

NAVIGATING TROUBLED WATERS:
AN ASSESSMENT OF THE
POSSIBILITY OF EFFECTIVE EU
MEDIATION IN THE SOUTH CHINA SEA DISPUTE.



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INTRODUCTION

At the end of the 20th century, the world saw the rise of new powers such as China in the wake of the collapse of the bipolar world order that had been in place since the end of World War 2. The EU, though originally established to share resources, promote trade and foster peace within Europe, has since the Treaty of Lisbon assumed diplomatic powers. Through its Common Foreign and Security Policy (CFSP), the EU has developed a foreign policy based on its values of democracy, political stability and human rights, that it holds to be universally applicable. It has risen to economic and political importance, and while under the strategic umbrella of the US, defying the conventional role of a great power that banks on its military capabilities to pursue its interests.

Meanwhile, China has grown from developing country to a serious security actor in the Asian region, with a permanent seat in the UN Security Council (UNSC) and a member of the G20 group. For its periphery, it is an indispensable trade partner to all Southeast Asian countries, but at the same time, its strategic interests are observed with great worry by these countries.

These circumstances are relevant to the maritime dispute in the South China Sea, in which China, Taiwan, Malaysia, Brunei, the Philippines, Vietnam and Indonesia are involved. The conflict has dragged on with intensity from the 1980's, and has recently become volatile with clashes between coast guard forces and civilians, and even military involvement. Some observers have called the dispute a time-bomb, for which a defuse is needed.

Taking into account the interests of the EU in regional stability in Southeast Asia, its trade interests with claimants and its experience in multilateral fora, one could argue that the EU could contribute to the prevention of escalation. Noting that the EU attaches importance to its normative goals in its international actions, it proposes to be a 'force for good' in the region. Against the backdrop of recent EU enlargements and the establishment of an EU foreign policy, the rise of China and recent developments that have made the US less dependable, it is to be expected that the EU could rise to the occasion, as a non-military power without a hidden agenda, that could credibly function as a mediator to bring the parties closer together and to work towards a settlement. Proponents argue that the EU's leverage could coerce China into talks, all the while maintaining positive ties with ASEAN, in which most of the claimant countries are united, so that a forum can be established in which all claimants could come eye to eye.

In this thesis, I will assess the plausibility of such a role for the EU on both the high and low level. As a methodology to answer this, my research uses an extensive literature review, official EU statements and documentation, interviews conducted with multiple diplomats and experts, some of whom on the basis of anonymity, and my own experiences as a trainee on EU-Asian relations while working at the Dutch Permanent Representation to the EU in 2016.

This thesis takes into account the historical development of both the EU-China relations and the dispute itself, in the context of how the the EU is currently perceived by its

Asian partners. To test the plausibility of successful EU mediation in the dispute on both the high and low level, I will use three models of compulsion, model-setting and soft diplomacy.

I will conclude that high level mediation is not a possibility in the current climate. While low-level diplomacy, through think tanks, education and seminars is still technically possible, the results will not credibly contribute to a solution for the dispute. To change this in the future, the EU must repair its credibility as a strong political power by mending its internal divisions and act unified, based on a credible and detailed foreign policy, which it currently lacks.

HISTORICAL CONTEXT OF EU-CHINA RELATIONS AND ITS RELEVANCE TO THE SOUTH CHINA SEA DISPUTE

The rise of an EU foreign policy: an institutional challenge

As stated in the introduction, China is a very important actor on the global playing field. The EU relies heavily on imports in both resources and goods from this region, and on its turn China needs the large single market to sell its goods. Trade between the EU and China encompasses more than one billion US dollars every day.¹ Different from China, the EU cannot be seen as ‘one’ actor. By its very definition the EU is represented by its Commission, the Member states individually or unified through the European Council (also: the Council) or even its citizens and political movements through the European Parliament. It would be inaccurate to state that these institutions all share the same policy priorities vis-a-vis China and the East Asian region. This part aims to differentiate the foreign policy objectives envisaged by the EU institutions.

As the institution burdened with the day-to-day execution of EU policy, the European Commission is the most active and experienced EU actor, having negotiated key free trade agreements, strategies and communications with the Union’s foreign partners. Specialised in trade agreements, for which the Commission enjoys a large part of autonomy, it has been active in negotiating preferential trade agreements with many countries in Southeast Asia, including India, Malaysia, Indonesia, Singapore, the Philippines, and Japan. Furthermore, a FTA with South Korea has already been concluded and progress for an EU-ASEAN FTA has been made since 2007, albeit with long breaks.²

Since the Treaty of Lisbon, the EU also formalised separate diplomatic responsibilities, executed by the European External Action Service (EEAS). Helmed by its High Representative, Federica Mogherini, who is also a Vice President of the European Commission, this independent EU institution is responsible for all EU relations with non-EU

¹ European Commission on <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>, accessed 27-6-2017.

² Okano-Heijmans, Maaïke (2014) ‘Trade Diplomacy in EU-Asia Relations’ *Clingendael Report*, available on [https://www.clingendael.nl/sites/default/files/Trade%20Diplomacy%20in%20EU-Asia%20Relations%20-%20Clingendael%20Report%20\(Sept%202014\).pdf](https://www.clingendael.nl/sites/default/files/Trade%20Diplomacy%20in%20EU-Asia%20Relations%20-%20Clingendael%20Report%20(Sept%202014).pdf), accessed 21-3-2017, 36.

states. The EEAS operates through 139 delegations worldwide, in countries such as China or multilateral organisations such as ASEAN. Since the Lisbon treaty, the importance of managing EU's external affairs has significantly risen. This, in a sense, is beneficial to the Member States who do not often have representations in all the countries where the EU is active. However, its new competences make the EU's position as a whole ever more politicised. Whereas in the past the institutions of the EU operated in the field of external relations only on the instructions of Member States, this economic and political partnership now primarily acts on the grounds of its Common Foreign and Security Policy (CFSP), and secondarily through Member State and European Parliament input. This results in a foreign policy materialised through country packages, strategies, statement and the now one year old EU Global Strategy. Through its 139 delegations, valuable information for the Commission and its Member States is being provided, but at the same time the EU delegations are responsible to carry out a common EU message from a Union that is divided on some key foreign policy matters.

Despite not currently being a strategic power in the Southeast Asian region, it would be inaccurate to state that the EU has no strategic interest. Traditionally, global trade has been the most important interest of the Commission and the importance of free navigation the South China Sea cannot be underestimated. Due to its limitations, primarily because of the lack of military capabilities, the EU has not succeeded to be a security provider in Southeast Asia like other conventional powers are. If not strategic, what kind of power does the EU have to gain influence and inspire changes abroad? The EU is more than just a cumulation of states operating in a single economic market and cooperating on worldwide political issues. To determine the nature of EU power in Asia, it is often argued that the EU has become a normative power.³ Simply by existing, it is a power to be reckoned with by other states and organisations. According to Ian Manners, who pioneered this theory, the EU should be a force for good, bringing normative issues such as human rights and the rule of law to the negotiating table.⁴ One can therefore argue whether the EU is a geopolitical player by design or by default. Those who claim that the EU has become a politicised and diplomatic organisation by design, see the Lisbon Treaty as a grand design to upscale the power base of the EU to a strategic level and to give the EU more 'teeth' to pursue its normative goals. Others argue that the Lisbon Treaty is a mere reaction by the EU and its Member States to adjust to the growing interdependence between the EU and third countries in an ever more globalising world, in which a diplomatic service is a necessity to assist the EU in pursuing its foreign policy objectives. Either way, as a consequence of the distinct diplomatic mandate that the EU enjoys through the EEAS, discrepancies are bound to arise between the foreign policy goals set by

³ Manners, Ian (2002) 'Normative Power Europe: A contradiction in terms?' *Journal of Common Market Studies*, Vol. 40, Issue 2, 239.

⁴ Ibidem, 239.

both the EU itself and its Member States. In chapter 4 of this thesis, I will assess in depth whether these discrepancies influence the power of the EU in Asia and whether the EU can bring enough normative incentives to the table in Asia to act as a credible mediator.

For a considerable amount of time before the Lisbon Treaty, the right to shape the EU foreign policy lied exclusively with the Member States of the EU, formerly known as the European Community. The Member States themselves have, however, retained their authority to formulate their own foreign policy goals and priorities. This differs from the usual procedure, where the power of policymaking lies executively with the Commission or the Member States. Therefore it is important for a credible EU-wide foreign policy to be coordinated between the Commission and the Member States.

That is, however, easier said than done. The EU acts in many policy fields, for which it enjoys various levels of autonomy. To make matters worse, often policy areas with different competences for the EU overlap, for example when negotiating trade agreements with third countries that also receive aid from the EU.

In the South China Sea dispute, three policy fields are relevant for this thesis. First, there is the CFSP, for which the general guidelines and objectives are laid out by the Council. Acting within these guidelines, the Council adopts strategy documents, common positions and joint actions on the basis of unanimity. Member States are obliged to commit to common positions. Thus the Council, and by extension the governments of Member States are privileged to shape the general direction of the CFSP. There is also a trade component to this. The EU and China are two of the largest economies in the world and both economies are heavily interdependent. Trade relations with other Southeast Asian countries, be it on bilateral basis or through ASEAN, could be damaged by any escalation of the South China Sea situation. Whereas security and defence remain mostly in the hands of Member States, the opposite is true of the negotiation of international trade agreements between the EU and its peers. In the area of international trade, the EU has exclusive competence of legislature. Since the Lisbon Treaty, the EU has been given full legal personality, allowing it to conclude international trade agreements. Third and last, there is a continuous political dialogue between the EU and the Asian countries, as well as bilateral relations between the states involved and separate EU Member States.

A unified foreign policy, which consists from a comprehensive security policy, a streamlined trade policy and a continuous political dialogue is thus an institutional challenge, especially when competences are distributed among different actors. Moreover, in the wake of the two latest rounds of EU enlargement, it has proven to be difficult to find consensus between EU Member States on key policy priorities. Even the most basic priority of all, the protection of human rights, civil freedoms and peace worldwide, has become matter of discussion when applied to some third states.

Also, after the Lisbon Treaty the role of the European Parliament has been enlarged. Instead of having only an advisory voice, the European Parliament has to give consent to the international trade agreements with third countries. The Parliament, sitting as a plenary or

through a variety of substructures, can comment on the work of the Commission and propose amendments, to be discussed in the European Council. This diffusion in interests, competences, power and priorities makes it hard to define the role of the EU in Southeast Asia.

One could conclude on a positive note that institutional diffusion cumulates a power position over multiple policy areas, rather than weaken it. If so, does this combined force of trade power, political dialogue, diplomatic presence and security policy by the EU then culminate into a normative power? Critics like Tobias Leeg have argued contrary to that position. He pointed out that Manners' notion of "normative power" is too vague to be applied as a defining concept to describe the EU influence in world affairs. Especially when it comes to international agreements with periphery states, the EU has often chosen strategic goals over normative ones like the spread of democracy and the establishment of the rule of law.⁵ Leeg states that the notion of "normative power Europe" disregards the nature of multilevel and inter-institutional decision-making.⁶ The only real normative institution in the EU, Leeg argues, is the European Parliament.⁷ But since the European Parliament holds the least amount of power in the agenda-setting and negotiating phases of international trade agreements, normative goals often don't make it to the final agreement. However, at the end of negotiations, the European Parliament can either give its consent or reject the agreement altogether. A majority in the European Parliament for rejection seems very unlikely. An advantage to this institutional arrangement according to Leeg is the so-called "paradox of weakness".⁸ When negotiating a text with a third party, the Commission could credibly argue that the text proposed by the opposition would never be accepted by the European Parliament or the Council. Accordingly, the Commission could pursue normative goals proposed by the European Parliament, while again credibly stating that these are demands that are vital to secure the consent of the European Parliament. At a later stage, I will argue that the diffusion in competences between institutions and the requirements of unanimity work counterproductive in this case. Also, there has been no case in my experience in which the "paradox of weakness" has yielded positive results for the EU.

Development of EU-China relations in a changing world

Above, the institutional context and framework has been discussed and while interactions between the EU and the far east are multifold, the question whether the EU could

⁵ Leeg, Tobias (2014) 'Normative Power Europe? The European Union in the negotiations on a free trade agreement with India' *European Foreign Affairs Review*, Vol 19, Issue 3, 339.

⁶ Ibidem, 340.

⁷ Ibidem, 343.

⁸ Ibidem, 342.

pose as a credible power in the South China Sea situation depends also on past interactions with China. In this part, therefore, I will provide this historical context of EU-China relations and I will argue that these relations have fluctuated since the end of the Cold War. Building on the idea that the world has shifted from a bipolar power configuration to a multipolar one, I will explain that the difference in mutual interests and expectations between the EU and China in regard to the developing multipolar world are key to understand the possibilities of credible EU mediation in the conflict.

Often, the role of the EU in the far east is being perceived as marginal, because of the geographical distance and cultural differences involved. However, the rise of both the EU and China have had a significant impact on the redistribution of world power in the latter half of the 20th Century. From the 1950's on, both the European states and China have sought their own ways of development and integration. While the security of western European states has been guaranteed by the nuclear supremacy of the United States, the European states have accomplished a large degree of integration in a period of political stability. Despite creating its own foreign and security policy, it is evident that the norms, values and foreign policy priorities of the EU are deeply anchored in the transatlantic world-view.⁹

Emerging as superpowers from the Second World War, both the USSR and the United States have had an enormous impact on their own peripheries. Since an important part of geopolitics is comprised of the competition among states over the control of territorial units, many states sought their ideological allegiances with either of the two powers. The postwar era has to a large extent been shaped by a bipolar world order, with two opposing nuclear superpowers eventually reaching an equilibrium. However, in the last two decades this equilibrium has faded. After the collapse of the USSR and the reunification of Germany, the status quo has been transformed to a world order in which power is shared between more than two actors. In this multipolar world order, interdependence between states has grown and new states and multilateral organisations have filled the void. However, this new order has yet to reach an equilibrium. Both in the Western world and the east, long standing alliances are up for review. This includes the relationship between the EU and the United States.

Since the Treaty of Maastricht entered into force in 1993, the EU developed its CFSP. Despite being anything but a full fledged foreign policy -European defence cooperation is still primarily undertaken through NATO- this shows a certain departure from its formerly exclusive Atlantic cooperation. There are other examples of the EU trying to be more and more independent from the US influence. European support for the wars in Afghanistan and Iraq has been declining since the start of operation Iraqi Freedom in 2003. Since the election of president Trump in November 2016, longstanding commitments of the Obama administration such as the US responsibilities to combat climate change and the importance of NATO are no longer as certain as they used to be. As a consequence, the EU needs to redefine

⁹ Men, Jing (2014) 'EU-China relations and diplomacy: The US Factor' *European Foreign Affairs Review*, Vol. 17, Special Issue, 73.

its foreign profile, to be clearer for both the foreign actors it cooperates with as its own citizens. With the traditional securities fading worldwide, the EU is in need of a own geopolitical identity. And nowhere is this more necessary than in the East Asian region, where allegiances are shifting even more rapidly than in the West.

For often the only cultural ties between some Asian and European countries are based on past colonialism, the EU seems to have brought less weight and substance to Asia than the US. Furthermore, in the recent years where as stated above the EU should have stepped up its involvement to secure an independent foreign policy vis-a-vis Asia, it has unsurprisingly been trumped by the US on security and economic matters. When Barack Obama took office as the 44th President of the United States, only a year before the Lisbon Treaty entered into force, the US devised a foreign policy named “Pivot to Asia”. The US had a proper response to the rise of China and the economic, political and military challenges in the area. Other than the opening of EU delegations and a seat at the Asian Defence Ministers Meeting (ADMM+) and Asia-Europe Meeting (ASEM), both advisory bodies without legal binding, the EU has not taken the opportunity to capitalise on trading ties of the past.

Within this historical context of the US pivot to Asia and an hesitant EU, China has been focussing extraordinarily on its domestic policy, which affects the whole region. Since the presidency of Xi Jinping, it is fair to say that China follows a domestic policy of “making China great again”, which emphasises the independence, sovereignty and hegemony of the Republic of China in the region.

The notion of the balance of power shifting from a bipolar to a multipolar world order is fundamental to understanding the vision and expectations of China vis-a-vis the EU.¹⁰ According to Frank Gaenssmantel the world has shifted from a bipolar to a multipolar world order since the end of the Cold War.¹¹ From this point of view, historical development and rise in foreign policy involvement of both China and the EU could be explained. The diminishing equilibrium of world power at the end of the Cold War gave fruit to new powers to establish their geopolitical identity. With the US as a traditional security guarantee in the area, who is now less dependable due to its new-found isolationism under its 45th president, the EU and China face each other as ambitious players in the area, with different points of view and different sources of power.

The EU-China relationship has developed hugely, with positive and negative tendencies from 1970 onward. According to Gaenssmantel, absence of strategic conflict, economic booms, complementarity of markets and common interest in independence from US hegemony were

¹⁰ Men, Jing (2014) ‘Is there a Strategic Partnership between the EU and China?’ *European Foreign Affairs Review*, Vol. 19, Special Issue, 12.

¹¹ Dessen, Bart ed., ‘Interpreting China as a regional and global power: nationalism and historical consciousness in world politics’ in *Nationalism and Historical Consciousness in World Politics* (London 2014), 11.

the forces behind a closer EU-China relationship. He also argues that the opposite is true for the decline of ties in the past few years.¹² Chinese diplomacy is based on long standing beliefs about world order instead of strategic or economic opportunism. This, and because of the hierarchical way the Chinese Ministry of Foreign Affairs is being directed, is why it has been proven hard for EU officials and Member State diplomats to provoke quick actions from the Chinese side.¹³ China has since long maintained relations with individual Member States of the EU, and has lobbied different actors and institutions since 1970. The Chinese foreign policy then, was to cooperate with the United States and the USSR in the era of the so-called “Strategic Triangle”. In the 1980’s, China developed its own independent foreign policy, which was partially aimed at appeasement to the USSR, but also laid the groundwork for more cooperation between Europe and China. After the internal repressions of 1989 and the Tiananmen Square protests, relations between China and the Western world took a hit. The early 90’s were a period of rapprochement under China’s “New Great Power”-diplomacy, where the institutional framework for intensified EU-China cooperation was laid. For instance, the EU and China both had a seat in ASEM since 1996 and the EU-China Summit takes place on a yearly basis since 1998.¹⁴ Since the new millennium, China looks outward to developing countries around the globe, from Africa to Latin America, to broaden its influence. The early years of the 21st century were the “honeymoon” years for EU-China relations. Especially since the start of the Iraq war in 2003, Chinese diplomats were positive about the criticism that many EU-states had on the US decision to exclude the UN Security Council. This led them to believe that a multipolar world order could be on the cards, in which the EU and China could be equals next to the US and Russia.

However, Gaenssmantel argues that the honeymoon was short-lived. As early as 2006, disputes arose between the EU and China over the dumping of textile and shoes on the EU market and differing views on the Darfur famine.¹⁵ This escalated even more in 2007, when German chancellor Gerhard Schröder and French president Jaques Chirac were replaced by Angela Merkel and Nicolas Sarkozy respectively. Both old statesmen were “friends of China”, but their successors angered Beijing by inviting the Dalai Lama for an official visit. This caused the cancellation of the 2008 EU-China Summit.¹⁶ However, while these developments were the straw that broke the camel’s back, Gaenssmantel argues that long standing differences and frustration about lack of progress caused China to downscale its diplomatic efforts towards the

¹² Gaenssmantel, Frank (2010) ‘Chinese diplomacy towards the EU: Grand vision but hard to manage’ *The Hague Journal of Diplomacy*, Issue 5, 380.

¹³ Ibidem, 380.

¹⁴ Ibidem, 384.

¹⁵ Ibidem, 388.

¹⁶ Ibidem, 402.

EU. The EU weapons embargo against China and its refusal to grant China Market Economy Status (MES) at the World Trade Organisation (WTO) are the main reasons for this frustration.

Acquiring MES was a Chinese policy priority from 2002 onward, in the first place to gain WTO accession, and second to show the world that a socialist market economy could be successful.¹⁷ After being scrapped from the non-market economies list in 1998, China has since then lived in the twilight zone regarding the award of MES. In 2002 and 2003, Chinese diplomats lobbied the European Commission extensively, while formally requesting the Member States to award MES to China in June 2003. This was followed up by even more pressure on both the Commission and the Member States, until the request was rejected by the Commission.¹⁸ Mid 2005, fatigue set in and the aforementioned dumping issues made an end to the “honeymoon”. After the honeymoon, EU-China relations were predominantly economical and from 2007-2009 aimed at combatting the recession in Europe.¹⁹

What does this mean?

Recent EU-China relations can thus be seen as a failed marriage after an endless courting period. To understand what possible role the EU could play in the South China Sea conflict, we must address the cause of the differing views on world order, policy priorities and security issues between the EU and China, because these differing views of the EU and China lie at the heart of this problem. After this analysis, it is possible that there could be shared interests between the EU and China to bring the parties closer.

As mentioned above, China holds the belief that a multipolar world order has risen from the ashes of the Cold War. This presumes that the bipolar world order of the US and USSR is now complimented by multiple “poles”. China regards itself and the EU as two of these poles, with possible addition of other BRIC-countries. Poles, in China’s view, are equal actors who treat other poles with respect. These poles are interdependent and complimentary, but do not necessarily agree on major security issues. Building on to the assumption of a multipolar world, it is also important that none of the poles establish a dominant position over the other poles.²⁰ This is why China has gone to great efforts to capitalise on recent wrinkles in the EU’s transatlantic ties with the US, albeit with disappointing results.

¹⁷ Gaenssmantel, Frank (2010), 391.

¹⁸ Ibidem, 391.

¹⁹ Noesselt, Nele (2016) ‘The European Union and China’s multidimensional diplomacy: strategic triangulation?’ *European Foreign Affairs Review*, Vol. 21, Special Issue, 21.

²⁰ Pardo, Ramon Pacheo (2009) ‘Political weakness of the EU in East Asia: a constructivist approach’ *Asia Europe Journal* Vol. 7, No. 2, 273.

Meanwhile, the EU maintains a different world view.²¹ Based on the multipolar model, it places its trust not on an equilibrium of power that keeps the poles in check, but rather the importance of multilateral organisations. These organisations should make the rules of the game and provide equal protection to all. Most of them founded after the Second World war and gaining importance after the Cold War, they have risen to share in world power. However, the EU emphasises the importance of differing power relations between the “poles”, and explicitly includes international organisations such as the United Nations, the WTO, ASEAN and itself in the new dimensions power. From its view, the EU is a highly developed region, bringing normative matters that it regards as universal to still developing countries such as China. Also, the EU holds that the best agreements for peace and stability come from multilateral consultations instead of closed, bilateral talks. This idea of hierarchy and multilateralism clashes with the Chinese self-imposed view of its equality to the Western world and the right of all poles to pursue its own development path. The multipolar world view and its distrust of multilateral organisations has caused China to be extremely assertive on symbolic issues such as the EU-China arms embargo and economic matters such as the WTO process.

This has created a dilemma for the Chinese. On one hand, China knows that it has certain responsibilities to fulfil in the very institutions it distrusts. It is a G20 member and with a permanent seat in the UN Security Council, it has to abide by the rules and provide a role model for other nations. On the other hand, China takes great pride in its history and sovereignty; matters that fuel its rigid stance on the South China Sea dispute. It shows that China will not allow any infringement of its presumed territory, but at the same time, China is reluctant to show force, since it knows that this will not help to its case among its fellow poles. The ongoing ambitions of China have become a challenge for the perceived normative power of the EU. This requires the EU to act strongly and unified, because only an united EU can exert normative power over its peers. At the same time, actors in whose interest a weakened EU would be, tend to try to divide the Member States as much as possible.

Still, the EU and China have become interdependent, politically and economically. China remains a strategic partner to the EU and a valuable economic partner. Annual EU-China Summits are organised to hold dialogues ranging from global security and cybersecurity to human rights, trade, science, sustainability, transport and social matters. Furthermore, China and the EU participate in multilateral fora like the ASEAN Regional Forum (ARF) and ASEM to discuss political and economic matters. These institutions are in place at a time in which the United States are no longer the unconditional ally that the EU have enjoyed for a long time. Criticising globalisation, free market access and multilateral organisations, president Trump has taken an alternative stance on multilateralism, canceling the TPP treaty and lecturing NATO leaders. His announcement to pull out of the Paris Climate Accord was met

²¹ Men, Jing (2014) ‘Is there a Strategic Partnership between the EU and China?’ *European Foreign Affairs Review*, Vol. 19, Special Issue, 12.

fierce resistance from European and Asian leaders alike. Since the Trump presidency is likely far from over, the continuous EU alignment with the US will be increasingly uncomfortable and possibly damaging in the long term. In the years to come, it could very well be that the US will lose the race for global supremacy to China. In that case, the EU will have to reconsider its choice of allies and act according to its own interests. Thus, the institutional framework seems rigid enough for the EU to engage with China in a dialogue on regional maritime security. Certainly, the developments in the US have caused the need for the EU to look outwards.

It is from this context that a case for possible EU mediation must be researched. Building on this context of classic Chinese foreign policy, where isolationism has made way for rigidity and the differing world views between security players, I will assess whether this institutional framework will provide the opportunity to engage in mediation. In the next chapter, an in-depth review of the history and current situation of the conflict will be provided, in which I will argue that China of all parties benefits most from the continuation of the status quo, which contributes to their hesitation to participate in any dispute settlement. After this, I will assess whether this hesitation could be pared by the EU through its multilateral institutional framework.

OVERVIEW OF THE SOUTH CHINA SEA DISPUTE AND DEVELOPMENT OF POSITIONS

Building on the knowledge of the previous chapter, it has become clear that the EU-China relationship has been ambiguous at best in the past decades. The dispute itself follows a similar, non-linear trend. Varying in seriousness and fogged by historical events affecting the nations involved, the historical backdrop of the situation is indispensable for a good understanding of the possible steps to take by the EU in its foreign policy engagements. As an historian, I will use this chapter to sketch the developing positions of the three most prominent claimants: China, the Philippines and Vietnam. Furthermore, the positions held by ASEAN and the United States are relevant in this aspect to identify possible starting points for EU mediation efforts.

To do so, this chapter will be structured in a past and present tense. As expected, the historical part will provide a backdrop to the current situation, in which I will introduce the Chinese claims of ancient administration over the Paracel and Spratly islands, the early skirmishes in the 19th century and the arrangements after the Second World War, when the People's Republic was founded and Vietnam was reunited. This part will provide insight in the current assertiveness showed by China, as well as the developments of legal claims by both Vietnam and the Philippines, focussing on the Spratly Islands in particular. Also, this part focusses on critical events such as the Scarborough Shoal stand-off between Chinese coast guard vessels and the Philippine navy. For recent developments, the United States and ASEAN have been decisive in shaping the current relationships.

Then, the part about the present looks into the recent arbitration procedure launched by the Philippines and Vietnam at an UNCLOS special tribunal, and the changing tactics of China that this procedure has brought about. I will argue that the process of internationalisation of the situation has been an eyesore for China, which has gone from overt aggression to a stalling tactic to justify the status quo. This part also deals with the role of rising hypernationalism in China and the Philippines, the domestic tactics by new presidents like Duterte and Trump, but also political veterans such as Xi Jinping to "make their country great again".

Whereas the current stalemate seems to offer a chance for the EU to expand its diplomatic leverage, forcing itself in a seat at the table, I will conclude that the EU faces major obstacles, part of them created by its own institutional diffusion, which will be assessed in the next chapter.

What has happened: the origins of competing claims and growing assertiveness.

Since 1949, China has held the position that the Spratly and Paracel island groups were not only inhabited, but also governed by the People's Republic, the Republic of China or any of its predecessors since ancient times. These claims go as far as stating that Chinese fishermen have used the shallow waters of the Spratlys since 200 BC. However, the first written source describing any jurisdiction over the area is dated around the 3rd century AD, during the Jin Dynasty. Archeological findings have shown that some of the islands were inhabited during the fifth-century Southern dynasty and there have been numerous accounts of fishing and trading activities by the inhabitants of modern-day China, Vietnam and Malaysia from then until the age of colonialism. It is indisputable that the South China Sea and its resources have been supporting large numbers of people since what China calls "ancient times". However, to justify China's modern day claim, there needs to be proof of continuous habitation and administration over the islands and adjacent waters.²² This proves to be difficult, because of the many historical developments that have occurred since the start of the 19th century.

The earliest documented claim to the Paracel Islands was made by China in 1876, while the British were the first to legally claim the Spratlys a year later. A few years later, the Sino-French War and its conclusion in 1885 by the Treaty of Tientsin stipulated that China was to recognize the French protectorate Tonkin, that is current-day north Vietnam. In 1887, the Convention Respecting the Delimitation of the Frontier Between China and Tonkin, signed between France and the Qing Empire, did not contain provisions for the ownership of the Spratly or Paracel islands. After the turn of the century, a new contest for the islands broke out. As early as 1907, China sent its navy to the Paracels for reconnaissance. The successor to the Qing Dynasty, the Republic of China stated that the Paracel Islands were its southernmost territory. France disagreed and made a formal claim to the Paracels, and occupied nine islands in the Spratlys, claiming it to be a part of Indochina.²³ The Chinese Kuomintang government made futile diplomatic protests over this occupation.

After making a claim on the Spratly and Paracel islands in 1927, the empire of Japan occupied both island groups in 1939 and developed naval bases. At the end of the Second World War, China reclaimed both island groups and established garrisons on Woody Island in the Paracels and Itu Aba Island in the Spratlys.²⁴ This was followed by the first mapped demarcation of the South China Sea by China, showing eleven dashed lines, enclosing both

²² Hossain, Kamrul (2013). 'The UNCLOS and the US-China hegemonic competition over the South China Sea' *Journal of East Asia and International Law*, Vol. 6, No. 1, 129.

²³ Ibidem, III.

²⁴ Ying, Fu and Wu Shicun, 'South China Sea: how we got to this stage', PDF accessible at <http://ie.china-embassy.org/eng/zlt/southchinasea/PO20160524162418210013.pdf>, 3.

island groups. In 1950 the People's Liberation Army drove the Chinese nationalists away from the Paracel and Spratly islands, and the stationed garrisons were withdrawn to Taiwan.

A turning point came in 1954, when France lost its colonies in Indochina. The new countries, Laos, Cambodia and Vietnam would be independent nations, with the latter divided in two countries, separated by the 17th parallel. Both the Spratly and Paracel island groups are situated below this boundary, so they would naturally fall under the jurisdiction of South Vietnam. Moreover, France expressed that since the islands were Indochina territory since 1933, ownership would naturally be transferred to South Vietnam.

The contest for possession of the islands grew to be a three-horse race, with the People's Republic of China, backed by North Vietnam, the Taiwan-based Republic of China and South Vietnam as contenders. The Philippines had made no formal claim to the Spratlys until 1971.

Where China's claim lies almost exclusively with historic arguments, the same can in part be said of Vietnam, that has an extensive record of claims to both island groups. The contrast is therefore significant with the Philippines, whose claims have always heavily relied on the formation of precedent in international maritime law, that has only materialized since the 1970's. In June 1978, the Philippine government were the first party to bring its claim within the legal framework of the Third United Nations Convention on the Law of the Sea (UNCLOS III) which it signed in 1984. In 1978, it issued Presidential Decree number 1599, claiming an Exclusive Economic Zone (EEZ) up to 200 nautical miles (nm) measured from its coastal baselines. After ratifying UNCLOS in 1984, the Philippines declared itself an archipelagic state in order to be covered by UNCLOS benefits. This meant that the Philippines claim ownership to all islands within its 200nm EEZ. Latecomers they may have been, but the Philippines rising to the occasion has made the situation more serious, and it has accelerated events.

After Vietnam issued a White Paper on the Paracel and Spratly islands in 1979, the Foreign Ministry of the PRC reacted with its own document, titled "China's Indisputable Sovereignty over the Xisha and Nansha Islands" in January 1980.²⁵

In the late Eighties, on March 13 1988 the first clash of forces of the modern time occurred at Johnson South Reef. A Chinese vessel, commissioned by UNESCO to build a tidal data station, was intercepted by the Vietnamese Navy. China defeated Vietnam and more than sixty Vietnamese were killed in this event.²⁶ It proved to be an isolated event without any escalation, but it was followed by the occupation of 21 to 24 features in the Spratlys by

²⁵ Zhang, Jian (2015) 'China's South China Sea policy: evolution, claims and challenge' in L. Buszynski and C.B. Roberts (eds.), *The South China Sea maritime dispute: political, legal and regional perspectives* London, England: Routledge, 68.

²⁶ Ibidem, 62.

Vietnam.²⁷

Vietnam, China and the Philippines have all been signees to the UNCLOS treaty and since the early 1980's, they have each tried to bring their claims in accordance with UNCLOS provisions, with varying success. China signed UNCLOS in 1982 and issued its "Law on the Territorial Sea and Contiguous Zone" a decade later.²⁸ Article 2 of this law stipulates that all four island groups in the South China Sea belong to China's land territory, which would grant each group of islands its own territorial waters, continental shelves and an EEZ of 200nm. This claim was followed up by China's 1998 "Law on the Exclusive Economic Zone and the Continental Shelf" in which it claimed aforementioned continental shelves and EEZs. Interestingly, the law is very specific that "no provision of this law can prejudice historical rights of the People's Republic of China".²⁹ This provision has been included to make sure that this law could not be used in any way to disprove China's earlier claims or the validity of the "nine dash line". However, China has so far been unsuccessful to legally defend its nine dash line as a valid demarcation boundary.

China has not been the only nation struggling to bring its claims in conformity with UNCLOS. In the 1990's, Vietnam tried to stretch UNCLOS provisions in multiple ways. Firstly, due to its rugged coastline being full of bays, deltas and lagoons, Vietnam could claim baselines from which to draw the continental shelf and its EEZ. However, UNCLOS provides that while this baseline may touch upon islands close to the coast in shallow water, the Vietnamese baseline consists of 11 points, 9 of which are on islands.³⁰ This brings the Vietnamese baseline further from its actual coast and stretches the EEZ beyond the actual 200nm. Secondly, UNCLOS makes a very important distinction between islands on one hand and rocks and tidal elevations on the other hand. Only islands which can support habitation and are still above water at high tide qualify for an EEZ of their own.³¹ Some features claimed by Vietnam will not pass this test and therefore will not provide an extended EEZ.³²

What must not be forgotten is that Vietnam sees the South China Sea as much as a vehicle for national unity as the Chinese. Because of the hostile geography of mainland Vietnam, its devastated infrastructure after the Vietnam War and the fact that the country is

²⁷ Zhang, Jian (2015), 83.

²⁸ Ying, Fu and Wu Shicun, 'South China Sea: how we got to this stage', 6.

²⁹ 'The Law of the People's Republic of China on the Exclusive Economic Zone and Continental Shelf', <http://asianlii.org/cn/legis/cen/laws/lotprocoteezatcs790/>, accessed 23-6-2017.

³⁰ Hai, Do Thanh (2015) 'Vietnam's evolving claims in the South China Sea' in L. Buszynski and C.B. Roberts (eds.), *The South China Sea maritime dispute: political, legal and regional perspectives* London, England: Routledge, 84.

³¹ Hossain, Kamrul (2013), 130.

³² Hai, Do Thanh (2015), 84.

long and narrowly shaped, makes the calm and shallow coastline of Vietnam a national interest. Not only is the sea a strategic and economic importance for Vietnam, it has been crucial in reuniting north and south through trade and personal travel. Furthermore, the declaration of a continental shelf and EEZ was a matter of national pride, as a Nhan Dan article from 1982 states: “[o]ur country has gone through many stages of development; but this marked a turning point in our national history: Our country expanded eastward vigorously on the basis of international law”³³ Hypernationalism and economic socialism eventually gave way to multilateralism and economic growth on the basis of a free functioning market economy in the late 1980’s. This has been reflected in Vietnamese willingness to sort out its disagreements. For example, Vietnam and Malaysia agreed on joint cooperation in their overlapping claimed areas in 1992 and Thailand and Vietnam demarcated their continental shelves and EEZ in the Gulf of Thailand in 1997. In 1999 Vietnam and China agreed on their land border, while a year later, the boundary in the much disputed Gulf of Tonkin was finally codified.³⁴ However, the 1990’s also saw disputes between China and Vietnam. A concession contract between China and the American based Crestone Energy Company sparked anger in Hanoi. The location for this contract was Vanguard Bank, a low tide elevation approximately 84nm from the nearest Vietnamese coastal island but more than 600nm from mainland China. According to Hanoi, this bank falls well within its EEZ and protested the contract. China replied that it would protect the mission with force if needed.³⁵ Only two years later, the Vietnamese government let Mobil Oil research an area close to Vanguard Bank. In turn, this led to multiple short-term standoffs and harassments by the Chinese coast guard. This event was an important motivation for the Vietnamese government to ratify UNCLOS in 1994, 12 years after signing the treaty.³⁶ It would, however, take considerable time to bring all legislation in line with UNCLOS. In June 2003, the Vietnamese government passed the “Law on National Borders”, which stipulated that all national borders must be in accordance with UNCLOS provisions, but it took until 2012 for Vietnam to make it clear that the claimed features were rocks under article 121 UNCLOS. Meanwhile, the battle for naval primacy was fought in the shadows, with China pressuring foreign oil and energy companies out of arrangements with Vietnam.³⁷

³³ Farrell, Epsey Cooke (1998): ‘The Socialist Republic of Vietnam and the law of the sea: an analysis of Vietnamese behaviour within the emerging international oceans regime’, 4.

³⁴ Hai, Do Thanh (2015), 88.

³⁵ Ibidem, 94.

³⁶ ‘Joint Submission to the Commission on the Limits of the Continental Shelf pursuant to article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the southern part of the South China Sea’, http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009executivesummary.pdf, accessed 29-6-2017, 1.

³⁷ Hai, Do Thanh (2015), 98.

These factors- growing Chinese assertiveness for its claim, harassment of Vietnamese fishermen causing political uproar and economic loss, and threats to Vietnamese business partners- have made a change in the Vietnamese strategy inevitable. By issuing a joint submission to the UN Commission on the Limits of the Continental Shelf on 6 May 2009, Vietnam internationalised the dispute, forcing China's hand to specify its claim. While China's refusal to cooperate, stating that contrary to what is written in the submission that there is no disputed area in the South China Sea, made this move inadmissible. It nonetheless drew media attention and brought the dispute within the scope of UNCLOS.^{38 39} It also proved to be the end of a period of détente that lasted from 1995 to roughly 2010, during which China agreed to discuss the matter of maritime security in the South China Sea at ARF and worked together with the Philippines and Vietnam in the field of seismic research.⁴⁰

With no legal regime to control the conduct of all parties involved, it was a matter of time until the next armed conflict would happen. And it did in 2012 on Scarborough Shoal, a crescent-shaped island well within the 200nm EEZ claimed by the Philippines. Because of the unique geographic features in the South China Sea, the Spratly islands shallow and warm lagoons provide a living for thousands of fishermen from the Philippines and Vietnam. As its most easterly island and only 124nm away from the Philippine mainland, Scarborough Shoal is the most accessible feature for Philippine fishermen. The confrontation between the Philippine navy and the Chinese coast guard at this island in 2012 marks a turning point in the worsening situation in the South China Sea.

In the wake of the failed ASEAN Summit -the causes for which will be explained later- the Philippine navy sent its BRP *Gregorio del Pilar* to Scarborough Shoal on April 8 2012 to arrest and deter eight Chinese fishing vessels.⁴¹ China reacted two days later by placing two surveillance vessels in between the fishing boats and the BRP *Gregorio del Pilar*. China actively defending these fishermen only 124nm from the Philippine coast was unprecedented at the time. To add to its force, China positioned the *Yuzheng 310*, its then-largest patrol vessel in the stand-off. Diplomatic exchanges followed, in which China ordered the Philippines to remove its forces from the vicinity of the island. On its turn, the Philippines dared China to bring the

³⁸ United Nations (2009) 'Receipt of the joint submission made by Malaysia and the Socialist Republic of Viet Nam to the Commission on the limits of the Continental Shelf', http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/mysvnm_clcs33_2009e.pdf, accessed 29-6-2017.

³⁹ Hai, Do Thanh (2015), 99.

⁴⁰ Karim, Mohd Aminul (2013) 'The South China Sea disputes: is high politics overtaking?' *Pacific Focus*, Vol. 28, No. 1, 109.

⁴¹ Tolentino, Elaine and Myungsik Ham (2015) 'The entrapment of asymmetry: the Philippines between the US and China' *Bandung Journal of the Global South*, Vol. 2, No. 20, 10.

matter to ITLOS, which China resolutely rejected.⁴² The Chinese argue to this day that Chinese fishermen were taken by surprise and abused by the Philippine navy.⁴³ Not able to find a solution to this conflict and Philippine stubbornness reaching the international media, the Chinese government put pressure on the Philippine authorities by suspending the trade of bananas, placing 1200 Philippine-bound containers in quarantine and canceling flights between the Chinese mainland and Manila.⁴⁴ The United States reacted cautiously that while the Philippines are a treaty ally, the stand-off was no military conflict on the Philippine mainland, nor was it an invasion. As a precaution, USS *North Carolina*, a Virginia-class attack submarine and USS *Louisville*, Los Angeles-class submarine were sent to Subic Bay in the northern Philippines.⁴⁵ In both the Philippines as in China, the event was covered extensively in the national press. Political and military hawks in both countries cried for escalation of the conflict, but the situation eased in mid June, when former Philippine president Aquino ordered all Philippine ships to return to port because of an impending typhoon. Two days later, the Chinese followed suit. However, after Philippine ships left, the Chinese erected a chain between the two ends of the lagoon to deter any trespassers.

The event inevitably caused Sino-Philippine relations to cool significantly and a visit by the Chinese Deputy minister of Foreign Affairs Fu Ying in October 2012 did not do anything to change that. In short, China ordered the Philippines to refrain from any internationalisation of the dispute through the UN, the US or ASEAN.⁴⁶

Alternatively, the Philippines and Vietnam brought the matter before UNCLOS, filing a formal request for an UNCLOS opinion in June 2013. The claimants expressed that the UNCLOS Special Tribunal would not need to arbitrate or provide demarcation to the maritime borders. They petitioned the court, however, to rule on the validity of the nine-dash line as a legal boundary, as it has not been consistent through the years.⁴⁷ Furthermore, the court would investigate whether Scarborough Shoal, Johnson Reef and Fiery Cross Reef were islands as laid down in article 121(3) UNCLOS. Finally, the Philippines hoped for the opinion to include that it is entitled to a EEZ of 200nm and a 12nm territorial sea. Half a year later, on 12 February 2014, China officially refused to take part in any arbitration procedure, claiming that

⁴² Cruz de Castro, Renato (2015) 'The 2012 Scarborough Shoal stand-off: from stalemate to escalation of the South China Sea dispute?' in L. Buszynski and C.B. Roberts (eds.), *The South China Sea maritime dispute: political, legal and regional perspectives* London, England: Routledge, 119.

⁴³ Ying, Fu and Wu Shicun, 'South China Sea: how we got to this stage', 17.

⁴⁴ Cruz de Castro, Renato (2015), 121.

⁴⁵ Ibidem, 121.

⁴⁶ Ibidem, 124.

⁴⁷ See figure 3.

its actions were necessary to protect Chinese sovereign territory and again denying the existence of a dispute.

The final factor that has been important to the development of the conflict has been the rise and fall of unity in ASEAN. Founded in 1967, the political alliance was seen by China and the USSR as a bloc of capitalist states endangering the Chinese interests in the region. When the Chinese issued the “Law on the Territorial Sea and Contiguous Zone of the People’s Republic of China” in 1992, diplomatic conflicts arose with four out of six then ASEAN countries, including Malaysia, the Philippines, Brunei and Indonesia. ASEAN acted in unity and issued its “Declaration on the South China Sea” in the same year, calling for a peaceful resolve to territorial disputes. Furthermore, the ASEAN members urged China to participate in negotiations for a Code of Conduct (COC) to regulate maritime moves in the South China Sea to prevent armed conflict.⁴⁸ An event that further shaped ASEAN’s involvement in the dispute and unity in its communication was the Chinese occupation of Mischief Reef, one of the larger islands in the Spratly archipelago, which is situated less than 200nm from the Philippine mainland. This occupation came at an interesting time, since it coincided with the withdrawal of US forces from the Philippines. While ASEAN proved to be likeminded in the late 90’s, China continued to build structures on the occupied islands. It even erected an airport and a sports park on Mischief Reef.

In the early years of the 21st century, China embarked on a charm offensive with the claimant states, but still refused to participate in multilateral talks with ASEAN to settle the dispute. The only result was the formulation of the 2002 Declaration of Conduct (DOC) in the South China Sea, a non-legal and non-binding document that sets out the intention by all parties to begin talks for a COC on the workgroup level.⁴⁹ The aforementioned seismic research arrangement can therefore be seen as a “if you can’t beat them, join them” tactic by Vietnam and the Philippines.⁵⁰ Just before the Scarborough Shoal stand-off, ASEAN unity was at its lowest when the ASEAN Ministers’ Meeting in Phnom Penh on 3-4 April 2012 did not produce any written joint conclusions.⁵¹ It is highly unusual for a body of likeminded states to disagree on the text of a joint communiqué, but this was a reality after the summit that was chaired by the then ASEAN president, Cambodia. One of China's closest allies, Cambodia blocked language on the growing number of harassments by the Chinese authorities and the oil concession blocks situated inside Vietnams EEZ, sold by China.

⁴⁸ Roberts, Christopher B. (2015) ‘ASEAN: the challenge of unity in diversity’ in L. Buszynski and C.B. Roberts (eds.), *The South China Sea maritime dispute: political, legal and regional perspectives* London, England: Routledge, 131.

⁴⁹ Ying, Fu and Wu Shicun, ‘South China Sea: how we got to this stage’, 11.

⁵⁰ Roberts, Christopher B. (2015), 133.

⁵¹ (2013), ‘Philippine legal move stirs South China Sea disputes’ *IISS Strategic Comments Vol. 19 No. 3*, 7-9.

Because of the lack of unity in ASEAN, Vietnam and the Philippines have sought to internationalise the dispute by involving the EU and United States in ASEAN fora such as ADMM+ and ARF. Likeminded allies are needed to counter the Chinese assertiveness and in the past decade, countries that traditionally were solving their disputes through bilateral means seem to put their hopes in international organisations.

Knowing that it cannot fight all diplomatic battles in all fora at the same time, China has since 2012 worked with 9 of 10 ASEAN states (excluding the Philippines) to make some progress on the COC. However, China is still adamant about its demand for the negotiations to be done on a bilateral basis so the COC progress will be very slow. Furthermore, this tactic will eventually play into Beijing's hand since it will only strengthen the status quo in the meantime.

What happens: the UNCLOS ruling and stalling tactics.

As stated above, the South China Sea situation differs from a conventional crisis due to a lack of direct urgency caused by a creeping and consolidating tactic from the Chinese side that has been relatively unchallenged and a long legal battle between the claimants at UNCLOS. Military escalation seems unlikely at this point because firstly, China prefers to keep the matter from internationalising, secondly, the claimant states could not possibly weigh in against China's maritime power and thirdly, the United States have been reluctant to engage in military escalation in the area.⁵² This continuation of uncertainty has been typical for the last few years. The creeping assertiveness by China has reduced overt conflict in the area, but it still reinforces the status quo in which China is the de facto owner of the islands. In real terms, all hopes of both the Philippines and Vietnam are with the UNCLOS ruling by the Permanent Court of Arbitration.

When Vietnam and the Philippines brought the case forward at UNCLOS, the legal question was not whether the occupation of islands by China was compliant with the UNCLOS provisions, but whether China's "nine-dash line" is a legal instrument for demarcation. This case was seen as a possible turning point in the South China Sea situation, though China disputes the binding nature of UNCLOS rulings. On July 12 2016, a special tribunal at The Hague Permanent Court of Arbitration ruled on the legality of the "nine-dash line" in international law and the status of disputed features in the South China Sea. Because China did not agree to arbitration and because of a written reservation in the ratification process, shielding China from compulsory arbitration, the award would not be a solution to the situation from the onset. However, this part is to illustrate the reactions to the award worldwide, the significance of the precedent that has been set and whether this award can be

⁵² Emmers, Ralf (2015) 'The US Rebalance to Asia and the South China Sea Disputes' in L. Buszynski and C.B. Roberts (eds.), *The South China Sea maritime dispute: political, legal and regional perspectives* London, England: Routledge, 174.

seen as an empty move against China or the start of the enforcement of modern international maritime law in the South China Sea.

Since the case was filed to the PCA in March 2014, China has built structures on the larger features in the Paracel and Spratly groups, elevating reefs and banks to make them habitable and constructing runways and military equipment on Mischief Reef and Woody Island.⁵³ The joint communiqué at the end of an ASEAN summit a month later was in a large part about rising tensions in the maritime space and -while not singling out China as the perpetrator- it was a tougher stance on the ASEAN side in relation to earlier statements.⁵⁴ In the wake of the filing of the case at the PCA, the US State Department released a report on the validity of the “nine-dash line” in December 2015. In this report the authors point out the difference in geographical coverage between the original “eleven-dash line” of 1947 and the current “nine-dash line”.⁵⁵ Furthermore, it stated that the “nine-dash line” was not in accordance with the law of the sea as a demarcation boundary. Also, the US Navy performed a “*Freedom of Navigation Patrol*” near Mischief and Subi reef, two features that China is expanding and developing. During this operation, USS *Lassen* sailed within 12nm of one of these features.⁵⁶ China reacted by issuing a press release, in which it warned the US not to provoke China any further.⁵⁷ Two days later, on 29 October 2015, the tribunal made its first preliminary ruling, in which it determined the case to be admissible. The tribunal would rule on the legal status of low-tide areas like Mischief Reef and rocks like Scarborough Shoal. The tribunal rejected seven claims made by the Philippines in which the Chinese were accused of illegal occupation of the features.

In 2016, China scaled up the development of the occupied features. New structures and fuel depots on Fiery Cross Reef were first observed in February. The reef, that originally

⁵³ Stanzel, Volker (2016) ‘Need disputes turn into armed Conflicts? East Asia’s maritime conflicts in a new environment: consequences for the European Union’ *Europe Foreign Affairs Review* Vol. 21, Special Issue, 71.

⁵⁴ ‘ASEAN balks on singling out China in communiqué’ *The Japan Times*, <http://www.japantimes.co.jp/news/2014/05/12/asia-pacific/asean-backs-off-criticizing-china-amid-growing-tensions-at-sea/#.WSKzKFKiHEY>, accessed 27-6-2017.

⁵⁵ US Department of State Office of Ocean and Polar Affairs (2014) ‘Maritime claims in the South China Sea’, <https://www.state.gov/documents/organization/234936.pdf>, accessed 27-6-2017, 6.

⁵⁶ Ying, Fu and Wu Shicun, “South China Sea: how we got to this stage”, 21.

⁵⁷ Panda, Ankit (2015) ‘After months of waiting, US finally begins freedom of navigation patrols near China’s man-made islands’ *The Diplomat*, <http://thediplomat.com/2015/10/after-months-of-waiting-us-finally-begins-freedom-of-navigation-patrols-near-chinas-man-made-islands/>, accessed 27-6-2017.

flooded at high tide, now hosts an airfield, a harbour, multiple housing blocks and a football stadium. On Woody Island, one of the largest islands in the Paracel group, a landing strip, complete with military equipment and surface to air missiles have been deployed.⁵⁸ Mischief Reef in the Spratlys has the longest airstrip of all, and when its harbour is ready for operation, it will be the largest lagoon in the South China Sea. The total amount of ships Mischief Reef could sustain is higher than Pearl Harbour. Another reef that used to be submerged at high tide is Johnson Reef. On this smaller feature, the Chinese have built a heliport, lighthouse and barracks to sustain temporary visitors. From 5 April 2016, China started development on Subi Reef, which features the same geography as Mischief Reef, only smaller. Starting with a lighthouse, the reef is now equipped with an airstrip, fuel deposits, a sport field and housing blocks.

When the PCA tribunal ruled on 12 July 2016, the contents of the award rejected the “nine-dash line” as a valid legal boundary. The award was promptly rejected by China, arguing that the award was non-binding on it, a reaction that it had already announced two months before the ruling came out.⁵⁹ ASEAN, the EU and the US all endorsed the ruling in various ways. At the end of the following ASEAN summit in Laos on 25 July, the joint statement contained the ASEAN commitment to promote stability, peace and security in the maritime domain.

The UNCLOS ruling on the status of features determined that in the Spratly group, no feature is an island in the legal sense, that would grant 12nm of territorial sea, a continental shelf and an EEZ. Rocks, banks and reefs can only be entitled to 12nm territorial sea at best. Mischief Reef, an island which is permanently occupied by the Chinese and which hosts flights to and from the mainland, is according to the tribunal within the EEZ of the Philippines, which makes the occupation of the island unlawful. Also Scarborough Shoal, a formation of rocks way smaller than Mischief Reef and still undeveloped, falls within the Philippine EEZ. However, the rock has been patrolled and ‘governed’ by China during the dispute.⁶⁰

What then, are the real world consequences of the ruling, and have they transformed the dispute? The court’s ruling has been significant in the international legal world, setting an important precedent, especially because it involves one of the permanent Security Council members. However, in the real world, its importance is yet to be assessed. Almost one year after the award, the stalemate in the South China Sea has continued. On one hand, the

⁵⁸ Private conversation with dr. Michael Reiterer, EEAS, June 2016 in Brussels.

⁵⁹ ‘Briefing by Xu Hong, Director-General of the Department of Treaty and Law on the South China Sea Arbitration initiated by the Philippines’, press conference on 12 May 2016. <http://www.chinaembassy.org.zw/eng/zgjj/t1363335.htm>, accessed 20-6-2017.

⁶⁰ Mortimer, Caroline (2017) ‘China to build on disputed shoal in South China Sea’ *The Independent*, <http://www.independent.co.uk/news/world/asia/south-china-sea-dispute-beijing-philippines-scarborough-shoal-nine-dash-line-manila-a7637216.html>, accessed 29-6-2017.

explanation for this could be that China made it clear that it would consider the award ‘null and void’, despite the legal binding nature of the award itself.⁶¹ On the other hand, almost all countries with the largest stakes in this dispute, China, the Philippines and the US have experienced regime changes and policy decisions focussing ever more on domestic programmes. For China, the situation in the South China Sea is now a policy dilemma. With the world watching, it must weigh its actions against the possible consequences like public backlash. The director of China’s National Institute for South China Sea Studies, dr. Wu Shicun identifies four “battlegrounds” in which the battle for the South China Sea is fought.⁶² The first one is the legal battleground, where China needs to defend itself and clarify its claim according to international maritime law. Secondly, China must show that it has effective authority in the maritime domain. Third, it has become inevitable for China to keep postponing negotiations with ASEAN or the other claimants for a Code of Conduct in the South China Sea. It has to cooperate to shape the outcome of the COC. No less important is the fourth battleground of information and public opinion. In an age in which fake news, viral messages and digital lifestyles have become common, China must be careful not to let this situation lead to a Pyrrhic victory, where it gains ownership of the islands in an unworkable international community.

As of now, China continues to seek a balance between hard statements using diplomatic muscle-flexing and softer language in which China is portrayed as a friendly power, being bullied by the United States in its own backyard. I witnessed an example of this at the Egmont Institute in Brussels, where dr. Feng Zhu explained the Chinese position as humble “our navy is nothing compared to that of the United States”.⁶³ Fuelled by rising nationalism in its mainland, China pursues the safeguarding of resources, sovereignty and prestige, while it must account for adverse impacts on its broader global strategy, its aspirations as a world power and as a strategic partner to the EU. Previously, China’s rights and strategic interests (*weiquan*) was seen as more important than the development of a stable and peaceful region around it (*weirwen*).⁶⁴ It is thus likely that Beijing wants to set the status quo in stone before it will allow real progress on the COC. The end of the Obama presidency and its implications for the position and security of ASEAN is the final important development.

On Wednesday, November 9 2016, the world awoke to the news of Donald Trump being elected as the 45th president of the United States. Elected largely on a domestic, isolationist

⁶¹ Philips, Tom, Oliver Holmes and Owen Bowcott (2016), ‘Beijing rejects tribunal’s ruling in South China Sea case’ *The Guardian*, <https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china>, accessed 29-6-2017.

⁶² Zhang, Jian (2015), 73.

⁶³ Dr. Feng Zhu at the event “The South China Sea issue: history, law & geopolitics” on 21 June 2016 at the Egmont Palace, Brussels.

⁶⁴ Zhang, Jian (2015), 73.

ticket in which Mr. Trump advocated against free trade agreements such as NAFTA, organisations such as NATO and the EU, he promised to make America great again by reforming its healthcare and border security. The pivot to Asia, set in by the Obama administration, included *freedom of navigation* operations in the South China Sea and comprehensive security and trade agreements with several Southeast Asian countries. While formally not choosing sides, the US has been brought into the diplomatic play when the Philippines sought arbitration at UNCLOS. Under Obama, the US has repeatedly urged all parties to work together on a COC and to refrain from escalation. While the Trump presidency is still young, it can be concluded that Mr. Trump's foreign policies include less idealism and more realism than his predecessor. As a realist businessman, Trump has shown himself opposed to China's economic policies but much more pragmatic to its geopolitical aspirations. However, he has also established a climate of uncertainty since taking office because of his promises to break with the policies of his predecessor, which in Asia translates as a more hawkish stance on the Korea crisis. Combined, this led him to promise China a better trade deal and easier access to US markets "if they solve the North Korean problem".⁶⁵ The pivot to Asia under Obama has made China anxious to the degree that it would allow negotiations with ASEAN as not to drive these countries into the open arms of the United States. Now with the Trump presidency, China risks less US intervention.

Not only in China and the United States, but also in the Philippines, nationalism has been on the rise. The Philippines' new president, Rodrigo Duterte has a troubling history of human rights violations in order to crack down on drug crime. He has also promised to restore the military capabilities of the Philippines and surprised friend and enemy alike when he announced a softer stance on the China situation, as not to harm the Philippines economy. Meanwhile, Duterte became a critic of United States foreign policy, calling it interventionist. However, in the past year it has become clear that Mr. Duterte is fickle in his press contacts and decision-making, raising the possibility of war over the South China Sea dispute in private with President Xi in May 2017.⁶⁶

The final claimant in this thesis, Vietnam, has shifted its hopes from reliance on the United States as a guarantee for its security to international law, in this case UNCLOS. It also tries to find support in the region outside of the ASEAN framework, such as Japan.⁶⁷ ASEAN itself has been working through strict ASEAN-China fora such as the 46th ASEAN Ministers

⁶⁵ Landler, Mark (2017) 'Trump Says China Will Get Better Trade Deal if It Solves 'North Korean Problem'', *New York Times*, <https://www.nytimes.com/2017/04/11/world/asia/trump-china-trade-north-korea.html>, accessed 29-6-2017.

⁶⁶ Villamor, Felipe (2017) 'Duterte says Xi warned Philippines of war over South China Sea' *New York Times*, <https://www.nytimes.com/2017/05/19/world/asia/philippines-south-china-sea-duterte-war.html>, accessed 29-6-2017.

⁶⁷ Roberts, Christopher B. (2015), 139.

Meeting in Brunei on 14-15 September 2013 to hold consultations on the roadmap to reach a COC. Other fora, where the US are present like ADMM+, ARF and EAS are not used for formal consultations. Roberts concludes that the best that can be expected from ASEAN for now is the negotiation of a COC in the future. This, however, will only be feasible if the COC is based on the current status quo in which China is the de facto owner of a large part of the Spratly and Paracel group. Even with this caveat, reaching ASEAN consensus will be difficult since all countries tend to make decisions in their own self-interest.⁶⁸ A COC, when concluded, will only help to transform the conflict from volatile to a sustained dispute, where the only solution lies the acceptance from all parties to recognise the jurisdiction and application of international maritime law.

All of the above considered, the time in which the PCA has ruled in favour of the Philippines on the validity of the nine-dash line has not brought a significant change to transform the dispute by itself. Domestic forces in China and other claimants, uncertainty over the future US involvement in Asia and the problem of a lack of ASEAN unity have internationalised the dispute. With the US rebalancing its attention to the domestic sphere, China's willingness to negotiate a COC on the lowest level and with calls rising for an ASEAN sub-group to represent the claimants in these negotiations, opportunities for other players might present themselves.

As a global power with a huge interest in safe passage through the South China Sea, the EU has recently tried to influence the situation by issuing statements from Brussels and through its delegations in East Asian countries. As a party to ARF and ASEM, it is in a position to influence individual claimants to the dispute. A possible starting point for mediation could be to facilitate talks that will conclude the Code of Conduct. Because the effects of the PCA ruling have proven to be limited, claimants other than China will be looking for other ways to manage the dispute. A solution to this dispute, however, is unlikely since it is currently not the interest of the most important claimant, China.

In the next chapter, I will assess the possibilities that have opened up for the EU in this context to influence or mediate in the dispute through both high level statements and low level mechanisms through three available methods, which could be used to sway China's opinion in favour of EU mediation. The feasibility of these possibilities depend on the answer to three major questions. First, does the EU currently have a position in which it is able to gain the trust of all parties involved, including China? If not, are there indications that it could? Secondly, the question which incentive would bring China to the table is crucial. As stated in this chapter, China has most to gain in maintaining the status quo. Finally, if there should be a position for the EU to mediate, where would it need to start to make significant progress?

⁶⁸ Roberts, Christopher B. (2015), 143.

THE EU POSITION AND MEDIATION POSSIBILITIES

Building on the three questions that have been posed at the end of the previous chapter, I will start by providing an overview of the EU position in the South China Sea dispute. The EU position is formed through Council Conclusions and declarations by the High Representative. Because Council consensus is needed in order to conclude, it is interesting to compare different declarations through the recent years. By doing so, I will argue that the Member State stance on the South China Sea situation is in no way unanimous.

In this chapter, I will address the development of the EU common position through my own experiences as a trainee in the Dutch Permanent Representation and through an analysis of recent statements made by the High Representative of the Union and Council conclusions. From this data, I will analyse the goals that the EU wants to achieve in the South China Sea dispute and whether a high level, high politics push for change will lead to positive results. Identifying three key areas in which the EU can exert pressure –political, economic and diplomatic– I will argue that economic and political coercion, applied through the compulsory model of EU influence, will not be feasible for the near future.

Different from a traditional power, the EU can use two different models to bring itself at the table and more importantly, to convince all stakeholders that consultations are in their mutual interest. I will argue that the model of integration will fall short to convince both China and ASEAN and its member states on a number of grounds. Instead, this chapter holds that the added value of the EU, if any, would be in soft diplomacy and social learning, that could change the context of the dispute. Applied to the dispute, it is possible to answer the three questions posed before. I will conclude on the notion that however this model theoretically would meet most of China's demands its real-world applicability remains difficult.

The development of an EU position

The comprehensive EU approach to China constitutes in large part of two areas: political pressure and economic involvement. The Member States through the Council can provide input for bilateral consultations and often use these events to hold political dialogues on human rights and basic freedoms. On pressing issues and en marge of high level political meetings between the EU and China, the Council and the EEAS can provide joint statements through Council Conclusions or EU-28 statements. Also, the High Representative can release her own statements on behalf of the EEAS. In order to issue an EU-28 statement or Council Conclusions, unanimity is required. Using my experiences while participating in the Council Working Group on Asia & Oceania (COASI), I will illustrate how these statements and conclusions are negotiated and why high politics such as these will probably not lead to a better EU position to influence the South China Sea dispute.

A few days after the Dutch Presidency of the Council started in January 2016, the Council was briefed on reports in the media about the construction on an airfield on one of the Spratly islands. Vietnam protested diplomatically but there was no majority for an EU-28 statement after this report. The countries that were in favour of a statement made it clear that it should come from the EU, not bilaterally. At the end of February, Member States raised the issue of the deployment of missiles by China on Woody Island, the largest feature in the Paracels.⁶⁹ Again, some Member States tried to convince others to issue a rapid response, possibly through a statement by the High Representative. The EEAS started internal consultations on the text of an EU-28 statement, to be first discussed in the first week of March. At the next COASI meeting, agreement was struck on the desirability of an EU-28 statement, and negotiations began on its contents. At this time, eight Member States asked for delay to study the situation in more detail, a number of Member States objected to including the words “UNCLOS”, “China” and “legal binding”. After much more deliberations both in official setting and informal discussions, the EU-28 statement was published on 11 March 2016, a month after the first discussion on this topic. Furthermore, the text was watered down significantly. UNCLOS was still included in the text but there was no reference to its legal bindingness, and Woody Island and China were not explicitly named. In this statement, the EU does not explicitly condemn the militarisation of Woody Island and it encourages the ASEAN-led process of concluding the COC.⁷⁰

Another example was the negotiation of Council Conclusions on the EU-China Strategy, that was to be concluded before the EU-China Summit on 13 July 2016. Negotiations for these conclusions began mid April. The Council Conclusions were meant to provide Council input and consent to existing language formulated by the EEAS. In other words, it was vital to have these Council Conclusions in order to have a unified, common strategy before the EU-China Summit. In an early stage, the EEAS drafted a concept for these conclusions, in which also the South China Sea dispute was named. More importantly, the need for an effective and solid China strategy was underlined by all Member States, also because China wants to distance itself from the US and it sees Russia as an unreliable partner. Problems arose mid May when it became clear that the EEAS part of the strategy, named “Elements for an EU-China Strategy” would become public before the summit, while the first available Foreign Affairs Council would be three days after the summit on 16 July. This was a problem for many Member States, but the EEAS stated that a rushed strategy would be worse than an incomplete

⁶⁹ Panda, Ankit (2016) ‘South China Sea: China has deployed anti-ship missiles on Woody Island’ *The Diplomat*, <http://thediplomat.com/2016/03/south-china-sea-china-has-deployed-anti-ship-missiles-on-woody-island/>, accessed 29-6-2017.

⁷⁰ ‘Declaration by the High Representative on behalf of the EU on Recent Developments in the South China Sea’, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/11-hr-declaration-on-bealf-of-eu-recent-developments-south-china-sea/>, accessed 20-6-2017.

strategy. Just weeks before the summit, consensus was reached on having Council Conclusions at the ECFIN Council of 12 July 2016. However, just days before agreement, some Member States shared new procedural concerns. Breaking rank just before the deadline postponed the Council Conclusions even further until after the EU-China Summit.

Events like these reflect the Achilles' heel of high level communication through the EU institutional framework. Because of the need for unanimity, closed-door negotiations and because of often small Member States' vulnerability for lobbying efforts, high level declarations are often watered down, incomplete or irrelevant because of the time passed between the event and the publication of a statement. While the EU must continue to issue statements in order to uphold its commitment to promote democracy and the rule of law, it cannot be seen as a means to exert real pressure on the South China Sea dispute.

Perhaps the EU could use its economic leverage to apply the compulsory model successfully. One could argue that the EU, with its market of over 500 million consumers, its political power to grant China Market Economy Status and on the other hand, punish it for dumping goods on the European market, holds a great advantage over China to coerce it to the negotiation table. China's has placed great importance on the completion of its "One Belt, One Road" (OBOR) programme, which depends on EU participation for its success. Would economic compulsion be a way to influence both China and to a lesser extent other claimant countries in order to settle the dispute? Yeikyoungh Kim argues that based on recent developments and the effectiveness of EU compulsory measures in the past, the compulsory model will not be satisfactory. Not only are sanctions out of the question due to the interdependence between the Chinese and EU economy, also political will for such a measure is currently lacking. Also, instead of sanctions, economic incentives linked to political reform have been ineffective.⁷¹ Furthermore, the claimant countries, complimented by other ASEAN members do not support such a strategy. For all their toughness in the dispute, China is still their number one trading partner and needlessly upsetting relations would only be counterproductive.⁷² On its own, such a move by ASEAN would be unthinkable due to the loyalty of members like Cambodia and Laos to the Chinese cause. There are two other reasons why the compulsion effect cannot be successfully applied to the South China Sea situation. First, not only is there no majority for sanctions or incentives within the EU, as I have illustrated above there are deep running divisions between Member States on the direction of the EU-China Strategy.⁷³ Second, taking the high level approach will not be appreciated by Beijing. Even if there was political will and a sound strategy to use the compulsion effect, it would not be a way to bring China to the table since complying would play out as weakness to

⁷¹ Kim, Yeikyoungh, (2016) 'The European Union, regional integration and conflict transformation in the South China Sea territorial disputes' *Asia European Journal* Vol. 14, 388.

⁷² Ibidem, 388.

⁷³ Ibidem, 389.

the outside world. Even if the Chinese government would be inclined to participate in dispute settling measures, it would not be able to publicly announce it as such.

Another method introduced by Kim is the model-setting effect. This effect has been very successful in South Asia already, notably with the EU involvement in the stabilisation of Myanmar and the promotion of regional integration in ASEAN.⁷⁴ It involves sharing the story of success through political and economic integration and relies heavily on two factors. First, the EU must be held in high regard in the peer country or institution. Its involvement must be welcomed and the peers must be convinced that the “EU way” is the best way. Second, the EU must act as a normative power to project the “EU way” on its peers. This means that the spread of democracy, respect for human rights and the rule of law will be essential to make this method work.

The model-setting effect will however not succeed as a way to influence the South China Sea dispute for a number of reasons. First and foremost, the public image of the EU has been hurt in the recent years by the financial crisis, a refugee crisis, the rise of populism in some of the EU Member States and Brexit. Secondly, Kim observes that the EU has often let go of its normative requirements in favour of economic benefit. Third, the EU experience of multilateralism and institution building will be hard to promote in claimant countries due to their status as developing countries. Both ASEAN and China are wary of multilateral institutionalisation which could harm their sovereignty.⁷⁵ Lastly, this method will be overt and China will depict any public effort for mediation as an act of meddling in its internal affairs. The EU operates on its core values of democracy and rule of law and argues that these are universally applicable. China on the other hand respects the EU as an economic power, but rejects the universality of the EU’s core values.⁷⁶

The last effect is that of soft diplomacy through social learning and identity change, promoted by Jeffrey Checkel. Using a social constructivist approach, he holds that a process in which interests and identities of parties are shaped through and during interaction can change attitude without overt coercion.⁷⁷ This means that the context of the dispute could be transformed, given that parties interact, possibly with a third party. In the context of the South China Sea dispute, this theory looks promising to assess the possibility of mediation or facilitation by the EU.

First, this model will work through low-level interactions and will thus aim to

⁷⁴ Council Conclusions on EU strategy with Myanmar, <http://data.consilium.europa.eu/doc/document/ST-10482-2016-INIT/en/pdf>, accessed 20-6-2017.

⁷⁵ Kim, Yeikyung, (2016), 394.

⁷⁶ Pardo, Ramon Pacheco (2009) ‘The political weakness of the EU in East Asia: a constructivist approach’ *Asia Europe Journal Vol. No2*, 274.

⁷⁷ Checkel, Jeffrey (2001) ‘Why comply? Social learning and European identity change’ *International Organization Vol. 55 No. 3*, 562.

depoliticise the interactions. This is important, as China will only consider options that will not further internationalise the dispute, nor will it agree to a 'public' mediation effort. The model, if applied, will take place on a working group level, which has had limited but promising effects earlier. It would also create a more pragmatic setting in which parties are able to discuss without reiterating official positions time and time again. A correct implementation this model could revive the favourable conditions that have been created in the run-up to the signing of the Declaration of Conduct in the South China Sea in 2002. Also, the position of the EU, the strength of its leverage in East Asian affairs and how the EU is perceived in the region is less of a priority than the ones earlier discussed. This model is currently the best chance for the EU to get a seat at the table since it would circumvent the aforementioned problems that the EU faces in coercion and integration model setting.

Despite its overall increased assertiveness, China has hinted at preparedness to work with all parties to implement the 2002 DOC, for instance at the 9th ASEAN-China Joint Working Group on the implementation of the DOC in September 2013 and during the 18th ASEAN-China Summit in Kuala Lumpur in 2015.⁷⁸ In its statements, the EU has always been very principal and normative, endorsing consultations but also criticising matters that according to China are none of its business. Diplomacy on a lower level would allow discussion without the burden of political positions.⁷⁹

Taking this model as the most plausible way the EU could influence the South China Sea dispute, and for the sake of argument discarding caveats that will be discussed later, it is important to assess where the starting point of such a mediation operation would begin and what its goal should be. It is clear that the EU does currently not have the power, nor the credibility to have a profound effect on the way the dispute will play out in the long run. A goal should therefore not be to push for a solution, but rather to bring the claimants closer together and to address their respective red lines. It will come down to whether assistance from the EU and its knowledge in institution building, soft diplomacy and perhaps economic incentives may lead to a better negotiation climate in which de-escalation would be considered in the interest of all claimant nations. If welcomed by the relevant claimants, the EU could provide a forum where it could share its own experiences regarding the settlement of maritime border disputes.

Also ASEAN's interests should be served by the EU providing a forum. It will show international interest in the dispute and whereas ASEAN formerly counted on the US for support, both ASEAN and the EU could show that multilateral dispute settlement is desirable. Vietnam and the Philippines have witnessed the very limited effects of the PCA ruling, in the sense that it was immediately rejected by China and no international actor has pushed hard to defend the binding nature of the award. Seeing China win by maintaining the status quo, other claimant countries look to the rest of the world for assistance. It would also be in the interest

⁷⁸ Kim, Yeikyung, (2016), 391.

⁷⁹ Ibidem.

of China to keep the US away from the negotiation table. EU mediation would not only mean choosing the lesser of two evils, but some researchers have described China as being open to establish a consensual position, if it would help its own development.⁸⁰

Thus, in principle, EU mediation on the working group level, eliminating as much political pressure as possible, building confidence between claimants, would have some degree of plausibility. The methods above and their applicability assume a best case scenario in which all claimants have an interest in the settlement of the dispute. To assess the real world applicability of the possibility of EU mediation and support, a number of severe caveats have to be made about China, the EU, the US and ASEAN.

First, all of the methods above assume it would be in the interest of China to settle the dispute. One could argue that due to its gained powers, its status as a permanent member of the UN Security Council and the G20, it would feel obliged to set an example and embrace multilateral institutions and their decisions. However, it has become clear that China currently only operates in its own national interest.⁸¹ To the world, China continues to be open for bilateral consultations, knowing that it would very likely come out on top. The constructive attitude that led to the 2002 DOC and subsequent promises to negotiate a COC can be seen as a charm offensive, that has been replaced by a more assertive policy. This policy will not change in the foreseeable future, argues dr. Frans-Paul van der Putten, because doing so would not serve China's interests.⁸²

Second, the methods above assume that the recent developments in the US mean that there will be a power vacuum in Southeast Asia in which the EU could develop its foreign policy. However, this vacuum does currently not exist, and despite the falling presence of the US, it is still the most dominant external factor in the area. Taking this into account, dr. van der Putten does not expect the relapse of US influence to be an advantage to the EU, on the contrary. He claims that the rapid grow of China, the awakening of Russia and the receding US strategic umbrella make the EU vulnerable to power politics by these three great powers. In this scenario, efforts by the EU to influence disputes outside its own neighbourhood will lead to possible repercussions from China or the US.⁸³

Third, it is safe to argue that the question of EU credibility, posed at the beginning of this chapter, can for now be answered negatively. Past successes in mediation and the call by its Member States for "European solutions" to its internal crises have not caused any spillover to save the EU foreign policy in Southeast Asia. There are three reasons for this. Firstly, as stated above, the EU reaction to the PCA ruling was too little, too late. The statement was heavily

⁸⁰ Chang, Vincent K. during a panel discussion hosted by NGIZ 20 June 2017, Amsterdam.

⁸¹ Ibidem.

⁸² Interview with dr. Frans-Paul van der Putten 21 June 2017 at Clingendael Institute, The Hague.

⁸³ Ibidem.

watered down and postponed because of the failure to reach unanimity for more than a month. Secondly, not only was the way the EU-China strategy was negotiated a failure in itself, since it was only approved of by the Foreign Affairs Council after it was presented to China at the July 12 EU-China summit, also the text was almost entirely dedicated to economics and failed to offer a persuasive EU foreign policy plan. The EU Global Strategy, launched June 2016, has not been able to prove itself as a strategic document that all Member States actively pursue. The focus is far too diffuse and the fact that maritime security in the South China Sea is only mentioned on page 42, without any action plan, signals that the EU is reluctant to provide a clear-cut policy on maritime security in the South China Sea.⁸⁴ Finally, it has been noted that the Chinese are focussing their diplomatic efforts more and more on the Member States because they think the EU institutional apparatus is too slow and because it allows China to cut tailor-made deals with individual countries, thus undermining EU unity. Whether this is a side effect and a consequence of earlier fractures in EU unity or an intentional play by China to divide and rule, is up for debate.⁸⁵

The fourth factor that should be taken into account is the position of ASEAN, which stronger than often assumed, argues dr. van der Putten. Since the Chinese and ASEAN economies are largely interdependent and because of China's interest in the security of the region while promoting strategic independence from the US, China actually needs ASEAN. This gives ASEAN the power to pursue a COC, perhaps with binding regulations in it.⁸⁶ Lastly, one must not forget that while the EU and ASEAN share much in their affection for multilateral institutions, ASEAN has continuously flagged that it wants to keep doing things "the ASEAN way", formulating their own foreign policy decisions.

Outlook

Therefore, the possibilities for EU mediation or institution building by the EU are very limited in the short term and to be a successful actor in the long term, institutional changes are required. In the short term, the EU has to realise that its position in the world and the way China and ASEAN perceive the EU has changed over the past ten years. The compulsory effect, even when applied while using incentives like the Market Economy Status or the dropping of the weapons embargo to get China to comply with international maritime law, will be ineffective and by doing so the EU would risk repercussions from China and the US. As for

⁸⁴ 'Shared vision, common action: a stronger Europe: a Global Strategy for the European Union's foreign and security policy' https://europa.eu/globalstrategy/sites/globalstrategy/files/pages/files/eugs_review_web_5.pdf, accessed 26-6-2017, 42.

⁸⁵ Chang, Vincent K. during a panel discussion hosted by NGIZ 20 June 2017, Amsterdam.

⁸⁶ Interview with dr. Frans-Paul van der Putten 21 June 2017 at Clingendael Institute, The Hague.

the short term then, the EU could only provide minimal support by for instance organising lectures and seminars on the applicability of international maritime law in order to raise public awareness. It could participate in think tanks, educate the youth and spread its visions through these channels. In fields of social mobility and integration, sustainability and urbanisation, the EU has a lot to offer through its integration models.⁸⁷The EU can of course resort to high level statements, but their effectiveness have been very limited and even counterproductive, since it shows the world fractures inside the EU's unity.

As for the long term, the only real hope for the EU is to review the way the EU foreign policy is structured. Currently, the EU-China Strategy and the EU Global Strategy do not provide satisfying prospects for EU involvement in crises worldwide. Such a development is only possible once the EU is unified and through a common vision. This will prove to be difficult post-brexite and with Southern- and Eastern European countries that have become dissidents after the financial and refugee crises. Mending internal divisions should be a top priority for the EU leadership, as this will allow the EU to make a decision vital for its future: does it want to be a strategic power in the world? If it does, a stricter foreign policy, endorsed by all Member States should be drafted. The EU should not be afraid to take sides and in this case should provide more vocal support to ASEAN in their own negotiation efforts. Acting as a unified strategic power would therefore also mean that the EU members will be responsible for the consequences thereof. To make EU statements stick and to be able to have an effect on crises, the EU institutions should be able to draft statements faster and provide swift responses to provocations. For this, the EU institutions need a certain level of autonomy. Only time will tell whether these requirements will be fulfilled by the Member State governments.

⁸⁷ Yeo, Lay Hwee (2013) 'Can the EU be a serious security actor in Asia?' *Asia Europe Journal Vol. II*, 467.

CONCLUSION

In this thesis, I have made an assessment about the possibilities for EU mediation in the South China Sea dispute by analysing the institutional challenge of making and maintaining an EU foreign policy and the historical context of the dispute itself against the backdrop of the changing relations between Europe and China in a changing world. The US under its new leadership has exposed cracks in the presumed solid US-EU alliance, while China has grown to be more assertive in its own periphery. Have these circumstances created any room for the EU to commence mediation efforts in any way?

To answer this, there are tests to see whether mediation in the current situation would be possible. Firstly, it starts with taking into account the current image of the EU perceived by Southeast Asian countries and the ties that it has to these countries. Multiple scholars indicate that instead of rising popularity with the presumed demise of US influence and ever growing economic interdependency, the EU has lost prestige due to the financial crises and political fallout over Brexit and the resettlement of refugees. Secondly, Chinese participation in any mediation effort is crucial for it to succeed. Instead of the premise that China would be interested in a settlement of the dispute, signalled by earlier pragmatic cooperation with other claimants in the field of seismic research and the conclusion of the 2002 DOC, there are no indications that China would be prepared to negotiate on this matter. The EU has some leverage for coercion in the possible revocation of its arms embargo against China, or to grant it Market Economy Status to help China ascend to the WTO. However, revoking the arms embargo would be vetoed by the United States and China is not actively pushing for MES. A continuation of the status quo in the South China Sea is more in interest and as a strategic benefit would outweigh the importance of MES for China.

What follows is that these factors added with the realities of cumbersome “too little, too late” EU decision-making and the influence still exerted by the US in the Southeast Asian region make the possibility for EU influence on the high level nonexistent. A successful mediation effort would have taken place directly after the 2002 DOC was concluded and the EU voice would have needed to be unequivocal. Sadly, the EU did miss opportunities not only then but also when constructing its EU-28 statement after the PCA ruling and when negotiating a EU-China Strategy. On the low level the EU could still technically contribute through working groups, confidence building measures and promotion of dialogue through EEAS delegations in the region. However, it needs to be clear that any substantial EU involvement will be countered by both China and the US, both of whom will not tolerate another political player in this region. In its current form, the EU is very hesitant to take sides, a treat that is not appreciated by ASEAN partners of the EU. Most importantly, low level efforts will not be able to transform the dispute at this time.

For the future, this dispute will hopefully serve as a model of how EU foreign policy has failed beyond its own neighbourhood. When the EU will recover from its recent crises, work needs to begin to unify the EU once again. Often designated as cause rather than consequence,

China has a history of dividing EU Member States through its bilateral ties. The EU must firstly enter in a renaissance of its own ideas and visions, to get all Member States behind its policy. This will mean that significant resources need to be allocated to relieving southern and eastern Member States. As unpopular as that sounds, it will need to happen in order for the EU to keep its future in its own hands.

Secondly, when acting unified again, the EU must ask itself what kind of power it wants to be. If it has strategic aspirations to ascend as a power to prevent a scenario in which Europe again becomes the playing field of great powers, it needs to do away its ad-hoc decision-making and formulate a detailed foreign policy, in which it is willing to side with allies and take risks. This will inevitably lead to repercussions, but it will be the only way to avoid being in a deadlock between China and the US, with possibly Russia expanding its influence in Eastern Europe and the Balkan area.

FIGURES

The Scarborough Shoal

The Philippines and China are in dispute over the Scarborough Shoal. Although the shoal is merely a few rocks poking above the sea, it is important to the Philippines because of its tranquil waters and rich stocks of fish.



Source: Reuters

Staff, 12/04/2017

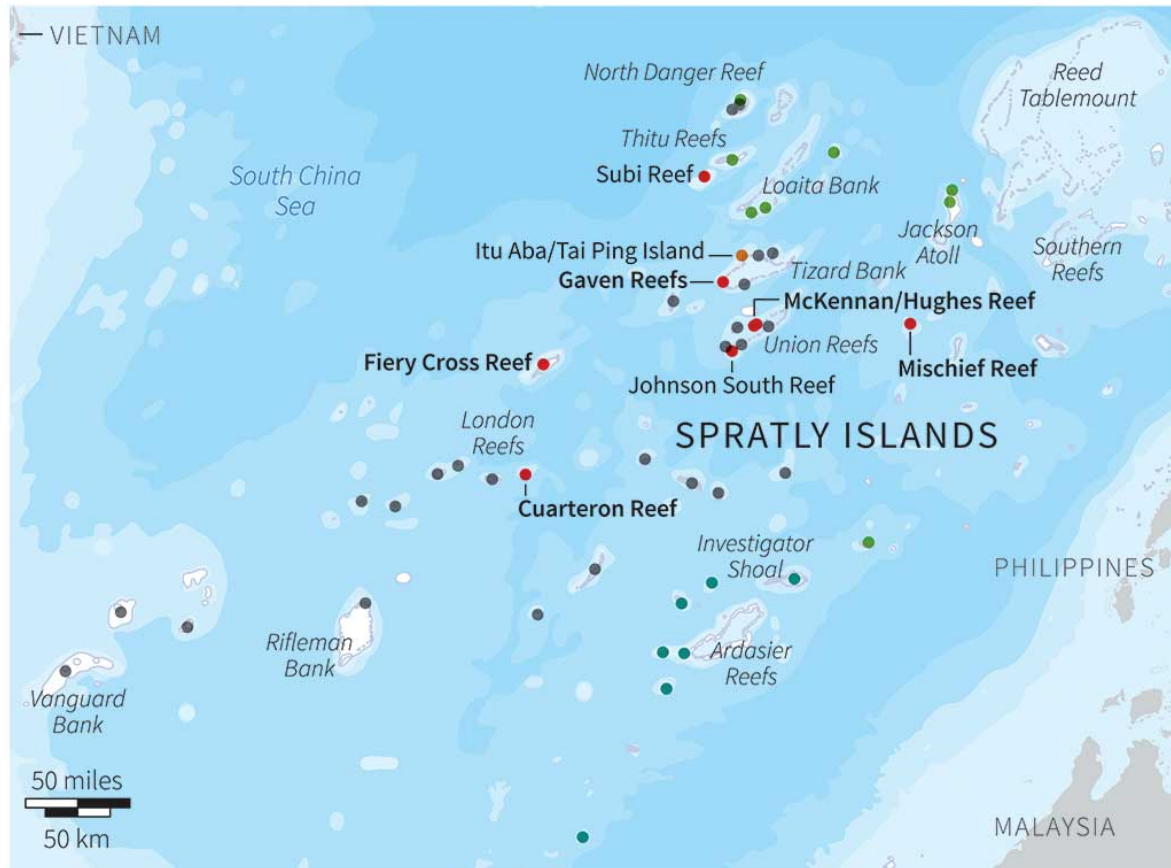
REUTERS

Fig. 1: Topography of the South China Sea, including China's "nine-dash line", the Paracel and Spratly island groups, and Scarborough Shoal.

Spratly Islands dispute

The South China Sea's Spratly Islands has been an area of ongoing territorial dispute between neighbouring countries. China claims most of the South China Sea, and the Philippines, Vietnam, Malaysia, Brunei and Taiwan also have overlapping claims.

OCCUPANTS* ● China ● Malaysia ● Philippines ● Taiwan ● Vietnam



Sources: U.S. government; Reuters.

*Occupation does not signify undisputed sovereignty.

C. Chan, Staff, 16/04/2015

REUTERS

Fig. 2: Topographic close-up of the Spratly islands, with current occupations.

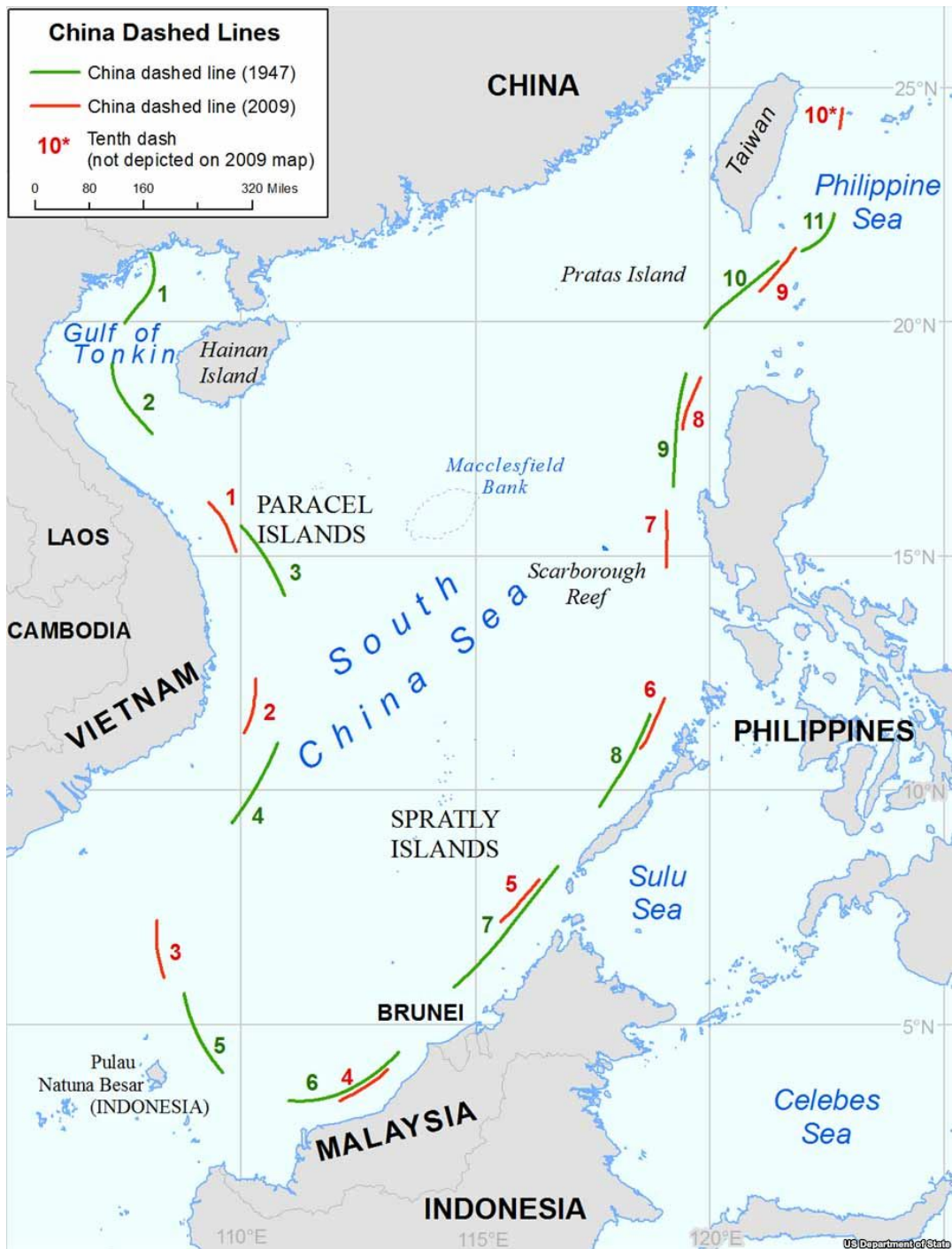


Fig. 3: Differences between China's original line (1947) and current "nine dash line" (2009), available at <https://nworeport.me/category/china-sea/>.

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