

PCRC-ArCS Special Session – Arctic legal and policy research 2020-25

12th Polar Law Symposium in Hobart, Tasmania (December 2-4, 2019)

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On December 3, 2019, many polar academics and participants of this year's Polar Law Symposium held at the Institute for Marine and Antarctic Studies (University of Tasmania) in Hobart attended the double special session on Arctic legal and policy research. This special session was co-organized by Kobe University's Polar Cooperation Research Centre (PCRC) and the Arctic Challenge for Sustainability (ArCS), Japan's flagship programme for Arctic research with the financial support from JSPS KAKEN-HI, and Kobe University Center for Social Systems Innovation (KUSSI). Chaired by PCRC Director and Professor of International Law at Kobe University's Graduate School of International Cooperation Studies, Prof. **Akiho Shibata**, this special session brought together Arctic legal experts



and aimed at discussing the future agenda of ArCS for the period 2020-2025 and beyond. True to its core values to foster academic excellence and talent, Kobe University's PCRC has always aimed to be a *Toryumon* (登龍門), a Japanese concept that translates into “gateway to success” in English, for early-career researchers. To achieve this ambitious goal, the PCRC allocated research and travel grants to provide support for early careers to present their research the Polar Law Symposium. As Kobe University's PCRC is preparing to host the next [Polar Law Symposium](#), the PCRC intends to showcase and to use the topics during both panels at the symposium in November 2020.



Dr. **Kentaro Nishimoto**, a Professor of International Law at the School of Law at Tohoku University in Sendai, Japan was the first speaker to take the floor as he presented his research on Japan's future Arctic policy for the next five years. He discussed Japan's broader ocean policy and its three pillars of research & development, international cooperation, and sustainable use of resources. He then discussed Japan's Arctic Challenge for Sustainability (ArCS) program and questioned if it was successful in its aim to generate new and innovative research in the humanities and social sciences using natural science outcomes. He expects a similar initiative to be approved for the years 2020-2025 to more closely look at the changes in the environment. Involved in formulation of Post-ArCS project, considered as the backbone for Arctic research in Japan, Dr. Nishimoto identified the three pillars of the policy document, namely research and development; international cooperation and sustainable use. He stresses the importance of interdisciplinary research in the Arctic and suggests the

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development of mechanisms enabling meaningful discussions across different fields. The focus of ArCS has traditionally been natural sciences (7 out of 8 ArCS themes) with an emphasis on scientific knowledge as the basis for international law-making. According to Dr. Nishimoto, the next challenges for the post-ArCS phase is to develop an interdisciplinary approach to Arctic issues. This could include developing new methodologies, listening to researchers from other disciplines and, most importantly, having mechanisms in place for these meaningful discussions to happen. From a purely legal science perspective, Dr. Nishimoto emphasized the need for Japanese law scholars to reach outside of their traditional fields of expertise. One striking example is that there are many excellent Law of the Sea specialists in Japan but almost no indigenous rights scholars.

After this excellent summary of Arctic legal research in Japan by Dr. Nishimoto, Dr. **Betsy Baker**, Executive Director of the North Pacific Research Board talked about networking between regional and national Arctic science programs. Building on the work of groups like the FisCAO (Scientific experts on Fish Stocks in the CAO) and ICES/PICES PAME Working Group on Integrated Ecosystem Assessment for the CAO that are already focused on how to build a science program for the region, her presentation focused on legal and policy research recommendations regarding the CAO Fisheries Agreement (CAOFA). According to Dr. Baker, there is no efficient management regime without adequate scientific research and scientific research pertaining to the CAOFA should be encouraged. She further pointed out that the joint program of scientific research and monitoring will include scientific and technical organizations as well as indigenous and local knowledge holders. In her presentation, Dr. Baker also asked the practical question of how signatories to the CAOFA can advance scientific knowledge through the agreement. She argued that there was a need for a common science body, which includes all partners, to implement the key scientific provisions of the agreement.



In the last presentation of the first panel aptly titled “Arctic challenge for sustainability,” Dr. **Tanja Joona** from the University of Lapland in Rovaniemi, Finland discussed the concepts of sustainable development and intergenerational justice. Dr. Joona gave a more nuanced and personal perspective to the panel by speaking about the importance of teaching the next generation about sustainable use of resources. While climate change is shaping the future of the Arctic, it also creates challenges for future generations within Arctic indigenous communities. Competing industries, such as windmill farms and the Arctic Railroad project, are putting the traditional livelihoods of indigenous peoples at risk. The risks taken by present generations

are imposed on future generations. She raised the question of knowing how to balance present generations’ rights and the rights of future generations. She illustrated the theoretical intergenerational approach with daily life examples of use of traditional knowledge by children. Traditional knowledge is passed on naturally because youth often follow and mime what adults do. She pointed out that contact and life with nature was of utmost importance to understand the way climate change is shaping the Arctic and creating new challenges for future generations (e.g. reduced number of reindeers, threats to pastures). Dr. Joona emphasized that sustainable use of nature is an integral part of Sàmi life, but the

development of competing industries, such as the Arctic coast railroad hinders Sàmi sustainable ways of living. In legal terms, Dr. Joona concluded by going back to the concept of intergenerational equity. To her, the most important question is to know how to balance the rights claims of the people alive today against the rights claims of future generations. The risks taken today will turn out to be the challenges imposed on future generations.



The presentations were followed by an interesting panel discussion. Dr. Nishimoto reemphasised the need for increased cooperation between different research fields in developing the next phase of ArCS in order to have a better policy-law-science nexus in Arctic research both within and outside Japan. Dr. Joona stressed that adaptive governance enables to respond to the severe consequences of changes in the Arctic. She further pointed out the need to balance the opportunities and challenges. Ultimately, she concluded that it is not because there are economic opportunities that one should take them. Opportunities should be balanced in light of the

negative impacts they create. Answering a question from the audience, she gave the example of windmill development in Northern Finland. At first windmills can be seen as a positive development toward renewable energy. However, in the area where they are being developed, they disrupt traditional reindeer herding practices. A question was then raised about the change in the role of science within Central Arctic Fisheries Agreement. According to Dr. Baker, there is a commitment in the CAOFA to sustainability and precaution which is more explicit than in other regional fisheries management organizations. Nonetheless, a greater inclusion of indigenous knowledge is needed in the CAOFA. It has also been mentioned during the panel discussion that search and rescue, emergency, preparedness and response are covering the legal perspective.



After a morning tea break in the beautiful IMAS gallery with a view of Hobart harbor in the background, the PCRC-ArCS special session reconvened in Aurora for its second panel. Senior Fellow at Shanghai Institutes for International Studies, **Dr. Baozhi Cheng** was the one to kick off the second panel with a presentation titled "China. Co-progressiveness of Arctic governance and the Initiative of Polar Silk Road: From the Perspective of Normative Development." Dr. Cheng further argued that it was of vital importance for Arctic governance to develop a coherent normative regulatory framework. Looking to potential new research in Arctic law, Dr. Cheng

highlighted the need to focus on the interactions between this new paradigm of Arctic norms and existing international regulations and domestic laws of Arctic States. He concluded that from a Chinese perspective, the Polar Silk Road is a joint initiative around the development of the Northern Sea Route promoting cooperation across the Arctic region and a vision for a shared future for mankind.



Following Dr Cheng, **Ms. Mana Tugend**, French lawyer and recent graduate of the LL.M. in Polar Law at the University of Akureyri, Iceland presented a research she had conducted under the supervision of **Dr. Dorothée Cambou**, post-doctoral researcher at Helsinki University in Finland, about Marine Protected Areas (MPAs) as a tool to foster sustainable development and protect/fulfill the rights of indigenous peoples. Through the analysis of the Inuit Impact and Benefit Agreement (IIBA) pertaining to the Tallurutiup Imanga National Marine Conservation Area (NMCA) established in Lancaster Sound in Nunavut, Ms. Tugend

explained that international environmental law and human rights law evolved to walk hand in hand. According to her, conservation of significant areas should not happen at the expense of indigenous peoples. She brought to light that, while acknowledging the aforementioned shift, the IIBA also represents an operationalization of the self-determination of the Inuit of Nunavut.

The next presentation was a collaborative research between **Mr. Romain Chuffart**, doctoral candidate in law at Durham University in the UK, **Ms. Sakiko Hataya**, doctoral candidate in law at Kobe University, **Dr. Osamu Inagaki**, researcher at Kobe University's PCRC, and **Ms. Lindsay Arthur**, MA candidate in Polar Law at the University of Akureyri. Their research focused on Japan's Arctic Policy and the expanding role of Arctic Council Observer States, such as Japan. They suggested that Japan has managed to build a robust Arctic engagement through implementing Japan's Arctic Policy although there is still some inconsistencies in the implementation of Japan's Arctic Policy. However, improvement could still be made at the Arctic Council's level. According to them, given Japan's expertise, Japan could build more cooperation with ACAP and EPPR working groups as well contribute more to both SDWG and PAME. Regarding the development of ArCS, the researchers pointed out that ArCS could help strengthen cooperation between various domestic stakeholders such as building bridges between the governmental level and scientific experts. ArCS can also be used to promote scientific cooperation at the international level.





Ms. Alexandra Carlton, doctoral candidate in veterinary medicine from Sydney University, rounded up the panel presentation as she addressed the development of maritime emerging pathogenesis and diseases in the Arctic caused by the conduct of new activities, particularly in relation to fish and fisheries, and the use of new shipping routes. These new diseases are a threat to the livelihoods and health of Arctic indigenous peoples. She discussed the potential use of the SPS protocol in formulating further Arctic law. Ms. Carlton argued that it was crucial to include a humanist element when thinking of the Arctic. She

highlighted that the Arctic faunal barrier is changing because of new activities occurring in the Arctic, such as new shipping routes. Most of the time, these routes coincide with indigenous hunting grounds and significant ecosystems. Although she acknowledged that warmer waters will create new opportunities (e.g. shipping routes or fishing new species), she warned that industrializing Arctic fish will have side effects, such as bycatch. Warmer waters will also bring new diseases for different fish stocks, which, in turn, will have a negative impact on the livelihoods and health of Arctic indigenous peoples. Ms. Carlton concludes that more fieldwork is needed to understand this new set of challenges and this could be new potential research pathways for Japan's ArCS project.

The session concluded with a productive discussion between Akiho Shibata, the panellists and the audience about the future of Japan's Arctic research and the role of ArCS. The discussion started with a question on how Japan can contribute to the Polar Silk Road initiative. There needs to be an increase in trilateral cooperation between China, Japan and the Republic of South Korea. It is important for the three countries to understand common needs and objectives regarding the future of the Arctic, especially when it comes



to shipping. Furthermore, cooperation can also be fostered through respective national involvement and areas of interests within Arctic research. As the Polar Silk Road is being developed, it is also important to take into account and to counter its potential negative effects on indigenous peoples and communities in different fields, such as conservation issues. There is a need to build channels for cooperation and make sure that indigenous peoples are not negatively affected by development of new shipping routes. Increased cooperation between researchers and indigenous communities enables reaching common understandings. The discussion also turned to Japan's role at the Arctic Council. At present, Japan targets specific working groups. Research programs such as ArCS can create linkages between participation, involvement and research. Strategic involvement and engaging in other working groups can broaden the scope of understanding because every field of Arctic is interconnected. For example, this can be as simple as sending Japanese experts to Arctic Council's WGs. ArCS could also help in engaging with AC Permanent Participants and do research with Indigenous researchers. Furthering the discussion on MPAs, Ms. Tugend stressed that the NMCA in Lancaster Sound could support positive

social, cultural and economic changes within the Inuit communities. She further pointed out that the cooperative management of the area could be the way to ensure that the rights of the Inuit people are respected, and that the diversity of interests within the Nunavut communities is taken into account. Ultimately, Ms. Tugend brought to light that the efficiency of the cooperative management board needs to be tested in practice. Ms. Carlton argued that lawyers and natural scientists collaborate in order to create knowledge that can be used by policy makers. Furthermore, she held that there is a need to focus on the inclusion of indigenous peoples within the production of this knowledge. Research projects such as ArCS can enable this kind of inclusion through bringing different epistemic communities together.