

## Article

# Legal Issues Regarding Arctic Cruise Shipping in the Russian Federation

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**Abstract:** With the development of the transportation network, vessels are increasingly used in the tourism business. The international cruise business requires huge investments and a clear international and domestic legal framework. Russia has unique opportunities to develop cruise tourism as a country with the world's longest total length of coastal line (37.7 thousand kilometres). Russia intends to develop and support cruise tourism in the Arctic and increase the tourist flow to the Arctic to a certain level in order to promote socio-economic development in the region. At the same time, a rapidly evolving tourism in the Arctic brings new challenges related to the preservation of environmental safety and protection of national interests and requires comprehensive legal cover and regulation at the national level. This article deals with Russian Federation's laws regulating sea/river cruise shipping involving an international element. It scrutinises state rules and policies on navigation in the Russian Arctic waters and relevant International Treaties of the Russian Federation, highlights the peculiarity of the cruise shipping contract in terms of Russian laws regulating the relationship arising from it, and finally, analyses the effects of Russian legislation in the field of Arctic tourism to its development. The authors attempted to summarise experts' views on relevant Russian legislation' shortcomings and put forward possible solutions.

**Keywords:** cruise shipping along the Northern Sea route; Athens Convention; Arctic Sea waters



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## 1. Introduction

A cruise is a trip performed by water transport; it includes shore excursions, sight-seeing of port cities, as well as a variety of entertainment on board sea and river liners [1]. Marine tourism is the economic backbone of coastal areas, contributing to economic growth and employment. In recent years, the transport of passengers and their luggage is carried out by vessels that make up about 12% of the world's merchant fleet, and part of this transportation is carried out for cruises [2]. WTO statistics show a steady annual increase in tourists' number using various cruises forms [3]. In 2018, 28.5 million tourists went on cruises worldwide, with 386 cruise liners at their service. The total revenue of the cruise industry was more than USD40 billion. This is approximately 2% of the global tourism industry's revenue [4]. 2020 was a challenging year for the travel industry worldwide, and the cruise market suffered the most severe losses. The coronavirus outbreak on board the 'Diamond Princess' in February 2020 caused significant reputational losses to the industry and, as a result, sea cruise tourism was almost stopped. In the first nine months of 2020, sales at the three largest operators—Carnival Corporation & PLC, Royal Caribbean Group and Norwegian Cruise Line—fell by 65–75% [5]. The number of guests onboard cruise ships in 2020 did not exceed 8 million. According to the expert's prognoses, the projected number of guests in 2021 will be about 17 million, and 22.5 million in 2022, and the number of guests on cruise ships in 2024 is expected again to reach the level of 2019 [4].

One of the new trends of the Russian cruise market is an increase in the number of river cruises at the expense of international tourists. This trend started in the summer of 2017 and continues to the present day [6]. Marine tourism in Russia is viewed as one of the most profitable and intensively developing economies. There have been tens of registered overseas liners' calls at Russian ports annually, the most popular of which are St. Petersburg, Kaliningrad, Murmansk, Archangelsk (North East), Sochi (South), Kamchatka coast and Peter the Great Bay in the Sea of Japan, where the 2nd port after St. Petersburg in the number of calls of foreign cruise ships, Vladivostok, takes place [7].

The Russian state government pays special attention to the Arctic Zone's socio-economic development, as the Russian coastline accounts for 53% of the Arctic Ocean and the country's population in the region totals roughly 2 million people [8]. Currently, tourism in the Arctic is developing steadily. The main tourist companies (Quark Expeditions and Poseidon Expeditions) use chartered ice-class vessels that are turned by them into cruise liners, and have been systematically organising cruises on Arctic routes, including cruises around the Islands belonging to Arkhangelsk Oblast' of Russia (Franz Josef land, Novaya Zemlya), from Murmansk to the North pole, along the Chukotka Autonomous Okrug with a visit to Wrangel Island, and along the coast of Sakhalin Island and Kamchatka peninsula with a visit to the Commander and Kuril Islands. Since 2010, Arctic cruises have been performed by the youngest and most powerful nuclear-powered icebreaker in the world, '50 Years of Victory'; it performs three to four cruises a year and is capable of accepting up to 130 persons onboard [9]. The National Park 'Russian Arctic' is annually visited by more than 2000 tourists on cruise liners from more than 30 countries worldwide; 30% of these tourists are citizens of China [10]. China's growing role in Arctic affairs is worth mentioning since China, as a proactive actor, is keen to participate in all kinds of Arctic affairs and seeks to build the 'Ice Silk Road' with the Arctic States [11]. In 2019, almost 1.2 million travellers visited the Russian Arctic Zone. At the same time, Russian domestic regulation of cruise tourism involving foreign tourists stay is comparatively strict and not flexible; it has a significant impact on Russian companies' competitiveness against foreign companies (American, Icelandic and Norwegian) in the Arctic cruise market [12]. The Russian government announced the beginning of work to simplify the legal rules regulating cruise tourism in the Arctic, in order to increase the tourist flow three times higher in the upcoming 15 years. However, it is understood that the tourist flow to the Arctic may not be increased tenfold since the ecological system of this special zone is very sensitive.

Russian cruise river companies have gone through the crucial year of 2020, for the sea cruise market, with minimal damage. Although downtime had taken place at the beginning of the season, the companies enjoyed incomes from the subsequent goods loading later on. Many new customers have chosen inbound river cruises, mainly due to the closure of the borders. Without an outbound flow, many retail companies have begun to explore the domestic market actively, including this segment; thus, the number of agents selling cruises has also increased [13]. In this paper, the authors gave a comprehensive overview of Russian laws regulating Arctic sea/river cruise shipping involving an international element and relevant International Treaties Russia is a party to. The article consists of five sections. Section 2 presents a review of relevant international and Russian literature that had been used and cited by authors for the research; the research methods are explained too. Section 3 gives an overview of the process of the literature analysis and research methods applied to the matter of the study, as well as important results of the study. Section 4 analyses International Treaties acceded by the Russian Federation regulating relationships that can arise out of the international carriage of passengers by sea, maritime transportation and tourism; describes the mechanism of the implementation of these instruments into the Russian domestic legal system and their role therein; summarises Russia's domestic laws governing cruise shipping, including the Merchant Shipping law of the Russian Federation and those laws governing the organisation of tourism activity and Russian Arctic waters navigation; describes in detail how the carrier's liability in the contract of carriage of

passengers by sea is evaluated and limited by Russian law and relevant International Treaties Russia is a party to and opens up the distinctiveness of the cruise shipping contract. Section 5 concludes the article, as well as proposes suggestions for the further development of Russian legislation on Arctic cruise shipping.

## 2. Literature Review and Research Methods

A number of the authors whose publications formed the basis of this study analysed sources of legal regulation on international cruise shipping and pointed out that the contract of sea cruise (cruise shipping contract) is not regulated by the national legislation of some countries, including Russia, while it is a special contract, so these authors have comprehensively discussed the features of its distinctiveness. These authors put forward that the existing regulations on Arctic tourism are not enough in Russia, comparing to the other Arctic States. As for the international regulation on Arctic Cruise Shipping, it is mentioned by the experts that there is no Treaty drawing special attention to the damage caused by being in the Polar waters. (Naumova, 2012 [14]; Oseledets, 2015 [2]; Melikyan, 2005 [15]; Tsvetkova, 2018 [16]). Many authors focused their research on the development of the Arctic shipping or sea cruise activity in the Arctic waters and its legal frame, and concluded that Russia has a great potential to develop cruise shipping in its Arctic waters and demonstrates a responsible, systematic approach to the formation of the legal regime in this area, successfully addressing modern perspectives and challenges; though, there is a number of problems to solve among which the legal regulation's imperfection is mentioned as a severe one (Grushenko, 2014 [9]; Hildenbrand et al., 2018 [17]; Lukin, 2016 [10]; Sidorova, 2017 [18]; Sharapova, 2015 [19]; Vylegzhanin et al., 2015 [20]). These authors also draw attention to the fact that the control over the Northern Sea Route allows Russia to ensure its military and strategic security in the Arctic. Thus, there is no surprise that Russia tends to perform its influence in this region and exercise different activity therein. At the same time, the increased active development of the Arctic Cruise Shipping in recent years, brings a sharp increase for tourist vessels related to sailing in the water areas where icebergs appear. Some authors emphasise the growing role of China in Arctic shipping related to the implementation of the "Ice Silk Road" Project and China's self-positioning as a proactive actor in Arctic Affairs and discuss the manner and dynamics of the cooperation between Russia and China in respect of the Northern Sea Route exploration (Holly Ellyatt, 2019 [8]; Chang Y.-C., 2019 [11]).

This research is based on a systematic approach to analysing the research subject—the laws and regulations on Arctic cruise shipping in the Russian Federation, including relevant international treaties, acceded by Russia and Russian domestic legislation. The authors also used comparative analysis and an extrapolation method.

## 3. Results and Way Forward

This article aimed to analyse the legal regulation of sea cruises in the Arctic waters based on the consideration of Russian legislation and international treaties acceded by the Russian Federation in this field. The study relies on the works of Russian and foreign scientists that are dedicated to the theory and history of tourism and cruise shipping, to the international legislation (on tourism organisation, carriage of passengers and their luggage by sea, navigation and safety of life at sea) and problems of its implementation in the Russian domestic legal system, as well as to the discussion on the Russian Arctic marine cruise industry, its current status and further development trends, including studies on relevant Russian legislation and state policy. Additionally, statistical materials and analytical publications were used to analyse the world cruise shipping market development and determination of the Russian cruise shipping market position and role therein.

During the course of this research, it is found out that marine tourism in Russia is regarded as one of the most profitable and intensively developing branches of the economy, and one that has immense potential to develop. Cruise tourism in the Arctic waters of the Russian Federation is developing steadily, with the background of the technology progress

and Arctic ice melting. At the same time, the state government pays special attention to the socio-economic development of the Russian Arctic Zone and the regulation of navigation along the Northern Sea Route. One of the main features of the state policy of the Russian Arctic' management is the predominance of a geostrategic approach over an economic approach with taking into account the rapidly growing role of Asia (China, first of all) in the world economy and Arctic shipping, which leads to taking more protecting measures in regards of the state sovereignty and marine environment and participating thoroughly thought out and well-controllable bilateral projects.

The imperfection of the legal framework of sea cruise tourism in Russia is regarded as a problem significantly influencing its development. While river cruise activity is clearly defined and standardised by Russian law, sea cruise shipping in the Arctic waters is still not legally formulated; its implementation requires a long coordination process with different authorities involved. General laws and regulations on the tourism in the Russian Federation are applied to the Arctic and non-Arctic tourism equally, but navigation in the Arctic waters of the Russian Federation has a special regime while the biggest ports involved in cruise activity organisation along the Northern Sea Route are not attributed by Russian law to the Northern Sea Route thus not covered by its special legal regime. Considering all the facts as mentioned above, it is reasonable to assume that these uncertainties may not contribute positively to business development.

The organisation of a sea cruise includes transportation of passengers by sea and organisation of tourist activity. The relationships arising from these activities are regulated by many International Conventions that Russia is a party to, regarding them as a constituent part of its own legal system and having them embodied into Merchant Shipping Code of 1999 and other laws and regulations or enacting them directly.

A new international document clarifying the legal regime for navigation in Arctic waters, the Polar Code, does not contain norms contradicting current rules and regulations for navigation on the Northern Sea Route of the Russian Federation; however, its practical implementation has caused a number of contradictions. First of all, a large number of the requirements imposed by the Code to ships operating in polar waters may cause the growth of capital and operating costs, which, in turn, will lead to a significant reduction of interest in the use of Arctic routes. Secondly, the scope of the Code is still a question, since its principle of division of ships into three categories is not commonly accepted and does not cover a certain category of vessels; this makes it impossible to extend the IMO requirements to all vessels operating in polar waters [20]. In other words, in order to protect the Polar waters' ecosystem, the Code sets higher requirements to ships operating in Polar waters which, combined with Russian geostrategic protective measures for navigation along the Northern Sea Route, may slow down the development of the sea cruise shipping activity in the Arctic. At the same time, the Polar Code gives a right of issuing permission for Arctic navigation to States of flag too. This will lead to inconsistency with Russian Rules on the Northern Sea Route navigation, and furthermore, indirectly, to deterioration of the Arctic marine environment.

There are two mechanisms in Russian law for determining a carrier's liability for the death of or personal injury to the passenger: one for organisations or citizens of the Russian Federation and another one for organisations or citizens of foreign countries. This approach did not contribute to a uniform understanding of the rules of international carriage of passengers and their baggage, and it is suggested by experts to be unified.

## 4. Discussion and Analysis

### 4.1. Relevant International Legal Instruments Acceded by the Russian Federation

In accordance with Part 4 of Article 15 of the Constitution of the Russian Federation [21], universally recognised principles and norms of international law and international treaties of Russia are a constituent part of its legal system. The law of international treaties of the Russian Federation is based on the norms of the Vienna Convention of the Law of Treaties (VCLT) of 1969 [22] and the provisions of the Federal Law no. 101-fz

(1995) [23]. Russia supports the principle of formality (procedural) incorporation of international treaties and has two ways of implementing international treaties, namely, enacting relevant domestic laws and using norms of the international treaties directly. According to Part 3 of Article 5 of the Federal Law no. 101-fz (1995), officially published international treaties of the Russian Federation are directly in force in Russia if their provisions do not need the act of domestic application. When considering civil, criminal or administrative cases, a court should directly apply such international treaties of the Russian Federation that entered into force and became binding for Russia [24]. An example of the international treaties' conversion is the Merchant Shipping Code of 1999 (hereinafter referred to as Merchant Shipping Code) [25], which contains international legal norms or norms of international agreements in merchant shipping acceded by Russia in recent years, incorporated into Russian domestic legislation.

Table 1 summarises International Treaties acceded by the Russian Federation regulating relationship arising from Arctic cruise shipping activity. There are rules stipulated in international treaties and conventions applicable to the international carriage of passengers by sea. In order to provide the legal regulation of the relationships arising from the carriage of passengers by sea, the 1961 Convention for the Unification of Certain Rules for Carriage of Passengers by Sea with protocol [26] and the 1967 Brussels International Convention for the Unification of Rules Relating to the Carriage of Passenger's Luggage by Sea [27] have been developed but were not successful. Only 11 countries became Parties to the Convention of 1961, while the Convention of 1967 never came into force [2]. The most effective international conventions in this field are the Athens Convention on the Carriage of Passengers and their Luggage by Sea of 1974 (hereinafter referred to as the Athens Convention) and its protocols (1976, 1990 and 2002) [28]. The Russian Federation acceded to its protocol of 2002 and denounced the Convention of 1974 with its Protocol of 1976 (which it had acceded as a successor of the Soviet Union) on 28 November 2018 [29]. Aspects related to the regulation of cruise shipping and the prevention of unnecessary delays in maritime traffic are regulated in detail in the Convention on Facilitation of International Maritime Traffic of 1965 (FAL) [30]. The International Maritime Organisation (IMO) is engaged in the formulation of international documents in the field of maritime transportation. Due to the measures taken by IMO, the International Convention for the Safety of Life at Sea of 1974 (SOLAS) [31] (the Soviet Union acceded to it on 2 November 1979, the relevant resolution text was not officially published and entered into force on 25 May 1980) [32], the International Convention for the Prevention of Pollution from Ships of 1973 (MARPOL) with its Protocols of 1978 and 1997 [33] (as the successor of the Soviet Union Russia is a party to this Convention since 1983), the International Convention on Maritime Search and Rescue of 1979 (as the successor of the Soviet Union Russia is a party to this Convention since 26 December 1991), the International Convention on Maritime Search and Rescue (SAR-79) [34] (for USSR it had entered into force on 24 April 1988) and many other international conventions have been ratified.

In the field of tourism, Russia as a successor of the USSR, is a Party to Resolutions of UN Diplomatic Conference on International Travel and Tourism (1963) [35], Manila Declaration on World Tourism (1980) [36], International Cultural Tourism Charter (1974) [37], Tourism Bill of Rights and Tourist Code (1985) [38], Hague Declaration (1989) [39], and as the Russian Federation is a Party to Charter for Sustainable Tourism (1995) [40], Global Code of Ethics of Tourism (1999) [41] and Osaka Millennium Declaration (2001) [42]. At the same time, Russia is not the party to the International Convention on Travel Contracts of 1970 (CCV) [43].

On 1 January 2017, the International Code for Ships Operating in Polar Waters (Polar Code) conducted by IMO, a new international document standardising the technical requirements for ships operating in the polar waters, entered into force [44]. This Code is a mandatory legal instrument for state parties to SOLAS and MARPOL [17].



**Table 1.** International Treaties acceded by Russia according to the field of regulation.

International Carriage of Passengers by Sea	Maritime Transportation	Tourism
1961 Convention for the Unification of Certain Rules for Carriage of Passengers by Sea with protocol	SOLAS	1963 UN Diplomatic Conference on International Travel and Tourism
1967 Brussels International Convention for the Unification of Rules Relating to the Carriage of Passenger's Luggage by Sea	MARPOL	1980 Manila Declaration on World Tourism
Athens Convention	SAR-79	1974 International Cultural Tourism Charter
FAL	2017 Polar Code	1985 Tourism Bill of Rights and Tourist Code
		1989 Hague Declaration
		1995 Charter for Sustainable Tourism
		1999 Global Code of Ethics of Tourism
		2001 Osaka Millennium Declaration

#### 4.2. Russia's Domestic Laws Governing Cruise Shipping

The legislation of the Russian Federation consists of the Constitution of the Russian Federation, federal constitutional laws, federal laws, codes and other standard legal acts. Standard legal acts are published in the form of laws, decrees, resolutions, orders, rules, instructions, and positions. The Constitution of the Russian Federation has a higher legal force and direct action. Laws and other legal acts should not contradict the Constitution. Federal laws can not contradict federal constitutional laws. Laws and other standard legal acts of the subjects of the Russian Federation cannot contradict the federal laws [45].

The imperfection of the legal framework is a significant problem in the field of sea cruise tourism in Russia [46]. There is no clear definition of sea cruises in Russian domestic laws. Therefore, from a legal perspective, a sea cruise can be identified as transportation of passengers by sea or as a tourist product. However, the transportation of passengers by sea and the organisation of a tourist trip, including services provided onboard the ship, are quite different activities and involve different type of contract.

Chapter XL 'Carriage' of the Civil Code [47] of the Russian Federation regulates the relationship that can arise from the adjustment of passenger transport. The main Russian laws and regulations for the transportation in the territorial sea and high seas and the entry of Russian ships into foreign ports refer to Merchant Shipping Code and, developed in accordance with its Chapter IX 'Contract of Carriage of Passenger by Sea' and the Athens Convention' provisions, Rules on Carriage of Passengers and Luggage by Sea [48]. Legal norms set by the Merchant Shipping Code extend to sea-going ships during their voyage both by sea routes and inland waterways, river ships and mixed ships during their voyage by sea routes and also by inland waterways with a call at foreign sea ports, at a time of rescue operations and of a collision with a sea-going ship (Article 3 of the Merchant Shipping Code, 1999).

The carriage of passengers and their luggage in inland waterways is regulated by Chapter XIII 'Carriage of Passengers, their Baggage and Mail' of the Code of Inland Water Transport of the Russian Federation (2001) [49]. According to provisions given by this Code, during the carriage of passengers by inland waterways in regards of water cruise, in order to confirm the conclusion of a contract of carriage of passengers for sightseeing and tourist activity, a tour ticket voucher to be issued for the passenger instead of a ticket; when transporting a tourist on a tourist route, the tour voucher represents the tourist product developed in accordance with the legislation of the Russian Federation on tourist activities (Paragraph 4 of Article 97 of the Code of Inland Water Transport, 2001). According to the Russian Federation's international agreements, passengers and their baggage are transported by inland waterways in international traffic (Paragraph 5 of Article 95 of the Code of Inland Water Transport, 2001).

There is a National Standard, namely ‘GOST P 56221-2014’ (hereinafter referred to as Standard), to regulate river cruises [50]. This Standard sets out general requirements for river cruise services. According to Article 3 of the Standard, the river cruise is the transportation of tourists through a water area that is not a sea (ocean) on a river cruise ship; river cruise services include activities related to the organisation of river cruises, providing the accommodation for tourists and additional services on a cruise ship.

Tourist activity in Russia is governed by Law no. 2300-1 “on the Protection of Consumers’ Rights and Interests” (hereinafter referred to as Law no. 2300-1) [51] and Federal Law no. 132-fz “on the Framework of Tourism Activities in the Russian Federation” (hereinafter referred to as Federal Law No. 132-fz (1996)) [52]. Article 1 of the Federal Law no. 132-fz (1996) defines a tourist product as a set of services for transportation and accommodation provided for the total price under the agreement on the sale of a tourist product. There are two types of cruises with the different legal regime in Russia, namely the tourist trip (longer than 24 h, including overnight accommodation), which considered as a tourist activity and regulated by the Federal Law no. 132-fz, and sightseeing tour (with the duration less than 24 h) which is regulated by the Law no. 2300-1 as a payable service.

Above mentioned general laws and regulations on tourism in the Russian Federation are the same for the Arctic and non-Arctic areas. Navigation in the Arctic waters of the Russian Federation has a special regime due to its special climatic and natural conditions; therefore, this special regime for navigation consequently affects cruise activity. The main navigation regulatory act to be applied to Russian Arctic waters is Federal Law no.132-fz (2012) [53]. This Federal Law has introduced into the Merchant Shipping Code a new Section 5.1 ‘Sailing in the waters of the Northern Sea Route’ and Article 14 ‘Navigation in the waters of the Northern Sea Route’ in the Federal Law no. 155-fz ‘on Internal Waters, Territorial Sea and Contiguous Zone’ [54]. Article 14 of the Federal Law no. 155-fz provides that, navigation along the Northern Sea Route—Russia’s historic national transportation route in the Arctic Zone, is carried out in accordance with the generally recognised principles and norms of the international law, international treaties; the Russian Federation is a party to, Federal Law no.132-fz (2012) and other federal laws and other regulations adopted in accordance with these laws. At the same time, the definition of the Northern Sea Route’ water area given by Paragraph 1 of Article 5.1 of the Merchant Shipping Code of 1999 does not include ports of Murmansk and Arkhangelsk, while these are the largest ports in the Russian Arctic zone.

The Navigation Rules in the water area of the Northern Sea Route [55] establish the procedure for the organisation of navigation of ships in the water area of the Northern Sea Route. The navigation through the Northern Sea Route is possible on authorisation only. The Northern Sea Route Administration was established on 15 March 2013 in order to manage navigation in the Northern Sea Route waters; it, inter alia, receives applications for vessels to sail in the Northern Sea Route water area, considers such applications and issues permissions for navigation in the water area. In 2013, the Northern Sea Route Administration issued a total of 635 permissions, 631 in 2014, 715 in 2015, 662 in 2017, and 792 in 2018 [56]. While only 91 out of 792 permissions issued in 2018 have been obtained by ships flying under the flag of a foreign state, the number of sails through the Northern Sea Route completed in 2018 by ships flying under the Russian flag and foreign flags (all of which were general cargo ships owned by COSCO) was almost equal—27 and 17 respectively [57]. Currently, foreign tourist vessels can only sail in the internal sea waters and in the territorial sea of Russia between ports that are open to vessels. The government establishes the list of ports open to foreign vessels.

The State Government systematically draws special attention to the socio-economic development of the Russian Arctic Zone. In this regard and as proof of it, “Fundamentals of State policy in the Arctic region for the period up to 2020 and beyond” [58] and “Basic Principles of the State Policy of the Russian Federation in the Arctic for the period up to 2035” [59] are worthy to be mentioned. These documents consider the Northern Sea Route as a competitive national transport communication of the Russian Federation on the

world market, and emphasising the importance of the intensification of mutually beneficial cooperation between the Russian Federation and the Arctic States based on international law [19].

The Polar Code provisions are fully consistent with the current Russian rules and regulations for navigation on the Northern Sea Route and meet the requirements for ships in protecting the marine environment from pollution. Simultaneously, the Navigation rules in the waters of the Northern Sea Route continue to operate in parallel with the Polar Code rules. However, experts' point of view is that the implementation of the Polar Code provisions requires certain amendments to be done to a number of Russian legal acts, otherwise potentially, there will be a conflict of interests based on the opportunities offered by the Polar Code to the States of the flag from one side and Russian domestic regulations on the Northern Sea Route navigation from another side [24].

#### *4.3. Contract of Carriage of Passenger by Sea and Liability of the Carrier*

Chapter IX of the Merchant Shipping Code 'Contract of Carriage of Passengers by Sea' is based on provisions of the Athens Convention. According to it, the carrier is responsible for transporting the passengers and their luggage to the destination, and handing the passenger's luggage to the person who is entitled to accept it; the passenger is responsible for paying the prescribed transport fee and baggage check-in fee (Paragraph 1 of Article 177 of the Code). Carrier refers to a person who signs the contract of carriage of passengers by sea or in whose name such contract is signed, regardless of whether the carriage of passengers by sea is carried out by the carrier or by the actual carrier. The actual carrier refers to the shipowner who is actually engaged in the passenger transportation or part of it other than the carrier. Passenger refers to a person who also signs the passenger carriage contract or in whose name such contract is signed (Paragraph 2 of Article 177). The contract of carriage of the passenger by sea shall be signed with the ticket certificate. If the passenger submits checked-in luggage, the luggage consignment shall be taken as evidence (Article 179).

Rules set by Paragraph 1 of article 177 of the Merchant Shipping Code are almost identical with the content of the first paragraph of Article 786 'The Contract of Carriage of Passengers' of Civil Code. In this regard, the basic rights and obligations of the parties to the contract of carriage of the passenger by sea and by other modes of transport coincide. Worth notable is that Chapter IX of the Merchant Shipping Code does not specifically discuss the seaworthiness, while rules set by chapters devoted to the contract for the carriage of goods by sea of the Code, provide that the carrier has liability on making ships seaworthy. According to Russian experts, this situation violates the right of passengers to travel safely [15].

Athens Convention, as amended by the Protocol of 2002, provides that the carrier shall be liable for the death or personal injury of the passenger and the loss or damage of the passenger's luggage and set the liability of the carrier to 400,000 Special Drawing Rights (SDR) for death or damage to the health of the passenger (Article 7), to 2250 SDR for the loss of the passenger's hand luggage, to 12,700 SDR for the damage to the means of transport carried by passenger and to 3375 SDR for the damage to other luggage items (Article 8).

Upon accession to the Athens Convention, the Soviet Union made a declaration (Decree no. 9064-X of the Supreme Committee of the USSR) [60] provided for in paragraph 1 of Article 22 of the Convention, according to which a Party will not apply the provisions of the Convention when the passenger and the carrier are entities or citizens of this Party; in connection with it, there are two mechanisms in Russian law for determining a carrier's liability in a cross-border carriage for the death of or personal injury to the passenger—one for organisations or citizens of the Russian Federation and the other one for organisations or citizens of foreign countries [2]. Paragraphs 1 and 2 of Article 197 of the Merchant Shipping Code provide that, when the carrier and the passenger are an organisation or a citizen of the Russian Federation, the liability for the injury caused to the life or the health of the



passenger during a cross-border carriage shall be determined in accordance with rules set by the international treaty of the Russian Federation or, if rules set by Merchant Shipping Code or the Contract of Carriage does not provide for higher compensation, in accordance with rules set by Russian Civil legislation. The compensation under provisions of Chapter 59 'Obligations Resulting from Harm' of the Civil Code of the Russian Federation, does not include a limitation of carrier's liability. Even though it is understood that this is to protect passengers' interests; in experts' view, this does not help to achieve a balance of interests of the parties and refers rather to the shortcomings of Russian legislation [2].

In terms of carrier's liability, the regulations set out by Merchant Shipping Code shall apply to the carriage of passengers in foreign travel, only if the carrier and passenger are not organisations or citizens of the Russian Federation. The rules set by Article 197.3 of this Code on the carrier's liability for the loss of, or damage to the luggage and on the limitation of such liability shall not apply to its carriage in coastal shipping. If the Merchant Shipping Code of the Russian Federation or the contract of carriage of passengers by the sea does not provide for a larger compensation for damage than the one established by the International Treaty (Athens Convention), the civil legislation of the Russian Federation (with no limitation) shall apply [2].

Regarding the burden of proof, Russian maritime law follows the regulation of the first version of the Athens Convention and sets that the carrier is liable only if he is guilty and it is proved by the passenger, except in cases where the carrier's fault is presumed.

#### *4.4. Distinctiveness of the Cruise Shipping Contract*

International maritime cruise transport is not regulated by Russian maritime law, since terms of, and relationships arising from the cruise shipping contract are not covered by the Merchant Shipping Code of the Russian Federation [46]. The cruise shipping contract is obviously different from the contract of carriage of passengers by sea (carriage to the point of destination). The parties to the cruise shipping contract are not passengers and carriers, but tourists and travel agencies. The cruise shipping contract should be attached to a number of additional agreements in the field of customer service (food, entertainment, visiting programmes). In the process of both maritime transportation and cruise shipping, passengers can get a series of services on board a ship, but these packages of services are different. In terms of cruise shipping, tourists pay transportation fees when purchasing a tourist product, while tourism itself starts at the end of the transportation time. According to the cruise shipping contract, the start and end time of tourism activity is the time when tourists get on and off the ship; while under the contract of carriage of the passenger by sea, the time for tourist activity starts when tourists arrive at their rest place and the transportation itself is finished [14].

In terms of cruise shipping operator, there are three types of contractual relationships, namely: the contractual relationship between passengers (cruise participants) and travel agency (cruise organiser); the contractual relationship between travel agency (cruise organisers) and another travel agency (providing single tourism services); the contractual relationship between travel agencies and carriers. The organiser of the cruise can be the shipowner (carrier) or a tourist line travel agency. The international cruise shipping contract is an independent contract. The contract of carriage of passengers by sea as a part of the cruise shipping contract is the contract for the transportation of passengers to the resting place or from the resting place. In order to organise cruise tourism, cruise operators should sign contracts for carriage with carriers.

Above mentioned set of relationship is regulated by Chapter IX 'Contract of Carriage of Passengers by Sea', Chapter X 'Time Charter' and Chapter XI 'Bareboat Charter' of the Merchant Shipping Code combined with Article 632 'Contract of Rent of Vehicles with Crew', Article 787 'Chartering Contract' and Article 430 'Contract for the Benefit of a Third Party' of the Civil Code of the Russian Federation. According to rules set by the Civil Code, the cruise organiser may conclude a contract with the carrier for several flights, including on the terms of chartering the vessel or for one flight. When chartering a vessel

for a cruise, the charterer acts as the carrier with all rights, duties and responsibilities under conditions of the charter party. The shipowner is responsible for the actions of the crew of the chartered vessel [16].

Following the Ministry of Transport of the Russian Federation's requirements [61], shipowners shall follow the rules set by a standard scheme of vessel's navigation published by authorities of international sea ports of the Russian Federation. In case of delay of arrival of the vessel in port or any deviation in the vessel's schedule, the vessel's administration shall inform the counterparty and tourists, to take measures required to implement the tourist programme. In case if these changes in the established schedule of the vessel's navigation have caused a violation of the programme of tourists' service, tourists have the right to initiate the tour package contract' termination (Article 10 of the Federal Law no. 132-fz) and to require to get compensation from the carrier's party for their actual losses or to be delivered back to the port of departure on the expenses of the carrier if the carrier is responsible for the delay or deviation (Article 10 of the Rules of carriage of passengers and their luggage by sea). Generally, it is understood that the carrier, as a contractual party to the cruise organiser, bears responsibility under the terms of the contract of the ship chartering according to rules set by laws regulating the transportation of passengers by sea (including provisions of the related international treaties of the Russian Federation); while, under the provision of Article 9 of the Tourist law (the Federal law no. 132-fz of 1996), the tour operator is responsible for non-implementation or inappropriate implementation of the contract on the tourist product concluded between the travel agency and tourists, except otherwise provided by the Federal law or other related laws of the Russian Federation.

In order to organise cruise tourism onboard of a foreign-flagged vessel, the cruise organiser must obtain permission from the Federal Agency for Tourism, which this organ can issue in coordination with the Federal Security Service, the Ministry of Defence and the Federal Agency for Sea and River Transport of the Russian Federation.

## 5. Conclusions

To sum up the above, here are some suggestions for improvement to address certain shortcomings of Russian legislation on marine cruise shipping in the Arctic waters. It is suggested to include in the domestic legislation the rules of the sea cruise contract; to clarify navigation regime along the Northern Sea Route and in Arctic ports; to introduce carriers liability on ship seaworthiness into the Chapter IX of Merchant Shipping Code "Contract of carriage of passengers by sea", providing that the carrier has liability on making ships seaworthy, in order to protect the right of passengers to travel safely; to make timely changes to Russian maritime laws in order to assure the implementation of the Polar code; to launch a study on theory and case materials regarding carrier's liability for the death of or personal injury to the passenger under provisions of the Civil Code, in order to put in balance two legal regimes existing in Russian law for organisations or citizens of the Russian Federation and for organisations or citizens of foreign countries. There is a need to design and implement a systematic approach for the development of the Arctic Cruise Shipping on both domestic and international levels. This approach may help to ensure the further economic development of the region and thus the Russian national interests therein. Expansion of international cooperation based on bilateral and multilateral efforts to ensure the safety of navigation in Polar Waters may help to reduce the risks and prices of cruises. It was suggested to work out a unified programme to develop Arctic ports along the Northern Sea Route on the domestic level. In this regard, there is a need to include all the crucial ports playing an active role in the Arctic Shipping into the scope of the Northern Sea Route concept.

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