Legal-economic regime of the Russian Arctic region in the international legal environment: evolution and development pathways

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Abstract. The Arctic vector in world policies is escalating, no doubt largely because of the predicted increase in the region’s involvement in global economic processes. One of the components of this process – definition of the legal status of the Arctic Ocean, is now in an active phase. The discord now seen in the establishment of international legal arrangements in the Arctic is due to: the international legal custom in the region, special conditions for economic activity in the Arctic region, emergence of new economic stakeholders in the region, global environmental challenges. For Arctic coastal states, like Russia, interests in the Arctic are of vital importance. Some countries, such as Russia, Canada and Norway, are interested in maintaining continuity in the international customary law, whereas some others, like China, Germany, or South Korea, are eager to introduce new means of legal regulation. This article suggests recommendations on further improving the national legislation and the instruments for managing the Arctic regional economic policy. Important considerations here are Russia’s strategic interests in the region, along with harmonization of relationships with other stakeholders, and mitigation of environmental risks. To this end, we have analysed the background for the formation of the international legal custom in the Arctic region, current trends in international law, valid economic grounds for countries to realize their interests in the Arctic. Special focus is on Russian economic policy in view of the challenging situation in the country’s national economy and its international affairs.

1. Introduction
The current legal regimes for economic activities in the Arctic have been taking shape for several centuries, with historical continuity maintained since the 17th century. The intensity of this process varied at different times in history. There is a number of factors behind this, and the main one are: partial exclusion of non-coastal states from the Arctic Ocean; harsh Arctic climate; availability of other possible directions for territorial and economic expansion; available technology, machines and infrastructure. These characteristics have historically defined the special status of the Arctic Ocean in international law. In Russia’s trying economic and foreign policy situation, advancements on the Arctic vector of the economic policy could provide wide opportunities for overcoming the crisis. The availability of opportunities poses the question of how to realize them, and one of the methods is to upgrade the legal framework and administrative tools for regional development. It is important to be aware of the context of other countries’ interests in the Arctic region. It is currently being mobilised by the following factors:

– shrinking Arctic ice cover, seasonal expansion of ice-free water spaces in the Arctic [1], [2]
high interest of South Korea, Japan, China and other rapidly developing South-East Asian economies in the most profitable and reliable transport routes, since these countries are much dependent on sea-borne trade, import of raw materials and export of products [3]. E.g., the distance between the ports of Yokohama and Hamburg via the Northern Sea Route (NSR, or Northeast Passage) is 37% shorter (7500 nautical miles) than the traditional route via the Suez Canal [4].

- presence of substantial undiscovered oil and gas reserves in the Arctic region. As estimated by the US Geological Survey, they amount to 30% of the world’s undiscovered gas reserves and 13% of undiscovered oil reserves lying at a relatively shallow depth of some 500 m underwater.
- intensification of geopolitical controversies in the region, involving the deployment of strategic military forces in the Arctic [5].
- magnification of environmental risks in the Arctic region.

The definition of the legal status of the Arctic Ocean is now in an active phase. Some countries, such as Russia, Canada and Norway, are interested in maintaining continuity in the international customary law, whereas some others, like China, Germany, or South Korea, are eager to introduce new means of legal regulation. Our interest is to study the legal framework and administrative tools for regional development of the Arctic globally and specifically in Russia. The focus is on the current stage of collision of interests and the potential solutions.

2. Material and Methods
The study has made use of the body of information regarding the legislative framework of relations in the Arctic region: international conventions; regional-scope international agreements; bilateral agreements between Arctic states; domestic legislative acts of Russia, other Arctic countries, as well as non-Arctic countries producing relevant legislation to regulate economic and environmental conservation activities in this region. Another interesting group of sources is national-level programmes and strategies defining the policy of the states in the Arctic region, Foreign Ministry diplomatic notes, texts of countries’ submissions to international commissions and agencies, and other documents which collectively constitute the legal authority regulating relations in the Arctic. We briefly look back into the history of human exploration of the Arctic, which has influenced such an important international legal authority as the international legal custom. Previous works by leading experts in international law and national regulation have been employed. Weighty scientific contributions to the studies of legal economic issues in the Arctic development have been made by Vylegzhanin [6], Young [7], Byers [8]. National policies in the Arctic have been studied by Dongmin [9], Conde Perez [10], Xinmin [11]. Russian policy in the Arctic region has been addressed by Selin [12], Fauzer [13], Govorova [14].

3. Results and Discussion
3.1. Establishment of the legal framework for the international regime in the Arctic
Historical continuity in the legal regime of the Arctic zone has been maintained since the 17th century. Sovereignty over territories and, hence, their legal-economic regime was regulated by the national legislation of the country whose representatives were the first to discover or explore the said territory. As Prof. Lahtin in 1928 rightfully described this phase in the making of legal regulatory arrangements, the baseline for the legal-economic regime in the Arctic was the treaty law practices and legislation of Arctic States [15]. The much later produced provisions of international treaties regarding the Arctic are construed and applied by these states as nothing more than derivatives of these original norms and in conjunction with them.

It is, therefore, logical that the core traditions of Arctic legislation were set up by the so-called Arctic Five (countries that possess a coastline and have access to the Arctic Ocean). The most elaborate, as argued by M. Byers [8], is Canadian Arctic legislation, and the first international agreements were made between Canada (historically, a dominion of the British Commonwealth) and Russia, as well as between Russia and the US (cession of Alaska). These traditions have fixed the so-called “sectoral principle” in
the division of the Arctic, first of all its waters, since the legal status of landmass is defined by sovereignty over it.

It is safe to say that until 1982 the basic principle for dividing the Arctic was the sectoral principle. As remarked by A.N. Vylegzhanin “Russian legal literature did not convincingly challenge another relevant conclusion – that "international legal custom had developed in the Arctic aimed at dividing it into sectors between the five Arctic Coastal States. "Here, instead of the word "dividing", it is more correct to use the words "delimitation, consistent with international law” – that is, delimitation not of waters, but of sub-ice and submerged lands, e.g., of the Arctic continental shelf areas” [6]. Note that in the international law context this principle was largely an international legal custom (without the direct force of law), although backed up by some national legal acts (e.g., Decree of the Central Executive Committee of the USSR of April 15, 1926 “On the Declaration of lands and islands located in the Arctic Ocean the territory of the USSR”) and bilateral agreements between states (the Treaty of Saint Petersburg of 1825 or, officially, the Anglo-Russian “Convention Concerning the Limits of Their Respective Possessions on the Northwest Coast of America and the Navigation of the Pacific Ocean”; “Treaty concerning the Cession of the Russian Possessions in North America to the United States of America”, aka Alaska Purchase, Washington, 1867). In a paper written in 1946 [16] Canadian Ambassador to the U.S. Lester B. Pearson formulated Canada’s claims in the sectoral division of not only land and islands in the Arctic Ocean, but also the frozen sea between these land areas.

This sectoral division tradition had long remained undisputed by non-Arctic countries, but since the second half of the 20th century, in the situation of economic globalization, formation of strategic military alliances and growing environmental threats, the role of international conventions and treaties regulating relations in the Arctic region has been rising. A major landmark in this process is the adoption of the Convention on the Law of the Sea in 1982. That said, as researchers from outside Russia remark, the 1926 Decree, where the sectoral principle of dividing the Arctic was adopted as a baseline in Soviet maritime law, remained in use until the country’s breakdown in 1991 [17].

UN Convention on the Law of the Sea of 1982 set the common rules and mechanisms granting coastal States special rights to water areas including: internal waters, exclusive economic zone (200 nautical miles from the baseline) and the continental shelf, which is a natural prolongation of the land mass.

The water and shelf areas beyond the above categories are open for navigation and economic use, and are referred to as “high seas”. Applications for extending the continental shelf are handled by the Commission on the Limits of the Continental Shelf. This approach to the delimitation of rights is currently the most commonly recognized, and reflected in the EU Arctic Strategy and NATO’s official stance. Yet, not all Arctic States have signed the 1982 Convention (the U.S. withheld from signing), although backed up by some national legal acts (e.g., Decree of the Central Executive Committee of the USSR of April 15, 1926 “On the Declaration of lands and islands located in the Arctic Ocean the territory of the USSR”) and bilateral agreements between states (the Treaty of Saint Petersburg of 1825 or, officially, the Anglo-Russian “Convention Concerning the Limits of Their Respective Possessions on the Northwest Coast of America and the Navigation of the Pacific Ocean”; “Treaty concerning the Cession of the Russian Possessions in North America to the United States of America”, aka Alaska Purchase, Washington, 1867). In a paper written in 1946 [16] Canadian Ambassador to the U.S. Lester B. Pearson formulated Canada’s claims in the sectoral division of not only land and islands in the Arctic Ocean, but also the frozen sea between these land areas.

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As of today, neither the sectoral principle nor the rules set out in the Convention on the Law of the Sea of 1982 are fully recognized by either the Arctic Five or all relevant states. Each stakeholder stands by their own interests in the region and strives to secure a legal basis for fulfilling them, yet neither has enough capacity to fully accomplish this task in the contemporary international law environment directly – through a universally recognised legal regulator. There are several tendencies of socio-economic and legal nature in the way this collision is being handled:

- simultaneous activation of several formats of international interactions in the Arctic: the Arctic Five, Arctic Council (comprising 8 permanent members and observers), and within them the preparation of declarations capable of becoming, as A.N. Vylegzhanin remarked, “a stage in the creation of a new norm of applicable international law” [6]
- differentiation between stakeholder countries in terms of their Sci-Tech potential to exploit the resources of the shelf
- differentiation between countries in their technical capacities supporting economic activities in the Arctic (icebreaker assistance, emergency facilities, weather stations, etc.)
- active utilization of the options offered by existing international law (e.g. 2001 and 2015 submissions by the Russian Federation in respect of the limits of continental shelf under its control, 2013 submission by Denmark, etc.).

It is also necessary to be mindful of the growing interests of Asian countries in the Arctic region [9, 11], especially because they are backed up by a progressing economic potential.

Owing to this set of tendencies the balance of interests can be maintained, notwithstanding the extended rights of Arctic Coastal States. It is generally a fact that the special rights of Arctic States in the region are recognised by all stakeholders. They only differ on approaches to determining the scope of these rights and the mechanisms for practicing them. This is largely due to navigation in the Arctic region being highly dependent on the coastal and marine infrastructure of the countries in the Arctic Five. At the same time, there is technical and technological dependence on the part of Arctic States, namely Russia, which has encountered some issues when implementing its socio-economic policy in the region.

3.2. Russian national level of legal regulation in the Arctic

For Russia, economic matters related to the development of Arctic territories are tightly bound to the development of infrastructure and maintenance of the Northern Sea Route, utilization of Arctic’s natural resources, and national security. It is very likely this natural bond within integral economic processes would be further strengthened, considering the widening opportunities for economic activities in the Arctic region for all stakeholders globally. The Arctic zone of the Russian Federation spans 9 million square km, i.e. one-fifth of the country’s total area. The Arctic zone now accounts for 15% of the country’s GDP and a quarter of its exports [19].

It would be logical to examine Russia’s Arctic policy and strategy in the context of the above-mentioned trends in the development of international legal and economic relations in the region.

Russian Arctic policy has gone through several variously directed and controversial stages over the past 30 years. Periods of Russia’s activation in the Arctic sphere since the 1990’s, as we shall see, are indivisible from the country’s general socio-economic and foreign policies.

The 1992-2000 period generally corresponds to the time of dependence on the West, both economically and, understandably, in the political sphere. This period was marked by a number of events in the legislative regulation of developments in the Arctic, which have shaped the long-term trends in the region’s economic development and the balance of power in the international arena.

On February 26, 1997 President Yeltsin signed the Federal Act #30-FZ “On ratification of the United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of part XI of the United Nations Convention on the Law of the Sea”. This event was the starting point for working out a number of key national legislative acts regulating the economic development of coastal regions and the country at large:
- Federal Act “On the exclusive economic zone of the Russian Federation” (December 17, 1998)
- Federal Act “On the internal maritime waters, territorial sea and contiguous zone of the Russian Federation” (July 30, 1998)
- Government Ordinance #717 “On the procedure of approving lists of the geographical coordinates of the points for drawing the lines for the outer limits of the continental shelf of the Russian Federation” (June 15, 1997)

In the general context of international legal regulation, these norms have initiated the application of the provisions set out in article 76 of the 1982 UN Convention on the Law of the Sea in setting the limits of the Russian continental shelf beyond 200 nautical miles from the so-called “baseline” dividing the country’s internal and territorial waters.
Active integration of the 1982 UN Convention on the Law of the Sea in the foundations of rulemaking in Russia—a key player in the Arctic, has strengthened the position of the Convention as a major legal regulator of relations and processes in the Arctic Ocean and the Arctic region in general [20].

As a result, Russia’s Arctic territories decreased from the potential 5.84 million km² (sectoral division of the Arctic) to 4.1 million km² (based on 200-mile exclusive economic zone as defined in the 1982 Convention).

Some of the domestic legislative acts of that time worth mentioning are the Russian Presidential Decree “On creating the industrial and production facilities for the development of hydrocarbon deposits in the Arctic continental shelf” (1996) and Order of the Ministry of Fuel and Energy Russia #43 dated 10.02.1997 “Regarding the Federal Ad Hoc Programme “Shelf” for the creation of high-technology installations, machinery and equipment for offshore oil and gas extraction and development of hydrocarbon deposits in the Arctic continental shelf”. These regulations have paved the regulatory ground for developments in Russia’s Arctic shelf, first of all in the Stockman and Prirazlomnoye fields. Note that practical effects of these efforts became visible only in 2013, when Prirazlomnaya rig started operating.

In 2000-2003, the mainstream in the country’s Arctic policy was to consolidate the economic space of the entire Russian territory and build a partnership with the West. In this period, Russia became the first country to submit an application to the Commission on the Limits of the Continental Shelf (submission dated December 20, 2001). This period also included the work to additionally substantiate the submission as required by the Commission. Meanwhile, tendencies in the Russian Arctic at that time were generally negative, with a reduction in human population, abandonment of many small settlements, closure of industrial facilities, degradation of infrastructure along the Northern Sea Route, and concentration of economic activity in single-industry urban communities [21].

The events characteristic of 2004-2008 portray Russia’s aspiration to reassert and enlarge its influence in the Arctic. The Arctic 2007 expedition, in which the ocean bed under the geographic North Pole was reached for the first time, was not a purely symbolic event. The Arctic Ocean bed was surveyed in search for evidence of the geological genesis of the Lomonosov Ridge to substantiate Russia’s claim for a part of the continental shelf. Besides, a Russian flag and a time capsule for future generations were planted in the seabed at the North Pole point, inciting controversial feedback from international diplomatic circles. In 2008, the “Fundamentals of the Russian Federation state policy in the Arctic until 2020 and beyond” were adopted, formulating Russia’s national interests in the Arctic region, as well as the strategic priorities, objectives and tasks in the implementation of the Arctic vector of domestic and foreign policy. According to the “Fundamentals”, Russia's principal interests are: “to use the Arctic zone as a strategic resource for addressing the tasks of the country’s socio-economic development, preserve the Arctic as a zone of peace and cooperation, conserve the unique Arctic ecosystems, use the Northern Sea Route as Russia’s unified national transportation link in the Arctic”.

The 2009-2011 period featured the 2010 Treaty between the Kingdom of Norway and the Russian Federation concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean. It resolved the over 40-year-long dispute on the delimitation of rights. Russia, which had originally insisted on a sectoral division of waters and the seabed, conceded to Norway’s “equidistance” approach. Under this Treaty, Russia abandoned its claims for some 80,000 square kilometres of waters and seabed. Some reputed Russian experts have described this Treaty as a failure for Russia [22].

Active development of the legal framework and governance programming for the Russian Arctic zone continued in 2012-2013. In 2013, the “Strategy for development of the Arctic zone of the Russian Federation and for national security until 2020” was adopted (endorsed by the President on February 8, 2013). The Strategy specifies which territories are considered part of the Russian Arctic zone, defines the vectors for improving the regulatory framework for managing the region’s socio-economic development, rules of navigating Arctic seas, special legal-economic regimes for the use of natural resources and nature conservation activities. In the same year 2013, the Russian Ministry of Transport
passed an Order “On approving of the rules of navigation in the Northern Sea Route waters” (#7 dated 17.01.2013), aiming to enhance the legislative framework for navigation along the seaways of the Northern Sea Route. The elaboration and implementation of the Russian Arctic policy have been the most full-blown since 2014. The Programme "Socio-economic development of the Arctic zone of the Russian Federation until 2020” was adopted (approved by Russian Government Ordinance #366 of April 21, 2014). Its principal objective is to “accelerate the development of the Russian Federation through massive involvement of the natural capacities of the Russian Arctic zone in economic activities”. The priority for the Programme is to “promote coordination among public authorities in implementing the state policy in the Russian Arctic” in the following areas: augmenting the resource base of the Russian Arctic zone, securing favourable conditions for the operation of all branches of military service, creating a common information space in the Russian Arctic zone, facilitating a high level of basic research in the Arctic, and others. The Programme has also significantly altered the list of territories included in the Arctic zone of Russia.

In 2016, the “Action plan for the Russian Arctic zone development and national security strategy 2020” was adopted (approved by Russian Prime Minister D. Medvedev on August 30, 2016). The Plan lists 80 actions grouped under six priority headings: comprehensive socio-economic development of the region; promotion of science, cutting-edge techniques and integration of innovations in all production spheres; promotion of the information infrastructure; environmental protection; development of international cooperation; and military security. This plan is designed to enhance the conditions for operation of Russian companies in the Arctic shelf, to improve the port infrastructure and port-and-industry clusters linked to the Northern Sea Route, to develop transport connections. The same year the transport-oriented territorial planning scheme was supplemented with Government Ordinance 31827-r of August 31, 2016 regarding the construction of a coal terminal with a cargo turnover of 10 million tons a year in Port Dickson.

Efforts were invested also in elaborating the procedure for collecting data on the region’s socio-economic development (Amendments to Section I of the Federal Statistical Activities Plan #638-r of April 9, 2016), rules of carriage by sea, which regulate the nationality of the ship (Federal Act # 460-FZ of 29.12.2017), and the procedure for calculating the environmental damage from mining operations (e.g., Government Ordinance #1676 of December 28, 2017). The procedure was prescribed for subsidising the construction of commercial fisheries vessels (Government Ordinance #1917 of December 27, 2019).

Talking to the 9th International Forum “Arctic: Today and the Future” on December 5, 2019, Alexander Krutikov, Deputy Minister for the Development of the Russian Far East remarked on a soon forthcoming introduction in the entire Arctic zone of a special economic regime, implying, among other things, tax benefits (the tax rate in gas extraction for the liquefied natural gas and gas-to-chemicals industries will be 0% in the first 12 years; the tax rate for mining in the north of Krasnoyarsk Krai, Yakutia and Chukotka will also be 0% in the nearest 12 years). Forecasted freight volumes for the Northern Sea Route are 80 million tons in 2024, 120 million tons in 2030, and 160 million tons by 2035. There are plans to prepare the infrastructure for setting up production facilities critical for the country’s economy, and to offer investors long-term low-interest loans from the Far East and the Arctic Development Fund. In 2020 already, the Fund is supposed to allocate over 15 billion roubles for the implementation of projects in the Arctic [23].

Overall, the instruments for managing socio-economic development in the Arctic are quite comprehensive and elaborate. The strategic approach is manifest in long-term public investments in the Arctic, introduction of economic incentives for regional development, and enhancement of information and knowledge support to a new quality level. On the other hand, legislative initiatives oriented at protectionism and an integrated development of the Northern Sea Route infrastructure and transport are constrained by a lack of both crucial techniques and industrial capacities. Russia has faced these issues when building the Port of Sabetta within the Yamal LNG project, and in arranging cargo transport via this port [24]. E.g., a draft law suggesting the use of Russian-made ships on NSR (Russian Government Directive #1730-r of August 3, 2019 for submitting the draft federal act “On making amendments to
article 4 of the Russian Merchant Shipping Code”) was confronted by a drastic shortage of not only available vessels but also the facilities able to build them. In this situation, it is necessary to activate the economic incentives for urgent construction of production and transportation facilities, research and developments of critical importance for shelf exploration, as well as build-up of human capital in the Russian Arctic. This task would be fully met by the Concept of flagship areas of development – multifaceted projects for socio-economic development of the Arctic. Apart from the dimensions mentioned above, other tasks of key importance for the Concept of flagship areas are:

- establishment of a system of flagship settlements in the Arctic, where resources for the implementation of priority projects for Arctic development will be concentrated,
- upgrade of the infrastructural matrix connecting flagship settlements to second-order communities,
- introduction of economic incentives for anchoring human capital in the Flagship area, and for its augmentation in the future.

Since the payback time for public investments in high-priority projects is rather long, it is advisable to also implement projects with short-term and mid-term payback. These projects would provide revenues for the budget of the State Programme for Development of the Arctic Zone under the special legal-economic regime.

4. Conclusions
Analysis of the evolution of Russian legislation and socio-economic development tools reveals an alignment between the principal trends in the general domestic and foreign policy and periods when Russia became more active in Arctic issues. Compared to previous periods, the current stage, starting 2014 on our timeline, features far more elaborate and systemic instruments and measures. The fact is that in a situation of tight competition with other economic and geopolitical influencers (such as China, EU, the USA) in the Asian, European and Near Eastern domains on the one hand, and limited inner resources for growth on the other, the Arctic is a region where Russia possesses natural advantages due to its geographic position, raw material and mineral reserves, as well as unique transit assets (considering the long-term climate warming and prospects for the Northern Sea Route). On the other hand, the actual planned legal-economic regime of the Arctic zone remains underdeveloped. We believe the best effect in the Russian Arctic can be achieved through a legal-economic regime in the form of Flagship areas of development. This approach would enable flexibility in regard of specific sub-regional features across the thousands-kilometres-long Russian Arctic, while on the other hand bringing different administrative units together for implementing global-scope projects. The macroeconomic effect would be maximised by deploying means of production and transport in Russian territory, introducing economic incentives for anchoring human capital in Flagship areas, upgrading the infrastructural scaffolding covering a system of flagship settlements.

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