

Freezing Arctic Jurisdiction: The case for a regional oil bank

Written by Mackinnon Lawrence

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MACKINNON LAWRENCE, MAY 8 2008

In the spring of 1970, Canada unilaterally enacted legislation to regulate activities in the Arctic Ocean. While criticized as an attempt to assert ownership over what was then perceived to be international territory, the act signalled a bold willingness to prosecute polluters in the absence of sufficient rules of international law. Canada acted to protect the Arctic Ocean's pristine nature for all of mankind[1].

Today, retreating polar ice and the potential for extensive oil and gas reserves have renewed interest in the region, but for a far less altruistic motive.

With jurisdiction over most of the Arctic Ocean still up for grabs, regional powers are scrambling to formalize territorial claims under the UN Law of the Sea Treaty. Although the Treaty represents an important development in international resource protection and cooperation, it enables a unilateral, take-all approach to deep offshore hydrocarbon resources. As the sustainability of a hydrocarbon-dependent society is increasingly called into question, this rush for "black gold" is particularly worrisome.

The notion that an ice-diminished Arctic Ocean could be the subject of a 15th century-style "land" grab runs counter to traditional characterizations of the region as a frozen periphery and hinterland. Amidst increasing energy insecurity, traditional perceptions no longer hold. An ice-free Arctic, a scenario that some scientists predict will occur by 2030, would enable access to an estimated quarter of the world's undiscovered oil and gas reserves in a body of water less than four times larger than the Mediterranean Sea.[2]

This potential bounty is luring "the Arctic Five" (Russia, the United States, Canada, Denmark(via Greenland), and Norway) northward.

Under the Law of the Sea, a series of geographical zones delineate jurisdictional rights with respect to offshore resources. Coastal states maintain sovereign authority over a 200-mile economic zone extending from their respective coasts, including the right to drill for oil[3]. In the Arctic Ocean, these zones form a continuous ring around a commons area, which in theory, is held for the benefit of the "common heritage of mankind."

But "creeping jurisdiction" threatens to carve up the Arctic commons. The Law of the Sea permits countries to claim territory outside their economic zones if they can prove the existence of a submerged natural prolongation of their respective territory[4].

Russia's August 2007 flag planting signalled their intent to do just that. Its corresponding claim includes two submerged ridges, which would secure exclusive access to extensive fossil fuel resources inside the Arctic commons and around the North Pole[5]. The Russians are not alone. Their gambit has sent Canadian and Danish expeditions north to gather evidence to support their own claims. The United States remains on the sideline so long as efforts to ratify the Treaty remain stalled in the Senate.

Even though it would be a generation before deep offshore Arctic reserves ever reach the market, this oil and gas

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represents a potential boon for regional players whose economies are inextricably linked to a steady supply of fossil fuels. A backyard source would also provide an alternative to politically sensitive Middle East oil and offer a chance to boost dwindling global reserves.

With oil threatening to hit \$200 a barrel, scarcity is here for good. Anxieties are compounded by the fact that we do not have any options that can match fossil fuel's relative abundance, cost, and energy punch. Climate change also suggests that continuing to burn fossil fuels until some "miracle" resource or technology bails us out will prove to be both an economically and environmentally hazardous gamble. The melting of the Arctic ice already illustrates the extent to which human activities can alter the basic functions of the planet and demonstrates that there are natural limits to the amount of carbon we can pump into the atmosphere.

Industrialized powers must rethink energy priorities to encourage the development of alternative solutions before climate chaos and depleted global reserves force them to. Geopolitical jockeying for Arctic oil and gas is not the way forward.

Given the likelihood of overlapping claims, carving up the region would be messy. Like fish stocks, oil reserves can straddle borders and migrate between territories. Further, competition over such an elusive resource may initiate a wasteful extraction race, which ignores global scarcity and could cause severe environmental degradation.

Jurisdictional uncertainty provides a unique opportunity to signal a new direction in global energy policy. The industrialized "Arctic Five" currently face two options: continue a century of competition over global fossil fuel resources by carving up the Arctic commons or establish a new regime to jointly manage the region's fossil fuel reserves.

There are many advantages to the second alternative. A new regime would allow for a moratorium on hydrocarbon extraction. Jointly managed among regional powers as an oil bank, this multilateral approach could provide an emergency supply of oil and gas as insurance against future alternative technology deficiencies while also signalling a commitment to investing in alternative energy solutions. It also accounts for the potential needs of future generations whose fossil fuel access is not guaranteed.

This approach is not without precedent in international law. The Antarctic Treaty System ("ATS"), various regional sea agreements, and the growth in principles of international environmental law favoring regional and multilateral cooperation to protect the environment provide useful models[6].

The Arctic region's acute environmental vulnerability provides a vehicle for regional cooperation. The 1989 Exxon Valdez disaster proved that oil spills are particularly destructive in the Arctic because the cold, icy waters breaks down oil molecules more slowly[7]. Although relatively pristine by global standards and supporting a surprisingly complex ecosystem, the region is under increasing threat from oil and gas activity. Conservation would limit further destruction.

While a joint management regime grants considerable control to a handful of global players, a jurisdictional free-for-all is an outdated solution that ignores today's energy and environmental realities. Like Canada's unilateral legislation nearly 40 years before it, an Arctic oil bank would be a symbolic commitment towards reorienting global energy politics for the good of mankind.

Mackinnon Lawrence studies at the American University, School of International Service

[1] Dr. Barry Hart Dubner, "On the Basis for Creation of a New Method of Defining International Jurisdiction in the Arctic Ocean," *Missouri Environmental Law and Policy Review* 13 (2005): 21-2.

[2] USGS, "U.S. Geological Survey Open File Report 97-470-J

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2003,” US Department of the Interior. <http://pubs.usgs.gov/of/1997/ofr-97-470/OF97-470J/>.

[3] Oceans and Law of the Sea, “The UN Law of the Sea Treaty,” United Nations. http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

[4] *ibid*

[5] C.J. Chivers, “Russians Plant Flag on Arctic Seabed,” New York Times, August 3, 2007. <http://www.nytimes.com/2007/08/03/world/europe/03arctic.html>.

[6] David Rothwell, “International Law and the Protection of the Arctic Environment,” *The International and Comparative Law Quarterly* 44 (1995): 306.

[7] *Ibid*, 280-82.