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**“Russian Approaches to an Emerging
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Russian Approaches to an Emerging Arctic Ocean Legal Order¹

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Introduction

The Arctic region is the subject of growing interest for the Russian policy-making and academic communities. The dramatic changes, that are currently taking place in the High North, also influence legal developments nationally, regionally and globally. These dynamic developments at various levels of the Arctic environment, economy and politics require a proper inquiry into the role of law in dealing with these complex issues. As Loukacheva (2013: 13) rightly put it, although law is not a panacea for all problems emerging in the region, it has its own role to play in dealing with many of them.

Both the Russian policy-makers and international lawyers pay a great attention to the use of law to protect Russia's national interests in the Arctic and shape an emerging legal order in the region to Moscow's benefit. For example, Russia's 2013 Arctic

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strategy calls for improving national legislation on the Arctic Zone of the Russian Federation (AZRF) (including regulations on industrial activities, environmental issues, indigenous peoples and Northern Sea Route (NSR) navigation) and using international law to expand Russia's continental shelf and exclusive economic zone (EEZ) in the Arctic Ocean (Putin 2013). With the adoption of the Polar Code in 2014-2015 Moscow has to cope with the challenge of its implementation that requires both changes in Russia's national legislation and Moscow's intensive international legal cooperation. These are few examples of how important legal issues for Russia's present-day domestic and external policies in the High North.

The research objective of this study is two-fold:

- On the one hand, it aims to examining Russia's various international law schools' approaches to the existing and emerging legal order in the Arctic region. Specifically, it focuses on Russia's three main international law paradigms: neo-liberal/cosmopolitan, neo-realist and 'hybrid' schools.
- On the other hand, the paper outlines an emerging agenda of Russia's Polar Law debate: UNCLOS (UN Convention on the Law of the Sea)-related problems; natural resources law; climate change; indigenous peoples; search and rescue operations; oil spills response; Polar Code implementation; arms control and confidence- and security-building measures (CSBMs) regimes; the prospects for the Polar Law development.

Major Russian Polar Law schools

Based on different theoretical approaches and legal doctrines it is possible to identify three main international law paradigms in post-Soviet Russia: the neo-liberal/cosmopolitan and neo-realist ones which form a sort of opposite poles as well as various 'hybrid' schools between them. Let's characterize each of them.

Neoliberal/cosmopolitan

The neoliberal/cosmopolitan school represents the most radical departure from the Soviet-time Marxist-Leninist legal doctrine. According to the present-day Russian neoliberals, territorial sovereignty as the ordering principle for world politics has been redefined, and in some ways transcended, by networks of interaction that

involve actors of many different kinds and at many different levels. The state is often a player in these networks, but it does not necessarily control them and is increasingly intertwined with them (Dmitriev 2000; Kudryavtsev 1994 and 1995; Lebedeva 2011).

Sovereignty is still a very important mode of power within the global polity but it is not alone one. There is also another mode of power, namely governmentality that orders world politics in a different way.

Governmentality does not challenge or undermine sovereignty, but rather steps in to give it a new form. The main challenge to international players is how to combine these two modes of power to make the world both governable and secure.

According to this approach, the Arctic (particularly, its natural resources and sea routes) is a common humankind's heritage/asset that should be exploited together with other countries and in a very careful way (Baranovsky, 2002, Leshukov 2001; Zagorsky 2011). International law and institutions should be in the focus of the Arctic politics and be a basis for an emerging regional governance regime. The neo-liberals believe that subregional institutions such as the Arctic Council (AC) and Barents-Euro-Arctic Council (BEAC) are parts of the global and regional governance systems and should be designed and function accordingly. For them, the AC and BEAC should avoid discussion of security issues; rather, environmental issues and the 'human dimension' (indigenous people and other residents of the Arctic regions) should be their main priorities.

Most radical neoliberal versions believe that an international legal regime similar to the Antarctic Treaty one should be established (a comprehensive agreement should be concluded on the Arctic to make it a 'region of peace and cooperation') (Dodin 2005: 23; Kovalev 2003; Sivakov 2009).

The proponents of the neoliberal approach point out that the military significance of the Russian North has dramatically decreased in the post-Cold War period. The region is, in their view, unable to play the role of the Russian military outpost. The neo-liberals hope that the Arctic will be further opened up for international cooperation to become a Russian 'gate-way' region that could help Russia to be gradually integrated in the European and world multilateral institutions. They believe that due to its unique geoeconomic location the AZRF has a chance to be a

"pioneer"/pilot Russian region to be included into the regional and subregional cooperation. They think that a priority should be given to the issues that unite rather than disunite regional players—trade, cross-border cooperation, transport, environment, health care, Arctic research, indigenous people, people-to-people contacts and so on. In this respect, they view the Northern Dimension partnerships² as well as AC, BEAC and Nordic institutions' programs as a helpful framework for such cooperation (Baranovsky, 2002, Leshukov 2001; Zagorsky 2011).

In contrast with their opponents from the neorealist 'camp' the proponents of the neoliberal approach believe that most of the Arctic problems can be solved beyond the security context, in a 'normal way'. In case of a conflict, this school suggests to use negotiations to realize positions of the opposite party and find a compromise that could satisfy both contending sides. To this group of analysts, the work on the technical/instrumentalist level has a consolatory effect on the conflicting parties and creates an interdependency mechanism that additionally contributes to the problem-solving process.

The neoliberals stress that it is very important to guarantee that the Arctic players should interact with each other on the basis of the following principles:

- preserving peace, predictability and stability in the Arctic region;
- ensuring sustainable management and development of natural resources;
- international cooperation to meet common challenges in the Arctic;
- developing national and international legal mechanisms to promote Arctic governance.

Neorealist/national interest-based approach

In forging their legal doctrines the Russian neorealists prefer Kenneth Waltz's (1979: 67) interpretation of sovereignty which is based on the assumption that a state is sovereign when "it decides for itself how it will cope with its internal and external problems, including whether or not to seek assistance from others and in doing so to limit its freedom by making commitments to them".

² The Northern Dimension was initially launched as an EU program for Brussels' cooperation with neighboring non-EU countries, including Russia (see Joenniemi and Sergunin 2003). In 2007 it was redesigned into a system of partnerships between the EU and Iceland, Norway and Russia.

This approach assumes the idea that states should be the only legitimate force of national power within their own borders. The same is true for the world politics where the states act as sovereign and (theoretically) equal international actors and they remain the main subjects of international law. According to John Mearsheimer (2006: 69), another neorealist pundit, the international relations system “comprises independent states that have no central authority over them. Sovereignty, in other words, inheres in states because there is no higher ruling body in the international system. There is no ‘government over governments’”.

The Russian neorealism’s vision of the Arctic legal regime is based on the following principles:

- National interests are a key category. Among them, the economic and strategic interests are most important ones.
- The emphasis on the need to ascertain Russia’s sovereignty over the Arctic territories, natural resources and maritime routes is made.
- International law is mostly seen as an instrument to resist any foreign ‘encroachments’ on the Russian sovereign rights in the region and keep control over the Arctic spaces/resources/transport communications (Ovlashenko, Pokrovsky 2012).
- A regional governance regime is only possible as a temporary compromise between the major (coastal) Arctic powers (A5) – Canada, Denmark, Norway, Russia and the United States.

According to the neorealist perspective, Russia's principal interest is to turn the Arctic into its main ‘strategic resource base’ and other policy considerations should be subordinated to this over-arching goal. Both Russian domestic policies in the AZRF and Moscow's international strategy should be oriented to the protection of its national interests in the region (Alexandrov 2009; Oreshenkov 2010; Voronkov 2012). Against this background it is especially important to secure Russia's economic interests in the Arctic. A variety of various instruments ranging from diplomacy and international arbitration to a modest military buildup and creation of capabilities to effectively prevent poaching and smuggling are suggested. In contrast with the neoliberals, the neorealists are quite pragmatic as regards the international institutions such as the UN, AC and BEAC. They do not believe that these

international fora are the components of the global or regional governance system whose existence is sharply denied by them. They suggest using these bodies first and foremost to protect Russia's national interests in the region (like other member states do) rather than promote some abstract universal/cosmopolitan values.

The neorealists tend to see every Arctic problem from the national security point of view—be it ecological problems and fisheries or territorial disputes and control over the sea routes. For example, the 2013 Russian Arctic strategy is partially designed in such an alarmist/securitized way by focusing on hard and soft security threats and challenges to the AZRF. Even the very title of the document – ‘The Strategy for the Development of the Arctic Zone of the Russian Federation and Ensuring National Security for the Period up to 2020’ – reflects such a securitized approach.

The radical version of the neorealist school views the Arctic as a manifestation of the perennial geopolitical rivalry between Russia and the West. The neorealists believe that in contrast with the past, the West prefers economic rather than military instruments for putting pressure on Russia. However, the aim of the Western policies remains expansionist and boils down to securing Russia's status of the West's "younger partner" and a source of cheap natural resources and labor force.

‘Hybrid’/moderate schools

Along with two extremes – neoliberalism and neorealism – there are numerous ‘hybrid’/moderate schools in the Russian international law community. Differing by their specific legal postulates these schools, however, share some common principles with regard to the existing and emerging Arctic legal system (Gureev 2011; Vylegzhanin 2003):

- The moderates believe that Russia should be a responsible international actor who behaves on the international arena in line with international law principles and international commitments. According to this school, the UNCLOS, Ilulissat Declaration (2008), Arctic Council’s agreements (particularly, on search and rescue (SAR) operations and oil spill response), directions and recommendations, Polar Code, etc. should be the legal basis for Russia’s Arctic strategy.
- On the other hand, Russia should be firm in defending its legitimate rights and national interests in the region, including the definition of the outer limits of the Russian continental shelf and expansion of its EEZ in the Arctic Ocean; control

over the maritime routes; fighting poaching and smuggling in the AZRF; modernization of the armed forces deployed in the High North, etc.

- The moderates do not share the neoliberal view of the Arctic as the humankind's 'common treasury' and they do not believe that it is realistic to establish an Antarctic Treaty-type legal regime in the High North (even in the distant future). The moderates point out that statements which mention the Arctic's deep seabed (or Area), continental shelves and high seas in the same breath as the common heritage of mankind carry the risk of confusion. Deliberately or not, by omitting to distinguish thoroughly between the different maritime zones, they may create the impression that the whole (marine) Arctic is considered a common heritage of mankind.
- However, the moderates favor creating a flexible regional governance system in the Arctic based on the pragmatic combination of hard and soft law. The moderates even do not oppose establishing some elements of supranational governance in the region, like, for example, in the case of the Central Arctic Ocean (Area) which is currently beyond the national sovereignty jurisdiction and where any economic activities – be it extraction of hydrocarbons or fishery – are presently impossible while the local environment is extremely fragile and vulnerable. For instance, under the moderates' pressure, the Russian government agreed to sign a declaration on fishing ban around the North Pole in July 2015.
- Similar to the neoliberals, the moderates suggest to make a full use of the existing international institutions engaged in the Arctic affairs – the UN (and its specialized bodies, such as the Commission on the Limits of the Continental Shelf (CLCS), International Maritime Organization (IMO), UN Environmental Program (UNEP), etc.), AC and BEAC. However, they do not believe that these institutions will be able to exercise real supranational governance in the region in the foreseeable future. The moderates, however, think that some institutional reforms are possible. For example, they suggest empowering the AC with more rights, including the right to conclude binding agreements (similar to the SAR and oil spills response documents) and further institutionalization of the Council with the aim to transform it from a discussion forum to a full-fledged intergovernmental international organization (Vylegzhanin 2013).

- According to the moderates, there should be a harmony between economic, ecological, humanitarian and military-strategic aspects of Russia's Arctic policies which is only possible if Moscow builds its strategy on the basis of international law principles and norms.

To sum up the Russian theoretical debate on the Arctic legal order, it should be noted that regardless its strong polarization (neoliberal-neorealist dichotomy) a compromise/moderate schools have emerged that formed a mainstream of the Russian international legal thought. This mainstream has managed to avoid xenophobic/ extremist views on the Arctic international relations system and develop more or less moderate and well-balanced concepts.

Russian Polar Law: a Discussion Agenda

UNCLOS-related debates

Discussions on the sectoral and median principles. Since the Tsarist and Soviet times Moscow favored the sectoral principle of division of the Arctic maritime spaces. On 15 April 1926 the Central Executive Committee of the USSR issued a decree entitled "On the Proclamation of Lands and Islands Located in the Arctic Ocean as Territory of the USSR". This document stated:

All lands and islands, both discovered and which may be discovered in the future, which do not comprise at the time of publication of the present decree the territory of any foreign state recognized by the Government of the USSR, located in the northern Arctic Ocean, north of the shores of the Union of Soviet Socialist Republics up to the North Pole between the meridian 32°04'35" E. long. from Greenwich, running along the eastern side of Vaida Bay through the triangular marker on Cape Kekurskii, and the meridian 168°49' 30" W. long. From Greenwich, bisecting the strait separating the Ratmanov and Kruzenstern Islands, of the Diomedede group in the Bering Sea, are proclaimed to be territory of the USSR (The Central Executive Committee of the Soviet Union 1964).

The Decree referred directly to the sectoral concept and claimed only lands and islands inside the sector as Soviet territory. This act aimed to prevent scientific and

economic expansion by other states on lands and islands within the Soviet Arctic sector.

The Soviet legal doctrine was firmly based on the sectoral concept. The Soviet international lawyers believed that all Arctic states had a sector. However, they differed by their views on the scope of the sectoral concept. One (predominant) group of scholars believed that only islands were territory of a coastal Arctic state (Kozhevnikov, 1964; Zhudro, 1964; Barabolya et al., 1966; Ignatenko and Ostapenko, 1978; Modzhoryan and Blatova, 1979; Tunkin, 1982, 1986). The second group of legal experts (minority) insisted that both lands and seas were under the sovereignty of an Arctic state (cf. Uustal, 1958).

Map 1. The U.S.-Soviet Maritime Boundary, as of 1990 Agreement

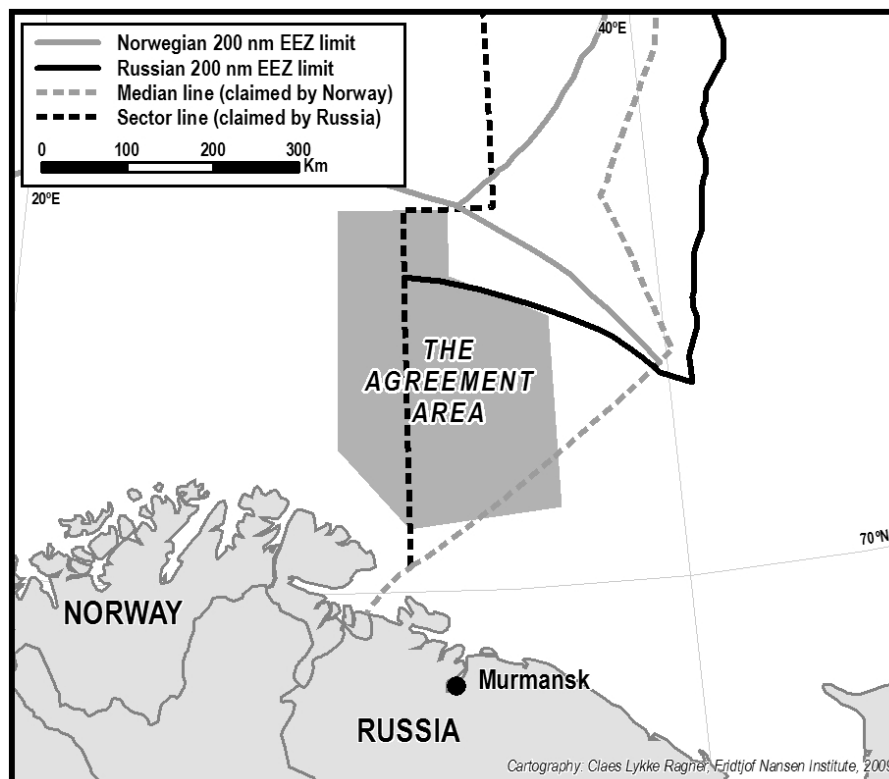


Names are not necessarily authoritative

Source: <http://www.state.gov/p/eur/rls/fs/128740.htm>

In the late Soviet and post-Soviet periods, however, both the Russian legal doctrine and state practices have evolved (Timtchenko 1997). In the case of the U.S.-Soviet treaty on the delimitation of the Bering Sea (1990) the Soviet Union followed the sectoral principle. The delimitation line in the Chukchi Sea coincided with the eastern limit of the Soviet sector (see map 1). Article 1(1) of this agreement stated: “The Parties agree that the line described as the ‘western limit’ in Article 1 of the 1867 Convention, as defined in Article 2 of this Agreement, is the maritime boundary between the United States and the Soviet Union” (Agreement between the United States of America and the Union of Soviet Socialist Republics 1990). The USSR used the sector line as a convenient way to delimit the sea expanses in this region and take into consideration its economic and strategic interests although this agreement has met a fierce domestic opposition and never been ratified by the Soviet and Russian Parliaments (Heininen, Sergunin and Yarovoy 2015b).

Map 2. Norwegian-Russian maritime disputes



Source: Kristoffer Stabrun. The Grey Zone Agreement of 1978. Fishery Concerns, Security Challenges and Territorial Interests. Lysaker: Fridtjof Nansen Institute, December 2009, p. 5
 <<http://www.fni.no/doc&pdf/FNI-R1309.pdf>>

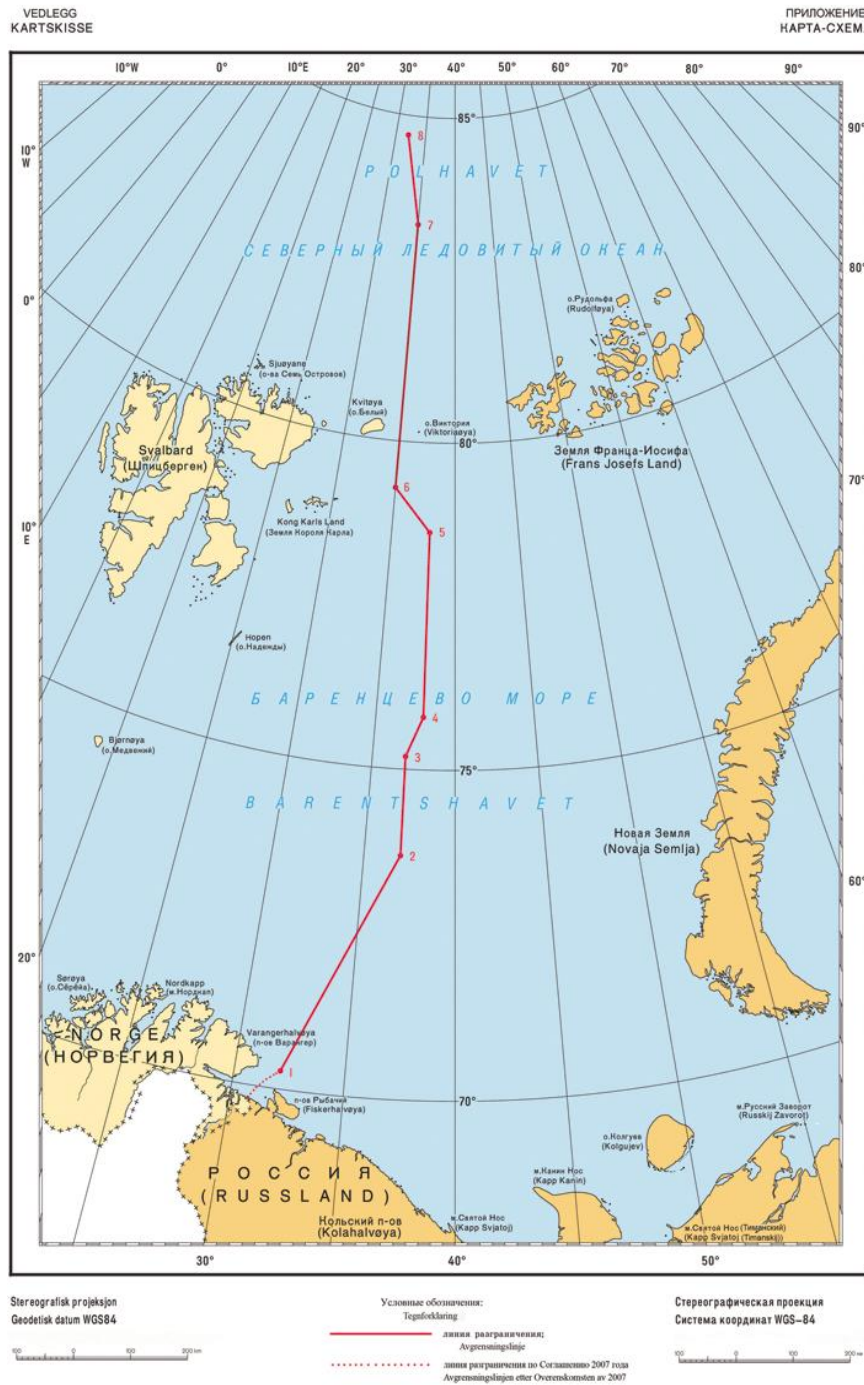
However, the Norwegian-Russian compromise on the delimitation of the Barents Sea was a different story (Heininen, Sergunin and Yarovoy 2015a). The Norwegian-Soviet negotiations started in 1974 from Moscow's claim that the sectoral concept should be a basis for the delimitation of the maritime space. The USSR insisted that the delimitation line should coincide with the western limit of the Soviet sector, i.e., the meridian 32°04' 35" E. longitude (see map 2). Oslo, on the other hand, has based its position on the extent of Norwegian territorial waters on an 'equidistance (or median) line'. It is situated an equal distance from the coasts on either side (Norway and Russia). At the heart of the dispute over the location of the maritime boundary and the allocation of territorial control was the control of the continental shelf between these two very different lines, or an area of approximately 155000 km² (and the overlapping exclusive economic zones (EEZs) within this area). Moreover, in addition to this specific dispute, were overlapping claims further north in the Arctic Ocean, of approximately 20000 km². Altogether the disputed area was approximately 175000 km².

There were ups and downs in the Norwegian-Soviet/Russian negotiations concerning the Barents Sea limits over the following years. For example, in 1991, there were official announcements that the talks were soon to be finalized, but no agreement was achieved. Throughout the 1990s and early 2000s, regular conflicts between Oslo and Moscow took place because Norway, for ecological reasons, had introduced strict rules and fixed quotas to regulate the fishery in the region, most of which were never accepted by the Russian side. This led to considerable tension over the inspection and boarding of Russian fishing boats by the Norwegian Coast Guard.

The final agreement was signed in Murmansk, Russia, on September 15, 2010 (Treaty between the Kingdom of Norway and the Russian Federation 2010), and has been subsequently approved by the two countries' national parliaments. The document came into force in July 2011. In this compromise, Oslo has withdrawn some of its previous territorial claims and Moscow has consented to a shift of the 1926 demarcation line (based on the sectoral concept) to share the 175,000 km² of disputed area in two almost equal parts defined by eight points. The northern terminal point of the delimitation line is defined as the intersection of the line drawn through points 7 and 8 and the line connecting the easternmost point and the westernmost point of the still undefined outer limits of the countries' continental

shelves (see map 3). In other words, Moscow made some concessions to the median concept.

Map 3. Delimitation of maritime territories in the Barents Sea in accordance with the 2010 Norwegian-Russian treaty



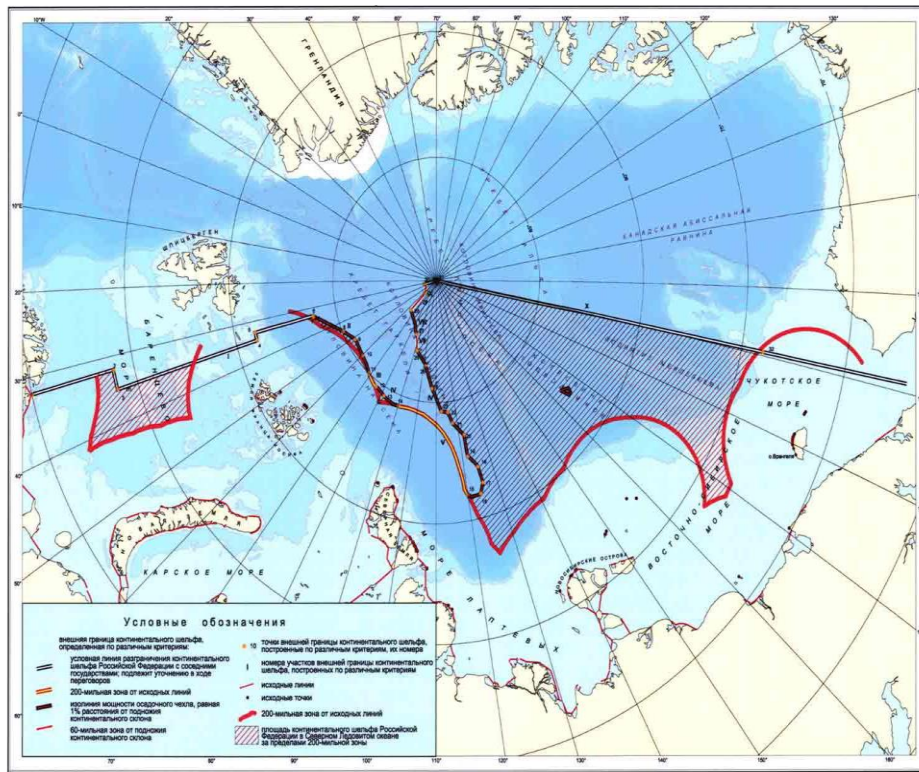
Source: https://commons.wikimedia.org/wiki/File:Map_borderline_at_sea_Norway_Russia.gif.

Although there were some protests against the 2010 agreement in Russia (mostly from the ‘fishery lobby’) this compromise is important and may have some far-reaching effects. It has demonstrated that in resolving their territorial disputes Norway and Russia are committed to the international law, particularly to the UNCLOS and, in a broader context, to the principles of the Ilulissat Declaration of 2008, a declaration that confirmed the eagerness of the five Arctic coastal states to solve disputes between them by peaceful means, on the basis of international law. Finally, Oslo and Moscow signaled to other A-5 states that by adopting a common policy on conflict resolution they can reinforce their claim to leadership on Arctic affairs against emerging actors such as the European Union and East Asian countries.

Since the UNCLOS neither prohibits nor favors the sectoral and median concepts, the mainstream of the Russian international law thinking suggests a rather pragmatic approach to the use of them. As Oreshenkov (2009 and 2009) puts it, depending on the nature of a maritime dispute Moscow could use either of these principles. For example, he believes that it was in Russia’s interest to stick to the median concept in the case of the delimitation of the Bering Sea while the sectoral principle was more favorable to Russia in the case of the demarcation of the Barents Sea. For this reason, he is rather critical of the Gorbachev’s and Medvedev’s governments who concluded ‘unfair’ agreements with the U.S. and Norway respectively. He also calls on the Kremlin to be more professional and flexible with regard to the future resolution of maritime disputes which should be based on the pragmatic combination of both concepts.

The Arctic continental shelf-related debates. In its 2001 claim, Russia argued that the Lomonosov Ridge and the Alpha-Mendeleev elevation are both geological extensions of its continental Siberian shelf and, thus, that parts of the Central Arctic Ocean, as well as parts of the Barents Sea, the Bering Sea, and the Sea of Okhotsk, fall under its jurisdiction. In effect Russia claimed sovereign rights over resources on the seabed area of some 1.2 million km² outside the 200-mile line (see map 4).

However, the CLCS found the substantiation of the Russian claim on the shelf insufficient and asked for more information. To collect data and make a new submission comprehensive research expeditions have been organized. The expedition of 2007 with flag planting as a by-product was one of them.

Map 4. The Russian claim on the Arctic continental shelf (2001)

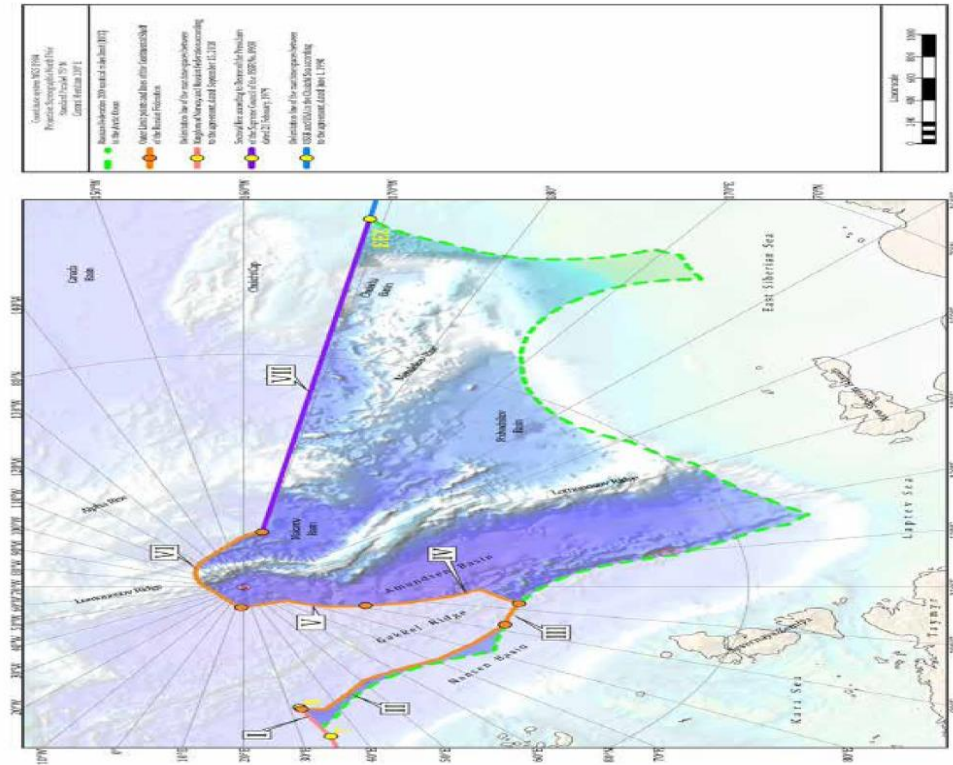
Source: http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/RUS_CLCS_01_2001_LOS_2.jpg

Prior to the Ukrainian crisis there was a hope that three Arctic powers involved in the dispute (Canada, Denmark and Russia) could either reach an agreement on the division of the Arctic shelf before they make their individual submissions to the CLCS or even make a joint submission. However, these plans were denounced by then Canadian prime-minister Stephen Harper who claimed that the North Pole should be the Canadian one. This position has provoked other countries to act separately. In late 2014, Denmark has filed its submission to the CLCS. In August 2015, Russia has officially resubmitted its application for the extension of its Arctic shelf (http://www.un.org/depts/los/clcs_new/submissions_files/rus01_rev15/2015_08_03_Exec_Summary_English.pdf) (see map 5). The CLCS plans to start its reviewing in 2016.

International experts suggest several scenarios for the further developments if a second, revised submission be returned by the CLCS. One extreme would be for Moscow to withdraw from the UNCLOS and just declare unilaterally that its continental shelf reaches up to the North Pole. Russia would still retain the right to a continental shelf, and would find itself in the same position as the U.S., which

remains outside the UNCLOS, and would have to rely on customary law to support its claim. However, this option is hardly acceptable for Moscow because it would provide a much less secure legal position than would a CLCS' decision which is considered as a legitimizing ruling.

Map 5. The Russian claim on the Arctic continental shelf (2015)



Source: http://www.un.org/depts/los/clcs_new/submissions_files/rus01_rev15/2015_08_03_Exec_Summary_English.pdf

The strong nationalistic groupings in Russia would support such unilateralism. However, Russia's official policy undoubtedly lies within the UNCLOS framework. Russia has much to lose if it undermines the authority of the UNCLOS in the Arctic. Moscow tries to avoid a conflict situation because any conflict, even if not armed, would prove to the world that the UNCLOS does not work and weaken the legitimacy of the Convention. Such weakening is seen by Moscow as dangerous and unacceptable.

As Moe (2014) put it, the other extreme scenario would be to accept that the initial submission was too ambitious and not substantiated by geophysical research and

come back to the Commission with a revised, less expansive position. On the one hand, this alternative would definitely show respect for international law. However, on the other hand, such an initiative would entail large domestic political costs for a Russian leader who would dare to abandon Russia's ambitious Arctic claim. As the Russian 2015 submission shows, it basically repeats the 2001 claim which means that Moscow would not follow the second scenario.

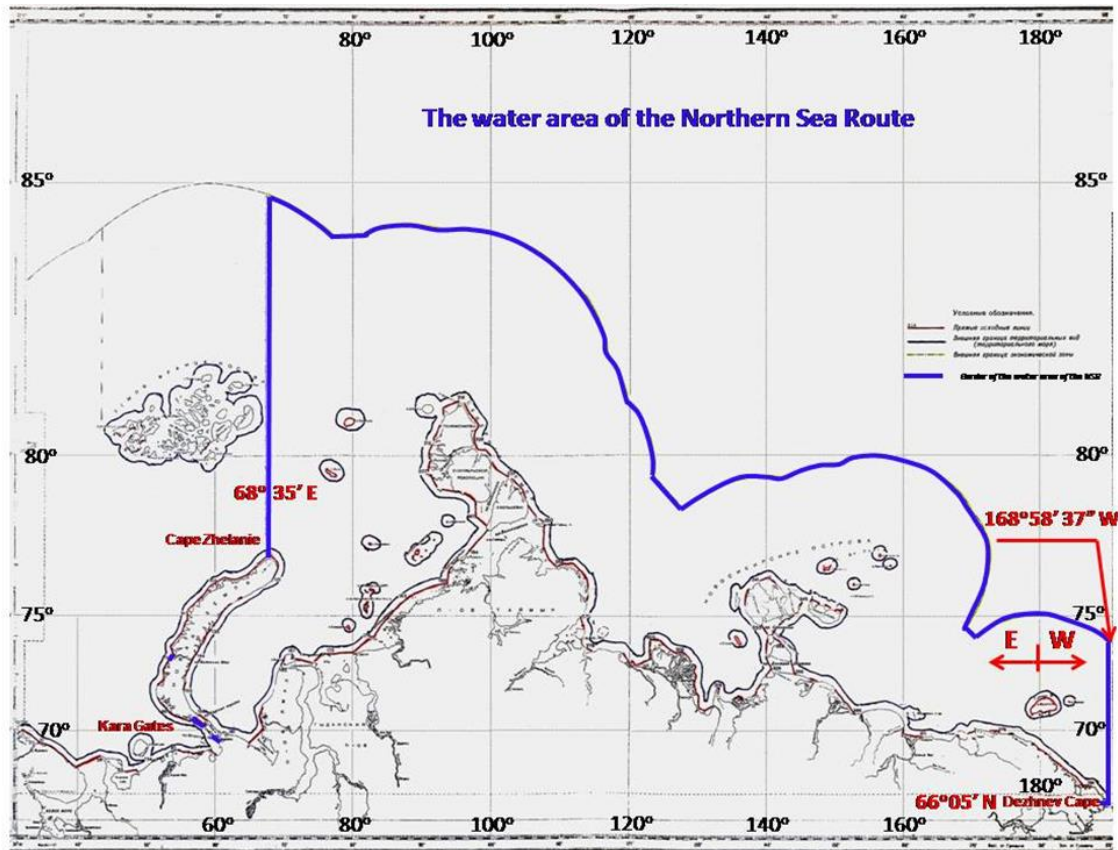
Both foreign and Russian experts did not exclude one more, third, scenario which, they believed, was both possible and the most likely. That option was Moscow's agreement to postpone the revision the new submission by the CLCS (Moe 2014; Zagorski 2013). First, it will take the CLCS years or even decades to consider the existing and forthcoming applications. Even if it becomes clear that the Russian claims on the Lomonosov and Mendeleev ridges cannot be substantiated, all the Arctic states may decide that it is better to agree on disagreement and continue business as usual.

Besides the need to preserve the UNCLOS in the Arctic, also a realistic assessment of their economic interests and technical capabilities prevent them from a conflict over the disputed areas. These areas are very deep and extraction of oil and gas there will not become profitable for many decades. Moreover, as the most authoritative assessment of Arctic mineral resources from the US Geological Survey maintains, most hydrocarbon resources are likely to be found in relatively shallower waters, within the 200-mile limit (U.S. Geological Survey 2008). Most of these uncontroversial continental shelves are relatively unexplored and the conflicting parties first should develop them.

As the recent Danish and Russian submissions demonstrate, this scenario, however, was not implemented as well.

In principle, the “cooperative/compromise scenario” which was discussed prior to the Ukrainian crisis is still possible. Based on its authority the CLCS could encourage the three contenders to negotiate a compromise variant of an agreement which could probably include the idea of making the Central Arctic a zone of international cooperation and/or natural reserve governed by the UN. Such idea is still floating among the academic and experts communities of the coastal states. In any case, as Moscow repeatedly underlined, the Kremlin plans to solve the problem within the UNCLOS framework, peacefully and on the basis of a solid research data.

Map 6. The water area of the Northern Sea Route

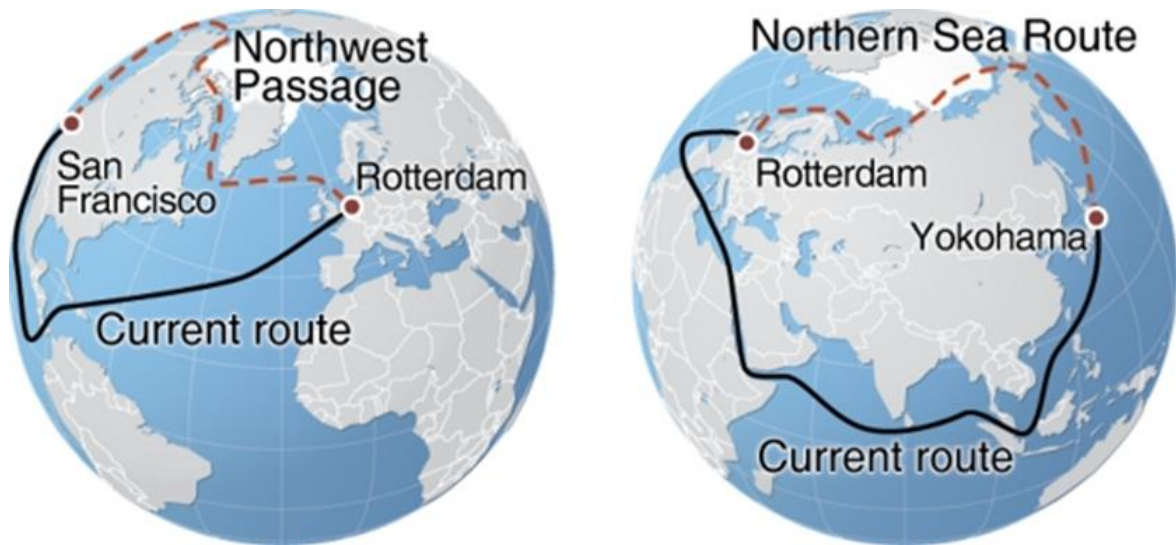


Source: http://asmp.morflot.ru/en/granici_smp/

Freedom of navigation via the Northern Sea Route. Moscow defines the Northern Sea Route (NSR) as a historically existing national unified transport route of the Russian Federation in the Arctic, and therefore considers it to be under its exclusive jurisdiction (see map 6). It is widely acknowledged that in the future, an ice-free Arctic could significantly reduce transportation costs by cutting the distance from Western Europe to Japan or China by 20 to 40% (see map 7). All the Asian cities to the north of Hong Kong could reach Europe more rapidly *via* the Arctic than *via* the Suez Canal. The potential benefits brought about by the opening the NSR are therefore of greater interest for Japan, Korea, and China than, for example, for India. For instance, the route between Hamburg and Yokohama through the Suez Canal (18,350 kilometers) would be reduced to 11,100 kilometers by using the NSR, which in theory reduces the sailing time from 22 to 15 days; in other words, a 40% reduction. The route between Rotterdam and Shanghai, meanwhile, would be reduced from 22,200 kilometers (*via* the Cape of Good Hope) to 14,000 using the

NSR. The volatile situation in the Middle East, especially since the “Arab spring” of 2011, the overburdening of the Suez Canal, rising tensions in the Hormuz Strait and, more importantly, growing piracy in the Horn of Africa, all encourage the development of new alternatives.

Map 7. The Northwest Passage and Northern Sea Route (as compared to the southern routes).



Transit from Russia to the North American continent would also be made shorter by crossing the Arctic. Murmansk is only 9,600 kilometers from Vancouver *via* the Bering Strait, but is 16,000 kilometers via the Panama Canal. In 2007, Russia and Canada both evoked the concept of an “Arctic bridge” connecting the port of Churchill in Manitoba to Murmansk. The project had already been raised some years before; OmniTRAX, a major railroad operator that owns the Churchill port, had been in negotiations with the Murmansk Shipping Company on this issue. In 2007 and 2008, the first shipments of Russian fertilizer from Kaliningrad purchased by the Farmers of North America cooperative of Saskatoon arrived in Churchill from Murmansk.

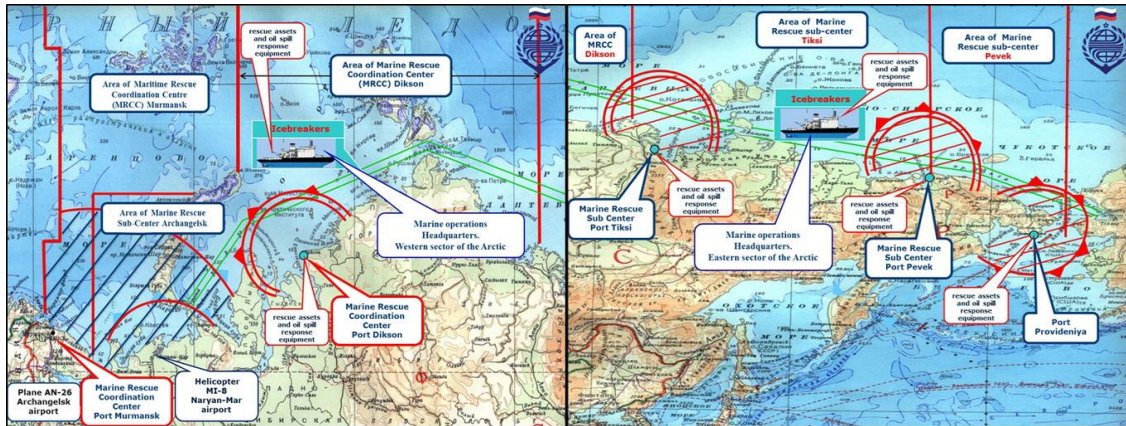
In contrast with the above optimistic expectations, some international experts (Antrim 2010; Laruelle 2013; Moe and Jensen 2010; Smith and Giles 2007; Stepanov, Ørebech and Brubaker 2005) point out that travelling along the NSR poses a number of significant challenges. First, the disappearance of the ice-cap during the

summer does not mean that the Arctic Ocean will become totally ice-free. Ice can quickly form in very different locations and can take ships by surprise and reduce the predictability of the journey. There will still be icebergs; and the danger of collision will be considerable. Travelling in extreme climate is difficult in technical terms because it requires ice-class vessels, including ice-breaking capacities, while there are also numerous administrative-technical barriers to be taken into account such as the Russian demands that foreign ships pay fees for chartering icebreakers, obtaining weather and ice reports, and hiring Russian pilots to guide vessels in the straits. These expenses are considered too costly by the main international shipping companies.

In addition, the insurance for vessels traversing the NSR tends to be very expensive because the international insurance companies have to take into account the NSR's unpredictability in terms of time and conditions of cargo shipments. Indeed, the NSR presently has a limited operational rescue system – there are only three rescue centers in Dikson, Tiksi and Pevek (see map 8). The number of ports that are able to host ships in need of repairs is insufficient, while the risks of collision are considerable because of the unpredictable ice conditions and because the lanes of direction are not clearly defined. The Russian government plans to build 10 search and rescue centers along the Russian Arctic coastline (three of them are already operational) but the question whether these plans would come true or not and whether these centers would be sufficient to develop the NSR up to the level of international safety standards remains open to discussion.

Finally, in terms of environment and ecological considerations, maritime traffic in the Arctic region will increase the risk of accidents. The international agreement on prevention and fighting oil spills in the Arctic signed at the AC ministerial meeting in Kiruna (May 15, 2013) and Polar Code are helpful in coping with this environmental threat but still insufficient to solve the whole problem. In fact, the above concerns have not yet precluded both Russia and potential NSR users from the ambitious plans to develop this important Arctic route.

Map 8. Search and rescue centers on the Arctic Ocean's coastline and their zones of responsibility.



Source: http://www.arctic-lio.com/nsr_searchandrescue

Ever since the Soviet period, the NSR has been of vital importance for Russia both economically and socially. The NSR is now actively used by “Norilsky Nickel”, “Lukoil”, “Gazprom”, “Rosneft”, “Rosshelf”, “Novatek” and other Russian companies to ship products and supplies to and from their plants, mines, oil and gas fields. The NSR is one of the main routes for the so-called ‘Northern supply’ – supply of foodstuff, consumer goods and fuel to the northernmost Russian settlements.

In the Soviet era, the NSR was a completely domestic sea route that was closed to international shipping. More recently, however, as the Arctic ice melts, the NSR becomes more accessible for navigation. Today, Russia has a great interest in transforming the NSR into a sea line of communication that is open to international trade. The maintenance of its own Arctic fleet, in particular of the icebreakers, and of port infrastructure is extremely costly, and additional revenues are therefore welcome. The more international navigation grows, the lower the costs will be for intra-Russian trade.

The first offer to open the NSR to international shipping was made by Moscow as early as in 1967, with the beginning of the détente period, but it has never become a reality. The offer was repeated in Mikhail Gorbachev’s Murmansk speech (1987). The route was formally opened to international use in 1991, just a few months before the collapse of the Soviet Union. The norms for using the route were laid down in

the Regulations for Navigation on the Seaways of the NSR (1991), the Guide for Navigation through the NSR, the Regulations for the Design, Equipment, and Supply of Vessels Navigation in the NSR (1995), the Federal Law on the Northern Sea Route (2012) and the Ministry of Transportation's Regulations on Navigation through the NSR (2013).

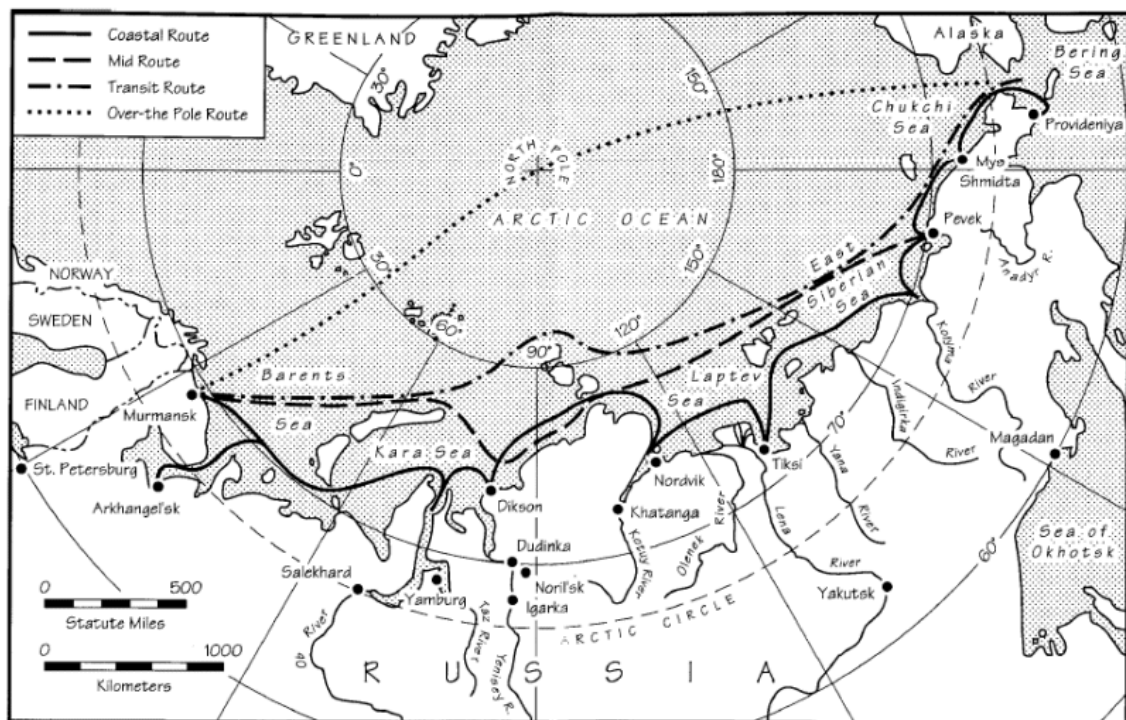
The two later documents stipulate conditions of transit and demand new insurance requirements, under which responsibility for possible environmental damage and pollution is ascribed to ship owners, and which set rather costly tariffs for assistance and logistical information. These —icebreaker assistance, sailing master services, radio communication and hydrographic information—are provided by the federal state unitary enterprises «Atomflot» (nuclear icebreakers, pilot services) and «Rosmorport» (diesel icebreakers) as well as by the private companies such as the «Far Eastern Shipping Company», «Murmansk Shipping Company», Murmansk transport branch of the «Norilsk Nickel», «Lukoil» (diesel icebreakers) and «Ice Pilots Ltd» (pilot services) (http://asmp.morflot.ru/en/org_ledokol_provodka/; http://asmp.morflot.ru/en/org_locman_provodka/). The NSR Administration, which was reborn in March 2013 and now is based in Moscow, consider applications for the navigation through the NSR, coordinates the activities of the above companies and exercises control over the navigation safety.

To support internationalization of the NSR Moscow launched a number of investment projects to modernize the NSR infrastructure. To this end in 2012–2014 over 21 billion rubles are allocated to the construction and modernization of maritime infrastructure in the Arctic (<http://premier.gov.ru/events/news/17172>). In this light, some experts expect the potential volume of freight traffic in both Eastern and Western directions of the NSR to reach 35–40 million tons per year by 2020 (http://www.dvinaland.ru/economy/priority/smp_doclad.html). However, other experts still seriously doubt not only the potential of the NSR and its ability to become an alternative route to the southern ones, but also in the necessity of the infrastructural development in the High North. These analysts believe that Russia has more important priorities in the development of the national transportation system.

It should be noted that although Russia's Arctic coastline stretches more than 14,000 km across the Barents, White, Kara, Laptev, and East Siberian Seas, the NSR is

considered to lie between the Kara Gate, at the western entry of the Novaya Zemlya straits, and Provideniya Bay, at the southern opening of the Bering Strait, which makes a total length of 5,600 km (see map 6). The Barents Sea is therefore not an integral part of the NSR's legal regime. The NSR includes the passage of nearly 60 straits, the main ones being the Vilkitski, Shokalski, Dmitri Laptev, and Sannikov Straits, running through three archipelagos, Novaya Zemlya, Severnaya Zemlya, and the New Siberian Islands. The legal definition is thus made more complex as there is not one single shipping channel; rather, there are multiple lanes, and the NSR crosses through waters of different status: internal, territorial, and adjacent waters, exclusive economic zone, and the open sea. Indeed the course of the route depends upon whether the ship crosses close to the coastlines or further out, or chooses to bypass Severnaya Zemlya (see map 9).

Map 9. The alternative 'versions' of the Northern Sea Route.



Source: <http://www.globalsecurity.org/military/world/russia/images/north-sea-route-map1.gif>

The previously mentioned Russian binding rules stipulating conditions of transit and new insurance requirements have been validated by major international insurance companies. However, they have been refuted by the U.S., which believes that acceptance of such regulations would mean recognizing Russia's sovereignty beyond

its territorial waters. The International Chamber of Commerce has therefore expressed its concerns and recalled that the UNCLOS regime on straits used for international navigation should take precedence over the rights of coastal states. Moreover, the U.S. discontent is explained by the suspicion that only foreign ships pay for possible environmental damage and pollution, and that Russian ships are exempt, which in legal terms can be regarded as a discriminatory measure. Moscow has, however, denied such allegations by saying that, according to the regulations, all ships – Russian and foreign – should present civil liability and insurance certificates while applying for an admission to navigate through the NSR (Application for Admission 2013). Moreover, the Kremlin opposes the international status of straits along the NSR saying that all of them are historically controlled by Russia and no international agreements were concluded to define these straits' status as 'global commons' (Ovlashenko and Pokrovsky 2012; Solntsev and Kopylov 2010; Zhilina 2012).

To defend its rights in the NSR water area Moscow refers to the UNCLOS Article 234 which has recognized special hazards of navigation in ice-covered waters and has given extra powers for coastal states to pass and enforce laws for control of vessel source pollution for those waters. A coastal state may adopt stricter than international pollution standards normally applicable in the EEZ. The Article 234 provides:

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence (UNCLOS 1982).

However, as some Russian international jurists point out, the Article 234 leaves open many questions of interpretation (Goverdovsky 2009; Sivakov 2009). For example, what is the significance of recognizing special coastal state powers specific to the

EEZ? One interpretation is that coastal states are given no greater powers than those granted for the territorial sea and thus no unilateral right exists to adopt special ship construction, crewing and equipment standards. What extent of ice coverage is required to invoke this article (especially given the current trend of melting ice in the Arctic Ocean)? It is unclear whether this article is applicable to international straits (although Russia denies such status for straits in the NSR water area)? The application of Article 234 to straits used for national navigation may also be questioned, although the UNCLOS does not explicitly exempt straits from application.

To solve these legal issues and properly regulate navigation in the NSR water area and in the Arctic region at large this school of legal thought suggests to conclude a special treaty among the Arctic states and other potential users of the polar maritime routes. Such a treaty should regulate legal status of the Arctic sea routes, delimitation of maritime spaces, EEZs, outer limits of continental shelf, environmental standards, maritime protected areas, maritime safety rules, military activities, Arctic research and so on (Dodin 2005; Kovalev 2003; Sivakov 2009). In fact, this suggestion is close to the idea of establishing an Antarctic Treaty system in the Far North.

The Russian mainstream, however, strongly believes that the Article 243 is fully applicable to the NSR water area and the entire Russian EEZ in the Arctic Ocean (Ovlashenko and Pokrovsky 2012; Solntsev and Kopylov 2010; Zhilina 2012). This school points out that even if melting of the Arctic ice to continue in the summer season, the Russian Arctic sector still will be covered with ice most of the year. For this reason, Moscow will have a legal right to invoke the Article 234 in the foreseeable future.

In sum, despite some legal inconsistencies and the lack of a proper infrastructure the NSR will remain an important priority for the Russian future strategy in the Arctic region. The NSR is considered by the Kremlin as an effective instrument to develop the AZRF both domestically and internationally. For this reason, Moscow plans to make considerable investments to the development of the NSR and bringing its infrastructure to international standards. However, similar to other dimensions of its Arctic course Russia faces an uneasy dilemma: how to combine its control over the

NSR with the passage's opening up for international cooperation and its integration to the global transportation system.

Polar Code implementation

The Russian international lawyers view the IMO's Polar Code (PC) as important step forward to increasing maritime safety and prevention pollution in the Arctic. The previous IMO documents did not describe at length hazards to shipping in polar areas. For example, the IMO Guidelines for Ships Operating in Polar Waters (December 2, 2009) have briefly referred to the unique risks of shipping in polar waters, such as poor weather conditions; the relative lack of good charts, communication systems and other navigational aids; difficulties to and high costs of rescue or clean-up operations because of the remoteness of the polar areas; cold temperatures effects that may reduce the effectiveness of numerous components of the ship, ranging from deck machinery and emergency equipment to sea suction; ice's additional loads on the hull, propulsion system and appendages (International Maritime Organization 2010: 3). It was also underlined that sea and glacial ice is "the single most significant factor in Arctic and Antarctic operations" (Ibid: 4).

In contrast to previous documents, the PC adopted in November 2014-May 2015 has a special section (Article 3.1) with a detailed description of hazards. Particularly, it identifies ten most significant hazards:

- ice, as it may affect hull structure, stability characteristics, machinery systems, navigation, the outdoor working environment, maintenance and emergency preparedness tasks and malfunction of safety equipment and systems;
- experiencing topside icing, with potential reduction of stability and equipment functionality;
- low temperature, as it affects the working environment and human performance, maintenance and emergency preparedness tasks, material properties and equipment efficiency, survival time and performance of safety equipment and systems;
- extended periods of darkness or daylight as it may affect navigation and human performance;

- high latitude, as it affects navigation systems, communication systems and the quality of ice imagery information;
- remoteness and possible lack of accurate and complete hydrographic data and information, reduced availability of navigational aids and seamarks with increased potential for groundings compounded by remoteness, limited readily deployable search and rescue (SAR) facilities, delays in emergency response and limited communications capability, with the potential to affect incident response;
- potential lack of ship crew experience in polar operations, with potential for human error;
- potential lack of suitable emergency response equipment, with the potential for limiting the effectiveness of mitigation measures;
- rapidly changing and severe weather conditions, with the potential for escalation of incidents; and
- the environment with respect to sensitivity to harmful substances and other environmental impacts and its need for longer restoration (International Maritime Organization 2015: 6-7).

The PC is quite realistic in its assessments regarding the possibility to ensure full ship safety and protection of vulnerable marine environments in polar areas and its authors understand that it is very difficult to do this. The Code, however, offers some framework for risk-mitigation strategies and suggests specific measures to cope with the above risks and challenges. First and foremost, it is done by both mandatory provisions on safety measures and pollution prevention as well by making recommendations on the same issues.

However, some specialist in environmental law have criticized the Code for not going far enough to protect the Arctic and Antarctic environments, arguing that while the new code is a positive step forward, it is insufficient to properly protect polar environments from the anticipated increased levels of shipping activity. One concern expressed includes the failure to phase out the use of heavy fuel oil in the Arctic, though it is already banned in Antarctica (Fomin 2015; Haun 2014). Another concern is related to the Code's reluctance to prohibit the discharge of ballast water.

Other experts are concerned about the lack of clear regulations with regard to the vessels operating with inadequate ice-strengthening and structural stability. The Code contains regulations requiring that ship operators limit entry into ice according to the ability of their ship to resist ice pressure, but concerns remain due to the fact that non-ice strengthened ships will still be allowed to operate in ice covered waters. The structural requirements too are found lax, for instance, being ice-classed is not a requirements for ships making one Arctic passage. Polar certification does not require a physical separate survey and the Code allows this to be simply sent by email (Haun 2014). Some Russian specialists are discontent with the lack of a clear and proper definition of an icebreaker in the Code which can create confusion and troubles in safety net (Vasilyev et al. 2015: 11).

Some environmental jurists believe that there will still remain disturbances of wildlife. While the code includes requirements for ships to avoid marine mammals such as whales and walruses, it fails to consider seabird colonies. Other experts criticized the IMO for some other omissions in the new standards, including the lack of mandatory provisions to prevent introduction of invasive species, failure to restrict discharges of graywater and failure to address underwater noise (Levinson and Harun 2015; Rosen 2015a).

As far as the PC implementation is concerned there are three major dimensions of this process – legal, economic/technical and institutional:

- Legal aspects. As far as the Code’s integration with Russian domestic regulatory law is concerned, the Russian legal experts believe that there is no need to radically change basic federal laws related to commercial shipping. However, some technical changes were made in the Russian Commercial Shipping Code and the Law on Sea Ports of the Russian Federation (Putin 2016). Some changes are planned in other regulatory documents, such as the Technical Regulations on Maritime Transportation Safety, Rules for the Classification and Construction of Sea-Going Ships, Rules for the Technical Supervision of Ships in Service, Rules of Navigation in the NSR Water Area, etc.
- Economic/technical dimensions. The “pessimistic” school (represented by some Russian industrialists, shipping and insurance companies) doubts that Russian design bureaus and shipbuilders will be able to produce new vessels compatible with the PC standards after January 1, 2017 and refit existing ships to meet the

Code's requirements by January 1, 2018 or, in some cases, by the end of 2020 (E-navigation and the Polar Code 2014). This group of experts criticizes the Russian representatives in the IMO who signed the Code without being granted a proper transitional period (up to five years as some specialists suggested) (Positsiya Rossii po Polyarnomu Kodeksu 2014). The "pessimists" accuse the foreign shipbuilders who have already possessed the marine environment-friendly technologies of lobbying their interests in the IMO and undercutting the Russian competitors.

On the other hand, the "optimistic" school points out that the Western economic sanctions coupled with the Kremlin's course on import substitution and the need to comply with the PC requirements encourage the Russian shipbuilding industries to develop their own technologies (Polyarnye Sanktsii Pomogut Rossii 2014). The same is true for the Russian crew training system and insurance sector which, according to the "optimistic scenario", will get new stimuli for a radical modernization.

- Institutional aspects. The institutional mechanisms responsible for the PC implementation differ greatly from country to country. In Russia, the Ministry of Transport (MT) is the main governmental body charged with the Code's implementation. Particularly, the ministry's Department of State Policy on Maritime and River Transport, Russian Maritime Register of Shipping and the Administration of the Northern Sea Route (part of the ministry's Maritime and River Transport Agency) are responsible for the PC implementation. As far as ice conditions and meteorological forecasts are concerned these agencies should coordinate their activities with the Federal Service for Hydrometeorology and Environmental Monitoring and Russian Federal Space Agency (replaced by the State Space Corporation in early 2016). Since SAR operations and oil spill prevention and response in the Arctic are conducted by the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters, the MT and its bodies should cooperate with this important institution as well. Finally, some other government agencies such as the Coast Guard, Defense Ministry and Ministry of Natural Resources and Environment are regularly being involved into the Code's implementation. All this creates a problem of coordination of the above governmental agencies and establishment of a proper division of labor between them.

Some Russian legal experts raise the question of how, given that the Polar Code is not really an enforcement document, will such issues as ship source pollution be enforced on international waters both as a practical and legal matter, beyond the authority of the flag states?

Other experts note that the linkages amongst flag state, port state, classification societies, labor and insurers are in their infancy stages. Most Russian experts believe that enforcement is essentially up to the flag states. Others point out the primacy of port and coastal state jurisdiction. Some specialists note that with respect to cooperation across all relevant parties (flag states, port states, classification societies, etc.) it is particularly relevant to introduce coordinated port control procedures for identifying possible violations of the PC requirements.

Some experts note that the STCW (the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978) includes enhanced procedures concerning the exercise of port State to allow intervention and enforcement where deficiencies might endanger persons, property or the environment. This can occur if certificates are not in order, or, if an illegal discharge of substance causing pollution takes place.

As to the infrastructural aspects of the PC implementation the Russian Ministry of Transport plans to develop a high-altitude version of the NSR for large-capacity vessels. The first phase of the project aims to establishing 2-mile wide main and alternative lanes; at the second phase, 20-mile wide routes will be laid out (see map 10). To this end, the MT's Federal State Unitary Hydrographic Department charts the routes with the help of three hydrological ships (<http://www.hydro-state.ru/kage.html>).

To fully implement the Code, Russia should complete the creation of ten federal SAR centers along the NSR. As mentioned above, currently, three federal SAR centers are already operational in Naryan-Mar, Archangel and Dudinka. Moreover, there are four regional SAR and fire units, two maritime SAR coordination centers (Murmansk and Dikson), three maritime SAR stations (Archangel, Tiksi and Pevek) and four storages for equipment for oil spill response (Dikson, Tiksi, Pevek and Providence) (Vasilyev et al. 2015: 29).

Map 10. High altitude routes in the NSR water area.

Source: <http://www.hydro-state.ru/kage.html>

To further develop the NSR and bring it to international standards, some Russian experts suggest establishing an international consortium with the participation of *Atomflot* (nuclear icebreakers), *Sovkomflot* (tanker, gas and cargo fleet), *Rosmorport* (port and navigation infrastructure) and international shipping companies (tanker and container fleet) (Semenikhin and Novosel'tsev 2015: 9).

To increase safety of the maritime traffic *via* the NSR Russia should further develop SafetyNET and Navtex systems in the NSR area. Particularly, in addition to the existing Navtex station in Tiksi, a new Navtex station will be built on the Andrew Island (see map 11).

As for technical aspects of the PC implementation many Russian and Western experts believe that a greater attention should be given to a proper equipping of ice-class ships for navigating in the polar areas. For example, Russia's Norilsk Nickel company uses Jeppesen's dKart Ice Navigator on their ice-class vessels, which helps them to significantly save costs for icebreaker assistance. New ice detection options for high-resolution radars in the form of an ice radar overlay on an ECDIS can also contribute to safer and more efficient navigation in ice fields (Oechslin 2014).

Another concern for many NSR users is ionospheric interference: electromagnetic fields affecting radio signals on particular frequencies. These can affect positioning systems, as well as communications in general. Recent research by the International Association of Lighthouse Authorities (IALA) and the IMO confirmed that modern

e-Navigation requires a more resilient positioning system. The Russian Arctic is fully covered by long range RNS ‘Chaika’ – the Russian version of LoranC – which is considered as a reliable backup to GPS/GLONASS and included in the global radio navigation plan of the IMO (Ibid.).

Map 11. SafetyNET and Navtex coverage zones in the NSR water area.



Source: <http://www.hydro-state.ru/tsibm.html>

It is interesting to note that Russian and foreign experts suggest some specific proposals for bilateral cooperation in the PC's context. For example, some specialists propose a number of the U.S.-Russian bilateral initiatives:

- Commit resources to improve hydrographic information and update nautical charts.
- Improve navigation safety information sharing between the two countries.
- Improve emergency response capability, such as stationing a rescue tug near areas of high risk or high value.

- Conduct oil spill response exercises to test the effectiveness of the Arctic Oil Spill Agreement.
- Institute communication and reporting requirements to better monitor vessel traffic, reduce risk and ensure vessel compliance with appropriate Arctic guidelines for safe navigation.
- Cooperate on establishing voluntary navigation safety measures in the Bering Strait (Rufe and Huntington 2014).

As far as the Phase 2 of the Polar Code is concerned the Russian experts believe that the following issues might be addressed:

- The PC should use a clearer and more precise terminology, particularly, with regard to the definitions of an icebreaker and different types of ice-class ships (Vasilyev et al. 2015: 11, 27).
- Shipping emissions. Many scholars underline that marine vessels are a large source of greenhouse gas and air pollutant emissions, including carbon dioxide (CO₂), nitrogen and sulfur oxides (NO_x and SO_x), particulate matter (PM) and black carbon (BC), which impact local air quality, human health, and the global climate. If diversion of vessels from other international routes increases, the current lack of the regional environmental requirements for vessels transiting and operating in the Arctic may lead to an increasing impact on human health for Arctic communities and for the global climate. Additional emissions of climate-forcing pollutants such as black carbon and carbon dioxide combined with emissions of PM and NO_x, which can be linked with respiratory health issues, may place additional stress on the Arctic environment and Arctic communities (Azzara et al. 2015; Bond et al. 2013: 5380-5552).

According to some accounts, a number of policies can mitigate shipping emissions growth in the Arctic. Some experts believe that upholding the implementation date of 0.5% fuel sulfur, rather than delaying to 2025 or later, would provide benefits beginning in 2020 extending through the period of time when increases in vessel traffic are actively occurring. Other specialists suggest that extending the North American version of Emission Control Areas (ECAs) into Arctic waters would provide additional air-quality and human health benefits associated with 0.1% sulfur fuel and the use of Tier III engines for reduced NO_x (instead of the current

MARPOL Annex VI Tier II engine standards and 0.5% sulfur fuel) (Azzara and Rutherford 2015: 4). They hope that regional benefits would be increased by cooperative multilateral action with other Arctic nations to extend the Arctic ECA to larger areas of the Arctic. Many specialists suggest switching to lighter and cleaner fuels such as distillates and LNG to further reduce emissions in the polar areas (Rosen 2015b).

- Some experts insist that in the near future the Code should phase out ballast and graywater discharge in the polar areas. Special facilities to receive, store and reprocess such water should be built in the Arctic ports, including the NSR (Fomin 2015: 29).
- Other potential avenues for reducing Arctic emissions from vessels include designations of Marine Protected Areas (MPA) under domestic conservation frameworks, or possibly the designation of particularly sensitive sea areas (PSSA) under the IMO. The authors of these proposals believe that both options would provide guidelines for limiting vessel operations within the areas and specifying either speed limits or fuel requirements for operation, both of which could reduce emissions (Azzara and Rutherford 2015: 4; Fomin 2015 29).
- Some experts believe that IMO needs more input from indigenous peoples to further improve the Code (Rosen 2015a).

Environment protection

The Russian jurists believe that international environmental law is an important integral component of the Arctic legal order (Dodin 2005; Gureev 2011; Kovalev 2003; Solntsev and Kopylov 2010; Vylegzhanin 2013: 38-46). The following international agreements (and relevant clauses within them) are seen as the most important ones:

- The UN Convention on the Law of the Sea (1982)
- Convention on biodiversity (1992)
- International Convention for the Regulation of Whaling (1946)
- Fish Stocks Agreement (1995)

- The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
- Convention on the Conservation of Migratory Species of Wild Animals (1979)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)
- Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matters (1972)
- International Convention on Oil Pollution Preparedness, Response and Cooperation (1990)
- The Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (2013)
- The IMO Polar Code and amendments to International Convention for the Safety of Life at Sea (SOLAS) (Nov. 1, 2014)

These documents were signed by Moscow and integrated to the Russian national legislation which (according to the Russian legal doctrine) is subordinated to international law. The following basic documents should be mentioned:

- Federal Law on Environment Protection (2002)
- Water Code of the Russian Federation (2006)
- Federal Law on Internal Marine Waters and Territorial Sea of the RF (1998)
- Federal Law on the Continental Shelf of the RF (1995)
- Federal Law on Fauna (1995)
- Russian Federal Law on the ratification of the Convention on biodiversity (1995)
- Federal Law on the Northern Sea Route (2012)

This legislation aims to providing Russia's environmental policies in the Arctic with a proper legal basis. The Russian sustainable development strategy has the following priorities in the AZRF:

- Monitoring and assessment of the state of the environment in the Arctic
- Prevention and elimination of environmental pollution in the Arctic
- Arctic marine environment protection
- Biodiversity conservation in the Arctic
- Climate change impact assessment in the Arctic
- Prevention and elimination of ecological emergencies in the Arctic, including those relating to climate change.

In accordance with the international practice, Russian law experts suggest two major principles for environmental management – precautionary and sovereignty approaches (Solntsev and Kopylov 2010: 84-85).

Precautionary approach/principle is based on the assumption that to protect the environment, where threats of serious or irreversible damage to it arise, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. This principle is exemplified by the Fish Stocks Agreement (1995) as well as by the regional FSAs (including the Norwegian-Russian agreement on fisheries in the Barents Sea).

Sovereignty approach:

- Implies Moscow's permanent sovereignty over natural resources (which is connected to the flag state jurisdiction on the high seas) in areas under Russia's national jurisdiction as a coastal state.
- These rights have to be distinguished according to the zones in which the natural resources are found (i.e., the high seas; the territorial sea; or the EEZ) and whether they are confined to one zone or are transboundary.
- These rights include the right to possess, to use and to manage resources.
- From these rights follows the right of a state to the exploration and exploitation of its natural resources and also the right to profits obtained from these resources.

It should be noted that Russian legal experts understand that the sovereignty principle is not the absolute one; it has certain limitations. Particularly, the *limitations* to the sovereignty principle include:

- The principle that permanent sovereignty must be exercised for the benefit of national development as well as the well-being of people;
- The state has a duty to compensate foreign investors whose property has been expropriated following legal proceedings;
- The state has the duty to protect the interests of indigenous peoples;
- And, lastly that the state has the duty to cooperate (by way of notification and consultation) in relation to shared natural resources.

As far as Russia's practical steps in coping with environmental problems are concerned a program to clean up the Franz Joseph Land Archipelago was launched by the Russian government in 2011. According to then Prime Minister Vladimir Putin, the government allocated 2.3 billion rubles (approximately USD 77 million) to the program to clear the archipelago of barrels of waste oil by 2015 although some critics see these activities as a cosmetic rather than systemic effort. Wrangel Island and Russian villages on Spitsbergen were next in line. In addition, a comprehensive analysis of the environment was planned in another seven major Arctic zones (Putin 2011).

As for the nuclear waste management a Federal Program on nuclear and radiological safety for the period of 2008-2015 was adopted by the government. Among the most significant results the following should be mentioned:

- 195 retired nuclear submarines were dismantled (97% of the total number);
- 98.8% of radioisotope thermoelectric generators were removed from service, and 86% of them were dismantled;
- construction of centralized long-term storage facilities for spent nuclear fuel prevented potential overflow of the spent fuel storages at reactor sites;
- 53 hazardous nuclear facilities were decommissioned; 270 ha of contaminated land were remediated;

- open water storages of RW were closed down (Karachay at Mayak, B-2 at Sibirsk chemical plant) (http://www.rosatom.ru/en/rosatom-group/back-end/index.php?sphrase_id=11699).

In 2016, Russia has launched a large-scale program of removing nuclear waste from the former Soviet submarine base in Andreev Bay (Murmansk Region). All in all, there were 22,000 containers of spent fuel from nuclear submarines and icebreakers stored in three storage tanks. There was also approximately 18,000 cubic meters of solid waste and 3,400 cubic meters of liquid radioactive waste, which, according to Norwegian sources, are collectively as radioactive as 5,000 Hiroshima bombs (<http://sputniknews.com/environment/20160610/1041126139/russia-norway-arctic-nuclear-waste.html>).

Russia has supported and vigorously participated in developing all the UN-related environmental initiatives ranging from the IPCC report (2014) to the International Maritime Organization's Polar Code (2014-2015) and Paris agreement on climate change (2015). Moscow has also actively participated in the Arctic Council's working and expert groups involved to environmental research and assessment.

While there was an obvious progress in Russia's legislation on sustainable environmental strategies there are still some *practical concerns* in this area:

- Some development plans are problematic from the environmental point of view and not tuned with those of neighbors. The problematic issues include development of hydrocarbon resources (Prirazlomnaya rig, Yamal LNG plant, potential oil spills, etc.); terrestrial pollution; permafrost; ecological problems pertaining to a potential increase in the NSR traffic; plans for floating nuclear stations, etc.
- Budget constrains led to some postponements in social and environmental programs. For example, the problem of the so-called mono-towns or single-industry cities remains unresolved and socio-economic and ecological situation there is still difficult (e.g., Nickel, Monchegorsk, Norilsk, etc.).
- There is no special environmental strategy/program for the AZRF (hence there is no funding/financial facility for this).

- The sustainable environmental strategy is often understood in a rather technocratic/instrumentalist way and reduced to the specific, often uncoordinated projects (e.g., nuclear waste treatment; ‘cleaning-up’ the environmental mess on the Arctic islands and archipelagos - Franz Joseph, Novaya Zemlya, Svalbard, Wrangel, etc.).

Indigenous peoples law:

The Russian legal experts are cognizant of the fact that there are serious social and economic problems relating to the indigenous peoples of Russia’s Far North, including the incompatibility of their traditional way of life with current economic conditions, low competitiveness of traditional economic activities, rising disease rates, a high infant mortality rate, and alcoholism. The unemployment rate among Russia’s indigenous people has been estimated at between 30 and 60 per cent, which is three to four times higher than that of other AZRF residents (Kochemasov 2009). Life expectancy is 49 years, compared to over 60 years for Russia on average.

Moscow’s policies official aim to foster favorable conditions for the sustainable development of the indigenous peoples. For example, in 2009 a Concept of Sustainable Development of the Small Indigenous Peoples of the North, Siberia and the Far East was approved by the Russian government. Among other things, the Concept set a task to raise the quality of life to the average in Russia and by halve the infant mortality rate by 2025 compared to 2007 levels. However, these policies have still not come close to their targets and remain subject for harsh criticism from the indigenous peoples themselves and human rights organizations.

The dispute over Russia’s policy toward indigenous peoples intensified with the Russian Ministry of Justice’s 2012 ruling to force Russia’s leading indigenous peoples’ organization RAIPON to re-register. The directive from the ministry was received a month after RAIPON submitted the report to the UN Human Rights Council criticizing the Russian authorities for neglecting the rights and problems of indigenous people. The tug-of-war between the ministry and RAIPON has resulted in the change of organization’s leadership which became much more loyal to the Kremlin.

The critics of Moscow’s policies on the indigenous peoples believe that Russia should endorse the United Nations Declaration on the Rights of Indigenous Peoples

(UNDRIP) and respect, protect and fulfill the rights of indigenous peoples set out therein. Furthermore, Moscow should ratify International Labor Organization (ILO) Convention 169 on Indigenous and Tribal Peoples and undertake to implement its provisions in its national legislation. According to human rights activists, Russia should recognize indigenous peoples' own customary law as a source of rights, including land rights. As a matter of the utmost urgency, the activists maintain, Russia should take immediate and effective measures to enable the establishment of federal-level Territories of Traditional Nature Use (TTNU), in a viable manner, giving indigenous peoples maximum control over these territories, in recognition of their inalienable rights to land and resources and their right to adequate food (Rohr 2014, 61). This will inevitably require the revision of Russia's Land Code which is seen by indigenous peoples and their proponents as a discriminatory and favorable for extractive industries.

The specific results of the Concept-2009 implementation remain unclear. While in the Yamal-Nenets Autonomous Area the indigenous peoples' economy (reindeer herding) is booming, social programmes are being effectively implemented and major conflicts with oil and gas companies are being avoided, the situation in other regions, such as Khanty-Mansi, Nenets, Korayk, Chukotka Autonomous Areas is rather difficult.

Arms control regimes

Given the fact that the 'hard' security situation in the Arctic is relatively benign, serious threats and challenges such as WMD (weapons of mass destruction) proliferation, large-scale terrorist attacks or military conflicts are hardly probable in the region.

However, it should be noted that the Arctic lacks a special arms control regime. There were only two international arms control regimes applicable to the area: The first regime was a system of the U.S.-Soviet/Russian strategic arms control and reduction agreements. Particularly, these agreements regulate a number of launchers and nuclear warheads on the Russian strategic submarines based on the Kola Peninsula.

The second arms control regime was the Conventional Forces in Europe (CFE) treaty that was concluded between NATO and the Warsaw Pact in 1990 and adapted

in 1999 under the aegis of the OSCE. However, the Baltic States refused to abide by the treaty, because it was concluded when they were still part of the USSR. Finland and Sweden have also refused to sign the treaty referring to their neutral (now non-aligned) status. In addition, none of the Western signatories of the 1999 Adaptation Treaty ratified it. As a result, Russia suspended its participation in the treaty in 2007.

Moscow, however, hopes that the CFE process can be reanimated in the foreseeable future. Drawing lessons from the past negative experiences Russia believes that there are two preconditions for resumption and successful continuation of the CFE process:

- A new treaty should be fully ratified by all signatories and
- All countries of the Arctic region should partake in this arms control regime.

It should also be noted that the CFE treaty was applicable only to land forces. Naval armaments were (and are) mainly excluded from any arms control regime. Unilateral measures were taken by some countries (including Russia) in the 1990s for the reduction of naval armaments and naval activities, but they related only to obsolete weapons and cannot be a substitute for a real arms control regime. According to some assessments, the basic hesitancy of the EU and NATO nations regarding naval armament limitations in the High North seems to be that if you initiate naval arms control in one of the seas within their zone of responsibility, this could lead to restrictions on maritime flexibility in other seas as well. However, these parties should initiate negotiations on naval arms control if they are serious about further improvement of the security environment in the region.

Let me note, with concern, that the Arctic region currently has no confidence- and security-building measures regime – a gap that should be filled with great urgency because CSBMs development is a very important element of any regional security system. The regional CSBMs could be based first and foremost on the 1994 OSCE Vienna Document which proved to be efficient in Europe. In addition, the following measures could be suggested:

- Given the specifics of the region, CSMBs should cover not only land but also naval military activities.

- Along with spatial limitations, temporal limitations on Russian, NATO and EU military activities in the region could also be established.
- Military-to-military contacts, joint exercises, exchanges and visits should be further encouraged.
- The countries of the region should intensify exchange information on their military doctrines, defense budgets as well as on major arms export/import programs.
- Not only regional but also bilateral CSBMs should be further encouraged.
- An idea of establishing a limited nuclear weapon-free zone in the Arctic (say, in Central Arctic) can be discussed. For example, Russia and U.S. could consider Canada's initiative to ban nuclear weapons in the region. Russia has responded positively to this initiative (Moscow raised a similar idea under Mikhail Gorbachev), but has questions about the geographical scope of such a zone. Russia supports making the Arctic a nuclear weapon-free zone, provided this would not affect the Kola Peninsula which is a home to two-thirds of the Russian strategic nuclear submarines.

Moscow also considers the field of civil protection as a promising venue for the Arctic regional cooperation. For example, according to the EU-Russia 2005 roadmap to the Common Space on External Security, one of the strategic objectives of Brussels–Moscow cooperation is to strengthen EU–Russia dialogue on promoting common ability to respond to disasters and emergencies, specifically including crisis management situations (Commission of the European Communities 2005). The positive experience accumulated in this area could be replicated to the Arctic regional cooperation. The priority areas for such cooperation could be as follows:

- Strengthening coordination of the Arctic states' agencies responsible for civil protection. This requires hard work on implementing the existing arrangements between the Operations Centre of Russia's EMERCOM (Ministry for Emergency Situations) and its foreign counterparts. More specifically this means exchanging contact details for keeping in touch on a 24-hour basis; exchanging templates for early warnings and requests/offers for assistance; exchanging information during an emergency, where appropriate; conducting communications exercises on an agreed basis; and enabling operation staff to spend

some time in the operational center of the other partner's service in order to gain practical experience.

- Exchanging information on lessons learnt from terrorist attacks.
- Inviting experts, on a case-by-case basis, to specific technical workshops and symposia on civil protection issues.
- Inviting observers, on a case-by-case basis, to specific exercises organized by the partner countries.
- Facilitating mutual assistance in search and rescue operations for submarines, ships and aircraft in emergency situations.

Hopefully, a steady implementation of this rather ambitious agenda could substantially change the security environment in the Arctic region in a positive way.

Conclusions

Various regimes governing the Arctic have proliferated into a vast, complex network of a regional legal order. This nexus of hard and soft law, rules, regulations, principles and norms regulates the activities of national governments in the High North, ranging from efforts to ensure peaceful uses of the Arctic Ocean, freedom of the seas, and the conservation of fisheries and other marine resources to prohibitions against marine pollution and dumping to regulations that ensure safe shipping, carriage and navigation on the high seas. What makes these developments especially impressive is that the bulk of Polar law has been created during the last three-four decades.

Reflecting on this rapid evolution of contemporary Polar law the Russian international law community posits some general conclusions:

First, Polar law has developed mostly on an ad hoc basis. This law has emerged largely in reaction to some accident or perceived crisis situation (especially in the environmental area).

Second, Polar has evolved piecemeal during the past several decades. The available law has come more as patchwork obligations, rather than as a carefully premeditated,

internationally-coordinated effort aimed at constructing a coherent legal regime for governing the Arctic. The fact remains that presently the 1982 UNCLOS serves as the hub of the contemporary law of the Arctic legal regime, around which, a corpus of international law for regulating various High North-related issues has evolved in broad scope and is firmly in place.

Third, implementing, sustaining, and adjusting Polar law in coming decades will not be easier. Even so, the effectiveness of Polar law rests on the genuine commitment by national governments. Governments make international law related to the Arctic, and governments must enforce that law against nationals who violate them. In the final analysis, then, blame for debilitating problems of the region, such as, for example, degradation of the marine environment in the forthcoming future will not lie in weak law. Most of the Arctic legal regimes are prudent and adequate, and most states acknowledge the application of most of these rules most of the time. Instead, the blame will accrue to those governments that fail to comply with that law, or to enforce it when necessary.

Fourth, the Russian international jurists believe that the following legal problems should be given priority attention:

- Delimitation of maritime spaces and definition of the limits of the continental shelf in the Arctic.
- The legal status of the Arctic maritime routes.
- Implementation of the Polar Code.
- Improvement and proper implementation of the international environmental law in the Far North.
- Protection of the indigenous peoples of the North.
- Establishment of a proper arms control and CSBM regime in the region.

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