

**Treaties v. Soft Law for the Sustainable  
Offshore Oil and Gas Development in the  
Arctic: *Case Studies of Gas Flaring and Oil Spill  
Preparedness and Response in Russia***

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# Background

- \* Calls for “hardening” of Arctic offshore development regime

“Promotion of a comprehensive legal regime for protecting, conserving, and managing the Arctic Ocean must intensify” (Joyner)

On the gaps in governance of offshore hydrocarbon activities: “lack of global and regional rules in general” (Koivurova, Molenaar)

“In accordance with the rules and principles of international law, the Arctic states should move forward with the development of a comprehensive regional Arctic marine environment agreement that consolidates and strengthens the existing mechanisms that apply to oil and gas exploration and exploitation on the Arctic coastal states' continental shelves” (Casper)

# Background



International  
Cooperation and  
Arctic Governance

Regime effectiveness and  
northern region building

Edited by  
Olav Schram Stokke and  
Geir Hønneland

Routledge Advances in International Relations and Global Policy

“Arctic institutions are the **most effective** (...)when they focus on activities or problem aspects where they **enjoy niche advantages**: where distinctive features of Arctic institutions make them better placed than others to extract or utilize the resources needed for problem solving”

“With respect to normative contributions, the Arctic approach has been far more limited, **largely echoing broader international regimes already in existence**. In no cases have institutions examined here provided legally binding rules, or review procedures that could give political teeth to non-binding ones”

# Outline

**Is an international binding agreement essential for the effectiveness of the Arctic Council regime in achieving its goal of sustainable development of the offshore resources?**

- 1. Theoretical Framework for the Effectiveness Assessment**
- 2. Gas Flaring**
- 3. Oil Spill Preparedness and Response**
- 4. Conclusions**

# Effectiveness

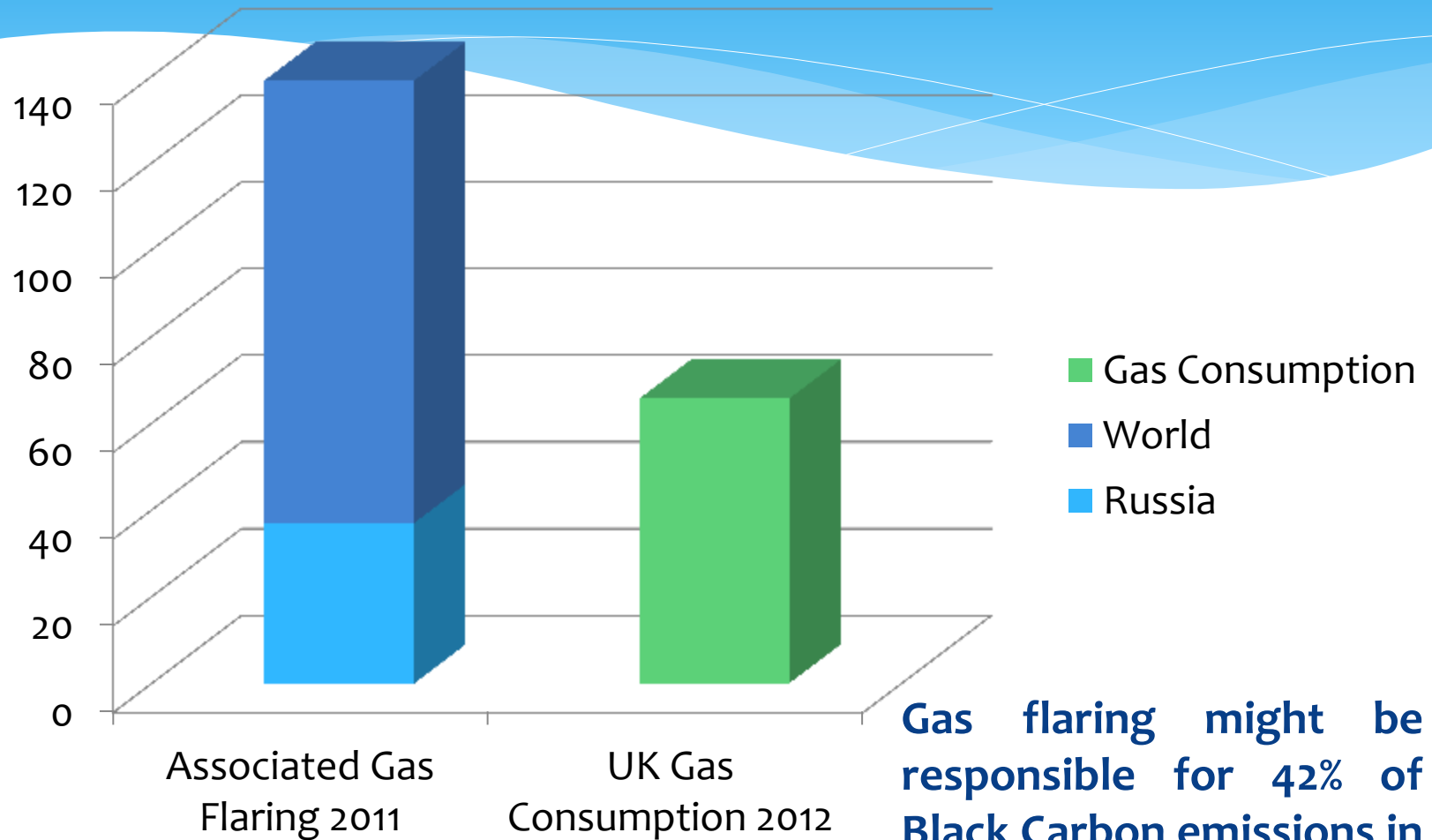
1999 Young and Levy, approaches to effectiveness:

- 1) **Problem solving** - “degree to which a regime eliminates or alleviates the problem that prompts its creation”  
“mitigation or removal of specific problems addressed by a regime” (Honneland, Stokke, 2010)
- 2) **Legal**
- 3) Economic
- 4) Normative
- 5) Political

+casual link

+regime interplay

# Gas Flaring Background



Sources: IEA, World Bank Units: bcm

**Gas flaring might be responsible for 42% of Black Carbon emissions in the Arctic**

# Gas Flaring Arctic

- \* No global gas flaring regulation
- \* Arctic Offshore Oil and Gas Guidelines (2009):
  - \* **Goal** > to reduce emissions
  - \* Need for specific licenses or permits covering flaring
  - \* Expectations set early in the planning process
  - \* Use of BAT

# Gas Flaring Russia, Decree 1148

- \* **Goal** – 95% of APG utilised, 5% - limit for flaring
- \* Any flaring exceeding 5% > **fine** multiplied by 12 (2013) or 25 (2014)
- \* Gazpromneft's fine for emissions to air in 2013 – €39 mln (compared to € 16,5 mln in 2012 and € 2,7 mln in 2011)
- \* **Deduction mechanism** for companies implementing APG utilisation improvement projects
- \* **Exemptions** for projects in the early stage of production
- \* Gazprom claims that ALL of the APG produced at **Prirazlomnaya** is utilised, doesn't say how



# Gas Flaring Arguments

- \* Not enough attention to gas flaring in the Arctic Council
- \* Goals in % or utilised APG, rather than volumes of flared
- \* Difficulties of utilisation in remote locations (net % for companies with multiple sites)
- \* Regime interplay ( e.g. Kyoto, World Bank, industry)

# Oil Spill Preparedness & Response in the Arctic

- \* Existing international legal framework

- \* BUT, special Arctic challenges:

↓  
**ice**

- techniques for oil clean-up
- personnel training
- equipment development research

↓  
**lack of infrastructure**

- cooperation
- 2013 Agreement on Cooperation on Marine OPRR

# 2013 Cooperation Agreement + Operational Guidelines (Ap. IV)

- \* National response system (contingency planning with organisational relationships, min level equipment, exercises programme)
- \* Competent operational authority and 24-hour contact point
- \* Notification obligation
- \* Request for Assistance
- \* Joint Reviews, trainings, exercises
- \* Art. 10.2 **“Implementation of this Agreement (...) shall be subject to the capabilities of the Parties and the availability of relevant resources.”**

# OSPR Arguments

- \* Cooperation in the Arctic has been a major driver of the creation of Arctic-specific preparedness and response arrangements
- \* Non-binding Operational Guidelines > more substance than the operating binding part
- \* Fast-paced legal development on OSPR in Russia (substantial, rather than legal)

# Conclusions

- \* Arctic Council can be effective in regulating offshore oil and gas, BUT not only in norm-creating way
- \* Soft law arrangements in the Arctic should not be underestimated
- \* ‘Food for thought’ for the next Offshore Oil and Gas Guidelines revision

**Thank you for your time!**

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