

Conference report: The role of non-Arctic states/actors in the Arctic legal order-making

*Tony Cabus & Maiko Raita**

On 7–9 December 2017, the Polar Cooperation Research Centre (PCRC), Kobe University, Japan, hosted a symposium on The Role of Non-Arctic States/Actors in the Arctic Legal Order-Making. The conference was the third international symposium organized and hosted by PCRC since its establishment in October 2015.

Twenty eight experts, including Koji Sekimizu, former Secretary-General of the International Maritime Organization (IMO); Keiji Ide, Japan's Ambassador for Arctic Affairs; Rasmus G. Bertelsen, professor of Northern Studies, UiT– The Arctic University of Norway; Erik Molenaar, Deputy Director of the Netherlands Institute for the Law of the Sea (NILOS) at Utrecht University; or Dalee Dorough, University of Alaska Anchorage discussed crucial policy issues related to the Arctic region. The panel of scholars and practitioners

touched upon various questions ranging from shipping governance and fisheries to the role of indigenous peoples and non-Arctic states. Chaired by Professor Akiho Shibata from Kobe University, the conference was a good opportunity to deepen our understanding of the Arctic and broaden our perspective.¹

The symposium took the explicit perspective of outside states (especially from Asian states) and indigenous communities. On the first day, two sessions on Global Arctic Shipping Governance and Central Arctic Ocean Fisheries saw contributions from Koji Sekimizu, Rasmus Bertelsen, Erik Molenaar, Joji Morishita, Leilei Zou, Geir Hønneland, Alexander Serguning, Kentaro Nishimoto, Piotr Graczyk, Chin Eng Ang and Elena Kienko. They addressed the implementation of the Polar Code and the Five-plus-Five process on fisheries in the Central Arctic Ocean. The second day focused on indigenous peoples' rights with Dalee Dorough, Aytalina Ivanova, Florian Stammer and Nikolas Sellheim discussing indigenous communities' issues in the light of non-Arctic influence on their customary laws. A second session focused on Policy-Relevant Science within the Context of the Arctic with contributions from Akiho Shibata, Malgorzata Smieszek, Hajime Kimura

* Graduate School of International Cooperation Studies, Kobe University, Japan.

¹ For all information on the conference, please visit <http://www.cscenter.co.jp/pcrc/>.

and Harada Naomi. Finally, on the third and last day, in two sessions Keiji Ide, Timo Koivurova, Sebastian Knecht and Aki Tonami presented the role of observers in the Arctic Council as well as perspectives, roles and strategies of Asian states in the Arctic legal-order making. Discussants in these sessions were Piotr Graczyk, Yuanyuan Ren and Marzia Scopelliti as well as Jian Yang and Wonsang Seo.

Discussions showed that with the admittance of five Asian states, namely China, India, Japan, South Korea and Singapore as observers to the Arctic Council (AC) we can witness a change in the governance of the Arctic. This extension is inherently linked to the transformations of the Arctic itself but also to the changes in the rest of the world as new actors and especially Asian states emerge. At the same time, the legal order of the Arctic must respect the sovereignty of the Arctic states – Russia, Finland, Sweden, Norway, Iceland, Denmark/Greenland, Canada and the United States – as well as the tradition and cultural livelihood of the indigenous peoples and the local communities. This balance between Arctic actors and non-Arctic actors therefore becomes the core problematique for the legal order of the Arctic.

It was identified that for non-Arctic states, one of the major issues is shipping governance. This topic usually concerns the possibility of new transit shipping routes along the Northern Sea Route (NSR), the Northwest Passage or the Transpolar Route and is of highly geopolitical nature. Indeed, as the ice melts, a shorter shipping road between (especially) Asia and Europe opens. This creates new economic opportunities for Arctic states and non-Arctic states alike, especially in terms of container shipping and energy resources (e.g. the Yamal LNG project).² For Asian states like China, Japan and South Korea, it also touches key energy security questions since the Arctic road can be much safer than the Middle East road and thus be worth the investment. For China it is also a route which is not exclusively controlled by the US Navy. In the end, whether or not it involves resources, Asian Arctic policies are mainly translated in geoeconomic measures such as Economic Partnership Agreements (EPA) or investment plans (the Yamal project). For China for instance, the secure supply of natural resources via the NSR could be part of its broader One Belt, One Road initiative which focuses on the development of modern infrastructures along routes connecting Asia and Europe with the objective of boosting exchanges between the two continents.

² President Vladimir Putin recently inaugurated the largest extractive installation for LNG in Yamal, Russia after a \$27 bn investment funded by Chinese banks and Total.

However, to exploit these new opportunities, numerous factors are to be considered in the fields of politics, international law (public and private), environment, technology and finance. This colossal amount of required knowledge could make good use of international cooperation – not only on the state level but on the sub-state level as well. Bearing this in mind, research departments, universities and institutes, forming epistemic communities³ will be relevant to identify the issues involved in Arctic activities and present a comprehensive view through trans-disciplinary studies. As a matter of fact, resilient epistemic communities would help in two ways: first, they would motivate cooperation in a field which is strongly dependent on unilateral measures; second, they would provide policy-relevant science for policy maker⁴ in order to match more accurately their political and economic objectives.

On a broader scope, the conference combined two essential strings: cooperation between Arctic and non-Arctic states; and between states and non-state actors in the Arctic. Taking a comprehensive approach, it aimed to clarify each role of non-Arctic states and

non-state actors in the Arctic region for the future legal order-making. In addition, its discussions also showed the degree of collaboration between non-Arctic states and non-state actors with Arctic states.

One representative example was found in the discussions surrounding policy-relevant science. The respective session (Day 2) focused on how to make Arctic marine scientific observation ‘relevant’ to the international policy community based on a case study of the Arctic Challenge for Sustainability (ArCS) project in Japan. The questions that were raised focused on a gap between policies and substantial activities in the Japanese case. It showed that, on the one hand, the Japanese government released its Arctic policy which aimed to contribute to the sustainable development for the Arctic’s indigenous peoples. On the other hand, its scientific activities were substantially left up in the air. Cooperation between Japan and indigenous peoples in the Arctic still stands at an early stage, limited to the economic, cultural and educational level as was discussed in the preceding session on the legal status of the Arctic’s indigenous peoples.

³ “An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.” Haas, P.M. "Introduction: epistemic communities and international policy coordination". International Organization, special issue: Knowledge, Power, and International Policy Coordination. 46 (1): 1–35.

⁴ On this particular topic, Japan has set up the Arctic Challenge for Sustainability (ArCS) project comprising specialists on diverse fields in natural and social sciences.

Another example was found in the discussion on shipping governance. One of its main purpose was to explore intersection between the Arctic Council (AC) and the IMO. While the main Arctic governance forum was the AC whose members are also IMO member states, the IMO and interested non-Arctic shipping nations had limited access to negotiations of shipping governance in the Arctic region. For this scope, some noteworthy comments emerged. For instance, indigenous peoples faced difficulties to convey their voice into the IMO, and the intersection between the AC and IMO would be a good opportunity for them. In this sense, it is notable that the conference not only specified their current individual situation, but also indicated the potential of discussion between non-Arctic states and indigenous peoples with Arctic states via other international fora as a next step for future Arctic governance.

The research approach to the Arctic taken by the PCRC is based on the perspective that challenges faced in the Arctic cannot be addressed only within the Arctic, but should take a geographically and functionally inclusive approach. Funded by the ArCS, PCRC will continue its work until 2020. The official website of PCRC can be found at: <http://www.research.kobe-u.ac.jp/gsics-pcrc/index.html>.

