



**UiT** The Arctic University of Norway

# The Impacts of the War in Ukraine on the Governance of the Northern Sea Route

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NCLOS  
NORWEGIAN CENTRE  
FOR THE LAW OF THE SEA

# Reflections on

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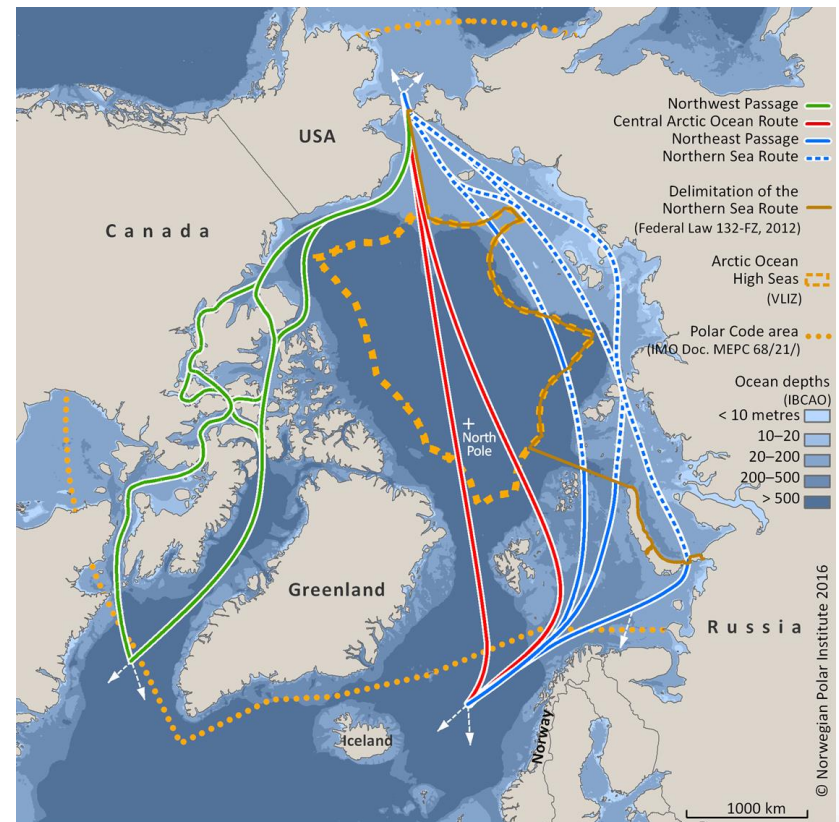


Illustration-credit-amedvedkovadobestock-125646.jpg

- the context (war, geopolitical rivalry)
- a recent development: a territorial grab in the Arctic?
- China and the NSR?

# Ukraine and the Northern Sea Route

- February 2022 → freezing of Arctic cooperation with Russia; sanctions
- The NSR (part of the NEP) **never legally closed**, but *de facto* the use of the NSR 'by invitation' rather than a matter of a right
  - 1967, 1990, and 2012/13 → a plausible bid (transparent and reasonable criteria for access, attention to UNCLOS, but selling Russian services and autonomous unilateral regulation)
- 2018 (not 2022) → end of the experiment?
  - **transparency and predictability** vs. **strategic and economic development**
  - Old ideas: cabotage restrictions to support Russian shipping and shipbuilding industries; power centralization
- Rising China, 2013 BRI (with 2018 Polar Silk Road)
- NSR legal regime in 2023 → cosmetic adjustments following the course set in 2018



# Updating various strategic and policy docs

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- Concept of Foreign Policy of the Russian Federation, March 2023
- 2022 Maritime Doctrine
- Revised Arctic Policy
- to “neutralize unfriendly countries’ militaristic policy in the region and their suppression of Russia’s possibilities to develop its own sovereign rights in the Arctic zone of the Russian Federation”
- an invitation to non-Arctic states that have a “constructive policy towards Russia” to partner up
- Ensure Immutability of historically developed international legal regime of **internal waters** of the Russian Federation → NSR

# Vessels subject to sovereign immunity in the NSR

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- The liberalization and increasing appreciation of UNCLOS in the Arctic led to tensions related to security (**Do the Rules apply to such ships?**)
- the *Rhône (A603)* passed through the entire NSR without warning in September 2018
- Response:
  - 2019 **Draft legislation** → additional requirements for non-commercial ships exercising the right of innocent passage (mirroring the rules for merchant ships)
  - **Political statements** → Chief of the General Staff of the Armed Forces of the Russian Federation, Valery Gerasimov: “[O]ur Armed Forces can fully ensure the safety of navigation in the waters of the Northern Sea Route, and therefore **there is no need to find warships of other countries** in this sea corridor”
- The **non-applicability of the NSR Rules** has become clear
- Relevance of navigational rights and freedoms in different maritime zones

# 2022 Law N 510 FZ

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- Federal Law on Amendments to the Federal Law the internal sea waters, territorial sea and contiguous zone of the Russian Federation, 31 July 1998, No. 155-FZ, **5 December 2022**, No. 510-FZ.



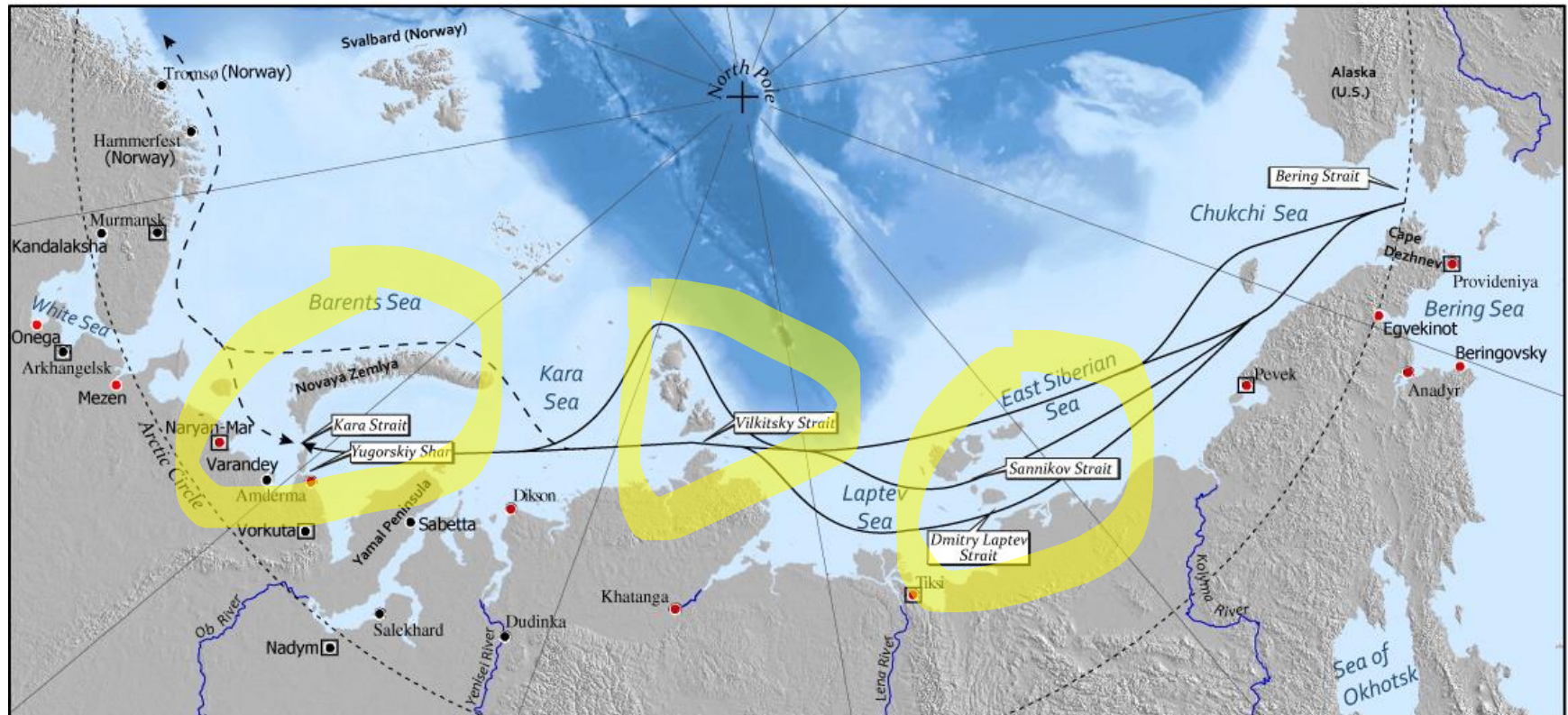
USS Illinois (SSN 786) moors in Arctic sea ice in the Beaufort Sea during ICEX 2022. (U.S. Navy photo by Mass Communication Specialist 1st Class Alfred Coffield) 220305-N-ON977-1081

# New law on the passage of warships through internal waters

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- foreign State-owned ships to seek **authorization for passage** through internal waters within the NSR at least 90 days before entry
- **cap the number** of foreign State-owned ships simultaneously present in internal waters of the NSR **to one**
- Possible suspension of IP in the TS → (announced in the Notices to Mariners, now also via ‘navigational warning’ (on radio) – can lead to reactionary and discriminatory practice
- **2022 Maritime Doctrine:** Arctic as vital; calls for fighting US strategic course for global dominance, and the attempts by some States to weaken Russian control over the NSR, and boost foreign naval presence in the Arctic
- strategic priorities:
  - 1) to exercise control over the naval activity of foreign states in the water area of the NSR; → **NEW REQUIREMENTS**
  - 2) to ensure the immutability of the historically established international legal regime of internal waters in the Arctic straits of the NSR → **IMPLICATION FOR THE LEGAL STATUS**

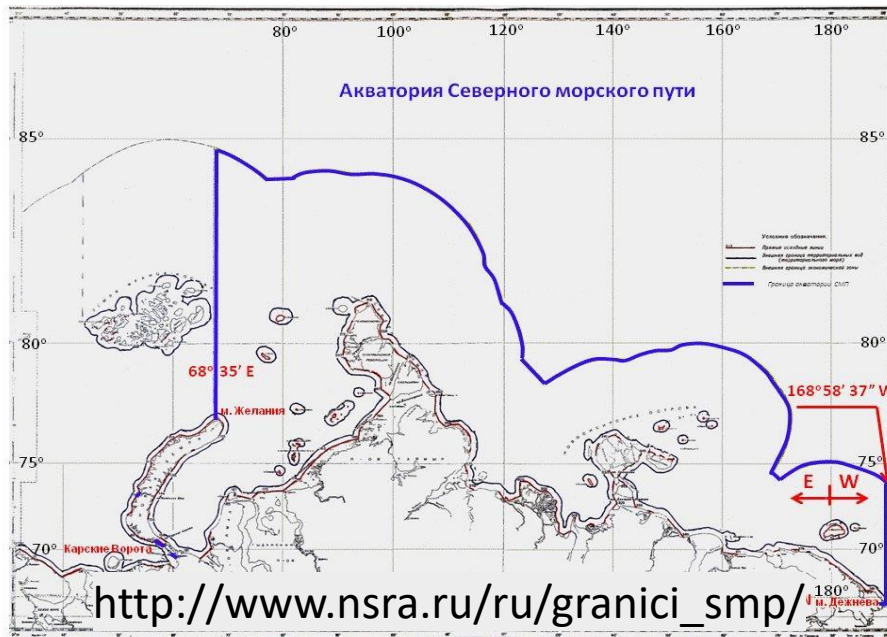
# NSR straits: what are these and legal status



Source: Buixadé Farré et al 2014 (adapted from Stephenson et al 2014).

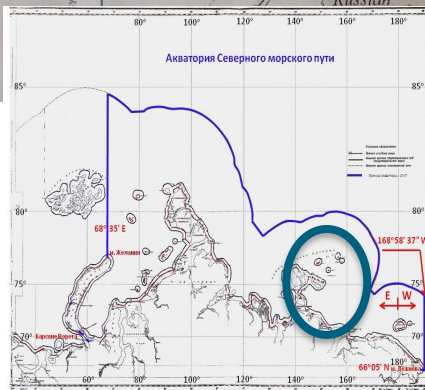
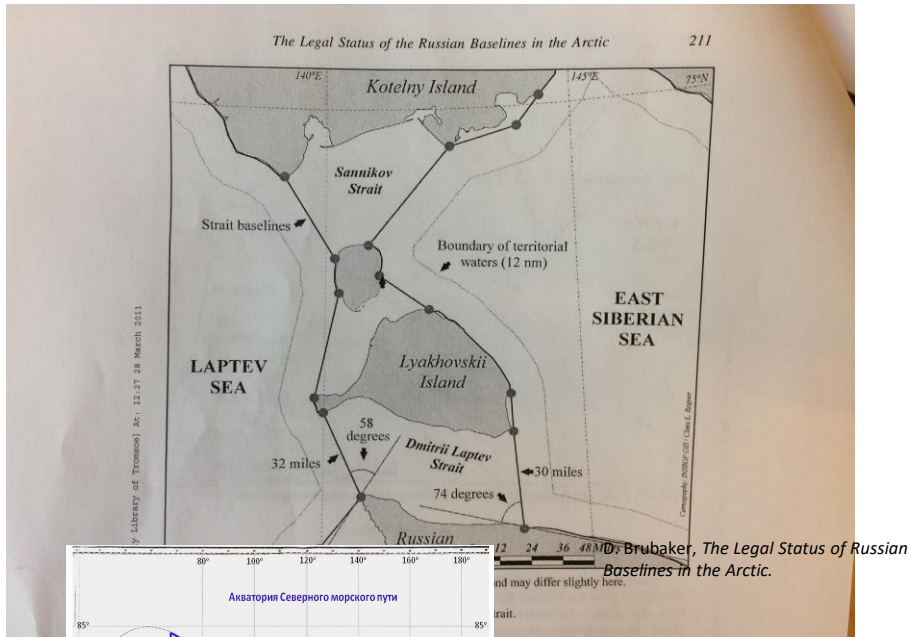


# Baselines 1985/2021



- Innocent, transit or no passage rights?
- **Baselines (even if lawful) are irrelevant** for navigation as Article 8(2) preserves innocent passage **without the need for previous acceptance, acknowledgement or use**
- Unless historic waters?
- No claims to historic waters in the NSR, except Baydartszkaya Guba, or?

# Laptev and Sannikov Straits



- The 1964 USSR *Aide Memoire* to the USA in response to the *Burton Island* plans:
- “the Dmitry Laptev and Sannikov Straits, *belong historically to the Soviet Union*” (as the *territorial sea* rather than internal waters)
- Sufficient (in practice) to require prior authorization from a ‘warship’
- Irrelevant for the determination if innocent passage applies.
- 2021 decree on baselines: less clear which waters claimed as historic
- Loud writers, silent State (until 2022?)

# Same tool in new context= different consequences

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- Same tool as in the 1960's: prior authorization for warships passing through NSR straits
- But different normative background
  - Then waters perceived as 'territorial waters' – prior authorization (plausible argument)
  - UNCLOS
  - Straight baselines
  - 1989 USSR/USA Uniform Interpretation of Norms of International Law Governing Innocent Passage – clear position
- Essentially a new territorial claim: Russia's (new) position → full sovereignty (no passage rights)
- Potential permanent ramifications
  - No innocent passage (applicable though unused)
  - No transit passage (emerging)
- 90 years of ambiguity comes to an end!
- Inevitably the question of the legal ground → historic title?
- (the antagonistic climate) and the 2022 Maritime Doctrine prepares the ground by warning of the potential "international-legal pressure to discredit the Russian Federation and lower the effectiveness of its maritime activity"
- Potential acquiescence

# NSR and China – all about the ‘potential’

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- Liu, N., & Solski, J. (2022). The Polar Silk Road and the future governance of the Northern Sea Route. *Leiden Journal of International Law*, 35(4) (completed in 2021)
  - China’s interest in shaping the regime, lack of full satisfaction
  - Comparison of some elements of coastal State practice → the ‘coastal-oriented’ posture constrains China’s capacity to herald a full-fledged maritime position in the Arctic
    - Baselines
    - Attitude to foreign warships
    - Reporting, routing, pilotage → potentially in the EEZ
- Modality of change → presence, tolerance to ‘security’ interest without necessary acceptance; behind the scenes
- Examples of recent practice, talks of joint NSR development body, memorandum of understanding on maritime law enforcement cooperation (FSB and China’s coast guard)
- China’s coast guard is subordinate to People’s Armed Police (PAP), which in turn is under command of the Central Military Commission (CMC) (since 2018) → Distinct from People's Liberation Army Navy (PLAN) but part of the Chinese military system (cf. Gerasimov’s words)

# Concluding observations

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- Russia's 21<sup>st</sup> century practice: 'generally' reasonable and over time more consistent with UNCLOS
  - Recognition and implementation of UNCLOS in the Arctic (transparency, predictability, non-discrimination) → a politically difficult process, now shift in priorities?
- The NSR as a vehicle to use the Arctic for Russia
  - 2012-2018 as era/moment of 'transparency first' approach → an experiment?
  - 2022 – assertive action to keep 'unfriendly' military off the NSR
  - Who is the offer recipient? What they care about and how they respond? This will influence the governance. (The NSR as the Polar Silk Road?)
    - The liberal interpretation of the UNCLOS on navigation as part of the problem? Better bilateral solutions?
- Effects of the geopolitical standoff:
  - Law of 'divided Arctic' → new territorial claim! What reaction?
  - Law of the 'common Arctic' →
    - Arctic cooperation paused (Norway took over the chairmanship in Arctic Council, but?)
    - BBNJ Agreement as potential game changer: see Russia's statement: "This instrument is unacceptable. The matter of our participation in it cannot be considered."
    - Environmental NGOs: Bellona, WWF, Greenpeace all banned

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Thanks!