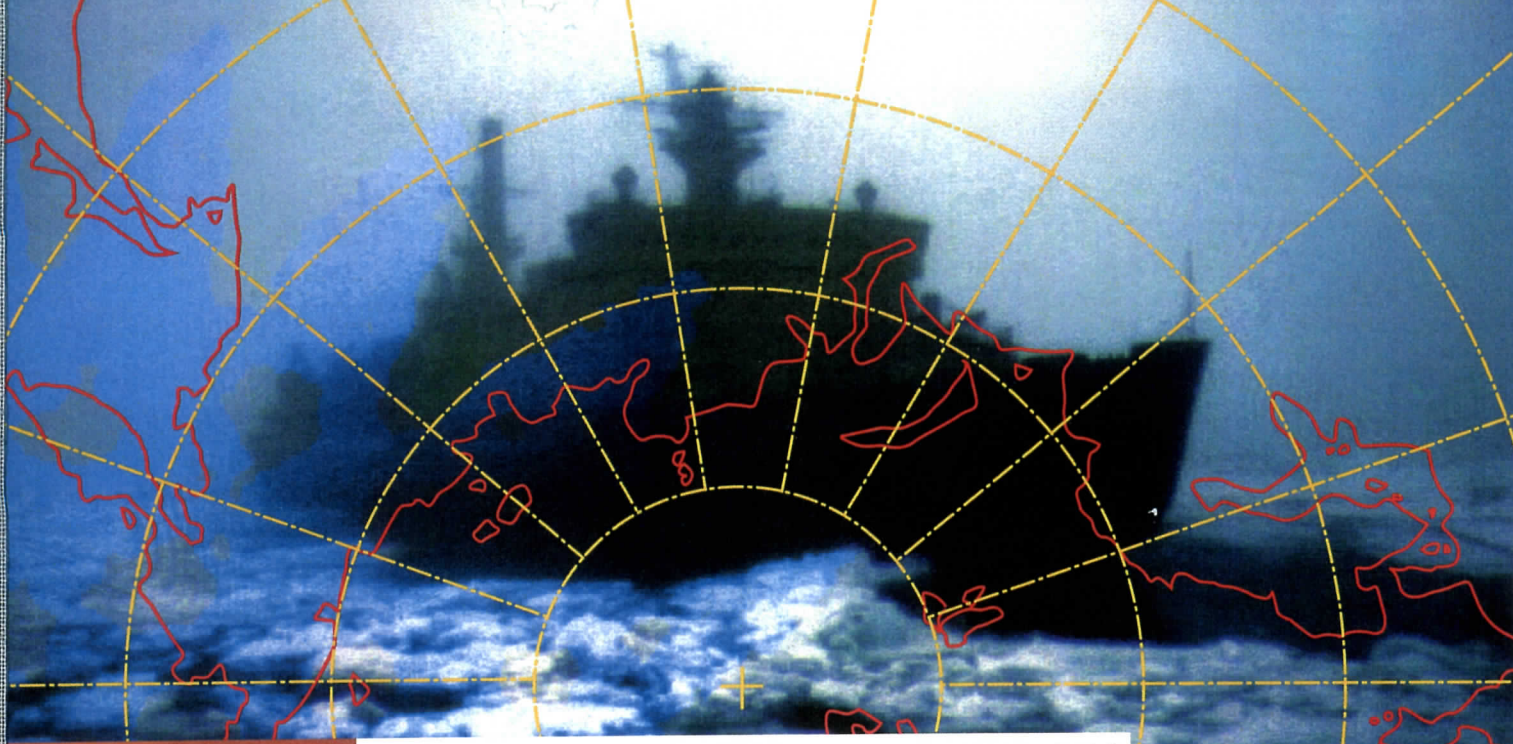

INSROP WORKING PAPER
NO. 98 - 1998, IV.3.3

Marine Insurance for the Northern Sea Route

By Valery A. Musin

INSROP International Northern Sea Route Programme

Central Marine Research & Design Institute, Russia

The Fridtjof Nansen Institute, Norway

Ship and Ocean Foundation, Japan

International Northern Sea Route Programme (INSROP)

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Sub-programme IV:	Political, Legal and Strategic Factors
Project IV.3.3	Marine Insurance for the Northern Sea Route
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Date:	31 March 1998
Reviewed by:	Peter Morgan, Clyde & CO, London

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FOREWORD - INSROP WORKING PAPER

INSROP is a five-year multidisciplinary and multilateral research programme, the main phase of which commenced in June 1993. The three principal cooperating partners are **Central Marine Research & Design Institute (CNIIMF)**, St. Petersburg, Russia; **Ship and Ocean Foundation (SOF)**, Tokyo, Japan; and **Fridtjof Nansen Institute (FNI)**, Lysaker, Norway. The INSROP Secretariat is shared between CNIIMF and FNI and is located at FNI.

INSROP is split into four main projects: 1) Natural Conditions and Ice Navigation; 2) Environmental Factors; 3) Trade and Commercial Shipping Aspects of the NSR; and 4) Political, Legal and Strategic Factors. The aim of INSROP is to build up a knowledge base adequate to provide a foundation for long-term planning and decision-making by state agencies as well as private companies etc., for purposes of promoting rational decisionmaking concerning the use of the Northern Sea Route for transit and regional development.

INSROP is a direct result of the normalization of the international situation and the Murmansk initiatives of the former Soviet Union in 1987, when the readiness of the USSR to open the NSR for international shipping was officially declared. The Murmansk Initiatives enabled the continuation, expansion and intensification of traditional collaboration between the states in the Arctic, including safety and efficiency of shipping. Russia, being the successor state to the USSR, supports the Murmansk Initiatives. The initiatives stimulated contact and cooperation between CNIIMF and FNI in 1988 and resulted in a pilot study of the NSR in 1991. In 1992 SOF entered INSROP as a third partner on an equal basis with CNIIMF and FNI.

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1. Introduction

The Northern Sea Route makes the distance between Western Europe and North-Eastern Asia considerably shorter than the conventional route via the Suez Canal. Due to this factor the prospect of intensive use of the Northern Sea Route for carriage of both domestic and foreign goods may facilitate international trade. That is why this project is very promising.

At the same time navigation in Arctic waters (including the Northern Sea Route) is inevitably connected with specific natural dangers, such as heavy ice conditions, low temperatures, darkness during polar nights, all of which create additional dangers for ships (and for cargoes on board them) in addition to those normally encountered at sea.

To a very substantial extent those factors are beyond human control. In view of that the main source of compensation of losses which may be sustained by shipowners and cargo-owners becomes marine insurance in all its three branches - hull insurance, cargo insurance and shipowners liability insurance.

Marine insurance law, like maritime law in general, is of an international character. However the legislation of each country certainly has some peculiarities of its own.

The aim of this work is to outline some problems of marine insurance (with specific reference to navigation by the Northern Sea Route) in the light of Russian law.

Due to the fact that Russia is now in course of transition to market economy a number of specific issues arise, such as:

1) whether Russian law (including that in the sphere of insurance) is being reviewed and renewed to take into account the "market perspective";
2) whether (and if so, to what extent) Soviet maritime (and, especially, marine insurance) law remains effective in the Russian Federation;
3) the main laws in the field of insurance in Russia and the correlation between them;

4) Whether the insurance monopoly (which previously existed in the Soviet Union) is now abolished and if competition is encouraged in the Russian insurance market;

5) whether the Russian insurance market is open to foreign insurance companies;

6) what about co-insurance and reinsurance in Russia?;

7) whether insurance coverage of ships, cargoes and shipowners liability upon such terms and conditions as are well known and accepted in international trade is available in the Russian insurance market;

8) what terms and conditions for the insurance protection of the environment are available in Russia.

These issues are briefly touched below so as to explain that Russian law is in a position to provide insurance coverage for ships, cargoes and shipowners liability at the internationally accepted level.

2.Sources of Russian Insurance Law (general overview)

Prior to an analysis of the insurance implications related to use the of the Northern Sea Route it is worthwhile to start with a brief overview of the sources of Russian law, including those in the sphere of insurance.

Economic reforms in Russia were - and are - accompanied by numerous laws of a market oriented character. At the same time a number of legislative acts of the former USSR remains effective in this country. As it is stipulated in Section 2 of the Decision of the Supreme Council of the RSFSR of 17th December 1991 "On Ratification of the Treaty on Creation of the Commonwealth of Independent States", the legal norms of the former USSR shall apply in the territory of the Russian Federation until relevant legislative acts of the Russian Federation will be

passed in due course, and to the extent that the USSR norms do not contradict Russian legislation.

Inter alia, the USSR Merchant Shipping Code 1968 is valid in Russia, as is specifically mentioned in Section 2 of the Decision of the Supreme Council of the Russian Federation of 3rd March 1993 "On some issues of application of legislation of the USSR in the territory of the Russian Federation ".

It is necessary to mention here that Russia is also a successor of the USSR in international conventions concluded by the latter. According to Article 12 of the Treaty on Creation of the Commonwealth of Independent States of 8th December 1991, the High Contracting Parties shall honour international obligations resulting for them from treaties and agreements of the former USSR.

Therefore, e.g., the International Convention on Civil Liability for Oil Pollution Damage 1969, to which the USSR was party, remains binding for the Russian Federation.

We may now consider the basic sources of Russian insurance law at present.

There are three main legislative acts in this field:

1) the USSR Merchant Shipping Code 1968 which is in force in the territory of the Russian Federation[1]; in particular, the Code contains Chapter XII " The Contract of Marine Insurance";

2) the RF Law on Insurance 1992 (as amended by the Federal Law of 31st December 1997 No. 157-ФЗ);

3) the RF Civil Code (Part Two) effective from 1st March 1996; it contains Chapter 48 ("Insurance").

First of all a question arises on the hierachy among these laws. We can find a clue to the resolution of this problem in the Civil Code. Article 3 (Section 2, paragraph 2) reads that civil legislation consists of the present Code and other federal laws promulgated in compliance with it,

[1] A draft [new] RF Merchant Shipping Code is now in course of consideration.

and "norms of civil law contained in other statutes should correspond to the present Code" which means that the Civil Code prevails over other federal statutes containing norms of civil law.

There are however some exceptions to this general rule.

For example, according to Article 2 (Section 1, paragraph 4) of the Civil Code - "the provisions stipulated by civil legislation shall be applicable to relations with involvement of foreign citizens, stateless persons and foreign legal entities unless federal law stipulates otherwise".

Since the notion "civil legislation" embraces both the Civil Code and other federal laws (as it is expressly mentioned in Article 3 (Section 2)), a special federal law regulating relations with "foreign element" shall prevail over relevant norms of the Civil Code.

The typical example of such a federal law is the Law on Foreign Investments 1991. In case of a contradiction between the norms of the Civil Code and those of the Law on Foreign Investments the latter law should be applied rather then the Civil Code.

We need to bear in mind that prevailing force is only granted to norms of federal laws which are specifically designated to regulate civil legal relations "with foreign element".

Chapter XII ("Contract of Marine Insurance") of the Merchant Shipping Code is equally applicable both to domestic and foreign parties of an insurance contract. There are no rules related only to foreigners. From this standpoint we could deduce that the norms of Chapter 48 of the RF Civil Code would prevail over those of the Chapter XII of the MSC.

There is, however, a special reservation in the Civil Code (Article 970) according to which the rules of the Civil Code related to insurance shall apply to some specific kinds of insurance, including marine insurance, unless the laws related to those kinds of insurance stipulate otherwise.

It means that in case of discrepancy between the norms of the Chapter XII of the MSC and those of the Chapter 48 of the Civil Code, the relevant norms of the Chapter XII of the MSC shall prevail over those of the Chapter 48 of the Civil Code.

As for the Law on Insurance 1992, its norms are also (with a very few exceptions)[2] extended both to Russian and foreign persons. That is why the provisions of Chapter 48 of the Civil Code prevail over the vast majority of the norms of the Law of Insurance.

It is worthwhile to note here that very important issues have been resolved in substantially different ways in the Law on Insurance on the one hand, and in the RF Civil Code on the other.

Let us take just one example related to such a crucial problem as the duty of the assured to provide information when entering into an insurance contract. Both the Insurance Law (Article 18, Section 1, Subsection "á") and the RF Civil Code (Article 944, Section 1) require the assured to inform the insurer of all the circumstances which are substantial for the assessment of the perils insured against.

However, the Law on Insurance does not specify which circumstances shall be deemed substantial ones. It means that it will be up to the court to resolve this problem upon its discretion depending on the situation.

Meanwhile the Civil Code does give some clue here. According to Article 944 (Section 1, paragraph 2) "substantial circumstances shall in any case be deemed those expressly specified by the insurer in the standard form of the insurance contract (insurance policy) or in his written inquiry".

Hence the Civil Code enables some circumstances to be deemed substantial by operation of law. As for all the rest, it depends upon court's discretion. In such a way the Civil Code simplifies the matter to some extent[3].

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[2] Related to activities of foreign insurers and brokers on Russian territory (see below).

[3] The situation became even more simple from 4th January 1998 since Articles 15-24 of the Law on Insurance were declared invalid from that date according to the Federal Law of 31st December 1997.

As for the legal consequenses of the assured's failure to comply with this requirement, they are quite different in the Law on Insurance on one hand, and in the Civil Code on the other.

According to the Law on Insurance, in the event that the assured deliberately misinformed the insurer on the subject-matter insured, the insurer is entitled to refuse to reimburse losses caused by the peril insured against (Article 21, Section 1, Subsection "b").

This means that in terms of the Law on Insurance a deliberate failure of the assured to perform his duty to provide information when entering into insurance contract does not affect the validity of the contract. It remains valid, however the insurer is exempted from his obligation to reimburse the losses sustained by the assured.

At the same time the insurer enjoys the right to retain (or to require) the premium which has been received by (or is due to) him.

The Civil Code displays a different approach to this problem.

Section 3 of Article 944 reads: "If it is established after conclusion of the insurance contract that the assured deliberately misinformed the insurer of the circumstances mentioned in Section 1 of the present Article, the insurer is entitled to require that the contract be declared null and void and that the consequenses specified in Section 2 of Article 179 of the present Code apply".

This means that, contrary to the relevant norms of the Civil Code, deliberate misinformation by the assured when entering into insurance contract may result in invalidation of the contract (albeit not by operation of law, but upon the insurer's request to the court).

The legal consequences of such invalidation will be regulated by Article 179 of the Civil Code, which deals with transactions concluded under the influence of fraud. According to this Article the misinforming party (the one who is guilty in fraud) should return to the other party any money and/or property received from the latter.

As for the money (and/or property) received by the misinformed party (the one who is the victim of the fraud), it is due to the State.

The idea of this scheme is twofold:

1) to put the innocent party into the position it was in prior to entering into the transaction (this aim is achieved by returning to this party any property and/or money which it gave to the guilty party);

2) to punish the guilty party (this aim is achieved by specifying that the property (and/or money) which has been given by the guilty party to the innocent one should not be returned to the guilty party, but should be allocated to the State).

The effect of this on an insurance contract the situation is as follows.

This contract comes into force at the moment of payment of insurance premium or its first instalment, unless the contract provides otherwise (Article 957, Section 1 of the Civil Code).

Now let us suppose that the assured who had paid the insurance premium (and therefore bringing the insurance contract into effect) sustained some losses resulting from a peril insured against and required the insurer to cover the losses. In the course of enquiries the insurer discovers that he had been deliberately misinformed by the assured when entering into the contract. The insurer decides to enjoy the right granted him by Section 3 of Article 944 of the Civil Code and applies to the court to declare the contract null and void because of the fraud on the part of the assured.

Since the guilty assured received nothing from the insurer so far, he has nothing to return to the insurer. The latter, in his turn, has already received the insurance premium which is now due to the state budget, not to the assured.

In practical terms the difference between the approach of the Law on Insurance and that of the Civil Code is as follows.

In case of deliberate misinformation given to the insurer by the assured, the Law on Insurance allows the insurer to refrain from recovery of losses sustained by the guilty assured and to retain the premium.

In the same situation the Civil Code exempts the insurer from reimbursing the losses but obliges him to transmit the premium to the state budget.

As it was already mentioned, the Civil Code prevails over the law on Insurance. So the norm contained in Article 944 (Section 3) of the Civil Code overrules the provision of Article 21 (Section 1, subsection "b") of the Law on Insurance.

The correlation between Chapter XII of the MSC, the Law on Insurance 1992 and the RF Civil Code may be illustrated, by considering the impact on the contract of insurance of alienation of the insured property .

Under the MSC there is a twofold approach to this issue since the Code distinguishes the "insurance consequences" of alienation of the insured cargo on the one hand, and those of alienation of the insured ship on the other.

In case of alienation of the insured cargo, the contract of insurance shall remain in force and all the rights and duties of the insured shall pass to the party acquiring the cargo (Article 203 of the MSC).

In contrast to that, in case of alienation of the insured ship, the contract of insurance shall terminate from the time of alienation.

However, if the ship is alienated during a voyage, the contract shall remain in force until completion of the voyage and the rights and duties of the insured shall pass to the acquirer of the ship (Article 204 of the MSC).

The concept contained in the Law on Insurance 1992 is different, though optional. According to Section 1 of Article 19 in case of change of the insured "his rights and duties shall pass to the new owner with the insurer's consent unless the law or a contract stipulates otherwise".

The MSC certainly falls within the definition of "Law"; therefore the Law on Insurance 1992 does not affect the abovementioned provisions of the MSC which remain effective.

According to the RF Civil Code (Article 960), upon the transfer of the right of ownership of the insured property from the person for whose benefit the contract of insurance was concluded to another person, the rights and duties under this contract shall pass to the new owner of the insured property except in such cases as confiscation, requisition etc. The new owner of the insured property should promptly notify the insurer in writing concerning the acquisition of the property.

In comparison with the relevant norms of the Insurance Law 1992 the position of the Civil Code is peculiar in two aspects: first of all , no insurer's consent is required for substitution of the insured by the new owner of the insured property (the insurer should only be notified concerning that); and secondly, this norm is of a strict mandatory character. It cannot be altered by contract. Moreover, as it appears from the text, the norm cannot be altered by law either.

Due to the fact that the Civil Code in terms of its legal force prevails over other federal statutes containing norms of civil law, the norm of Article 960 of the Civil Code overrules the provision of Article 19 of the Law of Insurance 1992[4]. It means that from 1st March 1996 (when the Part Two of the Civil Code became effective), in case of alienation of the insured property, the new owner substitutes the insured in his relationship with the insurer irrespective of whether the insurer gives consent.

On the other hand, due to the abovementioned prevailing legal force of the norms of Chapter XII of the MSC over those of Chapter 48 of the Civil Code, the rules of Articles 203 and 204 of the MSC remain unaffected.

In light of the above we may now touch on some problems of insurance protection related to the use of the Northern Sea Route.

[4] This Article of the Law on Insurance 1992 is invalid from 4th January 1998.

The special significance of insurance when using the Northern Sea Route is that when navigating in Arctic waters the usual perils of the sea are substantially increased with heavy ice conditions, low air temperature, limited visibility in the polar night etc.

The historic classification of the kinds of marine insurance (hull, cargo and shipowners' liability insurance) is completely valid in this context, but each of them is subject to particular consideration.

However, prior to considering the specific features of insurance coverage of the interests of shipowners and cargo-owners with regard to the Northern Sea Route it makes sense briefly to indicate the new insurance problems in this country which have resulted from the transition of the Russian economy to "market conditions".

3. Insurance problems resulting from the abolition of the state insurance monopoly in Russia

In earlier times, when an insurance monopoly existed, all kinds of marine insurance were concentrated in the "sole hands" of Ingosstrakh. Since the insurance monopoly was abolished, numerous competing insurance companies have been created - and keep being created - in the Russian insurance market which is being formed. Accordingly Russian shipowners and cargo-owners are at liberty upon their own discretion to chose domestic insurers.

Meanwhile insurers encounter, inter alia, the problem of specialisation of their lines of business. In fact this problem was apparent in the time of the insurance monopoly because when the same insurer provided insurance coverage for conflicting interests (e.g. insurance of risks related to cargo both for cargo owners and shipowners) it of course affected the insurance protection in a negative way.

Insurance companies are quite independent when determining the scope of their business activities, however with due consideration of the above the insurer of the cargo carried by sea should in any event refrain from acceptance of an offer to insure the shipowner's liability in relation to the same cargo.

The practice which has been formed for example in England is significant in this contact. Due to historic tradition, ships and goods are provided with insurance coverage upon a contractual basis, while shipowner's liability is usually covered by protecting and indemnity clubs ("P & I Clubs") which are a form of "insurance co-operatives".

The possibility to establish mutual insurance organisations is expressly mentioned in the Russian Law "On Insurance" 1992 (Article 7) as well as in the RF Civil Code (Article 968).

It is difficult to tell right now whether shipowner's liability insurance will be performed on a contractual or mutual basis in this country - this will be clarified by practice. But there is no doubt a necessity to demarcate the insurance coverage for shipowners on the one hand, and cargo interests on the other.

We should also bear in mind that the financial resources of the various insurance companies are apparently far from being equal.

Therefore in cases when it is not possible for a single insurer to provide insurance coverage for an high value item (such as a big ship or a major shipment of a high-priced goods), joint coverage (i.e. co-insurance) may be provided by several insurers. This is now expressly allowed by law (Article 12).

It is worthwhile to use the experience of foreign insurance markets and primarily that of the English market where for centuries there has been a practice of distribution of a large sum insured among a number of insurers who are called "underwriters". Each of them assumes a certain share of the liability for the insurance of the subject-matter in such a situation.

Russian law allows for the contract of co-insurance to contain terms and conditions "determining the rights and obligations of each insurer" (Article 12), and all of them shall be jointly and severally liable to re-imburse the losses sustained by the insured (Article 953 of the RF Civil Code).

The complication is that each insurance company has its own rules. Hence the unification of different rules is needed. There was no such a need in the past because in the time of the insurance monopoly the only insurance rules valid in the whole territory of the country were those adopted by the Finance Ministry.

Foreign experience may be of use here as well. It is well-known for instance that different insurance companies operating in the English insurance market apply the clauses for hull and cargo insurance recommended by the Institute of London Underwriters.

In this country the Insurance rules abovementioned may be used as "model" ones, although of course there is no prohibition on applying other clauses established in international insurance practice if the parties so agree. For example some Russian Insurance companies apply Institute Cargo Clauses 5 (A,B,C) when insuring goods.

The end of the insurance monopoly also brings to the fore the question of reinsurance. It should be noted that reinsurance has always been considered by Russian Maritime law as a form of insurance activity to be performed on a voluntary basis (See: Article 194 of the USSR Merchant Shipping Code 1929, Article 196 of the USSR Merchant Shipping Code 1968).

It is necessary to emphasise that Ingosstrakh gained substantial experience in this field when performing reinsurance transactions (especially those concerning the reinsurance of shipowners' liability insurance coverage) in the international insurance market.

Meanwhile for the time being reinsurance (which is mentioned in general terms in Article 13 of the Law on Insurance) may become compulsory under some circumstances. According to Article 27 (Section 2) of the Law, insurers who assume liabilities in amounts which exceeding

their capacity to cover such liabilities with their own assets and insurance reserves shall reinsure the risk of having to make payments with regards to such liabilities.

As for the possibility of using foreign insurers and reinsurers, it should be borne in mind that the transfer of insurance (or reinsurance) premium (to be calculated in hard currency) abroad is a kind of currency operation connected with the movement of capital and until recently could only be performed with the approval of the Central Bank of the Russian Federation (See: Article 6, Section 2 of the Law on Currency Regulation and Currency Control 9th October 1992).

Now the situation has changed. According to the "Regulations on amendments to the procedure of performance of some kinds of currency operations in the Russian Federation" approved by the Order of the Central Bank of the Russian Federation 24th April 1996 N 02-94, no licence of the RF Central Bank is required for the transfer of foreign currency by Russian residents from Russia to foreign insurers as insurance premiums, nor is it required for the transfer of foreign currency to Russian residents' accounts in authorised Russian banks as reimbursement of losses covered by insurance (Section 1.6).

Naturally, the formation and development of the Russian reinsurance market should be "included into the agenda".

In order to protect the domestic insurance market it is stipulated that foreign legal entities and foreign citizens are entitled to establish insurance organisations in the territory of Russia only as joint ventures in the form of limited companies or joint stock companies, with the proviso that the aggregate share of foreign investors in the chartered capital of such a JV should not exceed 49% (Artilce 5 of the Decision of the Supreme Council of the Russian Federation 27th November 1992 N 4016-1).

Furthermore, "mediatory activities in insurance related to the concluding of insurance contracts on behalf of foreign insurance companies are not allowed in the territory of the Russian

Federation unless international treaties with participation of the Russian Federation otherwise determine" (Article 8, Section 4 of the Law on Insurance).

It should also be noted that according to the Federal Law of 31st December 1997 No. 157-ÔÇ "insurance of legal entities' proprietary interests located in the territory of the Russian Federation (except reinsurance and mutual insurance) and of proprietary interests of fisical persons-residents of the Russian Federation may only be performed by legal entities having licence for performance of insurance activities in the territory of the Russian Federation".

The question arises, how to iterprete this provision with specific reference to sea-going vessels belonging to Russian legal entities. Such vessels may certainly spent considerable time outside the Russian territorial waters.

We should however bear in mind that according to the RF Civil Code such objects as sea- (and river-) going ships as well as aircrafts and space ships are legally deemed real property (Section 1 (paragraph 2) of Article 130).

Right of ownership to any kind of real property (as well as its mortgage etc.) is subject to state registration in Russia. Given that, such object remain (in legal terms) closely connected with Russia irrespective of their actual location in sime particular time.

That is why we may conclude that such object as, inter alia, sea-going ships should be registered with insurance companies having a licence to operate in Russia.

On the other hand, vessels may be reinsured abroad.

It is also possible to obtain an insurance coverage for shipowner's liability from foreign P. and I clubs.

The issues abovementioned directly relate to the procedure of insurance of ship, goods and shipowners liability, including insurance with due consideration of specific conditions of the Northern Sea Route.

4. Increasing demand for hull insurance in the Russian market with special reference to the use of the Northern Sea Route

As for hull insurance it is necessary to bear in mind, inter alia, the following.

In earlier times, when the overwhelming majority of ships belonged to the State, shipping companies were, strictly speaking, state-owned enterprises operating the fleet entrusted to them. They were only interested in obtaining of insurance coverage for damage to, not for total loss of the ship.

The reasons for such a situation stemmed from the system of financing of shipbuilding which was valid that time. Ships ordered for shipping companies were paid for by the Ministry of Merchant Marine in a centralised way from budget allocations. A lost ship had to be written off the balance of the shipping company. Therefore it was the state, not the shipping company, which sustained the losses resulted from the sinking of a ship.

Upon transition of the country to market economy the situation substantially changed.

In the first place there are now a lot of private shipping companies operating their own ships.

Secondly, the State-owned shipping companies are now in the course of privatisation.

Thirdly, although ships of certain types are not subject to privatisation (nuclear, training, hydrographical, icebreaking fleet - See: Subsection 2.1.14 of the State Programme for Privatisation of State-owned and Municipal Enterprises in the Russian Federation approved by the Decree of the President of the Russian Federation 24th December 1993 N 2284), in view of the reclassification of State-owned unitarian enterprises into (a) those enjoying the right of economical management and (b) those having the right of operative management of State-owned property (see Articles 113-115 of the Civil Code), the legal status of ships entrusted to enterprises of the latter type may be modified.

In the long run shipping companies (at least many of them) are now interested in insuring the ships both against damage and against total loss.

However the cost of repairing (let alone the amount of losses resulting from total loss) of a modern big ship equipped with high-priced machinery may appear to be beyond the financial capacity of a single insurance company. In such a situation appropriate insurance coverage may only be provided by means of co-insurance and the insurers may wish to reinsure their risks as abovementioned.

The most likely causes both of damage and of total loss of ships when going by the Northern Sea Route will apparently be perils resulting from heavy ice conditions. Of course, there is no doubt that hull insurers when determining hull insurance premium rates will take into account such factors as the age of the ship, its "ice class" (if any), the type of its engine, its electro-radio-navigational equipment, the route of the voyage, the season of the year, availability of ice-breakers and pilots (if necessary), the estimated term of the voyage, the nature of the goods to be carried etc.

It is also necessary to bear in mind that according to the normative acts being in force in the territory of the Russian Federation there are special requirements to as to the design, equipping and provisioning of ships going by the Northern Sea Route (Section 1.5 of the Rules for navigation on routes of the Northern Sea Route approved by the USSR Ministry of Merchant Marine 14 September 1990). These requirements are compulsory for all ships irrespective of the flag they fly. Both Russian and foreign ships are only allowed to go by the Northern Sea Route provided they meet the requirements abovementioned. All these factors will be also bear on the premium rates in the contract of insurance.

5. Insurance protection of shipowners' liability in the Arctic area (general outline)

As for shipowner's liability insurance, it should be noted first of all that such liability on this route may be of a different character which somehow influences the terms and conditions of the liability insurance. For example, the use of nuclear-powered icebreakers in the Northern Sea Route gives rise to the question of insurance of liability for nuclear damage. This may be resolved by using the legal mechanism contained in the Convention on Liability of Operators of Nuclear Ships 1962.

When transporting oil, oil products and similar substances there is the question of pollution liability insurance, reflected in the International Convention on Civil Liability for Oil Pollution 1969 ratified by the USSR and being valid for Russia.

According to the Convention, the financial security of the shipower with regard to his liability for pollution is compulsory.

In compliance with the norms of International law it is stipulated that any ship not carrying a certificate confirming the proper financial security of the shipowner for his civil liability for losses which may be caused to the marine environment and the Russian Northern coast by pollution, shall be prohibited to navigate by the Northern Sea Route (Section 5 of the Rules for Navigation on Routes of the Northern Sea Route).

One acceptable form of proper financial security of the shipowner for his civil liability may be an insurance policy issued by a first-class insurance company registered either in Russia or in a foreign country.

It is quite clear that although the different types of insurance (being hull, cargo and shipowner's liability coverage) are all relevant use of Northern Sea Route in the sphere of international trade and seafaring, still the most important type of insurance in this context is shipowner's liability

insurance, and in particular insurance protection for liability for contamination of the environment.

It is appropriate to note that it is not only shipowners whose liability should be covered by insurance. Any business activities performed both at sea and on shore may potentially result in substantial detriment to the environment and population of the Arctic region.

Nowadays, when human activities keep influencing - to an increasing extent - the natural environment on world-wide scale, environmental protection becomes vitally necessary for the whole of humanity. That is why appropriate legal means (including but not limited to rules relating to liability insurance) are one of priority directions of development of Russian law.

An illustration is the RF Federal Law "On Ecological Expertise" passed by the State Duma on 19th July 1995. It is rather detailed normative act stipulating, inter alia, that some items are subject to compulsory examination by State ecological organs, such as draft general plans for the development of those territories which have a specific regime for the use of natural resources and the performance of business activities (see: Article 11(2) of the Law). There is no doubt that the Arctic coast of Russia falls within this category. This means that any general plans related to development of this area will be very carefully examined from an ecological standpoint prior to their approval.

Feasibility studies and draft plans of business activities which may affect the environment of neighbouring states (See: Article 11, paragraph 5) are also subject to examination by state ecological organs. Russia's neighbours in the Arctic area are Norway (in the West) and the USA (Alaska) in the East.

Accordingly any business plans related to Northern Sea Route need to be assessed not only from technical and economical point of view but from the ecological perspective as well.

It is quite possible that the expert opinions may contain some recommendations or even requirements concerning special measures to be taken (including insurance) in order to prevent

(or at least minimise) any consequences of business activities which may be dangerous for the natural environment.

In this connection it is also appropriate to mention the Federal Law "On Production Sharing Agreements" adopted by the State Duma on 6th December 1995.

This law regulates the relationship between the state, on one hand, and an investor (both domestic and foreign), on the other, concerning the development of subsoil resources. The State grants an investor certain privileges in the field of taxation (the number of taxes due from the investor is substantially decreased - see Article 13), and currency regulations (both the investor and his subcontractors, such as project operators, suppliers, carriers etc., are exempted from compulsory sale of part of their hard currency export income (Article 15(3)) - such compulsory sale is generally obligatory for all Russian resident companies including those with foreign investments; joint ventures and wholly foreign-owned subsidiaries) etc.

Meanwhile an investor is obliged, inter alia, to take appropriate measures to prevent his activities having a detrimental effect on the natural environment and to remedy any damage to the environment.

An investor is also obliged to provide insurance coverage for his tortious liability in case of any accidents causing damage to the natural environment (Article 7(2).

These norms are extended to the whole territory of the Russian Federation including its Arctic coast. Therefore the insurance protection of liability for contamination of the environment is very important not only for shipowners but also for any other businesses performing their activities in the Arctic (as well as in other regions of the country).

It is also very important to emphasise two points:

1) The norms abovementioned are contained in the Article describing the terms and conditions of a production sharing agreement;

2) the norms are of mandatory character.

This means that these rules stipulate essentialia negotii (essential conditions) of the agreement so that if the parties for any reason fail to include such conditions into the agreement, the agreement will be deemed invalid. According to Article 432 (Section 1) of the RF Civil Code (Part One) 1994 any contract may only be deemed valid if the parties agree all essential conditions relating to the subject of the contract and also those conditions specified in the law as essential for a contract of a certain type.

This is a case in point because conditions related to tortious liability insurance are expressly mentioned in a mandatory norm of law and therefore they are essential conditions of any production share agreement.

That is why it is now appropriate to concentrate upon the development of norms of Russian law related to liability insurance.

In relation to liability insurance the situation is now as follows.

The MSC (Article 196) contains the list of proprietary interests which may be provided with insurance coverage, such as "a ship, including one under construction, cargo, freight, passage money, rent, any profit expected from the cargo, and other demands secured by a ship, cargo, or freight, the wages and other types of remuneration of the master and other members of the crew, and the risk taken by the insurer (reinsurance)".

As can be seen, there is no direct mention of civil liability in this list. At the same time it is not exhaustive, which means that liability insurance is not prohibited by the MSC. Moreover, it is actively offered by Ingosstrakh and by other Russian insurance companies.

The law on Insurance (Article 4) expressly mentions civil liability among the insurable interests through it gives no further details related to this kind of insurance.

As for the new RF Civil Code, it both expressly permits the insurance of civil liability (both tortious and contractual) and also deals with some legal issues of substantial importance concerning liability insurance.

It contains a mandatory stipulation that a contract of insurance of tortious liability shall be deemed as concluded for the benefit of those suffering loss or damage even if the contract has been concluded in favour of the insured or if there is no indication in the contract in whose favour it has been concluded (see: Article 931, Section 3).

Accordingly such a beneficiary has the right directly to sue the "Wrongdoer's" liability insurer (see: Article 931, Section 4).

This is of course the most effective way to protect the interests of potential victims.

Contractual liability shall be deemed as insured in favour of the party to whom the insured is liable, even if the contract of insurance has been concluded in favour of another party or if there is no mention in it of the party in whose favour it has been concluded (see: Article 932, Section 3).

This norm also is very beneficial for the party suffering loss or damage. Furthermore, last but not least, according to general law an insurer is exempted from payment of insurance indemnity if the losses resulted from wilful misconduct of the insured or the party benefitting from the insurance (Article 963, Section 1).

There is however a very significant exclusion from this rule. As concerns tortious liability insurance, an insurer is obliged to pay the insurance indemnity for personal injury even if the "wrongdoer" is at fault (see: Article 963, Section 2), irrespective of the form and extent of his fault, i.e. even in case of his wilful misconduct.

Such a provision definitely puts the insured in a privileged position.

There is no doubt that such insurance arrangements contribute significantly in creating an appropriate legal environment to protect the interests of those who are (or may be) involved in using Northern Sea Route.

Now let us specifically consider environmental contamination risk which may result in extreme damage or even the irreversible violation of the ecological balance of the Arctic Ocean

and Northern coast of Russia as well as in the infringement of the interests and wealth of the population of the Far North (See: Section 3 of the Rules of navigation by the Northern Sea Route).

This is apparently the main reason for the particular approach of the Russian authorities to this kind of insurance. While hull and cargo insurance (as well as the insurance of the marine carrier's liability for loss of or damage to goods) are quite voluntary and it is up to shipowner's or cargo owner's discretion to obtain appropriate insurance coverage (in relation to cargo insurance its terms and conditions may also to some extent be agreed by the seller and the buyer of the goods), insurance of liability for contamination of the environment is mandatory (at least within certain limits).

It is worthwhile to mention once again that Rules of Navigation by the Northern Sea Route expressly prohibit navigation by the Northern Sea Route for ships not having a certificate of proper financial security in respect of the civil liability of the shipowner for damage caused by contamination of the marine environment and the Northern coast of Russia (Section 5).

It should be noted that generally speaking "financial security" is much broader than insurance, however in practical terms insurance is certainly one of the most typical (and available) means of financial security.

Given this circumstance we shall consider below some problems related to that particular kind of liability insurance.

To start with, the terms and conditions of liability insurance should be "the mirror" of the liability insured. Conditions of civil liability may be - and actually are - based on different schemes. As for civil liability for contamination of environment, it is now subject to different legal regimes depending upon the kind of substance which may be the source of contamination.

For example, on the one hand, there is a specific legal regime for civil liability for oil pollution which is governed at the international level by certain conventions and international

agreements. On the other hand, contamination of environment may result from sources not covered by such international regulations, in which case the conditions of civil liability must be governed by the substantive law (to be more precise, the law relating to tortions liability) of the appropriate State. The terms and conditions of insurance coverage for liability for environment contamination should be drafted in such a way that they meet the requirements of the relevant international conventions (for oil pollution) and of relevant legislation (regarding tortious liability) (for other dangerous substances).

It means that in order to determine the terms and conditions of liability insurance we need to ascertain the conditions of appropriate liability.

6. Liability for oil pollution and its insurance coverage

6.1. Legal scheme of liability

Let us first consider the conditions of liability for oil pollution as defined by relevant conventions and international agreements. I am indebted to Messrs. Clyde and Co of London and in particular to Mr. Ben Browne and to Mr.Peter Morgan for supplying very informative materials related to those issues.

The legal regime regarding such liability was created after the accident involving the tanker "Torrey Canyon" (flying the Liberian the flag) in 1967 when 111 000 tons of oil were spilled into the sea.

When considering this regime we should deal with two conventions:

1) The International Convention on Civil Liability for Oil Pollution Damage ("CLC") which was adopted in Brussels in 1969 and entered into force in 1975;

2) The International Fund for Compensation for Oil Pollution Damage ("Fund Convention") which was adopted in 1971 and entered into force in 1978 (the fund is maintained by persons/corporate bodies which receive crude oil and heavy fuel oil in the countries participating in the Fund Convention).

The correlation between these two conventions is, briefly speaking, that the Fund Convention supplements the CLC by providing reimbursement of oil pollution damage in the situation when no compensation is available under the CLC.

Besides the conventions abovementioned there were until recently two non-governmental international agreements in this field:

1) Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP) which entered in to effect in 1969;

2) Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution ("CRISTAL") which entered into force in 1971.

The correlation between these two agreements were quite similar to that between the CLC and the Fund Convention, i.e. CRISTAL supplemented TOVALOP.

Therefore we can say that effectively TOVALOP corresponded to the CLC, and CRISTAL - to the Fund Convention.

The background to the putting in place of these agreements in addition to the two conventions was twofold. Firstly, a number of years lapsed in between the adoption of each Convention and its entering into force. For the CLC it was 6 year period (from 1969 up to 1975), for the Fund Convention - 7 year period (from 1971 up to 1978). By means of TOVALOP and CRISTAL similar legal mechanisms were provided quite promptly.

Secondly, the range of parties to the Conventions on the one hand, and to the agreements on the other, were different. For example, in 1994 there were over 80 countries participating in CLC, meanwhile TOVALOP covered about 97% of the world tanker fleet. As for the Fund

Convention, the number of its participants is about 60 countries; CRISTAL members own about 80% of the whole volume of bulk oil cargoes carried by sea. It is worthwhile to mention, that some major countries actively involved in the maritime oil trade, such as the USA, Saudi Arabia, Turkey, Iran, Iraq do not participate in CLC and Fund Convention although effectively all tankers flying their flags were entered in TOVALOP.

It is now appropriate to consider the legal scheme of the CLC in comparison with that of TOVALOP and the mechanism of the Fund Convention in comparison with that of CRISTAL.

The main points to concentrate upon are as follows:

1) participants; 2) sphere of application; 3) conditions of reimbursement of losses; 4) limit of compensation; 5) insurance implications; 6) jurisdiction.

Let us consider these items in turn.

6.2 Participants.

Here we need to note that the range of parties to the conventions on the one hand, and of the agreements on the other hand, are different. The parties to both the CLC and the Fund Convention are Contracting States. The parties to TOVALOP were owners and bareboat charterers of tanker vessels. The parties to CRISTAL were companies involved in extraction, processing and sale of oil. In the end due to the different criteria of participation in Conventions and Agreements effectively the whole (or at least a very high percentage of the) volume of the world oil trade was covered with loss compensation schemes.

6.3. Sphere of application.

This issue may in its turn be subdivided as follows:

a) kind of dangerous substance; b) type of vessel; c) type of incident.

a) kind of dangerous substance. The CLC (Article 5) relates to oil, which means persistent oil, e.g. crude oil, heavy diesel oil, fuel oil, lubricating oil, whale oil etc. as well as any persistent hydrocarbon mineral oil (See: 1992 Protocol to the CLC). The notion "oil" in terms of the CLC does not embrace distillate oils (gas oil, gasoline, kerosene, white spirit and so forth). TOVALOP as well as the Fund Convention and CRISTAL also covered oil as defined in the CLC.

b) type of vessel. The CLC is only applicable to a tanker [ship] which means "any sea going vessel and any sea borne craft of any type whatsoever actually carrying oil in bulk as cargo" (Article 1 (1)). Speaking in other words, the CLC does not cover pollution damage caused by oil escaped from a tanker when going in ballast or from a vessel other than tankers or from a coastal reservoir or pipeline.

It should be mentioned however that the 1992 Protocol to the CLC extends the notion of "ship" so as to include oil escape from tankers in ballast on the voyage following a laden one (unless it is ascertained that there was no residues of the oil cargo on board the tanker sailing in ballast).

TOVALOP, Fund Convention and CRISTAL adopt the same approach in this context.

c) type of incident. "Incident" in terms of the CLC means escape or discharge of oil from a tanker (carrying it in bulk) which results in pollution damage. The convention also relates to "preventative measures", i.e. "any reasonable measure taken by any person after an incident has occurred to prevent or minimise pollution damage" (Article 1 (7)). Therefore "pre-spill measures" are excluded from the sphere of application of the CLC.

There was substantial difference concerning this point between the CLC on the one hand, and TOVALOP on the other. According to TOVALOP (Article VI), a party had to make his efforts to

take reasonable and appropriate preventative and threat removal measures (such as laying out booms and skimmers). The 1987 Supplement provided for compensation for the cost of such measures.

Hence the sphere of application of TOVALOP was to some extent broader than that of CLC.

6.4. Conditions of reimbursement of losses.

The CLC (Article III) contains a stipulation that "the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences at the time of such occurrence, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as result of an incident".

Shipowner's liability for oil pollution damage in terms of the CLC is of a strict character because there are only a few situations exempting the shipowner from liability, which depend on him proving that the oil pollution damage:

a) "resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character"; or

b) "were wholly caused by an act or omission done with intent to cause damage by a third party"; or

c) "was wholly caused by the negligence or other wrongful act of any government or other authorities responsible for the maintenance of lights or other navigational aids in the exercise of that function".

Only the tanker owner may be sued for reimbursement under the CLC.

No such claim may be made against his servants or agents (See: Article III (4)). According to the 1992 Protocol this exemption is also extended to charterers, salvors, pilots, as well as persons taking preventative measures and their servants or agents.

TOVALOP contained effectively the same list of exemptions from strict liability with two additional reasons. TOVALOP participants were free from liability also:

(i) to the extent that liability is imposed under the CLC;

(ii) if the pollution damage (or measures to prevent or remove a threat of such a damage) were wholly or party caused by the negligence of the person(s) suffering the damage. In such circumstances the tanker owner would be wholly, or to the extent appropriate relieved from his liability to such a person.

As for the Fund Convention, its aim is to provide compensation for oil pollution damage when no reimbursement is available under the terms of the CLC.

No reimbursement is due under the Fund Convention if the pollution damage was caused by act of war or if oil escaped from a warship.

6.5. Limit of compensation

According to the CLC (Article V) and the 1976 Protocol to the CLC (Article II), the liability of a tanker owner for oil pollution damage may be limited as concerns any one incident to 133 SDR (Special Drawing Rights), which is equivalent to about 186 US Dollars, per one ton of ship tonnage (i.e. her net tonnage plus area of the engine room) or 14 million SDR (equals about 20 million US Dollars), whichever is the less.

The 1992 Protocol introduces higher limits, such as 3 million SDR (about 4,2 million US Dollars) for tankers the tonnage of which is not more than 5 000 grt and 420 SDR per ton for each ton exceeding 5 000 up to a maximum amount of 59.7 million SDR (about 83,5 million US Dollars).

The limit of shipowner's liability for oil pollution damage shall be lifted when the incident resulted from the actual fault or privity of the owner.

The 1992 Protocol amends this provision and makes in narrower.

The new wording abolishes the limit of shipowner's liability only when it is proved that the pollution damage was caused by "the owner's personal act or omission committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result".

If we compare these two formulations it becomes clear that the tests are substantially different and the latter grants tanker owners some additional possibilities to limit their liability for oil pollution damage.

TOVALOP provided for a similar (though not identical to the CLC) limit of tanker owner's liability for one incident: 160 US Dollars per ton or 16,8 million US Dollars, whichever is the less. These limits were considerably increased by the TOVALOP Supplement with effect from 20th February 1987 (it should be borne in mind that these new limits were only applicable if the oil carried is owned by a participant of CRISTAL). The relevant figures were as follows: ultimate amount of liability for tankers, the tonnage of which did not exceed 5 000 grt, was 3 million SDR (i.e. about 4,2 million US Dollars); if the tanker's tonnage exceeded 5 000 grt the amount of the owners liability would be 3 million SDR plus 420 SDR for any grt in excess of 5000t, but not more than 59,7 million SDR (corresponding approximately to 83,5 million US Dollars).

Contrary to the CLC, TOVALOP did not mention any situation when the limit of liability may be set aside.

The Fund Convention provides that the ultimate sum which may be paid for any one incident under both the CLC and the Fund Convention is 900 million Gold Francs (equivalent to 60 million SDR or about 84 million US Dollars).

In certain conditions this amount may be substantially increased. From the entering into effect of the 1992 Protocol to the Fund Convention, this aggregate limit amounts to 135 million SDR (over 188 million US Dollars).

When the combined oil volume of 3 member states reaches (or exceeds) 600 million tons in the calendar year preceding the incident then the limit will be 200 million SDR (about 280 million US Dollars).

Under CRISTAL the limit of compensation (including the amount payable according to TOVALOP) was 32 million SDR (equivalent about 48 million US Dollars). If a tanker's tonnage exceeded 5 000 grt, the limit of reimbursement was 625 SDR per each grt in excess of 5 000 t up to ultimate amount 120 million SDR (over 167 million US Dollars).

As one can see, the schemes contained in the CLC and the Fund Convention, on one hand, and in TOVALOP and CRISTAL, on the other, were effectively similar and step by step came closer to each other.

Revised texts of both TOVALOP and CRISTAL (effective from 1st June 1978) had been originally planned for 3 year term but there were extended later on, the last time until February 1997.

Since the 1992 Protocols to the CLC and the Fund Convention entered into force on 30th May 1996, there was no particular need to extend TOVALOP and CRISTAL for any further term, so both these agreements ceased to be applicable after 20th February 1997 (see: Colin de la Rue "TOVALOP and CRISTAL - a purpose fulfilled". The International Journal of Shipping Law, part 5, December 1996, p.295).

6.6. Insurance implications.

The CLC required tanker owners carrying more that 2 000 t of persistent oil as bulk cargo to have their civil liability for oil pollution damage insured. This insurance is of a compulsory character and should be confirmed with a special certificate to be issued by the authorities of the

country where the ship's port of registry is located. Such a certificate should be on board the tanker along with other ship's documents.

As for terms and conditions of insurance coverage for oil pollution damage liability, they should correspond to the conditions of liability which were described above.

It is appropriate to mention a specific problem related to liability insurance (which was briefly touched above), that is whether the victim of the incident is able to make a direct claim for compensation of losses against the insurer of the wrongdoer's liability.

The CLC expressly grants such a legal possibility to the person who has suffered oil pollution damage resulting from the incident (See: Article VII (8)). Such a rule is, it would appear, favourable to victims of pollution.

At the same time the CLC provides some kind of privilege for insurers who are entitled to establish a limitation fund even in cases when the tanker owner is unable to limit his liability (i.e. if the incident resulted from his actual fault or privity - See: Article V (8)). In such a situation the insurer will only be liable within the limitation fund established by him. As for any amount exceeding this fund, a separate claim may be made by the victim of pollution against the tanker owner.

6.7. Jurisdiction.

According to the CLC any suit for reimbursement of oil pollution damage under the Convention may only be brought in the courts of the contracting state in the territory of which (including its territorial waters) oil pollution damage took place.

7. Prospects for P and I Clubs in Russia

As was mentioned in the very beginning of this report, oil pollution damage in terms of the CLC, the Fund Convention, TOVALOP and CRISTAL was just an example (though rather typical and important) of losses resulting from environment contamination. Such losses may also be caused by a ship other than a tanker (e.g. ice-breaker, dry cargo freighter, passenger ship, tug etc.) and /or by dangerous substances other than oil.

There is apparently a need to provide insurance coverage for any kind of environment contamination liability. Even if no international convention so far contains a general stipulation declaring compulsory insurance protection for any event of environmental damage resulted from whatever source, it may be done at national level in the legislation of different states.

For example, the Rules for Navigation by the Northern Sea Route (Section 5) when requiring evidence of the financial security for civil liability of the shipowner with regard to the contamination of marine environment and Northern coast of Russia, contemplate any kind of liability irrespective of the nature of the dangerous substance or other factors.

Such a requirement may theoretically be met by two possible ways:

1) creating a specific legal regime for each kind of environment damage liability insurance, or 2) constituting general terms and conditions which should be sufficiently broad and flexible to provide insurance protection for all kinds of such liability.

If we compare these two options it becomes clear that the latter is much more practical.

As it is appropriate to note, insurance practice follows that approach.

Let us take, for instance, the appropriate scope of insurance coverage in this sphere offered by the Standard Steamship Owners Protection and Indemnity Association (Bermuda) ltd. As it appears from their "Guide" they cover:

- liability for loss, damage or contamination caused by the discharge or escape from the entered ship of any substance, not just oil, but also smoke, hazardous noxious substances, sewage and garbage:

- clean up costs;

- preventive measures where there is an imminent danger of discharge of any substance;

- the costs of any extraordinary measures taken to comply with government directions to prevent pollution or reduce the risk, other than any alterations to the hull;

- liability under a salvage agreement for salvors' work on preventing pollution;

- escape of oil or any other substances from a wreck;

- fines for pollution;

- liability for pollution which may arise under any other rule e.g. pollution from another ship whether caused by collision or not, damage to property, liability under a towage contract" (Guide to P. and I.Cover, 1993, p.p.59-60).

This (or a similar) list or perils insured against may be used by Russian insurers when offering financial protection for environment contamination liability.

It is the case that, due to historic tradition, in the international insurance market the protection for shipowners liability (including that for environment contamination) is usually arranged by P and I Clubs (see: Simon Poland and Tony Rooth. Gard Handbook on P. and I. Insurance. London, 1996, p.20; 366).

As has been mentioned above, there is currently no insurance monopoly in Russia. It means that generally speaking Russian shipowners may apply to foreign P and I Clubs to have their ships entered for insurance coverage of their liability to non-Russian parties. Still it should be borne in mind that since transfer of currency calls (both advanced and additional) abroad is a kind of currency operation connected with the movement of capital, a special license of the RF Central Bank was required until recently, through now there is no need for it (see above).

The question may arise whether it is possible to establish P and I Clubs in this country. In principle, the answer is yes, because according to Article 7 of the Law on Insurance 27th November 1992 "legal entities and physical persons may establish mutual insurance societies for insurance protection of their proprietary interests upon the procedure and the terms and conditions as defined in the Regulations for Mutual Insurance Societies".

However the Regulations abovementioned have yet to be approved by the supreme legislation body of the country, which is now the Federal Assembly.

The possibility to create Mutual Insurance Societies is also provided by the RF Civil Code (Article 968) stipulating that such societies "shall perform insurance of property and other proprietary interests of their members and are non-commercial organisations (Section 2, paragraph 1). Pecularities of legal status of mutual insurance societies shall be determined by Law on mutual insurance which should be in compliance with the Civil Code" (Article 968, Section 2, paragraph 2).

In view of the fact that such a law is not adopted yet, the possibility to create P and I Clubs in Russia is rather theoretical for the time being.

Speaking in practical terms, insurance coverage of all forms of shipowner's liability may currently be obtained in this country from Russian insurance companies. It should be noted that in order to be offer in liability insurance, the insurance company needs to obtain a special license for liability insurance. Until recently the body responsible for licensing in the field of insurance was "Rosstrakhnadzor" (The Federal Administration of Russia for the Supervision of Insurance Business), which acted in compliance with the "Conditions for licensing of insurance business in the territory of the Russian Federation" approved by the Order of Rosstrakhadsor 19th May 1994 No. 02-02/08. According to the Decree of the President of the Russian Federation 14 August 1996 No. 1177 "On the structure of federal bodies of executive power" Rosstrakhnadzor was abolished and its functions were transferred to the Finance Ministry of the Russian Federation.

Given the high level of shipowner's liability limit, it is quite reasonable and practicable for Russian insurance companies to employ co-insurance and re-insurance.

To summarise, we may conclude that Russian legal norms in the sphere of insurance are quite compatible with internationally accepted insurance protection schemes with regard to different risks, including those which may be encountered when using the Northern Sea Route.

8. Conclusion

A brief overview of the issues related to insurance coverage for those involved in navigation by the Northern Sea Route shows clearly enough that the Russian insurance market is now developed in a market direction. There is no state insurance monopoly any longer in Russia, so many insurance companies compete with each other and offer different kinds of insurance protection, the terms and conditions of which are negotiable.

Forms of marine insurance cover recognised worldwide (such as different types of Institute of London Underwriters Hull clauses as well as Cargo Clauses (A,B,C) are in use in Russia, and a number of Russian insurance companies have long-term experience in their application.

Each Russian insurance company may have Rules of its own provided they do not contradict the mandatory norms of Russian law. When preparing such Rules, insurers are at liberty to take account of precedents developed in the international insurance market.

Such a situation creates sufficient flexibility for Russian insurers to meet the demands of international trade including carriage of goods by the Northern Sea Route.

Modern Russian law (primarily the Civil Code of the Russian Federation) contains norms specifically intented to regulate insurance protection of civil liability (which norms may certainly be extended to shipowners' liability insurance).

Russia is a party to International Conventions related to civil liability for contamination of the environment (such as the International Convention on Civil Liability for Oil Pollution Damage 1969).

Ergo: Russian law represents a proper basis for the provision of insurance cover for international trade, including that in the Arctic Area.

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INSROP WORKING PAPER

NO - 1997 - IV. 3.3.

MARINE INSURANCE FOR THE NORTHERN SEA ROUTE

BY PROFESSOR V.A. MUSIN

REVIEW

In this long and thorough paper, Professor Musin helpfully traces the history of the still evolving law of insurance in Russia. He then highlights the particular risks involved in navigating the Northern Sea Route and the role of insurance in providing security against the consequences of such risks.

The primary sources of marine insurance law in Russia are the USSR Merchant Shipping Code 1968, the RF Law on Insurance 1992 and Part 2 of the RF Civil Code 1996. The relationship between these enactments is complex and Professor Musin makes a valuable comparative analysis.

He then examines the developing domestic marine insurance market in Russia following the abolition of Ingostrakh's state insurance monopoly. He rightly highlights the need for large marine risks to be spread by coinsurance and reinsurance and the opportunity for foreign insurers to participate in the developing local market through joint venture companies owned up to 49% by them.

He identifies the increased demand today in Russia for hull insurance cover against both damage and total loss now that many Russian vessels are privately and not state owned.

He then focuses on the special risks facing vessels plying the Northern Sea Route and in particular the risk of ice damage. He valuably makes the important point that navigation on this route for both Russian and foreign vessels is governed by Rules approved by the USSR Ministry of Merchant Marine in 1990. These Rules contain mandatory requirements as to the Ship's design, construction and equipment.

He moves on to consider perhaps the greatest liability risks attaching to the use of the Northern Sea Routes, namely pollution and environmental risks. On pollution he confirms that the International Convention on Civil Liability for Oil Pollution 1969 with its compulsory insurance requirements applies in Russia and therefore to the Russian coastline and territorial sea through which the Northern Sea Route passes. He then spot lights an important piece of Russian legislation entitled the "RF Federal Law on Ecological Expertise" under which there are regulations apparently widely enough drawn to necessitate their consideration in the planning of the Northern Sea Route.

In the course of his paper, Professor Musin in providing the Russian legal background and in identifying important legal considerations for underwriters helpfully relates them to hull

insurance, cargo insurance, P & I insurance and insurance against pollution and environmental risks. His analysis is legal and it opens the door for further papers to be written by underwriters or brokers from within or outside Russia separately dealing in detail from a commercial perspective with (1) Hull Insurance (2) Cargo Insurance and (3) P & I Insurance on the Northern Sea Route. Such commercial papers will be necessary because Shipowners and Traders interested in the Northern Sea Route will want to know the levels of premiums they will have to pay to their insurers and the detailed terms, conditions and warranties required by their insurers. Professor Musin's paper valuably paves the legal way for such necessary commercial studies.

PETER MORGAN

CLYDE & CO., LONDON

Author's answer

5 March 1998

I am deeply grateful to Mr. Peter Morgan (Clyde and Co of London) for his review of my paper. His comments are highly appreciated.

He is completely right when noting that, in addition to the legal aspects described in my report, commercial research of the insurance issues related to the Northern Sea Route will be needed.

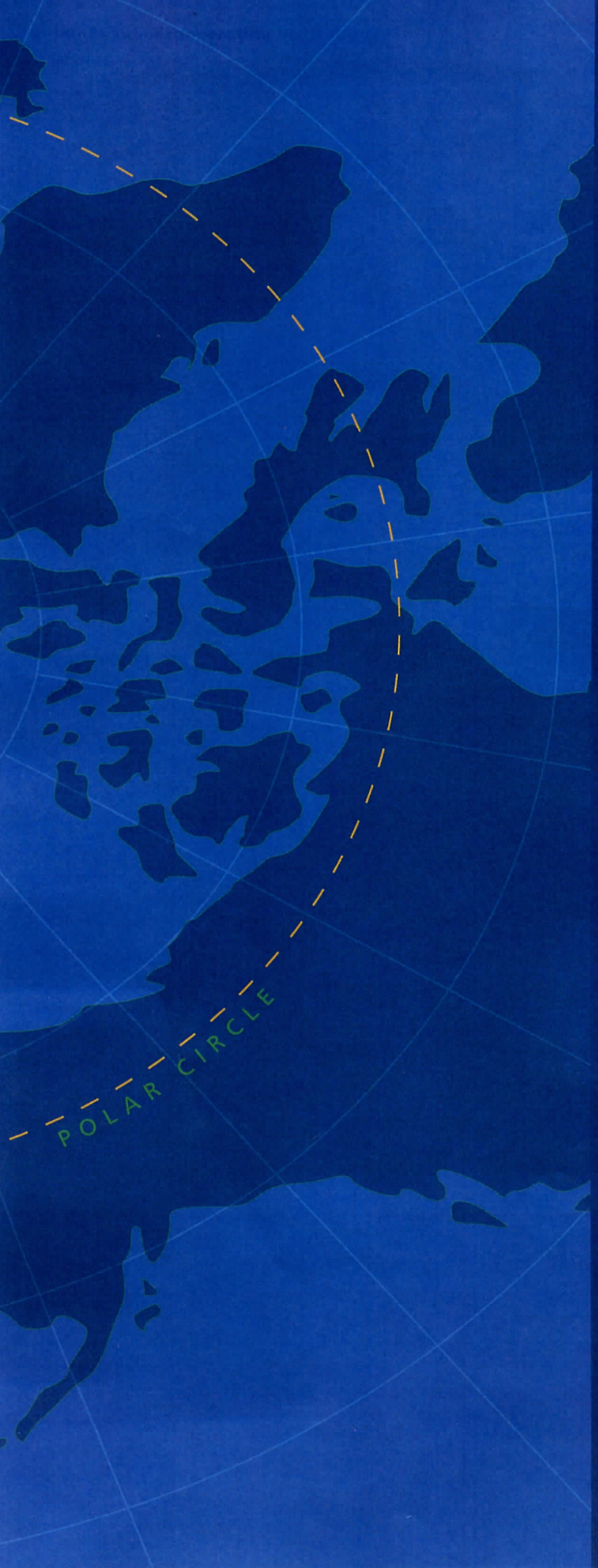
Such research is of an economic (rather than legal) nature, so it should (and I believe, it will) be prepared later on within the INSROP project.

I am also very much indebted to Mr.Trevor Barton (Clyde and Co) who kindly assisted in the preparation of the paper.

With kindest regards,

Sincerely yours,

Valery Musin



The three main cooperating institutions of INSROP

Ship & Ocean Foundation (SOF), Tokyo, Japan.
SOF was established in 1975 as a non-profit organization to advance modernization and rationalization of Japan's shipbuilding and related industries, and to give assistance to non-profit organizations associated with these industries. SOF is provided with operation funds by the Sasakawa Foundation, the world's largest foundation operated with revenue from motorboat racing. An integral part of SOF, the Tsukuba Institute, carries out experimental research into ocean environment protection and ocean development.

Central Marine Research & Design Institute (CNIIMF), St. Petersburg, Russia.
CNIIMF was founded in 1929. The institute's research focus is applied and technological with four main goals: the improvment of merchant fleet efficiency; shipping safety; technical development of the merchant fleet; and design support for future fleet development. CNIIMF was a Russian state institution up to 1993, when it was converted into a stock-holding company.

The Fridtjof Nansen Institute (FNI), Lysaker, Norway.
FNI was founded in 1958 and is based at Polhøgda, the home of Fridtjof Nansen, famous Norwegian polar explorer, scientist, humanist and statesman. The institute spesializes in applied social science research, with special focus on international resource and environmental management. In addition to INSROP, the research is organized in six integrated programmes. Typical of FNI research is a multi-disciplinary approach, entailing extensive cooperation with other research institutions both at home and abroad. The INSROP Secretariat is located at FNI.