

## **A book review of *Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors***

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**Matter commented on:** *Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors*

Akiho Shibata, Leilei Zou, Nikolas Sellheim and Marzia Scopelliti (eds)

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This most interesting book is a collection of contributions by a geographically diverse group of legal and political science experts, reflecting on the recent developments in the legal regime of the Arctic and taking a specific interest in non-Arctic actors. It responds to an observation that there is a remarkable change all over the world, particularly felt and visible in the Arctic (p 1). Climate change, globalisation and shifts in power, such as the shift in relative political and economic power from the West to the East, as well as the recognition for the increasing role of non-state actors in international law, all provide the rationale for the book and its focus.

The Arctic has, for just over some 15 years, moved from the periphery of global attention right to its centre. The globalisation of Arctic affairs is a result of different processes providing for increased marine access, as well as the understanding that ‘what happens in the Arctic does not stay in the Arctic’. Similarly, the source of change in the Arctic comes predominantly from outside.

The book consists of 14 chapters, which are organised into four parts. The first introductory chapter briefly explains the rationale behind the book and raises a few fundamental questions. Part I sets the context. It comprises four chapters on the current and future role of non-Arctic states in Arctic governance (Timo Koivurova), the relevance of the rise of Asia for the Arctic governance (Aki Tonami) and more specific insight on Japan’s (Keiji Ide) and China’s (Egill Thor Nielsson and Bjarni Mar Magnusson) roles and policies.

At this point, one can observe that the focus of the book rests primarily, but not exclusively, on non-Arctic Asian states. The role of inter-governmental and non-governmental organisations is also explicitly recognised, but the introductory part could have included more reflection on other non-state actors relevant to the international law-making process.

The conceptual starting point for the book is the Arctic Council and its orbiting actors, with the central theme being the intersection of the Arctic Council and the Arctic/non-Arctic dichotomy it promotes with the global international legal regimes, such as the law of the sea. The Arctic Council remains the only standing inter-governmental forum focusing on Arctic policy issues and, as asserted by Koivurova (p 18), ‘it is natural that any actor wanting to contribute to improving Arctic governance needs also to be active in the Arctic Council’. There has been a correlation between ‘being active’ in the Arctic Council and ‘being able to contribute to Arctic governance’, but what about causation? After all, the analysis of the two major case studies, chosen as such by the editors on important Arctic-related law-making in relation to Arctic shipping and fisheries in the Central Arctic Ocean (CAO), indicates that much occurs outside the Arctic Council. For example, Erik Molenaar (pp 163–64) observes that: ‘there are no indications that [other than Arctic coastal states participants in the Central Arctic Ocean Agreement] (de facto) observer status with the Arctic Council had any relevance whatsoever’. Rasmus Gjedssø Bertelsen’s investigation of the emerging architecture of Arctic shipping governance reveals a significant role of transnational knowledge networks and epistemic communities that help address the complexities and uncertainties that traditional law-making mechanisms leave. Here, Bertelsen appreciates the work of the Arctic Council Protection of the Arctic Marine Environment (PAME) working group, but also shows that its role should not be overstated. In addition, Leilei Zou’s overview of recent Russian legislative developments for the Northern Sea Route and China’s interactions with the NSR may suggest that a contribution to Arctic governance may also emerge through bilateral cooperation.

As correctly noted in the introductory chapter (p 6), ‘the question is how the Arctic Council and its non-Arctic observers have responded to such a dynamic legal order-making in the Arctic’. All the chapters in this book take a snapshot on the status of this question.

Part II focuses on the people living in the Arctic. Dalee Sambo Dorrough presents indigenous peoples’ perspective on non-Arctic states in a chapter covering the work of Inuit political organisations, their rights and status, concluding with recommendations to non-Arctic actors. Marzia Scopelliti and Nikolas Sellheim discuss the NGOs’ sometimes controversial influence on the activities (which can be sensitive to the public opinion) of sealing, whaling and hydrocarbon exploitation.

Four chapters in Part III are devoted primarily to two case studies – fisheries in the Central Arctic Ocean (CAO) and shipping. Joji Morishita – the head of the Japanese delegation to the A5+5 Meeting on High Seas Fisheries in the CAO – provides a thorough account of the different

stages in the negotiations leading to the adoption of the CAO Fisheries (CAOF) Agreement. Molenaar, who participated in all except the first of the six rounds of negotiations on the CAOF Agreement, offers a comprehensive analysis of the participation in the A5+5 process and the final CAOF Agreement in the broad context of state interests, rights and obligations under international law. The two remaining chapters in Part III comprise the above-mentioned different aspects of the governance of Arctic shipping by Bertelsen and Zou, respectively.

Part IV on the universality of science and the Arctic Council starts with a chapter by Shibata on the Arctic Science Cooperation Agreement. He critically evaluates the process leading to the adoption of the Arctic Science Cooperation Agreement and argues that the Arctic Council may need to rethink its future law-making process so as to formally include non-Arctic actors. Two remaining chapters address the behaviour of observers to the Arctic Council. First, in a chapter on state observers and scientific cooperation in the Arctic Council, Sebastian Knecht and Jennifer Spence analyse the de facto implications of the evolving Arctic Council observer policy for equal treatment. In the chapter on China in the Arctic Council, Yuanyuan Ren gives a critical overview of China's participation in the Arctic Council as observer, describing it as sporadic and insufficiently coordinated internally.

The book could benefit from a concluding chapter with some more general reflections and an attempt to revisit some of the questions posed in the introductory chapter. At the same time, the strength of the book lies in its dealing with a relatively new phenomenon, a careful entry of newcomers to a region where the residents have traditionally been suspicious. It is, therefore, not surprising that some of the questions are rhetorical, pointing to an important issue, rather than resolving it. As such, the book is thought-provoking and recommended reading for anyone who wants to stay attuned to what shapes the legal orders in the Arctic. It may serve as a useful handbook for ideas for further research, as not all of the chapters are equally comprehensive.

Another observation links to Tonami's interesting insight on the difference between the liberal roots of the Arctic Council, tracing them back to the Gorbachev's 1987 Murmansk Initiative, and the realist approach of 'economic diplomacy' pursued by the Asian states. At the same time, from the outside the Arctic may appear as a semi-closed club of states sensitive about their sovereignty (think of Canada, Russia or Norway concerning Svalbard), organised for different purposes as Arctic Council or Arctic Five. It is thus not surprising that the newcomers find it necessary to adapt their language. As such, the official statements related to the Polar Silk Road, or China's White Paper may be expected to carry a message that would be acceptable to the Arctic states (who would not like a win-win situation?). The chapters by Nielsson and Magnusson, and

to a lesser degree by Zou, provide context for the official statements, but it feels that the study of China's Arctic policy in the context of its global strategy – and relationship with other actors, such as Russia – holds immense potential for future research.

In this context, it is perhaps also a pity not to have a clearer voice from Russia, or at least specifically on Russia – a country with a history of particular apprehension towards the 'internationalisation' of Arctic affairs.

Finally, a few other topics could have been discussed in the context of the book's theme. Here one may think of developments in the law of the sea, where non-Arctic actors may have an impact on emerging legal orders in the Arctic. Examples include the Biodiversity Beyond National Jurisdiction (BBNJ) process, delineation of the outer limits of Arctic continental shelves and the Area, or maritime zones around Svalbard.