

Book Review

International Law and the Arctic

By Michael Byers, Cambridge University Press,
Cambridge University Press, Cambridge & New York, 2013.
Pp. xviii, 314. Index. ISBN 978-1-107-04275-9 (Hardback)

Taisaku Ikeshima

In August 2007, Arthur Chilingarov, a member of the Russian Duma, led the North Pole expedition that planted a titanium flag on the ocean floor. This event attracted global attention to the economic and energy significance of the Arctic as well as defined it as a potential source of political and diplomatic conflicts. Even though the planting of the titanium flag has no legal implications under contemporary international law, one should be aware of the case specific facts and applicable international rules so that the Arctic will not become an arena of international disputes with possible negative impacts on global politics. As the Arctic ice caps are melting due to climate change, various possibilities of establishing shipping routes and extracting energy resources in the region emerge. However, this may be a concern for Arctic states such as Canada and Russia.

As a result, an increasing amount of scholarly literature on the Arctic has been published from a Canadian vantage point. Hereby, I am reviewing the work of the University of British Columbia professor in Global Politics and International Law Michael Byers who has recently published a particularly informative and in-depth monograph on the Arctic from a legal perspective. He is a renowned scholar in international customary law and Arctic politics research and the author of *Custom, Power and the Power of Rules*, (Cambridge University Press, 1999) and *Who Owns the Arctic?: Understanding Sovereignty Disputes in the North*, (Douglas & McIntyre, 2009).

* * *

In the Introduction of *International Law and the Arctic*, Professor Byers claims that ‘there is no state-to-state competition for territory or resources in the Arctic and no prospect of conflict’, but argues that the Arctic is becoming a ‘region marked by cooperation and international law-making, during a period of significant geopolitical, environmental, and economic change’ (p. 5). The above

arguments could be illustrated by the role and functions of the Arctic Council (AC) which has become ‘the proverbial “town square” for an expanding transnational community of politicians, diplomats, and other experts who, through their repeated interactions, are gradually acquiring shared expectations, identities, and interests’ (p. 9). Byers’ aim is to ‘shine light on the growing role of law-based cooperation’ (Id.) in a rapidly changing Arctic.

Chapter 1 explores territorial issues. Specific emphasis is placed on the cases of Hans Island (as the only disputed land in the region), Svalbard, Greenland, and Sverdrup Islands. The author suggests that solving these cases may be a good opportunity to rethink the relationship between state sovereignty and indigenous people.

In Chapter 2, Professor Byers examines state practices on maritime boundaries in the Arctic, where most of them are ‘the result of negotiations leading to treaties’ (p. 29). Among others, he positively evaluates the 2010 Barents Sea Treaty between Norway and Russia as it ‘bridged the old Cold War divide and set Russia on the track toward international cooperation in the Arctic’ (p. 55).

Chapter 3, based on a paper which was co-authored with James Baker, considers the case of the Beaufort Sea boundary dispute between Canada and the United States. Since the legal positions of both parties may result in difficulties in resolving the case, the author believes there is ‘room for a negotiated solution that, unlike litigation or arbitration, enables the parties to retain control over the delimitation process’ (p. 91), which may lead to more options for bilateral cooperation, including a joint development agreement.

Chapter 4 discusses the issue of extended continental shelves or seabed of the Arctic Ocean, where the littoral states, in particular, may have considerable interests in terms of the extraction of mineral resources. Professor Byers states that under the United Nations Convention on the Law of the Sea (UNCLOS), Canada, Denmark, and Russia will profit from cooperating in maritime delimitation with the help of the recommendations provided by the Commission on the Limits of the Continental Shelf (CLCS).

In Chapter 5, which draws on Professor Byers’ collaborative work with Suzanne Lalonde, the use and the legal status of Arctic straits such as the Northwest Passage and the Northern Sea Route are examined in order to answer the question whether both are ‘international straits’, as the United States claims, or ‘internal waters’, as Canada and Russia maintain. The author argues that by way of negotiations these straits ‘could be transformed into safe, reliable, efficient, and contention-free shipping routes through cooperation between coastal and shipping states’ (p. 131).

Chapter 6 considers environment protection issues in the Arctic region with emphasis on the following aspects: species, fisheries, shipping, nuclear accidents, deep-sea mining, air-borne pollution, oil spills and ecosystem-based management. Building upon the well-established traditions of international environmental law in the Arctic, Professor Byers claims that the environmental vulnerability of the region, as well as the interconnectedness between the aforementioned items calls for stronger and more decisive cooperation among states.

Chapter 7 highlights the important role of the indigenous peoples in the region, who are becoming significant ‘non-state actors’ in the processes of international law-making ‘by cooperating across borders within and between ethnic groups in strategic and sometimes remarkably successful efforts to influence state decision-making’ both within, and outside the AC (p. 244).

In Chapter 8, Professor Byers maintains that ‘the region’s transformation’ from a Cold War frontline ‘into a zone of inter-state cooperation’ increasingly includes cooperation on security issues, such as drug-smuggling and illegal immigration (p. 279). The author provides the example of the Arctic Search and Rescue Agreement of 2011 and expresses hope that it will be followed by more law-making processes of cooperation.

In the Conclusion, Professor Byers rightly indicates that in the ‘rapid repositioning of the Arctic’ in the diplomatic scene where Canada, Russia, the United States and China are the major players, journalists’ reports have put too much emphasis on ‘the remote possibility of inter-state conflict’, but seem to have neglected ‘the trend toward cooperation that is actually taking place’ (p. 280). For him, cooperation in the Arctic has long traditions and successful precedence on the basis of ‘cooperative dynamic’ (p. 281) through law-making processes. The ‘constructivist’ perspective Byers adopts, allows him to provide in depth explanations to the shift from Cold War confrontation to Arctic cooperation (‘creeping cooperation’), claiming that the Arctic ‘with its unique combination of security, environmental, and indigenous politics’, is an excellent laboratory for students of twenty-first-century international relations’ (p. 283).

* * *

It is worth acknowledging some of the explicit strengths of Byers’ research. Firstly, the book covers a wide range of important legal issues concerning the Arctic and considerable amount of state practices of the Arctic littoral states. Those interested in a systematic understanding of the international law framework applicable to the Arctic will certainly welcome this fairly updated and concise analysis, written by a Canadian scholar. Canada’s standpoint and policies in this field could be seen in the 1988 work of Donat Pharand, *Canada’s Arctic Waters in International Law* (Cambridge

University Press) which was written after the 1985 incident with the US icebreaker's passage in the waters of Canada's Arctic Archipelago. A more recent work that might be of our interest is *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship* (Wilfrid Laurier University Press), the 2011 research of Franklyn Griffiths, Rob Huebert, & P. Whitney Lackenbauer. This is a co-authored work of Canada's leading Arctic experts who are analysing the issue from international political and strategic points of view. Therefore, Professor Byers' contribution will be appreciated by lawyers, experts, and students in the field of international politics and law.

Secondly, the author emphasises cooperation rather than confrontation in the Arctic. He claims that international law-making through negotiations among state actors and non-state actors has been particularly successful. However, he may be criticised by some realist and positivist scholars for being too naïve in his understanding of sovereign states' policies, which are usually concerned exclusively with their respective national interests. Nowadays the mass media frequently and negatively reports on China's proactive policies. A telling example is its recent allegedly resolute and provocative behaviour in the South China Sea. However, Professor Byers argues that 'China is respecting international law and has legitimate interest in the Arctic' (p. 256). His rather concise examination of 'China's law-abiding approach to the Arctic' (p. 255) could have been further elaborated with updated data on state practices such as China's admission in May 2013 as a permanent observer in the AC. However, the above stated does not diminish the value of the book. Nevertheless, the value of this book is not significantly influenced by this fact, since his support for China's permanent observer status has materialised as he had hoped.

Lastly, I would like to point out that China aside, non-Arctic Asian states such as India, Japan, Korea and Singapore, are also likely to become important stakeholders in the development of the AC itself, as well as playing role in the relations between the Arctic states and the aforementioned Asian economic powers. However, due to the limitations and delimitations of the book, these issues seem overlooked. There is an increased amount of interdisciplinary research projects in the fields of natural and social sciences, as well as economic and energy partnership. More and more people will be curious as to the kind of contribution these Asian actors will make in the law-making processes in Arctic matters. Therefore, the Arctic states would certainly benefit from stronger cooperation with these emerging actors in the Arctic scene. Future readers of books on the Arctic will also be very interested in these aspects.