

UDC [327+332.14](98)(045)

DOI: 10.17238/issn2221-2698.2019.37.82

European Union's approach to the Arctic policy development through the lens of the Russian regional interests*

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Abstract. Based on an extensive database, the authors analyzed the main features of the EU Arctic strategy and their relationship with Russian interests in the region. The authors proceed from the fact that the probability of reaching any significant points of contact between the two actors is minimal. The incompatibility of their strategic lines is because the EU considers the Arctic as another platform for its potential of “normative strength”, while Russia, in cooperation with its foreign partners, is primarily aimed at attracting investments in the development of the Arctic infrastructure. In the context of the ongoing crisis in bilateral relations caused by the events in Ukraine, it is not possible to talk about the prospects for harmonizing the regional aspirations of the EU and the Russian Federation.

Keywords: *the Arctic, the EU, Russia, foreign policy, ecology, environment, stress tolerance, sustainable development.*

Introduction

The European Union was the first non-regional actor to develop the conceptual foundations of its Arctic policy almost at the same time as other circumpolar powers. In November 2008, the corresponding communique of the European Commission was published. Since then, a variety of documents have been adopted by various governing bodies (the European Commission, the European Parliament and the Council of the EU) specifying the content of Brussels' regional interests, namely: the communiqué of the European Commission of June 26, 2012¹, European Parliament Resolution of March 12, 2014², EU Council conclusions on developing a European Union Policy towards the Arctic Region of May 12, 2014³, European Commission joint communiqué of April 27, 2016⁴ and the latest at the moment resolution of the European Parliament of March 16, 2017.⁵ Moreover, in the development of the doctrinal foundations of the EU's Arctic policy in recent years, several characteristic features are visible.

* For citation:

Tulupov D.S., Tsarenko E.V. European Union's approach to the Arctic policy development through the lens of the Russian regional interests. *Arktika i Sever* [Arctic and North], 2019, no. 37, pp. 82–93. DOI: 10.17238/issn2221-2698.2019.37.82

¹ Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps. URL: http://eeas.europa.eu/archives/docs/arctic_region/docs/join_2012_19.pdf (accessed 12 November 2019).

² European Parliament Resolution on the EU strategy for the Arctic. URL: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2014-0236+0+DOC+PDF+V0//EN> (accessed 10 November 2019).

³ Council conclusions on developing a European Union Policy towards the Arctic Region. URL: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142554.pdf (accessed 10 November 2019).

⁴ An Integrated European Union policy towards the Arctic. URL: http://www.eeas.europa.eu/archives/docs/arctic_region/docs/160427_joint-communication-an-integrated-european-union-policy-for-the-arctic_en.pdf (accessed 21 November 2019).

⁵ European Parliament's resolution on an integrated European Union policy for the Arctic. URL: http://www.europarl.europa.eu/doceo/document/TA-8-2017-0093_EN.pdf?redirect (accessed 19 November 2019).

Common and specific in the EU regional strategy

First, from a functional perspective, involving the EU in the development of the Arctic has always been distinguished by its emphasis on “normative power”. [1, Nicolaidis K., p. 311]. In other words, Brussels seeks to ensure the “indigenous” polar powers perceive its doctrine of legal regulation in an area of Arctic exploration (ecology, mining, shipping, and social security of small indigenous peoples of the North) as a universal standard for activity. The European Union has not been able to develop a clear narrative of its regional strategy, which would resonate with both internal and external audiences. The emphasis on ecology and scientific cooperation alone cannot, according to experts, become an idea justifying the exceptional contribution of Brussels to the process of regional construction. As a result, they raise a big question of whether the EU has both the opportunity and the desire to influence the development of the system of relations between the “indigenous” polar powers, which has already been established both politically and legally [2, Raspotnik A., Östha-gen A.].

Secondly, in the thematic plan, the focus of the EU’s Arctic policy is on three aspects: maintaining environmental protection, accumulating the maximum possible amount of scientific information about the Arctic, and ensuring the rights of small indigenous peoples of the North. [3, Chuffart R., Raspotnik A., p. 160]. From this perspective, the regional agenda of Brussels closely resembles the content of the Arctic strategies of individual EU member states (Denmark, Sweden, Finland, Germany, France, and the United Kingdom). At the same time, as A. Ostha-gen and A. Raspotnik rightly point out, the development and implementation of a single EU policy in the Arctic, in addition to purely financial restrictions, is often hampered by the fact that individual member states pursue opposite interests in this region in military security and resource development ⁶.

Fourthly, in a purely political sense, Brussels is not satisfied with indirect participation in the regional government through Denmark, Sweden, and Finland. That is why, despite the negative position of Canada and Russia, the EU is still ⁷ persistently seeks to increase its status in the Arctic Council to the level of a permanent observer, which was previously achieved by other non-regional groups (e.g., China and India). The lack of progress on this issue does not bother Brussels. It has focused on the implementation of its normative influence through participation in the activities of the AC working groups.

If we talk about the most significant changes that have occurred in the EU Arctic strategy, then, first of all, it is worth noting some adjustments of the position of Brussels on the prospects for the international legal regime of the Arctic. In its resolution of October 9, 2008, the European Parliament called on the European Commission to contribute in every way to the start of multilateral

⁶ Another Step Forward. The Council of the European Union Puts the Arctic on the Table. Arctic Institute. 22 May 2014. URL: <https://www.thearcticinstitute.org/step-forward-council-european-union-arctic> (accessed 22 November 2019).

⁷ Rossiya podpisala soglasenie o predotvrashchenii nereguliruemogo promysla v Arktike [Russia signed an agreement on the prevention of unregulated fishing in the Arctic]. URL: <https://tass.ru/ekonomika/5633940> (accessed 22 November 2019).

negotiations on the conclusion of a separate international treaty on the Arctic, taking the 1959 model of the Antarctic treaty as a basis. It was also assumed that at the initial stage, the subject of regulation might not be the entire Arctic, but only the central part of the Arctic Ocean. To a certain extent, this priority was embodied in the Agreement on the Prevention of Unregulated Fishing on the High Seas in the Central Arctic Ocean, signed in early October 2018 (by the European Union as well). However, initially, Brussels raised the issue more than merely preserving the regional ecosystem and resources, paying much attention to the political component (preventing military conflicts in the Arctic, recognizing the special status of small indigenous peoples, and increasing their role in regional management process). In the latest EU Arctic policy documents, the line for assessing the international legal foundation of regional development has become closer to the position of “indigenous” polar powers. Thus, in its report of April 27, 2016, the European Commission indicated that “... considers the 1982 UN Convention as a sufficient basis for the management of the Arctic Ocean and the peaceful settlement of disputes”⁸. The same but in a slightly more expanded form was also reflected in the content of the resolution of the European Parliament of March 16, 2017, which “emphasizes the importance of the 1982 UN Convention a) in creating a multilateral legal framework for activities in all areas of the oceans, incl. the Arctic, b) in the process of determining the external borders of the continental shelf in the Arctic Ocean and c) in settlement of disputes between regional powers regarding the establishment of sovereign rights in territorial waters”⁹. Thus, the most apparent discrepancies were smoothed out with one of the main provisions of the Ilulissat Declaration 2008. In the document, the five coastal Arctic powers recognized their adherence to “an extensive regulatory framework applicable to the Arctic, especially regarding the definition of external the boundaries of the continental shelf, the protection of the marine environment, the principle of freedom of navigation, marine scientific research, ... as well as the settlement of all possible intersections of mutual claims”¹⁰. It is impossible to talk about the full harmonization of the points of view of the EU and the coastal states (mainly Russia). In the rhetoric of many government representatives in Brussels, the need to recognize the Arctic as a zone of the common heritage of mankind remains relevant.

The second change in the discourse of the EU’s Arctic policy can be traced in the terminological aspect. Since 2008, its conceptual basis has remained the concept of “sustainable development”, which embodies the EU’s commitment to the principles of prudent management, based on minimizing the negative impact on the environment. At the same time, in the 2016 communiqué, along with sustainable development, the term “stress tolerance” also begins to be used. In particular, the document states that “the EU has a special responsibility to protect the environment in the Arctic and strengthen the stress tolerance of its ecosystem”, and also “should contribute to the sustainable development of the Arctic, taking into account the experience of indigenous peoples living in the re-

⁸ An Integrated European Union policy towards the Arctic. P. 14.

⁹ European Parliament’s resolution on an integrated European Union policy for the Arctic. P. 7.

¹⁰ Ilulissat Declaration, 27-29 May 2008. URL: <https://cil.nus.edu.sg/wp-content/uploads/2017/07/2008-Ilulissat-Declaration.pdf> (accessed 23 November 2019).

gion, as well as the impact of economic development on a vulnerable environment”¹¹. In its original sense, stress resistance is the amount of external negative impact (perturbation) the system can withstand before it enters the region of attraction or stability [4, Holling C.S.]. In other words, the ability to absorb or adapt to the effects of various kinds of shocks was considered a vital characteristic of a stress-resistant system, while maintaining its working capacity. Over time, this concept migrated from ecology to economics and politics. Since the beginning of the 2000s, it is in high demand in the political discourse of the EU. In a purely functional plan, the concepts of “sustainable development” and “stress tolerance”, of course, differ. If the former should be understood as a process or the final product, then the latter is a property of the system. However, in the EU’s political discourse, this difference was smoothed out, and today these two terms are used interchangeably.

On the relationship between the interests of the EU and Russia in the Arctic

Historically, it has always been more common for Russian diplomacy to defend its national interests in interacting with foreign players in a bilateral rather than a multilateral format. From this point of view, the EU is for Moscow, an “uncomfortable” partner. If we consider a complex of problems of a general political nature related to the imposition of sanctions against the Russian Federation, accusations of violating the “rules of the game” in the case of Ukraine and Syria, interference with the election, etc., the overall picture of perception becomes quite bleak. Under such conditions, it is complicated to expect any constructive interaction between Russia and the EU in the Arctic [5, Biedermann R.].

Nevertheless, one has to reckon with the fact of the EU’s desire to participate in the development of the region, and therefore it is essential to understand the nature of the relationship between its interests and the Arctic strategy of the Russian Federation in various fields.

Arctic shipping

Since 2007/2008, the steady trend of increasing freight transportation along the NSR (both coastal and transit), combined with the ambitious plans of the Russian leadership to improve the Arctic transport infrastructure, continues to be the subject of close attention of foreign actors, among which the European Union also appears. The development of Arctic shipping is reflected in almost every EU Arctic policy document adopted over the past ten years. The generalized position of the EU on this issue can be formulated as follows.

In principle, the optimizing shipping traffic between the ports of European countries and East Asian countries by using both the NSR and the Canadian Northwest Passage is evaluated positively, if it is sustainable (sustainability). It minimizes the negative impact on the marine environment of the Arctic.

In the political sense, the primary irritation for the EU is the need to pay fees for icebreaking and ice piloting through the NSR, as well as the Russian power in determining the mode of the NSR

¹¹ An Integrated European Union policy towards the Arctic. P. 16.

use. Brussels considers this practice to be discriminatory and, to some extent, contrary to the international law of the sea (and the principle of freedom of navigation in particular) [5, Biedermann R.]. This assessment is especially evident in the memorandum of the EU's Shipowners Association (ECSA) on the EU's Arctic policy, published in June 2014. The document focuses on the fact that “(secured in) the 1982 UN Convention on the Law of the Sea principles of freedom shipping, transit passage and the right of peaceful passage through the straits used for international shipping ... *should be respected and have priority* over the rights of coastal states, as fixed in art. 234 (Ice Covered Areas). Currently some Arctic states¹² are appealing to the contents of this article and they put forward claims for jurisdiction over the Arctic spaces, introducing a requirement to pay fees for the use of routes and straits, arguing that the latter is in their inland waters. Given the prospect of increased shipping and transit traffic in the Arctic, it can be argued that maintaining this practice in the future is likely to create unfavorable conditions (when using the NSR) for ships registered in non-Arctic countries” [6, Vorobyov N.I., pp. 49-50]¹³. Similar critical assessments of the current NSR management system have been heard in recent years from shipowner associations of the EU member states Denmark and Germany.

Slightly more balanced comments on the essence of the existing management system of the NSR were given in an analytical note published back in February 2010 by order of the Directorate General of the European Commission for Maritime Affairs and Fisheries. A team of well-known experts in international law of the sea was involved in its compilation, incl. Erik J. Molenaar, Tore Henriksen, James Kraska, and Maksim Korel'skiy. The experts conclude that “the importance of the NSR for the Russian Federation as a national asset is established, and the regulatory norms and national legislation established for users of the NSR are often even more stringent than generally accepted international norms and rules (esp., by the IMO) and correspond to the content of Art. 234 of the 1982 UN Convention, which is why they cannot be called *inappropriate or unjustifiably discriminatory*”¹⁴. At the same time, experts point out the main danger for European companies potentially interested in the NSR developing is the high possibility of abuse by the Russian side when exercising the NSR norms and rules and the adoption of discriminatory special by-laws/regulations. It was suggested that in the future for domestic vessels navigating in the Arctic waters, the requirements could be set significantly milder than for foreign ships. In addition, the note draws attention to the notorious condition that the coastal state can adopt regulatory laws and regulations only for areas covered with ice “*for most of the year*”, and therefore it is recommended to the EU governing bodies and the

¹² Refers to Russia and Canada.

¹³ ECSA Position Paper. EU Policy Towards the Arctic Region. European Community Shipowners' Association. 04.06.2014. URL: https://www.ecsa.eu/images/NEW_Position_Papers/2014-06-04_FINAL%20ECSA%20Position%20paper%20on%20EU%20Policy%20towards%20the%20Arctic%20Region.pdf (accessed 15 November 2019).

¹⁴ Legal Aspects of Arctic Shipping. Summary Report. European Commission. 23.02.2010. https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/docs/publications/legal_aspects_arctic_shipping_summary_en.pdf P/P. 19 (accessed 12 November 2019).

international community¹⁵ to complete a regularly monitor the actual boundaries of ice cover distribution in the NSR area.

In this regard, the meaning of all the EU efforts in promoting the idea of maximizing scientific cooperation and monitoring climate change in the Arctic becomes evident. It means the accumulation of scientific information is only a tool to create the basis for strategic decisions (naturally, they are not specified in the EU doctrinal documents). Moscow correctly recognizes the presence of such a hidden meaning, and it only spurs even greater distrust and suspicion in the perception of Brussels' regional ambitions.

Back to the contents of the 2010 analytical note mentioned above, it should be noted that since its publication, the regulatory framework of the Russian Federation in the development of the NSR has been noticeable. In 2012, Federal Law No. 132 "On Amending Certain Legislative Acts of the Russian Federation concerning State Regulation of Merchant Shipping in the NSR" was adopted¹⁶. In early 2013, updated Shipping Rules in the NSR appeared¹⁷. In 2015, the Government of the Russian Federation approved the principle of shipments tariff regulation via the NSR, both for domestic and foreign ships, based on the methodology of economically reasonable costs¹⁸. The priorities in the development of the Arctic shipping infrastructure (with an emphasis on creating conditions - primarily in navigation and hydrographic support and communications - to bring the volume of cargo transportation via the NSR to 80 million tons by 2024) were fixed in the second edition of the state program "Social-economic development of the Arctic zone of the Russian Federation"¹⁹ and in the state program "Development of the transport system", adopted in 2017.²⁰

¹⁵ See.: UNCLOS 1982. URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed 12 November 2019).

¹⁶ Federal'nyy zakon № 132 "O vnesenii izmeneniy v otdel'nye zakonodatel'nye akty Rossiyskoy Federatsii v chasti gosudarstvennogo regulirovaniya torgovogo moreplavaniya v akvatorii Severnogo morskogo puti" ot 28.07.2012 [Federal Law no 132 "On Amending Certain Legislative Acts of the Russian Federation Regarding State Regulation of Merchant Shipping in the Water of the Northern Sea Route" of July 28, 2012.]. Konsul'tant-Plyus. URL: http://www.consultant.ru/document/cons_doc_LAW_133277 (accessed 15 November 2019). (In Russ.)

¹⁷ Prikaz Ministerstva transporta Rossiyskoy Federatsii (Mintrans Rossii) ot 17 yanvarya 2013 g. N 7 g. Moskva "Ob utverzhdenii Pravil plavaniya v akvatorii Severnogo morskogo puti" [Order of the Ministry of Transport of the Russian Federation (Ministry of Transport of Russia) dated January 17, 2013 N 7 Moscow "On approval of the Navigation Rules in the waters of the Northern Sea Route"]. Rossiyskaya gazeta. 19.04.2013. URL: <https://rg.ru/2013/04/19/pravila-dok.html> (accessed 20 November 2019).

¹⁸ Postanovlenie Pravitel'stva RF ot 24.04.2015 N 388 (red. ot 04.09.2015). "Ob utverzhdenii Polozheniya o gosudarstvennom regulirovanii tarifov na ledokol'nuyu provodku sudov, ledovuyu lotsmanskuyu provodku sudov v akvatorii Severnogo morskogo puti" [Decree of the Government of the Russian Federation of 04.24.2015 no 388 (as amended on 09. 04.2015). "On approval of the Regulation on the state regulation of tariffs for icebreaking pilotage, ice pilotage of ships in the waters of the Northern Sea Route"]. Konsul'tant-Plyus. URL: <http://www.consultant.ru/cgi/online.cgi?req=doc&base=LAW&n=185924&fld=134&dst=100001,0&rnd=0.08819334469822704#07261626205709388> (accessed 20 November 2019).

¹⁹ Postanovlenie Pravitel'stva RF № 1064 «O» ot 31.07.2017 [Decree of the Government of the Russian Federation No. 1064 "O" of July 31, 2017]. Sayt Pravitel'stva RF. URL: <http://government.ru/docs/29164/> (accessed 19 November 2019).

²⁰ Postanovlenie Pravitel'stva RF N 1596 "Ob utverzhdenii gosudarstvennoy programmy Rossiyskoy Federatsii "Razvitie transportnoy sistemy" ot 20.12.2017 [Decree of the Government of the Russian Federation N 1596 "On approval of the state program of the Russian Federation" Development of the transport system" of 20. 12. 2017]. Konsul'tant Plyus. URL: http://www.consultant.ru/document/cons_doc_LAW_286331/ (accessed 16 November 2019).

It is noteworthy that since 2009, the Northern Sea Route has been regularly used by foreign shipping companies for transit flights (albeit much smaller than initially anticipated), in compliance with all requirements specified in domestic law, including payment of the relevant fees. From a legal perspective, there is a reason to interpret such a stable tendency as the implicit recognition of the legitimacy for the requirements established by the Russian side.

From upholding the legitimacy perspective for the existing domestic regulatory and legal framework for managing the NSR, it also seems very important to set the correct emphasis on the place of this Arctic route in the system of (external) economic priorities of the Russian Federation. In Section 12 of the 2013 Strategy, the Northern Sea Route is defined as the “single national transport route”, which, along with railway, river and air transport, is one of the main components of the Arctic transport system of the Russian Federation²¹. In interpreting this definition, it is essential to recall that historically the usefulness of the NSR for the Russian Empire / Soviet Union / Russian Federation was primarily *determined by considerations of internal economic development or strengthening the country’s military security*. As regards the promotion of the NSR as an alternative route for international maritime trade, so far this task has an auxiliary role. Nevertheless, in the West, priorities in the field of domestic policy for the development of Arctic shipping are seen in a completely different way. They are convinced in Brussels that “Russia designates the NSR as an international maritime transport corridor within the Russian jurisdiction ... and which should remain under its full control. That is why Moscow is creating regulatory and administrative barriers to international shipping on this route”²². The fight against such distortions and misinterpretations at the level of the official state rhetoric of the Russian Federation can play an important role in ensuring recognition of the legitimacy of the established domestic management system of the NSR.

Military security

Brussels’ perception of the military preparations of the Russian Federation in the Arctic is primarily determined by increased mutual tension on the issue of sanctions, the resolution of the Ukrainian crisis, and interference in the elections. At the same time, the general thesis about the isolation of the Arctic from the consequences of global military-political tension [7, Östhagen A., p. 87]. By the way, the purposeful representation of Russia as the chief troublemaker in the Arctic began long before 2014. It was primarily intended to become the main factor in justifying the legitimacy of the EU’s desire to participate in regional affairs [8, Offerdal K., p. 869]. At the same time, the alarmist perception of Russian military policy in the region near Brussels is combined with the reliance on the concept of “selective interaction”. It provides for the possibility of cooperation with Moscow only in “non-sanctioned” sectors: scientific research in the Arctic, support for small indigenous peoples

²¹ Strategiya razvitiya Arkticheskoy zony RF na period do 2020 g. [The development strategy of the Arctic zone of the Russian Federation for the period until 2020]. Sayt Pravitel'stva RF. 20.02.2013. URL: <http://static.government.ru/media/files/2RpSA3sctElhAGn4RN9dHrtzk0A3wZm8.pdf> (accessed 16 November 2019).

²² Walking on Thin Ice: A Balanced Arctic Strategy for the EU. European Political Strategy Center. July 2019. Issue 31. URL: https://ec.europa.eu/epsc/sites/epsc/files/epsc_strategic_note_issue31_arctic_strategy.pdf pp. 6-7 (accessed 23 November 2019).

of the North, and environmental protection in the region. It should be noted that for the Russian side, such a set of areas of interaction is perceived as extremely narrow and unattractive, which leads to the absence of any reciprocal desire to develop a regional dialogue with Brussels.

Defining the continental shelf outer borders in the Arctic

Commenting on the EU's desire to impose its vision of the most optimal configuration of the international legal regime of the central part of the Arctic Ocean on the coastal polar powers at the early stage of developing its own Arctic strategy, leading IMEMO research fellow P.A. Gudev quite clearly defined that "the talk that the Arctic should be recognized as a "world heritage", a "shared heritage" or a "world park" is extra-legal, ... (since) the concept of ShH can be applied exclusively to bottom and subsoil resources beyond the areas of national jurisdiction of coastal states, that is, to the international seabed area. Speaking about the Arctic, it must be borne in mind that the concept of ShH can be applied to the resources of the area, but only if it is formed there by the Arctic states" [9, p. 64]. In the subsequent development of its Arctic strategy, Brussels ceased to focus on the above-mentioned controversial concepts - in the content of such critical documents as resolutions of the European Parliament in 2014 and 2017, as well as the Communication of the European Commission in 2016; they are missing. However, this does not mean that the EU abandoned the concept of ShH as one of the ideological pillars of its maritime policy. So, in the relevant resolution of the European Parliament, published in mid-January 2018, among other things, a reminder (on the relevance) of UN resolution 2749 of December 17, 1970, as well as Art. 136 of the 1982 UNCLOS, which establishes the surface and subsoil of the seabed beyond areas of national jurisdiction, as well as the resources contained therein, belong to the common heritage of humanity²³. It can be assumed that in the long run, when negotiations to determine the external borders of the continental shelf in the central part of the Arctic Ocean between Russia, Canada and Denmark begin, Brussels will try to influence them by convincing Danish diplomacy of the need to advance the idea of creating an international region around the North Pole as a basis for a mutually acceptable compromise with two other candidate countries. In this case, the development rules for this area would be based on standards and regulations for environmental protection and resource extraction adopted in the European Union (Denmark may be the agent). The implementation of such a scenario would serve as an adequate projection of the regulatory power of Brussels on the process of regional development [10, Riddel-Dixon E., p. 427]. In principle, the idea of such a condominium in the central part of the Arctic Ocean may well find a response in Moscow and Ottawa. However, the likelihood that the parties will agree to access to the development of the resources of the third-party area (in the EU) is negligible.

²³ European Parliament resolution on international ocean governance: an agenda for the future of our oceans in the context of the 2030 SDGs. Provision No. 15.

Conclusion

Based on the totality of the circumstances considered, it can be concluded that the balance of interests of Russia and the EU in the Arctic is slightly negative. It will remain so until an average (pre-crisis) level of mutual understanding in the military-political is restored between and a new meaningful basis for bilateral cooperation is built. Brussels is of interest to Moscow primarily as an economic partner in the supply of technology for the oil and gas sector, the import of resources extracted in the Arctic, and investment in the development of the infrastructure of the Russian North. The EU's attempts, under the sanctions it has introduced, to propose interaction on "soft" issues (scientific cooperation, protecting the rights of small indigenous peoples, environmental protection) as an alternative agenda, cause quiet irritation for the Russian side, as the initiatives proposed by Brussels suggest attempts are often seen to erode Russian sovereignty and the notorious "internationalization" of the Arctic zone of the Russian Federation.

Acknowledgements and funding

The study was funded by a grant from the Russian Science Foundation (project No. 17-18-01110).

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