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Guns, engines and turbines

The EU's hard power in Asia

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GUNS, ENGINES AND TURBINES

THE EU'S HARD POWER IN ASIA

Edited by Eva Pejsova

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Executive summary

Europe and Asia have never been closer. Having forged robust economic ties and a booming trade relationship, and recently invested in new connectivity initiatives, the two regions are now stepping up cooperation also in the security domain. Brussels' renewed interest in engaging 'in and with' Asian partners was announced by HR/VP Federica Mogherini during her visit to the region in August 2018, as part of a more comprehensive EU-Asia strategy. This latest move is in line with the Union's continuous effort to play a more proactive role as a security provider in the region, promoted since Europe's 'pivot' towards Asia in 2012. While exploring concrete avenues for such cooperation, it is time for Europe to reassess the full range of its policy instruments, which go beyond normative discourses and cooperation in so-called 'non-traditional' security areas.

Asia is home to five of the world's largest arms recipient countries (India, South Korea, Pakistan, China and Singapore) and is by far the leading importer of defence technologies, accounting for 42% of global arms imports in 2017. Driven principally by the military rise of China, Asian countries have been investing heavily in expanding and modernising their industrial bases and capabilities, constituting a flourishing market for European defence industries. As of today, EU member states provide military-related equipment, technologies and know-how to almost all East Asian countries, including Singapore, Malaysia, Indonesia, Thailand, South Korea, China and Australia – in a seemingly indiscriminate fashion. Viewed from outside, this not only undermines the EU's image as a coherent foreign policy player, but also risks casting doubt on the sincerity of its engagement.

Indeed, the contribution of European countries to Asia's military balance is an aspect of EU-Asia security relations that is rarely discussed. While member states tend to portray arms exports from a purely economic perspective, their impact on the region's security environment is undeniable and the lack of coherent strategic thinking in Brussels on the matter striking. A major conceptual divide therefore emerges between a values-based foreign and security policy discourse at the EU level on the one hand, and the economic interests of its member states on the other. Asia remains one of the world's potentially most volatile security arenas. If the EU aims to enhance its credibility as a security provider and boost its political leverage in the region, bridging this divide will be essential.

Considering arms trade an integral part of a foreign policy toolbox, what is the status of security cooperation between Europe and Asia? Who exactly benefits from European military technology and know-how and how does that affect the region's

overall strategic balance? And finally, how could the EU coordinate its policies to best secure its strategic interests in the region? This *Chaillot Paper* sheds light on the new security dynamics in EU-Asia relations from the 'hard security' perspective. By looking at the burgeoning arms trade, dual-use technology transfers, as well as the emerging connections between new defence markets, it challenges the overwhelming perception of Europe's exclusively normative, 'soft' security profile globally and in Asia in particular.

Contributions to this volume present a number of concrete case studies that demonstrate European influence on the region's evolving security landscape. Albeit non-exhaustive, selected cases cover the main areas of interest that dominate Asia-watchers' debates in Brussels: from Europe's contribution to the fragile equilibrium in the South China Sea, to the sensitive issue of dual-use technology transfers to China, and the relevance of the arms embargo in Beijing's current strategic calculus. Engagement with old and new Asian partners – notably South Korea, Japan and Indonesia – is discussed in the context of the region's changing strategic dynamics, as well as the respective countries' specific domestic considerations.

More than ever, Asia is ready to enhance its security ties with Europe. Across the region, countries have various reasons to engage with the old continent – whether they seek to diversify their strategic options in light of the perceived unreliability of the US security umbrella under the current administration, or whether they are attracted by the high-quality products and services of European defence firms. But the greatest challenge remains at home. The lack of coordination in Brussels and the active involvement of some member states in the region – France and the UK especially – gives the impression to many Asian countries that security issues are still best handled bilaterally, giving little leeway to the EU as such. This perception may change with Brussels' progressive efforts to consolidate its security profile through new instruments such as permanent structured cooperation (PESCO). But at the end of the day, partners will judge the EU's foreign policy capacity by its actions.

Consistency is the key to success. Defenders of the current approach – i.e. selling armaments to all parties – argue that raising the cost of conflict makes its occurrence less likely; that arms sales build stronger dependency relationships; and that, ultimately, potential buyers would simply find another provider anyway. But what does all this say about the EU's credibility as a security actor and influencer? A more selective approach, which would prioritise Asian democracies or impose stricter criteria based on common values, would be a good start to demonstrate a coherent, norms-based approach to global security. Given the complexity of the Union's legislation *vis-à-vis* arms sales and dual-use technology transfers, it will not be an easy task and this *Chaillot Paper* does not pretend to provide clear answers. Instead, it aims to raise awareness of the problem and inform the debate, thus assisting EU policymakers and observers pondering Brussels' effective strategic options when engaging in and with Asia.

Introduction: Arms trade, dual-use technologies and the new dynamic in EU-Asia relations

Eva Pejsova

Ever since the European Union announced its intention to play a more proactive role in Asia's security in 2012,[1] its capacity to project power or exert any significant influence on the region's strategic chessboard has been downplayed. With the exception of French forces stationed in overseas territories in the South Pacific, Europe has no permanent military presence in the region, and is absent from most cooperative security arrangements with the exception of the ASEAN Regional Forum (ARF). As a result, regional countries have always largely ignored Europe as a strategic actor, viewing it as an economic power and a useful trading partner above all. Indeed, Brussels's foreign policy engagement in the region has been mostly limited to normative discourses on human rights, the rule of law and multilateralism, and the EU is often accused of free-riding on America's security umbrella.[2] As a result, it has been mostly playing second fiddle to the big regional players: focusing on non-traditional security issues and leaving the 'serious business' to the traditional security actors with effective military capabilities in the region.

But while the EU's normative power and soft security engagements become increasingly acknowledged as the main attributes of its foreign and security policy,[3] the substantial influence of its member states on the Asian military balance remains barely noticed. According to the Stockholm International Peace and Research Institute (SIPRI), the combined exports of conventional weapons from EU member states accounted

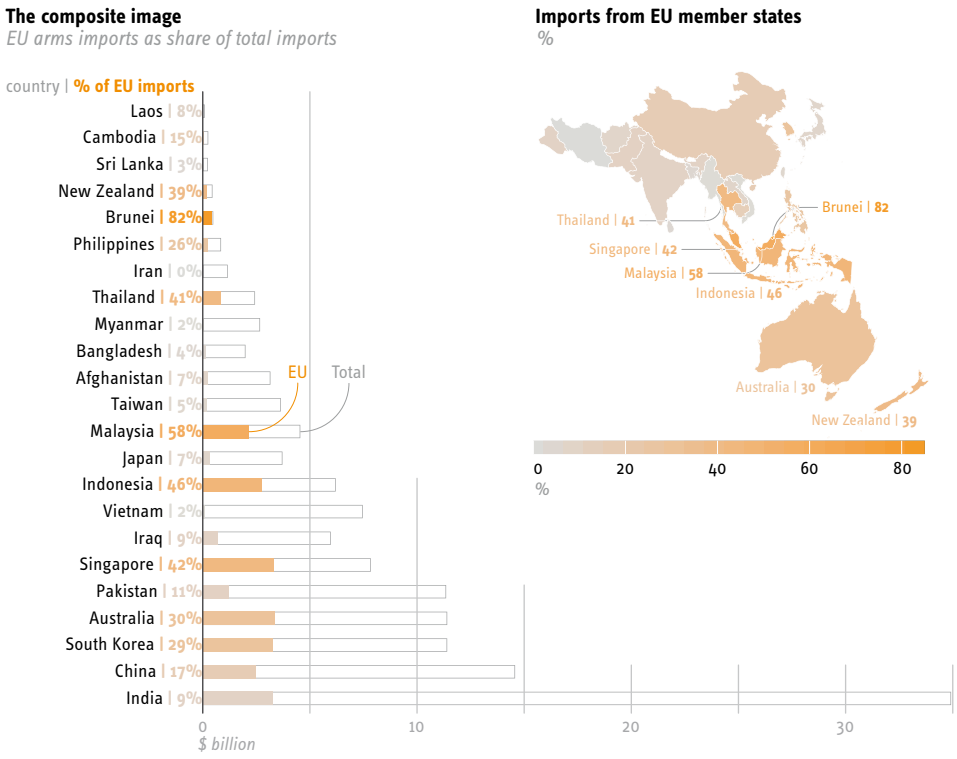
1. The year 2012 can be seen as signalling the beginning of the EU's increased interest in Asia, marked by the publication of the "Guidelines on the EU's Foreign and Security Policy in East Asia," considered as the first comprehensive strategy in the region (see http://eeas.europa.eu/archives/docs/asia/docs/guidelines_eu_foreign_sec_pol_east_asia_en.pdf), as well as the joint EU-US statement by the US Secretary of State Hillary Clinton and the HR/VP Catherine Ashton.
2. A number of regional security commentators point out the lack of EU hard power as the key drawback constraining Brussels' strategic leverage in Asia. See for instance Axel Berkofsky, "The EU in Asian Security: Actor with a Punch or Distant Bystander?", *Asia Pacific Review,* 21, no.2 (July 2014): 61-85.
3. See for instance Eva Pejsova, ed., "Prevention Better Than Cure: The EU's Quiet Diplomacy in Asia", Report no. 33, EUISS, May 2017, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Report%2033_0.pdf

for 26% of the global total between 2012 and 2016, making the EU the world's second-largest arms exporter after the United States.[4] Although military budgets and procurements within the EU are currently on the rise, its established defence industries have been seeking to maximise exports and expand into new markets.

Asia is home to five of the largest recipient countries (India, China, South Korea, Pakistan and Singapore) and by far the world's leading purchaser of defence technologies, accounting for 42% of global arms imports in 2017.[5] Driven principally by the military rise of China, Asian countries have been investing heavily in expanding and modernising their industrial bases and capabilities, constituting a flourishing market for European defence industries. Today, EU member states supply the majority of military-related equipment, technologies and know-how to a number of East Asian countries.

FIGURE 1 | The EU as an arms exporter in Asia

Asian arms imports 2007-2017



Data: SIPRI, 'Arms Transfers Database', 2018

4. Aude Fleurant, Pieter D. Wezeman, Siemon T. Wezeman and Nan Tian, "Trends in Iinternational Arms Transfers", SIPRI, February 2017, https://www.sipri.org/sites/default/files/Trends-in-international-arms-transfers-2016.pdf

5. Pieter D. Wezeman, Aude Fleurant, Alexandra Kuimova, Nan Tian and Siemon T. Wezeman, "Trends in International Arms Transfers", SIPRI, March 2018, https://www.sipri.org/sites/default/files/2018-03/fssipri_at2017_0.pdf

Over half of all defence imports in most Southeast Asian countries over the last five years have orginated from Europe. India and South Korea are regular *demandeurs* of European military technologies and Japan, seeking to diversify its strategic options, represents another potential market. Australia's commissioning of 12 conventional-powered submarines from the French Naval Group (former DCNS) in 2016 represents one of the most important deals in recent history, reinforcing the French strategic presence in the Indo-Pacific for the next twenty years. Last but not least, despite the arms embargo in place, the United Kingdom, France, Germany and Italy are the principal suppliers of dual-use technologies to China, contributing directly to its military build-up.

The contrast between the burgeoning arms trade at the member states' level and Brussel's lack of coherent strategic thinking on Asia's security is striking. The debate on European arms sales suggests a major conceptual divide: between a values-based foreign and security policy discourse at the EU level on the one hand and the economic interests and activities of the Union's member states on the other. While most member states portray and approach arms exports as 'business as usual', their effective impact on the region's security environment is implicit. Asia and Europe are deeply interconnected through trade and a variety of connectivity initiatives.[6] As security challenges in the Indo-Pacific abound, bridging this divide is essential to fully exploit and enhance the EU's strategic leverage in the region.

The crux of the problem remains the coordination between Brussels and the member states. Although arms trade falls within the national competence of member states under Article 346 of the Treaty of the Functioning of the EU (TFEU), the need for coordination, transparency and a sense of common rules is reflected in the only region-wide legally-binding position paper on conventional arms exports: the EU Council Common Position 2008/944/CFSP (hereafter 'the Common Position'). Adopted in 2008, the document lists eight common rules by which the EU member states have to abide (see box overleaf).

6. A number of connectivity initiatives and platforms are proposed to span the vast Eurasian space, such as China's Belt and Road Initiative (BRI), the ASEM Connectivity Platform or the EU-Asia Connectivity Strategy.

BOX 1 | The EU's eight common criteria for arms exports*

1. respect for the international obligations and commitments of EU member states, particularly sanctions (including arms embargos) and international agreements;
2. respect for human rights and international humanitarian law by the recipient country;
3. the internal situation in the recipient country;
4. risks to regional peace, security and stability;
5. national security of the member states as well of their friends and allies;
6. behaviour of the buyer country towards the international community, including its attitude to terrorism and respect for international law;
7. risk of diversion towards an unauthorised end-user or end-use; and
8. compatibility of the arms exports with sustainable development in the recipient country. Assessments are made on a case-by-case basis.

* Council of the European Union, "Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment", https://eeas.europa.eu/sites/eeas/files/eu_common_position_on_arms_export_controls.pdf

But as is often the case with international legal instruments, the problem lies in their implementation. The Common Position is indeed a unique region-wide legally-binding agreement that urges EU member states to exchange information on the status of licences and the value of their exports through annual reports, as well as through mechanisms for regular consultation (the COARM Working Party established in 2011). However, its provisions are not enforceable and their application relies exclusively on the good will of the member states. The absence of a control mechanism or sanctions policy in the event of its provisions not being respected constitutes another weakness of the policy. The application of the Common Position therefore often succumbs to national economic interests or external pressure, resulting in controversial exports to authoritarian regimes with negative human rights records, such as the Gulf countries.

With its changing strategic dynamics, big power competition and non-traditional security challenges, Asia contains several potential security hotspots. A number of recent studies, notably by Mathieu Duchâtel and Felix Heiduk, who also contribute to this *Chaillot Paper*, have shown Europe's active contribution to the region's military

balance and therefore influence on its security developments.[7] This gave rise to reflection and further debate in Brussels, providing the initial impetus for this volume. Considering arms trade an integral part of foreign policy, what is the status of defence cooperation between Europe and Asia? Who exactly benefits from European military technology and know-how and how does that affect the region's strategic balance? And finally, how could the EU coordinate its policies to best secure its strategic interests and enhance its political relevance in the region?

This *Chaillot Paper* aims to shed light on the new security dynamics in EU-Asia relations from a 'hard security' perspective. Looking at the flourishing arms trade, dual-use technology transfers, as well as the emerging connections between new defence markets, it challenges the overwhelming perception that Europe has an exclusively soft security profile globally and in Asia in particular. In contrast to often vague conventional narratives, the contributions to this volume present a number of concrete examples that demonstrate how Europe is exerting a direct influence on Asia's evolving security landscape. It further explores ways in which the EU might consolidate its strategic thinking in order to best contribute to the region's stability – today and in the future.

Among the many sources of potential conflict, overlapping sovereignty claims in the South China Sea probably constitute the most complex and the most dangerous flashpoint, with far-reaching repercussions for the global rules-based order. Opposing several Southeast Asian littoral states on the one hand and China on the other, the semi-enclosed tropical sea is home to some of the world's busiest maritime trading routes, as well as rich natural resources. Beijing's land reclamation and militarisation of regional waters has led to a competitive trend in defence acquisitions across Southeast Asia – with most procurements being of European provenance. Does this mean that Europe is directly feeding into the region's most protracted international conflict? And if so, how? Felix Heiduk's opening chapter addresses this question with an in-depth analysis of the regional defence dynamics, the opportunities and challenges it represents for the European defence industry and the place that this security issue occupies in Brussels's strategic thinking in the region.

Beyond the South China Sea, the military rise of China and the redistribution of power it entails remains the greatest driver of rising defence expenditures across the Indo-Pacific. While arguably commensurate with its economic power, Beijing's growing hegemonic ambitions, coupled with non-transparent negotiation practices and unilateral interpretations of international law, constitute a major source of concern globally. Europe has traditionally viewed China's rise more as an economic opportunity than a security challenge, which has often undermined its credibility and objectiveness in the eyes of Beijing's regional rivals. Indeed, cooperation between the

7. Mathieu Duchâtel and Mark Bromley, "Influence by Default: Europe's Impact on Military Security in East Asia", European Council on Foreign Relations (ECFR), 2017, https://www.ecfr.eu/publications/summary/influence_by_default_europes_impact_on_military_security_in_east_asia_7288

EU and China has been flourishing in recent years, including in many strategically sensitive areas – despite the 1989 arms embargo in place. In the second chapter, Liselotte Odgaard reexamines the value and validity of the embargo today, in light of Beijing's evolving political and strategic priorities.

The impressive build-up of Beijing's military capabilities is largely due to the influx of so-called 'dual-use technologies', which can be used for both civilian and military purposes. The number of sonars, engines, and turbines from European manufacturers that have found use in the PLA's aircrafts, submarines and other defence equipment has often been commented upon. As much as trade in dual-use items is known to be controversial and difficult to regulate, the transfers of *non-tangible* dual-use technologies are even less obvious to trace. In the third chapter Mathieu Duchâtel looks into how scientific cooperation, technological education and research exchange programmes in sensitive sectors such as aeronautics or aerospace have contributed to China's military modernisation and assesses their impact on bilateral security cooperation.

While there is clearly a record of expanding linkages among European defence industries and activity at the member states' level, if the arms trade is to be considered a valid part of the EU's foreign policy agenda and serve its strategic interests, it needs to be effectively coordinated at the regional level. The internal dimension of the Union's 'hard power' potential and the political, practical and legal challenges it entails require therefore better scrutiny. That is the aim of Chantal Lavallée's chapter, which examines the latest developments concerning the EU's export control institutional framework, notably the revision of the Common Position, highlighting the difficulties of an integrated approach to arms trade and especially dual-use technology transfers.

Shifting the focus to Northeast Asia, Zoe Stanley-Lockman's chapter evaluates the state of defence cooperation with the Republic of Korea (ROK) and Japan. Considered as the most trusted democratic counterparts in the region and allies of a common ally, the United States, the EU has always enjoyed a close relationship with those two strategic partners, including in political and security affairs. Both countries have also started to emerge as independent actors on the global defence industrial scene, shaping new cooperative (and competitive) patterns in the traditional strategic landscape. While European countries have always been a rather stable source of arms and technology imports, this trend has increased over the past few years in the light of changing strategic circumstances in both Seoul and Tokyo.

When trying to assess the influence of European arms exports on the Asian military balance and therefore security developments, the importance of domestic politics needs to be taken into consideration. That is precisely the aim of Bruno Hellendorff's contribution, which singles out some of the major trends that have shaped new attitudes and preferences towards defence procurements and their origins. Taking

the concrete example of Indonesia – the most populous and strategically important country in Southeast Asia – as a case study, the fifth chapter in this volume places European transfers within the context of a changing global and regional strategic landscape as well as domestic political, operational and institutional constraints.

Putting all of the above into perspective, in the final chapter Gareth Price reflects on the pros and cons of the EU's greater security engagement in Asia, examining various policy options and their implications. Even if there may be a potential for a greater, more strategic 'hard security' involvement, what form should it take? Indeed, given member states' diverging economic interests, strategic priorities, legal restrictions and normative commitments towards the EU, the room for manoeuvre remains relatively constrained. Price concludes by speculating on the future of the European arms trade under the new European Defence Fund (EDF) and EU Defence Industrial Development Programme (EDIDP). The influence of these instruments on arms exports is likely to remain limited, however, given that article 9 of the proposed regulation clearly states that the EDF window 'should not affect Member States' export policies on defence-related products'.[8]

8. European Commission, "Proposal for a Regulation of the European Parliament and of the Council establishing European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the EU defence industry", Brussels, 2017, https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-294_en

Chapter 1

European arms exports and the South China Sea conflict

Felix Heiduk

The long-standing disputes in the South China Sea over the ownership of its many small land features, reefs, atolls, and rocks have over the last few years seen tensions rise between China and littoral states as well as external powers such as the US. Six states – China, Taiwan, Vietnam, Malaysia, Brunei and the Philippines – have competing territorial and jurisdictional claims over a number of islands, low-tide elevations, rocks and reefs in the South China Sea. The picture is further complicated by competing claims over Exclusive Economic Zones (EEZs) and the associated rights to exploit oil and gas reserves and the rich fishing grounds of the South China Sea, as well as intense geostrategic rivalry between the US and China. All of this sets the scene for a protracted, multi-dimensional conflict in a part of the world that just happens to host some of the most important transit routes for global seaborne trade with Asia.

EU representatives, as well as representatives of member states, have repeatedly stated that the EU has a vested interest in a stable, peaceful South China Sea.[1] Most of Europe's trade with Asia transits through the South China Sea. China and the ASEAN states are, respectively, the EU's second and third-largest trading partners. Unlike other external actors such as the US or Australia, the EU, with the exception of a comparatively small French navy presence in the Pacific, lacks significant hard naval power capabilities in the region. Moreover, the EU perceives itself as a staunch defender of international law and 'effective multilateralism'[2] in settling international disputes. Hence, while not taking a position on territorial claims in the South China Sea, the EU has urged all claimants to resolve disputes through peaceful means, to clarify the basis of their claims, and to pursue them in accordance with international law including the United Nations Convention on the Law of the Sea (UNCLOS) and

1. Council of the European Union, "Declaration by the High Representative Federica Mogherini on behalf of the EU on Recent Developments in the South China Sea", March 11, 2016, http://www.consilium.europa.eu/en/press/press-releases/2016/03/11/hr-declaration-on-bealf-of-eu-recent-developments-south-china-sea/; Speech by Jean-Yves Le Drian at IISS Shangri-la Dialogue 2016, https://sg.ambafrance.org/Jean-Yves-Le-Drian-in-Singapore-for-the-15th-Shangri-la-Dialogue

2. EEAS Strategic Planning, "A Secure Europe In A Better World - European Security Strategy", Brussels, December 12, 2003, https://europa.eu/globalstrategy/en/european-security-strategy-secure-europe-better-world; Edith Drieskens and Louise G. van Schaik, eds., *The EU and Effective Multilateralism: Internal and External Reform Practices* (London: Routledge, 2014).

its arbitration procedures. Moreover, EU representatives have voiced concerns over the militarisation of the South China Sea and its negative impact on regional security and stability.[3] At the same time EU member states have been active participants in the global arms trade and over the last decade have sold armaments in considerable volumes to the majority of states in the region.

Indeed, observers have raised concerns over a creeping militarisation of the South China Sea in the context of a regional arms race, and, as a result, an evolving security dilemma in the region.[4] Some of the effects of this have already become visible: an antagonistic, at times outright confrontational, rhetoric employed by the conflicting parties; a tit-for-tat logic of brinkmanship in the South China Sea; and, most importantly, changes in the regional arms dynamics due to an arms build-up. Against this background, this chapter analyses whether European member states are contributing to the militarisation of the South China Sea, and if so, how?

The changing arms dynamics in the South China Sea

Asia is now one of the fastest-growing arms markets in the world. According to data published by the Stockholm International Peace Research Institute (SIPRI), military spending in the region increased by about 5% on average throughout the last decade. This makes Asia the region of the world which has seen the sharpest rise in military expenditure.[5] If we look at the region's arms dynamics over the last decade, it becomes even clearer why the possibility of an 'arms race' in this part of the Asian continent increasingly occupies political, academic and media attention: over the past decade (2007-2017), military expenditure in Southeast Asia has risen by 47% on average. In China military expenditures even grew by 118% over the same period. Arms imports by states in the region show a similar picture. For the period 2012-2016, Vietnam was even in the top ten of the world's biggest arms importers (in eighth place, with a total volume of $4.1 billion). Compared to the period 2007-2011, Vietnam's arms imports increased by 200%. Thailand's arms imports also almost doubled between the five-year periods 2007-2011 and 2012-2016, while Indonesia's increased by over two thirds.[6]

However, if we shift the focus from the absolute numbers concerning defence spending and arms procurement, a slightly more nuanced picture emerges. Defence spending

3. Robin Emmott, "Europe Warns Against Escalation in South China Sea Dispute", *Reuters*, November 6, 2015, https://www.reuters.com/article/us-southchinasea-eu/europe-warns-against-escalation-in-south-china-sea-dispute-idUSKCN0SV1LS20151106

4. Richard A. Bitzinger, "A New Arms Race? Explaining Recent Southeast Asian Military Acquisitions," *Contemporary Southeast Asia* 32, no. 1 (2010): 50–69; Andrew T. H. Tan, *The Arms Race in Asia: Trends, Causes and Implications* (London: Routledge, 2014); Christian Le Mière, "The Spectre of an Asian Arms Race," *Survival* 56, no. 1 (January 2, 2014): 139–56.

5. Aude Fleurant et al., "Trends in International Arms Transfers, 2016," *SIPRI,* Stockholm, February 2017.

6. SIPRI, *SIPRI Military Expenditure Database 1988–2016,* http://www.sipri.org/databases/milex.

as a share of GDP has actually remained fairly constant among the South China Sea states over the last decade. And a lot of the money spent on defence matters in countries like the Philippines and Indonesia is actually being spent on the modernisation of existing weapon systems – some of which had been barely functional for years. Nonetheless, while changes in the regional arms dynamics remain below the threshold of a full-blown arms race, they do amount to more than maintenance of the *status quo*. The littoral countries of the South China Sea have committed large chunks of their overall military spending towards upgrading their naval capacities (e.g. by purchasing submarines and frigates), including maritime aviation, mobile anti-ship missile systems and maritime surveillance. For a country like Vietnam, for example, the recent purchase of six Russian submarines does not equate to obtaining military superiority *vis-à-vis* other regional powers (let alone China), yet the purchase allows Vietnam to pursue asymmetrical (A2/AD) strategies in order to be in a position to curtail the freedom of movement and strategic options of perceived opponents. As a result, crucial aspects of the military balance have shifted due to the recent boost in defence spending and the rising arms imports into the region.

While numerous studies have cast doubts on the existence of a causal link between an arms build-up and the probability of an outbreak of military conflict,[7] this does not imply that the upgrading of defence capabilities that is currently taking place around the South China Sea is likely to enhance regional stability.

On the contrary, it is contributing to growing regional tensions due to a number of reasons. First, the changing arms dynamics heightens mistrust over the 'real' intentions and power ambitions of neighbouring states. Vietnam's historical mistrust towards China, for example, has only become intensified by China's claims in what Hanoi refers to as the 'East Sea', not the South China Sea. In 2014 China dispatched an oil rig into waters claimed by Vietnam, which ignited violent anti-Chinese protests. After China installed anti-ship cruise missiles and surface-to-air missile systems on three of its outposts in the South China Sea in March 2018, Hanoi described this as a 'serious violation of its sovereignty' and said China's militarisation efforts would further increase tensions in the region.[8] Second, the growing mistrust is further intensified by a lack of effective arms control and transparency mechanisms. A regional agreement on arms control is lacking and numerous states in the region have either refused to join or circumvented international agreements such as the UN Register of Conventional Arms (ROCA) or the UN Arms Trade Treaty (ATT) repeatedly. Third, the enhancement of the available weapon systems makes the potential outcomes of

7. Paul F. Diehl and Mark J.C. Crescenzi, "Reconfiguring The Arms Race-War Debate", *Journal of Peace Research*, 35, no.1 (January 1998): 111-118; Andrew T. H. Tan, *The Arms Race in Asia – Trends, Causes, Implications* (London: Routledge, 2014); Michael D. Intriligator and Dagobert L. Brito, "Can Arms Races Lead to the Outbreak of War?", *Journal of Conflict Resolution*, 28, no. 1 (March 1984): 63-84.

8. Khanh Vu and Christian Shepherd, "Vietnam Asks China to Withdraw Military Equipment from South China Sea," *Reuters*, May 8, 2018, https://www.reuters.com/article/us-southchinasea-china-missiles/vietnam-asks-china-to-withdraw-military-equipment-from-south-china-sea-idUSKBN1I922M

a military conflict much more severe. Many of the weapons recently acquired are, quite simply, more long-range and more lethal than their predecessors. In sum, it seems safe to assume that the changing arms dynamics will continue to negatively affect regional security and stability for the foreseeable future.

Arming the South China Sea – the role of European arms exporters

European arms manufacturers have a large share in the regional arms build-up – a fact that has so far not been discussed in the region or in Europe. For the six littoral states of the South China Sea, the volume of arms imports from the EU's member states has grown rapidly in absolute terms between 2007 and 2017. Moreover, for the majority of states a considerable part of their total arms imports originates from EU manufacturers.

Indonesia imported armaments worth a total of $5.972 billion between 2007 and 2017. Of this, arms totalling $2.748 billion – or 46% – came from EU countries. In the same period, Malaysia spent $3.719 billion on arms, including $2.166 billion worth from the EU, a share of 58%. And Brunei imported military goods worth $490 million in total, of which $403 million (82%) went to EU states. Even the Philippines, which does most of its arms shopping in the US, spent $219 million of the $854 million spent on arms imports between 2007 and 2017 in the EU – a share of 25%. China, which imported armaments worth a total of $14.576 billion over the same period, spent $2.488 billion (17%) on arms from EU member states. Of the South China Seas littoral states only Vietnam and Taiwan continue to import the vast majority of their arms from Russia and the US respectively. Thus arms imports from the EU only account for 5% (Taiwan) or even under 2% (Vietnam) of total imports.[9] The majority of EU arms exports to the South China Sea states originate from the so-called Big Three (Germany, France and the UK), but a host of other EU states have also exported arms in significant amounts over the last decade.

Consequently, against a backdrop of declining arms spending in Western Europe, Asia has emerged as a central market for European arms producers. It is one of the few regions of the world in which defence spending and demand for arms imports have steadily increased over the past few years. Observers believe that, without these rising exports to Asia, many of Europe's arms producers would have to reduce their current production capacities considerably.[10] These companies are therefore making greater efforts to drum up sales in the region, a development that also results in

9. SIPRI, *SIPRI Military Expenditure Database 1988–2016,* http://www.sipri.org/databases/milex.

10. John Dowdy, David Chinn, Matteo Mancini and Jonathan Ng, "Southeast Asia: The Next Growth Opportunity in Defense", *McKinsey & Company* (Singapore: February 2014).

them increasingly competing with each other for lucrative deals. This then converges with growing demand in the region for ever-more modern and high-tech weapons systems (for instance, the latest submarines or radar-guided anti-ship missiles), some of which are only offered by a few arms companies in the world in any case.[11]

TABLE 1 | Share of EU member states in Southeast Asian arms imports
in millions of US dollars and at constant 1990 prices

Country	Arms imports (total) 2007 – 2017 (in millions of US$)	Of which from EU member states (in millions of US$)	Of which from EU member states (percentage)
Brunei	490	403	82%
China (PRC)	14,576	2,488	17%
Indonesia	5,972	2,748	46%
Malaysia	3,719	2,166	58%
Philippines	854	219	25.6%
Taiwan	3,648	187	5%
Vietnam	6,206	112	1.8%

Data: SIPRI, 'Arms Transfers Database', 2018

Furthermore, the majority of Europe's arms exports to the littoral states of the South China Sea concerned the naval sector. For example, France exported six frigates to Malaysia and two to Vietnam. The on-board artillery for the warships ordered by Malaysia was manufactured in Sweden. Indonesia also ordered two Dutch-built frigates and obtained the associated anti-ship missiles from France. The corvettes' diesel engines in turn were built in Germany, and their artillery systems in Italy.[12] German diesel engines also power Chinese submarines.[13] Additionally, many of the recent armament deals between European arms firms and Southeast Asian customers also include transfer-of-technology agreements (ToT), some of which are quite extensive.

11. For example, only six exporters currently divide up the (growing) global market for submarines between themselves: China, France, Germany, South Korea, Sweden and Russia. Japan joined the circle in 2015, but has concluded no export deals to date (as of March 2018).

12. Felix Heiduk, "An Arms Race in Southeast Asia? Changing Arms Dynamics, Regional Security and the Role of European Arms Exports," SWP Research Paper, Stiftung Wissenschaft und Politik, 2017.

13. Mathieu Duchâtel and Mark Bromley, "Influence by Default: Europe's Impact on Military Security in East Asia," European Council on Foreign Relations, *Policy Brief*, 2017, http://www.ecfr.eu/publications/summary/influence_by_default_europes_impact_on_military_security_in_east_asia_7288.

Is Europe fuelling a regional 'arms race'?

While the South China Sea region is currently not experiencing a 'classical' arms race, in the sense that it does not follow a strict 'tit-for-tat' logic,[14] the changes in the arms dynamics amount to more than a simple maintenance of the *status quo*. The shift in the regional arms dynamics has been most visible in the naval sector, where the rearmament taking place has led to significant extensions of capacities. While China's military dominance certainly remains unmatched by the other South China Sea nations, several states have acquired asymmetric capabilities to curtail the strategic options of perceived opponents and to prevent any extreme imbalance *vis-à-vis* China. These changing arms dynamics are interlinked with the broader strategic context in which these changes are taking place: growing strategic uncertainty over China's rise, anxiety about US withdrawal from the region and the persistence of various flashpoints between ASEAN countries.[15]

Based on the available data, it can be inferred that EU member states are directly contributing to the arms build-up in the South China Sea through weapons exports and technology transfers. The growing demand for maritime armaments has been serviced by a great number of European arms manufacturers among others. Hence, Europe's direct involvement in the military upgrading of the region challenges the widespread view in both Europe and Southeast Asia that the old continent plays no part in Southeast Asia's 'hard' (i.e. military) security policy.[16] As a matter of fact, a variety of European-made corvettes, frigates and submarines plough the waters of Southeast Asia, albeit with local crews aboard. EU-based arms manufacturers are leading suppliers of submarines, warships, naval artillery, anti-ship missiles, radar systems etc to the majority of states in the region. Against declining demand in Europe and increased demand from Asia, EU member states and EU-based manufacturers have increasingly looked to the region as a lucrative sales market.

Perhaps surprisingly, the impact EU-owned arms manufacturers continue to have on regional arms dynamics and regional security is scarcely discussed within Europe. This is because arms export policies are still viewed primarily from an industrial and employment perspective in many parts of Europe. This economic primacy, which is not accompanied by any political or strategic discourse on the impact of

14. The reference to a "classical arms race" here draws on Colin S. Gray's conceptualisation of the phenomenon, as introduced in "The Arms Race Phenomenon", *World Politics*, 24, no.1 (October 1971): 39-79.

15. ASEAN Studies Centre, "How do Southeast Asians View the Trump Administration?", ISEAS Yusof Ishak Institute, Singapore, May 2017, https://www.iseas.edu.sg/images/centres/asc/pdf/ASCSurvey40517.pdf

16. Jonathan Holslag, "Europe's Convenient Marginalisation", *European Voice*, July 5, 2012, http://www.europeanvoice.com/article/imported/europe-s-convenient-marginalisation-/74781.aspx; Paul Lim, "ASEAN's Relations with the EU: Obstacles and Opportunities", *EU External Affairs Review* 2, no. 1 (July 2012): 46–58; Naila Maier-Knapp, "The European Union as a Normative Actor and Its External Relations with Southeast Asia", *Journal of Contemporary European Research* 10, no. 2 (May 2014): 221–35; Lay Hwee Yeo, "Can the EU Be a Serious Security Actor in Asia?", *Asia Europe Journal* 11, no. 4 (December 2013): 465–67.

European arms exports to the region, is especially surprising in the case of exports to the littoral states of the South China Sea which is described frequently as a 'conflict zone' and 'geopolitical hotspot'. In the past few years, EU member states have sold armaments to almost all conflict parties.

An aggravating factor is that these exports concern a region that has established hardly any arms control mechanisms and that has no regional institutionalised confidence-building measures. However, thus far the arms export policies of EU member states have by and large been predominantly guided by commercial interests, while strategic aspects of arms exports such as their impact on the military balance or their impact on regional security have been widely neglected.[17] Rather than follow a coherent strategic approach to arms transfers, European states in reality often act as competitors over lucrative deals such as tanks, fighter jets or submarines in Asia.

It is therefore apparent that policy coordination in the field of arms export controls is lacking – despite the existence of policy guidelines such as the EU's Common Position. At the heart of this are different understandings of arms exports at the member state level: while a minority of member states view their arms exports as at least loosely interlinked with their strategic posturing, the majority appears to regard arms sales as a purely commercial activity. In line with this, diverging interpretations of the EU's Common Position on arms export control, especially with regard to criterion four (preservation of regional peace and security), prevail. No legal provision to verify compliance with the EU's Common Position exists. The granting or denying of arms exports is exclusively in the hands of the member states and varies in line with the aforementioned diverging understandings. There have even been a few cases where EU member states have directly or indirectly taken advantage of an export denial in another member state to further their own arms exports.

It would therefore be highly advisable for EU member states to reflect on the link between their foreign and security policy on the one hand and arms-export policy on the other. Similarly, the European Commission's Southeast Asia paper of 2015 touches on disarmament and the ATT (Arms Trade Treaty) in a mere half-sentence and does not even mention the EU's arms exports, despite the fact that it is in the EU's declared interests not to contribute to a militarisation of the South China Sea. Hence a strategic debate needs to be launched at the European level, too, on whether it is in Europe's security interest for Southeast Asian states to react to, for example, China's growing military dominance by upgrading their own militaries; what the connection is between the region's unresolved conflicts and its changed arms dynamics; and what role European arms exports play in this.

17. An exception is the recent debate in France on the strategic dimension of its arms exports to the Asia-Pacific. Nicolas Regaud, "France and Security in the Asia–Pacific: From the End of the First Indochina Conflict to Today", *ASPI Strategic Insights*, Canberra, December 2016.

Chapter 2

The EU's arms embargo against China: what it's worth

Liselotte Odgaard

For more than three decades, China has unsuccessfully attempted to convince the EU that it should lift the arms embargo it imposed against China following the government's violent repression of student protests in Tiananmen Square in 1989. As recently as May 2017, the *Global Times*, a nationalist newspaper that acts as a mouthpiece for the Chinese government, reiterated that the 'EU's arms embargo is a political sign and will impede its cooperation with China.' The ban is characterised as 'a wedge in China-EU mutual trust, which does not conform to the current status of their bilateral cooperation and may jeopardize future collaborations.'[1] That said, the latest Chinese effort to propose that the arms embargo be lifted comes in the shadow of impending Brexit, giving Beijing new hope of obtaining support for this cause. Among EU member states, the United Kingdom has taken the most hardline stance on this issue.[2] For several reasons, London has had little interest in lifting the embargo. But, even with the prospect of the UK leaving the EU, has the window really opened for an end to the arms embargo?

To address this question, this chapter looks at the embargo's past and present purpose, and assesses to what extent it actually impedes EU-China relations. In the first part, the history of the EU's arms embargo is outlined, showing that the current discussions about lifting the embargo echo previous debates. The second part analyses the EU's security concerns about China, arguing that the arms embargo continues to be a useful way for the EU to signal reticence towards closer cooperation with Beijing. The next part of the chapter analyses the EU's human rights concerns regarding China, and demonstrates that insufficient Chinese progress on such issues is a key reason for maintaining the arms embargo. The fourth section deals

1. Liu Jianxi, "Time to Lift EU's Outdated Arms Embargo on China", *Global Times*, May 31, 2017, http://www.globaltimes.cn/content/1049431.shtml.
2. Robin Harding, "Japan Fears Brexit Blow to EU Arms Embargo on China", *Financial Times*, July 4, 2016, https://www.ft.com/content/219af680-41c6-11e6-b22f-79eb4891c97d

with the economic dimension of the EU-China dialogue, and argues that economic cooperation is a higher priority than the arms embargo for both Brussels and Beijing. The chapter concludes by readdressing the question of the conditions for lifting the EU's arms embargo.

The history of the EU's arms embargo

Perhaps unbeknownst to many, the EU embargo on arms exports to China which has been in place since 1989 is largely irrelevant in terms of controlling military-related exports. The EU (and the United States) imposed a ban on weapons sales after China's 1989 crackdown on pro-democracy demonstrators in Tiananmen Square. The initial 1989 Code of Conduct was not legally binding and merely called for the "interruption by the Member States of the Community of military cooperation and an embargo on trade in arms with China."[3]. However, the legal status of the embargo was to change with the creation of the EU's Common Foreign and Security Policy (CFSP) in 1993. The legally binding 2008 Council Common Position, which superseded it, defined common rules governing control of exports of military technology and equipment, but left room for individual member states to interpret the embargo in the context of their national laws.

The embargo does not address what many in the United States and in allied countries see as the key issue, which is the export of militarily useful dual-use technology. The EU arms embargo does not specify the items that are covered, leaving the interpretation up to the member states. The embargo has mainly been interpreted to cover lethal items and major weapons platforms, leaving substantial loopholes for other goods and technologies with potential military applications that do not fall under the embargo. For example, China's air force uses French-designed helicopters produced in China. Submarines and frigates deployed in the South China Sea are powered by German and French engines. The engines are exported as dual use, which means they have civilian as well as military applications and as such, they are exempt from the arms embargo. The engines are just one of many examples of dual-use exports from EU member states to China. Dual-use equipment has been sold to China, provided they have been given a licence by national arms export control regimes. In 2015, EU member states issued licences for the export of military equipment to China worth €300 million.[4] The weak arms embargo implies that the EU member

3. European Council, "Presidency Conclusions", Madrid, June 26 and 27, 1989, https://www.consilium.europa.eu/media/20589/1989_june_-_madrid__eng_.pdf

4. Mathieu Duchâtel and Mark Bromley, "Influence by Default: Europe's Impact on Military Security in East Asia", European Council on Foreign Relations, *Policy Brief* (May 16, 2017): 6, http://www.ecfr.eu/publications/summary/influence_by_default_europes_impact_on_military_security_in_east_asia_7288

states are much less concerned than Washington about exporting high technology items to China. In contrast to Taiwan, which in 2017 was number eight on the list of recipients of US arms, importing US arms at a cost of $493 million, mainland China does not appear on the list of recipient countries.[5]

In the past, there have been several attempts to lift the arms embargo. In 2005, the EU had itself just expanded its group of member states, adopting an inclusionary attitude towards countries that were in the process of adopting liberal approaches to development. The EU was in favour of engaging with a rising China seeking to integrate into international economic structures, and of supporting Chinese efforts to improve human rights in the belief that Beijing might become a responsible power in the international community by European standards. In 2005, the EU and China appeared to be moving towards agreement that the EU would lift the arms embargo if China made some progressive steps on human rights, including ratifying the 1976 International Covenant on Civil and Political Rights. However, there was no EU consensus on lifting the embargo, following US demands that the arms embargo stay in place.[6] Again, at the European Council summit on 16-17 December 2010, then EU High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission (HR/VP) Catherine Ashton submitted a strategy paper on the revision of EU foreign policies which envisaged the possible lifting of the EU arms embargo.[7] The proposal came on the heels of a decision by the EU's 27 member states in 2009 to lift an arms embargo against Uzbekistan despite ongoing concerns about human rights violations in this country. However, once again a divided Europe was unable to agree on lifting the embargo against China at a time when Beijing decided to curb military exchanges with the United States due to US arms sales to Taiwan.[8]

Security concerns: a balancing act for the EU

The arms embargo remains an inexpensive way for the EU to signal disapproval of Chinese actions in the security field without sacrificing much in terms of earnings derived from arms exports to China. Developments such as China's militarisation of its growing presence in the South China Sea, Beijing's negotiation of a code of conduct with the Association of Southeast Asian Nations (ASEAN) without Western participation, China's unwillingness to prioritise full denuclearisation on the Korean

5. Statista, "U.S. Arms Exports 2017, by country (in TIV expressed in million constant 1990 U.S. dollars)", 2018, https://www.statista.com/statistics/248552/us-arms-exports-by-country/

6. Interview with EU official, European Commission, 12 July 2006.

7. Andrew Rettman, "Ashton Pragmatic on China in EU Foreign Policy Blueprint", *euobserver*, December 17, 2010, https://euobserver.com/china/31538.

8. Toni Barber and Jamil Anderlini, "EU Divided on Lifting China Arms Embargo", *Financial Times*, February 2010, https://www.ft.com/content/da31e8fc-0e8d-11df-bd79-00144feabdc0

Peninsula and fully implement UN sanctions against North Korea, as well as growing strategic cooperation between China and Russia at a time when Moscow is emerging as a strategic opponent of Brussels and Washington, strengthens the EU's concerns about Beijing's security policies.

The EU and China established a comprehensive strategic partnership in 2003. The parties have committed to cooperation through the development of political, economic and people-to-people dialogues.[9] This partnership is conducted to sustain communication on differences and similarities in security outlook between two actors who remain sceptical of the possibilities for establishing tangible security cooperation. In a 2003 policy paper released by the European Commission, 'the EU and China have an ever-greater interest to work together as strategic partners to safeguard and promote sustainable development, peace and stability.'[10]

One reason is that at the end of the day, the EU tends to support overall US foreign policy, with a few notable exceptions, such as many EU member states' disagreement with Washington over the US-led 2003 invasion of Iraq, and the EU's decision to stay in the Iran nuclear deal despite the Trump administration's decision to withdraw in 2018. The maintenance of the arms embargo on China puts the EU in line with the United States, still one of its main allies, to demonstrate that it shares its concerns regarding Beijing's increasingly militarily assertive policy that ignores central Western security concerns. Another example is the EU's criticism of what is seen as aggressive Chinese expansion into the South China Sea, with the EU High Representative for Foreign Affairs' declaration on 11 March 2016 that the 'temporary or permanent deployment of military forces or equipment on disputed maritime features which affects regional security and may threaten freedom of navigation and overflight is a major concern.'[11]

An additional problem is Beijing's continued lack of transparency. China's official defence budget consists of about five pages of broad plans for defence spending that does not match the detailed defence budgets of Western states. Beijing gives the impression that, despite numerous strategic dialogues with other countries, it continues to withhold information necessary to establish international mechanisms that promote peace and stability. Hence, European Commission Vice-President Jyrki Katainen expressed concern about the lack of transparency in China's Belt and Road Initiative whose declared aim is to promote sustainable connectivity between China and the world's regions, including Europe.[12]

9. European External Action Service, "China and the EU", Delegation of the European Union to China, May 2016, https://eeas.europa.eu/delegations/china_en/15394/China%20and%20the%20EU

10. Commission of the European Communities, "Commission Policy Paper for Transmission to the Council and the European Parliament: A Maturing Partnership – Shared Interests and Challenges in EU-China Relations", COM(2003) 533 fin, 2003, http://trade.ec.europa.eu/doclib/docs/2004/may/tradoc_117070.pdf

11. Council of the European Union, "Declaration by the High Representative on Behalf of the EU on Recent Developments in the South China Sea", March 11, 2016, http://www.consilium.europa.eu/en/press/press-releases/2016/03/11/hr-declaration-on-bealf-of-eu-recent-developments-south-china-sea/

12. European External Action Service, "EU-China Relations Factsheet", May 30, 2018, https://eeas.europa.eu/topics/external-investment-plan/34728/eu-china-relations-factsheet_en

The Trump presidency has entrenched the rivalry between China and the US as strategic opponents with fundamental differences of interest on key global security and economic issues. The EU criticises the growing tendency in Washington to put US interests before its commitment to allies and strategic partners. Commenting on the capricious assertiveness of the US administration, President of the European Council Donald Tusk remarked 'with friends like that who needs enemies?'[13] The EU is however likely to continue to side with the US at a time of heightened rivalry between the US and China. As stated by President Tusk, the 'EU and US are friends and partners ... It is absurd to even think that the EU could be a threat to the US.'[14]

Actions taken by Europe to demonstrate dissatisfaction with China's behaviour may be less provocative to Beijing than actions taken by Washington. For Europe, the arms embargo is largely in place because it sends a signal that Brussels agrees with US concerns about China's rising assertiveness in the security and defence realm at a time when Europe is increasingly focusing on economic opportunities on offer in China. By contrast, the US puts a higher premium on keeping an embargo in place to demonstrate to Beijing that it needs to change course in the security arena if it wants to have access to the full range of Western arms. Although Beijing is aware that Europe is more willing to adopt a pragmatic attitude towards China, as indicated by the low effectiveness of the EU's arms embargo, Europe's closeness to Washington means that China does not see the EU as a reliable and trustworthy partner on security issues. Thus, *The Global Times* states that the 'arms embargo is a wrong political decision made to court Washington for economic benefits at the sacrifice of Beijing.'[15]

Human rights concerns

Chinese policies on human rights, democracy and the UN system are the original reason for establishing the EU arms embargo. In June 1989, the European Council strongly condemned the brutal repression taking place in China, requesting the Chinese government to 'stop the executions and to put an end to the repressive actions against those who legitimately claim their democratic rights.'[16] In the statement, the European Council also promises to raise the issue of human rights in China in the appropriate international fora, chief among which would be the UN. These issues have not become less of a concern. China has become a keen supporter of the UN as the main forum for the management of global security issues. For example, Beijing is set to play a larger role in UN peacekeeping missions with the completion of registration

13. European Council, Council of the European Union, "Remarks by President Donald Tusk Ahead of the EU-Western Balkans Summit and the Leaders' Agenda Dinner", May 16, 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/05/16/remarks-by-president-donald-tusk-ahead-of-the-eu-western-balkans-summit-and-the-leaders-agenda-dinner/
14. Ibid.
15. Liu Jianxi, "Time to Lift EU's Outdated Arms Embargo on China", *Global Times*, May 31, 2017.
16. European Council, "Presidency Conclusions: Annex II. Declaration on China", Madrid, 26 and 27 June 1989, http://www.consilium.europa.eu/media/20589/1989_june_-_madrid__eng_.pdf

of an 8,000-strong UN peacekeeping force in 2017. However, China maintains firmly attached to the principle of absolute sovereignty, opposing intervention in other countries unless approval has been obtained from the host country's government. This was also the case in Libya, where China abstained when the UNSC voted on Resolution 1973 on a no-fly zone over Libya. However, it abstained not because it endorsed a breach of the fundamental status of absolute sovereignty, but because it did not wish to block measures founded in the principles of the UN Charter that regional organisations such as the Arab League and the African Union had endorsed as necessary to preserve regional peace and security, following its policy to let the regions determine what they see as right for them.[17]

This policy is at odds with the EU's strong human rights agenda. China's foreign development assistance comes 'with no strings attached' and does not apply political conditionality, requiring that the recipient countries comply with human rights and democracy standards. In the EU's view, Beijing's opposition to political conditionality is undermining European efforts to promote civil and political rights in fragile states. As of late, this issue has become a problem internally in the EU, as EU member states who put a high premium on attracting Chinese investment, especially in Central Europe, are unwilling to criticise China on sensitive issues such as human rights and Beijing's assertiveness in the South China Sea.[18] Another example of Beijing's dismissive attitude to human rights and democracy is China's interference in the political systems of European countries. Germany's intelligence service has raised accusations against China for mining the personal data of German politicians and diplomats. [19]

The promotion of democracy, human rights and the rule of law in China itself has become more difficult since Xi Jinping's accession to power in 2012. China has significantly curbed rights to freedom of speech and assembly during Xi's presidency. Under the cover of a wide-ranging anti-corruption campaign, Xi Jinping appears to have consolidated his position by conducting a traditional Chinese purge whereby political opponents are removed from positions of power on allegations of breaking the country's laws. The purge, combined with the president's strongly nationalistic views on issues such as Taiwan and the South China Sea, has earned him the label of a modern Mao, a comparison which is being debated by journalists and analysts inside

17. Liselotte Odgaard, "Peaceful Coexistence Strategy and China's Diplomatic Power", *Chinese Journal of International Politics*, 6, no.3 (Autumn 2013): 233-272.

18. Anton Spisak, "EU Uneasy Over China's Efforts to Woo Central and Eastern European States", *Financial Times,* May 8, 2017, https://www.ft.com/content/2e98f6f4-089d-11e7-ac5a-903b21361b43

19. Luke Patey, "China Is Pushing Its Luck With the West", *New York Times*, December 27, 2017, https://www.nytimes.com/2017/12/27/opinion/china-west-power-influence.html

and outside of China.[20] These developments mean that for a number of European member states, such as Germany, Sweden and Denmark, insufficient human rights improvements in China itself and in China's external policies continue to justify the EU arms embargo remaining in place.[21]

The economic arena: China's and the EU's main priority

China's main focus is to accommodate the EU as a strategic partner in the economic area. This is a much higher priority than an arms embargo which is of little practical consequence. China sees a strategic partnership with the EU as beneficial to China's Belt and Road Initiative (BRI) for economic development and growth. To advance the initiative, China is arguing that the EU should grant it market economic status (MES), which would lower anti-dumping duties on Chinese goods and enhance its competitiveness on foreign markets.[22] The initiative is a development strategy proposed by China in 2013 that focuses on connectivity and cooperation between the world's regions with China at the centre. China also appreciates EU support for its image as a great power embedded in multilateral economic international institutions that strengthens world order. An example of this support was the decision of most EU member states[23] to join the Asian Infrastructure Investment Bank (AIIB), created at China's initiative. The bank, which opened for business in January 2016, is a multilateral alternative to the International Monetary Fund (IMF), offering financial assistance to developing economies.

Obstacles remain to cooperation in the economic sphere. China would like to see the EU remove barriers to trade. However, in this area the limits of European openness are reflected in the concern of member states to protect the employment opportunities and welfare systems of their own citizens. The United Kingdom supports freer trade with China, but Brexit implies that France's more critical view of Beijing's trade and investment policies is likely to prevail in the EU. During his visit to China in January 2018, French President Macron for instance highlighted that China applies substantial barriers to trade and investments despite its World Trade Organisation (WTO) membership, preventing Europeans from making significant investments

20. Christian Shepherd, "China's Neo-Maoists Welcome Xi's New Era, But Say He Is Not the New Mao", *Reuters,* October 28, 2017, https://uk.reuters.com/article/uk-china-congress-maoists/chinas-neo-maoists-welcome-xis-new-era-but-say-he-is-not-the-new-mao-idUKKBN1CX001; Tom Phillips, "Xi Jinping Becomes Most Powerful Leader Since Mao with China's Change to Constitution", *The Guardian*, October 24, 2017, https://www.theguardian.com/world/2017/oct/24/xi-jinping-mao-thought-on-socialism-china-constitution

21. Michael K. Connors, Rémy Davison and Jörn Dosch, *The New Global Politics of the Asia-Pacific: Conflict and Cooperation in the Asian Century* (Abingdon: Routledge, 2017): 76-77; "Merkel Met Wives of Jailed Human Rights Lawyers During China Visit", *The Local*, May 28, 2018, https://www.thelocal.de/20180528/merkel-met-wives-of-jailed-human-rights-lawyers-during-china-visit

22. Associated Press, "The US, Europe, and China are Divided on Whether Beijing Has a Market Economy", *Business Insider*, December 1, 2017, http://www.businessinsider.com/us-eu-china-market-economy-divided-2017-12?IR=T

23. EU member states that are AIIB member states include Austria, Denmark, Finland, France, Germany, Hungary, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Spain, Sweden, and the United Kingdom.

in prominent Chinese companies with advanced technological capabilities. (At the same time, Macron pushed for more reciprocal economic ties with greater access to Chinese markets in return for cooperation on major Chinese initiatives such as the Belt and Road infrastructure projects intended to link China and Europe).[24] But more generally, EU member states decided not to support the trade statement proposed by China during its Belt and Road initiative summit in May 2017, arguing that the Silk Road vision is not based on transparency and co-ownership.[25]

Nevertheless, for both China and the EU overcoming significant obstacles to enhanced economic cooperation takes priority over symbolic issues such as the arms embargo. With a mutual trade volume of over €1 billion per day, China is the EU's second-biggest trading partner, and the EU is China's biggest trading partner.[26] Despite legal, structural economic and ideational differences, in 2013 the EU and China launched negotiations on an investment agreement to provide investors on both sides with predictable, long-term access to the EU and Chinese markets and to protect investors and their investments. This demonstrates a determination to overcome differences for the benefit of mutual economic growth.

Conclusion

In conclusion, the EU arms embargo is likely to remain in place. The EU has too few incentives to lift it, and for Beijing it is ultimately a minor concern. For the EU, human rights and democracy concerns, Chinese barriers to trade and investment, and continued interdependence between Europe and the US in a wide range of security and economic areas means that the arms embargo remains useful to signal that Europe has reservations about extensive cooperation with China. For China, trade issues with the EU are a much greater concern than an embargo which has a predominantly symbolic importance.

The EU welcomes China's emergence as a power with a global economic presence engaged in multilateral frameworks underpinning the international order.[27] However, growing differences on human rights and democracy issues, on China's military build-up and assertive behaviour in its regional neighbourhood, and on China's emergence as a strategic opponent of the United States are significant reasons for maintaining the arms embargo in place. The embargo signals dissatisfaction with China's insufficient contributions to international peace and stability and its unwillingness to promote civil and political rights at home and abroad. Moreover,

24. Rick Noack and James McAuley, "France's Macron Visits China to Talk Fairer Trade and the Future", *Washington Post*, 8 January 2018, https://www.washingtonpost.com/news/worldviews/wp/2018/01/08/frances-macron-visits-china-to-talk-fairer-trade-and-the-future/?utm_term=.fe8e4d6978bb

25. Tom Phillips, "EU Backs Away from Trade Statement in Blow to China's 'Modern Silk Road' Plan", *The Guardian*, May 15, 2017, https://www.theguardian.com/world/2017/may/15/eu-china-summit-bejing-xi-jinping-belt-and-road

26. European Commission, "China", April 16, 2018, http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/

27. European Commission, "EU and China Discuss Trade, Investment, Overcapacity and Cooperation on State Aid Control at the 6th High-level Economic and Trade Dialogue", Brussels, October 18, 2016, http://europa.eu/rapid/press-release_IP-16-3441_en.pdf

for China it is more important to focus on obtaining market economic status in the EU than to lift the arms embargo in view of its negligible practical consequences. The EU arms embargo is a peripheral problem in EU-China relations. At the same time, there are too many reasons to keep the embargo in place to reconsider it for the foreseeable future. Consequently, it seems highly unlikely that the lifting of the EU arms embargo will be seriously debated unless China makes significant progress on human rights and democracy issues or raises its concerns about the arms embargo as an impediment to enhanced economic cooperation between Brussels and Beijing.

Chapter 3

Intangible technology transfers in EU-China relations

Mathieu Duchâtel

It is a documented fact that Europe sells military equipment to China.[1] The 1989 arms embargo is only a legally non-binding policy declaration preventing the export of major weapons systems. What really frames the scope of the EU-China armament relationship is the sum of national and EU-level arms and dual-use items export control mechanisms and regulations. According to the *Official Journal of the European Union*, EU member states exported €107.9 million worth of military equipment to China in 2016.[2] At the level of member states, for example, the 2017 annual report on arms exports submitted by the French defence ministry to the National Assembly listed China as the 15th largest recipient of French arms exports for the period 2007-2016.[3]

This small amount of registered arms exports includes mostly components and subsystems (see Figure 1). Although Europe's impact on the modernisation of the People's Liberation Army (PLA) is limited (65% of its imports come from Russia and much technology is now locally produced), it is still crucial.[4] To list only the most striking examples, many Chinese submarines are powered by German engines and equipped with French sonar systems, and the Chinese armaments industry mass-produces several military helicopters using French technology.[5]

1. Oliver Bräuner, Mark Bromley and Mathieu Duchâtel, "Western Arms Exports to China", *SIPRI Policy Paper* no. 43 (January 2015): 2, https://www.sipri.org/publications/2015/sipri-policy-papers/western-arms-exports-china; Mathieu Duchâtel and Mark Bromley, "Influence by Default, Europe's Impact on Military Security in East Asia", European Council on Foreign Relations, *Policy Brief*, May 2017.
2. Document 52017XG0516(01), "Nineteenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment", *Official Journal of the European Union*, February 14, 2018, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52017XG0516(01)
3. Ministère des Armées, « Rapport au Parlement 2017 sur les exportations d'armement de la France », July 7, 2017, https://www.defense.gouv.fr/actualites/articles/publication-du-rapport-au-parlement-2017-sur-les-exportations-d-armement
4. Pieter D. Wezeman, Aude Fleurant, Alexandra Kuimova, Nan Tian and Siemon T. Wezeman, "Trends in International Arms Transfers", SIPRI, March 2018, https://www.sipri.org/sites/default/files/2018-03/fssipri_at2017_0.pdf
5. Oliver Bräuner, Mark Bromley and Mathieu Duchâtel, "Western Arms Exports to China."

FIGURE 1 | EU-China dual-use technology transfers

Tangible dual-use technology transfers from the EU to China

France
United Kingdom
Germany
Czech Republic
Spain
Italy
Netherlands
Finland

AERONAUTICS
Aircraft, drones, aero-engines and aircraft related equipment specially designed for military use

AMMUNITION
includes fuse setting devices and specially designed components thereof

CHEMICAL/RADIOACTIVE AND ENERGETIC MATERIALS
also includes biological toxic agents and "riot control agents"

ENGINES AND COMPONENTS
Diesel engines used for destroyers, submarines, tanks, helicopters and armoured personnel carriers produced in China

EXPLOSIVE DEVICES
Bombs, torpedoes, rockets, missiles and other explosive devices, including components and related equipment

FIRE CONTROL AND WARNING EQUIPMENT
Components including weapon sights, bombing computers, gun-laying equipment and weapon control systems

GROUND VEHICLES AND ARMOURED EQUIPMENT
includes any protective equipment and its components

NAVAL EQUIPMENT
Vessels of war (surface or underwater) and special naval components and accessories

PRODUCTION EQUIPMENT AND COMPONENTS
Machinery for the production of elements described in the EU Military List

RADARS SENSORS AND SONARS
Sonar systems for maritime surveillance and radar equipment for air-traffic monitoring

SOFTWARE IT AND ELECTRONIC EQUIPMENT
Significantly used in submarine technology, naval-based systems, helicopters, radar trucks and missile launchers

WEAPONS
Arms with a calibre of less than 20 mm, automatic weapons with a calibre of 12.7mm and especially designed components thereof

2014 | Joint agreement between Airbus France and the Chinese AVIC on the co-production of 1000 EC-175 military helicopters with a total value of €15 bn

since 1996 | Deutz AG provides BF12L engines for Chinese-built self-propelled guns and armoured ammunition supply vehicles

2006 & 2008 | Safran Group establishes joint ventures to produce engines for more than 300 Chinese-built military helicopters

1996 | China purchases at least 6 Searchwater airborne early warning (AEW) British-built aircraft radars from Racal-Thorn used on the Y-8 AEW and maritime patrol aircrafts in service with the PLA navy

Data: Common Military List of the EU, 2015

This chapter covers an issue that has received less attention in Europe: intangible transfers of technology (ITT) from the EU to China in the field of conventional armament. What is the exact nature of these transfers and how do they contribute to Beijing's rising military competitiveness? ITT occur in the form of foreign direct investment, mergers and acquisitions, research and education cooperation and the transfer of technical data in non-physical forms. The Chinese arms industry is booming: over the past decade China has assiduously pursued a strategy to acquire technology and know-how from overseas in order to accomplish a transition from *catching-up* to *innovation*, and compete with more established arms exporters on global markets. Xi Jinping made clear in his work report to the 19th Party Congress that his goals included building a world class military by 2050.[6]

Europe-China interactions in the sphere of science and technology relevant to the arms industry are intense, but their impact on China's military modernisation is difficult to quantify accurately. As the EU attempts to rebalance its trade and investment relationship with China and is forced to rethink its China policy in the wider context of an increasingly open strategic confrontation between the US and China, ITT constitute a small but important piece of a larger puzzle that deserves more systematic attention. Politically, the key question for Brussels is thus to what extent a more restrictive environment should be built to prevent, limit or control ITT. This will not be an easy task, as it pertains not only to the very definition of the EU's relationship with China, but also its relations with the US, Japan and Australia, and the future of Europe's arms industry. More generally, it raises the question of to what extent the EU should support European industry and research and development with a military end-use.

From catching up to innovation

Intangible technology transfers are a direct consequence of China's success as a global economic powerhouse with a burgeoning arms industry. While China does not release data on its R&D spending on armament, it is generally estimated that the country spends at least 10 billion USD on such programmes, and possibly closer to 20 billion USD.[7] At this level of spending, even with inevitable waste linked to red tape and corruption, the Chinese arms industry will continue its impressive progress. China is currently pursuing new programmes in all categories of major weapons systems. To take only the example of naval systems, China Shipbuilding Industry Corporation (CSIC) communicates on its website its plans to 'speed up the

6. Full text of Xi Jinping's report at 19th CPC National Congress, "Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era", *ChinaDaily*, October 18, 2017, http://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_34115212.htm

7. Mathieu Duchâtel, "L'industrie d'armement de la Chine, du rattrapage à l'innovation », *Défense Nationale*, (June 2018): 27-34.

process of making technological breakthroughs in nuclear-powered aircraft carriers, new-type nuclear submarines, quiet submarines, maritime unmanned intelligent confrontation systems, maritime three-dimensional offensive and defensive systems, and naval warfare comprehensive electronic information systems.'[8]

Leadership commitment is another factor that will continue to accelerate China's transition from catching up with advanced arms producers to becoming innovative, possibly with the development of disruptive technologies that would give China a strategic advantage in the global balance of power. Among developing technologies that have received attention and could prove disruptive in the future are directed energy weapons, offensive cyber capabilities, or the use of artificial intelligence and quantum communication satellites to develop the next generation of weapons systems. As Xi Jinping made clear in his report to the 19th Party Congress, 'we must keep it firm in our minds that technology is the core combat capability, encourage innovations in major technologies, and conduct innovations independently.'[9]

Making China a 'country of innovators', as articulated by Xi in his work report, means that there is no longer interest in Beijing in purchasing full weapons systems from abroad, even though there will still be exceptions, for example a possible second batch of Su-35 fighter jets from Russia.[10] The reduction of China's dependence on imports for its military modernisation is a decade-long trend that is reaching maturity. The challenge for China's most ambitious programmes – the aircraft-carrier, the next generation of ballistic missile submarines, the fifth generation stealth fighter – is now about overcoming specific bottlenecks in the relevant development technologies, but China no longer focuses on low added value in arms production as the country's arms industry has accumulated considerable expertise at the systems integration level.

Impact on EU-China relations

This change has significant implications for EU-China relations. It means that obtaining the lifting of the 1989 EU arms embargo is no longer high on China's agenda. For more than a decade, the issue poisoned EU-China discussions as Beijing conditioned bilateral cooperation *vis-à-vis* international security matters on the termination of the embargo. But soon after the 18th Party Congress in 2012, Xi Jinping adopted a new approach, effectively decoupling international cooperation from the question of the embargo. This was formalised in 2013 against the expectations of many Chinese analysts, when China proposed including peace and security

8. Guo Yuandan, and Bai Tiantian, "China Eyes Nuclear-powered Carriers: Defense Firm", *Global Times*, February 28, 2018, http://www.globaltimes.cn/content/1091116.shtml

9. Full text of Xi Jinping's report at 19th CPC National Congress, "Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era", *ChinaDaily*, October 18, 2017, http://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_34115212.htm

10. "More Russian Su-35 Fighters Rumoured to Join PLAAF", *Asia Times,* March 9, 2018, http://www.atimes.com/article/russian-su-35-fighters-rumored-join-plaaf/

cooperation as one of four pillars of the EU-China strategic partnership.[11] Capturing the consequences of this new approach, a leading analyst from the China Institutes of Contemporary International Relations (CICIR) argued that with regard to Europe, it was 'in China's best interest to prioritise cooperation against non-traditional threats instead of focusing on lifting the arms embargo' and that China should prioritise 'technological education cooperation' in key industries such as aeronautics.[12]

There is plenty of anecdotal evidence of ITT from the EU to China, which take the form of foreign direct investment as much as education cooperation and obligations for foreign companies to transfer technologies when they invest in China. For example, after the acquisition of Spain's Aritex, the Chinese company Han's Laser Technology commented that it expected to "gain access to Aritex's patented technologies and expand into the aviation and military sectors through this acquisition".[13] The 'Made in China 2025' plan, which details China's strategy for leadership in ten key industrial sectors, makes clear that foreign acquisition is a central part of the country's plan. Six of these sectors have clear military applications: maritime equipment and high-tech shipping, new energy vehicles, new materials, new advanced information technology, machine tools and robotics, aerospace and aeronautics. Examples also abound of research and education cooperation that results in the strengthening of the Chinese arms industry. For example, in 2015 the French engineering school Ecole Centrale opened a branch in Beijing at Beihang University, previously known as the Beijing University of Aeronautics and Astronautics, which is a key training and research facility for the next generation of engineers who will develop the future programmes of the Chinese air force. A 2018 report by the Australian Strategic Policy Institute details the links established by PLA institutes with universities in the West, measuring for example the amount of peer-reviewed literature co-authored with PLA scientists in Sweden, Germany, the Netherlands or France.[14]

However, beyond anecdotal evidence, little detailed knowledge of the volume and intensity of ITT is available to policymakers in Europe (see an attempted overview of key projects in Figure 2 on page 39). There are two main reasons for this. First, many EU states are reluctant to share information with each other on such technology transfers, making it very difficult to conduct an EU-wide assessment. Second, when it comes to research and education cooperation, there is strong resistance in the

11. François Godement and Abigaël Vasselier, "China at the Gates: a Power Audit of EU-China Relations", European Council on Foreign Relations, December 2017, https://www.ecfr.eu/publications/summary/china_eu_power_audit7242

12. Quoted in Olivier Bräuner, Mark Bromley and Mathieu Duchâtel, "Western Arms Exports to China", *SIPRI Policy Paper* no.43 (January 2015): 19.

13. Quoted in Mathieu Duchâtel and Mark Bromley, "Influence by Default, Europe's Impact on Military Security in East Asia", European Council on Foreign Relations, May 16, 2017, https://www.ecfr.eu/publications/summary/influence_by_default_europes_impact_on_military_security_in_east_asia_7288

14. Alex Joske, "Picking Flowers, Making Honey: the Chinese Military's Collaboration with Foreign Universities ", Australia Strategic Policy Institute, 30 October 2018., https://www.aspi.org.au/report/picking-flowers-making-honey

academic world to the idea of restraints placed on international exchanges for the sake of national competitiveness or even national security.[15] Awareness of these two structural weaknesses at the EU-level should be sufficient to prompt a conversation on how to better control ITT, and at least address this problematic knowledge deficit.

The challenge of controlling ITT

In Europe, controls over intangible technology transfers are a national competence. The EU has policy guidelines to combat ITT, but they target the proliferation of weapons of mass destruction (WMD).[16] For conventional armament, it is important to distinguish ITT linked to foreign investment and ITT in the form of research and education cooperation.

It is particularly interesting to examine the ongoing construction of a EU-wide investment screening system in light of the issue of ITT and EU-China relations. It is with China in mind that European Commission President Jean-Claude Juncker stated during his 2017 State of the Union address: 'If a foreign, state-owned, company wants to purchase a European harbour, part of our energy infrastructure or a defence technology firm, this should only happen in transparency, with scrutiny and debate. It is a political responsibility to know what is going on in our own backyard so that we can protect our collective security if needed.'[17]

In September 2017, the Commission issued a proposal for an investment screening system. The document develops the idea that while foreign investment is welcome, such investments can also 'be problematic when they pose a threat to security or public order.' It makes clear that this can be the case when investors, and particularly investors from state-owned companies, seek to 'acquire control of or influence in European undertakings whose activities have repercussions on critical technologies, infrastructure, inputs or sensitive information.' This approach clearly goes beyond the defence sector, but it also covers sectors for which a European technological edge represents a strategic asset.[18]

15. Academic freedom is enshrined in Article 13 of the EU's Charter of Fundamental Rights. See Sibylle Bauer and Mark Bromley, "The Dual-use Export Control Policy Review: Balancing Security, Trade and Academic Freedom in a Changing World", *Non-Proliferation Papers*, no. 48 (March 2016): 4.
16. Vicente Garrido Rebolledo, "Intangible Transfers of Technology and Visa Screening in the European Union", EU Non-Proliferation Consortium, *Non-Proliferation Papers* no. 13, March 2012, https://www.sipri.org/node/2926
17. Statements on Behalf of the EU, "President Jean-Claude Juncker's State of the Union Address 2017", September 13, 2017, https://eeas.europa.eu/delegations/china/32110/president-jean-claude-junckers-state-union-address-2017_en
18. European Commission, "Proposal for a Regulation of the European Parliament and of the Council establishing a Framework for Screening of Foreign Direct Investments into the European Union", COM(2017) 494 final, Brussels, September 13, 2017, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0494&from=EN

FIGURE 2 | EU-China dual-use technology transfers

Non-tangible dual-use technology transfers from the EU to China

Non-tangible dual-use technology transfers

Cooperation in research and education

At European level

Focus on: biotechnology, energy (nuclear and non-nuclear), ICT, aviation and space

Partnerships with: EU Joint Research Centre (JRC) and the European Research Council

Platforms: EU-CN High Level Innovation Cooperation Dialogues (from 2013), EU-CN Co-Funding Mechanism for Research and Innovation and EU-ESA-CN Dialogues on Space Technology Cooperation

At national level

Bilateral dialogues with the UK and Germany

Joint science parks (with France and Belgium) and joint laboratories (with Belgium, Denmark, Germany, Spain, France, Italy, Lithuania, Hungary, Netherlands, Austria, Finland and the UK)

Scientific exchanges, researchers' mobility and joint research projects (with 17 EUMS) contributing to Chinese aeronautics industry

Technology transfer partnerships

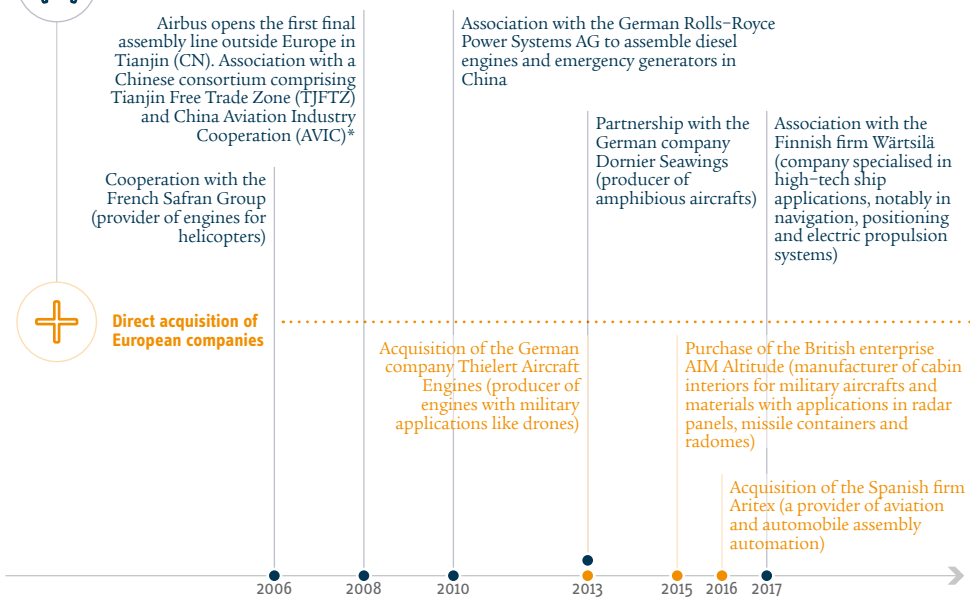
Belgium: Platform for Innovation China-Wallonia

France: Sino-French Innovation Forums with technology transfer as main topic

Italy: Sino-Italian Technology Transfer Centre in Beijing and Milan

UK: UK-CN Joint Commission on knowledge transfer and intellectual property management

Establishment of joint ventures



** AVIC produces 90% of the PLA's air force equipment, including fighters, bombers and missiles.*

Data: May-Britt U. Stumbaum, EUISS *Occasional Paper* no.80, 'Risky business? The EU, China and dual-use technology,' https://www.iss.europa.eu/content/risky-business-eu-china-and-dual-use-technology

While the Commission's proposed investment screening system reflects a larger debate regarding reciprocity in EU-China investment relations, the dynamics of ITT will be affected when the EU puts in place an investment screening mechanism in line with the proposal of the Commission. The priority for the Commission is Europe's long-term competitiveness. This applies to Europe's arms industry. But beyond this dimension, an investment screening mechanism could transform ITT from a very technical field for export control experts to a matter of public debate. Chinese acquisitions of high technology in Europe through direct investment will become more difficult.

Inside the EU, while Austria, Denmark, Germany, Finland, France, Latvia, Lithuania, Italy, Poland, Portugal, Spain, and the United Kingdom already have various degrees and forms of investment screening systems, this is not the case of the 16 remaining member states. Therefore, starting a discussion on investment screening has already had the merit of sharing best practices and opening a debate at the European level. Ultimately, while it is very unlikely that the EU will acquire a form of executive power that would enable the Commission to block foreign investment on national security grounds, what seems most relevant in the spirit of protecting Europe is the increased transparency and media scrutiny that the current process will induce in Europe once the EU-level investment screening system is in place. Foreign investment, especially from an ITT angle, will continue to generate more attention. Politically, a process has started among member states – the issue of ITT is now on the table.

At the same time, while the EU is moving on foreign investment, controls over ITT that occur through research and education cooperation are not discussed at the political level, as the ITT discussion centres only on investment. There is currently no significant initiative to introduce a greater national security/defence dimension to such international cooperation. Some member states do have controls in place, but exchanges conducted with export control officials in France and Germany show the difficulties perceived by export control officials when it comes to regulating transfers of sensitive knowledge within their own national territory.[19] In addition, given intra-European mobility, only an EU-wide approach can ensure that the EU fully controls ITT.

Transparency, reciprocity, and rethinking the EU's China policy

China's rise as an innovative science and technology power with strong and well-funded industrial policies should convince Europeans of the importance of better regulating ITT to a country that is making rapid progress on its goal to build a world-class military and is emerging as a competitor on arms exports. The current

19. Author's interview with European export control officials, Berlin, June 9, 2017.

focus of the technology transfer discussion in Europe is more a reflection of a general trend at play in the EU-China relationship: Europe's frustration regarding the absence of reciprocity in investment relations with China, rather than the specific question of ITT.[20]

Indeed, at the EU-level, the proposed Commission/Parliament text on investment screening is framed as a question of unfair Chinese competition rather than from a purely military angle. However, in democratic systems, the central element of a useful screening system is transparency and media scrutiny, in addition to administrative control capacities. Finally, the question of ITT regulation should also take into account research and education cooperation, with an aim to protect European strengths, and not focus only on investment. In these two areas, an initiative could be considered by the EU to list transfers and evaluate their impact on China's military power and on Europe's competitiveness, going beyond anecdotal evidence.

The question of ITT goes beyond bilateral relations between the EU and China. It pertains to Europe's relations with key partners, especially the United States and Japan. These two countries are actively reinforcing their existing regulations and mechanisms to prevent ITT. Although the reform they have undertaken is not targeted at any particular country and new rules apply to all, it was prompted by China's rise as a credible high-technology powerhouse. Compared to the EU, they start from a very high basis, with strong power in the executive branch to act against unwanted technology transfers.

The coming years will see a restructuring of EU-China relations in the area of investment and technology transfers. On the one hand, the discussion on the adoption of an EU-level investment screening system shows that the EU is creating a more restrictive environment to protect its sensitive technologies from intangible acquisition practices. On the other hand, EU-China interactions will continue to intensify, including in the form of Chinese foreign direct investment (FDI). A new balance will need to be achieved, one that is more beneficial for European interests.

Ultimately, the issue of controls touches upon the nature of the EU's political relationship with China. There is no intention among European foreign policy elites to move to a 'catch-all' approach that would prevent all transfers with a possible military end-use, because China is not an adversary of the European Union. But it is important that the EU's policies take the competitive elements in EU-China relations into account more seriously. It is also essential to build a level-playing field to avoid being subject to double standards or being taken advantage of.

20. Operational difficulties in dealing with China are repeatedly highlighted by European businesses. See Report by the European Union Chamber of Commerce in China at http://www.europeanchamber.com.cn/en/press-releases/2633/european_chamber_report_highlights_gulf_between_china_s_dynamic_economy_and_its_burdensome_regulatory_environment

Chapter 4

The EU's dual-use exports: a human security approach?

Chantal Lavallée

Arms sales and the export of dual-use items are not like any other business. Huge concerns have been raised within the European Union about the potential negative impact their misuse might entail in third countries to which they are sold. Transfers of strategic goods from EU member states to third countries inevitably present problems, as they may call into question the EU's consistency and credibility on the international stage. As some scholars argue, 'arms transfers by EU members may undermine the EU's ability to achieve its broader foreign policy goals, leadership on humanitarian arms control, and legitimacy as a normative power.'[1] By adopting an integrated approach to its external action, the EU strives to find the right balance between its security concerns, normative requirements and trade objectives.

Certain governments (Bahrain, Belarus, Egypt, Iran, Libya, North Korea, Syria, Turkey) have reportedly misused cyber-surveillance technology supplied by EU-based companies.[2] This has triggered debates among EU member states and institutions, and NGOs, on the need to reform export controls, especially regarding cyber-surveillance technology. Against this background, in 2011 the European Commission launched a broad review of Council Regulation (EC) No 428/2009 for export controls of dual-use items (hereafter Dual-use Regulation)[3] which was explicitly guided by a human security approach. This approach acknowledges that security and human rights are interlinked. As a 'human-centred' approach to security, it has broadened security concerns related to end-uses from a strict possible military use of such items to 'the potential effect on the security of persons'.[4] In this context, how does the EU reconcile

1. Jennifer L. Erickson, "Market Imperative Meets Normative Power: Human Rights and European Arms Transfer Policy", *European Journal of International Relations*, 19, no.2, June 2013, 210.
2. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology. Examining the Proposed Changes to the EU Dual-use Regulation", SIPRI, December 2017, 10; Daniel R. McCarthy, ed., *Technology and World Politics* (London: Routledge, 2018), 33; Catherine Stupp, "MEPs Approve Export Controls Tailored to Stop Government Surveillance", *EurActiv*, January 17, 2018; Catherine Stupp, "Nine Countries Unite Against EU Export Controls on Surveillance Software", *EurActiv*, June 8, 2018.
3. European Union, "Council Regulation (EC) No 428/2009 of 5 May 2009 Setting Up a Community Regime for the Control of Exports, Transfer, Brokering and Transit of Dual-use Items", Brussels, 2009.
4. European Commission, "The Review of Export Control Policy: Ensuring Security and Competitiveness in a Changing World", COM(2014) 244 final, Brussels, April 24, 2014, 6.

norms and interests in its dual-use export policy? In order to better understand the strategic leverage of the EU's 'hard power' influence in Asia as discussed in this *Chaillot Paper*, this chapter analyses the legal and institutional mechanisms regarding dual-use export controls, in the light of the current discussions on the 2016 Commission's draft regulation proposal.[5]

This contribution offers a comprehensive analysis divided in three parts, focusing on key dimensions of EU internal dynamics on arms and dual-use export policies. First, it clarifies what has often been described as a 'patchwork of regimes' guiding arms trade and exports within the EU and beyond; however, as this legal framework still contains some undefined loopholes, normative concerns about potential misuse of these technologies still exist. Against this background, it examines the review process of the EU Dual-use Regulation underlying the main elements of the 2016 Commission's draft regulation proposal, driven by a human security approach aimed at addressing these concerns. Finally, the chapter assesses the ongoing discussions regarding this reform process and the advocated normative approach. This helps in identifying the institutional and political challenges that the EU is facing internally when considering its interests in the promotion of trade and values with third countries – both issues of the highest relevance for the EU's relations with Asia.

The EU framework for export controls of military and dual-use technology

EU policies that deal with export controls are shaped by different agreements and regimes (see timeline in Figure 1 on page 49). At the international level, the EU is committed to UN Security Council Resolution 1540 (2004). The implementation of this resolution is driven by 'the idea that export controls on dual-use items can play a role in preventing acts of terrorism [which] has become firmly established since the terrorist attacks on the United States of 11 September 2001.'[6] This awareness as well as increasing allegations regarding the misuse of cyber-surveillance technology have influenced various agreements and multilateral export control regimes. For instance, the Wassenaar Arrangement[7] added certain types of cyber-surveillance technology to its dual-use control list. While this list is updated on a regular basis to reflect controls on new items (or also to 'de-control' some of them), 'in early 2017 the Head of the Wassenaar Arrangement indicated that surveillance systems and

5. European Commission, "Proposal for Regulation of the European Parliament and of the Council Setting Up a Union Regime for the Control of Exports, Transfer, Brokering, Technical Assistance and Transit of Dual-use Items (Recast)," COM(2016) 616 final, Brussels, September 28, 2016.

6. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 5.

7. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies: http://www.wassenaar.org/

other 'new technologies' – such as drones and artificial intelligence – would remain on the regime's agenda due to their 'potentially disrupting impacts.' [8] The European Parliament defended this position already in its Resolution on arms export of 17 December 2015.[9]

Internally, the EU has also various tools to control transfers and procurement of strategic goods as well as arms exports. The attempt to enable a European defence market, through the adoption of the Defence Package in 2009, is based on two key directives. Directive 2009/43/EC regulates the 'Transfers of Defence-related Products within the EU' and Directive 2009/81/EC 'Defence and Security Procurement' addresses questions of protectionism by restricting the derogation clause (Article 346 TFEU) regarding the internal market rules to very exceptional situations. Besides, different instruments limit possible arms exports, such as the sanctions policy – the various restrictive measures against Russia since the annexation of Crimea in 2014 or the arms embargo against China imposed after the Tiananmen Square massacre in 1989 come to mind.

Yet there are two key export control regimes, regarding arms and dual-use items. They refer to different material and rely on different policymaking logics and legal frameworks. First, the control of exports of military technology and equipment is strictly intergovernmental, as it is linked to national and strategic interests. Based on the 2008 Council Common Position, a Common Foreign and Security Policy (CFSP) instrument, it aims at improving transparency and convergence through eight risk assessment criteria.[10] With these criteria, the EU member states notably agreed to consider the respect for human rights in the recipient country, the internal situation prevailing in the country, or security and stability concerns when delivering export licences. It also made the 1998 EU Code of Conduct on Arms Exports legally binding. However, the state representatives remain responsible for the implementation, and different understandings as well as interpretations limit its effectiveness.[11] Compliance is mainly achieved by mutual 'peer pressure' as neither the Commission, the European Parliament nor the Court of Justice of the EU can exert legal control.

The second regime is related to the export control of dual-use items and based on Regulation (EC) No 428/2009, implementing the EU international commitments previously mentioned.[12] It is a supranational regime as part of the EU's Common Commercial Policy, and falls as such under the exclusive competence of the EU, hence it is binding and directly applicable. Its article 2 defines dual-use items as technology or software 'which can be used for both civil and military purposes.' These are to be found across various sectors such as 'nuclear, biological, chemical,

8. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 13.

9. European Parliament, "Review of Dual-use Export Controls", EU Legislation in Progress Briefing, January 12, 2018, 4.

10. Council of the European Union, "Council Common Position 2008/944/CFSP of 8 December 2008 Defining Common Rules Governing Control of Exports of Military Technology and Equipment", *Official Journal of the European Union*, L 335/99-L 335/103, December 13, 2008,

11. See the chapter by Felix Heiduk in this volume, pp. 15-21.

12. It amended Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology and previously the Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods.

materials processing equipment, electronics, computers, telecommunications, encryption, sensors and lasers, navigation and avionics, marine equipment, and aerospace and propulsion equipment'.[13] Western Asia played a prominent role in its creation, as 'the initial push behind the creation of a common EU legal framework [regarding dual-use items] was provided by revelations about the role that European companies had played in providing material that assisted the development of Iraq's WMD programmes in the 1990s.'[14] Thus, for a long time the main focus of EU regulation on export control of dual-use items was on security concerns related to potential military and WMD proliferation end-uses, as stated in the 2003 European Security Strategy and EU Strategy against the Proliferation of Weapons of Mass Destruction. In order to take account of political preoccupations and the rapid pace of technological development, the EU Dual-use Regulation gets updated on an annual basis in line with international agreements and multilateral export control regimes. In this way, EU policies shall result from, and at the same time shape, the discussions on the international stage.

The Dual-Use Regulation: towards a more European and normative approach

In 2011, the European Commission launched a broad public debate with the Green Paper on 'The dual-use export control system of the European Union: ensuring security and competitiveness in a changing world.'[15] The aim of this consultation among civil society, industry and member state representatives was to contribute to the report on the Dual-use Regulation implementation. Moreover, it also aimed at developing a long-term vision on the necessary reforms to modernise EU export controls considering new security risks and threats in the international environment as well as rapid technological developments. The idea of a new 'EU export control model' to adapt approaches to risk assessment, controls, criteria as well as information exchange mechanisms and administrative procedures for export authorisation while supporting the EU's competitiveness, was mooted. This was the first step in a long process of several stakeholder consultations, which lasted until the 2015 impact assessment on the policy options presented by the European Commission in its 2014 communication.[16] In September 2016, based on the conclusions of the consultations, the Commission adopted a draft regulatory framework setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items.[17] The objectives are to modernise the export controls, to reduce the administrative burden, and to harmonise the application of controls, as

13. European Commission, "Green Paper: The Dual-use Export Control System of the European Union: Ensuring Security and Competitiveness in a Changing World", COM(2011) 393 final, Brussels, June 30, 2011, 4.
14. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 5.
15. European Commission, "Green Paper: The Dual-Use Export Control System of the European Union".
16. European Commission, "The Review of Export Control Policy: Ensuring Security and Competitiveness in a Changing World".
17. European Commission, "Proposal for Regulation of the European Parliament and of the Council".

there is still a problem of fragmentation. 'Licence shopping' has remained an issue: mainly due to miscommunication and lack of coordination among member state authorities, companies might obtain an export control licence from one country, although an application for an export licence might already have been rejected by another country.[18] Hence, there is a need for better coordination and exchange of information. In addition, as the Commission pointed out, proper export controls at the EU level also need to be consistent with existing area-relevant EU policy provisions as well as with other EU policies.

In light of these developments, the Commission proposed in its 2016 Communication a series of amendments to the 2009 regulatory framework. It notably recommended, inspired by what the Commission frames as a human security approach, to revise the definition of dual-use items in order to take into consideration the emergence of new types of items such as cyber-surveillance technologies. This comes with the proposal to create 'an EU autonomous list of specific cyber-surveillance technologies.'[19] It means that such an EU control list for dual-use items for the first time would 'not [be] drawn from one of the multilateral export control regimes and give the Commission the ability to take the lead on adding items to the EU dual-use list.'[20] Moreover, it implies that new kinds of items might be included, according to new parameters; thus, 'it could also lead to a shift beyond the civilian-use or military-use paradigm that frames the range of goods controlled by dual-use export controls to encompass systems used by intelligence agencies and law enforcement agencies (LEAs).'[21] Additionally, the Commission suggested the harmonisation of licensing processes with the creation of the EU General Export Authorisations (EUGEAs) and even the possibility for national authorities to exert catch-all controls on exports of non-listed dual-use items, if there was a clear risk that exported items might be used in human rights violations or acts of terrorism. Generally speaking, the European Commission clearly put the protection of human rights at the centre of the new 'EU export control model', with an attempt at translating the human security approach into concrete technical parameters which should then guide the member states when considering export licences.

Challenges of the proposed regulatory framework

In January 2018, the European Parliament adopted its proposed amendments on the 2016 Commission's proposal for a regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items. Although the Council amendments are not yet known, eleven EU countries have already supported the Commission's proposal.[22] However, in June 2018, a group

18. Catherine Stupp, "MEPs Approve Export Controls Tailored to Stop Government Surveillance."
19. European Commission, "Proposal for Regulation of the European Parliament and of the Council", 9.
20. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 19.
21. Sibylle Bauer and Mark Bromley, "The Dual-use Export Control Policy Review: Balancing Security, Trade and Academic Freedom in a Changing World", *Non-Proliferation Papers*, no. 48, March 2016, 7.
22. Catherine Stupp, "Eleven Member States Back EU Controls on Selling Spyware", *EurActiv*, February 21, 2018.

of nine countries presented to the Council a working paper where they expressed their concerns regarding the key initiatives of the Commission (like an EU autonomous list of items subject to control) and proposed other options in order to protect the competitiveness of EU-based industry in this sector.[23] The Council previously agreed informally on many proposals made by the Commission over the review process.[24] This, admittedly, has been lengthy, as agreeing on the right balance regarding export controls is central, but not easy. Once the Council officially announces its amendments, the negotiations between the Commission, the Council and the European Parliament will start to frame the new agreement. Since the 'discussion paper' circulated and confirmed a clear division in two groups within the Council, it seems that the agreement will not be adopted by the end of the year as announced.

The main objective of this review process and, by extension, of the interinstitutional negotiations remains finding the best way to regulate the export of dual-use technologies with the level of control being restrictive, but not too restrictive. This sector is complicated to regulate not only because of the sensitivity of the issue, but also because the dual-use industry comprises a diverse range of sectors and goods. Controlling exports in a field as diverse as this, with activities in the nuclear, biological, chemical, electronics, telecommunications and aerospace sectors, is anything but easy.[25] In addition, examining the scope of usage is complex as some items that offer the risk of being misused might also be a useful tool, for instance items 'that are either vital to IT security or are used by human rights defenders to evade surveillance when operating in repressive regimes.'[26] In line with this concern, and contrary to what the Commission had proposed, 'MEPs voted to delete encryption technologies from the list of cyber-surveillance products.'[27]

Hence, while a wider approach to security has guided the overall review process and could hardly be called 'new' in 2016, it still constitutes one of the most controversial aspects of the recast proposal. The main criticisms pointed out the lack of clarity in EU documents on human rights concerns, the problem of agreeing on a definition of 'terrorism', 'cyber-surveillance technology' or 'human security' and the ambiguity of their scope.[28] Industry representatives have argued that such an ambitious step, especially the adoption of an EU control list for dual-use items, might introduce distortions in the competition in the global market. This risks putting EU-based

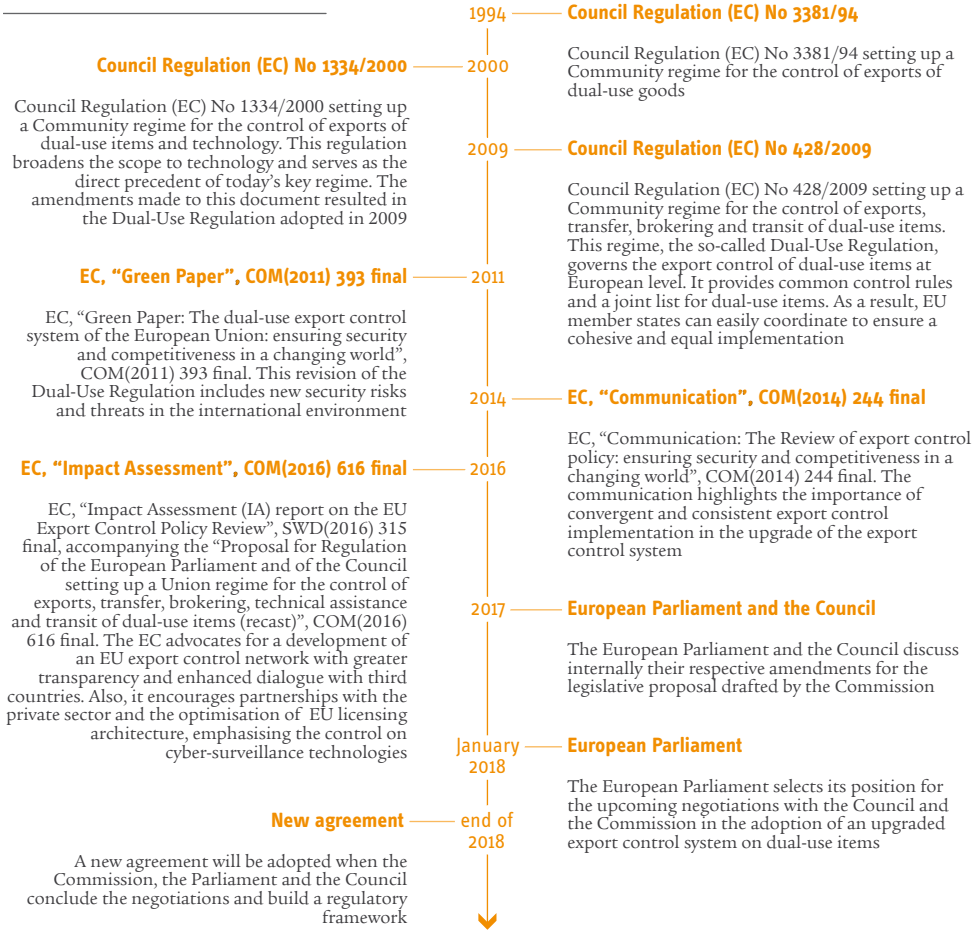
23. Catherine Stupp, "Nine Countries Unite Against EU Export Controls on Surveillance Software".
24. Council of the European Union, "Council Conclusions on the Review of Export Control Policy", Foreign Affairs Council (Trade), Brussels, November 21, 2014.
25. European Commission, "Green Paper: The Dual-use Export Control System of the European Union", 2011, 4.
26. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 17.
27. European Parliament, "Review of Dual-use Export Controls", 11.
28. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 4, 7, 17; European Parliament, "Review of Dual-use Export Controls", 10.

suppliers at a disadvantage in comparison with international key technology suppliers such as China or the United States, where similar controls will not necessarily be conducted.[29] These criticisms have also been expressed by the group of nine countries in their 'discussion paper.'

FIGURE 1 | EU export control system on dual-use items

A timeline on EU legislation regarding exports of dual-use items

This supranational regime is a part of the EU's Common Commercial Policy and falls under the exclusive competence of the EU, hence it is binding and directly applicable. The European Court of Justice has formal competence in this domain.



29. Mark Bromley, "Export Control, Human Security and Cyber-Surveillance Technology", 17, 19; European Parliament, "Review of Dual-use Export Controls", 7.

Conclusion

The EU's intention to encourage the creation of 'links between the EU Dual-use Regulation and other areas of EU policymaking relevant to export controls has long proved challenging.'[30] Hence, it obliges the EU to conduct significant reforms putting the norms it promotes at the centre of the modernisation process, as some equipment might fuel militarisation, facilitate human rights violations and contribute to terrorist acts. Besides, the EU arms trade and export controls framework, composed of different regimes, dynamics, approaches, actors and tools, has also raised consistency and effectiveness issues regarding the implementation of the relevant regulation. The EU should strive, as shown in the debate in the Council, to find the right balance between its normative commitments related to human rights and international humanitarian law, and its economic interests regarding the Union's competitiveness and technological leadership. This also constitutes a huge challenge for its external relations.

Therefore, the analysis of EU-Asia relations from the perspective of the EU's emerging profile as a 'hard power' should not underestimate the impact of the various legal frameworks governing exports control when it comes to arms sales and the export of dual-use items to the region. These internal constraints as well as institutional limitations inevitably affect the EU's level of ambition and its defence industry activities on the international stage. However, the EU's proposed approach offers leverage for another type of export control model in the world – one that puts the security of individual human beings at the core of the licence evaluation process, thereby ensuring that the EU's norms and values take precedence over purely economic concerns.

30. Sibylle Bauer and Mark Bromley, "The Dual-use Export Control Policy Review", 3.

Chapter 5

Europe-Northeast Asia defence relations: heralding a new era

Zoe Stanley-Lockman

With a changing geostrategic context characterised by new security challenges, including the growing North Korean nuclear threat, China's expanding military ambitions, and shifting relations with the US, the demand for a stronger European role in Northeast Asian security and defence appears acknowledged. This chapter explores the status of bilateral relations as the backdrop for an enhanced EU security role in Northeast Asia, as well as its impact on the regional strategic dynamics.

First, the chapter overviews EU member state bilateral defence relationships with South Korea and with Japan. Examining the bilateral defence relations of EU member states with these two countries separately yields a distinct trend: whereas South Korea actively looks towards European countries as a consistent source of arms import sales with a stable level of technology transfers, relations with Japan are likely to gear upward with a stronger emphasis on defence equipment and technology cooperation rather than on sales. Although the EU's relationships with the two Northeast Asian countries are extremely different in nature, one key takeaway is that South Korea and Japan, while still relying on the US as their primary security guarantor, are also both diversifying their security partnerships.

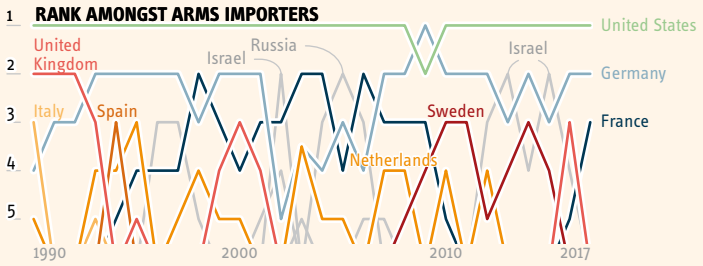
This provides a basis for Europe to play a larger role in Northeast Asia. Recognising that the EU is better characterised as a civilian power in its relations with South Korea and Japan, the chapter then turns to the possibility of the EU leveraging its 'building blocks' for a greater hard power role in the region. Between its partnership agreements and network of defence-diplomacy related activities, this may lead to the EU growing into a role as a more prominent facilitator of hard power relations in Northeast Asia.

FIGURE 1 | South Korea: a tale of diversification

While the United States have long dominated...

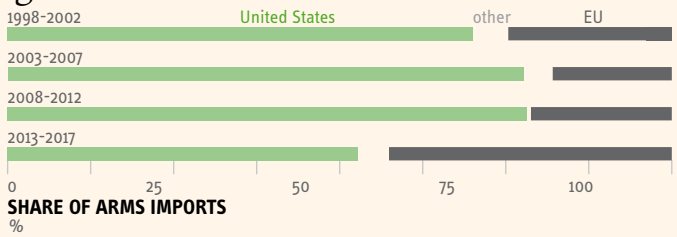
South Korea is one of the main recipients of EU arms exports. Likewise, EU member states regularly feature among the country's biggest partners for arms imports.

The US is, however, nearly uncontested as South Korea's main source of foreign arms systems. EU member states regularly crowd the remaining spots among the top 5 on an annual basis, and 2009 was the first time since 1990 that the US was pushed from top spot.



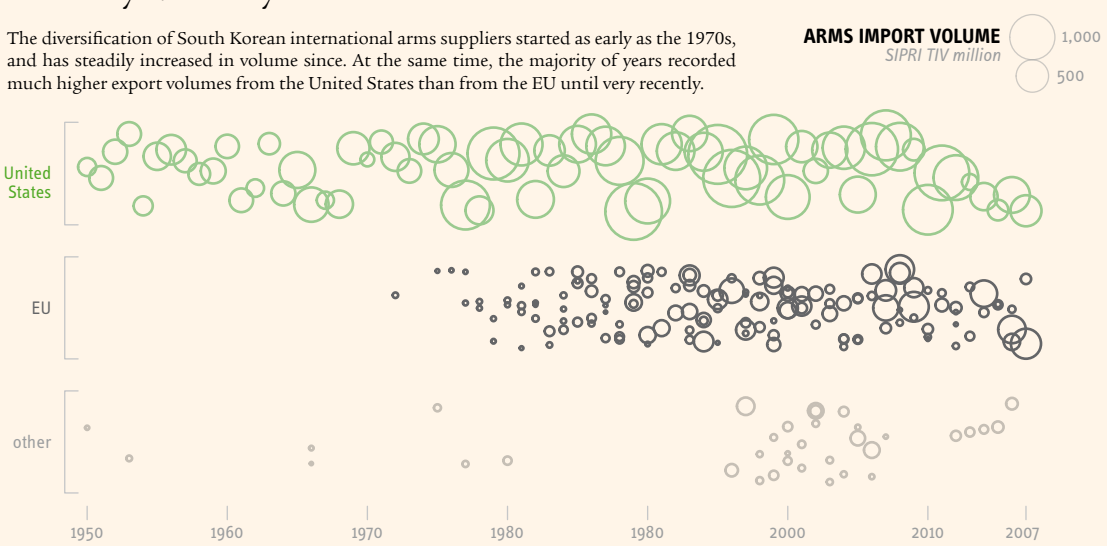
...import markets are starting to shift...

The relative weight of US arms imports to South Korea, however, is decreasing in favour of European exporters. Between 2013 and 2017, European arms exports constituted twice the share of South Korean arms imports (42%) than they did in the previous five-year period (21%).



...as they diversify

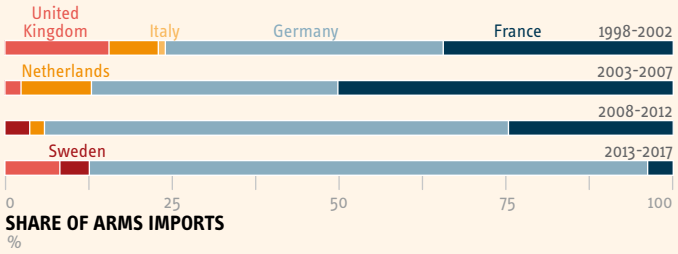
The diversification of South Korean international arms suppliers started as early as the 1970s, and has steadily increased in volume since. At the same time, the majority of years recorded much higher export volumes from the United States than from the EU until very recently.



EU partners

Over the years, South Korea has bought equipment from seven different EU member states.

Since the 1980s, South Korea has placed some 50 arms orders with EU member states spanning land, air and sea domains. Germany received a record 24 orders, followed by France and the Netherlands in joint second place with nine orders.

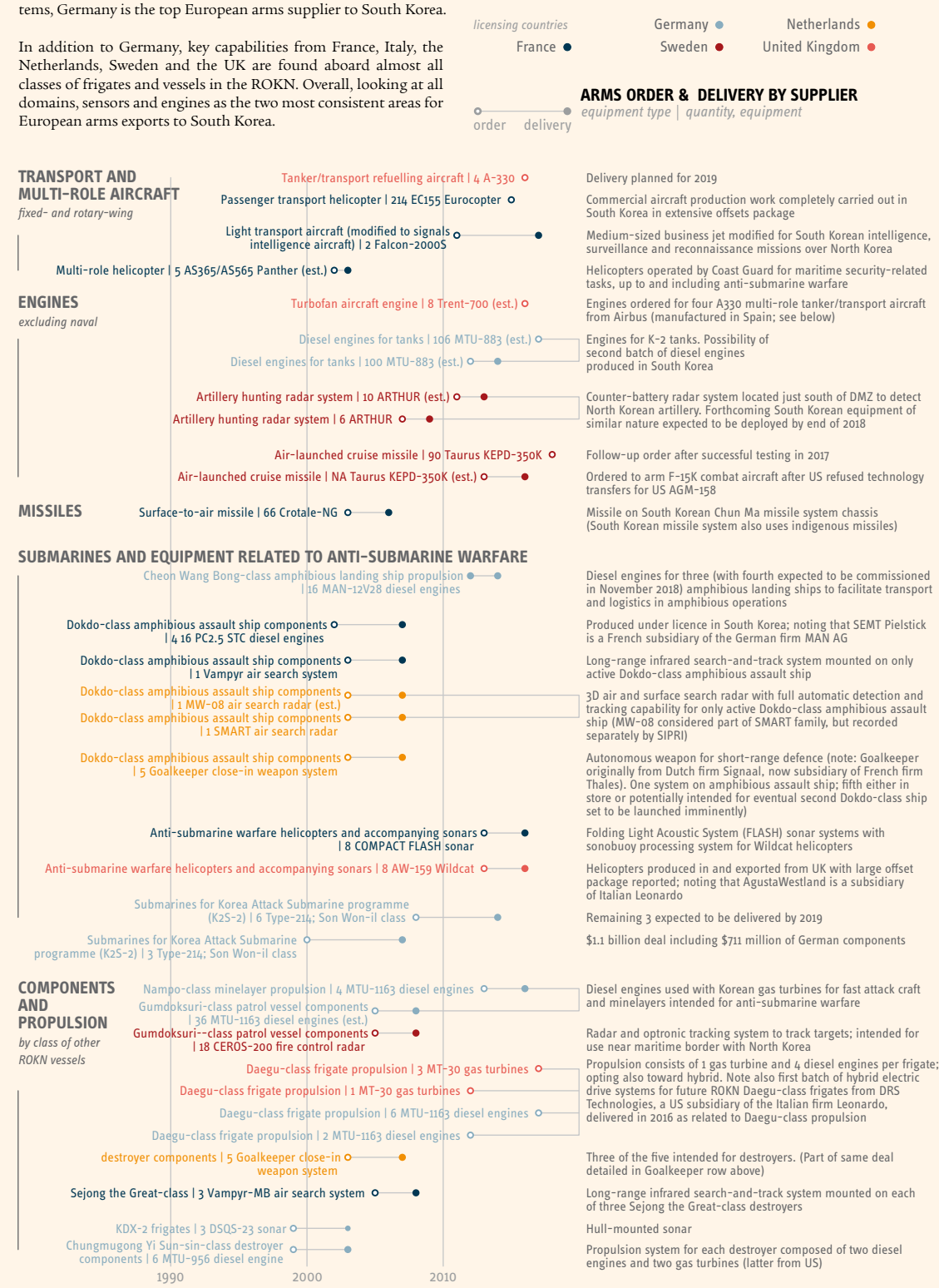


Orders and deliveries from EU member states

European-South Korean defence relationships take the most concrete form in the maritime domain. Because South Korea has long depended upon German submarine designs and propulsion systems, Germany is the top European arms supplier to South Korea.

In addition to Germany, key capabilities from France, Italy, the Netherlands, Sweden and the UK are found aboard almost all classes of frigates and vessels in the ROKN. Overall, looking at all domains, sensors and engines as the two most consistent areas for European arms exports to South Korea.

In the graphic below, equipment is categorised by licenser rather than the company's country of origin.



Data: SIPRI, 'Arms Transfers Database', 2018

European contributions to South Korean defence capabilities

As the US experiences a period of inward-looking isolationism, denying technology transfers even to close partners, evidence of stronger European-South Korean relations can be found in arms transfers. The European role in South Korean military capability development is a crucial stepping stone towards stronger hard power relations.

According to the Stockholm International Peace Research Institute (SIPRI), South Korea is consistently among the top ten destinations of EU-28 arms exports. As illustrated in Figure 1 (pp. 52-53), the EU-28 share of total South Korean arms imports doubled between 2013-2017 and the previous five-year period. This can be attributed to South Korea diversifying its arms imports sources and significant reductions of US arms export deliveries to South Korea: key specific cases are examined below.

Figure 1 in this section, adapted from SIPRI data, aims to give a comprehensive overview of European arms transfers to South Korea. The remainder of this section is dedicated to two growing trends. Owing partially to frustration with Washington and a desire to indigenise defence industrial production with more generous offsets and technology transfers, the European market share of South Korean military assets has grown.

Frustration with Washington

Even if the US is and will remain, despite President Trump, the security guarantor for South Korea, frustrations with Washington have opened up a slice of the South Korean market for Europe. This is most evident in the case of munitions and missiles. Detailed in Figure 1, South Korea's use of air-to-surface missiles co-produced by Saab and MBDA, as well as precision-guided munitions (PGMs) from MBDA, share a common feature: selection after Washington refused to grant the export licences. The latter of these deals has helped solidify a European preference for air-to-air missile technologies, particularly since another batch was ordered in March 2018.[1]

These orders are significant in two respects. Firstly, the denial of US air-to-surface missiles is likely related to the US having to strike a more delicate regional balance than is true for Europe. East Asia Forum analysis suggests that one reason Washington would not sell the missiles was so as not to irritate Japan, whose constitutional

1. Jeff Jeong, "With Delay in US, South Korea Turns to Europe for Air-to-Air Missile Technology", *Defense News*, March 8, 2018, https://www.defensenews.com/industry/techwatch/2018/03/08/with-delay-in-us-south-korea-turns-to-europe-for-air-to-air-missile-technology/

restraints hinder acquisition of pre-emptive strike weapons, by allowing a regional rival to purchase offensive weapons.[2] While the US certainly has structural advantages when it comes to defence cooperation in Northeast Asia, it adheres to certain limitations to which Europe is not bound.

Secondly, South Korea has incurred significant delays and encountered obstacles in pursuing its joint fighter programme with Indonesia, due in large part to a cumbersome technology transfer process for radars and denial of PGM exports from Washington.[3] Even if the US is a clear first choice, South Korean frustration with US-imposed barriers serves to strengthen ties with Europe as an alternative for gaps the US cannot fulfil as a security provider in the region or chooses to not fulfil due to technology transfer concerns.

Offsets and technology transfers

On a related note, European bids are reported to include more generous offset packages and technology transfers to help South Korea indigenise some defence industrial production. For example, despite its efforts, South Korea is struggling to indigenise diesel engines for use in its tanks.[4] Hence South Korean interest in Europe lies in gleaning expertise in the medium-term until production can be fully localised. A similar trend can also be seen in the underwater domain and for select radar systems.

Having long relied on European equipment for submarines and (relatively more recently) anti-submarine warfare (ASW) capabilities, a resurgent dynamic in recent South Korean procurement decisions suggests economic and industrial concerns are equally as important as performance requirements. Submarines and ASW equipment increasingly represent the area where European-manufactured capabilities help bolster South Korean defence and industrial capabilities alike. In addition to the 15 German submarines currently operated by the South Korean navy (ROKN), its upcoming plans to produce variants of German submarines under licence shows that South Korea is anxious to give a boost to the country's struggling shipbuilders. Regarding ASW helicopters, offsets have reportedly nudged South Korea towards selecting WildCat helicopters (which also amply meet the performance requirements) over Swedish or US options.[5]

While the Korean 'three axis' defence system against North Korea depends overwhelmingly on US assets,[6] European air and missile technologies have also

2. Soon Ho Lee, "South Korean Missile Acquisition Boosts Strike Capability", East Asia Forum, August 3, 2013, http://www.eastasiaforum.org/2013/08/03/south-korean-missile-acquisition-boosts-strike-capability/

3. Ibid.

4. Franz-Stefan Gady, "South Korea Moves Forward With Production of 106 New Main Battle Tanks", *The Diplomat*, February 21, 2018, https://thediplomat.com/2018/02/south-korea-moves-forward-with-production-of-106-new-main-battle-tanks/

5. Franz-Stefan Gady, "South Korea Seeks $400 Million 'Offset' in Sub-Killer Helicopter Deal", *The Diplomat*, November 14, 2017, https://thediplomat.com/2017/11/south-korea-seeks-400-million-offset-in-sub-killer-helicopter-deal/

6. The three axes which depend upon US-made assets (with Israeli technologies also garnering interest) are: Korea Air and Missile Defence, Kill-Chain and Korea Massive Punishment and Retaliation.

become vital to the South Korean arsenal. These systems are notable for two reasons: firstly, they have helped build South Korean industrial capabilities, and secondly they indicate how South Korea has turned to European niche manufacturers as a result of frustration with the US. South Korean licensed production of the Swedish radar systems described in Figure 1 are likely the basis of South Korean industrial capabilities that led to the government's recent announcement that a new, locally produced radar with increased range and operational duration will be deployed just south of the demilitarised zone, where the current Swedish radars operate.[7]

As explored in Figure 1 and in the preceding text, several European contributions to South Korean military capabilities are noteworthy. With bilateral relations serving as the primary conduit for defence cooperation, Europe's attractiveness as a source of arms and as a security partner to help develop local industry is clear.

Newfound bilateral defence cooperation with Japan

While EU member states have a strong basis for cooperation with South Korea, relations with Japan are slightly more complicated. Until recently, the Japanese Constitution prohibited defence industrial cooperation with foreign partners for historical reasons. Because no Japanese arms were exported to Europe, defence trade has been a one-way street thus far, and as seen in Figure 2, the Japanese market is far smaller than its South Korean equivalent. Bilateral EU member state defence trade relations with Japan are therefore necessarily far more constricted than is the case with South Korea, translating to a different trajectory that moreover emphasises dual-use and military cooperation and capacity building-related tasks as Japan changes its tune on security guarantees.

Watershed arms export policy changes in 2014

Under Prime Minister Shinzo Abe, Japan began easing restrictions on arms exports in December 2011, culminating in lifting the ban in April 2014 in order to 'proactively contribute to peace' with a more substantive role as a security provider in the region. The policy shift also reflects a desire to enhance substantive cooperation with like-minded democracies, nominally the US but also others. While military action remains limited to purely defensive activities, the change allows Tokyo to transfer technologies and attempt to lower defence equipment costs through higher unit production and more cooperation with universities and foreign partners.

Japanese arms imports are significant in that they hail from the same five member states which have recently signed agreements with Tokyo to increase defence technology and equipment cooperation: France, Germany, Italy, Sweden and the UK. That Japan

7. Jeff Jeong, "South Korea Develops Artillery-locating Radar", *Defense News*, April 24, 2017, https://www.defensenews.com/industry/techwatch/2017/04/24/south-korea-develops-artillery-locating-radar/

has already established defence relationships with these countries is no coincidence: indeed, having tested and operated the equipment is a crucial first step in exploring opportunities for cooperation now that they are constitutionally permitted. As Japan seeks to continue indigenising capabilities, it is no surprise that the same European equipment that Japan already operates re-appears as Japan's priorities for technology transfers from Europe. Although, as illustrated in Figure 2, senior Japanese military and government officials have had high-level exchanges with an even broader range of Europeans, the more concrete agreements from 2017 indicate which European partners Japan has chosen for privileged relations.

New defence cooperation agreements in 2017

Although primarily targeted at strengthening the relationship with the United States, recent arms export policy changes can potentially enable deeper relationships with other partners like Australia and European countries. The year 2017 is pivotal for understanding bilateral defence relations between Japan and EU member states. In that year France, Germany, Italy, Sweden and the UK all signed agreements to commence defence technology cooperation with Japan.

In May 2017, Japan and Italy signed both a Memorandum on Defence Cooperation and Exchange and an Agreement between Governments on the Transfer of Defence Equipment and Technology to define areas of cooperation, particularly for maritime materiel.[8]

In July, both Berlin and Stockholm signed bilateral agreements with implications for future defence cooperation with Japan. Both were motivated by interest in components previously used in Japanese equipment. During the bilateral Japan-Sweden Summit, 'defence equipment and technology cooperation' was among the issues discussed.[9] Follow-up will likely emphasise Tokyo's desire for technology transfers for Swedish air-independent propulsion (AIP) systems, as previously used in Japanese *Sōryū*-class submarines.[10] Next, Germany signed an agreement with Japan, which reportedly emphasises technology transfers to increase speeds of T-90 tanks, aiming to build Japanese capabilities on its more remote islands.[11] German munitions that have been mounted on Japanese Type-90 battle tanks may also be of interest to Tokyo.

A few months later, in November, Japan and the UK announced that MBDA and Mitsubishi Electric would team up to develop an air-to-air missile for deployment

8. Ministry of Defence of Italy, "Italy-Japan: Stronger Cooperation in the Defence Sector", May 23, 2017, https://www.difesa.it/EN/Primo_Piano/Pagine/jp.aspx
9. Ministry of Foreign Affairs of Japan, "Japan-Sweden Summit Meeting", July 9, 2017, http://www.mofa.go.jp/erp/we/se/page4e_000655.html
10. "Japan Bolsters Defense-Technology Cooperation with Europe", *Nikkei Asian Review*, May 11, 2017, https://asia.nikkei.com/Politics-Economy/International-Relations/Japan-bolsters-defense-technology-cooperation-with-Europe
11. Ryo Aibara, "Japan Quietly Inks Deal with Germany on Defense Sharing", *The Asahi Shimbun*, July 19, 2017, http://www.asahi.com/ajw/articles/AJ201707190028.html

FIGURE 2 | Japan: a tale of partnership

Agreements and exchanges with EU partners

Since 2014, the year Japan definitively changed its arms exports policies, Japan has signalled its increasing interest in Europe through more numerous and more regular exchanges between senior military and defence officials.

In addition to deepening relations with those which have signed defence equipment and technology transfer agreements with Japan, these exchanges show how Japanese interest in Europe is broadening simultaneously.

Evolution of industrial and operational cooperation

Since Japanese defence industrial cooperation with other states was constitutionally banned until recently, the market is only beginning to shift from a one-way arms supplier-customer relationship towards two-way cooperation. Prime Minister Abe began loosening the rules in 2011, allowing for some exploratory forays into defence cooperation with European states, but it was only after the significant April 2014 Japanese policy changes that Japanese-European defence cooperation, particularly with the UK and France, would begin to flourish. Signed agreements are represented in the map and not the timeline.

Equipment

As Japan seeks to continue indigenising capabilities, it is no surprise that the same equipment already transferred re-appear as Japan's priorities for technology transfers from Europe.

ARMS ORDERS
number of orders

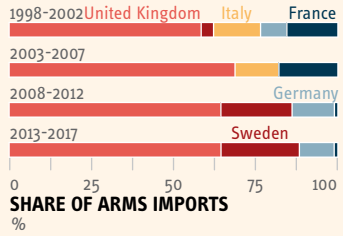
Sweden ● France ● Germany ●
Italy ● United Kingdom ●

Air refuel system ●●●	MP aircraft radar ●●	Transport helicopter ●
Gas turbine ●●	Diesel engine ●●	
AIP engine ●●	Light helicopter ●	MCM sonar ●
Naval gun ●●	Turbofan ●	Mortar ●

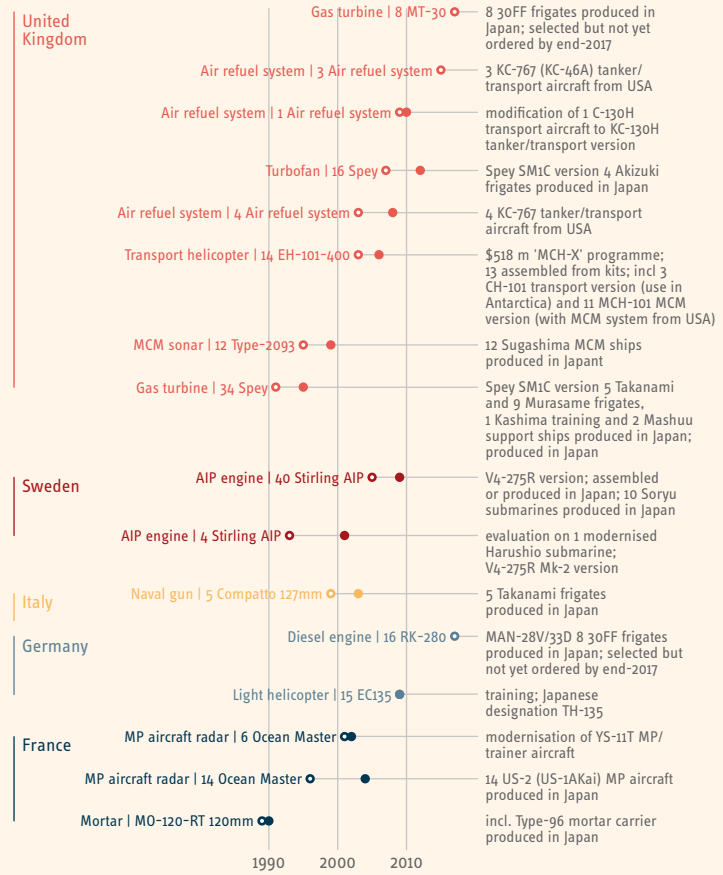
Arms transfers from the European Union

That Japan has already established defence relationships with these countries is no coincidence: indeed having tested out the equipment is a crucial component to founding cooperative opportunities now that they are constitutionally permitted.

Japanese arms imports are significant in that they hail from the same five member states which have recently signed agreements with Tokyo to increase defence technology and equipment cooperation: France, Germany, Italy, Sweden and the UK.



ARMS ORDER AND DELIVERY BY SUPPLIER
quantity | equipment



CONTEXTUAL POLICY CHANGES IN JAPAN

Tokyo begins loosening rules to permit international transfers of jointly-developed equipment

In National Security Strategy, Tokyo changes to a 'negative list' framework where, instead of a blanket ban on all arms exports except for specific case-by-case exceptions, all are permitted except those specifically prohibited in three new principles

'NOTHING EXCEPT' — **Tokyo issues Implementation Guidelines, the most substantive changes to date, clarifying 11 cases where arms exports are permitted** — 'EVERYTHING, BUT'

DEFENCE INDUSTRIAL AND TECHNOLOGICAL COOPERATION

UK and Japan announce air-to-air missile cooperation, particularly for missile seeker technology transfers, ahead of Letter of Arrangement signed in November 2014

France and Japan create committees for export controls and defence equipment

France and Japan sign defence cooperation letter of intent

France and Japan discuss future cooperation for unmanned underwater vehicles for mine detection

Sweden and Japan discuss defence technology transfers in bilateral PM summit following ministerial talks in February 2017 (also with Finland)

UK and Japan announce furthering of air-to-air missile cooperation with new co-development programme and begin discussing co-developing sixth-generation fighter

UK and Japan conclude intergovernmental framework agreement including potential future equipment co-development; begin joint research on chemical and biological protection technology

France and Japan sign defence equipment and technology transfer agreement

Netherlands and Japan discuss peacekeeping and anti-piracy

UK-Japan joint drills begin

France-Japan ACSA negotiations and joint venture discussions begin

UK-France-United States-Japan quadrilateral drill cancelled

OPERATIONAL AGREEMENTS AND INTERACTIONS BETWEEN JAPAN AND EUROPEAN STATES

2010 2012 2014 2016 2018

AGREEMENTS WITH EU AND NATO

Data: Ministry of Defence of Japan, 'Defense of Japan', 2015-2017; SIPRI, 'Arms Transfers Database', 2018

in the late 2020s, as based on a pre-existing cooperation arrangement. The first co-development project with a country other than the US, this significant event also has a transnational component with MBDA being a European consortium between France, Italy and the UK.

Beyond technology cooperation, the UK is the first European country to deepen cooperation with Japan on a more operational level. In October 2016, the UK sent 170 Royal Air Force personnel, *Typhoon* fighter jets and tanker/transport aircraft to Japan for joint drills, with the missile co-development agreement also including talks to expand the joint drills. Aimed at conveying the message to China that restrictions on air and sea travel in the region would not be accepted, this shows a desire on Tokyo's part to deepen cooperation with other partners beyond Washington.[12] Following this success, the two signed a Defence Logistics Treaty in January 2017 for exchange of supplies and services for lower-end missions.[13] In combination, these events could constitute an archetype framework for military partnerships with other European countries in line with Japan's ambition to 'proactively contribute to peace' in the region.

The fact that Tokyo has sought European partnership is significant because it demonstrates a willingness to diversify its defence network. When it comes to ensuring free and safe navigation and protecting its interests from non-traditional security threats or from perceived Chinese aggression, cultivating partnerships – with Australia as well as Europe – shows a concrete willingness on the part of Japan to mobilise support for a rules-based international order beyond the parameters of its treaty alliance with the US – and to prove to Washington that Tokyo is becoming serious about intensifying its security role. Whereas Beijing brands a vast range of US-driven military capability development activities in the region as part of a broader 'China containment' strategy, it is also possible that newer European partnerships, unhampered by treaty obligations and facilitated by recent arms export policy changes, can help strengthen Japanese capabilities below a threshold worrisome to China.

The EU as a facilitator

Bilateral relations will remain the primary framework for European defence cooperation with Northeast Asia. As such, any EU-level hard power projection or defence cooperation initiatives rely on existing and prospective bilateral defence relations as the basis for further development. Nonetheless, recent years have seen the fleshing out of EU strategic cooperation with the two Northeast Asian countries. Bilateral relations of EU member states, experience in crisis management in EU operations, as well as other defence diplomacy-related engagements are all building blocks to determine the role of the EU as a hard power actor beyond its

12. Justin McCurry, "UK Sends Typhoons to Japan for Joint Drills to Strengthen Security Ties", *The Guardian* , October 14, 2016, https://www.theguardian.com/world/2016/oct/14/uk-sends-raf-typhoons-to-japan-joint-drills-china

13. UK Foreign & Commonwealth Office and Ministry of Defence, "UK and Japan Strengthen Defence Ties", January 26, 2017, https://www.gov.uk/government/news/uk-and-japan-strengthen-defence-ties

neighbourhood. Relying on 'defence diplomacy' as a guiding principle, the EU may combine its building blocks, both in seeking a greater hard power role and in enhancing relations through partnership agreements with Japan and South Korea, to prove its effectiveness as a hard power facilitator.

Defence diplomacy

In the Asia-Pacific, there is growing recognition of 'defence diplomacy' as an umbrella term under which a variety of military relationship-building activities takes place. The US, China, France, and to a certain extent the UK, have been raising their defence diplomacy profiles across the region. Although many of the activities that Europe engages in could qualify as defence diplomacy, to date they are not coherently communicated. One helpful definition of defence diplomacy, as laid out *vis-à-vis* the US, suggests five aims for consideration:

> '(i) to build relationships that promote [...] security interests;
> (ii) to develop partner and allied states' military capabilities [...];
> (iii) to improve information exchange and intelligence sharing;
> (iv) to harmonise views on security challenges; and
> (v) to provide support for forces in the region'[14]

While these are not all immediately applicable to the EU, they are helpful guiding principles for an array of activities. Europe may also find 'the peaceful use of military capabilities to further foreign policy objectives' to be an appropriate definition of defence diplomacy ambitions in Northeast Asia and beyond.[15] Activities that touch upon defence diplomacy include dialogues, training courses and professional military education, military exercises and other institutionalised mechanisms championing military-to-military interaction. When it comes to European defence diplomacy specifically, there are two layers to be considered. The first is multilateral engagements in which EU member states take part independently of the EU, and the second layer is characterised by activities where the EU plays a more direct role.

Although not at the EU level, two or more member states have co-participated in military exercises, which are vital to building relationships and providing support for forces in the Asian theatre, alongside Japan and/or South Korea. Even in the context of European defence cooperation, the EU framework is only one of several cooperation frameworks considered. Applying the same logic to cooperative activities with third states, multilateral military-to-military interactions merit attention as a tool for European defence diplomacy.

14. Richard Bitzinger et al., "Defence Diplomacy Towards Southeast Asia", Report of the Conference Organised by the Multilateralism and Regionalism Programme of the S.Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore, S. Rajaratnam School of International Studies, 2010, https://www.rsis.edu.sg/wp-content/uploads/2014/07/ER101130_Defence_Diplomacy_SEA.pdf

15. European External Action Service (EEAS), "How Does the ESDC Contribute to Defence Diplomacy?", October 17, 2017, https://eeas.europa.eu/headquarters/headquarters-homepage_et/34095/How%20does%20the%20ESDC%20contribute%20to%20Defence%20Diplomacy?

In 2016 the 11-day exercise Croix du Sud involved Japanese forces, along with France, the UK and other third states.[16] Also in 2016, Denmark, France, Germany, Italy, the Netherlands and the UK all participated in the 36-day Rim of the Pacific Exercise (RIMPAC) in Hawaii and California alongside Japanese and South Korean forces (along with other third states). In RIMPAC 2018, the French, German, and Dutch navies also participated alongside Japan and South Korea; however the UK Royal Navy downgraded its participation and did not send any vessels, a development which came as a surprise to many. France and the UK also took part in the Multinational Planning Augmentation Team of the 11-day Cobra Gold exercise in February 2018, in which both South Korea and Japan participated alongside other third states. Although French and UK forces did not directly participate, the interaction could yield opportunities for enhanced in-theatre coordination.

Naturally, only a few member states have navies with sufficient global reach to participate in such exercises, making multilateral coordination and cooperation below the EU level more appropriate for these types of defence diplomacy activities. That said, the EU should pay greater attention to mini- and multilateral activities in order to be able to coordinate its own approach to defence diplomacy with the capabilities and postures of its member states.

At the EU level, there are several *ad hoc* activities that could develop into a more fully-fledged defence diplomacy in the Asia-Pacific. Lessons can be drawn from Southeast Asia. As part of its efforts to promote 'preventive diplomacy' in Southeast Asia, the EU has experimented with including military personnel in such initiatives. From 2013-2014, the EU participated in a Defence Officials Dialogue related to the ARF Inter-Sessional Support Group on Confidence-Building Measures and Preventive Diplomacy, of which the EU was co-chair. Other EU-level military personnel have also held dialogues with South Korea, notably information exchange on multilateral cooperation (albeit not military) with South Korea in 2014 and 2015, and likely with Japan in the vein of agreeing upon a Strategic Partnership Agreement (SPA).

The European Security and Defence College (ESDC), composed of civilian and military personnel alike, is an EU agency which can be seen as a defence diplomacy tool given its mission to develop a common understanding and disseminate best practices *vis-à-vis* the Common Security and Defence Policy (CSDP). Although primarily focused on Europe and its neighbourhood, the ESDC has experience in the Asia-Pacific as well. In 2014 the ESDC opened a training course on CSDP to members of the ASEAN Regional Forum (ARF).[17] Building on existing forums and initiatives in Northeast Asia, including trilateral cooperation if it resumes, the ESDC could consider leveraging its doctoral school network, officer exchanges and armaments courses[18] for military-to-military exchanges in Northeast Asia similar to those with

16. European Union Institute for Security Studies (EUISS), *Yearbook of European Security 2017*, 2017.

17. Guy Banim, "The EU's Contribution to the ARF Agenda" in "Prevention Better than Cure: the EU's Quiet Diplomacy in Asia", *Report no. 33*, ed. Guy Banim and Eva Pejsova , EUISS (May 2017): 19.

18. European External Action Service (EEAS), "How Does the ESDC Contribute to Defence Diplomacy?", October 17, 2017, https://eeas.europa.eu/headquarters/headquarters-homepage_et/34095/How%20does%20the%20ESDC%20contribute%20to%20Defence%20Diplomacy?

the ARF. One added benefit of such exchanges is to foster better understanding of the role of the EU as a security actor – a facet of the EU which is hardly recognised in most Asian countries. Seeing the EU as more than an economic power remains a difficult perception challenge, and stronger defence diplomacy could mitigate this in critical expert communities.

Partnership agreements

The importance of Northeast Asia to the EU is best demonstrated by the flurry of agreements that have entered into force since 2010 or been signed as recently as July 2018. Between enhanced economic and strategic cooperation and an increasingly volatile security environment in Northeast Asia, hard power relations also fit into the discussion as related to protecting European interests. Japan and South Korea are respectively the sixth and eighth-largest EU trade partners,[19] and share key strategic interests in preserving a rules-based international order. As made clear in the SPA, this order is underpinned by a host of shared priorities, including: strong arms control and nuclear non-proliferation, maritime security engagement, free trade, cybersecurity and hybrid threat management, climate change policies and effective crisis management. While the EU-South Korea Framework Partnership Agreement (FPA) provides scope for operational cooperation *vis-à-vis* the Common Security and Defence Policy (CSDP), the defence-related aspects of the newly signed EU-Japan SPA are more likely to enhance industrial and technological cooperation.

Although they focus essentially on political and security cooperation, any enhancement of military relations between the EU and South Korea would still be underscored by the trinity of partnerships signed since 2010: the Free Trade Agreement (FTA), Framework Agreement (FA) and FPA for CSDP which entered into force in 2011, 2014 and 2016 respectively. This is noteworthy as the first time the EU signed an FPA with a strategic partner. This set of partnerships is the backdrop for any advancement of hard power relations at the EU level.[20]

South Korean contributions to EU-led crisis management offer a gateway to more defence-oriented engagement. For example, South Korean personnel contributions to the military operation EUNAVFOR ATALANTA, aiming to reduce piracy off the coast of Somalia, are valuable in establishing linkages between military personnel for low-end naval operations. South Korean naval forces have provided critical escorts to secure free and safe navigation of European merchant vessels off the Horn of Africa. Other military engagement may also take place in the framework

19. European Commission Directorate General for Trade, "Client and Supplier Countries of the EU28 in Merchandise Trade (value %)", April 16, 2018, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.04.2018.pdf

20. Thomas Renard, "The EU's Strategic Partnership Agreements: Balancing Geo-economics and Geopolitics", Egmont Royal Institute for International Relations, June 9, 2015, http://www.egmontinstitute.be/eu-strategic-partnership-agreement/

of enhanced EU-NATO cooperation, given the renewed Individual Partnership and Cooperation Programme from November 2017 between NATO and South Korea, building on more than a decade of dialogue cooperation and South Korean deployments to Afghanistan.[21]

Japan has also sent vessels to work in coordination with other naval contingents (a lower level engagement than was the case for South Korea) in the context of the ATALANTA mission; however it is the more recent developments that offer a more concrete framework for EU-Japanese cooperation. In addition to recent policy changes and the series of bilateral agreements that were signed in 2017, the EU and Japan concluded the negotiation of a SPA. Together with the EU-Japan FTA, the newly signed SPA can provide a framework for substantive contributions to security and defence cooperation. Whereas EU-South Korean hard power relations, particularly relying on the FPA, may moreover depend upon operational experience, enhanced EU-Japanese defence relations may instead emphasise increased cooperation on dual-use technology development.[22]

Similar to the agreements with South Korea, Article 3 of the EU-Japan SPA focuses on 'peace and security' – with other articles emphasising space, cyber and non-proliferation cooperation.[23] In line with the SPA, linkages between increased EU hard power and Japanese ambitions to step up its role as a 'proactive contributor to peace' could be a natural fit – as related to arms control and non-proliferation and disarmament, cybercrime, disaster management, counter-terrorism, energy security and maritime security. To the extent that security and defence can be bifurcated, many of these tasks will be in the former category. That said, there may be increased scope for capability development and technology transfers beyond the bilateral agreements described above.

Between Japanese strengths in dual-use areas, such as machine learning and robotics, and existing EU-Japanese science and technology (S&T) cooperation in the civilian sphere, the European Defence Fund (EDF) and EU Defence Industrial Development Programme (EDIDP) have also garnered interest. In tandem, Article 14 of the EU-Japan SPA agreement, calling for 'enhance[d] cooperation in the area of science, technology and innovation' and Article 17 focusing on industrial cooperation[24] may also create more momentum for dual-use or military cooperation.

Such S&T cooperation could take various forms, and serve to reinforce mutual interest in outer space and cyber, respectively specified in Articles 16 and 36 of the EU-Japan SPA. Building on existing initiatives, such as constructing satellites to

21. NATO, "Relations with the Republic of Korea", November 7, 2017, https://www.nato.int/cps/ru/natohq/topics_50098.htm?selectedLocale=en

22. Ministry of Defence of Japan, "Strategic Partnership Agreement between the European Union and its member states, of the one part, and Japan, of the other part", July 17, 2018, https://www.mofa.go.jp/files/000381942.pdf

23. Ambassador Shiojiri, "Remarks: The Japan-EU Strategic Partnership Agreement", Mission of Japan to the European Union, January 30, 2014, http://www.eu.emb-japan.go.jp/pdfs%20and%20docs/Ambassador%20Shiojiri%20speech%20on%20SPA_WEBSITE.pdf

24. European External Action Service (EEAS), "EU-Japan Strategic Partnership Agreement", July 17, 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/48461/eu-japan-strategic-partnership-agreement_en

reduce dependence on the US Global Positioning System (GPS) and undertaking cybersecurity dialogues, the SPA can be expected to deepen cooperation. While Europe already benefits from Galileo – and may extend its reach to some French-held territories in the Asia-Pacific – Japan could benefit from valuable lessons as it aims to launch its own constellation of seven satellites to achieve their local alternative to US GPS by 2023. Since 2015, the EU and Japan have held annual bilateral cybersecurity dialogues, a basis for further cooperation in this non-traditional security area.

A further sector of mutual interest is cooperation in developing energy-related technologies, as related to two goals set out in the SPA: combating climate change and enhancing energy security. While primarily civilian, cooperative green technology development and information exchanges also may offer the armed forces operational advantages such as reducing military logistics tails, extending mission duration or even adding stealthy elements useful for intelligence and special operations.

Conclusion

As the EU boosts its profile as a contributor to global stability, its experience in arms control negotiations will be among the most important components of cooperation with Northeast Asian countries. This, however, does not preclude other day-to-day engagements to enhance hard power relations. While privileged bilateral relations with select member states are rightfully the primary framework for European defence cooperation with South Korea and Japan alike, the Union's ability to facilitate the development of dual-use and military capabilities and coordinate enhanced crisis management cooperation secures its relevance to Northeast Asian – and, by extension, global – security.

Overall, bilateral relations have demonstrated the potential offered by non-adversarial competition to Washington. In addition to the examples described above, the competitive fighter jet market is also critical. Given that both Seoul and Tokyo have been rebuffed by Washington's restrictive fighter jet export controls (for components for the KF-X programme in the case of South Korea and denial of the F-22 in the case of Japan), a unified and active Europe offers potential – particularly given current European focus on a future combat aircraft system (FCAS).

Just as Europe has begun filling South Korean capability gaps in the absence of Washington's export control approvals, Japanese-European cooperation may follow a similar pattern with the burgeoning framework of bilateral defence industrial cooperation with member states and potential dual-use cooperation with the EU in relation to the SPA. Both Northeast Asian countries may try to leverage a strengthened European position in negotiations with the US, but regardless, recent transfers show a pattern of Europe carving out niches in the region. Between shifting dynamics with Washington, the potential for increased defence diplomacy, and the myriad EU-level partnership agreements with strategic relevance, bilateral relations seem to be just the beginning.

Chapter 6

The complex drivers of military modernisation in Asia: the case of Indonesia

Bruno Hellendorff

As a matter of principle, the European Union has long tried to buttress its credentials as a security actor and provider *vis-à-vis* its Asian partners. An explicit objective of the EU in Asia is to establish itself 'as a credible political and security player in the region through demonstrating relevant expertise and working with key allies from inside and outside the region.'[1] In recent years, this ambition has led the EU to reconsider arms sales as not just a prerogative of member states, but also as a potential instrument for exerting leverage and influence on the geopolitical stage and allowing the Union to demonstrate a degree of 'hard power' in Asian security dynamics.

Transfers of defence equipment and technology are usually evaluated with regard to three criteria: operational (how well do the capabilities acquired measure up to the requirements?); procedural (how and under what provisions were these capabilities acquired?); and diplomatic (what are the effects on regional or global dynamics?). The political and symbolic aspects of the arms trade are less frequently commented upon. Yet, in the Asia-Pacific where economic growth is a strong enabler, and where diplomatic rivalries and competitive nationalist agendas frame defence modernisation processes in increasingly antagonistic terms, the interaction of the arms trade with politics deserves special attention.

This chapter starts from one straightforward assumption: arms transfers carry a strong symbolic charge, one that is significant in both strategic and political terms. Since this aspect of arms trade is a key dimension of the Asia-Pacific's evolving strategic and security landscape, there is room for external involvement, including for the EU, but with important caveats. To understand those caveats, it is necessary to look beyond the 'arms race' narrative and consider net importers as more than just recipients: aside from the actual contracting and delivery of equipment, there

1. European External Action Service, "EU-Asia Security Factsheet", http://eeas.europa.eu/archives/docs/asia/docs/eu_in_asia_factsheet_en.pdf

are many options available for tactical or strategic manoeuvring, both upstream (signalling interest, publishing white papers, drafting and adjusting procurement rules, sending delegations to public events, visiting facilities, entering into discussions or negotiations, etc) and downstream (displaying, testing and deploying of new equipment, implementing and monitoring offset agreements, organising joint exercises and training).

What are the main drivers of military modernisation programmes in the Asia-Pacific, and what does that tell us about the EU's potential role in the region's evolving strategic landscape?

Aside from the all-important, yet quite specific, case of China,[2] other Asian countries are modernising their military in fast-changing and complex ways. We here take Indonesia as a case study. Indonesia is Southeast Asia's largest country and its economy is growing at 5-6% per year. It sees increased defence spending as a political priority and invests important sums of money in procuring weapon systems abroad, including from European companies, while harbouring great hopes for its own defence industry. While unhappy with its status of arms importer and using its growing financial resources to develop domestic production chains as part of a wider political discourse on sovereignty, the Indonesian government is also facing considerable obstacles – not least in budgetary terms – in delivering on its promises to modernise the military. The country therefore offers valuable insights as to how arms transfers can affect the socio-political trajectory of Europe's main partners in Asia.

In the following sections, some of the main drivers of military modernisation in Asia are examined in greater detail, as they unfold in the specific context of Indonesia. The chapter focuses on (i) the structural enablers of increasing military spending; (ii) domestic power games; and (iii) the use of arms transfers in political discourses. The chapter concludes by arguing against the idea that arms exports provide a ready-made channel for influence, showing instead that the EU has limited options in this realm. However, the EU has much to gain in fostering deeper and stronger dialogue mechanisms on the regulation of the arms trade with its Asian partners.

The operational constraints of a changing environment

The first driver of increased military spending by Asian states is three-pronged. It comprises the conjunction of additional resources made available to governments by economic growth, the need to modernise their arsenal and the will to adjust their military capabilities to a fast-changing threat environment. Together, these interrelated dynamics make overall increases in military spending possible. In 2016,

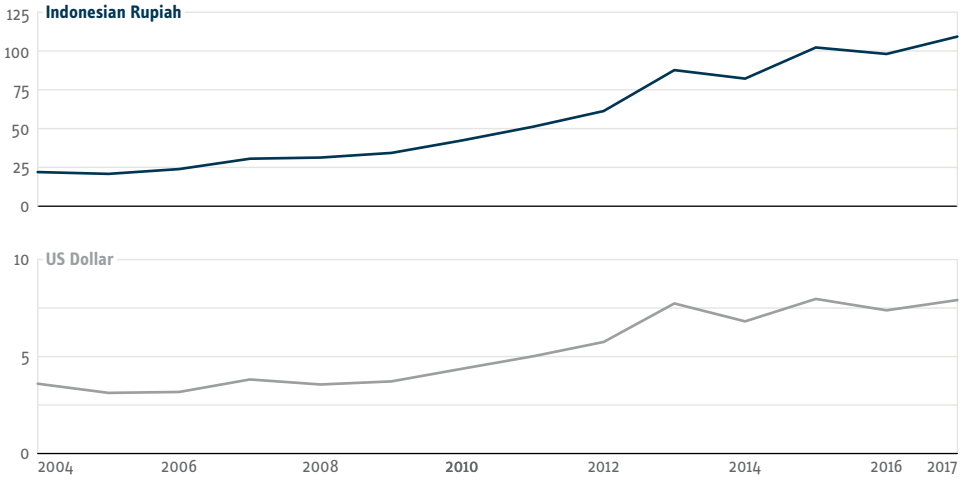
2. Richard A. Bitzinger and Nicu Popescu, eds., "Defence Industries in Russia and China: Players and Strategies", Report no. 38, EUISS, December 2017, https://www.iss.europa.eu/content/defence-industries-russia-and-china-players-and-strategies

military spending in Asia-Oceania grew by 4.6% – the world's most important increase according to SIPRI data[3]. Without the availability of additional resources, a sense of urgency and a perception of threat, such developments might have elicited popular resentment, signs of political opposition or negative media coverage.

This was not the case in Indonesia. During the heated presidential campaign of 2014 – a year of declining military spending – the two main contenders (Prabowo Subianto and Joko Widodo, nicknamed 'Jokowi') similarly committed to strengthen the budget of the armed forces.[4] However, once elected president, Jokowi faced a difficult budgetary context. He reaffirmed his commitment to enhancing the budget of the armed forces (*Tentara Nasional Indonesia* –TNI), but only to the extent allowed by economic conditions.[5] In 2015 and 2016, the Jokowi administration presented to parliament budget proposals that implied cuts in military spending.[6] Such proposals were contested in parliament,[7] as many Indonesian politicians – especially from the opposition – continue to call for additional resources to be pumped into the military.[8] According to SIPRI data, while military spending in Indonesia grew steadily between 2004 and 2014 – during the two mandates of the previous President Susilo Bambang Yudhoyono ('SBY') – the picture between 2014 and 2017 is less clear. Converting actual military spending into constant US dollars, the figure flattens: Indonesia spent close to $7 billion in 2014 (down 11.89% from 2013) and $8 billion in 2017, which puts it behind city-state Singapore, Southeast Asia's biggest military spender whose arms spending amounted to $10.1 billion in 2017.[9]

3. Nan Tian, Aude Fleurant, Pieter D. Wezeman and Siemon T. Wezeman, "Trends in World Military Expenditure, 2016", SIPRI, April 2017, https://www.sipri.org/sites/default/files/Trends-world-military-expenditure-2016.pdf
4. Dian Maharani and Deytri Robekka Aritonang, "Jokowi Janji Tingkatkan 3 Kali Lipat Anggaran Pertahanan", *Kompas*, June 22, 2014; Fikri Faqih, "Prabowo tanya Jokowi bagaimana cara menambah kekuatan TNI", *Merdeka*, June 22, 2014.
5. Ina Parlina, "Jokowi Pledges Ambitious Arms Spending", *The Jakarta Post*, February 24, 2016.
6. Prashanth Parameswaran, "Will Indonesia Double Its Military Budget in 2016?", *The Diplomat*, May 19, 2015; News Desk, "2017 Defense Budget Set Much Lower Than Proposed by Govt", *The Jakarta Post*, October 14, 2016.
7. Prashanth Parameswaran, "Will Indonesia's Military Budget Fall or Rise?", *The Diplomat*, September 30, 2015.
8. Rachmat Nur Hakim, "Fadli Zon: Anggaran TNI Harus Dinaikkan", *Kompas*, October 6, 2017; Nurul Fitri Ramadhani, "Prabowo Accuses Jokowi Govt of Weakening TNI", *The Jakarta Post*, June 21, 2018.
9. These figures are in constant (2016) US dollars. See the SIPRI military expenditures database.

FIGURE 1 | Military spending in Indonesia 2004-17



Data: SIPRI, 'Arms Transfers Database', 2018

As this graph illustrates, GDP growth is not in and of itself a driver of military spending. Additional factors come into play which push governments to invest in their military. In Indonesia's case, it is clear that the need to modernise military hardware and the perception of a changing threat environment play a considerable role in pushing military spending up (and pushing the opposition to call for such investment)[10] despite a dire fiscal and budgetary environment.

The TNI continue to operate obsolete platforms and systems. For instance, in 2004, when the western part of the country was hit by a tsunami, 15 of its C-130 transport planes were grounded, due to lack of spare parts and insufficient upkeep. Jakarta pointed at the US embargo in place at the time to justify the need to diversify its portfolio of defence suppliers and promote its own industry for the sake of greater autonomy. In 2015, a C-130 crashed in Medan, leading to a death toll of 142 people, including many civilians.[11] This tragedy led to a public outcry and highlighted the sorry state of military inventories. Between 2006 and 2015, no less than 18 accidents were recorded that involved TNI hardware and in 2015 the country's leading think tank evaluated that 52% of TNI equipment had been operated for over three decades[12]. According to *Vice Indonesia*, no fewer than 38 members of the TNI died in incidents related to the age and obsolence of military equipment in the 2016-2017 period alone.[13]

10. Ashri Fathan and Mohammad Wildan, "Prabowo Minta Pemerintah Naikkan Anggaran TNI", *Detik TV*, May 16, 2018.
11. Dewi Kurniawati & Austin Ramzy, "Death Toll Rises to 142 After Indonesian Military Plane Crashes Into City", *New York Times*, June 30, 2015.
12. Iis Gindarsah, "Arms Modernization and Military Transformation in Indonesia", *The Jakarta Post*, July 10, 2015.
13. Adi Renaldi, "Insiden Alutsista Terlalu Sering Tewaskan Anggota TNI 10 Tahun Terakhir", *Vice Indonesia*, March 15, 2018.

This has led the military to devise a long-term plan, aiming to acquire the 'main military platforms' (*Alat Utama Sistem Senjata* or 'alutsista') necessary to acquire a 'minimal essential force' (MEF) by 2024. Formalised in 2005, this programme has since been complemented by Jokowi's call to make Indonesia a 'global maritime fulcrum' (*poros maritim dunia* or 'GMF'). This ambition implies that Indonesia will seek to acquire or develop new capabilities more aggressively, in order to become 'a formidable regional naval power'[14] and deliver on the President's broader promises, including a new Sea Policy.[15]

Meanwhile, the focus and strategic aims of Indonesia's defence modernisation programmes have also evolved in relation to contextual elements. Jokowi's focus on maritime issues and the GMF slogan has made illegal, unreported and unregulated fishing or South China Sea tensions central to ongoing defence planning, institutional restructuring and procurement processes.[16] Even the army (*TNI-Angkatan Darat* or 'TNI-AD') sought to take on missions pertaining to maritime security (where the navy, i.e. the *TNI-Angkatan Laut* or 'TNI-AL', is most involved), as was apparent in 2014 when it partnered with local shipbuilders to develop and procure a new fast assault craft: the KMC Komando.[17]Protecting Indonesia's territorial sovereignty in the maritime domain has grown to be not only a top priority of the TNI, but also a key 'selling point' in the narrative the government projects towards domestic audiences: in a 2014 poll, '25 per cent of Indonesian respondents believe[d] that border incursion and foreign military aggression are among the primary threats to national sovereignty.'[18]

Additionally, military involvement in counter-terrorism missions has changed over the last decade. In 2016, the TNI conducted operations in Poso, central Sulawasi, against longtime 'most wanted' terrorist and leader of the militant group Mujahidin Indonesia Timur (MIT') Santoso.[19] The rise and territorial expansion of the so-called 'Islamic State' in Syria and Iraq also prompted new developments in this domain: 700 Indonesian citizens have joined the militant group in the Middle East, to the point that an Indonesian-speaking fighting unit (the 'Katibah Nusantara') was formed there, and returning foreign fighters bring with them new skills and resources.[20] In 2015, a failed plot in a shopping mall led to the discovery of chlorine in a homemade chemical bomb: this was the first time Indonesia faced the prospect of a chemical attack.[21] In January 2016, the so-called Islamic State of Iraq and Syria (ISIS) claimed

14. Iis Gindarsah and Adhi Priamarizki, "Indonesia's Maritime Doctrine and Security Concerns", *RSIS Policy Report*, April 9, 2015.
15. RSIS Workshop Report, "Indonesia's Global Maritime Fulcrum: Challenges and Trajectories", *RSIS Institute of Defence and Strategic Studies,* July 23, 2015.
16. Lyle J. Morris and Giacomo Persi Paoli, "A Preliminary Assessment of Indonesia's Maritime Security Threats and Capabilities", RAND, 2018.
17. "Indonesian Army (TNI AD) Unveils its New 'KMC Komando' Fast Assault Craft", *Navy Recognition*, April 30, 2014.
18. Iis Gindarsah and Adhi Priamarizki, "Indonesia's Maritime Doctrine and Security Concerns": 3-4.
19. POSO, "Indonesian Elite Troops Enter Forest to Hunt for Most Wanted Terrorist Suspect Santoso", *The Straits Times*, January 27, 2016.
20. Arsla Jawaid, "Indonesia and the Islamic State Threat", *The Diplomat*, March 15, 2017. Soufan Group, "Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq", December 2015, http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate_FINAL3.pdf
21. Kate Lamb, "Indonesian Police Blame Jihadis Returning from Syria for Chlorine Bomb", *The Guardian*, March 25, 2015.

responsibility for the terrorist attacks that took place in downtown Jakarta, when a dozen militants detonated explosive charges and exchanged gunfire with police officers. New tactics and methods have emerged among home-grown militant cells and an apparently growing number of self-radicalised groups and individuals: in 2018, women and children participated in deadly suicide attacks targeting religious minorities and law enforcement forces.[22] It is noteworthy that in the wake of the Marawi siege in the neighbouring Philippines, the TNI played an important role in monitoring and securing the area around the Sulu sea alongside the military and security forces of the Philippines and Malaysia.[23] The fear was that militants from groups such as the Maute Group and Abu Sayyaf fleeing the Southern Philippines might find a refuge in Indonesia[24].

Civil-military relations

A second driver of military modernisation is domestic power games pertaining to the normalisation of the mandate of the armed forces (and a traditionally strong political role of the military, especially land forces) in several Asian countries.

Indonesia provides a case in point of a country where the armed forces have historically held a position in the nation's political system and economy that was institutionalised as a 'dual function' (*dwifungsi*). During the country's New Order (*Orde Baru*) era, between 1966 and 1998, the armed forces had a bloc of reserved seats in the parliament and controlled a great part of the economy. Corruption was then, in the words of Australian scholar Robert Elson, 'a well-managed franchise, like McDonald's or Subway'[25] and the military played an active role in what was then referred to as 'corruption, collusion, nepotism' (*Korupsi, Kolusi dan Nepotisme*, or 'KKN').[26] Relatedly, the army (TNI-AD) was deeply involved in political surveillance through a territorial management structure that largely overlapped with the structure of government administration.[27]

The New Order came to an end in 1998 in the wake of the Asian financial crisis. Fearing that the country might implode, political and military leaders then agreed to

22. Sidney Jones, "How ISIS Has Changed Terrorism in Indonesia", *New York Times*, May 22, 2018.
23. Wahyudi Soeriaatmadja, "Indonesia on Alert against Militants Disguising as Refugees from Marawi", *The Straits Times*, June 19, 2017.
24. Bruno Hellendorff and Denis Jacqmin, "The Caliphate in Southeast Asia: Intertwined Logics of a Shared Concern", *GRIP Analysis*, April 5, 2017.
25. Donald Greenlees, "Suharto's Legacy of Development and Corruption", *New York Times*, January 28, 2008.
26. Richard Robison and Vedi Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets* (New York: RoutledgeCurzon, 2004).
27. Jun Honna, *Military Politics and Democratization in Indonesia* (London: Routledge, 2003).

pass sweeping reforms, leading to an effective democratisation and decentralisation of the political system. Yet, in the era of reforms (*Reformasi*), TNI involvement in the economy and corruption within the ranks, especially through procurement processes, would remain a lingering issue.[28]

The Indonesian parliament passed laws on national defence in 2002 and 2004, limiting the role of the armed forces to the defence of national sovereignty and separating them from the police. All military-owned businesses were supposed to be transferred to the civilian state. However, by 2009, many military cooperatives and foundations were still far from under civilian oversight – let alone civilian ownership.[29] In 2006, then minister of defence Juwono Sudarsono confirmed that markups still existed in TNI procurement processes.[30] As recently as 2016, a General from TNI-AD was sentenced to life 'for embezzling US$12 million through defense weaponry procurement between 2010 and 2014.'[31]

Coming to turf wars, the case can be made that while Indonesia is seeking to move from a traditional army-centric perspective to a more balanced approach, the transition is not as smooth as expected.[32] Arms transfers play a role in this, since they can reinforce the status and budget of one branch at the expense of the others: for instance, in view of the air force and navy's ambitious capability development plans, the Indonesian army put great emphasis on buying such 'big-ticket' items as Leopard tanks and AH-64E Apache helicopters.

In 2017, grenade launchers that were bought by the Police Mobile Brigade (Brimob) were stopped at the airport by the military who considered this import 'illegal': all imports to the country require a licence by the armed forces. The President himself had to step in to ease tensions and put an end to the spat, warning the military to 'stay out of politics.'[33] This highlights the intricacies of domestic politics and bureaucratic complexity inherent to the purchase of weapons abroad. At stake here is the contribution of foreign arms-suppliers to complex power games in the recipient country and the risk that this can generate for democratic institutions and rules. As a rule of thumb, the procurement of major weapon platforms or *Alutsista* offers a way to short-circuit regulatory frameworks, and two additional cases can be cited here to further illustrate the argument.

When Indonesia bought four Su-30 and Su-27 fighter jets from Russia in 2003, it appeared that the air force had actually little say in the process. The presidency was

28. Edo Karensa, "Indonesia's Defense Sector at High Risk of Corruption: Transparency International", *Jakarta Globe*, January 21, 2016, http://rai-see.org/indonesias-defense-sector-at-high-risk-of-corruption-transparency-international/ ; "When Military Personnel are Involved in Corruption", *Tempo*, December 30, 2016.

29. Lisa Misol, "'Unkept Promise': Failure to End Military Business Activity in Indonesia", *Human Rights Watch,* January 11, 2010.

30. Lisa Misol, "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities", *Human Rights Watch*, 18, no. 5, June 2006.

31. Haeril Halim, "TNI General Gets Life for Graft", *The Jakarta Post*, December 1, 2016.

32. See: Gregory Vincent Raymond, "Naval Modernization in Southeast Asia: Under the Shadow of Army Dominance?", *Contemporary Southeast Asia*, 39, no. 1, (2017): 149–77.

33. "Transparency in Weapon Imports", *Tempo*, 11 October 2017.

accused of having short-circuited most of the freshly-crafted democratic procedures.[34] The planes were largely paid for by exports of natural resources, including palm oil, via Indonesia's National Logistics Agency (Bulog) – an agency whose mandate is to maintain food price stability. The former coordinating minister for the economy, Rizal Ramli, then argued:

> 'The purchase of the Sukhoi jets was not included in the planning documents of the minister of defense or the Ministry of Defense. Even the allocation of import credits totaling US$ 241.71 million to [the armed forces] in the 2003 budget drawn up by National Development Planning Agency (Bappenas) did not include the purchase of the Russian equipment. Nor did the purchase appear in the Air Force's plans to the year 2004 [...]'[35]

More recently, a scandal erupted in Indonesia after a 'mystery' VVIP helicopter arrived in the air base of Halim Perdanakusuma (Jakarta), in February 2017. Back in 2014, the Indonesian air force had requested funds to buy three new VVIP helicopters, to be used to transport the President, and it had selected the AW101 (produced by the Italian firm Leonardo). The Indonesian President cancelled the order on budgetary grounds, and the Defence Minister, as well as the chief of the military, turned down an alternative proposal for sourcing a single AW101 that would be configured for search and rescue missions. Nevertheless, the air force went ahead with the contract, arguing that the acquisition would come out of its own budget, thus making national regulations on local content and the orders of the hierarchy 'irrelevant.'[36] Interestingly enough, this helicopter was part of a batch originally destined for India, where the deal fell through after it was discovered that politicians and military officials had received bribes in the process. Civilian control and oversight over the military is therefore in constant need of reinforcement. What can be inferred from this particular case is either that the military seeks to maintain some privileges pertaining to a past era, or that it seeks to take advantage of a competitive political environment where it feels it may have an edge. In either case, arms procurement clearly appears as the primary arena of civil-military rivalry.

Contribution to political ambitions

A third and all-important driver of military modernisation in Asia is the use of arms sales in a political discourse merging nation-building aspirations with technological and industrial ambitions – a phenomenon encapsulated in Richard Bitzinger's concept of 'techno-nationalism'.[37]

34. Brendan Taylor, *American Sanctions in the Asia-Pacific* (London: Routledge): 102; Xiaodon Liang and Sam Perlo-Freeman, "Corruption in the Indonesian Arms Business: Tentative Steps Towards an End to Impunity", World Peace Foundation (December 2017): 10-11.

35. Rizal Ramli, "Sukhoi Deal is Betrayal of 'Reformasi'", *The Jakarta Post*, July 25, 2003.

36. Mike Yeo, "Another Twist in Indonesia's Puzzling AW101 Helicopter Buy", *Defense News*, February 16, 2017.

37. Richard A. Bitzinger, *Arming Asia: Technonationalism and Its Impact on Local Defense Industries* (New York: Routledge, 2017).

In 2012, bearing in mind the political objective of greater autonomy and self-reliance in defence equipment, the Indonesian Parliament passed a law stipulating that major defence-related contracts signed with foreign partners had to contain a minimum amount of counter-trade, local content and offset provisions. Arms imports were supposed to help develop the national industry. In 2014, when he defended this new regulation, Indonesian defence minister Purnomo Yusgiantoro declared: 'Our philosophy is that if we want to have a strong country, we need to have strong armed forces. And if we want to have strong armed forces, we need a strong defence industry to support them. That is why it is necessary to strengthen our armed forces in parallel with pushing the defence industry further.'[38]

The idea behind the 2012 defence industry law is to rely on offsets and countertrade to build the country's own industry and become self-sufficient in strategic supplies as soon as possible. A first problem was implementation. The AW101 scandal mentioned above offered a clear indication that there are still ways to circumvent the rules. Filling the gaps has become a priority for political decision-makers: in February 2018, Indonesia was reported to have finally signed a deal for 11 Sukhoi-35 fighter aircrafts, and the deal is reportedly 'the first major arms deal during the presidency of Joko Widodo to adhere to the 2012 Defence Industry Law.'[39] Funding mainly comes from the export of natural resources to Russia however, and this will likely complicate the enforcement of contract provisions.

Not incidentally, Indonesia's emphasis on self-sufficiency in defence procurement strongly resonates with some of the pillars of the country's political culture: President Jokowi explicitly recycled the 'Trisakti' vision of Sukarno as his own programmatic platform. This vision is presented as encapsulating sovereignty in politics, independence in the economy, and pride and distinctiveness in cultural development.

Further reinforcing the point, the 2012 defence industry law was cited as a reason for Indonesia not to join the first international treaty to cover the trade of conventional arms: the Arms Trade Treaty (ATT) that was signed in 2013 and entered into force in 2014. 'Indonesia is unable to sign yet because the treaty contains a notion of conditionality that is against our law', foreign affairs ministry spokesman Michael Tene explained at the time.[40] Of particular importance to Indonesia was the language associated with human rights protection: Jakarta does not wish to subscribe to a framework in which exporter countries could leverage human rights provisions for strategic aims (attaching conditions to supplies of defence equipment and technology). Another issue for the country is that it seeks to be an arms exporter in its own right. Such a transition will necessarily require regulatory adjustments: in

38. Purnomo Yusgiantoro, "Self-Reliant Defense", *The Worldfolio*, 2014.

39. The Jakarta Post/Asia News Network, "Indonesia's New Air Force Chief to Prioritise Procurement of Jet Fighters", *The Straits Times*, 18 January 2018.

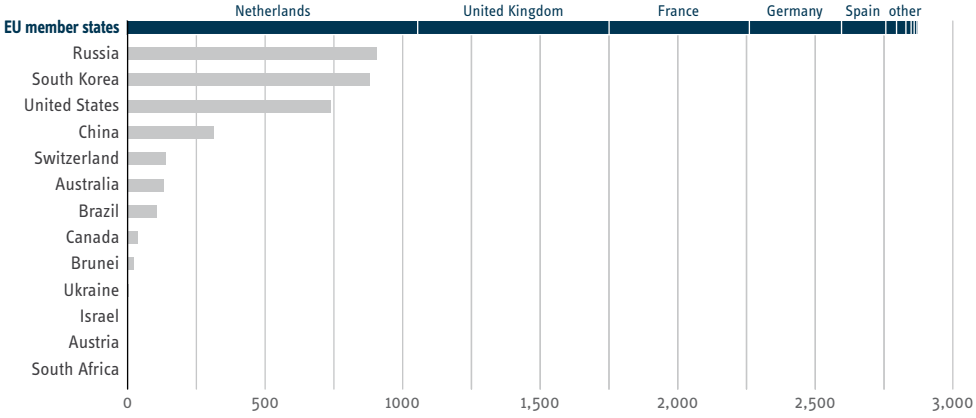
40. Natalia Santi and Abdul Manan, "Indonesia Refuses to Sign Arms Trade Treaty", *Tempo*, June 4, 2013.

2017, the country's leading shipyard, PT PAL, was rocked by a corruption scandal over the deal it signed in 2013 with the Philippines, turning this contract 'from a sign of promise for Indonesia's defense aspirations to yet another blot on the country's record on defense deals.'[41]

Arms export: Europe's way in?

According to SIPRI data, throughout the period 2004-17, half of Indonesia's defence imports originated from the EU (and Switzerland). Jakarta's main partners during this period were the Netherlands (selling frigates), the United Kingdom (with air defence systems),[42] France (ships, helicopters), Germany (tanks), Spain, Italy and Belgium.

FIGURE 2 | Indonesian arms imports 2004-17
by partners, TIV[43] million



Data: SIPRI, 'Arms Transfers Database', 2018

Certainly, the sale of 'big ticket' weapon systems often comes with – and buttresses – long-term political and strategic commitments. For instance, Airbus' longstanding cooperation with PT DI on such products as the C295 transport plane and helicopters contributed to make France's strategic partnership with Indonesia (since 2011)

41. Prashanth Parameswaran, "Corruption Scandal Rocks Indonesia-Philippines Warships Deal", *The Diplomat*, April 4, 2017.
42. The arms imported from Brunei were actually ships ordered by Brunei from the British company BAE systems. After a contract dispute (that was subject to arbitration), Brunei refused to integrate these corvettes in its navy and sought a new customer. In 2012, Indonesia agreed to buy the three vessels.
43. SIPRI Trend Indicator Values (TIVs): 'Military expenditure data measured in constant dollars is a trend indicator of the volume of resources used for military activities, which allow comparisons to be made over time for individual countries and between countries.' See SIPRI's methodology at: https://www.sipri.org/databases/armstransfers/background

a solid one.[44] As such, arms sales can constitute useful venues of influence and provide leverage points for diplomacy. But as the AW101 scandal shows, they can also become a liability. In 2017, the Indonesian trade minister threatened to target Airbus as retaliation for an EU regulation on palm oil.[45]

Arms sales may be a foreign policy tool for many countries. As the world's largest exporter of defence products, the US explicitly sees such transfers as serving no less than ten national security and foreign policy goals.[46] In its defence policy in the Asia-Pacific, France emphasised the importance of arms trade alongside defence cooperation, military presence in the region and institutional commitments.[47] However, despite the key place occupied by European arms in Indonesia's military modernisation programme – and elsewhere in Asia –, the direct influence the EU can hope to derive from such connections is limited.[48]

Firstly, the EU clearly lacks the capacity to enforce a coherent policy in this realm. European member states have agreed on a common position delineating the criteria governing their arms exports, but the decision to grant a licence remains in the hands of national governments.[49]A case in point was provided in 2013 when Germany approved the sale of Leopard tanks to Indonesia after the Netherlands had denied an export licence for the same equipment, for fear that they could be used to violently suppress domestic dissent.[50]

Secondly, arms trade is not a one-way street between exporters and importers. This is a buyer's market: importers can – and often do – require foreign partners to accept stringent conditions (e.g. with regard to technology transfers, financing, countertrade, etc.). This is clearly the case in Indonesia, where European companies like Airbus entered into local partnerships for regulatory reasons[51] and often compete against one another for local contracts.

Thirdly, defence production chains have become more globalised and more integrated with commercial markets. This has led not only to complex supply chain management issues, but also to a deeper connection of defence trade agreements to broader industrial, technological and research and innovation policies, not to mention export control and financial regulations as well as ethical considerations. Regulating the flow of defence products and technologies has grown more difficult, while international

44. See e.g. Siwage Dharma Negara, Norshahril Saat and Jason Salim, "A Chance for France: President Hollande's 2017 Visit to Southeast Asia", *ISEAS Perspective*, no. 28, 2017.

45. Rendi A. Witular, "Indonesia Mulls Campaign against Airbus Planes to Retaliate against EU", *The Jakarta Post*, May 19, 2017.

46. The White House, Presidential Policy Directive – United States Conventional Arms Transfer Policy, Presidential Policy Directive/PPD-27, Washington D.C., January 15, 2014, https://obamawhitehouse.archives.gov/the-press-office/2014/01/15/presidential-policy-directive-united-states-conventional-arms-transfer-p

47. Ministère de la Défense, *La France et la Sécurité en Asie-Pacifique*, Paris: 2016.

48. Mathieu Duchâtel and Mark Bromley, "Influence by Default: Europe's Impact on Military Security in East Asia", European Council on Foreign Relations, 16 May 2017.

49. See Eva Pejsova in the introduction to this *Chaillot Paper*.

50. Matthias Gebauer and Otfried Nassauer, "Berlin Approves Huge Tank Deal with Indonesia", *Der Spiegel*, 8 May 2013.

51. Sarah Gordon, "Airbus – the European model", *Financial Times*, 23 May 2014.

standards remain underdeveloped. For instance, in 2013, Indonesia relaunched a bank tender to acquire the Avibras Astros B MLRS (multiple rocket launcher system) from Brazil: Western banks kept away from the tender, as the Astros B is capable of launching cluster munitions – which are banned by the Oslo Convention.[52]

In this complex picture, it remains the case that arms exporters have more leeway over this trade than importers, but traditional equilibriums are shifting and nowhere is this evolution as visible as in the Asia-Pacific. As the Indonesian case demonstrates, while European arms may indeed find their way into Asian inventories, EU institutions have very little control over these flows. Indonesia, among other Asian partners, finds European defence goods and technologies attractive precisely because they see them as subject to relatively little strategic and political control. Competition among European firms in this buyer's market means that defence transfers to Asia are primarily dealt with at the level of member states, even if on the basis of a common position, and this provides leverage to the importing parties rather then to the EU.

Conclusion

Military spending growth and arms imports to the Asia-Pacific region are driven by different factors, for different purposes. The region is experiencing dramatic changes, as countries invest more resources in both their armed forces and their domestic industry. This is part and parcel of a deeper evolution: defence production chains are more globalised and more integrated to the civilian market than ever before. Not only are these developments upsetting the traditional interactions between arms importers and exporters; they are also putting the standards and frameworks governing international arms transfers under the spotlight.

Taking Indonesia as a case study, we have found that the implications of international transfers of defence equipment and technology extend far beyond the domain of capabilities. They have an impact on regional dynamics and, even more importantly, they carry an important symbolic charge that is put to use by different segments of society.

In Asia's fast-changing threat environment and political landscape, European arms are *de facto* part of a wider story. However, the EU's leeway over the trading behaviour of its member states is rather limited, and so are the prospects of a direct and decisive involvement of the EU in Asia's spiralling security dynamics. Does that mean it has to look elsewhere for topics of joint concern? Not necessarily. Arms transfers should become a prime locus of dialogue and cooperation between the EU and its strategic partners in the region. More importantly, the EU and its regional partners certainly share an interest in engaging on standards and regulatory frameworks, in order to ensure a level playing field for their respective industries and keep pace with the evolution of production lines in an increasingly globalised environment while clarifying the compliance obligations of their companies.

52. Pierre Tran, "Indonesia's Big Procurement Push is Aided by Lenders", *Defense News*, 31 March 2013.

Chapter 7

Rethinking the EU's contribution to Asia's security

Gareth Price

As many of the contributions to this volume show, the EU is a significant exporter of arms to Asia. France is currently the fourth-largest arms exporter in Europe followed, in order, by Germany, the UK, Italy and Spain. Nine out of ten of the world's largest arms importers are from the Asia-Pacific (including the Middle East). At present, arms exports reflect supply and demand rather than strategy. But given the scale of arms exports, and the rapid militarisation of several Asian armies, could these relationships provide the EU with a means of increasing its role as a strategic actor in Asia?

What kind of security actor?

While Asian security is vital for Europe's prosperity, positioning the EU as a security actor in Asia poses a number of challenges. First, within Asia there is a growing sense of the centrality of the continent – whether conceived of as East Asia, Asia more broadly, or the new formulation of the Indo-Pacific. However framed, the essential point is that Europe is peripheral to a region with a growing sense of its economic and political importance and centrality. By definition, extra-regional actors are less invested in Asia than those countries within it.

Second, the EU faces a long-standing challenge in positioning itself as a security actor rather than a trading entity, reinforced by the tendency of a few of its member states – notably France and the UK – to emphasise their own strategic interests in Asia. The most significant EU territory in Asia – New Caledonia – is well-leveraged by France to demonstrate that it has a personal stake in Asian security. This can serve to underscore a sense that security discussions are best handled bilaterally –

with member states - rather than with the EU. For now, the recent sale of French *Rafale* combat aircraft to India may have strengthened France's strategic standing in India, but few Indians would think of the deal as a demonstration of the EU's strategic profile.

The decision by the EU member state with the second-highest security profile – the UK – to withdraw from the EU is unlikely to help this. Over time, the launch of various military initiatives such as permanent structured cooperation (PESCO) along with security-related dialogues will change perceptions of the EU as a security actor. The most likely game-changer would be a successful troop deployment under a European rather than a coalition umbrella.

Third, historically the EU has emphasised its soft power in its engagement with other countries. Again, this can change over time, but the EU is primarily conceived as a trading partner – being Asia's largest economic partner – or, in some smaller Asian states, as the largest provider of development assistance.

Fourth, the fundamental security challenge within Asia relates to conceptions of the implications of China's rise. A zero-sum formulation does not yet apply to Asia where countries are not systematically pro- and anti-China. Even those most hostile towards China – notably India and Japan – engage with China economically, and within institutions such as the Asian Infrastructure Investment Bank (AIIB). Of late, even China's Belt and Road Initiative has become a potential source of collaboration rather than competition. Meanwhile, most countries in Asia – notably those in ASEAN – seek to balance engagement with China by forging deeper links with other countries. And yet, the sense of a trend towards a zero-sum Asia marginalises those countries that are peripheral to this competition, and the EU's substantive engagement with China enhances the impression that it is an economic rather than a security actor.

Arms sales and policy options

Arms sales from the EU to Asia are significant, and a number of arguments have been made in favour of specific policy options, each of which has a degree of logic. The first argument is that the EU should be, or indeed already is, aligned with the US to demonstrate Western solidarity. The UK and the states of Eastern Europe have typically been the keenest to align their interests with those of the US. Through the Five Powers Defence Arrangements (FPDA), the UK has strong ties with Australia, New Zealand, Malaysia and Singapore. France has prioritised its military-to-military relationship with India. Germany too has focused on its relationship with Australia and Singapore on the grounds that it is 'easier to link arms exports to strategic cooperation' with countries considered to be part of the West.[1]

1. Mark Bromley and Mathieu Duchâtel, "Influence by Default: Europe's Impact on Military Security in East Asia", *Occasional Paper* no. 214, European Council on Foreign Relations, London, May 2017, http://www.ecfr.eu/publications/summary/influence_by_default_europes_impact_on_military_security_in_east_asia_7288#

Although alignment with US interests historically makes sense, less certain foreign policy direction from the US, coupled with increasing market opportunities within Asia and rising competition in traditional markets, has led some EU member states to increasingly act in accordance with their own commercial interests rather than in regard to 'Western' interests – this is particularly the case in relation to dual-use exports to China.

The second suggestion is that the EU could focus on supporting Asian democracies, as a means of demonstrating the EU's normative values and support for human rights. Along with Germany, the Nordic states, notably Sweden, have been actively seeking to tighten their arms export policies, European exports do not currently reflect EU normative values given that their trade is ultimately driven by domestic economic and political concerns.[2] For example, efforts have been made in Sweden to push for the introduction of stricter legislation on arms exports, including a 'democracy clause' to ensure the recipient country's human rights' record becomes a key consideration prior to approving any arms sale.[3]

While this move has been well-received in Sweden, the policy's effectiveness is undermined by two factors; first, that the third-largest importer of Swedish military equipment is Saudi Arabia, which has a questionable human rights record.[4] The recent murder of a prominent critic of the Saudi government has, however, refocused international attention on the ongoing Saudi 'intervention' in Yemen. The second issue is that other EU member states are not pursuing the same policy, meaning it could result in a decrease in Swedish sales while creating an opportunity for other European states to increase arms exports. On 5 October 2018, the European Parliament called on all member states to cancel arms exports to Saudi Arabia, singling out Sweden and Spain as countries that still do.[5]

Europe has not intended to play the role of 'offshore balancer' in the region and has thus 'avoided attaching clear strategic goals to arms transfers.'[6] However, without a unified EU policy in relation to the arms trade, states will continue acting in their own national interests, and opportunities for collaboration and increased revenue will be missed.

An alternative argument is that the EU should seek to balance China's military build-up by supporting its neighbours, regardless of the political system in place. The build-up of the Chinese army has triggered an increase in military spending

2. Mark Bromley and Mathieu Duchâtel, "Influence by Default: Europe's Impact on Military Security in East Asia."
3. Emanuele Scimia, "Sweden vs France: the Future of EU Arms Sales to Asia", *Asia Times*, July 20, 2017, http://www.atimes.com/ds-sweden-vs-france-future-eu-arms-sales-asia/
4. Ibid.
5. "EU Urges Arms Ban on Saudi Alliance to Stop Yemen War", *PressTV*, October 5, 2018, https://www.presstv.com/Detail/2018/10/05/576117/Europe-Parliament-resolution-Saudi-Arabia-Yemen-arms-embargo
6. Mathieu Duchâtel, "China's Military Build-up May be a Game Changer for European Arms Transfers", *South China Morning Post*, February 5, 2018, http://www.scmp.com/news/china/diplomacy-defence/article/2131937/chinas-military-build-may-be-game-changer-european-arms

across the region.[7] From countries with well-developed capabilities such as Australia pledging to increase military spending by 80% by 2025, to Vietnam increasing its military budget to $6 billion in 2020, military expansion appears to be the common approach to counter China's military strength.[8]

Some EU member states have played an important role in arming the smaller states of the region, including littoral states of the South China Sea, such as Malaysia, Indonesia and Vietnam, who are building up their armed forces in case China asserts military control over the area.[9] European arms exports can thus be considered an opportunity to create a balancing force against China. For example, France, one of the states most invested in the region, views itself as a Pacific power supporting regional stability and freedom of navigation in Asia.[10] Given this position, France is enhancing its military-to-military ties with a number of Asian countries including Australia, India, Japan, Malaysia and Vietnam, as a means of increasing arms sales to these countries and to balance the military power within the region.[11]

Another argument – and possibly the one that most closely resembles the *status quo* – is that the EU should arm all parties so that the cost of conflict is too high. Given that Asia is one of the regions in the world where defence spending is increasing, engaging the Asian market has become essential to sustaining European defence industries. Despite the EU arms embargo on China, EU member states continue to export €300 million worth of goods annually to China in arms components and subsystems to be used in the development of China's military capabilities.[12] Furthermore, the lack of EU regulation of technology transfers means that states have interpreted the rules differently and acted inconsistently.

It is clear that member states have played a key role in increasing China's military capabilities through the supply of technology and components exports. China has now become the world's third-largest arms supplier, so it can be argued that the only option is to continue to arm the other countries of the region in an attempt to balance Chinese dominance. This is arguably the position the EU commonly takes given that arms exports to Asia have steadily increased over recent years despite calls from states such as Germany and Sweden to be more selective regarding the countries to which EU member states export such products.[13]

While EU member states do not sell weapons to China, sales of dual-use technologies to China are significant. Asia is one of the few regions in the world in which military spending is increasing, given the combination of political tensions and military modernisation. Whether or not one agrees with the notion that a proliferation

7. Ibid.
8. Ibid.
9. Felix Heiduk, "An Arms Race in Southeast Asia?", *Occasional Paper* no.10, Stiftung Wissenschaft und Politik, August 2017, https://www.swp-berlin.org/fileadmin/contents/products/research_papers/2017RP10_hdk.pdf
10. Mathieu Duchâtel, "China's Military Build-up May be a Game Changer for European Arms Transfers".
11. Mark Bromley and Mathieu Duchâtel, "Influence by Default: Europe's Impact on Military Security in East Asia."
12. Ibid.
13. Felix Heiduk, "An Arms Race in Southeast Asia?"

of weapons makes countries safer, it is understandable why arms manufacturers would look to Asian markets. Between 2012 and 2016 nine of the ten largest arms importers were in Asia (including the Middle East). In the same period, while the US and Russia were by far the largest arms exporters, marginally behind China in third place came, in order, France, Germany, the UK, Spain and Italy.

Enhancing the EU's strategic relevance

How could the EU better coordinate its policy on arms sales to Asia to secure its interests and enhance the EU's strategic relevance to the countries in the region? At present – aside from arms controls on the Democratic People's Republic of Korea (DPRK), Burma/Myanmar and China – the existing approach would be to sell weapons to any potential purchaser. The current approach could be justified on a number of levels. First, it can be argued that the greater the gap between countries in terms of sophistication of military capability**,** the less likely they are to come into conflict. Second, arms sales produce a type of dependency between seller and purchaser, creating a military-to-military relationship through training, spare parts and so forth, which in turn could be exploited to promote common interests. Third, if European defence companies did not sell weapons to a specific country, alternative arms manufacturers are readily available. Stricter European arms sales to (parts of) Asia would by default increase the strategic leverage of, for example, Russia *vis-à-vis* the EU.

While the current approach may appear somewhat *ad hoc*, there seem to be rather limited options in constructing a more 'strategic' approach. Assuming that the arms embargoes on the DPRK and Burma/Myanmar are non-negotiable, this would seem to leave three options for a new approach towards arms exports. The first would be to restrict exports of dual-use technologies to China. The second would be to introduce stricter criteria for arms exports, based on adherence to human rights norms or democracy, for instance. The third change from current practice would be to relax the arms embargo on China.

The first option would clearly irk China. However, while its impact may be questionable, given China's already advanced state of militarisation, it would send a positive signal to countries such as India and Japan regarding the EU's commitment to its norms. But targeting China specifically would potentially exacerbate the growing bipolarity within Asia (while noting that even those countries most concerned about the impact of China's rise remain more than happy to trade with China). The second option may enhance the EU's normative standing and would contrast with China's own rising arms exports, which are predicated both on cost and on the policy of non-interference. However, it remains idealistic given that any new policy would, presumably, need to be global rather than Asia-specific. Many significant purchasers of European arms sales would struggle to pass tests on adherence to democratic norms. Moreover, given that China's arms exports are perceived to be a means of

enhancing its strategic ambitions in parts of Asia and in Africa, by the same logic, for the EU to set benchmarks would serve to undermine its own standing. The final option would clearly antagonise the US, and would send a confusing signal to the EU's other Asian partners.

On balance, the only realistic new approach towards arms exports would involve restricting rather than increasing arms exports. The question of whether this would be worthwhile would involve an assessment of the trade-off between, on the hand, enhanced normative standing and, on the other, loss of revenue and possible influence.

Conclusion

Fundamentally, to definitively answer the question of how arms exports to Asia will ensure peace, and thereby the EU's prosperity, requires an assessment of whether Asia is fundamentally stable or unstable. This in turn requires assumptions regarding:

- Whether the US is acting as security guarantor in Asia;
- Whether arms sales are for domestic security or intended for deterrence;
- Whether China has long-term strategic ambitions within Asia and, if so, is engagement, containment or a combination of the two the best approach?

If one concludes that Asia is stable then it is difficult to argue that a change in the *status quo* would reap dividends. If not, then tightening the criteria on arms sales and/or restricting dual-use exports to China as a means of promoting the rule of law and normative values makes more sense. However, if European arms exports are to become a tool of EU foreign policy, this pre-supposes that there is a European (rather than, for instance, French) arms industry. The Eurofighter aside, by and large defence companies are seen as national rather than regional. Over time, incentives to encourage cross-country research and capability development through the European Defence Fund (EDF) may lead to the development of a fully-fledged European industry, as is more the case in the aviation and motor industries.

Arms exports provide a degree of influence with recipient countries, while tightening or restricting arms exports would enhance the EU's standing as a peaceful actor, although national interests would be unlikely to support such moves. However, more generally it seems difficult to build the case that arms exports provide an easy entry-point to demonstrate the EU's relevance as an extra-regional strategic actor in Asia. Specific security challenges on which the EU is already working, such as cybersecurity, anti-piracy/maritime security and counter-terrorism, offer optimal avenues for engagement. Furthermore, a tighter arms export agreement would require the EU to take sides in what is not, yet, a bipolar Asia and by doing so, would risk bringing a bipolar Asia closer to reality.

Conclusion

Eva Pejsova

The aim of this *Chaillot Paper* is to shed light on the role of European arms and dual-use technology transfers to Asia in the context of the EU's efforts to raise its profile as a security actor in the region. As most East, Southeast and South Asian countries seek to boost their defence capacities in light of the region's increasingly volatile security environment, their military build-up and modernisation programmes represent an excellent market opportunity for European defence industries. But as much as flourishing arms trade can be good for business, it should also support the EU's strategic interests and overall foreign and security policy objectives in the region. Escalating tensions over conflicting sovereignty claims in the South China Sea, the region's most dangerous security hotspot, provide a good example. As a global trading power, the EU has significant stakes in the South China Sea's safety and stability and positions itself as a promoter of peaceful, rules-based solutions to the regional conundrum. Yet European industries indirectly contribute to the military build-up by supplying naval assets to the Southeast Asian littoral countries, as well as military-related technologies to China, the most disruptive stakeholder in the conflict. While some may argue that such activity raises the cost of potential conflict and thus makes it less likely, others may view it as opportunistic, short-sighted and strategically ambiguous.

Indeed, the EU's relationship with China is especially sensitive in this respect. While the 1989 embargo on arms exports remains technically in place, it is not legally binding, nor does it include transfers of dual-use technologies. Now that China has developed its own defence industry and is no longer solely dependent on foreign imports, the embargo has become largely redundant, maintained by the EU mainly as a symbolic tool to signal discontent over some of Beijing's policies, especially on human rights. More importantly, China's military transformation has benefited from Intangible Technology Transfers (ITT) stemming from years of scientific and technological cooperation with individual European countries. While it is difficult to measure the exact impact of these interactions, it is important that future EU policies take into account the competitive elements of EU-China relations and better regulate ITT. Indeed, the issue of regulation of arms and dual-use technologies exports remains high on the EU agenda. While the Community regime for the control of dual-use items promotes a 'human-centred' approach, urging suppliers to consider the internal situation and stability of the recipient country, it is still enforced very loosely. Moreover, stricter regulation of exports to countries with questionable human rights records risks increasing the strategic advantage of other suppliers, such as Russia.

Defence cooperation with like-minded democratic countries, such as South Korea and Japan, is politically less problematic and offers an array of strategic opportunities, still awaiting to be fully exploited. South Korea, which signed a Framework Participation Agreement to take part in a CSDP mission in 2016, is the EU's most advanced security partner in the region and an eager importer of European armaments. Although Japan has traditionally preferred to rely on its US ally and to foster bilateral relations with individual member states such as France and the UK, it has also become increasingly interested in cooperating with the EU in defence research, dual-use technology development and capacity-building exercises. While bilateral relations will remain the norm in Northeast Asia, the EU's experience in conflict prevention and crisis management, as well as its proactive involvement in regional multilateral security forums, can serve as building blocks for the Union to develop a fully-fledged 'defence diplomacy' in the region, using military relationships and interactions to advance its foreign policy goals. The same could be theoretically applicable in Southeast Asia, where the perception of a changing threat environment plays a major role in pushing defence spending, regardless of the availability of resources.

Despite the substantial presence of European defence industries in Asian markets, the EU's hard power influence in Asia remains limited so far – mostly due to the lack of a coherent security policy and effective military capabilities at hand. But in fact useful leverage may be gained from arms sales for strengthening military relations with individual member states and thereby bolstering the overall perception of Europe as a security actor in the region. Furthermore, Brussels' growing involvement in multilateral cooperative structures, such as the ARF or the ASEAN Defence Ministers' Meeting Plus (ADMM Plus), as well as capacity-building and best practice sharing activities in anti-piracy, cybersecurity, counter-terrorism and other non-traditional security challenges have also increased its credibility on the regional scene. As the balance of power in the broader Indo-Pacific is shifting westwards, Europe is becoming an integral part of the regional strategic landscape. Further integration of security policies and calls for greater strategic autonomy should consolidate and reinforce this position in the future.

Annex

European military exports to Asia, 2010-2020

Type of Arm	Quantity	Importer	Category
Austria			
Camcopter S-100 unmanned aerial vehicule	2	Australia	Aircraft
Bulgaria			
Amphibian BRDM-2 armoured reconnaissance tanks (used)	4	Cambodia	Armoured vehicle
BTR-60PB armoured infantry carriers (used)	40	Cambodia	Armoured vehicle
Czech Republic			
BMP-1 armoured infantry vehicles	61	Cambodia	Armoured vehicle
RM-70 120 mm mobile rocket launchers	20	Cambodia	Artillery
VERA-E anti-aircraft radars	4	Vietnam	sensors
VERA-E anti-aircraft radars	4	Vietnam	sensors
France			
EC-665 Tiger Combat helicopter	22	Australia	Aircraft
NH-90 TTH transport helicopter	47	Australia	Aircraft
air refuel system	2	Australia	Aircraft
Vampyr air search system	19	Australia	sensors
FLASH ASW sonar	24	Australia	sensors
Barracuda submarine	12	Australia	Ships
PA6 diesel engines for support ships and frigates produced in China	60	China	Engines
Sherpa A-330 transport aircraft	4	India	aircraft
SA-315B Lama light helicopter	30	India	Aircraft
Mirage-2000-5 FGA aircraft	49	India	Aircraft
Ardiden-1 Turboshaft (turbine engines for helicopters)	30	India	engines
20PA6 diesel engine	20	India	engines
Meteor air-to-air missile	n.a.	India	missiles
Storm Shadow air-to-surface missile	n.a.	India	missiles
SM-39 Exocet anti-ship missile	36	India	Missiles
MICA air-to-air missile	493	India	Missiles
GS-100 Air search radar	19	India	sensors
Scorpene submarine	6	India	ships
CAESAR 155mm howitzer	37	Indonesia	Armoured vehicle
Mistral ground-to-air missile	136	Indonesia	Missiles

Type of Arm	Quantity	Importer	Category
MICA anti-air missiles	40	Indonesia	Missiles
MM-40 Exocets anti-ship missiles	30	Indonesia	Missiles
Hardware for Panther Helicopters	11	Indonesia	n.a.
Large-calibre mortars	8	Malaysia	Artillery
MICA anti-air missiles (mounted on a frigate)	20	Malaysia	Missiles
Frigates	6	Malaysia	Ships
AS-550 Fennec light attack helicopters	4	Philippines	Aircraft
MICA missiles (to be installed on Singapore-built corvettes)	120	Singapore	Missiles
Aster medium-range anti-aircraft missiles	200	Singapore	Missiles
EC155 Helicopter	214	South Korea	Aircraft
Vampyr air search system	3	South Korea	sensors
ASW Sonar	8	South Korea	sensors
MM-40 Exocet anti-ship missiles (to be mounted on a frigate)	25	Vietnam	Engines
MICA anti-air missiles	40	Vietnam	Missiles
France - AIRBUS			
EC725 Super Cougars transport helicopters	8	Thailand	Aircraft
Germany			
EC135 light helicopter	15	Australia	Aircraft
Waran APC (armored personnel carrier)	81	Australia	Armoured vehicle
DM-702 SMArt-155 guided shell	144	Australia	Artillery
MAN-3240 diesel engine	4	Australia	Engines
Meko-200anz frigate Waran	8	Australia	Ships
Diesel engines for destroyers, self-propelled mortar and gun produced in China	40	China	Engines
Dornier Do 228 (short takeoff and landing aircraft)	52	India	Aircraft
RK-280 diesel engine	14	India	Engines
MAN (V6 and 8L-48) diesel engines	28	India	Engines
MTU 8000 and MTU 838 diesel engines	124	India	Engines
BR710 Turbofan engines	4	India	Engines
ASW Sonar	16	India	sensors
Leopard Fighter Jet	100	Indonesia	Aircraft
EC135 light helicopter	15	Japan	Aircraft
Unarmed training aircrafts	20	Myanmar	Aircraft
Ships' engines (for Singapore-built corvettes)	8	Singapore	Engines
Type 218 submarines	2	Singapore	Ships
MTU 1163 diesel engines	42	South Korea	Engines
MTU 883 diesel engines for tanks produced in South Korea	100	South Korea	Engines
Taurus KEPD-350 ASM	177	South Korea	Missiles

Type of Arm	Quantity	Importer	Category
Patriot SAM system	408	South Korea	Missiles
SRAAM (Short Range Air-to-Air Missile)	88	South Korea	Missiles
Submarine	6	South Korea	Ships
EC146 light helicopters	11	Thailand	Aircraft
Oerlikon-Skyguard anti-aircraft guns	4	Thailand	Artillery
Diesel engines for T-84 battle tanks	49	Thailand	Engines
Antisubmarine sonar	2	Thailand	Sensors
Ireland			
Bushmaster APC (armored personnel carrier)	753	Australia	Armoured vehicle
Italy			
A-109K light attack helicopters	2	Australia	Aircraft
C-27J Spartan transport aircraft	10	Australia	Aircraft
Super Rapid 76mm guns (naval guns)	22	India	Artillery
127/64LW naval gun (for frigates)	13	India	Artillery
TMX fire control radar	6	India	sensors
RAN-40L air search radar (for aircraft carrier)	1	India	sensors
Deepak support ship	2	India	Ships
127mm naval gun	5	Japan	Artillery
A-109K light attack helicopters	10	Philippines	Aircraft
Anti-submarine helicopters	2	Philippines	Aircraft
76mm guns (for Singapore-built corvettes)	n.a.	Singapore	Artillery
P-180-Avanti transport aircraft	1	Thailand	Aircraft
AW139 helicopters	8	Thailand	Aircraft
Super Rapid 76mm guns	2	Vietnam	Artillery
Frigates radar systems	n.a.	Vietnam	sensors
Netherlands			
LW-08 air search radar	10	India	sensors
Frigates	2	Indonesia	Ships
Air-search radar (for Singapore-built corvettes)	n.a.	Singapore	sensors
Goalkeeper CIWS (close-in-weapon system	5	South Korea	Air defence systems
radar system for patrol boat	1	Thailand	sensors
SIGMA-90 Frigates	2	Vietnam	Ships
Norway			
NSM anti-ship missiles	100	Malaysia	Missiles
Poland			
WZT armoured vehicle	236	India	Armoured vehicle
Slovakia			
Armoured infantry vehicles	8	Cambodia	Armoured vehicle

Type of Arm	Quantity	Importer	Category
Mobile rocket launchers	5	Cambodia	Artillery
Spain			
A-330 tanker aircraft	5	Australia	Aircraft
BPE AALS (amphibious assault landing ship)	2	Australia	Ships
Hobart destroyer	3	Australia	Ships
Cantabria oiler	2	Australia	Ships
c-295 transport aircraft	56	India	Aircraft
A400M Atlas transport planes (with German engines)	4	Malaysia	Aircraft
C-295s military transport planes (engines imported from CA)	3	Philippines	Aircraft
A-330 tanker aircraft	6	Singapore	Aircraft
A-330 tanker aircraft	4	South Korea	Aircraft
C-295 military transport aircraft	3	Vietnam	Aircraft
Sweden			
RBS-70 Mk-3 Bolide portable SAM (surface-to-air missile)	150	Australia	Missiles
CEROS-200 Fire control radar	8	Australia	sensors
Giraffe AMS air search radar	5	Australia	sensors
AIP engine	40	Japan	Engines
Naval guns	6	Malaysia	Artillery
CEROS-200 Fire control radar	18	South Korea	sensors
Arty locating radar	16	South Korea	sensors
New radar systems	n.a.	Thailand	sensors
United Kingdom			
air refuel system	7	Australia	Aircraft
UFH/M-777 155 mm towed guns	54	Australia	Artillery
ASRAAM (Advanced Short Range Air-to-Air Missile)	20	Australia	Missiles
MSTAR (Man-portable Surveillance and Target Acquisition Radar)	61	Australia	sensors
Enforcer AALS (amphibious assault landing ship)	1	Australia	Ships
Turbofan engines for combat aircraft produced in China	80	China	Engines
Jaguar-S FGA aircraft	20	India	Aircraft
Hawk-100 trainer aircraft	57	India	Aircraft
UFH/M-777 155 mm towed guns	145	India	Artillery
anti-air missiles	350	India	missiles
Starstreak ground-to-air missile	500	Indonesia	Missiles
air refuel system	4	Japan	Aircraft
Turbofan engines for frigates produced in Japan	16	Japan	Engines
Starstreak ground-to-air missiles	n.a.	Malaysia	Missiles
Augusta Wetland anti-submarine helicopters	2	Philippines	Aircraft
Starstreak ground-tp-air missile	n.a.	Philippines	Missiles

Type of Arm	Quantity	Importer	Category
Peacock-class corvettes (navy)	4	Philippines	Ships
AW 159 ASW helicopter	8	South Korea	Aircraft
Mt-30 Gas turbine engine	1	South Korea	engines
Turbofan engines for tanker/transport aircraft produced in Spain	8	South Korea	engines
Naval gun for patrol boat	1	Thailand	Artillery
ROK - BVT-90 patrol boat - built in the UK	1	Thailand	Ships

Timeline of EU decisions regarding exports of military technology and equipment

This regime concerns the control of exports of conventional arms (military technology and equipment). It is strictly intergovernmental, as it is linked to national and strategic interests. Member states remain responsible for the implementation. Neither the Commission, the European Parliament nor the European Court of Justice can exert legal control.

1991 — Ad Hoc Working Group

The European Council sets up the Ad Hoc Working Group on Conventional Arms Exports (COARM) to compare national legislation and explore possibilities for the harmonisation of measures to control arms exports

1991-1992 — EU's eight common criteria

The European Council adopts eight Common Criteria for the assessment of arms export applications, aiming at developing a more restrictive and "responsible" arms trade to non-EU countries

1998 — EU Code of Conduct on Arms Exports

The European Council formalises the Common Criteria in a politically binding document, the EU Code of Conduct on Arms Exports

2000 — Common Military List of the EU

The European Council establishes a Common Military List of the EU (EU-CML) with the aim of further converging EU Member States' (MS) arms export control policies and procedures in the field of conventional arms exports

2003 — User's Guide

COARM adopts a User's Guide to help MS implement the EU Code and the EU-CML

2008 — Council Common Position 2008/944/CFSP

Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment. This legally binding instrument replaces and builds on the Code of Conduct, which was just politically binding. The Common Position (CP) maintains the eight common criteria and goes further than the Code of Conduct by adding new elements, such as intangible transfers of technology or enhanced controls in brokering and transit transactions. It also requires MS to abide by the eight common criteria when assessing export licence applications for items contained in the EU-CML and the Dual-use List

July 2015 — Council Conclusions 10900/15

Council Conclusions 10900/15 on the review of the CP. After the entry into force of the Arms Trade Treaty (ATT), the Council advocates for a review which will include an IT platform for information-sharing on licence denials and an updated User's Guide incorporating international arms trade treaties' guidelines

December 2015 — European Parliament adopts resolution

The European Parliament adopts a resolution on the implementation of the CP. The resolution calls on MS to include a mechanism that would freeze existing export licences to countries with an embargo established after the granting of the licence. It also supports the introduction of a standardised reporting and submission procedure for information on exports and licence data to be applied uniformly in all MS. MS can use this platform to display their reasons for a licence denial

2017 — European Parliament adopts new resolution

The European Parliament adopts a new resolution on the implementation of the CP. The text calls for a stricter, transparent, effective and better defined arms control system. The Parliament supports the creation of an arms control supervisory body that would sanction MS not complying with the CP. Also, the risk of corruption and the establishment of effective post-shipment controls are mentioned as possible additions to the text

2018 — Council Decision (CFSP) 2018/101

Council Decision (CFSP) 2018/101 on the promotion of effective arms exports controls. The Council sets the objectives of promoting transparency and responsibility in the international arms trade by supporting third countries' efforts at national and regional levels

Council Common Position

13.12.2008 EN Official Journal of the European Union L 335/99

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL COMMON POSITION 2008/944/CFSP

of 8 December 2008

defining common rules governing control of exports of military technology and equipment

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the European Union, and in particular Article 15 thereof,

Whereas:

(1) Member States intend to build on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992, and on the European Union Code of Conduct on Arms Exports adopted by the Council in 1998.

(2) Member States recognise the special responsibility of military technology and equipment exporting States.

(3) Member States are determined to set high common standards which shall be regarded as the minimum for the management of, and restraint in, transfers of military technology and equipment by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency.

(4) Member States are determined to prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability.

(5) Member States intend to reinforce cooperation and to promote convergence in the field of exports of military technology and equipment within the framework of the Common Foreign and Security Policy (CFSP).

(6) Complementary measures have been taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms.

(7) The Council adopted on 12 July 2002 Joint Action 2002/589/CFSP on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons [1].

(8) The Council adopted on 23 June 2003 Common Position 2003/468/CFSP [2] on the control of arms brokering.

(9) The European Council adopted in December 2003 a strategy against the proliferation of weapons of mass destruction, and in December 2005 a strategy to combat illicit accumulation and trafficking of SALW and their ammunition, which imply an increased common interest of Member States of the European Union in a coordinated approach to the control of exports of military technology and equipment.

(10) The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was adopted in 2001.

(11) The United Nations Register of Conventional Arms was established in 1992.

(12) States have a right to transfer the means of self-defence, consistent with the right of self-defence recognised by the UN Charter.

(13) The wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort is acknowledged.

[1] OJ L 191, 19.7.2002, p. 1.
[2] OJ L 156, 25.6.2003, p. 79.

(14) The strengthening of a European defence technological and industrial base, which contributes to the implementation of the Common Foreign and Security Policy, in particular the Common European Security and Defence Policy, should be accompanied by cooperation and convergence in the field of military technology and equipment.

(15) Member States intend to strengthen the European Union's export control policy for military technology and equipment through the adoption of this Common Position, which updates and replaces the European Union Code of Conduct on Arms Exports adopted by the Council on 8 June 1998.

(16) On 13 June 2000, the Council adopted the Common Military List of the European Union, which is regularly reviewed, taking into account, where appropriate, similar national and international lists [1].

(17) The Union must ensure the consistency of its external activities as a whole in the context of its external relations, in accordance with Article 3, second paragraph of the Treaty; in this respect the Council takes note of the Commission proposal to amend Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual use items and technology [2],

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. Each Member State shall assess the export licence applications made to it for items on the EU Common Military List mentioned in Article 12 on a case-by-case basis against the criteria of Article 2.

2. The export licence applications as mentioned in paragraph 1 shall include:

— applications for licences for physical exports, including those for the purpose of licensed production of military equipment in third countries,

— applications for brokering licences,

— applications for 'transit' or 'transhipment' licences,

— applications for licences for any intangible transfers of software and technology by means such as electronic media, fax or telephone.

Member States' legislation shall indicate in which case an export licence is required with respect to these applications.

Article 2

Criteria

1. Criterion One: Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.

An export licence shall be denied if approval would be inconsistent with, *inter alia*:

(a) the international obligations of Member States and their commitments to enforce United Nations, European Union and Organisation for Security and Cooperation in Europe arms embargoes;

(b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;

(c) the commitment of Member States not to export any form of anti-personnel landmine;

(d) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

2. Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

— Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:

(a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;

(b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe;

[1] Last amended 10 March 2008, OJ C 98, 18.4.2008, p. 1.
[2] OJ L 159, 30.6.2000, p. 1.

For these purposes, technology or equipment which might be used for internal repression will include, *inter alia*, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, *inter alia*, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

— Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:

(c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.

3. Criterion Three: Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

4. Criterion Four: Preservation of regional peace, security and stability.

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim. When considering these risks, Member States shall take into account *inter alia*:

(a) the existence or likelihood of armed conflict between the recipient and another country;

(b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

(c) the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient;

(d) the need not to affect adversely regional stability in any significant way.

5. Criterion Five: National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States shall take into account:

(a) the potential effect of the military technology or equipment to be exported on their defence and security interests as well as those of Member State and those of friendly and allied countries, while recognising that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;

(b) the risk of use of the military technology or equipment concerned against their forces or those of Member States and those of friendly and allied countries.

6. Criterion Six: Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Member States shall take into account, *inter alia*, the record of the buyer country with regard to:

(a) its support for or encouragement of terrorism and international organised crime;

(b) its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;

(c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

7. Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user or for an undesirable end use, the following shall be considered:

(a) the legitimate defence and domestic security interests of the recipient country, including any participation in United Nations or other peace-keeping activity;

(b) the technical capability of the recipient country to use such technology or equipment;

(c) the capability of the recipient country to apply effective export controls;

(d) the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;

(e) the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists;

(f) the risk of reverse engineering or unintended technology transfer.

8. Criterion Eight: Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

Article 3

This Common Position shall not affect the right of Member States to operate more restrictive national policies.

Article 4

1. Member States shall circulate details of applications for export licences which have been denied in accordance with the criteria of this Common Position together with an explanation of why the licence has been denied. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it shall first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it shall notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

2. The decision to transfer or deny the transfer of any military technology or equipment shall remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or export of the military technology or equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

3. Member States shall keep such denials and consultations confidential and not use them for commercial advantage.

Article 5

Export licences shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination. When assessing applications for licences to export military technology or equipment for the purposes of production in third countries, Member States shall in particular take account of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end user.

Article 6

Without prejudice to Regulation (EC) No 1334/2000, the criteria in Article 2 of this Common Position and the consultation procedure provided for in Article 4 are also to apply to Member States in respect of dual-use goods and technology as specified in Annex I to Regulation (EC) No 1334/2000 where there are serious grounds for believing that the end-user of such goods and technology will be the armed forces or internal security forces or similar entities in the recipient country. References in this Common Position to military technology or equipment shall be understood to include such goods and technology.

Article 7

In order to maximise the effectiveness of this Common Position, Member States shall work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of exports of military technology and equipment.

Article 8

1. Each Member State shall circulate to other Member States in confidence an annual report on its exports of military technology and equipment and on its implementation of this Common Position.

2. An EU Annual Report, based on contributions from all Member States, shall be submitted to the Council and published in the 'C' series of the *Official Journal of the European Union*.

3. In addition, each Member State which exports technology or equipment on the EU Common Military List shall publish a national report on its exports of military technology and equipment, the contents of which will be in accordance with national legislation, as applicable, and will provide information for the EU Annual Report on the implementation of this Common Position as stipulated in the User's Guide.

Article 9

Member States shall, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of exports of military technology and equipment from Member States, in the light of the principles and criteria of this Common Position.

Article 10

While Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, these factors shall not affect the application of the above criteria.

Article 11

Member States shall use their best endeavours to encourage other States which export military technology or equipment to apply the criteria of this Common Position. They shall regularly exchange experiences with those third states applying the criteria on their military technology and equipment export control policies and on the application of the criteria.

Article 12

Member States shall ensure that their national legislation enables them to control the export of the technology and equipment on the EU Common Military List. The EU Common Military List shall act as a reference point for Member States' national military technology and equipment lists, but shall not directly replace them.

Article 13

The User's Guide to the European Code of Conduct on Exports of Military Equipment, which is regularly reviewed, shall serve as guidance for the implementation of this Common Position.

Article 14

This Common Position shall take effect on the date of its adoption.

Article 15

This Common Position shall be reviewed three years after its adoption.

Article 16

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 8 December 2008.

For the Council
The President
B. KOUCHNER

Relevant EU legal instruments relative to arms exports and dual-use technologies

Council conclusions 10900/15 of 20 July 2015 relating to the review of Common Position 2008/944/CFSP on arms exports and the implementation of the Arms Trade treaty (ATT)

- http://data.consilium.europa.eu/doc/document/ST-10900-2015-INIT/en/pdf

Council Decision (CFSP) 2018/101 of 22 January 2018 on the promotion of effective arms export controls

- https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D0101&from=EN

Common Military List of the European Union adopted by the Council on 26 February 2018 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment)

- https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG0315(01)&from=EN

User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment.

- http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf

European Parliament, 'Resolution of arms exports: implementation of Common Position 2008/944/CFSP' adopted on 13 September 2017

- http://www.europarl.europa.eu/oeil/popups/summary.do?id=1502732&t=e&l=en

Report from the Commission on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, October 2013

- http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151857.pdf

Communication from the Commission on the Review of export control policy: ensuring security and competitiveness in a changing world, April 2014

- http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152446.pdf

European Commission, impact assessment on the EU Export Control Policy Review, September 2016

- http://trade.ec.europa.eu/doclib/docs/2016/october/tradoc_155008.pdf

Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast), September 2016

- http://eur-lex.europa.eu/resource.html?uri=cellar:1b8f930e-8648-11e6-b076-01aa75ed71a1.0013.02/DOC_1&format=PDF

Amendments by the EP on the Commission's proposal for the review of the Dual-use Regulation, January 2018

- http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0006+0+DOC+PDF+V0//EN

Commission's proposal for a Regulation establishing the European Defence Industrial Development Programme, June 2017

- https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-294_en

Abbreviations

AIIB	Asian Infrastructure Investment Bank
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
ASW	Anti-Submarine Warfare
ATT	Arms Trade Treaty
AVIC	Aviation Industry Corporation of China
BRI	Belt and Road Initiative
CFSP	Common Foreign and Security Policy
CML	Common Military List
CN	People's Republic of China
COARM	Working Party on Conventional Arms Exports
CP	Common Position
CSCAP EU	Council for Security Cooperation in the Asia-Pacific
CSDP	Common Security and Defence Policy
DPRK	Democratic People's Republic of Korea
EDF	European Defence Fund
EDIDP	EU Defence Industrial Development Programme
EEZ	Exclusive Economic Zone
ESDC	European Security and Defence College
EUMS	EU member states
FDI	Foreign Direct Investment
FPA	Framework Partnership Agreement
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GPS	Global Positioning System
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission
IMF	International Monetary Fund
IT	Information Technology
ITT	Intangible Transfers of Technology
MES	Market Economic Status
MLRS	Multiple Rocket Launcher System
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
PESCO	Permanent Structured Cooperation

PGMs	Precision-Guided Munitions
PLA	People's Liberation Army
R&D	Research and Development
RIMPAC	Rim of the Pacific Exercise
ROK	Republic of Korea
ROKN	Republic of Korea Navy
S&T	Science and Technology
SIPRI	Stockholm International Peace Research Institute
SPA	Strategic Partnership Agreement
TFEU	Treaty on the Functioning of the European Union
TNI	Indonesian national armed forces (*Tentara Nasional Indonesia*)
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNSC	United Nations Security Council
USD	United States Dollars
WMD	Weapons of Mass Destruction
WTO	World Trade Organisation

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