Theoretical and methodological substantiation of the state sovereignty of Russia in the Arctic

V V Gogoleva¹, T A Dolgopolova² T F Zyabkina¹, N B Kirsanova¹, E V Maksimova¹

¹Peter the Great St. Petersburg Polytechnic University, St. Petersburg, Russia
²North-Western Branch of the Russian State University of Justice, St. Petersburg, Russia

79217420164@yandex.ru

Abstract. The relevance of creating at the present stage of development of the state, the legal framework for consolidating the territorial integrity of the Russian Federation, including the Arctic territories belonging to international law and the need to save the generations of Russian settlers and researchers of historical heritage left in the development and consolidation of their sovereignty in the Arctic, is substantiated. The analysis of the peculiarities of the historical stages of the consolidation of the Arctic territories of interest at all times, both domestic and foreign researchers, is presented, since the Arctic is a place of concentration of geopolitical, military, political, trade, economic, environmental and legal interests. In the international context, the problems of the interest of states in the use of the Arctic spaces, due to the geographical and geological position of the Arctic, by their enormous volumes of natural resources, which are a determining factor in the struggle for the Arctic territories, are investigated. The author substantiates the importance of legal consolidation of spheres of influence in the Arctic zone in order to effectively use and distribute natural resources by the states of the Arctic region. The strategic importance of the Arctic zone for our country is analyzed, since the Russian Federation has direct access to the Arctic Ocean, ensures the safety of the use of the Northern Sea Route and the protection of territories belonging to Russia within the state borders. A legal analysis is presented of the regulation of the procedure for securing the use of resources in the Arctic space, which currently does not consistently and comprehensively cover all aspects of the regulation of economic activity and other relations in the Arctic space under the jurisdiction of the Russian Federation. Based on the analysis, recommendations and organizational and legal mechanisms for creating an integrated regulatory framework aimed at regulating legal relations and developing the Arctic zone of Russia are presented.

1. Introduction

Historically and geopolitically, Russia, in particular, residents of Novgorod and Pomeranian lands, began to denote their presence and fishing interests in the Arctic since the tenth century. The gradual further research and use of the resources of the Freezing Sea only confirmed the genuine interest of our state in the Arctic territories. Between the 10th and 20th centuries, many expeditions were sent to the Arctic with various goals and purposes. Between the 10th and 20th centuries, many expeditions were sent to the Arctic with various goals and purposes. Both scientific research expeditions and field expeditions were organized, aimed at the development and settlement, development of economic and economic activity, which in turn indirectly secured open territories of the Far North for Russia.
At the same time, huge scientific activity was carried out related to the discovery of mineral deposits, living biological resources in the Arctic zone. By right, one of the main explorers of the Arctic of that era is the famous Russian scientist, patriot of the Far North, Mikhail Vasilievich Lomonosov (1711-1765). In his writings, he designated the Arctic as the most important territories, and also argued that it was the Far North that Russia's power would grow [1]. After the “Lomonosov era”, the development of development and consolidation of territories only gained momentum. The development of the Northern Sea Route (NSR) was a response to a statement by the United States of America on part of the Arctic zone of the Russian Empire. After the defeat in the Russian-Japanese war (1904-1905), the government of Nicholas II (1894-1917) considered the NSR as an alternative route for transporting the fleet from the Baltic Sea to the Far East [2]. But, unfortunately, for more than 200 years, the Russian Empire has not created a consistent system of legal acts securing Russia's rights to the Arctic. And in fact, only since the formation of the RSFSR and the USSR, legal consolidation of the Arctic territories began [2].

Unfortunately, a detailed historical excursion into the stages of Arctic exploration by Russian researchers, we are forced to leave outside the scope of this study and dwell on the analysis of the main approaches to determining the state ownership of territories in the Arctic zone, as well as on the analysis of international legal regulation of cooperation between the Russian Federation and neighboring states in Arctic, at the present stage. In this regard, it should be noted that the need for normative consolidation of the concept of “indivisibility of the Russian territory” is currently being actively discussed, this is especially true for the Arctic zone.

And, therefore, we consider it correct to agree with the opinion of V. N. Snetkov and D. I. Kuznetsov “... there is no sufficient regulatory framework: the bill “On the Arctic zone of the Russian Federation ”that regulates the Russian sphere of influence has not been adopted. Such documents as the “State Strategy for the Study and Development of the Oil and Gas Potential of the Continental Shelves of Russia” ...”[3] have not been worked out from the legal side.

Thus, the problem of determining the legal support of the sovereignty of the Russian Federation in the Arctic space remains quite acute and requires improvement of existing and development of new mechanisms of legal regulation.

2. Main Body
Currently, there are two theories of the territorial delimitation of the Arctic: The theory of polar sectors and the Concept of internationalization of the Arctic. In official documents, the term “polar sector” is not. It is used exclusively in the scientific literature.

According to J. Brownley [4] based on the theory of polar sectors, the division of the Arctic is possible between three states: the Soviet Union; USA; Canada. Since the United States of America has access to the Arctic Ocean exclusively through acquired Alaska, unlike historically located in the Arctic zone of Russia and Canada, this position does not seem reasonable, therefore it is not quite geographically justified to call the United States “a large northern state.”

In his works, J. Brownley reveals the essence of the theory of polar sectors, according to which, in order to delimit space, a set of lines passing along the meridians is used. These lines start from the continental borders of states and converge at the point of the North Pole, thus creating a piece of space called a sector. The formed sectors are under the sovereignty of a state. The author also claims that the sectoral principle does not in itself give rise to a legal title.

Nevertheless, if there is a corresponding state activity, it represents a reasonable application of the principles of effective occupation in the form as they are understood at present. The territory of the state cannot enter the sector from the coast to the North Pole, the influence of states can extend exclusively to the open sea [4].

In Russian legal science, it was the interpretation of sector theory that caused a huge resonance. Since, according to the Decree of the Central Executive Committee of the USSR of 1926, all the islands and lands located in the Arctic zone were declared territories of the Soviet Union. The
stumbling block was the question of whether the sovereignty of the Soviet Union extends to ice, sea and air spaces, or whether it extends exclusively to islands and lands within the Arctic sector [6].

This document regulates exclusively the land territories of the USSR, but this Decree is not the only legal source relating to this issue. It is also necessary to take into account the international custom, which is the source of law, according to which our state from ancient times secured its rights to most of the Arctic space.

The question arises, how does the sovereignty of the state extend to air, sea and ice? For example, Yu. G. Barsegov [7], guided by the Russian-American agreement on the assignment of Alaska, argues that at the conclusion of the agreement, the Soviet Union and the United States of America were based on the fact that the sector line delimits both land and sea spaces. The United States of America saw the sector line as the sphere of action of the sovereignty of the USSR.

Based on a systematic scientific and comparative legal analysis, we can confidently say that in the scientific community there is no consensus on the theory of sectoral division of the Arctic. Scientific discussion continues about which territories belong to one or another state. Questions regarding the ownership of open sea waters, airspace and ice [8] require legal permission.

In his scientific works, M.E. Volosov [9] comes to the conclusion that according to the documents concluded between Canada and the USSR, sovereignty is fixed only on the mainland and island formations.

Gureev S. A. explained the essence of the concept of the polar sectors as follows: lands and islands located north of the Arctic coast and within the meridians, starting from land state borders and converging at the North Pole, are part of the Arctic state with all the ensuing legal consequences; coastal states are guaranteed the right to declare sovereignty over all possible open islands in their sector [10].

Also, according to S. A. Gureev, the theory of the sectors of the Arctic does not mean the rights of states to sea waters and airspace, the principles of international law should apply in these territories [10].

Scientists who oppose the theory of polar sectors argue their point of view by referring to Art. 89 of the UN Convention on the Law of the Sea [11]. This article indicates that no state has the right to claim the subordination of parts of the high seas to its sovereignty. Based on this, it follows that the sovereign rights of Russia cannot extend to the entire body of water in the occupied Arctic sector.

Expressing the interests of states that deny sectoral theory, the concept of internationalization of the Arctic has spread in the scientific legal society in the twentieth century.

Currently, the theory of internationalization is based on the doctrine of the equal sharing of the Arctic by all world states, or the endowment of all the rights of the five Arctic countries, while there is no single opinion and unambiguous interpretation of rights and territories. This concept is not the latest discovery. It arose around the same historical period of time as the theory of the Arctic sectors. But it gained popularity in science only at the end of the last century.

By the middle of the 20th century, the views on the concept of internationalization on the part of the scientific community were divided into two theories: General Theory (the essence of this theory was in the open sea and nobody owns the land) and Condominium Theory (the essence of which was the joint use of the Arctic of all states).

According to the second theory, absolutely anyone could use the territory of the Arctic for research or fishing activities. In other words, the Arctic zone does not belong to anyone, and no state has the right to extend its sovereignty there.

The foreign scientific community in a recommendatory form indicates the correctness of the establishment of a regime of collective functional jurisdiction of coastal states outside the two hundred mile zone, but with the preservation of the principle of the open sea.

The United States of America, having secured the support of a number of countries such as Norway and Denmark, intends to end the sectoral division of the Arctic in the future, declaring its claims to the Arctic, based on the concept of internationalization.
In today's realities, it is necessary to understand that the concept of internationalization has a place to be. Since, for several years, the Arctic has been considered as the territory of countries located north of fifty-five degrees north latitude, experiencing the influence of both the Arctic Ocean and the northern polar seas along with it.

At present, eight states are already included in the Arctic zone: Russian Federation; Canada; USA; Denmark; Norway; Finland; Sweden; Iceland. However, in our opinion, it is necessary to state the fact that the concept of internationalization is not beneficial for the Russian Federation.

According to Art. 38 of the Statute of the International Court of Justice of the United Nations, international legal custom is a source of international public law [12]. And in the event of a possible escalation of interstate relations on the issue of delimitation of the Arctic, Russia may refer to the above article.

The concept of polar sectors has always been predominant for the Russian Federation, and that is why, when carrying out any activity, our country relied precisely on it. The most important historical fact is that for many years in the implementation of state policy in the Arctic zone, Russia behaved openly in the international arena, it follows that neighboring states knew and did not object to the activities of the Russian Federation in the Arctic sector.

Consequently, general practice secured sovereignty in the Arctic sector for Russia. Based on the above characteristics and the replenished list of Arctic states, international associations were created - the Arctic Council and the Northern Forum [13].

In 1989, at the initiative of Finland, eight Arctic countries, Denmark, Canada, Norway, the United States of America, the Soviet Union, Iceland, Sweden, and Finland, met to discuss issues related to environmental protection in the Arctic. The meeting was held in the Finnish city of Rovaniemi [13]. Later, in 1996, a meeting of the same Arctic eight countries took place in Ottawa, Canada, and the Arctic Council was established.

So, according to the documents of the Arctic Council, the structure of the participants, excluding eight Arctic countries, includes six permanent members: the Arctic Council of Atabask; Aleut International Association; Inuit Circumpolar Conference; International Council of Gwichins; Sami Union; Association of Indigenous Peoples of the North, Siberia and the Far East [13].

These organizations include a huge number of people who are indigenous peoples of the North. These organizations participate in the adoption of all documents considered within the framework of the Arctic Council [13].

Observer status is also granted by the Arctic Council. Currently, more than twenty observers are involved in the work of the council. The task of the observer is that he can participate in the activities of the council, as well as provide material assistance. To date, non-Arctic states, such as: Germany; India; Great Britain; Italy; China; Spain; Poland; The Republic of Korea; Netherlands; Singapore; Japan; France [14].

In addition to states, the composition of observers also includes, for example, inter-parliamentary and intergovernmental associations: UN Development Program; World Conservation Union; Nordic Council of Ministers as well as non-governmental organizations: Northern Forum; Reindeer Herders Association of the world; International Circumpolar Health Union.

It should be noted that today another sixteen organizations and countries, including the European Union, seek to obtain the status of an independent observer.

The Arctic Council is funded for the most part from a number of international sources, but also from the budgets of the participating countries. Sessions or meetings are the main form of leadership in the structure of the Arctic Council, at which the signing of already formed documents takes place, new topical issues are brought up for discussion, and the chairmanship is transferred from participant to participant.

This measure is necessary to strengthen the participation of council members in its programs. For example, the Russian Federation presided over the period from 2004 to 2006.

Until 2013, the secretariat was located in the host country of the Arctic Council. Since 2013, the Secretariat has been located on an ongoing basis in Tromsø, Norway.
In order to expand and improve economic interaction and increase investment attractiveness, an independent Arctic Economic Council was created in 2014. From the Russian Federation in this council participate: Sovcomflot; Rosneft; Chamber of Commerce and Industry of the Russian Federation. The Secretariat of the Arctic Economic Council, as well as the Secretariat of the Arctic Council, are permanently located in Tromsø, Norway.

In 2015, the Arctic Council established another forum - the Arctic Coast Guard Forum. The priority task for the new structure is to ensure maritime security, as well as preserve the ecology of coastal territories [13]. The main activities of the Arctic Council are: monitoring the Arctic environment; conservation of Arctic flora and fauna; elimination of pollution in the Arctic; prevention and emergency response; protection of the marine environment of the Arctic.

Particular attention from the Arctic Council is given to the creation and implementation of economic and sociocultural programs to support the indigenous population of the Far North. It is important to note that the duties of the Arctic Council do not include military security.

The financial support for the Arctic Council currently comes from the so-called “Arctic Council Project Support Tool” established in 2014. From his budget, first of all, projects to reduce environmental pollution are financed. Funds for the Arctic Council Project Support Tool come from members of the council, independent observers, or interested parties.

The manager of funds is the Northern Environmental Finance Corporation [14]. Other states and organizations are not limited in providing finance. According to publicly available data, more than 30 projects have been supported through the Arctic Council Project Support Instrument.

The Russian Federation, as a member of the Arctic Council, also implements various projects to combat environmental problems, in particular, the Tundra and Valdai projects aimed at reducing emissions of soot and other polluting elements due to the operation of power plants; project for the production of “clean” electricity in the Murmansk region for reindeer herders.

In addition to carrying out its practical activities, the Arctic Council also develops legal documents, for example, the Agreement on cooperation in aviation and marine search and rescue in the Arctic, the Agreement on cooperation in the field of preparedness and response to oil pollution of the seas in the Arctic [15].

Non-governmental organizations include the Northern Forum of the Northern Countries, which was created in 1991. Already in 1992, the Northern Forum received UN accreditation and observer status in the Arctic Council. The Northern Forum includes the northern regions: of the Russian Federation; Iceland United States of America; Finland South Korea [16].

The main activity of this forum is to work on projects that improve the living conditions of people living in the North. There are such projects as: Youth Environmental Forum; International Ecological Action "To Save and Preserve"; renewable energy sources [17].

3. Conclusion
At the moment, the main problem in the regulation of legal relations in the Arctic zone is the lack of a single, coherent normative legal act. There are several regulations affecting the Arctic zone, but no more. Also, there is only the concept of the draft federal law “On the Arctic zone of the Russian Federation”.

The solution can be a comprehensive approach to the development and adoption of this law - a codified act. It is necessary to carry out the process of developing the content of the law and attracting scientific specialists specializing in the Arctic in order to more thoroughly study the articles of the law in connection with the specific conditions of the Far North [18].

Also, in order to adopt a quality normative act, it is advisable to launch the necessary legislative mechanisms:

Conducting specialized scientific hearings;

Obtaining opinions from the legislative and executive authorities of the constituent entities of the Russian Federation, to which the action of the future system code “On the state sovereignty of the Russian Federation in the Arctic” will be directed;

...
Obtaining necessary conclusions from expert councils and independent scientific organizations.

The adoption of this codified law is necessary, first of all, to improve the life of indigenous peoples and the economic development of the territories of the Russian North [19].

It cannot be ruled out that in the foreseeable future the Arctic states may be followed by an initiative to terminate the theory of polar sectors. And in this case, the Russian Federation will need to assert its rights to the Arctic territories.

We suggest considering possible constructive approaches:

In our opinion, there are two possible solutions to their current situation:
- The Russian Federation can join forces in the defense of the theory of polar sectors with Canada. The Russian Federation geographically owns the largest sector, and Canada is the second largest, so both of these Arctic powers are not considering transferring their territories, including airspace, sea space and ice.

Nevertheless, if the sectoral division is reviewed, it is assumed legally fair, the creation of a normative document of the defining space of the Russian Federation and Canada - autonomous, relative to other spaces, internationalization of the Arctic.

The second way out of a possible current situation is the international legal custom. According to historical data, the Russian Federation, when carrying out any action in the Arctic zone, always relied on the concept of polar sectors.

For more than 100 years, our country has pursued an open policy both within the state and in the international arena, regarding the implementation of various kinds of actions in the coastal Arctic waters and the Arctic Ocean, the exploration and development of mineral deposits, the organization of economic activity or the improvement of the population.

Thus, the Russian Federation, as the successor of the USSR, as well as the Russian Empire, openly exercised its sovereignty over its sector in the Arctic, and neighboring countries were aware of the activities of Russia and did not object to its implementation. For current contemporary international law, this is an established customary rule.

It should be noted that over the years, against the use by Russia of the concept of the polar sectors, there have been no objections from the states located in the Arctic, therefore, in fact, this may already be an international custom.

If the concept of internationalization of the Arctic is applied, a new principle of dividing the Arctic without using the Russian sector can be proposed, since it belongs to our country according to international custom. As a result, it is possible to transfer the entire sector, including air, sea and ice, to the sovereignty of the Russian Federation.

Thus, the centuries-old historical experience in securing by Russia its sovereignty over a number of territories in the Arctic and the features highlighted in this work provide undoubted legal justification for the actions of the Russian Federation regarding its territorial rights to the Arctic spaces.

Today, under rather tense conditions, both economic and geopolitical, it seems necessary to provide legal protection in the form of a systemic codified act “On the State Sovereignty of the Russian Federation in the Arctic” regulating the status of already developed territories in the Arctic, as well as, possibly, consistent consolidation of rights to other (undiscovered) Arctic territories.

References
[1] Snetkov V N 2011 M V Lomonosov on the need to consolidate the rights of Russia in the Arctic: experience and continuity Scientific and Technical Sheets of St. Petersburg State Pedagogical University 4(135) 31-34
[2] Fenenko A V 2011 Military-political aspects of Russian-American relations in the Arctic: history and modernity Tomsk State University Journal 2 1290-156
[3] The History of the development of the Russian Arctic.Dossier.Tass. Available from:
https://tass.ru [Accessed January 19 2020]

[4] Brownley J 1977 International Law (Moscow: Publishing house "Progress") p 213
[5] 2017 Decree of the Presidium of the CEC of the USSR of 04.15.1926 "On the Declaration of the Territory of the USSR as Lands and Islands Located in the Arctic Ocean" (Moscow: Justice) p 256
[6] Semenova K A 2015 Legal Aspects of Delimiting Arctic Spaces Scientific Forum with International Participation "SPbPU Science Week" 327-329
[7] Mogilevkin I M et al 2002 The Arctic: Russia's interests and international conditions for their implementation. NIIMEiMO im. EAT. Primakova RAS 2002-365
[8] Semenova K A 2010 Dynamics of the Russian legislation on the legal regime of the Arctic Formation of the international legal regime of the Arctic collection of articles 47-51
[9] Volosov M E 2001 International public law p 237
[10] 2011 International Law of the Sea (Moscow: INFRA-M Publishing House) p 432
[11] The United Nations Convention on the Law of the Sea (UNCLOS) (concluded in Montego Bay on 12.10.1982) Collection of legislation of the Russian Federation 48 5493.
[12] 1996 Statute of the International Court of Justice (Adopted in San Francisco 06.26.1945) Current international law (Moscow: Independent Institute of International Law)
[13] Arctic Council. Dossier. Tass. Available form: https://tass.ru [Accessed January 21 2020]
[14] The Arctic Council is 20 years old Available form: https://www.arctic–council.org/ [Accessed January 21 2020]
[15] Kupryashkin Yu V 2014 The Arctic in questions and answers: a scientific and practical manual (Moscow: Diamages print) p 163
[16] About the Northern Forum. Northern forum. Available form: https://www.northernforum.org/ [Accessed January 21, 2020]
[17] Ongoing projects Available form: https://www.northernforum.org/ [Accessed January 21 2020]
[18] Demidov V P, Mokhorova A Yu, Mokhorov D A 2019 Legal support of environmental protection in the Arctic region IOP Conference Series: Earth and Environmental Science Available form: https://iopscience.iop.org/article/10.1088/1755-1315/302/1/012154 [Accessed January 21 2020]
[19] Snetkov V N, Ponomarenko A V, Semenova K A 2019 Specific features of domestic and international legal regulation of environmental management in the Arctic J IOP Conf. Series: Earth Environ 32 012030 Available from: https://doi.org/10.1088/1755-1315/302/1/012030 [Accessed January 21 2020]