

**UNIVERSITY OF MACAU  
MASTER OF LAW SEMINAR SERIES**

Jean Monnet Seminar  
*From Silk Route to Ice Route:  
Arctic Governance, International Shipping and  
the European Union*

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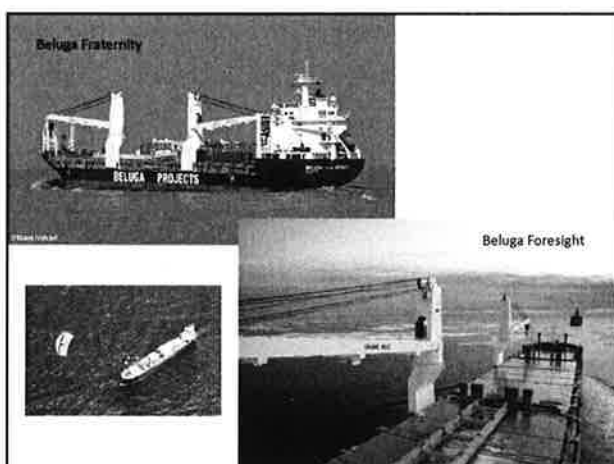
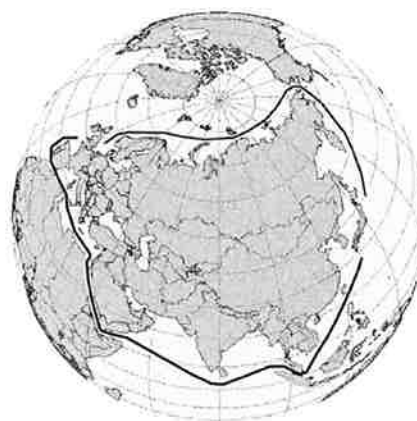
## Outline

1. Prologue
2. Defining the "Arctic"
3. The marine geography
4. Increasing access & navigability
5. Arctic navigation routes
6. Governance processes & challenges
7. Arctic governance & the EU
8. Conclusion

## 1. Prologue

### German ships successfully make "Arctic Passage" (12 Sept 2009)

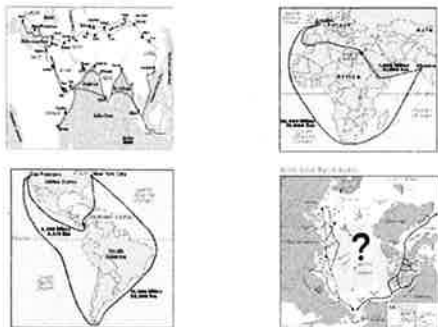
- LONDON (Reuters) - Two German cargo ships have successfully navigated across Russia's Arctic-facing northern shore from South Korea to Siberia without the help of icebreakers, the shipping company said.
- "We are all very proud and delighted to be the first Western shipping company which has successfully transited the legendary Northeast Passage and delivered the sensitive cargo safely through this extraordinarily demanding sea area," Niels Stolberg, president and CEO of Beluga, said in a statement on the company's website.



## EU's goods annual trade with key Asian states (2008)

- China:
  - Bilateral goods trade: € 326 billion.
  - EU is China's biggest trading partner.
  - China is the EU's second largest trading partner, but the EU's largest source of imports.
- Japan:
  - EU's 5<sup>th</sup> largest export market.
  - The EU ranks 3<sup>rd</sup> for Japan's imports and 2<sup>nd</sup> in its exports.
  - Fourth largest source of imports into the EU.
- South Korea:
  - EU's 8<sup>th</sup> largest trading partner.
  - € 65 billion bilateral trade in goods flows with the EU.
  - EU is South Korea's 2<sup>nd</sup> largest export destination.
- Preponderantly maritime trade!

Are we on the eve of a new international maritime trade route linking Asia to Europe?



## 2. Defining the "Arctic"



### "Arctic Circle"

- Areas North of 66° 33' N latitude
- Eight states (Arctic Council members):
  - Canada, Denmark (Greenland), Finland, Iceland, Norway, Russian Federation, Sweden, United States.



### The Arctic defined by isotherm

- Average temperature for the warmest month is below 10 degrees centigrade



### Arctic waters for global shipping regulation

- IMO Polar Code, 2002, as amended in 2009



### "Arctic waters" in Canada

- Arctic Waters Pollution Prevention Act, 1970, as amended in 2009:
  - Arctic waters includes waters north of 60 degrees latitude enclosed by straight baselines delineating outer limits of coastal archipelagoes of Canada and extending up to 200 nautical miles.

### 3. The marine geography

- Arctic Ocean:
  - Smallest of the world's oceans
  - Semi-enclosed
  - Surrounded by continents (unlike Antarctica)
  - Constrained hydrology (like Mediterranean)
- Subseas:
  - Barents Sea, Bering Sea, Beaufort Sea, Greenland Sea, Kara Sea, Labrador Sea, Laptev Sea, Norwegian Sea, Siberian Sea.
- Numerous straits

### Coastal frontage of Arctic states

- Arctic Ocean:
  - Canada (Yukon, Northwest Territories, Nunavut)
  - Denmark (Greenland)
  - Norway (Svalbard)
  - Russian Federation
  - United States (Alaska)
- Baltic:
  - Finland
  - Sweden
- Norwegian Sea (sub-arctic):
  - Iceland



### 4. The changing conditions of access and navigability

- Climate & environment:
  - Change in the Arctic can be expected to increase (ACIA, 2004); RADARSAT-1 image of Canadian Arctic waters in September 2007 revealed that sea ice had melted to an extent not seen for probably a century (Environment Canada, 2007); similar reporting in 2008. [http://www.youtube.com/watch?v=9x0\\_xqjOIOs&feature=player\\_embedded](http://www.youtube.com/watch?v=9x0_xqjOIOs&feature=player_embedded)
  - Small ships, perhaps even sailboats, could have navigated waters in the Northwest Passage; circa 100 vessels navigated the area (Environment Canada, 2007).

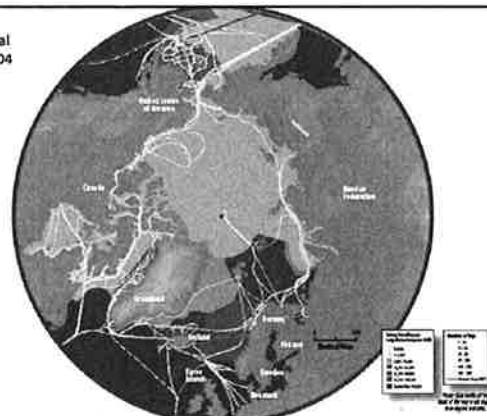
### Changing context ...

- Ocean uses in the Arctic generally:
  - Indigenous subsistence uses.
  - Increasing domestic & international commercial shipping (polar class vessels on order; non-polar class vessels navigating in the region; shortage of seafarers with ice-navigation experience to crew these ships).
  - Increasing interest in the development of resources, requiring shipping support (e.g., LNG); 25% of world's gas reserves are in the Arctic.
  - Growing tourism (cruise shipping, eco-tourism).
  - New distant fishing opportunities likely to emerge.

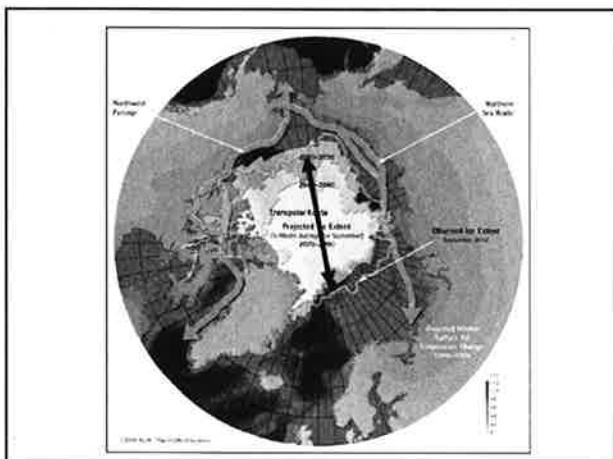
### 5. Arctic navigation routes

- Intra-regional routes
- Potential cross-regional routes:
  - Northwest Passage
  - Northern Sea Route
  - Transpolar Route

Intra-regional routes in 2004 (AMSA, 2009)

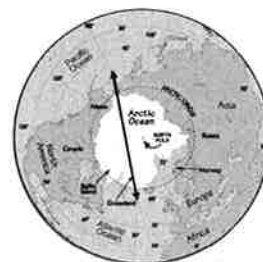


Map 5.1 Overview of all vessel activity for 2004, including fishing vessels, seal nets



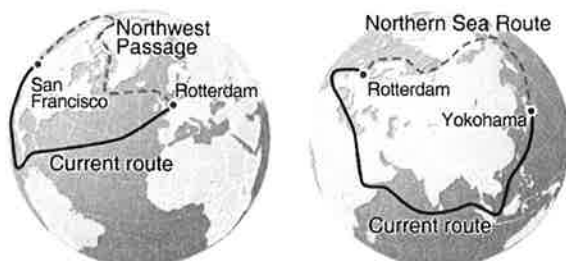
## Transpolar route

- From the Bering Strait, through the Arctic Ocean, across the North Pole, past Greenland and towards Iceland.
- Almost 5,000 miles shorter than the Hamburg-Yokohama route through the Suez Canal and over 6,000 miles shorter than the Panama Canal course for the same route.



## Two main routes compared

(Source: Hugo Ahlenius, UNEP/GRID-Arendal, 2007)



## Northern Sea Route

- A navigation route through the Russian Arctic:
  - Linking northern Europe and Asia.
  - 4,800 miles shorter than the Suez Canal route (Hamburg-Yokohama) (INSROP, 1999a).
  - "... the technological and environmental challenges of the NSR 'are no longer absolute obstacles to commercial shipping (even in winter time [with icebreaker assistance]), and that the route has a considerable commercial potential, which however is dependent on Russia's ability to accommodate the needs and requirements of international shipping'" (Østreg, 2006; Ragner, 2000).

## Northwest Passage

- A navigation route mostly through the Canadian Arctic, linking Europe and Asia (Wilson et al., 2004):
  - Package of routes through Canadian maritime zones (especially internal waters of the Canadian Arctic archipelago), and also the Beaufort Sea and Baffin Bay, Davis Strait and Labrador Sea.
  - Mostly summer navigation.
  - 9,000 km shorter than the Panama Canal route.
  - 17,000 km shorter than the Cape Horn route.
- "Climate change has reduced the extent and thickness of sea ice in the Arctic, making international shipping in the Northwest Passage a virtual certainty in the foreseeable future" (Pharand, 2007).

**Decreasing ice is enhancing summer season navigability; but under what conditions?**

### Hazards of Arctic navigation

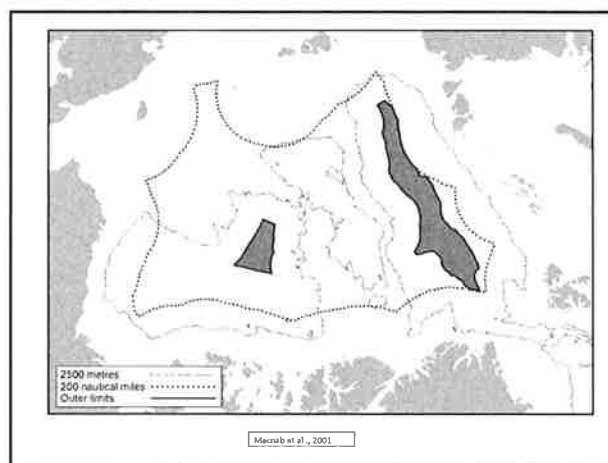
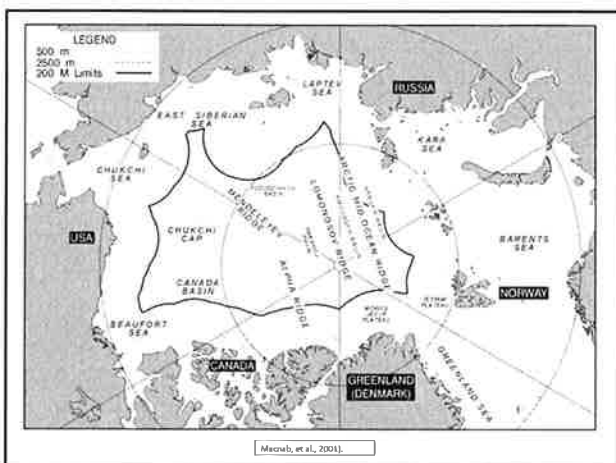
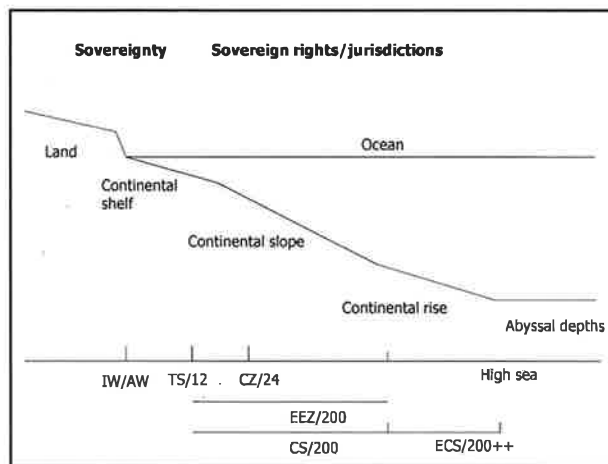
- Despite the rate of sea-ice loss, navigation through the Arctic remains and is likely to remain hazardous:
  - Likely mostly seasonal if without icebreaker assistance (polar class ships? Higher classes?).
  - Passage is not necessarily ice free: likely ice-cover, including presence of multi-year ice and packing.
  - Poor weather; reduced visibility (fog); variable light conditions.
  - Ice-build-up due to freezing of rain, sea spray, snow.
  - Bathymetry is not up to date; lack of up-to-date charts; better charting in Russian waters.
  - Remote areas: little infrastructure to support ships in transit (e.g., navigation aids, ports & repair facilities, search and rescue, salvage, pollution response); better support for navigation in Russian waters.

### 6. Governance processes & challenges

- National
- Regional
- Global

### (a) National level

- Arctic Ocean states are actively preparing claims to much of this ocean's seabed:
  - Russian Federation & Norway have already made submissions to the Commission on the Limits of the Continental Shelf; Norway has completed the process.
  - Canada will make a submission in 2013.
  - Denmark (Greenland) by 2014.
  - United States, although not a party to UNCLOS, is considering its seabed interests in the region.
  - International Seabed Area?
- Potential new maritime boundaries; relevance for shipping regulation.



## (b) Regional level: Arctic Council

- **Ottawa Declaration, 1996:** a high level political forum to (Art. 1):
  - Promote cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues (non-military security), in particular issues of sustainable development and environmental protection in the Arctic;
  - Oversee and coordinate programs;
  - Oversee and coordinate a sustainable development program;
  - Disseminate information.

## Council composition

- **Members:**
  - Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden, US.
- **Permanent Participants**
- **Observers:**
  - Non-Arctic states: China, France, Germany, Poland, Spain, The Netherlands, UK
  - Global & regional inter-governmental and inter-parliamentary organizations
  - Non-governmental organizations



## Permanent Participants

- **Purpose of category:**
  - To provide for active participation & full consultation with the Arctic indigenous representatives within the Council .
- **Consisting of:**
  - Organizations of regional indigenous peoples.
- **Limitation:**
  - Number of organizations (currently 6) should be less than the number of State Members (currently 8).

## Current Permanent Participants

- **Inuit Circumpolar Conference**
  - Canada's Inuit and Inuvialuit; Greenland's Kalaallit Inuit; Alaska's Inupiat ; Alaska's Yup'ik; Russia's Yupik.
- **Saami Council**
  - with member organizations in Finland, Russia, Norway and Sweden
- **Association of Indigenous Minorities in the Far North, Siberia, the Far East of the Russian Federation (RAIPON)**
- **Aleut International Association**
  - representing the Aleut on the Russian and American Aleutian, Pribilof and Commander Islands
- **Arctic Athabaskan Council**
  - represents the interests of United States and Canadian Athabaskan member First Nation governments
- **Gwich'in Council International (GCI)**
  - represents the Gwich'in in Canada and US.

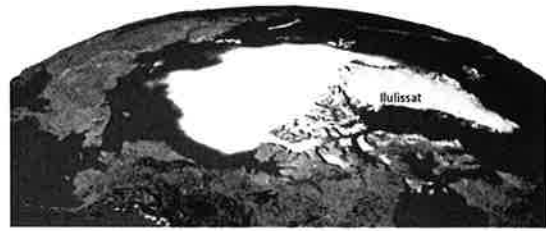
## Structure & processes

- **Council (meets every two years):**
  - Decision-making (consensus of Members).
  - Rotating meetings & secretariat functions.
- **Senior Arctic Officials (SAOs) (meet more frequently):**
  - Liaison and coordination.
- **National focal points:**
  - National follow-up.
- **Working Groups**

## Working Groups

- Arctic Contaminants Action Program (ACAP)
- Arctic Monitoring and Assessment Programme (AMAP)
- Conservation of Arctic Flora and Fauna (CAFF)
- Emergency Prevention, Preparedness and Response (EPPR)
- Protection of the Arctic Marine Environment (PAME)
- Sustainable Development Working Group (SDWG)

## Ilulissat Declaration, 2008



A policy statement by the Arctic 5, not 8, and not involving Permanent Participants or other non-Arctic States.

## (c) Global level

- UN Convention on the Law of the Sea, 1982
  - General duty to protect and preserve the marine environment at national, regional & global levels, including through international organizations
  - Straddling Stocks Agreement
- Convention on Biological Diversity, 1992
  - Duty to protect the environment at the ecosystem, species and genetic levels; in situ and ex situ protection
  - 36 MPAs in the Arctic
- IMO international maritime conventions (shipping)

## Key role of the International Maritime Organization

- Current initiatives
  - Polar Code will be further amended and made mandatory
  - Amendments to the Convention on Standards of Training, Certification and Watchkeeping of Seafarers
  - New navigation and meteorological areas (NAVAREAS & METAREAS)
- Future directions?
  - Possible amendments to the Convention on the Prevention of Pollution from Ships (MARPOL 73/78)
  - Possible designation of particularly sensitive sea areas (PSSAs)
  - Possible designation of routing measures under the Convention on Safety of Life at Sea

## 7. Arctic governance and the EU

- No direct EU coastal frontage in the Arctic Ocean!
- EU member states among the Arctic 8 (Denmark, Finland, Sweden)
  - Denmark = Greenland (not EU, withdrew in 1985)
  - Finland & Sweden = Baltic states
- Iceland: a future EU member?



## EU strategic interests in the Arctic

- Resources:
  - Natural gas (Norwegian & Russian)
  - Possible new high seas fisheries
- Navigation:
  - Legal status of international navigation routes
  - Non-discriminatory access to routes
  - Fees for services
- Protection of aboriginal peoples and their cultures (e.g., Saami in Finland & Sweden).
- Protection of the sensitive Arctic environment.
- Climate change and marine scientific research (EU a major funder of International Polar Year research, 2007-2008).

### The road towards an EU Arctic policy

- An Integrated Maritime Policy for the EU (2007).
- Climate Change and International Security (Paper from the High Representative and the European Commission to the European Council)(2008).
- The European Union and the Arctic Region Communication (Commission to Parliament & Council)(2008).
- European Parliament initiative to ban import of seal products and European Commission application for Arctic Council observer status (2009).
- Council of Ministers (December 2009).

### Climate Change and International Security (2008)

- “There is an increasing need to address the growing debate over territorial claims and access to new trade routes by different countries which challenge Europe's ability to effectively secure its trade and resource interests in the region and may put pressure on its relations with key partners.”

### Arctic Communication

- Three key policy objectives:
  - Protecting and preserving the Arctic in unison with its population.
  - Promoting sustainable use of resources.
  - Contributing to enhanced Arctic multilateral governance.

### Possible EU policy linkages

- Lisbon Treaty (2009):
  - Towards an EU Common Foreign and Security Policy
  - High Representative of the Union for Foreign Affairs and Security Policy: maintains EU relations with international organisations.
  - Exclusive competence over fisheries.
  - Shared competence on environment, transport, economic and social cohesion.
- The Northern Dimension Policy (1999).
  - Provides a common framework for the promotion of dialogue and concrete cooperation, strengthen stability and well-being, intensify economic cooperation, promote economic integration, competitiveness and sustainable development in Northern Europe.
- Marine Strategy Framework Directive (2008):
  - “The serious environmental concerns, in particular those due to climate change, relating to the Arctic waters, a neighbouring marine environment of particular importance for the Community, need to be assessed by the Community institutions and may require action to ensure the environmental protection of the Arctic.
- Overseas Countries Territories (OCR):
  - Relationship with Greenland (2006 Council Decision; 2007-2013 over €40 million annually)(2008 Green Paper).

### Regional linkages

- European Economic Area cooperation and the relationship with Norway.
  - Expansion of Arctic environmental cooperation.
- Barents Euro-Arctic Council:
  - To support and promote regional cooperation in the northernmost parts of Sweden, Norway, Finland and north-west Russia & promote sustainable economic and social development in the Barents Region.
- Nordic Council of Ministers:
  - Arctic Cooperation Programme.

### Opportunities in global fora

- Working through the IMO: should the EU become more active?
- EU's position as a state party to the UN Convention on the Law of the Sea:
  - EU became a party on 1 April 1998 (Art. 305(1)(f) & Annex IX).
  - Art. 197: a duty to protect the marine environment, including in particular regions.
  - MPAs on the high seas and idea for an LOS Convention implementation agreement for high seas biodiversity.



### EU declaration on ratifying the LOS Convention

- Fisheries and EU common fisheries policy.
- "Furthermore, with regard to rules and regulations for the protection and preservation of the marine environment, the Member States have transferred to the Community competences as formulated in provisions adopted by the Community and as reflected by its participation in certain international agreements (see Annex)."
- "The exercise of the competence that the Member States have transferred to the Community under the Treaties is, by its very nature, subject to continuous development. As a result the Community reserves the right to make new declarations at a later date."

### Conclusion:

#### Managing policy complexity & uncertainty

- The Arctic Council "setback".
- The EU will increasingly have an economic & ocean use presence in the Arctic.
- The policy approach has been fragmented and has not managed to position the EU to play a central policy role.
- The EU has substantial influence and leverage in global fora which can be brought to bear on Arctic-related initiatives.
- Although the EU cannot exercise sovereignty, sovereign rights or jurisdictions of coastal states, it is in a position to participate in standard setting through international fora.
- The EU's geographical relationship to the Arctic may change if Iceland becomes a member state and the relationship with Greenland becomes closer.
- The future EU Arctic policy will need to thread carefully in advancing a "leadership role" and emphasize cooperation.