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Russia and the polar marine environment: The negotiation of the environmental protection measures of the mandatory Polar Code

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The International Maritime Organization's Polar Code aims at enhancing polar marine environmental protection from vessel-source pollution. Russia, the largest Arctic coastal State will play an important role in the Code's implementation and further development. This article analyses Russia's positions and decision making mode during the negotiations of the Code's environmental measures. Looking at three issue areas – establishment of special areas, discharge ban of oil and oily mixtures and reception facilities – it is evident that Russia's environmental interests took a backseat to economic concerns and zero-sum outlook. Further, Russia's negotiating strategy was dominated by bargaining, rather than arguing, which could have produced better understanding among the negotiating parties. There was a disconnect between Russia's aims and the Code's goals, and between Russia's chosen strategy and the strategy from which its proposals could benefit most. This suggests that the Code's implementation and future development could face further challenges from Russia.

1 INTRODUCTION

With the decrease of polar sea ice and the expected increase of polar shipping, one recent step to protect the Arctic marine environment concerns a new mandatory international legal instrument, the International Code for Ships Operating in Polar Waters (Polar Code), negotiated at the International Maritime Organization (IMO).¹ The Polar Code is a set of region-specific regulations applying to both the Arctic and Antarctic, which adds to already existing major IMO Conventions, including the International Convention for the Prevention of Pollution from Ships (MARPOL).² The Code includes mandatory regulations, as well as recommendations, for passenger ships, cargo vessels and their crew, both for the protection of the fragile polar marine environment and for navigational safety, which indirectly contributes to the prevention of accidental pollution of polar waters. The safety measures of the Code address construction, machinery, equipment and training issues as well as voyage planning, while the environmental measures add to the Annexes of MARPOL in the areas of prevention of pollution by oil, noxious liquid substances, sewage and garbage. While the pollution prevention part of the Code originally set out with a much wider coverage, the key issue areas focussed on were oil pollution, including the possibility of a ban on the use of heavy fuel oil (HFO) and the possible need for port reception facilities, as well as questions of certification to prove compliance with the Code's requirements.

¹ 'International Code for Ships Operating in Polar Waters (Polar Code)' IMO Doc MSC.385(94) (adopted 21 November 2014, entered into force 1 January 2017); and 'International Code for Ships Operating in Polar Waters (Polar Code)' IMO Doc MEPC.264(68) (adopted 15 May 2015, entered into force 1 January 2017) (Polar Code).

² International Convention for the Prevention of Pollution from Ships, as Modified by the Protocol of 1978 Relating Thereto (adopted 2 November 1973 and 17 February 1978, entered into force 2 October 1983) 1340 UNTS 62 (MARPOL), as amended.

One of the most affected parties in the negotiation of the Polar Code was the Russian Federation, the largest Arctic coastal State. It is the waters north of the Russian Arctic coast that are most promising for commercial shipping with the predicted reduction of sea ice, and Russia already utilizes these waters in connection with resource extraction in the region. Russia's participation in the Polar Code's negotiation and its efforts to influence the Code's provisions are therefore important for understanding both the Code's future and Russia's possible approach to implementing and complying with it.

Russia's commitment to environmental protection in the past, both in general and in the Arctic in particular, has been chequered. Research points to a pattern whereby Russia appears to place higher importance on foreign policy goals and economic gains, than on environmental protection, in both the national and international settings.³ However, it is also clear for Russia that the Arctic environment is vulnerable, and environmental protection features in both Russia's 2008 and 2013 Arctic strategies,⁴ suggesting that Russia attaches importance to such measures. But how did this translate into the negotiation of regulations regarding ship-source pollution in the Arctic specifically?

To answer this question, I scrutinize Russia's participation in the negotiations on the environmental measures of the Polar Code. First, I ask what proposals Russia tabled during the negotiations regarding environmental protection, and what can be said for Russia's positions vis-à-vis the environment-related proposals of other IMO member States and observer organizations. Another way to answer my main research question is by looking at what characterizes the justifications Russia used in supporting its positions, and how the decision-making mode that Russia engaged in influenced the outcome of the debates. For this I use deliberative theory.

Classical deliberative theory contrasts two forms of decision-making modes, arguing (deliberation) and bargaining (negotiation).⁵ The former is built on the review of participants' preferences based on the exchange of reasoned arguments, claiming validity concerning factual truth, normative rightness (impartiality and reliance on principles) and sincerity (consistency), to achieve understanding based on consensus.⁶ During bargaining, meanwhile, parties aim at achieving their self-interests through demands that are based on credibility underpinned by material resources.⁷ If social norms prohibit the utterance of self-interest, however, arguments might be used by the bargaining parties in support of their claims, to achieve such interests.⁸

³ RG Darst, *Smokestack Diplomacy: Cooperation and Conflict in East-West Environmental Politics* (MIT Press 2001) 3-4; A Korppoo, N Tynkkynen and G Hønneland, *Russia and the Politics of International Environmental Regimes: Environmental Encounters or Foreign Policy?* (Edward Elgar 2015) 136-142; and P Carter, AM Brady and E Pavlov, 'Russia's "Smart Power" Foreign Policy and Antarctica' (2016) 6 *The Polar Journal* 259, 267-269.

⁴ Russian Federation, 'Basics of the State Policy of the Russian Federation in the Arctic for the Period till 2020 and for a Further Perspective' (2008) para 4(c); and Russian Federation 'Strategy for the Development of the Arctic Zone of the Russian Federation' (2013) para 16. For the environment as part of Russia's maritime policy for the Arctic Ocean, see DV Vasilevskaya, AV Nikolaev and GI Tsoy, 'The Environmental Component of the National Maritime Policy of the Russian Federation in the Arctic Ocean' in PA Berkman and AN Vylegzhanin (eds), *Environmental Security in the Arctic Ocean* (Springer 2013) 93.

⁵ J Elster, 'Arguing and Bargaining in Two Constituent Assemblies' (2002) 2 *University of Pennsylvania Journal of Constitutional Law* 345, 371-372; J Mansbridge, 'Deliberative and Non-Deliberative Negotiations' (2009) <<http://ssrn.com/abstract=1380433>> 3-5; and ME Warren et al, 'Deliberative Negotiation' in J Mansbridge et al (eds), *Negotiating Agreement in Politics* (American Political Science Association 2013) 86, 93. When the present article uses the phrases 'negotiation of the Polar Code', 'negotiating strategy' and 'negotiating parties', these are not intended to imply that the parties to the Polar Code process engaged mainly in bargaining as a decision-making mode.

⁶ Elster (n 5) 371-377; J Mansbridge et al, 'The Place of Self-Interest and the Role of Power in Deliberative Democracy' (2010) 18 *The Journal of Political Philosophy* 64, 66-67.

⁷ Elster (n 5) 372, 392-393.

⁸ J Elster, 'Strategic Uses of Argument' in K Arrow et al (eds), *Barriers to Conflict Resolution* (W.W. Norton & Company 1995), 237; and Elster (n 5) 405-418.

Thus, an expression of self-interest might be replaced by a claim to principle, or a warning might be stated instead of a threat, replacing the need to rely on the credibility of superior material resources to back up a position with a claim to factual truth.⁹ However, the outcome of such strategic uses of argumentation does not always coincide with what was intended. Recently, it has been acknowledged that interests and arguing do not necessarily exclude one another. In fact, explaining one's interest can lead to improved understanding and an outcome that takes into account the preferences of both parties.¹⁰ Where can Russia's stance in the negotiation of the Polar Code's environmental measures be placed between arguing and bargaining?

This article sets out with a short presentation of secondary literature regarding Russia and environmental protection, followed by an introduction to the research material. It then presents the environmental issue areas where Russia participated in the debates, and discusses Russia's positions and their implications, closely linked with the justifications offered. The final sections summarize the findings and offer a short conclusion.

2 RUSSIA AND ENVIRONMENTAL PROTECTION IN THE LITERATURE

Previous research points at the secondary nature of environmental considerations for Russia, compared to other drivers of its engagement with environmental regulations. In his study of three cases – Baltic Sea pollution, transboundary air pollution and nuclear power safety – Robert Darst suggests that the Soviet Union was guided by broader foreign and domestic policy goals when negotiating international environmental agreements, while after the end of the Cold War attracting money through transnational subsidization of environmental protection projects was important for economic development.¹¹ More recently, Anna Korppoo and colleagues find an array of issues when analysing three international environmental regimes – the climate regime, marine environmental protection in the Baltic Sea and fisheries management in the Barents Sea – that influenced Russia's participation in these regimes over environmental concerns: again, domestic and foreign policy goals, international image-building and soft power, and economic gain.¹² This is paralleled in the case of the establishment of the Ross Sea Marine Protection Area in the Antarctic where Perry Carter and colleagues suggest that Russia's economic concerns regarding future fishing rights in the area were important in the negotiations, while reinforcing its soft power image was influential in bringing a solution to the issue, rather than environmental considerations.¹³

Turning to Arctic shipping, Russia has long experience in extensive regulations of shipping on the Northern Sea Route (NSR),¹⁴ today based on the concept of exclusive economic zone in the United Nations Convention on the Law of the Sea (LOSC), where coastal States are provided with perceived unilateral rights for the protection of ice-covered waters from vessel-

⁹ Elster (n 8) 237-238 and 244-257; and Elster, 'Arguing and Bargaining,' (n 5) 405-418.

¹⁰ Mansbridge (n 5) 5-11; Mansbridge et al (n 6) 72-80; and Warren et al (n 5) 92-93.

¹¹ Darst (n 3) 3-4, 21-35.

¹² Korppoo et al (n 3) 130-142.

¹³ Carter et al (n 3) 267-269.

¹⁴ The Northern Sea Route is a concept originating from Soviet domestic regulations. It is described as an 'historically emerged national transportation route of the Russian Federation' that stretches from the Kara Sea to the Bering Strait; see Russian Federation, Federal Act on Amendments to Specific Legislative Acts of the Russian Federation related to Governmental Regulation of Merchant Shipping in the Water Area of the Northern Sea Route, adopted by the State Duma on 3 July 2012, approved by the Council of Federation on 18 July 2012. A collection of routes, the Northern Sea Route is covered by separate Russian regulations regarding, among others, the procedure of navigation, icebreaker assistance, ice pilotage and ship design and equipment; see Russian Federation, Rules of Navigation in the Water Area of the Northern Sea Route, approved by the Order of the Ministry of Transportation No. 7, 17 January 2013, registered by the Ministry of Justice on 12 April 2013.

source pollution.¹⁵ However, in a region important from a national security perspective, it has been suggested that control over ship traffic may have had higher importance for the regulation of shipping than environmental considerations.¹⁶ Such arguments are also supported by the poor environmental record of the Soviet Union/Russia in the Arctic, exemplified by the Soviet/Russian fleet's inability to comply with strict discharge regulations.¹⁷ Most recently, Andrei Zagorski commented that concerns relating to economic impact had influenced Russia's thinking regarding the Polar Code.¹⁸

Despite the trends in the secondary literature, it is pertinent to ask if their conclusions are relevant for the negotiation of the Polar Code. As suggested above, Russia has strong, objective environmental interests in the NSR area, which is also reflected in its Arctic strategies.

3 RESEARCH MATERIAL

The present analysis is built primarily on documents gathered from the IMO's document database, IMODOCS.¹⁹ These include State submissions to the IMO Committee responsible for environmental protection, the Marine Environment Protection Committee (MEPC), as well as two Sub-Committees that were tasked with the technical work on the Polar Code: the Sub-Committee for Ship Design and Equipment (DE) and its successor, on Ship Design and Construction (SDC).²⁰ This analysis also includes reports of these bodies where Russia's opinion was recorded, whether in the main text or annexed to the report as statement. Such inclusions of opinion serve to show strong opinions that were different from the majority of those States that spoke on a given issue.

Russia submitted six documents with regard to the substance of the environmental measures to be included in the Polar Code.²¹ Additionally, Russian opinions regarding environmental measures were recorded three times in reports of the Committee and Sub-Committees. In my analysis, I compare the content of these documents to other delegations' proposals as well as legal documents already existing at the time of the debates.

¹⁵ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (LOSC) art 234.

¹⁶ E Franckx, 'Nature Protection in the Arctic: Recent Soviet Legislation' (1992) 41 *International and Comparative Law Quarterly* 366, 384-385; R Vartanov, A Roginko and V Kolossov, 'Russian Security Policy 1945-1996: The Role of the Arctic, the Environment and the NSR' in W Østreng (ed), *National Security and International Environmental Cooperation in the Arctic – the Case of the Northern Sea Route* (Kluwer Academic Publishers 1999) 53, 63; and RD Brubaker, 'Regulation of Navigation and Vessel-Source Pollution in the Northern Sea Route: Article 234 and State Practice' in D Vidas (ed), *Protecting the Polar Marine Environment: Law and Policy for Pollution Prevention* (Cambridge University Press 2000) 221, 224.

¹⁷ Vartanov et al (n 16) 63 and endnote 26, 281; and Brubaker (n 16) 224-225.

¹⁸ A Zagorski, 'Perspective' in OR Young, JD Kim and YH Kim (eds), *The Arctic in World Affairs: A North Pacific Dialogue on the Arctic in the Wider World: 2015 North Pacific Arctic Conference Proceedings* (Korea Maritime Institute and East-West Center 2015) 215, 222-225.

¹⁹ These documents are accessible to the public after registration in IMODOCS. IMODOCS is available at <<http://webaccounts.imo.org/>>.

²⁰ Due to the reorganization of the IMO's structure, the 57th meeting of DE was followed by SDC 1.

²¹ Russia submitted two proposals referring to Article 234 of the LOSC providing for enhanced coastal State rights for prevention of vessel-source pollution. However, these did not concern environmental measures, but rather focused on safety and limitations to navigation. Therefore, these were left out of the analysis. For an analysis of these submissions, see D Bogнар, 'Russian Proposals on the Polar Code: Contributing to Common Rules or Furthering State Interests?' (2016) 7 *Arctic Review on Law and Politics* 111, 117-119; and D Bogнар, 'The "Elephant in the Room": Article 234 of the Law of the Sea Convention and the Polar Code as an Incompletely Theorised Agreement' (2016 Arctic Circle Assembly, Reykjavik, 9 October 2016). For the evaluation of the NSR regulations, which were in force until 2013, four years after the beginning of the negotiation of the Polar Code, in light of Article 234 of the LOSC, see Brubaker (n 16). For the importance of Article 234 as a justification of Russian control of navigation in the NSR, see VV Gavrillov, 'Legal Status of the Northern Sea Route and Legislation of the Russian Federation: A Note' (2015) 46 *Ocean Development & International Law* 256, 260-261.

State proposals served as the basis of the discussions regarding the content of the Polar Code and provide an insight into the justifications used by States to support their positions, whereas reports of the Committee and Sub-Committees give account of the debates. However, expert working group debates and private conversations on the corridors cannot be reproduced from these documents. Therefore, interviews were also conducted with delegates to the IMO in support of the analysis. Interviewees were selected from both national delegations and delegations of environmental nongovernmental organizations (NGOs) in consultative status at the IMO. However, interviewees were reluctant to offer detailed information on the Polar Code negotiations for the record, with most insight provided off-the-record which cannot be reproduced in this article.²²

4 RUSSIA AND THE NEGOTIATION OF THE POLAR CODE'S ENVIRONMENTAL PROVISIONS

In the following, I analyse Russia's positions and the justifications behind these, with regard to the environmental part of the Polar Code.²³ These are grouped in three thematic areas in order of their first appearance in the documentary material. In the process, I also place Russia's proposals and positions in the context of the views of other participants.

4.1 Regulation of and special areas for grey water, heavy fuel oil and emissions

Early discussions on environmental regulations had a wide scope, including grey water discharge,²⁴ emissions of sulphur oxides (SO_x) and nitrogen oxides (NO_x) and use of heavy fuel oil.

4.1.1 Positions

Environmental NGOs submitted no less than six documents to DE 56, including proposals to prohibit the use of HFO in the Arctic,²⁵ regulate discharges of grey water, reduce the impact of black carbon and address SO_x and NO_x emissions.²⁶

Russian concerns were recorded twice during this meeting. The first one appears to be a response to the environmental NGOs that 'keep mentioning the increased vulnerability of ecological systems',²⁷ where Russia argued against the regulation of grey water discharges and the proposed ban on HFO use.²⁸ Second, Russia issued a statement responding to the report of the working group responsible for the Polar Code, in opposition to the proposed establishment of Arctic special areas with regard to a number of issue areas.²⁹

²² Seven interviews were conducted in the 2015-2017 period, two of which were with NGO representatives. Interviewees from national delegations were selected from major Arctic States. While many were reluctant to be interviewed, informal discussions also took place during MEPC 68, the final meeting to discuss the Polar Code's environmental measures before their adoption.

²³ The Polar Code makes a linkage between navigational safety and environmental protection as, arguably, accidents can result in discharge of pollutants into the marine environment, see Polar Code (n 1) preamble. However, an analysis of the Russian submissions regarding the safety part of the Code is beyond the scope of this article. For this, see Bognar, 'Russian Proposals' (n 21) 117-119, 121-124.

²⁴ Grey water includes all wastewater streams from ships with the exception of sewage.

²⁵ Friends of the Earth International (FOEI) et al, 'Development of a Mandatory Code for Ships Operating in Polar Waters: Heavy Fuel Oil Use in Arctic Waters' IMO Doc DE 56/10/10 (24 December 2011).

²⁶ Friends of the Earth International (FOEI) et al, 'Development of a Mandatory Code for Ships Operating in Polar Waters: Environmental Protection Chapter' IMO Doc DE 56/10/12 (24 December 2011).

²⁷ 'Report to the Maritime Safety Committee' IMO Doc DE 56/25 (28 February 2012) Annex 21.

²⁸ *ibid.*

²⁹ *ibid* Annex 22.

4.1.2 Implications and interpretation

The proposal of environmental NGOs to prohibit the use of HFO pointed to two risks that might be averted through the suggested ban, citing scientific research to buttress this proposal. Emphasizing the expected increase of Arctic shipping, dangers posed by navigational conditions and lack of spill response infrastructure, the proposal suggested that an accidental spill of HFO would be more detrimental to both the unique and vulnerable Arctic environment and coastal residents, including indigenous peoples, than distillate marine fuel.³⁰ The second benefit of banning HFO use mentioned in this proposal is associated with the health effects of particulate matter emissions, including black carbon, resulting from the use of HFO.³¹ As regards the regulation of sewage and grey water, the environmental NGOs pointed to the low tolerance of polar waters to changes in nutrient levels that would result from such discharges, as well as to cumulative effects together with global climate change and associated warmer sea temperatures.³² This argumentation is found in document DE 56/10/12, a paper that discussed a wide array of issue areas, which the environmental NGOs wanted to see included in the Polar Code. This wide scope, however, also means that justification for many of the positions was not included due to lack of space, including with regard to SOx and NOx emissions.

Russian counter-arguments to the proposed regulations, especially the possibility that special areas and emission control areas could be established in the Arctic, were manifold. Russia took issue with the legality of the proposed special areas and emission control areas. Its statement during the plenary session singled out two aspects of the established procedures it saw as being violated. First of these was that proposals to create special areas must be tabled by parties to MARPOL,³³ which are nation States. This argument can be seen as directed against both the environmental NGOs and the working group, whose report suggested special areas as options for inclusion in the Code.³⁴ The second criticism was that, according to the procedures, proposals to establish special areas have to be ‘adequately substantiated’.³⁵ It is true that the environmental NGOs’ proposals in DE 56/10/12 did not contain extensive justifications. However, with regard to the proposed regulations against the use of HFO in the Arctic, Russia appeared not to take note of the extensive references provided. On the face of it, then, Russia did not oppose the introduction of stringent regulations, including special area designations, but argued against perceived violations of the MARPOL procedures, creating an image of itself as the State upholding international law.

Yet, reading these comments against special areas together with an earlier Russian statement sheds more light on Russia’s concerns and their origins. Here, Russia suggested that

it would be imprudent to disregard the influence that would be exerted by each Code’s requirement on the shipping in polar waters and economic activity in adjacent areas of a number of States.³⁶

Multiple self-interested justifications appear here. First, the increase of costs that would be caused by a switch from HFO to distillate fuel would affect many of the Russian-flagged vessels as well as vessels serving Russian projects along its northern coast. Russia suggested

³⁰ DE 56/10/10 (n 25) 2-4.

³¹ *ibid* 4-5.

³² DE 56/10/12 (n 26) 3.

³³ DE 56/25 (n 27) Annex 22.

³⁴ *ibid*.

³⁵ *ibid*.

³⁶ *ibid* Annex 21.

that complying with some of the proposed regulations, such as those suggested for grey water, would be ‘extremely difficult’.³⁷ While it was not further explained what was meant by ‘economic activity in adjacent areas’,³⁸ it can be surmised that this referred to the burgeoning extraction industry in the Russian Arctic. Finally, goods delivery to remote communities was also mentioned as being made more difficult as a result of the proposed regulations.³⁹ As a solution, Russia suggested that regulation of structural requirements would be sufficient, but that ships should not be subject to requirements that exceed those in MARPOL.⁴⁰ This latter statement is in direct contradiction with the stated aim of the Polar Code that is to provide additional requirements to those already existing in MARPOL to increase the protection of the polar environment. Thus, it appears that Russia’s interests with regard to shipping and economic activities in its Arctic region were in contradiction with stringent environmental regulations in this case.

While these issues are important for the protection of the polar marine environment, they were left out of the Polar Code. This was due mainly to the lack of prior regulations to build on as in the case of grey water and the ongoing work of other IMO bodies on related issues, such as the effects of black carbon emissions by international shipping in general.⁴¹ With regard to the use of HFO, its regulation was viewed as desired but premature.⁴² Thus, the focus turned towards the regulation of other pollution sources, such as oily mixtures. This is the subject of the next subsection.

4.2 Discharge of oil and oily mixtures from machinery spaces

As one of the additional requirements to those already existing in MARPOL, a complete prohibition of discharge of oil and oily mixtures was discussed during many of the IMO’s meetings. This proposed prohibition extended not only to discharges from cargo tanks but also from machinery spaces, which would affect many more vessels than just oil tankers. The first meeting to discuss the potential ban, proposed by environmental NGOs, was the 57th session of DE.⁴³ This resulted in MEPC 65 being asked to decide between a complete ban and the option of subjecting discharge of oil and oily mixtures to certain conditions, with the MEPC favouring the former.⁴⁴

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ ‘Report to the Maritime Safety Committee and the Marine Environment Protection Committee’ IMO Doc DE 57/25 (5 April 2013) 25; and ‘Report of the Marine Environment Protection Committee on its Sixty-Fifth Session’ IMO Doc MEPC 65/22 (24 May 2013) 69-70.

⁴² MEPC 65/22 (n 41) 70. The issue of regulating HFO use and carriage has reappeared at the IMO since the adoption of the Polar Code, supported by major Arctic States, such as the United States and Canada; see Canada et al, ‘Work Programme of the Committee and Subsidiary Bodies: Measures to Reduce Risks of Use and Carriage of Heavy Fuel Oil as Fuel by Ships in Arctic Waters’ IMO Doc MEPC 71/14/4 (21 March 2017). While risk mitigation is supported by Russia, banning the use of HFO is not; see Russian Federation, ‘Any Other Business: Comments on the Document on the Use of Heavy Fuel Oil in the Arctic (MEPC 71/16/4)’ IMO Doc MEPC 71/16/8 (12 May 2017) 4.

⁴³ Friends of the Earth International (FOEI), World Wide Fund for Nature (WWF) and Pacific Environment, ‘Development of a Mandatory Code for Ships Operating in Polar Waters: Operational Oil Pollution in Polar Waters’ IMO Doc DE 57/11/23 (25 January 2013) 2. This document was submitted to support measures proposed by five Arctic States to mitigate the impact of discharges from other than cargo spaces. For this submission, see Denmark et al, ‘Development of a Mandatory Code for Ships Operating in Polar Waters: Proposals Related to an Environmental Chapter of a Mandatory Code for Ships Operating in Polar Waters (Polar Code)’ IMO Doc DE 57/11/9 (10 January 2013) 3.

⁴⁴ MEPC 65/22 (n 41) 70.

4.2.1 Positions

During these debates, there is no record of opposing opinion from Russia. However, following the MEPC's decision, Russia tabled a string of proposals to overturn the complete ban and, subsequently, to seek exemptions from it.⁴⁵ These submissions included proposals to allow discharges under certain conditions, to allow maritime administrations to exempt ships from the ban and to provide a five-year-long grace period for certain ship types to comply with the discharge ban.

A discharge ban similar to that decided upon has been in place both in the Canadian Arctic and in Antarctic waters, as indicated by Canada, demonstrating that it is possible to comply with this stringent requirement.⁴⁶ Canada further suggested that workable solutions did exist, allowing for compliance with the ban while not causing disproportionate difficulties for shipping.⁴⁷

4.2.2 Implications and interpretation

While the first Russian submission that aimed to overturn MEPC 65's decision did not elaborate on the reason for this other than the 'extremely difficult' nature of complying with the decision,⁴⁸ later Russian documents suggested a number of justifications for the proposed overturn or relaxation of the ban.

First, Russia referred to the claim that discharges of oily water with less than 15 parts per million oil content pose smaller danger than pollutants coming into the Arctic from outside.⁴⁹ However, Russia cited just one study throughout the submissions to support this statement, while the lack of page numbers accompanying the reference hinder easy verification of the research. Nevertheless, Russia suggested that the decision to impose a complete ban was not well substantiated,⁵⁰ disregarding the experience accrued from the Canadian Arctic and Antarctica. These instances show inconsistencies in Russia's argumentation, highlighting the lack of regard by Russia for providing factually based arguments while requiring a much higher standard of reasoning from other negotiating parties, suggesting that Russia might not have aimed for genuine arguing.

On the other hand, Russia appeared to presuppose the supremacy of its own Arctic experience. Multiple Russian proposals emphasized the vast Russian experience with regard to Arctic shipping, as well as the attention Russia had paid to navigational safety and

⁴⁵ Russian Federation, 'Development of a Mandatory Code for Ships Operating in Polar Waters: Comments on Chapter 1 of Part II-A' IMO Doc SDC 1/3/18 (29 November 2013); Russian Federation, 'Reports of Sub-Committees: Comments on the Outcome of SDC 1: Environmental Issues Related to the Draft Code for Ships Operating in Polar Waters (Polar Code)' IMO Doc MEPC 66/11/3 (24 January 2014); Russian Federation, 'Mandatory Code for Ships Operating in Polar Waters: Comments on the Environmental Matters in the Polar Code (Part II-A, Chapter 1)' IMO Doc MEPC 67/9/2 (8 August 2014); and Russian Federation, 'Mandatory Code for Ships Operating in Polar Waters: Comments on the Report of the Polar Code Correspondence Group (Part II-A, Chapter 1)' IMO Doc MEPC 67/9/3 (15 August 2014).

⁴⁶ Canada, 'Reports of Sub-Committees: Development of a Mandatory Code for Ships Operating in Polar Waters – Reception Facilities for Oil and Oily Mixtures' IMO Doc MEPC 66/11/8 (21 February 2014) 3.

⁴⁷ *ibid* 1-2.

⁴⁸ SDC 1/3/18 (n 45) 1.

⁴⁹ MEPC 66/11/3 (n 45) 2; and MEPC 67/9/3 (n 45) 2. Russia used this justification in a document submitted already to DE 57, see Russian Federation, 'Development of a Mandatory Code for Ships Operating in Polar Waters: Proposals related to an Environmental Chapter of a Mandatory Code for Ships Operating in Polar Waters (Polar Code)' IMO Doc DE 57/11/12 (25 January 2013) 2.

⁵⁰ MEPC 66/11/3 (n 45) 2.

environmental protection in its Arctic waters, as legitimization of Russia's positions.⁵¹ Most illustrative is the document MEPC 66/11/3 stating that Russia

drawing on its own vast experience of Arctic shipping, is of the opinion that the Committee's support of the option of total banning of discharge from ships, bilge waters especially, is not well-grounded.⁵²

Therefore, it seems that what, in Russia's eyes, discredited the ban was not so much scientific research results but Russia's experience which could hardly be reasoned against.⁵³

One Russian argument, reiterated in three documents, stands out as being inspired by the Polar Code's aim to enhance environmental protection.⁵⁴ Russia pointed to the problem of illegal and uncontrolled discharges that could increase as a result of the prohibition of oil and oily mixtures discharges in the Arctic. Drawing a comparison with the Baltic Sea, which experiences illegal discharges in spite of better infrastructure and reception facilities than are available in the Arctic, Russia emphasized the difficulty of identifying such discharges. While illegal and uncontrolled discharges are a genuine concern, it is remarkable that Russia used this argument in support of overturning the discharge ban, rather than, for example, to propose construction of better facilities in the Arctic.

An indication of why Russia would use this argument to support overturning the discharge ban is provided by some of the main justifications Russia cited against the ban, namely the difficulties it would cause for upgrading ships, the costs this would entail and the negative effect this would have on shipping in the Arctic.⁵⁵ Russia appeared concerned with the difficulties posed for many different ship types that correspond to Russian activities in the region.

First, Russia mentioned ships on transit voyages across the Arctic.⁵⁶ Official Russian rhetoric had been vocal about the possibilities that lie in using the NSR between Europe and Asia, trying to promote this route.⁵⁷ Such opportunities would be threatened by a discharge ban on oil and oily mixtures that requires ships to keep these wastes on board during the whole length of Arctic voyages or include port stops to offload them along the route. Second, Russia also brought up ships that operate continuously in Arctic waters for long periods of time without port calls, including icebreakers, survey and research ships.⁵⁸ These touch upon different activities in Russian waters. First, icebreakers support other activities in the region, such as resource extraction, transit voyages and resupplying local communities. They also serve to showcase Russian Arctic prowess as Russia has the largest number of icebreakers in the world and is the only State with nuclear icebreakers. Their presence in the Arctic is also important in the exercise of Russian jurisdiction and control over the NSR.⁵⁹ Second, survey vessels are essential for mapping oil and gas resources that can support continued expansion of the extraction industry in the region. These vessels are instrumental in turning the Arctic into Russia's strategic resource base, providing a backbone to the Russian economy and

⁵¹ *ibid*; MEPC 67/9/2 (n 45) 2; and MEPC 67/9/3 (n 45) 2.

⁵² MEPC 66/11/3 (n 45) 2.

⁵³ However, Canada's experience of how a discharge ban, introduced 40 years prior in the 1970 Arctic Waters Pollution Prevention Act, works might be a match to Russia's experience.

⁵⁴ MEPC 66/11/3 (n 45) 3; MEPC 67/9/2 (n 45) 2; and MEPC 67/9/3 (n 45) 2.

⁵⁵ SDC 1/3/18 (n 45) 1; MEPC 66/11/3 (n 45) 2; and MEPC 67/9/2 (n 45) 2;

⁵⁶ MEPC 66/11/3 (n 45) 2-3; and MEPC 67/9/3 (n 45) 2.

⁵⁷ See, e.g., V Putin, 'Speech at the Second International Arctic Forum' (Second International Arctic Forum, Arkhangelsk, 23 September 2011) <<http://narfu.ru/en/media/news/21110>>.

⁵⁸ DE 57/11/12 (n 49) 2; MEPC 66/11/3 (n 45) 2; MEPC 67/9/2 (n 45) 2; and MEPC 67/9/3 (n 45).

⁵⁹ This is especially so in light of foreign objections to the status of some Arctic straits. For an account of US challenges of the Russian claims in the 1960s, see JA Roach and RW Smith, *Excessive Maritime Claims*, 3rd edn (Martinus Nijhoff 2012) 312-318. See also RD Brubaker, *The Russian Arctic Straits* (Martinus Nijhoff 2005) 41, 146-147, 158-162.

underpinning its great power revival.⁶⁰ Third, scientific research, supported by research vessels in the Arctic, is significant for enhancing Russia's soft power, additionally to the value in itself. Many of these vessels do not routinely leave Russia's Arctic waters, meaning that the option to discharge oil and oily mixtures before entering polar waters is not open to them.

Thus, many Russian interests in the Arctic would be negatively affected by the prohibition of oil and oily mixtures discharges from machinery spaces. However, these were not protected with equal vigour by Russia. The proposals countering the discharge ban had a continuously changing and narrowing scope, ranging from overturning the discharge ban, through allowing maritime administrations to exempt ships of their choosing, to introducing grace periods for limited ship types – signifying the give-and-take characteristic of bargaining. The group of vessels Russia tried to protect to the end, and so what can be considered the most important group of vessels for Russia, is those that spend long periods of time sailing in the Arctic without port calls, in spite of the official rhetoric regarding transit passages.

On this basis, it is possible to see the self-interest behind Russia's proposals to overturn the discharge ban, or at least provide exemptions for some of the affected vessels. Therefore, the Russian justification regarding illegal and uncontrolled discharges might be seen as a warning rather than a genuine environmental argument. Warnings, as strategic appeals to truth introduce a factual element to bargaining, thus stating not what the speaker will do, but what will happen – something outside of the speakers control.⁶¹ Here, Russia stated that illegal and uncontrolled discharges would happen if the ban was introduced, rather than that ships over which it has control would defy the ban. This way, Russia avoids social opprobrium. Russia appears to have appropriated environmental arguments for the purpose of self-interest and to convince other States to change their preferences. However, whether this warning was successful is questionable since Russia's proposals were different in the three submissions containing this warning.

Finally, Russia remarked that the decision to ban any discharges of oil and oily mixtures from all ships in the Arctic was

more stringent than the one for special areas, where discharge into the sea of oil and oily mixtures from ships is allowed under certain conditions, and more stringent than those applicable to other areas of the world's oceans.⁶²

While it is possible to criticize the IMO for introducing quasi-special area requirements without going through the procedures for establishing special areas – something Russia had done in the early debates on proposed special areas – here Russia appears instead to denounce the stringency of the new requirements compared to other sea areas. This is remarkable as the development of the Polar Code itself acknowledges the fragility of the polar environment and its need to be protected through measures more stringent than found in the existing IMO instruments.⁶³ This Russian approach suggests that zero-sum considerations and self-interest, rather than a common goal and concern for the state of the polar environment, led Russia in the negotiations of this issue.

While Russia was not successful in overturning the discharge ban or providing exemptions from it, clarifying Russia's interest did seem to achieve one concession to a proposal preferred by Russia: a grace period for those vessels that spend long periods of time

⁶⁰ For a connection between resource extraction and Russia's great power revival, see M Laruelle, *Russia's Arctic Strategies and the Future of the Far North* (M.E. Sharpe 2014) 159.

⁶¹ Elster (n 8) 252-253.

⁶² MEPC 66/11/3 (n 45) 2.

⁶³ Polar Code (n 1) preamble.

navigating in ice without port calls – the group of vessels Russia most wanted to protect.⁶⁴ However, since this grace period is linked to the next survey a given vessel must go through, this grace period will vary from ship to ship between one and four years, less than Russia asked for.⁶⁵

4.3 Establishment of port reception facilities

As a consequence of the complete prohibition of oil and oily mixtures discharges in the Arctic, another issue needed to be considered, namely the presence of adequate port reception facilities where ships can offload their oily wastes. The issue of lack of adequate reception facilities was first discussed as concerns were raised at both DE 57 and MEPC 65 that the proposed complete discharge ban of oil and oily mixtures in the Arctic should take into account whether there were adequate reception facilities in the region.⁶⁶

4.3.1 Positions

Several major flag States⁶⁷ and representatives of the shipping industry submitted a paper to the next meeting, SDC 1, proposing that every Arctic port be required by the Polar Code to have reception facilities, making it easier for ships to comply with the discharge ban.⁶⁸ On the other hand, an inclusion of such a requirement in the Polar Code was not well received by Canada,⁶⁹ Russia⁷⁰ and environmental NGOs.⁷¹ While supporting the need for reception facilities,⁷² the United States suggested that, rather than including a duty in the Code, MARPOL should be amended, in order to avoid confusion.⁷³

4.3.2 Implications and interpretation

Interestingly, the international shipping organizations and flag States acknowledged that the lack of facilities was not necessarily a problem, given the existence of such facilities just outside of the Arctic region, the short periods of operation in the Arctic and operating practices

⁶⁴ ‘Report of the Marine Environment Protection Committee on its Sixty-Seventh Session’ IMO Doc MEPC 67/20 (31 October 2014) Annex 10, 6. The text regarding the grace period reads: ‘Subject to the approval of the Administration, a category A ship constructed before 1 January 2017 that cannot comply with paragraph 1.1.1 [the discharge ban] for oil or oily mixtures from machinery spaces and is operating continuously in Arctic waters for more than 30 days shall comply with paragraph 1.1.1 not later than the first intermediate or renewal survey, whichever comes first, one year after 1 January 2017. Until such date these ships shall comply with the discharge requirements of MARPOL Annex I regulation 15.3 [regulation of discharges in special areas].’

⁶⁵ MEPC 67/9/3 (n 45) 3.

⁶⁶ DE 57/25 (n 41) 30; and MEPC 65/22 (n 41) 69-70.

⁶⁷ These States, including the Marshall Island, Panama and Liberia, operate open registries for ships, gathering large fleets whose interests they represent at IMO. However, many of them are developing States, some small island States.

⁶⁸ Kiribati et al, ‘Development of a Mandatory Code for Ships Operating in Polar Waters: Reception Facilities for Oil and Oily Mixtures’ IMO Doc SDC 1/3/1 (11 October 2013).

⁶⁹ MEPC 66/11/8 (n 46).

⁷⁰ Russian Federation, ‘Mandatory Code for Ships Operating in Polar Waters: Comments on the Report of the Polar Code Correspondence Group (Part II-A, Chapter 1)’ IMO Doc MEPC 67/9/4 (15 August 2014).

⁷¹ Friends of the Earth International (FOEI), World Wide Fund for Nature (WWF) and Pacific Environment, ‘Development of a Mandatory Code for Ships Operating in Polar Waters: Reception Facilities for Oil and Oily Mixtures’ IMO Doc SDC 1/3/23 (29 November 2013).

⁷² United States, ‘Development of a Mandatory Code for Ships Operating in Polar Waters: Part II-A – Applicability and Goal-Based Standards’ IMO Doc SDC 1/3/19 (29 November 2013) 2.

⁷³ United States, ‘Mandatory Code for Ships Operating in Polar Waters: Legal and Technical Comments on Polar Code, Part II and Amendments to MARPOL’ IMO Doc MEPC 67/9/5 (20 August 2014) 2.

minimizing waste generation.⁷⁴ It appears then that their proposal was primarily concerned with the needs of the shipping industry. They also suggested that the establishment of reception facilities was needed ‘to ensure and facilitate the effective implementation’ of the total discharge ban.⁷⁵ This passage is further illuminated by a draft provision prepared by the United States, suggesting that the discharge ban be delayed until the establishment of adequate reception facilities.⁷⁶

This would have meant severe implications for the protection of the Arctic environment and drew response from environmental NGOs and Canada. They rejected the notion that the introduction of the discharge ban should be delayed until the lack of adequate reception facilities was remedied, thus impairing the environmental protection part of the Polar Code.⁷⁷ Beyond repeating that operational practices and reception facilities in the vicinity of the Arctic region suggested less need for reception facilities,⁷⁸ these documents also pointed to the difficulties the proposed requirement would pose for Arctic coastal States and their remote local communities.⁷⁹ It was also questioned whether there was a lack of adequate reception facilities, considering the amount and nature of traffic in the Arctic, underlining that vessels on transit voyages do not make use of port facilities.⁸⁰

Russia appears to have first tried to connect the issue of reception facilities to its proposal to overturn the discharge ban on oil and oily mixtures in the Arctic, suggesting that ‘special areas can only be designated provided they have enough port reception facilities to collect such wastes from ships’.⁸¹ The suggestion, thus, appeared to be that accepting the Russian proposal overturning the discharge ban would mean that the question of reception facilities could also be discarded.

Later, in expressly suggesting the removal of the reception facility requirement from the draft Polar Code, Russia also revisited some of the justifications used by Canada and the environmental NGOs against the proposed requirement, including the requirement being disproportionate to the amount of vessel traffic in the Arctic, the improbability and impossibility of ships on transit voyages using reception facilities and the burdensome nature of the requirement.⁸² It is the latter – the cost associated with the establishment of the reception facilities – that appears to be the main reason for opposing the requirement. It is especially so when considered together with an earlier Russian intervention, expressed in quite undiplomatic language, suggesting that Russia was willing to construct reception facilities in every port if the co-sponsors of the original proposal, mostly small island developing States, would pay for it.⁸³ This statement appears to resort to a demand, characteristic of bargaining, in trying to rely on Russia’s power vis-à-vis the co-sponsors.

What makes Russia’s position different from that of Canada and the environmental NGOs is the insistence by the latter two that the requirement of reception facilities should not cause a delay to the discharge ban. This environmental regard is lacking in the Russian proposals. Instead, Russia attempted the opposite: to couple the issue of reception facilities with its bid to overturn the discharge ban.

⁷⁴ SDC 1/3/1 (n 68) 3.

⁷⁵ *ibid* 2.

⁷⁶ SDC 1/3/19 (n 72) 2-3.

⁷⁷ SDC 1/3/23 (n 71) 2; and MEPC 66/11/8 (n 46) 1.

⁷⁸ SDC 1/3/23 (n 71) 2; and MEPC 66/11/8 (n 46) 2-3.

⁷⁹ SDC 1/3/23 (n 71) 1; and MEPC 66/11/8 (n 46) 2.

⁸⁰ MEPC 66/11/8 (n 46) 2-3.

⁸¹ MEPC 66/11/3 (n 45) 2. While the introduction of the discharge ban itself does not constitute establishment of a special area, it may be seen as a quasi-special area measure due to its stringency.

⁸² MEPC 67/9/4 (n 70) 2.

⁸³ Bognar, ‘Russian Proposals’ (n 21) 121.

The final version of the Polar Code does not include a requirement for reception facilities as it was deemed superfluous in light of a broad requirement for adequate reception facilities already found in MARPOL.⁸⁴ Russia also highlighted this clause in its proposal,⁸⁵ although the decision of MEPC to delete the requirement from the Code appears to be based on the work of an intersessional working group, not on Russia's proposal.⁸⁶

5 SUBSTANCE AND FORM OF RUSSIA'S ENGAGEMENT

5.1 The substance of Russian positions

As shown above, many of the Russian proposals regarding the environmental part of the Polar Code were less beneficial to environmental protection than the positions expressed by other parties. This was especially evident in the discussions on the possible establishment of special areas for heavy fuel oil, grey water and air emissions and the ban on discharges of oil and oily mixtures from machinery spaces in the Arctic. It has been shown how compliance problems for Russian ships and the possible impact of this on Russian Arctic activities were visible throughout Russia's interventions and proposals.

In the case of the debate on port reception facilities in the Arctic, Russia held a similar position to environmental NGOs and Canada. Yet, the difference between Russia and these other parties lay, notably, in the lack of Russian concern for a delay in the implementation of the discharge ban that could have resulted from the requirement for reception facilities, as well as Russia's attempts to link the issue of reception facilities with its proposal to overturn the discharge ban. On this basis, one might consider Russia's stance on the issue of reception facilities to be guided less by environmental concerns than those of the environmental NGOs and Canada.

If environmental concerns appear to have taken a low priority in Russia's positions, then what was guiding Russia's participation in the debates on the environmental measures of the Polar Code? While considerations of shipping and economic activities in the Arctic region appear to have been important, it would be far-fetched to say that Russia's proposals were aimed at positive economic gain. Rather, the chief concern appears to be damage limitation. This included both the costs associated with upgrading its ships to the new standards, avoiding the need to acquire new vessels that comply with the Code's requirements where upgrade is not feasible and, through these, protection of the economic viability of the diverse Russian activities and projects in the Arctic. This appears to confirm Zagorski's submission that the environmental measures of the Code were viewed unfavourably in Russia due to their possible negative economic impacts.⁸⁷ While it is understandable that Russia would not want its economic activities in the Arctic to be crippled by the Code, Russia's positions regarding the environmental measures of the Code do not consider the possible positive effects of the Code either as a tool of environmental protection or as a driving force. Thus, it is arguable that a better balance could have been found between protection of short-term financial-economic concerns and environmental measures necessary for the protection of the fragile environment.

The Russian aim to reduce its financial-economic costs might also be seen in the context of foreign policy considerations. This is due, first and foremost, to the fact that Russia's great power revival has been connected to resource extraction, especially in the Arctic.⁸⁸ In this context, it is also remarkable that Russia appears to have espoused a zero-sum outlook in its

⁸⁴ MEPC 67/20 (n 64) 43-44.

⁸⁵ MEPC 67/9/4 (n 70) 2.

⁸⁶ MEPC 67/20 (n 64) 43-44.

⁸⁷ Zagorski (n 18) 223-224.

⁸⁸ Laruelle (n 60) 159.

positions on the environmental measures of the Polar Code. This is evident in Russia's remark comparing the stringency of the discharge ban in the Arctic to other seas.⁸⁹ Thus, it is not simply the reduction of the impact of the new environmental measures on its economic activities in the Arctic that appears to be Russia's aim in the negotiations analysed here, but also the reduction of the relative disadvantage the Code could cause Russia vis-à-vis other States, which do not have significant stakes tied up and affected in the Arctic.

One final issue that deserves mention here appears to have underpinned some of Russia's proposals. This is the importance of Russia's jurisdiction and control of the NSR, emphasized by the presence of icebreakers, an important vessel type Russia tried to exempt from the discharge requirements.

Russia's participation in the negotiation of the Polar Code's environmental measures is rather defensive. This manifests itself, first, in the weak environmental protection focus of the Russian proposals vis-à-vis their aim to minimize the effects of the proposed environmental measures on Russia's economic activity, great power revival and jurisdictional control over the NSR. Second, Russia did not propose any environmental measures for inclusion into the Code, but rather reacted to other actors' proposals.

Thus, there is a disconnect between the general goal of the Polar Code and Russia's positions. The former aims to strengthen the environmental protection of the polar regions through stringent regulations, whereas Russia focuses on mitigating the possible negative outcomes of the new measures. Russia's approach appears to miss the objective of the Polar Code. Russia's participation in this negotiation then is not much different than in other international environmental regimes where environmental concerns come relatively low on its list of priorities.

5.2 The form: arguing, bargaining or in-between?

Throughout the negotiation of the environmental part of the Code, it is obvious that Russian interests were pursued, suggesting that the decision-making mode Russia engaged in was bargaining, rather than arguing. Such a conclusion is also supported by inconsistencies in Russia's position as well as the changing aims of the Russian proposals regarding the discharge ban, trying to pursue a give-and-take deal-making. The closest Russia came to engaging in straightforward bargaining, relying on demands, was over the question of port reception facilities where it tried to rely on its power vis-à-vis developing States to stop the issue progressing further.

Additionally, there is evidence of strategic use of argumentation on Russia's part. It could be argued that Russia's suggestion that ships engaged in polar shipping should not be subjected to regulations that exceed MARPOL, as well as its objection to the discharge ban that is more stringent than applicable in other sea areas around the world, rely on the universality principle of the IMO. However, in these cases this principle is used in order to protect Russian ships from more stringent measures. Thus, self-interest seems to be substituted for impartiality, the basis of arguments in normative rightness. Further, Russia used a warning regarding possible illegal and uncontrolled discharges of oil and oily waters if the discharge ban was to be implemented, thereby relying on argument's basis in factual truth for what will happen in case of the ban, instead of a bargaining threat of what Russia might do. None of these seems to have led to the desired outcome, however.

What did appear more successful when success is measured against the proposals in the Russian documents, were Russia's open explanations of how its interests would be negatively impacted. As suggested by Jane Mansbridge and colleagues, expressions of interest can be

⁸⁹ MEPC 66/11/3 (n 45) 2.

beneficial to deliberation by creating mutual understanding between parties.⁹⁰ Accordingly, being open about the problems experienced by ships undertaking voyages in polar waters for long periods of time without port calls, with regard to the discharge ban of oil and oily mixtures from machinery spaces, could have contributed to the MEPC agreeing on a grace period for these. As last among the proposals that Russia submitted on the issue of the complete ban, this had the narrowest scope, thus providing least exemption from the strict new environmental measures, showing also an improved Russian understanding of the positions of the other parties to the debate, facilitating a possible agreement.

As suggested in Section 1, it is possible that open expressions of self-interest can constitute part of arguing, as they elucidate the positions and motives of the parties and thus contribute to reaching a common understanding. According to Mansbridge and colleagues, while coercive power should be excluded, expressions of self-interest are not frowned upon in this decision-making mode, deliberative negotiation.⁹¹ Arguably, since strategic uses of argumentation serve to hide the self-interest of parties, these might also be seen as antithetical to deliberative negotiation. Deliberative negotiation should, therefore, be placed somewhere on the spectrum between arguing and bargaining, balancing between arguing's common understanding and bargaining's self-interest. Russia's explanation of the difficulties it faces in complying with the discharge ban as well as the limited scope of its proposed grace period to placate its negotiating partners, thus creating an understanding, suggests an instance of deliberative negotiation.

This suggests that there was a further disconnect in Russia's participation in the negotiations: a disconnect between the negotiating strategy Russia used and the strategy from which its proposals benefitted most. Russia achieved more success with regard to proposals where it managed to make the other negotiating parties see the issue from its perspective. This involved explaining how its interests would be affected. This deliberative stance was contrasted throughout the negotiations with Russia's overwhelming reliance on bargaining and strategic use of argumentation.

6 CONCLUSION

Russia's participation in the negotiation of the environmental part of the Polar Code can be characterized by two disconnects: one regarding the content of the Code and one regarding Russia's negotiating strategy. These together suggest that, despite its interest in protecting the vulnerable Arctic environment and its policy documents' emphasis on environmental protection, this concern was trumped by other considerations in the concrete negotiation of the Polar Code. While the fact that some of its concerns were taken into account should be encouraging for Russia, its persistent reactive stance against stringent environmental regulations, readiness to rely on strategic uses of argumentation and demands based on power relations suggest that the implementation and possible further development of the Polar Code could face resistance from the largest Arctic coastal State.

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⁹⁰ Mansbridge et al (n 6) 72-80.

⁹¹ *ibid* 72-82.

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