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**Chinese Continental Culture and
Maritime Interests:
Recommendations for Sino-
German relations**

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Tobias Kollakowski | German Institute for Defence and Strategic Studies

Chinese Continental Culture and Maritime Interests: Recommendations for Sino-German relations

Introduction

China and the Global West are caught in a security dilemma. Since China's economic, political and military resurgence and particularly since China's foreign and security policy has become more assertive under the Xi-Li Administration, confrontations with western countries have surged.¹ As interests, norms and values continue to diverge, a broad range of policy areas is affected, including economic competition, military strength and geopolitics, and contests of ideologies and human rights. Recent expressions of this confrontational situation in daily politics were manifold: The Trump era witnessed drastic exchanges of protectionist and retaliatory measures carried out by China and the US.² In 2020, the passing of the Hong Kong National Security Law seriously damaged Sino-British relations as British politicians accused China of breaking international obligations made with the UK as part of the handover of Hong Kong.³ China's armament ambitions that, unlike in Europe, have been carried out without treaty-based limitations, have led to the development of state-of-the-art technologies such as hypersonic weapons systems. These developments provoked deep concerns in the US.⁴ Conversely, the announcement of the UK, the US and Australia to create a security agreement for the Asia-Pacific that will enable Australia to gain access to nuclear-powered submarine technology, was condemned by China as 'extremely irresponsible' and Beijing alleged that the Anglo-Saxon partnership was driven by 'Cold War mentality and ideological prejudice.'⁵

With tensions rising between China and the nations of the Global West, Sino-German relations have not been left untapped. The massive prosecution of the Uyghur ethnic minority in Xinjiang, the suppression of the democracy movement in Hong Kong, assertive Chinese behaviour against South and East China Sea littoral states, unequal trading conditions with China and Chinese sanctions against the German think tank *Mercator Institute for China Studies* are just some of the issues that have strained the Sino-German relationship in recent years.⁶ Lately, the deterioration of bilateral relations has yielded implications that went far beyond diplomatic communiqués and the ministerial level. Originally intended as a symbol of goodwill, the German Frigate *FGS Bayern* was scheduled to call at the port of Shanghai while on its deployment to the Indo-Pacific. In September 2021, China denied Germany's request for a port visit in

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- 1 Sørensen 2015; Ferdinand 2016; Blackwill/Campbell 2016: 16–20.
 - 2 Bulman 2021.
 - 3 BBC 2020.
 - 4 Department of Defense 2021: VII, 60, 61.
 - 5 BBC 2021.
 - 6 Hein 2021; Wurzel 2021.

Shanghai.⁷ The threat of cyber-attacks against the Bundeswehr, among others particularly from perpetrators located in China, has been increasing over the past years, while participation of Chinese representatives in German military education programmes is being re-evaluated.⁸

On the other hand, cooperation with China remains a key German and EU policy objective. Recent policy documents, such as the EU External Action Service's 2013 *EU-China 2020 Strategic Agenda for Cooperation* and the 2019 *Joint Communication To The European Parliament, The European Council And The Council* by the European Commission and the High Representative of the Union, underpin China's role as a strategic partner, among others, to foster multilateralism and share the commitment that is needed to achieve the Sustainable Development Goals.⁹ Likewise, the People's Republic of China (PRC) also identifies cooperation with the EU and its member states as a policy objective. *China's Policy Paper on the EU* (2014) details:

China stands ready to work with the EU to bring the two major forces closer to pursue peaceful development in a multi-polar world, respect and accommodate each other's core interests and major concerns, make the international order and international system more just and equitable, advocate democracy in international relations and create a peaceful, stable, equitable and orderly development environment for all countries. [...] Step up personnel exchanges at various levels in the defense and security field between China and the EU, expand the area and scope of practical cooperation between the two sides, improve the dialogue mechanism on security policies and create conditions for gradually elevating the level of the dialogue.¹⁰

The vast majority of global challenges, which in most cases are also core German policy issues, such as climate change and environmental protection, proliferation of arms, global trade or global health, can only be met if Beijing collaborates. Following this logic, cooperation between the Bundeswehr's Joint Medical Service and the People's Liberation Army (PLA) is uniquely developed and involves, among others, the *Combined Aid* exercise series whose scenarios also target non-conventional security challenges, such as cholera outbreaks.¹¹ Subsequently, despite – and to a certain degree, due to – Sino-German relations having become increasingly strained in recent years, Germany's foreign and security policy still aims at identifying opportunities for cooperation with China and seeks to engage with China, including on a defence policy level.¹²

Concerning concrete security-related policy areas, the German *Policy Guidelines on the Indo-Pacific* detail German intentions to work in dialogue with China with regard to questions of arms control, regional security and in support of international maritime law.¹³ And last but not least, there is strong party-affiliated support for a cooperative stance towards China. The parliamentary group of the Social Democratic Party of Germany, the political party of German Chancellor Olaf Scholz and German Minister of Defence Christine Lambrecht, notes in its position paper:

⁷ Ratz et al. 2021.

⁸ Carstens/Lohse 2021; Bundesministerium des Innern, für Bau und Heimat 2021: 324.

⁹ EEA 2013; European Commission 2019.

¹⁰ MOFA PRC 2014.

¹¹ Bundeswehr Journal 2019; Bundeswehr 2019.

¹² Interview with an anonymous, authoritative source on 16 November 2021.

¹³ Bundesregierung 2020: 9, 16.

For us Social Democrats, political relations with China have always been characterised by an ongoing political dialogue. Our principle is to not just talk about but also with China, and directly address constructive and critical issues in our cooperation and competition. [...] Our relations with China must be defined along the three dimensions of partnership, competition, and system rivalry. China's interest in actively shaping the international order provides an opportunity for us to deepen our cooperation and advance shared interests at a global level.¹⁴

This leads to the question in which policy areas and how German policy should strive to engage with China. How can a cooperative posture be sustained without sacrificing our norms and values?

This GIDSResearch seeks to address this issue by placing its research focus on the maritime domain. It aims to examine underlying motivations and drivers that influence China's approach towards the maritime domain with regard to the military, legal and political dimension. It does so in the first two sections by taking into consideration China's identity, which has been shaped over the course of several centuries by continental power, and contrasting it with the liberal maritime mindset of Western/Anglo-Saxon tradition. As becomes apparent throughout the third section of this paper, the Chinese mindset poses significant challenges to proponents of seapower, though not all measures have direct ramifications for German security. Nevertheless, the role of continental and maritime factors influencing a stakeholder's stance towards the maritime domain is subject to change as the example of the Soviet Union's attitude towards the law of the sea during the second half of the 20th century strikingly demonstrates. Consequently, this paper recommends that German security policy should seek to create opportunities for naval cooperation, utilise the maritime dimension to further enhance cooperation with China and try to demonstrate to relevant stakeholders in China the great advantages of a maritime order that perceives freedom of navigation as its core component. The last section of this GIDSResearch provides some examples of how such a policy approach could be implemented.

It should be noted that while this paper explicitly seeks to identify space for cooperation and ways to improve Sino-German/EU/NATO naval relations, it does not, by any means, argue against a firm German stance on human rights issues or remarks by German office holders criticising aggressive behaviour by Chinese stakeholders, for example in the cyber domain. If, however, Germany's position towards China, as outlined in the *Policy Guidelines on the Indo-Pacific*, is about conveying messages closely associated with normative, liberal and institutional political schools of thought and Berlin disapproves of realist notions such as containment and balancing, Germany should make every effort to flank confrontational but necessary policy actions with cooperative (military) measures.

Furthermore, although this research paper applies a conceptual approach that refers to sea and continental power to interpret Chinese policy and legal interests and aspects of Chinese naval strategy, it does not dismiss other explanatory frameworks that interpret Chinese activities in the maritime domain from other perspectives such as economics, geostrategy or (non-maritime) strategic culture.¹⁵

¹⁴ SPD Fraktion im Bundestag (2020): 1.

¹⁵ See, for example, You/You 1991: 137–138; Winterford 1993: 385; Rosyidin 2017; Kirchberger/O'Keeffe 2019.

1 The view of the Global West: A sea of freedom

Before examining Chinese perceptions of the sea, it is useful to quickly recall the western view on the subject. The West's perception of the high seas, the global commons, is essentially one of freedom. Its central characteristics are a liberal order (including the high importance of property, contractual and human / personal rights) and maritime aspects, i.e. the central importance of sea trade and naval forces in the context of creating and maintaining this order.¹⁶ Flows of capital and trade, which were simultaneously the guarantee for the maintenance of this order and a result thereof, were protected by the mighty fleets of the great naval powers enabling them to achieve and maintain command of the seas. During peacetime, the use of oceanic sea power kept international sea-based trade open for one's own party and the international community and denied the enemy access to it during times of war. Consequently, during conflicts adversaries cut off from global high seas trade suffered from a long-term economic decline that played a central role in maritime-centred, comprehensive approaches to warfare in the English tradition.¹⁷

Over the past two centuries, Imperial Britain and the United States of America, two Anglo-Saxon states largely characterised by seapower, have been the main stakeholders in shaping and maintaining this order.¹⁸ In the 21st century, the U.S., the 'ultimate custodian of international order',¹⁹ has inherited and accepted the responsibility that results from this intricate relationship between world power, seapower and the global maritime order.²⁰ In this regard, the U.S. Navy, U.S. Coast Guard and U.S. Marine Corps 2007 *A Cooperative Strategy for 21st-Century Seapower* notes

The oceans connect the nations of the world, even those countries that are landlocked. Because the maritime domain—the world's oceans, seas, bays, estuaries, islands, coastal areas, littorals, and the airspace above them—supports 90% of the world's trade, it carries the lifeblood of a global system that links every country on earth. Covering three-quarters of the planet, the oceans make neighbors of people around the world. [...] As our security and prosperity are inextricably linked with those of others, U.S. maritime forces will be deployed to protect and sustain the peaceful global system comprised of interdependent networks of trade, finance, information, law, people and governance.²¹

The creation of such a global, international system was based on the establishment of lines of communication between the world's civilisations primarily by sea that was carried out by the Europeans in the period between the end of the 15th century and the late 18th century.²²

This development was made possible in particular by the scientific knowledge gained in modern history, especially the geographical data gathered on expeditions, and the enforcement of economic interests in the respective target regions by means of maritime force.²³ Initially, the design of this system was characterised by a variety of

16 Till 2013a: 2; Till 2013b: 13.

17 Lambert 2016: 9; Haines 2016: 242.

18 Mead 2007; Lambert 2016, 3–31; Till 2013b: 13.

19 Reisman 1999: 63.

20 Montgomery 2014: 119.

21 Department of the Navy 2007: 2, 6.

22 Sharman 2019: 165, 193–194.

23 Glete 1992: 84.

stakeholders – private,²⁴ state and private-public hybrid organisations such as the East India Company, England’s chartered trading company. During the course of the 19th century, these conditions changed. With the 1856 *Paris Declaration Respecting Maritime Law*, piracy was forbidden and, in 1858, the East India Company was dissolved after consensus had been reached that trading companies were not allowed to exercise rights and means of state violence.²⁵ The state-based international maritime order thus prevailed. Its liberal character is also based on the formative influence of seapower states that were shaping and negotiating this order. These states usually had inclusive political systems that took into account the interests of seafaring merchants, who in turn had great interest in protecting their material and intellectual rights from arbitrary despotism by fostering systems that entailed rule of law.²⁶ Against this background, freedom of the sea and freedom of speech and thought, referred to by Andrew Lambert as ‘freedom of intellectual connectivity by sea’, are closely related.²⁷

2 Sino-centric perceptions of the Sea

China’s traditional perspective on the creation of the maritime order and the role of the sea is completely different. From a cultural point of view and taking into consideration Imperial China’s self-concept, the sea, with the exception of the coastal provinces, has hardly played any role except for very few dynasties. In contrast to the maritime powers of the Global West, which prospered under the establishment of the liberal, maritime order, underwent social change and consequently dominated the globe by controlling the world’s sea lines of communication, the maritime-liberal character of this very order clashed blatantly with the Chinese system, whose state ideology and retention of power were based on social harmony and the preservation of its traditional philosophical-moral order.²⁸

The Chinese imperial court and civil servants were highly suspicious of the social and political consequences associated with sea trade.²⁹ One concern was that foreign ideas that reached China via Chinese ports could potentially destabilise the Chinese system and the Confucian social order.³⁰ Norms and values that were closely associated with seapower states, such as Holland and Great Britain, e.g. freedom of the individual and a Western understanding of politics bound by rule of law, were in complete contrast to the Chinese social model in which a patrimonial state was meant to be capable of correcting destructive social developments by means of social control.³¹ The resistance of the (neo)-Confucian civil service apparatus was correspondingly strong when components of the Sino-centric order, for example the tribute system, were exploited to generate commercial profits in long-distance trade.³² For centuries, especially during the Ming and Qing dynasties, the attitude of the Chinese central state oscillated between indifference and a marked aversion to the maritime domain and its accompaniments

²⁴ For example corsairs.

²⁵ Sharman 2019: 188, 190.

²⁶ Lambert 2018; Till 2013b: 2-3.

²⁷ Lambert 2018: 21; Till 2013b: 4.

²⁸ Gernet 1996: 477; Heilmann 2004: 21.

²⁹ Wilson 2009: 246; Dreyer 2007: 40.

³⁰ Lambert 2018: 315.

³¹ Wong 1997: 101.

³² Dreyer 2007: 34.

such as sea trade and piracy.³³ In particular, piracy and concerns about social and ideological instability were decisive in convincing the Chinese unitary state to pursue an anti-maritime agenda from the beginning to the middle of the 16th century. In 1500, a law was passed that made the construction of ships with more than two masts a criminal offense, in 1525 a law was passed that provided for the destruction of ocean-going ships and imprisonment for Chinese who made their living in overseas trade, and from 1551 a general ban of shipping involving ships with more than one mast came into force.³⁴

The climax of Chinese anti-maritime policy was reached in the 17th century when the Qing dynasty suppressed rebels under the leadership of the Ming loyalist Koxinga on Taiwan: To destroy the economic basis of Koxinga's rebel state, which was mainly financed through sea trade and piracy, the Qing government ordered the evacuation of the Chinese coastal belt.³⁵

In the long run, local maritime activities in China could not be prevented, given the poor implementation of anti-maritime laws in the Chinese coastal provinces, where many people profited from sea trade, and their unsustainable character. However, these examples illustrate the traditional way of thinking that shaped Beijing's policy towards the sea. This traditional view of the unitary state on the oceans can best be compared with that of the empire's northern border regions at the Great Wall: A space designed to prevent or delay the penetration of foreign 'barbarians' into China.³⁶

Finally, there is another fundamental difference in China's perception of the maritime order. With regard to the offensive maritime violence on which the establishment of the global maritime order was based, China was not an agent but an object of violence. Ultimately, this led to the collapse of the Chinese worldview and empire. As a result of the defeat of the Qing Dynasty's fleet against the Royal Navy in the Opium War of 1841, against the French Navy in 1884 and against the Imperial Japanese Navy in the 1st Sino-Japanese War and subsequent semi-colonial experiences the Chinese threat perception was fundamentally transformed. The trauma of being invaded by mounted nomadic tribes from Central Asia was replaced by invasions from the sea, a narrative that has largely been preserved up to current times. In the ideological discourse about the century of humiliation (1839 to 1949) propagated by the Chinese Communist Party, the subject of the Chinese coast's vulnerability to (western) aggressors is an integral part. Against this background, Commodore Yu Guoquan, former Director of the Division of Ships, Department of Arms & Technology, People's Liberation Army Navy (PLAN), commented in an interview in 1996:

In the last 109 years, imperialists have repeatedly invaded China from the sea (...) 470 times (...) 84 of these being serious invasions. The ocean has become an avenue for the aggressors to bring in their troops and haul away our wealth.³⁷

A not so recent reminder of China's littoral vulnerability occurred during the 3rd Taiwan Crisis in 1995/1996 when the Clinton Administration dispatched two carrier strike groups to the sea zone surrounding Taiwan including a passage of the Taiwan Strait, in response to attempts by the PRC to exert pressure on Taiwan by means of rocket tests and amphibious landing exercises.

33 Fairbank 1983: 16; Sharman 2019: 167.

34 Wilson 2009: 239, 255.

35 Wills 1979: 221–231.

36 Andrade 2004: 417; Lambert 2018: 316.

37 Cole 2010: xxiv.

These historic experiences provide one explanation for the traditional focus of the PLAN on sea denial. This fact manifested itself, among others, in a focus on the procurement of submarines in the 1990s and early 2000s. For example, between 1997 to 2005, in the immediate aftermath of the Taiwan Crisis, China commissioned ten Russian-built Kilo II submarines in addition to its already large, though outdated, submarine fleet of approximately 40 conventional units at the time.³⁸ Subsequently, Bernard Cole also used the above-mentioned term of a ‘Great Wall at Sea’ to stress the PLAN’s orientation towards sea denial and its strategy designed to impair U.S. interventions in the western Pacific’s marginal seas at turn of the century/the early 2000s.³⁹

Apart from these century-old threat perceptions, another significant formative influence on China’s approach towards the maritime domain occurred during the founding years of the People’s Liberation Army Navy.

In the time period between the 1950s and the early 1980s, the concept of ‘People’s War’, Mao’s land-based way of ‘revolutionary’ warfare that had been applied by the Communists over the course of their armed struggle preceding the foundation of the People’s Republic of China, was adapted to the navy and served as the principal guideline for the PLAN.⁴⁰ Under the doctrine of People’s War, the PLAN was designed to carry out what would be subsequently termed ‘near-coastal defence’ (近岸防御 jinan fangyu), support army operations and engage a hostile naval force approaching the Chinese coast by employing large numbers of fast attack craft, especially torpedo boats, land-based aircraft and submarines.⁴¹

Following the adoption of the 1980 strategic guidelines that emphasised the concept of active defence and the appointment of Liu Huaqing (1982 – 1988) as Commander of the PLAN in 1982, the near-coastal defence strategy was replaced by a ‘near-seas/offshore defence strategy’ (近海防御战略 jinhai fangyu zhanlüe) (1979/1982) / ‘active defence near-seas defence strategy’ (积极的近海防御战略 jiji de jinhai fangyu zhanlüe) (1985/86) that envisioned the defence of the economically viable coastal belt far from the shore. It required the PLAN to develop capabilities to intercept hostile incursions long before they reached coastal waters and protect sea routes in the near-seas.⁴²

Thus, the objective to achieve a greater operational radius of action at sea applied the land-centred ideas of forward defence that had been essential to the 1980 strategic guidelines to the naval domain.⁴³ Moreover, the late 1980s witnessed the Central Military Commission’s call for rapid reaction forces that were supposed to be combat-ready for regional deployments, including marine infantry and thus an initial, though very limited, expeditionary capability.⁴⁴

Even though the PLAN had embarked on its route to modernisation and development of blue-water capabilities, had begun to gather experience in sea-based logistics⁴⁵ and had initiated the ‘open-ocean training programme’ by the late 1980s,⁴⁶

³⁸ Office of the Secretary of Defense 2006: 48; Saunders 2012: 127, 132.

³⁹ Cole 2010.

⁴⁰ Katzenbach/Hanrahan 1955; You/You 1991: 139; Tien 1992: 227; 377; Cole 2009: 327.

⁴¹ You/You 1991: 138–139; Winterford 1993: 377; Fravel 2019: 76, 96.

⁴² You/You 1991: 139, 140; Winterford 1993: 379; Fravel 2019: 162–163.

⁴³ Fravel 2019: 162.

⁴⁴ Winterford 1993: 379.

⁴⁵ The first high-seas replenishment tanker AOR FUQING 881 HONGZEHU was commissioned in 1979.

⁴⁶ You/You 1991: 137.

the PLAN's underlying strategic culture, its terrestrial identity, the way how it thought from land onto the sea, remained largely the same.

A striking example of this mind-set was revealed in form of the naval build-up plans that were created during this time period and which demanded the advance of naval capabilities to match expanding operational requirements to be achieved at predetermined points in time. You Ji and You Xu, E.D. Smith Jr, David Winterford, Andrew S. Erickson and Carl Otis Schuster all elaborate on somewhat different phases in this long-term PLAN development plan. The authors proclaim alleged deadlines for the years 2000, 2015, 2020, 2030 and 2050 to achieve respective sea denial, sea control and extra-regional power projection capabilities within the first and second Pacific Island Chains and further beyond.⁴⁷

While the exact details of these benchmarks vary depending on the source, what matters for the purposes of this paper is the terrestrial mind-set that stands behind Chinese efforts to 'draw lines in the water'⁴⁸ as if the sea had borders up to which armies could advance or as if the island chains, to cite Andrew Erickson, were '[...] fortified barriers that China must continue to penetrate to achieve freedom of maneuver [...].'⁴⁹ This notion of the sea stands in stark contrast to the above-introduced western/seapower concept of the global commons as one inseparable and interconnected space, one 'common property of all' to use the words of the famous Dutch philosopher Hugo Grotius.⁵⁰ This comprehensive perspective on an undivided sea and the way how decision-makers think about it also fully encompasses the military dimension as the First Sea Lord, Admiral of the Fleet John, 1st Baron Fisher (1904–1910, 1914–15) argues:

The Admiralty should never engage itself to lock up a single vessel even – not even a torpedo-boat or submarines – anywhere on any consideration whatever. The whole principle of sea fighting is to be free to go anywhere with every [...] thing the Navy possesses. The Admiralty should [...] reserve entire freedom of action⁵¹

Some authors have linked the Chinese strive for dominance in adjacent marginal seas (green water) and its ambition to acquire the capability to deny the enemy access to certain sea zones that were considered to be of high strategic value to another formative influence on the Chinese naval school of thought: the impact of Soviet naval thinking on the early PLAN.⁵²

In the early 1950s, against the background of Sino-Soviet Friendship, the People's Republic of China received significant naval assistance from the USSR to foster the build-up of a Communist Chinese navy.⁵³ By 1952, according to data provided by Bernard Cole, the number of Soviet naval advisors dispatched to China reached a couple of thousand.⁵⁴ These experts also introduced the Soviet concept of the Young School [Molodaya Shkola], the Soviet adaption of the original French Jeune École approach, which promoted a defensive navy consisting of small surface combatants, land-based

47 You/You 1991: 141; Smith 1991: 39; Winterford 1993: 379–380; Erickson 2009: 102–103; Schuster 2013: 56–57.

48 McDevitt/Vellucci 2013: 79.

49 Erickson 2009: 103; see also Bullock 2002: 62.

50 Till 2013a: 341.

51 Fisher 1919: 197.

52 You/You 1991: 139.

53 Winterford 1993: 373.

54 Cole 2009: 323.

aircraft and submarines.⁵⁵ Ultimately, PLAN leaders, including famous PLAN commanders such as Xiao Jinguang and Liu Huaqing received training in the USSR, the latter at the Voroshilov Naval Academy in Leningrad during the 1950s.⁵⁶ Around that time period, as Bryan Ranft and Geoffrey Till point out, Soviet early-Cold War naval strategy encompassed the creation of a defensive perimeter up to approximately 500 nm that consisted of a layered defence made up of land-based aircraft, major surface combatants, long-range submarines, medium-range submarines, minor surface combatants, minefields and coastal artillery.⁵⁷

This does not mean, however, that the Chinese blindly copied the Soviet military system from the strategic to the tactical level. In fact, as M. Taylor Fravel argues, they explicitly did not.⁵⁸ At a significant 1958 meeting of the Central Military Commission, the military-political leadership of the People's Republic of China determined that China should primarily build on China's own military experience when developing operating procedures (以我为主 *yi wo wei zhu*), but secondarily 'use the Soviets as a reference.'⁵⁹ Thus, (only) where geographic, economic and military conditions had been amenable to the application of Soviet military doctrine,⁶⁰ the Chinese had indeed adapted Soviet concepts.

Both influences, the Maoist People's War and (early) Soviet concepts, nevertheless, were designed to deny enemy forces access to sea zones and shared, at their core, a terrestrial approach to the maritime domain. Weapons and tactics developed to implement them were, to borrow the words of Andrew Lambert, designed '[...] to destroy seapower, not to acquire it.'⁶¹

3 Impacts of China's continental culture on naval strategy, policy interests and legal interpretations

China's strategic culture, shaped by centuries of continental power, has deep implications on how the 21st century People's Republic of China approaches the maritime domain and maritime order, both at a regional and international level.

More than almost any other maritime topic, a continental school of thought has informed Chinese activities with regard to the western Pacific marginal seas. Continental powers have traditionally employed a wide range of means, such as legal or physical restrictions or land-based weapon systems and strategies, to deny opponents access to maritime space deemed vital and to promote the continentalisation of the sea.⁶²

⁵⁵ You/You 1991: 139; Cole 2009: 322

⁵⁶ Winterford 1993: 377; Cole 2009: 323.

⁵⁷ Ranft/Till 1989: 172–173.

⁵⁸ Fravel 2019: 72–106.

⁵⁹ Lin 2013; Fravel 2019: 100.

⁶⁰ The term 'doctrine' is here applied as it is understood not in Soviet but in Western military terminology: '[...] doctrine is defined as the fundamental principles by which the military forces or elements thereof guide their actions in support of national objectives. [...] First and foremost, doctrine provides fundamental principles. These principles reflect the Army's views about what works in war, based on its past experience. They are principles that have been learned through battles and wars that have been successful under many conditions such as the principles of fire and maneuver or the principles of joint operations.' Spencer 2016.

⁶¹ Lambert 2018: 14.

⁶² Bullock 2002; Kraska 2011: 95; Lambert 2018: 318.

The military, political and legal dimensions of Beijing's approach to this matter have been the object of extensive academic research in the recent past. Countless authors have elaborated on the wide range of Chinese joint military capabilities that are designed to counter foreign military interventions in East Asian waters and are often encapsulated under the western term anti-access/area denial (A2/AD). Components of this concept include but are not limited to utilising land-based cruise missiles, tactical ballistic missiles and aircraft, ISR capabilities, naval mines and military facilities on Chinese-claimed and artificially extended islands and reefs in the South China Sea to secure the sea control zone within the first island chain.⁶³

In addition, the PLAN's sea-going assets, for example China's conventional submarine force, the largest in the world, or, as of 2021, 84 missile attack craft and 72 Jiangdao-class corvettes, provide an impressive arsenal to secure China's proclaimed defensive perimeter.⁶⁴

The capability of anti-ship ballistic missiles to hit moving targets at sea, one of the centrepieces of the China's A2/AD concept, had long been the object of intense debate. In December 2020, however, Admiral P. Davidson, commander of US Indo-Pacific Command, for the first time officially acknowledged on behalf of the U.S. that the PLA had conducted a successful anti-ship ballistic missile test against a moving vessel.⁶⁵ Furthermore, Chinese efforts have aimed at expanding the PRC's A2/AD zone up to the point that large parts of the Second Island Chain have fallen within the range of Chinese weapon and sensor systems.⁶⁶

The 2nd decade of the 21st century also witnessed the resurgence of the concept 'underwater great wall' [水下长城] – a Chinese term that had been in use long before to describe Chinese subsurface capabilities⁶⁷ – to describe Chinese efforts to establish an undersea surveillance network in the South China Sea designed to detect foreign subsurface vessels and ultimately award the PRC the capability to deny them access to the sea zone.⁶⁸ Recently, various influential publications have given rise to a debate concerning potential Chinese ambitions to turn the South China Sea into a bastion for its sea-based second-strike capability.⁶⁹ The mind-set that underlies Chinese actions, from territorialisation by creation of artificial islands and A2/AD missile deployments to the construction of an underwater great wall and the potential creation of a bastion in the South China Sea, is thoroughly terrestrial. Born out of strategic thinking that perceives 'geographical space [地理空间]' as the 'stage for strategists'⁷⁰ and 'strategic space [战略空间]' as a 'space area [空间区域] necessary for the country to resist external interference, aggression, maintain its own survival, and develop'⁷¹, the Chinese

63 Krepinevich, Watts/Work 2003: 93; Cliff et alii 2007; Yoshihara/Holmes 2010: 101–124; McDevitt/Vellucci 2013: 80–81; Montgomery 2014: 130–137; Ou 2014; Scholik 2016: 179–181; Biddle/Oelrich 2016; Tangredi 2018: 8–9; Goldsmith 2019: 3–8; Tangredi 2019: 5; O'Rourke 2021: 11–13.

64 Pape 2021: 130.

65 Rogin 2020.

66 Department of Defense 2021: VIII.

67 Sun [孙] 2006: 5.

68 Bana 2016a; Bana 2016b; Goldstein 2019; Zhang [章] 2020.

69 Chang 2017; Cook 2017; Soulard 2018; Lambert 2018: 317; Zhao 2018; Kirchberger, O'Keeffe 2019.

70 Wang [王] 2010: 61–61.

71 Shou [寿] 2013: 241.

expansion into the sea aims at creating a militarily closed and controlled area through the ‘creeping continentalisation of the maritime space.’⁷²

China’s increasing military capabilities in the region and its rapidly expanding force posture are, from the armed forces’ perspective, among the most impressive aspects of China’s strategic approach to the maritime domain. Nevertheless, for German foreign and security policy they present the concern of least importance given that Germany is not and does not claim to be a military stakeholder in this part of the world. Consequently, Chinese military capabilities in the western Pacific theatre do not pose a direct security threat to Germany.

This assessment changes, however, when it comes to China’s legal positions and political narratives which, shaped by continental thinking, challenge western and maritime-minded nations and the liberal maritime order they created.⁷³

During the UNCLOS negotiations, the PRC took a leadership position among the group of (developing) countries that opposed the legal codification of western liberal maritime thinking and thus, for example, supported extreme coastal positions, such as extending territorial waters up to 200nm during the early 1970s, and denounced western demands for free passage of warships through international straits. China also advocated the use of the continental shelf in determining TTW as, according to Beijing, the ‘[...] shallow sea off the coast of a country is the natural extension of its land territory.’⁷⁴

The points of view of the proponents of far-reaching coastal state authority and their leading advocates, especially the PRC, mattered because in the end results could only be achieved by compromise. As Steven Haines, Professor of Public International Law, points out, UNCLOS was ultimately a

[...] product of the tension between the newly independent coastal states of the developing world (which sought to enhance their position at the expense of major maritime interests) and the major maritime powers (which sought, and secured, the preservation of high seas freedoms and rights of navigation).⁷⁵

While the UNCLOS negotiations were concluded in 1982 and UNCLOS has since become the universally accepted regime of law and order in the world’s oceans and seas, the PRC continues to act as one of the most ardent proponents of a continental legal agenda and an advocate of interpretations of a law of the sea benefiting coastal states and threatening to ‘shrink the high-seas.’⁷⁶ It was against this background that China signed and ratified UNCLOS in 1996, but added several formal declarations and reservations in the course of its ratification.

As of the time of writing this paper, the PRC maintains claims to all archipelagos and islands on the basis of the ‘Law on the Territorial Sea and Contiguous Zone’ of 1992 and ‘[...] does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes.’⁷⁷ Through territorialisation and the expansion of artificial islands the PRC has systematically expanded its control over vast parts of the South China Sea and its natural resources,

⁷² Lambert 2018: 320.

⁷³ Kraska 2011: 163. As it is the aim of this policy paper to develop an argument of political and not of legal nature, legal disputes of minor significance to Germany’s approach to foreign and security policy, such as the contested use of UNCLOS Articles 7 and 47 on straight baselines (see, for example, Beckman 2019: 6), will not be covered.

⁷⁴ Friedheim/Jehn 1975: 345; Muller 1983: 209–213; Kraska 2011: 107–108.

⁷⁵ Haines 2016: 244.

⁷⁶ Lambert 2018: 320.

⁷⁷ United Nations Treaty Collection 2021.

but the International Arbitral Tribunal has decided in its award ‘In The Matter Of The South China Sea Arbitration’ (PCA Case N° 2013-19) that Chinese claims to an EEZ in this sea zone are legally unfounded as

[...] none of the high-tide feature[s] in the Spratly Islands is a fully entitled island for the purposes of Article 121 of the Convention (see paragraphs 473 to 626 above). There is thus no maritime feature in the Spratly Islands that is capable of generating an entitlement to an exclusive economic zone or continental shelf [...].⁷⁸

Moreover, the PRC claims ‘[...] sovereign rights and jurisdiction over an exclusive economic zone of 200 nautical miles and the continental shelf.’⁷⁹ Beijing’s interpretation that involves alleged coastal states’ excessive types and scopes of sovereign rights in the EEZ, has severe consequences: High Seas freedoms, so the argument goes, cannot be applied to the EEZ, specific military activities by foreign warships are consequently not allowed and navigation rights require prior notification/authorisation by the coastal state and are only granted, if foreign vessels and aircraft do not have an impact on the coastal state’s security, national interests or the coastal state’s entitled rights to the EEZ’s natural resources.⁸⁰

In fact, as Chinese scholars Dr. Ren Xiaofeng and Senior Colonel Cheng Xizhong⁸¹ argue in an article published in the journal *Marine Policy*, one of the leading journals on ocean policy studies:

The EEZ is not the high seas but an area beyond and adjacent to the territorial waters of the coastal State, where the coastal State enjoys sovereign rights and exclusive jurisdiction for specific matters. It cannot be called international waters. In the EEZ, the traditional freedom of the high seas does not exist, and the “freedoms of navigation and overflight” and “other internationally lawful uses” enjoyed by other States in the EEZ are “freedoms” and “uses” restricted by the rules of the Convention and other international laws. The ‘quality’ or the ‘quantity’ of these freedoms is very different from the freedoms of the high seas in that there are more restrictions on them.⁸²

As a result, according to Beijing’s view, gathering military intelligence in the EEZ without the permission of the coastal state, for example, is identified by the PRC as threat of force against the coastal state,⁸³ an interpretation that has led to various incidents over the past decades, most notably the 2009 incident involving the *USNS Impeccable* in the South China Sea.⁸⁴ Consequently, the Chinese Ministry of Defence referred to alleged ‘[...] illegal surveying activities in China’s exclusive economic zone without China’s permission’ that supposedly had ‘[...] violated international and Chinese laws’ when explaining China’s perspective on the incident.⁸⁵ However, for proponents of the liberal maritime order, like Germany, such legal views and their subsequent enforcement are highly problematic given that mobility on the surface of the

⁷⁸ Permanent Court of Arbitration 2016: 278.

⁷⁹ United Nations Treaty Collection (2021).

⁸⁰ Ren/Cheng 2005; Hayashi 2005: 133; Bush 2010: 64, 69; Cole 2010: xxiii–xxiv; Till 2013a: 345; Song 1989: 986

⁸¹ Both scholars are associated with the China Institute for International Strategic Studies.

⁸² Ren/Cheng 2005: 140.

⁸³ Ship and Ocean Foundation 2003: 31.

⁸⁴ Zou 2014: 43–44.

⁸⁵ China.org.cn 2009.

ocean and the air above is threatened by continuous moves to enclose the EEZ and undermine the seapower stakeholders' understanding of UNCLOS as a liberal maritime framework.⁸⁶ While much of the debate concerning the issue between coastal state jurisdictional authority and freedom of the seas has focused on the role of naval vessels as sovereign representatives of foreign state authority and fishery disputes among the South China Sea littoral states, there are signs that in recent years the conflict has also developed ramifications for merchant shipping and thus the global sea lanes. Although China claims that freedom of navigation is no issue in this part of the world,⁸⁷ reports from seafaring personnel indicate that the PRC's ambitions to exercise authority in maritime zones claimed by Beijing have also led to Chinese authorities instructing merchant ships to keep well clear of certain areas in the South China Sea, resulting in the need to re-route the respective merchant vessels and subsequent higher transit costs.⁸⁸

In addition, Beijing also has a different legal interpretation concerning the right of innocent passage. The declaration the PRC has filed at the UN when joining UNCLOS notes 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.⁸⁹

China's provision, which claims that coastal states be in possession of power to demand 'advance approval' before foreign warships may conduct a passage through TTWs, is completely incompatible with UNCLOS Articles 17-19 stating that '[...] ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.'⁹⁰

According to a western/ liberal maritime interpretation, 'ships of all States' is meant to include warships, not least due to the further restrictions placed on submarines as they exercise the right of innocent passage in accordance with UNCLOS Article 20. Nevertheless, this very detail is not explicitly stated in UNCLOS – as the Convention refers to 'ships of all states' and not 'all ships' –, thus giving China manoeuvre space for its own legal interpretations.⁹¹

Consequently, with regard to the subtopic of innocent passage, the implications of China's legal position go far beyond the regional case of the South China Sea and pose a direct policy concern for Germany. The situation is aggravated by the fact that there are internationally contested views as to the precise meaning of UNCLOS terminology like 'peaceful purposes' or 'other internationally lawful uses', as is acknowledged by both the PRC and international scholars alike.⁹² Against the background of evolving interpretations and continuously increasing coastal state authority, legal scholar Jon Van Dyke comes thus to the conclusion that

⁸⁶ Kraska 2011: 163; Hong 2012: 78.

⁸⁷ Hong 2012: 85.

⁸⁸ Interview with Th. Johannsen, Captain Merchant Navy, on 16 December 2021.

⁸⁹ United Nations Treaty Collection (2021).

⁹⁰ United Nations (no date): 30–31; Kraska 2011: 318.

⁹¹ Interview with Prof. Dr. Matz-Lück, Director of the Walther Schücking Institute for International Law on 17 February 2022.

⁹² Ship and Ocean Foundation 2003: 3–11; Ren/Cheng 2005; Hong 2012: 87–88.

[...] it is no longer accurate to say that the freedom of navigation exists in the exclusive economic zone of other countries to the same extent that it exists on the high seas. Coastal states have acted to control such navigation to protect their coastal living resources, to guard against marine pollution, and to protect the security of coastal populations, and it can be anticipated that such assertions of coastal state control will continue. In many cases, these claims have been approved by the International Maritime Organization and by other regional and global organizations. The balance between navigation and other national interests continues to develop, and navigational freedoms appear to be disappearing during this evolutionary process.⁹³

Ultimately, the PRC's claims to most of the South China Sea based on alleged 'historic' rights have received much attention over the past two decades. According to the Chinese Ministry of Foreign Affairs, China possesses 'indisputable sovereignty, sovereign rights and jurisdiction over the South China Sea islands and their near seas.'⁹⁴

In its 2016 decision the tribunal in the South China Sea Arbitration decided that Chinese claims were '[...] without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the [UNCLOS – *author's note*] convention.'⁹⁵ Fortunately, from the German perspective, the arbitration tribunal also declared '[...] that the Convention superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein'⁹⁶ – given the danger what a renewed opening of Pandora's box of 'historic rights' could have meant for maritime space all over the world and for UNCLOS as a whole. This introduces the next issue of potential global implications stemming from regional Chinese legal interpretations and actions. Apart from specific legal interpretations that directly challenge liberal maritime thinking, as in the case of the right of innocent passage, the enforcement of Chinese laws that contradict UNCLOS may also have global implications if the international context is taken into account. Countries like Bangladesh, India, Iran, Maldives, Myanmar, Pakistan, the Philippines, Sri Lanka, and Syria demand prior authorisation when foreign warships seek to make use of the right of innocent passage through their territorial sea.⁹⁷

In addition, various states, including Grenada, Guyana, Myanmar, Uruguay, Malaysia and Pakistan, but also potential great powers such as Brazil and India, claim partial or complete authority over their EEZ to regulate maritime activities that go beyond their UNCLOS-denoted resource-management rights as far as to restrict foreign military activities. Moreover, some of these states actively mobilise international support to reinterpret the law of the sea concerning the EEZ.⁹⁸ Against this background, there is, as James Kraska argues, the danger looming at the horizon that other coastal states, which are currently not enforcing their excessive EEZ claims, could become encouraged by the precedents set by Chinese actions, which in consequence may lead to state practise that undermines freedom of navigation inside the EEZ.⁹⁹ In fact, the People's Republic and (some) Chinese legal scholars are actively campaigning and seeking to shape

⁹³ Dyke 2005: 121.

⁹⁴ People's Daily 2009.

⁹⁵ Permanent Court of Arbitration 2016: 473.

⁹⁶ Ibid.

⁹⁷ Beckman 2019: 7–8.

⁹⁸ Kraska 2011: 8, 9, 164, 291; Hong 2012: 79, 81–82; Beckman 2019: 11–12.

⁹⁹ Kraska 2011: 8, 159.

the global regulatory discourse on the governance of the South China Sea, effectively turning the South China Sea disputes equally into a battle of the legal arguments in which winning the legal hearts and minds of unlike-minded states is crucial for the institutionalization of China's approach and interpretation of international law.¹⁰⁰

While Chinese efforts to shape international norms have become ever more ambitious and vocal over the course of the past decade, forces within China that have been proposing political steps to shape and change the global maritime order have existed for a long time. For example, in an influential article published in 2009, Gao Zhiguo, Vice-President of the Chinese Association of the Law of the Sea, makes the argument that '[it] is China's view that the [UNCLOS] Convention is only the first step towards the establishment of a new international legal order for the oceans.'¹⁰¹

Since General Secretary Xi Jinping took over power in 2012/2013, China's foreign policy stance, including its desire to shape the global order, has become more assertive.¹⁰² In his speech at the 19th National Congress of the Communist Party of China, Xi Jinping outlined his ambitions to reform the international order:

We will advocate the construction of a community with a shared future for mankind (人类命运共同体) and advance the reform of the global governance system. Our country's international influence, appeal, and shaping power have been further improved, making new major contributions to world peace and development.¹⁰³

Concerning the maritime domain, Beijing has since proposed a subcomponent of Xi's visionary political model called the 'Maritime Community with a Shared Future' (海洋命运共同体). Introduced at the 70th anniversary of the foundation of the PLAN in 2019 and again presented at the 13th World Oceans Day in 2021, the 'Maritime Community with a shared future' (henceforth: 'Maritime Community') remains vague with regard to the exact definition of the concept, as is often the case with Chinese political slogans. It unites a wide range of subtopics from achieving 'blue' sustainable economies to creating maritime economic interconnectivity and improving marine ecological protection and pollution management with concepts concerning maritime order and ultimately security.¹⁰⁴

Chinese scholars Hu Dekun and Jin Yu¹⁰⁵ summarise the 'Maritime Community' as follows:

Rooted in traditional Chinese culture and values, this concept is a breakthrough of the Western-dominated international ocean theory. It goes beyond the simple and narrow maritime rights and interests of a country or a nation and reflects the deep concern for global ocean governance and even global governance. It is the Chinese wisdom and solution to safeguard world ocean peace, promote world ocean development and participate in international ocean governance.¹⁰⁶

¹⁰⁰ Hermez 2020: 562.

¹⁰¹ Gao 2009: 294–295.

¹⁰² See, for example, Vogl 2021: 21.

¹⁰³ People.com.cn 2017.

¹⁰⁴ Kollakowski 2019; Xinhua 2021; The State Council Information Office 2021; Hu and Jin 2021.

¹⁰⁵ Associated with Wuhan University's China Institute of Boundary and Ocean Studies and the China Institute of Boundary and Ocean Studies.

¹⁰⁶ Hu/Jin 2021.

Embodied in the ‘Maritime Community’ is ‘China’s Maritime Outlook in the New Era’ [新时代中国海洋观], China’s guideline to the maritime domain. Under its auspices, in recent years, China has signed a range of agreements on marine biodiversity and bilateral maritime cooperation, has initiated marine science and technology cooperation projects, has engaged in consultations about the international seabed regime and has developed projects aimed at increasing marine data sharing. Going far beyond the East Asian littoral, in their geographic scope a lot of these initiatives encompass sea zones across the entire Indo-Pacific region.¹⁰⁷

Ultimately, the 14th Five-Year Plan, China’s central policy document outlining national socio-economic and political priorities, which was adopted in 2021, underpins China’s ambitions to shape the international maritime order in accordance with Chinese values:

We will actively develop the blue partnership, deeply participate in the formulation and implementation of international maritime governance mechanisms and related rules, encourage the construction of a just and reasonable international maritime order, and promote the construction of a Maritime Community with a Shared Future [积极发展蓝色伙伴关系·深度参与国际海洋治理机制和相关规则制定与实施·推动建设公正合理的国际海洋秩序·推动构建海洋命运共同体]¹⁰⁸

In order to achieve these objectives, the Five-Year Plan identifies a broad range of measures, among others, advancing marine environmental protection, increasing the competitiveness of maritime commerce and strengthening maritime cooperation while also resolutely safeguarding China’s maritime rights.¹⁰⁹

While the economic and ecological components of the ‘Maritime Community’ may actually present substantial overlap with Western/European/German policy interests as they relate to pressing global issues of the 21st century, the political dimensions of this model raise another significant challenge for international stakeholders shaped by seapower identity:

Politically, the ‘Maritime Community’ comes about as a Sino-Centric countermodel to the liberal maritime order of Anglo-Saxon tradition that particularly emphasises the rights of the coastal state as opposed to the principle(s) associated with freedom of the seas.¹¹⁰ Furthermore, on the occasion of the 70th anniversary of the foundation of the PLAN, Xi Jinping and the Chinese leadership referred to Zheng He’s voyages as a possible role model for the future design of maritime relations, a highly problematic perspective from the western point of view.¹¹¹ Zheng He’s seafaring had a lot to do with sustaining the Sino-Confucian political order in this part of the world and rather little to do with the international system of exchange of trading goods, humans and ideas in the tradition of seapower, a point the PRC leadership acknowledges positively given the absence of overseas colonialism in Imperial China’s approach to international relations.¹¹² Proposing a model that draws its traditions from Imperial China’s order model thus raises the question whether China ultimately seeks to implement a regional

¹⁰⁷ Hu/Jin 2021.

¹⁰⁸ Government of the People’s Republic of China 2021.

¹⁰⁹ Ibid.

¹¹⁰ Kollakowski 2019: 17–18.

¹¹¹ IR in the western sense did not exist in Imperial China as, for example, there was no equal concept of sovereignty and relations with other regional stakeholders were ‘ritualised.’ For the sake of simplicity, the term will be used here nonetheless.

¹¹² Dreyer 2007: 3, 30–34.

maritime order that has the potential to stand in contrast to or even replace the established global maritime order, if left unchecked. Thus, while the term may appear strange to a western audience, China's 'Maritime Community with Shared Future' is one of the most striking maritime examples of how China tries to utilise its discourse power with the aim of '[...] revising and further shaping the global legal regime and replacing it by one with outspoken Chinese characteristics.'¹¹³

For some time, Chinese representatives have been presenting their continental views and order models with growing confidence beyond purely academic or legal circles. A Chinese representative at an international security policy conference gave a vivid example in 2019 when he claimed that apart from geographic location and historic rights Chinese authority over the South China Sea was justified as sailing through the South China Sea would be comparable to driving on roads within mainland China. In the latter case, no state would freely grant the right to cross through a state's territory to any foreigner without prior control. Since China was a continental power, it would not be pursuing a policy of expansion at sea, as in light of this interpretation, the South China Sea would actually be 'Chinese land.'¹¹⁴

As this line of argumentation implies, the division lines between Chinese political narratives, legal claims and subsequent activities of the military and/or state authorities are fluent.

In light of Chinese mindsets, legal interpretations and proposed political models that are so fundamentally different from the liberal-maritime perspective, the task of how to engage a stakeholder that holds such a different point of view seems daunting indeed. Still, as this research paper argues, it is important to remember that political views and policy interests are not completely fixed but may change depending on the respective situation of the stakeholder, particularly where the maritime order is concerned, if elements associated with continental or seapower wield greater or smaller influence on the state's identity.

The Soviet Union provides a practical case study on how such a transformation and subsequent adaptations in policy interests can look like.

4 The case of the USSR: Interests shape policy

Bordering China to the north and to the west, the Soviet Union was the second continental behemoth in Eurasia. The USSR featured a command economy in which production quotas for industry and agriculture as well as the distribution of investments were decided by government planning, it derived its wealth from the exploitation of its vast natural resources, an enormous labour pool working in the world's largest country and a quantitatively great industrial base with a particular emphasis on heavy industry.¹¹⁵ Furthermore, during the Stalinist era foreign and especially sea-borne trade was limited.¹¹⁶ The geographic shape of the USSR, its political system and the way how it functioned economically made it the ultimate anti-thesis of seapower culture.¹¹⁷

The USSR's continental character also shaped the country's approach to the maritime domain. The primary objective of the Soviet Navy was the defence of the marginal seas that were located adjacent to the Soviet shores and formed the Eurasian

¹¹³ Hermez 2020: 575.

¹¹⁴ Anonymous, interview on 3 December 2020.

¹¹⁵ Ranft/Till 1989: 31, 36.

¹¹⁶ Polmar 1991: 432.

¹¹⁷ Lambert 2018: 227–228, 312.

great power's maritime flanks.¹¹⁸ Faced with superior NATO naval power, early-Cold War Soviet naval strategy aimed at the protection of the Russian homeland from sea-borne attacks, particularly hostile amphibious and carrier-based power projection capabilities.¹¹⁹ Emphasising green-water operations, these operational priorities were also reflected in the Soviet naval order of battle. For example, as John Kirsten Skogan shows, in the early 1950s more than 40% of the Soviet submarine force was allocated to the Baltic Fleet and only approx. 10% to the Northern Fleet.¹²⁰ Against this background, Stalin's plans for an ocean-going fleet that consisted of various large battlecruisers were a short-lived anomaly, born out of the dictator's lust for world power. As soon as Stalin was dead, the programme was immediately stopped and Nikita Khrushchev ordered Admiral Gorshkov to resume the development of a fleet of minor surface combatants and submarines.¹²¹

Ultimately, the early USSR's continental mindset also had a profound impact on how it approached questions concerning the law of the sea. In the early stages of international negotiations about the law of the sea, the USSR assumed a leadership position among the continental-minded littoral states that aimed to limit freedom of navigation and foster the role of coastal states' jurisdictional authority at sea. Subsequently, as Mary Jehn and Robert Friedheim point out, the Soviet Union's '[...] maritime outlook was defensive and protectionist.'¹²² During discussions of the United Nations International Law Commission, which had been tasked to develop a draft for a legal regime of the territorial sea, for example, the USSR underlined that coastal states should ultimately decide on the breadth of the territorial sea.¹²³ Moreover, at the 1958/1960 Geneva Conferences the Soviets argued that coastal states should have the right to introduce regulations concerning the passage of warships through TTW, including the requirement to obtain permission from coastal states before foreign warships could pass territorial waters.¹²⁴ This fell in line with efforts undertaken by the USSR in 1960 that included, firstly, adding a reservation to Article 23 of the 1958 Convention on the Territorial Sea and the Contiguous Zone which stated that 'The Government of the Union of Soviet Socialist Republics considers that the coastal State has the right to establish procedures for the authorization of the passage of foreign warships through its territorial waters.'¹²⁵ Secondly, the USSR introduced new regulations for visits by foreign warships to Soviet TTW which demanded that '[...] consent for the passage of foreign warships into Soviet territorial waters must be requested through diplomatic channels 30 days prior to the proposed visit.'¹²⁶ While the USSR argued for a 12nm delimitation of territorial waters, this position needs to be interpreted in the context of a time period when West Germany, the UK, the US, Canada and other 'seapower' proponents were negotiating in favour of a 3nm TTW delimitation.¹²⁷ Initially, the USSR also continued former far-reaching Russian claims for internal waters, including the White Sea and the Northern Sea Route. Moscow's

118 Herrick 1968: 143.

119 Ranft/Till 1989: 18, 162; Polmar 1991: 78; Rohwer/Monakov 2001: 204.

120 Skogan 1990: 20.

121 Polmar 1991: 79.

122 Friedheim/Jehn 1975: 342.

123 Butler 1971: 41.

124 Butler 1971: 65; Ranft/Till 1989: 58.

125 United Nations Treaty Collections (n. d.).

126 Butler 1971: 64.

127 Gorshkov 1965: 64–65.

continental approach to the sea also extended to Europe's marginal seas, as Ranft and Till point out:

Historically Russia has never accepted that only completely land-locked waters can be treated as closed seas and has made repeated claims that the Baltic and Black Seas should be accepted as such. Since 1945 she has unsuccessfully tried to pressurise Turkey and the Baltic states to support the view that only the littoral states should regulate access to these waters.¹²⁸

In fact, from 1948 onwards, Soviet state and legal stakeholders aimed at preparing the legal and political grounds for excessive claims into the littoral and high seas based on a continuously increasing number of water spaces defined as 'historic seas' or 'closed seas' in which coastal states would have enjoyed far-reaching legal authority.¹²⁹

If an absolute understanding of seapower culture was applied,¹³⁰ one would have to conclude that the socio-political, geographic and economic USSR retained its continental identity. A decade into the Cold War, there were, however, important changes taking place with regard to the utility of maritime means to the USSR which in consequence led to significant policy adjustments:

Beginning in the mid-1960s, approximately, the Soviet Navy drastically expanded its naval presence beyond littoral waters and began to deploy operational naval formations, the Eskadras, to distant sea zones such as the Caribbean, the Indian Ocean and South-East Asia.¹³¹ As Robert Weinland shows, ship days of Soviet naval vessels in the Mediterranean and in the oceanic theatres of the Atlantic, Pacific and Indian Ocean increased by a factor of almost fifteen between 1964 and 1973.¹³² New overseas tours of duty went hand in hand with changes in the Soviet fleet design, and by the later days of the Cold War the USSR had significantly expanded its blue water capabilities. The Soviet Navy was now in possession of a growing sea-based logistics component that awarded the Soviets the capability to sustain overseas-deployed naval formations and developed further major surface combatants featuring enhanced sea endurance such as Kirov- and Slava-class cruisers and Sovremenny- and Udaloy-class destroyers.¹³³

Apart from the expansion of the Soviet Navy, since the mid-1950s Soviet merchant marine policy had witnessed ambitious programmes to increase merchant ship capacity.¹³⁴ As Norman Polmar points out, merchant shipbuilding during the Krushchev era was driven especially by political considerations to support socialist states overseas, foster trade relations with Third World countries and the requirement to develop dual-use strategic sealift capabilities. These incentives were further complemented by economic considerations during the 1970s when merchant shipping became an important revenue source for 'hard' currencies of western countries.¹³⁵ Subsequently, between 1950 and the 1980s the size of the Soviet merchant fleet quintupled resulting in the world's second largest merchant fleet by number of ships (2,400 ships of all types)

¹²⁸ Ranft/Till 1989: 60.

¹²⁹ Butler 1971: 108, 131, 199–200.

¹³⁰ Mahan 1890: 25–89; Till 2013a: 87–115; Lambert 2018; Kollakowski 2021: 3–5.

¹³¹ Ranft/Till 1989: 165; Polmar 1991: 84.

¹³² Weinland 1975: 376.

¹³³ Ranft/Till 1989: 156. In 1970, *Boris Chilkina*, the lead ship of a class of replenishment oilers of 24,000t full load displacement entered service with the Soviet Navy, providing it with significant replenishment at sea capabilities. Polmar 1991: 84; Volkov, Brichevskii 2021.

¹³⁴ Ranft/Till 1989: 144.

¹³⁵ Polmar 1991: 432.

by the end of the Cold War.¹³⁶ Furthermore, in 1963, the USSR initiated its ocean mining programme and, over the course of several decades, built one of the world's largest fishing fleets consisting of thousands of trawlers, processing and support vessels capable of fishing in distant waters for long periods of time and continuously expanded its radius of action as the Cold War progressed.¹³⁷ As the Cold War drew to a close, the USSR was negotiating fishing agreements intended to grant Soviet trawling flotillas access to ports in places as far as Australia and the Philippines.¹³⁸

The transformation of the USSR from a state with little maritime interests beyond the immediate littoral into a major maritime stakeholder was rapid, of exceptional magnitude and decisively changed Soviet foreign and legal policy.¹³⁹ Featuring the world's second largest navy, a huge merchant marine and oceanographic and fishing fleets that all operated on a global level, ensuring and maintaining access to the world's oceans and their marine resources as well as freedom of navigation became major Soviet policy concerns and spurred the Soviets to oppose expansive coastal claims.¹⁴⁰ In the words of Robert L. Friedheim and Mary Jehn,

The Soviets now want an assured right to get their navy and merchant marine out of their ports on enclosed and semi-enclosed seas and through straits with as little interference as possible; they want to have access to fishing grounds near the coasts of other states; they want rules that are not discriminatory, administratively burdensome, or prohibitively expensive governing transit of vessels through areas over which other governments claim some rights.¹⁴¹

All these factors contributed to a significant adjustment of Soviet legal positions during contemporary negotiations on the law of the sea. Beginning with the 1960 Geneva Convention the Soviet attitude to the issue of extending the legal boundaries of territorial waters beyond 12 nautical miles continuously hardened over the next fifteen years.¹⁴² Moreover, Soviet foreign legal policy turned to support legal concepts associated with freedom of the seas such as 'innocent passage.'¹⁴³ Consequently, Admiral of the Fleet Gorshkov, Commander-in-Chief of the Soviet Navy since 1956, argued in his 1976 monograph *The Sea Power of the State*,

In view of the situation that has arisen, it is extremely important for the USSR, and objectively for all other countries in the world, to defend the principle of freedom of the [open] sea as a key prerequisite for progress in international law of the sea.¹⁴⁴

Concerning international straits, the USSR firmly supported the notion of 'free transit', which resulted in the Soviets promoting transit rights through international straits that, with regard to most aspects, went as far as to resemble rights associated with navigation on the high seas rather than those of innocent passage through the territorial sea.¹⁴⁵

136 Ranft/Till 1989: 144–145; Polmar 1991: 431.

137 Butler 1971: 201; Ranft/Till 1989: 144; Polmar 1991: 441.

138 Polmar 1991: 441.

139 Butler 1971: 4; Ranft/Till 1989: 58.

140 Friedheim/Jehn 1975: 342; Butler 1971: 167, 201.

141 Friedheim/Jehn 1975: 342.

142 Butler 1971: 43–45; Friedheim/Jehn 1975: 346.

143 Butler 1971: 201.

144 Gorschkow 1978: 88.

145 Friedheim/Jehn 1975: 347; Ranft/Till (1989): 59; Kraska 2011: 421. The Soviets did, however,

In this sense, Gorshkov points out,

The Soviet Union advocates that in straits used by international shipping all states are guaranteed free transit of ships and of overflights by airplanes, provided that guarantees for the security of the coastal states are observed. Without this free transit, the implementation of the generally accepted principle of freedom of the [open] sea, which promotes the normal development of mutual relations between states, is unthinkable and practically impossible.¹⁴⁶

Having assumed its new role as proponent of at least major components of an international maritime order designed to protect norms and values associated with freedom of navigation, severe political frictions could erupt between the USSR and stakeholders acting in conflict with these norms, as was the case in 1972 when Malaysian and Indonesian declarations announced that the Strait of Malaca could not be considered an international strait.¹⁴⁷ Not only with regard to TTW and international straits but also to matters regarding coastal fisheries' authority and the continental shelf the Soviets became increasingly concerned with 'creeping jurisdiction', the tendency of states to bring forth ever more expansive claims, both in a legal and geographic sense.¹⁴⁸ The USSR also moved away from the interpretation of closed seas, a move potentially influenced by concerns that other littoral states in the world could assert similar claims.¹⁴⁹ By the late 1960s, Soviet stakeholders stopped adding the concept of 'closed seas' to the debate on the law of the sea.¹⁵⁰

Thus, despite carrying out the struggle of the Cold War with the United States, the USSR assumed the position of its capitalist geopolitical rival in general, '[...] sharing with her the attitudes of a major maritime power wishing to keep to a minimum the restrictions placed by international law on the free movement of naval and other vessels.'¹⁵¹ As James Kraska points out, US-Soviet common interest went as far as to coordinate proposals and statements to push the agenda further towards the notion of freedom of the seas.¹⁵²

Through joint efforts, the Global West and the USSR significantly contributed to the success of UNCLOS after various conference rounds at its final 1982 Convention. The Soviet Union became the first major country to sign the Convention.¹⁵³

5 Potential for maritime factors shaping Chinese policy-making in the early 21st century

Referring to the comparative case of the USSR as an example of how a maritime transformation can shape and change a stakeholder's foreign and legal policy with regard to the maritime domain and using this example as a model that may inform 21st

demonstrate readiness to accept coastal states' rights to designate transit corridors within these international straits.

¹⁴⁶ Gorshkov 1978: 84.

¹⁴⁷ Friedheim/Jehn 1975: 347.

¹⁴⁸ Butler 1971: 201; Friedheim/Jehn 1975: 343, 346.

¹⁴⁹ Butler (1971): 132–133; Ranft/Till 1989: 60.

¹⁵⁰ Butler 1971: 108; Friedheim/Jehn 1975: 345.

¹⁵¹ Ranft/Till 1989: 58.

¹⁵² Kraska 2011: 421.

¹⁵³ Ranft/Till 1989: 61.

century decision-making vis-à-vis China necessitates the condition that contemporary China is equally influenced by powerful maritime developments. Various pieces of academic research undertaken during the last three decades by authors of different nationalities point into the direction that China's maritime transformation might be of equivalent if not even more tremendous magnitude.

Since the first decade of the 21st century, at the latest, the interpretation of a Chinese maritime strategic orientation that is limited to A2/AD in the western Pacific marginal seas has no longer offered an adequate explanation for the increasing overseas tours of duty of Chinese warships or the Chinese fleet design. For example, the PLAN now features the largest frigate fleet in the world.

Michael McDevitt and Frederich Velluci Jr. argue that the PLAN is developing along two different vectors: According to the authors one is driven by its principal wartime mission, which is the defence of the People's Republic of China and its adjacent seas and includes the above-mentioned notions of active near-seas defence and A2/AD. Additionally, the other vector involves a variety of peacetime missions, including overseas naval deployments, which have been closely associated with China's enormously grown international role and an expanded Chinese global presence that reaches from politics and economics to tourism and disaster relief.¹⁵⁴

Already at the end of the 20th century David Winterford and You Ji and You Xu pointed at PLAN naval modernisation and expansion in light of various increasing maritime interests, including the vast economic potential of China's coastal and sea-borne trade and its flourishing ocean fishing, offshore natural resources and the (disputed) riches of the South China Sea.¹⁵⁵

Senior Captain Qi Xu, in the early 2000s deputy director of the Strategic Research Office of the Naval Affairs Science Research Institute in Beijing, further elaborates on the importance of the sea to the PRC. Qi draws attention to China's role as one of the leading investors in international seabed-area development and marine research, Beijing's national interests in the international maritime space, 'international navigation channels' and open ocean transport routes and underpins the importance that the high seas are reserved for humanity's common use. Ultimately, Qi concludes that with Chinese interests '[...] spread all over the world ocean space [...] This requires the navy to defend a larger scope.'¹⁵⁶ Carl Otis Schuster draws the same conclusion when he argues that the 21st century PLAN '[...] arose out of the need to protect Chinese maritime trade and facilitate its diplomatic position on the global stage' and '[...] its operations should be viewed in that context.'¹⁵⁷

Chinese scholar Zhao Baomin further expands on the significance of maritime interests, noting that China, as a country that is no longer self-sufficient, requires a security strategy that is no longer limited to defending the country's territory against outside enemies but must also take care of ensuring the survival of an economy that depends on foreign trade relations.¹⁵⁸ This situation forces it '[...] to be compatible with the dual considerations of sea power and land power.'¹⁵⁹

In his 2016 monograph *China's Quest For Great Power. Ships, Oil, and Foreign Policy*, Bernard Cole further goes into detail on China's intricate relationship between the need to protect maritime/overseas interests, Beijing's dependence on global sea lines

¹⁵⁴ McDevitt/Velluci 2013.

¹⁵⁵ You/You 1991: 137–138; Winterford 1993: 376.

¹⁵⁶ Qi 2006: 17.

¹⁵⁷ Schuster 2013: 70.

¹⁵⁸ Literal translation: 'Survival of its 'overseas-dependent' economy [海外经济生存].

¹⁵⁹ Zhao[赵] 2014: 105.

of communication, particularly those transporting energy resources, and the expanding capabilities of the PLAN.¹⁶⁰

In 2018, French naval officer Pierre-Louis Josselin conducted a comparative study of 21st century states featuring significant economic and naval power. Josselin even goes as far as to argue that the PRC is one of the very few states still in existence that meet the traditional catalogue of attributes of sea power once postulated by Alfred Thayer Mahan.¹⁶¹

Both Carnes Lord and Howard Dooley contextualise China's maritime development, including the modernisation of the navy, expansion of naval operations, shipbuilding industry and commercial interests, within Chinese naval history and provide comparative analyses with other (former) stakeholders in the maritime domain. Both authors conclude that China has embarked on a profound maritime transformation they assess as a 'remarkable event' in the history of the last two millennia.¹⁶²

Significantly, as Liza Tobin shows, Chinese efforts aimed at achieving maritime great power status and raising the 'whole-nation maritime consciousness' (全民海洋意识) are closely interconnected with political objectives, such as the 'Great Rejuvenation of the Chinese Nation' (中华民族伟大复兴), issued by the highest echelons of the PRC, thus underlining the high priority awarded by the Chinese leadership to the maritime domain.¹⁶³

If China indeed has been undergoing a profound 'maritime transformation' that has altered the Chinese perception of the ocean, and if 'maritime consciousness' is supposed to shape the Chinese nation, these circumstances should be taken into consideration when Germany is developing its own defence engagement policy vis-à-vis China.

6 Implications for Germany

As outlined in the third section of this research paper, various components of China's political, military and legal approaches to the maritime domain are incompatible with a liberal maritime understanding of the global commons to which Germany has subscribed and as it was formed by seapower culture(s). While some of Beijing's ambitions primarily affect the regional political and maritime order and do not impact Germany directly, it is nevertheless vital for Germany to in every instance stand up for UNCLOS '[...]' as a comprehensive maritime regulatory and cooperation framework' and insist that '[...]' the freedoms of navigation enshrined therein are universal', as the *Policy Guidelines on the Indo-Pacific* correctly assert.¹⁶⁴

From the perspective of political constructivism, this need can be derived from Germany's role as a normative civil power which generates a significant proportion of international influence and authority from its commitment to western/liberal, and in this case liberal-maritime, norms and values.¹⁶⁵ Of course, in addition to the normative dimension, there are also pragmatic policy interests that speak in favour of Germany's

¹⁶⁰ Cole 2016.

¹⁶¹ Josselin 2018: 27–28, 44–47, 59. Mahan's factors include a country's geography, government, national character and population. For a more detailed discussion on how 'constituents of seapower' (maritime economy, geography, socio-political components etc.) have influenced the identity of China through various time periods, see, for example, Kollakowski 2021.

¹⁶² Lord 2009: 450–451; Dooley 2012: 73.

¹⁶³ Tobin 2018.

¹⁶⁴ Bundesregierung 2020: 11.

¹⁶⁵ Maull 2007: 73.

commitment to the preservation of the maritime order and the freedom of the seas. As a state with short coastlines and an exclusive economic zone that is small in international comparison but also a high economic dependence on seaborne trade, it is in Germany's interest to show diplomatic and legal resistance to any attempts by continental states to 'territorialise' maritime space. Ultimately, as James Kraska argues, any sign of willingness to compromise on a liberal maritime interpretation of UNCLOS would '[...] further weaken the EEZ framework, as well as serve to weaken voices inside the communist government that are more supportive of a liberal order of the oceans.'¹⁶⁶

This raises the difficult question how Germany should act to convey the desired political and legal message. A typical German reaction up to date has consisted of countering the Chinese position by vehemently advocating compliance with the 'rules-based order.'¹⁶⁷ As much as promoting the pre-eminence of international law corresponds to the self-image and the political position of the Federal Republic of Germany, this argument at least partially misses the actual problem. Chinese policy/politics does not aim to dispose of the 'rules-based order' and thus create 'unregulated chaos' but seeks to change and reinterpret the rules and adapt them to 'Chinese characteristics', which in this case would lead to a maritime order shaped by decisively continental ways of thinking.

Thus, what German policy actually needs to aim at is influencing Beijing's policy interests with regard to maritime law and the maritime order. At first sight, this task might seem unrealistically difficult to achieve, and rightly so. While changing another stakeholder's interests is by itself a difficult undertaking, as political theories on conflict resolution show, issues that are closely associated with an opponent's norms and values are among the most difficult to resolve.¹⁶⁸

However, as shown in the previous section, China itself has been experiencing a great 'maritime transformation' turning the PRC from the Mao Zedong era of pure continental power into one of the greatest maritime stakeholders of the world.

At this point, Germany's national interest to maintain a partnership with China and conduct defence policies aimed at engaging China should come into action to support China's maritime transformation and subsequently the country's perspective on the global commons.

Germany should encourage China to play a more active role in the oceans and should strive to strengthen the 'maritime element' in Chinese identity whenever practical. Also, Germany's strategic communication should stress that Berlin welcomes China's contributions to maritime security as a major power assuming global responsibilities. Germany should speak out in favour of the integration of China into maritime and predominantly western-dominated formats, knowing that such moves will involve some kind of 'power sharing.'

The primary example of Chinese maritime security operations involves PLAN anti-piracy deployments to the Horn of Africa. In this sea zone Chinese warships operate independently of but alongside with warships from NATO member states and participate in the SHADE format, the coordination forum for the navies operating in the region. At the turn of the first decade of the 21st century, Chinese representatives to SHADE signalled that China had an interest in joining the multinational operational command formats at the Horn of Africa, provided that China was to be granted a leadership function within the existing C2 structure.¹⁶⁹ In light of the considerable

¹⁶⁶ Kraska 2011: 329.

¹⁶⁷ For example, the speech given by the Chief of German Navy on the 70th anniversary of the foundation of the PLAN.

¹⁶⁸ Plank/Henneberg 2014.

¹⁶⁹ Interview with a former deputy commander, EU Naval Force – Somalia on 03 November 2020.

forces China has been deploying on a permanent basis to the sea zone this was not a disproportionate negotiating position. However, China's request was turned down. This author argues that denying the Chinese their request to voluntarily join the multinational structures – C2 organisations that in the end were shaped and dominated by western nations – was a significant error.

On the contrary, China should be further invited and, if possible, integrated into as many formats as possible associated with safeguarding 'good order at sea' and maintaining a liberal maritime order. This would serve two purposes: Firstly, it is supposed to generate in China more agency for the existing maritime order as, according to social identity theory, group membership results in individuals demonstrating more willingness to embrace actions on behalf of the community.¹⁷⁰ Secondly, it is intended to further shape the way how China interprets its naval force (and, of course, how Communist propaganda will subsequently propagandise its use). As history shows, naval forces that have operated on behalf of states that were characterized by a high degree of seapower tended to take on order-maintaining functions, while 'luxury fleets', to use the words of Winston Churchill, have often been accused of taking a more confrontational stance towards the maritime order.¹⁷¹ In this sense, a PLAN that is increasingly involved in protecting global sea lanes and global Chinese oceanic interests could have an moderating/'order maintaining influence' on China's security policy.

How could these propositions be practically implemented on a naval service branch level? The German Navy could carry out exercises with the PLAN in the Gulf of Aden, as had already happened at the beginning of Operation Atalanta. When PLAN warships visit European ports again, as was the case before the outbreak of the Covid-19 pandemic, NATO/EU institutions could invite Chinese units to participate in exercises. Manoeuvres with a focus on humanitarian aspects, such as NATO's Dynamic Monarch submarine rescue exercises, would potentially also be well-suited formats to establish naval cooperation. Ultimately, Germany could consult with its NATO allies on whether there would be a chance to invite the PLAN to participate in a NATO standing maritime group.

The baseline of all these measures and underlining strategic communication should be to regard China as a welcome member in the seapower community, if its forces work with its international partners in support of the existing maritime order.

That the PRC's perspectives on the law of the sea do not actually seem to serve modern Chinese maritime and naval interests, as once was the case with the USSR, may also be a point of note when German Navy representatives meet their Chinese counterparts and discussions touch upon contesting views on the law of the sea. As James Kraska argues, the PRC itself is completely zone-locked by straits, channels and EEZs belonging to states of the First Island Chain that overlap the approaches to the western Pacific marginal seas.¹⁷² If China's interpretation of the law of the sea, including Beijing's proposed far-reaching jurisdictional authority applicable to the EEZ, were ever to become universally accepted, PLAN warships would never be able to

¹⁷⁰ Kelly/Breinlinger 1995; Bilewicz/Wójcik 2010: 72–73; Besta, Mattingly/Błazek 2016: 56.

¹⁷¹ Padfield 1974: 183; Lambert 2018.

¹⁷² Kraska 2011: 427.

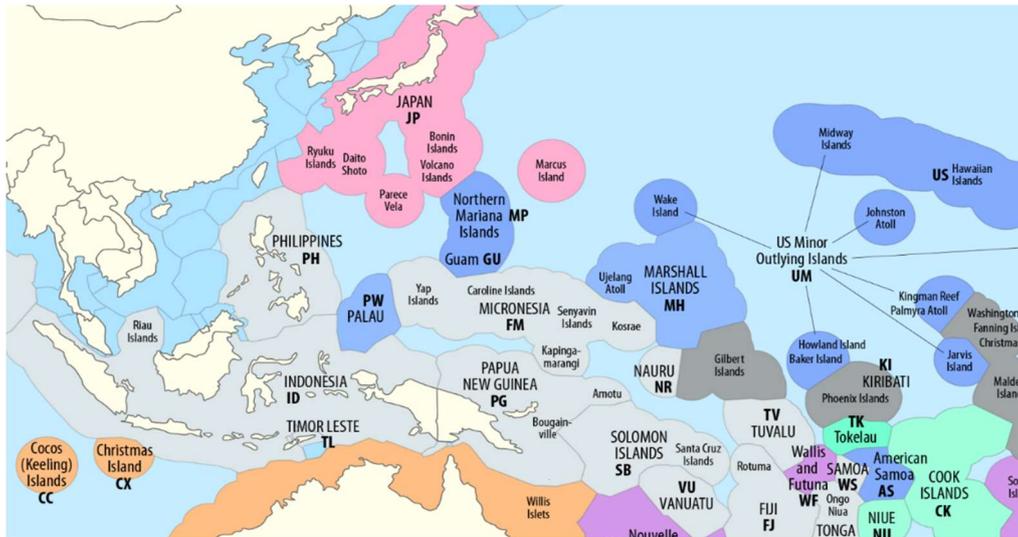


Fig. 1: Exclusive Economic Zones in the Pacific Region. Source: Maximilian Dörrbecker, CC BY-SA 2.5, https://en.wikipedia.org/wiki/Exclusive_economic_zone#/media/File:Map_of_the_Territorial_Waters_of_the_Pacific_Ocean.png.

access the open ocean without the consent of adjacent coastal states again (see Illustration 1).¹⁷³ As a world power in possession of the world's largest navy, this cannot possibly be in the interest of China. Finally, as this paper presents the argument that the maritime domain would qualify as a good area in which to strengthen cooperation with China, it also acknowledges that Germany needs to assert its own position in its effort to uphold the liberal maritime order. In international relations opportunities for cooperation and engagement with a 'systemic rival',¹⁷⁴ to use the terminology of the European Commission, should always be inseparably connected with a firm understanding of the factors that compose one's own negotiating position and the resolve to enforce one's own stance when necessary.

Germany and other like-minded nations, such as the Netherlands, Italy or the United Kingdom, have filed declarations at the United Nations opposing the notion of coastal state consent concerning the exercise of passage rights.¹⁷⁵ This was an important milestone, as was the joint note verbale to the United Nations submitted by France, Germany, and the UK demanding the resolution of the South China Sea dispute in accordance with UNLCOS principles and rules.¹⁷⁶ Nevertheless, further steps should be taken in preparation for a struggle for maritime order that could potentially arise over the course of the 21st century depending on how influential some coastal states, especially the PRC, assess their position in international politics. In order to be prepared to '[...] face potential changes in international law as a consequence of changing geopolitical realities',¹⁷⁷ firstly, it is advisable that Germany develops a powerful mechanism to implement Germany's legal position with regard to global maritime disputes.

One option could be to model such a forum after the U.S. National Security Council Interagency Task Force on The Law of the Sea and adapt it to the German political

¹⁷³ Ibid: 428.

¹⁷⁴ European Commission 2019.

¹⁷⁵ Hong 2012: 82; United Nations Treaty Collection 2021.

¹⁷⁶ Pham 2020.

¹⁷⁷ Hermez 2020: 562.

organisational culture. Given the breadth of agencies involved with these issues, representatives from the Foreign and Defence Ministry, the German Navy, the Department of Public Policy in the Federal Ministry of Justice, the Federal Ministry for Digital and Transport and possibly also legal advisors from the Armed Forces Operations Command and other relevant Bundeswehr commands would be appropriate members for this project-oriented forum. In any case, the key take-away point would be that the focus should not lie on the creation of new or even bigger government structures, but on the substantive content-matter. It would require more extensive legal opinions of much greater precision on the respective sea zones, if Germany wanted to execute a more perceivable maritime legal enforcement policy, which this author believes it should.¹⁷⁸ Thus, such an inter-ministerial forum could help with contributing the resources from across ministries, including legal, geographic and other subject matter expertise, necessary to form the legal opinions on which state authority could act later on.

Afterwards, Germany's official position on these issues should be made public and distributed through the appropriate diplomatic channels. Subsequently, the German Navy should be deployed to challenge claims by coastal states deemed excessive.

Ideally, such deployments designed to enforce freedom of navigation and prevent foreign claims from becoming accepted by the international community as reflecting the practice of nations should be carried out on the EU level in a way similar to the US 'Freedom of Navigation (FON) Program.' Firstly, carrying out naval deployments in support of the liberal maritime order fits the self-proclaimed role of the EU as a normative power very well.¹⁷⁹ Secondly, conducting FON assertions may very well trigger repercussions from coastal states whose claims are challenged and the EU, as a whole, is much better suited to face these tensions and diplomatic, economic or other consequences than individual member states.

Furthermore, there is another reason why an EU FON programme might be a desirable policy choice. Against the background of the shift in worldwide political attention to the Indo-Pacific in recent years, a debate has arisen in the German military and academic security community on whether the EU should deploy a (standing) naval formation to Asian waters. However, criticism Chinese scholars have put forward involves the alleged employment of legal issues by the United States as a pretext to confront China as a political/economic rival¹⁸⁰ or to apply suspected 'selective multilateralism in the international maritime management' [在国际海洋制度方面[...]采取以自己为标准的选择性多边主义] to pursue US interests.¹⁸¹ Whether these accusations, as they are put forward by China, are accurate or not, giving China the impression that warships of EU member states are being deployed to the western Pacific to deal with an alleged 'China threat' is neither in the economic, foreign policy or security interest of the EU nor would it fit with a German foreign policy guideline that dismisses notions such as decoupling or containment.¹⁸² The political message of such naval formations, however, would be very different, if they were deployed as part of a *global* EU FON programme with the objective of promoting a liberal interpretation of the maritime order and within this context would regularly pass through disputed waters in the Indo-Pacific.

¹⁷⁸ Interview with an authoritative source on 3 January 2022.

¹⁷⁹ Not as formally institutionalised as the US FONOP programme and on a smaller scale, countries like the United Kingdom, Japan or Australia have likewise carried out what Nick Childs calls 'freedom of maritime manoeuvre' activities in the South China Sea. Childs 2021: 66.

¹⁸⁰ Zhang 2010: 47; Hu/Jin 2021.

¹⁸¹ Xia [夏]/Su [苏] 2011.

¹⁸² Bundesregierung 2020.

Again, this would require a well-developed strategic communications strategy that leaves no doubt that EU military engagement in the region is not directed against China per se, but specifically aims to enforce the liberal, maritime international order.

As shown throughout this article, the writing is on the wall that the question of the future of the maritime order and the issue whether its interpretation will continue to be dominated by seapower proponents or a group of continental advocates led by China will be one of the potential fields of conflict during the 21st century. Germany can meet this challenge by designing a well-thought-out defence engagement strategy vis-à-vis China, asserting its own stance towards the open ocean and initiating EU mechanisms designed to foster the notion of freedom of the seas. It would be wise to start now as long as the implications of this struggle are still primarily limited to Southeast Asia.

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