The Polar Silk Road and the Future Governance of Northern Sea Route

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A fast changing world

THE RISE OF CHINA
Rules-based International Order

CURRENT NARRATIVE


- 2016 Defence White Paper mentioned this term 48 times
  “A system in which power is not misused, and threats to peace and stability from tensions between countries can be managed through negotiations based on international law and the threat from terrorism can be addressed by concerted international action”

- 2017 Malcolm Turnbull’s speech in Shangri-la Dialogue
  “US Anchored”

- 2019 United States Coast Guard Arctic Strategy; 2019 US Department of Defence Arctic Strategy
Power, Order and International Law

POWERT

“The capacity to do things and to affect others to get the outcomes we want”

• Military
• Economic
• Soft
• Smart
• Sharp?
“The concept held by a region or civilization about the nature of just arrangements and the distribution of power thought to be applicable to the entire world.”
Power, Order and International Law

THEORETICAL FRAMEWORK

• Power determines order

• Order determines international law, while international law reflects and legitimize the existing order

• International law enhances power, and demarcate boundaries for exercising power (rights and obligations)

Idealism v. Realism

• Woodrow Wilson The Fourteen Points Principle: self-determination
• UN Charter
The Polar Silk Road

STRONG POLITICAL WILL

- The Belt and Road Initiative 2013

- “The Blue Economic Corridor” – The Vision for Maritime Cooperation under the Belt and Road Initiative 2017

- China’s Arctic Policy White Paper 2018 – officially raised the concept

- Joint statement of the People’s Republic of China and the Russian Federation on the development of a comprehensive strategic partnership for collaboration in the new era 2019

- 14th Five Year Plan, Ocean Chapter (Part 9, Chapter 33)
The Polar Silk Road

ARCTIC SHIPPING ROUTES AND BEYOND

• Yamal LNG

• Payakha Oilfield

• Zarubino Port in the southeast of Vladivostok

• Arkhangelsk Deepwater Port

Source: website of the administration of the NSR & Sina
GOVERNANCE OF NORTHERN SEA ROUTE

“The Polar Silk Road

China maintains that the management of the Arctic shipping routes should be conducted in accordance with treaties including the UNCLOS and general international law and that the freedom of navigation enjoyed by all countries in accordance with the law and their rights to use the Arctic shipping routes should be ensured.” – 2018 China’s Arctic Policy White Paper

• China to recognize the NSR as a straight used for international navigation, which would allow transit passage (Bai, 2012)

• The NSR can neither be defined as a strait used for international navigation, nor as internal water subject to exclusive coastal state jurisdiction. They recommend the conclusion of an international convention similar to the Svalbard Treaty that could balance the interests between coastal and flag States (Liu, 2009)

• East Asian countries (China, Japan and South Korea) should strengthen their cooperation to influence the development of international law on Arctic shipping (Zhang, 2015)
The paradigm after the 2012/13 reform:

- Make the NSR great again! (fantastic plans)
- Permit-based order of navigation
- Payment for ‘services’ not the ‘use’ of NSR
- Russian icebreaker monopoly
- Prominence of international law
  - UNCLOS and Article 234
  - Definition and boundaries
  - Polar code
Main trends

Liberalization of access
- Permit scheme: no inspection, very easy procedure, transparent and digital
- Fees: relatively transparent methodology for calculation
- (general) appreciation for UNCLOS

• Autonomy
  - No IMO (arguably no need for one), example SRS
  - Implementation of the Polar Code limited to the necessary (no POLARIS or automatic equivalence for class notations)
  - The NSR regime is quite comprehensive, with limited outside input, and a rising role of ROSATOM (regulator, icebreaker monopolist, shipping company, ‘the logistic operator’)
  - Effect: limited predictability for foreigners (autonomous decisions may be good for users but may also change)
  - Protectionism (obligation to use Russian-flagged ships for cabotage and transport of hydrocarbons (oil, LNG and coal) loaded within the NSR
  - Security interests
Some controversial issues

- Permit and UNCLOS
- Icebreaker monopoly (between UNCLOS and actual capability)
- Full autonomy and predictability
- Transparency (first rising then dropping) and non-discrimination
- And some more fundamental and climate change related issues:
  - Straight baselines and navigational rights within straits
  - 3 options
  - Navigation of sovereign-immune vessels
  - Relevance of the description of the NSR as ‘historically developed and national’?
Can China challenge Russia in the future Governance of NSR?

- Reliance on Russia in the Arctic (imbalance of power)
  - Politically (access to the Arctic and Russian Arctic)
  - Factually (know how, infrastructure, capabilities). Relevant for icebreaker assistance!

- China’s ‘coastal’ or ‘land’ identity and policy may be a burden for the ‘maritime’ narrative

- Maritime narrative (UNCLOS, navigational rights and freedoms) must be supported by State practice at home to be convincing

Universality vs. Regionalism
A qualitative change *de facto*?

- Russia’s *de facto* control
- A ‘stable’, ‘attractive’ or ‘useful’ supply chain?
- Law of the sea marginalized?