

The Arctic, Russia and Coercion of Navigation

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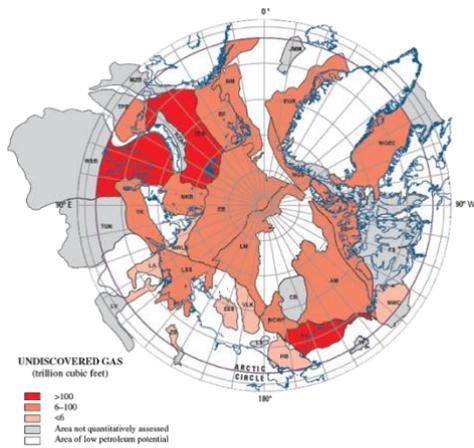
This paper considers the geographical changes enabled by sea ice melting in the Arctic Ocean, which provide higher accessibility to energy resources and shipping routes, and seeks to understand how Russia benefits from the uncertainties in the United Nations Convention on the Law of the Sea (UNCLOS) and in the International Code for Ships Operating in Polar Waters (Polar Code) as a coercion mechanism to limit freedom of navigation in the Northern Sea Route (NSR). The Arctic is a region of strategic and geopolitical importance for Russia, therefore all the possibilities enabled by climate change should be enjoyed. However, with increased accessibility to the Arctic Ocean, Russia seeks to control navigation in the NSR and ensure the protection of its national interest, through coercion of navigation. This paper discusses the uncertainties that enable Russia to consider the UNCLOS as a coercion mechanism, namely the ambiguity of Article 234, the uncertainty of international straits criteria, and the limitations in the Polar Code. It argues that the uncertainties and different interpretations in the law of the sea can influence the Russian legislation over the NSR by limiting freedom of navigation and implementing prejudicial measures toward foreign-flagged vessels. Nonetheless, through the Russian naval power, the Border Guard Service (BGS) and the Northern Fleet of the Russian Federation (Northern Fleet), and its effect of dissuasion based on sea control and sea denial activities, the Ministry of Transport of the Russian Federation (Ministry of Transport) can effectively ensure compliance with the Russian legal regime in the NSR and avoid infringements to the law.

Introduction

Sea ice melt marked a renewed geopolitical and strategic importance of the Arctic Region in the 21st Century. Although global warming brings environmental challenges and security threats, it also brings opportunities for resource exploitation and the gradual opening of shipping routes: the Northwest Passage (NWP) and the NSR.

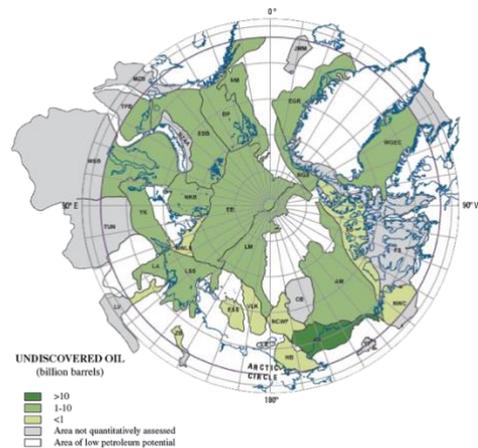
The Arctic states seek to enjoy the consequences of global warming as much as possible. The U.S. Geological Survey (USGS) estimates that approximately 84% of total Arctic gas and oil are in the Arctic continental shelf (Bird et al., 2008:4) as Figures 1 and 2 show. Thus, with less sea ice it becomes possible to exploit these resources.

Figure 1. Undiscovered gas



Source: Bird et al., 2008:3.

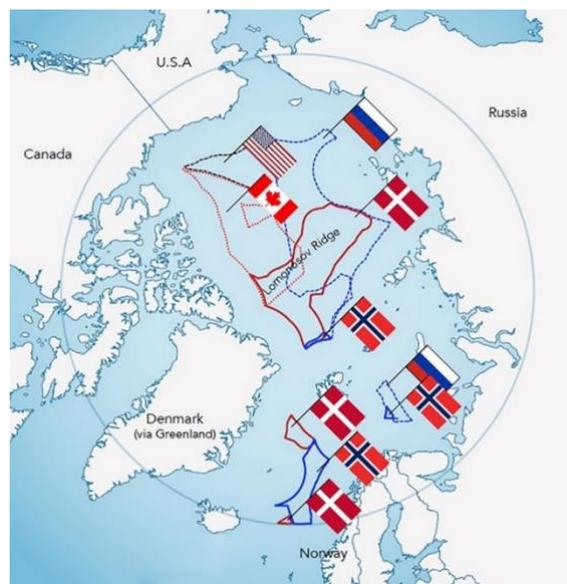
Figure 2. Undiscovered oil



Source: Bird et al., 2008:4.

The Arctic Ocean’s littoral states (Arctic Five) are seeking to extend their continental shelves to enjoy potential energy resource exploitation through submissions at the Commission on the Limits of the Continental Shelf (CLCS) (Koivurova, 2011), with the exception of the USA which has not ratified the UNCLOS. There are different views on this topic, and for instance, Balão considers that “The accessibility of previously frozen lands is triggering disputes over their sovereignty” (2012: 182, our translation) with overlapping submissions and boundary tensions (Figure 3), and Koivurova thinks that “The current consensus ... is that orderly, peaceful development will continue with respect to the continental shelf and the coastal states drawing the outer limits of their continental shelves” (2011: 221).

Figure 3. Arctic Ocean continental shelf claims



Source: The Arctic Institute, 2017.

Russia's interests in the NSR can be viewed from strategic and geopolitical perspectives. The Arctic was seen as a barrier region, inaccessible through marine transportation with great natural defense capabilities (Mackinder, 1919: 54). Nonetheless, in the 21st Century, the Arctic Ocean is opening to transportation, practically year-round in some parts (Balão, 2016: 133). Indeed, the interest in commercial shipping through the NSR is increasing, which will, according to Bai, "...result in the proliferation of shipping activity in the region" (2015: 698).

In light of increased navigation in the NSR, Russia seeks to ensure marine and safety of navigation (Todorov, 2017: 69). From a geopolitical point of view, climate change enables more accessibility and, consequently, it is important to ensure coastal and water sovereignty.

The "*Rules of Navigation in the Water Area of the NSR*" (henceforth Rules) is a Russian document that answers the question of by whom and how the NSR is managed. According to the Rules, to navigate in the NSR, a vessel, whether foreign or Russian, must submit an application form (Russian Government, 2020, Art.9) to be approved or refused by the Rosatom's Marine Operation Headquarters (henceforth Headquarters) (Rosatom, 2020, Art.1).

Much of the Russian legislation is based on Article 234 of the UNCLOS, which gives extended powers to states to engage in further activities to protect the frozen waters:

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 (UN, 1982, Art.234, emphasis added).¹

For some academics, such as Lamson, Article 234 is viewed as an ambiguous clause (Lamson, 1987: 4). Regardless, this clause exists and may be used by states to protect the most vulnerable waters, such as in the Arctic Ocean.

I argue that the uncertainty level of the UNCLOS and the Polar Code is benefiting Russia by allowing it to consider them as a coercion mechanism to be used by the Ministry of Transport to limit freedom of navigation in the NSR, bearing in mind the Russian naval power.

A coercion mechanism, from the concept of Strategy from Ribeiro (Ribeiro, 2010), means that the uncertainties in the UNCLOS and in the Polar Code function as a mechanism that triggers coercion, in this case, coercion of navigation. Indeed, the most important means in Strategy are those that enable the coercion mechanism, since Strategy is about "...edifying, disposing, and employing means of coercion in a given space and time, to materialize goals fixed by politics, overcoming problems and exploring possibilities in a disagreement environment" (Ribeiro, 2010: 22, our translation).

We emphasize the concept of Strategy because, in light of climate change, it is important for Russia to create and follow a strategy that defends its goals and interests when there are overlapping interests such as the extensions of continental shelves, or even different interpretations and

opinions on the legal status of the NSR. To pursue a strategy, Russia needs to know what means of coercion are available and how to use them. Thus, it is important to discuss the limitations of navigation, in the scope of a higher goal which is the maintenance of sovereignty.

Freedom of navigation is one of the most important principles of UNCLOS. UNCLOS contains different maritime domains that apply different navigational and overflight rights such as innocent passage through territorial seas, transit passage through international straits, archipelagic sea lanes passage through archipelagic waters, and freedom of navigation through the Exclusive Economic Zone (EEZ) (UN, 1982). For the purposes of this paper, we will be referring to freedom of navigation whenever we are addressing freedom in a general way.

Russian priorities in the Northern Sea Route

The NSR is a route located along the Northeast Passage that practically connects the Atlantic to the Pacific Ocean. Russia defines the NSR as a:

water area adjoining the northern coast of the Russian Federation, including internal sea waters, territorial sea, contiguous zone and exclusive economic zone of the Russian Federation, and is limited in the East by the line delimitating the sea areas with the United States of America and by the parallel of the Dezhnev Cape in the Bering Strait; in the West, by the meridian of the Cape Zhelanie to the Novaya Zemlya archipelago, by the east coastal line of the Novaya Zemlya archipelago and the western limits of the Matochkin Shar, Kara Gates, Yugorski Shar Straits (Duma, 2012, Art.5.1, No 1).

An international voyage through the NSR can be reduced by up to 40% when compared to the Suez Canal (Figure 4) (Todorov, 2017: 62). For instance, an international transit through the NSR between the ports of Hamburg (Germany) and Shanghai (China) will save a week of voyage, be risk-free from piracy, and save more than half a million dollars in fuel (Gavrilov, 2015: 256).

Figure 4. The NSR and the Suez Canal



Source: Yep, 2013: n/p.

Global warming has increased the strategic importance of the Arctic Zone of the Russian Federation (henceforth AZRF) as the recent official Russian documents show: (i) “*Foundations of the Russian Federation’s State Policy in the Arctic for the Period to 2035*” (Putin, 2020a) (henceforth Arctic Policy); and (ii) “*Strategy of Development of the Arctic Zone of the Russian Federation and the Provision of National Security for the Period to 2035*” (Putin, 2020b) (henceforth Arctic Strategy). These documents describe Russian interests in defense, mineral resources, and maritime transportation, as well as environmental, social, and sustainable development issues (Putin, 2020a).

The main interests identified in the Arctic Policy for the AZRF are to ensure sovereignty and territorial integrity of Russia; preserve the Arctic as a territory of peace and cooperation; ensure the well-being of people and the Indigenous peoples living in the Arctic; develop the Arctic as a strategic resource base and accelerate its contribution for economic growth; develop the NSR as a globally competitive market of transportation; and environmental protection of the Arctic (Putin, 2020a, Art.5). The Arctic Policy has also identified threats to national security, and contrary to what we may think, they are not related to external threats. Most threats come from the internal dimension, such as population decline; insufficient level of social, transportation, information, and infrastructural development; lack of geological surveys; failure to meet deadlines concerning the construction of icebreakers and Search and Rescue (SAR) equipment, and other monitoring systems in the AZRF (Putin, 2020a, Art.7).

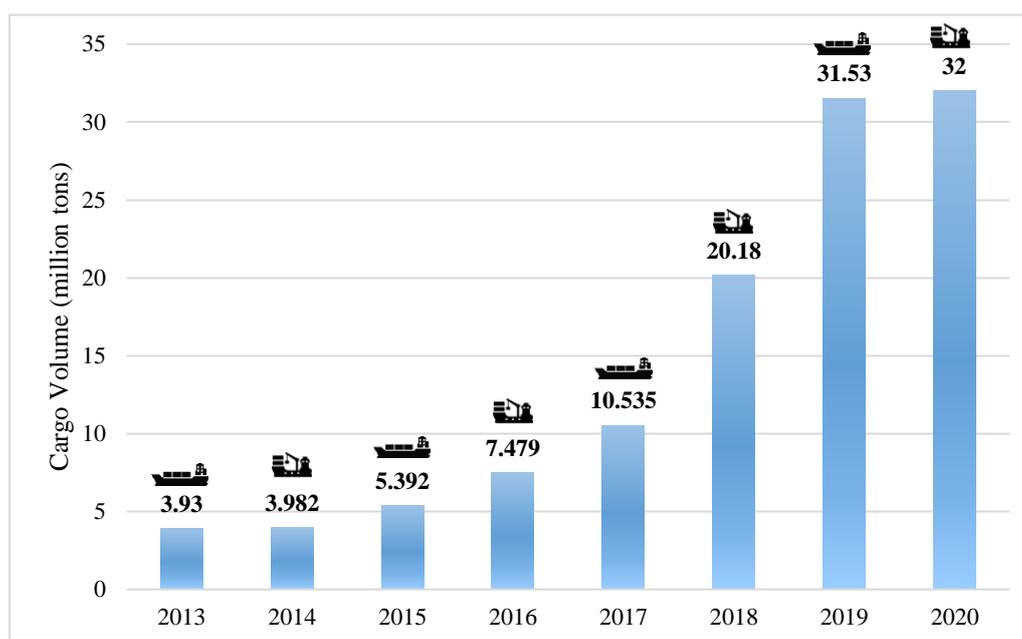
The threats to national security that Russia has identified were to be expected as external threats from NATO, especially after the annexation of Crimea in 2014, however, they were simply categorized as challenges to overcome (Buchanan, 2020: paragraph 30). These are the lack of international legal demarcation of marine spaces in the Arctic, here referring to territorial disputes; mistrust in the Russian actions and decisions in the Arctic; Arctic militarization and potential increase of conflict in the region; prevention of Russia from carrying out economic or other activities; and attempt of countries to revise the international treaties that regulate the Arctic, consequently, to establish new ones without considering current regional treaties (Putin, 2020a, Art.8).

Many of these domestic challenges came from the annexation of Crimea in 2014 and the Eastern Ukrainian civil war. Due to these events, Russia is now seen by the West as “untrustworthy and domineering in its foreign policy” (Heininen, 2019: 215) and an assertive power willing to “use military-coercive instruments to protect its national interests, including those in the Arctic” (Sergunin & Konyshov, 2018: 143).

The Russian plan for the NSR is simple: marine safety, environmental protection, infrastructure development, and economic growth.

As Putin has stated, one of the goals for the NSR is to “boost the traffic and bring it up to 80 million tons by 2025 on the Northern Sea Route” (Putin, 2019: paragraph 9), and up to 130 million tons by 2035 as the Arctic Strategy expects (Putin, 2020b). In fact, the cargo volume has been slowly increasing since 2013 and it has reached up to 32 million tons in 2020 as Figure 5 shows.

Figure 5. Cargo volume between 2013 and 2020



Source: Created by author. Data from: <https://arctic-lio.com/main-results-of-nsr-navigation-2019/> and Staalesen, 2020.

However, Russia is aware that to compete at a global level, it must develop efficient monitoring systems and SAR equipment to ensure not only the safety of navigation but also environmental protection because the Arctic climate is extremely harsh and unpredictable. The Arctic Strategy forecasts the development of seaports; more tug boats and rescue vessels, and icebreakers; the creation and development of a satellite constellation in highly elliptical orbits based on domestic equipment, providing satellite communications for users in the NSR and territories north of 70 degrees north latitude; and the development of a unified system to prevent accidents, such as oil spills (Putin, 2020b, Art.13 and 15). In fact, Russia is interested in cooperating in the scope of potential emergencies as Foreign Affairs Minister Lavrov has stated:

Given the rapid development of maritime activities and navigation, including cruise ship tourism in the Arctic, it is important to continue strengthening our capability for rapid response to possible emergencies. We favour expanding coast guard cooperation within the Arctic Forum framework (Lavrov, 2019: paragraph 10).

Russia believes that providing all the conditions to navigate safely in the NSR will be extremely beneficial to the economic growth, as navigation itself is associated with transport fees, whether from the icebreaker's assistance or shuttle transportation (Sevastyanov & Kravchuk, 2020).

Northern Sea Route legal status and Russian legislation

The US, along with Singapore (Hartmann, 2018: 291), is the main country that contests the Russian legal status of the NSR and Russia's sovereignty over it. The US does not agree with the Russian baseline drawing as they claim the baselines were drawn to enclose straits considered international in internal waters (Brubaker, 2001: 265) (Figure 6). Consequently, "The United States...contests Russia's claim to internal waters status of the Vil'kitskii, Shokal'skii, Dmitrii Laptev, and Sannikov

Straits and the drawing of straight baselines around associated island groups” (Scott & Vanderzwaag, 2015: 734) and, therefore, they should be subject to a transit passage navigational regime.

Figure 6. Russian Arctic baseline



Source: Todorov, 2017: 70.

Transit passage only applies to straits “used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone” (UN, 1982, Art.37) and it means “the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone” (UN, 1982, Art.38, No 2). According to US claims, Russia has no right to impose limitations on freedom of navigation by requesting a permit to navigate in the NSR (Todorov, 2017: 64). Additionally, the US claims that the Russian straits should be considered as international straits since there is a potential for future international shipping, while Russia considers that they cannot be international because what counts is the functional/current use perspective (Gudev, 2018: paragraph 30). It is clear that behind these claims lies the American interest in “deterrence and surveillance measures” (Brubaker & Østreg, 1999: 323-324). Furthermore, Russia is engaging in prejudicial measures that do not allow the maritime transportation of oil, natural gas, gas condensate, and coal extracted in the AZRF by foreign-flagged vessels, prioritizing ships carrying Russian flags and built in Russia (Duma, 2017, Art.4), although the UNCLOS explicitly mentions that “The coastal State shall not... discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State” (UN, 1982, Art.24, No 1b).

Russia considers the NSR as a “historically established national transport communication” route (Duma, 2012, Art.14, our translation), and navigation in its water area is “carried out with the generally recognized principles and norms in international law, international treaties and other legal

acts” (Duma, 2012, Art.14, our translation). The historic waters have the same legal navigational regime as internal waters (Fahey, 2018: 171) which means that, according to the Russian perspective, the NSR shouldn’t be subject to any navigational or overflight rights as internal waters are “all the waters that fall landward of the baseline, such as lakes, rivers, and tidewaters. States have the same sovereign jurisdiction over internal waters as they do over other territory” (Burgess et al., 2017: 12).

At the same time, Gudev argues that, due to harsh and unpredictable weather conditions, it is not possible to navigate through the NSR without entering in the internal waters (2020: 132). Consequently, it is not possible to divide the NSR into different legal navigational regimes as it is crucial to ensure the integrity of the route (Gavrilov, 2020: 4). In practice, this means that only one legal navigational regime applies to the NSR.

As we have mentioned, the current Russian legislation that applies to the entrance of the NSR, the Rules, defines that to navigate in the water area of the NSR, foreign or Russian flagged vessel must submit an application where it identifies all the characteristics of the ship annexing different certificates (Russian Government, 2020, Art.4 and 5). Then, this certificate shall be approved or refused by the Headquarters.

UNCLOS and the Polar Code as a coercion mechanism

Due to its complexity and heterogeneity, UNCLOS can easily be misunderstood. The uncertainties, limitations, and confusing terminologies can lead to different interpretations and even cause legal tensions between states (Nadarajah, 2020). In fact, in law there is a great difference between theory and practice, what it should be and what it is, and this cleavage starts to widen even more “when it involves interests that, one way or another, translate into power and the ability to exercise it” (Balão, 2012: 184, author’s translation). Therefore, in cases of high uncertainty and flexibility, law “can be used to serve various constituencies and interests” (Koivurova, 2011: 222).

There are two main uncertainties in UNCLOS that raise doubts and can be used as a mechanism to limit freedom of navigation. These are Article 234 and the uncertainty over international straits.

Bartenstein has identified two major uncertainties in Article 234. The meaning of the word “where” is ambiguous since it can be viewed from a territorial approach or even temporal one (Bartenstein, 2011: 28). Also, it is not clear to which maritime domain it applies or at which time (Bartenstein, 2011: 28). In relation to this, Dremluga notes that Article 234 must be interpreted as an ordinary meaning and not a literal one (2017: 130). While a literal meaning implies that Article 234 is limited to sea ice-covered areas, the ordinary meaning “of ‘ice-covered area’ held during the UNCLOS negotiations, and for a long period afterward, was that it is synonymous with the Arctic Ocean area” (Dremluga, 2017: 130). Furthermore, the phrase “most of the year” is not totally clear, whether it applies all year or just ice time periods (Bartenstein, 2011: 31).

Another case of uncertainty is the international straits criteria. Although the International Court of Justice has defined the criteria for international straits in the Corfu Chanel Case², the discussion about potential use versus functional/current use remains. There has not been a defined and specific number of passages for considering a strait as one used for international navigation, “it is unclear what level of international navigation is required for a strait to be appropriately classified as an international strait” (Rothwell, 2012: 270). However, the Harvard Law Review argued that Article 37 of the UNCLOS should be subject to the potential use test considering its ordinary

meaning, its context in the UNCLOS, the goals and the purpose of the UNCLOS itself, and the Vienna Convention dispositions (Harvard Law Review, 2020). Indeed, “[t]here is hardly better evidence for the potential of something to occur than the fact that it is currently occurring” (Harvard Law Review, 2020: 2599). Regardless, according to the criteria defined in the Corfu Chanel Case, Russia does not meet the criteria of a functional approach to international navigation since it remains a route for national shipping (Gunnarsson, 2021: 3) rather than international shipping. Thus, even if the international straits are not recognized as internal waters, the argument of potential use cannot be applied to the NSR since it is mostly a national route for now (Gavrilov, 2015: 260).

The Polar Code also has limitations that reinforce the use of Article 234 of the UNCLOS. In fact, Russia considers that the Polar Code is insufficient in providing safety of navigation and marine environment protection as it only applies to ships under the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) (IMO, 2014). This way, the Polar Code only applies to “ships engaged on international voyages” (IMO, 1974, Regulation 1a), that is, ships navigating “from a country...to a port outside such country, or conversely” (IMO, 1974, Regulation 2d). In this context, Article 234 remains important as it provides extra measures for the Russian action. The fact that the Polar Code does not cover all the vessels navigating through the NSR, the Rules apply to all vessels and contain all requirements that ships must present to obtain a navigation permit (Todorov, 2021: 7).

Russian legislation presents some limitations to freedom of navigation in the NSR. They claim that it is necessary to oversee navigation in the NSR to ensure safety of navigation and environmental protection, by triggering Article 234. Indeed, the increased traffic in the NSR will inevitably increase the risks of threats to the Arctic’s ecosystem. For instance, an accident with an oil tanker hitting an iceberg or other ice formation at sea could be catastrophic as it would endanger not only the environment but also the coastal population since the fishery is an important income and the main diet of those populations (Dremluga, 2017: 133). Therefore, safety of navigation and environmental protection, as well as other soft security issues such as illegal migration, smuggling, and poaching, seem to be genuine reasons for limiting freedom of navigation, especially where SAR capabilities are still being developed (Fahey, 2018: 174). Regardless of these reasons, Fahey considers that the reasons “must be balanced against the threat of ‘creeping jurisdiction’, attempts by coastal States to extend their sovereignty and jurisdictional reach over the maritime domain in a manner inconsistent with the law of the sea, unlawfully impeding freedom of the seas” (2018: 159). Although Russia aims to ensure safety of navigation and environmental protection through control of navigation in the NSR, “Russian practice does not always seem to support this goal” (Hartmann, 2018: 286).

What is really happening in the NSR is that no state, even the US, has exercised freedom of navigation activities, as the US does in the South China Sea with Freedom of Navigation Operations (FONOP) (Casarini, 2016: 2). Some academics believe that this failure to ensure freedom of navigation could lead to a tacit acceptance of the NSR’s legal regime and Russian control over it, which “may impact the formation of customary international law” (Fahey, 2018: 197).

We must not forget that Russia is not the only country that triggers Article 234 to ensure safety of navigation and environmental protection by asking for a permit to navigate in the NSR (Hartmann, 2018: 283-284). Canada acts similarly in the NWP. Canadians claim that they have sovereign rights in the NWP while the US considers this route must be subject to transit passage, just like the NSR (Todorov, 2017: 73). Also, under the Northern Canada Vessel Traffic Services Zone Regulations (NORDREG), every nongovernmental vessel is subject to a notification and authorization system (Hartmann, 2018: 284).

The uncertainties that we have discussed above are indeed being used to establish a legal regime based on Article 234 that is causing limitations on freedom of navigation and prejudicial measures. These uncertainties and different interpretations occur when a legal issue is not properly regulated “either because the content of the law is incomplete because it does not cover certain areas of a particular matter, or because the same law, covering those areas, is not sufficiently detailed...” (North Central Administrative Court, 2019: 27, our translation), thus, they can be bypassed to serve someone’s interests.

The goal here is not to stress who is right and who is wrong but to show that the UNCLOS has uncertainties that can lead to different interpretations. In this way, Article 234 provides some basis to the ones that legislate in its name. According to Russia, the Polar Code is not sufficient to protect the marine environment, so, Article 234 can give extended powers to regulate ice-covered seas. Thus, “...to control the navigation and provide vessels with hydrographical, icebreaking and other support, the coastal state should obtain all necessary information about the passing vessel” (Todorov, 2017: 69).

To sum up this section, Russia is benefiting from the uncertainties found in the UNCLOS and the limitations of the Polar Code to coerce navigation in the NSR by limiting freedom of navigation, considering that the act of coercion is the main mechanism of influence in International Relations through which “states and institutions influence the behavior of other states by escalating the benefits of conformity or the costs of nonconformity through material rewards and punishments” (Goodman & Jinks, 2004: 633).

Sea denial and sea control in the Northern Sea Route

There are two major perspectives to Arctic issues when analyzing its military reality: the competitive approach and the cooperative approach.³ Authors like Balão believe that the increased accessibility to shipping routes and energy resources of the Arctic could potentially lead to sovereignty disputes and, consequently, to an escalation of an arms race and even confrontation (Balão, 2016). Other authors such as Exner-Pirot & Murray or Heininen, believe that the Arctic is a region of great geopolitical stability, where regional order has been intentionally negotiated by the Arctic states (littoral and non-littoral) seeking to improve cooperative relations (Exner-Pirot & Murray, 2017). Furthermore, they believe that the potential for a conflict in the Arctic is unlikely due to its history and geography: “the relative sparsity of the Arctic population, and the late settlement by ethnic Europeans, means that there isn’t a recent history of territorial loss and boundary change across the region” (Exner-Pirot & Murray, 2017: 58). However, they do note that “...great powers such as the United States and Russia, will attempt to maximize their strategic and economic advantages when the opportunity presents itself, but will not make decisions that significantly increase the risk of conflict unless their survival is threatened” (Exner-Pirot & Murray, 2017: 53-54). Heininen states that “[c]urrent Arctic geopolitics is often misunderstood, particularly by the media and policy-

makers...” (2019: 219). In fact, several factors contribute to this stability, which is the existence of common interests like the decreasing of military tensions, environmental cooperation, sustainable economic development, and international scientific research cooperation (Heininen, 2019).

Contrary to this view of the Arctic’s ‘exceptionalism’, Huebert believes that the Arctic is becoming more alike with other regions, and therefore, “more common means of cooperation and competition” (Huebert, 2017: 5). Nevertheless, he mentions that the Arctic cannot simply be labeled as a region of cooperation or conflict because “...states are not preparing to go to war over resources, either real or potential, in the Arctic. However, they are also not prepared to declare the region a zone of peace nor to reduce or eliminate their military capabilities as they did in the 1990’s” (Huebert, 2013: 201).

One thing is sure, the Arctic is not going through an arms race like the one portrayed by social media. For now, “what we are seeing is a limited modernization and expansion of military installations and forces in the Arctic” (Hilde, 2013: 145).

The Russian defense policy is balanced by the International Relations schools of neorealism and neoliberalism (Sergunin & Godzimirski, 2020). Russian neorealists look at the Arctic concerns from a security perspective and express great worries over Russian sovereignty and territorial integrity and, at the same time, they view International Law as an “instrument for resisting foreign encroachments on Russia’s sovereign rights and maintaining control over its Arctic spaces/resources/transport/communications” (Sergunin & Godzimirski, 2020: 28). In contrast, Russian neoliberals argue that the Arctic has lost its military importance after the end of the Cold War and look at this region from a common mankind heritage perspective that should be preserved and developed within a cooperative framework (Sergunin & Godzimirski, 2020).

It is true that the Arctic lost its military importance regarding concerns about a potential confrontation between the North Atlantic Treaty Organization (NATO) countries and the Soviet Union. However, climate change not only brings opportunities but also new challenges and threats to every country’s national security. The hard security dimension is still important for the Arctic military balance. Indeed, the Russian agenda is concerned with “responding NATO countries’ increased military preparations and activities as well as ascertaining Russia’s national sovereignty over its Arctic sector” (Sergunin & Konyshchev, 2018: 32). But there are also soft security issues that neoliberalism is concerned about. Marine pollution by greywater and ballast water discharges, potential oil spills, poaching, illegal fishing and overfishing, illegal migration, smuggling, as well as “violation of the Polar Code requirements and potential attacks on critical industrial objects (oil and gas rigs, pipelines, cables, floating nuclear plants, etc.)” (Sergunin & Gjørsv, 2020: 268) are many of the soft security threats in the Arctic (Sergunin & Godzimirski, 2020: 35). Now, the military is not exclusively engaged with hard security issues, but soft security issues as well. The Russian Armed Forces are now performing “SAR operations, monitoring air and maritime spaces, providing navigation safety, mitigating natural and man-made catastrophes (such as responses to oil spills) ...” (Sergunin & Konyshchev, 2019: 186).

The protection of the AZRF’s coastline and waters, and Russia’s economic interests, is mainly done by the Northern Fleet and the Border Guard Service (BGS) and the Coast Guard (Sergunin & Konyshchev, 2017: 173). Although the Northern Fleet does not operate directly in the NSR, it is important because one of the entries to the NSR is through the Barents Sea, which is where the Northern Fleet Joint Strategic Command is located (Figure 7, in orange).

The strategic importance of this region is determined by the fact that it is home to strategic submarines and Ballistic Nuclear-Powered Submarines (SSBNs), (Baev, 2018: 410); it is of great utility in “in denying American sea power free access through North Atlantic...” (Gray, 1977: 42); and it is an important part of the Bastion Concept (Boulègue, 2019: 7). Therefore, this strategic zone is extremely important for projection of the Russian naval power and the demonstration of sovereign rights in the AZRF (Sergunin & Godzimirski, 2020: 33).

Figure 7. Military districts of the Russian Federation



Source: <https://structure.mil.ru/structure/okruga/north/news.htm>. Edited by author.

Naval power can be defined as a country’s capacity in surface, subsurface, and air naval units, which aims to defend a country’s maritime interests (Carvalho, 1982: 126) whether they are “the navies, coast guards, the marine or civil” (Till, 2009: 21). In fact, the main mission of naval power is naval presence, and the greater it is, the greater the power of dissuasion (Carvalho, 1982: 127). Dissuasion can be defined as an “effort...to convince a country or a coalition to refrain from courses of action that would menace... [a country’s] interests and goals” (Kugler, 2002: 1). Occasionally, dissuasion is confused with deterrence, however, as dissuasion “arises in a different, less confrontational place” than deterrence (Kugler, 2002: 1). Deterrence is “the logic of direct military coercion applied against a hostile, well-armed enemy” in a context of a war horizon (Kugler, 2002: 1).

Russia is seeking to increase its naval power through the modernization of conventional forces (surface and conventional submarines), as well as strategic nuclear forces of the Northern Fleet (SSBNs) (Sergunin & Konyshchev, 2017: 2017). The strategic forces “remain not only a key element of the Russian military strategy, but also as a symbol and guarantee of Russia’s great power status” (Sergunin & Konyshchev, 2018: 144). However, the Russian military agenda is viewed from a pejorative perspective that the militarization concept emphasizes. It is relevant to say that pure militarization occurs from the moment a country decides to develop its military units, whether “physical military equipment or events, such as new military bases or training exercises” (Choi, 2020: 2). Needless to say, all Arctic littoral states value their sovereignty and national interests and, consequently, have their own military agendas to protect them (Konyshchev & Sergunin, 2019).

The Bastion Concept, a soviet strategy, is still important for Russia’s national security as it seeks to ensure the protection of the Kola Peninsula and access of Northern Fleet’s SSBNs into the Atlantic Ocean, and further through sea control and sea denial activities (Boulègue, 2019: 7) (Figure 8).

Figure 8. Bastion concept and the Greenland – Iceland – United Kingdom (GIUK) gap



Source: Nilsen, 2019: n/p and Mikkola, 2019: n/p. Edited by author.

Indeed, sea control and sea denial activities are very important for demonstrating a nation's naval power. However, for this to be perceived, a nation's naval power should be visible to others, otherwise, it loses its mission:

...in order to function, naval power must be perceived. Invisible warships whose existence is kept in secret do not encourage friends, deter enemies, or stimulate neutrals...These imaginary warships may be perfect weapons of war, but their political utility is zero (Luttwak, 1973: 38).

Sea control aims at “acquiring and securing the privilege to utilize the maritime space in the period of time as expected” (Chang, 2018: paragraph 3) and, usually, it is obtained by naval presence. Once obtained, a country can start to develop actions without foreign intervention to project its naval power and imply that it could “pose a threat of, and carry out, amphibious assault on the enemy shore” (Vego, 2008: 15). The goal of sea control activities is “not to use the sea oneself, but to prevent the enemy from doing so” (Till, 2009: 153). Therefore, sea control should be focused on shipping routes and communication lines as underwater cables since the sea is mainly used for these purposes (Chang, 2018: paragraph 10).

In contrast, sea denial activities can be an alternative to sea control with the goal to exclude or “prevent an enemy from using the sea to do them harm” (Till, 2009: 154) or they can be a complement to sea control (Till, 2009: 154).

Therefore, through sea control and sea denial activities, Russia can be present at sea and project “power to command or influence events ashore” (Till, 2009: 155). As Till says, “Sea control is therefore the fundamental capability of the navy...Sea control is absolutely necessary, the thing without which all other naval missions, and most national missions, precariously risk catastrophic failures” (Till, 2009: 155). Indeed, “The real reward for having command, or control, of the sea is the capacity to use it for your strategic purposes and to deny its use to any adversary” (Till, 2009:

184). And, in sum, according to Till, there are two types of strategic uses: “the capacity to project military power ashore and to use the sea as a means of transportation” (2009: 184). Evidently, the Russian naval power is not only about the Northern Fleet. As Till said, seapower can be composed by navies, coast guards, or even civil authorities (2009: 21).

The BGS contributes to Russian naval power as an important government agency for Arctic shipping because it is “responsible for border controls, economic security and prevention of various illegal activities in the Russian EEZ” (Sergunin & Gjørsv, 2020: 263). Due to the high role of the BGS in protecting internal and external threats in the NSR, one of Russia’s top priorities is to strengthen the BGS with “plans to build 20 border guard stations along the Arctic Ocean’s coastline” (Konyshev & Sergunin, 2019: 185).

Both the Northern Fleet and the BGS can create a general disposition to inaction (Sala, 2015: 522) which will necessarily reduce the intention of others to violate Russian law. That is, the higher level of naval power, the higher power of dissuasion. Sea control and sea denial activities are very important for any Navy because due to them, a country gains the capability to influence others.

Conclusion

As we know, Russian control and the legal status of the NSR has been criticized, especially, by the US who claims that some parts should not be regulated by Russian law. The interest in understanding the balance between freedom of navigation and what is disposed in the UNCLOS and the Polar Code has led to the conclusion that the uncertainties of the UNCLOS and the limitations of the Polar Code are benefiting the Russian legislation in the NSR, and that naval power goes hand in hand with these uncertainties.

However, one thing must be mentioned here: the Rules are also mandatory for Russian-flagged vessels, and not exclusively for foreign-flagged vessels. That is, with the argument to ensure environmental protection and safety of navigation it is necessary to control the traffic in the NSR, including both foreign and Russian vessels. Thus, as data shows, not only foreign-flagged vessels receive refusals but Russian-flagged do as well (Table 1).

Table 1. Total vessel refusals

Year	2013	2014	2015	2016	2017	2018	2019	2020	TOTAL
Foreign vessels refusals	18	16	6	2	2	5	1	4	54
National vessels refusals	65	14	9	1	0	11	1	15	116
Total Vessels Refusals	83	30	15	3	2	16	2	19	170

Source: Data retrieved from http://www.nsr.ru/en/rassmotrenie_zayavleniy/otkazu.html.

Between 2013 and 2020, out of a total of 170 refusals, only 54 were from foreign-flagged vessels. Most refusals are based on lack of documentation or wrong application form filling. The only case of violation of the Russian rules was made by the Dutch-flagged vessel “Arctic Sunrise” belonging to Greenpeace, which entered the waters of the NSR without a navigation permit after its 3rd refusal in 2013 (Northern Sea Route Administration, 2013). The truth is that Russia cannot completely control the NSR. The goal of boosting navigation and promoting a globally competitive route would be choked by an excessive legal regime.

Regardless, the uncertainties of the UNCLOS and the limitations of the Polar Code benefit the protection of the Russian interests in the NSR by shaping its own legislation:

The Russian policy-makers and specialists in international law pay a great attention to the use of law to protect Russia's national interests in the Arctic and shape a legal order in the region to the benefit of Moscow that is interested to promote usage of the NSR for international shipping, but within its own jurisdiction (Sevastyanov & Kravchuk, 2020: 231).

The fact is that freedom of navigation in the NSR is being restricted by default from the moment that the Ministry of Transport asks for a form to navigate in the NSR and for refusal or approval by the Headquarters. As Fahey mentions "If foreign-flagged vessels must request express permission from the NSRA [Northern Sea Route Administration] to even enter the water area of the Northern Sea Route as the default, then that requirement of the NSRA Navigation Rules appears to resemble a de facto prohibition against navigation..." (2018: 181).

From a geopolitical point of view, in light of the increased accessibility to the Russian Arctic coast, Russia seeks to maintain sovereign rights, however, at the same time, Russia wants to boost Arctic shipping in a sustainable environment where it needs to verify if vessels are complying with the Rules to protect the fragile Arctic environment and safety of navigation.

Although UNCLOS presents uncertainties and different interpretations, it is an extremely important binding instrument that "cement[s] the relationship of states" (Nadarajah, 2020: 1). Without it, it "could have led to a pastiche of national rules and regulations that would foster ineffective management of resources, undermine maritime safety, and open the way for disputes and conflict over boundaries and access to seas and waterways" (Antrim, 2016: 44-45).

When we state that the uncertainties in the UNCLOS and the limitations in the Polar Code enable the coercion mechanism, we are not addressing material rewards or punishments. The coercion mechanism must be triggered by something, which in this case are the military modernization programs and, consequently, Russian naval power.

The Russian military modernization programs seek to increase its naval power, whether we are talking about the navies or the coast guard. Constructing and modernizing naval assets enable greater presence at sea, acquired by sea control and sea denial activities, which in turn, increases the power of dissuasion. Dissuasion is extremely important since it has the power to influence others. Therefore, Russian military modernization programs go hand in hand with Russian legislation. In other words, the materialization of the UNCLOS and the Polar Code as a coercion mechanism depends strongly on the power of dissuasion, which discreetly can convince others to refrain from violating activities in the NSR.

Acknowledgments

The author acknowledges the support provided by Professor Sandra Balão with helpful resources and orientation. This article is a result of a Master's dissertation in Strategy at the University of Lisbon, which is being developed under the orientation of Professor Sandra Balão.

Notes

1. “Where” and “most of the year” outlined by us.
2. See page 28 in the International Court of Justice. (1949). The Corfu Chanel Case (Merits). Retrieved from: <https://www.icj-cij.org/public/files/case-related/1/001-19490409-JUD-01-00-EN.pdf>.
3. Competitive approach and cooperative approach suggested by us.

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