

Russian Institutional Framework for International Environmental Cooperation in the Arctic

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1. Introduction

As Haward (2011) notes in respect to the Antarctic Treaty System (ATS) 'international commitments to collective security' 'operationalized in the broader system or regime provide a means to addressing geopolitics and governance'. Although the applicability of the ATS legal approaches to the Arctic is disputed by many researchers for various reasons, the need for international commitments made operational by Arctic nations is hardly challenged by anyone. The approaches to making international commitments operational vary from self-regulation to enforcement.

An optimistic approach to seafaring environmental protection in the Arctic is conveyed by Leblanc (2011), who states that 'the responsible shipping companies [...] will likely have purpose designed reinforced hull vessels, qualified pilots, suitable equipment, appropriate charts, insurance and so on'. It is true that as far as international environmental cooperation is concerned, states today do not have a monopoly on information and implementation. Pearce (2001) reports that environmentally sound behavior may come down to self-regulation. Yet if self-regulation is not in place, than one may have to rely on self-enforcing international environmental treaties (EIA). The chances that self-regulation might not be in place are high and Leblanc (2011) gives an example of 'fly-by-night' companies whereas Chander and Tulkens (2006) demonstrate that reliance on self-enforcement is associated with high risks of "free riding".

To effectively address international environmental challenges in the Arctic requires cooperation, and in practice cooperation is usually codified in International Environmental Agreements (IEAs). The very essence of international cooperation is participation of two or more international parties achieving a common goal(s) or resolving a conflict. The scope of cooperation encompasses information, implementation and enforcement aspects in order to achieve conservation, prevention and rehabilitation objectives. In Barrett's account (2003), self-enforcement is the product of a treaty that 'must satisfy three conditions: individual rationality, collective rationality and fairness' and/or 'be perceived by the parties as being legitimate'. Exploring self-enforcing IEAs using two models Barrett (1994) shows that IEAs can do little to improve on the non-cooperative outcome when the number of countries that share the resource is large. The fundamental feature of IEAs is that they cannot be enforced by a third party.

As such, enforcement of IEAs is perceived as an indispensable part of international environmental cooperation in the Arctic. And states are obviously the sole legitimate parties where it comes to enforcement in areas under their jurisdiction. In this paper we will look into the institutional aspects of the Russian potential for involvement in international environmental cooperation in the Arctic with respect to information, implementation and enforcement.

2. Activity based, Area based and Functional regimes

Environmental cooperation is an inherent part of modern international relations that are governed by international law, and the Arctic is no exception. Much has been written recently on whether the present international Arctic regime is capable of providing effective protection for the Arctic marine environment. While the coastal states maintained in the Ilulissat Declaration (2008) that the existing legal regime 'provides a solid foundation for responsible management by the five coastal States and other users', while others argue, that new comprehensive legal instruments need to be developed and adopted (WWF, 2009).

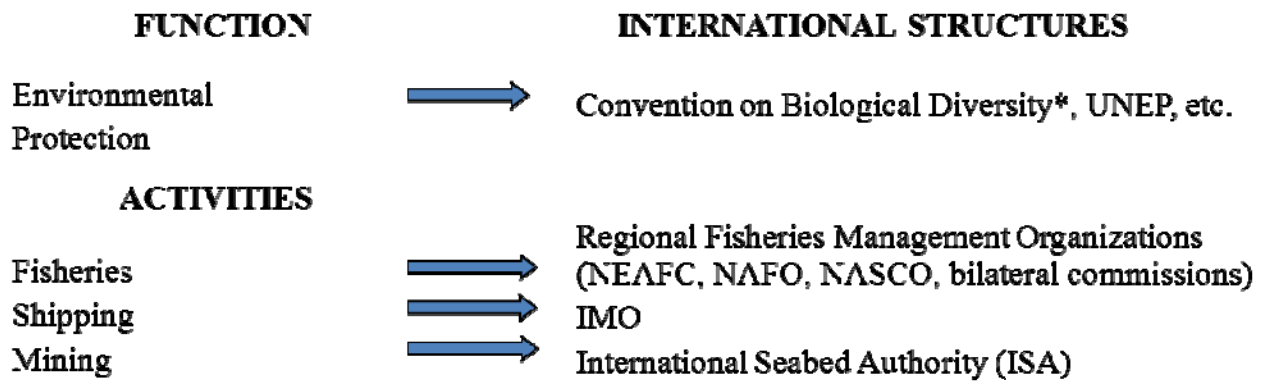
There is an on-going debate about the need for a new legal regime fuelled by new continental shelf claims from coastal states and a growing desire from the non-coastal states to have their say in the Arctic issues. The on-going debate may follow Chander and Tulken's

(2006) views about a possible trade-off 'between the breadth of international cooperation (in terms of the number of participants in a treaty) and its depth (in terms of the size of the actions agreed upon by the parties): is a "broad but shallow" treaty better than a "narrow but deep" one?'

The present legal regime of Arctic marine areas is governed by the United Nations Convention on the Law of the Sea, 1982 (LOS). Many environmental concerns may be addressed within the framework of specialized international conventions made under the auspices of IMO (e.g. MARPOL 73/78), through regional fisheries management organizations (RFMOs) as well as bilateral agreements.

Reliance on sectorial (activity based) regulations seem to be well justified with a view that the law of the sea has been developing along 'functional' lines rather than an area based approach (Churchill, 1999). By a 'functional' approach Churchill implies an activity based approach combined with the extent of jurisdiction that can be exercised by states. An in depth analysis of the possibility of establishing marine protected areas (MPAs) by Breide and Saunders (2005) clearly shows that it is activity centered regulations that will be used when modeling area based environmental protection.

Functional development implies different structures for different activities. Comprehensive international arrangements with institutionalized cooperation models are in place for major maritime activities (shipping and fishery) – IMO and RFMO. Limitations on the freedom of navigation outside the 12-mile zone cannot be dealt with outside IMO. It is unlikely that flag state jurisdiction over vessels will be abandoned for the sake of the Arctic by any of the major shipping nations. However, to classify international cooperation on environmental issues we need to have a look at environmental function, activities and international structures. As Figure 1 shows there are international organizations with specific environmental functions relevant to the Arctic issues. On the other hand, there are structures that originally had no environmental agenda given they are activity based.



* CBD is referred to as a structure on the grounds of the vast institutionalization of cooperation under this treaty through its Secretariat and national offices. The same holds true for most of the international environmental treaties.

Figure 1. Environmental functions and maritime activities

Environmental protection requires a holistic approach and a cross-sectoral effort at both the national and international level. Accordingly, coastal states all over the globe have gradually developed a management and regulatory framework that reflects the functional nature of their jurisdiction. While international organizations and international conventions are already heading towards harmonization of regulations and practices, it is often not the case with the agencies, representing countries at those organizations.

No matter how skillfully new legal instruments (if any) are crafted, there is no doubt that their implementation will be based on existing institutional basis for quite some time. When calling for strengthening of a specific functions such as the protection of the Arctic marine environment there needs to be institutional potential for management, implementation and enforcement efforts taken on a national level pursuant to international law (existing or to be introduced) with respect to national arrangements for international cooperation.

3. Russian ‘continuation’ of the USSR international environmental agreements

According to the Minsk Declaration of December 8th, 1991 and subsequent to the first Alma-Ata declaration of December 21st, 1991, the USSR as a subject of international law had ceased to exist. The letter from the President of the Russian Federation, Boris N. Yeltsin

presented by Ambassador Y. Vorontsov, the Permanent Representative of the USSR, to the United Nations' Secretary-General on December 24th, 1991 stated that:

'the membership of the Union of Soviet Socialist Republics in the United Nations, including the Security Council and all other organs and organizations of the United Nations system, is being continued by the Russian Federation (RSFSR) with the support of the countries of the Commonwealth of Independent States. In this connection, I request that the name 'Russian Federation' should be used in the United Nations in place of the name 'the Union of Soviet Socialist Republics'. The Russian Federation maintains full responsibility for all the rights and obligations of the USSR under the Charter of the United Nations, including the financial obligations. I request that you consider this letter as confirmation of the credentials to represent the Russian Federation in United Nations organs for all the persons currently holding the credentials of representatives of the USSR to the United Nations' (Yeltsin, 1991).

The letter covered 'responsibility for all the rights and obligations of the USSR under the Charter of the United Nations'. However, a considerable number of international rights and obligations were covered by instruments outside the scope of the Charter of the United Nations. The shortcoming of the scope of 'continuation' was to be remedied. The Russian Ministry of Foreign Affairs on January 12th, 1992 circulated among the heads of diplomatic missions in Moscow the following note:

'Russia is now a party to any Treaties to which the former Soviet Union was a party, and enjoys the same rights and obligations as the former Soviet Union, except insofar as adjustments are required, (e.g. to take account of the change in territorial extent). The Russian federation continues the legal personality of the former Soviet Union and is not a successor State in the sense just mentioned. The other former Soviet Republics are successor States.' (1993)

In the absence of any objections to both statements the delegation of the Russian Federation took over the Soviet seat in the UN General Assembly and turned into the party for all environmental international agreements of the USSR. At this time the USSR was party to 60 universal and bilateral environmental agreements, and there were not only environmental reasons for continuing them. In 1990 the environmental authority

(*Goskomprirody*) was the contact point and experienced authority for 22 of the international agreements, and was given supervisory power with respect to the implementation of another 28 international agreements by other ministries such as the Ministry of Fisheries and the Ministry of Marine and River Fleet (Sovmin Resolution N 526, 1990).

4. Russian national structures for international environmental cooperation

4.1 The USSR model

The Russia People's Commissariats became Ministries in 1946, and the Council of People's Commissars became the Council of Ministers (*Sovmin*). A Ministry's competence, unlike that of the Council of People's Commissars, was operational. The Council of Ministers of the Union of Soviet Socialist Republics (USSR) *de jure* was the government in modern terms. It consisted of leaders of the top executive authorities of the Soviet Union from 1946 until 1991.

By virtue of Article 128 of the USSR Constitution (1977) the Council of Ministers of the USSR was officially recognized as the 'Government of the USSR'. *Sovmin* was formed according to the USSR Constitution (1977) by the Supreme Soviet of the USSR at a joint sitting of the Soviet of the Union and the Soviet of Nationalities. *Sovmin* consisted of the Chairman of the Council of Ministers of the USSR, First Vice Chairmen and Vice-Chairmen, Ministers of the USSR, and Chairmen of State Committees. Ministries were quite numerous and at time, their number was around 50 (including State Committees, whose expertise was broader than that of Ministries).

By the Model Statute of the USSR Ministry (adopted by the USSR Council of Ministers (*Sovmin*) Resolution N 640 as of 10.07.1967) provided that every Ministry had to:

- provide for rational use and restoration of natural resources, take into account the interests of affected sectors within the scope of other Ministries and the economy in general, take necessary measures to protect air, soil and water courses from pollution by industrial and household waste, sludge, radioactive substances and waste, and the flora and fauna (at the planning stage, item 26);

- participate in economic, scientific, technical and cultural cooperation with foreign countries, provide for enactment of USSR obligations stipulated by international agreements whenever such enactment is related to the public sector for which a Ministry is responsible for international cooperation (item 73).

According to USSR Council of Ministers (*Sovmin*) Resolution N 526 as of May 26th, 1990, the USSR State Committee for Nature Protection was empowered to:

- organize enactment of the USSR obligations stipulated by international agreements;
- analyze enactment of international environmental obligations by other USSR Ministries and state agencies, supreme executive bodies of the republics of the USSR, organizations, companies and enterprises on sectorial and special issues related to environmental issues; and
- prepare proposals on development of international environmental cooperation.

A special *Interministerial Commission* was established to coordinate enactment of international environmental obligations of the USSR. The Commission was to oversee activities and efforts by all governmental ministries and agencies regardless of their level, other organizations and companies. The Commission had to include representatives of the Ministries of Foreign Affairs, Health, Finance, Planning, Committees on Hydrometeorology, Nature Protection (vice-head), and the USSR Academy of Sciences. State Committee for Planning (*Gosplan*) was to include in new development plans measures that were necessary for enactment of international environmental obligations of the USSR, and the Ministry for Finance was to provide funding to the State Committee for Nature Protection needed to implement such measures.

In 1991 the Council of Ministers was dissolved, and replaced by the newly established *Cabinet of Ministers* which itself disappeared only months later, upon the Soviet Union's disintegration. Before 1991 all USSR Ministries were to carry out nature protection measures within their scope while the coordination and supervision of the implementation of international environmental obligations was the responsibility of a special Inter-Ministerial

body (since 1990).

It is important to note that:

- all national level Ministries (committees) were obliged to perform the environmental function;
- the national level environmental authority (*Goskomprirody*) was responsible for the implementation of international obligations under environmental agreements and for supervising the implementation of activity based agreements, including but not limited to fisheries and maritime transport, relevant to environmental protection, whereas national level sectorial authorities (for fisheries and maritime transport) were directly responsible for the actual implementation.

4.2 The current model

The Russian authority structure and interrelations underwent radical changes after the collapse of the USSR throughout the 1990s in terms of scope and capacity. There were also numerous changes in administration of environmental protection. However, the administrative reforms of 2004 saw a streamlining of the competency of federal authorities.

Notwithstanding all the changes, competence assignment is rooted in the tradition established in early 1990s. The overall structure and functions of the Federal Ministries and Agencies are determined by Decree of the President of the Russian Federation. It is noteworthy that presidential decrees normally (but not necessarily) reflect federal laws. Responsibility for representing Russia in different international organizations and meetings under international agreements is assigned to federal agencies by orders of the Russian Federation Government.

It appears that the assignment of responsibility for the implementation of different international treaties on the national level remains largely along traditional lines. Table 1 illustrates that the responsibility of Russian authorities adheres to traditional sectorial lines, whereas international instruments with clear environmental function remain in the realm of a specialized authority for environmental protection.

Agreements	Before 1990	1990	Present
MARPOL 1973/78	USSR Ministry of Sea and River Fleet		RF Ministry of Transport
IMO			
IWC 1946, NEAFC 1980, NASCO 1982 and bilateral fisheries agreements	USSR Ministry for Agriculture	Ministry for Fisheries	Federal Fisheries Agency
Bilateral international agreements on Environmental Protection		USSR State Committee for Nature Protection	Ministry for Natural Resources and Ecology
CBD, CITES, etc.	-	-	

Table 1. Distribution of responsibility of Russian authorities for international cooperation.

In contrast to the USSR model, and in the absence of general obligations to perform environmental functions, the Ministry for Natural Resources and Ecology (Minprirody) stands alone, as no other Ministry is responsible for environmental protection (sectorial ministries are responsible exclusively for the successful development of the sectors in question). The withdrawal of the environmental functions from sectorial agencies leads to serious gaps in implementation and enforcement. As Table 2 shows, national sectorial

authorities with competence to undertake environmentally relevant measures are not under obligation to do so. And these administrative system gaps, for quite obvious reasons, cannot be handled on the basis of self-enforcement or self-regulation.

Agency	Environmental function	Activity	Activity restrictions	Activity authorization	Enforcement with respect to activity
Ministry for Natural Resources and Ecology	Yes	cross-cutting	No	approval required, but not for shipping or fisheries	no
Ministry of Transport	No	Shipping	yes*	yes**	no
Federal Fisheries Agency	No	Fishing	Yes	yes	yes
Federal Security Service	No	cross-cutting	No	approval required	yes

* Subject to approval by RF Government ** Not required for foreign flag ships

Table 2. Environmental function and sectorial competence distribution.

4.3 Data flow challenges

Information is crucial for international cooperation on environmental issues. It is hard to identify any sound management measures without a solid knowledge base to support them. Information is the key to successful management. The range of information required includes data on impacts on the environment (existing and planned) and the status of ecosystems and resources (baseline and current). The USSR's framework for the collecting data on natural resources for the purposes of management and environmental protection was based on state ownership of the information collected by the Russian Academy of Science, and applied research institutes operating under the auspices of different agencies. Environmental data were in principle available to interested parties regardless of sector and management level (national, regional or local).

Nowadays an extensive network of data sources is being developed. Table 3 shows the administration of information is sector based. For example fisheries information requires data on the status of marine biological resources and their environment. This information can be found at the Federal Fisheries Register (FFR), which is one of the federal databases on the status and use of natural resources. FFR was established according to the Federal Law on Fisheries N 72 (2004), and the procedures for its maintenance are stipulated by RF Government Decree N 601 (2008). FFR contains information on fisheries basins, waterways (physical description), fisheries resources and their use, and fisheries rights.

Major sources of data are the Russian Fisheries Agency (Rosrybolovstvo) contractors (fisheries research institutes in Murmansk, Arkhangelsk, Vladivostok, Rostov-on-Don, Kaliningrad), fisheries themselves and regional authorities. Rosrybolovstvo is the administrator of FFR. At present the all the data is available to the administrator yet access for other key players is subject to approval by the administrator (Rosrybolovstvo).

Type of information	Administrator	Main data sources	Availability
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source			
Federal Red Book (well documented)	Rosprirodnadzor (Federal Agency under Ministry for Natural Resources and Ecology)	<i>State Environmental Monitoring</i> , interested parties on their initiative	Generally available
Regional Red Books (well documented)	Regional Authorities	Interested parties (normally)	Normally available on request (limited number of copies, normally not available in digital format)
Fisheries Register (since 2004)	Federal Fisheries Agency (Rosrybolovstvo)	Fisheries Institutes (PINRO, Murmansk and TINRO-Centre, Vladivostok), fisheries, regional fisheries authorities	Fully available for the administrator, access to other key players is subject to approval of the administrator (Rosrybolovstvo)
Water Cadastre (since 2002)	Federal Agency for Water Resources	Territorial organs of the administrator, water users	Fully available for the administrator, access to other key players is subject to approval by the administrator
Land Cadastre	Ministry of Economy	Territorial organs of the administrator	Available on request against payment

(since 2001)			
Navigation Data	Ministry of Transport	Russian Ship Registry, System of Navigation Management	Restricted information
Subsoil Cadastre	Rosnedra (Federal Agency under Ministry for Natural Resources and Ecology)	Target research (ordered by federal authorities or interested parties)	Restricted information
Territorial Development Plans (since 2009)	Federal, regional, local authorities	Unrestricted, in fact huge variety of sources is used	Become public on approval. Most plans are under development

Table 3. Information databases and agencies in charge.

The databases have been established quite recently and are far from being complete. Another peculiarity is that they are not coordinated. Even administrators of these databases have very limited access to information held by another administrator.

5. Implications of existing administrative arrangements

The above mentioned shortcomings have an immediate effect on the level of efficiency of Russian involvement in international environmental cooperation. While originally sectorial (fisheries or transport), international organizations (such as IMO, NAFO, etc.) enhance co-

operation with CBD, in Russia the environmental function on national level is assigned to a single agency, as illustrated in Figure 1.

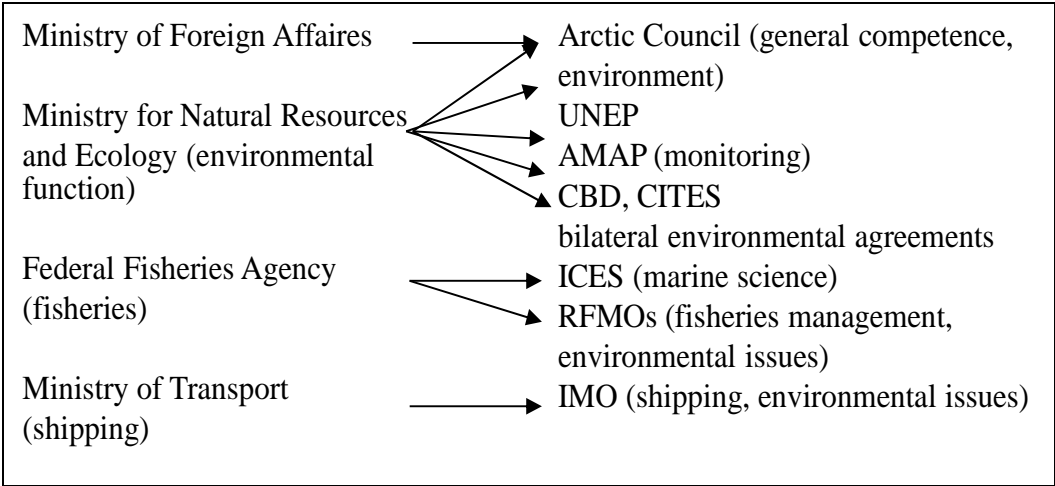


Figure 1. Competency of Russian federal authorities to participate in activities of international organizations (as established by the RF Government orders).

To illustrate this point we will examine the Russian Federation’s involvement in the work of the International Maritime Organization (IMO) and the Convention on Biodiversity (CBD). Russia is represented at IMO by the Ministry of Transport (Mintransport) and coordination of activities under CBD lies with the Ministry for Natural Resources and Ecology (Minprirody). The latter is responsible for environmental protection in the Russian territory, in EEZ and on the continental shelf, yet it has nothing to do with maritime shipping or fisheries. Representatives of Minprirody do not participate in the work of IMO, RFMOs, ICES. Representatives of the Federal Fisheries Agency and the Ministry of Transport are not involved with UNEP, CBD and/or bilateral environmental agreements, and do not have to implement environmental protection measures unless specifically ordered to do so.

Minprirody can neither introduce shipping regulation measures in the internal sea waters or territorial seas nor initiate their introduction directly through IMO in EEZ for environmental reasons. Meanwhile, Mintransport’s competence by virtue of by-laws enables them to introduce such regulations (or initiate them via IMO if relevant) but precludes them from

coming out with initiatives on shipping limitations for environmental reasons as it is the mandate of Minprirody.

Another challenge is the information gaps resulting from uncoordinated databases. The point is that sectorial agencies do not have knowledge of environmental risks while an environmental protection agency has little (or no) idea of current impacts and prospects of their dynamics. The Ministry for Natural Resources and Ecology cannot offer constructive and targeted impact mitigation measures due to lack of information on actual pressures. It is also unable to introduce restrictions on shipping and fisheries that fall under the competence of other Ministries (agencies). As far as sectorial ministries are concerned, they cannot propose environmental measures, as it is not their responsibility. On the other hand, they are apt to oppose general bans as inadequate.

6. Conclusion

The Arctic as a natural system possesses the quality of integrity, and governance approaches should take this into account. The modern trend in the implementation of international instruments by international organizations are distributed along activity-, area- and functional basis, and as such there is a growing adaptation of sectorial instruments to perform the function of environmental protection. The most striking example is the use of navigational restriction rules under MARPOL 73/78 for establishing marine protected areas (MPAs) in EEZ and zones beyond national jurisdictions. This trend calls for the same type of integrity on a national level.

The present legal basis of Russian agencies on the national level precludes national structures responsible for environmental protection and sectorial agencies (ministries) from implementing even those integral approaches that are justified and legitimate according to the existing international law.

Keeping this in mind, it would seem that the key to the successful and efficient involvement of Russia in international environmental cooperation in the Arctic would be to return to the Soviet model of implementation of environmental functions on the national level. This

suggests that sectorial agencies should be assigned the responsibility of performing environmental protection as part of their mandate.

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