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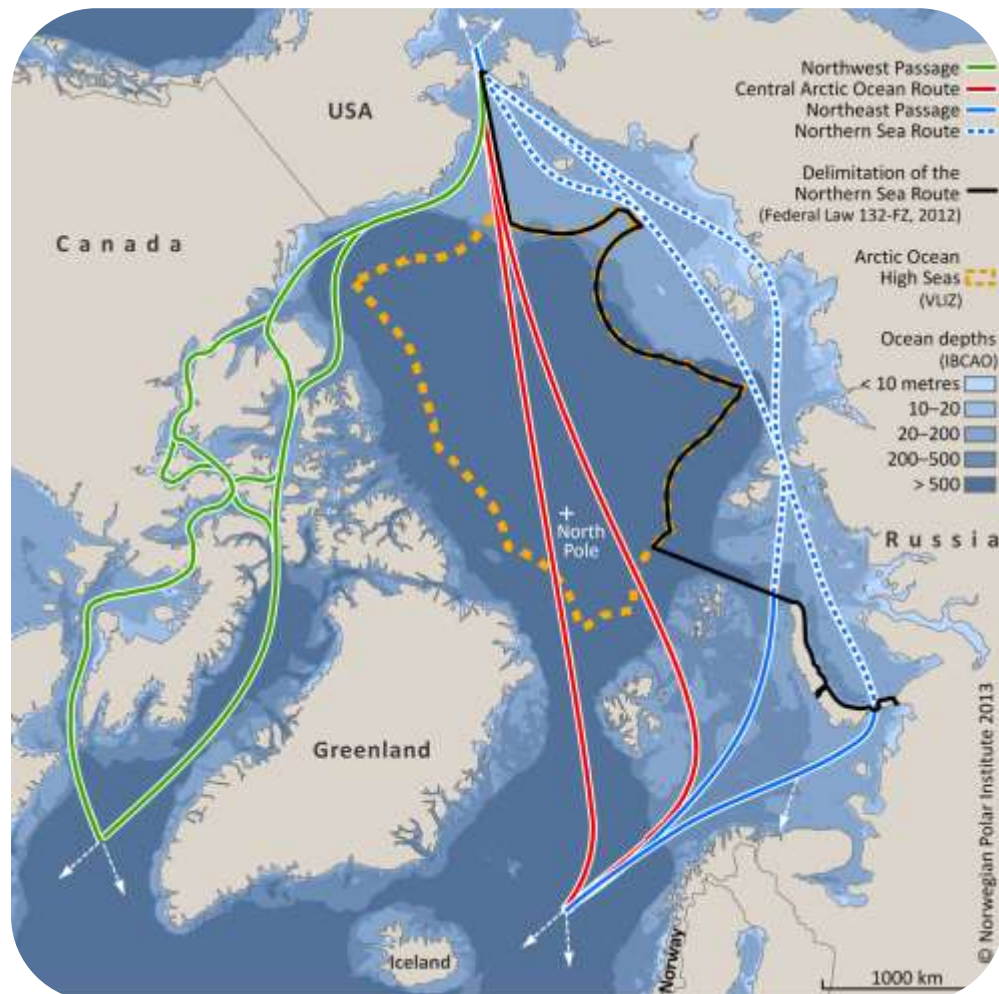
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Governance of Arctic Shipping – Balancing Rights
and Interests of Arctic States and User States
Singapore, 10 December 2015

Overview of the presentation

- Setting the scene
- Russian maritime zones within Arctic waters
- The distinct legal regime for the Northern Sea Route (NSR)
 - The international legal basis for the NSR legal regime
 - Selected aspects of Russia's prescriptive and enforcement jurisdiction on the NSR
 - Prior authorization
 - Prior notification and reporting
 - Icebreaker assistance
 - Fees
 - Non-compliance and enforcement
- Concluding remarks

Setting the scene



Russia's maritime zones within the 'Arctic waters'

- Baselines established in 1985 (mixed method)
- Effects:
 - All (but one) straits enclosed with baselines
 - Little effect on the location of 200 nm limit
- Limited (relatively) area of explicit historic waters claim
- Rights and freedoms of navigation in territorial sea and EEZ
- Innocent passage (or even transit passage) through enclosed straits?
- Special legal regime within 'the water area of the NSR'

The international legal basis for the NSR legal regime

- No explicit reference to Article 234
- The NSR as *historically developed national transport communication of the Russian Federation*
- Commentators in Russia seem confused
- In practice:
 - The Administration of the NSR refused *Arctic Sunrise* a permit on the grounds of violation of rules adopted and enforced in accordance with Article 234
 - the ‘totality’ of the legislative change and the UNCLOS
- Historical references – symbolic only?

Russia's prescriptive and enforcement jurisdiction on the NSR – the framework

- Federal Law on Amendments to Specific Legislative Acts of the Russian Federation Concerning the State Regulation of Merchant Shipping in the Water Area of the NSR, dated 28 July 2012, No. 132 FZ
- Rules of Navigation in the Water Area of the Northern Sea Route, approved by the order of the Ministry of Transport of Russia, dated 17 January 2013 № 7
- The Administration of the NSR

Prior authorization requirement

- A permit from the ANSR to be sought
- Criteria for admission of ships to the NSR in according to the category of ice strengthening
 - Period of the year
 - 7 zones
 - Current ice conditions (H,M,L)
 - Category of ice strengthening (RS notations)
 - Icebreaker assistance
- Much more transparent and streamlined than under 1990 Regulations
- Legality under international law of the sea?

Notification and reporting obligations

- Essentially a SRS with detailed reporting obligations
- First notification already 72h prior to arrival on Western or Eastern Boundary
- Gathering and distribution of information – *useful* for maritime safety and environmental purposes (but necessary?)
- Legality of NORDREG (similar) was questioned by a number of States

Icebreaker assistance

- Mandatory only in specific scenarios (see criteria for admittance)
- Icebreaker assistance and ice pilotage as natural monopoly
 - Only Russian flagged icebreakers
 - Specifically authorized organizations
- Important role of icebreakers as source of SAR and preparedness and response
 - High costs regardless if used or not

Fees

- Long debated within Russia, including in courts
- New principle for calculation of fees
 - Fees to be determined with due account of ‘capacity of a vessel, its ice class, distance of icebreaker assistance and navigation period’
- Further refinement in legislation
 - Methods for the determination of the above
 - Ceiling tariffs applicable only to Atomflot
- Non-discrimination requirement?
 - Lukoil or Norilsk Nickel specifically authorized to use their own icebreakers – competitive advantage?
 - No transparent system for discounts
- Article 234 and a tonnage due?

Non-compliance and enforcement

- The NSR mostly used by Russian vessels
- Russian vessels' non-compliance subject to 'remote monitoring principle'
 - administrative proceedings and monetary fines
- Foreign vessels generally comply with the rules
 - But what happens if they do not? Not clear.
- 1990 Regulations included a special clause on expulsion
- Two known instances of foreign non-compliance after 2013

***Arctic Sunrise* (Dutch flag)**



Source:
[Wikipedia.org](https://en.wikipedia.org/wiki/Arctic_Sunrise)

Qingdao China (Jersey flag)



Source:
english.cri.cn

Concluding remarks

- Russia's Arctic maritime zones include parts of the Barents and Bering Seas, and the NSR
- The development of NSR shipping, including international – high priority
- The NSR legal regime is still being refined, recently improved in light of consistency with the UNCLOS
 - Effects of the Polar Code?
- Still unclear:
 - Consistent and predictable application of law
 - Enforcement
 - The future effects of climate change on the legal regime

Thank you!



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