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## Relevant Aspects of International Legal Regulation of the Arctic Shipping\*

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**Abstract.** The critical aspects of the international legal regulation of shipping in the Arctic discussed on the international Arctic agenda are analyzed. The authors examine the specifics of the Northern Sea Route legal status from the perspective of the leading role of the Arctic coastal states and the possibilities for countries to specify at the national and regional levels the universal norms of international maritime law at the national and regional levels. The authors devoted much attention to the study of the UNCLOS 1982, Art. 234, which gives coastal states the right to adopt national laws and regulations to control pollution of the marine environment in ice-covered areas within exclusive economic zones. The article is one of the leading international legal grounds for the Russia's establishment of control over the NSR shipping. The Polar Code, entered into force in 2017, is examined separately. The article also presents expert opinions on navigation forecasts in the Arctic region.

**Keywords:** *Arctic, climate change, shipping in the Arctic, Northern Sea Route, security, Polar Code.*

### Introduction

In his speech at the plenary meeting of the 70th session of the UN General Assembly, President of the Russian Federation V.V. Putin called the problem of global climate change a challenge that affects the future of all humanity<sup>1</sup>. It relates to the Arctic ecosystem, which is undergoing rapid change.

A description of the main consequences is given in the Arctic Monitoring and Assessment Program (AMAP): "Among the key changes that could lead to severe consequences for the environment and the population of the Barents region shortly (period until 2030), the following: faster warming; reduction in the duration and area of seasonal ice cover; trade intensification and increased investment in the transport sector ... In the near and medium-term (2030–2080), a year-round non-freezing condition of the seas is likely to be established; a significant increase in the acidity of ocean waters; changes in ocean currents and hydrographic conditions; a significant reduction in the duration of snow cover; active thawing of permafrost"<sup>2</sup>.

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<sup>1</sup>Vystuplenie Prezidenta Rossiyskoy Federatsii V.V. Putina na plenarnom zasedanii 70-y sessii General'noy Assamblei OON, N'yu-York, 28 sentyabrya 2015 goda [Speech by the President of the Russian Federation V.V. Putin at the Plenary Meeting of the 70th Session of the UN General Assembly, New York, September 28, 2015]. URL: [http://www.mid.ru/general\\_assembly/-/asset\\_publisher/lrzZMhfoyrUj/content/id/1802254](http://www.mid.ru/general_assembly/-/asset_publisher/lrzZMhfoyrUj/content/id/1802254) (date accessed: 24.11.2019).

<sup>2</sup>AMAP, 2017. Adaptation Actions for a Changing Arctic: Perspectives from the Barents Area. Arctic Monitoring and Assessment Programme (AMAP), Oslo, Norway. URL: <http://www.amap.no/documents/doc/adaptation-actions-for-a-changing-arctic-perspectives-from-the-barents-area/1604> (accessed 24 November 2019).

The issue of globalization and climate change is also presented in the document “Assessment of Arctic Maritime Navigation”<sup>3</sup>, prepared by the Arctic Council in 2009, as the main reason that had a significant impact on the intensification of shipping in the Arctic Ocean related to servicing the development of oil and gas fields, as well as the development of cruise tourism.

In particular, this refers to the thickness of the ice cover of the Arctic Ocean, which undergoes profound changes in size, depth, and character (there is a tendency for the transition of long-term ice to annual ice prevail). “The Arctic is becoming integrated into the global economy, thanks to the development of vast natural resources, incl. not only oil and gas but also a complex of solid minerals such as copper, nickel, palladium, zinc, and much more”<sup>4</sup> [13, Hildebrand L.P., Brigham L.W., p. 2].

Soon, the relevance of these issues will only increase in connection with the growth of cargo traffic along the Northern Sea Route. In the report at the conference “High North Dialogue” (organized on April 3-4, 2019 in Bodø, Norway), section “Arctic Transport and Infrastructure”, Kjell Stokvik, Managing Director of the Centre for High North Logistics, provided information on the current situation, the potential of maritime shipping and the infrastructure of the Northern Sea Route. Statistics on the dynamics of the sea transportation volume over the past century, and especially over the past five years, indicate a rapid increase in cargo transportation over the past few years (an increase of five times in the period since 2014, and almost twice much in 2018 compared with 2017). The critical factor of this phenomenon is the rapid development of the Russian energy sector of the economy, in particular, associated with the production of liquefied natural gas.

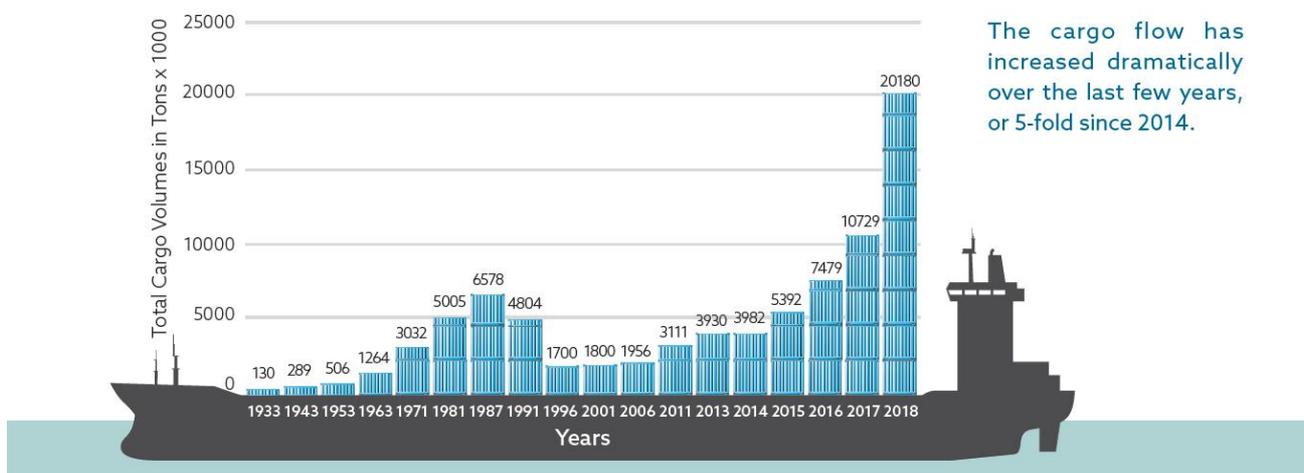


Fig. 1. Statistics of the cargo transportation volume along the Northern Sea Route.

Note. “Crucial changes with the strongest impact on nature and society in the near-term (present day to 2030) in the Barents area include: more rapid warming; a shift to seasonal ice cover and substantial reduction of sea ice cover in winter; an intensification of trade and investment in transportation.... For the near-to-mid future (2030 to 2080) a plausible picture will be: an ice-free sea all year round; a substantial increase in ocean acidification; change in ocean currents and hydrographic conditions; a substantial reduction in snow-cover season; a substantial degradation of permafrost”

<sup>3</sup> AMSA, 2209. Arctic Marine Shipping Assessment. URL: <http://www.pame.is/index.php/projects/arctic-marine-shipment/amsa> (accessed 24 November 2019).

<sup>4</sup> Note. The Arctic is becoming more integrated with the global economy through development of its vast natural resources incl. not only oil and gas, but also a suite of hard minerals such as copper, nickel, palladium, zinc and more.

Such economic development requires new solutions for marine transport systems that can work safely and efficiently in ice-covered areas.

The Strategy for the Development of the Marine Activities of the Russian Federation until 2030<sup>5</sup> sets as its main priority “the improvement of international legal support for marine activities and the development of international cooperation in the field of marine activities”. As a result, issues of international regulation and adaptation of the legal regime of shipping in the Arctic go to a new level.

The purpose of the study is to analyze topical issues of international legal regulation of shipping in the Arctic.

The objectives of the study are to study and present the positions of Russian and foreign scientists on shipping in the Arctic, which are on the Arctic international agenda. The novelty of the work lies in the use of materials from international conferences of recent years and the presentation of the content of foreign authors.

### *Relevant issues of the legal regime of shipping in the Arctic*

An analysis of scientific literature and publications highlights the following critical issues in the regulation of shipping in the Arctic:

- *Internationalization of the national transport artery of Russia — the Northern Sea Route, as well as the issuance of permits for vessels to pass along the Russian Arctic coast*

International law provides the coastal state — the Russian Federation — with substantive rights to regulate shipping on the Northern Sea Route (the NSR). The water areas of the NSR include the inland sea, territorial waters, and exclusive economic zones. Special rights are provided for in regions covered by ice within the exclusive economic zone.

Shipping of the NSR waters is regulated by the relevant legislation of the Government of the Russian Federation and the authorized state body — the Ministry of Transport of the Russian Federation.

Russian Foreign Minister Sergey Lavrov, in his speech, notes that more than 20 countries navigated the NSR in 2018 following the uniform rules for both Russian and foreign ships. The Russian Federation is responsible for ensuring security and the most careful attitude to the fragile ecosystem of the Arctic region. The rules for navigation in the NSR are comparable to traffic rules. “You come to some country, use these rules, and are obliged to observe them. Not because someone wants to impose something, but because otherwise, it would be unsafe to go through the route that is becoming increasingly popular for many countries”<sup>6</sup>.

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<sup>5</sup> Rasporyazhenie Pravitel'stva RF ot 30 avgusta 2019 g. № 1930-r «O Strategii razvitiya morskoy deyatel'nosti RF do 2030 goda», Sobranie zakonodatel'stva RF, 02.09.2019, N 35, st. 5013 [Order of the Government of the Russian Federation of August 30, 2019 No. 1930-r "On the Strategy for the Development of Maritime Activities RF until 2030". Collected Legislation of the Russian Federation, 02.09.2019, No. 35, Art. 5013. URL: <http://www.pravo.gov.ru> (accessed 11.24.2019).

<sup>6</sup> Lavrov S.V. Vystuplenie i otvety na voprosy Ministra inostrannykh del Rossii na otkrytii ministerskoy sessii V Mezhdunarodnogo arkticheskogo foruma «Arktika — territoriya dialoga», Sankt-Peterburg, 9 aprelya 2019 goda [Speech and

At the state level, the supervision of the issues of ensuring the safety of sea navigation and the protection of the marine environment from pollution from ships in the NSR and the permissive procedure for navigation of vessels is assigned to the Federal State Budgetary Institution “Administration of the Northern Sea Route”. Monitoring of data on issuing permits to courts indicates 16 refusals to issue licenses in 2018 (a total of 808 applications were received), two refusals to issue licenses in 2019 (a total of 801 applications), and all of them are justified (e.g., due to the reasons for the lack of evidence from the vessels of the polar sailing vessel, incorrect documentation, etc.)<sup>7</sup>.

The primary opponent of the licensing procedure for the NSR is the United States. They defend the position that in the 12-mile territorial sea, the right of peaceful passage would be in effect, and the exclusive economic zone (according to UNCLOS), three freedoms of the high seas would operate, incl. freedom of navigation.

The essence of the discussion is supposed to be a broad interpretation by Russia of the provisions of Article 234 “Ice-covered Areas” of the 1982 Convention, which applies super-restrictive measures without coordination with the International Maritime Organization.

- *New challenges related to security and climate change*

At the opening of the ministerial session of the V International Arctic Forum (April 2019), Arctic: Territory of Dialogue,” Russian Foreign Minister Sergey Lavrov made an official speech emphasizing the need to deepen interstate cooperation in the region on a serious common challenge — the issue of climate change. On the one hand, this remains a challenge. On the other, it provides new opportunities, e.g., in expanding the use of the NSR for shipping and developing maritime activities in the Arctic, incl. cruise tourism. “Of particular importance are the tasks of strengthening the capacity to respond quickly to possible emergencies”<sup>8</sup>.

In turn, on the eve of the Norwegian Prime Minister Erna Solberg in her report at the conference “High North Dialogue” (organized April 3–4, 2019 in Bodø, Norway) announced information about upcoming changes in the Arctic strategy of Norway. In particular, the strategy will be aimed at developing cooperation in the field of prevention and response to emergencies. Natural human-made factors and shipping risks also cause it. The prime minister focused on the recent incident — the accident and the rescue operation of passengers on the Viking Sky cruise ship off the coast of Norway. Ms. Erna Solberg also highlighted the factors of climate change that have a

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Answers to the Questions of the Minister of Foreign Affairs of Russia at the Opening of the Ministerial Session of the V International Arctic Forum “Arctic — Territory of Dialogue”, St. Petersburg, April 9, 2019]. URL: [https://russiancouncil.ru/analytics-and-comments/comments/vystuplenie-i-otvety-na-voprosy-na-otkrytii-ministerskoy-sessii-v-mezhdunarodnogo-arkticheskogo-foru/?sphrase\\_id=29725865](https://russiancouncil.ru/analytics-and-comments/comments/vystuplenie-i-otvety-na-voprosy-na-otkrytii-ministerskoy-sessii-v-mezhdunarodnogo-arkticheskogo-foru/?sphrase_id=29725865) (accessed 08 June 2019).

<sup>7</sup> Federal'noe gosudarstvennoe kazennoe uchrezhdenie «Administratsiya Severnogo morskogo puti» [Federal State Treasury Institution “Administration of the Northern Sea Route”]. URL: <http://www.nsra.ru> (accessed 08 June 2019).

<sup>8</sup> Vystuplenie i otvety na voprosy na otkrytii ministerskoy sessii V Mezhdunarodnogo arkticheskogo foruma «Arktika – territoriya dialoga» [Speech and Answers to Questions at the Opening of the Ministerial Session of the V International Arctic Forum “The Arctic — Territory of Dialogue”]. URL: [https://russiancouncil.ru/analytics-and-comments/comments/vystuplenie-i-otvety-na-voprosy-na-otkrytii-ministerskoy-sessii-v-mezhdunarodnogo-arkticheskogo-foru/?sphrase\\_id=29725865](https://russiancouncil.ru/analytics-and-comments/comments/vystuplenie-i-otvety-na-voprosy-na-otkrytii-ministerskoy-sessii-v-mezhdunarodnogo-arkticheskogo-foru/?sphrase_id=29725865) (accessed 08 June 2019).

direct impact on the security of the Arctic territories, the complete responsibility of the shipowner and captain for ensuring safety on the ship and the importance of cross-border cooperation. The main message of the speech was that meteorological forecasts and awareness of threats in the Arctic are essential both in everyday life and in preparedness for responding to emergencies, which necessitates cooperation with each other at the state level. “Norway and Russia have broad and longstanding cooperation in the Arctic. This cooperation continues despite our differences on other issues.”<sup>9</sup>.

The solidarity of the top officials of these states on these key aspects is the foundation for further collaboration on working with security challenges and climate change.

- *Changes in the safety of shipping in the Arctic related to the adoption and implementation of the provisions of the International Code for Ships Operating in the Polar Waters (Polar Code) in the marine practice of shipowners.*

Difficulties in harmonizing shipping legislation in polar waters are associated with the regulation of safety of navigation by many international and regional agreements, and by national norms of coastal states. The adoption of the Polar Code marked a new stage in the development of legislation and the practical regulation of shipping in ice conditions.

For more than 20 years, work continued this document under the leadership of the International Maritime Organization. During its development, international experts faced difficulties in developing common standards for shipping in polar waters and harmonizing national norms of the coastal states of the Arctic. The result was the adoption of a package of amendments to the International Convention for the Safety of Life at Sea (SOLAS)<sup>10</sup> and the International Convention for the Prevention of Pollution from Ships (MARPOL)<sup>11</sup>.

The effective date of the document is January 1, 2017. The purpose of the Code is to “provide for safe ship operation and the protection of the polar environment by addressing risks present in polar waters and not adequately mitigated by other instruments of the International Maritime Organization”<sup>12</sup>.

The Code provisions are relevant to vessels operating in the Arctic and Antarctic waters.

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<sup>9</sup> Solberg E. Speech by Prime Minister Erna Solberg at the High North Dialogue-conference in Bodø, 3 April 2019. Statsminister Kontor. Regjeringen. URL: <https://www.regjeringen.no/no/aktuelt/high-north-dialogue/id2640058/?fbclid=IwAR0rHQDIYmnoUIDFfo7Jn2Te6PksnpIYaxi2OrB4dOMBx4DSD0k3qCmPay4/> (accessed 08 June 2019).

<sup>10</sup> Mezhdunarodnaya konventsia po okhrane chelovecheskoy zhizni na more 1974 goda, tekst, izmenennyy Protokolom 1988 goda k ney, s popravkami (SOLAS-74) ot 01.11.1974 [International Convention for the Safety of Life at Sea, 1974, text as amended by its 1988 Protocol, as amended (SOLAS-74) of 01 November 1974]. URL: [docs.cntd.ru/document/901765675](https://docs.cntd.ru/document/901765675) (accessed 08 June 2019).

<sup>11</sup> Mezhdunarodnaya konventsia po predotvrashcheniyu zagryazneniya s sudov 1973 goda, izmenennaya Protokolom 1978 goda k ney ot 02.11.1973. Sayt «Elektronnyy fond pravovoy i normativno-tekhnicheskoy dokumentatsii» [The International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 to it of 02.11.1973. Website “Electronic Fund of Legal and Technical Documentation”]. URL: [docs.cntd.ru/document/901764502](https://docs.cntd.ru/document/901764502) (accessed 08 June 2019).

<sup>12</sup> Mezhdunarodnyy kodeks dlya sudov, ekspluatiruyushchikhsya v polyarnykh vodakh (Polyarnyy kodeks) ot 15.05.2015. Sayt «Elektronnyy fond pravovoy i normativno-tekhnicheskoy dokumentatsii» [International Code for Ships Operating in Polar Waters (Polar Code) of 15 May 2015. Website “Electronic Foundation for Legal and Technical Documentation”]. URL: [docs.cntd.ru/document/420376046](https://docs.cntd.ru/document/420376046) (accessed 08 June 2019).

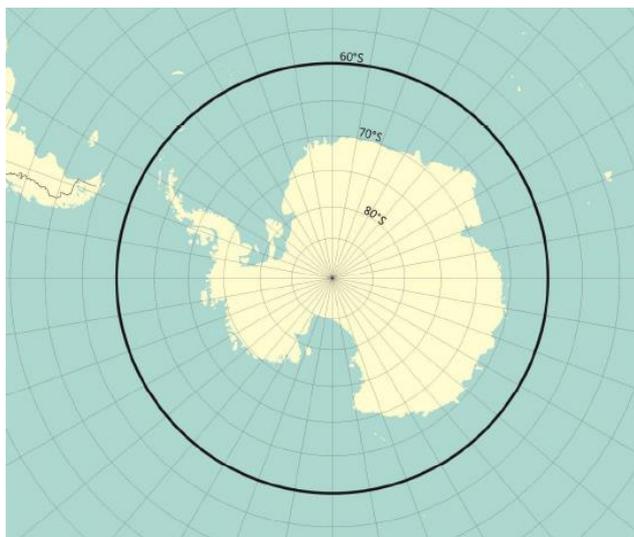


Fig. 2. The area of the Polar Code in the Antarctic waters.



Fig. 3. The area of the Polar Code in Arctic waters.

The first part of the Polar Code describes the sources of danger, requirements for the equipment of vessels, materials suitable for operation at operating polar temperature, fire safety, etc. The vessel itself must have a certificate for a polar sailing vessel and a ship's manual for operation in polar waters.

The second part of the Code describes measures to protect the environment (prohibition of any discharge of oil or oil-containing mixtures into the sea, harmful liquid substances, restrictions on the discharge of wastewater, etc.). Particular attention is paid to the training and education of personnel.

Researchers note that the provisions of the Polar Code are the first step towards an inclusive international legal regime for polar navigation. The code was not able to resolve all pressing issues. These "unresolved issues" include the following items: noise level, heavy diesel fuel (HFO), and invasive species, and it can be assumed that in this connection, even the concepts of domestic

and wastewater will be revised. The Code also does not cover the protection of the habitat and marine protected areas<sup>13</sup> [11, Bartenstein K., p. 21].

The difficulties in developing common standards for shipping in polar waters are primarily associated with fundamental differences in approaches to determine the class and categories of ships by classification societies. The Code allows the operation of single-sided vessels without an ice-class, and the concepts of the categories of vessels “A, B, C” are vague. Category C vessels can receive a Polar Ship Certificate even without actual certification.

It creates additional risks. The temperature and ice limits provided by the Polar Ship Certificate and the Polar Water Operational Manual are not harsh, and the Arctic conditions are harsh compared to the usual shipping conditions, unpredictable and difficult to predict. The approval procedure for each vessel’s Polar Water Operational Manual is not established, which raises questions of practical application.

Regarding the implementation of the Polar Code, Sidorova T.Yu. quite rightly notes that the issuance of the Polar Certificate for a certain class of vessels without inspection can lead to failure to achieve the main goal of the document — to ensure the safety of navigation in polar ice and environmental safety. “In the best case (for shipowners), the Arctic states will establish additional rules, since the Convention norm of Art. 234 The Polar Code cannot be changed, at worst — the conditions will be tightened so much that the implementation of this right by the flag state will simply be impossible” [4, Sidorova T.Yu., pp. 135-139].

As a result, this will lead to disputes between shipowners and authorized bodies of the Arctic states.

It refers to the Convention, i.e., UNCLOS<sup>14</sup> Art. 234 “Ice-covered areas”<sup>15</sup>. In the event of a conflict between the rules of the Polar Code and the national law of the coastal Arctic state, the latter will prevail. In other words, coastal states have the opportunity to establish their own special rules within their exclusive economic zone, which should not be milder than the standards set by universal international conventions.

Researchers note that for the Arctic states, “the provisions of the Polar Code should be considered as a new basis for the application of Art. 234. It gives riparian states the right to raise

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<sup>13</sup>Note. There is broad agreement that the Polar Code requirements are but a first step toward an all-encompassing international regime for polar navigation. A significant number of issues were not addressed. This “unfinished business” includes noise, heavy fuel oil (HFO) and invasive species, but even sewage and gray water can be expected to be reconsidered. The Polar Code does not address issues such as habitat protection and marine protected areas.

<sup>14</sup> Konventsiya Organizatsii Ob"edinennykh Natsiy po morskomu pravu ot 10.12.1982 g. Sayt «Elektronnyy fond pravovoy i normativno-tekhnicheskoy dokumentatsii» [United Nations Convention on the Law of the Sea of December 10, 1982 Website “Electronic Fund of Legal and Technical Documentation”]. URL: <http://docs.cntd.ru/document/1900747> (accessed 08 June 2019).

<sup>15</sup> Note. “Coastal states have the right to adopt and enforce non-discriminatory laws and regulations to prevent, reduce and control pollution of the marine environment from ships in ice-covered areas within the exclusive economic zone, where especially severe climatic conditions and the presence of ice cover such areas for most of the year, they create obstacles or an increased danger to shipping, and pollution of the marine environment could seriously harm the ecological balance or irreversibly disrupt it”.

further the standards they set so long as the exercise of their authority in this regard satisfies the criteria provided for in this article” [7, Chircop A., p. 283].

It is necessary to dwell in more detail on this norm, which defines the “leading role of the Arctic coastal states in clarifying the legal regime of the Arctic maritime regions” [1, Vylegzhanin A.N., p. 6]. Its action significantly affects the development of the Arctic shipping as a whole and is the primary international legal basis for the establishment by Russia of control over navigation along the Northern Sea Route.

### *Analysis of the UNCLOS norm “Ice-covered areas” (Art. 234)*

The history of the article in the text of the Convention is associated with the initiative of Canada, which unilaterally adopted in 1970 Arctic Waters Pollution Prevention Act (PPA)<sup>16</sup> and sought to justify this from the international law perspective. The act gave the Canadian authorities the right to exercise control over the navigation of ships of any country.

Experts note that first in Canadian law, restrictions on international shipping in the Arctic waters took the form of a general ban on dumping. In the Arctic Water Pollution Prevention Act, the concept of “zero discharge” (part 4 of the Law) has been a key one since 1970. Given the Canadian history of the standard-setting practice, as well as the country’s experience in securing an international base to represent its interests as a coastal state, it is not surprising that its internal rules regarding pollution from ships have not changed in favor of an international compromise. Moreover, Canada stated that it has sufficient jurisdiction to maintain the previously enshrined ban on dumping and to adjust reservations to that selectively<sup>17</sup> [11, Bartenstein K., p. 19].

That is why, during the negotiations on the UNCLOS development, Canada actively promoted the idea of creating a special legal regime in ice-covered areas. There, due to the high risk of harm to the marine environment due to the unique features of this region, stricter national rules and standards may apply compared with those that exist in this area at the international level [9, Dremluga R., pp. 128–129].

Despite the lack of a definition of “ice-covered areas” in the article, the point of view is that they should be understood throughout the Arctic [15, Tanaka Y., p. 305].

It should be noted that the interpretation of this concept causes debate in the international community.

The event “The New Arctic: Navigating the Realities, Possibilities, and Challenges” was organized by the Wilson Center on March 19, 2019, to discuss Arctic diplomatic issues. David Balton,

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<sup>16</sup> Arctic Waters Pollution Prevention Act, R. S. C. 1985, c. A-12.

<sup>17</sup> Note. Canada’s first legislative initiative restrictions respecting international navigation in Arctic waters took the form of a general discharge prohibition. This “zero discharge” approach in section 4 of the AWPPA has been the core component of Canada’s AWPPA since 1970. Given this domestic standard-setting history, as well as Canada’s efforts to secure an international basis for coastal State action, it is not surprising that Canada decided not to subordinate its long-standing domestic regime regarding vessel source pollution to an international compromise. Instead, Canada asserted that it has the required jurisdiction to maintain and selectively adjust the preexisting general discharge prohibition and its various exceptions.

Wilson Center Research Fellow, The former US Ambassador for Oceanology and Fisheries at the US Department of State, also noted rapid climate change in the Arctic, which further questions the use of article 234 by Russia and Canada.

“In a place like the Arctic where there’s less and less ice, will Article 234 still be a valid justification for what Russia and Canada are trying to do, with respect to their portions of the Arctic? The answer is probably no. Article 234 requires that an area be ice-covered for at least most of the year,” the expert commented<sup>18</sup>.

Another question of the interpretation of Article 234 “ice-covered areas” is related to the word “where”, which can be used in both broad and narrow terms.

For a broad interpretation, the word “where” means the following: the geographic area covered by the extended jurisdiction of coastal states, as specified in article 234. In a narrow interpretation, the word “where” takes on the meaning of the word “when”. The result of this interpretation is that in this case, article 234 will only be applicable in situations where the conditions listed in this article exist, namely in areas “*where there are particularly severe climatic conditions and the presence of ice covering throughout most of the year, such areas create obstacles or an increased danger to navigation, and pollution of the marine environment could seriously harm the ecological balance or irreversibly disrupt it*”<sup>19</sup> [14, McRae & Goundrey, p. 216].

There are arguments in support of both interpretations [14, McRae & Goundrey, p. 216 (ff)].

Researchers note that a narrow interpretation will be difficult to apply in practice, since in this case, coastal states may have to adopt one set of rules for ice-free periods and another set of rules for the remainder of the year. It would be difficult, in particular, because the ice conditions are not equally predictable at a certain point in time annually, but change constantly and gradually<sup>20</sup> [12, Bartenstein K., p. 31].

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<sup>18</sup> Russia and Canada may lose their legal claim to Arctic seaways as ice melts, experts say. URL: <https://www.arctictoday.com/russia-and-canada-may-lose-their-legal-claim-to-arctic-seaways-as-ice-melts-experts-say/> (accessed 20 November 2019).

<sup>19</sup> Note. Another question of interpretation of Article 234 relates to the wording “ice-covered areas” in general and the word “where” in particular, which is followed by certain conditions listed in the article. The word “where” could be given either a broad or a narrow interpretation. By adhering to the broad interpretation, the word “where” would merely define the geographical area where the extended jurisdiction of coastal states given in Article 234 is applicable. In a narrow interpretation, on the other hand, the word “where” would simply be given the meaning of the word “when”. The outcome of such an interpretation would thus be that Article 234 would only be applicable in situations where the conditions listed in the article actually exist, namely in areas when “particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance”.

<sup>20</sup> Note. However, the narrow interpretation would be difficult to apply in practice since coastal states then might have to adopt one set of rules for periods that are ice-free, and another set of rules for the remaining time of the year. This would be complicated, in particular because the ice conditions do not change abruptly at a certain point in time each year but shift constantly and gradually.

The objective is the fact that at the time of the adoption of the Convention to determine the territorial scope of its operation, there was no reason to assume that the ice cover would be so sharply reduced.

The critical question is: can this fact be considered a sufficient legal basis to cast doubt on the possibility for the coastal Arctic states to exercise their rights to issue normative legal acts in new climatic conditions?

Experts turn to the interpretation of the Convention on the Law of the Sea, which, following paragraph 1 of Art. 31 of the Vienna Convention on the Law of Treaties of 1969 should be carried out “in good faith following the usual meaning that should be given to the terms of the treaty in their context, as well as in the light of the object and purpose of the treaty” [3, Dudykina I.P., pp. 178–188].

Irina Dudykina, Ph.D. (Law), expert of the Department of Economics of the Analytical Center under the Government of the Russian Federation, notes that the literal interpretation of Art. 234 of the Convention should not be applied since the converse will also be considered correct when sea spaces are free of ice for more than six months a year, a different legal regime should apply to them. In understanding the meaning of the Vienna Convention, it is necessary to take into account not the literal interpretation of its terms, but their usual meaning in the context of the intentions that guided the states — developers of the Convention on the Law of the Sea. This meaning is that the term “ice-covered areas” is considered as a synonym for the sea spaces of the Arctic as a whole [3, Dudykina I.P., p. 178–188].

Foreign researchers emphasize “certain freedom” in the interpretation of Article 234, despite the inclusion in Clause XIV of the SOLAS Convention of the clause that none of the provisions of the chapter can be interpreted as infringing on the rights and obligations of the State Parties assigned to them following international law and she, like the clause on conflicts in the MARPOL convention, is called upon to “reconcile” the provisions of the Polar Code with the provisions of article 234. It creates the basis for controversial reflection based on general principles of conflict of contracts, namely the norms of *lex anterior* (previous law) and *lex specialis* (special law), or on the conflict of provisions of the UN Convention on the Law of the Sea (namely, Articles 311 (2) and 237) establishing relations between treaties. Moreover, considering the vagueness of the wording of the clause clauses themselves, the conclusion that the jurisdiction of the coastal state remains in force of article 234 is not automatic<sup>21</sup> [11, Bartenstein K., p. 17].

Summarizing, we can conclude that UNCLO Art. 234 regulates relations without any connection with the change in the ice cover of the Arctic, and its primary purpose is to preserve the

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<sup>21</sup> Note. Despite the fact that the clause according to which “nothing in this chapter shall prejudice the rights or obligations of States under international law” was included in the SOLAS Chapter XIV and seems, together with the general conflict clause of MARPOL, to solve the issue of the relationship between the Polar Code and Article 234, there is room for interpretation. The conflict clauses make moot arguments that are based on general conflict of treaty rules, namely, the *lex anterior* and *lex specialis* rules, or on the conflict rules provided in the LOSC—that is, Article 311(2) and Article 237—governing relationships between treaties. However, given the indeterminacy of the wording of the conflict clauses, the conclusion that coastal state jurisdiction under Article 234 is preserved might not be automatic.

fragile marine environment of the Arctic Ocean. Melting of Arctic ice does not cancel this task, but makes it even more relevant, since, according to scientific research, this process only increases the vulnerability of the Arctic region [10, Ho J., pp. 713–715].

Thus, the reduction in the ice area of the Arctic Ocean does not create legal grounds for changing the legal regime of Arctic coastal waters, defined by Art. 234 Convention on the Law of the Sea.

### *Arctic Navigation Development Forecasts*

Leading Researcher, IMEMO RAS named after E.M. Primakov, RSMD expert Pavel Gudev, expressed the view that “global climate warming could lead to a significant part of the Arctic freeing itself from ice and becoming accessible for navigation no less, but most of the year.” He also raises the question of further application of Article 234 of the Convention and how its wording — “the presence of ice covering such areas for most of the year” — will be consistent with the current situation in the region, as well as its legitimacy of other countries on the NSR route, in connection with the liberation of the water spaces of Russia from ice conditions [2, Gudev P.A., p. 1].

The General Secretary of the World Meteorological Organization, Petteri Taalas, notes new opportunities for navigation in the Arctic region in the future, as “the temperature rise in the Arctic will continue and much faster than in the rest of the world ... Arctic shipping will expand ... At the end of the century – since the 2070s. — the amount of rainfall will increase. And in the northern regions — snowfall. So, despite the discovery of new routes, navigation in the Arctic will not necessarily become easier”<sup>22</sup>.

Foreign researchers note that in the distant future, ample opportunities for navigation along the North-West and North-East passages can become a reality; such a development of events will require the development of new international legal and safety rules. “This may deprive Canada and Russia of the ability to regulate shipping, as well as additional “sources of income” [5, Atland K., p. 213].

An increase in traffic intensity is expected for the Arctic routes, despite the current conditions, which do not favor large-scale activities. Such a development of events can radically affect some of the current global shipping centers (e.g., Singapore), gradually bringing the Arctic to the leading position of commercial shipping. Trade relations between Asia and Europe are growing, as are competition and congestion. The interest of non-Arctic players is apparent: China, India, South Korea, Japan, and Singapore take part in discussions, scientific expeditions, and debates on the Arctic sea routes<sup>23</sup> [8, Dalaklis D., Baxevani E., p. 383].

<sup>22</sup> Source: TASS. Navigatsiya v Arktike: ministr transporta RF vyskazalsya o «Polyarnom kodekse» [TASS. Navigation in the Arctic: the Minister of Transport of the Russian Federation spoke about the Polar Code]. URL: [https://www.korabel.ru/news/comments/navigaciya\\_v\\_arktike\\_ministr\\_transporta\\_rf\\_vyskazalsya\\_o\\_polyarnom\\_kodekse.html](https://www.korabel.ru/news/comments/navigaciya_v_arktike_ministr_transporta_rf_vyskazalsya_o_polyarnom_kodekse.html) (accessed 08 June 2019).

<sup>23</sup> Dalaklis D., Baxevani E. Maritime Transport in the Arctic After the Introduction of the Polar Code: A Discussion of the New Training Needs.

Note. In case there is no dramatic shift regarding the retreat of ice, more traffic is clearly expected for the Arctic routes, despite the current conditions that it is obvious that they do not favor large scale activities. This development

In foreign scientific publications, scientists express a position on the need to combine the efforts of the United States and the European Union in the development of maritime infrastructure in the framework of the International Maritime Organization. In particular, it is proposed to establish an exchange of data from NASA and ESA on the monitoring of maritime navigation, and also, together with other Arctic states, to put forward a proposal to give the entire Arctic Ocean or part of it the status of a “particularly sensitive marine area”, and to establish more stringent environmental standards for ships and a clearer definition of navigation routes [6, Cavalieri S., Kraemer R.A., p. 290].

### **Conclusion**

The conditions of the Arctic are harsh compared to the usual terms of navigation, which is why polar shipping is a separate type of activity in world shipping.

The authors of the study analyzed several topical issues of international legal regulation of shipping in the Arctic (of course, their range is full), presented the positions of Russian and foreign researchers on the Arctic international agenda: the need to deepen interstate cooperation in the Arctic region, internationalization of the Northern Sea Route, security, international legal regulation of territories, climate change, paying particular attention to the study of foreign publications.

The adoption of the Polar Code marked a new stage in the development of legislation and the practical regulation of shipping in ice conditions. The time has come when researchers need to evaluate the results of the introduction of the Polar Code, incl. the questions of personnel training, the implementation of the Code requirements for the design of ships intended for navigation in the Arctic, the difficulties for putting into practice the requirements of the Code for Environmental Protection, etc.

Russia has legal grounds to control navigation along the Northern Sea Route. This fact raises debate abroad regarding the justification for the application of the UNCLOS Art. 234 to the Arctic Territories or on the need for its new interpretation against the background of a rapid decrease in the ice cover. In this work, the authors presented the positions of experts and arguments that the reduction in the ice area of the Arctic Ocean does not create legal grounds for changing the legal regime of Arctic coastal waters, as defined by Art. 234 of the Convention. On the interpretation of the wording “the presence of ice covering such areas for most of the year” the authors conclude that a narrow interpretation contains significant practical problems, and a wider interpretation is supported by practice, has sufficient legal grounds at the state level, and all these are arguments in favor of a broader interpretation.

Continued implementation of Art. 234 as a special legal mechanism for the protection of the Arctic marine spaces is in the common interest of all countries of the world, given that the

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could radically influence certain current global shipping hubs (e.g. Singapore), gradually bringing the Arctic to the forefront of commercial shipping. Trade relations between Asia and Europe are increasing and so will competition and congestion. The interest of non-Arctic actors is explicit with China, India, South Korea, Japan, and Singapore participating discussions, scientific expeditions and debates about arctic maritime routes.

natural environment of the Arctic today has become more vulnerable and exposed to more threats than during the development of the above Convention.

The Arctic is one of the last places on Earth, where climatic conditions constrain the development of natural resources. But this situation is changing rapidly. The main issue is the actions of states to ensure sustainable development. There are new opportunities for maritime operations and shipping in the Arctic, but at the same time, they highlight several problems: effective enforcement of the IMO Polar Code; lack of marine infrastructure; strengthening monitoring and observation of Arctic waters; the challenge of creating a complex of protected marine areas; additional measures provided for by the Polar Code for the circumpolar region; the need for broad public and private investments, as well as potential public-private partnerships in the Arctic. Collaboration between Arctic states and the global maritime community will be crucial<sup>24</sup> [13, Hildebrand L.P., Brigham L.W., p. 434].

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<sup>24</sup> Hildebrand L.P., Brigham L.W. Navigating the Future: Towards Sustainable Arctic Marine Operations and Shipping in a Changing Arctic.

Note. New opportunities for Arctic marine operations and shipping are emerging, but significant challenges remain. These include: the effective implementation and enforcement of the IMO Polar Code; a huge gap in Arctic marine infrastructure; enhancing the monitoring and surveillance of Arctic waters; the challenge of developing a set of marine protected areas; additional Polar Code measures for the circumpolar region; and the need for large public and private investments, as well as potential public-private partnerships in the Arctic.

Cooperation among the Arctic state, and the global maritime enterprise, will be critical to effective protection of Arctic people and the marine environment. It is only through ongoing and sustained cooperation among all concerned stakeholders and actors, incl. the central role of the shipping industry and interests, that the sustainable development of the Arctic can be achieved.

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