

# Arctic security, sovereignty, and rights of utilization: Implications for the Northern Sea Route

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Both Russia's *Arktika* submarine expedition of 2007, which planted a titanium Russian national flag on the seabed below the North Pole, as well as the prediction of significant hydrocarbon and mineral resources in the Arctic waters and continental shelves (United States Geological Survey, 2008) sparked a flood of alarmist analyses and sensationalist media coverage.<sup>1</sup> Brosnan et al. (2011) provide a detailed frequency analysis of this inundation. These perspectives predicted tension and armed conflict in the Arctic in the wake of significant regional rearmament, as well as a 'scramble' or 'gold rush' for resources based on the speculation that the United Nations Convention on the Law of the Sea (UNCLOS) could not be 'seamlessly applied.' Further, they predicted that mutual remilitarization measures could provoke misunderstandings and escalation, that a lack of international governance in the Arctic may prove problematic, and that both sovereignty conflicts concerning land and sea territories as well as disputes concerning rights of economic exploitation of particular maritime areas may violently escalate (Borgerson, 2008; Emmerson, 2010; Howard, 2009; Lee, 2009; Sale and Potapov, 2010; Zellen, 2009). For some time, these authors succeeded at marketing a purported causality between climate change and armed conflict, overshadowing moderate voices such as Young (2009), Trenin and Baev (2010), or Strandsbjerg (2012), who pointed out that such fears were often overstated and Arctic governance was actually peaceful and constantly strengthening.

Surprisingly, for many, by 2015, none of these dire predictions had materialized. Instead, quite the contrary had happened: the Arctic Five<sup>2</sup> confirmed their will to peacefully settle disputes by scientific research, the application of international maritime law, and bilateral negotiation in the 2008 Illulissat Declaration. In the 2009 Tromsø Declaration, all signatories agreed that the rule of law should be the basis of regional development and international relations. The 2010 Russian–Norwegian accord that defined a maritime border in the Barents Sea proved that these declarations were in fact workable.<sup>3</sup> Search and rescue areas in the Arctic Ocean were defined and delimited in the 2011 Nuuk Declaration, which also emphasized the will to maintain peace, stability, and constructive cooperation. In the

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1 The continental shelf is defined as the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance (UNCLOS, Article 76).

2 For the sake of brevity, in the following, the five Arctic littoral states—the USA, Canada, Denmark (by her sovereignty over Greenland), Norway, and Russia—are combined under this umbrella term.

3 The Gray Zone agreement of 1978 had distributed fishing rights in the Barents Sea, but failed to define a maritime border.

wake of these developments, very few pessimists had the humility to admit their predictions were wrong—Borgerson (2013) is a noteworthy exception. Against this backdrop, this chapter reviews the contemporary state of military capabilities, disputed sovereignty, and rights of economic utilization in the Arctic and applies this review to the case of the Northern Sea Route (NSR), with the goal of predicting the likely future development of its general security and policy framework.

### **Military capabilities and conflict potential in the Arctic**

Few would doubt that Russia—with her Northern Fleet and the naval infantry, air force, coast guard, and patrol vessels that support it—is by far the most forceful naval power in the Arctic (The Military Balance, 2014; Wezeman, 2012; Brosnan et al., 2011, Hilde, 2014; Conley et al., 2012). Besides the headquarters at Severomorsk, the Northern Fleet has four other large naval bases in the High North, each of which consists of multiple bays, facilities, ports, and installations (Gadzhievo, Zapadnaya Litsa, Vid'yayevo, and Gremikha). Current media coverage suggests that a much smaller naval base may be under construction on Wrangel Island (Nilsen, 2014b). Norway also has a number of larger naval bases in its northern regions (at Haakonsværn, Ramsund, and Sortland). By comparison, Canada, the USA, and Denmark, combined have few naval bases in the Arctic. Further, among the Arctic Five, Russia has by far the strongest icebreaking capability, both by the number and the power of her icebreakers (Glukhareva, 2011; Keupp and Schöb, 2015—this book), allowing her combat vessels to operate in ice-infested waters with an ice thickness of up to two meters if they travel in an icebreaker canal. Given that even military vessels can suffer ice-related damage if they have thin hulls (Åtland, 2011), this effect is not to be underestimated. Further, Russia's nuclear icebreakers have to be refueled only once in four years; thus, their radius of operation is almost unlimited.<sup>4</sup> While the U.S. military today has few surface vessels capable of operating in the Arctic, it has significant Arctic undersea capabilities and is able to operate nuclear submarines in the Arctic Ocean and in near-Arctic seas, in open water as well as under the Arctic ice cover (Åtland, 2014). As of 2014, the USA is the only nation able to match the Russian submarine fleet (The Military Balance, 2014). Both nations operate nuclear and conventional submarines in polar waters today and have done so throughout the Cold War.

The case is more nuanced when air and surveillance capabilities are considered. The USA has a significant number of well-equipped air force bases in the High North (Eielson, Fort Clear, Fort Greely, Fort Wainwright, joint base Elmendorf-Richardson, Qaanaaq (Thule) in Greenland). While Canada's combat aircraft are stationed in south-east and central Canada, they are regularly deployed in the Arctic region and can operate from four secondary air bases in northern Canada (Wezeman, 2012). Further, Canada and the USA have

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<sup>4</sup> All nuclear and some of the conventional icebreakers were part of the Northern Fleet during the Soviet era, but are now civilian vessels held by state-controlled firms. See Keupp and Schöb (2015—this book) for technical and operative details of the nuclear icebreakers; today, these are in charge of accompanying vessels transits through the NSR.

installed sophisticated satellite surveillance and early warning systems in the High North (Polar Epsilon, Ballistic Missile Early Warning System). Russia has many airfields and airbases north of the 60th parallel, some of which have reopened in the past five years (Alykel, Besovets, Khatanga, Kogalym, Kotelny Island, Mirny, Severomorsk (Murmansk), Olenya (Olenegorsk), Raduzhny, Salekhard, Surgut, Syktyvkar, Tiksi, Dresba airbase at Pevek, Petrozavodsk, Ugolny, Yakutsk). However, it is questionable how many of these are fully operational from a military point of view. Russia resumed long-range bomber and patrol flights only from 2007 onward, after many airfields and bases had been dormant for over a decade or even closed due to a lack of funding in the post-Soviet era. *If* all of these bases were fully operational for military purposes, Russia would probably match the air capabilities of its Arctic neighbors. It is important to note that the extreme climate in the Arctic may restrict the use of aircraft, submarines, and vessels not configured for such an environment. For example, the Canadian Forces' diesel submarines cannot function in Arctic waters, and the range of F-16 and F-35 fighter aircraft (Norway and Canada are planning to purchase the latter) may be limited by a lack of tanker aircraft support in the Arctic regions (Wezeman, 2012). Thus, long-range aircraft will probably be at the core of any air capability in the Arctic.

Both from a strategic and a logistics perspective, the hostile environment of the Arctic discourages far-reaching infantry and mechanized operations. Therefore, compared to air and sea capabilities, land capabilities have only limited significance. While Canada maintains a troop of 5,000 rangers in its Arctic territories—dubbed ‘invasion force’ in 2009 by some colorful Russian rhetoric—these cannot be considered regular military personnel. General Walter Natynczyk's statement, ‘If someone were to invade the Canadian Arctic, my first task would be to rescue them’ still seems to be valid six years later (Åtland, 2014).

Relying on reports in the public press about planned military expenditures, some authors (e.g., Huebert et al., 2012) have suggested a correlation between the resumption of Russian long-range bomber and patrol flights from 2007 onward and military maneuvers in the Arctic<sup>5</sup> in the following years, concluding that a remilitarization of the Arctic was underway, particularly because some of these flights allegedly<sup>6</sup> violated the airspace of other nations. Consequently, such perspectives predicted ‘a resumption of the ‘old’ Cold War hostilities’ (Huebert, 2013). While it is certainly not impossible that Russia aimed to test the air defense readiness condition of her Arctic neighbors, this conclusion ignores two important aspects.

First, *each* of the Arctic Five has a long history of military operations and exercises in the Arctic. As Dittman (2008) points out, Russian and U.S.-American submarines operated in Arctic waters and below the North Pole as early as 1960, and the Canadian Force spent thousands of flying hours in the Arctic archipelago in the 1970s and held frequent exercises

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5 Most notably, Canada's *Operation Nanook* in 2009, the U.S. military exercise *Northern Edge* in 2008, and the U.S. polar submarine ice expedition of 2009, the Norwegian exercise *Cold Response* (with other NATO members) in March 2009, and Russian naval exercises involving submarines and military vessels in autumn 2009.

6 It is difficult to ascertain whether ‘airspace violations’ reported in the public press actually qualify as such since flight movements are politically exploited by all sides. Evidence presented in Åtland (2014a: 155, endnote 67) suggests that particular Russian flights conducted in February 2009 had not violated Canadian airspace though Canadian politicians claimed that they had.

between 1950 and 1970, which trained those forces in winter warfare. The NATO exercise *Cold Response* was first conducted in 2006 (i.e., before the resumption of Russian long-range bomber and patrol flights). The exercise has been repeated in 2010 and 2012. Canada's *Operation Nanook* has been conducted every year since 2007. U.S. submarine deployments to Arctic waters did not cease after the collapse of the Soviet Union (Huebert et al., 2012), while the Russian military activity significantly decreased due to a lack of funding for operations and maintenance. In other words, the Arctic is not *remilitarized* now because it was never *demilitarized*. What the world has witnessed since 2007 is the *re-activation* of hitherto dormant or decommissioned Russian military bases and materiel, financed by revenues from increased global sales of hydrocarbon resources. Thus, these developments constitute rather a return to the status quo ante than a new round of militarization.

Second, the extent to which announced investments in military capabilities are realized (if at all) is doubtful due to budget constraints and changing political agendas, irrespective of the announcing nation. Further, many of these announcements—particularly those originating from Russia and Canada—exhibit assertive rhetorics intended for a domestic audience and are often more related to prestige policy than *realpolitik*. Thus, they should not be taken at face value, particularly so when they are reproduced by mass media and the public press in other countries (Baev, 2010; Trenin and Baev, 2010; Konyshev and Sergonin 2012; Strandsbjerg, 2012; Wang, 2013; Zysk, 2009; Åtland, 2014). As Wezeman (2012) aptly puts it,

‘While some media, politicians and researchers have portrayed the changes in the capabilities of the Arctic littoral states as significant military build-ups and potential threats to security, the overall picture is one of limited modernization and increases or changes in equipment, force levels, and force structure. Some of these changes—for example, the strengthening of the Canadian Rangers, the move of the main Norwegian land units to the north of Norway or the new Russian Arctic units—have little or nothing to do with power projection into the areas of the Arctic with unclear ownership; rather they are for the patrolling and protecting of recognized national territories.’

Each of the Arctic Five has produced a foreign policy strategy or statement by now that documents their respective security and economic interests in the Arctic as well as their policy for the foreseeable future.<sup>7</sup> While those of Russia, the USA, and Canada have a more assertive and security-oriented tone compared to those of Denmark and Norway, all five highlight the importance of protecting their sovereignty, their economic interests, and the Arctic environment. Political differences notwithstanding, military installations and materiel are described as *defensive* and primarily serve to dissuade others from challenging economic interests. For Russia, this strategy represents a significant change, since her Northern Fleet was defined as an ocean-going force during Soviet times, but now is commissioned to protect Russia's borders. All five strategies highlight their preference for regional cooperation and normal diplomatic and economic relations. If one is to believe what Russia's Secu-

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<sup>7</sup> Canada: *Statement on Canada's Arctic Foreign Policy* (2010), Denmark: *Kingdom of Denmark Strategy for the Arctic 2011-2020* (2011), Norway: *High North Strategy* (2006), Russia: *Basics of state policy of the Russian Federation in the Arctic for the time up to 2020 and beyond* (2008), USA: *National Strategy for the Arctic Region* (2013). For detailed comparisons of these strategy documents, see Wang (2013) and Åtland (2014a).

rity Council defines for its strategy in the Arctic up to 2020 and beyond, the strategic goal is not military confrontation, but the transformation of Russia's share of the Arctic into a strategic resource base, based on scientific research and compliance with international law. The document expressly states that such long-term economic development goals are not only impossible to achieve with military means, but on the contrary, they require peace, stability, and international cooperation (Security Council of the Russian Federation, 2008).

Finally, the installation of military and intelligence infrastructure is not necessarily equal to an act of aggression or a signal of increased tension in international relations, but may simply constitute an act of delimiting spheres of sovereignty and protecting economic interests (Trenin and Baev, 2010; Wang, 2013). As U.S. Admiral James Stavridis put it, 'not all military capabilities are designed for force' (Stavridis, 2010). Nevertheless, the development of military capabilities in the Arctic from 2008 onward may also be interpreted in a wider context of increased East–West tensions since the 2008 Georgian War, and given the Ukraine crisis from 2014 on, it is likely that these tensions will continue for the foreseeable future. However, even under the tensions of the Cold War, the Arctic remained a remarkably peaceful region, despite or because of the manifold military operations that took place there. To date, there has never been any armed conflict between any of the Arctic Five in the Arctic region. International initiatives such as the Arctic Military Environmental Cooperation Program (AMEC), its successor, the Nunn-Lugar Cooperative Threat Reduction Program, or the 2011 Nuuk declaration demonstrate that cooperation in security-related areas among the Arctic Five is basically possible and workable.

### **Arctic governance, sovereignty, and rights of economic utilization**

While academic discussion about hypothetical international governance structures in the Arctic continues, it is highly unlikely that such structures will ever emerge in practice. None of the Arctic Five envisages a comprehensive, region-specific legal regime similar to that of Antarctica under the 1959 Antarctic Treaty (Åtland, 2013). Further, under the 1996 Ottawa Declaration, the Arctic Council is not allowed to discuss military and security issues. The tone of the 2008 Ilulissat Declaration illustrates the unanimous view of the Arctic Five that there is nothing special about the Arctic, that it is a place like any other in the world governed by established international law, and in particular, that there is no pressing need to involve outsiders in Arctic governance (Strandsbjerg, 2012). Hence, the Arctic Five are likely to oppose the establishment of any international regime or institution apart from the Arctic Council, and they are likely to take measures to secure their regional economic interests as well as to safeguard their territorial and maritime sovereignty. Several initiatives by the European Parliament, the European Union, and the European Council (see Cavalieri and Kraemer, 2013, for an overview) and by China's Rear Admiral Yin Zhuo (Blunden, 2012), all directed at establishing international governance in the Arctic have been firmly rejected by the Arctic Five. As a result, the role any non-Arctic state can play in Arctic governance will probably be restricted to an observer status in the Arctic Council. Thus, it seems safe to say that the regional interests of the Arctic Five will shape the gen-

eral security and policy framework of the Arctic for the foreseeable future. For the same reason, any role that NATO can play in the Arctic will be limited since Russia is highly unlikely to tolerate any NATO presence in what she conceives of as her economic sphere of interest (Nilsen, 2014a).

At the same time, this status quo need not necessarily develop into an arena of increased tension, as some writers have projected. The 2010 Russian–Norwegian bilateral accord demonstrates that even longstanding border disputes can be resolved and stable states achieved by peaceful negotiation. Further, in the 2008 Ilulissat Declaration, the Arctic Five universally accept the UNCLOS as a basis for international dispute settlement.<sup>8</sup> As a result, recent efforts to address matters involving sovereignty in the Arctic are marked by a spirit of rule-based problem-solving, rather than an escalating spiral of politically charged claims and counterclaims (Young, 2011).

There has been much confusion in the debate about Arctic conflicts due to a lack of understanding of what distinguishes contested sovereignty from disputed rights of economic utilization. *Sovereignty* refers to a nation's right to exclusively govern a particular area without any outside interference. Under UNCLOS, sovereignty is restricted to a state's territorial waters (12 nautical miles from the coastal baseline), while limited sovereign action may be performed in the contiguous zone (24 nautical miles from the coastal baseline). By contrast, the right of utilization under UNCLOS is established by defining an exclusive economic zone (200 nautical miles from the coastal baseline) that the coastal state may exploit, both regarding resources in these waters and in the continental shelf below them.<sup>9</sup> However, this right of *economic* exploitation of the 200-mile zone does not make the coastal state *sovereign* over the waters or the continental shelf beyond the 12-mile zone.<sup>10</sup> Instead, these are governed by international maritime law and its institutions (not by the state's national legislation).<sup>11</sup> So are the high seas—the international waters beyond any exclusive economic zone are not the maritime equivalent to *terra nullius*. Neither is the seabed below the high seas (and any resources it might hold) a free-for-all cornucopia; instead, any prospecting involving the seabed below the high seas is subject to the issuance of a research license by the International Seabed Authority, and subsequent economic exploitation requires an additional license.

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8 While, as of 2015, the USA has neither signed nor ratified UNCLOS, its maritime policy in the Arctic *de facto* abides by it. Until it ratifies UNCLOS, the USA is bound by the 1958 Convention on the High Seas, which it has signed and ratified.

9 Under UNCLOS (Art. 76), coastal states may extend their claim to the continental shelf (and hence, their right of utilization) to up to 350 miles from the coastal baseline. However, this is not a unilateral act; instead, the claim must be reviewed and approved by the United Nations Commission on the Limits of the Continental Shelf (UNCLCS).

10 With the exception of limited constabulary rights in the contiguous zone, such as customs and coast guard operations.

11 Binding judgments can be pronounced by the International Tribunal for the Law of the Sea (created by UNCLOS), the International Court of Justice, or by arbitration once all states involved in the conflict accept to be bound by the decision (UNCLOS, Art. 279; Annexes V through VIII). In the contiguous zone, the state has limited sovereign-like rights, e.g., regarding police and customs operations and environmental protection, but it is not sovereign over these waters in a strict sense.

Some analysts cite examples from contemporary history, such as the British–Norwegian–Icelandic disputes over fishing zones in the North Sea in the 1970s and 1980s, or recent conflicts in the East and South China Sea, to argue that force-on-force encounters of constabulary forces and conflict escalation may also occur in the Arctic as a result of disputes over territorial sovereignty or rights of utilizing maritime resources (e.g., Borgerson, 2008; Åtland, 2013; Huebert, 2013). However, such analogies seem somewhat far-fetched. First, international maritime law in the 1970s and 1980s was governed by the 1958 Convention on the High Seas, which did not provide signatories with an exclusive economic zone, implying the ‘cod wars’ were a product of their time.<sup>12</sup> Second, conflicts in the East and South China Sea around the Kurile, Spratly, Paracel, and Senkaku (Diaoyu) Islands emerged precisely because the parties involved in these conflicts lacked a common understanding to accept the provisions of international maritime law to settle their disputes and failed to conclude international accords to resolve territorial disputes before they escalate. More specifically, an equivalent to the 2008 Ilulissat Declaration does not exist among the neighboring countries of the East and South China Sea; thus, the Arctic should rather be seen as a role model for these regions than vice versa. Third, the conflicts in the South China Sea are fueled by overlapping exclusive economic zones, which the parties involved in these conflicts dispute and fail to delimit peacefully, although it would be their obligation to do so (UNCLOS, Art. 279 and 280). By contrast, exclusive economic zones established in the Arctic Ocean are neither overlapping nor disputed, and almost all existing and purported resources in the Arctic are located firmly within a single exclusive economic zone.

Alarmist projections about ‘armed brinkmanship’ in the Arctic as a result of climate change (e.g., Borgerson, 2008) tend to overlook that sovereignty claims in the Arctic are not a consequence of climate change, but originate from state policy. As early as 1909 and 1925—i.e., at a time when the Arctic ice was anything but melting—Canada passed laws fixing the borders and status of her polar territories, claiming they stretch from her Arctic coastlines to the North Pole, and the Soviet Union did the same in 1926 (Trenin and Baev, 2010). The USA claimed Wrangel Island from the end of the 19th century to 1924, when a colonization party was ousted by Soviet forces. However, despite even such extreme claims, the Arctic has remained remarkably peaceful, and with the following exceptions, unaffected by disputes over contested sovereignty. This fact compares very favorably to other resource-rich regions in the world.

Canada and Denmark have unresolved disputes over the delineation of their joint maritime border in the Lincoln Sea and regarding who is sovereign over tiny Hans Island. But for symbolic incidents—such as placing liquor bottles and erecting flag poles—these conflicts have never escalated, and as of 2015, they are subject to bilateral talks (Krogh Søndergaard, 2014). From a global perspective, such often-cited conflicts seem relatively insignificant. The maritime border between the USA and Russia in the Bering Sea is *de jure*

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<sup>12</sup> The reader should note that the wide exclusive economic zones known today only entered into effect after UNCLOS had been finally ratified by a sufficient number of signatories, i.e., in 1994 (!). In comparison with the 1958 Convention on the High Seas, UNCLOS significantly reduced the freedom of the high seas in favor of the economic interests of the coastal states.

undefined, since the Soviet Union collapsed before it could ratify an international accord defining the borderline. However, both nations *de facto* abide by the accord and act accordingly (Brosnan et al., 2011). The USA and Canada disagree about how to draw their joint maritime border in the Beaufort Sea, but are currently discussing the issue peacefully through diplomatic channels, despite the probable existence of significant shale oil and gas resources in the continental shelf below the waters. Finally, while Canada claims that the Canadian Arctic is an archipelago of islands less than 100 nautical miles apart, and therefore, the waters between the islands are territorial—implying the Northwest Passage is an internal waterway under Canadian sovereignty—a conflicting view prominently supported by the USA argues the Northwest Passage is an international strait.<sup>13</sup> As of 2015, the dispute is unresolved. Still, it has never escalated to a point where force-on-force confrontation was reported, although Canada has increased its coastguard presence in the region. All in all, it seems that these conflicts have been much overstated and overinterpreted.

The stability these examples portray is not necessarily specific to the Arctic region. In fact, conflicts over contested sovereignty can remain *unresolved yet peaceful* anywhere in the world, even for a very long time. For example, in central Europe, no international boundary has *ever* been agreed between Germany, Austria, and Switzerland concerning the Obersee, which forms the greatest part of Lake Constance. Whereas Austria argues that this area is a condominium, implying that sovereignty over the area be jointly administered by all three nations, Switzerland insists the area is physically separated between the littoral states (implying about 32% of the waters are under Swiss and merely 10% under Austrian sovereignty). Germany does not support any position (Khan, 2004). As a result, Swiss maps show state borders partitioning the lake whereas German and Austrian maps do not. By contrast, fishing rights were distributed as early as 1893 by the Bregenz Accord, and they have not been disputed since. To date, while all three nations patrol the lake with regional flotillas, no naval war between them has broken out. In other words, at the heart of the issue is not contested sovereignty as such, but the will of all involved actors to either tolerate an unresolved status quo or to negotiate solutions by international dialogue. It needs to be noted though that this view was challenged by a more aggressive Canadian view from the 1990s onward, which purported that sovereignty can be abandoned by *de facto* dereliction, and therefore, continuous military presence would be required to prevent a loss of sovereignty (e.g., McRae, 1994). Such perspectives may increase rather than decrease the likelihood of escalation.

Conflicts in the Arctic region do not only emerge from disputed sovereignty, but also from disputed rights of economic utilization. Norwegian sovereignty over the Svalbard Islands is not disputed, but since UNCLOS did not come into effect before 1994, the 1920 Svalbard Treaty does not discuss the extent to which its signatories may exploit the waters of the Svalbard archipelago beyond the territorial waters. Russia argues that under the Svalbard Treaty, all signatories have this right, whereas Norway claims that under UNCLOS, all maritime areas beyond Svalbard's territorial waters are part of Norway's exclusive economic zone. As of 2015, the dispute is unresolved. Occasionally, clashing

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<sup>13</sup> See Rothwell (1993) for an excellent legal analysis of this dispute.



fishing vessels provoke coast guard and patrol operations from both sides, but apart from these incidents, Svalbard's demilitarized status has remained remarkably stable to date, particularly during the Cold War. All in all, the conflict has been much overstated (Ebinger and Zambetakis, 2009).

Further, Canada, Denmark, and Russia have all been doing geological research with the goal of proving that the Lomonossov and Mendeleev ridges—underwater continental crusts below the North Pole—are actually an extension of their respective continental shelves, implying that the state's exclusive economic zone could be extended to 350 nautical miles from the coastline up to the North Pole (cf. exhibit 1). This dispute has received much media attention, not the least because, in 2007, the Russian submarine expedition *Arktika* planted a titanium national flag on the seabed below the North Pole in order to substantiate Russia's geological claims. This move has been misinterpreted much. Russia does not seek to extend its sovereignty to the North Pole, but wants to secure the right of utilization of purported hydrocarbon resources below the seabed (as do Canada and Denmark). The conflict is still fought out by scientists before the United Nations Commission on the Limits of the Continental Shelf (UNCLCS), and all three states have agreed to abide by its rules and regulations. As of 2015, all nations have submitted updated claims and geological research; a decision is expected by summer 2015. When a ruling is made, the UNCLCS issues a final and binding recommendation. However, the delimitation of the *actual* boundaries of exclusive economic zones is subject to negotiation between the affected states.<sup>14</sup> The extent to which such trilateral negotiation can produce an equivalent to the 2010 Russian–Norwegian accord is likely to mirror the contemporary willingness to peacefully resolve conflicts in the Arctic region.

What is more remarkable, however, is that none of the three states has ever considered the deployment of military force to the North Pole as a viable means to substantiate their claims. Despite assertive rhetorics from both sides, with the 2010 Canadian–Russian accord, both nations agreed to settle their disputes peacefully before the UNCLCS. The Russian government has issued a similar stance regarding upcoming negotiations with Denmark (Pettersen, 2014). Thus, the suggestion that 'interstate resource wars' are looming on the horizon seems somewhat far-fetched (Åtland, 2013; Young, 2013). Further, any claims for (purported) polar hydrocarbon resources are probably motivated more by political than economic issues, given that current estimates have predicted relatively limited potentials or not assessed the polar region at all (United States Geological Survey, 2008; Gautier, 2009). Further, given the technological challenges of deep-water drilling in the polar region (Trenin and Baev, 2010), the profitable exploitation of any potential will likely remain unfeasible until the North Pole becomes ice-free during the summer months—an event that is expected for the years from about 2050 onward (National Snow & Ice Data Center, 2015).

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14 UNCLOS, Article 76(8), Article 83, Article 9 of Annex II

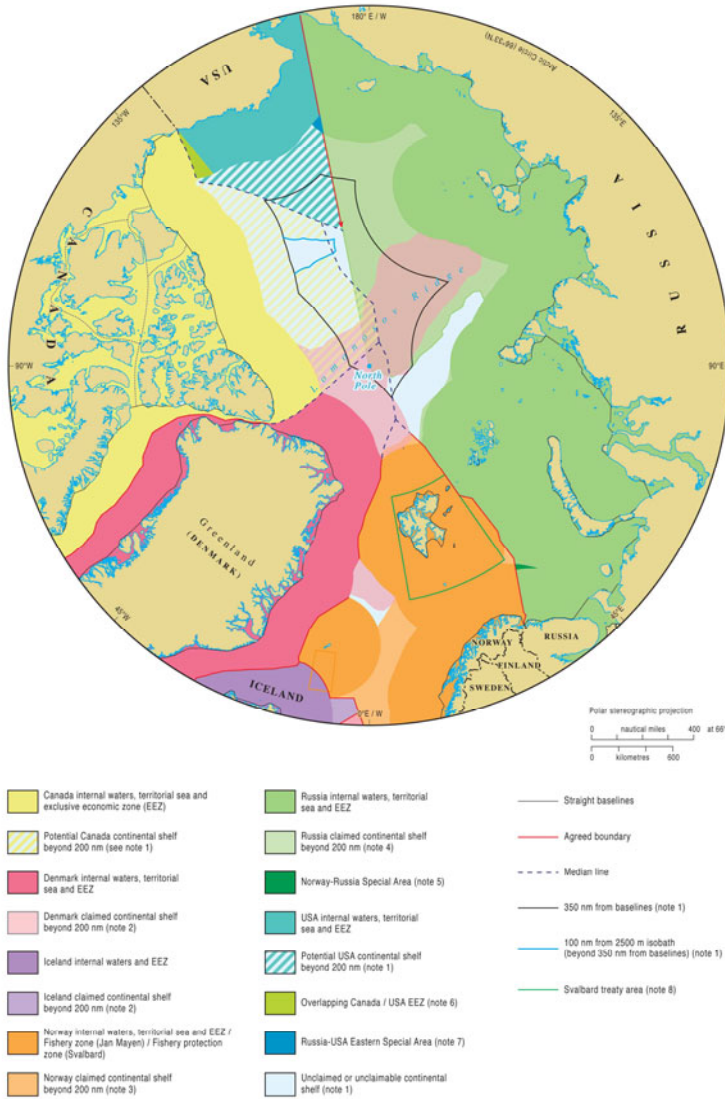


Exhibit 1: Maritime jurisdiction and boundaries in the Arctic region (IBRU, Durham University, 2014)

### Implications for the general framework of the Northern Sea Route

In the *Basics of state policy of the Russian Federation in the Arctic* (Security Council of the Russian Federation, 2008), Russia defines the following development goals for the Northern Sea Route (NSR):

- organization of technical control over the strait zones, rivers estuaries, firths on the itinerary of the Northern Sea Route;
- creation and development of the infrastructure and control system of communications of the Northern Sea Route for solving problems of maintenance of the Eurasian transit;
- use of the Northern Sea Route as a national single transport communication of the Russian Federation in the Arctic;
- use of the Northern Sea Route for international navigation under the jurisdiction of the Russian Federation and according to international treaties of the Russian Federation;
- to provide re-structuring of volumes of cargo transportation through the Northern Sea Route, including through the state support of construction of vessels of ice-breaking, rescue and auxiliary fleets, and also the coastal infrastructure.

All in all, these points demonstrate that Russia's strategic goal is the *economic* development of the NSR; and this point has to be seen in the larger context of the ultimate goal to develop 'the Arctic zone of the Russian Federation into a leading strategic resource base of the Russian Federation' by 2020 (Security Council of the Russian Federation, 2008). This economic motivation constitutes a significant departure from prior Soviet policy, under which the NSR was neglected once its function as a discrete channel for troop movements between oceans had lost its military relevance (Armstrong, 1992).

At the same time, the formulation of the above goals leaves little doubt that Russia considers the NSR to be a primarily national affair, implying that the presence of any other state or international organization, particularly NATO, will not be tolerated (Staalesen, 2010a; Wang, 2013). By her Northern Fleet and icebreaker capability, Russia has the necessary means and power to enforce this policy. Russia's recent investments in military infrastructure in the Arctic should be seen in this light—quite an obvious hint that no other nation is to interfere in what she perceives as internal Russian affairs. It needs to be noted, though, that the maritime doctrine of the Russian Federation (2001) highlights the priority of political and diplomatic, economic, and other non-military means in resolving conflicts. The nontolerance of political or military interference does not necessarily equal a blockade of the NSR. While Russia has strongly rebuked Chinese initiatives for involvement in Arctic policy, it has granted China's icebreaker *Xue Long* (*Snow Dragon*) passage through the NSR, and collaboration with Chinese researchers as well as Arctic training of Chinese mariners is underway (Pettersen, 2013).

This *de facto* exclusive power over the NSR is not uncontested in the scholarly discussion of international law. While Russia's above-cited maritime doctrine explains that 'com-

pliance with generally accepted principles and rules of international law and international treaties of the Russian Federation in the course of maritime activities' is sought, some commentators are questioning the extent to which this compliance actually exists. A view prominently supported by the USA holds that the key straits of the NSR are international straits (Blunden, 2012), whereas in the Russian perspective, these straits are internal waterways (Kolodkin and Volosov, 1990). As a result, the Russian perspective gives Russia sovereign rights over the complete passage, whereas under the U.S. perspective, it would be illegal to block the passage of any vessel as long as it travels under the right of innocent passage. Kastner (2015—this book) provides an excellent discussion of this matter of dispute.

Shipowners, therefore, face significant political risks since the regionalist power structure in the Arctic discussed in this chapter implicates the fate of the NSR will *de facto* be determined by Russian policy alone. There is little doubt that Russia possesses the necessary power to completely control any shipping on the NSR. It holds both the Western and the Eastern sea entrance to the NSR; further, with strong icebreaker support available, irrespective of the time of year and weather conditions, her Northern Fleet can be deployed to any point of the route at any time to enforce any policy. Theoretically, Russia could block the NSR at any time by intercepting traffic at strategic choke points, such as the De Long, Laptev, Sannikov, and Vilkitsky straits, at Wrangel Island, and at the Kara gate (see Keupp and Schöb, 2015—this book and Svahn, 2015—this book, for a detailed discussion of the key straits and navigational challenges of the NSR). Further, in a climate of international tension, national environmental legislation, or even the provisions of international law, such as the Canadian clause, may be used under false pretenses to deny passage for non-Russian ships or to impound vessels traveling on the route.<sup>15</sup> Shipowners should take note that many national marine parks and environmentally protected zones are passed while traveling along the NSR (cf. exhibit 2).<sup>16</sup> The Russian President Putin has repeatedly set himself in scene as the prime protector of the polar bear (Nilsen, 2014b). Finally, although the mandatory inspection of vessels upon entry into the NSR has been abandoned as of January 17, 2013 (see Keupp and Schöb, 2015—this book, for a detailed discussion), 'inspections', i.e., harassment, may be re-introduced if international relations should deteriorate.

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<sup>15</sup> Under Article 234 UNCLOS (the 'Canadian clause'), coastal states have 'the right to adopt and enforce non-discriminatory laws and regulations for the preservation, 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.'

<sup>16</sup> Most notably, Wrangel Island, the *Kandalaksha Nature Reserve*, the *Taimyrsky State Nature Biosphere Reserve*, and the *Russian Arctic National Park*.



Exhibit 2: Protected areas along the NSR (Ahlenius, 2012)

However, these risks are somewhat mitigated once the practical aspects of economic development are taken into account. It seems quite illogical that Russia should authorize a policy hostile to international trade and transit traffic since such a policy would sabotage the very development goals it has defined for the Arctic in general and the NSR in particular. Russia primarily needs the Arctic to remain a stable region that will be able to attract the long-term investment necessary to capitalize on Russia's natural resources (Wang, 2013).

The sanctions imposed against Russia in the wake of the Ukraine crisis from 2014 on demonstrate that any noncooperative policy is likely to cause significant reduction of international trade, currency depreciation, and outright recession in Russia. Historical analysis shows that in the mid-1990s, when federal financing for the development of the Russian Arctic was effectively terminated following the collapse of the Soviet Union, the flow of cargo through the NSR declined sharply, many polar towns and polar stations were evacuated, and the North radio relay line ceased to operate (Kovalev and Gainutdinova, 2012). Likewise, effects are to be expected when Russia fails to attract foreign capital to finance the future development of the NSR, particularly the construction of maritime infrastructure along the sectors east of Dudinka.

Compared to the previous years, the 2014 transit statistics for the NSR already exhibit a significant decline in non-Russian shipping, assuming that Russian ships only operate under the Russian flag (cf. Table 1). This decline might be related to increased international tensions following the Ukraine crisis of 2014. To date, Russia has failed to develop the NSR as an East–West transit corridor; extant commodity and oil transports are almost completely westbound and container transit to and from Asia is still the exception (Keupp and Schöb, 2015—this book).

	Number of transits under Russian flag	Number of transits under non-Russian flag	Transits under non-Russian flag as a percentage of all transits
2011	26	15	36.6%
2012	18	28	60.9%
2013	46	25	35.2%
2014	47	6	11.3%

*Table 1:* NSR transits between 2011 and 2014 by flag (author's calculation using data from Northern Sea Route Information Office, 2014).

Of course, the passage might be restricted to Russian transit only, but with the Suez Canal route as a powerful competitor and Singapore anxiously striving to maintain its significance as the central transit hub for East–West shipping, shipowners and line operators will likely ignore the NSR, should Russia close it for international traffic. Its role would then be restricted to a regional commodity supply channel, with little, if any, growth potential. Thus, Russia should have a great self-interest in keeping the passage open for international business, not the least because many other nations are interested in the development of the NSR.

Norway as the closest neighbor is likely to benefit from increased trade and transit traffic, and since the focus of Norwegian oil production will shift to the Barents Sea region as the North Sea fields become depleted, regional interests will likely mitigate global tensions. Finland has a long history of tanker, cargo vessel, and icebreaker construction for the Soviet Union and Russia, and it has suggested intensifying bilateral cooperation to market the NSR (Nilsen, 2011). South Korea's shipbuilder Samsung Heavy Industries has already constructed and delivered ice-classed and icebreaking tankers, and in 2014 Daewoo Shipbuilding & Marine Engineering won a tender to construct icebreaking liquid natural gas tankers for deployment in the Yamal region. Naturally, both nations would benefit from increased shipping volumes on the NSR. Germany, being a nation dependent on its exports for economic growth, is interested in developing the NSR since it provides the shortest route to Japan. Iceland and Greenland (once it becomes independent from Denmark) may position themselves as local shipping hubs or relays for Arctic East–West traffic and may further extend their strategic importance once transpolar shipping becomes possible. China National Petroleum Corporation has signed an agreement with Sovcomflot about shipping along the NSR (Staalesen, 2010c), and effective commercial shipping seems to have begun in 2013 (Pettersen, 2013). All in all, the long-term economic disadvantage from a confrontational policy (and hence, the collapse of non-Russian traffic through the NSR) is likely much greater than any short-term tactical benefits. In 2010, then Russian Prime Minister Putin firmly advocated a picture of the Arctic as a zone of peaceful cooperation, where disputes are solved on the basis of international law and bilateral negotiation and where both sovereignty and economic ownership are mutually respected (Staalesen, 2010b). If this promise holds, the economic development of the NSR will likely continue.

However, Russian politics are not always governed by rational and logical conclusions about trade and commercial interests since significant hardliner factions both in politics and the military continue to exert influence. Assertive rhetorics, nationalism, Soviet romanticism, prestige policy, and anti-Western propaganda directed at an internal audience are salient features of Russian political life, and sometimes, these features are misinterpreted by Western commentators as acts of warmongering. Further, laws and regulations in Russia may be subject to post-hoc interpretation and negotiation, and the spirit of the effective administration of rules and regulations may significantly depart from their letter (see Keupp and Schöb, 2015—this book, for an application of this problem to the renegotiation of 'official' NSR fees). However, statements justifying military presence and citing the need for defending national interests likely undermine the credibility of the many diplomatic declarations concerning peaceful development through dialogue and cooperation, particularly so when they are reproduced by mass media. However, once this distorting influence is filtered out, most Russian diplomatic actions can be seen to undergird the desire for peaceful development through cooperation (Wang, 2013).

Shipowners, commentators, and scholars alike should, therefore, be interested in observing the development of the following three issues; these may serve as early warning systems for the development of East–West relations in general and of the general framework of the NSR in particular.

First, being a direct neighbor with longstanding and pragmatic diplomatic relations with Russia, Norway has played a central role in many political or economic initiatives to develop this relationship. The future development of Russian–Norwegian relations is seen as a key tenet of Norway’s High North strategy, and the development of a sustainable petroleum industry has prompted unprecedented levels of cooperation with Russia (Sharp, 2011). To date, the Ukraine crisis since 2014 has not had a significantly negative impact on these relations. While Norway has suspended all bilateral military activities until the end of 2015; both nations continue to invest in joint cross-border infrastructure projects (Nilsen, 2015). Thus, repercussions from the Ukraine conflict are probably unlikely to spread to the NSR in the immediate future.

Second, once a ruling from UNCLCS regarding the Lomonossov and Mendeleev ridges dispute is issued, the following trilateral negotiations between Russia, Canada, and Denmark about how to delimit their respective exclusive economic zones might be interpreted as a proxy for how reliable East–West relations are as of 2015. More specifically, the tone with which Russia negotiates may be interpreted as a proxy for how serious it is about anchoring its Arctic policy in international law, and what subsequent enforcement or patrol operations (if any) ensue in polar waters, should conflicts of interest persist. During the demarcation process, vociferous political rhetoric from all sides is to be expected (Wang, 2013).

Third, the contemporary development of actual Russian jurisdiction, i.e., the de facto application of laws and regulation, may serve as a relatively reliable gauge for how enforceable foreign claims are before Russian courts. For shipping in the NSR, the central legal document from a Russian point of view is the 1998 federal act, *On the inland waters, territorial sea and contiguous zone of the Russian Federation*. To date, jurisdiction by the Supreme Court of the Russian Federation has been largely business-friendly. Case law evidence suggests that shipowners and operators do not owe any fees for transiting the NSR as such; fees are only owed for actual icebreaker service, if purchased (*no services rendered–no fees owed*). See Bunik and Mikhaylichenko (2013) for a detailed commentary of these cases. However, these cases only involved Russian companies and state-controlled firms; the extent to which Russian jurisdiction may favor foreign business interests is debatable. The history of past East–Western joint ventures in the oil and gas business between 2007 and 2010 suggests that foreign direct investment is not safe in Russia if politically motivated state interests prevail over business interests. Shipowners should therefore carefully track the developments in case law of the highest Russian courts and assess the extent to which this developing jurisdiction may be politically influenced.



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