

Equitable Arctic Development of Natural Resources

Arctic Oil and Gas Research Centre Breakout Session Arctic Circle Assembly 2017 Harpa, Reykjavík, 13 October 2017, 2100-2200

This breakout session examines governance of oil and gas activities in the Arctic with a view to promoting equitable hydrocarbon development under the control of Arctic inhabitants and to their benefit with particular emphasis on indigenous peoples. Professor Overland presents the results of a recent research project comparing and ranking corporate processes to ensure indigenous rights in Arctic extractive industries. Professors Merrild Hansen and Johnstone then follow with an analysis of the experiences and views of Greenlanders from South and East Greenland respectively, examining whether there are significant differences in priorities between those who live close to mining projects and those who live hundreds of kilometres away. Dr Pereira completes the panel with an examination of the position of non-operators in Arctic oil and gas joint ventures, seeking to improve the balance between rights, responsibilities and benefits which will in turn improve the attractiveness of investment.

Wine and soft drinks will be served to participants.

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EQUITABLE ARCTIC DEVELOPMENT OF NATURAL RESOURCES

Chair: Anita Parlow, Independent Consultant and Research Fellow for the Wilson Centre

Speaker 1: Indra Overland, Head of the Energy Program, Norwegian Institute of International Affairs (NUPI)

Title: Ranking Oil, Gas and Mining Companies on Indigenous Rights in the Arctic

Speakers 2: Anne Merrild Hansen, Professor of Social Science, Arctic Oil and Gas Studies and Director of the Arctic Oil and Gas Research Centre, Ilisimatusarfik and Rachael Lorna Johnstone, Professor of Law, Arctic Oil and Gas Studies and Director of the Arctic Oil and Gas Research Centre, Ilisimatusarfik

Title: Perspectives on Greenlandic Extractive Industries

Speaker 3: Eduardo Pereira, Professor of Natural Resources and Energy Law, Externado U, Colombia

Title: Joint Operating Agreement: Risk Control for the Non-Operators within Arctic Operations

PRESENTERS AND PRESENTATION ABSTRACTS

Indra Overland is head of the Energy Program at the Norwegian Institute of International Affairs (NUPI). He did his PhD at the Scott Polar Research Institute at the University of Cambridge and has since published extensively on Arctic, post-Soviet and global energy issues. He has been awarded the Toby Jackman Prize, the Marcel Cadieux Prize, the Stuland Prize and co-authored the most cited article published by the Journal of Eurasian Studies. In 2017 he is publishing the edited volume *Public Brainpower* with Palgrave MacMillan, on the role of civil society and public debate in natural resource governance, with case studies of 18 countries including Canada, Norway and Russia.

Ranking Oil, Gas and Mining Companies on Indigenous Rights in the Arctic

This ranking evaluates the public commitments, formalized procedures and institutional arrangements of resource-extraction companies for handling indigenous rights in the Arctic. The purpose of the ranking is to support norm formation and to contribute to improving the performance of companies on indigenous rights by highlighting which companies have made a public commitment to indigenous rights, and to what extent. The ranking covers 92 oil, gas and mining companies involved in onshore resource extraction above the Arctic Circle. Each company is assessed according to 20 criteria related to indigenous rights. The criteria were selected by evaluating the main guidelines and legal instruments related to resource extraction and indigenous rights in the Arctic. The criteria include commitments to international standards, the presence of organizational units dedicated to handling indigenous rights, competent staffing, track records on indigenous issues, transparency, and procedures for consulting with indigenous peoples.

For further information, see https://www.academia.edu/31311533/Ranking_Oil_Gas_and_Mining_Companies_on_Indigenous_Rights_in_the_Arctic

Anne Merrild Hansen is Professor of Social Science, Arctic Oil and Gas Studies at Ilisimatusarfik, Associate Professor in Environmental Assessment and the Arctic at Aalborg University, Denmark. She was a Fulbright Arctic Initiative scholar 2015-2016 with University of Alaska, Fairbanks. She is also a member of the regional 'Adaptation Actions for a Changing Arctic' team on Baffin Bay - Davis Strait for the Arctic Council. She has published widely on impacts assessments related to extractive industries, social indicators and determinants of wellbeing in the Arctic. Anne specialises in participatory and engaging research practices.

Rachael Lorna Johnstone is Professor of Law, Arctic Oil and Gas Studies, at Ilisimatusarfik (the University of Greenland), Director of the Arctic Oil and Gas Research Centre and Professor of law at the University of Akureyri, Iceland. Professor Johnstone specialises in Polar law: the governance of the Arctic and the Antarctic under international and domestic law. She is the author of *Offshore Oil and Gas Development in the Arctic under International Law: Risk and Responsibility* (Brill 2015) and has published widely on the rights of indigenous people; international human rights law; international environmental law; due diligence; state responsibility; and Arctic strategies.

Perspectives on Greenlandic Extractive Industries

Greenland's vast territory and continental shelf hold the promise of vast natural resources that could put the country on a path to a healthy, self-reliant economy and security for its 57,000 inhabitants. However, those resources are not evenly spread out around the country and some are much closer to long-established settlements than others. Professor Merrild Hansen and Professor Johnstone discuss the different priorities, concerns and expectations of resource development from different regions and attitudes towards who is a legitimate decision-maker. The presentation is based on fieldwork to be conducted in May and August 2017.

Eduardo G Pereira has been active in the oil and gas industry for several years and is an international expert on joint operating agreements. His experience in this area - both academic and practical - is extensive. He played a key role in assisting Petra Energia in becoming Brazil's leading onshore oil and gas company and developing its international business throughout Europe, Africa and Asia. He has practical experience in over 40 jurisdictions covering America, Europe, Africa and Asia. Dr Pereira concluded his doctoral thesis on oil and gas joint ventures at the University of Aberdeen. He is a professor of natural resources and energy law at the Externado University of Colombia Law School (Colombia), an adjunct professor of energy law at the University of Eastern Finland Law School (Finland) and a research fellow at the Scandinavian Institute for Maritime Law - University of Oslo (Norway). He is also a managing editor for UEF Energy Law Review and an associate editor of OGEL. He is also the author and editor of several leading oil and gas textbooks.

Joint Operating Agreement: Risk Control for the Non-Operators within Arctic Operations

Joint Operating Agreements (JOA) are well accepted standard agreements in the oil and gas industry. The basic aim of any JOA is to regulate the relationship of the parties in the Joint Venture: Operator and Non-Operators. The former is responsible to perform the operations on behalf of the consortium and the latter is responsible to contribute with regard to the financial commitments and expenses of the Joint Venture. However, it is far less certain how the Non-Operators will participate in the rules regarding the conduct of operations, decision-making processes, existence of operating committees and related approvals. So it is possible to suggest that Joint Operation Agreements typically might not reflect the Non-Operators' perspectives, as they traditionally focus on the strong position retained by the Operator. This reality is very clear as the most critical clauses (namely conduct of operations, limitation of liabilities and removal of the Operator) strengthen the Operator's position, often to the detriment of the Non-Operators. In consequence, such an unbalanced agreement can cause uncertainty, raises the potential for litigation and might even jeopardize the very existence of the consortium. This is even more complex for Arctic operations as the costs and risks tend to be much higher than conventional oil and gas operations. This lecture will explore the complexity of an Arctic operation and the higher risks imposed to the Non-Operators.