

Springer Polar Sciences

Paul Arthur Berkman
Alexander N. Vylegzhanin
Oran R. Young

Baseline of Russian Arctic Laws



 Springer

Springer Polar Sciences

In collaboration with the new Springer book series on
“Informed Decisionmaking for Sustainability”

Springer Polar Sciences

Springer Polar Sciences is an interdisciplinary book series that is dedicated to research in the Arctic, sub-Arctic regions, and the Antarctic. In recent years, the polar regions have received increased scientific and public interest. Both the Arctic and Antarctic have been recognized as key regions in the regulation of the global climate, and polar ecosystems have been identified to be particularly susceptible to the ongoing environmental changes. Consequently, the international efforts in polar research have been enhanced considerably, and a wealth of new findings is being produced at a growing rate by the international community of polar researchers.

Springer Polar Sciences aims to present a broad platform that will include state-of-the-art research, bringing together both science and humanities to facilitate an exchange of knowledge between the various polar science communities. The Series offers an outlet to publish contributions, monographs, edited works, conference proceedings, etc. Topics and perspectives will be broad and will include, but not be limited to: climate change impacts, environmental change, polar ecology, governance, health, economics, indigenous populations, tourism and resource extraction activities. Books published in the series will appeal to scientists, students, polar researchers and policy makers.

More information about this series at <http://www.springer.com/series/15180>

Paul Arthur Berkman
Alexander N. Vylegzhanin • Oran R. Young

Baseline of Russian Arctic Laws



Paul Arthur Berkman
Science Diplomacy Center
Fletcher School of Law and Diplomacy
Tufts University
Medford, MA, USA

Alexander N. Vylegzhanin
Department of International Law
MGIMO University
Moscow, Russia

Oran R. Young
Bren School of Environmental Science
& Management
University of California Santa Barbara
Santa Barbara, CA, USA

ISSN 2510-0475

ISSN 2510-0483 (electronic)

Springer Polar Sciences

ISBN 978-3-030-06261-3

ISBN 978-3-030-06262-0 (eBook)

<https://doi.org/10.1007/978-3-030-06262-0>

© Springer Nature Switzerland AG 2019

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors, and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Switzerland AG.
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Preface

The Arctic is a region of intense and rising interest, especially for states and permanent residents, most notably the Indigenous peoples who have inhabited the High North across millennia. At the center of the Arctic is the Arctic Ocean, with its globally relevant issues, impacts, and resources. Surrounding the central-Arctic Ocean and the Arctic High Seas are lands under the jurisdiction of five states – Canada, Denmark (Greenland), Norway, the Russian Federation, and the United-States. At the closest point, only two miles separate Russia and the United States, between Big Diomedes and Little Diomedes Islands in the Bering Strait, with the Chukchi Sea to the north and the Bering Sea to the south, reflecting the longest maritime boundary between any two nations on Earth.

As neighbors, variably as allies and adversaries, and having become the first two superpowers, the activities of these two nations have global relevance. In the north polar region, without its ceiling of permanent sea ice, we now have a new Arctic Ocean, with fundamentally changing environmental, economic, and societal connections at local-global levels. Russia has the largest land mass north of the Arctic Circle, exercises jurisdiction over the largest segment of the Arctic Ocean, and has the largest Arctic population. For these reasons, Russian Arctic laws for both marine and terrestrial areas are relevant to many actors on the global stage.

Compiled comprehensively from 1821 to 2013 with the guidance of Igor Ivanov (former Minister of Foreign Affairs of the Russian Federation), Russian Arctic laws were published by the Russian International Affairs Council (RIAC) as one of three volumes in a compendium entitled *The Arctic Region: Problems of International Cooperation* (Арктический регион: Проблемы международного сотрудничества). The resulting baseline of Russian laws for the Arctic, as defined in their entirety by an authoritative source, constitutes *Volume 3: Applicable Legal Sources* (Том 3. Применимые правовые источники) with Igor S. Ivanov as Chief Editor and Alexander N. Vylegzhanin as Volume Editor of the original Russian language version.

The story behind this book starts with the first international, interdisciplinary, and inclusive (holistic) dialogue between the North Atlantic Treaty Organization (NATO) and the Russian Federation regarding the Arctic Ocean, which was

co-convened by Profs. Paul Berkman and Alexander Vylegzhanin at the University of Cambridge in 2010. The Advanced Research Workshop on *Environmental Security in the Arctic Ocean* underwent formal approval by the full NATO-Russia Council, engaging 17 nations, including the 8 Arctic states, with representatives from the NATO Parliamentary Assembly and other international governmental bodies, as well as from national agencies, including 4 ministries of the Russian Federation with a special representative of the President. As memorialized in the Springer book with the workshop's name, that holistic dialogue laid the foundation for this book and many other opportunities to create synergies among research, leadership, and education for sustainable development of the Arctic.

Following the introduction by Alexander Vylegzhanin, this book emerged from an October 2016 meeting at RIAC between Igor Ivanov and Paul Berkman. At that meeting, Minister Ivanov presented the wrapped green three-volume compilation that had been published by RIAC in 2013 (referenced above), noting that the books had been published in 2015 in Chinese, but not yet in English. Prof. Berkman spontaneously offered to publish an English translation, recognizing that it could be a lengthy but important journey.

The chain of custody – as a fundamental feature of authenticity and evidence – starts with the original Russian Arctic laws going back to 1821. With oversight by Minister Ivanov, these laws were compiled comprehensively through 2013 by Prof. Vylegzhanin, who is Head of the International Law Programme at MGIMO (Moscow State Institute of International Relations), the only university supported by the Russian Ministry of Foreign Affairs. Minister Ivanov established the provenance of the authentic compilation in Russian, with Prof. Vylegzhanin providing continuity in the chain of custody for this English edition updated to 2018, resulting in this *Baseline of Russian Arctic Laws*. Legal sources added to this English edition since publication of the original Russian edition in 2013 include agreements, declarations, decrees, joint statements, and memoranda of understanding from the Russian Federation and with other states.

This book itself underscores the role of science diplomacy as an international, interdisciplinary, and inclusive (holistic) process, building common interests among allies and adversaries alike. To be holistic, science can be considered as the “study of change” (symbolized by the Greek letter Δ) across the natural sciences and social sciences, as well Indigenous knowledge, all of which reveals patterns and trends (albeit with different methodologies) that become bases for decisions. The associated diplomacy is about introducing options (without advocacy), which can be used or ignored explicitly, contributing to informed decisionmaking as an apex goal at global-local levels (Fig. 1).

The third coeditor of this book is Prof. Oran R. Young, who is a key collaborator in the *Arctic Options* and *Pan-Arctic Options* projects, which center on informed decisionmaking for sustainability with the support of national science agencies in the United States, the Russian Federation, Norway, France, China, and Canada (Table 1). These two projects are being intertwined from 2013 to 2020, sharing the subheading of *Holistic Integration for Arctic Coastal-Marine Sustainability* and providing the source of support for this book. with its English translations (involving assistance from Ms. Vera Savva) This trio also is coediting the companion three-

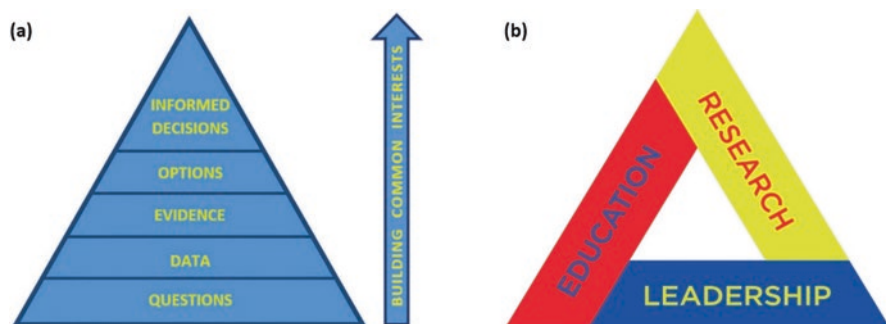


Fig. 1 The Greek letter delta (Δ) symbolizes science as the “study of change.” (a) The “Pyramid of Informed Decisionmaking:” (Berkman, P.A., Kullerud, L., Pope, A., Vylegzhanin, A.N. and Young, O.R. 2017 The Arctic Science Agreement propels science diplomacy. *Science* 358:596–598) (b) Like the three primary colors, the three synergistic building blocks of science diplomacy are research, leadership, and education in an international, interdisciplinary, and inclusive (holistic) process, involving informed decisionmaking to balance national interests and common interests for the benefit of all on Earth across generations

volume book series on *Informed Decisionmaking for Sustainability* that is being published by Springer, for which the *Baseline of Russian Arctic Laws* will provide a comprehensive dataset.

The use of this *Baseline of Russian Arctic Laws* as a dataset will help to answer questions (Fig. 1a) that originate from historical, cultural, institutional, commercial, military, scientific, and other interests. Examples of questions that can be addressed with the *Baseline of Russian Arctic Laws*, involving synergies of research, leadership, and education that contribute to informed decisionmaking (Fig. 1b), include:

- In a historical context, how is the Russian Federation orienting to the sovereign interests of other Arctic states?
- In a cultural context, how are Indigenous Arctic peoples being addressed by Russia today and historically?
- In an institutional context, where are the Arctic priorities, and how do agreements operate within the Russian Federation?
- In a commercial context, how might the “polar silk road” emerge along the Northern Sea Route?
- In a military context, what are the Russian strategies for stewardship to ensure peace, stability, and prosperity among the Arctic states?
- In a scientific context, what does the *Baseline of Russian Arctic Laws* reveal about sustainable development in the Arctic, balancing economic, environmental, and societal considerations across generations?

Answers to these questions will be of value to decisionmakers responsible for the development of governance mechanisms and built infrastructure as well as their coupling to achieve progress regarding informed decisionmaking for sustainability in the Arctic. One explicit feature of sustainability is a multi-generational perspective. The *Baseline of Russian Arctic Laws* provides a comprehensive chronology spanning nearly two centuries, allowing the reader to view decisions and decisionmaking circumstances impacting the evolution of the Arctic as a territory of dialogue.

Table 1 Intertwined projects involving “*Holistic Integration for Arctic Coastal-Marine Sustainability*”^a coordinated through the Science Diplomacy Center at Tufts University

	Project Name	
Aspects	<i>Arctic Options</i>	<i>Pan-Arctic Options</i>
Duration	2013–2019	2015–2020
Conceptual scope	Decision support-process (Fig. 1), integrating stakeholder perspectives, holistic evidence, and governance mechanisms to reveal options (without advocacy) that contribute to informed decisionmaking for sustainable development in the Arctic Ocean	
Geographic scope	Bering Strait Region (BeSR), Barents Sea Region (BaSR), and Arctic High Seas	Bering Strait Region (BeSR) and the Pan-Arctic (defined as the area north of the Arctic Circle)
Options	Governance mechanisms	Governance mechanisms and built infrastructure
Funding nations	The United States, France	The United States, Russian Federation, Norway, France, China, and Canada
Funding program	<i>ArcSEES</i> (Arctic Science, Engineering, and Education for Sustainability) www.nsf.gov/pubs/2012/nsf12553/nsf12553.htm	<i>Belmont Forum</i> (Arctic Observing and Research for Sustainability) www.belmontforum.org/announcements/2015/belmont-forum-announces-collaborative-research-awards-arctic-observing
Funding	\$2,000,000+	€1,000,000

***Goal** Design, develop, and demonstrate a holistic process to enhance the effectiveness of governance with built infrastructure for sustainable development in Arctic coastal-marine systems. **Objective 1** Aggregate Arctic coastal-marine data from the natural and social sciences in an efficient and flexible manner for diverse decisionmaking purposes. **Objective 2** Apply analytical tools and strategic planning concepts to reveal plausible scenarios about Arctic coastal-marine development over diverse spatial and temporal scales. **Objective 3** Generate infrastructure and policy options through international, interdisciplinary, and inclusive dialogues responding to Arctic coastal-marine opportunities and risks. **Objective 4** Share the options resulting from Objectives 1 to 3 with members of the policy community in view of current Arctic governance issues

With practical application of science diplomacy, decisionmakers will be able to discover patterns and trends embedded in this *Baseline of Russian Arctic Laws*, which is presented without interpretation or annotation so that subsequent assessments can begin from a position of objectivity. This *Baseline of Russian Arctic Laws* is important because it enhances transparency in our globally interconnected civilization, facilitating holistic dialogues that can help to balance national interests and common interests. The co-editors hope that such transparency will continue to evolve in the Arctic, as elsewhere on Earth, promoting cooperation, preventing conflict, and contributing to the fundamental goal of stability and peace reinforced with science diplomacy.

Medford, MA, USA
 Moscow, Russia
 Santa Barbara, CA, USA

Paul Arthur Berkman
 Alexander N. Vylegzhanin
 Oran R. Young

Legal Regime of the Arctic Region as Reflected in the Documents

The documents that are provided in this book reflect the outcomes of lawmaking by Russia and other Arctic states at the *bilateral and regional* levels, which have historically determined the *status* of the Arctic and the *contemporary legal regime of activities* in this region. Systematization of these documents and their publication is, undoubtedly, a breakthrough, and not only for the scientific community. The issue of the legal regime of the Arctic Ocean, and the Arctic polar area as a whole, is currently so relevant that heads of state and diplomats from various countries, high-ranking statespeople, legal experts, economists, historians, journalists, and representatives of business circles often express their views on it, though with diverse, sometimes contradictory, standpoints and contemplations. These statements may be placed between two points of the “juridical extremum.” Meanwhile, the *first* extreme viewpoint reflects the *concept of Arctic sectors*, which has been represented in Canadian and Soviet juridical literature since the beginning of the twentieth century, in its “strict” interpretation: the seabed of the Arctic Ocean and the superjacent waters and ice are qualified as being divided into five North polar sectors, within each of which a respective Arctic State exercises sovereign rights. According to the *other extreme legal position*, which is reflected even in some *NATO and EU documents*, the Arctic Ocean, in a legal sense, does not differ in any way from the Indian Ocean or other ice-free oceans: universal treaties on the Law of the Sea apply to the Arctic region without any adjustment. Among such treaties, the *UN Convention on the Law of the Sea* adopted in 1982 is considered by the EU and NATO to be the *framework for “managing the Arctic Ocean.”*

Below, it will be illustrated that *neither the first nor the second* extreme positions observed above *reflect the contemporary international law applicable to the Arctic*. But even without these theoretical clarifications, readers might come to the same conclusion after having familiarized themselves with the legal documents collected in this volume. These documents are persuasive of the *uniqueness of the historically developed legal position of the Arctic Ocean and the Arctic region* as a whole, of the fact that the Arctic is *not a legal loophole*, that the enormous volume of legal norms regulates relations between states regarding activities in the Arctic region, and that

the role of the Arctic States in the *creation* of such norms, their *fulfillment*, and *ensuring compliance* therewith is *decisive*.

The documents that have been collected in this book are of primary importance in the phenomenon of the law applicable to the Arctic, which is sometimes called, in legal literature, “the Arctic law.” These documents (of course, in abridged form) have been codified in four chapters of the book. In *Chap. 1, Treaties of Arctic States*, both *bilateral* and *regional* treaties have been provided. Their significance as *primary sources* of applicable international law is underlined by their priority position at the beginning of this treaty collection.

In *Chap. 2*, we exhibit international legal documents that are not treaties, including such important examples as the *Ilulissat Declaration of the five coastal States bordering on the Arctic Ocean* dated May 28, 2008. It would not be quite appropriate to qualify this document as “soft law” that is not legally binding, as some scholars suggest. The fact is that the Ilulissat Declaration of 2008 observes the legal status of the Arctic Ocean *as it already stands*, as it is already reflected in *international customary law*. And thus, it is legally *binding upon all states* and other subjects of international law. In the same chapter, we have included declarations adopted within the *Arctic Council*. It is clear that such a large number of environmental declarations, concluded within this high-level forum of the Arctic States, still do not *per se* create rights and obligations under international law, to the extent that there has been no respective intention on behalf of the states that have agreed to these declarations. As a result, non-compliance with norms stipulated in these declarations does not entail responsibility under international law. However, despite that role, such declarations should not be underestimated, because, first of all, they can signify *a stage in the creation of a new norm* of applicable international law.

In *Chap. 3*, we have collected extracts from *national legislative acts by Russia related to the Arctic*, Russia being the state with *the longest coast in the Arctic Ocean* (whereas coastal length does have *determinative* importance in the *Law of the Sea*). National legislation is not a source of international law, but its importance for case-specific international legal qualifications has been underlined on several occasions, including by the UN International Court of Justice. The majority of legislative acts included in this chapter of the book are in force, while a few of them have had tremendous historical legal significance.

Chapter 4 contains translations of key national political and legal documents of the foreign Arctic States – *Canada, the United States, Norway, Denmark, Iceland, Finland, and Sweden* – on the Arctic. In this regard, the reader will note that Canada has, at the legislative level, the most elaborate, consistent, and developed position in respect to the Arctic. The volume of political and legal documents of some of the Arctic States that outline their national strategies in respect to this region is quite large; in these documents, reference is also made to some of the less flattering characteristics of the condition in which Russia’s Arctic infrastructure finds itself “highly inadequate infrastructure” of the Northern Sea Route, “badly inadequate” navigation services, etc.; in these same documents, there are also nicely articulated claims to world leadership in the context of “systematic generation of knowledge” about the High North (Norway) or in specific areas of economic activity in the Arctic

(Finland). These key documents from foreign states on their Arctic policies are especially helpful reading for members of parliaments, for officials of executive state bodies, and for everyone who is engaged in the preparation of political and legal documents on the Arctic. In addition, disparities in regard to specific issues of legal qualification become apparent in these foreign documents – see, for example, the positions of the United States and Canada in respect to the *status of the Northwest Passage* (along the Canadian coast).

In general, this collection of documents shows the *legal identity of the Arctic region*. Along with that, it includes *universal* treaties that apply to the regulation of relations between states irrespective of their regional identities, for example, the UN Charter, the UN Convention on the Law of the Sea, etc. Such an approach is understandable: a considerable amount of comprehensive, even voluminous, collections of documents on general international law that objectively show universal levels of regulation of international relations have already been published – in the United States, Great Britain, and Canada, in other Arctic countries, and in Russia as well.¹ Besides, some regional, bilateral, and national legislative documents presented in this collection refer to universal treaties, including the UN Convention on the Law of the Sea from 1982. In view of that, in the process of reading this collection, an initial issue arises about the *interrelationship* between the regional, bilateral level of international regulation in the Arctic and that of universal treaties.

Correlation Between Regional Legal Identity of the Arctic and Universal Treaty Regulation

One of the judges of the International Tribunal for the Law of the Sea, in a report presented at the 2010 International Conference in Berlin on the political and legal status of the Arctic, observed that this unique region may “turn out to be a laboratory for a new international legal regime,” with the judge underlining the word “new.”² Such an approach highlights some of the discord surrounding the *Ilulissat Declaration*, dated May 28, 2008, which was adopted at the regional level – by five coastal States bordering the Arctic Ocean, which provided, in particular, that these states saw “no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.”³ International lawyers offer various viewpoints on the

¹We will name just a few of such anthologies that have been published: International law in selected documents/Chief Edit. Durdenevsky V. N. M., 1955; International law in force in three volumes/Content by Prof. Kolosov M. Yu. and Prof. Krivchikova E.S. M., 1997–1999; International law in force (selected documents) / Chief Edit. Kolosov M. Yu., Krivchikova E.S. M., 2002; *Blatova N.T., Melkov G.M.* International law: Collection of documents. Textbook. M., 2009.

²Wolfrum R. The Arctic in the Context of International Law/New Chances and New Responsibilities in the Arctic Region/Eds. Witschel, Winkelmann, Tiroch, Wolfrum. Berlin, 2010, p. 37.

³Ilulissat Declaration, Arctic Ocean Conference, Greenland, May 27–29, 2008. URL: <http://arctic-council.org/filearchive/Ilulissat-declaration.pdf> (June 16, 2009).

evaluation of international legal sources and legislative documents applicable to state activities in the Arctic and on ascertainment of the direction in which applicable law will develop.⁴ Yet, more tessellated is the picture of political and legal evaluations of the growth of economic activity of the states in the Arctic Ocean against the background of environmental security.⁵

As already observed in 1931, it is difficult to characterize the legal regime of the Arctic region in a way that raises no objections.⁶ This can be reiterated as of the present day as well, all the more so in the current conditions under which economic competitiveness between states in the Arctic increases, as the reasons for objections may be yet more diverse, caused, obviously, by more than simply different understandings of international law applicable to the region.

The object of various legal opinions – depending on the emphasis on regional, bilateral treaties or universal ones – is, first and foremost, the *waters of the Arctic Ocean and its ice-covered areas*; as will be shown below, there are still different evaluations of their legal regime, though not so drastically different as in the past. A more extensively contentious issue that awaits a legally sound resolution concerns the qualification of the legal regime of *submerged and subglacial areas* of this *smallest-in-size, coldest, and shallowest* ocean on our Earth.⁷ In selecting the correct legal evaluation, one must make a decision as to whether, from the viewpoint of contemporary international law, the seabed of the Arctic Ocean beyond the 200-mile exclusive economic zones of the five Arctic Coastal States represents only *their continental shelf*, which is subject to delimitation between them, or whether, in the High Arctic seabed, each of these States is to create, at the expense of its own shelf, an *international seabed – the area of “common heritage of mankind”* – in accordance with one of the articles of a treaty in which not all of the Arctic States participate.⁸

⁴See, for example, *Taksoe-Jensen P.* An International Governance Framework for the Arctic: Challenges for International Public Law/New Chances and New Responsibilities in the Arctic Region... pp. 147–155; *Heidar T. H.* The Legal Regime of the Arctic Ocean/New Chances and New Responsibilities in the Arctic Region... pp. 157–162; *Winkler T.* An International Governance Framework for the Arctic: Challenges for International Public Law – A Danish Perspective/New Chances and New Responsibilities in the Arctic Region... pp. 163–167; *Kolodkin A.L.* Interview to newspaper “Izvestiya” on April 16, 2009 (*In Russian*).

⁵Environmental Security in the Arctic Ocean. University of Cambridge, UK. October 13–15, 2010, p. 264.

⁶*Smedal, G.* Acquisition of Sovereignty over Polar Areas, Oslo, translated from Norwegian, 1931, p. 143.

⁷In scientific literature, these specifics of the Arctic Ocean are illustrated by the following data: its area makes up 2.8% of the Earth’s total surface, whereas the area of the Pacific Ocean is more than 30% of the Earth’s total surface, the area of the Atlantic Ocean is more than 20.8%, and the area of the Indian Ocean is more than 14%. The average depth of the Arctic Ocean is 1050m, whereas the average depth of the Pacific Ocean is 4300m, the Atlantic Ocean 3300m, and the Indian Ocean 3900m. Protection of the Arctic Marine Environmental (RAME), “Arctic Marine Shipping Assessment Report 2009”. Tromsø. Arctic Council. 2009.

⁸This issue could also be formulated in strictly legal terminology: whether it is only Article 76 of the 1982 Convention (regarding delineation between the continental shelf of a coastal state and the area of “common heritage of mankind”) that applies to the Arctic continental shelf.

For *Russian science of international law*, the Arctic issue is an “old” issue, which was extensively investigated by Professor V.L. Lakhtine at the beginning of the twentieth century⁹ and developed by succeeding national schools of international lawyers.¹⁰ In the meantime, this issue is currently being reconsidered not only in the context of those climatic, economic changes that are signified by *contemporary processes in the Arctic region*, but also *taking into account* a multitude of *new applicable legal sources*, the most significant of which are presented in the edition offered – along with the fundamental legal acts of the nineteenth to twentieth centuries that are still in force and which provide the historically established basis for the legal order in the Arctic.

In the most generic terms, the conclusion by V.L. Lakhtine remains correct, in that *treaty basis* and the *legislative practice of the Arctic States* play a leading role in determining the legal status of the Arctic, whereas *universal treaties* apply, *first of all, in light of references* (incorporated therein) *to regional arrangements and international customary law*.

Arctic States and the Pivotal Importance of Their Legal Practice

As observed above, the role of the Arctic States has been and still is determinative in the establishment of the legal status of the Arctic Ocean. All of the global mechanisms created by the UN Convention on the Law of the Sea of 1982 (hereinafter also referred to as the “1982 Convention”) “do not work” – and not only due to the immense differences between the ice-covered areas of the North and the warm waters of the Indian Ocean, but also because one of the five Arctic Coastal States is not a party to the 1982 Convention and does not fulfill, for example, the obligations set out in Article 76 of this Convention concerning the delineation of its own Arctic shelf. Consequently, if one Arctic State does not fulfill such limitations, whereas another does, then the result of such a delineation of limits of the Arctic shelf will not be equitable.¹¹ Contrastingly, a *regional approach* would achieve an *equitable* result in this case. The Minister of Foreign Affairs of the Russian Federation drew attention to the fact that “strengthening the regional level of management in conditions where universal mechanisms do not work serves as a safety net.”¹²

⁹Lachin, V.L. Rights on the North Polar areas. Izdanie Litizdata Narodnogo Komissariata po Inostrannum Delam. M., 1928. 48 p (*In Russian*).

¹⁰On that, see Digest of International Law in six volumes/Chief Edit. Kozhevnikov F.I., Koretsky V.M. and others. M., 1967. V. III., p. 129 et seq. (*In Russian*); Contemporary International Law of the Sea. Regime of waters and seabed of the World Ocean/Man. edit. Lazarev M.I. M., 1974, pp. 184–190 (*In Russian*).

¹¹For more details on that, see Proposals under Roadmap for Development of International Legal Basics of Cooperation in the Arctic/Chief Edit. Ivanov I.S.; composite author. M., 2013, pp. 4–6 (*In Russian*).

¹²[Electronic resource]. Available at: www.mgimo.ru/news/guests/index.phtml (*In Russian*).

The term “Arctic States” denotes a group of *eight* States, the *territories* of which are *crossed by the Arctic Circle*. In this sense, the following States belong to the category of the Arctic States: *Canada, the United States (due to the Alaska Peninsula and adjacent islands), Norway, Denmark (due to Greenland), Finland, Iceland, Russia and Sweden*. Such a framework is encapsulated, for example, in the text of the *Declaration on the Protection of the Arctic Environment* of 1991, which articulates the *Arctic Environmental Protection Strategy*.¹³ From a historical perspective of the national legal practices of the *Arctic States*, their *national legislations* have laid the foundation for the legal regime of the Arctic. The achievements of Russia, the State with the longest coast along the Arctic Ocean, consist not only in the discovery of many Arctic territories, in their geographical and legal designations, and in their original acquisition but also in the economic development of the Northern coastal and sea areas along the Northern Sea Route. Many Arctic strategies (included in this collection) of States bordering Russia in this region are mindful of the merits of their subjects or citizens in discovering or exploring specific Arctic territories. Similar actions of subjects of the Russian Empire, in accordance with the international law from the seventeenth to nineteenth centuries, established sufficient title to extend sovereignty of the Russian State over remote Northern areas. Nevertheless, edicts of the Russian Tsar were issued even earlier – in 1616–1620 – and such edicts reserved the exclusive rights of Russia in some areas of the Arctic. In 1821, an edict of Emperor Alexander I to the Senate entitled “Concerning enforcement of the ordinance on limits of navigation and order for interaction in maritime affairs along the coasts of the East Siberia, North-West America and the Aleutian Islands, the Kuril Islands and others” was issued (its text is included in this book). § 1 of the edict declares: “Conduct of trade, whaling and fishing, as well as any industry on the islands, at ports and bays and generally along the whole Northwest coast of America, from the Bering Strait until 51 degrees north latitude, as well as on the Aleutian Islands and eastern coast of Siberia; and also including the Kuril Islands, that is, beginning from the same Bering Strait up to the South cape of Urup Island... is provided for use by Russian subjects only.”¹⁴ The rights of Russia in the Northern territories and adjacent seas are reflected in the Russian-Swedish Treaties of 1806 and 1826, the Russian-American Convention of 1824,¹⁵ and the Russian-British Convention of 1825, the text of which is also reprinted in this edition. Having theo-

¹³The book entitled *Environmental Security in the Arctic Ocean*, which was published in London, schematically presents a “Chronology of framework basics of the Arctic policy from the end of the Cold War up to the present time,” and the first occasion on which it was observed was a speech by President Gorbachev in Murmansk in 1987 that called for “cooperation of Arctic States, Europe and of the entire international community” in utilizing the potential of this region (*Berkman P. A. Environmental Security in the Arctic Ocean. Promoting Co-operation and Preventing Conflict*. Royall United Service Institute. Whitehall Paper 75. 2010, p. 25).

¹⁴The text is reprinted according to Complete Collection of Laws of the Russian Empire from 1649. Volume XXXVII. 1820–1821. Printed in the Typography of the Second Section of His Imperial Majesty’s Own Chancellery, 1830, pp. 903–904 (*In Russian*).

¹⁵*Efendiev O.F. Arctic waters/Contemporary international law of the sea. Regime of waters and seabed of the World ocean/Chief Edit. Lazarev M.I. M., 1974, p. 184 (In Russian).*

retically scrutinized legally binding documents that are descriptive of the legal regime of the Arctic, Professor Lakhtine drew attention to the “political and economic importance of the North Polar areas” and stated that, for some states, these “areas became a new potential arena for a clash of interests.”¹⁶ He explained this by noting the fact that, in the High Polar areas, “there could not exist any economic interests until modern aviation and aeronautic opportunities emerged.”¹⁷ But, as soon as such opportunities came into being (represented by the flight of a mono-plane over the North Pole by an American aviation officer, R.E. Byrd, and, a short while later, of the airship Norge by R. Amundsen, a Norwegian, and U. Nobile, an Italian), outlooks for “utilization of the North Polar area as an air bridge between most remote continents became clear.” It was these developments, Professor Lakhtine continues, that “triggered preparation of projects concerning the creation of a transarctic air connection,” which exacerbated interstate competitiveness.¹⁸ As is well known, at present, such a transarctic air connection has been established by the states and is operating successfully, and air flights over polar areas do not as such present any unresolved issue of international law.

Another issue that arises in the process of reading this collection of documents is whether Russia, under contemporary international law, retains sovereignty over all lands, including islands, located within its Arctic sector, stipulated in the Russian-American Convention of 1867 (in the east) and the Decree of the Presidium of the Central Executive Committee of the USSR of 1926 (in the west).

Sovereignty of Russia and Canada over Lands and Islands, Including Those Not Yet Discovered, Within Their Arctic Sectors

When Professor Lakhtine outlines the “legal status of the North Polar areas,” he observes, in the first place, the *lack of any objections* by non-Arctic (“nonpolar”) states in respect to the *sovereignty* of a respective *Arctic state over “adjacent” lands and islands*, including those *not yet discovered*, and a lack of “sufficient practical interest of non-Polar states with regard to those lands and islands, in a situation in which there is quite significant practical interest” of the Arctic Coastal States, have “created the status which begins to flourish now. As a matter of fact, the sovereignty of the respective coastal polar states extended over lands and islands of the Arctic Ocean, although these states did not perform effective occupation over them, as this

¹⁶ *Lakhtine V.L. Referred writings*, pp. 12–13 (*In Russian*).

¹⁷ *Ibid.* P. 17. This is illustrated by the facts. Robert Peary, an American explorer, reached the North Pole after 429 days and planted the American flag at the Pole. When he managed to wire to President Taft that the “North Pole was at his disposal,” Taft replied that he “did not know exactly what he could do with” such an “interesting and generous gift.” (*Lakhtine V.L. Referred writings*, pp. 5–7).

¹⁸ *Ibid.*, pp. 8–17 (*In Russian*).

was physically impossible.”¹⁹ For a long time, the limits of the “gravitation areas” of Arctic Coastal States, or their “polar sectors” *in the Arctic*, proposed by Lakhtine V.L., were perceived favorably in international legal doctrine. Norwegian scholar G. Smedal, referring to the conclusions of V. Lakhtine, has not only generally associated himself with those conclusions but has also drawn upon additional arguments to support these statements, in particular, from Canadian practice. He writes that Canada holds that it possesses rights to the whole archipelago located between its Northern coast and the North Pole.²⁰ British analyst H. Steel, who has investigated how the control functions of the Canadian authority have expanded further to the North, writes about the peaceful and fascinating way that Canada has absorbed these Arctic and Subarctic areas, and also does not, as a matter of law, draw any difference between ice overland and ice-covered maritime areas.²¹ According to V. Lakhtine, “most uncontroversial are the limits of the American north polar sector ... established by the 1825 and 1867 Conventions.”²² However, he neither analyzes, nor does he cite, the texts of these conventions. Meanwhile, these treaties remain *legally effective, even as of today*, and they deserve analysis, especially in light of contemporary evaluations of the legal status of the Arctic, the Arctic continental shelf, and its delimitation between the USSR and the United States in 1990 along the line provided for in the 1867 Convention.²³ Most precisely, the 1825 and 1867 Conventions’ opening section “Bilateral treaties of the Arctic States” contains the key component of the contemporary legal regime of the Arctic that the reader should know.

Article III of the Anglo-Russian “Convention concerning the limits of their respective possessions on the northwest coast of America” (formulated in Saint Petersburg in 1825) stipulates as follows: “The line of demarcation between the Possessions of the High Contracting Parties ... shall be drawn in the following manner...” (this is followed by a detailed description of that line of demarcation in its southern part). As far as the northern part is concerned, the convention describes that line of demarcation as going *along the meridian in direction of the North Pole*: “And, finally, from the said point of intersection, the said Meridian Line of the 141st Degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British Possessions ...” That means that the Convention of 1825 *was the first* to introduce, at the treaty level, the term “Polar possessions” *of the Russian Empire and of the United Kingdom* (for the Dominion of Canada) *in the*

¹⁹ Ibid. The same author also articulated this thought in this way: “Irrespective of nationality, these lands currently belong to the polar states within the gravity of which these islands are located, irrespective of the factor of effective occupation.” Ibid, p. 29 (*In Russian*).

²⁰ Smedal G. Op. cit., p. 8.

²¹ Steel H. Policing the Arctic. Jarrolds Publishers. L., 1936, p. 9.

²² Lakhtine V.L. Referred writings. p. 38 (*In Russian*).

²³ For scientific discussion regarding the law applicable to specification of the legal regime of the Arctic continental shelf, see, for example, International courts: current issues of international law/ Intercollegiate collection of academic papers. № 2 (6)/Chief Edit. Ignatenko G.V., Lazutin L.A. Ekaterinburg, 2010. pp. 23–42; MGIMO-University Bulletin. 2010. № 1 (10). pp. 104–113 (*In Russian*).

Arctic; in that same treaty, *the principle of separation of jurisdiction of the two neighboring states according to the sectoral (meridian) line directing to the North Pole was denoted for the first time ever*. That said, it should be noted that, in demarcating the “respective possessions” of Russia and Great Britain, the intention of the Contracting States was that not only the *land* but also the *adjacent sea areas*, including the *ice-covered ones*, should be delimited. The meridian demarcation line moving up to the North Pole was recognized by the Contracting States as *suitable*, being the one that would ensure *simplicity* in the process of *practical governance* over the vast-in-length line demarcating the polar possessions of the two States, as later observed by the foreign scholar.²⁴

Readers will also familiarize themselves with *the second treaty delimitation* between the Arctic Coastal States of their respective jurisdictions *along the meridian directing to the North Pole* – the Russian-American Convention of 1867. Its full title is as follows: “Treaty concerning the cession of the Russian possessions in North America by His Majesty the Emperor of all the Russias to the United States of America,” formulated in Washington on April 18 (30), 1867. Under this treaty, the delimitation line was drawn to the east of which all lands were transferred by Russia in favor of the United States and to the west of which they remained under the sovereignty of Russia. By implication of the 1867 Convention, Russia ceded to the United States “all the rights, franchises, and privileges” in all of the said “territory or dominion, and appurtenances thereto.” “The cession of territory and dominion herein made is hereby declared to be free and unencumbered by any reservations... The cession hereby made, conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto” (Article VI). Article I refers to the *meridian (sector) line* specified in the Anglo-Russian Convention of 1825: “... the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28 – 16, 1825...”. The 1867 Treaty sets forth that the said line passes in the direction of the North Pole through the meridian point that is located in the Bering Strait “midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen ocean” (*et remonte en ligne directe, sans limitation, vers le Nord jusqu’a ce qu’elle se perde dans la mer Glaciale*) (Article I).²⁵ V. Lakhtine and G. Smedal, in their observations, assume that *the territory* conveyed under the 1867 Convention is not limited by *the land*. Both *the land* (including islands, both those demarcated on the

²⁴G. Smedal writes that the advantage of the “sector principle” is its simplicity, for the purpose of delimitation of jurisdiction in the Arctic between neighboring states (Smedal G. Op. cit. p. 12).

²⁵The 1867 Convention was signed, on behalf of Russia, by Eduard de Stoeckl, the Privy Councillor of His Majesty the Emperor of all Russia, and, on behalf of the United States, by William H. Seward, Secretary of State. The text of the treaty (in Russian and French) is cited by Collection of border treaties concluded between Russia and neighboring states. Saint Petersburg, 1891. pp. 299–303 (*In Russian*). See also Ovchinnikov I.A. Collection of effective treaties, conventions, and other international acts related to military navigation. Pg., 1914. p. 82 et seq. (*In Russian*).

maps of that period and those not yet discovered) and the *rights applicable in the maritime areas* (including the *ice-covered ones*) that are adjacent to the land are ceded. The ceded territory, by its geometrical form and in the legal meaning of the agreed-upon expression of the wills of the parties, presented *the first Arctic sector* to be clearly *defined in a treaty*.

To conclude, both under the 1825 Convention and the 1867 Convention, the referenced *sector lines* initially served precisely for *interstate delimitation between the Arctic neighboring states of their rights* on “polar possessions.” However, these polar possessions *were not declared as territory placed under the sovereignty* of the respective state. The first State to proclaim *sectoral limits of its rights* in the Arctic in a National Law was *Canada*. The French Professor Hartingh F. writes that the Canadian sector achieved a triumphal victory in 1923.²⁶ However, claims to the Arctic sector of Canada had been made earlier – as early as 1907; it is Pascal Poirier, a Canadian senator, who has legally proved that the sector principle in the delimitation of the Arctic areas would avoid “difficulties,” because each state bordering the Arctic Ocean would “extend its possessions (‘ses possessions’) up to the north pole (‘jusqu’au pôle nord’).”²⁷ Yet, in earlier maps issued by the Canadian Ministry, the limits of the Arctic sector passed from the westernmost and easternmost tips of the northern coast of Canada along the meridians 60 and 141 west longitude up to where they meet at the point of the North Pole.²⁸ In order to anchor these rights, declarations at the governmental level followed. Under the amendments adopted in 1925 to the well-known Northwest Territories Act, Canada legally determined that an appropriate permit from the Canadian authorities was required to conduct activities within the Canadian Arctic sector, including for the purpose of exploration and exploitation of natural resources.²⁹ In 1926, Canadian legislation provided for establishment of the “Arctic Islands Preserve”; in accordance with the legislation, the northern limits of this reserve coincide with the *limits of the Arctic sector of Canada*. In May 1929, the limits of its *Arctic sector* were once and again stipulated in a Canadian legislative act.³⁰

The second state to confirm the meridian limits of its *Arctic sector at the level of national laws* was the USSR (it should be reiterated that, earlier, the Russian Empire was the first to have signified, *at the treaty level*, sectoral limits in delimitation of its

²⁶ Hartingh F. de. Les conceptions soviétiques du droit de la mer. Paris, 1960. p. 39.

²⁷ Cited by UN ILC. Documents of the Second Session Including the Report of the Commission to the General Assembly. Note 34. p. 107.

²⁸ Reid I. The Canadian Claim to Sovereignty over the Waters of the Arctic. 12 Canadian Yearbook of International Law, III, 1974 (cited by: Barsegov Yu. G., Mogilevkin I. M., etc. Arctic: interests of Russia and international conditions for their realization. M.: Science, 2002. p. 29 (*In Russian*)).

²⁹ British North America Acts 1867–1907. Printed by C. H. Parmelee, Printer of the King’s Most Excellent Majesty. 1913. pp. 1–2; p. 209; Pharand D. Canada’s Arctic Waters in International Law. Cambridge, 1988. pp. 45–50.

³⁰ Timchenko L. Quo Vadis, Arcticum? The International Law Regime of the Arctic and Trends in its Development. Kharkiv: Osnova, 1996. p. 73. See also Nikolaev A. N., Bunik I. V. International legal substantiation for rights of Canada in its Arctic sector/Moscow Journal of International Law. 2007. № 1. pp. 12–14 (*In Russian*).

polar possessions in the Arctic). As far as national legislative acts of Russia are concerned, those, as shown above, legally enshrined additional sovereignty of the Russian State over the polar land areas, including the Arctic islands along the Russian coast in the seas of the Arctic Ocean (diplomatic note of the Minister of Foreign Affairs of Russia of 1916), as well as over all “bays, inlets, harbours of the Russian coast of the Arctic Ocean.”³¹ This legal position was also supported by the Soviet government. So, in 1921, the Council of People’s Commissars of the USSR adopted the Decree “On protection of fish and animal grounds in the Arctic Ocean and the White Sea.”³² The decree set forth that “only Russian citizens shall enjoy the right to carry out fishery and hunting, under special written permits” (Article 2). State enforcement measures were provided. In 1924, the People’s Commissariat for Foreign Affairs addressed a *memorandum* to the diplomatic missions of several states, in which it noted occasions on which foreign citizens acted in breach of the sovereign rights of the USSR along the northern coast of Siberia. By that memorandum, the *legal force of the 1916 Diplomatic Note of the Russian Government* regarding appertinment of the claimed Arctic territories was confirmed by the USSR. In a memorandum from 1924, attention was drawn “to all powers, the state or private explorers and ships of which have visited or might visit the said waters” to the necessity “of averting a breach by their citizens of the USSR’s sovereignty over these territories.”

On April 15, 1926, the Presidium of the Central Executive Committee of the USSR adopted the *Decree* “On the Declaration of lands and islands located in the Arctic Ocean the territory of the USSR.”³³ Under the 1926 Decree, “all lands and islands which are already discovered or might be discovered in the future and which by the moment of the present decree do not constitute a territory of any foreign states recognized by the Government of the Union of Soviet Socialist Republics, situated in the Arctic Ocean northwards of the coast of the Union of Soviet Socialist Republics up to the North Pole” within the limits between the meridians passing along the easternmost and westernmost tips of territory of the country, were legally qualified as the territory of the USSR. This regime was also conceived to be applicable to those islands, rocks, etc., which could emerge in the future as a result of geological development of the Earth. Neither the Canadian Law of 1925 (on Canadian Arctic sector) nor the USSR 1926 Decree (on the USSR Arctic sector) caused any protests.

The term “lands and islands” used in the 1926 Decree was construed by scholars in varying ways. Under the decree, within its context, the words “islands” and “lands” did not mean *lands of a continent*, and the conjunction “and” between those

³¹ Instructions to a military cruiser entrusted to safeguard maritime fishing along the northern coast of the European part of Russia. 1893. With hand-written corrections made by the Emperor of Russia, 1894 (personal archive of the author of the introductory article) (*In Russian*).

³² Collected Acts of the RSFSR. 1921. № 49. Art. 259. pp. 351–352 (*In Russian*).

³³ Reference to Collected Acts of the USSR. 1926. № 32. Art. 203 (*In Russian*), text of this Decree has been reprinted in this edition according to: International law in selected documents (volume 1)/ Chief Edit. Durdenevsky V.N. M., 1955. p. 210 (*In Russian*). Hereinafter also referred to as “1926 Decree”.

words proved that, from the legal point of view, “islands” are not “lands.” But, in their ordinary meaning, islands *are* also lands. Was the intention of the Central Executive Committee (CEC) of the USSR then that not only the islands within the Arctic sector but also the “lands,” for example, *submerged*, *sub-ice*, would also adhere to the territory of the State? Or was the CEC, by the word “lands,” denoting those islands, in whose name the actual word “land” appears: “Frantz Josef Land,” “North Land” (“Severnaya Zemlya”), etc.? Professor E. Korovin construed this decree in this way: it declares the powers of the State within the defined Arctic sector over (a) islands, (b) agglomerate ice, and (c) maritime areas not covered by ice.³⁴ According to L. Timchenko, in the process of construing this legal act, one may assume that the sovereignty of each state extends *not only over surface areas* of the respective Arctic sector but that such sovereignty “may even be extended over air space over it.”³⁵ The construction of the 1926 Decree proposed by V. Lakhtine is consistent with his description of the legal regime of the Arctic areas presented above. According to this description, the sovereignty of each Arctic coastal state not only extends over the surface areas of the respective Arctic sector, but such sovereignty “may also be extended over the air space above it.” Meanwhile, at the present moment, *none of the Arctic States claim sovereignty over the air space* within their *entire* Arctic sector, either legally defined (such as in the case of Canada, the United States, and Russia) or any eventual one (such as in the case of Denmark and Norway). Sovereignty is exercised over *part* of such air space, namely, over *the state territory*. Foreign international legal literature suggests, in general, that the term “land” used in the Canadian and Soviet (Russian) legislation on Arctic sectors should be understood not as “ice rocks,” not as air space, but only as *sub-ice* and *submerged lands* (i.e., including the *continental shelf*) within the defined polar sector,³⁶ which appears to be more logical. In this context, the following issue

³⁴ On this, see Timchenko L. Op. cit. P. 76 (*In Russian*). Professor Korovin E.A., when analyzing the Decree of the Presidium of the Central Executive Committee of the USSR of 1926, observes that it should be construed “in such a way that ‘lands and islands’ encompass both ice rocks and waters surrounding them, because, construed otherwise, one would have to think that the polar sector adjacent to the USSR is to be qualified as open sea, with all ensuing consequences.” In reply to this, V.L. Lakhtine notes: “Still, one should observe the silence of normative law on this issue.” Lakhtine V.L. Referred writings. p. 38 (*In Russian*).

³⁵ Ibid. According to V.L. Lakhtine, areas within an Arctic sector must be subjected to powers of the polar states “as per their gravity sectors.” By that, the author refers to the legal formula of “territorial propinquity,” developed by the American scholars H. Halleck and D. Miller. Lakhtine V.L. Referred writings. p. 29 (*In Russian*).

³⁶ Canadian Foreign Policy and the Law of the Sea/Eds. B. Johnson and M. W. Zacher. University of British Columbia Press. Vancouver, 1977. P. 42. However, the scientific literature is familiar with a contradictory statement made by a Canadian official: as declared by the Minister of Northern Affairs and National Resources to the House of Commons of the Canadian Parliament in 1956, “We have never subscribed to the sector theory in application to the ice. We are content that our sovereignty exists over all the Arctic Islands... To our mind, the sea, be it frozen or in its natural liquid state, is the sea; and our sovereignty exists over the lands and over our territorial waters” (Digest of International Law). Prepared under the direction of M. M. Whiteman. Washington, 1963. Vol. 2. pp. 1267–1268. Cited by: Savaskov P.V. Legal regime of the Arctic/Arctic: zone of peace and cooperation. M.: Institute of World Economy and International Relations of the Russian Academy of Sciences, 2011. p. 28 (*In Russian*).

remains topical when reading this book – concerning the contemporary legal qualification of maritime areas, including ice-covered ones, within an Arctic sector.

Legal Regime of Ice and Waters Within Defined Arctic Sectors

The legal regime of these areas was described by Professor Lakhtine separately for each of the following categories: (1) *agglomerate ice* (“ice fields, ice pileup, floating ice”) and (2) the *remaining Arctic waters*, “free from ice cover.” As far as *the former* is concerned, the author, in the first place, reminds us of concepts offered by foreign scholars regarding taking consideration of the specifics of ice fields.³⁷ When the scholar discusses repeated occurrences of “utilization of non-moving ice fields for the purpose of overland travel” and argues that “technically, it is quite possible to use them as intermediate air stations and landing facilities,” he reaches the following conclusion: “Agglomerate ice, even if relatively stationary, must, since it can, as a matter of fact, be used for socially useful purposes (for needs of fishing or hunting; for needs of air communication, etc.), be equated in its legal status to polar territories, and the sovereignty of polar states must extend over it, in accordance with their gravity sectors.” But *floating ice* “must share the legal fate of polar seas.” This *second category of the Arctic Oceans areas* was also conceived by V. Lakhtine in light of its physical and legal diversity. He finds it easiest to resolve issues of defining the status of *internal waters*, including historic waters, as well as *territorial seas*. It is clear that these areas lie *under the sovereignty* of a respective Arctic state. And, today, this approach does not raise complicated legal discussions (although there are issues of defining *accurate limits of historical waters* in the Arctic).³⁸ At present, no extraordinary complexity is associated with determining the legal regime of *200-mile exclusive economic zones*, in which *each of the five Arctic States*, from the coast to the Arctic Ocean, has, respectively, *sovereign rights and jurisdiction* under contemporary international law. But both at the beginning of the twentieth century and nowadays, it has been more of a problem, against the background of current legal practice and applicable law, to articulate the legal regime of those areas of the Arctic Ocean that are located *beyond jurisdiction* of Arctic Coastal States. V. Lakhtine has suggested that this issue should be resolved as follows:

³⁷ For example, in accordance with the concept proposed by Prof. Vaultrin, floating ice must be subjected to the regime of open seas in the same way as polar seas, whereas non-moving ice may be subject to possession besides territory; as per Prof. Foshil, ice, being, by its physical features, substantially different from both water and dry land, may be subject only to limited utilization in space and time; Prof. Breitfus holds that sovereignty of polar states must extend, within sectors, not only to dry land but also to ice-covered seas surrounding those lands and islands, to an extent to be accurately determined in accordance with the procedure established internationally (*Lakhtine V.L. Referred writings*. p. 32 (*In Russian*)).

³⁸ See International legal qualification of maritime areas as historic waters (theory and practice of states)/Chief Edit. Vylegzhanin A. N. M.: MGIMO; Institute of international research, 2012. pp. 49–55 (*In Russian*).

- Maritime areas “covered by relatively non-moving substantial agglomerate ice” must be equated, in their legal status, to polar territories, and the “sovereignty” of the respective Arctic coastal States must “extend over them as per their gravity sectors.”
- All remaining waters, “free from ice cover,” must be subjected to “at least limited sovereignty of polar states within their respective gravity sectors.” The author sees these limitations in regard to the obligation of a respective Arctic state to ensure “free passage to all ships” and “permit hunting and fishing, subject to regulation and compliance.”³⁹

In domestic international legal literature, prevailing opinion has been and still is that the referenced 1926 Decree of the Presidium of the CEC of the USSR reinforces the sovereignty of the State *only over islands and lands* within the Arctic sector, *but not over maritime waters*. In foreign literature, however, in 1986, scholars reached a conclusion on the applicability of the 1926 Decree *to all maritime areas* lying within the sector defined therein, i.e., *both to ice and water areas*: “An Exhibit to the Soviet Notice to mariners entitled ‘Legislative acts and rules adopted by the USSR state bodies on navigation issues,’ contained reprinted text of the 1926 Decree. Inclusion of the 1926 Decree, based on sector principle, in the context of a legislative act on law of the sea ... – refers to the fact that the sector still remains a basis in the Soviet law of the sea.”⁴⁰

Pursuant to the *Decree of the CEC of the USSR dated June 27, 1935, “Concerning unified geographic names of the Soviet Arctic,”* the names and geographical limits of specific parts of the Arctic Oceans, including the Pechora Sea, Kara Sea, Laptev Sea, and East Siberian Sea, were provided; meanwhile, those seas were referred to as being “adjacent to the USSR territory.”⁴¹ Professor V. Kulebyakin, having summarized the theoretical foundation for the rights of the Arctic States in their respective sectors, stated the following: “It is widely recognized by international lawyers that the North Pole and its surrounding seas are completely different from other oceans and seas, and represent a special case with unique features from the viewpoint of legal regulation. The main feature that distinguishes the Arctic Ocean from other oceans consists in the fact that its territory, except some areas, is permanently, or during most of the year, covered by ice. It is precisely a combination of historical, economic, political, geographical, ecologic and other factors that affords a conclusion that the Arctic maritime areas may not be considered under the same perspec-

³⁹ Ibid. pp. 33–34.

⁴⁰ *Franckx E.* Nature Protection in the Arctic: Recent Soviet Legislation (1992) 41 ICQL 366. pp. 372–373.

⁴¹ Not dwelling specifically on such an important issue as historic waters in the Arctic, we will merely cite the following: “The Soviet doctrine of international law subsumes bay-type seas – the Kara Sea, Laptev Sea, East Siberian and Chukotsk Sea, which are historical waterways of our country, have been explored through efforts of Russian and Soviet sailors throughout a long period in history and have overarching importance for the economy of the USSR, its defense and the nature protection of this area, – to internal waters of the USSR” (International law/Chief Edit. Kozhevnikov F.I. M., 1987). p. 180 (In Russian).

tive as maritime areas generally.”⁴² 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.”⁴³ 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. It is stated that “the Arctic States, being guided by their sovereignty and other fundamental international legal principles, must and may adopt respective legislative acts concerning the regime of their Arctic sectors without taking into account the positions of other states.”⁴⁴ It is noted as follows: “The said sector division of the Arctic, at the moment of its realization, did not raise any objections from other non-Arctic States and was de-facto accepted.”⁴⁵

Today, however, the key question is: to what degree was this legal status of the Arctic, created over centuries, modified through adoption of the UN Convention on the Law of the Sea in 1982 and its subsequent entry into force for four out of the five Arctic Coastal States?

The 1982 Convention: New Basis for Management of the Arctic Ocean (Position of the EU and NATO) or a Component of “Extensive International Legal Framework” (the Ilulissat Declaration of 2008)?

If one turns to preparatory materials for the Third UN Conference on the Law of the Sea, in which the numerous drafts of the future 1982 Convention and relevant official and unofficial materials (non-papers) were discussed, including those materials that were circulated directly to members of delegations of the states that participated in this Conference, it becomes clear that these states *intentionally avoided broad discussion of the Arctic* at the Conference. As documents included in this book show, by the beginning of this Conference, the international community recognized the *special prevailing rights of the Arctic States* and the sector (meridian) lines that were stipulated in treaties, first and foremost in the Russian-British Convention of 1825 and the US-Russian 1867 Treaty concerning the cession of Alaska. Those rights were crystallized and developed overwhelmingly through adoption by those states of *domestic legislative acts* (first of all, by Canada, the Russian Empire, and, thereafter, the USSR), acquiescence therewith of the majority of states throughout

⁴² Kulebyakin V.N. Legal regime of the Arctic/International law of the sea/Chief Edit. Blishenko I.P. M., 1988. p. 139 (*In Russian*).

⁴³ Palamarchuk P.G. Referred writings. p. 121 (*In Russian*).

⁴⁴ Efendiev O.F. Arctic waters/Contemporary law of the sea. Regime of waters and seabed of the World Ocean. Chief Edit. Lazarev M.I. M., 1974. p. 190 (*In Russian*).

⁴⁵ Kovalev A. A. International legal regime of the Arctic and Russian interests/International public and private law: issues and perspectives. St. Petersburg, 2007. p. 223 (*In Russian*).

the world, as well as the treaty practices of the Arctic States. *Interstate bilateral cooperation in the area of study and conservation of nature of those areas* progressed in a particularly successful way – in the first place, on the basis of *treaties made by the Arctic States* (many such treaties are included in this edition). Those actions were carried out with due account of the *limits of the Arctic polar sectors defined earlier* – those of the Soviet Union, Canada, and the United States. Nonetheless, it should be acknowledged that one of them – the United States – consistently objected to *domestic legislative regulation* by Canada and the Soviet Union of *navigation* along their Arctic coasts while, however, not objecting to *sector (meridian) lines per se* and, moreover, offering *precise sector limits* as a basis for delimitation of the continental shelf in the Arctic between the United States and the USSR.⁴⁶

Attention should also be drawn to the fact that, during the Third UN Conference on the Law of the Sea, the so-called Arctic “Five” group of states *functioned in a confidential format*. It included the *five Arctic Coastal States* (Canada, Norway, Denmark, the United States, the USSR). As members of the USSR delegation recall, in the process of the Conference, these States, within the framework of meetings between their delegations, discussed issues that touched upon interests in the Arctic. They reached an *informal understanding* that it was in the interests of the Arctic “Five” states to “suppress” *all attempts to discuss issues of the status of the Arctic at the Conference*. Meetings of the “Five” took place at various levels. It is also known that Arctic issues were in sight during bilateral meetings with Canadians, other participants of the “Five” (both at the operational diplomatic and the state level). It is understandable that there are no written (published) testimonials of Soviet participants on such meetings of representatives of the “Five,” and that such testimonials could not have been created within the usual diplomatic practice of the USSR. But publications of the Canadian scholar A. Morrison could serve as documentary evidence of such consultations (of the “Five” Arctic Coastal States).⁴⁷ He also notes that, with all of the similarities in climatic conditions of the Arctic and the Antarctic, the legal regime of the latter did not inspire the heads of the Arctic States to adopt elements of such a regime and apply them in the Arctic: “In looking to the Antarctic for inspiration and guidance, both from the perspective of similar physical conditions and from that of the Antarctic Treaty regime, the leaders of the Arctic countries appear to have dismissed certain aspects of that regime, having reached an unspoken agreement that the path of ‘common heritage’ followed in the case of the Antarctic Treaty is not one they wish to follow.”⁴⁸ The reality also is that the legal

⁴⁶ Delimitation of the continental shelf in the Arctic along the sector limits specified in the United States-Russia Convention of 1867 and proposed by the United States was reflected in provisions of the Agreement between the Union of Soviet Socialist Republics and the United States on the maritime boundary of 1990 (the text of the Agreement is included in this collection).

⁴⁷ A. Morrison is Executive Director at the Canadian Institute for strategic studies in Toronto. He served as Minister-Counsellor at the permanent mission of Canada to the United Nations from 1983 to 1989.

⁴⁸ Morrison A. Coming in from the Cold War: Arctic Security in the Emerging Global Climate: A View from Canada. p. 49.

regimes of the Antarctic and the Arctic are different, which comes as no surprise: *in many respects, each of these areas differs significantly from the other.*⁴⁹

There are also other scholarly publications that prove the intention of the Arctic States participating in the Third UN Conference on the Law of the Sea not to contribute to the Arctic those elements that are alien to it – neither the treaty regime of the Antarctic nor that universal regime for other (“nonfreezing”) oceans that was under approval during the III UN Conference on the Law of the Sea, that is, to preserve *the regional status of agglomerate ice and maritime areas* of the Arctic that was developed before the Conference. To this end, Canadian scholars, B.G. Buzan and D.W. Middlemiss, have observed that the Canadian delegation to the Conference intensified its activity, “working with the Northern States.”⁵⁰ In the same book, published in 1977 (i.e., concurrently with the Third UN Conference on the Law of the Sea), the official position of Canada in respect to the status of waters surrounding the whole “Canadian archipelago” was reiterated, with reference to documents from the Canadian Parliament: “Canada has always regarded the waters between the islands of the Arctic archipelago as being Canadian waters.”⁵¹

To conclude, there is *no convincing evidence* to the effect that the agreed-upon *intention of the Five Arctic States* at the Third UN Conference on the Law of the Sea was to regard the ice-covered areas of the Arctic as an *object of the future of Convention on the Law of the Sea*. Quite the contrary, there is evidence proving that the understanding of those States was different: both polar regions – the Arctic and Antarctic – were being gently excluded from *special review* at the Conference; the Polar areas were not considered as *specific objects of the 1982 UN Convention on the Law of the Sea*, also on a quite logical basis – both the Antarctic and the Arctic *already enjoyed legal status that had been developed for each of them specifically* (1959 *treaty status in the former case*; numerous treaties and *customary rules status in the case of the Arctic*).

What has been outlined, of course, does not amount to immunity from the established legal regime of the Arctic Ocean. The progressive development of international law is its inherent feature. The evolution of the legal regime of the polar areas of the Earth is also a reality. In the Antarctic, relations between states are regulated by treaty norms of international law, development of such regulation is based on the system of the 1959 Antarctic Treaty, and this system expands, also taking into account outcomes of the Third UN Conference on the Law of the Sea. Such considerations could not but play a role in the Arctic as well, although its legal regime is mainly presented by *customary norms of international law* that develop under the influence of domestic legislation, the treaty practice *of the Arctic States*, and the

⁴⁹ *The Antarctic* is the mainland (Antarctic) surrounded by open seas of three oceans. *The Arctic* is the ice-water part of the territory landlocked by the coasts of the five states (Ibid.).

⁵⁰ Buzan B. G., Middlemiss D. W. Canadian Foreign Policy and Exploitation of the Seabed/ Canadian Foreign Policy and the Law of the Sea/Eds. B. Johnson and M. W. Zacher. University of Britain Columbia Press. Vancouver, 1977. p. 36.

⁵¹ Buzan B. G., Johnson B. Canada and the Third Law of the Sea Conference: Strategy, Tactics, and Policy/Canadian Foreign Policy... p. 257.

consent of other states, including acquiescence. Historical entitlements of those states in the Arctic region, the exceptionally harsh climatic conditions in this region, security interests, the fragility of environment of the North, the huge financial contributions necessitated by exploration of the Arctic areas, maintenance of coastal infrastructure, and the conducting of scientific research have all predestined such *legal specifics*, the prevailing force of the *rights of the Arctic States* and their *primary responsibility* for the state of the region.

Alongside that, such milestone events as adoption, in 1982, of the UN Convention on the Law of the Sea,⁵² its entry into force in 1994 for 60 states, the ensuing consecutive increase in the number of states participating in this Convention, especially after substantial amendment of the legal regime of governance over mineral resources of the seabed beyond the continental shelf,⁵³ *these events had substantial impact* on the *existing legal regime* of maritime areas located to the north of the Arctic Circle, considerable part of which still remains covered by ice through most of the year. These impacts were *unavoidable*, despite the fundamental specifics of the legal regime of the Arctic outlined above and the referenced intention of the Arctic Coastal States not to consider those polar areas as the special object of a new treaty – the 1982 Convention. This impact was due to the fact that, *first*, the majority of the rules enshrined in the 1982 Convention concerning maritime areas located under the sovereignty of coastal states (i.e., in Arctic terms, rules on internal waters, and territorial sea) are simultaneously also *customary norms* of international law and, as such, are also fulfilled by states that are not parties to the 1982 Convention. *Second*, rules of the 1982 Convention regarding 200-mile exclusive economic zones, although they are relatively new (such rules were not present in any of the 1958 Geneva Conventions on the Law of the Sea), are also attributed by a majority of scholars to *customary norms of international law*; all five Arctic Coastal states *have established* such 200-mile zones. Third, the Convention provides a special section – “Ice-covered areas” in Part XII (“Protection and preservation of the marine environment”) – that is applicable, *inter alia*, to areas located in the Arctic.

At the same time, *mechanical (not based on the general international law)* application of the 1982 Convention to the regulation of *any and all relations between Arctic States*, including with a state not participating in this Convention, as implied, for example, in the majority of documents from *NATO and the European Union* (hereinafter also referred to as the “EU”), should be dismissed as erroneous. In accordance with the official position of NATO, “the 1982 UN Convention on the

⁵²The text of the Convention was adopted by the following “distribution” of votes: 130 states, “for”; 4 states, “against”; and 17 states, “abstained.” Out of the five Arctic Coastal States, three voted in favor of adoption of the convention: Norway, Denmark, and Canada. Canada, however, became party to the 1982 Convention only in 2003.

⁵³The author means entry into force of the agreement relating to the implementation of Part XI of the 1982 UN Convention on the law of the sea, the text of that part of which was modified in the direction of “free-market principles.” For further reading on that, see Vylegzhanin A. N., Gureev S. A., Ivanov G. G. *International law of the sea*. M., 2003. pp. 164–175 (In Russian).

Law of the Seas is the legal framework that applies to the Arctic Ocean.”⁵⁴ In the policy document of the EU on the Arctic included in this collection, they precisely emphasize the *global-treaty level* of the legal regulation of the Arctic States’ relations, and *absolute priority is given to applicability of the 1982 Convention* to the Arctic region. Pursuant to the document, “the UN Convention on the Law of the Sea [provides] a key basis” among international legal norms applicable to the Arctic. On that basis, the EU states, in quite oversimplified terms (not exerting itself much in regard to perusal of scholarly opinions in Russia, Canada, and other Arctic Coastal States), as follows: “Beyond areas of national jurisdiction, the Arctic Ocean contains parts pertaining to the high seas and the seabed managed by the International Seabed Authority.” In other words, the EU does not even presume that the five Arctic States have the right to delimitate among themselves all seabed areas of the shallow, semi-closed Arctic Ocean *as their continental shelf* on the basis of international law (its customary norms; provisions of Article 6 of the Convention on the continental shelf, or Article 83 of the 1982 Convention). In that case, there would be *no area* in the Arctic. On the contrary, the EU is eager that Russia, Canada, and the other Arctic States fulfill a different article of the 1982 Convention – Article 76, limiting their own shelf in accordance with criteria set out therein, having separated the area in the Arctic – as a matter of fact, in favor of a syndicate of western companies. The reality is that some members of the EU are Arctic States that do not have coasts along the Arctic Ocean and, as a result, do not have their own areas of the continental shelf in the Arctic Ocean (e.g., Sweden and Finland); and these States are also *interested in implementation of such an approach*, a fact that is confirmed by the texts of their Arctic strategies included in this book. Furthermore, the document seems to instruct the Arctic States: “No country or group of countries have sovereignty over the North Pole or the Arctic Ocean around it.”⁵⁵ It should be noted that none of the Arctic Coastal States, in their legal documents, provides for “sovereignty over the North Pole” or the Arctic Ocean. And, readers may assure themselves of that when reading the policies, acts, directives, and strategies in respect to the Arctic adopted in Russia, the United States, Canada, Denmark, and Norway.

The political setting of the EU, aimed at the establishment of the area in the Arctic on the basis of the 1982 Convention (at the expense of Russia’s shelf) and subsequent internationalization of this area, including with reference to ecological considerations, is also developed at the conceptual level. In a representative book, *The European Union and the Arctic: Policies and Actions*, the authors, proceeding from the position of the European Parliament, assert that, for the EU, it is important to propose “measures for protection [of the Arctic waters], with a view to establishing the Arctic as a *protected area*, similar to the Antarctic, and designated as a ‘natural reserve devoted to piece and science.’”⁵⁶

⁵⁴ Speech by NATO Secretary General Jaap de Hoop Scheffer on Security Prospects in the High North. NATO. 29.01.09.

⁵⁵ The European Union and the Arctic Region. Communication from the Commission to the European Parliament and the Council. p. 3.

⁵⁶ Airoldi A. *The European Union and the Arctic. Policies and Actions*. ANP 2008:729. Nordic Council of Ministers. Copenhagen. 2008. p. 63.

The practice of the Arctic States shows different approaches to resolving issues of legal status of the high-latitude *Arctic waters beyond national jurisdiction*, including areas covered by ice all year round. It is conditioned, first of all, on the fact that the universal international treaty – the UN Convention on the Law of the Sea of 1982 – has now come into force in relation to Russia, Norway, Denmark (the Island of Greenland), and Canada. On the one hand, as observed above, this Convention did not provide for any exceptions with respect to Arctic waters. Thus, proceeding from the idea of its applicability to the open water and ice-covered areas of the Arctic Ocean, beyond the limits of the 200-mile exclusive economic zones of the five Arctic Coastal States, there is a *high sea area*. On the other hand, as is known, at the Third Conference on the Law of the Sea, the Arctic Coastal States “suppressed” all attempts at the Conference to specially consider the issue of the Arctic, moreover, to specifically mention it in the Convention of 1982. In the book by western international law scholars issued long after the adoption of the 1982 Convention, it is noted that “the law of the sea for the polar north has been applied through national approaches. That is, the government of each Arctic State considers, adopts and implements through national legislative means those legal rules and norms that it feels best serve its national interests within the context of its own polar seas. Thus, as concepts and principles of ocean law emerged and evolved throughout the twentieth century, they were adopted and applied by each Arctic State, in its own way, to its own northern waters.”⁵⁷ Thus, currently, one should qualify *waters of the Central Arctic area* (surrounded by the 200-mile exclusive economic zones of the five Arctic Coastal States) *released from permanent frost* as high seas; such qualification is already considered to be undisputed, which was confirmed at an international scientific symposium that took place in 2011 in Moscow.⁵⁸

Regional Institutional Mechanisms of the Arctic States as an Integral Part of the Legal Regime of the Arctic

The documents included in this collection, while showing priority to the legal practice of the Arctic States (both at the bilateral and national legislative levels) in developing the status of the Arctic, may convince readers that the role of the *regional level of lawmaking and law enforcement* in the Arctic is important. The primary step in the *institutionalization of such a regional format* was the adoption, in 1996, of the *Declaration on the establishment of the Arctic Council*, according to which the eight

⁵⁷ Rothwell D. R., Joyner C. C. The Polar Ocean and the Law of the Sea/The Law of the Sea and Polar Maritime Delimitation and Jurisdiction. Ed. by G. Oude Elferink and D. R. Rothwell. Martinus Publishers. The Hague/New York/London, 2001. p. 1.

⁵⁸ International cooperation in the area of environmental protection, preservation, and the rational management of biological resources at the Arctic Ocean. Papers of the International scientific symposium. RIAC/Chief Edit. Ivanov I.S. M., 2012. 88 p. (*In Russian*).

Arctic States have become members of the *Arctic Council*. The role of the Arctic States acting within the framework of the Arctic Council has been highly praised. The head of the Legal Department at the Swedish Ministry of Foreign Affairs notes that only those Arctic States whose population lives in the Arctic and who realize their sovereignty and jurisdiction over vast areas of the region bear special responsibility for its sustainable development and governance and that that has already been demonstrated by the activities of the Arctic Council.⁵⁹ The Declaration on the establishment of the Arctic Council notes, first of all, a “commitment to the well-being of the inhabitants of the Arctic,” “to sustainable development” of that region, and commitment “to the protection of the Arctic environment, including the health of Arctic ecosystems, maintenance of biodiversity in the Arctic region and conservation and sustainable use of natural resources.” The representatives of the governments of the eight Arctic States, desiring “to provide for regular intergovernmental consideration of ... Arctic issues,” declared that “The Arctic Council is established as a high level forum.” The Declaration states that one of its purposes is to provide “a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the indigenous Arctic communities and other Arctic inhabitants on common Arctic issues, in particular, issues of sustainable development and environment protection in the Arctic.” The list of *members of the Arctic Council is conclusive*: as specified in the document, it includes Denmark, Iceland, Canada, Norway, the Russian Federation, the United States, Finland, and Sweden. This conclusiveness is determined by the *regional character* of this institution. At international conferences, it is sometimes stated that, besides the abovementioned Arctic Council member states, the membership of the Arctic Council also includes organizations representing indigenous Arctic peoples.⁶⁰ Such assertions are not legally accurate. The Declaration of 1996 specifies that, besides the Arctic Council members, i.e., the eight Arctic States, there are also “permanent participants in the Arctic Council.” According to the document, they include “the Inuit Circumpolar Conference, the Sami Council and the Association of Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation.” Such a list of *permanent participants* (but not members of the Arctic Council, the states listed above) is *not conclusive*: the permanent participation status “is equally open to other Arctic organizations of indigenous peoples,” if the Arctic Council determines that such an organization meets the criteria established by the Declaration. Decisions of the Arctic Council “are made by its members” (not by “permanent participants”). At the same time, the Arctic Council member states that, according to the document of 1996, make decisions “by consensus” necessarily take into account the interests of the

⁵⁹ Jacobson M. Cooperation in the Arctic Region: Legal Aspects. Paper presented at the Swedish/Finish Cultural Center. 2010. 8 November. pp. 6–7.

⁶⁰ The author of this commentary also had to address these arguments during co-chairmanship at the International Conference on Environmental Security in the Arctic Ocean (Cambridge University, 2010). In the follow-up to this Conference, a collection of scientific reports was issued: Environmental Security in the Arctic Ocean/Ed. P. A. Berkman and N. Vylegzhanin. Springer. Dordrecht, the Netherlands. 2012. p. 459.