

Should Japan's Arctic Policy be Based on the Assumption That the Arctic Ocean is a Global Commons ?

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Abstract

The legal status of the Arctic Ocean is strongly debated, particularly in the context of security. Some argue that the Arctic Ocean is a global commons, while others deny this. Japan is currently formulating its Arctic policy, but it is uncertain about this legal definition with respect to security matters. Japan's Arctic policy, which was publicised on 16 October 2015, will be influenced by its bilateral and multilateral relations with the Arctic and non-Arctic states. This paper considers the following three relevant issues: (1) The concept of a global commons under international law; (2) Whether or not the Arctic Ocean can be defined as a global commons; and (3) Japan's options for its Arctic policy with special reference to security and Japan-US bilateral relations based on the Japan-US alliance. This paper concludes that the application of global commons to the Arctic Ocean would be misguided and would not resolve issues of security because the legal concept is vague and it lacks specific context and origin. In addition, Japan's Arctic policy should be concrete and sufficiently comprehensive to face challenges within and outside the Arctic Council.

Key words: Arctic Ocean, global commons, Arctic Council, Japan's Arctic policy, Japan-US alliance

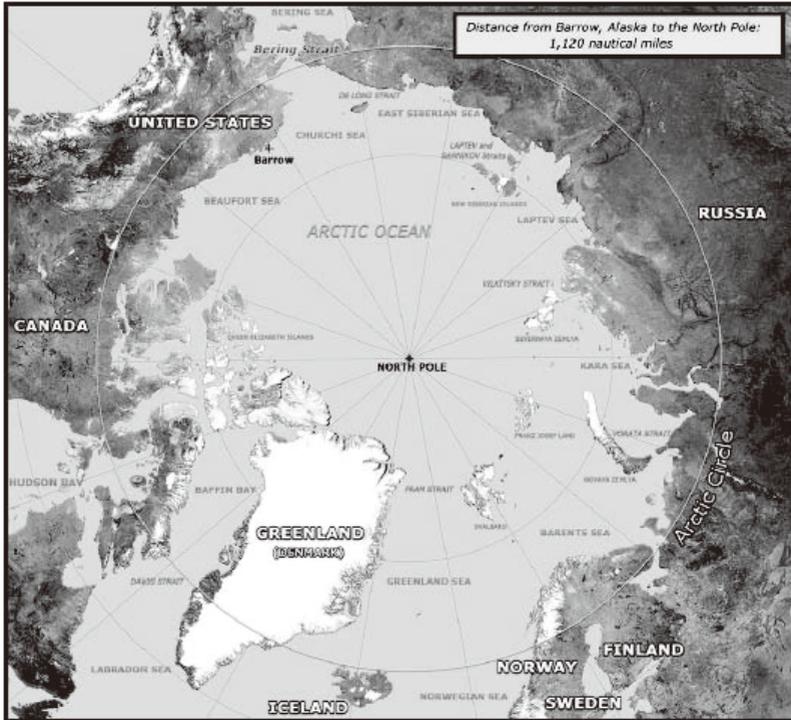
Introduction

It has been some time since the concept of global commons emerged in social science.¹ In the current security debate between Japan and the United States, there seems to be a tacit understanding that the Arctic Ocean is a global commons similar to cyberspace and outer space [Map 1].² However,

[Map 1]

Source: 'The United States Navy Arctic Roadmap 2014-2030', 2014, p. 5.

The Arctic Ocean



Arctic Ocean (United States Navy graphic)

whether this is a well-established concept is a critical question in need of a fresh evaluation. The notion of a global commons still raises a wide range of ambiguous points for discussion, regardless of its general definition from the viewpoint of military security. In the fields of international law and international relations, strictly speaking, the term global commons remains to be clearly defined, although doing so may pose a challenge.³

Some commentators in Japan have recently invoked the idea of global commons, particularly in the context of security and the Japan-US alliance,⁴ at the core of which is the 1960 Japan-US Security Treaty.⁵ Many analysts today agree that the security environment surrounding Japan is drastically changing.

Carefully considering the legal significance of cyberspace and outer space is beyond the scope of this paper and will not be dealt with here.⁶ This paper has two primary goals: (1) Examining the general concept of global commons under international law and comparing it to the legal status of the Arctic Ocean; and (2) Japan's attitude toward the Arctic Ocean and its policy with special reference to the applicability of the current argument considering the Arctic Ocean as a global commons similar to cyberspace and outer space regarding security.⁷

For the purpose of this article, the Arctic Ocean is defined as the maritime area which surrounds the North Pole within the limit of the Arctic Circle (an imaginary line of latitude located at 66 degrees 33 minutes north) and which neighbours the coasts of Canada, the United States, Denmark (Greenland), Norway, and Russia.⁸

I . The Notion of Global Commons and Some Similar but Different Ideas

The notion of a global commons under international law has never been completely articulated, but it is generally a comparatively recent one used to generically refer to the places, spaces and other factors that are beyond the jurisdiction and control of states.⁹ There has been an extensive debate over similar notions under international law; for example, *res communis* such as the high seas, or the common heritage of mankind (CHM) represented by the deep seabed and its resources. Strictly speaking, however, global commons are different from these.

To establish the background for examining the position and status of the Arctic Ocean as a global commons, it is valuable to briefly consider and classify some apparently similar but essentially different concepts often used in the context of international law and international relations.¹⁰ The above-mentioned places and spaces often referred to as global commons do not necessarily have comparable historical developments or institutional frameworks. In the discourse of international law, for example, similar notions and phrases such as 'common spaces',¹¹ 'areas beyond national jurisdiction',¹² 'le domaine public international' (in French),¹³ and 'internationalised areas (territories)'¹⁴ were already established before the term global commons

came into use. In addition to these terms or perhaps in combination, the international community started using various concepts derived from domestic law and economics.¹⁵

Although the common features of the places and spaces called global commons are open for debate, one may summarise them into the following four points: (1) Everybody has freedom of access (use) to these places and spaces; (2) Nobody is allowed to appropriate them; (3) They are reserved for the use of peaceful purposes; and (4) They are somehow under control and/or regulation of international institutions.¹⁶ Because these places and spaces also have various practical differences, however, the following section will briefly classify each distinct and specific feature against its historical background.¹⁷

1. The high seas as *res communis*

As a well-founded general principle of international law, the freedom of the sea or of the high seas in particular is one of the oldest. This essentially signifies open and free access/use by anybody, but no appropriation. Early international lawyers such as Hugo Grotius conceptualised and advocated equal use and non-appropriation to principally ascertain free trade, as they regarded the high seas as *res communis*¹⁸ whose origin lies in Roman law.¹⁹

This idea is grounded on the principle of maintaining maritime order based on the dual institution of wider high seas and narrower territorial seas. In order for the high seas to be open for stable use, global society has long supported their highly public character. As there has been no unified management body for the whole maritime space, this freedom is in principle a passive one that intends to guarantee no regulation or interference from others. It has also become customary international law and has been enshrined in maritime agreements such the 1958 Geneva Convention on the High Seas²⁰ and the 1982 United Nations Convention on the Law of the Sea (LOSC).^{21,22}

The peaceful use of the high seas is normally interpreted to be within the framework of the principle of general prohibition of the use of force under the United Nations Charter.²³

2. The frozen territorial disputes in Antarctica

Antarctica has been under the control and management of the Antarctic

Treaty (AT) of 1959, which has the following four major principles: (1) The guarantee of peaceful use (non-militarisation); (2) The freedom of and international cooperation for scientific research; (3) The prohibition of nuclear tests and the disposal of radioactive waste material; and (4) The frozen territorial claims and/or territorial disputes.²⁴ By the mid-twentieth century, Antarctica was at danger of becoming the target of claimant states, but it is now under a *sui generis* legal regime called the Antarctic Treaty System (ATS), which governs the stable use of the continent as well as its surrounding maritime area. It also accommodates the state parties' interests in natural resources, living or non-living, as well as environmental protection.²⁵

As territorial disputes among the claimant states have been shelved since their entry into the AT, the ATS has successfully developed its governmental function through the preservation and management of living and non-living resources and the protection of the environment. This success has been attained by both internal and external accommodation²⁶ of state interests and community interests. Although not an international organisation strictly speaking, the ATS provides good governance of Antarctica not only for the national interest of state parties, but also for the public interest of the international community in terms of science, the environment and ecosystem.²⁷

What is remarkable about the ATS is its considerable influence on the governance of outer space including the moon and other celestial bodies, and the deep seabed in terms of global interests in maintaining peace and order for the benefit of public interest.²⁸

3. The Common Heritage of Mankind (CHM)²⁹

Outer space and celestial bodies including the moon have also remained in the public domain for some time. This is due to human efforts to keep these spaces and objects from being appropriated by a handful of powerful states as a reflection of the arms race during the Cold War era and to reserve them for peaceful purposes as well as free and equal access. The international community has utilised the multilateral law-making process, including the UN, to adopt some significant instruments such as the 1963 UN General Assembly (UNGA) Resolution, titled the 'Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer

Space,³⁰ and the 1967 Outer Space Treaty.³¹

The Outer Space Treaty designates the exploration and use of outer space including the moon and other celestial bodies as 'the province of all mankind'. This opens them to the freedom of use based on the principles of non-discrimination, equality and non-appropriation.³² Thus, the notion of peaceful use of outer space,³³ among others, constitutes the basic framework for places of high public interest and the stable use of resources with a certain regulation of freedom against the historical background of the Cold War arms race.³⁴

The advancement of resource exploration and development turned the eyes of the international community to the preservation and sustainable use of natural resources and to the recognition of the 'rights of peoples and nations to permanent sovereignty'³⁵ over natural resources.³⁶ In the 1970s, the world's attention consequently focused on the environmental movement in the form of concerns and responsibilities for common resources and environmental protection. This trend is reflected in the 1972 UN Conference on the Human Environment in Stockholm,³⁷ the 1973 Washington Convention,³⁸ and others. The major reason for this trend may be that the concept of 'community interest'³⁹ gradually started to develop globally from the values of sharing and commonality in the ideas of preservation of shared natural resources, environmental protection and of the common use of public domain. On the other hand, the rise of developing countries also promoted the support for establishing a New International Economic Order (NIEO) in the 1970s for their own benefit.⁴⁰

In the same vein, the concept of 'the common heritage of mankind' (CHM) was enacted for the first time in the LOSC (Part XI, in particular) and has been enshrined in a distinctively new legal regime for the deep seabed and its resources under international law. Besides the conventional principles of non-appropriation and peaceful use that are common with other public areas and spaces, the CHM's distinct feature is that an international management regime called the International Seabed Authority⁴¹ unitarily governs the management of the place and its resources for the particular consideration of developing states' interests and needs after considering the equitable distribution of their interest.⁴² Although Part XI of the LOSC had to be practically amended through the adoption of the 1994 Part XI

Implementation Agreement⁴³ due to the strong opposition from developed states such as the United States, the idea of due regard to developing states' special needs by way of the equitable distribution of gained interests in mining activities in the deep seabed⁴⁴ materialised by the LOSC regime at the cost of the limitations of freedom of financially and technologically developed states.⁴⁵

The Moon Agreement of 1979,⁴⁶ which had been adopted in the UNGA prior to the 1982 LOSC, also stipulates the moon and other celestial bodies as CHM with the principles of non-appropriation, exploration and development on a non-discrimination and equality basis. It established an international institution and procedures for exploration and development, although the Agreement currently lacks wide support from the international community,⁴⁷ the participation of superpowers in the field of outer space development and the current feasibility of the above-mentioned international institution. In this regard, CHM prescribed in the LOSC and the 1994 Implementation Agreement is more concrete and practical than the Moon Agreement.

Thus, the special characteristic of the CHM regime is that for the anticipation and prevention of free competition among developed states on a 'first-come-first-served' basis, an international management regime such as the UN is strictly in charge of conducting the distribution of resources with due regard to the needs of developing states to benefit of humankind.

4. Global Commons⁴⁸

It was not until the World Commission on Environment and Development referred to the term global commons in the 'Brundtland Commission Report' submitted to the UN in 1987⁴⁹ when the term became recognised in the international community. The Report emphasises a paradigm shift 'from one earth to one world'⁵⁰ in the context of the environment, advocating the importance of enabling sustainable development under certain international institutions of surveillance, development, and management to ascertain common interests between states in the shared ecosystem and areas beyond national jurisdiction. The global commons mentioned in the Report generally refers to the oceans, outer space and Antarctica,⁵¹ while the common agenda for these comprises the maintenance and preservation of resources and

ecosystem as well as the need for international cooperation.⁵²

A series of related resolutions adopted in the UNGA consequently led to the declaration of global climate change as a 'common concern of mankind'.⁵³ Although it lacked the concreteness and substance of the CHM, there began to grow the sense that climate change and the ozone layer in conjunction with the global atmosphere together form legal interests protected by all the states.⁵⁴ Therefore, the idea of a common concern for mankind in the context of protecting the environment has increasingly materialised and been enacted due to its universality and the necessity of common action through agreements such as the 1985 Vienna Convention for the Protection of the Ozone Layer,⁵⁵ the 1992 UN Climate Change Convention and the 1992 UN Convention on Biological Diversity. The trend is based on the global agenda that needs a broad, common approach regardless of the traditional distinction between 'within' and 'beyond' the scope of national jurisdiction. It will generate a new value requiring a global initiative to go beyond the environmental context of the concept and phrase which remain within an agreement like the CHM.

Therefore, the concept of common property normally refers to the areas beyond national jurisdiction such as the high seas and their superjacent space that are governed by multilateral agreements such as the High Seas Convention, the LOSC and the Outer Space Treaty. The living resources in these areas can be common property (or shared resources) upon catching and taking, but are differentiated from the CHM in reference to mineral resources in the deep seabed under specific regimes or from common natural resources which are subject to a right shared by a limited number of states.⁵⁶ In fact, this concept's shortcoming involves the depletion of resources and aggravation of the ecosystem and the environment: resource management would be hindered unless an effective protection of resources was ascertained by the cooperation of all states, for example, high seas fisheries being disrupted by the conduct of a free-rider and a third party.⁵⁷

5. Summary

Often regarded as a *res communis*, the high seas are not under a unitary international management regime but principally under flag ship jurisdiction in accordance with the freedom of use and the non-appropriation principle.

With the continuous momentum of expansion in terms of governance, the ATS is a *sui generis* legal regime to promote international cooperation for scientific research and observation under the principles of peaceful use and denuclearisation after shelving the territorial disputes among state parties. The CHM is the fundamental legal concept enshrined in international instruments such as the Moon Agreement and the LOSC to govern the moon and other celestial bodies or the deep seabed and its resources, respectively, under the unitary international institution in accordance with some common basic principles such as peaceful use and non-appropriation. Outer space is not considered CHM *per se*, but is subject to the principle of peaceful use, which is open for some interpretations.

Thus, a question arises as to whether the Arctic Ocean can be also regarded as a global commons due to its similarities to the Antarctic continent.⁵⁸ This question will be addressed in the following section.

II. The Assumption of the Arctic Ocean as a Global Commons

The Arctic Ocean is the ice-covered maritime area characterised by a semi-enclosed sea largely surrounded by coastal states with a certain margin of its high seas under the application of the law of the sea, including the LOSC.⁵⁹ Therefore, the geographical and legal conditions of the Arctic and Antarctic are quite different. It is noteworthy that Alfred T. Mahan also referred to '[t]he sea a great common'⁶⁰ as early as 1890 when he wrote the book *The Influence of Sea Power upon History 1660–1783*. By mentioning the sea as 'a wide common', he intentionally characterised its most important function as 'trade routes'.⁶¹ For this reason, some writers attribute the origin of the term global commons to Mahan. However, this may be over exaggerated, as the background and legal and political context of his time are quite different from today. A more careful look is helpful here.

The term global commons has been often used recently, particularly in the United States and Japan. This follows the current trend in the United States in the context of security.⁶² However, against the background of environmental protection and globalisation, the term originally referred to the places, spaces and resources therein that are widely open for the common

interest of international society.⁶³

In the brochure 'National Security Strategy of Japan',⁶⁴ formulated by the Abe cabinet in its meeting on 17 December 2013, for example, subsection 4, 'Risks to Global Commons' begins with a phrase stating that 'In recent years, risks that can impede the utilization of and free access to *global commons, such as the sea, outer space, and cyberspace*, have been spreading and become more serious' (emphasis added).⁶⁵ In this wording, the term global commons is represented by the sea, outer space and cyberspace. Traditionally speaking, 'the sea' as a whole is rarely regarded as global commons, since the territorial sea, for example, is not normally included. What is misleading and unclear here is the following paragraph in the brochure:

'[T]he Arctic Sea is deemed to have enormous potential for developing new shipping routes and exploration of natural resources. While it is expected that states concerned work together under relevant international rules, such potential could provide new causes of friction among them.'⁶⁶

The latter phrase does not clarify what sort of 'friction' could arise and for what reason. Moreover, whether this estimation of the situation is correct and can be shared by other states needs to be assessed.

As shown in its annual documents of 2014 and 2015, the Ministry of Defense (MoD) of Japan has analysed the Arctic Ocean as the place where '[t]he strategic importance of the region is ... increasing'. It remains vigilant of some Arctic states including Russia, who are 'promoting efforts to deploy new military capabilities for the purpose of securing their interests and defending their territories'.⁶⁷ In its analysis of 2014, the MoD identified Russia's 'military superiority among other Arctic states, with deployment of dominant military capabilities' in the region, whereas the MoD recognised China 'showing intention to be actively involved in the activities'⁶⁸ therein. It is assumed, therefore, that Russia and China are of particular interest for Japan's concern with respect to the trend of security in the Arctic Ocean.⁶⁹

Considering that the Arctic Ocean is a maritime space of common interest for concerned states in the international community particularly in terms of protecting the environment and ecosystem for sustainable

development of the region, it is undeniable that it has some aspects of global commons in its original sense. However, it is open for debate whether Canada, Denmark/Greenland, Norway, Russia and the United States (the so-called Arctic Five), who are directly concerned as littoral states of the Arctic Ocean as a semi-enclosed sea, all agree that the Arctic Ocean is a global commons in the original meaning.⁷⁰ Regardless of the real intentions of these countries, recent public opinion and academic views show a steadily growing tendency that the Arctic Ocean should be considered a global commons and should be reconsidered as a globally influential place of the world's interest in terms of energy and resources.⁷¹ In light of the current situation in which the so-called 'globalisation of the Arctic' is gradually occurring, the Arctic Ocean's future will be more at risk if certain factors become incompatible or in strict opposition. For example, the Arctic Five would like to confine the Arctic Ocean to their own internal matters, whereas the trend of the international community prefers a more globalised view and response.

III. Good Governance in the Arctic

Global climate change has caused recognizable environmental change in the Arctic. Thus, the littoral states in and around the Arctic Ocean, including the Arctic Five, are under the direct and most significant influence of shifts in regional and local stability and sustainable development. Under these circumstances, a question arises today regarding the type of governance that is necessary and preferable for the Arctic.⁷²

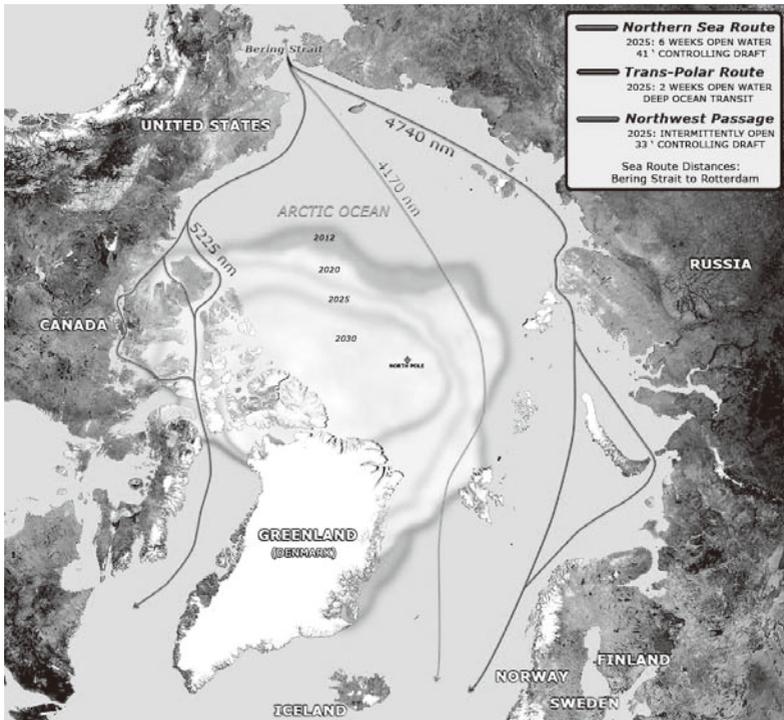
Regarding Arctic governance, the objectives, establishment and role of the Arctic Council (AC)⁷³ are quite different from those of the Antarctic Treaty System (ATS),⁷⁴ which is in charge of Antarctic governance. The AC, which started to function in 1996 as 'the leading intergovernmental forum promoting cooperation, coordination and interaction among the Arctic states, Arctic Indigenous communities and other Arctic inhabitants on common Arctic issues'⁷⁵ such as sustainable development and environmental protection in the Arctic, is not the only mechanism in charge of good governance of the Arctic. The legal framework governing the Arctic Ocean consists of a multi-layered network of the law of the sea, at the centre of which is the LOSC, relevant norms adopted in international organisations such as the

International Maritime Organisation (IMO) and the laws and regulations of coastal states in the Arctic Ocean.⁷⁶

The coordination of internal and external interests of coastal states in the Arctic Ocean remains among the most important challenges. However, more states have become stakeholders for the following reasons: the geographical adjacency to the region; use⁷⁷ of the Northern Sea Route (NSR) and the North West Passage (NWP);⁷⁸ and the economic and environmental factors involved [Map 2]. This is why the international community increasingly expects good governance based on a stable legal order. However, at issue is that the direction of governance has not necessarily been

[Map 2]

Source: 'The United States Navy Arctic Roadmap 2014-2030', 2014, p. 14.



Anticipated future Arctic transit routes superimposed over Navy consensus assessment of sea ice extent minima. (United States Navy graphic)

clarified: among the Arctic Five of the AC and the other Arctic states, there has been no agreement whether to focus on international cooperation or state sovereignty in the face of friction.⁷⁹ This point is especially key in the field of security and exemplifies the diverse and complicated nature of security in the Arctic Ocean.⁸⁰

In discussing security in the Arctic, one should note that multiple factors are of concern in the international community in this century. Besides conventional security issues such as military confrontation and arms races are concerns on other various notions of security and their responses, such as environmental factors resulting from climate change and maritime pollution, energy issues caused by the development of natural resources and environmental and human security factors related to human existence in the region.⁸¹ Therefore, it is suggested that the 'US Navy Arctic Roadmap' of 2009,⁸² for example, 'conveys a strong commitment to cooperation with foreign militaries on non-military matters, such as search and rescue, maritime domain awareness, and humanitarian assistance and disaster relief (HA/DR)'.⁸³ Moreover, even within the AC exist the divergent motivations with respect to security. The Arctic Five are likely to first consider their own state sovereignty and national security, while the other three Arctic states aim principally at security in a wider sense and for international cooperation.⁸⁴ Even the Arctic Eight, the original signatories of the AC, do not necessarily share a common basis of security, as they do not form a single international institution for a political, economic or military purpose.⁸⁵ Accordingly, the Arctic region will eventually need both a more comprehensive perspective of security suitable for the regional circumstances and a framework and/or mechanism to implement the perspective.

The issue of Arctic security currently needs to consider not only traditional security, which is concerned with the survival of sovereign states, but also global security, which is related to global interests, and regional security unique to the Arctic maritime area involving all concerned states. Traditional security will possibly continue, being centred on the conventional response in line with the reality of the US-Russia confrontation of nuclear states that persists in the post-Cold War period.⁸⁶ Global security has increasingly become an urgent challenge requiring more opportunities for dialogue and cooperation, as such issues as transnational environmental

degradation and search and rescue (SAR) operations in the Arctic Ocean will need global cooperation beyond the wall of state sovereignty and will have varying influence on every country directly or indirectly. In fact, it is the wider global sense of security that is currently an essential but often ignored concept to considering the Arctic Ocean as a global commons.⁸⁷

Thus, it can be said that good governance of the Arctic will require transnational cooperation towards the preparation for and implementation of the mechanism encompassing both the national security of each concerned state as well as global and regional security.

IV. Towards the Concretisation of Good Governance in the Arctic

The Arctic Five are reluctant to establish any international legal framework (or the internationalisation of the Arctic) other than the law of the sea, including LOSC, as they so declared at Ilulissat in 2008.⁸⁸ In addition to the AC and its recommendations adopted by consensus, the international legal norms governing the Arctic include the laws and regulations of each coastal state in the Arctic region, the so-called soft law adopted in some international organisations and bodies such as the IMO and the International Association of Classification Societies (IACS). For example, some guidelines concerning the navigation adopted by the IMO⁸⁹ and IACS,⁹⁰ or the methods of consultation and accommodation for harmonising domestic rules are relevant for operating the Arctic legal norms.

Moreover, there is a further need for some normalising practice in addition to the Arctic Agreement on Search and Rescue of 2011 and the Arctic Agreement on Cooperation on Maritime Oil Pollution Preparedness and Response of 2013 adopted in the AC's auspices. It is noteworthy that both the Maritime Safety Committee (MSC) and the Maritime Environment Protection Committee (MEPC) of the IMO adopted the International Code for Ships Operating in Polar Waters (Polar Code) in November 2014 and May 2015, respectively. At the same time, the MSC and MEPC amended the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL), respectively, so that the Polar Code will become

mandatory for ships operating in polar waters.⁹¹ These processes illustrate the development of the de facto Arctic legal network to implement the regulations and rules for various purposes for the benefit of Arctic governance.⁹² For good governance of the Arctic region as a whole, the AC will be expected to make further efforts at reconciling environmental protection and sustainable development in the Arctic and to ensure the implementation of the relevant norm network, although the AC is not obliged to handle military and security issues under the Ottawa Declaration.⁹³

However, the Arctic Ocean cannot totally exclude challenges related with security matters in terms of Arctic governance. In fact, each Arctic state has a practical approach in terms of security, as the state practice of joint military operations between some friendly states such as the United States, Canada and Denmark has been gradually established. Because there are various attitudes among the Arctic states towards the involvement of the North Atlantic Treaty Organisation (NATO),⁹⁴ Canada, for example, would keep a certain distance from NATO involvement. Now that Russia's domineering existence and China's growing activism in the Arctic Ocean are clear, the concept of security has diversified and become multifaceted, as evident in human and environmental security. This is another reason why the 2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (the Arctic SAR Agreement) was concluded under the auspices of the AC, largely for the benefit of all Arctic coastal states.⁹⁵

Due to the natural environment and geographical features unique to the Arctic region, the Arctic states have accumulated experience in which the coastal states' navy or coast guard cooperate and work together through drills, notifications and information exchanges to effectively respond to a natural disaster or distress. Additionally, practical mechanisms (or multilateral agreements) related to security matters such as SAR and emergency response to maritime oil pollution have been developing under the AC's auspices, as discussed above. It can thus be said that the notion of security in the Arctic Ocean is not merely in the narrow sense related to the military, but also in a broader sense. On the contrary, for good governance of the Arctic Ocean as a global commons, coordination among the concerned states using the broader concept of security will more easily lead to common interests in the region.

V. The Circumstances of the Coastal States and other Concerned States

1. Some Primary Concerned States in the Arctic Region

The United States is the only state in the Arctic Five that has not yet acceded to the LOSC.⁹⁶ The United States has its own interests in the Arctic mainly through the geographical location of Alaska,⁹⁷ but its national strategy in the Arctic was less prioritised than in other Arctic states. Accordingly, it was not until the Obama Administration that the United States better clarified its foreign policy on the Arctic region, 'National Strategy for the Arctic Region', in 2013 and showed some guidelines leading to the concrete measures mentioned below to ascertain its national security interests as well as the freedom of navigation.⁹⁸

As coastal states, Canada and Russia have strengthened regulations concerning their coasts,⁹⁹ but interestingly, they have contrasting policies on environmental protection and economic development.¹⁰⁰ Canada treats the maritime areas along the NWP as its internal waters, which are subject to its stringent regulation under its coastal jurisdiction regarding environmental protection. Thus, the Canadian position is that protecting its own 'Arctic sovereignty' is its primary national interest, while it also seeks to ensure traditional and non-traditional security in parallel.¹⁰¹

With the longest coastline on the Arctic Ocean among the Arctic Five, Russia has been active in developing and using the NSR, so that Russian control over its coast will lead directly to its national interests through its unique management style.¹⁰² On the other hand, Russia has shown a 'more military-focused'¹⁰³ security position in its 2013 official development strategy than in the 2008 document 'Foundations of Russian Federation Policy in the Arctic until 2020 and Beyond.'¹⁰⁴

As non-Arctic states, China and South Korea were given the status of observer by the AC in May 2013 along with other Asian countries such as Japan, India and Singapore.¹⁰⁵ They have been active in pursuing their own Arctic policy through their recent proactive commitments to the NSR. Japan has recently started devoting itself to materialising its Arctic plan by appointing an ambassador in charge of Arctic matters¹⁰⁶ and by establishing some working groups on the matter in a cross-governmental format.¹⁰⁷

However, Japan's Arctic policy, which was publicised on 16 October 2015,¹⁰⁸ will need to be more concretised specific to Japan through contributions in other fields than its favourite and well-known area of scientific observation and environmental protection technology. As an observer state in the AC, Japan will immediately need to establish its Arctic policy to clarify its contribution to improve the AC's governance.¹⁰⁹ Japan is at a crossroads to decide whether it should continuously promote its scientific and academic contributions in terms of its national policy, or if it should expand the area of proactive contribution (and if so, in what terms?).¹¹⁰

Regarding economic development in the Arctic, the Japanese economy has shown considerable interest in offshore drilling and establishing a pipeline in and around the Arctic Ocean with a leading investment by the Japan Oil, Gas and Metals National Corporation (JOGMEC).¹¹¹ However, the possible use of the NSR as an alternative route to the conventional southern one between Japan and Europe will take some time to become stable.¹¹² The currently low oil price and persistently low economic incentive in shipping, navigation and insurance companies will be major factors hindering the development of the NSR for Japan against the background of unpredictable and changeable climate impact on the Arctic Ocean.

The direction of Japan's Arctic policy considered here is also dependent on its relations with the AC¹¹³ and other international organisations/organs, Arctic states such as the United States and non-Arctic states such as China.¹¹⁴ Therefore, Japan should be prudent enough to behave itself so it will not be regarded as an unfair player with a unique but unwanted policy. Regarding security matters in the Arctic, Japan's delicate nature within the AC will naturally require it to hold and pursue its policy with a perspective compatible with the AC and various conditions of the Arctic Ocean. Therefore, bilateral relations between Japan and the United States represented by the alliance will need to be adjusted to the multilateral conditions of the realities of the Arctic Ocean as well as the AC because the latter will decide the necessity and appropriateness of the former.

2. The Arctic Policies of the United States and China

The following sections present an overview of (1) the recent situation in the United States, which has increasingly materialised its national strategy

on the Arctic with a view to better performing the chairmanship at the AC (2015-2017), and (2) the case of China, which is actively engaged in Arctic development. The aim is to examine American Arctic policy and China's position to adequately understand the latter in light of the Japan-US alliance and thus properly comprehend the security environment of the Arctic Ocean. The principal reason why only these two countries' policies are discussed here is that their policies and state practices are the major factors influencing Japan's Arctic policy in the context of the relationship between the Arctic Ocean and the concept of the global commons.

(1) The American Position¹¹⁵

The Obama Administration presented the 'Arctic Region Policy' (NSPD 66/HSPD 25)¹¹⁶ issued on 9 January 2009 under the former Bush Administration and publicised its 'National Strategy for the Arctic Region' in May 2013.¹¹⁷ This stated that the United States would prioritise Arctic matters and proceed to responding internationally by taking domestically uniformed measures. In order to respond to a new Arctic environment due to climate change, the 2013 National Strategy for the Arctic Region, which concretised the 'National Security Strategy' of May 2010,¹¹⁸ contains the following three major areas of effort: (1) To advance American security interests; (2) To pursue responsible stewardship of the Arctic region; and (3) To strengthen international cooperation.¹¹⁹

The 2010 National Security Strategy appears too general and superficial to be concrete, but it simply demonstrates that while facing traditional demands of its further proactive attitude towards the Arctic, the United States considers national interests and international cooperation.¹²⁰ This Strategy is noteworthy for the following two points: first, it stresses that retaining access to global commons is militarily important;¹²¹ and second, in the name of safeguarding global commons, the 'international cooperation' mentioned above is emphasised in the separate item called '[T]he Interest in the Arctic Ocean' from maximising use of the shared domains of the ocean, air and space (explained to 'exist beyond exclusive national jurisdiction').¹²² Regarding the maritime area of the American Arctic, the 'US Coast Guard Arctic Strategy'¹²³ issued in May 2013 stresses that body's responsibility for 'ensuring safe, secure, and environmentally responsible maritime activity

in U.S. Arctic waters'.¹²⁴ This is based on the basis of the following three strategic objectives: improving awareness, modernising governance, and broadening partnerships.¹²⁵

President Obama states in the beginning of the 2013 National Strategy for the Arctic Region that the United States seeks an Arctic 'that is stable and free of conflict'.¹²⁶ The 'Arctic Strategy'¹²⁷ publicised by the Department of Defense (Pentagon) in November 2013 admits that to ensure national security in light of the current Arctic situation, it is impossible to help for itself, but is necessary to work together with allied states and partner states in accordance with international law.¹²⁸ This will proceed to strike a balance between human security and environmental security. In other words, the main naval task in this region will possibly be in the field of non-traditional security matters, as has been suggested in the 'U.S. Arctic Road Map' of 2009.¹²⁹ In addition, the Pentagon's Arctic Strategy contains content that responds jointly in a unified manner between Alaska and the Federal Government.¹³⁰

Moreover, the Pentagon's Arctic Strategy advocates preparation for a regime to respond to various challenges by promoting the partnership and cooperation with allied states. It stresses international cooperation based on confidence-building through transparency and information-sharing, considering uncertainties such as future climate change and economic situations, the national budget and public opinion. The attitude in the Pentagon's Arctic Strategy emphasising efforts towards international cooperation with a somehow low-key tone derives from regional characteristics of the Arctic which 'reflect the relatively low level of military threat'.¹³¹ The Pentagon's Arctic Strategy also reiterates that the Ilulissat Declaration of 2008 affirmed 'no need to develop a new comprehensive international legal regime to govern' the Arctic Ocean,¹³² as the legal framework provided by the LOSC is sufficient for managing of this Ocean.¹³³ The Pentagon's Arctic Strategy accepts the AC's ability to cope with the issue of 'soft security'¹³⁴ such as human and environmental security in addition to military security. Therefore, one can easily read from these official documents that the way of fully understanding the Arctic security situation merely from the viewpoint of military and the arms race runs counter to the current American Arctic Strategy and is thus a position the United States seeks to avoid.

In addition, the White House clarified a more concrete direction and process of its Arctic strategy in the 'Implementation Plan for National Strategy for Arctic Region' issued in January 2014. Furthermore, the United States has publicised through the National Oceanic and Atmospheric Administration (NOAA) its positive attitude regarding the Arctic environment in 'NOAA's Arctic Action Plan: Supporting the National Strategy for the Arctic Region' in 2014.

The common important points in these documents are: (1) National security; (2) Responsible stewardship; and (3) International cooperation. Among these, the last point attracts special attention. This is because its implication in the documents mentioned above appears to be United States' emphasis on the partnership and approach on Arctic matters through international cooperation with other concerned states under several constraints (e.g. national budget, America's relationship with neighbouring states, priorities given in relation with other national policy) that practically weaken its ability and intention to pursue its own unilateral policy.

Furthermore, the 'United State Navy Arctic Roadmap for 2014 to 2030'¹³⁵ issued in February 2014 is remarkable in that mentioning global commons, the US Navy specifies its mid- and long-term vision on Arctic policy from the viewpoint of its role and task with special reference to 'the need to develop strong cooperative partnerships with interagency and international Arctic Region stakeholders'.¹³⁶ Three points are worth mentioning here. First, the Arctic Roadmap only singled out Canada as a security partner in North America.¹³⁷ Second, the feasibility of an international route caused by climate change will depend on 'a spirit of trust and cooperation'¹³⁸ with the expectation of the Arctic region to be 'a low threat security environment'.¹³⁹ Third, the Arctic Roadmap stresses the position that the US Navy preserves '[a]ccess to the global commons and freedom of the seas' as 'a national priority'¹⁴⁰ without explaining the term global commons. In this light, the following summarises the basic American position regarding the freedom of navigation:

'United States' policy since 1983 provides that the United States will exercise and assert its navigation and overflight rights and freedoms on a world basis in a manner that is consistent with customary

international law. The Navy will guarantee freedom of navigation in Arctic Ocean waters and help ensure the free flow of commerce on the global commons.’¹⁴¹

From the analysis mentioned above, one may assume that the term global commons actually means the ocean in general and in the context of security. In the report of the US Congressional Research Service, titled ‘Changes in the Arctic: Background and Issues for Congress’ dated 4 August 2014, the proposal ‘to establish and maintain a military presence in the high north’ is supported on the recognition that the Arctic is ‘a potential emerging security issue’.¹⁴²

Intriguingly, however, the term global commons disappeared from the ‘National Security Strategy’¹⁴³ issued in February 2015. Instead, the ‘Shared Spaces’ comprise cyberspace, space, air and the oceans, to which the United States ensures its own access.¹⁴⁴ The Arctic Ocean is described in the 2015 National Security Strategy as one place where recent ‘unprecedented international cooperation’¹⁴⁵ will be promoted.

The United States just started serving as Chair in the 2015 session of the AC¹⁴⁶ and is expected to take leadership there as a leading Arctic state to govern the Arctic Ocean as a zone of international cooperation and peace. As a whole, it can be said that the Americans’ current interest in the Arctic inevitably lies in its promotion of international cooperation due to Arctic policy without the strong financial support from the apathetic US Congress.

(2) The Chinese Position

Some commentators find that China, often referred to as a rising power or even a returning power,¹⁴⁷ has been actively pursuing its Arctic policy.¹⁴⁸ This is seen in its strong interest in developing the maritime routes and in exploring energy resources in the Arctic. Many writers believe the steps taken by China will be a major factor influencing the security environment in the Arctic Ocean.¹⁴⁹ There are actually some quasi-official views on China’s intention and Arctic policy, but the Chinese government has not yet publicised its official policy on the Arctic.¹⁵⁰ As a number of views attribute this to China’s delayed process of finalising its policy, this may be a policy of intentional ambiguity for some reason. China’s attitude towards the Arctic

does not seem to resemble the one devoting itself to scientific research in Antarctica early on, as discussed below. Will China's active behaviour become a threat to Arctic security?

The present author will not dwell on this issue here, as his negative views on this point have been expressed elsewhere.¹⁵¹ It may suffice to mention some relevant points for why we should not unnecessarily exaggerate China's proactive posture in the Arctic, but rather view this as opportunities for the Arctic.¹⁵² First, against the background of China's recent rapid economic growth, one should pay more attention to China's steady and pragmatic attitudes and achievements in the fields of scientific observation and cooperation, the enhancement of bilateral partnership with Arctic regional states through economic development and China's participation in Arctic governance in the legal orders such as the AC and LOSC. Some believe these actions may be because China has always regarded the Arctic Ocean as a global commons, though it would not express this officially. Second, China seeks to enhance cooperation of scientific observation and economic partnership with Canada, Norway and Iceland simply because these countries have demands mainly for China's economic ability and technology. This may be the only natural and inevitable consequence if one considers the current situation of China, who is, in fact, the largest economy in the world on purchasing power parity (PPP) evaluation.¹⁵³ Third, it is reasonable to think that embracing China in the AC will be more beneficial for international cooperation to avoid excessive security response against China and not to amplify any possible unstable factors in and around the Arctic. Fourth, China may be playing a specific role in appealing for good governance of the Arctic Ocean in that its support of the idea of reserving the Arctic as a global commons can be interpreted as speaking for developing countries. It does so by checking the creeping jurisdiction and claims by some of the Arctic Five for extending their continental shelves, thereby preventing the erosion of the CHM at the centre of the Arctic Ocean.¹⁵⁴

It would therefore be pointless to confuse China's activities in the Arctic with the situation of the South China Sea, where China has been assertively reclaiming its island territories, as both situations differ significantly.¹⁵⁵ Thus far, there has been no evidence that China's activities and behaviour in the Arctic Ocean are in contradiction with international law. It would be unfair

to magnify only the views leading to a threat to security and military tension in the Arctic region. Moreover, the concerned states should accurately and without prejudice examine the security situation in the Arctic in conjunction with the current American Arctic strategy and policy, as briefly described above.

VI. Seeking Japan's Arctic Policy

It is pointed out that Japan started conducting scientific research and observation in the Arctic region since the early 1950s.¹⁵⁶ It has not been long since the growing possibility of developing the NSR due to global climate change started attracting people's attention in Japan. Its national interest in the future plan lags behind that of other countries.

In fact, the 'Basic Plan on Ocean Policy'¹⁵⁷ adopted in April 2013 identifies various challenges in the Arctic Ocean caused by climate change such as an impact 'on the global climate system and potential for use of Arctic Sea Route'.¹⁵⁸ Therefore, the Plan states the following:

Given the changes in the Arctic Ocean caused by climate change, Japan has been facing diverse issues to study and address, such as securing maritime transport, securing the safety navigation, promotion of research and survey activities, conservation of environment, and promotion of international coordination and cooperation. Comprehensive and strategic measures should therefore be promoted to tackle these issues.¹⁵⁹

It was not until the 'Relevant Ministries and Agencies Liaison Conference on the Arctic Ocean Issues'¹⁶⁰ was established on 30 July 2013, when the arrangement of national policy concerning the Arctic region began. It has been reported that by the time between the autumn of 2013 and 2014, the government started strongly considering the construction of an Arctic Observation boat (or icebreaker).¹⁶¹ The first meeting of the 'Public-Private Partnership Conference concerning the Arctic Maritime Route' was held under the initiative of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) on 30 May 2014 to share information and exchange

views.¹⁶² This Partnership Conference was a nation-wide forum of importance whose secretariat is in the section of maritime policy in the general policy bureau of the MLIT. Recently, more workshops and seminars concerning the Arctic and its maritime route are held in Japan to promote the partnership and exchange of the public and private sectors.

This tendency illustrates that Japan's Arctic policy, though recently announced, will continue to be mainly pursued by projects on conventional scientific observation and survey and on future economic activities.¹⁶³ However, the following passage in 'Japan's Arctic Policy' of 2015 is noteworthy.

There is a risk that factors such as opening of new shipping route and the development of natural resources may become a cause for new friction among states. It is important to prevent *moves to strengthen military presence in the region* from leading to tension and confrontations. At the same time, while recognizing that these developments may become factors that change the international security environment, not only in the Arctic but *for the surrounding states including Japan*, it is necessary to pay close attention to moves by the states concerned and also to promote cooperation with the Arctic and other states.¹⁶⁴

What phrases such as 'moves to strengthen military presence in the region' and 'for the surrounding states including Japan' imply is not clear at this moment. However, one may assume that the background to this policy is connected with the recent legislative movement under the current administration. These phrases may be associated with the following two major factors that affect the current government's realistic and proactive attitude towards Japan's security: first, the Japan-US alliance; and, second, China's assertive maritime activities in East and Southeast Asia. Nevertheless, there seems to be no apparent relationship between these two factors that may be discussed here. As was discussed above,¹⁶⁵ the present author is of the opinion that, in considering Japan's contribution in the field of Arctic security, due regard must be given to various relevant factors such as Japan's capacity and potential under the pacifist Constitution and Japan's bilateral and multilateral relationships with Arctic and other non-Arctic states.

In light of the current Arctic conditions, it is worthwhile to theoretically examine the relevance or irrelevance of the Japan-US alliance as Japan seeks to elaborate its Arctic policy in the near future. There may be a future case in which these two countries will have to face how to apply bilateral relations to Arctic matters with which multilateral and common interests are related. In this context, a fundamentally important question may arise as to how compatible the newly enacted security related legislations of 2015 are with exercising the collective right of self-defence required under the Japan-US alliance and with exercising the right of self-defence permissible under the Japanese Constitution. This question is, however, beyond the scope of this article, but must be answered on another occasion.

It would be highly doubtful that the Arctic states and concerned states which have made every effort to avoid a hard core issue of military security would welcome considering a military and national defence-related issue such as exercising the collective right of self-defence arising in the context of the Japan-US alliance, regardless of its theoretical meaning. Therefore, considering the question whether an Arctic matter in the context of a global interest can be necessarily connected to the bilateral relations of the Japan-US alliance would not contradict the current situation only if the consideration were made in the context of security in a non-traditional form.

For the last few years, the enhancement and expansion of the Japan-US alliance has been achieved through several different policy- and law-making processes. In the first stage, one notices some landmark events in the Abe Administration's initiative enabling the government to loosen the interpretation of the long-standing prohibition of exercising the collective right of self-defence under the pacifist Constitution. This is so it can exercise it to proactively support Japan's close friend states such as the United States and to send Japan's Self Defense Force (SDF) abroad to make a more proactive contribution even in time of war. These events are based on the decision of the 'National Security Strategy of Japan'¹⁶⁶ made by the government on 17 December 2013, the receipt of the report titled 'Report of the Advisory Panel on Reconstruction of the Legal Basis for Security'¹⁶⁷ submitted on 15 May 2014 and the Cabinet's decision 'on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People'¹⁶⁸ of 1 July 2014.

The movement to deepen the Japan-US alliance did not stop here, but entered the second stage to materialise Japan's commitment to the alliance in many ways. Among others, a series of Japan-US Defence Guidelines (i.e. 1978, 1997 and 2015)¹⁶⁹ are non-legal instruments, but political ones of a soft-law nature with extraordinarily huge impact in practice, particularly on Japan's security and defence beyond the scope of the Japanese Constitution. After the 'Interim Report on the Revision of the Guidelines for Japan-US Defense Cooperation',¹⁷⁰ revealed on 8 October 2014, the government removed the geographical restraint over the SDF's activities. It also referred to the expansion of the bilateral cooperation even to 'space and cyberspace'.¹⁷¹ The 'Guidelines for Japan-US Defence Cooperation'¹⁷² of 27 April 2015 did not, in the context of the significance of the Arctic Ocean with respect to Japan's security, provide new or large surprises, only because of the reconfirmation of the 2014 'Interim Report'. At least for the argument of this paper, it is fortunate and reasonable that similar to the Interim Report, the new Guidelines do not refer to the Arctic Ocean at all, but only to 'space and cyberspace'.¹⁷³

However, the third stage of this process has resulted in the current decision to solidify the bilateral alliance by enacting the security-related legislations of 19 September 2015.¹⁷⁴ What had long been deemed totally impossible by the authentic interpretation of the government has just become possible from the change in its interpretation of the anti-war provision, Article 9, of the Pacifist Constitution. Accordingly, the non-existence of the words 'Arctic Ocean' may not guarantee its permanent exclusion from the forcefully expanded scope of application and operation of the Japan-US alliance's cooperation in the area of maritime security. This is because the abrupt change of constitutional interpretation may, from time to time, occur by a whim of the government in place under enormous pressure and the influence of the *de facto* supra-legal existence called the new Japan-US Defense Guidelines. These seem to have already altered the geographical scope of Japan and 'the Far East' explicitly prescribed under the 1960 Japan-US Security Treaty.¹⁷⁵ Japanese nationals as a sovereign nation must be continuously vigilant on this issue.

In summary, it would not be necessary to extensively apply the narrow concept of security which may encompass the case of the collective right of

self-defence based on the bilateral Japan-US alliance to the Arctic Ocean, or to view security matters in the Arctic through the narrow-sighted glasses of the bilateral alliance. To the contrary, it will be more practical for Japan to consider first the permissible scope of international cooperation under the Constitution as international cooperation on non-traditional security, or in response to the relevant maritime law and multilateral agreements mentioned above, including the AC. Moreover, one should carefully examine whether or not the consideration mentioned above will be, in the context of Arctic security, compatible with what the United States expects Japan to develop as the ideal bilateral alliance.

Conclusions

This paper largely considered the following three issues: (1) The concept of global commons under international law; (2) Whether or not the Arctic Ocean can be a global commons; and (3) What Japan should do with its Arctic policy with special reference to security and Japan-US bilateral relations.

Regarding the first issue, it can be said that the concept of global commons under international law is still under development and is not yet fixed in terms of scope, definition and potential. Global commons was only used temporarily to refer to some places of international concern within the context of environmental protection and sustainable development mainly for the sake of international cooperation for management. Therefore, this kind of vague notion should not be exaggerated or abused to camouflage or misguide the reality of security, among other things. This would do more harm than good. The notion of global commons does not in itself solve any security concern.

With respect to the second issue, the Arctic Ocean should not be considered a global commons due to its original background of history, geography and legal conditions. The dominant views in the literature still seem to be more conservative and pacific in the sense that the concept of global commons has not emerged to cover and articulate the common spaces and areas in the world in the context of military and security but to refer to them in the context of public interests such as environmental protection.

Moreover, introducing this kind of catchy but controversial term in the fields of international law and international relations would only lead to misunderstanding the real situation in the Arctic region. As the Arctic Ocean has no common features of global commons, the notion of global commons does not apply to it. In addition, the worst consequence of introducing this concept is the inability for it and its analogy to solve the real problems arising in the Arctic, where in the post-Cold War era, regional peace and security have been successfully maintained.

Considering the third issue, Japan should accelerate its work to concretise its contribution to Arctic policy without too much emphasis on security aspects, as Japan's bilateral relations with the United States in particular should not unnecessarily affect the multilateral and bilateral relations with the Arctic and non-Arctic countries. Because the Arctic Ocean has recently attracted the world's attention to security in an unnecessarily stirring manner, it is more practical and reasonable to focus on a wider concept of security with special reference to human and environmental security. Besides security issues, Japan's role in the AC should be wide enough to encompass its internal and external tasks and responsibility as an observer state. In addition to its traditional scientific contribution in the Arctic region, Japan will have a capacity to play a catalyst role in interrelating the Arctic and non-Arctic states through monitoring the AC's operation as well as the nexus between the AC and the outside community.

It is possible to find various issues for discussion under international law that will not be comprehensible only from the viewpoint of environmental protection and sustainable development when one re-examines the Arctic Ocean in the context of global commons from a wider perspective of security (including the function of the Japan-US alliance). In addition, it is this wider concept of non-traditional security that is worth considering carefully in the Arctic case with a view to ascertaining good governance in the region in the post-Cold War era and under the impact of climate change. This philosophy will also lead Japan to make the most of the fundamental spirit enshrined in the Constitution for the benefit of its foreign policy agenda, including Arctic policy. As a non-Arctic state, Japan should in advance scrutinise and classify what it should and should not do in the Arctic. The wider concept of security may be something that Japan must consider as it

formulates its Arctic policy.

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- ¹ For the details of the debate, see the following: Taisaku Ikeshima, *The Antarctic Treaty Regime and International Law: Accommodation of Interests in the Territory, Resources, and Environment*, Tokyo, Keio University Press, 2000, pp. 309-322 (in Japanese); John Vogler, *The Global Commons: Environmental and Technological Governance*, Second Edition, Chichester, John Wiley & Sons, 2000; Taisaku Ikeshima, 'The Stable Use of Global Commons and the Role of the United Nations', *Kokuren Kenkyuu (The United Nations Studies): Global Commons and the United Nations*, No. 15, 2014, pp. 21-56 (in Japanese).
- ² See, for example, the following: Abraham M. Denmark, 'Managing the Global Commons', 33 *The Washington Quarterly* 165, July 2010; Tara Murphy, 'Security Challenges in the 21st Century Global Commons', 5 *Yale J Int'l Affairs* (2010).
- ³ See Patricia Birnie, Alan Boyle & Catherine Redgwell, *International Law & the Environment*, Third Edition, Oxford, Oxford University Press, 2009, pp. 190-198.
- ⁴ See Junichi Takeda, 'The Clash between the Rise of China and Global Commons', *Gaiko (Diplomacy)*, Vo. 6, 2011, pp. 66-77 (in Japanese); Masashi Nishihara, 'How to Think about the Expansion of Security Fields', *Gaiko (Diplomacy)*, Vol. 11, 2012, pp. 115-119 (in Japanese); Masahiro Akiyama, 'Ocean: Pursue Multilateral Diplomacy against China's Expansion', *id.*, pp. 120-125 (in Japanese); Kazuto Suzuki, 'Outer Space Policy as Security Strategy', *id.*, pp. 126-131 (in Japanese); Yasushi Misawa, 'Cyberspace: Soft Regulation and the Role of Government', *id.*, pp. 132-137 (in Japanese); Ryoichi Hisasue, 'Money-Laundering: Its Tense Relationship with Global Finance', *id.*, pp. 138-143 (in Japanese).
- ⁵ Treaty of Mutual Cooperation and Security between Japan and the United States of America, signed on 19 January 1960, entered into effect on 23 June 1960.
- ⁶ See *Rising Challenges to the Japan-US Alliance in the Global Commons*, Japan Institute of International Affairs (JIIA), March 2014, at <http://www2.jiia.or.jp/pdf/resarch/H25_Global_Commons/H25_Global_Commons.php> (accessed 20 September 2015); *Rising Challenges to the Japan-US Alliance in the Global Commons (II)*, Japan Institute of International Affairs (JIIA), March 2015, at <http://www2.jiia.or.jp/pdf/resarch/H26_Global_Commons/H26_Global_Commons.php> (accessed 20 September 2015).
- ⁷ This paper partially contains the research results of the author's following works: Taisaku Ikeshima, 'Arctic Governance: Possibilities and Limitations of Existing Frameworks', in the 2012 JIIA Research Project Outcome Report 'Arctic Governance and Japan's Diplomatic Strategy', 2013, pp. 63-78 (in Japanese), at <http://www2.jiia.or.jp/pdf/resarch/H24_Arctic/06-ikeshima.pdf> (accessed 20 September 2015); Taisaku Ikeshima, 'Security Suitable for the Arctic Ocean as the Global Commons', *Rising Challenges to the Japan-US Alliance in the Global Commons*, Japan Institute of International Affairs (JIIA), pp. 77-89 (in Japanese), March 2014 <<http://www2.jiia>

or.jp/pdf/resarch/H25_Global_Commons/08-ikeshima.pdf> (accessed 20 September 2015); Taisaku Ikeshima, 'The Stable Use of Global Commons and the Role of the United Nations', *Kokuren Kenkyuu (The United Nations Studies): Global Commons and the United Nations*, No. 15, 2014, pp. 21-56 (in Japanese); Taisaku Ikeshima, 'The Arctic Ocean as a Global Commons: US Policy and Japan's Response', *Rising Challenges to the Japan-US Alliance in the Global Commons (II)*, Japan Institute of International Affairs (JIJA), pp. 73-86 (in Japanese), March 2015 <http://www2.jiia.or.jp/pdf/resarch/H26_Global_Commons/08-ikeshima.pdf> (accessed 20 September 2015).

- ⁸ There are many different definitions given to the Arctic Ocean in different fields of science. See, among others, the following materials and websites: Arctic Council (AC), Protection of the Arctic Marine Environment (PAME), *The Arctic Ocean Review, Phase I Report* (2009-2011), Second Edition, 2013, pp. 3-4 ('1.3 Scope and Approach'); National Oceanic and Atmospheric Administration, 'Frequently Asked Questions about the Arctic', at <<http://www.arctic.noaa.gov/faq.html>> (accessed 15 November 2015); Woods Hole Oceanographic Institution, 'Arctic: Location and Geography', at <<http://polardiscovery.whoi.edu/arctic/geography.html>> (accessed 15 November 2015).
- ⁹ See Thomas Bräuninger & Thomas König, 'Making Rules for Governing Global Commons', 44/5 *J of Conflict Resolution* 604-629 (2000); Daniel W. Drezner, 'The Tragedy of the Global Institutional Commons', at <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199970087.001.0001/acprof-9780199970087-chapter-13>> (accessed 20 September 2015); Scott Jasper, *Conflict and Cooperation in the Global Commons: A Comprehensive Approach for International Security*, Washington, D. C., Georgetown University Press, 2012.
- ¹⁰ See for example the following: Klaus Dodds, 'Introduction – The Governance of the Global Commons: Much Unfinished Business?', *Global Policy* (2012) 3:1, 58-60; John Vogler, 'Global Commons Revisited', *Global Policy* (2012) 3:1, 61-71; J. Ashley Roach, 'The Central Arctic Ocean: Another Global Commons', *Global Policy* (2012) 3:1, 82-84.
- ¹¹ See 'Chapter 14 Common Spaces and Co-operation in the Use of Natural Resources', James Crawford, *Brownlie's Principles of Public International Law*, 8th Edition, Oxford, Oxford University Press, 2012, p. 333. However, Ian Brownlie uses 'common amenities' in 'Chapter 12 Common Amenities and Co-Operation in the Use of Resources', Ian Brownlie, *Principles of Public International Law*, Seventh Edition, Oxford, Oxford University Press, 2008, p. 249.
- ¹² See *Regulatory and Governance Gaps in the International Regime for the Conservation and Sustainable Use of Marine Biodiversity in Areas beyond National Jurisdiction*, Marine Series No.1, IUCN Environmental Policy and Law Papers Online, 2008, at <https://cmsdata.iucn.org/downloads/iucn_marine_paper_1_2.pdf> (accessed 20 September 2015); *The International Legal Regime of Areas beyond National Jurisdiction: Current and Future Developments*, edited by Erik J. Molenaar & Alex G. Oude Elferink, Leiden/

Boston, Brill/Nijhoff, 2010.

¹³ See Patrick Daillier & Alain Pellet, *Droit International Public*, 7e édition, 2002, Paris, L. G. D. J., pp. 804-807, 1137-1138.

¹⁴ For 'internationalized areas', see Eric Suy, *Corpus Iuris Gentium: A Collection of Basic Texts on Modern Interstate Relations*, Leuven/Amersfoort, Acco, 1992, p. 149.

¹⁵ See Garrett Hardin, 'The Tragedy of the Commons', 162/3859 *Science* 1243-1248 (1968), at <<http://www.sciencemag.org/content/162/3859/1243.full>> (accessed 20 September 2015).

¹⁶ See Ikeshima, *supra* note 7, 2014, p. 23.

¹⁷ See Ikeshima, *supra* note 7, 2014, pp. 22-28.

¹⁸ See, however, Aaron X. Fellmeth & Maurice Horwitz, *Guide to Latin in International Law*, New York/Oxford, Oxford University Press, 2009, p. 250, in which *res communis* means '[t]he common heritage of all humankind, not subject to the appropriation by or sovereignty of any state or group of states, such as the high seas, Antarctica, or celestial bodies.' This definition seems to be slightly too wide and misleading.

¹⁹ See Donald R. Rothwell & Tim Stephens, *The International Law of the Sea*, Oxford/Portland, Hart Publishing, 2010, pp. 147-148; Crawford, *supra* note 11, 2012, pp. 297-298.

²⁰ Article 2 of the 1958 Geneva Convention on the High Seas.

²¹ Article 87 of the LOSC.

²² See R. R. Churchill & A. V. Lowe, *The Law of the Sea*, Third Edition, Manchester, Manchester University Press, 1999, pp. 205-208.

²³ Churchill & Lowe, *supra* note 22, pp. 208 & 431.

²⁴ See Sir Arthur Watts, *International Law and the Antarctic Treaty System*, Cambridge, Grotius Publications Limited, 1992, pp. 9-23; Christopher C. Joyner, *Governing the Frozen Commons: The Antarctic Regime and Environmental Protection*, Columbia, University of South Carolina Press, 1998, pp. 54-66; Ikeshima, *supra* note 1, 2000, p. 49.

²⁵ Watts, *supra* note 24, pp. 39-87; Joyner, *supra* note 24, 1998, pp. 54-82; Ikeshima, *supra* note 1, 2000, pp. 157-269.

²⁶ Ikeshima, *supra* note 1, 2000, pp. 355-357.

²⁷ See also Taisaku Ikeshima, 'A Conflict of "Public Interests" between International Law and Domestic Law with Respect to Whaling and the Environment: A Lesson from the *Kyodo Senpaku Case*', in in *Festschrift of the Law Faculty for the 150th Anniversary of Keio University: Keio's Legal Science: Public Law II*, Tokyo, Keio University Press, 2008, pp. 1-25.

²⁸ Ikeshima, *supra* note 1, 2000, pp. 121-126.

²⁹ See, among others, W. Riphagen, 'The International Concern for the Environment as Expressed in the Concepts of the "Common Heritage of Mankind" and of "Shared Natural Resource"', in *Trends in Environmental Policy and Law*, (Project Co-ordinator) Michael Bothe, Berlin, Erich Schmidt Verlag, 1980, pp. 343-362; A.-Ch. Kiss, 'La Notion de Patrimoine Commun de l'Humanité', 175 *RdC* 99, 136-145 (1982);

Rüdiger Wolfrum, 'The Principle of the Common Heritage of Mankind', 43 *ZaöRV* 312 (1983); M. G. Schmidt, *Common Heritage or Common Burden?*, Oxford, Clarendon Press, 1989; M. C. W. Pinto, "'Common Heritage of Mankind": From Metaphor to Myth, and the Consequences of Constructive Ambiguity', in *Theory of International Law at the Threshold of the 21st Century, Essays in Honour of Krzysztof Skubiszewski*, The Hague/London/Boston, Kluwer Law International, 1996, pp. 249-268; Ikeshima, *supra* note 1, 2000, pp. 278-298.

³⁰ A/RES/1962 (XVIII), 13 December 1963.

³¹ See Francis Lyall & Paul B. Larsen, *Space Law: A Treatise*, Farnham, Ashgate, 2009, pp. 53-80.

³² Article I of the 1967 Outer Space Treaty

³³ Article IV (2) of the 1967 Outer Space Treaty

³⁴ For the notion of peaceful uses, see Taisaku Ikeshima, 'The Notion of "Peaceful Uses" of the Sea, with Special Reference to the Clauses of UNCLOS', 16 *Hogaku Seijigaku Ronkyu* [Journal of Law and Political Studies] 139-84 (1993); Boleslaw A. Boczek, 'The Peaceful Purposes Reservation of the United Nations Convention on the Law of the Sea', in *Peace in the Oceans: Ocean Governance and the Agenda for Peace, The Proceeding of Pacem in Maribus XXIII*, Costa Rica, 3-7 December 1995, Edited by Eilsabeth Mann Borgese, Paris, UNESCO, 1997, pp. 53-70.

³⁵ UNGA Res. 17/1803 (1962).

³⁶ See Birnie, Boyle & Redgwell, *supra* note 3, p. 600.

³⁷ Birnie, Boyle & Redgwell, *supra* note 3, p. 48.

³⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), done on 3 March 1973, entered into force on 1 July 1975. Birnie, Boyle & Redgwell, *supra* note 3, p. 685.

³⁹ See Isabel Feichtner, 'Community Interest', in *Max Planck Encyclopedia of Public International Law* [MPEPIL], electronic edition, Oxford University Press, 2007.

⁴⁰ Vogler, *supra* note 10, 2012, p. 70. For the idea of NIEO, see Mohammed Bedjaoui, *Towards a New International Economic Order*, Paris, UNESCO, 1980.

⁴¹ Article 156 of the LOSC.

⁴² Article 157 of the LOSC.

⁴³ Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, done on 28 July 1994, adopted by the UNGA Res. 48/263, entered into force on 28 July 1996. The parties to this Agreement are 146 as at 10 October 2014. See the UN site at <http://www.un.org/Depts/los/reference_files/status2010.pdf> (accessed 20 September 2015).

⁴⁴ Articles 140, 144 (1) (b), 150 (f), (h), in particular.

⁴⁵ For the details of the implementation mechanism of the LOSC, see Taisaku Ikeshima, 'The Implementation Mechanism of the United Nations Convention on the Law of the Sea (UNCLOS): A General Overview', *Waseda Global Forum*, No. 9, 2013, pp. 73-87, at pp. 75-78.

- ⁴⁶ Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 5 December 1979, adopted at the UN GA (Res. 34/68), and entered into force on 11 July 1984.
- ⁴⁷ There are 16 States parties to this Agreement, as at 1 January 2015. See 'Status of International Agreements relating to Activities in Outer Space as at 1 January 2015', UN A/AC.105/C.2/2015/CRP.8, 8 April 2015.
- ⁴⁸ See the following: Nico Schrijver, *Development without Destruction: The UN and Global Resource Management*, Bloomington/Indianapolis, Indiana University Press, 2010, pp. 75-113; Vogler, *supra* note 10, 2012, pp. 61-66.
- ⁴⁹ This Report is available at the following site <<http://www.un-documents.net/our-common-future.pdf>> (accessed 20 September 2015). The Report was later published as the book *Our Common Future*, New York, Oxford University Press, 1987.
- ⁵⁰ The Brundtland Report, *supra* note 49, p. 10.
- ⁵¹ See The Report, 'Chapter 10: Managing the Commons', *supra* note 49, pp. 216-238.
- ⁵² The major concerns in the Report were the prevention of over-fishing in the LOSC, the most suitable use of the Orbit, the regulation of space debris, the need for an institution for the peaceful use in the outer space, and the management and protection of the resources and ecosystem in Antarctica. See Ikeshima, *supra* note 1, 2000, pp. 309-313.
- ⁵³ Item No. 1, 'Protection of Global Climate for Present and Future Generations of Mankind', UNGA Res. A/RES/43/53, adopted on 6 December 1988.
- ⁵⁴ See Schrijver, *supra* note 48, p. 105.
- ⁵⁵ Vienna Convention for the Protection of the Ozone Layer, done on 22 March 1985, entered into force on 22 September 1988. See Schrijver, *supra* note 48, p. 102; Birnie, Boyle & Redgwell, *supra* note 3, pp. 338-339.
- ⁵⁶ For the concept of shared resources, see the following: Ian Brownlie, 'Legal Status of Natural Resource in International Law (Some Aspects)', 162 *RdC* 245 (1979); Rosalyn Higgins, 'Natural Resources in the Case-law of the International Court', in *International Law and Sustainable Development: Past Achievements and Future Challenges*, Oxford, Oxford University Press, 1999, pp. 87-111; Lilian del Castillo-Laborde, 'Equitable Utilization of Shared Resources', *MPEPIL*, Oxford University Press, 2010 (electronic version).
- ⁵⁷ This may lead to the 'tragedy of commons' in the international society. See Hardin, *supra* note 15; Erin A. Clancy, 'The Tragedy of the Global Commons', 5 *Indiana J Global Legal Studies* 601 (1998).
- ⁵⁸ See, for example, P.K. Gautam, 'The Arctic as a Global Common', *IDSa Issue Brief*, 2 September 2011, at <<http://www.idsa.in/issuebrief/TheArcticasaGlobalCommon.html>> (accessed 20 September 2015).
- ⁵⁹ See Article 234 of the LOSC, to which Canada and the Former Soviet Union (Russia) made a great contribution in law-making. See John Norton Moore, 'The UNCLOS Negotiations on Ice-Covered Areas', in *Changes in the Arctic Environment and the*

Law of the Sea, edited by Myron H. Nordquist, Tomas H. Heidar, & John Norton Moore, Leiden/Boston, Martinus Nijhoff Publishers, 2010, pp. 17-26; Birnie, Boyle & Redgwell, *supra* note 3, pp. 419-420; Armand de Mestral, 'Article 234 of the United Nations Convention on the Law of the Sea: Its Origins and Its Future', in *International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand*, edited by Suzanne Lalonde & Ted L. McDorman, Leiden/Boston, Brill/Nijhoff, 2015, pp. 111-124. Under this provision, the coastal state has a wide competence to adopt non-discriminatory pollution regulations. See Churchill & Lowe, *supra* note 23, pp. 348-349; Louis B. Sohn et al, *Law of the Sea in a Nutshell*, Second Edition, St Paul, West, 2010, pp. 399-400.

⁶⁰ See Alfred T. Mahan, *The Influence of Sea Power upon History 1660-1783*, Boston, Little, Brown & Company, 1890, p. vii.

⁶¹ Mahan, *supra* note 60, p. 25.

⁶² See *supra* notes 2 & 4, respectively. For the emphasis of access, see also Vogler, *supra* note 10, 2012, p. 61. However, Ashley Roach, for example, simply states without any clear legal ground, that '[t]he global commons is the high seas and the seabed and subsoil beyond these limits of national jurisdiction'. See Ashley Roach, *supra* note 10, p. 82.

⁶³ See Chapter I of this paper.

⁶⁴ 'National Security Strategy of Japan', at the following site, <http://www.cas.go.jp/jp/siryu/131217anzenhoshou/pamphlet_jp_en.pdf> (accessed 20 September 2015).

⁶⁵ 'National Security Strategy of Japan', p. 52 (emphasis added).

⁶⁶ Id., p. 52.

⁶⁷ *Defense of Japan 2014*, at <http://www.mod.go.jp/e/publ/w_paper/pdf/2014/DOJ2014_1-1-4_web_1031.pdf> (accessed 20 September 2015); *Defense of Japan 2015*, p. 4 at <http://www.mod.go.jp/e/publ/w_paper/pdf/2015/DOJ2015_1-2-3_1st_0730.pdf> (accessed 20 September 2015).

⁶⁸ *Defense of Japan 2014*, p. 64.

⁶⁹ *Arctic Security in an Age of Climate Change*, edited by James Kraska, New York, Cambridge University Press, 2011, for example, aims to 'examine Arctic defense policy and military security from the perspective of all eight Arctic states' (p. i) but does not use a global commons to refer to the Arctic Ocean.

⁷⁰ Different from Antarctica, the Arctic has five coastal states, which are most directly concerned with the Ocean and its management. In this sense, they are actually real stakeholders, and their positions are extremely influential with respect to the idea of the applicability of global commons.

⁷¹ See, for example, Richard C. Powell, 'Guest Editorial: Configuring an "Arctic Commons"?', 27 *Political Geography* 827-832 (2008); Richard C. Powell, 'Commentary: Lines of Possession? The Anxious Constitution of a Polar Geopolitics', 29 *Political Geography* 74-77 (2010). These comments are all from a (critical) geopolitical viewpoint, and are also reflected in *Polar Geopolitics?: Knowledge, Resources and Legal Regimes*, edited by Richard C. Powell and Klaus Dodds,

Cheltenham/Northampton, Edward Elgar, 2014 (Taisaku Ikeshima, 'Book Review', *Waseda Global Forum*, No. 12, 2015, pp. 197-203).

⁷² For Arctic governance, see Oran Young, 'Arctic Governance: Preparing for the Next Phase', June 2002 at <http://www.arcticparl.org/files/static/conf5_scp2002.pdf> (accessed 20 September 2015); Oran Young, 'Whither the Arctic? Conflict or Cooperation in the Circumpolar North', 45 *Polar Record* 73-82 (2009); Taisaku Ikeshima, 'Chapter 6 Arctic Governance: Possibilities and Limitations of Existing Frameworks', in the 2012 JIIA Research Project Outcome Report 'Arctic Governance and Japan's Diplomatic Strategy', 2013, pp. 63-78 (in Japanese), at <http://www2.jiia.or.jp/pdf/resarch/H24_Arctic/06-ikeshima.pdf> (accessed 20 September 2015).

⁷³ See the AC's webpage at <<http://www.arctic-council.org/index.php/en/>> (accessed 20 September 2015).

⁷⁴ See the ATS's webpage at <http://www.ats.aq/index_e.htm> (accessed 20 September 2015).

⁷⁵ See Arctic Council, 'The Arctic Council: A Backgrounder', at <<http://www.arctic-council.org/index.php/en/about-us>> (accessed 15 November 2015).

⁷⁶ Ikeshima, 'Arctic Governance', 2013, *supra* note 7, pp. 63-68. See also Taisaku Ikeshima, 'Agenda for Arctic Governance: Seeking for the Emergence and Development of a Legal Order', *Gaiko* [Diplomacy], Vol. 22, 2013, pp. 46-53 (in Japanese).

⁷⁷ This type of user states includes the so-called flag states.

⁷⁸ For the NSR, the NWP, and other routes in the Arctic Ocean, see *The 21st Century – Turning Point for the Northern Sea Route?: Proceedings of the Northern Sea Route User Conference, Oslo, 18-20 November 1999*, edited by Claes Lykke Ragner, Dordrecht/Boston/London, Kluwer Academic Publishers, 2010; Willy Østregren et al., *Shipping in Arctic Waters: A Comparison of the Northeast, Northwest and Trans Polar Passages*, Berlin/Heidelberg, Springer-Verlag, 2013.

⁷⁹ See Oran R. Young, 'Governing the Arctic: From Cold War Theatre to Mosaic of Cooperation', 11 *Global Governance* 9-15 (2005); Ian Brosnan, Thomas M. Leschine & Edward L. Miles, 'Cooperation or Conflict in a Changing Arctic', 42 *ODIL* 173 (2011).

⁸⁰ See Franklyn Griffiths, 'Arctic Security: The Indirect Approach', in *Arctic Security in an Age of Climate Change*, edited by James Kraska, New York, Cambridge University Press, 2011, pp. 3-19; Lawson W. Brigham, 'The Challenges and Security Issues of Arctic Marine Transport', in *Arctic Security in an Age of Climate Change*, edited by James Kraska, New York, Cambridge University Press, 2011, pp. 20-32; Olav Schram Stokke, 'Environmental Security in the Arctic: The Case for Multilevel Governance', 66 *International Journal* 835 (2011); Lassi Heininen, 'Arctic Security: Global Dimensions and Challenges, and National Policy Responses', 5 *The Yearbook of Polar Law* 93 (2013).

⁸¹ For this observation, see Oran Young, 'Foreword – Arctic Futures: The Politics of Transformation', in *Arctic Security in an Age of Climate Change*, edited by James Kraska, New York, Cambridge University Press, 2011, pp. xxi-xxvii, at p. xxvi; Takahiro Ishihara,

'The Arctic Ocean and Security', *Kokusaimondai* [International Issues], No. 627, 2013, pp. 49-59.

⁸² See U.S. Navy (sponsored by Task Force Climate Change/Oceanographer of the Navy), 'U.S. Navy Arctic Roadmap', October 2009, at <http://www.wired.com/images_blogs/dangerroom/2009/11/us-navy-arctic-roadmap-nov-2009.pdf> (accessed 20 September 2015).

⁸³ Griffiths, *supra* note 80, p. 16.

⁸⁴ Heininen, 2013, *supra* note 80, p. 115.

⁸⁵ Five out of the eight Arctic countries belong to the North Atlantic Treaty Organisation (NATO), different five of them join the Nordic Council, and three of the eight are members of the European Union (EU). Heininen, 2013, *supra* note 80, pp. 100-101.

⁸⁶ See Caitlyn L. Antrim, 'The Russian Arctic in the Twenty-First Century', in *Arctic Security in an Age of Climate Change*, edited by James Kraska, New York, Cambridge University Press, 2011, pp. 107-128, at pp.126-127.

⁸⁷ See Young, 'Foreword', *supra* note 81, p. xxvi.

⁸⁸ See the Ilulissat Declaration of 28 May 2008, at <http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf> (accessed 20 September 2015).

⁸⁹ The IMO's Polar Code adopted on 21 November 2014 and on 15 May 2015, at <<http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED%20BY%20MSC%20AND%20MEPC.pdf>> (accessed 20 September 2015).

⁹⁰ See the recommendations adopted in the IACS at <<http://www.iacs.org.uk/publications/publications.aspx?pageid=4§ionid=5>> (accessed 20 September 2015).

⁹¹ See 'Shipping in Polar Waters', at the IMO website, at <<http://www.imo.org/en/MediaCentre/HotTopics/polar/Pages/default.aspx>> (accessed 20 September 2015); J. Ashley Roach, 'A Note on Making the Polar Code Mandatory', in *International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand*, edited by Suzanne Lalonde & Ted L. McDorman, Leiden/Boston, Brill/Nijhoff, 2015, pp. 125-140.

⁹² See Stokke, 2011, *supra* note 80, p. 847.

⁹³ The Declaration of the Establishment of the Arctic Council, Ottawa, Canada, on 19 September 1996, at <https://oarchive.arctic-council.org/bitstream/handle/11374/85/00_ottawa_decl_1996_signed%20%284%29.pdf?sequence=1&isAllowed=y> (accessed 20 September 2015).

⁹⁴ For the NATO's viewpoint on Arctic security, see Ragnheiður Arnadóttir, 'Security at the Top of the World: Is There a NATO Role in the High North?', *Assemblée parlementaire de l'OTAN*, at <<http://www.nato-pa.int/default.asp?SHORTCUT=2082>> (accessed 20 September 2015).

⁹⁵ See Stokke, *supra* note 80, pp. 843-847; Shih-Ming Kao, Nathaniel S. Pearre and Jeremy Firestone, 'Adoption of the Arctic Search and Rescue Agreement: A Shift of the Arctic Regime toward a Hard Law Basis?', 36 *Marine Policy* 832-838, 837 (2012).

⁹⁶ See National Strategy for the Arctic Region, May 2013, p. 9 (which states that

accession to the LOSC 'would protect U.S. rights, freedoms, and uses of the sea and airspace throughout the Arctic region'); Taisaku Ikeshima, 'A US Response to the Participation in the UNCLOS: the Light and Shade of US Unilateralism', in *New Developments in US Domestic and Foreign Policy*, pp. 147-164, Japan Institute of International Affairs (JIJA), Tokyo, Japan, pp. 147-164 (in Japanese), March 2013 <http://www2.jiia.or.jp/pdf/resarch/H24_US/09-ikeshima.pdf> (accessed 20 September 2015).

⁹⁷ National Strategy for the Arctic Region, May 2013, p. 11.

⁹⁸ Id., p. 6.

⁹⁹ For their strict regulations, see J. Ashley Roach & Robert W. Smith, *Excessive Maritime Claims*, Third Edition, Leiden/Boston, Martinus Nijhoff Publishers, 2012, pp. 490-497.

¹⁰⁰ For their conflictual but cooperative policies, see Jonathan R. Edge & David L. VanderZwaag, 'Canada-Russia Relations in the Arctic: Conflictual Rhetoric, Cooperative Realities', in *International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand*, edited by Suzanne Lalonde & Ted L. McDorman, Leiden/Boston, Brill/Nijhoff, 2015, pp. 240-265.

¹⁰¹ For the Canadian viewpoints, see Donat Pharand, *Canada's Arctic Waters in International Law*, Cambridge, Cambridge University Press, 1988; Michael Byers, *Who Owns the Arctic?: Understanding Sovereignty Disputes in the North*, Vancouver/Toronto/Berkeley, Douglas & McIntyre, 2009; Ted L. McDorman, 'The Northwest Passage: International Law, Politics and Cooperation' in *Changes in the Arctic Environment and the Law of the Sea*, edited by Myron H. Nordquist, Tomas H. Heidar, & John Norton Moore, Leiden/Boston, Martinus Nijhoff Publishers, 2010, pp. 227-250; Kristin Bartenstein, 'The "Arctic Exception" in the Law of the Sea Convention: A Contribution to Safer Navigation in the Northwest Passage?', 42 *ODIL* 22 (2011); Franklyn Griffiths, Rob Huebert & Whitney Lackenbauer, *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship*, Waterloo, Wilfrid Laurier University Press, 2011; Rob Huebert, 'Canada and the Newly Emerging International Arctic Security Regime', in *Arctic Security in an Age of Climate Change*, edited by James Kraska, New York, Cambridge University Press, 2011, pp. 193-217.

¹⁰² For the Russian viewpoints, see Alexander S. Skaridov, 'Northern Sea Route: Legal Issues and Current Transportation Practice', in *Changes in the Arctic Environment and the Law of the Sea*, edited by Myron H. Nordquist, Tomas H. Heidar, & John Norton Moore, Leiden/Boston, Martinus Nijhoff Publishers, 2010, pp. 283-306; Nataliya Marchenko, *Russian Arctic Seas: Navigational Conditions and Accidents*, Berlin/Heidelberg, Springer Verlag, 2012; Marlene Laruelle, *Russia's Arctic Strategies and the Future of the Far North*, London/New York, Taylor & Francis, 2014.

¹⁰³ See John Drennan, 'Russia's Persistent Arctic Ambitions', *IISS Military Balance Blog*, 11 December 2013, at <<https://www.iiss.org/en/militarybalanceblog/blogsections/2013-1ec0/december-e71c/russia-in-the-arctic-b038>> (accessed 20 September 2015).

¹⁰⁴ The English translation is available at <http://www.arctic.or.kr/files/pdf/m4/rusia_eng>.

pdf> (accessed 20 September 2015). For the analysis, see Edge & VanderZwaag, *supra* note 100, pp. 260-261.

¹⁰⁵ See the following site of the AC: <<http://www.arctic-council.org/index.php/en/our-work/2/8-news-and-events/159-press-release-15-may-kiruna>> (accessed 20 September 2015). For the observer manual of the AC, see <<http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers/5-observers>> (accessed 20 September 2015).

¹⁰⁶ See the press release of the Japanese Ministry of Foreign Affairs (MOFA) of 19 March 2013 (in Japanese) at <http://www.mofa.go.jp/mofaj/press/release/25/3/press6_000016.html> (accessed 20 September 2015). For the establishment of the Arctic Taskforce in the MOFA (2 September 2010), see the press lease at <http://www.mofa.go.jp/mofaj/press/release/22/9/0902_01.html> (accessed 20 September 2015).

¹⁰⁷ For the launch of a cross-sectoral public-private forum in the Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT), see the press release at <http://www.mlit.go.jp/sogoseisaku/ocean_policy/sosei_ocean_tk_000021.html> (accessed 20 September 2015).

¹⁰⁸ For 'Japan's Arctic Policy' (in English) of 2015, see the following website of the Prime Minister of Japan and His Cabinet, at <[https://www.kantei.go.jp/jp/singi/kaiyou/arcticpolicy/Japans_Arctic_Policy\[ENG\].pdf](https://www.kantei.go.jp/jp/singi/kaiyou/arcticpolicy/Japans_Arctic_Policy[ENG].pdf)> (accessed 15 November 2015). For the present author's view on this policy, see the following website of the Brookings Institutions: Taisaku Ikeshima, 'Japan's Arctic Policies with regards to Maritime Law and Jurisdictional Issues' (with a PDF file of his oral presentation slides), delivered at the seminar 'Charting Japan's Arctic Strategy', Brookings Institutions, 19 October 2015, at <<http://www.brookings.edu/events/2015/10/19-charting-japans-arctic-strategy>> (accessed 15 November 2015).

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¹¹³ See 'Japan's Arctic Policy' of 2015, *supra* note 108, p. 5.

¹¹⁴ For China's activities and their impact, see Taisaku Ikeshima, 'China's Interests in the

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¹¹⁵ For a general review, see Ronald O'Rourke, 'Changes in the Arctic: Background and Issues for Congress', Congressional Research Service, September 4, 2015, at <<https://www.fas.org/sgp/crs/misc/R41153.pdf>> (accessed 20 September 2015).

¹¹⁶ National Security Presidential Directive and Homeland Security Presidential Directive, NSPD-66/HSPD-25, January 2009, at <<http://fas.org/irp/offdocs/nspd/nspd-66.htm>> (accessed 20 September 2015).

¹¹⁷ National Strategy for the Arctic Region, May 2013, at <https://www.whitehouse.gov/sites/default/files/docs/nat_arctic_strategy.pdf> (accessed 20 September 2015).

¹¹⁸ National Security Strategy, May 2010, at <https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf> (accessed 20 September 2015).

¹¹⁹ National Strategy for the Arctic Region, 2013, p. 2.

¹²⁰ National Security Strategy, May 2010, p. 50.

¹²¹ *Id.*, pp. 49-50.

¹²² *Id.*, p. 50.

¹²³ United States Coast Guard Arctic Strategy, May 2013, at <https://www.uscg.mil/seniorleadership/DOCS/CG_Arctic_Strategy.pdf> (accessed 20 September 2015).

¹²⁴ *Id.*, p. 9.

¹²⁵ *Id.*, p. 10.

¹²⁶ National Strategy for the Arctic Region, 2013, p. 4.

¹²⁷ For the 'Arctic Strategy' of 2013, see the Pentagon's website at <http://www.defense.gov/Portals/1/Documents/pubs/2013_Arctic_Strategy.pdf> (accessed 20 September 2015).

¹²⁸ *Id.*, pp. 1-2.

¹²⁹ See *supra* note 82.

¹³⁰ 'Arctic Strategy' of 2013, pp. 5-6.

¹³¹ *Id.*, p. 4.

¹³² The Ilulissat Declaration, 2008, *supra* note 88, p. 2.

¹³³ The Pentagon's Arctic Strategy of 2013 also confirmed that, in the Ilulissat Declaration of 2008, the Arctic Five committed themselves to 'the orderly settlement of overlapping territorial claims through the established framework of the international law as reflected in' the LOSC. See the Pentagon's Arctic Strategy of 2013, p. 4, footnote 6.

¹³⁴ The Pentagon's Arctic Strategy, 2013, p. 7, footnote 8.

¹³⁵ The United States Navy Arctic Roadmap for 2014 to 2030, February 2014, at <http://www.navy.mil/docs/USN_arctic_roadmap.pdf> (accessed 20 September 2015).

¹³⁶ Arctic Roadmap, p. 19.

¹³⁷ *Id.*, p. 6.

¹³⁸ *Id.*, p. 3.

¹³⁹ *Id.*, p. 3.

¹⁴⁰ Id., p. 16.

¹⁴¹ Id., p. 17.

¹⁴² 'Changes in the Arctic: Background and Issues for Congress' of 4 August 2014, in the summary page.

¹⁴³ National Security Strategy, February 2015, at <https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf> (accessed 20 September 2015).

¹⁴⁴ Id., pp. 12-13.

¹⁴⁵ Id., p. 13.

¹⁴⁶ See 'Meet the U.S. Chairmanship Team', at the AC website at <<http://www.arctic-council.org/index.php/en/about-us/arctic-council/u-s-chairmanship>> (accessed 20 September 2015); 'U.S. Chairmanship of the Arctic Council', at the US Department of State website, at <<http://www.state.gov/e/oes/ocns/opa/arc/uschair/index.htm>> (accessed 20 September 2015).

¹⁴⁷ Henry Kissinger, *On China*, London, Penguin Books, 2012, p. 546. The Armitage-Nye Report of 2012 refers to this situation as 'the re-rise of China'. See Richard L. Armitage & Joseph S. Nye, *The U.S.-Japan Alliance: Anchoring Stability in Asia*, CSIS, August 2012, p. 1.

¹⁴⁸ See, for example, Linda Jakobson, 'China Prepares for an Ice-Free Arctic', *SIPRI Insights on Peace and Security*, No. 2010/2, March 2010, at <<http://www.lowyinstitute.org/files/sipriinsight1002.pdf>> (accessed 20 September 2015); Aldo Chircop, 'The Emergence of China as a Polar-Capable State', 7 *Canadian Naval Review* 9 (2011); David Curtis Wright, 'The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China', Naval War College, China Maritime Studies Institute, No. 8, August 2011, at <http://www.usnwc.edu/Research---Gaming/China-Maritime-Studies-Institute/Publications/documents/China-Maritime-Study-8_The-Dragon-Eyes-the-Top-of-.pdf> (accessed 20 September 2015); Linda Jakobson & Jingchao Peng, 'China's Arctic Aspirations', *SIPRI Policy Paper* 34, November 2012, at <http://lindajakobson.com/wp-content/uploads/bsk-pdf-manager/10_SIPRI34.PDF> (accessed 20 September 2015).

¹⁴⁹ See, for example, James Kraska, 'The New Arctic Geography and U.S. Strategy', in *Arctic Security in an Age of Climate Change*, edited by James Kraska, Cambridge, Cambridge University Press, 2011, pp. 244-266, at pp. 257-258; Lee Willett, 'Afterword: A United Kingdom Perspective on the Role of Navies in Delivering Arctic Security', in *Arctic Security in an Age of Climate Change, ibid.*, pp. 281-298, at pp. 295-296.

¹⁵⁰ See 'China's View on Arctic Cooperation' (in English), Ministry of Foreign Affairs of the People's Republic of China, 30 July 2010, at <http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjzg_663340/tyfls_665260/tfsxw_665262/t812046.shtml> (accessed 20 September 2015); Tang Guoqiang, 'Arctic Issues and China's Stance', China Institute of International Studies, 4 March 2013, at <http://www.ciis.org.cn/english/2013-03/04/content_5772842.htm> (accessed 20 September 2015).

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- ¹⁵² See Ikeshima, 2013, *supra* note 114, pp. 79-80.
- ¹⁵³ See World Economic Outlook Database, April 2015, the International Monetary Fund (IMF), at the following site <<http://www.imf.org/external/pubs/ft/weo/2015/01/weodata/index.aspx>> (accessed 20 September 2015); 'Projected GDP Ranking (2015-2020)', *Statistics Times*, 3 June 2015, at <<http://statisticstimes.com/economy/projected-world-gdp-ranking.php>> (accessed 20 September 2015); 'United States vs China GDP', *Statistics Times*, 10 January 2015, at <<http://statisticstimes.com/economy/united-states-vs-china-gdp.php>> (accessed 20 September 2015).
- ¹⁵⁴ Ikeshima, 2013, *supra* note 114, pp. 79-80.
- ¹⁵⁵ *Id.*, pp. 77-78.
- ¹⁵⁶ See Toshio Kunikata, a speech at Arctic Frontiers 2014, Tromso, Norway, 20 January 2014, at <<http://www.mofa.go.jp/mofaj/files/000028220.pdf>> (accessed 20 September 2015).
- ¹⁵⁷ Basic Plan on Ocean Policy (provisional translation into English), April 2013, at <http://www.kantei.go.jp/jp/singi/kaiyou/kihonkeikaku/130426kihonkeikaku_e.pdf> (accessed 20 September 2015).
- ¹⁵⁸ Basic Plan on Ocean Policy, p. 11.
- ¹⁵⁹ Basic Plan on Ocean Policy, p. 8.
- ¹⁶⁰ See 'Japan's Effort to Form Arctic Policy', Prime Minister of Japan and His Cabinet, p. 9, at <<http://www.kantei.go.jp/jp/singi/kaiyou/sanyo/dai14/siryou3.pdf>> (accessed 20 September 2015).
- ¹⁶¹ 'Government Considering a New Icebreaker for the Arctic' (in Japanese), in print, *Sankei Shimbun*, 24 January 2014.
- ¹⁶² 'Public-Private Partnership Conference concerning the Arctic Maritime Route', MLIT, 30 May 2014, at <http://www.mlit.go.jp/sogoseisaku/ocean_policy/sosei_ocean_tk_000021.html> (accessed 20 September 2015).
- ¹⁶³ See 'Japan's Arctic Policy' of 2015, *supra* note 108, p. 4.
- ¹⁶⁴ *Id.*, p. 6 (emphasis added).
- ¹⁶⁵ See 'II. The Assumption of the Arctic Ocean as a Global Commons' above.
- ¹⁶⁶ 'National Security Strategy of Japan', Cabinet Secretary, at <<http://www.cas.go.jp/jp/siryou/131217anzenhoshou/nss-e.pdf>> (accessed 20 September 2015).
- ¹⁶⁷ 'Report of the Advisory Panel on Reconstruction of the Legal Basis for Security', Prime Minister and his Cabinet, at <http://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku_en.pdf> (accessed 20 September 2015).
- ¹⁶⁸ 'Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People, July 1, 2014', Cabinet Secretariat, at <http://www.cas.go.jp/jp/gaiyou/jimu/pdf/anpohosei_eng.pdf> (accessed 20 September 2015).
- ¹⁶⁹ 'The Guidelines for Japan-U.S. Defense Cooperation', Ministry of Defense, at <<http://>

www.mod.go.jp/e/d_act/anpo/index.html (accessed 20 September 2015).

¹⁷⁰ 'Interim Report on the Revision of the Guidelines for Japan-US Defense Cooperation', Ministry of Defense, at http://www.mod.go.jp/e/d_act/anpo/pdf/20141008.pdf (accessed 20 September 2015).

¹⁷¹ *Id.*, p. 4.

¹⁷² 'Guidelines for Japan-US Defence Cooperation', 27 April 2015, at <http://www.mofa.go.jp/mofaj/files/000078188.pdf> (accessed 20 September 2015).

¹⁷³ *Id.*, pp. 21-22.

¹⁷⁴ For the arrangements related with the legislations, see 'On the Legislations concerning Peace and Security' (in Japanese), Cabinet Secretary, at http://www.cas.go.jp/jp/gaiyou/jimu/housei_seibi.html (accessed 20 September 2015).

¹⁷⁵ See Preamble and Articles 5 and 6 of the Japan-US Mutual Cooperation and Security Treaty of 1960.