

Towards a Coastal Area Management Act for the Russian Federation

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Abstract. Coastal area management should be considered as an element of a more general philosophy – that of natural resource management – which is in the process of replacing the purely 'protection of the environment' approach which has dominated most of the 20th century. Specific legislation on coastal management has been adopted by many countries, and today steps have been taken to accumulate all experience accumulated and to harmonize legal regulations on the international level. For the Russian Federation, formerly the Soviet Union, with an enormous sea-shore line to cope with, it is a new experience to develop a concept and a legal regulation specifically tackling coastal area management. The draft of a legislative act on coastal area management reflects the attempts to find ways for harmonizing various economic, environmental and social interests in this huge area, encompassing relevant Russian legislation in force as well as international conventions and treaties, and taking into consideration foreign experience in this field.

Keywords: Coastal resource; Integrated management; Legislation.

Abbreviation: ICAM = Integrated Coastal Area management.

Introduction

Advanced techniques and technologies of modern world economy have resulted in constantly increasing needs for natural resources, as well as their extraction from the natural environment. Global shortage of natural resources, including that of the sea, is becoming a real threat, contrary to the opinions of philosophers of the past about the inexhaustibility of maritime resources. Erosion of vast spaces of land, degradation of air and water quality, and of ocean ecosystems, prove that the threat of natural resource deficit is approaching us. Many problems of human society, related to resources, arise to a great extent from the inadequate regulation of the use of natural resources. As is stressed in recent documents from the European Union relating to the new environmental action program, the problem of degradation of natural resources should not be considered as a problem in itself, but as a result of mismanagement (Kiss & Shelton 1999).

Today it is quite clear that it is not enough to protect nature. It is necessary to harmonize the interests of development, including those of industry, and conservation of the potentiality of nature for present and future generations (Birnie & Boyle 1992). The idea of natural resource management, which is being effectively elaborated now, meets this task (e.g. Kiss & Shelton 1999; Vylegjanin & Zilanov 2000). In this general context, the conceptualization of coastal management is formed.

Integrated coastal management is defined (Cicin-Sain & Knecht 1998) as a continuous and dynamic process of decision-making with the aim to achieve sustainable use, development and protection of coastal and marine areas and resources.

Throughout the world, coastal areas have been among the most heavily exploited areas because of their rich resources. About 60% of the world's population – nearly three billion people – now live within 60 km of the coastline. In the last 25 - 30 yr, methodology of Integrated Coastal Area Management (ICAM) has been developed in many countries. ICAM

is a dynamic process with the main goal to elaborate a strategy and means of its implementation through legal and other instruments that promote multiple use and development of environmental, cultural and institutional resources of coastal areas and of their economic and social potentials, and achieving sustainability. In other words ICAM is targeted to maximize benefits provided by coastal areas and to minimize conflicts between various users as well as harmful effects of human activities on the environment.

In the former Soviet Union, there was an obvious lack of legal instruments and public and administrative attention to specific natural and economic values of coastal areas (Bondarenko 1990). However, over the last 10 yr the situation has changed dramatically. Different users, including private companies, and industry, which is in federal, provincial and municipal ownership, now exploit the various resources of the coastal area with their competing interests, without coordination of their activities or consideration regarding complex consequences in the future. The consequences of those conflicts often have considerable transnational aspects, as today occur in the Russian Federation where coastal areas and adjacent seas impact the well-being and natural environment of other countries.

Nowadays, Russia pays much more attention to coastal area management (Aibulatov et al. 1996; Mikhaylichenko & Aibulatov 2000). The main objective of management in the region in question is to harmonize the interests of immediate consumption or use of coastal resources with the need to ensure their long-term sustainability. The key issues that have arisen in this context in Russia, as in many other countries where the conflict of interests has already reached a critical stage, can be resolved through adequate management. This would require feasible solutions to the following problems: (1) overlapping jurisdiction of central and provincial institutions; (2) competition between resource users; (3) ineffective conflict resolution mechanisms; (4) lack of nationally or locally adapted coastal policies to achieve decision-making processes.

In this context, developing a philosophy and legislative basis for ICAM becomes rather topical from both the national and international points of view (Mikhaylichenko 1997, 1998; Barsegov 1998; Vylegjanin 2001). The key idea in this movement should be that the marine and coastal spaces are closely interrelated and need to be considered as an integral unit. The main objective of the present paper is to shape a realistic concept for the future legislative development of ICAM.

Key conflicts of resource use in coastal areas

Identification of the existing patterns of coastal area resource use, typical combinations of interaction of resource users, and specific problems – environmental, economic and social – should be resolved through the development of specific legal instruments. Particular attention should be paid to the following aspects: economic activities in the coastal zone, pollution of the sea from land sources, impacts on the marine living resources caused by exploitation of gas and oil on the continental shelf; protection of the traditional interests of local communities (including national minorities), conservation of coastal area ecosystems, regulation of recreational activities, and efficiency of land source pollution control.

Current legal basis for coastal area management in Russia

As previously stated, in the former Soviet Union there was no specific legal regulation for the coastal area. However, with emerging private use of coastal resources, the lack of relevant legislation increases the risks of negative impacts on the marine environment. Even a brief analysis of the current situation regarding resource use in the Russian coastal area reveals a large number of examples of unreasonable patterns of human activity and obvious administrative and legal barriers for sound utilization of coastal resources.

Today the legal status and human activities in the coastal area are regulated by a considerable amount of legal acts, the most important among them being:

- Constitution of the Russian Federation (adopted at The National Voting on December 12, 1993);
- Law of the Russian Federation No. 2395-1 of February 21, 1992 on Underground Resources (in the Wording of March 3, 1995) (with the Amendments and Additions of February 10, 1999, January 2, 2000, May 14, 2001);
- Water Code, No. 167-FZ of November 16, 1995 (taking into account the Amendments by the Federal Law No. 194-FZ of December 30, 2001);
- Federal Law No. 187-FZ of November 30, 1995 on the Continental Shelf of the Russian Federation (with the Amendments and Additions of February 10, 1999);
- Federal Law No. 41-FZ of March 26, 1998 on Precious Metals and Precious Stones (with the Amendments and Additions of March 31, 1999);
- Federal Law No. 89-FZ of June 24, 1998 on Production and Consumption Waste (with the Amendments and Additions of December 29, 2000);

- Federal Law No. 191-FZ of December 17, 1998 on the Exclusive Economic Zone of the Russian Federation;
- Federal Law No. 32-FZ of February 10, 1999 on the Introduction to Legal Acts of the Russian Federation of Amendments and Addenda Arising from the Federal Law on Production Sharing Agreements (with the Amendments and Additions of August 5, 2000);
- Federal Law No. 155-FZ of July 31, 1998 on the Internal Sea Waters, Territorial Sea and Adjacent Zone of the Russian Federation;
- Federal Law No. 52-FZ of March 30, 1999 on the Sanitary and Epidemiological Welfare of the Population;
- Federal Law No. 174-FZ of November 23, 1995 on the Ecological Expert Examination (with the Amendments and Additions of April 15, 1998);
- The Law of the Russian Federation No. 7-FZ of January 11, 2002 on Protection of the Environment, and others.

There are legal acts that treat specific regions, the Black and Azov Seas, for example. In this context it is worth mentioning the Decree of the President of the Russian Federation No. 1470 of July 6, 1994 on the natural resources of the shores of the Black Sea and Azov Sea (with Amendments of March 1, 1996); Treaty on division of competence between the Federal organs of State power and organs of State power of Krasnodar Province of January 30, 1996; Treaty on division of competence between the Federal organs of State power and organs of State power of Rostov Province of June 11, 1996.

The analysis of the above-mentioned documents proves that the resources of coastal areas are treated separately and in a mosaic way. Legislation in force is constructed in a traditional and largely outdated way, managing a problem rather than managing an activity to prevent the emergence of a problem. It does not provide any legal or institutional tool to resolve knots of conflicts relating to resource use that exist in large amounts in the coastal area. As a practical consequence of such an ineffective legal regulation, the resource use in the areas in question is far from being harmonized and sustainable. A new federal law on coastal management of integrated nature is needed.

Environmental, social and economic manifestations of the need to develop ICAM in Russia

The environmental, social and economic background for shaping the legal basis for integrated coastal management encompasses the following factors:

- The adjacent sea area of Russia and the relative borderline are closely interrelated and can be considered

as a unique complex appropriate for management. In the context of the eventual law, the term 'coastal management' should mean State management of the adjacent sea area and relative shore.

- The sea area in question over which Russia, in accordance with the international law exercises sovereignty and jurisdiction, is an important life-supporting space for renewable marine living resources – one of the main natural resources of Russia.
- Because of the interlinks of ecological and social factors, degradation of natural resources and local ecosystems in the coastal areas will produce a negative impact on the health and well-being of the present and succeeding generations of Russians, as well as on natural resource use and the economic prosperity of the region.
- Pollution of the coastal area, including lagoons, beaches, forests, spaces of marine organisms spawning, etc. constantly expands. Russian as well as foreign 'polluters' very often do not bear any responsibility and liability for the environmental damages and relative negative social and commercial consequences, that their activity causes because of the weak State control and underdeveloped legal regulations in the area.
- Erosion of the seashore, the factor that is to a great extent caused by mistakes in management, lead to losses of valuable coastal lands and has a destructive effect on local communities.
- Negative impacts of human activity on the coastal ecosystems have been increased enormously in recent years as a result of economic reforms and inadequate legal regulations.
- It is no rare situation when an individual as well as local authorities do not have adequate legal means at their disposal for protecting a constitutional right for a healthy environment, which is often jeopardized by chemical, oil or other companies, supported by Federal executive organs. A feasible way-out could be found in the creation of a legislative mechanism for harmonizing resource use, environmental and commercial interests of local communities, companies, subjects of the Federation and the Federation itself in the coastal area.
- In many coastal areas the water quality decreased as a result of violations of rules concerning waste disposal from the seashore and from ships. Hence, the recreational potentiality of the areas and related commercial advantages were also diminished.
- A disadvantageous legal environment for investments makes the employment situation in the coastal areas even more depressing, does not encourage of financial investments, that are necessary for resolving vital social and economic problems, the reconstruction of ports in particular.

Mondial legal experience to be adapted in ICAM in Russia

To formulate an innovative approach for a legal basis of ICAM, we analyzed recent developments of the concept of and legal approaches to the management of the coastal area, including the EU Model law on Sustainable Management of Coastal Zones and European Code of Conduct for Coastal Zones (Anon. 1999a) as well as papers of international organizations, for example, FAO (Anon. 1997) on the subject. This kind of work was helpful for identifying possible ways of adapting mondial legal experience to the Russian law in the sphere of coastal area management.

Legal experience of coastal management in The Netherlands, United Kingdom, Sweden, United States is of particular interest in this context. In each of these countries a specific segment of coastal management is developed. For example, Danish legislation (Bangert 1997) pays particular attention to municipal and regional planning in the framework of coastal management. The relative English legal experience is significant for the definition of the Coast Protection Areas for environmental purposes (Lowe 1997). In Sweden the legislators stress on land use regulation in the areas in question (Jacobsson 1997). The US law on coastal management (Anon. 1999b) provides a valuable example of setting up a legal basis and institutional mechanisms for harmonizing the interests of various natural resource users, as well as Federal and State interests in the coastal area.

Legal approaches of the US as well as of European countries accumulate both national legislation and international conventions with a priority for the latter ones. This aspect is of particular interest for developing the future philosophy of coastal management in the Russian Federation.

Optimum legal grounds of ICAM in Russia

The economic, social, cultural dimensions of life in the coastal areas of the Russian Federation are profoundly interlinked with the developing activities of Russian private and state enterprises in the sea, and with the marine environment. This factor predetermines the necessity, as has already been stressed, to consider the coastal area and its contiguous waters as an integral unit from the legal point of view. This concept can be a starting point in the formulation of the optimum legal grounds of ICAM in the Russian Federation. In the context of the ground ideas mentioned above, the specific objectives of the drafting are the following:

- To take into consideration tendencies of today's natural resource use in the coastal area and a prognosis of the state of those resources when exploitation is developed;
- To increase efficiency of legislation in force to mitigate conflict situations and to harmonize the various interests in coastal areas;
- To harmonize jurisdictions of the Federal organs of the Russian Federation and that of authorities of subjects of the Federation in the sphere of coastal area management;
- To identify key weak points and lacuna of the existing legal regulations in the coastal area;
- To apply relevant international and national legal experience – specific acts as well as particular provisions, relating to the theme in question;
- To formulate specific proposals for development of ICAM in the Russian Federation.

Conclusions

Analysis of the present situation in coastal areas proves that effective legislation is needed to achieve the following goals: socio-economically and environmentally sustainable development of the communities; conservation of the unique coastal area environment for present and future generations; harmonization by legal tools of competing interests of the coastal area's users; definition of the scope of responsibilities of different branches and levels of power; and shaping of legal institutional frameworks for ICAM program developments and implementation.

As stated above, in order to achieve these goals it is necessary to identify the existing patterns of coastal area resource use, typical combinations of interaction of resource users, and specific problems – environmental, economic and social – that should be resolved through the development of legal instruments. The next steps could be an analysis of the situation in key coastal areas, and a review of recent developments in the conception of, and legal approaches to, the management of the coastal area. In particular, the EU Model law on Sustainable Management of Coastal Zones as well as UN agencies papers on the subject are highly important for identifying possible ways of adapting the mondial legal experience to Russian law in the sphere of coastal area management.

On this basis, it would be possible to commence the formulation of the optimum legal grounds of ICAM in the Russian Federation (Anon. 2000; Andreeva et al. 2001). In this paper we present a draft of a unique legislative act on ICAM, that we are sure could contribute to a more sustainable use of coastal area, as well as

decreasing and preventing pollution of the sea, which is particularly important for intensively used areas.

In our view, the key provisions of the act should be the following:

1. The coastal area, as defined in the draft, should encompass the adjacent sea area with the outer borderline coinciding with the outer borderline of the exclusive economic zone as well as a shore belt that includes adjacent administrative units.

2. The Constitution of the Russian Federation contains a 'joint competence' provision of the Federation and subjects of the Federation. At present this constitutional norm is being developed in the context of a specific natural resource management. As to the coastal area, along with shaping three level jurisdictions – Federal, provincial and municipal – we would suggest a consultative body to be incorporated in the decision-making structure. This body, consisting of representatives of the Federal, provincial and municipal authorities, as well as of legal entities, non-governmental associations and local communities, can operate with the authorities and participate in the decision-making process relating to the coastal management. The activity of such an advisory organ would assist to harmonize interests of different state institutional levels and resource users, and would be a mechanism of implementation of the 'joint competence' idea.

3. Another practical way to realize the 'joint competence' provision seems to be in developing a coastal management plan. We suggest that this plan would be a main ground for all activities in the area in question. The municipality should initiate the plan. All the related communities should be informed on the development of the draft and every citizen will have the right to make any suggestions and comments. Some components of the draft should be obligatory, for example a map of the area in question with identification of recreational sections, natural reserves, sites under Federal jurisdiction, spaces exempted from transferring into private ownership, gas or oil industrial sites and others. The draft should include a scenario of environmental improvements, monitoring and control mechanisms, social developments, emergency measures, etc. To be finally approved the draft should be considered at the provincial and Federal levels.

4. The public level of legal regulation should be protected from including automatic copies of private law constructions (a mistake which is very typical in the contemporary Russian legislative process, which is under influence of aggressive lobbying of companies).

5. In our opinion the law on coastal management should pay particular attention to the environmental issues in different aspects. In our proposal we tried to shape various possible ways of environmentally sound management of the coastal area. They could be the following:

- Definition of types of land and sea spaces which are exempted from privatization: such as the narrow strip of the shore bordering the sea; sections of internal sea water, territorial sea and exclusive economic zones; lands covered by flood tides; communications; natural parks and reserves; recreational zones and some others;
- Main requirement for rules of tenders for long-term renting of land sites in the coastal area. Improvement of the social environment as well as conservation and improvement of the natural environment are mentioned in the list of key criteria for defining the 'winning' party. As to sea spaces they can be used, in accordance with the Federal Law on the Continental Shelf of the Russian Federation, for exploration and exploitation of mineral resources, fisheries, formation of scientific geological or paleontological collections and some others;
- Provision on obligatory insurance of enterprises conducting exploration, exploitation or transportation of oil, gas and other mineral resources;
- Specific environmental conservation provisions, including environmental requirements for military objects, removal of consequences of incidents on the sea, environmental impact assessment procedures, environmental damage evaluation;
- Specific provisions concern states of emergency of natural and technogenetic nature.

Acknowledgements. At its first stage (1998-1999) the work was implemented in the framework of the Russian Federal Research Program 'Comprehensive Investigations of Oceans and Seas, the Arctic and Antarctic', in the second stage (2000-2002) in the framework of the Russian Federal Target Program 'World Ocean'. The authors are particularly grateful to Prof. Nikolay A. Aibulatov for his active participation at the first stage of the work, and also to Julia R. Davletbaeva, attorney.

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Received 6 July 2002;

Revision received 3 April 2003;

Accepted 3 April 2003.

Co-ordinating Editor: M. Cassar.