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# DANGER ON THE HIGH SEAS: THE EAST ASIAN SECURITY CHALLENGE

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## SUMMARY

- The maritime conflicts of East and Southeast Asia are not only a threat to regional security but also present a serious challenge to Europe, jeopardising the international rules-based order and European economies. However, the EU has not so far played a role proportionate to the magnitude of its interests in the region.
- At the heart of the two most volatile disputes – in the South China Sea and the East China Sea – lies a simmering conflict between the “only remaining superpower” – the US – and the new world power – China.
- In the case of the East China Sea, for example, Beijing may be using the dispute to attempt to weaken the US’s security alliance with Japan, and hence to secure dominance over the neighbourhood.
- In the case of the South China Sea, the rival parties have in the main resisted seeking a solution through international law – likely because they stand to gain if the conflicts continue, and can use them as cover to pursue other strategic interests.
- Though none of the states involved want war, minor confrontations could spiral into an international armed conflict if crisis-prevention mechanisms are not put into place.

East and Southeast Asia is the region of the world with the greatest number of unresolved international maritime disputes, some of them so volatile that the possibility of armed clashes cannot be ruled out. This paper analyses the two most dangerous of these conflicts, in the South China Sea and the East China Sea, and finds that at their core is the competition between the United States – the guarantor of stability – and China – the challenger of the regional order.

Europe has important interests in these disputes. They not only threaten to break into a broader conflict but also jeopardise the international rules-based order. North Korea’s recent purported hydrogen bomb test again underlined how fragile the situation in the region is, while the strategies that China has employed to assert its territorial claims in recent years could endanger the norms of global governance. The disputes also threaten European prosperity, which depends on trade and investment from Asia. In addition, the European Union is one of the most important economic partners of all countries in the region. They in turn are major economic partners to EU countries, with China topping the list.<sup>1</sup> EU countries combined make up the world’s largest foreign direct investor in the region; their investments in China alone have doubled within the last year to a record high of €16 billion.<sup>2</sup> All

<sup>1</sup> In 2014, EU countries sold goods worth approximately €164.7 billion to China, €78.5 billion to ASEAN countries, €16.9 billion to Taiwan, €53.3 billion to Japan, and €43.1 billion to South Korea (trade with North Korea is negligible). EU countries bought goods worth €302.4 billion from China, €100.6 billion from ASEAN, €23.2 billion from Taiwan, €53.3 billion from Japan, and €39 billion from South Korea. The statistics cited here come from Eurostat.

<sup>2</sup> China is ninth on the list of investors in the EU; see “Chinese investment into Europe hits record high in 2014”, Baker & McKenzie, 11 February 2015, available at <http://www.bakermckenzie.com/news/Chinese-investment-into-Europe-hits-record-high-in-2014-02-11-2015/>. See also “Europe to Japan M&A Register”, available at <http://eu-japan.com/investment/europe-to-japan/>.

EU member states are in the process of expanding their economic relationship with Asian countries.<sup>3</sup> Should any of the maritime disputes in the region escalate into armed confrontation, the fallout would destabilise the economies of the EU with lasting effect.

This vital interest means that the EU has a responsibility to work more closely with partners in the region, and with the US, to uphold the use of international norms in resolving conflicts.

But if Europe's interest in the stability of Asia is clear, its ability to significantly influence politics in the region is less so. Economic interdependence cuts both ways. As a result, Europe's economic "hard power" is rarely, if ever, applied. It has been reduced to the three-decade-old arms embargo against China, which is of not much more than symbolic value; and participation in United Nations-imposed economic sanctions against North Korea. European military power has not been significant in the region since the end of the US's Vietnam War, the UN peacekeeping operation in Cambodia in 1992/93 (UNTAC), the United Kingdom's return of Hong Kong to China in 1997, and the participation of various EU member states in UN peacekeeping operations in East Timor.<sup>4</sup>

As the EU is unlikely to intervene through military means or economic sanctions, the other political tools available to it need to be examined in greater detail. The EU and its member states currently engage with the region through consultation mechanisms including the Asia–Europe Meeting (ASEM – made up of the EU and Association of Southeast Asian Nations (ASEAN) countries and other regional powers, plus China, Japan, and South Korea), annual German–Chinese cabinet meetings, and similar arrangements by other EU member states, as well as regular high-level meetings at the business and civil society levels. It is doubtful, however, that any of these mechanisms would seriously influence the countries in the region on what they regard as their most vital interests, such as territorial conflicts.

The EU understands the need to engage in the security of the region. In July 2012, then-EU High Representative Catherine Ashton and US Secretary of State Hillary Clinton signed a Joint EU–US Statement, agreeing, among other matters, on political cooperation over security in the Asia-Pacific region.<sup>5</sup> So far, this is the EU's statement with the strongest practical implications, but it has yet to be followed up with action.

<sup>3</sup> China is the biggest driver of efforts to increase trade, as illustrated by British Chancellor George Osborne's statement ahead of President Xi Jinping's visit to the UK, that a "golden era" in Chinese–British relations was set to begin. In the past, France has occasionally lobbied hard to lift the arms embargo against China, which was imposed after the 1989 Tiananmen Square massacre. The "16+1" group of Eastern European countries with China, the group of Nordic countries with China, and the planned group of South European countries with China, all exist in order to develop their own profitable relationship with the country.

<sup>4</sup> François Godement, head of ECFR's Asia and China Programme, noted in correspondence with the author that transits of naval forces – port visits, for example – by France and the UK in the region might in some cases be considered as "displays of hard power, although more in principle than substance".

<sup>5</sup> "Joint EU–US statement on the Asia-Pacific Region", European Union, Phnom Penh, 12 July 2012, available at [https://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/131709.pdf](https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/131709.pdf).

More to the point, to add some meat to this bone, the EU needs to go beyond a general understanding that East/Southeast Asia is volatile. It needs to examine the specifics of the potential conflicts, with an eye towards understanding how the EU can influence events in East/Southeast Asia and minimise threats to the stability of the region.<sup>6</sup> In particular, it needs to develop a policy that recognises that the US–China rivalry lies at the core of all three disputes. To that end, this paper will scrutinise the dangers emanating from the region's two most volatile disputes – the South China Sea and the East China Sea, considering another five disputes in the annex – and recommend how the EU should respond.

## The South China Sea

The dispute over the South China Sea is the most volatile of the maritime conflicts in East/Southeast Asia. It is also the most complex, involving a large number of parties and conflicting interests. This is one of the world's most strategically important maritime crossroads, controlling the thoroughfares to China, Japan, and South Korea, and over a third of all global trade passes through it. It is thought to possess rich natural resources – mainly hydrocarbons<sup>7</sup> – and is a major fishing area.

China has laid claim to between 80 and 90 percent of the 3.6 million km<sup>2</sup> of the South China Sea. Vietnam, the Philippines, Malaysia, and Brunei claim parts of it, though they do not claim maritime territory as such, but only as linked to islands or smaller natural features.<sup>8</sup> Japan and the US are not littoral states and have not taken positions on the various territorial claims, but they insist on the principles laid down by the Law of the Sea and freedom of navigation, which limits the claims of some of the parties.<sup>9</sup>

The history of the dispute – a backdrop of poorly substantiated and mutually disputed claims – explains why it continues to give rise to almost incessant controversies, and occasionally clashes. The dispute dates back to before the international Law of the Sea took effect in 1982, via the United Nations Convention on the Law of the Sea (UNCLOS). In 1947, China became the first state to make claims that extended significantly beyond what was commonly considered to be "territorial waters" at the time – a three-mile zone from the coast. It has argued consistently that all territory inside a roughly drawn boundary known

<sup>6</sup> In a wider discussion, the roles of India and Australia would have to be examined, but this paper focuses on the narrower regional context.

<sup>7</sup> See Xander Vagg, "Resources in the South China Sea", American Security Project, 4 December 2012, available at <http://www.americansecurityproject.org/resources-in-the-south-china-sea/>.

<sup>8</sup> Vietnam claims the Paracels and the Spratlys, 21 islands in total; the Philippines claims the Spratly Islands and the Scarborough Shoal, a total of 53 islands, reefs, shoals, cays, rocks, and atolls; Malaysia claims 12 islands, whereas Brunei only claims the Louisa Reef formation. Taiwan, which claims to represent the Republic of China from before the Communist takeover on the mainland in 1949, backs the Chinese claim.

<sup>9</sup> US Assistant Secretary of State Daniel Russel, speaking before the House Committee on Foreign Affairs' Subcommittee on Asia and the Pacific, on 5 February 2014, stated: "Since the end of the Second World War, a maritime regime based on international law that promotes freedom of navigation and lawful uses of the sea has facilitated Asia's impressive economic growth. ... we have a national interest in the maintenance of peace and stability; respect for international law; unimpeded lawful commerce; and freedom of navigation and overflight in the East China and South China Seas. ... All claimants – not only China – should clarify their claims in terms of international law, including the law of the sea".

## Maritime disputes in East/Southeast Asia



as the “nine-dash line” belongs to it, and submitted that claim to the UN in 2009, but without presenting greater geographical or legal grounding for it.

The claims of the other disputants are more modest but no better substantiated, as, like China’s, they rest on assertions that certain isles or reefs have been used by their populations since ancient times.<sup>10</sup> Under the Law of the Sea, arguments are better founded when they refer to natural features such as a continental shelf, or proximity to the coastline.

In recent decades, all parties have tried to create facts on the ground. In 1988, China sank two Vietnamese ships in the Spratly area, killing 68 Vietnamese soldiers. The

<sup>10</sup> An extremely weak argument, considering that it is impossible to know why names were given to islands in the past, and who the populations were who used Chinese bowls, for example, remnants of which can be found on some of the islands.

Philippines, Vietnam, and Taiwan have all built structures on islands or reefs. In 1995, China began to build structures on Mischief Reef, in the Spratly Islands near the Philippines coast, and again in 2012 on Scarborough Shoal, also near the Philippines coast, after Filipino fishermen had been forced off the island. Claims have been met by counterclaims, there have been confrontations between fishermen of all littoral states, and all claimants have at times given exploration rights to international companies.

Since approximately 2012, China has become assertive in ways that other parties cannot match. In 2012, Beijing designated Sansha, a city on the southern Chinese island of Hainan, as the prefectural capital of the whole of the South China Sea, within the nine-dash line. It has given Chinese fishermen active in the South China Sea a milita-

like role, with hundreds of fishing boats at times asserting China's claims by sheer number, without resorting directly to armed violence. Additionally, China has moved an oil rig into disputed waters off the Vietnamese coast, and it has expanded and modernised its navy so that it has the largest fleet in the South China Sea (but so far has preferred to resort to deploying its coast guard). Since the end of 2013, China has carried out land reclamation on five reefs and islets, building hangars and runways, and reclaiming some eight km<sup>2</sup> in a year and a half – 17 times more land than all the other countries combined have reclaimed over four decades. According to a Pentagon report, once completed, Fiery Cross Reef alone will be at least two km<sup>2</sup> – as large as all other islands in the Spratlys combined.<sup>11</sup> This “Great Wall of Sand”, as it has been dubbed by the media, has helped alert outside parties to the conflict.

Tensions have continued to rise. Vietnam has held naval exercises with India and Japan. Japan has joined the US and India in naval exercises in the Indian Ocean and is a core member of a US-led group of 30 countries whose navies cooperate regularly. Japan agreed with the Philippines on joint capacity-building measures and arms deliveries, and the Philippines is seeking to make Visiting Forces Agreements with other countries.

Diplomatic efforts to resolve the issues have failed again and again. Several attempts have been made to initiate multilateral conflict resolution, which China as a rule has refused to take part in, insisting instead on the principle of bilateral discussion. Negotiations on a Code of Conduct, agreed in principle in 2002, with China dragging its feet, have so far failed to make headway. When the Philippines called upon the Permanent Court of Arbitration in The Hague to hear the case in 2012, China declared that it would not accept the court's authority.<sup>12</sup>

On 28 April 2015, an ASEAN summit agreed on a declaration which criticised land reclamation activities as having the potential to “undermine peace, security, and stability in the South China Sea”, and urged the speedy conclusion of the long-envisioned Code of Conduct. In response, China stated that the sea “is not an issue between China and ASEAN”.<sup>13</sup> The dispute has featured several times in EU statements, for example in May 2014, and again in a summer 2015 G7 declaration, to which the EU was a party, committing to the principle of the freedom of navigation and “other lawful

uses” of the high seas.<sup>14</sup>

Outside parties have made efforts to ensure that the zone continues to function as a trade route. In October 2015, after President Xi Jinping's visit to the US, Washington decided it would undertake a “freedom of navigation operation”. This involves sending navy boats to pass through the 12-mile zones – the standard area of territorial waters – around those new “islands”, created through land reclamation (something that is not accepted under UNCLOS).

The head of the US National Security Council stated that US forces would “sail, fly and operate anywhere that international law permits”,<sup>15</sup> and on 27 October 2015 the USS Lassen passed by Subi Reef, a feature that is usually submerged and thus does not count as an island with a 12-mile zone. China reacted by threatening, in general terms, the use of armed force in such cases. It also insisted it had never challenged the principle of freedom of navigation, but that the US “incursion” did.<sup>16</sup>

So far, the parties to the dispute have for the most part avoided allowing an objective, neutral party or actor to find a solution on the basis of international law. This can only be because they expect to gain a better deal than is attainable by law, that there are other advantages to be gained if the case remains open, or that there are yet other ways to advantageously resolve the dispute. As a result, the maritime dispute in the South China Sea is unlikely to be resolved on the basis of legal considerations, at least not as the region's reality stands today. Legal intervention will only be helpful once there is political will to resolve the conflicts. Against this backdrop, US involvement on the ground, even if it does not take sides on the issue of ownership, may help ensure stability for the time being.

## The East China Sea

At stake in the East China Sea dispute is a group of uninhabited islands, called Senkaku-shotō in Japanese and Diaoyudao in Chinese, and the surrounding maritime territory. The islands are located approximately 170km northeast of Taiwan, the same distance from the Japanese coast, and 330km from the Chinese coast.

The roots of the dispute date back to the nineteenth century. There were no authorities on the islands until Japan

14 The EU is always represented at G7 meetings. See “G7 Foreign Ministers' Declaration on Maritime Security in Lülbeck, 15 April 2015”, which at the G7 summit was endorsed by the leaders, available at [http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Meldungen/2015/150415\\_G7\\_Maritime\\_Security.html](http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Meldungen/2015/150415_G7_Maritime_Security.html).

15 Susan Rice, quoted in the *Economist*, 17 October 2015, p. 62. On the US analysis of the problem, see “Chinese Land Reclamation in the South China Sea: Implications and Policy Options”, Congressional Research Service, Washington, DC, 18 June 2015, available at <https://www.fas.org/sgp/crs/row/R44072.pdf>.

16 On the same day, Xinhua reported that “Foreign Ministry spokesperson Lu Kang urged the US to ‘immediately correct its wrongdoing’, adding that China will continue to watch the situation and ‘do whatever is necessary’. Stressing that China's sovereignty over the Nansha Islands and its adjacent waters is ‘irrefutable’, Lu said China is prepared to respond to any deliberate provocation by any country. China respects other countries' freedom of navigation in accordance with international law. ... The construction activities undertaken by China on its own territory is an internal affair and will not block the legal freedom of other countries”. See “China lodges protest with US on warship patrol in South China Sea”, *Xinhua*, 27 October 2015, available at <http://www.globaltimes.cn/content/949232.shtml>; see also “China says US warship's Spratly islands passage ‘illegal’”, *BBC News*, 27 October 2015, available at <http://www.bbc.com/news/world-asia-china-34647651>.

11 See Dan De Luce and Paul McLeary, “In South China Sea, a Tougher U.S. Stance”, *Foreign Policy*, 2 October 2015, available at [http://foreignpolicy.com/2015/10/02/in-south-china-sea-a-tougher-u-s-stance/?utm\\_source=Salithru&utm\\_medium=email&utm\\_campaign=New%20Campaign&utm\\_term=%2ASituation%20Report](http://foreignpolicy.com/2015/10/02/in-south-china-sea-a-tougher-u-s-stance/?utm_source=Salithru&utm_medium=email&utm_campaign=New%20Campaign&utm_term=%2ASituation%20Report). A report from IHS Jane's called the reclamation initiative “purpose-built to coerce other claimants into relinquishing their claims and possessions”. See James Hardy and Sean O'Connor, “China Building Airstrip-capable Island on Fiery Cross Reef”, IHS Jane's, November 20, 2014. On the other hand, Chinese general Fan Changlong explained at the 2015 Xiangshan Forum in Beijing that: “The projects ... will enable us to provide better public services to aid navigation and production in the South China Sea”. (Quoted in the *Japan Times*, 18 October 2015).

12 The first ruling on whether the court is competent in the matter was handed down on 29 October 2015, and was positive. China declared it did not accept the ruling.

13 See Shannon Tiezzi, “China ‘Gravely Concerned’ By ASEAN Statement on South China Sea”, the *Diplomat*, 29 April 2015, available at <http://thediplomat.com/2015/04/china-gravely-concerned-by-asean-statement-on-south-china-sea/>.

## Countries involved in East/Southeast Asia's maritime disputes

	South China Sea	East China Sea	Taiwan	Gulf of Pohai	Yellow Sea	Sea of Japan	Kuril Islands
US	●	●	●	●			●
JAPAN	●	●	●			●	●
CHINA	●	●	●	●	●		
TAIWAN	●	●	●				
SOUTH KOREA				●	●	●	
NORTH KOREA				●			
RUSSIA							●
*ASEAN member states	●						

\* Does not apply equally to all member states

annexed them in the 1895 Sino-Japanese War. Four of the islands were later bought by a Japanese entrepreneur, then occupied by the US after the Second World War. The newly founded government of the People's Republic of China (PRC) did not protest against this, nor did the exiled Republic of China government of Chiang Kai-shek.<sup>17</sup> Only when the islands were due to be returned to Japan in 1972, as part of Okinawa prefecture, and there were reports that there might be oil in the seabed, did both rival governments claim ownership. Japan, meanwhile, argues that there was no territorial conflict to begin with, and the US has refused to take sides on the issue.

It can be argued that while Japan denied any kind of territorial dispute, it has avoided activities that might provoke China, as though it accepted that there was an unresolved dispute. In the 1970s, the PRC and Japan reached an agreement to explore the East China Sea together, though this soon ceased in the absence of promising finds. There were occasional public flare-ups, as when activists from Hong Kong and Taiwan tried to reach the islands to hoist Chinese and Taiwanese flags, but these did not spark greater conflicts. Fishermen from Japan, China, and Taiwan occasionally clashed around the

<sup>17</sup> The People's Republic of China and Taiwan claim today that the Potsdam Declaration (which Japan accepted as part of the San Francisco Treaty) required that Japan relinquish control of all islands except for "the islands of Honshū, Hokkaidō, Kyūshū, Shikoku and such minor islands as we determine", and state that this means of control of the islands should pass to China. Japan does not accept that there is a dispute, asserting that the islands are an integral part of Japan's Okinawa Prefecture. It rejects the contention that the islands were under China's control prior to 1895, and that these islands were affected by the Potsdam Declaration or the San Francisco Treaty.

islands, without leading to broader political conflicts.

The dispute came to world attention only in 2010, when the captain of a Chinese fishing vessel was detained in Japan, accused of ramming Japanese coast guard boats that had demanded that the vessel leave Japanese waters. Sharp protest by the Chinese government, and demonstrations and boycotts of Japanese goods, induced the Japanese government to release the captain.

Beijing did not let the matter rest there. Instead, it launched a diplomatic campaign to force Japan to concede that there was a territorial conflict over the islands. The ultra-conservative governor of Tokyo criticised his government for its weak response, and announced the City of Tokyo would buy three of the disputed islands, which were privately owned by a Japanese family, and settle residents on them. This pushed the central government to act, purchasing the islands for two billion yen. China reacted by sending Chinese coast guard boats and jet fighters to make intrusions into Japanese maritime and air space.

In a surprise move, Beijing announced in 2013 that it had established an Air Defence Identification Zone (ADIZ) over a large area of maritime territory between the Asian mainland, South Korea, the Japanese islands of Okinawa, and Taiwan, requiring all aircraft intending to pass through the zone to inform the Chinese authorities first. Japan, the US, South Korea, and others refused to accept this and

did not comply.<sup>18</sup> After the establishment of the ADIZ, the US declared that defence of the islands fell under the Japan–US security alliance. Barack Obama was the first US president to explicitly and openly make that point, during a visit to Japan in 2014. After the incident, five years passed before a meeting among the heads of government of Japan, South Korea, and China finally took place, in the context of trade talks. It took near-fatal collisions of coast guard boats for China to agree to hold low-level talks on the establishment of a crisis-management mechanism. The EU only later started to pay attention to this dispute, beginning during a 2014 EU–Japan summit, where the Union issued a joint condemnation with Japan of “the use of coercion” over the issue, and emphasised the need for “active diplomatic engagement”.<sup>19</sup>

The steep increase in volatility after 2010, compared to the lack of tension in previous decades, raises the question of what has changed. The International Crisis Group has argued that China’s actions in both the South and East China Seas reflect “reactive assertive” tactics, meaning that Beijing exploits perceived provocations by other countries to take countermeasures and advance its own objectives. This might explain why China ignored the (veiled) offer by Japan in 2012 to ask the International Court of Justice to resolve the question – it is useful for Beijing to keep the conflict running in order to promote other interests.

However, this must be weighed against China’s interest in a mutually beneficial relationship with Japan. There are other matters at stake in the dispute, such as the opportunity for Beijing to gain access to the high Pacific through the maritime territory surrounding the contested islands. Possession of this territory would be a significant strategic advantage for China, allowing it to surround Taiwan in the case of an armed conflict. The advantage of continuing the conflict over the islands may seem sufficient for Beijing to devise strategies that might risk the relationship to Japan. Taiwan’s approach to the conflict gives evidence for this interpretation. Though it was in principle pursuing the same objective as Beijing, Taiwan did not join the measures against Japan, but instead initiated negotiations with Japan to resolve the questions of which maritime territory could be fished in by each country, and reached a quick agreement. Taiwan clearly had an interest in avoiding a major conflict, and may also have been averse to any resolution that would have allowed China access to the territory around the islands.

But there might be even more at stake than this direct strategic advantage over Taiwan. If the US allowed China to exert enough pressure on Japan to make it give in, Washington’s reputation as Japan’s ally would be deeply damaged. Weakening the US position in East Asia might be considered a prize worth a number of risks. This may explain why, in the

end, Obama took a clear position on US obligations to Japan.

Under this interpretation of the dispute, China has not yet attained its objectives. Instead, Japan and the US, as well as littoral states in the South China Sea, have become warier of China’s ambitions in the region and beyond, and even if tensions have somewhat subsided since 2013, the overall situation continues to be one of high risk of armed conflict, even if not by the design of any of the parties.

## Conclusion

As the three biggest economies in the world, the US, China, and Japan have a strong incentive to cooperate in resolving their conflicts. The rise of East and Southeast Asia owes much to the Pax Americana since the end of the Vietnam War, and has been a boon to US and European economic and social development. The US has – as a treaty ally to Japan, and as a formal or informal security guarantor to other countries directly involved in the conflicts – a stake in all seven maritime disputes considered in this paper, while both China and Japan are involved in five each, including the most explosive ones – the South and East China Seas. In both these cases, Japan and the US are satisfied with the status quo, while China is not.

There is a key difference between the South and East China Sea disputes: in the East China Sea, only Beijing aspires to revise the status quo. In the South China Sea, all other claimants wish the same, if not to the same degree as China. Others have also carried out land reclamation, have given contracts to companies to explore the seabed, and have deployed their coast guards to protect their fishermen. China’s actions are not fundamentally different in that respect – though they certainly have been much faster. Its land reclamation efforts progress more quickly than others’, and its coast guard, militia, and navy move with greater force.

The crucial element in the South China Sea conflict is something else: China’s claim to practically the entire sea. While freedom of navigation has not so far been impinged upon,<sup>20</sup> it is easy to imagine that this might happen once China rules the waves. In addition, access to seabed and fishery resources would then be monopolised and controlled by China. As a result, almost all of the moves aimed at overturning the status quo have been initiated by Beijing. This Chinese assertiveness affects the countries in the region twofold: directly, and as beneficiaries of the US’s longstanding guarantee of the security of Japan and others. Given the basically peaceful environment, especially in the East China Sea,<sup>21</sup> why would China want to rock the boat? The explanation may lie in the transformation of Chinese foreign policy.

<sup>18</sup> The three governments, as well as others worldwide, however, complied in the case of civilian aircraft in order to avoid dangerous incidents.

<sup>19</sup> See “The EU and Japan Acting together for Global Peace and Prosperity”, Joint Statement, 22nd EU–Japan Summit, Brussels, 7 May 2014, available at [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/142520.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/142520.pdf) (hereafter, Joint Statement on the 22nd EU–Japan Summit).

<sup>20</sup> Since May 2009, when China for the first time confronted vessels passing through parts of the South China Sea (in this case the USNS Impeccable), these incidents have always occurred inside the Chinese EEZ.

<sup>21</sup> From 2009 until 2012, Japan was governed by the Democratic Party of Japan, which made improving its relationship with China one of its foreign policy objectives. Once in government, it proposed the establishment of an “East Asian Economic Community”, which was spurned by Beijing.

First, China holds a new position in the region and globally. In its own eyes, and in the eyes of others, China has achieved the status of a world power. After following for 30 years the famous maxim, attributed to Deng Xiaoping, to “hide your light and bide your time”,<sup>22</sup> China has adopted a foreign policy that seems to arise from the wish to act in accordance with its new position.<sup>23</sup> Even if there is no enemy that wants to attack China, it may regard a strong military as something that a world power “needs”. Ninety percent of global trade goes by sea, but under the current order only the US (with allies) has the means to police the sea lanes. Why, from the point of view of the newly arrived world power, should that remain the case close to China’s coast? The fact that China profits from the status quo does not mean that it cannot perceive a need to improve it, and extend its own maritime reach. As the Chinese Defence White Paper of May 2015 states: “It is necessary for China to develop a modern maritime force structure commensurate with its national security”.<sup>24</sup>

From that perspective, the US security guarantee, and, since 2011, its “rebalancing strategy” that aims to bring 60 percent of the US fleet to the Pacific by 2020, may look to China very much like “soft containment” – at the least.<sup>25</sup> It might seem only natural to seek an arrangement in the region that makes China less dependent on the US, and wins it access to the natural resources and the fish of the region in the process.

If China had its armed forces reinforce rather than undermine the international system, there would probably be no major problem. But, at a 2014 regional conference, Xi indicated that China was heading in another direction: “Security in Asia should be maintained by Asians themselves”.<sup>26</sup> Since then, China has set into motion its vision of two new “Silk Roads”, one of them a “Maritime Silk Road”, a grand investment scheme that promises a kind of Marshall Plan for South and Southeast Asia. This initiative transcends maritime security, offering what previously only the US could offer: affluence through cooperation with the power that holds the purse strings. It would be logical if, for China’s leaders, the core question is who dominates the seas around China. “Comprehensive national power” has been a declared objective of China’s policy for some years, and it might consist in shaking up the fundamentals of post-Vietnam War East Asia.

The combination of the US–China rivalry with China’s assertive and unpredictable behaviour is at the core of the East/Southeast Asian maritime conflicts. However, excluding the US from the region would mean depriving

22 See, for example, Xiong Guangkai, “China’s Diplomatic Strategy: Implication and Translation of ‘Tao Guang Yang Hui’”, Chinese People’s Institute of Foreign Affairs, Issue 98, Winter 2010, available at <http://www.cpifa.org/en/q/listQuarterlyArticle.do?articleId=182>.

23 In his talk with President Obama on 8 June 2013, President Xi said: “The vast Pacific Ocean has enough space for two large countries like the United States and China”. See “Chinese leader Xi Jinping joins Obama for summit”, *BBC News*, 8 June 2013, available at <http://www.bbc.com/news/world-asia-china-22798572>; and also “The World is Xi Jinping’s Oyster Right Now”, the *Economist*, 5 December 2014, available at <http://uk.businessinsider.com/the-world-is-xi-jinpings-oyster-right-now-2014-12?op=1?r=US&IR=T>.

24 The *Economist*, 17 October 2015, p. 61.

25 Col. Lu Yin, Berlin Foreign Policy Forum, 10 November 2015.

26 See *Global Times*, 22 May 2014.

its countries of their long-time security guarantor. If the US backed out, how would China set the rules? China’s claim to possession of the entire East and South China Seas presages a region in which the established global norms of governance are weakened, at least as far as the Law of the Sea is concerned, and where its neighbours have a lesser say in their own fates than under the current *Pax Americana*.<sup>27</sup> Small wonder, then, that – though there is little desire in the region to choose between China as the guarantor of economic development and the US as the guarantor of security – Washington’s “rebalancing” policy has so much support.

The US is still dominant in the region, but the initiative has passed to China. This means that Beijing is responsible for making the decision of how to react, in cases such as the US’s “freedom of navigation” operation. The most likely trigger for an armed clash is another in the pattern of China responding assertively to unplanned incidents – from the Hainan incident of 2001 to the two incidents in January 2013 when Chinese navy vessels allegedly locked their radar weapons-targeting system onto a Japanese navy boat and military helicopter.

The regional maritime disputes have become a simmering conflict between the “only remaining superpower” – the US – and the new world power – China. Their resolution is dependent on the relationship between the US and China, as well as what the countries of the region expect from the US. Neither the South nor the East China Sea conflicts can be resolved as long as the rivalry between the US and China is unresolved. This also means that the dangers inherent in these conflicts cannot be neutralised, and unplanned armed clashes can only be avoided or mitigated by careful crisis-prevention measures. These are possible, and in fact are partly implemented, because neither side is actively seeking an armed conflict. Still, the present situation is such that any miscalculation or any accident can easily erupt into a scenario that no one wants.<sup>28</sup>

### *And Europe?*

Europe has an important stake in maintaining peace in East/Southeast Asia, and in upholding international law and rules. The EU and the US statements about their interests echo one other<sup>29</sup> – especially concerning

27 This would presumably be the world that former Chinese foreign minister Yang Jiechi had in mind when he said at the ASEAN Regional Forum meeting in Hanoi in 2010: “There are big countries, and there are small countries, and that is just a fact”.

28 See Tuosheng Zhang, “The Gap Between Threat and Threat Perception in the Asia-Pacific”, in *The Stockholm China Forum Paper Series* (Washington, DC: German Marshall Fund of the United States, 2014).

29 Together with Japan, the EU stated on 7 May 2014: “We concur on the need to continue to ensure the freedom of navigation and overflight of the high seas as enshrined in the United Nations Convention on the Law of the Sea, to ensure the safety of navigation and to refrain from actions, including the use of coercion, that could increase tensions. We highlight the need to seek peaceful solutions through active diplomatic engagement and in accordance with principles of international law, and to work together to build mutual confidence”. See Joint Statement on the 22nd EU–Japan Summit, available at [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/142520.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/142520.pdf). While the EU does not have a position on the claims in the East and South China Seas as such, the reference to the need to base claims on international law can be interpreted as meaning that the EU does not regard claims based on history as acceptable. On 5 February 2014 Daniel Russel, Assistant Secretary of State, said to the Subcommittee on Asia and the Pacific of the House Committee on Foreign Affairs: “As we consistently state, we have a national interest in the maintenance of peace and stability; respect for international law; unimpeded lawful commerce; and freedom of navigation and overflight in the East China and South China Seas”.

the principle of freedom of navigation.<sup>30</sup>

Therefore, the US security guarantee for Asia is in Europe's interest, at least as long as the countries of the region want it, and as long as what would take its place does not seem to be an improvement. For this reason, it makes sense to use European tools to work for conflict resolution and to protect the rules of international order on the seas of the region. The EU has said as much, both with the US (in the Joint Statement of 12 July 2012), with Japan,<sup>31</sup> and in its 2012 "Guidelines on the EU's Foreign and Security Policy in East Asia": "The EU and its Member States, while not in any sense taking position on these various claims, should nevertheless: if welcomed by the relevant parties, offer to share the experience of the EU and its Member States in relation to the consensual, international law-based settlement of maritime border issues, and to the sustainable management of resources and maritime security cooperation in sea areas with shared sovereignty or disputed claims".<sup>32</sup>

The wording makes clear that the EU sees itself not as a neutral observer, but as a party that would make diplomatic resources available. However, it will do this only if it is "welcomed by the relevant parties". This is a high threshold, considering that China has so consistently refused to acknowledge the EU's right to even comment on questions of maritime security in East Asia.<sup>33</sup>

As a consequence, the EU has confined itself to "cautious attempts at exerting diplomatic influence"<sup>34</sup> – it has neither agreed officially with Japan's indication to the UN General Assembly in 2012 that it is ready to go to the International Court of Justice on the East China Sea question, nor has it commented on the Philippines' decision to appeal to the Permanent Court of Arbitration. Instead, it usually issues firm declarations of its resolve to contribute to security in Asia. In 2013, then-EU High Representative Catherine Ashton said at the Shangri-La Dialogue in Singapore: "We believe we have a dual contribution to make to security in the region and beyond: first by offering to be a true long-term partner on security issues and second by being an effective and innovative one, through our ability to implement a comprehensive approach which is particularly suited to the new challenges we all face. ... For us the

30 See the comprehensive presentation by the Council of the European Union: Guidelines on the EU's Foreign and Security Policy in East Asia, 11492/12, Brussels, 15 June 2012: [http://eeas.europa.eu/asia/docs/guidelines\\_eu\\_foreign\\_sec\\_pol\\_east\\_asia\\_en.pdf](http://eeas.europa.eu/asia/docs/guidelines_eu_foreign_sec_pol_east_asia_en.pdf), and compare Daniel Russel, Assistant Secretary of State, Testimony to the Subcommittee on Asia and the Pacific of the House Committee on Foreign Affairs, 5 February 2014: <http://docs.house.gov/meetings/FA/FA05/20140205/101715/HHRG-113-FA05-Wstate-RusselD-20140205.pdf>.

31 See the Joint Press Statement on the 22nd EU–Japan Summit: "We support ASEAN and its central role in establishing strong and effective multilateral security structures in Asia. To this end, the EU and Japan will continue to play an active and constructive role in the ASEAN Regional Forum (ARF). We strongly support the efforts by ASEAN and China for the early conclusion of an effective and legally binding Code of Conduct. Recognising the EU's experience in regional integration and the promotion of peace and security on a continental scale, Prime Minister Abe welcomes the EU's continued interest in greater involvement in the East Asia Summit and its willingness to contribute substantially to promoting peace and security in the region, including through its engagement with the regional architecture". Also see Michael McDevitt, "East Asian Maritime Disputes and U.S. Interests", available at <http://www.du.edu/korbel/china/media/documents/denverpresentation.pdf>.

32 "Guidelines on the EU's Foreign and Security Policy in East Asia".

33 Mathieu Duchâtel and Fleur Huijskens, "The European Union's principled neutrality on the East China Sea", SIPRI Policy Brief, February 2014 (hereafter, Duchâtel and Huijskens, "The European Union's principled neutrality").

34 Duchâtel and Huijskens, "The European Union's principled neutrality".

comprehensive approach implies combining hard and soft power to achieve lasting security and prosperity. This approach, we believe, makes us a unique global partner for Asia on security issues".<sup>35</sup> In 2015, Ashton's successor, Federica Mogherini, said on the maritime disputes, again at the Shangri-La Dialogue: "We are resolute as Europeans on how they should be resolved – that is, peacefully".

If, however, the core of the maritime disputes is not an issue of territory, but, as argued above, the rivalry between the US and China, then the question is whether the largely inconsequential role the EU plays, as expressed in these speeches and statements, corresponds to the dimension of its interests in the region. This disengaged attitude might be in order if European interests were taken care of sufficiently by others – the US? Japan? China? – or if Europe was confident that the major actors in the region would eventually arrive at resolutions that do not damage European interests. However, this is not a given.

As always, the urgent is the enemy of the important, and in Europe today the urgent includes the Ukraine crisis, the euro crisis, the refugee crisis, and the Islamic State (ISIS) terrorist threat. Fortunately, the thing that everyone fears – that an accident evolves into an armed conflict – has not yet put East Asia on the "urgent" list. But the question of what to do if that happens is not an academic one. How would, and how should, the EU respond? Countries in the region, and the US, would ask Europe not to stand on the sidelines. Maybe China would ask too. Given the present statements from European sources about the value of economic relations to China, a miscalculation in Beijing that the EU might be on its side would be possible.<sup>36</sup> Then what? It is conceivable that a US request to impose economic sanctions on China would rip the Union apart.

Therefore, the first European priority would be to reach a consensus to overcome its present state of "convenient marginalisation"<sup>37</sup> and act in unison. The European External Action Service (EEAS) should initiate a rigorous analysis of possible European East Asia policies, and their parameters. What is driving policymaking in China today – domestic motives, ideology, or rational calculation? Does Beijing have a plan for the country's future (beyond catching up with the US), and does it have the strength to solve the problems it is currently causing? How does China's policy complement or contradict European visions of its future with Asia? What ideas do the other countries in the region have of their future – especially those with which Europe shares values and interests? How much of a Chinese say in their affairs would they tolerate?

Additionally, the EEAS should consider whether the EU

35 See Speech by EU High Representative Catherine Ashton at the Shangri-La Dialogue, Singapore, 1 June 2013, available at [http://eu-un.europa.eu/articles/en/article\\_13596\\_en.htm](http://eu-un.europa.eu/articles/en/article_13596_en.htm).

36 See footnote 3.

37 The author is grateful to Professor Reinhard Wolf, Frankfurt, for drawing his attention to this appropriate term to describe the far-reaching acceptance by EU countries of their present small capacity to exert influence in the Far East, as used by Jonathan Holslag, "Europe's convenient marginalisation", *Politico*, 4 July 2012, available at <http://www.politico.eu/article/europes-convenient-marginalisation/>.



stands behind the Joint EU–US Statement of 2012. If so, what options are there for its implementation, and if not, what other options are there? An extreme example: would it be an option to have European ships demonstrate the principle of freedom of navigation in the South China Sea in the way the US does? That would be risky, and a European consensus would presumably be unreachable. The question illustrates, however, how important it is to define a reasonable European strategy.

A militarisation of the EU's Asia policy is not feasible, and probably not desirable. The theatres where Europe exerts its "hard power", when necessary, remain the Atlantic region and the Middle East. However, an agreement based on the policies of cooperation that the EU has implemented for decades in its relationship with Asian partners would be realistic. Working with countries in the region, EU members should use their close economic cooperation with China to make the European position on international rules and norms, particularly on freedom of navigation, clear to Beijing and others. This could be accompanied by more intense cooperation with the US, Japan, South Korea, and others in the region.

Japan in particular could be an important partner. It has already taken steps towards military interoperability with the EU, for example in the Indian Ocean, and the EU and Japan are currently negotiating a Strategic Partnership Agreement.<sup>38</sup> Another way to intensify Europe's engagement would be to pursue official development assistance (ODA) projects together with Japan and the US. Eventually, cooperation in the field of capacity-building or at some point even arms exports could also be options, and could form the substance of the ambitions formulated in the Joint EU–US Statement, and by German Defence Minister Ursula von der Leyen at the 2015 Shangri-La Dialogue: "I see the need of closer cooperation between ASEAN and the European Common Defence and Security Policy".<sup>39</sup>

At the core of the most volatile East/Southeast Asia maritime disputes is the rivalry between the US and a rising China. If this competition pits China against the rules-based international order, as seems to be the case, this will constitute a serious challenge for Europe's value system. Europe would need to seek closer cooperation with the countries whose values it shares. The question of what the EU should do seems to boil down to a simple recipe with only one essential ingredient: cooperation. Close cooperation in highly developed formats with all its Asian

<sup>38</sup> Such an agreement could then provide the basis for further agreements, for example on information security and acquisition and cross-servicing agreements. See Michito Tsuruoka's excellent analyses and formulation of objectives for a "full political and security partnership between Europe and Japan" in Yuki Tatsumi (ed.), *Japan's Global Diplomacy: Views from the Next Generation* (Washington: Stimson Center, 2015).

<sup>39</sup> The full quote was: "Free trade was possible because every nation respected the freedom of the sea and this is what this conference is all about. Stability, security and prosperity are indivisible. None of them can exist without the others. ... As ASEAN is intensifying its focus on security, including its outreach to China, I see the need of closer cooperation between ASEAN and the European Common Defence and Security Policy". See Federal Minister of Defence Ursula von der Leyen, "Strengthening Regional Order in the Asia-Pacific", Speech at the IISS Shangri-La Dialogue, 20 May 2015, available at <http://www.iiss.org/en/events/shangri-la-dialogue-2015-862b/plenary4-b8e3/leyen-9690>.

partners, and most of all with those whose views of the world are most similar to Europe's – a group which China, at some point, will belong to.

## Appendix: Other maritime conflicts

### Taiwan

Taiwan is the one location in the world where the US and China are antagonists. Chiang Kai-shek, the leader of the pre-Communist Republic of China, remained under the protective umbrella of the US after he was defeated in the civil war and went into exile in Taiwan. Today, Taiwan rules surrounding maritime territory and a number of islands, some close to the coast of mainland China.

The US has improved its relationship with Beijing, but in the 1979 Taiwan Relations Act made clear that it would continue to stand by Taiwan and secure its defence. However, a show of force in the mid-1990s by China's government, and, in retaliation, by the US navy, was the last time that there was a real possibility of an immediate armed conflict. While Beijing continues to make clear that it has the option of armed force, it has deepened its economic relations with Taiwan and toned down its aggressive rhetoric. Armed conflict across the Taiwan Strait does not at present seem likely. Even when the Democratic Progressive Party (DPP) came to power in Taiwan in 2000 and began a process resulting in a parliamentary resolution to declare the island independent of "China" (a process that was never completed, and terminated when the long-ruling Kuomintang party returned to power in 2008), Beijing aimed to gradually improve relations to facilitate future reunification.<sup>40</sup> Whether the same holds true after the landslide victory of the DPP in the elections of January 2016 depends to a large degree on the evaluations of the Xi-led government in Beijing. A conflict in either the South or East China Sea would change the parameters of Taiwan's strategic situation and might have dire consequences for Taiwan. The integration of Taiwan into China would completely change the strategic environment of the South and East China Sea conflicts in Beijing's favour.

The EU has taken a position on the Taiwan issue at various times. In 2005, when China enacted a law that forbids "secession", the EU issued a statement urging "all sides to avoid any unilateral action that could stoke tensions", and recalled the "constant principles that guide its policy, namely its commitment to the principle of one China and the peaceful resolution of dispute ... and its opposition to any use of force".<sup>41</sup>

<sup>40</sup> As shown by the surprise offer from Xi to meet Taiwanese President Ma Ying-jeou – which took place on 7 November 2015 – changes around the Taiwan issue may be possible at any time.

<sup>41</sup> See "EU Presidency declaration on the 'anti-secession law' by China", European Council, 14 March 2005, available at [http://eu-un.europa.eu/articles/en/article\\_4470\\_en.htm](http://eu-un.europa.eu/articles/en/article_4470_en.htm).

### *The Gulf of Pohai between North and South Korea*

The agreement that ended the Korean War designated the 38th parallel as the provisional land border between North and South Korea. While relatively easy to designate on land, the sea demarcation of the so-called Northern Limit Line has proved more difficult. As a result, occasional armed incidents occur between the navies of both countries, most recently in 2010,<sup>42</sup> and there is a risk that these could spiral out of control.<sup>43</sup>

The real risk, however, is that the strategy of nuclear-armed North Korea could lead to an all-out war between North and South (probably dragging in Japan and the US, and possibly China). Bilateral discussions on the exploitation of marine resources, or on confidence-building measures (such as the establishment of common radio frequencies, signalling of intent by vessels, or a naval hotline) invariably fail. This is because North Korea uses the uncertainty around the demarcation to create tensions when it wants to express displeasure – for example, at the time of South Korean-US manoeuvres – or exert pressure to achieve other objectives, such as pushing South Korea to improve economic cooperation.

The EU has issued statements expressing concerns when there were armed incidents, such as in 2010.<sup>44</sup>

### *The Yellow Sea between China and South Korea*

In 2012, when China declared its ADIZ over the East China Sea, the zone included the air space above Ieodo (Chinese: Suyan; English: Socotra Rock). This maritime feature is contested between China and South Korea, as it is located in the declared exclusive economic zones (EEZs) of both. The actual dispute is more about fishing rights and access to possible rich seabed finds derived from the territorial claim. In the past China, South Korea, and Japan agreed on fishing quotas, but Chinese fishermen have often violated that agreement in recent years, usually followed by the Korean government seizing Chinese boats. One Korean coast guard officer was killed during one such incident, when Chinese crews resisted.

However, neither side has allowed the conflict to develop into a controversy comparable to the South and East China Sea disputes, which may explain why Europe's EEAS has not yet felt a need to take a position on the issue.

<sup>42</sup> "South Korea to bolster troops amid new threat from North", *Associated Press*, 25 November 2010, available at <http://www.france24.com/en/20101125-south-korea-bolster-security-threats-north-islands-artillery-clash/>.

<sup>43</sup> "North Korea: The Risks of War in the Yellow Sea", International Crisis Group, Asia Report, Number 198, 23 December 2010, available at <http://www.crisisgroup.org/en/regions/asia/north-east-asia/north-korea/198-north-korea-the-risks-of-war-in-the-yellow-sea.aspx>.

<sup>44</sup> "Statement by EU HR Ashton on North Korean attack on South Korean island", European Union, Brussels, 23 November 2010, available at [http://eu-un.europa.eu/articles/en/article\\_10404\\_en.htm](http://eu-un.europa.eu/articles/en/article_10404_en.htm).

### *The Sea of Japan*

The two islands of Dokdo (Japanese: Takeshima; English: Liancourt Rocks) are uninhabited and located at about the same distance from the Korean and Japanese coasts. They were formally annexed by Japan in 1905, when Korea became a Japanese colony, and the dispute was not resolved even after Japanese-Korean relations were normalised in 1965. However, South Korean coast guard troops occupied the islets in 1953 and have held them ever since. In recent years, the island conflict has become part of the animosity between vocal minorities in both countries. For the South Korean public, the dispute relates directly to the colonial period of 1905 to 1945, with its history of humiliation at the hands of the Japanese occupiers. In 2012, then-South Korean President Lee Myung-bak visited the island, causing outrage in Japan. A number of provincial lawmakers in the Japanese prefecture Shimane (to which Takeshima "belongs") planned to travel to the islands in boats to protest. The initiative was stopped short by the central government in Tokyo, showing that, while it seems unlikely that the dispute will be resolved in the near future, neither government will allow it to get out of control.

The EEAS has never taken a position on the issue.

### *The four southernmost Kuril Islands*

The Soviet Union declared its entry into the war against Japan on 8 August 1945 and soon occupied Japan's so-called Northern Territories, i.e. 56 of the Kuril Islands, and the southern half of Sakhalin. The occupation of four larger islands and a number of smaller ones, directly adjacent to Japan's Hokkaido island, was never accepted by Japan. The Treaty of San Francisco, post-Second World War, states that the "Kuril Islands" are to be ceded to the Soviet Union, but for Japan the southernmost islands are not part of the "Kurils", having become part of Japan through a Russian-Japanese treaty in 1855, a quarter of a century before the others.

In the absence of a peace treaty between the Soviet Union and Japan, the question of the islands was never resolved. In fact, this question remains the only obstacle standing in the way of a peace treaty. Diplomatic efforts on both sides to resolve the question, possibly through a compromise over some of the islands, were never successful. With the discovery of rich mineral deposits in the waters surrounding the islands, it becomes even more remote; then-Russian President Dmitry Medvedev brought this home when he paid a visit to the islands in 2010. However, the two sides have arrived at agreements about fishing rights. So while the climate vacillates between hostile and cooperative, outbreak of an armed conflict, even by accident, remains highly improbable.

The EEAS has never taken a position on the issue.

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