

BOOK REVIEW NOTES

THE ARCTIC ENERGY BASKET: TREASURE CHEST OR PANDORA'S BOX?*

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The never-ending race after the world's limited energy resources puts forward a wide range of questions and concerns to be responded to in a short period of time. Even with the boom in renewable sources of energy¹ and the provocative forecasts of the collapse of the oil and gas markets² new opportunities for oil and gas exploration and exploitation are still the focus of global attention. However, what appears new and promising may be deceptive. The abundant yet hard to obtain Arctic oil and gas reserves are an apt illustration of the case. The main question in this regard is whether the Arctic is a treasure chest whose opening will free vast energy resources for future generations or a Pandora's Box whose opening will let loose irreversible troubles upon humankind.

The book *New Energy Basket of the World: The Arctic* by Manjeet Kumar Sahu, advocate, High Court of Jharkhand, India, serves as a springboard in the debate over the benefits and drawbacks of oil and gas activities in the Arctic. It provides

* Reviewed book: Manjeet Kumar Sahu, *New Energy Basket of the World: The Arctic* (LAP Lambert Academic Publishing, 2015).

¹ *A Renewable Energy Boom*, The New York Times, April 4, 2016 (Nov. 21, 2016), available at <http://www.nytimes.com/2016/04/04/opinion/a-renewable-energy-boom.html>.

² John Vidal, *The End of Oil is Closer than You Think*, The Guardian, April 21, 2016 (Nov. 21, 2016), available at <https://www.theguardian.com/science/2005/apr/21/oilandpetrol.news>.

readers with insightful facts and data on both sides of the debate. The book mostly concerns, but is not limited to, the legal regulations and environmental policy in respect of Arctic hydrocarbon activities. Sahu digs deep into a wide range of thorny issues encompassing a complex diachronic overview of oil and gas exploration in the Arctic Region: the basins lying within the scope of the Arctic; the activities of the major players in the Arctic oil and gas arena; the governance of the Arctic Region via the Arctic Council and international law on the use of the Arctic reserves. All the aforementioned points are organized into the conceptually overlapping chapters of the book that provide an in-depth, comprehensive analysis of the past and contemporary trends in the expansion of the Arctic Region.

In the introduction to the book, Sahu refers to the Arctic as perhaps the most “promising arena for the oil and gas industry in human history” and lists the key countries engaged there, specifically the eight Arctic states that comprise the Arctic Council: the USA, the Russian Federation, Canada, Norway, Greenland (that is to say, the Kingdom of Denmark), Finland, Iceland, and Sweden, each of which has a stake in the huge energy hub of the Arctic. All the activities carried out in the Arctic area are supposed to comply with agreements arrived at on this country-based delimitation of boundaries, aimed at eliminating the risks of boundary disputes.

The second chapter, titled “History of Oil and Gas Exploration in the Arctic Region,” presents the diachronic perspective of oil and gas exploration in the Arctic Region. To highlight the milestones of the process, Sahu organizes information in a chart spanning the years from 1920 to 2015. The history of the exploration of the Arctic reserves reveals not only the triumphs of discovering new oil fields and the collaborative and partnering activities of the countries bordering the Arctic, but also the obstacles encountered, including oil spills and pipeline explosions as well as oil price declines.

The concept of a “new energy basket” is thoroughly unveiled via a brief overview of seven Arctic basin provinces that, according to the data provided, contain 87 per cent of the Arctic oil and natural gas reserves. Sahu notes that due attention should be paid to the volume of the hydrocarbons discovered in the basins, as it renders the picture of Arctic “treasures” more distinctive, and a bit of geographical awareness may benefit the reader, bridging the gap between the true state of affairs and bare legal interpretations, which follow in the final chapters of the book.

The information on Arctic oil and gas exploration would not be complete without at least the basic facts on the major players – the corporations competing in the face of many challenges. As Sahu informs us, various multinational oil and gas companies came together to set up their R&D in the Arctic Region. Making his Arctic “story” more illustrative, Sahu provides information on such oil and gas giants as Rosneft, ExxonMobil, Statoil, Gazprom, and Shell and their current activities relating to the exploration of the Arctic reserves. Reading this brief yet comprehensive second chapter, one learns about Russian-American joint development projects in the Arctic Region, the world’s largest oil spill preparedness and response organization

Oil Spill Response Limited and its links to the exploration and exploitation of the Arctic reserves, as well as many other fascinating facts on the diverse activities of the major players. It is obvious that their presence and involvement in the Arctic arena brings into play each and every aspect of possible relationships, from collaboration to confrontation between the giant transnational oil and gas corporations. Thus the focus of the book on the legal and environmental regulations of Arctic activities comes as no surprise: where there are such enormous assets at stake and such powerful players, willing to compete with each other, a solid legal background is vital.

Whereas the four preliminary background chapters of the book present basic information essential for a better and deeper understanding of the dichotomy of the Arctic Region's exploration, the last two chapters are mostly of an analytical nature and may draw the particular attention of legal scholars carrying out research in correlated areas. The governance of the Arctic Region, referred to by Sahu in the fifth chapter as a "unique blend of arrangements between domestic and international legal instruments with soft law arrangements," is represented by its central institution, the Arctic Council. According to its Action Plan strategy, the Council aims at "a critical and noteworthy commitment to the general global push to diminish environmental damage on a global level." As a promoter of soft law and the sustainable development of the Arctic Region, the Council attends to such matters as monitoring and assessment, conservation of Arctic flora and fauna, emergency prevention measures, preparedness and response, and the protection of the Arctic marine environment. The Council embraces a sustainable development mission, contributing immensely to the environmental, economic, and social well-being of humankind in respect of the exploration and exploitation of the Arctic reserves.

The sophisticated subject of the international legal regime for the Arctic is the focus of Sahu's attention in the final chapter of the book. He claims that international law relating to the Arctic, although extensive and systematic, still has much room for improvement on the whole range of current complex issues arising in the Arctic Region due to its importance for the world community. Sahu suggests utilizing a multifaceted approach to tailor the international legal regime for the Arctic to a more or less updated format, as the existing one contrasts with current political and social trends, to be observed in the regulation of the activities in the Arctic Region. In his view, the regime requires simpler laws in comparison to the existing "boundless and complex accumulation of standards, settlements, traditions and soft law." The reasons for this push to reshape and restructure the current legal regime in respect of the Arctic are climate change and the consequences it may entail, alongside politically grounded territorial conflicts.

Moving forward in his analysis of the attributes of the international legal regime for the Arctic, Sahu identifies two elements of the regime: firstly, the soft non-binding nature of laws proposing to the Arctic states methods for mostly preventive measures, but not dispute-settlement schemes, and, secondly, the absence of an international treaty or convention aimed at regulating specific types of industrial activities in the

Arctic. Further analysis of the applicable conventions and their relevancy to offshore oil and gas activities supports the stated reasoning.

The thorough and thoughtful interpretation of the currently in effect international conventions and treaties provided by Sahu should be of particular interest to legal scholars researching the same or similar area of international law. While analyzing the legislative instruments regulating Arctic activities, Sahu challenges himself with disputable questions that arise owing to the ambiguity of related cases, thus making the analysis even more complex. For instance, in answering the question of whether the decisions of the Commission on the Limits of the Continental Shelf (CLCS) are binding or not, Sahu makes reference to statements on the matter by the US president, to possible legal interpretations of articles of the United Nations Convention on the Law of the Sea (UNCLOS) as well as to commentaries of prominent legal scholars, thereby shaping solid grounds for his own opinion.

In analyzing the applicability of existing international law to dispute resolution in respect of the Arctic, Sahu comes to the conclusion that, because the UNCLOS regime currently faces a wide range of difficulties and inconsistencies in dealing with the disputes related to the Arctic, other instruments to deal with the conflicting claims should be worked out, introduced, and enforced. The two possible solutions he suggests are a multilateral Arctic treaty, aiming at the delimitation of boundaries, similar to the existing Antarctic treaty (a rather disputable solution), or the so-called joint development agreements between the key countries involved. In Sahu's view, the agreements would boost collaboration between the countries in dealing with the difficult cases that may arise in the course of exploration and exploitation of the Arctic reserves. However, since it is unclear as to what extent any of the Arctic states may succeed in proving the existence of a continental shelf beyond their 200 nautical miles exclusive economic zone (EEZ), not a single state is willing to commit to any final and binding instrument as the means for resolving potential disputes.

Alongside the analysis of the adaptability of UNCLOS to the resolution of Arctic disputes, Sahu covers the relation of the Arctic to a number of other international conventions, including the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labor Organization Convention (ILO), the International Covenant on Civil and Political Rights, and the UN Framework Convention on Climate Change (UNFCCC). The reference to such an abundant number of sources of international law contributes greatly to the in-depth awareness of the concerns and thorny issues that may entail international conflicts during the exploration and exploitation of the Arctic reserves, making the legal analysis more comprehensive, multidimensional and, as mentioned before, multifaceted. Apparently, the dichotomy of the "treasure chest" versus "Pandora's Box" overlaps all the activities of exploration and exploitation of the Arctic reserves, rendering the possibility faint as to the creation of a solid legal background. Nevertheless, the international community may benefit greatly from the work of such an analytical

nature as the book provides, because it thoroughly reveals the main threats, risks, and inconsistencies relating to the existing international legal regime for the Arctic.

In the final chapter of the book Sahu comes to an array of sophisticated conclusions that may capture the attention of lawmakers and policymakers, and even those who are indifferent to the future of the fragile Arctic environment. The first and foremost conclusion relates to the aforementioned idea according to which the current international legal regime for the Arctic is inadequate to handle the existing socio-legal concerns in a comprehensive and well-organized manner. That notwithstanding, it may be considered a successful part of a social experiment and a certain legal driver for the development of the hydrocarbon resources in the Arctic Region. Sahu asserts that thus far the legal regime has been nothing more than a realm of conflict between the common heritage of mankind and the territory of Arctic states. The solutions he suggests for better organizing the entire legal regime encompass the following: the introduction of a new dispute settlement mechanism incorporated with the Arctic Council; the formation of an Arctic treaty, based on the Antarctic treaty system, shifting the soft legal arrangement of the Arctic into a hard legal regime; the governance of the Arctic Region, according to Sahu, should be vested solely in the Arctic Council; the necessity of NGO participation in the composition of the Arctic Council; the entire current legal framework in respect of the Arctic should be consolidated in a single legal instrument; the particular requirement for oil and gas corporations to maintain environmental standards in respect of Arctic exploration; the role of non-Arctic states should be specified and limited to scientific research on climate change, energy security, and shipping routes, among other matters.

The style of writing adopted by Sahu in *New Energy Basket of the World: The Arctic* is concise and at the same time accessible, making the information covered by the research engaging and noteworthy, both for legal scholars, law-makers, policy-makers, law students, etc. and for interested laypeople. The quotation from the Atharva Veda, provided as the final lines of the book, tunes the interpretation of the main ideas to the philosophical mode. The treasure chest of the Arctic may turn into a Pandora's Box if explored and exploited recklessly and greedily. The world community should embrace the sustainable development mission in order to anticipate and avoid the possible risks of international conflicts and natural disasters for, "[W]hatever we dig out from Earth must have to be filled up again, and restored as fast as possible..." Hopefully, "[W]e do not intend to hit the Earth at the Heart of the Hearts."

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