

## The EU's South China Sea Challenge

*In the South China Sea, the EU's raison d'être – the rule of law and peaceful coexistence – is under threat. What can Brussels do about it?*

By **Sophie Boisseau du Rocher**

The European Union is certainly not a major stakeholder in the South China Sea disputes and does not claim to be. Yet, at the same time, it has significant interests in the issue – and not only because 40 percent of its foreign trade is dependent on this free and safe corridor. The EU has major partners directly involved in the disputes, and perhaps more importantly, it has systemic interests to defend. As suggested in 2016 at the Shangri-La Dialogue by Jean-Yves Le Drian, then France's defense minister, “if the law of the sea is not observed in the China Seas today, it will be in jeopardy in the Arctic, the Mediterranean or elsewhere tomorrow” – a concern recently echoed by a NATO report.

Where are we today with this assessment? Is there any possibility for the new “geopolitical” EU Commission (as it has branded itself) to budge China without compromising too far on its fundamentals? Or will the South China Sea challenge be an additional humiliating game of hide and seek for Europe? Facing China's increased self-confidence – even impatience – in shaping its own global order, can the EU contribute to that order's elaboration while preserving its core values? At the very end, what is at stake is the EU's legitimacy as an exemplary model for peace.

### The European Experience

The fundamental attachment to the rule of law demonstrated by the European Union over decades is not the product of concepts elaborated by lawmakers in their ivory towers; it has been generated incrementally after a long history of painful and costly wars, violence, and devastation. It should not be mistaken for a half-hearted inspirational ideal but instead be understood as a concrete vision that has matured over centuries: pooling resources and sharing a market system in order to make war “not merely unthinkable, but materially impossible.”

This cooperative endeavor, aimed at producing peace and prosperity through economic unification and shared core values, was born in 1958, and is based on the respect of international law recognized as a body of rules binding mutual relations between states. Indeed, the EU considers democracy (a space of discussion among equals) as the foundation of the international system and the best guarantee for peace. Rule of law is a foundational principle shared by member states and a pillar of the EU's identity. It has become a framing vector not only for the European Union's integration through the *acquis communautaire* (the EU's body of law) but for its external action (the universal applicability of these political values is enshrined as constitutive principle in its treaty). Despite all its pitfalls and deficiencies, much has been achieved without endangering this teleological formula.

From this observation derives the EU's compliance with the rule of law and its cooperative, normative, and benevolent approach. For sure Brussels is war-averse: As a prerequisite, its model postulates that war is not the appropriate solution for settling disputes. In assuming such a position as one of its greatest assets and a source for legitimacy, the EU opted to diffuse its norms as an expression of its peaceful influence. Was that wishful thinking?

## **Facing Reality**

The above explains why, from early on, Brussels advocated international norms, negotiations through multilateral institutions, and non-coercive measures in the South China Sea, insisting on similarity with the approach of Southeast Asian states. It did so originally on a very soft basis; China's 1988 occupation of the Paracel Islands and 1995 occupation of Mischief Reef were analyzed as localized initiatives and did not produce any major declaration, probably because Brussels had not yet ratified the United Nations Convention on the Law of the Sea (UNCLOS) at the time. But eventually the EU began to take a more proactive stance, concomitantly to its own reorganizations on security and foreign policy combined with a targeted approach to Asian security (e.g. the launch of its 1994 Communication "Towards a New Asia Strategy").

As a neutral observer, the EU does not take sides, instead continually promoting the rules-based international system and upholding international law (in particular after it ratified UNCLOS in April 1998). On numerous occasions, the Council of the European Union or the High Representative for foreign affairs and security reiterated the crucial respect for free and safe transit through the region. For a long time, the EU has hoped to keep the issue at a local level – its December 2007 Guidelines on the EU's Foreign and Security Policy in East Asia did not even mention the dispute – probably to avoid the risk of overtly antagonizing the countries involved. Its principled declarations (as formulated in its key strategic documents in 2012, 2014, 2016), even if their formulation appears sometimes disconnected with reality, systematically underline that confrontational policies might lead the region into disastrous wars like the ones Europe experienced during the 20th century. "An incalculable escalation has to be prevented," in German Chancellor Angela Merkel's words.

Yet, at this stage, the EU was already facing three uncomfortable realities that reveal its ambivalence. The first relates to international law promotion, a "must" for Brussels but a pipedream when confronted with a deaf and/or ambivalent interlocutor; this reality is even harder to face when the recalcitrant party becomes one of your biggest economic partners. On this specific topic, the EU is not exempt from contradictions; when the Philippines undertook a legal case against China under UNCLOS at the Permanent Court of Arbitration in the Hague (2013-2016), Brussels – unable to find wording acceptable to all 28 members and fearful of alienating its second largest trading partner – did not provide visible diplomatic support. The EU's silence, for whatever reason, set a bad precedent.

The second uncomfortable reality relates to the EU's ambitious goal to be perceived as a comprehensive security actor in Asia, signaling it has a strategy and role to play in the changing Asian security architecture. The EU commitments to regional stability stem from its strategic partnerships, its membership in the ASEAN Regional Forum, and its accession to the Treaty of Amity and Cooperation in 2012. While highly vocal in Brussels about those commitments, the EU simultaneously was not very consistent in following up; it did not attend some of the important security fora (such as the 2014 Shangri-La Dialogue) because of more urgent security issues in its neighborhood (notably the Ukrainian crisis). As a result, the EU appears desperate to be part of the Asian security fray without having the resources or the capacity; this perception still hinders its participation at the East Asia Summit (EAS) and the ASEAN Defense Minister Meeting Plus.

The final uncomfortable reality refers to the ambivalent nature of EU-China relations. Obviously, Beijing, a contracting party to UNCLOS, does not intend to abide by rules when Brussels is

systematically – some would say mechanically – referring to the rules-based order. Aware of the steady upgrade of China’s dredging and reclamation activities in the South China Sea, the EU kept a “concerned” critical tone but still hoped for cooperation within the framework of their “comprehensive strategic partnership.” At this stage, China’s behavior – in this specific area as elsewhere – was not perceived to be threatening enough to call into question economic interdependencies and priority rapprochements. The unpleasant reality Europe later faced stemmed from its own naivety regarding a potential change in Chinese diplomacy. Of course, Beijing might be interested in deepening the EU-China partnership, but on its own terms; the promise of harmony is achievable only if you do not question the Chinese Communist Party’s supremacy, which precisely remains above the law. Behind Chinese behavior is an implicit evaluation that the international legal system Brussels helped build might be of little influence, even discredited. The bet Europe has made on China with its policy of “change through trade,” while apparently leading to an impasse (no crucial concession has been achieved), became existentially dangerous and highly problematic for the EU.

The terms of the debate within the EU and between the EU and Asia informed discussion and reflected the stakes. Confronted with East Asia’s spiraling security dilemma and with China’s determination, the EU’s added value – even if its substance is not contested – appeared of little help. It is common sense: For sure, war is better to be avoided. Beijing has always agreed with this, intending to win without a war, yet the means China employs to this end are increasingly problematic. Chinese creeping expansionism over the last 40 years has changed the status quo and created an untenable position for Brussels: How to resist China’s aims and bullying tactics while maintaining a policy of engagement without going against the very identity of the EU? Indeed, Brussels and most European capitals were feeling uncomfortable facing China’s strategy of “small steps” (as Bonnie Glaser and Deep Pal called it in a 2014 article for The Jamestown Foundation’s China Brief), turning a blind eye to Chinese initiatives (and to the EU’s own failure to have any impact), and refraining from confronting Beijing. Yet, remaining inactive in order not to irritate Beijing and thereby avoiding coercive measures such as trade sanctions is not a strategy in the long term.

In the meantime, behind the diplomatic silences and growing mistrust, a crucial question was appearing that needs a coherent, articulate, and collective answer: Whose rules will run the 21st century world and for what kind of societies? Apparently, the world China wants to create, as exemplified in the South China Sea – one based on strategic intimidation and threats – is not of the same nature as the one the EU envisions. Former Philippine President Benigno Aquino III was probably right in pointing out the discrepancy between the external effects of China’s authoritarianism (or “cultural autism” as Bilahari Kausikan qualified it) and the lack of support for the rule of international law.

In an effort at clarity, Brussels qualified China as a “systemic rival, promoting alternative models of governance” in its March 2019 report “EU-China: A Strategic Outlook,” therefore stressing its far-reaching, brooding potential. And in this context, the fate of the South China Sea becomes a focal test, for China as well as for the EU.

### **New European Engagement or Stalling Tactics?**

How to wrangle a coherent answer out of these ambitions, constraints, and multifaceted provocations? Taking a closer look, the South China Sea issue compiles most features of the China challenge for Western diplomacies, a nerve-wracking combination of military

unilateralism and stubborn refusal of any negotiation. In the deliberately confused context created by China, Europe found itself caught in its own contradictions, wishing to be considered as a security provider while being simultaneously entangled by its declaratory diplomacy. In the ongoing shift of global power toward Asia, the European Union is facing a growing number of challenges (the least of them being the growing vulnerability of its supply chains) and wants to be up to the task of meeting them. Its foreign policy has recently transformed to be more proactive, realistic, and collaborative to mitigate “China’s real diplomatic genius in dividing its partners” as French President Emmanuel Macron once said. But on such a sensitive issue for its global deployment, China will not stop its attempts to divide and rule simply because the EU requests Beijing to do so. Probably the attempts will become more pernicious and sophisticated, testing the EU arbitration between values and interests, between short-term and long-term benefit. In fact, the EU turned to Southeast Asian countries to contribute to a correction of the structural asymmetry they have with China.

Doubtful about the Trump administration’s confrontation strategy, the EU adopted the concept of “principled pragmatism,” with a three-pronged approach. This approach is low-profile, in consideration of the EU’s structural and operational constraints, but it is coherent and realist. The aim was to prevent the gap between reality and perceptions from widening further and to step up the European security profile and avoid being considered a bystander, while not confronting China. As such, it is not a reset but a complementary approach that aims at inhibiting, or at least complicating, the Chinese exercise of assertiveness.

First, according to the ASEAN-EU Plan of Action 2018-2022, the EU has deepened and strengthened its military cooperation with Southeast Asian states and with ASEAN, emphasizing the security dimension of the dialogue as well as the need to strengthen ASEAN’s operational ability. The purpose was to adjust to local expectations by sharing its own expertise and experience. Indeed, one of the aims of those rapprochements is to gain consistency by proposing efficient vectors of cooperation to enlarge ASEAN’s options and, therefore, increase the association’s resilience and confidence level.

It has done so with the multiplication of security dialogues (such as the EU-ASEAN High-Level Dialogue on Maritime Security Cooperation or those organized by the European Security and Defense College), with capacity-building trainings on functional issues (illegal or over-fishing, preservation of the maritime environment, joint development of resources, port security, etc.) and with support for legal governance (conflict prevention and peaceful settlements of disputes, best practices in ocean governance, maritime international law enforcement, etc.). In the same vein, the ASEAN-EU relationship has been upgraded to a “security partnership” (as announced in January 2019). Brussels is now looking for enlarged projects with other regional partners, such as Japan, India, and South Korea, to increase its leverage. As a matter of fact, China also benefits from these programs: In July 2018, an EU-China ocean partnership agreement was signed to improve international governance of the oceans.

Second, EU member states have increased their arms sales and their transfer-of-technology agreements to a demanding region as a way to mitigate the imbalance with China (which is rapidly making progress in the application of civilian-military technology) and correct the strategic imbalance of most Southeast Asian militaries. This option complements the above soft power approach. Over half of all defense imports in Southeast Asian countries from 2014 to 2019 originated from Europe, de facto changing the arms dynamics in the region. According to

the SIPRI database, Germany, France, and the U.K. are the major European arms exporters to the region.

Two observations deserve our attention. First, those exports are done without much concern for the EU policy Guidelines and Common Position. Second, despite strict EU restrictions on arms transfers to China, China also benefits from dual-use technology transfers with a direct effect on the militarization process of the South China Sea. Much remains to be discussed to enhance a more coherent convergence. France, with major interests in the region (a junction to reach its territories in the Pacific), might take the lead in such a debate.

Third, the EU gave its tacit support to naval activities conducted by individual member states to ensure a regular and visible presence in Asia's maritime domain, including freedom of navigation. Different missions have been conducted by the French and U.K. navies, some embarking officers of various European nationalities and EU officials. This initiative was organized after Le Drian's call for a more proactive European role in the region, confirming France's leading position in the European debate. France-U.K. naval cooperation will not stop with Brexit as the two countries are linked by the 2010 Lancaster Agreements; furthermore, Boris Johnson, when British foreign affairs secretary, announced his intention to deploy the latest aircraft carrier, HMS Queen Elizabeth, to the Asia-Pacific once it is operational in 2021. Both countries are keen to cooperate with other European states and with external powers with the declared goal of "being treated by China as an equal partner," as Macron declared in Australia in May 2018. Finally, Germany is also considering sending a warship to the area to demonstrate its support for and concern for the respect of international law. Slowly but steadily, the EU wants to weigh in on the military equation.

### **The EU's Dilemma**

The EU's greater involvement aims to ensure the maintenance of the South China Sea as "a free and safe corridor" through a mix of concrete actions and calls for the respect of international law. Operational cooperation is paying dividends and is now working on a regular basis; calls for a legal international order are more precise and targeted. The note verbale submitted by France, Germany, and the U.K. to the United Nations in September 2020 to defend the integrity of the law of the sea and to question China's historic claims' compliance with international law and UNCLOS provisions is a case in point.

This note verbale set a precedent: For the first time, three major European states voiced the European position at the level of the United Nations. If there is nothing new about the substance – respect for international law and the settlement of disputes in accordance with the principles and rules of UNCLOS are the bedrock of European policy – the very fact they questioned the validity of the Chinese narrative at the U.N. is the message. Despite the numerous efforts by Beijing to produce a soft European acquiescence on the issue, the continent remains vigilant and tries to rally other countries to its side.

The first target is China's reputation. China is clearly presented as the one partner refusing to comply with international law, refusing any opening for compromise and producing escalation. On the other hand, the current EU effort involves a show of solidarity with ASEAN member states. The initiative echoed not only the December 2019 case brought by Malaysia about its extended continental shelf, but other notes verbales issued by Vietnam, Indonesia, or the Philippines. That stressed a shared understanding of Chinese provocative diplomacy, offering an implicit support during the process of finalized the much-expected China-ASEAN Code of

Conduct. In so doing, the EU denies the argument so often promoted by Beijing that the South China Sea disputes are a purely bilateral affair. Containing the external effects of China's unilateral interests – so explicitly demonstrated in the South China Sea – is set as a priority.

The concern is not about China's ambitions to become a world power but about China's behavior and what it means for the rest of the world. In going out of its comfort zone to signal its resistance to China's imposed interpretation of the situation – which includes discrediting alternative approaches as bases for discussion – the EU denounces the Chinese intimidation and coercion strategy.

So far, however, there has not been much apparent impact on China's behavior as three recent examples seem to illustrate: the establishment of two new administrative districts (one for the Paracels and Macclesfield Bank, the other for the Spratly Islands) in April 2020; the maintenance of Chinese Coast Guard maneuvers on the edge of the nine-dashed line on an almost daily basis, as a recent report observed; or the draft of a future "law of the PRC on the maritime police," published on November 5, 2020 by the Chinese People's National Congress and currently under discussion. This law would allow China's Coast Guard to enforce maritime law and conduct maritime police operations over the areas that Beijing is claiming (90 percent of South China Sea). These developments demonstrate Xi Jinping's intentions and a new step in the implicit tug-of-war.

At this stage, the crucial question for the new, geopolitical EU Commission is to decide whether to opt for a clear rapprochement with the United States or maintain its decoupling strategy. The pledge of new President Joe Biden "to reassert America's role in the world and be a coalition builder" provides a basis for a potential rapprochement.

### **The EU's Leverage**

The new triangular consideration – China, the United States, and the EU – simultaneously poses an opportunity for Europe to reassert its specific position and added value, and the risk of being sidelined without convincing either Washington or Beijing of its coherence. Can Europe stay in the middle without being caught in a potential escalation of tension and renouncing its identity and principles? In being overambitious about its resources and goals, the EU might lose its credibility. Brussels walks a delicate diplomatic tightrope that is carefully observed in Asia.

To what extent are the EU's demands doomed to fail concerning a rules-based order in the South China Sea? There is no binary answer. Behind the scenes, and in the context of many levels of complexity, Beijing is calculating the costs and benefits while the EU still has some cards and leverage. First, it is China's largest trading partner, which means that China cannot afford a fray like its trade tensions with Australia or the United States, in terms of both trade and reputational cost.

Second, the recent China-EU investment deal, a deal mostly encouraged by Xi, revealed the need for China to acquire cutting-edge technologies by investing in European companies. Apparently, the deal locks in China's liberalization of investments, which is perceived in Brussels as a major step forward and concession (and a big diplomatic win for the EU). Yet, even if the draft passes the test of ratification by EU governments and the European Parliament, it might not pass the test of the Chinese Communist Party's interests. China's promises could be dispelled by its own realities. Nevertheless, for the moment, Brussels hopes for a similar evolution in the South China Sea settlement and would have much to gain from a virtuous example. As a matter of fact, some

Chinese diplomats publicly confirm the need for Beijing to better answer international demands, even if just “to defend national interests.”

Third, the EU should cooperate with like-minded countries to strive for a collective and lasting peace as the only way for an equitable solution and to convince Beijing of the systemic gain to be had in resolving the disputes. No actor should be locked in a legal struggle. The new Biden administration has left all options open. First, negotiations: Jake Sullivan, the new national security advisor, has argued for a “managed coexistence with China” and would feel comfortable with diplomatic maneuvering. In a context of continuing disagreement, such an option will mollify tensions after a very chaotic 2020 for both the U.S. and the world. Second, prevention: The U.S. Navy released in December 2020 its new strategy defining China (and Russia) as “determined rivals” with China presented as “the most pressing long-term strategic threat.” This double approach sends clear signals on the new U.S. administration’s calculation between reaching some sort of an understanding with Beijing and defining the limits. It has been well received in Southeast Asia and is certainly considered in Europe.

Biden’s intention to build a coalition of like-minded partners, emphasizing democracy as a common thread, echoes the EU’s priorities. Washington and Brussels will probably intensify their dialogue on China at a time when other partners (like Australia, India, Japan, and ASEAN) are calling for a convergent re-balancing stance, notably within the framework of their Indo-Pacific strategies. Discussions on an EU Indo-Pacific strategy are open as, simultaneously, discussions are being held on a possible new NATO strategic concept defining China as “the most consequential challenger” to open and democratic societies. Crucially, those strategies are dependent on free and safe navigation and overflight, including in the South China Sea, and should not be conditioned by Chinese intimidatory tactics.

The South China Sea issue is obviously a long-term game and for sure, many parameters are involved in its resolution. But facing China’s show of force, the EU’s watered-down hedging diplomacy is no longer an option. If Brussels is determined to be considered as a reliable global actor coherent with its constitutive values, it is only pragmatic to privilege long-term gains over short-term illusions.

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