

ON THIN ICE: WATER RIGHTS AND RESOURCE DISPUTES IN THE ARCTIC OCEAN

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In August 2007, a Russian submarine surprised the world by planting the country's flag on the Arctic seabed, almost 14,000 feet below the North Pole. The titanium tricolor was the culmination of a scientific mission to demonstrate Russia's claim to a vast, potentially resource-rich region along its northern coast. Recent geological surveys suggest the Arctic may hold up to a quarter of the world's remaining oil and gas reserves. Predictably, other circumpolar powers criticized the Russian voyage. "This isn't the 15th century," said Canadian foreign minister Peter MacKay. "You can't go around the world and just plant flags and say 'We're claiming this territory.'"¹

Over the past few years, several factors have converged to make the Arctic a new front for global tensions. First, the sustained increase in energy prices has changed the economics of surveying and mining hostile climates, making the Arctic ever more attractive as hydrocarbon reserves continue to dwindle.² Second, rapidly shrinking ice cover has made these untapped resources more accessible and opened up lucrative shipping lanes previously blocked by ice. Over the past twenty years, an area the size of one-third of the continental United States has disappeared from the Arctic ice cover due to climate change, reducing the costs and risks of access.³ In 2007, the long-sought Northwest Passage, which could potentially cut a journey from Europe to Asia by 2,500 miles, opened to commercial shipping for the first time. The passage remains a point of contention between the United States, which considers it international waters, and Canada, which considers it to be under Canadian sovereignty.

Adding to the convergence of high energy prices and melting ice is a third factor, the weakness of international law governing the region. No country currently owns the North Pole or the Arctic region around it. Unlike its Antarctic counterpart, the Arctic is not a continent; it is an ocean of drifting and increasingly thin chunks of ice that shrink and expand with the seasons, and that until recently were considered too barren and remote to be worth claiming. According to the rules established by the 1982 United Nations Convention on the Law of the Sea (UNCLOS), countries

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have exclusive economic rights to a 230-mile zone around their coastline.⁴ At issue today is a roughly circular territory around the extreme north that extends beyond this perimeter. In 2001, Russia claimed 460,800 square miles of this territory, an area about the size of Western Europe. By law, states that have ratified UNCLOS can petition a special UN commission, the Commission on the Limits of the Continental Shelf (CLCS), to extend their economic zone—but only if they can demonstrate that the area in question is connected to their own continental shelf. Russia's delegation argued that its continental shelf is connected to the North Pole via the 1,100-mile Lomonosov Ridge, which bisects the Arctic Ocean, stretching between Siberia and Canada's Ellesmere Island.⁵ The CLCS has so far neither approved nor rejected the claim, asking the delegation to come back with more evidence—which they are expected to do in the wake of the Arktika-2007 expedition, as the flag-planting mission was called.⁶

A problem with this process is that upon ratifying UNCLOS, countries have ten years to launch a petition. Four of the five circumpolar countries have ratified the convention within the past decade, with the fifth—the United States—poised to join this year. Russia's 2009 deadline means it must intensify the pressure for territorial claims, while other circumpolar powers have little choice but to respond with counter-claims and escalations of their own. Russia's last mission created a surge of expeditions and denunciations from other circumpolar states, with Denmark and Canada pursuing their own claims to the Lomonosov Ridge and thus the North Pole. In short, the deadline has “sparked just the kind of the disorderly rush to put down markers that the treaty's drafters had once hoped to head off.”⁷

Nor does the law provide for effective dispute resolution. The CLCS only has a mandate to review the evidence and make recommendations, not enforce decisions. Claims are subject to counter-claims by other states, with the whole process liable to degenerate into lengthy bilateral negotiations. The weakness of Arctic international law during a crucial time in the region's development threatens to create “a cacophony of arguments that could keep lawyers and geographers busy for decades.”⁸

Unlike geopolitical rivalries of the past, where possession enforceable by force usually amounted to nine-tenths of the law, competition over the Arctic has so far been set up to emphasize legal claims backed up by verifiable scientific data. If Russia's flag-planting marks a potential return to the realpolitik of yesteryear, then conflict over the Arctic offers an important test case for international law and global conflict management. The future of Arctic sovereignty could therefore provide some important lessons for drafting durable international treaties and managing resource disputes in the modern age.

This essay examines the status of Arctic international law, and offers policy suggestions for building a peaceful and durable legal regime in the region. First, this