

# International legal dimension of the sustainable development concept and the Arctic region: old challenges and new approaches.

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## **Abstract**

*Sustainable development of the Arctic is one of the main topics on the agenda of the Arctic states and the international community as a whole. The need to consolidate international environmental obligations of states, prevent environmental damage from economic activities, as well as establish environmental responsibility in the region is dictated by the uniqueness of the ecosystem of the Arctic region. Intensive development of oil and gas production, transport infrastructure inevitably entails an increase in negative impact on the environment. The article discusses the essence of the concept of sustainable development of the Arctic, as well as international legal mechanisms to ensure the environmental safety of the region and issues of responsibility for the damage to the environment.*

## INTRODUCTION

The concept of sustainable development was formulated in the report of the Commission on Environment and Development (Commission Brundtland) "Our Common Future" in 1987 [Dudydkina I.P. (2017), p. 146; Kukushkina A.V. (2017), p. 29]. The task of the Commission was to ensure the interconnection of economic development, social progress and environmental protection [15, p.1]. The Report proposed the following definition of sustainable development: development that meets the needs of the present without compromising the ability of future generations to meet their own needs) [17, p. 16].

The concept of sustainable development does imply certain restrictions on the exploitation of natural resources, but these restrictions are not absolute, but relative and are related to the current level of technology and social organization, as well as the ability of the biosphere to cope with the consequences of human activity. Sustainable development requires that those who have more money coordinate their lifestyle with the ecological capabilities of the planet, for example, with regard to energy consumption [10].

The issues of ensuring sustainable development are of particular relevance in relation to the Arctic region. According to the assessment of the Ministry of Natural Resources and Ecology of the Russian Federation, the resources of the Russian Arctic currently amount to approximately 511 billion tons of oil equivalent. This is approximately 65% of the world's potential hydrocarbon resources or about 2/3 of all reserves currently being developed in the world. In foreign studies, however, suggestions have been made to ban the extraction of

natural resources in the Arctic in order to preserve the unique nature of the region [Kotlova A.V. (2018), p. 32-34].

It seems that this approach cannot be applied for several reasons: Firstly, the resources of the Arctic are an important element in the economic development of the Arctic states. Secondly, the steadily developing economy of the region is the basis for creating comfortable living conditions for the population, supporting the indigenous peoples of the North, and creating the necessary infrastructure in the region. So, it is the sustainable development of the Arctic that will maximize the use of its rich potential in the interests of all mankind [Kukushkina A.V., Shishkin V.N. (2017), p. 33-41; Nikitina E.N. (2018), p. 65-87].

The results of the study.

As you know, within the framework of the Arctic Council, the Working Group on Sustainable Development in the Arctic (SDWG) was created.

The Arctic Council's Sustainable Development Program aims to propose and implement measures undertaken by the Arctic states to strengthen sustainable development in the Arctic, including opportunities to protect and improve the environment and economies, the culture and health of indigenous peoples and Arctic communities, as well as improve environmental, economic and social conditions of the Arctic communities as a whole [13].

The main areas of activity of the SDWG working group are: human health in the Arctic (expanding the range and increasing the degree of integration of activities affecting human health and carried out within the Council through specific initiatives aimed at improving the health and well-being of indigenous peoples and non-indigenous people in the Arctic); socio-economic problems of the Arctic (improving the understanding of human influence on the Arctic environment and the socio-economic conditions of indigenous peoples and Arctic communities); adaptation to climate change and energy (consideration of the importance of environmentally friendly economic activity in the energy sector); natural resource management (taking into account the dependence of the health and economic well-being of the population of the Arctic communities on the non-depleting use of natural resources); cultures and languages of the Arctic (support for the cultures of peoples living in the Arctic) [13].

In the year 2002, the Arctic Council prepared the "General Guide to the Development of Oil and Gas Resources in the Arctic" (Arctic Offshore Oil & Gas Guidelines, 2002), which takes into account both international conventions applicable to this area and the relevant (applicable to the Arctic) national legislation of the coastal Arctic States [Dudydkina IP (2017), p. 151]. The Guidelines provide for the main directions of environmental regulation of oil and gas production in the Arctic, as well as the principles and legal mechanisms applicable in this case [13].

The issues of responsibility for adhering to the principles of sustainable development in the Arctic is one of the most difficult in this context. Eight Arctic states (USA, Russian Federation, Canada, Denmark, Norway, Sweden, Iceland, Finland) are considered as the main subjects of responsibility for sustainable development. To these should be added

representatives of indigenous peoples who have the status of Permanent Participants in the Arctic Council.

Despite the fact that the Permanent participants have the right to participate in negotiations and consultations within the Council, but they are not allowed to vote, they nevertheless have the opportunity to influence the decisions of the Council, which are adopted by consensus taking into account the opinion and with the active participation of the Permanent participants. Such a multi- stakeholder governance puts Permanent Members of the Arctic Council on a par with states [Hansen- Magnusson H. (2019), p. 148].

The role of the Permanent Participants in the Arctic Council is more significant than the role of observers, despite the fact that the material capabilities of the latter are much wider. Indigenous peoples' demand boils down to having real rights in the Arctic Council, and not just being involved in the Council as rights holders and not just merely stakeholders [Hansen- Magnusson H. (2019), p. 149]. So, we can conclude that indigenous peoples will strive in the future to use the results of economic activity in the region in the interests of their own development.

The existence of non-state actors along with the states in the Arctic Council raises the question of who and for what specifically is responsible in the Arctic, given that the Permanent Participants, together with the states, are responsible for the respective territories.

In accordance with Art. 26 of the 2007, UN Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to the lands, territories and resources that they traditionally owned, which they traditionally occupied or otherwise used or acquired. States provide legal recognition and protection of such lands, territories and resources [2]. The Declaration also provides for the obligation of States to consult in good faith and collaborate with relevant indigenous peoples through their representative institutions in order to secure their free and informed consent before approving any project affecting their lands or territories and other resources, especially in connection with the development, use or development of mineral resources, water or other resources [2].

In September 2019, it became known that a draft law was being prepared in the Russian Federation aimed at expanding the list of entities that may be entitled to work on the Arctic shelf. The bill will provide for amendments to the legislation of the Russian Federation in terms of expanding the composition of participants with the right to use subsoil resources containing hydrocarbon reserves and resources located on the continental shelf of the Arctic zone of the Russian Federation [9]. An increase in the number of entities engaged in economic activity in the Arctic, on the one hand, helps to attract investment in the region, and on the other hand raises the issue of environmental responsibility of business. Today, there are several dozen large companies in the Russian Arctic, only two of which have the right to offshore production: Gazprom and Rosneft.

In 2018, an attempt was made in the Russian Federation to compile a sustainable development rating for the regions of the Russian Arctic. Expert Center Arctic Design Project Office "PORA" together with the Department of Environmental Economics of the Faculty of

Economics, Moscow State University M.V. Lomonosov published the results of the corresponding study. The project is aimed at the comprehensive implementation of the principles of sustainable development in the Arctic zone of the Russian Federation, implying a balance of its economic, social and environmental components [12]. The project compiles two methodologically related ratings. Firstly, the rating of the regions of the Arctic zone of Russia, and secondly, the rating of companies operating in this territory.

Various indicators were used to compile the region's sustainable development index, including: the ratio of per capita cash income to the subsistence minimum, migration outflow of the population, the level of satisfaction of the population with the activities of authorities at all levels to ensure social

guarantees, the observance of the rights of representatives of indigenous peoples, and the share of environmental protection costs environment, the proportion of reclaimed land from the total area of land affected, the proportion of renewable and sources of reproduction of the resource base in the total volume of the resource base and many others [12]. According to the results of the study of the regions, the first place in the ranking was taken by the Murmansk region. Then, follows the Republic of Sakha (Yakutia) and the Arkhangelsk region.

In June 2019, the Polar Index Companies, when calculating the rating, feedback from representatives of companies, regions, and the expert community was taken into account. As a result, the index of sustainable development of companies was calculated on the basis of a system of quantitative indicators. The five leaders in the rating included PJSC SIBUR Holding, PJSC MMC Norilsk Nickel, PJSC Lukoil, PJSC Gazprom Neft and PJSC Novatek [14]. The practical significance of the study is expressed in the fact that the Polar Index has become a real mechanism for evaluating enterprises operating in the Arctic. The results of the study can be taken into account when deciding on the admission of the company to work in the Arctic region.

In the Russian Federation, there are no uniform regulatory documents and requirements governing the procedure for conducting environmental monitoring on the shelf. This leads to the fact that each oil and gas company conducts work in accordance with its own program [11]. The only guidelines for compiling an environmental monitoring program are licensing subsoil use requirements for a licensed area and passing a state environmental review [11]. An example of international cooperation in combining environmental standards is the Russian-Norwegian project for the harmonization of national and international standards "Barents 2020, assessment of international standards for the safe exploration, production and transportation of oil and gas in the Barents Sea" [11]. So, it is necessary to develop a single regulatory document establishing the procedure for conducting industrial environmental monitoring [11]. This will make it possible to regularly monitor the nature of the current environmental impact, develop environmental restoration programs, and will also become the basis for bringing to justice the subjects of harm.

It seems that the development of the content of such a document will be facilitated by a number of resolutions of international conferences, which contain provisions that the state is

responsible for ensuring that activities within its jurisdiction or control do not harm the environment of other states. The state shall be liable for damage arising from activities not prohibited by international law carried out on its territory or under its control, if such activity is associated with the risk of causing significant transboundary harm due to its physical consequences.

Liability agreements for significant transboundary harm provide for two main types of liability. Firstly, we are talking about the absolute responsibility that the state bears as the sole defendant. Such a regime is established, for example, by the Convention on International Responsibility for Damage Caused by Space Objects of 1972. Secondly, we are talking about the responsibility borne by a private operator that carries out activities that caused harm. The state in this case compensates the damage only to the extent that it was not compensated by the operator. This type of liability is provided for in agreements governing activities related to the use of atomic energy.

There are a number of international legal documents relating to the extraction of oil and gas at sea, namely: The Convention on Civil Liability for Damage from Marine Oil Pollution in 1969 or the Convention for the Prevention of Marine Pollution from Ships in 1973; however, these conventions do not contain regulation of issues liability for environmental pollution resulting from activities on oil platforms [Vereina LV, Kotlova AV (2018), p. 44-47].

## CONCLUSIONS

In view of the foregoing, it seems reasonable to develop and adopt an international treaty that would provide for uniform, universal environmental standards of activity in the Arctic, ensuring compliance with the principle of sustainable development, measures to prevent environmental pollution, as well

as liability for violation of these requirements. At the same time, despite the relevance of the problems identified in the article related to the sustainable development of the Arctic, the adoption of the above treaty today seems to be very difficult. The current situation is explained by the fact that environmental issues, and hence the sustainable development of the region, are given priority in the priority for the Arctic and non-Arctic states to the political, military or economic problems of the Arctic. In addition, it is necessary to take into account the fact that "in the current Russian legislation the prevalence of economic interests over environmental ones is traced" [Bogolyubov, S.A. (2011), p. 7].

It seems that expanding the circle of entities entitled to develop resources on the Russian shelf will lead to the creation of new mechanisms for control over their activities by the state, which, on the one hand, will contribute to further "greening" of domestic legislation, and on the other hand, it may be an incentive to enhance international cooperation between the Russian Federation and the Arctic and non-Arctic states in the field of sustainable development of the Arctic. In the framework of such cooperation, in our opinion, a lawsuit balance between economic interests and environmental safety in the region will be achieved, drawn up by an international treaty providing for common environmental standards for

economic activity in the Arctic and containing international legal foundations for the sustainable development of the region in question.

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