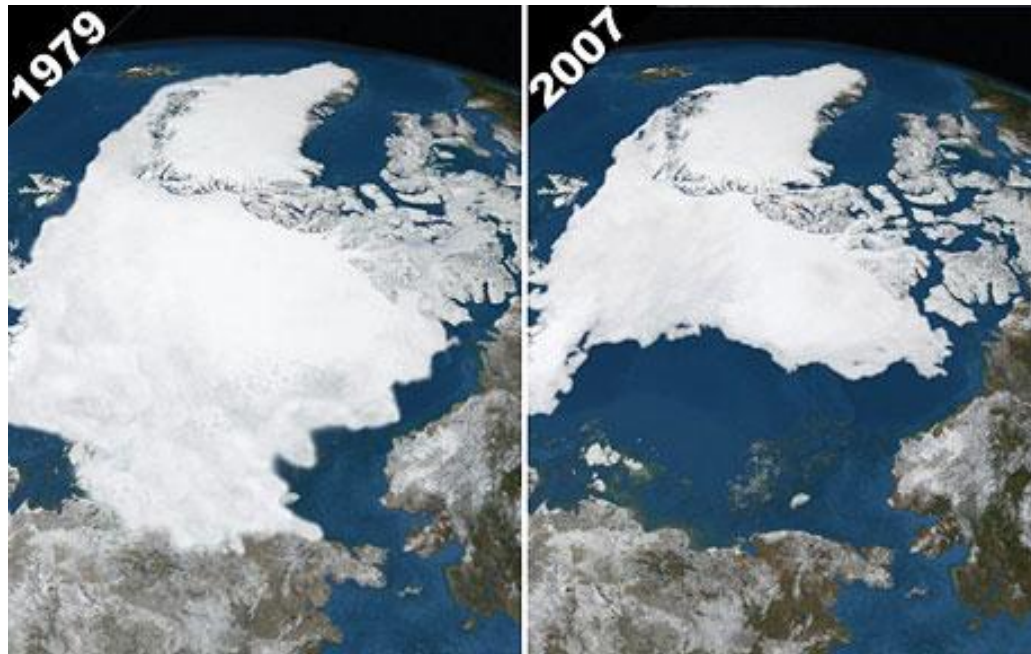


The Changing Arctic: Strategic Opportunities and Challenges



Sherri Goodman

Senior Vice President & General Counsel
Executive Director, CNA Military Advisory Board

New Access to Resources

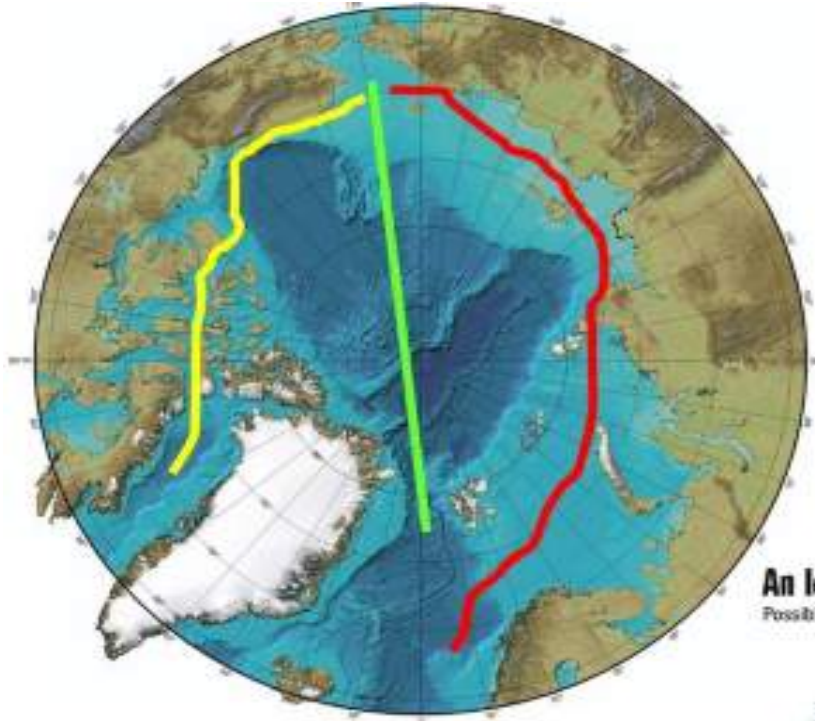


Source: Arctic Monitoring Assessment Program

Strategic Considerations

- **Estimates vary as to when the Arctic is likely to be “ice free”**
- **Key considerations of an open Arctic**
 - Increased maritime shipping – both intra Arctic and trans Arctic
 - Improved access to energy, mineral, fisheries resources
 - Other strategic considerations
 - Loss of permafrost
 - Arctic as an area for military operations
 - Risk of accelerated environmental degradation (spills, vessel pollution)
 - Potential disputes over resources & extraction practices
 - No reciprocal standards for oil and gas activities.
 - Lack of Infrastructure to support increased presence
 - Maritime safety a large issue – although recent SAR agreement
 - Changes to the livelihood/sustainment of indigenous peoples due to Increased numbers of people (workers/tourists)
 - Non-conforming foreign direct investment from China & elsewhere – especially in the mining area

New Shipping Routes



Nordic Barents
Heavy ice-class bulk carrier

An Ice-Free Route to Asia?

Possible shipping shortcuts through the Arctic Ocean



Transit and Presence Risks

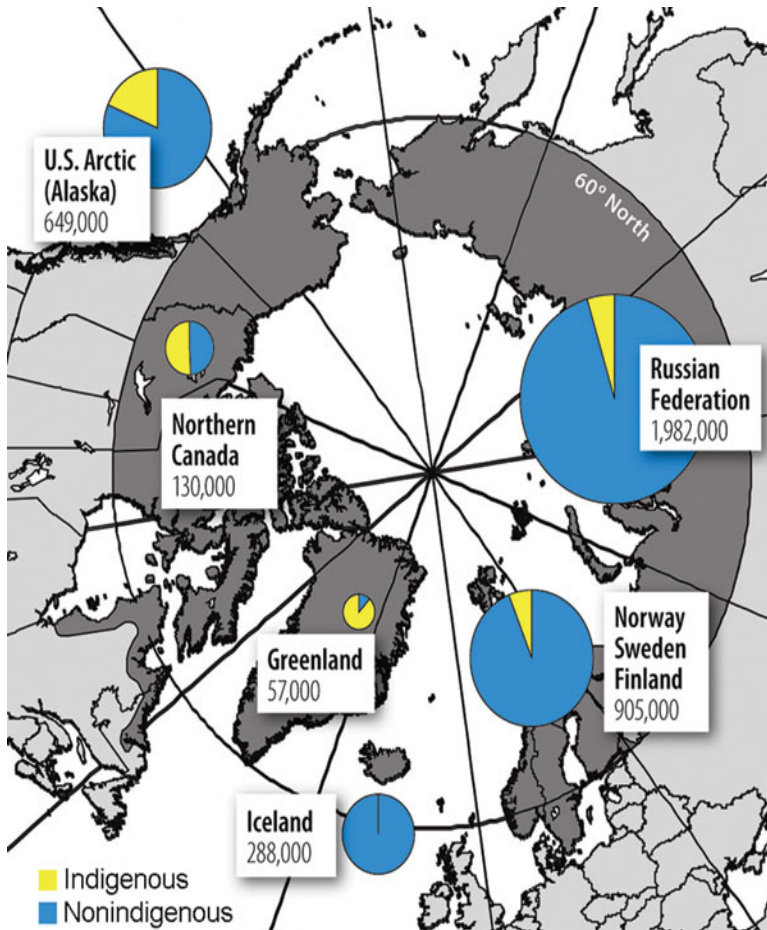
- **Transit Risks**
 - Vessel source pollution due to normal operations or accident
 - Vessel stranding ice or uncharted rock – need rescue
 - Whale strikes
- **Oil and Gas Extraction Risks**
 - Vessel stranding
 - Vessel source pollution
 - Oil Rig, Pipeline, floating production/storage/offloading units or Transfer Vessel Risk(s)
 - Fisheries/wildlife damage & cleanup costs
- **Tourism**
 - Vessel source pollution
 - Vessel stranding ice or uncharted rock – oil loss
 - Pax. Evacuation.
 - Whale strike



Regional Risk Reduction Measures Still Relatively Underdeveloped

- Less than 10% of Arctic waters charted to modern standards...although 5 littoral countries have formed a regional hydrographic commission
 - Lack of charts increases probability of mishaps.
 - Lack of good charts affects full insurability of shipping
- Navigation Aids (Arctic Council)
 - Aids to Navigation (ATON) networks (fixed and floating systems) still under development.
 - Electronic navigational charts (ENC) spotty due to lack of survey data.
 - Real time data on Sea Ice and Prevailing Weather conditions for all of Arctic not yet available
 - “Free Rider” Conundrum
- Arctic SAR collaboration between the 5 littorals plus Finland, Iceland, and Sweden improved the situation but does not eliminate the risks.
- Should the 5 littoral states bear all of these costs?

Indigenous People of the Arctic Region



- Loss of food source
- Loss of housing
- Disease
- Loss of Culture



Melting Permafrost



- Houses
- Transportation
- Pipelines
- Methane release



US Arctic Policy

- US is Arctic Nation – varied & compelling interests in region
 - National security and homeland security interests
- International cooperation, largely through the Arctic Council
 - Boundary issues including extended continental shelf
- Promotion of international scientific cooperation
- Need for int'l cooperation to address:
 - Maritime transportation (incl. maritime safety and environmental protection)
 - Standards for safe economic development, particularly energy
 - Environmental protection and conservation
- US actions will be budget constrained.

The Arctic Council: Assessment

- An intergovernmental forum to “oversee, coordinate” programs concerned with protection of the Arctic environment.
- No power is given to the Council to take actions on behalf of the member states or give it legal personality
- Absent the conclusion of a binding international instrument, no regulatory power over the activities in arctic waters.
- Giving the Arctic Council greater authority to address regional shipping safety, pollution response capacity, and regulation of FDI should be studied.

Key Questions for an Arctic Strategy

- How should arctic resources be managed In a sustainable way? How do we protect the Arctic environment and Indigenous Peoples?
- How should trade & commerce be managed for both sustainability & prosperity?
- Which safety measures are needed to support increased shipping to and through the region?
- How should legal issues and disputes regarding territory and economic rights of states be resolved – given US's non-accession to UNLCOS?
- How do we manage transboundary risks recognizing an incident in one state will affect everyone? What are the proper roles of the Arctic Council and the IMO?
- Are investments needed? New infrastructure or operational capabilities? Who pays?
- Refurbishment of the U.S. Ice breaker fleet...who pays?
- What should be done in support of Arctic research?
- How should interests of local and indigenous populations be considered?

The Wild Card

- Cooperation among the primary Arctic 5 has been excellent over the past 20 years.
- Issues relating to Ukraine and Crimea could de-rail efforts to develop regional governance processes/procedures at the Arctic Council, IMO, and elsewhere
 - US/Russia naval and USCG cooperation in Arctic recently put on hold
- Regional cooperation critical given much increased external investment in large projects bordering the Arctic Sea.

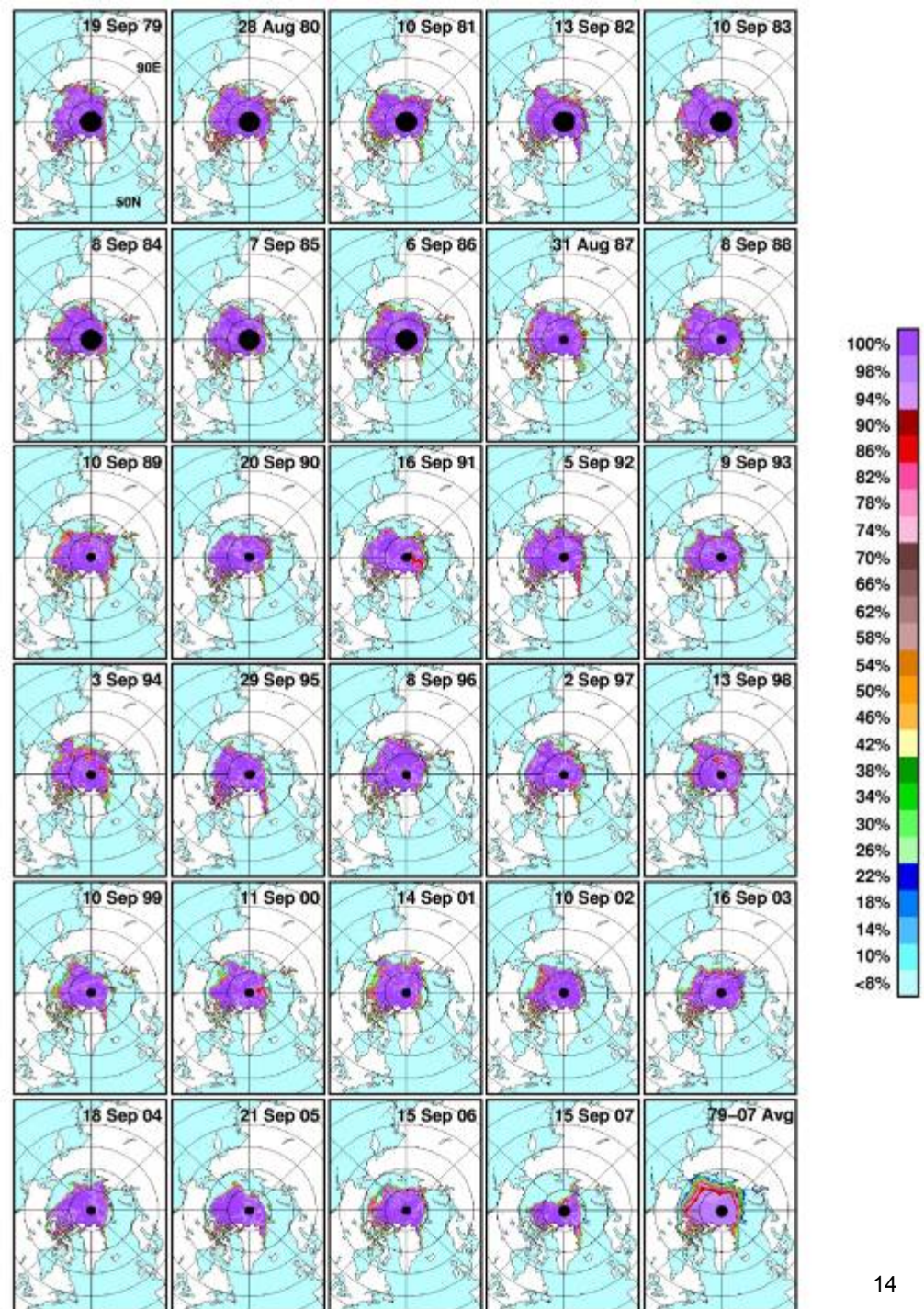
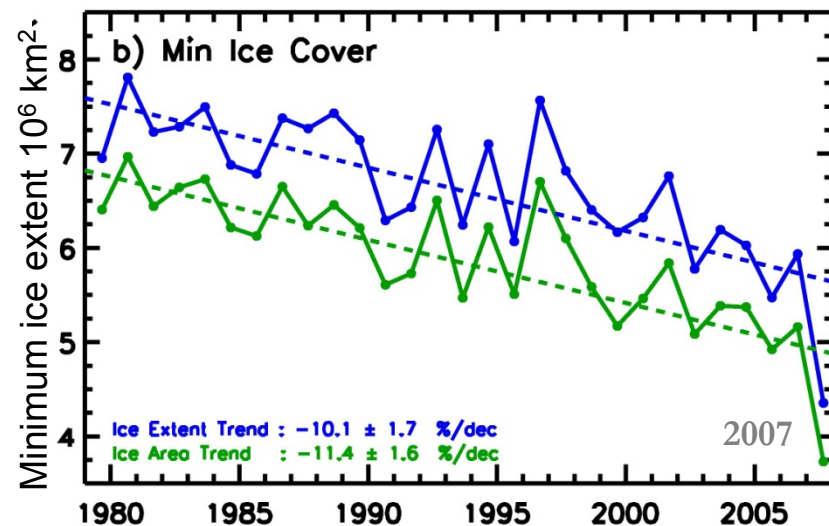


Questions?



Yearly Arctic Ice Cover -- Minimum Extents -- (1979-2007)

Extent trend: -10.1%/decade
Area trend: -11.4%/decade



Additional US Arctic Policy

2009 NSPD further indicates

- Due to increased human activity in the Arctic Region, the **US must "assert** a more active and influential **national presence** to protect its Arctic interests and to **project sea power** throughout the region."
- **Freedom of the seas is a top national priority** to international navigation through the Northwest Passage of the Canadian Arctic and through the Northern Sea Route North of Russia.
- UN Convention on the Law of the Sea (**UNCLOS**) **is the most effective means** to achieve solutions to controversies among Arctic States, especially to gain recognition for continental shelf North of Alaska.
- The **Arctic Council "[..] provides a beneficial venue** for interactions with indigenous groups. Arctic Council **should remain a high-level forum** devoted to issues within its current mandate and **not be transformed into a formal international organization"**
- The Arctic Council's **study on climate change conditions should be increased. Should include** Arctic's socioeconomic composition, among them **indigenous communities.**
- The US is **open to making operational changes to the Council** to improve work. Changes **cannot be allowed to affect the level of governance**
- The geopolitical circumstances of the Arctic region differ sufficiently from those of the Antarctic region such that an **"Arctic Treaty" is not appropriate or necessary.**

The Arctic & The LOS: Limited Coverage

Art 234 of the LOS Convention:

- *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.

UNCLOS

2 The United Nations Convention on the Law of the Sea

1 Introduction

The 1982 United Nations Convention on the Law of the Sea¹ was described at the time of its adoption as “the greatest international legislative effort undertaken by the United Nations and probably the greatest ever undertaken in the annals of international law as a whole.”² The Convention sets out the rules and principles governing all ocean activities, from navigation to fishing, including marine scientific research and deep seabed mining. It was the product of several years of intense negotiations.

The conclusion of the Law of the Sea Convention was not the first time that the international community had sought to codify and progressively develop the law of the sea. The twentieth century saw a number of international conferences that were dedicated to this task. These attempts to codify the law of the sea illustrate the increasing institutionalization of law-making described in the previous chapter.

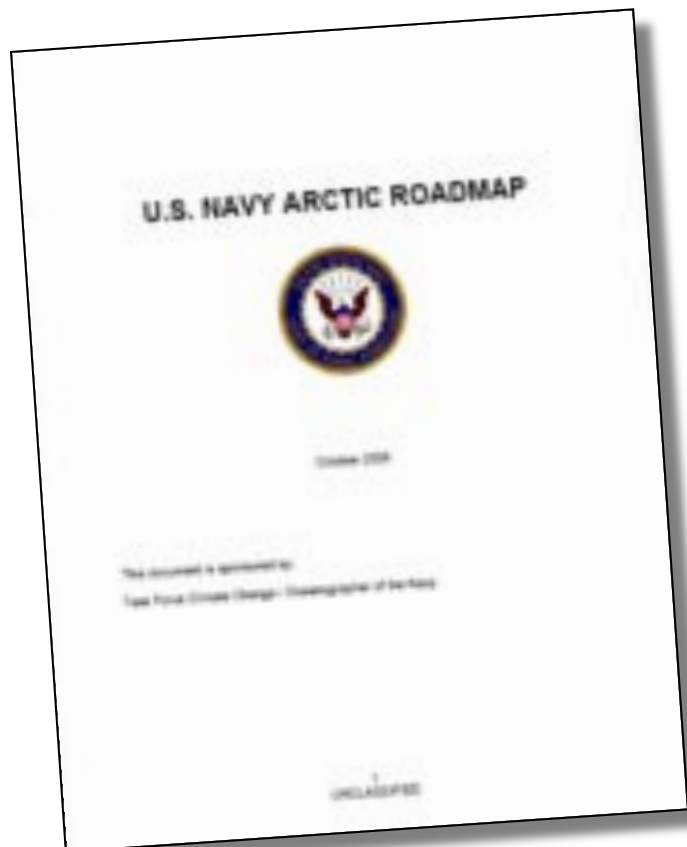
This chapter will trace the progression of several international conferences dedicated to the codification and progressive development of the law of the sea. It will start with a short overview of initial attempts at codification by the League of Nations and by the United Nations before turning to a more detailed look at the promulgation of the Law of the Sea Convention itself. Given its importance to the modern law of the sea, it is appropriate to consider in detail how the Law of the Sea Convention was negotiated and to what extent it has met its drafters’ hopes of creating a single, coherent framework for the law of the sea.

¹ Hereinafter, Law of the Sea Convention.

² Statement of Norway, 186th Meeting, *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. 17, 27, at para. 42.

Signed by President, but not ratified by Congress

US Navy – Arctic Roadmap



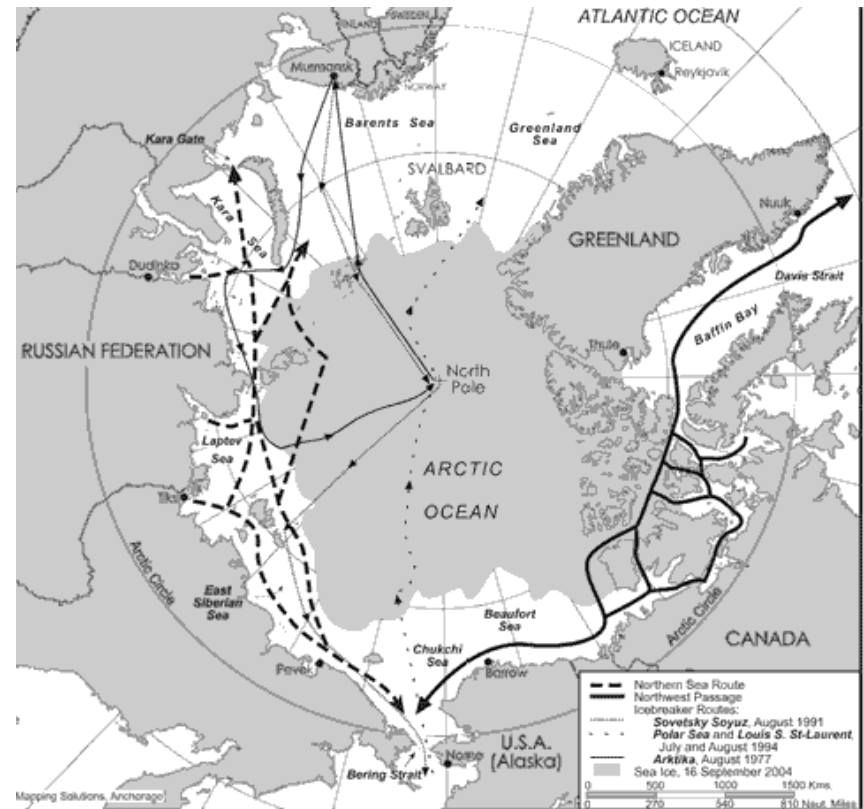
- Ensure naval readiness and capability
- Promote maritime security in the Arctic region
- Increase operational experience
- Promote cooperative partnerships
- Improve environmental understanding
- Review current capabilities and gaps
- Continue Arctic and sub-Arctic training exercises:
 - Joint search and rescue,
 - Humanitarian assistance
 - Disaster relief exercises with the Coast Guard;
- More robust environmental sensors
- Enhance modeling for better predictive capabilities

Vessel Transit and Presence Issues

Potential Routes For Int'l Navigation

- Bering Strait
- Northwest Passage (Canada)*
- Northeast Passage/
Northern Route (Russia)*
- Some of these routes may traverse internal waters – some pass through recognized straits

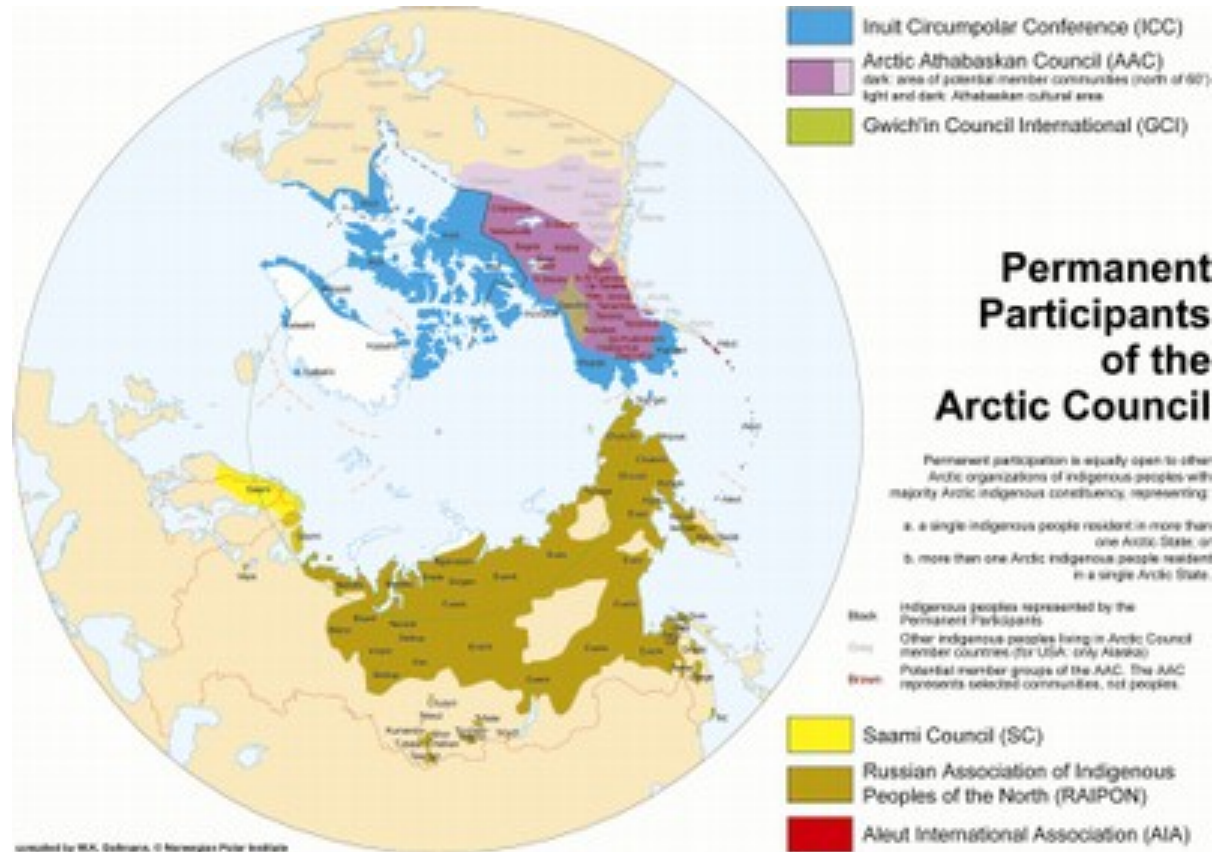
*NIC Global Trends 2030 projects both routes will be open for 110 days/year for Navigation.



Arctic Council



Since 1996
Canada
Denmark
Finland
Iceland
Norway
Russia
Sweden
US



Arctic Legal Status

The Arctic is legally different than other geographically remote areas

- There is no overarching legal treaty which governs activities...contrast:
 - Deep seabed (beyond nat'l jurisdiction): the Law of the Sea (LOS) Convention
 - An international body licenses activities
 - Outer Space (O/S) – Outer Space Convention 1967
 - A '72 Liability Convention makes states responsible for their activities in O/S
 - Antarctica – The Antarctic Treaty of 1959
 - Rejects all territorial claims...or military activities
 - A 1980 Protocol establishes a Commission to regulate harvesting of marine resources
 - Mineral/Oil and Gas Extractive activities now banned.
- The LOS has one specific Article affecting ice bound areas only. For the most part, the general LOS Rules & legislation of individual state(s) apply.
- Since much of the Arctic is under the sovereign jurisdiction of individual states and there are some development/population centers care needed in making direct comparisons