Offshore Oil and Gas Exploration & Indigenous Peoples in the Arctic: Response & International Support

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Oil drilling activities in the Arctic have negatively impacted the livelihoods of indigenous peoples and, resultantly, have compelled them to demand more attention, protection, and rights from the international community. It is estimated that the Arctic contains 22 percent of the world’s undiscovered fossil fuels, that is, 13 percent of oil and 30 percent of gas (Hough, 2014, p. 19). This much-quoted figure has increased competition over oil and gas deposits while creating conflicts over overlapping sovereignty claims. Globalization and oil exploration in the Arctic have ultimately increased interactions between circumpolar peoples and the world, which allows indigenous communities to collaborate with both intergovernmental and nongovernmental organizations and defend their livelihoods against oil giants.

**I: The Sovereignty of Native Tribes, the ICC, & Oil and Gas Development**

The indigenous peoples of the Arctic have been relatively successful in uniting to claim their right to self-determination, particularly in regards to their right not be deprived of their natural resources. Six international organizations representing many Arctic indigenous communities, including the Aleut International Association, the Inuit Circumpolar Conference, and the Saami Council are Permanent Participants of the Arctic Council, meaning that they are fully involved and consulted in the work of the Arctic Council. The Arctic Council Indigenous Peoples’ Secretariat was also established in 1994 to create new opportunities for indigenous peoples and assist the Permanent Participants in presenting their causes to the Arctic Council. Although indigenous peoples have the right to equality, non-discrimination, and self-determination, many countries in the Arctic Council continue to question the land and resource rights established in Article 14 of Convention 169 of the ILO, for this is a threat to their territorial integrity and their energy interests. According to the *Arctic Human Development Report*, only Sweden and Norway of the eight Arctic states have ratified ILO 169 (2004, p. 107). Although countries like the United States and Canada recognize exclusive indigenous land rights, they include clauses that limit indigenous offshore rights and titles, and therefore, purposefully limit oil and gas rights (2004, p. 107). With the disposition system, states are able to transfer the right to develop resources to private interests, although the petroleum companies are still required to adhere to conservation and environmental regulations. Specifically, Arctic oil and gas disposition regimes are “work or bonus bid-leasing schemes,” in which resource rights are awarded to the party committing to the most work or to the highest bidder, respectively (2004, p. 114). Thus, native tribes are excluded from these decision-making processes by petroleum companies and are denied the right to control their own natural resources, even when the resources are within their territorial boundaries.

The Inuit Circumpolar Council (ICC) is a multilateral non-governmental organization that represents approximately 160,000 Inuit living in the Arctic regions of Alaska, Canada, Greenland and Chukotka, and Russia, and is the main forum for advancing the rights and interests of the Inuit at the Arctic regional level. The origins of circumpolar indigenous institution building are in oil and gas exploration, as the ICC held its first meeting in 1977 in order to establish “a link between Inuit self-determination at home and sustainable circumpolar resource development” (Shadian, 2014, p. 224). That is to say, the ICC directly related the daily survival of indigenous populations to sustainability and the conservation of resources. Those who participated in the meeting, including Saami from Lapland, Sweden, and Finland; several Greenlandic groups; and Inuit and First Nation tribes from the Northwest Territories and Yukon, demanded that indigenous populations in the Arctic be recognized as people with full rights. These native tribes were able to mobilize in response to resource conflicts with states and garner international attention on issues relating to resource development, political autonomy, and the fundamental rights of indigenous peoples. Furthermore, the ICC outlined its Arctic policy in 1992, which resulted in the creation of legal regimes with enforcement capabilities within each nation-state and increased attention to offshore oil and gas development. In its 1992 Principles and Elements for a Comprehensive Arctic Policy, the ICC insisted on more preparation for a major blowout of in the Arctic, with adequate equipment and well-trained personnel, the development of a yearly contingency plan by Arctic state government, Inuit, and industry representatives, rules for requesting permission to drill, and agreement from the responsible party to cover the costs of a worst-case scenario spill response (ICC 1992b: 65-66).

Furthermore, the Arctic states often used the policies developed by the ICC as a guide for sustainable development in the region, as well as a guide for their own environmental policies. For example, the Arctic states would not come together to address the issue of Arctic oil and gas development until the Arctic Council’s publication of its *Offshore Oil and Gas Guidelines* in 1997, followed by its 2008 *Arctic Oil and Gas Assessment*, which repeated the ICC’s previous calls for resource development planning and building an inter-Arctic regime to gain more control over offshore oil and gas projects (Shadian, 2014, p. 237). The ICC as an actor in the Arctic regional policy scene has successfully taken action to regulate offshore oil and gas exploration and has pushed for more recognition of threats to indigenous communities in the Arctic in the event of a major spill.

**II. Limited Spill Response Capabilities in the Arctic & Impacts on Native Tribes**

The lack of preparation for a potential oil spill, limited response capabilities due to the harsh climate, and the presence of offshore oilrigs drilling wells into the seabed threaten the food supply and disrupt the way of life for indigenous populations in the Arctic.

The harsh climate and environment of the Arctic, constraints on response logistics and equipment, and the fragility of the ecosystem and limited options for restoration all limit the effectiveness of the response in the event of a major oil spill in the Arctic. Different regulatory requirements for each Arctic state also complicate oil spill response. In the United States, The Bureau of Ocean Energy Management (BOEMRE) and Alaska Department of Environmental Conservation, in addition to requiring a permit to conduct offshore oil exploration in the Arctic, also require an emergency response plan, including a spill management team, designated locations for response operations centers, and a list of procedures to be followed after the spill (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2010, p. 6). However, these established response procedures would not be able to overcome the challenges posed by the environment itself in responding to a spill in the Arctic. These challenges include sea ice, temperature [which affects the oil’s pour point and speed of degradation], wind and wave activity, and darkness. These environmental conditions increase the response gap, effectively limiting the amount of time that teams can respond to the spill. Researchers in the Prince William Sound have found that response is not possible 38 percent of the time, which rose to 65 percent of the time during the winter season (Nuka Research and Planning Group, 2007). The distance of Coast Guard operations bases from drilling areas in the Artic also presents another issue, as it will take the Coast Guard a long time to reach the spill in order to oversee the response, including working with the provided equipment and response teams (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2010, p. 19). This indicates that an oil spill in the Artic would have devastating consequences for native communities, as organizing an effective response would not always be possible and large percentages of the oil would remain unrecovered.

Ongoing oil drilling activities compromise subsistence living and cultural practices of indigenous peoples. The lives of indigenous peoples are directly connected to the environment that supports them. The Inuit, for example, catch 80 percent of their food source in coastal waters and rely on local marine wildlife, such as the bowhead whale, for survival. An Inuit tribe in Alaska, the Inupiat, is limited to catching 10 bowhead whales each year, and the first nine boats to harpoon a whale receive equal shares with the lead whaling crew. The skull is then traditionally returned to the sea, an act that symbolizes the “regenerative cycle of life and death” (Hagopian, 2014). Furthermore, icebreaker tanks and rigging ships that regularly move through the area have long-lasting negative consequences for the environment (Hagopian, 2014). The *Survey of Living Conditions in the Arctic*, an international joint effort, found that activities like hunting, harvesting, and traditional food-processing remained important for indigenous peoples, many of them explaining that locally available fish and game and traditional activities are why they chose to stay (2007, p. 4). Additionally, 74 percent of indigenous adults reported that they fished in the last twelve months, and 43 percent reported that they hunted seal or ugruk in the last twelve months (2007, p. 5). It’s clear that oil-related activities in the Arctic seriously implicate the lives of indigenous populations, threatening not only subsistence living, but also the preservation of their traditions. Oil and gas operations can also have other serious effects, including increased human populations on their lands, disruption of daily life caused by large infrastructure projects, decreased local flora and fauna, degradation of sensitive lands, and water, soil, and air contamination. This can even lead to health problems among affected indigenous populations and loss or damage to hunting grounds and fisheries, as well as to the biodiversity, medical plants, and spiritual sites of the area (Fjellheim 2006, p. 28).

**III. International Attention on** **Oil and Gas Projects in the Arctic**

The international community, including both intergovernmental organizations and nongovernmental organizations (NGOs) outside of the Arctic, have been responsive to the interests and concerns of indigenous populations in the Arctic in regards to sustainable resource development and oil and gas exploration. Globalization and the rise of new technologies have enabled native communities in the Arctic to communicate the risks that offshore drilling poses to their resources and to appeal to the international community for support. Moreover, the *Deepwater Horizon* spill in 2012 increased international awareness and media interest in the risks associated with offshore oil and gas exploration in the Arctic, which resulted in a discussion between Arctic states on legally-binding regulations for Arctic resource development (Shadian, 2014, p. 239). Political actors and organizations in the international community can thus increase awareness on issues affecting indigenous communities in the Arctic, like oil drilling, and pressure to Arctic states to find solutions to effectively reduce negative impacts to these communities.

The rights of native tribes in the Arctic are protected by intergovernmental organizations and indigenous peoples are allowed to participate in international politics as independent actors. For example, the ICC is recognized by the UN Economic and Social Council (ECOSOC) as having consultative status in the United Nations as an NGO and as an Indigenous Peoples Organization (IPO). This means that the ICC is able send participants and observers to sessions of different UN bodies and advance its own interests. Furthermore, national frameworks often fail to support indigenous rights in the Arctic, prompting native groups to bring the issue of offshore oil and gas development to the international level. For instance, the *Arctic Human Development Report* observes that only four of the eight Arctic states, Canada, Finland, Norway, and Russia, provide constitutional protection for the rights of indigenous peoples (2004, p. 106). Therefore, native tribes often turn to intergovernmental organizations, or even non-governmental actors, for support with Arctic conservation efforts, with increasing oversight and regulation of offshore oil and gas exploration, and with taking oil giants to court.

The self-determination and fundamental rights of indigenous peoples of the Arctic are enshrined in international law, and this body has become an important instrument for holding oil corporations accountable, precluding the exploitation of indigenous populations, and reducing harmful impacts to the environment. The rights of indigenous populations have been secured within international human rights law in Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization. Convention 169 is particularly important for resisting offshore oil and gas exploration in the Arctic in that obliges states to recognize indigenous land ownership and establishes the responsibility of states to safeguard indigenous natural resources in Articles 6 and 15 (ILO, 1989). Multilateral environmental agreements also value traditional knowledge and work to incorporate indigenous perspectives and ways of knowing into resource conservation and spill response, exemplified by Article 8(j) of the Convention on Biological Diversity concerning the ecological knowledge of indigenous and local communities (CBD, 2000). The creation of a United Nations Permanent Forum on Indigenous Issues, where Arctic indigenous peoples develop strategies for social and economic development for native communities, also recognizes the key role that indigenous peoples in the Arctic have in environmental protection, sustainable resource development, and corporate responsibility. In 2002, the forum was also first chaired by a prominent Sami, Ole Henrik Magga.

 Furthermore, NGOs have been founded that regularly advocate for the rights of native communities in the Arctic. These organizations include the Alaskan Wilderness League; Alternatives North, a social justice organization that operates in the Canadian Northwest Territories and works to improve the quality of life for indigenous populations; Arctic Portal, which works to increase access to information about the Arctic and the people who live there; the Bellona Foundation, an international environmental NGO based in Norway that fights oil and gas exploration in the Arctic; the Circumpolar Conservation Union, which protects the cultural integrity of the Arctic and promotes awareness of the human rights of indigenous peoples; Earthjustice, a non-profit public interest law organization that works through the courts on behalf of indigenous communities; Northern Forum, an international non-profit organization based in Yakutia, Russia that brings together leaders to discuss the issues facing indigenous peoples in the Arctic; Oceana, an international organization that focuses on ocean conservation and protecting marine ecosystems from offshore drilling, and many more. These national and international non-governmental organizations continue to be highly involved in defending the interests of indigenous peoples in the Arctic by conducting research on the effects of oil drilling in the Arctic, fighting legal battles against oil corporations, and pushing for stricter regulations. For example, the Circumpolar Conservation Union (CCU) had been involved with the work of the Arctic Council in drafting Article 4 of the text *Systems for Oil Pollution Preparedness and Response*, which requires the Arctic countries to maintain national response plans that consider the likelihood of spills at certain locations and threats to areas of special ecological concern. The CCU is also working with other conservation groups and holding discussions with the Department of Interior, NOAA, United States Coast Guard and the White House to improve response capabilities in the Arctic and identify subsistence communities that would be at considerable risk. The Northern Forum has observer status at the Arctic Council and works with member states on environmental risk analysis in regards to oil drilling, protecting marine environments, and preserving indigenous languages. The Norwegian Society for the Conservation of Nature (Norges Naturvernforbund) has vehemently opposed oil and gas exploration in the Norwegian Arctic, specifically in the Barents Sea, by three of the United Kingdom’s “big six” energy companies and German oil corporations, including E.ON and RWE/Npower.

It’s evident that native groups in the Arctic can partner with non-governmental organizations in order to address the issues of offshore oil and gas exploration with Arctic states and confront oil corporations that threaten the subsistence lifestyles of indigenous communities.

**IV. A Case Study: Shell & Exploratory Drilling in the Arctic**

Native communities in the Alaskan Arctic, in cooperation with environmentalists, successfully brought the Royal Dutch Shell company and the U.S. government to court in January of 2014. This event came after several obstacles faced by Shell, including the delay of its plans for exploratory drilling after the 2010 *Deepwater Horizon* spill, the grounding of a drill barge in the end of 2012, the revision of its exploration plan in November of 2013, and ultimately Shell’s suspension of drilling activity in 2014. (Leschine, 2014). Native communities in Arctic Alaska were ultimately able to call on U.S. environmental agencies and mobilize a national network of supporters in order to bring the oil giant to court. This reveals the increasing interconnectedness of indigenous communities in the Arctic with the outside world, culminating in the formation of a robust international support system of NGOs and other groups.

Indigenous peoples in cooperation with environmental agencies and NGOs have been engaged in ongoing legal battles with the Royal Dutch Shell Company and have worked together tirelessly to improve response plans, reduce risks to the environment, and hold Shell accountable. Earthjustice sued the Department of the Interior in 2008 over its oil and gas lease sale of 300 million acres, and a coalition of environmental NGOs and native groups sued the Bureau of Ocean Energy Management, Regulation, and Enforcement's (BOEMRE) in 2011 over its decision to drill in the Beaufort Sea (Leschine, 2014). In 2012, Alaskan native communities effectively collaborated with Oceana, the Alaska Wilderness League, the Sierra Club, Earthjustice, the Center for Biological Diversity, and a host of other environmental groups to improve spill response plans in the Arctic and hold Shell to a higher legal standard (Murphy, 2012). Public Employees for Environmental Responsibility (PEER), an activist watchdog organization, filed a suit against the Federal Bureau of Safety and Environmental Enforcement (BSEE) for failing to disclose information on the failure of Shell’s containment dome apparatus. And in 2014, Shell suspended drilling after the Court of Appeals for the Ninth Circuit ruled that the Department of the Interior violated the law in selling offshore gas leases in the Chuckchi Sea, citing the DOI’s “arbitrary estimate of worst case discharge” (Leschine, 2014). Thus, indigenous peoples in the Arctic have clearly benefited from partnering with environmental organizations in the U.S. These organizations are able serve as advocates for indigenous communities, taking action for the protection of their interests and commanding financial and legal resources on their behalf.

 Offshore oil and gas exploration directly implicates the livelihoods and subsistence culture of indigenous peoples in the Arctic. Although some Arctic states reinforce indigenous self-determination and the preservation of native rights and rituals, existing tensions remain between member states and indigenous representation on the Arctic Council, notably in regards to land rights, sustainable resource development, and the ownership of oil and gas reserves. In the context of globalization, native tribes in the Arctic have responded by appealing to intergovernmental and non-governmental organizations to protect their resources at risk and ultimately raise awareness on the unpreparedness of Arctic states for the event of a major oil spill.

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