



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

Session on Global Arctic Shipping Governance
Morning of 7 December 2017

The first day of our symposium will start with a keynote speech by **Koji Sekimizu**, Executive-Secretary Emeritus of IMO, on “The Polar Code and the Contribution of Non-Arctic States in its formation and implementation”.

We will then commence the Session on Global Arctic Shipping Governance, with **Rasmus Gjedssø Bertelsen** delivering his main speech on “**Transnational Knowledge Networks for Adaptive Global Arctic Shipping Governance**” (TBC).

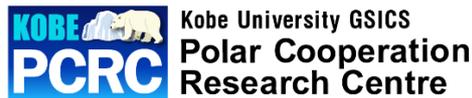
Discussants: **Ang Chin Eng, Piotr Graczyk, Kentaro Nishimoto and Alexander Sergunin**

Coordinator: **Akiho Shibata**, Director, PCRC Kobe University

New shipping routes in the Arctic due to climate change may affect global shipping significantly and raise questions of global Arctic shipping governance. On the one hand, the main Arctic governance forum is the Arctic Council, whose members are also important shipping nations and International Maritime Organization (IMO) member-states. On the other hand, the IMO and important non-Arctic shipping nations have limited access to discussions of Arctic governance. It has proven difficult for diplomatic and political reasons to establish formal channels of communication between the Arctic Council and the IMO such as observership.

These challenges point to the value of other fora for discussing global Arctic shipping governance between the Arctic Council member-states, the IMO and interested non-Arctic shipping nations. In this session we will explore the question of global Arctic shipping governance between state and non-state actors as well as academia and civil society. This dimension of global governance offers an interesting constellation of possibilities for policy-relevant and fundamental international maritime governance research between academic institutions of Arctic Council Member States and IMO Member States. Including experts from academia and practitioners we seek to discuss:

1. The role of transnational, transdisciplinary (triple-helix) knowledge networks (epistemic communities) for adapting global Arctic shipping governance to climate change and power transition (rise of Asia)
2. The possible role for universities in global Arctic shipping governance as neutral conveners of states, academia, business or civil society, while also addressing fundamental issues relating to research and teaching of



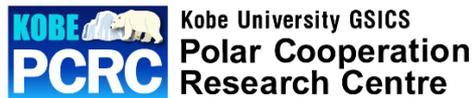
international law and the politics of governance of Arctic shipping.

3. The location of Arctic shipping within contexts of international law and politics.

The main speech will be followed by 15 minutes presentations by 4 discussants. The summary of **Piotr Graczyk**'s presentation "**The Arctic Council and governance of Arctic shipping: defining the role and interplay mechanisms**" is as follows:

The Arctic Council (AC) has significantly stepped up its role in governing shipping activities in the Arctic and has enhanced its potential in influencing Arctic States' performance in this field. The purpose of this presentation is to explore the AC's institutional impact on Arctic shipping governance through the analysis of its role, which is conceptualised through institutional tasks, functions and "pathways of influence". In a three-step analysis the presentation addresses relevant functions of the Council and measures at its disposal applicable to Arctic shipping. Firstly, it defines AC's position within the system and summarises its relevant work pertaining to shipping such as already undertaken initiatives. Secondly, it identifies areas in which the AC may have impact on regulations on both national and international levels. The empirical manifestations of such contributions are formulated in theoretical terms and applied into the role concept. Thirdly, the presentation explores the key mechanisms of interaction between AC and the International Maritime Organisation (IMO) and other international institutions. The key channels for interplay are analysed to systematically specify three principal "pathways of influence" through which the Council may sway the shipping governance system in the Arctic. The focus is not, however, on areas in which the impact may be exerted as these have been identified by others, but rather on specific mechanisms and instruments at the disposal of the Arctic States to be used through the Council. In that sense, the Council is seen as a tool in international diplomacy, negotiations and policy-making and, on the other hand, an instrument of influence on individual members. The study uses the cases from actual work of the Arctic Council's working groups, the Norway's involvement in both within AC and IMO as well as bodies such as the newly established Arctic Marine Shipping Best Practices Information Forum (AMSBPIF). In conclusion, the presentation identifies the main features of the interaction mechanisms between the two institutions - AC and IMO - and attempts to characterise the actual role of the Arctic Council in governing regional shipping and, accordingly, its ability to influence Arctic states' actions in other issue areas in the region.

This presentation addresses the deficit of the formal channels of communication (such as an observer status at AC) between AC and IMO by indicating the actual mechanisms through which the two institutions interact and interplay. The case of AMSBPIF provides for an example of a broader collaboration between states and



non-state actors such as the shipping or insurance industry, NGOs and other international organisations. Furthermore, it is argued that shipping in the Arctic as an issue area has contributed to institutional improvements within AC and its ability to foster politically significant solutions, which implications go beyond shipping.

The summary of Professor **Alexander Sergunin**'s presentation "**Japan-Russia Cooperation on the Polar Code Implementation**" is as follows:

My paper aims at examining the prospects for Japan-Russia cooperation on the implementation of the International Maritime Organization's (IMO) Polar Code which entered into force on 2017.

The legal aspects of the implementation process are studied, particularly, whether the signatories need to change their national legislation and regulations related to the navigation in polar waters with the inception of the Polar Code. For example, Moscow has to modify legal acts on the use of the Northern Sea Route (NSR), activities of national classification societies, Russian Commercial Shipping Code, Technical Regulations on Maritime Transportation Safety, Rules for the Classification and Construction of Sea-Going Ships, Rules for the Technical Supervision of Ships in Service, etc.

Technical aspects – whether Russia and Japan will be able to refit their commercial fleets in accordance with the Polar Code's safety and environment requirements, develop a proper port infrastructure (e.g., facilities to receive, store and reprocess ballast and gray water and vessel waste along the NSR, etc.) as well as search and rescue (SAR) and pollution prevention and response systems, etc., - will be discussed. The need for institutional changes and better coordination of various governmental agencies' activities will be analyzed.

The Russian and Japanese concerns related to the Code's requirements and their interpretations by foreign countries are discussed.

The prospects for the Japanese-Russian cooperation on the Polar Code implementation will be explored. Particularly, the following potential venues for the Japanese-Russian cooperation are explored:

- Improving hydrographic information and updating nautical charts.
- Improving navigation safety information sharing between the relevant Russian and Japanese agencies.
- Establishing optimal – in terms of safety and environment protection – routes for navigation in polar waters.



- Improving emergency response capability, such as stationing rescue tugs near areas of high risk or high value.
- Conducting SAR and oil spill response exercises.
- Introducing marine protected areas along the Arctic maritime routes.
- Establishing joint control mechanisms for assessing vessel and crew's preparedness to navigate icy waters.
- Training Japanese crews in the Russian maritime training centers.

Keywords: Japan, Russia, Polar Code implementation.

The summary of **Kentaro Nishimoto's** presentation "**International Law and Adaptive Global Arctic Shipping Governance**" is as follows:

The recognition that an extensive international legal regime applies to the Arctic Ocean has been the foundation for its governance. The law of the sea provides the legal framework for striking an appropriate balance between the rights and interests of Arctic and non-Arctic States. The development of the Polar Code by the International Maritime Organization (IMO) has further strengthened the body of international law that applies to Arctic shipping. To some extent, the legal component of global Arctic shipping governance is now taken for granted; the real challenge is seen to lie in the implementation of substantial regulations and measures. However, there still remain difficult problems concerning the relationship of the global legal instruments with possible unilateral measures by coastal States and regional initiatives.

My comment will address the role of international law in adaptive global Arctic governance and the challenge it faces. In particular, it will highlight two underlying structural challenges for the legal regime, concerned with the relationship of the *global* legal instruments with *unilateral* and *regional* initiatives. The first issue is the coexistence of international rules and standards with the powers of the coastal State under Article 234 of UNCLOS to adopt and enforce unilateral measures. The lack of a reference to generally accepted international rules and standards in Article 234 suggests that coastal States still have the power, as a matter of law, to adopt unilateral measures in their EEZ. The second issue is the lack of a formal legal mechanism to mediate between the global rules and regional initiatives. Although UNLCOS provides for the possibility of concluding regional instruments, the effectiveness of such instruments are limited by the fact that they cannot bind non-parties. In this regard, the new internationally legally binding instrument on marine biological diversity beyond areas of national jurisdiction (BBNJ) may have a role to play in bridging between the global and the regional, at least in the Central Arctic Ocean. However, whether the new instrument will complicate or simplify the situation is difficult to assess at this early stage of its development.

A discussion on "global Arctic shipping governance" is all the more significant given the unresolved structural difficulties in the international legal framework. One factor



that could account for the fact that the underlying difficulties have not caused conflict and confusion in practice is the willingness of Arctic and non-Arctic States to discuss the measures necessary to meet the challenges of Arctic governance based on scientific expertise. To some extent the focus on science is also embedded in the international legal framework: Article 234 of UNCLOS requires laws and regulations adopted by coastal States to “have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.” Although the question of who has the legal power to regulate cannot be done away with, having shared perceptions on the challenges and required regulations will reduce the possibility of conflict and improve the prospects for successful adaptive governance. In this regard, epistemic communities for adaptive global Arctic shipping governance have an important role in mitigating the consequences of the difficulties of the underlying international legal regime.