

CENTRO STUDI PER I POPOLI EXTRA-EUROPEI "CESARE BONACOSSA" - UNIVERSITÀ DI PAVIA

# ASIA MAIOR

THE JOURNAL OF THE ITALIAN THINK TANK ON ASIA  
FOUNDED BY GIORGIO BORSA IN 1989

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## The End of the Obama Era in Asia

Edited by  
Michelguglielmo Torri  
and Nicola Mocci

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## CHINA 2016: DEFENDING THE LEGITIMACY OF THE PARTY-STATE'S AUTHORITY\*

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*The present article focuses on what seemed to be the main issue at stake in China during the year 2016: the legitimacy of the party-state's domestic authority.<sup>1</sup> Party-state's legitimacy was indeed affected by an enduring and worsening economic slowdown and above all by various forms of protests that were overwhelming the institutional legal channels. The aim of the present article is firstly to assess the main symptoms of the party-state's legitimacy crisis in the year 2016, and, secondly, to focus on the major strategies adopted by the Chinese Communist Party to deal with its legitimacy crisis. The article deals with the legitimacy crisis in terms of the party's and its affiliated social organisations' capacity to politically represent social groups and their interests.*

*In 2016, labour protests in particular (which, however, did not represent the sole form of social protests) effectively suggested that industrial workers were critical of the role of the single trade union and, as a consequence, relayed more and more on alternative labour organisations and on outright illegal forms of collective protests. In that sense, although it would not be correct to claim that labour protests were threatening the stability of the political regime, the party-state's legitimacy was nevertheless at stake because of the party's evident inadequacy to represent workers' interests and to promote the workers' effective empowerment.*

*The way the party-state was dealing with the malfunction of its corporatist stance was, indeed, in itself a further demonstration of its legitimacy crisis: repression was gradually taking the place of corporatism and one man-authority was trying to replace collective leadership. Significantly, these authoritarian regressions were being ruled and formalised by law.*

*Additionally, the international perspective on some key selected issues, namely the ongoing BRI (Belt and Road Initiative, formerly called OBOR: «One Belt, One Road» initiative) and the arbitration question on South China Sea, showed that Chinese foreign policy too was substantially conditioned by domestic legitimacy issues.*

\*. The present chapter is the outcome of a joint research effort, and every single part of it was jointly discussed by the two authors before being written and revised by both. However, the final draft of parts 1, 2, 3 and 4 were written by Francesca Congiu, whereas the final draft of parts 5.2 by Alessandro Uras. The final draft of part 5.1 was written by both.

1. A party-state is here considered as a state in which political power is held exclusively by a single political party and where, accordingly, there is a total overlapping of functions between state and party institutions.



## 1. Introduction

The year 2016 has represented a fundamental drive for China's search for a new development path. The Chinese economic «miracle» has been over for at least two decades. The export-driven model, especially after the emergence of the global economic crisis, was not able to grant a sustained economic growth anymore, and social turmoil spread, nurtured by the slowdown in growth, which in 2016 was 6.7%, namely slightly lower than the previous year (6.9% in 2015)<sup>2</sup>. As a consequence, Chinese economic growth could no longer be considered the basic fuel for the legitimacy of the single-party rule, which was in the middle of a major internal crisis. More and more informal social organisations were indeed involved in protests, making use of non-institutional and illegal canals to express their grievances. These actions can be considered a symptom of the party's growing inadequacy to politically represent the major social groups and their interests.

Furthermore, since 2008–09, the People's Republic of China (PRC) has been dealing with economic and geopolitical tensions in the Southeast Asian region, complicated by the United States' Pivot to Asia politics. Maritime Asia was indeed at the front line of intense geopolitical and trade competition where global challenges converged and overlapped with national prerogatives. As Chinese foreign policy experts confirm, China's foreign policy was indeed embedded in domestic issues and national interests and could thus be considered as a key instrument for defending and strengthening the single-party internal legitimacy to rule the country. As a consequence, foreign policy goals and decisions can be read as being guided by a combination of measures supporting domestic economic growth and responding to nationalism.<sup>3</sup>

During the year 2016, it seems that the main issue at stake has indeed been the legitimacy of the Chinese party-state's authority mainly observed in terms of its political and social representative capacities. The aim of this article is firstly to assess the main symptoms of the party-state's legitimacy crisis as far as the year 2016 is concerned. Secondly, the work focuses on the major strategies adopted by the Chinese Communist Party to deal with its legitimacy question.

2. 'China GDP on target with 6.7% growth', *Financial Times*, 19 October 2016; Francesca Congiu, 'China 2015: Implementing the Silk Road Economic Belt and the 21<sup>st</sup> Century Maritime Silk Road', *Asia Maior 2015*, vol. XXVI, p. 29.

3. Mikeal Weissman, 'Chinese Foreign Policy in a Global Perspective: A Responsible Reformer «Striving for Achievement»', *Journal of China and International Relations*, vol. 3, n. 1, May, 2015, pp. 151-166; Pei Minxin, 'Exploring Emerging Domestic Drivers of Chinese Foreign Policy', *The German Marshall Fund of the United States Policy Brief*, Asia Program, April 2014; Robert Lawrence Kuhn, 'Eight factors driving Xi's foreign policy', *China Daily Europe*, 1 January 2016.

The article begins with what the Chinese Communist Party (CCP) has officially declared as its current top priority as it faces the above mentioned emerging challenges: the strengthening of its unity in terms of ideology and policies. Facing external and internal threats, the party, indeed, has usually demonstrated the need to make ideas converge into one single path, from a perspective of international and domestic politics as well as of political economy. In 2016, the CCP line favouring structural economic reforms seemed to prevail over the more conservative faction, as was demonstrated by the State Council's documents on the so called «Supply-side Reform».

The article is divided into two parts. The first deals with labour conflicts and the party-state's reaction to them, because in 2016, factories have been the principal terrain of social conflict. The second part deals with the «One Belt, One Road» strategy's new developments in the Euro-Mediterranean area and with the 2016 evolution of the South China Sea's conflicts in the Philippines versus China arbitration case.

## *2. Strengthening the unity of the Party: a top priority*

The year began with the Politburo Standing Committee demanding comprehensive loyalty to the party's central leadership and to Xi Jinping. After the Politburo Standing Committee meeting on the 7<sup>th</sup> of January 2016, the party released a formal statement.<sup>4</sup> In the official state press communication, it is possible to read a summary of the meeting and some significant points. The first is that: «The key to strengthening party leadership is maintaining the centralised and unified leadership of the party centre». The official report underlines as well the need to be united around one single ideological line – Xi Jinping's – in order to be able to carry on with the project of building socialism with Chinese characteristics.<sup>5</sup>

Near the end of the year, in October, during the Sixth Plenary Session of the 18<sup>th</sup> Communist Party of China's central committee, Xi was formally proclaimed the «core leader» (领导核心) of the Chinese Communist Party. From the full-text of the *communiqué* of the Sixth Plenary Session, it is clear that the party's main political focus was to be stronger and united around one single path. In order to achieve this, it was necessary to establish more severe

4. The January Politburo Standing Committee meeting's main task was to review work reports of the leading party groups of the National People's Congress Standing Committee, the State Council, the Chinese People's Political Consultative Conference, the Supreme People's Court and Procuratorate, the Party Secretariat.

5. '习近平主持中央政治局会议' ('Xi Jinping Presided at the Politburo of the Communist Party of China Central Committee'), 人民日报 (*Renmin Ribao*), 30 January 2016. See also: 'All the president's men: Xi Jinping tells Communist Party's top echelon to unite behind him in thought and action', *South China Morning Post*, 9 January 2016.

inner-party rules and to continue fighting against inner-party corruption. The plenary session was, in particular, a call for senior officials so that they would feel invested with important responsibilities and behave as example-models in front of the party's local officials for the sake of the leadership's broader development plans. By calling party officials to comply with Xi Jinping's political line, the party was demanding them to have three different types of consciousness: «political consciousness» (政治意识), «consciousness of the big picture» (大局意识), «consciousness of the core» (核心意识) and a strong «consciousness of keeping in line» (看齐意识). This was officially the only way to build an equitable and developed society and to grant social stability.<sup>6</sup>

Technically and formally, the new title of «core leader» did not give Xi Jinping more power that he already had. However, it was a significant request to recognise the dominance of his political line. The official reasons for proclaiming Xi Jinping the «core leader» of the party and for asking party officials to publicly recognise it, were, according to official state media, the need to have strong leadership in order to enable the party to surmount challenges (战胜挑战) and to deal with new situations (新情况) and new problems (新问题).<sup>7</sup>

Taking into account that China, for almost ten years, had been in the middle of a persistent economic slowdown<sup>8</sup>, of growing social conflicts due to an enlarging socio-economic gap, and of complicated international tensions, by using the above expressions (new challenges, new situations, new problems), the party was very likely referring to these kinds of situations and problems.<sup>9</sup> Here, it should be noted that the need to be united around the centre is not a new issue in Chinese domestic politics. Discourses on political stability, unity and economic development indeed emerged soon after the Cultural Revolution along with Deng Xiaoping's leadership. The fight against factionalism, the strengthening of the inner-party discipline,

6. ‘习近平主持中央政治局会议’ (‘Xi Jinping Presided at the Politburo of the Communist Party of China Central Committee’).

7. ‘中国共产党第十八届中央委员会第六次全体会议公报 (全文)’ (Sixth Plenary Session of the 18<sup>th</sup> CPC Central Committee (full text)), 凤凰网 (*Fenghuangwang*), 27 October 2016; ‘日社论: 坚定不移推进全面从严治党’ (‘People’s Daily Editorial: Firmly carry on the comprehensive strict discipline of the Party’), 人民日报 (*Renmin Ribao*), 28 October 2016. It should be noted here that Hu Jintao, Xi’s predecessor, was never granted this title in a rather significant departure from previous practise: Mao Zedong, Deng Xiaoping and Jiang Zemin were indeed all core leaders of their generations. Hu Jintao has represented the apex in a process of construction of a collective leadership in which a core leader was supposed to be unnecessary.

8. Except from the high peek in 2010 (10.6%), mainly due to a heavy state financial stimulus, Chinese GDP annual growth started to go below the traditional double digit from 2008 (9.7%), reaching 7.3% in 2014, 6.9% in 2015 and 6.7% in 2016. National Bureau of Statistics of China, Annual Data (<http://www.stats.gov.cn/english/Statisticaldata/AnnualData>).

9. ‘日社论: 坚定不移推进全面从严治党’ (‘Daily Editorial: Firmly carry on with a comprehensive strictly discipline of the party’).

the institutionalisation of political power and collective leadership, had all emerged intermittently as political strategies to rule the country since the first biggest threat – historically – to party legitimacy.<sup>10</sup>

### 3. *Domestic politics and social issues: managing labour conflicts*

#### 3.1. *Workers' militancy: an overview of the major labour protests in 2016*

Labour conflicts have always been a constant in Chinese social history and recently, since the beginning of the 2008 global economic crisis, their intensity seems to have reached the level of the 1990s labour protests, which followed the first state-owned-enterprises' reform.<sup>11</sup> Because of the erosion of exports since 2008, most Chinese industrial sectors strategically started to implement several solutions: from downsizing to closure; from abroad relocation to sales or mergers. These solutions were accompanied by some labour cost-cutting tactics such as downsizing severance pays, salaries, bonuses and benefits such as social insurance.<sup>12</sup> In particular, in the Pearl River Delta, the heart of Chinese labour-intensive manufacturers, thousands of manufacturing units were relocating, merging or closing down.<sup>13</sup> In most cases, factory owners and managers did not discuss relocation plans with the workforce but merely announced them, sometimes providing employees with minimal compensation, sometimes without doing it. In many cases, the company had never paid (before the relocation) social insurance, housing funding or other welfare benefits required by law. As a consequence, those workers risked being laid off without pension or medical insurance. Following a model already framed by the first Asian «tigers»<sup>14</sup>, this kind of capital's reaction against an economic crisis caused the development of a variegated and fragmented labour movement, struggling to obtain compensation for workers, missing severance payments and social insurances from the closing

10. Francesca Congiu, *Stato e società nella Cina contemporanea. Dalla rivoluzione all' «armonia sociale»*, Roma: Carocci Editore, 2012, pp. 46-51.

11. Ching Kwan Lee, 'Precarization or Empowerment? Reflections on Recent Labor Unrest in China', *The Journal of Asian Studies*, Vol. 75, No. 2, May 2016, pp. 324-25.

12. China Labor Bulletin (hereinafter CLB), *Searching for the Union. The workers' movement in China 2011-13*, February 2014. ([http://www.clb.org.hk/sites/default/files/archive/en/File/research\\_reports/searching%20for%20the%20union%201.pdf](http://www.clb.org.hk/sites/default/files/archive/en/File/research_reports/searching%20for%20the%20union%201.pdf)).

13. It should be underlined that at the time of this writing and, especially for the private sector, it was not possible to indicate precise quantitative data concerning the number of closing, merging or reallocating factories.

14. Francesca Congiu, *Made in Taiwan. Organizzazione politica e sindacale in una fabbrica globale*, Roma: Carocci editore, 2014.

factories.<sup>15</sup> According to the China Labour Bulletin's Strike Map, the peak of these protests was registered during 2016, the year under analysis.<sup>16</sup> For the sake of synthesis, only a few of them are listed hereafter.

The year started with the explosion of about 19 collective protests in the municipality of Chongqing. The protests were organised by laid off workers of a machine factory and by golf caddies asking respect for the compensation agreement and fair social security contributions.<sup>17</sup> The year went on with two other significant labour conflicts in Shenzhen. Almost one hundred workers at the electronic factory Guang Xie Electronics went on strike and picketed the factory entrance in order to prevent managers from removing machinery and other possessions to another location. Eventually, they forced the company to pay lay-off compensation in advance as a guarantee against relocation. A labour organisation, the Chunfeng Labour Dispute Service Centre, assisted the workers in the first phases of the action and, later, the local trade union intervened in support of their interests. The labour organisation, in particular, organised training seminars on how to engage in collective bargaining with management, and assisted workers with the election of their representatives and the formation of their committee. Workers were able to invite the company to the negotiating table to discuss a potential factory trade union's reform, wage increases, arrears, social insurance and housing. On 31 May, the company decided to renounce to its plans of reallocation.<sup>18</sup>

The second significant labour conflict, which started already in 2015 in Shenzhen, involved the Mizutani Toy Factory Co. Ltd., a manufacturer of the Walt Disney Corporation in China. The reasons behind this unrest were similar to the others: relocation of production (Mizutani was moving to the Philippines), underpaid severance compensation and social insurance contributions (社保) and unlawful dismissal of workers. After the protests in 2015, negotiations started up again in March 2016. However, the company agreed to compensate (赔偿) employees with only one-tenth of the arrears (拖欠) and, as a consequence, the workers went again on strike, before being repressed by the police.<sup>19</sup>

15. 'At Multinationals, Chinese Factory Workers Strike for Layoff Compensation', *Labornotes*, 2 July 2015. For a more detailed account on the causes, the processes and the outcomes of Chinese strikes in the third millennium, please refer to Hao Ren (Chinese version ed.), Zhongjin Li & Eli Friedman (English version eds.), *China on Strike. Narratives of Workers' Resistance*, Haymarket Book, Chicago, Illinois, 2016.

16. See the China Labour Bulletin' Strike Map at: <http://maps.clb.org.hk/strikes/en>.

17. 'Increasingly angry workers in Chongqing take to the streets once again', *CLB*, 4 March 2016.

18. 'Shenzhen labour activists and trade union help workers secure compensation', *CLB*, 13 June 2016.

19. '深圳水谷工廠抗爭 水谷只願賠十分一' ('The Shenzhen Mizutani Factory conflict: Mizutani only wanted to pay 1/10 of the compensation'), *Red Balloon Solidar-*

Finally, during the last quarter of 2016, the international and Chinese press registered several strikes in some multinational companies that expressed the intention to sell off their factories to local companies. This occurred with the French company Danone in Guangzhou, because the French decided to sell a bottling plant to a local company and refused to pay severance according to the workers' years of employment, pointing out that the corporate name was not changing. Dozens of workers went on strike for two weeks and were violently repressed by the police. Furthermore some workers were dismissed and charged with «suspension, sabotage, disruption of work order and for disobeying work arrangements».<sup>20</sup> *Red Balloon Solidarity*, a Hong Kong labour organisation, reported some workers claiming that: «[...] we did not want anything if not defending our legal rights (维权) and seizing our hard-earned money, everyday they were coming to frighten us by saying we were breaking the law (犯法), that we could be arrested if not imprisoned and that capital was not going to suffer a financial loss».<sup>21</sup> A similar problem involved Sony at a smartphone camera parts factory in Guangzhou. Workers went on strike for two weeks in order to oppose Sony's decision to sell the factory off to a local company. They feared that working conditions would worsen and some of them might lose their job. The multinational reacted by paying them off an unfairly low amount of money and by firing many workers that had organised the strike.

Unrests erupted as well in three Coca Cola plants (in Chengdu, Chongqing and Jilin province) after the announcement about the intended sale of all Coca Cola bottling plants in China to the Hong Kong multinational Swire Pacific and to a giant Chinese state-owned food corporation, COFCO. Like the Sony workers, Chinese Coca Cola workers feared receiving lower wages or losing their jobs. They organised coordinated strikes to ask for more detail on the sale and to obtain economic compensation.<sup>22</sup>

As had happened during the 1990s, large protests (however, not as large as in the 1990s) seriously involved the state sector again as well and, in particular, the coal mining and steel industries. Protests emerged, indeed, after the government announced, in 2015, its intention to reduce industrial overcapacity (压缩产能) and to lay off (大量裁减冗员) about 1.8

*ity*, 21 May 2016; See also Worker Empowerment and Hong Kong Confederation of Trade Unions, *Suppliers Escaped. Disney Abandoned Mizutani Toy Makers Viciously*, March 2016 ([http://en.hkctu.org.hk/assets/publications/Report\\_on\\_Mizutani\\_and\\_Disney\\_final220416.pdf](http://en.hkctu.org.hk/assets/publications/Report_on_Mizutani_and_Disney_final220416.pdf)).

20. ‘樂百氏廣州水廠工人罷工,談判過程內幕特警入廠兩女工被當場開除’ (‘Inside news of the negotiation over Robust Guangzhou Water Factory strike: regimental policemen were sent inside and two women workers were fired on the spot’), *Red Balloon Solidarity*, 24 November 2016.

21. *Ibid.*

22. ‘Workers Protest Sale of China Coca-Cola Bottling Plants’, *Caixin*, 23 November 2016; ‘Striking workers call for negotiations at multinationals’, *CLB*, 6 December 2016.

million workers in the coal and steel industries (15% of the industries' total workforce).<sup>23</sup> In September 2015, the Longmay Mining Group, the biggest coal company in North-eastern China (owned by the government of Heilongjiang Province) announced, in line with the central government, its plan to lay off 100,000 workers (40% of the workforce at 42 mines in four cities).<sup>24</sup> In March 2016, a massive protest of at least a thousand coal miners belonging to the Longmay Mining Group took place in the city of Shuangyashan (Heilongjiang Province) in front of the mining authorities' headquarters. Some pictures in the Chinese micro-blogging website, *weibo*, showed some banners displayed by protesters that said: «我们要活着,我们要吃饭» («We want to live, we want to eat»). Workers were demanding wage arrears that they were finally able to obtain when Mr. Lu Hao, the governor of Heilongjiang Province, gave in to the workers requests.<sup>25</sup> Between April and October, labour unrest also took place in the Wuhan Iron and Steel State Corporation in order to protest unfair layoff compensation.<sup>26</sup> By the end of July 2016, provincial governments had met only 38% of their targets to cut production capacity in coal mining and 47% in steel industry, according to Zhao Chenxin, spokesperson for the National Development and Reform Commission.<sup>27</sup> It is possible to suppose that one of the reasons for this delay was the massive, widespread discontent and unrest among coal and steel workers.

The most significant and widespread labour unrest in 2016 was likely the Wal-Mart workers' campaign against a new comprehensive working-hours system, unilaterally introduced by the multinational company. It started some years before and gave rise to an online Wal-Mart Workers' Association (沃尔玛中国员工联谊会) that began in 2014 with 100 to 200 affiliated members

23. '聂辉花: 2016年不会有大规模的国企工人下岗潮' ('Nie Huihua: in 2016, it is unlikely to witness an extensive layoffs of SOEs workers'), *中国财经 (Zhongguo caijing)*, 21 December 2015; 'China expects to lay off 1.8 million workers in coal, steel sectors', *Reuters*, 29 February 2016.

24. 'Massive Layoffs in China's Coal Country Threaten Unrest', *New York Times*, 16 December 2015.

25. Protests' pictures at the following link: [wickedonna.blogspot.it/2016/03/201639.21.html](http://wickedonna.blogspot.it/2016/03/201639.21.html); 'Mass protests by China's coal, iron, and steel workers on the decline', *CLB*, 18 August 2016; 'Coal, steel workers oppose raw deals in capacity reduction', *CLB*, 4 November 2016. See also: 'China coal protests highlight overcapacity tensions', *Financial Times*, 12 March 2016; 'Coal miners protest in northeastern China, claiming unpaid wages', *Reuters*, 13 March 2016; 'Official Admits He Gave Misleading Account of Chinese Miners' Plight', *New York Times*, 13 March 2016; '这个事错了, 知错就要改' ('This incident was dealt with in a wrong way and needed to be corrected'), *京华网 (Jinghua wang)*, 13 March 2016.

26. '武汉钢铁工人示威 抗议底价买断下岗' ('Wuhan Iron and Steel Corporation's workers protested against unfair base price layoff compensation'), *自由亚洲电台普通话 (Radio Free Asia)*, 18 October 2016.

27. 'China Behind on Plans to Trim Overcapacity', *Caixin*, 16 August 2016.

and ended up in 2016 with about 10,000 members.<sup>28</sup> Furthermore, July 2016 was the beginning of an embryonic form of collaboration between the new-born Chinese Wal-Mart Workers' Association and the Wal-Mart American Workers Group based in Minnesota. The leaders of the groups, it is reported, discussed the recent strikes in China on Skype calls using a translator.<sup>29</sup>

According to a text written by the Wal-Mart Workers' Association on 7 September 2015, in an attempt to seek the support of the official trade union, and published by *Red Balloon Solidarity* on the 13, workers thought that the new working-hours system would jeopardise their current contract terms, which assured fixed working hours, overtime pay and holidays. Wal-Mart's aim was to cut wages, which were stagnating in relation to the increase in the company's profits and to the minimum wage, and at the same time, maximise flexibility. The new system entailed indeed the possibility for store managers to assign employees any number of hours per day, as long as each of them reached a total of 174 hours per month. As a matter of fact, those working for more than eight hours per day or forty hours per week would not be entitled to overtime pay. Furthermore, the association accused Wal-Mart of deliberately cutting workers' wages, of fragmenting their labour union and of unlawfully firing workers' representatives. The 7 September text was a call to be united, to independently form groups, and to enter a struggle: «呼吁员工们自愿结合, 自主组成若干小组, 轮番上阵 [...]». The text also contained a criticism of the Chinese official trade union for not doing opposition against the new working-hours system, and a call for authentic trade union's elections which, according to the workers, have been constantly manipulated by the multinational company in order to be sided by a pro-management trade union.<sup>30</sup>

In July 2016, after discovering that the company had unilaterally put into effect the new working-hours system despite their opposition, around two hundred workers struck in three stores: two in Nanchang, Jiangxi and one in Chengdu, Sichuan. Workers at all three stores shared similar demands: abolishing the unilaterally imposed comprehensive working-hours system, separating meal subsidies and full-attendance bonuses added to the basic monthly wage, impeachment of the current store trade union presidents, and democratic trade union elections.<sup>31</sup>

After the strikes, workers formed a preparatory committee to become better coordinated at a national level and bargain with Wal-Mart management.

28. 'China's Walmart workers take the boss to court', *CLB*, 28 August 2016.

29. 'China's Walmart workers take the boss to court', *CLB*, 28 August 2016.

30. 'Exclusive: US and Chinese labor groups collaborated before China Wal-Mart strikes', *Reuters*, 18 July 2016.

31. '沃爾瑪世界首富與血汗商場.中國員工呼籲團結一致爭取生存權益和人格尊嚴' ('Wal-Mart, the richest enterprises and the sweatshop-Chinese staff, a call for unity to protect their survival rights and dignity'), *Red Balloon Solidarity*, 13 September 2015.



Forty-nine activists from all over China formed the preparatory committee on 23 July, and the committee elected Wang Shishu, a veteran worker and activist in Shenzhen, to serve as the head of the Wal-Mart Workers Rights Defence Coordination Group. The committee also democratically elected eight deputies. The intention of the Group was to organise strategy meetings with the Group's head and the deputies, and to arrange on-site labour-organising training for workers in different cities in order to prepare them to engage in collective bargaining with the company. Furthermore, the Group aimed at helping Wal-Mart workers obtain support from the official trade union, and also offered activists and workers who were subjected to reprisals or who were dismissed by Wal-Mart the legal advice of a group of labour rights lawyers. In general, the Group aimed to encourage workers to file law suits against Wal-Mart's imposition of the new working-hours system<sup>32</sup>. In August, a veteran employee indeed took Wal-Mart to the labour arbitration court in Shenzhen demanding that the Shenzhen store where he was employed stop imposing the new working-hours system<sup>33</sup>.

### *3.2. The repression of labour NGOs*

Labour non-governmental organisations emerged in China in the 1990s in order to answer to the needs of a growing mass of rural migrant workers in the growing export-processing zones. Following China's integration in the global economy, the mode of production had changed from Maoist communism to capitalism; however, the official single trade union's functions and procedures (All China Federation of Trade Unions, ACFU) have never been adapted to capitalist transition, leaving workers unorganised and unprotected in a new and transitioning mechanism of production. Most labour groups have been established by former workers or labour activists. Initially, they emerged as legal aid centres. Since the beginning of the 1990s, the central government started to promulgate a series of labour and trade union laws with the intention to adapt the legal situation to the changing conditions of labour and thus to improve working conditions in the state as well as in the emerging private sectors. However, labour laws were being poorly implemented, and migrant workers were experiencing large violations of labour rights without being aware of their own rights and of recently enacted labour laws. Labour NGOs, thus, emerged with the primary objective of promoting legal awareness and mutual legal aid among migrant workers. Between the 1990s and the 2000s they proliferated in the manufacturing zones and, since the spread of the

32. 'Strikes at Walmart stores in China begin to spread', *CLB*, 4 July 2016.

33. 'China's Walmart workers strengthen organizing after strikes', *CLB*, 27 July 2016.

factory closing phenomenon, they have also slightly changed their objective toward a more direct support of collective actions and strikes. Most of the time, these collective actions and strikes have taken place outside the official channel of the ACFTU; furthermore, they were not envisaged in any of the several Chinese labour laws. However, it must be stressed that labour NGOs' primary role remained to provide legal support to workers for individual petitions, arbitration cases or court suits against employers, or also in collective negotiations with management.<sup>34</sup>

In order to be legal, every social organisation in China must receive recognition from the authorities through an official registration procedure. Labour NGOs usually cannot be registered under the label of social-group organisations (or non-profit organisations). In fact, this label is reserved for organisations set up by state agencies and carrying out specific social welfare functions, such as official trade unions, or to those organisations able to attach themselves to other legal entities such as universities or research institutes. In the latter case, these legal entities represent a «professional supervising unit», a sort of sponsor through which to obtain recognition from the Ministry of Civil Affairs and toward which to be accountable, together with the ministerial institutions (the so-called «dual management system»). Most labour NGOs are classified as grassroots organisations and cannot easily find an official sponsorship. Thus, in order to be officially authorised, they must be registered as business NGOs and obtain their licence from the Ministry of Commerce and Industry. For this reason, being registered as a business organisation, labour NGOs are not allowed to raise funds domestically. As a matter of fact, for many years, they have been heavily dependent on foreign funding.<sup>35</sup>

With the number of rural migrant workers steadily growing together with widespread violations of labour rights, labour NGOs' role became even more strategic during the 2000s and, in particular, during

34. Yi Xu, 'Labor non-governmental organizations in China: Mobilizing rural migrant workers', *Journal of Industrial Relations*, Vol. 55, No. 2, 17 April 2013, pp. 243-259. See also: Ching Kwan Lee & Yuan Shen, 'The Anti-Solidarity Machine?: Labor Nongovernmental Organizations in China', in Mary E. Gallagher, Ching Kwan Lee, & Sarosh Kuruvilla (eds.), *From Iron Rice Bowl to Informalization. Market, Workers, and the State in a Changing China*, Ithaca, New York: Cornell University Press, 2011; Chris King-chi Chan, 'Community-based organizations for migrant workers' rights: the emergence of labour NGOs in China', *Community Development Journal*, Vol. 48, No. 2, March 2012, pp. 6-22; Ivan Franceschini, 'Revisiting Chinese Labour NGOs: Some Ground for Hope?', *Made In China – A Quarterly on Labour, Civil Society and Rights*, issue No 1, 2016, pp. 16-19 (<http://www.chinoiresie.info/revisiting-chinese-labour-ngos-some-grounds-for-hope>).

35. Mami Yamaguchi, 'The Voices and Protests of China's Labour NGOs and their Effort to Promote Migrant Worker Rights', *Institute of Developing Economies*, Working Paper no. 508, 2015; Chris King-chi Chan, 'Community-based organizations for migrant workers' rights'.

the on-going global economic crisis. As more and more factories were closing down, it became crucial for workers to receive assistance to get compensation, social insurance and wages in arrears. Furthermore, labour organisations were essential in helping workers deal with management, local authorities and local trade unions. Lastly, they started to get involved in strikes, not as the main organisers but as legal supporters and organisational advisors.<sup>36</sup>

The great majority of labour groups tended to prefer legal strategies and individual-type based remonstrance against the employers, demonstrating a non-antagonist stance towards both capital and the party-state and a will to solve labour conflicts in an harmonious way. Nevertheless, by doing so, these labour groups were representing an alternative form of organisation to the official trade union and were funnelling thousands of workers into potentially antagonist social organisations. According to Tim Pringle, labour NGOs' appearance represented a Chinese version «of the outsourcing of welfare delivery and related civil services to selected civil society organizations that has accompanied the global spread of neoliberal ideology [...]».<sup>37</sup> At first sight, their work was well-suited with the party-state's old corporatist strategy of channelling social complaints into institutionalised juridical channels of dispute resolution such as petitions, arbitrations and courts.<sup>38</sup> However, their recent increasing involvement in labour organising, in strikes and in assistance in collective bargaining was evidently overthrowing the institutionalised perimeter of labour grievances' representation channels. For all these reasons, labour NGOs were frequently monitored, boycotted, co-opted or, more recently, openly repressed by Chinese authorities.<sup>39</sup> This has been the case for 2015–2016, during which the repression of labour activists was particularly severe. In December 2015 several labour NGOs – such as the Panyu Migrant Workers Documentation Service Centre in Guangzhou (番禺打工族文书处理服务部), the Nanfeiyan Social Work Service Organisation in Foshan (南飞雁社会工作服务中心), the Haige Labour Centre in Guangzhou (海哥劳工服务部) and the Labour Mutual Aid Group in Panyu, Guangzhou (劳动者互助小组) – and several specific labour activists became the target of both a state media smear campaign against them and a proper police prosecution.

36. 'The Lide shoe factory workers' campaign for relocation compensation', *CLB*, 22 June 2015.

37. Tim Pringle, 'What the Labour NGOs in China Do?', *China Policy Institute Analysis*, 17 October 2016.

38. *Ibid.*

39. Francesca Congiu, 'La Cina sull'orlo di una crisi politica e internazionale: l'anno del 18° congresso del PCC', *Asia Maior 2012*, Vol. XXIII; 'China labor activists say facing unprecedented intimidation', *Reuters*, 21 January 2015; Ivan Franceschini, 'Revisiting Chinese Labour NGOs: Some Ground for Hope?'

From 3 December 2015, police authorities launched a stringent procedure of investigation: staff, family members and affiliated workers of the above mentioned labour organisations were questioned and several remained in custody. Four were formally charged in December 2015, and, between September and November 2016, were sentenced to prison for disruption of public order. This was the case of Zeng Feiyang, Zhu Xiaomei, Tang Huanxing and Meng Han, all Panyu Migrant Workers Documentation Service Centre's labour activists. Zeng was sentenced to a three-year jail term, suspended for four years. Zhu and Tang were sentenced to 18-month jail terms, suspended for two years. Meng Han was sentenced to 21 months. Furthermore, the centres were closed down.<sup>40</sup>

The state media campaign targeted, in particular, the Panyu Migrant Workers Documentation Service Centre (PMWDSC) in Guangzhou and its director, Zeng Feiyang. During the 1990s and the 2000s, Zeng was very active in establishing labour NGOs in Guangdong, among which was the PMWDSC. More interesting, he had been one of the leaders of the protest held outside the Ministry of Civil Affairs Office in Guangzhou in 2014 against one of the first drafts of the so-called Overseas NGO Management Law, which was finally promulgated in 2016 (see § 3.3). The draft was targeting foreign NGOs and foreign funded NGOs, restricting requirements for registration and defining more strictly the border between legal and illegal civil organisations.<sup>41</sup> On 22 December, the People's Daily published a report entitled '工运之星'曾飞洋被抓:打着公益幌子敛财谋色' ('The so-called «Pioneer of labour movement», Zeng Feiyang has been arrested for gathering money illegally and seeking sex under the cover of public interests'). The report accused the labour organisation of not being properly registered and of being very active and behind the scenes in organising labour strikes, inciting labour conflicts and severely disrupting social order («在幕后策划组织操纵工人罢工; 激化劳资矛盾; 严重扰乱社会秩序»). Furthermore, the report accused the organisation and its director of accepting foreign funds («免费威权, 接受境外巨额利益») from Hong Kong-based foundations, such as the China Labour Bulletin, but also from Western NGOs («西方多国等

40. '曾飞洋汤欢兴朱小梅聚众扰乱社会秩序案一审当庭宣判三被告表示认罪悔罪' ('The conviction of Zeng Feiyang, Tang Huanxing and Zhu Xiaomei for disturbing social order has been pronounced in a first instance sentence, three defendants pledged guilty and showed repentance'), 新化网(Xinhuanet), 26 September 2016; 'Labour activist Meng Han sentenced to 21 months', China Labour Bulletin, 4 November 2016.

41. '曾飞洋汤欢兴朱小梅聚众扰乱社会秩序案一审当庭宣判三被告表示认罪悔罪' ('The conviction of Zeng Feiyang, Tang Huanxing and Zhu Xiaomei for disturbing social order has been pronounced in a first instance sentence, three defendants pledged guilty and showed repentance'), 新化网 (Xinhuanet), 26 September 2016; 'Labour activist Meng Han sentenced to 21 months', China Labour Bulletin, 4 November 2016.

境外非政府组织»). Lastly, Zeng was also accused of embezzlement.<sup>42</sup> The same kind of accusations can be found in a Xinhua report published on 22 December 2015.<sup>43</sup>

On 8 January 2016, Han Dongfang, the Director of China Labour Bulletin, issued a letter to the People's Daily editor-in-chief, Li Baoshan. He argued that Guangzhou authorities were already well aware that the PMWDSC had been cooperating with the China Labour Bulletin for at least the last five years. In addition, he explained the foundation of CLB's work with Chinese labour activists and underlined the positive results of this cooperation. He specified that among them there were the peaceful settlement of potentially violent labour disputes through negotiations that tried to assure fair distribution of wages and benefits to workers.<sup>44</sup>

It is interesting to note that the court verdicts, especially that of Zeng Feiyang which had been the main target of the Chinese official press, were lighter than one could have expected. According to the English language and Chinese language local press, Zeng's sentence made no mention of foreign funding. Its argument was narrowed – when compared to the smear media campaign – to the fact that Zeng and his labour organisation had encouraged workers to go on strike causing serious losses to the involved companies. The four plaintiffs also had suspended sentences. However, probably in exchange for this, they had to publicly admit their guilt in «disrupting social order», although their often declared aim was exactly the opposite – that is, instructing workers to make them able to organise bargaining tables with managers. Furthermore, all four of them chose not to appeal.<sup>45</sup>

42. '广州劳工民间社团人士到市民政部门抗议当局压迫民间组织', ('Guangzhou labour civil society associations outside the municipal civil affairs department to protest authorities' oppression of civil society organisations'), 维权网(*Weiquan wang*), 23 October 2014 ([http://wqw2010.blogspot.it/2014/10/blog-post\\_418.html](http://wqw2010.blogspot.it/2014/10/blog-post_418.html)).

43. '揭开工运之星光环的背后番禺打工族文书处理服务部主任曾飞样等人涉嫌严重案件调查' ('Revealing the dark side of the so called «Pioneer of the labour movement»: the investigation on several people, including Zeng Feiyang, the head of the Panyu migrant workers' service center, for being suspected involves several cases), 新化网广州(*Xinhuanet Guangdong*), 22 December 2015.

44. The text of the letter: 对«人民日报»关于«番禺打工族服务部»主任曾飞洋先生报道的回应' ('A reply to the People's Daily report on the director of the Panyu Workers Service Center, Zeng Feiyang'), ([http://www.clb.org.hk/sites/default/files/archive/en/File/CLB 对人民日报关于番禺打工族服务部"主任曾飞洋先生报道的回应.pdf](http://www.clb.org.hk/sites/default/files/archive/en/File/CLB%20对人民日报关于番禺打工族服务部)).

45. '«工运之星»曾飞洋被抓:打着公益幌子敛财谋色' ('The so-called «Pioneer of labour movement», Zeng Feiyang has been arrested for gathering money illegally and seeking sex under the cover of public interests'), 人民日报 (*Renmin Ribao*), 22 December 2015.

### 3.3. *New laws on social organisations: the Charity Law and the Overseas NGOs Law*

During the same year, the People's Republic of China passed two key laws for the management of social organisations. In March, the National People's Congress passed the Charity Law (慈善法)<sup>46</sup> and in April, it passed the Law on Management of Foreign NGOs Activities in Mainland China (境外非政府组织境内活动管理法).<sup>47</sup> The first went into effect in September 2016, while the second was expected to go into effect in January 2017.

According to the Charity Law, organisations that can be registered as social organisations can also be entitled to receive the status of charitable organisation (慈善组织) from the Ministry of Civil Affairs (Article 8), which is also entitled to carry out the management and supervision of charitable activities (Article 92). In Articles 3-4, the law defines «charitable activities» as «public interest activities voluntarily carried out [...] through the donation of property, the provision of services or other means [...]»; and says that they «[...] shall abide by the principles of being lawful, voluntary, honest, and non-profit, and must not violate social morality, or endanger national security or harm societal public interests or the lawful rights and interests of other persons».

One of the most important innovations introduced by the Charity Law was norms that have the effect of lowering barriers to domestic funding by increasing the types of non-profit organisations that could engage in public fundraising and also encouraging more people to donate to public benefits and charitable causes by cutting taxes. Before that, this kind of fundraising was allowed only for a small number of organisations – the ones strongly connected with the government. Furthermore, the law included charitable organisations among a group of four different types of non-profit organisations for which the «dual management system» was going to be removed, making them able to register directly with the Ministry of Civil Affairs without the need of searching for a sponsorship and making them accountable only to the Ministry or its local departments.<sup>48</sup>

46. ‘揭开工运之星光环的背后番禺打工族文书处理服务部主任曾飞洋等人涉嫌严重案件调查’(‘Revealing the dark side of the so called «Pioneer of the labour movement»: the investigation on several people, including Zeng Feiyang, the head of the Panyu migrant workers’ service center, for being suspected involves several cases), 新化网广州 (*Xinhuanet Guangdong*), 22 December 2015.

47. The text of the letter: 对«人民日报»关于«番禺打工族服务部»主任曾飞洋先生报道的回应’(‘A reply to the People’s Daily report on the director of the Panyu Workers Service Center, Zeng Feiyang’), (<http://www.clb.org.hk/sites/default/files/archive/en/File/CLB对人民日报关于番禺打工族服务部”主任曾飞洋先生报道的回应.pdf>).

48. ‘曾飞洋等聚众扰乱社会秩序案一审宣判 三被告认罪’(‘The cases over Zeng Feiyang etc. for disturbing social order have been took to trial: three defendants have been pledged guilty’), 财经网 (*Caijing Wang*), 26 September 2016; ‘起底«工运之星»曾飞洋: 法院认定其长期接受境外组织资助’(‘Revelation about the so-called «Pioneer

The Charity Law, and in particular its entry norms (Article 8), however, automatically excluded most labour NGOs from the benefits and protection of the law; most of them were indeed registered, as we have already said, as for-profit businesses and thus could not be classified as charitable organisations: «'Charitable organisations' refers to legally established non-profit organisations [...]. Charitable organisations include foundations, social groups, social service organisations and other forms of organisations». In order to be eligible to become a charitable organisation, it was necessary to be legally classified as non-profit and thus to first obtain the sponsorship of a «professional supervising unit» such as a government ministry or a state agency. For labour organisations lacking good connections with the government and above all operating in highly sensitive sectors, obtaining the sponsorship could be a difficult if not an impossible task.<sup>49</sup>

Interestingly, the Overseas NGOs Law's main aim was to raise barriers to foreign funding and, in general, to regulate foreign NGOs' activities in China in a more stringent way. Firstly, the law (Articles 3-4), defines the fields of action of overseas NGOs such as economy, education, culture, health, sports, environmental protection, poverty and disaster relief; it specifies that they «shall not threaten China's national reunification and security or ethnic unity, nor harm China's national and social interests or the legitimate rights and interests of citizens, legal persons and other organizations» and «shall not engage in or finance profit-making or political activities in the mainland of China, and they shall not illegally engage in or finance religious activities». Secondly, the law placed the registration and supervision of all foreign NGOs operating in China under the Ministry of Public Security instead of the Ministry of Civil Affairs (Article 6). Thirdly, it required a report to be filed on by all of their Chinese partners, funding sources and activities to Public Security. This requirement was easily fulfilled by Chinese partners with an official background, good connections with the government or that were properly registered. However, it would certainly be problematic for labour organisations, which were usually unregistered or registered as for-profit organisations. Lastly, according to the law, in order to be legal, foreign NGOs had to establish a permanent representative office registered in China that had to be approved by a government affiliated sponsor; it could work only within the geographic area where its given activity had been accepted (Article 18); and it could not engage in fundraising or accepting donations in China. For those Chinese organisations or individuals that

of the labour movement»: thou court affirmed that he had been accepting financial support from overseas organisation over a long period'), 头条 (*Toutiao*), 27 September 2016; 'Guangdong rights activists get 'lighter than expected' sentences as defiant detainee's fate hangs in balance', *South China Morning Post*, 26 September 2016; 'Court sentences 3 for misleading workers', *Global Times*, 28 September 2016.

49. See the Chinese and English version of the law at: <http://chinadevelopmentbrief.cn/wp-content/uploads/2016/04/Charity-Law-CDB-Translation.pdf>.

receive funding from unregistered or illegal foreign NGOs, the law envisages penalties, including detention. Detention is considered as well for members of foreign NGOs or their representative office in China, which are guilty of engaging in or funding political activities or engaging in other acts that endanger national security or harm national or public interests (Articles 46-47). As the useful compendium filed by Ivan Franceschini and Elisa Nesossi underlines, the Overseas NGOs Law's norms on supervision, management and penalties are vague and would probably easily allow arbitrary actions by Chinese public security officials for the sake of social order and stability.<sup>50</sup>

#### 4. *To be united around a single development path: which one?*

We began this article by stating that what emerged as the CCP's top political priority for 2016 is the strengthening of party unity around the political and economic line expressed by Xi Jinping. Furthermore, this priority has been described as an old-style party strategy that is usually implemented to defend its authority in times of legitimacy crisis.

The party-state was certainly in the middle of a profound legitimacy crisis due primarily to the typical harsh social backlashes of the crisis which has been affecting China for at least ten years, which have not been adequately managed by the corporatist official channels connected to the party. The proliferation of pro-labour laws that Elaine Sio-ieng Hui identified as a «vital vehicle through which the Chinese party-state has constructed capitalist hegemony with regard to state-capital-labour relations» by substantially building proper and *ad hoc* juridical institutional channels for workers' complaints, it seemed not to work anymore.<sup>51</sup> As reported by the same author, on various occasions the government expressed official criticism toward the very well-known pro-migrant workers 2008 Labour Contract Law for excessively raising labour costs and for having made the Chinese labour market much too inflexible and less affordable for local and foreign investors.<sup>52</sup> Furthermore, as the events in 2016 demonstrated, it is remarkable that labour protests and strikes have started to overcome those institutional limits that are set up by labour laws, precisely with respect to those labour rights sanctioned by the same laws. As a matter of

50. See the official Chinese law full text and its official translation on the Ministry of Public Security website: <http://www.mps.gov.cn/n2256903/n2256905/n2256909/c5283934/content.html>. Furthermore, a very useful and concise compendium of the law has been prepared by Ivan Franceschini & Elisa Nesossi, 'The Foreign NGOs Management Law: A Compendium', *Made in China – A Quarterly on Labour, Civil Society and Rights*, n. 2, 2016, pp. 34-41.

51. 'Civic Freedom Monitor: China', *The International Center for Not-for-Profit Law*, 5 December 2016 (<http://www.icnl.org/research/monitor/china.html>).

52. *Ibid.*



fact, one of the party reactions that we have chosen to highlight here is the promulgation of the 2016 Charity Law and Overseas NGOs Law. These laws seem to have the precise aim to reconstruct new institutional limits in the face of a widening use of non-institutional means to protest labour rights' violations by pushing labour organisations behind the legal perimeter.

What seems to be clear is that the legitimacy of the party-state was strictly intertwined with the skilful governance of the capitalist economy and that the major internal challenge was to prevent the development of hybrid and embryonic forms of system-changing initiatives that would question both capitalism and the party-state.

Although it remains difficult to assess with certainty which political economy line the party intended to prioritise and develop in the face of its legitimacy crisis, and aside from repression and social control – as it was stated in the 13<sup>th</sup> five-year plan (2016–2020) released on March 2016 and approved by the National People's Congress<sup>53</sup> – the Chinese party-state seemed to follow three policy directions, all of which are strictly interconnected: 1) innovation and upgrading; 2) structural reforms and adjustment; 3) market expansion. In 2016, in particular, it seems that the diverging views were blurring because of Xi's efforts to fight against political rivals through the anti-corruption campaign, and to unite the party leadership along one single view.<sup>54</sup> We might say that the statement of Xu Shaoshi, Minister of National Development and Reform Commission, on the occasion of the 2016 Central Economic Work Conference, subsumed the essence of that view: «We will use the market and the law to regulate enterprises. If a company can adjust its work according to the market and make its own decisions, the government will not interfere».<sup>55</sup>

The main current institutional and central plan to sustain innovation and upgrading was launched in 2015, and was called «‘中国制造 2025’重点领域技术创新绿皮书» («‘Made in China 2025’ A Green Book on Innovation and Technology Key Areas»). It was a ten-year action plan aimed at radically transforming China's manufacturing sector from a low-cost one to a competitive, innovative, efficient and high-tech sector. The plan was indeed meant to focus mainly on information technology, robotics, aerospace and new materials. According to some media, it could represent a solution to a plethora of problems: the rising labour costs, the challenges in terms of

53. Ivan Franceschini & Elisa Nesossi, 'The Foreign NGOs Management Law: A Compendium', pp. 34-41.

54. Elaine Sio-ieng Hui, 'The Neglected Side of the Coin: Legal Hegemony, Class Consciousness, and Labour Politics in China', *Made in China – A Quarterly on Labour, Civil Society and Rights*, No. 4, 2016, pp. 11-14.

55. *Ibid.* See also: '楼继伟：劳动合同法不利于提高全要素生产率 下一步应调整' ('Lou Jiwei: the labour contract law impeded the improvement of full elements of efficiency and need to be adjusted'), 财经网 (*Caijing wang*), 19 February 2016; 'Guangdong Freezes Worker Salaries 'to Help Manufacturers'', *Caixin*, 3 March 2016.

the environment and resources, the exports slowing down and the growth of Southeast Asian industrial competition. In the words of the Premier, Li Keqiang, «Made in China 2025» was a strategy to «seek innovation-driven development, apply smart technologies, strengthen foundations, pursue green development and redouble our efforts to upgrade China from a manufacturer of quantity to one of quality».<sup>56</sup> In 2016, the plan started to be implemented and Ningbo (in Zhejiang Province), which was in the middle of a major port infrastructures' upgrade, was chosen to be the first pilot city, expanding, in this way, its capacity to attract foreign capital.<sup>57</sup>

Since the Central Economic Work Conference in December 2015, as already highlighted in the previous issue of *Asia Maior*, the so-called «Supply-Side Structural Reform» became a central factor in China's economic policy, to be gradually implemented by local leaders. This reform included four elements: eliminating excess capacity, especially in State-Owned-Enterprises; reducing stocks of unsold housing; shutting down inefficient and indebted firms; reduce costs and increase competitiveness of firms (possibly through tax reductions; de-regulation; reductions in social security contributions).<sup>58</sup> As far as the elimination of excess capacity is concerned, in February 2016, the State Council released two documents concerning the steel and coal industries and the plan for layoffs. In both documents, the central government appeared extremely careful of the fate of laid-off workers. Each plan indeed implied large funds available for workers' reassignments to new jobs or to retirement procedures.<sup>59</sup> Thus, the «Supply-Side Structural Reform» was another element of a wider political economy project aimed at producing a transition from a labour-intensive and export-driven economy to a capital-intensive, high-tech, and domestic demand-driven one. The plan effectively aimed at upgrading the mode

56. National People's Congress of China, *The 13<sup>th</sup> Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020)*, Official Translation, Central Compilation & Translation Press, 2016 (<http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>).

57. 'Supply side reform to facilitate China's economic transition', *Xinhuanet*, 21 March 2016; 'NDRC: Overcapacity top reform priority for 2017', *China Daily*, 19 December 2016; see also: Barry Naughton, 'Supply-Side Structural Reform at Mid-year: Compliance, Initiative, and Unintended Consequences', *China Leadership Monitor*, No. 51, Fall 2016.

58. *Ibid.* Francesca Congiu, 'China 2015: Implementing the Silk Road Economic Belt and the 21st Century Maritime Silk Road', *Asia Maior 2015*, Vol. XXVI, pp. 19-52.

59. State Council, 关于钢铁行业化解过剩产能实现脱困发展的意见 ('Proposal of absorbing excessive capacity and becoming profitable in iron and steel industry'), Document 6, 1 February 2016 ([http://www.gov.cn/zhengce/content/2016-02/04/content\\_5039353.htm](http://www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm)); State Council, 关于煤炭行业化解过剩产能实现脱困发展的意见 ('Proposal over absorbing excessive capacity and becoming profitable in coal industry'), Document 7, 1 February 2016, ([http://www.gov.cn/zhengce/content/2016-02/05/content\\_5039686.htm](http://www.gov.cn/zhengce/content/2016-02/05/content_5039686.htm)).

of production and at reducing inefficiencies, especially in SOEs. In the meantime, the transition, as well as the connected labour redundancy, had to deal with intensified government intervention such as distribution of subsidies, tax breaks and loans.<sup>60</sup> The December 2016 Central Economic Work Conference, set to establish economic policies and priorities for 2017, confirmed the same trend for the following year: cutting overcapacity in the steel and iron industry as a top priority to be reached by focusing on «zombie enterprises»<sup>61</sup> and encouraging mergers and reorganisations.<sup>62</sup>

Lastly, market expansion, in particular through the «One Belt, One Road» project, was the other side of the coin of the «Supply-Side Structural Reform» as well as of the «Made in China 2025» strategy. The plan was indeed meant to deal with overcapacity in steel and iron industries not only through cuts, mergers, reorganisations and labour redundancy but also by promoting the internationalisation of Chinese enterprises. Facilitating internationalisation meant liberalising outbound foreign-direct investment (OFDI) from Chinese companies and acquiring, in this way, the know-how and licenses necessary to upgrade and innovate them, improving their international competitiveness. Furthermore, the whole BRI plan consisted, concretely, in turning Chinese steel and iron overcapacity into the building processes of an integrated set of transportation and communication infrastructures, enhancing regional and continental connectivity between China and the so-called Eurasian space.<sup>63</sup>

As shown in the next part of the article, Chinese foreign policy indeed seemed an international projection of this new development path. As Chinese foreign policy experts confirm, China's foreign policy was indeed embedded in domestic issues and national interests and could thus be considered a further key instrument for defending and strengthening the single-party internal legitimacy to rule the country. As a consequence, foreign policy goals and decisions can be read as if guided by a combination of measures supporting domestic economic growth and responding to nationalism.<sup>64</sup>

60. Francesca Congiu, 'China 2015: Implementing the Silk Road Economic Belt and the 21st Century Maritime Silk Road', pp. 29-34.

61. «Zombie enterprises» is the definition used to identify those companies which were supported by government and banks but which were not considered enough efficient and productive.

62. 'Supply side reform: 2016 overcapacity reduction goals', *CCTV.com*, 15 December 2016.

63. Francesca Congiu, 'China 2015: Implementing the Silk Road Economic Belt and the 21st Century Maritime Silk Road', p. 31.

64. Mikeal Weissman, 'Chinese Foreign Policy in a Global Perspective: A Responsible Reformer «Striving for Achievement»', pp. 151-166; Pei Minxin, 'Exploring Emerging Domestic Drivers of Chinese Foreign Policy'; Robert Lawrence Kuhn, 'Eight factors driving Xi's foreign policy'.

## 5. China's foreign policy

### 5.1. New developments of the «One Belt, One Road» initiative: a focus on the China-Euro-Mediterranean corridors

The entangled relationship between domestic issues of party-state legitimacy and foreign policy strategies is nowhere more evident than in the BRI initiative. As stated in the previous issue of *Asia Maior*, the gargantuan global infrastructure plan could, indeed, potentially answer to various domestic questions. It would strategically nurture China's domestic-construction industry, contributing to contain, where possible, the ongoing labour conflicts. Secondly, it would create a faster and more feasible way for the exchange of goods between China and regional markets in Europe, Central Asia, Africa and Southeast Asia. Furthermore, specifically, taking into account the South China Sea disputes (§. 5.2), the BRI could also be considered as a means to secure access to raw materials, and energy in particular, throughout an active promotion of good neighbour relations and profitable economic agreements. At the same time, the reasons behind the BRI could as well be read in relation to the ongoing China-US global challenge on both the geopolitical, economic and ideological levels.<sup>65</sup> Recalling the already quoted perspective of Elaine Sio-ieng Hui on Chinese labour laws, we might add that the BRI could be considered as another «vital vehicle» to perpetuate capital hegemony together with the party-state's legitimacy by extending their borders and their agency outside China's frontiers.

From the BRI perspective, in 2016 profound attention was paid to European countries, in particular to the European Mediterranean countries and to Central and Eastern Europe. In May, the Asian Infrastructure Investment Bank and the Europe Bank for Construction and Development signed a memorandum of understanding that set out a framework for cooperation in the field of infrastructure investment in Asia and the rest of the world.<sup>66</sup> The main reason behind those preferences lies in the pre-existing projects located in these regions: the Greek port of Piraeus, the Land-Sea Express Route between Greece and Central Europe, the China-Europe railway hubs.<sup>67</sup> In the summer 2016, China's shipping and logistics corporation, COSCO, expanded its involvement in Piraeus, acquiring a controlling share

65. For a more extensive exposition of the One Belt, One Road initiative and of the US-China global challenge, please consult Francesca Congiu, 'China 2015: Implementing the Silk Road Economic Belt and the 21st Century Maritime Silk Road' cit.; Francesca Congiu, 'China and the Pivot to Asia', *Asia Maior 2014*.

66. 'Asian Infrastructure Investment Bank to cooperate with European Bank for Reconstruction and Development', *AIIB.org*, 11 May 2016.

67. Andreea Brizna, 'How a Greek Port Became a Chinese Dragon Head', *The Diplomat*, 25 April 2016; Alice Ekman, 'New Chinese Activism in the Mediterranean', *Politique étrangère*, Vol. 81, No. 4, Winter 2016-2017.

in the Piraeus port authority. In Greece, this meant port privatisation, which unleashed Greek dockworkers' strikes and protests during the negotiation between COSCO and Greece's privatisation agency (the Hellenic Republic Asset Development Fund).<sup>68</sup> COSCO and other Chinese port companies were also interested in other seaports such as: Algeria's port Cherchell; Egypt's Port Said and Alexandria; Israel's ports Ashdod and Haifa; Turkey's port Kumport; Genoa, Naples and Venice in Italy. Throughout all this, combined with the shares that COSCO, in particular, owned in the Suez Canal container terminal and in the Port of Antwerp, China could potentially create a network of shipment routes around Europe and the Mediterranean Sea. It should also be noted that in 2016 the PRC opened in Djibouti, in the Horn of Africa, its first overseas military base.<sup>69</sup>

Furthermore, great attention has been paid to the connection between the Mediterranean Sea and the North and Baltic Seas through the construction of the Belgrade-Budapest railway that was supposed to continue through Skopje (in Macedonia) toward Piraeus. In November 2016, at the Riga 16 plus 1 Summit (Central and Eastern European Countries plus China), Serbia and China signed both a contract for the construction of the first part of the railway and a memorandum of understanding for a loan to finance it. The contract was worth US\$ 319 million and the loan was agreed to with the Chinese Exim Bank.<sup>70</sup> Apart from this huge land-sea route BRI project, other China-Europe rail services were increasing in number and frequency; in 2016, the railway lines Wuhan-Lyon and Rotterdam-Chengde were officially opened.<sup>71</sup>

As the 2016 debate on the granting of the market economy status to China reveals, the European Union and European countries were trapped in a so-called «China dilemma» between, on the one hand, job redundancy that could result from the dropping of trade protections and, on the other hand, the aspiration of many of them to receive Chinese investments.<sup>72</sup> In view of this, the possible Chinese achievement of market economy status

68. 'Workers protest as Greece sells Piraeus Port to China COSCO', *Reuters*, 8 April 2016.

69. 'Chinese growing ambitions on EU ports and a golden opportunity for Italy', *ItalyEurope24 by Il Sole 24 Ore*, 7 December 2016; 'China's COSCO acquires 40% stake in Italy's Vado', *China Daily*, 18 October 2016; 'China drops anchor in Mediterranean ports', *Mercator Institute for China Studies Blog*, 25 May 2016; 'China, Algeria to build mega sea port', *Xinhuanet*, 18 January 2016; 'China Builds First Overseas Military Outpost', *Wall Street Journal*, 19 August 2016.

70. 'China, Serbia, Hungary progress on Budapest-Belgrade railway deal', *Xinhuanet*, 10 September 2016. 'Serbia and China sign contract for first phase of Belgrade-Budapest rail line modernisation', *Think Railways.com*, 15 November 2016.

71. 'Wuhan's 1<sup>st</sup> freight train to France', *Wuhannews.com*, 18 April 2016; 'First rail service China-Netherlands launched', *PortofRotterdam.com*, 28 September 2016.

72. Francois Godement, 'China's market economy status and the European interest', *European Council on Foreign Relations – Policy Brief*, June 2016.

within the WTO has become one of the main concerns for the European Union (EU). China has argued that it should automatically be granted the market economy status after the 15<sup>th</sup> anniversary of its accession to the WTO on 11 December 2016. Such a transition also has a customary legal enforcement, granted by the WTO Commission. Nonetheless, the European Parliament and other Western institutions are struggling to convince the commission to reconsider or to postpone China's shift. With such new status, Chinese exports would no longer be subjected to anti-dumping measures and, accordingly, the EU would be forced to automatically lift its customary barriers towards the Chinese products. This scenario might cause a fracture between the richest and most import-oriented countries, which would happily greet lower prices and more purchasing power, and the manufacturing countries, which to the contrary, would be strongly disadvantaged. According to a report by the Economic Policy Institute (EPI)<sup>73</sup>, if the WTO grants the market economy status to China, its exports are expected to increase to 50%, and the labour market of the EU could lose up to 3.5 million jobs and 2% of its GDP in a three to five-year timespan. Such sweeping changes would severely damage the competitiveness of EU manufacturing industries, and undermine most of the still fragile European economies. According to the EPI report, the most penalised countries would be France, Germany, Italy and the United Kingdom.<sup>74</sup>

However, at the end of 2016, the European Commission presented a proposal for a new method for calculating dumping on imports from non-EU countries, particularly from non-EU countries where the state has pervasive influence on the economy. The purpose was to improve European trade defence instruments, making irrelevant the possible WTO acceptance of China's economy as a market economy.<sup>75</sup>

## 5.2. *China and Southeast Asian regional politics: the South China Sea issue*

The South China Sea issue has often been portrayed as a straight foreign matter, especially because of the presence of the other regional claimants, but it actually has a pronounced domestic significance and has

73. Robert E. Scott & Xiao Jiang, 'Unilateral grant of market economy status to China would put millions of EU jobs at risk', *Economic Policy Institute*, 18 September 2015 (<http://www.epi.org/publication/eu-jobs-at-risk>).

74. *Ibid.*

75. European Commission, *Proposal for Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union*, 09 November 2016, Brussel, COM (2016) 721 final ([http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc\\_155079.pdf](http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155079.pdf)).

become increasingly important for the party-state legitimacy. The dispute is a delicate matter for the Chinese leadership, for more than one reason.

The first reason is that integrity of the national territory is a sensitive issue, and the ability to safeguard the inviolability of the motherland represents a true indicator of the government's legitimacy. In its preamble, the 1982 Chinese Constitution refers to Taiwan as «[...] part of the sacred territory of the People's Republic of China. It is the inviolable duty of all Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland».<sup>76</sup> Furthermore, Article 52 states that: «It is the duty of citizens of the People's Republic of China to safeguard the unification of the country and the unity of all its nationalities».<sup>77</sup> Even if the document specifically indicated Taiwan, which is understandable since it is connected to the reunification process, such a statement also applies to other territories that are already part (or considered to be) of the motherland, but face strong external pressure, such as Tibet, Xinjiang and the South China Sea.<sup>78</sup>

The second reason lies in the growing impact of public opinion on government policy. Regarding the specific case of the maritime dispute, the Communist leadership faced some criticism for not reaffirming the country's sovereign rights more forcefully. One significant cause behind such development, as also pointed out by different scholars, has been the rise of a strong nationalistic feeling after the Tiananmen crisis and the subsequent international isolation.<sup>79</sup>

Furthermore, the South China Sea dispute represents a matter of national security for several reasons. The sovereignty issue is probably the most evident. It also has a great political importance for the leadership and the party's authority. To a certain degree, the unavoidable quest for sovereignty is almost a justification to safeguard the nation's most urgent needs and valuable economic assets. Basically, China aims for domestic stability in order to achieve political continuity. In view of this, to China, «control of the critical South China Sea is a security imperative».<sup>80</sup> First of all, China's economic growth has become progressively dependent on energy and the importation of natural resources from Africa and the Middle East. The country's increasing dependence on foreign oil is perceived as

76. The State Council of the People's Republic of China, *Constitution of the People's Republic of China*, 4 December 1982 ([http://english.gov.cn/archive/laws\\_regulations/2014/08/23/content\\_281474982987458.htm](http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987458.htm)).

77. *Ibid.*

78. Robert D. Blackwill & Kurt M. Campbell, 'Xi Jinping on the Global Stage. Chinese Foreign Policy Under a Powerful but Exposed Leader', *Council on Foreign Relations, Council Special Report No. 74*, February 2016.

79. Minxin Pei, 'Exploring Emerging Domestic Drivers of Chinese Foreign Policy', p. 2.

80. Ji Guoxing, 'China versus South China Sea Security', *Security Dialogue*, Vol. 29, No. 1, 1998, pp. 101-112.

a potential weakness, which is one of the main reasons behind most of the government's economic, military and political actions and initiatives designed to protect national critical interests. Such a continuous search for energy and resources has contributed to the growing assertiveness in the South China Sea, which is believed to contain vast reserves of oil and gas. In fact, according to State-owned China National Offshore Oil Company (CNOOC)<sup>81</sup>, the area might contain approximately 125 billion barrels of oil and 500 trillion cubic feet of gas. Although the Chinese government has probably overestimated the area's resource potential, the fact that the South China Sea is rich in offshore oil fields has been confirmed by the most recent geological report issued by the United States Geological Survey (USGS). Indeed, USGS figures show great confidence in picturing the South China Sea as an unexpectedly rich oil area, with a 95% chance of extracting at least 750 million of oil barrels.<sup>82</sup> By itself, this is more than sufficient to qualify the area as a major oil field.

The above figures might also represent another – economy-related – explanation of the importance given by the Chinese leadership to the South China Sea dispute. Despite Xi's progressive departure from the old model of growth based on exports, and the new focus on domestic consumption, the party's political legitimacy and social stability are still tied to the re-attainment of a pre-financial crisis figures, with a slightly decreased expected annual gross domestic product (GDP) growth at 7-6% and an inflation rate below 4%.<sup>83</sup> In order to sustain such growth, the leadership needs to ensure that oil supply disruptions are either eliminated or kept at a minimum. Accordingly, Càceres' geopolitical equation accurately describes the strategic importance of the South China Sea: «Control of oil and gas brings power. Power provides a complete sense of security. Security, both from external and internal threats, is a prerequisite to prosperity and stability. China seeks all of these things».<sup>84</sup>

Another strategic imperative is the safeguard of the Sea Lane of Communication (SLOC) that goes through the South China Sea. In order to have a deeper understanding of the importance of the South China Sea for all of the East Asian economies, it is important to note that «the oil transported through the Malacca Strait from the Indian Ocean, en route to East Asia through the South China Sea, is triple the amount that passes

81. Tim Daiss, 'Why the South China Sea Has More Oil Than You Think', *Forbes*, 22 May 2016.

82. United States Geological Survey, *Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010*, 11 June 2010 (<https://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf>).

83. Gideon Rachman, 'Xi Jinping has changed China's winning formula', *Financial Times*, 30 May 2016; 'China's Premier Wen Jiabao targets social stability', *BBC News*, 5 March 2011.

84. Sigfrido Burgos Càceres, *China's Strategic Interest in the South China Sea. Power and Resources*, Abingdon and New York: Routledge, 2014, p. viii.



through the Suez Canal and fifteen times the amount that transits the Panama Canal».<sup>85</sup> Concurrently, a significant portion of the global oil and gas production transit through the South China Sea in its way to reach the Chinese, Japanese and Korean ports. The figures strongly uphold such a trend: «[...] Japan, South Korea and Taiwan each import over 80% of their crude oil via the South China Sea; and, for China, which now imports over 50% of its total oil consumption, around 80% to 90% of those imports cross the South China Sea».<sup>86</sup>

The preservation of those maritime routes is a priority not only for Beijing, but also for Seoul, Taipei and Tokyo. The PRC's assertiveness contributed to the emergence of a renewed, but also artificial, China-threat theory, specifically the 'China SLOC threat'. According to several observers, the issue has progressively emerged because of the Chinese navy's increasing presence: «The mission of sea lanes protection is now mentioned far more often in official Chinese documents than ten years ago, in part because China has itself become far more vulnerable to interruption of its seaborne trade».<sup>87</sup> The common fear of a naval blockade, which would cause catastrophic consequences for the entire region, might evolve into a deeper cooperation and become a shared international responsibility, rather than another source of tension and misunderstanding.

Another important, and often underrated, issue concerns the debate around fishing rights in the contested area. The ongoing clash over fishing rights poses a major threat for regional peace and, if not properly addressed, could even trigger an armed escalation in the South China Sea. Food security is as important, if not more so, as oil security, and the regional actors do not have a shared awareness of the problem.

The figures are showing the seriousness of the situation. According to the last report of the World Bank and the UN Food and Agriculture Organisation (FAO): «[...] China will likely increasingly influence the global fish markets. According to the baseline model results, in 2030 China will account for 37 percent of total fish production (17 percent of capture production and 57 percent of aquaculture production), while accounting for 38 percent of global consumption of food fish».<sup>88</sup> If the Chinese projection is already impressive, the sum of China, Japan and Southeast Asia is projected to account for 70% of global fish production by 2030. Both China

85. Robert D. Kaplan, *Asia's Cauldron: The South China Sea And the End of a Stable Pacific*, New York: Random House, 2014, p. 15.

86. Nien-Tsu Alfred Hu & Ted L. McDorman, *Maritime Issues in the South China Sea. Troubled Waters or A Sea of Opportunity*, Abingdon and New York: Routledge, 2013, p. 37.

87. Greg Austin, '4 Reasons Why China Is No Threat to South China Sea Commerce', *The Diplomat*, 22 May 2015.

88. The World Bank, 'Fish to 2030. Prospect for Fisheries and Aquaculture', *World Bank Report Number 83177-GLB*, December 2013 (<http://www.fao.org/docrep/019/i3640e/i3640e.pdf>).

and its coastal neighbours have started to enhance their fishing fleets, but a common fishing policy would be absolutely desirable in order to discuss such demanding projections and avoid a further exacerbation of the issue.

*5.2.1. A nightmare come true: the South China Sea arbitration case (an overview)*

The evolution of the Chinese regional policy has been strongly affected by the progressive internationalisation of the South China Sea dispute, triggered by the Philippines in 2013, which reached its climax in 2016. However, before starting the analysis of this year's events, sketching out a few background facts, which might be useful for a clearer and deeper picture of the problem, is in order.

The Philippines started the legal process on 22 January 2013, by appealing to Articles 286 and 287 of the United Nations Convention on the Law of the Sea (UNCLOS).<sup>89</sup> Article 286 states that: «[...] any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse of section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section». On its part, Article 287 states that: «When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI; (b) the International Court of Justice; (c) an arbitral tribunal constituted in accordance with Annex VII; (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein».<sup>90</sup>

According to Article 287, Manila requested the formation of an Arbitral Tribunal,<sup>91</sup> which was constituted on 21 June 2013, under Annex VII<sup>92</sup> of the Convention. The Philippines expected to be awarded by the Tribunal regarding three main issues: (1) the illegitimacy of the Chinese claims and its inconsistency with the Convention; (2) the determination, under Article 121 of UNCLOS, of the nature of certain features claimed by both countries and their capacity to generate any legal entitlement to

89. Hereinafter referred to as The Convention.

90. United Nations, *United Nations Convention on the Law of the Sea, Part XV. Settlement of the Disputes*, 10 December 1982 ([http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part15.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part15.htm)).

91. Hereinafter referred to as Tribunal.

92. United Nations, *United Nations Convention on the Law of the Sea, Annex VII*, ([http://www.un.org/depts/los/convention\\_agreements/texts/unclos/annex7.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/annex7.htm)).

maritime zones larger than 12 miles; (3) clarification regarding Manila's entitlement to exercise its sovereign rights within and beyond its exclusive economic zone and continental shelf as established in the Convention.<sup>93</sup> The main purpose of the Filipino government was to undermine the Chinese prominence by challenging the regional status quo with new tools. For the first time in their long-standing dispute, Manila decided to officially oppose the Chinese claims and bring the South China Sea controversy in the global arena.

In addition, the arbitration request was not aimed to achieve any sovereignty acknowledgment on the contested islands for two main reasons. The first reason is the fact that acknowledging sovereignty lies beyond the legal boundaries of the Tribunal, which has no jurisdiction on such matters. The second one is more a question of political opportunity for the Philippines. Manila's main interest is the exposing China to global criticism rather than reinforcing the legitimacy of its claims, which suffer the same legal inconsistency of the Chinese ones.

The Chinese reaction was based on the reaffirmation of their inalienable right to the islands. The Chinese government clarified its unwillingness to participate in any arbitral proceeding and, in December 2014, produced a diplomatic note that expressed its aversion to the ongoing procedure. China's Position Paper was intended «[...] to demonstrate that the arbitral tribunal established at the request of the Philippines for the present arbitration (Arbitral Tribunal) does not have jurisdiction over this case».<sup>94</sup> Concurrently, the document also clarified that «no acceptance by China is signified in this Position Paper of the views or claims advanced by the Philippines, whether or not they are referred therein. Nor shall this Position Paper be regarded as China's acceptance of or participation in this arbitration».<sup>95</sup>

Beijing's absolute and incontrovertible denial to consider any degree of procedural participation basically reflects the consistency of the Chinese posture regarding the issue. Accordingly, China refused to appoint one of the five arbitrators that constituted the tribunal or to submit any written memorial to the court. In China's own view, the Chinese self-declared sovereignty over the South China Sea is undisputable and non-negotiable. Such a doctrine does not imply that the Chinese Communist Party was unaware of the regional environment or the presence of other claimants. The Chinese leadership actually encouraged the organisation to hold bilateral

93. Permanent Court of Arbitration, *PCA Case No. 2013-19. The South China Sea Arbitration. Award of 12 July 2016*, Section II, Part A, 12 July 2016 (<http://www.pccases.com/pcadocs/PH-CN-20160712-Award.pdf>).

94. Ministry of Foreign Affairs of the People's Republic of China, *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*, 7 December 2014 ([http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1217147.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml)).

95. *Ibid.*

meetings with the specific purpose of finding a peaceful resolution of the controversy. Bilateral ground is the most suitable for Beijing, even though the continuous engagement encouraged by the Association of Southeast Asian Nations (ASEAN) has gradually persuaded China to debate the maritime issue in a very limited number of multilateral meetings. China has constantly refused to discuss the dispute outside the regional environment, in an international multilateral framework that would include extra-regional powers (namely, the United States), because the CCP considers it a domestic issue that has to be debated and resolved with the other regional actors directly involved. Accordingly, the hypothetical Chinese participation in such an international legal process would represent the political antithesis of the aforementioned doctrine. It would imply the implicit acknowledgment of the Philippines' claims and the acceptance of the internationalisation of the dispute. That could represent a serious threat to the Party's legitimacy.

In April 2015, the Permanent Court of Arbitration issued a press release, which confirmed its decision to conduct a hearing in July on the Arbitral Tribunal's jurisdiction.<sup>96</sup> The same document confirms that the Chinese government «will neither accept nor participate in the arbitration unilaterally initiated by the Philippines».<sup>97</sup> During the two rounds of hearings, the Philippine delegation clarified to the Tribunal its political and strategic aim. The former Secretary of Foreign Affairs Albert del Rosario emphasised that « [...] the Philippines is not asking the tribunal to rule on the territorial sovereignty aspect of its dispute with China. We are here because we wish to clarify our maritime entitlement in the South China Sea, a question over which the Tribunal has jurisdiction».<sup>98</sup>

Such a clarification was strategically important because it allowed Manila to achieve two fundamental goals: it shifted attention to the legal entitlement of the Chinese U-shaped line<sup>99</sup> and, concurrently, cleared the path for the Tribunal to accept the case. Over the last two decades the Chinese leadership has relied on bilateral negotiations with the other claimants, refusing to debate the South China Sea issue in almost any multilateral environment in order to avoid a possible internationalisation of the dispute.

96. Permanent Court of Arbitration, *Arbitration between the Republic of the Philippines and the People's Republic of China. The Arbitral Tribunal Sets Date for Hearing on Jurisdiction and Admissibility*, 22 April 2015 (<https://www.pcacases.com/web/sendAttach/1298>).

97. *Ibid.*

98. Albert del Rosario, 'Full Text: The Philippines' opening salvo at The Hague', *Rappler*, 8 July 2015.

99. The U-shaped line, also referred to as the Nine-Dash Line, indicates the geographical extension of the Chinese claims in the South China Sea. See Zhiguo Gao & Bing Bing Jia, *The Nine-Dash Line in the South China Sea: History and Implications*, *The American Journal of International Law*, Vol. 107, No. 1, January 2013, pp. 98-124.

This concern became a reality on 29 October 2015, when the Arbitral Tribunal in The Hague issued its award on jurisdiction and admissibility. China successfully avoided the Tribunal's jurisdiction over its specious U-shaped line and its self-declared sovereignty over the islands, nevertheless, the tribunal's decision to determine the legal entitlement of some contested features in the South China Sea significantly undermined Beijing's claims, which consequently entered in the international legal debate. China continued to decline any involvement in a procedure that it considered illegal and inappropriate, and instead reiterated its unquestionable rights over the contested area.

### 5.2.2. *Dividing the region; China and its quest for support*

The first six months of 2016 marked the beginning of a crucial stage of the South China Sea controversy and both countries worked to uphold their cause within the regional environment. In April the Chinese Foreign Minister Wang Yi visited Brunei, Cambodia and Laos. The most important issue on Wang's agenda was clearly the South China Sea (SCS) issue and the upcoming arbitration. During the visit in Brunei, his first destination, Wang underlined the importance of China's dual-track approach as the most practical and feasible way to solve territorial disputes in the SCS.

The bilateral instrument is central to Chinese regional diplomacy, reinforcing Wang's statement that: «[...] disputes related to the South China Sea should be addressed properly through negotiations and consultations among countries directly concerned».<sup>100</sup> Wang clearly expressed his concern regarding the danger of a possible deviation in regional affairs: «Deviating from the 'dual-track approach', the overall interest of the ASEAN will be obstructed and even kidnapped by certain individual countries for private gains and the peace and stability of the South China Sea will be also jeopardized by the intervention of countries outside the region upon the occasion, which is absolutely unacceptable to China and ASEAN countries».<sup>101</sup>

The second stop of Wang's diplomatic voyage was Cambodia, where he met Prime Minister Hun Sen, and then he ended his short tour in Laos. Wang's meeting with his Lao counterpart Saleumxay Kommasith was particularly important, since Laos was holding the annual chairmanship of ASEAN and was expected to play a crucial, and neutral, role in managing the arbitration output. In this regard, Kommasith acted more as ASEAN spokesman and respected the association's neutral stance, underlining the country's support for an effective implementation of the Declaration on the

100. Ministry of Foreign Affairs of the People's Republic of China, «*Dual-Track Approach*» is the Most Practical and Feasible Way to Resolve the South China Sea Issue, 21 April 2016 ([http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1358167.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1358167.shtml)).

101. *Ibid.*

Conduct of the Parties in the South China Sea (DOC), in order to maintain the regional peace and stability.<sup>102</sup>

Wang's main accomplishment resulted in the publication of a four-point consensus, agreed to by his counterparts in Brunei, Cambodia and Laos, through which China developed a substantial backing from the three countries. The consensus concisely stated that: (1) the dispute over the Spratly Islands is not an issue between China and ASEAN and should not have any implication on their future relations; (2) sovereign states have the right to choose their own way to solve disputes and no unilateral decision can be imposed on them; (3) dialogues and consultations under Article 4 of DOC<sup>103</sup> are the proper instrument to solve disputes; (4) China and ASEAN countries are able to jointly maintain peace and stability in the South China Sea through cooperation. Countries outside the region should play a constructive role rather than exacerbating the current issue.<sup>104</sup>

The reference in the last sentence is probably addressed to the United States, and more generally to Western institutions such as the Permanent Court of Arbitration, which are considered as the most influential external forces in the dispute. The constructive role desired by Beijing should be translated into the non-interference in the regional affairs, rather than in the tacit endorsement of such international disturbance, perceived as an exacerbation of the antagonism in the South China Sea.

Wang's short tour and the consequent document underlined both China's eagerness to engage its closest regional partners as the Tribunal's final verdict approached, and Beijing's inner capacity to capitalise on the division between the ASEAN members regarding the South China Sea issue.

The Philippines did not gain any regional praise for their international endeavour, and possible partners in the dispute, such as Vietnam and Malaysia, released neutral statements in which they expressed their hope for a «fair and objective ruling in the Arbitration case».<sup>105</sup> On the other side, by supporting China's four-point consensus, Brunei, Cambodia and Laos clearly expressed their position, which was a refusal of the Philippines-led multilateral strategy against China's maritime assertiveness.

102. 'China, Laos vow to further develop comprehensive strategic cooperation partnership', *Xinhua*, 23 April 2016.

103. Article 4 of the COD states that «the parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or the use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UNCLOS».

104. Ministry of Foreign Affairs of the People's Republic of China, *Wang Yi Talks about China's Four-Point Consensus on South China Sea Issue with Brunei, Cambodia and Laos*, 23 April 2016 ([http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1358478.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1358478.shtml)).

105. 'Vietnam urges fair ruling in Philippines-China arbitration', *ABS-CBN News*, 2 July 2017.

Also, the fourth point of the aforementioned consensus clearly stressed that China and its three partners would stand against any involvement of outside powers, namely the United States. On 8 June 2016 the Chinese Ministry of Foreign Affairs released a final document,<sup>106</sup> reiterating its denial and non-participation in the arbitration and settling the relevant disputes between the two countries through bilateral negotiations. On 29 June 2016 the Tribunal officially announced the decision to issue its final award on 12 July 2016.

### 5.2.3. *The verdict and its impact on the regional environment*

On 12 July the Tribunal issued its unanimous award, and the result was completely favourable to the Philippines, receiving almost all of Manila's submissions. The most important decision was probably the one concerning the Chinese historical right and the status of the Nine-Dash (or U-shaped) Line.<sup>107</sup> In view of this, the Tribunal stated that «[...] as between the Philippines and China, China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the 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».<sup>108</sup>

Regarding the entitlements to maritime areas and the status of features, «[...] The Tribunal also concludes that none of the high-tide features in the Spratly Islands are capable of sustaining human habitation or an economic life of their own within the meaning of those terms in Article 121(3) of the Convention. All of the high-tide features in the Spratly Islands are therefore legally rocks for purposes of Article 121(3) and do not generate entitlements to an exclusive economic zone or continental shelf».<sup>109</sup> The final award also clarified that «[...] both Mischief Reef and Second Thomas Shoal are located within 200 nautical miles of the Philippines' coast on the island of Palawan and are located in an area that is not overlapped by the entitlements generated by any maritime feature claimed by China. It follows, therefore, that, as between the Philippines and China, Mischief Reef and Second Thomas Shoal form part of the exclusive economic zone and continental shelf of the Philippines».<sup>110</sup>

106. 'Chinese FM statement on settling disputes between China, the Philippines in the South China Sea through bilateral negotiations', *Xinhua*, 8 June 2016.

107. See fn. 93.

108. Permanent Court of Arbitration, *PCA Case No. 2013-19. The South China Sea Arbitration*, Section V, Part F, Paragraph 278.

109. Permanent Court of Arbitration, *PCA Case No. 2013-19. The South China Sea Arbitration*, Section VI, Part C, Paragraph 646.

110. *Ibid.*, Paragraph 647.

Concurrently, the Tribunal also declared that «[...] China had violated the Philippines' sovereign rights in its exclusive economic zone by (a) interfering with Philippine fishing and petroleum exploration, (b) constructing artificial islands and (c) failing to prevent Chinese fishermen from fishing in the zone. The Tribunal also held that fishermen from the Philippines (like those from China) had traditional fishing rights at Scarborough Shoal and that China had interfered with these rights in restricting access».<sup>111</sup>

Altogether, the Arbitration ruling was overwhelmingly in Manila's favour and the court downsized, if not effectively eliminated, the Nine-Dash Line as we know it. Such an award also marked the first significant international legal decision on the maritime dispute in the SCS, a danger that China had successfully avoided for more than 20 years.

The Chinese government refused to recognise the Tribunal's award. Xi Jinping declared that China's territorial sovereignty and maritime interests in the SCS would not be affected in any circumstances, while its Foreign Minister, Wang Yi, stated that the arbitration was «a political farce under the pretext of law».<sup>112</sup> Immediately after the publication of the final award, the Chinese Ministry of Foreign Affairs released an official statement that solemnly declared that the award was void and it had no binding force: «[...] The conduct of the Arbitral Tribunal and its awards seriously contravene the general practice of international arbitration, completely deviate from the object and purpose of UNCLOS to promote peaceful settlement of disputes, substantially impair the integrity and authority of UNCLOS, gravely infringe upon China's legitimate rights as a sovereign state and state party to UNCLOS, and are unjust and unlawful».<sup>113</sup> It is underlined again in the final paragraph of the document: «The Chinese government reiterates that, regarding territorial issues and maritime delimitation disputes, China does not accept any means of third party dispute settlement or any solution imposed on China. The Chinese government will continue to abide by international law and basic norms governing international relations as enshrined in the Charter of the United Nations, including the principles of respecting state sovereignty and territorial integrity and peaceful settlement of the disputes».<sup>114</sup>

The Philippines welcomed the Tribunal's award with great satisfaction. For Manila, the award provided a basis to further talks and cooperation

111. Permanent Court of Arbitration, *The South China Sea Arbitration. Press Release*, 12 July 2016 (<http://www.pcacases.com/web/sendAttach/1801>). For a more detailed explanation see paragraphs 716, 757, 814 and 1043 of the final award.

112. Ministry of Foreign Affairs of the People's Republic of China, *Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines*, 12 July 2016 ([http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1379492.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379492.shtml)).

113. *Ibid.*

114. *Ibid.*



to encompass all parties, including China. According to the Secretary of Foreign Affairs of the Philippines, Albert del Rosario, «[...] good faith discussions, based on the rule of law, can be commenced to prepare the way for negotiations and a lasting settlement among all parties with claims in the South China Sea».<sup>115</sup>

The whole arbitration process had been triggered and fuelled by the Aquino III administration and his Liberal Party, which lost the election in favour of Rodrigo Duterte's PDP-Laban on 9 May 2016. Duterte's stance on the dispute and his willingness to follow the Court's guidelines are not clear.<sup>116</sup>

#### 5.2.4. *The post-arbitration environment and Rodrigo Duterte's election*

Regarding China's position after the arbitration, it is possible to point out a dual view. From a domestic point of view, Beijing's stance was unaltered, along with popular support for its maritime strategy, and the Tribunal's award was seen as another unrequested foreign interference. From an international point of view, despite China's alleged disregard, the verdict clearly undermined Beijing's position and its enduring work to keep the issue outside of the international agenda. From such a perspective, China's reaction was both confident and wary of a possible international exacerbation. China is expected to be a responsible stakeholder in the South China Sea, but after Manila's unexpected triumph, the Chinese leadership lost the chance to exploit the legal ambiguity derived from its Nine-Dash Line. The court ruling was particularly aggressive and directly rejected the Line, which literally infuriated China and led to the intensification of its assertiveness and land reclamation in the disputed area. The tension in the region peaked when Chinese Defence Minister Chang Wanquan released a warring declaration, in which he called for the «recognition of the seriousness of the national security situation, especially the threat from the sea». He also added that «military, police and people should prepare for mobilization to defend national sovereignty and territorial integrity».<sup>117</sup> On the same day, the Supreme People's Court issued a judicial interpretation in which it specified its new standards for convicting and punishing those engaged in illegal fishing in Chinese territorial waters. Such criminal acts and those responsible would be fined and sentenced to less than one year's

115. Albert Del Rosario, 'Del Rosario – Personal Statement on Final Arbitral Award', *Institute for Maritime and Ocean Affairs*, 12 July 2016.

116. On this topic, see Carmina Yu Untalan, 'The Philippines 2016: Democracy in Dispute?', in this same volume.

117. 'China's defense minister stresses preparedness for «war at sea»', *Xinhua*, 2 August 2016.

imprisonment.<sup>118</sup> The court also added that «People’s court will actively exercise jurisdiction over China’s territorial waters [...] and safeguard Chinese territorial sovereignty and maritime interest».<sup>119</sup> Such strong declarations appeared as the dangerous preamble of a military escalation in the region, on the contrary turned out to be the beginning of a gradual downsizing of the confrontation. Philippine President Duterte declared that his country could achieve more benefits from China if the two governments could reach a settlement despite the Tribunal’s award.<sup>120</sup>

On 20 October 2016, during an official visit to China, President Duterte announced a new realignment towards Beijing and the beginning of a new ‘springtime’ in the relationship between the two countries. President Xi Jinping called Duterte’s visit a new milestone in Sino-Philippine relations, adding that the two countries agreed to pursue bilateral dialogue and consultation in seeking a proper settlement in the South China Sea.<sup>121</sup>

The Arbitration’s award created great commotion in the region and certainly affected the perception of China, both regionally and globally. But Beijing’s alleged belligerence and assertiveness was mitigated by the inception of new political strategies in the Philippines and by the usual lack of regional cohesion. These two factors contributed to reduce the political scope of the arbitration and allowed Beijing to preserve its core interest, namely to maintain a favourable political and strategic status quo in the contested waters and uncontested access to the SCS, in order to keep its second strike capability with SSBN submarines. Even if the whole arbitration process was a serious strike to China’s regional prestige and its bilateral diplomacy framework, Beijing successfully avoided further internationalisation of the dispute and reduced any expected damages.

118. Supreme People’s Court of the People’s Republic of China, *Top court clarifies law at sea*, 4 August 2016 ([http://english.court.gov.cn/2016-08/04/content\\_26346625.htm](http://english.court.gov.cn/2016-08/04/content_26346625.htm)).

119. ‘China’s supreme court clarifies maritime jurisdiction’, *Xinhua*, 2 August 2016.

120. ‘Philippines to gain more from China if settlement reached despite tribunal ruling: Duterte’, *Xinhua*, 23 July 2016.

121. ‘Duterte: Philippines is separating from US and realigning with China’, *The Guardian*, 20 October 2016.