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Legal and Institutional Frameworks for the Arctic Zone of the Russian Federation

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Abstract. In light of attempts made to consolidate questions on regulating development support zones, the author has attempted to analyze questions on the legal regulation of current issues regarding the use of Russia’s Arctic Zone. This paper analyzes the study of public opinion on the legalization project in the Russian Arctic. It studies the ecological aspects and problems of land use, which are foreseeable in the impact that passing the bill “On the Development of the Arctic Zone of the Russian Federation” would have in its current interpretation. In order to analyze whether or not the legal regulation of issues on the development of the Arctic are sufficient enough, regulatory documents, both active and planned, are enumerated. The author describes the possibility of adopting the term “territory” for Russia’s Arctic Zone, as well as analyzes its composition. The paper focuses on the question of forming and operating development support zones from a historical point of view and also in light of a conceptual and declaratory transformation. Problems of ecological expertise, land use, and territory planning for the construction of infrastructure facilities are looked at while taking into account environmental protection and protecting the interests of the indigenous peoples living within the corresponding borders. The research reflects the global environmental problems of the Arctic region as a climate region of the planet, as well as of the indigenous peoples inhabiting it.

1. Introduction

Recently in 2016, the editorial board of the journal “Arctic and North” organized a study of public opinion around the project “Legalizing the Russian Arctic: public expertise on the new federal law”[1], specifically, about the bill “On the Development of the Arctic Zone of the Russian Federation” (as amended by the Ministry of Economic Development, November 2017).

By no means detracting from the significance and correctness of the wording of the questions by the creators of the project, which reflect the current issues of the composition of Russia, nor detracting from the correlation of the concepts “the Arctic Zone of the Russian Federation” and “the Russian Arctic”, nor of holding a referendum on the issue of continuity in terms of codifying the name “the Russian Arctic” instead of “the Arctic Zone of the Russian Federation”, nor from the content of the new law, preferences for businesses and benefits for the population, expanding the borders of the Russian Arctic, nor from the cooperation between the federal center and government people, we note that in our view, they only slightly touch on the issues of environment protection in the arctic climate region, problems of land use, and protection of the rights and legal interests of the indigenous peoples of the Arctic. As a result, only in answer to one of the broad questions put forth by the authors of the



draft does the “public opinion” cite the need for protecting the natural resources of the Arctic and for introducing special regimes in the areas of natural resource management, territorial planning, and environment protection. That question is: “Why do the federal subjects and municipalities of the Russian Federation need a new law? Expectations and concerns, possibilities and threats?” [2].

At the same time, the regulation of the ecological aspects of the Arctic, which is reflected in the specified project on the federal law regarding the Russian Arctic Zone, raises many questions regarding the preservation of the largest ecosystem on Earth and causes specific concerns, thereby predetermining the relevance of this research.

2. Body

We will begin by determining that the category of “territory” is not correctly used in reference to the “Arctic”, since the word “territory” is etymologically related to the concept of “ground” (from “terra” - ground), and the makeup of the Arctic includes not only areas of land, including islands, but such environmental components as bodies of water (territorial waters), an exclusive economic zone, continental shelf, and the airspace above [3].

The structure of Russia’s Arctic Zone changed from 22 April 1989 to 2018.

According to a decision by the State Commission under the Soviet Council of Ministers on Arctic Affairs from 22 April 1989, it included the following:

- *territories of eight federal subjects*, specifically of one republic - Sakha (Yakutia), one *krai* - Krasnoyarsk, two *oblasts* – Murmansk, Arkhangelsk, four autonomous *okrugs* - Nenets, Yamalo-Nenets, Taymyr (Dolgano-Nenets), Chukotka;

- *lands, islands, groups of islands* [4], located in the Arctic Ocean, northwards from the USSR coast to the North Pole, already discovered or whose future discovery is possible, granted that they do not already belong to other nations;

- *inland waters, territorial waters*;

- *exclusive economic zone*;

- *continental shelf*.

According to the “Basics of the State Policy of the Russian Federation in the Arctic for the Period until 2020 and for the Future”, Russia’s Arctic Zone has been set by the borders within which Russia observes sovereign rights and jurisdiction in accordance to international law. It included components enshrined by the decision of the State Commission under the Soviet Council of Ministers on Arctic Affairs from 22 April 1989, taking into account changes made in art. 65 of the Russian Constitution regarding the autonomous *okrugs* (for reference - the Taymyr (Dolgano-Nenets) Autonomous Okrug has been included as part of the Krasnoyarsk Krai since 01.01.2007), as well as areas enshrined in the decree of the Presidium of the Central Executive Committee of the USSR from 15 April 1926 “On the declaration of USSR territory of land and islands located in the Arctic Ocean”.

The bill “On the Arctic Zone of the Russian Federation”, prepared by the Ministry of Regional Development on 23.01.2013, defines the Arctic Zone of the Russian Federation as the part of the Arctic on which the jurisdiction of the Russian Federation extends and the structure of which is expanded. This includes:

- *territories of nine federal subjects* (complete or partial), more specifically, three republics – Sakha (Yakutia) (11 *uluses*), Karelia (Loukhsky, Kemsy and Belomorsky Municipal Districts); Komi (of the urban district of Vorkuta);

- three autonomous *okrugs* – Nenets, Yamalo-Nenets, Chukotka;

- one *krai* – Krasnoyarsk (Taymyr (Dolgano-Nenets) Municipal District, town of Igarka in the Turukhansky Municipal District, urban district of Norilsk, and others);

- two *oblasts* – Murmansk, Arkhangelsk (Primorsky, Mezensky, Onezhsky Municipal Districts, urban districts of Severodvinsk, Arkhangelsk, Novodvinsk, and the Arctic island archipelago, Novaya Zemlya and others administratively related to the Arkhangelsk Oblast)

- *lands and islands* located in the Arctic Ocean northwards from the coast of the Russian Federation to the North Pole, already discovered or whose future discovery is possible, granted that they do not already belong to other nations

- *inland waters and territorial waters* of Russia, adjacent to the nine federal subjects, lands and islands indicated. Thereby, the inclusion of sea areas in the composition of the Arctic Zone of the Russian Federation ensures the implementation of the Decree of the President of the Russian Federation, Vladimir Putin, from 2 May 2014, № 296 “On Dry Lands of the Arctic Zone of the Russian Federation”;

- *exclusive economic zone and continental shelf* of the Russian Federation, adjacent to the nine federal subjects, lands and islands indicated, within the sovereign rights and jurisdiction of the Russian Federation.

- *airspace* above Russia’s Arctic Zone in its specified composition.

In accordance with the Decree by the Federation Council of the Federal Assembly of the Russian Federation from 23.03.2016 №109-СФ (p.2), it was ruled to clarify the composition and geographical borders of land and sea areas of the Arctic Zone of the Russian Federation.

The latest revision of the composition of Russia’s Arctic Zone, prepared by the Ministry of Economic Development on 08.11.2017, establishes that the *Arctic Zone of the Russian Federation* is the part of the Arctic territory within which the Russian Federation observes sovereignty, sovereign rights, and jurisdiction, including the territories (parts of territories) of the federal subjects of the Russian Federation, lands and islands, located in the Arctic Ocean northwards from the coast of the Russian Federation to the North Pole and lying within areas outlined by international agreements of the Russian Federation and Russian legislation, as well as inland waters and territorial waters of the Russian Federation, airspace above the specified territories and water areas, as well as the exclusive economic zone of the Russian Federation and the continental shelf of the Russian Federation (p.2 art. 2 of the federal draft law “On the Development of the Arctic Zone of the Russian Federation”).

Likewise, art.3 of the draft indicates that the composition of dry lands which are part of the Arctic Zone, including territories (parts of territories) of the federal subjects of the Russian Federation, lands and islands specified in p.2 art.2 of the federal law, is approved by the President of Russia.

Thus, *analyzing the composition of Russia’s Arctic Zone by looking at its history demonstrates* that it changes over time, and that no criteria for assigning territories and water areas to the composition of the Arctic Zone of the Russian Federation exist; all the more that in the most recent revision, the right to define the composition of the dry lands was given over to the President of Russia. Thus, it can be concluded that the composition of the Arctic Zone of the Russian Federation has yet to be completely formed.

All activity of the state is directed towards the transition from the exploration to the sustainable development of territories by ensuring the economic efficacy of projects and the protection of the surrounding nature (environment).

Whether the sustainable development and compliance to the principles of environmental protection in the case of developing the Arctic are attainable or not is a question which is certain to arise after examining and analyzing the corresponding regulatory documents.

The process of changing the Arctic in its Russian region is regulated by the following regulatory legal acts:

- Basics of the State Policy of the Russian Federation in the Arctic for the Period until 2020 and the Future,

- Development Strategy for the Arctic Zone of the Russian Federation and Provision of National Security for the Period before 2020, approved by the President of Russia on 8 February 2013 (hereinafter — Strategy),

- the state program “Social and Economic Development of the Arctic Zone of the Russian Federation”, approved in the revised amendment by Government Decree of the Russian Federation from 31 August 2017, №1064 (the timeline for carrying out the program extended to 2025) (hereinafter — State Program)

- and others, including the above-mentioned regulatory acts.

The main objectives of the adopted strategies, programs, and regulatory documents are to increase the protection of the population, flora and fauna, and natural habitat on the territory of the Arctic Zone; to preserve and sustainably develop it, as well as to accelerate social and economic growth and achieve strategic interests and provide national security for Russia in the Arctic. In particular, the systems, methods, and means for reaching the strategic goals and benefits of sustainably developing Russia's Arctic Zone have been defined and cannot be overshadowed by the increased level of social and economic development in the Arctic Zone of the Russian Federation.

The multiple attempts to develop and pass a law regarding the Arctic Zone of the Russian Federation since the presidency of Boris Yeltsin, and again in 2018, have been limited by the revision of the draft law “On the Development of the Arctic Zone of the Russian Federation”. After multiple changes, this draft law was adjusted for the formation of development support zones.

As a result, the title of the draft law “On the Development of the Arctic Zone of the Russian Federation” and its contents have started to completely diverge. Due to this, it could hardly be justified to say that this draft law regulates Russia's Arctic Zone, as it is not, in our view, special but instead is directed at regulating issues exclusively on the formation and operation of the development support zones without taking into consideration ensuring their ecological security. This is confirmed by the following.

The concept of “development support zones” was fixed in an amendment of the state program “Social and Economic Development of the Arctic Zone of the Russian Federation”, passed by the government of the Russian Federation on 31 August 2017 in the form of a decree.

“Support zones were formed based on the existing administrative division, transport hubs, and resource base, as well as on the prospects for the social and economic development of the Arctic Zone. They represent complex projects of social and economic development, which stipulate the simultaneous use of interconnected working tools for geographical and sectoral development, as well as of mechanisms for carrying out investment projects, including on the principles of public-private and municipal-private partnerships” [5].

According to the State program “On the Arctic Zone of the Russian Federation”, the following development support zones are suggested to be created:

1) Yamalo-Nenets support zone. This zone is planned to be developed as a petrochemical cluster with the possibility of extracting crude oil and natural gas on the shelf of the Kara Sea, in the northern part of the Yamal Peninsula. The new areas of gas extraction could provide 1/3 of the total volume of natural gas extracted in the country. This would allow for the development of liquefied gas production and its export.

2) The Kola support zone is defined by the borders of the Murmansk Oblast, already rich in minerals. A planned refinement of their mining is intended to attract qualified workers to the region and create the Center of Arctic Competencies and Murmansk State Arctic University.

3) The Arkhangelsk Support Zone joins companies of shipbuilding, engineering, logistics, timber industry complex, and tourism. The mining of lead, zinc, and silver is planned. In the Arkhangelsk Oblast region, there are plans to create a transportation infrastructure, which would provide a “corridor” for the development of the Arctic.

4) Taymyr-Turukhansky support zone includes the Taymyr and Turukhansky Districts of the Krasnoyarsk Krai and Norilsk, where the mining of nickel is already carried out by the company “Nor Nickel”, who plan on mining ore and platinum-group metals, developing coal deposits, and creating new centers for extracting hydrocarbons and crude oil. In case of positive developments, an expert on oil, gas, and coal will be provided.

Accordingly, we see that *the development support zones are being created for the sole need of mining minerals, and that the creation of these zones does not align with the composition of Russia's Arctic Zone.*

Consequently, the development support zones cannot objectively affect the regulation of the wide range of relationships that arise during the process of carrying out the complex social and economic

process of improving the Arctic Zone and its population, since the Arctic Zone does not geographically cover lands and other natural components of Siberia and the Russian Far East. The Arctic is the part of the North which includes Russia's Arctic Zone (North – Arctic – Arctic Zone).

Considering the above-mentioned, changing the title of the bill would be advised, taking into account the regulation and use of support zones as means of development in regions of new economic growth, since it is not permissible to confuse the concepts of “the Arctic Zone of the Russian Federation as a government controlled site” and “the Arctic Zone as a site of natural zoning”.

As arctic expert of the journal “Rare Earth” and member of the Council for the Arctic and Antarctic of the Federation Council, M. Zhukov, notes, “All provisions concerning the Arctic and the Arctic Zone of the Russian Federation need to be removed from the text of the bill, as they are unnecessary. Otherwise, the bill will slow down the development of the Arctic Zone of the Russian Federation” [6]. We completely agree with this position.

Indeed, if we analyze the concept of “development support zones” from a historical point of view, then its notional transformation from “non-ecological” to “economic” becomes clear.

The problem of developmental cooperation of production and nature within the boundaries of the noosphere was first outlined by the public figure and most prominent scientist of the late 19th – early 20th cc., Vladimir Vernadsky. In reference to the problems of forming a minerals and raw materials basis for developing the Arctic, his ideas were developed by introducing the concept of “nature-like” technology, whose implementation provided the complex development of subsoil without any irreversible environmental impact [7] [8] [9].

The academician, Vernadsky, along with other scientists within his initiative group, for example, Mendeleev, understood development support zones as “pockets of infrastructure security”, which create conditions for the phased expansion of the development level of the surrounding areas in conformity with the objectives and conditions of specific time periods. They considered development support zones to be a temporary phenomenon, as territories on which the production and mining of minerals and raw materials took place, and which should be replenished by restoring the environment after deposits have been exhausted.

As we can see, the creation of support zones within the state program “On the Arctic Zone of the Russian Federation” does not protect nature and the environment from irreversible environmental consequences.

The concept of development support zones, contained within the state program “Social and Economic Development of the Arctic Zone of the Russian Federation” (the latest amendment) defines them solely as mineral and raw material points.

At the II International Conference “Arctic 2018”, held in Moscow on 20-21 February 2018, the advisor to the Minister of Natural Resources and Ecology of the Russian Federation, Dmitry Fishkin, called support centers “raw materials”, with the understanding of a development support zone as the total of several mineral and raw materials centers, the creation of which is aimed at extracting mineral resources and not at developing corresponding terrestrial ecosystems, territories, and Russia as a whole.

Creating and implementing development support zones for the ecology also adds problems in the area of land use, as well as raises questions related to these about the protection of the interests of indigenous peoples.

For instance, a chart of the geographical plan for a support zone, in accordance with the bill “On the Arctic Zone of the Russian Federation”, includes a diagram on the placement of the infrastructure features of the support zone, whereby the verification of the project documentation's compliance to the building and reconstruction requirements for a capital construction facility has been canceled.

The existence of rejection of limit parameters of approved construction does not entail verifying project documentation. This significantly distinguishes the construction of facilities in Russia's Arctic Zone from other areas of construction for which the town planning code of Russia enforces the mandatory approval procedures.

In order to obtain building permits for linear infrastructure, it is not required to submit town planning plans of land plots. Strictly speaking, town-planning regulations themselves are not provided for land plots intended for housing infrastructure facilities of a support zone. Instead, the construction of such facilities is approved without holding public hearings, in other words, without taking into consideration the opinion of those living in the area of the development support zones.

The state environmental expertise of project documentation for infrastructure facilities of a support zone is held subject to the requirements of the project documentation for provisions for the bill being studied, which greatly understates the possibility of environmental expertise, including that of the public.

Consequently, constructing facilities of development support zones does not ensure that the urban planning requirements necessary for the sensible use and protection of natural resource management are observed. This places a heavy burden on the fragile nature of the Arctic and on the natural resources traditionally used by the indigenous peoples of the Arctic, or the conditions for accessing them, since the facilities of development support zones are planned to be introduced into constructions as well, predominantly, on the territories of the so-called “permafrost”, as well as in places of the life and traditional economy of the indigenous population (members of the indigenous peoples of the North, and also peoples of larger ethnic groups – Sakha (Yakuts), Izhma Komi, Karelians, Russian Pomors), which brings about multiple ecological and other problems.

Furthermore, areas on which reindeer herding, hunting and fishing, and the gathering of wild plants take place will be involved in implementing infrastructure projects within the borders of the Arctic Zone, including the extraction of mineral resources.

These types of activities, predominantly done by the indigenous population, can only be combined with the industrial mining and transport of mineral resources if the relevant requirements, which ensure traditional natural resource use, are codified and strictly fulfilled.

Such requirements should also be enshrined in the norms regulating the permitted use of Arctic land, which currently do not exist.

In addition, in relation to the Arctic Zone as a natural feature and in regards to the rights and interests of the indigenous (local) population who lead a traditional way of life, and whose interests and rights need to be protected, the Russian Federation has an international obligation to protect the environment from negative human impact.

At the international level, the Arctic Environmental Protection Strategy (AEPS) is especially valid when the Arctic Council has been formed and the Ottawa Declaration has been signed.

Therefore, it is unacceptable to regulate as fast and cost-effective of an extraction of mineral resources as possible, without observing principles of environmental protection and the fundamental ecological norms of international law, as this could lead to conflicts in areas of ecology and protection of the rights of the indigenous population.

As of today, the U.N. Environment Program (UNEP) and the above-mentioned countries have declared the following global problems in the Arctic:

- Pollution of water areas by waste from sea transportation, crude oil, and chemical compounds;
- saturation of facilities presenting a potential radiation hazard (submarines of the Russian Navy, Kola Nuclear Power Plant, storage facilities for irradiated nuclear fuel, and others);
- accumulation and storage of industrial waste;
- and many others.

These problems bring about climate change, an already steady melting of Arctic ice, a decrease in the population of wild animals and a change in their habitat, due to the ability of impurities to accumulate in the atmosphere as a result of the peculiarity of airflow movement in the Arctic [10].

Considering the above-mentioned, we can firmly state that the problems of Russia’s Arctic Zone have not been resolved by the law, including by the federal draft law planned for approval, “On the Development of the Arctic Zone of the Russian Federation”.

3. Conclusion

Based on the conditions on the day this paper was written, it is known that the drafter of the bill “On the Development of the Arctic Zone of the Russian Federation” of Russia’s Ministry of Economic Development, planned for it to be sent to the Russian Parliament by the end of 2018. However, the passing of this bill has been postponed until a strategy for spatial development has been developed, within which the support zones themselves will be developed. Adoption of the Spatial Development Strategy of the Russian Federation was postponed until the end of 2018.

It is difficult to predict at the moment the fate of the legal regulation of the Arctic in terms of implementing the groundwork and programs mentioned above, considering the development of a spatial development strategy for the Russian Federation. We are hopeful that the concept of development support zones and Russia’s Arctic Zone will nevertheless be limited in both a conceptual and an environmental and human-rights sense, while effective mechanisms for solving the problems of Russia’s Arctic Zone will be standardized.

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