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Nengye LIU

Singapore Management University, nengyeliu@smu.edu.sg

Qi XU

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## How Might the European Union Engage Constructively with China in the South China Sea?

Liu Nengye<sup>a</sup> and Xu Qi<sup>b</sup>

<sup>a</sup>Adelaide Law School, University of Adelaide, Adelaide, Australia; <sup>b</sup>Department of International Relations and International Organization, University of Groningen, Groningen, The Netherlands

### ABSTRACT

This article addresses the following questions: How does the South China Sea matter to the European Union? What roles could the EU play in the governance of the South China Sea? In particular, how could the EU effectively engage with China in the South China Sea? The article provides an analysis of the legal basis and policy background for the EU's involvement in the South China Sea governance and explores the EU's interests in the South China Sea.

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South China Sea; European Union; China; Belt and Road Initiative

### Introduction

Though the European Union (EU) has no territorial claims in the South China Sea, European colonial powers, especially the United Kingdom and France, are no strangers to this region. By the late 1880 s France controlled Vietnam, Laos, and Cambodia, which it referred to as *Indochine Francais* (French Indochina). France, as the colonial ruler of Vietnam at the time, in 1931 asserted its sovereignty over part of the South China Sea.<sup>1</sup> The colonial era is long gone. In 2016, the Association of Southeast Asian Nations (ASEAN) was the EU's third largest trading partner after the United States and China.<sup>2</sup> Six major economies of ASEAN, Indonesia, Thailand, Philippines, Malaysia, Singapore, and Vietnam, together with China, are coastal states on the South China Sea. The South China Sea contains some of the world's busiest international sea-lanes (Strait of Malacca), as well as two of the world's busiest ports (Singapore and Hong Kong), connecting the EU and East Asian economies (China, Japan and South Korea). The EU obviously has a significant interest in maintaining peace and security in the South China Sea region.

A semi-enclosed sea that is part of the Pacific, the South China Sea has been attracting the world's attention for a long time and more recently because of the *Philippines v. China Arbitration*.<sup>3</sup> Disputes over sovereignty of the Paracel and Spratly archipelagos and maritime areas in the South China Sea have escalated in recent years. China's behavior and the United States' role in the South China Sea disputes have been extensively examined.<sup>4</sup> The EU has set out in its international ocean governance policy that it is exploring possibilities in the South China Sea as an active contributor to global maritime security<sup>5</sup> and has issued two

statements of its positions on South China Sea disputes in response to the two decisions of the *Philippines v. China* Tribunal on 11 March 2016<sup>6</sup> and 15 July 2016.<sup>7</sup> The EU, however, has invested more attention in its neighboring regions, such as Russia, the Middle East, North Africa, and the Arctic,<sup>8</sup> rather than the South China Sea. Further, there has been limited consideration of the role of the EU in the governance of the South China Sea within the academic literature.

This article addresses the following questions:

- How does the South China Sea matter to the EU?
- What roles could the EU possibly play in the governance of the South China Sea?
- In particular, how could the EU effectively engage with China on South China Sea issues?

The article first provides an analysis of the legal basis and policy background for the EU's involvement in South China Sea governance. It then explores the EU's interests in the South China Sea and its shifting positions on the South China Sea. The focus in this article is the potential for the EU's constructive engagement with China so as to enhance peace, security, and prosperity in the South China Sea region.

## The EU in the South China sea: Legal basis and policy background

The EU sees itself as a “strong global actor” at the bilateral, regional, and multilateral levels, playing this role in an increasingly connected, contested, and complex world.<sup>9</sup> To this end, the EU is keen to promote a rules-based global order with multilateralism as a key principle and support of the United Nations at its core. The EU believes that through its combined “weight,” it can promote creation of and compliance with agreed rules to contain power politics and contribute to a peaceful, fair, and prosperous world.<sup>10</sup> In this connection, Van Voo- ren and Wessel defines the EU as

An entity that interacts with third countries and international organizations, in ways which are legally and politically distinguishable from its constitutive Member States. In the global context, this entity has a stand-alone identity composed of values, interests and policies which it seeks to define and promote internationally as its own.<sup>11</sup>

With the Lisbon Treaty,<sup>12</sup> the EU has made an attempt to solidify the institutional underpinnings of its foreign policy by creating a High Representative for Foreign Affairs and Security Policy who is served by the European External Action Service (EEAS). As a result, the Union is now competent and active in an array of fields, supplementing or sometimes replacing the foreign policies and bureaucracies of its Member States.<sup>13</sup>

As illustrated by the Treaty on the Functioning of the European Union (TFEU), the Union has shared competences with Member States in many areas, including, for example, internal market, agriculture and fisheries, environment, transport, and energy.<sup>14</sup> Moreover, the Union has exclusive competence “for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable to the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.”<sup>15</sup>

In its latest policy regarding international ocean governance, the EU considers itself well placed to shape international ocean governance on the basis of its experience in developing a

sustainable approach to ocean management, notably through its environmental policy, integrated maritime policy, reformed common fisheries policy, action against illegal, unregulated and unreported (IUU) fishing and maritime transport policy.<sup>16</sup>

Over the past decade, the EU has adopted a number of directives regarding ocean governance with both internal and external dimensions, such as the Marine Strategy Framework Directive<sup>17</sup> and the Maritime Spatial Planning Directive.<sup>18</sup> These measures enable the EU to act externally on global ocean governance issues, including as regards the South China Sea.

### The EU's current role in the South China sea

The EU, owing to its particular historical evolution, its hybrid polity, and its constitutional configuration, is different from other powers.<sup>19</sup> The EU in its foreign policy is expected to project its core norms: peace, liberty, democracy, human rights, and rule of law.<sup>20</sup> The South China Sea could be a great testing ground for the EU to demonstrate its role in the world. The EU has significant trade and investment interests with the South China Sea coastal states. In particular, the EU is seeking to deepen trade and investment relations with China, secure intellectual property rights protection, and enhance cooperation on high-end technology, human rights, and climate action.<sup>21</sup>

Almost 90% of the EU's external freight trade is seaborne.<sup>22</sup> Europe plays a major role in shipping, with European companies owning 41% of the world's total fleet (in deadweight, dwt).<sup>23</sup> The South China Sea includes the Strait of Malacca, one of the most important shipping lanes in the world. One of the EU shipping interests in the region is ensuring freedom of navigation. On this the EU has stated that "a coherent cross sectoral, rules-based international approach is needed to ensure that seas are safe, secure, clean and sustainably managed. Such an approach will contribute to delivering results for EU citizens on priorities such as jobs, growth, competitiveness, sustainability, climate resilience, and peace and security."<sup>24</sup>

On various occasions the EU has called upon all parties to resort to the peaceful settlement of the South China Sea disputes.<sup>25</sup> Unlike the United States, which carries out navigation activities in the South China Sea in the framework of the Freedom of Navigation Program (FONOP) of the U.S. Department of Defense and State Department,<sup>26</sup> the EU's engagement in the South China Sea affairs has mainly been statements and declarations. As noted in the preceding, in March 2016, the EU issued a statement on the *South China Sea Arbitration*. On the one hand, the EU stated that it does not take any position on claims to land territory or maritime space in the South China Sea, and on the other hand, the EU urges "all claimants to resolve disputes through peaceful means, to clarify the basis of their claims, and to pursue them in accordance with international law including UNCLOS and its arbitration procedures."<sup>27</sup> Given that China has maintained the position that the Arbitral Tribunal has no jurisdiction over the matter,<sup>28</sup> the EU's Statement can be interpreted as the EU being critical of China's behavior.

The July 2016 *Final Award* supported most of the Philippines' claims. As observed by EurActiv, the South China Sea ruling loomed large over 2016 EU–China Summit, which was held on 13 July 2016.<sup>29</sup> The EU issued its second Statement on the South China Sea dispute on 15 July 2016 in which the EU "acknowledges the Award rendered by the Arbitral Tribunal," but also "calls upon the parties concerned to address remaining and further related issues through negotiations and other peaceful means and refrain from activities likely to

raise tensions.”<sup>30</sup> To a certain extent, the EU’s July 2016 Statement seems to be in line with or support China’s nonappearance approach to the *South China Sea Arbitration* and appears to be different from the United States’ reaction, which called on Beijing to respect the decision of the Arbitral Tribunal.<sup>31</sup> Nevertheless, in order to protect the EU’s interests in the South China Sea, taking a back seat by merely providing neutral declarations is not an option. In the next part, the article discusses the EU’s potential contributions to enhancing stability in the region, through effective engagement with China.

## The EU’s potential contributions to governance of the South China sea

### *The EU’s internal experience*

In its second South China Sea declaration, the EU stated that

while underlining the importance of all States working together to protect the marine ecosystem already endangered by the intensification of maritime traffic and dredging, the EU and its Member States will continue to organise High Level Dialogues on Maritime Security Cooperation and the exchange of best practices on joint management and development of shared resources, such as fisheries, as well as on capacity-building measures.<sup>32</sup>

The EU has had a successful experience regarding marine environmental protection and fisheries management that could be shared with the littoral States in the South China Sea. For example, the South China Sea faces serious vessel-source pollution. Owing to the unwillingness of some flag states to enforce the law, as well as the cost and difficulties of enforcement at sea, port state enforcement can play an important part in preventing vessel-source pollution.<sup>33</sup> For European waters, the EU adopted Directive 95/21/EC,<sup>34</sup> which made the port inspection commitments of the Paris Memorandum of Understanding (MOU)<sup>35</sup> binding and uniform.<sup>36</sup> Port state control is one of the most successful examples of the EU’s internal influence on the prevention of vessel-source pollution.<sup>37</sup> In the South China Sea region, the Tokyo MOU, which calls for port state inspection and enforcement,<sup>38</sup> is not a legally binding instrument. As a result, port-shopping issues for substandard vessels due to the different levels of port state control practice may exist. The South China Sea coastal states could consider European practice as a useful model that would strengthen the port state control system without jeopardizing any of the sovereignty claims in the South China Sea.

As analyzed by Schofield and Sumaila, the South China Sea disputes are not driven by a regional hunger for seabed energy resources, but rather by fisheries.<sup>39</sup> The South China Sea, however, lacks a binding regime that manages fisheries at regional level. The EU has reformed its Common Fisheries Policy (CFP), which became effective from 1 January 2014. The reformed CFP, consisting of Regulation (EU) 1380/2013 on the Common Fisheries Policy and Regulation (EU) 2015/812 as regards the landing obligation, introduces a number of measures and instruments designed to achieve sustainability.<sup>40</sup> These include, for example, that fish stocks should be exploited at maximum sustainable yield (MSY) levels<sup>41</sup>; that discarding of fish is no longer acceptable;<sup>42</sup> and that multi-annual management plans will replace the single-stock-based approach, thus bringing the vast majority of stocks under multistock management plans.<sup>43</sup> The EU has introduced transferable fishing concessions<sup>44</sup> with the aim of eliminating overcapacity of the fishing fleets and an improvement of the economic results for the fishing industry as a whole.<sup>45</sup> It might be too early to assess the

effectiveness of the reformed CFP three years after its adoption.<sup>46</sup> If the reformed CFP leads to sustainably managed fisheries in the European waters, it could enhance the EU's role in promoting sustainable fisheries in the South China Sea.

### ***Engagement with China in the South China sea***

Traditionally, the EU has considered the ASEAN Regional Forum (ARF) as the “only political and security dialogue forum in the Asia-Pacific in which it participates.”<sup>47</sup> To increase contributions to regional peace and security in the South China Sea, the EU should rely on cooperation with regional partners. It can be predicted that China's interest in maritime cooperation with Europe will gradually increase. The 21<sup>st</sup> Century Maritime Silk Road initiative, which is an indispensable part of “The Belt and Road Initiative,”<sup>48</sup> will enhance this interest in maritime cooperation.

### ***EU–China 2020 strategic agenda***

In 2013, the EU and China established the EU–China 2020 Strategic Agenda and committed to promote the EU–China Comprehensive Strategic Partnership over the next decade.<sup>49</sup> The agenda includes peace and security, prosperity, sustainable development, and people-to-people exchanges.

The EU–China High Level Strategic Dialogue is the paramount platform for the two parties to carry out consultations on issues of common interests. As a major regional concern in the Asia Pacific, the South China Sea issue is expected to be discussed in the Strategic Dialogue. China, however, is concerned about the external interference in the South China Sea affairs. This is clear from China's response to the April 2016 G7 Foreign Minister's Statement on Maritime Security,<sup>50</sup> in which it was stated that “no effort to internationalize and judicialize the South China Sea issue will be of any avail for its resolution; it will only make it harder to resolve the issue, and endanger regional peace and stability.”<sup>51</sup> If the EU intends to include the South China Sea in the China–EU High-Level Strategic Dialogue, it should focus on consensus/trust-building consultation about the South China Sea cooperation, rather than touching upon territorial and maritime disputes.<sup>52</sup>

The 2020 Strategic Agenda refers to the Asia-Europe Meeting (ASEM) and ASEAN Regional Forum as a means to enhance mutual cooperation.<sup>53</sup> Since the EU and China have committed to cooperate in the field of maritime affairs, both parties can use the ASEM as an important platform to discuss peace and security cooperation in the South China Sea. Furthermore, after the *Philippines v. China Arbitration*, China and ASEAN have, once again, confirmed “the full and effective implementation” of the Declaration on the Conduct of Parties, and noted as cooperative activities “navigation safety, search and rescue, marine scientific research, environmental protection, and combating transnational crimes at sea.”<sup>54</sup> The EU can collaborate with ASEAN and China to initiate intersessional meetings of the ASEAN Regional Forum, workshops, seminars, symposiums, or other training activities, to set out a list of priority areas of cooperation accepted by three parties.

In the EU–China 2020 Strategic Agenda, the parties committed to promoting bilateral trade and investment relationships, industry and information, agriculture, transport, and infrastructure. The EU and China both see the South China Sea as an important shipping lane for their respective trading interests. The 2020 Agenda also references possible cooperation on fisheries management and the fight against illegal, unregulated, and unreported

(IUU) fishing, which has been the “recognized reason for the depletion of fishery resources in the South China Sea.”<sup>55</sup> China and the EU have agreed to “combat IUU fishing at bilateral and multilateral levels” and to “support regional fisheries management organizations to improve scientific research, law enforcement and governance.”<sup>56</sup> In March 2016, an EU–China working group on IUU fishing had its first meeting.<sup>57</sup> This working group provides the EU with a platform to get involved in fisheries management in the South China Sea, where, as previously noted, the EU could share its internal experience.

Through key initiatives to achieve sustainable development in the 2020 Strategic Agenda, the EU and China are to enhance exchanges and cooperation on ocean-related subjects, including “ocean management, marine spatial planning, marine knowledge, marine observation and surveillance, R&D of marine science and technology, growth of the marine economy and ocean energy use.”<sup>58</sup> Unlike territorial and maritime disputes, these fields of cooperation are less politically sensitive and largely relate to the International Cooperation Framework for the South China Sea and Other Neighboring Sea Areas (2016–2020) issued by China.<sup>59</sup> In this framework, China states its desire to collaborate with states and/or international organizations within and beyond the South China Sea that are interested in joint cooperation, including respecting “ocean and climate change, marine environment protection, marine biological system and diversity, exploration and exploitation of marine resources, marine disaster prevention and reduction, regional oceanography research and marine policy and management.”<sup>60</sup>

People-to-people exchanges constitute another essential element of the 2020 Agenda. To boost people-to-people exchanges in marine affairs, the two parties agreed to initiate China–EU Blue Year in 2017, which was an example of marine cooperation under the Strategic Agenda.<sup>61</sup> In the coming year, it is expected that more exchanges will take place between the EU and China, in which the EU’s role regarding international cooperation in the South China Sea will be enhanced.

The EU–China 2020 Strategic Agenda for Cooperation is an ambitious scheme that delineates a blueprint for mutual cooperation and progress. China has suggested that all coastal states in the South China Sea “should draw upon the successful experience of other regions.”<sup>62</sup> Because of the EU’s experience in the semi-enclosed sea cooperation, such as North Sea, Baltic Sea, and the Mediterranean, the 2020 Agenda provides an avenue for the EU to constructively engage with China to assist China and other neighboring regional states to work together on a cooperation mechanism in the South China Sea.

### ***The belt and road initiative***

The Belt and Road Initiative (BRI) launched in 2013 is an economic vision for the opening up of and cooperation “to promote the connectivity of Asian, European, and African continents and their adjacent seas.”<sup>63</sup> The BRI’s framework is formulated into two parts, the Silk Road Economic Belt, which is a land-based route, and the 21st-Century Maritime Silk Road, which is a sea route.<sup>64</sup> The Initiative prioritizes five key areas: “policy coordination,” “facilities connectivity,” “unimpeded trade,” “financial integration,” and “people-to-people exchange.”<sup>65</sup> The core of the BRI “lies in the connectivity of infrastructures.”<sup>66</sup> The initiative has made significant progress in its first phase (2013–2017).<sup>67</sup> Nonetheless, the majority of the early outcomes come from the land component achievements have not been evident regarding the Maritime Silk Road. To accelerate the implementation of the BRI, China held a Belt and Road Forum for International Cooperation (BRF) in Beijing in May 2017, aimed



at pushing forward the implementation of projects and the improvement of support systems.<sup>68</sup> China has issued the “Vision for Maritime Cooperation under the Belt and Road Initiative,”<sup>69</sup> which is a road map for greater maritime cooperation with the BRI partners, including with the EU.

The EU expressed its support and willingness to participate in the Belt and Road Forum for International Cooperation.<sup>70</sup> For the EU, while there may be economic benefits to be gained from the cooperation with China,<sup>71</sup> the initiative also poses challenges and uncertainties, including a lack of transparency and clarity respecting the rules, norms, and mechanisms.<sup>72</sup>

The Maritime Silk Road can be divided into two parts: The first is the construction of the infrastructure, such as ports; the second is to set up the social and institutional foundations of trade and investment promotion.<sup>73</sup> Thus far, China’s involvement in the port of Piraeus in Greece and the Gwadar port in Pakistan has made progress.<sup>74</sup>

Regarding the EU’s involvement, the EU–China Connectivity Platform intends to create synergies between EU policies and projects and China’s Belt and Road Initiative. By way of the Chairmen’s Meeting and the First Meeting of Investment and Financing Cooperation Expert Group on EU–China Connectivity Platform, the parties have discussed the working mechanism, enacted a pilot action list of demonstration projects, and agreed to deepen cooperation on the China–EU connectivity.<sup>75</sup> The EU and China could cooperate in the South China Sea concerning the financing and investment of port infrastructure, social and environmental standard-making of ports, and other port-related fields.

Regional economic integration is one priority of the BRI.<sup>76</sup> The BRI explicitly calls on participating countries to expand mutual investment and deepen and promote cooperation with China in developing the marine economy.<sup>77</sup> China attaches great importance to “expanding the blue economic space in the ocean, committing to develop ocean economy, exploiting marine resources, preserving marine ecology environment, safeguarding maritime rights, and establishing the maritime powerful nation.”<sup>78</sup> On the EU’s side, blue economic growth is a long-term strategy focusing on blue energy (offshore wind energy and ocean energy), aquaculture, coastal and maritime tourism, blue biotechnology, and seabed mineral resources.<sup>79</sup> The EU also aims to further develop marine data, maritime spatial planning, environmental protection, skills development, maritime security, and marine and maritime research to ensure the implementation of blue growth policies in seven sea areas around Europe.<sup>80</sup>

In order to achieve sustainable development, China is planning to invite relevant parties including states and international organizations to jointly establish the so-called “blue partnership.”<sup>81</sup> Such a partnership is mainly concerned with marine economy development, marine science and technology innovation, exploitation and utilization of ocean energy, marine sustainable fisheries, and other fields related to ocean sustainability.<sup>82</sup> When looking into the respective fields of the blue economy developed by China and the EU, common areas clearly exist.

In the most recent statement on international ocean governance, the EU indicates that it is willing to engage in bilateral dialogues on maritime affairs and fisheries with key ocean players including China and pledges to strengthen cooperation in sustainable blue growth.<sup>83</sup> Although the South China Sea does not fall within the EU’s sea basins in the implementation of the blue growth plan, the EU’s willingness to deepen cooperation with China could open the door for the two parties to embark on dialogues and consultations on blue economic growth. Under the BRI, policy coordination is necessary so both parties can take advantage

of senior officials working meetings to set priorities in blue economy cooperation for the South China Sea. Intergovernmental working groups in financing and investment in preferential fields could be established. The Asian Infrastructure Investment Bank (AIIB)<sup>84</sup> and Silk Road Fund<sup>85</sup> can be potential options for financial support.

Though the BRI does not explicitly refer to issues in the South China Sea there remains space for EU–China cooperation on these matters. Port infrastructure and the blue economy could be part of the EU’s engagement in international cooperation respecting the South China Sea. From a Chinese perspective, these two areas are to be recommended and encouraged as areas for cooperation.

## Conclusion

The EU is a global actor that could play a constructive role in the South China Sea. The EU has deliberately sought to differentiate itself from the United States. This is evidenced by the EU’s declarations on the South China Sea *Arbitration* between the Philippines and China. In order to protect its interests in the South China Sea, particularly trade and shipping, the EU could make a unique contribution to enhance peace and security in the South China Sea region. The EU should explore venues through EU-China 2020 Strategic Agenda to engage with China, especially as regards China’s Belt and Road Initiative in the South China Sea. If the EU can effectively work with China to ensure stability and resource sustainability in the South China Sea region, this could enhance the EU’s role as a “different” power in maintaining the rules-based order in the Asia-Pacific region.

## Notes

1. Yo-Jung Chen, “South China Sea: French are coming,” *The Diplomat*, 14 July 2016.
2. “Top trading partners 2016,” European Commission Directorate General for Trade, available on the website of the European Commission, [trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_122530.02.2017.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.02.2017.pdf).
3. *The Republic of Philippines v. The People’s Republic of China*, available on the website of Permanent Court of Arbitration (PCA), at [www.pccases.com/web/view/7](http://www.pccases.com/web/view/7). In the *Award on Jurisdiction and Admissibility* (11 March 2016), the Tribunal ruled that it had jurisdiction. In the *Award* (15 July 2016), the Tribunal predominantly sided with the Philippines on the merits.
4. For recent literature on the South China Sea disputes, see, e.g., Nengye Liu and Saiful Karim (eds.), Special Issue, “South China Sea after the Philippines v. China Arbitration: Conflict and Cooperation in Troubled Waters,” (2017) 2 *Asia Pacific Journal of Ocean Law and Policy* 1, and Erik Franckx and Marco Benatar (eds.), Special Issue, “The South China Sea, An International Law Perspective,” (2017) 32 *International Journal of Marine and Coastal Law* 193–372.
5. Joint Communication of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy of 10 November 2016 on International Ocean Governance: An Agenda for the Future of Our Oceans, JOIN (2016) 49, 5.
6. “Declaration by the High Representative on behalf of the EU on Recent Developments in the South China Sea, 11 March 2016,” available on the website of European Council, [www.consilium.europa.eu/en/press/pressreleases/2016/03/11-hr-declaration-on-bealf-of-eu-recent-developments-south-china-sea](http://www.consilium.europa.eu/en/press/pressreleases/2016/03/11-hr-declaration-on-bealf-of-eu-recent-developments-south-china-sea).
7. “Declaration by the High Representative on behalf of the EU on the Award rendered in the Arbitration between the Republic of the Philippines and the People’s Republic of China, 15 July

- 2016,” available on the website of European Council, [www.consilium.europa.eu/en/press/press-releases/2016/07/15-south-china-sea-arbitration](http://www.consilium.europa.eu/en/press/press-releases/2016/07/15-south-china-sea-arbitration).
8. The EU has developed three Arctic policy documents in the past 8 years (2008–2016): Commission Communication on EU and Arctic Region, COM (2008) 763 of 20 November 2008; Joint Communication, Developing a European Union Policy towards the Arctic Region: Progress since 2008 and Next Steps, JOIN (2012) 19 of 26 June 2012; and Joint Communication, An Integrated European Union Policy for the Arctic, JOIN (2016) 21 of 27 April 2016.
  9. “Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union’s Foreign and Security Policy,” European Union, June 2016.
  10. *Ibid.*
  11. B. Van Vooren and R. . Wessel, *EU External Relations Law, Text, Cases and Materials* (Cambridge: Cambridge University Press, 2014), 1.
  12. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, [2012] OJ C326.
  13. “A Global Actor in Search of a Strategy: European Union Foreign Policy between Multilateralism and Bilateralism,” Directorate-General for Research and Innovation, European Commission, 2014, 10.
  14. The Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47, Article 4.2.
  15. *Ibid.*, Article 3.2.
  16. EU, “Joint Communication for Foreign Affairs,” *supra* note 5, 4.
  17. Directive 2008/56/EC of 17 June 2008 on establishing a framework for community action in the field of marine environmental policy [2008] OJ L164/19.
  18. Directive 2014/89/EU of 23 July 2014 on establishing a framework for marine spatial planning [2014] OJ L257/135.
  19. I. Manners, “Normative Power Europe: A Contradiction in Terms?,” (2002) 40 *Journal of Common Market Studies* 235–258.
  20. *Ibid.*, 242.
  21. “Shared Vision,” *supra* note 9, 38.
  22. “Maritime, what do we want to achieve?,” available on the website of Directorate General Mobility and Transport, European Commission, [ec.europa.eu/transport/modes/maritime\\_en](http://ec.europa.eu/transport/modes/maritime_en).
  23. Commission Communication on Strategic goals and recommendations for the EU’s maritime transport policy until 2018, COM (2009) 8 of 21 January 2009.
  24. EU, “Joint Communication for Foreign Affairs,” *supra* note 5, 18.
  25. See, for example, Declaration on Recent Developments in the South China Sea, *supra* note 6.
  26. U.S. Department of Defense Freedom of Navigation Program, “Fact Sheet,” March 2015, available on the website of U.S. Department of Defense, [policy.defense.gov/Portals/11/Documents/gsa/cwmd/DoD%20FON%20Program%20-%20Fact%20Sheet%20\(March%202015\).pdf](http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/DoD%20FON%20Program%20-%20Fact%20Sheet%20(March%202015).pdf).
  27. EU, “Declaration by the High Representative on Recent Developments,” *supra* note 6.
  28. See “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines,” P.R.C Ministry of Foreign Affairs, 7 December 2014.
  29. “South China Sea ruling looms large over EU-China Summit,” available on the website of Euractiv, [www.euractiv.com/section/trade-society/news/china-sea-ruling-looms-large-over-eu-china-summit](http://www.euractiv.com/section/trade-society/news/china-sea-ruling-looms-large-over-eu-china-summit).
  30. EU, “Declaration by the High Representative on the Award,” *supra* note 7.
  31. Press Statement, John Kirby, Assistant Secretary and Department Spokesperson, Bureau of Public Affairs, Washington, DC, 12 July 2016. “As provided in the Convention, the Tribunal’s decision is final and legally binding on both China and the Philippines. The United States expresses its hope and expectation that both parties will comply with their obligations.” Available on the website of U.S. Embassy in the Philippines, [ph.usembassy.gov/statement-u-s-department-state-spokesperson-john-kirby-decision-philippines-china-arbitration](http://ph.usembassy.gov/statement-u-s-department-state-spokesperson-john-kirby-decision-philippines-china-arbitration).
  32. EU, “Declaration by the High Representative on the Award,” *supra* note 7.
  33. See: Nengye Liu and Frank Maes, “The European Union’s Role in the Prevention of Vessel-Source Pollution and its Internal Influence,” (2009) 15 *Journal of International Maritime Law* 418.

34. Council Directive 95/21/EC Concerning the Enforcement, in Respect of Shipping Using Community Ports and Sailing in the Waters under the Jurisdiction of the Member States, of International Standards for Ship Safety, Pollution Prevention and Shipboard Living and Working Conditions (Port State Control) [1995] OJ L 157.
35. The Paris Memorandum of Understanding on Port State Control is an administrative agreement between twenty-seven Maritime Authorities, available on the website of Paris MoU on Port State Control, [www.parismou.org](http://www.parismou.org).
36. Subsequently amended by Directive 2001/106/EC and Directive 2009/16/EC.
37. Nengye Liu, "Prevention of Vessel-Source Pollution in the South China Sea: What Role Can China Play?," (2012) 15 *Asia Pacific Journal of Environmental Law* 147, 164.
38. Memorandum of Understanding on Port State Control in the Asia-Pacific Region, known as the Tokyo MOU, concluded in December 1993, available on the website of Tokyo MOU, [www.tokyo-mou.org/organization](http://www.tokyo-mou.org/organization).
39. Clive Schofield and Rashid Sumaila, "Fishing, not Oil, is at the Heart of the South China Sea Disputes," *The Conversation*, 16 August 2016. See also Adam Greer, "The South China Sea is really a Fishery Dispute," *The Diplomat*, 20 July 2016.
40. Sustainability is at the heart of the proposed reform. See Communication of 13 July 2011, Reform of the Common Fisheries Policy, COM (2011) 417, 2.
41. These levels can be defined as the highest catch that can be safely taken year after year and that maintains the fish population size at maximum productivity. *Ibid.*, COM (2011) 417, 3.
42. *Ibid.*, 4.
43. *Ibid.*
44. Transferability of fishing rights makes it possible for the fishermen to adjust their quota holdings to fit their catch by buying or leasing fishing rights retroactively. See M. Salomon, T. Markus, and M. Dross, "Masterstroke or Paper Tiger—The Reform of the EU's Common Fisheries Policy," (2014) 47 *Marine Policy* 79.
45. Council Regulation (EU) 1380/2013 on the Common Fisheries Policy [2013] OJ L354/22, article 21. See also *supra* note 41, COM (2011) 417, 5.
46. Nengye Liu, "The European Union's Potential Contribution to the Governance of High Sea Fisheries in the Central Arctic Ocean," in Nengye Liu, Elizabeth Kirk, and Tore Henriksen (eds.), *The European Union and the Arctic* (Leiden/Boston: Brill Nijhoff, 2017), 290.
47. "Asia," available on the website of European Union External Action, [eas.europa.eu/diplomatic-network/asia/334/asia\\_en](http://eas.europa.eu/diplomatic-network/asia/334/asia_en).
48. See "The Belt and Road Initiative," available on the website of the State Council of the People's Republic of China, [english.gov.cn/beltAndRoad](http://english.gov.cn/beltAndRoad) and see "About Belt and Road," available on the website of Belt and Road Portal, [eng.yidaiyilu.gov.cn/ztindex.htm](http://eng.yidaiyilu.gov.cn/ztindex.htm).
49. EU–China 2020 Strategic Agenda for Cooperation, available on the website of European Union External Action, [eas.europa.eu/delegations/china/15398/eu-china-2020-strategic-agenda-cooperation\\_en](http://eas.europa.eu/delegations/china/15398/eu-china-2020-strategic-agenda-cooperation_en).
50. Foreign Ministry Spokesperson Lu Kang's Remarks on Declaration by G7 Foreign Ministers' Meeting on Maritime Issues, available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/nanghai/eng/fyrbt\\_1/t1354854.htm](http://www.fmprc.gov.cn/nanghai/eng/fyrbt_1/t1354854.htm).
51. "China's Policies on Asia-Pacific Security Cooperation," available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1429771.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1429771.shtml).
52. The Seventh China–EU High-Level Strategic Dialogue was held in Beijing on April 19, 2017. Both parties exchanged their views on various regional and international issues. The South China Sea issue was not to be explicitly mentioned. See "The Seventh China–EU High-Level Strategic Dialogue Held in Beijing," available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1455371.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1455371.shtml).
53. EU–China Strategic Agenda, *supra* note 49.
54. Joint Statement of the Foreign Ministers of ASEAN Member States and China on the Full and Effective Implementation of the Declaration on the Conduct of the Parties in the South China Sea, 24 July 2016, available on the website of ASEAN-China Ministerial Meeting, [asean.org/joint-](http://asean.org/joint-)

statement-of-the-foreign-ministers-of-asean-member-states-and-china-on-the-full-and-effective-implementation-of-the-declaration-on-the-conduct-of-parties-in-the-south-china-sea-24-july-2016-vie.

55. Li Jian Wei and Ramses Amer, "Closing the Net Against IUU Fishing in the South China Sea: China's Practice and Way Forward," (2015) 18 *Journal of International Wildlife Law & Policy* 146.
56. "Vice Minister Qu Dongyu meets European Commissioner," available on the website of Ministry of Agriculture of the People's Republic of China, [english.agri.gov.cn/news/dqnf/201510/t20151016\\_26670.htm](http://english.agri.gov.cn/news/dqnf/201510/t20151016_26670.htm).
57. Parliamentary questions on 5 September 2016: Answer given by Mr Vella on behalf of the Commission, available on the website of European Parliament, [www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-005477&language=EN](http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-005477&language=EN).
58. EU-China Strategic Agenda, *supra* note 49.
59. International Cooperation Framework for the South China Sea and Other Neighboring Sea Areas [in Chinese, translated by authors], available on the website of State Oceanic Administration People's Republic of China, [www.soa.gov.cn/xw/dfdwdt/jgbm\\_155/201611/t20161108\\_53692.html](http://www.soa.gov.cn/xw/dfdwdt/jgbm_155/201611/t20161108_53692.html).
60. *Ibid.*
61. "Li Keqiang Jointly Chairs 18th China-EU Summit with President Donald Tusk of the European Council and President Jean-Claude Juncker of the European Commission," available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1381402.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1381402.shtml).
62. "Vice Foreign Minister Liu Zhenmin Attends the Roundtable on Asian Regional Cooperation Organizations at Boao Forum for Asia Annual Conference 2017," available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/mfa\\_eng/wjbxw/t1449744.shtml](http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1449744.shtml).
63. "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road," 28 March 2015, available on the website of The National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, [en.ndrc.gov.cn/newsrelease/201503/t20150330\\_669367.html](http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html).
64. The Belt will "focus on jointly building a new Eurasian Land Bridge and developing China-Mongolia-Russia, China-Central Asia-west Asia and China-Indochina Peninsula economic corridors by taking advantage of international transport routes, relying on core cities along the Belt and Road and using key economic industrial parks as cooperation platforms." The Road will focus on jointly building smooth, secure, and efficient transport routes connecting major sea ports along the Belt and Road. The China-Pakistan Economic Corridor and the Bangladesh-China-India-Myanmar Economic Corridor are closely related to the Belt and Road Initiative, and therefore require closer cooperation and greater progress. See the Belt and Road Portal, *supra* note 48.
65. *Ibid.*
66. Michael M. Du, "China's "One Belt, One Road" Initiative: Context, Focus, Institutions, and Implications," (2016) 2 *Chinese Journal of Global Governance* 38.
67. Chinese Minister of Foreign Affairs Wang Yi: "There is a rise in international consensus"; "Financial support mechanism is starting to work"; "Connectivity net is in the gradual formation"; "The development in industrial capacity cooperation has been accelerated"; "Significant development has been made in economic corridor construction"; "The China-Europe train brand has been formed"; "Trade and investment has been greatly increased"; "Closer humanity communications have been achieved." See Wang Yi, "Belt and Road Construction Has Achieved a Series of Important Early Harvest," available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/activities\\_663312/t1365955.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/activities_663312/t1365955.shtml).
68. See "Ministry of Foreign Affairs Holds Briefing for Chinese and Foreign Media on President Xi Jinping's Attendance and Chairing of Related Events of the BRF," available on the website of Ministry of Foreign Affairs of the People's Republic of China, [www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/activities\\_663312/t1455115.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/activities_663312/t1455115.shtml).

69. "Vision for Maritime Cooperation under the Belt and Road Initiative," available on the website of Xinhua Net, [news.xinhuanet.com/english/2017-06/20/c\\_136380414.htm](http://news.xinhuanet.com/english/2017-06/20/c_136380414.htm).
70. Seventh China–EU High Level Strategic Dialogue, *supra* note 52.
71. Zhao Minghao, "The Belt and Road Initiative and its Implications for China-Europe Relations," (2016) 51 *The International Spectator/Italian Journal of International Affairs* 111–114.
72. *Ibid.*, at 114–116. See also Du, *supra* note 66, 38–39, and Nicola Casarini, "When All Roads lead to Beijing. Assessing China's New Silk Road and its implications for Europe," (2016) 51 *The International Spectator/Italian Journal of International Affairs* 105.
73. D. Arase, "China's Two Silk Roads Initiative: What It Means for Southeast Asia," (2015) *Southeast Asian Affairs* 30–31.
74. F. van der Putten and M. Meijnders, "China, Europe, and the Maritime Silk Road," available at [www.clingendael.nl/sites/default/files/China\\_Maritime\\_Silk\\_Road.pdf](http://www.clingendael.nl/sites/default/files/China_Maritime_Silk_Road.pdf).
75. "The First Chairmen's Meeting of EU-China Connectivity Platform was held in Beijing" [in Chinese, translated by authors], available on the website of National Development and Reform Commission, [www.sdpc.gov.cn/gzdt/201611/t20161130\\_828359.html](http://www.sdpc.gov.cn/gzdt/201611/t20161130_828359.html). "The First Meeting of Investment & Financing Cooperation Expert Group of EU-China Connectivity Platform was held in Beijing" [in Chinese, translated by authors], available on the website of National Development and Reform Commission, [www.sdpc.gov.cn/gzdt/201611/t20161130\\_828359.html](http://www.sdpc.gov.cn/gzdt/201611/t20161130_828359.html).
76. Zeng Linglinag, "Conceptual Analysis of China's Belt and Road Initiative: A Road Towards a Regional Community of Common Destiny," (2016) 15 *Chinese Journal of International Law* 524.
77. "We should expand mutual investment areas, deepen cooperation in agriculture, forestry, animal husbandry and fisheries, agricultural machinery manufacturing and farm produce processing, and promote cooperation in marine-product farming, deep-sea fishing, aquatic product processing, seawater desalination, marine biopharmacy, ocean engineering technology, environmental protection industries, marine tourism and other fields." *Supra* note 73.
78. "Goals, missions of China's new five-year plan," available on the website of the State Council of the People's Republic of China, [english.gov.cn/news/top\\_news/2016/03/05/content\\_281475301749142.htm](http://english.gov.cn/news/top_news/2016/03/05/content_281475301749142.htm).
79. "Report on the Blue Growth Strategy Towards more sustainable growth and jobs in the blue economy," available on the website of European Commission, [ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/swd-2017-128\\_en.pdf](http://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/swd-2017-128_en.pdf). Maritime Affairs-Integrated Maritime Policy: Blue Growth, available on the website of European Commission, [ec.europa.eu/maritimeaffairs/policy/blue\\_growth\\_en](http://ec.europa.eu/maritimeaffairs/policy/blue_growth_en).
80. *Ibid.* The seven sea basins are the Adriatic and Ionian Seas, Arctic Ocean, Atlantic Ocean, Baltic Sea, Black Sea, Mediterranean Sea, and North Sea.
81. "State Oceanic Administration of People's Republic of China: Initiative for establishing blue partnership" [in Chinese, translated by authors], available on the website of Xinhua Net, [news.xinhuanet.com/fortune/2017-04/17/c\\_1120825396.htm](http://news.xinhuanet.com/fortune/2017-04/17/c_1120825396.htm).
82. *Ibid.*
83. An Agenda for the Future of Our Oceans, *supra* note 5.
84. "About AIIB: Overview," available on the website of Asian Infrastructure Investment Bank, [www.aiib.org/en/about-aiib/index.html](http://www.aiib.org/en/about-aiib/index.html).
85. "About US: Overview," available on the website of Silk Road Fund, [www.silkroadfund.com.cn/enweb/23775/23767/index.html](http://www.silkroadfund.com.cn/enweb/23775/23767/index.html). The Silk Road fund was established by Beijing on December 29, 2014.