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Who resolves Arctic oil disputes?

Antarctica provides a model for settling competing claims.

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Russia's planting of a flag at the North Pole this month has set off a race for control of the Arctic, with five nations preparing to make claims to the seabed at the top of the world.

Since Aug. 2, when a Russian research submarine placed the flag on the seabed 13,000 feet below the surface, the Arctic has suddenly moved onto the international stage. Denmark dispatched icebreakers to survey potential claims in the far north, where the US Coast Guard ice-breaker Healy is already engaged in a mapping mission that would bolster a US claim. Canada, which announced it will build two military outposts in the region, is expected to follow suit.

Resolving disputes arising from the claims will represent a major diplomatic challenge to the five nations that surround the rapidly thawing Arctic Ocean. But experts say the track record for dealing with similar disputes is encouraging, suggesting it's likely that rival nations can work out a mutually satisfactory solution over the coming decade.

"The international community has dealt with lots of maritime boundary issues with a lot of resources at stake," says Ted McDorman, professor of law at the University of Victoria, British Columbia. "When you have an overlapping claim, you negotiate with one another. The Arctic won't be any different." The Inuit have been living in the High Arctic for thousands of years, and 160,000 still do. Over the past 400 years, their land was incorporated into European empires, which claimed control of the sea to a distance of three miles. The rest of the vast Arctic basin wasn't owned by anybody.

In the 20th century, many nations extended territorial waters to control use of shipping lanes, fishing banks, and energy resources. By the early 1980s, most nations came to accept claims of exclusive economic control for 200 nautical miles from shore.

Today, the outer ring of the Arctic is effectively carved up between five nations: Russia, Norway, Canada, the US, and Denmark (which controls Greenland). The middle remains unowned.

What are the new claims about?

All five states are expected to claim part of the Arctic Ocean, legal experts say, together grabbing about 90 percent of currently unclaimed seabed.

They're doing this because global warming is melting much of the Arctic's ice cover, raising the possibility of increased shipping and oil and gas exploration. According to the US Geological Survey, the region may contain 25 percent of the world's remaining oil and gas reserves.

Such claims are legitimate under the UN Convention on the Law of the Sea, which lets states make claims beyond 200 nautical miles if the seabed is shown to be an extension of their continental shelf. All the potential claimants except the US have ratified the convention.

The convention has time limits for making claims, based on when they ratified the treaty. Russia, which did so early, submitted a claim to the North Pole and 1.2 million square kilometers of seabed in 2001, alleging that the underwater

Lomonosov Ridge is an extension of its continental shelf. Canada and Denmark have until 2013 and 2014, respectively, to submit counterclaims. The US will have 10 years to claim a large area adjacent to the Alaskan shelf once it ratifies the treaty.

Does Russia's flag mean anything?

In legal terms, no. Under the Law of the Sea, it's geology, not flag planting, that matters, which is why Russia, Denmark, the US, and Canada are all dispatching survey ships to the region.

"Natural features of the seabed have to be understood and mapped very carefully," to substantiate that it is an extension of a country's continental shelf, says Lindsay Parson of the National Oceanography Centre in Southampton, England.

Nonetheless, the flag planting was a powerful symbolic act, says Eric Posner of the University of Chicago Law School, who believes power, not international law, will settle the issue. "Russia really meant something when it planted the flag: that it is taking the Arctic carve-up very seriously," he says, noting that Moscow's fleet of heavy icebreakers is second to none. "Russia is positioning itself to take the lion's share. If the US and Canada don't make serious investments in ships that can patrol the Arctic, then Russia will have no reason to back down and will just go with the biggest possible claim."

Who decides claims?

Claims beyond 200 nautical miles are reviewed by a group of 21 scientists who sit on the Commission on the Limits of the Continental Shelf, a body created by the Law of the Sea Convention. "The commission will be facing very, very significant workload issues in the next while because many countries will be turning in claims," says Donald Rothwell of the Australian National University in Canberra. "An already lengthy process could take longer."

There's a further catch: the body is prohibited from ruling on territory that's claimed by more than one state. Those countries have to work it out themselves.

Michael Byers, of the University of British Columbia, says the claimants have incentives to work out a deal. "It's not in any country's interest – or that of the big multinational oil companies – to have a Wild West scenario up there," he says.

Have countries cooperated before?

Yes, and legal experts say such efforts offer a variety of models for the Arctic.

For example: France, Ireland, Spain, and Britain all have claims on the shelf offshore from the Bay of Biscay, but decided to submit their claim jointly and subdivide it later. "We did research cruises together and there was a tremendous amount of bonhomie," recalls Professor Parson. "It was practical and pragmatic all around."

Similarly, Australia and New Zealand have overlapping claims to parts of the Tasman Sea, but worked out a territorial compromise on their own before submitting their respective claims. "The common sense approach is to try to reach a mutually negotiated settlement," says Professor Rothwell. "Indeed most of the countries around the world do adopt that approach."

Rothwell also points to the Antarctic, where 46 nations put all claims on hold indefinitely under the 1959 Antarctic Treaty. "It may be that we've moved into the stage where the Arctic states might look more closely at what has been going on in the Antarctic," he says.

What if they don't?

"If you have a resource grab, you would have a very serious problem," says Christopher Joyner of Washington's

Georgetown University. "There would be a serious conflict between Canada and Russia, and the US would not be far behind."

On the other hand, one side might just back down. "The US and Canada might say, well, there's enough Arctic for us and it's not worth it to try to interfere with Russia," says Professor Posner.

Byer thinks negotiations will work. "If Russia really wanted to be difficult, it wouldn't be chartering its icebreakers to other countries [such as Denmark and Canada]," he says. "Cooperation just might succeed in this instance, which is something to celebrate in today's world."

What the foreign press says

" The division of the Arctic 'is the start of a new redistribution of the world.' "

– Rossiiskaya Gazeta

"It was the first time that a Russian expedition, having reached the North Pole, made a 13,000-ft. dive and set a Russian flag on the bottom of the Arctic Ocean. Thereby they rose our country's prestige....' [Patriarch Alexy II of Moscow and All Russia in letter to State Duma vice speaker]. 'This expedition proves that Russia is rightfully called a great polar power.'"

– Interfax, Moscow

"The whole business is more like the late-19th century scramble for Africa, when the great powers carved up the continent.... But unlike in Africa, this dispute cannot be decided on the basis of first come, first served.

"There is, of course, a bitter irony underlying all this. Access to the Arctic for all these nations has improved in recent years only because of climate change.... As thrilling as this latest expedition might be, it would have been better for mankind if the Arctic had remained an inaccessible wilderness."

– The Independent, London

"One of its most dangerous effects in the Arctic will be to expose great tracts of land to the release of methane gas ... which would actually speed up global warming – perhaps uncontrollably.

"It would be far better to seek out co-operative solutions for protecting and exploiting ... resources. This could be done by extending the Law of the Sea Treaty, or by using a precedent established in Antarctica during the 1950s, when a similar competitive surge at the South Pole was wisely steered towards a framework of legal governance."

– The Irish Times, Dublin, Ireland

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