

## RUSSIA ON THE NORTHERN SEA ROUTE: HAVING THE CAKE AND EATING IT TOO?

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Today Russia implements two different approaches to managing the Northern Sea Route (NSR). The first one entails signaling openness for international cooperation, foreign investments and cargo with the aim to develop the NSR into a globally competitive maritime route. Such approach is evident both from the statements of the high-ranking Russian officials and the strategic documents dedicated to the Arctic region. The other pattern is reflected in Russia's willingness to impose limitations on foreign shipping on the Route. In addition to the permission-based national regime for navigation on the NSR, since 2018, Russia has ruled out certain maritime activities on the Route carried out by vessels flying non-Russian flags. Further measures for ships built outside Russia, as well as foreign warships, are being discussed. Taken together, these trends could lead to a suggestion that Russia sees the future development of the Northern Sea Route in attracting foreign investments and cargo, but not the vessels. However, additional layer of inconsistency emerges in Moscow's attempts to justify the harsh national permission-based regime and national measures aimed at limiting foreign shipping on the NSR. The main argument by the Russian authorities is the special responsibility of the coastal state for the safety of navigation and protection of the marine environment. Yet, the practice indicates that the state is sometimes reluctant to keep high environmental and safety standards – both due to the lack of efficient law enforcement mechanisms and possible unwillingness to challenge the economic development of the region. The article concludes with the suggestion that Russia will need to more clearly decide the future course of development for the NSR and adjust the navigation regime and law enforcement mechanisms accordingly.

**Keywords:** Arctic, Northern Sea Route, Law of the Sea, shipping, security, environmental protection.

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The Northern Sea Route (NSR) plays an important role in Russia's plans for the development of the Arctic. It is actively engaged in the export of natural resources mined in the Arctic; it is the shortest sea artery connecting the European part of the country with Siberia and the Far East. It is not surprising, therefore, that in recent years the development of the NSR has received a powerful impetus. The volume of cargo traffic is growing, plans are being actively implemented to build a powerful icebreaker fleet. In 2021, a significant event for the NSR was recorded: for the first time in history, at the height of the winter season, ice-class liquefied natural gas (LNG) tankers passed through it eastwards without icebreaking assistance, bringing closer the achievement of the goal of ensuring year-round shipping along the entire water area of the NSR [1].

Despite the fact that oil and gas projects in the Russian Arctic remain the main driver for the growth of navigation along the NSR, the Russian authorities expect to increase the route's attractiveness for international transportation as well. In 2011, President Putin stated that it was "much more profitable for ships to pass

through the NSR than through the Suez Canal" [2]. Subsequently, the authorities of the country repeatedly urged foreign partners to use the NSR [3]. The goals for its development not only as a national route but also as a transport artery competitive in the world market for the transportation of international cargo are laid down by the government in the strategic documents adopted in 2020 for the development of the Arctic.

However, in recent years there has been another trend. Against the backdrop of deteriorating relations with Western countries after 2014 and the sanctions they have imposed, Russia is increasingly inclined to tighten the regime of navigation along the NSR and limit the presence of foreign vessels there. At the same time, in an attempt to protect the interests of domestic companies in the region, the authorities unwittingly question the basic values on which Russia relies when justifying a strict national regime for the access of ships to the NSR water area.

This paper is an attempt to analyze the dual approaches of the Russian authorities to the management of the NSR and the possible consequences for the Russian Federation of such inconsistency.

## INTERNATIONAL AMBITIONS OF THE RUSSIAN AUTHORITIES REGARDING THE NSR

The consistent increase in cargo traffic along the NSR over the past seven years (from 4 million tons in 2014 to 33 million tons in 2020 [4]) is mainly due to an increase in the volume of imported building materials and exported resources from the Russian Arctic and is directly related to implementation or construction of large oil and gas projects – Yamal-LNG, Novy Port, Arctic-LNG-2, etc. [5, p. 8]. Transit flows, despite an upward trend (the volume of transit shipping increased from 0.3 million tons in 2014 to more than 1.2 million tons in 2021), today account for a modest 3% in the structure of freight [6]. It should also be taken into account that these transit statistics include not only international traffic but also domestic shipping to or from ports outside the NSR (for example, Sabetta-Murmansk, Murmansk-Vladivostok, etc.).

The relatively low rates of international transit along the NSR (about 1 billion tons of cargo pass through the Suez Canal annually [7]) are largely due to geographical, climatic, and economic factors. Natural restrictions in the form of a short navigation season and the presence of ice contribute to curbing the cardinal growth of transit traffic. Even in the face of unprecedented melting of the Arctic ice cover in the coming decades, the polar routes will be covered with ice for most of the year, creating the risk of collision with drifting ice and icebergs [8]. Commercial container shipping along the NSR will be hampered by the need to invest in ice-class vessels that are effective only in the polar regions, high insurance risks, lack of infrastructure along the NSR, a high probability of delays in delivery due to harsh navigation conditions, the absence of large transshipment hubs on the route, important for increasing the profitability of regular transportation, etc. [9]. At the moment, the largest foreign shipping companies (in particular, Maersk, CMA CGM, Hapag-Lloyd) do not see the NSR as a serious commercial alternative to existing international routes [10], and the Chinese COSCO Shipping remains the only foreign company actively showing interest in the transit opportunities of the NSR (in 2020, the ships of the Chinese company made 8 voyages along the NSR, in 2019 – 11, 2018 – 6<sup>1</sup>).

At the same time, attracting international transit flows occupies a prominent place in the plans of the Russian authorities to achieve the presidential target of 80 million tons by 2024 [11] and further develop the NSR. Strong statements by high-ranking offi-

<sup>1</sup> *Permissions for Vessels on the Northern Sea Route*. The Northern Sea Route Administration. (In Russ.) Available at: [http://www.nra.ru/ru/rassmotrenie\\_zayavleniy/razresheniya.html](http://www.nra.ru/ru/rassmotrenie_zayavleniy/razresheniya.html) (accessed 04.02.2021).

cial about its international potential continue to be heard. In particular, in 2020, the head of the Ministry of the Russian Federation for the Development of the Far East and the Arctic (Minvostokrazvitiya) Aleksey Chekunkov, whose competence includes issues of the development of the Arctic, admitted that the emergence of year-round shipping could ensure competition between the NSR and the Suez Canal and would make it possible “to pull away part of the transport flows – more than 700 million tons per year” [12]. Subsequently, however, Chekunkov made an adjustment, naming a much more modest, but still significant figure – 10 million tons by 2030 [13].

In the Strategy for the Development of the Arctic Zone of the Russian Federation adopted in 2020 for the period up to 2035 (hereinafter referred to as the Strategy) [14] and the Fundamentals of the State Policy of the Russian Federation in the Arctic for the same period (hereinafter referred to as the Fundamentals) [15], considerable attention is paid to the promotion of the international transit potential of the NSR. In particular, as one of the tasks of Russia in the Arctic, the Fundamentals call “increasing the volume of national and international transportation of goods along the Northern Sea Route” (clause 28 “d”), and one of the main indicators of the effectiveness of the policy of the Russian Federation in the region is considered to be “the freight volume in the waters of the Northern Sea Route, including transit traffic” (clause 26 “o”). The Strategy contains a plan for the development of international container traffic along the NSR: it is planned to “construct hub ports and create a Russian container operator in order to ensure international and domestic shipping in the waters of the Northern Sea Route” (clause 13 “g”). At the second stage of the implementation of the Strategy (2025–2030), it is envisaged “to ensure year-round navigation throughout the entire water area of the Northern Sea Route” and “the start of construction of hub ports for transshipment of international container cargo” (clause 31 “e”), and at the third (2031–2035) – “the formation on the basis of the Northern Sea Route of a competitive national transport communication of the Russian Federation on the world market and the completion of the construction of hub ports” (clause 32 “d”).

More detailed plans for unfolding the transit potential of the NSR are contained in the Northern Sea Transit Corridor (NSTC) project of Rusatom Cargo, a company that is part of the structure of the main operator of the NSR – the state-owned corporation Rosatom. According to the project, it is planned to establish an international transit container line along the NSR between two hub ports to be built, one for each the western and eastern borders of the NSTC (most likely, these will be Murmansk and Kamchatka) [16].

The essence of the idea is that the containers will be delivered to the port hubs by regular ships, then reloaded onto ships with ice reinforcement and transported to the second transshipment arm of the NSTC. For these purposes, Rusatom Cargo intends to build its own fleet of Arc7 ice-class container ships with a capacity of approximately 5,000 TEU<sup>2</sup>. Thus, this will allow foreign companies potentially interested in using the NSR to avoid the need to invest in ice-class vessels and the risks associated with navigation in the harsh conditions of the Arctic. The pilot stage of the project involves transportation of 8–10 million tons per year starting from 2024 (which is in line with the latest statements by the representative of Minvostokrazvitiya), with the potential for further increase. Rusatom Cargo also announced negotiations with DP World (one of the world's largest port operators headquartered in the UAE) and Creon Energy Fund (an investment fund established in Luxembourg) to invest in this project [16].

Questions still remain about the NSTC project: where will the fleet of ice container ships be built, will there be interest from foreign companies capable of providing the declared freight volumes, how the issue of cargo insurance will be resolved, etc. However, the obviousness of the vector on international cooperation and attraction of foreign cargo and investments for the development of the NSR is beyond doubt. In this regard, another question arises: to what extent does the current national shipping regime on the NSR meet these ambitions?

#### TOWARDS RESTRICTING FOREIGN SHIPPING

The NSR includes water areas that have different legal status and regimes – internal waters, territorial sea, contiguous zone, and the exclusive economic zone (EEZ) of Russia. As a general rule, a coastal state extends its sovereignty only to internal waters and territorial sea within 12 nautical miles from the coast, where it can adopt its rules of navigation (with a significant exception in the form of the right of innocent passage in the territorial sea), while beyond 12 miles freedom of navigation applies. However, according to the national legislation, Russia interprets the entire set of different maritime zones within the NSR as a single whole – “the historically established national transport communications of the Russian Federation” [17, clause 14]. This made it possible to extend a unified navigation regime to the entire area of the NSR. In accordance with the Navigation Rules along the NSR [18], in order to access the waters of the NSR,

<sup>2</sup> TEU (*twenty-foot equivalent unit*) is a unit of container cargo volume.

Russian and foreign vessels must obtain permission from the Russian authorities represented by the NSR Administration. The conditions for admission to the NSR vary depending on the ice class of the vessel, the season, and the ice conditions in the areas in which navigation is planned. Among other things, the rules of navigation in the NSR require masters to provide information about the route, regularly report on the position and condition of the vessel, etc. Moreover, the rules provide for mandatory ice pilotage and, in some cases, icebreaking assistance.

In establishing the permit procedure for passage along the NSR, Russia relied on certain international legal arguments (see below). Practice shows that for the time being foreign vessels comply with the Russian rules on the NSR. At the same time, not all countries recognize the legitimacy of the Russian regime. Since the 1960s, the position of the USSR/Russia regarding the legal regime of some straits of the NSR has been officially challenged by the United States [19], and in 2015 the Americans filed a diplomatic protest against the regime of regulation of navigation along the NSR as a whole [20].

Russia's desire to secure control over vital transport communications is understandable. However, it is also obvious that the permit procedure for passage along the NSR hardly corresponds to the tasks of developing international shipping and attracting foreign cargo.

Comparing the NSR with key straits and channels for international navigation, one can see that in order to facilitate the international cargo flow through them, the coastal states guarantee freedom of navigation. Particularly, despite the fact that the waters of the Suez Canal are covered by the internal waters of Egypt, in accordance with the Constantinople Convention of 1888, the Canal is declared free and open to ships, regardless of states' ownership. The coastal states adjacent to the Strait of Malacca are implementing trilateral cooperation aimed at ensuring the openness of the straits for all ships [21, p. 562]. The same applies to the Strait of Gibraltar, in respect of which Spain and Morocco did not make serious attempts to restrict the freedom of navigation [22, p. 198].

Moreover, Russia's new regulatory measures in relation to the NSR, adopted or initiated over the past few years, indicate its desire for even greater national control over the NSR by restricting foreign shipping. In December 2017, the President of Russia signed an act that, among other things, gives the vessels sailing under the state flag of the Russian Federation the exclusive right to ship and store oil, natural gas, and other mineral resources extracted in Russia or in the territory under Russian jurisdiction [23].

The new rules have caused concern among foreign shipping companies operating on the NSR. In particular, after changes were made to the Russian legislation, representatives of Denmark reached out to the Ministry of Transport of Russia with a request to clarify a number of issues [24]. However, to a greater extent, the new rules hit not foreign companies, but Russian ones. Most of the ships of one of the largest operators on the NSR, Novatek, are registered outside the Russian Federation. As a result, in March 2019, the government was forced to make a number of exemptions from the new act allowing sea transportation of LNG by Novatek's chartered ships, as well as removing restrictions on the shipping of resources loaded in Sabetta port [25].

In addition, in accordance with the 2017 amendments, only vessels under the Russian flag are allowed to carry out icebreaking assistance on the NSR. So far, this measure has not caused a serious international outcry, but it is likely that later on some countries may have questions. For example, China, which is building its own icebreakers to expand its presence in the Arctic and, in particular, on the NSR, is now deprived of the opportunity to use icebreakers under the Chinese flag on the route to escort its ships.

In March 2018, the Ministry of Industry and Trade of the Russian Federation proposed further tightening of the navigation regime along the NSR by prohibiting the use for the same purposes as specified in the amendments from December 2017 (shipping of oil and gas, icebreaker assistance and pilotage, etc.) of vessels constructed abroad. According to the explanations of the draft's authors, the project was prepared in order to increase the operations of the Russian shipyards and implement plans for import substitution in the shipbuilding sector [26]. The main supporters of the act are United Shipbuilding Corporation and Rosneft, which is implementing the Zvezda shipyard project in the Far East in consortium with Gazprombank and Rosneftgaz [27]. However, the draft act received a negative assessment by the Ministry of Economic Development and is currently being finalized [26].

Against the backdrop of the deteriorating military-political situation in the Arctic, the desire of the Russian authorities to strengthen control over the NSR also affected warships. In March 2019, the Ministry of Defense of the Russian Federation submitted proposals to the Government to change the rules for navigation of foreign warships and other governmental ships operated for non-commercial purposes in the waters of the NSR. The draft, among other things, proposes to establish for foreign warships the mandatory submission of the notification of a planned passage through the Russian territorial sea in the NSR no later than 45 days before the expected start date. Although a num-

ber of countries practice the introduction of a permit or notification procedure for the passage of warships through the territorial sea, there are also enough reasons to criticize such a measure – due to both the absence of significant international legal grounds and its inconsistency with the long-term practice of the USSR/Russia [28]. The proposal of the Ministry of Defense was not accepted, and the decision on its expediency, apparently, has been postponed for the time being.

Thus, over the past three years, the Russian authorities have taken or proposed a number of steps to consolidate state control over navigation along the NSR by tightening the regime for navigation of foreign ships. In some cases, these measures were explained by protectionism and economic considerations, in others – by security interests. However, the general trend toward limiting the access to the Russian Arctic for foreign ships is beyond doubt. It seems that this can significantly affect the overall attractiveness of the NSR for foreign investment. Notable in this regard is the fact that Western experts are increasingly discussing the prospects for using high-latitude routes bypassing the NSR in the event that ice continues to melt, including directly through the North Pole, as a possible way to avoid the need to get approvals by the Russian authorities and the associated bureaucratic costs [29].

#### SAFETY VS ECONOMY?

One of the main arguments of Russia justifying the permission-based procedure for navigation along the NSR was, first of all, that a coastal state has primary responsibility for ensuring the safety of navigation and the preservation of the marine environment in the NSR area (see, for example, paragraph 1 of the Navigation Rules on the NSR). As per an authoritative scholar Vylegzhanin, “in these extremely severe polar regions, a non-Arctic state can [safely navigate] only with the consent of the corresponding Arctic coastal state, relying on its coastal infrastructure, its technical means of communication, its ability to respond to emergency situations and pollution of the marine environment, to conduct search and rescue of people and cargo” [30, p. 6]. An important component of the argumentation of the Russian authorities is the reference to Article 234 of the 1982 Convention, which grants the right to coastal states to take and implement measures to prevent, reduce, and control pollution of the marine environment from ships in ice-covered areas within the EEZ [31, p. 75].

However, law enforcement practice on the NSR often diverges from the declared goals. The main problem is that the responsible authorities actually lack the powers to address violations of the rules for navigation

along the NSR. The mandate of the NSR Administration, which is authorized to issue permissions to ships, is limited to checking electronically issued documents, while inspection of the actual condition of a ship is not required [18]. Therefore, in its decisions, the Administration relies primarily on the information of the port authorities. Functions to investigate violations of the rules of navigation along the NSR, in accordance with Article 23.10 of the Code of Administrative Offenses of Russia, are assigned to the Border Guard Service of the Federal Security Service of the Russian Federation. At the same time, when it comes to real cases of violations, issues related to their prevention and bringing the violators to responsibility remain unresolved.

A relevant example is the incident with the Novatek tanker *Boris Vilkitsky*. In March 2018, the vessel, which originally had a high ice class *Arc7*, suffered damage to one of its propulsion systems, and as a result, its class was downgraded to *Arc4*. This meant that the tanker could not sail in the waters of the NSR under medium-heavy ice conditions, even with an icebreaker. However, in April 2018, the tanker entered the NSR (the Kara Sea) under the assistance of an icebreaker, and the NSR Administration declared this a violation of the rules. Only upon the vessel's arrival at Sabetta port, other violations were revealed: lack of maps, ignorance by the master and crew of the basics of ice navigation, etc. [32]. This incident became the reason for the conflict between the Administration of the NSR, which considered the behavior of the vessel "a threat to the safety of navigation and the protection of the marine environment", and Rosatomflot, which did not refuse to assist the violating vessel. Novatek was also an interested party, which experienced a shortage of high ice class vessels for the implementation of the Yamal LNG project [33].

Similar incidents are still happening. Particularly, in October 2020, motor vessel *Sparta III*, owned by Oboronlogistika, violated the conditions of the permit issued to it, going beyond the areas designated therein. Despite repeated warnings, the ship continued its unscheduled route and, being in a difficult ice situation, was damaged. As a result, Rosatomflot had to disengage several icebreakers twice from exercising their regular functions and carry out comprehensive rescue operations [34].

Instead of serving as an impetus for strengthening measures to prevent violations (for example, to establish patrol groups capable of promptly piloting the ship out of the NSR, to increase fines for violations, to deny access to ships in case of recurrence, etc.), such accidents and the resulting conflicts between the Administration of the NSR and interested commercial operators led to the opposite effect. Since 2018, an initiative has been promoted to split the NSR water

area into 28 areas instead of seven large zones. Such a measure would make it possible to extend the navigation of ships with weak ice protection in some areas of the NSR (primarily in the Kara Sea and in the Gulf of Ob), as sought by Novatek [33]. As a result, with the adoption of new navigation rules along the NSR in September 2020, this initiative was implemented, thus actually lowering the overall level of safety on the NSR in the interests of national companies.

These circumstances, together with the fact that after 2018 the website of the NSR Administration stopped publishing information on cases of violations of the rules of navigation along the NSR<sup>3</sup>, suggest that the Russian authorities do not have real mechanisms to maintain the proper level of safety and environmental protection on the NSR, and sometimes the achievement of this goal may even be sacrificed to economic interests. This assumption is supported by the behavior of Russia in the IMO<sup>4</sup> when discussing the introduction of international standards and requirements for ships operating in polar waters: Russia often acts as one of the most persistent opponents of the adoption of new environmental restrictions<sup>5</sup>. At the same time, such a position, obviously, runs counter to the above arguments, which justify the strict national regime of navigation along the NSR as the special responsibility of the Russian Federation for ensuring the safety and preservation of vulnerable ecosystems of the Arctic seas, and negatively affects its international reputation, giving rise to criticism by the international community.

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Today, in Russia's approaches to the development of the NSR, two differently directed vectors can be observed. One is to demonstrate openness to international cooperation, foreign investment and cargo, the desire to turn the NSR into a competitive route of global importance. This message is present both in the statements of government representatives and in the main strategic documents of Russia dedicated to the development of the Arctic. One of the specific plans for the implementation of these tasks is the program to increase the international transit traffic along the route by creating two hub ports on the borders of the NSR,

<sup>3</sup> *Non-Compliant Vessels*. The Northern Sea Route Administration. (In Russ.) Available at: [http://www.nsr.ru/ru/non\\_compliant\\_vessels.html](http://www.nsr.ru/ru/non_compliant_vessels.html) (accessed 04.02.2021).

<sup>4</sup> *International Maritime Organization*.

<sup>5</sup> For example, when discussing the introduction of a ban on the use of heavy fuel oil (HFO) in the Arctic at IMO, Canada and Russia opposed such a measure. After the Canadian delegation withdrew its objections in February 2020, Russia was left alone in opposition. The HFO ban was eventually introduced at the end of 2020, however, due to the efforts of Russia, the final decision of IMO provided for significant easing, allowing coastal states to make exceptions for certain types of their vessels until 2029 [35].

between which cargo will be transported by Russian ice-class container vessels.

Another vector is manifested through an obvious tilt toward limiting the presence of foreign ships on the NSR. In addition to the national permission-based procedure for the passage of ships, since 2018 Russia has banned foreign-flagged ships from conducting certain types of operations in the NSR; similar measures are being discussed with respect to ships constructed outside Russia, as well as tightening the access of warships.

Trying to combine the two indicated trends, one can assume the following: the Russian Federation is striving for the development of the NSR through the influx of foreign investments and cargo only, but not foreign ships. The main argument of Russia in this case is the need for strict control by the coastal state in order to ensure the safety of navigation and protect the environment. However, practice shows that in some cases, Moscow is ready to neglect the interests of security and environmental values – due to both the lack of real mechanisms for monitoring compliance with the rules of navigation in the NSR and the possible un-

willingness to slow down the economic development of the Russian Arctic.

There are serious doubts that such a controversial approach will increase the attractiveness of the NSR for the international community. It is well known, one can not have a cake and eat it too. Probably, Russia will need to more clearly define the vector of development of the NSR and pursue a more consistent policy for its implementation. If the aim is the development of the international potential of the NSR, obviously, the national navigation regime will need to be adapted so that foreign companies and states are ensured of unhindered access to Russian waters, of course, subject to high standards in the field of shipping and marine environment protection. Otherwise, if strengthening national control over the transport artery that is vitally important for the national security and economy, including by limiting the presence of foreign ships, is the priority, it will be necessary either to reinforce the arguments about Russia's special responsibility for protecting the ecosystems of the Arctic and safety of navigation via creating effective mechanisms to ensure prevention of violations, regardless of who commits them, or find more convincing arguments.

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## РОССИЯ НА СЕВЕРНОМ МОРСКОМ ПУТИ: В ПОГОНЕ ЗА ДВУМЯ ЗАЙЦАМИ?

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Данная статья анализирует последние тенденции в подходах России к управлению Северным морским путем (СМП). С одной стороны, РФ демонстрирует желание превратить СМП в конкурентоспособную на мировом рынке транспортную артерию за счет привлечения иностранных инвестиций и грузов. С другой стороны, власти страны все больше стремятся к ограничению присутствия на Севморпути иностранных судов. При этом в попытке защитить интересы отечественных компаний Россия невольно ставит под сомнение убедительность аргументов, на которые она опирается при обосновании жесткого национального режима доступа судов на СМП.

**Ключевые слова:** Арктика, Северный морской путь, международное морское право, судоходство, безопасность, защита окружающей среды.

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