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The Politics of Russian Arctic shipping: the interplay of legal and security/geopolitical factors

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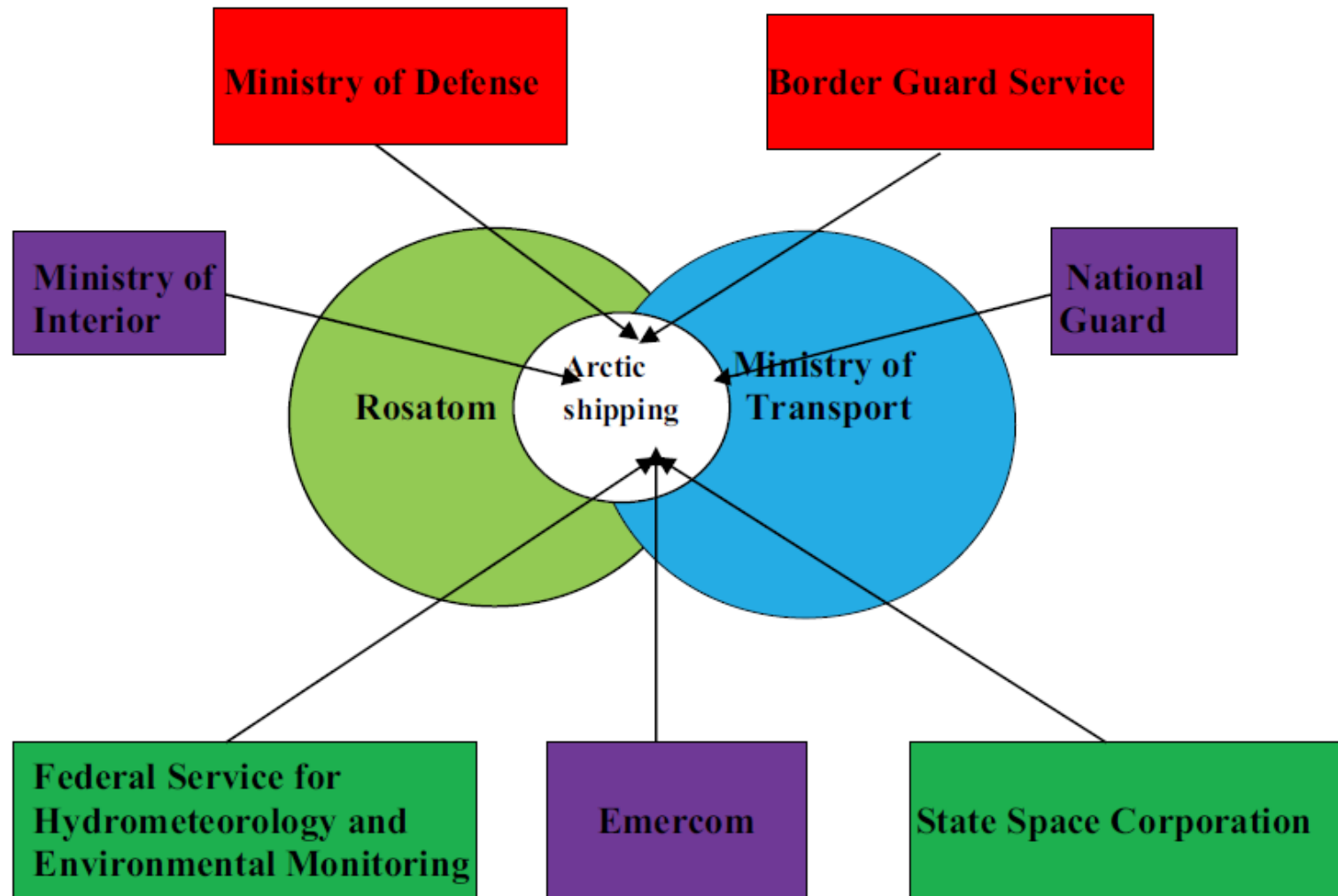


Russian national legislation on Arctic shipping

- Merchant Shipping Code (April 30, 1999)
- Federal Law on the Northern Sea Route (July 28, 2012)
- The Rules of Navigation on the Northern Sea Route (January 17, 2013)
- Putin V. On Making Changes in Some Legislative Acts of the Russian Federation (December 27, 2018)
- The Rules of Navigation on the Northern Sea Route (September 18, 2020)



Decision-making on Arctic shipping





The water area of the Northern Sea Route





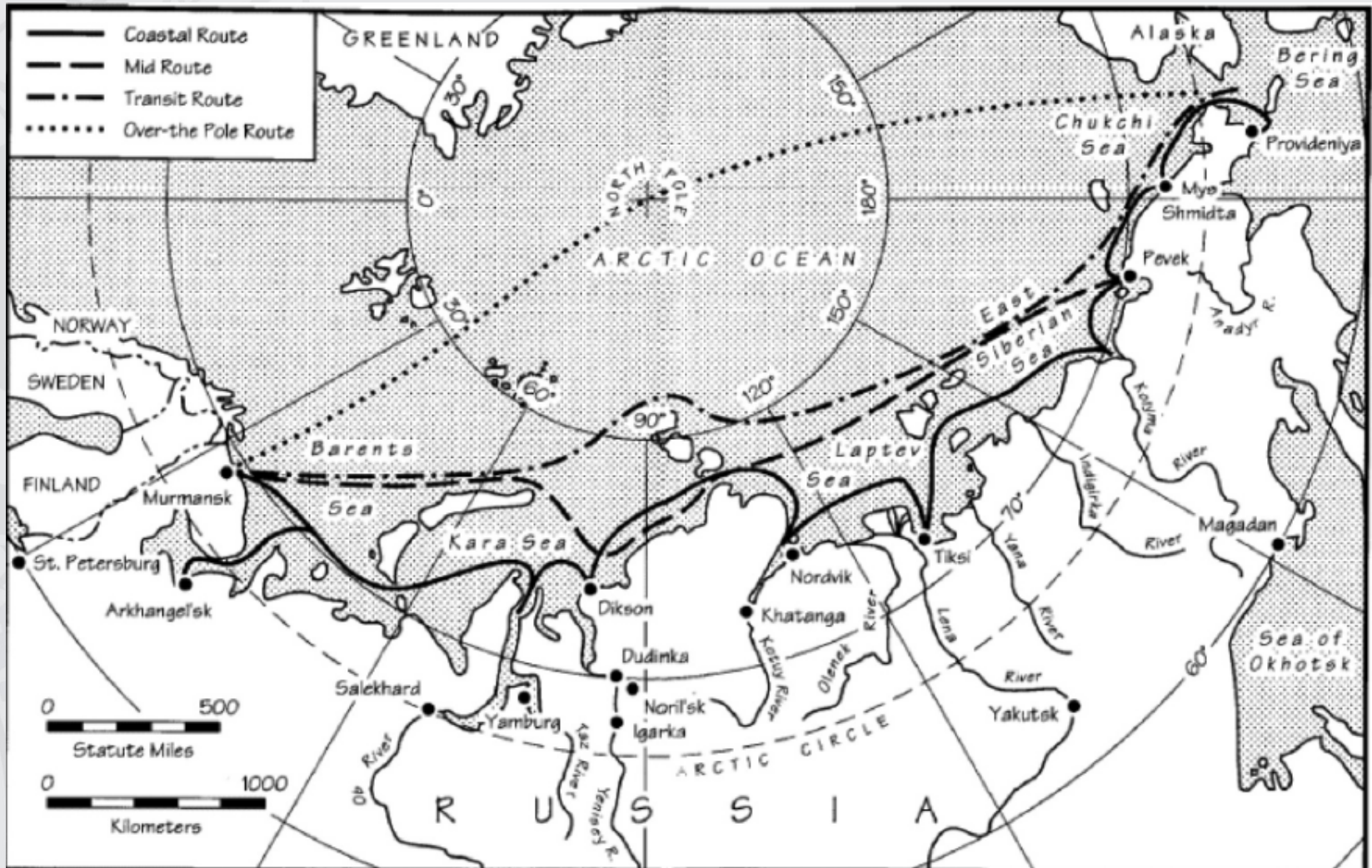
NSR international legal status

UNCLOS-related problems. Freedom of navigation vs. national control over the NSR. NSR international legal status. Article 234 debate:

- What is the significance of recognizing special coastal state powers specific to the EEZ? One interpretation is that coastal states are given no greater powers than those granted for the territorial sea and thus no unilateral right exists to adopt special ship construction, crewing and equipment standards.
- What extent of ice coverage is required to invoke this article (especially given the current trend of melting ice in the Arctic Ocean)?
- It is unclear whether this article is applicable to international straits (although Russia denies such status for straits in the NSR water area)?
- The application of Article 234 to straits used for national navigation may also be questioned, although the UNCLOS does not explicitly exempt straits from application.



The “alternative” versions of the NSR





The Russian legal debate on the Article 234

To solve these legal issues and properly regulate navigation in the NSR water area and in the Arctic region at large one school of Russian legal thought suggests concluding a special treaty among the Arctic states and other potential users of the polar maritime routes.

Such a treaty should regulate the legal status of the Arctic sea routes, delimitation of maritime spaces, EEZs, outer limits of continental shelf, environmental standards, maritime-protected areas, maritime safety rules, military activities, Arctic research and so on.

In fact, this suggestion is close to the idea of establishing an Antarctic Treaty system in the Far North.



The Russian legal debate on the Article 234

The Russian mainstream scholarship, however, strongly believes that Article 234 is fully applicable to the NSR water area and the entire Russian EEZ in the Arctic Ocean.

This school points out that even if melting of the Arctic ice to continue in the summer season, the Russian Arctic sector still will be covered with ice most of the year. For this reason, Moscow will have a legal right to invoke Article 234 in the foreseeable future.



International legal acts

Polar Code-related problems:

- the lack of competences of flag state maritime administrations and classification societies;
- the lack of clear PC regulations with regard to the vessels operating with inadequate ice-strengthening and structural stability;
- the use of email (without physical inspection) for getting permission to navigate the NSR can lead to misinformation and cheating on the part of specific vessels (the case of the LNG carrier *Boris Vil'kitsky* operated by Dynagas LNG Partners, April 2018);
- the lack of a clear and proper definition of an icebreaker in the Code.



Improving the Polar Code

- The renewed PC should radically reduce shipping emissions. Since the current PC version failed to phase out the use of heavy fuel oil in the Arctic, though it is already banned in Antarctica, many specialists suggest switching to lighter and cleaner fuels such as distillates and LNG to further reduce emissions in the polar areas.
- Some experts insist that in the near future the Code should phase out ballast and graywater discharge in the polar areas. Special facilities to receive, store and reprocess such water should be built in the Arctic ports, including the NSR.



Improving the Polar Code

- Many environmentalists believe that there will still remain disturbances of wildlife. While the Code includes requirements for ships to avoid marine mammals such as whales and walruses, it fails to consider seabird colonies. Other experts criticize the IMO for some other omissions in the PC standards, including the lack of mandatory provisions to prevent the introduction of invasive species, failure to restrict discharges of graywater and failure to address underwater noise.



Improving the Polar Code

Some Russian environmentalists point out that other potential avenues for reducing Arctic emissions from vessels include designations of these areas under domestic conservation frameworks or possibly the designation of particularly sensitive sea areas under the IMO. The authors of these proposals believe that both options would provide guidelines for limiting vessel operations within the areas and specifying either speed limits or fuel requirements for operation, both of which could reduce emissions.



Geopolitical and security factors

- Russian military experts believe that the Norwegian and Barents Seas can still serve as the main launching areas for Western seaborne attack; therefore, these analysts maintain, the Russian Navy should still be concerned about the readiness of its anti-submarine forces in the Arctic Ocean.
- Some Russian military analysts do not exclude the possibility that the USA can permanently deploy a nuclear submarine fleet, large surface warships and sea-based ballistic missile defense (BMD) systems in the Arctic Ocean (currently, American submarines and other warships visit the region periodically).



Geopolitical and security factors

- Increasing number of military exercises and other activities nearby the Russian borders and NSR.
- International crises: Ukraine and Syria. These crises have negatively affected Russia's relations with NATO and its member states, with NATO suspending several cooperative projects with Russia, including military-to-military contacts and the development of confidence- and security-building measures, including the Arctic. The NATO-Russian tensions led to some increase in their military activities and presence in the region, as well as accelerated their military modernization programs.



Russia's soft security threat perceptions

Illegal activities in the NSR water area:

- Poaching
- Smuggling
- Illegal migration
- Marine pollution, oil spills, ballast and grey water discharges
- Potential attacks on critical industrial objects (oil and gas rigs, pipelines, cables, floating nuclear power plants, etc.).



Russian Military Modernization Programs: Strategic Nuclear Forces

- The Delta IV class (667-BDRM Dolphin) submarines are provided with a new sonar system and new submarine-launched ballistic missiles Sineva (Skiff SSN-23)
- The Typhoon-class (project 941 – Akula/Shark) submarines are being reequipped with long-range cruise missiles.
- These submarines will be replaced by four *Borey*-class submarines equipped with *Bulava* ballistic missiles and cruise missiles. The *Yuri Dolgoruky* has been in operation by the Northern Fleet since January 2013. The *Prince Vladimir* has successfully completed sea trials and joined the Northern Fleet in June 2020. The *Prince Pozharsky* is still under construction in Severodvinsk and is planned to be operational in 2024.



Russian Military Modernization Programs: Conventional Forces

- *The Naval Forces:* the Northern Fleet operates 38 surface ships. These include 11 large surface ships; among them are Russia's only aircraft carrier, 3 cruisers and 7 destroyers.
- *Air Force:* represented by the Northern and Pacific fleets' naval aviation forces. A number of Tu-142 anti-submarine warfare aircraft (13 with the Northern Fleet and 14 with the Pacific Fleet) and Il-38 maritime patrol aircraft (14 with the Northern Fleet and 15 with the Pacific Fleet) are capable of long-distance operations. Russia's strategic aviation is not based in the Far North; however, it does use the region as a transit channel for air patrols in the Arctic and North Atlantic oceans.

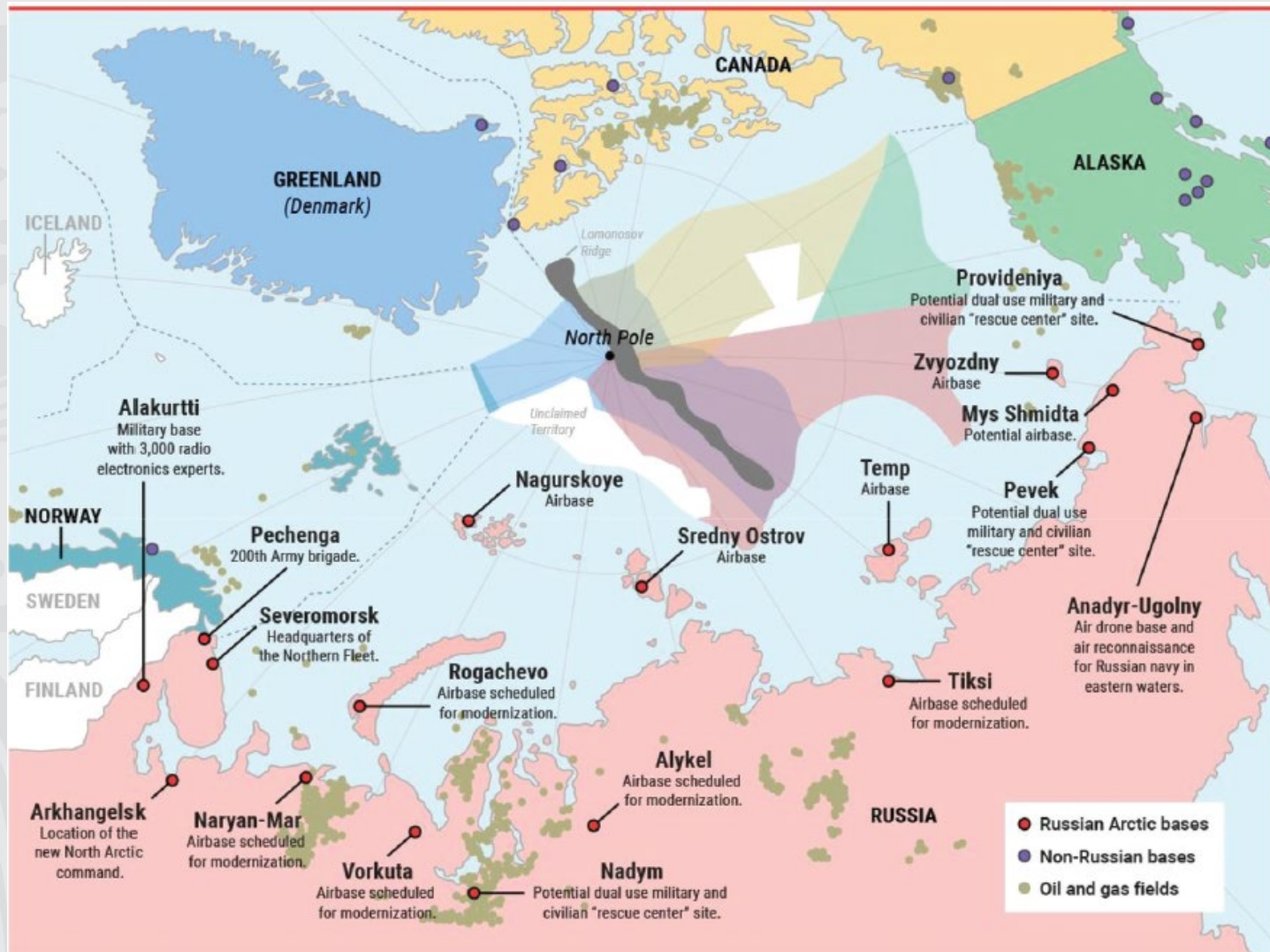


Russian Military Modernization Programs: Conventional Forces

Air-defense force units are stationed on the Kola Peninsula, near Severodvinsk (Arkhangelsk region), Chukotka, and on a number of Russian islands in the Arctic – Novaya Zemlya, Franz Josef Land, the New Siberian Islands, and Wrangel Island. Some of these units have re-established many of the old Soviet airfields and military bases in the Arctic. In October 2014, these units have been united into a joint task force.

These units are equipped with, among other things, RS-26 Rubezh coastal missile systems, S-300 air-defense missiles, and the Pantsyr-S1 anti-aircraft artillery weapon system.

The measures to increase Moscow's military potential in the region include the creation of a new air-force and air-defense army, including regiments armed with MiG-31 interceptor aircraft, S-400 air-defense missile systems (to replace the S-300 systems), and radar units.



SOURCES: The Heritage Foundation, TASS, Sputnik News, RT, USNI News, The Moscow Times, Associated Air Charter, Barents Observer, Council on Foreign Relations, The Economist.

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Russian Military Modernization Programs: Conventional Forces

Land Forces:

- Arctic brigade (January 2015). Two other brigades in the Murmansk Region remained at place.
- Another Arctic brigade is under construction on the Yamal Peninsula.
- A unified command “North” (December 2014).
- Two new Arctic coast defense divisions should be established by 2018 as part of an effort to strengthen security along the Northern Sea Route. However, these plans have never been implemented.



Russian Military Modernization Programs: Conventional Forces

Border Guards:

- Two new border guard commands - one in Murmansk for the western AZRF regions, and one in Petropavlovsk-Kamchatsky for the eastern Arctic regions – were established.
- Now the border guards are assigned with the task to deal with the new – soft security – threats and challenges such as the establishment of reliable border control systems, the introduction of special visa regulations to certain regions, and the implementation of technological controls over fluvial zones and sites along the NSR. It is currently controlled from the air by border guard aircrafts and on the land and sea by the North-Eastern Border Guard Agency; the Russian border guards further plan to establish a global monitoring network from Murmansk to Wrangel Island. All in all, Moscow plans to build 20 border guard stations along the Arctic Ocean's coastline.



Russian Military Modernization Programs

- The aim of modernization is to make the Russian armed forces in the Arctic more compact, better equipped and trained, as well as prepared for coping with new, non-traditional, security challenges and threats.
- The modernization programs do not violate the regional military balance and do not provoke a regional arms race.



Changing Roles of the Military

The nature and roles of military power in the Arctic have been radically changed over the last quarter of the century. In contrast with the Cold War era, when it was a coercive instrument in a global military confrontation between two superpowers and capitalist and socialist systems, now military power has principally new functions:

- assertion of Russia's sovereignty over its EEZ and continental shelf in the Arctic Ocean;
- protection of Moscow's economic interests in the North (protection of mineral and bio-resources, fighting poaching and smuggling);



Changing Roles of the Military

- prevention of illegal migration;
- prevention of potential terrorist attacks against critical industrial and infrastructural objects;
- fulfillment of dual-use functions, such as SAR operations, monitoring air and maritime spaces, providing navigation safety, and mitigating natural and man-made catastrophes;
- assistance to the academic community in developing Arctic research, and
- performance of some important symbolic functions.



Conclusions

There are at least two positive trends in the Russian security/geopolitical discourse on Arctic shipping:

- There is a clear shift from discussing hard security threats to the soft security challenges which are now in the focus of Russia's debate.
- Moscow aims to solve the NSR-related problems in a cooperative way through political and scientific 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 specialized UN bodies.



Conclusions

To solve existing problems and make the NSR an attractive transport corridor and a real platform for international cooperation Russia still has to do a lot of homework:

- Clear and transparent rules of navigation *via* the NSR should be established.
- Better division of labor between various governmental agencies should be introduced.
- The port, SAR and communication infrastructures along the NSR should be radically improved.
- Safer and faster sea routes within the NSR water area should be defined.
- Icebreaker, rescue and research fleets should be modernized.
- Icebreaker and pilot escort serviced should become affordable for all NSR potential customers.
- Information systems on ice conditions and weather forecasts should be improved as well.