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Navigation in the Northern Sea Route: interaction of Russian and international applicable law

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ABSTRACT

The current legal regime of the Northern Sea Route (NSR) as it is defined by Russian legislation based on relevant international customary rules is now facing new challenges in the context of the obligations of Russia under the UN Convention on the Law of the Sea (UNCLOS). Being part of the Arctic Zone of the Russian Federation (AZRF), as it is legally defined now in the ‘Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2035’ (promulgated by the President of the Russian Federation in 2020), the NSR is defined by Russian Law as ‘a historically established’ national transport communication ‘of the Russian Federation in the Arctic’. On the other hand, the latest Russian legal acts, including Order of the Government of the Russian Federation (2019) ‘Infrastructure Development Plan of the Northern Sea Route for the period until 2035’, guides Russian agencies to encourage increasing international carriages between the countries of Europe, Asia and America via the NSR. In this context this paper presents relative options for harmonisation of the status of the AZRF and of the NSR with the rules of international law on the internal waters, territorial sea and exclusive economic zone, with special emphasis on the applicability of Article 234 of UNCLOS to the NSR and Russian legislation on the NSR to warships.

KEYWORDS

Northern Sea Route; UNCLOS; arctic zone of the Russian Federation; ice-covered areas

1. Introduction

The Northern Sea Route, passing along the Northern coast of Russia, is the only way connecting all Arctic and Sub-Arctic regions of Russia. The Russian Arctic lands have no main highways; instead, in winter, ice roads are built, many of which go out to NSR-ports. With a rapidly changing climate in the Arctic and new possibilities for economic development of the Arctic region, growing interest to understand the contemporary legal regime of navigation via the NSR extends both from Arctic¹ and non-Arctic states.²

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¹The term ‘Arctic coastal States’ means usually the group of five States bordering the Arctic Ocean, each of them having internal waters, territorial seas, exclusive economic zone and continental shelf in the Arctic Ocean, i.e. Canada, Denmark (because of Greenland), Norway, Russia and USA (because of Alaska). The term ‘Arctic States’ means usually the group of eight States the territories of which are crossed by the North Polar Circle; that is, in addition to the five States mentioned above, Finland, Iceland and Sweden. These eight States are also members of the Arctic Council.

²O. Young, “Arctic Futures: the Power of Ideas” in *Environmental Security in the Arctic Ocean*, ed. P.A. Berkman, A.N. Vylegzhanin (Springer, 2010): 123–4.

The goal of this paper is to reveal how the legislation of Russia on the NSR interacts with the applicable international law, in particular with the UN Convention on the Law of the Sea, 1982 (hereinafter – UNCLOS). In this context, the authors, after introducing basic facts on the NSR concentrate firstly on the relevant legal acts, relating to the status of waters of the NSR. Secondly, the paper provides an updated review of the status of the AZRF, showing that this term is differently defined in the Russian legislation (compared to the USSR laws) and in contrast with the term ‘Arctic Possessions’ used in the 1825 Boundary Convention between Great Britain and Russia. Thirdly, the authors address the current legal issues of national regulation of shipping in the NSR by Russia, with special attention to the legal questions which are to be resolved. Fourthly, implications of applicability of Art. 234 of UNCLOS to the NSR are considered. Fifthly, Russia-USA disagreements regarding the NSR are scrutinised and optional ways of resolving such disagreements are suggested. Sixthly, the authors analyse whether warships are excluded from the NSR regime because of the immunity provisions of UNCLOS.

2. NSR: basis facts and relevant acts of Russian legislation

The NSR’s length, depending on the itineraries chosen, is from two to three thousand miles. Ports located along the Northern Sea Route, in particular, such ports as Sabetta, Igarka, Dudinka, Dickson, Tiksi and Pevec are of vital importance for the Russian economy today.³

The practical possibility to navigate via the NSR was discovered by S. Dezhnev’s voyage (Russia) in 1648 and was subsequently confirmed by a number of sea expeditions: V. Bering (Russia) in 1725–1743; F. Vranghel (Russia) in 1821–1824; N. Nordensheld (Sweden) in 1878–1879; D. De Long (USA) in 1879–1881; F. Nansen (Norway) in 1893–1896. In 1899, according to the project of the Russian admiral S. Makarov, the first Russian ice-breaker ‘Ermak’ was built and started to navigate in the Arctic waters. The first ‘instructions for sea-offices’ as to how to navigate ‘to the East via the Siberian Ocean’ was written by Russian academician M. Lomonosov in 1764.⁴

As for the special legal status of the NSR, defined by national laws, it is only in 1932 that the Government of the USSR issued a legal act establishing ‘Glavsevmorput’ – the Administration of the NSR subordinated directly to the Soviet Government.⁵ There was no single protest against this legal document on the NSR. According to it, the western limit of the NSR is the entrance to the *Kara Gate Strait*; the eastern limit is the *Provideniya Bay* in the Bering Strait. The same limits are provided in Art. 5.1. of the Merchant Marine Code of the Russian Federation of 1999, as amended. The NSR does not cover Russian coastal waters in the Barents Sea; it includes waters to the East of it: the Kara Sea, the Laptev Sea, the East Siberian Sea, part of the Chukchi Sea and finally part of the Bering Strait. So, it is not accurate to assert: ‘In Europe, this shipping route has traditionally been known as the Northeast Passage (in Russia, it is known as the Severnii Morskoi Put, which translates as “Northern Sea Route”).’⁶ The Northeast Passage

³A.G. Granberg, and V.I. Peresipkin, eds, *Problems of the Northern Sea Route* [in Russian] (Moscow. Nauka Publ., 2006; in Russian), 9–10.

⁴*Ibid.*, 10–11.

⁵*Ibid.*, 13.

⁶The Japan Association of Marine Safety, *Northern Sea Route Handbook*, 2015.

includes not only the NSR but also shipping routes in the Barents Sea. It is also not accurate to assert: ‘The Northeast Passage is the route linking the Atlantic and Pacific via the various seas to the north of Russia’⁷; the Northeast Passage links these oceans via the various seas not only ‘to the north of Russia’, but also to the north of Norwegian mainland coast in the Barents Sea.

According to the Federal Law of the Russian Federation of 31 July 1998 (titled ‘*Internal Sea Waters, Territorial Sea and Contiguous Zone of the Russian Federation*’): ‘Navigation on the seaways of the Northern Sea Route, a historically established national uniform transport communication of the Russian Federation in the Arctic, including through the Vilkitsky, Shokalsky, Dmitry Laptev, Sannikov straits, is carried out according to the present federal law, other federal laws, international treaties of the Russian Federation and Regulations for navigation on the seaways of the Northern Sea Route, approved by the federal enforcement organ authorised by the Government of the Russian Federation’.

This Law is applicable not only to merchant ships but also to warships. So, the modern status of the NSR is still not easy to comprehend. As observed: ‘On the one hand, the NSR is the major national sea route of Russia in the Arctic, the most important element of the infrastructure of the Extreme North’s economic complex and a communication link between the Russian Far East and the country’s western areas. It unites the largest river ways of Siberia into a single transport net. On the other hand, there are potential possibilities to use its individual seaways for international carriages between the countries of Europe, Asia and America’.⁸

The increasing attractiveness of the NSR as an international transport route creates new challenges for Russia’s stance with regards to the legal status of the NSR, where this country has long exercised *de facto* control. Considering the continued retreat of the Arctic sea ice because of climate change as well as the actual length of the NSR (not more than 5 600 km from the Kara Gate Strait to Providence Bay), the NSR is becoming a prominent alternative to the Suez Route, particularly for vessels travelling from China, Japan and Korea (both North and South) to major European ports.⁹ Some researchers highlight the potential importance of the NSR for Scandinavian countries, invoking reduced fuel costs.¹⁰ Another important benefit is the possibility for this Arctic sea route to be used by larger vessels than those admitted for transit through the Suez.¹¹

For Russian Arctic policy, the infrastructural development of the NSR is of importance not only because international commercialisation of this route will increase the number of entries to Russian ports, but also because it will increase relevant additional revenues for local communities deriving from port and pilotage fees. The efficient exploitation of the NSR requires now and in the near future a substantial number of ice-breakers and ice class ships. Within the framework of the Yamal LNG project only, more than 10 ice class carriers have been ordered (total cost of their construction

⁷Drent, Jan, “Commercial Shipping on the Northern Sea Route.” *The Northern Mariner* III, no. 2 (April 1993): 1.

⁸N. Koroleva, V. Markov, and A. Ushakov, *Legal Regime of Navigation in the Russian Arctic* (Moscow, 1995), 98.

⁹Lee, S.-W., and J.-M. Song, “Economic Possibilities of Shipping through Northern Sea Route,” *The Asian Journal of Shipping and Logistics* 30, no. 3: 418.

¹⁰Solvang, H. and others, “An Exploratory Study on the Northern Sea Route as an Alternative Shipping Passage,” *Maritime Policy & Management* 45, no. 4 (2018): 495–513.

¹¹Shengda Zhu and others, “The Environmental Costs and Economic Implications of Container Shipping on the Northern Sea Route,” *Maritime Policy & Management* 45, no. 4 (2018): 456–477

exceeding 4 billion USD).¹² The state programme ‘Socioeconomic Development of the Russian Arctic Zone’ provides for the delivery of goods necessary for life support of the Arctic coastal population using the Northern Sea Route and envisages further development of the NSR, including measures related to hydrographic and emergency rescue navigation improvement.¹³ A Decree of the President of Russia dated May 2018 sets a goal to achieve an annual cargo turnover in the NSR of 80 million tons by 2024,¹⁴ which can be achieved only by increase of international shipping via the NSR.

Though the international community has shown a certain degree of interest in commercialising the NSR, multiple relevant risks and challenges are noted, among them, weather and ice condition hazards; and poor port infrastructure along the coast of the Kara Sea, Laptev Sea and East Siberian Sea.¹⁵ The number of foreign transits through the NSR remains stable: in 2017 the number of permits to enter the NSR which were issued to foreign vessels amounted to 108; in 2018–92 permits; in 2019 the transit permissions were granted to 100 foreign vessels.¹⁶ The shaky interest of other countries to use this route for international commercial shipping is burdened also with a number of legal challenges, including issues of more stringent protection of the marine environment according to Russian laws applicable to the NSR.

3. Russian legislation on the arctic zone of the Russian Federation: applicability to the NSR

During the USSR period the term ‘Arctic Zone’ of the Soviet Union was mentioned in the decision of the State Commission of the Council of Ministers of the USSR of 24 April 1989, while making reference to the ‘sacred’ act of the Soviet Arctic legislation, that is to the Decree of the Presidium of the Central Executive Committee of the USSR of 15 April 1926 ‘On the Proclamation of Lands and Islands Located in the Arctic Ocean as Territory of the USSR’ (hereinafter – the 1926 Decree).

According to the 1926 Decree: ‘All lands and islands, both those discovered and those that may be discovered in the future that do not comprise at the time of publication of the present decree the territory of any foreign state recognised by the Government of the Soviet Union, located in the Arctic Ocean, north to the coasts of the Union of the Soviet Socialist Republics up to the North Pole between the meridian passing along the easternmost and westernmost extremities of the territory of the country are proclaimed to be territory of the Soviet Union’.¹⁷

¹²Porfir'ev B. N. and others, *Consequences of Climate Change for the Economic Development of Particular Russian Arctic Economy Sectors* [in Russian] in *Arktika: ekologiya i ekonomika*. T. 28. № 4: 6.

¹³State program ‘Socioeconomic Development of the Russian Arctic Zone’, URL: <http://government.ru/rugovclassifier/830/events/>.

¹⁴Decree of President of the RF dated 7.05.2018 № 204 ‘On National Aims and Strategic Priorities of Russian Federation development for the period till 2024’. Ministry of Energy of the RF. URL: <https://minenergo.gov.ru/view-pdf/11246/84473>.

¹⁵Østreng, W and others. *Shipping in arctic waters: A comparison of the northeast, northwest and trans polar passages* (Springer, 2013): 351.

¹⁶Permissions for navigation in the water area of the Northern Sea route. URL: http://www.nsra.ru/ru/rassmotrenie_zayavleniy/razresheniya.html?year=2019.

¹⁷The English text of the 1926 Decree see in: Berkman P., A.Vylegzhanin, and O.Young. *Baselines of Russian Arctic Laws*. (Springer, 2019): 216.

The relevant justification was provided in Russian legal publications for qualification of the 1926 Decree as not only being in line with international law, but also as effecting (in harmony with the 1925 Northwest Territories Act of Canada as amended) the development of international law applicable to the Arctic, based on historic title,¹⁸ special geographic and climate circumstances, economic, ecological and security factors.¹⁹ It is asserted that ‘the economic welfare’ of Russia as an Arctic-Rim state with the longest mainland coast line in the Arctic Ocean, and its ‘ecological security and defensive capacity are linked to a great extent’.²⁰

Special emphasis is made by Soviet legal experts on legal acts of Russia formalising its *de facto* control over Arctic ‘possessions’, beginning from the edict of Empress Elizabeth Petrovna dated 11 March 1753 (about ‘the exclusive rights of Russia in the Arctic waters along the Russian coasts’ and ‘emphasizing the prohibition of merchant navigation from Europe to Siberia’ without permission of Russian authorities) and the Anglo-Russian 1825 Boundary Convention and in 1867 USA-Russia Convention on Ceding Alaska²¹ (which provide for the sector lines delimiting ‘polar possessions’ of the relevant Arctic coastal States) and finally referring to the famous diplomatic note issued by the Ministry of Foreign Affairs on 20 September 1916 (which expressly states the existence of Russia’s rights to certain northern territories which were ‘universally recognised for centuries’).²² The 1926 Decree is generally based on the legal documents of Russia, providing for meridian (sector) lines in the Arctic and practically copies the Canadian North-West Territories Act of 1925. No state in the world protested in 1925–1926 against these sector lines.

According to the 1825 and 1867 conventions and to relevant Russian (and Canadian) legislation,²³ the Arctic sector is formed by the Arctic State’s coast, bordering the Arctic seas, and the two meridians of longitude drawn from the easternmost point and from the westernmost point of such a coast to the North Pole. Within such a triangular sector, Canada, Russia and the USA may regard as its territory all ‘islands and lands’.

A number of authors recognise that the limits of the Arctic sectors established by Canadian and Russian laws reflect, according to customary law, the boundaries of sovereign rights of the Arctic coastal States in the relevant sea-bed areas of the Arctic Ocean through their national legislative approaches.²⁴ But there are certainly no sovereign rights of the Arctic States on superjacent waters beyond their EEZ which are high seas. As noted: ‘While sector claims were asserted for administrative convenience, they

¹⁸The history of Russian navigation in the Arctic Seas in the 17th–18th centuries is illustrated by «The Map Showing the Inventions of Russian Navigators in the Northern Part of America and Other Adjacent Places Made During Various Voyages» which was drawn by the Imperial Academy of Sciences in 1774. Source: ‘Description of ancient atlases maps and plans published in XVI, XVII, XVIII centuries and in the first half of XIX century’ (kept in the Archives of the Navy’s Central Cartographic Works). – Leningrad: Office of the Head of the Navy’s Hydrographic Service, 1958. P. 29.

¹⁹Koroleva, Markov, and Ushakov. *Navigation in the Russian Arctic*, 60–61.

²⁰*Ibid.*, 58.

²¹*The End of Russian America. Captain P.N. Golovin's last report. 1862. Basil Dmytryshyn and E.A.P. Crownhart-Vaughan* (Oregon Historical Society, Portland, 1979): 3.

²²*Praviteslvennyi Vestnik* (‘Правительственный вестник’), 17 October 1916 (17), № 212.

²³An Act, respecting the Northwest Territories, 1906; The Northwest Territories Act, 1925. The latter provides for ‘territories’, ‘islands’ and ‘possessions’. Relevant Russian legislation (‘Postanovlenie Prezidiuma Centralnogo Ispolnitelnogo Komiteta SSSR’ or the Decree, of 15.04.1926) uses a similar wording.

²⁴The USA, though respecting land sector lines, established by the Conventions of 1825 and 1867, does not have national laws regarding sea area within these lines. Melkov, ed. *International Law* [in Russian]. RIOR publishing house, Moscow, 2009: 420–423.

were also symbolic and allowed for a comparatively uncontested territorial division of parts of the Arctic'.²⁵

In the current legislation of the Russian Federation (after the collapse of the USSR in 1991) the term 'Arctic Zone of the Russian Federation' was defined in the 'Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2020 and beyond' (hereafter – 'Fundamentals', adopted by the President of the Russian Federation on 18 September 2008). The new relevant document – 'Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2035' was approved by Presidential Decree of 05.03.2020.²⁶ According to the 'Fundamentals', the Arctic zone of the Russian Federation consists of two parts: 1) lands (including islands and rocks) as they are defined by the Decree of the President of the Russian Federation of 2 May 2014; and 2) sea areas adjacent to this land territory of Russia (the internal waters; the territorial sea; the exclusive economic zone (hereafter – EEZ) and the continental shelf of the Russian Federation). The land part of the AZRF includes, in full or in part, the territories of the Republic of Sakha (Yakutia), Murmansk and Arkhangelsk provinces, the Krasnoyarsk territory, and the Nenets, Yamal-Nenets and Chukchi autonomous districts (that is, the Northern Russian territories of the Eurasian mainland), and also the lands and islands specified in the 1926 Decree. The maritime part of the AZRF includes 'the internal maritime waters, territorial sea, exclusive economic zone and continental shelf of the Russian Federation' adjoining to the land territory of the AZRF. In short, the AZRF consists of: 1) lands and internal waters and the territorial sea of Russia in the Arctic (these areas are under the sovereignty of the Russian Federation); 2) the exclusive economic zone and the continental shelf of the Russian Federation in the Arctic (these areas are under the sovereign rights and relevant jurisdiction of the Russian Federation as provided by international law, in particular, by UNCLOS).

So, we might conclude, that according to the current Russian law:

- (1) the 1926 Decree, still being a part of modern Russian Arctic Law, provides only for sector limits of the Decree's area of application; but not for the limits of the AZRF, which are different. The AZRF is less than the area of application of the 1926 Decree. The western limits of the AZRF are specified by the Treaty between the Kingdom of Norway and the Cooperation in the Barents Sea and the Arctic Ocean, 2010. The eastern limits of the AZRF are formed by the delimitation line provided in the Agreement between the United States of America and the Union of Soviet Socialist republics of the Maritime Boundary, 1990 (the meridian starting from the Bering Strait and extending to the North).
- (2) the AZRF consists not only of the Northern Russian land territory (including islands and rocks) but also of marine spaces, which are either under the sovereignty of the Russian Federation (internal waters and the territorial sea) or under Russian sovereign rights and jurisdiction (areas of exclusive economic zone and continental shelf of the Russian Federation in the Arctic); the AZRF does not include airspace over EEZ; the legal regime of the latter is established by general international law.

²⁵Rothwell D.R. *The Polar Regions and the Development of International Law* (Cambridge University Press, 1996): 4–5.

²⁶Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2035 approved by Presidential Decree of 05.03.2020 N 164. URL:

http://www.consultant.ru/document/cons_doc_LAW_347129/.

The AZRF does not include the high seas water column in the Arctic (beyond the EEZ) even if such columns of waters are within the sector (meridian) lines provided by the 1926 Decree. According to the 1926 Decree, if, with melting of ice, new islands or rocks are discovered within the sector lines (as four small islands were recently discovered in the Kara Sea²⁷) then, according to the 1926 Decree, they constitute legally the territory of the Russian Federation, even if they are discovered in the high seas area of the Arctic Ocean (but within the area of application of *the 1926 Decree*).

So according to the legal acts of the Russian Imperial and of the Soviet governments only some of the coastal sea areas (including the Kara Gate, Vilkitsky, Dmitry Laptev, Sannikov straits) are qualified as internal waters of Russia. From the 20th century these sea areas have become a part of the NSR and later were also qualified as a part of the AZRF. Other parts of the NSR (and of AZRF) constitute the territorial sea and the exclusive economic zone of Russia. The Decree of the Council of Ministers of the USSR dated 15 January 1985, contains geographic coordinates for establishing normal and straight baselines along the Russian Arctic coast delimiting areas constituting Russian internal waters.²⁸

The rigid environmental rules of navigation via the NSR are applicable to all ships (both Russian and foreign) – which pass through the NSR – whether a particular part of it has a status of internal waters or territorial sea or EEZ. While in the internal waters forming part of the NSR this right of Russia is based on its absolute sovereignty as the coastal State, that is not the case with such parts of the NSR which have the status of the territorial sea (where ‘innocent passage’ is provided by international law) and the EEZ (where ‘freedom of navigation’ exists as *lex generalis*). In the latter cases interaction of Russian law on the NSR with international environmental law is of importance.

4. National regulation of shipping in the NSR: interaction with international environmental law

The need for regulation of shipping in the NSR for better protection of the environment in the Arctic is recognised by Russia, being a party to such environmental protection treaties as the *United Nations Framework Convention on Climate Change*, 1992; *Kyoto Protocol of 1997 to the Climate Convention*, 1992; *Convention on Biological Diversity*, 1992; etc. Russia is also a party to *specific international shipping law instruments of universal character applicable to navigation via the NSR*, including *International Convention for the Protection of Pollution from Ships, 1973, as modified by the 1978 Protocol Relating to Thereto (MARPOL 73/78)* and as amended by *Polar Code, 2015*; *International Convention for Safety of Life at Sea (SOLAS), 1974 as amended by Polar Code, 2015*.

In addition, there are regional treaties to which Russia is also a Party, starting from the *Agreement on the Conservation of Polar Bears* of 1973,²⁹ and followed by the agreements concluded by the eight Arctic states: *Agreement on Cooperation on Aeronautical and*

²⁷“Melting Glaciers Reveal Five New Islands in the Arctic,” *The Guardian*, 22 October 2019, <https://www.theguardian.com/environment/2019/oct/22/melting-glaciers-reveal-five-new-islands-in-the-arctic>.

²⁸List of Geographic Coordinates of Points that Determine the Position of the Straight Baselines from Which the Breadth of the Territorial Sea, Economic Zone and Continental Shelf of the USSR Off the Continental Coast and Islands of the Arctic Ocean, the Baltic and Black Seas Is Measured, Approved by the Resolutions of the Council of Ministers of the USSR of 7 February 1984, and 15 January 1985, both available at the DOALOS Web site.

²⁹The English texts of universal and regional and bilateral agreements applicable to activity in the Arctic Region are available now in: Berkman, Vylegzhanin, and Young, *Russian Arctic Laws*.

Maritime Search and Rescue in the Arctic, 2011; Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013; Agreement on Enhancing International Arctic Scientific Cooperation, 2017.

In this context, the key question is how to harmonise this broad international law framework which is *prima facie* applicable to the NSR and qualification in Russian laws of the NSR as ‘a historically established national transport communication of the Russian Federation in the Arctic’.

As provided in the recently promulgated ‘Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2035’, developing the Northern Sea Route will remain in the current decades one of the national priorities of Russia.³⁰

Taking into account the need to reduce the number of accidents at the Arctic seas Russian legislation on regulation of shipping in the NSR as well as the system of competent state institutions is evolving. A brief outline of such a legislative evolution is given below.

The Federal Law dated 28 July 2012 ‘On Amending Certain Legislative Acts of the Russian Federation Regarding State Regulation of Merchant Shipping in the Northern Sea Route’ (*the 2012 NSR Law*) introduced amendments to the legal status of the NSR. Firstly, Federal Law dated 31 July 1998 ‘On Inland Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation’ was edited. According to the new version of this law (which is applicable to both warships and merchant vessels) navigation through the NSR is carried out ‘in accordance with generally recognised principles and norms of international law, international treaties of Russia and provisions of its national legislation’. The geographic extension of the NSR is defined without changes. The NSR consists of internal waters, the territorial sea, the contiguous zone and the exclusive economic zone of the Russian Federation and each of such sea areas has a different legal status.³¹ In this context, it is not accurate to assert, by referring to publications of Prof. A. Kolodkin, that the Russian Federation has (according to Prof. Kolodkin’s reasoning) ‘the right to define the NSR to include sea lanes running beyond its own exclusive economic zone in high latitudes even close to the North Pole’.³² Article 5.1 of the Merchant Marine Code, noted above, provides that the area of the Northern Sea Route means a water area adjoining the northern coast of the Russian Federation, including internal waters, territorial sea, contiguous zone and exclusive economic zone of the Russian Federation. So, the Russian Federal Law strictly limits the NSR – not further than the outer limits of the 200-miles EEZ of the RF; not ‘beyond’.

The Northern Sea Route Administration (NSRA) is defined by the 2012 NSR Law as the body within the Russian Ministry of Transport ensuring organisation of shipping in the NSR, safety of maritime navigation (avoiding collisions between ships and between

³⁰Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2035.

³¹Article 5.1. Navigation in the area of the Northern Sea Route.

1. The area of the Northern Sea Route means a water area adjoining the northern coast of the Russian Federation, including internal sea waters, territorial sea, contiguous zone and exclusive economic zone of the Russian Federation and limited in the East by the line delimiting the sea areas with the United States of America and by the parallel of the Dezhnev Cape in the Bering Strait; in the West, by the meridian of the Cape Zhelanie to the Novaya Zemlya archipelago, by the east coastal line of the Novaya Zemlya archipelago and the western limits of the Matochkin Shar, Kara Gates, Yugorski Shar Straits.

³²Østreng, W and others. *Shipping in arctic waters*, 15.

them and floating ice, etc.) and protecting the marine environment in the Northern Sea Route from pollution from vessels.

Until recently it was the Russian Ministry of Transport that was in charge of the organisation of navigation through the NSR. In December 2018, however, the federal law was signed by the Russian President,³³ introducing modifications in the structure of institutions governing the NSR. Pursuant to these amendments (which entered into force 8 January 2019) some competencies with regards to NSR shipping were handed over to the State Atomic Energy Corporation 'Rosatom'. From now on, 'Rosatom' is the sole entity responsible for rendering state services for maritime activities in the NSR (including icebreaking and pilotage services). However, the Russian Ministry of Transport exercises controlling functions with regards to 'Rosatom' and approves plans for the development of NSR marine infrastructure suggested by 'Rosatom' and other corporations and entities.

The legal order of shipping through the NSR is provided by the Russian 'Rules of Navigation in the Water Area of the Northern Sea Route' (the version which is enforced today was adopted by the Russian Ministry of Transport on 17 January 2013). These Rules set out the provisions which vessels must comply with. A separate act sets out the tariffs for icebreaking fleet services in the NSR.

However, a ship-owner – whether Russian or foreign – is not under obligation to apply for the permission to navigate through the NSR if its vessel navigates only through a part of the EEZ within the NSR, without entering the Vilkitsky Strait or other internal waters of Russia which forming another part of the NSR (if, for example, such a vessel navigates in the EEZ to the north of New Siberia Islands – which is also a part of the NSR). Russia does not extend its sovereignty over the EEZ within the NSR. Only such parts of the NSR which are internal waters and the territorial sea of the Russian Federation are under its sovereignty. In other parts of the NSR, being its EEZ, Russia has sovereign rights and jurisdiction according to Art. 56 of UNCLOS, including jurisdiction with regard to the protection and preservation of the marine environment. A combined legal effect of relevant customary rules of international law noted above and of Art. 56 (on rights and jurisdiction of the coastal state in its EEZ) and of Art. 234 of UNCLOS (on ice-covered areas, which are to be considered further) provide Russia with the legal basis to exercise effective environmental control over the parts of its EEZ within NSR. If a foreign ship navigates through the whole NSR, including the internal waters of the Russian Federation (where the innocent passage is not provided by international law), the relevant ship-owner is obliged to obtain a permission for sailing in the NSR under Russian legislation.

The arguments of Russia in favour of the legality of such special environmental regime of the NSR have been so far based on customary international law and on Art. 234 of UNCLOS, in the broader context of international environmental law.³⁴

³³Federal Law dated 27.12.2018 r. № 525-FZ 'On introduction of amendments into certain legislative acts of the Russian Federation (on participation of Rosatom Corporation in functioning of the Northern Sea Route).'

³⁴Explanatory Note to Draft Law 'On Amending Certain Legislative Acts of Russian Federation in terms of state regulation of merchant shipping in the Northern Sea Route'. URL: <https://www.mintrans.ru/documents/8/1494>. The term 'International Environmental Law' is explained by a number of authors. See generally: Molitor, M. *International Environmental Law. Primary Materials.* (1991); Birnie, P., Boyle, A. *International Law and the Environment* (1992).

5. Application of UNCLOS Article 234 to the NSR

According to Article 234 of UNCLOS, the coastal state has the right to adopt its special stringent environmental laws if the following conditions are met:

- the special legal regime established by the coastal state is non-discriminatory;
- such a legal regime is focused on the prevention, reduction, and control of marine pollution from vessels;
- particularly severe climatic conditions and the presence of ice presents obstructions or exceptional hazards to navigation;
- the legal regime applies to an area where pollution could cause major harm to the environment or irreversible disturbance;
- the legal regime has due regard for navigation;
- the legal regime is established within the limits of the exclusive economic zone of the coastal state;
- the legal regime is based on the best available scientific evidence.

This Article was negotiated at the III UN Conference on the Law of the Sea among Canada, the Soviet Union and the United States, as principally pertaining to the Arctic Ocean.³⁵ The Commentary to UNCLOS published in English in the Netherlands, in the US and in the UK, correctly observes: ‘Article 234 – sometimes called the “Arctic article” – is one of the few provisions in the Convention the terms of which were negotiated directly between the States concerned – in this case, Canada, the USSR and the United States of America – and incorporated without opposition in the various negotiating texts’.³⁶

According to the authors of the Commentary, Art. 234 of UNCLOS confirms the *lex specialis* status of the Arctic: ‘Article 234 is the only provision in Part XII which accords to a coastal State the right to adopt and enforce within the limits of its exclusive economic zone its own non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution in the circumstances contemplated by the article. To that extent, it is a *lex specialis*, particularly in relation to article 211, paragraphs 5 and 6 (on special circumstances), which it overrides in the geographical areas to which it relates. The general objective of the article is to balance the interests of the coastal State in ice-covered areas within the limits of its exclusive economic zone with the general interests of international navigation’.

There is no definition in UNCLOS of ‘ice’ or ‘ice-covered areas’. The World Meteorological Organisation maintains ‘a standardized classification of sea-ice terminology and ice reporting codes, including an illustrated glossary of sea-ice conditions’. So, Art. 234 is not limited to ice which originates at sea – ‘it relates to all ice encountered at sea’.³⁷ Art. 234 is applicable also to underwater ice within the NSR.

³⁵Though we are not prepared to share the suggestion of Kraska, J. Governance of Ice-Covered Areas: Rule Construction in the Arctic Ocean, in *Ocean Development & International Law* (2014): ‘Ostensibly applicable to all “ice-covered areas,” the new article was really only about the Arctic Ocean’.

³⁶United Nations Convention on the Law of the Sea 1982. A Commentary. Volume IV, Ed.-in-Chief Nordquist M. N. (Martinus Nijhoff Publishers. Dordrecht/Boston/London). 1991: 393.

³⁷*Ibid.*

More debatable is the issue of interpretation of the ‘most of the year’ clause. The applicability of Art. 234 is limited to the areas where for ‘most of the year’ particularly severe climatic conditions and the presence of ice cover create obstructions to navigation. So the question is raised in the law literature as to whether the coastal state can invoke this article when establishing its national regulations if the respective areas are free from surface ice for more than 6 months during the year because of global warming.³⁸ In our opinion, the ‘good faith’ rule of interpretation (as set forth in art. 31 of the Vienna Convention on the Law of Treaties) means in this case that the intention of the states Parties to UNCLOS should be taken into account. Even if ice covers an area in the Arctic waters for less than 6 months of the year, this does not mean the disappearance of the environmental risks caused by navigation in the area. On the contrary, harsh weather conditions, low visibility due to darkness in winter (‘polar nights’), and intermittent fog in all seasons remain important ‘obstructions’ to navigation in the Arctic. Does that mean that in spite of the ice melting, ‘severe climatic conditions’ persist for most of the year, calling for Art. 234 to be applied³⁹? Opponents to such a broad interpretation of Art. 234 might remark that the rule of ‘the presence of ice covering such areas for most part of the year’ is a necessary criterion for application of Art. 234.

Article 234 legalises only special national environmental rules that are applied to the areas ‘within the limits of the exclusive economic zone’,⁴⁰ which opens up a discussion as to the relevant rights of the coastal state regarding environmental protection of its territorial sea covered by ice. There are different views amongst scholars in this regard. Some of them suggest that application of Art. 234 is only limited to the EEZ without giving any similar environmental rights to coastal states in the territorial sea.⁴¹ Some researchers argue that the environmental regulations adopted in the exclusive economic zone under Art. 234 cannot be stricter than the ones applicable in the territorial sea.⁴² Other scholars tend to take a broader approach to the scope of application of Art. 234 of UNCLOS.⁴³ As noted, if the territorial sea is excluded from the scope of Art. 234 that would lead to an absurd conclusion that the competence of coastal States in ice-covered areas is broader in the EEZ than in the territorial sea.⁴⁴ Therefore, preference may be given to the interpretation suggested in the Commentary to UNCLOS: special environmental regimes in ice-covered area have ‘no applications for any claims to sovereignty’; their practical impact is ‘that it extends the competence of the coastal state over marine pollution from vessels’ in such ice-covered areas up to ‘the outer limit’ of the exclusive economic zone⁴⁵; but not to its inner limit. That means that the coastal

³⁸Becker, Michael A. Russia and the Arctic: Opportunities for Engagement within the Existing Legal Framework, *American University International Law Review* 25, no.2, 2010: 225–25.

³⁹Albert Buixadé Farré et al, “Commercial Arctic Shipping Through the Northeast Passage: Routes, Resources, Governance, Technology, and Infrastructure,” *Polar Geography*, 2014.

⁴⁰K. Hakapää, and Molenaar, Erik, “Innocent Passage – Past and Present,” *Marine Policy* 23, no. 2 (1998).

⁴¹V.Gavrilov, R.Dremluiga, and R.Nurimbetov “Article 234 of the UN Convention on the law of the sea and reduction of ice-cover in the Arctic Ocean,” *Marine Policy* 106, (2019).

⁴²McRae, D.M. & Goundrey, D.J., “Environmental Jurisdiction in Arctic Waters: The Extent of Article 234,” *University of British Columbia Law Review* 16, no. 2: 221.

⁴³Pharand, Donat, “The Arctic Waters and the Northwest Passage: A Final Revisit,” *Ocean Development & International Law* 38, no. 1–2: 47.

⁴⁴Lilly Weidemann, “International Governance of the Arctic Marine Environment: With Particular Emphasis on High Seas Fisheries,” *Hamburg Studies on Maritime Affairs* (2014): 80.

⁴⁵United Nations Convention on the Law of the Sea. 1982. A Commentary: 398.

state can establish a special environmental regime of innocent passage in the area of its territorial sea where particular severe climatic conditions and the presence of ice covering such an area for most part of the year create exceptional hazards to navigation. And that is in fact done (as the permission-based regime of innocent passage) according to the Russian regulation of navigation via such areas of the territorial sea which form part of the NSR.

There is growing evidence that Canada has similar reasoning. Since 2010, Canada established the national regulation (Northern Canada Vessel Traffic Services Zone Regulations – ‘NORDREG’) which require permission (‘clearance’) from foreign-flagged vessels to enter its waters in the Arctic, including its territorial sea and EEZ.⁴⁶ NORDREG standards, particularly, mandatory submitting of a sailing plan report (as well as position and deviation reports) were adopted by Canada. Moreover, in general, ship-owners and other seafaring entities seem to comply with Canadian and Russian requirements under Art. 234.⁴⁷ For instance, the American Bureau of Shipping Advisory ‘Navigating the Northern Sea Route: Status and Guidance’⁴⁸ informs ship owners and seafarers on the existing rules of passage through the NSR and warns about the necessity to obtain an authorisation to enter the respective area. A similar guidance was adopted by the Oil Companies International Marine Forum (OCIMF) in 2017.⁴⁹ However, these cases of compliance with Russian laws on the NSR are not supported by the USA.

6. How to resolve Russia – USA disagreements regarding the NSR?

In fact, Russia – U.S. disagreements are not about the special environmental legal regime of the NSR, but about the legal status of some parts of the NSR – first and foremost, Vilkitsky Strait (which unite the Kara Sea and Laptev Sea) and the Dmitry Laptev and Sannikov Straits (which connect the Laptev Sea and Eastern Siberian Sea). According to the *aide memoire* of the Soviet Government to the U.S. embassy in Moscow of July 1964, these straits have the status of internal waters of the USSR because they ‘belong historically to the Soviet Union’. In accordance with this status foreign military ships will ‘enter internal waters of the USSR after advance permission of the Government of the USSR’.⁵⁰

As noted, in June 1965 the U.S. government responded with a diplomatic note ‘in a remarkably tautological manner’. According to the USA, so far as ‘the Dmitry Laptev and Sannikov Straits are concerned, the United States is not aware of any basis for a claim to these waters on historic grounds . . . While the United States is sympathetic with efforts which have been made by the Soviet Union in developing the Northern Seaway Route and appreciates the importance of this waterway to Soviet interests, nevertheless, it

⁴⁶Northern Canada Vessel Traffic Services Zone Regulations SOR/2010-127, URL: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2010-127/FullText.html>.

⁴⁷Stanley P. Fields, *Article 234 of the United Nations Convention on the Law of the Sea: The Overlooked Linchpin for Achieving Safety and Security in the U.S. Arctic?* 7 HAR.NAT’L SEC.J 55, no. 72–73 (2016): 95.

⁴⁸American Bureau of Shipping (ABS) Advisory ‘Navigating the Northern Sea Route: Status and Guidance’. URL: <https://ww2.eagle.org/en.html>.

⁴⁹Oil Companies International Marine Forum (OCIMF) ‘Northern Sea Route Navigation: Best Practices and Challenges’ (2017). URL: <https://www.ocimf.org/media/73010/Northern-Sea-Route-Navigation-Best-Practices-and-Challenges-1-.pdf>.

⁵⁰M. Byers. *International Law and the Arctic* (Cambridge University Press, 2013): 144.

cannot admit that these factors have the effect of changing the status of the waters of the route under international law'.⁵¹

The U.S. National Strategy for the Arctic Region (of 2013; and of 2019) in challenging the NSR laws refers to 'the freedom of the sea' in the Arctic. However, according to international law, there is no abstract 'freedom of the sea'; there is a concrete 'freedom of the high seas' (Art. 87 of UNCLOS). On 29 May 2015, the U.S. Department of State sent a diplomatic note to the Russian Federation conveying 'support for the navigational safety and environmental protection objectives' in the NSR regulatory scheme, while expressing concern over those provisions that were 'inconsistent with important law of the sea principles related to navigation rights and freedoms', particularly the requirement that foreign-flagged vessels obtain permission from Russia's authorities to enter and transit the Northern Sea Route.⁵² This argument is further developed by the opinion that complying with the Russian permission-based regime should presumably be regarded 'as a business decision and not as flag State acceptance of the regime'.⁵³ In our opinion international law does not divide 'general practice' on: a) 'business decisions' practice; and b) 'state decisions' practice. In addition, according to prevailing legal consciousness in Russia, the USA (which was born as a state in the 18th century) cannot change the legal status of the internal waters of Russia in the Arctic which was enforced by Russia beginning from the 17th century. Similarly, Russia cannot change the legal qualification of the Chesapeake Bay, for example, as internal waters of the USA.

So the legal acts of the Russian Empire and of the USSR confirm that the Kara Gate Strait, the Vilkitsky Strait, the Dmitry Laptev Strait and the Sannikov Strait were consistently regarded as internal waters of the country in accordance with international law for centuries. This legal position was further confirmed by the Decree of the Council of Ministers of the USSR dated 15 January 1985, which contains geographic coordinates for establishing baselines along the Russian Arctic coasts. According to this document, the Kara Gate Strait, the Vilkitsky Strait, the Dmitry Laptev Strait and Sannikov Strait are to the shore from the straight baselines thus forming internal waters of the country.⁵⁴

The official position of Russia is that this legal qualification cannot be changed. It is also suggested that there is no need for such a change, if moving the Arctic shortest routes to the North Pole occur (for example, if it is found that the transpolar Sea Route via the Central Arctic Ocean 'will gradually replace the NSR' by 2050, because of sea ice retreats in the Arctic).⁵⁵

Another way to resolve Russia-USA disagreements might be the Canadian *modus vivendi* that is the 1998 *Arctic Cooperation Agreement*. According to this Canada-USA 'agreement to disagree' on the status of the Northwest Passage, the US promised that 'all navigation by US icebreakers within waters claimed by Canada to be internal will be

⁵¹Ibid., 144–145.

⁵²For the text of the note see: Berkman, Vylegzhanin and Young, *Baseline of Russian Arctic Laws*, 116.

⁵³Sean Fahey, "Access Control: Freedom of the Seas in the Arctic and the Russian. Northern Sea Route Regime," 51 *HARV. NAT'L SEC. J.* 154, 168 (2018): 159.

⁵⁴List of Geographic Coordinates of Points that Determine the Position of the Straight Baselines from Which the Breadth of the Territorial Sea, Economic Zone and Continental Shelf of the USSR Off the Continental Coast and Islands of the Arctic Ocean, the Baltic and Black Seas Is Measured, Approved by the Resolutions of the Council of Ministers of the USSR of 7 February 1984, and 15 January 1985, both available at the DOALOS Web site.

⁵⁵T. Stevenson, J. Davies, H. Huntington, W. Sheard. An examination of trans-Arctic vessel routing in the Central Arctic Ocean./Marine Policy 100(2019). P. 83–89 (p.85).

undertaken with the consent of the Government of Canada'. Canada has taken the obligation to 'facilitate navigation' by those US vessels.⁵⁶

7. Are sovereign immune vessels excluded from the NSR regime?

There has been much debate over the applicability of the existing NSR legal regime to warships and other sovereign immune vessels seeking transit through the NSR. This debate was triggered not only by the ambiguity of the NSR Rules 2013. Other documents also underline *expressis verbis* the importance of the Arctic region for defence purposes of the Russian Federation.⁵⁷ The debate is mainly caused by the diplomatic note of the US dated 29 May 2015, cited above. The latter expresses concern about non-exclusion of warships from the scope of the NSR Rules. In 2019, the Russian government developed specific draft rules for the entering of foreign warships in the waters of the Russian Federation.⁵⁸ The main purpose of the new rules, as it is stated in the preamble of the draft document, is to ensure the safety of navigation and to control marine pollution from vessels stemming from 'the intensified naval activities of various states in the Arctic'.

Though UNCLOS does not contain references to the assessment of the legality of authorisation imposed by coastal states, there are more than 20 states requiring authorisation for warships to enter their territorial waters in order to exercise their right of innocent passage.⁵⁹ The potential introduction of the notification-based procedure of navigation of warships in the territorial sea, however, is leading to controversy. Definitely, article 236 of UNCLOS provides for immunity of such vessels from coastal states' regulations and enforcement thereof. Notwithstanding, UNCLOS also recognises the coastal States' right to self-defence in their territorial sea if the passage of a foreign warship is not innocent (Article 25). In this regard, the *Joint Statement by the United States and Soviet Union, with Uniform Interpretation of Rules of International Law Governing Innocent Passage*, of 1989, might be helpful – though the document does not apply specifically to the Arctic waters. It is possible to suggest that the same states might agree upon a specific source of the Arctic law 'Joint Statement with Uniform Interpretations of Rules of International Law Governing Immunity of Warships from coastal states' jurisdiction in the Arctic'.

So far, Russia has applied its NSR regime to all ships. This exercise of authority on the NSR, however, has not met substantial opposition from foreign governments, apart from incidents that occurred with US warships. One of them took place in 1965, when the US warship (of icebreaker class) 'Northwind' approached the Vilkitsky Strait from the west, without a permission provided by the laws of the USSR. Strong diplomatic pressure 'was applied by the Soviet Union and the US government had to order the "Northwind" to

⁵⁶M. Byers. *International Law and the Arctic*: 139–140.

⁵⁷See e.g. 'Fundamentals of the State Policy of the Russian Federation in the Arctic for the Period up to 2035' approved by Presidential Decree of 05.03.2020 N 164; 'The marine doctrine of the Russian Federation for the period till 2020'; 'Russian Strategy of the Development of the Arctic Zone and the Provision of National Security until 2020'.

⁵⁸Draft ruling of the Government of Russia amending Resolution No. 1102 of the Government of Russia dated 2 October 1999 'On the rules of navigation and presence of foreign warships and other state-owned ships operated for non-commercial purposes in the territorial sea, internal waters, on naval bases, and bases for stationing warships in seaports of the Russian Federation'. URL: <https://regulation.gov.ru/projects#npa=89000>

⁵⁹Alexander M. Lewis. Navigational restrictions within the new LOS context. Geographical implications for the United States. Melkov (ed.) *International Law*: 425.

turn round'.⁶⁰ In 1967 the United States decided to send two icebreakers 'Edisto' and 'Eastwind' through the Vilkitsky Strait.⁶¹ Having received a notification of this plan as 'a matter of courtesy' (rather than a formal application for authorisation to enter the NSR), the Soviet Government denied the passage stating that 'for passing the strait ... military ships must obtain preliminary permission of USSR government through diplomatic channels one month before expected date of passing'.⁶² The US icebreakers 'Edisto' and 'Eastwind' did not enter the strait. However, on 30 August 1967, the US sent a Diplomatic Note to the USSR Government contesting the stance of the Soviet Union as contrary to international law on sovereign immune vessels.⁶³ As for the USSR (or Russia), this State has never sent its warships to the internal waters of the USA.

The US officially contested in 1989 Finland's decision to introduce mandatory piloting for warships in its territorial sea on the grounds that making use of such services should be left at the discretion of the warships.⁶⁴ Similarly, in its diplomatic note dated 5 April 1985, the US protested against compulsory piloting introduced by Italy in the strait of Messina on 3 April 1985.⁶⁵ Norway also adopted for some areas compulsory piloting legislation.⁶⁶

The practical question is: what measures might Russia undertake if, for instance, the US again sent a warship into waters within the NSR without obtaining permission? In accordance with article 30 of UNCLOS, if a warship does not comply with the laws and regulations of the coastal state concerning passage through the territorial sea and disregards any request for compliance therewith, the coastal state may 'require' it to leave the territorial sea immediately (Article 30 of the 1982 Convention). However, if such a situation arises within the internal waters of the Russian Federation in the North, such a limitation of measures is absent. Most probably Russia will not act on a reciprocal footing (that is Russia will not send its warships to the internal waters of the USA) and will use instead its right of individual self-defence according to the UN Charter, qualifying as aggression the entry of the US warship in its internal waters.

8. Conclusion

Being a part of the AZRF, the NSR is a water column not extending beyond Russian 200 miles EEZ in the Arctic, though not covering Russian EEZ in the Barents Sea. The meridian limits provided by the 1867 US–Russia Convention and the 1926 Decree are not relevant to the modern NSR legal regime.

⁶⁰M.Byers. *International Law and the Arctic*, 145.

⁶¹Kastner P. *International Legal Dimensions of the Northern Sea Route*. In Keupp M.M., ed., *The Northern Sea Route A Comprehensive Analysis*, 47.

⁶²Document 310 USSR Ministry of Merchant Marine, Oral Demarche to the United States Coast Guard Cutter Edisto (28 August 1967)/*The Arctic in International Law and Policy*/ed. Kristina Schönfeldt.

⁶³US Diplomatic Note to the USSR Government dated 30 August 1967 in *The Arctic in International Law and Policy*, ed. Kristina Schönfeldt.

⁶⁴Roach J.A., and Smith W.R. *Excessive Maritime Claims*. 3rd ed. Leiden: Martinus Nijhoff Publishers. 2012: 231.

⁶⁵LIS No. 112 – United States Responses to Excessive National Maritime Claims. Office of Ocean Affairs. 1982, 70.

⁶⁶Regulations on compulsory pilotage and the use of pilot exemption certificates (Compulsory Pilotage Regulations) of the Ministry of Transport and Communications pursuant to §§ 2, 6, 7, 11, 15, 17 and 20 of Act no. 61 of 15 August 2014 relating to the Pilot services. URL: https://www.kystverket.no/globalassets/los/regelverk-engelsk/01.2017_compulsory-pilotage-regulations_revised-final.pdf

The existing regime of shipping in the NSR is based largely on the combination of 'historic' arguments (with regards to the Arctic waters traditionally qualified by Russia as its internal waters) and legal grounds provided by UNCLOS (with regards to the territorial sea and EEZ including the rights of Russia as a coastal state under Art. 234 of UNCLOS). Nevertheless, the legal option to prohibit passage of every vessel which has not obtained prior authorisation remains still within the 'grey area' of the NSR regime, despite the fact that there appear no substantial protests to the special environmental regime of the NSR from other states – with the exception of the USA. Though Canada has adopted a similar special environmental regime of navigation in the Canadian Arctic, this State demonstrates its own legal position regarding the Northwest Passage and is not prepared to share Russia's legal stance on the NSR. Being in a weaker (than Russia) military and political position in relation with the USA, Canada, however more successfully than Russia, defended its national interests by concluding with the USA an 'agreement to disagree' on the status of the Northwest Passage – as internal waters of Canada.

On the other hand, in contrast to the USSR legal position, contemporary Russia emphasises that there is no single status of the NSR: its parts – internal waters, the territorial sea and the EEZ – have a different legal status based on international law; while a single environmental regime of navigation via the NSR still reflects practical convenience.

UNCLOS does not contain specific provisions regarding the possibility for the coastal state to impose for environmental reasons compulsory piloting of vessels in its territorial sea or a prior permission requirement, whereas state practice is not uniform on the matter. It is predicted that with climate change in the Arctic region new sea routes may appear further to the north of the Russian arctic coasts, via the Central Arctic Ocean, and such routes will probably replace the NSR after midcentury. The new environmental regime of Arctic shipping will be needed based on regional development of the Arctic Law applicable to shipping via the High North waters beyond the EEZ of the five Arctic coastal States.

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