

Emerging Legal Orders in the Arctic: the Role of Non-Arctic Actors. Eds. Akiho Shibata, Leilei Zou, Nikolas Sellheim and Marzia Scopelliti. 2019. Routledge Research in Polar Law. Routledge: Abington. pp 286 + xvi, 115GBP (hardback); 36.99GBP (eBook) ISBN: 9781138618510 (hardback) ISBN: 9780429461170 (ebook)

Emerging Legal Orders in the Arctic: the Role of Non-Arctic Actors is the first publication of the promising new series, *Routledge Research in Polar Law*. The four editors are from non-Arctic states (two Asian and two European) but together have considerable experience working on Arctic (and in some cases Antarctic) law and policy. The anthology contains 14 chapters, organised into an introduction followed by four Parts: setting the contexts; people(s) in the Arctic; Arctic marine legal order-making; and the universality of science and the Arctic Council.

As is customary in such edited collections, the first chapter, co-written by the editors, presents the aims of the book, explains its relevance in a time of increasing interest in the Arctic region and the rise of a number of Asian states and outlines the contributions to follow. Part One begins with Timo Koivurova's presentation of the main participants in Arctic affairs, the creation of the Arctic as a geopolitical region and the decisions and processes that eventually determined which states would be regarded as 'Arctic' and which would be considered outsiders. Koivurova emphasises the contributions of sub-state governments as well as non-state actors in Arctic cooperation. Unsurprisingly, the Arctic Council is the main forum under consideration, but Koivurova also explains the interplay with global regimes, in particular, the law of the sea, the World Trade Organisation, the climate change regime, the rights of indigenous peoples and the UN Economic Commission for Europe (UNECE).

Aki Tonami follows with a pertinent and very clear analysis of the Asian states' international relations frames, contrasting their primarily realist approaches with the liberal institutionalism of the Arctic Council and of Western states (at least of the 1990s) more generally. She explores why, how and to what extent the Asian states work with the Arctic Council, notwithstanding these differing political philosophies. She also explains the Asian (particularly Chinese and Japanese) emphasis on international law but considers the possibility that while the future of international relations will be rule based, the Asian states will take a greater role in developing and defining those rules. This chapter will be particularly useful for the legal academics to whom this book is directed who may be less well informed regarding both international relations theory and Asian policy. Keiji Ide's chapter on Japan's role in Arctic law follows naturally, emphasising the importance of a strong legal order in Japanese policy and Japan's increasing confidence and capacity to shape international law. Egill Thor Nielsen and Bjarni Már Magnússon continue with a close examination of China, with particular attention to the Belt and Road Initiative. As for Japan, they argue that China is likewise invested in a strong legal order, though perhaps for slightly different reasons: China 'is employing international law to strengthen its perceived position in the Arctic as a key player and downplaying its secondary status as an observer in the main intergovernmental forum.' (60).

Part Two disappoints. This is not for want of quality but rather that it is so short. Entitled *People(s) in the Arctic*, in fact only one chapter addresses peoples (indigenous) and the other is on NGOs. Dalee Sambo Dorrough's contribution on Arctic indigenous peoples (principally, the Inuit) is very good, but the book would have been enriched greatly by contributions reflecting the perspectives of other indigenous peoples and Arctic communities. More to the point, for a book that explores widely Asian *perspectives* on the Arctic, there is no discussion of Asian approaches to indigenous rights in the Arctic. China prefers to talk of indigenous 'tradition and culture' rather than rights. Furthermore, China denies that there are any indigenous peoples in China itself. Japan recognises the indigenous Ainu people of Hokkaidō but does not uphold their rights in any systematic manner and has little to say regarding indigenous rights elsewhere.¹ Nevertheless, all the Arctic Council observer states voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.² Moreover, the Netherlands and Spain are both parties to 1989 ILO Convention 169 on the Rights of Indigenous and Tribal Peoples, and India is a party to its predecessor, ILO Convention 107

¹Hiroshi Maruyama, "Beyond the Present Ainu Policy: emancipating the Ainu from subordination to Japan" (2015) 81 *FOCUS*.

²UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, UN General Assembly Resolution 61/295, 13 September 2007.

on Indigenous and Tribal Populations from 1957.³ The reasons for Asian hesitance to address indigenous rights in the Arctic *qua rights* merit examination and it is not provided here. Given the increasing interest from China regarding trade and investment in Arctic states, Asian policies on the land and resource rights of indigenous peoples could have been explained. Indigenous rights is an important branch of *international law* in the Arctic – even if a number of states might prefer to consider indigenous law a purely domestic affair. In the second chapter in this Part, Marzia Scopelliti and Nikolas Sellheim discuss the influence of (non-Arctic) NGOs on resource exploitation (marine mammals and hydrocarbons). They explain how well-resourced external NGOs can sometimes position themselves as insiders over time to pursue their agenda, often at the cost of indigenous peoples' livelihoods. But this is not a chapter on Arctic peoples *per se*.

Part Three examines law-making in the marine Arctic, with two chapters on Arctic Ocean fisheries and two on shipping. It begins with Joji Morishita's analysis of the negotiations that led to the Central Arctic Ocean Fisheries Agreement⁴ and the care with which the 'Arctic Five' (the five states whose Exclusive Economic Zones (EEZs) border the high seas of the Arctic Ocean) protected their pre-eminent positions, whilst recognising and upholding international law regarding high seas freedoms and including indigenous peoples. Morishita explains the roles and attitudes of the various participants in this delicate diplomatic process. The chapter is followed by the longest and most technical chapter in the book, Erik Molenaar's patient examination of the Central Arctic Ocean Fisheries Agreement. Molenaar explains how the interests of the Arctic Five differ from the other participants and how they might effectively forestall high seas fishing for some time to come. The crux of the matter is that any high seas fisheries are likely to depend on straddling stocks – i.e. the same fish that might be available in the high seas will *also* be at times within the EEZs of at least one of the Arctic Five. The coastal state has no incentive to permit high seas fishing if it could impact on its own stock or have wider, negative, ecosystem impacts. Furthermore, by increasing the take within the EEZ, the coastal state could prevent the movement of fish northwards in the first place (140–141). Molenaar also notes that sedentary species are not covered by the agreement but are rather governed by the principles of the continental shelf. The Arctic Five's attempt to define a 'special' role for themselves was not only resisted in order to defend high seas freedoms in the Arctic Ocean but also due to a fear of setting a precedent for the wider international negotiations on the conservation and use of biodiversity in areas beyond national jurisdiction (145). This chapter displays as well as any could the inevitable interrelationship between 'Arctic' law-making and global international law and legal development. It is also the only chapter that considers Taiwan, a great fishing nation but also a great manufacturer and exporter whose position (if it is has one) on the Arctic sea routes would be interesting.

Rasmus Gjedssø Bertelsen moves the discussion on to shipping with a theoretical analysis of Arctic shipping through the frame of

³Convention (No. 169) concerning indigenous and tribal peoples in independent countries 1989, 1650 *United Nations Treaty Series* 383 (1991); Convention (No.107) concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries 1957, 328 *United Nations Treaty Series* 247 (1959).

⁴Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean, available at Commission of the European Union, Proposal for a Council Decision on the Signing on Behalf of the European Union, of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean, Annex, COM (2018) 454 final, 12 June 2018.

epistemic communities. Through this lens, he explores the issues of complexity and uncertainty and the role of different knowledge-communities and knowledge-creators in response. Leilei Zou follows with an analysis of the contested legal issues pertaining to the Northern Sea Route. She presents a historic study demonstrating the different phases in Russian regulation and the legal and factual bases for Russia's contentions regarding its (non-international) straits. She then situates China's 'top-down rush' of activity (198) in the Northern Sea Route but concludes that China expresses a cautious interest, ensuring that it will be poised to benefit should the route become commercially viable.

The final Part of the book focuses on science in the Arctic Council. Akiho Shibata begins with a discussion of the Arctic Science Cooperation Agreement,⁵ positioning it within the wider rules of international law. He juxtaposes the general principle of freedom of scientific research in the marine environment with the principle of exclusive sovereignty over *terra firma* and explains how the two are treated the same under the Arctic Science Cooperation Agreement. Reflecting Koivurova's discussion in the second chapter, Shibata discusses how political will, rather than geography alone, creates 'regions' or 'regional seas' and explains how this third treaty emerging from the Arctic Council is part of the region-building process. The process, as well as the treaty, is (only) semi-inclusive of non-Arctic partners. The contributions of the state observers to Arctic science are reviewed by Sebastian Knecht and Jennifer Spence in Chapter 13. They explain that the review process for observers is principally based on scientific work – at least that is what the observer states present in their reports. However, '[w]ith regard to the substance of science cooperation between Arctic and non-Arctic actors in Arctic Council working groups, the overall record is mediocre' (238) and the authors conclude that in practice, the political commitments required by the Arctic Council observer criteria are much more important than the scientific work when observers are being reviewed. Yuangyan Ren's chapter on China's participation at the Arctic Council concludes this Part. She demonstrates that China's engagement with the Arctic Council and the Arctic in general has increased since it was accepted as an observer in 2013, but that its contributions are nevertheless limited. She identifies three main limitations: not sending delegates at all; lack of continuity of delegates so that those present are never sufficiently informed to progress the agenda; and sending the wrong delegates who lack the knowledge, the authority or both to participate effectively.

A reproduction of the text of the Arctic Science Agreement concludes the volume, but its purpose is not clear. Why this treaty and not, for example, the more complicated and legally nuanced Central Arctic Ocean Fisheries Agreement? There are literally dozens of relevant instruments that might have been included here but all of them, including the Arctic Science Agreement, are readily available online.

The anthology is a significant and timely contribution to the literature on Arctic law, in particular the influences of the rapidly evolving Asian states. While there is a very good volume dealing with China,⁶ there is much less available in English on Japan and precious little on Singapore, South Korea or India. Each contribution to this volume brings something unique to

⁵Agreement on Enhancing International Arctic Science Cooperation 2017, available from: <https://oarchive.arctic-council.org/handle/11374/1916>.

⁶Arctic Law and Governance: The Role of China and Finland, edited by Timo Koivurova, QIN Tianbao, Sebastien Duyck, and Tapio Nykänen (Oxford: Hart Publishing, 2017)

the project and the balance of international law and international relations makes this an ideal text for academics in both fields: the lawyers have much to learn from the IR theorists and the political scientists likewise from the legal scholars. The criticisms above regarding Part Two say perhaps more about the research interests of the present reviewer than about the quality of this collection as a whole. This book is a fine

example of Polar law and demonstrates how far this relatively new field of international law has burgeoned, substantively and geographically, over the past decade (Rachael Lorna Johnstone, University of Akureyri, Faculty of Law, Sólborg, Norðurslóð, IS600 Akureyri, Iceland (rlj@unak.is)).

DOI: [10.1017/S0032247419000809](https://doi.org/10.1017/S0032247419000809)