

Chapter 14

Northern Sea Route: International Law Perspectives

Jędrzej Górski

City University of Hong Kong, Hong Kong

ABSTRACT

The Northern Sea Route (NSR) passes through international waters and therefore is subjected to international regimes which encroach upon the regulatory sovereignty of states having stakes in the Arctic. These commitments cover freedom and safety of navigation, delimitation of exclusive economic zones, and obligations related to sustainability such as marine pollution, or conservation of fisheries. Russia's historical claims to sovereignty over the navigation along the NSR have been substantiated after the adoption of the UNCLOS which allowed states to take regulatory actions against marine pollution in ice-covered areas. Such special rights come in tandem with the provision of public goods such as piloting, icebreaking, and rescue services by Russian authorities and state-owned enterprises. The issue of the right to natural resources along the NSR will not be completely settled until a conclusive decision on Russian claims to extended continental shelf filed under the UNCLOS. Sustainability issues are least controversial and subject to unhindered intergovernmental cooperation.

INTRODUCTION

The use of the Northern Sea Route (NSR) is chiefly Russia's development strategy, albeit with some backing of Russia's East Asian regional partners potentially benefitting from an increased freight through the NSR. At the same time, the NSR obviously passes through international waters and is subjected to multifold international regulatory regimes set forth in such fundamental documents as the United Nation Convention on the Law of the Sea (UNCLOS), relatively recent Polar Code, or dozens of documents adopted since the 1990s by organizations such as the Arctic Council (AC) or the International Maritime Organization (IMO). The primary issue which here arises is how to effectively strike a balance between legitimate interests of Russia and its potential partners incurring the cost of the development of infrastructure accompanying the NSR with the stakes of in the international community in the freedom of navigation (FON) in international waters. Numerous other issues, where international commitments might encroach upon the governance of the NSR and upon regulatory sovereignty of states having stakes in the

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Arctic, among others, include safety of navigation, delimitation of borders and of exclusive economic zones (EEZ), plus obligations related to sustainability issues such as marine pollution, conservation of fisheries, or protection of heritage sites and of indigenous peoples.

The purpose of this chapter is to review the core provisions of international instruments affecting the economic activity along the NSR with an emphasis on shipping, and to a limited extent address their implementation in Russia. This chapter starts by discussing the FON with an emphasis on the status of straits and safety of navigation along the NSR. Then it moves onto discussing the exploitation of national resources in the region with an emphasis on the Russian claims to the continental shelf. Next, this chapter covers various sustainability issues with an emphasis on marine pollution. The chapter concludes by pondering on possible solutions, further research directions, and final conclusions.

BACKGROUND

Freedom of Navigation in General

The backbone of the principle of the FON is now set forth in the UNCLOS (United Nations, 1982) also known as the Montego Bay Convention which, after the conclusion in December 1982, entered into force in November 1994 (in April 1997 for Russia), incorporating and consolidating previous agreements and customary law of the sea. The core stakeholders in the Arctic, including Canada, Denmark, Norway, Russia, and the USA, reaffirmed their commitment to obeying general rules of the law of the sea also in the Arctic in the 2008 Ilulissat Declaration stipulating that “the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims. This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We, therefore, see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures” (Danish Ministry of Foreign Affairs, 2008).

The UNCLOS incorporates FON-related customs by stipulating that in principle, within the high seas, the FON comprises (article 87):

- Freedom of navigation *sensu stricto*,
- Freedom of overflight,
- Freedom to lay submarine cables and pipelines,
- Freedom to construct artificial islands,
- Freedom of fishing,
- Freedom of scientific research.

Moreover, within the boundaries of territorial waters (twelve miles off the coast) “ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea” so long as the passage is for the purpose of

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