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Abstract

With temperatures in the Arctic rising at twice the pace of anywhere else in the world, the European Union (EU) decided in 2008 to begin formulating an overall Arctic policy tackling maritime, environmental, energy and transport challenges. This attempt to draft a comprehensive policy on a topic that the EU had rarely touched upon unavoidably ran up against other existing strategies from Arctic and non-Arctic states. Against this background, this paper examines whether the EU's current Arctic policy is conducive to framing a strategy that is both correctly targeted and flexible enough to represent Europe's interests. It shows that the EU's approach can serve as an effective foreign policy tool to establish the Union's legitimacy as an Arctic player. However, the EU's Arctic policy is still underestimating its potential to find common grounds with the strategic partners Russia and China. A properly targeted Arctic policy could help influence Russia over the EU's interests in the Northern Sea Route and strengthen cooperation with China in an endeavour to gain recognition as relevant Arctic players.

1. Introduction: the EU's emerging Arctic policy

*"You never really know your friends from
your enemies until the ice breaks"*

"Change is the only constant"

Inuit proverbs

The 'Arctic' has figured for a long time as the kingdom of ice, polar bears and pioneer adventurers.¹ It fed the imagination of more than one child going to bed after having read Jules Verne's *The Adventures of Captain Hatteras*.² Nowadays, it rather tends to relate to climate change. The 'Arctic' has many definitions. As correctly and playfully remarked by Archer, the definition of the 'Arctic' is much more complicated than the definition of 'Europe'.³ One version is limited to the Arctic Ocean, another to the area within the Arctic Circle. Both have weaknesses. On the one hand, the Arctic should not relate only to ice-covered waters. On the other hand, the Arctic Circle is an artificial man-made line. The most commonly agreed definition of the Arctic today is the area around the North Pole, where the monthly maximum temperature is below 10 degrees Celsius: the 10°C isotherm line. Hereinafter, the 'Arctic' will relate to this definition.

Challenges in the ice-melting Arctic

The melting of the Arctic ice leads to challenges related to security, environment, economic opportunities and multilateral governance. First, in recent years, the media have relayed security concerns about the development of a so-called 'new Cold War' in the Arctic. Basing their analysis mainly on a 'new scramble' for Arctic resources, these media forget to mention that the Arctic has been governed since 1982 by the United Nations Convention of the Law of the Sea (UNCLOS) and that political cooperation has never been stronger than now among Arctic coastal states. It is true that these states are investing in modernizing and

¹ Such as Fridtjof Nansen (the first to drift across the Arctic Ocean in order to reach the North Pole in 1893), Roald Amundsen (the first to sail through the North West Passage without interruption between 1903 and 1906), Robert Peary and Matthew Henson (the first persons to reach the North Pole in 1909), or more recently Jean-Louis Etienne (who reached the North Pole using a sleigh in 1986), Alain Hubert and Didier Goethebuer (who reached the North Pole in 94 days without assistance through the Canadian Arctic in 1994).

² J. Verne, *The Extraordinary Journeys: The Adventures of Captain Hatteras*, translated by William Butcher, Oxford, Oxford University Press, 2005.

³ C. Archer, "An EU Arctic Policy?", Paper prepared for the UACES Conference, Bruges, 6-8 September 2010, p. 2.

increasing the proportion of their military forces able to intervene in the Arctic region.⁴ However, the degree of cooperation⁵ among these military forces tends to suggest that the coastal states are trying to gain the capacity to patrol their enlarging territory rather than to prepare a military confrontation.⁶

Second, environmental challenges and the protection of indigenous peoples' lifestyles have gained more attention. As temperatures in the Arctic are rising at twice the pace of anywhere else in the world, the Arctic is melting away faster than ever before.⁷ Moreover, the ice melting reduces the average albedo of the region, which accelerates climate change at local and global levels. It should be noted that this reduction of summer ice is irregular between one year and another, so it is difficult to predict the size of the summer ice-pack and when these waters are going to freeze again. In addition, while the melting of the ice-pack does not affect global sea levels, the melting of the *inlandsis* (the Greenlandic ice cover) does contribute to the rise in these levels. Both factors increase the number of icebergs drifting in Arctic waters.⁸ While scientists still disagree on the point, this analysis will adopt the assumption that it may take 20-30 years for the Arctic Ocean to be truly ice-free in summer. Further, physical changes have a tremendous effect on the lifestyle of indigenous people,⁹ whether in terms of hunting traditions (reindeer moving to the south), the increase in shipping, or hydrocarbon industry in the region.

Third, the melting Arctic offers new economic opportunities with regard to shipping lanes and the exploitation of hydrocarbon resources. Due to the Arctic ice melting, in the medium to long term, the North West Passage (NWP) through the Canadian archipelago and the Northern Sea Route (NSR) along the coast of Siberia can constitute new routes for the world's shipping industry. In comparison with the other major shipping lanes, namely the Suez Canal and the Malacca Strait, the use of the NWP and the NSR could shorten by many thousand kilometres the journey between major international ports. Indeed, in pure distance terms, a journey between Rotterdam and Shanghai is faster through the NSR than through the

⁴ S.T. Wezeman, "Military capabilities in the Arctic", *Stockholm International Peace Research Institute (SIPRI) Background Paper*, March 2012, pp. 13-14.

⁵ T. Pettersen, "Arctic generals agree on closer ties", *Barents Observer*, 17 April 2012.

⁶ *Ibid.*

⁷ During the last 100 years, the Arctic annual average temperature has doubled.

⁸ F. Lasserre, "Changements climatiques dans l'Arctique – Vers la disparition de la banquise ?", in F. Lasserre (ed.), *Passages et mers arctiques – Géopolitiques d'une région en mutation*, Québec, Presses de l'Université du Québec, 2010, pp. 11-32.

⁹ Representing approximately 400 000 inhabitants (10% of the overall Arctic population).

Malacca Strait and the Suez Canal. However, observers are divided on whether using the Arctic routes is financially interesting for companies. For instance, a Marseille-Shanghai journey is shorter through the Suez Canal than through the NSR.¹⁰ Moreover, the profits made from a shorter journey have to be counterbalanced by the supplementary costs caused by the slower speed, insurance costs, the need for icebreakers, and unexpected expenses.

Pending newer publications, the 2008 US Geological Survey estimates the Arctic hydrocarbon reserves as follows: 13% of the undiscovered oil and 30% of the undiscovered gas in the planet.¹¹ However, it seems that 95% of these reserves are located within nations' Exclusive Economic Zones (EEZ).¹² It thus seems that the notion of a race for the Arctic hydrocarbons is highly exaggerated, as sovereignty over most of them is not contested. As to the economic part of the equation, most of these new fields are offshore, facing exploration and exploitation companies with the need for hi-tech and highly expensive drilling technologies, which most countries involved – with the exception of Norway – do not possess.

Moreover, both the long-term development of shipping lines and the exploitation of hydrocarbon fields will rely on the availability of Search and Rescue (SAR) facilities in the NWP and the NSR. For the moment, SAR facilities are lacking in both passages, notably in the NWP¹³ and the eastern part of the NSR¹⁴, where there is virtually no harbour ready to receive damaged vessels.¹⁵

Fourth, the international legal regime and multilateral governance plays a role. Unlike the Antarctica, which is a continent covered by ice, the Arctic is mainly governed by the United Nations Conventions on the Law of the Sea. With the

¹⁰ Based on Lasserre's calculation in F. Lasserre, "China and the Arctic: threat or cooperation potential for Canada?", *China Papers*, no. 11, Centre of International Relations, Canadian International Council, University of British Columbia, June 2010, p. 6.

¹¹ P. Stauffer (ed.), *Circum-Arctic resource appraisal: estimates of undiscovered oil and gas north of the Arctic Circle*, U.S. Geological Survey Fact Sheet 2008-3049, May 2008. These data are not proven reserves but potential reserves calculated according to the best available geological knowledge.

¹² From the state's baseline up to 200 nautical miles, as stated in the UNCLOS, a state enjoys economic rights over the EEZ (sovereign rights for exploring, exploiting, conserving and managing natural resources).

¹³ K. Espen Solberg, "The Impact of the Arctic Council cooperation agreement on air and sea search and rescue (SAR) on the safety of shipping", Presentation at *Arctic Futures Symposium*, Final report, 12-14 October 2011, Brussels, p. 31.

¹⁴ M. Bennett, "Russia pushes development of Northern Sea Route", *Eye on the Arctic*, 14 August 2012.

¹⁵ Concerning the westerrt of the NSR, most of the SAR facilities are from Soviet times and need to be renovated in order to be fully operational.

exception of the United States of America, which considers the UNCLOS as part of customary international law,¹⁶ all the Arctic circumpolar states are parties to the Convention and consider it as the primary component of the international legal regime of the region.¹⁷ Moreover, in addition to several sub-regional organisations dealing with specific topics and areas of the Arctic, the Arctic Council (AC) provides a dedicated regional cooperation forum treating issues faced by the Arctic governments and the indigenous people of the Arctic. Established in 1996, this intergovernmental forum with no formal decision-making powers comprises all five of the circumpolar states as well as Iceland, Sweden and Finland and six indigenous peoples' organisations.

The formation of the EU's Arctic Policy

Based on a proposal of the European Commission in its 2008 Communication on "the European Union and the Arctic region", the Council of the European Union decided in December 2009¹⁸ upon the development of a European Union Arctic Policy (EUAP).¹⁹ This EUAP was articulated around three objectives:

- Protecting and preserving the Arctic in harmony with its peoples;
- Promoting the sustainable use of natural resources;
- Contributing to enhanced governance in the Arctic through the implementation of relevant agreements, frameworks and arrangements, and their further development.²⁰

Aside from related actions in the fields of research, environment and maritime issues, the Council supported the Commission's application for a Permanent Observer Status within the AC in order to contribute to the work of the different working groups and thus increase the legitimacy of the European Union as a relevant Arctic player.²¹ Though officially supported by six AC members – Norway, Sweden, Finland, Denmark, Iceland and the US – this application was rejected in April 2009

¹⁶ While the US Congress never ratified the Convention, the US has considered UNCLOS in its entirety as part of customary international law, with the exception of Part XI of the Convention providing for a regime relating to minerals on the seabed outside any state's territorial waters or Exclusive Economic Zones.

¹⁷ Canada, Denmark, Norway, the Russian Federation and the United States of America, *The Ilulissat Declaration*, Arctic Ocean Conference, Ilulissat, Greenland, 27-29 May 2008.

¹⁸ Council of the European Union, *Conclusions on Arctic issues*, 16826/08, Brussels, 8 December 2009.

¹⁹ European Commission, *The European Union and the Arctic Region*, COM(2008) 763 final, Brussels, 20 November 2008.

²⁰ *Ibid.*

²¹ Council of the European Union, *Conclusions on Arctic issues, op.cit.*, §17.

mainly due to the opposition of Canada, with which the EU was facing tense relations because of the seal product ban, combined with the European Parliament proposal for an Arctic Treaty.²² Since then, the EU has reiterated its application, which is due to be discussed during the next AC Ministerial meeting in May 2013.

After a period of relative stagnation, the EUAP was expected to be reinvigorated in June 2011 by a mid-term report requested in the Council Conclusions. This report by the Commission and the High Representative appeared a year late, in June 2012.²³ Bringing few novelties in the substance of the EUAP,²⁴ the joint report nevertheless makes new efforts to present the EU's involvement in the region as "supportive of the efforts of Arctic states"²⁵ and to take into account "the needs of indigenous and local communities".²⁶ It is clearly an attempt to reassure the Arctic states about the aims of the EUAP. Moreover, it interestingly draws the attention to the interface between Space and the Arctic in identifying how the EU Space Policy could be an asset for the EUAP.²⁷ Finally, the fact that this assessment was made public just before the end of the Danish Presidency of the Council of the European Union may illustrate the actual and/or perceived Danish lack of support for an enhanced EUAP.²⁸

The EUAP has so far been characterised by a relative lack of interest among individual EU member states. Among the EU members who are also in the Arctic Council, Denmark gives a bare minimum of support to the policy, while Sweden and Finland are more committed to an institutional approach given their resentment at being left out of separate policy meetings by the 'littoral Five' states (Canada, Denmark, Norway, Russia and the USA). Among other EU member states only France,

²² Regulation (EC) No 1007/2009 of the European Parliament and of the Council on Trade in Seal products adopted on 16 September 2009, *Official Journal of the European Union*, L 286, 31 October 2009, pp. 36-39; European Parliament, *Resolution on Arctic Governance*, P6_TA(2008)0474, Strasbourg, 9 October 2008; and European Parliament, *Joint Motion for a Resolution on the International Treaty for the Protection of the Arctic*, RC/778935EN, Strasbourg, 30 March 2009.

²³ European Commission and the HR, *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps*, JOIN(2012)19 final, Brussels, 26 June 2012.

²⁴ Notably in listing the EU's actions in the Arctic since 2008.

²⁵ European Commission and the HR, *Developing a European Union Policy towards the Arctic Region*, *op.cit.*, p. 5.

²⁶ *Ibid.*

²⁷ European Commission and the HR, *Space and the Arctic*, SWD(2012)183 final, Brussels, 26 June 2012.

²⁸ Denmark, as a member of the EU, NATO and the 'Arctic 5', is in a paradoxical position and has turned out to be the least supportive EU member state in the formation of the EUAP.

the UK and Germany have begun to articulate interests in the region; Central and Southeast European member states perceive the Arctic as peripheral.

In addition to the member states' perceptions of the EUAP, the formulation of the policy itself is atypical. The European Parliament took the most controversial positions²⁹ at the beginning of the formulation of the EU policy,³⁰ while the Commission sought to manage its knowledge deficit through a pragmatic policy-drafting process. The epicentre of Commission work was DG MARE (maritime affairs) rather than RELEX (external affairs). The creation of the European External Action Service (EEAS) should have helped draw together the different dimensions of EU policy, but the Service itself is still looking for its role in the institutional framework.³¹

Against this background, this study examines whether the EU's current Arctic policy is conducive to framing a strategy that is both correctly targeted and flexible enough to represent Europe's most essential interests in this matter. While demonstrating that this policy could be an effective foreign policy tool to frame the legitimacy of the EU as an Arctic actor, the paper argues that the EU is underrating the EUAP's potential to find common grounds with two of its most important partners, namely Russia and China.

Although the Arctic literature is relatively large overall, academic literature specifically focusing on the EUAP is rather limited. Therefore, this research is based on three main types of materials: public documents, academic literature with a particular focus on extra-European literature, and finally on interviews with member states' officials and EU officials.

Sections 2 and 3 will provide an analysis on the ability of the EUAP to impact the EU's relations with other partners on Arctic issues. On the one hand, the formation of policy towards a region that includes Europe's High North is bound to be linked, in one way or another, to the relationship the EU maintains with Russia. It is therefore

²⁹ Following the activism of several parliamentarians, the European Parliament adopted a controversial resolution in October 2008 supporting the negotiation of a new legal regime for the Arctic and raising security concerns in the Arctic. Moreover, in 2009 it adopted an EU trade ban on seal products, thereby damaging the EU's image among Arctic indigenous populations (despite an EC regulation of August 2010 exempting the Indigenous Communities of Greenland and Canada from the ban).

³⁰ More recently, the Parliament adopted in early 2011 a more moderate resolution asking for a "sustainable policy in the High North". European Parliament, *Resolution on a sustainable EU policy for the High North*, 2009/2214(INI), Strasbourg, 20 January 2011.

³¹ Since the entry into force of the Lisbon Treaty, the Europe and Central Asia Division of the EEAS shares responsibility for the topic, but lacks involvement in both the internal drafting and the external representation of the policy.

relevant to analyse the EUAP as a potential way to overcome unresolved tensions in relations with Russia as well as to strengthen the positive aspects. On the other hand, a certain convergence of interests between the EU and China on Arctic issues may be detected, which could lead to a potential cooperation in their efforts to be recognised as relevant Arctic players. The conclusions will recall the main findings.

2. The EUAP: a way to overcome tense relations with Russia?

The EU and Russia are facing tense bilateral energy relations, which have an impact on other areas of their relationship.³² Contrary to the popular belief and as already mentioned above, the Arctic coastal states do not contest each other's sovereignty over Arctic hydrocarbon resources. The main controversy between the EU and Russia concerns commercial shipping in the NSR. However, it should be possible to overcome these tensions in view of Russia's need for partnership in exploiting its new economic assets: that is, its opening shipping lanes and newly exploitable hydrocarbon fields.

Shipping lanes: the hottest topic between Russia and the EU in the Arctic

Legal controversies over the NSR status and its consequences for EU shipping access

Due to different views on UNCLOS provisions, the EU and Russia do not interpret the legal status of the Northern Sea Route in the same way. As a consequence, the Russian authorities have enacted regulations limiting the right of innocent passage in what the EU considers the Russian Exclusive Economic Zone.³³ This debate is illustrated by the fact that Russia calls the shipping route along its Northern coast the 'Northern Sea Route', while the EU used to call it the 'North-East Passage'. As things stand, the use of the Russian term by all major Arctic stakeholders

³² See for instance K. Westphal, "Russian Gas, Ukrainian Pipelines and European Supply Security – Lessons of the 2009 Controversies", *SWP Research Paper*, September 2009, Berlin.

³³ UNCLOS divides sovereignty over sea areas into three categories: First, a state exercises full sovereignty in its internal waters (between the state's coastline and its baseline). Second, it exercises full sovereignty over its territorial waters, with a right of innocent passage for foreign ships (from the baseline up to 20 miles). Third, from the baseline up to 200 miles, the coastal state enjoys economic rights in its EEZ (for exploring, exploiting, conserving and managing natural resources), but foreign vessels can navigate with no restrictions. From 200 miles from the baseline onwards, the high seas are open to all states with no restrictions.

gives a fairly good perception of the power balance in the EU-Russia legal debate over the NSR.³⁴

From a legal perspective, two arguments are adduced by Russia to support its regulatory approach. First, Russia considers that a large part of the Northern Sea Route³⁵ is situated in its internal waters and not within its EEZ, which implies a legal possibility to refuse access for foreign vessels. It considers that, due to geographic necessity, the baseline for determining sea borders should not follow the Russian coastline (which is the 'normal' method under article 5 UNCLOS) but should be determined using the 'straight' baseline method. Indeed, article 7 UNCLOS allows a state to delimit its baseline using this method subject to several criteria:

In localities where the coastline is *deeply indented and cut into*, or if there is a *fringe of islands along the coast in its immediate vicinity*, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured. [emphasis added]

Based on the jurisprudence of the International Court of Justice (ICJ),³⁶ this exception allowed Norway to determine its baseline using a straight method in consequence of its particularly winding coastline.³⁷ The European Union does not agree with this application of article 7 UNCLOS for the Russian coast, which does not comply with the criteria set up by the ICJ and UNCLOS.

Second, the Russian authorities consider that article 234 UNCLOS on 'ice-covered waters' should be applied to the NSR:

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

³⁴ The EU supported the use of the term 'North-East Passage' for a long time, while recent documents use 'North East Passage' and 'Northern Sea Route' as synonyms. See European Commission, *Strategic goals and recommendations for the EU's maritime transport policy until 2018*, COM(2009) 8 final, Brussels, 21 January 2009, p. 7; and A. Moe & Ø. Jensen, *Opening of New Arctic Shipping Routes*, Standard Briefing, Directorate-General for External Policies of the Union, European Parliament, Brussels, 2010.

³⁵ For the purpose of this research, the analysis will focus on the Coastal Route of the Northern Sea Route, which is most likely to be used in the near future because it requires fewer icebreakers to navigate than the Transit Route (which, unlike the Coastal Route, passes north of the Novaya Zemlya Island, the Severnaya Zemlya Islands and the New Siberian Islands).

³⁶ International Court of Justice, *The Fisheries Case* (United Kingdom against Norway), Judgment of 18 December 1951.

³⁷ For information, Canada has used the same argument to enact far-reaching environmental legislation limiting the right of innocent passage for foreign vessels.

or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence. [emphasis added]

Applying this article would allow Russia to 'adopt and enforce' environmental regulations on the grounds both of geography and temporality. However, the article is notably open for interpretation: it uses subjective terms such as 'particularly' or 'most of the year' or 'exceptional'; 'major harm to or irreversible disturbance of the ecological balance'; and last but not least, 'based on the best available scientific evidence'.³⁸ The EU disputes the interpretation of these subjective terms in order to contest the *de facto* right taken by Russia to enact severe environmental regulation obstructing full access to the NSR for the EU shipping industry.

Specifically, the Russian authorities make it compulsory for shipping companies to request an authorisation for navigation in the NSR from the Ministry of Transportation four months prior to their journey.³⁹ The time taken to process these requests is apparently too long in comparison with the strict schedule of shipping companies.⁴⁰ The Russians also impose the use of icebreakers for security reasons, which costs approximately 14'000 dollars a day per icebreaker.⁴¹ It should be added that the vast majority of available icebreakers in the world are Russian property.⁴² All these additional costs in combination make the cost-benefit balance less attractive for shipping companies.

Interestingly, recent Russian actions are shedding a different light on the Russian will to limit the right of innocent passage. The Duma recently passed a new law on

³⁸ For a complete explanation of the ambiguities of article 234 UNCLOS, see K. Bartenstein, "Chapitre 12 – Les pouvoirs du Canada de protéger le milieu marin dans l'archipel arctique", in F. Lasserre (ed.), *Passages et mers arctiques – Géopolitiques d'une région en mutation*, Québec, Presses de l'Université du Québec, 2010, pp. 267-289.

³⁹ European Commission, Directorate-General for Maritime Affairs and Fisheries, *Legal aspects of Arctic shipping – Summary Report*, Brussels, 2010, p. 16.

⁴⁰ Insights provided by Laurent Mayet, special advisor of the French Ambassador at Large for Polar issues, during a conference: L. Mayet, "Les enjeux de l'Arctique", Speech delivered at the *Café-Défense Mission Lille Euroméditerranée* Conference, 27 March 2012, Lille, France; and R. Kefferpütz, "On Thin Ice? (Mis)interpreting Russian Policy in the High North", *CEPS Policy Brief*, no. 205, Brussels, Centre for European Policy Studies, February 2010, p. 5.

⁴¹ A journey on the NSR generally requires the use of two icebreakers.

⁴² M. Humpert, "EU Arctic Policy: A Memorandum to the European Commission", *The Arctic Institute*, Center for Circumpolar Security Studies, Brussels, May 2011, p. 17.

the Northern Sea Route,⁴³ which is due to enter into force in February 2013.⁴⁴ According to a European Commission official, it seems that this new piece of legislation “is going to resolve a lot of current issues between the EU and Russia over the Northern Sea Route”.⁴⁵ The new law foresees a re-positioning of Russia’s Arctic administration under a new Federal Agency in charge of all commercial maritime activities along the NSR. This new organisation could then speed up the issuing process of navigation permits and bring down the costs of transit.⁴⁶ The law demands that vessels using the Route compulsorily subscribe to insurance for civil liability. It also reaffirms the state monopoly of the use of icebreakers in the waters of the NSR and determines the costs of an icebreaker escort on the basis of the volume of services provided. The agency will also assist the setting up of SAR operations along the route. More importantly, the law adopts a new definition of the NSR in Russian terms. Under this, the NSR includes internal waters, territorial waters, the contiguous zone and the EEZ and is delimited at its eastern end by the Bering Strait and in the west by the Novaya Zemlya Islands. As a consequence, maritime areas west of the Novaya Zemlya Islands are not governed by this new legal regime and fall under the common maritime regulations.

Only experience of how this new legal framework will be put into effect will be able to confirm or contradict the recent statement made by Vitaly Klyuev from the Russian Ministry of Transportation:⁴⁷

Here we must conform to the conditions of the international UN Convention on the Law of the Sea of 1982, which Russia is an adherent of. [...] The convention establishes that the principle of free maritime traffic is applicable to all seas, including territorial seas, exclusive economic zones in the sea, and moreover, the open sea where no one has jurisdiction.⁴⁸

⁴³ Rossiyskaya Gazeta, *Federal Law n°132-FZ "On amendments to certain legislation of the Russian Federation regarding the state regulation of merchant shipping in the waters of the Northern Sea Route"* [author’s translation], 30 July 2012.

⁴⁴ "Vladimir Putin signs law on the Northern Sea Route", *Arctic Info*, 30 July 2012.

⁴⁵ Interview with an official, DG Mare, European Commission, Brussels, 30 March 2012.

⁴⁶ A. Vasiliev, Ambassador at Large, Senior Arctic Official of the Russian Federation, “Russian perspective on international cooperation in the Arctic”, *Speech at Arctic Futures Symposium, "The Arctic in a Time of a Change"*, 12 October 2011, The Royal Library of Belgium, Brussels, Belgium, p. 4.

⁴⁷ Deputy director of the department of government policy in the area of sea and river transport of the Russian Ministry of Transportation.

⁴⁸ Reported by A. Kireeva & C. Digges, “Russia taking on Northern Sea Route as Bellona raises alarm over Norwegian vessels under escort of nuclear icebreakers”, *Bellona Foundation*, 12 April 2012.

Whereas it is too early to draw far-reaching conclusions on the new law, it appears to satisfy several EU concerns in speeding up the procedure for issuing navigation permits, as well as limiting the requirement to use Russian ice-breakers for the eastern part of the coastal route. It is therefore interesting to look at the possible impact of EU influence on this shift of position.

An EU impact on Russian policy on the NSR?

In similar cases in the past, the EU used its support for the Russian candidacy to the WTO as leverage in its relations with Russia. The best example is the case of Russian taxes on EU flights over Siberia. What the media called 'sky taxes' have been a periodic irritant in EU-Russia relations. Considered by the EU and its member states as a breach of the 1944 Chicago Convention on International Civil Aviation, Russia imposed transit taxes on EU airlines flying over Russian territory even in the absence of any landing on Russian soil.⁴⁹ Although an agreement was reached in 2006 on gradually reducing these taxes, it was not implemented until November 2011, a month prior to the WTO's final approval of the Russian candidacy. Intriguingly, the European Commission Press Release presenting the progressive implementation of the agreement mentioned a quote from Commissioner Karel De Gucht who linked this agreement to Russia's WTO accession: "The clear commitment we received from Russia to make charges for flying over Siberia cost-related, transparent and non-discriminatory helped pave the way for the EU to support Russia's accession to the WTO. Both of these developments are very good news."⁵⁰

A similar concomitance can be observed in the case of the Russian bill watering down the shipping regulation on the NSR. However, authors tend to agree that, while Russia sees the Arctic as central, it considers the EU as peripheral. As noted by Archer, "with this imbalance, the Arctic region is unlikely to play an important role in Russo-EU relations".⁵¹ Interviewed by the author, a European Commission official shared this view in spring 2012.⁵² Hence, observers should not overestimate the size of the Arctic within both the EU and the Russian agendas.

⁴⁹ This transit taxes cost approximately 300-400 million euros per year for European companies.

⁵⁰ European Commission, "Air transport: Commission welcomes agreement on Siberian overflights", *Press release*, IP/11/1490, 1 December 2011.

⁵¹ Archer, *op.cit.*, p. 12.

⁵² Interview with an official, DG Mare, European Commission official, Brussels, 30 March 2012.

This paper rather supports the idea that the EU's relations with Russia on the NSR will be strengthened over time due to technology-related factors, including the EU's space capabilities as well as the European hydrocarbons drilling technologies.

The Russian need for European technologies

The EU's space capabilities

In addition to its stake in the commercial use of the NSR, the EU owns an asset of high value that was made into an EU shared parallel competence by the Lisbon Treaty: the EU Space Policy.⁵³ In the Arctic context where geography and climate change are crucial, the EU could use this as a competitive advantage to enter the Arctic debate. Recognised by a European Commission official as the most notable enhancement of the EUAP in the past three years,⁵⁴ a Staff Working Document on this space angle was released in June 2012 in annex to the progress report on the EUAP.⁵⁵

This Working Document supports the idea that the EU Space Policy should allow the EU to bring an added value to the Arctic in crucial dimensions such as navigation, monitoring, data processing, research and communication. Before large-scale shipping, fishing or a tourist industry using Arctic routes can develop, SAR facilities need to be available with ready-made capacity to provide assistance and respond appropriately to an accident involving vessels. The risk of accidents and challenges of search and rescue in the Arctic are more serious than anywhere else due to freezing temperatures, severe icing, iceberg collision, uncharted waters, and the extreme vulnerability of the environment to pollution. The Galileo programme in particular should be able to map the newly ice-freed Arctic areas in very high definition and to monitor shipping navigation in near-real time. Such high-level capabilities are urgently needed to secure safe transit for shipping in the Arctic. The EU holds here a competitive advantage in comparison with other players (such as the US and its GPS programme which is not as precise as the Galileo system) and holds an asset of high value especially for Canada and Russia, two states that would be particularly exposed in case of accidents. Moreover, observed trends suggest that Arctic tourism is developing relatively quickly and will increase risks of accidents in addition to those affecting commercial shipping. In this context, developing

⁵³ Articles 4 and 189 TFEU.

⁵⁴ Interview with an official, DG Mare, European Commission official, Brussels, 30 March 2012.

⁵⁵ European Commission and the HR, *Space and the Arctic*, *op.cit.*

cooperation between the EU Space Agency and the soon-to-be established Russian Federal Agency for the administration of the Northern Sea Route could bring legitimacy and credibility to the EUAP.

The Arctic Council itself has started to tackle this challenge by signing in May 2011 an Agreement on Cooperation on Aeronautical and Maritime SAR in the Arctic. This first legally binding agreement under the auspices of the AC, strengthens cooperation between AC members and gives each of them a particular SAR area for which it is responsible. In general terms, the AC agreement addresses the issue of cooperation at the borders of sovereign states rather than setting standards for SAR or committing the parties to build or renovate effective infrastructures.⁵⁶

In the EU-Russia context, supporting the construction or renovation of SAR infrastructure would mean European companies investing on Russian territory, which is currently not an option favoured by the Russian authorities.⁵⁷

European technology for hydrocarbon extraction

Interestingly, the Russian Federation is even more reluctant to allow foreign investments in its oil and gas sector. Russia requires that foreign companies wishing to invest in the Russian oil and gas sector with a share of more than 5% should obtain direct approval from the Kremlin.⁵⁸ The Russian authorities consider this sector as related to national security and therefore limit foreign investments. Nevertheless, in the case of the Shtokman gas field in the Barents Sea, the Russian authorities welcomed investments by European companies – namely the French TOTAL and the Norwegian Statoil. A consortium was set up comprising Gazprom (51% of the shares), TOTAL (25%) and Statoil (24%).⁵⁹ Although the consortium ended in July 2012 due to the exit of Statoil,⁶⁰ this pragmatism when it comes to one of the world's largest natural gas fields was related to the Russian lack of technology for offshore drilling. The European companies brought to the consortium advanced offshore technology

⁵⁶ Espen Solberg, *op.cit.*, p. 32.

⁵⁷ Russia announced in November 2011 the construction of ten SAR centers along the NSR by 2015. See T. Pettersen, "Russia to have ten Arctic rescue centers by 2015", *Barents Observer*, 18 November 2011.

⁵⁸ Russian Federal Law of 29 April 2008, quoted by T. Romanova, "The theory and practice of reciprocity in EU-Russia relations", in K. Engelbrekt & B. Nygren (eds.), *Russia and Europe: Building bridges, digging trenches*, London, Routledge, 2010, p. 72.

⁵⁹ "Shtokman decision in December", *Artic Portal*, 20 September 2011.

⁶⁰ A. Staalesen, "Statoil exits Shtokman", *Barents Observer*, 7 August 2012.

available nowhere else on the market. Norway was in this respect a key player in the equation.

To conclude, the EU does not have a very strong leverage over Russia's interpretation of the NSR's status. Nevertheless, the EU and its closely connected neighbours Norway and Iceland do have competitive advantages to offer the Russian authorities when it comes to space capabilities and oil and gas offshore drilling technologies. However, given the economic and financial crisis which has had strong impacts both in the EU and Russia, China is likely to have an increasing role in the Arctic in future as the financier for the creation of all these very costly infrastructures.

3. The EU-China convergence and divergence of interests in the Arctic

The European Union and China share a wide range of interests in the Arctic, notably on scientific research and on economic opportunities. Unexpectedly, on the latter, the EU and China also agree on supporting a legal regime of free shipping on Arctic routes in contradiction to traditional Chinese policy on sovereignty-related issues. This convergence of interests indicates room for cooperation between the two non-Arctic actors in the future. However, while facing similar challenges over recognition, they adopt different strategies.

The EU-China convergence of interests on Arctic issues

As stated clearly by the Chinese Assistant Minister for Foreign Affairs, Hu Zhengyue, in June 2009, the Chinese government does not "have an Arctic Strategy".⁶¹ At the same time, the presence of a Chinese official at an Arctic forum shows a genuine Chinese interest in the current debate on the Arctic. Moreover, as stated by the Special Advisor of the French Ambassador at Large on Polar Issues, Laurent Mayet, "it is easy to judge the Chinese interests in Arctic issues by their very *active attendance* at Arctic Council meetings while being *only* an ad-hoc observer".⁶²

⁶¹ statement expressed during an Arctic forum organised by the Norwegian government in June 2008, reported by L. Jakobson, "China prepares for an ice-free Arctic", *SIPRI Insights on Peace and Security*, no. 2010/1, March 2010, p. 9.

⁶² Comment made by Laurent Mayet, special advisor of the French Ambassador at Large for Polar issues, during a conference. Mayet, *op.cit.* [emphasis added; author's translation].

A similar scientific interest

According to Jakobson, "China has one of the world's stronger polar scientific research capabilities".⁶³ Indeed, since 1999, China has been showing interest to cooperate with Arctic littoral states in terms of scientific research both on climate change and Arctic transportation. China organised five scientific expeditions in the Arctic (in 1999, 2003, 2008, 2010 and 2012), actively participated in the International Polar Year in 2007 and 2008, and launched in October 2003 the world's largest Arctic scientific base at Ny-Ålesund in Svalbard. In addition to this, China owns one icebreaker and is planning to build a new one by 2014.⁶⁴ Analysed by observers as a shift in Chinese activism in the Arctic, the fifth scientific research expedition was organised during the summer of 2012 by the Chinese authorities. While the four first expeditions conducted research mainly in the Bering Sea, this expedition sailed, for the first time, from Shanghai (China) to Reykjavik (Iceland) using the Northern Sea Route and is likely to return to China using the Transpolar Route to reach Shanghai. This journey of approximately 15'000 kilometres was highly mediatised, notably due to a partnership with the well-known Iceland-based website called the Arctic Portal. These scientific research activities are conducted under the framework of the Polar Research Institute of China and the Chinese Arctic and Antarctica Administration⁶⁵ (a body from the Chinese State Oceanic Administration).

Similarly, as stressed in a Working Document accompanying the 2012 report of the European Commission and the EEAS, "the EU and its Member States have made a leading contribution to Arctic research over the last 10 years".⁶⁶ The EU developed research projects on climate change, contaminants and health, infrastructure, environmental technologies, capacity building, reporting, monitoring and mapping, space and soil.⁶⁷ For instance, it invested in the development of the European Polar Research Icebreaker *Aurora Borealis* or in collaborative research projects such as *DAMOCLES*⁶⁸ in which China participated⁶⁹ (EU contribution: € 16.5 millions).⁷⁰ Both

⁶³ Jakobson, *op.cit.*, p. 3.

⁶⁴ W. Zhenghua, "Second icebreaker planned for polar research", *China Daily*, 9 April 2012.

⁶⁵ Created in 1993 in order to broaden the activities of the Chinese Antarctica Administration.

⁶⁶ European Commission and the HR, *The inventory of activities in the framework of developing a European Union Arctic Policy*, SWD(2012)182 final, Brussels, 26 June 2012, p. 11.

⁶⁷ *Ibid.*, pp. 11-18.

⁶⁸ DAMOCLES stands for Developing Arctic Modelling and Observing Capabilities for Long-term Environmental Studies.

⁶⁹ Dr. H. Yang, Polar Research Institute of China, "An Overview of Chinese Arctic Research", Presentation at *China-Iceland symposium*, 17 August 2012, Akureyri (Iceland).

for the EU and China, investing in scientific research is a relatively easy way to gain legitimacy without being perceived as too invasive by the Arctic coastal states.

Moreover, Lasserre supports the idea that there is no linkage between China's scientific interest in the Arctic and its economic objectives, both in terms of shipping routes and hydrocarbons access.⁷¹ This is confirmed by comparing Chinese research conducted in the Arctic with that in Antarctica. Indeed, while China conducted four scientific expeditions in the Arctic, 28 expeditions have already been conducted since 1945 to the Antarctica, where economic opportunities are non-existent due to the Antarctica Treaty System.

Nevertheless, a linkage might be found between the development of scientific research and climate change concerns. Although the standard Brussels perspective sees China and the protection of the environment as rather contradictory terms, the reality is more complex. China has a strong interest in protecting the Arctic environment, which has effects on its three North East provinces, commonly called Manchuria in English,⁷² where approximately 8% of China's total population live. For the Chinese authorities, the protection of the Manchurian environment is crucial in order to avoid political instability in the region and thus protect the regime. Moreover, it could be argued that conducting climate change research is the best way to adapt to climate change, notably when it comes to identifying economic opportunities. Therefore, even if the EU's and Chinese concerns on the Arctic environment could be seen as of different nature, the two players are again encountering a convergence of interests.

Taking advantages of new economic opportunities

In addition to threats, the ice melting in the Arctic region is also producing economic opportunities: the opening of new shipping routes as well as access to new fields of hydrocarbons. Commercial shipping carries 90% of all international trade,⁷³ and the EU holds 41% of the total world shipping fleet.⁷⁴ Moreover, the EU is China's biggest trading partner. China has recognised the potential of these new

⁷⁰ European Commission and the HR, *The inventory of activities*, *op.cit.*, pp. 15-16.

⁷¹ Lasserre, "China and the Arctic", *op.cit.*, p. 5.

⁷² Composed of the provinces of Liaoning, Jilin and Heilongjiang.

⁷³ Shipping Facts, *Shipping and World Trade – Overview*, <http://www.marisec.org/shippingfacts/worldtrade/index.php> (15 September 2012).

⁷⁴ European Commission, *Strategic goals and recommendations for the EU's maritime transport policy until 2018*, *op.cit.*, p. 2.

shipping routes by investing in its second icebreaker. This will reduce the Russian grip on foreign shipping companies by creating an opportunity to replace Russian icebreakers in the NSR with Chinese icebreakers. Moreover, with the EU, China is the only player with the ability to guarantee Canada or Russia a high frequency of shipping traffic on those routes. This planning possibility is very relevant when the moment arrives for the coastal states to assess the profitability of very expensive infrastructure investments along these routes.

One of the most interesting convergences of views between the EU and China concerns the legal status of both the NWP and the NSR. As detailed above, the EU is defending its right of innocent passage in both routes. While China has not directly expressed a position on these passages, it supports the idea that the International Maritime Organisation (IMO) should play a crucial role in order "to improve the legal framework for Arctic shipping cooperation".⁷⁵ Therefore, it seems clear that China is seeking free access for itself to these passages. By extension, on the one hand, it supports a right of innocent passage in the NSR. On the other hand, the NWP is considered an international strait and not as Canadian domestic waters. In taking this position, China is also in line with the United States. As stated by Jakobson, "based on official statements by the Chinese Government and the open-source literature written by Chinese Arctic scholars, China can be expected to continue to persistently, yet quietly and unobtrusively, push for the Arctic in spirit being accessible to all".⁷⁶

This convergence of views is unexpected given that the traditional Chinese foreign policy line is to protect sovereignty at any cost. On the one hand, the Chinese authorities have always defended the idea that waters between the Chinese coast and Taiwan should not be considered as an international strait but as domestic Chinese waters. On the other hand, they apply the same reasoning to the Hainan Island strait in the south of China.⁷⁷ The convergence of views in the Arctic is a good starting point for an enhanced discussion between China and the EU based on the wish of both to protect their future economic prospects in these shipping routes.

⁷⁵ Ministry of Foreign Affairs of the People's Republic of China, "China's View on Arctic Cooperation", Speech - High North Study Tour, 30 July 2010.

⁷⁶ Jakobson, *op.cit.*, p. 13.

⁷⁷ Lasserre, "China and the Arctic", *op.cit.*, p. 8.

Obviously, China has an interest in the hydrocarbon resources in the Arctic due to its increasing oil consumption. It should be noted that, in contradistinction from the EU, China does not see the potential of the Arctic gas fields as strategic, since its energy mix is relatively poor in gas compared to coal. Due to the fact that the sovereignty over these resources is not contested, China sees rather opportunities for investments in the Arctic and, even if it does not have the necessary technology, it holds a crucial asset: its big annual growth and associated investment potential. However, this should be seen as a medium to long-term interest. In fact, there are no large-scale actions by Chinese oil companies that would confirm this hypothesis for the moment.⁷⁸

The EU and China thus share a wide range of interests. However, they face difficulties in being recognised as players in Arctic politics due to the fact that neither of them is a littoral actor. Nevertheless, this state of affairs could be turned into an opportunity for the EU and China to draft a joint strategy for defining their common interests and thus being recognised as relevant Arctic actors.

An EU-China partnership for international recognition in the Arctic?

Chinese scholars are criticising the Chinese authorities for their lack of a comprehensive strategy towards the Arctic. As discussed by Jakobson, such a wide range of critics against the authorities is relatively rare.⁷⁹ For instance, in answering questions for the Beijing newspaper *Cankao Xiaoxi*, Guo Peiqing of the Ocean University of China opines that China should be more ambitious in its relations with the Arctic region: "any country that lacks comprehensive research on Polar politics will be excluded from being a decisive power in the management of the Arctic and therefore be forced into a passive position".⁸⁰ The Chinese authorities are much more reluctant than the academic community to develop a comprehensive strategy. In adopting a "wait-and-see approach",⁸¹ they learn from the EU's mistakes in its development of an Arctic policy.

⁷⁸ A. Staalese, "China's new foothold on Northern Sea Route", *Barents Observer*, 26 November 2010; and Lasserre, "China and the Arctic", *op.cit.*, p. 8.

⁷⁹ Jakobson, *op.cit.*, p. 7.

⁸⁰ Interview of P. Guo, in K. Xie, '极地未来对中国影响重大' ["The future of the polar region is crucial to China"], *Cankao Xiaoxi*, 8 November 2007 [Jakobson's translation]; cited in Jakobson, *op.cit.*, p. 7.

⁸¹ Jakobson, *op.cit.*, p. 2.

The Arctic Council: a missed opportunity for cooperation between the EU and China

Simultaneously with the EU and in full compliance with the traditional Chinese policy of joining non-binding cooperative fora in order to prevent any contestation of sovereignty,⁸² China applied in 2009 for a Permanent Observer status within the AC, recognising this forum as the primary body to deal with Arctic issues. Interestingly, China and the EU promoted their applications using similar arguments.

As a non-coastal Arctic state, China argues that Arctic states and non-Arctic states have their interests "intertwined".⁸³ This shows clear similarities with the EU's wording, for instance in an October 2011 speech by Maria Damanaki, Commissioner for Maritime Affairs and Fisheries: "And what happens in the Arctic ocean, has consequences for the rest of the world and obviously for the European Union."⁸⁴

The AC member states rejected China's and the EU's applications for Permanent Observer status in April 2009. In such a situation, it may be natural for these two actors to analyse their rejection together and develop a common strategy for their future application. Both of them submitted new applications due to be discussed in 2013. Interviews conducted in Brussels in spring 2012 by the author indicate, however, that no such cooperation happened.⁸⁵ Indeed, there is in practice no particular discussion between the European Commission and China on Arctic issues. Their day-to-day relations are even coloured by suspicion. Indeed, while answering this question, a European Commission official mentioned to the author: "the Chinese come to us to request information but they don't give any in return".⁸⁶

This reluctance to connect their position and develop linkages between the EU and China can be explained as a strategy to maximise each actor's chances to join the AC. Indeed, a close cooperation between the EU and China could be frightening for the AC members. This reasoning is in line with the "China threat theory",⁸⁷ which consists in analysing any Chinese action as a threat due to its

⁸² Lasserre, "China and the Arctic", *op.cit.*, p. 5.

⁸³ Ministry of Foreign Affairs of the People's Republic of China, "China's View on Arctic Cooperation", Speech - High North Study Tour, 30 July 2010.

⁸⁴ M. Damanaki, European Commissioner for Maritime Affairs and Fisheries, "The Arctic at a time of change", SPEECH/11/658, Speech at *Arctic Future Symposium*, 12 October 2011, The Royal Library of Belgium, Brussels.

⁸⁵ Interview with an official, DG Mare, European Commission, 30 March 2012.

⁸⁶ *Ibid.*

⁸⁷ In line with B. Gertz, *The China Threat: How the People's Republic Targets America*, Washington D.C., Regenery Publishing, 2000.

increasing power on the global stage.⁸⁸ This atmosphere of suspicion could also be applied by extension to the EU in the event of formalised China-EU cooperation on Arctic issues.

Nevertheless, these two major players in international affairs may be following a rather fragile strategy by seeking to join the forum simply as Permanent Observers. Indeed, the AC is currently debating about the role that Observers should have in the forum.⁸⁹ The debate does not only concern the difference of status between *ad hoc* Observers and Permanent Observer, but seeks to determine whether the forum needs Observers at all. Therefore, all the current Permanent Observers (France, Germany, the Netherlands, Poland, Spain and the United Kingdom) are potentially in the same position as China and the EU are: on an 'ejector seat'. In order to influence the AC in this discussion, it seems that *ad hoc* Observers and Permanent Observers are informally pressuring the AC with the implicit threat that they could discuss Arctic issues together in another forum in case of rejection. Indeed, interviews conducted by the author tend to confirm this idea.⁹⁰ However, it should be noted that such unofficial consultations take only place during sessions and do not continue in intersession periods.⁹¹ The EU could be in a favourable position to set up such a forum as it is already very active in regional cooperation on Arctic-related issues through the Barents Euro-Arctic Council (BAEC), of which the EU is a member, and the Northern Dimension, a common policy framework including the EU, Iceland, Norway and Russia.

Lessons for China from the EU's youthful mistakes?

China supports the introduction of a new legal framework for the Arctic region to complement UNCLOS, to which it has been a party since 1996.⁹² The European Parliament strongly supported the negotiation of a new legal regime, taking into

⁸⁸ N. Hong, "The melting Arctic and its impact on China's maritime transport", *Research in transportation economics*, vol. 35, 2012, p. 51.

⁸⁹ In May 2011, the AC Ministers adopted the criteria for admitting Observers and their role in the AC. Among the criteria, the AC requests from Observers to "recognize Arctic states' sovereignty, sovereign rights and jurisdiction in the Arctic" and to "recognize 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 the Ocean". See Arctic Council, *Senior Arctic Officials Report to Ministers*, Nuuk, Greenland, May 2011, p. 50.

⁹⁰ Interview with an EU member state diplomat, Brussels, 10 April 2012.

⁹¹ E-mail interview with an official, French Ministry for Foreign and European Affairs, April 2012.

⁹² Jakobson, *op.cit.*, p. 11.

consideration the specificities of the Arctic region.⁹³ Watered down in the 2008 Communication, the Commission was asking for an assessment of “the effectiveness of Arctic-relevant multilateral agreements to determine whether additional initiatives or measures are needed”.⁹⁴ In line with the Council, which discarded this proposal in its 2009 Council Conclusions due to vocal reactions from Arctic states, the European Parliament does no longer support the introduction of an Arctic treaty.⁹⁵

Interestingly, in contrast to earlier EU documents, China is not supporting the introduction of a new treaty comparable to the Antarctica Treaty System. It rather supports a treaty model based on the Svalbard Treaty. Jia Yu, from the Chinese State Oceanic Administration, argues that such a new treaty could secure China’s right of innocent passage, while the coastal states would see their full and absolute sovereignty preserved over their passages.⁹⁶ Interestingly, this is more-or-less the analysis of the former Member of the European Parliament Dania Wallis, the strongest supporter of a new legal regime in the Arctic.⁹⁷

Such a convergence of analysis does not mean that the EU and China support or supported a new treaty for the same reasons. Indeed, China’s primary reason for such a position could be construed as support for the Chinese raw materials policy, as the Svalbard Treaty allows resource exploitation by all signatories within its purview. Supporting a new set of Arctic rules on raw materials exploitation could be a way for China to access new extraction fields and new markets. However, such an assumption could limit EU-China potential cooperation on an Arctic treaty. On the one hand, the EU has no interest in supporting China in its policy of directly accessing raw materials in other countries or regions. On the other hand, the EU, the US and Japan recently brought a complaint to the Dispute Settlement

⁹³ European Parliament, *Resolution on Arctic Governance*, *op.cit.*, p. 2; and European Parliament, *Joint Motion*, *op.cit.*, p. 2.

⁹⁴ European Commission, *The European Union and the Arctic Region*, *op.cit.*, p. 11.

⁹⁵ S. Weber & I. Romanyshyn, “Breaking the ice – The European Union and the Arctic”, *International Journal*, Autumn 2011, p. 855.

⁹⁶ Jia Yu 贾宇, “Beiji diqu lingtu zhuquan he haiyang quanyi zhengduan tanxi” 北极地区领土主权和海洋权益争端探析 [“A preliminary analysis of territorial sovereignty in the Arctic region and the causes of disputed maritime rights and interests”] [author’s translation], *Zhongguo Haiyang Daxue xuebao* 中国海洋大学学报, January 2010, pp. 6-10, cited in D. Curtis Wright, “The Panda Bear Readies to Meet the Polar Bear: China Debates and Formulates Foreign Policy Towards Arctic Affairs and Canada’s Arctic Sovereignty”, *Working Paper*, Canadian Defence & Foreign Affairs Institute, Calgary, March 2011, p. 6.

⁹⁷ D. Wallis, “Introduction”, in D. Wallis & S. Arnold (ed.), *The Spitsbergen Treaty – Multilateral Governance in the Arctic*, *Arctic Papers*, vol. 1, pp. 5-6.

Body of the WTO accusing China of restricting the exportation of rare earths, one of the most valuable groups of raw materials.⁹⁸

Moreover, in contradiction to the European Parliament's proposal, China is supporting the introduction of a new legal regime for the Arctic only as a complement to UNCLOS. It is very careful to recall the sovereign rights of the coastal states: "in accordance with the UNCLOS and other relevant international laws, Arctic states have sovereign rights and jurisdiction in their respective areas in the Arctic region, while non-Arctic states also enjoy rights of scientific research and navigation".⁹⁹

Second, China is building up its relations with Arctic indigenous communities. The EU's relations with these communities are in general very good. The EU includes indigenous issues both in its human rights policies and in its development policies. For instance, in the framework of the European Instrument for Democracy and Human Rights (EIDHR), a project for Arctic and Sub-Arctic indigenous peoples has been established in order to pursue traditional livelihoods in strengthening capacity building in Russia.¹⁰⁰ These relations have even been institutionalised to a certain extent, for instance through the Conference of Parliamentarians of the Arctic Region¹⁰¹ or within the BAEC (Working Group of Indigenous Peoples and The Barents Indigenous Peoples Office).

However, the European Parliament's decision to ban seal products in the European internal market had a serious impact in the EU's relations with indigenous communities,¹⁰² notably those in Canada, although the EU exempted these communities from the ban a year later.¹⁰³ It is worth noting that while Canada is suing

⁹⁸ WTO – Dispute Settlement Body, *Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum*, Dispute DS431, DS432 & DS433, 13 March 2012.

⁹⁹ Ministry of Foreign Affairs of the People's Republic of China, "China's View on Arctic Cooperation", Speech - High North Study Tour, 30 July 2010.

¹⁰⁰ Project EIDHR/2009/227865 – Capacity building, to pursue traditional livelihoods – Russian Federation with 120 000 EUR. Source: European Commission, DG for Maritime Affairs and Fisheries, "The EU and the Arctic Region", *EU – Arctic Indigenous Peoples Representatives meeting*, 25 January 2011, Tromsø.

¹⁰¹ The 9th Conference of Parliamentarians of the Arctic Region was organised at the European Parliament in Brussels on 13-15 September 2010. For more information, see <<http://www.arcticparl.org/>>

¹⁰² *Regulation (EC) No 1007/2009 of the European Parliament and of the Council on Trade in Seal products adopted, op.cit.*

¹⁰³ *Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products published in the Official Journal on 17 August 2010, Official Journal of the European Union, L 216, 17 August 2010, pp. 1-10.*

the EU before the WTO Dispute Settlement Body, Canada concluded in January 2011 a market access agreement with China for the exportation of seal products.¹⁰⁴ This agreement was particularly well perceived by the Canadian indigenous communities, for instance by the Canadian Inuit leader Mary Simon, who stated:

The size of the Chinese market and rapid growth of the Chinese economy makes this particularly good news for Inuit and our interests in expanding our market opportunities for seal skin products. I'm pleased that the Chinese government has seen through the myths and distortions that have been widely disseminated by animal rights extremists in other parts of the world, such as Europe. We want to create a stable and secure future for our seal hunters.¹⁰⁵

This agreement should provide China with indigenous community support in the AC, where the Inuit Circumpolar Council (ICC) has permanent voting rights. Moreover, China is showing a growing interest in the Arctic raw materials which is perfectly illustrated by the November 2011 visit of Karl Ove Berthelsen, Greenland's Minister for Natural Resources, to China where he was received by the Chinese Vice Premier Li Keqiang, most likely to become the next Chinese Prime Minister.¹⁰⁶

Therefore, although the interests of China and the EU are converging to a large extent on Arctic issues, the two partners do not cooperate in order to maximise their chances to become recognised as relevant Arctic players. This is also illustrated by the last visit of the Chinese Prime Minister, Wen Jiabao, to Iceland and Sweden in April 2012. While the Chinese Prime Minister discussed the Chinese application for the AC Observer Status, he did not make the same step towards the EU.¹⁰⁷ Nevertheless, the EU should be proactive in taking a step toward China by trying to develop a dialogue on this convergence of interests. Indeed, as stated by Bailes, "it is widely assumed that China, Japan and South Korea would be among the earliest and most powerful non-Arctic nations to be drawn into the game as and when transit and investment possibilities in the polar region are opened up".¹⁰⁸ China is not the only Asian country potentially interested in the Arctic. This could lead to cooperation between China and Japan, generating the "genuine win-win situation"¹⁰⁹ wished by

¹⁰⁴ Canadian Ministry for Fisheries and Ocean, "Canada Opens New Market for Seal Products in China", *Press Release*, 12 January 2011.

¹⁰⁵ Inuit Tapiriit Kanatami, "Inuit Applaud Seal Trade Agreement Between Canada and China", *Press Release*, 12 January 2011.

¹⁰⁶ "Visit from Greenland to China", *Scandasia.com*, 12 November 2011.

¹⁰⁷ A. Staalesen, "More Chinese pressure on Arctic Council", *Barents Observer*, 17 April 2012.

¹⁰⁸ A.J.K. Bailes, "How the EU could help cool tempers over the Arctic", Community post on *europesworld.org*, 19 June 2009.

¹⁰⁹ Jakobson, *op.cit.*, p. 13.

Jakobson. A successful cooperation between the EU and China could thus open up a new era of cooperation with other East Asian countries in which China would like to be a driver.¹¹⁰

4. Conclusions: towards future cooperation in the Arctic

This paper explored the role the EU's Arctic Policy could play in the European Union's relations with two of its crucial strategic partners: Russia and China. It has shown that the EUAP currently lacks strong leverage to influence Russia over the EU's interests in the NSR. Moreover, while the EU and China clearly share specific interests in the Arctic, the analysis has indicated that the EU does not use the EUAP as a tool to cooperate with China in getting recognition as legitimate actors.

However, the political situation in the Arctic is evolving as fast as its ice is melting. In order to gain credibility as an Arctic player, the EU has to develop the EUAP. To strengthen its position in the Russian case, the EU should develop its competitive advantages such as space capabilities and oil and gas offshore drilling technologies, which could prove its added value in the exploitation of the NSR. The promotion of this added value should be done within the AC as well as within all the sub-regional organisations where the EU has a say, such as the BAEC and the Northern Dimension. This would also leave the EU in a better position to face any potential decision of the AC to exclude all Observers from its framework.

Aside from facing similar difficulties in becoming recognised as relevant Arctic players, the EU and China currently agree to a large extent in terms of their views on the Arctic, which could pave the way for future cooperation. However, neither of the two actors is ready yet to develop a partnership on the issue. It even seems that China is busy learning from the EU's youthful mistakes in Arctic policymaking. Nevertheless, the EU is not in an inextricable position, and making a calculated first step towards cooperation could produce some valuable results. Moreover, the EU should continue to convince Sweden, Finland, and potentially Iceland, to actively promote the role of the EU as an actor when the Chinese authorities lobby them for their support for China's application to the AC.

¹¹⁰ On the idea of China's involvement in the Arctic in order to become a regional driver on Arctic issues in South-East Asia, see M. Humpert & A. Raspotnik, "From 'Great Wall' to 'Great White North': Explaining China's politics in the Arctic", *European Geostrategy*, Long Post, 17 August 2012.

To conclude, this study has also attempted to combat simplistic approaches towards the Arctic. Many observers, both from academia and journalism, emphasise the risk of a 'new Cold War', a new 'gold rush' for resources or a piece of the 'Arctic cake'. While the Russian flag episode partly accounts for this state of affairs, the lack of knowledge has been at the core of these exaggerations. The complexity of the region should compel analysts to be cautious about any knee-jerk conclusions. As a non-Arctic organisation, the EU faced and still faces this 'knowledge challenge' in shaping the EUAP. As stated in June 2010 by Alexander Stubb with regard to the project for an EU Arctic Information Centre, "even though today's world is like a global village, quick and convenient access to accurate information is still a challenge. Lack of knowledge breeds suspicion and uncertainty".¹¹¹ The Commission recognised this weakness at an early stage in seeking to draft a balanced policy protecting the interests of the EU and its member states.

In response to the famous Inuit proverb "you never really know your friends from your enemies until the ice breaks", the EU is committed to demonstrate that it has been, and still is, an authentic friend of the Arctic.

¹¹¹ A. Stubb, former Finnish Minister for Foreign Affairs, "High Time for the High North", Speech, 17 June 2010, Helsinki.

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Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products published in the Official Journal on 17 August 2010, *Official Journal of the European Union*, L216, 17 August 2010, pp. 1-10.

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