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Nord Stream's Extension to the Kurgalsky Peninsula: Implications for an EIA

*Alexander Lott**

Abstract

Nord Stream is planning to lay two submarine pipelines in the Baltic Sea in addition to the ones which already enable the export of natural gas from the Russian Arctic to Germany and the European Union (EU). The main difference between the initial Nord Stream project and the extension project is that the Russian landfall is now planned to be located on the southern coast instead of the northern coast of the Gulf of Finland. The location of the Russian landfall is not yet finally determined.

According to Nord Stream the landfall will either be stationed in the Kurgalsky Peninsula or in the Soikinsky Peninsula. Unlike the Soikinsky Peninsula, the Kurgalsky Peninsula is a Ramsar wetland of international importance, a coastal and marine Baltic Sea protected area as well as a candidate Emerald site. Its environment is thus protected currently under both the Ramsar and Helsinki conventions. International environmental organisations deem the project as a danger to the protected area. Nonetheless, due to feasibility reasons Nord Stream has considered the Kurgalsky Peninsula advantageous in comparison with the Soikinsky Peninsula as it would significantly reduce onshore and offshore pipeline route length.

The aim of this paper is to establish whether Nord Stream and Russia are obligated to apply an EIA procedure in respect of the potential construction activities in and near the Kurgalsky Peninsula under international law and, if so, under which legal instruments it should be done. In particular, the paper aims at mapping some of the interconnections between the environmental impact assessment (EIA) procedure and the relevant international conventions in the fields of marine environmental protection, protection of migratory birds and biological diversity.

1. Introduction

By April 2012, two 1 224 km-long submarine gas transmission pipelines had been laid on the seabed of the Baltic Sea between Vyborg in Russia and Greifswald in Germany. The pipelines enable the export of 55 bcm of natural gas from the Russian Arctic to satisfy the energy needs of more than 26 million European households per year.[1] Consequently, in 2014 more Russian natural gas was exported to Europe via the offshore Nord Stream than the alternative onshore route through Ukraine and Slovakia.[2]

In May 2012 Nord Stream's shareholders gave their permission for the extension of the pipeline project.[3] The prospective shareholders of the Nord Stream extension project are Gaz-

* Doctoral candidate at the University of Tartu and adviser at the Administrative Law Chamber of the Supreme Court of Estonia.

[1] Nord Stream AG. Fact Sheet. Zug 2014, p 2. Accessible: https://www.nord-stream.com/the-project/pipeline/ (25.06.2016).

[2] European Parliament. At a glance: The Nord Stream 2 pipeline project. April 2016. Accessible: http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/580875/EPRS_ATA(2016)580875_EN.pdf (25.06.2016).

[3] Nord Stream AG. Nord Stream to Assess Options to Further Increase Gas Import Capacities Through the Baltic Sea, 11.05.2012. Accessible: https://www.nord-stream.com/press-info/press-releases/nord-stream-to-assess-options-to-further-increase-gas-import-capacities-through-the-baltic-sea-410/ (25.06.2016).

prom (Russia) with 50 %, as well as Uniper and BASF/Wintershall Holding (Germany), Shell (the Netherlands/UK), OMV (Austria) and the French Engie (each 10 %).[4] Since Estonia did not permit Nord Stream to conduct marine scientific research in its exclusive economic zone (EEZ) in 2012 (as in 2007),[5] the extension project's transit countries also remain the same: Finland, Sweden and Denmark.[6]

The project concerns the installation of two additional trans-Baltic pipelines which are analogous to the existing ones (incl. capacity-wise). While the landfall on the German coast is planned to remain in Greifswald, the landfall on the Russian coast will either be stationed in the Kurgalsky or Soikinsky Peninsula.[7] The main distinction between the two Russian potential landfall sites is that unlike the latter, the Kurgalsky Peninsula is a Ramsar wetland site of international importance as well as a coastal and marine Baltic Sea protected area[8] (HELCOM MPA). It is also a candidate Emerald site[9] and a state nature reserve.[10]

The Kurgalsky Peninsula is one of 35 Ramsar sites in Russia.[11] The site has been deemed to exhibit "a high species diversity of flora and fauna, supporting numerous species of regionally or globally threatened plants, mammals, birds, amphibians and reptiles."[12] Thus, presumably the potential Soikinsky landfall poses less damage to marine and coastal environment than its alternative option in the sensitive Kurgalsky Peninsula area. In particular, during the implementation of the initial Nord Stream project the domestic competent authority (the Federal Service for Environmental Management Supervision) provided its permit for the laying of the pipelines in the Russian waters on the condition that Nord Stream ensures that this is carried out with minimum impact on the marine environment and its species.[13] Applied to the present context, this would mean *prima facie* that a regular coast should be chosen for stationing a landfall rather than an internationally protected nature reserve.

At the same time, Nord Stream has considered the Kurgalsky landfall financially more feasible in comparison to Kolganpya in the Soikinsky Peninsula (located some 45 km north-east). It has stated that "Among other advantages, the Kurgalsky landfall option significantly reduces onshore and offshore pipeline route length."[14] International environmental organisations have

[4] Nord Stream 2. Our Company – Prospective Shareholders. Accessible: http://www.nord-stream2.com/our-company/prospective-shareholders/ (25.06.2016).

[5] See A. Lott. Marine Environmental Protection and Transboundary Pipeline Projects: A Case Study of the Nord Stream Pipeline. – 27 Utrecht Journal of International and European Law 2011, p 59–61.

[6] See Nord Stream AG. Nord Stream to Further Develop Finnish Route Alternative After Estonia Rejects Survey Application, 06.12.2012. Accessible: http://www.nord-stream.com/press-info/press-releases/nord-stream-to-further-develop-finnish-route-alternative-after-estonia-rejects-survey-application-428/ (25.06.2016). See also Figure 1 (below).

[7] See Figure 1 (below).

[8] HELCOM. 166 – Kurgalsky Peninsula. Accessible: http://mpas.helcom.fi/apex/f?p=103:12:::NO::P12_ID:166 (25.06.2016).

[9] See further *infra* Chapter 3.

[10] See also the domestic regulation on the Kurgalsky nature reserve in ПРАВИТЕЛЬСТВО ЛЕНИНГРАДСКОЙ ОБЛАСТИ ПОСТАНОВЛЕНИЕ от 8 апреля 2010 года N 82. О государственном природном комплексном заказнике "Кургальский" регионального значения (с изменениями на 8 июля 2015 года). Accessible in Russian at: http://docs.cntd.ru/document/891828949 (25.06.2016).

[11] Ramsar. Country Profiles. Accessible: http://www.ramsar.org/country-profiles (25.06.2016).

[12] Ramsar. Country Profiles – Russian Federation. Accessible: http://www.ramsar.org/wetland/russian-federation (25.06.2016).

[13] D. Langlet. Nord Stream, the Environment and the Law: Disentangling a Multijurisdictional Energy Project. – 59 Scandinavian Studies in Law 2014, p 99.

[14] Nord Stream AG. Nord Steam Extension Project Information Document (PID). Zug 2013, p 19. Accessible: https://www.nord-stream.com/media/documents/pdf/en/2013/03/nord-stream-extension.pdf (25.06.2016).

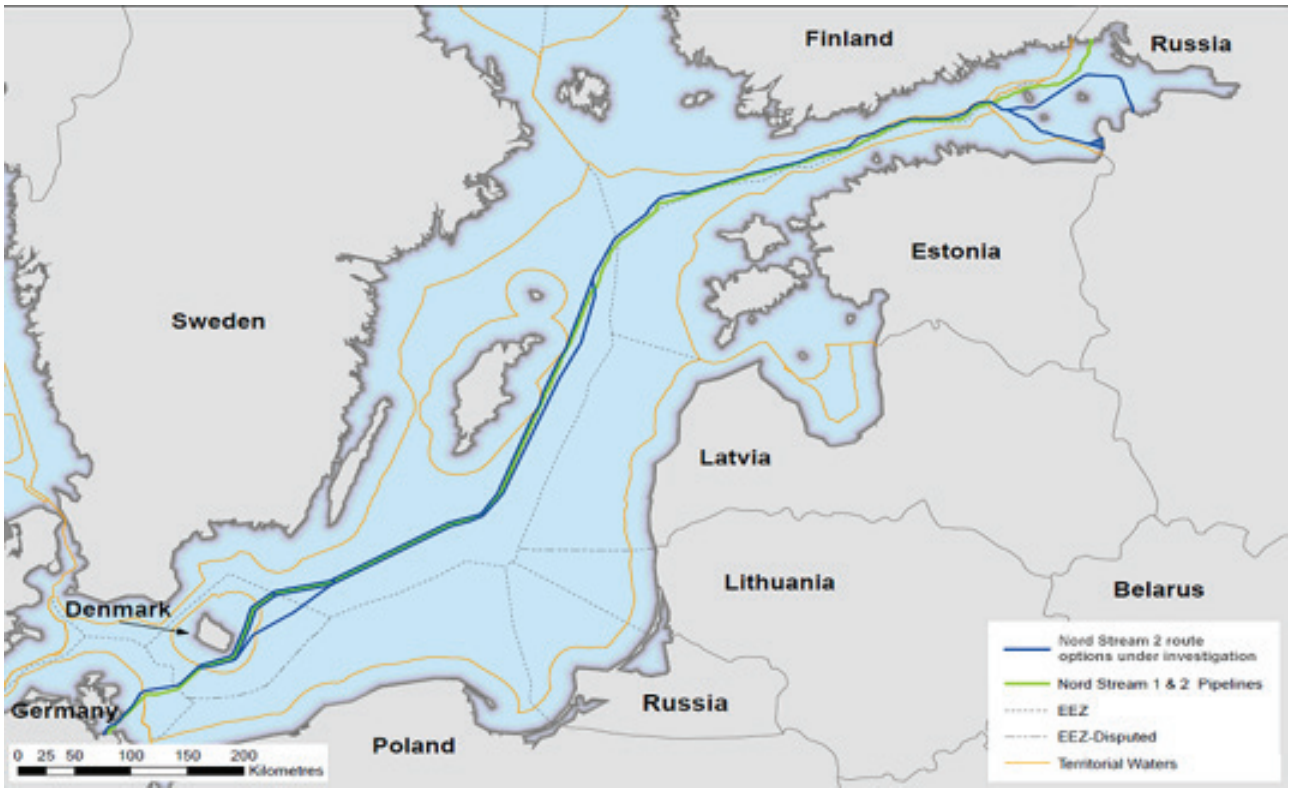

Figure 1. Possible routes for Nord Stream 2, including the alternative solutions in the eastern part of the Gulf of Finland. Accessible: http://www.nord-stream2.com/our-project/pipeline (25.06.2016).

raised their concerns regarding this prospect.[15] This paper aims to establish whether Russia and Nord Stream are required to carry out an EIA procedure in respect of the potential construction activities in and near the Kurgalsky Peninsula under international law and, if so, under which treaty.

2. Characteristics of the Kurgalsky Nature Reserve

The Kurgalsky Peninsula is located between the Narva Bay and Luga Bay on the southern coast of the Gulf of Finland. The Kurgalsky wetland of international importance (65 000 ha, incl. 38 400 ha of marine area, 1 400 ha of inland water bodies, 25 200 ha of terrestrial habitats)[16] stretches throughout the Kurgalsky Peninsula and also covers the area of HELCOM MPA, candidate Emerald site and a Russian nature reserve. Geographically, the four protection sites generally overlap (hence hereinafter *nature reserve*).

The nature reserve borders Narva River and Estonia in the south-west. The Kurgalsky Peninsula hosts some villages which include members of the endangered indigenous people Izhorians. Until recently, access to the peninsula was restricted as it was part of the Border Security

[15] Greenpeace. "Nord stream" can destroy a wildlife preserve "Kurgalsky", 20.09.2012. Accessible: http://www.greenpeace.org/russia/en/news/20-09-2012-nordstream_kurgalsky_eng/ (25.06.2016). See also Coalition Clean Baltic. Update of information regarding anthropogenic threats to Kurgalskiy Nature Reserve, Leningrad Oblast, Russia. HELCOM 15.02.2016, p 1–3.

[16] Ramsar. Information Sheet on Ramsar Wetlands – Kurgalsky Peninsula, 1997, p 1. Accessible: http://sites.wetlands.org/reports/ris/3RU026en.pdf (25.06.2016).

Zone.[17] Industrial development commenced in the peninsula only recently.

The establishment in 2001 of the Ust-Luga port 8 km east of the nature reserve's border has caused a rapid rise in the number of inhabitants in the surrounding settlements.[18] The Ust-Luga port is due to reach its full capacity in 2018, handling approximately 180 million tons of cargo (incl. radioactive substances and waste) per year.[19] By comparison, the second-largest port in Europe, Antwerp, handled 199 million tons of cargo in 2014.[20] Also, Shell and Gazprom signed in June 2016 a memorandum of understanding for constructing in the Ust-Luga port by 2021 a liquefied natural gas (LNG) terminal with the annual capacity of 10 million tons of LNG.[21] The prospective rise in the already heavy shipping traffic in the Gulf of Finland and Luga Bay in addition to the pollution caused by the development of the Ust-Luga port will likely have an adverse cumulative effect on the state of the environment in the Kurgalsky Peninsula.[22]

The Kurgalsky nature reserve is an important habitat for vulnerable or threatened species, e.g. flying squirrel, European beaver, brown bear, European mink, Eurasian badger, European otter, grey seal and Baltic ringed seal.[23] Notably, it has been estimated that the population of the Baltic ringed seal declined from approximately 200 000 to 5 000 seals in the course of the 20th century and that there are only some 300 Baltic ringed seals left in the Gulf of Finland.[24] The islets around the Kurgalsky Peninsula are used as seal haul-outs of which some hold over 300 seals.[25] The Kurgalsky Peninsula is also a resting area for more than 250 species of migrating water birds.[26] 85 of those species were listed in the so-called Baltic red book and 7 in the Russian red book in the middle of the 1990s.[27]

In the course of the feasibility study, Nord Stream considered that the extension project has a potential offshore and onshore transboundary impact on *inter alia* birds due to noise and visual impact.[28] The construction works may have

[17] Coalition Clean Baltic. Call for action regarding the alarming situation around Kurgalskiy Nature Reserve, Russia. HELCOM 23.10.2015, p 3. Accessible: https://portal.helcom.fi/meetings/STATE-CONSERVATION%203-2015-276/MeetingDocuments/3N-4%20CCB%20letter%20on%20Kurgalskiy.pdf (25.06.2016).

[18] Coalition Clean Baltic. Call for HELCOM action regarding Baltic MPAs within Russian part of the Gulf of Finland. HELCOM 19.11.2015, p 2. Accessible: https://portal.helcom.fi/meetings/HOD%2049-2015-247/MeetingDocuments/4-18%20Call%20for%20HELCOM%20action%20regarding%20Baltic%20MPAs%20within%20Russian%20part%20of%20the%20Gulf%20of%20Finland.pdf (25.06.2016).

[19] Baltic Ports Organization. JSC Ust-Luga. – General Information. Accessible: http://www.bpoports.com/jsc-ust-luga.html (25.06.2016).

[20] Port of Antwerp. 2015: Facts & Figures. Antwerp 2015, p 10. Accessible: http://www.portofantwerp.com/sites/portofantwerp/files/campaigns/Cijferboekje_2015_UK_DEF.pdf (25.06.2016).

[21] See Gazprom. Gazprom and Shell committed to broader cooperation in LNG sector. 16.06.2016. Accessible: http://www.gazprom.com/press/news/2016/june/article276698/ (25.06.2016).

[22] See also N. Trumbull, O. Bodrov. Environmental Degradation of Russian Coastal Regions: The Case of the Gulf of Finland. – 5 Eurasian Geography and Economics 2009, p 4–7.

[23] Information Sheet on Ramsar Wetlands. – Kurgalsky Peninsula (note 16), p 3.

[24] International Union for Conservation of Nature and Natural Resources. The IUCN Red List of Threatened Species – Pusa hispida. Accessible: http://www.iucnredlist.org/details/41672/0 (25.06.2016). See also HELCOM. Species Information Sheet – Phoca hispida botnica. Accessible: http://helcom.fi/Red%20List%20Species%20Information%20Sheet/HELCOM%20Red%20List%20Phoca%20hispida%20botnica.pdf (25.06.2016).

[25] Information Sheet on Ramsar Wetlands – Kurgalsky Peninsula (note 16), p 2–3.

[26] Trumbull, Bodrov (note 22), p 10. Information Sheet on Ramsar Wetlands – Kurgalsky Peninsula (note 16), p 2.

[27] Information Sheet on Ramsar Wetlands – Kurgalsky Peninsula (note 16), p 2.

[28] Nord Stream Extension Project. Public Meeting within the International Consultation. Tallinn 30.05.2013, slide

such an adverse impact also on seals and fish in the affected marine area.[29] Other potential adverse transboundary impacts include sediment spreading and change of water characteristics.[30]

Wetlands have been deemed to be extremely fragile and vulnerable to anthropogenic pollution.[31] In particular, the construction of the landfall (incl. a several kilometres-long trench in the shallow waters as the trench needs to reach up to 15 m water depth) and the compressor station as well as the laying of the pipeline may likely have an impact on the nature reserve's environment. In general, it has been also argued that "Although occasional discharges, which can occur during maintenance, and continuous but comparatively small oil leakages may be relatively insignificant, the risk of losing benthic habitats as a result of large-scale shifting of sediments while pipelines are being laid must not be underestimated."[32] Furthermore, the Nord Stream extension project's potential cumulative effects in combination with the on-going development of the Ust-Luga port should be acknowledged. Such major infrastructure projects also have an indirect effect on the environment as they trigger societal changes in the relevant area, including the formation and expansion of settlements.

3. Implications for an EIA

According to the Nord Stream extension's preliminary project timeline, the EIA phase should have been finished by the beginning of 2015.[33] However, the results of an EIA, if carried out, of the project's effects on the Kurgalsky nature reserve have not been published. Greenpeace claimed in the beginning of 2013 that Nord Stream ordered a preliminary EIA from an NGO *Prozrachnyi Mir*, which came to the conclusion that the potential Nord Stream extension project in the Kurgalsky nature reserve will affect its water area and will *inter alia* have a deterring effect on seals.[34] Nord Stream claims that it has not ordered such an EIA.[35]

Unlike the other Baltic Sea coastal States, Russia is not a member State of the EU and does not need to follow its EIA directive.[36] However, since Russia is an Observer State[37] to the Council of Europe's (CoE) Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)[38] it is required to list candidate Emerald sites (based on the same principles as Natura 2000 sites). Russia runs a project in cooperation with the CoE on the identification of potential areas of special conservation interest

22. Accessible: http://www.envir.ee/sites/default/files/nordstream_ettekanne.pdf (25.06.2016).

[29] Ibid.

[30] Ibid.

[31] G. V. T. Matthews. The Ramsar Convention on Wetlands: its History and Development. Gland 2013, p 60.

[32] A. Proelss. Pipelines and protected sea areas, in R. Caddell, D. Rhidian Thomas (eds.). Shipping, Law and the Marine Environment in the 21st Century: Emerging challenges for the Law of the Sea – legal implications and liabilities. Oxford 2013, p 276.

[33] Nord Stream Public Meeting, Tallinn 2013 (note 28), slide 6.

[34] Greenpeace. Construction of Nord Stream pipeline threatens a unique natural site, 14.02.2013. Accessible: http://www.greenpeace.org/russia/en/news/14-02-2013-kurgalsky_nordstream/ (25.06.2016).

[35] Ibid.

[36] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ [2012] L 26/1 as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ [2014] L 124/1.

[37] Chart of signatures and ratifications of Treaty 104: Convention on the Conservation of European Wildlife and Natural Habitats. Accessible: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/104/signatures?p_auth=hj5fqPTV (25.06.2016).

[38] Convention on the Conservation of European Wildlife and Natural Habitats. Bern 19.09.1979, e.i.f. 01.06.1982.

of the Emerald Network in the European part of Russia and its implementation period is due to be finished by 2016.[39] The Kurgalsky Peninsula is among Russia's candidate Emerald sites.[40] However, even if Russia would join the Emerald network soon, it would not necessarily be required under the Bern Convention to conduct an EIA in respect of its planning and development in areas such as the Kurgalsky Peninsula. The 1979 Bern Convention does not explicitly refer to the EIA procedure.

By contrast, some international conventions, *prima facie* the Convention on EIA in a Transboundary Context (Espoo Convention)[41] provide also criteria for conducting an EIA. This is scrutinised next.

3.1 The Espoo Convention's Criteria for an EIA

Russia has not (unlike the other Baltic Sea coastal States) ratified the Espoo Convention. However, it is the Espoo Convention's signatory State.[42] Hence it is required to refrain from acts which would defeat the object and purpose of the treaty.[43]

Furthermore, Russia has declared that it will act in respect of the Nord Stream Extension Project as a party of origin under the Espoo Convention (as far as it considers it possible according to its domestic legislation).[44] Russia did the same with the initial Nord Stream project.[45] This decision means that Russia needs to follow the obligations as stipulated for the parties of origin in the Espoo Convention,[46] including the requirement to carry out an EIA. This is due to the potential transboundary effects of the construction activities in the Kurgalsky Peninsula as well as in its adjacent waters.[47]

Russia is required under Article 2(6) of the Espoo Convention to ensure that the opportunity to participate in the EIA procedure as provided to the public of the affected States is equivalent to that provided to its own public. Koivurova and Pölönen have thus concluded in respect of the initial Nord Stream project that the nine affected States (Baltic Sea coastal States) and their publics can participate in any one of the national EIA procedures.[48] This means that e.g. the Estonian public can voice its concerns about the Nord Stream's extension project in the course of the Russian EIA procedure.[49]

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[39] SPb CPO Biologists for Nature Conservation. Report on the implementation of the Joint EU/CoE Programme for the preparation of the Emerald Network of Nature Protection Sites, Phase II in the Russian Federation. St Petersburg 2014, p 3. Accessible: http://pjp-eu.coe.int/documents/1461016/4165450/Emerald_Ru_Report_2013_final.pdf/861e0c43-d07f-4b45-84cd-0a678c93f0de (25.06.2016).

[40] HELCOM. Fact sheet for HELCOM MPA 166 – Kurgalsky Peninsula. General Information of MPA. Accessible: http://mpas.helcom.fi/apex/f?p=103:12:::NO::P12_ID:166 (16.06.2016). See also I. Obretenova. The Emerald Network: legal framework, constitution process and joint EU/CoE action. Council of Europe, slide 10. Accessible: http://eap-csf.eu/assets/images/IO%20EU_Emerald Network_legalframework_JP%20Iva%20Obretenova.pdf (25.06.2016).

[41] Convention on Environmental Impact Assessment in a Transboundary Context. Espoo 25.02.1991, e.i.f. 10.09.1997.

[42] United Nations Treaty Collection. Convention on Environmental Impact Assessment in a Transboundary Context – Status as at: 28.06.2016.

[43] Vienna Convention on the Law of Treaties. Vienna 23.05.1969, e.i.f. 27.01.1980, Art 18.

[44] Nord Stream Public Meeting, Tallinn 2013 (note 28), slide 18.

[45] Nord Stream Espoo Report. Chapter 3: Legal Framework and Public Consultation. 2009, p 62. Accessible: https://www.nord-stream.com/download/document/73/?language=en (25.06.2016).

[46] See e.g. Art 2 of the Espoo Convention.

[47] See for the potential transboundary effects, e.g. Nord Stream Public Meeting, Tallinn 2013 (note 28), slide 22.

[48] T. Koivurova, I. Pölönen. Transboundary Environmental Impact Assessment in the Case of the Baltic Sea Gas Pipeline. – German Yearbook of International Law 2009(52), p 306, 309.

[49] See also e.g. Articles 3(1), 3(2) and 3(8) of the Espoo Convention.

The applicability of the Espoo Convention also implies that Russia would be required under Article 5 of the Espoo Convention to enter into consultations with the nature reserve's bordering country Estonia upon its request concerning, *inter alia*, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. This is important mainly because such an obligation does not follow from the bilateral treaties concluded between Estonia and Russia in the field of environmental cooperation.[50] The consultations may relate to possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of Russia (Art 5(a) of the Espoo Convention). For example, during the initial Nord Stream project Finland reserved under this provision an opportunity for consultations with Russia.[51]

Therefore, Russia is required to conduct an EIA under the Espoo Convention in respect of the prospective construction works in the Kurgalsky Peninsula as long as this is in accordance with its domestic law. The EIA process in 2008 and 2009 demonstrated the lack of any potential impediments stemming from the Russian domestic law for conducting the EIA under the Espoo procedure. It would thus be reasonable to expect that such an EIA is likewise possible under the Russian domestic law in regard of the on-going extension project. However, as noted by Koivurova and Pölönen, in practice it is still Russia's decision which route-alternatives it will study in its EIA and the other Baltic Sea coastal States do not have many legal means for influencing Russia's choice.[52]

In addition, following the example of the initial project, Nord Stream should also prepare the extension project's general transboundary environmental impact statement (Espoo Report) on the basis of the EIAs conducted by Denmark, Finland, Germany, Russia and Sweden. Unlike the nationally conducted EIAs, this report is not subordinate to the domestic laws of the coastal States and instead needs to directly follow the Espoo Convention and the supervision of the international Espoo contact point meetings. Nord Stream did not have any direct legal obligation to prepare the Espoo Report,[53] but presumably for maintaining good relations with the parties of origin nonetheless decided to present this single document in regards of the initial Nord Stream project.[54] Koivurova and Pölönen have found that in light of this precedent it is very difficult for any future analogous projects not to follow its example on international coordination.[55]

In this regard, it is particularly important that in the upcoming Espoo Report the question of alternatives is scrutinised in depth. This concerns particularly the location of the Russian landfall (either in the Soikinsky Peninsula or in the Kurgalsky Peninsula as elaborated above) but also the prospect of a land-based alternative.

[50] See Agreement between the Government of the Estonian Republic and the Government of the Russian Federation on Cooperation in Protection and Sustainable Use of Transboundary Waters. Moscow 20.08.1997, e.i.f. 20.08.1997. Accessible: http://faolex.fao.org/docs/texts/bi-32669.doc (16.06.2016). This treaty is not concerned with the protection of the marine environment. Instead, pursuant to the treaty's Article 4 its objects are transboundary waters of the Narva River watershed, including Lake Peipus-Pihkva. See also Agreement between the Government of the Estonian Republic and the Government of the Russian Federation on Cooperation in the Field of Environment. Pskov 11.01.1996, e.i.f. 19.06.1996. Accessible in Estonian at: https://www.riigiteataja.ee/akt/13083958 (16.06.2016). Accessible in Russian at: http://faolex.fao.org/docs/texts/bi-32792.doc (16.06.2016). This treaty is worded in abstract manner and is in general an expression of mutual goodwill.

[51] Koivurova, Pölönen (note 48), p 315–316.

[52] Ibid, p 313.

[53] Ibid, p 322.

[54] See ibid, p 305–306.

[55] Ibid, p 323.

Although the additional pipelines would certainly have a cumulative impact on the Baltic Sea's marine environment, most of the issues relevant for the extension project's Espoo Report have been addressed already in the initial project's Espoo Report. This provides the opportunity for the new Espoo Report to address in greater detail some of the shortcomings of the initial project's EIA.

In particular, the initial project's Espoo Report did not elaborate on the land-based alternative since allegedly none of the Baltic Sea coastal States asked Nord Stream to analyse this at the appropriate stage (scoping phase) of the transboundary EIA procedure. Koivurova and Pölönen have found that as a result of this it became subsequently difficult for the affected States to claim that the final Espoo Report was not complete because of failing to address the potentials of a land-based alternative.[56] This time the request to study the land-based alternative should have been made in the appropriate moment, i.e. during the scoping phase.[57]

The international Espoo contact point meetings[58] between the Baltic Sea coastal States (affected States) and Nord Stream will also serve as the forum for influencing Nord Stream to ensure that the potential locations of the Russian landfall and the project's land-based alternative are studied in the final Espoo Report thoroughly. Similarly, albeit Nord Stream was initially rejective towards Finland's concerns about the lack of study on the alternative routing south of Gogland Island in the eastern Gulf of Finland,[59] the alternative route was later still duly analysed by Nord Stream in the Espoo Report.[60] Koivurova and Pölönen found that this illustrates the clear impact that the international Espoo contact point meetings had on the outcome of the final Espoo Report.[61]

Likewise, the affected States would be able to raise their potential concerns in the Espoo contact point meetings about the Russian landfall location in the Kurgalsky Peninsula as well as about the need to elaborate on the land-based alternative route in the Espoo Report. More specifically, the determination of the location of the Russian landfall and submarine pipeline's routing in the Russian territorial sea might deserve a specific routeing document analogously to the one presented during the initial Nord Stream project in respect of routing in the Danish and German waters.[62] This question should require specific attention and an in-depth scrutiny by the Baltic Sea coastal States.

Yet as the Kurgalsky Peninsula is an internationally protected Ramsar site since 1994,[63] it is relevant to establish whether Russia might also be required to follow an EIA procedure under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat[64] (Ramsar Convention). This is analysed subsequently.

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[56] Ibid, p 311–312.

[57] Notably, in 2013 the parties of origin asked Estonia whether it wants to participate in the EIA procedure which they had just commenced and also asked feedback on the extension project's information document (PID). The Estonian Ministry of the Environment asked its public for opinions and recommendations on the PID and the extension project's EIA. During this scoping phase the present author sent to the ministry his observations which centred around the request for Nord Stream to study the land-based alternative in its Espoo Report. Nord Stream and the parties of origin should have received these comments pursuant to Article 3(8) of the Espoo Convention. A. Lott. Seisukoht seoses Nord Streami laienduse projektiga (Position on the Nord Stream Extension Project –A.L.). 31.05.2013, unpublished, p 3–4. On file with the author.

[58] See further on their function and aims in Koivurova, Pölönen (note 48), p 305–306.

[59] Ibid, p 312–313.

[60] Ibid, p 314.

[61] Ibid.

[62] See ibid, p 308.

[63] V. Zimin, Ramsar wetland sites are under threat in the Gulf of Finland. – CCB Newsletter 2003(1), p 14.

[64] Convention on Wetlands of International Importance especially as Waterfowl Habitat. Ramsar 02.02.1971, e.i.f.

3.2 The Ramsar Convention's Criteria for an EIA

As the continuator State of the Soviet Union, Russia has acceded to the Ramsar Convention on February 11th, 1977.[65] The Ramsar Convention is deemed to be the first wildlife convention which is focused only on the protection of habitats.[66] It has a near-universal participation (169 States Parties).[67]

The Convention's main aim is pursuant to its Article 3(1) to ensure that Contracting States formulate and implement their planning so as to promote the conservation of the wetlands included in the Ramsar List, and as far as possible the wise use of wetlands in their territory. The aforereferred *wise use* of wetlands is defined by the Contracting States as their sustainable utilisation for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem.[68] The term is commonly considered as synonymous to *sustainable use*.[69] Notably, pursuant to Article 5 of the Ramsar Convention Estonia has also an important role in defining and co-ordinating the wise use of the Russian Kurgalsky wetland as the two States may be considered as sharing the wetland's water system, namely the Narva Bay.[70]

The resolutions of the Conference of the Contracting States of the Ramsar Convention have made common references to the EIA procedures in regard to the wise use of wetlands. However, pursuant to the Convention's Article 6(2)d), such resolutions do not have a binding force. They are of recommendatory value to the Contracting Parties. Therefore, the resolutions adopted unanimously by the Contracting Parties are primarily important sources for interpreting the Ramsar Convention. In practice, domestic courts have also applied them in this manner.[71]

The non-binding legal force of the relevant resolutions is also exemplified by the terms used in a provision of the recommendation X.17 on the scientific and technical guidance for conducting an EIA and a Strategic Environmental Assessment (SEA).[72] It *invites* Contracting Parties to draw these guidelines to the attention of all relevant stakeholders, including *inter alia* government ministries, departments and agencies, water and basin management authorities, non-governmental organizations, and civil society, and to *encourage* those stakeholders to take these guidelines into account in relevant decision-making.

This Ramsar recommendation provides that an EIA should be mandatory when, *inter alia*,

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21.12.1975. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987.

[65] Russia's Ramsar Profile (note 11).

[66] P. Birnie, A. Boyle, C. Redgwell. International Law & the Environment. Oxford 2009, p 673.

[67] Ramsar – About Ramsar. Accessible: http://www.ramsar.org/ (25.06.2016).

[68] Ramsar. Recommendation 3.3: Wise use of wetlands. Convention on Wetlands (Ramsar, Iran, 1971) 3rd Meeting of the Conference of the Contracting Parties, 27.05-05.06.1987, p 1. Accessible: http://www.ramsar.org/sites/default/files/documents/library/key_rec_3.03e.pdf (25.06.2016). Ramsar Convention Secretariat. The Ramsar Convention Manual: A Guide to the Convention on Wetlands (Ramsar, Iran, 1971). Gland 2013, p 14.

[69] The Ramsar Convention Manual (note 68), p 14.

[70] Ramsar. Resolution VII.19. 7th Meeting of the Conference of the Contracting Parties, 10.05-18.05.1999, p 5. Accessible: http://www.ramsar.org/sites/default/files/documents/library/key_res_vii.19e.pdf (25.06.2016).

[71] See J. Verschuuren. Ramsar soft law is not so soft at all. Discussion of the 2007 Decision by the Netherlands Crown on the Lac Ramsar Site on the Island of Bonaire. 2008, p 1–2. (Translation of a case law annotation published in 2008 „Milieu en Recht", 35(1), p 28–34.) Accessible: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1306982 (25.06.2016).

[72] Ramsar. Recommendation X.17: Environmental Impact Assessment and Strategic Environmental Assessment: updated scientific and technical guidance. 10th Meeting of the Conference of the Parties to the Convention on Wetlands, 28.10-04.11.2008, p 2. Accessible: http://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_x_17_e.pdf (25.06.2016).

activities take place in protected areas.[73] It also urges Contracting Parties to apply a precautionary approach (to which the Convention itself does not explicitly refer to) in decision-making in cases of scientific uncertainty when there is a risk of significant harm to biodiversity.[74] The Ramsar Handbook on EIA adds that the precondition for a successful EIA is also the effective participation of indigenous people,[75] in this case primarily Izhorians.

In addition, Ramsar Resolution VIII.14 stipulates that "any new factors, including development proposals, on or off the site, that are likely to have a significant impact on the ecological character of the site, should be subject to a full EIA."[76] It follows from the foregoing that the States Parties to the Ramsar Convention have agreed to the principle that an EIA should be conducted if a planned activity in the Ramsar wetland might affect its ecosystem.

Nevertheless, the detailed Ramsar resolutions on the EIA procedure do not, strictly speaking, create any direct legal obligations for the Contracting Parties. They are of soft law value for the potential construction of onshore and offshore pipelines and their supplementary facilities in the Kurgalsky nature reserve.

Thus, Russia's and Nord Stream's obligation to weigh alternatives under the Espoo Convention in respect of Nord Stream's potential extension to the Kurgalsky nature reserve is important mainly because no such requirement for carrying out an EIA applies to them directly under other international conventions. In particular, the United Nations Convention on the Law of the Sea[77] (LOSC), the Convention on Biological Diversity[78] and the Convention on the Protection of the Marine Environment of the Baltic Sea Area[79] (Helsinki Convention) lack strict criteria for an EIA procedure.

3.3 Criteria under the LOSC, Convention on Biological Diversity and Helsinki Convention for an EIA

Article 14 of the Convention on Biological Diversity requires conducting an EIA only „as far as possible and as appropriate", thus providing great discretion for the States Parties. Likewise, LOSC Articles 204 and 206 provide that States must „endeavour to" and „as far as practicable" carry out such assessments. Also, LOSC Articles 204 and 206 only provide for a broad assessment of the proposed activity's impacts on the marine environment and do not require *inter alia* any international co-ordination or consultations with the affected States prior to carrying out the project. That said, it still follows from LOSC Article 206 that the extension project's parties of origin (Denmark, Finland, Germany, Russia and Sweden) should make their EIA reports as conducted under the Espoo Convention through an international organisation (e.g. the Helsinki Commission) available to all States (LOSC Art 205).

In addition, although the Kurgalsky Peninsula and its surrounding waters have been designated as a HELCOM MPA, this status as such does not provide any special guarantee of

[73] Ibid, p 25.
[74] Ibid, p 22.
[75] Ramsar Handbook on Impact Assessment. Gland 2010, p 14.
[76] Ramsar. Resolution VIII.14: New Guidelines for management planning for Ramsar sites and other wetlands. 8th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands (Ramsar, Iran, 1971), 18-26.11.2002, para 141. Accessible: http://ramsar.rgis.ch/cda/en/ramsar-documents-resol-resolution-viii-14-new/main/ramsar/1-31-107%5E21393_4000_0__ (25.06.2016).
[77] United Nations Convention on the Law of the Sea. Montego Bay 10.12.1982, e.i.f. 16.11.1994.
[78] Convention on Biological Diversity. Rio de Janeiro 05.06.1992, e.i.f. 29.12.1993.
[79] Convention on the Protection of the Marine Environment of the Baltic Sea Area. Helsinki 09.02.1992, e.i.f. 17.01.2000.

protection (aside of recommendatory management plans etc)[80] for the area concerned.[81] The Helsinki Convention requires under its Article 7(1) to carry out an EIA only if this is „required by international law or supra-national regulations applicable to the Contracting Party of origin". Hence, as the obligation to carry out a transboundary EIA in respect of Nord Stream's potential extension to the Kurgalsky Peninsula arises only from the Espoo Convention, Article 7(1) of the Helsinki Convention directly brings the EIA procedure under the scope of the Espoo Convention.[82]

Notably, Article 7(3) of the Helsinki Convention requires Russia to cooperate with Estonia to ensure that potential impacts on the marine environment are fully investigated within the EIA as conducted under the Espoo Convention. This is due to the fact that Estonia and Russia share the transboundary waters in the Narva Bay. In particular, they would be required to jointly take appropriate measures in order to prevent and eliminate pollution. In the present context this provision thus somewhat complements Article 5 of the Espoo Convention which also facilitates cooperation between Estonia and Russia on reducing the environmental impact of the potential extension of Nord Stream pipelines to the Kurgalsky Peninsula.

4. Conclusion

The extension of the Nord Stream pipelines and their integral parts (e.g. landfall, compressor station) to the Kurgalsky Peninsula would have an adverse impact on the Kurgalsky HELCOM MPA, the Ramsar wetland of international importance, the candidate Emerald site as well as on the Russian nature reserve. The extension project would also in this section likely have a transboundary impact since the onshore and offshore construction works as well as the laying of the pipeline in the Gulf of Finland and Narva Bay would occur mostly within approximately 10 km-radius as measured from the Estonian maritime (concerning offshore works) and land boundary (in regard to onshore works).

Nord Stream and Russia are not strictly obligated under the Espoo Convention, Bern Convention, Ramsar Convention, LOSC, Helsinki Convention, EU law or the Biological Diversity Convention to conduct an EIA in respect of the extension project's potential impact on the ecological character of the Kurgalsky Peninsula. However, as some cases demonstrate, it is possible to interpret Article 3 of the Ramsar Convention in combination with its resolutions on the EIA process in a manner which implies the obligation to conduct an EIA. Yet it is unlikely that the Russian government or courts would apply such an interpretation.

The obligation to conduct an EIA under international law could only follow from the Espoo Convention. However, Russia has not ratified it. Nonetheless, Russia has declared itself bound by the obligations set for the parties of origin under the Espoo Convention as far as it considers it possible according to its legislation. Therefore, as demonstrated by the initial Nord Stream project nearly ten years ago Nord Stream and Russia are able and need to follow the Espoo rules on transboundary EIA due to the extension project's transboundary effects.

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[80] See HELCOM. Recommendation 35/1. System of Coastal and Marine Baltic Sea Protected Areas (HELCOM MPAs). 01.06.2014, p 3–4. Accessible: http://www.helcom.fi/Recommendations/Rec%2035-1.pdf (25.06.2016).

[81] See also HELCOM. Pearls of the Baltic Sea. Networking for life: Special nature in a special area. 2007, p 15. Accessible: http://www.helcom.fi/Lists/Publications/Pearls%20of%20the%20Baltic%20Sea.pdf (25.06.2016).

[82] See Koivurova, Pölönen (note 48), p 302. See also D. M. Dzidzornu. Environmental Impact Procedure through the Conventions. – 10 European Environmental Law Review 2001, p 23.

This implies *inter alia* that following the example of the initial project Nord Stream should present the Espoo Report on the extension project's general transboundary environmental impact. The Espoo Report should provide careful analysis on the potential locations of the Russian landfall. This general study as carried out by Nord Stream is not dependent on its conformity with the Russian legal framework (distinct from the EIA conducted by Russia on its section of the project). Instead, it needs to follow directly the Espoo Convention and the supervision of the international Espoo contact point meetings.

In addition, as the pipelines and their integral components are planned to be stationed in the Kurgalsky Peninsula and in the Narva Bay, Estonia, which shares these transboundary waters and is bordering the Kurgalsky nature reserve, but also other Baltic Sea coastal States have many procedural rights in the course of the transboundary EIA.