An Introduction to the 21st Century Maritime Silk Road from the Perspective of the Law of the Sea

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SUMMARY: 1. Introduction. – 2. An Overview of the Maritime Sovereignty Disputes in the South China Sea. – 3. Challenges to the Freedom of the Seas along the Maritime Silk Road. – 4. Some preliminary remarks on the new Chinese Coast Guard Law. – 5. Chinese concerns over the Straits of Malacca and Singapore. – 6. Final Remarks.

1. Introduction

The 21st Century Maritime Silk Road initiative was proposed by Chinese President Xi Jinping during a speech to the Indonesian Parliament in October 2013[1], but only in March 2015 did the National Development and Reform Commission of the People's Republic of China release a document titled "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road",[2] which offers the framework of principles and values which form the foundation for developing the initiative. The Belt and Road Initiative (BRI) was completed by two other documents both released in 2017: "Vision and Actions on Energy Cooperation in Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road";[3] "Vision for Maritime Cooperation under the Belt and Road Initiative".[4]

This new Chinese global approach to oceans is an unprecedented development in its national history since the voyages of Admiral Zheng He to the coasts of East Africa and Arabia between 1405 and 1433, during the early Ming Dynasty. This maritime policy would not be repeated until 2008, when the People's Liberation Army Navy (PLAN) deployed a task force to participate in international antipiracy operations off the coast of Somalia.[5] Finally, in 2015, the Information Office of the State Council published a new white paper on "China's Military strategy" declaring "overseas interests [had become] an imminent issue".[6]

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[1] Speech by Chinese President Xi Jinping to Indonesian Parliament (2 October 2013, Jakarta, Indonesia), <http://www.asean-china-center.org/english/2013-10/03/c_133062675.htm>.

[2] See the full text on <https://eng.yidaiyilu.gov.cn/qwyw/qwfb/1084.htm>.

[3] See the full text on <https://eng.yidaiyilu.gov.cn/zchj/qwfb/13754.htm>.

[4] See the full text on <http://www.xinhuanet.com//english/2017-06/20/c_136380414.htm>.

[5] A. Sheldon-Duplaix, 'See Beyond the China Seas. Will China Become a Global "Sea Power"?' (2016) China Perspectives, <https://journals.openedition.org/chinaperspectives/7041#quotation>.

[6] State Council Information Office of the People's Republic of China, 'China's Military Strategy (May 2015)', China Daily, 26 May 2015, <www.chinadaily.com.cn/china/2015-05/26/content_20820628.htm>. The paper underlined that: "With the growth of China's national interests (*Zhongguo de guojia liyi* 中国的国家利益), its national security is more vulnerable to international and regional turmoil, terrorism, piracy, serious natural disasters, and epidemics, and

The new Chinese policy is justified by the impressive economic development this country has achieved in recent decades. Firstly, China's ocean economy has been growing rapidly, in line with its national GDP. Then, in 2013, China surpassed the U.S. becoming the world's foremost trading nation. Moreover, it is one of the leading shipbuilding countries in the world. Finally, over 90% of the nation's imported energy supplement currently relies on marine transportation. For all these reasons, China's maritime interests have become global.

The aim of this paper is to analyse the framework of the 21st Maritime Silk Road under the lens of the Law of the Sea.

According to the "Vision for Maritime Cooperation under the Belt and Road Initiative", the principal aim of this initiative is to encourage countries along the Road "to align their strategies, further all-around and pragmatic cooperation, and to jointly build unobstructed, safe and efficient maritime transport channels". This aim should be reached by deepening the cooperation in the following four areas: green development, ocean-based prosperity, maritime security, innovative growth and collaborative governance.

Despite the well-known fact that the Law of the Sea does not define a legal regime for establishing and governing the Sea Lines of Communication (SLC), but many of the customary and conventional international norms offers a legal regime to manage some fundamental aspects necessary to ensure the operation of a maritime route.

The new Maritime Silk Road is a sea line connecting Asia with Africa and, through the Bāb el-Mandeb Strait and Suez Canal, with Europe. The Indo-Pacific segment of the route is the longest and, due to several situations, also the most problematic, particularly in the South China Sea. The goal of this paper is to examine some of the most relevant issues concerning the South China Sea, offering a comparative analysis between the Chinese laws and regulations[7] and the relevant norms of the Law of the Sea, which provide guidance on various maritime matters.

2. An Overview of the Maritime Sovereignty Disputes in the South China Sea

the security of overseas interests concerning energy and resources, strategic sea lines of communication [SLOCs], as well as institutions, personnel, and assets abroad, has become an imminent issue".

[7] The relevant Chinese laws and regulations that are object of reference in this paper are: *Declaration of the Government of the People's Republic of China on China's territorial sea* of 4 September 1958, *Regulations Governing Non-Military Foreign Vessels Passing Through the Qiongzhou (Chiungchow) Strait*, *Coast Guard Law of the People's Republic of China* of 8 June 1964; *Law on the Territorial Sea and the Contiguous Zone* of 25 February 1992, *Declaration of the Government of the People's Republic of China on the baselines of the territorial sea* of 15 May 1996, *Exclusive Economic Zone and the Continental Shelf Act* of 26 June 1998, *Law on Maritime Traffic Safety* of 2 September 1983 (amended on 7 November 2016; revised on 29 April 2021), and *Coast Guard Law of the People's Republic of China* of 22 January 2021.

The main source of stress in the Indo-Pacific segment of the Maritime Silk Road is the China's "Nine-dash Line" claim in the South China Sea.[8]

The South China Sea, with an area of 648,000 nm^2, is surrounded by seven countries or territorial entities: Brunei, the People's Republic of China, Indonesia, Malaysia, the Philippines, Taiwan and Vietnam.

According to Article 1 of the Chinese *Law on the Territorial Sea and the Contiguous Zone*:

> "The territorial sea of the People's Republic of China is the sea belt adjacent to the land territory and the internal waters of the People's Republic of China.
> The land territory of the People's Republic of China includes the mainland of the People's Republic of China and its coastal islands; Taiwan and all islands appertaining thereto including the Diaoyu Islands; the Penghu Islands; the Dongsha Islands; the Xisha Islands; the Zhongsha Islands and the Nansha Islands; as well as all the other islands belonging to the People's Republic of China.
> The waters on the landward side of the baselines of the territorial sea of the People's Republic of China constitute the internal waters of the People's Republic of China".

China decided to use the method of straight baselines in drawing the baseline from which the breadth of the territorial sea is measured. Thus, the islands that have been claimed in the Taiwan Strait (Penghu/Pescadores islands), in the East China Sea (Diaoyu/Senkaku islands) and in the South China Sea (Dongsha/Pratas islands; Xisha/Paracel islands, Zhongsha Islands, including Macclesfield Bank and Scarborough Shoal, and Nansha/Spratly islands) inside the baseline are located within China's internal waters.

In 1998, China enacted an *Exclusive Economic Zone and Continental Shelf Act*, which described the extent of its EEZ "to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured"[9] and its continental shelf as "the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance".

Finally, China claims "historical rights" in the South China Sea as affirmed in Article 14 of 1998 Act[10] and on many occasions, such as the *South China Sea Arbitration*.[11]

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[8] In this original form, the line featured 11 dashes. The two dashes in the Gulf of Tonkin were removed in 1953, rendering it a 'Nine-dash Line'. See C. P. C. Chung 'Drawing the U-Shaped Line: China's Claim in the South China Sea, 1946-1974' (2015) Modern China 1; Zhiguo Gao and Bing Bing Jia, 'The nine-dash line in the South China Sea: history, status, and implications' (2012) 107 American Journal of International Law 98.

[9] It should be noted that China has never publicized charts or lists of geographical coordinates of its EEZ as required by Article 75 UNCLOS.

[10] Article 14 of 1998 Act: "The provisions of this Act shall not affect the historical rights of the People's Republic of China".

[11] See also *Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea*, 12 July 2016, <https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/201607/t20160712_8527297.htm>.

A partial solution to some disputes between China and the Philippines concerning overlapping claims was defined by the award of 12 July 2016,[12] adopted by an Arbitral Tribunal constituted under Annex VII of UNCLOS.[13]

The Arbitral Tribunal ruled in favour of the Philippines' position, declaring several elements of China's claims in the South China Sea to be unlawful. Key highlights include:

- China's claims to historic rights and resources within its Nine-dash Line have no legal basis and exceed rights provided by UNCLOS;
- None of China's claimed land features in the Spratly Islands are "islands" under Article 121 UNCLOS and as such they cannot generate an EEZ and continental shelf;
- China breached the Philippines' sovereign rights regarding fishing, oil exploration, navigation, and the construction of artificial islands and installations, in its EEZ, in addition to violating its marine environmental protection obligations under UNCLOS by causing "severe harm to the coral reef environment" with its land reclamation activities and harvesting of endangered species;
- China had aggravated and extended the dispute including by engaging in actions such as large-scale land reclamation activities and the construction of artificial islands, during the arbitration process.

It is well-known that China rejected the arbitral tribunal's ruling declaring that it was "null and void and has no binding force" [14] and tried to come to some direct arrangements with the Philippines to circumvent the arbitral decision.[15]

Under Article 122 UNCLOS, the South China Sea is a semi-enclosed sea and, for this reason, under Article 123, coastal States "should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention". However, this cooperation is difficult to achieve because this area is the object of many disputes concerning sovereignty and territorial and maritime delimitation.

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[12] *PCA Case No. 2013-19 in the Matter of the South China Sea Arbitration before an Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People's Republic of China,* Award of 12 July 2016.

[13] China rejected the jurisdiction of the arbitral tribunal over the case, see *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, 7 December 2014, <https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/201606/t20160602_8527277.htm>.

[14] See *Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines*, 12 July 2016, <https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/201607/t20160712_8527294.htm>.

[15] See *Joint Statement of the People's Republic of China and the Republic of the Philippines*, 21 October 2016 <https://www.fmprc.gov.cn/nanhai/eng/zcfg_1/201610/t20161021_8523693.htm>; *Memorandum of Understanding on Cooperation on Oil and Gas Development between the Government of the People's Republic of China and the Government of the Republic of the Philippines*, 27 November 2018, <https://www.fmprc.gov.cn/nanhai/eng/zcfg_1/201811/t20181127_8523697.htm>.

In 2002, all the states bordering the South China Sea signed a "*Declaration on the Conduct of Parties in the South China Sea*" (DOC)[16] to promote trust in one another and affirmed three fundamental principles:

> "their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea";
>
> "[their commitment to] undertake "to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea";
>
> "[their commitment to] undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner".

Although the DOC is not a binding instrument, it establishes principles for a process of conflict management in the South China Sea, but only after the award concerning the *South China Sea Arbitration* did negotiations between concerned States gain a new momentum. In 2016, ASEAN and China agreed to apply the *Code for Unplanned Encounters at Sea* to the South China Sea[17] and, in 2017, they adopted a framework for a code of conduct in the South China Sea (CoC) "to establish a rules-based framework containing a set of norms to guide the conduct of parties and promote maritime cooperation in the South China Sea".[18]

These codes do not seem to have reduced the tension between the States concerned and China is accused of using the PLAN, its Coast Guard[19] and also Maritime Militia[20] to assert and defend its maritime claims.

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[16] *Declaration on the Conduct of Parties in the South China Sea*, 4 November 2002, <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/>.

[17] *Joint Statement on the Application of the Code for Unplanned Encounters at Sea in the South China Sea*, 8 September 2016, <https://www.fmprc.gov.cn/nanhai/eng/zcfg_1/201704/P020210903716565178615.pdf>; *Guidelines for Hotline Communications among Senior Officials of the Ministries of Foreign Affairs of ASEAN Member States and China in Response to Maritime Emergencies in the Implementation of the Declaration on the Conduct of Parties in the South China Se*a, 8 September 2016, <https://www.fmprc.gov.cn/nanhai/eng/zcfg_1/201704/P020210903716568578083.pdf>.

[18] I. Storey, 'Anatomy of the Code of Conduct Framework for the South China Sea', The National Bureau of Asian Research (NBR), 24 August 2017, <https://www.nbr.org/publication/anatomy-of-the-code-of-conduct-framework-for-the-south-china-sea/>.

[19] See *infra* paragraph 4 of this paper.

[20] China's 2013 Defense White Paper, states that Militia serve "as an assistant and backup force of the PLA" (<http://www.andrewerickson.com/wp-content/uploads/2019/07/China-Defense-White-Paper_2013_English-Chinese_Annotated.pdf>). Militia has its of subset the Maritime Militia. See for more details C. M. Kennedy and A. S. Erickson, 'China Maritime Report No. 1: China's Third Sea Force, The People's Armed Forces Maritime Militia: Tethered to the PLA' (2017) CMSI China Maritime Reports 1, <https://digital-commons.usnwc.edu/cmsi-maritime-reports/1>.

3. Challenges to the Freedom of the Seas along the Maritime Silk Road

The legal situation regarding the navigational rights of foreign vessels within national jurisdiction is one of the most serious concerns for the world community. Many States have restricted the freedom of navigation in the waters under their jurisdiction (territorial waters, straits, EEZs).

a) Innocent Passage in territorial waters

The navigational rights of foreign vessels in the territorial sea of a coastal State are guaranteed by the right of innocent passage under Article 19 UNCLOS. However, many countries regard the obligation to allow foreign ships the right of innocent passage as a significant limitation on their sovereignty and a potential threat to their national security.[21]

In China's practice, foreign merchant vessels are allowed to enjoy the right of innocent passage in its territorial sea,[22] but foreign warships must obtain prior permission from the Chinese authorities before navigating through the Chinese

[21] At present, Algeria, Antigua and Barbuda, Bangladesh, Barbados, Burma, Cambodia, Cape Verde, Congo (Brazzaville), Grenada, Iran, Maldives, North Korea, Oman, Pakistan, the Philippines, Romania, St. Vincent and the Grenadines, Seychelles, Somalia, Sri Lanka, Sudan, Syria, United Arab Emirates, Vietnam, and Yemen all require prior permission or authorization for the passage of foreign warships in their territorial waters. Albania also requires special authorization for the innocent passage for warships, except in the circumstances of *force majeure*. Croatia, Egypt, Finland, Guyana, India, South Korea, Libya, Malta, Mauritius, and Montenegro all require a prior notification before a foreign warship can pass through their territorial waters. In addition, Montenegro restricts the number of foreign warships of the same nationality passing through its territorial sea to a maximum of three at a time. Denmark stipulates that simultaneous passage through the Great Belt or the Sound of more than three warships of the same nationality is subject to prior notification through diplomatic channels.

[22] However, it should be noted that a strict regime is imposed on certain categories of ships sailing in the Chinese territorial waters; indeed Article 54 of the *Maritime Traffic Safety Law*, revised in 2021, affirms as follow: "The following vessels of foreign nationality entering and leaving the territorial sea of the People's Republic of China shall report to the maritime safety authority: (1) submersibles; (2) nuclear-powered vessels; (3) vessels carrying radioactive substances or other poisonous and harmful substances; and (4) other vessels that may endanger the maritime traffic safety of the People's Republic of China as provided for by laws, administrative regulations or the provisions of the State Council. / Vessels mentioned in the preceding paragraph, when passing through the territorial sea of the People's Republic of China, shall hold relevant certificates, take special precautionary measures that conform to the laws, administrative regulations and rules of the People's Republic of China and accept instructions and supervision of the maritime safety authority". This national rule is inconsistent with the "right of innocent passage" because a coastal State is only authorized by UNCLOS to require tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials to use designated sea lanes and traffic separation schemes (Article 22) and check documents and observation of special precautionary measures established for such ships by international agreements (Article 23). Coastal State cannot prohibit transits by such ships that follow the UNCLOS provisions or require that they provide prior notification before entering its territorial waters. Moreover, UNCLOS does not limit innocent passage of submarines and other underwater vehicles except for the requirement to navigate on the surface and to show their flag (Article 20).

territorial sea.[23] China specifically stipulated this requirement on ratifying UNCLOS in a Declaration that included the following statement:

> "The People's Republic of China reaffirms that the provisions of the United Nations Convention on the Law of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal State to request, in accordance with its laws and regulations, a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warships through the territorial sea of the coastal State".[24]

This position on innocent passage for warships is not shared by most of the world community that expressly or implicitly allows it.

A particular problem arises if foreign warships are conducting the passage purely for the purpose of demonstrating the right of innocent passage without prior notification or authorization as required by the coastal State. This is the main aim of U.S. Freedom of Navigation Operations (FONOPs).[25]

It might be argued that U.S. military vessels under the U.S. FONOPs are in fact conducting non-innocent passage.[26] The vessels involved might be evident to the coastal State by virtue of an obvious diversion from the direct shipping route: the coastal State could well argue that that diversion was not part of "continuous and expeditious" passage as required by Article 18(2) UNCLOS and also that the diversion in itself signalled an activity that could be prejudicial to the security of the coastal State.[27] This interpretation concerning the diversion would be deduced

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[23] See Article 6 of Law on the Territorial Sea and the Contiguous Zone: "Non-military foreign ships enjoy the right of innocent passage through the territorial sea of the People's Republic of China according to law". Note that, in compliance with international law, according of Article 55 of the *Maritime Traffic Safety Law*, revised in 2021, "No vessels of foreign nationality may enter the Chinese internal waters unless they have obtained permission to enter a port; but they may enter the internal waters due to urgent illness of personnel or malfunction of the engine or the wreck or seeking shelter from wind or other emergencies when they have no time to obtain permission".

[24] United Nations, *The Law of the Sea: Declarations and statements with respect to the United Nations Convention on the Law of the Sea and to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea* (United Nations publication, Sales No. E.97.V.3). See also, Yann-huei Song and Zou Keyuan, 'Maritime Legislation of Mainland China and Taiwan: Developments, Comparison, Implications, and Potential Challenges for the United States' (2000) Ocean Development & International Law 329; and Zou Keyuan, "Innocent Passage for Warships: The Chinese Doctrine and Practice' (1998) Ocean Development and International Law 201.

[25] According to a definition of U.S. Department of State, "U.S. Naval forces engage in Freedom of Navigation operations to assert the principles of International Law and free passage in regions with unlawful maritime sovereignty claims. FON operations involve naval units transiting disputed areas to avoid setting the precedent that the international community has accepted these unlawful claims"; see <https://2001-2009.state.gov/t/pm/iso/c21539.htm>.

[26] W. J. Aceves, 'The Freedom of Navigation Program: A Case Study of the Relationship Between Law and Politics' (1996) Hastings International and Comparative Law Review 259.

[27] This example is presented by S. Bateman, 'Security and the Law of the Sea in East Asia: Navigational Regimes and Exclusive Economic Zones' in D. Freestone, R. Barnes and D. Ong (eds), *The Law of the Sea* (Oxford University Press 2006), 365 ff.

from the phrase "any other activity not having a direct bearing on passage" enclosed in Article 19(2)(l) UNCLOS.

b) Navigation through the Chinese straits

Straits are key passages along maritime routes and, as such, they require a particular regulation by the Law of the Sea, which has always sought to ensure freedom of navigation for foreign ships. In the maritime region in question, there are two straits that receive special attention: the Qiongzhou/Hainan Strait and the Taiwan Strait.

The Qiongzhou Strait, situated between Hainan Island and the Leizhou Peninsula, is located within Chinese internal waters. Yet, it was not until 1958 that China declared it to be an "internal strait" under the *Declaration on China's Territorial Sea*, what was unclear before that date.

The strait is deemed to be a convenient route between China and Southeast Asian countries, in particular Vietnam, but it is subject to a very stringent regime in terms of the passage of foreign vessels: while foreign merchant vessels may pass through it when they have obtained the permission and comply with the established vessel traffic service system (VTS), navigation of foreign warships is interdicted. The promulgation of these regulations raised protests among some countries, particularly the United States;[28] nevertheless, they are in line with international law which grants coastal States the full power to regulate passage in its internal straits.

The situation regarding the Taiwan Strait is closely linked to the issue of sovereignty over the island which China considers a rebel province after the Communist revolution in 1949 and, therefore, an internal affair. China claims the sovereignty over the island, despite having found a *modus vivendi* with the Taiwanese authorities for the time being, and it aspires to reunify the island to the motherland according to the principle of "One country, Two systems".

With the 1958 *Declaration on China's Territorial Sea*, China acknowledged an area of "high seas" in the Taiwan Strait but, after the adoption of 1982 UNCLOS with the introduction of new legal concepts like EEZ and continental shelf, the legal status of the Taiwan Strait has changed. Today, the water area in the Taiwan Strait has become part of China's EEZ and the navigation of foreign vessels is subject to the legal regime for the EEZ.

In practice, the sea area of this strait is affected by the divided situation of China with two separate legal systems in terms of governance over navigation, one from mainland China and the other from Taiwan. This complicated legal situation is a problem for the navigation of foreign vessels in the Taiwan Strait because there is not clear demarcation line separating the jurisdiction between the two coastal sides.

[28] The United States contests the illegal use of the method of straight baselines by China, as this method may only be used in limited circumstances. Thus, they qualify as illegal the prior permission requirement for navigation in Qiongzhou Strait, the waters of which are to be considered territorial sea under the regime of innocent passage. See Office of the Staff Judge Advocate, U.S. Indo-Pacific Command, 'China's Excessive Maritime Claims' (2021) International Law Studies, <https://digital-commons.usnwc.edu/ils/vol97/iss1/14>.

Finally, there are special rules adopted by each party to govern the navigation of vessels across the strait. Mainland China defines shipping between the two sides as "domestic transportation under special administration",[29] while the Taiwanese authorities have attempted to treat such navigation as international affair, rather than a domestic issue, since the Democratic Progressive Party came to power, rejecting the so-called "One China" principle fixed in the "1992 Consensus".[30]

Under international law, the Strait of Taiwan is recognised as used for international navigation, but the regime governing the straits used for international navigation should not apply to such strait according to Article 35(b) UNCLOS.[31] However, Taiwanese authorities affirm that in a part of the Taiwan Strait that is not part of their territorial sea the regime of "transit passage" is applied for foreign vessels.[32]

c) Navigation and military activities in EEZ

As to the navigation in the EEZ, Article 58 UNCLOS provides a legal regime similar to that concerning the high seas, i.e., freedom of navigation for foreign vessels (and freedom of overflight for foreign aircrafts); however, third States "shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State" in accordance with the Convention and other rules of international law.

Nevertheless, the freedom of navigation is subject to conflicting interpretations when it is invoked by warships for military activities in the EEZ of a third State. While from the Western States' point of view, navigation and military exercises should be based on the concept of "freedom of navigation", within non-Western contexts – East Asia, Latin America or Africa – a widely shared opinion is that foreign warships engaging in military operations in a country's EEZ may be a threat to the national security or the resource sovereignty of the coastal State and, as such, they must be prohibited. In Asia, in addition to China, other States have already expressed their growing concern over the issue, including Bangladesh, Cambodia, India, Indonesia, Iran, Malaysia, Maldives, North Korea, Pakistan, Thailand and Vietnam.[33]

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[29] Provisions Governing the Administration of the Direct Shipping between the Two Sides of the Taiwan Strait under Decree No. 6 of the Ministry of Communications of the PRC of 1996.

[30] For history and content of the "1992 Consensus", see *Xu Shiquan,* 'The 1992 Consensus: A Review and Assessment of Consultations Between the Association for Relations Across the Taiwan Strait and the Straits Exchange Foundation' (2001) American Foreign Policy Interests 121, <https://www.ncafp.org/articles/01%20The%201992%20Consensus-%20A%20Review%20and%20Assessment.pdf>.

[31] Keyuan Zou, 'Navigation through the straits in East Asia' (2021) QIL 21, <http://www.qil-qdi.org/navigation-through-the-straits-in-east-asia/#_ftnref37>.

[32] Article 13 of 1998 (ROC) Law on the Territorial Sea and Contiguous Zone.

[33] See R. Pedrozo, 'A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?' (2011) 42 Journal of Maritime Law & Commerce 487, 497. Other States that do not allow some foreign military activities in their EEZ without their consent are Brazil, Cap Verde, Kenya and Uruguay.

Concerning the navigation of foreign military vessels and military activities in the EEZ, in the absence of an express prohibition by UNCLOS, the right to navigate in the EEZ of another State must be granted to all the military vessels and it seems reasonable to state that military activities are lawful in the EEZ of another State without the need of its previous consent, provided that the foreign military vessels refrain from the threat or use of force or other provocative acts such as "stimulating or exciting the defensive systems of the coastal State; collecting information to support the use of force against the coastal State; or establishing a 'sea base' within another State's EEZ without its consent".[34]

Another relevant problem in the regime of EEZ is whether coastal State jurisdiction extends to activities in the EEZ such as hydrographic surveying and the collection of other marine environmental data that is not resource-related or is not done for scientific purposes.[35]

While it is the opinion of some States that hydrographic surveys can be conducted freely in the EEZ under Article 58 UNCLOS, many coastal States, including China, have specifically claimed that hydrographic surveys and military surveys may only be conducted in their EEZs with a previous consent.[36] In particular, States are concerned by military surveys, that are activities undertaken in the ocean and coastal waters involving marine data collection for military purposes. Such data is important for effective submarine operations, anti-submarine warfare (ASW), mine laying, Mine countermeasures (MCM) and amphibious operations, particularly in waters such as the South and East China Seas where oceanographic and underwater acoustic conditions vary widely between one area and another.

In China's view, as proclaimed during the Third UN Conference on the Law of the Sea, "the coastal States should have 'exclusive jurisdiction' in regard to marine scientific activities in their economic zones and that express consent should be obtained for such activities".[37]

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[34] See Ocean Policy Research Foundation, *Guidelines for Navigation and Overflight in the Exclusive Economic Zone*, Tokyo, 26 September 2005, <https://nippon.zaidan.info/seikabutsu/2005/00816/pdf/0001.pdf>. The Guidelines are a set of non-binding principles based on UNCLOS, State practice, and emerging "soft law". The legal regime prescribed by the Guidelines is even more stringent since it is stated that "Warships or aircraft of a State intending to carry out a major military exercise in the EEZ of another State should inform the coastal State and others through a timely navigational warning of the time, date and areas involved in the exercise, and if possible, invite observers from the coastal State to witness the exercise".

[35] For a more extensive discussion on these issues see S. Bateman, 'Hydrographic surveying in the EEZ: differences and overlaps with marine scientific research' (2005) Marine Policy 163.

[36] Ship and Ocean Foundation (SOF) and East-West Center (EWC), *The Regime of the Exclusive Economic Zone: Issues and Responses,* A Report of the Tokyo Meeting, 19-20 February 2003, Honolulu, East-West Center, 2003, 7.

[37] See China's position announced by Lo Yu-Ju at the Third UN Conference on the Law of the Sea, 30th Meeting of the Third Commission, 14 September 1976, UN Doc. A/CONF.62/C.3/SR.30, 96, para 16.

Despite China joining UNCLOS, these positions have been implemented in domestic legal order, in 1996, with the *Provisions of the People's Republic of China on the Administration of Foreign-related Maritime Scientific Research*.[38]

In 1998, China also adopted the *Exclusive Economic Zone and Continental Shelf Act* with the aim, among other things, to control surveillance and research activities in waters under its jurisdiction. The most relevant articles of this law are Article 9, according to which foreign States carrying out marine scientific research within China's EEZ should comply first and foremost with the laws and regulations of China, and Article 12, which clarifies that if the Chinese government perceives that its laws and regulations concerning its EEZ are being violated, it has "the right to take the necessary investigative measures in accordance with the law and may exercise the right of hot pursuit".

For example, this law was directly implemented during the U.S. "spy plane" incident off Hainan in 2001 and a series of incidents involving U.S. "military survey" ships operating in South China Sea in 2002 (the *Bowditch* affair) and in 2009 (the *Impeccable* and the *Victorius* affairs).

Today, the provisions of the 1998 Act are complemented by the new China Coast Guard Law.[39]

Under the perspective of the Law of the Sea, while UNCLOS established a clear regime for marine scientific research, there is no specific provisions in UNCLOS for hydrographic surveying.

While marine scientific research activities require the prior authorization of the relevant coastal State in internal waters, the territorial sea and archipelagic waters,[40] the "freedom of scientific research" is ensured to all States on the high seas under Parts XIII of UNCLOS. Hydrographic surveying is listed along with marine scientific research, as an activity under the jurisdiction of the coastal State in the territorial sea,[41] and as a prohibited activity during innocent[42] and transit[43] passage, but there is no reference to hydrographic surveying elsewhere in UNCLOS. In particular, Part XIII of UNCLOS provides that coastal States have the exclusive right to regulate, authorize and conduct marine scientific research in their EEZ and on their continental shelf. It then establishes an implied consent regime[44] that allows other States and competent international organizations to

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[38] *Provisions of the People's Republic of China on the Administration of Foreign-related Maritime Scientific Research* of 18 June 1996 (entered into force on 1 October 1996), <http://www.asianlii.org/cn/legis/cen/laws/potaofmsr735/>. Under this law, China has the right to take part in any scientific research carried out by other countries in the sea area under its national jurisdiction and to obtain the data and results thereof. Such data and results cannot be published or transferred without the prior consent of the coastal State. For more details on the marine scientific research in China's jurisdictional waters, see Keyuan Zu, 'Governing Marine Scientific Research in China' (2003) 34 Ocean Development & International Law 1; Nong Hong, 'China's Approach to Marine Scientific Research' (2021) The Korean Journal of International and Comparative Law 294.

[39] See *infra* paragraph 4 of this paper.

[40] Articles 19(2)(j), 21(1)9g), 40, 54 and 245 UNCLOS.

[41] Article 21(1)(g) UNCLOS.

[42] Article 19(2)(j) UNCLOS.

[43] Article 40 UNCLOS.

[44] Articles 246-252 UNCLOS.

proceed with a scientific research project in the EEZ or on the continental shelf under certain circumstances even though the consent of the coastal State may not have been forthcoming.

In 1992, China regulated hydrographic survey activities through the *Law on surveying and mapping*,[45] which subjects any such activity on its territory and in its maritime jurisdiction to the approval of the State Council, particularly those conducted by foreign organizations and individuals.[46].

This consent regime for such activities in an EEZ is controversial and knows different interpretations by the world community.[47] For example, the United States claims that while coastal State consent must be obtained in order to conduct marine scientific research in its EEZ, the coastal State cannot regulate hydrographic surveys or military surveys conducted beyond its territorial sea, nor can it require notification of such activities.[48] Similarly, the United Kingdom regards what it calls military data gathering (MDG) as a fundamental high seas freedom available in the EEZ.[49]

d) Freedom to lay submarine cables

The BRI is also regarded by China as a means for expanding its technology sphere of influence[50] across countries along the new Maritime Silk Road and for building the so-called "Digital Silk Road" (DSR).[51]

A vital component of this technological infrastructure is the submarine cable network for international communications (cables laid on the seabed of the oceans or buried under it). Thus, the importance of a solution for the maritime sovereignty disputes is also linked to the governance of the submarine

[45] Surveying and Mapping Law of the People's Republic of China of 28 December 1992 an revised on 29 August 2002, <http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383865.htm>.

[46] Ibid., Article 7.

[47] J. Ashley Roach, 'Marine Scientific Research and the New Law of the Sea' (1996) Ocean Development and International Law 59; G. Galdorisi and K. R. Vienna, *Beyond the Law of the Sea. New Directions for US Oceans Policy* (Praeger, 1997), 164.

[48] However, the United States does not assert the right of jurisdiction over marine scientific research within its EEZ but recognizes the right of other countries to assert that right. This was because of the U.S. interest in encouraging marine scientific research and avoiding any unnecessary burden. President's Ocean Policy Statement, 10 March 1983, as quoted in A.R. Thomas and James C. Duncan (eds), *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations,* International Law Studies Vol. 73, Naval War College, Newport, Rhode Island, 1999, p.44.

[49] Email dated 21 Nov 2003 from Mr. Chris Carleton, Head, Law of the Sea Division, United Kingdom Hydrographic Office.

[50] Through the DSR, "Chinese companies have quietly been eroding U.S., European and Japanese dominance over […] the undersea cable market" (M. Tobin, 'US-China tech war's new battleground: undersea internet cables', South China Morning Post, 14 December 2019, <https://www.scmp.com/week-asia/politics/article/3042058/us-china-tech-wars-new-battleground-undersea-internet-cables>.

[51] For example, in September 2018, the Forum on China-Africa Cooperation (FOCAC) included in the FOCAC Beijing Action Plan (2019-2021), among other issues, a call for greater cooperation between China and African countries on undersea cables; see <http://focacsummit.mfa.gov.cn/eng/hyqk_1/201809/t20180912_5858585.htm>.

communication cables. Of the 378 maritime cables currently operating worldwide, 23 are under the Pacific.[52] The quantity and closeness of many of these cables makes the South China Sea a network choke point and whoever exercises its sovereignty and jurisdiction over this maritime space has the control over a part of the global submarine cable network.

According to UNCLOS, in their territorial sea, coastal States exercise sovereignty and may establish conditions for cables entering these zones,[53] while the freedom to lay submarine cables is proclaimed over the continental shelf[54] and in EEZ.[55] Thus, coastal States could not request the coordination of a cable route in the EEZ or over the continental shelf from their competent authorities and they would not have the right to adopt laws and regulations on conditions for carrying out cable route surveys for laying a cable outside their territorial sea.

However, UNCLOS maintains a margin of ambiguity asserting that the freedom to lay cables was subject to the right of the coastal State to take "reasonable measures" for the exploration of the continental shelf and the exploitation of its natural resources[56] and some coastal States have profited from this margin of interpretation.[57]

Indeed, under Chinese law, it is significant to note that the lying of submarine cables is subject to the coastal State's permitting and regulation, not only in its territorial sea, but also over its continental shelf and in its EEZ.[58] This aptitude reflects China's position during negotiations of UNCLOS, which proposed to make laying of submarine cables and pipelines in EEZ and over continental shelf subject to the coastal States' consent.[59]

The different implementation of the pertinent international rules in the domestic legal order of the coastal States is a problem for the cable industry and the concerns increase when it obtains permits in waters with overlapping maritime boundaries, with additional delay and costs, conflicting requirements and the potential for conflicts with other countries asserting their claims over those waters.

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[52] Tobin (n 50).
[53] Article 79(4) UNCLOS.
[54] Article 79 UNCLOS.
[55] Article 58 UNCLOS.
[56] Article 79(2) UNCLOS. However, this provision does not affirm the right of the coastal State to take reasonable measures for the prevention, reduction and control of pollution from cables; this is confined to only pipelines.
[57] See, for example, domestic legislation of India, Malaysia, Mauritius, Myanmar, Pakistan and several other States; see R. Churchill, 'The Impact of State Practice on the Jurisdictional Framework Contained in the LOS Convention' in A. Elferink (ed.), *Stability and change in the law of the sea: the role of the LOS Convention* (Martinus Nijhoff Publishers 2005), 91 ff., at 140.
[58] See *Regulations on the Management of Laying Submarine Cables and Pipelines* of 1st March 1989 (for the laying of submarine cables in inland seas, territorial seas and continental shelves under the jurisdiction of China) and Article 11 of the Exclusive Economic Zone and Continental Shelf Act.
[59] 'Working paper submitted by the Chinese delegation: general, principles for the international sea area (A/AC.138/SC.II/L.34*)' in the *Report of the Committee on Peaceful uses of the Sea-Bed and the Ocean Floor beyond the limits of National Jurisdiction*, vol. III (General Assembly Official Records, Supplement No. 21 (A/9021), 1973), 71 ff, at 73 (para 2(4)) and 74 (para 3).

4. Some Preliminary Remarks on the New China Coast Guard Law

In January 2021, China adopted a new Coast Guard Law (CCG Law) to conduct "activities of maritime rights protection and law enforcement in the waters under the jurisdiction of the People's Republic of China".[60] This law received some criticism on a number of unclear points and due to its alleged incompatibility with the Law of the Sea.

First, the law does not define the concept of "waters under the jurisdiction" of China. A plausible definition could be found in a draft released on 4 November 2020 for public comment, where these waters were described as "the PRC's internal waters, territorial sea, contiguous zone, exclusive economic zone (EEZ), continental shelf and other sea areas under the jurisdiction of the PRC". This implies that CCG Law should apply over all the waters claimed by China in in the East and South China Seas surrounded by the Nine-dash Line. According to some Chinese experts, waters under the jurisdiction of China should cover 3 million Km^2, 50% of which is disputed among neighbouring countries.[61]

Most of the claimant countries in the China Seas have expressed their opposition to this law, as it has exacerbated tensions in regional disputes and affects the interests of other claimants, such as Japan in relation to the dispute over the Senkaku Islands, or such as Vietnam, the Philippines and Taiwan in relation to disputes over the Spratly Islands, or Indonesia in relation to the dispute over a portion of the Indonesian EEZ claimed by China under the Nine-dash Line.

In particular, Article 20 of this law may affect economic activities at sea in areas under dispute, because it states:

> "Where, without the approval of a competent authority of China, a foreign organization or individual constructs a building or structure, or lays a fixed or floating device of any kind in the waters or island under the jurisdiction of China, a coast guard agency shall have the power to order the foreign organization or individual to stop the said violation or order removal within a specified period; and if the foreign organization or individual refuses to do so, the coast guard agency shall have the power to effectuate stoppage or force the removal".

The clear aim of this norm is to protect the rights to natural resources in all the waters under China's jurisdiction, in particular in its EEZ. A very recent example of the risks of this law is highlighted by the case of the Indonesian drilling for oil and gas at the Tuna Block in the North Natuna Sea[62] followed by a formal protest

[60] Article 3 CCG Law. Note, in March 2018, the control of Chinese Coast Guard (CCG) was transferred from the State Oceanic Administration to the Central Military Commission, making CCG the hierarchical equivalent of the People's Liberation Army (PLA).

[61] Qi Lianming, Zhang Xiangguo and Li Xiaodong, *A Comparative Studies of Island Protection and Development Policies in China and Other Countries* (Chinese ed., Ocean Press 2013), 107.

[62] In July 2017, Indonesia renamed the northern reaches of its EEZ in the South China Sea as the "North Natuna Sea". It should be noted that Indonesia insists it's a non-claimant State in the South China Sea. See T. Allard and B. C. Munthe, 'Asserting sovereignty, Indonesia renames part of

of the Chinese government and a request to cease any activities in the area claimed as its sovereign territory.[63]

Two other provisions of the new law are a matter of concern; Article 21, which stipulates that if a foreign warship or government vessel violates China's domestic law in waters where China claims jurisdiction, the CCG will take enforcing measures, up to and including forced eviction and towing; and Article 22, which allows the CCG to use weapons against foreign organizations and individuals that infringe on China's national sovereignty, sovereign rights and jurisdiction at sea.

While it can be assumed that these provisions were designed to be applied to situations similar to those of the U.S. Freedom of Navigation operations (FONOPs) in the Chinese territorial sea, EEZ and others maritime areas under dispute, the norms lack a real legal basis in international law. Indeed, under Articles 32 and 95 UNCLOS warships and non-commercial government vessels are exempt from the exercise of jurisdiction by anyone other than the flag State (so-called "sovereign immunity") and UNCLOS does not have a provision for taking coercive measures against those types of vessels as law enforcement.[64]

5. Chinese Concerns over the Straits of Malacca and Singapore

The Straits of Malacca and Singapore serve as the major international route linking the South China Sea with the Indian Ocean and are of strategic interest to China for its increasing dependence on oil imported from the Middle East. That is why, in 2003, Chinese President Hu Jintao introduced the concept of the "Malacca Dilemma" to describe Beijing's concern that if the Malacca Straits or certain other Southeast Asian sea-lines were blocked, China would suffer severe trade and energy supply disruptions.

The Straits of Malacca and Singapore are regarded as a single strait according to the definition of a "strait used for international navigation" as specified in Articles 37 and 38(1) UNCLOS. The main problem of concern for the bordering States – Indonesia, Malaysia and Singapore – has always been the threat posed by the passage of oil tankers and other large tankers to the marine environment.

Article 43 UNCLOS (the so-called "burden sharing" clause) provides for cooperation among user States and States bordering a strait on the provision of navigational and safety aids, and the prevention of marine pollution in a strait, but its implementation remains problematic.

South China Sea', Reuters, 14 July 2017, <https://www.reuters.com/article/us-indonesia-politics-map-idUSKBN19Z0YQ>.

[63] Tom Allard, Kate Lamb, Agustinus Beo Da Costa, 'EXCLUSIVE China protested Indonesian drilling, military exercises', Reuters, 1 December 2021 <https://www.reuters.com/world/asia-pacific/exclusive-china-protested-indonesian-drilling-military-exercises-2021-12-01/>.

[64] Article 30 UNCLOS provides only that a warship in territorial waters that fails to comply with the coastal State's laws and regulations regarding navigation and ignores requests to comply with such laws may be asked to leave immediately. For a more detailed comment about the new CCG Law, see R. Pedrozo, 'Maritime Police Law of the People's Republic of China' (2021) 97 International Law Studies 465.

Among the user States, while Japan has a long history of cooperation with Indonesia, Malaysia and Singapore through the Malacca Strait Council (MSC) and the Revolving Fund [65], other user States such as the United States, China, South Korea and Taiwan have been reluctant to contribute to the costs. On the other side, while the interests of the littoral States frequently do not coincide, both Malaysia and Indonesia are sensitive to any attempt to "internationalize" management of the Malacca-Singapore Straits as was demonstrated by their negative reaction to the US proposal of the Regional Maritime Security Initiative (RMSI) in 2004.[66]

The issue of burden sharing in the management of the Straits of Malacca and Singapore was also debated in three meetings held between 2005 and 2007 and organised by the International Maritime Organization (IMO); the result was the establishment of the *Cooperative Mechanism between the Littoral States and User States*.[67]

Today, the ongoing incidence of piracy and armed attacks on ships in the straits and the threat of maritime terrorism have focussed attention on extending of cooperation to cover the security of shipping. Thus, the littoral States are now challenged to increase their patrol and surveillance activities in the straits against the threats to the security of navigation,[68] but they continue to avoid international cooperation as exemplified by the absence of Indonesia and Malaysia from the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).[69]

China has a direct economic interest in the management of the Straits of Malacca and Singapore, them being the main gateway for its oil supply chain. Consequently, China has adopted two parallel strategies in this area.

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[65] The Revolving Fund was established on 11 February 1981 through a Memorandum of Understanding (MOU) signed between Indonesia, Malaysia, Singapore and the Malacca Strait Council (MSC).

[66] The RMSI was launched by the United States in May 2004 with the intention of establishing a cooperative regime for maritime security in the Malacca Straits; major elements of the RMSI included increased situational awareness, information sharing, a decision-making architecture and interagency cooperation. For more details on the RMSI see ADM Tom Fargo USN, Commander, US Pacific Command, Address to MILOPS Conference in Victoria, British Columbia, 3 May 2004, <https://www.hsdl.org/?view&did=446531>).

[67] The Cooperative Mechanism Between the Littoral States and User States on Safety of Navigation and Environmental Protection in the Straits of Malacca and Singapore, IMO/SGP 2.1/1/Rev. 1, 4 September 2007.

[68] In 2004, Indonesia, Malaysia and Singapore launched the Malacca Straits Patrol (MSP), a set of practical co-operative measures to ensure the security of the SOMS; it comprises the Malacca Straits Sea Patrol (MSSP), the "Eyes-in-the-Sky" (EiS) Combined Maritime Air Patrols, as well as the Intelligence Exchange Group (IEG). In 2005, Thailand joined MSP as an observer and, in 2008, as a full member.

[69] The contracting Parties to ReCAAP are Bangladesh, Brunei, Cambodia, China, Denmark, Germany, India, Japan, South Korea, Laos, Myanmar, the Netherlands, Norway, the Philippines, Singapore, Sri Lanka, Thailand, the United Kingdom and Vietnam. For an analysis of ReCAAP, see M. Seta, 'The Asian Contribution to the Development of International Law: Focusing on the ReCAAP" (2019) 25 Asian Yerabook of International Law 65.

Above all, it has participated in the relevant initiatives regarding the international cooperation, in particular as full member of the Cooperative Mechanism and of ReCAAP, and it has strengthened the bilateral maritime cooperation with Indonesia (MoU of 25 April 2005), Malaysia (MoU of 25 August 2006) and Singapore (establishing a mechanism for exchange on the security of the Malacca Strait in 2006).

On the other side, it has tried to create an alternative shipping route to the navigation through the Straits of Malacca and Singapore, supporting the fascinating idea of building a canal across the Kra Isthmus in Southern Thailand. However, this project was definitely cancelled by the Thai government in September 2020 and substituted by the project of a railway and a pipeline across the isthmus.[70] Thus, the "Malacca Dilemma" remains a major source of concern for China and for navigation along the new Maritime silk Road.

6. Final Remarks

The ambitious project of building a new Maritime Silk Road was completed, in 2018, with the launch of the so-called "Polar Silk Road" by the Chinese government,[71] to develop the Arctic shipping routes, particularly the Northern Sea Route along the Russian coast in the Arctic Ocean.

Due to the melting of the ice, the Arctic region's vast natural wealth has been recognized as a new economic opportunity, leading to a rise in the claims of coastal States. Indeed, the region contains almost one-fourth of the world's unexplored oil and gas resources, in addition to other natural resources and the need to seize these resources has increased the claims of coastal States.[72]

China's proclamation of being a "near-Arctic State",[73] to strengthen its legal right to participate in the geopolitical developments, clearly advertises its ambitions to expand its energy supply chains and use the Polar Silk Road to link its enormous commercial and infrastructure projects in Asia and Europe to the Arctic region.

Although UNCLOS is applied in the Arctic region,[74] the challenge for the coming decades is to build a new governance that goes beyond Article 234

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[70] See 'Thailand mulls replacing $28bn Kra canal idea with a railway', Global Construction Review, 3 September 2020, <https://www.globalconstructionreview.com/thailand-mulls-replacing-28bn-kra-canal-idea-railw/>.

[71] State Council Information Office of the People's Republic of China, 'China's Arctic Policy', January 2018, <https://english.www.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm>.

[72] See A. Caligiuri, 'Les revendications des Etats côtiers de l'océan arctique sur le plateau continental au-delà de 200 milles marins'0 (2008) Annuaire du Droit de la Mer 273.

[73] Ministry of Foreign Affairs of the People's Republic of China, 'China's View on Arctic Cooperation', 30 July 2010, <https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/tyfls_665260/tfsxw_665262/201104/t20110402_599888.html>.

[74] See Arctic Council, Ilulissat Declaration of 28 May 2008, <https://arcticportal.org/images/stories/pdf/Ilulissat-declaration.pdf>.

UNCLOS,[75] and this goal seems to be materialising in the Arctic Council[76] where China is a permanent observer since 2013.

[75] Article 234 (Ice-covered areas) UNCLOS: "Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. 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".

[76] See F. Borgia, *Il regime giuridico dell'Artico: una nuova frontiera per il diritto internazionale* (Editoriale Scientifica 2012); C. Cinelli, *El Ártico ante el derecho del mar contemporáneo* (Tirant lo Blanch 2012).