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Introduction: regulating shipping in Russian Arctic Waters: between international law, national interests and geopolitics

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Introduction

The opening of the Arctic Ocean and adjacent seas following the impacts of climate change has attracted increased international attention to the Arctic Ocean, its resources, and alternative transportation routes between the continents.¹ The Northeast Passage (NEP), running primarily along the coast of Russia, is widely believed to be the most available Arctic shipping route.² The NEP includes the Northern Sea Route (NSR), located within limits provided in Russian legislation.

The legal regime of shipping in the Russian Arctic is determined in accordance with the rules and principles of the international law of the sea, enshrined first and foremost in the UNCLOS.³ At the same time, the regime evolves through the interaction of many different processes and drivers, such as the change in the physical environment resulting from climate change; Russia's security concerns reinvigorated by the growing internationalisation of Arctic affairs; relevant international political and legal processes and the broader geopolitical setting.

The idea behind the Special Issue of *The Polar Journal* was to take a snapshot of these different processes and drivers. Hence the title *The Northern Sea Route: Between international law, national interests, and geopolitics*. The contributions to this Special Issue pose and address different questions that collectively aim to discuss the nexus between the international political and legal processes and the domestic state interest and practice.

Russia is the major Arctic flag, port, and coastal state, with wide Arctic maritime zones, including the Northern Sea Route (NSR). After the period of relative neglect for the Arctic affairs following the dissolution of the Soviet Union, the foundations of Russian Arctic policy were laid primarily between 2008 and 2013.⁴ As regards the NSR,

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¹Arctic Council, Arctic Marine Shipping Assessment 2009 Report.

²Østreng et al., Shipping in Arctic Waters, 29–30.

³United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

⁴The Foundations for the State Policy of the Russian Federation in the Arctic for the period until 2020 and for a further perspective', President of the Russian Federation, Decree No. N Пп-1969, <http://government.ru/info/18359/>; The Strategy for the Development of the Arctic Zone of the Russian Federation and Ensuring National Security for the Period until 2020, 20 February 2013, <http://government.ru/info/18360/>; 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], 28 July 2012, No. 132 FZ, *Sobranie zakonodatel'stva Rossiyskoy Federatsii* 30 July 2012 No. 31 p. 4321; 2013 Rules of Navigation in the Water Area of the Northern Sea Route, as approved by the order of the Ministry of Transport of Russia, 17 January 2013 № 7], registered by the

the main thread was to maximise access and liberalise the conditions for use of the route, also by foreign actors. Most recently, however, Russia has been revising its Arctic strategic documents and legislation.⁵ Some of the policy documents were originally intended for an update in 2020, but some other adjustments might have been triggered by other processes and drivers.⁶

At the international level, legal and political processes have been ongoing to address what has been perceived as inadequacies of existing governance of the marine Arctic and its resources. These include the work of the International Maritime Organisation (IMO), resulting in the adoption of the International Code of safety for ships operating in polar waters (Polar Code) and processes within the Arctic Council, e.g., on the identification of areas of heightened ecological and cultural significance and possible measures to protect them. Russia has engaged in these developments and voiced interest in the implementation of the Polar Code. One can expect a continuation of these legal and political processes, i.e., revision and amendment to the Polar Code, as well as the adoption of instruments that are related to the Polar Code, consequential to it, or which complement it.⁷

Liberalisation, making it more attractive for ships to use the NSR, and acceptance of the confinements provided by international law of the sea, led to some rebound of the often-interrelated inward-looking concerns of economic protectionism and national security. Parallel to the participation of the Russian Federation in the ongoing international efforts to develop and strengthen universal (within International Maritime Organisation, for example) and regional (within the Arctic Council, mainly) rules and standards, Russia has recently amended its legislation to encourage the use of Russian-flagged vessels in the Arctic Zone of the Russian Federation. Moreover, in the future, only ships built in Russian shipyards, may be chartered by the oil and gas companies for the transportation of hydrocarbons out of the NSR area.⁸ Although the new legislation includes significant exemptions, it may signify a trend that Russia embarks on increased shipping in the Arctic Zone of Russia of ships which are built with the participation of Russian investors. Likewise, the security concerns led Russia to draft legislation aiming to impose specific requirements on sovereign immune vessels exercising the right of innocent passage within the NSR.⁹

The different aspects of the political situation, economic prospects, or legal status of the NSR have been subject to extensive treatment in Russian and international scholarship. With some exceptions, however, the relevant research efforts evolved primarily in isolation following the demarcation between the 'western' and Russian epistemic communities. One of the aspirations of this project has been to further the mutual understanding between these communities. Most of the articles included in the Special Issue,

Ministry of Justice 2 April 2013 No. 28,120. English texts of these and other sources of Russian Arctic Laws are compiled and published in Berkman et al., "Baseline of Russian Arctic Laws."

⁵Foundations for the state policy of the Russian Federation in the Arctic for the period until 2035, President of the Russian Federation, Decree No. 164, <http://kremlin.ru/acts/news/62947>; Strategy for Development of the Arctic Zone of the Russian Federation and the Provision of National Security for the Period to 2035, <https://tass.com/economy/1180883>.

⁶See, among others, the Decree of the President of the Russian Federation "On the Interagency Commission of the Security Council of the Russian Federation for defending national interests of the Russian Federation in the Arctic," 25 August 2020, http://www.consultant.ru/document/cons_doc_LAW_360572/.

⁷Beckman et al., *Governance of Arctic Shipping*, 433.

⁸See, for example, the article by Arild Moe in this issue.

⁹Solski, "Navigational rights of warships."

and certainly the idea behind it, stems from a joint project that has provided a vital platform for collaboration between Russian and 'western' academics.¹⁰ The dynamic development of the current relevant processes at the national and international levels will contribute to the emerging architecture of the governance of Arctic shipping. Only a genuinely integrated research project may lead to a full understanding of these processes and their implications.

The Special Issue consists of nine articles. In the first article, *A new Russian policy for the Northern Sea Route? State interests, key stakeholders and economic opportunities in changing times*, Arild Moe unpacks the recent political developments surrounding the major reorganisation in the administration of the NSR. In particular, he analyses some recent developments through the lenses of the relevant domestic Russian stakeholders: the military, commercial stakeholders including Novatek and Yamal LNG, as well as other cargo producers, shipbuilding industry, Atomflot and Rosatom and the Ministry of Transport. He observes that the recent developments indicate there have been adjustments with regards to the priorities of Russian policy for the NSR. The focus on international shipping has gradually been overtaken by resource extraction projects, exhibiting more potential than projected just a decade ago. Moreover, it is difficult to ignore the effects of the imposition of the Western sanctions on Russian political course, also in the Arctic. Although Russia has refrained from the militarisation of the NSR, it has taken a more inward thinking approach, providing fertile soil for protectionist measures, possibly justifying a more active control regime for shipping.

The second article, *Russia's Policy to Develop Trans-Arctic Shipping along the Northern Sea Route* written by Sergey Sevastyanov and Aleksey Kravchuk, also deals with the latest changes in the NSR management system and the measures undertaken to unlock the trans-Arctic potential of the NSR. The authors argue that shuttle transportation between two large logistic hubs in Murmansk and Petropavlovsk-Kamchatsky will create optimal conditions for trans-Arctic shipping along the NSR. The first stage of implementation of the concept of shuttle transportation along the NSR is already underway, but the ultimate success of this idea may depend on further investment and funding.

The third article, *The Politics of Russian Arctic shipping: the role of security and geopolitical factors* by Gunhild Hoogensen Gjørvi and Alexander Sergunin, addresses security and geopolitical factors in NSR politics. The authors discuss how Russia's hard and soft security perceptions of Arctic shipping evolved in the post-Cold War era, including perceptual changes in the context of the Ukrainian crisis and ongoing tensions between Russia and the West. They conclude that although the economic significance of the NSR is the most important priority for Moscow's policies in the sphere of Arctic shipping, the role of security and geopolitical factors should not be completely ignored. Russia's security concerns include those related to hard security (other States' military posture), but there has been a clear shift to soft security challenges in domestic debates. The second positive trend identified by the authors is that Russia aims to solve the NSR-related problems cooperatively through political and scientific

¹⁰The project funded by the Norruss Pluss programme of the Research Council of Norway (NRC) Regulating shipping in Russian Arctic Waters: Between international law, national interests and geopolitics, project. No. 287,576. Many of the articles have been first presented at an international workshop organised by the Jebesen Centre for the Law of the Sea (JCLoS), renamed the Norwegian Centre for the Law of the Sea (NCLoS) from 1 September 2019, UiT The Arctic University of Norway, in Tromsø 14 and 15 May 2019.

dialogue with other regional players and in the context of multilateral institutions, such as the Arctic Council, Barents-Euro-Arctic Council, Nordic institutions, IMO and other specialised UN bodies.

The fourth article shifts the focus from political science to law. Viatcheslav Gavrilov, in the article on *Russian Legislation on the Northern Sea Route Navigation: Scope and Trends*, identifies the main trends in Russian NSR legislation. The author sets out the domestic legal framework for the regulation of navigation in the NSR, compares it with the previously applicable legal regime, and describes the most recent legislative developments. That way, the author provides an essential update on the current status and trends in the development and implementation of the Russian Arctic shipping regulations.

The fifth article *Navigation in the Northern Sea Route: Interaction of Russian and International Applicable Law* by the three co-authors from the MGIMO-University, Alexander Vylegzhanin, Ivan Bunik, Ekaterina Torkunova, and Elena Kienko from the Russian Academy of Sciences (Institute of the World Economy and International Relations) also deals with the current legal regime of the NSR, but it pays special attention to the interaction of Russian and international law. The authors analyse some of the most recent Russian legislation introducing the term 'Arctic Zone of the Russian Federation' (AZRF) in the context of Russia's historical practice, such as the practice associated with the sectorial division of the Arctic, beginning with the sector delimitations provided in the 1825 British-Russian Boundary Convention and the 1867 Treaty between Russia and the USA on Ceding Alaska. They observe that the AZRF consists of land territories and marine space under Russian sovereignty, subject to sovereign rights and jurisdiction in accordance with international law. Further, they investigate the question of harmonisation between the international law framework and the qualification in Russian law of the NSR as 'a historically established national transport communication of the Russian Federation in the Arctic'. They conclude that the current legal regime is an outcome of a combined legal effect of relevant customary rules of international law and UNCLOS.

The sixth article *Polar Code implementation in the Arctic Five: has harmonisation of national legislation recommended by AMSA been achieved?* by Aldo Chircop and Miriam Czarski ventures beyond the Russian Arctic. The key objective of this article has been to explore how the five Arctic coastal States (Arctic Five) have implemented the Polar Code in their capacities as a flag and coastal States, and how harmonised these efforts have been. The authors investigate the legislative and policy framework, as well as the implementation and harmonisation with the Polar Code of each of the Arctic Five: Canada, Denmark (Greenland), Norway, the Russian Federation (RF) and the United States (US). Their main observation is that the practice shows high degree of support for and convergence with the Polar Code's content. Although exceptions can be observed, there is a significant degree of uniformity of polar standards applicable to domestic and international shipping.

Remaining with the Polar Code, although bringing us back to Russia, the seventh article *Coping with Deficiencies in the Polar Code: A Russian Perspective* by Andrey Todorov, examines some of the shortcomings of the Polar Code, identified as by the expert community in Russia. The principal line of criticism touches upon the potential negative effects of the goal-oriented approach (GOA), which has been used in parts of the Polar Code. The main concern is that the flexibility surrounding the GOA leaves excessive discretion to people that may lack the necessary knowledge, skills, or experience to ensure vessel's safety in the conditions of Arctic navigation. Further, Todorov

investigates some of the available options to mitigate the potential shortcomings of the Polar Code. He discusses the implementation of Article 234 of the UNCLOS, as well as the exercise of Port State Control and port State jurisdiction.

The two last articles of the special Issue recognise the need to investigate the role and practice of emerging users of the NSR. There is no doubt that China may become the dominant non-Arctic state with the prospective most considerable interests in operating in Arctic waters, both as an area for transport and for access to natural resources. Whereas ships from several countries have transited the NSR over the last decade, China has formulated a vision for long-term policy and extensive use.¹¹

In this respect, the eighth article, *Sino-Russian Cooperation on Arctic Shipping: Strategic Partnership in the Global Context*, by Mariia Kobzeva, analyses bilateral cooperation between Russia and China in the development of shipping in the Russian Arctic as a part of a comprehensive partnership and strategic interaction format. The author analyses the cooperation through the lenses of a defensive neorealist IR theoretical approach according to which great powers will avoid conflict unless they feel directly threatened and are unwilling to risk what they have in the hopes of getting more. Kobzeva investigates what national interests support the feasibility of cooperation between the two countries, and what mitigates exacerbation of legal discrepancies between them. In conclusion, Kobzeva observes that the NSR development and the Ice Silk Road projects are still in their infancy, but the policies of the two States feature mutual balance and independence. One area where the divergence of positions may be more prevailing is the field of security, but the mutual recognition of the *status quo* of Russia as an Arctic sovereign State, and China as legitimate major Arctic actor forms a solid basis for interaction. On the other hand, the converging interests in technological development may offer a potent field for mutual cooperation.

The last article in the special Issue puts emphasis on the technological collaboration between the two States. Article on *China-Russia Collaboration in Arctic Shipping and Maritime Engineering*, by Gao Tianming and Vasilii Erokhin, deals with an often overlooked or marginally addressed field of cooperation, namely maritime engineering. The authors discuss how China may collaborate with Russia to ensure the development of secure navigable deep-water shipping routes in the Arctic and to partner in the engineering and construction of large-tonnage tankers and icebreakers. The paper presents an overview of the current condition of the shipbuilding industry in Russia in relation to the construction of vessels and marine equipment in such segments as icebreaking, transport, port, and dredging fleet. The authors conclude with a summary of the existing technological, engineering, and economic obstacles and opportunities for China in the light of the establishment of navigable maritime routes in the Arctic Ocean.

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¹¹Liu "Will China build a green Belt and Road in the Arctic?"

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