

UiT

THE ARCTIC
UNIVERSITY
OF NORWAY

Russian coastal State jurisdiction over commercial vessels navigating the Northern Sea Route (NSR)

Jan Jakub Solski
PhD Student at JCLOS/ UiT
Jan.solski@uit.no

Closing seminar for A-LEX: Regulating Arctic Shipping:
Political, legal, technological and environmental
challenges
9 November 2016

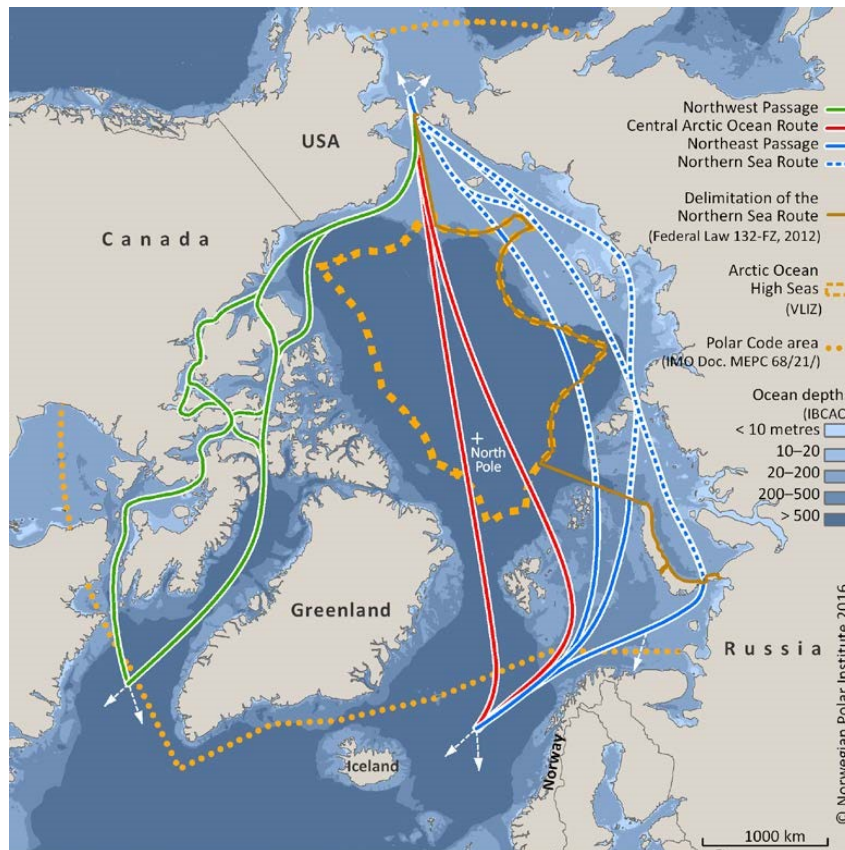


Outline of the presentation

- Setting the stage, research problem, objectives and questions
- International legal framework
- State practice of Russia and other States
- Preliminary findings

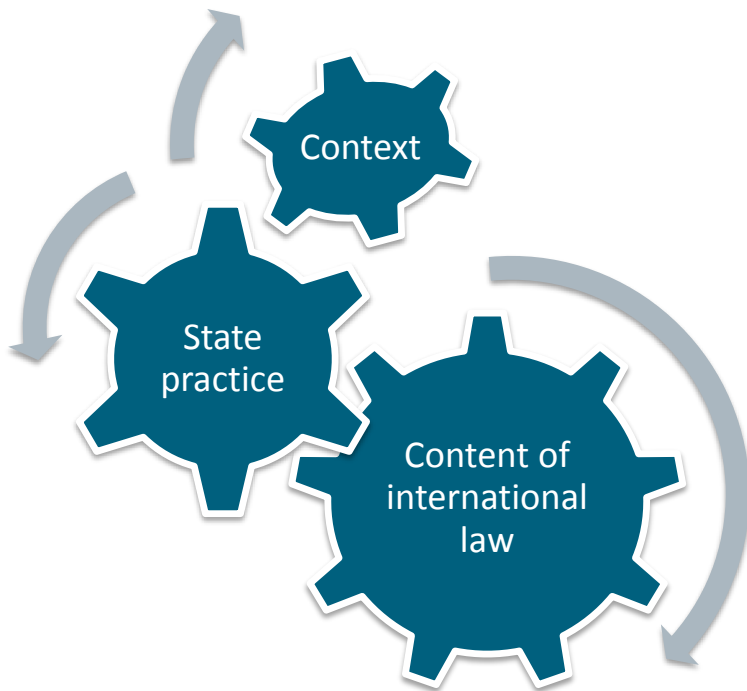


Setting the stage



- The NEP's potential for shipping
- NSR historically developed for domestic reasons – now turning into “a key commercial route of global importance”
- Distinct legal regime for the NSR – unilateral measures exceeding coastal State jurisdiction under *general law of the sea*

Russian coastal State jurisdiction over commercial vessels navigating the Northern Sea Route (NSR) – my project



- Premise:
 - State practice will clarify the rules of International law
- Research questions
 - Russia's coastal State jurisdiction under international law
 - How Russia exercises this jurisdiction

International legal framework for the regulation of Arctic shipping

- The Law of the sea, primarily the UNCLOS
 - Maritime zones
 - Regimes of navigation (balance, the role of the IMO)
- Article 234 (Arctic exception)
 - more extensive rights of a coastal State in ice-covered areas

Article 234

Article 234: Ice-covered areas

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.

Russia's prescriptive and enforcement jurisdiction on the NSR – legal framework

- Federal Law on Amendments to Specific Legislative Acts of the Russian Federation Concerning the State Regulation of Merchant Shipping in the Water Area of the NSR, dated 28 July 2012, No. 132 FZ
 - Merchant Shipping Code of the Russian Federation, No. 147-FZ
 - Federal Law No. 155-FZ “On the Internal Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation”
 - Federal Law No. 147-FZ “On Natural Monopolies”
- Rules of Navigation in the Water Area of the Northern Sea Route, approved by the order of the Ministry of Transport of Russia, dated 17 January 2013 № 7
 - 1990 Regulations revoked
- The Administration of the NSR

The international legal basis for the NSR legal regime

- Article 234
- The NSR as *historically developed national transport communication of the Russian Federation*



Controversial practice

- | | |
|--|--|
| <ol style="list-style-type: none">1. A requirement to obtain a permit\ prior authorization2. Notification and reporting obligations3. Icebreakers assistance and ice pilotage4. Fees5. Enforcement of non-compliance | <ol style="list-style-type: none">1. Most controversial, not agreeable with the US or Singapore but could make sense in the Arctic2. Less controversial, can be opposed out of principle, but makes sense to know where to keep SAR/preparedness and response resources3. Makes sense, but only no foreign icebreakers assistance permitted4. Adjusted to reflect the actual use of services, but discounts can be problematic5. Not clear |
|--|--|

Preliminary findings

- Dissonance between scholars and State practice
 - Situated in the context of the grand debate about Russia vs the West
 - But ideas precede action! The NSR regime is being refined.
- Russia's interest (and practice) coincide with the interest of global mobility
- Legality of specific practices will ultimately depend on their reasonableness and reception by the users (no IMO review)
 - General compliance by some private actors but small scale
 - US, NORDREG debate, *Arctic Sunrise*, China
- General improvement in terms of transparency and consistency with international law, but still unclear:
 - predictable application of law
 - Enforcement
 - Effect of climate change on the legal regime

Thank you!