

Indigenous rights, sovereignty and resource governance in the Arctic

Åshild Kolås

Peace Research Institute Oslo (PRIO)

While oil and gas industries are already well established in Siberia and Alaska, the melting of the Arctic ice cap is opening up new areas of the High North to hydrocarbon exploration. According to the US Geological Survey (USGS), the Arctic is expected to hold about 22 per cent of the world's undiscovered, technically recoverable conventional oil and natural gas resources (about 13 per cent of undiscovered oil reserves, 30 per cent of natural gas, and 20 per cent of natural gas liquids).¹ Greenland waters are believed to be particularly rich in oil, and may contain reserves of up to 50 billion barrels, equivalent of Libyan oil reserves.² Of the Arctic Council's five member states bordering the Arctic Ocean, Russia and Norway have already submitted continental shelf claims to the Commission on the Limits of the Continental Shelf. Another two member states, Canada and Denmark (on behalf of Greenland) are in the process of submitting their claims. Sovereign rights to offshore hydrocarbon reserves are key issues at stake in these claims. While some analysts see the scenario as a 'scramble' for Arctic hydrocarbons, others highlight the huge technological difficulties of oil and gas extraction in the Arctic, and suggest that territorial disputes are relatively insignificant.³ Nevertheless, the Arctic region's substantial mineral and hydrocarbon wealth makes issues of sovereignty and governance all the more important to stakeholders, including indigenous peoples as well as states.

The Arctic Council is an important forum for discussing circumpolar affairs such as resource management and environmental protection. In addition to the eight Arctic states (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States), the Arctic Council also includes as permanent participants six Non-Governmental Organisations (NGOs) representing Arctic indigenous peoples: the Arctic Athabaskan Council (AAC), the Aleut International Association (AIA), the Gwich'in Council International (GGI), the Inuit Circumpolar Council (ICC), the Russian Association of Indigenous Peoples of the North (RAIPON) and the Saami Council (SC). As permanent participants, these organisations have full consultation rights in connection with Arctic Council negotiations and decision-making. The

Arctic Council is thus in itself a new mechanism for cooperation among states and indigenous peoples. Despite often being overlooked by energy security analysts, the development of such mechanisms will have critical implications for the future of resource governance in the Arctic.

In the circumpolar region, the culture and traditional livelihood of indigenous peoples is based on fishing, hunting and (in northern Eurasia) reindeer herding. The current growth of infrastructure related to transportation, oil and gas, and mineral extraction is increasingly incompatible with land requirements for these livelihoods. In northern Scandinavia and Russia, for instance, indigenous peoples are losing their traditional lands and in some cases forced to abandon transhumant reindeer herding.⁴ Similar challenges are faced by indigenous hunters in Greenland (Inuit) and North America (Inuit and Native American Indians). Not surprisingly, rights to land, territory and resources are vital stakes in self-government debates in the Arctic, and controversial issues in negotiations on indigenous rights.

Indigenous rights versus state sovereignty?

Multilateral organisations such as the International Labor Organisation (ILO) and the UN Permanent Forum on Indigenous Issues (UNPFII) have championed the rights of indigenous peoples with significant impacts on the way indigenous rights are negotiated in the Arctic. Ratified by two of the Arctic Council member states, Norway and Denmark, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) was a milestone for international acceptance of the concept of indigenous rights. Convention No. 169 (C169) accords substantial rights of ownership and possession over traditionally occupied or accessed land and resources to indigenous peoples (Article 14.1). The Convention further stipulates that: ‘The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources’ (Article 15.1).

The United Nations Declaration on the Rights of Indigenous Peoples (UN-DRIP) was adopted by the UN General Assembly in 2007 by a majority of 144 countries, against the vote of only four countries: Canada, the United States, New Zealand and Australia (two of the Arctic Council member states included), and with 11 abstentions (including a third Arctic Council country, Russia). This declaration affirms that indigenous peoples have ‘the right to the lands,

territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and 'the right to own, use, develop and control' these lands, territories and resources (Article 26.1 and 26.2). Indigenous peoples also have the right of redress or equitable compensation for land, territories and resources 'which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent' (Article 28.1). Importantly, the declaration recognises that indigenous peoples have the right to self-determination, and thus to 'freely determine their political status and freely pursue their economic, social and cultural development' (Article 3), although not thereby 'authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states' (Article 46.1).

Indigenous rights to self-determination are often viewed as contradictory to state sovereignty, understood as the supreme and absolute authority within a territory. However, for proponents of indigenous self-determination such as the Inuit Circumpolar Council (ICC), sovereignty is a concept in flux:⁵

Old ideas of sovereignty are breaking down as different governance models, such as the European Union, evolve. Sovereignities overlap and are frequently divided within federations in creative ways to recognise the right of peoples. For Inuit living within the states of Russia, Canada, the USA and Denmark/Greenland, issues of sovereignty and sovereign rights must be examined and assessed in the context of our long history of struggle to gain recognition and respect as an Arctic indigenous people having the right to exercise self-determination over our lives, territories, cultures and languages.

'A Circumpolar Inuit Declaration on Sovereignty in the Arctic', ICC, April 2009

In the Arctic as elsewhere in the contemporary world, globalisation is bringing statist sovereignty discourses into question, as is also evident in current debates on indigenous self-government and self-determination.⁶ As described by Shelagh Grant, 'Arctic sovereignty is no longer simply a legal right to land ownership, but has developed into a broader concept characterised by many shades of grey'.⁷ This is a reflection of developments in both supra-national institutions such as the Arctic Council and European Union (EU), and sub-national mechanisms and frameworks for sovereignty sharing currently evolving in Arctic Canada and Scandinavia (especially Greenland and northern Norway). Two important examples of sub-national self-government mechanisms are those of the Sami Parliament in Norway and the Self-Government Authorities of Greenland.

The Sami of Norway: New mechanisms for self-government

The Sami are an indigenous people inhabiting the northernmost parts of Norway, Sweden and Finland, and parts of the Kola Peninsula in Russia. The total Sami population is about 60-80,000 people, of which the majority (40-50,000) live in Norway.⁸ In each of the three Nordic countries there is a Sami parliament, of which the first was established in Norway in 1987.⁹ In the 1970s, strong opposition against the damming of the Alta-Kautokeino River marked a defining moment for Sami ethno-political mobilisation in Norway.¹⁰ The government's initial response was to set up a Sami Rights Commission (SRC). After a long process of consultations and negotiation with Sami civil society, the Sami Parliament was established as a representative Sami political body, passed into law with the Sami Act, to 'enable the Sami people in Norway to safeguard and develop their language, culture and way of life'.¹¹ However, the Sami Parliament was not given a mandate to manage reindeer husbandry, which is a key occupation in the core Sami areas, nor could it provide adequate protection against pasture loss.

Until 2005, most of the reindeer's winter pastures and as much as 96 per cent of the total area of northern Norway's Finnmark County was state-owned land managed by a government enterprise, Statskog. With the passing of the Finnmark Act in 2005,¹² all of this land (covering an area of 46,000 square km) was transferred from Statskog to a new entity known as the Finnmark Estate, to be administered by a governing board made up of an equal number of representatives from the Finnmark County Council and the Sami Parliament. The purpose of this was to facilitate the management of land and natural resources in Finnmark 'in a balanced and ecologically sustainable manner for the benefit of the residents' and particularly 'as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life'. Section Three of the Act refers specifically to its compliance with ILO Convention No. 169 and 'the provisions of international law concerning indigenous peoples and minorities'. The Act modifies other legislation, including provisions regarding the prospecting of minerals in Finnmark. In connection with the preliminary assessment of mineral deposits in Finnmark, written notification must be given to the Sami Parliament, the landowner and the appropriate reindeer husbandry boards, and along with county authorities, these institutions also have the right to comment. If the Sami Parliament or the Finnmark Estate as landowner opposes the

granting of an application, the Ministry has the power to decide. If, in such cases, the Ministry grants the application, an appeal to the King from the Sami Parliament or the Finnmark Estate as landowner will suspend the decision. With this, the Sami Parliament has in effect been empowered to veto the exploitation of new mineral deposits in the Finnmark Estate.

Greenland: The Self-Government Authorities

The indigenous Inuit people make up approximately 89 per cent of Greenland's population.¹³ According to the Greenland Home Rule Act (29 November 1978), Greenland was recognised simply as 'a distinct community within the Kingdom of Denmark'. The Act allowed for the transfer of legislative and executive powers and responsibility for expenditure to the home rule authorities in a number of fields, including organisation of home rule and local government, direct and indirect taxes, fishing and hunting, planning, legislation on trade and business, social welfare, education and cultural affairs, health services, transportation, and protection of the environment. In 1985, Greenland withdrew from the EU to become a European overseas territory after disputes over fishing rights. In 2009, the European Parliament passed a bill to ban EU imports of seal products, effective from August 2010. Despite that the ban exempted seal products hunted by aboriginals, Inuit organisations in Canada and Greenland filed a lawsuit with the European General Court, challenging the assertion that seal hunting is inhumane.

A new framework for self-government, replacing the home rule arrangement, came into force with the Act on Greenland Self-Government (June 21, 2009), based on a proposal drafted by the Greenlandic-Danish Self-Government Commission. The Act opens for gradual further transfer of powers and responsibilities from Denmark to Greenland in areas such as administration of justice, policing and the establishment of courts of law. The Act also provides for the Greenland authorities to assume control of the management of mineral and oil resources in Greenland. The preamble to the Self-Government Act recognises the people of Greenland as a people with the right to self-determination under international law, stipulating that if the people of Greenland favour independence, negotiations are to commence between the governments of Denmark and Greenland. An independence agreement must, however, have the consent of the parliaments of both Greenland and Denmark and the endorsement of a referendum in Greenland.

Arctic resource governance and sovereignty sharing

The new sub-national indigenous self-government mechanisms are not only evidence of an increasing recognition of indigenous rights in some Arctic countries – they also represent new efforts towards the sharing of sovereignty. Similarly, the Arctic Council can be seen as a supra- or trans-national mechanism for sovereignty sharing, or an example of what Robert Latham terms ‘social sovereignty’, based on an interconnected system of state and non-state actors.¹⁴ This recognises that sovereignty can be attached to a wide range of state and non-state structures, and that ‘what is at stake in sovereignty is not the status of the agent (such as state) but of a body of relations that shape spheres of life operating within or even across state boundaries’.¹⁵

Among the permanent participants of the Arctic Council, several are transboundary non-governmental organisations (NGOs). The ICC, for instance, represents Inuit of Alaska, Canada, Greenland, and Chukotka (Russia). While ICC has never sought Inuit statehood, it holds Consultative Status II at the United Nations and has been active in a number of UN organisations.¹⁶ Mandated by its general assembly, the ICC is now developing a common position on resource development in ‘Nunaat’, the traditional Inuit homelands. Work on the position is led by the Premier of Greenland, Kuupik Kleist. The aim is to ensure that future oil and gas development in Arctic waters is environmentally sensitive.¹⁷ While the Arctic Council’s ‘Offshore Oil and Gas Guidelines’ are understood by the ICC as minimum requirements for environmental protection, the common position is also expected to define requirements for revenue sharing, socio-economic benefits and controls.

The implications of self-government for state sovereignty are contested. In the Canadian context, scholars have argued that Inuit self-determination is exercised ‘in a manner that strengthens Canadian sovereignty’.¹⁸ In Russia, however, the indigenous peoples’ umbrella organisation Russian Association of Indigenous Peoples of the North (RAIPON) (another Arctic Council permanent participant) was recently suspended by the Ministry of Justice (MoJ) due to a ‘lack of correspondence between the association’s statutes and federal law’.¹⁹ According to RAIPON’s first vice-president Pavel Sulyandziga: ‘There is an extensive hike in the level of industrialisation in the north, and the indigenous peoples are among the last barriers against the companies’ and state’s development of the resources. The authorities strongly dislike RAIPON’s extensive international engagement’.²⁰ This suggests that in its dealings with indigenous peoples,

the Russian state is still not prepared to open up a space for sovereignty sharing between state and non-state structures.

The challenge of sustainable Arctic resource governance is often portrayed simply as a conflict between environmental protection and profit-making, ‘with the interests of local communities variably used in favour of one or the other’.²¹ Unfortunately, realities are far more complex. On the one hand, the ICC and many other indigenous people’s organisations call for stringent environmental protection measures for oil and gas drilling in the Arctic, while firmly opposing uranium mining. On the other hand, hydrocarbons and mineral extraction also provide self-government institutions with a key source of revenue that helps them achieve greater economic independence from state authorities. A case in point is Greenland, where the Self-Government Authority relies heavily on economic transfers from the Danish Government. Ironically, after the EU’s import ban on seal products, ‘environmentally focused’ members of the European Parliament have joined forces with environmental NGOs to oppose oil and gas extraction in the Arctic, targeting Greenland in particular.²² Indigenous self-government and sovereignty sharing notwithstanding, the dilemmas of Arctic hydrocarbon exploitation, environmental sustainability and globalisation have no easy solutions.

Notes

¹ USGS News Room, ‘90 Billion Barrels of Oil and 1,670 Trillion Cubic Feet of Natural Gas Assessed in the Arctic’, July 23, 2008, online at: http://www.usgs.gov/newsroom/article.asp?ID=1980&from=rss_home [Accessed March 18, 2013].

² Fraser, Whit (2011) ‘The Coming Age of Arctic Oil and Gas Development: Inuit Cautiously Prepare for the Future’, *Canada’s Arctic Journal Above and Beyond*, May/June 2011, online at: <http://www.arcticjournal.ca/index.php/2011/05/the-coming-age-of-arctic-oil-and-gas-development/> [Accessed March 18, 2013].

³ Dingman, Erica (2011) ‘Sovereignty Matters: States, Security and Climate Change in the Arctic’, The World Policy Institute, New York, International Affairs Working Paper, May 05, 2011; Keil, Kathrin (2012) ‘Opening Oil and Gas Development in the Arctic - A Conflict and Risk Assessment’, *Tvergastein - An Interdisciplinary Journal of the Environment*, Special Issue on ‘The Opening of the Arctic’, 2, November 2012, 36-43.

⁴ UNEP (2001) C. Nelleman, L. Kullerud, I. Vistnes, B.C. Forbes, E. Husby, G.P. Kofinas, B.P. Kaltenborn, J. Rouaud, M. Magomedova, R. Bobiwash, C. Lambrechts, P.J. Schei, S. Tveitdal, O. Grøn and T.S. Larsen, *GLOBIO. Global methodology for mapping human impacts on the biosphere*. UNEP/DEWA/TR.01-3, pp. 16-17.

⁵ Inuit Circumpolar Council, *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*, Article 2.1, adopted April 2009, online at: <https://lists.alaska.edu/pipermail/iassa.net/2009-May/000574.html> [Accessed March 20, 2013].

⁶ Åhrén, Mattias, Martin Scheinin and John B. Henriksen (2007) 'The Nordic Sami Convention: International Human Rights, Self-Determination and other Central Provisions'. Kautokeino: *Gáldu Čála – Journal of Indigenous Peoples Rights*, 3, 2007; Henriksen, John B. ed. (2008) 'Sámi self-determination: scope and implementation'. Kautokeino: *Gáldu Čála – Journal of Indigenous Peoples Rights*, 2(2008).

⁷ Grant, Shelagh (2010) *Polar Imperative: A History of Arctic Sovereignty in North America*. Vancouver: Douglas & McIntyre, p. 402.

⁸ Figures provided by the Sami Information Centre, an organisation under the auspices of the Sami Parliament in Sweden, online at: <http://www.samer.se/1536>.

⁹ The Sami Parliament in Sweden was established in 1993, while the Sami Parliament in Finland was founded in 1996.

¹⁰ Bjørklund, Ivar (2000) *Sápmi – becoming a nation*. Tromsø: Tromsø University Museum.

¹¹ Act of June 12, 1987 No. 56 concerning the Sami parliament and other Sami legal matters (the Sami Act).

¹² Act of June 17, 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act).

¹³ CIA, The World Factbook, Greenland, online at: <https://www.cia.gov/library/publications/the-world-factbook/geos/gl.html> [Accessed March 23, 2013].

¹⁴ Dingman, Erica (2011) 'Sovereignty Matters: States, Security and Climate Change in the Arctic', The World Policy Institute, New York, International Affairs Working Paper, May 05, 2011, p. 8.

¹⁵ Latham, Robert (2000) 'Social Sovereignty', *Theory, Culture & Society*, 17(4), p. 3.

¹⁶ Arctic Council, 'ICC', online at: <http://www.arctic-council.org/index.php/en/icc> [Accessed March 23, 2013].

¹⁷ Fraser, Whit (2011) 'The Coming Age of Arctic Oil and Gas Development: Inuit Cautiously Prepare for the Future', *Canada's Arctic Journal Above and Beyond*, May/June 2011, online at: <http://www.arcticjournal.ca/index.php/2011/05/the-coming-age-of-arctic-oil-and-gas-development/> [Accessed March 18, 2013].

¹⁸ Byers, Michael (2009) *Who Owns the Arctic: Understanding Sovereignty Disputes in the North*. Vancouver: Douglas & McIntyre, p. 8.

¹⁹ Sommer, Rebecca (2012) 'Human Rights groups and States concerned over Russian suspension of RAIPON', *Huntington News*, November 26, 2012, online at: <http://www.huntingtonnews.net/50110> [Accessed March 23, 2013].

²⁰ Interview with Pavel Sulyandziga featured in the Russian newspaper *Novaya Gazeta*, cited in Sommer 2012.

²¹ Østhagen, Andreas (2012) 'Dimensions of Oil and Gas Development in Greenland', The Arctic Institute, Center for Circumpolar Security Studies, Wednesday 19 December 2012, online at: <http://www.thearcticinstitute.org/2012/12/dimensions-of-oil-and-gas-development.html> [Accessed March 18, 2013].

²² Ibid.