this case we should talk about both the characteristics of the coastal sea spaces and the continental shelf of the Russian Federation in the Arctic Ocean, which has been the subject of much discussion in domestic legal doctrine in recent years (Ivanov 2013; 11–44; Gavrilov 2015: 147–157; Gubanov 2014; Vylegzhanin et al… 2021: 3-25), and the legal status of the seas and straits located close to its shores in the Asia-Pacific. A clearer definition in the context of modern military, political and economic realities will be important for strengthening Russia's position in this part of the globe and building a new paradigm for relations with the countries of the region.

The Sea of Okhotsk should be afforded a special role in the implementation of this task, given its particular importance for Russia from the military-strategic and socio-economic points of view. At the same time, its geographical location and specific geographical boundaries do not allow us to determine with complete legal accuracy the status of this marine area in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea (hereinafter the 1982 Convention).[3]

Some researchers believe that this should therefore refer to an enclosed or semi-enclosed seas, the legal status of which would thus be determined by Part IX of the 1982 Convention. Others argue that the Sea of Okhotsk does not fully meet the criteria of such seas as defined in Art. 122, and that its status should not differ in any way from that of ordinary coastal sea spaces, which are made up of internal waters, territorial seas, exclusive economic zones (EEZ), etc. (Konstantinov 1999: 132). Finally, the opinion is expressed in the Russian doctrine on international law that the waters of the Sea of Okhotsk should be considered the historic waters of the Russian state, under its sovereignty (Melkov 2014: 45; Konstantinov 1999: 127–130).

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[2] Maritime Doctrine of the Russian Federation. Approved by Decree No. 512 of the President of the Russian Federation. Para. 28.1. Consultant Plus database of legal texts. URL: http://www.consultant.ru/document/cons_doc_LAW_423278/ (accessed: 01.07.2022).

[3] The United Nations Convention on the Law of the Sea of December 10, 1982. URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_r.pdf (accessed: 03.07.2022).

The latter position raises perhaps the greatest number of questions and doubts, if only because neither the Soviet Union nor Russia ever raised the issue of declaring the Sea of Okhotsk the historic international waters of the Russian state at the official level, unlike the situation with regard to the Peter the Great Gulf (Romanov 1958: 47–55). What is more, it seemed that the Russian Federation itself did everything it could to ensure that such approach would not be adopted, either in theory or in practice. For example, both the application submitted by Russia to the Commission on the Limits of the Continental Shelf on determining the limits of the continental shelf in the Sea of Okhotsk,[4] and Resolution No. 845 of the Government of the Russian Federation "On the Russian Continental Shelf in the Sea of Okhotsk" adopted on August 15, 2015 based on the results of its consideration clearly laid out Russia's attitude to this maritime space as a territory whose status is determined by the general provisions of the 1982 Convention, and does not fall under the clause about so-called "historic" bays in Art. 10, para. 6, or "historic title" in Art. 15.

Further, neither the Soviet Union nor Russia took any significant forward-looking actions to adopt domestic or initiate international regulatory documents, nor did they do anything that could have led to the establishment of special control over the navigation of foreign vessels in the Sea of Okhotsk or operations to extract living marine resources in its central part.[5]

Does this mean that the Russian Federation does not have the legal grounds or opportunity to initiate and promote at the international level the concept of the Sea of Okhotsk as the historic waters of the Russian state or as an area within which it has special historic rights to the priority implementation of certain types of activities? This article attempts to assess, based on an analysis of the legal nature of the institution of "historic waters" and the content of the category of "historic rights" of states to maritime spaces in modern international maritime law, the possibility in principle that Russia does indeed have such grounds.

Categories of "Historic Waters" and "Historic Rights" to Maritime Spaces in the Theory and Practice of International Law

These legal constructions are rooted in the remote past and are based on the ideas of certain states that they have rights to coastal marine areas, which they exploited, unchallenged, for a long period of time, as well as on the principles of the fair delimi-

[4] Revision of the Partial Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf Related to the Continental Shelf in the Sea of Okhotsk. URL: https://www.un.org/Depts/los/clcs_new/submissions_files/rus01_rev13/part_1_Rezume_MID.pdf (accessed: 05.07.2022)

[5] One of the few exceptions to this practice was the Agreement concluded on June 13, 1996 between Russia and the United States on the conservation of transboundary fish stocks in the central part of the Sea of Okhotsk. His Art. 1, in particular, provided that "… any fishing for straddling stocks in the central Sea of Okhotsk is subject to the rights, duties and interests of the Russian Federation." URL: https://docs.cntd.ru/document/901880159# (accessed: 05.07.2022). However, this agreement has still not entered into force.

tation of such areas with neighbouring countries. "Over the centuries, many coastal states have laid claim to and exercised sovereignty over the maritime areas adjacent to their coasts, which they considered vital to them, and with this in mind only, they were prepared to agree to the requirements of international law on the delimitation of the territorial sea" (Vylegzhanin 2012: 9).

Given this circumstance, international bodies that made efforts in the first half of the 20th century to develop uniform rules for determining the status, boundaries and delimitation of coastal marine areas, were faced with the serious problem that such activities could violate the rights of those countries that *de facto* had sovereignty over coastal sea areas already or possessed special rights to them long before the international community became cognizant of the need to establish a unified legal regime for such spaces.

One of the measures implemented to tackle this issue following decades of complex negotiations between states was the inclusion in Art. 10, para. 6 of the 1982 Convention of the rules on so-called "historic" bays, the delimitation of the spatial extent of which does not fall under the general provisions for determining bays set out in Art. 10, paras. 1–5.[6] In addition, the 1982 Convention formalized the provision that the requirements set out in the document regarding the delimitation of the territorial sea between states that are opposite or adjacent to each other along the median line (unless an agreement to the contrary exists between the states in question) does not apply where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a manner other than that specified in the Convention (Art. 15).

However, it would appear that such normative consolidation at the international legal level of the status of historic sea areas or historically established legal grounds for such rights, is clearly lacking and does not correspond to modern ideas about both a possible list of types of such water areas and the heterogeneity of their legal status.

In this case, it is important to understand that the bays are not the only water areas that can have historic status today. For example, even the Soviet doctrine expressed the idea that "the Siberian seas, such as the Kara, Laptev, East Siberian and Chukotka seas, can be classified as historic maritime spaces" (Averochkina 2013: 84). The practice of other states also shows that claims to "historic rights" are often put forward not only in relation to bays and other such coves, but also in relation to seas, straits and other maritime spaces. It is thus obvious that the term "historic bays" used in the text of the 1982 Convention needs supplementing in the theory and practice of modern international maritime law with another, more general term, namely, "historic waters" (Vylegzhanin 2012: 21).

[6] Skaridov A. S. 2017. *Morskoe pravo. V 2 t. T. 1. Mezhdunarodnoe publichnoe morskoe pravo: uchebnik dlya bakalavriata i magistratury* [Maritime Law. In 2 vols. Vol 1. International Public Maritime Law: A Textbook for Undergraduate and Graduate Studies]. Moscow: Yurait. P. 64.

The validity of this claim is confirmed in the text of one of the most important theoretical documents produced in this area at the international level and published by the UN Secretariat on March 9, 1962 under the title "Juridical Regime of Historic Waters, Including Historic Bays." Paragraph 34 of the document states unequivocally: "It is a fact that the term 'historic bays' is more frequently used or has until recent times been more frequently used than 'historic waters.' This circumstance cannot, however, be taken as evidence that […] only bays, not other waters, may be claimed by States on an historic basis."[7]

However, only "historic bays" appears in the 1982 Convention, and even then, it is in relation to solving the problem of determining the boundaries of this type of coastal deepening. This can most likely be explained by the reluctance of those who drew up the Convention to provide a strict definition within its framework of both an exclusive list of types of maritime spaces to which the status of historic waters can be ascribed, and the conditions under which coastal states would have legal grounds to claim the right to this kind of sea space.

Given that there is no universal treaty norm that defines the circumstances "under which maritime areas adjacent to the coast of a coastal state may be classified as historic, or, in other words, which elements are essential for qualifying waters as historic," each case must be decided, "*in concreto,* with due account of its special circumstances and in light of the applicable law" (Vylegzhanin 2012: 22–23, 32), within which, in this case, the norms of customary international law acquire a special place.

As things stand to date, international legal doctrine and practice have developed an exhaustive list of criteria and circumstances that give coastal states the right to lay claim to the spaces of adjacent sea areas as their historic waters. This list is rather complex structurally, and combines a large number of heterogeneous conditions and prerequisites (Vylegzhanin 2012: 24–27), which, in our opinion, are often unreasonably detailed and mutually contradictory. At the same time, as indicated in para. 185 of the UN Secretariat's 1962 document, the following three factors have the greatest legal significance: 1) The authority exercised over the area by the State claiming it as "historic waters"; (2) the continuity of such exercise of authority; and (3) the attitude of foreign States.[8] These factors have subsequently become widespread in the international legal literature (Dzhunusova 2015: 20).

Thus, despite the presence of other important circumstances, the effective exercise of a state of its sovereignty over a given maritime area should be considered the main necessary condition for claiming its rights to this area as its historic waters. At the same time, this sovereignty must have been exercised over an extended period of time and not be considered unlawful by other countries (Vylegzhanin 2012: 45–46). It is

[7] International Law Commission (1962). Juridical Regime of Historic Waters, Including Historic Bays. Study prepared by the Secretariat. ILC Yearbook. Vol. 2. P. 6

[8] Ibid. P. 25.

also important to note here that the answer to the question about the legal regime of historic waters was largely formed during the process of establishing this point of view in international legal doctrine and judicial practice, and states that such waters must be part of the territory of the state in question as its internal waters or territorial sea (Vylegzhanin, Sokolova 2014: 81; Batyr 2021:77).

At the same time, it should be understood that the concept of "historic title" of states to marine waters is not limited to possible claims to historic bays or historic waters. Its content is far broader, and the specified grounds can also be taken into account, for example, when delimiting the territorial sea between states with opposite or adjacent coasts (Art. 15 of the 1982 Convention), or to confirm the existence of preferential (historic) rights of states carrying out activities in sea areas beyond their territories.

Moreover, in the latter case, as Sophia Kopela has rightly pointed out, "The establishment, and the type, of historic rights depend on the activities performed by a state over a specific maritime area. Whereas the exercise of sovereignty (activities *a titre de souverain*) could lead to the establishment of historic titles and historic waters, the exercise of exclusive sovereign rights (short of sovereignty) could lead to the establishment of historic rights with a quasi-territorial zonal impact beyond the territorial sea. This could relate to both the continental shelf and the EEZ depending on the activities performed and their zonal impact. The scope of the zonal impact would be determined and restricted to these activities, for example, exclusive fishing rights or exploitation of resources (Kopela 2017:188).

The possibility that a state could possess such rights was confirmed in 1910, in the decision of the Permanent Court of Arbitration on the North Atlantic Coast Fisheries Case between Great Britain and the United States. The ruling stated that the United States did indeed have special historic rights to fish in the waters that were under the jurisdiction of the British at the time, and also proposed establishing certain organizational and legal guarantees for the exercise by the American side of such rights in this water area (Vylegzhanin 2012: 15–16).

The institution of historic rights to fishing and the extraction of other marine resources has not lost its significance as a *lex specialis* in modern international maritime law, even after they were written into Art. 56 of the 1982 Convention regarding the sovereign rights of coastal states to explore, exploit and conserve the natural resources of the exclusive economic zone outside their territories. For example, the *ad hoc* Arbitration Tribunal set up to resolve the maritime boundary dispute between Eritrea and Yemen in 1999 accepted that the traditional (historic) fishing regime is not amenable to the maritime zones established by the 1982 Convention (Kopela 2017: 192). A similar statement based on the same reasoning can be found in an earlier decision of the International Court of Justice on February 24, 1982 in the dispute between Tunisia and Libya in the Mediterranean concerning the delimitation of the continental shelf. Here, the court pointed out that the concept of historic rights or waters and the concept of the continental shelf are governed by distinct legal regimes in customary international

law. The first is based on acquisition and occupation, while the second is based on the existence of rights "*ipso facto* and *ab initio*." According to the Court, the two may sometimes coincide in part or in whole, but such coincidence can only be fortuitous.[9]

The Arbitral Tribunal on the South China Sea set up in 2013 to consider the dispute between the Republic of the Philippines and the People's Republic of China also contributed to the definition of the concept of the historic rights of states to maritime areas. In its ruling of July 12, 2016, the Tribunal notes that "The term 'historic rights' is general in nature and can describe any rights that a State may possess that would not normally arise under the general rules of international law, absent particular historical circumstances. Historic rights may include sovereignty, but may equally include more limited rights, such as fishing rights or rights of access, that fall well short of a claim of sovereignty.[10] At the same time, the Tribunal emphasized that the concepts of "historic rights" and "historic title" should not be confused, since the latter "is used specifically to refer to historic sovereignty to land or maritime areas."[11]

However, the latter thesis has not received unambiguous support in the Russian legal doctrine. For example, V. L. Tolstykh, has noted in this regard that the frequent use of the word "title" in the context of claims to sovereignty does not mean it cannot be used in other contexts (Tolstykh 2019: 66). That said, the position of the Tribunal that the concept of "historic rights" is broader in nature than "historic title" should be recognized as fair.

The foregoing leads us to the following tentative conclusion, which is crucial for determining the fundamental possibility of declaring the Sea of Okhotsk Russia's "historic waters" and (or) establishing that Russia has the legal grounds (special rights) to carry out certain types of activities in its water area:

1. There are two main legal regimes for the delimitation and exploitation of maritime areas in modern international law that correspond to *lex generalis* and *lex specialis,* respectively. The first is based on the norms of the 1982 Convention and is the main regime for regulating these issues. The second is based on facts and circumstances that are unique to each individual case and allow states to claim their special (historic) rights to specific maritime areas.

2. These kinds of historic rights create legal grounds for coastal states to:

a) demand that historic waters (including historic bays) in respect of which they have a so-called historic title (over which they have exercised sovereignty for an extended period of time, and this sovereignty is unchallenged by other states) be included as part of their territory;

[9] International Court of Justice: Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya). Judgment of 24 February 1982. P. 60. URL: https://www.icj-cij.org/public/files/case-related/63/063-19810414-JUD-01-00-EN.pdf (accessed: 03.07.2022).

[10] An Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea: The Republic of the Philippines vs the People's Republic of China. Award of 12 July 2016. Para. 225. https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf (accessed July 3, 2022).

[11] Ibid.

b) the priority (exclusive) implementation of certain types of activities in maritime areas that are under its jurisdiction, but located outside their territory (EEZ, continental shelf);

c) carry out non-exclusive activities within maritime areas belonging to other countries or under their jurisdiction.

The Status of the Sea of Okhotsk and Russia's Historic Right to its Waters

In our opinion, the legal analysis of the situation contained in the previous section significantly clarifies, and at the same time narrows, the legal status of the Sea of Okhotsk, given that Russia has historic rights to its waters.

It is increasingly obvious that Russia does not have sufficient legal grounds to declare the Sea of Okhotsk its territorial waters and extend to it the status of internal waters or territorial sea of the Russian Federation. And this is not so much because other states might object to such a declaration, but because Russia itself has never made any statements regarding its historic title to the waters of the Sea of Okhotsk or a state policy aimed at implementing and defending Russian sovereignty is relation to its waters.

It can be argued that (with certain exceptions) the Soviet Union, and then the Russian Federation, exercised sovereignty over the maritime areas of the Sea of Okhotsk for a relatively short historical period, starting from the end of the Second World War. The assertion that Russia enjoyed exclusive historic rights to these waters in earlier periods is open for debate given that its dominance in the Sea of Okhotsk was broken following the conclusion of the Treaty of Saint Petersburg in 1875, according to which Russia ceded all the Kuril Islands to Japan is exchange for full ownership of Sakhalin Island. Then, following the Russo–Japanese War of 1904–1905, Japan was awarded the southern part of Sakhalin, which was occupied at the time by Japanese troops. A provision to this effect was written into the Treaty of Portsmouth signed by Russia and Japan on September 5, 1905. Thus, at the time the Russian Empire ceased to exist in 1917, it no longer legally owned either southern Sakhalin or the Kuril Islands as a whole. These lands were only returned as a result of the Soviet–Japanese War, during which the Soviet Union occupied southern Sakhalin and the Kuril Islands, including the islands of Iturup, Kunashir, Shikotan and Habomai, between August and September 1945. These islands were named part of the Russian Soviet Federative Republic by Decree of the Presidium of the Supreme Soviet of the Soviet Union on February 2, 1946 (Gavrilov 2015: 77–79).

Any discussion of Russia's historic title to the Sea of Okhotsk must necessarily include a consideration of Japan's persistent protests regarding the territoriality of the four southern Kuril Islands, an important factor that certainly weakens the argument that Russia has exercised long-term sovereignty over that particular maritime area. At the same time, this factor, in our opinion, can be interpreted in relation to the subject

of this article to a limited extent only, and only in relation to the land territory of these islands. It should not thus be regarded as a persistent objector in relation to the historic status of the Sea of Okhotsk as a whole.

There is almost no point stating here that Russia needs to secure exclusive rights to the exploration and development of natural resources in the coastal waters and subsoil of the Sea of Okhotsk bed on the basis of its historic right to these areas. These rights have already been assigned to Russia within its 200-mile exclusive economic zone in accordance with Art. 56, para. 1 (a) and Art. 77, para. 1 of the 1982 Convention. What is more, after the Commission on the Limits of the Continental Shelf confirmed in its decision of March 11, 2014 that the bed of the Sea of Okhotsk outside Russia's EEZ would be considered part of the continental shelf of the Russian Federation, Moscow received this right in relation to the subsoil resources and "sedentary species" of living organisms in its central part.

Thus, in terms of securing Russia's rights to the resources of the Sea of Okhotsk, the only unresolved issues today is the question of their harvesting in the waters of the central part of the sea. In this case, we are talking about an enclave of sorts of open sea waters located outside Russia's EEZ and representing a "vast, irregularly shaped area, its longest part being 290 nautical miles, and its narrowest 42 nautical miles."[12] What makes this area special is that, due to the unique geographical location and shape of the Sea of Okhotsk, and in accordance with the provisions of the 1982 Convention, it enjoys a free fishing regime – despite the fact that the enclave is surrounded on all sides by the 200-mile exclusive economic zone of the Russian Federation, where Russia enjoys exclusive rights to the extraction of the living marine resources therein.

Such a state of affairs is clearly not in line with the national interests of the Russian Federation, and the efforts of Russian politicians and the Russian scientific community should thus in the near future be directed towards changing the legal status of this particular section of the Sea of Okhotsk. At the same time, in our opinion, the emphasis in this work should not be placed on attempts to declare it an inland sea or historic waters of the Russian Federation. Rather, it should be placed on the consistent assertion at all levels and by all possible means of the argument that Russia has exclusive historic rights to the extraction of living sources in the central part of the Sea of Okhotsk water area. What is more, this argument should be based not on the long-term practice of Russia's exclusive use of the resources of the Sea of Okhotsk, which cannot be confirmed by historical evidence, but rather on reference to Russia's vital interests in this region, the content of which can be interpreted quite broadly.

There are numerous examples in international practice that confirm the legal validity of this approach. For example, back in 1917, the Central American Court of Justice noted in its ruling on the case of the Gulf of Fonseca that, in addition to geographical and historical factors, the vital interests of states should be taken into account when

[12] By Sea, Circumventing the Enclave. URL: https://fishnews.ru/news/27077 (accessed: 18.06.2022).

determining the legal status of maritime spaces, including, first and foremost, issues pertaining to the development of the state's economy and defence. At the 1930 League of Nations Codification Conference in the Hague, several countries noted that the concepts of security, defence, and even the "welfare of states," are pertinent considerations in the establishment of the existence of historic rights to certain maritime spaces (Symmons 2019: 366–367). In turn, the 1951 decision of the International Court of Justice on the fisheries dispute between the United Kingdom and Norway also recognized the need to take the special interests of coastal states into account when ruling on such issues.[13]

Legal scholars have repeatedly emphasized the key importance of the vital interests of the state for establishing the existence of a country's historic rights to maritime areas at the domestic level. For example, when the People's Republic of China adopted its Declaration on China's Territorial Sea in 1958, it simultaneously declared the Bohai Bay and the Qiongzhou (Hainan) Strait as its internal historic waters. This contention was based, among other things, on the importance of these maritime areas for the economy and security of the People's Republic of China. In the same vein, Panama, when ratifying the United Nations Convention on the Law of the Sea in 1996, declared that it had exclusive sovereignty over the Gulf of Panama, which is vital for the country's security and defence, as well as for its economy. In its 1985 ruling on the Alabama and Mississippi Boundary Case, the United States Supreme Court also cited the "vital interests of the coastal nation, including elements such a geographical configuration, economic interests and the requirements of self-defense" as factors that must be taken into account in such cases (Symmons 2019: 367, 370).

In our opinion, all of the legal theses and structures presented above can be fully used by Russia to declare and defend its exclusive historic rights to the extraction of living resources in the central part of the Sea of Okhotsk, which should be similar to the rights the country already possess within its own EEZ. This argument is supported both by the unique geographic configuration of this sea basin, which is surrounded on almost all sides by Russian territory, and by its importance now and in the future for Russia's socioeconomic development. This task is especially relevant today, when, as a result of the confrontation with the West, Russia is in dire need of new sources of resources necessary to keep its economy stable.

However, given the situation as it stands today, Russia's assertion that it has special historic rights in the Sea of Okhotsk can no longer be limited to the right to extract resources. We believe that Russia should go further on this issue and consider the possibility of claiming the exclusive right to navigate the larger part of the Sea of Okhotsk for Russian vessels. At the same time, an authorization or notification procedure could

[13] International Court of Justice: Fisheries case (United Kingdom v. Norway). Judgment of 18 December 1951. P. 21. https://www.icj-cij.org/public/files/case-related/5/005-19511218-JUD-01-00-EN.pdf (accessed: 01.07.2022).

be set up for foreign vessels to navigate these waters, similar to the procedure used in the Northern Sea Route. The validity of legitimizing such a historic right is directly determined by the fact that the Sea of Okhotsk has acquired supreme importance in ensuring the vital security and defence interests of Russia with regards to its eastern borders.

Conclusion

In conclusion, we can note that, despite the incredibly limited room for maneuver for Russia in terms of defending its historic title to the Sea of Okhotsk, the situation is not entirely hopeless in the foreseeable future. At the same time, however, we should bear in mind that the key to success in the resolution of this issue lies not in declaring the Sea of Okhotsk an inland sea of Russia or its historic waters, but rather in legitimizing many of its exclusive historic rights in this sea area based on the fact that the country has vital interests in the Sea of Okhotsk for ensuring its economic development, security and defence. This is precisely the approach that China has adopted with regard to its historic right in the South China Sea (Zou, Ye 2017: 337), and it appears to be quite promising.

All this, in our opinion, provides the necessary legal grounds for the Government and the State Duma of the Russian Federation to broach, in the new political reality, the issue of a partial change in the country's stance on the legal status of the Sea of Okhotsk and the development of a new strategy for asserting Russia's historic rights to its water area, both through the adoption of unilateral legal acts, and through the implementation of a consistent policy to disseminate and defend this point of view in international relations within the framework of negotiations with foreign states and the activities of relevant international bodies and organizations.

The first step in this direction has already been taken: the updated Maritime Doctrine of the Russian Federation (2022) classifies the Sea of Okhotsk, along with certain other maritime areas, as a vital area for ensuring Russia's national interests in the World Ocean, the first time such an assertion had been made.[14] The task now is to see this process through to is logical conclusion.

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[14] Maritime Doctrine of the Russian Federation. Approved by Decree No. 512 of the President of the Russian Federation. Para. 14.4. Consultant Plus database of legal texts.

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