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RUSSIA'S ARCTIC MARITIME CLAIMS

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ABSTRACT

As an Arctic State, Russia has extensive maritime claims in the Arctic Ocean. This Article analyzes those claims to determine their consistency with international law. A brief overview of the applicable legal regime in the Arctic is provided, in particular, a discussion of Article 234 of the United Nations Convention on the Law of the Sea (UNCLOS), applicability of the mandatory Polar Code adopted by the International Maritime Organization in 2017, and the various legally binding agreements adopted by the Arctic Council. The Article will also review Russia's maritime boundary agreements with the United States (1990), which is being provisionally applied pursuant to an exchange of notes, and with Norway (1957, 2007, and 2010). It also discusses Russia's extensive straight baseline systems in the Arctic and the Bering Sea, many of which are inconsistent with the international rules applicable to the drawing of baselines set out in the 1951 International Court of Justice decision in the Fisheries (U.K. v. Nor.) Judgment and Articles 5 and 7 of UNCLOS. The Article then analyzes Russian regulations applicable to ships transiting the Northern Sea Route, concluding that many of these provisions are inconsistent with international law. The Article concludes with a review of Russia's extended continental shelf claims in the Arctic, which was validated by the Commission on the Limits of the Continental Shelf in 2023.

INTRODUCTION

As one of the five coastal States bordering the Arctic Ocean, the Russian Federation has extensive maritime claims in the polar region. This Article will initially provide a brief overview of the applicable legal regime in the Arctic and will then examine the Russian claims to determine their consistency with international law. Topics discussed include Russia's maritime boundary agreements with the United States and Norway, its straight baseline claims along its Bering Sea and Arctic Ocean coastline, Russia's regulation of maritime traffic in the Northern Sea Route (NSR), and its recently approved extended continental shelf claim in the Arctic.

I. ARCTIC LEGAL REGIME

A. Law of the Sea

On May 28, 2008, the five coastal States bordering the Arctic Ocean—Canada, Denmark (Greenland), Norway, the Russian Federation, and the United States—adopted the Ilulissat Declaration, confirming that the legal framework contained in the United Nations Convention on the Law of the Sea (UNCLOS) applies to the Arctic Ocean.¹ Specifically, the Arctic nations agreed that UNCLOS “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.”² Accordingly, the respective coastal States determined that a new legal regime to govern the Arctic was not necessary, noting that UNCLOS provides the necessary framework for responsible management and use of the Arctic by all coastal States.

Regarding polar areas, Article 234 of UNCLOS allows coastal States 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 [EEZ], 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

1. Ilulissat Declaration, May 28, 2008, 48 I.L.M. 382.

2. *Id.*

the marine environment could cause major harm to or irreversible disturbance of the ecological balance.³

When enacting such laws and regulations, coastal States “shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.”⁴

Article 234 was negotiated directly between Canada, the Soviet Union, and the United States and adopted by the Conference without opposition.⁵ The Article aims to balance coastal State interests in ice-covered areas within the EEZ with the interests of other states in international navigation.⁶ This balance is secured by Article 297(1)(a), which provides that disputes concerning the interpretation or application of the Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction in the EEZ are subject to compulsory dispute settlement when another State alleges that the coastal State has acted in contravention of the provisions of the Convention regarding freedoms of navigation and overflight, laying of submarine cables and pipelines, or other internationally lawful uses of the sea specified in Article 58.⁷ Additionally, warships and other sovereign immune vessels do not come within the scope of Article 234 and are therefore not required, as a matter of law, to comply with coastal State vessel-source pollution control measures.⁸

Article 234 thus allows Arctic coastal States to unilaterally adopt and enforce “nondiscriminatory laws and regulations for the prevention, reduction, and control of marine pollution” in ice-covered areas within the EEZ.⁹ These laws and regulations must, at a minimum, apply international rules and standards, but may be more stringent and do not require review

3. U.N. Convention on the Law of the Sea, art. 234, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

4. *Id.*

5. Shabtai Rosenne & Alexander Yankov, eds., *United Nations Convention on the Law of the Sea 1982: A Commentary*, 4 *CTR. FOR OCEANS L. & POL'Y UNIV. OF VA.* 392, 396 (1991) [hereinafter *VIRGINIA COMMENTARY IV*].

6. *Id.* at 393.

7. UNCLOS, *supra* note 3, at 502.

8. *Id.* at 494 (“The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.”); *VIRGINIA COMMENTARY IV*, *supra* note 5, at 396.

9. *VIRGINIA COMMENTARY IV*, *supra* note 5, at 393, 396.

by the International Maritime Organization (IMO).¹⁰ Additionally, they must have due regard to navigation and to the protection and preservation of the marine environment based on the best available scientific evidence.¹¹ Finally, such laws and regulations may only be applied within the limits of the EEZ that are ice-covered for most of the year, where particularly severe climatic conditions create obstructions or exceptional hazards to navigation, and where vessel-source pollution could cause major harm to or irreversible disturbance of the ecological balance.¹² Within the EEZ in ice-covered areas, Article 234 is *lex specialis*; beyond the 200 nautical mile limit, the remaining provisions of Part XII of the Convention regarding protection and preservation of the marine environment apply.¹³

B. Polar Code

The Arctic Council was established in 1996 as a high-level forum to (inter alia) “provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.”¹⁴ With the increased use of Arctic waters for tourism and shipping, the Council works with the IMO to strengthen existing measures and develop new measures to improve the safety of

10. UNCLOS, *supra* note 3, at 484. Normally, coastal states may, in respect of their EEZ, adopt laws and regulations for the prevention, reduction, and control of pollution from vessels that conform and give effect to generally accepted international rules and standards established through the IMO or general diplomatic conference. *Id.*

11. UNCLOS, *supra* note 3, at 493.

12. VIRGINIA COMMENTARY IV, *supra* note 5, at 396; UNCLOS, *supra* note 3, at 493.

13. VIRGINIA COMMENTARY IV, *supra* note 5, at 393. *Lex specialis* is a Latin phrase which means “law governing a specific subject matter.”

14. Declaration on the Establishment of the Arctic Council, Sept. 19, 1996, 35 I.L.M. 1387 [hereinafter Ottawa Declaration]. Members of the Arctic Council include Canada, Denmark (Greenland), Finland, Iceland, Norway, the Russian Federation, Sweden, and the United States. *Id.* The Inuit Circumpolar Conference, the Saami Council, the Russian Association of Indigenous Peoples of the North, Aleut International Association, Arctic Athabaskan Council, and the Gwich'in Council International are Permanent Participants in the Council. *Id.* Observer status in the Council is open to non-arctic states; inter-governmental and inter-parliamentary organizations, global and regional; and non-governmental organizations that the Council determines can contribute to its work. *Id.*

maritime navigation and prevent or reduce the risk of ship-based pollution in the Arctic Ocean.¹⁵

Given the increase in volume and diversity of polar shipping, safety of life at sea and protection of the marine environment is a matter of concern for the IMO.¹⁶

Ships operating in the Arctic and Antarctic environments are exposed to a number of unique risks. Poor weather conditions and the relative lack of good charts, communication systems and other navigational aids pose challenges for mariners. The remoteness of the areas makes rescue or clean-up operations difficult and costly. Cold temperatures may reduce the effectiveness of numerous components of the ship, ranging from deck machinery and emergency equipment to sea suction.¹⁷

Additionally, the presence of ice imposes additional loads on a ship's hull, propulsion system, and appendages.¹⁸

In 2009, the IMO adopted recommendatory guidelines to enhance maritime safety and pollution prevention standards beyond the existing requirements in the International Convention for the Safety of Life at Sea Convention (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL).¹⁹ On January 1, 2017, a mandatory Polar Code under both SOLAS and MARPOL entered into force.²⁰ The Polar Code "covers the full range of design, construction, equipment, operational, training, search and rescue and environmental protection matters relevant to ships operating in the inhospitable waters surrounding the two poles."²¹ Mandatory measures regarding safety and pollution prevention are included in Parts I-A and II-B, respectively, while

15. *Navigating Arctic Waters with the Arctic Counsel and the International Maritime Organization*, ARCTIC COUNCIL (Nov. 27, 2020), <https://arctic-council.org/news/navigating-arctic-waters-with-the-arctic-council-and-imo/> [https://perma.cc/7ZJY-LLMK].

16. The IMO is a specialized agency of the United Nations empowered to establish global standards for the safety, security, and environmental performance of international shipping.

17. Int'l Maritime Org. [IMO], *Shipping in Polar Waters*, [hereinafter *Shipping in Polar Waters*], <https://www.imo.org/en/MediaCentre/HotTopics/Pages/polar-default.aspx> (last visited Jan. 1, 2024) [https://perma.cc/LH68-LTPF].

18. *Id.*

19. IMO Doc. Res. A.1024(26), Guidelines for Ships Operating in Polar Waters, Dec. 2, 2009 [hereinafter *Polar Code*].

20. Res. MEPC.264(68), International Code for Ships Operating in Polar Waters (Polar Code), IMO Doc. MEPC 68/21/Add.1, Annex 10, May 15, 2015.

21. *Shipping in Polar Waters*, *supra* note 17.

recommendatory provisions concerning safety and pollution prevention are contained in Parts I-B and II-B, respectively.²²

Ships intending to operate in polar waters must apply for a Polar Ship Certificate, which classifies vessels as

Category A ship - ships designed for operation in polar waters at least in medium first-year ice, which may include old ice inclusions; Category B ship - a ship not included in Category A, designed for operation in polar waters in at least thin first-year ice, which may include old ice inclusions; or Category C ship - a ship designed to operate in open water or in ice conditions less severe than those included in Categories A and B.²³

Prior to issuing a certificate, an assessment will be undertaken to consider “the anticipated range of operating conditions and hazards the ship may encounter in the polar waters.”²⁴ The assessment will also identify “operational limitations, and plans or procedures or additional safety equipment necessary to mitigate incidents with potential safety or environmental consequences.”²⁵

Ships operating in polar waters must additionally carry a Polar Water Operational Manual that provides owners, operators, masters, and crew “with sufficient information regarding the ship’s operational capabilities and limitations in order to support their decision-making process.”²⁶ The Polar Code sets goals and functional requirements, to include those covering ship structure (Part I-A, chapter 3); stability and subdivision (Part I-A, chapter 4); watertight and weathertight integrity (Part I-A, chapter 5); machinery installations (Part I-A, chapter 6); operational safety; fire safety/protection (Part I-A, chapter 7); life-saving appliances and arrangements (Part I-A, chapter 8); safety of navigation (Part I-A, chapter 9); communications (Part I-A, chapter 10); voyage planning (Part I-A, chapter 11); manning and training (Part I-A, chapter 12); prevention of oil pollution (Part II-A, chapter 1); prevention of pollution from noxious liquid substances from ships (Part II-A, chapter 2); prevention of pollution by sewage from ships (Part II-A, chapter 4); and prevention of pollution by discharge of garbage from ships (Part II-A, chapter 5).²⁷

22. Polar Code, *supra* note 20.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*; see also Polar Code, *supra* note 20, at 12-14.

27. Polar Code, *supra* note 20.

C. Arctic Council Agreements

The Arctic States have negotiated three legally binding agreements under the auspices of the Arctic Council that seek to enhance international cooperation on issues related to maritime search and rescue (SAR), marine oil pollution, and Arctic scientific cooperation.²⁸

The Arctic SAR Agreement coordinates life-saving international maritime and aeronautical SAR coverage and response among the Arctic States in the Arctic.²⁹ The agreement was negotiated to improve SAR response in the Arctic by requiring the Arctic States to coordinate assistance to those in distress at sea and cooperate with each other in undertaking SAR operations.³⁰ The agreement defines the area of the Arctic in which each State has lead responsibility in organizing responses to SAR incidents.³¹ SAR assistance will be provided regardless of the nationality or status of persons in distress.³²

The Arctic Marine Oil Pollution Preparedness and Response Agreement seeks to strengthen cooperation, coordination, and mutual assistance among the Arctic nations on oil pollution preparedness and response to protect the Arctic marine environment.³³ The Arctic Science Agreement facilitates access by scientists of the eight Arctic States to Arctic areas.³⁴ Specifically, the agreement includes provisions on entry and exit of persons, equipment, and materials; access to research infrastructure and facilities; and access to research areas.³⁵ Additionally, the agreement encourages the Arctic States to promote education and training of scientists working on Arctic matters.³⁶

28. *Arctic Region Office of Ocean and Polar Affairs*, U.S. DEP'T OF STATE, <https://www.state.gov/key-topics-office-of-ocean-and-polar-affairs/arctic/> (last visited Feb. 11, 2024) [<https://perma.cc/7Q2K-7CX7>].

29. Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, May 12, 2011, T.I.A.S. No. 13-119 [hereinafter Arctic SAR Agreement].

30. *Id.* at art. 2-3, 9.

31. *Id.*

32. *Id.*

33. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, May 15, 2013, T.I.A.S. No. 16-325.

34. *Id.*

35. *Id.*

36. Agreement on Enhancing International Arctic Scientific Cooperation, May 11, 2017, T.I.A.S. No. 18-523.

II. MARITIME BOUNDARIES

A. *United States-Russia Agreement*³⁷

In 1867, Russia ceded Alaska to the United States for the sum of \$7.2 million.³⁸ The Treaty of Cession transferred “all the territory and dominion” possessed by Russia on the American continent and the adjacent islands contained within the geographical limits set out in Article I.³⁹ Given that the maximum breadth of the territorial sea in 1867 was three nautical miles, the treaty did not establish a maritime boundary between the two nations.⁴⁰

Nonetheless, in 1977, the United States established a 200 nautical mile fishery conservation zone.⁴¹ The following year, the Soviet Union reciprocated, declaring a comparable two-hundred nautical mile fisheries zone.⁴² The opposing fisheries zones resulted in several overlapping areas along the 1867 treaty line. Negotiations to establish an acceptable maritime boundary between the two nations began in 1981 to resolve several outstanding issues.⁴³

The United States argued that the line described in Article I of the 1867 treaty was the maritime boundary. However, “the two sides applied differing cartographic techniques to depict” the 1867 treaty line.⁴⁴ The United States used arcs of great circles, while the Soviets used a rhumb line.⁴⁵ Both sides also disagreed on the geographic location of one of the

37. For a history of the negotiation of the 1990 maritime boundary agreement, see generally John H. McNeill, *America's Maritime Boundary with the Soviet Union*, 68 INT'L STUD. SERIES US NAVAL WAR COLL. REV. 219 (1995); S. TREATY DOC. NO. 101-22 (1990) [hereinafter S. TREATY DOC. 101-22].

38. U.S. Dep't. of State, *Milestones: 1866-1898*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1866-1898> (last visited Jan. 29, 2024) [<https://perma.cc/X5GK-LCF5>].

39. Treaty Concerning the Cession of the Russian Possessions in North America by His Majesty the Emperor of all the Russias to the United States of America, Russ.-U.S., Mar. 30, 1867, 15 Stat. 539.

40. John H. McNeill, *America's Maritime Boundary with the Soviet Union*, 44 NAVAL WAR COLL. REV. 46, 47 (1991).

41. Fishery Conservation and Management Act of 1976, H.R. Res. 200, 94th Cong. § 101 (1976) (enacted).

42. *Decree of the Presidium of the Supreme Soviet of the USSR on the Economic Zone of the USSR*, 13 GAZETTE OF THE SUPREME SOVIET OF THE USSR, 217, 217 (1977).

43. McNeill, *supra* note 40, at 47.

44. S. TREATY DOC. 101-22, *supra* note 37, at V.

45. Arcs of great circles “approximate the shortest distance between points on the surface of the earth” and “appear as straight lines on a conic projection of the earth.” A

points described in the 1867 treaty as a basis for constructing the treaty line.⁴⁶ The result of these differences was “a chord-shaped area in the Bering Sea—approximately 18,000 square nautical miles—that each side asserted to be on its side” of the treaty line.⁴⁷ Finally, there were areas on the United States side of the treaty line that were “within 200 nautical miles of the Soviet coast but beyond 200 nautical miles of the U.S. coast”⁴⁸ Similarly, there was one area in the Bering Sea on the Soviet side of the treaty line that was “within 200 nautical miles of the U.S. coast but beyond 200 nautical miles of the Soviet coast.”⁴⁹ Use of the treaty line as the maritime boundary would have “prevented exclusive economic zone claims in special areas by one Party where the other Party could not make such claims.”⁵⁰ As a result, fishery resources in these “special areas” would not be subject to either side’s jurisdiction.

These issues were resolved in June 1990 with the signing of the U.S.-Russia Maritime Boundary Agreement, which establishes the maritime boundary between the United States and the Soviet Union in the North Pacific Ocean, Bering and Chukchi Seas, and the Arctic Ocean.⁵¹ It is the longest maritime boundary in the world.⁵² Article 1 of the agreement establishes the boundary as the “western limit” in Article 1 of the 1867 treaty.⁵³ Given the different depictions of the treaty line using arcs of great circles or a rhumb line, the agreed boundary provides each side with “one-half of the aggregate of the areas in the Bering Sea in which the assertion of exclusive economic zone jurisdiction by either or both parties was disputed”⁵⁴ One issue left unresolved is the terminal point of the boundary line in the central Arctic Ocean.⁵⁵

Article 3 of the agreement “provides for the transfer of sovereign rights and jurisdiction in the special areas from the Party that could claim such rights and jurisdiction . . . to the Party that could not.”⁵⁶ This transfer

rhumb line is “a line of constant compass bearing that appears as a straight line on a Mercator projection.” *Id.* at VI.

46. McNeill, *supra* note 40, at 48.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. S. TREATY DOC. 101-22, *supra* note 37, at V.

52. McNeill, *supra* note 40, at 46.

53. S. TREATY DOC. 101-22, *supra* note 37, at VII.

54. *Id.* at VI.

55. Viatcheslav Gavrilov et al., *Canada and the Russian Federation: Maritime Boundaries and Jurisdiction in the Arctic Ocean*, 13 ARCTIC REV. ON L. & POL. 219, 224 (2022).

56. S. TREATY DOC. 101-22, *supra* note 37, at VI.

of jurisdiction allows both sides “to achieve their common interest in assuring that all waters within 200 nautical miles of either or both coasts are subject to the fisheries jurisdiction of one or the other Party.”⁵⁷ Thus, the United States may exercise sovereign rights and jurisdiction in the three eastern special areas (two in the Bering Sea and one in the Chukchi Sea) and the Soviet Union may exercise such rights in the one western special area (in the Bering Sea).

The agreement was submitted to the United States Senate for advice and consent and to the Soviet Duma for ratification. The United States ratified the treaty in 1991; however, before the Duma could act, the Soviet Union collapsed, and the agreement has not been ratified by the Russian Federation.⁵⁸ Nonetheless, pursuant to an exchange of notes, “pending the entry into force of the Agreement, the two Governments agree” to abide by its terms as of June 15, 1990.⁵⁹

B. Norway-Russia Agreement

In 1957, Norway and the Soviet Union signed an agreement delimiting their continental shelf in the Varangerfjord.⁶⁰ The boundary extends northeasterly for 24.35 nautical miles from frontier marker No. 415 (end of the Norway-Soviet Union international boundary) “to its terminus at the midpoint of the Cape Kibergnes-Cape Nemetsky Line.”⁶¹ The boundary line did not, however, extend into the Barents Sea.

After Norway and the Soviet Union claimed continental shelf rights in 1963 and 1968, respectively, the parties initiated informal discussions in 1970 to delimit their maritime boundary in the Barents Sea.⁶² The talks collapsed after the parties could not agree on a method to define the boundary. Norway argued that the boundary line should be the median line between the respective coasts.⁶³ The Soviets argued that, based on several

57. *Id.*

58. CIA, 2022 WORLD FACTBOOK ARCHIVE, <https://www.cia.gov/the-world-factbook/about/archives/2022/field/disputes-international/> (last visited Jan. 30, 2024) [<https://perma.cc/8ZW7-RN8N>].

59. See Gavrilov et al., *supra* note 55, at 224.

60. Agreement Concerning the Sea Frontier between Norway and the USSR in the Varanger Fjord, Nor.-U.S.S.R., Feb. 15, 1957, 312 U.N.T.S. 322 [hereinafter Sea Frontier Agreement].

61. *Id.*

62. Thilo Neumann, *Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean*, AM. SOC'Y OF INT'L L., (Nov. 10, 2010), <https://www.asil.org/insights/volume/14/issue/34/norway-and-russia-agree-maritime-boundary-barents-sea-and-arctic-ocean> [<https://perma.cc/E6PG-QDGC>].

63. *Id.*

special circumstances, the boundary should coincide with the sector line (meridian of longitude 32° 04' 35" E).⁶⁴ The different delimitation approaches resulted in an overlapping area between the median and sector lines of over 155,000 square kilometers in the Barents Sea and 20,000 square kilometers in the Arctic Ocean.⁶⁵

Intermittent discussions over the next four decades resulted in an amendment to the 1957 Agreement in 2007.⁶⁶ The new agreement extended the 1957 boundary line from 24.35 to 39.41 nautical miles, terminating at the intersection of the median and sector lines in the Barents Sea.⁶⁷ The dispute was finally resolved in 2010 when the parties agreed to a 907 nautical mile boundary delimiting their exclusive economic zone (EEZ) and continental shelf claims in the Barents Sea and Arctic Ocean.⁶⁸

The 2010 line begins at the terminus of the 2007 amendment and ends in the Arctic Ocean at a point where the line connecting the continental shelf of both nations intersect.⁶⁹ The new agreement delimits the maritime zones generated by both the mainland coasts of the parties and the Svalbard archipelago, and Russia's Franz Josef Land and Novaya Zemlya archipelago.⁷⁰ It also defines two areas of extended continental shelf in the Arctic and the "loop hole" in the Barents Sea.⁷¹ In effect, the new boundary line gives each party about half of the disputed area.⁷²

Like the United States-Russia boundary agreement, the 2010 treaty creates a 3,400 square kilometer "special area" on the Russian side of the line in the "loop hole" where Russia exercises sovereign rights and jurisdiction that would otherwise be within Norway's 200 nautical mile EEZ.⁷³ The parties are also required to continue their fisheries cooperation and coordinate their exploration of transboundary hydrocarbon

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*; Agreement between the Russian Federation and the Kingdom of Norway on the Maritime Delimitation in the Varanger Fjord Area, Nor.-Russ., Jul. 11, 2007, U.N.T.S. No. 45114 [hereinafter 2007 Treaty].

68. Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Nor.-Russ., Sept. 15, 2010, <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS2010.PDF> [<https://perma.cc/94ZZ-SV85>].

69. BUREAU OF OCEANS & INT'L ENV'T & SCI. AFF., U.S. DEP'T OF STATE, LIMITS IN THE SEA No. 148, NORWAY, MARITIME CLAIMS AND BOUNDARIES, at 26 (Aug. 28, 2020).

70. *Id.*

71. *Id.*

72. Gavrilov, *supra* note 55, at 223.

73. *Id.*; 2010 Treaty, *supra* note 67, art. 3.

resources.⁷⁴ Additionally, the northwestern terminal point of the boundary dividing the extended continental shelf is conditioned on Russia establishing the western point of its extended continental shelf consistent with the recommendations of the Commission on the Limits of the Continental Shelf (CLSC).⁷⁵ The new treaty entered into force in 2011.⁷⁶ Nonetheless, in 2022 Russian lawmakers indicated Russia may abrogate the treaty if Norway continues to block food shipments to Russian settlements in Svalbard.⁷⁷

III. RUSSIAN STRAIGHT BASELINES

A. *Applicable Legal Regime*

Generally, “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast.”⁷⁸ Nonetheless, in limited circumstances, international law allows coastal States to draw straight baselines along their coast from which their maritime zones are measured.⁷⁹ In 1951, the International Court of Justice (ICJ) recognized that, ordinarily, the low-water mark should be used to delimit the territorial sea where the coast is “not too broken.”⁸⁰ However, where the coast is

deeply indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the “skjærgaard” along the western sector of the [Norwegian] coast . . . , the baseline becomes independent of the low-water mark, and can only be determined by means of a geometrical construction Such a coast . . . calls for the application of a . . . method of base-lines

74. Neumann, *supra* note 62.

75. Gavrilov, *supra* note 55, at 223.

76. Treaty between the Russian Federation and the Kingdom of Norway concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean, Russ.-Nor., Sept. 15, 2010, 2791 U.N.T.S. 3.

77. *Russia's Speaker Asks Parliament to Look at Scrapping Norway Sea Treaty*, REUTERS (July 5, 2022, 8:15 AM), <https://www.reuters.com/world/europe/russias-speaker-asks-parliament-look-scrapping-norway-sea-treaty-2022-07-05/>.

78. UNCLOS, *supra* note 3, art. 5; Convention on the Territorial Sea and the Contiguous Zone art. 3, Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter 1958 Territorial Sea and Contiguous Zone Convention].

79. UNCLOS, *supra* note 3, art. 5; 1958 Territorial Sea and Contiguous Zone Convention, *supra* note 78, art. 4; Fisheries Case (U.K. v. Nor.), Judgment, 1951 I.C.J. 116 (Dec. 18) [hereinafter 1951 Fisheries Case].

80. 1951 Fisheries Case, *supra* note 79, at 128.

which, within reasonable limits, may depart from the physical line of the coast.⁸¹

The Court clarified, however, that the use of straight baselines was the exception, not the rule, indicating that the “base-lines must not depart to any appreciable extent from the general direction of the coast” and that the sea areas lying within the baselines must be “sufficiently closely linked to the land domain to be subject to the regime of internal waters.”⁸²

UNCLOS confirms the decision of the ICJ in the Fisheries Case. As a general rule, “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast.”⁸³ Straight baselines may be used instead of the low-water line but only “where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity.”⁸⁴ Nonetheless, UNCLOS repeats the language of the Fisheries Case, noting that “[t]he drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.”⁸⁵ UNCLOS further limits drawing straight baselines to and from low-tide elevations, “unless lighthouses or similar installations which are permanently above sea level have been built on them,” or in cases where the drawing of straight baselines to and from low-tide elevations “has received general international recognition.”⁸⁶ Straight baselines may also not be applied “in such a manner as to cut off the territorial sea of another State from the high seas or an [EEZ].”⁸⁷ Finally, when drawing straight baselines, the coastal State must consider “economic interests peculiar to the region . . . which are clearly evidenced by long usage.”⁸⁸

81. *Id.* at 128-29.

82. *Id.* at 133.

83. UNCLOS, *supra* note 3, art. 5.

84. *Id.* art. 7(1). Straight baselines may also be used “[w]here because of the presence of a delta and other natural conditions the coastline is highly unstable” and “across the mouth of [a] river between points on the low-water line of its banks” if the “river flows directly into the sea.” *Id.* art. 7(2), 9. Additionally, a straight baseline that does not exceed twenty-four nautical miles, drawn between the low-water marks of the natural entrance points of a juridical bay, can be used to close off the bay. If the “distance between the low-water marks of the natural entrance points . . . exceeds 24 nautical miles, a straight baseline of 24 nautical miles [can] be drawn within the bay . . . to enclose the maximum area of water . . . possible with a line of that length.” *Id.* art. 10(4).

85. *Id.* art. 7(3).

86. *Id.* art. 7(4).

87. *Id.* art. 7(6).

88. *Id.* art. 7(5).

International law does not provide an objective test to identify what constitutes a “deeply indented coast.” Most experts agree, however, “that there must be several indentations which individually would satisfy the conditions establishing a juridical bay . . . though there may be other less marked indentations associated with them.”⁸⁹ The judicious employment of straight baselines thus allows a coastal State to “eliminate potentially troublesome enclaves and deep pockets of non-territorial seas without significantly pushing [the] seaward” territorial sea limits away from the coast.⁹⁰ In short, straight baselines should not be used to “increase the territorial sea unduly.”⁹¹

Similarly, international law does not provide an objective test to identify what constitutes a fringe of islands along the coast. Nonetheless, most experts agree that “there must be more than one island in the fringe” and islands “arranged like stepping-stones perpendicular to the coast” would not qualify.⁹² Thus, a fringe of islands likely exists in two situations: (1) islands that appear to form a unity with the mainland, and (2) islands that mask a large portion of the coast.⁹³ Fringing islands must also be in the immediate vicinity of the coast.⁹⁴ For example, a fringe of islands twenty-four nautical miles from the coast would satisfy the requirement; a fringe of islands one hundred nautical miles from the coast would not.⁹⁵

To comply with these requirements, the United States believes that straight baselines must (1) “not depart to any appreciable extent from the general direction of the coastline, by reference to general direction lines” that in each locality do not exceed sixty nautical miles in length; (2) “not exceed twenty-four nautical miles in length”; and (3) “result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.”⁹⁶ The United States also considers that, to meet the criteria of being “deeply indented and cut into,” the coastline must meet all of the following characteristics: (1) there exists at least three deep indentations;

89. U.N. OFF. FOR OCEAN AFF. & THE L. OF THE SEA, *BASELINES: AN EXAMINATION OF THE RELEVANT PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA*, ¶ 36, U.N. Sales No. E.88.V.5 (1989).

90. *Id.* ¶ 38.

91. *Id.* ¶ 39.

92. *Id.* ¶ 43.

93. *Id.* ¶¶ 41-45.

94. *Id.*

95. *Id.* ¶ 46.

96. Message from the President of the United States transmitting the United Nations Convention on the Law of the Sea, at 9, Oct. 7, 1994, S. TREATY DOC. NO. 103-39 (1994) [hereinafter U.S. Commentary on UNCLOS].

(2) the indentations are near one another; and (3) the depth of penetration of each indentation from the proposed closing line at its entrance to the sea is greater than half the length of the straight baseline segment.⁹⁷ The United States additionally considers that a “fringe of islands along the coast in its immediate vicinity” must meet all the following requirements before straight baselines can be drawn: (1) “the most landward point of each island lies no more than [twenty-four nautical] miles from the mainland coastline”; (2) “each island to which a straight baseline is to be drawn is not more than [twenty-four nautical] miles apart from the island from which the straight baseline is drawn”; and (3) “the islands, as a whole, mask at least 50% of the mainland coastline in any given locality.”⁹⁸

B. Bering Sea

On February 7, 1984, the Soviet Council of Ministers approved a list of the geographical coordinates “defining the position of the straight baselines for measuring the breadth of the territorial sea, the [EEZ], and the continental shelf of the USSR off the continental coast and islands of the Pacific Ocean, the Sea of Japan, the Sea of Okhotsk, and the Bering Sea.”⁹⁹ Generally, the Russian coast adjacent to the “Bering Sea is smooth with few fringing islands and few localities where the coastline is deeply indented.”¹⁰⁰ These locations, therefore, do not meet the geographical criteria set forth in UNCLOS for the use of straight baselines.

None of the straight baselines used along the east coast of the Kamchatka peninsula (basepoints 94-116) meet the international legal criteria set out in UNCLOS. “The southeastern coastline, from Mys Lopaka to Mys Polosatyy (basepoints 94-105), is essentially smooth with few minor curvatures.”¹⁰¹ Four of the baselines between point 105 (Mys Polosatyy) and 116 (Mys Tavukhin) exceed sixty nautical miles—105-106 (71.1 miles), 106-107 (103.9 miles), 108-109 (81 miles), and 112-113 (62 miles)—and illicitly “incorporate broad gulfs into internal waters.”¹⁰² Russia could, however, establish twenty-four nautical mile juridical bay

97. *Id.*

98. *Id.*

99. Council of Ministers of the Union of Soviet Socialist Republics, Declaration 4604, Feb. 7, 1984, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1984_Declaration.pdf [<https://perma.cc/P5U5-4DA9>].

100. BUREAU OF OCEANS & INT’L ENV’T & SCI. AFF., U.S. DEP’T OF STATE, LIMITS IN THE SEA NO. 107, STRAIGHT BASELINES: U.S.S.R., at 4 (Sept. 30, 1987) [hereinafter LIS 107].

101. *Id.* at 6.

102. *Id.*

closing lines¹⁰³ “in this stretch of coastline, including in the immediate vicinity of Petropavlosk-Kamchatskiy and in the bay to northwest of Mys Kamchatskiy.”¹⁰⁴ Straight baselines may also be “appropriate in the area immediately to the west of basepoint 116, which would enclose Zaliv Korfa and two unnamed bodies of water to its west.”¹⁰⁵ Karaginskiy Island, however, “does not meet the fringing islands criterion” and straight baselines are, therefore, not authorized.¹⁰⁶

The next three baseline segments close off juridical bays; however, basepoints 117 and 118 “are not proper headlands to the bay situated to the northeast of point 117.”¹⁰⁷ Juridical bays also exist along the stretch of coastline including points 122-123 to 133-134, “but improper headlands have been chosen to close them off.”¹⁰⁸ Additionally, the coastline including baseline segments 122-123, 123-124, and 125-126 “is neither deeply indented nor fringed with islands” and does not warrant the use of straight baselines.¹⁰⁹

Although segment 137-138 northeast of Mys Chesma delimits a juridical bay, the coastline between basepoints 135 and 136 is a mere curvature and does not meet the international criteria for drawing straight baselines.¹¹⁰ Segment 139-140, on the northwest side of Anadyrskiy Zaliv, is in the vicinity of a juridical bay, but the closing line “is longer than the maximum allowed 24 miles and it does not connect proper headlands.”¹¹¹ Segments 141-142 (Zaliv Kresta) and segments 145-146, 147-148, 149-150, and 151-152 along the northern coast of Anadyrskiy Zaliv properly close off juridical bays; however, the coastline between basepoints 143 and 144 does not warrant the use of straight baselines as it is a mere curvature.¹¹²

The five baseline segments in the vicinity of the Bering Strait—153-154, 154-155, 156, and 157—appear “to be a reasonable employment of straight baselines” (i.e., multiple coastal indentations and the presence of several islands that mask almost fifty percent of the mainland coast or closing lines for juridical bays), although “improper headlands have been

103. See UNCLOS, *supra* note 3, art. 10.

104. LIS 107, *supra* note 100, at 6.

105. *Id.*

106. *Id.*

107. *Id.* at 6-7.

108. *Id.* at 7.

109. *Id.*

110. LIS 107, *supra* note 100, at 7.

111. *Id.*

112. *Id.*

used at basepoints 156 and 157.”¹¹³ Russia also claims straight baselines around parts of Komandorskiye Ostrova Island; however, “none of the seven baseline segments meet the straight baseline criteria.”¹¹⁴

Thus, while some of Russia’s claims along its Bering Sea coast meet the international criteria for the use of straight baselines, most do not. In these areas, the low-water line along the coast is the proper baseline for measuring the various maritime zones.

C. Arctic Ocean

On January 15, 1985, the Soviet Union Council of Ministers approved a list of the geographical co-ordinates defining the position of the baselines for measuring the breadth of the territorial sea, EEZ, and the continental shelf of the USSR off the continental coast and islands of the Arctic Ocean and the Baltic and Black Seas.¹¹⁵ The decree also declared that the “waters of the White Sea south of the line connecting Cape Svyatoy Nos with Cape Kanin Nos, the waters of [Chesha Bay (Cheshskaya)] south of the line connecting Cape Mikulkin with Cape Svyatoy/Nos (Timansky), and the waters of Baidaratskaya Bay south-east of the line connecting Cape Yuribeisalya with Cape Belushy Nos” are historic waters (internal waters) of the Soviet Union.¹¹⁶ Like the baselines along the Bering Sea, Russia’s baseline claims along its Arctic Ocean coastline are equally problematic, in particular, the straight baselines used to close off the Dmitry Laptev, Kara Gate, Sannikov, Shokalsky, and Vilkitsky Straits as internal waters.

In 1963, the USCGC *Northwind* (WAGB-282) conducted an oceanographic survey in the Laptev Sea.¹¹⁷ The following year, USS *Burton Island* (AGB-1) surveyed the East Siberian Sea.¹¹⁸ On July 21, 1964, the Soviet Union protested *Burton Island’s* operations in the Arctic indicating (inter alia) that the

Northern Seaway Route at some points goes through Soviet territorial and internal waters, [including] . . . all straits running west and east in the Karsky Sea inasmuch as they are overlapped

113. *Id.*

114. *Id.*

115. *Id.*

116. Council of Ministers of the Union of Soviet Socialist Republics, *Declaration 4450*, 1, 1 (Jan. 15, 1985), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1985_Declaration.pdf [<https://perma.cc/4WL6-MFNR>].

117. U.S. DEP’T OF STATE, BUREAU OF OCEANS AND INT’L ENV’T AND SCI. AFF., LIMITS IN THE SEA NO. 112 71 (Mar. 9, 1992) [hereinafter LIS NO. 112].

118. *Id.*

two-fold by Soviet territorial waters, as well as by the Dmitry, Laptev and Sannikov Straits, which unite the Laptev and Eastern Siberian Seas and belong historically to the Soviet Union.¹¹⁹

The Soviet Union further noted that

not one of these stated straits . . . serves for international navigation. Thus, over the waters of these straits the statute for the protection of the state borders of the USSR fully applies, in accordance with which foreign military ships will pass through territorial seas and enter internal waters of the USSR after advance permission of the Government of the USSR . . .¹²⁰

The United States responded to the Soviet protest on June 22, 1965, stating (inter alia) that the *Burton Island* was operating lawfully in the Karsky Sea.¹²¹ While the United States is sympathetic to the Soviet efforts to develop the Northern Seaway Route and

appreciates the importance of this waterway to Soviet interests, nevertheless, it cannot admit that these factors have the effect of changing the status of the waters of the route under international law. With respect to the straits of the Karsky Sea described as overlapped by the Soviet territorial waters it must be pointed out that there is a right of innocent passage of all ships through straits used for international navigation between two parts of the high seas and that this right cannot be suspended . . . In the case of straits comprising high seas as well as territorial waters there is of course unlimited right of navigation in the high seas areas. So far as the Dmitry Laptev and Sannikov Straits are concerned, the United States is not aware of any basis for a claim to these waters on historic grounds even assuming that the doctrine of historic waters in international law can be applied to international straits. For the reasons indicated the United States must reaffirm its reservations of its rights and those of its nationals in the waters in

119. *Id.*; Soviet Ministry of Foreign Affairs to the American Embassy in Moscow, *aide-memoire*, (July 21, 1964), reprinted in OFFICE OF THE LEGAL ADVISOR, CUMULATIVE DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1981-1988, BOOK II 1813 (Marian Nash (Leich), ed. 1995) [hereinafter CUMULATIVE DIGEST 1981-1988].

120. LIS No. 112, *supra* note 117.

121. *Id.*

question whose status it regards as dependent on the principles of international law and not decrees of the coastal state.¹²²

In August 1967, the United States informed the Soviet Union that the USCGC *Edisto* (WAGB-284) and USCGC *Eastwind* (WAGB-279) planned to circumnavigate and conduct oceanographic surveys in the Arctic.¹²³ The United States icebreakers planned to transit north of Novaya Zemlya and Severnaya Zemlya into the Laptev Sea and the East Siberian Sea and conduct surveys in international waters.¹²⁴ However, due to usually severe ice conditions, the United States Embassy in Moscow informed the Soviet Ministry of Foreign Affairs that it would be necessary for the ships to enter the Karsky Sea and transit the Vilkitsky Strait.¹²⁵ The Soviet Union protested the transit (by written aide-memoire and oral démarche), reiterating that passage of foreign naval vessels through the Karsky Sea and the Dmitry Laptev and Sannikov Stratis required 30-days prior notification.¹²⁶

The United States cancelled the planned operation but responded to the Soviet démarches, strongly protesting the unwarranted Soviet position regarding the “peaceful circumnavigation of the Arctic by the . . . *Edisto* and *Eastwind*.”¹²⁷ The United States note reiterated that the “circumnavigation . . . was undertaken as a part of regular scientific research operations in the Arctic Ocean” and that the United States had informed the Soviets of these operations “as a matter of courtesy.”¹²⁸ The United States further noted that the unwarranted Soviet position raised the possibility that the Soviets would “detain the vessels or otherwise interfere with their movement,” thereby forcing the United States to cancel the operation.¹²⁹ In doing so, however, the United States emphasized that the Soviet Union “bears full responsibility for denying to United States vessels their rights under international law, for frustrating this scientific endeavor,

122. American Embassy at Moscow to Soviet Ministry of Foreign Affairs, *aide-memoire* (June 22, 1965), reprinted in CUMULATIVE DIGEST 1981-1988, 1814-15 (Marian Nash (Leich), ed. 1995).

123. LIS No. 112, *supra* note 117, at 72.

124. *Id.*; Dep’t of State, File No. SCI 31 US (Aug. 14, 1967), reprinted in CUMULATIVE DIGEST 1981-1988, *supra* note 119, at 1816.

125. LIS No. 112, *supra* note 117, at 72.

126. *Id.*; CUMULATIVE DIGEST 1981-1988, *supra* note 119, at 1816-17.

127. *Id.* at 72-73; Dep’t of State to American Embassy Moscow, *Telegram 29187*, (Aug. 30, 1967), File SCI 31 US; American Embassy Moscow to Dep’t of State, *Telegram 841* (Aug. 30, 1967), reprinted in CUMULATIVE DIGEST 1981-1988, *supra* note 119, at 1817-19.

128. American Embassy Moscow to Dep’t of State, *Telegram 841* (Aug. 30, 1967), reprinted in CUMULATIVE DIGEST 1981-1988, *supra* note, 119, at 1817-19.

129. *Id.* at 1818.

and for depriving the international scientific community of research data of considerable significance.”¹³⁰

The United States further reiterated that Soviet domestic law cannot effectively change the status of waters under international law and the rights of foreign ships with respect to them [Moreover,] there is a right of innocent passage for all ships, warships included, through straits used for international navigation between two parts of the high seas, whether or not, as in the case of the Vilkitsky Straits, they are . . . overlapped by territorial waters, and that there is an unlimited right of navigation in high seas areas of straits comprising both high seas and territorial seas.¹³¹

IV. NORTHERN SEA ROUTE

The Northeast Passage (NEP) traverses the Arctic along the Eurasian coastline of the Barents, Kara, Laptev, East Siberian, and Chukchi Seas.¹³² The 2,900-mile-long Northern Sea Route (NSR) refers to the portion of the NEP that extends from the Russian islands of Novaya Zemlya to the Bering Strait—beginning at the “western entrance of the Novaya Zemlya Strait and the meridian north through Mys Zhelaniya and ending by the parallel 66°N and the meridian 168° 58’37”W.”¹³³ Although the NSR is only open for limited periods throughout the year due to ice conditions, it provides a shorter alternative—up to 35 to 60 percent shorter—for ships transiting between European and north Pacific ports relative to the traditional commercial routes through the Suez and Panama Canals.¹³⁴ Improvements in icebreaker technology have also allowed the Soviets to increase the length of the navigation season.¹³⁵

In 1967, Moscow offered “to open the Northern Sea Route to foreign shipping and provide icebreaking support for a fee”¹³⁶ A demonstration voyage was conducted “in which a Soviet ship transported

130. *Id.*

131. *Id.* Although the Dmitry Laptev and Sannikov Straits were not involved in this case, the U.S. note reiterated that the United States was not aware of any basis for Soviet claims to these waters. *Id.*

132. Nathan Mulherin et al., U.S. Army Corps of Eng’r, *Northern Sea Route and Icebreaking Technology: An Overview of Current Conditions*, 5 (Jun. 1994).

133. *Id.*

134. *Id.*

135. *Id.* at 11.

136. *Id.* at 12.

cargo from western Europe to Yokohama” in just 27 days.¹³⁷ In 1978, the *Amguema*-class transport ship *Kapitan Myshevskiy*, escorted by the nuclear icebreaker *Sibir*, completed the first high-latitude passage of surface ships—from Murmansk to Magadan via the Bering Strait—covering 3,200 miles.¹³⁸ Ten years later, in October 1987, then-General Secretary Mikhail Gorbachev announced that the Soviet Union was opening the NSR, “with certain restrictions, to all foreign vessels for peaceful and commercial purposes.”¹³⁹ This change of policy allowed Russia “to bring foreign currency into the Russian economy by selling its premiere ice navigation expertise on the world market.”¹⁴⁰ Russia has continued to develop the marine transportation infrastructure along the NSR to raise foreign capital, focusing on:

- “Escort[ing] foreign ships along the route with Russian icebreakers,
- Transport[ing] foreign goods aboard Russian ice-strengthened cargo ships,
- Employ[ing] idle Russian icebreakers and cargo vessels in the U.S. and Canadian Arctic, and
- Promot[ing] arctic tourism.”¹⁴¹

Increased international traffic along the NSR since 1991 has led Moscow to adopt a series of domestic regulations based on UNCLOS Article 234 to purportedly protect the marine environment, enhance safety of navigation, and manage shipping in the NSR.¹⁴² Amendments to the *Federal Law of Shipping on the Water Area of the Northern Sea Route* refer to the NSR as “a historically developed national transport communication of the Russian Federation” that is regulated by special rules of navigation.¹⁴³

Navigation through the NSR shall be carried out in accordance with the *Federal Act on the internal maritime waters, territorial sea and*

137. *Id.*

138. Mulherin et al., *supra* note 132, at 12.

139. *Id.* at 6.

140. *Id.*

141. *Id.* at 3.

142. *Id.*; see UNCLOS, *supra* note 3, art. 234.

143. Federal Law of Amendments to Specific Legislative Acts of the Russian Federation Concerning the State Regulation of Merchant Shipping on the Water Area of the NSR [Northern Sea Route], SORBRAINE ZAKONODATEL’STVA ROSSIĬSKOĬ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation], 2012, No. 31, Item 132-FZ, http://www.nkra.ru/en/ofitsialnaya_informatsiya/zakon_o_smp.html [<https://perma.cc/8XYU-W2LK>].

contiguous zone of the Russian Federation, “other federal laws and the international treaties to which the Russian Federation is a party and the regulations on navigation on the watercourses of the Northern Sea Route approved by the Government of the Russian Federation and published in *Notices to Mariners*.”¹⁴⁴ The three principle domestic regulations applicable to navigation in the NSR are the (1) *Regulations for Navigation on the Seaways of the Northern Sea Route*; (2) *Regulations for Icebreaker-Assisted Pilotage of Vessels on the Northern Sea Route*; and (3) *Requirements for Design, Equipment and Supply of Vessels Navigating the Northern Sea Route*.

A. Requirements for the Design, Equipment and Supplies of Vessels

The *Regulations for Navigation on the Seaways of the Northern Sea Route* provide, in part, that vessels navigating the NSR must satisfy special requirements. These special requirements, which are purportedly based on Article 234 of UNCLOS, take account of the difficult and dangerous conditions of navigation along the NSR and “are intended to ensure safety of navigation and to prevent pollution of the marine environment and northern coast of Russia”¹⁴⁵ In general, the requirements “apply to the hull, machinery installations, systems and arrangements, stability and watertight integrity, navigational and communication facilities, supplies and emergency outfit, [and] manning.”¹⁴⁶ Some of these regulations are consistent with the IMO Polar Code discussed above, others are not.

B. 1990 Regulations for Navigation

The *Regulations for Navigation on the Seaways of the Northern Sea Route* were originally formulated in 1990 by the Head Department of

144. Federal Law on the internal maritime waters, territorial sea and contiguous zone of the Russian Federation art. 14, SORBRAINE ZAKONODATEL'STVA ROSSIJSKOJ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1998, No. 31, Item 155-FZ. The 1998 law was amended by the 2012 Federal Law No. 132-FZ.

145. *Requirements for Design, Equipment and Supply of Vessels Navigating the Northern Sea Route*, ARCTIS KNOWLEDGE HUB, <http://www.arctis-search.com/Requirements+to+the+Design%2C+Equipment+and+Supplies+of+Vessels+Navigating+the+NSR> (last visited Feb. 12, 2024) [hereinafter NSR CDEM Requirements] [<https://perma.cc/PP5C-GGZ6>].

146. Brit Fløistad & Lars Lothe, *The Northeast Passage/Northern Sea Route*, ARCTIS KNOWLEDGE HUB, <http://www.arctis-search.com/The+Northeast+Passage+and+Northern+Sea+Route+1> (last visited Feb. 12, 2024) [<https://perma.cc/PRH3-L64X>].

Navigation and Oceanography under the Soviet Ministry of Defense.¹⁴⁷ Given the severe climatic conditions that exist in the Arctic, the regulations are intended to regulate navigation through the NSR for the purposes of ensuring safety of navigation of ships and preventing, reducing, and controlling marine environment pollution from ships.¹⁴⁸

The regulations grant authority to the Maritime Operations Headquarters (MOHQ) to conduct NSR shipping as field conditions warrant and require:

- Administration of the NSR approval.¹⁴⁹
- Ship certification for ice worthiness and an experienced Master. If the MOHQ determines that the level of experience is inadequate, it may assign an ice pilot to the vessel for all or part of the voyage.¹⁵⁰
- Proof of indemnity for possible damage liability (mainly pollution).¹⁵¹
- Vessels must abide by all decisions of the MOHQ or face removal from the route.¹⁵²

The MOHQ is responsible for providing vessels transiting the NSR with navigational information and rendering leading and rescuing services and is authorized to collect payments for services rendered to ships navigating the NSR.¹⁵³

Compulsory icebreaker-assisted pilotage is required “in the Proliv Vil’kitskogo, Proliv Shokal’skogo, Proliv Dmitriya Lapteva, and Proliv Sannikova due to adverse navigational situation and ice conditions and for the purpose of ensuring safe navigation.”¹⁵⁴ In other areas, the MOHQ is authorized to, “in consideration of ensuring safe navigation and for the purpose of providing the most favorable navigation conditions, prescribe one of the following types of leading as determined by the circumstances”:

- (1) Leading along recommended routes up to a certain geographical point [i.e., shore-based pilotage];

147. Regulations for Navigation on the Seaways of the Northern Sea Route art. 2, approved by the USSR Minister of Merchant Marine, Sept. 14, 1990 [hereinafter 1990 NSR Regulations].

148. *Id.* reg. 2.

149. *Id.* reg. 3.

150. *Id.* reg. 4.

151. *Id.* reg. 5.

152. *Id.* reg. 7, 10; Mulherin et al., *supra* note 132, at 139.

153. 1990 NSR Regulations, *supra* note 147, reg. 8.

154. *Id.* reg. 7.

- (2) Aircraft-assisted leading [i.e., conducted by planes or helicopters];
- (3) Conventional pilotage;
- (4) Icebreaker leading; and
- (5) Icebreaker-assisted pilotage.¹⁵⁵

Although many of the NSR regulations are generally consistent with international law, the compulsory pilotage requirement illegally restricts the right of transit passage and is therefore inconsistent with international law (i.e., UNCLOS, arts. 42(2) and 44).

As discussed above, the United States does not recognize Russia's historic water claims to the Dmitry Laptev and Sannikov Straits. Rather, the United States considers these waterways to be international straits subject to the regime of transit passage.¹⁵⁶ Accordingly, all ships and aircraft are authorized to transit these strategic waterways (including the Northeast and Northwest Passages in the Arctic) freely in their normal mode of operation "as a matter of right, and not at the sufferance of the States bordering straits."¹⁵⁷ The United States and other nations take the position that compulsory pilotage in an international strait illegally restricts the right of transit passage (e.g., opposition to compulsory pilotage in the Torres Strait).¹⁵⁸

Regulation 9, which authorizes the MOHQ to suspend navigation in the NSR "[i]n cases where an obvious necessity of environment protection or safe navigation dictates . . .," is also problematic.¹⁵⁹ International law is clear on this issue—"there shall be no suspension of transit passage."¹⁶⁰ Similarly, Regulation 10, which authorizes the MOHQ to order vessels that have violated the NSR Regulations to leave the route, would also violate international law.¹⁶¹

155. *Id.*

156. LIS No. 112, *supra* note 117, at 20-21.

157. U.S. Commentary on UNCLOS, *supra* note 96, at 1407.

158. See Int'l Mar. Org., Marine Env't Prot. Comm., *Report of the Marine Environment Protection Committee on its Fifty-Third Session*, MEPC 53/24/Add.2, annex 21 (Aug. 1, 2005); Int'l Mar. Org., Marine Env't Prot. Comm., *Designation of the Torres Strait as an Extension of the Great Barrier Reef Particularly Sensitive Sea Area*, MEPC 55/8/2/Add.1, annex 21 (July 22, 2005); Int'l Mar. Org., Marine Env't Prot. Comm., *Identification and Protection of Special Areas and Particularly Sensitive Sea Areas, Outcome of NAV 52 related to PSSAs, Note by the Secretariat*, ¶¶ 2, 3 (Sept. 7, 2006).

159. 1990 NSR Regulations, *supra* note 147, reg. 9.

160. UNCLOS, *supra* note 3, art. 44.

161. 1990 NSR Regulations, *supra* note 147, reg. 10; UNCLOS, *supra* note 3, art. 42 (prohibits coastal States from adopting laws and regulations that have the "practical effect of denying, hampering or impairing the right of transit passage"); *id.* art. 44 ("States bordering straits shall not hamper transit passage . . .").

C. Regulations for Icebreaker-Assisted Pilotage

The Icebreaker-Assisted Pilotage regulations contain procedures for requesting icebreaker assistance when transiting the NSR.¹⁶² The regulations also outline the obligations and responsibilities of the master of the vessel, as well as the master of the icebreaker and the pilot, making clear that the master of the vessel being escorted retains responsibility for the safety of navigation of his or her vessel.¹⁶³ As mentioned above, the MOHQ (in coordination with the Administration of the Northern Sea Route) is responsible for all matters associated with icebreaker support for vessels navigating the NSR.¹⁶⁴ Specifically, the MOHQ will coordinate traffic flow and icebreaker services for vessels transiting the NSR, provide vessels with ice pilots (if one is not already on board) and icebreaking support, and continuously inform vessels “about ice and hydrometeorological conditions in order to provide for fast and secure transit through the Northern Sea Route.”¹⁶⁵ Icebreakers are provided by the Murmansk Shipping Company (for the Arctic West Region, up to the meridian 125°E) and the Far East Shipping Company (for the Arctic East Region, E of the meridian 125°E).¹⁶⁶

Requests to transit the NSR should be submitted at least four months in advance to the Administration of the Northern Sea Route (ANSR).¹⁶⁷ The request shall include information on the vessel, approximate date and purpose of the voyage, and a certification of liability insurance.¹⁶⁸ The ANSR will notify the ship owner of its decision concerning the request within ten days.¹⁶⁹ If the request is approved, the vessel will be inspected at the expense of the owner at the ports of Murmansk, Nakhodka, Provideniya, or at any other convenient port.¹⁷⁰

Vessels navigating through the NSR will be provided with two pilots and, upon request of the master, a helmsman experienced in steering in ice.¹⁷¹ The pilot’s duties and responsibilities are defined in the *Northern*

162. See Rules of Navigation: Regulations for Navigation on the Seaways of the Northern Sea Route, General provisions, reg. 1.1.1. to .4, Sobranie Postanovlenii Soveta Ministrov (Pravitel'stva) SSSR [SPP SSSR] [Collection of USSR Government Regulations] [hereinafter Icebreaker Regulations].

163. *Id.*

164. *Id.* reg. 1.2-1.4.

165. *Id.* reg. 1.1.4.

166. *Id.* reg. 1.1.3.

167. *Id.* reg. 2.1.

168. Icebreaker Regulations, *supra* note 162, reg. 1.2.2.1.

169. *Id.* reg. 1.2.2.3.

170. *Id.* reg. 1.2.2.4.

171. *Id.* reg. 1.2.2.8.

Sea Route State Ice Pilot Regulations.¹⁷² The ice pilot is required to be constantly present on the bridge “during the icebreaker guiding combined with pilotage—under any conditions, and during conventional pilotage—in the areas of difficult navigational and ice conditions.”¹⁷³ Vessel masters are required to “immediately follow all instructions of the guiding icebreaker master ([or] Marine Operations Headquarters) to avoid . . . areas of difficult ice.”¹⁷⁴ Noncompliance with the type of guiding assigned by the MOHQ is considered a violation of section 7 of the NSR Navigation Rules, which could result in the removal of the noncompliant vessels from the NSR as provided in section 10 of the Rules.¹⁷⁵

D. NSR Regulation Amendments

In January 2013, the Russian Ministry of Transport approved new Rules of Navigation on the Water Areas of the Northern Sea Route. Generally, the new rules provide:

- Procedure of the navigation of ships in the water area of the NSR
- Rules of the icebreaker assistance of ships in the water area of the NSR
- Rules of the pilot ice assistance of ships in the water area of the NSR
- Rules of the assistance of ships on seaways of the water area of the NSR
- Provision about the navigational-hydrographic and hydrometeorologic support of the navigation of ships in the water area of the NSR
- Rules of the radio communication during the navigation of ships in the water area of the NSR
- Requirements to ships pertaining to the safety of navigation and protection of the marine environment from the pollution from ships
- Other provisions in relation to the organization of the navigation of ship in the water area of the NSR.¹⁷⁶

172. *Id.* reg. 1.2.2.10.

173. *Id.* reg. 1.2.2.15.

174. Icebreaker Regulations, *supra* note 162, reg. 1.2.2.23.

175. *Id.* reg. 1.2.2.17.

176. AM. BUREAU OF SHIPPING, NAVIGATING THE NORTHERN SEA ROUTE ADVISORY 8 (2013).

The NSR regulations were most recently amended in 2020.¹⁷⁷ Like previous versions, the regulations are intended to regulate navigation through the NSR for the purposes of ensuring safety of navigation of ships and preventing, reducing, and controlling marine environment pollution from ships.¹⁷⁸

Regulation of navigation in the NSR is managed by the MOHQ under the control of the State Atomic Energy Corporation (Rosatom). The MOHQ develops routes for navigation (considering the hydrometeorological, ice, and navigational conditions) and arranges for icebreaker assistance and escort of ships navigating in the NSR.¹⁷⁹ Ships that have not been granted permission by the Federal Agency of Maritime and River Transport (FAMRT) to navigate in the NSR may not enter the waterway.¹⁸⁰

Applications to obtain permission to transit the NSR shall be submitted to the FAMRT not earlier than 120 calendar days and not later than fifteen working days before the estimated date of the ship's entry into the NSR.¹⁸¹ The application shall contain information about the applicant and the vessel, as well as a certificate of insurance or other financial security of civil liability for pollution damage.¹⁸² Permission may be refused if the ship is non-compliant with the admission criteria or if the applicant fails to submit a copy of the Contract for Icebreaker Escort Services, if such assistance is mandatory according to the admission criteria.¹⁸³

Permission to transit the NSR may be refused for any of the following reasons: (a) a reasonable refusal by the FAMRT; (b) providing incomplete or unreliable information in the application or the documents attached thereto by the applicant; (c) documents presented are unreadable; (d) required documents are incomplete or invalid; (e) the application is not signed by the applicant; (f) the ship's planned navigation route or area of work in the NSR and/or the period of navigation are outside the areas and/or seasons of operation of the ship.¹⁸⁴

177. Rules of Navigation in the Water Area of the Northern Sea Route, approved by the Decree N 1487 of the Government of the Russian Federation, Sept. 18, 2020 [hereinafter 2020 NSR Regulations] (Rules initially amended Jan. 17, 2013).

178. *Id.* reg. 1.

179. *Id.* reg. 2.

180. *Id.* reg. 3.

181. *Id.* reg. 2.

182. *Id.* reg. 4-7, appx. 1.

183. 2020 NSR Regulations, *supra* note 177, reg. 11.

184. *Id.* reg. 15.

Ice pilotage by authorized persons is required to ensure safety of navigation of ships, prevention of accidents, and protection of the marine environment in the NSR.¹⁸⁵ Icebreaker escort will be carried out by Russian-flagged icebreakers. The MOHQ shall determine the type of escort of ships and the composition of the convoy when icebreaker assistance is required, considering the actual ice and hydrometeorological situation on a specific route of navigation of ships in the NSR and ice class and technical characteristics of ships.¹⁸⁶ Additionally, when icebreaking assistance is being provided, the icebreaker and ships shall constantly monitor channel 16.¹⁸⁷ When a ship is navigating in ice conditions of ice concentration over three points, the master or chief officer must be present on the navigating bridge.¹⁸⁸

In August 2022, a proposed amendment to the Law on Internal Waters would apply the regulations to foreign warships transiting the straits of the NSR. These straits include the Kara Gate, Vilkitski, Sannikov, and Demtry Laptev Straits.¹⁸⁹ First, the proposed amendment requires ninety days advance approval for foreign warships and other government non-commercial vessels that seek to transit through the internal waters of the NSR.¹⁹⁰ The proposed amendment also limits the number of foreign warships and other government non-commercial vessels that can simultaneously be in the NSR internal waters to one vessel.¹⁹¹ Third, the proposed amendment requires submarines to sail on the surface and fly their flag.¹⁹² Lastly, the proposed amendment allows Russia to suspend passage of warships and other non-commercial government vessels for security reasons.¹⁹³ The 2022 proposed amendments are clearly inconsistent with international law as they unlawfully restrict the right of innocent passage in the territorial sea and right of transit passage through international straits.¹⁹⁴ Moreover, the proposed amendments clearly violate Article 236 of UNCLOS, which exempts sovereign immune

185. *Id.* reg. 26.

186. *Id.* reg. 30.

187. *Id.* reg. 32.

188. *Id.* reg. 40.

189. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1998, No. 155-FZ.

190. *Id.* art. 14.3.

191. *Id.*

192. *Id.*

193. *Id.*

194. Cornell Overfield, *Wrangling Warships: Russia's Proposed Law on Northern Sea Route Navigation*, LAWFARE (Oct. 17, 2022), <https://www.lawfaremedia.org/article/wrangling-warships-russias-proposed-law-northern-sea-route-navigation> [https://perma.cc/Q6NY-WZPX].

vessels from complying with the environmental provisions of the convention, including Article 234.¹⁹⁵

E. United States Protest

On May 29, 2015, the United States protested certain provisions of the 2013 NSR Regulations (which are similar to the 2020 regulations) that it considered inconsistent with international law.¹⁹⁶ These provisions include the: (1) requirement to obtain prior permission to enter and transit the Russian EEZ and territorial sea; (2) characterization of international straits that form part of the NSR as internal waters; and (3) lack of an express exemption for sovereign immune vessels.¹⁹⁷ The United States also encouraged Russia to submit relevant aspects of the NSR regulatory scheme to the IMO for consideration and adoption.¹⁹⁸

The United States diplomatic note renewed previous objections to the characterization of certain international straits within the NSR as Russian internal waters. The United States also objected to the characterization of the NSR as a “historically established national transport communication route,” indicating that the “United States does not consider such a term or concept to be established under international law.”¹⁹⁹ The United States additionally sought clarification about the scope of the Northern Sea Route—in particular, whether the eastern limit of the NSR extends into and through the Bering Strait.²⁰⁰ The United States note also requested confirmation that the northern extent of the NSR does not extend beyond the outer limits of the Russian EEZ into areas of the high seas.²⁰¹

In addition, the United States expressed concerns over the purported requirement to obtain prior permission from Russian authorities before foreign-flagged vessels can transit areas within the NSR that are within Russia’s claimed EEZ and territorial sea.²⁰² In the view of the United States, the requirement to apply for a transit permit and provide a certification of adequate insurance is inconsistent with freedom of navigation in the EEZ, the right of innocent passage in the territorial sea,

195. See UNCLOS, *supra* note 3, art. 236.

196. Diplomatic Note to the Russian Federation regarding its Northern Sea Route Regulatory Scheme, May 29, 2015, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW, ch. 12, § A at 526 [hereinafter 2015 DIGEST OF U.S. PRACTICE].

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 526-27.

202. 2015 DIGEST OF U.S. PRACTICE, *supra* note 196.

and the right of transit passage through straits used for international navigation.²⁰³

Russia has argued that the NSR scheme is based on Article 234 of UNCLOS. Although Article 234

allows coastal States to adopt and enforce certain laws and regulations in ice-covered areas within the limits of their exclusive economic zones, these laws and regulations must be for the prevention, reduction and control of marine pollution from vessels, must be non-discriminatory, and must have due regard to navigation.²⁰⁴

The United States considers that “a unilateral, coastal State requirement for prior notification and permission to transit these areas does not meet the condition set forth in Article 234 of having due regard to navigation.”²⁰⁵ Similarly, Article 234 does not justify “a coastal State requirement for prior notification or permission to exercise navigation rights and freedoms.”²⁰⁶

For Article 234 to serve as the legal basis for the NSR scheme, the area in question must be subject to “severe climatic conditions and the presence of ice . . . for most of the year.”²⁰⁷ The United States questions whether the entire NSR is ice-covered for most of the year, particularly in the western portion of the Route.²⁰⁸ Moreover, “as conditions in the Arctic continue to change, the use of Article 234 as the basis for the scheme may grow progressively even more untenable.”²⁰⁹

The United States protest also notes that the NSR scheme does not “provide an express exemption for sovereign immune vessels.”²¹⁰ The absence of such an exemption is inconsistent with Article 236 of UNCLOS, which specifically provides that “the provisions of this Convention regarding the protection and preservation of the marine environment [e.g., Article 234] do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.”²¹¹ Accordingly, the United States “requests that the Russian Federation

203. *Id.* at 527.

204. *Id.*

205. *Id.*

206. *Id.*

207. UNCLOS, *supra* note 3, art. 234.

208. 2015 DIGEST OF U.S. PRACTICE, *supra* note 196, at 527.

209. *Id.*

210. *Id.*

211. UNCLOS, *supra* note 3, art. 236.

confirm that the Northern Sea Route scheme shall not apply to sovereign immune vessels.”²¹²

The United States additionally expressed concern with the provisions of the NSR scheme that require the use of Russian icebreakers and ice pilots. The United States notes that “it is unclear whether those provisions are mandatory or if there is discretion on the part of the flag State regarding the use of these services.”²¹³ The United States, therefore, “requests that the Russian Federation clarify these provisions on Russian icebreakers and ice pilots.”²¹⁴ If the provisions are mandatory, the United States considers that Article 234 does not provide “authority for a coastal State to establish such requirements.”²¹⁵ It is also unclear whether the NSR scheme allows for the use of foreign-flagged icebreakers. If it does not, “then the provision would appear to be inconsistent with the non-discrimination aspects of Article 234.”²¹⁶ Similarly, the charges “levied for icebreakers and ice pilots may not be supportable under Article 234 and, in any event, cause concern about their relation to the cost of services actually provided.”²¹⁷

Finally, any of the measures of the NSR scheme—e.g., use of prescribed routes, use of icebreakers and ice pilots, and other related measures—that apply in straits used for international navigation

must be approved and adopted by the IMO. In the view of the United States, the relevant provisions of the Northern Sea Route scheme should be proposed to and adopted by the IMO to provide a solid legal foundation and broad international acceptance. This could be done without prejudice to the Russian Federation’s views or those of the United States about Article 234 and whether IMO adoption is necessary from a legal perspective. The United States would welcome the opportunity to work with the Russian Federation and with others at the IMO to favorably consider and adopt an appropriate proposal.²¹⁸

212. 2015 DIGEST OF U.S. PRACTICE, *supra* note 196, at 527.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. 2015 DIGEST OF U.S. PRACTICE, *supra* note 196, at 527-28.

V. EXTENDED CONTINENTAL SHELF

On December 20, 2001, the Russian Federation submitted its extended continental shelf (ECS) claim in the Arctic and Pacific Oceans to the Commission on the Limits of the Continental Shelf (CLCS) pursuant to UNCLOS Article 76(8).²¹⁹ In the Bering Sea, Russia claims that the outer limit of its continental shelf is “defined by the delimitation line according to the USSR/USA Agreement of June 1, 1990.”²²⁰ In a letter to the United Nations Under-Secretary-General for Legal Affairs dated February 28, 2002, the United States noted that

the use of that boundary is consistent with the mutual interests of Russia and the United States in stability of expectations, and with Article 9 of Annex II of the Convention, which provides that the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.²²¹

Nonetheless, the United States informed the United Nations Under-Secretary that “the United States believes that the [Russian] submission has major flaws as it relates to the continental shelf claim in the Arctic.”²²² The United States letter also cautioned that the CLCS “should not be perceived as endorsing particular [straight] baselines” used by Russia to delimit its maritime zones.²²³

In particular, the United States noted that the positions of the 2,500-meter isobaths and the foot of the continental slope “could not be examined for accuracy or completeness, because they are not included in the executive summary” of the submission.²²⁴ The United States also took exception to Russia’s claim to the Alpha-Mendeleev Ridge and the

219. *Commission on the Limits of the Continental Shelf (CLCS) Outer Limits of the Continental Shelf Beyond 200 Nautical Miles from the Baselines: Submissions to the Commission: Submission by the Russian Federation*, UNITED NATIONS (Jun. 30, 2009), https://www.un.org/depts/los/clcs_new/submissions_files/submission_rus.htm [https://perma.cc/9W2Y-C3KM].

220. *Substantiation of the Outer Limit of the Continental Shelf of the Russian Federation in the Bering and Okhotsk Seas*, UNITED NATIONS, https://www.un.org/depts/los/clcs_new/submissions_files/rus01/RUS_page4_Pacific.pdf (last visited Mar. 5, 2024) [https://perma.cc/KFV7-7K35].

221. U.N. Secretary-General, Letter dated Feb. 28, 2002 from the Secretary-General addressed to the Under-Secretary-General, at 1, U.N. Doc. CLCS.01.2001.LOS/USA (Mar. 18, 2002).

222. *Id.*

223. *Id.*

224. *Id.*

Lomonosov Ridge, as well as to Russia's failure to take into consideration the first sentence of UNCLOS Article 76(6), which provides that "notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baseline from which the breadth of the territorial sea is measured," in establishing the outer limit of its continental shelf beyond 200 nautical miles.²²⁵ According to the United States, the

geologic and geophysical evidence indicates the Alpha-Mendeleev Ridge System is the surface expression of a single continuous geologic feature that formed on oceanic crust of the Arctic Ocean basin by volcanism over a "hot spot." . . . The Alpha-Mendeleev Ridge System is therefore a volcanic feature of oceanic origin that was formed on, and occurs only within the area of, the oceanic crust that underlies the Amerasia Sub-basin of the Deep Arctic Ocean Basin. It is not part of any State's continental shelf.²²⁶

Regarding the Lomonosov Ridge, the United States raised questions relating to natural prolongation, indicating that "the ridge is a freestanding feature in the deep, oceanic part of the Arctic Ocean Basin, and not a natural component of the continental margins of either Russia or any other State."²²⁷ Canada, Denmark, and Norway also expressed separate concerns with the Russian submission.²²⁸

During the Tenth and Eleventh Session of the CLCS, the sub-commission undertook a review of the original Russian submission, as well as additional material submitted by Russia requested by the CLCS. The sub-commission's final recommendations were adopted by consensus and submitted to the Russian Federation in June 2002. In short, the CLCS concluded that the data submitted was not sufficient to delimit Russia's

222. *Id.* at 3.

226. *Id.* at 2.

227. U.N. Secretary-General, Letter dated Feb. 28, 2002 from the Secretary-General addressed to the Under-Secretary-General *supra* note 221, at 3.

228. Permanent Mission of Canada to the United Nations, Note Verbale No. 0145, CLCS.01.2001.LOS/CAN (Feb. 26, 2002); Permanent Mission of Denmark to the United Nations, Note Verbale No. 119.N.8, CLCS.01.2001.LOS/DNK (Feb. 26, 2002); Permanent Mission of Norway to the United Nations, Note Verbale, CLCS.01.2001.LOS/NOR (Apr. 2, 2002).

extended continental shelf in the Arctic and Pacific oceans, and requested that Russia submit additional data to substantiate its claims.²²⁹

Russia made a revised submission to the CLCS in August 2015, which was amended by two Addenda in March 2021.²³⁰ In early February 2023, the CLCS approved the recommendations with regard to these revised submissions, noting (*inter alia*) that “the outer limits of the continental shelf in the southern part of Amundsen Basin” had not been defined and recommending that Russia make a “partial revised submission in respect of its continental shelf in that area.”²³¹ On February 14, 2023, Russia submitted a second partial submission in response to the CLCS recommendations.²³² In August 2023, the CLCS concluded its review of the revised submission. The CLCS agreed with Russia that the Medeleev-Alpha Rise, the Podvodnikov Basin, and Lomonosov Ridge are natural extensions of the Russian continental shelf and recommended using points proposed by Russia to establish the outer limits of the continental shelf in these submarine areas.²³³ The CLCS indicated, however, that the evidence submitted by Russia was insufficient to prove the continental nature of the Gakkel Ridge.²³⁴ Finally, the CLCS recognizes that the establishment of the final outer limits of the Russian extended continental shelf in the Arctic Ocean will depend on continental shelf delimitations with neighboring States (i.e., Canada and Denmark (Greenland)).²³⁵

229. See U.N. Convention on the Law of the Sea, Comm’n on the Limits of the Cont’l Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, U.N. Doc. CLCS/32 (Apr. 12, 2002); U.N. Convention on the Law of the Sea, Comm’n on the Limits of the Cont’l Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, U.N. Doc. CLCS/34 (July 1, 2002); U.N. Secretary General, *Oceans and the law of the sea*, ¶¶ 27-41, U.N. Doc. A/57/57/Add.1 (Oct. 8, 2002).

230. U.N. Secretary-General, *Continental Shelf Notification*, U.N. Doc. CLCS.1.Rev.2015.LOS (Aug. 4, 2015); U.N. Secretary-General, *Continental Shelf Notification*, U.N. Doc. CLCS.1.REV.2015.LOS.Add.1 (Apr. 1, 2021).

231. U.N. Convention on the Law of the Sea, Comm’n on the Limits of the Cont’l Shelf, *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Partial Revised Submission made by the Russian Federation in respect of the South-East Eurasia Basin in the Arctic Ocean*, 1 (Aug. 8, 2023) [hereinafter CLCS Summary of Recommendations (2023)].

232. U.N. Secretary-General, *Continental Shelf Notification*, U.N. Doc. CLCS.1.Rev2.2023.LOS (Feb. 15, 2023).

233. CLCS Summary of Recommendations (2023), *supra* note 231 at 5-20.

234. *Id.*

235. *Id.*

CONCLUSION

After years of prolonged discussions, Russia has apparently settled its maritime boundaries with the United States in the Pacific and Arctic Oceans and the Bering and Chukchi Seas, as well as with Norway in the Barents Sea. Russia also recognizes that it will have to negotiate boundary agreements with Canada and Denmark (Greenland) notwithstanding the decision of the CLCS regarding the final outer limits of the Russian extended continental shelf in the Arctic. Nonetheless, the boundary agreements with the United States and Norway remain in flux. The Russian Duma has failed to ratify the boundary agreement with the United States, which is being applied provisionally, and Russian legislators have threatened to abrogate the boundary agreement with Norway in retaliation for the purported blockage of food shipments to Russian settlements in Svalbard.

Russia's straight baseline claims along the Bering Sea and the Arctic Ocean remain problematic. While some of these baseline claims are appropriate, for the most part, the claimed baselines do not meet the two geographic conditions in UNCLOS (Article 7) required for drawing straight baselines (i.e., localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity); enclose waters that do not have a close relationship with the land but rather reflect the characteristics of territorial seas or high seas; or are inordinately long, well in excess of twenty-four nautical miles. In these areas, the appropriate baseline is the low-water line along the coast.

Similarly, many of the provisions of the NSR scheme remain problematic despite repeated protests by the United States and other nations. The requirement to obtain prior permission to enter and transit the Russian EEZ and territorial sea is inconsistent with international law principles regarding freedom of navigation in the EEZ and the right of innocent passage in the territorial sea. Russia's characterization of several international straits that form part of the NSR as internal waters is likewise inconsistent with the international law right of transit passage reflected in UNCLOS. Moreover, the lack of an express exemption for sovereign immune vessels from the provisions of the NSR scheme violates Article 236 of the convention. Some of these problematic provisions in the NSR scheme could be fixed by submitting them to the IMO for consideration and adoption.

Finally, Russia's extended continental shelf claim has been finally validated after more than twenty years, receiving approving recommendations from the CLCS on a majority of its claims in the Arctic. Russia's willingness to compromise and accept the commission's

recommendations demonstrate Moscow's apparent continued commitment to comply with the relevant provision of UNCLOS regarding maritime delimitation. Moreover, the CLCS ruling will likely prompt Canada and Denmark (Greenland) to initiate discussions (sooner rather than later) with Russia on a potential continental shelf delimitation in the Arctic.²³⁶

236. Martin Breum, *Russia Gets Approval for the Data Behind Much of its Arctic Ocean Seabed Claim*, ARCTIC BUS. J. (Feb. 17, 2023), <https://www.arctictoday.com/russia-gets-approval-for-the-data-behind-much-of-its-arctic-ocean-seabed-claim/> [<https://perma.cc/2DVZ-BVMM>].

