

## **International, legal and economic aspects of providing transportation along the Northern Sea Route**

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**Abstract.** The article examines the importance of the Northern Sea Route in ensuring stable international transport for the needs of the world economy. The article considers the regulation of the Northern Sea Route in the context of national legislation and international legal norms. At the same time, international conventions and legal acts of the Russian Federation regulating the legal regime of the Northern Sea Route have been analyzed.

**Keywords:** Arctic, Northern Sea Route, cargo transportation, transport system, sea transport.

In the context of the globalization of the world economy, when suppliers of various goods can be located in different parts of the world, they acquire transport communications that ensure the delivery of the required goods. The most important elements of the world transport system are international straits and artificial sea canals.

A huge role in the modern world economy is played by the Panama Canal, which makes it possible to reduce thousands of nautical miles when crossing from the Pacific Ocean to the Atlantic Ocean, and the Suez Canal, which allows the shortest route from the Indian Ocean to the Mediterranean Sea.

So, 14,019 ships passed through the Suez Canal from January to September 2020,<sup>1</sup> approximately the same number of ships passed through the Panama Canal during this period of time.

Given the huge role of these channels in world trade, the most important indicator is ensuring the stability of the supply of goods through these channels.

The huge vulnerability of these structures was demonstrated by the accident that occurred on March 24, 2021 with the container ship "Ever Given", which ran aground in the southern part of the Suez Canal and completely blocked traffic in both directions. Losses to the global economy due to the said blockage of the Suez Canal could amount to up to 10 billion US dollars.<sup>2</sup>

In this regard, it is worth considering the prospects for using the Northern Sea Route (hereinafter referred to as the NSR) to ensure a stable supply of goods for the needs of the world economy. At present, the Russian Federation seeks to create, within the NSR, a Eurasian maritime transport artery along which navigation will be ensured through centralized government from Russia.

Currently, the operation of the NSR is influenced by the international situation, within which this northern shipping line becomes of interest to international freight carriers who seek to establish their own rules for the use of NSR, taking advantage of the fact that the problems associated with the creation of modern infrastructure for the proper operation of the NSR were previously rather slowly solved, satisfying the requests of Russian and international shipping companies involved in the movement.

The identified problems are reflected in the strategy for the development of maritime activities of the Russian Federation until 2030, approved by the Government of the Russian Federation.<sup>3</sup> So, now in the direction of sea transport traffic management, significant success has been achieved (the volume of cargo transportation has been increased, the technical equipment of ports has been improved, etc.). Thus, in accordance with the provisions of the Maritime Doctrine of the Russian Federation, the preconditions have been created for the functioning of this highway as a national transport communication with the possibility of international use, competitive in relation to traditional sea routes in terms of the quality of transport services and safety of navigation within the framework of the current national legislation.<sup>4</sup>

Since the active participation of the Russian Federation in the system of international relations, the management of NSR is determined within the framework of the formation of a new geopolitical status of the country, which has led to an increase in the volume of cargo transportation by foreign transport companies and shippers by NSR, since transportation by NSR

is becoming of interest to foreign transport companies, since the considered transport highway , allows you to deliver goods to the Pacific coast in the shortest possible time.

In 1997, the Russian Federation acceded to the UN Convention on the Law of the Sea, providing that it does not accept the procedures specified in Section 2 of Part XV of the Convention leading to the adoption of binding decisions by the parties on disputes related to historical bays, the exclusive economic zone, and the delimitation of maritime boundaries<sup>5</sup>.

It is important to note that the 1982 UN Convention on the Law of the Sea has not been ratified by the United States to date, but they are trying to increase their presence in the polar space, along with Canada and the European Union.

Currently, the Russian Federation is developing NSR as a historical transport communication of the Russian Federation, however, this process is influenced by the changed geopolitical situation, which is complicated by the following factors:

- Norway's desire to oust the Russian Federation from the Svalbard archipelago or reduce the Russian presence in the archipelago and reconsider the status of the archipelago as a demilitarized zone. In particular, Norway has unilaterally established a fish protection zone of 200 nautical miles in the area of this archipelago, which is not recognized by the Russian Federation.<sup>6</sup>

- China, Japan and South Korea are considering NSR as a promising transport hub and an alternative to the Suez Canal, since the transportation of goods through the NSR is 15% more profitable than using standard Asian sea routes for this.<sup>7</sup>

- due to the ongoing climatic changes and the reduction of ice-covered territories, the volume of transported goods on the NSR is increasing.

Thus, in August 2017, the Christophe de Margerie tanker sailed along the NSR in less than 7 days, becoming the world's first merchant vessel that covered the entire route along the NSR without icebreaker assistance.<sup>8</sup>

Consequently, today the regulation of navigation according to NSR from the standpoint of Russian legislation is determined by the following structure:

- 1) ratified norms of international law;
- 2) federal legislation governing the rules for the movement of ships in the territorial sea and inland sea waters, as well as the rules for carrying out transportation by water transport;
- 3) by-laws and local regulations governing certain issues of the operation of NSR infrastructure facilities, trade transit rules, etc.

At the level of federal legislation, transportation by NSR is regulated by the Federal Law of July 31, 1998 № 155-FZ "On internal sea waters, the territorial sea and the contiguous zone of the Russian Federation."<sup>9</sup>

Considering that according to NSR the first commercial foreign vessel passed with the permission of the Russian authorities only in 2010 (bulk carrier Nordic Barents), the position of the Russian Federation, based on the doctrine of historical waters, is justified.

In addition, a sufficient basis for establishing national sovereignty in relation to NSR is the regulation by Russian legislation of transportation on this route for many decades.

At the same time, the Russian Federation does not interfere with international shipping along the NSR, since navigation along this northern route contributes to the socio-economic development of the region as a whole.

However, obtaining the economic benefit and political advantage from the ownership of the right to manage and implement the licensing system within the NSR imposes additional responsibilities on the Russian Federation. According to the UN Convention on the Law of the Sea, the Geneva Convention "On the High Seas", the Russian state is one of the Arctic states, which, having exclusive rights to own and manage part of these territories, are obliged to ensure proper control over the preservation of environmental safety in the region.<sup>10</sup>

Since transport traffic on the NSR increases annually, the Russian Federation needs to pay special attention to the environmental situation in this region.<sup>11</sup>

Understanding the identified problem, the Decree of the President of the Russian Federation dated March 5, 2020 № 164 "On the foundations of the state policy of the Russian Federation in the Arctic for the period up to 2035" defines the main measures aimed at maintaining a favorable environmental situation in the Arctic.<sup>12</sup>

Considering that the Arctic and NSR are, among other things, objects of economic interest of the Russian Federation, and are also recognized as one of the main resource bases of the state, the preservation of environmental stability in the region belongs to the sphere of national interests of the Russian Federation not only within the designated period, but in the long term.

Within the framework of this article, we should pay special attention to the problems of interpretation and application of certain provisions of international normative documents and the resolution of disagreements between the Russian Federation and other subarctic countries in relation to NSR.

One of these problems is the legal interpretation of Article 234 of the UN Convention on the Law of the Sea. The Russian Federation has special rights to develop its own national interests within the NSR, in the aspect that territorial development and navigation within it was initiated by the Russian state in the XVI century and continues up to the present moment, which gives grounds to consider the NSR as a historically established national maritime transport communications.

Moreover, the above article of the UN Convention on the Law of the Sea provides for special legal regulation for states whose borders are located within the maritime regions of the Arctic.<sup>13</sup>

The content of Article 234 of the UN Convention indicates the possibility of a legislative initiative by states, whose borders lie in coastal areas, aimed at ensuring the rules of use, navigation, research and prevention of environmental pollution.

In this regard, the direct interpretation of the content of Article 234 of the UN Convention gives the Russian Federation all the grounds to ensure control over maritime navigation in the area of the Northern Sea Route. At the same time, it is obvious that due to the decrease in the areas covered with ice in the Arctic Ocean, the issue of the internationalization of the use of NSR by a number of states will be actively discussed at the international level. In particular, the United States of America views the NSR exclusively as an international strait that must be open for transit passage.<sup>14</sup>

In this regard, the Russian Federation needs to maintain control over the navigation of ships in the NSR area and ensure the preservation of a special legal framework for states whose borders go to ice-covered areas.

Article 234 of the UN Convention on the Law of the Sea under consideration contains a commentary on a number of characteristics that should be possessed by the territories adjacent to the Arctic state: the presence of severe climatic conditions, a strong ice shelf, which retains its stability for most of the year, is mandatory.

In this regard, it is necessary to take into account the influence of the climate on the observance by the participants of international relations of the above article of the UN Convention on the Law of the Sea.

Consequently, according to Article 31 of the Vienna Convention "On the Law of Treaties" 1969, each existing treaty is binding on its participants and must be fulfilled in good faith by them, and the interpretation of the norms of international treaties should be based on the objectives of this treaty.<sup>15</sup>

Consequently, if we take into account the intentions of the states that signed the Convention under consideration, and the meaning that was put into the concept of "ice-covered areas", it seems possible to talk about the extension of Article 234 of the UN Convention on the Law of the Sea to the Arctic areas as a whole. Therefore, the concept of "ice-covered areas" and the Arctic, in relation to the Convention under consideration, should act as synonyms, and therefore the strict observance of this article of the UN Convention on the Law of the Sea by all participants in international relations is the main task of Russia.

## References

<sup>1</sup> See: [https://www.korabel.ru/news/comments/sueckiy\\_kanal\\_uvelichil\\_trafik\\_po\\_sravneniyu\\_s\\_proshlym\\_godom.html](https://www.korabel.ru/news/comments/sueckiy_kanal_uvelichil_trafik_po_sravneniyu_s_proshlym_godom.html) (appeal date: 11.03.2021).

<sup>2</sup> See: Demidov A. Losses from blocking the Suez Canal can reach \$ 10 billion // *Gazeta.ru* – URL: [https://www.gazeta.ru/business/news/2021/03/26/n\\_15786224.shtml](https://www.gazeta.ru/business/news/2021/03/26/n_15786224.shtml) (appeal date: 27.03.2021).

<sup>3</sup> See: Order of the Government of the Russian Federation of August 30, 2019 № 1930-r "Strategy for the development of maritime activities of the Russian Federation until 2030" // Government of the Russian Federation. – URL: [http://marine.gov.ru/upload/iblock/5f1/5f11cdf55677558636\\_0a5905054c3ec3.pdf](http://marine.gov.ru/upload/iblock/5f1/5f11cdf55677558636_0a5905054c3ec3.pdf) (appeal date: 03.03.2021).

<sup>4</sup> See: The maritime doctrine of the Russian Federation approved by the President of the Russian Federation on July 26, 2015 // President of the Russian Federation. – URL: <http://static.kremlin.ru/media/events/files/ru/uAFi5nvux2twaqjftS5yrIZUVTJan77L.pdf> (appeal date: 03.03.2021).

<sup>5</sup> See: Federal Law of February 26, 1997 № 30-FZ "On the Ratification of the United Nations Convention on the Law of the Sea and the Agreement on the Implementation of Part XI of the United Nations Convention on the Law of the Sea" - URL: <https://base.garant.ru/2540664/> (appeal date: 03.03.2021).

<sup>6</sup> See: Kolodkin R.A. Agreement with Norway: demarcation for cooperation // *Maritime law and insurance* – 2021. - № 1. – P. 105.

<sup>7</sup> See: Kudrevich V. Arctic new challenges: how to make the Arctic Ocean not an arena for a new geopolitical confrontation, but a territory of economic cooperation // *TASS*. – URL: <https://tass.ru/spec/arctic> (appeal date: 03.03.2021).

<sup>8</sup> See: Results of work of PJSC "Sovcomflot" in the 1st half of 2017. URL: [http://www.scf-group.com/press\\_office/press\\_releases/item91971.html](http://www.scf-group.com/press_office/press_releases/item91971.html) (appeal date: 11.03.2021).

<sup>9</sup> See: Federal Law of July 31, 1998 № 155-FZ "On internal sea waters, the territorial sea and the contiguous zone of the Russian Federation" // SPS "Consultant-Plus". – URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_19643/](http://www.consultant.ru/document/cons_doc_LAW_19643/) (appeal date: 03.03.2021).

<sup>10</sup> See: 1982 United Nations Convention on the Law of the Sea // *Electronic Fund of Legal and Regulatory and Technical Documentation – Consortium Codex*. – URL: <http://docs.cntd.ru/document/1900747> (appeal date: 03.03.2021).

<sup>11</sup> See: Savenkov A.N. The Arctic: Legal Support for Sustainable Development and Cooperation // *Proceedings of the Institute of State and Law of the Russian Academy of Sciences*. - 2018. – Volume 13. - № 1. – P. 24.

<sup>12</sup> See: Decree of the President of the Russian Federation of March 5, 2020 №-164 "On the Fundamentals of State Policy of the Russian Federation in the Arctic for the Period up to 2035" // *IPO "Garant"*. – URL: <https://www.garant.ru/products/ipo/prime/doc/73606526/> (appeal date: 03.03.2021).

<sup>13</sup> See: Vylegzhanin A.N., Nazarov V.P., Bunik I.V. Northern Sea Route: towards solving political and legal problems // *Bulletin of the Russian Academy of Sciences*. 2020. Volume 90. №12. P.1114.

<sup>14</sup> See: Shitikov V.D., Guseinov G.M., Chirkov A.D. Comparative legal analysis of the peculiarities of the legal status of the Northern Sea Route and the North-Western Passage // *Issues of Russian and International Law*. 2019. Volume 9. № 4A. P. 110.

<sup>15</sup> See: Vienna Convention on the Law of Treaties of May 23, 1969 // *United Nations Organization*. – URL: [https://www.un.org/ru/documents/decl\\_conv/conventions/law\\_treaties.shtml](https://www.un.org/ru/documents/decl_conv/conventions/law_treaties.shtml) (appeal date: 04.03.2021).