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# Features of Creating Environmental Institutional Conditions for the Functioning of Arctic States

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**Abstract.** The analysis of rule-making process in order to reveal some features of creating of environmental institutional conditions for Arctic states has been carried out in the paper. The importance of this research is defined by the fact that environmental problems are of particular relevancy in the movement of ensuring of the Arctic states' development. At the same time, there is no any unified international treaty concerning environmental standards of the Arctic's economic activity or any special rules for its protection. The Arctic states jointly establish environmental standards and rules for the development of the Arctic. The authors have examined the Arctic's legal regime in the context of international cooperation on environmental affairs. The following main problems of creating the institutional environmental conditions for the Arctic states functioning are identified: firstly, the concept of "Arctic states" in international documents refers to different groups of countries; secondly, part of the Arctic's territories and water areas does not have clear jurisdiction and is sometimes considered as "disputed territories"; thirdly, in relation to the Arctic, the so-called "soft law", implying the recommendatory nature of rules and norms enshrined in international treaties and not having legally binding force for the signatory states. The features of institutional environmental conditions for the functioning of the Russian Federation have been evaluated and the trends for their improvement have been determined.

## 1. Introduction

The importance of the research is defined by the following: environmental issues are of particular relevancy in the movement of ensuring the development of the Arctic states. This is explicated by the fact that the Arctic's natural system ensures climate stability not only in the Arctic territories, but throughout the northern hemisphere of the Earth. In addition, the Arctic's flora and fauna is unique. It is of interest not only as a natural resource, but as a factor in ensuring biological diversity in nature as well. Unreasonable exploitation of resources and territories of the Arctic can lead to global environmental problems.

On the one hand, the activation of states' activities in a dispute over Arctic territories has the goal of using unique natural resources and territories [1], [2]. For the same purpose, Russia is expanding its presence in the Arctic [3-5]. At the same time, all participants of the Arctic's development understand that further mineral resources development, intensified exploitation of the Northern Sea Route and coastal areas will inevitably lead to anthropogenic load increase [6], [7]. On the other hand, the same participants have a clear idea that the buffer capacity of Arctic ecosystems is low, the ability of natural environment to self-purification and self-recovery is reduced by virtue natural climatic reasons [8], [9]. The exploiting of the Arctic's wealth is very profitable for the Arctic states and they are responsible for the rational use of the Arctic territories. Obviously, the Arctic states, like no others, are interested in establishing and observing of institutional conditions of functioning.



At the same time, there is no any unified international treaty concerning environmental standards of economic activities in the Arctic or any special rules for its protection. The Arctic's states jointly establish environmental standards and rules for the Arctic's development.

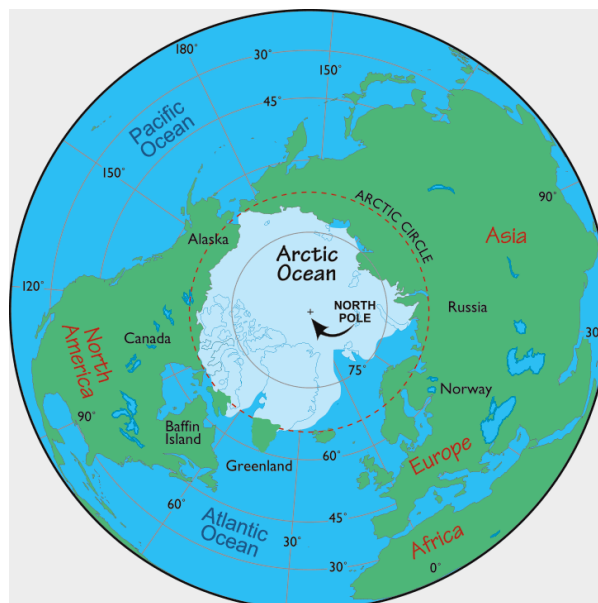
The purpose of the research is the data collection, the analysis of the rule-making process and its results, revealing the features of creating environmental institutional conditions for the functioning of the Arctic states.

For achieving this goal it is necessary to solve the following problems:

- consider the Arctic's legal regime in the context of international cooperation on environmental issues;
- reveal main problems of creating institutional environmental conditions for the functioning of the Arctic states;
- assess the characteristics of the institutional environmental conditions of the Russian Federation's Arctic Zone functioning.

## 2. Methods

Introducing the methods by which the tasks and purpose of the research can be solved, the authors, first of all, would like to take a look at the object of their research. The fact is, there is no any ample definiteness in this question. Legal regimes of territories depend upon the defining of their borders and a number of other components. In the scientific community the Arctic is considered the northern polar region of the Earth including the North Pole. It is limited by the 66th northern parallel [10, 11]. The Arctic includes significant land areas, parts of the Arctic, Pacific and Atlantic Oceans and extensive airspace (Figure 1).



**Figure 1.** The Arctic (based on the materials from the Internet portal "World map" [12])

The Arctic's land territories are mainly under the sovereignty of one of the Arctic states. The marine water area which is out of the Arctic states' jurisdiction is governed by international legal treaties.

The same term "Arctic states" in various international documents includes various groups of countries:

- firstly, states whose territories are crossed by the 66th northern parallel: Russia, Canada, the USA, Norway, Finland, Iceland, Sweden and Denmark; these states are permanent members of the Arctic Council, created with the purpose of developing cooperation on environmental issues; these countries primarily create environmental institutional conditions for the Arctic's functioning;
- secondly, countries whose seabords are washed by the Arctic Ocean; in this situation, Iceland, Finland and Sweden can be excluded from the group of the Arctic states; these countries formulate the policy and legal control of the protection and use of the Arctic Ocean; each of them has legal

rights to dispose of its inland waters, continental shelves, territorial seas and exceptional economic zones.

The subject of the research is international treaties and Russian political, program and regulatory documents that consider environmental issues and rational nature management.

The research methods are directly related to the subject, purpose and problems. The research is based on general and general scientific methods, which we will not dwell on due to their predetermination in any scientific research. Among interdisciplinary methods, we will note a cultural one, which will allow us to consider the process of creating environmental institutional conditions as a regulator of the social interaction of the Arctic states. Besides we will note a concrete historical method that will allow studying the issue of state-legal environmental interaction of the Arctic states in the process of the development with time, accompanied by changes and improvement. As special methods, we will use a dogmatic one, which will allow us to study the process of forming environmental institutional conditions for the Arctic states' functioning in a logical order using special legal conditions and constructions. It is also supposed to apply a comparative legal method, which provides for systematic and comprehensive research and comparison of legal features of the Arctic states' environmental legislation.

The institutional environmental conditions for the Arctic states' functioning and legal regime were determined on the basis of international political and program documents and agreements involved as research materials. Some features of the institutional environmental conditions for the functioning of the Russian Federation's Arctic Zone were revealed on the basis of Russian political-program and legal-normative documents' analysis.

### **3. Main results of the research**

#### *3.1. The Arctic's legal regime in the context of international cooperation on environmental issues*

The authors' research concerning international treaties from the standpoint of creating institutional conditions for ensuring environmental priorities and environmental management have shown that there is no any unified international environmental standards treaty for economic activities in the Arctic or any special rules for its protection. At the same time, environmental cooperation between Arctic countries is quite developed. At present, there are more than one hundred international treaties related to environmental cooperation in the Arctic. First of all, international treaties concern environmental protection issues, including unique wildlife (polar bears, whales, etc.); environmental safety and shipping safety; coordination of interests during exploration and mining, development of aquatic biological resources (fishing, marine animals, etc.) [13], [14]. Separately, there are issues concerning preserving northern indigenous peoples' natural habitat [15], [16], [17].

The declarations are a number of international political and program documents forming the environmental institutional conditions for the Arctic states' functioning. The liabilities of the joint plan of operations with respect to the Arctic strategy of environment protection were made and adopted in 1991 at the 1st Arctic Conference [18]. The strategy for the environment protection of the Arctic, taking into account the features of the indigenous peoples' traditional way of life and their interests, was adopted at the II Arctic Conference in 1993 in Nuuk, Greenland [19]. The materials of the conference in Nuuk contain the Arctic Monitoring and Assessment Program. At present the composition of the Arctic states includes eight countries whose territories are crossed by the 66th northern parallel. The composition was ratified in 1996 in Canada [20]. The Arctic Environmental Protection Strategy was ratified at the IV Arctic Conference in Alt, Norway, in 1997 [21]. Laid in the 1990s, basis of international cooperation was developed by the number of Declarations of the 21st Century [22], [23]. Arctic Council Fairbanks Declaration (2017) [24] et al. We agree with the opinion that all subsequent declarations, confirmed priority of the Arctic's environment protecting among other areas of cooperation [25].

Inasmuch as oil pollution of the polar ice, water area, coastal territory and bottom is a serious environmental threat on a global scale, a whole series of international conventions relating to oil and gas production operate in the Arctic. These conventions, ratified mainly within the framework of UN activities, do not imply a special legal regime for the Arctic. The main ones are the following: International Convention on Civil Liability for Oil Pollution Damage (adopted under the auspices of the UN specialized agency International Maritime Organization in 1969) [26]; International Convention on the Establishment

of an International Fund for Compensation for Oil Pollution Damage (adopted with active participation of the International Maritime Organization in 1971 and completely revised in 1992) [27]; Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) [28]; International Convention for the Prevention of Pollution from Ships (adopted in 1973) [29]; Convention on Civil Responsibility for Oil Pollution Damage From Seabed Mineral Exploration and Development (ratified by a group of countries at a diplomatic conference in 1976) [30]; United Nations Division for Ocean Affairs and the Law of the Sea (adopted in 1982, ratified by 162 countries and the European Union) [31].

The cooperation in the field of utilization and protection of Arctic sea waters is regulated by The Ilulissat Declaration, signed by Russia, USA, Canada, Norway and Denmark at the 1st Conference on the Arctic Ocean in 2008. According to this declaration, Arctic waters do not have any special legal status and accordingly, they do not have any binding special environmental norms and rules [32]. In 2017, the international Polar Code regulating ships safety entered into force. The environmental significance of the document is that it provides recommendations concerning waste and fuel discharge, which demonstrates the increasing requirements of the world community for Arctic waters protection [33].

### *3.2. Main problems of creating institutional environmental conditions for the functioning of the Arctic states*

The research of the institutional conditions of international cooperation has shown that there is no any special legal regime for the Arctic. The legal regime of the Arctic at the universal level has not been regulated. This causes all sorts of problems that negatively influence the creation of institutional environmental conditions for the Arctic states' functioning.

The first problem is that the concept "Arctic states" in international documents indicates different groups of countries. A number of states with coastlines washed by the Arctic Ocean such as Russia, Canada and others belong unambiguously to the Arctic. Each country has a legal right to dispose of its inland waters, territorial seas, continental shelves and exceptional economic zones. The expanded composition of the Arctic states additionally includes Finland, Iceland and Sweden on the basis that the 66th parallel crosses their territories as well. However, a number of researchers consider it to be inexpedient, calling this expanded composition of the Arctic states an "Arctic Club" [34], [35].

The second problem of creating institutional environmental conditions for the Arctic states' functioning is the territorial one. For the formation and regulation of international environmental policy, it is important that the land Arctic territories are mainly under one of the Arctic states' sovereignty. The principle of the Arctic states' sovereignty which consists in the right to control, dispose, exploit freely natural resources and check their use, extends not only to their territorial borders, but to the continental shelves and exceptional economic zones as well.

The marine water area out of jurisdiction of the Arctic states is regulated by international legal treaties. The significant problem in creating an international environmental and legal framework is that some Arctic territories and waters still do not have clear-cut jurisdiction and are regarded as "territories in dispute" [36, 37]. The lack of essential legal basics creates the foundation for territorial disputes and conflicts that can turn the Arctic into a dangerous zone of conflicts of national interests.

The third problem of creating institutional environmental conditions of the Arctic states' functioning is so called "soft law". This legal concept implies an advisory opinion of regulations enshrined in international treaties and is not legally binding for signatory states [38]. None of the declarations on cooperation in the Arctic contain mechanisms ensuring the fulfillment of obligations assumed by the Arctic states [18], [19], [20].

### *3.3. Features of the institutional environmental conditions for the functioning of Russia's Arctic Zone*

The analysis of Russian legislative documents has shown that special attention is paid to the environmental problems of the Russian Federation's Arctic. It is reflected in Russian political and program documents. These documents, being included in the legal system of the country on the issues of the Arctic as a source of law of a political and ideological nature, essentially affect the formation of most elements of the legal system, including environmental issues. In accordance with them, federal and regional laws, by-laws, state and regional special programs have been adopted.

In major political and program document "The Foundations of the State Policy of the Russian Federation in the Arctic for the Period up to 2020" and the Future, preservation of the Arctic's unique ecological

systems” is considered as one of the foundations of Russia's national interests [39]. In another political and program document “Russia’s Arctic Zone Development” and “National Security Strategy for 2020”, the environmental conditions for the development of the Arctic Zone of the Russian Federation are divided into two phases. The first one, which ended in 2015, provided, firstly, the realization of measures to ensure environmental safety in the Russian Arctic, including priority projects to eliminate existing sources of environmental pollution; secondly, the development of a unified national system for monitoring environmental conditions of the Russian Arctic, integrated into international observing system.

Measures concerning fulfilling of these conditions are being implemented, but the problem has not been solved yet [40]. It is confirmed by the fact that “the development of a system of scientific research and state monitoring of the high-latitude Arctic’s environmental conditions” is included in the number of programs [41; 42]. The second stage of the National Security Strategy provides for the reduction and prevention of the Arctic Zone’s negative environmental impact. The fulfillment of this condition requires the adoption of a number of norms and regulations of environmental management, which are lacking at present.

The major document determining the vector and methods of the Russian Arctic’s development, including in the ecological field, is the government program “Social and Economic Development of the Arctic Zone of the Russian Federation”. In this programme it is stated that one of the principles which the Russian Arctic’s economic development is based on is “maximum environmental conservation”. It means “the use of the most strong ecological standards and effective environmental technologies” [42]. As long as this principle is recognized as fundamental it is the basis for three subprograms presented in this government program. The Department of Natural Resources and Ecology of the Russian Federation is one of the main participants in the subprograms.

The implementation of these principles requires further expansion of the legal field in the sphere of environmental legislation. Existing and prospective problems of the exploitation of resources and the territory of the Russian Arctic can be solved only with the development of comprehensive environmental legislation. In creating the institutional regulatory environment for the Arctic’s development, including in the field of environmental management and environmental protection, consistency is very important. The strategic documents determining goals, principles and directions of development of the Russian Arctic have been adopted. The program document, which includes three subprograms of the social and economic development of Russia’s Arctic, has been adopted and is being implemented. But the omission, in our opinion, is the lack of laws that clearly regulate the rational use of natural resources and the protection of the Arctic’s water areas and land territories.

Some measures concerning ensuring environmental safety in the Arctic are provided for by the fifth chapter of the Federal Law “On the Development of the Arctic Zone of the Russian Federation”, which has not been adopted yet. According to this law, at the initial stage, a positive confirmation of the state environmental expertise is an obligatory condition for the adoption of an economic project. In the process of carrying out a production activity, business entities have to recoup natural environment for damages in full. In addition, the concept of “zero dumping” is being fixed for the Arctic Ocean, which excludes the pollutants discharge into the water area [43]. Foreign countries’ practice shows that these measures are quite effective for environment protection [44], [45].

The draft law also states that in order to protect the Arctic’s natural environment, the Russian Federation’s governmental authorities may establish special norms, standards and environmental requirements aimed at the realization of economic and other activities [43]. The enactment of the bill would be likely to give impetus to the development of the environmental standards and norms at the regional level, taking into consideration natural features of each of the advance zones of the development of the Russia’s Arctic.

In our opinion, to ensure environmental protection in the Arctic, the priorities of the rule-making process should include the following: determination of standards, norms and environmental requirements for the realization of economic activities; consolidation of strict state environmental legislation control; compulsory environmental insurance for all business entities; approval of the external environmental audit procedure and mandatory environmental monitoring, confirmed by the certificate of international level. As incentive measures, it is necessary to develop and legislate tax remissions procedures, investment support, accelerated depreciation of treating plants etc. for business entities successfully implemented environmental technologies.

Developing rule-making processes, the Russian Federation should take into account the following: on the one hand, other Arctic states' accumulated experience; on the other hand, its own existing legislation framework; and finally, the Arctic's specifics. Only by creating the institutional conditions for the Russian Arctic's functioning, including in the field of environmental management and environmental protection, Russia will be able to develop with success unique Arctic Zone of the Russian Federation.

#### 4. Conclusion

The carried out research allowed us to draw the following conclusions:

1. There is no any united international treaty concerning environmental standards of the Arctic's economic activity or any special rules for its protection. At the same time, environmental cooperation between Arctic countries is quite developed. First of all, international treaties concern environmental protection issues, including unique wildlife, environmental safety and shipping safety; coordination of interests during exploration and mining, development of aquatic biological resources.

2. The research of the institutional conditions of international cooperation has shown that there is no any special legal regime for the Arctic. The legal regime of the Arctic at the universal level has not been regulated. This causes all sorts of problems that negatively influence the creation of institutional environmental conditions for the Arctic states functioning. Firstly, the concept of "Arctic states" in international documents refers to different groups of countries; secondly, part of the Arctic territories and water areas does not have clear jurisdiction and is sometimes considered as "disputed territories"; thirdly, in relation to the Arctic, the so-called "soft law", implying the recommendatory nature of rules and norms enshrined in international treaties and not having legally binding force for the signatory states.

3. Special attention is paid to the environmental problems of the Russian Federation's Arctic. The maximum conservation of the Arctic unique ecological systems is considered one of the foundations of Russia's national interests. The strategic documents determining goals, principles and directions of the Russian Arctic's development have been adopted. The program document including environmental principles into all three subprograms of the social and economic development of the Russia's Arctic has been adopted as well and is being implemented. But the omission, in our opinion, is the lack of laws that clearly regulate the conservancy and the protection of water areas and land territories of the Arctic.

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