

Problems of Legal Regulation of the North Polar Region of the Earth

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Introduction

Each year there is a rising research interest to the Earth's polar regions, and it is connected not only to the climate changes which can be actively observed globally¹ and in the Arctic in particular². Sea ice thawing in the Arctic Ocean, in perspective, could open up both new sea routes between Northern Europe and Asian countries, and possibilities for mineral extraction on the Arctic shelf. According to scientists, the Arctic is incredibly rich in natural resources and one could argue that even right now the Arctic shelf is the country's largest oil and gas industry reserve³.

At the same time, it is worth mentioning the sensitivity of the Arctic region in terms of ecology. The Arctic Ocean is the smallest and shallowest⁴ on our planet and is characterized by its harsh climate, the existence of ice caps and the largest continental shelf.

Research results

The harsh climate is the reason behind the Arctic Ocean's poor organic life, both in terms of the species diversity and biomass. In total, approximately 4000 species of metazoan, protozoa and algae living in the Arctic Ocean have been described. Mammal life-cycles are closely connected to the condition and distribution of ice caps in the region. Thus, diatom algae⁵, which produce organic matter, organize colonies on lower parts of the ice, are consumed by

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¹ Over the past 100 years, air temperature in the Arctic region has increased by 4-6 ° C. It is predicted that by the end of the 21st century, air temperature will rise by another 7 ° C. // Ice changing of the Arctic. The popular science site on meteorology "Meteorologist and Me" simply about the complex. – Available at: <https://meteo59.ru/articles/002-led-arktiki.php>.

² It should be noted that under the definition of 'the Arctic' we understand the universally used notion of the Arctic as the Northern polar region of the Earth, consisting of the Arctic Ocean with its seas, straits and bays, located to the North of the Arctic Circle, located at a latitude of 66°33'44" (66,5622°) N

³ The mineral foundation of Russia's Arctic continental shelf and its effect on the development of infrastructure in the Far North / V.D. Kaminskiy, O.I. Suprunenko, V.V. Suslova, A.M. Ivanova, A.N. Smirnov. 2016.

⁴ The deepest point of 5 527 m. is off the coast of Greenland

⁵ Diatoms are a major group of algae, specifically microalgae, found in the oceans, waterways and soils of the world. Living diatoms number in the trillions: they generate about 20 percent of the oxygen produced on the planet each year.

invertebrates and fish, which in turn become food for larger animals.

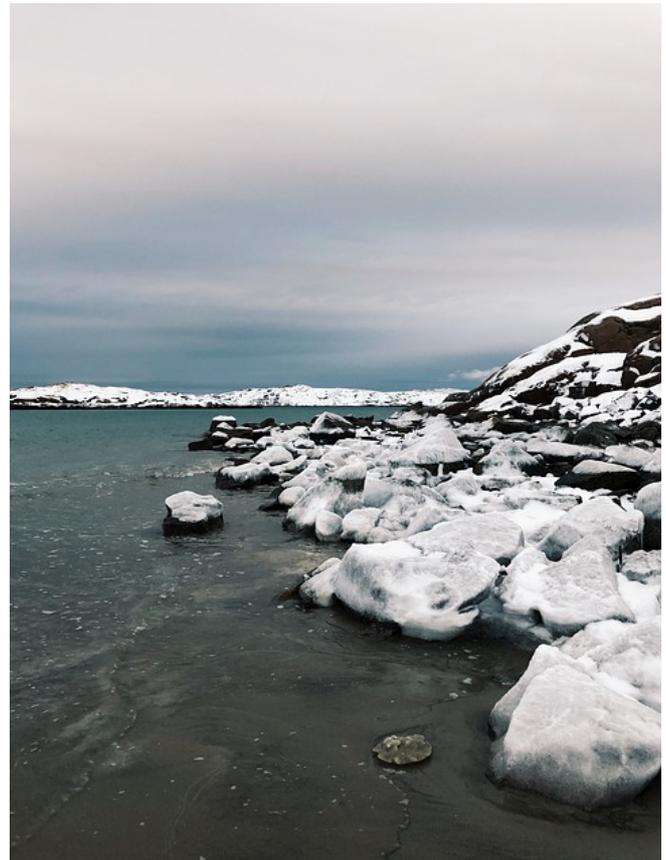
It is obvious that because of temperature changes Arctic ice⁶ suffers a reduction in its mass and consolidated with Siberian river flow, the productive portion of water bodies is coastal and thus is susceptible to large-scale desalination, which ultimately affects marine organisms that can only live in salt water.

There are assessments that, discomfortingly, say about a possible disappearance of 30-40% of animal and plant species as a result of climate change and, consequently, change in their usual places of habitat, which will alter at a faster rate than the flora and fauna will be able to adapt to⁷.

It should also be noted that the latest research on trans-country sea ice drift in the Arctic Ocean done in the Columbia University and McGill University, demonstrated that sea ice not only does move faster but also increases the scale of international ice exchange (ice drifts from Russia to Norway and Greenland, Alaskan ice moves into Russian waters). Accordingly, pollution from oil spills or

organic pollution could be transferred from one Arctic neighbor to another via ice⁸.

Without any doubt, we cannot state that the international community on the whole and circumpolar countries in particular, do little in the sphere of cooperation to save the Arctic natural ecosystem.



⁶ According to the deputy director of the Institute of Geography of the Russian Academy of Sciences O. Solomin, over the past 30 years the area of sea ice in the Arctic has been reduced and the area of snow and its volume has been decreasing. // The temperature of the atmosphere over the past 100 years has increased by 0.74 degrees. – Available at: <https://www.gismeteo.ru/news/klimat>

⁷ Climatic Chaos. What is the danger of global warming and what can we do to prevent it? TASS Special Project Available at: tass.ru/spec/climate

⁸ Expansion of transnational marine migration of ice formations in the changing Arctic Ocean. Robert Newton, Stephanie Pfirman, Bruno Tremblay, Patricia De Repentigny // Future Earth. 06/27/2017. Available at: <http://onlinelibrary.wiley.com/doi/10.1002/2016EF000500/full>

Notably, the Arctic Council⁹ has been established to come up with decisions and protect, by managing cooperation between both circumpolar and non-polar countries, the unique Northern polar region. Projects in ecology, economy, culture, healthcare, emergency prevention and protection of indigenous peoples and the North are carried out under the aegis of the Arctic Council¹⁰.

International cooperation is based upon norms of international law, which is inevitably affected by sovereign state politics, and its obvious flaw is the uniformity of its applications. International law is based on the principles of sovereign equality of States and its binding nature.

Regarding the disclosure of the legal frameworks of the Northern polar regions, the largest part of which is the Arctic ocean, it should be noted that the single most important international document regulating and protecting the World Ocean is The United Nations Convention on the Law of the Sea of 1982¹¹. The Convention, among other things, included a number of then-effective international laws and

regulations of the 1958 convention, some of which were specified and amended, considering up-to-date conditions.

This international treaty is, in effect, universal in respect to the number of countries that ratified it and the amount of problems solved. The Convention defined the legal framework of marine territories and provides the international legal basis for state operations in the field of sea exploration and exploitation.

On the one hand, the convention guaranteed protection of economic interests for coastal countries, having instated an exclusive economic zone, while on the other hand it ensured access to sea floor resource exploitation outside international jurisdiction. It also reaffirmed and amended the freedom of the high seas and the right of all vessels, including military and governmental, to exercise navigation in international straits and canals.

The adoption of said Convention should be seen as a result of efforts to raise the effectiveness of the World ocean resource control by redirecting political debate to those issues of marine management which should be resolved

⁹ Established in 1996 by Finland's initiative. The Arctic Council consists of the eight Arctic States: Canada, the Kingdom of Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russia, Sweden and the United States. Six international organizations representing Arctic Indigenous Peoples have permanent participant status.

¹⁰ The Council operates by 6 working groups sorted by there are: liquidation of pollution, monitoring Arctic environment, preservation of the Arctic flora and fauna, prevention and liquidation of accidents, maritime arctic environment protection, sustainable development.

¹¹ Convention entered force on November 16, 1994.

urgently by refining international cooperation and coordination.

Regarding the Arctic, the Convention importance has been acknowledged by circumpolar countries, including the United States of America, who are not a part of the convention, but who have stated their intent to follow the principles of maritime law in the Ilulissat Declaration of 2008, according to which maritime law provides a solid foundation for responsible management in the Arctic¹².

Acknowledging the priority of the UNCLOS, countries adopt provisions on maritime delimitation¹³, which provide coastal states with various sovereign and jurisdictional rights.

In case territorial claims are present between countries¹⁴, they are in most cases solved by signing bilateral treaties. With regards to the Arctic region, several can be mentioned, including the Treaty between Norway and the Russian Federation on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean of 2010. In case a final result to the tensions cannot be achieved, international law considers consulting

the International Court of Justice to be the way.

Territorial issues in the Arctic are relatively clear and quite soluble per se. The genuinely important and hard to solve matter is the realization of points in the article 234 of the UNCLOS, which governs the possibility of coastal countries to accept non-discriminatory laws aimed at prevention, reduction and control of marine pollution by vessels in the borders of the ice-covered areas in the EEZ, where the ice itself presents a danger or an obstacle to navigation and marine pollution could do harm to ecological balance or disrupt it irreversibly.

This possibility has been utilized by Canada and Russia, who have passed national legislation which allows a coastal state to reject a vessel entry in case of violation of international laws adopted in lieu with article 234 of the UNCLOS.

The USA, in turn agreeing with the rights of coastal states, claim that such rights should not violate freedoms of the high seas, including the freedom of transit passage which could not be restricted on the basis of national law

¹² The declaration concludes that the Law of the Sea framework “provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.”

¹³ Territorial waters – 12 nautical miles, contiguous zone - 24 nautical miles, EEZ – 200 nautical miles.

¹⁴ Up to this date, the most insoluble one is the dispute between the USA and Canada in the Beaufort Sea, which both sides are trying to peacefully resolve.

regulation. It should also be noted that foreign academic and political circles, in response to climate change and ice cap diminishing in the Arctic, also state the necessity to redefine the use of this article to reduce the entitlements of circumpolar countries¹⁵.

Attention should also be paid to the unsolved claims to the Arctic continental shelf and, consequently, sovereign rights to exploitation of its riches, which include not only natural, but also biological resources, covering the continental shelf. UNCLOS suggests a mechanism to expand the shelf borders to outside the EEZ by inquiring the UN on the borders of the shelf and acknowledging that it is a continuation of the coastal country's land territory. Considering widening of the shelf borders, we should note that the Commission (as of yet¹⁶) has not made any definite decisions on the inquiry (based on geological and geomorphologic traits of the Arctic sea floor) made by Russia to expand its continental shelf borders in the Arctic.

It is crucial that realization of coastal states' right on continental shelf expansion based on conventional decisions could lead to the situation in which almost all entitlements to the depths of the Arctic would ultimately fall under the exclusive jurisdiction of

coastal countries, to which would obviously protest non-Arctic states.

Yet another burning issue in the region could be the increase in navigation in the Northern polar waters, the use of the freedom of transit passage in international waters and maritime law frameworks. In the first case the problem arises as a result of Canada and Russia's claims that part of the Northwest Passage and the Northern Sea Route are internal waters and international vessels should request the right to entry. To this the US state that the Northwest Passage and the NSR are international straits and thus a coastal state has no right to restrict transit passage. In the second case, the increase in navigation would lead to an issue of safe seafaring in straits and adhering to the laws of navigational and ecological security.

Conclusions

It should be said that not all countries accept all international treaties and deals all the time. For instance, the USA are not party to the UNCLOS, Canada has left the Kyoto Protocol, Russia has not ratified several agreements regarding the Arctic. Accordingly, unilateral legal approach does not always exist to solve such problems, but it is extremely important to strive to create such a legal

¹⁵ Interpretation and usage of article 234 of the UNCLOS following the reduction of ice caps in the Arctic. Gavrilov V.V., Dremlyuga R.I., Kripakova A.V. // Russian Law Journal. 2017. p. 151- 160.

¹⁶ Mid-July, 2019

system, based on rules of ecological management in the Arctic, that would be suitable for Arctic countries.

It is the international law and the Convention that provide a basis that regulates state rights and obligations in consideration with the exploitation of oceans and their resources, environmental and biological protection, and liability for damage to the oceans as a result of illegal activity of different actors. Arctic states should prevent any potential harm and take preventive measures in ecological security and minimization of accidents in these remote Northern regions, where mitigation of consequences after navigational and technogenic failures could become a national disaster.

In order to prevent hazardous situations and resolving disputes not only would first-priority tasks be completed by Arctic countries by instituting the legal status of their borders and providing complete political and economic safety for them, but also taking up complex measures to reduce potential ecological risk by, among other things, creating joint navigational rules for straits and setting traffic separation zones by conclusion of international agreements.

In this article the authors, expressing the common objective of defining various problems emerging between circumpolar countries and the Arctic, basing on the dialectical method in the form of reflexive theoretical thought,

consider the main way to resolve the existing issues in the region to be the realization of the Arctic region's universal importance by the countries and the undeniability of international law and the United Nations Convention on the Law of the Sea, the inevitability of international partnership and the search for compromise.

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