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Master's thesis

International straits disputes in the Arctic and China's position

Or China's geopolitics within a peaceful second-order region

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Ihre Forderung der Freiheit der Meere richtet sich polemisch
gegen das Monopol des Nachbarn und denkt noch nicht an
einen neuen Nomos der Erde.*

Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum

(Ch. II Sec. 3)

Carl SCHMITT

*Your defence of the freedom of the seas aims polemically at the neighbours' monopoly and does not yet imagine a new Nomos of the Earth

Abstract

Climate change, oil exploration, shipping, fisheries in the Arctic: the legal, scientific and foreign policy aspects of those domains are being actively researched by Chinese scholars. This trend is recent as is China's interest in the Arctic. Concerns have been raised when the giant Middle Kingdom began to manifest itself in that polar region. Will China try to use its economic weight to twist the coastal states' arms, at least those of the smaller countries? Will it promote freedom of navigation like in the Malacca strait, as a major commercial power heavily relying on exports? Retrospectively, it seems that China decided to abide by the rules set by the coastal states, to avoid making waves in the pristine waters of the Arctic. The purpose of our thesis is to explain why China is not more assertive in the Far North. We analyse how its economic and legal interests motivate China to adopt a low-key position in the Arctic, as well as why China's long-standing non-intervention policy converge with those interests in the case of the Arctic. To explain how these aspects make sense in the wider picture of China's rise, we combine classical realist and constructivist approaches.

摘要

中国学者在法律、科学、外交政策等方面积极研究北极的气候变化、石油勘探、航运和渔业资源。这一趋势最近归因于中国在北极的利益。当巨大的中央王国开始在北极地区展现自己引起了世界的忧虑。中国是否会尝试利用其经济实力向沿海国家施加压力，至少向那些较小国家施加压力。中国作为一个严重依赖出口的经济体，是否会促进自由航行，例如在马六甲海峡。回顾性分析，中国似乎决定遵守沿海国家制定的规则，避免在北极制造纷乱。本文的目的是解释为什么中国在北极没有过分自信武断。本文分析经济和法律利益如何促使中国在北极采取低调政策，以及为什么中国长期坚持的不干涉政策可以与中国的北极利益相结合。

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Abbreviations

AC Arctic Council

AIIB Asian Infrastructure Investment Bank

CAA Chinese Arctic and Antarctic Administration

CAO Central Arctic Ocean

CIAO China-Iceland Joint Aurora Observatory

CLCS Commission on Limits of the Continental Shelf

CNCPEC China National Committee for Pacific Economic Cooperation

CNOOC China National Offshore Oil Corporation

CNPC China National Petroleum Corporation

COGG China Oil and Gas Group Limited

CPCC Chinese People's Political Consultative Conference

CPDOD Centre for Polar and Deep Ocean Development

CPIFA Chinese People's Institute of Foreign Affairs

CPOS Center for Polar and Oceanic Studies

DSB Dispute Settlement Body

EC European Community

EEA European Economic Area

EZZ Exclusive Economic Zone

GA United Nations General Assembly

ICJ International Court of Justice

ILC International Law Commission

IR International Relations

ITLOS International Tribunal for the Law of the Sea

LNG Liquefied natural gas

NEP North-East passage

NSR Northern Sea Route

NWP North-West passage

PRIC Polar Research Institute of China

SCO Shanghai Cooperation Organisation

SIIS Shanghai Institute for International Studies

SIPRI Stockholm International Peace Research Institute

SLOC Sea lines of communication

SOA State Oceanic Administration

SOE State-Owned Enterprise

UNCLOS United Nations Law of the Sea

UNSC United Nations Security Council

USGS U.S. Geological Survey

WTO World Trade Organisation

Introduction

Historical background

In 2010, a hint that China's *opinio juris* on sovereignty rights in the Arctic might be controversial had been made by the Rear Admiral Yin Zhuo at the Third Session of the 11th Chinese People's Political Consultative Conference (CPPCC), when he advised Chinese leaders not to fall behind on Arctic Ocean exploration:¹

‘The North Pole and surrounding area are the common heritage of mankind and do not belong to any one country,’ said Zhuo. He went on to say ‘China must play an indispensable role in Arctic exploration as we have one-fifth of the world’s population.’

Of course this comment by a man from the military has not been very well received abroad, in particular by Russia and Canada.² Yet, before China's admission as a permanent observer in the Arctic Council (AC) in May 2013, no further comments were made by the central government and the only comments from within China were made by Chinese scholars, who can hardly represent their country, and furthermore had divided opinions. The Assistant Foreign Minister Liu Zhenmin simply declared that China recognises the UNCLOS as the basis for conflict solving in the Arctic.³ This consistent official position since then can be double-edged as the UNCLOS recognises freedom of navigation in international straits.

When China was admitted in the Council, it officially acknowledged the territorial claims of the Arctic countries and renewed its adherence to UNCLOS principles, but it did not completely explain its position concerning the issue of territorial straits, as it is not explicitly required by the said ‘Nuuk criterion’ of admission in the Council. As opposed to China, some European Union (EU) Member States and the United States of America (USA) clearly stated that they believe the North-East passage (NEP) and the Northwest passage (NWP) to be international

¹罗建文. 海军少将: 开发北冰洋中国不可“缺位”. Ed. by 中国新闻网. 5th Mar. 2010. (Visited on 24/05/2015).

²Jakobson, Linda. *China prepares for an ice-free Arctic*. Insights on Peace and Security 2. Stockholm: Stockholm International Peace Research Institute, Mar. 2010. 16 pp., p. 15.

³Jakobson, Linda and Peng, Jingchao. *China's Arctic Aspirations*. Policy Paper 34. Stockholm: Stockholm International Peace Research Institute, Nov. 2012. 22 pp., p. 17.

straits.

Several reasons can explain China's silence, with among them:

- The fear of being considered as a threat
- The general principle of non-interference in other states' sovereign matters
- The uncertainties on the size of Arctic resources and on their upcoming availability
- The lack of interest for the Arctic compared to more strategic regions like the South China Sea

Jingchao Peng then research assistant at Stockholm International Peace Research Institute (SIPRI), stated back in 2011 what still could be seen as a valid and clear interpretation of China's official silence:⁴

China's official silence should not be seen as indicating that it does not take a view on the division of Arctic resources. Chinese officials have in several occasions expressed that China always supports the rights of Arctic states over the resource within each country's exclusive economic zones (EEZ). However, China sees Arctic's international water area as 'treasure of mankind', thus it consistently holds the view that China has a legitimate right to play a part in Arctic's resource explorations.

In 2013, Tan Guoqiang,⁵ Chairman of the China National Committee for Pacific Economic Cooperation, after a panorama of last years major issues in the Arctic and after detailing the applicable frameworks and the ongoing disputes, including the international straits disputes, on which he does not take sides, states clearly four points that are, according to him, China's major stakes in the Arctic, and that were repeated almost word for word by Zhang Xia during a meeting at the Polar Research Institute of China (PRIC):⁶

- China wants to cooperate with other Arctic countries on urgent climate change issues
- China hopes to be able to settle win-win shipping and trade agreements with Arctic countries
- China wants to become a permanent observer of the Arctic council to better contribute to debates
- Arctic countries owns sovereignty rights while non-Arctic countries 'have the rights to navigation and scientific research', and are interested in opening routes while respecting

⁴Peng, Jingchao. 'What is China doing in the Arctic?' In: *Baltic Rim Economies* 4 (30th Nov. 2011), pp. 28–29.

⁵Guoqiang, Tang. 'Arctic Issues and China's Stance'. In: *China International Studies* (Jan. 2013), pp. 29–48.

⁶Zhang, Xia. Researcher at Polar Research Institute of China. Personal communication, 15th Dec. 2014.

‘respective rights in the Arctic’.

These repeated comments on sovereignty and ‘right in the Arctic’, also the repeated insistence that China is a ‘near-Arctic state’ by Chinese officials including Tan Guoqiang, can intrigue. The position taken by Yin Zhuo was never officially and unequivocally repealed by higher-ranking officials, while Tan Guoqiang and Jingchao Peng seem to foster confusion about China’s real position on international straits disputes and right on resources extraction. A clear declaration would be for example that those resources belong to coastal states and that there are no special rights of navigation for foreign ships, or to stand clearly in favour of freedom of navigation, as China did for the Malacca strait several decades ago.⁷

Indeed, several Chinese scholars like Guo Peiqing⁸,⁹ Zhang Xia¹⁰ or Fu Kuenchen¹¹ would have been in favour of a more assertive Chinese position on Arctic passages. Their position make sense in international law, as pointed out by the international law professor Erick Franckx:¹²

China could gain from teaming up with the EU which finds itself in a quite similar position (investing heavily in scientific research in the area, but carefully being kept out of any relevant decision making there). Even though China seems to have complied with the Russian national requirements when their state research icebreaker last visited the area, this seems to be a dangerous precedent in order to safeguard their own position as to navigational rights in the area in the future.

From China’s position, the situation can be considered as analogue to a prisoner’s dilemma, what explains these prevarications. Either China acts ‘rogue’ by just forcing its way at the detriment of others, but has also to expect retaliation, for example by attacks on its claims in the South China Sea, or China cooperates, but chooses thereby to renounce to potential unilateral profits that would be expected from free waters. In both cases China risks losing money and rights, but in the second case China’s losses are compensated by long-term cooperation.

⁷Pang, Zhongying. ‘China’s non-intervention question’. In: *Global responsibility to protect* 1.2 (2009), pp. 237–252, p. 244.

⁸Guo, Peiqing. *New cold wars over Arctic wealth*. Ed. by Times, Global. Article presently taken offline by the Global Times. 27th July 2009.

⁹Ming, Xu. *Breaking the ice*. Ed. by Times, Global. 18th May 2012. (Visited on 24/05/2015).

¹⁰Zhang, Xia et al. ‘From mandatory icebreaker guiding to a permission regime: change to the new Russian legislation of the Northern Sea Route’. In: *Advances in Polar Science* 25.3 (Sept. 2014), pp. 138–146.

¹¹Fu, Kuenchen. Professor at Shanghai Jiatong University. Sino-U.S. Arctic Social Science Forum at Tongji University, 15th May 2015.

¹²Franckx, Éric. Member of the Permanent Court of Arbitration. Personal communication per mail, 29th Mar. 2015.

Hypothesis on the Chinese position on non-intervention in the Arctic

In the last decade, by promoting international scientific research and cooperation, also by entering the Arctic council as a permanent observer, China seems to have *de facto* made the second choice, despite the official silence on sovereignty issues.

My main hypothesis is that, if China has interest in delaying its official decision in order to humour everybody, its peculiar approach to sovereignty participates predominantly to a complete explanation of the quasi-refusal to take a stance on international straits. To express it differently, China's ideological position supplements well its direct interests because it allows the government to bide its time and Chinese investments to come without many strings attached. A surprise would rather have been that China asserts a clear-cut position like the USA or the EU. This would have signalled a clear departure from China's traditional non-intervention stance, as China does not have huge interests in the Arctic. Thus we argue that Jingchao Peng is right when he states that China's official silence does not mean that the Chinese government has no stance at all on Arctic subjects.

We will argue that China's approach of the concept of the sovereignty originates from its long-term goal to be able to assert itself as a full-fledged sovereign state, not only on paper but also *de facto*. Thus we defend that it is not because of a Confucian approach to international diplomacy that China refuses any official meddling in foreign states' affairs, but much more simply because the Chinese government already has problems when it comes to delineating its own borders. These difficulties weaken the legitimacy of the Chinese government in the eyes of other governments. As a result China is forced to insist that sovereign states do not intervene in each other's affairs in order to reassert its own legitimacy and handle those problems bilaterally.

Development

Wishing to be comprehensive, we draw on the literature to understand the stakes in the Arctic as well as we discussed the issue with several Chinese and non-Chinese scholars in order to have diverse opinions on the precise issue of international straits.

First we explain why we do not restrict ourselves to one sole conceptual framework, but rather choose to build our own one. In order to weigh ideological factors and to precise the meaning of terms such as legitimacy or sovereignty, we will try to clarify China's general approach to sovereignty in using mainly Carl Schmitt's sovereignty theory. Carl Schmitt, in spite of

being a realist, insists on the slow building and negotiation of the concept of sovereignty that gradually appeared throughout history, so that 'sovereignty' is not empirically given. He rather insists on the discrepancies between the official discourses on sovereignty and their concrete realization, between what being a sovereign state means now and what it meant a century ago, when most of the world was colonized by Western powers.

Then, we attempt at drawing a map of Chinese main interests in the Arctic, so as to clarify the possible economic effects of a Chinese unilateral declaration on international straits in that region, and to see that the Arctic configuration seems to support the liberal peace theory.

Following this, we insist on the Chinese general hesitation in foreign policy regarding disputes that involve sovereignty issues. We show that, even if not any more really applied, this theory has still not found any real successor.

Finally, we examine the legal aspects of the issue. We use international registered and customary law to define what is an international strait and what particular circumstances can be used in the Arctic to define it or restrict navigation. The purpose of this part, apart from understanding precisely the core of the topic, is to compare China's situation in the Qiongzhou strait with Canada's and Russia's situations in their respective passages and to see if that thorn in the foot could hamper the Chinese possible moves.

As a result, our thesis consists of three parts, focused on economic, legal and ideological factors, with a more theoretical introduction. Together, they aim at providing an extensive overview of the situation, fuelled by scholars and officials from within or outside China.

1 Chinese geopolitics in the Far North: a tailored theoretical framework

1.1 Against ‘maniac’ theories

1.1.1 Neorealism

Defensive realists such as Kenneth Waltz usually come up with pessimist predictions based on the assumption that the ultimate goal of great powers on the rise like China is not to simply balance and compose with other rulers of the world-order, but to overcome their ‘enemies’, that is rival great powers in an uncertain world driven by competition:¹

From the vantage point of neorealist theory, competition and conflict among states stem directly from the twin facts of life under conditions of anarchy: States in an anarchic order must provide for their own security, and threats or seeming threats to their security abound. Preoccupation with identifying dangers and counteracting them become a way of life.

One of the fiercest proponent of offensive realism nowadays, John Mearsheimer, regularly justifies preventive wars, and almost predicts an imminent fallout of civilization due to an inevitable war between the USA and China. For example in the *Tragedy of great powers politics*, Mearsheimer predicts a war over Taiwan in the South China Sea, but thankfully assures us that the war will be short and limited:²

Nuclear weapons make it extremely unlikely that China will end up fighting a major conventional conflict resembling World War II. In fact, any wars that break out in Asia are likely to be limited in terms of both goals and means. In such circumstances, the economic costs of fighting are likely to be limited and thus do

¹Waltz, Kenneth. ‘The origins of war in neorealist theory’. In: *Journal of Interdisciplinary History* (1988), pp. 615–628, p. 619.

²Mearsheimer, John. *The tragedy of great power politics*. New York: W.W. Norton & Company, 2014. 592 pp., Conclusion.

not pose a significant threat to the prosperity of the belligerents. Winning a small-scale war might indeed add to a country's prosperity, as might happen if China seized control of the South China Sea.

1.1.2 Cooperation theories

The relevance of that seemingly paranoid theory revolving around 'security dilemmas' has been largely contested by proponents of other theories such as the regime theory of Stephen Krasner,³ the complex interdependence theory of Keohane and Nye,⁴ the neofunctionalist theory of Ernst Haas⁵ or the more recent global governance theory from James Rosenau.⁶ These theories have in common that they all explain how states (or non-states actors) cooperate on a global scale because it is in their interest, thus contradicting the neorealist assumption that international relations are first of all a zero-sum game, that the increase in well-being of one nation necessarily comes at the expense of other nations.

Thus Krasner focuses on the creation of so-called regimes, which are sector-specific institutions that allow cooperation and favour information exchange between states in order to overcome the dilemma of the prisoner. Keohane and Nye would rather emphasize the importance of transnational informal networks between governmental officials and non-governmental organizations and explain that this new interdependence reduces the weight of traditional governments as well as the need to use force. Haas studied principally the common and formal institutions created by states in order to resist to the outer world. Those institutions are typically regional like the European Union, the ASEAN and maybe in the future the Arctic Council. James Rosenau centres on the emergence of global public policies in spite of the absence of a global state, and explains it by the existence of transnational networks pervading national states and societies.

³Krasner, Stephen. 'Regimes and the limits of realism: regimes as autonomous variables'. In: *International Organization* 36.02 (1982), pp. 497–510.

⁴Keohane, Robert Owen and Nye, Joseph. *Power and interdependence*. London: Longman Publishing Group, 2001. 368 pp.

⁵Haas, Ernst. 'Turbulent fields and the theory of regional integration'. In: *International Organization* 30.02 (1976), pp. 173–212.

⁶Rosenau, James, Czempiel, Ernst-Otto et al. *Governance without government: order and change in world politics*. Cambridge: Cambridge Univ Press, 1992. 324 pp.

1.1.3 Hegemony theories and China's revisionism (or lack thereof)

Another theoretical possibility to study China's geopolitics in the Arctic could be to insist on one of the different versions of hegemonic stability theory, primarily those of Charles Kindleberger,⁷ Robert Gilpin,⁸ or their criticism by Susan Strange⁹ and Gramscian renewal by Robert Cox,¹⁰ without forgetting Keohane¹¹'s defence of multilateralism and assumption that the USA hegemonic era is over. They all have in common that they explain the stability of the international order by the existence of a hegemonic political entity providing common goods such as a common language and a world reserve currency, and enforcing by hard and/or soft power means its predominant weight within international institutions.

If we are to follow the basic assumptions of those two frameworks where the rise and fall of great powers look almost like a law of nature, whether the USA still remains a hegemonic power or not and whether its place is soon to be overtaken by China or a new balance of power within a multipolar world are not so controversial subjects. China seems to become influential enough that the USA's supremacy should be threatened in the future. Using the Gilpinian framework as an interpretation grid would then force us to consider that statements like 韬光养晦 (Bide your time, build your advantage) necessarily indicate a veiled intention to chair the world instead of the USA in the future.¹²

However, if we insist on the necessity for rising powers to blend in the constituted international order and for existing hegemonic powers to continue to favour multilateral cooperation like Keohane,¹³ then we can only be perplexed by such bold statements, in particular when we witness the ever increasing participation of China to multilateral organization and institutions. China for example joined the UNCLOS in 1996 and the World Trade Organisation (WTO) in 2001, and became itself a founder of multilateral organisations such as the Shanghai Cooperation Organisation (SCO) and the Asian Infrastructure Investment Bank (AIIB). Indeed, China's integration within the WTO can be interpreted as one important step towards the wider integration of China within an international order still dominated by the USA, and notably with

⁷Kindleberger, Charles Poor. *The world in depression, 1929-1939*. Oakland, California: University of California Press, 1986, p. 344.

⁸Gilpin, Robert. *US power and the multinational corporation: the political economy of foreign direct investment*. New York: Basic Books, 1975. 291 pp.

⁹Strange, Susan. 'The future of the American empire'. In: *Journal of International Affairs* 42.1 (1988), pp. 1-17.

¹⁰Cox, Robert. 'Gramsci, hegemony and international relations: an essay in method'. In: *Cambridge Studies in International Relations* 26 (1993), pp. 49-49.

¹¹Keohane, Robert O. *After hegemony: Cooperation and discord in the world political economy*. Princeton, New Jersey: Princeton University Press, 2005. 320 pp.

¹²Legro, Jeffrey W. 'What China will want: the future intentions of a rising power'. In: *Perspectives on Politics* 5.03 (2007), pp. 515-534, p. 519.

¹³Keohane, see n. 11.

the approval of the USA, since neither states appear to have used more than usual this new common arena since 2001 to fight an antidumping war.¹⁴

Similarly, if we follow Strange's take on hegemony, China is far from being the next hegemonic power. Strange states that inside of the international system, structural power is more important than relational power.¹⁵ In other words, what counts is not to get others to do what you want when you desire and state it, but to get

to choose and to shape the structures of the global political economy within which other states, their political institutions, their economic enterprises and (not least) their professional people have to operate

Yet, according to those criteria, China is a huge manufacturing country trying to become a fully developed country, as is wishing Xi Jinping.¹⁶ The RMB is slowly internationalizing but not yet a world reserve currency. Chinese universities, even according to the Shanghai ranking¹⁷, do not yet make it to the top 100, even Beijing University. Likewise, Chinese language and culture are still much confined within China, Taiwan and the overseas Chinese communities, and Chinese is not on the way of becoming a *lingua franca* like English is at a global level or French, Spanish and Russian are at regional levels.

On his side, Cox focuses on the ideological power structures and defends that there exists an imperial state system within which the core, that is the USA, contains the elite, while the periphery, that is developing and third-world countries, obediently follows the guidelines set by this elite, not so much because they are forced to do so, but because their own elites are convinced that the core elites' discourse is right, in a fashion similar to the Hegelian slave-master relation.

1.1.4 The diversity of possible interpretations

All those theories are applicable in the case of the Chinese approach of the Arctic, be it at least to demonstrate a high degree of literacy in applying one's theory in detail and then making up for the gaps with reality revealed thereby. Each theory's application could be the subject of a separate case study in the form of a new thesis. This has already been partly done in the

¹⁴Bown, Chad P. 'China's WTO entry: antidumping, safeguards, and dispute settlement'. In: *China's Growing Role in World Trade*. Chicago: University of Chicago Press, 2010, pp. 281-337, p. 333.

¹⁵Strange, Susan. 'The persistent myth of lost hegemony'. In: *International organization* 41.04 (1987), pp. 551-574, p. 565.

¹⁶王佳宁. 习近平: 坚定不移创新创新再创新加快创新型国家建设步伐. Ed. by 新华网. 9th June 2014. (Visited on 24/05/2015).

¹⁷See the 2014 ranking at <http://www.shanghairanking.com/World-University-Rankings-2014/China.html>

cases of neorealist¹⁸ and neoliberal¹⁹ theories, but we could expand.

For example, we could argue that the Arctic council functions as a regime in Krasner's sense, that is a set of rules, norms, procedures and principles that guide discussions and actions. Therefore, China's entrance in the Arctic council would be equivalent to an official announcement of China's pacific intentions towards the world and in particular the Arctic countries. Its participation to the council will allow China to strengthen cooperation and to avoid any aggressive behaviour by :

- providing information about its behaviour and monitoring the behaviour of others
- reducing transaction costs between Chinese representatives and the others
- generating the expectation among members that China wants to cooperate

We could also empirically test Rosenau's understanding of China's rising integration within global institutions, concomitant with its slow and cautious move away from non-interventionism.²⁰ In that case, China's entrance into the AC should be understood as a sign that China wants to occupy the rank of a world-power, with all due attributes such as a right to participate in all regional forums.

Another possibility could be to study the fears that the rising and mighty China can instil by its presence in the Arctic,²¹ and, by example, either deflate them by following Strange's interpretation of the current world order and stating that China's interests in the Arctic are much more those of a secondary power trying to keep up with international standards in terms of research and knowledge building than those of a looming threat for coastal states, or inflate them by adhering to the Gilpin belief that the rise and fall of great powers follows inevitable laws and ought to be dangerous for the former hegemonic power.

Finally, we could follow the neo-gramscian hegemony theory of Cox. Under that interpretation, China's actions in the Arctic would be those of a peripheral country fascinated by the attributes of a world-power like the USA and trying to mimic them, including its participation to all major international fora, since its elites have integrated the necessity of the 'law merchant' that structures the development of global capitalism.²²

¹⁸Rainwater, Shiloh. 'Race to the north: China's Arctic strategy and its implications'. In: *Naval War College Review* 66.2 (2013), pp. 62–82.

¹⁹Wegge, Njord. 'China in the Arctic: interests, actions and challenges'. In: *Nordlit* 32 (2014), pp. 83–98.

²⁰Wang, Hongying and Rosenau, James. 'China and global governance'. In: *Asian Perspective* 33.3 (2009), pp. 5–39.

²¹Su, Ping and Lanteigne, Marc. 'China's developing Arctic policies: myths and proceedingsceptions'. Third China-Nordic Arctic Cooperation Symposium, 27th May 2015.

²²Cutler, Claire. 'Locating "Authority" in the Global Political Economy'. In: *International Studies Quarterly* 43.1 (1999), pp. 59–81.

1.1.5 Epistemological anarchy in the Arctic?

Sticking to only one theoretical framework entails a major default, the necessary incompleteness of the subsequent analysis. All the major theories of International Relations (IR) that we mentioned commit the crime of ‘monocausal mania’ to reuse the terminology popularised by Moravcsik and Legro.²³ They all focus on one particular aspect of the relations between states or between their populations, have an identified set of assumptions, and force scholars to test the predictions derived from those assumptions in the given context. This might be for the better in a scientific setting, as it is a standard view that science is supposed to be able to make predictions about the future and provide explanations about the past. As stated by Hempel & Oppenheim in their seminal article ‘Studies in the Logic of Explanation’:²⁴

Only to the extent that we are able to explain empirical facts²⁵ can we attain the major objective of scientific research, namely not merely to record the phenomena of our experience, but to learn from them, by basing upon them theoretical generalizations which enable us to anticipate new occurrences and to control, at least to some extent, the changes in our environment

This view has been thoroughly contended by the major proponents of neorealism such as Waltz, who branded neorealism as being more scientific than the classical realist Morgenthau and its six configurations of the world-order, and compared without further ado international relations with physics:²⁶

(System) theories tell us about the forces to which the units are subjected. From them, we can draw some inferences about the expected behavior and fate of the units: namely, how they will have to compete with and adjust to one another if they are to survive and flourish. To the extent that the dynamics of a system limit the freedom of its units, their behavior and the outcomes of their behavior become predictable.

It has also been defended by neoliberal thinkers who gauged the legitimacy of their own corpus of beliefs in the light of that criteria, prominently Andrew Moravcsik:²⁷

²³Legro, Jeffrey W and Moravcsik, Andrew. ‘Is anybody still a realist?’ In: *International Security* 24.2 (1999), pp. 5–55.

²⁴Hempel, Carl and Oppenheim, Paul. ‘Studies in the Logic of Explanation’. In: *Philosophy of science* (1948), pp. 135–175, p. 154.

²⁵The explanans is the theory that explains, while the sentence describing the phenomenon to be explained is called the explanandum.

²⁶Waltz, see n. 1, p. 618.

²⁷Moravcsik, Andrew. ‘Liberal International Relations Theory: A Scientific Assessment’. In: *Progress in International Relations Theory: Appraising the Field*. Ed. by Elman, Colin and Elman, Miriam Fendius. Cambridge, Massachusetts: MIT Press, 2002. Chap. 5, p. 27.

Certainly the liberal scientific research program advances a wide range of distinct confirmed predictions not successfully predicted —or in any way derivable from —realist or institutionalist theory.

The problem raised by that approach, even if standard, is that it is too corseted for the reality of social sciences phenomenon, as generally recognised by every student of IR after having assessed its conclusions on the scientificness of their program. Take for example those quotations of two scholars at two opposite sides of the ideological spectrum within the IR field, Moravcsik²⁸ and then Mearsheimer,²⁹ followed by a critical assessment³⁰ of the classic hegemony theories presented in section 1.1.3:

If foreign policymaking is a process of constrained choice by purposive states, a view shared by realist, institutionalist, and liberal theory, there may well be cases in which a combination of preferences and constraints shapes state behavior. In such cases, a multicausal synthesis, one that treats these theories not as substitutes but as complements, is required.

It is worth noting, however, that although social science theories are essential for helping us make sense of the remarkably complicated world around us, they are still rather crude instruments. The ability of even our best theories to explain the past and predict the future is limited. This means every theory confronts cases that contradict its main predictions.

I argue that neither leadership nor hegemony theory has been tested adequately by existing empirical studies. Some responsibility lies with theorists, who have generally failed to present their arguments in a clear, logical, and falsifiable fashion. Empiricists, however, have not been sufficiently sensitive to variations in the theory and have produced studies that suffer from the twin ills of underspecification and theoretical ‘over-extension’.

Already in their article on scientific explanation, Hempel & Oppenheim recognised that social sciences theories are unlikely to ever fulfil the criteria that they set for a correct scientific explanation, for two major reasons:³¹

- Causal explanation presupposes repeatability of the phenomena under consideration, what is unattainable for human phenomena.

²⁸Moravcsik, Andrew. ‘Taking preferences seriously: A liberal theory of international politics’. In: *International organization* 51.04 (1997), pp. 513–553, p. 542.

²⁹Mearsheimer, *The tragedy of great power politics*, see n. 2.

³⁰Lake, David A. ‘Leadership, hegemony, and the international economy: naked emperor or tattered monarch with potential?’ In: *International Studies Quarterly* (1993), pp. 459–489, p. 460.

³¹Hempel and Oppenheim, see n. 24, §4.

- Human behaviour involves wills and motivations and therefore calls for teleological rather than causal analysis.

These difficulties are the reason why we decided not to follow a specified framework but to deliberately fire on all cylinders and use an ad-hoc synthesis akin to neoclassical realism, as explained below in section 1.4. Carl Schmitt's choice as the axis of our synthesis is *a priori* logical in that he was an international law scholar focused on sovereignty issues, while the choice of attaching this thesis to neoclassical realism should find its justification via its sheer development. Still the whole development will not be axed on theory. We will try to not *be used by the theory* and forced to adapt the events to the said theory, but we choose to *use theoretical elements* at the end of each chapter, in order to explain events and facts. Through their organised narration, they should already help us to draw a general and coherent story of China's involvement in the Arctic, as this is the understanding that we are seeking.

1.2 First element: 'globally governed' versus mercantilist sovereignties

1.2.1 International trade as a threat to sovereignty

Ruggie³² outlines a postmodernist view of sovereignty that contests the supposed eternal supremacy of the state in international relations. Ruggie's explanation of the loss in sovereignty of states joins that of Schmitt that we shall see below. Cosmopolitanism, the ideology despised by Schmitt, is at play under the term of global governance. A new bourgeois elite controlling financial flows is becoming more important than states themselves.

Finance and trade are responsible for modern sovereignty loss for Ruggie. The never-ending streams of money flowing across borders for services rather than goods constituted the first indication that states might not be as relevant as before. The traditional Hamiltonian or mercantilist views of the national economy, where the state resorts permanently to intervention and thus controls the economy, seem to fall short of a credible understanding of that new context. More crucially, it reminds us of the Middle-Age, at the end of which the bourgeoisie and new centralized states rose against the former feudal authorities.³³ It might be that, again, political institutions are being slowly adapted to new economic circumstances.

Ruggie makes a strong argument in the case of Free Trade Agreements (FTAs), and in particular

³²Ruggie, John Gerard. 'Territoriality and beyond: problematizing modernity in international relations'. In: *International organization* 47.01 (1993), pp. 139–174.

³³Marx, Karl. *Le 18 Brumaire de Louis Bonaparte*. Paris: Fayard/Mille et une nuits, 1997. 224 pp.

of the European Union, where sovereignty is being bargained daily in a way that would never have been possible a hundred years ago, for example in the case of the debt crisis in Greece. In order to understand such cases, he provides a loosely Marxist framework³⁴ consisting of three explanatory elements, which are the material environment, the strategic behaviour in those environments and the social epistemology that guides those behaviours³⁵. However, without debating this framework, we can remark that Ruggie's analysis seems to fall short of a complete understanding of the situation in East Asia where neo-mercantilist development models would constitute prosperous counter examples, as China for example seemingly defies the prophetised death of mercantilism³⁶.³⁷ Nonetheless, during the debates about the Arctic, a point of contention that is often raised is the degree of compatibility between territorial waters *a priori* closed to foreign ships and international trade. As we see now, Ruggie's analysis renders intelligible that aspect of the debates.

1.2.2 International straits as necessary exceptions to sovereign control

According to Ruggie,³⁸ sovereignty must have built-in loopholes in order to be workable. Let us imagine that the world would be constituted of a myriad of completely isolated atomic components called states. Then they would be completely unable to communicate. This is the reason why the legal fiction of extra-territoriality was invented. Each state grants to the other states it wants to communicate with an island of sovereign territory inside of its own territory, typically where they build embassies. This is what Ruggie calls 'unbundled territoriality'.³⁹

For example, in the financial realm, the explosion of RMB trading hubs is presently encour-

³⁴'Loosely Marxist' because the separation between the material environment and the more social aspects built on this background reminds a lot of the Marxist distinction between the infra- and superstructure.

³⁵Short definitions of those terms would be

- material environments: the material circumstances that constitute the background of concrete constraints on which actors choose their strategy
- strategic behaviour: the path that actors choose to follow, step by step, in their environments
- social epistemology: the epistemic dimension, akin to a Durkeimian 'mentalité collective' or Weberian 'Weltanschauung' that impregnates every aspect of the social life

³⁶Hou, Xiaoshou. 'Dissecting China's Rise: Controversies over the China Model'. In: *China's perspectives 2* (2014), pp. 61–67.

³⁷Gerritsen, Rolf, Zeng, Benxiang, Gerritsen, Dan et al. 'The future of the Chinese miracle: Will neo-statist soes persist in China's development model?' In: *Australasian Journal of Regional Studies* 20.2 (2014), pp. 258–285.

³⁸Ruggie, see n. 32, p. 164.

³⁹*Ibid.*, p. 165.

aged by the Chinese government⁴⁰ in order to facilitate financial exchanges between the Chinese banks and their foreign counterparts. These trading hubs are, like embassies, necessary islands of 'neutral' territories inside of sovereign territories. Reversely, the strict control of outbound financial flows would indicate that the Chinese government is trying to control his internationalized bourgeoisie, to keep it at home.⁴²

In our case international straits can also be understood as voluntary temporary suspensions of states' prerogatives for practical reasons. It would be more difficult for all the states taken together to maintain commercial relations between them if some of them did not grant to others' commercial fleets some liberties of navigation inside of their own territorial waters. *De facto*, the states with the biggest commercial fleets usually call for more freedom of the sea, as did the Netherlands when Grotius published *Mare Liberum*⁴³ on account of the Dutch East India Company, while the smaller states rather prefer to leverage their control of their coastal areas into lucrative rights of passage or military exclusivity⁴⁴. The contemporary compromise, laid out in UNCLOS, is a clear example of 'negotiated sovereignty' as seen in 1.4.4 where islands of 'unbundled territoriality' enable the pacific co-existence of sovereign states.

In the Arctic, this process is repeated again, with Canada and Russia in the role of the smaller coastal states, while the United States and the European Union, with no or less coast in the Arctic, but much to gain from a free passage for their commercial and military fleet, push for the open waters principle. We will explain in chapter 3 that, although China has for a long time chosen the second option, times are changing. Because of its increasing integration in world trade and institutions, China tends to depart from its traditional stance on non-intervention that at least partly justified its position regarding the freedom of the sea, which we explain in chapter 4.

⁴⁰Xinhua, ed. *Minister says Luxembourg on way to becoming RMB trading hub*. 27th Oct. 2014. (Visited on 24/05/2015).

⁴¹The move is recent and cautious, what could be taken as an indication that, even in that less sensitive case, China is still wary of any loss of sovereignty.

⁴²Ezell, Stefan. 'Fighting Innovation Mercantilism'. In: *Issues in science and technology* Winter 2011 (2011), pp. 83–90, p. 85.

⁴³Grotius, Hugo. *The Freedom of the Seas, Or, The Right which Belongs to the Dutch to Take Part in the East Indian Trade*. Ithaca, New-York: Cornell University Library, 2009. 190 pp.

⁴⁴As Hasjim Djalal, former advisor to the Indonesian Minister for Maritime Affairs, puts it:

Since the beginning of the 20th century, ocean issues have been dominated basically by the freedom of navigation, a conclusion that I personally draw. Coastal State sovereignty was limited to three miles from the coastline at that time. The end result for us is that this kind of freedom of navigation or freedom of the seas actually brought colonialism to Indonesia. The colonial powers roamed the seas between our islands and took away the fisheries resources, the maritime resources.

In (Djalal, Hasjim. 'Remarks on the Concept of «Freedom of Navigation»'. In: *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*. Leiden: Martinus Nijhoff Publishers, 2009, p. 65)

1.3 Second element: internal debates on foreign policy

1.3.1 Conflicts within the Chinese domestic policy making sphere

The Chinese burgeoning civil society gravitating around national and local governments is rife with internal debates that pervade the government. Deliberations with policy makers, stakeholders and the Chinese civil society at large is a practice nowadays well-anchored.⁴⁵ This allowed distinct political groups, much like the different political parties in Europe or in the USA, to voice their differences⁴⁶. As a result, debates between different political sides may occur openly within the academia and think-tanks, which, because of links to the political deciders through personal ties and administrative linkages,⁴⁷ can indicate the content of the debates within the administration itself. Furthermore^{48, 49} policies usually go first through a phase of public debate about the goals and methods that the administration should adopt, then the doors are closed for an internal debate before the release of an official policy.

Let us take the domestic making of energy policy to illustrate this point. This domain, even if labelled as strategically important, is, because of its financial and environmental implications, a contentious subject involving a multiplicity of actors, from think-tanks to business interests^{50, 51}. Recently, the sudden takedown of Chai Jing's documentary *Under the Dome* three

⁴⁵He, Baogang and Warren, Mark. 'Authoritarian deliberation: The deliberative turn in Chinese political development'. In: *Perspectives on politics* 9.02 (2011), pp. 269–289.

⁴⁶These two main sides are generally referred to as 'Liberals' and 'New Leftists'. The New Leftists are to be distinguished from ultra-leftists, who advocate a return of Mao-era reforms. They rather only insist on the necessity to provide better social safety net and social equity to Chinese citizens instead of focusing mainly on economic growth. They sometimes agree with the most progressive elements from the Rightists, which are Liberals that believe in the efficiency of the free market, and argue that this efficiency necessitates freer institutions in order to achieve social progress. See (Freeman, Charles and Yuan, Wen Jin. *China's New Leftists and the China Model Debate after the Financial Crisis*. Washington: Center for Strategic and International Studies, 2011. 26 pp.)

⁴⁷Xufeng, Zhu. 'The Influence of Think Tanks in the Chinese Policy Process: Different Ways and Mechanisms'. In: *Asian Survey* 49.2 (2009), pp. 333–357, p. 345.

⁴⁸孙哲. '中国外交思想库: 参与决策的角色分析'. In: *复旦学报 (社会科学版)* 4 (2004), p. 14.

⁴⁹Yang, Jiang. Researcher at Danish Institute for International Studies. Personal communication per mail, 27th Mar. 2015.

⁵⁰Rosen, Daniel and Houser, Trevor. *China energy: a guide for the perplexed*. Washington: Center for Strategic and International Studies and Peterson Institute for International Economics, May 2007. 49 pp., pp. 18-20.

⁵¹Already within the government, several administrations manage the core of the policy, such as the National Development and Reform Commission (国家发展和改革委员会), the National Energy Commission (国家能源委员会) and the National Energy Administration (国家能源局). The first two ones are under the authority of the State Council while the last one is a regulator, charged with the oversight of the implementation of policies. The National Energy Commission was created to help coordinating the National Development and Reform Commission with other relevant ministries and commissions when it comes to energy policies, for example with the Ministry of Environmental Protection (环境保护部).

days after its viral success (150 million views) lets us guess possible tensions on that topic within the government. The video was first supported by the new minister of Environmental Protection Chen Jingning but taken down a few days after without explanation.⁵² This could be interpreted as a too successful public relations campaign started by the Ministry of Environmental Protection that was fought back by other ministers as the discussion seemed to have gone out of control. The debate is likely to continue out of sight of the media, as no longer than two months after the takedown, the documentary is used in academic articles in order to illustrate the need to reform diverse aspects of Chinese domestic policies^{53, 54}.

1.3.2 Broadening of the struggle's domain to foreign policy

As first shown in a much more dramatic setting by Allison⁵⁵ in the case of the Cuban Crisis or by Putnam in the case of a summit conference in Bonn in 1978,⁵⁶ foreign policy making is, not unlike national policy making, subject to internal bureaucratic and ideological battles. While in the case of Allison, the Department of State and its head Bob Kennedy had to fight against the Navy and its bureaucratic procedures, in the case of Putnam, the ministries of Industry from the USA, Germany and Japan had to fight against their own ministries of Finance in order to conclude the final deal that emerged during the summit.

In the case of foreign policy as well, China's academic field is rife with debate. Shambaugh⁵⁷ identifies seven schools, namely, from the most nationalist, pessimistic and isolationist to the most optimistic and internationalist, nativists, realists, 'major power', 'asia first', 'global south', 'selective multilateralism' and 'globalism'. Chinese foreign policy think tanks are buzzing,⁵⁸ with already 428 domestic think-tanks in 2010. Among them, the Shanghai Institute for International Studies (SIIS, 上海国际问题研究院) is in the top five⁵⁹ and has a department centred around Arctic Studies. Their leverage is sufficient to organise and finance several conferences with dozens of professors from all around the world several times per year only about the Arctic. Indeed, many of the researchers that I could meet during my stay at Tongji University were from the SIIS.

⁵²Beaumont-Thomas, Ben. *Smash-hit Chinese pollution doc Under the Dome taken offline by government*. Ed. by The Guardian. 9th Mar. 2015. (Visited on 24/05/2015).

⁵³张楚妍. '穹顶之下'. In: 环境教育 4 (2015), p. 047.

⁵⁴贺平, 于淼 and 马瑞. '论环境公益诉讼中公民的原告主体资格 - "穹顶之下" 引发的思考'. In: 法制博览 9 (2015).

⁵⁵Allison, Graham T. 'Conceptual models and the Cuban missile crisis'. In: *American political science review* 63.03 (1969), pp. 689-718.

⁵⁶Putnam, Robert D. 'Diplomacy and domestic politics: the logic of two-level games'. In: *International organization* 42.03 (1988), pp. 427-460.

⁵⁷Shambaugh, David. 'Coping with a conflicted China'. In: *The Washington Quarterly* 34.1 (2011), pp. 7-27.

⁵⁸Bondiguel, Thomas and Kellner, Thierry. 'The Impact of China's Foreign Policy Think Tanks'. In: *Brussels Institute of Contemporary China Studies Asia Paper* 5.5 (2010), pp. 1-32.

⁵⁹Ibid., p. 5.

During the conferences that I attended in Shanghai, Chinese scholars' views were not necessarily unified about the goals and means of China's presence in the Arctic. There was less cleavage than there seems to exist regarding domestic energy policy, but this might be linked to the Arctic being a less salient topic than pollution in China. Some scholars such as Pan Min⁶⁰ are more concerned by the protection of environment and the protection of indigenous population, while others such as Zhang Renping⁶¹ would promote Chinese fishing in the CAO, what can potentially endanger the subsistence of those populations. However, on international straits, Chinese scholars tend to be quite prudent and have similar positions, at least much more than what was reported by Jakobson in 2010,⁶² when the Senior Colonel Han Xudong warned that force might have to be used in the Arctic because of complex sovereignty disputes. That hesitations exist has been confirmed by Chen Dan Hong, senior director at the CAA, when she mailed me her understanding of China's research in the Arctic:⁶³

It is not a long time for China to carry out the research work in the Arctic. We have organized the national Arctic Ocean Expedition 6 times since 1999, as well as begun our search study in the Yellow River Station located in Ny-Ålesund, Norway since 2004. Our study in the Arctic is mainly focused on the scientific issues, especially on the climate change in the Arctic and its impact on China. As to the social science study, the work in this area only began in recent years. There is still much to do to get a deep understanding of the Arctic. Due to the short period of study and lack of comprehensive understanding, there is no Chinese Arctic policy or position published yet.

Those hesitations and debates allow us to draw three conclusions for our development. First, neither Chinese scholars' views nor Chinese official servants views, even if they can be branded as such, as proven by the media echo of Yin Zhuo's declaration mentioned in the introduction, may represent much more China's official stance than researchers in Europe can represent their country. Second, since not all Chinese interests are necessarily aligned and several of them can be expected to be represented by their government concurrently, nothing assures us that an official Chinese position has to be clear-cut, on the contrary. This is the reason why we draw a map of those interests in chapter 2. Third, theories mentioned in section 1.1.2 about the emergence of global governance networks and the rise of international cooperation make sense in the case of the Chinese approach towards the Arctic. As opposed to North-Korea, Chinese policymakers are not cut from the world in an autarchic state. It can be supposed

⁶⁰Pan, Min. 'The impacts of environmental changes on Arctic Indigenous economy - the case of Canadian Inuit'. Professor at Tongji University. Third China-Nordic Arctic Cooperation Symposium, 27th May 2015.

⁶¹Zhang, Renping. 'Fishery Management in Polar Waters from the perspective of International law'. Professor at Dalian Maritime University. Arctic Fisheries Roundtable at Tongji University, 16th Jan. 2015.

⁶²Jakobson, see n. 2, p. 7.

⁶³Chen, Danhong. Division head of international cooperation at Chinese Arctic and Antarctic Administration. Personal communication per mail, 20th May 2015.

that their advisors or themselves are in close contact with other governments' representatives and as aware as humanly possible of the latest policy developments, publications and theories in their field of practice. We will refer to this point in chapter 3 when analysing how China is reinventing its non-intervention policy.

1.4 Main theory: Carl Schmitt between realism and constructivism

1.4.1 Neoclassical realism as a synthesis

In our section 1.1.1, we referred to several realists schools of IR, but did not mention one of the most recent, and also arguably oldest one: classical (or neoclassical) realism. Gideon Rose defines neoclassical realism in these terms:⁶⁴

Neoclassical realists assume that there is indeed something like an objective reality of relative power, which will, for example, have dramatic effects on the outcomes of states interactions. They do not assume, however, that states necessarily apprehend that reality accurately on a day-to-day basis.

To paraphrase Rose, neoclassical assume like Machiavel in *The Prince* or, as we will see, Schmitt in *The Nomos of the Earth*, that international politics is ultimately a game of power and its ultimate goal is political stability, that is environmental security, for its players. Like these authors too, and unlike neorealists, they do not assume for so much that the states' primary mean of conflict resolution will be the use of force nor that the players have complete and perfect information about their assets and those of the other players. The reason behind the myopia of the states is that their perceptions are filtered by their flesh and blood official servants, who can make mistakes, have ideological biases and can have diverging interests, as we just explained in the case of China in section 1.3.

China's rise was already analysed by Randall Schweller⁶⁵ in a neoclassical framework. Following the realist part of his theory, China, as a materially rising power, should sooner or later balance the status of the USA within international institutions. However, several factors let us foresee that it will be a non-violent process. The major reason is that China's rise does not take place in a legal vacuum, but in an international environment overcrowded by international institutions that enable the rising state to perform regular non-violent mini-agressions,

⁶⁴Rose, Gideon. 'Neoclassical Realism and Theories of Foreign Policy'. In: *World Politics* 51.1 (1998), pp. 144–172, pp. 152-153.

⁶⁵Schweller, Randall and Pu, Xiaoyu. 'After unipolarity: China's visions of international order in an era of US decline'. In: *International Security* 36.1 (2011), pp. 41–72.

what Schweller calls a process of deligitimisation and deconcentration.⁶⁶ Precisely by over-abiding to the letter of international treaties, China can at the same time socialise and loudly contest what it deems blatant violations of international law or abuses of power. It can also use multilateral institutions such as the WTO to enforce its 'rightful resistance' strategy by imposing costly counter-measures in order to avoid direct confrontations when disagreements arise. In other words, Schweller supposes that China does not aim at overthrowing the current international order nor at delegitimising it, but more simply at overthrowing and deligitimising the central role of the USA within that system, most probably with the goal to present itself as a fitting replacement. In our development, we suppose that if Schweller is right about the deligitimisation and deconcentration phase, then it partly explains the cooperative behaviour exhibited in the Arctic that we shall see in chapters 2 and 4. However, as we shall see in section 1.4.5 and chapter 3, the deligitimisation process might face significant hurdles as China still struggles a lot for legitimacy when it comes to sovereignty.

1.4.2 Against cosmopolitanism

Carl Schmitt was Hitler's constitutional right hand. Often, this tag condemns him and his works. However, if we are to believe the rising number of quotations of his works during the last decade⁶⁷, they are still seminal. The remarkable thing with Schmitt is that, even though he was a Nazi, he prophesied the emergence of a global state consisting of an alliance of major powers that would together rule the other states and coerce them if necessary. This image, predicted before WW2, has striking resemblances with the post-WW2 UN order. Schmitt understands this movement as a change of the *Nomos of the Earth*.⁶⁸ The *nomos* is the concrete territorial and political organization of the world order, invested with symbolic meaning, that undergirds the formal rules of international law.

Schmitt despised the new cosmopolitan *nomos* that, according to him, would soon emerge if the Nazi state did not intervene, because this new *nomos* entailed a loss of sovereignty for states. As the main architect of the constitution of the Third Reich, the primacy and all-mightiness of the state inside its own borders constitute for Schmitt the foundation of any sound political regime (own translation)⁶⁹:

⁶⁶Schweller and Pu, see n. 65, p. 44.

⁶⁷On Google scholar, there are 4 results for 'nomos of the earth' before 1980, 20 between 1990 and 2000, 600 between 2000 and 2010 and 924 since 2010

⁶⁸Schmitt, Carl. *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*. Berlin: Duncker & Humblot, 1995. 310 pp.

⁶⁹In (Schmitt, Carl. *Der Begriff des politischen*. Berlin: Duncker & Humblot, 1932. 78 pp., p. 30):

Der politische Gegensatz ist der intensivste und äußerste Gegensatz und jede konkrete Gegensätzlichkeit ist um so politischer, je mehr sie sich dem äußersten Punkte, der Freund-Feindgruppierung, nähert. Innerhalb des Staates als einer organisierten politischen Einheit, die

Political opposition is the most intensive and extreme opposition and every concrete conflict is all the more political that it approaches the extreme point, the Friend-Foe grouping. Apart from the primary political decision and once that decision is taken, numerous secondary definitions of 'political' can take place inside of the State as an organised political unity that takes all the fundamental Friend-Foe decisions.

Schmitt denounced any world-order like the UN as an imperialist masquerade where the mightiest state(s) would impose its (their) will upon the others. Therefore it is interesting to revisit Schmitt's arguments against cosmopolitanism, or in more contemporary terms, against the existence of an international network of cooperation-oriented minds, in order to shed light on the reasoning behind the present reticence of Chinese officials to even take a stand on sovereignty issues in the Arctic.

1.4.3 *Jus gentium* and the recognition of internal enemies

The *Nomos of the Earth* describes the evolution of the *jus gentium* from its renewal after the discovery of the 'New World' until WW2. *Jus gentium* is originally a Latin term which describes the basic rights warranted by the Roman empire to 'barbarians', that is foreigners in Latin, as well as the rules by which the relations between the Roman empire and the political entities outside should be regulated. Along history, this *jus gentium* evolved to become contemporary international law, which still contains this distinction between human rights and state rights and obligations. In other words, the *jus gentium* is the ancestor of the contemporary Geneva conventions as well as of the Vienna and Montevideo conventions.

The difficult equilibrium between those two edges of the *jus gentium* naturally created tensions. A major shock to that equilibrium was the discovery of the 'New World' because of the uncertainties it created on the status of those newly discovered political entities. These uncertainties allowed for the legitimisation of the massacres that occurred during the conquest of those new territories. Schmitt analyses why and how states have agreed since the arrival of Colombo on the American continent to build a corpus of international laws, what presciently echoes contemporary debates on the *droit d'ingérence* or so-called humanitarian interventions⁷⁰.

als Ganzes für sich die Freund-Feindentscheidung trifft, außerdem *neben* den primär politischen Entscheidungen und im Schutz der getroffenen Entscheidung ergeben sich zahlreiche sekundäre Begriffe von 'politisch'

⁷⁰(Schmitt, *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*, see n. 68, p. 274), own translation:

ie Anerkennung von Insurgenten als Belligerenten und die Anerkennung einer neuen Regierung. Beide sind für die Frage der Raumordnung besonders aufschluß reich, weil sie besonders klar

The processes of recognition of insurgents as belligerents and of new governments [...] are both particularly revealing for the question of the space regulation, because they make clear that intervention necessarily belongs to some kind of international coexistence and because they point out where, in the general system of humanitarian law, war transforms into just war, this point being civil war.

Schmitt takes several examples to explain how separatist movements can, if recognised by other states, become governments. Among them is the case of the secession war in the United States⁷¹, where the USA refused to recognise insurgents as belligerents, because it would have meant that they would have had to apply rights granted by international law, while this law is naturally inoperative if the conflict remains internal to the state⁷². According to Schmitt, foreign powers are always ready to meddle in the internal affairs of another state if they can try thereby to gain territories or more influence in the state where the civil war happens (own translation and emphasis added⁷³):

Any recognition granted *by a big power* to the insurgents of another state supports directly and very effectively the moral, juridical, propagandist but also military fighting potential of those insurgents, traitors and saboteurs. [...] putting on the same level a legal government with their internal illegal enemies is not at all an

erkennen lassen, daß die Intervention von jeder völkerrechtlichen Koexistenz unabtrennbar ist und im Gesamtsystem des Völkerrechts den Punkt bezeichnet, an dem der Krieg in den gerechten Krieg, das bedeutet: in den Bürgerkrieg umschlägt.

⁷¹He quotes the following extract of a letter to the United Kingdom from the United States against foreign intervention:

There is, of course, the employment of force by the government to suppress the insurrection, as every other government necessarily employs force in such cases. But these incidents by no means constitute a state of war impairing the sovereignty of the government, creating belligerent sections, and entitling foreign States to intervene or to act as neutrals between them, or in any other way to cast off their lawful obligations to the nation thus for the moment disturbed. Any other principle than this would be to resolve government everywhere into a thing of accident and caprice, and ultimately all human society into a state of perpetual war

In (Schmitt, *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*, see n. 68, p. 281)

⁷²Commentators have been numerous to remark that the contention of Schmitt with the emergence of an American-based new *nomos* of the Earth remains highly critical. For example (Koskenniemi, Martti. 'International law as political theology: how to read *Nomos der Erde*?' In: *Constellations* 11.4 [2004], pp. 492–511, p. 493):

Whatever Schmitt's political choices, readers have been struck by the expressive force of his critiques when applied to contemporary events: the war on terrorism as a morally-inspired and unlimited 'total war', in which the adversary is not treated as a 'just enemy'; the obsolescence of traditional rules of warfare and recourse to novel technologies – especially air power – so as to conduct discriminatory wars against adversaries viewed as outlaws and enemies of humanity; Camp Delta in the Guantánamo naval base with its still over 500 prisoners from the Afghanistan war as a normless exception that reveals the nature of the new international political order of which the United States is the guardian – the source of the normative order, itself unbound by it

⁷³Schmitt, *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*, see n. 68, pp. 278-279.

expression of perfect neutrality, but is much rather a judgement about a process internal to the state that derives from an evaluation of the standing government, and as such *indicates always an intervention* in the near future.

We will largely rely on that understanding of foreign meddling in internal affairs when we will analyse the Chinese understanding of non-intervention policy below in section 1.4.5 and in chapter 3.

1.4.4 A partially constructivist state building process

Most often, the scientific work necessary to define clearly the term ‘sovereignty’ obeyed to the following process:⁷⁴

identifying a class of properties as ‘essential’ to statehood, thus demarcating ‘sovereignty’ from deviant cases and eliminating obnoxious borderline cases by searching for ever more fine-grained qualitative difference. The desired outcome is a clarified concept, evident in its logical purity and by the empirical givenness of its referent

As a crucial example is often taken the case of the convention of Montevideo,⁷⁵ which, in an attempt to define the state, asserts that:

The State as a person of international law should possess the following qualifications:

1. a permanent population;
2. a defined territory;
3. government;
4. capacity to enter into relations with other states

This definition only states that states should have four necessary physically demonstrable attributes to acquire the statehood property but does not close the list, thus lets suppose that the whole list of necessary and sufficient attributes might be longer. Schmitt, being realist, recognises these elements as necessary requirements that a state must met in order to become one⁷⁶. Power has to be empirically, concretely grounded.

⁷⁴Bartelson, Jens. *A genealogy of sovereignty*. Cambridge: Cambridge University Press, 1995. 332 pp., p. 14.

⁷⁵*Convention on the Rights and Duties of States*. Organization of American States. 1933, Art. 1.

⁷⁶In (Schmitt, *Der Begriff des politischen*, see n. 69, p. 20):

Staat ist nach dem heutigen Sprachgebrauch der politische Status eines in territorialer Geschlossenheit organisierten Volkes

Own translation: ‘State’ is, following the contemporary word usage, the political status of a people organised on a defined territory.

Yet, the difficult balance between the statuses of illegal internal enemy and of external legal belligerent that we retraced in section 1.4.3 shows us where the crux of sovereignty lies: in the *recognition* of a state's legitimate claim to being by other states. Recognition does not create a state, but consolidates a claim to legitimate power, as shows Schmitt within the second half of the chapter four⁷⁷ dedicated to this issue of *Anerkennung* in German. To that extent, Schmitt can be considered a precursor of the more recent constructivist understanding of sovereignty, led by Biersteker who considers that⁷⁸ 'the meaning of sovereignty is negotiated out of interactions within inter-subjectively identifiable communities' and that can go as far as considering that⁷⁹ 'rather than neutral lines, borders are often pools of emotions, fears and memories that can be mobilized apace for both progressive and regressive purposes'.

Schmitt's work is not a philosophical discovery, neither is Biersteker's understanding of sovereignty. Both are simply applying to the study of sovereignty something that thousands schools of philosophers, from Plato to the recent reinterpretations of the Hegel slave-master relationship, have already argued: the power of the master is nothing without its recognition from the slave. The real philosophical debate is rather about what form the link between the two concepts takes or should take than about its existence. Thus, in its ideal *Republic*, Plato's first reform is a reorganisation of the educational system in order to create obedient, willing citizens, thereby making the same bet as contemporary totalitarian states.⁸⁰ Hegel's less prescriptive model has been widely used to explain decolonisation, in that colonised states reused against colonial states the rhetoric about freedom, self-government and resistance against oppression that was at the core of their own national myths,⁸¹ *id est* of their legitimate sovereignty. Yet, if we consider that this slave-master relationship is more simply the proto-model of any dependence relationship and that states depend on each others to confirm their claims to statehood, it is clear that, no more or no less than interpersonal relationships, interstates relationships are inherently created by and entrenched in a back and forth of conflictual confirmations and refusals of acknowledgement, of which Schmitt draws the history.

Revealingly, the legal discussion that we lead in chapter 4 refers constantly to the states' objections against other states' positions. Even in international law, there exists no such thing as a clear-cut and intangible definition of sovereignty. In the three cases that we examine, states object the Canadian, Russian or Chinese claims of sovereignty over territories or of sovereign regulations over those territories. As long as these disputes stand, it can be said that

⁷⁷Schmitt, *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*, see n. 68, p. 270.

⁷⁸Biersteker, Thomas and Weber, Cynthia. 'The social construction of state sovereignty'. In: *Cambridge studies in international relations* 46 (1996), pp. 1-21, p. 11.

⁷⁹Paasi, Anssi. 'Boundaries as social processes: territoriality in the world of flows'. In: *Geopolitics* 3.1 (1998), pp. 69-88.

⁸⁰Forti, Simona. 'The Biopolitics of Souls Racism, Nazism, and Plato'. In: *Political Theory* 34.1 (2006), pp. 9-32.

⁸¹Gibson, Nigel. 'Beyond manicheism: dialectics in the thought of Frantz Fanon'. In: *Journal of Political Ideologies* 4.3 (1999), pp. 337-364.

the legal sovereignty of those states is incomplete⁸². Similarly, we will often explain China's move along this thesis as a desire for international recognition, in particular when we will analyse China's switch from a non-intervention foreign policy to a power mildly engaged in secondary international arenas in chapter 3. But in order to better explain China's position regarding foreign intervention, let us state now what risks a country struggling with separatist movements encounter on the international stage.

1.4.5 The essential threat of separatist movements

In spite of his emphasis put on recognition, Schmitt defends that the state should not ask to other states for ideas on its internal policies. On the contrary, Schmitt considers that the state shall be all-mighty to allow the leader to realize its objectives. This is because for him recognition is not a given, rather a credential that must be fought for, with raw power if necessary. A realist thinker, Schmitt believes that other states will be willing to dismantle a state's territory as soon as possible if it offers to them expansion possibilities. This explains his focus on internal threats and his wariness of human rights as a norm that could possibly deligitimise the internal repression of state enemies and encourage thereby foreign states to meddle in its internal affairs. Separatist movements or worse, civil wars, constitute a prime tool of deligitimisation, because they create the danger that other states would withdraw or change the terms of their recognition.

Violent separatist movements are considered to be *unjust enemies*.⁸³ This phrase does not designate war criminals but rather illegitimate or unrecognised enemies, which therefore can safely be fought without restraint⁸⁴:

A preventive war against such an enemy is even more than a just war. This is a crusade. Because we do not handle there with a criminal but with an unjust enemy, a denier of the state of nature.

The state of nature that Schmitt defends is the all-mightiness of the state over its own territory, in other words state sovereignty. Schmitt's thinking interests us because we may consider that his reasoning is valid not only for totalitarian states but also for contemporary democracies like the United States, Belgium or China. As he shows himself, the United States did crush in the past an internal rebellion.⁸⁵

⁸²We develop further the concept of legal sovereignty below in 3.1.

⁸³Schmitt, *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*, see n. 68, ChaIV.4.

⁸⁴In (ibid., p. 135) 'Ein Präventivkrieg gegen einen solchen Feind wäre noch mehr als ein gerechter Krieg. Es wäre ein Kreuzzug. Denn wir haben es ja nicht einfach mit einem Verbrecher, sondern mit einem ungerechten Feind zu tun, mit dem Verewiger des Naturzustandes.'

⁸⁵Ibid., p. 274.

Indeed China is nowadays struggling with separatist movements in Tibet, Xinjiang and Taiwan. The obvious consequence is that the government's legitimacy should be weakened on the world stage because other foreign powers would play with that thorn in the side. As we saw in section 1.4.1, China is not likely to solve these issues by an all out war like the United States did. Yet, as it is a prime target for foreign destabilization, another logical option for the country would be to formally and repeatedly protest on the international stage against the slippery slope legitimising any intervention right. This is the argument that we develop in chapter 3 and that should be kept in mind along other developments in order to better understand the Chinese general prudence or even defiance when it comes to sovereignty.

2 First aspect: Chinese interests in Arctic waters

2.1 Shipping routes

2.1.1 The shorter length of the sea routes

Prima facie advantages

The Northern routes offer the obvious advantage of being considerably shorter than existing routes. For example, Shanghai-Rotterdam through the NSR is 19% less than via the Suez canal, while the NWP is only 10% less¹. However the passages are closed most of the year and, even in Summer, route diversion can be expected in case of floating ice. As a consequence only materials and products that can be sent with delay can be planned to ship through the passages.

As it stands, compulsory ice-breaking fees in Russian internal waters could put off potential customers. Chinese scholars like Zhang Xia complain that they are applied for ships like the Yong Sheng (永盛) or Xuelong (雪龙) that, according the Russian classification, belong to a category that should allow it to independently roam in Arctic waters.² However, in 2011 and later in 2012, fees were lowered³ ⁴. Prior to that, they were higher than those of the Suez Canal.

Because of those added costs, the Northern routes are not and will not be in the very near future the most reliable and cheapest routes. However, they could be the safest ones, as piracy

¹Distances calculations made by Frédéric Lasserre and Svend Aage Christensen (Christensen, Svend Aage. *Are the northern sea routes really the shortest?* DIIS Brief. Copenhagen: Danish Institute for International Studies, Mar. 2009. 6 pp.)

²Zhang et al., see n. 10, p. 143.

³Marchenko, Nataliya. 'Northern Sea Route: Modern State and Challenges'. In: *ASME 2014 33rd International Conference on Ocean, Offshore and Arctic Engineering*. Vol. 10. Polar and Arctic Science and Technology. American Society of Mechanical Engineers. 2014, p. 8.

⁴See 4.3.1

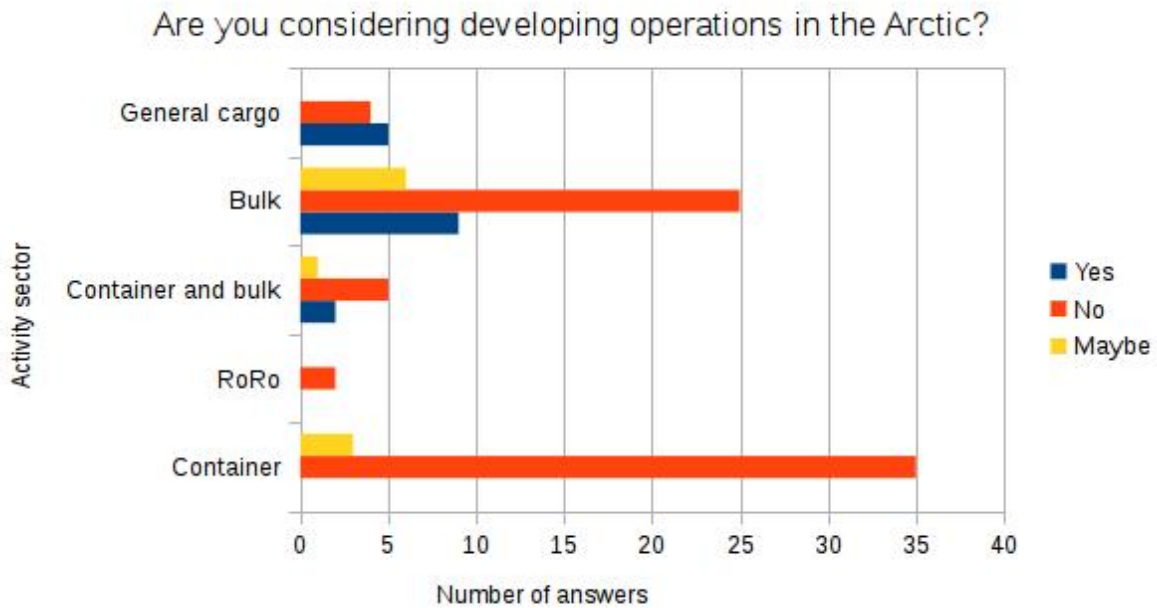


Figure 2.1: ‘Are you considering developing operations in the Arctic?’. Survey conducted Feb. 2008-March 2010 with 142 companies/98 answers ⁷

along the coast of Somalia or near Malacca raises significantly insurance costs.⁵ They could also be the greenest, if we only take into consideration the quantity of fuel burned along the way to Europe and not the pollution due to the need for new, ice-resistant ships.

Practical and legal hurdles

Either this potential new costs/benefits balance of shipping through the Arctic has not been yet completely evaluated, or it clearly repelled investors, but as reported by Frédéric Lasserre and Sébastien Pelletier⁶ and showed in the graphic 2.1, in 2010, a big majority of shipping companies from all the continents would not invest in Arctic shipping.

Furthermore, in 2013, the only Chinese company to undertake an Arctic shipping was a state subsidized company, Cosco,⁸ in spite of being on the verge of bankruptcy, what made Lasserre wonder if that operation was not simply there to test the waters⁹. The Yong Sheng carried

⁵Hong, Nong. ‘The melting Arctic and its impact on China’s maritime transport’. In: *Research in transportation economics* 35.1 (2012), pp. 50–57, p. 3.

⁶Lasserre, Frédéric and Pelletier, Sébastien. ‘Polar super seaways? Maritime transport in the Arctic: an analysis of shipowners’ intentions’. In: *Journal of Transport Geography* 19.6 (2011), pp. 1465–1473.

⁷ibid.

⁸Staalesen, Atle. *First container ship on Northern Sea Route*. Ed. by Barents Observer. 21st Aug. 2013. (Visited on 24/05/2015).

⁹In (Huang, Linyan, Lasserre, Frédéric and Alexeeva, Olga. ‘Is China’s interest for the Arctic driven by Arctic

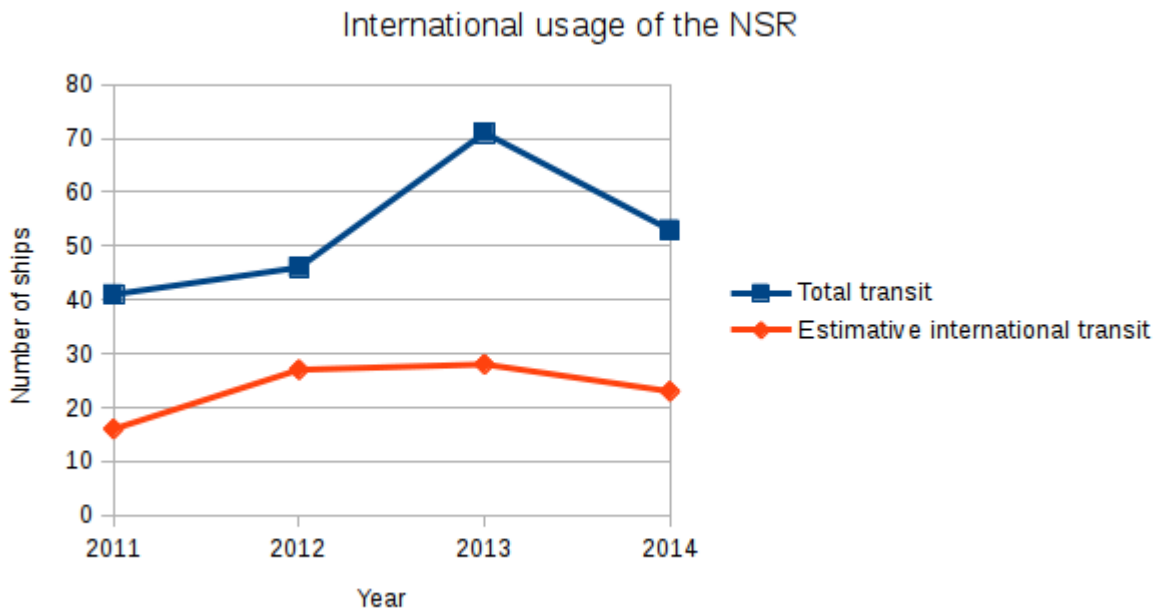


Figure 2.2: Estimative transit through the NSR ¹¹

16 740 tons of general cargo (steel and heavy equipment) from Dalian to Rotterdam. This operation has not been renewed in 2014 but will be again this year. More importantly, other shipping companies seem to have made the same calculations, as 2014 saw a drop of 80% in tons of cargo compared to 2013's volume of 1 355 897 tons through the Russian route, with only 23 cargo ships transiting through the NSR, while they were 41 in 2013.¹⁰

As it stands, sovereignty problems discussed in chapter 4 are an integral part of the calculations, as a prior authorization is necessary to roam through Russian or Canadian waters. Therefore good diplomatic relations with Russia or Canada is a prerequisite for ships to sail. Yet, in particular in the case of the Russia, currently at odds with the USA and the EU, political tensions necessarily affect the commercial possibilities of the Northern Sea Route (NSR), a part of the NWP.¹² Reversely, the currently good diplomatic relations between China and

shipping potential?' In: *Asian Geographer* [June 2014], pp. 1–13, p. 9):

Is Cosco's decision to try the Arctic route a bold (and risky) decision by management to try new niche markets in order to benefit from a competitive advantage should this market develop? Or is it rather an instruction from the government, a hypothesis all the more credible given its dismal financial situation and its close cooperation with the Polar Research Institute?

¹⁰Bennett, Mia. *China's silk road plans could challenge Northern Sea Route*. Ed. by Barents Observer. 6th Jan. 2015. (Visited on 24/05/2015).

¹¹The source of our data is uncertain of the real international traffic through the NSR, since some Russian vessels practically only sail within the NSR for Russian internal purposes and make only one stop outside of Russian ports. See (Moe, Arild. 'The Northern Sea Route: Smooth Sailing Ahead?' In: *Strategic Analysis* 38.6 [2014], pp. 784–802)

¹²McMillan, Terri. *Breaking Through the Ice: An Assessment of Northern Sea Route Opportunities*. Ed. by The

Russia¹³ were a precondition for the launch of the Yong Sheng, and they partly explain that China is testing Arctic possibilities. These good relations are presently facilitated by the fact that Russia needs China to export its oil, since the European countries try to drive away from Russian gas following the Russian invasion of Eastern Ukraine.¹⁴

2.1.2 Iceland as a potential logistics hub

Sign of the times, a Chinese businessman, Huang Nubo, tried in 2011 to buy 3% of the Icelandic territory in order to develop touristic facilities, much to the distrust of the local population. His offer was rejected on the ground that citizens belonging to other countries than those of the European Economic Area (EEA) are not allowed to buy land in Iceland.¹⁵ Iceland is being overtly wooed by China, what can seem ironic given the complete disproportion of size:¹⁶

Tiny, troubled Iceland has been much favoured by mighty China. When the President of Iceland, a country with a population of some 316,000 people, paid a state visit to China in 2007 he was received with all the pomp and ceremony of the head of a major state. China gave both public and behind-the-scenes help in Iceland's bid for a seat on the UN Security Council in 2008.

Other examples are the fact that the Xuelong, the Chinese scientific icebreaker, stopped in Iceland during his trip in the Arctic, that the Reykjavik's embassy is China's largest foreign office, with the ability to accommodate up to 500 staffers,¹⁷ or that China signed in April 2013 a FTA with Iceland. The FTA is expected to boost Iceland seafood exports to China.¹⁸ The move has very limited risks for China, since most Icelandic exports will consist of seafood or primary resources, while it allows the country to negotiate its first FTA within the EEA. Finally, academic exchange and partnerships are well and lively between China and Iceland, with the two countries having built a common Aurora observatory¹⁹ and numerous Icelandic scholars invited in China, for example for two conferences on the Arctic in January and May

Maritime Executive. 10th Oct. 2015. (Visited on 24/05/2015).

¹³Blagov, Sergei. *Russia's partnership with China: An alliance of necessity*. Ed. by Asia Times. 10th May 2015. (Visited on 24/05/2015).

¹⁴Koch-Weser, Jacob and Murray, Craig. *The China-Russia Gas Deal: Background and Implications for the Broader Relationship*. Washington: U.S.-China Economic and Security Review Commission, 9th June 2014. 30 pp.

¹⁵Vu, Tung Phuong. 'Chinese investments in Iceland: Opinions and opportunities'. MA thesis. Reykjavik: University of Iceland, 21st Jan. 2015. 55 pp., p. 14.

¹⁶Blunden, Margaret. 'Geopolitics and the northern sea route'. In: *International Affairs* 88.1 (2012), pp. 115–129, p. 128.

¹⁷Tatlow, Kirsten. *China and the Northern Rivalry*. Ed. by The New York Times. 5th Oct. 2012. (Visited on 24/05/2015).

¹⁸Vu, see n. 15, p. 19.

¹⁹The China-Iceland Joint Aurora Observatory (CIAO) will be based at Karholl in Iceland. Website: <http://karholl.is/en/>

in Tongji university, or through the presence of Icelandic researchers at the Polar Research Institute in Shanghai.

In return, Iceland signed with a Chinese oil company²⁰ and has become the first European country to grant to China the status of free-market economy. Icelandic scholars and enterprises²¹ are also very enthusiastic about the possible economic developments that the Chinese use of the NSR could bring:²²

Iceland's central Atlantic location in the northern hemisphere makes it an ideal northern entry to Europe from East Asia. In a similar fashion as the Port of Piraeus in Greece has become, and thrived as, it could be COSCO's northern gateway to Europe.

However, Lawson Brigham, former chair of the Arctic Council's Arctic Marine Shipping Assessment²³ is much less optimistic regarding that possibility, and argued that the prospects of the NWP for the moment are meagre while the endpoint of the NSR will most probably be in Northern Norway and in Murmansk.²⁴

2.2 Primary resources

2.2.1 Rare earth resources in Greenland

China is the world largely dominant producer of rare earth elements with a market share above 90% during the last five years and is estimated to hold around 30% of world's resources.²⁵ Rare earth metals are vital to the electronics sector as light-bulb, lasers, batteries or magnetic alloys components for example. As a result the Chinese rare earth industry is willing to go abroad in order to seize ahead of potential competitors development opportunities in countries where the rare earth sector is small or imaginary. Recently, China was even condemned by the WTO for illegally curtailing its rare-earth exports in 2014. China finally agreed to follow the recommendations of the Dispute Settlement Body (DSB) of the WTO.²⁶

²⁰See below in 2.2.2

²¹Sigurjonsson, Thorvaldur Ludvik. 'CRARC Roundtable 2015: Arctic Shipping'. Arctic Services. Third China-Nordic Arctic Cooperation Symposium, 28th May 2015.

²²Gudjonsson, Heidar and Nielsson, Egill Thor. *China Can Play Key Role in Arctic Shipping*. Ed. by The Maritime Executive. 21st Mar. 2015. (Visited on 24/05/2015).

²³<http://www.pame.is/>

²⁴Brigham, Lawson. Professor at the University of Alaska Fairbanks. Personal communication per mail, 25th May 2015.

²⁵Qi, Zhang. *New standards for rare earth sector*. Ed. by China Daily. 7th Jan. 2011. (Visited on 24/05/2015).

²⁶*China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*. Dispute DS431. World Trade Organisation. 29th Aug. 2014.

Yet, as stated by Greenland Minerals and Energy Limited company, the Kvanefjeld deposit in Greenland is one of the largest deposits of rare earth metals in the world.²⁷ Apart from rare-earth elements, Greenland's subsoil appears to be also rich in undeveloped deposits of gold, uranium, diamond and iron ore,²⁸ thus adding more reasons for Chinese enterprises to invest in that frontier region. For example, the Chinese iron ore mining company General Nice bought a \$2 billion mine in Greenland this January.²⁹

Lisa Linnea Erdal details in her master thesis³⁰ the Chinese political behaviour in this maybe soon independent region of Denmark. Securing good-will among Nuuk's politicians and bureaucrats is likely a sound and low-cost investment for China that is anticipated to bring a lot of economic benefits. China competes there directly with the EU, by promoting an independent handling of its international affairs with Greenland, thus contributing to the state-building process. In reaction, Danish politicians have openly stated their fears of being too quickly bypassed by Nuuk's politicians and the Danish government did not invite Greenland when Hu Jintao visited Denmark in 2012 or when they visited China.³¹ Danish politicians also fear that Greenland might be too weak as a standalone state to defend its sovereign interests.

Notwithstanding this, Greenland's foreign minister Kai Holst Andersen ostensibly invited China to invest in infrastructures in Greenland last year.³² This year however, due to the lack of advancement of mining projects, Greenland's budget is likely to be unbalanced,³³ and this is sufficient for the French Senate's Finance and European Affairs Committees Gattolin to hope that it might be temporarily sufficient for the European Union to advance funds in order to retain the region inside European sphere of influence.³⁴

2.2.2 Oil and gas resources

According to U.S. Geological Survey (USGS) estimations:³⁵

²⁷ *Rare Earth Elements at Kvanefjeld*. Subiaco, Western Australia: Greenland Minerals and Energy Limited. (Visited on 14/05/2015).

²⁸ Conley, Heather. *Arctic Economics in the 21st Century: The Benefits and Costs of Cold*. Washington: Center for Strategic and International Studies, July 2013. 74 pp., pp. 28-29.

²⁹ Hornby, Lucy, Milne, Richard and Wilson, James. *Chinese group General Nice takes over Greenland mine*. Ed. by The Financial Times. 11th Jan. 2015. (Visited on 24/05/2015).

³⁰ Erdal, Lisa Linnea. *Independence on the Horizon. A Study of the Interplay Between Sovereignty and Natural Resources in Greenland*. FNI Report 6. Lysaker, Norway: Fridjof Nansen Institute, Dec. 2013, p. 39, Cha5.

³¹ *Ibid.*, p. 29.

³² China Economic Review, ed. *Greenland, a frontier market unlike any other for China*. 27th Feb. 2014. (Visited on 24/05/2015).

³³ Boersma, Tim and Foley, Kevin. *Dark Clouds Gather over Greenland's Mining Ambitions*. Ed. by Brookings Research. 16th Jan. 2015. (Visited on 24/05/2015).

³⁴ Gattolin, André and Degeorges, Damien. *Greenland: On its way back towards the European Union?* Ed. by Euractiv. 28th Oct. 2014. (Visited on 24/05/2015).

³⁵ Bird, Kenneth et al. *Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle*. 3049. U.S. Geological Survey, 2008. 4 pp., p. 1.

90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids may remain to be found in the Arctic, of which approximately 84 percent is expected to occur in offshore areas.

Although the number of 13% of undiscovered oil reserves is often mentioned and seems impressive,³⁶ another number could be 5%, as 90 billion barrels of oil represent no more than 5% of the 1687 billions of barrels of proved oil reserves by the end of 2013.³⁷

At least three barriers hamper presently access to those resources: legal uncertainties, technological difficulties and environmental concerns.

Firstly the continental shelves of the coastal countries have not yet been completely delimited. Yet, as long as the continental shelves are not definitely fixed, the property of all potential oil resources in the Arctic are not yet completely defined, although, according to the territorial distribution foreseen by the USGS, most of them are located within territories under jurisdictions of the coastal states.³⁸ Russia had presented its project to the Commission on Limits of the Continental Shelf (CLCS) in 2001 but the CLCS had asked Russia to further document its claims, while Canada is still documenting its own claims.³⁹ Norway submitted its claims in 2006, and Russia submitted a new partial claim in 2013. Denmark has very recently in December 2014 decided to submit its own claims. Some claims have already been very strongly contested, for example when Russia declared that its continental shelf extends until the North Pole, using the argument that the Lomonosov Ridge, an underwater mountain, naturally prolongs the Eurasian shelf.⁴⁰

Secondly, environmentally sensible oil exploration and exploitation in the cold Nordic waters require a know-how that few countries possess. Norway, the USA and Canada have experience are leading the field, being technologically advanced countries that already have experience in the domain of Arctic or near-Arctic drilling and that have strong environmental concerns.⁴¹

Thirdly, these environmental concerns could brake the exploitation of Arctic resources. All the three governments which have national firms that may have the technical know-how to start exploitation in the Arctic appear to be reluctant in front of possible public relations re-

³⁶Conley, see n. 28, p. 4.

³⁷*BP Statistical Review of World Energy 63*. London: British Petroleum, June 2014. 48 pp., p. 6.

³⁸Bird et al., see n. 35, p. 4.

³⁹Huebert, Robert Neil. *Canadian Arctic sovereignty and security in a transforming circumpolar world*. Foreign policy for Canada tomorrow 4. Toronto: Canadian International Council, 2009. 51 pp., p. 20.

⁴⁰Poselov, VA et al. 'The Lomonosov Ridge as a natural extension of the Eurasian continental margin into the Arctic Basin'. In: *Russian Geology and Geophysics* 53.12 (2012), pp. 1276–1290.

⁴¹Harsem, Øistein, Eide, Arne and Heen, Knut. 'Factors influencing future oil and gas prospects in the Arctic'. In: *Energy policy* 39.12 (2011), pp. 8037–8045, p8043-8044.

percussions, in particular regarding oil spill in the Arctic⁴².⁴³ The *Deepwater Horizon* oil spill of 2010 in the Gulf of Mexico appears to have policy repercussions in the far North too. Greenpeace has already started a campaign called *Save the Arctic* to protest against Shell exploration drillings⁴⁴.

However, these three obstacles have not discouraged Chinese companies, which have massively invested recently in Arctic oil resources:

- **Canada:** In 2010 China National Offshore Oil Corporation (CNOOC) acquired Nexen, a Canadian oil company, for \$15.1 billion, which is China's largest foreign acquisition. From 2009 until the end of 2012, \$33 billion were spent by Chinese State-Owned Enterprises (SOE) in acquiring majority and minority stakes in Alberta's oil sands companies.⁴⁵ Last year, China Oil and Gas Group Limited (COGG) acquired a smaller private Canadian energy company.⁴⁶
- **Iceland:** CNOOC was granted an exploration license by the Icelandic government in partnership with Reykjavik-based firm Eykon.⁴⁷
- **Russia:** China National Petroleum Corporation (CNPC) partnered with Russia's state-owned oil company Rosneft in exploring three offshore Arctic areas for oil in 2013.⁴⁸

Furthermore, Russia is organizing a pivot towards the East and signed several gas agreements with China last year.⁴⁹ The already exploited fields in its Northernmost territories in the Yamal peninsula, which are presently linked to Europe through the Yamal-Europe pipeline, will be linked to China through the NSR. 16 new tankers for liquefied natural gas (LNG) are to be built that will be able to break through ice and operate independently on the NSR.⁵⁰

⁴²Harsem, Eide and Heen, see n. 41, p8043-8044.

⁴³Knol, Maaïke and Arbo, Peter. 'Oil spill response in the Arctic: Norwegian experiences and future perspectives'. In: *Marine Policy* 50 (2014), pp. 171-177.

⁴⁴The website is available at <https://www.savethearctic.org/en>

⁴⁵Dutta, Ashok. *Petrodollars: Chinese investors second-guess Canadian oil projects*. Ed. by The Barrel. 15th Feb. 2015. (Visited on 24/05/2015).

⁴⁶Jones, Jeffrey. *China is still purchasing Canadian oil assets – just smaller ones*. Ed. by The Globe and Mail. 20th June 2014. (Visited on 24/05/2015).

⁴⁷Lanteigne, Marc. *China's emerging arctic strategies: economics and institutions*. Reykjavik: Centre for Arctic Policy Studies of the University of Iceland, 2014. 45 pp., p. 20.

⁴⁸Soldatkin, Vladimir. *Rosneft, CNPC eye Russia offshore Arctic oil*. Ed. by Reuters. 24th Nov. 2010. (Visited on 24/05/2015).

⁴⁹Soldatkin, Vladimir and Aizhu, Chen. *Russia signs second China gas deal, but falling prices raise doubts*. Ed. by Reuters. 10th Nov. 2014.

⁵⁰Staalesen, Atle. *To Yamal with world's most powerful LNG carriers*. Ed. by Barents Observer. 10th Nov. 2014. (Visited on 24/05/2015).

2.2.3 Fisheries

On January 16th, over 40 Arctic experts attended a ‘Roundtable on Central Arctic Ocean (CAO) Fisheries Issues’ in Tongji university to assess how precautionary approaches can be applied in the CAO prior to any commercial fishing activity taking place. The result of the conference was that commercial fishing in the CAO is unlikely in the near future, but could occur in the future if ice further melts. In the interim coastal states have agreed that their domestic commercial fleets will not operate in the CAO. Furthermore, the United States and Canada have developed fisheries management plans in their Arctic EEZ’s which delay the start of commercial fishing until adequate science confirms its feasibility.

However, the coastal states had a hard time in getting China to follow this temporary ban in the Arctic, and the Chinese researchers’ presentations were strongly oriented towards the freedom of fishing granted in international high seas. Guo Peiqing for example, who is a researcher in the Ocean University of China, insisted strongly on the UNCLOS and diverse agreements on fishing in high seas. Coastal states reactions, however, were wary of such an approach that would endanger the subsistence of local populations and possibly the existence of rare species. For example, Trevor Taylor,⁵¹ a former Minister of Fisheries in Labrador and Newfoundland, pointed out that Canada had fished blindly, without any impact assessment, during the 1960’s, and that the result was a late but steep and unexpected depletion of the stocks in the next decade, as shown in figure 2.3

The subject of fisheries opens up a problem very similar to the shipping routes. Chinese scientists tend to defend their country’s rights to open waters, be it for fishing or shipping, like Guo Peiqing, or at least to a fishing agreement, like Tiang Jianye. However coastal states defend their backyard. For example the USA Ambassador Balton, working as a deputy assistant secretary for oceans and fisheries at the Department of State, clearly stated during the conference that vessels belonging to non-coastal states are naturally entitled to enter the CAO in order to fish, but that coastal states encircle the area, and as such could find a common agreement to prevent destructive fishing.

Furthermore, this issue resonates with the recent announcement that China will increase seven-fold its krill catch in the Antarctic, what led several conservation groups and scientists to publicize their worry that the Chinese fleet might be overfishing in the fragile polar waters.⁵³

⁵¹Taylor, Trevor. ‘Fishing in the Dark: Lessons to be learned from fishing in the absence of science and management’. Arctic Fisheries Roundtable at Tongji University, 27th Mar. 2015.

⁵²(ibid.)

⁵³MercoPress, ed. *Beware: China announces plan to seven-fold increase Antarctic krill catches*. 30th Apr. 2015. (Visited on 24/05/2015).

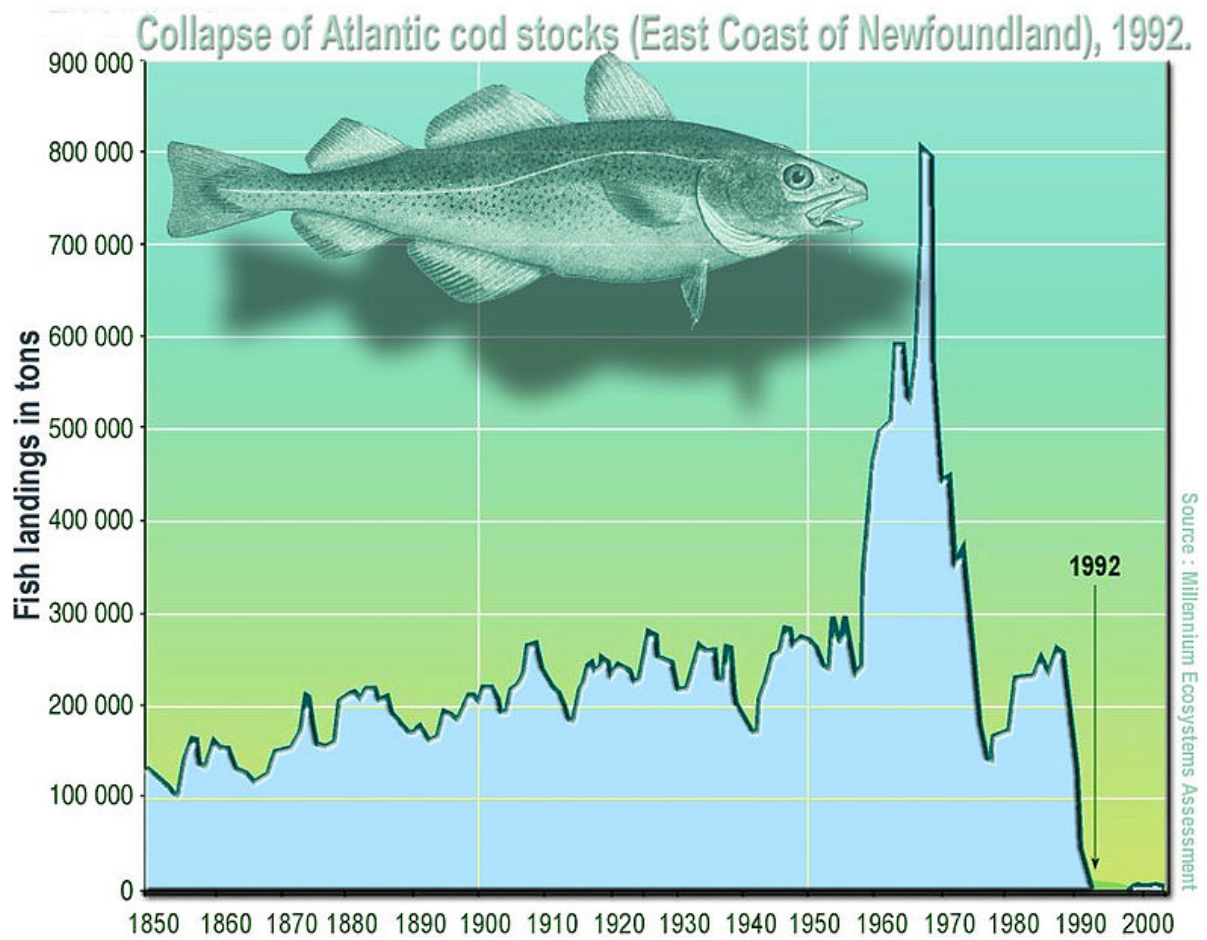


Figure 2.3: Collapse of cod fish stocks in Newfoundland after the 1960's⁵²

2.3 Recognizing China as a responsible power

2.3.1 Scientific cooperation

In addition to the Chinese Arctic and Antarctic Administration (CAA, 中国北极和南极的管理) in Beijing and the PRIC (中国极低研究中心) in Shanghai, which are research institutes reporting to the State Oceanic Administration (SOA, 国家海洋局), China disposes of several research centres in universities, such as the Centre for Polar and Deep Ocean Development (CPDOD) at Jiao Tong University (上海交通大学), the Center for Polar and Oceanic Studies (CPOS) at Tongji University (同济大学) and even a university focused on oceanic studies, including the Arctic, the Ocean University of China (中国海洋大学), all situated in Shanghai. These research centres are very active. For example in Tongji university alone, there have been three international conferences on the Arctic between January and May 2015, with researchers from Norway, Iceland, Russia, Canada or the USA. Many more institutes researching on the Arctic exist out of Shanghai.⁵⁴

According to Iselin Stensdal,⁵⁵ publication in those research centres is rapidly expanding and internationalizing. Between 2005 and 2012, 883 articles were published, with a progression from 63 in 2005 to 189 in 2012. No more than 44% of those articles had only Chinese authors and 40% of them had as co-authors researchers in Nordic states. Even if the technical aspects of Arctic climate represent the dominant field, around 5% of articles revolved around Arctic governance and international law. That China is highly interested in climate change issues comes as unsurprising. The country is one of the biggest polluter on Earth because of its sheer size while its population is increasingly worried by the most obnoxious aspects of pollution, as evidenced by the public debate sparked by Chai Jing's documentary *Under the Dome*.⁵⁶

Apart from that blooming scientific activity about the Arctic in Shanghai, the Chinese government also conducted several Arctic expeditions, of which the Summer 2012 Xuelong trip through Russian waters, to Iceland, and back through the CAO was the most publicized.⁵⁷ Chinese scientists have also been active for ten years in Ny-Ålesund on the Svalbard island. Still, the country is very much at the beginning of its research in the Arctic.^{58, 59}

⁵⁴Jakobson and Peng, see n. 3, p. 3.

⁵⁵Stensdal, Iselin. *Asian Arctic Research 2005–2012: Harder, Better, Faster, Stronger*. FNI Report 3. Lysaker, Norway: Fridjof Nansen Institute, May 2013. 39 pp., p. 7.

⁵⁶Beaumont-Thomas, see n. 52.

⁵⁷Viglundson, Jon and Doyle, Alister. *First Chinese ship crosses Arctic Ocean amid record melt*. Ed. by Reuters. 17th Aug. 2012. (Visited on 24/05/2015).

⁵⁸Kristensen, Kristian Soby. Researcher at University of Copenhagen. Personal communication per mail, 27th Mar. 2015.

⁵⁹Chen, see n. 63.

2.3.2 Cooperation in the Arctic council

China has been received as a member of the Arctic Council in 2013, in spite of the initial reluctance from Canada and Russia,⁶⁰ and participated to every session since then. The Arctic Council is mostly only an information exchange forum on environmental protection and sustainable development, even if more recently it became also used to formulate guidelines for economic policies.⁶¹ Inside of the Arctic Council, since China does not have voting rights and is thus not fully integrated into the decision process, the country tends to be designated as an 'expectant' or 'latent' stakeholder.⁶² As demonstrated by the renewed Chinese insistence to be part of the Arctic Council and its reluctant acceptance of the Nuuk criteria on coastal states' sovereignty in the Arctic in order to access it, as well as by its increasing research and economic interests, China has a strong interest towards knowledge sharing, all the more that the patchwork of Arctic governance institutions are quickly evolving and are largely debated within academic circles.⁶³

Furthermore, because of its sensitivity on sovereignty issues explained in section 1.4.5 and in the next chapters and also, as will be developed later in chapter 3, in order to build its image as a peaceful world-power, China has no interest in coming off as the black sheep. This explains that Chinese officials' and scholars' favourite words when it comes to the Arctic in particular seems to be 'cooperation', even if in general this word belongs to the most used words of the Chinese foreign policy lingo, probably followed by 'win-win' and 'harmonious'.⁶⁴ For example, the following is an extract of the speech of Professor Qiu Huafei at a Sino-U.S. Arctic Social Science Forum⁶⁵ on May 18th at Tongji University, which is in the same vein as his government's representative in a speech in Norway in 2010:⁶⁶

In the spirit of peaceful development of the Arctic for the benefit of mankind and on the basis of mutual respects and enhanced understanding and trusts, China will develop a normal relationship of win-win cooperation with the Arctic countries and the international community in the common endeavour to maintain and promote peace, stability and sustainable development in the Arctic, so as to make the Arctic part of the harmonious world.

⁶⁰Stensdal, Iselin. Researcher at Fridtjof Nansen Institute. Personal communication per mail, 7th Apr. 2015.

⁶¹Solli, Per Erik, Wilson Rowe, Elana and Yennie Lindgren, Wrenn. 'Coming into the cold: Asia's Arctic interests'. In: *Polar Geography* 36.4 (2013), pp. 253–270, p. 3.

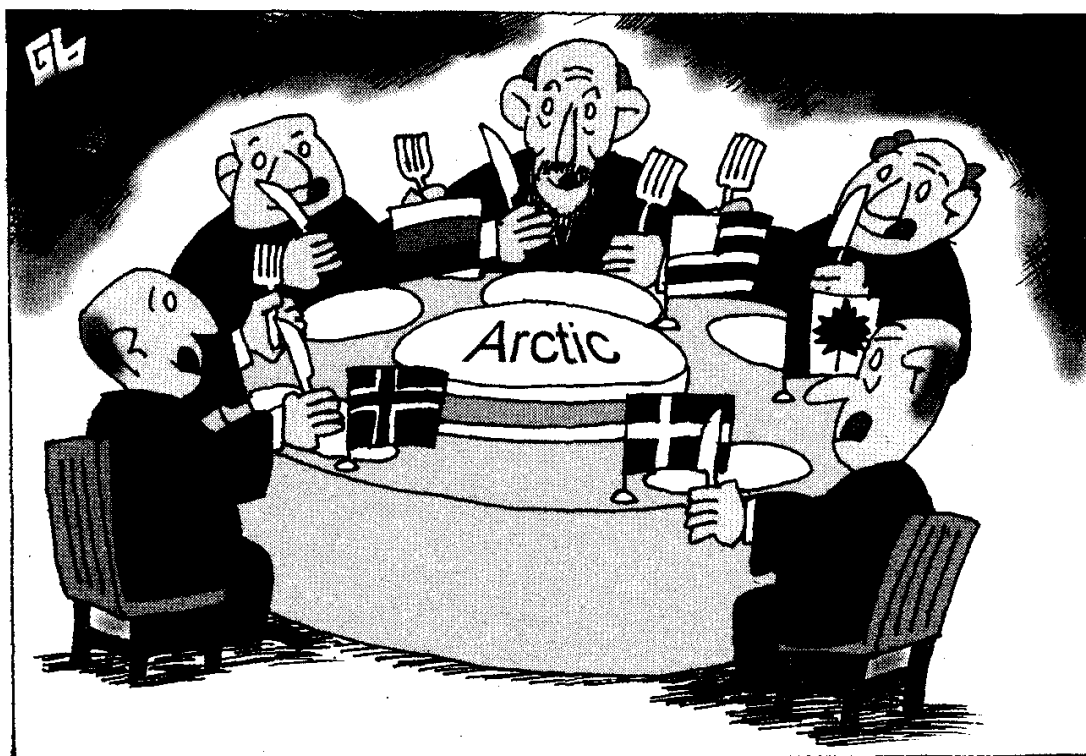
⁶²Stokke, Olav Schram. 'Asian Stakes and Arctic Governance'. In: *Strategic Analysis* 38.6 (2014), pp. 770–783, p. 777.

⁶³Pelaudeix, Cecile. 'What is «Arctic governance»? A critical assessment of the diverse meanings of «Arctic governance»'. In: *The Yearbook of Polar Law* 6 (2015).

⁶⁴*China-ASEAN cooperation: 1991-2011*. People's Republic of China. 16th Nov. 2011.

⁶⁵Qiu, Huafei. 'Global governance and the Arctic'. Professor at Tongji University. Sino-U.S. Arctic Social Science Forum at Tongji University, 15th May 2015.

⁶⁶Huikang, Huang. *China's View on Arctic Cooperation*. Ed. by Foreign Affairs of the People's Republic of China, Ministry of. 30th July 2010. (Visited on 24/05/2015).



SMW/ImagineChina

Five Arctic powers are holding a summit in Greenland on May 28, 2008 to forestall a confrontation over the Polar region's mineral resources and discuss how to protect its fragile environment.

Figure 2.4: Exclusive pie sharing in the Arctic ⁶⁷

However, in conferences in Tongji University, scholars like Fu Kuenchen⁶⁸ from Shanghai Jiatong University tended to express their dissatisfaction with the current situation, as according to them Arctic states tend to exclude non-coastal states from the decision making process. Wang Chuanxing from Tongji University also expressed⁶⁹ his fear that Russia and Canada are trying to 'get eggs by way of killing the hens' in that they are the most reluctant to non-coastal participation. This is particularly evidenced by the creation of a new Arctic Economic Council ⁷⁰ in which only coastal states participate. The goal of this council is, just like the Arctic Council, information exchange, but an important aspect pointed out by Chinese scholars is that information should better be shared with everybody. In that regard, they tend to follow a recurrent official position which is that China is a near-Arctic state⁷¹ and globally

⁶⁷(Guoqiang, see n. 5, p. 42)

⁶⁸Fu, see n. 11.

⁶⁹Wang, Chuanxing. Professor at Tongji University. Personal communication per mail, 27th Mar. 2015.

⁷⁰See the website at <http://arcticeconomiccouncil.com/>

⁷¹Exner-Pirot, Heather. 'New directions for governance in the Arctic region'. In: *Arctic Yearbook* (2012), pp. 225–

relevant actor, and therefore should fully participate to Arctic matters.⁷²

2.4 Intermediary discussion: liberal peace underway in the Arctic?

Numerous reasons laid out in chapter 3 would explain that China might be considered as a threat and excluded, but in the case of the Arctic in particular, this could be related to China not having an official agenda:⁷³

As an East Asian power that has neither Arctic coast nor the Arctic Council membership, China's open statement of not having a strategic agenda regarding the melting Arctic has been interpreted in dichotomous ways: some take it as a genuine expression from the Chinese government while others regard it as a tactic taken by the rising power to hide its real intention there due to its limited influence in the remote Arctic region.

In the meantime, as pointed out by Chinese scholars interviewed in Shanghai during conferences^{74,75,76} it is also precisely because China fears being considered as a threat by other Arctic nations that the country actively promotes scientific and diplomatic cooperation in order to facilitate information exchange, which should not be hindered. It is true that one should wonder why, even if the AC is not a policy-making body, but rather an agenda-shaping forum, there is a need for different categories of voting and participation rights in the AC. The reason for excluding people might simply be that knowledge is power. As stated by Guo Peiqing,⁷⁷ a comprehensive research of Arctic politics is necessary for China to defend its interests there.

We will detail further the general aspects of China's foreign policy regarding intervention in chapter 3, but it is worth noting that neo-realist and liberal theories alike agree on the fact that, in order to be considered as a real rising power, relevant on the world stage, it is compulsory for China's international lustre to participate in the politics of remote and second-order regions.⁷⁸

246, p. 298.

⁷²Rainwater, see n. 18, p. 63.

⁷³Lackenbauer, Whitney and Manicom, James. *Canada's northern strategy and East-Asian interests in the Arctic*. East Asia-Arctic Relations: Boundary, Security and International Politics 5. Waterloo, Ontario: The Centre for International Governance Innovation, Dec. 2013. 28 pp., p. 8.

⁷⁴Guo, Peiqing. Professor at Ocean University of China. Arctic Fisheries Roundtable at Tongji University, 16th Jan. 2015.

⁷⁵Fu, see n. 11.

⁷⁶Cheng, Baozhi. Researcher at Shanghai Institute for International Studies. Sino-U.S. Arctic Social Science Forum at Tongji University, 15th May 2015.

⁷⁷Jakobson, see n. 2, p. 7.

⁷⁸Gartzke, Erik and Weisiger, Alex. 'Under Construction: Development, Democracy, and Difference as Determinants of Systemic Liberal Peace'. In: *International Studies Quarterly* 58.1 (2014), pp. 130–145, p. 30.

This seems to have been understood by some Arctic states,⁷⁹ since Norway was positive towards letting China and the other Asian countries become permanent observers to the Arctic Council. The countries that had this position wanted to facilitate communication and reciprocal understanding, rather than excluding actors and ending up with concurring and perhaps even competing understandings, even if it makes for more coordinated governance.

Therefore, neo-realist doomsayers notwithstanding,⁸⁰ it rather seems that we can consider the Arctic to be a textbook example of liberal peace building in a multipolar setting with multilateral institutions.⁸¹ There seems to be little or not interest in playing a zero-sum game.⁸² Indeed no country has the military capabilities to prevail alone nor is willing to do so, while all the coastal states already created a regional multilateral council that emphasized as a requirement to enter it, via the Nuuk criteria, the respect of multilateral institutions such as the UNCLOS.

In this special context, Chinese Arctic policies should be considered independently from other more assertive policies in its Southern maritime region. They should rather be likened to other recent cooperative efforts such as the anti-piracy military actions in Somalia or its participation to the international rescue effort of the Malaysian Airlines flight MH370. As we explain in chapter 3, China is indeed slowly striking through its foreign non-intervention policy, beginning with low-key, consensual actions, so that its attitude in the Arctic could utterly plausibly prefigure what face the country wants to show to the world once border problems with neighbouring countries will be solved.

⁷⁹Stensdal, see n. 60.

⁸⁰Rainwater, see n. 18.

⁸¹Wegge, see n. 19, p. 91.

⁸²Exner-Pirot, Heather. Professor at University of Saskatchewan. Personal communication per mail, 28th Mar. 2015.

3 Second aspect: Chinese non-intervention foreign policy

3.1 China's contested sovereignty

3.1.1 Juridical sovereignty versus empirical control

While analysing the *Nomos of the Earth*, we already made implicitly a distinction between juridical and empirical sovereignty. The first concept refers to a set of formal rights granted to any sovereign state by international law, the second to the concrete reality of the legitimate supremacy and inviolability of a state's institutions within its borders. This distinction constitutes one of the axis of academic debates about sovereignty, albeit not always exactly under the same terms. Sometimes the debate is played along the terms of internal and external sovereignty¹, while in some other cases, the distinction is done between positive and negative sovereignty².

¹In (Chang, Mei-Ling. 'State sovereignty as social construct: a case study of Kosovo's pursuit of independence.' 2008, p. 2):

Internal sovereignty refers to the right and the ability of a state's government to exercise control over domestic affairs within a given territory without outside interference, and hence this type of sovereignty is also called 'empirical' sovereignty [...]; external sovereignty refers to a state's legal identity in international law and equal status with all other states which stresses inviolation of territorial integrity and the state's political independence from outside authorities and being free to conduct foreign relations, and hence this type of sovereignty is also called 'juridical' sovereignty or 'international legal sovereignty'.

²In (Jackson, Robert. 'Quasi-states, dual regimes, and neoclassical theory: international jurisprudence and the Third World'. In: *International Organization* 41.04 [1987], pp. 519–549, p. 526):

juridical statehood derived from a right of self-determination – negative sovereignty – without yet possessing much in the way of empirical statehood, disclosed by a capacity for effective and civil government – positive sovereignty

3.1.2 Foreign meddling in Chinese internal affairs

China arguably already possesses all attributes of external sovereignty in spite of territorial disputes, since the Chinese government is part of the United Nations and has even a seat at the Security Council (UNSC). The country is able to benefit from all attributes of juridical statehood by being in control of defined territories and having diplomatic relations with other countries. However, concrete control of these territories is sometimes disputed. Let us take several very contemporary examples where the empirical application of sovereign claims are disputed:

- **Internet sovereignty:** when Xi Jinping's government members refer to sovereignty in phrases such as 'Internet sovereignty'³, they much rather emphasise sovereignty in the sense of 'lack of interference from the outside world' than in the sense of 'equal legal status of our state with other states'. However, this understanding of sovereignty has been straightforwardly criticised by the United States⁴ and less directly by European countries such as Germany.⁵
- **The Diaoyu/Senkaku conflict:** China refuses to acknowledge the validity of the claims of Japan and treats therefore those claims as 'meddling in sovereign affairs'⁶. Reversely Japan refuses to recognise the Chinese claims. The result is that there exists no international consensus on the borders of China in that region.
- **Tibet:** Foreign countries regularly try to treat the Tibetan liberation as an international problem⁷, while China has to reiterate its legitimate sovereignty against foreign inter-

³Xi Jinping said on Nov. 19 (中国新闻网, ed. 加强战略部署维护网络安全成国际社会共识和惯例. 27th Feb. 2014. [Visited on 24/05/2015]):

Following the principle of mutual respect and mutual trust, China is ready to work with other countries to deepen international cooperation, respect sovereignty on the Internet, uphold cyber security, and jointly build a cyberspace of peace, security, openness and cooperation and an international Internet governance system of multilateralism, democracy and transparency.

⁴McGreal, Chris and Johnson, Bobbie. *Hillary Clinton criticises Beijing over internet censorship*. Ed. by The Guardian. 21st Jan. 2010. (Visited on 24/05/2015).

⁵Der Spiegel, ed. *Confidential Report Lists 'Significant' Abuses: German Foreign Ministry Criticizes China's Human Rights Record*. 26th Apr. 2008. (Visited on 24/05/2015).

⁶When the US House of representatives passed a non-binding amendment that recognised Japanese sovereignty over the Diaoyu, *ChinaDaily* reported the following (China Daily, ed. *Double blow to ties*. 24th Dec. 2012. [Visited on 24/05/2015]):

This is a blatant violation of China's sovereign rights. [...] The US' meddling in the dispute over the Diaoyu Islands is detrimental to regional peace and stability.

⁷The US Congress voted an amendment calling for access to journalists in Tibet, to which the Foreign Ministry spokesman at the time, Hong Lei, answered (China Daily. *US urged to stop meddling over Tibet*. 29th Mar. 2012. [Visited on 24/05/2015]):

We advise these members to recognize the facts, discard prejudice, stop any interference in China's internal affairs and do more things conducive to the Sino-US relations, not the other way around,

ventionism.



Figure 3.1: Frontpage of ChinaDaily's edition of May 1st this year, reiterating a long-standing CCP position

empirical sovereignty because of an escalation would have threatened its juridical sovereignty, that is led to the disintegration of the state.

3.2 The Chinese anti-imperialist stance

3.2.1 Western intervention against 'quasi-states'

In order to understand in an extreme case how states' sovereignties are contested today in spite of them having full juridical sovereignty, we examine now the case of quasi-states. Quasi-states exemplify concretely how the delegitimation of governments by the international community is happening nowadays, and how this leads to interventions, either to enforce a split of the country like in Serbia or to reinforce its military capacities, infrastructure, or health-care services like in many African countries.

In a Schmittian reading of the world, these dissents about the legitimacy of the Chinese government are politically dangerous, because they could foreshadow future interventionist actions that would be more than mere words. However, these threats are minimal in comparison with the risk of foreign intervention that existed for China after WW2, when China just emerged from a bloody civil war and the USA sided with the Kuomintang and Taiwan. Then, not only China's empirical sovereignty would have been challenged on the sides like nowadays, but the very existence of the Chinese communist government would have been threatened, if not the existence of the Chinese state altogether, would separatist movements have won. This is in that context that China developed its anti-imperialist stance, which in our words would consist in fighting back every light encroachment on its

Jackson⁸ has been one of the promoters of the denomination ‘quasi-states’. Decolonization leads, according to him, to the birth of states that have the international legal right to exist but lack an administration strong enough to provide political goods to its citizens such as security, infrastructure, social welfare... Often they become legally independent administrations that practically depended on foreign intervention such as humanitarian aid or military support to subsist. In Jackson’s terms, they have negative statehood⁹ but lack the positive one. These states can also become ‘rogue’ or ‘failed’ states. Several examples can be taken in a very recent past:

- Afghanistan, ‘found guilty’ of harbouring terrorists, has been called a failed state right after 9/11 and invaded by an international coalition. The state is still under partial foreign governance¹⁰¹¹
- Mali, unable to cope with terrorism in Northern Mali, called France, surrounding states and China for assistance¹²
- Greece, unable to overcome its financial crisis, has resorted to international financial help and international crisis co-management¹³
- North-Korea’s development of nuclear weapons has been labelled as ‘criminal’¹⁴

The case of quasi-states makes clear that, more importantly than the formal, juridical sovereignty still possessed by all those countries, the real stake is the concrete, empirical sovereignty, and that its recognition depends primarily on internal features, not on international legal texts, as states become more and more accountable for the well-being of their citizens¹⁵.

⁸Jackson, see n. 2.

⁹Or, in Schmittian terms, juridical statehood

¹⁰Rotberg, Robert. ‘Failed states in a world of terror’. In: *Foreign Affairs* 81 (2002), p. 127.

¹¹Mamundzay, Farid et al. *Policy Paradigms, Subnational Governance, and the State Sovereignty Gap in Afghanistan*. Kabul: Independent Directorate of Local Governance of the Islamic Republic of Afghanistan, Jan. 2015. 17 pp.

¹²Dorman, Steven. ‘China’s evolving foreign policy in Africa: a new direction for China’s non-intervention strategy?’ MA thesis. Monterey, California: Naval Postgraduate School, 2014. 120 pp.

¹³Featherstone, Kevin. ‘The JCMS Annual Lecture: The Greek Sovereign Debt Crisis and EMU: A Failing State in a Skewed Regime*’. In: *JCMS: Journal of Common Market Studies* 49.2 (2011), pp. 193–217.

¹⁴Kan, Paul Rexton, Bechtol, Bruce and Collins, Robert. *Criminal sovereignty: understanding North Korea’s illicit international activities*. Carlisle Barracks, Pennsylvania: Strategic Studies Institute of the U.S. Army War College, Mar. 2010. 44 pp.

¹⁵In (Aalberts, Tanja. ‘The sovereignty game states play: (quasi-) states in the international order’. In: *International Journal for the Semiotics of Law* 17.2 [2004], pp. 245–257, p. 246):

Whereas state collapse and failure formerly used to be regarded as the internal business of the respective states, and part of their responsibility as sovereign entities, now the acknowledgement has risen that state failure not only bears upon the well-being of the citizens concerned (which often has proven to be not good enough a reason for international action), but its implications reach further, i.e. to neighbouring states, regional security, and to the ‘global society’ at large.

As we saw with Schmitt in 1.4.5, this recognition of internal features is not at all neutral and empirical. Quasi-states are not neutrally thought as another kind of states that challenges the traditional notion of sovereignty,¹⁶ but as watered-down versions of Westphalian states. Thus, Afghanistani and Malian armies are being formed by American and French armies while Greece should regain its independence as soon as the debts are paid. Therefore, quasi-statehood does not signal a change of paradigm in the notion of statehood, but is rather a play on words where powerful countries merely designate some entities as good or failed states and use the internal features of the states as arguments supporting their naming scheme.¹⁷

notions of quasi-statehood arguably consists of imperialism by other means. Indeed history seems to repeat itself, as there have been calls for neo-colonialism in order to save failed states from worse – and, ultimately, from themselves.

3.2.2 China's oppression by foreign powers

China, in its recent history, has repeatedly denounced any kind of neo-imperialism and neo-colonialism.¹⁸ In Chinese history textbooks, the unequal treaties imposed on the Qing dynasty still constitute an essential brick of the taught prism for international relations:¹⁹

Chinese nationalism is not just about celebrating the glories of Chinese civilization; it also commemorates China's weakness. This negative image comes out most directly in the discourse of China's Century of National Humiliation (百年国耻) [...] From 1927 to 1940, in Republican China there was an official holiday called National Humiliation Day. [National humiliation] provides the context for the founding moment of the PRC, when Mao Zedong told the world in 1949 that the Chinese people had finally stood up:

Ours will no longer be a nation subject to insult and humiliation. We have stood up.

As can be seen through the slope of the frequency of the term 'victim' in governmental reports in figure 3.2, this attitude was more widespread after the foundation of communist China. However, still today, Chinese scholars and officials are very wary of the misuse of 'foreign values' and norms, the promoting of which would be used to delegitimise the CCP. It had been

¹⁶Jackson, see n. 2.

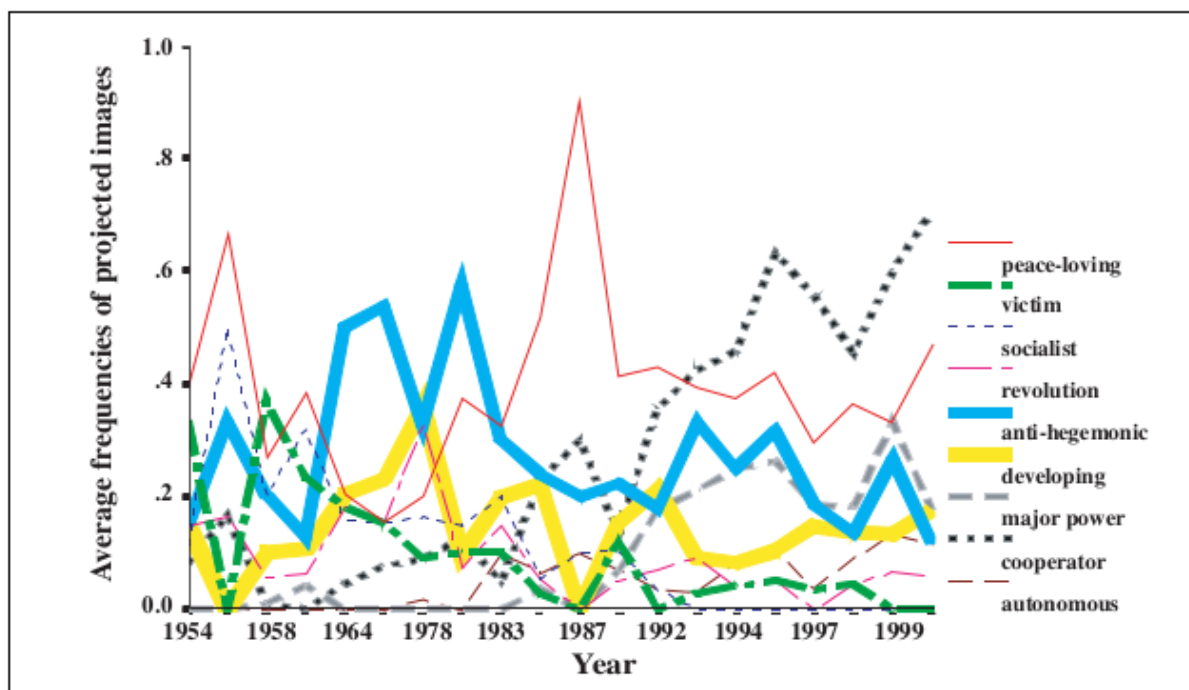
¹⁷Aalberts, see n. 15, p. 255.

¹⁸Pang, 'China's non-intervention question', see n. 7.

¹⁹Callahan, William. 'National insecurities: Humiliation, salvation, and Chinese nationalism'. In: *Alternatives: Global, Local, Political* 29.2 (2004), pp. 199–218, p. 203.

²⁰(Wang, Hongying. 'National image building and Chinese foreign policy'. In: *China: An International Journal* 1.01 [2003], pp. 46–72, p. 52)

Figure 2. Projected Images



Source: Government Work Reports, various issues.

Figure 3.2: China's position in the international system according to governmental reports²⁰

analysed *inter alia* by James Rosenau²¹ and remains a distinctive feature of Chinese officials' mind-setting towards foreign powers, with for example the brand-new campaign to 'never let textbooks promoting Western values appear in our classes' promoted by the new Minister of Education Yuan Guiren:²²

In recent years, some countries have viewed China's rise as a challenge to their institutional patterns and political values, so they have intensified infiltrating and dividing China with more covert means, making ideological and publicity work in universities more difficult.

Thus, nationalism in China is entrenched in a fight against colonialist powers and oppression, that, after the Korean and Vietnamese wars, translated into very little intervention abroad during three decades. This is the opposite of the American conception of patriotism, which revolves around the defence of American universal values²³ and entails intervention to spread those values around the world.²⁴

²¹Wang and Rosenau, see n. 20, p. 32.

²²曹林. 限定“西方价值观”避免不必要纷争. Ed. by 新华网. 5th Feb. 2015. (Visited on 24/05/2015).

²³Nussbaum, Martha. 'Patriotism and cosmopolitanism'. In: *The cosmopolitan reader* (1994), pp. 155–162.

²⁴Turner, Bryan. 'Cosmopolitan virtue, globalization and patriotism'. In: *Theory, culture & society* 19.1-2 (2002), pp. 45–63.

3.3 Non-interference policy: times are changing

Since the end of the nineties, China stopped opposing intervention by Western powers and even participated in several anti-piracy operations.²⁵ In 2005, China issued a position paper in the UN which reads as follows (emphasis added):²⁶

Each state shoulders the primary responsibility to protect its own population. However, internal unrest in a country is often caused by complex factors. Prudence is called for in judging a government's ability and will to protect its citizens. No reckless intervention should be allowed. When a massive humanitarian crisis occurs, it is the *legitimate concern of the international community to ease and defuse the crisis*. [...] It falls on the Security Council to make the decision in the frame of UN in light of specific circumstances which should lead to a peaceful solution as far as possible. *Wherever it involves enforcement actions*, there should be more prudence in the consideration of each case

What is remarkable in this paper is that China agrees that military enforcement actions can be legitimate and that the UNSC, in which China has a veto power, might decide to send troops, according to chapter seven of the Charter. Of course the language is carefully chosen to be as moderate as possible, but the content signifies that China agrees it has to share the burden, the so-called 'responsibility to protect' that permanent members of the UNSC have.²⁷ This turn is not the only one taken by China in recent years. China's approach to freedom of seas also markedly changed since the signature of UNCLOS in 1982, with the country now in favour of 'burden-sharing' between coastal and user states in the straits of Malacca and Singapore,²⁸ even if there was intense debate under the Hu Jintao government about the necessity to defend the freedom of the sea principle in the Malacca strait.²⁹ In Schmittian terms, this would be understood as a complete reversal, from anti-imperialism to adherence to the necessity of a 'World police' led by major powers.

Inside of China, there is a debate among scholars between tenants of the old stance of Deng Xiaoping and proponents of a change in China's attitude towards the rest of the world, even if³⁰ most of the high ranking servants favour its maintain and disapprove any provocative stance taken by the military or scholars, such as those of Yin Zhuo or Guo Peiqing. On one

²⁵Erickson, Andrew and Strange, Austin. 'Ripples of Change in Chinese Foreign Policy? Evidence from Recent Approaches to Nontraditional Waterborne Security'. In: *Asia Policy* 17.1 (2014), pp. 93–126.

²⁶*Position Paper of the People's Republic of China on the United Nations Reforms*. People's Republic of China. 7th June 2005.

²⁷Evans, Gareth. 'The responsibility to protect: ending mass atrocity crimes once and for all'. In: *Irish Studies in International Affairs* 20.1 (2009), pp. 7–13.

²⁸Pang, 'China's non-intervention question', see n. 7, p. 244.

²⁹Lanteigne, see n. 47, p. 10.

³⁰Swaine, Michael. 'Perceptions of an assertive China'. In: *China Leadership Monitor* 32.2 (2010).

side of the spectrum, Yang Wenchang, director of the Chinese People's Institute of Foreign Affairs (CPIFA),³¹ feels compelled to explain that the 韬光养晦 principle is still up to date because it allows to act and look moderate on the international stage, thus to generate the expectations that your decisions are not hastily made and that you are reliable. It should rather be understood as a 'Wait and see' command than as 'Let's build weapons in secret'. On the other side, Pang Zhongying,³² professor at Beijing University educated in Europe, would much rather like China to become openly assertive, because, as a new major player, China ought to defend clearly its interests.

This reversal has often been linked to China's growing economic interests in remote parts of the world^{33,34} but those interests are not simply economic, as demonstrated by the recent PLA rescue operations in Nepal and following the MH370 aircraft crash in the Indian ocean or the mediation in South-Sudan where China spoke at the end a language very close to that of the USA.³⁵ There is more generally a raw necessity to be credible as a global power, with the conceptual and military tools that allow the state to enforce its decisions abroad, as laid out by the latest PLA's white paper:³⁶

With the growth of China's national interests, its national security is more vulnerable to international and regional turmoil, terrorism, piracy, serious natural disasters and epidemics, and the security of overseas interests concerning energy and resources, strategic sea lines of communication (SLOCs), as well as institutions, personnel and assets abroad, has become an imminent issue.

Therefore, when the non-intervention policy is put forward by the Chinese government, the suspicion can arise³⁷ that this might not reflect the real Chinese contemporary changing stance on non-intervention, but rather economic interests where Chinese enterprises neglect ethical

³¹Yang, Wenchang. 'My Views about «Tao Guang Yang Hui»'. In: *Foreign Affairs Journal* 102 (2011).

³²Pang, Zhongying. *Does China needs a new foreign policy?* Stockholm: Stockholm International Peace Research Institute, Apr. 2013. 7 pp.

³³Chen, Gang. 'China's emerging Arctic strategy'. In: *The Polar Journal* 2.2 (2012), pp. 358–371, p. 361.

³⁴In (Bitzinger, Richard. *China's syndrome: Chinese military modernization and the rearming of Southeast Asia*. RSIS Working Paper 126. Singapore: S. Rajaratnam School of International Studies, 2nd May 2007, p. 30):

China is now the world's second largest oil importer (after the United States), and 60 per cent (expected to rise to 75 per cent by 2015) of its crude oil imports come from the Middle East, much of it passing through the Malacca and Singapore. In addition, a quarter of the world's trade also transits through these waterways. Consequently, Beijing is extremely concerned about the continuing openness, safety and security of these vital SLOCs (Sea lines of communication), which could be disrupted or impeded during an international crisis, terrorist action or piracy.

³⁵Large, Daniel. *Sudan's foreign relations with Asia China and the politics of «looking east»*. 158. Pretoria: Institute for Security Studies, Feb. 2008. 20 pp.

³⁶*China's Military Strategy*. The State Council Information Office of the People's Republic of China. May 2015, Sec. 1.

³⁷Brookes, Peter and Shin, Ji Hye. 'China's influence in Africa: Implications for the United States'. In: *Background 1916* (2006), pp. 1–9.

considerations and accommodate local governments.³⁸ In those cases, the discourse on non-intervention is used as a leverage against Western powers, since they come with strings attached when they offer investments or humanitarian aid. Those contradictions and debates explain that China is seeking at the moment a new way to promote its new role on the international stage. For a while, it had been through the ‘peaceful rise’ slogan, while now it is turning to the ‘21st century silk belt’.

3.4 ‘Peaceful rise’ and ‘silk road’

The peaceful rise (和平崛起) slogan was at the beginning promoted by the ‘norm entrepreneur’³⁹ Zheng Bijian, who was in 2002 leader of the Central Committee’s Central Party School, of which Hu Jintao was president. The former is supposed to have been an advisor of the latter, and tested his idea during several national and international forums during two years. His party credentials and connections within the administration are said to have been decisive for the promotion of the slogan,⁴⁰ following the path that we outlined in section 1.3. According to Bijian’s own words,⁴¹ the goal of that notion was to defend that (emphasis added):

China does not seek hegemony or predominance in world affairs. It advocates a *new international political and economic order*, one that can be achieved through incremental reforms and the democratization of international relations. China’s development depends on world peace—a peace that its development will in turn reinforce.

This slogan was criticised internally for multiple reasons, among them that it was a mere slogan rather void of content and that it contradicted Deng Xiaoping’s 套光养辉. Finally, the content was not altered and the term ‘rise’ was from time to time replaced by ‘development’ in translations. The slogan proved at least effective to stir up debates and attract attentions, given the number of mentions of the notion since 2005⁴².

The ‘new international political and economic order’ that Bijian defends is still being defined step by step, since, as we saw in section 1.3, internal politicians are divided on how to ad-

³⁸Holslag, Jonathan. ‘China’s new mercantilism in Central Africa’. In: *African and Asian Studies* 5.2 (2006), pp. 133–169, p. 166.

³⁹Finnemore, Martha and Sikkink, Kathryn. ‘International norm dynamics and political change’. In: *International organization* 52.04 (1998), pp. 887–917, p. 895.

⁴⁰Glaser, Bonnie and Medeiros, Evan. ‘The changing ecology of foreign policy-making in China: the ascension and demise of the theory of “peaceful rise”’. In: *The China Quarterly* 190 (2007), pp. 291–310, p. 296.

⁴¹Bijian, Zheng. ‘China’s «peaceful rise» to great-power status’. In: *Foreign Affairs* 84.5 (2005), pp. 18–24, p. 24.

⁴²Apart from the media attention received by the concept, on Google Scholar, ‘peaceful rise’ gives 2300 results since 2005, with among them numerous plays on words like (Mearsheimer, John. ‘China’s unpeaceful rise’. In: *Realism Reader* 105.690 [2014], p. 464)

⁴³(新华网, ed. 新丝路·新梦想. Dec. 2014. [Visited on 24/05/2015])



Figure 3.3: Regions impacted by the Chinese Silk Road Economic Belt and Maritime Road project⁴³

dress China's rise, while the country, as laid out in section 1.4.1, seems to be waging a long term 'rightful resistance' against the USA hegemony within international institutions. Part of that long-term counter-hegemony strategy is the recent 'New Silk Road' strategy. Since that concept shies away from the prospects of military confrontation, it seems that its goal is first and foremost to attract the goodwill of countries that could benefit from those new economic opportunities, that is most of Southern and Central Asia⁴⁴ as shown in map 3.3, as well as the Arab world⁴⁵ or even Africa.⁴⁶ Apart from the obvious economic prospects, the strategy along the silk road might be the same as that outlined for the Arctic in section 2.4: those states who have deepened their economic and scientific links with China might have a more positive attitude towards the country in the future. They might even rally China's political claims on the international stage later.

3.5 Intermediary discussion: the Arctic as a peaceful second-order region

The Chinese government has always been very wary of foreign interference in its own affairs and will likely continue to be so in the next decades. Reversely, this attitude prevents it from intervening outside of its territory, except, recently, under rare circumstances. These circumstances could be a 'major international crisis' like in Sudan or, less avowedly, commercial interests, as in the case of the Malacca strait or during recent anti-piracy operations with European countries along the Somalian coast.⁴⁷

Yet, there is no major international crisis in the Arctic, and, as we explained in chapter 2, immediate Chinese commercial interests might well be not to make waves, but to accommodate everybody. China could have accommodated explicitly Russian and Canadian claims by openly acknowledging them and by using the non-interference policy as a justification. However, the fact that China did not use that card could be understood as a tentative not to vex its actual or potential trade partners while not going as far as to completely compromise any future position reversal. It also strategically lets the USA and European countries do the contesting. According to the majority of the scholars that I could contact, this reassures the Nordic states. Rachael Lorna Johnstone, from the University of Akureyri, explains this in the

⁴⁴Khodzhaev, Ablat. 'The Central Asian Policy of the People's Republic of China'. In: *China and Eurasia Forum Quarterly* 7.1 (2009), pp. 9–28.

⁴⁵Simpfendorfer, Ben. *The New Silk Road: How a rising Arab world is turning away from the west and rediscovering China*. London: Palgrave Macmillan, 2011. 256 pp.

⁴⁶Aneja, Atul. *China steps up drive to integrate Africa with Maritime Silk Road*. Ed. by The Hindu. 21st Jan. 2015. (Visited on 24/05/2015).

⁴⁷Lin-Greenberg, Erik. 'Dragon boats: assessing China's anti-piracy operations in the Gulf of Aden'. In: *Defence & Security Analysis* 26.2 (2010), pp. 213–230.

following terms:⁴⁸

In many ways, China is quite easy to deal with and work with because you can predict how it will respond (or not respond) to international incidents. China does not even discuss sending in drones, or troops and is pretty reluctant even to talk international sanctions. So for China, indigenous affairs are a domestic issue for the Arctic States. For all their talk about indigenous rights, this suits the Arctic States just fine. China will not tolerate interference in its internal affairs; but unlike some other major international players, it does not interfere in other States' internal affairs either.

Furthermore, on a more global scale, the other members of the UNSC, including the USA and Russia, have objectively benefited from a silent and implicitly acquiescent China during the last decades,⁴⁹ since it allowed them to pursue their own interventionist policy without opposition from another member of the UNSC, for example lastly in Libya. A more assertive China could have meant more complicated diplomatic bargainings, if the benefits or objectives of an intervention were not shared by China. Thus, the redefinition by China of the purpose and means of an acceptable intervention naturally raises eyebrows in Washington, London, Paris and Moscow.

States that are not member of the UNSC could legitimately be even more worried by a more assertive China, since China's sheer size and economic power have made the country into a pole of international trade. For example, if China had ostensibly pressured Iceland and Greenland to change their environmental laws in order to get contracts with Chinese companies, other states in the Arctic would have been worried about China's possibly nefarious influence in the pristine region, given its track record of tackling pollution at home, and thus China would have been much less likely to be admitted as an observer member in the Arctic council.

Besides pragmatic economic considerations, this is precisely because of those fears that China has to play the card of cooperation in the Arctic and should swallow its potential desires for more assertiveness in order to reassure its partners, as we explained in 2.4, and as several Chinese scholars defended to me while in Shanghai. According to Yang Jiang⁵⁰ and Wang Chuanxing,⁵¹ China is not playing the 韬光养晦 principle thereby, which is slowly disappearing from the Chinese conceptual arsenal. It is rather that Arctic stakes are secondary to China, what was a consistent interpretation from Chinese or non-Chinese scholars met in Shanghai

⁴⁸Johnstone, Rachael Lorna. Professor at the University of Akureyri. Personal communication per mail, 3rd Apr. 2015.

⁴⁹Dutton, Peter. 'China's Views of Sovereignty and Methods of Access Control'. Hearing before the US-China Economic and Security Review Commission. 27th Feb. 2008.

⁵⁰Yang, see n. 49.

⁵¹Wang, see n. 69.

or interviewed by mail⁵²⁵³⁵⁴⁵⁵⁵⁶⁵⁷⁵⁸.⁵⁹

Finally, there is a possible comparison between the general geopolitical situation of China in the Arctic and Europe versus China. Shambaugh⁶⁰ argues that the European Union is generally quite benevolent towards China because European countries have virtually no military interests in China's surroundings. An easy parallel is to be drawn between Arctic countries and China. Since China has no security interests in the Far North, it is all the more easier for it to accommodate everyone, just like the European Union does with Asian countries.

⁵²Ma, Jianying. Deputy Director of Institute for Ocean Politics Studies. Personal communication per mail, 27th Mar. 2015.

⁵³Wang, see n. 69.

⁵⁴Cheng, see n. 76.

⁵⁵Pelaudeix, Cécile. Assistant professor at Aarhus University. Personal communication per mail, 21st Apr. 2015.

⁵⁶Stensdal, see n. 60.

⁵⁷Kristensen, see n. 58.

⁵⁸Guo, see n. 74.

⁵⁹Fu, see n. 11.

⁶⁰Shambaugh, David. 'The new strategic triangle: US and European reactions to China's rise'. In: *The Washington Quarterly* 28.3 (2005), pp. 5–25, p. 8.

4 Main issue: Chinese legal conundrum *à propos* sovereignty

4.1 Criteria of sovereignty attribution over sea territories

4.1.1 Historic title

In its 14th session, the International Law Commission (ILC) inquired on request of the General Assembly (GA) on the definition of ‘historic bays’ and ‘historic waters’.¹ The Commission quickly considered that, although only one of the two terms is referred to in the United Nations Law of the Sea (UNCLOS), to which Canada, Russia and China are part, both of them have been used interchangeably by the the Member States of the United Nations (UN). As a consequence the whole topic of the inquiry revolves around the criteria for legitimate historical claims of sovereignty regarding sea territories.

The literature being shallow on that topic, the Commission only had one case of settlement to draw from in order to support its analysis. The case² was a dispute on the status of Norwegian fjords. The United Kingdom considered that Norway had not established its sea borders according to straight baselines as stipulated in the UNCLOS. Norway agreed with it but argued that since nobody had ever contested the country’s sovereignty over the fjords in question since decades, it could be established that Norway’s sovereignty had been indirectly recognised. Norway finally won the case, even if its argumentation was not completely accepted by the judges of the International Court of Justice (ICJ). As analyses Professor O’Connell:³

The Court did not uphold the Norwegian method of drawing the territorial sea upon historic grounds, since this would have been to treat that method as a special

¹*Régime juridique des eaux historiques, y compris les baies historiques*. Vol. 2. A/CN.4/126. Secrétariat de la Commission du droit international. 1960.

²*Fisheries case*. ICJ Reports 1951. Judgment. International Court of Justice. 18th Dec. 1951, pp. 113–144.

³O’Connell, Daniel and Shearer, Ivan Anthony. *The international law of the sea*. Oxford: Oxford University Press, 1984. 1201 pp., p. 206.

case rather than as the application to a concrete situation of standard rules, which is what the Court intended.

Here a distinction has to be made between a historic title over a delimited territory, and the method of using historic grounds to delimit a sovereign territory. While the Court accepted Norway's argument that some delimited areas were part of Norway's territorial waters due to a historic title, it did not accept the method of delineating new sea borders that would have been yet unclear following historic grounds. In other words, it recognised that a given situation, that had been going on uncontested for decades, could be said to be legal, but did not recognize that historic titles could create new delimitations that had not been previously uncontested. In 1962, the ILC followed that approach and argued that therefore the burden of proof in the case of disputes about historic title did not particularly tilt on the side of the defendant state, since historic waters claims should not be an exceptional method.

At the issue of its analysis in 1962, the Commission recommended that the following criteria⁴ ⁵ be evaluated to determine the legitimacy of a historical claim:

1. The authority exercised over the area in question by the State that claims it to be part of its 'historic waters'
2. The continuity of this usage
3. The attitude of foreign states

The Commission strongly insist on the importance of the second criterion in spite of the difficulty to clearly define it. Expressions like 'established usage' or 'continued and well-established usage' are often mentioned in the literature. The Commission adds that this usage must have taken place during a 'considerable period',⁶ that the action must have been 'repeated' and 'effective'.

Concerning the third point, the Commission indicates that foreign states must at the very least have been tolerant regarding the practice of a claimant state. This does not require that all states of the international communities said nothing, but simply that the states that would have any interest in the claimed area accepted *de facto* the practice. Also, this differs from an acknowledgement of the neighbouring states. If acknowledgement had taken place, there

⁴See n. 1, §185.

⁵Translated from

1. L'autorité exercée sur l'espace en question par l'État qui le revendique en tant qu' 'eaux historiques' ;
2. La continuité de cet exercice d'autorité;
3. L'attitude des États étrangers.

⁶See n. 1, §103.

would be no need to recourse to historic claims.

Reversely, this means that if the neighbouring or interested states have clearly stated their disapproval of a policy as soon as that policy had been enforced, then naturally the claimant state would fall short of arguments to substantiate its position. As we will see below, a consequence of it is that historic claims over Arctic passages are not as well substantiated in the case of Canada as in the one of Russia.

Finally, the more recently published UNCLOS, which codify the customary law of the sea, refers to the term 'historic' in several articles focused on the method of delimitation of sea territories, but does not detail what the 'historical method' would be, so that we are left to the consultation of ILC digests to know how to interpret this concept.

4.1.2 Straight baselines

The method of delimitation through straight baselines is clearly defined in the UNCLOS as follows in Article 7⁷:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its *immediate vicinity*, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
2. ...
3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be *sufficiently closely linked to the land* domain to be subject to the regime of internal waters.

As is obvious, the difficulty lies not in the principle of the method, which consists in drawing straight lines on a map between points, but in its concrete application: what are the relevant points ?

In the case of archipelagos, the UNCLOS further stipulates in its Article 47 (text cropped and emphasis added):

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago ...

⁷We only quote here the relevant paragraphs of the article and add emphasis

2. The length of such baselines shall not exceed *100 nautical miles*, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of *125 nautical miles*.

Furthermore the articles of the part of the Convention about archipelagos immediately following Article 47 propose that archipelagic states delimit sea lanes in which free passage would be granted to foreign ships.

No reference is made to historic titles in the articles that we mentioned here, which constitute one of the legal ground on which Russia and Canada substantiate their legal claims in the Arctic. However the jurisprudence contains, as we saw above, hints to the possibility of using historic titles or claims to assert sovereignty over a sea territory.

4.1.3 International strait

The Part III of the UNCLOS provides regulations pertaining to 'straits' but does not define what a strait is. The most important part of the regulation is the following, contained in Article 38§1:

In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

Limitations can be put to that freedom, in particular to avoid pollution or threats to the safety of the bordering territories, but the right of transit passage would mean that the bordering territory cannot levy fees and is compelled to organise the transit of foreign ships by building navigational aids, writing guidelines and regulations for the transit and by publishing them.

It should also be noted that normally, right of innocent passage is granted through territorial seas, but many states restrict navigation in this zone of twelve miles or even more along their coast.⁸ As a result the right of transit might be invoked in particular when the distance between the two coastlines is narrower than 24 miles.

⁸Oxman, Bernard H. 'The territorial temptation: a siren song at sea'. In: *American Journal of International Law* (2006), pp. 830–851.

In order to find what an international strait is, one must look at the decision of the *Corfu Channel* case of 1949⁹ (emphasis added):

It may be asked whether the test is to be found in the volume of traffic passing through the Strait or in its greater or lesser importance for international navigation. But in the opinion of the Court the decisive criterion is rather its geographical situation as *connecting two parts of the high seas* and the fact of its being *used for international navigation*.

The Court analyses that in the year and a half before the incident between Albania, who mined the channel, and British ships, around 2 884 ships had gone through the passage, bearing all flags (Italian, Greek, French, British for example) and that Albania had not opposed these moves prior to the sparking of a war between Greece and Albania. The Court also remarks that, even if there exist another passage between the Ægean and the Adriatic seas, its geographical situation nonetheless makes the passage fit for international navigation.

In the Arctic seas, the passages have been sparsely used during previous centuries, for the simple reason that the seas were frozen. Nowadays, traffic is slowly intensifying. In a trial at the ICJ, an element that would be heavily deliberated is the degree of existence of this transit traffic between two zones of free waters in order to consider a strait an international strait. Should the traffic potential due to variable weather conditions be taken into account or rather the historically attested traffic ? Depending on the answer to this question, the Russian and Canadian straits could either be open only under the conditions of the coastal states or open without such conditions.

4.1.4 Right of innocent passage in territorial seas

The UNCLOS recognizes four kinds of waters, as pictured in figure 4.1, which are the following ones:

- internal waters: foreign ships cannot sail within those waters except when they arrive to or depart from a harbour (Article 8).
- territorial sea: the limit to the territorial sea is set to 12 miles. Usually states restrict the freedom of navigation in those areas, even if the right of innocent passage should be granted according to UNCLOS (Article 2, 3, 4)¹⁰

⁹*Corfu Channel case*. ICJ Reports 1949. Judgment (Merits). International Court of Justice. 9th Apr. 1949, pp. 4–169, p. 28.

¹⁰In spite of a prohibition on hampering innocent passage under UNCLOS Article 24(1), roughly 40 coastal states have some type of requirement of notification and authorization for passage. (Brubaker, Douglas. 'Straits in the Russian Arctic'. In: *Ocean Development & International Law* 32.3 [2001], pp. 263–287, p. 271)

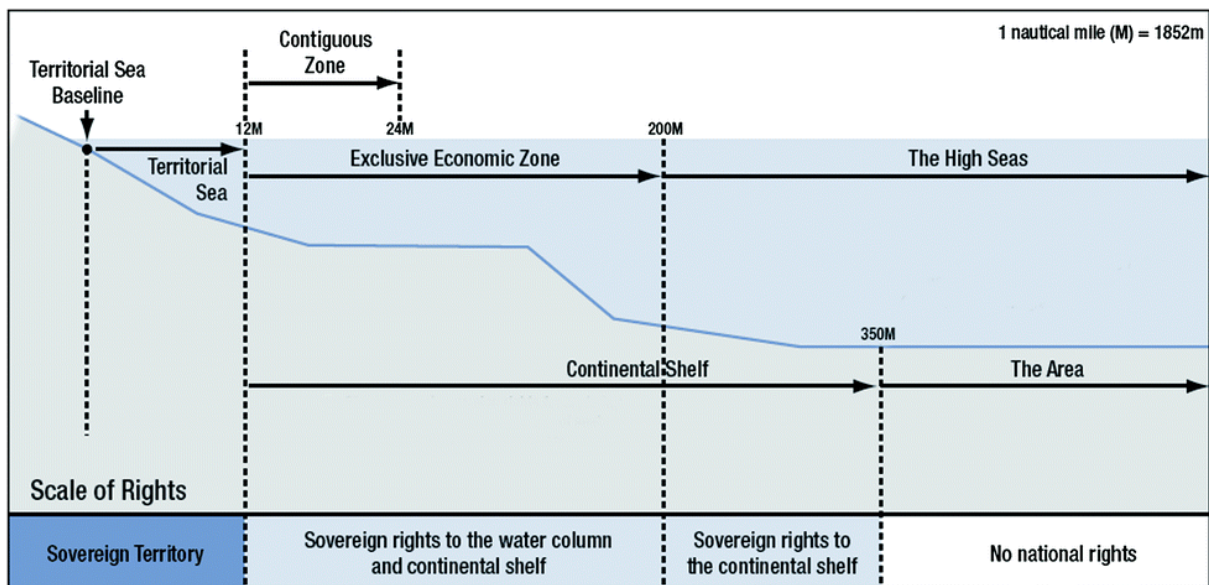


Figure 4.1: The four categories of sovereignty over coastal waters according to UNCLOS¹¹

- exclusive economic zone (EEZ): the upper limit is 200 miles and usually freedom of navigation is granted in that area (Part V), which is already considered as high seas for navigational purposes
- complete high sea: no restrictions are put on navigation (Part VII)

It is only if Canada and Russia succeed in imposing the conception that at least some part of the passages are part of their internal waters or at most territorial seas that they would have the right to hamper transit through those routes. In other words, Russia and Canada will not challenge the right of transit on most parts of the straits, but challenge it at 'gateways' only. Furthermore, under Article 8 of UNCLOS, when straight baselines are drawn around waters that were not previously considered internal, a right of innocent passage remains.

Finally, limitations can be put in place in the territorial sea or EEZ for security of environmental reasons. In the case of the Arctic, the UNCLOS specifically provides for environmental protection measures due to the fragility of the ecosystem in Article 234:

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.

¹¹(*Arctic Marine Shipping Assessment*. Arctic Council, 2009. 24 pp., p. 52)

Now we detail the histories of and claims on Canadian and Russian passages, as well as China's claims in the Qiongzhou strait in 4.4.

4.2 The Northwest passage

4.2.1 Brief history

The NWP is usually defined as the nautical area existing between the Davis Strait and Baffin Bay in the east and the Bering Strait in the west. It goes through Canadian waters, and the Canadian stance, just like the Russian one, has consistently been that the road belongs Canadian internal waters and that Canada has full sovereignty over this area. The Canadian Parliament even renamed the road 'Canadian Northwest Passage' in 2009. Unlike the Russian road, the Canadian road has been used for commercial shipping only once and will not be frequently used until infrastructure finishes to be build. Stephen Harper, the Prime Minister of Canada, announced the creation of a deep-water harbour in 2007, in part to bolster the sovereignty claims of Canada, but because of environmental concerns and the lack of immediate interest, the harbour has still not being built.

Historically, the NWP has been mostly roamed by explorers and military ships. Most of them were not Canadian but British, Danish or Norwegian. In 1903, the Norwegian Roald Amundsen lead a herring boat that strolled through the entire passage with a crew of six men by following the coast in order to escape creditors. He had previously learned how to accommodate the harsh Arctic climate by living for two years with Inuit people in Gjoa Haven. His feat was rendered possibly by the very low tonnage of his boat which allowed him to cruise in waters no deeper than three meters.

Canadian officer Henry Larsen lead the second team that sailed the passage, crossing west to east, leaving Vancouver 23 June 1940 and arriving at Halifax on 11 October 1942. In 1944, he succeeded in crossing that new channel in a single season. Later in 1957 and then in 1969, US ships cruised through the passage, sometimes unaccompanied, while American submarines frequently used the cover of the ice during the cold war to escape soviet detection. The recent years have seen an increase of frequenting of the passage, mostly for oceanographic research or private travel that benefit from the recess of the ice during summer. In September 2013 the *MS Nordic Orion* became the first commercial bulk carrier to transit the NWP, carrying 15 000 tons of coal from Vancouver to Finland.

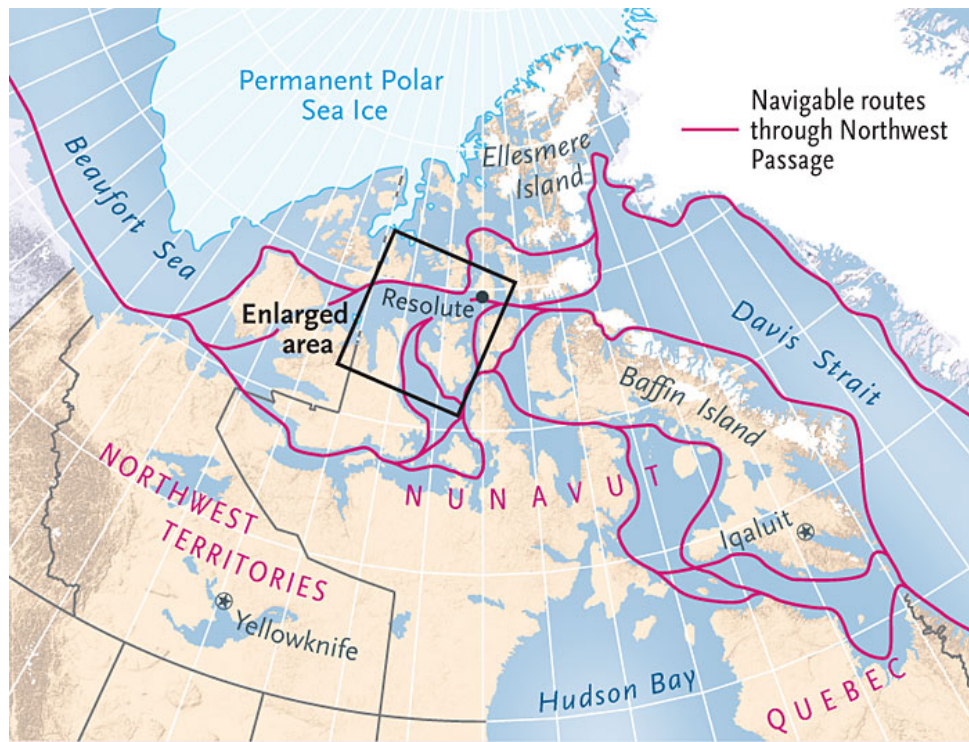


Figure 4.2: Navigable routes through the Northwest Passage¹³

4.2.2 Canadian defence of its sovereignty over the passage

Robert Dufresne wrote a concise and complete summary¹² for the Canadian parliament, which has been published on the website of the Parliament and to which we refer below in order to detail the Canadian claims.

Internal waters by historic title

Canada ratified the UNCLOS in 2003, and attached a declaration that limits the applicability of some points of the Convention in the Canadian context. The relevant part in our context of this declaration, made on the seventh of November 2003, reads as follows (emphasis added):

With regard to article 287 of the Convention on the Law of the Sea, the Government of Canada hereby chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention without specifying that one has precedence over the other:¹⁴

¹²Dufresne, Robert. *Revendications controversées du Canada à l'égard des eaux et des zones maritimes arctiques*. Ottawa: Service d'information et de recherche parlementaires du Canada, 2008.

¹³(Bakley, Chris. *Navigable routes through Northwest Passage*. Ed. by Geographic, Canadian. Apr. 2012)

¹⁴*Declarations and statements on the UNCLOS*. United Nations. Oct. 2013.

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI of the Convention; and
- (b) an arbitral tribunal constituted in accordance with Annex VII of the Convention.

With regard to Article 298, paragraph 1 of the Convention on the Law of the Sea, Canada does not accept any of the procedures provided for in Part XV, section 2, with respect to the following disputes:

- Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving *historic bays or titles*

This section 2 of Part XV mainly states which tribunal can be used to settle disputes, which provisional measures are applicable and which jurisdiction shall prevail in the case where several jurisdictions can stand on the same problem. Some of the rules, such as those concerning the precedence of some jurisdictions over others, already belong to international customary law. Therefore, by refusing to accept the whole section but nonetheless recognizing the International Tribunal for the Law of the Sea (ITLOS) and the possibility of an arbitration tribunal in its declaration, Canada simply states that it accepts only some of the proposed means of settlement.

However, the Canadian state directly thereafter rejects those means in three cases, of which we copied only the relevant one above. This case concerns boundary delimitations and historic claims. More precisely, the three items of that case mentioned by Canada are about:¹⁵

- the ‘delimitation of the territorial sea between States with opposite or adjacent coasts’ (Article 15)
- the ‘delimitation of the exclusive economic zone between States with opposite or adjacent coasts’ (Article 74)
- the ‘delimitation of the continental shelf between States with opposite or adjacent coasts’ (Article 83)

Therefore, this part of the declaration was probably aimed at the problems that Canada faces in the Beaufort Sea with the United States or in the Island of Hans with Denmark, but it is not relevant for the delimitation of the status of the Northwest passage. As far as the status of the Northwest passage is concerned, it is only on the basis of Canadian historical claims but not because of the nature of the problem that Canada refuses to acknowledge the procedures laid down in Part XV, section 2.

¹⁵*United Nations Convention on the Law of the Sea*. United Nations. Nov. 1982.

This position weakens the legitimacy of the legal standing of Canada, because those means of dispute settlement are standard and can be said to be part of international customary law, with 160 party states recognizing the legitimacy of the ITLOS, with among them Canada for other matters than the status of the Northwest passage. Canada also has a history of participation to the tribunal, since Canadian judges already served in the ITLOS. Therefore this refusal of the legitimacy of the ITLOS when it comes to the Northwest passage seems completely ad-hoc, what is naturally legal but still not well justified.

Furthermore, the first clear statement of the Canadian position to that effect was only made in 1973 by the Bureau of Legal Affairs:¹⁶

Canada also claims that the waters of the Canadian Arctic Archipelago are internal waters of Canada, on a historical basis, although they have not been declared as such in any treaty or by any legislation.

It was reiterated in 2002, when officers of the Department of Foreign Affairs and International Trade issued the following statement:

Canada's full sovereignty over these waters, including the Northwest Passage, is based on historic title and no right of passage is therefore recognised. Further strengthening Canada's sovereignty position is the ongoing use and occupation of the covering ice by its Inuit people 'from time immemorial'.

According to the emeritus Professor Pharand at the faculty of law at the University of Ottawa mentioned by the Parliament in its reports on Canadian claims in the Arctic, these historical claims lack substance, for at least four reasons, that we quote below:¹⁷

First, neither the British nor Canadian explorers ever took possession of any part of the Arctic waters, especially not those of the Northwest Passage. Second, the first official claim that the waters of the Canadian Archipelago were historic internal waters was made in only in 1973. Third, as soon as Canada delineated its claim of historic waters, by providing for straight baselines around the Archipelago, the United States and EC Member States sent notes of protest. Fourth, Canada has not succeeded in subjecting all foreign ships to prior authorization to enter the Northwest Passage, in particular U.S. ships.

These reasons draw back on the very definition of a historical title as well as on the inherent weakness of claims based solely on historical titles, as we explained above in 4.1.1. The defin-

¹⁶Kindred, Hugh and Castel, Jean-Gabriel. *International law, chiefly as interpreted and applied in Canada*. 7th ed. Toronto: Emond Montgomery Publications, 2006. 960 pp., p. 461.

¹⁷Pharand, Donat. 'The Arctic Waters and the Northwest Passage: A Final Revisit'. In: *Ocean Development & International Law* 38.1 (2007), pp. 3–69, p. 13.

ition of ‘historical title’ has not been defined in UNCLOS, but later by the International Law Committee. Also it has never been used to prevent a strait from being international. Therefore, the burden of the proof for such a weak and unusual claim would lie rather on the Canadian side, as explained by the British argumentation during *Fisheries*¹⁸ where the United Kingdom contested the status of Norwegian fjords.

According to Pharand,¹⁹ this is the reason why Norway defended at the time that its historical claim was not meant to replace the customary procedure of drawing straight baselines, but only to supplement its straight baselines method in a case where those straight baselines did not encompass all the sea territory that had been historically part of Norway sovereign territory. Professor Pharand recommends to follow that path in the present case, where historic claims would rather consolidate the main procedure of delimitation of internal waters than delimit them altogether.

Internal waters through inclusion within straight baselines

In January 1st 1986, Canada adopted an Order in Council, akin to a decree, establishing straight baselines around the Arctic Archipelago.²⁰ A Canadian Laws Offshore Application Act had been adopted at the same time, which has been replaced by an Oceans Act since then. These acts provide for environmental protection in Arctic sea territories. In particular they provide for the preservation of fish resources, mammals and endangered marine species.

The use of straight baselines is justified by the *Fisheries* case,²¹ in which the Court accepted Norway’s use of straight baselines on the account that²²

bordered by an archipelago such as the “skjaergaard” along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometrical construction.

As we mentioned above in 4.1.2, the UNCLOS is more restrictive than this criteria in that it only provides for cases where the coast is heavily indented but not for cases where an archipelago is adjacent to the coast. However, the *Fisheries* case offers a solid defence because the Norwegian situation presents several aspects parallel to that of the Canadian Arctic archipelago. The difficulty of appreciation in a potential trial would lie in the degree of proximity and the size of the archipelago. The Norwegian archipelago was much smaller than the Canadian one and closer to the coast. However, in the *Fisheries* case, no stringent conditions are put on the

¹⁸See n. 2.

¹⁹Pharand, see n. 17, p. 8.

²⁰*Territorial Sea Geographical Coordinates (Area 7)*. SOR/85-872. Canadian Council. Sept. 1985.

²¹See n. 2.

²²*Ibid.*, p. 128.

distance from the coast. It is only in the UNCLOS article mentioned in 4.1.2 that the term ‘immediate vicinity’ is mentioned.

A second point of contention would be the relevance of considering the whole archipelago as an integrated ensemble. According to Pharand,²³ ‘the Archipelago meets the kind of geography which the International Court had in mind and of which the Norwegian skjaergaard was only a manifestation’. Pharand consolidates this claim by the fact that most territories of the Archipelago are concretely considered as only one territory during most of the year since in winter, the islands and seaways are all covered by ice and snow and Inuit people roam on sea and earth alike.

Right of innocent passage and right of transit

According to Article 8 of the UNCLOS as seen in 4.1.4, Canada, which is part to the UNCLOS, should accept the right of innocent passage in its internal waters even if those waters were finally deemed to be internal because those waters would have been territorial before.

Concerning the right of transit granted in international straits, the decision would revolve around the functional element of the definition of a strait put forward in 4.1.3. Canada regularly opposed free navigation in the passage and the passage has surely not a history of being an actively used international waterway. However, the EU and the USA both insisted that they considered that, in spite of the lack of actual use of the passage as a strait,²⁴ the potential use is sufficient to consider that the passage is a strait. That question has not yet been directly treated in the jurisprudence, so that, depending on scholarly interpretations, the status of the passage remains uncertain.

The question has already been raised in 1985 when the the American icebreaker Polar Sea was sent to explore the waters of the passage without asking for Canada’s permission. The law²⁵ passed after the public outcry in Canada to enforce Canadian sovereignty over this passage proves the sensitivity of the Canadian country on this matter. An agreement was reached in 1988 by Canada and the USA where both countries agreed to disagree, so that the question is frozen for the moment^{26, 27}.

Finally, even if the right of transit is recognised in the straits of the Northwest passage, Canada had passed in the early seventies several laws to protect Arctic waters way beyond its territ-

²³Pharand, see n. 17, p. 16.

²⁴Huebert, *Canadian Arctic sovereignty and security in a transforming circumpolar world*, see n. 39, p. 90.

²⁵See n. 20.

²⁶Huebert, *Canadian Arctic sovereignty and security in a transforming circumpolar world*, see n. 39, p. 89.

²⁷Lajeunesse, Adam. *Negotiating Sovereignty: The Past and Present Failure of ‘Security’ as a Bargaining Chip*. Working Papers on Arctic Security 5. Toronto: The Gordon Foundation, 25th Jan. 2013. 36 pp.



Figure 4.3: Track of the Northeast passage as of 2012 ³¹

orial waters.²⁸ As often remarked,²⁹ Canada is far from being the first country to enable itself to control more effectively its EZZ. The USA and Russia, between others, have also passed laws that force ships to adhere to several safety standards, in particular in the fragile Arctic waters. These regulations are not contrary to the spirit of the UNCLOS, as we saw in 4.1.4. Since those laws are rarely contested by foreign states, but rather copied, some scholars argue that this announces the formation of a new custom for the international law of the sea.³⁰

4.3 The Northeast passage

4.3.1 Brief history

The road along Siberia has two advantages over the road through Canadian waters: the ice melts more during Summer than in Canada and the infrastructure for maritime transit, inherited from the Cold War era, is still functional. Deep waters harbours and nuclear ice-breakers pave the way. Most of it goes through Russian territories, which is why the Russian state simply calls it the Northern Sea Route (NSR).

This passage was first open by the Finnish explorer Adolf Erik Nordenskiöld, in 1878, then in 1932, a Soviet expedition was the first to sail all the way from Arkhangelsk to the Bering Strait without wintering. This led to the creation of a special governing body *Glavsevmorput*

²⁸Huebert, Rob. 'Climate change and Canadian sovereignty in the Northwest Passage'. In: *The Calgary Papers in Military and Strategic Studies* 4 (2011), pp. 383–399, p. 353.

²⁹Sand, Peter. "'Green' Enclosure of Ocean Space—Déjà Vu?' In: *Marine pollution bulletin* 54.4 (2007), pp. 374–376.

³⁰Brubaker, see n. 10, p. 277.

³¹(Allen, Jared. *The Northern Sea Route*. Ed. by ArcticEcon. 1st Oct. 2012. [Visited on 24/05/2015])

in 1932 that supervised Arctic navigation and harbours. During World War 2, the route was regularly used to transfer material from Eastern Siberia to European Russia. In 1965, the US used the pretext of scientific exploration to try to transit a scientific vessel through the NSR, what led to a diplomatic incident between the USA and the Union of Soviet Socialist Republics (USSR). Nowadays, the route is less used than it was during the Soviet era, even if only for internal transportation, and is opening up to international transit, from four applications only in 2009³² to 635 permits in 2013.³³ Fees have been significantly lowered in-between.

The biggest challenge in the Arctic Ocean being ships safety, Russia has a leading edge in that domain. Apart from the Russian ice-breakers already in service, the public company responsible for their maintenance and commercial use, Rosatomflot, decided to order a nuclear ice-breaker that would be able to plough the way through the CAO under harsh conditions. In total no less than 14 icebreakers are either working or under construction in Russia at the moment.³⁴ The Russian company thus signals that it not only intends to accompany foreign ships in Russian internal waters but also to generally stay the world leader as an ice-breaking service company and to attract new customers. In the meantime, Vladimir Putin had presented in 2008 an investment plan in the Arctic of €35 billion over 12 years. The former Cold War Arctic military basis Kotelniki airport has been recently reopened with that financing.³⁵ Nonetheless Russian scholars such as Kovalev and Gainutdinova complain that Russian troops lack of equipment and projection power to enforce Russian claims in the Arctic³⁶

4.3.2 Russian defence of its sovereignty over the passage

Historic title and straight baselines

Russia does not use straight baselines to delimit its internal waters in the Arctic. Most of the claims are based on historical titles, and go back at least to the first years of the USSR in 1926, when the Soviet Union used a peculiar division method of the Arctic called the sector

³²Lasserre and Pelletier, see n. 6, p. 1469.

³³Marchenko, see n. 3, p. 1.

³⁴Staalesen, Atle. *New icebreakers open way for Russia in Arctic*. Ed. by Barents Observer. 5th May 2015. (Visited on 24/05/2015).

³⁵Pettersen, Trude. *Russia re-opens Arctic cold war era air base*. Ed. by Barents Observer. 30th Oct. 2013. (Visited on 24/05/2015).

³⁶In (Kovalev, S. and Gainutdinova, L. 'Opening Up the Arctic'. In: *Russian Politics and Law* 50.2 [2012], pp. 78–87, pp. 85–86):

The major naval powers are striving, under the pretext of 'freedom of the seas', to force Russia into a dishonest competition for access to our own resources for the simple reason that their naval forces are capable of dominating one region of the world ocean or another.[...] We must remember how, during the Great Patriotic War [of 1941–45], German sailors and pilots were able to operate confidently on remote Arctic archipelagos and off the shores of western Siberia.

method³⁷.³⁸ Later, the Soviet Union claimed several straits to be enclosed in its internal waters following the 1985 *Soviet Legislation on Straight Baselines*³⁹. It was based partly on the limit for internal waters that the Soviet Union used, which was 24 nautical miles, and partly on a parallel drawn between the Northern Sea Route and the *Fisheries* case⁴⁰⁴¹. Indeed this position still holds today, with the latest Russian laws still considering that the NSR is an internal route and thus belongs in internal Russian waters, independently of straight baselines, but due to a historical title.⁴²

Some parallels have been drawn between the Canadian and the Russian claims to historic titles, for example by the soviet lawyer Kolodkin⁴³. However, this has been contested by the USA and by scholars from other countries, for example by Brubaker from Norway⁴⁴. Furthermore, according to Brubaker still,⁴⁵ Russia or prior to that the Soviet Union apparently did not make systematic claims over precise straits but simply considered broadly all of the areas to be under its entire sovereignty and control. To that extent, the historic claims made by Russia appear to be weaker than those of Canada if we strictly only refer to the UNCLOS as a source of legitimacy for territorial delimitation.

³⁷Olenicoff, Serge. *Territorial waters in the Arctic: the Soviet position*. R-907-ARPA. Santa Monica, California: Rand Corporation, July 1972. 64 pp., p. 6.

³⁸Timtchenko, Leonid. 'The Russian Arctic sectoral concept: past and present'. In: *Arctic* 50.1 (Mar. 1997), pp. 29–35.

³⁹This legal text has not been published directly but has been ulteriorly printed in (Butler, William Elliott. *The USSR, Eastern Europe and the Development of the Law of the Sea: Bibliography on the Soviet Union and the Development of the Law of the Sea*. Dobbs Ferry, New York: Oceana Publications, 1985. 133 pp.)

⁴⁰In (Olenicoff, see n. 37, p. 25):

From this it follows that all gulfs, inlets and bays whose width on the seaward side is less than 24 miles, regardless of a greater width further inland, are entirely the property of the Soviet Union.

⁴¹In (ibid., pp. 28-29):

The 1951 ruling in that case extended Norway's territorial waters beyond the fringe of its outer coastal islands, and designated the area between these islands and the mainland (including the Indreleia shipping lane) as internal waters. It is obvious that the Soviets feel their Northern Sea Route should have the same status, and they will probably continue to stress this in the future.

⁴²Zhang et al., see n. 10, p. 140.

⁴³In (Kolodkin, A. L. and Volosov, M. E. 'The legal regime of the Soviet Arctic'. In: *Marine Policy* 14.2 [1990], pp. 158–168, p. 167):

The approach of Canada, in our view, corresponds also to the approach of the USSR, the more so since foreign ships have not passed through Soviet waters.

⁴⁴In (Brubaker, see n. 10, p. 266):

These authors do note certain foreign use of Russia's Arctic straits by Great Britain, Norway, and the United States. T. Armstrong and J. Nielsen indicate even greater foreign use, especially in the Western Soviet Arctic, where, for example, in the 1870s, 80 to 90 Norwegian sealers operated in the Kara Sea traveling through the Kara Gates Straits and the Iugorskij Shar.

⁴⁵Ibid.

Right of innocent passage and transit

As we saw in 4.1.4 and since Russia is part to the UNCLOS, those waters that were previously territorial should remain open to navigation even after being enclosed. Yet, according to the Belgian professor Franckx,⁴⁶ the Soviet Union had called the waters of the straits ‘territorial’ in communications with the USA prior to the 1985 law. As a result, on a purely legal plan, the position that free passage in those straits should be granted could be valid.

However, Russia strongly defends its control over its territorial Arctic seas and defends its position by using the Article 234 of the UNCLOS as explained in 4.1.4, all the more that the NSR is still infested with ice. According to some Norwegian or Chinese scholars this disregards the UNCLOS provisions on the right of innocent passage^{47, 48} while the Canadian scholar Pharand and the French scholar Pelaudeix agree with that interpretation^{49, 50}.

Russia has concretely taken steps to enforce its sovereignty. Apart from the renovation of one airport and the construction of a new nuclear icebreaker as seen in 4.3.1, Russia established in 2013 a new law to update the regulation of the passage and make it clearer for foreign shipping companies. As a result the increasing number of ships⁵¹ passing through the Northeast passage systematically obeys to Russian law and asks for permission against the *Администрация Северного морского пути*, that is the *Northern Sea Route Administration*, in spite of the vocal opposition from the USA and some EU countries.

4.4 Chinese defence of its sovereignty

4.4.1 Straight baselines

Apart from the Paracels and Spratly islands, China has also contested sovereignty claims over the Qiongzhou strait (琼州海峡). In 1958, China published a declaration describing its straight baselines and enclosing the Bohai Sea and the Qiongzhou strait as internal waters. While for Paracels and Spratly islands, China used the historic title argument, in the case of the

⁴⁶Franckx, Erik. *Maritime claims in the Arctic: Canadian and Russian perspectives*. Leiden: Martinus Nijhoff Publishers, 1993. 360 pp., p. 291.

⁴⁷Zhang et al., see n. 10, p. 145.

⁴⁸Brubaker, see n. 10, p. 270.

⁴⁹Pharand, see n. 17, p. 55.

⁵⁰Pelaudeix, see n. 55.

⁵¹635 permits were granted in 2013 and 604 in 2014, comparing to less than 10 a decade before (Marchenko, see n. 3, p. 1) (Bennett, Mia. *Arctic satellite image of the week: Northern Sea Route - open for business ?* Ed. by Cryopolitics. 26th Sept. 2014. [Visited on 24/05/2015])

⁵²(Dzurek, Daniel. ‘The People’s Republic of China Straight Baseline Claim’. In: *IBRU Boundary and Security Bulletin* 4.2 [1996], pp. 77–89, p. 81)

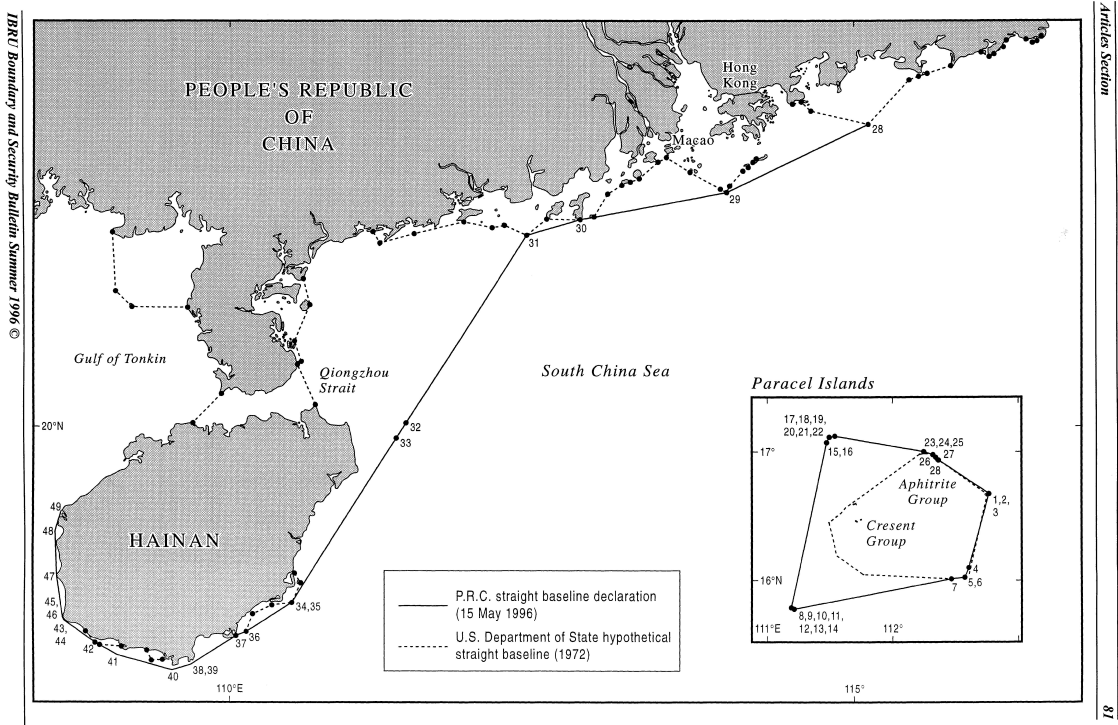


Figure 4.4: Chinese straight baselines around the Hainan island ⁵²

Qiongzhou straits, only straight baselines were deemed sufficient to justify the state's position. The 1958 map was immediately opposed by the USA and a few states.⁵³ In 1996, much after the publication of the Chinese position but only two years after becoming part to the UNCLOS and in response to a UN deadline, Vietnam lodged a detailed complaint at the UN which reads as follows:

In drawing the baseline at the segment east of the Leishou peninsula from point 31 to point 32, the People's Republic of China has also failed to comply with the provisions, particularly articles 7 and 38, of the 1982 United Nations Law of the Sea. By so drawing, the People's Republic of China has turned a considerable sea area into its internal water which obstructs the rights and freedom of international navigation including those of Vietnam through the Qiongzhou strait. This is totally unacceptable to the Socialist Republic of Viet Nam.

The arguments against the systems of straight baselines developed by China are of several orders and mostly put forward by the USA⁵⁴ or American scholars:⁵⁵

- The coast is not deeply indented, so there is no need to use the straight baselines system.
- Some features used to delimit the straight baselines do not comply with the UNCLOS requirements, since they are permanently submerged.
- The distance between the reference points is sometimes longer than 100 km, and as a result parts of the seas that are enclosed should rather belong to high or territorial sea than to internal waters, given their lack of 'immediate vicinity' to the land, as explained in 4.1.2.

4.4.2 Right of international transit and innocent passage

In 1964, the People's Republic of China (PRC) established the *Regulations Concerning the Passage of Foreign Non-military Vessels through Qiongzhou Strait*. This regulation forbade foreign military vessels to pass through the straits, but enables international commerce under the scrutiny of the PRC's authorities, with a 48 hours notice prior to the passage and only during daytime. Nowadays the conditions have been relaxed, since transit during nighttime has been

⁵³Xue, Guifang. 'China and the Law of the Sea: An Update'. In: *International Law Studies*. Vol. 84. Leiden: Martinus Nijhoff Publishers, 2008, pp. 97–110, p. 103.

⁵⁴*Limits in the Seas. Straight baselines claims: China*. 117. Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State. 9th July 1996.

⁵⁵Roach, Ashley and Smith, Robert. 'Straight Baselines: The Need for a Universally Applied Norm'. In: *Ocean Development & International Law* 31.1 (2000), pp. 47–80, pp. 62-63.

allowed, but they are still stringent⁵⁶.

The Chinese position about the right of innocent passage for foreign military vessels has been consistent: they require authorization from the Chinese state. For example Article 11 of the *Maritime Traffic Safety Law of the People's Republic of China*⁵⁷ of 1983 states

Non-military vessels of foreign nationality may not enter the internal waters and harbours of the People's Republic of China without the approval of its competent authorities

The PRC has consistently hold the same position for its territorial sea and its EEZ too, thus defending more strongly its seas than what is provided for in the UNCLOS as we saw in 4.1.3 and 4.1.4, with the former foreign ministry Hong Lei stating in 2010⁵⁸

We hold a consistent and clear-cut stance on the issue. We oppose any party to take any military actions in our exclusive economic zone without permission

As a result, the USA military's short incursions into Chinese high-seas EEZ or territorial waters have been strictly criticized by the Chinese government and scholars alike⁵⁹. China is far from being the only state having such a position about military action in its territorial sea or EEZ, with around 27 states in the world holding a similar position, most of them being from East and South-East Asia.⁶⁰ Those countries certainly form a minority on the international level, but still a non-negligible minority, that contains powerful countries such as China and Russia.

⁵⁶In (Niu, Ziru. 'Navigation Issues in the South China Sea'. MA thesis. Oslo: Scandinavian Institute of Maritime Law at University of Oslo, Aug. 2005. 47 pp., p. 25):

When any merchant vessel intends to make a passage, it must apply to the Qiongzhou Strait Authority 48 hours before the vessels enters the strait, or before the vessel leaves port, with detailed information on the name, nationality, tonnage, speed, colour of hull, funnel marking, port of departure, time of departure and destination. The vessel, after having obtained permission, must inform the Authority of the exact time of entering the strait 24 hours before its entry. Moreover, the Authority may, when it seems it necessary, close the Strait. 74 The speed of the vessel shall be less than 10 knots. The vessel should pass through the central channel in the strait and should not use radar, unless it is specially permitted to do so by the Authority.

⁵⁷*Maritime Traffic Safety Law of the People's Republic of China*. People's Republic of China. 1983.

⁵⁸北京日报, ed. « 专属经济区 » 不是 « 国际海域 » 美违反国际法. 7th Dec. 2010. (Visited on 24/05/2015).

⁵⁹In (Zhang, Haiwen. 'Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States? — Comments on Raul (Pete) Pedrozo's Article on Military Activities in the EEZ'. in: *Chinese Journal of International Law* 9.1 [2010], pp. 31–47):

As a non-State-party to the Convention, the United States has taken advantage of the parts of the Convention that are in its own interests and is trying to escape from the relevant international legal obligations.

⁶⁰O'Rourke, Ronald. *Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for Congress*. Washington: Congressional Research Service, 10th Dec. 2012. 100 pp., p. 4.

On the other hand, China seems to be part of an ever growing percentage of countries that enact strong environmental protection laws in their EEZ and thereby indirectly regulate the right of innocent passage.⁶¹ This point of international law being *de facto* contested by the practice of a non-negligible minority of states, China is therefore not completely at odds with international law regarding this point, in spite of the claims of Peng and Wegge,⁶² since international law evolves with the practice of states.

4.5 Intermediary discussion: lessons from the disputes' similarities

4.5.1 Waters' status

Among the three cases, the Canadian case appears to be more solid than the Chinese and Russian ones. The Russian historic title could partly hold in regions that were unexplored before the Soviet Union, but would probably fail in the Norwegian neighbourhood, since Norwegian ships used straits that are nowadays under Russian sovereignty. Then Russia should use a different system of legitimation to assert its sovereignty over these territories. On the Chinese side, the baseline around the Hainan island seems obviously away from the coast and enclosing territorial seas and has been contested by other countries, so that neither the historic title nor the straight baselines system appear to be sufficiently rooted in international law.

On a purely legal point of view, the weaknesses of the Chinese position are very similar to those that are to be found in the Canadian and Russian Arctic. Therefore, a Chinese opposition to the Canadian and Russian defences of their internal and territorial waters would most likely backfire. Therefore the Chinese position which is to not publicly take a stance over the topic seems to be the wisest one.

4.5.2 Transit or innocent passage

China, Canada and Russia all oppose the position shared by the EU and the US on international straits in their respective territories. Therefore, their interest is rather to maintain a common legal front on the right of passage in their internal waters. Canada has chosen very early a peculiar way to address this problem, which was to use environmental protection as the main reason for enclosing their Arctic backyard. Since then, the USA and Russia have passed

⁶¹Oxman, see n. 8.

⁶²Peng, Jingchao and Wegge, Njord. 'China and the law of the sea: implications for Arctic governance'. In: *The Polar Journal* 4.2 (2014), pp. 287–305, p. 294.

similar laws, UNCLOS has addressed specifically environmental protection in the Arctic, and a growing number of countries do use environmental laws to control navigation in their EZZ. As the minority of countries that have passed stringent laws to regulate traffic in their EZZ is not negligible, this kind of position cannot simply be discarded as illegal. There seems to be a shared understanding that the security of the EZZ is of prime importance for the coastal states in Asia, while Russia and Canada also mention security concerns when they oppose freedom of navigation in their Arctic EZZ.

Therefore, if China was to oppose the Russian or Canadian positions regarding the right of transit or innocent passage, the country would actually completely contradict itself and undermine its own position in its own waters. As a result, the logical Chinese position would be to actually support the Canadian and Russian claims. Implicitly, this is what China already did in asking to Russia and planning to ask to Canada at the time of the 2012 Xuelong expedition.⁶³

For reference, concerning the international strait problem only, not the straight baselines' one, this explanation has already been put forward, albeit not developed at full length like in this thesis, among others by the law professor Aldo Chircop or the Canadian and Russian scholars Frédéric Lasserre and Olga Alexeeva^{64, 65}.

⁶³Lasserre, Frédéric. Professor at Laval University. Personal communication per mail, 19th Mar. 2015.

⁶⁴Chircop, Aldo. 'The Emergence of China as a Polar-Capable State'. In: *Canadian Naval Review* 7.1 (2011), pp. 9–14.

⁶⁵Alexeeva, Olga and Lasserre, Frédéric. 'China and the Arctic'. In: *Arctic Yearbook* (2012), pp. 80–90.

Final discussion: future prospects for non-Arctic states in the Arctic

A clearer Chinese positioning

Our main hypothesis in the introduction was that China's current position supplements well its direct interests because it allows the government to bide its time and Chinese investments to come without many strings attached. This was what we argued in chapter 2. We added that the peculiar Chinese relationship to sovereignty explained that China did not rush to publish a position. This was the main argument in chapters 3 and 4.

Furthermore, even if China probably does have an understanding of international straits disputes in the Arctic, as has been emphasised by the quotation of Chinese Arctic researchers on this issue in this thesis, it is true that China has only been very recently involved in the Arctic and mostly focused on climate change issues. Therefore the country is still building its Arctic policy research capacities, in a region where the stakes are relatively low.

As a result, China appears to be a peaceful rising power in the Arctic. In the interviews that I received by mail, all the European and Canadian scholars were positive about China's role in the Arctic, in spite of the former declaration made by Yin Zhuo, precisely because of its non-interference policy that we described in the chapter 3 and its scientific involvement described in section 2.4. At least in the Arctic, China respects the UNCLOS and furthermore did not issue any potentially conflictual statement about sovereignty. The 2010 statement by former rear-admiral Yin Zhuo should not be taken as an official Chinese declaration, but as someone speaking in his individual capacity.

This still does not completely prevent fears, as China is a rising power susceptible to transform the current international order, what also explains why Russia was reluctant to let China enter the AC. However, the recognition of the Nuuk criteria contributed a great deal to extinguishing these fears, since from a legal point of view, both the Nuuk criteria and the fact that China already asked for permission in the NSR tie the country's hands.

Now, what is going to happen? Two solutions seem likely: either China publishes an official position that explains its neutrality in the Arctic, as part of the 13th Five-Year Plan (2016-2020), which will be passed in March 2016, or China keeps going and still says nothing about the status of the straits. Both solutions are compatible, if China publishes an Arctic strategy that carefully avoid sovereignty questions. However, a clear acknowledgement of all the problems in the Arctic and of China's neutrality regarding them could contribute to appease the media frenzy that sometimes follows some Chinese actions in the Arctic.⁶⁶ Meanwhile, the best reaction could be that of Matthew Willis, researcher at the Royal United Services Institute in England: 'Chinese Designs on the Arctic? Chill Out'.⁶⁷

India, Japan and South-Korea versus China

Like China, Japan, South-Korea and India have become interested in the Arctic and have become permanent observers of the AC. Japanese and Korean companies are already drilling in Norway and fishing in the Bering strait, even if not always for the better, according to Stokke⁶⁸ from the University of Oslo who qualifies their environmental activism in the Arctic as 'laggard'. Japan and South Korea have also developed research capacities relevant for the Arctic, with for example The National Institute for Polar Research conducting research since the 70s in Japan⁶⁹ or the Korea Polar Research Institute employing around 200 researchers and staffers.⁷⁰ Resources, shipping routes and climate changes are, for all those countries including India^{71,72}, the main interests in the Arctic. South Korea is already a leader in the construction of icebreakers at the Daewoo shipyard of Okpo.⁷³

A comparison between the reception of China and other Asian states in the Arctic is instructive. Although South-Korea and Japan have not been very assertive, officials and scientists in India did not hesitate to take rather strong stances. For example, Vijay Sakhuja, a researcher at the Indian Council of World Affairs, think-tank of 'national importance' chaired by the Vice-President of India, explains that it is 'prudent' for India to consider that the Arctic is a 'global

⁶⁶Su and Lanteigne, see n. 21.

⁶⁷Willis, Matthew. 'Chinese Designs on the Arctic? Chill Out'. In: *China Brief* 14.18 (14th Sept. 2014), pp. 11-14.

⁶⁸Stokke, see n. 62, p. 774.

⁶⁹Jakobson, Linda and Lee, Syong-Hong. *The North East Asian States' Interests in the Arctic and Possible Cooperation with the Kingdom of Denmark*. Stockholm: Stockholm International Peace Research Institute, Apr. 2013. 52 pp., p. 21.

⁷⁰Ibid., p. 31.

⁷¹NDTV, ed. *India Seeks Increased Participation in Arctic Council*. 5th May 2015. (Visited on 27/05/2015).

⁷²See the description of Indian Research on the governmental website of the National Center for Antarctic and Ocean Research at <http://www.ncaor.gov.in/arctics/view/120-indian-arctic-portal>

⁷³Korea Herald, ed. *Daewoo Shipbuilding Wins Contract for Six Canada-China Icebreakers*. 10th July 2014. (Visited on 03/05/2015).

common' and a 'common heritage of mankind'.⁷⁴ He also explains that Asian countries should 'breach the monopoly' that coastal countries have on the Arctic Council.⁷⁵ Likewise the website of the Minister of External Affairs insists on its presentation of the Arctic on the necessary global governance of the 'global commons' of the Arctic.⁷⁶ Yet, no major complaint on India's invasion of the Arctic and meddling in coastal states' affairs has yet been heard.

Several reasons can be advanced for this differential treatment. First, China is tipped as the next great power in a very near future, while India's economy is not yet as petulant as that of China, and Japan and North-Korea, in spite of their size, are still much smaller than China. Therefore we can suppose that China concentrates all attention on its own position, partly overshadowing the Arctic policies of other states. Accentuating the focus, China's concrete interests and scientific cooperation in the Arctic, even if not yet impressive, seem still to be the most active of all of the Asian states at the moment.⁷⁷ Second, Japan, South-Korea and India have a different political regime than that of China. We insisted along our thesis on China's non-intervention policy and the interrogations and debates that its discontinuation can raise. In that game of perceptions, the internal transparency of the three other Asian states advantages them. We centred our thesis on the thorn in the side that China has in international relations when it comes to sovereignty problems. We suppose that, once that thorn will be gone, the world will not fear China as much as it sometimes does now.

⁷⁴Sakhuja, Vijay. 'India and the Changing Arctic'. Tromsø, Norway, 18th Jan. 2015.

⁷⁵Sakhuja, Vijay. *India and China in the Arctic: Breaching the Monopoly*. 13th May 2013. (Visited on 12/01/2015).

⁷⁶*India and the Arctic*. Ministry of External Affairs, Government of India. 10th June 2013. (Visited on 12/12/2014).

⁷⁷Jakobson and Lee, see n. 69.

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