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# Current Developments in Arctic Law

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## Editors' Note

Current Developments in Arctic Law (CDAL) is an annual publication of the University of the Arctic's Thematic Network on Law (Network). The Network consists of over 160 scholars interested in the Arctic, not only from the standpoint of law but also from other social science disciplines, such as international relations and political science. Network members belong to education and research institutions located across the Arctic and sub-Arctic region. Its activities include research, education, networking, and outreach. In recent years, the Network has successfully implemented several research and network projects. To name a few are *Food (In)Security in the Arctic*, funded by the Nordic Council of Ministers, the *pilot project for institutionalizing research-end user cooperation in societal security research*, funded by the Council of the Baltic Sea States, and the *Finnish-Japanese Arctic Studies Program*, funded by the Department of Education in Finland.

In the areas of education and teaching, the Network organises guest lectures, in which well-known experts deliver speeches on topical issues concerning the Arctic. The Network cooperates with related institutions,

including other Thematic Networks of the University of the Arctic, to organise summer schools or teaching programs for doctoral and advanced-level undergraduate and graduate students. While the Network organises several seminars and workshops each year open to students and scholars, it regularly joins the host's effort to organise the annual Polar Law Symposium. Network members schedule scientific sessions in renowned international conferences, such as in the International Congress of Arctic Social Sciences (ICASS), the UArctic Congress, and the Arctic Circle Assembly.

As part of the outcomes of the research and network projects and that of the conference presentations, each year, the Network members publish high-quality scientific papers focusing on legal and policy developments concerning the Arctic. The publication of the *Yearbook of Polar Law* (Brill/Nijhoff) is one of the significant achievements to which the Network strongly contributes. Its members serve on the editorial board and, at the same time, serve as peer-reviewers for the submitted manuscripts.

The CDAL is another achievement that encourages both junior and senior scholars to publish their research and academic results. Additionally, it publishes policy papers,

short notes on Arctic-related research and developments, conference summaries and similar contributions. Today, the CDAL is in its eighth year. Hence, this is our eighth volume. The papers published in the CDAL are non-peer-reviewed and include both academic and non-academic contributions. This volume contains 10 articles covering a wide range of topics, as follows: Heather Sauyaq Jean Gordon and Ranjan Datta present the concept of restorative justice practices based on indigenous knowledge. By giving examples of such practices, the authors reflect on how introducing them can help with holistic healing of indigenous peoples and communities. Elena Cirkovic proposes a cosmolegal approach to the legal framework of climate change and outer space pollution, in which both human and non-human actors are agents influencing one another. Elena Gladun and Olga Zakharova examine how the Russian Federation is complying with the goals of the United Nations (UN) 2030 *Agenda for Sustainable Development in the Arctic Region*. Karolina Sikora analyses the influence of the registry of indigenous peoples in the Russian Federation on the conditions and status of the indigenous peoples of the Russian Federation's North, Siberia and the Far East. Stefan Kirchner offers predictions of the potential consequences of a *No-Deal Brexit* to international cooperation in the Arctic

region. Juha Saunavaara and Fujio Ohnishi describe the *Arctic Challenge for Sustainably II* (ArCS II) project conducted jointly by Japan's National Institute of Polar Research, the Japan Agency for Marine-Earth Science and Technology and the Hokkaido University. Juha Joonas describes the potential consequences of opening a planned phosphate mine in the Kemin-Sompio area in the Finnish Lapland. Pavel Tkach discusses how federal laws of the Russian Federation make the Arctic regions more attractive for business development. Gudmundur Alfredsson presents a brief history of the Polar Law Symposiums organised so far, as well as their contents and outreach. Finally, Mami Furuhashi reports on the 13<sup>th</sup> Polar Law Symposium held this year online.

While these contributions are not peer-reviewed, and opinions expressed in the papers are those of the individual authors, we sincerely hope that the articles are of interest to many of you – our readers. We are grateful to all the contributors for their insightful thoughts and deliberations, which advances this eighth volume of the CDAL one step further in disseminating knowledge on the state of the Arctic world.

*Kamrul Hossain & Marcin Dymet*

*December 10, 2020*

# Restorative Justice in the Arctic: Indigenous Knowledge for Healing Communities\*

Heather Sauyaq Jean Gordon\*\* & Ranjan Datta\*\*\*

## Introduction

Indigenous people are overrepresented in the justice systems in both Alaska and Canada, especially when looking at incarceration rates (Alaska Department of Corrections, 2018; Canada Department of Justice Research and Statistics Division, 2019). Mainstream justice systems are focusing on punitive measures that do not reflect Indigenous Knowledge and Indigenous approaches to restorative justice and healing (Pranis, Stuart, & Wedge, 2003). In this short paper, we aim to generate further understanding of how Indigenous knowledge is significant and related to Indigenous restorative justice as a means to consider how we might resolve various forms of disputes, meet the needs of Indigenous peoples and communities, and rethink Alaska and Canada's justice systems. This paper

considers how we might engage in relearning by making more room for the holistic healing found within Indigenous models of restorative justice. We hope our paper provides a general introduction to the importance of Indigenous knowledge for people who work with Indigenous clients in the United States (U.S.) and Canadian Arctic justice systems. Our paper also serves to inform other Indigenous people interested in developing restorative justice practices in their communities of what is being done in some Canadian and U.S. Arctic communities.

## Turning to Indigenous Knowledge for Justice and Healing: Restorative Justice

Indigenous knowledge is dynamic, holistic, intergenerational, linked to experience on traditional lands and the integrity of the knowledge depends on maintaining the "integrity of the land itself." (Battiste 2005, p.8). Indigenous people have a deep connection between their traditional knowledge and their restorative justice systems such as the peacemaking circles. In restorative justice, many Indigenous people rely on

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\*The opinions expressed in this article are the author's own and do not reflect the view of the Administration of Native Americans, The Administration for Children and Families, the Department of Health and Human Services, or the United States government.

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their sustainable Indigenous Knowledge to resolve disputes within their communities (Lange, & Popova, 2011; Loukacheva, 2012). Indigenous knowledge, cultural practices, and traditional restorative justice systems are interconnected to develop social control to maintain harmony in the community, such harmony being essential to community survival. Indigenous people in North American societies were and are dynamic cultures that constantly adapt(ed) to meet their changing circumstances and address their needs.

Indigenous restorative justice is typically a healing process based on Indigenous dispute resolution traditions. There is a substantial body of literature citing the positive impact of Indigenous knowledge-based restorative justice systems. In these systems, parental education was crucial to teaching and cultivating every child a sense of duty and responsibility to maintain harmony (Dickson-Gilmore & La Prairie, 2007; Melton, 2005). Hewitt's (2014) study focused on Indigenous knowledge and laws suggesting that Indigenous restorative justice is a means to consider how we might better resolve various forms of disputes and reinvent versus revise Canada's criminal justice system. Indigenous people represent Indigenous spirituality, values, beliefs, and traditions in inmate programming facilitates healing for the Indigenous

communities (Correctional Services Canada, 2015).

Indigenous restorative justice is a traditional knowledge-based practice. This process addresses crime in a way that situates it as an act against an individual and community, not an act against a state and its laws (Dickson-Gilmore & La Prairie, 2007; Melton, 2005). In many cases, Indigenous restorative justice is based on a holistic philosophy. The unwritten customary laws and traditions guide these systems and practices that are learned primarily by example and through the oral teachings of Indigenous Elders (Melton, 2005). It is a healing process that acknowledges that crime does damage but posits that judicial systems should be a vehicle for healing, not for punishment. This justice method attempts to understand the circumstances that led to crime occurring in the first place to identify and address the cause and impacts accurately. The Indigenous restorative knowledge-based justice's goal becomes identifying a healing methodology for the victim, offender, and community that helps reduce recidivism and acknowledges the impact of the crime on the individuals and communities affected (Correctional Services Canada, 2015).



## **Using Indigenous Knowledge for Restorative Justice**

Healing is the center of the Indigenous Knowledge-based restorative justice system. For example, a study (Justice Education Society, 2016) suggests that if a healing circle is used as the method for justice, it must include the offender, Elders, community members, and the victim if he or she has agreed to participate. In this healing process, all parties have the opportunity to discuss the crime and how it has affected the victim and the community. Besides, the healing focuses on the underlying causes of the offence. Together the group will suggest reconciliatory action for the offender. In this Indigenous Knowledge-based justice system, victims report more satisfaction than traditional justice procedures (Justice Education Society, 2016). Thus, restorative justice practice becomes an effort to institutionalize a positive problem-solving methodology around a historically culturally devastating system for both victim and offender (Hansen, 2009; Hansen et al., 2012; Tribal Law and Policy Institute, 2014).

In the Indigenous Knowledge-based restorative justice systems, Indigenous Elders, leaders, and medicine-men play significant roles (Hansen, 2009; Hansen et al., 2012). For instance, Elders often take offenders out into the bush to hunt, trap and live off the land in traditional ways. This is intended to reclaim the

offender to their traditional roots, increase attachment to the land, and improve traditional skills. Studies (Borrows, 2002; Mills, 2016) suggest that Indigenous Knowledge, values, protocols, and traditions, preserved in the wisdom of Elders and communities' practices, need to be considered as a significant part of restorative justice. Therefore, many Indigenous people traditionally believe that restorative justice is a way of life and a part of the life process.

## **Restorative Justice in the Arctic: Examples**

### **Canada**

In Canada, there is a multitude of restorative justice practices taking place due to first Indigenous movements to address healing and traditional forms of justice and followed by the 1996 amendment to the Canadian Criminal Code that encouraged community-based restorative elements (Barnes, 2013; McCormick, 2001; Canadian Resource Centre for Victims of Crime, 2011). In Canada, some forms of restorative justice are Indigenous, while others are faith- or community-based, Indigenous practices include Peacemaking Circles (Indigenous), Healing Circles (Indigenous), Sentencing Circles (not always Indigenous), and Aboriginal Courts (also known as First Nations Courts or Indigenous Courts)

(Indigenous) (Canadian Resource Centre for Victims of Crime, 2011; Johnson, 2014; Mehl-Madrona, 2014). Started in 1991, the Indigenous Justice Program (IJP), formerly known as the Aboriginal Justice Strategy, supports Canadian Indigenous restorative justice programs by helping to fund over 100 restorative justice programs serving over 400 communities (Fleming, 2015). Indigenous restorative justice resolves family conflicts, builds community capacity, enforces Indigenous laws, and develops sentencing plans. Participants in IJP funded restorative justice programs have lower recidivism rates than those involved in the mainstream Canadian justice system and are just over half as likely to re-offend (Canada Department of Justice Evaluation Division, 2016). We will now look at examples of Indigenous restorative justice in Canada, Circle Healing in the Hollow Water First Nations Community in Manitoba and the Tsuu T'ina First Nation Court in Alberta.

### *Healing Circles*

The Hollow Water First Nations Community developed the Hollow Water First Nations Community Holistic Circle Healing (CHCH) in 1986 in the Hollow Water Ojibwa community of the Anishinaabe people in Manitoba, Canada in response to the high rates of alcohol abuse that was linked to incest and sexual assault taking place in the community (Barnes, 2013; Bushie,

1997a). Incest was not an accepted norm by the Ojibwa people and it was a taboo to have incestual relations (Sivell-Ferri, 1997a). The community came together and began to talk about the issues they were having as more and more people came forward disclosing what had happened to them (Bushie, 1997a). The community developed a thirteen-step CHCH process that begins with disclosure and continues through confronting the victimizer, supporting the family, holding circles with the victimizer, holding separate circles with the victim, gradually bringing in the family to the victim's circle, holding a sentencing circle, regularly reviewing sentencing, and ultimately ending the process with a cleansing ceremony (Sivell-Ferri, 1997b). The CHCH method is founded on seven Ojibwe teachings of "honesty, love, courage, truth, wisdom, humility, and respect" (Sivell-Ferri, 1997b)

For an offender to partake in the CHCH they have to first plead guilty and admit to the offence and then agree to partake in the circles instead of being sentenced by a judge (Sivell-Ferri, 1997b). If they do this, then they are supported through the Circle Healing and "non-blaming approach." The first circle is with the offender and their family, the offender taking responsibility for their actions and meeting with their family to admit what they have done. The second circle is for the victim and their family to

discuss what has happened. Eventually, the offender, victim, and their families join one circle and the victim explains to the offender how they were affected in order to heal. In the final circle, the sentencing circle, the two families, victim, and offender, are joined by community members; the offender tells the community what they have done, and the community develops sentencing recommendations for the judge and these proceedings are reported to the court (Bushie, 1997b). This process has greatly reduced recidivism rates compared to mainstream justice practices with a recidivism rate of only 2 percent compared to the mainstream recidivism rate for sex offenders being 13 percent (Native Counseling Services of Alberta, 2001).

#### *Aboriginal Courts*

Aboriginal Courts began in Canada with the Tsuu T'ina Peacemaker Court in Alberta in 2000 (Whonnock, 2008). One of the reasons the courts were created includes addressing the results of the Royal Commission on Aboriginal peoples that demonstrated that the current Canadian mainstream justice system was not working for the Aboriginal peoples of Canada as evidenced by their overrepresentation in the system and the lack of Aboriginal values, cultures, and beliefs in the mainstream Canadian justice system (Chartrand, 1995). A second reason for the courts was given by the Indigenous

Bar Association which said that they needed the Aboriginal courts due to a history of Indigenous nations in Canada and their cultural method of oral history being excluded from mainstream justice (Whonnock, 2008). The Aboriginal courts utilize Aboriginal methods of dispute resolution that respect and reflect the local Aboriginal culture of the area. By focusing on restorative justice instead of punitive measures, they emphasize rehabilitating instead of imprisoning Indigenous people (Johnson, 2014). Offenders must be willing to plead guilty and admit their offence to begin the healing restorative process.

The Tsuu T'ina First Nation are Dene and live outside Calgary, Alberta (Whonnock, 2008). They began planning an alternative justice system in 1996, reviewing other peacemaking dispute resolution processes such as the Peacemaking Circle used by another Dene people, the Navajo in the U.S. (Bryant, 2002). They developed a Court Proposal in 1998, and the Tsuu T'ina Peacemaker Court was started on the Reserve in 2000 (Bryant, 2002; Wang, 2019). It works to combine Alberta Provincial Court and Peacemaker processes where the Crown Prosecutor and Peacemakers are both present in the courtroom and the judge ultimately decides if a case will be dealt with in the court or go to a peacemaking circle. The Judge is a First Nations Bar member, and

the court has jurisdiction over youth, criminal, and bylaw offences committed on the Reserve (Wang, 2019). The goal of the court is to restore peace between the victim, offender, and community utilizing the Tsuu T'ina culture and traditional values (Whonnock, 2008). Not only do the proceedings of the court reflect the local culture through the peacemaking process and smudging with sweetgrass or sage, but the court itself does as well as the courtroom is circular shaped to reflect a beaver den as the totem of the Tsuu T'ina is the beaver (Wang, 2019). The chairs and tables of the court are also in a circle so that all participants including the judge, Elders, offender, victims, and family members face each other in a circle which is very unlike a conventional courtroom which elevates the judges who can appear intimidating. After only its first year in operation, the court demonstrated lower recidivism rates than the mainstream system (Bryant, 2002).

## **Alaska**

In Alaska, tribes are drawing on their Indigenous Knowledge to heal their people through Tribal Healing to Wellness Courts and Circle Peacemaking. Some tribes have already established self-funded restorative justice practices like the Kenaitze Indian Tribe who operates a Healing to Wellness Court for adults, the Henu Community Wellness Court, and a Peacemaking Circle, the Ts'ilq'u Circle

(Kenaitze Indian Tribe, 2020a; Kenaitze Indian Tribe, 2020b). Other tribes are applying for funding to start restorative justice practices of their own such as the Outagamie Native Council in Bethel, Alaska through funding from the Alaska Office of Juvenile Justice and Delinquency Prevention which provides funding for juvenile Healing to Wellness Courts through the federal Office of Juvenile Justice and Delinquency Prevention (The Resource Basket, 2020). These courts can receive free technical assistance and training through the Tribal Law and Policy Institute or the Rural Community Action Program Alaska Native Youth Training and Technical Assistance Project (Tribal Law and Policy Institute, 2015; The Resource Basket, 2020). The goal of both the Healing to Wellness Courts and Circle Peacemaking programs in Alaska is to utilize culture to heal the offenders and those harmed by restoring relationships, healing the community, and getting people the help they need through substance abuse treatment and counselling instead of incarcerating people.

### *Tribal Healing to Wellness Courts*

Tribal Healing to Wellness Courts are the tribal adaptations of the drug courts that were started in the U.S. in the 1980s (Tribal Law and Policy Institute, 2014). As alcoholism was often tied to crime and incarceration in Indigenous communities in the U.S., tribes sought

ways to address the alcoholism and get people treatment to prevent further crime in the community (Feldstein, Venner, & May 2006; Tribal Law and Policy Institute, 2014). In 1997, the U.S. Department of Justice through its Drug Court Program Office developed a program to assist Indigenous nations in the U.S. to develop drug courts. These courts specifically include Indigenous culture through 1) developing a community-healing approach that addressed both physical and spiritual healing of the participants and community and 2) utilizing culture and tradition in substance abuse and rehabilitation treatment (U.S. Department of Justice, 2003). A study was done on the recidivism rates of drug courts, not specific to Tribal Healing to Wellness Courts, found that drug courts are effective in reducing recidivism with recidivism rates reducing from 50 percent to 38 percent with the effects lasting even up to three years (Mitchell, Wilson, Eggers, & MacKenzie, 2012). These are promising results that continue to inspire Tribes in Alaska to develop Healing to Wellness Courts.

The Kenaitze Indian Tribe are Dene people and they established and fund the Henu Community Wellness Court in Kenai, Alaska and started taking cases in 2017. Unlike traditional court systems advocating punishment, the Henu Court's vision seeks to make the community healthier through

transforming lives through their mission of supporting "wellness and rehabilitation for those in need through a cooperative justice program to create a safe and healthy community" (Kenaitze Indian Tribe, 2020a). The court works specifically with adult offenders struggling with drugs and alcohol and seeks to provide participants with resources to heal and achieve sobriety instead of sending them to jail. Along with treating substance abuse issues, the court seeks restorative components of rebuilding relationships with family, friends, and the community and increasing self-sufficiency with the goals of healing the offender to stop recidivism. The program is guided by the Kenaitze Traditional Value Wheel which details the values in the Dena'ina culture (Kenaitze Indian Tribe, n.d.). The Henu Court seeks to help participants change their lives and be on the "Yaghali Tinitun" – the Good Trail. The court assists offenders in getting reestablished into their communities through holding them accountable for their offences, providing peer support, offering culturally relevant behavioral health treatment at the Dena'ina Wellness Center, and encouraging them to pursue education and employment through helping offenders develop a Life Change Plan (Kenaitze Indian Tribe, 2016).

#### *Circle Peacemaking*

Peacemaking circles have a history rooted in Indigenous communities

(Pranis, Stuart, & Wedge, 2003). As seen in this paper, the ideas of meeting in a circle and utilizing peacemakers is prevalent in both Canada and Alaska and is utilized as a way to promote healing for the victim, offender, and community instead of instituting punishment. Circles are specific to the community using them and reflect the local culture and beliefs of the Indigenous people engaging in the practice. Peacemaking circles begin with a prayer, utilize consensus, focus on healing broken relationships instead of broken laws, and work to reintegrate and build trust instead of punishing, resulting in apologies, restored relationships, and healing consequences such as going to a culture camp, doing community service with an Elder, or beginning treatment for substance abuse (Costello, 1999; Pranis, Stuart, & Wedge, 2003). Peacemaking circles can handle both juvenile and adult cases, working to resolve issues around drugs and alcohol, property damage, shoplifting, truancy, child support and custody, and domestic issues (Costello, 1999; Mirsky, 2004). Peacemaking circles can be as small as six people and as large as sixty, including the victim, offender, and both of their families, peacemakers, and other community members such as police, counsellors, or others interested (Costello, 1999). Typically, the peacemaking is not a neutral party acting as a mediator, they often are involved in the lives of the parties as

relatives or community Elders and are chosen for their leadership, knowledge, and teaching they can provide.

In Kake, Alaska, a T'lingit community, the local tribe, the Organized Village of Kake, funds and runs a Circle Peacemaking program (Jarrett & Hyslop, 2014). Circle Peacemaking is a traditional method of dispute resolution in the T'lingit culture, and it had fallen out of practice in the community due to mainstream culture introducing the court system. As Kake is only accessible by boat or plane, it was difficult to get lawmakers to come to the community to deal with local issues and the community was having problems with alcohol use and suicide in the 1980s and 90s. The community members decided to address their own issues, and the Circle Peacemaking program was reintroduced in Kake after community members met with T'lingit First Nations community members from Carcross, Yukon, Canada who utilized Circle Peacemaking and learned from them how to set up a program. The Circle works with the Organized Village of Kake tribal court, local police, and social services workers to take referrals and work on healing offenders instead of prosecuting them (Rieger, 2001). The Circle is open to all members of the community and works with Natives and non-Natives. One young community member who went through the Circle for minor consumption found a surprise in

how many people attended his circle, and after everyone spoke he reflected on that he had been feeling marginalized in Kake and did not realize that there were so many people caring about him. These healing experiences have resulted in reducing recidivism in Kake with a rate of 28 percent compared to an Alaska state-wide rate of 66 percent (Fortson & Carbaugh, 2014).

### **Recommendations**

If a community is interested in developing restorative justice practices based on Indigenous Knowledge, we have several suggestions: involve local stakeholders in all stages of development, tailor the program to the local community and its culture, learn from what other Indigenous communities are doing to help guide program development, recognize Indigenous self-determination and sovereignty and the history of the communities experiencing colonization, develop a working agreement between mainstream judicial systems and Indigenous systems, access funding required adequately support the program, emphasize sustainability of the program for long-term community healing, see success as more than just reduced recidivism but community healing as well, and focus on having community based restorative “practices” instead of worrying about what “justice” might mean (Jarrett &

Hyslop, 2014). Additionally, there is a lack of evaluation research on restorative justice practices, and we suggest measuring the successes of restorative justice in Indigenous communities and ensuring there are resources necessary to permanently institute the practices.

### **Conclusion**

Indigenous knowledge-based restorative justice programs are not only community-initiated and bear little resemblance to mainstream justice systems, but also provide opportunities on healing individuals and communities– including the underlying harms of ongoing colonization. They could provide an alternative pathway for Indigenous people in the justice system that could lead to healing instead of incarceration and punishment. Indigenous knowledge provides valuable insight into how to better understand and practice restorative justice practices with Indigenous people and the examples we provide from the U.S. and Canadian Arctic demonstrate what communities are doing and what other communities could institute

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## Law Beyond the Human in the Arctic and Outer Space\*

Elena Cirkovic\*\*

As temperatures continue rise in the Arctic, the permafrost begins to thaw, releasing methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) into the atmosphere. These emissions accelerate

future warming.<sup>1</sup> In July 2020, an explosion in the Yamal Peninsula above the Arctic Circle, caused by subterranean gases, has opened up a massive hole. Russian scientists found the 50-meter crater on an expedition.<sup>2</sup> They named it Crater 17, as 16 similar objects have been discovered in Siberia's extreme northwest since the phenomenon was



The Yamal Crater, as seen above, would be miniscule compared to a Yakutia Crater reported by Russian Scientists. Image source: The Siberian Times via Vasily Bogoyavlensky

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\* The commentary is a shorter version and promotion of Dr. Cirkovic's paper forthcoming in 2021: Elena Cirkovic, "The Next Generation of International Law: Space, Ice, and the Cosmolegal Proposal (2021) 21 *German Law Journal* 2 (forthcoming March 2021).

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<sup>1</sup> Dmitry Yumashev, et al. *Climate policy implications of nonlinear decline of Arctic land permafrost and other cryosphere elements* 10 *NAT.COMMUN.*1900 (2019).

<sup>2</sup> The local news provided images of the crater:

[https://www.youtube.com/watch?time\\_continue=1&v=q3fQok8iQ94&feature=emb\\_title](https://www.youtube.com/watch?time_continue=1&v=q3fQok8iQ94&feature=emb_title)

first observed in 2014.<sup>3</sup> The inaccessibility of the Arctic region has limited most ground-based observations to places with existing infrastructure, which can delay understanding of phenomena such as the Yamal crater. This is where another domain steps in: the outer space technology has been crucial for the monitoring of climate change.<sup>4</sup>

The orbit has also been subject to environmental problems. The increasing orbital debris poses a risk to functional satellites. International law has been unable to respond to this problem despite various other proposals for management of space debris.<sup>5</sup>

These phenomena also demonstrate how non-human phenomena, like GHGs and orbital debris, are unpredictable and disruptive agents. They are unintended results of anthropogenic pollution, and in turn, have the capacity to affect all planetary life (human and non-human). In response, the author has been proposing a new approach to lawmaking through which the law would recognize the unpredictability of human/non-human relations: the cosmolegal. What are the implications of

recognizing that everything—including rocks, polluted air, the oceans—is alive?

Cosmolegality emerges from theories on post-human legalities that argue for a move beyond the centrality, for law, of the human subject that acts upon the world (cosmos), as its object. It proposes that ‘anything’ that makes a difference to other actors is an agent. The main hypothesis of the proposal is that the international legal response to climate change on Earth, and anthropogenic pollution of outer space, requires a new approach to the law itself.

However, the ‘resource rush’ in the Arctic and outer space (e.g. space mining) reveals the short-sightedness of attempts to instrumentalize and colonize these spaces sidestepping environmental problems. Both domains are governed by international regimes that do not directly respond to the magnitude of the ongoing environmental degradation. The orbital space also has capacity limits, which is not determined only by the number of anthropogenic space objects in a specific orbital neighborhood, but also

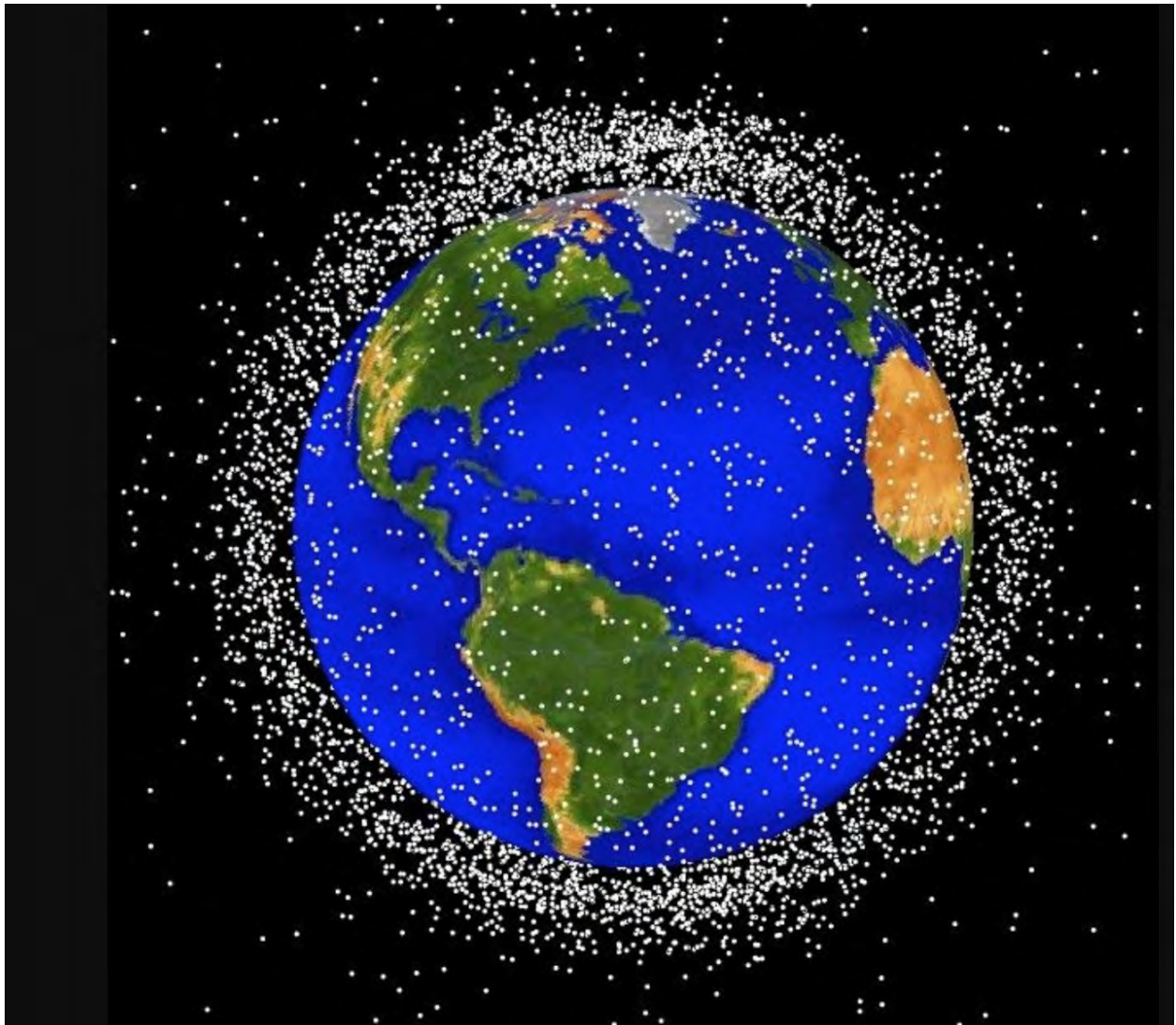
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<sup>3</sup> Land in Russia’s Arctic Blows ‘Like a Bottle of Champagne’, *The New York Times*, September 5, 2020.

<sup>4</sup> Elder, C. D., Thompson, D. R., Thorpe, A. K., Hanke, P., Walter Anthony, K. M., & Miller, C. E. (2020). Airborne mapping reveals emergent power law of Arctic CH<sub>4</sub> emissions. *Geophysical Research Letters*, 47,

<sup>5</sup> Elena Cirkovic, “The Next Generation of International Law: Space, Ice, and the Cosmolegal Proposal (2021) 21 *German Law Journal* 2 (forthcoming March 2021).





Source, NASA at <https://www.orbitaldebris.jsc.nasa.gov/images/beehives/leo640.jpg>

the uncertainty in how these objects will behave in the future.<sup>6</sup>

The dominant debates in international law as related to the ongoing and future human activities in outer space have focused recently on the military and commercial uses of outer space with international lawyers participating in the delineation of what the public-

private, state-commerce nexus of relations, should become.<sup>7</sup> The recently passed Artemis Accords have intensified these debates arguing that “International space agencies that join NASA in the Artemis program will do so by executing bilateral Artemis Accords agreements, which will describe a shared vision for principles, grounded in the Outer Space Treaty of 1967, to create

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<sup>6</sup> For ongoing observations of “space junk” behaviour see for instance Jonathan McDowell (Harvard Smithsonian Centre for Astrophysics), GCAT: General Catalog of Artificial Space Objects, at <https://planet4589.org/space/gcat/web/cat/index.html>

<sup>7</sup> Olavo O. Bittencourt Neto et.al (eds) Building Blocks for the Development of an International Framework for the Governance of Space Resource Activities: A Commentary (2020)

a safe and transparent environment which facilitates exploration, science, and commercial activities for all of humanity to enjoy.”<sup>8</sup> However, the space environment question requires a consideration of its existence beyond potential utility for the human species. Much of the Earth system and the extraterrestrial space beyond Earth, are operating under the laws of physics, chemistry, or biology, and so on. This includes human bodies. Viruses, gases, or rocks do not in any way, shape, form, bend themselves to public policy. The current legal systems addressing climate change and outer space are not driven by the realities of their environments, but by the formalistic and human-focused structure of international law.

The cosmolegal proposal builds on the hypothesis of profound interrelatedness in the Earth system. Earth System Science (EES) is the application of systems science to Earth sciences and approaches the earth as a self-enclosed system, which includes interacting physical, chemical, and biological processes. The Earth system approach also allows us to understand the earth on a planetary scale. Human-caused environmental problems are not contained only on Earth, and for this reason we need to connect

how human activities affect the environment beyond the uppermost layers of atmosphere and in the Earth’s orbit, and into the more ‘cosmic’ realm. Most importantly, it allows for a shift in the imagination and understanding of the cosmos, which would not see the human, and its laws, as a central actor of the Earth System and beyond, or as the apex owner, and manager of its environment. Rather, human is only one of the actors of the ‘cosmos’, known and unknown.



Arctic Trees, Painting by the Author (Dr. Elena Cirkovic), St. Petersburg, 2018

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<sup>8</sup> <https://www.nasa.gov/specials/artemis-accords/index.html>

# Russian Arctic Policy Supporting the 2030 Agenda for Sustainable Development in the Arctic

*Elena Gladun\* & Olga Zakharova\*\**

## Introduction

In 1992, Russia accepted the basic principles of sustainable development and made a commitment to follow them by signing international agreements – Rio Declaration, Agenda 21, UN Framework Convention on Climate Change, Convention on Biological Diversity. This involved commitments to ensure sustainable development through relevant national policies and legislation. Over the last three decades, Russia has taken meaningful steps towards sustainable development by issuing environmental strategy and creating legal and regulatory foundations for socio-economic development and environmental protection. Transitioning towards sustainable development, Russia participates in all international initiatives based on the principles of sustainability. In 2015, countries, Russia included, revised their approaches to sustainability and adopted 17

Sustainable Development Goals in the 2030 Agenda for Sustainable Development.<sup>1</sup> On January 1, 2016 these new goals officially came into force. The new Goals are unique in that they call for action by all countries, poor, rich and middle-income to promote prosperity while protecting the planet.

Due to the fact that the Arctic is both fragile and rich in resources the unique Arctic environment requires special attention. Being the Arctic state Russia must adhere to sustainable growth and development of the Arctic territories.

In 2019-2020 the Russian scholars from Tyumen State Universities have conducted a research with the main objective to investigate if Russia has made any meaningful steps towards sustainable development in the Arctic concerning new sustainability goals and if any complying rules are incorporated in Russian arctic-related legislation to contribute to sustainable development transition. For this purpose, the researchers examined several groups of official documents from the perspective of SDGs to discover if the federal and regional strategies, laws, regulations and target programs make sustainable development goals applicable in the

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<sup>1</sup> UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development', Resolution 70/1, 25 September 2015,

[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)



Russian Arctic<sup>2</sup>. The research methods included the content and legal analysis of legislation and reports; comparative analysis of relevant documents adopted in Russia.

The research exemplified that all the documents were worked out prior to 2015 and, on the one hand, it seems as new sustainable development goals have had no impact on the Arctic legal framework. The further finding was that just few provisions on sustainable development can be found in a number of legal norms regulating the Arctic use and protection. For example, Federal program "Social and economic development of the Arctic zone of the Russian Federation" practically does not address the concept of sustainable development as the integration of economic, social and environmental

dimensions. Moreover, the term "sustainable development" itself is mentioned in this document just a few times. But does this mean that Russian Arctic policy is not following the sustainability approach? The deeper analysis revealed adherence of the Russian Arctic regulations to the sustainable approach. What was found out is that the term "sustainable development" in Russian Arctic policy is used in different contexts: "sustainable development of indigenous peoples", "sustainable development of related industries". With this angle, principles and rules formulated in the laws and programs can be considered the description of the SDGs compatible for the Russian Arctic and constitute a specific domestic roadmap according to the Arctic priorities for the next 15 years.

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<sup>2</sup> President of the Russian Federation, 'Strategy for the development of the Arctic zone of the Russian Federation and ensuring national security for the period up to 2020', 13 February 2009, <http://government.ru/info/18360/>; President of the Russian Federation, 'Strategy for the Development of the Arctic zone of the Russian Federation and ensuring national security for the Period up to 2035', 26 October 2020, No 645, <http://docs.cntd.ru/document/566091182>; President of the Russian Federation, 'Principles of the state policy of the Russian Federation in the Arctic for the period up to 2020 and further', 8 September 2008, No 1969, <https://rg.ru/2009/03/30/arktika-osnovy-dok.html>; Government of the Russian Federation, 'Federal Program of the Russian Federation "Socioeconomic development of the Arctic zone of the Russian Federation for the period up to 2020"', 21 April 2014 No. 366, <http://government.ru/rugovclassifier/830/events/>; President of the Russian Federation, 'Framework of state policy in the field of environmental development of the Russian Federation for the Period until 2030', 30 April 2012, <http://kremlin.ru/events/president/news/page/492>; Federal Law, 'On Environmental Protection', 10 January 2002 [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34823/](http://www.consultant.ru/document/cons_doc_LAW_34823/); President of the Russian Federation, 'Strategy of Ecological Safety of the Russian Federation for the period up to 2025', 19 April 2017 No. 176, <http://kremlin.ru/acts/bank/41879>; Government of the Russian Federation, 'Energy Strategy of Russia for the period up to 2035', 9 June 2020 No. 1523-p, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_354840/](http://www.consultant.ru/document/cons_doc_LAW_354840/); President of the Russian Federation, 'Climate doctrine of the Russian Federation', 17 December 2009, <http://kremlin.ru/events/president/news/6365>; other environmental and natural resource laws and codes.

## Results

Analyzing the Arctic related legislation of the federal and regional level, the authors have come to the conclusion that industrial development is the cornerstone of Russia's Arctic policy. The primary task of the Russian government is the exploitation of Arctic resources. According to the Federal program "Social and economic development of the Arctic zone of the Russian Federation" almost two-thirds of all Arctic projects are directly related to the development of the mineral resource base. In the meantime, the comprehensive analysis reveals that Arctic related legislation of the federal and regional level, federal and regional target programs, grassroots and Arctic

local communities' initiatives as well as operating companies' incentives are, to a certain degree, relevant to the new SD goals and applicable with the sustainable approach of the Arctic development.

The main result of the research was the classification of 17 SDGs, as they are addressed in the Arctic legal frameworks, and according to which they can be grouped in three blocks. The criteria of grouping were their applicability and availability of legal and financial mechanisms for their implementation. Thus, the first group is for the goals which are "much addressed, officially implemented with substantial budgetary provisions and effective tools provided". The second

**Table 1**

<b>Group 1 "SDGs much addressed"</b>	<b>Group 2 "SDGs declared"</b>	<b>Group 3 "SDGs not responded"</b>
<b>Goal 1 "No poverty"</b>	<b>Goal 8 "Decent work and economic growth"</b>	<b>Goal 5 "Gender equality"</b>
<b>Goal 2 "Food security"</b>	<b>Goal 9 "Industry, innovation, and resilient infrastructure"</b>	<b>Goal 6 "Clean water and sanitation"</b>
<b>Goal 3 "Good health and well-being"</b>	<b>Goal 12 "Responsible consumption and production, recycling"</b>	<b>Goal 10 "Reducing inequalities"</b>
<b>Goal 4 "Education and life-long learning opportunities"</b>	<b>Goal 13 "Climate action"</b>	<b>Goal 11 "Sustainable cities"</b>
<b>Goal 7 "Energy"</b>	<b>Goal 7 "Affordable and clean energy"</b>	<b>Goal 16 "Justice and inclusive societies at all levels"</b>
<b>Goal 17 "Global partnerships"</b>	<b>Goal 14 "Sustainable use and conservation of the oceans, seas and marine resources"</b>	
	<b>Goal 15 "Sustainable use of terrestrial ecosystems, forests, lands"</b>	

group is for the goals which are “declared as significant for further implementation but lacking relevant funding and practical instruments”. The third group comprises the goals which are “not responded either by the government or by the public and industries”. This classification is presented in Table 1.

### **Discussion: Prospects of implementation of SDGs in the Russian Arctic**

To illustrate the process of Russia’s transition to sustainable development in the Arctic within the framework of SDGs we can describe the specific goals and how they are reflected in program and regulatory documents. For this paper we selected three goals from each classification group.

#### ***Goal 4 “Education and Life-Long Learning Opportunities” (Group 1)***

Education is, perhaps, the most discussed issue in the Russian Arctic, compared only to environmental security. There are several federal target programs employing various measures

to support education in the Arctic – “Development of Education in 2013-2020”<sup>3</sup>, the Federal Program “Social and economic development of the Arctic zone of the Russian Federation”<sup>4</sup> which also comprises section on education. The core principle of the Arctic education is to provide professional training and retraining, advanced training of specialists in the system of secondary professional and higher education for work in Arctic conditions.<sup>5</sup>

The areas covered by these target programs are:

- social support for vocational education;
- development of preschool and general education;
- social support and professional development of the teaching staff;
- compensation system to the teachers who are the residents of the northern territories.<sup>6</sup>

The Arctic regions of Russia concretize the basic provisions of the federal programs developing their own policies and regulatory frameworks in accordance with the regional specifics. In Murmansk Region, for example, the

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<sup>3</sup> Government of the Russian Federation, ‘Federal program “Development of education in 2013-2020”, 26 December 2017 No. of 1642, <http://docs.cntd.ru/document/499091784>;

<sup>4</sup> Government of the Russian Federation, ‘Federal Program of the Russian Federation “Socioeconomic development of the Arctic zone of the Russian Federation for the period up to 2020”, 21 April 2014 No. 366, <http://government.ru/rugovclassifier/830/events/>

<sup>5</sup> President of the Russian Federation, ‘Principles of the state policy of the Russian Federation in the Arctic for the period up to 2020 and further, 8 September 2008, No 1969, <https://rg.ru/2009/03/30/arktika-osnovy-dok.html>

<sup>6</sup> Ibid

system of secondary vocational and higher education is actively changing, especially the structure of educational programs bringing them closer to the economic needs. A special role is assigned to the system of secondary vocational education and vocational training (in 2015-2016 academic year, 16,000 people were trained in 105 educational programs of secondary vocational education).<sup>7</sup> The idea of the region is to perform breakthrough training for qualified personnel of complicated Arctic projects. For this purpose, the Center for Arctic Competences is projected in the region to provide comprehensive life-long learning provided for employees of enterprises operating or ready to work in Arctic conditions.<sup>8</sup>

The regional target program of the Yamalo-Nenets Autonomous District is "Development of Education in 2014-2020".<sup>9</sup> Within this one and its several sub-programs the system of boarding schools is being introduced. The primarily objective is to develop new curricula considering sociocultural features and specific talents and capabilities of local children living with

their parents in the tundra. These boarding schools are now being transformed into specific centers of ethno-cultural education, covering all the territories of traditional residence and traditional economic activities of indigenous peoples in Yamal.<sup>10</sup>

Most attention in the educational system in the District is paid to:

- teaching native languages
- teaching indigenous peoples in places of traditional residence and nomadic routes, without separating children from parents and for maintaining the traditional way of life.

Still, there is a lack and a big demand in deeper research and providing more qualitative level of education in the following areas:

- prevention and treatment of deer diseases (anthrax, brucellosis, catarrhal and pulmonary diseases of calves);
- reclamation of land erosion of the tundra;
- domestication of reindeer feeding;
- restoration and stimulation of reindeer moss growth with the help of

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<sup>7</sup> Government of the Russian Federation, 'Federal Program of the Russian Federation "Socioeconomic development of the Arctic zone of the Russian Federation for the period up to 2020", 21 April 2014 No. 366, <http://government.ru/rugovclassifier/830/events/>

<sup>8</sup> Ministry of Education and Science of the Murmansk Region, 'On the establishment of the Center for Arctic Competencies', 28 December 2015 No. 2353.

<sup>9</sup> Yamalo-Nenets Autonomous District Government, 'Target program "Development of the vocational education system of the Yamalo-Nenets Autonomous District for 2016-2020", 28 April 2016 No. 394-P.

<sup>10</sup> Department of Education of the Yamalo-Nenets Autonomous District (2015) Education in the Yamalo-Nenets Autonomous District: state and development trends, Salekhard.

biostimulators and water-retaining polymers (lichenology);

- processing medical products from plants growing in the area for prevention and treatment of animals and people;

- identification and comprehensive study of sacred, cult places of indigenous peoples;

- encouraging indigenous peoples to do research and get focused scientific degrees.

### ***Goal 13 "Climate Action" (Group 2)***

Global warming has myriad implications for the Arctic environment, residents, and nations. Climate change is one of the most discussed topics in the Arctic as it is affecting marine ecosystems and marine life, terrestrial ecosystems, animals and people who depend on them. Climate impacts include effects on access to food and resources; health and wellbeing. Community cohesion, traditions, and culture are other dimensions of sustainable development.<sup>11</sup> To respond the climate issues some policy and

regulatory measures are taken in the country, for example, the Climate Doctrine approved in 2009<sup>12</sup> suggests measures for reducing emissions. Although not legally binding, the Climate Doctrine became a strong statement of intent. It sets strategic guidelines and targets and serves as a foundation for developing and implementing climate policy, covering issues related to climate change and its consequences.<sup>13</sup> On 31 March 2015, the Russian Federation submitted to the United Nations its Intended Nationally Determined Contributions (INDC), proposing to reduce its emissions of net GHG by 25% to 30% below the 1990 level by 2030.

However, the ambitious goals announced by the Russian Federation are not supported by the current federal legislation. The Climate Doctrine of 2009 and the Comprehensive Plan for the implementation of the Climate Doctrine adopted in 2011 do not contain effective tools to reduce greenhouse gas emissions. Moreover, the Comprehensive Plan is financially provided neither by the federal budget

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<sup>11</sup> See, for example, Arctic Resilience Report, 'The Arctic Council', 27 March 2017, <http://arctic-council.org/arr>; Bruce Forbes, 'Land use and climate change on the Yamal Peninsula of north-west Siberia: some ecological and socio-economic implications', *Polar Research* 18 (2): 367-373 (1999).

<sup>12</sup> President of the Russian Federation, 'Climate doctrine of the Russian Federation', 17 December 2009, <http://kremlin.ru/events/president/news/6365>.

<sup>13</sup> Michal Nachmany, Sam Fankhauser, Jana Davidova, Nick Kingsmill, Tucker Landesman, Hitomi Roppongi, Philip Schleifer, Joana Setzer, Amelia Sharman, Stolle C. Singleton, Jayaraj Sundaresan and Terry Townshend (2015) *The 2015 Global Climate Legislation Study: A Review of Climate Change Legislation in 99 Countries: Summary for Policy-Makers*. London, UK: Grantham Research Institute on Climate Change and the Environment, GLOBE International.

nor by regional budgets and extra budgetary sources.<sup>14</sup> State Policy of the Russian Federation in the Field of Environmental Development for the period until 2030<sup>15</sup> declared a number of global environmental problems associated with the loss of biodiversity, desertification and other adverse environmental processes alongside with the problem of climate change. But this document, on the analogy with the Climate Doctrine, lacks practical measures and the ways of achieving the targets are not traced.<sup>16</sup>

The Federal Program “Social and economic development of the Arctic zone of the Russian Federation” sets the goal to protect vulnerable Arctic objects and the population from dangerous impacts of climate change. This goal is associated with one climate related result, that is the installation of equipment for forecasting and assessing the consequences of global climate change. Again, practical measures and

the ways of achievement of this target are lacking.<sup>17</sup>

Environmental legislation in Russia has not changed to a big extent in the wording of climate change. A few articles were supplemented to the Federal Law “On Environmental Protection” defining the ozone-depleting substances (Article 1) and setting the goals of ozone-layer protection and the powers of federal authorities in this issue (Article 54).<sup>18</sup> These provisions cannot be considered sufficient in terms of establishing legal framework for climate change mitigation in the country.

There are no climate related initiatives on the regional level either.

Thus, the perspectives of implementing Goal 13 in the Arctic are seen in protection of vulnerable Arctic environmental and the population from dangerous impacts of climate change with the focus on:

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<sup>14</sup> Ларсен А. Х. и соавт. (2012) Изменение климата и возможности низкоуглеродной энергетики в России. [Larsen A.H., et al. *Izmenenie klimata i vozmozhnosti nizkouglerodnoi energetiki v Rossii* [Climate change and the possibility of low-carbon energy in Russia]].

<sup>15</sup> President of the Russian Federation, ‘Framework of state policy in the field of environmental development of the Russian Federation for the Period until 2030’, 30 April 2012, <http://kremlin.ru/events/president/news/page/492>.

<sup>16</sup> Elena Gladun, ‘Sustainable Development of the Russian Arctic: Legal Implications’, *NISPAcee Journal of Public Administration and Policy*, XII, No. 2 (2019 /2020).

<sup>17</sup> Government of the Russian Federation, ‘Federal Program of the Russian Federation “Socioeconomic development of the Arctic zone of the Russian Federation for the period up to 2020”, 21 April 2014 No. 366, <http://government.ru/rugovclassifier/830/events/>.

<sup>18</sup> Federal Law, ‘On Environmental Protection’, 10 January 2002, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34823/](http://www.consultant.ru/document/cons_doc_LAW_34823/).

- installation of equipment for forecasting and assessing the consequences of global climate change
- to find effective legal tools and financial mechanisms for achievement INDC targets
- to develop climate related initiatives on the regional level.

### ***Goal 11 “Sustainable cities” (Group 3)***

Issues of sustainable cities in the Russian Arctic are mostly an academic discussion. There is no relevant federal or regional policy, regulations or target programs on the issue. However, to date, all the cities of the Russian Arctic face the challenge of transformation from industrial hubs to locations providing service, intellectual resources and innovative decisions for their areas and residents.<sup>19</sup>

Much research is devoted to the renovation of the Arctic cities and rethinking of their role and objectives in the development of the Russian Arctic. In these circumstances the focus of state policies and regulations should be, first of all, on introducing effective measures based on local initiatives.

### **Conclusion**

In the Russian Federation, a gradual transition to sustainable development is being achieved, providing a balanced solution of socio-economic problems and environmental issues and natural resource potential in order to meet the needs of present and future generations.<sup>20</sup> Russia welcomes the adoption of the new 2030 Agenda for Development and the country’s leaders stand ready to support the successful implementation of the Agenda. However, basic strategic documents related to socio-economic development and environmental protection remain rather declarative and focus on enumeration of the state’s main objectives which have yet to be realized, as they are not supported by any legal mechanisms. It has also become apparent that most SDGs are not integrated into the Arctic related legal frameworks and poorly adapted for the Arctic regions. Meanwhile, large-scale industrial projects have been recently launched in the Russian Arctic regions; and their sustainable development should be the country’s priority. The draft bill “On development of the Arctic zone of the Russian Federation” are being considered in the country for

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<sup>19</sup> See, for example, Alexander Sergunin (2019) Russian Arctic Cities’ Sustainable Development Strategies In Vasilii Erokhin, Tianming Gao and Xiuhua Zhang (ed) Handbook of Research on International Collaboration, Economic Development, and Sustainability in the Arctic, Chicago: IGI Global, p. 495-513.

<sup>20</sup> President of the Russian Federation, ‘Concept of the Russian Federation’s Transition to Sustainable Development’, 01 April 1996 No. 440, <http://kremlin.ru/acts/bank/9120>.

several years and it's crucial that this core document will contain legal rules adjacent to SDGs and in this way improve Arctic related legislation in accordance with sustainable approach.

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## A Note About the Indigenous Peoples' Registry in the Russian Federation

*Karolina Sikora\**

### Introduction

Shortly before the collapse of the Soviet Union, when the policy of the so-called 'glasnost' (liberation) was launched, indigenous peoples of the Russian North have started to address the need to recognise and define their rights. They were referring to minority and indigenous rights mechanism created in the West. The main point of reference has been the UN working definition of indigenous peoples included in the study on discrimination against indigenous peoples, published by UN Special Rapporteur Martínez-Cobo in 1986. The Russian legislation, however, has established its autonomous concept of indigenous peoples, which recognises only "indigenous small-numbered peoples of the North, Siberia and the Far East". Moreover, individuals belonging to small numbered peoples have not been registered in any formal way as status holders. This situation has been posing challenges when it comes to proving people's rights, for instance to fish, and hunt as well as eligibility to social benefits. In 2020, the Russian Parliament adopted the amendment to

the Federal Law on the Guarantees of the Rights of the Indigenous Small-numbered Peoples (1999), introducing a registry of individuals certified for the indigenous status. In this paper, I analyse the amendment and present threats standing behind the classification of people in a strict, bureaucratic manner.

### Indigenous legislation in the Russian Federation

Indigenous small-numbered peoples' rights have been regulated in Russian law on two levels: federal and regional (Kryazhkov 2013). The highest legal act, the Russian Constitution, stipulates precisely in article 69 that the state "shall guarantee the rights of the indigenous small peoples according to the universally recognized principles and norms of international law and international treaties and agreements [that Russia had ratified]" (Russian Federation 1993). Therefore, those provisions allow for the superiority of international law, as long as it complies with the Russian Constitution (article 125 thereof). In practice, however, Russia overcomes this legal clause by abstaining from ratifying most of the international documents, crucial for the protection of indigenous rights, like ILO 169 or UNDRIP. Thus, in the prevailing number of cases, there is a need to apply

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exclusively Russian legal framework. In this regard, the second level of regulations, federal laws regulate human and civil rights of small-numbered peoples, determine the usage of traditional lands, and guarantee for the traditional way of life. However, federal laws are not outright and need further concretisation (Fondahl et al. 2020). Often, they do not comply with the Constitutions, contain legal gaps and lack of implementation mechanisms, what make them rather of declarative nature (Kryazhkov 2013). Nevertheless, these are the ones which regulate the legal status of “small numbered indigenous peoples”.

The Law on Guarantees of the Rights of the Indigenous Small-numbered Peoples (Russian Federation 1999) in its article 1 states that as indigenous small-numbered peoples can be recognised those groups, which inhabit ancestral lands in the North, Siberia and the Far East of the Russian Federation, which kept traditional way of life, which population does not exceed 50 000 people, and which perceive themselves as a separate ethnic group. All of those criteria need to occur simultaneously, therefore the number of ethnic groups eligible for the small-number status is limited, and currently covers 46 groups. That being so, Russian legislation does not recognise all indigenous peoples inhabiting the territory of the State, but only those particular groups, which

fulfil criteria stated in the federal law (Xanthaki 2004).

### **Registry of small numbered indigenous peoples of the North, Siberia and the Far East**

In 1932, the Soviet Union introduced the internal passports, which had been issued to every Soviet citizen (Donahoe 2011). The documents contained personal data as well as information about one’s nationality. The passports were proof of people’s belonging to the indigenous population and a sign of self-determination. When in 2002 documents had been abolished, individuals lost a tool to prove their ethnicity that conditions additional rights and benefits (Fondahl, Filippova, and Savvinova 2020). Therefore, even though federal laws declare several rights to indigenous peoples, they face challenges to execute them. Indigenous hunters, for instance, have been treated as poachers, and fishermen have been issued fines for catching fish out of the licenced season or in an amount exceeding quota (Fondahl, Filippova, and Savvinova 2020).

To solve this impasse, in spring 2020 Russian authorities introduced a long-negotiated amendment to the Federal Law on Guarantees, which establishes the registry of individuals belonging to recognised small numbered-indigenous peoples of the Russian Federation

(Ledkov 2016). However, indigenous peoples have not been involved in the process of developing the registry, what should have taken place according to the Federal Law on Guarantees itself, which states that communities shall participate in matters that affect their interests (Fondahl, Filippova, and Savvinova 2020).

According to the new regulation the unified list is approved by the Government of the Russian Federation upon the request of the federal executive body responsible for the development and implementation of the ethnic policies - namely the Federal Agency for *Ethnic Affairs* (Russian Federation 2020).

Registration of persons belonging to small numbered peoples is carried out based on information provided by applicants (Russian Federation 2020). In order to be registered, an individual is obliged to submit all together 12 types of documents, enumerated in the federal law (point 4 and 5 thereof). Among the required documents are a proof of residency in a territory of traditional habitation of small-numbered peoples, tax number, pension insurance number, proof of conducting traditional way of life, information about family ties, certified document containing information about one's nationality or a court decision testifying the applicant's belonging to indigenous small numbered peoples or any other document containing information about

person's indigeneity. The authorities may refuse to register a person if the applicant has not provided all the required information (Russian Federation 2020, point 13). Moreover, the authorities have a right to clarify provided information and request for additional data from federal and local authorities, as well as from indigenous peoples' associations.

### **Possible Threats of the new regulation**

In reference to the presented amendment in federal law, I identify three threats to the rights of indigenous peoples, which I will discuss in the following paragraphs.

The first threat concerns the requirement to live in the place enlisted as a habitation area of small numbered indigenous peoples. The history of indigenous populations in the north of Russia is marked with different forms of dislocation. Many indigenous groups have had a nomadic lifestyle and followed the animals' yearly migration cycle according to the season. Then, during the Soviet period, the policy of sedentarisation of nomadic populations and displacement took place on an extremely wide scale, in practice embracing the whole territory of the Russian North (Slezkine 1994). Relocated groups had been settled also away from the traditional lands, in a bigger settlement, what changed in

many cases people's way of life and brought plenty of social and economic problems. Nowadays, looking for better life perspectives, education, job, healthcare, especially the majority of indigenous women have migrated to urban areas, leaving behind post-socialist life in the outskirts (Khoreva et al. 2018). Therefore, in the context of Russian North peoples' ethnicity is not defined by territorial belonging (Shabaev and Istomin 2017; Istomin and Shabaev 2016). The requirement stated in the federal amendment will, thus, exclude those individuals, who decided to move away from their traditional habitation areas. Here I would like to further notice, that the land that is inhabited by the indigenous peoples since the time immemorial, is not automatically regarded by law as the area of their traditional habitation. According to the Federal List of Places from 2009, only certain areas, but not all qualified for are pointed in the list (Russian Federation 2009).

The second threat relates to pursuing traditional economic activities, which are also categorised by the Russian Government in the State register of traditional subsistence activities. The list consists of 13 types of occupation, among are: cattle breeding, processing life stock products, beekeeping, fishing, hunting, agriculture, arts and crafts, making of traditional dwellings (Russian Federation 2009). Thus, individuals not

involved in those activities will be disqualified from the registry. Indigenous teachers, also native language teachers, medics, social workers, librarians, artists and many more professionals from the so-called intelligentsia, who are involved in preservation and spreading of indigenous cultures are left on the margin (IWIGA 2019). Allowing only those individuals carrying out traditional activities having access to wider benefits will lead to social injustices and may as well enhance the stereotype of backwardness and primitivism of the northern indigenous peoples.

The third threat involves a highly bureaucratic procedure of enlisting individuals in the registry. A thicket of regulations and required documents is likely to discourage many to go through the administrative procedure. Moreover, not all of the indigenous northerners have required documents, which makes the procedure even more unpredictable (Britskaya 2020). Those who have had the old internal Soviet passport will not be considerably affected. However, the younger generations or those who did not have the passport will have to prove his or her ethnicity by the court through demonstrating archival documents, church books, parent passports (Zadorin et al. 2017). Consequently, the law does not provide a possibility for registering entire families collectively, which would

accelerate the process and make it more foreseeable (IWIGA 2019). The chance that many will be willing to undergo the court proceeding for the purpose of the registry is rather small. Court's procedures are long, expensive and juridical bodies located far from the peripheries. Additionally, having the experience of the soviet judicature, people often rightly, are suspicious of the current regime, associating it instability, and unpredictability.

### Conclusions

In Russian settings, followed by the amendment to the Law on Guarantees, indigenous peoples lost the right to autonomously decide who belongs to a community. Instead, this role was taken over by the state in a form of a formal registry. On one side, the registry enables individuals belonging to the recognised small numbered peoples proving their status and benefiting from wider rights. On the other hand, the registration procedure as it is shaped currently narrows the scope of small-numbered peoples to taiga and tundra inhabitants pursuing very traditional economic activities. Consequently, the number of people entailed to benefits by law will decrease leading to further deterioration of the socio-economic status of the indigenous peoples.

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## Arctic Implications of a No-Deal Brexit

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The United Kingdom (UK) has left the European Union (EU) on 31 January 2020.<sup>1</sup> Although the UK and the EU concluded a Withdrawal Agreement<sup>2</sup> (WA), to this date (early October 2020), no new agreement has been concluded which would allow the UK access to Europe's single market, the European Economic Area (EEA), of which also Norway and Iceland are members.<sup>3</sup> Between the end of the UK's EU membership and the end of the transition period on 31 December 2020, the United Kingdom is a non-EU member of the EEA as the EEA Agreement<sup>4</sup> applies to the UK by virtue of Article 129 paragraph 1 WA,<sup>5</sup> according to which, "during the transition period, the United Kingdom shall be bound by the obligations stemming from the international

agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly".<sup>6</sup> Although the current construction provides the UK with single market access, the UK government has already announced that it does not intend to continue EEA membership beyond 31 December 2020. At this time, it looks increasingly likely that the current UK government is going to let the transition period run out without securing an agreement with the European Union. The withdrawal agreement between the EU and the UK only outlined the process towards an agreement concerning the future relationship between the EU and the UK. Allowing only eleven months for the creation of such an agreement seemed ambitious at best and it appears questionable whether the UK government ever had the intention of actually using the transition period for the negotiation of a new agreement. The UK's Internal Market Bill is in express

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<sup>1</sup> European Commission (2020). Brexit - How to get ready for the end of the transition period, [https://ec.europa.eu/taxation\\_customs/uk\\_withdrawal\\_en](https://ec.europa.eu/taxation_customs/uk_withdrawal_en).

<sup>2</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Official Journal 2019/C 384 I/01, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2019:384I:FULL&from=EN>.

<sup>3</sup> EFTA (no year). EEA Agreement, <https://www.efta.int/eea/eea-agreement>.

<sup>4</sup> Agreement on the European Economic Area, Official Journal 1994 L 1/3, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21994A0103\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21994A0103(01)&from=EN).

<sup>5</sup> EFTA (2020). Frequently asked questions on EFTA, the EEA, EFTA membership and Brexit, <https://www.efta.int/About-EFTA/Frequently-asked-questions-EFTA-EEA-EFTA-membership-and-Brexit-328676>.

<sup>6</sup> Article 129 para. 1 WA.

violation of the withdrawal agreement and places UK law over international law, a stunning move away from the classical position at least in English law<sup>7</sup> that “the law of nations is *per se* part of the law of the land”,<sup>8</sup> an idea which is still reflected the American legal system,<sup>9</sup> for example in Article VI sentence 2 of the constitution of the United States of America.<sup>10</sup> The EU has already reacted to the flagrant violation of international law by the UK which the Internal Market Bill poses and it appears likely that this will remain a source of tension for the foreseeable future. At least for the timing being, it appears as if the current British government has not only decided to in favour of a hard Brexit and to not use the transition period, but that it has also abandoned respect for international law, including its prime maxime, *pacta sunt servanda*. This makes it significantly more difficult for other states to muster the trust necessary for *bona fide* trade negotiations.

The Arctic, especially the European Arctic, has close economic connections

with the European Union. Sweden and Finland are full members, Greenland and Faroyar, although not EU members, are part of the Danish realm and closely connected to the mainland, which is an EU member, Norway and Iceland are, as mentioned, members of the EEA, and Canada has concluded a free trade agreement with the European Union, the Comprehensive Economic and Trade Agreement<sup>11</sup> (CETA), which is at least in part provisionally in force.<sup>12</sup> While a free trade agreement between the EU and the United States of America might become a possibility depending on the outcome of the elections in the United States in November 2020, the economic relations between the EU and the Russian Federation are currently put on ice due to the ongoing war Russia is waging against Ukraine, which has led to sanctions and counter-sanctions between the West, including the EU, and the Russian Federation. This has direct implications for cross-border commerce, for example between the Finnish region of Lapland and Russia’s Murmask

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<sup>7</sup> See Lauterpacht, H. (1939). “Is International Law a Part of the Law of England?”, 25 Transactions of the Grotius Society, pp. 51-88.

<sup>8</sup> Ibid, p. 51.

<sup>9</sup> Dickinson, Edwin D. (1952). “Law of Nations as Part of the National Law of the United States”, 101 University of Pennsylvania Law Review, pp. 26-56,

[https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7912&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7912&context=penn_law_review).

<sup>10</sup> Available online at [https://www.senate.gov/civics/resources/pdf/US\\_Constitution-Senate\\_Publication\\_103-21.pdf](https://www.senate.gov/civics/resources/pdf/US_Constitution-Senate_Publication_103-21.pdf).

<sup>11</sup> Comprehensive Economic and Trade Agreement, Official Journal 2017 L 11/23, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0114\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0114(01)&from=EN).

<sup>12</sup> CETA has not yet completely entered into force because some member states refused to ratify CETA as needed. Only the parts for which the EU has the sole competence have entered into force, but so far only preliminarily.



oblast. For many people living in the European high north, the EU's outer border between Norway and Sweden / Finland, on the other hand, has been virtually non-existent for generations. While different regulatory systems impact daily life across Sápmi, the personal and cultural connections across borders are often as important or even more important than those within a country. For a long time, European integration had the practical effect that borders became less and less relevant, following the model of integration between the Nordic countries. With Brexit, not only the threat of a hard border on the island of Ireland (which would be in violation of the Good Friday Agreement<sup>13</sup>) but also borders between Britain and the countries of the (European) Arctic would return.

With regard to trade negotiations with Arctic nations, the disregard for international law exhibited by the current British government will provide a significant obstacle. Yet, close connections to the Arctic are not insignificant for the UK. The United

Kingdom has a long history of engaging with the Arctic, ranging from exploration of the icy top of the world and the exploitation of living marine resources to scientific research and modern-day tourism which brings large numbers of British tourists to the European Arctic during the winter months. The economic connections between the United Kingdom and especially nearby nations such as Iceland, Norway and Faroyar are significant, yet so far the UK only has managed to conclude a free trade deal with the latter, or, more precisely, with Denmark, which is reflected in the title of the agreement, the Agreement establishing a Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands.<sup>14</sup> An agreement had been concluded with Norway and Iceland,<sup>15</sup> but it never entered into force as it was seen only as a fallback in the event of a no deal-Brexit.<sup>16</sup> With the entry into force of the UK-EU Withdrawal Agreement, that agreement became moot.<sup>17</sup> What was not envisaged in the agreement with

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<sup>13</sup> Available online at

<https://www.dfa.ie/media/dfa/alldfawebstimedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>.

<sup>14</sup> Available at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777022/continuing-the-uks-trade-relationship-with-the-faroe-islands.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777022/continuing-the-uks-trade-relationship-with-the-faroe-islands.pdf).

<sup>15</sup> UK Government (2020). Agreement on trade in goods between Iceland, Norway and the UK,

<https://www.gov.uk/government/collections/agreement-on-trade-in-goods-between-iceland-norway-and-the-uk>.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

Norway and Iceland was that a British government would conclude a withdrawal agreement with the European Union and then fail to honor it. A truly hard Brexit will have negative economic consequences for both the UK and the member states of the EEA. It looks ever more likely that international trade law rules under the World Trade Organization (WTO) system will become relevant between the UK and Arctic nations.

While short stays, e.g. for touristic purposes, will likely be possible visa free after 31 December 2020, the practical realities of travel to Europe for UK citizens will change significantly after the that date<sup>18</sup> (in addition to, of course, the impact of the ongoing COVID-19 pandemic on international travel). Even though the UK was not a party to the Schengen Agreement,<sup>19</sup> travel between the continent and the UK was relatively easy pre-Brexit. While the impact on tourism might still be limited, although the travel experience is unlikely to be as smooth as in the past, the lack of a clear legal regime is likely to impact scientific

and economic cooperation, to name just two examples.

With regard to the Arctic, Britain's disregard for international law raises questions in how far the United Kingdom remains a reliable partner for cooperation because international cooperation in the Arctic relies heavily on the use of international law. Non-Arctic states which wish to cooperate with Arctic nations will have to find their place within the international legal framework in order to facilitate such an engagement - for example through the United Nations Convention on the Law of the Sea,<sup>20</sup> by seeking observer status at the Arctic Council<sup>21</sup> or through bilateral agreements, such as the recent fisheries agreement between Norway and the UK.<sup>22</sup> Abandoning respect for international law as a matter of principle essentially closes the door to international cooperation. Even serious political differences have been overcome to facilitate cooperation in the Arctic, but always on the basis of international law, even if the norms created under the

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<sup>18</sup> See UK Government (2020). Visit Europe from 1 January 2021, <https://www.gov.uk/visit-europe-1-january-2021>.

<sup>19</sup> The Schengen acquis - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal 2000 L 239/13, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922(01)&from=EN).

<sup>20</sup> United Nations Convention on the Law of the Sea, 1833 United Nations Treaty Series 3.

<sup>21</sup> The United Kingdom was one of the first states which gained observer status, together with Germany, the Netherlands and Poland, in 1998.

<sup>22</sup> See UK Government (2020). UK and Norway sign historic fisheries agreement, <https://www.gov.uk/government/news/uk-and-norway-sign-historic-fisheries-agreement>.

auspices of, for example, the Arctic Council, are of a limited material scope.

A hard Brexit will impact the relationship between the United Kingdom in many ways. It will be detrimental to the economic relationship between the UK and Arctic nations, although the free trade agreement between the UK and Faroyar and the fisheries agreement between the UK and Norway might be indicators of how future developments could look like. This, however, requires that other states,

and especially the European Union, are willing to conclude agreements with the United Kingdom. Unless the UK government is able to counteract the impression that it has no regard for international law, a key tool for international cooperation in the Arctic, it risks that Britain is no longer perceived as a reliable partner. In the long run, this lack of trust might impact British-Arctic relations more than the absence of free trade agreements and the need to fall back on WTO rules.



## Arctic Challenge for Sustainability II: Japan's New Arctic Flagship Project

*Juha Saunavaara\* & Fujio Ohnishi\*\**

### Japan's involvement in the Arctic scientific cooperation

The origins of Japan's involvement in Arctic research date back to the 1950s and to the establishment of the National Institute of Polar Research (NIPR) in 1973. These early steps were succeeded by the diversification of activities and increased international cooperation in the 1990s. A new phase of Japan's Arctic engagement emerged in the form of the establishment of the Ny-Ålesund research station on Svalbard in 1991 and Japan's membership in the International Arctic Science Committee (IASC). This was soon followed by the introduction of the International Northern Sea Route Programme (INSROP, initiated by Norway, Japan and Russia); this was succeeded by the Japan Northern Sea Route Programme (JANSROP), which continued until 2005.<sup>1</sup> The most recent phase, during which Japan has applied for and been awarded with an observer status in the Arctic Council, has been

characterised by nationwide multidisciplinary research projects and platforms. The Japan Consortium for Arctic Environmental Research (JCAR) was established in 2011 as a nationwide network-based organisation. The GRENE Arctic Climate Change Research Project was conducted between 2011 and 2016 under the leadership of NIPR as a core institute and the Japan Agency for Marine-Earth Science and Technology (JAMSTEC) as an associated institute. The Arctic Challenge for Sustainability (ArCS) succeeded GRENE and lasted until 2020.

The ArCS project incorporated social sciences and humanities as a new element and was administered by NIPR, JAMSTEC and Hokkaido University, which established its Arctic Research Center in 2015. The same organisations have directed the Japan Arctic Research Network Center (J-ARC Net), which was established in 2016. Hokkaido University has also participated actively in UArctic activities. The 'Arctic Challenge for Sustainability II (ArCS II, June 2020 - March 2025)' project is funded by the Ministry of Education, Culture, Sports, Science and Technology-Japan and is jointly

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\* Hokkaido University Arctic Research Center

\*\* Hokkaido University Arctic Research Center

<sup>1</sup> More about Japan's past involvement in Arctic research, see: Tonami, A., & S. Watters (2012). Japan's Arctic policy: The sum of many parts. In L. Heininen, H. Exner-Pirot & J. Plouffe (Eds.) *Arctic Yearbook 2012* (pp. 93-103). Akureyri, Iceland: Northern Research Forum; Ohnishi, F. (2016). Japan's Arctic policy development: From engagement to a strategy. In L. Lunde, J. Yang & I. Stensdal (Eds.). *Asian countries and the Arctic future* (pp. 171-182). Singapore: World Scientific Publishing.

managed by NIPR, JAMSTEC and Hokkaido University. Aside from continuing research and educational activities executed during the preceding projects, ArCS II adds new layers to Japan's Arctic research, for example, by strengthening the role of engineering sciences.

### ArCS II objectives and structure

ArCS II consists of four strategic goals and 11 research programs. Therefore, it

differs from ArCS, wherein the international collaborative research was carried out under the umbrella of eight study themes, one of which was the Arctic Data Archive System (ADS). The strategic goals of the new project, which were identified as the key parameters contributing to understanding the Arctic's changes and its development toward the sustainable future, are as follows: 1) Advanced Observation of Arctic Environmental Change, 2) Improvement of Weather and Climate

**Table 1: ArCS II Research Programs**

Field and Principal Investigator	Title of the Program
Atmosphere PI: Makoto Koike (The University of Tokyo)	Atmospheric Environment and Climate Forcings in the Arctic
Ocean PI: Eiji Watanabe (JAMSTEC)	Research and Public Dataset Production on the Arctic Marine Environment
Cryosphere PI: Teruo Aoki (NIPR)	A Changing Cryosphere in a Rapidly Warming Arctic: Properties and Processes
Land PI: Hideki Kobayashi (JAMSTEC)	Biogeochemical Cycling in the Arctic Terrestrial Ecosystem, Permafrost and Periglacial Regions
Teleconnection PI: Meiji Honda (Niigata University)	Teleconnections and the Predictability of Weather and Climate
Climate Prediction PI: Hiroyasu Hasumi (The University of Tokyo)	Weather and Climate Prediction and Its Technological Improvement
Human Society PI: Hiroki Takakura (Tohoku University)	Human Security, Energy and Food in the Arctic under Climate Change
Arctic Sea Routes PI: Akihisa Konno (Kogakuin University)	Sustainable Arctic Sea Routes in a Rapidly Changing Environment
Coastal Environments PI: Shin Sugiyama (Hokkaido University)	Arctic Coastal Change and Its Impact on Society
International Law PI: Akiho Shibata (Kobe University)	Designing Resilient International Legal Regimes for a Sustainable Arctic and the Contribution of Japan
International Relations PI: Fujio Ohnishi (Hokkaido University)	Elucidating the Complex Dynamics of Arctic Politics and Its Contribution to Japan's Arctic Policy

Prediction, 3) Impact of Arctic Environmental Change on Society and 4) Legal/Policy Response and Research Implementation for a Sustainable Arctic. The achievement of these goals is expected to lead to a situation where existing environmental conditions are understood accurately, uncertainties can be reduced, the challenges different Arctic communities are facing can be identified, and the international framework for the implementation of actions paving the way for the sustainable development can be understood and effectively utilized.

While the individual research programs introduced in Table 1 form the administrative structure of the project and guide the concrete research activities, they are neither silos nor entities entirely separate from each other. By contrast, interdisciplinarity and cooperation between different programs are both encouraged and expected.

In addition to research-related activities, ArCS II pays special attention to the development of human resources and the dissemination of knowledge and information acquired through the project. The practical implementation of the so-called priority subjects occurs through the International Research Exchange Program, the Overseas Fellowship Program and the Call for Complementary Research Projects. Furthermore, the strategic dissemination

of Arctic information is to be performed through the establishment of the Arctic Environmental Information website and the Arctic Sea Ice Information Center. In addition to the domestic education and outreach activities, ArCS II supports Japanese experts' participation in international forums and information sharing between academics and policymakers.

### **International relations and law as a part of the ArCS II project**

Those familiar with the ArCS project may remember that all research related to social sciences and humanities used to be gathered based on one theme, entitled 'People and Community'. Under the new project structure, which reflects the strategic goals, social scientists and scholars representing humanities have affiliated themselves with various research programs, often also including natural scientists and researchers with a background in engineering. While many cultural anthropologists and economists, for example, are contributing to the programs focusing on environmental change and society, there are two research programs with a clear emphasis on international relations and international law.

The research program 'Elucidating the Complex Dynamics of Arctic Politics and Its Contribution to Japan's Arctic Policy' approached Arctic multilevel



governance through the lens of state-level cooperation and conflict, the role of corporate actors in Arctic governance, the political dynamics between the state and indigenous people, the role of non-state actors and paradiplomacy, the formation and transformation of Japan's national awareness of the Arctic, and an economic analysis of Arctic policy issues. This research program consists of six closely cooperating subgroups, each of which have overseas partners contributing to their activities. The Rule of Law has for years been one of the basic principles and objectives of Japan's Arctic policy. The 'Designing Resilient International Legal Regimes for a Sustainable Arctic and the Contribution of Japan' research program brings continuity to the previous activities by approaching the rapidly changing Arctic from the perspective of international

law. The concrete issues to be studied from the perspective of the international legal framework include, for example, international scientific cooperation, the sustainable use of the Arctic Ocean (e.g., issues concerning the Northern Sea Route and the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean), the rights of indigenous peoples and the sustainable development of the Arctic. Although the COVID-19 pandemic has exerted a major impact on the activities performed during the first year of ArCS II, the activities of both the IR and international law research programs – which encompass seminars, publications, policy recommendations and dialogue with various stakeholders – are based on international cooperation.



## One of the Finland's Largest Minings Coming to Forest Sámi Reindeer Management Area\*

Juha Joona\*\*

### Sokli mining project

Since 2007, the Norwegian mining company YARA has been preparing to open a phosphate mine in the municipality of Savukoski, in Finland. The name of the area is Sokli. If the project materializes, the mine would be one of the largest in Finland in terms of both area and estimated costs. The

estimated costs of the project are about one billion euros.

Sokli is located in the area Kemin-Sompio reindeer herding district. The name 'Kemin-Sompio' comes from the names of the two Forest Sámi Lapland villages located in the area, Keminkylä and Sompio.

The Kemin-Sompio reindeer herding district is the largest reindeer herding district in Finland in terms of both area and number of reindeer (12,000 animals). In some years, the Kemin-Sompio district has produced 10% of the reindeer meat in the entire Finnish reindeer husbandry area. About 200 people earn a living from reindeer



Lapland villages around the middle of the 18th century.

\* The article is part of JustNorth, a project that has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 869327

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husbandry. Some of them are full-time, some part-time reindeer herders.

The planned mine would be located in the middle of the pasture area of the Kemin-Sompio district. The size of the mining district is about 6,000 hectares. The ore would be transported by truck to the city of Kemijärvi, where it would be loaded on a train. According to the plan, heavy traffic would be around nearly 300 cars a day, which would mean a vehicle every five minutes, day and night.

The mine's energy production would use a heating plant that would need up to 200,000 solid cubic meters of wood per year. According to the application, this tree would be taken at a distance of 100 km from Sokli, i.e. in practice from the area of the Kemin-Sompio district.

If the project materializes, the district will lose much of its pasture area. In addition, the herding area of the district would be practically divided into two parts, which would prevent the reindeer from moving from one grazing area to another. Almost all the reindeer in the area graze on natural pastures throughout the year. Adding 200,000 solid cubic meters of annual fellings to the current, already quite significant fellings, would cause significant damage to winter feeding of reindeer.

## **The legal-historical perspective**

In modern times there have been no lawsuits in Finland in which the real estate status of the areas that belonged to the Lapland villages has been clarified in more detail. The legal status of reindeer husbandry has also not been clarified in more detail in the case law. Unlike in Sweden and Norway the government has also been reluctant to clarify this issue.

However, the legal-historical status of the area was sidelined in the so-called taxed mountain case. This was a decision taken by the Swedish Supreme Court (SC) in 1981, which dealt in detail with the Sámi reindeer herder's legal status. Although the subject of the lawsuit was the territory which now belongs to Sweden, to the court was submitted material which was made in the district courts of Sompio and Keminkylä Lappvillages, among others. The decision of the SC states that it can be concluded from this material that there has been a tendency in this area in particular that the Sámi have been considered to have a similar right to the areas they use as the peasants (Nytt Juridisk Arkiv 1981: 1 pp. 184 and 196).

According to the Swedish SC, by the middle of the 18th century, the Sámi land status was the strongest in the area which in present-day is located in Northern Finland. According to the court, this right was comparable to the

peasants' land right, ie. the land ownership right of that time.

### **Significant disadvantage to reindeer husbandry**

Section 2.2 of the Finnish Reindeer Husbandry Act provides for an area specifically intended for reindeer husbandry. According to the law, land in this area may not be used in such a way as to cause "significant harm" to reindeer husbandry. Sokli is located in this area.

The matter has been appealed to the Supreme Administrative Court in connection with both planning and mining permit. In 2017, however, the Supreme Administrative Court ruled that the mine would not cause significant harm to reindeer husbandry. However, such an interpretation of the law can rightly be called into question. According to the preliminary work of the law, even a single forestry measure, such as clear-cutting, can exceed the threshold of significant harm. It is clear that the current project exceeds several times that harm, what forestry measure can cause to the reindeer husbandry.

However, the matter has been appealed to the Supreme Administrative Court also in connection with the environmental permit in 2020. Also, in this context, it has been pointed out that the project is in conflict with section 2.2 of the Reindeer Husbandry Act. The case

is pending before the Supreme Administrative Court.

### **Convention on Civil and Political Rights**

Almost all the reindeer owners of the Kemin-Sompio district are descendants of the forest Sámi who have lived in the area as the first population group. The vast majority of the reindeer owners of the district consider themselves Sámi and in their family reindeer husbandry has been practiced in the area for hundreds of years.

Finland has ratified the Convention on Civil and Political Rights. According to article 27 of the Convention, persons belonging to minorities may not be prohibited from enjoying their culture. It is well established in Finland that reindeer husbandry is part of Sámi culture.

Kemin-Sompio district's reindeer owners have also pointed out in connection with the processing of the environmental permit that the project is in conflict with Article 27. In its defense, YARA did not comment at all on this point. This matter is also pending before the Supreme Administrative Court.

### **Conclusions**

It appears that in the present case little account has been taken of the legal-

historical past of the region. The real estate status of the area differs from what it is elsewhere in Finland. It has also remained unclear to where the Sámi's strong real estate status has disappeared.

One starting point could also be that the legal status of Sámi reindeer herders cannot differ much from what it is in Sweden. In Sweden, reindeer herding is understood strongly protected land use right with a civil law basis. As this starting point is primarily based on the joint legislation of Finland and Sweden, this should also be the starting point in Finland. Although this matter is not

provided for in any particular law, this should be the premise in the case law as well.

On the other hand, the legal protection of reindeer husbandry is also provided for in the current legislation, i.e. section 2.2 of the Reindeer Husbandry Act. However, it appears that the authorities have difficulty in applying this provision, in accordance with the normal interpretation of the law.



## Effective Business Development in Arctic Russia: How to Make the Arctic Zone Attractive for Business

*Pavel Tkach\**

The Russian Arctic includes millions of square kilometres of land, sea, and ice with a huge amount of mineral resources. For business, the Far North may be considered a vast place for experimentation. However, this region also involves many disadvantages for business, such as its cold temperatures, remoteness, and logistical difficulties. During these difficult times, additional state support for legal entities or

entrepreneurs who intend to start commercial activities in the Arctic can make these regions more attractive and, consequently, more profitable. But what can the Arctic provide businesses, other than profits from mineral resource extraction activities, and how can the region attract business for other commercial activities? This year, the Government and Ministry of Far East and the Arctic of the Russian Federation tried to answer this question, and it issued Federal Law № 193-FZ on State Support of Entrepreneurial Activity in the Arctic Zone of the Russian Federation. We must emphasise that this legal instrument was not issued as a response to the COVID-19 outbreak but was, rather, planned long before the pandemic.



Pic. 1. Arctic Zone of the Russian Federation (from <https://64parallel.ru/obshhestvo/pojmano-v-seti/kostomuksha-teper-v-arkticheskoy-zone/>)

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## The state of business in Arctic Russia

To properly begin this section, we must answer the question: What is Arctic Russia? Arctic Russia is four federal subjects of the Russian Federation (namely: Murmansk Oblast, Nenets Autonomous Okrug, Yamal-Nenets Autonomous Okrug, and Chukotka) and five federal subjects, partly represented by municipal formations (the Republic of Karelia, Arkhangelsk Oblast, Krasnoyarsk Krai, Sakha Republic, and Komi Republic) (Pic. 1). A detailed list of the territories belonging to the Arctic Zone of the Russian Federation is set out in the Decree of the President of the Russian Federation № 296 from 2 May 2014 on Land Territories of the Arctic Zone of the Russian Federation.<sup>1</sup>

The state of business in the Arctic can be characterised by a strong link between municipalities, small-to-medium businesses, and the mineral extraction industry. This link can be traced in the number of monotowns in Arctic Russia. For the purpose of this research, a *monotown* is a city whose economy is dominated by a single industry or company. A list of monotowns is managed by the Order of the Government of Russia № 1398-r from 29 July 2014, and a monotown may be excluded from the list if its local

economy is sufficiently diversified. However, while the main goal of a link between municipalities and businesses is mutually beneficial to diversify the economy and gain profit, the link between municipalities and the mineral extraction industry aims to provide comfortable conditions for industry and opportunities to enjoy logistics through the Northern Sea Route. Problems in the development of entrepreneurship in Russia have regularly become subjects of discussion at the federal level – in ministries and departments, in the Federation Council and the State Duma, and at meetings with the president of the Russian Federation. Despite these discussions, until 2020, state support for entrepreneurial activity in the Arctic Zone was poor. At the same time, federal subjects looked forward to a diversification of the local economies and developed various projects supporting local entrepreneurs. For example, the educational project ‘You-entrepreneur’ was founded in cooperation with the Russian Federation on the federal level and Arkhangelsk Oblast on the local level to encourage young entrepreneurs to implement business activities in the Arctic. Nevertheless, a lack of state support for local entrepreneurs was not the only difficulty facing entrepreneurship in the

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<sup>1</sup> Decree of the President of the Russian Federation № 296 on Land Territories of the Arctic Zone of the Russian Federation (Presidential Executive Office, 2014)  
<<http://static.kremlin.ru/media/acts/files/0001201405050030.pdf>> accessed 3 November 2020  
(translation by the current author)



Arctic. Local entrepreneurs have highlighted the following difficulties:

1. Harsh natural and climatic conditions that affect almost all types of economic and social activities, including the accelerated wearing of fixed industrial assets and a need for these assets' frequent replacement.
2. The risks of environmental accidents and disasters whose elimination in the Arctic – especially on the sea shelf – is an unprecedentedly complex and little-studied matter.
3. Businesses' dependence, in many regions of the Arctic, on northern deliveries (supplies from the central regions of the country during a limited period of Arctic sea and river navigation, including oil, oil products, coal, food, and technical products) and the high cost of these goods' transportation (including by air) to remote Arctic territories.
4. The general underdevelopment of all types of supporting infrastructure for business – such as roads, engineering, and energy.
5. A shortage of many qualified specialists and insufficient motivation for existing workers due to a lack of competition in the local labour market.
6. Arctic businesses' high dependence on large, city-forming corporate structures and state and municipal support, with insufficient bank financing and unfriendly conditions compared to

Russia's central regions (including interest rates on loans).<sup>2</sup>

All of these factors raised a question about the invention of a distinct package of state support measures for entrepreneurial activity in the Arctic within the federal agenda. A response to this agenda was enacted on 13 July 2020: Federal Law № 193-FZ on State Support of Entrepreneurial Activity in the Arctic Zone of the Russian Federation (hereinafter referred to as 'Federal Law').

### **Federal Law: From the registration stage to the first profits**

Alexander Krutikov, one of the bill's authors, commented on the prerequisites for the law's creation:

This law offers incentives and mechanisms for the economic development of the Arctic. An increase in people's household income is, first of all, the creation of highly paid jobs and the construction of new enterprises. Today, the capital costs of setting up a new enterprise in the Arctic are 2-3 times higher than in central Russia, and no investor will go there. Moreover, the number of operating small businesses is steadily

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<sup>2</sup> Valeriy Lebedevich, *Problems of Small and Medium Business Development in the Arctic Zone of the Russian Federation* (Russian Center for Arctic Development, 2017) <<http://arctic-rf.ru/deyatelnost/issledovaniya/problemyi-razvitiya-malogo-i-srednego-biznesa-v-arkticheskoy-zone-rossijskoj-federaczii.html>> accessed 4 November 2020 (translation by the current author)

declining. We took all the best that works and is in demand by business in the Far East, but it is impossible to completely copy its preferential treatment for the simple reason that the costs and risks are higher in the Arctic. It is proposed to establish reduced tax rates in the Arctic for the entire duration of the investment project. In addition, they will operate not within the support zones and priority development areas but throughout the entire territory of the Arctic Zone of the Russian Federation.<sup>3</sup>

This statement shows that business practices in the Far East of Russia were used as the case study during the bill's development, and the bill's basic concept is the *priority development area*. The priority development area is where a special legal regime has been established to implement entrepreneurial and other activities in order to attract investments, ensure accelerated socioeconomic development, and create comfortable conditions for the population.<sup>4</sup> De jure, the Arctic Zone of the Russian Federation is, as a whole, not a priority development area per regulations of the

main legal framework, Federal Law № 473-FZ on Territories of priority rapid socio-economic development. But de facto, the Arctic Zone is perceived by the Government as one large priority development area. As a result, the regulation of state support for entrepreneurial activities in the Arctic Zone is comparable to the regulation of priority development areas in the Russian Federation and adapted, as mentioned in the previous section, to risks and costs in the Arctic.

The Federal Law on State Support of Entrepreneurial Activity in the Arctic Zone of the Russian Federation begins with the most important definition of this legal instrument – the definition of a *resident of the Arctic Zone of the Russian Federation*. A *resident of the Arctic Zone of the Russian Federation* (hereinafter, a *resident*) is an individual entrepreneur or legal entity whose state registration was carried out in the Arctic Zone of the Russian Federation in accordance with the Russian Federation's legislation (except for state and municipal unitary enterprises), which entered into an agreement on the implementation of investment activities in the Arctic Zone of the Russian Federation (hereinafter,

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<sup>3</sup> Project Office for the Development of the Arctic, *It's Time to Strengthen Support for Small and Medium-Sized Businesses in the Arctic* (porarctic.ru, 30 May 2019) <<https://porarctic.ru/blog/2019/05/30/pora-usilit-podderzhku-malogo-i-srednego-biznesa-v-arktike/>> accessed 5 November 2020 (translation by the current author)

<sup>4</sup> Federal Law № 473-FZ on Territories of priority rapid socio-economic development (Official Internet Portal of Legal Information, 2014) <<http://static.kremlin.ru/media/acts/files/0001201412290024.pdf>> accessed 5 November 2020 (translation by the current author)

an agreement on the implementation of investment activities) in accordance with the Federal Law, and which is included in the Arctic Zone of the Russian Federation's register of residents.<sup>5</sup> By this definition, we may conclude that entering into an agreement on the implementation of investment activities grants one status as a resident of the Arctic Zone of the Russian Federation.

Before the administrative procedure of entering into this agreement, a prospective resident must meet all of the following requirements for legal entities or entrepreneurs:

1. The state registration of a legal entity or entrepreneur should be carried out in the Arctic Zone of the Russian Federation (in one of the municipal formations included in the Arctic Zone, or in a federal subject if it is completely located within the Arctic Zone).<sup>6</sup>
2. A legal entity or entrepreneur should intend to implement a new investment project in the Arctic Zone or new to the entity or entrepreneur types of entrepreneurial activities – that is, the entity or entrepreneur must not have conducted these activities before the date of their application. This requirement clarifies that the purpose of this law is not only to attract investment but also to increase the value of the

Russian Arctic as a place for business experiments.<sup>7</sup>

3. The total amount of implemented and planned capital investments cannot be less than 1 million rubles (13,100 USD). This low limit to planned capital investments was declared in order to attract small and medium businesses to entrepreneurial activities in the Arctic.<sup>8</sup>

After meeting these requirements, applicants undergo the procedure for registration as a potential resident of the Arctic Zone. Article 9, Section 4 of the Federal Law declares that the registration procedure may be conducted online. To apply for an agreement on the implementation of investment activities in the Arctic Zone, a prospective resident must follow three simple steps. First, they must visit the Arctic Russia website (<https://arctic-russia.ru/en/>), navigate to the 'Investor' section, and click on the 'User Account' section. Second, they must apply for user account registration. Within a few hours, the application will be approved, and the user will receive their registration data at their email address. Third, to log in to their user account, the user must navigate to the 'Services' section to prepare a required package of documents, upload them electronically, and click the 'Send' button. The required

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<sup>5</sup> Federal Law № 193-FZ on State Support of Entrepreneurial Activity in the Arctic Zone of the Russian Federation (Official Internet Portal of Legal Information, 2020) <<http://kremlin.ru/acts/bank/45677>> accessed 6 November 2020 (translation by the current author)

<sup>6</sup> Federal Law (no 5) Article 2.1.2

<sup>7</sup> Federal Law (no 5) Article 9.6.1

<sup>8</sup> Federal Law (no 5) Article 9.6.3



package of documents includes copies of statutory documents (for legal entities), a business plan, an extract from the Unified State Register of Legal Entities or an extract from the Unified State Register of Entrepreneurs, and a copy of the applicant's certificate of registration with the tax authority. The application will be considered within 10 days, and if a positive response is received, an agreement will be signed within 10 days from the moment response received. The agreement is signed by the legal entity or entrepreneur and the state, represented by a management company.<sup>9</sup> The *management company* concept derives from the Federal Law on Territories of priority rapid socio-economic development, and it refers to the company appointed by the Government of the Russian Federation to manage priority development areas.<sup>10</sup> The main requirement for such a company is that its controlling stock belongs to the state.

The commercial activity of a resident of the Arctic Zone is accompanied by preferences which fall into two categories: tax preferences and administrative preferences. Tax preferences include a 0% tax rate for:

VAT when selling goods placed under the customs procedure of the Free Customs Zone (FCZ); income tax from the moment the resident's first profit is received; land tax from the moment resident status is obtained or the ownership of each land plot commenced; corporate property tax from the tax period in which the organisation is included in the Arctic Zone of the Russian Federation's register of residents.<sup>11</sup> However, these preferences do not apply to projects in solid mineral extraction, to representative offices (branches) of foreign entities registered in the Arctic Zone of Russia in order to implement investment projects, or to entities with branches outside the Arctic Zone, which would contradict to articles 284.4.1.2 and 284.4.1 of the Tax Code of Russian Federation, with amendments that will be enacted on 1 January 2021.<sup>12</sup> Importantly, the tax preferences mentioned above apply only to taxes paid into the federal budget; tax rates for taxes paid into the budgets of federal subjects are set annually by local tax authorities. Moreover, the Tax Code does not specify the maximum tax rates

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<sup>9</sup> Federal Law (no 5) Article 10.1

<sup>10</sup> Federal Law (no 4) Article 2.5

<sup>11</sup> Tax Code of the Russian Federation № 117-FZ with amendments on 15 October 2020 (Official Internet Portal of Legal Information, 2020)

<[http://www.consultant.ru/document/cons\\_doc\\_LAW\\_28165/](http://www.consultant.ru/document/cons_doc_LAW_28165/)> accessed 7 November 2020

(translation by the current author)

<sup>12</sup> Rules of the Tax Preferences to the Residents to the Arctic Zone of the Russian Federation Will Enter into Force on 1 January 2021, with Amendments (15 October 2020) to Tax Code of the Russian Federation

for taxes paid into the budgets of federal subjects, and it only declares the possibility of reduced tax rates.<sup>13</sup> This rule enables local tax authorities to reduce tax rates for residents of the Arctic Zone by only 1%, and tax rates will thus remain high. On the other hand, article 284.4.5 (2021) declares that the tax rates for taxes paid to the budgets of federal subjects by the residents of priority development zones and residents of the Free Port of Vladivostok cannot exceed 5%. We suggest that adding residents of the Arctic Zone of the Russian Federation to the ruling of this article would make tax preferences more dependable for entrepreneurs and legal entities implementing commercial activities. Administrative preferences include: no quota on the recruitment of foreign employees; shortened inspection times (the term for scheduled inspections cannot exceed 15 business days); a possibility to apply the free customs zone procedure to residents' developed and equipped land plots; court representation of residents by the management company; and a possibility to conclude concession agreements without tender procedures.<sup>14</sup>

In addition to preferences, residents also have obligations. Residents' primary obligations are to carry out the activities provided for by the agreement and to

make investments, including capital investments, in the declared amounts and terms.<sup>15</sup> A violation of these obligations constitutes a repudiatory breach of their agreement, and it may result in termination of the agreement and revocation of resident status. Regarding non-contractual obligations, notably, article 28 of the Federal Law establishes an obligation for residents of the Arctic Zone to support and cooperate with Indigenous communities in their places of residence or their traditional activities, following the principles approved by the authorised federal body. The authorised federal body monitors compliance by residents of the Arctic Zone with these principles and publishes a report on this compliance on its official website annually, no later than July 1.<sup>16</sup> Nevertheless, a violation of the obligation for cooperation with Indigenous communities will not lead to termination of the agreement, though it may cause fines for the resident.

In concluding this section, we reiterate that tax and administrative preferences are very attractive and able to make entrepreneurial activities in the Arctic financially comfortable. However, tax preferences also entail certain drawbacks, such as the inability to use these preferences in mining projects and by entities with branches outside the

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<sup>13</sup> Tax Code (no 12) Article 284.1.8

<sup>14</sup> Federal Law (no 5) Chapter 4

<sup>15</sup> Federal Law (n 5) Article 11.3

<sup>16</sup> Federal Law (no 5) Article 28.4

Arctic Zone. On the positive side, we emphasise that the application procedure may be completed online, without any additional administrative burden, and the requirements for the total amount of implemented and planned capital investments enables small and medium businesses to participate. Despite these advantages, a foreign company that wishes to register a representative office or branch for commercial activities in the Arctic will be unable to avoid an administrative burden. Before a representative office or branch of a foreign company applies for status as a resident of the Arctic Zone, they must first undergo the state registration process as a legal entity within the Arctic Zone of Russia. For the other Arctic States, we have emphasised the legal definition of a *resident of the Arctic Zone* as an example of how to divide business conditions on the grounds of a location.

The Russian Government's opinion – reflecting the relation of the state to the Federal Law – can be found a statement by Yuri Trutnev, Deputy Prime Minister of the Russian Federation:

Significant steps have been taken to improve the system of public administration for the development of the Arctic region. Almost the entire Russian Arctic is becoming a

special economic zone with a set of tax preferences. The most important thing is that the principle is changing: if at the previous stage the State itself invested in the Arctic, and in not very large amounts, now we are talking about supporting investors and providing assistance to projects in the economic sphere. We will continue to improve the conditions for commercial activities, develop the economy of the Arctic territories because this will help improve the living conditions of people in the future.<sup>17</sup>

The Government supports this legal instrument, but how it will apply practically remains to be seen.

## Conclusion

In conclusion to our research, we would like to link the Federal Law on State Support of Entrepreneurial Activity in the Arctic Zone of the Russian Federation and entered into force on 26 October 2020 the Strategy on the Development of the Arctic Zone of the Russian Federation for the period up to 2035 (hereinafter, *Strategy*) and to address how the Federal Law will help achieve the Strategy's goals.

First, Paragraph 4, Subparagraph D of the Strategy recognises that a major

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<sup>17</sup> Ministry for the Development of the Russian Far East, *The Arctic Zone of the Russian Federation Accepts Its First Residents* (minvr.gov.ru, 5 October 2020) <<https://minvr.gov.ru/press-center/news/28229/>> accessed 9 November 2020 (translation by the current author)

problem in the economic development of Arctic Russia is the uneven industrial and economic development of certain territories in the Arctic Zone and the economic focus on extracting natural resources, with further exports to the industrialised regions of the Russian Federation and abroad.<sup>18</sup> Unequal tax preferences for mining projects in the Federal Law clarify that the law's foremost goal is diversifying the economy since, firstly, the mining industry in Russia is well divided between Gazprom and Rosneft and, secondly, the Arctic Zone of the Russian Federation is, as a whole, a well-developed "mining hub" which lacks serious problems. Moreover, a focus on mining and a lack of economic diversification may lead to an increased number of monotowns and shrinking Arctic cities, such as Vorkuta, where – after the collapse of the city's dominant coal mining industry – the population decreased dramatically, from 218,467 people in 1989 to 73,123 people in 2020.

Another achievement of the Federal Law is its introduction of a special economic regime in the Arctic Zone. According to Paragraph 12, Subparagraph A of the Strategy, the introduction of a special economic regime in the Arctic Zone may

promote the area's transition to a circular economy. Paragraph 12 of the Strategy declares a list of necessary measures to achieve economic development in the Arctic. We think the Federal Law can be considered a general legal framework for these measures' implementation. For example, Subparagraph G declares the necessity of simplifying the procedure of granting land plots for the purpose of carrying out economic and other activities not prohibited by law, which is implied from Article 15 of the Federal Law. Furthermore, based on Paragraph 17, Subparagraph M of the Strategy, we can suggest that the preferences declared by the Federal Law be considered as measures to attract not only different projects but also foreign investments to the Arctic Zone.

So, can we consider this Federal Law to be promising? We can find the answer to this question in statistics. As of 14 November 2020, the Arctic Zone of the Russian Federation includes 14 registered residents, 55 billion rubles (719 million USD) in investments, and 2,855 announced new jobs.<sup>19</sup> These figures offer hope that the economy of the Russian Arctic will diversify and that Arctic entrepreneurship will rise.

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<sup>18</sup> Strategy of the Development of the Arctic Zone of the Russian Federation for the Period Up to 2035 (Official Internet Portal of Legal Information, 2020)

<<http://static.kremlin.ru/media/events/files/ru/f8FhckYOPAQQfxN6Xlt6ti6XzpTVAvOy.pdf>> accessed 10 November 2020 (translation by the current author)

<sup>19</sup> <https://investarctic.com/en/>

## The Polar Law Symposiums

*Gudmundur Alfredsson\**

The Polar Law Symposiums are by now well-established academic events. They have been held annually in several countries of the polar regions, both north and south, they have been well-attended, and they have been and continue to be in the forefront of law and policy debates relating to the Arctic, Antarctica, and even the Third Pole.

The Symposiums have been convened in Akureyri (Iceland) five times 2008-10, 2013, and 2016; once in Nuuk (Greenland) 2011; twice in Rovaniemi (Finland) 2012 and 2017; twice in Hobart (Australia) 2014 and 2019; once in Anchorage and Fairbanks (the USA) 2015; and once in Tromsø (Norway) 2018.<sup>1</sup> Following an initial planning meeting in 2007,<sup>2</sup> the use of the label 'polar law' has multiplied.

As these lines are written in November 2020, the Polar Cooperation Research Centre at the University of Kobe in Japan is conducting the 13th Polar Law Symposium online. The plan is to hold the 14th Symposium also in Kobe but in-

person in autumn 2021, provided the ongoing covid-19 pandemic will no longer be leading to travel restrictions.

In a welcoming message at the opening of the virtual Symposium (2020polarlawsymposium.org/welcome-message-from-the-convenor-at-the-opening-of-13th-pls/), Professor Akiho Shibata stated as follows: "Despite the continuing difficulties around the world caused by COVID-19, ... the 13th Polar Law Symposium has successfully opened entirely online, with a total of 288 registered participants. This is the largest registration number ever achieved in the history of the Symposium. ... we have 25 uploaded individual presentations either by slideshows or by video viewing, five seminars for on-demand video viewing, and 13 live events planned with 28 oral interactive presentations and lectures."

The hundreds of Symposium participants belong mostly to academic institutions and NGOs, plus a scattering of government and IGO representatives. They stem from Arctic countries, Australia, New Zealand, and other States with economic, political, research

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<sup>1</sup> For more detailed information about each one of these Symposiums, see "[www.polarlaw.is/en/polar-law-symposium](http://www.polarlaw.is/en/polar-law-symposium)".

<sup>2</sup> About the history of early polar law developments in Iceland, see Gudmundur Alfredsson and Agust Thor Arnason, "Fullveldið og heimskautarétturinn" (Sovereignty and Polar Law) in Fullveldi í 99 ár. Safn ritgerða til heiðurs dr. Davíðs Þórs Björgvinssonar (99 Years of Icelandic Sovereignty. Essays in Honor of Dr. David Thor Björgvinsson), Reykjavík: Hið íslenska bókmenntafélag (The Icelandic Literary Society), 2017, pp. 267-280.

and security interests in the polar regions.

The themes addressed at the Polar Law Symposiums cover a wide range of polar law. Interdisciplinary approaches are common; the emphasis is not only on relevant areas of global, regional, domestic and local laws and related policies and practices but also on comparative law and the cultural, economic, and political considerations that do or should influence the making of new laws.

Specific issues discussed at the Symposiums include the following: sovereignty and boundary disputes on land and sea, dispute settlement, colonialism, self-determination, self-government, the rights of indigenous peoples and other human rights, land and natural resources rights, gender, human security, environmental law, pollution, climate change, the melting ice, fauna, flora and biodiversity, sustainable development, good governance, traditional economic activities, identity and cultural heritage, education and languages, the law of the sea and maritime law, transport, tourism, NGOs, the Arctic Council, the West Nordic Council and other global, regional and sub-regional IGOs, the Antarctic treaty system, search and rescue, and geopolitics and security. Undoubtedly, the list of issues will grow longer in the years to come.

Most of the presentations made at the Symposiums are published in *the Yearbook of Polar Law*, which first appeared in 2009, and since then every year ([www.brill.com/pola](http://www.brill.com/pola)). Articles are subject to blind peer reviews, while sections with short papers and book reviews are not reviewed. The editors-in-chief are Gudmundur Alfredsson, Julia Jabour, Timo Koivurova, and Akiho Shibata. One or more local or special editors supervise each year's volume.

The Yearbook is supplemented by a book series, *Studies in Polar Law*, also published by Brill Academic Publishers in the Netherlands ([brill.com/view/serial/SPLW?rskey=8W0zMf&result=1](http://brill.com/view/serial/SPLW?rskey=8W0zMf&result=1)). Three books have so far appeared: Kamrul Hossain, Jose Miguel Roncero Martin and Anna Petrétei (editors), *Human and Societal Security in the Circumpolar Arctic. Local and Indigenous Communities* (2018); Antje Neumann, *Wilderness Protection in Polar Regions, Arctic Lessons Learnt for the Regulation and Management of Tourism in the Antarctic* (2020); and Timo Koivurova and Sanna Kopra (editors), *Chinese Policy and Presence in the Arctic* (2020). A new textbook on polar law is under preparation and will be edited by Natalia Loukacheva.

As mentioned above, the use of the 'polar law' label continues to increase, along with its components of Arctic law and Antarctic law, and the Symposiums

have certainly contributed to that growth. Other publishing houses (Edward Elgar, Routledge, Springer, and others) and organizations (f.ex. the Nordic Council of Ministers) have also published materials on polar law or closely related subjects. An open-access journal, *the Review of Arctic Law and Politics*, is published in Tromsø and edited by Øyvind Ravna ([arcticreview.no/index.php/arctic](http://arcticreview.no/index.php/arctic)). The University of the Arctic runs a Thematic

Network on Arctic Law ([www.uarctic.org/organization/thematic-networks/arctic-law/](http://www.uarctic.org/organization/thematic-networks/arctic-law/)), led by Kamrul Hossain, Leena Heinämäki, and Karolina Sikora. Polar law issues are also increasingly seen on the agendas of the multitude of global, regional, national, and local conferences held each year about the Arctic, Antarctica, and the Third Pole. Further evidence of success is the ever-increasing number of 'polar law' hits on Google!



Polar Law Symposium 2017, Rovaniemi, Finland



## Conference Report of the 13th Polar Law Symposium Special Online Session

*Mami Furuhata\**

The 13th Polar Law Symposium (PLS) special online session was held from November 9th to 30th 2020. Due to the COVID-19 pandemic, it became the first symposium held online in the history of PLS. The PLS is an annual event and had been held in various countries such as Australia, Norway, Finland, U.S., Greenland and it was planned to be held in Kobe-City, Japan. Polar Cooperation Research Centre (PCRC) of Kobe University<sup>1</sup> hosted and logistically supported this online symposium.

PCRC is the research center belonging to the Graduate School of International Cooperation Studies (GSICS) of Kobe University. It is established in the first of kind and leading institution in polar legal and policy studies in Japan, focusing on the Arctic and Antarctic international legal and institutional developments. PCRC is subsidized by the Ministry of Education, Culture, Sports, Science and Technology-Japan (MEXT) as one of the executing agencies of Arctic Challenge for Sustainability II (ArCS II) project which is the national

flagship research project in the Arctic region of Japan.

The 13th PLS is the 7th international symposium for PCRC to host since 2015. Among the accumulated experiences, it was the first time to hold a symposium online. Hosting the online symposium requires completely different operations from the physical symposium, both logistically and technically. This report conveys the experience of hosting the 13th PLS special online session.<sup>2</sup>

The 13th PLS terminated on November 30th with 354 registered participants from 43 countries and regions. The Figure 1 shows the country of participants' affiliation, the countries with 5 or more participants are shown in the table. Japan accounts for 70 (20%) participants. 40 (11%) are participants from U.S., 27 (8%) are from Australia and 25 (7%) are from China. Figure 2 shows the composition of participants by regions. 34% of participants are from European countries, 32% from Asia, 16% from North America, 10% from Oceania and 6 % from Latin America. Such diversity of participants is showing the high level of interest in polar research from various regions of the world. And this large number of participants may have been possible because it was held online.

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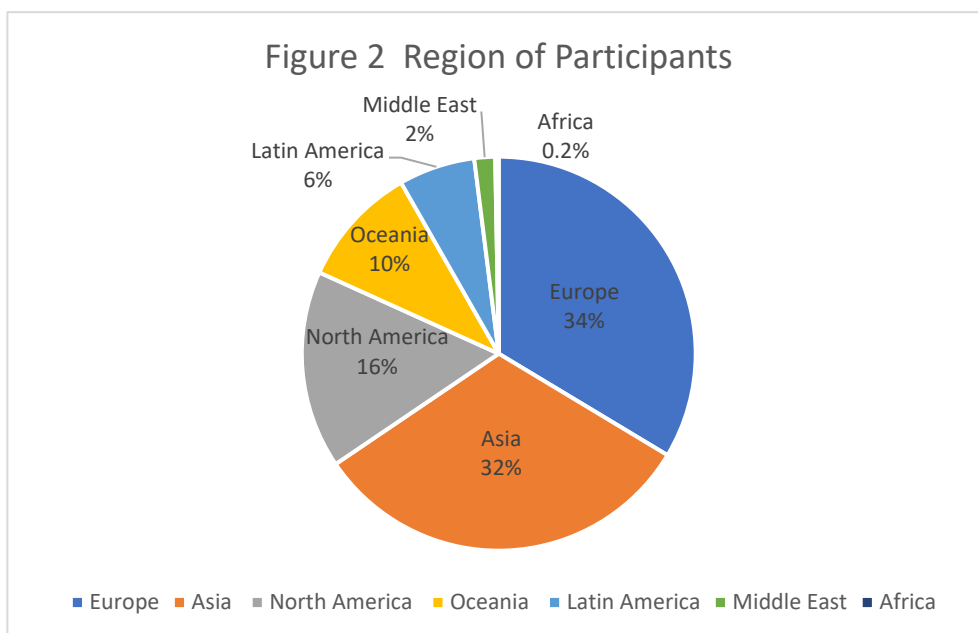
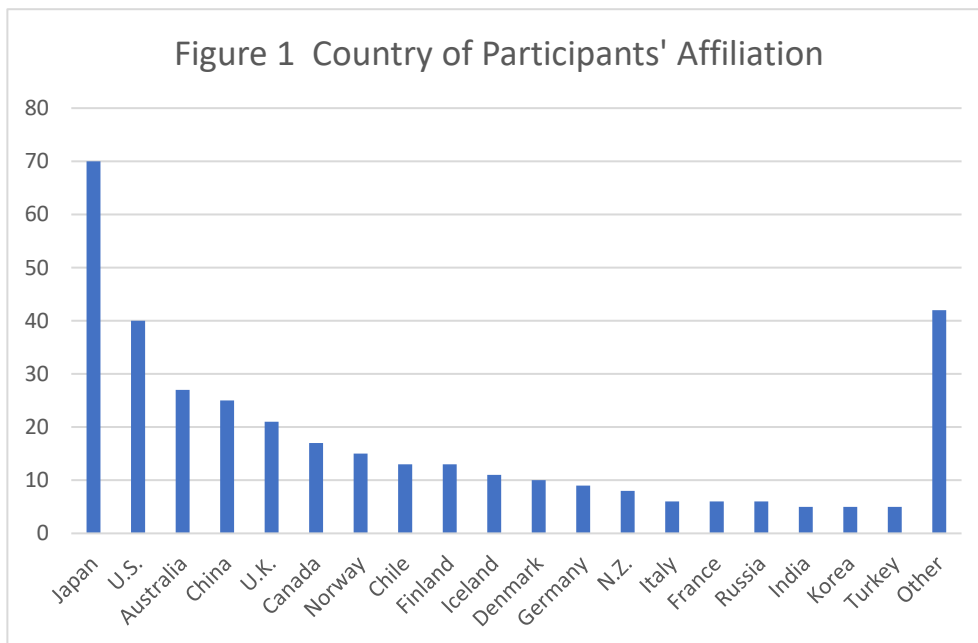
<sup>1</sup> The web site of PCRC: <http://www.research.kobe-u.ac.jp/gsics-pcrc/index.html>

<sup>2</sup> The 13th PLS web Site: <https://2020polarlawssymposium.org/>



Another feature of the online event is the length of the session. The PLS is usually three-day event, but this special online session has been held for 3 weeks. One of the practical reasons for prolongation is the scheduling of seminars. During the session, 12 live events with 28 oral interactive presentations have successfully convened by Zoom meeting or webinar system. Unlike gathering at a

same conference hall, online participants from all over the world remain in their respective time zones. Working hours for Japan are sleeping hours for people on the other side of the globe. To accommodate participation in each seminar as much as possible, the schedule of seminars was adjusted to hold only one seminar per day.



The challenges faced by the Planning Committee is mainly technical issues related to system construction of website. Not only managing the pre-registration and entrant to 12 live seminars and hosting the ZOOM meetings, all seminars were delivered by YouTube Live for the people who missed the pre-registration. There were 580 viewers on YouTube. Almost all Zoom seminar were recorded and uploaded to the homepage for subsequent On-demand Video Viewing. These additional follow-ups of the live event made participants available three ways to attend; Zoom, YouTube Live and On-demand video viewing through the PLS website.

In addition to these live seminars, 43 individual presentations were uploaded either by PPT slideshows and/or by video recording. Each live seminar and individual presentation were given the dedicated web page to upload the materials and participants could leave their open comment on the pages. 77 textual comments and replies were written throughout the symposium. This personal comment-and-reply function can be assumed as an alternative to the discussion over coffee-break of the physical conference.

Another technical challenge supporting these various formats of online event was how to protect the presentation and recording files. The proceedings and presentation of PLS will be published in

The Yearbooks of Polar Law. The committee had to add technical protection to the contents to meet publishing conditions. The individual presentations have been embedded to the dedicated web page with special processing by the technical expert to protect from downloading. How easy would it be if this were just to project on the screen of the venue without distributing papers?

It can be said that the 13th PLS provided as much full service as possible online. All of these has been a good experience for future events under these situations, but one thing cleared was that hosting online event wouldn't save the cost of labor and time in preparation compared to the physical session.

It is indeed undeniable that participants accessing Zoom from their own room all over the world have created relaxing and friendly atmosphere and solidarity by sharing time and exchanging their opinions, but online symposium cannot be a full substitute for all the value involved in having a face-to-face discussion including informal conversation with new colleagues for network building.

The purpose of the PLS "is to examine, in detail, the implications of the challenges faced by the Polar Regions for international law and policy and to make recommendations on appropriate actions by States, policy makers and other international actors to respond to

these emerging and re-emerging challenges.”<sup>3</sup> To tackle with these challenges, following 5 panels are established on the 13th PLS; 1) Emerging legal, policy and scientific issues in the Antarctic, 2) Policy-Law-Science Nexus in Polar Regions, 3) Emerging Legal Issues in Protecting the Arctic Environment, 4) Indigenous Peoples in the Arctic, 5) Resources Development and Indigenous Peoples in the Arctic. The accepted proposals to PLS were assigned to these 5 panels according to the theme. Among them, those selected as oral presentation were presented in the interactive live seminars convened by each panel.

One of the highlighted live seminars was the open lecture on the Arctic plastic problem: *‘Plastic Arctic’- How does law deal with the emerging threat of Arctic plastic pollution?* convened by the panel of Emerging Legal Issues in Protecting the Arctic Environment. The speaker was Dr. Seita Romppanen, Senior Lecturer in EU and International Environmental Law at the UEF Center for Climate Change, Energy and Environmental Law (CCEEL) and the commentator was Dr. Junko Toyoshima, Research fellow at Ocean Policy Research Institute, Sasakawa Peace Foundation. Dr. Romppanen discussed about the legal and regulatory framework of plastic pollution. She carefully examined and explained the

possible international and regional legal approaches and the limits and weakness of the current legal system on this issue. Dr. Toyoshima, as a scientist who just came back from the Arctic cruise on the oceanographic research vessel "Mirai", operated by the Japan Agency for Marine-Earth Science and Technology (JAMSTEC), reported the current state of plastic pollution based on the latest research. She reported that arctic ocean is the hotspot of microplastics, and microfiber concentration in seawater is the highest in the arctic while fishing tools are the most harmful to the arctic wildlife.

The discussion was inevitably directed to the need for cooperation between natural and social scientists. These dialogue between lawyers and scientists are symbolic for PLS. A lot of other issue emerging in the polar regions need for legal and political control on human activities based on the scientific facts and predictions

Throughout the symposium, it was impressive that young legal scholars were seeking applicability the traditional international law to the emerging issues in the polar regions by their analysis and interpretation. The possible solution would be refined and strengthened through discussions with researchers of other fields and other stake holders just as it was at this

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<sup>3</sup>The Polar Law Institute;

symposium. In that sense, it is convinced that the Polar Law Symposium will be an increasingly important venue for researchers all over the world to share their scientific knowledge on diverse issues in polar regions.

PCRC will proudly host the 14th Polar Law Symposium in 2021 as well.

Provisionally, we plan to hold the physical meeting on 21 to 23 November at Kobe University Main Campus in Kobe, Japan. We are hoping this pandemic will be settled down soon and looking forward to meeting you in-person in Kobe next year.



