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NON-CITIZENSHIP IN THE EU: IRRELEVANT, A DRIVING FORCE FOR DISPLACEMENT OR A PRETEXT FOR INTERVENTION?

Katalin Berényi

ABSTRACT

This paper sheds light on the ambiguous status of non-citizenship and its multifold implications. Non-citizenship persists in the Baltic successor states of the USSR where large Russian-speaking populations were left without an effective nationality once independence was restored. This piece advocates for the relevance of addressing this tangible issue in the context of human rights, displacement and regional stability. The author reflects on whether being stuck in the grey zone, somewhere between citizenship and statelessness may give an impetus for the non-citizens of Latvia and Estonia to migrate to other EUMS or to the Russian Federation legally or under irregular circumstances in pursuit of a better life. Further to this, the paper explores Russia's interests in guaranteeing visa-free travel for alien passport holders and other endeavors to propagate the situation of ethnic Russians deprived of the protection of an effective nationality as a pretext to intervene in the Balticum. The paper concludes that unless non-citizens are granted vital political and economic rights in the Baltic EU Member States, non-citizenship remains a threat to regional stability on a larger scale, as well as an incentive for further displacement.

Keywords: nationality, non-citizenship, statelessness, European Union, Russia, Russian Federation, Balticum

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Introduction

The scale of statelessness in the European Union is most apparent in the successor states of the USSR: Latvia and Estonia. After 1991, while Lithuania granted citizenship to all its citizens at the time of independence, Estonia and Latvia introduced extremely strict nationality laws based on the *ius sanguinis* principle. In addition, the choice of legal continuity resulted in the re-establishment of inter-war citizenship laws according to which persons who were not descendants of those who were citizens of Latvia and Estonia prior to World War II fell within

the vague category of *non-citizenship*. Although it was initially established on a temporary basis to deal with the controversial issue of former USSR settlers, the situation of non-citizens remains an unresolved case which has been subject to broad policy debates both within the Baltic societies and in the international arena.

By principle non-citizens may not be viewed as foreigners or stateless persons but as *individuals with a specific legal status*. Noteworthy, their social rights and benefits are nearly identical with those generally inherent to an effective nationality and thus do not differ considerably from the social entitlements enjoyed by Latvian and Estonian citizens. Non-citizens are also granted the right to acquire a travel document, to reside in the Baltic States without visa or residence permit, to return, to have diplomatic protection abroad, to obtain Latvian citizenship through naturalisation, and are entitled to pension and unemployment benefits. In addition, non-citizens have been granted the right to preserve their native language and culture provided that it is in line with national law. Non-citizens, on the other hand, are not entitled to benefit from long-term mobility and are excluded from participating in political life, enjoying no electoral rights.

Looking at the situation of non-citizens in Latvia, as of May 2018 based on the World Population Review there are about 290,000 non-citizens residing in the country which represents 14% of the population.¹ This number in comparison to the 720,000 non-citizens estimated by the population census carried out in 1995 (which marks the beginning of the naturalisation process) suggests a slow but permanent reduction in the number of non-citizens residing in Latvia. It also constitutes a great progress within the Latvian society regarding the social inclusion of non-citizens into the mainstream society. In compliance with the objectives of the 1961 Convention, Latvia continues to encourage non-citizens to apply for citizenship both through legislative amendments facilitating naturalisation and language tests while engaging in public awareness-raising campaigns. Measures promoting naturalisation in Latvia with special regard to children resulted in increased naturalisation rates over the course of the past years.

In 2012 a referendum was initiated on the automatic granting of Latvian citizenship to non-citizens by the *For Human Rights in United Latvia* party but it was banned by the Central Elections Commission under the pretext of security reasons and insisting that it contradicted the principle of continuity guaranteed by the Latvian Constitution. Nevertheless, in order to

¹ <http://worldpopulationreview.com/countries/latvia-population>. (Accessed on 5 May 2018)

reflect on the developments and expectations, the Saeima (Latvian Parliament) adopted the Amendments to the Citizenship Law in May 2013. On the one hand, it aimed at extending the scope for dual citizenship in order to sustain ties with Latvian citizens settling down in other EUMS after EU accession, allowing to have dual citizenship under certain circumstances. On the other hand, the amendments provided for the further simplification of citizenship acquisition and the naturalisation process of non-citizens.

To shed light on recent developments on this issue, the current **Latvian president Raimonds Vejonis** has been making tremendous advocacy efforts since 2016 to push the Saeima to establish the rights of non-citizens' new-borns Latvian citizenship to be granted automatically at birth (unless the parents choose for the baby the citizenship of a different country). In June 2017, he restated his call to put an end to the issue of Latvian children with non-citizen status being born in the country. The Saeima has shown little intention of developing the due legislation, therefore, the president decided to use his presidential right to propose legislation himself (Public Broadcasting of Latvia June 2017). Accordingly, *President Vejonis proposed legislation to the Saeima providing for the granting of automatic citizenship to all new-borns in Latvia from June 2018, regardless of whether their parents were non-citizens*. Nonetheless, after casual talks with only two speakers, the *President's initiative was rejected by the Saeima in late September 2017*. In terms of the voting, 39 of the 100 members of parliament voted to move the proposals forward, 38 voted against and 14 chose to abstain. The numbers of supporters of the proposal were insufficient to proceed in the legislative process, which would have required support from half the chamber (Public Broadcasting of Latvia June 2017).

Nexus between non-citizenship, statelessness and displacement in the European context

The lack of an effective nationality (*de facto* statelessness) generally excludes a person from the protection of a state and a wide range of rights and benefits inherent to a nationality. Therefore, a person who is not considered as a national by any state will find him/herself more vulnerable to human rights violations. Considering that having the right to a nationality is essential to the enjoyment of *other basic human rights*, statelessness or the lack of an effective nationality directly interferes with the enjoyment of other human rights, while constituting a human rights violation in itself, violating the right to a nationality. Statelessness can arise both in a migratory and non-migratory context. Some stateless populations in a non-migratory context remain in their "own country" of long-term residence and may be referred to as *in situ*

populations. (UNHCR 2014) Also as mentioned aforehand, non-citizens in the Baltic states enjoy extensive rights and benefits (*de facto* citizenship), except in terms of political rights and economic opportunities which *per se* may provide a reason for non-citizens to leave the country. Consequently, when addressing the myriad vulnerabilities of persons without an established nationality, a clear distinction must be made between non-citizens and stateless, considering that non-citizens enjoy extensive rights as compared to stateless persons living in Latvia and Estonia. Also these countries have put in place statelessness protection mechanisms and their national legislation addresses the particular cases of stateless persons as a distinct group.

Nonetheless, not having a chance to engage in the political and public life of the country where they reside permanently for decades, without having to apply for naturalisation, directly results in a sense of exclusion from decision-making and enstrangement from society. Additionally, as non-citizens live on the margins of society, they have no real chance to develop proficiency in the native language of their country of residence. As a result, they are disproportionately discriminated in the labour market in their country of long-term residence and therefore compelled to engage in the informal job market often under dangerous circumstances. What is more, non-citizens are not entitled to occupy certain professions in the public and private sectors. In the absence of job opportunities, they often move to countries irregularly where they can earn a better living. While Latvian and Estonian citizens may benefit from free movement, also in terms of employment as EU citizens, non-citizens cannot work in other EUMS on an equal footing as citizens. Persons living in Latvia and Estonia holding non-citizen passports can travel visa-free to European Economic Area, including EU Member States (except to the UK and Ireland), as well as to the Russian Federation only for short trips not exceeding 90 days within a period of 180 days and they need a visa to enter most third countries. In practical terms this means that they cannot reside longer than 90 days in a foreign country, neither can they work abroad legally. This has proven to be a driving force for many affected persons to leave their country of long-term residence and work illegally in other EUMS, especially in Sweden and Finland, as well as in the Russian Federation where non-citizens also benefit from long-standing family ties and their fluency in Russian.

The displacement challenge may also arise as a result of external factors, including foreign policy incidents which trigger situations where a state decides to change its citizenship policy or practice relating to the right to reside of a certain (stateless) group. These changes may directly entail the forced displacement, detention or deportation of those who have no established nationality within the state, therefore, are not adequately represented in political

life, leaving them largely vulnerable to such instances of arbitrary state actions. They may ultimately become internally displaced or even forced to migrate across the border into neighbouring countries (Albarazi, van Waas 2016), in the case of non-citizens, most probably to the Russian Federation.

Geopolitical implications of non-citizenship for the EU

The Russian Federation has taken a particular interest early on in the situation of non-citizens, residing in its “near-neighbourhood”, Latvia and Estonia. As pointed out beforehand, Moscow provided passports to ethnic Russians who remained in the Baltic successor states of the USSR, as a gesture towards its compatriots. Already this act was greatly viewed as a targeted measure to retain influence in its “near-neighbourhood” after the disintegration of the Soviet Union. Later in 2008, a decree was adopted based on which holders of non-citizen passports born in the USSR before February 1992 can enter the Russian Federation without a visa. Recently in April 2017, the Russian Ministry of Foreign Affairs confirmed that all persons holding non-citizen passports (including those who were born after 1992) may now enter the Russian Federation visa-free to stay in the territory of Russia for stays not exceeding 90 days during each period of 180 days. This foreign policy measure constitutes a further endeavour in favour of ethnic Russians, however, it does not exceed the indulgence of the Schengen rules which apply for third country nationals to enter the Schengen zone.

Although amendments to the Latvian and Estonian citizenship laws now allow dual citizenship, Russia has not particularly indulged in granting Russian citizenship to non-citizens on a large scale, suggesting that Russia has no particular interest in granting full citizenship to all non-citizens but rather to maintain the existing status quo and the influential power gained through them in the EUMS of its near-neighbourhood constituting its sphere of interest. Nevertheless, Estonia’s non-citizen population of currently 80,000 individuals, about half have no established nationality and the other half are citizens of Russia which could imply the potential of Russia to act on behalf of its citizens residing in Estonia. Russia has been criticizing the situation of non-citizens from a human rights point of view in the international realm for many years, having repeatedly expressed its concern by the alarming situation of non-citizens who have been arbitrarily deprived of citizenship. Russia is the main sponsor of the UN Human Rights Council (HRC) resolution on arbitrary deprivation of nationality which is adopted by the HRC on a semi-annual basis. The credibility of this sponsorship and Russia’s overall approach towards

non-citizens in the context of statelessness may however be subject to consideration, in light of the inconsiderate approach of Russia towards its own immense stateless population.

As for now, the uneasy situation of non-citizens continues to persist in the direct neighbourhood of the Russian Federation with the potential of provoking a similar confrontation with Russia that other countries have recently faced. For instance, the diplomatic incident that arose from the non-citizenship issue between Latvia and Russia could have the potential to give rise to further regional unrest in Europe in light of Russia's aggressive foreign policy conduct in the previous years. Through the illegal annexation of the Ukrainian territory of the Crimean peninsula Russia in early 2014 clearly showed that it was ready to intervene and use force in order to "protect" and act on behalf of its compatriots.

According to Hellborg, the issue of regional stability lies in the following dilemma: in case Latvia and Estonia granted non-citizens automatic citizenship, the room for manoeuvre for Russia to intervene in the Baltic EU Member States' national policies would be limited. Nonetheless, members of the Russian-speaking population may continue to be viewed as a threat to the nation by many, irrespective of their nationality. On the other hand, if not granted full citizenship, non-citizens are pushed further away from the Baltic States, compelling them to apply for Russian citizenship which would serve as a pretext for Russia to intensify its involvement through claims of protection of nationals abroad and potentially intervene on behalf of its nationals and compatriots (Hellborg 2015). It is therefore broadly argued that the current international context is marked by the clear attempts of the Russian Federation to use the Russian-speaking minorities in the "near-abroad" as a vehicle to destabilise the neighbouring countries. Such attempts have only intensified with the annexation of the Crimean peninsula which has put further pressure on the long burdened EU-Russia relations (Kochenov and Dimitrovs 2016). For all these reasons, addressing the relatively underconsidered issue of Russian-speaking non-citizens living in the EUMS should rapidly move higher on the EU's political agenda.

Conclusions

The paper concludes that the situation of non-citizens is more relevant than ever not only as a pressing human rights issue but also as an issue relating to displacement and regional stability. Although these long-term residents enjoy extensive social rights and benefits generally

associated with an effective nationality, non-citizens do not benefit from major political rights and economic opportunities which would be essential to their sense of belonging and social inclusion in the long haul. The political and economic empowerment of non-citizens would allow them to participate in society in a more meaningful way and to benefit from rights generally attributed to EU citizens, including those relating to free movement within the EU, especially the right to work in other EUMS on an equal footing as Latvian and Estonian (EU) citizens and vote in European Parliament elections. In the absence of positive legislative measures, potentially the automatic granting of nationality to new-borns of non-citizen parents upon birth, and to older members of the non-citizen population, they are inclined to migrate to Russia and other EUMS under irregular circumstances which only increases the existing migration fatigue in Europe.

Hence, the paper draws the conclusion that there is a strong nexus between non-citizenship, statelessness and displacement which is also apparent in the European context, despite of the extensive rights and benefits enjoyed by non-citizens. Unless non-citizens are granted major political and economic rights, rendering them significant constituents of society, all efforts made by the Latvia and Estonia to reduce the number of non-citizens remain irrelevant in light of the emerging socio-political realities and therefore non-citizenship remains a threat to regional stability on a larger scale, as well as an impetus for further displacement.

Additionally, the long burdened Baltic-Russian relations have the potential to further destabilise Russia's near neighbourhood, a part of the post-Soviet space which now belongs to EU territory. In light of Russia's aggressive foreign policy endeavours under the pretext of protecting ethnic Russians in the close neighbourhood of the EU, this piece advocates that the issue of eradicating non-citizenship in the Baltic EUMS should be moved higher on the EU's political agenda. This would be key to prevent the Russian Federation from using the Russian-speaking minorities in the "near-abroad" as a vehicle to influence the internal affairs of the neighbouring countries, some of which are now Member States of the European Union.

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HOW TO DEAL WITH THE NORTH KOREAN NUCLEAR THREAT?

A STRATEGIC ASSESSMENT OF THE CRISIS

Vittorio Maccarrone

ABSTRACT

The following paper tries to provide an assessment on the role that China and the United States, with the European Union contribution, have in the management of the North Korean nuclear threat. Starting with a general overview on nuclear proliferation in East Asia – examining in depth Japan, China and North Korea interest towards nuclear – it will be discussed that Kim Jong-un is far from an irrational, crazy and spoiled political figure; he responds to several domestic pressures and to the security threats that occur in the international environment. The article aims at showing that Pyongyang's aggressive behaviour won't be halted by further isolating the country. In particular we will argue that, without abandoning sanctions as a foreign policy tool, the crisis will be untangled either through diplomatic efforts or through a strategic containment. The alternative would be a nuclear conflict.

1 Introduction

One of the most discussed issues in international relations, widely addressed after the World War II and still of fundamental importance for the world security nowadays, is the proliferation of nuclear weapons throughout the international environment. The *dual-use* characteristic of the nuclear technology, which enables states to hidden their nuclear ambitions and to officially declare research activities wholly aimed for civil and peaceful purposes, can be exploited by those countries that want to seek nuclear capabilities.

A nuclear arms race between the two great powers, the United States of America and the Soviet Union, occurred in the aftermath of the Second World War – therefore after that the nuclear bomb revealed itself as the most powerful and lethal weapon, even capable of determining the Conflict's destiny. Due to the Great Power's increasing dependence from Weapons of Mass Destruction (WMD) for guaranteeing their own security, the main strategy according to which, during the Cold War, the stability of the entire international system should have been based on involved the possession of nuclear weapons. The so called “Mutual assured destruction” was, indeed, a doctrine of military strategy in which neither of the two countries (US and Soviet Union) had the incentive to initiate a conflict because it would have led to the complete annihilation of both the attacker and the defender.

Nuclear weapons have raised concerns also in the Middle East and they still constitutes the core of the debate in that region. The growing interest on nuclear capabilities shown by Middle Eastern countries over the years, the undeniable danger represented by the bellicosity of the Arab regimes and the proliferation of non-state actors such Isis have prompted analysts and politicians to theorise the establishment of a Nuclear Weapons Free Zone in the Middle East in order to prevent further proliferation of WMD. Steps forward have been recently made by the international community with the Iran nuclear deal, signed with the Persian State, even if the issue is far from being solved after the election of Donald Trump.¹

The US President has to deal with another harsh issue for global security, though: a nuclear North Korea. The East Asian country claims to possess enough nuclear material to produce nuclear weapons; moreover it has conducted five successful nuclear tests during the last ten years.² The Supreme Leader, Kim Jong-un – often depicted as an irrational leader, instantly ready to initiate a nuclear war – threatens continuously the US and its allies, including Japan and South Korea, officially rejecting negotiations (although indiscretions have revealed the likelihood of back-channel talks³ between the US and the Korean government) and persistently attempting to improve country's nuclear facilities. Why and how did North Korea reach such capabilities? What is the nuclear status of the other regional actors in East Asia? Are the European Union and other western international organisation capable to have a role in the maintenance of the peace in the region?

Obama's strategic patience has failed, but US administration's hawkish assertions – consistent with the American conservative political tradition – seem to push North Korea towards more extremism and isolation, rather than involving it in a fair and straightforward peaceful path. As we will see in our analysis on North Korean regime's framework, the European strategy should bear in mind that Kim Jong-un is a rational political actor and that the situation will be stabilised only through true diplomatic attempts.

¹ <https://www.theguardian.com/world/2017/oct/06/calm-before-the-storm-trump-set-to-walk-away-from-iran-nuclear-deal>

² <http://www.bbc.com/news/world-asia-pacific-11813699>

³ <https://apnews.com/686ac7c761694b28b67793a1d8297145>

2 Proliferation of nuclear weapons in China, Japan and North Korea: an assessment

After the Second World War, a lot of countries, besides America and Soviet Union, attempted to possess nuclear weapons. For example, the founders of the State of Israel, surrounded by hostile enemies, have been seduced from the very beginning by nuclear weapons' deterrent characteristic. The Jewish State also stretched to employ the nuclear weapon against its neighbours after that the Six-Day War critically threatened its country's territorial integrity.⁴ The Middle Eastern states thus started to build nuclear facilities for peaceful purposes, sometimes hiding military aims, thereby contributing to the instability of the region and hindering international organisation's non-proliferation efforts.⁵ Therefore, since the aftermath of WWII, the international arena has experienced a growing number of states with nuclear weapons or, at least, favourably disposed towards the creation of nuclear arsenals.

2.1 China

East Asian countries have contributed to the spreading of nuclear both as a military and civil tool. One of the main great power, China, which has reached today a decisive political status – that is actually pivotal for the economic and geopolitical equilibrium of the international system – understood from the fifties that a strong nuclear capability would have been indispensable for its geopolitical and strategic aims. The main developments of China's nuclear program can be divided in two different phases. The first phase (from 1950 to 1963) is characterised on the one hand by the Chinese reliance upon the military, financial and technical support provided by the Soviet Union; on the other hand, because of Soviet strategic curtailments of technical aid, China attempted to become self-sufficient in all stages of nuclear weapons development, research, engineering, testing and production.⁶ The second phase (from 1964 to 1976) has been marked by several nuclear weapons tests. After that the Institute of the Atomic energy had been established in Peking, the Chinese government launched in the late fifties the first all-Chinese nuclear development plan, probably in the anticipation of an eventual Soviet cutback.⁷

⁴ Ginsburg, M., 2013. *Dayan pushed PM Meir to consider using nuclear weapons in 1973 war. The Times of Israel*, 3 October 2013.

⁵ For a better comprehension of nuclear proliferation in the Middle East see: Bahgat, G., 2008. *Proliferation of nuclear weapons in the Middle East*. University Press of Florida.

⁶ S. Minor, Michael, 1976. China's Nuclear Development Program. *Asian Survey*, Vol.16, No.6, University of California Press, June 1976, p.572.

⁷ *Ibidem*.

The first of China's nuclear weapons tests took place in 1964, and its first hydrogen bomb test occurred in 1967. Nuclear experiments continued until 1996, when China signed the Comprehensive Test Ban Treaty (CTBT). China's involvement in the treaty was a turning point for its nuclear strategic posture in international relations. While during the Cold War China's opposition to arms control envisaged preserving the hegemony of strong powers, recent developments in the international arena – first of all further proliferation of nuclear weapons and rising of terrorism – have persuaded Chinese leaders to get involved in almost all international institutions on nuclear non-proliferation and nuclear security. China has, indeed, signed also the nuclear Non-Proliferation Treaty, the CTBT and it joined the Zangger Committee in 1997 which, under the NPT, coordinates nuclear export policies.

China's nuclear strategy has always been a vexed question among pundits and political analysts for the vulnerability of its nuclear arsenal. In fact, during the Cold War China did not develop so sizeable nuclear capabilities to counter a first possible attack from either the US or the Soviet Union.⁸ The reasons of such weakness have to be examined in both China's technical shortcomings (China's weak command and control infrastructure for its nuclear forces further enhanced the vulnerability of its nuclear weapons) and domestic constraints – mainly the existence of a closed political environment that suppressed discussion and debate on such issues.⁹ Moreover, China pursued an original nuclear strategy according to which, by adhering to the idea of assured retaliation, a small number of survival weapons would have been enough to accomplish deterrence by threatening retaliation and, thus, unacceptable damage on an adversary.¹⁰

2.2 Japan

Another East Asian country that have had for much of the past half-century both the means and the motives to seek nuclear capabilities is Japan. If Japan's interests on nuclear warheads dates back to the Second World War period – during which the country wasn't able to possess a respectable nuclear program, even though Japanese scientists had determined the amount of

⁸ Fravel, M. T. and Medeiros, E., 2010. China's Search for Assured Retaliation: The Evolution of Chinese Nuclear Strategy and Force Structure. *International Security*, Vol. 35, No. 2, The MIT Press, p.53.

⁹ Ivi, p.70.

¹⁰ Ivi, p.58.

uranium required for a bomb¹¹ – it is from the early fifties that it seriously developed the idea of starting nuclear research, also thanks to US and French encouragements. Eisenhower's assertiveness brought about the transfer, approved by its administration, of non-nuclear components of nuclear arsenal to US bases in Japan.¹² By using the East Asian country as a base for nuclear operations against the Soviet Union and China in the event of war, proliferation of nuclear weapons in Japan could have been a crucial political move for the American government.

However, from the late sixties and during the seventies Japan adopted a non-nuclear stance: in 1967 the Prime Minister Sato announced the Three Non-Nuclear Principles, according to which Japan prohibited both the possession and the manufacturing of nuclear weapons, as well as their introduction in the Japanese territory. Furthermore, from the seventies to the nineties, many government-sponsored studies, for the most part stating that joining a nuclear arms race would have been strategically unwise and hugely expensive for the country, concluded that the best option was continued reliance on US nuclear umbrella.¹³ In other words, going nuclear was neither desirable nor necessary as long as Japan could rely on the US defence commitment.

Recently Japanese leaders have reconsidered the role of nuclear weapons. Some geopolitical changes in the international environment have contributed to the new approach. First of all, China's expansion of nuclear forces is considered by Japan an option not so far away from being reached, since Chinese leaders may find the opportunity to pursue some strategic parity vis-à-vis the US and Russia. Moreover, both North Korean nuclear tests and the threats pronounced by its leadership against the US and its allies are a matter of concern for the Japanese government. Accordingly, the debate on nuclear has recently resurfaced in Japan. Some analysts have newly argued that a strong nuclear deterrent would enable Japan to balance Chinese and North Korean nuclear superiority, whereas other experts believe that even if Japan's possession of a second strike capability is not credible its nuclear option might have a strategic utility by complicating the calculation of the adversaries.¹⁴ The debate led to the future possibility, indicated by Foreign Minister Okada in 2010, of granting entry of US nuclear

¹¹ Furukawa, K., 2010. Japan's Policy and Views on Nuclear Weapon: a Historical Perspective, Jebat. *Malaysian Journal of History, Politics & Strategic Studies*, Vol.37, p.2.

¹² Ivi, p.5.

¹³ Fitzpatrick, M., 2015. *Asia's Latent Nuclear Powers*, Routledge, Adelphi Series, p.69.

¹⁴ Furukawa, K., cit., pp.16–17.

weapons into Japanese ports, thus admitting the possibility to change one of the Three-Non-Nuclear principles.

Nevertheless, both public opinion and Japan's institutional structure are key actors in hampering this significant shift in country's nuclear policy. The former has basically a peaceful-oriented attitude: even after North Korea's nuclear tests in October 2006, the majority of the Japanese public expressed their support for the continuation of the Three-Non-Nuclear Principles.¹⁵ The latter is constituted by a very rigid framework, also due to the presence of veto actors that since the fifties have been contributing to Japan's non-nuclear international posture. Even if from the nineties Japan has launched an institutional overhaul, its fundamental characteristic of a wide variety of veto player has persisted.¹⁶

2.3 North Korea

In this context of disseminated nuclear proliferation – within which other East Asian states such as South Korea and Taiwan have dealt with nuclear research and, in some cases, are currently considering to pursue the bomb¹⁷ – one more key actor has been contributing to jeopardise regional security since the nineties: North Korea. North Korea's interest in nuclear stems from 1956, when it signed the founding charter of the Soviet Union's Joint Institute for nuclear research and began to send scientists and technicians to USSR for training, thereby relying originally on Soviet assistance for the creation of a rudimentary nuclear program.¹⁸ Even if in 1985, under Soviet pressure, North Korea signed the NPT – whose main goal is to inspect all nuclear facilities to ensure that nuclear material is not being diverted to weapons use – Pyongyang began construction on a 5 MWe reactor. This structure was too large for being evaluated a research reactor; therefore its primary mission may have been to produce substantial

¹⁵ Furukawa, K., cit., p.24.

¹⁶ Hymans, J., 2011. Veto Players, Nuclear Energy, and Non-proliferation: Domestic Institutional Barriers to a Japanese Bomb. *International Security*, Vol. 36, No. 2, The MIT Press, p.175.

¹⁷ E. Sanger, D., Sang-Hun, C. and Rich M., 2017 North Korea Rouses Neighbors to Reconsider Nuclear Weapons. *The New York Times*.

¹⁸ Cordesman, A., 2016. *North Korean Nuclear Forces and the Threat of Weapons of Mass Destruction in Northeast Asia*. Center for Strategic and International Studies, p.25.

amount of weapons-grade plutonium, although still required reprocessing before it could be used in weapons.¹⁹

During the nineties the Korean Peninsula assisted to two very important events. The first one occurred in 1992 when the DPRK and the Republic of Korea signed the Joint Declaration of Denuclearisation of the Korean Peninsula, as a result of the announcement made by George H.W. Bush on US nuclear weapons' withdrawal from the ROK. This apparently positive event was followed by the sudden North Korean intention to withdraw from the NPT, in response to the UN Security Council Resolution (passed on May 11, 1993), urging the DPRK to cooperate with the IAEA and to implement the 1991 North-South denuclearisation accord – the UN passed the Resolution because of Pyongyang's decision to deny the access to two suspect nuclear sites to IAEA personnel.²⁰ The crisis was skilfully defused by Jimmy Carter in 1994 through an agreement between the US and DPRK according to which the latter would have accepted the ultimate dismantle of its reactors and related facilities.

The North Korea started to begin a real threat for the regional security when the Six-Party Talks between North Korea, South Korea, Japan, China, Russia and the United States were suspended in 2009. In May of the same year, the DPRK successfully conducted an underground nuclear test and expelled nuclear inspectors from its territory.²¹ Since then North Korean behaviour towards the international community and the US has become more aggressive; the anti-American rhetoric and Pyongyang's firm belief to pursue the nuclear path have hampered the opportunity, although very weak, to reach a compromise; Kim Jong-un has significantly carried on the nuclear program, as the several nuclear tests that have taken place in the last years have shown. In 2012, 2013, 2014, 2016 and 2017 Pyongyang tested its nuclear devices, disclosed to the world its enhanced nuclear capabilities and threatened the neighbours, thus escalating the crisis between its leadership and the US administration.

3 Understanding the North Korean strategy: a different approach towards the issue

North Korea is one of the most closed country in the international arena. Its economy, politics and society have developed in an absolute isolation from the rest of the world. The North

¹⁹ Oh, K. and Hassig, R., 1995. The North Korean Bomb And Nuclear Proliferation in Asia. *Asian Perspective*, Vol. 19, No. 2, Lynne Rienner Publishers, p.162.

²⁰ Cordesman, Anthony, cit., pp.25-26.

²¹ "Text of N. Korean News Report Announcing Nuclear Test," Washington Post, May 25, 2009.

Korean population – almost homogeneous from the ethnical and social point of view – differs in ways of life, moral principles and values from any other national community. This feature brought also about a greater complexity for international academics in analysing the Korean society; the admission of foreign reporters is strictly limited and the few information available on the regime are provided by the so called *defectors* and by those journalists who have personally visited the country. However the rather impenetrable and mysterious North Korean society has contributed to misinterpret the figure of Kim Jong-un and of the whole regime. The media, some pundits and also several governments have depicted the North Korean leader and its dynasty as irrational actors, pretty much ready to wage war on the US and the other neighbours, without any rational calculation. According to this view, a nuclear catastrophe can occur at whatever time because of the North Korean “craziness”. Therefore, Pyongyang wouldn’t rationally follow the basic rules of international relations.

On the contrary, the study of the North Korean society shows that Kim’s recent moves in the dispute with the US and the international community can be rationally explained. First of all, Kim Jong-un has to deal with an overshadowing body within the society: the army. Since the beginning of Kim Jong-il’s administration the army has enhanced its influence in North Korean politics. After Kim Il-sung death in 1994, indeed, Kim Jong-il had to tackle the worsening of the economic crisis and the growing famine of the population by mobilising his military forces to stabilise the country and his people.²² This situation – in which the army provided also goods, services and security to the people – has exacerbated the dependence of the population from the military, thus increasing the latter’s influence on the former. Moreover, Kim Jong-il elaborated the *Songun* – also known as the Military-First Politics – according to which a new role was assigned to the armed forces: they were no more considered just an institution designed to defend the country from external hostilities, but also as a source of legitimacy for the government and all the other institutions.²³ Therefore the army constitutes an essential actor in the formulation and implementation of policies, thereby affecting government’s political options. Hence, Kim Jong-un knows that nuclear weapons provide another tool for cultivating military support: they bring prestige to an institution whose morale has been challenged also by

²² Chu, S-R., 2009. North Korean Security Dilemma and Strategic Options. *The Journal of East Asian Affairs*, Vol. 23, No. 2, Institute for National Security Strategy, p.77.

²³ Park, H. S., 2007. Military-First Politics (Songun): Understanding Kim Jong-il’s North Korea. *Academic Paper Series*, Vol.2, No.7, Korea Economic Institute, p.1.

its relative inferiority to South Korea's military forces.²⁴ The nuclear program and the persistent tests that are worrying the international community, thus, are not the outcome of irrational choices made by the Korean government. Kim Jong-un does not want to improve country's nuclear capabilities in order to go to war; he maintains this state of tension because if he decided to stop nuclear tests, he would lose the support of the army, from which he and his Party draw legitimacy.²⁵

We have just discussed about one domestic element that inevitably affect North Korean foreign policy strategies. It is also worthy for our analysis, though, to comprehend Kim's aggressive politics by casting a glance over the international context as well. Pyongyang's ongoing provocations and its refusal to put nukes on the table of negotiations could be explained not only by looking at the domestic constraints, but also by taking into account some concepts of international relations. First and foremost, North Korea is a very small state that has to choose between two different security strategies in its relation with the US: either bandwagoning or balancing the great western power. Pyongyang has decided to not bandwagon – by accepting the US defence umbrella – but in some way to balance the US nuclear power. This has been an unusual choice: small states do not possess the necessary strength to self-defence, since they suffer of resources constraints that would hamper rearmament and military build-up. Therefore, to accomplish internal balancing, small states need to rely on more cost-effective alternatives, such as nuclear weapons.²⁶ Secondly, Kim's regime is probably following the brinkmanship strategy, which in diplomacy refers to a unilateral strategy in negotiations according to which a state carries out provocative tactics, including bluffing, blustering and threatening to achieve its goals. Kim Jong-un seems to pursue the entry brinkmanship strategy – which differs from the exit brinkmanship strategy (adopted by an actor when leaving the negotiation table). The goal of this approach is to enhance one's bargaining chips and position relative to the other sides.²⁷ Therefore Pyongyang's attempts to improve its nuclear capabilities and its ongoing

²⁴ Byman, D. and Lind, J., 2010. Keeping Kim: How North Korea's Regime Stays in Power. *Quarterly Journal: International Security*, Belfer Center for Sciences and International Affairs, July 2010.

²⁵ Angiulli, A., 2017. *La Corea del Nord tra Stati Uniti e Cina*, Università LUISS Guido Carli, Tesi di Laurea, p.134.

²⁶ Park, K-A., 2010. North Korean Strategies in The Asymmetric Nuclear Conflict With The United States. *Asian Perspective*, Vol. 34, No. 1, Lynne Rienner Publishers, p.20.

²⁷ Ha, Y. C. and Chun, C., 2010. North Korea's Brinkmanship And The Task To Solve The "Nuclear Dilemma". *Asian Perspective*, Vol. 34, No. 1, Lynne Rienner Publishers, p.96.

threats against the US, its allies and whole international community can be aimed at enhancing its bargaining power in future negotiations for the resolution of the crisis.

Lastly, North Korea is seriously worried about the frightening – in Pyongyang’s geopolitical perspective – developments in the international environment. In fact, after the collapse of the Soviet Union – and the following gradual shift of Eastern Europe countries under Western influence – and the normalisation of the relations between China and South Korea, another threat has been embodied by the Bush Administration, which since taking office in 2001 deemed North Korea (along with Iran and Iraq) as a rogue state. The fall of Saddam Hussein and Muammar Gaddafi, respectively in 2003 and 2011, further reinforced North Korea's fear of being the next target.²⁸ Moreover, neither Iraq nor Libya possessed nuclear weapons when they have been attacked. The equation thus leads our analysis to another conclusion: Kim Jong-un is developing nuclear capabilities in order to safeguard its regime survival, thereby exploiting the ‘equaliser’ purpose of the possession of strategic nuclear weapons.

4 How did international powers manage the crisis? The role of the US, EU and China

Since North Korean nuclear tests increased in the last years – threatening the regional stability and worrying not only South Korea but also Japan and, for other reasons, China – the international actors most involved in the crisis (mainly the United States and China) that arouse with the onward Pyongyang’s nuclear developments have now to deal with a very volatile issue. Both the US and China share, indeed, the same concern – the instability of the Korean Peninsula, the proliferation of weapons of mass destruction in the region and a catastrophic nuclear conflict – but they also have different geopolitical interests. Therefore they pursue different strategies.

The first aim of the US is that of avoiding a North Korea with nuclear capabilities – a nightmare that could be even worse if Pyongyang’s missiles will be able to reach the American territory. This challenging purpose – that should have been approached with more shrewdness in order to be achieved – has basically failed: not only North Korea has acquired and tested many nuclear weapons, but Pyongyang has also transferred its nuclear technologies to Iran, Pakistan and Syria

²⁸ Park, K-A., cit., p.36.

in the last years.²⁹ Therefore the US have failed also in preventing some rogue states from acquiring WMD. After Obama's 'strategic patience' – during which Kim's dynasty has improved country's nuclear programme – the new administration led by Donald Trump has been tackling the issue with more resolve. Notwithstanding some Trump's statements, in step with the conservative hawkish tradition, Kim Jong-un carries on with nuclear tests. Hence, the US government has decided to turn to another strategy, aimed at containing North Korean nuclear wishes, that is by urging China (Pyongyang's first sponsor) to exacerbate sanctions against the DPRK.

The relationship between China and North Korea dates back to the Korean War, when China's troops came to the aid of Kim Il-sung's soldiers. Since then the economic and political relationship between the two countries has increased, albeit with several contradictions that have arisen over the years. It is true, though, that without China's support North Korea would almost collapse. This is why Trump's solicitations on China to put pressure on Kim's regime have become one of the main paths whereby hampering Pyongyang's nuclear capabilities. However China's government turned out to be at least reluctant to the American calls: it has barely condemned Kim's policy in the multilateral institutions and, after having supported the 1718 UN Resolution against North Korea, it refused to condemn Pyongyang's provocation in 2010 when a North Korean mini-submarine torpedoed a South Korean naval vessel, killing 46 in the sinking. This apparently inconsistent China's foreign policy moves are geopolitically understandable if we look at the Chinese interest in the area. Beijing's main concerns are the prospect of US military intervention in their backyard – that would undermine its economic growth and would also strengthen America's hegemony in the world – and Pyongyang's stability – without which the PRC would have to tackle both a massive flow of refugees and the loss of a buffer state suitable for hindering the American presence in the region. Therefore Beijing publicly admonishes and toughens its stance toward Pyongyang only when the Chinese perceive that U.S. military action is likely and the stability of North Korea is not a concern.³⁰

In this scenario the European Union has played a quite marginal role. It established diplomatic ties with North Korea in 2001, even if political contacts started in 1998.³¹ The EU has been

²⁹ Moore, G. J., 2008. America's Failed North Korea Nuclear Policy: a New Approach. *Asian Perspective*, Vol. 32, No. 4, Lynne Rienner Publishers, p.14.

³⁰ Song, J., 2011. Understanding China's Response to North Korea's Provocations, *Asian Survey*, Vol. 51, No. 6, University of California Press, p.1154.

³¹ Seligerr, B., 2008. The EU and North Korea - More Than "Funding The Bill"? *The Journal of East Asian Affairs*, Vol. 22, No. 1, Institute for National Security Strategy, p.84.

engaged in North Korea since 1995 with development projects and humanitarian assistance, mainly related to food security. However, alongside these activities implemented with the purpose of providing direct benefit to those among the most vulnerable people in the DPRK, the European Union has adopted several restrictive measure against the North Korea over the years, including general economic sanctions, restrictions on financial support for trade, on admission and residence, on the provision of certain services (such as those related to technology that could contribute to Pyongyang's nuclear research facilities) and so on. Despite the unavoidable worsening of the relations – due to the North Korean nuclear tests that have led the international community to further isolate the country – an important European state, Germany, has recently offered its role in any future talks with North Korea, mentioning the success of the Iran nuclear deal as a model.³² Could the EU settle the current stalemate between North Korea and the international community? It seems that the EU role could mainly be symbolic. The European political stance is, indeed, peculiar in the North Korean missile crisis: it is not an actor particularly involved in the region and it is geographically far. The latter characteristic contributes in shaping Pyongyang's perception of the European intentions, which are not considered a direct threat. Therefore the EU can support peace initiative either by diplomacy or by "soft power."³³

Final remarks and conclusions

At the present time, the North Korean nuclear issue is a matter of concern for South Korea, Japan and all the other countries close to the Korean Peninsula. The international powers involved are trying to not run into a conflict that can easily entail the use of nuclear weapons. Strategic analysts, academics and think tanks are racking their brains to find a solution to the problem. Actually the DPRK has been threatening the international community for years and the eventuality of a nuclear conflict jeopardises the regional peace and stability. Our analysis leads us to different conclusions.

We have argued that Kim Jong-un behaves rationally: the regime is dependent on the military power, which pushes for the development of the nuclear programme. Moreover, Pyongyang's nuclear arsenal is a potent deterrent designed to prevent a US military attack and Kim's ongoing

³² Borger, J., 2017. Merkel offers German role in Iran-style nuclear talks with North Korea. *The Guardian*, 10 September 2017.

³³ Seligerr, B., cit., p.81.

threats can serve as bargaining chips for future negotiations. Hence, the North Korean missile crisis can be depicted as a situation in which both actors (the US and the DPRK) have to rationally arrange their moves and threats and rationally calculate the rival's countermoves and the counter-threats. Due to some similarities – above all CIA's uncertainties about the status and location of opponent's warheads – the North Korean crisis has been compared even with the Cuban Missile Crisis,³⁴ during which the leaders of the superpowers deadened a situation that could sharply deteriorate.

It can be inferred that diplomatic efforts are the best tool to draw the North Korean crisis to a close. On the one hand, in fact, the more the United States isolates Pyongyang the more the latter will build on its nuclear arsenal, thereby enhancing the likelihood of an American pre-emptive strike against the DPRK; on the other hand, any U.S. first strike on North Korea would result in a devastating loss of American and South Korean lives and would additionally subject South Korea to Pyongyang's nuclear retaliation.³⁵ Thus, there's no military solution to the crisis. On the contrary, diplomatic efforts – although very improbable at the moment – or strategic American and Chinese joint countermoves can better contribute to the peace process in the region. Should diplomacy triumph – thanks either to a sudden American diplomatic overture or to Chinese political pressures against Pyongyang – the US might bargain the rollback of their military drills in South Korea for the limitation of North Korean nuclear tests and the restoration of the diplomatic dialogue with the ROK. These kind of proposals, if successful, can kick off other talks that may build confidence among the countries involved in the crisis. In the event that diplomacy fails – North Korea has recently launched its last ballistic missile, which is able to hit the whole US territory according to many analysts,³⁶ thereby almost crippling any formal diplomatic chance – the United States can opt for another strategy: accepting a nuclear North Korea and counting on the American deterrent power to contain Pyongyang. First of all, the US should make it clear that they are not attempting to overthrow the North Korean government. However, the State Department should likewise state clearly and calmly that any attack by North Korea would lead to the swift and violent end of the Kim regime.³⁷ The American nuclear deterrent is, indeed, stronger than the North Korean one. Therefore maintaining South Korea and Japan under its nuclear umbrella – Trump's idea to

³⁴ Sanger, D.E. and Broad, W.J., 2017. A 'Cuban Missile Crisis in Slow Motion' in North Korea. *The New York Times*, April 2017.

³⁵ Sagan, S.D., 2017. The Korean Missile Crisis. *Foreign Affairs*, 29 Nov. 2017. Web. 29 Nov. 2017.

³⁶ <http://edition.cnn.com/2017/11/28/politics/north-korea-missile-launch/index.html>. Web. 30 Nov. 2017.

³⁷ Sagan, S.D., 2017. The Korean Missile Crisis, *Foreign Affairs*, 29 Nov. 2017. Web. 30 Nov. 2017.

equip these two countries with a nuclear arsenal would mean further inflaming the situation around the Korean Peninsula – and, perhaps, enhancing it by keeping nuclear capable bombers at Guam on ground alert would be a potent deterrent against Pyongyang. If so, the US should only wait the collapse of the North Korean regime under the weight of its own economic and political weakness.³⁸

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³⁸ *Ibidem*.

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CHINA'S SOLAR PANEL: WELCOME A SOLAR POWERED FUTURE

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Introduction

China is one of the oldest states in the world. China's historical memory goes back to the 19th century BC, till the mythical Xia-dynasty. (Li and Xingcan, 2003, pp.132–140) For a long time, China is the world's most populous and the 4th largest state, which has undergone significant technological and production development. As the President of the People's Republic of China, Xi Jinping, stated at the October 2017 Party Congress: China has entered a new era, in which it has to play a central role in the world. (Chinaembassy, 2017) This endeavour, however, results comprehensible resistance from other leading powers in the world. In economic terms, this often takes the form of commercial wars involving the application of state subsidies and anti-dumping measures.

My hypothesis of this essay is that China and EU should create a stronger cooperation because of the importance of solar energy.

The “Global Trends in Renewable Energy Investment 2018” report was published recently by UN Environment, the Frankfurt School-UNEP Collaborating Centre, and Bloomberg New Energy Finance. It also found that 98 gigawatts (GW) of new solar capacity was installed in 2017. According to the report, China becomes a “driving power” for solar energy with \$86.5 billion invested last year, we can see how China is leading the word in this topic. (Frangoul, 2018)

Energy production is a key factor in the development of modern civilizations that is why nowadays the importance and topicality of this issue is unquestionable. Our life is unimaginable without constant, reliable and inexpensive supplies of energy. Modern industrial societies depend on fossil fuels – oil, coal and natural gas. Over two thirds of the world's energy comes from these non-renewable sources. Fossil fuel deposits are finite, they will not last forever as they will be depleted. The world's dependence on fossil fuels should be reduced. (Prieger,

2015, p.476) The question to examine is in close connection with the law of international legal regulations its legal sources.¹

Solar energy is the most important energy source because not only it is an inexhaustible source of energy, but also environmentally friendly and exists everywhere on the earth and it is free of charge. In the future, solar energy will become more and more important and will provide more energy as compared to the present. It is important that a solar panel should be installed in a way that it can have a longer life. Solar batteries have long-lives, around 40 to 60 years. (Energia monitoring, 2015) Nowadays, power consumption is unavoidable just think of the growing number of household machines, entertainment and the multitude of IT assets. The electricity that comes from electricity providers today, we ourselves can have by the use of stand-alone local operators. The alternative energy providing procedure is developing rapidly - building more powerful solar panels, wind turbines - and the demand growth leads to better prices. As a result of this, the payback period is reduced. Therefore, as an investment it is becoming a good economic procedure. (Bejczy, 2015)

Alternative, renewable energy sources should be more widely utilised. They are environmentally sustainable sources of energy. As their supply is infinite, they never run out, neither does their use deplete our natural sources.

China solar industry is an ever-growing industry with huge focus on development of solar panels, modules, storage solutions, installations among others. The size of the industry can be imagined by the 400 photovoltaic (PV) companies, 100+ lithium-ion battery manufacturers involved. (Prieger, 2015, p.476)

Chinese companies manufacture not only domestically but also for the globe. Recently though domestic demand has been huge with China's ambitions to meet solar energy installation targets of 100GW by 2020. Currently the country is producing 28.1GW which is huge in itself but a fraction of the targeted installations.

While Chinese manufacturing companies have been growing at a global scale, they have started entering the markets for EU, US, Canada among other countries for quite some time now. There have been accusations by various companies that the Chinese industry is involved in violating

¹ The special issues of that field of law will not be elaborated in the present paper. For more see: Mátyás, I., 2009. A Bécsi Vételi Egyezmény két évtizede és lehetséges hatása az egységes európai szerződésjog kialakítására. Előzmények, tapasztalatok, következtetések. *Magyar Jog*, October, 2009, pp.629–635.

pricing rules and practically dumping the goods i.e. goods are priced lower than the production cost or lower than their cost in their own market. This has raised concerns over the globe and various countries have imposed import tariffs on the Chinese solar goods.

Though this is great news for the respective countries' domestic players, the opposite is true for solar panels installation companies, rooftop solar panels consumers who have been deeply impacted.

As part of this paper, I shall try to look into several questions. Can China's solar module export be seen as dumping and if it can what impact on various economies across the globe it has. Are the anti-dumping measures good for the economy? There are many commercial and legal problems because of this dumping situation. Therefore, I like to highlight the legal problems regarding the Commission Regulation, too, which was adopted by the European Union in 2013. Furthermore I will take a look how this situation has changed since 2013 to the present.

What is the motivation for China to invest in the solar industry?

First of all I need to mention about that there are a couple of things, which motivated China to look towards cleaner energy. One of them is the increasing demand for energy. As an importer, it is becoming more and more relevant for China to have a long-term sustainable solution. In addition, with renewable energy this becomes possible. China did look into other avenues and entered into natural gas contracts with Russia.

The second reason was the increasing pollution. The industrial towns have become difficult for people to survive in. Many people are moving away to pollution free cities and it became important for the leaders to treat the issue with high severity.

Thirdly, the global outlook and the desire to compete and become market leaders in a growing sector. Many countries started looking into alternate forms of energy, no matter if it is nuclear, gas, solar, and wind energy. To create equipment and devices that could not only be manufactured to meet the needs of the country but also of the greater world felt attractive and a viable solution. By building production lines, China could prepare for its own requirement ahead of time rather than be forced to compromise on its energy goals like India and Saudi Arabia because of lack of domestic manufacturing factories.

This motivation towards solar energy is very different for the western economies like EU and US. The US and EU are already developed and have most of their energy generation in place. For them the driving factor to invest is coming from the fact that many old power generation plants are retiring and need to be replaced. (Willis, 2015) There is also need to address environmental concerns. In order to meet these requirements the respective industries are switching to solar energy. Apart from grid level demand, there is demand for rooftop solutions, which is mainly driven by the need of cost effective power.

The importance of the Commission Regulation (EU) No 513/2013

Compared to China, EU countries like Germany, Italy are different. While China is developing its solar capacity to meet energy needs, Germany is expanding solar capacity and using it to replace retiring coal powered plants. Germany is already the leader in installed photovoltaic (PV) energy generation capacity which amounted to 37.6 GW at the end of 2014 compared with China for which it was 28.05 GW. (Haugwitz, 2015) However, the numbers may not reflect the actual difference in respective industry but we can get a picture from the fact that given proper conditions for power generation, Germany already has enough capacity for its solar powered energy to meet 50% of the country's demand. (Vidal, 2014) While for China this is very different as even with the current installed capacity, the solar powered energy is just 2.1% of total installed capacity of 1360 GW at the end of 2014, according to National Energy Administration (NEA) figures and the country still needs to meet the entire demand. (Reuters, 2015)

As we can see from the two nations, they operate differently domestically. EU countries have managed to capitalise on the oversupply of inexpensive solar products to drive up solar capacity. Henceforth this regulation was created after a long series of panel discussion. EU and China agreed on some trade conditions. Firstly, they agreed upon the minimum import price of a Chinese solar panel at 0.56 EUR/Watt. Secondly, the quantitative limit is set at 7 GW per year. (Commission Regulation, 2013)

With anti-dumping measure being of critical importance, I will explore a bit about what prompted EU to adopt them. The investigation was initiated after complaints coming from domestic producers, which accounted for more than 25 % of the total union production of PV modules and key components. The main motivation behind these complaints was a fall in prices

of PV modules, cells and wafers to unsustainable levels, which was much below the production cost.

The low prices though triggered the demand for installations and led to creation of jobs in the installation sector and demand for rooftop installations but at the same time, these price conditions started deteriorating the health of union industry. This can be evaluated from the fact that though the demand and production capacity increased, the production capacity utilisation was very low, as low as 41% for the solar modules production factories. The low sale price also decreased the returns for investments and discouraged expansion and innovation by the various companies.

This made a strong case for reviewing the impact of imports from Chinese producers and any dumping involved. European commission examined the industry to identify root causes and potential injury to the union industry. For this, commission looked for cooperation from a sample of parties involved catering to various aspects of the trade like union producers, unrelated importers, exporting producers. The analysis focused on limited types of crystalline silicon PV modules or panels or cells or wafers identified by CN codes. Portable solutions like solar panel powered chargers, thin film solutions, and permanently integrated PV products in electronic goods were excluded. Taking into account the production cost and adjusting for various factors like import costs, packaging, shipment etc. the dumping margin was calculated which in some cases was found to be as high as 112.6 %.

These tariffs escalated the issue and started a trade war with China. Chinese authorities explored counter measures of tariffs for imports of raw materials like polysilicon, French wines among others. In order to de-escalate the tensions keeping in mind the trade between EU and China (Europe is China's main trading partner while for EU China is second only to USA), a two year long minimum price agreement was reached. As part of this agreement, Chinese solar panels would have a minimum price (0.56 euro cents per Watt) for annual imports from China of about 7GW without being subject to tariffs. (Reuters, 2013) The participating Chinese exporters will be exempted from anti-dumping and anti-subsidy duties being fixed definitively. And if any manufacturer does violate this agreement or decides not to be part of the agreement, import tariffs would be imposed over the concerned party goods.

The agreement has come under fire from various avenues. Some European solar panel manufacturer association like EU ProSun found the agreement lenient and damaging to the union industry while some European photovoltaic industry association like (EPIA) have raised

voices opposing the agreement and supporting free trade. EPIA reasons that lifting these tariffs would add competition and make available high quality solar panels from the world leading companies. This will help increase the rate and quality of solar installations in the industry. (Gifford, 2015)

Developing Solar Production Economies (DSPE): These are the economies whose solar manufacturing industry is in its infancy stage but have ambitions to be market leaders in future. Examples of such an economy are India, Saudi Arabia among others.

India is different from other economies like US/China. While US/China has a domestic market and established players, which can help, meet domestic demand, India lacks major players in the industry and needs time for its domestic industry to grow. However, at the same time, India has very ambitious targets for solar installations i.e. to install solar energy of 100,000 MW by 2022. (Raj, 2015)

Imported Chinese and American solar panels and other key components have impacted the domestic manufacturing. Majority of its domestic players including Tata Power Solar, Moser Baer have raised concerns over the cheap imports flooding the market. These cheap imports have decreased the production utilisation to less than 30%. While at the same time, these cheap or financially backed imports have helped boost the implementation of solar projects. As much as 55% of the projects are dependent on the imported content. (Indian Times, 2014)

India also faces challenges to get the funds for its projects. Some respite maybe coming in the form of foreign players like SunEdison, FirstSolar who plan to setup domestic manufacturing. Also, export-imports banks from US and China are interested in getting a share of India's expansion by providing cheaper loans to importers buying from country's domestic players. (Prieger, 2015, p.476)

Countries could move in the direction of its ambitious targets by focusing on ease of land acquisitions to setup manufacturing plants, low cost capital, and skilled labour. These are the economies whose main focus is to improve solar powered energy to meet the energy demands. These are for example: Mexico, Philippines, Chile, Brazil, Argentina and Ecuador.

Chinese solar manufacturing saved Chile's energy crisis. In the mid-2000s, Chile used to depend on Argentina for nearly 90% of its gas supply. Argentina at the same time was recovering from economy crisis and facing shortage of energy, whose generation mainly relied on gas supplies. Argentina was forced to stop exports of gas due to domestic requirements and

thereby Chile lost its main source of low-emissions energy. At that time, the oversupply of PV panels from China paved a way for Chile to expand rapidly its use of solar power in an inexpensive way. Some of the interesting figures which help us understand how much Chinese panels played a role in this expansion is that in 2013, Chile imported 40.9 million USD in Chinese PV panels which was more than half of its total PV imports. While solar power is still an emerging sector and the power generated in only a small share of total energy generation in the country, but it is expanding rapidly with over half of the approved 10,000 megawatts of new power projects based on solar. (Ray et al., 2015)

Solar industry impacted by tariffs

Tariffs are a special kind of protective measures, which through the increase of the retail price try to keep foreign goods away from the internal markets. Governments generally impose tariffs to raise revenue or to protect domestic industries from foreign competition, thus consumers will usually purchase foreign-produced goods when they are cheaper. Tariffs are a kind of economic sanction.²

Solar industry has been deeply impacted by tariffs. While some companies have been forced to shut down business or gone insolvent others have tried to innovate and become more competitive. These companies have explored new markets and partnerships. E. g. when China's industry was impacted by tariffs, they looked towards Africa, Latin America, and since then have expanded into various countries-setting up solar farms, manufacturing/assembly units among others. (Prieger, 2015, p.333) While some have looked into improvement of technology and entered the thin film based panels manufacturing sector, which is a growing sector for portable solutions.

Some have looked into marketing and creating creatively designed sale packages. For example, household consumer need not pay anything for the solar panels. They will be installed on the roof and consumer has to pay just for the energy. While, excess energy will be sent to grid and consumer will be paid for it. Panel installation has been made easier and is now simple plug

² For economic sanctions see: Mátyás, I., 2015. Gazdasági szankciók, mint a politikai viták megoldásának módszere – az ukrán válság. In: *Bonas Iuris Margaritas Quaerens – Emlékkötet a 85 éve született Bánrévy Gábor tiszteletére*, Pázmány Press, Budapest, pp.189–204.

and play. This reduces any labour costs, which were earlier spent to install the solar panels. (Prieger, 2015, p.476)

Because of low margins, companies must compete to become competitive and come up with better solutions. Companies are realizing that same solution does not apply to all. So in countries like UK, ET Solar has come up with low light modules. (Clover, 2015)

Besides of these, I need to mention about that the Chinese government always attempted to develop the education and healthcare system in China, and also spent a significant sums of money for fighting with the poor and dangerous infectious diseases. (Jordán, 2005)

Commission Regulations (EU) No. 366/2017 and No. 367/2017

In 2015, at the request of EU ProSun, the Commission launched an expiry review and *ex offio* initiated a partial interim review concerning the continuation of measures currently in force on elements used in crystalline silicon photovoltaic modules or panels. As a result, it has adopted Regulation No. 2017/366/EU (OJ EU, 2017a) and Regulation No. 2017/367/EU. (OJ EU, 2017b) The Commission considered it necessary to maintain definitive anti-dumping import duties for certain products. The level of duties is 0-11.5% according to Regulation No. 2017/366 and 44.6-64.9% according to Regulation No. 2017/367. Therefore it can be seen that the situation has not changed fundamentally in the past five years, the Union perseveres in maintaining its protectionist policy despite the protest of the Chinese government and some EU companies.

Conclusion

There are plenty of challenges of EU presently, and facing them of growing energy consumption and climate change, the EU launched the climate and energy package as a set of binding legislation for its targets for 2020. The trade relationship between the EU and China is obviously very important, settling the solar panel dispute can be considered successful for having avoided a trade war. It is crucial for both the EU and China to maintain good trade relations based on mutual benefit. (Yu, 2015)

In my opinion that solar industry needs storage solutions. In islands like Hawaii or remote areas like the ones in Chile where off-grid solar solutions have been implemented, the issues being faced are in terms of storage especially during peak generation time. Since there are no adjacent grids to leverage distribution or transmissions there are more challenges and opportunities. These places are trying to adopt storage solutions one of them being lithium-titanate battery installation by Reno-based Altair Nanotechnologies. (Thurston, 2014)

Solar industries needs stable policies. Currently investors are hesitant with their investments. The main concerns are coming from the subsidy driven solar sector. Investors are looking for opportunities with stable industry policies where projects viability will not be impacted once the incentives are removed. They are also taking into account the potential political changes, which could impact their projects. The need for financial stability and level playing field has attracted investors to markets in Latin America, Chile in particular. (Grover, 2015)

Chinese firms are working on thin film solar power solution, which once affordable could be used to power cars and charge phones. This is a new market and offers lot of opportunities. Member of National Committee of the Chinese People's political conservative conference mentioned during a session that the country's generation of thin film solar power could be worth over 1.28 trillion USD in three years. (Chang, 2015)

Countries need capital to support their long-term energy goals. As countries are setting up ambitious goals for new projects be it China with 100 GW by 2020 or India with 100 GW by 2020. There is a huge demand for solar modules and equipment, however, the supply is not able to match this, yet. The shortage is triggered by scarcity of funds to boost production or to upgrade manufacturing to meet the tighter environmental laws. The imposition of tariffs by EU, US and other nations have sent the companies bankrupt and investors are anxious to invest in the changing industry. (Prieger, 2015, p.476)

There is a need to remove subsidy and import tariffs. China and US/EU solar industry are interlinked. China procures raw materials like polysilicon, a raw material used in making solar panel from EU. Imposing tariffs on solar products from country say China, impacts the solar manufacturing industries that in turn affect the demand of raw materials, indirectly hitting the EU companies itself. These tariffs also affect the EU's solar installation companies leading to unemployment. What is required here is greater co-operation among the countries where each country plays to its strengths.

Regarding to the pollution, we can see that recently China did reduce the pollution. According to the French president, Emmanuel Macron: “I’ve never seen Beijing like this.” Concentrations of PM 2.5-the smallest polluting particles, which pose the greatest health risks-were 54% lower in the Chinese capital during the fourth quarter of 2017 than during the same period of 2016. China has reduced its notorious air pollution. (J.P., 2018)

As far as I see it, China is an important player of the global scale. The reason why I have chosen this topic is that I have been interested in the future of China and the European Union, and the law of international economic relations.

Finally, I would like to quote Xi Jinping, President of the People’s Republic of China, who said in Hague at its Nuclear Safety Summit: “Both development and security are important. Security is a prerequisite for development. The peaceful use of nuclear energy contributes to energy security and the fight against climate change.” (Atomenergiainfo.hu)

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