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Challenges to freedom of the seas and maritime rivalry in Asia

SEDE



IN-DEPTH ANALYSIS

Challenges to freedom of the seas and maritime rivalry in Asia

ABSTRACT

China's New Maritime Silk Road policy poses geostrategic challenges and offers some opportunities for the US and its allies in Asia-Pacific. To offset China's westward focus, the US seeks to create a global alliance strategy with the aim to maintain a balance of power in Eurasia, to avoid a strong Russia-China or China-EU partnership fostered on economic cooperation. For the EU, the 'One Belt, One Road' (OBOR) initiative by improving infrastructure may contribute to economic development in neighbouring countries and in Africa but present also risks in terms of unfair economic competition and increased Chinese domination. Furthermore, China's behaviour in the South China Sea and rebuff of the ruling of the Permanent Court of Arbitration, in July 2016, put the United Nations Convention on the Law of the Sea (UNCLOS) at risk with possible consequences to freedom of the seas. Increasing relations with China could also affect EU-US relations at a time of China-US tension. To face these challenges, a stronger EU, taking more responsibility in Defence and Security, including inside NATO, is needed.

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Acronyms

ADMM	ASEAN Defence Minister Meeting
AIIB	Asia Infrastructure Investment Bank
AMM	ASEAN Ministerial Meeting
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
ASW	Anti-Submarine Warfare
EAS	East Asia Summit
EEZ	Exclusive Economic Zone
ENP	European Neighbourhood Policy
EU	European Union
FTA	Free Trade Agreement
GDP	Gross Domestic Product
HA/DR	Humanitarian Aid/Disaster Relief
IFC	Information Fusion Centre
IMP	Integrated Maritime Policy
IOR	Indian Ocean Region
JMSDF	Japan Maritime Self-Defence Forces
MEA	Ministry of External Affairs
LCS	Littoral Combat Ship
M/V	Merchant Vessel
NSR	New Silk Road
OBOR	One Belt, one Road
PLAN	People's Liberation Army Navy
PRC	People's Republic of China
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
SA	Surface-Air
SLOC	Sea Line of Communication
SOE	State-Owned Enterprise
SRF	Silk Road Fund
SSBN	Submersible Ship Ballistic missile Nuclear powered
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
UNCLOS	United Nations Convention on the Law of the Sea

Introduction

On 7 September 2013, President Xi Jinping proposed the building of the 'Silk Road Economic Belt' during his visit to Kazakhstan. The same year, on 3 October, addressing the Indonesian parliament, he proposed the building of a 'New Maritime Silk Road'. Both are now collectively called 'One Belt One Road' (OBOR) initiative. At the Boao Forum on 28 March 2015, China released the 'Vision and Action on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road' indicating that the OBOR initiative has officially become one of China's national strategies. According to the Chinese authorities, One Belt refers to the land-based Silk Road, whereas One Road refers to the 21st Century Maritime Silk Road.

At the end of 2014, China set up the Asia Infrastructure Investment Bank (AIIB) in October and the Silk Road Fund (SRF) in November to sponsor Asian connectivity and development programmes. They function together as complementary wings of Asian development.

China's OBOR initiative has provoked both positive and negative comments and interpretations internationally. Some observers view it as a grand strategy for extending China's economic and geopolitical influence into ASEAN, Eurasia and beyond, while others are concerned that OBOR might reshape global economic governance and lead to the rebirth of China's domination in Asia.

Furthermore, Chinese and foreign media quickly described OBOR as the 'Chinese version of the Marshall Plan', and the BRICS Bank, the AIIB, and the Silk Road Fund as key components of that plan. The Belt and Road project is undoubtedly the most important international project that China has embarked on in the last few decades. It aims to stimulate economic development over a vast area covering sub-regions in Asia, Europe and Africa

Although there has been no official announcement about what countries are covered by the Belt and Road initiative, some official sources point to the involvement of at least 63 countries, including 18 European countries. Particularly relevant for Europe is that the Silk Road ends where the European Union (EU) starts. This massive bloc between the EU and China accounts for 64% of the world's population and 30% of global Gross Domestic Product (GDP).

This study will focus on the 21st Century Maritime Silk Road. In a first part, it analyses the challenges to the freedom of the seas in Asia, giving particular attention to China's maritime interest sphere. The second part analyses the role of the 'Maritime Silk Road', in this context, while the third part is devoted to the United States and its allies' role in the security policies in the region. From the above, the fourth part describes the effects of the strategic choices made by regional powers and the United States on European Union cooperation, foreign and security policy deployment in the region, noting possible implications on Euro-Atlantic cooperation. The fifth part describes and analyses the legal dimension of disputes in the context of UNCLOS and of the ruling of the Permanent Court of Arbitration in the case of the South China Sea. In the last part, the study proposes some policy options for the EU.

1 Current challenges to the freedom of the seas in Asia

The main guiding principle that motivated the writers of the UNCLOS was to preserve the freedom of the seas. Global wealth relies on economic exchanges which are transiting mainly through the Sea Lines of Communication (SLOCs). Keeping those lanes secure has become a priority for all the actors, both institutional and private.

1.1 China's SLOCs concerns

In a few decades, China has become the world's second economy but also a strategic power building up all its maritime and naval capabilities patiently. China's expanding economy generates increasing needs of raw materials and energy resources, surpassing the United States as the world's largest oil importer in

September 2013. China imported about 6.2 million barrels of oil a day in 2014, mostly from the Middle East and Africa. Those imports grew even faster than China's overall trade, producing a new dependence and vulnerability on the maritime trade routes.

China's trade ties with both suppliers and markets have grown rapidly as the production of many goods has relocated to China. Over the last decade, Chinese state-owned enterprises and private companies have become significant international actors, investing and building factories in foreign countries, acquiring foreign firms, and building major infrastructure projects everywhere from Latin America to Southeast Asia. This activity has increased China's overseas economic presence and made its domestic growth dependent on the ability to access global markets and resources. *'From 2003 to 2014, Chinese foreign trade nearly quintupled, growing from \$851 billion to more than \$4.16 trillion. China became a major exporter to developed country markets in North America and Europe. In 2011, more than 60 percent of China's trade travelled by sea. Trade is not the only dimension of China's growing international presence. Chinese companies have become major investors in Asia, Africa, Latin America, and Europe. Official data indicates that the cumulative total of Chinese outbound investment grew from approximately \$33.2 billion in 2003 to more than \$531.9 billion in 2012.'*¹

Consequently, China developed a merchant fleet² and a chain of ports, seven of which are among the first ten ports in the world. China has become the first shipbuilding country with 41.1% of the market in 2010, getting ahead of South Korea and Japan.

1.2 A constraining maritime geography

China is bordered, from the north to the south, by the Bohai Sea, the Yellow Sea, the East China Sea and the South China Sea. The East China Sea, with shallow waters, is closed in the east by the Kyushu islands and Ryu-Kyu islands – among them is Okinawa – and, in the south, by Taiwan. It is linked to the South China Sea by the strait of Taiwan.

The South China Sea is a semi-enclosed sea, spanning an area of almost 3.5 million square kilometres. The South China Sea lies to the south of China; to the west of the Philippines; to the east of Viet Nam; and to the north of Malaysia, Brunei, Singapore, and Indonesia. The South China Sea is a crucial shipping lane, a rich fishing ground, home to a highly biodiverse coral reef ecosystem, and believed to hold substantial oil and gas resources. It has a continental shelf all around and is 5,000 metres deep in its middle with many rocks and small islands (Paracel, Spratly and Scarborough Shoal).

Surrounded by semi-enclosed seas and dependent upon the sea for its economy, China is trying to loosen this natural stranglehold inside which it is enclosed. Thus, China attaches the greatest importance to the security of the SLOCs and displays a growing strategic interest in ensuring unimpeded access to the Indian Ocean area and the South China Sea.

1.3 Freedom of the seas in the Pacific Ocean

China's main accesses to the Pacific Ocean through the East or the South China Seas are constrained by the chains of islands through which the ships have to go, which are under Japanese or US control. The Northwest Pacific constitutes the logical extension of China Sea's vital zone. Maintaining a naval presence in this area enables China to put pressure on possible adversaries and to organise a defence in depth. Over the last decade, the PLAN (People's Liberation Army Navy) has intensified its training activity beyond the first island chain, acceding to the high sea through the Mikayo and the Tsugaru straits with

¹ *China strategic perspectives* n°7 – Christopher D. Yung – Ross Rustici – INSS – October 2014.

² China's merchant fleet is the world's n°3 with 157,557,210 dead-weight tonnage (dwt), behind Greece (279,429,790) and Japan (230,675,179) – *Review of Maritime Transport* 2015.

increasingly powerful task forces. *The exercises are of broader strategic and diplomatic importance, too, showing China is unafraid to assert its rights of free passage to move beyond foreign naval bases that could contain it, such as the US base on the Japanese island of Okinawa*³. Chinese warships or submarines are regularly detected in Japanese territorial waters or in the vicinity of Guam. In May 2015, *'China issued a military white paper that formalised the addition of what it calls 'open-seas protection' to the PLAN's 'offshore-waters defence' role*⁴.

From Beijing's perspective, the South China Sea, inside the nine-dash line is an integral part of domestic territory, so guaranteeing the freedom of navigation of its own maritime vessels in the area is a given. *'Whether or not China is willing to accommodate the interests of other countries' merchant and military vessels in the South China Sea, however, is not a given. Because the South China Sea is considered to be under the China's jurisdiction, several policies have been put into effect in order to monitor, limit, or otherwise regulate the activities of foreign vessels*⁵. Hainan announced that, beginning on 1 January 2014, all non-Chinese fishing vessels operating in the South China Sea must report to the provincial government. Although the policy does not restrict freedom of navigation per se, it has nevertheless created anxiety among those who must face the difficult choice of abiding by maritime policies that they see as illegitimate or accepting the increased risk of continuing with business as usual. For the most part, Beijing tends to subscribe to a relatively pure interpretation of freedom of navigation that is inclusive of civilian maritime vessels. Inevitably, this has produced friction when others have conflated the issue with freedom of overflight or sought to deem active military operations merely as navigation. Like Japan and other countries in the region, China has voiced concern over the idea that foreign military vessels be allowed to operate within EEZs. Beijing's stance on SLOCs and freedom of navigation in the South China Sea remains ambiguous and much depends on interpretations of the status of its maritime territorial claims within the nine-dash line.

1.4 Freedom of the seas in the Indian Ocean

In October 2006, the Indian Navy promulgated a document titled 'Freedom of the Seas... India Maritime Strategy'. As noted by Admiral Arun Prakash, a former Chief of the Indian Naval Staff, in a talk *'amongst fifty-six nations of the Indian Ocean Region (IOR), some of the fastest growing economies of the world co-exist with some of the poorest. Many of the countries are afflicted with serious problems of backwardness, fundamentalism and insurgency. Most of them are under military dictatorship or authoritarian rule. This region is the largest repository of the world's hydrocarbon resources... is home to 1/3rd of the world's population which is regularly struck by 70% of the planet's natural disasters. Most of the post-Cold War conflicts have taken place in this region. Today the global epicentre of terrorism as well as nuclear and missile proliferation exist right next door of us. Areas of the IOR like the Horn of Africa and the Malacca Straits are rife with incidents of piracy, drug-trafficking and hijacking.*⁶

Beijing does not feel comfortable with its merchant fleet transiting in a maritime area under uncertain protection of foreign navies and has invested in a chain of ports in the Indian Ocean, called the 'string of pearls': Sittwee in Myanmar, Chittagong in Bangladesh, Hambantota in Sri Lanka, Gwadar in Pakistan, Mombasa in Kenya, Dar-e-Salam and Bagamoyo in Tanzania. A Chinese firm recently signed a nearly \$500 million deal to construct three berths in the island of Lamu (Kenya). The project is part of the Kenya-South Soudan-Ethiopia Transport corridor which could be one of the Africa's section of the Maritime Silk Road.

³ *South China Morning Post* – 18 April 2010.

⁴ 'Who rules the waves?', *The Economist*, 17 October 2015.

⁵ 'Claimant and non-claimant views on SLOCs and freedom of navigation' – Jonathan Spangler – Issue briefings 7 South China Sea Think Tank – 2015.

⁶ In memory of Major General Sinha, former Director of USI – Admiral Arun Prakash – *USI Journal* n°568, April-June 2007, page 157.

China has also approached the governments of Seychelles, Mauritius and Madagascar - without success so far.

The Chinese navy has maintained a continuous naval presence in the Horn of Africa, since December 2008, with two warships and a supply ship to tackle piracy and protect the Chinese merchant traffic. The PLAN was looking for port facilities in the area. An agreement has been found with Djibouti, where China is building its first military outpost from which it can survey the Bab-e-Mandel Strait. At the end of their deployment, some task forces entered the Mediterranean for port visit or, more recently, for exercises with the Russian fleet.

For India, this 'string of pearls' strategy' has become a source of concern, giving the feeling of a military encirclement by China, due to the position of the ports and Beijing's special relationship with Pakistan. Although economic exchanges between the two countries have increased during the last decade, territorial disputes from the 1962 Sino-Indian border war have not been solved and the Indian Ocean has become an area of potential tensions between the two countries. While China naval presence is increasing in the IOR, India is turning its interests to the East, towards the Strait of Malacca and the West of the Pacific Ocean, developing its relations with ASEAN countries, Australia and Japan.

The Strait of Malacca is another key chokepoint where China feels vulnerable. It is controlled by the navies of Indonesia, Malaysia and Singapore. Moreover, with the Andaman and Nicobar islands, India is able to survey all the maritime traffic issuing from the Malacca strait. Other issues to the Indian Ocean, the Sunda and Lombok Straits, are also under Indonesia's control.

1.5 The Mediterranean Sea

Although the Mediterranean Sea is geographically far away from Asia, Asian actors increasingly play a role in the region. Chinese interests have reached the Mediterranean first for commercial reasons and more recently with warships deployments. It has built a container platform in Port Said (Egypt). In 2008, the COSCO Company has signed a 35-year lease for exploiting a container platform in Piraeus port of Athens. In return, Greek exports to China grew by 250% between 2011 and 2012. On July 2016, COSCO took over 67% of the Piraeus Company's shares, with the agreement of the Greek government. In Algeria, a Chinese firm is constructing a new port and the Algerian navy bought China-made patrol vessels. Since 2011, the PLAN has regularly sent task groups for operations, exercises or port visits in the Mediterranean.

1.6 US view on freedom of the sea

In 1983, a few months after the adoption of the UNCLOS, the United States presented its national policy regarding freedom of navigation which stated that *'the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the UNCLOS. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.'*⁷ Although it has not ratified the Convention, the USA officially established the 200-nautical-mile exclusive economic zone (EEZ) around US coastlines and afforded other countries their rights to freedom of navigation within the zone, stating, *'Within this Zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight.'*

Since then, the US administrations have continuously reiterated the centrality of freedom of navigation to the country's maritime policy. *'The US has always recognized and defended the traditional freedoms of*

⁷ President Reagan, 1983.

*navigation and overflight on and over the world's oceans for military and commercial purposes.*⁸

President Barack Obama's position has not differed. In a news conference with Chinese President Hu Jintao, he asserted that *'The United States has a fundamental interest in maintaining freedom of navigation, unimpeded commerce, respect for international law, and the peaceful resolution of differences.'*⁹

Without any maritime territorial claims to the South China Sea, the United States has maintained that freedom of navigation is at the heart of the country's maritime policy. It considers freedom of navigation in international waters, including within EEZs, to be an unalienable right of all countries and will continue to pursue national interests in the South China Sea based on this stance.

1.7 Conclusion

China is surreptitiously expanding a maritime strategy. It is intransigent and aggressive in its maritime approaches, a domain where it feels strong enough. Nonetheless, the further it moves away from its homeland and the more it, therefore, feels vulnerable and tends to pursue a more moderate and pragmatic attitude.

China is building up commercial access points along its sea lanes but only a few ports can be used as military bases. If China wants to become a naval power in the Indian Ocean, it first needs to respect freedom of navigation and to have reliable naval partners.

China and the United States have divergent views on freedom of navigation. The incompatibility of their positions is a source of tensions in the South China Sea. Both states' views are legally fragile – China's due to the recent ruling of the Permanent Court of Arbitration, the United States' because it has not yet ratified the Convention.

On the one hand, the supply lines of Japan and other US security partners are vulnerable to China's military influence in the South China Sea. On the other hand, China's own supply lines crossing the very same region are vulnerable to the military influence of the United States. A confrontation between the two countries in the South China Sea would have an immediate impact on the shipping traffic and on world trade in general and could call into question the principle of 'freedom of the seas'.

2 The role of the 'One Belt One Road' initiative

Chinese maritime expeditions towards the Southeast Asia and the Middle East have existed since remote times. Trade routes were sailed since the Han dynasty (206 BC - 220 AC) and exchanges made with the Roman Empire. The most famous were the voyages of Admiral Zheng He who, in the first half of the fifteenth century, commanded impressive large-scale fleets as far as East Africa. In comparison the eastern sea routes to Japan and the Pacific were less frequented. After Zheng He, voyages were forbidden by the Emperor and China closed its frontiers for a while.

2.1 The One Belt, one Road initiative

On 7 September 2013, during his visit to Kazakhstan, President Xi Jinping first officially announced the building of the 'Silk Road Economic Belt' a trans-Eurasian project extending from the Pacific Ocean to the Eastern Europe. This economic belt concerning, potentially, three billion people is supposed to create the biggest trade market in the world.

⁸ Turning to the Sea: America's Ocean Future – National Oceanic and Atmospheric Administration (NOAA), 1999.

⁹ 19 January 2011.

On 3 October 2013, Chinese President Xi Jinping attended the 21st APEC Summit in Indonesia and delivered a speech at the Indonesian Parliament. It was in this speech that he first proposed the creation of a '21st Century Maritime Silk Road' (MSR) in order to promote maritime cooperation with ASEAN countries, and to realise common development and prosperity¹⁰. At the Boao Forum on 28 March 2015, China released the 'Vision and Action on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road' indicating that the OBOR initiative had officially become one of China's national strategies. According to the Chinese authorities, One Belt refers to the land-based Silk Road, whereas One Road refers to the 21st Century Maritime Silk Road.

At the end of 2014, China set up the Asia Infrastructure Investment Bank (AIIB) in October and the SRF (Silk Road Fund) in November to sponsor Asian connectivity and development programmes. They function together as complementary wings of Asian development.

In March 2015, the PRC issued an action plan for carrying out this initiative with the building of six major economic cooperation corridors and several key maritime pivot points across Eurasia:

- on land, the plan is to build a new Eurasian land bridge and develop the economic corridors of China-Mongolia-Russia, China-Central Asia-West Asia, the China-Indochina peninsula, China-Pakistan and Bangladesh-China-India-Myanmar;
- on the seas, the initiative will focus on jointly building secure and efficient transport routes connecting major sea ports along the belt and road. The choice of Indonesia for announcing the Maritime Silk Road was obviously an invitation to President Jokowi's Sea Toll Program to join the Chinese initiative.

Formally, OBOR emphasises five key areas of cooperation: coordinating development policies, forging infrastructure and facilities networks, strengthening investment and trade relations, enhancing financial cooperation and deepening social and cultural exchanges. But the main projects are devoted to infrastructure such as railways, roads, ports, pipelines, energy and telecommunications networks. Beijing revealed the establishment of the Silk Road Fund to which China would contribute \$40 billion.

2.2 China's New Silk Road Strategy

OBOR, as communicated by the Chinese government, aims to increase connectivity between the Asian, European and African continents. The intention is to enhance trade flows and to spur long-term economic growth and development, benefiting all countries involved. OBOR is very much a national strategy and is expected to be a critical driver for the country's long-term ambitions and a key pillar of its 'going out' strategy.

This overarching strategy is reflected in 'Vision and Actions', which sets out a vision in which China-led infrastructure construction, reduced tariffs, and simplified customs administration would allow trade to flow seamlessly between China and countries along OBOR by both rail and ship.

OBOR, according to Vision and Actions, is in line with the purposes and principles of the UN Charter. It upholds the Five Principles of Peaceful Coexistence: mutual respect for each other's sovereignty, mutual non-aggression, mutual non-interference, equality and mutual benefit, and peaceful coexistence.

The Initiative follows market operation and *'as such, OBOR should probably not be called a strategy. Moreover, Beijing has repeatedly stated that OBOR is a vision for harmony and prosperity and not a*

¹⁰ 'Chronology of China's 'Belt and Road' initiatives', Xinhua, 5 February 2015.

*geopolitical and diplomatic offensive, a geopolitical conspiracy, or a scheme to change the existing international order.*¹¹

In his speech at the China Development Forum on 21 March 2015, China's vice foreign minister Zhang Yesui said that *'China is a participant, constructor and contributor of the current international order and system'; 'the OBOR initiative is an economic cooperation proposal, it is not a tool of geopolitics', and 'it is not directed against any specific country or organization, but is a useful complement to the existing international and regional institutions'*¹². Chinese Minister of Commerce Gao Huchen further stressed that *'OBOR will be based on each country's natural endowments, advocating 'one country one policy' [and that] through the construction of OBOR, different and diversified countries are intertwined together, thus promoting mutual development and dependence, and regional stability'*¹³.

For many analysts, China's NSR strategy has been formed under the pressure of the US rebalancing policy and China's own economy slowdown. Some thinkers argue that the NSR is an opportunity to develop economically the western regions and, by doing so, to avoid direct confrontation with the United States. With the slump in US and European market demand, after the financial crisis of 2008, China's encountered a slowdown in its exports of goods with a significant level of excess production in many sectors since 2012, such as steel production and housing. With the economic slowdown and little expansion in domestic consumption, China had to search for alternative markets for its products.

*'The NSR is also reminding the ancient Silk Roads at a time of prosperity. Chinas ambition to recover its past glory economically and culturally is the most fundamental driving force, demonstrating that China's strategy is mainly driven by long term instead of short term factors.'*¹⁴

From the perspective of Beijing's foreign policy, the NSR represents a key aspect for a sustainable grand strategy to connect China more strongly with the outside world. Through the NSR strategy, China wishes to improve its international image as a responsible power and to raise its profile as a global power by providing better connectivity and more strategic benefits for its Asian neighbours. OBOR has the potential to grow into a model for an alternative rule-maker of international politics and could serve as a vehicle for creating a new global economic and political order.

2.3 International reactions to the NSR

Reactions to the OBOR initiative have varied from quite enthusiastic, mainly in the economic sphere, to strong scepticism.

2.3.1 The United States

Since OBOR was proposed, North American scholars have proposed interpretations on the potential impact it might create. Scott Kennedy commented: *'Motivation aside, the initiative is a powerful illustration of China's growing capacity and economic clout, and China's intent to deploy them abroad. Successful implementation of the initiative could help deepen regional economic integration, boost cross-border trade and financial flows between Eurasian countries and the outside world.'*¹⁵

But, in light of the US re-balancing strategy in Asia-Pacific, more North American scholars have viewed OBOR from the perspective of competition. For example, Ralph Cossa, President of the Pacific forum, and Brad Glosserman, the executive director, pointed out that OBOR may change the power structure in the

¹¹ China's one Belt, one Road: an overview of the debate – Zhao Hong – ISEAS 2016 n°6.

¹² Zhang Yesui, 'One belt one road is not a tool of geopolitics'.

¹³ Gao Huchen, "One Belt One Road' planning' – *Shanghai Securities Daily*, 13 March 2014.

¹⁴ 'China's new Silk Road: where does it lead?', Gan Junxian and Mao Yan, *Asian Perspective* 40 (2016) 105-130.

¹⁵ Scott Kennedy and David A. Parker, 'Building China's 'One Belt One Road'', CSIS Publication, 3 April 2015.

Asia-Pacific and in Eurasia. In this new round of power competition, the United States seems to have been at a disadvantage, because *'Beijing is increasingly seen as an assertive actor, responding to regional needs, while Washington is playing defence, working to block new initiatives and seemingly struggling to keep pace with China.'*¹⁶ The journalist Wendell Minnick also believes that although OBOR does not have direct military implications, *'it could help China ease America out of Asia over the long haul while weaning our allies away from us'*¹⁷.

The US government on the whole takes a selective response. Few US officials have mentioned or praised the significance of OBOR. On the other hand, in some specific areas where it needs China's help, such as in the maintenance of stability and development in Central Asia, it has expressed a cautious welcome and taken a cooperative position. For example, on 22 January 2015, US Assistant Secretary Nisha Desai Biswal said at the Woodrow Wilson Centre: *'Some paint our New Silk Road initiative as being in competition with China's Silk Road Economic Belt, but in fact we welcome China's constructive engagement and see a great deal of potential complementarity in our efforts.'*¹⁸

But at the same time, considering OBOR as a rival to the USA-led Trans-Pacific Partnership (TPP) free-trade pact - Beijing has opted not to join - the USA puts overt pressure on both South Korea and Australia not to join the AIIB. Another serious concern for the USA is that the revival of the Silk Road will likely lead to a closer China-Russia partnership.

2.3.2 ASEAN

Malaysia has been supportive of the initiative and sent a strong delegation to Beijing to participate to the OBOR dialogue. In Singapore, the China Construction Bank signed a Memorandum of Understanding with International Enterprise Singapore in April 2016, providing S\$30 billion in financial support to Singapore and Chinese companies jointly investing in OBOR projects. Vietnam, on the contrary, is highly suspicious of OBOR projects as well as, to a certain degree, Myanmar which has signed an agreement with China, in April 2011, to develop a railway link from the southwest city of Kunming to Kyaukpyu port. Construction was scheduled to finish in 2015 but the government of Myanmar, fearing to being too dependent on China and looking for a more balanced foreign policy with India and the USA, cancelled the project in July 2014. Indonesia's President Jokowi has welcomed the OBOR initiative which will contribute to the construction of 24 ports to connect Indonesia's islands.

2.3.3 India and South Asia

India has remained suspicious and has repeatedly expressed its concerns about China's growing strategic and economic presence. India views both Belt and Road as an ongoing attempt at encirclement and considers the strategy as an initiative competing with its policy in South Asia. India wants to connect to Iran, Central Asia and Russia and to push the Himalayan economic belt with China, Nepal and Bhutan. Border disputes are not solved and stay as a preliminary to further cooperation with China. At the heart of India's reluctance to embrace Beijing's promise of road building and connectivity is strategic mistrust. The proposed corridor expected to connect Kashgar to the port of Gwadar runs through Pakistan-occupied Kashmir and Gilgit-Balistan, both considered by Delhi to be Indian territories.

Already hosting Chinese vessels in the port of Gwadar, Pakistan strongly welcomed the Chinese infrastructure projects, estimated to be worth around \$46 billion for the country, (most of them have been already launched).

¹⁶ Ralph Cossa and Brad Glosserman, 'A Tale of Two Tales: Competing Narratives in the Asia Pacific', PacNet, N°84, Pacific Forum CSIS, 1 December 2014.

¹⁷ Wendell Minnick, 'China's 'One Belt One Road' Strategy', *Defense News*, 12 April 2015.

¹⁸ Nisha Desai Biswal, 'The Silk Road Post-2014: challenges and opportunities', The US Department of State, 22 January 2015.

In Sri Lanka, China has been working to improve its port facilities since 2002. While the former president of Sri Lanka expressed his support for the 21st Century Maritime Silk Road, Chinese investment produced discontent among Sri Lankan political groups. Thus the current president, Maithripala Sirisena, re-examined the qualifications of Chinese companies that were accused of causing corruption and environmental problems and suspended the Chinese port program on March 2015. An underlying reason for this reversal is that close relations between China and former president Rajapaksa triggered diplomatic tensions between India and Sri Lanka.

2.3.4 Australia

Some experts, like Geoff Wade, from the Australian National University, have noted: *'Within Australia, enterprises, banks and law firms are promoting the OBOR initiative as an economic opportunity for the country and, with Chinese endorsement, an Australia-China OBOR Initiative has been established to promote Chinese engagement in the Australian economy. China is also utilising the concept to promote its growing economic engagement with northern Australia.'*¹⁹

Not all reactions to OBOR have been enthusiastic. On the economic front, China has been criticised for using its massive financial assets to dominate smaller economies through long-term control of infrastructure, natural resources and associated land assets, and through offering less than desirable credit terms for infrastructure loans. Such processes can also result in China exerting some control over local markets, labour and export policies as mentioned by Geoff Wade, in an article: *'Chinese capital is, without doubt, being employed as a strategic tool. The expansion of Chinese control of ports across Southeast Asia, Oceania and the Indian Ocean is one example of 'commercial' operators serving strategic needs through domination of infrastructure.'*²⁰

2.4 Conclusion

According to Sun Tzu, the greatest skilfulness consists in winning without fighting. Aware of its military inferiority to the United States, Beijing wishes to create favourable conditions in its strategic environment in order to reach its main objectives without resorting to force. But the lack of transparency of China's policy and China's behaviour in the South China Sea are affecting trust of possible partners.

In the document 'A cooperative strategy for 21st Century Sea Power' the US Navy states: *'China's naval expansion into the Indian and Pacific Oceans presents both opportunities and challenges. For example, China supports counter piracy operations in the Gulf of Aden, conducts humanitarian assistance and disaster response missions enabled by its hospital ship, and participates in large-scale, multinational naval exercises...However, China's naval expansion also presents challenges when it employs force or intimidation against other sovereign nations to assert territorial claims.'*²¹

Despite the claimed economic nature of the OBOR agenda according to Beijing, critics see the initiative as being also a strategic program. It has been repeatedly noted in China that OBOR is also intended as a regional security mechanism, with strong interrogations about the future role of the People's Liberation Army in protecting China's OBOR facilities abroad. Last but not least, the two economic corridors now being developed provide China with direct access to the Indian Ocean.

¹⁹ 'China's 'One Belt, One Road' initiative', Geoff Wade, Foreign Affairs, Defence and Security, Parliament of Australia website.

²⁰ 'Chinese investment in Australia needs closer scrutiny', Geoff Wade, *The Weekend Australian*, 9 March 2016.

²¹ 'A cooperative strategy for 21st Century Sea Power', March 2015.

3 The role of the USA and its allies in the security policies in the region

In March 2013, the National Security Advisor to the President, Tom Donilon, gave a speech to the Asia Society²² outlining why the United States is rebalancing its global posture to Asia-Pacific. Considering the critical role the United States has played in Asia for decades, *'providing the stabilizing foundation for the region's unprecedented social and economic development'*, Donilon emphasized that the future of Asia and the United States will be *'increasingly linked'*. Referring to President Obama's speech in Canberra to the Australian Parliament (2011), he said: *'The overarching objective of the United States in the region is to sustain a stable security environment and a regional order rooted in economic openness, peaceful resolution of disputes, and respect for universal rights and freedoms.'*

To pursue this vision, the pillars of the US strategy are *'strengthening alliances, deepening partnerships with emerging powers, building a stable, productive and constructive relationship with China, empowering regional institutions and helping to build a regional economic architecture that can sustain shared prosperity.'*

The main priorities of this strategy are:

- Strengthening the alliance with Japan which remains a cornerstone of regional security and with the South Korea by improving the trilateral ties to tackle North Korea's provocations and threats against our territories, while keeping ready to help if North Korea chooses a better path;
- Developing a strong partnership with India, supporting its 'look East policy', and with Indonesia;
- Building a constructive relationship with China in coherence with its position among other nations on diplomatic, military and economic domains. Developing USA-China military-to-military dialogue to address many of the sources of insecurity avoid misunderstanding or accident which could destabilize the relations;
- Reinforcing regional institutions, ASEAN particularly.

3.1 The United States Defence posture to horizon 2020

As announced by President Obama in the document *'Sustaining US global leadership: priorities for 21st Century Defence'*, the US military strategy, while still contributing to global security, is rebalancing now to the Asia-Pacific region. *'In the coming years a higher proportion of our military assets will be in the Pacific. Sixty percent of our naval fleet will be based in the Pacific by 2020. Our Air Force is also shifting its weight to the Pacific over the next five years.'*²³

The US concerns in the area come from North Korea, but also from China's unilateral requests in the East and South China Seas, which create permanent tensions with Japan and several ASEAN countries. Incidents with US Navy units have occurred repeatedly in those areas during the past fifteen years.

The priority for the United States is not to be ready for a conflict with China, that nobody is willing to see happen as it would destroy both countries' economies, but rather to create such an environment that a military confrontation becomes inconceivable.

To meet such a challenge, the USA has to find the right balance between conciliation and deterrence, to deploy credible means for, and to send the right messages to, its allies or its adversaries to make sure they understand its position. It reinforces its military presence in the area with a new operational concept

²² Tom Donilon, President Obama's National Security Advisor – speech to the Asia Society, 11 March 2013.

²³ Ibid.

- the Air Sea Battle, while at the same time planning regular exchanges and exercises to develop mutual knowledge and confidence measures. To reduce costly rotations, the US Navy increases forward-basing of forces abroad, particularly in Guam and Okinawa²⁴. The US Coast Guards are also deployed to safeguard the US Exclusive Economic Zone and work with regional partners.

However, inside the US Defence community, two tendencies are opposing: the first considers that a conflict with China is possible, if not inevitable, and the USA must be prepared for it²⁵; the other thinks that a growing economy naturally means more power, including military and from the USA and that trying to contain it is also normal, but this confrontation will remain at the political and economic levels²⁶. It is still too early to have a clear vision of President Trump's policy in the area, although the candidate has criticized China repeatedly during his presidential campaign.

3.2 US alliance policy in Asia

Japan, Australia and New Zealand are traditional allies of the US in the region. US military bases in Japan are more than welcome today, with China's growing military power and the territorial dispute over the sovereignty of the Senkaku/Diaoyu islands. The USA-Japan alliance is a cornerstone of the US strategy in Asia. Japan's military budget has increased progressively. Prime Minister Shinzo Abe created a National Security Council in 2013. According to Tetsuo Kotani²⁷, *'The essence of Japan's maritime strategy is to protect the US Seventh Fleet in the western Pacific by providing sophisticated ISR (Identification Safety Range) and ASW (Anti-Submarine Warfare) capabilities so that this formidable force can enjoy freedom of action. US-Japan naval cooperation can be a model for division of labour between the USA and its key partners, namely ROK, Australia, and India. Japan is now taking measures to reinforce its defence posture in the Ryukyu island chain and the concept of Air-Sea Battle provides the basis for it. Japanese naval thinkers are looking at the Tokyo-Guam-Taiwan (TGT) Triangle as key operational areas for Japan Maritime Self-Defence Force (JMSDF).'*

In 2012, the Australian government published a White Paper 'Australia in the Asian Century' in which the future of Australia is clearly bound to Asia. However, Australia remains a strong ally of the USA with which it is linked by Defence agreements and an intelligence sharing community. Australia is now hosting US military assets and 2,500 Marines in its bases near Darwin.

The United States considers its relations with India to be *'one of the defining partnerships of the 21st century'*. US and Indian interests converge in the Asia-Pacific. Southeast Asia begins in Northeast India, and the USA welcomes India's efforts to 'look East,' from supporting reforms in Myanmar to trilateral cooperation with Japan to promoting maritime security. When visiting India, on 25 January 2015, President Obama and the Indian Prime Minister Modi signed a document on a 'Common strategic vision'²⁸ in which they stress the importance of maritime security and freedom of navigation and overflight 'particularly in the South China Sea' and call for peaceful resolution of the disputes. For some Indian experts, the relation with the USA contributes to the *'concirclement'* strategy against the Chinese so-called 'String of Pearls'.

²⁴ A cooperative strategy for 21st Century Sea Power - arch 215.

²⁵ 'China's challenges to the rule of law, the global commons, liberal capitalism, and human rights deserve a resolute answer, and we need a strategy to provide one. Miscalculation, the escalation of what began as a minor incident, and rising Chinese nationalism heighten the prospects of conflict. Preventing conflict is key: strategy, operational posture, readiness, resilience, and sustainability are its essential elements. The US should be prepared and it is not.' - The Rebalance to Asia: What Are Its Security Aims and What Is Required of US Policy? By Seth Cropsey - Hudson Institute - June 2014.

²⁶ America's global Defence predicament – Why the Asia « rebalancing » has little significance for European security – Egmont RIIR – Jeffrey H. Michaels – December 2014

²⁷ A research fellow at the Japan Institute of International Affairs.

²⁸ US-India Joint Strategic Vision for the Asia-Pacific and Indian Ocean Region.

3.3 United States and ASEAN

The United States participates in different meetings with ASEAN countries including the ASEAN Regional Forum (ARF), the ASEAN Defence Minister Meetings (ADMM-Plus), the East Asia Summit (EAS) and the Post Ministerial Conferences. An ASEAN-USA Joint Declaration on Cooperation to Combat International Terrorism was signed on 1 August 2002 with a Work Plan to implement it. Under the ADMM-Plus Framework, the U.S. co-chaired the ADMM-Plus Experts' Working Group on Counter-Terrorism with Indonesia for the period of 2011-2013. In 2009, the USA acceded to the Treaty of Amity and Cooperation (TAC) and appointed a resident Ambassador to ASEAN in 2010. Since then, cooperation has progressed on non-proliferation, cyber security, HA/DR, piracy and human trafficking. The USA has a representative to ReCAAP²⁹ and have a liaison officer to the Information Fusion Centre (IFC). Singapore has long been a port of call for the US aircraft-carrier; nowadays, the US has 4 Littoral Combat Ship (LCS) deployed on a permanent basis there.

In April 2014, an agreement on Defence cooperation was signed with the Philippines, to reopen Subic Bay basis to the US Navy. But the newly elected President Rodrigo Duterte, during his visit to Japan, on 26 October 2016, said that he wanted all the foreign troops out of his country within 'maybe two years' and that he was willing to revoke base-hosting agreements with the United States. The USA faces the same difficulty with the government of Thailand: relations have cooled after the coup which the USA has condemned.

Pacific Command forces participate every year in around one hundred exercises with foreign forces. Among the main exercises, Talisman Saber is a bilateral training in Australia, Cobra Gold is a multinational exercise organised yearly with Thailand with the participation of China for the first time in 2015 and RIMPAC, every two years, a US multinational exercise open to all the border states of the Pacific. The scenarios of these exercises are discussed during the bilateral or the ADMM+ meetings.

One of the US Navy's concerns is the proliferation of submarines in the area, in shallow waters. For this reason the Navy has published a new operational Anti-Submarine Warfare (ASW) concept³⁰ and has given some priority to ASW training.

The US priority is clearly focused on the China Seas. Within the South China Sea the US NAVY launched Freedom of navigation operations with warships transiting around the Paracel and the Spratly islands. The US administration had suspended this operation between 2012 and 2015. The last mission occurred on 21 October 2016, with USS Decatur transiting in the vicinity of the Paracel islands³¹.

3.4 Economy

The other domain in which the USA wants to exert its influence, if not its hegemony, is the economy with the Trans Pacific Project (TPP). *The centrepiece of our economic rebalancing is the Trans-Pacific Partnership (TPP)—a high-standard agreement the United States is crafting with Asia-Pacific economies from Chile and Peru to New Zealand and Singapore. The TPP is built on its members' shared commitment to high standards, eliminating market access barriers to goods and services, addressing new, 21st century trade issues and respect for a rules-based economic framework. We always envisioned the TPP as a growing platform for regional economic integration. The TPP is part of a global economic agenda that includes the new agreement we are pursuing with Europe—the Transatlantic Trade and Investment Partnership... Taken together, these two agreements—from the Atlantic to the Pacific—and our existing Free Trade Agreements, around the world*

²⁹ Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia – Singapore.

³⁰ *Anti-Submarine Warfare – Concept of Operations for the 21st Century*.

³¹ 'USS Decatur conducted this transit in a routine, lawful manner, without ship escorts...' Pentagon spokesman Cdr Gary Ross.

*could account for over sixty percent of world trade. But our goals are strategic as well as economic...The TPP is also an absolute statement of US strategic commitment to be in the Asia-Pacific for the long haul. And the growth arising from a US-Europe agreement will help underwrite NATO, the most powerful alliance in history.*³²

3.5 Conclusion

Washington views Beijing as a major challenge to its interests in East Asia, and has followed a mixed strategy of rebalancing and containing China's growing influence by using its diplomatic, economic, military, but also cultural means, to maintain its strategic positions in the region. From the Chinese perspective, Washington has adopted a hostile containment strategy with respect to China's ascent, the US military in East Asia poses a substantial threat to China's national security and its core interests³³.

For the foreseeable future, the U.S. Navy with its allies will keep the supremacy throughout the region while China tries a pawn-pushing strategy in the China Seas and the second islands chain to create a secure buffer zone and takes the initiative in the west with the OBOR project.

ASEAN countries would like a peaceful relation between the USA and China, and to be able to cooperate with both nations without having to make a choice. However, recent changes in China's policy have pushed most of them, including Vietnam, to call for a greater involvement of the United States in the region.

With the ASEAN promoting its 'centrality', i.e. developing relations with great powers such as China, the United States and India, is it manageable for the USA to increase its presence in ASEAN while respecting their 'centrality'? Singapore is the first destination for US investments (twice the volume invested in China) but the US efforts to develop relations with some ASEAN countries have been criticized because they are weakening the regional cooperation.

With regard to freedom of the seas Washington has a broad interpretation of UNCLOS (which the US Senate still refuse to ratify) considering that the same military activities are allowed in any Exclusive Economic Zone as on the high seas. Nowadays, with the extension of seabed activities in many EEZ, this interpretation could be discussed.

4 Effects on the European Union's policy in Asia Pacific and on Euro-Atlantic cooperation

A former German Ambassador to China and Japan, Dr Volker Stanzel, has made the following analysis: *'East and Southeast Asia is the region of the world with the greatest number of unresolved international maritime disputes, some of them so volatile that the possibility of armed conflict cannot be ruled out'*³⁴; in his view and that of many other observers, the two most dangerous areas are the South and East China Seas, due to *'the competition between the United States – the guarantor of stability – and China –, the challenger to regional order'*³⁵.

³² Tom Donilon, President Obama's National Security Advisor – speech to the Asia Society, 11 March 2013.

³³ See Weifeng Zhou, 'China's growing assertiveness in the South China Sea', Elcano Royal Institute, Madrid, ARI 60/2015 – 5 November 2015.

³⁴ Dr Volker Stanzel, 'Danger on the High Seas: The East Asian Security Challenge', Policy Brief European Council on Foreign Relations, ECFR/156, January 2016 - quoted by Dr Peter Roell in 'China's Maritime Silk Road - An ambitious undertaking: a view from Europe' - ISPSW March 2016.

³⁵ Ibid.

'A Global Strategy for the European Union's Foreign and Security Policy' mentions: *'In East and Southeast Asia, we (the EU) will uphold freedom of navigation, stand firm on the respect for international law, including the Law of the Sea and its arbitration procedures, and encourage the peaceful settlement of maritime disputes.'*³⁶

As a major actor in global trade, the European Union (EU) relies heavily on the Sea Lines of Communications (SLOCs) in the Indian Ocean and the China Seas. The European Union's main interests regarding maritime security in the Asia-Pacific region include unhindered and safe passage of goods. The main risk for the European Union is that potential great power rivalry might affect not only the South China Sea but also the Indian Ocean region to such an extent that it could destabilize regions in Africa and the Middle East, or that it might lead to instability and increased tensions in the Mediterranean region.

The relations between the EU and China are essentially economic and commercial, while with the US they rely also on defence and security matters, through NATO and member states bilateral agreements. The EU has also developed strong economic exchanges with ASEAN, Japan, South Korea, Australia and New Zealand.

4.1 EU – China economic exchanges and relations

The EU and China signed an agreement on economic and commercial cooperation in 1985 which consists in a three pillars' dialogue: politic, economic and cultural and education's exchanges. In 2013, a cooperation strategy was adopted - China-EU 2020 - which did not include a free trade agreement (FTA).

China has become the EU's first supplier (with 20% of EU's imports) and the EU is China's first provider. In 2015, the EU's trade deficit with China reached €180 billion (only Finland and Germany have a positive trade balance with China). Many trade disputes are still pending, like dumping on steel production or trade barriers for some European meats in China. The EU's concerns include technology transfer, retaliation, subsidies, counterfeiting³⁷, discriminatory treatment, inadequate protection and enforcement of intellectual property rights in China and a dominant position of the state-owned enterprises (SOE).

China is interested in exploring the FTA option with the EU as confirmed by President Xi Jinping in 2014. Since, seven rounds of negotiations between China and the EU have yielded little progress. A FTA between China and the EU would be worthwhile with great economic potential in bilateral trade. But it can only succeed when China implements the reforms it has announced. A report from the Centre for European Policy Studies (CEPS) and the World Trade Institute³⁸ concludes: *'The EU-China FTA negotiations will (then) form a Government Procurement Agreement-plus framework. However, if the reforms amount to little more than window-dressing, clearly a China-EU FTA is not going to be possible in public procurement, or indeed, in other areas as well (e.g. services, Foreign Direct Investment, standardization, etc).'*'

Donald Trump's decision against TPP may provide an opportunity for a new approach in the negotiation against a rise in global protectionism.

But the EU's deepening economic ties with China have not created closer political or security relations. On the contrary, Xi Jinping sees *'China as a normative power whose values should inform global governance in a world that is a 'community of shared destiny'; its goal is to chart how ideas, institutions, and behaviour are interlinked in China's new grand strategy.'*³⁹

³⁶ European Union Global Strategy, June 2016, page 38.

³⁷ Over 65% of all detections among goods arriving at EU borders.

³⁸ 'Tomorrow's Silk Road: assessing an EU-China FTA' – CEPS/WTI – 2016.

³⁹ China's "Asia Dream": The Belt Road Initiative and the new regional order - William A Callahan – 2016.

Criticising the US-led global liberal order and alliances, Xi Jinping proposed a 'New Asian Security Concept': *'One cannot live in the 21st century with the outdated thinking from the age of the Cold War and zero-sum game. We believe it is necessary to advocate common, comprehensive, cooperative and sustainable security in Asia. We need to innovate our security concept, establish a new regional security cooperation architecture, and jointly build a road for security of Asia that is shared by and win-win to all⁴⁰' and 'it is for the people of Asia to run the affairs of Asia, solve the problems of Asia and uphold the security of Asia. The people of Asia have the capability and wisdom to achieve peace and stability in the region through enhanced cooperation.'*⁴¹ In his speech at the Indonesian Parliament, in September 2013, he mentioned the building of the *'China-ASEAN community of shared destiny.'*

Xi Jinping, obviously, is going beyond 'connectivity' simply as related to infrastructure projects and considers how China can use it to influence global governance norms, and rules: *'We should advance multilateral diplomacy, work to reform the international system and global governance, and increase the representation and say of China and other developing countries.'*⁴²

4.2 EU – USA relations

The EU and its member states have a long-standing relation with the US on political, economic, cultural and security domains. Both entities contributed in establishing international laws and norms which are ruling the world today. The majority of the EU member states are also NATO members and, if not, have developed security and defence cooperation with the United States. In its document - A cooperative strategy for 21st Century Sea Power - the US Navy, the Marine Corps and the US Coast Guard stated: *'Europe NATO and our European allies and partners remain vital to US security interests within the region and around the world. Our interoperability with allies remains a priority, as demonstrated by the nine-month cooperative deployment of a Carrier Strike Group with British Royal Navy staff embarked and the combined Carrier Strike Group operations between the United States and France. Our naval installations in Europe are fundamental to sustaining naval forces operating in this and adjacent areas.'*

In spite of what it states, with the exception of four destroyers deployed in Spain for ballistic missile defence (BMD), the US navy has left the Mediterranean, which they only sail through to go to the Persian Gulf. The election of Donald Trump as the next President of the United States could be worrying for the EU given the many declarations in his campaign on US isolationism. *'In NATO, for instance, only 4 of 28 other member countries, besides America, are spending the minimum required 2% of GDP on defence. We have spent trillions of dollars over time – on planes, missiles, ships, equipment – building up our military to provide a strong defence for Europe and Asia. The countries we are defending must pay for the cost of this defence – and, if not, the U.S. must be prepared to let these countries defend themselves.'*⁴³ The new President inaugural address, on 20 January 2017, has confirmed these declarations insisting on 'America first' and giving a warning to the world, allies included: *'For many decades, we've enriched foreign industry at the expense of American industry; subsidised the armies of other countries while allowing for the very sad depletion of our military; we've defended other nation's borders while refusing to defend our own...'* The next months will probably open a new era for EU-USA relations.

The EU has also positive and friendly relations with India and with the US allies in the area - Japan, South Korea, Australia and New Zealand. But, one of the EU strategic priorities is the ASEAN.

⁴⁰ New Asian security concept for new progress in security cooperation. Xi Jinping in: Fourth Summit of the Conference on Interaction and Confidence Building Measures in Asia, Shanghai, 21 May 2014.

⁴¹ Ibid.

⁴² The central conference on work relating to foreign affairs - Xi Jinping in Beijing - Xinhua, 29 November 2014.

⁴³ Donald Trump Foreign Policy speech – 27 April 2016 – Donald Trump website.

4.3 EU – ASEAN relations

Relations between the two organisations had started in 1972 and have increased during the past four years. Since September 2015, the EU has appointed an ambassador to ASEAN. On 18 May 2015, the EU High Representative for Foreign Affairs and Security Policy and the European Commission published a joint communication entitled: 'The EU and ASEAN: a partnership with a strategic purpose'. Ms Federica Mogherini declared: *'The partnership between the EU and ASEAN is of the highest importance and we are determined to develop it and to strengthen our political and economic cooperation. From trade to security, from climate change to State of Law, our cooperation is intense and, as the EU, we support ASEAN integration. The deepening and the widening of our relation with ASEAN are the core of the EU strategy in Asia.'*

The EU is ASEAN's second partner for commercial exchanges (after China), with €248 billion in 2013, and the first direct investor in ASEAN with 22% of the amount. The EU is a member of the ARF. The two organisations cooperate on non-traditional security issues, such as transnational crime, terrorism, disaster relief, information security, climate change and public health epidemics. The EU is supplying the ASEAN Coordination Centre for HA/DR⁴⁴. In May 2015, they organised a high-level dialogue in Kuala Lumpur on maritime security.

According to the DG Trade of the European Commission, ASEAN is among the EU trade priorities. Discussions on a free-trade agreement started in 2007. After a break in 2009, they resumed in 2015. During this period, bilateral agreements with some countries made progress and a free-trade agreement was signed with Singapore in 2013 and partly with Vietnam in 2015. Partnership and cooperation agreements have been signed with the Philippines, Indonesia and Malaysia. With Thailand the negotiations have been suspended after the coup.

An EU-ASEAN summit takes place every two years. For the first time, in July 2014 in Brussels, security matters were on the agenda of the 20th summit: 'Towards a strategic partnership for Peace, Stability and Prosperity.' One of the conclusions was that it was necessary *'to enhance maritime security and safety cooperation, such as information sharing and capacity building'*⁴⁵ and *'the Ministers welcomed cooperation between ASEAN and the EU on maritime issues... it is expected that several possible areas of cooperation on maritime issues, including maritime surveillance, port security, counter-piracy, illegal, unregulated and unreported fishing and the joint and sustainable management of maritime resources, information sharing and capacity building, could be enhanced through the ASEAN Regional Forum (ARF) and the Plus One framework.'*

On 25 July 2016, the ASEAN Ministers of Foreign Affairs met in the framework of the 49th ASEAN Ministerial Meeting (AMM), in Vientiane. During the separate talks with the EU representatives, they agreed to work on a roadmap towards an 'ASEAN-EU strategic partnership' and to increase their cooperation on fighting illicit trafficking, terrorism, human trafficking, cyber-criminality and on maritime affairs, including maritime security.

4.4 Challenges to EU policy in Asia-Pacific

From the above, the EU is facing a double challenge in this area. On the one hand, it has to face China's expansionism strategy including its contest of international law; on the other hand, the strategic rivalry between the USA and China could have an earthquake effect on the world economy and the EU would have to choose sides in such a conflict.

China's expansionism is particularly relevant in three areas - South China Sea, ASEAN and inside the EU.

⁴⁴ Humanitarian Aid and Disaster Relief.

⁴⁵ Co-chairs' statement of the 20th EU-ASEAN Ministerial Meeting.

Beijing seems to have learned the lesson that its 'charm offensive' had a better impact than its aggressive foreign policy of the past decade. Some experts call the new neighbouring diplomacy, promoted with the OBOR initiative, China's 'second charm offensive'⁴⁶. But this charm offensive is going beyond the immediate neighbourhood. For remote areas like Europe, China is using appropriate dressing for its projects underlining that its Five Principles of Peaceful Coexistence are precisely in line with the principles and proposals of the United Nations Charter. China is also declaring green, sustainable governance to be a primary development objective, in full coherence with the goals of the EU. In this way, One Belt, One Road began with slogans such as, 'lean, clean and green' in the words of Jin Liqun, president of the Asian Infrastructure Investment Bank (AIIB).

4.4.1 The South China Sea

The EU has been quite cautious if not almost inaudible, on the South China Sea dispute, although the ruling of the Permanent Court of Arbitration was clearly in favour of the Philippine claims and concluded that there was no legal basis for China's historic rights on the nine-dash line maritime area. Yet, the EU permanently refers to the UNCLOS, considering it as a milestone of the international law. China's decision to ignore the ruling may open the way to other contests and put the law at risk. The EU cannot accept the Chinese attitude and must defend the ruling while also proposing solutions. Its Integrated Maritime Policy could be used as a basis for discussion between the claimants.

To help solving the dispute, the EU should consider China's strategic interest in the Yulin naval base in Hainan and to advise the claimants to reach a compromise in this specific part of the South China Sea, even if this does not coincide with the US views.

4.4.2 ASEAN

Although Chinese leaders assert that 'Asia is open to the world', repeated formulas such as 'Asia for Asians' and 'community of shared destiny' look like a pale copy of the US's Monroe Doctrine for the Americas and imperial Japan's Greater East Asia Co-Prosperty Sphere.

China has tried to convince Southeast Asian countries that OBOR is in synergy with ASEAN's development strategies and can play a complementary role in the building of the ASEAN community. ASEAN has come up with several initiatives in an attempt to close its development gaps, including the Initiative for ASEAN Integration Work Plan and the Master Plan on ASEAN Connectivity. OBOR and the Lancang-Mekong Cooperation framework will also help address the gaps by improving connectivity for less developed countries, bringing their competitive advantages into full play. The ASEAN Connectivity Coordinating Committee and its Chinese counterpart (the Chinese Working Committee of the China-ASEAN Connectivity Cooperation Committee) have already held several meetings and continue the consultation process to expand project-financing channels and enhance cooperation in infrastructure technology transfer and personnel training.

The EU policy towards ASEAN is clearly competing with China's OBOR project. For ASEAN these increasing ties with many other countries (the USA, South Korea, Japan, India, Australia) are warmly welcomed. They not only bring economic growth to the region but they also offer the possibility not to be too dependent on China, in coherence with ASEAN concept of centrality. Even if Chinese leaders often stress that they see small and large countries as equal on the world stage, former Foreign Minister Yang Jiechi underlined a hierarchical notion of regional order when he told Southeast Asian leaders, in 2010, that '*China is a big country and other countries are small countries, and that's just a fact*'⁴⁷. Beijing's

⁴⁶ Glaser and Pal, 2014.

⁴⁷ 'US takes a tougher tone with China', Washington Post, J. Pomfret, 30 July 2010.

'international friendship' generally means some counterparts while other countries cannot criticize China and accept the 'China dream'.

For the EU, being a 'soft power' could be worthwhile and Ms Mogherini rightly assesses that 'the partnership between the EU and ASEAN is of the highest importance'. There are probably some domains on which the EU could collaborate with China's OBOR or with other countries' programmes but it must be clear that the EU, also, has its own values and vision of international relations.

4.5 The EU's weaknesses

In comparison with the USA, a world power, and China a growing and future challenging world power, the EU is a rather weak organisation whose policy is based on consensus, like ASEAN's. Based on awareness of the EU's Achilles' heel, China's strategy focuses on bilateral relations with individual states.

The UK was the first country to become a founding member of the AIIB. Sixteen other EU countries have followed suit. In recent years, Chinese state and private companies have consistently acquired European businesses: in 2014, Chinese foreign direct investment in Europe (including Switzerland, Norway and the EU) reached \$18bn and \$23bn in 2015⁴⁸, according to the *Financial Times*. *'China invests in sectors of strategic importance, such as the nuclear and aeronautical industries, energy, automobiles, transport infrastructure, telecommunications and banking, among others. This raises fears about the implications for European countries' national security and concerns about China's compliance with the applicable EU regulations.'*⁴⁹ Many analysts have pointed out the poor reaction capacity of the EU and the lack of EU coordination when forming a common policy to face the growing Chinese investment on European soil.

An economic platform between China and 16 states in central and Eastern Europe aims at building and modernising transport infrastructure. *'This platform was launched much to the EU's displeasure, which was not consulted on the matter beforehand. Brussels observes a state of dependency on the part of some of the continent's poorest countries caused by a trade imbalance that favours China. The creation of infrastructure and new centres of production and distribution of Chinese products progresses, at times, beyond the EU's control.'*⁵⁰ The national interests of European member states seem to be ruled by the pure logic of economics, competing among themselves, and lacking strategic vision. The EU's legislative conformity and even the EU's unity itself may be at stake. This dangerous path has led to the creation of the EU-China Connectivity Platform, a common framework for cooperation with China on OBOR.

Chinese investments in Europe have been carefully and strategically thought out. The eastern European countries are logically the first entries for the 'Belt' but they will be also connected to the 'Maritime Silk Road' through the port of Piraeus and the planned construction of a high-speed train from Athens to Budapest via Skopje and Belgrade. The port of Piraeus will be also a key hub for seaborne transportation across and around the Mediterranean Sea. China also pays a special attention to Spain as a possible facilitator in its business and cultural approach of Spanish-speaking South American countries.

The European states' investments in the AIIB were a bad surprise for the USA, which has been trying to clinch the negotiations with the EU on the Transatlantic Trade and Investment Partnership (TTIP) for three years, under more pressure but without success. On the economic side the EU is now a challenger to the USA, which would have expected to avoid this connexion between Chinese and European economies. US critics speak of 'China's European Century' and warn that as Chinese trade and investment in Europe grow, so will Chinese influence over European politics. These decisions may strain the USA-EU relations

⁴⁸ Claire Jones, *The Financial Times*, 10 March 2016.

⁴⁹ 'One Belt, One Road: the Chinese Dream and its impact on Europe', Christina Müller-Markus in *Notes Internacionales*, CIDOB 148, May 2016.

⁵⁰ *Ibid.* 43.

and reduce the US military presence in Europe, as seen in the Mediterranean. For a decade, the USA has been asking its NATO European partners to increase their defence budget to share the burden, to no avail.

4.6 SLOCs and naval expansion

Port development in South-East Asia, around the Indian Ocean and in the Mediterranean is one of the objectives of China's '21st Century Maritime Silk Road' to develop trade and port facilities for its shipping companies. Those ports will be for trade activities but they can also be used by naval warships for replenishment. *'Chinese Navy's supply lines west of the Strait of Malacca are highly vulnerable. The PLAN plays a role in the Maritime Silk Road, but only by strengthening China's diplomatic influence and to address non-traditional security issues, like in the Horn of Africa. Achieving sea power, including the ability to secure or disrupt supply lines by military means, or to attack land targets from the sea, is what China aims for in its near seas, but not in the Indian Ocean or the Mediterranean Sea. In the long term it is possible that this will change: China's diplomatic-commercial approach might turn out to be only a stage in a trajectory that eventually involves also the expansion of strategic-military influence.'*⁵¹

China has negotiated a naval base in Djibouti and Greece has offered the Chinese Navy to carry out maintenance and repair of its equipment in Crete. The growing expansion of the PLAN capabilities and the lack of transparency that characterises Chinese military intentions are two reasons for the European navies and the EU to watch over the evolution of PLAN's activities.

The EU launched operation ATALANTA, in December 2008, to protect vessels belonging to the World Food Programme, African Union mission in Somalia (AMISOM) and the maritime traffic against piracy and armed robbery. It has been further asked to monitor fishing activities off the coast of Somalia. To improve the maritime situational awareness in the Indian Ocean and the Gulf of Guinea, the EU has developed several Critical Maritime Routes Programme⁵². By doing this, the EU has progressively contributed to secure the SLOCs in the area.

4.7 Conclusion

Those developments are significant for the European Union. While promoting 'Asia for Asians' in its neighbourhood, China is becoming more influential economically and diplomatically in regions close to Europe. Stronger investment and trade relations between China and countries in Africa and the Middle East are increasing the need for these countries to maintain friendly relations with Beijing. For the time being, this process is hardly visible, since China is careful to keep a low profile in such regions in the military and security domains.

Europe must stand firmly on its norms and values when discussing with China. EU member states must understand that they have to think one step beyond their immediate interest and that they will be stronger if they agree on a shared policy when they compete with great powers.

The EU member states must also consider that relations with the USA have changed and will continue to evolve. For the USA, the EU is an economic power and a competitor on the world markets. The euro is seen as challenging the dollar's supremacy and the US strategic priorities have shifted to Asia and the Middle East, as shown by the rebalance of the US military forces⁵³ to these areas. The EU member states must understand that they have to increase their defence budget and their contribution to NATO's spending and to ask for more responsibilities of the EU inside NATO.

⁵¹ China, Europe and the Maritime Silk Road - Clingendael - Frans-Paul van der Putten & Minke Meijnders - March 2015.

⁵² MARSIC, CRIMLEA, CRIMSON, CRIMGO, CRIMARIO, GoGIN.

⁵³ Sustaining US global leadership: priorities for 21st century defence - January 2012.

5 Consequences of the ruling of the Permanent Court of Arbitration in the case of the South China Sea

By Notification and Statement of Claim dated 22 January 2013, the Philippines initiated arbitration proceedings against China pursuant to Articles 286 and 287 of the Convention and in accordance with Article 1 of Annex VII of the Convention⁵⁴. In response, China presented a Note Verbale to the Department of Foreign Affairs of the Philippines on 19 February 2013, rejecting the arbitration and returning the Notification and Statement of Claim to the Philippines. In its Note, China highlighted that *'the two countries have overlapping jurisdictional claims over parts of the maritime area in the South China Sea and that both sides had agreed to settle the dispute through bilateral negotiations and friendly consultations.'*

In December 2014, Vietnam, considering that its interests could be affected by the procedure, asked the Tribunal to receive copies of all relevant documents in the arbitration⁵⁵. In January 2015, the Philippines sent the Tribunal its comments on Vietnam's requests, supporting Vietnam having access to documents in the interest of transparency. Throughout June and July 2015, the Tribunal received requests from several States, interested in the arbitration, for copies of relevant documents and for permission to attend the Hearing on Jurisdiction. After seeking the views of the Parties on each occasion, the Tribunal granted such requests from Malaysia, Japan, Vietnam, Indonesia, Thailand, and Brunei.

The Hearing on Jurisdiction took place from 7 to 13 July 2015. The disputes that the Philippines had placed before the Tribunal did not concern the sovereignty of States over land territory that the Convention does not address. The Philippines asked the Tribunal to resolve a dispute between the Parties concerning the entitlements to maritime zones that would be generated under the Convention by

⁵⁴ 'The disputes that the Philippines has placed before the Tribunal fall broadly within four categories. First, the Philippines has asked the Tribunal to resolve a dispute between the Parties concerning the source of maritime rights and entitlements in the South China Sea. Specifically, the Philippines seeks a declaration from the Tribunal that China's rights and entitlements in the South China Sea must be based on the Convention and not on any claim to historic rights. In this respect, the Philippines seeks a declaration that China's claim to rights within the 'nine-dash line' marked on Chinese maps are without lawful effect to the extent that they exceed the entitlements that China would be permitted by the Convention.

Second, the Philippines has asked the Tribunal to resolve a dispute between the Parties concerning the entitlements to maritime zones that would be generated under the Convention by Scarborough Shoal and certain maritime features in the Spratly Islands that are claimed by both the Philippines and China. The Convention provides that submerged banks and low-tide elevations are incapable on their own of generating any entitlements to maritime areas and that '[r]ocks which cannot sustain human habitation or economic life of their own' do not generate an entitlement to an exclusive economic zone of 200 nautical miles or to a continental shelf. The Philippines seeks a declaration that all of the features claimed by China in the Spratly Islands, as well as Scarborough Shoal, fall within one or the other of these categories and that none of these features generates an entitlement to an exclusive economic zone or to a continental shelf.

Third, the Philippines has asked the Tribunal to resolve a series of disputes between the Parties concerning the lawfulness of China's actions in the South China Sea. The Philippines seeks declarations that China has violated the Convention by:

- (a) interfering with the exercise of the Philippines' rights under the Convention, including with respect to fishing, oil exploration, navigation, and the construction of artificial islands and installations;
- (b) failing to protect and preserve the marine environment by tolerating and actively supporting Chinese fishermen in the harvesting of endangered species and the use of harmful fishing methods that damage the fragile coral reef ecosystem in the South China Sea; and
- (c) inflicting severe harm on the marine environment by constructing artificial islands and engaging in extensive land reclamation at seven reefs in the Spratly Islands.

10. Fourth, the Philippines has asked the Tribunal to find that China has aggravated and extended the disputes between the Parties during the course of this arbitration by restricting access to a detachment of Philippine marines stationed at Second Thomas Shoal and by engaging in the large-scale construction of artificial islands and land reclamation at seven reefs in the Spratly Islands. ' - The South China Sea Arbitration Award - 12 July 2016 - para. 7-10.

⁵⁵ Socialist Republic of Viet Nam, Statement of the Ministry of Foreign Affairs of the Socialist Republic of Viet Nam Transmitted to the Arbitral Tribunal in the Proceedings Between the Republic of the Philippines and the People's Republic of China, pp. 1-3, 5-6 (14 December 2014).

Scarborough Shoals and certain features in the Spratly islands and also the lawfulness of some of China's actions in the South China Sea.

On 29 October 2015, the Tribunal issued its Award on Jurisdiction and found that it had jurisdiction to consider seven of the fifteen Philippines' submissions. The other submissions were debated during the Hearing on the Merits, on 24-30 November.

In November 2015, the United States sent a Note Verbale requesting to send a representative to observe the hearing. Although the Philippines did not object to the US request, the Tribunal decided that 'only interested States parties to the UNCLOS will be admitted as observers'. Later the UK and Australia made the same request which was accepted for both.

On 21 December 2015, an official spokesperson for the Chinese Ministry of Foreign Affairs commented on the publication of the transcript of the Hearing on the Merits as follows: *'The Chinese side will neither accept nor participate in the South China Sea arbitration unilaterally initiated by the Philippines. This longstanding position is fully supported by international law and subject to no change.'*⁵⁶

On 20 May 2016, representatives from the Chinese Embassy in The Hague presented to the Registry a letter from the new Ambassador reaffirming the Chinese position: *'The Chinese Government consistently adheres to the position of settling the relevant disputes between China and the Philippines by peaceful means through negotiation and consultation. This is a consensus reached and repeatedly reaffirmed by the two sides, as well as an explicit provision in the Declaration on the Conduct of Parties in the South China Sea (DOC)... China always stands that, with regard to the relevant disputes between China and the Philippines in the South China Sea, a true solution can only be sought through bilateral negotiation and consultation. All sides should encourage the Philippines to work with China to resolve peacefully the relevant disputes through negotiation in accordance with the bilateral consensus, the DOC and international law including UNCLOS.'*⁵⁷

With respect to the former objection, the Tribunal noted that there is a dispute between the Parties regarding sovereignty over islands, but held that the matters submitted to arbitration by the Philippines do not concern sovereignty. The Tribunal emphasised that it did *'not see that any of the Philippines' Submissions require an implicit determination of sovereignty.'*

On 12 July 2016, the Permanent Court of Arbitration delivered its award setting out its formal decisions:

With respect to the status of features in the South China Sea:

- Declares that China's claims to historic rights 'with respect to the maritime areas of South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention;' and 'the Convention superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein;'
- Declares that, as low-tide elevations, Mischief Reef and Second Thomas Shoal, do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation; the same for Subi Reef, Gaven Reef (South), and Hughes Reef but they may be used as the baseline for measuring the breadth of the territorial sea of high-tide features situated at a distance not exceeding the breadth of the territorial sea;

⁵⁶ Ministry of Foreign Affairs, People's Republic of China, Foreign Ministry Spokesperson Hong Lei's Regular Press Conference (21 December 2015).

⁵⁷ Ministry of Foreign Affairs, People's Republic of China, Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference (20 May 2016).

- Declares that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef, in their natural condition, are rocks that cannot sustain human habitation or economic life of their own, within the meaning of Article 121(3) of the Convention and accordingly generate no entitlement to an exclusive economic zone or continental shelf;

With respect to the status of other features in the South China Sea:

- As there is no entitlement to an exclusive economic zone or continental shelf generated by any feature claimed by China that would overlap the entitlements of the Philippines in the area of Mischief Reef and Second Thomas Shoal Declares that Mischief Reef and Second Thomas Shoal are within the exclusive economic zone and continental shelf of the Philippines;
- Declares that China has, through the operation of its marine surveillance vessels in relation to M/V Veritas Voyager on 1 and 2 March 2011 breached its obligations under Article 77 of the Convention with respect to the Philippines' sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank;
- Declares that China has, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese flagged vessels, breached its obligations under Article 56 of the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone;
- Declares that China has breached its obligations under Article 58 of the Convention, in May 2013, when Chinese fishermen engaged in fishing within the Philippines' exclusive economic zone through the operation of its marine surveillance vessels, was aware of, tolerated, and failed to exercise due diligence to prevent such fishing;
- Declares that China has, through the operation of its official vessels at Scarborough Shoal from May 2012 onwards, unlawfully prevented fishermen from the Philippines from engaging in traditional fishing at Scarborough Shoal;
- Declares that China has breached its obligations under Articles 192 and 194 of the Convention, being aware of fishermen from Chinese flagged vessels engaged in the harvesting of endangered species on a significant scale, tolerated, protected, and failed to prevent the aforementioned harmful activities;
- Declares that China has breached its obligations under Articles 123, 192, 194, 194, 197, and 206 of the Convention with the construction of artificial islands, installations and structures on several Reefs ⁵⁸ causing severe, irreparable harm to the coral reef ecosystem without cooperating or coordinating with the other States bordering the South China Sea;
- Declares that China has breached Articles 60 and 80 of the Convention with respect to the Philippines' sovereign rights in its exclusive economic zone and continental shelf with the construction of artificial islands, installations and structures at Mischief Reef;

and

- Declares that China has breached its obligations pursuant to Articles 279, 296, and 300 of the Convention, as well as pursuant to general international law, to abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decisions to be given and in general,

⁵⁸ Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef, and Mischief Reef.

not to allow any step of any kind to be taken which might aggravate or extend the dispute during such time as dispute resolution proceedings were ongoing.

The Tribunal's decision, although legally binding, is not enforceable.

5.1 Reactions to the Permanent Court of Arbitration's Award

Unsurprisingly, Beijing rejected the tribunal's ruling. President Xi Jinping said China's 'territorial sovereignty and marine rights' in the seas would not be affected by the ruling and confirmed that China was still 'committed to resolving disputes' with its neighbours.

Chinese state media reacted angrily to the verdict. Xinhua, the country's official news agency, hit out at what it described as an 'ill-founded' ruling that was 'naturally null and void'. The Communist party's mouthpiece newspaper, the People's Daily, said in an editorial that the tribunal had ignored 'basic truths' and 'trampled' on international laws and norms. *'The Chinese government and the Chinese people firmly oppose the ruling and will neither acknowledge it nor accept it.'* Chinese state media called the Permanent Court of Arbitration a 'puppet' of external forces⁵⁹.

When attending the 6th East Asia Summit Foreign Ministers' Meeting held in Vientiane, Chinese Foreign Minister Wang Yi said that the political manipulation behind the arbitral tribunal would be revealed, in response to the comments made by some foreign ministers on the South China Sea arbitration case⁶⁰.

The Philippine foreign affairs secretary, Perfecto Yasay Jr, said the country welcomed the ruling and called for 'restraint and sobriety', but the mood at President Rodrigo Duterte's cabinet meeting was 'upbeat', presidential spokesperson Ernesto Abella said.

Paul Reichler, of the law firm Foley Hoag LLP, who coordinated the Philippines' legal team, said: *'The tribunal's ruling not only benefits the Philippines, it also benefits other states bordering the South China Sea like Indonesia, Malaysia and Vietnam. If China's nine-dash line is invalid as to the Philippines, it is equally invalid to those states and, indeed, the rest of the international community.'*

Since the mid-1990s, the USA has maintained a position of neutrality on the competing sovereignty claims over the South China Sea islands. Openly supporting the Tribunal's decision could have the unintended effect of hardening China's position with regard to third party dispute settlement and of further discouraging China from complying with the Tribunal's decision on the merits. The US State Department called on both parties to comply with their obligations, according to a statement from spokesman John Kirby.

The verdict rejecting China's ownership claims to 80% of the South China Sea was greeted with much satisfaction and glee in New Delhi⁶¹. The Indian government's official reaction was prompt and measured, with the Ministry of External Affairs (MEA) issuing a statement on the day of the award that called on all parties to show the 'utmost respect' for the UNCLOS. By stressing that 'India supports freedom of navigation and over-flight, and unimpeded commerce, based on the principles of international law, as reflected notably in the UNCLOS,' the MEA statement was seen as chiding China. Emphasizing India's specific national interest in the issue, it added: 'States should resolve disputes through peaceful means without threat or use of force and exercise self-restraint in the conduct of activities that could complicate or escalate disputes affecting peace and stability.'

⁵⁹ Ben Blanchard and Martin Petty - Reuters - 14 July 2016.

⁶⁰ 'Political manipulation behind arbitral tribunal will be revealed: Chinese FM' - Xinhua - 27 July 2016.

⁶¹ India's response to the SCS verdict - Mohan Malik - The American Interest - 22 July 2016.

ASEAN countries took a low profile and avoided mention of the 12 July ruling in the joint communiqué of the last ASEAN foreign ministers' meetings in Vientiane, in late July 2016. Statements must get the consensus among all 10 ASEAN members and China leveraged that by ensuring that Cambodia and Laos would not provide it, announcing a massive aid to both countries.

Follow-up

On 18 October 2016, the Philippines' president flew to Beijing, telling his hosts he wants to make friends not war. Mr Duterte has announced opportunely that he would reduce its military cooperation with Washington, and has confirmed his declaration while visiting Japan a few days later. Mr Duterte has brought a 400-strong business delegation on the three-day state visit designed to secure billions of dollars of investment and to repair relations with the world's second biggest economy.

Both presidents agreed to resume direct talks on the dispute in the South China Sea after years of escalating tension, a sign of warming relations with Beijing. They agreed also to establish a joint coast guard committee on maritime cooperation, a potentially significant step because Chinese Coast Guard vessels have been keeping Philippine fishing boats from Scarborough Shoal.

In a gesture to Philippine fishermen, China's vice foreign minister, Liu Zhenmin, said China would provide assistance with aquaculture and the commercial processing of fish, an issue that Mr. Duterte has emphasized. Mr. Liu said that the countries' relationship was back to 'full recovery' and that they would hold talks on broader defence and security issues, which had also been halted under Mr. Aquino. On the investment front, China agreed to finance infrastructure in the Philippines, lifted the embargo on the import of tropical fruits and said it would start encouraging its tourists to visit after removing a travel advisory on the Philippines. But Mr Duterte told reporters that he would not raise joint exploration with China for oil and gas in the South China Sea, a venture that Beijing would like.

For China, the Tribunal's decision to disqualify its claim on the nine-dash line on the basis of historic rights was a huge setback. In terms of China's domestic politics, the ruling is unacceptable to the regime and set a strong pressure on Chinese government to respond and save face, as noted by Ashley Townshend⁶².

The increasing maritime traffic transiting through the South China Sea and the strategic importance to its economy make it legitimate for China to pay attention to this area. Sea depths in the South China Sea, are another, even more strategic, reason. Since China is a nuclear weapon state, one of the priorities for China is to possess a reliable sea-based nuclear deterrent, namely strategic ballistic missile submarines (SSBNs). For China, the South China Sea needs to be safe waters for the SSBNs. China seeks to establish sea control in the waters to deny US surveillance operations to detect Chinese submarines. The USS Impeccable incident⁶³, in March 2009, was anticipating the future Chinese military reinforcement on the Paracel.

5.2 Conclusion

Although the ruling of the Permanent Court of Arbitration was in favour of the Philippines, bilateral and multilateral discussions are now the only way for solving the disputes. To that end, President Duterte's visit to China and his declarations are a first step towards diminishing tensions and reopening discussions. Despite China's reluctance for multilateral discussions, they will be necessary for the delimitation of some boundaries and to settle an agreement on sharing a common space.

⁶² Scholar at the University of Sydney's United States Studies Centre.

⁶³ On 5 March 2009, the Impeccable, a T-AGOS vessel, monitoring submarine activity in SCS, was approached successively by a PLAN frigate which crossed its bow at a range of 100 yards without contact, followed by several flyovers of Chinese fighters. She was asked to leave the area. On 8 March, she was shadowed by five Chinese ships which manoeuvred close to her in to 25 feet and tried to snag Impeccable towed sonar array.

As noted by Raul Pedrozo⁶⁴, *'Under international law, including UNCLOS, a nation must 'establish' its maritime zones; such zones are not self-proclaiming. In the case of the Spratly, none of the claimants have declared maritime zones from their claimed land features. Therefore, there are no maritime claims to challenge, so high seas freedoms of navigation and overflight apply. Similarly, with regard to the Paracels, only China has established maritime zones.'* It is urgent for China and the Border States to discuss and agree on the EEZ delimitations in the South China Sea.

On Hainan Island, the Yulin naval base hosts 4 SSBNs equipped with nuclear ballistic missiles. China has also built a port and an airport on Woody Island, in the Paracels, 200 Nautical Miles south of Yulin, equipped with Surface-Air missiles and on which J-11 fighters have been deployed. The new bases have considerable significance for China's sea-based nuclear deterrent. Strategic submarines can now be much better shielded from reconnaissance and surveillance when leaving the naval base on the island of Hainan. China cannot be flexible about the security of its strategic nuclear deterrence forces. In the framework of a discussion, it is clearly a red line.

Should the USA ratify the UNCLOS it would send a strong message to the international community that the world's greatest maritime power abides by the law and considers that the rights and obligations contained in the UNCLOS apply to all nations. But in spite of the requests sent by the former US presidents Bush and Obama, the Congress has always opposed to the ratification and this situation will not change with the new administration.

6 Policy options for the EU

China's OBOR initiative affords both opportunities and risks due to China's behaviour in the China's Seas and hidden strategic policy. For the United States, China's increasing grip on the South and Central Asia is certainly unacceptable, and US President elect Trump's telephone call to the Taiwanese President seems to show the future way of the US strategy in the area.

The magnitude of OBOR's impact on the EU's long-term geopolitical, economic and geostrategic interests will also depend on whether the EU responds to OBOR with one voice and coordinated policies.

Relying on a soft power approach with a focus on international law, the EU is not seen as a strong security player, which leaves it with some possibilities to initiate a maritime security governance mechanism and framework that can mitigate the risk of the Asia-Pacific area being affected by Great Power tensions. This should be done, obviously, in close cooperation and coordination with regional countries.

In accordance with the above the policy options for the EU could be the following:

1. In her foreword to the European Union Global Strategy, the High Representative of the Union for Foreign Affairs and Security Policy, Vice-President of the European Commission states rightly: *'The purpose, even existence, of our Union is being questioned. Yet, our citizens and the world need a strong European Union like never before... None of our countries has the strength nor the resources to address these threats and seize the opportunities of our time alone. But as a Union of almost half a billion citizens, our potential is unparalleled... We will deliver on our citizens' needs and make our partnerships work only if we act together, united... Yes, our interests are indeed common European interests: the only way to serve them is by common means. This is why we have a collective responsibility to make our Union a stronger Union. A fragile world calls for a more confident and responsible European Union, it calls for an outward- and forward-looking European foreign and security policy.'*⁶⁵ Consequently, the first action will be to

⁶⁴ Raul Pedrozo in Perspectives 9 - South China Sea Think Tank – Taipei.

⁶⁵ Shared vision, Common Action: A stronger Europe - EUGS - June 2016.

build a 'credible Union', anchored on its shared values if the EU wants to be able to discuss as equals with the Great powers.

2. EU policy has always promoted international law (UNCLOS) as the basis for maritime governance and cannot accept China's rebuff of the ruling of the Permanent Court of Arbitration. That said, the EU must act to avoid a confrontation between China and the USA in the South China Sea, which would have an immediate impact on maritime traffic and world trade. The development of a code of conduct in the South China Sea should be actively pursued and bilateral and multilateral discussions must be encouraged to find an agreement on EEZ delimitations, on fishing and environmental rules and on freedom of navigation in the area, in accordance with the UNCLOS and taking into account the security of China's strategic nuclear deterrence. Proposing the EU Integrated Maritime Policy (IMP) as a basis for discussion could be helpful.
3. The EU policy towards ASEAN is competing with China's OBOR project. For ASEAN these increasing ties with other countries are welcomed as they contribute to economic growth in the region and offer the possibility not to be excessively dependent on its main partner, China, in coherence with ASEAN concept of centrality. As analysed by the High Representative, the EU should intensify its relations with ASEAN, increasing its presence and facilitating progress in ASEAN confidence-building measures.
4. The evolution of China's strategy and the situation in the East and South China Sea require constant monitoring. This calls for intelligence gathering by European intelligence agencies for improved awareness and decision-making.
5. The EU's interests do not always coincide with those of the United States, and the EU benefits from taking a more independent position on security issues related to Asia. The EU member states must also consider that relations with the US have changed and will continue to evolve. For the USA, the EU is an economic power and a competitor on the world markets. The euro is seen as challenging the dollar's supremacy and the US strategic priorities have shifted to Asia and the Middle East, as shown by the rebalance of the US military forces⁶⁶ to these areas. President elect Trump has announced he will give less support and take some distance from its European allies. The EU must strengthen defence and security ties among member states, increase defence efforts and assume a greater role within an 'obsolete' NATO.
6. The US rebalance towards Asia requires Europe to take a greater responsibility for stability in its immediate surroundings, especially in the Mediterranean, in the western Indian Ocean and in Africa. All observers agree to say that operation ATALANTA in the Horn of Africa, is a success. In spite of the difficulty of its mission, operation SOPHIA is saving migrant lives and helps Libya to rebuild its Navy and Coast Guard. A permanent activation of EUROMARFOR, with a European Maritime Force, sailing in the Mediterranean or alongside the West African coasts would offer the necessary means for presence and surveillance at sea, training with foreign navies and crisis prevention, in relation with NATO.
7. Maritime domain awareness is a prerequisite to maritime security. While the US is developing the MISE (Maritime Information Sharing Environment) and the EU, the CISE, (Common Information Sharing Environment), the South East Asian countries have established the IFC (Information Fusion Centre) in Singapore and India is developing its own system. Connection between the different networks will improve considerably the maritime surveillance and awareness. Furthermore, the EU's

⁶⁶ Sustaining US global leadership: priorities for 21st century defence - January 2012.

PMAR-MASE⁶⁷ programme for Eastern and Southern Africa and Indian Ocean is financing a maritime regional IFC in Madagascar with the aim to connect it to Singapore's IFC.

8. OBOR opens opportunities for the EU to pursue its geostrategic ambitions⁶⁸ in Central Asia by deepening the EU-China strategic partnership through cooperation in non-traditional security fields, as decided in 2007 and confirmed in 2015. This could possibly pave the way to EU-Russia reconciliation. It may be advantageous for the EU to consider how its existing policy tools and strategies, such as the European Neighbourhood Policy (ENP) and the EU Maritime Security Strategy, could be linked with OBOR and how this strategic alignment could feed into the EU's Global Strategy for Foreign and Security Policy.
9. China's new initiatives will accelerate the growth of its influence in the maritime domain as well as in Asia, Africa and Europe more broadly. An EU proactive approach to closely working with local actors and coordinating actions or programs with China when it is of added value, seems to be the best way to preserve European interests and role. For example, the EU has a real interest in supporting the 2050 Africa's Integrated Maritime Strategy (2050 AIMS) to improve security, tackle IUU and piracy and develop Africa's economies, and coordinating with Chinese investments in ports and infrastructures.

⁶⁷ The Piracy Maritime Awareness and Risks-Maritime Security project supported by the Joint Research Centre.

⁶⁸ The 2007 European Union Strategy for Central Asia was reviewed for the fourth time in 2015 and the review concluded that the strategy remains valid.

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