

A Law of the Sea Approach to the New Maritime Silk Road: Environmental Protection and Maritime Safety in Areas under National Jurisdiction

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The New Maritime Silk Road (NMSR)

- The maritime dimension of a broader strategic framework (OBOR)
- A very ambitious international project dedicated to maritime cooperation and economic development

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- In areas under national jurisdiction, environmental protection and maritime safety as key elements of the NMSR
 - A Law of the Sea approach to the New Maritime Silk Road: *According to a new dimension of Maritime Safety (I) and From Sustainable Development to the Blue Economy (II)*





I – According to a new dimension of Maritime Safety

A – From Maritime Safety to Maritime Security

1) An enlarged Maritime Safety

a) From the safety of navigation

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- Originally understood by reference to navigation and safety of life at sea
 - Safety at sea, i.e. the safety of the vessel and the safety of navigation
 - A very important issue from a Law of the Sea perspective: respect and strengthening of the applicable law, i.e. UNCLOS, IMO conventions (SOLAS and others) and soft law





I – According to a new dimension of Maritime Safety

A – From Maritime Safety to Maritime Security

1) An enlarged Maritime Safety

b) To the safety of the sea

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- The protection and preservation of the marine (and terrestrial) environment, via pollution control in the traditional framework of navigation and maritime transport, but also in relation with activities involving platforms
 - Better participation in the IMO conventions (i.e. MARPOL) and compliance with maritime safety standards





I – According to a new dimension of Maritime Safety

A – From Maritime Safety to Maritime Security

2) Including Maritime Security

a) Security as a condition of safety

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- Maritime safety in relation to maritime security, i.e. human origin of threats resulting from or directed against maritime navigation
 - Security as a condition of safety, not only in relation with ships, but also as regards platforms, or even in ports (acts of piracy and other illegal acts at sea, as well as terrorism)
 - Along the NMSR, in particular in the straits of South East Asia, or in the Gulf of Aden





**I – According to a new dimension of
Maritime Safety**

**A – From Maritime Safety to Maritime
Security**

2) Including Maritime Security

b) International criminal acts at sea

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- The NMSR can help to strengthen international cooperation in the fight against international criminal acts at sea but can also be an incentive for their development
 - Strengthening participation in the IMO conventions, i.e. 1988 SUA Convention and Protocol, 2005 Protocols





I – According to a new dimension of Maritime Safety

B – From Maritime Safety to Environmental Considerations


1) According to UNCLOS

a) The predominant role of the flag State

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- Part XII of UNCLOS
 - The flag State in relation with the traditional principle of the freedom of the seas, as it applies on the high seas, and by extension in EEZs
 - Given the importance of flags of convenience within the world fleet, a very strong impact on maritime safety and environmental protection



- The coastal State, first concerned in the areas under its national jurisdiction, and the port State have legal competences, but guarantees have been provided for, such as the suspension of pursuit in favor of the flag State, or the prompt release of the vessel in case of payment of a reasonable bond.





**I – According to a new dimension of
Maritime Safety**

**B – From Maritime Safety to
Environmental Considerations**

2) Regionally

a) The regional seas

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- A very flexible form of cooperation
 - Along the NMSR, several regional seas systems involved, especially East Asian Seas, East Africa and Mediterranean, Red Sea and Gulf of Aden
 - To be associated to the project as a forum for cooperation between member States, in order to be able to develop a common approach of the key issues




**I – According to a new dimension of
Maritime Safety**

**B – From Maritime Safety to
Environmental Considerations**

2) Regionally

b) The other forums

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- The European Union, insofar as the NMSR encompasses marine waters of the EU, i.e. areas under the national jurisdiction of some of its Member States
 - The regional MoUs dedicated to port State control, to be associated to the management of the relevant aspects of the NMSR, to better maritime cooperation and economic growth




II – From Sustainable Development to the Blue Economy

A – By reference to Sustainable Development

1) Following the logic of Rio

a) The concept of Sustainable Development

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- In International Law, 3 essential dimensions, ecological, economic and social, and a two-fold approach, spatial and temporal
 - All these aspects are involved along the NMSR, with conflicts of interests to be balanced, especially between economic development and environmental protection




II – From Sustainable Development to the Blue Economy

A – By reference to Sustainable Development

1) Following the logic of Rio

b) Applied to the oceans and seas

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- Importance of an economic development respectful of the marine environment, both for developing and developed countries
 - Oceans and seas as a promise of sustainable development, not only for coastal States but also in a broader approach including hinterlands: China's Belt and Road Initiative encompasses a terrestrial dimension precisely involving landlocked States




II – From Sustainable Development to the Blue Economy

A – By reference to Sustainable Development

2) In accordance with SDG 14

a) In connection with other SDGs

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- SDG 14 dedicated to *Life below water* and named *Conserve and sustainably use the oceans, seas and marine resources for sustainable development*
 - One of the 17 SDGs conceived as part of a highly inter-connected agenda including nine other SDGs presented as closely linked with oceans and seas




II – From Sustainable Development to the Blue Economy

A – By reference to Sustainable Development

2) In accordance with SDG 14

b) As a strategic guideline

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- A “Blue Partnership to forge a “blue engine” for sustainable development”
 - To promote ocean cooperation, and develop all the uses of the sea and marine activities, in a synergic and holistic way
 - In areas under national jurisdiction, coastal States would have to balance positive and negative impacts, economic promises, environmental risks and social benefits for all





II – From Sustainable Development to the Blue Economy

B – In the framework of the Blue Economy

1) An avatar of Sustainable Development

a) From navigation to other uses of the sea

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- The Blue Economy: oceans and seas as drivers of economic growth
 - Traditional uses of the sea based on mobility such as navigation and fishing + new maritime activities, the blue growth industries, i.e. renewable marine energies, marine mineral resources including offshore, blue biotechnologies, maritime, coastal and cruise tourism, and aquaculture.

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- Blue Economy: a multiple use of the sea, with competition for maritime space, and claim for exclusivity
 - Need to manage maritime areas, via Maritime Spatial Planning, with an effective risk of appropriation and privatization of marine spaces (private concession over the public domain): a real challenge for the near future, in areas under national jurisdiction, along the NMSR.





II – From Sustainable Development to the Blue Economy

B – In the framework of the Blue Economy

1) An avatar of Sustainable Development

b) An economic approach to the environmental and social dimensions

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- Risk to prioritize economy to the detriment of environmental protection and social welfare or even human rights, apprehended in an individual or collective way.
 - The objective of the NMSR is primarily focused on economic development; the environmental and social dimensions are integrated in the project, but they obviously appear to be subsidiary

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- A great challenge in areas under national jurisdiction; economic benefits could be unbalanced when all the negative impacts would primarily affect the coastal States, their marine and terrestrial environment, but also local and national communities
 - Blue growth does not mean blue justice, especially for the most vulnerable and ocean dependent people





II – From Sustainable Development to the Blue Economy

B – In the framework of the Blue Economy

2) A new strategic power tool

a) Economically

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- The New Maritime Silk Road is dedicated to international trade development and is of course sinocentric
 - A prospective power tool for China, in terms of maritime transport, infrastructure investment, especially in ports along the Road, access to local markets and resources, in Africa or in Europe

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- Some reluctance and fears in terms of independence and economic benefices, but also of negative impacts from an environmental point of view
 - Context of rivalry between the Chinese Blue Economy development and the ambitions of other commercial powers, also eager to assert themselves as maritime powers, such as the European Union




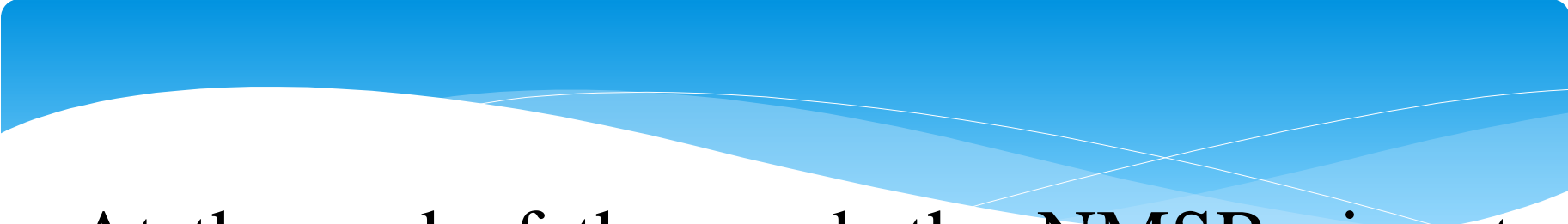
II – From Sustainable Development to the Blue Economy

B – In the framework of the Blue Economy

2) A new strategic power tool

b) Geopolitically

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- The NMSR, a geopolitical strategy developed by China in order to consolidate itself as a global superpower
 - In the South China Sea, in the Pacific, in the Indian Ocean, in Africa, along the Eastern coast, and in the Gulf of Aden, on the access roads to the Middle East and East Mediterranean, in the Arctic...

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- At the end of the road, the NMSR aims to consolidate the geopolitical influence of China in Europe, a region where it is not traditionally so well established, in a context of economic and strategic rivalry
 - Maybe not without relations, the EU and China have since finally concluded in principle negotiations on an investment agreement, after seven years of hard discussions, as announced in December 2020

Thank you for your kind attention

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