

Selected Master Theses

Port safety warranties in Charterparties in the context of the Ukrainian-Russian War

When the time charterer redelivers on short notice

The law of the sea challenges pertaining to the regulation of navigational rights and freedoms on the Northern Sea Route: Russia’s excessive maritime claims

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3.3 The legislative framework of Russia with regards to the NSR

To date, the implementation of legislation specifically grounded in UNCLOS Article 234 has been observed solely in Canada and Russia.⁽¹⁾ Based on the Russian legal doctrine and the perspectives of various Russian scholars, it can be observed that the historical Soviet and subsequent Russian approaches to legislation and enforcement pertaining to Arctic navigation, as well as its geographical extent, are presently consolidated within a comprehensive legal framework governing the NSR.⁽²⁾

At the time of the study, the NSR’s legal framework is comprised of three fundamental components:

- 1) FL No. 155-FZ, “On Internal Waters, Territorial Sea and Contiguous Zone of the Russian Federation,” dated 31 July 1998, as amended 05.12.2022.⁽³⁾
- 2) FL No. 81-FZ, “Merchant Shipping Code of the Russian Federation,” dated 30 April 1999, as amended 21.05.2023.⁽⁴⁾ (hereinafter “Merchant Shipping Code”).
- 3) Decree of the Government of the Russian Federation No. 1487, “On approval of the Rules of navigation in the waters of the Northern Sea Route,” dated 18 September 2020, as amended 01.09.2023.⁽⁵⁾ (hereinafter “2020 Navigational Rules”).

Article 14 of the FL No. 155-FZ stipulates that:

Navigation in the water areas of the NSR, the historically established national transport communication line of the Russian Federation shall be carried out according to generally recognised principles and norms of international law, international treaties of the Russian Federation, the present Federal Law, other federal laws and other normative legal acts issued in accordance with them. ⁽⁶⁾

The rhetoric employed in this Federal Law and Russian legal doctrine as such, in addition to the reliance on UNCLOS as an international treaty to which Russia is a party, appears to make an ambiguous allusion to customary international law. Specifically, it references the notion of possessing a “historical title” to the NSR as a justification for ownership, as historical titles are recognised as one of the justifications for territorial rights.⁽⁷⁾ The scholarly literature authored by Russian academics affirms that the NSR is considered an “indivisible, national transport route”.⁽⁸⁾ This legal approach is based on the principle of *uti possidetis* or *uti possidetis sic possidetis*, which can be understood: “As you possess, so shall you possess.”⁽⁹⁾ (See further discussion in Section 5)

The Article includes a mention of “other federal laws,” with the most significant being the Merchant Shipping Code. According to Article 5.1, the geographical scope of NSR is established as:

The water area adjacent to the northern coast of the Russian Federation, covering internal sea waters, the territorial sea, the contiguous zone and the exclusive economic zone of the Russian Federation (...) ⁽¹⁰⁾

According to Dremluga and Prisekina, it can be argued that Russia’s alignment of the outer boundary of the NSR with that of the EEZ suggests that the country views Article 234 as the foundation for its domestic navigation rules.⁽¹¹⁾

Furthermore, Article 5.1(2) makes a specific mention of the 2020 Navigational Rules.⁽¹²⁾ The explanatory note accompanying the earlier 2012 Navigational Rules affirms that the rules specifically reference Article 234, thereby indicating:

The available Rules of Navigation on the Northern Sea Route (...) are consistent with the requirements of Clause 234 of the UNCLOS (...) ⁽¹³⁾

To facilitate the study endeavour, it is important to undertake an investigation pertaining to Section 2 of the 2020 Navigational Rules. The following provisions hold significant relevance:

- 1) The organization of navigation of vessels in the water areas of the NSR is carried out by the State Atomic Energy Corporation Rosatom (hereinafter “Rosatom”);⁽¹⁴⁾
- 2) Foreign-flagged ships are subject to a mandatory system of prior notification and authorization before entering the water areas of the NSR. Vessels without a permit from Russian authorities have no right to enter the NSR;⁽¹⁵⁾
- 3) The permit is granted provided the vessel complies with the relevant requirements on safety of navigation and pollution prevention. Rosatom reserves the unilateral right to suspend or deny the issuance of the permit;⁽¹⁶⁾ (This is not a mere formality, as applications were rejected in more than 100 cases between 2018 and 2023.)⁽¹⁷⁾

The review described above posits that Russia recognises its comprehensive authority and control over the NSR, particularly in terms of unilaterally regulating navigation. Despite the presence of considerable uncertainty regarding the extent to which Article 234 permits Coastal States to restrict the freedom of navigation and right of innocent passage⁽¹⁸⁾ , Russian NSR legislation suggests that Russia adopts a broad (*de-maximis*) interpretation of Article 234, which seems to grant Russia extensive authority to regulate shipping in a manner akin to the regulation of internal waters, thereby granting Russia full sovereignty over navigation and the unilateral discretion to permit or deny passage to vessels.⁽¹⁹⁾ It can be asserted that the official stance of the Russian government under the 2020 Navigational Rules is that the “entire” NSR is subject to the same legal framework and same jurisdictional powers as in Russia's internal waters, regardless of the specific maritime zone in which a vessel is located on the NSR and regardless of the passage rights and freedoms it is entitled to exercise under the general navigational provisions of the UNCLOS.⁽²⁰⁾

