



THE EUROPEAN UNION'S PRINCIPLED NEUTRALITY ON THE EAST CHINA SEA

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INTRODUCTION¹

The European Union (EU) is widely perceived as a marginal player in East Asian security, as it does not have a military presence in the region.² Its current foreign and security policy priorities in Europe's neighbourhood—Russia's assertiveness and terrorist risks from the Middle East's conflict zones—and the relative weakening of the EU as a result of the Euro crisis have reinforced the perception of the EU as largely irrelevant to Asian security.

This Policy Brief develops a more nuanced argument regarding the

EU's impact on maritime security in the East China Sea. The EU follows an approach of principled neutrality in the East China Sea, which has three main features: (a) no position on sovereignty and no sides taken; (b) advocacy of crisis management tools; and (c) an emphasis on international law, especially the United Nations Convention of the Law of the Sea (UNCLOS).³ Although principled neutrality is essentially a cautious attempt at exerting diplomatic influence in China and Japan—arguably, it contributes to managing tensions. Since the EU has strong legitimacy as a proponent of an international order based on laws, rules and norms, and as a party that has ratified UNCLOS (contrary to the United States), principled neutrality helps to maintain international law and crisis management options in the security discourse. However, the extent to which the EU helps to shape a less confrontational security environment is highly questionable. Regrettably, given its strong

¹ For general background on the disputes in the East China Sea and other papers in this series see 'Promoting crisis management in the East China Sea', SIPRI, Feb. 2015, <<http://www.sipri.org/research/security/china/promoting-crisis-management-in-the-east-china-sea>>.

² Shetler Jones, P., 'Why the EU (still) finds it hard to be taken seriously in Asia', *Europe Asia Security Forum*, 25 Nov. 2012, <<http://euroasiasecurityforum.com/2012/11/25/why-the-eu-still-finds-it-hard-to-be-taken-seriously-in-asia/>>; Speck, U., 'A strategic approach toward the Asia-Pacific', *Carnegie Europe*, 28 Sep. 2012, <<http://carnegieeurope.eu/strategieurope/?fa=49518>>; and Weissmann, M., 'A European strategy towards East Asia. Moving from good intentions to action', *Swedish Institute of International Affairs*, Apr. 2013.

³ United Nations Convention on the Law of the Sea (UNCLOS), opened for signature 10 Dec. 1982, entered into force 16 Nov. 1994, *United Nations Treaty Series*, vol. 1833 (1994).

SUMMARY

● The Policy Brief discusses the role that the European Union (EU) could play to support crisis management and international law solutions in the East China Sea. The current EU approach can be described as 'principled neutrality'. On the one hand, it has no position on sovereignty issues, but on the other, it supports crisis management and international law solutions (at the general level of principled declarations). The Policy Brief argues that this rhetorical support plays a very limited—but not insignificant—role as it helps maintain cooperative security approaches in the security discourse. It also analyzes how the EU reached its current position and the difficulties it faces in exerting influence in the strategic triangle comprising China, Japan and the United States. The Policy Brief recommends stronger diplomatic commitment by the new EU leadership and the External Action Service in support of an international maritime order based on the United Nations Convention on the Law of the Sea (UNCLOS), as the EU has unique potential to play a leading role in support of UNCLOS.



legitimacy, the EU does not provide political leadership regarding international law solutions. The question of how the EU can improve the promotion of crisis management and international law in East Asia, therefore, remains unanswered.

This Policy Brief analyses the EU's principled neutrality in the East China Sea and describes the internal and external factors that have shaped this approach. It reviews the EU's construction of diplomatic channels with China and Japan after the Lisbon Treaty—a key development if the EU is to develop greater influence on security matters in East Asia. The conclusion assesses the impact of the EU's approach and discusses policy options to make a greater contribution to peace and stability in the East China Sea. It argues that the EU should focus its limited diplomatic resources on seeking added value in a complex security environment through greater diplomatic support for international law and crisis management solutions.

THE EU'S PRINCIPLED NEUTRALITY IN THE EAST CHINA SEA

The European External Action Service (EEAS) released three statements in reaction to some of the major events that led to the deterioration of China–Japan security relations in 2012 and 2013. The first was issued in response to the purchase of the Senkaku/Diaoyu Islands by the Japanese Government in September 2012.⁴ The EU stated

⁴ European External Action Service (EEAS), 'EU Declaration on recent developments in East Asia's maritime areas', no. EU12-317EN,

that, given its 'significant interests in the region', it was 'following with concern the developments in East Asia's maritime areas'. In this statement, the EU called for restraint and urged that the parties involved should seek 'peaceful and cooperative solutions in accordance with international law, in particular the United Nations Convention on the Law of the Sea (UNCLOS)'. The statement also mentions the EU's hope that the two parties can 'clarify the basis for their claims'.

The second statement reacted to China's unilateral announcement of an air defense identification zone (ADIZ) over the East China Sea in November 2013.⁵ The statement describes the Chinese ADIZ as a development heightening 'the risk of escalation and contribut[ing] to raising tensions in the region'. Further, it reiterates the EU's call for restraint, emphasizing the importance of 'trust building measures', international law, and of resolving 'differences constructively'.

A month later, in December 2013, the EU issued a third statement in response to the visit of the Japanese Prime Minister, Shinzo Abe, to the Yasukuni Shrine.⁶ The visit was characterized as 'not conducive to lowering tensions in the region or

25 Sep. 2012, <http://eu-un.europa.eu/articles/en/article_12619_en.htm>.

⁵ EEAS, 'Declaration by the High Representative Catherine Ashton on behalf of the European Union on the establishment by China of an "East China Sea Air Defence Identification Zone"', 28 Nov. 2013, <http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2013/20131129_en.htm>.

⁶ EEAS, 'Statement by the Spokesperson of EU High Representative Catherine Ashton on the visit of Prime Minister Abe to Yasukuni Shrine', 131226/01, Brussels, 26 Dec. 2013, <http://eeas.europa.eu/statements/docs/2013/131226_01_en.pdf>.



to improving relations with Japan's neighbours, especially China and Republic of Korea'.

The statements contain the three main components of the EU's principled neutrality. Like many states in other parts of the world, including the USA, the EU takes no position on the sovereignty of the Senkaku/Diaoyu Islands. Contrary to the USA, the statements by the EU do not mention Japan's administration of the islands. There have been no public comments from EU officials regarding Japan's official stance that there is no sovereignty dispute over the Senkaku/Diaoyu Islands. Not taking sides and refraining from any public comments on issues surrounding sovereignty is in essence a policy of neutrality.

In addition, the EU approach is organized around two main principles: crisis management and international law solutions. First, the statements—and the EU via diplomatic channels—advocate crisis management tools to 'seek peaceful and cooperative solutions'.⁷ The maritime security toolbox includes self-restraint, dialogue, preventive diplomacy, confidence-building measures (CBMs) and building trust at the political level.

Second, the EU has a stated strategic interest in an international order based on rules and norms, which is consistent with the EU's advocacy of a 'law-based multilateral system' that reflects Europe's post-war model. The approach emphasizes international law, including UNCLOS.⁸

⁷ EEAS (note 4).

⁸ This was reflected in the European Security Strategy in 2003: 'Our security and prosperity increasingly depend on an effective multilateral system. We are committed to upholding and developing International

There are both similarities and differences between the EU and the USA's approach to international law in the East China Sea. Public support for UNCLOS in relation to East Asian maritime security was first included in the US Department of State's declarations regarding the situation in the South China Sea.⁹ However, contrary to the USA, the EU ratified UNCLOS in 1998. Although in practice the US Navy follows the rules of UNCLOS at sea, the lack of ratification nullifies its influence over China in this area. As Peter Dutton notes, 'East Asian states, indeed many states around the world, are desperate for active American leadership with regards to the norms and the law that govern legitimate international action'.¹⁰ This positions the EU as the only major third party with sufficient legitimacy to advocate international law without risking being accused

Law ... We want international organisations, regimes and treaties to be effective in confronting threats to international peace and security, and must therefore be ready to act when their rules are broken'. Council of the European Union, 'A secure Europe in a better world: European security strategy', Brussels, 12 Dec. 2003, <<http://www.eeas.europa.eu/csdp/about-csdp/european-security-strategy/>>, p. 9. See also Godement, F., 'Divided Asia: the implications for Europe', Policy brief, European Council on Foreign Relations, London, Nov. 2013, <http://www.ecfr.eu/page/-/ECFR91_DIVIDED_ASIA_AW.pdf>.

⁹ E.g. a US Department of State press statement stated that 'We continue to urge all parties to clarify and pursue their territorial and maritime claims in accordance with international law, including the Law of the Sea Convention. We believe that claimants should explore every diplomatic or other peaceful avenue for resolution, including the use of arbitration or other international legal mechanisms as needed'. US Department of State, 'South China Sea', Press statement 2012/1263, 3 Aug. 2012, <<http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm>>.

¹⁰ Dutton, P., 'China's maritime disputes in the East and South China Sea', *Naval War College Review* (Summer 2014), pp. 7–18.



of double standards—a role that the Association of Southeast Asian Nations (ASEAN) cannot play because of the ongoing maritime disputes between China and some of its member states. Whether this enables the EU to provide political leadership on international law approaches for maritime security in the East China Sea is another question.

Indeed, the EU's support for international law remains at the general level of principled declarations. The EU has no public stance on specific aspects of UNCLOS, such as the potential procedures that states could use to settle their differences. For example, in a related issue, the EU did not publicly support the initiative of the Philippine Government to institute arbitration against China under UNCLOS at the Permanent Court of Arbitration in The Hague.¹¹ Similarly, in the East China Sea, the EU has not specifically advocated maritime border delimitation under UNCLOS or resolved the sovereignty issue over the Senkaku/Diaoyu Islands at the International Court of Justice (ICJ). The reason for this, as one European diplomat put it, is that 'the EU would wave a red flag in front of a bull if it would suggest China and Japan to resolve their issues through the ICJ'.¹² Finally, despite the mainstream interpretation by the EU member

states that UNCLOS gives states the right to conduct military activities in exclusive economic zones (EEZs), the EU has refrained from confronting China on this contentious issue. The reason for staying at the general level of principles, as another European diplomat explains, is because 'the EU's role is not to act as a judge or arbitrator. The EU is just an interested party that wants to ensure stability in the region'.¹³

THE EU'S INVOLVEMENT IN THE EAST CHINA SEA

Interests and stakes

The EU's principled neutrality reflects the shared perception among EU member states that they have interests at stake in the East China Sea. Despite the 2009 creation of the EEAS by the Lisbon Treaty, EU foreign policy on non-trade issues is driven by the member states. The position of the EU on the East China Sea is the result of consultations between member states between 2009 and 2014.¹⁴ These consultations were initially held in reaction to rising tensions in the South China Sea and took the form of an intra-European debate on whether and how the EU should diplomatically address East Asian maritime security. The debate resulted in an update of the 2007 Guidelines on the EU's Foreign and Security Policy in East Asia, published in June 2012.¹⁵

¹¹ The case was initiated by the Philippines in Jan. 2013. According to the notification and statement of claims submitted by the Philippines, the goal is to seek an arbitration declaring the illegality of China's 9-dash line in the South China Sea and a description of which features in the South China Sea qualify as islands under UNCLOS, thus generating an EEZ. China in a *note verbale* has expressed the position that 'it does not accept the arbitration'. China does not participate in the proceedings.

¹² European diplomat, Interview with author, Beijing, May 2014.

¹³ European diplomat, Interview with author, Beijing, May 2014.

¹⁴ European diplomats, interviews with authors, Europe and China, 2009–14.

¹⁵ The guidelines state that 'The EU and its Member States, while not in any sense taking position on these various claims (in the South China Sea), should nevertheless: if welcomed by the relevant parties, offer to share the



The maritime security situation in the East China Sea was not addressed in the 2012 guidelines, which were released just before the deterioration of China–Japan ties in September 2012. However, the language and the approach are similar to the statements made about the situation in the South China Sea. The guidelines clearly state that the EU has an interest in regional peace and stability in East Asia and in a maritime security order that is based on international rules and shared norms.¹⁶

The very fact that the EU managed to reach a unified position on this matter is an achievement. Indeed, member states display varying degrees of interest and differ in how they choose to prioritize security concerns in the East China Sea. Some states are of the opinion that the EU should refrain from addressing security in the East China Sea and focus instead on promoting trade and economic ties with China and Japan. To some, peace and stability are perceived as the overarching security interests of the EU, while others see freedom of navigation as a major long-term strategic interest that the EU should uphold. Furthermore, EU member states differ with regard to the intensity and the frequency with which they raise maritime security issues with China and Japan. In China, for example, some European

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.' 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>.

¹⁶ EEAS (note 16).

delegations regularly warn of the potential consequences for China's international image if force projection is prioritized; the aim of this approach is to make clear that coercion has 'political costs'.¹⁷ Other states concentrate their diplomatic resources on purely bilateral issues and prefer to outsource diplomatic activities on East Asian security to the EU, without strongly backing EEAS statements.

For small EU member states with no elaborated policy on East Asian security, this shared approach provides a formal position and a common ground for discussion. It pre-empts the risk that some EU member states could express their own stance on sovereignty to advance other aspects of their diplomatic agenda. Conversely, the common position protects EU member states from seeing their relationship with China adversely affected in case their national approach was more critical of China than the EU's.

The EU's crisis management diplomacy

The EU's promotion of crisis management and international law reflects similar efforts undertaken by the USA. Two EU–USA joint declarations have underlined the common approach on the two sides of the Atlantic, most recently in March 2014 when they reiterated their 'calls on all parties to take confidence-building measures and to settle conflicts without threat or use of force and by diplomatic means in accordance with international law, including UNCLOS'.¹⁸

¹⁷ European diplomat, Interview with Authors, Beijing, May 2014.

¹⁸ US White House, EU–US Summit: joint statement, 26 Mar. 2014, <<http://www>>.



However, the EU's principled neutrality is not determined by the transatlantic partnership, nor is it particularly conceived to support US goals and security responsibilities in East Asia. Furthermore, the EU does not have a military alliance with Japan that covers the Senkaku/Diaoyu Islands, nor does it have a robust military-to-military relationship with China enabling frequent exchanges. Contrary to the USA, the strategic position of the EU in international politics is not at stake in East Asian military affairs. In this context, the EU can pursue a policy that suits its resources and profile in the region rather than simply following the USA. Conversely, the EU also has to balance the different expectations placed on it by China and Japan when engaging in the East China Sea.

In China, the EU is perceived as a minor external player: one that creates little trouble but generates little useful support. China wants maritime security in the East China Sea removed from the China-EU agenda. This was requested prior to the visit of the Chinese President, Xi Jinping, to Europe in March 2014 and again, before the October 2014 Asia-Europe Meeting (ASEM) summit.¹⁹ Overall, the EU's approach in the East China Sea dispute is perceived as non-threatening by China. At the same time, China deploys limited diplomatic efforts to win understanding and support from the EU, with the exception of the

whitehouse.gov/the-press-office/2014/03/26/eu-us-summit-joint-statement>. This joint statement in large reiterates the language of the EU-US joint statement on the Asia-Pacific region issued on the margin of the East Asia Forum, Phnom Penh, July 2012.

¹⁹ European diplomats, Interviews with authors, Beijing, Feb. 2014, Oct. 2014.

aftermath of Abe's visit to Yasukuni, which prompted a coordinated effort by Chinese diplomats in Europe to generate support against Japanese historical revisionism.²⁰

However, the Chinese strategic community retains a keen interest in exchanges with Europeans on the topics of crisis management and non-military means to address territorial disputes. Crisis management is a new approach to foreign policy in China. Many within the strategic community equate crisis management with capitulation.²¹ Therefore, promoting crisis management with like-minded partners in China can help them advocate more cooperative practices of security policy within their political system.

In Japan there is an interest for the EU playing a more influential role. Japan's diplomacy stresses international norms and the EU is perceived as a norm-setting status quo power. The statement by the EU on China's ADIZ was appreciated in Japan and seen as contributing to China's restraint in enforcing airspace control.²² Japan understands that the position of the EU on security in East Asia is relatively neutral and independent. Despite disappointment due to the EU's reluctance to criticize the patrols by the Chinese Navy and Coast Guard in the territorial sea of the Senkaku/Diaoyu Islands, the EU's neutrality is understood as a guarantee that China and Japan

²⁰ The Chinese ambassadors to France and Germany published op-eds and the Chinese ambassador to the United Kingdom attacked Japan in televised interviews.

²¹ Chinese academics and experts, Interviews with author, Beijing, May-June 2014.

²² Japanese officials and experts, Interviews with author, Tokyo, Feb. 2014.



will listen to calls for restraint.²³ As a strong advocate of CBMs to enhance East Asian security, the Japanese Government appreciates the EU's standing in favour of crisis management.

DEVELOPING CHANNELS TO PROMOTE CRISIS MANAGEMENT AND INTERNATIONAL LAW

The EU's focus on promoting crisis management and international law has helped to establish the EU as a neutral third party and has won it diplomatic space between China, Japan and the USA. However, it is only since the creation of the EEAS by the Lisbon Treaty that the EU possesses an institutional instrument to convey common positions rapidly in reaction to international developments. Similarly, the creation of the position of High Representative for Foreign and Security Policy has empowered the EU with new resources to seek diplomatic influence. The former High Representative, Catherine Ashton, has brought an EU voice to the ASEAN Regional Forum and the Shangri-La Dialogue, and has supported the participation of EU representatives at the Council for Security Cooperation in the Asia Pacific (CSCAP), a regional track-two security dialogue mechanism in the Asia-Pacific region.

The EU has begun to make use of these channels. EEAS staff is employed within the political sections of embassies across the world, where they provide political and strategic analyses and exchanges with

diplomatic counterparts and local interlocutors. This enables the EU to exchange on political and security issues on a routine basis, a dialogue that was previously limited to trade issues. However, an instrument to reach out to the military is still needed. Without a defence attaché position, the EEAS has no Ministry of Defence counterpart, a protocol obstacle more generally but one that is particularly insurmountable in communicating with the Chinese People's Liberation Army. This weakness is being addressed with the creation of an annual EU-China Dialogue on Security and Defence, an essential political dialogue at the military-to-military level on international security issues. With this in place, the EU now has instruments to exert influence at the working level, and not only during annual political summits with China and Japan.

The EU could use these channels to address any doubts in Europe concerning China's support for freedom of navigation and to engage in a dialogue on UNCLOS with Chinese military lawyers, naval officers and Ministry of Defence (MOD) officials. Currently, the EU does not play a significant role on the contentious question of military activities in EEZs. China requires foreign navies to obtain permission before conducting military activities in Chinese EEZs (these are not defined clearly in the South China Sea), a position which is at odds with Western interpretations of UNCLOS. But this question is currently handled by some of the European national embassies—especially defence missions—rather than the EU.

²³ Japanese officials and academics, Discussions with author, Tokyo, Feb. 2014.

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CONCLUSIONS: IN SEARCH OF ADDED VALUE

In the past three years, the EU has developed a set of positions on maritime security in the East China Sea to respond to rising tension between China and Japan over the Senkaku/Diaoyu Islands. These positions were articulated in statements made by the EEAS through Catherine Ashton. The EU has defined the collective maritime security interests of its member states and raised concerns with China and Japan at multiple diplomatic occasions with a single voice. As a result, many EU member states with no policy on East Asian security can now follow the EU guidelines and share a common ground for discussions. The EU's ambition to contribute to stability rests on the development of diplomatic channels to address military security with China and Japan, and on a nascent military relationship with China, which the EU conceives as a socialization process promoting notions of cooperative and collaborative security.

Principled neutrality is the EU's attempt to play a positive role in the East China Sea, a region in the world where the EU has little influence and power. This approach stresses security-crisis management, rather than sovereignty-crisis resolution. In setting limited goals, the EU is looking for added value rather than pursuing unrealistic goals. Its main contribution so far is the diplomatic support for crisis management and international law approaches, which has in turn aided the security discourse and helped shape a less

confrontational environment with peaceful cooperation options. Given the risk of air collision or incidents at sea, this contribution is not insignificant, although it is clearly not a game-changer. With the EU's new foreign and security policy team in place since November 2014 under the leadership of High Representative of the European Union for Foreign Affairs Federica Mogherini, ensuring that these efforts continue to play a positive role in East Asian security should be a priority on the EU's agenda. In particular, the EU's offer to share its experience 'in relation to the consensual, international-law-based settlement of maritime border issues . . . if welcomed by the relevant parties' will need high-level political support to stand a chance of being taken seriously, especially in China.²⁴

The EU's neutrality enables meaningful exchanges in China to promote crisis management and international law but these advocacy channels are currently underdeveloped, especially at the military-to-military level. Indeed, the EU could make better use of its neutrality to play a greater and more positive role. This is particularly true of the EU's support for UNCLOS. Given its legitimacy as a neutral third party, the EU should focus its limited diplomatic resources on promoting UNCLOS as the most important source for stable maritime order.

²⁴ EEAS (note 16), p. 20.