

Conference on Arctic Marine Resource Governance

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Legal Gaps in the New Arctic Regulatory Framework?

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Considering the importance of the marine domain, the question of how the legal regime of the oceans is structured and coherent, is crucial. This is particularly relevant in the Arctic where current changes of the ecosystem have spawned the possibility for commercial ships to take advantage of new shipping routes. However, navigating in the Arctic also implies the risk of negative externalities, including environmental pollution and threats to maritime safety which in turn can prove very critical for this fragile region. The increased presence in the Arctic has called for a contemporary and coherent legal framework. Such an ideal is challenged by the fact that international public law is a product of political compromises. The adoption of the Polar Code strives to enhance both the safety of the crew, ship and environment in the Arctic region. The question which remains to be answered is whether the Polar Code pursuant to the existing international legal framework constitutes a contemporary and coherent legal framework or if the regulation implies the risk for emerging legal gaps.

The aim of the presentation is to address, through a legal dogmatic analysis, whether such legal gaps exist, consequently resulting in flag States adopting lesser strict regulation, commonly referred to as *the race to the bottom*. Where such legal gaps are identified, private parties tend to shop for the flag of convenience. Such race to the bottom and flag of convenience selection will ultimately hamper the very nature and aim of the legal regime. More specifically, we will address whether the guidelines in the Polar Operations Manual issued by the IMO provides a sufficient *tool* to comply with what we consider a contemporary and coherent legal framework in the interaction with existing conventions, namely UNCLOS and MARPOL. Provided there is still a non-contemporary and coherent legal framework we will present one or more legal policy concerns' addressing what in our view has to be done.