



January 2022

# Northern Sea Routes and Shipping Regulations

Karthika Ellangovan

Edited By: Aryan Gupta

The Northern Sea Route (NSR) is one of several Arctic shipping routes demarcated and mapped by the Russian Federation. It runs along the Arctic waters and inside the exclusive economic zone (EEZ) of Russia, allowing her the right to administer and manage the shipping route for a multiplicity of purposes like trade, transit, and security. This paper will explore various reasons that make the NSR attractive for commercial purposes and analyse the administrative aspects that govern this Route. The NSR is believed to be a ‘convenient’ sea route due to the nature of ice that floats in it all year long. Studies have shown that the melting rate of ice in the Northern Route, makes shipping a faster, feasible and profitable affair. The continuous melting of ice allows some scientists to consider the NSR almost ice-free during the summers.<sup>1</sup> These advantageous characteristics make the Sea route commercially attractive for parties as it is the shortest route to connect Europe and Asia. However, these benefits also come at a cost as this allows Russia to possess a monopoly over the route’s commerce and security. Quite often, trans continent shipping looks at the number of weeks that give ships an ice-free sailing experience. Some of the central ports like St. Petersburg have up to 210 days of sailing without ice.<sup>2</sup>

While this is a major determinant for choosing this shipping route, countries also give importance to access and discovery of natural and mineral resources. The discovery of certain minerals near mainland Russia is an additional advantageous factor for countries to opt in. The global interest towards the Northern Sea Route is increasingly capitalising on national interests in the Arctic. The economic potential of the zone must be weighed against the political and jurisdictional disputes that may arise from shipping and transit in the region. The alternative route is the Suez Canal that has different modalities involved for shipping. For instance, southern routes like the Suez, may have no ice.

---

<sup>1</sup> Dan Wang, Danyang Li, Yu Gong, Rui Wang, Jie Wang, Xiaoling Huang, 2019. Development situation and future demand for the ports along the Northern Sea Route, Volume 33, Research in Transportation Business & Management.

<sup>2</sup> Russia, and Federal’NaïA Sluzhba Gosudarstvennoï Statistiki. Федеральная служба государственной статистики. Federal State Statistics Service, Russian Federation. Russia, 2002. Web Archive. <https://www.loc.gov/item/lcwaN0015756/>.

However, these conditions that form the Sea Route policy do not give us a sense of democratic or collaborative policy by federal states, that should have been adopted by interpreting the Laws of the Sea. There is sufficient information to argue that the Northern Sea Route policy is devised by many governmental agencies, but some believe that more power rests at the hands of the Kremlin. It is needless to say that Russian domestic laws greatly influence international law but to understand this claim and authority that Russia possesses over the Sea route, we must look into its legal status as per international law. The Russian Federal Act addresses the claim on sovereignty over the Northern Sea Route, through Article 14, by stating the historic importance of the route to the Russian Federation. While this may seem to be contentious, this domestic legislation was incorporated in accordance with international law. The classification of such waters in the Federal Act, was also done by incorporating provisions of the United Nations Convention on the Law of the Sea (UNCLOS), 1982. International law mandates a safe and sustainable use of the Northern Sea Route. The provisions for the same can be found at Article 234 of UNCLOS that authorises coastal states with a right to enforce laws and regulations in order to prevent marine pollution in “ice-covered areas”; which includes the NSR.

The regulatory structures of the NSR are multi-layered, consisting of treaties, nonbinding international standards, and Russian domestic laws.<sup>3</sup> However, the body or entity that possess’ efficient control over the NSR, shall remain the authoritative mainland, as they do not address mere shipping regulations but also discuss the details of safe transport of hazardous materials. This includes nuclear installations and radiation tools that are potentially dangerous to marine life. The relevant domestic law in that regard is the Federal Law on the Use of Atomic Energy of 1995. However, it prescribes construction and operation of vessels with nuclear installations and radiation sources to follow the International Atomic Energy Agency (IAEA)’s regulations. Although there is significant importance allotted to international law, within the Russian order, many who study the law and speculate international affairs, believe that the mainland has been successful in creating a Russian-led Arctic order. It is because of this seamless intertwine of Russian domestic law and international law like the UNCLOS that it has become increasingly difficult to

---

<sup>3</sup> Mika Okochi, 2020. EIAS Visiting Fellow and Associate Professor at Tokyo University of Marine Science and Technology 01 April 2020.

predict the nature of laws and regulations that are imposed in the NSR. It is a grey area to identify which rules are binding and those actions that would constitute a violation of the same. A pertinent evaluation to introduce at this juncture would be to examine the extent of Russian interpretation of international law, and specifically the laws of the Sea. This can be studied by examining the current regime and its regulations which came into force in 2018 and are under scrutiny and contention.<sup>4</sup>

The law reserves cabotage for Russian-flagged vessels in the whole of the mainland. ‘Cabotage’ here includes voyages between Russian ports, or points of departure and arrival within Russia’s exclusive economic zone (EEZ). Second, the flag requirement imposed covers most kinds of maritime activity within the exclusive economic zone or on the continental shelf (icebreaker escorts, exploration, salvage). The third regulation is unique as it is said to be applicable solely to the Northern Sea Route. It states that oil, liquefied natural gas and coal loaded from within the NSR area can be transported only on Russian-flagged ships to the first point of destination or transshipment. In addition to this, more restrictions were imposed in the same year, concerning the transport of hydrocarbons out of the NSR region, to be reserved for vessels *built in Russia*.<sup>5</sup> Furthermore, the other categories of ships that can enter the NSR would also have to be Russian built.<sup>6</sup> These regulations certainly imply a larger political narrative of favouring Russian shipbuilding industries to thrive. For instance, the Zvezda shipyard is also believed to be a stakeholder in the region as they provide offshore products and supply ships.

The Ministry for Industry and Trade may exercise some control in the NSR, so that they may access building contracts for supplying ships. With such policies that promote the shipbuilding sector, certain industries have the potential to transport and supply tons of cargo and thereby promote business and development for the Federation. This initial provision can boost investments in the sector and increase output for long term benefits and subsequently allow for new projects to

---

<sup>4</sup> Federal Law, 2017. “On amendments in the Code for merchant navigation and recognition of expiration of some provisions of legal acts of the Russian Federation.”, 2017

<sup>5</sup> Arild Moe, 2020. A new Russian policy for the Northern sea route? State interests, key stakeholders and economic opportunities in changing times, *The Polar Journal*, 2020, 10:2, 209-227.

<sup>6</sup> *Ibid.*

arise in the NSR. It is needless to say that these provisions and partnerships for business, would considerably increase the commercial attractiveness of the region. Companies that are suitably located to provide coastal services receive a considerable amount of state subsidies, and therefore are priced a little more affordably. Some may label these mechanisms to be a part of ‘protective legislation’, but the conditions for choosing a Russian-based business in the NSR seem to be more favourable for logistical reasons. Another core sector that influences these shipping regulations is the military forces that are believed to be significant stakeholders in the NSR region. They have clear interests in the Sea Route such as monitoring underwater activities and intercepting security threats to their coastal ports. These regulations supplement Russia’s security protocols and monitoring systems that have already been imposed in the region. This reduces the obligation of the state to impose additional military and technical tasks to secure the region. By drafting such regulations and government mandates, the military forces have lesser duties to impose laws in the same region; thereby, preventing an overlap of regulating laws and an over-militarisation of a transit Sea Route. It is interesting to note that there was no mention of the ‘military’ as a stakeholder, or as a standalone, when these regulations were passed in the Duma Committee.<sup>7</sup> Besides this, there is also significant tension over the issue of straits in the NSR region. While Russia claims it to be internal waters, the White House contends that straits be used for international navigation and thereby, face a lesser burden of regulations. Article 37 of the UNCLOS employs the definition that straits are those which can be used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.<sup>8</sup>

While Russia does not wish to give up on their claims to internal waters and straits, international law provides that even ships with foreign flags can enjoy the use of territorial waters of a coastal state with their transit rights; that are most often understood by the concept of ‘innocent passage’. Recent developments in 2019, show that drafts have been introduced in the Russian legislation for more restrictions on the NSR pertaining to foreign warships that may wish to enter the region. The requirement mandates that a notification be sent prior to 45 days of entering the Sea Route and the failure to do so, may result in a fatal destruction of the warship or a denial of entry by appropriate

---

<sup>7</sup> Ibid.

<sup>8</sup> Article 37, Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

authorities. It is implied that this regulation also possesses some military interest so that a greater foreign military presence is not found in the NSR. However, Russia attempts to dismiss this military claim by justifying such actions to be in accordance with international law regulations, specifically Article 234 of the UNCLOS, that seeks to enforce measures to prevent, reduce and control marine pollution in ice covered areas.<sup>9</sup> By virtue of the regulations imposed, it becomes increasingly clear the military forces and coastal industries rank up first as major stakeholders in the NSR. Most developmental projects in the region have state interests and subsidies offered to industries and businesses that have an operational interest in the Arctic. By adopting this protectionist strategy, Russia has prioritised major policy decisions that actively shape the nature of activities that occur in the Sea Route.

Although Kremlin claims that the newer regulations provide for greater security and efficient control, there are questions on the policies' transparency to the global community, while still keeping in mind that international law does not mandate the disclosure of such information. Russia has managed to incorporate most policies of the NSR in accordance with UNCLOS and other relevant conventions that govern international waters. Despite such allegiance to international treaties, binding or otherwise, there is plenty of scope for these protectionist trade measures to be in violation of international trade laws like National and Special Protection.<sup>10</sup> Another point of contention remains with the issue of whether Russia is mandated to address its trade policy and security affairs through laws drafted for the NSR – which has a diametrically opposite agenda, in the lens of shipping, trade and transit. Russia maximises its state, economic and commercial interests through means of regulating activities in the NSR, without defining a framework authorises these actions.

---

<sup>9</sup> Article 234 of UNCLOS, id; “Холодная волна: иностранцам создали правила прохода Севморпути” [Cold wave: Rules for passage of foreigners on the Northern Sea Route have been created], *Izvestiya*, 6 March 2019. <https://iz.ru/852943/aleksei-kozachenko-bogdan-stepovoi-elmar-bainazarov/kholodnaia-volna-inostrantcam-sozdali-pravila-prokhoda-sevmorputi>.

<sup>10</sup> WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994)

# Bibliography

Arild Moe, 2020. A new Russian policy for the Northern sea route? State interests, key stakeholders and economic opportunities in changing times, *The Polar Journal*, 2020, 10:2, 209-227.

Article 37, Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

Article 234 of UNCLOS, id; “Холодная волна: иностранцам создали правила прохода Севморпути” [Cold wave: Rules for passage of foreigners on the Northern Sea Route have been created], *Izvestiya*, 6 March 2019. <https://iz.ru/852943/aleksei-kozachenko-bogdan-stepovoi-elnar-bainazarov/kholodnaia-volna-inostrantcam-sozdali-pravila-prokhoda-sevmorputi>.

Dan Wang, Danyang Li, Yu Gong, Rui Wang, Jie Wang, Xiaoling Huang, 2019.

Development situation and future demand for the ports along the Northern Sea Route, Volume 33, *Research in Transportation Business & Management*.

Federal Law, 2017. “On amendments in the Code for merchant navigation and recognition of expiration of some provisions of legal acts of the Russian Federation.”, 2017

Mika Okochi, 2020. EIAS Visiting Fellow and Associate Professor at Tokyo University of Marine Science and Technology 01 April 2020.

Russia, and Federal'NaiA Sluzhba Gosudarstvennoĭ Statistiki. Федеральная служба государственной статистики. Federal State Statistics Service, Russian Federation. Russia, 2002. Web Archive. <https://www.loc.gov/item/lcwaN0015756/>.

WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994)