

FREEDOM OF NAVIGATION IN THE ARCTIC:
OPTIONS FOR DETERRING RUSSIA'S EXCESSIVE MARITIME CLAIMS

by
Michael "Mac" Sims

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Abstract

As climate change opens up new lanes of international commerce from melting sea ice in the Arctic, the region has growing importance to American strategy. The newly viable Northern Sea Route (NSR) through the Arctic Ocean around Russia will prove to be one of the 21st century's most important commercial routes as the fastest way to move goods between the North Atlantic and the North Pacific. However, the Russian Federation has made excessive maritime claims, claiming that most of the NSR is an internal waterway, and enforcing a stringent regulatory regime on any vessel wishing to make the transit.

This paper presents the option of conducting Freedom of Navigation Operations (FONOP) in the Arctic to deter excessive Russian claims and to reassure the United States' allies of a commitment to preserving a rules-based order in the Arctic. This study analyzes the history of Russian maritime claims and the efficacy of the larger FONOP program, using FONOPs in the South China Sea as a case study to generate a pro and con policy analysis framework. Based on these factors, this paper concludes that the US should begin FONOPs through the Arctic within the next five years, accomplishing the stated policy goal with the most limited military escalation possible. Furthermore, since the commercial activity in the Arctic will only increase over time, this study finds that waiting to tackle this problem only increases the costs associated with finding a solution in the long term.

Advised by: Professor Paul J. Weinstein, Jr.

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To my husband Austin, for inspiring me to write on this topic, encouraging me throughout, and for putting up with me while I completed this degree. To my parents, for always believing in me. I love you all!

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MEMORANDUM FOR PRESIDENT JOSEPH R. BIDEN JR.

DATE: January 24th, 2022

FROM: MICHAEL “MAC” SIMS

SUBJECT: Excessive Russian Maritime Claims and Freedom of Navigation in the Arctic

I. Action-Forcing Event

In 2021, Russia assumed the chairmanship of the Arctic Council at the same time that they raised the amount of military hardware and manpower in the region to unprecedented levels.¹ As climate change melts Arctic ice revealing new strategic and commercial avenues, Russia has invested in creating a wide advantage to threaten American polar interests.

II. Statement of the Problem

The United States is an Arctic nation with critical security and economic interests in the region. We share the Arctic with four NATO states, Canada, Denmark, Norway, and Iceland, which collectively represent more than half of the sovereign Arctic coastline. Russia represents the single largest territorial coastline in the Arctic, and neighboring Finland and Sweden round out the eight Arctic states. As global warming melts Arctic ice revealing resources and shipping routes, regional politics have evolved from scientific cooperation and goodwill to a potential geopolitical flashpoint and microcosm of great power competition.

The Arctic carries massive economic potential for powers that are willing and able to exploit the hostile environment. As soon as the 2030s, the Arctic could be mostly ice-free in the high summer, leading to the possibility of new mineral and gas exploitation on the seabed,

¹ Nick Paton Walsh, “Satellite Images Show Huge Russian Military Buildup in the Arctic,” CNN (Cable News Network, April 5, 2021), <https://www.cnn.com/2021/04/05/europe/russia-arctic-nato-military-intl-cmd/index.html>.

commercial shipping through the Northwest Passage and Northern Sea Route (NSR), and expanded fisheries to replenish diminished fishing resources.² Of these commercial opportunities, the most significant is the NSR, which is already open for transit for some months with icebreaker support, and the presence of undersea oil reserves. According to the United States Geological Survey, "extensive Arctic continental shelves may constitute the geographically largest unexplored prospective area for petroleum remaining on earth." They continued by estimating that the Arctic may hold an estimated 90 billion barrels of oil, 1.7 trillion cubic feet of natural gas, and 44 billion barrels of liquid natural gas. This amounts to 30% of undiscovered natural gas and 13% of undiscovered oil.³

With so much economic potential waiting underneath the ice, it is not difficult to see how commercial possibility in an unexplored international arena quickly devolves into a security dilemma. Further, that half of the Arctic is either US or NATO territory and the other half is Russian imparts an even more complex geopolitical context than simple economic competition. Though the world is moving away from natural fuels, that transition is still decades away and, in the short term, there are trillions of dollars to be made from countries that exploit these resources, incentivizing poor behavior from countries with revisionist tendencies. Though there are other security concerns in the Arctic beyond US-Russia competition, these concerns are the most salient, least likely to be resolved through simple dialogue, and require the greatest number of resources to confront.

² U.S. Library of Congress, Congressional Research Service, *Changes in the Arctic: Background and Issues for Congress*, by Ronald O'Rourke, et. al., R41153 (September 23, 2019), 22.

³ *Ibid*, 65.

Military interest in the Arctic mirror the two main economic opportunities. Resource exploitation drives potential conflicts in the form of conflicting territorial claims and a desire to control the profits from new shipping lanes presents freedom of navigation concerns. As Lincoln Flake, a senior Russia analyst for NATO, warns, “the issues of Arctic navigation and seabed ownership remain as disputes with the greatest potential to destabilize the region.”⁴ As we will see, this destabilization comes from the illegal overregulation of Arctic commercial lanes in areas that are rightfully in the international right-of-way.

Russian disposition in the Arctic is directly aligned with their territorial claims in the region deriving from a desire to find new avenues for oil exploitation as their Siberian reserves are predicted to dry up in coming years.⁵ To that end, Russia has submitted dubious claims that would extend their Exclusive Economic Zone (EEZ) well into the seabed that the United States considers fair for international use.⁶ Since a nation’s EEZ is determined by the length of its continental shelf, Russia has attempted to demonstrate to the international community that the Lomonosov Ridge, which spans a significant distance across the Arctic Ocean as far as the North Pole, is an extension of its continental shelf. Importantly, other nations such as Norway and NATO-ally Canada also maintain that part of the oil-rich Ridge and surrounding areas are

⁴ Lincoln E Flake, “Forecasting Conflict in the Arctic: The Historical Context of Russia’s Security Intentions,” *The Journal of Slavic Military Studies* 28, no. 1 (February 2015), 74.

⁵ Thomas Grove and Arthur Bondar, “Russian Military Seeks to Outmuscle U.S. in Arctic,” *The Wall Street Journal* (Dow Jones & Company, May 25, 2021), <https://www.wsj.com/articles/russian-military-seeks-to-outmuscle-u-s-in-arctic-11621935002>.

⁶ “Blinken Says Russia Has Advanced Unlawful Maritime Claims,” Reuters, May 18, 2021, <https://www.usnews.com/news/world/articles/2021-05-18/russia-has-advanced-unlawful-maritime-claims-in-the-arctic-blinken>.

their territory.⁷ Russia has also attempted to claim newly revealed islands as their territory, using them to bolster claims of a more expansive EEZ.⁸

Similarly, Russia claims expanded rights over the NSR than international law would normally allow. That the NSR lies almost entirely within the Russian EEZ is not under doubt, but Moscow asserts that much of the route is within its territorial waters.⁹ The difference between the two is significant. If the important shipping lane is within the Russian EEZ, then it is in international waters and is not subject to Russian law or sovereignty. This would mean that both commercial and foreign naval vessels could pass through the route freely. If it were in internal waters, foreign navies would not be able to pass and commerce in one of the 21st century's most important future routes would be subject to Russian authority, taxation schemes, and passage rights. The US firmly denies this Russian territorial claim.

Through the economic lens, Russia's military actions in the Arctic do comprise a coherent policy: secure the nation's economic future through arctic oil and shipping by enforcing historic Russian territorial claims through military activity if necessary. This regional approach also nests well within the Kremlin's larger foreign policy. Russia has been building the military muscle in the region needed to enforce those claims by putting unprecedented numbers of troops and aircraft in the Arctic, building new bases, resuming nuclear-armed bomber sorties that had been paused at the end of the cold war, and reactivating the Soviet-era Northern Fleet.¹⁰ President Putin has stated directly that military posture must be increased in the Arctic

⁷ O'Rourke, et. al., 40-41.

⁸ Grove and Bondar.

⁹ O'Rourke, et. a., 32.

¹⁰ Grove and Bondar.

to be able to regulate the NSR by force, if necessary.¹¹ Furthermore, there has also been a new effort to bolster defensive capabilities through the establishment of new air defense networks, coastal missile systems, early warning radars, and other sensors.¹²

Russia's aggressive posturing on NATO's doorstep along with territorial claims on the international right-of-way and NATO member's seabeds constitute a serious threat to American interests in the Arctic. Mr. Putin's actions in Ukraine, Crimea, and Georgia show an appetite for aggressive revisionism, leading to the necessity of credible deterrence in the Arctic. The United States must revise its stance in the region to ensure its rights and territorial integrity as well as that of our treaty allies. However, it must do all of this without creating a security dilemma that risks turning a potentially profitable region into a security dilemma or regional arms race in the same vein as the South China Sea.

III. History/Background

From the 1920s to the present, Russian navigational rights and claims on the seabed have been largely consistent from the Soviet to Putin regimes. During the Soviet years, the USSR would repeatedly make two claims regarding the NSR: that the straits through which one travels within the NSR are internal waterways rather than territorial straits, and that the EEZ is subject to a level of government regulation that normal EEZ waters are not subject to. Claims regarding the seabed have been equally consistent with Russia laying claim to a wedge of bed from their shoreline to the North Pole. These historical basis behind these three claims are

¹¹ Ibid.

¹² "Report to Congress: Department of Defense Arctic Strategy," media.defense.gov (US Department of Defense, 2019), <https://media.defense.gov/2019/Jun/06/2002141657/-1/-1/1/2019-DOD-ARCTIC-STRATEGY.PDF>.

essential to understanding their modern attitude towards the NSR and EEZ as well as the military force posture supporting that attitude.

Though the foundation of Russian Arctic claims goes back hundreds of years, the first claim upon which much of Russia's modern jurisprudence is based is a 1926 edict by the People's Commissar of Foreign Affairs. This doctrine, which is still roughly followed today, lays out the particular claims to a wedge-shaped plot of earth through the Arctic circle, originating on either side of the Russian landmass and terminating at the North Pole, within which all landmass belonged to the Russian SFR.¹³ Though the right to exploit the seabed was not relevant at that point and the NSR was a theoretical route, this memorandum would serve as a sort of jumping-off point for future Arctic claims.

The 1950s saw a flurry of activity in the development of Arctic doctrine for the USSR. As the NSR became a feasible route due to icebreaking technologies, the USSR began to work on diplomatic solutions to ensure their dominance in their polar wedge culminating in the Law of the Seas Conferences of 1958 and 1960. These conferences saw the Soviet diplomats receive many of the concessions that they wanted about territorial rights to the seabed, but few of their ambitions towards NSR regulation were realized.¹⁴ At the time the technology did not yet exist to fully exploit the seabed, so this felt like a loss to the USSR's position, but decades later, this would form the basis for further conventions that would be beneficial to the USSR's position, as noted below. After the failure to secure their desired navigational rights in explicit

¹³ *Memorandum on the Soviet Doctrine and Practice with respect to the Regime of the High Seas*, reproduced by International Law Commission, 2nd Sess, UN Doc, A/CN. 4/38, (November 21, 1950), 6.

¹⁴ Flake, 84.

language, the USSR began a regime that scholars refer to as “creeping jurisdiction” where they took advantage of ambiguous language within the Law of the Seas to slowly expand their claims to navigational jurisdiction.¹⁵

The United States, keen on ensuring that the NSR would be open and available for international shipping, would begin to test the Soviet Union's creeping jurisdiction in the 60s through a sort of proto-freedom of navigation exercises. The US wanted to demonstrate that the USSR both lacked *de jure* and *de facto* control of NSR waters by sending American scientific and military vessels to navigate and survey waters that they considered international right-of-way but that the USSR considered closed. This began with the USCGC *Northwind* and the *USS Burton Island* who were sent in 1964 and again in 1965 to conduct surveys. The USSR, likely realizing that they could not stop the American vessels, shrewdly preempted the passage by sending the US Department of State permission for the ships to pass through Russian internal waterways. This *aide-memoire* memorandum also “reminded” the US Government that the waters, “belong historically to the Soviet Union...” and that, “not one of these stated straits, as is known, serves for international navigation.”¹⁶ In response, the US sent a diplomatic cable back to the Kremlin rejecting the idea that a historic claim could prevent them from accessing the waters and, even if they could, no such claim existed.¹⁷ For their part, the Russian memorandum only stated that a historic claim existed, but not what it was.

¹⁵ William V Dunlap, “Transit Passage in the Russian Arctic Straits,” *Maritime Briefing* 1, no. 7 (1996), 10.

¹⁶ Christopher R. Rossi, *Sovereignty and Territorial Temptation: The Grotian Tendency* (Cambridge, UK: Cambridge University Press, 2018), 98-99.

¹⁷ *United States Responses to Excessive National Maritime Claims*, Limits in the Seas No. 112, United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, (March 9, 1992), 21.

In 1967, the US dispatched the *Edisto* and the *East Wind* Coast Guard icebreakers to circumnavigate the Arctic to demonstrate again the right of innocent passage through international straits. The American ships encountered poor weather conditions in the northern route that they had chosen which was comprised entirely of international waters. In response, they chose to pass through the Vilkitsky Strait, regarded as one of the most important in the NSR, making this a critical test to the US claim that NSR straits granted international innocent passage. Bizarrely, the USSR blocked passage to the US military ships but also claimed that they were “territorial waters,” rather than inland waters, a distinction which meant that the US ships did indeed have a right to innocent passage.¹⁸ However, despite having the legal remit to pass through, Soviet threats to detain or otherwise interfere with the voyage caused the group to abandon the mission, though the legal issue was still outstanding.¹⁹

The US was quick to point out the curious phrasing of the Russian denial of passage, so the USSR had to retroactively rely on a dubious technicality that the US ships did not notify the USSR of the use of the territorial waters 30 days in advance to boot them from the waterways.²⁰ That this would have been impossible since they did not know in advance that the planned international waterway was impassable terrain could not have gone over the American’s heads. Realizing that they lacked the real legal authority to regulate who got to use the NSR, they embarked on a regulatory regime to make it as difficult as possible to legally pass, including requiring Russian icebreaker escorts, timely notification of use, and numerous

¹⁸ Rossi, 100-101.

¹⁹ Ibid.

²⁰ Flake, 86.

bureaucratic permissions.²¹ It would have been clear to everyone involved that Moscow needed a firmer international legal basis to proceed with its regulatory ambitions rather than simple strongarming.

Russian diplomats were able to make great progress to that effect during the deliberations on the 1982 United Nations Convention on the Law of the Sea. (UNCLOS) As regards their territorial claims to the seabed, which at this time had become a priority due to technological capability to exploit it, Article 76 states that nations would receive a 200-mile EEZ with an extra 150-mile option if they could prove their continental shelf extends that far.²² This fully realized the Soviet position from the 1950s and set the stage for the ongoing Russian claims to a larger seabed mentioned in section II.

Further, Article 7 of UNCLOS allows straits to be considered “internal waters,” and therefore not subject to international rights of passage without permission, if they are sufficiently “indented and cut into [territorial landmasses], or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed” when drawing limits of internal waters.²³ This means that the USSR could draw maps of internal waterways to include the most important straits of the NSR, which they promptly did. Reflecting the importance of this diplomatic win, the USSR responded three months later in March of 1983 by passing “the Law of the State Boundary of the USSR” which used the same “straight line” language to claim internal waterways around all Arctic islands,

²¹ Ibid.

²² Convention on the Law of the Sea (UNCLOS), (December 10, 1982), 1833 U.N.T.S. 397, 53.

²³ Ibid, 28.

converting all NSR straits to internal waterways not subject to international right-of-way.²⁴

When combined with Article 7 of UNCLOS, this represented a significant diplomatic victory and gave a basis for international recognition of what was previously creeping jurisdiction.

Finally, Article 234 of UNCLOS states that nations have the specific right to,

“adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.”²⁵

Though this seems innocuous on the surface, the Russians interpret this clause expansively.

Article 234 has become the vehicle that the Kremlin uses to ban naval vessels of other nations from their EEZ to the present; all other nations, including the US, deny this broad interpretation of Article 234.²⁶ Though the United States is a signatory to UNCLOS but has not ratified the treaty, it has become customary international law which the US abides by.²⁷ Therefore, UNCLOS gave three substantial victories to the USSR’s Arctic claims in the form of inland straits, seabed range, and EEZ exclusionary policy, even if the full extent of these derivative claims is not recognized by the international community.

The legal basis of Russian Arctic claims has remained mostly static from the passage of UNCLOS to the present. The dissolution of the Soviet Union and the disorganization of the Russian Federation in the early 2000s meant that more pressing issues occupied the minds of

²⁴ W.E. Butler, tran., “Union of Soviet Socialist Republics: Law on the State Boundary of the U.S.S.R.,” *International Legal Materials* 22, no. 5 (1983), 1057.

²⁵ UNCLOS, 114-115.

²⁶ Flake, 88.

²⁷ Dunlap, 10.

policymakers than a little-used NSR and somewhat relevant seabed claims. However, though the last ten years have seen little change in Russian legal claims, there has been a significant military force posture change. As noted in section II, the last ten years have seen a substantial buildup in Russia's Arctic military and naval forces as sea ice melts and the longstanding Arctic claims become more relevant. Fundamentally, the mission of Russian Arctic forces has changed. During the Cold War, thicker and less seasonally transient ice meant that the main strategic value of the Arctic was as a staging ground for nuclear deterrents. Today, the value has become primarily economic, meaning that the preponderance of military force in the region has shifted from nuclear missile submarines patrolling under the ice to conventional forces that can defend territorial claims such as army groups and border guards.²⁸ Putin has resolved to create several new brigades of Arctic infantry, build new air bases, and raise new air defense regiments in support of his plans through the 2030s.²⁹ In 2013, he ordered the reopening of a neglected Soviet naval base in the far north, framing it explicitly in terms of protecting economic interests by saying, "We will not only reopen the military base but restore the airfield to working order and make it possible for the emergency services, hydrologists and climate specialists to work together to ensure the security and effective work of the Northern Sea Route."³⁰

The United States took notice of Russian military modernization and force posture changes in the arctic. In 2009, President Bush issued Presidential Directive-66 which reaffirmed

²⁸ Philip Burgess, tran., "Foundations of the Russian Federation's State Policy in the Arctic until 2020 and Beyond," Arctic Portal, September 18, 2018, https://icr.arcticportal.org/index.php?option=com_content&view=article&id=1791%253.

²⁹ Sergunin, 183.

³⁰ Putin: Russia to Reopen Soviet-Era Arctic Military Base," Reuters (Thomson Reuters, September 16, 2013), <https://www.reuters.com/article/us-russia-arctic/putin-russia-to-reopen-soviet-era-arctic-military-base-idUSBRE98F0VX20130916>.

the decades-old US policy that NSR straits are not inland waterways and that the Russian EEZ is open for international transit.³¹ The US has also begun the process of ensuring that Russian military force is met in the Arctic by American and NATO military deterrence. In 2018, President Trump ordered the Navy to re-establish the 2nd Fleet, America's Arctic Naval force, as an entity independent of the Atlantic Fleet.³² Additionally, the US has worked with its NATO allies to increase aircraft patrols and establish new airfields in the Arctic Circle.³³ Finally, President Trump ordered the Departments of State, Homeland Security, Defense, and Commerce to procure an additional three heavy icebreakers to its existing one, to compete with Russia's 40 icebreakers and not to be dependent on Russian capabilities to transit the arctic.³⁴

As the Kremlin expands its presence in the Arctic, the last four years have seen a flurry of new activities and edicts from the central government. In 2018, President Putin laid out his future vision of the NSR, expecting that total gross tonnage through the shipping channel would reach 80 million tons by 2024, significantly expanding the importance of the route to global markets in line with the expanding importance of the Arctic due to receding sea ice.³⁵ However, the order for additional use was accompanied by additional restrictions on international use

³¹ National Security Presidential Directive - 66, NSPD- 66 (January 9, 2009).

³² U.S. Revives Navy Fleet to Counter Russian Presence in North Atlantic," RadioFreeEurope/RadioLiberty (U.S. Revives Navy Fleet To Counter Russian Presence In North Atlantic, August 25, 2018), <https://www.rferl.org/a/us-revives-navy-2nd-fleet-counter-russian-presence-north-atlantic-/29452420.html>.

³³ Henry Ridgwell, "US, Russia Spar over Military Buildup on Sidelines of Arctic Summit," VOA (US, Russia Spar Over Military Buildup on Sidelines of Arctic Summit, May 20, 2021), tinyurl.com/2myvkk4s.

³⁴ Julian Borger, "Trump Orders Fleet of Icebreakers and New Bases in Push for Polar Resources," The Guardian (Guardian News and Media, June 9, 2020), <https://www.theguardian.com/us-news/2020/jun/09/trump-icebreakers-bases-arctic-antarctic-polar>.

³⁵ Atle Staalesen, "It's an Order from the Kremlin: Shipping on Northern Sea Route to Reach 80 Million Tons by 2024," The Independent Barents Observer, May 15, 2018, <https://thebarentsobserver.com/en/arctic/2018/05/its-order-kremlin-shipping-northern-sea-route-increase-80-million-tons-2024>.

which stem from their excessive maritime claims. Mr. Putin ordered that all foreign voyages through the NSR must provide the government with 45 days' notice, use a Russian icebreaker, and invite a Russian pilot onboard.³⁶ These new restrictions are the most significant escalation in the Russians' Arctic regulatory regime since the fall of the USSR and are illegal under the US understanding of the UNCLOS treaty, derived from the legal logic above.

The history of Russian claims in the Arctic has been marked by limited success in trying to strongarm its claims, but significant successes working within international systems. Russia's working strategy has been to exploit international institutions to get a tenuous claim to their preferred legal outcome and follow it up with military force. This more liberal approach is contrary to the realist balance of power political game that Russia seems to prefer in other theatres, demonstrating the unique nature of great power relations in the Arctic.

IV. Policy Proposal

Rejecting excessive claims to waterways that are vital to international commerce is both an essential economic interest for the United States and vital for preserving a rules-based international order on the High Seas. While the international courts will determine the legitimacy of Russia's seabed claims, there is no such pending arbitration for Russia's claim that the NSR is an interior waterway and subject to their jurisdiction. Therefore, the United States should adopt a policy in the Arctic to deter Russia from enforcing their excessive maritime claims and to reassure allies that the US is committed to preserving a rules-based order on the

³⁶ Atle Staalesen and Krestia DeGeorge, "Russia Sets out Stringent New Rules for Foreign Ships on the Northern Sea Route," ArcticToday, March 8, 2019, <https://www.arctictoday.com/russia-sets-out-stringent-new-rules-for-foreign-ships-on-the-northern-sea-route/>.

High Seas in the region. To accomplish this goal, the United States should use the Coast Guard Polar Security Cutter (PSC) icebreakers currently under construction to conduct Freedom of Navigation Operations (FONOP) within the NSR at a rate of one per year. A FONOP is a naval operation where a United States Navy or Coast Guard ship exercises its right of free passage through a maritime zone with contested territorial status. Such exercises would demonstrate American commitment to freedom of navigation in the Arctic, reassure allies of our intent to contest Russian expansionism in the region, and reaffirm international norms.

Policy Authorization Tool

FONOPs are a unique policy tool because they require both domestic and international authorization. Domestically, the President, the Department of Defense, and the Department of Homeland security must draw from constitutional and executive authority to justify the use of military force in this way. The rationale for the President's authority to command the Coast Guard and Navy to undertake a FONOP is found in article 2, section 2 of the Constitution which grants the President the powers of the Commander in Chief of the United States Armed forces.³⁷ As the Coast Guard is a military branch, albeit one normally under the control of the Department of Homeland Security, the President's command authority authorizes the executive to order them to conduct a FONOP.

Internationally, the United States must be able to justify its claim of an excessive maritime jurisdiction by a foreign power for the Freedom of Navigation Operation to be considered legitimate and not a form of military aggression. The rationale for the FONOP can be

³⁷ U.S. Const. Art. II § 2.

found in the UNCLOS treaty which states in Article 87 that states have the right to the same freedom of navigation within a national EEZ as they would on the High Seas.³⁸ Further, the Russian position states that the straits that access the NSR are internal waterways rather than international straits. A FONOP operation through these areas relies on article 38 of UNCLOS which states that all vessels have a right to “continuous and expeditious transit,” otherwise known as the right of transit passage, through international straits connecting portions of the High Seas. These two portions of the Conventions establish the legal case for United States FONOPs under international law. Importantly, the United States is a signatory but the senate has not ratified UNCLOS due to ongoing resistance from some Republicans about security and sovereignty concerns. However, the US government does consider the UNCLOS treaty to be “customary” international law and treats it in the same way as other unratified executive agreements.³⁹ Despite not ratifying the treaty, the United States does follow the law as laid down in UNCLOS and expects the international community to abide by it. The idea of customary international law, or *jus cogens*, is firmly embedded as a fundamental principle of the international legal order.⁴⁰ Russia and all other Arctic nations have ratified the treaty.

The operational framework to conduct FONOPs already exists within the DoD. DoD Instruction S-2005.01 establishes the FONOP program and the Navy produces an annual report for congress each year on the FONOPS conducted globally per congressional reporting

³⁸ UNCLOS. Pt. V Art. 58; Pt. VI § 1. Art. 87.

³⁹ William Gallo, “Why Hasn’t the US Signed the Law of the Sea Treaty?,” VOA News (Voice of America, June 6, 2016), <https://www.voanews.com/a/united-states-sign-law-sea-treaty/3364342.html>; “Maritime Claims Reference Manual,” United States Navy JAG Corps (US Navy, February 8, 2022), https://www.jag.navy.mil/organization/code_10_mcrm.htm.

⁴⁰ Wladyslaw Czaplinski and Jean-Marc Thouvenin, “Jus Cogens and the Law of Treaties,” in *The Fundamental Rules of the International Legal Order*, ed. Christian Tomuschat (Leiden, NL: Martinus Nijhoff Publishers, 2006), p. 83.

requirements.⁴¹ FONOPs are authorized and conducted under the executive's constitutional authority and customary international law. Functionally, authorizing FONOPs in the NSR is as simple as adding the contested territory to the Navy and Coast Guard's annual schedule under this program.

Policy Implementation Tool

This policy will be implemented through military operations via the Coast Guard and Navy. Following the completion of the second PSC Icebreaker, the Coast Guard Cutter and at least one naval vessel will transit the NSR from the westernmost point through the international straits and Russian EEZ out the Bering Strait off the coast of Alaska. This trip will present logistical difficulties for the Navy and the Coast Guard as they traverse unknown and potentially hostile waters, are unable to go to port, and are cut off from normal underway supply lines for approximately one month at a time. Using the USCG and USN vessels as a tool to successfully implement the FONOP policy directly acts as a tool of deterrence designed to dissuade Russia from pursuing expansionist claims in the Arctic. Such claims will need to be deterred periodically rather than just once, and so FONOPs in the NSR should occur at a rate of once per year.

The logistical difficulties of an Arctic FONOP severely restrict the timeline when such an operation is feasible. First, the PSC program has been marred by several cost and calendar setbacks. Originally slated to have the first ship operational in early 2024, the lead ship of the

⁴¹ "Annual Freedom of Navigation Report Fiscal year 2020," OUSDP Report to Congress RefID: 7-CAD991F (Department of Defense, January 27, 2021).

class is not set to launch until Q3 2025.⁴² However, though a heavy icebreaker, it will be unable to break the thickest ice during the winter, only able to break up to eight-foot-thick ice.⁴³ Though it is possible to make it through the NSR during the winter, unfamiliarity with the route and lack of information from native users could easily see the American party run into dangerous winter conditions or ice too thick to break, meaning that they would have to request assistance from the Russians. This would defeat the purpose of the FONOP, leading to an outcome that is worse than the status quo.

To mitigate this risk, the operation should occur in the summer months when the ice is at its thinnest. Additionally, this will be easier for the Navy follow-on vessels, which are not rated for the heavy ice conditions in the Arctic winter.⁴⁴ Therefore, the earliest date that the FONOP could occur is in the summer months of 2026, assuming that the PSC program can hit its current schedule. This could be further in the future if policymakers wanted to wait until a second PSC was completed to hedge against the uncertainty of a break-down that would otherwise require Russian aid to our ships.

The PSC program is already funded and the FONOP would be part of the normal operating budget for the ships assigned to the mission. This program would not extend any additional costs to the government than are already built into the yearly budget. It is worth noting that the PSC is far from a cheap program. At \$9.8B in total lifecycle costs and \$2.6B per

⁴² U.S. Library of Congress, Congressional Research Service, *Coast Guard Polar Security Cutter (Polar Icebreaker) Program: Background and Issues for Congress*, by Ronald O'Rourke, RL 34391 (2021), 13.

⁴³ *Ibid*, 7.

⁴⁴ Peter Ong, "Ice-Strengthened Ships for the U.S. Navy?," *Naval News*, January 12, 2021, <https://www.navalnews.com/naval-news/2021/01/ice-strengthened-ships-for-the-u-s-navy/>.

ship in design and production costs, the program represents a significant investment for DHS.⁴⁵ As the Coast Guard's two current icebreakers are likely to be retired following the delivery of the ships, the opportunity costs associated with a single month-long FONOP are high. These costs only expand when one considers that the first FONOP would have to be followed by more for the policy to have the intended effect. This would require at least one of only 3 American icebreakers that would otherwise be used to break for American shipping or resupply at other Arctic missions.

Though the Russian government is the target of this regime of deterrence, there are clear effects on Coast Guard and Navy operations. Managing the demands of these two important stakeholders throughout the planning and execution of Arctic FONOPs will be essential to policy success. Should either agency become stretched too thin to the point that they must deprioritize this or other invaluable missions, such as those mentioned as opportunity costs above, the policy becomes less effective. As well, the President will need to be aware of the geopolitical stakeholders, especially NATO Arctic allies, and manage their needs from inception to sustainment of the series of FONOPs in the NSR. Managing both the military and political stakeholders throughout the process will be essential to the policy having its intended impacts. Failure to meet political or military ends invalidates the purpose of the operation and would constitute policy failure.

⁴⁵ *Coast Guard Polar Security Cutter (Polar Icebreaker) Program: Background and Issues for Congress*, 15; *Ibid*, 6.

V. Policy Analysis

Conducting FONOPs within the NSR to reassure allies of American commitment in the Arctic, demonstrate operational capability, and challenge excessive Russian maritime claims would be a complicated maneuver with several risks but a high reward. FONOPs in the Arctic are the strongest signal that the United States could send to Russia that we oppose their excessive claims without promulgating a large military buildup. Former Trump administration Secretary of the Navy Braithwaite expressed the importance of US Naval presence to guarantee freedom of the seas, saying specifically about the NSR that, “were sea lanes open up [and the NSR] becomes navigable, the US Navy is going to guarantee that freedom of navigation exists for our partners.”⁴⁶

Conducting FONOPs in the Arctic also allows the United States to apply consistency to its foreign policy and demonstrate capability. The larger FONOP program is a global endeavor, targeting excessive claims by both allies and adversaries.⁴⁷ The United States’ policy is clear: excessive maritime claims should be pushed back against to maintain a rules-based international order that guarantees freedom of the seas, regardless of which nation is pushing the claim. The lack of Arctic FONOPs is glaring when compared to the rest of the global program. That the United States would impose military FONOPs on friendly foreign powers but not in the Arctic against Russia insinuates two things: that the United States does not care enough about the Arctic to push back on excessive claims, or that it does not have the

⁴⁶ Paul McLeary, “Navy Secretary: US Plans Patrols near Russian Arctic Bases,” Breaking Defense (Breaking Media, Inc., January 6, 2021), https://breakingdefense.com/2021/01/navy-secretary-us-patrols-near-russian-arctic-bases/?_ga=2.72665299.1168766149.1609903708-1675952015.1607572454.

⁴⁷ “U.S. Department of Defense Freedom of Navigation Program Fact Sheet,” Office of the Undersecretary of Defense for Policy (US DOD, March 2015), 2.

capability to do so. This Arctic omission is even more conspicuous considering that in recent years, aside from conducting FONOPS the world over from China to Costa Rica, the US already conducts non-Arctic FONOPs against Russian maritime claims, including 2 in 2021.⁴⁸

As established above, the United States has a clear position on Russia's maritime claims in the Arctic going back to the 1960s. Commitment to that position is essential to reassuring our Arctic allies that we stand with them against Russian encroachment and FONOPs would be a clear demonstration of that position. As we will see in the political analysis below, this is a position with which the majority of NATO agrees. While the United States has made this position clear, it is the second point about capacity that the US should worry about. Arctic operations, as discussed below, are both difficult and dangerous. Showing that the US has the capability to operate in the Arctic sends a powerful message to deter Russia. Failure to do so sends the opposite message, telling Russia that they can push around other Arctic nations unmolested. As former Commandant of the Coast Guard Admiral Zukunft said, a FONOP in the NSR would be “most relevant” and, “it would have to be a demonstration of not just will, but also capability on the part of the United States.”⁴⁹

Given that the inputs are relatively small and do not introduce any new weapons systems to the region that we do not already have on station, FONOPs achieve our goal of

⁴⁸ “Annual Freedom of Navigation Report Fiscal year 2021,” OUSDP Report to Congress RefID: 1-F88C38D (Department of Defense, December 2, 2021), 8, https://policy.defense.gov/Portals/11/Documents/FON%20Program%20Report_FY2021.pdf; For a full table of 2021 FONOPs globally, see the preceding link.

⁴⁹ Melody Schreiber, “How Geopolitics Complicate the U.S. Navy's Plans for Major Arctic Operations,” ArcticToday, July 26, 2019, <https://www.arctictoday.com/how-geopolitics-make-u-s-navy-plans-for-major-arctic-operations-so-complicated/>.

deterrence without precipitating an arms race in the Arctic, at least in the short term. Though the Russians might respond by further increasing armaments in the region, FONOPs represent the least militarized deterrence option while still achieving the policy goal. Though the Russians might respond by increasing the military presence in the region, the United States would not be the escalating party. Promoting peace in the region while also pushing back against Russian expansionism is a key benefit of the FONOP strategy over trying to match Russia's military buildup in the region. However, given the low monetary investment that FONOPs require, as discussed above, it also grants the DoD flexibility to send more troops and equipment to the region should the strategy prove fruitless, allowing the US to hedge its bets without looking too aggressive.

FONOPs also embolden our allies to take similar positions. When the United States credibly demonstrates the capability to operate in the Arctic, it will have the effect of reassuring our allies that we stand behind them if they conduct similar operations and adopt similar policies. In this way, conducting FONOPs in the Arctic nest within the Biden administration's larger goal to empower NATO to confront Russian expansionism. Ultimately, legal arbitration in international courts does not provide the forceful mechanism required to deter a state that has shown its lack of regard for international institutions. Though FONOPs in the Arctic may not force Russia to abandon their claims, it would demonstrate their impotence to enforce them, essentially rendering them moot in the eyes of our Arctic allies.

Similar actions are ongoing in the South China Sea as the United States conducts FONOPs against excessive Chinese maritime claims around the Spratly Islands known as the "nine dash line." The Chinese Claims in the South China Sea are very similar to the Russian

claims to the NSR. Both are based on revisionist historical claims, improperly drawn straight baselines, claiming territorial seas, EEZ expansion, and disregarding international straits. Additionally, their regulatory regime is essentially the same as Russian impositions in the NSR: requiring permission to go through what they consider to be territorial seas, disregarding innocent passage rights, and barring most warships from passage.⁵⁰ Given the similarities between the initial conditions in both cases, the South China Sea case presents an excellent case study from which we can draw benefits and likely outcomes of US FONOPs in the Arctic and assess the effectiveness of the policy tool.

The United States began contesting territorial claims to the South China Sea via FONOP in 2013 by sailing naval vessels through contested waters and near Chinese claimed islands.⁵¹ In 2016, the People's Republic of China (PRC) presented its case to the Permanent Court of Arbitration (PCA) in The Hague seeking to cement its control over nearly all of the South China Sea. However, the PCA denied their claim as being inconsistent with the UNCLOS treaty.⁵² China rejected this ruling with President Xi Jinping saying that China would maintain its "territorial sovereignty and marine rights" and would continue to press its claim in the South China Sea.⁵³ Indeed, over the next several years it proceeded to build military bases, artificial islands, and airfields throughout the South China Sea, turning it into a fortress.

⁵⁰ Edward Lundquist, "FONOPS in the South China Sea: Nations Counter China's Excessive and Illegitimate Maritime Claims," *Military Technology* 45, no. 5 (2021), 65.

⁵¹ "Australia Conducting 'Freedom of Navigation' Flights in the South China Sea." BBC News, BBC, December 15, 2015, <https://www.bbc.com/news/world-australia-35099445>.

⁵² Pratik Jakhar, "Whatever Happened to the South China Sea Ruling?," *The Interpreter*, July 12, 2021, <https://www.lowyinstitute.org/the-interpreter/whatever-happened-south-china-sea-ruling>.

⁵³ Tom Phillips, Oliver Holmes, and Owen Bowcott, "Beijing Rejects Tribunal's Ruling in South China Sea Case," *The Guardian*, July 12, 2016, <https://www.theguardian.com/world/2016/jul/philippines-wins-south-china-sea-case-against-china>.

However, the United States continued to peruse FONOPs in the contested area, regularly sailing and flying through Chinese zones of control. In addition, the United States worked to generate regional rejection of these claims, urging allies to conduct their own similar operations and reminding them of America's commitment to the region. Specifically, the US sought to remind the main target of Chinese aggression, the Philippines, that the United States is treaty-bound to come to their military aid if they are assailed by the Chinese military while exercising their freedom of navigation.⁵⁴

US FONOPs in the region had the intended effect of bringing allies into the fold to conduct similar operations. Aside from regional powers being emboldened to operate as if the claim did not exist, global powers such as the French, Germans, Australians, and the UK have all sent their naval vessels in concert with the US or on their own to conduct FONOPs in the South China Sea.⁵⁵ Each time this occurs, such as when the UK sailed a small aircraft carrier through the South China Sea in 2018, Beijing has responded by issuing strongly-worded statements about territorial sovereignty but, to date, no military action has been taken against foreign-flagged vessels conducting FONOPs.⁵⁶ Though the PRC government maintains its territorial claims, the continuous FONOPs by the US and allies have rendered those claims impotent in the eyes of the international community. Though the PCA verdict was helpful, it did not confer any judgment that was not already obvious to the global community. Of course, the

⁵⁴ Antony Blinken, "Press Statement: Fifth Anniversary of the Arbitral Tribunal Ruling on the South China Sea," *US State Department*, July 11, 2021, <https://www.state.gov/fifth-anniversary-of-the-arbitral-tribunal-ruling-on-the-south-china-sea/>.

⁵⁵ Lundquist, 66.

⁵⁶ Tim Kelly, "Exclusive: British Navy Warship Sails near South China Sea Islands, Angering Beijing," *Reuters* (Thomson Reuters, September 6, 2018), <https://www.reuters.com/article/us-britain-china-southchinasea-exclusive/exclusive-british-navy-warship-sails-near-south-china-sea-islands-angering-beijing-idUSKCN1LM017>.

PRC's claim to the entire South China Sea was excessive, but it required action by the United States DoD to reassure allies and render the claim a moot point. The South China Sea case shows FONOPs done right, accomplishing the goals of the program, and provides a roadmap for achieving similar goals under similar circumstances in the Arctic.

However, several confounding factors introduce substantial risks not present in the South China Sea case. One of the main goals present in the Arctic case but not present in the South China Sea case is that of demonstrating the capacity to conduct Arctic operations. No one doubted American capacity in the South China Sea. Indeed, the US Navy had been operating in the region for over 100 years by the time we conducted the first FONOP in 2013. In the Arctic, however, the capacity to operate must be demonstrated because there is such a clear gap in what Russian forces and American forces can accomplish in the Arctic. Indeed, there is credible skepticism within the US government if a FONOP in the arctic is even feasible.

In contrast to the dozens of Russian icebreakers, there is only a single American icebreaker in service, the Coast Guard's *Polar Star*. This policy calls for FONOPs to begin only after the first two PSCs are delivered because the *Polar Star* is occupied year-round by its mission to resupply Arctic and Antarctic bases.⁵⁷ Since it is so old and many of its refit parts are no longer made, the *Star* spends much of the year in dry dock being refitted for the next base resupply. The Coast Guard plans to take the *Polar Star* out of service following the delivery of the second PSC.⁵⁸ With just two heavy icebreakers in service, a FONOP represents a substantial

⁵⁷ Ben Werner, "McMurdo Station Expansion Relies on Coast Guard Heavy Icebreaker," USNI News (United States Naval Institute, September 30, 2019), <https://news.usni.org/2019/09/30/mcmurdo-station-expansion-relies-on-coast-guard-heavy-icebreaker>.

⁵⁸ Ibid.

opportunity cost for the Coast Guard and DoD. In theory, a transit through the NSR would only take 10 days, but prior planning, positioning, waiting for the right weather conditions, and unfamiliarity with the route could cause this timeline to expand substantially.⁵⁹ Every day that the PSC is transiting the NSR, or preparing to do so, is a day that it is not breaking ice for shipping, assisting in search and rescue, or performing other important duties.

The picture is further complicated in the event of a vessel casualty. Should the PSC or the accompanying naval vessel suffer a malfunction, there are only two options. First, the second PSC would have to make an unplanned NSR transit with support vessels to render aid. This means that the US would have no icebreaking capability anywhere else. Second, if such a rescue was not feasible, the US would likely have to ask the Russian government for assistance. On this subject, former USCG Commandant Admiral Zukunft said that being stuck in ice during an Arctic operation and having to call Russia for rescue was “my biggest fear when [he] was Commandant.”⁶⁰

Such a breakdown is not a mere academic exercise, in 2018 during the Arctic TRIDENT JUNCTURE naval exercise, the amphibious landing ship *USS Gunston Hall* was damaged by heavy Arctic seas off the coast of Iceland in the cooling October weather and had to return to port.⁶¹ In fact, the Coast Guard turned down a DoD request to provide icebreaking support in a similar exercise near Russian territory out of fear that the *Polar Star* would break down and

⁵⁹ Malte Humpert, “The Future of the Northern Sea Route - a ‘Golden Waterway’ or a Niche Trade Route,” The Arctic Institute, February 25, 2022, <https://www.thearcticinstitute.org/future-northern-sea-route-golden-waterway-niche/#:~:text=In%20theory%2C%20distance%20savings%20along,days%20via%20the%20Arctic%20Ocean.>

⁶⁰ Schreiber.

⁶¹ Geoff Ziezulewicz, “Heavy Seas Damage Navy Ship near Iceland,” Navy Times, October 25, 2018, [https://www.navytimes.com/news/your-navy/2018/10/24/heavy-seas-damage-navy-ship-near-iceland/.](https://www.navytimes.com/news/your-navy/2018/10/24/heavy-seas-damage-navy-ship-near-iceland/)

require Russian rescue.⁶² Further, most US Navy ships do not have reinforced hulls that can withstand icy seas, even with an icebreaker leading, generating a substantial possibility that the trailing naval vessel taking part in a FONOP would require rescue. Only the aging cold war-era Ticonderoga-class cruisers have hulls capable of withstanding ice.⁶³ With 21 still in active service and fewer at sea at any given point, there are similar questions as the PSC about opportunity cost and viability of aging platforms.

In the event of an American rescue, the FONOP will have been a failure and the US government would suffer an international embarrassment. In the event of a Russian rescue, then two American ships, their crews, and equipment would be at the mercy of a Russian government angry at territorial encroachment and looking to make a point. In either case, the long-term strategic damage would be immeasurable to America and its allies' positions in the Arctic. In this case, the US will have demonstrated that it lacks the capacity to operate effectively in the Arctic, leaving Russia to pursue whatever expansionistic ambitions it pleases safe in the knowledge that the US has no tactical countermeasures.

Further, Russia's capacity to operate in the region is extensive. Their defensive capability is formidable, and they have spent years turning much of the NSR into a fortress to protect their territorial claims, similar to what the Chinese have done in the South China Sea.⁶⁴ The

⁶² Christopher Woody, "The Coast Guard Turned down a Request for an Arctic Exercise out of Concern the US's Only Heavy Icebreaker Would Break down and Russia Would Have to Rescue It," Business Insider (Business Insider, December 14, 2018), <https://www.businessinsider.com/coast-guard-arctic-freedom-of-navigation-exercise-polar-star-russia-2018-12>.

⁶³ Malte Humpert, "U.S. Navy Plans to Send Surface Vessels through Arctic," High North News, March 11, 2019, <https://www.highnorthnews.com/en/us-navy-plans-send-surface-vessels-through-arctic>.

⁶⁴ David Auerswald, "Now Is Not the Time for a Fonop in the Arctic," War on the Rocks (The Texas National Security Review, October 10, 2019), <https://warontherocks.com/2019/10/now-is-not-the-time-for-a-fonop-in-the-arctic/>.

Russians have more than enough missile and naval capabilities positioned at key points within the NSR and its straits to sink or seize the small American flotilla. All FONOPs essentially gamble against the use of force by the claimant, but Russia would be uniquely positioned relative to other FONOPs. Where the Chinese know that firing or seizing an American ship conducting a FONOP in the South China Sea would likely invite proportional retaliation due to the number of American assets in the region, the Russians would be well aware that similar action in the NSR would not result in American naval retaliation in the Arctic or the NSR because no such capacity exists. The Russian response calculus is fundamentally different from that of the Chinese, leading to a more risk-heavy FONOP in the NSR than in the South China Sea.

Therefore, conducting FONOPs would be a significant escalation in the Arctic, but a successful FONOP carries much less investment and potential for an arms race than further regional military buildup. Eventually, the US will need to take steps to reassure our Arctic allies and deter Russian Arctic expansionism. The FONOP represents a middle road between doing nothing and a substantial American military investment. However, a FONOP with current American capabilities carries substantial operational risk. A policy failure could be precipitated by any series of events from a breakdown to Russian military action. Though the causes of a policy failure exist on an escalatory scale from mundane to significant, the outcome of a policy failure is absolute. Failure would demonstrate a lack of American capacity to protect itself or its allies' interests in the Arctic, allow Russia to press further on its claims unabated, and essentially surrender the Arctic as a rules-based space. Success would do the opposite. Arctic FONOPs, then, are high risk. Each FONOP would carry the possibility of generating a beneficial

Arctic status quo with relatively low investment or relegating the United States to second-rate status in one of the future's most important global commercial channels.

VI. Political Analysis

Conducting a series of FONOPs along the NSR would alter the political landscape in the north in considerable ways as well as being a serious matter of domestic political import. There are four groups that the administration must consider to make an informed judgment on the proposed policy: the domestic public, elected officials, the agencies involved, and the international Arctic community. Understanding these groups' motivations and outlooks in the Arctic presents an intricate tapestry of competing perspectives, making Arctic FONOPs politically precarious.

In December of 2019, Americans were polled by the Arctic Studio on their outlooks about the region. The survey found that on a scale of 1 (completely disagree) to 7 (completely agree) the average American rated the statement, "The United States is an Arctic Nation with Broad and fundamental interests in the Arctic region" as a 3.40.⁶⁵ This language, which the average American seems to slightly disagree with, comes directly from the Obama administration's 2010 National Security Strategy. Moreover, this number has moved slightly more towards disagreement year over year. Only Alaskans, predictably, were convinced of the statement, rating it a 5.25, a reasonable level of agreement.⁶⁶ The important conclusion that one can come to from this data is that increasing commitment in the arctic, particularly

⁶⁵ Zachary H Hamilla, "The Arctic in U.S. National Identity," The Arctic Studio, March 6, 2020, 2, https://www.arcticstudio.org/Research_USArcticIdentity.html.

⁶⁶ Ibid.

commitment that puts American lives and prestige in harm's way, would not be politically popular amongst the electorate. However, this picture is confounded by American views of Russia.

Over 75% of Americans perceive Russia as either “mostly” or “very unfavorable,” as of February of 2021.⁶⁷ As Russia builds up forces on the border of Ukraine for a potential invasion, this number is likely to grow even higher. Americans are largely hawkish on Russia, perceiving the country as one of America’s major geopolitical adversaries. These negative opinions make actions to counter Russian influence very popular. There have not been any polls asking direct questions about FONOPs in the Arctic, but competing views among voters about the importance of the Arctic and dislike of Russia make anticipating the domestic political response to a FONOP difficult. As a relatively mundane military operation, a FONOP would be unlikely to gain much mainstream press attention, so a successful operation is unlikely to register among voters. An unsuccessful operation, however, would be a national embarrassment, at best, and a significant military escalation, at worst, and would cause significant harm to the administration.

Winning the support of congress would be very important for the program. Failure to do so could result in defunding the icebreaker program or even adverse congressional action restricting the FONOP program from engaging in the north. Importantly, both Senators Murkowski and Sullivan of Alaska are on record saying that the United States has not done enough to secure our interests in the arctic. Senator Murkowski said, “People can quibble about what we have versus what Russia has versus what China is building. All I can tell you is we are

⁶⁷ “In Depth: Topics A to Z - Russia,” Gallup.com (Gallup, March 29, 2022), <https://news.gallup.com/poll/1642/russia.aspx>.

not in the game right now.”⁶⁸ Ensuring that Alaska’s delegation, as our only state within the Arctic Circle, agrees with the policy will be essential in building wider congressional support. Based on their past comments, it is likely that the administration can garner their support through consultation on the program.

Senator Jack Reed, the SASC chairman, said that he is also concerned about Russia’s militarization of the NSR and thinks that the region should remain one of peace and cooperation.⁶⁹ Engaging with SASC, HASC, and other committees pertinent to national security and foreign affairs throughout this process would be necessary for policy success. Senator Reed, in particular, is an important conduit for the administration to succeed in FONOP planning. Senator Reed’s opinion above is not unique. As demonstrated by a House Foreign Affairs hearing in 2013 on the topic of Arctic Security, there is a strong sense of concern about Russia’s military buildup in the region but a desire to respond in such a way as to prevent a traditionally peaceful region from becoming an arena for armed conflict or cold war.⁷⁰ In this way, FONOPs can be marketed to congress as a way to push back on Russian expansion in the Arctic without a massive arms buildup or substantially increased military presence.

Other natural allies in congress are those that take a more hawkish view on Russia or who are in favor of more military presence in the Arctic. For instance, Representatives Don

⁶⁸ Kenneth J Smith, "Arctic FONOPS in the Northern Sea Route" (Newport, RI: Naval War College, 2018), 8.

⁶⁹ Jack Reed, "Opening Statement by Ranking Member Jack Reed, SASC Hearing on Eucom: U.S. Senator Jack Reed of Rhode Island," The Office of Senator Jack Reed, March 1, 2016, <https://www.reed.senate.gov/news/releases/opening-statement-by-ranking-member-jack-reed-sasc-hearing-on-eucom>.

⁷⁰ US Congress, House of Representatives, Committee on Foreign Affairs, Subcommittee on Europe, Eurasia, and Emerging Threats, *THE UNITED STATES AS AN ARCTIC NATION: OPPORTUNITIES IN THE HIGH NORTH*, 113th Congress, 2nd Session, 2014. <https://www.govinfo.gov/content/pkg/CHRG-113hhrg91844/html/CHRG-113hhrg91844.htm>

Young (AK), Elaine Luria (VA), and Mike Gallagher (WI) introduced the Arctic Security Initiative Act of 2021 to study Arctic issues and, ultimately, to increase US presence in the region.⁷¹ Though this bill has not made it out of committee, it is demonstrative that a bipartisan faction exists in congress which would prefer to see increased US security commitment in the Arctic.

There is a great amount of political will among Alaska's delegation and other congressional haws to see more US military involvement in the Arctic to counter Russia, but there is little momentum from the majority of members in either direction. Even for members that might be amenable to the FONOP plan, this is far from their most pressing issue. Additionally, there is considerable anti-Russian sentiment in congress at present and current Russian actions in Eastern Europe might be dispelling some members of the notion that the Arctic can remain permanently peaceful and cooperative. All these factors lead to a positive assessment of potential congressional attitudes towards Arctic FONOPs.

Guaranteeing agency cooperation with the policy plan is important for quick adoption and proper planning. Principally, there are three bureaucratic considerations in FONOP planning, the Navy's stance, the Coast Guard's stance, and continuity with existing administration policies and statements. Though the President, both as the government's chief executive and the military's commander-in-chief, does have the legal authority to force agencies to comply with the policy, running against the grain of the bureaucracy can often lead to policy failure, so understanding their position on FONOPs and making sure their concerns are heard is important. Of the four stakeholders identified above, previous statements from the

⁷¹ Arctic Security Initiative Act of 2021. H.R. 4135, 117th Congress (2021).
<https://www.congress.gov/bill/117th-congress/house-bill/4135/text?r=45&s=1>.

agencies involved lead to an assessment that the bureaucracy is in a high state of readiness and desire to implement the policy.

In 2019, the Secretary of the Navy Richard Spencer announced that the Chief of Naval Operations and he had begun talks to plan a potential Arctic FONOP.⁷² Further, Rear Admiral Thomas Marotta, the reserve assistant deputy Chief of Naval Operations for plans and strategy confirmed that the Department of the Navy's (DON) position on potential Arctic FONOPs was that any such action would be the natural end to Russia's restriction of NSR waters saying, "if the Russians didn't, in March, send out a requirement that you needed to notify them 45 days in advance, put one of their pilots on your ship, and give them the exact route that you're taking, there'd probably be no conflict in the Arctic."⁷³

Finally, the DON made its position on freedom of navigation in the Arctic explicit in its 2021 Strategic Blueprint for the Arctic where it said, "We will ensure common domains remain free and open, and prevent competitors from disrupting or controlling Arctic sea lines of communication and commerce."⁷⁴ This comment is clearly aimed at Russia, signaling DON's openness to FONOPs in the future. When combined with the statements from active and former senior Navy leaders, DON's position as a stakeholder in this administration policy plainly favors implementation.

⁷² Humpert.

⁷³ Melody Schreiber, "U.S. Coast Guard Will Broaden Arctic Focus to Include European Arctic, Commandant Says," ArcticToday, October 17, 2019, <https://www.arctictoday.com/u-s-coast-guard-will-broaden-arctic-focus-to-include-european-arctic-commandant-says/>.

⁷⁴ "A Blue Arctic: Strategic Blueprint for the Arctic," media.defense.gov (Department of the Navy, 2021), <https://tinyurl.com/muje6a65>.

The Coast Guard has made similar statements in previous years. In June of 2021, the Commandant of the Coast Guard, Admiral Schultz, said that the Arctic could be the next region that his service conducts FONOPs. He also noted that the US is falling behind in the region and the US has an obligation to protect the “rules-based international order.”⁷⁵ This is deliberately chosen language that reflects the stated intent of the FONOP program. Here, Admiral Schultz opens the door to the possibility of FONOPs and then implicitly calls for their use as one of the only tools that the US has to counter Russia’s excessive claims. In a separate speech, he reiterated how important he believes it is to contest Russia’s claims and build up the Coast Guard presence in the Arctic, arguing that the future focus of contested maritime boundaries will shift from the South China Sea to the NSR.⁷⁶

Therefore, the defense stakeholder agencies seem to be either tacitly in favor of Arctic FONOPs, or perhaps even actively planning on their use in the future. FONOPs also represent a point of continuity with the administration's larger defense ambitions. Though the administration has not yet published any official guidance on the Arctic or even a National Security Strategy, it has published Interim National Security Strategic Guidance in advance of a full National Security Strategy. In it, President Biden tasks the government with defending the freedom of navigation globally saying, “We will continue to defend access to the global commons, including freedom of navigation and overflight rights, under international law.”⁷⁷

⁷⁵ Patricia Kime, “Coast Guard Considers Arctic FONOPs as Russian Activity Increases in Region,” *Military.com*, June 29, 2021, <https://www.military.com/daily-news/2021/06/29/coast-guard-considers-arctic-fonops-russian-activity-increases-region.html>.

⁷⁶ Schriber.

⁷⁷ Joseph R Biden, “Interim National Security Strategic Guidance,” *The White House* (The United States Government, March 3, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf>.

The political outlook of policy implementation as pertains to administration stakeholders is strong, indicating that there would be great unity of effort within the government to accomplish the FONOP goal.

Finally, the administration must consider the international political ramifications of conducting FONOPs in the NSR, beginning with Russia. From Russia's perspective, a FONOP thought the NSR would be a violation of their territorial waters and sovereignty. As recently as late 2021, Presidents Biden and Putin met to discuss Arctic matters and President Putin downplayed his arctic military expansion, explaining that he was open to collaboration on the exploitation of the NSR.⁷⁸ This does not meet the reality of the situation. As mentioned above, Russia has been legally restricting the NSR and backing up those restrictions by turning the international waterways into a fortress. Though it is unclear if Russia would use military force against an American vessel exercising innocent passage rights, it is clear that any such action would be strongly condemned. With Russo-American relations at their lowest point in decades, it is difficult to see a scenario where the Russians do not respond to an Arctic FONOP with some sort of escalating provocation. Short of military action, the administration would be unlikely to see a political downside to Russian condemnation. Domestically, this might be a welcome opportunity to flout an anti-Putin credential. Unfortunately, there is a second arctic power that would likely find this action objectionable.

The Canadian government has long supported Russian claims to the NSR because they hold an almost identical excessive claim to nearly all of the Northwest Passage. This claim,

⁷⁸ KM Seethi, "Russia, the United States, and Churning Arctic Geopolitics," The Arctic Institute, September 1, 2021, <https://www.thearcticinstitute.org/russia-united-states-churning-arctic-geopolitics/>.

based on the same legal logic relating to UNCLOS as Russia's, is considered by the US government to be an excessive one, but the US has kept this disagreement with Ottawa quiet and largely ignored the issue to not upset a critical Arctic security relationship with our northern neighbor.⁷⁹ A FONOP through the NSR would almost certainly change this status quo. As mentioned above, a key component of the overall FONOP program is that the US challenges both allies and adversaries alike when they break the rules for the sake of preserving the liberal order on the high seas. If the US were to conduct a FONOP in the NSR, the logic of the program would almost necessitate that one also be conducted through the Northwest Passage.

The Canadians are aware of this, and it would cause a great deal of consternation between the two, otherwise quite close, allies. This would also cause serious, though hard to quantify, damage to the bilateral security relationship. Canada, being unable to stop a US warship, might even seek international arbitration against the US if there was a FONOP through the Northwest Passage. Should the US not choose to follow up the NSR passage with a Canadian one, it would make the US look like agitators against Russia, or even call into question the legal legitimacy of the entire program. Third-party actors might begin to see FONOPs as less of a tool of international law that benefits everyone and more like a weapon that the US wields against its enemies. Should a FONOP through the NSR be pursued, the Canadian situation would have to be managed deftly to avoid negative political fallout.

⁷⁹ Rebecca Pincus, "Rushing Navy Ships into the Arctic for a FONOP Is Dangerous," U.S. Naval Institute, February 21, 2019, <https://www.usni.org/magazines/proceedings/2019/january/rushing-navy-ships-arctic-fonop-dangerous>.

The remainder of NATO and non-NATO allies would largely look on a FONOP favorably. Though a FONOP through the NSR has not occurred, the British did lead a FONOP with a flotilla of Royal Navy, US Navy, and Norwegian Navy vessels in 2020.⁸⁰ This FONOP intended to challenge Russian excessive claims in the Barents Sea. Since this FONOP was led by the British, it did not fall under the American FONOP program, but this does demonstrate how much international willpower exists to conduct FONOPs and deter Russian expansionism via excessive maritime claims. Speaking at a conference in 2019, Norwegian Prime Minister Erna Solberg emphasized the importance of "respect for international law and regional cooperation" as "keys to ensuring peace and stability across borders."⁸¹

Though PM Solberg also expressed her desire, as many others have, that the Arctic remain peaceful and cooperative, it is quickly becoming apparent that the easygoing times of the past are evaporating. Between Russian actions over the past decade in Eastern Europe, further militarization and aggression in the Arctic, and the growing commercial importance of the region, a new consensus is building among regional powers that the future of the Arctic will be less peaceful and more an open field for great power competition.⁸² Allies will look to the United States to lead the charge against these sorts of aggressive actions and will look favorably

⁸⁰ "U.S., Norway, UK Carry out Fonop Mission off Russia's Arctic Coast" (The Maritime Executive, September 14, 2020), <https://www.maritime-executive.com/article/u-s-norway-uk-carry-out-fonop-mission-off-russia-s-arctic-coast>.

⁸¹ Vladimir Isachenkov, "Putin Outlines Ambitious Arctic Expansion Program," AP NEWS (Associated Press, April 9, 2019), <https://apnews.com/article/ap-top-news-st-petersburg-international-news-norway-arctic-d0c2eb39a3b44b40ac8ddb1749ebe143>.

⁸² Andreas Østhagen, "Relations with Russia in the North Were Already Tense. Now It's Getting Worse.," The Arctic Institute, February 25, 2022, <https://www.thearcticinstitute.org/relations-russia-north-tense-getting-worse/>.

on FONOPs to deter excessive claims and to maintain a rules-based cooperative order in the Arctic.

The political situation around this policy proposal is, therefore, complicated. The risky nature of the operation itself, as detailed in the analysis section, makes it difficult to build a political risk profile. Should FONOPs succeed without incident, we can expect some positive opinions from the electorate, great kudos from congress, and, with the notable exception of Canada, appreciation from our Arctic allies. A failed FONOP, particularly one that requires Russian assistance, would be a profound embarrassment at home for the administration and abroad for the perception of American power in the region. As with the policy as a whole, the political dimension of a regime of Arctic FONOPs is high-risk, high-reward.

VII. Recommendation

The Arctic is emerging as a critical arena for American and NATO national security interests. Russia's excessive maritime claims within the region, particularly those within the NSR, represent a long-term challenge for commercial and international stability in what has been a mostly peaceful region since the fall of the USSR. However, as arctic ice melts and new natural resources and sea lanes become available, Russia's revisionist actions in the region threaten that enduring peace. Ultimately, the United States must act to deter Russia's expansionist claims in the region sooner rather than later. Though they may seem minor today, as Arctic shipping and commercialism increase, it will become more and more difficult to deter excessive claims as they become entrenched if left unchecked. As time goes on, the necessity of rolling back these claims will become greater and greater, as will the price. Therefore, the

United States should begin an ongoing regime of Arctic FONOPs through the NSR as soon as the two Polar Security Cutters become fully operational.

Such action is not without military risk. Most notably, FONOPs carry the risk of attack by Russian forces and maritime risks inherent to Arctic operations that may render the need for rescue. In either case, the policy will fail to achieve the goal, precipitating national embarrassment or escalating military action. All military action is inherently risky, but these risks can be minimized.

The risk of adverse military actions by the Russians is minimal. While it is true that they have militarized the NSR, they are unlikely to use that military force against an American patrol. As mentioned above, the United States has conducted FONOPs against non-Arctic excessive claims in Peter the Great Bay which did not result in military action. Indeed, no American FONOPs have resulted in American casualties, including those around the equally fortified Spratly Islands.

The more likely scenario between the two major risks is that of a ship casualty that requires either American, allied, or Russian rescue. Traversing the arctic is dangerous and, as mentioned above, has caused ship casualties in far less austere environments. However, there are several factors that the Navy and Coast Guard can use to mitigate the risk to crew and ship. First, such expeditions should only be conducted in the summer when the ice is minimal. Though the weather is unlikely to render the icebreakers superfluous, their role should and will be minimized through optimized timing. This limits what can go wrong both to the icebreaker and follow-on naval vessel. Additionally, the policy should not begin until the second PSC is fully

mission capable, ensuring that a failed American FONOP can be rescued by an American vessel, or even continue with additional PSC support, depending on the circumstance. Finally, like any military operations, Arctic FONOPs will be repeatedly rehearsed in friendly waters before being given the green light to ensure that the crews are adequately trained and ships sufficiently equipped to complete the tasks. Though these measures do not eliminate the risk inherent to the Arctic FONOP, they do minimize them to an acceptable degree relative to the benefit.

The benefits of FONOPs in the Arctic are significant, meeting American strategic policy goals in the Arctic by deterring new excessive maritime claims, rendering existing claims moot, and reassuring our allies in the region that the US is committed to a rules-based order on the High Seas, especially in the Arctic. This policy represents both a domestic and international political win in a time when voters, congress, and international partners all want the United States to take a harder line with Russia. The benefits, however, are not simply political. As instruments of Policy, we have empirical evidence that FONOPs are effective at pushing back against expansionist states. As demonstrated in the South China Sea case, persistent FONOPs in that region have resulted not in China giving up their claims, but in the international community, both sovereign and commercial, refusing to recognize them and operating as if they do not exist. This, in turn, has led to China's claims being unenforceable, fulfilling the intended purposes of the FONOP. FONOPs would likely have the same effect in the Arctic, fulfilling the need to ensure that one of the next century's most vital commercial corridors is not dominated by expansionist powers looking to bully their regional neighbors into unfair regulatory regimes.

Domestic and foreign political actors have all expressed a desire not only for an open but also for a peaceful Arctic. Therefore, when looking for solutions to the problem of Russia's excessive claims, the most peaceful solution that fulfills the policy goal is the optimal solution. While the US could push back on Russian militarism and expansionism in the Arctic through military escalation and a return to the Arctic's Cold War battleground status, the FONOP presents the alternative. Though Russia may perceive it as escalatory, it is far less so than starting an arms race and our allies would look favorably on this more mature approach that straddles the line between diplomatic and military action.

It is unlikely that the Arctic can remain free of competition forever, but by pushing back against expansionist claims today while the stakes are low and the region is calm, we can prevent a much larger confrontation when the Arctic is a region of global focus tomorrow. Through the judicious mitigation of risk, the Coast Guard and the Navy can build a regime of FONOPs that act as the cutting edge of Arctic diplomacy at a relatively low cost to the government. Such operations would reassure our allies that America remains committed to a rules-based international order while demonstrating our regional resolve to Russia. FONOPs are the best hope of building a peaceful future in the Arctic without capitulating to foreign despots and should be the policy of this administration.

Curriculum Vita

Michael “Mac” Sims was raised in Gainesville, Georgia. After graduating high school at Riverside Military Academy, he earned a B.S. in History from the United States Military Academy at West Point and was commissioned as a Chemical Officer in the United States Army. Leaving the Army as a First Lieutenant, he has worked in both the private sector and the public sector. Mac is currently employed as a Marine Corps civil servant where he serves as the deputy implementation lead for the Defense Agencies Initiative within the Logistics Plans, Policy, and Strategic Mobility Division. His academic and professional interests include defense policy, military readiness, and force sustainment.