

China and the Law of the Sea: Implications for Arctic Governance

Abstract:

Guided by insights from IR theory, this article investigates China's adherence to the UN Convention of the Law of the Sea (UNCLOS), asking how Beijing's attitude towards UNCLOS affects China's role in Arctic governance and beyond. Examining contested Law of the Sea matters – the dispute over the “nine-dash line” in the South China Sea, the right of innocent passage of warships, the role of international arbitration – it argues that China's compliance with UNCLOS does matter for understanding how China is perceived as a member of the international community. Further, China's growing interests and enhanced engagement in the Arctic depend on a strong international legal framework; Arctic governance encapsulates the norms of multilateralism and rule of law. The article concludes by asking whether Chinese experiences from observing and participating in the multilateral governance of the Arctic can serve as an example of successful multilateral cooperation and peaceful conflict solution, of relevance to China also in its nearby maritime regions.

Keywords: China, UNCLOS, Arctic, governance, IR

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Introduction

Since the end of the Cultural Revolution, the People's Republic of China (PRC) has strengthened its position as a member of the international community and participated increasingly in multilateral regimes and organizations.¹ Given recent decades' growth in Chinese power and influence in world politics, it is natural to ask what global role an even stronger China may seek in the future. This applies not least to the Arctic, where not only questions of interest to the Chinese polar scientists are in focus, but also matters of a strategic economic and political nature.² With climate change shrinking the ice-cover of the Arctic Ocean, the new economic potentials with respect to resources and new shipping routes have motivated China to engage more actively

¹ Johnston, A. (2003). Is China a Status Quo Power? *International Security* 27(4), 5–56.

² Personal communication, Director, Polar Research Institute of China, 2 October 2013.

in the Arctic.³ This is also reflected within the realm of governance, where China in May 2013 was admitted as a permanent observer to the Arctic Council (AC). However, recent Chinese interest in the region has also given rise to some uncertainty and scepticism among the Arctic states.⁴

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is the key international legal framework that establishes a legal order for the world's seas and oceans. It addresses a broad range of issues – from granting coastal states marine jurisdiction and securing international communication, to the protection and preservation of the marine environment. According to the preamble, the aim is to “contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights [...] in accordance with the Purposes and Principles of the United Nations as set forth in the Charter”.⁵

This article investigates one central dimension of how China fills its position as a member of the international community: its adherence to UNCLOS. We examine how China's interpretations and views on the Convention affect the role or standing of this rising great power in issues of global governance, issues related to Arctic governance in particular. The Arctic is of great general interest as a region of growing importance in its own right. Moreover, it is a part of the globe where China has expressed and demonstrated interest only recently, so the High North offers an illustrative case of the challenges facing China in its relatively new global policy engagements.⁶

Research Questions

The Arctic is a maritime region, dominated by the Arctic Ocean, regional seas and coastal areas, surrounded by the land areas of five countries: Canada, Denmark/Greenland, Norway, Russia and the USA. UNCLOS provides the most important source of international law in the polar region. Today, with major powers such as China, Japan, India, and important political entities such as the EU, showing greater interest in the Arctic, examining the attitudes of these “Arctic newcomers” towards UNCLOS is both legitimate and pertinent.⁷ Thus, we ask the following research questions: *How does China view UNCLOS?* and *What implications does the PRC's attitude towards UNCLOS have on China's role in Arctic governance and beyond?*

³ Jacobsen, L and Peng, J. (2012). *China's Arctic Aspirations*. SIPRI Policy Paper 34, November.

⁴ Solli, Per Erik et al. (2013), “Coming into the Cold: Asia's Arctic Interests”, *Polar Geography*, DOI: 10.1080/1088937X.2013.825345; Young, O. (2012). “Listening to the Voices of Non-Arctic States in Arctic Ocean Governance”, paper presented at the 2012 North Pacific Arctic Conference, Honolulu, Hawaii, 8–10 August. “Arctic states” refers to the states with territory the north of the Arctic Circle: Russia, Norway, Denmark/Greenland, Canada, USA, Finland, Sweden and Iceland. The first five (A5) are “Arctic littoral states”, as they have a coastline on the Arctic Ocean itself.

⁵ Preamble, the United Nations Convention on the Law of the Sea of 10 December 1982. Available at: http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

⁶ Chen, G. (2012). “China's Emerging Arctic strategy”, *The Polar Journal* 2, no. 2, 358–71.

⁷ On 15 May 2013, in Kiruna (Sweden), China, Japan, India, Singapore, Italy and the EU were granted permanent observer status at the Arctic Council (with some technical issues pertaining to the EU ban on seal products to be resolved before the decision could be implemented).

We begin by discussing two theoretical paradigms or approaches of international relations (IR) of particular relevance to research on international law and governance: the *realist* and *liberal* traditions. Here we identify some key issues, debates and disagreement concerning core issues in IR, such as the potential for governance by international law and the function of power. These fundamental debates will guide our empirical investigation of China's approach to UNCLOS, as well as assisting in the analysis of how China's attitude to the Law of the Sea affects its own role and position in Arctic governance.

Guidance from IR theories

China's interpretations of UNCLOS and the implications for its role in Arctic governance are closely related to the country's role as an actor in world politics, and are hence best analysed in a global context.⁸ The application of IR theory will need to address and be contextualized within the broader debates concerning China as a rising global power. The fact that China in recent years has increasingly become an integrated member of the global system of world politics – binding itself legally to the WTO agreement, becoming a more active member of the UN, a dialogue partner to ASEAN and an initiative-taker in the Shanghai Five group – adds to this view.⁹

Insights from the realist tradition

The realist tradition is typically concerned with problems like the security of states, interstate competition or shifts in the distribution of power-capabilities in the international system, emphasizing the grim implications of international anarchy.¹⁰ This approach pays considerably attention to the most powerful states. Similarly, the phenomenon of power-fluctuations in the international system, causing states to move up or down in the “international hierarchy of states”, have been put under investigation. Shifts in the global balance of power – applying typical realist approaches – have been one of the most studied processes.¹¹ In analysing China's adherence to UNCLOS and the implications for multilateral governance, two partly related strands of realist thought stand out as particularly relevant: *power-transition theory*, and theories on *revisionist/status-quo powers*.¹²

Power-transition theories

According to Jacek Kugler and Douglas Lemke, power-transition theory is based on three assumptions: “i) the internal growth of nations influences international politics,

⁸ Young, 2012; Lanteigne, M. (2013), *Chinese Foreign Policy. An Introduction* (London: Routledge).

⁹ Johnston 2003; Welch, D. (2010), Status Seekers. Chinese and Russian Responses to U.S. Primacy. *International Security* 34(4),63–95, : 83–84.

¹⁰ Mearsheimer, John (2003). *The Tragedy of Great Power Politics* (New York: W.W. Norton); Nye, Joseph S. (2007), *Understanding International Conflicts. An Introduction to Theory and History*, 6th edn. (New York: Pearson Longman); Gilpin, R. (1986). *War and Change in World Politics* (Cambridge: Cambridge University Press); Smith, M. (1986), *Realist Thought from Weber to Kissinger* (Baton Rouge: Louisiana State University Press).

¹¹ Lake, D. (2013) “Great Power Hierarchies and Strategies in Twenty-First Century World Politics”, in Walter Carlsnaes et al., eds., *Handbook of International Relations*, 2nd edn. (Los Angeles, CA: Sage).

¹² *Hegemonic stability theory* might also be relevant in this context; however, it is not investigated in this article, as it is considered to have less explanatory power for the research questions raised here. For more on this theory approach see Gilpin 1986; Lake 2013; Levy, J. (2013), “Interstate War and Peace”, in Carlsnaes et al., eds., 587–94.

ii) world politics is characterized by hierarchy rather than anarchy, and relative power and iii) evaluations of the international status quo are important determinants of interstate wars".¹³ Power-tradition theories tend to be materialistic and utility-oriented, and often emphasize the tendency of a dominant state to build alliances, seeking to establish an international order of which it is the foremost beneficiary. Hence dangerous instability and greater chances of great-power wars (system-level wars) can be expected when a dissatisfied state achieves parity with the dominant state and attempts to change the international hierarchy, including the mechanisms and rules for distributing benefits and wealth.¹⁴

On the other hand, if the rising state stands to benefit from the current order, the power transition can be expected to go more smoothly, with less risk of system-level wars. For instance, the consequences of the dissatisfaction of Japan and Germany in the first half of the 20th century can be contrasted with the more peaceful transition of power from Great Britain to the USA, as the latter was generally satisfied with the "Pax Britannica" (1815–1914) created by the UK following the Congress of Vienna. Similarly, the policies and attitudes of the Soviet Union to the heavily US-influenced post-Second World War order can be seen as exemplifying a dissatisfied state – and China's potential satisfaction/ dissatisfaction with the current political order and its position in the international hierarchy increasingly is of interest today.¹⁵

Revisionist and status-quo states

"Revisionist states" are commonly seen as states that challenge the prevailing international order, and are often compared to *status-quo powers*, a categorization and perception of state attitudes to world affairs closely linked to realism.¹⁶ The idea of revisionist/status-quo powers can be traced back to Carr and Morgenthau, whose writings were profoundly inspired by the extreme revisionist policies of Nazi Germany – an exceptional empirical case.¹⁷ Robert Gilpin has identified a "revisionist state" as one dissatisfied: i) its current position in the international system, ii) the current distribution of wealth and iii) the prevailing international (legal) norms.¹⁸

Gilpin's idea of the revisionist state is closely related to power-transition theories, despite some important nuances – e.g., in the way the international system is viewed as primarily anarchical or hierarchical, the focus on identifying revisionist tendencies over power-transition, and the emphasis of the dominant and rising states' inclination to develop alliances. Recently, a slightly different focus has emerged within the revisionist tradition, as represented by William Wohlforth, who focuses on status and prestige rather than material goods.¹⁹ To Wohlforth, the issue of social standing and

¹³ Kugler, J., and D. Lemke (2000), "The Power Transition Research Program", in M. I. Midlarsky (ed.), *Handbook of War Studies*, 2nd ed. (Ann Arbor: University of Michigan Press); M. Bussmann and J. Oneal (2007), "Do Hegemons Distribute Private Goods? A Test of Power-Transition Theory", *Journal of Conflict Resolution* 51(1), 88–111.

¹⁴ Bussmann and Oneal (2007).

¹⁵ See Jørgensen, K.E. (2010), *International Relations Theory. A New Introduction*. New York: Palgrave Macmillan, 93–94; Bussmann and Oneal (2007) 93–94; Lake (2013).

¹⁶ Buzan, Barry (1991), *People, States and Fear* (New York: Harvester Wheatsheaf).

¹⁷ Carr, E. H. (1939/2001), *The Twenty Years' Crisis* (Houndmills: Palgrave); Morgenthau, Hans J. (1948/2005), *Politics Among Nations* (Boston, MA: McGraw Hill); Johnston 2003.

¹⁸ Johnston 2003; Gilpin 1986.

¹⁹ Wohlforth, William (2009), "Unipolarity, Status Competition, and Great Power War", *World Politics* 61(1), 28–57.

how a given state is perceived as prominent by its peers can also explain why states may display revisionist attitudes or behaviour even if the current political order might be advantageous.

Drawing on social identity theory, Wohlforth indicates that this situation has characterized the rise of earlier great powers, just as it might be characteristic of China today:

If the material costs and benefits of a given status quo are what matters, why would a state be dissatisfied with the very status quo that had abetted its rise? The rise of China today naturally prompts this question, but it is hardly a novel situation. Most of the best known and most consequential power transitions in history featured rising challengers that were prospering mightily under the status quo. In case after case, historians argue that these revisionist powers sought recognition and standing rather than specific alterations to the existing rules and practices that constituted the order of the day. (Wohlforth 2009, 31; from an article investigating the historical examples of the growth of Prussia, the Habsburg Empire, Russia, France and Britain)

An analysis of revisionist/status-quo powers might gain validity and relevance by adding the component of social status and standing to the identification of pure material disadvantages/gains in a given political order.

Insights from the liberal tradition

The liberal approach to IR is closely related to ideas deriving from the Enlightenment in Europe. Common themes in this tradition are confidence in human reason, and a genuine belief in progress. In this tradition, international law is also more prominent and discussed. Further, the domestic and “societal” dimensions of states are often emphasized and viewed as important, as in the highly influential democratic-peace tradition.²⁰ Moreover, economic interdependencies among states, along with interconnectedness created by international organizations and regimes, are viewed as crucial mechanisms or instruments for generating a stable and peaceful international political order.²¹ In investigating how China’s approach to UNCLOS might affect its role in Arctic and global governance, we have selected two liberal theoretical frameworks to guide the empirical investigation as well as the analysis: *Neoliberal institutionalism*, and an analytical model originally created by Kenneth W. Abbott et al. for analysing the degree of *legalization of institutions*.²²

Neoliberal institutionalism – Rational functionalism

The spread of international regimes and organizations can be explained as a way for states to “overcome problems of collective actions, high transaction costs, and information deficits or asymmetries”.²³ Such approaches, emphasizing efficiency and problem-solving as explanations for international cooperation, are closely connected

²⁰ See Jørgensen 2010, 68; Wegge, Njord (2011), “The Political Order in the Arctic: Power Structures, Regimes and Influence”, *Polar Record* 47(241), 165–76; Levy 2013.

²¹ Jørgensen 2010; Nye 2007; Knecht, Sebastian and Keil, Kathrin (2013): Arctic Geopolitics Revisited: Spatialising Governance in the Circumpolar North, *The Polar Journal*, 184–86.

²² Abbott, Kenneth W. et al. (2000), “The Concept of Legalization”. *International Organization* 54(3), 401–19.

²³ Martin, Lisa L. and Simmons, Beth A. (2013), “International Organizations and Institutions”. In: Carlsnaes et al., eds., 326-351.

to theorists like Robert Keohane and his *After Hegemony*, as well as Stephen Krasner in his 1983 edited volume, *International Regimes*.²⁴

The heritage from Keohane and Krasner, with their inspiration from micro-economics, has in the past 25 years been extraordinarily important to the field of IR. In shifting the dominant neo-realist focus away from military power capabilities, the effects of the international anarchy and balancing behaviour, to a focus on interdependence, cooperation and transnational processes, the neo-liberal research agenda has had a profound impact on what has become mainstream IR theory today.²⁵

Key concepts in rationalistic liberal theory include mutual utility maximizing; efficiency; the ability to solve problems through compromises and cooperative behaviour, with institutions and regimes, such as international law, serving as vital tools or instruments.²⁶ The degree to which states are willing to reach mutually beneficial solutions based on the construction and adherence to fear playing fields might thus, in IR, be a key criterion for success. Such behaviour might in the liberal paradigm be contrasted to counterproductive nationalism or dangerous power-politics.²⁷ Finally, as to the relevant liberal framework pertaining to UNCLOS, rational functional reasoning has been used as a basis for explaining settlements of maritime and territorial disputes.²⁸

The concept of legalization

Towards the end of the 1990s the idea of “world politics” as more or less “legalized” spread. With the creation of the International Criminal Court, the growing authority of the European Court of Justice, the development of dispute settlement procedures in the WTO as well as with the establishment of the International Tribunal for the Law of the Sea, major aspects of international politics could be interpreted as increasingly legalized.²⁹ Such a development fits well with the liberal tradition’s view of human progress, where an institutionalized, law-based, international order is preferable to one governed by power.

Writing in *International Organization* in 2000, Kenneth W. Abbott et al. produced a three-dimensional continuum on the degree an institution could be said to be legalized:

“Legalization” refers to a particular set of characteristics that institutions may (or may not) possess. These characteristics are defined along three dimensions: obligation, precision, and delegation. Obligation means that states or other actors are bound by a rule or commitment or by a set of rules or commitments. Specially, it means that they are legally bound by a rule or commitment in the sense that their behaviour thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law as

²⁴ Keohane, Robert (1984), *After Hegemony. Cooperation and Discord in the World Political Economy*. Princeton, NJ: Princeton University Press; Krasner, Stephen (1983), *International Regimes*. Ithaca, NY: Cornell University Press.

²⁵ Jørgensen 2010.

²⁶ Stokke, Olav S. (2012), *Disaggregating International Regimes. A New Approach to Evaluation and Comparison*. Cambridge, MA: MIT Press.

²⁷ Nye 2007; Young, Oran R. (1999), *Governance in World Affairs*. Ithaca, NY: Cornell University Press.

²⁸ Martin and Simmons (2013)

²⁹ Simmons, Beth A. (2013), “International Law”. In: Carlsnaes et al., eds., *Handbook of International Relations*, 352-378.

well. Precision means that rules unambiguously define the conduct they require, authorize, or proscribe. Delegation means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules. (Abbott et al. 2000, 401)

Within a liberal context, the degree to which China promotes and strengthens the legalization of UNCLOS is a relevant area of investigation. Is the PRC following up the UNCLOS obligations to which it has bound itself? Can it be interpreted as strengthening or weakening the *precision* of the Convention? And, to what extent can China be characterized as strengthening the *principle of delegation* in disputes?

According to a liberal IR view, the behaviour of China, in terms of weakening or strengthening the principles of legalization in world governance, could influence its image and role as a member of the world community, including the Arctic.

China's Ratification of UNCLOS

China signed UNCLOS in 1982; the Convention itself entered into force in 1994. UNCLOS was the first international convention to be signed by China after regaining its seat in the United Nations in 1972. Moreover, it is the first international convention in which China was proactively involved in negotiating. The PRC had opted for an international legal regime for ocean governance ever since declaring its independence in 1949. Beijing has viewed UNCLOS as a great improvement on the 1958 Geneva Conventions because UNCLOS was signed by a much greater number of countries, with a balance between the two maritime hegemony, the USA and the USSR.³⁰ However, China's views on issues regarding innocent passage of foreign warships in territorial seas, the dispute settlement mechanism, and maritime boundary delimitation conflicted with those of some other states. The National People's Congress stalled ratification of UNCLOS for a long time, concerned with the possible repercussions of the Convention on China's sovereignty over its self-prescribed maritime territory and on the settlement of maritime disputes with neighbouring countries. When China finally decided to ratify UNCLOS in 1996, it simultaneously issued a statement requesting prior authorization for innocent passage of warships in its territorial seas. China also exerted its right of declaration under UNCLOS Article 298 to reject international arbitration for settlement of maritime disputes, instead upholding that any disputes should be resolved through consultation between the disputing states only. As stated in the official declaration, China 'does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to the categories of disputes referred to it in paragraph 1 (a)(b) and (c) of Article 298 of the Convention.'³¹

Bridging Domestic Legislations with UNCLOS

As noted, China's position on the innocent passage of warships in its territorial sea differs from those of many other countries and, to some degree, from UNCLOS –

³⁰ Gao, Z. (2009), 'China and the Law of the Sea' in Nordquist, M. H., Koh, T., and Moore, J. N. (eds) *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention* (Leiden: Martinus Nijhoff), p. 265-295.

³¹ China, upon Ratification (7. June 1996), United Nations, Oceans & Law of the Sea, <http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#China Upon ratification >.

depending on how one interprets the relevant provision. However, apart from rejecting warships' right of innocent passage and international arbitration for maritime disputes, China's domestic maritime laws are otherwise largely in conformity with UNCLOS.³² Most parts of the Convention's provisions have, in effect, been incorporated into PRC domestic legal marine laws, either by directly transferring UNCLOS language or adopting clauses with similar principles as those set out in UNCLOS.³³

Prior to UNCLOS, the 1958 *Statement by the PRC Government on Territorial Sea* was PRC's initial maritime legislation. China claimed sovereignty over offshore islands, including Taiwan, Diaoyu/Senkaku islands and all island groups in the South China Sea.³⁴ Chinese scholars believe that the US deployment of the 7th Fleet in the Taiwan Strait in 1950 directly prompted this statement on the part of Beijing.³⁵ The declaration also set the breadth of territorial sea from baselines at twelve nautical miles, as well as declaring that no foreign aircraft or foreign vessels could enter China's territorial sea, or its airspace, for any military purposes, without express permission from the Chinese government.³⁶ One could argue that this statement is flawed in many ways. It failed to account for Beijing's position on other relevant maritime regimes, such as the contiguous zone. Further, it referred to the "straight baseline" principles but failed to define which base points were to be used in drawing the baseline with geographic coordinates.

The Chinese government promulgated the *Law of the People's Republic of China on the Territorial Sea and Contiguous Zone* in 1992, two years before UNCLOS entered into force.³⁷ The 1992 law claimed a contiguous zone of 12 nautical miles in breadth. It elaborated legal principles on innocent passage of foreign vessels.³⁸ According to Article 6 of this law, foreign ships for non-military purposes shall enjoy the right of innocent passage through China's territorial sea, but ships passing for military purposes must have the permission from the Chinese government.³⁹ Similar to the 1958 declaration, the law still contained no explicit articles on the administration of maritime activities. This perspective has received criticism also from Chinese specialists. Xue Guifang, a marine law expert from China Ocean University, dismisses the content of the 1992 law as 'merely narratives on the principle'. Xue

³² Beckman, R. (2011), 'UNCLOS and the Maritime Security of China', in Li, M. and Lee D. (eds), *China and East Asian Strategic Dynamics: The Shaping of a New Regional Order*, Lanham MD: Lexington Books: 2011)

³³ Gao, J. (2004), *中国与国际海洋法* [China and international maritime laws], (Beijing: Ocean Press).

³⁴ Xinhua, '中华人民共和国政府关于领海的声明' [Statement by the PRC government on Territorial Sea], 4 September 1958, <http://news.xinhuanet.com/ziliao/2003-01/24/content_705061.htm>.

³⁵ Shi, C. (2005), '1958年中华人民共和国政府关于领海的声明研究' [A study on the Declaration of the People's Republic of China on Territorial Waters in 1958], *Dangdai Zhongguoshi Yanjiu*, no.4,109.

³⁶ Xinhua, 中华人民共和国政府关于领海的声明 (see note 34 above).

³⁷ Gao 2004, 281.

³⁸ Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, 25 Feb. 1992, accessed from <<http://www.lawinfochina.com/display.aspx?lib=law&id=670&CGid=>>.

³⁹ Ibid.

further points out that, without accompanying administrative regulations and institutional directives, it is nearly impossible to implement these clauses.⁴⁰

In 1998, two years after ratifying UNCLOS, the Chinese government promulgated the *Law of the People's Republic of China on the Exclusive Economic Zone and Continental Shelf*. In terms of conformity and consistency, the 1998 law on EEZ and the Continental Shelf contains some rules and principles that are arguably incompatible with UNCLOS. Importantly, the EEZ and Continental Shelf are two types of regimes as stipulated in UNCLOS, but in the 1998 law this distinction is somewhat blurred.⁴¹ Some legal experts have interpreted this use of a single term for two distinct ocean regimes as a legislative technique to avoid doubly prescribing identical provisions applicable to both regimes.⁴²

Apart from the 1992 Law of the Territorial Sea and Contiguous Zone and 1998 Law of the EEZ and Continental Shelf, China developed extensive legal and policy frameworks governing ocean affairs during the past decade. In 1999, the National People's Congress in China amended the *Marine Environment Protection Law in People's Republic of China* in order to modify certain clauses to correspond to the international conventions and treaties China had signed since 1982, when the original law was promulgated. Through this renewed legislation, China officially recognized that the legality of international treaty precedes domestic law in marine environment practice. According to Article 97 of the amended law, 'If an international treaty regarding environment protection concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this law, the provisions of the international treaty shall apply, unless the provisions are ones which the People's Republic of China has announced reservations.'⁴³

For the management of natural resources, UNCLOS grants sovereign rights and jurisdiction over its EEZ and continental shelf to China.⁴⁴ The enactment of the *Fisheries Law of the People's Republic of China* in 1986 is Beijing's most comprehensive effort by far to regulate fishery resources in China's internal waters and its seas. The law delegates regulatory power to specific administrative organs and grants them rights to regulate and utilize China's fishery resources.⁴⁵ Ratifying UNCLOS prompted China to look after its growing interests in sea-related activities, and focus more on the resources bordering the country's landmass.⁴⁶ This law was modified in 2004, in a spirit similar to amending the marine environment law, to

⁴⁰ Han, Y. (2012), 专家解读《领海法》：只是对外宣示主权 不具操作性[Experts on territorial sea law: just for asserting sovereignty but essentially not executable], *China Newsweek*, 26 November.

⁴¹ See Park, H. (2000), *The Law of the Sea and Northeast Asia: A Challenge for Cooperation* (The Hague: Kluwer Law International), p. 40

⁴² Takata, T. (1998), 'The Conclusion by Japan of the United Nations Convention on the Law of the Sea and the Adjustment of Maritime Legal Regime', *The Japanese Annual of International Law*, vol. 67, no. 2, p. 223-231.

⁴³ Ministry of Land and Resources of the People's Republic of China, 'Marine Environment Protection Law of the People's Republic of China (1999)', <http://www.mlr.gov.cn/mlrengli/sh/laws/200710/t20071012_656329.htm>.

⁴⁴ See Article 1 of *Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf*; and Article 56, UNCLOS.

⁴⁵ Wu, J. (2012), 'China's Marine Legal System – An Overall Review', *Ocean and Coastal Law Journal*, vol. 17, no. 2.

⁴⁶ Xue, G., *China and International Fisheries Law and Policy* (Leiden: Martinus Nijhoff) p. 130.

remain in line with various international fishery agreements China signed after 1986. China has also concluded bilateral fishery agreements with South Korea, Japan and Vietnam on fishery resource management in the overlapping EEZs.

The South China Sea – Dispute over the Nine-dash Line⁴⁷

On 7 May 2009 the PRC declared: “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.”⁴⁸ The statement was submitted to the UN, together with a map showing the U-shaped nine-dashed line, encompassing almost the entirety of the South China Sea.⁴⁹ The claim, reiterated by Beijing for decades, derives most directly from a map issued by Chiang Kai-shek in 1947/48, later declared in a modified version by the PRC government in 1958.⁵⁰ This claim over the South China Sea has been based on the somewhat hazy concept of “historic rights”; however, the current tendency of Beijing is to frame the argument so that it appears compatible with the UNCLOS system – emphasizing arguments focusing on how China has sovereignty over all islands, atolls, rocks and other types of above-water features within the line, and that these islands generate sovereign rights over the EEZ and continental shelves.⁵¹

Nevertheless, Beijing’s argument remains unclear, and dubious even when applying the most liberal interpretations of the UNCLOS. The Chinese interpretation is generally not considerable acceptable beyond the borders of the PRC, as lines on historic maps do not constitute titles in international law.⁵² Beijing’s maritime claim in the South China Sea hence poses a major challenge to the image of the PRC as a compliant member of UNCLOS.

In recent years, tensions have risen over the disputed islands and maritime boundaries in the South China Sea. From the viewpoint of China’s regional neighbours, is due not least to China’s increasingly assertive posture in the disputes. Examples include its more frequent naval patrols in the South China Sea, exerting pressure on foreign oil companies to stop operations in disputed waters, and the establishment of a city unit as well as a military garrison on the PRC-controlled

⁴⁷ Known as Huangyan islands in China.

⁴⁸ Statement from the PRC to the Secretary-General of the United Nations. New York, 7 May 2009: <http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf> .

⁴⁹ Attached map from the PRC to the Secretary-General of the United Nations. New York, 7 May 2009: <http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf>.

⁵⁰ Statement by the PRC government on Territorial Sea, 7 May 2009; see also Dupuy, Florian and Dupuy, Pierre-Marie (2013), “A Legal Analysis of China’s Historic Rights Claim in the South China Sea”, *American Journal of International Law* 107(1), 124–41; Schofield, C., and Storey, I.(2009), ‘The South China Sea Dispute: Increasing Stakes and Rising Tensions’, The Jamestown Foundation, November.

⁵¹ “Laws of the People's Republic of China” available at: <<http://www.asianlii.org/cn/legis/cen/laws/rotscotnpcotaotdotgocts1338/>>, Schofield and Storey 2009; *Tønnesson, Stig (2002), “The History of the Dispute”. In Kivimäki, Timo (ed.) *War or Peace in the South China Sea* (Copenhagen: Nias Press).

⁵² Dupuy and Dupuy 2013, 133, 141; Schofield and Storey 2009, 21.

Paracel Islands to administer its claims to the South China Sea, and imposing unilateral fishing bans.⁵³

The ongoing legal challenge from the Philippines at an arbitral tribunal, convened in conformity with Annex VII of UNCLOS (appointed by the president of the International Tribunal for the Law of Sea, ITLOS) to invalidate the nine-dash line represents a case of special interest to the research questions of this article. By filing a Notification and Statement of Claim at IITLOS on 22 January 2013, the Philippines initiated a formal legal process involving China and its interpretation of UNCLOS.⁵⁴

While China, as noted, has entered a reservation against the dispute-settlement procedures provided for in section 2 of Part XV of UNCLOS with respect to the categories of disputes referred to in paragraph 1(a) (b) and (c) of its Article 298,⁵⁵ – holding that any disputes should be resolved through consultation between disputing states –, there might still be many potential cases where Beijing will need to follow the principle of delegation, as the room for reservation tends to be very restricted. Hence the Philippines’ case against China on the nine-dash line might also become a though test of the PRC’s commitment to UNCLOS procedures.⁵⁶

Thus far the PRC has rejected the Philippines’ request for UN arbitration, arguing that the complaint lacks merit, is historically and legally incorrect as well as a breach of the Declaration on the Conduct of parties in the South China Sea.⁵⁷ The Chinese government has therefore not selected its own representatives for the potential obligatory arbitration. On 24 April 2013, the President of the International Tribunal for the Law of the Sea, Judge Shunji Yanai, therefore, in line with the UNCLOS provision, appointed three arbitrators of his own choice to serve as members of the arbitration tribunal instituted under UNCLOS Annex VII.⁵⁸ This tribunal is currently (Winter 2013/2014) reviewing the file’s legitimacy, given China’s reservations to UNCLOS. It remains to be seen if a court will be established and a final ruling handed down. In case of such an outcome, China will be obliged to follow decision of the ruling court.

UNCLOS in Arctic Governance: a Chinese Perspective

When Chinese policymakers were contemplating the costs and benefits of ratifying UNCLOS, they focused on gauging the impact of the Convention on China’s sovereignty and territorial integrity in home seas. For distant oceans, UNCLOS provisions ensure states the freedom to transit through the EEZs and the high seas,

⁵³ Schofield and Storey 2009,1.

⁵⁴ Notification and statement of claim, Manila, 22 January 2013. Available at: <<http://www.pia.gov.ph/news/piafiles/DFA-13-0211.pdf>>.

⁵⁵ China, declaration upon UNCLOS ratification.

⁵⁶ See Statement by Secretary of Foreign Affairs Albert del Rosario on the UNCLOS Arbitral Proceedings against China, 22 January 2013. Available at: <<http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/7300-statement-by-secretary-of-foreign-affairs-albert-del-rosario-on-the-unclos-arbitral-proceedings-against-china-to-achieve-a-peaceful-and-durable-solution-to-the-dispute-in-the-wps>>.

⁵⁷ Declaration on the Conduct of Parties in the South China Sea. 4 Nov. 2002, Phnom Penh. On the Chinese statement see: <<http://www.interaksyon.com/article/55420/china-rejects-un-arbitration-of-disputed-territories-returns-ph-statement-of-claim>>.

⁵⁸ Press Release International Tribunal for the Law of the Sea (ITLOS/Press 191, 25 April 2013)

and the right to explore the resources in the high seas and the seabed underneath.⁵⁹ Back then, China did not seem to have reason to challenge those provisions. The PLA Navy and the government's maritime enforcement had not developed capacities for operating beyond China's home seas. Domestic energy consumption was still self-sufficient. Ratifying UNCLOS would extend China's maritime trajectory to distant waters in which Beijing had yet to establish a presence. The Arctic Ocean was one such distant ocean for Chinese policymakers. It did not interfere in Beijing's deliberations on ratifying UNCLOS.

Publicity around the Arctic Ocean publicity erupted in China in 2007 when a Russian submarine planted its national flag in the seabed at the North Pole, a move interpreted in popular media as to asserting Russian sovereignty of the central Arctic Ocean. In fact, even before that incident, Chinese scientists had sought to direct attention to the Arctic, focusing especially on the impact of the unprecedented melting of the Arctic ice had on China's homeland environment and climate. Arctic warming has also motivated Chinese experts to pay attention to the Arctic's resources and shipping potentials in a seasonally ice-free environment. A consortium of Chinese scholars thus anticipated that China would benefit greatly from Arctic warming, especially through taking advantage of Arctic shipping routes and untapped resources.⁶⁰ The Chinese government, for its part, can be said to have followed up this advice, extending budgetary support to government agencies for carrying out polar activities, mainly through scientific expeditions to the polar areas.⁶¹

For Chinese policymakers and scholars, UNCLOS provides the legal basis for China to explore the Arctic from two dimensions. First, the Convention grants to Chinese vessels freedom of navigation through the Arctic Ocean's EEZ and international straits. Arctic sea routes could bring considerable savings in cost and time in transiting between North Europe and East Asia. This would generate great economic benefits for China's shipping industry while also promoting the development of the country's northern sea ports.⁶² In the summer of 2013, China Ocean Shipping Company (COSCO), China's largest shipping enterprise, sent the commercial container vessel 'Yong Sheng' from Dalian to Rotterdam – the first voyage of a container ship through the Northern Sea Route (NSR). Another COSCO container 'Hong Xing' is reported to be shipping via the NSR in the fall 2013.⁶³ In addition to

⁵⁹ UNCLOS Articles 56 and 87, <http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm> and <http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm>.

⁶⁰ See for example Yue, L., Yang, L., and Zhao, Y. (2008), '关于北极地区油气资源的战略性思考' [Strategic thoughts on the Arctic's petroleum and gas potential], *Zhongguo guotu ziyuan jingji*, no. 11; Li, Z (2009), '北极航线的中国战略分析' [Analysis of China's strategy on the Arctic route], *Zhongguo Ruankexue*, no. 1,1-7; and Ren, X., and Li, Y. (2008), '北冰洋主权之争与中国国际责任浅析' [A tentative analysis of the Arctic Ocean's sovereignty disputes and China's international responsibility], *Langfang shifan xueyuan xuebao*, vol. 24, no. 4, 66-69.

⁶¹ See Brady, A.-M. (2012), 'Polar stakes: China's Polar Activities as a Benchmark for Intentions', *China Brief*, vol. 12, no. 14, <http://www.jamestown.org/programs/chinabrief/singapore/tx_ttnews%5Btt_news%5D=39647&cHash=ab95416de6afcf23ac990a0491beab8#.UlgT6NKshcY>.

⁶² Li, Z. (2010), '中国视角中的北极航道问题' [Arctic shipping routes from a Chinese perspective] in Guo, P. (eds) *北极航道的国际问题研究* [Research on the international issues of the Arctic shipping routes] (Beijing: Ocean Press of China), chapter 5.

⁶³ 'First container ship on Northern Sea Route', *The Barents Observer*, 21 Aug. 2013. <<http://barentso>

shipping rights, the UNCLOS grants China legal rights to explore the resources in the Arctic's high sea area. As yet, Chinese officials have not expressed themselves on China's resources interests in the Arctic. Beijing operates with two realities as to Arctic resources: first, that most of the prospective oil and gas in the Arctic seabed lie within 200 nm from the baselines of Arctic littoral states, so coastal countries have exclusive right to explore them; second, that under UNCLOS, coastal countries can enjoy jurisdiction right over seabed resources beyond 200 nm if it can be proved that the geology of the seafloor is a 'natural prolongation' of their continental shelf.⁶⁴ It will be hard for China to challenge the continental shelf extension, as it has ratified UNCLOS and used the same provision to claim an extension of its jurisdiction over the seabed resources in East China Sea. Nevertheless, Beijing wants a share of Arctic resources by whatever means available, and this view is likely to remain unaltered, given the country's massive energy needs for sustained economic growth.⁶⁵

China's rising interests in the Arctic have met with caution and scepticism from the Arctic states. Beijing's application for permanent observer status on the Arctic Council was deferred twice at AC ministerial meetings in 2009 and 2011, before finally being approved in 2013. For AC acceptance as a permanent observer, China had to recognize the sovereignty, sovereign rights and jurisdiction in the Arctic. In doing so, China subscribed to the current institutional engine in the Arctic region. However, permanent AC observers do not have voting rights in the Council's decision-making. China is fully aware of this subordinate position: permanent observer status on the Arctic Council entails merely the right to 'observe' the Council's meetings and 'nothing more'.⁶⁶ China will have to approach Arctic affairs through various avenues.⁶⁷ For this reason, basing Chinese actions on the codified UNCLOS provisions would not only serve to appease outside uneasiness over China's rising interests in the Arctic but also to ensure that the PRC has the means and legal justification to pursue its perceived interests in the Arctic.

The issue of innocent passage

The right of foreign warships to enter Chinese territorial sea and contiguous zone was a major constraint on China's ratification of UNCLOS.⁶⁸ Beijing took care to declare that any foreign warship must receive permission before being allowed to pass through China's territorial waters.⁶⁹ The 1992 Law of the Territorial Sea and Contiguous Zone legalized this position – inevitably evoking international questions and suspicions, especially from the USA, which strongly opposes the concept of innocent passage requiring prior permission from the coastal state.

bserver.com/en/arctic/2013/08/first-container-ship-northern-sea-route-21-08>.

⁶⁴ Byers, M. (2013), *International Law and the Arctic* (Cambridge: Cambridge University Press, p. 254.; also see part 4 of UNCLOS Article 76,

<http://www.un.org/depts/los/convention_agreements/texts/unclos/part6.htm>.

⁶⁵ Authors' communication with a Chinese Arctic official, 24 September 2011.

⁶⁶ See Guo, P. (2011), '应对北极门罗主义的挑战' [Making preparations against an Arctic Monroe Doctrine], *Liaowang*, no. 42, 71–72.

⁶⁷ Pan, M. (2013), '在北极事务中, 中国更适合走'曲线路径'' [In Arctic affairs, China would benefit from taking a roundabout route], *Dongfang Zaobao*, 21 May.

⁶⁸ Xue, G. (2012), 'China and the Law of the Sea: A Sino–U.S. Maritime Cooperation Perspective', in Erickson, A. S. and Goldstein, L. J (eds), *China, the United States, and 21st-Century Sea Power: defining a maritime security partnership* (Annapolis, MD: Naval Institute Press).

⁶⁹ China, Declarations and Statements upon Ratification

Two main arguments characterize the defence offered by Chinese government officials and specialists on this issue. First, many Chinese legal experts argue that innocent passage of foreign warships through territorial seas was never recognized as customary international law. State practice in this regard has been dualistic rather than monistic: countries opposing or supporting innocent passage of foreign warships are all convinced that their own practice is in line with international law.⁷⁰ Following this reasoning, it is legitimate for a state to form an opinion on whether foreign warships may enjoy innocent passage in its territorial sea.⁷¹

The second argument builds on the UNCLOS provisions. Many legal experts in China contend that although UNCLOS Article 19 on innocent passage does not rule out military vessels, it also specifies that passage can be regarded as innocent only ‘so long as it is not prejudicial to the peace, good order or security of the coastal state’.⁷² For the Chinese government, the presence of a foreign military vessel in its territorial sea is a direct infringement of PRC sovereignty and interpreted as an act aimed at endangering state security. Professor Gu Wenzhao of the East China Normal University explains that the government’s deep-rooted suspicion and resistance to innocent passage of military ships is due to the deep pain and humiliations inflicted by imperialists in the modern era.⁷³ However, that view is not unanimous: the prominent Chinese maritime legal experts and practitioners Zhou Gengsheng, Shen Weiliang and Chen Degong hold that, per international law, the category “vessels entitled to enjoy innocent passage” does include military ships.⁷⁴ As Professor Li Hongyun, an international law expert from Beijing University argues, UNCLOS Article 19 outlines the types of vessel activities that constitute prejudice to peace, good order and security of the sea so to be deprived of innocent passage; and since some of these activities apparently point to the exclusive functions of a military vessel, activities of military vessel that abide by the provision should therefore enjoy innocent passage.⁷⁵

Notwithstanding the criticism even from Chinese academics, the PRC’s official position is unlikely to change in the near future. While this position legally guarantees to China absolute sovereign control over all types of activities in its territorial seas,

⁷⁰ See e.g. Qin, J., and Chen, F. (2007), ‘浅论军舰不享有领海无害通过权’ [A tentative analysis of why warships do not have the right of innocent passage], *Fazhi Zaixian*, no. 9, 27–28; Sun, S. (1989), ‘国际海洋法的历史演进和海洋法公约存在的问题及其争议’ [Evolution of international laws of the sea and the UNCLOS controversy], *Zhongguo Faxue*, no. 2, 102–103.

⁷¹ Shao, J. (1989), ‘The Question of Innocent Passage of Warships’, *Marine Policy*, vol. 13, no. 1, (January).

⁷² UNCLOS Article 19, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/part2.htm>.

⁷³ Gu, W. (2007), ‘关于军舰无害通过权若干问题的思考’ [Thinking on several issues with regard to the innocent passage right of warships], *Lilun Jianshe*, vol. 112, no. 6.

⁷⁴ Zhou Gengsheng is an expert on international law in China and former legal advisor to the Ministry of Foreign Affairs. Shen Wenliang was Deputy Head of the Chinese delegation to the UN Conference on the Law of the Sea from 1973 to 1982. Chen Degong is the former Deputy Chief of China Institute of Marine Affairs, a think-tank affiliated to China’s State Oceanic Administrations; he participated in the third UN Conference on the Law of the Sea 1973–1982. See Zhou, G. (1976), *国际法* [International Law] (Shangwu Yinshuguan), 370; Shen, W. and Xu, G. (1983), ‘第三次联合国海洋法会议和海洋法公约’ [Third UN Conference on the Law of the Sea and the Convention on the Law of the Sea], *Zhongguo Guojifa Niankan*, 410–411; and Chen, D. (1988), *现代国际海洋法* [Modern international maritime law] (Beijing: Zhongguo Shenhui Kexue Press).

⁷⁵ Li, H. (1998), ‘也谈外国军舰在领海的无害通过权’ [On innocent passage of warships in territorial seas], *Zhongwai Faxue*, vol. 58, no. 4.

China must similarly accept the need for prior authorization from other states on innocent passage of Chinese warships in their territorial waters. This would arguably restrain the PLA Navy's space of activity in the Arctic. Of course, China could insist on innocent passage of all vessels, including military ones in the Arctic Ocean. But an inconsistent policy would not only discredit China's image internationally as a rule-abiding actor, it would also threaten to counteract China's sovereign control over its own territorial seas.

China's UNCLOS compliance and the impact on its Arctic interests

Controversies over China's self-prescribed maritime regime management, particularly on issues regarding innocent passage and territorial disputes, surfaced long before the Arctic caught the attention of the Chinese authorities. As noted, China's maritime defence forces had not acquired the capacity to project power beyond China's near seas when the government was harmonizing domestic legislation with the provisions of UNCLOS. It therefore seems unlikely that potential Chinese interests in the Arctic, or in any other distant oceans, were accorded crucial weight in the strategic calculus concerning maritime affairs at the time.⁷⁶ However, with China increasingly involved in global affairs today, this earlier "homeland-oriented" policy tendency might now be viewed from a different perspective. New challenges have emerged on how to apply both state legislation and acceded international conventions in regulating Chinese actions beyond national territory.

China's pledged respect for UNCLOS as regards Arctic governance appears to indicate the image of a status-quo power that has come to stay in the international order. However, some of China's laws and regulations are arguably inconsistent with UNCLOS, and concerns have been raised whether China intends to bring these diverging views into conformity with UNCLOS, as one would expect of a status-quo power. As one area where China has no territories but where its growing global interests are evident, the Arctic represents a case that can shed light on the trajectory that a rising China is likely to choose as regards international governance.

Analysis and Concluding Remarks

This article has asked how China views UNCLOS as a legal framework for ocean governance, examining the implications of the PRC's attitude towards UNCLOS on China's role in Arctic governance and beyond. According to realist theories of *power-transition* and *revisionism*, important to any study of a rising great power's attitude towards an international regime is a review of the relative degree to which that power stands to benefit from the regime in question. Here we have investigated whether China benefits from UNCLOS, and to what degree the PRC can be viewed as dissatisfied with the current rules and political order at the seas. Might China prove to be a revisionist state with much to benefit from "re-interpreting" or even "rewriting" parts of UNCLOS? Moreover, as indicated by Wohlforth, an investigation of whether a China can be characterized as a "revisionist power" should take into account its *social standing*, its perceived *status and prestige* – and not only the distribution of

⁷⁶ Shan, X. (2012), '中国参与联合国海洋法公约谈判始末' [Recounting China's participation in the UNCLOS negotiation], *Liaowang Dongfang Zhoukan*, no. 47.

wealth and material goods.⁷⁷ Can we assume that China feels it has gained its rightful position in the international hierarchy of states in issues of ocean governance?

Analysis of China's overall attitude towards UNCLOS certainly reveals some indications of dissatisfaction concerning the material benefits and distribution of wealth deriving from prevailing regimes. One example could pertain to rules where China's somewhat "unfortunate" geographical position makes it harder to claim extended continental shelves beyond 200nm.⁷⁸ A similar tendency could be seen in the PRC's push for "historical rights" in the South China Sea. In the latter debate, China could certainly be viewed as dissatisfied with the distribution of wealth – at a relative disadvantage when applying a traditional interpretation of UNCLOS to guide a solution to this multilateral conflict. Further, another argument with respect to potential revisionist attitudes might point to China's uneasiness at its how it is perceived and respected externally as a great power. We may ask whether China perhaps does not feel that its rightful social position in "the hierarchy of states" is reflected when dealing with considerably smaller disputants. This mechanism might be one component relevant for explaining parts of China's uncompromising attitude versus the "small state" the Philippines in the Scarborough Shoal dispute.

The liberal traditions approach to IR believes in human progress, and emphasizes how strong regimes, norms and law ultimately may ameliorate the international anarchy.⁷⁹ A key question in assessing how China fill its role as a state party to UNCLOS is whether China can be viewed as a cooperative state, willing to seek mutually beneficial solutions and play by prior established rules and laws. Through the identification and review of China's attitude and behaviour in the cases selected for this article, possible patterns in PRC behaviour may be identified, indicating how China might be perceived also in other issues of global governance.

This article has focused on how China's role or standing can be evaluated in terms of the degree to which China is seen as enhancing or diminishing a political order as "legalized". In this respect China's interpretations and adherence to UNCLOS are indeed of broad interest and relevance. China's relationship to UNCLOS could be compared with the degree to which strengthens or weakens what Abbott et al. identified as three dimensions of legalization: the principles of i) obligation, ii) precision and iii) delegation.

With respect to *obligation*, China appears to be pursuing its obligations only to a certain extent: important provisions like the innocent passage of warships are not necessarily followed, neither can its claims in the South China Sea be said to indicate firm application of UNCLOS. With respect to *precision*, we have seen that China tends to seek ambiguous language in controversial issues. However, it cannot easily be blamed of discrediting or weakening the UNCLOS provisions on this dimension as such. In fact, seeking to exploit vagueness inherited in a legal text is indeed a way of playing by the rules, also within a highly legalized context. The most challenging issue for the PRC seems to be its attitude to the third dimension: *the principle of delegation* – granting third parties right to act as brokers, arbitrators or judges. The

⁷⁷ Wohlforth 2009.

⁷⁸ Personal communications, Chinese Law of the Sea, Professor XMU South China Sea Institute, and Shanghai Jiao Tong University ZhiYuan, 18 September 2013.

⁷⁹ Jørgensen 2010, 58–59.

current dispute with Philippines over the validity of the nine-dash line might indeed serve as a test for the PRC with respect to its commitment to strengthening a legalized world order.

We have now reviewed China's overall relationship to UNCLOS. How does this affect China's role in Arctic governance? Although it is not entirely clear what kind of role China seeks here, as Beijing has not yet formulated an official Arctic policy, some preliminary assessments can still be made. China's handling of South China Sea disputes shows in some crucial aspects a departure from UNCLOS, which obliges state parties to settle any disputes between them by peaceful means. In its home waters China also rejects international arbitration for settlement of maritime disputes as set out in UNCLOS. These are issue areas that might lead observers and state leaders to question China's genuine strategy as regards UNCLOS. On the other hand, in purely Arctic issues we can note that PRC officials have remained cautious and reserved in asserting China's potentially perceived rights in the region. This approach suggests that Chinese leaders currently harbour no ambitions of overturning the status quo in the Arctic governance. After all, Arctic governance appears to be operating on a system that is advantageous to China and its interests, not least in facilitating the development of international shipping and scientific research.

What Chinese leaders see as the country's legitimate interests in the Arctic are primarily those connected to climate change, resources and shipping opportunities. In terms of these interests, China is pursuing the legitimate concerns of a rising economic power. Moreover, the current Arctic engagement is still focused very much on scientific research, and China has not shown aggressiveness in its attempts to explore economic opportunities in the region. Thus, the main uncertainty with regard to Arctic governance is probably how to ensure that China can remain a committed and law-respecting member in the context of its growing international power.

Arctic governance encapsulates two essential norms: multilateralism and rule of law. The success of Arctic governance depends on the collective willingness of the stakeholders in the Arctic to be bound by rules and regulations established by key regimes such as UNCLOS. When China was granted permanent observer status on the Arctic Council, it pledged the following: Arctic sovereignty, sovereign rights and jurisdiction of the Arctic states; further, recognizing "that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea, and that this framework provides a solid foundation for responsible management of this ocean."⁸⁰ Yet, while China's current Arctic policy approach appears to favour multilateralism and rule of law, its recent assertive behaviour in its own coastal region might lead observers to speculate on the underlying intentions. In particular, its assertive posture in the South China Sea is likely to aggravate concerns, as here the PRC has demonstrated a willingness to defend its interests by the use of force. In this respect, China's behaviour does indicate that its rise in status shows certain characteristics of a revisionist power.

⁸⁰ The AC ministerial meeting in Nuuk, 11 May 2011, adopted "the recommendations of the Senior Arctic Officials (SAOs) on the role and criteria for observers to the Arctic Council as set out in Annexes to the SAO Report, and decided to apply these criteria to evaluate pending applicants for observer status". The criteria are available at: < <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>>.

The Arctic states should take into consideration the possibility that China in the future might challenge regional institutional frameworks by extra-legal means. However, caution is imperative in drawing analogies between China's behaviour in the South China Sea and the Arctic. Indeed, the converse logic might emerge. If Beijing is content to maintain a highly law-binding, multilateral stance in the Arctic, the Arctic could function as an example where China experiences the benefits of acting as a law-binding and cooperative member of the international society.

Experience from participating in a well-functioning Arctic governance system could have a positive feedback effect, enabling China to seek to transfer the advantages of multilateral cooperation and peaceful conflict-solving to maritime disputes closer to home.

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