The Rights of Indigenous Peoples of the Arctic and Their Implementation Challenges

V N Snetkov, D A Mokhorov, Yu V Dorovskaya, K A Semenova
Peter the Great St. Petersburg Polytechnic University, St. Petersburg, Russia

semenova86@bk.ru

Abstract. Despite developed regulatory framework enshrining legal status of indigenous small-numbered peoples and governmental law-enforcement practice, challenges appear in implementing rights of such population category. One of factors jeopardizing realization of Arctic indigenous peoples rights is interest of companies and states in Arctic resources development. A set of conditions from an increasing geopolitical and economic interests of states in Arctic resources development to challenges of sustainable development of the Arctic region leads to the need for states to negotiate and conclude a treaty with mechanisms for protecting Arctic indigenous peoples rights. The States parties to the 1982 UNCLOS, including Arctic states and indigenous representatives, are recommended to be involved in its elaboration. The Arctic states bear a special responsibility to ensure Arctic indigenous peoples rights. Such treaty should stipulate an obligation of each Arctic state to take the views of indigenous representatives in regulating legal relations with their participation. While the Arctic resources development by resource companies is a factor posing a threat to protection of Arctic indigenous populations rights, activities of companies involve new jobs creation and social infrastructure development. The treaty should stipulate a mechanism for a balance between the interests of Arctic indigenous peoples and resource-extracting businesses.

1. Introduction
The right-protection of Arctic indigenous peoples in the modern world is the subject of legal regulation in a number of legal sources. Nevertheless, the issue of implementing the rights of this category of population remains so far quite pressing and demanding the improvement of current mechanisms to address it. This research objective is to take an in-depth look into the correlation of effective norms of international and national law with the law-enforcement practice of states in protecting the indigenous peoples entitlements and identifying the main factors that impede the implementation of such legal institution.

2. Main Body
The main sources enshrining the rights of the Arctic indigenous peoples include both international treaties and national laws of the states. International sources of indigenous peoples rights, including indigenous peoples of the Arctic, feature the UN Declaration of September 13, 2007 (UNDRIP) [1], as well as the ILO Indigenous and Tribal Peoples Convention [2].

Canada, as one of the Arctic states, since 2016 is a State party to the UNDRIP. The Canadian Parliament also has a Standing Committee on Aboriginal Peoples. This committee takes part in the consideration of draft laws aimed at regulating legal relations involving indigenous peoples.
According to the official data provided on the website of the Parliament of Canada, “... over the past 10 years, the committee ... has considered more than 20 bills on issues related to education, language, land management, self-government, land claims, meeting the agreements and resource management” [3]. One of the latest documents developed with the participation of the Canadian Parliamentary Committee on Aboriginal Peoples includes different acts featuring respecting indigenous languages, the first nation, Inuit and Metis children, youth, and families. Also, the Parliamentary Committee on Aboriginal Peoples is currently actively working for ensuring the laws of Canada are in harmony with the UNDRIP [3].

Other Arctic states also highlight the protection of indigenous peoples rights as one of the major lines for developing their polar policy. In particular, the Arctic Strategy of Norway notes that one of the major areas of activity of Norway in the Arctic is to safeguard “the foundations of the existence of indigenous peoples, their traditional trades and lifestyles, preservation of their history and culture” [4]. The contemporary US policy regarding the circumpolar peoples affirms their right “to self-determination, land and natural resources…, for the preservation of their unique culture” [5].

Even though the Russian Federation has refrained so far from participating in specific international treaties, affirming the indigenous small peoples rights, in general, it is worth noting that almost all of the fundamental rules of law enshrined in the said international sources, is excised through the Russian national laws.

The sources of the Russian laws affirming the indigenous small-numbered peoples rights, including the Arctic peoples are the Russian laws of federal level covering guarantees [6], general principles for organizing communities of small-numbered peoples settled from Siberia to the Far East of Russia [7], other regulatory framework, as well as laws and regulations of the integral entities of the Russian Federation.

Furthermore, the various branches of Russian legislation contain special regulation for relations with the participation of representatives of indigenous small-numbered peoples. So, for example, the Russian codified water act contemplates “the use of water bodies in places of traditional residence and traditional economic activities of such indigenous small-numbered peoples settled the North, Siberia and the Far East of Russia” [8]. The Russian codified forest act lays down the rules pertaining to the use of forests by such indigenous small-numbered peoples [9]. The Federal Law on Wildlife regulates the involvement of the said population category in protection and use of the wildlife objects, preservation and restoration of their habitat in a special way [10].

Conducting a comparative analysis of Russian laws and regulations, and international norms enshrining among other things the rights of Arctic peoples, some collisions can be seen. The rules of the Russian public law so far do not allow to freely implement the recommendations of the UNDRIP on preserving their traditional medicine and their practice of healing among indigenous small-numbered peoples, as in Russia traditional medicine is possible only under “… a permit issued by the executive authority of the Russian Federation in the health sphere” [11].

Despite existing developed legal framework enshrining the legal status of indigenous small-numbered peoples and law-enforcement practice of states it is pending a number of issues that manifest themselves in the process of realization of the rights of such category of population.

As one of the main factors that poses threats to the realization of such Arctic peoples rights, is mentioned the interest of states and companies in the development of Arctic resources which first of all raises the environment protection problem of the traditional residence of indigenous people [12, 13], as well as the right of indigenous people to health protection [14].
One of the major problems pertaining to the implementation of the Arctic peoples rights is “takings of lands of traditional nature use and degradation of the state of natural complexes as a result of anthropogenic impact” [16]. As a rule, the indigenous population of the Arctic is not vested with the legal rights to the land for which cause the resource companies often start on the industrial development of territory, without obtaining the consent of the peoples of the Arctic [16]. It is rightly noted that oil production is concurrently one of the fundamental conditions for economic development of the Arctic and its social infrastructure. Compensation for the negative environmental impact of oil companies can also be implemented in the form of monetary compensation, the creation of various charitable programs, etc. [17].

Thus, the activities of big companies in the Arctic, on the one hand, are a factor limiting the right of indigenous peoples to access the resources of their traditional lands. On the other hand, resource companies are sources of additional jobs for the indigenous population of the Arctic.
The legal experience of the United States, Denmark and Norway related to the search for a balance of interests between resource companies and indigenous peoples of the Arctic shows that one of the optimum solutions to this problem is the conclusion of tripartite agreements with the participation of key stakeholders and local authorities [16].

A study into various “patterns of distribution of benefits between government, companies and indigenous peoples” deserves special attention. There are three basic models to distribute benefits featuring paternalism, corporate social responsibility and partnership [17]. It is typical for the paternalistic model the leading role of the state in regulating the mechanism of distribution of goods. The footing of the corporate social responsibility model is mainly decisions of the company’s management. At the same time, the ‘partnership model’ of the distribution of benefits implies the equality of all the main participants in the legal relations [17].

The legal experience of Canada in recognizing and enshrining “the so-called aboriginal rights, that is, belonging to indigenous peoples by virtue of their residence in a certain territory of Canada before the arrival of the Europeans,” is also considered as positive. However, the legislation of Canada, when regulating the right of indigenous peoples to fishing, provides for state licensing of fishing, as well as the possibility of restricting “the right of indigenous peoples to food, social and ceremonial fishing ... in order to preserve the fish population” [19].

The Russian federal act pertaining to fisheries and conservation of aquatic biological resources also contemplates special rules regulating “fishing in order to ensure the traditional lifestyle and traditional economic activities” of such population category living in the Russian north, Siberia and Far East [20]. Some difficulties, however, are mentioned in the literature in the process of realizing the fishing rights of indigenous peoples. In particular, according to T. Zakharova, a lack of provisions on the priority of fishing of indigenous peoples over commercial ones often limits indigenous peoples access to natural resources [19].

Some of the shortcomings of the Russian laws and regulations covering protection of the Arctic peoples rights can rightly be attributed to its provisions that state authorities and local self-government
bodies may provide assistance to representatives of indigenous small-numbered people, while the provision of such assistance should be an obligation, and not the right of the state [6].

Another problematic issue of the existing mechanism to protect the rights of the Arctic peoples is a lack of specific international legal norms, tailored to the specifics of the basic living conditions of people in the Arctic region. Given the diversity of the Arctic indigenous peoples, the determination of their legal status with the help of common international norms protecting the indigenous peoples rights is seen as a significant drawback of legal regulation.

Figure 3. Indigenous population in the Arctic. Available on the website https://www.nordregio.org/maps/indigenous-population-in-the-arctic/ [21]

3. Conclusion

As a result of the comparative legal analysis of various regulatory legal acts and legal experience of various states in safeguarding the Arctic peoples rights, the following conclusions were drawn:

1. Current international legal standards are aimed at protecting indigenous small-numbered peoples, including the Arctic peoples. Nevertheless, the combination of such factors as the increase in the geopolitical and economic interests of states in the development of Arctic resources, existing issues for ensuring sustainable development of the Arctic region leads to the need for states to develop and conclude a treaty securing special mechanisms for safeguarding the Arctic peoples rights. It is recommended that State parties to the 1982 UNCLOS [22], including the Arctic states, as well as representatives of indigenous peoples of the Arctic, be involved in the elaboration of such treaty.

2. The Arctic states have a special responsibility to ensure the Arctic indigenous peoples rights. In this regard, the treaty intended for right-protecting the Arctic indigenous peoples should necessary to affirm the obligation of each Arctic state to take into account the opinion of representatives of indigenous peoples of the Arctic when regulating legal relations with their participation.

3. The development of Arctic resources by resource companies, on the one hand, is a factor that constitutes threats to rights protecting of the indigenous Arctic population. On the other hand, the activities of companies often involve creating new jobs and developing social infrastructure. The treaty on rights protecting of indigenous Arctic peoples should contemplate a mechanism for observing a balance between the interests of Arctic indigenous peoples and extracting businesses.
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