

# MARITIME SECURITY :

Belgium's  
interests  
and options





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AND INFORMATION ON  
PEACE AND SECURITY

Chaussée de Louvain, 467  
B-1030 Brussels  
Phone : +32 (0)2 241 84 20  
Fax : +32 (0)2 245 19 33  
E-mail : [admi@grip.org](mailto:admi@grip.org)  
Web : [www.grip.org](http://www.grip.org)  
Twitter : [@grip\\_org](https://twitter.com/@grip_org)  
Facebook : GRIP.1979

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Rue des Petits Carmes 24 A  
B-1000 Brussels  
New Postal Address:  
Rue des Petits Carmes 15  
B-1000 Brussels  
Phone: +32 (0) 2 223 41 14  
E-mail: [info@egmontinstitute.be](mailto:info@egmontinstitute.be)  
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# **MARITIME SECURITY :**

## **Belgium's interests and options**

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**REPORT**

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# INTRODUCTION

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Good order at sea is critical to the trading interests of virtually every economy on the planet. The maritime domain is the next “great frontier” of global growth. Yet, at a time of ever increasing connectivity between societies and economies, **smaller countries too seldom see their particular interests and status scrutinized in the wider debate over “whose order” should prevail at sea.** There is an intrinsically political dimension to the “ordering of the global commons” that can simultaneously consolidate or erode existing practices of global governance, with huge ramifications into the economic realm.

As a trading nation with a strong maritime tradition (half of its trade is seaborne), a self-styled champion of regional integration, a proponent of the rule of law, and a pioneer in naval “pooling and sharing” practices, Belgium has a lot to contribute to the ongoing global discussion on maritime security. It has skills, experience and resources to share, that can provide useful additions, in terms of perspective and substance, to conflict prevention and conflict management perspectives in the maritime sphere.

Based on this realization, **Deputy Prime Minister and Minister of foreign affairs Didier Reynders supported the setting up of a platform of discussion on Belgian stakes and perspectives in a thriving debate on maritime security at the European and global levels.** The July 12 award was thus both an incentive for launching this initiative and a useful reminder of the hybrid objective of the platform: at the same time it is about discussing Belgium's place and role in Asia, and about promoting its contribution in such a specialized, composite and strategic field as “maritime security”.

From the Minister's perspective, it is important to promote a strategic vision regarding maritime security and security in general. Indeed, security is an immaterial asset that has long been considered granted, as a sort of “fait accompli”. Belgium, it should be stressed, is already active in invisible ways to preserve an unimpeded access to and from the maritime domain – this connection being the bloodline of our modern economy. However, current challenges require more efforts, more investments and creativity. Belgium has to invest in additional or more modern vessels, but also in less tangible assets such as international alliance, rules, common understanding...

This is the time to both reflect on Belgium's accomplishments and assets, and debate the future of our international outlook vis-à-vis maritime security. Brussels is a place where many decisions of paramount importance not just to the maritime sector but also to trade in general, to international regulatory frameworks, etc. are discussed, negotiated and agreed upon.

It is a city where debates over international policy orientations are lively and significant. Brussels also has for itself a series of assets, in the form of professional bodies, associations, establishments of higher education and research, think tanks and international institutions... Connecting such assets to the wider debate is, in the case of maritime security, of great value to the enduring visibility, vibrancy and relevance of Brussels as a meeting place for future-oriented thinkers, ideas and projects.

However, discussing Belgium's interests and contribution to maritime security rules and practices involves definitional issues as well as a transdisciplinary vision that the topic itself does not facilitate. Maritime security is simultaneously broad and narrow. It is narrow as a field of expertise for seafarers and maritime professionals. It is broad as a concept used by academics to account for such different things as (1) good order at sea; (2) absence of maritime threats; (3) securing of sea-related livelihoods and resources; (4) marine environment conservation<sup>1</sup>. Bearing this definitional issue in mind, GRIP and the Egmont Institute convened a first expert roundtable in December 2016, with the view of launching a platform of exchange and action on maritime security.

**This report is the result of this two-panel event. The following pages are not the proceedings of the event. They rather offer a new perspective on maritime security merging wider political considerations with narrower technical concerns and informed by Belgium's experience.**

The report is structured as follows: a first section sets out the general context of the discussions, introducing the issue of maritime security vis-à-vis South China Sea disputes and the potential implications of this award for the international maritime order.

A second section, called "Good order at sea", looks at the political and legal stakes associated to a Court award that was published on July 12 in the context of Sino-Philippines Relations in the South China Sea. The award and its consequences constitute a major stake for all countries who count on a "good legal order at sea" based on the United Nations Convention on the Law of the Sea (UNCLOS) to sustain their economic growth and security outlook. This section recapitulates and freely adapts a series of elements that came to the fore in the first panel, with one priority: keeping Belgian interests and perspectives at the center of the discussions.

A third section digs deeper into the assets and perspectives of and in Belgium, vis-à-vis maritime security. It highlights the perspectives of different stakeholders, i.e. the industry, administration and navy. The section builds upon the contributions of Panel 2, which all had as a priority to find concrete elements in Belgian assets and practices to reverberate further in international discussions.

The content of all sections reflects and enriches the contributions made by participants under the condition of anonymity and, in most cases, as personal comments – not in their official capacity. **It should be read as the result of a free-flowing discussion, not an official position of any represented institution.**

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1. Usefully refer to: Christian Bueger, « What is maritime security? », *Marine Policy*, 53, 2015, p. 159–164.

# 1. THE SOUTH CHINA SEA, EUROPE AND BELGIUM...

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In a much publicized row between China and the Philippines, an arbitral tribunal constituted in The Hague handed over in July an award (hereafter the “July 12 award”) that grabbed the world’s headlines as none other ever had. On legal grounds, the content of the award rapidly appeared of considerable scope. Above all, the tribunal ruled China’s claims and actions in the South China Sea to be inconsistent with the UN Convention on the Law of the Sea (UNCLOS). Then, it also provided clarification on the status – thereby the legal entitlements – of maritime features that several other parties (Brunei, Malaysia, Vietnam, Taiwan) consider, in whole or in part, theirs<sup>2</sup>. On these two accounts at least, the award is decidedly “an extremely rich and fertile piece of international jurisprudence”<sup>3</sup>.

**On diplomatic and political grounds, it proved equally impactful.** For Paul Reichler, the Philippines’ chief counsel in the case, it was “an overwhelming victory”<sup>4</sup>. Meanwhile, Chinese officials labeled the tribunal’s verdict a “farce”<sup>5</sup>. The US State Department saw it as an “important contribution to the shared goal of a peaceful resolution to disputes in the South China Sea”<sup>6</sup> and the European Union reminded of its commitment to “maintaining a legal order of the seas and oceans based upon the principles of international law, UNCLOS, and to the peaceful settlement of disputes”<sup>7</sup>. These varied diplomatic reactions to the award, among many, demonstrated the extent to which the defense of common rules of governance can become problematic when in direct opposition to great powers’ interests and ambitions. By its very nature, arbitration is supposed to be an effective tool of conflict management: in this particular case, a party to the dispute found itself at odds with the process, considering it abusive. For Beijing, this Tribunal constituted under Annex VII of UNCLOS does not have jurisdiction over what is, in essence, a matter of sovereignty.

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2. Award in PCA Case N° 2013-19 in the matter of the South China Sea Arbitration before an Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People’s Republic of China, 12 July 2016.

3. Diane Desierto, “The Philippines v. China Arbitral Award on the Merits as a Subsidiary Source of International Law”, *EJIL: Talk!*, 12 July 2016.

4. Ted Galen Carpenter, “Why the South China Sea Verdict Is Likely to Backfire”, *The National Interest*, 13 July 2016.

5. Liu Xiaoming, “South China Sea arbitration is a political farce”, *The Telegraph*, 23 July 2016.

6. “Decision in the Philippines-China Arbitration”, Press Statement by John Kirby, Assistant Secretary and Department Spokesperson, Bureau of Public Affairs, Washington D.C., 12 July 2016.

7. “Declaration by the High Representative on behalf of the EU on the Award rendered in the Arbitration between the Republic of the Philippines and the People’s Republic of China (15/07/2016)”, *European External Action Service*, 15 July 2016.



It may have appeared paradoxical to some that a clarification in legal entitlements heightened political tensions in Asia. Through the Association of Southeast Asian Nations (ASEAN), East Asia is known to have formally instituted the defense of the “rule of law” and “peaceful settlement of disputes” as overarching principles of intra-regional diplomatic intercourse, as reflected in the Treaty of Amity and Cooperation in Southeast Asia (“TAC”). The reality is that arbitration, in this particular case, was interpreted by one party to the disputes as a political provocation, not a tool for dispute management – even less an adequate instrument for peaceful settlement! In such context, the question of **what tools and mechanisms are left that can adequately be used for effectively managing tensions is of determining importance.**

Regional stability in East Asia is function of the many institutional arrangements that now constitute the regional security architecture, alongside bilateral or “minilateral” security agreements. Nevertheless, it also depends upon the more general “rules of the game” that such institutions and accords complement and adapt to the regional context. Prime among such rules stand UNCLOS and maritime security regulations and practices: the maritime domain is certainly an area of increasing importance to East Asian actors and one where normative frameworks are subject to ever-growing scrutiny. UNCLOS and treaties like SOLAS (Safety of Life at Sea) represent as many milestones in a multilateral effort to institute common rules among states in a truly shared and global marine environment. What the July 12 award further highlighted was that such rules are and remain problematic in several respects and that their implementation is systematically subject to negotiation and mediation. In other words, **while it is in the interest of all states to contribute to a “good order at sea”, its definition and implementation are inevitably competitive endeavors.** What is at stake is deciding “whose” order it is that will eventually prevail, thus whose interests will eventually be best represented in it.

Global governance rules are far from neutral. The fact that diplomatic reactions vis-à-vis the Tribunal’s proceedings and July 12 award were so varied and subject to heavy lobbying contributed to open **new cracks in the rules-based global governance architecture and practices.** For Ambassador Yang Yanyi, head of the Chinese mission to the EU, the award is “illegal, illegitimate and invalid”; it represents the endpoint of a process that, in itself, “undermines the authority and sanctity of [UNCLOS]”<sup>8</sup>. For Manila, the award was to constitute the necessary basis for any substantial negotiation over South China Sea disputes, until political transition (and the coming to power of Rodrigo Duterte) complicated matters further. With this new Presidency came a drastic restructuring of foreign policy priorities, and whatever achievements were attained or expected from the July 12 award have then been put in the backburner, for the sake of enhanced trade and financial ties with Beijing.

Continued stability in the South China Sea is an absolute necessity for global trade. It also constitutes a litmus test for the continued relevance of existing rules of governance in the maritime domain. **On both accounts, Europe has important interests and principles to defend.**

8. Yang Yanyi, “The South China Sea Arbitration : Illegal, Illegitimate and Invalid”, *EUobserver*, 12 July 2016.



As a whole, it is the largest trading bloc globally, with maritime transport carrying more than half of its external trade: close to € 1,777 billion in 2015<sup>9</sup>. It is also, as a Union, part of UNCLOS<sup>10</sup> and defends the Convention in both its “Guidelines on the EU’s Foreign and Security Policy in East Asia”<sup>11</sup> and “Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017)”<sup>12</sup>.

Having acceded to the TAC and being part of several regional arrangements such as the ASEAN Regional Forum, **the EU and some of its member states also consider themselves actors – not mere spectators – of ongoing security developments in East Asia**. Ongoing and developing inter-regional dialogues, strategic partnerships or multilateral forums such as the ASEAN-EU High Level Dialogue on Maritime Cooperation, the EU-China partnership or the Asia-Europe Meeting (ASEM) further anchor European interest and involvement in East Asian security dynamics in agreed-upon frameworks and open discussions. Additional imprints are provided by such new enterprises as the EU “global strategy”<sup>13</sup> or its “maritime security strategy”<sup>14</sup>. This is not to mention the particular initiatives of some European states, like France to take but the clearest example<sup>15</sup>, that have made their Asian policy (or diplomacy in Asia) a political and strategic priority.

Additionally, 2017 has been marked as the **EU-China “Blue Year”**, a year of increased maritime cooperation. The first priority of this Blue Year relates to ocean governance – in direct relation to the EU’s Joint Communication on international ocean governance. The cooperation between the EU and China is expected to enhance maritime space planning while accommodating conflicting interests, to strive for clean and secure oceans and to strengthen maritime research and data. The EU and China should also step up their cooperation in renewable maritime energy; in keeping the Arctic a safe, sustainable and prosperous region; in organization an international “Our Ocean Conference” in Malta; and in maritime culture.

Considering these many developments and factors, **the stakes were high for Europe in relating to the process and end result of the China-Philippines arbitration**. Its common institutions had an agenda and an image to defend, its member states had strong interests to relate to, and both had to uphold their respective (sometimes joint) commitments within the broader Asia-Europe or global governance discussions. Due to the particularities of the arbitration process – a formalized procedure, publicized timeline, transparent membership and motivated decisions –, there was little difficulty in preparing for its award, other than making sure “one’s house is in order”.

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9. Eurostat, “World Maritime Day Half of EU trade in goods is carried by sea”, *Newsrelease*, 28 September 2016.

10. See e.g.: Esa Paasivirta, “The European Union and the United Nations Convention on the Law of the Sea”, *Fordham International Law Journal*, 38 (4), 2015, p. 1045-1071.

11. Available at: [http://eeas.europa.eu/archives/docs/asia/docs/guidelines\\_eu\\_foreign\\_sec\\_pol\\_east\\_asia\\_en.pdf](http://eeas.europa.eu/archives/docs/asia/docs/guidelines_eu_foreign_sec_pol_east_asia_en.pdf)

12. Available at: [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/129884.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129884.pdf)

13. See: <https://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>

14. See: [https://ec.europa.eu/maritimeaffairs/policy/maritime-security\\_en](https://ec.europa.eu/maritimeaffairs/policy/maritime-security_en)

15. See e.g. Yo-jung Chen, “South China Sea: The French Are Coming”, *The Diplomat*, 14 July 2016.

Still, **for the European Union, reacting to the award proved to be extremely challenging**. The European External Action Service (EEAS) had long been preparing for this award, and demonstrating its commitment to a relatively strong-worded communication vis-à-vis South China Sea issues and challenges to the rule of law there (including during the EU-ASEAN ministerial and senior expert meetings)<sup>16</sup>. Yet, when the time came, political conflicts among a few member states led to a dramatic downgrading of the European reaction<sup>17</sup>, which was eventually released on July 15, much later than originally anticipated and with consequences on the credibility of the EU as a coherent international actor. In some European capitals – the *Wall Street Journal* gives the list of Zagreb, Budapest and Athens<sup>18</sup> –, there seems to have been a fear of seeing this piece of jurisprudence affecting their own border disputes or on their privileged relationship with China<sup>19</sup>. Diplomatic engagement, mobilization of expertise in Track-II processes, new and carefully crafted programmatic documents simply did not suffice. Somehow, in the (intergovernmental) political sphere, the momentum was lost.

In few other instances can the opposition between particular interests (expressed in political or economic terms) and a joint commitment to common rules and practices be as plainly apparent. **Problematically, this tension is not going to fade in the near future**. In the aftermath of the Brexit vote, many issues stand in the way of enhanced common action on the global stage for Europe and its Union. The last striking example was when Belgium's Walloon Parliament, demonstrating a lack of coordination between federal and regional political majorities, blocked a free trade agreement with Canada (the Comprehensive Economic and Trade Agreement or "CETA").

The toned-down European communiqué vis-à-vis the July 12 award and the difficult CETA negotiations both make evident that small countries – even small countries' sub-entities – can and do have an influence on international issues. However, these are negative examples: the influence that was demonstrated on such occasions was that of a blocking minority, not the result of strategically organized policies or diplomatic initiatives. There is no way out of this conundrum: **small countries do have a part to play in global governance, one in which their capacity to say no is considerably more potent – and potentially rewarding – than their willingness to say yes**. Negotiating the definition and implementation of common rules of governance is of paramount importance to small countries, who derive from their participation in such formalized processes an importance incommensurate to their actual power or capabilities.

16. Discussions with EEAS officials, Brussels, 2015-2016.

17. The contrast between the July 15 Declaration, "acknowledging" the award, and the March 11 "Declaration by the High Representative on behalf of the EU on Recent Developments in the South China Sea" has been obvious to most observers.

18. Laurence Norman, "EU Issues South China Sea Statement Ending Discord Within Bloc", *The Wall Street Journal*, 17 July 2016.

19. Discussions with EU officials, Brussels, December 2016. Also see: Robin Emmott, "CORRECTED-EU's silence on South China Sea ruling highlights inner discord", *Reuters*, 14 July 2016.

When it comes to those rules that apply in the maritime domain, small countries are no less affected than great powers: the seas and oceans convey most of their trade, contain indispensable resources already used or yet-to-recover, confront their leaderships with new and evolving sovereignty issues, and provide a space of strategic rivalry with neighbors and external powers. Governing the seas will be a fundamental challenge of the 21<sup>st</sup> century. One in which **Europe will have to have a voice, or run the risk of being marginalized.** This challenge is not geographically fixed, of course, but tensions in East Asia or the Gulf of Guinea do link area-specific, concrete issues with the stakes of a discussion that is global by nature. Therefore, the July 12 award and the many issues associated to it should form part of a future-oriented discussion on how to defend European interests and principles in maritime affairs. It should be a springboard from which to dive in a concrete debate on how to redefine the tension between interests and principles in Europe's international image and action. A debate in which small countries have to contribute, and provide a driving force for innovation and cooperation.

## 2. GOOD ORDER AT SEA

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### 2.1 The South China Sea ruling

On July 12, 2016, an arbitral tribunal constituted under Annex VII of UNCLOS published an award in the dispute between the Philippines and China over South China Sea issues. This award is significant for the region itself, but also for the overall structure and practices of maritime security governance. Such a scope imposes that, as an introduction to in-depth consideration of Belgian interests and possible contributions to maritime security governance, it be duly considered in its legal and political contexts.

The Philippines had submitted 15 claims to the arbitral Tribunal. Five of them form the focus here: they relate to (1) China's claim to have "historic rights"; (2) the status of features (islands or rocks, or else?) in the Spratleys archipelago; (3) the operations of Chinese law enforcement vessels; (4) environmental damages; and (5) the escalation of the disputes.

It should also be noted that the Tribunal had issued a preliminary **award on jurisdiction and admissibility** in October 2015. In this first award, the Tribunal clarified that China's reserves and claim that Manila and Beijing had reached a prior agreement on not to reach out to third parties in the settlement of their disputes (via bilateral negotiations and the Declaration of Conduct of Parties in the South China Sea or "DOC", signed between China and ASEAN in 2002), did not constitute barriers to the competence of the Tribunal. In effect, the Tribunal "held that the DOC is a political agreement and "was not intended to be a legally binding agreement with respect to dispute resolution," does not provide a mechanism for binding settlement, and does not exclude other means of settlement. The Tribunal reached the same conclusion with respect to the joint statements identified in China's Position Paper"<sup>20</sup>.

**On China's claim to have "historic rights" in the South China Sea**, the Tribunal ruled that there is no legal or historical foundation supporting the claim. Firstly, the Tribunal clarified that, in its view, much of the historical evidence mobilized by the parties "has nothing to do with the question of whether China has historically had rights to living and non-living resources beyond the limits of the territorial sea in the South China Sea"<sup>21</sup>. Further developing the argument, the Tribunal explained that "because [it] is not addressing questions of sovereignty, evidence concerning either Party's historical use of the islands of the South China Sea is of no interest with respect to the formation of historic rights"<sup>22</sup>.

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20. Award, para. 159.

21. *Ibid.*, para. 264.

22. *Ibid.*, para. 267.

Secondly, the Tribunal noted that: “[...] historic rights are, in most instances, exceptional rights. They accord a right that a State would not otherwise hold, were it not for the operation of the historical process giving rise to the right and the acquiescence of other States in the process. It follows from this, however, that the exercise of freedoms permitted under international law cannot give rise to a historic right; it involves nothing that would call for the acquiescence of other States and can only represent the use of what international law already freely permits”<sup>23</sup>.

China's exercise of its right to freedom of navigation (and exploitation of resources) in what was, before the coming into force of UNCLOS, essentially the “high seas” cannot, therefore, lead to a valid right or title. There is no indication that China enjoyed exclusive control of the waters in the historical time it mobilizes and that such right was recognized by other parties. Furthermore, any such right was forfeited by China when it signed and ratified UNCLOS. The Tribunal reminded parties that:

“The Convention was a package that did not, and could not, fully reflect any State's prior understanding of its maritime rights. Accession to the Convention reflects a commitment to bring incompatible claims into alignment with its provisions, and its continued operation necessarily calls for compromise by those States with prior claims in excess of the Convention's limits”<sup>24</sup>.

**On the features that constitute the Spratley archipelago**, the Tribunal ruled that none can be definitely categorized an island and thereby generate an exclusive economic zone. It found that none of the reefs can either sustain human habitation or economic life of their own. Importantly,

“The Tribunal also held that the Spratly Islands cannot generate maritime zones collectively as a unit. Having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal found that it could—without delimiting a boundary—declare that certain sea areas are within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China”<sup>25</sup>.

This assessment is of considerable importance for it sets a very high threshold for the two criteria set out in Article 121(3) of UNCLOS, i.e. human habitation and economic life of its own. It also determines that “The geological and geomorphological characteristics of a high-tide feature are not relevant to its classification pursuant to Article 121(3)”<sup>26</sup>.

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23. *Ibid.*, para. 268.

24. *Ibid.*, para. 262.

25. Press Release: The South China Sea Arbitration (the Republic of the Philippines V. the People's Republic of China), The Hague, 12 July 2016, p. 2.

26. Award, para. 540.

**On the operations of Chinese law enforcement vessels** in the South China Sea, the Tribunal found that “China has breached its obligations under the Convention by operating its law enforcement vessels in a dangerous manner causing serious risk of collision to Philippine vessels navigating in the vicinity of Scarborough Shoal”<sup>27</sup>. Manila had recorded two incidents in April and May 2012, when Chinese vessels engaged in unprofessional manoeuvres endangering the life of Philippines coast guards. On both occasions, collision was only nearly avoided. This begs the question of a what a “Code of Conduct of Parties in the South China Sea” can bring that would provide a credible safety net against such incidents.

**On environmental damage** brought upon fragile ecosystems in the South China Sea, the Tribunal found that “[through] recent large-scale land reclamation and construction of artificial islands at seven features in the Spratly Islands [...] China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species”<sup>28</sup>. More specifically, the Tribunal declared that, on the issue of the protection of fragile ecosystems, China’s actions in the South China Sea breached Articles 192 and 194(5) of UNCLOS (as per an improper regulation of fishing practices) and Articles 192, 194(1), 194(5), 197, 123, and 206 of UNCLOS (as per the dredging and large scale reclamation it undertook in the seven features it occupies in the Spratleys). This environmental dimension is particularly significant since the last Paris agreement (COP21) includes, among others, binding provisions on IUU (“illegal, unreported and unregulated”) fishing.

**On the escalation of disputes**, the Tribunal found that China “aggravated and extended the disputes between the Parties through its dredging, artificial island-building, and construction activities”<sup>29</sup>, thereby contravening to the spirit of the Declaration of Conduct of Parties in the South China Sea (“DoC”).

**In sum**, the July 12 award substantially challenged China’s legal position in the South China Sea disputes. Yet, with China clearly rejecting the implications of this “piece of paper”, and since the binding award is not backed by an enforcing mechanism, the prospects of China complying to the award appear very remote at best. Actually, with the dramatic reshuffling of the cards that came with Philippines President Duterte’s shift toward Beijing and the uncertain position that the Trump administration may take on the issue, future political use of – and reference to – the award is unclear. Both parties (the Philippines and China) seemingly set on a converging path vis-à-vis their interpretation of their respective rights and obligations under UNCLOS, and vis-à-vis the management of their dispute (toward a political discussion at the detriment of legalistic formulas.

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27. *Ibid.*, para. 112.

28. Press Release: The South China Sea Arbitration (the Republic of the Philippines V. the People’s Republic of China), The Hague, 12 July 2016, p. 2.

29. Award, para. 1181.

Thereby, jurisprudence may be skipped altogether in any future discussion over the disputes, transforming in fact the very process of arbitration into a source of political nuisance rather than a platform for peaceful negotiation – its actual original goal. This prospect strikingly demonstrates the salience of the conundrum mentioned above: whose order is it that will eventually prevail in the South China Sea? Inevitably, the issues of political transition and enforcement beg the question of what arbitration actually is, and what it can reasonably achieve as a dispute management or dispute settlement mechanism.

## 2.2 Arbitration as a conflict management mechanism

**Arbitration is neither good nor bad.** It is not something dangerous. Rather, it is something needed in International Relations. Arbitration settles disputes in different fields, and while the first is probably commercial, its scope is wide enough to accommodate various issues. It is a process, **with which Belgium has historical and particular affinities.**

The **Comité maritime international (CMI)** has been founded in 1897 in Antwerp. While concerned with the unification of maritime law, an important aspect of its activities relates to arbitration. In 2016, the CMI adopted the “York Antwerp Rules 2016” (YAR2016) pertaining to General Average<sup>30</sup>.

The International Chamber of Commerce (ICC) International Court of Arbitration, created in 1923, has also been an important player in the regulation of maritime disputes. Its Belgium office is very active as a provider of commercial arbitration service. There have been 28 cases of arbitration undertaken through the ICC International Court of Arbitration between the 1970s and 1990s that were connected to maritime affairs. Up to the 1990s, Antwerp was an important place for maritime arbitration. However, new maritime regulation spots (London or New-York) have since emerged. How can this shift be accounted for? A probable explanation may partly lie in the fact that the maritime industry consolidated its practices around Common Law, rather than Civil Law – which is prevalent in Continental Europe (and Belgium). Even dredging companies – which represent an important asset in Belgium – experience commercial disputes but would likely tend to seek arbitration elsewhere.

This **competition among arbitration centers** is not peculiar to Belgium, or even Europe. In China, economic growth and increasingly internationalized businesses bring in their wake a growing demand for commercial arbitration service, not excluding

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30. The law of general average is a legal principle of maritime law “where in the event of emergency, if cargo is jettisoned or expenses incurred, the loss is shared proportionately by all parties with a financial interest in the voyage”. Duhaime Law Dictionary.



maritime affairs. When such disputes arise, operators may tend to rely on Hong Kong-based services – perhaps for similar reasons that they prefer London over other European locations. The city of Shanghai is therefore aiming at developing its status and competences as “arbitration place” to keep economic actors close to its shores – and legal system – when negotiating their disputes, notably through the Shanghai International Arbitration Centre (“SHIAC” or 上海国际仲裁中心).

In any arbitration, there is **a lot of negotiation involved** before the proceedings. Arbitrators can even be appointed by parties. In practice, with regards to arbitration over maritime disputes, the legal framework chosen by parties is rarely that of Belgium; it would rather be – as a rule of thumb – the British Common Law system. The question, now that London and Brussels are negotiating a “Brexit”, is whether this practice will hold, and whether it is an option for other European actors to bend this process in their direction. It would reasonably be a difficult endeavor, because many critical actors of the industry (e.g. Lloyd’s) are based in London and would likely refuse any dramatic shift toward other places.

## 2.3 Political and diplomatic stakes

Firstly, as a trading and maritime nation, Belgium has a strong interest in upholding international law of the sea and **orderly manners for managing the seas and oceans**. This principle of orderly managing the seas is a priority for Belgium in its campaign for election at a non-permanent seat at the United Nations Security Council (UNSC). Belgium has in common, with many partner nations, to consider the two issues of (1) developing and safeguarding maritime resources, and (2) fighting climate change as priorities in its global agenda. Belgium is a strong proponent of stricter regulations (and enforcement) vis-à-vis – among others – illegal, unreported and unregulated (IUU) fishing or environmental damages.

Secondly, there is a necessity to manage maritime security with **internationally accepted and recognized rules**. Maritime security requires **predictability**. Looking at the July 12 award, China made clear it would not prompt any change of policy in the region. Actually, China is progressing in its control of South China Sea waters, turning it more and more into what different authors said was in effect a “Chinese lake”<sup>31</sup>. This may well fall under the category of a “grand design” from the Chinese Communist Party (CCP) leadership, in line with the slogan of a “China dream”. The “China dream” seems to imply, in the foreign policy realm, a form of dominance in the neighborhood, a form of dominance Chinese leaders may consider due to them in view of their country’s power and policy. Certainly, the control of South China Sea waters is of critical importance to China in military terms. From its naval and submarine base, in the island of Hainan, it is there that it can project perhaps most effectively its strategic assets, and keep the Sea Lanes of Communication (SLOCs) its economy depends upon in close check.

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31. Gareth Evans, “The South China Sea is not a Chinese lake”, *The Japan Times*, 14 July 2016; Jennifer Lind, “South China Sea as a Chinese Lake”, *New York Times*, 23 August 2016.

Much like the US could project their power abroad as a great power after they had made the Caribbean a “US lake”, China sees strong incentives in securing the area as a platform for further power projection. Since the publication of the award, China has continued its construction activities in the Spratleys, and did not modify its claims on either the South or East China Seas.

Thirdly, **trade lanes should remain open**. Up to now, freedom of navigation and the unimpeded flow of goods and resources was guaranteed in the last resort by the American presence and alliances in East Asia. A balance of power ensured a degree of overall stability and sustainability for the liberal order. Now, with rising powers claiming new entitlements vis-à-vis said order, the challenge of upholding common rules is becoming more complex. China is now raising its international stance through a defense and promotion of norms and international standards more in line with its own perception and interests. This defense of new norms is accomplished back to back with the defense of national interests (not just those of China), perhaps most obvious in China’s “One Belt One Road” (OBOR) initiative. Through OBOR, China will be able to leverage its industrial and financial overcapacity in partner countries. The gigantic amounts of financial resources planned to contribute to infrastructure investments will come with important political implications, not to mention normative and regulatory agreements. What is in effect, for China, a landmark initiative will be, for partner countries, a challenge as much as an opportunity in their growth trajectory.

In view of all three issues (orderly managing the seas; predictability of regulatory framework; unimpeded trade connectivity), Belgium has a strong interest in the evolution of dispute management tools and mechanisms, and in European initiatives vis-à-vis such evolution. Concerning dispute management, Belgium has a stake in global norms and practices, because of the open and internationalized nature of its economy. It also has skills to offer in the defense and enforcement of the rule of law, including in the realm of maritime disputes. Concerning European initiatives, Belgium is in favor of robust common positions vis-à-vis such issues as South China Sea disputes. It does not take sides, nor does it position on sovereignty aspects of the disputes themselves. As with most other European countries, Belgium sees both China and Philippines as important trade and political partners.

## 2.4 Conflict management

On conflict management tools and options, it first appeared from international reactions to the award that the **legal clarification provided by the Court could possibly complicate more than facilitate political negotiations**. From an external perspective, the July 12 award seems to have been an embarrassment for one party and a source of worry for the other.

China has clearly indicated that it would not accept any reference to it, nor would it condone mention of South China Sea disputes in international declarations, documents or initiatives it is part of. Meanwhile, after undergoing a dramatic political change, the government of the Philippines seemed to have fundamentally revised its policy vis-à-vis China and the award. With President Duterte's first official visit abroad taking place in Beijing, both countries – the Philippines and China – agreed on some form of political understanding. Under Duterte, Manila seems set on a new course of action vis-à-vis China and vis-à-vis the international order. The rapprochement between the two countries implies much greater backing and traction for China's two key arguments: on the one hand, disputes should be settled through bilateral negotiations only. On the other hand, parties to a dispute should not seek assistance from third parties or an external court. A similar rapprochement may be at play between China and Malaysia as well, leaving the significance of the July 12 award in question, not to mention the possibility that it be enforced in the near future. Moreover, it appears China is ever since supporting attempts at UN level (through several UN resolutions) to downgrade UNCLOS and ignore it as a universal tool for conflict settlement and as a true reflection of customary international law.

Secondly, such developments have a consequence on **ASEAN centrality**. ASEAN is now divided: since the 2012 Summit when member states could not agree on a joint communiqué precisely because of South China Sea tensions, this division is plainly apparent<sup>32</sup>. Yet, ASEAN cooperation and unity is of considerable importance for regional economic integration. It is also critical in terms of confidence building among ASEAN members and between ASEAN members and external partners. Without a consensus in ASEAN, the prospects of reaching a binding Code of Conduct of Parties in the South China Sea ("CoC") are grim at best.

Thirdly, the **Sustainable development goals** (SDGs) constitute a new, potentially significant, venue for dispute management. Goal 14 demands that state parties "conserve and sustainably use the oceans, seas and marine resources for sustainable development". In the case of the South China Sea, which is simultaneously a source of livelihood for millions of individuals in coastal regions and an ecosystem in grave danger, international cooperation over environmental protection (and commitment to the SDGs) can reasonably constitute an incentive for parties to negotiate a modus vivendi over contested areas. In fact, this could – although it is yet too early to tell – be the direction taken by President Duterte from the Philippines: in late 2016 the President indicated his willingness to declare a marine sanctuary and no-fishing zone at Scarborough Shoal<sup>33</sup>. Sovereignty disputes over Scarborough Shoal are precisely what prompted the Philippines to challenge Beijing's claims in the area through an arbitral court.

32. Nicholas Khoo, "Manila's Pyrrhic Victory: ASEAN in Disarray over the South China Sea", Asia Maritime Transparency Initiative, 6 October 2016; Michael Martina, Manuel Mogato & Ben Blanchard, "CORRECTED-ASEAN breaks deadlock on South China Sea, Beijing thanks Cambodia for support", *Reuters*, 26 July 2016; Sukmawani Bela Pertiwi, "Is ASEAN Unity in Danger From the South China Sea?", *The Diplomat*, 3 August 2016.

33. Mike Ives, "Philippines to Declare Marine Sanctuary in South China Sea", *The New York Times*, 21 November 2016; Charmaine Deogracias, "Fishery accords during Duterte China visit way forward in South China Sea dispute", *PhilStar*, 19 October 2016.

A fourth venue for confidence building and possibly conflict management is provided by **capacity building needs** and initiatives. There is indeed an identified need for capacity building initiatives in the region, most strikingly in the two areas of (1) environmental cooperation and (2) maritime security. On both realms, Belgium and the European Union can – and do – contribute substantially and innovatively.

To take one example of an initiative trying to explore all such options and more, ASEAN and the EU have set up a so-called **“ASEAN-EU High-level Dialogue on Maritime Security”** (HLD-MS) which is gaining momentum and provides a useful platform of discussion for maritime security stakeholders from both regions. The ASEAN-EU HSD-MS is not a capacity-building initiative; it is a political-diplomatic forum. Yet, it has rapidly moved from general discussions on such issues as South China Sea tensions to technical issues like port security, best practices in the securing of international straits, monitoring of problematic areas, etc. The ASEAN-EU HLD-MS is a rather successful initiative whereby European stakeholders engage their Southeast Asian counterparts – and vice versa – on the practicalities of ensuring maritime security. The forum is not limited to Asian waters, and recent conversations have included greater consideration over the EU’s management of the refugee crisis in the Mediterranean; an experience (in both its good and bad aspects) that can be useful to Southeast Asian countries now confronted to similar problems. The Indonesia-Malaysia-Singapore cooperation in securing the strait of Malacca has been another source of lessons learned that were shared to the benefit of European partners.

Such specific experiences provide “sticking points” to such inter-regional discussions, and Belgium can bring useful material on the table in this respect. When it comes to port security training and exercises, the port of Antwerp can legitimately claim a recognized expertise, as it was tasked by the European commission to edit a “handbook of maritime security exercises and drills”<sup>34</sup>. In terms of conflict management, Belgium can discuss the agreements it has reached with Holland on such sensitive matters as navigation in the Scheldt river or “land swap”<sup>35</sup>.

The EU-ASEAN HLD-MS is supplemented, at the inter-regional level, by programs of exchanges, visits and targeted assistance. However, any effort geared toward a reinforcement of cooperation or coordination in these spheres should also consider the policy of those powers that are closer and more involved. Of particular interest to the region and Europe will be the future policy of the Trump administration. If the “rebalancing” option is dropped by the White House, then what? In all likelihood, a downsized US presence would leave far greater opportunities and space for other powers to assert their claims and develop alternative rules for the region. This normative uncertainty is potentially detrimental to the full realization of Europe-Southeast Asia collaboration in maritime affairs and to the development of a more substantial inter-regional dialogue on political and security affairs.

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34. Available on the Port of Antwerp’s website, here.

35. AP, “Belgium and the Netherlands swap land – because it ‘makes sense’”, *The Guardian*, 30 December 2015; Will Worley, “Belgium and the Netherlands just resolved a centuries-old border dispute completely peacefully”, *The Independent*, 29 November 2016.

## 2.5 European positions

Summarily, **the EU does not take sides in the disputes of parties in the South China Sea**, but it stands for international order, for the respect and application of UNCLOS, for the peaceful settlement of disputes, and it is supporting ASEAN's bid to reach a CoC. This position has been consistent and is reflected in the High Representative's diverse statements on the region, as well as in the EU's guidelines and plan of action vis-à-vis East Asia and ASEAN<sup>36</sup>. As noted above, the EU also staked much of its credibility as a political-security actor in Asia in maritime security cooperation, through the ASEAN-EU High Level Dialogue on Maritime Security.

However, when the July 12 award was published, and despite extensive prior preparation and anticipation, it took the Union four days – three and a half some would argue – to reach a consensus and publish an official statement. The statement also appeared unusually lax and toned down. Several media reported that last minute divisions had come up within the EU; that such countries as Greece and Hungary voiced opposition to any statement that would appear too critical of China, and that Croatia and Slovenia suddenly found themselves concerned that a strong European endorsement of the July 12 award would affect their own bilateral dispute<sup>37</sup>. It so appears that these countries would not accept a statement recognizing too ostensibly the binding nature of the ruling. Matters were further complicated by the fact that the negotiating team and leading EU officials were at Ulaanbaatar for the 11<sup>th</sup> Asia-Europe Meeting (ASEM) summit.

While it is difficult for observers not to see this mishap as (at least partly) the product of intense Chinese lobbying<sup>38</sup>, it constitutes a direct hit at the **credibility of European institutions and member states vis-à-vis their Asian partners**, and a strong rebuke of the EU's efforts at establishing itself as a political and security actor in East Asia. As an active international actor concerned with both the sustainability of its good relations with Asian partners and the continued relevance – and development – of the EU as a credible civilian power, Belgium has to relate to and position itself vis-à-vis this issue of arbitration. The question is: how?

Firstly, there is the possibility of seeking to attract London-based arbitration services in the wake of the Brexit vote. Paris and other European capitals attempt to raise their own profile in order to achieve such a shift to their advantage. Belgium used to have a positive reputation in the realm of maritime disputes arbitration. Can this heritage be further leveraged in the economic and diplomatic sphere today? It is of course an open-ended question. Importantly enough, what should matter most in any further debate on this issue is not whether Belgium can indeed bring more arbitration cases in Brussels.

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36. See the “Guidelines on the EU's Foreign and Security Policy in East Asia” and “Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017)”.

37. Robin Emmott, “EU's statement on South China Sea reflects divisions”, *Reuters*, 15 July 2016.

38. Theresa Fallon, “The EU, the South China Sea, and China's Successful Wedge Strategy”, *Asia Maritime Transparency Initiative*, 13 October 2016.

Rather, it should be that Belgium try and bring the implementation of arbitration cases closer to its shores. Belgium can play a greater role on implementation rather than actual tribunals.

Secondly, besides arbitration, there is the possibility of political and diplomatic mediation, which can offer other venues for Belgian inputs and contributions. Belgium will not, on its own, challenge either China or other parties. But it has a stake in the continued relevance of UNCLOS and the rule of law. On both UNCLOS and “the rule of law”, Belgium can legitimately claim to have specific skills and expertise.

Within or through European-sponsored forums, such as the EU-ASEAN High-Level Dialogue on Maritime Security, Belgium can bring functionally pertinent assets.

## 3. MARITIME SECURITY

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For the Directorate General Shipping of the Belgian Federal Public Service (“FPS”<sup>39</sup>) for Mobility (“DG Shipping”), maritime security aims at improving the security of international trade and of the ships used for traffic and associated port facilities in the face of threats of intentional unlawful acts.

**It is important to discriminate between maritime security and maritime safety**, which are two distinct concepts. Maritime security relates to man-made incidents and threats. Maritime safety relates to the perils encountered at sea, the “acts of god” so to speak (extreme weather events, navigation hazards, etc.). The threat of piracy is at the intersection of both realms.

Bearing this definition in mind, Belgium has been at the forefront of global efforts toward reinforcing maritime security for international shipping, through at least three channels. The first is regulatory. Belgium has subscribed to global and European maritime security regulation in a prompt and diligent manner. The second is organizational. Belgium does have at its disposal a series of organs that allow for policy coordination and harmonization among the many actors involved. Due to Belgium’s peculiar political and institutional set-up, this is an interesting area for further discussion at the international level. The third relates to best practices, which Belgium is happy to share. It has set up an efficient system of information sharing for its ship register – “BEMTAR” – which represents an example of civil-military good cooperation. It has developed an innovative and efficient partnership with its neighbors on monitoring the security and safety situation in its maritime area. With Holland, Belgium consolidated a naval pooling and sharing agreement that is proving its worth.

### 3.1 Regulation

After the shock of the terrorist attacks in New York on September 2001, the international community realized the vulnerability of shipping to the threat of terrorism. In December 2002, within the International Maritime Organization (IMO), 180 state parties agreed on a modification to 1974 the Safety of Life at Sea (SOLAS) Convention, whereby a new chapter was added. This chapter, Chapter XI-2 “Special measures to enhance maritime security”, provided, inter alia, for an **International Ship and Port Facility Security Code (ISPS Code)**. The ISPS Code is a two-part document instituting minimum security arrangements for ships, ports and government agencies.

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39. Since the major administrative reforms of 2000 (“Copernic reforms”), most Belgian ministries – to the exception of the Ministry of Defence – were renamed “Federal Public Services” (FPS). They are still headed by a minister and their mission are similar.



A first part contains mandatory provisions, while the second part provides guidance for implementation. It thus forms “the basis for a comprehensive mandatory security regime for international shipping”<sup>40</sup>.

This initiative was rapidly translated into European regulation: (1) the “Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security”<sup>41</sup> and (2) the “Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security”<sup>42</sup>. By 2007, Belgium had achieved the translation of said regulation into its own body of legislation. The product were the two main foundations of maritime security regulation in Belgium: the law on maritime security of February 5<sup>th</sup> 2007<sup>43</sup> and the Royal Decree of February 21<sup>st</sup> 2007<sup>44</sup>.

With this law and Decree, a national authority on maritime security is established and port inspections are regulated. Belgium thereby instituted a national authority for maritime security as well as local committees. The National authority is composed by officials from DG Shipping (FPS Mobility), the Crisis centre (FPS Internal affairs), the State Security Service (FPS Justice), Customs (FPS Finance), Navy (Ministry of Defence), Environment (FPS Public Health) Bilateral Affairs (FPS External Affairs), the Coordination Unit for Threat Assessment or “CUTA” (joint FPS Justice and FPS Internal Affairs) and the Federal Police. Representatives from the Regions (Wallonia, Flanders and Brussels-Capital) and from local committees are invited to the Authority’s reunions, but without voting power.

Local committees for maritime security are composed, at minimum, of the Harbour Master and representatives of the local police, the federal police (navigation unit), Customs, State Security Service and the managing authority of port facilities. All Belgian ports (Antwerp, Brussels, Charleroi, Gent, Genk, Hasselt, Liège, Oostende, Zeebrugge) as well as riverine waterways are subject to the ISPS Code.

**Two distinct units compose Belgium’s coast guard: the Maritime Rescue Coordination Centre (MRCC), based in Oostende and responsible for maritime safety as well as for the coordination of Search and Rescue operations; and the Maritime Information Crosspoint (MIK), based in Zeebrugge and responsible for maritime security.** The MRCC is under the responsibility of the Flemish Region while the MIK is under the responsibility of the Ministry of Defence (Naval Operations Command). Maritime security is therefore an issue that is managed at the federal level, contrarily to maritime safety. It allows for smoother cooperation with international partners under the Boon Agreement for instance – through which North Sea coastal states and the European Community offer each other mutual assistance and cooperation in combating pollution. The MIK and MRCC cooperate closely.

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40. “SOLAS XI-2 and the ISPS Code”, *International Maritime Organization*.

41. Available here.

42. Available here.

43. Available here.

44. Available here.

Further regulation was prompted by the “Pompeii incident”, whereby in 2009 a Belgian registered ship – dredger Pompeii, which was on its way to South Africa from Dubai – was hijacked and its crew held hostage by pirates. The Law of 16 January 2013 on the repression of maritime piracy protects Belgian flagged vessels against pirate attacks in designated waters, by allowing private armed guards on board of these ships. This law comes with several royal and ministerial decrees regulating the procedures and the certification of private armed guard companies. Since the introduction of the law, no vessel with private armed guards on board was subject to a pirate attack. Belgium has been among the first countries to allow private armed guards on-board of its ships.

**Of course, Belgium collaborates extensively with international partners on this issue.** For example, DG Shipping is very active within EU institutions, as per the European Maritime Security Strategy. It also participates in the Maritime Safety Committee of the International Maritime Organization, the international working group on piracy and the working group on maritime cyber security.

## 3.2 BEMTAR

In order to tackle the issue of piracy and other possible threats to Belgian flagged ships, Belgium has set up a specific organ: **BEMTAR (“Belgian Maritime Threat Awareness and Response”)**. BEMTAR aims above all at focusing pertinent information from diverse sources and convey it to its ship register. It also represents a textbook case of efficient civil-military cooperation. BEMTAR is an information platform in which DG Shipping, the Belgian Navy and the CUTA (intelligence analysis) work together to give the most accurate and up to date information to all Belgian vessels. It is described by Flemish regional authorities as such:

“BEMTAR informs Belgian flagged ships of the maritime security situation, monitors Belgian flagged ship worldwide and provides threat awareness to Belgian shipping owners. BEMTAR is the single point of contact for shipping owners, passing questions through to relevant partners and providing the answers within the shortest possible delay. BEMTAR operates under supervision by the Federal Public service for mobility and transportation (*Federale overheidsdienst mobiliteit en transport - FODMOB*)”<sup>45</sup>.

In practice, when a possible danger arises, a demand is formulated that is forwarded to the CUTA. CUTA then proceeds to its own analysis. Based on CUTA’s assessments, together with information collected from open source databases, the Belgian navy and DG Shipping jointly develop a report. Information can also be collected from confidential sources, accessed via the Navy’s alliance commitments. The Navy is responsible for the translation of this threat assessment into an unclassified version in line with NATO’s concept of Naval Cooperation and Guidance for Shipping (NCAGS) and Allied Worldwide Navigational Information System (AWNIS).

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45. *Notices to Mariners, N°1*. Ostend: Vlaamse Hydrografie, 7 January 2016, p. 34.

The non-confidential report is sent to all Belgian vessels in proximity to the possible danger situation, so they can react according to their procedures. The demand for CUTA assessments can also come from a private shipping company. When they have to send a ship to a possible dangerous environment, they can ask for a situation report. It is then expected that the company would provide as much information as it can on the situation it wishes to be briefed on. Through BEMTAR, relevant authorities will provide this report as soon as possible, after CUTA provided its threat assessment. In short, there are two “push and pull” procedures<sup>46</sup>: the “push” option is when CUTA is notified of a particular threat situation and BEMTAR then communicates its report to Belgian flagged ships. The “pull” option is when a maritime actor asks for a specific report which BEMTAR will endeavour to provide according to the information it will then seek.

Through the BEMTAR platform, Belgian authorities have the exact position of all Belgian-flagged ships globally, with the overlay provided by the monitoring of the piracy situation and related challenges. **If and when needed, a maritime security picture can be forwarded to Company Security officers (CSOs) so that they can warn ship captains of their threat environment.** In case of imminent danger, this communication can be initiated by phone. No other flag is in the loop. This system is specific to Belgian flagged ships, the national register representing a substantial number of oilers and gas carriers.

BEMTAR was recently put to use after several rockets were fired against ships in the Bab el Mandeb, from Yemen. An analysis was made and then communicated to all ships passing through these waters. Another example was off the coast of Libya. Several incidents were recorded in the area, including a series pertaining to the “new Libyan Navy”. In late 2016, the NGO Sea Watch reported that the Libyan Coast Guard attacked a boat full of migrants. According to the NGO, “coast guards were seen hitting migrants and causing the deflation of the vessel. The attack led to the drowning of approximately 30 people”<sup>47</sup>. The new Libyan navy also acknowledged having fired shots at and boarded a NGO-operated search and rescue (SAR) ship, the Bourbon Argos, on 17 August 2016<sup>48</sup>. Other such developments might have gone unnoticed, posing nonetheless a substantial threat to international shipping in the area, at least in potential terms. BEMTAR made a report on these developments and raised the ISPS level for ships cruising in these waters.

Not all European nations have similar systems to BEMTAR. Some have for instance entrusted this mission to private service suppliers (Holland) while others rely exclusively on confidential information (UK and France). BEMTAR is therefore a useful case study, as much as a potential model – among others – for many maritime clusters in Europe and beyond.

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46. Ibidem.

47. “Report of Libyan Coast Guards attacking migrants raises concerns over continued cooperation within Operation Sophia”, ECRE, 4 November 2016.

48. Patrick Kingsley and Chris Stephen, “Libyan navy admits confrontation with charity’s rescue boat”, *The Guardian*, 28 August 2016.

### 3.3 Cyber security and the maritime domain

One of the most pressing security issue today in the maritime domain pertains to cybercrime. **With the ever-increasing informatization of ships and port facilities comes the question of their vulnerability to cyber-enabled attacks.**

Belgium is aware of this issue and works with international partners on developing and drafting the necessary international legislation to protect maritime assets (vessels and facilities) and people against cyber-attacks. Such work is mainly, but not only, undertaken within the IMO.

**Cyber-attacks can take many guises.** An example of how this new type of criminality can unfold is provided by a case of cyber-enabled piracy off the coast of Nigeria in early 2016. Heavily armed men attacked a container ship from a fast skiff. Counterboarding and antipiracy measures were initiated by the container ship but did not prevent pirates from boarding. The crew was able to reach the citadel and lock themselves up. Pirates, however, were not seeking to capture them so as to demand ransoms. Rather, they spent very little time on-board the ship. By the time they had left, the crew realized they had stolen the content of specific cargo containers – where the most valuable goods were stored. Pirates had a prior knowledge of the cargo. It was later confirmed that they had hacked the content management system of the company operating the ship and, once on-board, located valuable containers by bar code<sup>49</sup>. This type of attacks does seem to be increasing.

The problem with cybersecurity is, perhaps above all, one of language. The Maritime and Information technology (IT) communities relate to very different grammars, with few common references. The cybersecurity industry loves jargon. For actors of the maritime realm, this jargon is hard to relate to. An important first step toward greater cybersecurity within the maritime community is thus to demystify the subject and present it in a way that is not only interesting and engaging but also jargon free (to an extent).

Cyber is increasingly being recognized as everyone's problem, not just an IT problem. Maritime companies expect more and more from their employees to behave in a way that is "cyber safe". Problematically, the concept may appear unpalatable to those with little appreciation of what constitutes "risk" or "threat" in cyberspace. As in all other business environments, the most common threat to the integrity of a system or network is the careless behavior of an individual unaware of the risks involved in, e.g., browsing problematic websites, clicking on suspicious links or downloading compromised email attachments. With the gradual decline of traditional scamming methods online, hackers and cybercriminals seem to be adjusting to an evolving environment by joining other illegal organizations, including terrorist groups, to "keep the money flowing".

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49. Christopher Miller, "Pirates turn hackers when targeting ships at sea", *Mashable*, 4 March 2016.

Such a trend had already been identified in Somalia, but it has seemingly spread across Africa at a rapid pace. The container ship attack mentioned above is the proof that such development is at play, with major implications for the maritime industry.

Another vulnerability is one pertaining to social media. With a continued pressure on operators to provide increased internet access for crews away from home, there is a heightened risk that crewmembers' online posts provide third parties with confidential or sensitive information about their ship's whereabouts or contents.

Areas of specific interest to Belgium in this context include (1) awareness building, (2) training and education, and (3) development of guidelines. While aware of the risks in general, maritime companies might not grasp the specificities of the cybersecurity issue for their operations and business model. Public authorities and port facilities management bodies should also understand their stake in this unfolding threat environment. All the more so that such regulating or managing actors, once compromised, risk contaminating a series of other, private and/or public, actors.

Both ship- and shore-based staff would benefit from additional training and education on cybersecurity. What are the vulnerabilities of the network or system they are part of? How can they ensure a "cyber safe" behaviour within it?

At last, within IMO, member states and other associations like Bimco<sup>50</sup>, are developing international guidelines on cybersecurity. Belgium relates strongly to such efforts, as they attempt at setting out minimum standards for companies and public authorities.

**Cybersecurity has not yet been integrated fully in the BEMTAR process, but in the future it should.** BEMTAR will evolve according to the evolution of the threats it identifies. Another issue might for instance be the use of drones by pirates<sup>51</sup>.

## 3.4 Industry and military

From the perspective of the industry, **Belgium's contribution to the global debate on maritime security can simply not avoid the issue of capability.** Promoting best practices and guidelines is an apt argument, yet one that does not suffice in itself. Naval power should provide for ultimate back up to other maritime actors and ensure a sufficient level of deterrence or surveillance for civilian stakeholders. This issue of capability is not only tied to the buying behavior of a state but also to its industrial policy.

Assets such as ships or radar systems are one part of the story. Maintenance, repair and overhaul (MRO) are another. Yet another is the industrial tools and competences that are available in a country that design and produce the asset in question.

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50. Baltic and International Maritime Council (BIMCO) is the largest of the international shipping associations representing ship-owners, with more than 2,200 members. It represents 65 percent of the world's tonnage.

51. Kelsey D. Atherton, "Pirates of the Near Future will use Drones", *Popular Science*, 12 February 2016.

Belgium has specific interests to defend. It also proved **reliable and efficient in its contributions to international efforts**. Through its participation to EUNAVFOR MED (Sophia) and EUNAVFOR Somalia (Atalanta), Belgium has raised its international profile and perfected a series of competences. It is also very active in Mine counter-measure (MCM) operations, such as in Standing NATO Mine Countermeasures Group 1 and 2.

Looking forward, the question is how Belgium can ensure the visibility and flexibility of its contributions to international naval operations in a global context that is undergoing profound changes. Belgian competences in MCM operations are recognized among its international partners as world class. It is in Ostend that EGUERMIN, the Belgian-Netherlands Naval Mine Warfare school, is based. Since the mid-2000s, EGUERMIN is recognized as NATO's Naval Mine Warfare Centre of Excellence.

What is all the more interesting about this competence is that Belgium has developed with neighboring Holland an integrated command, common training and maintenance facilities for frigates and mine hunters (Benesam)<sup>52</sup>. **The naval cooperation between Belgium and the Netherlands, dating back to 1948, involves an innovative pooling and sharing arrangement**. Both countries recently agreed, inter alia, on a joint naval acquisition process<sup>53</sup>. While Holland will oversee the acquisition of new frigates, Belgium will take the lead on the procurement of new mine hunters. How Belgium and Holland take this partnership in the following two to three decades will probably be of considerable interest to their European and NATO partners, not to mention Asian interlocutors. Presently, the European Commission is heading a policy of consolidation of a European Defence Technological and Industrial Base (EDTIB), where the BENESAM experience can provide models and best practices.

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52. Sven Biscop, Jo Coelmont, Margriet Drent & Dick Zandee, *The Future of the Benelux Defence Cooperation*. Brussels-The Hague: Clingendael/Egmont Report, April 2013.

53. Taylor Moore, "Netherlands, Belgium Join on €4 Billion Military Ship Purchase", *NLTimes*, 16 November 2016.

# CONCLUSION

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Against the background of an unfolding “Asian century” – indeed a “Pacific century” – Belgium has interests and principles to defend, in a global conversation covering stakes and issues that far outstretch the capabilities of its diplomacy, security forces or academic institutions. From such assessment, there can only be one way up: finding added value, niche activities, comparative advantages where they are, in such a way that they find their right place in international forums and dynamics.

In Asia-Europe relations, a prime locus of attention is maritime security, as a critical – and expanding – policy space and a developing diplomatic/legal issue. In times of growing maritime threats and opportunities, maritime security connects economic actors to political decision makers, administrative staff, institutional frameworks, military forces and security agents in new and complex ways. As a “container concept”, it is also the object of academic and policy research. These fast evolving articulations imply a dose of international connectivity and cooperation perhaps never seen before.

In an attempt to link the experience and specific competence present in Belgium in the realm of maritime security to the global discussion on the matter, GRIP and the Egmont Institute partnered to organize a two-fold expert discussion. Triggered by a scrutiny of recent developments, most strikingly the July 12 award on the China-Philippines dispute in the South China Sea, the discussion focused on two overarching interrogations. Firstly, when talking about maritime security and “good order at sea”, whose order is it that we promote and/or seek to preserve? In other words, what space is there to question the spatial and/or political underpinnings of maritime regulations and practices? Secondly, are there concrete elements – pertaining to either experience or expertise – that Belgium can contribute to the overall maritime security debate, especially in the framework of a Europe-Asia discussion?

To the first question, the different contributors opposed multifaceted approaches. Unsurprisingly, there is no clear-cut and definitive answer to be found in current debates and negotiations. Discussions therefore revolved around five key themes: (1) the scope of the July 12 ruling; (2) its relation to ongoing discussions over the practice of international arbitration; (3) its overlap with political and diplomatic stakes; (4) its implications on existing conflict management mechanisms in East Asia and beyond; and (5) European positions.



What appeared from these discussions was that the July 12 ruling was an impactful event, with immediate ramifications on the maritime order Belgium – as a European country and on its own – seeks to preserve and develop. While “good order at sea” is a consensual objective to virtually all maritime nations, the definition, interpretation and implementation of this order is subject to a series of resistances, competitive initiatives and confrontational stances. The July 12 ruling contributed to widen cracks in the current rules-based global governance architecture and open new ones, leaving open the question of what best practices remain to actually manage and settle substantial maritime and territorial disputes – if not arbitration.

European diplomatic and political reactions to the July 12 ruling demonstrated the intricacies and complexity of the stakes involved. Despite of the huge interest displayed by European institutions in actively engaging East Asian and Southeast Asian partners over the issue, and despite their mandate to do just that, some of its member states were reluctant to endorse a common position that could be considered too hostile vis-à-vis China. In this light, maritime security is more and more a diplomatic and political issue, making conflict management mechanisms a prime issue of concern and policy relevance. Over such mechanisms, Belgian and European interests and experience can prove extremely useful, in terms of arbitration (with the Comité maritime international that was founded in Antwerp in 1897 or the International Chamber of Commerce International Court of Arbitration), mediation (through private service providers), maritime governance (through UN bodies, collection of best practices, capacity building, exchange of information...), development (e.g. via European commitments to the Sustainable Development Goals), regulatory cooperation or diplomacy (most notably through the “ASEAN-EU High-Level Dialogue on Maritime Security”).

In response to the second question, concerned with practical venues for cooperation and information-sharing, this seminar raised four particular issues: (1) regulatory adaptation and innovation; (2) information sharing in the maritime domain; (3) cyber risks; and (4) the problematic of capability. On all four accounts, Belgium has specific assets to promote. Firstly, Belgium proactively engaged its international partners to align their regulations over maritime security. Moreover, its peculiar institutional setup did not prevent it from developing integrated and complementary structures in charge of maritime safety and security. Secondly, Belgium developed a particular system for the vessels in its registry: the unique “Belgian Maritime Threat Awareness and Response” (BEMTAR) system. Through it, Belgian-flagged vessels enjoy a picture of their maritime threat environment that is in line with international best practices and can be rapidly operationalized. Thirdly, with regards to cyberthreats to maritime operators, Belgium shares an overall concern with its international partners and supports the possibility of developing multilateral discussions on awareness building, training and education, and the development of specific guidelines. Fourthly, in the realm of capacity, Belgium has long spearheaded the quest of greater integration across borders, i.e. “pooling and sharing”. Via its experience in “Benesam”, the cooperative scheme it has set up with Holland, Belgium can provide models and returns from experience of particular interest to institutional, industrial, political and diplomatic partners, in Europe and beyond.

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## MARITIME SECURITY : Belgium's interests and options

Good order at sea is critical to the trading interests of virtually every economy on the planet. The maritime domain is the next “great frontier” of global growth. Yet, at a time of ever increasing connectivity between societies and economies, **smaller countries too seldom see their particular interests and status scrutinized in the wider debate over “whose order” should prevail at sea.** There is an intrinsically political dimension to the “ordering of the global commons” that can simultaneously consolidate or erode existing practices of global governance, with huge ramifications into the economic realm.

As a trading nation with a strong maritime tradition (half of its trade is seaborne), a self-styled champion of regional integration, a proponent of the rule of law, and a pioneer in naval “pooling and sharing” practices, Belgium has a lot to contribute to the ongoing global discussion on maritime security. It has skills, experience and resources to share, that can provide useful additions, in terms of perspective and substance, to conflict prevention and conflict management perspectives in the maritime sphere.

Discussing specific interests and contribution to maritime security rules and practices involves definitional issues as well as a transdisciplinary vision that the topic itself does not facilitate. Maritime security is simultaneously broad and narrow. It is narrow as a field of expertise for seafarers and maritime professionals. It is broad as a concept used by academics to account for such different things as legal regimes, the confrontation of maritime threats, environmental conservation or socio-economic issues. Bearing this in mind, GRIP and the Egmont Institute convened a first expert roundtable in December 2016, with the view of launching a Brussels-based platform of exchange and action on maritime security.

**The present report is the result of this two-panel event. The following pages do more than just compile proceedings; they integrate different perspectives so as to foster a coherent, yet by no means exhaustive or comprehensive, view of Belgium's assets and experience. The end-product should provide policymakers in Europe and abroad a useful example of what a small country like Belgium can contribute to the global debate on maritime security.**