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**Memorandum on the Soviet Doctrine and Practice with Respect to the Regime of the High Seas  
prepared by the Secretariat**

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MEMORANDUM  
ON  
THE SOVIET DOCTRINE AND PRACTICE  
WITH RESPECT TO THE REGIME OF  
THE HIGH SEAS

(Prepared by the Secretariat)

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/SOVIET DOCTRINE

## SOVIET DOCTRINE AND PRACTICE WITH RESPECT TO THE REGIME OF THE HIGH SEAS

### I. FREEDOM OF THE SEAS - A GENERAL PRINCIPLE

A Soviet text-book places the U.S.S.R. alongside other states in recognizing the freedom of the seas.

1. The status of the high seas. The waters of oceans and seas are subject to the common use of all states for the purpose of navigation, business, etc. In the science of international law and in the practice of states the spaces of the sea, being in common use of all peoples, are called the "high seas". Littoral countries of a given sea may establish their authority (jurisdiction) over only a determined strip of its waters, which are contiguous to its shore.

(Institut Prava Akademii Nauk S.S.S.R., Mezhdunarodnoe Pravo, Moscow, 1947, p. 236 - Institute of Law of the Academy of Sciences of the U.S.S.R., International Law).

The U.S.S.R.'s particular interest in the principle has been stated as follows:

The question of the measure and substance of the concept of freedom of the seas has great importance for the U.S.S.R. as a great naval power, interested in uninterrupted communication between the 14 seas and 3 oceans washing its shores. The Soviet naval forces, which were given the task even before the second world war of having "a sea and ocean fleet worthy of our great cause," must be certain of a free exit to the sea lanes of the world.

Furthermore, the problem of freedom of the seas now has a second more general reason for being important. During the course of the first and second world wars, and even during the interval between them the question of freedom of the seas became much more complicated. In that very period there arose to the first magnitude the effort of the great capitalist maritime powers to seize unlimited control over the seas; to subordinate the force of law to the rule of physical force on the seas; to do away with the freedom of the seas and to conduct on their surfaces a severe economic war. The piracy of states on the sea rose to a position of prowess.

(S. Vyshnepol'skii, Freedom of the Seas in the Epoch of Imperialism, Sovetskoe Gosudarstvo i Pravo, No. 1, 1949, p. 13. - Soviet State and Law) Translated into English in Current Digest of the Soviet Press, American Council of Learned Societies, Washington, D. C., Vol. I, No. 16, 17 May 1949, p. 37.

On 1 January 1942, the U.S.S.R. adhered with other states to the principles of the Atlantic Charter, point 7 of which reads:

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance.

/(For text of

(For text of Declaration of adherence, see Soviet Foreign Policy During the Patriotic War, Documents and Materials, Vol. I, June 22, 1941 - December 31, 1943, trans. by Andrew Rothstein, London, no date, p. 114, and CCIV:381 INTS).

A series of notes was addressed by the U.S.S.R. to the United States in 1948, the first of which on 30 January 1948 protested against air inspection of Soviet ships passing through waters near Japan. In the report of the Telegraph Agency of the Soviet Union (Tass) it was stated:

In connection with this the Ministry of Foreign Affairs on 30 January of this year directed to the American Embassy in Moscow a note in which, having communicated the aforementioned acts of American airplanes, the attention of the Government of the U.S.A. was called to the aforementioned violation of the freedom of commercial navigation. The Ministry of Foreign Affairs of the U.S.S.R., it was stated in the note, expects that the Government of the U.S.A. will give the necessary orders to the responsible American authorities not to permit such violations in the future.

(Pravda, No. 33 (10774), 2 February 1948, p. 2).

The espousal of the principle of freedom of the seas is found to be of early origin in Russian history. Professor Kozhevnikov in his 1948 text-book feels that it antedates Hugo Grotius. He writes:

The principle of the freedom of the high seas and the impermissibility of subjecting it to the authority of individual states was brought forward by Russian diplomacy as early as the XVI century, and later corroborated in 1609 by Hugo Grotius in his famous work "Mare Liberum". From the beginning of the XVIII century it received general recognition and is today one of the fundamental principles of international law. The high seas may not be occupied.

(F. I. Kozhevnikov, Sovetskoe Gosudarstvo i Mezhdunarodnoe Pravo 1917-1947. Opyt Istoriko-pravovogo Issledovaniya. - The Soviet State and International Law 1917-1947. The Experience of Historical Legal Research, Moscow, 1948, p. 209).

## II. THE HIGH SEAS DEFINED

Certain bodies of water called "seas" are excluded from the doctrine of freedom of the seas. The U.S.S.R. is especially concerned since some of the more important ones lie within its territory. A Soviet text (Institut Prava, op. cit., p. 237-238) states the principle, as follows (in translation):

6. 'Closed Seas'. The principle of freedom of the high seas is not applied to closed spaces of water which cannot be reached from the ocean by seagoing vessels (for example, the Caspian, the Aral, the Dead Seas). These "seas" are, in effect, large lakes, falling under the regime of national waters or frontier waters, depending upon whether their shores belong to one or two states.

The Caspian Sea in the treaties and practice of the U.S.S.R. and Iran is considered as a Soviet and Iranian sea, on which navigation is permitted only to Iranian and Soviet ships. Commercial and business ships on it are subject to the law of the flag when they are outside ports and roadsteads, but this does not exclude the right of supervision in special zones.

The regime of the Caspian Sea is established by the "Treaty of Establishment, Commerce, and Navigation between the Union of Soviet Socialist Republics and Iran," signed in Teheran on 27 August 1935 (Sbornik Deistvuyushchikh Dogovorov, Soglashenii i Koaventsii, Zaklyuchemykh s Inostrannymi Gosudarstvami, Vol. 9, Moscow, 1938, p. 1929 - cited hereafter as Collection of Treaties, etc., U.S.S.R.; and CLXXVI:299 LNTS). The pertinent article reads, in translation:

Art. XIV. The Contracting Parties are agreed that in accordance with the principles proclaimed by the Treaty of 26 February 1921 between the Russian Socialist Federated Soviet Republic and Persia there may be on the entire Caspian Sea only ships belonging to the Union of Soviet Socialist Republics and Iran, as well as citizens and commercial and transport organizations of one of the two Contracting Parties sailing respectively under the flag of the Union of Soviet Socialist Republics or under the flag of Iran.

They are likewise agreed that only persons which are their citizens may serve as crew on their ships.

The Arctic Ocean has been classified specially in Soviet literature, and, perhaps, is not considered as the "high seas" by the U.S.S.R. This conclusion derives from a presentation by a Soviet jurist writing in the 1930's, on the basis of an extension of the "sector" principle declared as governing Soviet claims to territory in the Arctic Ocean.

The territorial declaration was set forth in a decree of 15 April 1926 (Sobranie Zakonov i Rasporyazhenii S.S.S.R., 1926, Part I, No. 32, Art. 203 - Collection of Laws and Orders of the U.S.S.R.). [Also translated somewhat differently, and incorrectly cited in T. A. Taracovzio, *Soviets in the Arctic*, New York, Macmillan, 1938, p. 381]

[Art. 203

Art. 203 concerning the declaration of the land and islands located in the Northern Frozen Ocean as territory of the U.S.S.R.

The Presidium of the Central Executive Committee of the U.S.S.R. decrees:

All lands and islands whether discovered or likely to be discovered in the future which are not recognized by the Government of the U.S.S.R. at the time of publication of the present decree as the territory of some foreign state and which are located in the Northern Frozen Ocean to the north of the coast of the U.S.S.R. up to the North Pole between meridian  $33^{\circ}-4^{\prime}-35^{\prime}$  east from Greenwich, passing along the eastern side of Vaida Bay through the triangular mark on Cape Kekurski, and meridian  $168^{\circ}-49^{\prime}-36^{\prime}$  west from Greenwich, passing along the middle of the strait separating Ratmanov and Kruzhenstern Islands of the Diomede Archipelago lying in Bering Strait, are declared the territory of the U.S.S.R.

Based upon this decree W. Lakhtine, one-time Secretary-Member of the Committee of Direction of the Section of Aerial Law of the Union of Societies, "Ossoaviachim" of the U.S.S.R., has argued as follows in an article translated under the title "Rights over the Arctic" (American Journal of International Law, Vol. 24 (1930), p. 703 at 712):

The writer agrees with the opinion of E.A. Korovin. It must be remembered that some of the immovable ice fields are utilized for land communication, and that it is possible to establish there intermediate aerial stations, etc. We are of the opinion that floating ice should be assimilated legally to open polar seas, whilst ice formations that are more or less immovable should enjoy a legal status equivalent to polar territory. Polar States acquire sovereignty over them within the limits of their sectors of attraction ----

Lakhtine then carries his argument further to include the open seas within the sector theory, and says (at p. 713):

When taking into account, however, the peculiarities of the Arctic Ocean, and the legal status of the adjacent territories and ice, we are obliged to conclude that the doctrine of the high seas, if applied to the Arctic Ocean, is quite unsatisfactory. Sovereignty should attach to the Polar States over the Arctic Ocean within their sectors of attraction. The jurisdiction, however, should be qualified by the assurance to Foreign Powers of the right of innocent passage of all naval vessels, although the littoral State should have the right to regulate, control and even prohibit hunting and fishing. This principle has been practically recognized in the Anglo-American-Russian-Japanese convention of 1911 regulating fur-seal hunting; and in the conduct of the English and French in the Antarctic, as well as the new naval policy of the United States of America.

Thus the proposed legal status of the high seas of the Arctic, is, in its essential part, nearly identical with that of "territorial waters".

/Lakhtine's

Lakhtine's proposals have not been incorporated in any declaration of the Soviet Government.

No such assimilation of the waters of the Antarctic Ocean to "territorial waters" has been made by the Soviet writers or the Soviet government. The possible Soviet attitude on Antarctic waters can be determined only by its attitude toward territory in the Antarctic. Certain territory at the South pole is said to be subject to Soviet jurisdiction by right of discovery. In articles published in 1949 the following has been said (in translation by the Current Digest of the Soviet Press):

In 1931 and 1939 Norway claimed Peter I Island, discovered by Russians in 1821, and 'united' the expanse between the Australian and English (Falkland) sectors. On January 27, 1939, the Soviet Government informed Norway that it could not accept this action by Norway as legal; and considered it necessary to reserve its point of view concerning state ownership of the territory discovered by the Russian navigator Bellingshausen. It is important to note that at the same time (January 1939) the U.S.A. in statements to Britain and France also reserved its point of view on sovereignty in the Antarctic. Thus the question remained open by virtue of statements of the two great powers.

The Soviet public and Soviet science could not neglect the problem of the Antarctic and forget the rights and interests of our Motherland in this question. Naturally the Geographical Society, of which both great Antarctic explorers - Bellingshausen and Lazarev - were members, cannot but take an interest in this question.

(Russian Discoveries in the Antarctic - at the General Meeting of the All-Soviet Geographical Society, Izvestia, 11 February 1949, p. 3, Pravda, 11 February 1949, p. 3. English translation in Current Digest of the Soviet Press, Washington, D.C., Vol. I, No. 6, 8 March 1949, p. 43 at p. 44).

Another indication of a claim to territory in the Antarctic appeared four months later, in the following words (in translation by the Current Digest of the Soviet Press: Idem, Vol. I, No. 24, 12 July 1949, p. 7):

However, in attempting to settle the question of the Antarctic without the participation of the Soviet Union, the American expansionists are deliberately relegating to oblivion the fact that the right of priority in discovery of the Antarctic still belongs to the Soviet Union. ----

The right of priority in discovery of a number of Antarctic lands remains historically Russia's, and, by succession, that of the U.S.S.R. Russia has never renounced her rights, and the Soviet Government has never given its consent for any one to dispose of territory discovered by Russian seamen. ----

With the reference above to the sectors of Australia and the Falkland Islands, Soviet writers may be indicating an extension of the "sector theory" to territory in the Antarctic region. On the other hand, these "sectors" have been defined  
/by Letter Patent



by Letter Patent or Orders in Council for many years, and they are much wider than they would be under the Soviet "sector theory". Also, the Soviet geographers are laying claim to certain territory which they believe to have been discovered by Russian explorers in 1819-1821 through whom the claim is traced to the U.S.S.R. No "sector theory" could apply to this claim. The question of the status of the Antarctic seas appears to remain unsettled under the present state of Soviet declarations.

The U.S.S.R. claims as its internal waters, and therefore excluded from the rules relating to the high seas, three seas (White, Azov and Gulf of Riga) with narrow passages to open water. A Soviet text-book records the position, as follows, in translation (Institut Prava, op. cit., p. 248):

The White Sea is considered by us as an internal sea of the Soviet Union by virtue of primordial practice. The waters of this sea - south of a line drawn from Cape Kanin to Cape Sviatoi Nos - are internal waters of the Soviet Union. Therefore, Soviet legislation forbids foreign fishing in this sea, except in cases provided for by international treaties or concessionary contracts. The aforementioned prohibition was first established by a decree of the Council of People's Commissars dated 24 May 1921, entitled "Concerning Fishing Industries in the Northern Frozen Ocean". It was reaffirmed by subsequent decrees of the Soviet Government and is kept in force today by the decree of the Council of People's Commissars, dated 25 September 1935, concerning the regulation of fishing. The Sea of Azov is also internal waters of the U.S.S.R. and the Gulf of Riga must also be so considered. The narrow waterways of the entrances, the ancient rights under the Peace of Neustadt, and theory (see above) all speak for such a decision.

The decree of 24 May 1921 of the Council of People's Commissars of the R.S.F.S.R. (Collection of Laws, R.S.F.S.R., 1921, No. 49, Art. 259) reads, in translation, as follows:

259. Concerning the Protection of Fish and Animal Resources in the Northern Frozen Ocean and the White Sea.

1. The right of the R.S.F.S.R. to exclusive exploitation of the fish and animal resources extends:

In the White Sea - south of a line drawn between Capes Sviatoi Nos and Kanin; in the Chesskaya Bay - south of a line from Cape Mikulin and Cape Sviatoi Nos, and in the Northern Frozen Ocean along the shore from the frontier with Finland to the northern extremity of Novaya Zemlya, 12 miles in depth from the line of lowest tide, both as to the shores of the mainland and as to the shores of islands.

2. In the above described waters the right to conduct fishing and trapping industries belongs solely to Russian citizens in accordance with a special written authorization of the Chief Administration for Fishing and Fishing Industry 'Glavryby'.

/The Decree