

# Chapter 22

## Legal Aspects of Navigation Through the Northern Sea Route

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**Abstract** The Northern Sea Route (NSR) across the Arctic Ocean has been a significant feature of Russia for much of the past century and will play an increasingly important role in the future of the Russian Federation across the twenty-first century. This paper highlights historical features of traffic associated with the NSR, including legal and regulatory strategies of the Russian Federation for international use of the NSR.

### 22.1 Historic Operations Across the Northern Sea Route

The Northern Sea Route (NSR) is seen as one of the key international transport corridors across the Arctic Ocean between the Pacific and Atlantic Oceans, as discussed prominently in the *Arctic Marine Shipping Assessment* [1] and numerous other reports [4, 7, 8, 10, 25]. Historic features of NSR voyages include:

- In summer 1967, the motor vessel “*Novovoronezh*” owned by Murmansk Shipping Company with a deadweight tonnage (DWT) of around 5,000 tons (ice class ARC-4) performed a remarkable double voyage through the NSR during a single navigation period along the route Hamburg-Japan-Murmansk route that took 57 days, including cargo operations in Japan.

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- In summer 1989, the motor vessel “*Tiksi*” owned by Murmansk Shipping Company (“Norilsk” type, 20,000 DWT with Russian highest ice class, ARC-7) repeated such a double transit voyage through the NSR along the route Western Europe – Japan – China – Europe that took 47 days.
- In July 1990, the motor vessel “*Kola*” owned by Murmansk Shipping Company (“Norilsk” type, 20,000 DWT with Russian highest ice class, ARC-7) transited from Hamburg to Tokyo in 19 days, with a NSR crossing that only took 8 days. This voyage still is a record.
- In summer 1990, the biggest vessel ever to transit the NSR was the nuclear LASH carrier and container ship, “*Sevmorput*” with 33,980 DWT.
- In March 1993, during an experimental voyage under the most difficult ice conditions, the *Murmansk-Pevек* (a nuclear icebreaker of “*Arktika*” type) managed to lead a vessel of “Norilsk” type through the NSR in 28 days.
- In September 2010, the tanker “*SCF Baltica*” (owned by OAO NOVATEK) transited from Murmansk to Ningbo (China) in 23 days, crossing the NSR in 10 days.
- In August 2011 the “*Vladimir Tikhonov*” became the largest supertanker (162,300 tons deadweight) to transit the NSR and in a record 7.4 days. The following month, the tanker ‘*Palva*’ (74,940 tons deadweight) eclipsed the NSR transit record in 6.5 days with an average speed about 14 knots. Also in September 2011, the ‘*M/V Sanko Odyssey*’ became the first Japanese tanker and largest bulk carrier (74,800 tons deadweight) to cross the NSR.

Moreover, in a year of firsts, more than 834,900 tons of cargo (82 % hydrocarbons) was transported in 2011, which is an absolute record for the NSR.

“*Sevmorput*” is still in operation and is one of four nuclear-powered cargo ships ever built. “*Sevmorput*” has done year-round navigation on the Murmansk-Dudinka line with containers on board. However, operational experience has shown that from November through June, “*Sevmorput*” needs icebreaker escort because the vessel can get stuck even in 30-cm sea ice with large pressure ridges.

Russia has a database of navigation along Arctic routes for more than 70 years, including NSR transit navigation (Tables 22.1 and 22.2). Through 2009, traffic along the NSR was at its peak in 1987 with 6,579,000 tons. Moreover, carrying of goods along NSR has not been interrupted, even during World War II, when traffic increased by 30 % despite all difficulties.

## 22.2 Legal Developments for the Northern Sea Route

There have significant legal developments for the NSR [3] since the Murmansk speech by Soviet President Mikhail Gorbachev (1987), in which he noted:

The shortest sea route from Europe to the Far East and the Pacific Ocean passes through the Arctic. I think that depending on progress in the normalization of international relations we could open the North Sea Route to foreign ships, with ourselves providing the services of ice-breakers.

**Table 22.1** Annual vessel traffic (1,000 tons) on the Northern Sea Route (NSR) from 1933 to 2009

Year	Traffic	Year	Traffic
<b>1933</b>	130	<b>1972</b>	3,279
<b>1934</b>	134	<b>1973</b>	3,599
<b>1935</b>	176	<b>1974</b>	3,969
<b>1936</b>	201	<b>1975</b>	4,075
<b>1937</b>	187	<b>1976</b>	4,349
<b>1938</b>	194	<b>1977</b>	4,553
<b>1939</b>	237	<b>1978</b>	4,789
<b>1940</b>	350	<b>1979</b>	4,792
<b>1941 WW II</b>	165	<b>1980</b>	4,952
<b>1942 WW II</b>	177	<b>1981</b>	5,005
<b>1943 WW II</b>	289	<b>1982</b>	5,110
<b>1944 WW II</b>	376	<b>1983</b>	5,445
<b>1945 WW II</b>	444	<b>1984</b>	5,835
<b>1946</b>	412	<b>1985</b>	6,181
<b>1947</b>	316	<b>1986</b>	6,455
<b>1948</b>	318	<b>1987</b>	6,579 (max)
<b>1949</b>	362	<b>1988</b>	6,295
<b>1950</b>	380	<b>1989</b>	5,823
<b>1951</b>	434	<b>1990</b>	5,510
<b>1952</b>	489	<b>1991</b>	4,804
<b>1953</b>	506	<b>1992</b>	3,909
<b>1954</b>	612	<b>1993</b>	3,016
<b>1955</b>	677	<b>1994</b>	2,300
<b>1956</b>	723	<b>1995</b>	2,362
<b>1957</b>	787	<b>1996</b>	1,642
<b>1958</b>	821	<b>1997</b>	1,945
<b>1959</b>	888	<b>1998</b>	1,458 (min)
<b>1960</b>	963	<b>1999</b>	1,580
<b>1961</b>	1,013	<b>2000</b>	1,587
<b>1962</b>	1,164	<b>2001</b>	1,800
<b>1963</b>	1,264	<b>2002</b>	1,600
<b>1964</b>	1,399	<b>2003</b>	1,700
<b>1965</b>	1,455	<b>2004</b>	1,718
<b>1966</b>	1,778	<b>2005</b>	2,023
<b>1967</b>	1,934	<b>2006</b>	1,956
<b>1968</b>	2,179	<b>2007</b>	2,150
<b>1969</b>	2,621	<b>2008</b>	2,219
<b>1970</b>	2,980	<b>2009</b>	1,801
<b>1971</b>	3,032		

**Data from:** Council for Research of Productive Resources (SOPS), Russian Academy of Sciences and the “Soyizmorniiproekt”

**Table 22.2** Main characteristics of ship cargoes along the Northern Sea Route from 1985 to 2006

Year	Cargo characteristics			
	Total cargo volume (1,000 tons)	Liquid cargo (1,000 tons)	Quantity of cargo (pieces)	Number of transport voyages (trips)
1985	6,181.3	1,013.5	296	1,115
1990	5,510.5	854.0	252	886
1995	2,361.3	226.4	134	309
2000	1,587.0	287.1	52	169
2001	1,800.0	353.3	60	194
2002	1,599.6	288.6	47	170
2003	1,695.0	394.5	47	160
2004	1,717.5	360.5	47	160
2005	2,022.6	562.0	48	168
2006	1,956.0	584.1	47	180

**Data from:** Council for Research of Productive Resources (SOPS), Russian Academy of Sciences and the “Soyizmorniiproekt”

Four years later, just before end of the Soviet Union [24], *Regulations For Navigation on the Seaways of the Northern Sea Route* were officially published.

The NSR has been defined by the Russian Federation [14] in its federal law: “*About Internal Sea Waters, Territorial Waters and Adjacent Area of the Russian Federation.*” Article 14 of this Russian law (as amended on 23 July 2008 by Article 61 of federal law No. 160) states:

Navigation on the seaways of the Northern Sea Route, a historically developed national uniform transport communication of the Russian Federation in the Arctic, including through the Vil’kitski, Shokal’skiy, Dmitry, Laptev and 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 authorized by the Government of the Russian Federation and published in the Notices to Mariners.

Russian Federation [15] *Regulations Regarding the Northern Sea Route and the Arctic Region*, summarized information concerning the legal regime of the Northern Sea Route. Revision of existing regulations and development of new regulations governing maritime transport, ordered that previous regulations and orders of the Soviet Ministry of Marine on the Northern Sea Route and Arctic region shall be considered to:

- Have lost force according to Appendix 1 of the *Regulations*;
- Be in full force and effect according to Appendix 2 of the *Regulations*;
- Remain in force, but subject to revision, according to Appendix 3 of the *Regulations*; and
- Involve service of the Navy, including revision of acts listed in Appendix 3 of the *Regulations* for naval research and development in 1999.

Additionally, regulations from the Ministry of Transport of the Russian Federation [22] involves *Rules of Pilotage in Ice-Covered Waters*. Current information about rules and regulations governing the Northern Sea Route can be found on the official website of Ministry of Transport of the Russian Federation [23], including the following documents.

- *Commemorative Booklet to the Owner or Master of a Vessel;*
- *Regulation for Navigation on the Seaways of the Northern Sea Route;*
- *Regulations for Icebreakers and Pilot Guiding of Vessels through the Northern Sea Route;*
- *Requirements for the Design, Equipment and Supply of Vessels, Navigating the Northern Sea Route;*
- *Federal Rates Service (Order No. 322-T from 26 July 2005).*

One of the main issues of interest to foreign vessel owners is the amount of fees that Russian and foreign users of the NSR are obliged to pay for transiting through the NSR. On one hand, using the NSR provides a shorter distance route between the Atlantic and Pacific Oceans, as compared to transit through the Suez or Panama Canals. On the other hand, high fees collected by Russian organizations raises the question about whether using the NSR is disadvantageous from an economical point of view. Moreover, one may ask, why do I have to pay if I do not need services of a Russian icebreaker? For example, I am a German vessel owner and I have my own icebreaker capable to transit the NSR without any assistance of Russian icebreakers.

The Russian Open Joint Stock Company (OJSC), “*Murmansk Shipping Company*” (MSC), renders much of the services to ships on routes of the NSR. It is believed that since the NSR is a “*Russian national seaway*”, then Russian and foreign shipping companies have to pay the MSC for using the NSR.

The main problem arises when we address legal grounds of such payments, imposed to users of the NSR. In this case aspects of public law and private law have to be analyzed thoroughly. Public law aspects mainly refers to interests of protection of the environment, safety of navigation and other features. Private law aspects refer to fees that the MSC (recently also the State corporation “Rosatom” for nuclear icebreakers) as NSR operators want to obtain from foreign vessel owners. It would be reasonable to elaborate comprehensive modern approach that separates public and private law aspects for imposing charges to foreign users of the NSR [5, 26].

Let us give an example based on the Supreme Court ruling of the Russian Federation [13], which admitted the position of the MSC. In accordance with this position, the legal ground for the collection of fees did not reside on the fact that the vessel owner uses MSC’s services, including the pilotage in ice-covered waters. It referred to the fact that the vessel *actually* is on the NSR. Then, the fee shall financially cover all measures intended to operate the NSR as a whole system properly. The logic implied that on the one hand there are private relationships governed by private law, and you do not pay for services since you do not get services. But on the other hand public interests require collection of fees anyway, even if vessel owners use the NSR without the official support by the MSC. This means that one is obliged to pay regardless of whether the vessel owner needs or actually gets a service.

One has to pay because he simply enters the NSR, and he pays for the fact that the NSR exists and is properly maintained.

Due to the lack of clear public law concerning the NSR, recent judicial practice views private law as the priority. This legal position is not in line with the legal grounds that Russian organizations rely on for their right to collect fees for vessels using the NSR. Since there is no comprehensive legislation designating a competent government authority to protect public interests, arbitration courts primarily refer to Civil Codes of the Russian Federation [11, 12, 16, 17] and apply the following logic: ‘no services – no fees.’

For example, the Supreme Arbitration court of the Russian Federation [18] ruled on December 12, 2007 that the MSC is not entitled to collect fees from OJSC “*GMK Noril'sy Nickel*” when the claimant failed to prove that it actually rendered services of pilotage in ice-covered waters to *Nornikel*. The Court referred to articles 1, 307 and 779 of the Civil Code of the Russian Federation [11, 12, 16, 17] and decided that relationships between the parties arose from NSR usage shall be governed by rules applicable to contracts for rendering services.

The same position was confirmed by another court decision [19]. The Court judged that since the vessel operated by the Respondent party (*Nornikel*) is technically suitable to operate ice-covered waters without pilotage services in ice-covered waters, then the Claimant is not entitled to collect fees. The Claimant position was as always a referral to simple fact of using NSR (‘you use the NSR – you pay’). The Court did not make any referrals to public law interests (such as environmental protection) since MSC is not a governmental authority to ensure public interests.

## 22.3 Future Development of the North Sea Route

Despite the fact that there is little experience of leading high capacity vessels under Arctic conditions [6], high-capacity container ships and tankers for use in the Arctic (displacement more than 100,000 tons) are already being designed and built. However, due to their high construction cost, it seems reasonable to conduct experimental voyages with scientists and experts from different countries on board. In fact, the history of development of new technologies for Arctic navigation shows that new stages have been preceded by experiments:

- In August 1969 – accompanied by the Canadian Coast Guard icebreakers “*John A. Macdonald*” and “*Louis S. St-Laurent*” along with the United States Coast Guard icebreakers “*Northwind*” and “*Staten Island*” – the “*SS Manhattan*” (a 305-m oil tanker with 106,000 DWT) became the first commercial ship to cross the Northwest Passage;
- Year-round navigation along the Enisey River to Dudinka port proceeded from 1970 to 1978;
- In winter 1976, there was a cargo shipment to Yamal with unloading on fast ice;
- On 17 August 1977, the Soviet nuclear icebreaker “*NS Arktika*” became the first surface vessel to reach the North Pole;

- Transit voyages along Northern Sea Route in April-May under the most difficult ice conditions (1993–1994);
- In winter 1998, there was export of gas condensate from Ob' Bay as part of the international project, ARCDEV, that involved a “*demonstration voyage and various research activities and investigations related to commercial shipping transport of hydrocarbons from Russian arctic to European market area*” [2].

Prior to mass construction of high capacity vessels to transit the NSR, the “*Noncommercial Partnership for the Coordination of Northern Sea Route Usages*” has suggested an ‘*Arctic Shuttle Project*’ to address variants of practical implementation of the NSR corridor:

- Year-round efficient and safe navigation of transport vessels with high ice class in Arctic ice escorted by powerful icebreakers (including nuclear icebreakers) along the most suitable routes (both coastal and high latitudinal), depending on real-time (current) ice conditions;
- High ice-class vessels (being the most expensive) should be used only on the ice-covered part of the route. The running expenses and capital costs of high ice-class vessels are higher as compared to ordinary vessels;
- Ordinary vessels (without ice-class, faster, cheaper, and more economically efficient) should be used on open-water parts of the route. Loading of these ordinary vessels may be done in the ports of Germany, the Netherlands and other European countries in the West and in the United States, Japan, China and other nations in the East;
- Reloading of cargo can be done in the ports, nearest to the ice zone such as Murmansk, Arkhangelsk and Kirkenes in the West and Provideniya, Adak, Dutch Harbour, Anchorage, Petropavlovsk and Kamchatsky in the East.

Emphasis of the Russian government to develop the NSR was reinforced by comments from Prime Minister Vladimir Putin at the Second International Arctic forum convened by the Russian Geographic Society (“*The Arctic – Territory of Dialogue*”) in Arkhangelsk on 23 September 2011, when he noted:

Developing modern infrastructure along the Northern Sea Route is a major objective. We are launching a comprehensive transport project designed to ensure the dynamic development and exploration of our northern territories, resolve vital economic and social challenges and create new production lines and jobs. We are planning to expand existing ports and build new ones, for instance the Port of Varandei by the Yugorsky Shar Strait and the Sabetta Port on the Yamal Peninsula. The NSR and its major harbours will be integrated with other modes of transport. We are also planning to upgrade river, car and railway routes and communications, northern airfields, airports and polar aviation. We are going to considerably expand our ice-breaker fleet. Today we have 10 ice-breakers. We intend to build another three all-purpose nuclear-powered icebreakers and six diesel-electric ones before 2020. We have allotted 38 billion roubles for this purpose until 2014 [9].

Overall, development of the NSR is a significant feature of the Arctic policy of the Russian Federation [20], which covers the period until 2020. Similarly, the national maritime strategy of the Russian Federation [17] is relevant to the Northern Sea Route for the period until 2020. Moreover, the transport strategy of the Russian Federation [21] is specifically relevant to Arctic shipping across the

NSR through 2030 with relevance “*in the field of research, development and use of the oceans in the interest of security, sustainable economic and social development of States.*”

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