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# Preventing the Melting of the Arctic Council: China as a Permanent Observer and What It Means for the Council and the Environment

BRIANNA WODISKE

What will an ice-free Arctic look like, and when it happens, will environmental protection trump economic interests? With the Arctic ice melting at record pace, the world's superpowers are increasingly jockeying for political influence and an economic position in the Arctic.<sup>1</sup> In 2012, the ice in the Arctic melted at a record rate, and some scientists think that the summer ice could disappear within four years.<sup>2</sup> The fact that nations have interests and high hopes in the Arctic is "partly the result of the work of the US Geological Survey which estimated that the Arctic could contain up to 30 percent of the undiscovered gas reserves of the world and 13 percent of undiscovered oil in the world."<sup>3</sup> One author opines that seeking Arctic carbon fuels is "paradoxical" because these fuels have been, and still are melting the northern ice.<sup>4</sup>

Further, "[o]f all Asian countries eyeing the Arctic, it is inevitably China that provokes the most interest and, in some quarters, alarm,"<sup>5</sup> due to the size of the country, its population, and its clear need to secure

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1. Elisabeth Rosenthal, *Race Is On as Ice Melts Reveal Arctic Treasures*, N.Y. TIMES (Sept. 18, 2012), <http://www.nytimes.com/2012/09/19/science/earth/arctic-resources-exposed-by-warming-set-off-competition.html?pagewanted=all&r=0>.

2. Brad Plumer, *When will the Arctic be ice-free in the summer? Maybe four years. Or 40*, WASH. POST (Sept. 20, 2012), <http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/09/20/when-will-the-arctic-be-ice-free-maybe-four-years-or-40>.

3. Rob Huebert, *Cooperation or Conflict in the Arctic?*, in CHANGES IN THE ARCTIC ENVIRONMENT AND THE LAW OF THE SEA 27, 29 (Myron H. Nordquist, John Norton Moore & Thomas H. Heidar eds., 2010).

4. James Graff, *Arctic: The Fight for the Top of the World*, TIME, Oct. 1, 2007, at 28, 34, available at <http://content.time.com/time/magazine/article/0,9171,1663848-2,00.html>.

5. Banyan, *Snow dragons*, ECONOMIST, Sept. 1, 2012, at 46, available at <http://www.economist.com/node/21561891>.

energy supplies and other resources.<sup>6</sup> On May 15, 2013, China sought and was granted permanent observer status to the Arctic Council, the “main intergovernmental forum for the five countries on the Arctic Ocean—America, Canada, Denmark, Norway and Russia—and three others in the Arctic Circle (Finland, Iceland and Sweden).”<sup>7</sup>

This note will argue that China’s acceptance to the Council will promote protection of the environment and provide a voice for other non-Arctic states. Section I will lay out the law governing the Arctic and China’s interest in the region. Section II will analyze the ways the Arctic Council has looked at applications in the past. Section III will look at China’s legal rights under the United Nations Convention of the Law of Seas (UNCLOS). Section IV will make the argument for the acceptance of China’s application for permanent observer status and explain why it is important; and finally, section V will conclude by looking at the implications of China’s acceptance and what role it will play in the Arctic Council’s future decisions.

#### I. THE LAW OF THE SEA CONVENTION AND CHINA’S RACE FOR A SEAT AT THE ARCTIC TABLE

The United Nations Convention of the Law of Seas (UNCLOS) is referred to as a “constitution for the oceans.”<sup>8</sup> UNCLOS established that “[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles . . . .”<sup>9</sup> The convention also gives each coastal State the sovereign rights to natural resources and certain economic activities in its Exclusive Economic Zone (EEZ).<sup>10</sup> The EEZ is the area of sea extending as far as 200 nautical miles from the State’s coast.<sup>11</sup> If a State wishes to establish outer limits of its continental shelf beyond 200 nautical miles from its coast, it must make a submission to the Commission on the Limits of the Continental Shelf (CLCS), whereby the limits shall not exceed 350 nautical miles off the State’s coast or shall not exceed 100 nautical miles from the 2,500

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6. *Id.*

7. *Id.*

8. Michael W. Reed, *An Attempt to Unravel Charting and Publicity Requirements Imposed by UNCLOS Article 16*, in *SELECTED CONTEMPORARY ISSUES IN THE LAW OF THE SEA* 3, 3 (Clive R. Symmons ed., 2010).

9. United Nations Convention on the Law of Sea art. 3, Dec. 10, 1982, 1833 U.N.T.S. 397, available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf) [hereinafter UNCLOS].

10. *Id.* art. 56.

11. *Id.* art. 57.

metre isobath, a line connecting the depth of 2,500 metres.<sup>12</sup> The CLCS's twenty-one members, all of whom are experts in geology, geophysics, and hydrography,<sup>13</sup> make the final and binding recommendations to the coastal state relating to the outer limits of its continental shelf.<sup>14</sup>

“The first comprehensive effort to implement an Arctic-wide regime dealing with the protection of the Arctic environment began with the 1991 Arctic Environmental Protection Strategy (AEPS).”<sup>15</sup> With the eight Arctic states (Canada, Denmark, Finland, Iceland, Norway, Sweden, Russia, and the United States) serving as parties, the AEPS sought to identify Arctic environmental issues to develop plans for managing and protecting the region.<sup>16</sup> The Arctic States later formed the Arctic Council,<sup>17</sup> established by the Ottawa Declaration in 1996.<sup>18</sup> The Council was established so that the Arctic States and the indigenous communities could cooperate and coordinate the oversight of environmental protection programs established under the AEPS.<sup>19</sup> The Council would also oversee and coordinate sustainable development programs and encourage education about the Arctic.<sup>20</sup> One big limitation on the Arctic Council, however, is that the agreement is not established as hard law through a treaty, which means that it is not legally binding.<sup>21</sup>

Aside from the eight member states on the Arctic Council, there are also permanent participants and observers. Observer status is open to non-Arctic states, inter-governmental organizations, inter-parliamentary organizations, as well as non-governmental organizations.<sup>22</sup> There are permanent observers and ad-hoc observers, the difference between the two is that only permanent observers are

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12. *See id.* art. 76.

13. *Id.* Annex II, art. 2(1).

14. *Id.* art. 76(8).

15. Donald R. Rothwell, *The Arctic in International Affairs: Time for a New Regime?*, 15 BROWN J. WORLD AFF. 241, 247 (2008).

16. Arctic Environmental Protection Strategy, June 14, 1991, 30 I.L.M. 1627, 1631-32 [hereinafter AEPS].

17. Rothwell, *supra* note 15, at 241, 247.

18. *See generally* Ottawa Declaration, Sept. 19, 1996, 35 I.L.M. 1387, available at <http://www.arctic-council.org/index.php/en/document-archive/category/5-declarations> [hereinafter Ottawa Declaration].

19. *Id.* art. 1(a), (b).

20. *Id.* art. 1(c), (d).

21. *See generally* U.N. Charter.

22. Ottawa Declaration, *supra* note 18, art. 3.

automatically invited to the Council's meetings.<sup>23</sup> Permanent observers have the right to observe the Council's actions, attend meetings, and contribute primarily through working groups.<sup>24</sup> The Ottawa Declaration establishes the criteria for status as a permanent participant as well as the decision-making procedure for determining that status;<sup>25</sup> the declaration states that "[d]ecisions of the Arctic Council are to be by consensus of the Members"<sup>26</sup> and defines "Member" to include only the eight Arctic states.<sup>27</sup> This decision, made by consensus, can only be undertaken after a "full consultation" with the permanent participants such as the organizations of the Arctic indigenous peoples.<sup>28</sup>

The Ottawa Declaration however, lacks formalistic rules and guidelines in granting observers status. Although permanent observers do not have formal decision-making powers, they have more influence with the Council,<sup>29</sup> so observers are in a better position to be heard with regard to the Council's decisions. Having permanent observer status is crucial for China to take part in the Arctic strategy and to preserve a voice in matters dealing with how the Arctic will be protected or exploited.

#### A. Why China Set Their Sights on the Arctic North

If China fails to implement a viable Arctic strategy, the country could really be left out in the cold. One of China's main interests in the Arctic is the opening of the Northern Sea Route<sup>30</sup> because it would provide China with more direct trade routes.<sup>31</sup> International shipping is important for China's economic development because 46% of its gross domestic product (GDP) is shipping-dependent, which directly affects

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23. Chris Irvine, *China granted permanent observer status at Arctic Council*, TELEGRAPH (May 15, 2013), <http://www.telegraph.co.uk/news/worldnews/asia/china/10060624/China-granted-permanent-observer-status-at-Arctic-Council.html>.

24. ARCTIC COUNCIL, ARCTIC COUNCIL OBSERVER MANUAL FOR SUBSIDIARY BODIES 4, 5, available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting> [hereinafter OBSERVER MANUAL].

25. Ottawa Declaration, *supra* note 18, art. 2.

26. *Id.* art. 7.

27. *Id.* art. 2.

28. *Id.*

29. See OBSERVER MANUAL, *supra* note 24, at 3.

30. See Margaret Blunden, *Geopolitics and the Northern Sea Route*, 88 THE ROYAL INST. OF INT'L AFF. 115, 125 (2012).

31. *Id.*

China's economy as a whole.<sup>32</sup> Most recently, a Chinese icebreaker ship became the first vessel to cross the Arctic Ocean, concluding a three-month mission from the Pacific Ocean to the Atlantic via the Arctic.<sup>33</sup> By completing this mission, China sent a clear message about its interests in the region.

Aside from China's ability to trade more effectively, the Northern Sea route has other geopolitical implications. For one, the desire for peaceful shipping and the use of the Northern Sea route for commerce purposes is directly linked to the strength of a country's navy.<sup>34</sup> Thus, the Northern Sea Route has great economic and geopolitical implications for China.

There are vast amounts of untapped oil and gas as well as natural resources in the Arctic.<sup>35</sup> A total of seventeen surveyed sites found that there could be up to 90 billion barrels of undiscovered oil in the Arctic, which would amount to 13% of the world's undiscovered reserves.<sup>36</sup> Moreover, as to natural gas, it is estimated that there is around 47.3 trillion cubic meters of gas and 44 billion barrels of liquefied petroleum gas in the Arctic.<sup>37</sup> Since China is growing and developing at a rapid pace, these resources would greatly benefit the country. Also, with China as "the world's largest importer of iron ore and copper, and [the] second largest importer of hydrocarbons, it would be surprising if China did not have an interest in the Arctic's mineral and hydrocarbon resources . . . ."<sup>38</sup>

Moreover, research on climate change is important to China.<sup>39</sup>

32. Joseph K. Spears, *China and the Arctic: The Awakening Snow Dragon*, CHINA BRIEF Mar. 18, 2009, available at [http://www.jamestown.org/uploads/media/cb\\_009\\_6\\_01.pdf](http://www.jamestown.org/uploads/media/cb_009_6_01.pdf).

33. *China's Snow Dragon icebreaker makes 85-day voyage to become to country's first vessel to cross Arctic Ocean*, NAT'L POST (Sept. 28, 2012), <http://news.nationalpost.com/2012/09/28/chinas-snow-dragon-icebreaker-makes-85-day-voyage-to-become-countrys-first-vessel-to-cross-arctic-ocean/> [hereinafter *First Vessel to Cross*].

34. A.T. MAHAN, *THE INFLUENCE OF SEA POWER UPON HISTORY, 1660-1783*, 26-29 (Project Gutenberg eBook elec. book ed. 2004), available at [http://www.gutenberg.org/files/13529/13529-h/13529-h.htm#Page\\_26](http://www.gutenberg.org/files/13529/13529-h/13529-h.htm#Page_26).

35. Christoph Siedler, *Taking Stock of North Pole Riches*, SPEIGEL ONLINE (Sept. 7, 2009), <http://www.spiegel.de/international/world/the-arctic-monopoly-taking-stock-of-north-pole-riches-a-648197-druck.html>.

36. *Id.*

37. *Id.*

38. Aldo Chircop, *The Emergence of China as a Polar-Capable State*, 7.1 CAN. NAVAL REV. 9, 12 (2011).

39. See NAT'L CAPITAL BRANCH OF THE CAN. INT'L COUNCIL & MUNK-GORDON ARCTIC SEC. PROGRAM, *Interests and Roles of Non-Arctic States in the Arctic, Background Brief 4* (Oct. 2011), available at [http://www.opencanada.org/wp-content/uploads/2011/11/arctic\\_seminar\\_background\\_brief.pdf](http://www.opencanada.org/wp-content/uploads/2011/11/arctic_seminar_background_brief.pdf) [hereinafter CAPITAL BRANCH].

China has invested heavily in its marine research capabilities and has even established research stations in the Arctic, largely due to rights granted to certain nationals of other countries under the Svalbard Treaty.<sup>40</sup> Annually, China spends around £38.5 million (€49 million) on polar research, which is approximately the same amount of money that South Korea spends and considerably more than how much the United States spends.<sup>41</sup> China's investment in Arctic research sends a clear message to the world that it wants to help and also that it has the means to do so.

Among other things, the icebreaker that made its expedition across the Arctic Ocean earlier this year has:

[A] data processing center and seven laboratories with over 500sq meters of working space, [...] operational equipment, a freezer to store samples, a low temperature cultivation room, a clean laboratory, a marine biological laboratory, a marine chemical laboratory, a geological laboratory, and a CTD winch, a biological winch, a geological laboratory, and a hallow-section device of EK-500 model.<sup>42</sup>

With such strong interests and dedication to the region, China has certainly made its case for its inclusion in the Arctic governance.

## II. THE COLD SHOULDER OR A WARM SEAT AT THE TABLE? THE WAY THE ARCTIC COUNCIL DETERMINED PERMANENT STATUS IN THE PAST

Currently, there is a lack of information on the Arctic Council's process in determining whether or not it will grant observer status to various states throughout the years. However, the postponement of the European Union's status as an observer may provide some insight into the Council's thoughts.<sup>43</sup> First, and perhaps most importantly, allowing the European Union observer status would open up the option to a whole range of other state and non-state actors to apply.<sup>44</sup> Given the

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40. Chircop, *supra* note 38, at 12.

41. MALTE HUMPERT & ANDREAS RASPOTNIK, FROM 'GREAT WALL' TO 'GREAT WHITE NORTH': EXPLAINING CHINA'S POLITICS IN THE ARCTIC 3 (2012), available at <http://europeangeostrategy.ideasoneurope.eu/files/2013/04/Long-Post-2.pdf> [hereinafter HUMPERT & RASPOTNIK].

42. Magdalena Tomasik, *The 5th Chinese National Arctic Research Expedition*, ARCTIC PORTAL, <http://arcticportal.org/features/805-chinare5> (last visited Jan. 2, 2013).

43. *EU application to Arctic Council postponed*, NORTH NORWAY (May 18, 2011), <http://www.northnorway.org/nyheter/847-eu-application-to-arctic-council-postponed> [hereinafter *Application postponed*].

44. Arctic Council, Kiruna Declaration, MM08 (May 15, 2013).

structure of the current Arctic Council, an influx of applicants may not have been something it was ready or even willing to address. This is doubtful though in light of the most recent acceptance of India, Italy, Japan, Singapore, South Korea, and, of course, China as observers.<sup>45</sup>

The European Union decision was, at least partially, due to a dispute between Canada and the European Union over a seal hunting ban and the effects it would have on indigenous groups.<sup>46</sup> Eva Aariak, the premier of Nunavut, Canada's majority Inuit territory, expressed concerns that the European nations are working hard to counteract her indigenous group's way of life.<sup>47</sup> Moreover, "[t]he Arctic Council . . . was formed to promote co-operation and co-ordination and interaction in regards to member states in the Arctic. What [the] European Union is trying to do is not those."<sup>48</sup> Overall, it seems like the Arctic Council's decision to deny the European Union's application was grounded in politics rather than in any set procedure to examine the admittance of new observers. The Arctic Council's decision thus leaves room for a more defined structure.

Alternatively, perhaps the deciding factors in the Council's decision to admit France, Germany, The Netherlands, Poland, Spain, and the UK as observers could provide the answer. The answer, however, is less technical than one might hope. Like with the European Union, the Arctic Council has great discretion and liberty to pick and choose which countries or groups it wants to have more influence in the Arctic.<sup>49</sup> Therefore, in the event a country plans to seek or is seeking to join the tight-knit Arctic family, it should avoid inflaming member states.

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45. Steven Lee Myers, *Arctic Council Adds 6 Nations as Observer States, Including China*, N.Y. TIMES (May 15, 2013), [http://www.nytimes.com/2013/05/16/world/europe/arctic-council-adds-six-members-including-china.html?\\_r=1&](http://www.nytimes.com/2013/05/16/world/europe/arctic-council-adds-six-members-including-china.html?_r=1&).

46. Clive Schofield & Tavis Potts, *Across the Top of the World? Emerging Arctic Navigational Opportunities and Arctic Governance* 2009 CARBON & CLIMATE L. REV. 472, 481; Michael Byers, *Circumpolar Challenges: An Ambitious Agenda for the Arctic Council*, RIDEAU INST. 21 (Sept. 27, 2012), <http://www.rideauinstitute.ca/wp-content/uploads/2012/09/Byers-Arctic-Council-pre-conf-report-web.pdf> [hereinafter *Circumpolar Challenges*]; see also Kiruna Declaration, *supra* note 44, at 48.

47. *Nunavut premier wants EU barred from Arctic Council*, CBC NEWS (Apr. 15, 2009), <http://www.cbc.ca/news/canada/north/story/2009/04/15/arctic-council.html>.

48. *Id.*

49. HUMPERT & RASPOTNIK, *supra* note 41, at 8.

*A. Recent Developments to Admitting Permanent Observers: New Criteria Equals a Better Understanding*

Despite a less than clear history of admitting observers, there are some recent developments. At the Nuuk Ministerial Meeting in 2011, the Council adopted the recommendations of the Senior Arctic Officials (SAOs) on the role and criteria for observers to the Arctic Council.<sup>50</sup> The adopted recommendations state that the Council will take into account the extent to which observers:

- Accept and support the objectives of the Arctic Council defined in the Ottawa declaration.
- Recognize Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic.
- 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 this ocean.
- Respect the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants.
- Have demonstrated a political willingness as well as financial ability to contribute to the work of the Permanent Participants and other Arctic indigenous peoples.
- Have demonstrated their Arctic interests and expertise relevant to the work of the Arctic Council.
- Have demonstrated a concrete interest and ability to support the work of the Arctic Council, including partnerships with member states and Permanent Participants bringing Arctic concerns to global decision making bodies.<sup>51</sup>

This new checklist to admitting observers may prove to be a helpful tool for the Council in justifying either the admittance or the exclusion of new members. Nevertheless, it will be a helpful tool that the rest of the world can finally use as reference when looking at how the Council makes decisions.

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50. Klaus Dodds, *Anticipating the Arctic and the Arctic Council: Pre-emption, Precaution and Preparedness*, THE ARCTIC COUNCIL: ITS PLACE IN THE FUTURE OF ARCTIC GOVERNANCE 1, 248 (Thomas S. Axworthy, Timo Koivurova & Waliul Hasanat eds., 2012).

51. *Id.* at 170.

### III. CHINA, THE ARCTIC, AND THE LEGAL UPHILL BATTLE: EXAMINING CHINA'S INTERESTS IN LIGHT OF THE LAW OF THE SEA

China argued in the past that since the effects of climate change will have an impact at the regional and interregional level, the external actors from the Arctic should be allowed to actively engage in Arctic discussions.<sup>52</sup> To date, China adopted a wait-and-see approach to Arctic developments, wary that active overtures may cause alarm in other countries due to China's size and status as a rising global power.<sup>53</sup> Chinese officials stressed that China's Arctic research activities remain focused on the climatic and environmental consequences of the ice melting in the Arctic.<sup>54</sup> This stance by Chinese officials was likely an attempt to quell any fears held by the Arctic states.

China is aware that although permanent observers do not have voting rights, they do have an automatic invitation to Arctic Council meetings and activities.<sup>55</sup> With this understanding, China hopes to be increasingly influential over the Council's decisions.<sup>56</sup> The Arctic Council's power granted under UNCLOS (that actively governs the Arctic) is problematic for China. As discussed above, under UNCLOS, the Arctic Council was delegated the authority to oversee the Arctic region, the non-Arctic states have little to no role in the council's decision-making process.<sup>57</sup> Therefore, while China will have a difficult time establishing any "legal rights" to the Arctic per se, the country can still help create a stronger regime that is more inclusive and conducive to the times and bring many invaluable tools to the Arctic regime.

There is another less legal obstacle worth noting, as identified by one author. The current international mechanisms are based on "Western" values of freedom, equality, and democracy, creating obvious discrepancies between the basic social system and ideology of China.<sup>58</sup> "As a result, China's participation in international mechanisms is restrained."<sup>59</sup> China should therefore be more open to Western views

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52. See HUMPERT & RASPOTNIK, *supra* note 41, at 8.

53. Linda Jakobson, *China Prepares for an Ice-Free Arctic*, STOCKHOLM INT'L PEACE RESEARCH INST. 2 (Mar. 2010), <http://books.sipri.org/files/insight/SIPRIInsight1002.pdf>.

54. *Id.*

55. Linda Jakobson & Jingchao Peng, *China's Arctic Aspirations*, STOCKHOLM INT'L PEACE RESEARCH INST., at V (Nov. 2012).

56. *Id.*

57. *Id.* at 11-17.

58. David Curtis Wright, *The Dragon Eyes the Top of the World*, 8 NAVAL WAR COLLEGE 19 (2011).

59. *Id.*

and values as well as be more involved to advance their international presence.<sup>60</sup> In sum, while China faces some hurdles in finding a voice in the Arctic north, it seeks ways to justify its position and propose alternatives that could bring more power to the Council.

*A. China's Traditional View of their Place in the Arctic: The Convention on the High Seas and Why it Matters*

China traditionally justified its position in the Arctic by using the Convention on the High Seas (“the Convention”). The Convention establishes that the land beyond internal waters and the territorial sea are free for all mankind.<sup>61</sup> The law states that everything beyond the EEZ and all continental shelves are part of the high seas; accordingly, no one owns these seabeds.<sup>62</sup> China, however, fears that the high seas’ water will shrink if all of the claims by Arctic states to the outer-continental shelf are deemed legal.<sup>63</sup> It is estimated that about 88 percent of the Arctic’s seabed would be controlled by the Arctic states if all of the current and expected continental shelf claims were approved.<sup>64</sup>

Despite the possible setbacks for China if the continental shelf claims are approved, Arctic states must realize that limiting non-Arctic state participation may cause effects on the Arctic states in the future if non-Arctic state cooperation is necessary.<sup>65</sup> More importantly, UNCLOS does not seem to address the issue of outsiders’ abilities to use and exploit unclaimed portions of the Arctic because of the loophole—the Convention.<sup>66</sup> Therefore, China’s traditional view of its place in the Arctic should not go unnoticed because other states might utilize a similar view to assert a presence in the Arctic.

Additionally, it is particularly important for Arctic states and the region’s aboriginal peoples to secure support from the rest of the international community.<sup>67</sup> It is important for the Council to recognize that “some of the Arctic issues are trans-regional, such as climate

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60. *Id.* at 21.

61. Convention on the High Seas art. 4, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200 (entered into force Sept. 30, 1962) [hereinafter Convention on the High Seas].

62. Yekini Abubakri Olakulehin, *The Scramble for Arctic and International Law*, SOCIAL SCIENCE RESEARCH NETWORK 6 (2007).

63. Jakobson & Peng, *supra* note 55.

64. Wright, *supra* note 58, at 34.

65. Aldo Chircop, *Should Observer Participation In Arctic Ocean Governance Be Enhanced*, 7 CAN. NAVAL REV. 3 (2012).

66. *See generally* Convention on the High Seas, *supra* note 61.

67. Jakobson & Peng, *supra* note 55.

change and international shipping, which involve the interests of non-Arctic states.”<sup>68</sup> It seems unfair and unwise to bar interested parties who clearly have a stake in the Arctic as well as in the effects the Arctic will have on the global community from its governance. In the end, the Convention may offer another way for non-Arctic states to get involved and the Council should be careful that the loophole not cost them their relevancy.

Despite claims that China has taken more of a “wait-and-see approach” to the Arctic, China has already begun developing an Arctic strategy.<sup>69</sup> Prior to the May 2013 acceptance, China invested in Arctic research and tried to establish regional, political, and economic partnerships to show their commitment to the region.<sup>70</sup> One example of China’s efforts was marked by a Chinese head of state’s first visit to Denmark.<sup>71</sup> The Chinese prime minister also made trips to Iceland and Sweden for the first time in decades.<sup>72</sup>

China also sought to establish “lucrative” trade deals with some of the Arctic states<sup>73</sup> to secure resources from the countries that border the Arctic with the ability to exploit within their EEZ.<sup>74</sup> Essentially, China found other ways to secure their place in the Arctic in preparation for the possibility that the Council would continue to ignore their pleas for inclusion. The combination of the Convention and China’s ambitious Arctic endeavors makes China an undeniable force to be reckoned with.

The Council could have used UNCLOS to their advantage if it wanted to reject China’s application since the UNCLOS is “vague and general.”<sup>75</sup> This would provide the Council flexibility in articulating a reason for China’s exclusion. In the end, however, it seems that the

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68. Lan Lijun, H.E. Ambassador, Statement at Meeting Between the Swedish Chairmanship of the Arctic Council and Observers (Nov. 6, 2011), *available at* <http://www.arctic-council.org/index.php/en/document-archive/category/392-observer-meeting-stockholm-6-nov-2012?download=1509:china-statement>.

69. *China Prepares for an Ice-Free Arctic*, *supra* note 53, at 2, 9.

70. *See generally China Prepares for an Ice-Free Arctic*, *supra* note 53, at 9-11; Isabella Mroczkowski, *China’s Arctic Powerplay*, DIPLOMAT (Feb. 15, 2012), <http://thediplomat.com/flashpoints-blog/2012/02/15/chinas-arctic-powerplay/> (example of a partnership made with Iceland).

71. Joyce Man, *China vies for seat at council on arctic resources and trade routes*, GLOBAL POST (July 31, 2013), <http://www.globalpost.com/dispatch/news/regions/asia-pacific/china/120629/arctic-council-oil-natural-resources> [hereinafter *China vies for seat at council*].

72. *Id.*

73. Rosenthal, *supra* note 1.

74. Olakulehin, *supra* note 62, at 8.

75. Wright, *supra* note 58, at 19.

Council could not ignore China's efforts any longer.

*B. Treading Carefully: Arctic States Acting Any Differently Than China in the South China Sea?*

China had to be careful because a more assertive approach regarding other countries' sovereignty claims in the Arctic could have undermined China's position on its own rights and sovereignty in contested maritime spaces like the South China Sea.<sup>76</sup> China applies very different approaches to defining a region as a territory in the South China Sea as it does in the Arctic Ocean.<sup>77</sup> Were the Arctic states really acting any differently than China with regard to their claims in the South China Sea?

China asserts claims over some small islands in the South China Sea as well as claims to the surrounding EEZs of those islands.<sup>78</sup> A few islands qualify as falling within China's 12-nautical mile territorial sea, but a very small amount would qualify under UNCLOS as falling within the EEZ or continental shelf.<sup>79</sup> Despite these facts, China has now claimed the entire South China Sea based on self-created rules.<sup>80</sup> Nevertheless, China would likely have been upset if any of the Arctic five did something similar.<sup>81</sup>

Because of the issues surrounding China's claims in the South China Sea, some Chinese officials, when discussing territorial developments in the Arctic region, emphasized China's respect for the sovereign territorial rights of Arctic countries and reassured that China's interests in the region are benign and cooperative in nature.<sup>82</sup> This was an attempt to divert the attention away from their claims in the South

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76. See generally Jane Perlez, *Alarm as China Issues Rules for Disputed Area*, N.Y. TIMES (Dec. 1, 2012), <http://www.nytimes.com/2012/12/02/world/asia/alarm-as-china-issues-rules-for-disputed-sea.html> (describing generally the dispute in the South China Sea); Caitlin Campbell, *China and the Arctic: Objectives and Obstacles*, U.S. CHINA ECON. AND SEC. COMM 8-9 (2012), available at [http://origin.www.uscc.gov/sites/default/files/Research/China-and-the-Arctic\\_Apr2012.pdf](http://origin.www.uscc.gov/sites/default/files/Research/China-and-the-Arctic_Apr2012.pdf).

77. Wright, *supra* note 58, at 37.

78. Maj. Gen. PK Chakravorty, *Disputes in the South China Sea*, 27.4 INDIAN DEFENSE REV. 1 (2012) (discussing the dispute in the South China Sea); see also Jon M. Van Dyke, *Disputes Over Islands and Maritime Boundaries in East Asia*, in MARITIME BOUNDARY DISPUTES, SETTLEMENT PROCESSES, AND THE LAW OF THE SEA 39, 62-65 (Seoung-Yong Hong & Jon M. Van Dyke eds., 2009) (detailing the dispute in the South China Sea).

79. Wright, *supra* note 58, at 37.

80. *Id.* at 38.

81. *Id.*

82. Campbell, *supra* note 76, at 8-9.

China Sea and to encourage Arctic states of their good intentions. China had to avoid showing disfavor or indifference for the Arctic States' claims to territory in the Arctic to secure their future there. Thus, China had to find the perfect balance between showing interest and commitment to the region and avoiding stepping on the toes of any Arctic state in order to avoid drawing attention to their claims in the South China Sea.

#### IV. AN ARGUMENT FOR CHINA'S ACCEPTANCE AS A PERMANENT OBSERVER: BENEFITING FROM THEIR FINANCIAL WEALTH AND SCIENTIFIC RESEARCH

The Arctic Council and the future Canadian chairman faced a tough decision in 2013 when deciding whether to accept China as a permanent observer. Many factors played into the decision, factors which will change the Council's make-up forever. There are some undeniable truths and realities that Arctic states had to face, but China will likely prove to have a positive impact on the Council's make-up and future governance.

##### A. *The Next Arctic Council Chairman: The Canadian Perspective and What Their Role Was in Deciding China's Application*

Since May 2013, Canada has been the new chairman of the Arctic Council, and it was a good time for Canada to voice its desire to foster cooperation in the region.<sup>83</sup> "[W]orking on building common ground with China and taking its concerns and interests into account could prove profitable inasmuch as China could, in turn, consider Canada's specific interests in the Arctic."<sup>84</sup> Canadian interests overlap with China's in "areas of research, environmental regulation of maritime shipping, interpretation of maritime treaties, and the need to cooperate and engage in multilateral mechanisms to reach an international compromise on these issues."<sup>85</sup>

Moreover, Canada and the United States are currently entangled in a dispute over the Beaufort Sea maritime boundary, an area of

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83. The Canadian Press, *Canada focuses on development at Arctic Council: experts fear wrong approach*, CBC NEWS (Dec. 3, 2012), <http://www.cbc.ca/news/canada/north/story/2012/12/03/north-canada-arctic-council.html>; see also Frederic Lasserre, *China and the Arctic: Threat or Cooperation Potential for Canada?*, CAN. INT'L COUNCIL (2010) (abstract).

84. *Id.* at 11.

85. *Id.*

approximately six thousand square nautical miles of sea area above rich oil and natural-gas resources.<sup>86</sup> With China on Canada's side, Canada could counter the United States' refusal to recognize the Canadian claim over the Northwest Passage.<sup>87</sup> This could facilitate a dialogue between nations about shipping rules and guidelines for the Arctic.<sup>88</sup> Thus, China could really prove to be more of a resource than a threat to Canada.<sup>89</sup>

*B. A Chilling Truth: What China Brings to the Table and Why the Arctic Council Needs Them*

One important contribution China offers is scientific research capabilities. This is important because "cooperation amongst scientists is one of the best ways to reduce the high costs of arctic research."<sup>90</sup> China brings the following to the table: a research station – Huang He Zhan – in Svalbard, Norway, which is well inside the Arctic Ocean in the Barents Sea; three Arctic research expeditions planned over the next three to four years; and intentions to build a new 8000 ton ice breaker by 2013 in addition to its current vessel, the Xuelong-Snow Dragon, to cruise the Arctic region to conduct various expeditions.<sup>91</sup> It is abundantly clear that China is willing to spend the money and invest in researching the Arctic region.

A Danish diplomat and economist who did a recent study on the rise of Asia said that even though Asia is "still in the catch-up phase with regard to technology, innovation, invention and science," it still has a lot that can help foster growth.<sup>92</sup> He also noted that Asia is in a unique position because it is not worried about where to get money, but rather how to spend the money available; "[n]ot only will Asia be the world's creditor, but Asia will take over a large part of global economic activity. . . . Most of the new multinationals entering the list of the

86. Wright, *supra* note 58, at 30.

87. *Id.* at 37.

88. *Id.*

89. *Id.*

90. Rob Huebert, *Canada and China in the Arctic: A Work in Progress*, CANADIAN POLAR COMM., available at <http://www.polarcom.gc.ca/eng/content/meridian-newsletter-fallwinter-2011-springsummer-2012-0> (last modified Jan. 3, 2013).

91. Muhammad Makki, *China's Quest for Arctic Access and Resources*, J. OF ENERGY SECURITY 19, (Apr. 2012), [http://www.ensec.org/index.php?option=com\\_content&view=article&id=351:chinas-quest-for-arctic-access-aamp-resources&catid=123:content&Itemid=389](http://www.ensec.org/index.php?option=com_content&view=article&id=351:chinas-quest-for-arctic-access-aamp-resources&catid=123:content&Itemid=389).

92. Dodds, *supra* note 50, at 229.

world's largest and most important enterprises will grow out of Asia."<sup>93</sup>

This study proves that China will have the capital to invest in vital and important projects in the Arctic. As the ice melts more rapidly each year, the need for investing in Arctic research becomes even more pressing. The world has yet to see the effects of climate change and the Council would be wise to view China as an ally in fighting to protect the people across the globe as well as finding sustainable solutions to Arctic exploration and development.

China should not worry too much about contesting claims by Arctic countries to extend their EEZs because offshore oil and gas is expensive to find, extract, and transport, especially in an extremely remote and often inhospitable region.<sup>94</sup> Moreover, to be able to access the Arctic's resources, the Arctic countries will need the strong Chinese markets as well as their massive amounts of capital.<sup>95</sup> The Arctic states were wise to warm to the undeniable truth that China has the wealth and tools necessary to make the Council succeed.

Currently, all of the Council's funding comes from voluntary contributions by individual Arctic states.<sup>96</sup> Under current practice, states propose projects or identify working groups they wish to support, and these governments then implement and fund them."<sup>97</sup> There are problems with this voluntary method. Not all states give money to all projects, and some states give more than others.<sup>98</sup> Therefore, under this type of funding system, the more funding the merrier. China would be able to pick projects it wants to pursue and could fund part, if not all, of the research. This is extremely beneficial for such a haphazardly funded organization.

China is also extremely concerned with understanding the current and the future effects of the changing environment on the country's continent as well as on its domestic agriculture and economic development.<sup>99</sup> The research station in Svalbard has been in operation since 2004, and since 2009, Norway and China have had formal dialogues regarding Arctic issues, identifying climate and

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93. *Id.*

94. *Circumpolar Challenges*, *supra* note 46, at 22.

95. *Id.*

96. Evan T. Bloom, *Establishment of the Arctic Council*, 93 AM. J. INT'L L. 712, 718 (1999).

97. *Id.*

98. Bloom, *supra* note 96, at 719.

99. *Circumpolar Challenges*, *supra* note 46, at 22.

environmental issues as areas of mutual interest.<sup>100</sup> By engaging China, who is largely responsible for global emissions, the Council can make the country more conscious of Arctic issues and help promote negotiation and implementation of agreements to protect the Arctic environment.<sup>101</sup>

With nearly 20 percent of the world's population,<sup>102</sup> falling slightly below 1.5 billion,<sup>103</sup> the effects of the melting ice will play a crucial role in protecting the Chinese people and their livelihood. The Council hopes that the more China researches and the more time China spends in the Arctic, it will have fewer motives for a potential resource grab. Ultimately, the benefits outweigh the potential costs of allowing China a seat at the Arctic table.

Furthermore, the main criterion stipulated in the rules regarding admitting observers is that the non-Arctic states or other organizations must be able to contribute to the Council's work.<sup>104</sup> After looking at China's efforts and expenditures in the Arctic, it is clear that it can contribute to the Council's work. If, however, the Council finds any activities at odds with the Council's Declaration, it can suspend admission.<sup>105</sup>

China has a lot of scientific capital; for instance, incorporating their scientists into the Council's Working Groups ("WGs") and Task Forces ("TFs") will be an invaluable tool in advancing polar research.<sup>106</sup> "The chief idea behind this arrangement is that the WGs should operate as international research institutions, taking into account the quality of the projects and researchers' backgrounds rather than as an extension of political organs."<sup>107</sup> The addition of the Chinese scientists will strengthen the WGs and TFs and will likely produce new studies. This will ultimately help protect the region and its resources more effectively.

As discussed earlier, because of how funding works, if China finds

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100. Campbell, *supra* note 76, at 4.

101. Terry Fenge, *Canada and the Arctic Council: Our turn to conduct the Arctic orchestra*, POL'Y OPTIONS (Apr. 2012), <http://archive.irpp.org/po/archive/apr12/fenge.pdf>.

102. Wright, *supra* note 58, at 7.

103. Malcolm Moore, *China's ageing population: 100-year waiting list for Beijing nursing home*, TELEGRAPH (Jan. 16, 2013), <http://www.telegraph.co.uk/news/worldnews/asia/china/9805834/Chinas-ageing-population-100-year-waiting-list-for-Beijing-nursing-home.html>.

104. Dodds, *supra* note 50, at 163-64.

105. *Id.* at 164.

106. *Id.* at 289.

107. *Id.* at 289-90.

a certain area of research it wants to pursue and decides to lead the project, it will likely fund most, if not all, of any given project.<sup>108</sup> This would be extremely helpful in achieving the Council's overall goals. Moreover, without any funding, the voluntary funding cannot "suffice in the future if the Council is to fully reflect an expanded mandate, carry out its evolving agenda, implement a developing, expansive communication and outreach program, and generally be more strategic in outlook and operation."<sup>109</sup> The Council has a lot on its plate in the coming years, and help from a wealthy nation like China will ultimately help it achieve its goals.

### C. Side Effects: Other Benefits of Having China at the Arctic Table

The acceptance of China to the Council will help relationships among Arctic states improve, and may also foster bilateral trade and investment relations.<sup>110</sup> The economic possibilities could also trickle down to other states and indigenous groups in the region. Similarly, as a major trading nation, China can bring the cost of goods down with the possibility of opening a shorter shipping route across the top of the world.<sup>111</sup> It is estimated that the opening of the Northern Sea Route, the route across the Arctic, could save China between \$60 billion to \$120 billion dollars annually.<sup>112</sup> Of course, this could bring the cost of Chinese goods down for states that purchase from them. Additionally, in choosing to admit China and potentially opening the door for more permanent observers, the Council is broadening awareness about Arctic issues and their goals.<sup>113</sup> It is likely that there are other factors that play into the Council's decision.

China is also the world's largest fishing nation, and although Arctic states can regulate fishing within 200 nautical miles of their shores, they cannot do so on the High Seas.<sup>114</sup> The regulation for areas beyond the 200 nautical miles is only facilitated through regional

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108. Bloom, *supra* note 96, at 718.

109. Fenge, *supra* note 101, at 66.

110. Lasserre, *supra* note 83, at 15.

111. Spears, *supra* note 32.

112. Michael Byers, *The dragon looks north*, AL JAZEERA, <http://www.aljazeera.com/indepth/opinion/2011/12/20111226145144638282.html> (last modified Dec. 28, 2011).

113. Oran R. Young, *Whither the Arctic? Conflict or Cooperation in the Circumpolar North*, 45 POLAR RECORD 73 (2009) (discussing the possibility of an Arctic Treaty) [hereinafter *Whither the Arctic?*].

114. *The dragon looks north*, *supra* note 112.

fishery organizations.<sup>115</sup> The United States would like to create a regional fishery organization for the Arctic Ocean before commercial fishing begins there, and China might prove helpful in efforts to do so.<sup>116</sup> China already works well with several regional fisheries organizations and in return, China is provided fixed quotas of fish stock.<sup>117</sup> Therefore, China provides valuable contacts, relationships and knowledge about creating a strong organization.

Fortunately, the aforementioned benefits of including China in the Arctic Council as a permanent observer were not overlooked or underestimated because the Council admitted China as an observer on May 15, 2013.<sup>118</sup> This is a step in the right direction because countries such as China are the ones that the Council needs on their side, working vigorously and tirelessly to meet the challenges of today. Postponing China's application would have only delayed the inevitable fact that the Council needs to admit new members in order to strengthen their power and international authority. China is, therefore, a gateway into a new way of Arctic governance.

#### V. HOW WILL THE ARCTIC COUNCIL ADDRESS FUTURE ARCTIC APPLICATIONS?: THE IMPLICATIONS OF ALLOWING CHINA A SEAT AT THE TABLE

With China as a new permanent observer, how should the Arctic Council address future applications and pleas for admission? The Council should be more open-minded to a new configuration of the Council and should use China's acceptance as a way to build a stronger Arctic Council. Oran Young puts it best, "what is needed to maintain the Arctic as a zone of peace is a more effective governance system for the region."<sup>119</sup> China provides the perfect opportunity for this shift.

Also, the Council frustrates their own purpose by refusing to let non-Arctic states be a party to Arctic discussions and governance. To advance its mission, the Council needs to garner support and gain international recognition and authority, not upset non-Arctic actors. The most effective way to achieve that is to find a place for various interested parties and work together to find solutions to Arctic concerns.

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115. *Id.*

116. *Id.*

117. *Id.*

118. Kiruna Declaration, *supra* note 44, at 6.

119. Oran R. Young, *Review Article The Future of the Arctic: Cauldron of Conflict or Zone of Peace?* 87 INT'L AFF. 192 (2011).

Therefore, if the Council had decided to refuse China's application, it would not only have lost its wealth and research capabilities, but may also have suffered from severe political ramifications.<sup>120</sup>

History suggests that China does not take rejection very well or lightly, so it is unknown how this decision would have played into their thought process and subsequent relations elsewhere around the world.<sup>121</sup>

Norwegian Arctic policy expert Lunde said he was "a bit afraid, for instance, that if China is continuously denied access, it will be more difficult for the responsible people in leadership to discipline all the players that might become more irresponsible in their attitudes towards Arctic cooperation."<sup>122</sup> In essence, China's application could have affected Arctic relations as well as other international efforts.

China has contributed greatly by stepping up and getting involved in the Arctic. "China has spoken for the global commons in ways that no other major state has done in recent times."<sup>123</sup> Essentially, China has become an advocate for the area within the High Seas as remaining part of common heritage of mankind and therefore, is acting as a guardian for the interests of developing countries who may not yet have the resources to contribute to the Arctic.<sup>124</sup> Admitting China as a permanent observer will cause a ripple affect throughout developing countries and will likely give them similar access to the Arctic when they are prepared to become more involved.

#### *A. Avoiding an Arctic Council Meltdown: The Future and Strengthening of the Council*

If the Arctic Council can garner more international cooperation, as it did through admitting China, then it will open the door to sharing research and knowledge among many different groups and state actors.<sup>125</sup> This could prove to be beneficial in finding a more sustainable solution to Arctic governance, since more people would be working towards the solution. Moreover, China's presence and participation as an observer will strengthen the "legitimacy, authority and effectiveness

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120. Levon Sevunts, *Canada's delicate balancing act at Arctic Council: 'Yes' to China, 'No' to EU*, EYE ON THE ARCTIC (Jan. 25, 2013), <http://eyeontheartic.rcinet.ca/canadas-delicate-balancing-act-at-arctic-council-yes-to-china-no-to-eu/?lang=en>.

121. *Id.*

122. *Id.*

123. *The Emergence of China as a Polar-Capable State*, *supra* note 38, at 14.

124. *Id.*

125. Dodds, *supra* note 50, at 244.

of the Arctic Council.”<sup>126</sup>

There has also been much discussion about whether the Arctic Council is and will be effective, regardless of attempts to strengthen the regime. Some argue for an Arctic Treaty similar to the Antarctic Treaty because it would create a “hard law” regime.<sup>127</sup> The Antarctic Treaty is legally binding and has protected the Antarctic since the mid-twentieth century.<sup>128</sup> The main goal was to promote research and avoid a land grab by states.<sup>129</sup> This type of treaty, if implemented in the Arctic, might force the “coastal States to stop and think about whether they really want to despoil one of the last pristine places on the planet.”<sup>130</sup>

However, others argue that an Arctic Treaty is not the most effective way to address Arctic issues.<sup>131</sup> First, the Arctic is very different from the Antarctic because Antarctica is surrounded by land, as opposed to the Arctic, which is surrounded by water.<sup>132</sup> Also, people live on the Arctic.<sup>133</sup> Furthermore, the US and Russia would never agree. Accordingly, strengthening the current regime would be much more effective.<sup>134</sup> Thus, for the time being, it may be best to work with what we have rather than undertake a completely new endeavor considering the difference in the regions.

“Geographically, the sheer distance of the Antarctic from other countries diffuses the interests of any one nation, while the Arctic Ocean directly abuts the territory of individual nations and the Arctic region includes territories of several sovereign nations.”<sup>135</sup> Also, the Arctic is different from the Antarctic because it not only deals with state actors, but indigenous groups and other non-states actors.<sup>136</sup> So, the Arctic faces different challenges than that of Antarctica, not only because surrounding states have more of a national interest in protecting

126. *Id.*

127. Brent Carpenter, *Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and How an Arctic Treaty Might Stop a New Cold War*, 39 ENVTL. L. 215, 251 (2009); see also Erika Lennon, *A Tale of Two Poles: A Comparative Look at the Legal Regimes in the Arctic and Antarctic*, 8 SUSTAINABLE DEV. L. & POL'Y 32, 35 (2008); *Whither the Arctic?*, *supra* note 113.

128. Lennon, *supra* note 127, at 32.

129. *Id.* at 33.

130. Carpenter, *supra* note 127, at 251.

131. *Whither the Arctic?*, *supra* note 113, at 75.

132. Ioana Georgescu, *Arctic Geopolitics-Time for a New Regime*, INSTITUT EUROPEEN DES HAUTES ETUDES INTERNATIONALES 13 (2010).

133. *Id.*

134. See Georgescu, *supra* note 132, at 82.

135. Lennon, *supra* note 127, at 35.

136. *Whither the Arctic?*, *supra* note 113, at 76.

their piece of the Arctic pie, but because of the important role that non-states actors play.<sup>137</sup> These are realities that must be acknowledged and addressed accordingly.

Authors Liu and Yang gave four reasons for expressing similar pessimism as described above: first, Antarctica is a continent and the only piece of land in the world without a sovereign whereas in the Arctic, there are several states with territorial sovereignty, exclusive economic zones, and continental shelves; second, article 234 of UNCLOS already addresses ice-covered sea areas, and UNCLOS is widely applied in the Arctic region; third, many bilateral and multilateral agreements pertaining to the Arctic have already been concluded under the influence of UNCLOS, including AEPS; and fourth, the Antarctic is a non-militarized region whereas nuclear weapons are present in the Arctic, the most militarized region in the world.<sup>138</sup>

However, to strengthen the Arctic Council, the Arctic Eight must sacrifice some control over their natural resources<sup>139</sup> because “in considering the long-term benefits from an intact Arctic environment, the costs of sacrificing certain economic resources are minor.”<sup>140</sup> The Seventh Ministerial Meeting of the Arctic Council in 2011 was a step in the right direction because the Council proposed a number of concrete measures with regard to climate change and environmental protection; the Council also adopted guidelines regarding the role and criteria for admitting observers, as discussed previously.<sup>141</sup> This demonstrates the Council’s commitment to using its power more effectively and also signals the Council’s willingness to modify existing guidelines and openness to change.

One way the Council could strengthen their internal structure would be to move away from its current mandate of environmental protection and sustainable development to instead focus on a greater number of issues such as fisheries and marine mammals as well as political and security-related support.<sup>142</sup> “This could allow a better

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137. *Id.*

138. Wright, *supra* note 58, at 27.

139. *Melting Boundaries: Rethinking Arctic Governance*, (2011), THE SCHOOL OF INT’L STUDIES U. OF WASH. 47 (2011), available at <https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/16482/Task%20Force%20A%202011.pdf?sequence=1>.

140. *Id.*

141. Dodds, *supra* note 50, at 248.

142. *Id.*

division of labour between the Working groups.”<sup>143</sup> Again, this would all help increase the Council’s legitimacy and authority. Furthermore, there should be a person responsible for media relations to both increase the Council’s visibility and educate the public about Arctic issues.<sup>144</sup>

Several reports have already recommended a number of procedural improvements that Canada should pursue during its time as Chairman.<sup>145</sup> Suggested improvements include: developing funding arrangements to promote the fuller participation of indigenous peoples; holding Arctic Council ministerial meetings every year instead of every other year; developing a common Canada-US agenda for the two countries’ successive chairmanships (2013-2017); and encouraging the Arctic Council to recognize the special roles played by regional, state, and territorial governments in Arctic governance.<sup>146</sup>

The hurdle to achieving a restructured and strengthened Arctic Council will be the Arctic states themselves,<sup>147</sup> since each state wants to pursue their own national interests above those of the global community.<sup>148</sup> The acceptance of China and other states<sup>149</sup> however, signals an effort by the Council to be more cooperative and inclusive, which in turn may have averted a catastrophic Arctic Council meltdown.

### *B. Leading Up to China’s Acceptance*

Prior to the decision on May 15, 2013, the Canadian government noted that although the “current informal nature [of the Arctic Circle] . . . has served Canada well for many years . . . the growing demands on the organization may require changes to make it more robust.”<sup>150</sup> The United States also has a similar view whereby it would allow for updating aspects of the Council.<sup>151</sup> The Scandinavian countries are the most receptive to opening up the Council to new members and observers.<sup>152</sup> The aforementioned evidence is important because it

143. *Id.*

144. *Id.* at 270.

145. *Circumpolar Challenges*, *supra* note 46, at 1.

146. *Id.*

147. Dodds, *supra* note 50, at 271.

148. *Id.*

149. Myers, *supra* note 45.

150. Government of Canada, Statement on Canada’s Arctic Foreign Policy: Exercising Sovereignty and Promoting Canada’s Northern Strategy Abroad (2010), *available at* [http://www.international.gc.ca/arctic-arctique/assets/pdfs/canada\\_arctic\\_foreign\\_policy-eng.pdf](http://www.international.gc.ca/arctic-arctique/assets/pdfs/canada_arctic_foreign_policy-eng.pdf).

151. Dodds, *supra* note 50, at 273.

152. Sevunts, *supra* note 120.

signals that some Arctic members are open to change and provides a glimmer of optimism.

Now you may be wondering what was the actual likelihood of the Arctic Council accepting China as a permanent observer. The director of the department for international and strategic studies at the China Institute of International Studies thought that China had a “50-50 chance” of becoming a permanent observer.<sup>153</sup> In reality, the decision would be determined by a multitude of factors starting in the capitals of other Arctic powers, “notably Norway, Sweden and Russia.”<sup>154</sup>

Sweden wanted the China application decided by May 2013.<sup>155</sup> Norway clashed “with China over the awarding of the Nobel Peace Prize to Chinese dissident Liu Xiabo,” and Russia had not shown that it was warming to the idea of China joining the Council as a permanent observer.<sup>156</sup>

It has been said, however, that China “wooed the Arctic Council” at the January 22, 2013 Conference of the Arctic in Tromsø, Norway.<sup>157</sup> On January 21, Zhao Jun, a Chinese ambassador to Norway, said in a keynote speech that, “China believes the Arctic Council is the most important international forum for discussions about environmental protection and sustainable development in the Arctic.”<sup>158</sup> This likely reassured the Arctic Council who was visibly concerned about opening up the Council to more members. It was important that the Council see new members, like China, as assets rather than enemies.<sup>159</sup> China provided the perfect opportunity to look towards a newer and more formidable Arctic Council that could more effectively govern the treasures of the Arctic.

Though stated in the context of the Cold War, Gorbachev’s famous Murmansk Speech of 1987 still applies to the modern Arctic landscape:

The Arctic is not only the Arctic Ocean, but also the northern tips of three continents: Europe, Asia and America. It is the

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153. *China vies for seat at council, supra* note 71.

154. Brian Flemming, *China’s Arctic Council bid will test us*, STAR PHOENIX (Sept. 14, 2012), <http://www2.canada.com/saskatoonstarphoenix/news/forum/story.html?id=d4ff8ae4-8c24-4763-88ee-e1114e60e55a>.

155. *Id.* at 2.

156. *Id.*

157. *China, Korea, EU woo Arctic Council at Norway conference*, NUNATSIAQ NEWS (Jan. 22, 2013), [http://www.nunatsiaqonline.ca/stories/article/65674china\\_korea\\_eu\\_woo\\_arctic\\_council\\_at\\_norway\\_conference/](http://www.nunatsiaqonline.ca/stories/article/65674china_korea_eu_woo_arctic_council_at_norway_conference/).

158. *Id.*

159. Flemming, *supra* note 154, at 2.

place where Euroasian, North American and Asian Pacific regions meet, where frontiers come close to one another and the interests of the states belonging to mutually opposed military blocs and nonaligned ones cross.<sup>160</sup>

The community and interrelationship of the interests of our entire world is felt in the northern part of the globe.<sup>161</sup>

So even at this point in history, Gorbachev was correct about how interconnected the Arctic is with many different continents and with many divergent views.

### *C. The Current State of Affairs*

As mentioned previously, during the May 15, 2013 ministerial meeting in Kiruna, the eight Arctic Council members granted permanent observer status to China, India, Japan, South Korea, Singapore and Italy.<sup>162</sup> However, the European Union will not become a permanent observer until it has resolved some final disagreements with Canada concerning the import of seal products.<sup>163</sup> Despite the possibility that the European Union could decide to intentionally frustrate the Council's goals because it is upset that it was not granted status, it will probably just continue to seek a resolution with regard to the seal product ban since it is so close to gaining the acceptance it so desperately seeks. Additionally, the Council agreed on a new manual that will govern the activities and roles of the observers.<sup>164</sup> The European Union will not be able to directly raise issues but will have to bring them forward through one of the eight core members.<sup>165</sup> This manual was important for the eight Arctic states in reasserting their role, and stood as a reminder to the new observers of their place at the Arctic table.

Sweden's foreign minister, Carl Bildt, affirmed the idea that the addition of the observers strengthened the Council, stating that, "[b]y

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160. Mikhail Gorbachev, Gen. Sec'y of the Communist Party of the Soviet Union, Speech in Murmansk at the Ceremonial Meeting on the Occasion of the Presentation of the Order of Lenin and the Gold Star to the City of Murmansk (Oct. 2, 1987).

161. *Id.*

162. Myers, *supra* note 45, at 1.

163. Clive Schofield & Tavis Potts, *Across the Top of the World? Emerging Arctic Navigational Opportunities and Arctic Governance*, 4 CARBON & CLIMATE L. REV. 472, 481 (2009).

164. *See generally* OBSERVER MANUAL, *supra* note 24.

165. *Id.* at 5.

being observer[s], these organizations and states, they accept the principles and the sovereignty of the Arctic Council on Arctic issues.”<sup>166</sup> Additionally, Mr. Carl Bildt thinks that the expansion further strengthens the Council’s international clout and influence.<sup>167</sup>

## VI. CONCLUSION

There must exist a perfect balance in the Arctic between exploring new opportunities and addressing environmental concerns. This is especially true because:

The Arctic is the world’s last continuous and unexploited region, being highly unique in terms of its landscape, having an increased proportion of continental shelves, a low level of sunlight, extremely low water temperatures, presence of permanent sea-ice cover, and its indigenous peoples and ecosystems, as well as its vulnerability to climate change.<sup>168</sup>

China offers the Council a shared interest in learning about and finding ways to protect this precious environment. It also has the wealth, scientific tools, and capabilities to assist the Council in achieving these environmental goals. Those same tools and capabilities can also be used to discover ways or programs for sustainable development in the region. Moreover, it will be better for the Council to have big international players like China on their side in order to gain international influence and to avoid losing their influence altogether.

Further, “[i]n an increasingly interdependent world, in both the economic and the ecological senses of the term, the idea of international cooperation is not just an ideal but an imperative.”<sup>169</sup> The problems that face the Arctic are not for the Arctic states to handle alone. The effects and implications of a warming Arctic and the governance of the region will reach to all corners of the globe, and the Council should not miss the opportunity to get more hands and heads in the game.

Overall, the decision to admit China was a complicated one with many political and economic effects. There are passionate advocates on both sides and the decision was ultimately decided by a privileged few. Aside from the Council now having China on their side, it will face many legal questions as it moves forward in trying to pursue building a stronger and more formidable system to govern the Arctic. The

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166. Myers, *supra* note 45, at 1.

167. *Id.* at 2.

168. Georgescu, *supra* note 132, at 19.

169. SANJAY CHATURVEDI, *THE POLAR REGIONS: A POLITICAL GEOGRAPHY* 37 (1996).

decisions made by the Arctic Council will have national and international effects because the unknown effects that this melting region will pose to states and to people. Hopefully, China can start the discussion and encourage the debate about the future of the Arctic. China will inevitably play an important role in international affairs across the globe as its population grows in numbers, power, and wealth. The Council was wise in recognizing the ability to create a mutually beneficial relationship with this rising super power.