

# FROM PARIAH TO PARTNER—RUSSIAN-AMERICAN SECURITY COOPERATION IN THE ARCTIC OCEAN

*Dr. James Kraska\**

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## I. INTRODUCTION: A NEW ARCTIC OCEAN SECURITY AGENDA

The Obama administration seeks to push the “reset” button on Washington-Moscow relations. Military-to-military programs between the United States and Russia, which were suspended after the August 2008 conflict in Georgia, have resumed and included nearly twenty (20) exchanges and operational events in 2009.<sup>1</sup> The President rescinded plans to install ballistic missile defense sites in Eastern Europe, which Moscow applauded. NATO is also seeking closer cooperation with Russia. On September 18, 2009, NATO Secretary-General Anders Fogh Rasmussen called for a “new beginning” in relations between the Alliance and Moscow, focusing practical cooperation and conducting a joint review of new security challenges.<sup>2</sup>

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\* Commander Kraska is the Howard S. Levie Chair of Operational Law and professor of international law in the Center for Naval Warfare Studies at the U.S. Naval War College, and serves as a guest investigator at the Marine Policy Center, Woods Hole Oceanographic Institution. A former Oceans Law & Policy Adviser for the Director of Strategic Plans & Policy, Joint Chiefs of Staff, he was the principal drafter of the national security provisions of the U.S. Arctic Region Policy, National Security Presidential Directive-66, signed by the president in 2009. A draft of this article was presented at the American Branch of the International Law Association “ILA Weekend” in New York in September, 2009. He may be reached at james.kraska@gmail.com.

1. Carlos Aranga, *U.S.-Russian Military-to-Military Links Set to Expand*, EMBASSY OF THE U.S. LONDON UK, Sept. 21, 2009, available at <http://www.usembassy.org.uk/euro030.html#top> (last visited Feb. 25, 2010).

2. *Id.*

Following President Barack Obama's visit to Russia, the presidents of the two nations created a Bilateral Presidential Commission, which they will co-chair. The Commission is designed to move bilateral relations beyond "Cold War mentalities and chart a fresh start in relations between our two countries."<sup>3</sup> Secretary of State Clinton and Foreign Minister Lavrov will coordinate the Commission, which will include working groups on foreign policy, military-to-military cooperation, counter-terrorism, nuclear energy and security, arms control, and other bilateral issues.<sup>4</sup> The co-chairs pledged to develop an initial list of priority initiatives and a roadmap for moving forward. In conjunction with the military-to-military cooperation, the Commission should also establish a working group on Arctic security. Increased maritime security collaboration in the Arctic Ocean offers one of the best opportunities to develop common bilateral interests in the security relationship that are largely unencumbered by past political differences.

The Arctic is a maritime domain, and if we are to look forward to new maritime security cooperation, we would do well to consider past collaboration. First, this paper traces bilateral collaboration between Moscow and Washington during the negotiations for the Law of the Sea Convention. Complementary interests in freedom of the seas made the Soviet Union and the United States natural allies in negotiating the Convention, but the spirit of cooperation was lost after the treaty was completed, and it never has been regained. Over the past decade, U.S.-Russian maritime security relations deteriorated, smothered by larger disputes. Yet while Russian Arctic diplomacy occasionally has become belligerent, Moscow has tacked quite close to adhering to international law in its activities in the Arctic—paying particular attention to compliance with the Law of the Sea Convention. This serves as a solid basis for exploring closer maritime security cooperation in the Arctic Ocean by providing a common rule set for the four areas ripe for greater collaboration. Next, the paper turns toward the public statements of the two nations concerning the Arctic. Both the United States and Russia have recently released Arctic strategies, which suggest broad areas of interest and concern in Arctic security, as well as raise opportunities for conducting combined maritime training, naval exercises, and military operations in the Arctic Ocean.

Third, the paper proposes areas of potential collaboration. In light of the shared concerns between the two nations, the United States should

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3. Bilateral Presidential Commission, 15 Oct. 2009, *available at* <http://www.state.gov/p/eur/rls/fs/130616.htm> (last visited Feb. 25, 2010).

4. Aranga, *supra* note 1.

propose an agenda of four areas to serve as a term of reference for the proposed Arctic Working Group of the Bilateral Presidential Commission. Each of these areas relates to a more collaborative approach to sea power in the Arctic Ocean, and therefore is broadly supportive of the Department of Defense goal of fashioning a cooperative approach to 21st century sea power.

## II. THE BILATERAL RELATIONSHIP

The basic governing framework for the Arctic Ocean is already established—the United Nations Convention on the Law of the Sea (UNCLOS).<sup>5</sup> Not only is Moscow a party to UNCLOS, but it has been fairly straightforward in its compliance with the treaty, pursuing its interests in the Arctic within the accepted framework of the Convention. Moscow largely plays by the rules applicable to the Arctic Ocean, and this compliance provides a basis for greater collaboration on Arctic security. The United States, on the other hand, should join the treaty in order to assume a more influential role in the Arctic Ocean and around the world. Ironically, although the United States is not a party to UNCLOS, it was one of the primary negotiators of the pact, which is accepted by more than 150 states and has assumed its place as the constitution for the world's oceans.

Although the United States is a traditional maritime power and Russia the quintessential land power, the two countries have long shared a natural union of strategic interests at sea. During the negotiations for the Law of the Sea Convention from 1973–1982, for example, Russia and the United States were the core members of the group of five major maritime powers that ensured that the new treaty protected and promoted freedom of navigation and global mobility.<sup>6</sup> Lobbying their friends and client states at the height of the Cold War, the two superpowers developed generous navigational regimes now codified in the Convention that protect commercial and military access throughout the oceans. The U.S.S.R., for example, stood with the Western major maritime states and Japan in conditioning acceptance of the 200-mile exclusive economic zone (EEZ) upon guarantees for the right of foreign-flagged vessels, including warships, to navigate and conduct all non-resource-related activities in the zone.<sup>7</sup>

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5. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 396–7 [hereinafter *Law of the Sea*].

6. ANN L. HOLLICK, *U.S. FOREIGN POLICY AND THE LAW OF THE SEA* 253 (Princeton Univ. Press) (1981). The other four major maritime powers were the United States, United Kingdom, France and Japan.

7. *Id.* at 294.

At the Caracas Session of the Law of the Sea negotiations in 1974, the U.S.S.R. combined with Denmark, the United Kingdom, and Switzerland, to propose that marine scientific research in coastal areas would not be subject to coastal state permission unless it was directed at the exploitation of resources.<sup>8</sup> Although this provision failed to gain acceptance by the greater conference, it demonstrated Russia's commitment to the concept of freedom of the seas.

Similarly, with visions of a blue water fleet under Admiral of the Fleet S. G. Gorshkov, and more importantly, trapped in geographic disadvantage, with all of its ports zone-locked by other coastal states' territorial seas and EEZs, Russia proved an essential ally for obtaining the right of unimpeded transit through international straits. Washington and Moscow—one democratic and the other communist—achieved a regime of freedom of navigation throughout the littorals and championed the right of unimpeded transit through strategic chokepoints.<sup>9</sup>

The close maritime relationship between Washington and Moscow did not survive beyond the Cold War. In the 1990s, the United States acquired the mantle of a unipolar power, believing that a weakened Russia was less critical to maintaining the navigational regimes reflected in the Convention. Furthermore, U.S. national concern over strategic security in the oceans waned, yielding to a vision of the oceans that valued environmental protection over global mobility. After the attacks of 9/11, maritime homeland security rose to the top of the U.S. oceans agenda, and Washington began to promote electronic systems for maritime domain awareness that enable coastal states to track—and potentially impede—offshore navigation.

As these trends in oceans policy were developing, Vladimir Putin rose to power in Russia. Relations between the West and Russia deteriorated, and Moscow's diplomatic bellicosity and bluster have increased. These changes emerge from a period of missed opportunity in bilateral diplomacy. There is no doubt that Washington and Moscow have experienced some rather disquieting political and military differences over the past decade.

In the past two decades of American unilateralism by Democratic and Republican administrations before and following 9/11, Washington neglected to cultivate a stronger diplomatic relationship with Russia.<sup>10</sup> While Russia's combat operations in the Chechnya wars were excessively

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8. *Id.* at 298.

9. *Id.* at 253.

10. John Lewis Gaddis, *And Now This: Lessons from the Old Era for the New One*, in *THE AGE OF TERROR: AMERICA AND THE WORLD AFTER SEPTEMBER 11*, 13 (Strobe Talbott and Nayan Chanda eds., 2001).

brutal, for example, the Kremlin believes the West did little to support Moscow against militant secessionist Islam. The overall deterioration in the relationship between the United States and Russia coincided with a program of NATO expansion, seemingly designed to make a final adjustment to European spheres of influence that were unfavorable to Moscow. The period also gave rise to amazing technological progress on ballistic missile defense by the United States, which appeared in Moscow to undermine the potency of Russia's only element of great power status—its nuclear arsenal. Furthermore, from a Russian viewpoint, the United States demonstrated an unwillingness to engage with the Kremlin as an equal partner—expecting cooperation on threat reduction, counter-terrorism, and non-proliferation, while ignoring Russia's need for a sense of stability and influence in its "near abroad."

Russia shoulders even greater blame. Last winter Russia returned to a policy of using energy as a weapon to bully the Ukraine and the states of Europe. Russia's invasion of its neighbor, Georgia, converted an inconsequential neighborhood spat into a crisis on the global level. The invasion was presaged by a stubborn refusal to abide by the Istanbul commitments to withdraw Russian military forces from Georgia and Moldova under the Conventional Forces Europe (CFE) framework. Russia has compensated for a declining military force structure and atrophied capability with increasingly bellicose diplomacy and provocative military exercises, unnecessarily antagonizing its most prosperous neighbors and strongest potential new partners. At the same time, Moscow is courting a rogues' gallery of nations that are intent on upending the world system. These maneuvers are driven by a desire to consolidate political power inside the Kremlin and nurture the political right that is ascending in the country, but their effects reverberate beyond Russia's borders.

For Moscow, things often are seen through the lens of history. At a conference on maritime security in a Nordic capital in 2007, I heard a senior Russian diplomat explain that there were three causes of insecurity in the Baltic Sea, none of which had anything to do with the Baltic Sea. The three factors suggested by the representative of the Russian Federation, were: first, expansion of NATO eastward; second, proposed U.S. missile defense sites in Poland; and third, the Czech Republic and U.S. noncompliance with conventional force limits under the CFE treaty, with this third factor being particularly ironic in light of Russia's unwillingness to comply with its obligations to remove garrisoned forces from its two neighbors. This quixotic list underscores Russia's belief that its ability to protect its core security interests in Eastern Europe, and its identity as a world power, is dissolving. Russia's concerns are a function of a sense of deep unsettlement following the dissolution of the U.S.S.R., against the backdrop

of an elusive project unfolding for more than half a millennia to catch up to the West, both technologically and economically. The feelings are exacerbated by an unhealthy population demographic in free-fall and an economy wholly dependent on natural resources.

However, throughout Eurasia, Russia is a world-class military power. Russia can project great military power in the Northern Pacific Ocean, the Baltic Sea, the Mediterranean and Black Seas, and soon—the Arctic Ocean. Reconciling a powerful Russia into a peaceful and liberal European order will take deft diplomacy, and some new approaches to find common ground. Just as George Kennan predicted that a patient, long-term containment would serve as a bulwark against an irascible Soviet Union, persistent promotion of the rule of law in international diplomacy can help to integrate Russia into the community of nations—and perhaps into the community of democracies.

Russia will not be satisfied being a junior partner. At the same time that Russia's national power is cast into question, with a deteriorating stable of human capital, a "robber baron" feudal economy, and an uneven military force, we are witnessing an explosion of Russian capabilities and presence in all spheres of Arctic power. Moscow's preponderance of Arctic power—geographic, demographic, military, and economic—makes it more comfortable in negotiating about the Arctic than it is about most other issues. That same power also makes it imperative for all seven other Arctic and Arctic-associated nations to work more closely with Moscow to avoid conflict and ensure prosperity in the High North. As a superpower and ally or friend of all of the remaining Arctic states, the United States could play a more constructive role in integrating Russia into a stable new political order in the Arctic Ocean.

### III. ARCTIC RESOURCE ECONOMICS

Not only is Moscow more confident about the Arctic than any other aspect of national power, but it is also the most self-assured about its role in the Arctic region than is any other nation. Geographically, Russia is an immense Arctic nation, stretching 170 degrees around the North Pole. One-third of Russian territory lies north of the Arctic Circle, and the Northern Sea Route links these areas to Europe, Asia, and North America. Seventy-two (72) percent of the world's population living north of the Arctic Circle

is in Russia.<sup>11</sup> Russia obtains eleven (11) percent of its GDP from the Arctic,<sup>12</sup> and twenty-two (22) percent of growth in GDP from the Arctic.<sup>13</sup>

The Arctic is on the cusp of an economic boom, with Moscow leading the way. The region is also linked to the national, and indeed, the world commodity markets. The *Circum-Arctic Resource Appraisal* found that the Arctic may contain up to 90 billion barrels of oil and 47 trillion cubic meter of natural gas.<sup>14</sup> The United States Geological Survey estimated in 2008 that the Arctic holds about thirteen (13) percent of the world's undiscovered oil, thirty (30) percent of the undiscovered natural gas and twenty (20) percent of the undiscovered natural gas liquids.<sup>15</sup> Most of the fossil fuels in the Arctic are in Russia or areas of the Arctic Ocean under Russian resource jurisdiction. Russian President Dmitry Medvedev calls reliance on oil and gas a national narcotic that ameliorates the need for economic reform.<sup>16</sup>

Russia has a preponderance of other Arctic resources as well. The largest nickel mine in the world, for example, is located in the area and operated by Norilsk. In fact, Russian energy resources in the Arctic dwarf not just any other nation, but all other Arctic nations combined.

The United States also has significant onshore and offshore hydrocarbon deposits in the Arctic.<sup>17</sup> The world's largest coal deposit lies inland along the northwest coast of Alaska.<sup>18</sup> The world's largest zinc mine

11. GÉRARD DUHAIME, & ANDRÉE CARON, *The Economy of the North*, in THE ECONOMY OF THE NORTH 16–25 (Solveig Glomsrød and Lulie Aslaksen eds., 2006), available at <http://portal.sdwg.org/media.php?mid=454> (last visited Feb. 25, 2010).

12. Gerard Duhaime and Andree Caron, *The economy of the circumpolar Arctic*, in THE AGE OF TERROR: AMERICA AND THE WORLD AFTER SEPTEMBER 17, 20 (Strobe Talbott and Nayan Chanda eds., 2001).

13. Yuri Solozobov, *Escalating tensions over hunt for oil and gas in the Arctic*, RUSSIA NOW (Russ.), Aug. 28, 2009, available at <http://www.telegraph.co.uk/sponsored/russianow/6098600/Escalating-tensions-over-hunt-for-oil-and-gas-in-the-Arctic-Russia-Now.html> (last visited Feb. 25, 2010).

14. *90 Billion Barrels of Oil and 1,670 Trillion Cubic Feet of Natural Gas Assessed in the Arctic*, U.S. DEP'T OF THE INTERIOR, May 23, 2008, available at [http://www.usgs.gov/newsroom/article.asp?ID=1980&from=rss\\_home](http://www.usgs.gov/newsroom/article.asp?ID=1980&from=rss_home) (last visited February 25, 2010) [hereinafter *90 Billion Barrels*]; see also, Jad Mouawad, *Oil Survey Says Arctic Has Riches*, NEW YORK TIMES, Jul. 24, 2008 at C1, C4.

15. *90 Billion Barrels*, *supra* note 14.

16. Interview by Georg Mascolo, Christian, and Matthias Schepp with Dmitry Medvedev Der, Russian President, in Russ. (Nov. 9, 2009), available at <http://www.spiegel.de/international/world/0,1518,druck-660114,00.html> (last visited Feb. 25, 2010).

17. Sandra Cavalieri, *Offshore Hydrocarbon*, in ARCTIC TRANSFORM, available at <http://arctictransform.org/download/OffHydSum.pdf> (last visited Feb. 25, 2010).

18. RADM Arthur E. (Gene) Brooks, *Arctic Journal – Part I*, USCG: COAST GUARD JOURNAL, Apr. 7, 2008, <http://www.uscg.mil/cgjournal/message.asp?id=65> (last visited Feb. 25, 2010).

is located at Red Dog, near the Chukchi Sea.<sup>19</sup> Consequently, Moscow and Washington share compelling strategic economic security considerations in the Arctic, and the area offers a new opportunity for the two nations to collaborate. Right now the key to unlocking a genuinely constructive bilateral relationship between Washington and Moscow is to develop a closer relationship in maritime security cooperation, and the Arctic Ocean is the best theater for expanding the relationship.

#### IV. MOSCOW'S MIXED MESSAGES

The Russian Federation has a penchant for spoiling closer relations with the West. For example, in 2009 Russian diplomats complained about NATO military exercises in Norway.<sup>20</sup> Andrei Nesterenko of the Russian Foreign Ministry warned that increased NATO activities in the Arctic might “erode constructive cooperation” among the nations of the frozen littoral.<sup>21</sup>

Continuing to stir the pot, on the 70th anniversary of the invasion of Poland, Russian Ministry of Foreign Affairs spokesman Andrei Nesterenko defended the Soviet Union's 1939 pre-war diplomacy with Nazi Germany, in which Moscow and Berlin entered into a secret protocol to the Molotov-Ribbentrop pact to divide Northern and Eastern Europe into spheres of influence.<sup>22</sup> Nesterenko rejected the fact of this conspiracy between Stalin and Hitler as “preposterous, to say the least.”<sup>23</sup> He continued, suggesting that recognition of such claims “are an insult to Russia . . . and betray a desire to shift the blame for unleashing the conflict onto somebody else, to revise World War II history, to discredit Russia, to diminish its role in the defeat of fascism and to veil their own unseemly behavior before and during the war at the same time.”<sup>24</sup>

In 2007 Moscow renewed long-range “Bear” strategic reconnaissance flights over the Arctic after a fifteen (15) year suspension—raising hackles in Canada and Norway. Canada has publicly denounced the flights, and Canadian Foreign Affairs Minister Lawrence Cannon wants Moscow to give advance notice of future flights that are in close proximity to the

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19. *Id.*

20. Vladimir Isachenkov, *Russia Plans to Create Arctic Military Force*, ASSOCIATED PRESS (Russ.), Mar. 27, 2009, available at [http://www.huffingtonpost.com/2009/03/27/russia-to-create-arctic-m\\_n\\_180157.html](http://www.huffingtonpost.com/2009/03/27/russia-to-create-arctic-m_n_180157.html) (last visited Feb. 25, 2010).

21. *Id.*

22. *Russian foreign ministry spokesman's weekly briefing*, BBC MONITORING FORMER SOVIET UNION (Lon.), Sep. 7, 2009.

23. *Id.*

24. *Id.*



Canadian Arctic Air Defense Identification Zone (ADIZ).<sup>25</sup> When a flight was conducted a few hundred kilometers north of Canada in February 2009, on the eve of a visit by President Obama to Ottawa, the Canadian Prime Minister Stephen Harper and Defense Minister Peter McKay accused Moscow of trying to bully Canada.<sup>26</sup> After discussing the issue with Russian Foreign Minister Lavrov, Cannon could not resist announcing: "I do sometimes wonder why the Russians would want to spend so much fuel to fly up to our borders, and they do the same thing with the Americans so, anyway, I don't have an answer on that."<sup>27</sup>

Unhelpfully, Ottawa insisted Moscow should provide advance notification of such flights, even though they are conducted in international airspace. Russia's ambassador to Canada stated Moscow is "growing weary of sniping" by Canadian cabinet ministers over what they see as provocative language about entirely lawful and routine Bear reconnaissance flights.<sup>28</sup> Russian Ambassador Georgiy Mamedov called the Canadian protest a "bizarre outburst,"<sup>29</sup> and Anatoliy Serdyukov, the Minister of Defense of the Russian Federation, stated that the suggestion that the February 2009 flight during Obama's visit to Ottawa was a deliberate attempt to threaten the newly-elected president of the United States was "beyond ridiculous."<sup>30</sup> "It is," he continued, "false and nonsensical."<sup>31</sup>

Russia is correct in defending its right to conduct the surveillance flights in international airspace. The flights do not require notification to nearby nations, and Serdyukov claimed they were "no more provocative than the ones Canada participates in with NATO, which are much closer to the Russian border in the Baltic Sea region."<sup>32</sup> Russia proposed an agreement with Canada whereby Russia would notify Canada of flights in the Arctic in exchange for notification to Moscow of similar NATO exercises, which was rejected.<sup>33</sup> Furthermore, such a pact would erode

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25. Mike Blanchfield, *Russia, Canada relations over Arctic remain frosty*, CANWEST NEWS SERVICE (Ottawa), Apr. 9, 2009, available at <http://www.canada.com/news/Russia+Canada+relations+over+Arctic+remain+frosty/1482408/story.html> 1 (Feb. 25, 2010).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Anatoliy Serdyukov, *Don't Demonize Russia*, NATIONAL POST (Can.), Mar. 30, 2009, at A15.

31. *Id.*

32. Blanchfield, *supra* note 25.

33. *Id.*

political support for the United States and allied surveillance and reconnaissance flights in international airspace throughout the world, such as off the coast of China.

This issue of Russian over-flights and Canada's hyperventilated reaction to them raises an issue about the nature of U.S. diplomatic responses to Russian activities in the Arctic. Both Canada and Norway have worked to color Russian activities in a way that might leverage American military power to resist what they view as Russian encroachment in their locality of the Arctic. For Canada, the concern is Russian continental shelf claims over the underwater Lomonosov Ridge and the seabed of the North Pole.

Norway is more anxious to gain recognition for its contested claim of an EEZ in the waters surrounding the Spitsbergen archipelago. Under the Svalbard Treaty, Norway has sovereign rights over the islands, but other nations are free to use the islands as well.<sup>34</sup> In 2005, tensions rose when Norwegian enforcement vessels chased the Russian vessel *Elektron* out of the waters near Svalbard.<sup>35</sup> The 1926 treaty predates creation of the concept of a 200-mile EEZ, however, yet Oslo insists on treating the waters around the islands as a "Fisheries Protection Zone," an *ad hoc* term not found in UNCLOS. But Norway is a maritime nation, with sea area under jurisdiction that is six (6) times the amount of land territory.<sup>36</sup> Especially sensitive to displays of naval power, Norway was incensed two years after the *Elektron* incident when Russia deployed the aircraft carrier *Kuznetsov* to operate near Oslo's most productive offshore oilrigs.<sup>37</sup>

In neither case, however, is it clear that U.S. allies have a stronger legal claim than that of Russia. Washington should avoid being drawn into the squabbles by refraining from automatically supporting Ottawa and Oslo. It is wrong to assume that the Russian Federation is over-reaching in either case; in fact, the contrary is true, as Russia has colorable claims to an extended continental shelf that very well may extend to the North Pole by way of the Lomonosov Ridge, and a purely textual analysis of the Svalbard

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34. Status of Spitsbergen, Feb. 9, 1920, 2 U.S.T. 269, 270 [hereinafter Spitsbergen].

35. *Operation Underway to Stop Russian Trawler in Norway*, DAILY NEWS BULLETIN (Moscow), Oct. 17, 2005 at 1.

36. ØYSTEIN JENSEN, COASTAL STATE JURISDICTION AND VESSEL SOURCE POLLUTION: THE INTERNATIONAL LAW OF THE SEA FRAMEWORK FOR NORWEGIAN LEGISLATION 2 (Fridtjof Nansen Institute Report) 2006.

37. Kristian Atland & Kristin Ven Bruusgaard, *When Security Speech Acts Misfire: Russia and the Elektron Incident*, 40(3) SECURITY DIALOGUE 333 (2009); Harald S. Klungtveit, *Russian Fighter Planes make Chaos in the North Sea*, DAGBLADET.NO, Nov. 12, 2007, available at <http://www.dagbladet.no/nyheter/2007/12/11/520859.html> (last visited Feb. 25, 2010).

Treaty suggests Norway is not entitled to an economic zone or special fishing zone surrounding Spitsbergen.<sup>38</sup>

Ultimately, Greenland (Denmark) may have a greater claim to the seabed of the North Pole than either Canada or Russia. Greenland has a tiny population of only 55,000, but the land area is three times the size of Texas.<sup>39</sup> Dependent on funding from Copenhagen, in the coming decades Greenland is likely to seek independence, replacing Danish subsidies with revenue from Arctic resources. If this occurs, we can expect China, which has been cementing agreements for oil and gas around the world, to court Greenland with wads of cash.

The Commission on the Limits of the Continental Shelf should address the disagreements over the Lomonosov Ridge claim through careful review, and the issue concerning an economic zone around Spitsbergen could be addressed through the dispute resolution machinery in the Law of the Sea Convention. By developing closer maritime security cooperation with Russia, the United States may be able to serve a broader and more constructive mediating role to bring the three other Arctic powers closer together. Simply supporting Canada and Norway only enforces Russia's sense of victimhood and isolation, while at the same time cynically dispensing with governance by the rule of law in favor of a misguided attempt to employ *realpolitik* in support of traditional allies.

## V. MOSCOW'S ARCTIC STRATEGY

The point of departure for engagement with Moscow on the Arctic should be a better understanding of the strategic implications of two major policy pronouncements by the Kremlin—the national security strategy and the national Arctic strategy. On May 13, 2009, Russian President Dmitriy Medvedev approved the final *National Security Strategy of the Russian Federation until 2020*.<sup>40</sup> The new approach emphasizes the economic component of national power. The goal of the document is the public security of the state and the “preservation of the constitutional order and sovereignty of the Russian Federation.”<sup>41</sup> The strategy targets the United

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38. Spitsbergen, *supra* note 34, at 271.

39. U.S. Census, Texas, <http://quickfacts.census.gov/qfd/states/48000.html> ---- report (last visited Feb. 25, 2010); CIA Fact Sheet, <https://www.cia.gov/library/publications/the-world-factbook/geos/gl.html> (last visited Feb. 25, 2010).

40. Vladimir Solovyev Kommersant, *The President approved the National Security Strategy of Russia until 2020*, KOMMEPCAHTB DAILY, May 14, 2009, available at <http://www.kommersant.ru/doc.aspx?DocsID=1168827> (last visited Feb. 25, 2010).

41. One source from the Presidential Staff seat who was involved in the work on the document, stated that the difference between the current strategy and all other documents is that it,

States and its allies as a “group of leading foreign countries aimed at achieving overwhelming superiority in the military sphere by unilaterally forming a global system of missile defense and militarizing near-Earth space.”<sup>42</sup> The policy also reflects an alarming forecast that in the long term the world will see escalation of the competition for control over energy resources, which in the Arctic and elsewhere, may devolve into war. “The attention of international politics will be concentrated on possession of access to sources of energy resources, including in the Middle East, on the Barents Sea shelf and other Arctic regions . . . . At the same time, however, the document indicates that Russia is ready for the development of improved relations with NATO and greater strategic partnership with the United States, but on the basis of “equality and concurring interests.”<sup>43</sup>

In September 2009, President Dmitry Medvedev signed another Kremlin strategy, which was released by the presidential Security Council and focused on the Arctic. The *State Policy of the Russian Federation in the Arctic until 2020* states that Russia is strengthening its border guard forces and plans to create a new military force to protect its interests in the Arctic region.<sup>44</sup> The strategy also indicates the “Arctic Zone of the Russian Federation” should become the country’s “top strategic resource base” within a decade.<sup>45</sup> Russia seeks to use its vast Arctic areas to “satisfy the requirement of Russia for hydrocarbon resources, aquatic biologic [sic] resources and other kinds of strategic raw materials.”<sup>46</sup> Moscow also is focused on protecting its Arctic natural environment, to “eliminate” the ecologic impact of commerce, to ensure the Arctic is seamlessly connected to the rest of the country’s network of information technology and communications in order to form a single information space, and as a region

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“places emphasis not only on the power component [but also] also takes into consideration the rights of individuals.” *Id.* “So, this concept is quite democratic and liberal,” the source noted. “After all, it is impossible to ensure national security with power methods only.” *Id.*

42. *Id.*

43. *Id.*

44. The “Arctic Zone of the Russian Federation” encompasses, fully or partially, “the territory of the Republic of Sakha (Yakutia), Murmansk and Arkhangelsk Oblasts, the Krasnoyarsk Kray, the Nenetskiy, Yamalo-Nenetskiy and Chukotskiy Autonomous Okrugs, that were defined by a decision of the State Commission for Arctic Affairs under the Council of Ministers of the USSR of 22 April 1989, as well as the lands and islands indicated in the Resolution of the Presidium of the Central Executive Committee of the USSR of 15 April 1926 “On the Declaration of the Territories of the USSR of Lands and Islands Situated in the Arctic Ocean,” and the interior sea waters, the territorial seas, the exclusive economic zone and the continental shelf of the Russian Federation adjacent to the territories, lands and islands within the limits of which Russia possesses sovereign rights and jurisdictions in accordance with international law.” Presidential Decree, May 12, 2009, No. 537 (Russ.), § 2 [hereinafter No. 537].

45. *Id.* § 4(a).

46. *Id.* § 6(a).

for basic and applied scientific research, especially technology related to defense and security.<sup>47</sup>

Overcoming the geophysical challenges, Russia has developed a much more extensive Arctic economic and shipping infrastructure than any other nation, and it also operates numerous ice breakers to support transits throughout the Northern Sea Route and Northeast Passage. Moreover, most of the transits across the top of Siberia are in international waters, as Russia has drawn straight baselines to capture as internal waters only a handful of narrow and short straits.

Established in the 1930s, the northern routes were used to connect the frozen north to the rest of the country.<sup>48</sup> The infrastructure and port facilities deteriorated in the 1990s with the fall of the Berlin Wall and the break-up of the Soviet Union.<sup>49</sup> Usage of the routes plummeted. However, in recent years the Northern Sea Route and Northeast Passage are experiencing a renaissance, as Russia lavishes attention and resources on its northern strategy. The routes have tremendous potential to promote the natural resources sector of the new Russian economy. Most of the rivers in Siberia flow north to the Arctic, providing the best avenue for moving goods over long distances. As the climate warms, the rivers and associated oceanic routes will become even more accessible, both for resource development and transportation.

The routes have fared prominently in Russia's national economic development strategy since 2000, and Moscow has more ice breakers than any nation on Earth.<sup>50</sup> Three heavy, nuclear-powered ice breakers are to be added to the fleet by 2016.<sup>51</sup> These powerful ships can operate along the northern coast throughout the entire year.<sup>52</sup> The nation also plans to construct a variety of ice-strengthened service vessels for offshore port service and search-and rescue operations.<sup>53</sup>

Moscow has published comprehensive regulations for navigation along the Northern Sea Route, which include navigational control, mandatory

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47. *Id.* § 6(c)–(e).

48. Claes Lykke Ragner, *The Northern Sea Route*, NORDEN ASSOCIATION'S YEARBOOK, 114, 115 (2008).

49. *Id.* at 118.

50. Scott G. Borgerson, *Arctic Melt: The Economic and Security Implications of Global Warming*, FOREIGN AFFAIRS, Mar./Apr. 2008, at 63.

51. Caitlyn Antrim, *Russia and the Changing Geopolitics of the Arctic*, WORLD POLITICS REVIEW, Mar. 2, 2009, available at <http://www.worldpoliticsreview.com/articlePrint.aspx?ID=3380> (last visited Feb. 25, 2010).

52. *Id.*

53. *Id.*

pilotage and required icebreaker escort through the Vilkitskiy Strait, Dmitry Laptev Strait, the Sannikov Strait, and the Shokalskiy Strait. Most of the traffic along the Northern Sea Route is Russian-flagged. Most transits are regional cabotage shipping rather than intercontinental voyages. With the exception of two German vessels that used the route in the summer of 2009, the Northern Sea Route had not been transited by a non-Russian ship since 1997. Russia asserts the authority to require all vessels using the route to pay a fee to support icebreaking, and the charge can be as much as \$100,000 per transit.<sup>54</sup> The transit fees and other regulations may be excessive since they are disconnected from the actual cost of the services rendered, and therefore are an impermissible impediment to transit passage through straits used for international navigation.

Some ice-strengthened ships are capable of conducting the transit without icebreaker support, so requiring ice-breaker assistance appears to be more about rent-seeking and political control than safety at sea. But in September 2009, Russia indicated that it was prepared to develop international cooperation on the Northern Sea Route. Artur Chilingarov, in a meeting with the Norwegian Barents Secretariat, suggested that Russia could position an office in Kirkenes.<sup>55</sup> Cooperation on the Northern Sea Route will become more important as the ice gets thinner, opening a passage through the route without the aid of ice breakers.

Furthermore, Russia is interested in capitalizing on the Arctic as a sphere of military security. Moscow seeks to strengthen its ability to “defend and safeguard the state border of the Russian Federation in the Arctic Zone,” and to use the area to support “essential combat capabilities of general purpose formations of troops (forces) of the Armed Forces . . . .”<sup>56</sup>

Finally, the strategy seeks to ensure the Arctic is a sphere of greater international cooperation, and so far this element has been under-exploited. Moscow is seeking to build an Arctic security architecture that provides for conditions of “mutually advantageous” cooperation between the Russian Federation and other Arctic-bordering states, and “based on international treaties and agreements to which the Russian Federation is a party.”<sup>57</sup>

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54. 2005 U.S. Arctic Research Commission, ANN. REP. 37, 68.

55. Rune Rafaelsen & Artur Chilingarov, *Russia Wants International Cooperation on Northern Sea Route*, BARENTS OBSERVER, 20 Oct. 2009, available at <http://www.barents.no/russia-wants-northern-sea-route-cooperation.4644802-41098.html> (last visited Feb. 25, 2010).

56. No. 537, *supra* note 44, § 6(b).

57. *Id.* § 6(f).

In contrast to the provocative military exercises and belligerent public diplomacy, Russia has been remarkably even-tempered about efforts to maintain peace and adhere to the rule of law in the Arctic Ocean. At a press conference in Moscow, Russian Foreign Ministry special envoy Anton Vasilyev stated that any suggestion concerning possible military conflict over Arctic resources is baseless.<sup>58</sup> The “alarmist assessments” about the potential for war in the Arctic—some of which “reach almost as far as the World War III in the struggle for Arctic resources,” are “excessive and sometimes provocative.”<sup>59</sup> Vasilyev also stated that issues in the Arctic will be “solved on the basis of international law.”<sup>60</sup>

The United States should explore Vasilyev’s offer to collaborate more closely. By working more closely with the Russian Navy, the United States could promote a stable and peaceful Arctic Ocean. Furthermore, cooperation would leverage the Russian and U.S. naval forces for expanded support for freedom of navigation in the Arctic, enjoin Russia in sharing a greater burden in maritime security operations and develop the rule of law in the world’s fourth largest ocean. Finally, the cooperation in the High North would be noticed elsewhere, such as China, which is grappling with how to employ a rapidly growing blue water fleet. The unintended consequence—think of it as an extra dividend—of accepting the Russian Navy as an equal partner for peace in the Arctic Ocean might actually be warmer relations between the two countries.

## VI. EXTENDED CONTINENTAL SHELF

Despite the relentless media frenzy over a private Russian miniature submarine planting a flag on the seabed of the North Pole, Russia is not making irresponsible claims to the seabed. Under the Law of the Sea Convention coastal nations may claim sovereignty over the resources of an extended continental shelf, but not the water column above it, by submitting convincing bathymetric and geologic data to an international commission that shows the seabed is a natural extension of the geographic continental margin.<sup>61</sup> Russia has made claims to the resources of the seabed at the

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58. *Russia says Arctic Military Conflict is Not Possible*, DAILY NEWS BULLETIN (Moscow), Oct. 22, 2008, available at <http://www.barents.no/russia-wants-northern-sea-route-cooperation.4644802-41098.html> (last visited Feb. 25, 2010) [hereinafter *Arctic Military*]; WHITNEY LACKENBAUER, *From Polar Race to Polar Saga: An Integrated Strategy for Canada and the Circumpolar World*, in FOREIGN POLICY FOR CANADA’S TOMORROW NO. 3 18 (Canadian International Council) (2009).

59. *Arctic Military*, *supra* note 58.

60. *Id.*

61. Law of the Sea, *supra* note 5, art. 76.

North Pole based on some evidence that the Lomonosov Ridge, an underwater mountain range, extends from Siberia to the top of the world. The body that reviews such claims, the Commission on the Limits of the Continental Shelf, was set up under the Law of the Sea Convention, and it has asked Russia for additional ocean survey data to support the claim—which Russia is trying to provide.

Moscow is completing geological studies by 2011 to demonstrate its claim to the extended continental shelf of the North Pole. In 2001, Russia was the first nation to submit an extended continental shelf claim to the Commission, and Russia's assertion that the Lomonosov Ridge projects the Siberian continental shelf to the North Pole is opposed by Canada and Denmark. Canada fears submarines from the Russia's Northern Fleet could be involved in efforts to claim and protect Arctic resources.

Concerning Russia's claim over the continental shelf extending as far as the North Pole, the spokesman stated that Russia was going through the process for making such claims under Article 76 of the Law of the Sea Convention. "Article 76 of the International Convention on the Law of the Sea only stipulates the sovereignty to explore the seabed and mineral resources and the exclusive right to use the seabed and mineral resources. Pipes, cables can be built over this territory no problem, without a permit of respective nations, this zone is open to navigation," he stated accurately.<sup>62</sup> He also acknowledged that even if Russia is allowed to expand the borders of its continental shelf, it will not mean that Russia will have total sovereignty over this entire zone."<sup>63</sup> In particular, a continental shelf claim does not inure additional rights of control over the fishing resources.<sup>64</sup>

## VII. THE BERING GATE

The Bering Strait is the Pacific gateway to the Arctic Ocean and the Northwest Passage. The daily maritime border cooperation and routine security management between the 17th Coast Guard district and the eastern region of the Federal Border Service of Russia is the most functional bilateral relationship between the two countries.

The arrangement is also one of the best bilateral security relationships in the Arctic outside of NATO. The two nations closely coordinate the management of the Bering Strait under an agreement signed in 1995 between the U.S. Coast Guard and the Federal Border Service of the

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62. *Moscow Asks to Stop Arctic War Intimidations*, DAILY NEWS BULLETIN (Moscow), Oct. 23, 2008, available at <http://www.mombu.com/hdtv/hdtv/t-10238-moscow-asks-to-stop-arctic-war-intimidations-2535845.html> (last visited Feb. 25, 2010).

63. *Id.*

64. *Id.*



Russian Federation.<sup>65</sup> A 2001 protocol to the pact reached agreement on operational procedures to more effectively combine maritime law enforcement in the North Pacific, including search and rescue operations, protection of 200-mile exclusive economic zones, prevention of terrorism and smuggling at sea and maritime border security.<sup>66</sup> In order to accomplish these tasks, the two nations developed a Combined Operations Manual or “playbook” for conducting operations, including cooperative procedures for command, control and communications, information-sharing, boarding of suspicious vessels, flight operations and emergency assistance.<sup>67</sup> The two nations exchange personnel and conduct combined training and operations along the Bering Strait.

#### VIII. IMPLEMENTING THE COOPERATIVE STRATEGY IN THE ARCTIC OCEAN

The *Cooperative Strategy for 21st Century Sea Power*, which was signed by the service chiefs of the Navy, Marine Corps and Coast Guard in 2007, suggests climate change may become a potential source of competition and conflict.<sup>68</sup> “Climate change is gradually opening up the waters of the Arctic, not only to new resource development, but also to new shipping routes that may reshape the global transport system,”<sup>69</sup> the strategy states. “While these developments offer opportunities for growth, they are potential sources of competition and conflict for access and natural resources.”<sup>70</sup>

But the Russian Navy is not going to go away and it is far more favorable to co-opt the force than resist it. Doing so leverages the military and political power of Russia to achieve the goals of the Cooperative Strategy—increasing the rule of law in the oceans. If the Russian Navy can successfully be incorporated into the global security paradigm, then an entirely new and powerful capability is brought on line to contribute to

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65. Memorandum of Understanding between the United States Coast Guard and the Federal Border Service of the Russian Federation, 20 Oct. 1995 (copy on file with the author).

66. Promulgation of Agreed Operational Procedures as Outlined in the Combined Operations Manual Between the United States Coast Guard and the Federal Border Service of the Russian Federation, 9 Apr. 2001 (copy on file with the author).

67. Section II, Promulgation of Agreed Operational Procedures as Outlined in the Combined Operations Manual between the United States Coast Guard and the Federal Border Service of the Russian Federation, 9 Apr. 2001 (copy on file with the author).

68. James T. Conway, Gary Roughead, & Thad W. Allen, *A Cooperative Strategy for 21st Century Seapower*, available at <http://www.navy.mil/maritime/MaritimeStrategy.pdf> (last visited Feb. 25, 2010).

69. *Id.*

70. *Id.*

maritime security constabulary operations, humanitarian assistance and disaster relief and the assertion of freedom of navigation challenges. Such close coordination for maritime security cooperation also presents the navies of the United States and other countries with the opportunity to share best practices, present our perspective on how to best strengthen conflict avoidance at sea and broaden maritime regional stability. No nation can do it alone, and Russia could be a great force multiplier.

Building on Russia's renewed interest in the oceans and yearning for recognition, the United States and the other major maritime powers should seriously operationalize the *Cooperative Strategy* in its Arctic relationship with Russia. Going beyond diplomatic engagement with Moscow, the United States should seek to conduct exercises and mission planning for responsible multinational patrols in critical areas such as the Arctic Ocean.

#### IX. LEVERAGING THE INCIDENTS AT SEA AGREEMENT

In the late 1960s, there were several incidents between forces of the U.S. Navy and the Soviet Navy. These included planes of the two nations passing near one another, ships bumping one another, and both ships and aircraft making threatening movements against those of the other side. In March 1968 the United States proposed talks on preventing such incidents from becoming more serious. The Soviet Union accepted the invitation in November 1970, and the talks were conducted in two rounds—October 1, 1971, in Moscow and May 17, 1972, in Washington, D.C. The “Incidents at Sea” (INCSEA) agreement was signed by Secretary of the Navy John Warner and Soviet Admiral Sergei Gorshkov during the Moscow summit meeting in 1972.

One way to quickly reach this level of cooperation would be for the United States to refashion its approach to the INCSEA arrangement. INCSEA, which has atrophied over the last two decades and has been reduced to a mechanism for Sixth Fleet staff talks and arranging port visits—confined to the European environs. But when it was originally conceived, the INCSEA agreement had global application. The treaty was signed by the Secretary of the Navy years before the Goldwater-Nichols defense transformation stripped the Chief of Naval Operations of his role as the worldwide operational commander of naval forces. Goldwater-Nichols successfully reduced service parochialism, yet vestiges such as INCSEA remain in the pocket of regional naval commanders rather than Pentagon leadership with a global perspective.