

Book Review

Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors.
Edited by Akiho Shibata, Leilei Zou, Nikolas Sellheim, and Marzia Scopelliti.
Routledge, 2019. 286 pages.

Reviewed by Andreas Kuersten*

For most of human history, the Arctic has primarily interested only those residing there or claiming sovereignty over portions of it. Yet climate change is making the region more accessible and “a centrepiece in and for global affairs” (1). Accordingly, the Far North is also an increasingly contested space. Not in terms of territory and resources—widespread accounts of geopolitical struggle are largely contrived and unmoored from the “exceptional cooperation” that pervades northern relations (Steinberg et al. 2015, 33)—but with regard to governance and what assemblies are most prominent, who have voices within them, and how loud they are. And while Arctic states and organizations certainly jostle amongst themselves for standing (see, e.g., Kuersten 2016), arguably the most provocative discourse and developments concern the roles of non-Arctic actors in regional institutions and decision making.

As the Arctic opens, non-Arctic actors are increasingly advocating for changes to dominant northern institutions that favour Arctic actors, and working around such institutions to expand their influence. These ambitions, however, are encountering the understandable desire of Arctic actors to remain preeminent in an area they call home or in which they exercise national jurisdiction.

Keying in on these circumstances, the editors of *Emerging Legal Orders in the Arctic* presciently assert that it “is the delicate balance between Arctic and non-Arctic interests and perspectives that is the core problématique for the emerging legal orders in the Arctic” (2). Moreover, they contend that such orders “cannot be legitimately created or effectively implemented unless all the relevant actors, including states, peoples, governmental and non-governmental organizations,

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are involved in the processes of such order-making and implementation,” and “[h]ere [they] see a potential, and even a necessity, for non-Arctic actors to play a constructive role” (1). Commensurate with these statements, *Emerging Legal Orders in the Arctic* is a collection of works addressing Arctic governance and non-Arctic actor engagement in this process.

The first entry, by Timo Koivurova, helpfully parses what determines whether an entity is considered Arctic or non-Arctic. Generally, “it is members of the Arctic Council [AC] that can be considered Arctic states” (12), the AC being an international forum “widely view[ed] ... as the centrepiece of modern Arctic governance” (Smieszek 2019, 123). It strictly stratifies actors with regard to standing and influence based, ostensibly, on Arcticness (see Kuersten 2017). Only Arctic states—Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States—are Member States with voting rights. Next down are organizations representing northern Indigenous peoples, which are Permanent Participants with full consultation rights in all AC determinations. Finally, at the bottom, are all others: Observers whose presence and participation are at the discretion of the members. Primarily, observers observe AC activities and contribute to research-focused working groups and task forces. How non-state actors are determined to be Arctic or non-Arctic is less clear, but “the most relevant distinction” is between “those that have a clear Arctic identity” in terms of their work “and those that do not” (15).

Subsequent chapters build on the foundation laid by Koivurova and can be effectively organized according to the subjects they address, with a clear delineation between those that primarily assess actors and those that primarily assess regional bodies. With regard to the former, a great deal of attention is paid to Asian states, and China in particular. Aki Tonami compellingly argues that Arctic states view the Far North as “their” domain (38), and expect Asian states—China, Japan, South Korea, Singapore, and India—to take part in regional norm- and rule-making “within already existing forums such as the [AC],” which privilege local actors (28). Yet “Asian states are realists,” prioritizing “balance of power, diplomacy and formation of alliances” over institution-building, and prefer settings and processes in which they are not subordinate and that offer meaningful geopolitical or economic gains (28). They, therefore, frequently circumvent established associations by using direct state-to-state diplomacy, working outside of the framework built and promoted by Arctic states. This creates friction in northern relations and, “as a result,” Tonami claims that “the Arctic legal order has entered a period of contested multilateralism” (41).

Egill Thor Nielsson, Bjarni Már Magnússon, and Yuanyuan Ren zero in on China. Nielsson and Magnússon assess China’s 2018 white paper presenting its Arctic policy. In line with Tonami’s analysis, Nielsson and Magnússon note that

China concentrates on economic goals, not on engaging regional institutions. This matches its expanding bilateral interactions with Nordic states and Russia, which emphasize economic projects. In addition, rather than express commitments to Arctic-specific governance mechanisms, “the focus of [China’s] policy is on the global legal framework where [it] plays a greater role” (62). For her part, Ren assesses the country’s involvement with the AC, concluding that, “to date, China’s performance and role in the [forum] have remained limited” (259).

Keiji Ide and Leilei Zou offer chapters on Japan and Russia, respectively. Unfortunately, Ide’s presentation offers little critical analysis, and reads like a propaganda piece extolling Japan’s and the author’s Arctic efforts. Zou, on the other hand, informatively describes the complementarity of Russian and Chinese ambitions with regard to the Northern Sea Route (NSR). Both seek economic gain and increased regional and global standing: Russia covets the benefits of having an important international trade route along its coast facilitating Arctic natural resource extraction and industry, and China desires an additional shipping route to Europe and the securing of resources and goods through investments in Russia’s northern projects—Chinese investment is particularly welcome given Western sanctions on Russia in response to its annexation of the Crimea region of Ukraine (see Kuersten 2015).

Dalee Sambo Dorough focuses on Arctic Indigenous peoples, “the real people of the Arctic” (90). She asserts that any “discussion of legal order in the Arctic must recognise the status and rights of Arctic [I]ndigenous peoples throughout their circumpolar homeland” (69), advocating for what has been termed a “rights-based approach to Arctic governance” that “ensures that the decisions taken *for* the Arctic are taken *by and for* the people whom they will affect most” (Durfée & Johnstone 2019, 177). States—Arctic and non-Arctic alike—must avoid “rights ritualism,” whereby the language of human rights is employed to avoid scrutiny and accountability and to gain reputational benefits, absent corresponding behaviour respectful of such rights (87). Dorough specifically calls out China in this regard.

Marzia Scopelliti, Nikolas Sellheim, and Rasmus Gjedssø Bertelsen address the influence of non-governmental organizations (NGOs) and transnational networks of non-state actors on Arctic governance. Scopelliti and Sellheim remark that, despite not being “formal subjects of international law,” NGOs “are crucial for its agenda-setting stage, its interpretation and further developments” (93). Generally, NGOs engage in “inside advocacy”—interacting with decision makers directly—and “outside advocacy”—seeking to influence decision makers by shaping public opinion (93). The authors pay particular attention to environmental NGOs not part of the AC, finding that by “choosing contentious and emotional issues under international law—marine mammal and hydrocarbon exploitation—... conservationist narratives of NGOs have directly impacted on the Arctic legal

environment” (92). These impacts, however, have been both positive and negative in terms of the NGOs’ goals. For example, while “anti-sealing and anti-whaling NGOs” successfully “spurred hunting and trade moratoria,” “the negative [cultural and economic] effects of these bans have prompted Arctic governments to launch cooperative efforts for putting the sustainable utilisation and management of marine mammals back on the international agenda” (102). Bertelsen, in turn, assesses “the governance role of transnational knowledge networks and epistemic communities” of non-state actors—e.g., NGOs, AC working groups, individuals, and firms—in the context of Arctic shipping, which is characterized by “complexities and uncertainties” in terms of both physical setting and international law (175). In the face of a harsh environment and relatively unrefined legal standards, these networks and communities pool knowledge, develop norms, coordinate policy, and build capacity through robust socialization, significantly influencing legal order.

Moving on from specific actors and types of actors, four chapters consider the two primary Arctic governance bodies: the AC and Arctic Five (A5). The A5 has arguably become the second most prominent agglomeration focused on Arctic governance. It consists of the five states with Arctic coastlines—Canada, Denmark, Norway, Russia, and the United States—and, similar to the AC, privileges those deemed sufficiently Arctic (see Kuersten 2016). These five countries commence and direct all actions and only invite wider participation from certain others once the bounds of target initiatives have been significantly refined.

Akiho Shibata analyzes the AC process that led to the 2018 Arctic Science Cooperation Agreement (ASCA), a treaty that seeks to promote international cooperation in all scientific endeavours relating to the Arctic “*through legally binding obligations*” (208). He finds that AC observers “substantively engaged” in the ASCA drafting process through oral and written submissions during AC meetings, “despite their lack of decision-making power” (208). Broadly, they sought to extend the treaty’s benefits to all scientists, regardless of whether they are nationals of AC member states. The ASCA was ultimately concluded through the AC and only members are party to it—and there is no accession clause—but the language of the final document allows legal obligations and benefits to extend to non-member state nationals in certain situations. While Shibata interprets the treaty as “reflecting as much as possible the interests of non-Arctic states and their scientists actively engaged in Arctic science” given the restrictive negotiation setting of the AC (223), this assertion is debatable since any extension of obligations and benefits arises only at the behest of a party state. He does, however, prudently offer that “the effective governance of the Arctic may indeed be strengthened if the Arctic Council ... has the courage to formally open its law-making processes to relevant non-Arctic actors” (223).

Sebastian Knecht and Jennifer Spence evaluate the contributions of AC observer states to the forum and the AC's developing observer admission policies. The authors divide these observers and policies into two waves. During the first wave, 1996–2013, European states were admitted unconditionally. However, as international interest in the Arctic grew, members worried about maintaining their regional preeminence, particularly as “some non-Arctic states openly question[ed]” existing arrangements (234)—e.g., China. Ultimately, significant changes were instituted to observer admission policies; during the second wave, 2013–present, as mostly Asian states have been admitted, admission has been conditioned on applicant promises to contribute to AC science work and “compl[iance] with a geopolitical narrative formulated by the Arctic states of what the political order of the Arctic region should be” (235). Despite formal attention to potential science contributions, applicants “are much less assessed according to their scientific suitability than with regard to their political obedience” (238). Observers are also now assessed by members every four years, and continued observer status must be proactively approved based on contributions to the AC. Knecht and Spence conclude that these changes result in a situation where observers “are, in short, same same but different” since “political considerations affect the admission and integration process and prohibit equal treatment” (242). While convincing with regard to admission, the authors offer no evidence for their deduction with regard to integration and internal AC work, particularly given their observation that both European and Asian states are comparably “mediocre” in terms of the number of AC projects they take part in (238). The chapter is mostly informative and provocative, but would benefit from meaningful discussion of how political considerations affect observer treatment and participation once admitted.

Finally, Joji Morishita and Erik J. Molenaar examine the A5 and the “A5+5” process that led to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean. The Agreement formalizes the “qualified abstention” with regard to regional commercial fishing by the A5 and +5—China, Iceland, Japan, South Korea, and the European Union—who were invited based on their capacities to fish commercially in the Central Arctic Ocean (161). The non-Arctic actors saw this as a chance to participate as equals in Arctic governance and increase their regional standing. And they made their presence felt. Aside from a brief passage in the preamble, language asserting any “special responsibilities and special interests” of the A5 was not included, despite A5 efforts in this regard (126). Ultimately, regional fisheries were effectively regulated and the Agreement treats all parties equally. Together, these chapters provide an interesting account of how Arctic legal orders can develop differently and, perhaps, more positively when non-Arctic actors are meaningfully involved; for example, rights are more broadly accounted for and reach is expanded. While the A5+5 process was certainly

deficient in certain ways—e.g., Indigenous groups were not formally included, as they are in AC deliberations—these deficiencies were partially accounted for by Canada, Denmark, and the United States including Indigenous representatives in their delegations, and can hopefully be learned from to improve future governance activities.

As a whole, *Emerging Legal Orders in the Arctic* is timely and important as the Arctic grows in global importance and the interests and rights of Arctic and non-Arctic actors increasingly intersect, developments that are unlikely to abate. Aside from the minor critiques noted above, the book's chapters are informative and incisive. Arctic scholars would be well-advised to consume this title, as would those interested in international relations and governance more broadly.

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