



Security and Defence Dossiers 66

Geopolitics of the Arctic.
Two complementary visions.
Spain-Singapore

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MINISTRY OF DEFENCE



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Security and defense document Spain-Singapore international research group

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Deputy Director Spanish Institute for Strategic Studies

Prologue

The Arctic: the geopolitical challenge of the 21st century. Two views: one from the east, another from the west

The paper herein presented is one more of the results of the Annual Research Plan 2014 of the Superior Center National Defense Studies (CESEDEN), whose objective is "to convert the CESEDEN, through the IIEE (Spanish Institute for Strategic Studies), into a national and international reference point for strategic thought, capable of influencing the society and contributing to national planning of all issues related to security."¹

Through the Spanish Ambassador to Singapore, Federico Palomera Gúez, the Institute, in January of 2007, opened relations with the Rajaratnam School of International Studies (RSIS) of the Nanyang Technological University (NTU) and more specifically with its Institute for Defense Strategic Studies (IDSS)², which was at the same time one of its founding elements.

¹ IG 30-08 (2nd Revision). RESEARCH ACTIVITIES OF THE SUPERIOR CENTER FOR NATIONAL DEFENSE STUDIES (CESEDEN).

² <http://www.rsis.edu.sg/research/idss/>

The initial conversations between the two Institutions³ settled on the preparation of a joint research paper on one of the major geopolitical issues of the future, the Arctic. Its selection had, in addition to its undoubted geopolitical interest, several aspects which increased that initial interest with undeniable elements of opportunity which could redound to a greater mutual benefit.

Singapore, together with China, Japan, South Korea, and India were admitted as permanent observers on the Arctic Council in May of 2013, a status which Spain, along with other European countries, had enjoyed for nearly ten years. This decision of the Council was no more than a demonstration of the growing interest of Far Eastern countries in playing a leading role in the new geopolitical order at a global level, in clear accord with their economic weight at an international level, with a tendency showing a progressive increase in the importance of this region in an international context.

These two points of view, Eastern and Western, are without doubt a sufficient appeal. In addition, however, both countries, Spain and Singapore, are countries with an undeniable maritime tradition, and in our respective Gross National Products, the Naval sector holds a fundamental importance. Traffic through our ports would no doubt be affected by the opening of new routes, the naval construction industry would have a new field for research and development, in addition to new challenges for fishing and energy resources. These latter could see the confirmation, in both countries, of the increase in the importance of the sector related to trade in natural liquid gas.

Both our countries also share a world vision in which prime importance is given to membership in two of the most important economic organizations on the world stage, the European Union (EU) and the Association of Southeast Asian Nations (ASEAN), which in turn have special relations with the two economic giants of the moment: the U.S. and China. These two organizations, and in particular our two countries, must play a fundamental role in relations of collaboration and trust among them.

Another aspect taken into account when proposing the theme of collaboration to the IDSS was the support lent by the Spanish Institute, with its direct participation in the research group, to the research project: "The Race for the Arctic: International Law Issues considering Climate Change. Reference: DER2012-36026", of which Dr. Elena Conde Pérez, co-author of this document on behalf of the Institute, is the research leader.

This new publication from the CESEDEN collection "Security and Defense Documents" has the format typical of the international research papers at the Institute, made up of the articles prepared independently by the

³ <http://www.ieee.es/>

two researchers, one from each Institute, in Spanish and in English, as well as common conclusions which are not only agreed upon jointly by the two authors, but are developed and, in the end, adopted by both institutions. These conclusions are published in Spanish and in English.

In addition, in this case we were fortunate to enjoy the presence of the IDSS researcher François Perrault at CESEDEN for the presentation of, and debate on, the two papers at a session with a group of experts, and the development of the conclusions, which were later approved by the IDSS.

To sum up, with this publication CESEDEN continues its awareness of the significance of security thought in the Far East, and along these lines will this year hold the third Asia-Pacific course, and maintains a constant watch on the great challenges to peace and security of the future, as shown by the monographic course on Climate Change now under way. In this sense, this paper on the Arctic unites the Eastern and Western viewpoints on what has been called the “geopolitical frontier” of the 21st century.

The Arctic is evolving owing to climate change

The Arctic is characterised by its particular physical conditions that make it unlike anywhere else in the planet – a group of frozen seas. The predominance of the sea means that, in this area, the states bordering the Arctic Ocean have played a major role in shaping an “Arctic Policy” that is reflected in the Arctic Council as the main cooperation body. The process of climate change is creating a host of opportunities and risks in the Arctic.

Despite the uncertainty of when and how many changes will occur, there is growing interest in the Arctic. Exclusion versus inclusion

Uncertainty over the extent of the changes, the possible human uses of the new space and when these changes will take place is important and by no means negligible. The range of opportunities it offers has spurred the interest of the Arctic states themselves in governing it as their own, exclusive space, as well as arousing the interest of third parties – not only in the use and governance of this space, but also in its protection, owing to its particular characteristics. The permanent members of the Arctic Council thus tend to think that regional cooperation and governance issues should be managed by them and by the representatives of the native

peoples of the region. In this regard, some of the permanent members – specifically the five Arctic coastal states, the *Arctic 5* (especially Canada and Russia) – regard the internationalisation of the region as a potential risk to their Arctic sovereignty. In contrast, the other states in the area – especially the small countries – consider the effects of internationalisation to be positive and are using their geographical position as a powerful diplomatic weapon against third countries interested in the region, such as China.

The Arctic is a space of cooperation. Equilibrium

Despite the impression the media sometimes give, the Arctic is not an area of disputes between neighbours, or even between them and third parties, but rather a space where intense cooperation between states has prevailed – and is expected to continue. The Arctic Council, the main forum for cooperation, is proof of this. Although, as pointed out, the most prominent Arctic states – those bordering the Arctic Ocean – establish the governance of this space, the states in the region have realised the need to strike a balance between the inclusion/exclusion of new permanent observers and the idea of internationalising/regionalising this space. This equilibrium of opposites can be expected to continue in the immediate future. The aim seems to be to “include” in order to “control”.

Arctic governance: the main stumbling block

The discourse and policies of the non-Arctic countries have experienced two different phases. The first, characterised by alarm and reaction, gave way to a more moderate, diplomacy-based second phase. These phases stemmed from policies and strategies of the Arctic states that were nearly always designed to maintain the status quo of “their” region and, accordingly, control of the process of its governance.

In recent years, a consensus appears to have been achieved in the Arctic Council between the “non-Arctic” countries and permanent members, though it seems that they have yet to agree on the way forward. Governance of the Arctic – who and what should govern the region – will most likely continue to be a topic of discussion among Arctic and non-Arctic states.

China has gained prominence on becoming an observer

In this connection China, which recently became a permanent observer on the Arctic Council, has used its diplomacy intelligently with a view to gaining this status. Within the organisation, it will undoubtedly influence the governance of the area. At the same time, the fact it is a permanent

observer is a guarantee of stability for the members of the Arctic Council, which establish the game rules. A balance of powers seems assured for the time being.

Although the circumpolar region is not a priority for China's foreign policy, it is part of its goal of becoming a major world power. In this pursuit of international prominence, China aspires to join many international organisations, and its membership of the Arctic Council is therefore viewed as a diplomatic success and a reflection of its legitimate interest in the region.

China has softened the tone of its declarations on the Arctic

The tone of China's stances on the Arctic between 2008 and 2011 seems to be related to the harsher approach of its foreign policy addresses and actions. In 2011 it softened its tone with respect to the Arctic in particular and the world in general, although in recent months it seems to have decided to make its neighbours take a step back, such as the United States in the South China Sea.

Cooperation between Arctic and non-Arctic states can be expected to continue its positive trend, and this time it is more likely that China's Arctic approach will not change in keeping with its harsher approach to other foreign policy issues.

The possibility that this more diplomatic approach will change once Russia is able to make greater use of the Northern Sea Route cannot be ruled out.

The European Union's disappointment at the rejection of its application for observer status

China's success contrasts with Europe's disappointment with the Arctic Council. The EU has traditionally been interested in the Arctic for various reasons. Its contribution to the area's economic, scientific and social development is considerable. Accordingly, the EU hoped to influence the regulations governing it. However, the reluctance of the strong Arctic states – especially Canada and Russia – has triggered a change in the EU's policy towards the region. The EU thus now has a lower profile towards the Arctic; it aims to be viewed as a legitimate actor with legitimate interests in the area, but has not yet had its efforts rewarded with permanent observer status on the Arctic Council.

Spanish interests in the Arctic

It is not easy to establish Spain's interests in the Arctic in concrete terms. It is obvious that any country in our neighbourhood regards the North

with interest, and Spain does too. However, this attention does not seem to have been specified except with respect to traditional fishing interests – currently the risk of progressive extension of the continental shelves and a possible change in the international system of overlaying waters – and traditional scientific interests. The reasons for Spain's difficulties of concrete its interests in the Arctic may be:

- a. Owing to the economic crisis, other priority regions are closer, and have stronger ties, to Spain, with a view to their potential commercial exploitation and use.
- b. It is possible that Spain will wholly espouse the EU's positions with respect to the Arctic region.
- c. There are wide interests, and, by now, no defined public political strategy to guide our authorities and investors.

Singapore interests in the Arctic

Singapore is not situated in the Arctic, but developments there – whether the melting of the ice cap or opening of new sea routes – will have important ramifications for Singapore as a low-lying island and international seaport. As a permanent observer of the Arctic Council, Singapore can contribute its knowledge on maritime matters, climate change, and the prevention and management of environmental pollution. Singapore can also help to develop the natural resources and trade route potential of the Arctic region.

In future the law of the sea is likely to be adapted in favour of the most powerful states

Although it seems desirable for both Arctic states and third states that international law should be the instrument that governs the Arctic area, especially the Law of the Sea, it is not unlikely that this law will be adapted to the needs of the most powerful Arctic states, leading to a new international balance that will probably not suit Spain's interests, particularly with respect to navigation and fishing on the high seas.

Geopolitics of the Arctic Special Reference: Spanish interests in the Arctic region

Dr. Elena Conde Pérez¹

Chapter two

Introduction

It is easy to understand that when we speak of the “Arctic”, we are thinking of a fragile ecosystem of extreme climatic conditions, with temperatures oscillating between - 40° C in winter and 8° C in summer, an area surrounding the North Pole and which is formed to a great extent by a group of oceans permanently covered with ice, as well as a number of land masses of tundra, covered with either ice or snow, in the northernmost regions of the European, Asiatic and American continents. Nevertheless, there exists a certain doctrinal controversy regarding how far south it should be considered that the Arctic region extends, and so several theories are current, such as that of the tree line², or of the geographic location of the Polar Arctic Circle, at 66° 33’ North latitude. These apparently theoretical distinctions are, however, relevant to International

¹ Tenured Professor of Public International Law at the Madrid Complutense University. This paper was written within the framework of the Non-oriented Fundamental Research Project entitled THE RACE FOR THE ARCTIC: International Law Issues considering Climate Change. REFERENCE: DER2012-36026, of which I myself am research leader and which is composed of 11 researchers.

² This is the term used to refer to the imaginary line which marks the limit of the habitat in which trees are capable of growing. Beyond the tree line, the inadequate ecological conditions do not permit growth, whether due to the cold temperatures, lack of atmospheric pressure, lack of humidity or soil conditions.

Law, for in spite of the fact that some States, as is the case with parts of Finland, Iceland, and Sweden, would fall within the geographic definition of “Arctic States”, due to being partially within the Arctic Circle, it has traditionally been the States bordering the coasts of the Arctic Ocean, that is, the U.S., the Russian Federation, Canada, Norway, and Denmark (via Greenland), which have maintained a higher profile relative to the region, and have been, as such, the principal architects of what may be designated an “Arctic policy”.

The Arctic region, especially as a consequence of the new opportunities for its exploitation offered by climate change, has come to be a focus of geostrategic interest where the sovereign interests of the Arctic coastal States, and those of the International Community as a whole converge³, and, lacking a specific juridical regime for the area — long called for by the jurisprudence Public International Law, in its several branches, especially the Law of the Sea, is the juridical tool which will serve to reconcile harmoniously the aforesaid interests.⁴

The following study, based fundamentally on my own previous papers on the subject, deals with the analysis, from the perspective of International Law, of the policies developed by third actors — the non-Arctic States — in the region, especially the European Union and Spain, extracting general conclusions in this regard.

Opportunities and risks derived from the process of climate change in the arctic region

Especially since the beginning of the 21st century, the Arctic region has undergone spectacular changes. This is due fundamentally to the process of global warming, which is intensified in this area of the planet with repercussions on all the rest. As a consequence of the increase in temperatures, a retraction is produced in the marine ice with great transforma-

³ The tensions between the coastal States and those of the International Community were thrown into relief in two meetings held in 2008 in Ilulissat (Greenland). The first of these produced the *Ilulissat Declaration*, of a markedly sovereignist character. The second took place in September of the same year within the framework of the Nordic Council, as a general reflection on juridical problems arising in the Arctic region. The Inuit populations, for their part, claimed their place with the Inuit Circumpolar Declaration, which upholds the participation of these peoples in the governance of the Arctic. However, the sovereignist character would be reiterated at the Chelsea meeting (2011) to which, again, only the Arctic Ocean coastal States were invited.

⁴ Cf. Conde Pérez, E., “International Law in the face of the process of climate change in the Arctic” in *‘Energy and Climate in the Area of Security and Defense’, Security and Defense Documents, n° 58*, Working Group on *The Arctic in the next 25 Years*, Superior Center for National Defense Studies, Ministry of Defense, 2013, p. 178.

tions of climatic models and ecosystems⁵. These physical changes have consequences in other fields of greater interest for this study, such as the economic, political, and human modifications derived from the melting process in the Arctic Ocean, whose contours, however, are not yet defined, for the general consequences, of all kinds, which may come about as a result of climate change in the Arctic remain uncertain. Therefore, one basic and fundamental element to keep in mind regarding this analysis is that which refers to the uncertainty existing with regard to the magnitude of the changes which, in the near future, may come to be experienced by the Arctic region.⁶

In any case, one fact which seems undeniable is that, in the coming decades, it is expected that there will be an ever-greater ice-free Arctic space during ever-longer periods, which will undoubtedly facilitate its human use from different perspectives. All of this opens up a world of opportunities and risks derived from or associated with these, so that another important point in this study is that regarding these opportunities and risks which will arise as a consequence of the progressive melting of the Arctic ice in the coming years.

Thus, the modifications in the Arctic region — some now existing, others yet to come — opening a panorama of opportunities and risks which will need management in conformity to International Law, regional regulations, and the domestic ordinances of the Arctic States⁷, refer, in general terms, to the following aspects:

a) Changes in the natural environment, understood in its broad sense, that is, encompassing the flora, fauna, human life-styles, and natural surroundings of the Arctic space. The warming of the region is producing migrations of fish populations into ever-colder areas, which will undoubtedly affect the fishing of these species, since it is foreseeable that some of these may pass from areas under the national jurisdic-

⁵ Viz. López Martínez, J., "The Arctic, recent environmental changes and perspectives on future variations.", in *Energy and Climate in the Area of Security and Defense, Security and Defense Documents n° 58*, Working Group on *The Arctic in the next 25 Years* Superior Center for National Defense Studies, Ministry of Defense, 2013, pp. 155-173.

⁶ For example, with reference to mineral resources, studies carried out seem to have shown the existence of enough petroleum and gas in the Arctic for at least another two centuries. It seems that, while in the Russian Arctic there is a greater abundance of petroleum, on the coasts of Norway and America, there is more gas. The majority of the mineral resources seem to be found on the continental platforms of the Arctic States. However, all these estimates are as yet uncertain.

⁷ The system of governance existing for the Arctic is multiple: while the principal responsibility for the control of the area falls on the Arctic States, which regulate this space through their domestic legislation plus bilateral and multilateral treaties, it is also true that some—if not all—the Arctic States belong to international organizations—the U.N., the European Union or the Security Council of the United Nations—which of course affect their perspectives.

tion of the Arctic States, into areas of the high seas where, in principle, free fishing rights exist. On the other hand, warming has brought with it the abundance of philoplankton, with which it is to be expected that fishing resources prosper, although this too is a field surrounded by uncertainty, since it may constitute a risk for the indigenous species from the arrival of fish populations out of other latitudes. The appearance of invasive species is also probable as a result of the greater use of the Arctic environment by man, whose effects on the new surroundings are still unknown, but potentially dangerous. The impact of the increase in navigation along the Arctic routes may seriously affect marine mammals. Contamination of the sea and the atmosphere, as well as the existence of persistent organic pollutants (POP), may in their turn produce irreversible changes in ecosystems. For their part, the indigenous peoples of the Arctic are facing, as a result of the change in their natural habitat, challenges of great magnitude, such as may be the alteration of the species of customary consumption, changes in the availability of foodstuffs, and risks to their own health, not forgetting that the situation of these populations is especially at risk because climate change has opened the door to the natural spaces they inhabit to the great powers, anxious to control their habitats.

- b) Easier navigation through the Arctic.** The prospect of an Arctic ever-freeer of ice is imminent. As a consequence, access to the Arctic coasts will be easier, and during the warm periods of the year, will be able to be undertaken without the aid of icebreakers. The opening of the Arctic will reduce navigation costs, and in consequence, the exploration and exploitation of existing natural resources will be simpler. These changes will be more evident in the regions which were previously more inaccessible due to the existence of ice, such as Greenland, Canada, Alaska, and the north coast of Russia. In spite of the aforementioned opportunities, the risks remain: navigation through the Arctic continues to be especially risky; coastal erosion, as a consequence of the melting process, is more probable, meaning that port infrastructures must be prepared for these new risks, as must the facilities for the exploration and exploitation of the area's resources; it is foreseeable that climate change will bring about an increase in extreme climate phenomena, with their consequences —floods, forest fires, etc. All of this goes to show that beyond a world of opportunities, a world of risk, in need of heavy investment, is about to arrive. The future of the commercial navigability of the Arctic will depend on a number of factors, as yet uncertain: a) the time and the costs of the permits to pass through Arctic routes compared with other routes; b) the necessary slowness of transport along these routes due to the physical conditions of the area; c) the possibility of using the maximum tonnage capacity of the ships; d) the cost of insurance; e) the need to adapt the ships to the

climatic conditions of the Arctic; f) the infrastructure, vigilance, and management of the Arctic routes.⁸

c) Abundance of resources and easier exploitation of these as a consequence of climate change. In the Arctic, there has been an appearance or a strong resurgence of four key economic sectors in which the Arctic States and the third States have special interests, which are, mineral resources (petroleum, gas and mining), fisheries, trade and logistics (including navigation), and tourism. Despite the existence of high hopes for these economic sectors, their development in the Arctic is still uncertain. The profitable exploitation of the natural resources will depend on three basic factors: a) the possibility of exploitation, which in turn will depend on technological developments; b) commercial interest: the high prices of the resources together with the uncertainty as to the existence of resources in other parts of the world are factors of interest to be kept in mind; c) accessibility: improvements in access to Arctic resources reduce operational and logistics costs.⁹

Interests of the Arctic states and of third states in the Arctic region. Special reference to the interests of the European Union

The outlook of opportunities — despite being to a certain extent surrounded by uncertainty — described above, explains, on the one hand, the interest of the Arctic States in affirming or reaffirming their sovereignty over this space, and the interest of third parties in gaining access to the Arctic region with the objective not only of exploiting its resources or using the new navigation routes, but also of preserving its unique ecosystem or even of creating a wide region which might be Common Heritage of Humanity¹⁰, or which might at least be governed by a specific treaty, similar to the one covering Antarctica.¹¹

a) The interests of the Arctic States. Special reference to the Arctic Council

To speak of conflicts of sovereignty in the Arctic makes no sense, since, leaving aside the dispute over the Isle of Hans (between Canada and Denmark, close to resolution), there are no territorial problems in the area. Rather the opposite, in spite of the impression the newspaper headlines

⁸ Vid. Emmerson, Ch., *et al.*, *Arctic Opening : Opportunity and Risk in the High North*, Lloyd's 2012, Chatham House, p.31.

⁹ *Ibid.*, p. 19.

¹⁰ Vid. Le Bris, C.: "Arctic Meltdown: breaking the ice between States in favor of mankind", 112 *General Review of Public International Law*, n. 2, (2008): 329-359.

¹¹ Vid. Rothwell, D. R.: "The Arctic in International Affairs: Time for a New Regime", XV *Brown Journal of World Affairs*, n. 1, (2008): 241-253.

may give — often speaking of a *battle for resources* — the Arctic space is an area of extensive cooperation. The Arctic region¹² is governed principally by the Law of the Sea, basically constituted by the United Nations Convention on the Law of the Sea of 1982, and by the applicable common law. On the basis of International Law, disputes about the delimitation of the coasts adjacent to the Arctic States¹³ have been resolved, with the exception of that regarding the delimitation pending of the maritime border in the Beaufort Sea between Canada and the United States, which has, however, not impeded an intense collaboration between the two countries.

If the basic premises of International Law do not change, no State will be able to claim its sovereignty over the central part of the Arctic Ocean, for although the marine waters (up to 200 nautical miles from the baselines) and the adjacent depths (up to a maximum of between 200 and 350 nautical miles, in application of article 76 of the United Nations Convention on the Law of the Sea, (1982), hereafter UNCLOS) to the coasts of the Arctic coastal States, are subject to a kind of sovereignty by the said States, part of the waters and the seabed of the central Arctic belong to no-one — for the moment — and are subject to the principle of freedom, with subtleties, which governs on the high seas, or are what remains of the Common Heritage of Humanity once Part XI of the United Nations Convention on the Law of the Sea was amended by the Accord regarding its application of 1994.¹⁴

Consequently, the climate existing with regard to the Arctic space and its resources is one of cooperation among the Arctic States — with greater prominence for some than for others — who tend to consider, on a scientific basis, that the majority of the exploitable resources lies within the

¹² The Arctic area is a group of frozen seas, which explains that it is the Law of the Sea—both the common law as well as the international treaties in force, especially the United Nations Convention of the Law of the Sea (1982) (hereafter, UNCLOS)—the main branch of International Law which regulates this environment.” Cf. Conde Pérez, E., “Some Juridico-political questions deriving from the process of global warming in the Arctic”, University of Santiago de Compostela and University of Minho, II Spain-Portugal Meeting of Professors of Public International Law and International Relations: *The Governance of the Oceans and Seas: new realities, new challenges*, 2013, pp. 151-172.

¹³ The United States and the Soviet Union concluded a Treaty on the delimitation of the Bering Sea, the Bering Straits and the Sea of Chukchi in 1990. Russia and Norway concluded a similar agreement in 2010 regarding the Barents Sea

¹⁴ From the baseline, the different maritime spaces are measured subject to different forms of the sovereignty—full or functional—of the coastal States; territorial sea, exclusive economic zone (EEZ), continental platform. Beyond the jurisdiction of the States lie the high seas, governed by the principle of freedom, with clarifications especially with regard to the freedom of fishing and navigation; for its part, the International Seabed and Ocean Floor Zone has a peculiar regimen between the “Common Heritage of Humanity” and the “market freedom.”

spaces falling under their jurisdiction.¹⁵ Obviously, to amplify even further their sovereign rights to exploration and exploitation, the Arctic States have tended to request the widening of their continental Arctic platforms within the terms of Article 76 of the UNCLOS¹⁶. Specifically, the attitude of Russia regarding the request for a widened continental platform, the first which had to be analyzed by the Commission on Limits with respect to a Continental Platform, was marked by particularly belligerent and aggressive undertones, not only with reference to the rest of the world but also to the rest of the Arctic States.

The aforementioned atmosphere of cooperation among the Arctic States finds its maximum expression in the international organizations which have arisen to regulate the problems with reference to this area. Thus, the unique nature and fragility of the Arctic environment has caused the Arctic countries to collaborate for some time on the governability of this space. In this respect, the principal political forum — though not the only one — among the eight Arctic States has come to be the Arctic Council, established in 1996 with the objective of promoting the cooperation, coordination, and interaction among the Arctic States in the fields of sustainable development and environmental protection.

The member States are the eight Arctic States together with representatives of the indigenous communities of the region which have the status of permanent members on the Council. In addition, there are States and entities that enjoy the status of observers, as is the case of Spain.

b) The interests of the European Union in the Arctic

The Arctic is not of interest only to those States bordering this region, but also to third parties. In this respect, and due to the fact that Spain is a member of the organization, of special interest is the position which the European Union (EU) has come to hold regarding the Arctic.

Part of the geographic area of the EU encompasses the Arctic region (Denmark, Finland, and Sweden are members of the EU and, at the same time, Arctic States). The EU maintains strong ties of cooperation with as-

¹⁵ "A study carried out in 2008 by the U.S. Geological Institute estimated that a third of the recoverable reserves of hydrocarbons may be located north of the Polar Arctic Circle. A subsequent analysis confirmed that these reserves lie submerged under a column of 500 meters of water, which means that the greater part of these resources lie under the 200 nautical miles of jurisdiction of the coastal State (...)", Cf. Conde Pérez, E., "The role of scientific research in the delimitation of the continental platform of the Arctic States", IV Ordinary Meeting of the International Association of the Law of the Sea. La Coruña University, *The Contribution of the U.N. Convention on the Law of the Sea to the good governance of the seas and oceans*, Marcial Pons, p. 293 (in press).

¹⁶ Vid. in ext., Conde Pérez, "The role of scientific marine research in the delimitation of the continental platform...", Loc. Cit. Pp. 285-303.

sociate Arctic States (Norway, Iceland), and with first magnitude strategic partners which are also Arctic States (Canada, the United States of America, and the Russian Federation).

The interests of the EU in the region have undergone a remarkable evolution, consistent with the role she aspires to play in the region, and that which she has in fact been permitted to play by the most active Arctic States, the coastal nations. And so she has gone from concentrating, in 2007, on those aspects deriving from climate change and security¹⁷ to an attempt to become an actor of influence and responsibility in the region, endeavoring to be accepted as such.

The EU member States which are Arctic States — Denmark, Finland, and Sweden — and which have an obvious interest in the development of a European policy regarding the Arctic region, have had a decisive influence on this and on its evolution. In this way, the EU interests in the Arctic region began by focusing on ecological aspects, mainly related to the phenomenon of climate change. Subsequently, the EU has come to concentrate on the geopolitical and strategic aspects of this area, incorporating them into the design of its Integrated Maritime Policy¹⁸. The interests of the EU in the Arctic region, however, embrace a variety of aspects, such as the environment, energy, transport, and fisheries¹⁹. The E.U. has participated intensively in the Northern Dimension,²⁰ collaborating with Russia, Norway, Iceland, Finland, and Sweden on the Barents Euro-Arctic Council. The EU is one of the largest investors both in Arctic research and in the development of indigenous and local communities.

The *Blue Book on an Integrated Maritime Policy* (2007) and its Plan of Action are the first documents to deal with the Arctic issue from the perspective of the European Union.²¹ In March of 2008, the Commission and the High Representative on Foreign Policy issued a joint document on cli-

¹⁷ The EU policy on the Arctic was decisively influenced by the fact that Russia, during its expedition Artika 2007, planted a titanium Russian flag on the mid-ocean ridge of Lomonosov, which raised fears of a possible battle for the resources of the area.

¹⁸ http://ec.europa.eu/maritimeaffairs/policy/index_en.htm

¹⁹ To examine the repertoire of activities that the EU has been developing in the Arctic, *vid.* The European Commission and High Representative of the European Union for Foreign Affairs and Security Policy Joint Staff Working Document *The Inventory of Activities in the Framework of developing a European Arctic Policy* accompanying the document Joint Communication to the European Parliament and the Council Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps. Brussels, 26.6.2012, SWD (2012), 182 final. http://ec.europa.eu/maritimeaffairs/policy/sea_basins/arctic_ocean/documents/swd_2012_182_en.pdf

²⁰ http://www.eeas.europa.eu/north_dim/

²¹ Communication of the Commission to the European Parliament, to the Council, to the European Economic and Social Committee, and to the Committee on Regions: *An Integrated Maritime Policy for the European Union*, Brussels, 10.10.2007 COM(2007) 575 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0575:FIN:ES:PDF>

mate change and international security, which dealt with risks for the EU deriving from the progressive melting of the Arctic ice, and of a possible race for resources. The European Parliament, as well, in its Resolution of October 2008, dealt with this same question and observed with concern the sovereigntist aspirations of Russia, emphasizing the need for a treaty for the Arctic region.²²

The Communication from the Commission to the European Parliament and to the Council, of November 22, 2008, entitled "The European Union and the Arctic Region"²³, touched on a number of controversial issues, causing some Arctic States to veto the entrance of the EU as an observer on the Arctic Council. One of those questions refers to Regulation 1007/2009 of the Parliament and the Council on the trade in seal products.²⁴ Another question dealt with in the Communication, and which put the Arctic countries on the alert, was the proposal for a moratorium for the fisheries in the Central Arctic, outside the Exclusive Economic Zones (hereinafter EEZ) of the Arctic States until a treaty on the subject, which is currently under discussion, was adopted. Norway considered that such a moratorium was unnecessary because the prospect of exploitation of fishing on the Arctic high seas was unlikely for the moment. The position of Norway in this respect may be of special concern, not only regarding the sustainability of fishing exploitation in the Arctic, but also with respect to the interests of third party States, such as Spain, traditionally dedicated to fishing on the high seas. In its Communication, the Commission also decided to request the status of permanent observer on the Arctic Council. Although Norway supported this petition, Canada opposed it, due to the controversy with the EU over seal products. Russia also maintained its opposition to the entry of the EU as permanent observer.

Perhaps due to all these difficulties and political reverses, in the conclusions of the Council on Arctic issues — Council on Foreign Affairs, 8 December 2009 — the questions of security and of Arctic geopolitics disappeared, and in their place was adopted a vision much closer to the interests of the Arctic-State members of the EU,²⁵ the organization thereby adopting a much more modest profile in its proposals for the region. The matter of permanent observer status for the EU on the Arctic Council is still pending, for at the Meeting of Ministers of the Arctic Council in Kiruna (Sweden, 2013), the request presented by the Union

²² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+TA+P7-TA-2011-0024+0+DOC+XML+VO//EN>

²³ COM 2008 (763,cs,da,de,el,en,es,et,fi,fr,hu,it,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=483680:cs final) <http://eur-lex.europa.eu/Notice.do?l&lang=en&ihmlang=en&lng1=en,es&lng2=ngmode=db>

²⁴ DOUE L286/36, 31 October 2009.

²⁵ http://ec.europa.eu/maritimeaffairs/policy/sea_basins/arcticoCEAN/documengs/arctic_council_conclusions_09_en.pdf

did not receive a sufficient consensus. It seems that the existing controversies between the EU and Canada regarding the trade in seal products, deriving from Regulation 1007/2009, may be behind this new setback.²⁶ The practical implications this may produce are minimal, and yet, the symbolic value for the EU of being a permanent observer member of the Arctic Council is major. Not in vain, twelve non-Arctic States now hold this status, among them Spain, as well as nine inter-governmental or inter-parliamentary organizations, and eleven non-governmental organizations. For their part, at the Kiruna meeting, the emerging powers of Asia (China, Japan, South Korea, and Singapore), and Italy were admitted as permanent observers, who are especially interested in the exploitation and navigation through the Arctic and whose shipbuilding industries may extract great profits from contracts to construct ships especially prepared to traverse the ocean Passages, in particular the North Passage.

In this sense, its incapacity to achieve the said status has meant that the EU has striven to be recognized as a legitimate actor with legitimate interests in the region. In view of the joint Communiqué to the European Parliament and to the Council on the *Development of a European Policy for the Arctic region: advances since 2008 and following steps*²⁷, where the European Commission and the High Representative for Foreign Affairs indicate the balance and the objectives of the policy to be followed in the Arctic by the EU, it may be gathered that this balance is highly positive, reason for which it is more than evident that the refusal to grant the permanent observer status is a response to political interests based on the intention to exclude from the governance of the Arctic such an important actor on the international scene as is the EU.

The interests of Spain in the Arctic

Leaving aside the demonstrations shown regarding the interests of the EU in the Arctic, it is difficult to find specific references to the interest

²⁶ These Regulations were adopted by the EU due to the existing concern about the situation of the seals because of the hunting methods used, especially in the Atlantic area of Canada. In spite of the fact that the Regulations contain an important exception for the commercialization of seal products from animals caught by the Innuits and other indigenous communities and which are necessary for their sustenance, the adoption of the Regulations meant that groups of Innuits, non-indigenous hunters, and companies dedicated to the processing of seal products took the case before the European Union Tribunal of Justice and the World Trade Organization. At the Arctic Council, the EU was met with the slogan "No seal, No deal" on signs brandished by the Innuits organizations to pressure the Canadian government into not granting observer status on the Council to the EU.

²⁷ Brussels, 26.6.2012 JOIN(2012) 19 final http://ec.europa.eu/maritimeaffairs/policy/sea_basins/arctic_ocean/documents/join_2012_19_en.pdf

of Spain in the area. The inscrutability of the Spanish authorities and economic agents as far as discovering what interests our country might have in the Arctic, only find their only counterpoint in the willingness of Spanish scientists and researchers to speak openly about their research projects with respect to the area. The silence of our authorities and economic agents may be due, simply, to an absence of current interest or of immediate prospects for exploitation of the Arctic on the part of Spain, or else that our country accepts without objections the policies designed on the Arctic by the EU, but not to a real lack of interest, proof of which is that Spain is actively participating at the heart of the International Maritime Organization (hereinafter, IMO) on the drawing up of the *Polar Code*, a legally binding treaty which replaces the Directives of the IMO for the regulation of navigation through Arctic waters.²⁸ In spite of scientific and media interest in the subject, as well as recognition by Spain of the growing interest in this region, it does not seem that our country is in any condition to put into effect a "Political Strategy for the Arctic", as has been done by other neighboring countries. Nonetheless, for their historic, economic and scientific relevance, I will focus on the following aspects of interest for Spain with respect to the Arctic:

a) Fishing resources in the Arctic

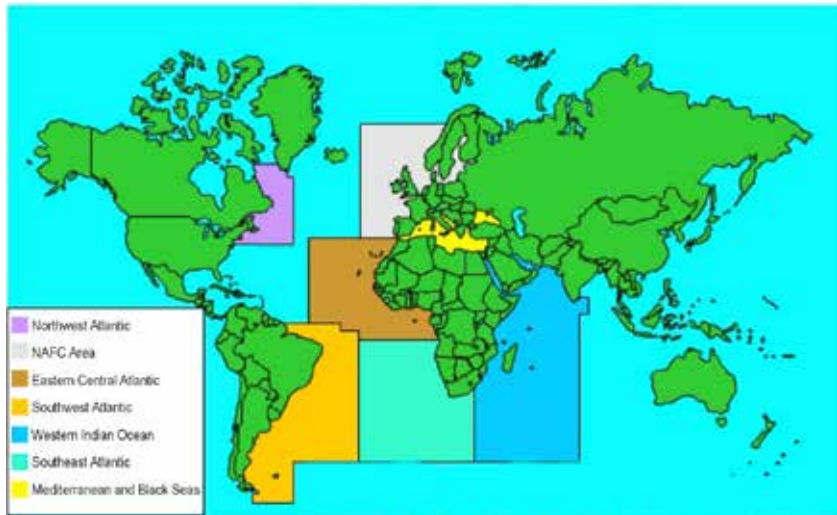
The capture of fish in the Arctic currently represents only 5% of the total captured. However, the fishing industry has traditionally been a key economic sector in the Arctic region, especially in those Arctic States of smaller size. For their part, the indigenous Arctic communities depend almost entirely on fishing for their economic survival. The fishing sector feels the effects of other activities such as mining or navigation; it is a sector sensitive to marine pollution, and has political strength proportionate to its relative size.

As I had occasion to set forth in the study, "International Law regarding the process of climate change in the Arctic. Special reference to the Law of the Sea."²⁹, the important interests of Spain in fishing matters (see Graph 1) are modulated by the fact that, since the entrance of Spain into the European Community, a great deal of competence in this issue has been attributed to the institutions of the Community. Thus, the Common Fisheries Policy of the European Union forms a part of domestic Spanish ordinances, and governs between the 12 and the 200 nautical miles of the member States under the principle of free access without discrimination of the fishing vessels of any member State into the waters of any other

²⁸ Information provided by S.R. Allnutt, WMO, *Vid.* [Http://www.imo.org/MediaCentre-HotTopics/polar/Pages/default.aspx](http://www.imo.org/MediaCentre-HotTopics/polar/Pages/default.aspx)

²⁹ *Cf.* Conde Pérez, E., in *Energy and Climate in the field of security and defense*. Loc. Cit. Pp. 175-195-

member State, only subject to the community rules on conservation and management of fisheries, and to the accords between the Community and third-party States giving them access to the waters of member States of the Union. With respect to the foreign aspect of the Common Fisheries Policy, the European Commission is in charge of negotiating the accords on fisheries with third-party States. The so-called “Northern Agreements” are those concluded by the EU with Norway, Iceland, and the Faroe Islands for the management of the fisheries in the North Sea and in the Northeast Atlantic.



Graph 1. Fishing areas for Spain. Source: Ministry of Agriculture, Food and the Environment <http://www.magrama.gob.es/es/pesca/temas/la-pesca-en-espana/mapa-de-zonas-de-pesca/default.aspx>

Spanish interests focused on the exploitation of the live resources of the Arctic are or may be susceptible to clash with the same interests on the part of the two major Arctic States, Canada and Norway.

- **Spanish interests vs. Canadian interests:** Certain measures adopted over time by Canada with respect to the marine spaces adjacent to her coasts raise fears of the possibility of a rampant nationalism.³⁰

³⁰ On the subject of fishing it is necessary to quote the Canadian Decree of December 15th of 1970 relative to the delimitation of its fishing zones. For her part, at the heart of the “turbot crisis” between Canada and Spain stand two Canadian laws—C-29 and C-8 of 1994—by which Canada extended, unilaterally and against the international order then existing, her competence over foreign fishing vessels beyond the 200-nautical-mile limit, with the alleged objective of ending overfishing and achieving the recovery of species.

The most authoritative doctrine³¹ has emphasized that the fact that Canada ratified the UNCLOS late — in 2003 — is somewhat disturbing, as there exists a risk that on claiming an extended continental platform (which has occurred, and not without controversy, within Canada itself³², given the extension claimed by this country in December of 2013³³ and despite the fact that the supra-adjacent waters would be considered high seas) she is attempting to claim sovereign rights over the resources existing in the marine space within the amplified platform.

- **Spanish interests vs. Norwegian interests in the Svalbards:** Spain has customarily fished in waters of the Svalbard archipelago for the exploitation basically of cod. The regimen of the Svalbards is regulated under the Treaty of Paris of 1920, which establishes Norwegian sovereignty over the archipelago, but recognizes the right of equal access to the exploitation of the natural resources of the other signees. This has turned into a possibility that Norway may adopt measures for the conservation and management of marine resources, such as the fixing of total capture admissible for Arctic cod in the area³⁴; however, among the competences which Norway enjoys, none gives her the right to on-board inspection nor to confiscation of vessels for alleged infractions of fishing regulations. Despite this, since 2006 some ten Spanish cod-fishing vessels have been confiscated while fishing in the Arctic. The tense situation came to a negotiating point in January of 2013, when a memorandum of understanding was concluded between Spanish and Norwegian authorities for mutual vigilance in the development of fishing activities carried out in the waters of the Arctic.

In this regard, it has been proposed to draw up a treaty in order to regulate fishing grounds in the Arctic high seas. The waters of the central Arctic, an area the size of the Mediterranean, contain fisheries which until now have never been exploited. The Arctic countries are discussing a treaty to establish a moratorium on commercial fishing over this space until scientific studies determine the state of the fish population of the area and their surroundings. The objective is to avoid depredation of the fishing

³¹ *Vid.* Iglesia Berlanga, M., "The 'Arctic War' and Spanish interests: Geostrategy and Law", *Fishing Economy. Notes from a university course*, Sotelo Blanco, April (2010): 605-626.

³² *Vid.* in this respect, the position of Prof. M. Byers, Canadian, at <http://thetyee.ca/Opinion/2013/12/24/Stephen-Harper-North-Pole/>

³³ http://www.un.org/Depts/los/clcs_new/submissions_files_/submission_can_70_2013.htm

³⁴ In the case of the member States of the EU, and although she is not a party to the Treaty of Paris, as the EU has exclusive competence in matters of fishing, it is the European Commission which communicates to Norway before December 31 of each year the list of vessels with the right to fish in the Svalbards the following year.

resources of the Arctic, through application of the general rules which govern fishing on the high seas (Part VII of the United Nations Convention on the Law of the Sea, of 1982, plus the United Nations Agreement on Straddling and Highly Migratory Species of 1995).³⁵

b) Scientific interests of Spain in the Arctic

As indicated above, the scientific interests of Spanish researchers in the Arctic have become common since the earliest discoveries³⁶. In another regard, as also previously indicated, the scientists have demonstrated their willingness to speak about them.³⁷ Most scientific activities have been undertaken in the Antarctic, although recently, a number of researchers are carrying out scientific activities in the Arctic, or collaborate with scientific teams from abroad who perform their activities in the Arctic. Such projects cover all sectors of scientific research. In order to develop their scientific activities in the Polar areas (see Graph 2) — traditionally, in Spain both areas have been jointly included scientifically — our country possesses the following structure:

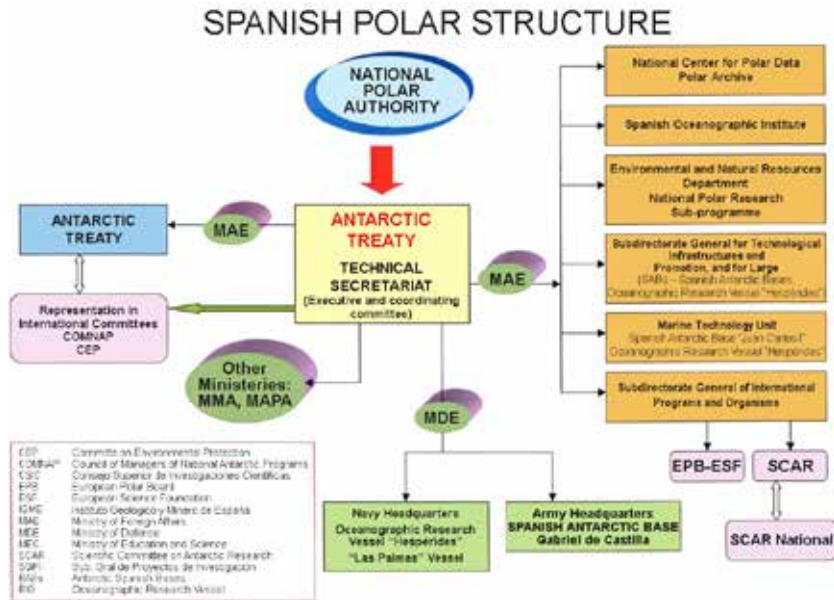
- The Spanish Polar Committee, attached to the Ministry of Science and Innovation, represents Spain at the principal organisms related to Polar affairs, such as the Atlantic Council; grants authorization to carry out scientific activities; and coordinates and has custody of the data obtained.
- The annual Programs of Scientific Research, within the Ministry of Science and Innovation, regulate issues relative to both Polar zones, including the financing of scientific projects relative to these.³⁸
- The High Council on Scientific Research.

³⁵ <http://www.oceansnorth.org/international>

³⁶ The Malaspina-Bustamante expedition was one of the first carried out in the Arctic: in July of 1789, the corvettes *Discovered* and *Daring*, captained by the two, departed Cadiz in search of the Northwest Passage, in an exercise together with other countries; the passage was not found. In 1792, two Spanish ships, captained by Galiano and Valdés, joined Capt. Vancouver's expedition to explore the archipelago known by the name of Juan de Fuca.

³⁷ I am especially grateful to Prof. Francisco Navarro, Polytechnical University of Madrid, for data provided for the realization of this study. In the same respect, Admiral M. Catalán, President of the Spanish Polar Committee put at our disposition the report *Spain's Report about the Scientific Research Activities in the Arctic Area*. I equally appreciate the contributions of the following Spanish researchers: Daniel Pablo de la Cruz Sánchez Mata (Department of Vegetal Biology, Complutense University of Madrid), and Pedro Elosegui (CSIC).

³⁸ This study, in fact, falls within the research programs of the Ministry of Science and Innovation, specifically within the following Non-oriented Fundamental Research Project entitled RACE FOR THE ARCTIC: INTERNATIONAL LAW ISSUES CONSIDERING CLIMATE CHANGE. REFERENCE: DER2012-36026, of which the research leader is Dr. Elena Conde Pérez and which is made up of 11 researchers.



Graph 2. Source: Courtesy of Professor Francisco Navarro, Advanced School of Telecommunications Engineers (Polytechnical University of Madrid)

- The Armed Forces manage the research vessel 'Hesperides', and the ship 'Las Palmas.'

c) Ocean passages as a mechanism to favor commercial traffic and the exploitation of resources. Interests of Spain

Although several ocean passages exist, the North West Passage and the Northern or North East Passage are especially important for their strategic and commercial interest; shortly, probably as a consequence of global warming, they will stand open, at least for some periods a year, to navigation without the aid of icebreaking vessels:

- The so-called North West Passage — between the Davis Strait and Baffin Bay on the east, and the Bering Strait on the west — is the most relevant with regard to the judicial statute on the marine spaces which it traverses. The economic and commercial value of the opening of this route of navigation is unquestionable: through the North West Passage, Europe and the Far East will be united by a thoroughfare which is 7,000 km. shorter than that through the Panama Canal. Since 1975, Canada has been asserting her sovereignty over the waters of the Passage based on her consideration of these as domestic waters³⁹.

³⁹ The judicial nature of domestic waters is recognized in Art. 2.1 of the UNCLOS, indicating that they are subject to the sovereignty of the coastal State. Thus, their judicial

This position is in turn supported by two judicial criteria manipulated by the aforementioned nation: the existence of a historic entitlement based on the immemorial use and occupation which the Inuit peoples have been making of the waters and the ice of the North West Passage, and the tracing of straight baselines carried out through the Decree of September 10, 1985 following the rules established by the jurisprudence and international custom on the matter, for on that date, Canada was still not part of the UNCLOS. The United States, together with the European Union (hereinafter EU), Japan, and China — a country very much interested in the commercial use of this passage — opposed the judicial designation of the passage as “domestic waters”, considering rather that the Passage is an international strait, subject as such to free transit,⁴⁰ which enormously benefits its expected use.

Keeping in mind the fragility of the ecosystem within which the Northwest Passage lies, legal precedents have determined the need to establish a particular regimen — a new category of straits, in fact, which would be added to those now existing under the UNCLOS — attending to their spe-

regimen is tinged by the said sovereignty, full and exclusive, of the coastal nation, with regard to:

- *Exploitation of natural resources* (renewable and non-renewable) existing both in the column of water and in the bed and in the subsoil, in accord with the domestic legislation adopted by the coastal State.
- *Full application of domestic legislation of the coastal State in penal, police-related or public safety matters.*
- *The regimen of navigation of foreign vessels*, which need the authorization of the coastal State in order to enter and navigate in these waters.
- The foregoing until now is applicable to those States parties to the Convention of 1982, but also to those which are not, since it will be applied to them, not as a Convention, but rather as custom, for it establishes the same.

⁴⁰ In this case the regimen of navigation is the right to passage in transit, defined as the freedom of navigation and overflight exclusively for the purposes of free and uninterrupted transit through the straits, during which the vessels and aircraft must respect the laws of the coastal States in matters of security, prevention, pollution and prohibition of fishing, among others. Those in command of a vessel acting contrary to said laws would incur international responsibility for any damage or prejudice caused to the coastal States of the straits. The right to free passage in transit is given concrete expression as follows:

- underwater navigation by submarines is accepted.
- control of passage by the coastal State is prohibited, excepting the establishment of maritime corridors in the charge of the competent international organizations.

The rights of the foreign vessels and aircraft are broad, in comparison with the obligations deriving from the passage in transit. For example, Article 39.1 c) of the UNCLOS indicates that vessels and aircraft in transit must abstain from “all activity not related to its normal modes of rapid and uninterrupted transit, excepting in case of grave difficulty or of circumstances beyond its control.”, which opens the door to possible arbitrary interpretation by the users as to what might be permitted to an aero-naval combat group navigating through an international strait in a crisis situation.

cial physical characteristics, for the regulation of navigation through the Northwest Passage, a regimen which would attempt to conciliate the sovereign interests of Canada, with the economic interests and desire for use of the zone on the part of the U.S.

- In a case similar to the foregoing, the Northern Route is a group of maritime routes which connect the Pacific and Atlantic Oceans from the New Zembla archipelago to the Bering Strait. In these archipelagos, through the Decree of December 15, 1985, Russia has traced straight baselines, in conformity with Article 7 of the UNCLOS which is the expression of common law in the matter, through certain spaces which they have come to consider as domestic waters but to other States are, rather, international straits, although the Russian position has been little challenged at an international level, which is not without significance. In this way, the intention of the Kremlin is to transform the Northern Route into a commercial passage as an alternative to the Straits of Malacca and the Suez Canal, and profit economically from it.⁴¹ It is obvious that every country in the world, especially of the northern hemisphere, has an interest, in economic and commercial terms, in the opening of the Arctic oceanic routes.⁴² Regardless of the fact that it is not possible to offer specific data with respect to Spain, she obviously has a major interest in such an opening, as well as in the establishment of a judicial regimen favorable to these interests, considering the waters contained in these passages as international straits.

CONCLUSIONS

1. The Arctic space is characterized by its peculiar physical conditions compared with any other part of the planet — a set of frozen seas. The predominance of the sea has caused, within the area, the coastal Arctic States of the Ocean of the same name to have been the principal protagonists in the definition of an “Arctic policy”, reflected in the Arctic Council as principal organ of cooperation.
2. The process of climate change opens a world of possibilities and of risks in the Arctic. Uncertainty, regarding the magnitude of the changes, the possible human use of the new spaces, and the moment when such changes will occur, is important and not negligible, but the panorama of opportunities on offer has caused a surge in interest by the Arctic States

⁴¹ Cf. Conde Perez, E., “International Law considering climate change in the Arctic”, *Loc.Cit.*, pp. 186-187.

⁴² *Vid.* Sirvent Zaragoza, G., “New routes of navigation through the Arctic” in *Energy and climate in the area of security and defense, Documents of Security and Defense n° 58*, Working Group on *The Arctic in the next 25 years*, Superior Center for National Defense Studies, Ministry of Defense, 2013, pp. 197-215.

themselves in governing the space as their own and exclusive, as well as interest on the part of third parties, interested not only in the use and in the governability of this space, but also in the protection of its unique characteristics.

3. Despite what the communication media reflect on occasion, the Arctic space is not an area of confrontation between neighbors, not even between these and third parties, but rather a space where there has reigned — and it is foreseeable that this will continue to be so — an intense cooperation among States. The Arctic Council, principal forum of cooperation, is good proof of this. Through it, however, the most prominent Arctic States — the coastal States of the Arctic Ocean — set the governability itself of this space, determining the opening or non-opening to third parties, and the possibility that said third parties may or may not influence the future judicial regimen for the Arctic.

4. The EU has traditionally been an actor interested in the Arctic for a number of reasons. Its contribution to the economic, scientific, and social development of the area is outstanding. In consideration of this, the EU aspired to influence its judicial regimentation. On the contrary, the reticence of the solid Arctic States — especially Canada and Russia — has caused an evolution in the policy of the EU towards the region. Thus, the profile of the EU regarding the Arctic is currently lower, it tries to appear as a legitimate actor with legitimate interests in the area, but to date has not seen its efforts rewarded with the status of permanent observer on the Arctic Council, due to political pressure.

5. Determining the interests of Spain in the Arctic in specific terms is not easy. It is obvious that any country in our area regards the North with interest, as does Spain. However, these interests do not seem to have solidified, except with reference to the traditional fishing interests — currently at possible risk from the progressive broadening of continental platforms, and the possible change in the international regimen of supra-adjacent waters — and the traditional scientific interest.

6. Pondering the causes of the Spanish lack of specificity regarding her interests with respect to the Arctic, I come to different conclusions: a) The economic crisis in which Spain is immersed determines the existence of other regions of priority, closer and more associated with our country with respect to their potential for commercial exploitation and use; b) There is the possibility that Spain seamlessly assumes the positions of the EU respecting the Arctic region; c) Diffuse interests exist, without a public and defined political strategy to guide our authorities and investors.

7. Although it seems desirable both for the Arctic States as well as third-party States, that International Law be the instrument governing the Arctic space, especially the Law of the Sea, it is not unlikely that said

governance adapt itself to the needs of the most powerful Arctic States, causing a new international equilibrium, which will probably not be in Spain's interest, especially regarding navigation and fishing on the high seas.

The Political Tug-Of-War on Arctic Governance: China's Journey to Permanent Observer Status

By Francois Perreault
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Chapter three

INTRODUCTION

China is now a permanent observer of the Arctic Council. Along with India, Italy, Japan, Singapore and South Korea, it has officially been accepted to participate on the most prominent political forum in the Circumpolar North. Until May 15 2013, the Arctic Council was made up of the eight Arctic States – the permanent members –, six Indigenous groups – the permanent participants –, and twenty-six permanent observers, of which six were non-Arctic States.¹

For economic reasons – resource exploitation, tourism, fishing and shipping –, environmental concerns – as the Arctic melts, Southern states will

¹ In 1996, the Ottawa Declaration officially created the Arctic Council (AC), a high level intergovernmental forum made up of the eight Arctic States, the permanent members: Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russia, Sweden and the United States. Decisions at all levels in the AC are the exclusive right and responsibility of the eight Arctic States with the involvement of permanent participants, six international organisations representing the Arctic Indigenous Peoples. These permanent participants have full consultation rights in connection with the Council's negotiations and decisions. The six veteran non-Arctic States permanent observers are: France, Germany, The Netherlands, Poland, Spain and the United Kingdom. Permanent observers can observe the work of the AC and may propose projects through an Arctic State or Permanent Participant, but their financial contribution cannot surpass those of the Arctic States.

be affected -, but also for political and national security reasons, these six countries have developed growing interests in the North. As permanent observers, they can now try and influence regional governance from within, although observer status on the Arctic Council does not grant them any decisional powers. Decisions at all levels of the Council are the exclusive right and responsibility of the eight Arctic States. Moreover, over the years the permanent members have established several criterions and other measures to limit the political and economic role of observers.

Although there seems to have been a recent convergence on the way forward, Arctic governance – *who* and *what* should govern the region – will remain the main fault line between the Arctic and non-Arctic States. In less than a decade, the debate or rhetoric on the subject has gone through various stages as we witnessed, what I call, a political tug-of-war on governance through the use of discourse, national policies, active diplomacy, and investments in commercial opportunities, scientific endeavours, and military capabilities.

In this political tug-of-war on governance, China stands out among the group of non-Arctic States. A rising giant, everything it says and does goes under a microscope, often subjectively analysed by others through a negative lens. The China threat theory has permeated to the Arctic. Early on, Chinese scholars' regional arguments did not help appease this negative threat perception. Although, they were not the only ones to take an alarmist and reactionary position in the Arctic; the European Parliament, Japan and Germany also shared similar point of views on Arctic governance, as they perceived a threat of being left out of the region's future potentials.

Still, even if these economically powerful non-Arctic entities share a common understanding of the region, China is different. It is the only one overtly seeking global power status. This simple fact is extremely important. It should not be overlooked when analysing the impact of China's growing economic and strategic interests in the Arctic.

Academic research on China's strategy (ies) in the Arctic is a recent endeavour. One of the first notable academic articles, outside of China, is SIPRI's Jakobson analysis in 2010 (Jakobson, 2010). Since then, there have been more studies, but even inside China, social and political science research on the region is quite recent (Alexeeva and Lasserre, 2012a: 62; 2012b:81).

Notwithstanding, when one looks at the current available research on China and the Arctic, there seems to be a lack of analysis on what it means for the policies of the Arctic states and the overall governance of the Circumpolar North (*Ibid*: 68) to have the Chinese government seeking to influence discussions and decisions on how the region should be governed (Jakobson and Peng, 2012: 1).

This working paper seeks to address this shortcoming. It analyses the recent political tug-of-war on regional governance to underscore the policy implications of China's interests in the region for the permanent members of the Arctic Council. China's new role in the region will inevitably have future impacts on regional governance and individual States' policies, but this paper shows that even before May 2013, during the years preceding the decision to add new permanent observers on the Council, the prospect of enlargement and China's growing Arctic Interest had direct policy implications for the Arctic States, and at the same time, it helped frame current and future discussions on Arctic governance.

The analysis is based on the author's past academic research and a critical review of a variety of official government policies and secondary sources. Section I provides a brief overview of the Arctic's geopolitical landscape by summarizing the permanent members' strategic postures. Section II discusses China's Arctic interests, and section III underscores the policy implications of enlargement for the permanent members as well as for regional governance by analysing the recent political tug-of-war in the Arctic – specifically related to China's recent political journey to obtain observer status. Conclusions are given in section IV.

Section I

The arctic's geopolitical landscape

During the last decade, new climate change realities complexified the Arctic with positive and negative ramifications in the economic, environmental, social, political, and security spheres. All of a sudden (or so it seemed), there was a real, albeit estimated, resource and shipping potential in the region,² there were critical environmental and social impacts on people and wildlife to mitigate,³ unresolved legal and political issues to tackle,⁴

² The most cited estimates come from the United States Geological Survey published in 2008 (USCG, 2008)

³ The most cited studies that have had an impact on how we look at the Arctic are, among others, the Arctic Climate Impact Assessment -2004, and one that has also potentially accelerated the internationalization of the region, is the Intergovernmental Panel on Climate Change fourth assessment report, which for their efforts to disseminate knowledge won the Nobel Peace Prize along with Al Gore. (see www.ipcc.ch) Other: ACIA 2004 Arctic Climate Impact Assessment (www.acia.uag.edu/)

⁴ Under UNCLOS, Arctic States have the right to claim extended continental shelf, given them exclusive rights to the resources on or under the seabed. There are, and will be, competing claims, such as those over the Lomonosov Ridge; There are also disagreements between Canada and the United States over the maritime boundary in the Beaufort Sea, which will be resolved diplomatically; Canada and Denmark have disagreements in regards to a maritime boundary in the Lincoln Sea, and with regards to Hans Island, a tiny 1.3km² island, which they both claim; There was also a maritime delimitation disagreement between Norway and Russia, but they resolved it in

new security dimensions to prepare for,⁵ and a growing international interest for the region to take into account. Needless to say, the Circumpolar North witnessed a renewed high level political interest, and between 2006 and 2011, each of the Arctic States developed and approved their own national Arctic strategy (ies) or State policy (ies).

The Arctic states' strategic postures

The Circumpolar North is politically and geographically diverse. There are eight Arctic States, all permanent members of the Arctic Council – Canada, Denmark (Greenland and the Faroe Islands), Finland, Iceland, Norway, Russia, Sweden and the United States. They span three geographical regions – North America, Europe and Russia. Five of them are coastal States, also known as the *Arctic 5* – Canada, Denmark, Norway, Russia and the United States. Four of the *Arctic 5* are NATO States, one is the world's sole superpower, and two, Canada and Russia, are Arctic giants; they are by far the largest Arctic countries with the biggest landmass above the Arctic Circle.

Moreover, Canada and Russia have significant socio-cultural links to the Arctic. For them, their Arctic sovereignty is more than just territorial integrity; it is also linked to their national identity and to their nation-building discourse, a narrative filled with historical exploits, adventures, might, national heroes, legends, songs and stories (Emerson 2012; Perreault, 2010). For these countries, the Arctic is a crucial part of “*who*” and “*what*” they are, nationally, but also, and perhaps more importantly, internationally. Any perceived threat to their Arctic sovereignty is extremely emotional as it enters the realm of identity politics (Perreault and Roussel, 2009).

During the second part of the last decade, the Governments of Canada and Russia decided to use an Arctic rhetoric that was (*and still is, somewhat today*) nationalistic, ambitious, unflinching, defensive and sometimes even confrontational. Identity politics and the debate over Arctic governance played a significant part in spurring this rhetoric and the renewed military interest in the region, although power politics and the desire to enhance their country's status and position in the international hierarchy also had an influential role.

2010; Canada's North West Passage and Russia's Northern Sea Route, which they both claim as internal waters, are contested mainly by the United States who argues that the straits should be considered international straits and open to transit passage, which means foreign ships can pass through without obtaining prior permission and foreign submarine can sail submerged.

⁵ A slew of security scenarios have been examined in many reports. As an example, see *The Future of Arctic Marine Navigation in Mid-Century: Scenario Narratives Report* (www.gbn.com/). Moreover, military officials from several countries also started to develop different security scenarios.

For Russia, the Arctic is a crucial component of its strategy to become, once again, a principal power and a global energy player in world politics (Heininen, 2012: 20; Emmerson, 2010: 57). On the one hand, the Arctic is an integral part of its internal economic and social policies. Russia needs stability in the North for economic prosperity and social stability, and the government uses strong nationalistic rhetoric, and media frenzied events to bolster domestic popularity.⁶ On the other hand, the Arctic is also a key element of its foreign and defence policy. The Arctic hosts a significant part of Russia's nuclear arsenal, and the Northern Fleet is particularly prominent in the region (Atland, 2010: 284); it is thus crucial to Russia's defence strategy (*ibid*: 286). Hence, for national security reasons - domestic social stability and military security - Russia will maintain a fighting potential in the Arctic, and at the same time, it will try to establish a zone of peace and cooperation to foster growth (Heininen, 2012: 20).

Canada also decided to use strong nationalistic Arctic rhetoric to defend its sovereignty and to bolster the Government's domestic popularity, especially between 2006 and 2010. Its Arctic strategy and related discourse can be linked to a desire to trade in Canada's traditional internationalism and middle power status for continentalism and major power status (Perreault, 2011)⁷. Sovereignty and national security are indeed a substantial part of Canada's Arctic strategy, though sustainable development, social and economic prosperity, environmental protection and northern governance are also officially promoted (Canada, 2009; 2010). Canada is currently chair of the Arctic Council for the next two years.

For Norway, its High North strategy reflects its traditional elements of its defence and security policy, but also its economic prosperity as a major Arctic oil and gas producer. The High North (the Arctic) is the most important strategic priority of Norway's foreign policy, especia-

⁶ For example, Arktika 2007, which culminated with the planting of the flag at the bottom of the North Pole was a big media event. The three members of the expedition that reached the sea floor, Anatoly Sagalevich, Yevgeny Chernyaev and Artur Chilingarov, were given the titles of "Hero to the Russian Federation" once they returned to Russia. Recently, less nationalistic and more of a show of Arctic solidarity and pride, a Russian icebreaker brought the Olympic torch relay to the North Pole, where each of the Arctic States were represented by national torch bearers.

⁷ Very briefly: In Canadian Foreign Policy theory, the concept of middle power designates a particular style of foreign policy, internationalism: active diplomacy, reflected in a strong participation in all major international organisations and in a systemic participation in multilateral operations. Middle power is linked to words, such as social, humanitarian, mediating, conciliatory, liberal, discrete, multilateral and peacekeeper. Continentalism (or neo-continentalism) and major power status are rival political ideas: unilateral actions and the use of force are put on the same level as multilateralism and diplomacy. Integration and closer ties to the United States are also seen as a natural route for economic, cultural, ideological and linguistic reasons. For more on the subject, please see (Nossal, Paquin and Rousset, 2011).

lly regarding commercial and societal opportunities (Norway, 2006; 2009; 2011).

Russia is the principal actor in Norway's High North, and also its central preoccupation. Norway needs to keep reassuring and normalizing its bilateral relationship, and all the while, it needs to continue to try and keep East-West relations on good standing, and deter any perceived Russian threat to their High North by using NATO and its allies (Perreault, 2010). It is true that Norway is both deterring and cooperating with Russia, but over the years military cooperation between the two countries has grown, and it has perhaps become even stronger than the deterring/containing element (off the record chat with Norway Military Official). In Norway, the official mantra is "High North – Low tension" is used to refer to the region (NATO Interview, 2010).

In the last decade, the Norwegian government did perceive a decreasing international interest for its territory (Graeger, 2005: 62). It embarked on an international quest to bolster its standing as an important energy and technological producer. It also pressed its NATO allies to bring the military alliance further up North (Erichsen, 2009; Barents Observer, 2009). The Norwegian government was successful with the former, but it has yet to convince all of its NATO allies to bring the alliance in the North. Canada seems particularly reluctant (Embassy, 2013). It has decided to block the initiative in NATO, and as expected, Russia is also adamantly opposed.

The United States, a coastal State by means of Alaska, has always put a high value on its national security, and it has always been dogmatic towards the freedom of the seas principals. It still does to a large extent in the Arctic, even though it has not yet ratified the United Nations Convention on the Law of the Sea (UNCLOS), and that it was relatively late – 2009 - to produce an Arctic Strategy, which was in the form of a National Security Presidential Directive (White house, NSPD -66). As the world's sole superpower, it seemed more preoccupied with other international issues. The Arctic is melting, sure, but Alaska seems to be well protected; the Canadians seem to be pulling their weight to defend their part of the North, and the North American Aerospace Defense Command (NORAD) is in order.

While the U.S. Navy has a vital role to play in the Arctic, the U.S. Coast Guard (USCG) bears the larger share of America's Arctic defence. The USCG has been calling for increased American interests in the North, asking their Government to ratify UNCLOS and to develop a more robust Arctic strategy (Emmerson, 2010: 123).

That said, now that the Arctic is slowly internationalizing itself, increased American interest is likely to become the norm. New government initiatives seem to point in that direction. In 2012, the US Secretary of State and the Russian Foreign Minister signed an agreement to further regional

cooperation between the State of Alaska and the Russian Far East federal district, and more recently, the White House published a new US Arctic Strategy on May 10, 2013. According to the strategy, national security is the number one prerogative, but stewardship and international cooperation are also important elements (White House, May 2013).

Denmark, the last of the *Arctic 5*, is a peculiar case. Its strategy has a clear global perspective (Heininen, 2012), and economic opportunities, scientific knowledge and global cooperation are key components of its policies. However, it was Denmark's idea to host the *Ilulissat Conference* in 2008,⁸ and Greenland will most likely be independent before 2030 (Emerson, 2010). Denmark will eventually lose its biggest Arctic asset. That said it still looks at the Arctic (Greenland and the Faroe Islands) in terms of sovereignty and national security issues, so NATO and the *Arctic 5* are important groups for the Nordic Kingdom.

For Finland, Iceland, and Sweden, sovereignty and national security issues are not so significant compared to the *Arctic 5*. Central to their national policies is environmental security, economic prosperity and international cooperation (Heininen, 2012).

Sweden was the last of the 8 permanent members to adopt a national strategy. It embraces a human development perspective. Finland's policy relates mostly to economic issues, and for Iceland, its national economic potential lies at the heart of its strategy as it essentially wants to become an Arctic Singapore (Emmerson, 2010: 162).

Iceland's Arctic policy also addresses the *Arctic 5* and their *Ilulissat Conference* as it presses for better regional cooperation, and it reminds them that Iceland is "the only country located entirely in the Arctic region" and that it should also be considered a *regional* coastal State (Heininen, 2012:14). With the *Arctic 5 process*, Iceland feels left out, but the Icelandic Government also knows that their territory is now decidedly strategically well located. China also knows this and it has engaged Iceland in the economic sphere (*more on this in section III*).

As for the "*who and what*" questions related to governance, as a whole, all of the Arctic States reiterated their trust in the Arctic Council's role as the main inter-governmental forum to further regional cooperation and

⁸ The Ilulissat conference was exclusive in nature as it only involved the 5 coastal States, the Arctic 5. It was contrary to a global outlook on the Arctic as its declaration reminded the world of the exclusive rights of the littoral States over the landscape and waters in the region. It reaffirmed their fate in the existing international law framework, and it officially rejected any ideas to develop or adopt an Arctic Treaty along the same lines of the Antarctic Treaty. It was a high level meeting directed at the more vocal non-Arctic States, such as the EU, China and Germany. The Ilulissat conference not only caused friction with the non-Arctic States, but also with the other three that had not been invited. (*more on this in section III*).

governance. They all identified UNCLOS as the main legal framework to handle competing claims, future agreements and regulations.

They believe that regional cooperation and governance questions should be matters handled by the Arctic States, with active participation and full consultation of the Arctic indigenous representatives – the permanent participants. The exclusivity preference of the Arctic States relates to the fact that they believe there is a need to address common concerns and challenges of a particular geographical region between those that are located there. Permanent observers, such as non-Arctic States, are encouraged to participate in the Arctic Council primarily at the level of working groups, but only as long as consensus exists among the permanent members.

Section II

China's Arctic interests

The warming of the Arctic has important global ramifications, not only with the physical effects of climate change on Southern countries, but also in regards to the evolution of international law, such as UNCLOS – the Arctic States' favoured legal framework for the region – with the yet unknown impact of claiming new extended continental shelf ownership, and with the precedent setting of perhaps classifying Russia's Northern Sea Route (NSR) or Canada's North West Passage (NWP) as international straits or territorial and historical waters. Moreover, future decisions of the Arctic Council or agreements between the coastal States – *the Arctic 5* – will inevitably have an impact on the governance of certain Northern resources and policy sectors.

In fact, in the near future, regional agreements and/or regulatory regimes will be discussed, developed and adopted to regulate, among others, Arctic fishing, regional environmental protection, search and rescue coordination, resource exploitation (oil, gas and minerals), and international shipping. We could even potentially see the development of a regional-seas agreement for the Arctic Ocean (Exner-Pirot, 2012).

Some of these resources and policy sectors, and more importantly large geographical areas of the region are viewed by many non-Arctic States, like China, as global commons that need to be looked at with an international perspective as opposed to a regional one. Taken as a whole, non-Arctic countries want to be included, if not in the final decisions, at least in the discussions preceding any groundbreaking governing decisions that could affect international law and the regulation of what is thought of as global commons. Of course, the Arctic States tend to disagree with the international perspective. Although, the recent enlargement seems to indicate that they have since decided that it might be better to include "outsiders" as observers rather than exclude them completely.

The Arctic has recently been added as a component to China's foreign policy strategy due to the region's global ramifications in the political, environmental, economic, and some would argue, military spheres. For certain analysts, China is the Asian country with the most stakes in the region (Blunden, 2012: 125), but still, the Arctic is not yet a Chinese priority, and probably will not be for awhile (Jakobson and Peng, 2013: 2013).

Instead, the circumpolar region is a necessary adjunct to China's overall strategic posture as it is overtly seeking global power status. To attain this heightened position in the international hierarchy, it is increasingly involving itself in regional issues worldwide. To protect its national interests, China wants to be actively engaged in a number of international and regional organizations. The Arctic Council happens to be one of them.

Political interests

One of China's political interests on a global scale is to be perceived as a responsible international stakeholder. To achieve that goal in the North, China needs to find a way to develop genuine ties with the Arctic States. To protect its interests, it also needs to be able to influence discussions and decisions related to Arctic governance.

Hence, over the years leading to the May 15 2013 announcement, obtaining the permanent observer status was one of China's main political objectives in the North. In this context, China started to cultivate good bilateral relationships with the smaller Arctic States. Through active diplomacy, the Middle Kingdom expanded its economic agreements and investments in the North, as well as its scientific endeavours (more on this in Section III).

Pursuing and increasing its diplomatic ties with the Arctic states was, and remains, a means to an end; it gives China soft power ammunition to dissipate the China threat perception, plus it gives it more political pull when it comes to protecting its national interests in the Arctic and the world.

Environmental and scientific interests

China is not a newcomer to Polar science. It has been involved in Antarctica for more than three decades. It became a member of the Antarctic Treaty in 1983, and it established its first research base in 1985 – it now has three of them (For more on China in Antarctica, see Brady, 2010). China has made 27 expeditions in the Antarctic, and it also has one of the biggest icebreakers in the world, the Xue Long, bought in the Ukraine in 1994, and used since as a polar research and re-supply vessel.

In contrast to Antarctica, China is relatively new to the Arctic as it joined the International Arctic Science Committee in 1997 (Jakobson, 2010: 3).

Since then, it has made four expeditions in the region, and it opened its research station on Ny-Aleslund, Svalbard, named the Yellow River Station, in 2004.⁹

Nevertheless, China has already developed an extensive scientific program, although its Antarctic Program receives the largest share of the polar research funds. Overall, Antarctic governmental expenditure in 2010 was US\$44million (Brady, 2010:782). The Arctic represents only 0.1 percent of the central government's allocation for scientific research, and about one fifth of polar resources (Jakobson and Peng, 2013: 19).

China faces real environmental challenges back home. Hence, its Arctic (and Antarctic) research endeavours are genuinely important, and polar research is likely to increase as China seeks to understand the impact of a warming Arctic on, among other things, the Tibet glaciers, its rivers and lakes, and regional typhoons (Emmerson, 2010: 144).

That said, even if there are genuine environmental concerns, active diplomacy through scientific research is also a means to an end. It provides China with a foothold in the region, and the Chinese government can increase its soft power to try and diffuse any perceived threat created from its incredible rapid growth.

Thus, China's activity in the Arctic, but also in Antarctica, need to be linked to its political interest, which reflects the country's growing economic and political power. According to Anne-Marie Brady (2010: 766), China's scientific engagement in Antarctica is an extremely useful platform for track-two diplomacy. We can certainly extrapolate this argument to the Arctic, and so, to China's overall scientific endeavours across the Poles.

Economic interests

Commercial interest for the region is relatively new in China. Chinese largest State-owned corporations seem to have adopted a wait and see approach (Jakobson and Peng, 2013: 7), similar to Japanese corporations (Tonami and Watters, 2012:98). In spite of that, according to Jakobson and Peng (2013:10), the overriding motives for China's growing interests in the North are economic – not only the opportunities, but also the potential adverse effects of climate change on its economy.

Understanding the potential environmental impact is certainly crucial and that is one of the reasons China has a state of the art research program, but the importance of new shipping lanes for China's economy should not be understated. The seasonal opening of Russia's NSR would cer-

⁹ For more governmental information on China's research bases and scientific programs across the poles, see <http://www.chinare.gov.cn/en/>, the official website of the Chinese Arctic and Antarctic Administration.

tainly be beneficial for the economic development of North Eastern China (Nong Hong, 2012: 52), but also for the whole country, with some Chinese analyst calculating that China can potentially save anywhere between 60 to 120 billion dollars yearly by increasing its trade through the new shipping route (Rainwater, 2013: 70).

Over 90 per cent of the world's international trade is done through commercial shipping; China has seven of the world's top 20 container terminals, and COSCO and China Shipping are among the world's top ten container service operators (Ibid: 51-52). Moreover, 46% of China's GDP is shipping-dependent (Blunden, 2012: 125).

Furthermore, resource exploitation and the importation of raw material are similarly crucial to China. The opening of the NSR will help with importation by cutting down costs, but to benefit from the Arctic resources (oil, gas and mineral exploitation), China will need to collaborate with the Arctic States – especially the *Arctic 5*.

National security interests

China's most important national security interest is regime maintenance, which is directly tied to keeping domestic stability through economic prosperity. Since China's economy is dependent on the importation of energy, raw material, and international exports, it should not come as a surprise that the protection of its Sea Lines of Communication has become a vital component of its naval doctrine, representing a strategic shift from coastal to far sea defence (Rainwater, 2013:66). If China was to start using Russia's NSR on a larger scale, this new shipping route would become vital to its national security interests. It should not come as a surprise either that one of China's most vocal advocate in regards to China's rights and interests in the Arctic is an Admiral in the People Liberation Army's Navy, Admiral Zhuo Yin, who is certainly looking at the region through the prism of strategic power.¹⁰

Territorial integrity and sovereignty claims are also weighty matters in the Arctic, and this could have significant ramification on China's own territorial integrity and sovereignty claims over Taiwan, the Senkaku/Diaoyu Islands and the South China Sea. This should not be understated;

¹⁰ Admiral Zhuo Yin has been cited in Gordon Chang's 2009 article (Chang, 2009) as arguing that "the Arctic belongs to all people of the world and no states should have sovereignty rights over it."; that "the current scramble for the sovereignty of the Arctic among some nations has encroached on many other countries' interests."; and that 'China must play an indispensable role in Arctic exploration as we have one-fifth of the world's population.'" According to Blunden (2012: 126), it is not clear "whether the military is pushing the government to be more assertive in the Arctic, or whether the government is using the military to fly its own kite."

especially that China still has an ambiguous stance towards Canada's and Russia's claims over their respective NWP and NSR. For the time being, and until China develops an official position, Canada and Russia - the two Arctic giants - are most likely (at least behind closed doors) to remind China about the delicate intricacies and similarities of their mutual claims. According to Alexeeva and Lasserre (2012: 86), if China considered the NWP an international strait "it would be tantamount to reckoning the Qiongzhou strait is."

Section III

Political implications

There are unresolved legal and political issues to tackle in the Arctic. Claudia Cinelli (2011: 5) notes that the dilemma stems from the fact that, on the one hand, international law must address particular State interests (particularly the coastal States) and, on the other hand, it needs to be concerned with safeguarding common interest as a whole, the interests of non-Arctic States.

Of course, the internationalization of the Arctic increases this dilemma, but there are also other complexities to take into account with regards to the region and international law, such as its geographical particularities (re: perennial ice), its historical use or non-use, and the presence of multiple strong Arctic powers. That being said UNCLOS is viewed by the Arctic States as a sufficient legal framework to resolve most, if not all, of the pending legal issues. Politics, cooperation and diplomatic negotiations through the Arctic Council should be able to handle the rest.

However, today, the internationalization of the Arctic also means that the region needs to evolve with a powerful country like China (but with the EU as well) that wants to safeguard its interests by presenting itself as a defender of the Arctic's global commons and the rights of non-Arctic States. China does not have an official Arctic policy, but over the years military officials and prominent scholars have taken assertive stances against the status quo, putting into question the Arctic-States interpretation of UNCLOS, their sovereignty and the regional governance structure. The EU also proposed, among other things, to review the entire legal framework of the region.

A political tug-of-war on Arctic governance

The "who and what" questions related to Arctic governance have been given different answers by powerful "outsiders", and in response to their controversial positions, the permanent members of the Arctic Council have, over the years, enacted political strategies or regional and national

policies designed to protect their own interests and the region's status quo. At the same, the Arctic States also slowly realized that they needed to, somewhat, adapt their strategic postures to the new global realities by attempting to strike a delicate balance between including/excluding and internationalizing/regionalizing, which resulted in the May 15 2013 Arctic Council enlargement.

In less than a decade, the debate or rhetoric on the subject has gone through various stages as we witnessed, what I call, a political tug-of-war through the use of discourse, national policies, active diplomacy, and investments in commercial opportunities, scientific endeavours, and military capabilities.

The evolution of the “outsiders” discourse and the making of policy

The political rhetoric of powerful “outsiders” like the European Union and China followed a similar course over the years. Two phases can be identified.

The first phase is an alarmist, reactionary and even hawkish period that began in and around 2007 for China, and as early as 2006 for the EU when parliamentarians started suggesting that governance in the Arctic was defective and that an international treaty was needed. This phase continued until 2009 for the EU, and 2011 for China, until perhaps the Arctic Council's Ministerial meeting in May of that same year.

Many factors contributed to fuelling the rhetoric during this period, such as the increase of alarmist media coverage of the region, the Arctic States' national and international discourse,¹¹ their unilateral and regional actions, the U.S. Geological Survey of 2008 (USGS, 2008) and the surge in the price of oil and gas. What seems to have given the initial spark, or set off alarm bells, at least in China (Jakobson and Peng, 2013:14), is Arktika 2007, which saw Russia plant its national flag inside a titanium tube at the bottom of the Arctic Ocean in (or close to) the North Pole. This event had immediate negative reactions from other Arctic States. It was even likened to 14th or 15th century conquest by the Canadian Foreign Affairs Minister at the time, Peter Mackay (CBC, 2007).

The incredible images and subsequent political reactions created the perception in the media that the Arctic States were involved in an *all or nothing* race to claim new extended continental shelf in order to own *all*

¹¹ For example, Canada's reaction towards the Arktika 2007 planting of the flag and its subsequent rhetoric in regards to Russia in the North; in 2009, the Government of Canada also launched an advertising campaign in Europe to promote Canada as an “Arctic power”, the rightful owner of more than a third of the territory and resources; Norway also made an effort to increase the European Union's focus toward the Arctic, as well as NATO's.

the riches that might lie on the Arctic Ocean's seabed. Never mind that this Russian research exercise - minus the media frenzied event meant to bolster domestic popularity - had been accomplished following the guidelines set out in the United Nation framework of the Law of the Sea and that their claim to the area would be scientifically scrutinized, as well as other potential competing claims, such as those of Canada and Denmark.

For the EU, and I would argue for China as well, this phase is characterized by a fundamental lack of knowledge about the region's geopolitical situation (Wegge, 2012:16). It is effectively a learning and policy making phase for China and the EU, where national media, politicians, civil servants, military officials and scholars started making policy recommendations in reaction, among other things, to the heightened media attention in the region.

In China, these recommendations "contained assertive and even hawkish stances" (Jakobson and Peng, 2013:15). Put into a more global context, the tone of these Arctic stances correlate with China's overall foreign policy between 2008 and 2011, where it adopted a more hard-line approach in both discourse and actions. In the Arctic, but overall, China did return to a more benign approach in 2011 (Scobell and Harold, 2013).

The Middle Kingdom still does not have an official Arctic Strategy and, in part because of this, until about May 2011 there was unrestrained public discussions on the subject (Alexeeva and Lasserre, 2012a:65), mainly from prominent Chinese scholars, but also from military officials. Many of their assertive stances were published by the national media, and because military officials were also participating in these public discussions, it was interpreted by most people outside of China as a tacit acceptance of those positions by the Communist Party of China. Although, it seems that during a policy making phase and before an official policy is formulated in China, it is usual for certain groups "to first engage in a public debate about what the country's objectives and policies should be", sometimes gauging reactions of foreigners at international seminars and workshop (Jakobson and Peng, 2013: 22)

Nevertheless, Chinese academics like Li Zhenfu, associate professor at Dalian Maritime University, argued "whoever has control of the Arctic route will control the new passage of world economics and international strategies", a comment bound to make Canada and Russia wary of China's intention as they are both claiming that the Arctic routes belong to their territorial waters and that they are theirs to control. Zhenfu also stated that the Arctic "has significant military value" (Jakobson, 2010:6-7), urging China to protect its interests in the North. Guo Peiquing, professor at the Ocean University of China argued that the country cannot remain neutral in Arctic affairs because it is on the verge of becoming a global power. He also stated that China should be aware of the possibility of an alliance forming between the Arctic States (*Ibid*:7).

Military officials like Admiral Zhuo Yin argued, among other things, that the Arctic did not belong to any country and that no States should have sovereignty rights over it. He stated that China needed to play an indispensable role in the Arctic's future (see endnote 12). Even Senior Colonel Han Xudong stated that the use of force in the Arctic cannot be ruled out (Jakobson, 2010:7).

For the EU, Diana Wallis was one of the few parliamentarians that had previous knowledge on the region and she became a fervent proponent of changing the status quo with regards to Arctic governance. She was one of the architects of the EU Parliament's Arctic resolution of October 9, 2008. This resolution contained controversial elements, such as the idea of opening international negotiations to adopt an international treaty (Wegge, 2012: 17; see European Parliament Resolution, 2008). Moreover, the resolution was perhaps even worded in a legally incorrect manner (Koivurora, 2009:7) due, most likely, to a potential lack of specific regional knowledge.

Regardless, the Arctic Council, UNCLOS, regional governance, and the sovereignty and interests of certain Arctic States were being questioned by powerful outsiders. Needless to say, the Arctic States did not like these revisionists and hawkish stances at all, even if some of those stances had been triggered by their own unilateral actions (re: Russian flag planting; Nationalistic rhetoric; new military spending), which sometimes caused genuine concerns about the stability of the region, and it likely increased the perceived threat of being left out of the region's future potentials.

Because of the Arctic States' reactions to the "outsiders'" discourse and policy making, and due to an increasing overall geopolitical knowledge within the Governments of non-Arctic States, a second phase slowly came into being. This period is marked by a more tempered and diplomatic approach.

The change in official discourse and policy happened pretty quickly within the European Union, due to Norway's and Denmark's decision to try and influence a change in the European Union's positions (Wegge, 2012). The EU Commission issued a communication on November 20, 2008, that was rid of the most controversial elements of the EU Parliament's resolution (International Arctic Treaty), and which accepted UNCLOSS as the most appropriate legal framework for the region (see EU Commission, 2008). By December 8, 2009, the EU also recognized the Arctic Council as the most prominent forum to ensure circumpolar cooperation and to further Arctic governance (Wegge, 2012:18,21). Their answers to the "who and what" of regional governance had converged with those of the Arctic States.

In China during this period, Chinese Arctic scholars and military officials became more restrained in public, especially after China's observer

application was deferred a second time in May 2011 (Jakobson and Peng, 2013:15). As previously mentioned, obtaining the permanent observer status was one of China's main political objectives in the North, and it was most likely decided thereafter that public assertiveness and controversial positions were not helping their cause. According to Jakobson (2013:15), officials in China are now fully aware of the sensitivities of Arctic politics, especially regarding resource exploitation and sovereignty issues.

Hence, over time, the EU's Arctic policy seems to have moved much closer to the national strategies of the Arctic States (Wegge, 2012:25), and even though China still has no official policy (a fact that is most likely tied to a strategy meant to lower any China Arctic threat perception), Chinese policy makers have now stated that the Arctic Council is the main institution to manage regional governance and circumpolar cooperation (Jakobson and Peng, 2013:11). It seems that what has been achieved in the region during this second phase is an *Arctic Council consensus* between "outsiders" and the permanent members, although the answer to the "*who* should govern the Arctic question" might still remain unanswered for China and others. The first step for China was to gain access to the Arctic Council, which is *what* is currently governing the region along with the international legal framework. The next step would be to try and change the *who* from within, if at all possible as this will involve a delicate diplomatic dance with all the permanent members of the Arctic Council.

The Arctic states' policy responses and China's active diplomacy

The "outsiders" discourse and policy making evolved alongside the Arctic States' political strategies or regional and national policies that were, more often than not, designed to try and protect "their" region's status quo and to keep controlling the governance process. Discussions amongst the Arctic States about an Arctic Council enlargement were also necessary at this stage as the permanent members needed to somehow strike a delicate balance between including/excluding and internationalizing/regionalizing. In fact, they still need to strike that balance today, and they will continue to have to do so in the near future.

Ilulissat, Chelsey and the Arctic 5

A direct policy response from certain Arctic States to the most vocal "outsiders" and their idea that the region might need a new governmental legal framework was the *Ilulissat Conference* and subsequent *Declaration* (Ilulissat, 2008). The *Arctic 5* excluded the other Arctic States as they wanted to counter claims that the coastal States could not cooperate together, and that governance in the Arctic, and in particular in the Arctic Ocean, was deficient.

Of course, these claims and concerns about peaceful cooperation in the region did not come out of nowhere. The Governments of Canada and Russia were using an Arctic rhetoric that was nationalistic and defensive. They both had a clear domestic purpose to use this type of rhetoric, although the international audience was also very much considered when they delivered their speeches. The coastal States, minus the United States, also had started to re-invest into their military capacities in the North, and this caused concerns over a potential militarization of the region. There had also been diplomatic incidents between Denmark and Canada over a tiny parcel of land named Hans Island they both claim to own, and moreover, Norway was becoming wary of Russia's actions in the North, so was Canada. The media was a factor as it helped heighten the perception that there was an Arctic race and that conflict was a dire possibility.

In the end though, the increasing alarmist media coverage and the growing international concerns and interests for the region brought the coastal States together to reassure the world that they had everything under control. The *Ilulissat Declaration* was an explicit answer to the "who and what" questions on governance.

The *Arctic 5* reiterated their fate in the Arctic Council, their commitment to the law of the sea framework and "to the orderly settlement of any possible overlapping claims." The *Declaration* states "the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea." Furthermore, it explicitly states that they "see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean", and as coastal States, they "have a stewardship role in protecting" the Arctic Ocean and will work "through the International Maritime Organization" to do so (Ilulissat, 2008).

The *Ilulissat Declaration* had significant results, and it can be considered today as a historical component of Arctic cooperation (Plouffe, 2011:79). But by asserting their dominance in the region and suggesting that others leave the Arctic affairs in the hands of the coastal states (Young, 2010: 166), the *Arctic 5* did cause concerns.¹²

Iceland was particularly concerned that *Ilulissat* could potentially undermine the Arctic Council, and more so, that it would be left out of critical

¹² In Germany, *Ilulissat* seems to have caused alarm amongst analysts at several important policy institutes (Blunden, 2012:122); some commentators in China talked about a potential Arctic State alliance that could contribute to exclude China from the region; The EU did recognize the Declaration in their November 2008 communication, but at the same time they stated that "There is no specific treaty regime for the Arctic. No country or group of countries have sovereignty over the North Pole or the Arctic Ocean around it."

discussions regarding its immediate geographical surroundings. Iceland considers itself a “regional” coastal State as it is very much connected to the Arctic Ocean by the Greenland, Norwegian and Barents Sea. It had been reassured by some of the *Arctic 5* that this was a one-off meeting, but two years later, Canada held a second exclusive meeting in Chelsey, Québec (Plouffe, 2011: 77), which did not bode well with Iceland.¹³

The *Arctic 5* process undoubtedly alienates Iceland, as well as other non-coastal States and “outsiders” like China. It is supported by Russia and Canada (and Denmark) but criticized by the U.S. and non-coastal states (*Ibid*: 79). Canada and Russia sometime perceive the internationalization of the region as a potential threat to their Arctic sovereignty, especially in matters related to the NSR and NWP. The exclusive *Arctic 5* process represents a way for them to exclude, nationalize and regionalize issues that they do not want to internationalize.

Deferrals, criteria and omissions

Deferring non-Arctic States’ or international organizations’ permanent observer applications every two years at the Arctic Council’s Ministerial meeting, is probably one of the most effective political strategy or tool at the disposal of the Arctic States to voice their concerns regarding an “outsider’s” official or unofficial position (as long as the Arctic Council remains the number one forum in the region). China’s application was deferred twice. This happened in 2009 and 2011.

Another policy tool at their disposals to make sure non-Arctic States comply or converge towards their views on regional governance is to create new criteria, which they did at the ministerial meeting in Nuuk, Greenland, in 2011. The Nuuk observer rules or Nuuk criteria added increased pressure on “outsiders” to change their positions in order not to challenge those of the Arctic States (for a good analysis of the Nuuk observer rules, see Graczyk and Koivurora, 2013). The Nuuk criteria had a definite impact on China as it had to revise its application in order for it to comply with the new rules (Solli, Rowe and Lindgren, 2013:256).

Omissions are another tactic or policy response. In the middle of this political tug-of-war on governance, each of the Arctic States approved

¹³ Iceland occupies a strategic location in the region. It wants to become a transshipment hub similar to Singapore. The Arctic 5 process alienates it from important discussions in matters related to the Arctic Ocean. Just before the Arctic Council ministerial meeting in May, Iceland’s President Ólafur Ragnar Grímsson, announced the creation of a new global forum called the Arctic Circle, which is open to any countries or stakeholders interested in the Arctic’s future potentials. The announcement prior to the Arctic Council’s meeting seems to have been calculated to put some pressure on those that were still not in favour of the Arctic Council’s enlargement. In this light, the enlargement can be seen as something that was necessary, so as to keep the Arctic Council relevant in the future.

their own national Arctic strategy (ies) or State policy (ies). The fact that all of them decided not to mention the prospect of enlargement or the global Arctic perspective in their official positions seems to have been a tactical and deliberate calculation (Heininen, 2012: 43), not to mention that regional consensus needs to be attained on any decisions of the Arctic Council.

China's Active Diplomacy

A 1920 Treaty regulates the Archipelago of Svalbard, Norway.¹⁴ Since then, scientific research has become institutionalized. Ny-Alesund, Svalbard, is essentially a research centre opened to all 41 treaty signatory States (Grydehoj and al., 2012: 103) and according to Adam Grydehoj and al. (Ibid:113-114), "the Treaty has turned Norway into a pivotal player in Asia's Arctic expansion". It has indeed enabled China to have a foothold in the Arctic even though it has no territory of its own. China opened its Yellow River Station in 2004 on Ny-Alesund, and since 2005, it became a member of the Ny-Alesund Science Managers committee (Jakobson and Peng, 2013: 10).

China developed an active diplomacy strategy in the economic and scientific spheres to try and convince the Arctic States of its benign intentions so as to eventually obtain permanent observer status. Deferred twice, it increasingly cultivated good bilateral relationships with the Scandinavian countries. It based its scientific cooperation in Svalbard, and its collaboration with smaller Arctic States went a long way; in June 2013, China announced plans to establish a China-Nordic Arctic Research Centre in Shanghai in 2014, which will launch numerous partnerships with several research institutes in Denmark, Iceland and Norway (Zhenghua, 2013). These three countries, as well as Finland and Sweden all voiced their support for China's third bid prior to the May 15 2013 vote.

China also embarked on an "economic campaign among Scandinavian countries (...) particularly in the area of natural resource extraction" (Alexeeva and Lassere, 2012a: 63). Moreover, it has increased its energy collaborations with Russia, which as we mentioned previously is a crucial component to both countries national interests, as economic prosperity is necessary to domestic stability and regime maintenance. China's economy is also very much dependent on the importation of energy, raw material, and international exports, and this makes Russia a valuable strategic partner in the North. In 2009, both countries signed an agreement that includes 205 major bilateral projects (*Ibid*: 66).

¹⁴ For a good analysis of the role of Svalbard for the globalization of the Arctic, see (Grydehoj, 2012).

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Third time's a charm, the saying goes, but permanent status has not been achieved without a much needed concerted diplomatic and political effort by the Chinese government. It eventually worked.

The Nordic states were in favour of enlargement. They all came to voice their support for the Middle Kingdom's new Arctic status before May 15 2013. This early political backing was most likely the result of a variety of factors, such as fruitful bi-lateral talks, economic potential, agreements, MOUs, investments and scientific cooperation.

Canada, Russia and the United States did take their time to acknowledge China's application, and it is said, through the vines, that the working dinner scheduled to discuss enlargement, the night before May 15, lasted till early the next morning (off the record chat). Enlargement was not a given, though apparently the Arctic Council's future relevance was one of the main arguments in favour. As mentioned previously, consensus is necessary for any decision taken at the Council.

The May 15 2013 acceptance of six new permanent observers can be seen as a potential political victory for both sides of this political tug-of-war on governance.

On the one hand, non-Arctic States finally obtained observer status, which gives them the right to observe the meetings of the Arctic Council and to start influencing regional governance from within. Some of them, like China, applied three times before obtaining a positive response. The EU still has not been accepted but mainly because of their 2010 embargo on imported seal products. Canada and Norway have challenged the ban at the World Trade Organization, and Canada is adamant that the EU should not join the Arctic Council "permanently" because of this.

On the other hand, the Arctic States have also won a battle. The Arctic Council has been declared once again the most prominent political forum in the region. A new "Observer Manual", which clearly reiterates the exclusive rights of the eight Arctic States over non-Arctic States, was formally adopted at the Arctic Council meeting in May (see Observer Manual, 2013), and it seems that the existing multinational framework – UNCLOS and other regional agreements – will take precedent over the creation of new structures, such as an international treaty. Control over the governance process remains in the hands of the Arctic States.

Conclusion

China is overtly seeking global power status and this fact should not be overlooked when analysing its interests in the Circumpolar North. China's

activity in the Arctic needs to be linked to its overall political interest, which reflects its growing economic and political power.

The Arctic might not yet be a Chinese priority, but it is a necessary adjunct to its overall strategic posture. Thus, China's political goal of obtaining permanent observer status on the Arctic Council was directly related to the fact that it wants to be actively engaged in a number of international and regional organizations. It wants to attain a heightened position in the international hierarchy, and so it is increasingly involving itself in regional issues worldwide. The Arctic happens to be one of those issues.

The permanent members of the Arctic Council mostly believe that regional cooperation and governance questions are matters better handled by themselves and the region's indigenous representatives. They have an exclusivity preference, and some even perceive the internationalization of the region as a potential threat to their Arctic sovereignty, especially in matters related to the NSR and the NWP. The *Arctic 5 process* was (and still is) a way to exclude, nationalize and regionalize certain issues. Deferrals, new criteria, and omissions are also political tools that enable them to protect the status quo, exclusivity, and regionalization.

That said, the Arctic States all view the internationalization of the region as a good omen. They will all benefit economically from it, and they can, especially the smaller Arctic States, use their geographical position as a powerful diplomatic tool to heighten international relations with influential countries such as China.

China definitely had an impact on the Arctic States' policies during, what I call, the political tug-of-war on governance. Although, it was not the only one taking part in this tug-of-war process, as a growing number of non-Arctic States were also voicing their strong opinions on how the region should be governed. Overall, though, the process seems to have helped frame future discussions on Arctic governance as the positions of China and other outsiders have somewhat converged closer to the Arctic States own positions.

China's track-two diplomacy through its economic and scientific relations has helped it gain access to the Arctic Council. At the same time, by getting more involved in the region China sort of proved through the years that enlargement was almost necessary. The Arctic States slowly realized that they needed to strike a delicate balance between *regionalizing* certain issues and *excluding* non-Arctic States, and *internationalizing* other issues while *including* outsiders in the decisional process. In the end, they granted China, India, Italy, Japan, Singapore and South Korea permanent observer status on May 15 2013.

What does it mean for the policies of the Arctic States and the overall governance process in the coming years to have the Chinese government seeking to influence decisions in the region?

Only time will tell, but as mentioned, the tone of China's Arctic stances between 2008 and 2011 seemed to have correlated with its more hard-line approach to its overall foreign policy in both discourse and actions. China did return to a more benign approach in 2011 in the Arctic and the world, although it now seems that, for the past few months, China has decided to push back against its neighbours as well as the United States in the South China Sea. The "USS Cowpens incident", among other recent diplomatic rows, highlights this new trend (Farley, 2013).

The Arctic is not China's backyard and the security structure in the North is very different than it is in East and Southeast Asia. It is foreseeable, and most probable, that the excellent cooperation between the Arctic States, and between those and "outsiders", will remain the trend. Most likely, China's Arctic approach won't change this time around to correlate with its more hard-line foreign policy as it did before 2011. China has only recently obtained observer status and it has gain knowledge overtime so as to be fully aware of the sensitivities of Arctic politics, especially regarding resource exploitation and sovereignty issues. Of course, it is possible that China's soft-power diplomatic approach might shift once it starts using Russia's NSR on a larger scale. The new shipping route would then become vital to its national security interest and thus, would be linked to a vital component of its naval doctrine.

What might warrant further analysis is that, with China and others in the mix, the security structure of the Arctic could potentially become more complex in the future, especially if it gets entangled in extra-regional conflicts. It already spans three geographical regions; it has the world's sole superpower; it has NATO States, Coastal States, and two Arctic giants whose Arctic sovereignty enters the realm of identity politics.

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