

AS THE FAR NORTH MELTS, CALLS GROW FOR ARCTIC TREATY¹

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The massive oil spill in the Gulf of Mexico is a warning, conservationists say, of what could happen in the Arctic as melting sea ice opens the Arctic Ocean to oil and gas drilling. Many experts argue that the time has come to adopt an Arctic Treaty similar to the one that has safeguarded Antarctica for half a century. Few people around the world have more closely watched the unfolding Gulf of Mexico oil spill disaster than those concerned about the environmental impact of oil and gas development on a swiftly thawing Arctic Ocean. A similar-sized offshore spill would likely have even more profound consequences in the Arctic, a pristine environment that is home to a wide variety of seabirds, marine mammals, and fish. And cleanup efforts would be hamstrung for parts of the year by sea ice and the lack of the well-developed spill-response infrastructure that exists along the Gulf of Mexico.

With numerous nations and oil companies preparing for the day when widespread oil exploration will be possible in the Arctic Ocean, the Gulf spill has crystallized the fears of conservationists and native people in the Far North. And the prospect of such a disaster in the Arctic has brought to the fore a question that regional experts have debated for decades: Should the Arctic be protected by the same sort of international treaty that has safeguarded Antarctica for nearly half a century?

In late April, in the wake of the spill, the conservation group WWF released [three lengthy reports](#) calling for the establishment of an “Arctic Ocean Framework Convention” that would lead to formal regulation of fisheries, shipping, and oil and gas development in the Arctic Ocean. “The melting of the Arctic ice is opening a new ocean, bringing new possibilities for commercial activities in a part of the world that has previously been inaccessible,” said Lasse Gustavsson, incoming executive conservation director for WWF-International.

Until recently, the Arctic Ocean — locked in ice year-round, which prevents maritime passage through the region and inhibits most resource exploitation — has not needed a strict regime of protection. Regional issues have been resolved by the intergovernmental Arctic Council, which has had non-binding authority to handle disputes among the eight Arctic states. But WWF and a sizeable number of politicians, scientists, and academics are calling for a new form of governance in the Arctic Ocean, which could be ice-free in summer within two decades, opening up the region to an unprecedented surge of shipping, fishing, and hydrocarbon development.

“Few — if any — seriously question any longer that the Arctic Ocean meltdown has now become irreversible,” said one of the WWF reports. “The governance and regulatory regime that currently exists in the Arctic may have been adequate for a hostile environment that allows very little human activity for most of the year. But when the Arctic Ocean becomes increasingly similar to regional seas in other parts of the world for longer and longer parts of the year, adequacy cannot be assumed and reform of the regime is indispensable.”

Yet as sorely needed as an international agreement on managing the Arctic may be, there is no consensus on what an Arctic treaty would look like or whether a treaty or charter is the best way to manage and protect economic, environmental, cultural, and security interests in the region.

¹ environment 360, Yale University, June 14, 2010

The debate has broken down into two camps, those — such as WWF — that prefer a “hard-law” approach of new treaties and protocols, and those who advocate a “soft-law” approach of regional cooperation and management under existing regulations, such as the United Nations Convention on the Law of the Sea. Most everyone agrees, however, that failure to cooperate in a more meaningful way will result in a series of chaotic scenarios that could result in environmental disaster and heightened tensions among Arctic states.

The idea of drafting a treaty to deal with Arctic issues is nothing new. University of Toronto political scientist Franklyn Griffiths came up with a proposal in 1979 that would have set up a demilitarized zone in the Arctic in which polar nations would cooperate in areas of pollution control and scientific study. Lincoln Bloomfield, the former director of Global Issues for the National Security Council in the United States, expanded on that idea with a much broader proposal two years later. The Soviet Union’s Mikhail Gorbachev gave the concept international credibility in 1987 when he called for a treaty on cooperation in the Arctic.

While the concept has evolved, it has never been able to cut through the complexity of the issues in the Arctic. The Antarctic Treaty, which went into effect in 1961, covered an uninhabited continent (save for scientific bases) that was almost entirely covered in ice. The Antarctic Treaty and ensuing protocols, signed by nations representing 80 percent of the world’s population, set aside the southernmost continent as a scientific preserve. The treaty also bans military activities and prohibits resource exploitation. Few international agreements have worked as well.

Unlike Antarctica, there are people living in the Arctic. Nearly 2 million people in Russia, 130,000 in Canada, and a little more than a million total in Greenland, Iceland, the Scandinavian countries, and the Faeroe Islands reside above the Arctic Circle. The cultural and economic interests of these people would have to be accounted for in any future treaty. And many of them, including the Inuit of the Canadian Arctic and Alaska, won a certain degree of self-governing powers when they became landowners through various claims processes.

Maritime territorial boundaries in the Arctic, including the status of the Northwest Passage through Canada, have also not been resolved. Canada maintains that the passage, which for the past two summers has been navigable for the first time in recorded history, is part of its territorial waters. The United States and the European Union claim that it is an international strait. And although all of the lands and islands of the Arctic are under the control of Arctic states, the core of the Arctic Ocean remains part of the high seas. For this reason, WWF and other advocates of the hard-law approach say that a comprehensive international treaty is needed to protect the Arctic Ocean. WWF’s proposed Arctic convention would apply only to the marine environment of the Arctic. Building on the Arctic Council and the Law of the Sea Convention, WWF calls for a legally-binding framework that would seek to establish “ecosystem-based ocean management” both in territorial and international waters. It would create protocols for shipping and resource development, create a network of marine protected areas throughout the Arctic Ocean, ensure that commercial activity followed approved environmental practices, and require polluters to pay for cleanup efforts.

“This is a region that is undergoing dramatic change,” said Timo Koivurova, director of the Northern Institute for Environmental and Minority Law at the Arctic Centre, University of Lapland, who co-wrote the WWF reports. “We know that economic activities are going to enter the region. There is no evidence to suggest that the soft-law approach that we have now will be effective in regulating these activities in the future. What is required is the establishment of regional institutions with legal powers to regulate.”

Rob Huebert, associate director of the Centre for Military and Strategic Studies at the University of Calgary in Canada, thinks soft-law proponents are underestimating the scope of the problems bearing down on the Arctic. “The soft approach, which relies largely on voluntary cooperation, is insufficient to deal with the challenges that climate change, energy development, and increased shipping will bring to the Arctic,” he said in an interview. “Without a stronger framework for cooperative management, the living resources of the Arctic are likely to suffer, essential habitat will be degraded, and the traditional subsistence way of life of many Arctic communities will be endangered.”

Yet as rich as the Arctic’s resources are, not everyone agrees that there is a race to exploit them. Nor do they see crises looming. Oran Young, for example, is perhaps the leading scholar on the subject of Arctic governance. Based at the University of California, Santa Barbara, he is also director of the Institute of Arctic Studies at the University of Tromsø in Norway. No one has been on top of this subject longer than he has been. Young believes that fears of an Arctic resource rush, expressed in media reports in recent years, are substantially exaggerated. He and others see no need for an overarching treaty when the future is so uncertain. “While it is important to consider the possibility of worst-case scenarios unfolding in the Arctic, I think this idea of a Wild West-like land rush is far-fetched,” he said in an interview. “The development of oil and gas reserves located beneath the continental shelves of the Arctic, beyond the limits of the existing exclusive economic zones, is highly unlikely during the foreseeable future.”

Young believes that issues pertaining to territorial claims and future shipping practices can be dealt with adequately by the UN Convention on the Law of the Sea, which the Obama administration recently pledged to sign. Nevertheless, Young says there is good reason to reassess current governance arrangements in the Arctic in light of what is going on. The solution is not a treaty, he adds, but what he describes as a “somewhat messy patchwork made up of disparate pieces” — a soft-law approach that can be quickly adapted to rapidly changing circumstances. Arctic nations could agree, for example, to manage walrus, beluga, and cod or halibut fishing in mutually beneficial ways.

Such soft laws could be administered by the Arctic Council, which currently promotes cooperation among Arctic governments on a number of key issues, such as trans-boundary pollution, overfishing, and oil and gas development. Although member states — which include Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Sweden, Russia, and the United States — make the final decisions, the council provides a forum in which indigenous people living in the North have a say in the decision-making process, which they would not be able to exercise in more formal treaty negotiations. “Even if it were feasible, would we want to have a formal, legally binding treaty for the Arctic?” Young wonders. “There is a tendency to think of formal arrangements like the Antarctic Treaty system, but there are also advantages to having a soft approach in addressing Arctic issues. Unlike treaties that are rigid and take tremendous time and effort, informal agreements can be made more quickly. They can have more substance and they can provide for greater adaptability.” Canada and Greenland, for example, recently signed an agreement to deal with the increasingly unsustainable hunting of polar bears in Baffin Bay. The two countries are collaborating to determine how many bears can be hunted on each side of the maritime border. It will be left to each country, not a legally binding treaty, to honor the agreement.

In recent months, the United States, the European Union, Russia, and Canada have distanced themselves from the idea of an overarching treaty. And so far, the Arctic Council has shown no appetite for such a treaty. Critics see this as a sign that the council believes it is currently doing a good job. Koivurova, co-author of the WWF reports, says that one possible first step is to forge

a framework treaty that formalizes the current membership of the Arctic Council and adds certain guiding principles related to environmental protection. “The Arctic Council may not like it,” he concedes. “But if it continues without a legal mandate, there is great danger of it becoming a façade under which unilateral and uncoordinated development-oriented parties of the Arctic states can proceed.”