

Third International Symposium
The Role of Non-Arctic States / Actors in the Arctic Legal Order-Making

Session on Asian States/Actors in the Arctic Legal Order-making
Afternoon of 9 December 2017

The last day of the symposium will start with a keynote speech by Professor Timo Koivurova. The keynote will be followed by the morning session on Role of the Observers in the Arctic Council and afternoon session on Asian States/Actors in the Arctic Legal Order-making.

At the session on Asian States/Actors in the Arctic Legal Order-making, **Dr. Aki Tonami** will deliver her main speech “**A New Political Economic Order in the Making? The Arctic and the Asian States**”.

Discussants: **Jian Yang and Won-Sang Seo**
Coordinator: **Akiho Shibata**

A New Political Economic Order in the Making?
The Arctic and the Asian States
Aki Tonami

What is the “Arctic legal order-making?” Order is “a stable pattern of relations among international actors that sustains a set of common goals or purposes” (Griffiths et. al., 2008). According to realists, the balance of power, diplomacy and the formation of alliances provide the best methods of maintaining order. Whereas liberal internationalists support a greater role of international institutions in developing mutually accepted norms and rules of conduct in order to maintain order. This conference is titled “the Role of Non-Arctic States/ Actors in the Arctic Legal Order-Making”, therefore it takes a liberal internationalist point of view; a legal order-making in the Arctic is an “effort to establish and strengthen the international normative and institutional framework so as to bring stability and foreseeability in the future of the Arctic.” With this in mind, I would like to discuss the role of Asian states/actors in international institutions related to the Arctic in developing mutually accepted norms and rules of conduct.

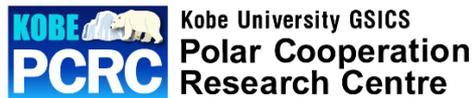
The Arctic region is governed through a multi-layered legal system, which Oran Young calls as an “international regime complex” (Young, 2012). As more attention is paid to a changing natural environment of the Arctic, perhaps the biggest change introduced to the Arctic order-making in the last few years is that this knowledge of a multi-layered legal system is no longer limited to Arctic coastal states. Non-Arctic states/actors are now also aware that Arctic governance consists of arrays of international institutions for developing norms and rules of

conduct.

What are the role of Asian states in this changing multi-layered legal system of the Arctic? If one speaks strictly about the Arctic Council, the role of Asian states, who have obtained Observer status in 2013, is to literally ‘observe’ and keep a low-profile as the eight Arctic states cooperate and coordinate action on issues of sustainable development and environmental protection. True, (Asian) Observer states are also allowed to participate in the Arctic Council’s working groups, which serve to contribute scientific knowledge to the ministerial meetings. However, the role Asian states are expected to play does not go beyond being “educate”d by the Arctic states “about why the existing system of [Arctic] governance is appropriate and relevant” (Manioc and Lackenbauer, 2014). Asian states are welcomed as long as their participation is limited to economic activities in the Arctic such as investment and shipping, because they do not have the legitimacy to make norms and rules of conduct about the Arctic.

What role, then, do Asian states wish to play in the Arctic order-making? In my previous research, I regarded Arctic policy of Asian states (namely, China, Japan, Korea, Singapore and India) as economic diplomacy, which is a foreign policy practice and strategy where economic/commercial interests and political interests are in tandem. These Asian states pursue state-led development and exercise their economic diplomacy in the pursuit of economic security within an anarchic system in the Arctic. One notices here exists a conundrum: to maintain international order surrounding the Arctic region, Asian states are realists — in order words, they place more priority to the balance of power, diplomacy and the formation of alliances, rather than norm- and rule-making in international institutions. Asian states' Arctic policies incorporate various tools of economic diplomacy that can be described as primarily economic or primarily political in character. The majority of their Arctic-related activities are tools of commercial diplomacy (trade and investment promotion), such as Arctic scientific programmes, joining international/multilateral organizations, and the promotion of the NSR. These tools are political but their primary goals are economic. Economic Partnership Agreements (EPA) or FTAs with an Arctic state(s) are also popular. EPA/FTA is a tool of trade diplomacy, which is also a political tool with primarily economic goals. Resource development projects and the possibility of using the NSR to transport such resources are tools to secure supply of natural resources, and are placed as an economic tool aimed at achieving primarily political goals rather than primarily economic goals.

Although it is mistaken to categorize all Asian states as the ‘united Asia’, China is a salient example of Asian states’ realist approach to the Arctic order-making. China is the only state to have used a tool of financial diplomacy towards one of



the Arctic states, Iceland, clearly with an intention to achieve primarily political goals. In addition, China has, by a wide margin, been most forward-leaning in seeking to secure supply of natural resources of the largest scale, shown in the size of the resource development projects in Russia. Even compared to other Asian states, the Chinese government has not been reticent about marking that the Arctic has a political significance for China. China's attempt to secure supply of natural resources via resource development projects in the Arctic region and the promotion of NSR could be part of China's broader regional development strategy via infrastructure investment and industrial development, expressed in the One Belt, One Road (OBOR) initiative also known as the Maritime Silk Road or symbolized as the establishment of the Asia Infrastructure Investment Bank. Moreover, as seen in the National Security Law and the speech by the Chinese foreign minister Wang Yi, China regards the Arctic as an integral part of its comprehensive polar strategy.

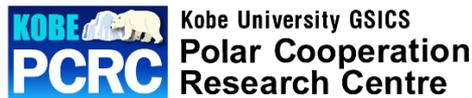
Indeed, Arctic states would like Asian states' greater role in international normative and institutional framework, particularly within already existing institutions such as the Arctic Council (or its working groups). However, from Asian states' point of view, they are only willing to play a role only if rule- and norm-making efforts would serve their political/economic goals, where they clearly see the value of making mutually acceptable norms and code of conduct in pursuing their economic security. With this in mind, I would like to discuss with the panel's discussants and conference participants what role can Asian states play in the Arctic legal order-making.

Yang Jian's discussion summarises as follows:

1. Asian countries and the Arctic affairs

In May 2013 the Arctic Council held a conference of ministers in Kiruna, Sweden, accepting six countries, including China, India, Japan, Korea, and Singapore, as permanent observers to the Council, a significant step forward to enhance the status of the Arctic on the global agenda and allow Asian coastal states to play a positive role in Arctic affairs.

In the past few decades, with the aggravating climate change, the Arctic has seen a risk in ecological environment and a rise in economic opportunities. The geopolitics of the Arctic has thus entered a new active phase. Political activities of some states as well as non-state actors have increased. There is an intense political game regarding the responsibility- and obligation-sharing of Arctic governance and the distribution of interests of Arctic resources. As a result of climatic warming and increased human activities in the Arctic, its nearly primitive



environment and ecology face great challenges. Conflicts over resource exploitation and protection of natural and social ecologies are increasingly prominent. How to establish an effective institution to balance regional development and environmental protection is now a pressing issue. Furthermore, in this era of globalization, how to include external factors is also an important subject in Arctic governance.

Meanwhile the enduring economic growth of Asian coastal states is equally impressive. Since the 1960s, Japan has spawned from the war ruins like a phoenix and become the leader of East Asian economies. In the following decade, the ‘small Asian dragons’ – South Korea, Singapore and Chinese Taiwan and Hong Kong soon followed, illuminating China’s path to opening-up and development. Decades of economic reform assimilates China into the world market and facilitates the overall domestic social and economic development, making the East Asian continent an important engine for the world’s economic development. The rapid development of Malaysia, Thailand, the Philippines, Vietnam, and Indonesia in the 1990s has shown a sanguine development-prospect for the ASEAN region as a whole. India, with the second largest population in the world, also has embarked on an elephant-like powerful pace of development.

These Asian countries enjoy traditional oriental civilizations, but have lost their previous development momentum due to inferior technologies and foreign invasions. However, after World War II, especially after the Cold War, they have seen rapid development and made their own contributions to world economy. Some primary driving forces of their rapid economic development include their fear for inferiority and their fervor to emulate the modernization of Western countries.

The development of Asian countries includes acquiring technology and production from developed countries, which they regard as a necessary step towards modernization. Therefore, Western countries have moved large numbers of their production lines to Asian coastal countries, which become the world’s factory and face increasing demand for energy and resources. Prospects for exploration and exploitation of Arctic resource endowments make these Asian countries potential markets for Arctic products, such as oil, natural gas, minerals and marine products.

Because of the Asian’s countries’ large population, as well as the accumulated wealth and increased purchasing power, the Asian market has become where the hope lies for some Arctic countries future development.

Besides development in processing and production, many Asian countries have become important trade and shipping countries. The commercial opening of the Arctic sea routes might bring some significant effects to major Asian seaport cities. Investment and trade patterns related to shipping cost would change and economic uncertainty would increase. With climate change and the enhancement of shipping conditions, Asians countries will access the Arctic through navigation



of the Arctic sea routes. This is an inevitable result of globalization. Given these aspects, the Asian countries are newcomers and they need to acquire Arctic knowledge and gain Arctic experience.

The Arctic countries hope non-Arctic countries, especially Asian coastal states, can fully understand the mission and take the responsibility of Arctic governance and make due contributions. Besides hopes for participation of non-Arctic countries in sustainable development of the Arctic, Arctic countries also worry that their participation will make governance more difficult.

In the process of pursuing modernization, Asian countries also experience adverse impacts of industrialization on the environment, ecology and health. They are quickly abandoning the obsession for industrialization and building modern ecological civilizations with traditional Asian knowledge. These Asian coastal states are also restoring the use of education and the academia for their societies. Following Japan, countries like Singapore, South Korea, China and India have made significant progress in technological and academic research, and become an important force in Arctic research, constituting the moral and academic foundation for their cooperation with Arctic countries on the issue of Arctic governance.

While the Asian countries feel the call of Arctic economic opportunities and the magnitude of missions of Arctic environmental governance, they also feel a sense of exclusion from some Arctic countries towards non-Arctic countries. This is due to Arctic countries' perception-gaps of non-Arctic countries in Arctic issues, as well as discrimination from some Arctic countries in the arrangement of interests, responsibilities and obligations. Asian countries should engage in comprehensive cooperation with Arctic countries and contribute to a peaceful, environment-friendly, ecologically balanced and sustainable Arctic.

2. China's Arctic policy in the context of its overall foreign policy and development strategy

How to understand China's Arctic Policy? We can't illustrate or understand the policy in isolation from China's overall foreign policy and development strategy. In the 19th National Congress of the Communist Party of China (CCP), the ruling party announced new policies and plans for future development, including foreign policy.

Hereby, I would like to quote some paragraphs from the Xi's report in the 19th national congress.

China remains firm in pursuing an independent foreign policy of peace. China has actively developed global partnerships and expanded the convergence of interests with other countries. We should respect each other, discuss issues as equals, resolutely reject the Cold War mentality and power politics, and take a new approach to developing state-to-state relations with communication, not confrontation, and with partnership, not alliance. We should respect the diversity



of civilizations. In handling relations among civilizations, let us replace estrangement with exchange, clashes with mutual learning, and superiority with coexistence.

The two phrases like “pursuing an independent foreign policy of peace ”and” developing state-to-state relations with communication, not confrontation, and with partnership, not alliance” make great sense. China develops its state-to-state relations independently while pursuing peace. When western countries imposed economic sanction on Russia in 2014 because of the Crimea issue and the Ukraine crisis, China tried to maintain bilateral relations with Ukraine and Russia at same time instead of joining the sanctions.

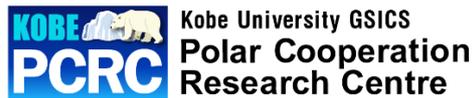
In May 2015, the Sino-Russian joint statement by leaders of the two countries reads in part “The statement on Silk Road Economic Belt Construction and the Eurasian Economic union cooperation in the joint”, to ensure a sustained and stable growth of the regional economy and the strengthening of regional economic integration. The statement also “committed to opening up a common economic space.”¹

In December 2015, after the meeting between Chinese Premier Li Keqiang and Russian Prime Minister Vladimir Medvedev, the two countries issued a joint statement to illustrate their support of a comprehensive strategic coordination partnership between the two countries. The statement reads, “No matter how the international and regional situations change, our two countries will continue to strengthen mutual relations and take the relation with each other as a priority of our foreign policy, will firmly support each other in safeguarding the core interests such as national sovereignty, security and development interests, will promote the understanding and friendship between the two peoples, and close coordination in international and regional affairs. We will transform the advantages of good high level political relationship into a more pragmatic, international and cultural cooperation achievements, to jointly respond to the risks and challenges from the external environment to our revitalization and prosperity, to jointly promote world peace, development and prosperity.” In the joint statement, the two prime ministers showed their willingness for the first time to cooperate in developing the Northern Sea Route (NSR) into a competitive commercial sea route in the future.

It is a very remarkable discussion in the field of international relations research that whether China and the U.S. can avoid so-called Thucydides Trap? The Greek historian’s metaphor reminds the world of the possible conflicts when a ruling power deals with a rising power -- as Sparta faces Athens rising in ancient Greece. There is a rising power with growing entitlement, sense of its importance, and demand for greater say and sway; on the one hand, there is an established power

¹ Chinese Government and Russian Government. *The Sino-Russian joint statement. May 9, 2015.*

http://news.xinhuanet.com/world/2015-05/09/c_127780870.htm



with uncertainty, insecurity, and determination to defend the status quo. In recent years we heard time and again the voices that US should enhance its military alliance to dealing with rising China.

As Mr. Xi Jinping said during his visit to U.S. early this year, “There is no such thing as the so-called Thucydides Trap in the world. But should major countries time and again make the mistakes of strategic miscalculation, they might create such traps for themselves.”

Mr. Xi and his colleagues send out good news by reiterating that China will develop state-to-state relations with communication, not confrontation, and with partnership, not alliance. And China is willing to promote coordination and cooperation with other major countries and work to build a framework for major country relations featuring overall stability and balanced development.

Currently, however, China and Russia are not willing to elevate the relations between the two countries to the alliance level when it comes to security and military issues. As early as in 1982, China formulated a policy of not making or joining any alliance with any nation, which it has maintained during its period of rapid development over the last three decades. Maintaining good political and economic relations with the U.S., Japan, Europe, Russia, and other countries at the same time is also in line with China’s security interests and development interests. That is why China insists that developing a strategic partnership between China and any other country should not be seen as a threat to any third party. China believes that setting and joining any alliance will hamper China’s ability to develop and maintain good relations with the rest of the world. China does not expect any conflict between the big powers or the blocks of powers that could create an embarrassing situation where China is forced to choose sides. No matter what stage of development it reaches, China will never seek hegemony or engage in expansion. China never expects the world to be lead to a new Cold War -- two blocks of military alliance.

3. The principles for China to participate in the Arctic governance

In the political report in the 19th national congress of the CCP Mr. Xi Jinping said that China will ensure harmony between human and nature and an ecological civilization is vital to sustain the Chinese nation's development. He said, “We must pursue a model of sustainable development featuring increased production, higher living standards, and healthy ecosystems. We must continue the Beautiful China initiative to create good working and living environments for our people and play our part in ensuring global ecological security.” As human beings we have many common challenges to face, such as climate change. No country can address alone various challenges that mankind is confronted with; no country can afford to retreat into self-isolation. When he explained the China’s foreign policy he said, “we should be good friends to the environment, cooperate to tackle climate change, and protect our planet for the sake of human survival.”

In recent years, in some speeches by representatives of the Chinese government, positive attitudes towards global governance and Arctic governance have systematically emerged. In January 2017, President Xi Jinping pointed out in his speech at United Nations Headquarters in Geneva that all nations in the world should actively strengthen global governance. In order to make polar regions and other new spaces a place for cooperation between the parties rather than competing arenas, he suggested following the principles of sovereignty, peace, benefit-to-all and joint governance.²

Building a community with a shared future for mankind is a new introduced concept for Xi's foreign policy. At the third Arctic Assembly in 2015, Chinese Vice Foreign Minister Zhang Ming mentioned in particular the need to maintain an Arctic governance system based on existing international law. China supports the promotion of Arctic governance within the framework of existing international law, supports the Arctic Council as an important mechanism in Arctic governance, and supports international maritime organizations and other international platforms to play an active role in Arctic governance.³

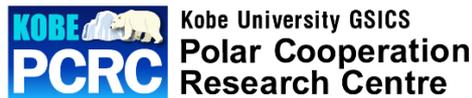
Mr. Xu Hong, director of the Department of Treaty and Law of the Ministry of Foreign Affairs, published an article in 2017 entitled *Arctic governance and Chinese Participation*. In his article, he confirmed that Arctic governance has formed a "global-regional-national" three-level pattern with multi-stakeholder participation.⁴ According to his view, the main contribution of China's participation in Arctic governance should include: (1) playing a positive role in Arctic governance through constructive participation in global governance; (2) actively contributing to the governance of the Arctic region; (3) steadily deepening bilateral cooperation with Arctic countries; (4) attaching importance to the positive interaction among the Arctic Council, observer countries and stakeholders; and (5) continuously working with other stakeholders for a better contribution to the Arctic governance.

Arctic and non-Arctic States are partners, not competitors. We should continue to enhance mutually beneficial and win-win cooperation. The cooperation between Arctic and non-Arctic States has always been part and parcel of Arctic cooperation, either bilaterally or within the frameworks of regional fora and international organizations, on scientific research, environmental protection and

² Xi Jinping. *Working Together to Build a Community of Shared Future for Mankind* Speech delivered at the United Nations Office at Geneva, Geneva, 18 January 2017. http://www.china.org.cn/chinese/2017-01/25/content_40175608.htm.

³ Zhang Ming. Keynote Speech by Vice Foreign Minister Zhang Ming at the China Country Session of the Third Arctic Circle Assembly. http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1306858.shtml.

⁴ Xu Hong. "The Arctic governance and Chinese participation". *Journal of Boundary and Ocean Studies*, Vol.2, 2017.



sustainable development. A good partnership between Arctic and non-Arctic States should contain the following 4 essential elements:

First, the recognition and respect of each other's rights constitute the legal basis for cooperation between Arctic and non-Arctic States. Arctic States hold sovereignty and related sovereign rights and jurisdiction in the Arctic region, while non-Arctic States also enjoy relevant rights of navigation and scientific research. Second, to enhance cooperation, Arctic and non-Arctic States should strengthen communication, increase mutual understanding and trust, and seek common interests. Third, addressing trans-regional issues through joint research endeavors represents the major field of cooperation between Arctic and non-Arctic States. Arctic and non-Arctic States are partners, instead of competitors. Forth, upholding and promoting peace, stability and sustainable development in the Arctic region should also be prioritized.

Respect provides the important basis for China's participation in Arctic affairs. China hopes that "two ways of respect" should be carried on by non-Arctic States and Arctic States. China respects Arctic countries' sovereignty, sovereign rights and jurisdiction in the Arctic, and the traditions and culture of Arctic indigenous people. China also believes that the legitimate concerns of non-Arctic countries and the rights they enjoy under international law in the Arctic and the collective interests of the international community should be respected. In participating in the Arctic affairs and realizing its interests in the Arctic, China should also assume the global responsibility of keeping peace and maintaining environment-friendly, sustainable development in the Arctic region.

4. Bilateral and multilateral: China's approaches in its Arctic cooperation.

Cooperation is the fundamental approach China follows in participating in Arctic affairs. China is ready to step up exchanges and cooperation with Arctic countries, non-Arctic countries and other stakeholders and work for concrete outcomes in a wide range of areas including climate change, scientific research, environmental protection, shipping, sustainable development and people-to-people exchanges.

Mr. Wang Yang, Chinese deputy prime minister, said at the Russian International Arctic forum *Arctic - Territory of Dialogue* that the Chinese government is ready to promote and improve the multilateral governance of the Arctic, and actively carry on international cooperation at multiple levels and within a wide range of issues to achieve mutual benefit and win-win results.⁵ China is a global economic power, a Permanent Member of the UN Security Council, a signatory to the United Nations Convention on the Law of the Sea, and an important constructor of many international regimes of environment protection. As reiterated by Chinese diplomats, the eco-environment in the Arctic region is unique and fragile, more

⁵ Xinhua News agency. "China ready to enhance Arctic environmental cooperation." Mar 30, 2017 7:26 AM. http://english.gov.cn/state_council/vice_premiers/2017/03/30/content_281475611650212.htm



susceptible to global environment problems such as climate change and persistent organic pollutants. The protection of the eco-environment of the Arctic requires joint efforts of Arctic States and the whole international community. China has ratified or acceded to major international environmental agreements including the Stockholm Convention on Persistent Organic Pollutants, the United Nations Framework Convention on Climate Change and the Kyoto Protocol and the Paris Agreement on climate change. China is fulfilling its treaty obligations in good faith, and has made solid achievements in controlling greenhouse gas emission and reducing persistent organic pollutants. China will keep working to make due contribution to the protection of global and Arctic environment.⁶

Economic cooperation and scientific cooperation are the key fields of China's bilateral cooperation with many Arctic States and non-Arctic States, such as Arctic fishery trade between China, Iceland, Norway and Denmark. China conducts joint ocean and Aurora observations with Norway and Iceland. China and Russia cooperate to develop the Northern Sea Route and oil and gas exploitation projects. During President Trump's visit to Beijing, the government of Alaska, Alaska gas development company (AGDC), Sinopec, China Investment Corporation and Bank of China signed an agreement to promote the development of liquefied natural gas in Alaska. The agreement will involve an investment of up to 43 billion dollars, creating 12 thousand jobs in the U.S..⁷

As mentioned above, Sino-Russian cooperation has made great progress in Russian Arctic regions. While China and Russia strengthen their Arctic bilateral cooperation, we should actively explore opportunities for cooperation with the U.S., Canada, Norway and other members of the Arctic Council, and communicate with other Asia Pacific countries such as Japan, South Korea, and India. The significant progress in the Sino-Russian bilateral cooperation in the Arctic will promote the Arctic's peaceful development and international cooperation. Good multilateral cooperation will be conducive not only to deepening the Sino-Russian bilateral cooperation, but also to the healthy development of the governance of the entire Arctic.

Because of the geographical proximity, the similarity of economic models and the experience of polar research, East Asian countries (China, Japan and South Korea) have a natural relevance with the Arctic, and they are the stakeholders of the Arctic affairs. Observership at the Arctic Council provides more opportunities for East Asian countries to participate in the Arctic governance, but at the same time they face many challenges. East Asian countries should strengthen cooperation, complement each other, and participate in the Arctic governance more comprehensively and extensively.

⁶ Hu Zhengyue, China's view on the Arctic, an Presentation at High North Study Tour, 2 July 2009.

⁷ <http://finance.sina.com.cn/roll/2017-11-10/doc-ifynsait6850227.shtml>



The summary of **Won-Sang Seo**'s discussion is:

The purpose of this presentation is to introduce Korea's Arctic policy and position on the Arctic Legal order-making. Korea joined the Arctic Council as observer, and drew up a master plan for the Arctic in 2013. The goal of the Master Plan is to contribute to sustainable future of the Arctic by enhancing cooperation with the Arctic states and relevant international organizations in the areas of science and economy. Korea has been striving to achieve strengthening international cooperation, encouraging scientific and technological research capacity, and pursuing sustainable arctic businesses for five years from 2013. Korea is preparing for the second Master Plan for the Arctic to be implemented from 2018. The Agreement on Fishery in CAO, under negotiation, is also an important issue. I would like to express my personal opinion.