

Japan's Arctic Policies with regards to Maritime Law and Jurisdictional Issues

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Outline

- **Introduction: geographical background**
- **Japan's interests and contributions**
- **Major issues: maritime and security**
- **Legal framework: UNCLOS and others**
- **Concluding remarks**

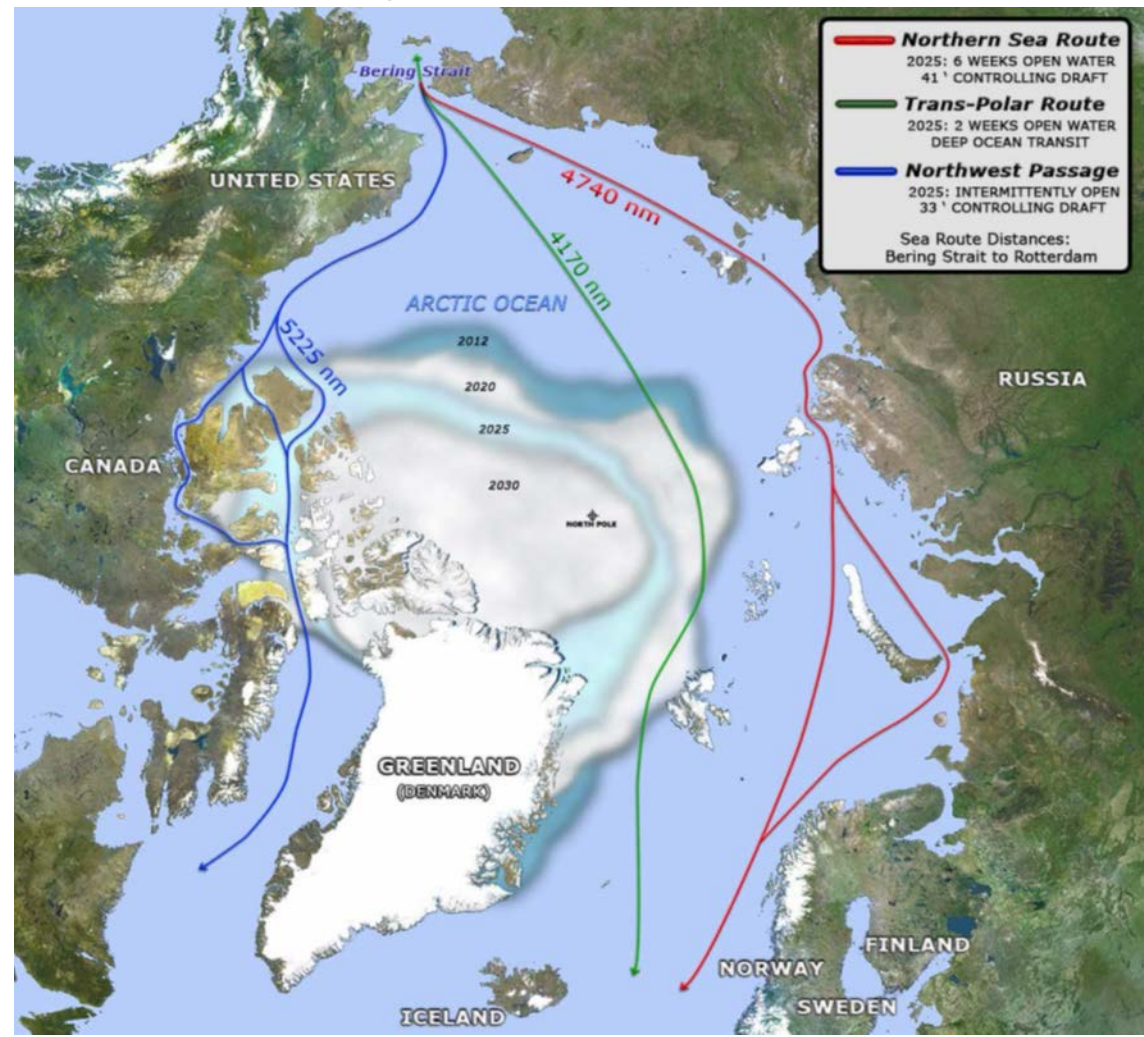
Source: 'The United States Navy Arctic Roadmap 2014-2030', 2014, p. 5.

The Arctic Ocean



Figure 1: Arctic Ocean (United States Navy graphic)

Source: 'The United States Navy Arctic Roadmap 2014-2030', 2014, p. 14.



Japan's interests in the Arctic

- **Arctic Sea Routes as a user state**
 - Northern Sea Route (NSR)
- **Major Interests**
 - Shipping: safety and environment
 - Fishery (anti-unregulated fishing in the high seas)
 - Scientific observation/survey
 - Environmental protection

Japan's contribution through cooperation

- **Bilateral cooperation:**
 - Japan-US under the bilateral alliance
 - J-Russia for the **NSR**
 - J-Arctic states
- **Multilateral cooperation:**
 - J-Arctic Council (AC) (as an **observer**)
 - J-Arctic states ('Arctic 8')
 - J-**non-Arctic** states (including European and Asian states)

Maritime issues

- **‘Basic Plan on Ocean Policy’ of 2013: in the Arctic Ocean**
 - **Securing maritime transport, the safety navigation, promotion of research and survey activities, conservation of environment, and promotion of international coordination and cooperation**
 - **Under the law of the sea, including UNCLOS**

Security issues

- Traditional and non-traditional (human & environmental)
- What Japan can do under the new security-related legislation and the Constitution
- What they expect Japan to do
 - US
 - Arctic states
 - Non-Arctic states
 - The rest of the world

Law of the sea (1)

- United Nations Convention on the Law of the Sea (UNCLOS)
 - **Article 234 Ice-Covered Areas**
 - Coastal states have the 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. Such laws and regulations shall have **due regard** to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

Law of the sea (2)

- United Nations Convention on the Law of the Sea (UNCLOS)
Article 26 Charges which may be levied upon foreign ships
 - (1) No charge may be levied upon foreign ships by reason only of their passage through the **territorial sea**.
 - (2) Charges may be levied upon a foreign ship passing through the territorial sea as payment **only for specific services** rendered to the ship. These charges shall be levied **without discrimination**.
- Coastal states' laws and regulations within their EEZ
 - Russia's regulation & implementation
 - *De facto* sea route for international use?
 - Transparency, reasonableness, etc.
 - Infrastructure development (port facilities, SAR centers, etc.)
 - Networking with the Arctic coastal states

AC and IMO

- Under the auspices of the Arctic Council (AC)
 - Agreement on Cooperation on Aeronautical and Maritime **Search and Rescue** in the Arctic (2011)
 - Agreement on Cooperation on Marine Oil Pollution **Preparedness and Response** in the Arctic (2013)
- International Maritime Organization (IMO)
 - Polar Code (a mandatory International Code of Safety for Ships Operating in Polar Waters) (2014 & 2015):
 - For **mandatory** regulation for **both** the Arctic and the Antarctic maritime areas
 - Safety-related and environment-related requirements

Polar Code

- IMO's amendments (additional requirements) to
 - International Convention for the Safety of Life at Sea (**SOLAS**)
 - International Convention for the Prevention of Pollution from Ships (**MARPOL**)
 - International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (**STCW**)
- Domestic measures to be taken
 - Implementation measures for shipping:
 - ship design, construction and equipment; operational and training concerns; SAR; and the protection of the environment and eco-system of the polar regions

Concluding remarks

- The Rule of Law under the law of the sea
 - The freedom of navigation (FON)
 - Coastal jurisdiction & flag ship jurisdiction
- Japan's Arctic policy as a balanced approach
 - Whole nation support for national policy/strategy
 - National, regional and community interests
- Japan's role to play
 - Bilateral/multilateral cooperation and coordination
 - As a **bridge/pipe/channel/conduit** between the AC and the rest of the world
 - **Watcher, monitor, messenger** for community interest/public interest