

# Building the 21st Century Maritime Silk Road: Its Impact on the Peaceful Use of the South China Sea\*

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*Building the 21st Century Maritime Silk Road is a new initiative for international cooperation. It will have a positive impact on the peaceful use of the South China Sea by encouraging a Code of Conduct to Parties in the South China Sea between China and ASEAN members; realizing a breakthrough of jointly developing oil and gas resources in the area; promoting comprehensive cooperation in maritime non-traditional security field; and providing a peaceful external environment for the South China Sea dispute settlement. The South China Sea dispute is a negative challenge to building the 21st Century Maritime Silk Road. However, the pace building should not be stopped because of it. In the future, the 21st Century Maritime Silk Road will be on the international consensus as an international legal regime. Also, it will improve the domestic legal system regarding building the 21st Century Maritime Silk Road for China as well as the countries along the Belt and Road, especially the ASEAN members.*

**Keywords:** The 21st century Maritime Silk Road, the South China Sea dispute, international cooperation, Marine Non-Traditional Security

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## 1. Introduction

When Chinese President Xi Jinping visited the ASEAN countries in October 2013, he raised the strategic conception of jointly building the 21st century Maritime Silk Road (hereinafter the Silk Road).<sup>1</sup> At the China-ASEAN Expo in 2013, Chinese Prime Minister Li Keqiang also emphasized the need to build the Maritime Silk Road oriented towards the ASEAN and creates strategic propellers for hinterland development.<sup>2</sup> The initiative that was raised at the third plenary session of the 17th central committee of Communist Party of China (“CPC”) in November 2013 opined that the 21st century Maritime Silk Road enables China to build a new pattern of all-round opening-up.<sup>3</sup> The Silk Road initiative was finally referred to by Chinese Prime Minister Li Keqiang’s government work report in March 2014.<sup>4</sup> The government work report clearly demanded:

We should combine the building of the Belt and Road as well as China’s regional opening-up and we should strengthen the new Eurasian continental bridge along with creating propellers for ports on land and at sea.<sup>5</sup>

The primary purpose of this research is to analyze the impacts of building the 21st century Maritime Silk Road and its relevance with the peaceful use of the South China Sea.

This paper is divided into five parts including short Introduction and Conclusion. Part two will define the Silk Road under international law as perhaps being a new form of international cooperation. Part three will emphasize the positive impacts of building the Silk Road on the peaceful settlement of the South China Sea dispute. Part four will examine the future of the South China Sea dispute as the biggest challenge on the Silk Road.

## 2. The 21st Century Maritime Silk Road under International Law

### *A. The Objective of the 21st century Maritime Silk Road*

Building the 21st century Maritime Silk Road is in the common interests of China

and other countries along the Belt and Road,<sup>6</sup> upholding the principle of “opening-up of and cooperation, harmony and inclusion, market operation and mutual benefit.”<sup>7</sup> The aims of the Silk Road initiative are:

promoting orderly and free flow of economic factors, highly efficient allocation of resources and deep integration of markets, encouraging the countries along the Belt and Road to achieve economic policy coordination and carry out broader and more in-depth regional cooperation of higher standards and jointly creating an open, inclusive and balanced regional economic cooperation architecture that benefits all.<sup>8</sup>

### ***B. The Construction Mode***

The Silk Road is not meant to discard existing international cooperation mechanism, but aims to make full use of existing bilateral, regional and multilateral ties.<sup>9</sup> First, the Silk Road will strengthen bilateral cooperation and promote comprehensive development of bilateral relations through multi-level and multi-channel communication and consultation. Second, the Silk Road will continue to encourage the constructive role of international forums and exhibitions at regional and sub-regional levels hosted by countries along this course, as well as the platforms provided for the same.<sup>10</sup> Last but not the least, the Silk Road will enhance the role of existing multilateral cooperation mechanisms.<sup>11</sup>

### ***C. Pluralistic and Open Process of Cooperation***

The Silk Road does not seek conformity, but encourages a pluralistic and open process of cooperation which can also prove to be highly flexible. It is open to all States, and international and regional organizations, to ensure that the results of the concerted efforts will benefit wider areas. China will join other countries along the Silk Road in order to substantiate and improve the content and mode of cooperation, work out relevant timetables and roadmaps, and align national development programs and regional cooperation plans.<sup>12</sup>

Thus, the Silk Road is “a positive endeavor to seek new models of international cooperation and global governance.”<sup>13</sup>

### 3. The Positive Impact of the Silk Road on the Peaceful Use of the South China Sea

#### *A. Enhancing Regional Stability and Mutual Trust between China and the ASEAN*

First, the Silk Road is a token of continuous strategic transformation of China's foreign policy. The neighboring diplomacy forum of the CPC Central Committee held in October 2013 marked this transformation of the relationship between China and neighboring countries.<sup>14</sup> President Xi Jinping emphasized in the forum that:

Neighboring countries had extremely important strategic significance to our country no matter from the geographical location, natural environment, or the relationship between each other... [We] need to take more active actions and keep pace with the time for our diplomatic strategy and diplomatic work. The neighboring diplomacy of our country is persisting in building good-neighborly relationship and partnership with the neighboring countries and pursuing a policy of bringing harmony, security and prosperity to neighbors and policy of friendship, sincerity, mutual-benefit and inclusion.<sup>15</sup>

The initiative does not only reflect China's aim of establishing strategic relationship with neighboring countries, but also promote a new understanding of the current South China Sea dispute in the context of changing geopolitics. It would help promote a closer China-ASEAN community with shared destiny, as well. At present, China has signed the treaty of good-neighborliness and friendly cooperation with eight neighboring countries and is in talks to sign the China-ASEAN treaty of good-neighborliness and friendly cooperation. Besides, China is willing to sign the treaty of good-neighborliness and friendly cooperation with all neighboring countries in order to give a forceful guarantee for developing bilateral relations, regional prosperity and stability.<sup>16</sup>

Second, building the Silk Road is also aimed to enhance policy coordination for deepening maritime cooperation by exploring mutual political trust. The efforts by Chinese leadership can be evidenced in the China-ASEAN Cooperation Fund and the China-Indonesia Maritime Cooperation Fund that are recently established.<sup>17</sup>

Third, the Silk Road is hoped to enhance cultural exchange between the

peoples for their bond, which provides public support for implementing the grand project. Ideally, China ought to enhance the friendly and solid foundation for bilateral cooperation with the ASEAN members.<sup>18</sup>

Last, China should welcome the free riders on the Silk Road for mutual benefit. The Silk Road will be the way to addressing common interests, even thus accommodating the interests and concerns of all parties involved. In this process, China will take more responsibilities and obligations.<sup>19</sup>

***B. Marine Non-Traditional Security Field and the South China Sea Dispute.***

China and the ASEAN economies are mutually complementary. They also have common interests in marine non-traditional security, such as piracy, maritime terrorism, maritime transnational crimes, marine environmental pollution, disaster relief, marine weather forecast, climate change, etc.<sup>20</sup> In fact, China and the ASEAN have reached several agreements on the cooperation in marine non-traditional security field.<sup>21</sup> During the 14th ASEAN Plus China (10+1) Summit and in the commemorative summit of 20th anniversary of building dialogue relations between China and the ASEAN in 2011, Chinese Prime Minister Wen Jiabao specifically advised in establishing the China-ASEAN Maritime Cooperation Fund to promote the cooperation in the field of marine scientific research, environmental protection, connectivity, safety of navigation, search-and-rescue as well as transnational crime.<sup>22</sup> At the 17th ASEAN Plus China (10+1) Summit in 2014, Chinese Premier Li Keqiang suggested to set ‘2015’ as “Year of China-ASEAN Maritime Cooperation,” and “hold Maritime Cooperation Forums which would invite marine ministers of relevant countries and strengthen dialogue and cooperation with maritime law enforcement agencies of other parties and to establish a maritime cooperation center.”<sup>23</sup>

Therefore, the Silk Road is conducive not only in the promotion of a comprehensive cooperation between China and the ASEAN countries in marine non-traditional security field, but also in the field of maritime culture, pelagic fishery, fish processing, sea water desalination, marine bio-pharmacy, ocean engineering technology, environmental protection industry and marine sightseeing tourism.<sup>24</sup> Along the Silk Road, consequently, the South China Sea will become a sea of peace, friendship and cooperation connecting China and the ASEAN countries.

### ***C. Joint Development of Oil and Gas Resources in the South China Sea***

Another important agenda of the Silk Road is to jointly develop oil and gas resources between China and the ASEAN members in the South China Sea. It is generally known that Chinese government raised the principle of “shelving disputes and going in for joint development 搁置争议、共同开发 原则的困境与出路”<sup>25</sup> as early as in the late 1970s. There were, however, no cases successfully invoking this principle due to the lack of political will of the parties concerned for joint development.<sup>26</sup> Three oil companies of the Philippines and Vietnam signed the Tripartite Joint Marine Seismic Undertaking Agreement in April 2005,<sup>27</sup> which may be regarded as a historic and substantial step toward the principle of “shelving disputes and going in for joint development.”

For a joint development of oil and gas resources in the South China Sea, the ASEAN countries are required to boost internal dynamism of national economic growth and coordinate it with Chinese diversification strategy for energy security. Meanwhile, the Silk Road coincides with the ASEAN maritime developmental strategy. *E.g.*, the Silk Road initiative was originally proposed in Indonesia,<sup>28</sup> in order to achieve maritime connectivity between China and Indonesia, as a new engine of bilateral cooperation. When President Xi Jinping met Indonesian President Joko in November 2014, he pointed out that the construction of a powerful country in the marine front is accorded with the Silk Road initiative. His idea was advocated by President Joko. They finally agreed that both sides should maximize the synergy in order to promote cooperation in the field of infrastructure construction, agriculture, finance, nuclear energy and even aerospace mechanisms.<sup>29</sup>

Moreover, connecting energy facilities is important in building the Silk Road. A notable example is constructing oil and gas pipelines in the South China Sea. The northern part of the oil and gas pipelines in the South China Sea could be extended north through Hong Kong, while the southern parts could be extended south through the Natuna Islands of Indonesia. Likewise, the western part of the oil and gas pipelines can pass through the shallow water areas offshore Vietnam and the eastern part can pass through Borneo, the Philippines and Taiwan.<sup>30</sup>

### ***D. China-ASEAN Code of Conduct***

China and ASEAN countries signed the Declaration on the Conduct of Parties

in the South China Sea (“DOC”) in 2002<sup>31</sup> as well as the Guidelines for the Implementation of the DOC in 2011.<sup>32</sup> Neither the Declaration on the Conduct of parties in the South China Sea, nor the Guidelines for the Implementation of the DOC are, however, fully binding signers because implementation measures are not yet adopted. Essentially, senior officials and joint working group meetings on the implementation of the DOC have been held several times since 2004. In addition, the Proposal for the DOC was accepted unanimously by the ASEAN foreign ministers at the 45th ASEAN Foreign Ministers’ Meeting in July 2012.<sup>33</sup> Indonesian Foreign Minister, Marty Natalegawa presented a Zero Draft COC to the ASEAN Foreign Ministers on the sidelines of the UN General Assembly (67th) in September 2012.<sup>34</sup> Senior officials’ meetings on the implementation of DOC was held in Suzhou, China in September 2013.<sup>35</sup> It symbolized that China and the ASEAN countries officially resumed consultations on the DOC. Today, there is substantial progress between China and the ASEAN countries in consonance with the DOC. Due to different interests and appeal of the parties, no consensus has been adopted on the DOC between China and the ASEAN, or even internally among the members of the ASEAN.

The Silk Road initiative shows that China is ready to not only deepen cooperation with the ASEAN countries to safeguard peace and stability of the South China Sea earnestly, but also contribute to comprehensively and effectively implement the DOC through consultations as early as possible. If enforced, it will form a binding legal institution for claimants in the South China Sea. Chinese Foreign Minister Wang Yi pointed out:

China and the ASEAN countries have agreed to advance the process of signing “Code of Conduct” in the South China Sea under the framework of implementation of the Declaration on the Conduct of Parties... China has all along taken a positive and open-minded attitude towards the development of ‘the Code’ under the principle of “rational expectations, explicit consensus, eliminating interference and step by step.”<sup>36</sup>

### ***E. Free Navigation in the South China Sea and Sea Lane Security***

Recently, free navigation in the South China Sea has caused wide attention of the international community for (1) the coexistence of the disputes of the islands sovereignty and the sea border delimitation and (2) the intervention of outsiders

and some ASEAN countries hoping to counter China. In fact, the freedom of navigation is not the point at issue not only because the UN Convention on the Law of the Sea (“UNCLOS”) sets the legal institution which secures the right to free navigation in different region,<sup>37</sup> but also because the claimants to the dispute do not hinder the freedom of navigation in that maritime area. Now, the most critical factor against the safety of navigation in the South China Sea is maritime terrorism including piracy.

‘Facilitating connectivity’ is an important part of the Silk Road initiative. It includes port infrastructure construction, smooth land-water transportation channels, and advanced port cooperation, sea routes and the number of voyages, and information technology cooperation in maritime logistics, etc.<sup>38</sup> Sea lane security is the key to maintaining steady and sustained development of the Silk Road. The port construction is thus most urgently needed for the sea lane security because ports are the ‘maritime stage’ for the Silk Road.<sup>39</sup> Liow Tiong Lai, Malaysia’s transport minister pointed out:

The Chinese government welcomes Malaysia to build an international port in Malacca so as to strengthen economic cooperation between the two countries and comply with the building of the 21st Century Maritime Silk Road.<sup>40</sup>

The Silk Road could not only disprove allegations of China’s skeptical attitude towards the necessity of freedom of navigation,<sup>41</sup> but also enhance law enforcement capacity building. It provides maritime safety through joint development of maritime public service facility.

#### **4. The South China Sea Dispute as the Biggest Challenge to the Silk Road**

Although “the building of the 21st century Maritime Silk Road focuses on economic and humanity exchanges between the two countries, without getting involved in the controversy problems,”<sup>42</sup> the South China Sea dispute is the biggest challenge to the Silk Road initiative.



### ***A. The Position of the South China Sea in the Silk Road Initiative.***

Lying between the Pacific and the Indian Ocean, the South China Sea holds an important strategic position. It is the transport hub for Mainland China and Chinese offshore islands to stay in touch with the outside world, and is the only route for Northeast Asian ports to connect with South Asia, Europe and Africa. In addition to wealthy marine life, the South China Sea is believed to lie atop significant reserves of oil and natural gas.<sup>43</sup> According to the UNCLOS, an island could have territorial sea, the continental shelf and exclusive economic zone exercising its jurisdiction to various degrees.<sup>44</sup> Now that China, Vietnam, Malaysia, the Philippines, Brunei and Taiwan are involved in the South China Sea dispute, there is an obvious overlap among their claims. Without concessions, the dispute would not be easily resolved.<sup>45</sup>

“The 21st century Maritime Silk Road is designed to go from China’s coast to Europe through the South China Sea and the Indian Ocean in one route, and from China’s coast through the South China Sea to the South Pacific in the other.”<sup>46</sup> In this geopolitical context, the peaceful settlement of the South China Sea dispute will be a steppingstone for further maritime cooperation and development in this region.

### ***B. Legalization of the South China Sea Dispute***

Recently, the legal status of China’s ‘nine dashed-line’ claim has been often challenged by the international community.<sup>47</sup> *E.g.*, Hilary Clinton, the then US Secretary of State criticized it at the Security Conference of the ASEAN Regional Forum in July 2011:

We also call on all sides to put forward their claims on the South China Sea in a way in accord with the international law. The claims on the South China Sea should be legal claims, which rely on the facts of topography and landform.<sup>48</sup>

The Philippines has also strongly criticized China in this conference, maintaining that there was no basis in international law for China’s claims to the South China Sea.<sup>49</sup> Meanwhile, Vietnam is willing to bring claims before international arbitration.<sup>50</sup> Penghong Cai said: “Even Indonesia believes that the dotted line will affect its ‘territorial integrity’ because the dotted line cuts in Natuna Islands,

thus more Indonesian troops need to be ‘stationed’ on the islands.”<sup>51</sup> Moreover, claimants over the South China Sea would invoke the provisions of the UNCLOS in a narrow sense in favor of them in order to get sympathy and support from the international society.

### ***C. Regionalization of the South China Sea Dispute***

In the past, the South China Sea question was handled bilaterally. Today, however, it has evolved into multilateral even becoming a highly topical issue of the ARF meetings including the ASEAN Defense Ministers’ Meeting and the ASEAN Foreign Ministers’ Meeting.<sup>52</sup> It shows a significant trend of regionalization of the South China Sea dispute. As the ARF meetings paid attention to the South China Sea dispute, the ASEAN countries try to make use of the UNCLOS dispute resolution mechanisms. The ASEAN altogether is gradually setting up a frontline against China. They have claimed that “the fundamental cause of the conflicts in the South China Sea dispute and the deterioration of the South China Sea situation is the power of China.”<sup>53</sup> Accordingly, the ASEAN members are indulging in relevant mechanisms of the Association as the most potent lever to deal with the dispute.<sup>54</sup> Against this backdrop, China put forward a dual-track approach for the South China Sea issue in 2014. Wang Yi said: “Disputes should first be settled through direct negotiation between directly concerned parties, while the peace and stability in the South China Sea is maintained jointly by China and the ASEAN countries.”<sup>55</sup> As the South China Sea dispute has been regionalized. As the South China Sea dispute is being regionalized, the ASEAN members have already become key players in the building of the Silk Road.

### ***D. Internationalization of the South China Sea Dispute***

Another aspect of the South China Sea dispute is ‘internationalization.’ As the US, Japan and India intervene into the South China Sea question, it has truly become a global issue. The US “put great attention”<sup>56</sup> to the South China Sea issue since the beginning of 21st century. In particular, the US Department of State’s “Limits in the Seas: China’s Maritime Claims in the South China Sea” is unequivocally backing the so-called “arbitration of the South China Sea.”<sup>57</sup> Recently, Japan has taken an active part in military exercise in the South China Sea frequently sending ships to this region with the intention of fighting against piracy, drug smuggling,

illegal migration and other trans-border crimes.<sup>58</sup> In February 2015, Gen Nakatani, Japan's Defense Minister made it clear that "the influence of the situation of the South China Sea to Japan is growing."<sup>59</sup> Noticeable is that after Mr. Modi was appointed prime minister of India in 2014, the Indian government changed to a 'Look East' policy into an 'Act East' policy.<sup>60</sup> During Modi's visit to Washington, India and the US jointly declared that the South China Sea is of great significance to safeguard maritime security and ensure freedom of navigation.<sup>61</sup> Indian President Pranab Mukherjee also signed an agreement of offshore oil exploration with Vietnam just before Modi's visit to America.<sup>62</sup> Furthermore, some member States of the ASEAN may be looking for forcible measures against China by forming alliances.<sup>63</sup> Others claim that the issue of the South China Sea ought to be referred to the UN.<sup>64</sup> They believe that: "It is important to attract the attention of the world and equally important to considering that the islands dispute is becoming an international issue."<sup>65</sup>

In conclusion, internationalization of the South China Sea dispute not only makes it more difficult to settle the dispute, but also deepens fears and worries of some ASEAN countries towards China. It is not good for establishing an international cooperation framework of the Silk Road building.

## 5. Conclusion and Suggestions

### *A. Understandings*

1. The building of the Silk Road would be a long process. On the one hand, the Silk Road covers a wide area. It aims at linking many countries and regions running through four oceans and connecting the Asia-Pacific economic circle at one end and European economic circle at the other. On the other hand, the cooperation along the Silk Road will be fruitful, rich and broad. Yang Jiechi said:

In addition to cooperation in the field of the maritime transport, marine resources development, it involves other fields as marine scientific research, marine environmental protection, marine sightseeing tourism, marine disaster management, maritime law enforcement and maritime cultural and educational exchanges. We should not only develop the Blue Economy at sea and establish marine economic demonstration areas, but also build port-vicinity industrial

parks, marine technology zones and marine personnel training base on land. We should not only use marine resources, but also protect the environment. We should achieve joint development of inshore and inland economy, with the goal of common prosperity.<sup>66</sup>

In order to realize the purpose in a short time, the Silk Road initiative should unite the efforts in these fields and vast geographic areas.

2. The Silk Road initiative should have positive influence on the peaceful settlement of the South China Sea dispute. It is also a breakthrough of the Chinese government towards the claims in recent years. Penghong Cai said:

We want to express our willingness to actively take the international responsibility to solve regional hot spot issue to the rest of the world and create a sense of Chinese style and power that surrounding countries can share the development opportunities of China.<sup>67</sup>

The South China Sea dispute is deeply involved in the core interests of neighboring countries. As they are not likely to make major concessions on the dispute, the 'four trend' - complication, legalization, regionalization and internationalization - will continue.

3. The Silk Road is expanding to the ASEAN, but is not limited to these countries. For the stability of the South China Sea, China and the ASEAN countries should make cooperation pragmatically in the field of marine economy, maritime connectivity scientific research and environmental protection, maritime security and maritime humanity. Both sides have established the China-ASEAN maritime cooperation center, the China-ASEAN maritime emergency hotline and the China-ASEAN maritime institute.<sup>68</sup> Now, negative influence of the South China Sea dispute over the Silk Road is decreasing. In fact, the construction of the Silk Road is steadily moving forward. *E.g.*, China carries out port construction and operation together with the partners like Indonesia, Cambodia, Burma, Sri Lanka, Pakistan and Greece.<sup>69</sup> Another maritime projects are working among those countries. They are supported by China-ASEAN Cooperation Fund and China-Indonesia Maritime Cooperation Fund.<sup>70</sup>

### ***B. Suggestions***

1. First, the Silk Road initiative should focus on international consensus and its legal ground. In a sense, the initiative marks the transition of China from a *passive* observer and participant of the international rules to an *active* advocator and constitutor. [Emphasis added] Therefore, legal system is imminent for international cooperation.<sup>71</sup>

Second, existing mechanisms of bilateral, regional and multilateral cooperation should be coordinated. Today, many international cooperation mechanisms are working together in the construction of the Silk Road, such as the Shanghai Cooperation Organization (“SCO”), ASEAN Plus China (10+1), Asia-Pacific Economic Cooperation (“APEC”), Asia-Europe Meeting (“ASEM”), and Boao Forum for Asia (“BFA”). Thus, strengthening communication and coordination between these mechanisms is important to promote the integration of resources and the distribution of responsibilities.

Last but not the least, an inter-governmental model cooperation agreements should be adopted for the Silk Road. Also, regional cooperation plans should be outlined at the key areas of cooperation of the Silk Road so as to achieve early harvest and produce demonstration effect.<sup>72</sup>

2. Domestic legal system should be improved. On the one hand, management institutions should be set up in the building of the Silk Road both at home and abroad. Administrative jurisdiction covers the southwest region of China, coastal areas, Hong Kong, Macao and Taiwan, forming an open situation of various parts of China. Meanwhile, administrative institutions includes National Development and Reform Commission, Ministry of Foreign Affairs, Ministry of Commerce, etc. A central management organization is needed to coordinate all kinds of domestic resources and relevant works. On the other hand, such legal systems as finance, trade, transportation, new energy resources, foreign assistance and fund should be established for the Silk Road.

3. The ‘fate community’ is the key to building the Silk Road as well as resolving the South China Sea dispute peacefully. China will thus welcome free riders.<sup>73</sup> The Silk Road initiative shows that China is willing to take more responsibilities and obligations as its capacity allows.<sup>74</sup> It upholds the principle of mutual benefit

and interests of all parties. China also welcomes neighboring countries to realize a win-win strategy by catching up the fast track of Chinese economic development. President Xi Jinping proposed the spirit of friendship, sincerity, mutual-benefit and inclusion as the foreign policy grounds at the neighboring diplomacy forum of the CPC Central Committee held in October 2013.<sup>75</sup> The ‘fate community’ principle can be applied to the negotiation of the China-ASEAN Free Trade Area and the Regional Comprehensive Economic Partnership (“RCEP”).

4. China and the ASEAN countries have had a certain basis for maritime cooperation, by means of initiatives such as the China-Indonesia Oceans and Climate Joint Research Centre in 2010 and the China-Thailand Climate and Marine Ecosystem Joint Laboratory. These maritime cooperation projects should be well coordinated with the on-going national agenda like the Asian Infrastructure Investment Bank and the Silk Road fund. Finally, the operation rules for “China-ASEAN Cooperation Fund” should be formulated in order to promote comprehensive cooperation between China and the ASEAN countries in marine non-traditional security field. If the ASEAN countries are able to benefit from them, the South China Sea will be a peaceful, cooperative and harmonizing water.

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