

# ISSUE

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## Pride and prejudice Maritime disputes in Northeast Asia

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### Reports

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## FOREWORD

Asia is now the undisputed engine of world economic growth, and the planet's most populous continent, home to more than half of the global population. But it is also a macro-region where conflicting historical claims and unresolved territorial disputes risk undermining social and economic achievements and triggering all-out conflicts. Along with the wider Middle East, Asia is the region where overall spending on defence has grown most spectacularly over the past few years.

Most of these disputes stem from contrasting national narratives – most of which, in turn, stem from diverging interpretations (and perceptions) of history. And it is indeed striking to observe how much a continent that is so projected towards the future is also so dragged back to its past. It is as though what we Europeans call *Vergangenheitsbewältigung* (the need to come to terms with one's own past) – with reference in particular to the legacy of Nazi Germany and World War II – had not been pursued convincingly enough, especially in Northeast Asia.

The flip side of all this is mounting nationalism among elites as well as public opinion across the region. Nationalism can be – and has indeed been, not only in Asia – an important element of nation-building, capable of generating self-confidence, mobilising resources and driving modernisation. If not channeled properly, however, it can also turn into a major obstacle to reconciliation and, ultimately, modernisation itself. As a result, even economic interdependence may come to be seen as a source of vulnerability, fuelling antagonism and deepening mistrust, despite shared goals of peace and prosperity.

The European Union is not, as such, a major player in Asian security – although it does play a security role in terms of trade (including defence equipment), aid and diplomacy. This is especially true regarding mediation (as epitomised by the EU's peacekeeping mission in Aceh a decade ago) and confidence-building (as proved by its more recent peacebuilding initiative in Myanmar), not to mention direct cooperation with and assistance to ASEAN countries. In Asia and beyond, the EU increasingly plays the role of a 'norm-defender', promoting a rules-based international system, and deploying legal and diplomatic efforts aimed at defusing regional tensions.

The fact that the EU is not involved in Asia's 'hard' security does not mean, in other words, that it is not interested in it – or, indeed, in making it less 'hard'. Hence the focus that the CSCAP EU has decided to devote to the territorial disputes in Northeast Asia – and next, possibly, in Southeast Asia as well – with a view to assessing their origins and nature but also the prospects for a peaceful resolution. Europe's own experience with both political and societal reconciliation (even across the Cold War divide) and military confidence-building (even at the height of the Cold War confrontation) may offer some guidance and inspiration here – not least by showing that, when pride and prejudice run high, sense and sensibility can help.

*Antonio Missiroli*

*Paris, March 2015*

## INTRODUCTION

*'When motivated by honour, actors are risk-accepting and may welcome threats as a means of demonstrating their courage'*

*Thucydides*

Overlapping sovereignty claims at sea constitute one of the major sources of diplomatic tensions in East Asia, with repercussions for the security environment in the broader Asia Pacific. Given the importance of the region's maritime realm for the functioning of the global economy, any instability caused by the possible escalation of these disputes also poses a threat to Europe, a major trading partner, which relies on its sea lines of communication (SLOCs) for the export and import of goods. The three concrete cases addressed in this report include the dispute over the Senkaku/Diaoyu<sup>1</sup> Islands in the East China Sea – administered by Japan and laid claim to separately by the People's Republic of China (hereafter, PRC or China) and the Republic of China (ROC or Taiwan); the Dokdo/Takeshima Islands in the Japan Sea/East Sea – administered by South Korea (Republic of Korea, ROK) and claimed by Japan; and the Southern Kurils/Northern Territories in the Sea of Okhotsk – administered by the Russian Federation and claimed by Japan.

Northeast Asia's sovereignty and maritime border disputes thus bring together four powerful regional actors – China, Japan, South Korea and Russia. While the US is not a claimant to any of the contested territories, the American security presence in the Asia Pacific weighs heavily on the regional geopolitical balance, thereby influencing, whether directly or indirectly, the disputes' dynamics. The military rise of China, Japan's shift to becoming a 'normal' security actor, South Korea's rise as a middle power, and Russia's 'pivot' to Asia are significant new developments that call for a rethinking of the regional maritime security environment. Additionally, rising nationalism and historically-based mutual antagonism in regional countries exacerbate the sovereignty rows. The disputes are then easily exploited by the ruling elites for domestic political purposes and to boost their legitimacy, triggering a dangerous spiral of action-reaction dynamics, which has become a recurrent pattern in the regional security environment.

Despite some common features pertaining to the legal nature of territorial disputes in general, each dispute is unique in terms of the actors involved, the economic, political and geostrategic interests at stake, as well as the assertiveness of policies deployed to defend the respective claims. Rather than conflicts over the interpretation of international law or implementation of national maritime security policies, the region's maritime border delimitation and sovereignty disputes mirror

<sup>1</sup> Throughout this report, the names of the contested islands appear in the following order: the name given by the country administering the territories, followed by the name used by the claimant country.

the changing power relations in Northeast Asia, the complex historical legacies and domestic political dynamics. The high symbolic value of those islands explains the intransigence of the national governments, making the disputes matters of national pride, coloured by historical prejudices.

Against this background, the report seeks to examine, on the one hand, the driving sources of tension in Northeast Asia's three maritime disputes, focusing in particular on developments that have occurred since the late 2000s. At the same time, it examines the existing and emerging forms of maritime cooperation – in the form of various schemes for the joint development of resources in the overlapping areas – so as to highlight the possible ways forward. The publication aims to provide a better understanding of the regional maritime security dynamics in Northeast Asia and contribute to the ongoing debate among scholars and observers, both in Asia and beyond, on the management of maritime disputes in the broader Asia-Pacific region.

This report is structured in three parts. The first chapter describes the general context and key issues at stake in the three cases, by examining the historical origins of the disputes and the external sources of tension. Notably, it explores how natural resources, geopolitics and power shifts in Northeast Asia influence the dispute dynamics. The second chapter analyses the internal sources of tension in the three cases with particular reference to nationalism, history and identity politics, which are crucial to gaining insight into and understanding the reasons behind the actors' strongly-vested interests. Finally, the third chapter discusses the various maritime cooperative mechanisms in place at the sub-regional level in Northeast Asia and in the wider Asia Pacific. It concludes by suggesting that a functionalist approach to maritime cooperation is the most promising way to manage the tensions in the short term, as well as to contribute to build mutual trust among the concerned parties in the long run.

The content of this report is derived from a one-day workshop on *Northeast Asia's Maritime Disputes: Sources of Tension and Prospects for Cooperation* that took place in Brussels on 7 November 2014. The event was organised in the framework of the annual meeting of the EU Committee of the Council for Security Cooperation in the Asia Pacific (CSCAP EU). The authors would like to thank all participants for their constructive contribution to the discussions during the workshop, and especially Bernt Berger, Axel Berkofsky, Alice Ekman, John Hemmings, Juha Jokela, Matthias Maass, Michael Reiterer, Frans-Paul van der Putten and Gudrun Wacker, who delivered their presentations on the various topics covered in this report.



Map 1: Maritime East Asia



# I. ISLANDS, BORDERS AND CLAIMS

The three disputes examined in this report have different origins. However, they are all related to Imperial Japan's military expansion in, and domination of, East Asia in the late nineteenth century and the early twentieth century.

All three cases involve territorial claims to small islands and their surrounding waters, which, in turn, affect maritime boundary delimitations and Exclusive Economic Zone (EEZ) demarcations between the claimants. The issue of ownership of the contested island chains, together with the question of maritime demarcation, is directly linked to economic interests. The country that owns the islands can control the exploration and usage of living and non-living resources in the surrounding ocean space, especially (potential) oil and natural gas reserves, and fisheries.

The disputed islands also have a strategic significance. Some of them are located near vital sea lines of communication (SLOCs), which are crucial for the free passage of maritime traffic, especially energy imports, and hence for the coastal states' economic survival. Furthermore, control of the surrounding waters enhances the strategic position of the state in possession of the islands and may contribute to establishing naval primacy.

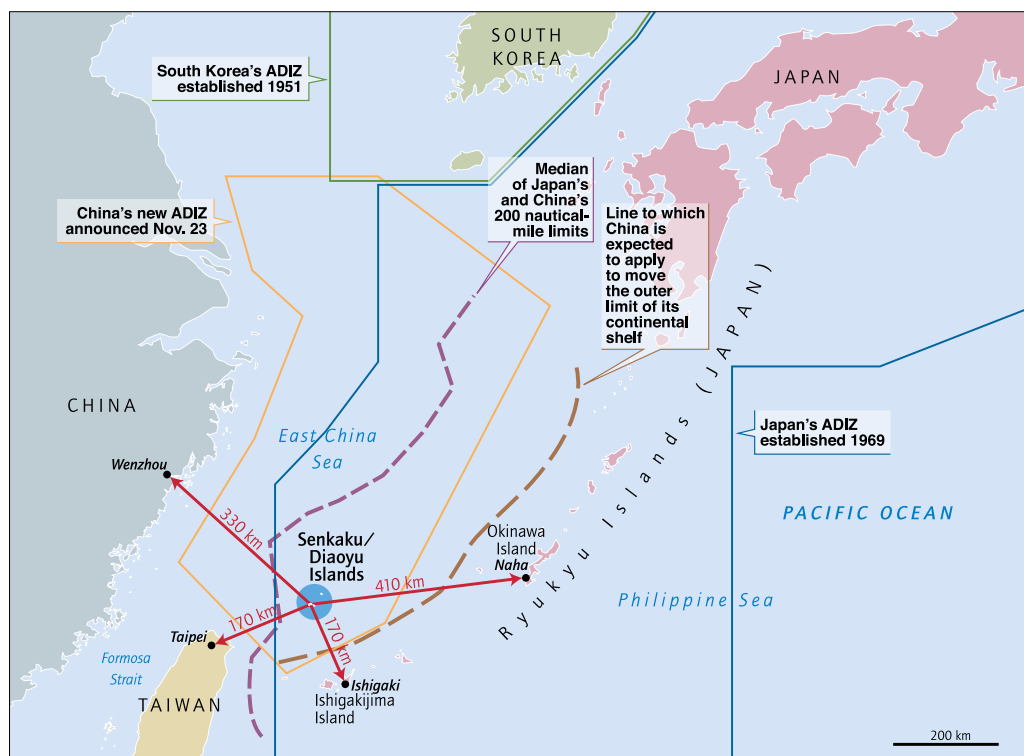
The first chapter of this report examines the different interpretations concerning the ownership of the contested territories, the question of natural resources and maritime boundaries, and, finally, how geopolitics and power shifts in Northeast Asia influence dispute dynamics in the three cases.

## Historical origins of the disputes

### Senkaku/Diaoyu

This is an ongoing territorial dispute in the East China Sea (ECS) between Japan and China (People's Republic of China, PRC), and Taiwan (Republic of China, ROC). It concerns sovereignty over the islands known as Senkaku (in Japan), Diaoyu (in China), or Tiaoyu (in Taiwan), and maritime delimitation. In English, the islets were historically referred to as the Pinnacle Islands. The features in question comprise five uninhabited islands and three barren rocks encompassing a total territory of about 7 km<sup>2</sup> (see Map 2). They are administered by Japan as part of the Okinawa prefecture, and are separately claimed by China and Taiwan, whose claims overlap. The analysis below will focus on the dynamics underpinning the dispute between Japan and China.

## Map 2: Senkaku/Diaoyu Islands



The PRC claims sovereignty over the islands on the basis that China discovered them during the Ming Dynasty (1386-1644). Beijing asserts that over the course of several hundred years Chinese fishing vessels visited the islands, which were regularly used as landmarks to assist in navigation and to provide shelter from storms for seafarers. In the sixteenth century Senkaku/Diaoyu were included in China's coastal defence network. China further maintains that the Treaty of Shimonoseki, signed in April 1895 following the end of the first Sino-Japanese War, ceded the islands to Japan as part of Taiwan. In Beijing's view, Senkaku/Diaoyu were returned to China under the provisions of World War II agreements, namely the 1943 Cairo Declaration, the 1945 Potsdam Declaration and the 1951 San Francisco Peace Treaty (to which neither the PRC nor the ROC were signatories).

Japan claims jurisdiction of the territories in question since 1895. It argues that the Treaty of Shimonoseki was not applicable to the Senkaku/Diaoyu, since Japan had incorporated the islands into its territory as *terra nullius* (no man's land) in January 1895, i.e. before the end of the war, and after conducting surveys confirming that no government control over these territories existed. Tokyo further points out that none of the allied agreements mentioned Senkaku/Diaoyu by name, and neither did the

Treaty of Shimonoseki. Accordingly, the territories that Japan renounced at the end of the war did not include these islands. This is contested by the PRC, which maintains that these territories were part of Taiwan and hence were returned to China. Following World War II the US administered Okinawa, together with the Senkaku/Diaoyu as part of the Ryukyu Islands, until 1971. Under the Okinawa Reversion Treaty of 1972 the US returned the islands to Japanese administration.

**Box 1: Key events in the history of Senkaku/Diaoyu**

1895: The Shimonoseki Treaty ends the First Sino-Japanese War. Formosa (modern Taiwan) and all islands belonging to it are ceded to Japan.

1945: The Potsdam Declaration calls for Japan to surrender. The declaration limits Japan's sovereignty to specifically listed islands, but does not mention Senkaku/Diaoyu.

1951: The San Francisco Treaty officially ends World War II. Japan renounces control over several islands, but Senkaku/Diaoyu are not mentioned.

1971: The Okinawa Reversion Treaty returns to Japan the control of Okinawa and other territories administered by the US, including the Senkaku/Diaoyu islands.

2012: The administration of Noda Yoshihiko nationalises three of the Senkaku/Diaoyu islands.

During the Cold War, Japan and China shelved the territorial issue. This was a tacit agreement (with no legal basis) and by no means meant that either side abandoned their sovereignty claims [Drifte, 2014]. Relegating the issue to the back burner, however, allowed Tokyo and Beijing to prioritise the normalisation of diplomatic relations in 1972, and focus thereafter on deepening bilateral economic ties.

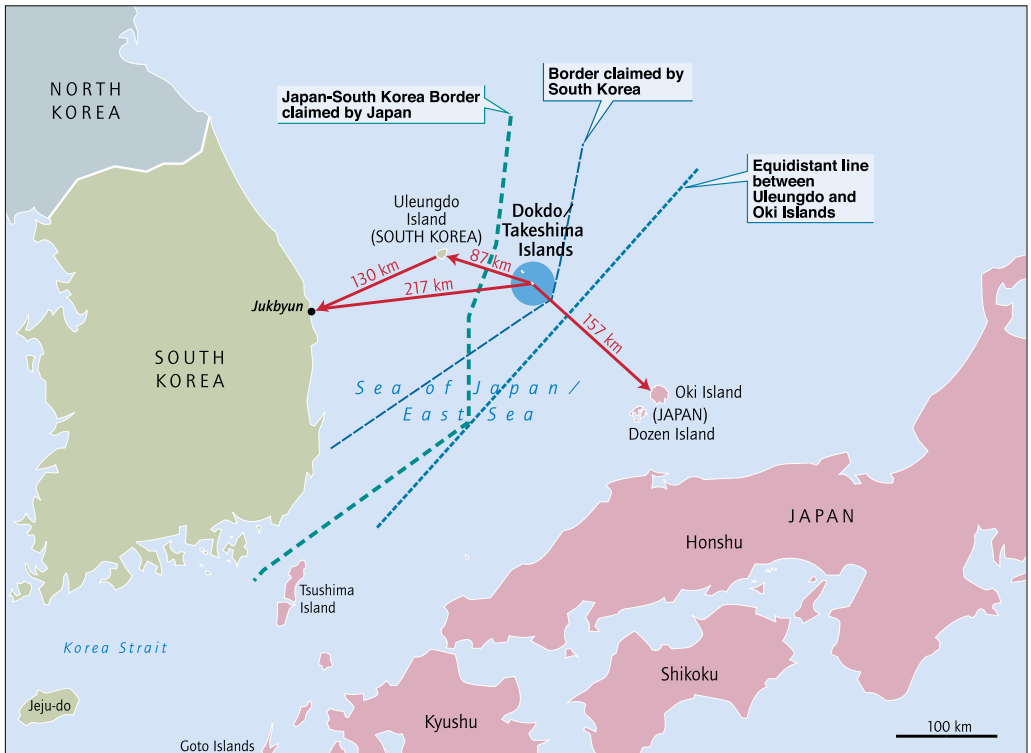
The Senkaku/Diaoyu were privately-owned and rented out to the Japanese government until 2012 when it nationalised three of the islands. The PRC interpreted Japan's action as a change in the *status quo* that the two powers had hitherto agreed to maintain over the islands. Coupled with Tokyo's repeated denial that there had been a shelving agreement or that a territorial issue existed, the nationalisation has led to a major deterioration in Sino-Japanese relations. Beijing's objective in the past couple of years has been to force the Japanese government to recognise the existence of a territorial dispute and erode its administrative control over the islets.

**Dokdo/Takeshima**

This dispute between the Republic of Korea (ROK) and Japan concerns sovereignty over the Dokdo (in Korean) or Takeshima (in Japanese) islands, as well as maritime

demarcation in the Japan Sea (known as East Sea in Korea). The contested islands are referred to in English as the Liancourt Rocks. Similarly to the ECS dispute, the competing claims are over a group of small uninhabited islets, namely, two large rocks and 33 smaller rocks with a total territory of 0.186 km<sup>2</sup> (see Map 3).

**Map 3: Dokdo/Takeshima Islands**



Seoul claims that Korea established suzerainty over the islands in the sixth century and presents old historical records to support its claim. This is repudiated by Tokyo, which refers to documents in its possession that attest Japan's administration of Dokdo/Takeshima since the seventeenth century. Japan also asserts that in 1905 it formally incorporated the islets into its territory as *terra nullius* (similarly to the Senkaku/Diaoyu). For Korea, however, this decision is associated with Japan's imperialist expansion in Asia in the early twentieth century and, more specifically, with Japan's annexation of Korea, which was formalised in 1910.

Japan administered Dokdo/Takeshima until 1945. Tokyo argues that even though it renounced its claims to Korea after the war, this excluded the islets, for they were not mentioned in the San Francisco Treaty. However, Korea's view is that in 1946 the US-led occupational authorities defined Japan's territory as excluding Dokdo/

Takeshima, which is how Japan's sovereignty was reestablished after World War II [Schoenbaum, 2008].

In the 1950s, Seoul pressed its sovereignty claims by building a lighthouse and a helicopter landing pad on the islands, as well as by deploying police officers. ROK's government has administered these territories ever since, stationing the Korean Coast Guard there on a permanent basis and subsidising the settlement of two residents (fishermen). In 1965, Japan and Korea normalised their bilateral diplomatic relations by shelving the dispute. However, no maritime boundary was established.

**Box 2: Key events in the history of Dokdo/Takeshima**

1905: Japan incorporates Dokdo/Takeshima into its territory.

1951: The San Francisco Treaty officially ends World War II. Japan renounces control over several islands, but Dokdo/Takeshima are not mentioned.

1952: South Korea starts to administer Dokdo/Takeshima.

1954 and 1962: Japanese proposal to transfer the dispute to the International Court of Justice (ICJ). South Korea rejects the proposal on the grounds that no legal dispute existed.

1965: Japan-South Korea Basic Relations Treaty to formalise the establishment of bilateral relations. The Dokdo/Takeshima dispute is explicitly mentioned, with each party recognising that the other claims the islets but also confirming the *status quo*, namely, that Korea is administering the territories.

2012: President Lee's visit to Dokdo/Takeshima. He becomes the first South Korean president to set foot on the islets.

2012: Japanese proposal to transfer the dispute to the ICJ. South Korea rejects the proposal on the grounds that no legal dispute exists.

The dispute is characterised by periodic escalations of tensions between the two sides with Tokyo protesting against what it perceives as Korea's occupation of Dokdo/Takeshima, while Seoul seeks to reinforce its claims by carrying out construction work on the islets.

ROK has rejected Japan's proposals for submitting the Dokdo/Takeshima dispute to international arbitration, as explained in Box 3 (p. 14). While Seoul does not recognise ICJ jurisdiction over the islets, it does not consider that Tokyo has a legal claim over them either.

### Southern Kurils/Northern Territories

For seven decades the dispute between Russia and Japan over sovereignty of the Southern Kurils (as the islands are referred to in Russian) or the Northern Territories (as they are known in Japan) has prevented the two neighbours from concluding a formal peace treaty ending World War II. The four islands, administered by Russia as part of its territory and claimed by Japan, cover a surface area of about 5,000 km<sup>2</sup> and include Habomai, Shikotan, Etorofu and Kunashiri. They are located at the southern part of the Kuril archipelago north of Hokkaido (see Map 4).

### Map 4: The Kuril Islands



Unlike the Senkaku/Diaoyu and Dokdo/Takeshima, the Southern Kurils/Northern Territories have been inhabited by permanent residents. Until the end of the nineteenth century these comprised indigenous people who were then displaced by Japanese settlers. Following the Soviet annexation of the islands in 1945 all Japanese residents were expelled. At present, there are some 17,000 Russian inhabitants.

Prior to 1945 the Southern Kurils/Northern Territories were part of Japan (see Map 4). The 1855 Shimoda Treaty gave Japan sovereignty over the four islands

and established the original border with Russia. The 1875 St. Petersburg Treaty expanded Tokyo's territorial rights to include the entire Kuril chain. Following the Russo-Japanese War of 1904-05 Japan also gained control of the southern half of Sakhalin Island.

The Soviet Union occupied all the islands in 1945, at the time of Japan's surrender, and declared them Soviet territory. Under the San Francisco Treaty, Tokyo renounced ownership of the Kurils (and southern Sakhalin). What complicated the sovereignty question, however, was that the treaty did not specify to which country the islands would be returned, nor did it define the Kuril territory that was ceded by Japan. In addition, the Soviet Union was not a party to the treaty.

**Box 3: Key events in the history of the Southern Kurils/Northern Territories**

1855: The Shimoda Treaty establishes bilateral diplomatic relations between Japan and Russia.

1875: St Petersburg Treaty.

1905: Portsmouth Treaty ends the Russo-Japanese War.

1945: Yalta Agreement to discuss post-war reconstruction. Russia is granted control over the Southern half of Sakhalin. It starts to exercise *de facto* control over the disputed islands shortly after Tokyo's surrender.

1951: The San Francisco Treaty officially ends World War II. Japan renounces control over the Kuril islands. The disputed territories are not explicitly mentioned by name and Moscow refuses to sign the treaty, partially due to their exclusion.

1956: The Soviet-Japanese Joint Declaration puts a technical end to World War II hostilities between the two countries. The Soviet Union agrees to cede control over the two smaller islands, Shikotan and Habomai, after the conclusion of a bilateral peace treaty. The treaty, however, is yet to be signed.

2001: Two-plus-two agreement between Prime Minister Mori and President Putin to settle the Southern Kurils/Northern Territories dispute. Russia agrees to cede control over Shikotan and Habomai to Japan. The agreement, however, is later rejected by Prime Minister Junichiro Koizumi.

Until the 1990s Moscow did not acknowledge the existence of a territorial dispute with Tokyo. Its position changed afterwards, and Russia and Japan engaged in negotiations on several occasions. The main solution offered by Moscow in the past, as indicated in Box 3, was based on the 1956 Joint Declaration, and included the handover of Habomai and Shikotan in return for Tokyo's agreement to sign a peace



treaty. This has not been acceptable to Japan, for it insists on sovereignty over all four islands and considers them to be an integral part of its territory.

## **Natural resources, maritime boundaries and evolution of the disputes**

### **Senkaku/Diaoyu**

The prospects of large oil and gas deposits in the waters surrounding the Senkaku/Diaoyu islands, as well as in the ECS seabed, are significant driving forces in this dispute. Both Japan and China rely on energy imports, especially from the Middle East, in order to meet their respective economic needs. The suspected ECS resources provide an opportunity for these countries to enhance energy security by diversifying their import dependence, especially by lowering reliance on some of the world's busiest and most dangerous trade routes. Possible disruption of energy supplies along the SLOCs passing through the Indian Ocean to the Malacca Strait and the South China Sea would have devastating consequences for their economies, especially for a resource-poor Japan.

Japan is the third-largest oil consumer in the world. It relies almost solely on imports to meet its domestic oil demand, with 83% of its crude imports coming from the Middle East.<sup>2</sup> It is also the world's largest and second-largest importer of Liquefied Natural Gas (LNG) and coal, respectively, with more than 95% of its gas demand met by LNG imports. Due to the shutting down of nuclear reactors in the wake of the 2011 Fukushima nuclear disaster, Japan's LNG imports have increased by 30%. Diversifying its energy sources is critical for sustaining the country's economic power, especially in the context of a growing competition for energy resources with China.

The PRC became a net oil importer in 1993 and is now the world's second-largest oil consumer. Imports of crude oil account for 54% of its total oil demand, with more than 50% of these imports coming from the Middle East. Additionally, as the PRC's domestic natural gas production was unable to keep pace with its economic demands, it started importing natural gas in 2007. China is now the world's fifth-largest net importer of gas. Not surprisingly, energy security has become a top priority in the PRC's foreign policy agenda.

The high energy demands of Japan and the PRC have intensified their competing claims to ownership of the islands in the ECS, thereby making the delimitation of the Sino-Japanese maritime boundary even more contentious. Under the 1994 United Nations Convention on the Law of the Sea (UNCLOS), ratified by both countries in 1996, a coastal state is entitled to several maritime zones. Among others, these include an EEZ of 200 nautical miles (nm) and a continental shelf

<sup>2</sup> The country energy data in this section is from the International Energy Agency (IEA) and US Energy Information Administration (EIA).

(CS) that can be extended up to 350 nm. The rights in the EEZ and CS include exclusive exploration and exploitation of natural resources. However, the question of which state possesses these rights remains contested, for Japan's and China's EEZs significantly overlap.

Japan uses the Senkaku/Diaoyu as baselines for its EEZ and CS, but proposes an equidistant approach, namely, a median line that draws the maritime boundary in the middle between the Ryukyu islands and the Chinese coast (see Map 2). Beijing, however, argues that the Senkaku/Diaoyu are rocks and hence do not generate an EEZ or CS. Instead, it claims a CS extension beyond 200 nm out to the edge of the Okinawa Trough – defining it as a natural boundary marker for the two countries' CS – as a basis for asserting jurisdiction over a major part of the ECS.

Dispute dynamics have been characterised by intensified competition over control of offshore resources in the ECS. Estimates of oil and gas deposits vary, as shown in Table 1.

**Table 1. Hydrocarbon resources in the ECS**

<b>Hydrocarbon resources in the ECS</b>	<b>US Energy Information Administration (proved &amp; probable)</b>	<b>PRC (own data)</b>	<b>Oil &amp; Gas Journal PRC (proved reserves)</b>	<b>Oil &amp; Gas Journal Japan (proved reserves)</b>
Oil reserves	200 million barrels	70 to 160 billion barrels <i>(probable)</i>	24,400 million barrels	44 million barrels
Natural gas reserves	1 and 2 trillion cubic feet (ft <sup>3</sup> )	303 billion ft <sup>3</sup> (proved) 175 to 210 trillion ft <sup>3</sup> <i>(probable)</i>	155,400 billion ft <sup>3</sup>	740 billion ft <sup>3</sup>

Source: EIA (2014)

China's exploration and extraction of resources in the area has progressed steadily since the 1980s, despite Japan's protests. Tokyo's main concerns are that the PRC has been developing resources from fields located very close to (or even on) the Japanese side of the median line. Japan embarked on its own surveys of the ECS beginning in the 2000s, but its exploration activities have excluded the maritime zones around the Senkaku/Diaoyu. The unresolved sovereignty and maritime boundary disputes prevent the development of hydrocarbon resources in the ECS, whose full extent

remains uncertain. Although in 2008 Tokyo and Beijing reached an agreement for joint development of gas deposits in the area, as of now they have not followed through on its implementation.

Finally, the overlapping EEZ claims have also driven the fishing disputes between Japan and China in the ECS, despite the existing bilateral fisheries agreement signed in 1997 (examined in chapter three). Fisheries are critical to the food security (and fishing industries) of both countries, with China and Japan being the world's first and seventh-largest fish-producing nations, respectively. As overfishing in the ESC in the past 20 years has significantly depleted fish stocks, Sino-Japanese competition over marine living resources in the area has intensified.

### **Dokdo/Takeshima**

Competition over natural resources is not a major source of tensions in the ROK-Japan territorial dispute, since the direct economic value of the Dokdo/Takeshima islands is not very high. There are no proven hydrocarbon resources in the surrounding waters, although they are significant as fishing grounds. As with the ECS case, this sovereignty dispute is linked to competing claims over (overlapping) EEZs around the contested islets in the Japan (East) Sea.

The two countries have failed to agree on a maritime boundary and each claimant has included the disputed territories in their respective EEZs. Seoul has proposed a median line between Ullung (Utsuryo in Japanese) island and Japan's Oki islands to delineate the maritime boundary. Not surprisingly, Japan's own sovereignty claims over Dokdo/Takeshima mean that such a proposal has been unacceptable to Tokyo, which has claimed a median line between Ullung Island and Dokdo/Takeshima.

The prospect of natural gas resources in the surrounding seabed, with estimates of 600 million tons of gas hydrates [McDevitt and Lee, 2013], has added to the complexity of the dispute. ROK is the world's 11<sup>th</sup> largest energy consumer and the 5<sup>th</sup> largest oil importer. Similarly to Japan, Korea is highly dependent on oil imports for meeting its energy demands, with 87% of ROK's total crude imports coming from the Middle East. As Korea is seeking to diversify its energy sources with natural gas (in the form or LNG), which it mostly imports, the potential resources around Dokdo/Takeshima are an attractive alternative to the continuing import dependence. However, exploration activities in the area are hampered by mutual protests over marine surveys around the islets and threats of retaliation due to the unresolved EEZ claims. This means that although the full extent of non-living resources in the Japan (East) Sea is as yet undetermined, the expectation of resource availability as such influences each side to press its respective sovereignty claims.

The area is valuable for its rich fishing grounds and major catches include codfish, Alaskan pollock, Pacific saury, squid and shark. As is discussed in chapter 3 of this report, Japan and the ROK established a joint (provisional) fishing zone in 1999,

which included the waters around the disputed islets. Korea maintains 12 nm of territorial waters around Dokdo/Takeshima where Japanese vessels are not permitted to enter and their fishing boats are captured if incursions take place.

### **Southern Kurils/Northern Territories**

The economic and, to a lesser extent, territorial value of the islands is not a significant driving force in the Japan-Russia dispute. While the waters around the contested territories are rich fishing grounds (with catch worth US\$4 billion a year), valuable hydrocarbon deposits are located further away from them, in Russia's Far East. Unlike in the other two disputes, in this case claimants attach much less importance to maritime delimitation issues, although the right to control maritime areas around the Southern Kurils/Northern Territories adds to the complexity of the issue. The strategic dimension of the islands is examined in the next section.

Tokyo and Moscow use a median line between Hokkaido and Kunashiri as a provisional maritime boundary between the two countries. Russia claims 12 nm of territorial waters around the Southern Kurils/Northern Territories, which are included in its EEZ. Although Japan is allowed to fish in the waters for a certain fee, Japanese fishing boats have to contend with a great deal of obstruction from the Russian authorities when attempting to operate in the zone. There have even been incidents of Russian border guards shooting at Japanese fishermen in Russia's claimed territorial waters.

Broader economic and, especially, energy interests suggest that Japan and Russia should have been able to resolve the territorial issue in order to fully develop their economic partnership. Russia is the world's largest exporter of natural gas, and ranks second and third globally for oil and coal exports, respectively. Japan is highly dependent on energy imports, as discussed earlier. For Tokyo, Russia's natural resources are an opportunity for Japan to diversify its sources of energy supply, while Russia's fast-growing economy is attractive for future Japanese business investments.

For Moscow, increasing energy exports to Japan is a way of reducing its export dependence on the EU (especially in the wake of the Ukraine crisis), as well as on China, and shifting the Russian economy towards the broader Asia Pacific – a new strategic objective in recent years. In line with this geoeconomic reorientation, Moscow will need Japanese technology and capital investments in order to develop Siberia and the Far East region. Russia's eastern territories contain abundant, yet still unexploited, oil and gas deposits. The proximity of those territories to Japan and the possible use of the Arctic Northern Sea Route (discussed in the next section) mean that Japan would be able to rely on a stable energy supply and reduce its fuel costs.

Bilateral cooperation in the energy sector in the Russian Far East has somewhat intensified in the past few years. Recent deals include the 2013 agreement for joint production of oil in the northern part of the Sea of Okhotsk, and the 2014 decision

on bilateral cooperation for development of hydrocarbon deposits in Siberia and the Far East. Mutual economic interests, however, have not provided compelling incentives for Moscow and Tokyo to resolve the territorial issue, and thereby achieve the full potential of their bilateral economic relations. In particular, Japan refused in the past to consider Russia's 'two-island' formula, even though this would have expanded Japan's EEZ into an area of rich fishing grounds, and would have opened the door to strategic *rapprochement* with Moscow. Russia, for its part, has recently become less willing to compromise.

## Power shifts and current dispute dynamics

### Senkaku/Diaoyu

Geopolitics and the shifting power balance in Northeast Asia are direct sources of tension in the Senkaku/Diaoyu dispute. The narrowing power asymmetry between Japan and China is driving their naval competition in the ESC, while US-China rivalry at a broader regional level is exacerbating Sino-Japanese strategic distrust.

For China, Japan is a security concern primarily due to its alliance with the US and, especially, in the context of the Sino-US geopolitical tensions in East Asia. America's 'rebalance' policy is interpreted by the PRC as a 'strategic encirclement' of China, which seeks to prevent the rise of a potential challenger to the US's primacy in the region. Japan is regarded as a proxy for perceived American hegemony. From this perspective, Beijing views the deepening of US-Japanese security ties as aimed at offsetting (and even containing) Chinese power. This is also how China interprets Washington's repeated reaffirmation that the Senkaku/Diaoyu fall within the scope of the US-Japan security treaty and America's treaty obligations to Japan.

The Senkaku/Diaoyu islands have a major geostrategic significance for the PRC. If they are owned by Japan, the US-Japan alliance will be able to block Chinese naval vessels in the ESC and hence squeeze the People's Liberation Army (PLA) maritime space by restricting its access to the Western Pacific. China realises that Japan enjoys a certain strategic advantage as it physically controls the islands, has technologically advanced navy and air-defence forces, and, most importantly, can rely on US protection. Japan's shift to southwestern defence and the Tokyo-Guam-Taiwan strategic triangle is aimed at not only reinforcing Japan's surveillance of the vital SLOCs converging in this area, but also enhancing Japan's support for the US presence in the Western Pacific [Patalano, 2014].

Japan is especially worried that the PLA's rapid modernisation reflects Chinese ambitions for future domination of maritime East Asia. The PLA is developing capabilities to control the 'near seas' (within the 'first island chain') and 'anti-access/area-denial' (A2/AD) strategy (see Map 5, p. 21). The latter would deny the US access to the Western Pacific, as well as possible intervention in a Senkaku/Diaoyu contingency

to assist Japan. Since sea lanes crossing the ESC are crucial to Japan's trade and energy imports, PLA's control of this maritime space would allow it to block SLOCs that are of strategic importance to Japan. Beijing's establishment in 2013 of an Air Defence Identification Zone (ADIZ) in the ESC, which included the disputed islands (see Map 2), only intensified Tokyo's concerns (which are shared by Washington).

The growing naval competition in the ECS is negatively affecting the dispute. The PRC is seeking to erode Japan's administrative control of the Senkaku/Diaoyu, and strengthen its own sovereignty claims and power position relative to Japan. Beijing also appears to be testing Washington's treaty obligations by increasing pressure on Tokyo. To this end, China has stepped up its maritime surveillance activities in the ECS, and the dispatch of naval vessels and military aircraft into the contested areas. In response, Japan has reinforced the governance of the islands, expanded the powers of the Japan Coast Guard (JCG) to protect sea borders and increased the involvement of its Self-Defence Forces (SDF). The growing tendency of both sides to resort to military assets in pursuit of territorial claims is increasing the danger of an accidental clash or miscalculation, which could lead to Sino-Japanese armed confrontation (possibly involving the US).

### **Dokdo/Takeshima**

Geopolitical and power considerations in Northeast Asia affect the Dokdo/Takeshima dispute indirectly. ROK and Japan are both allies of the US, supporting America's rebalance to Asia. They also share concerns about North Korea's nuclear and missile developments, as well as China's rise. They are not direct power competitors, while the contested islands do not have a strategic significance. At the same time, existing strategic divergences make it difficult for Seoul and Tokyo to resolve the dispute, and form a closer security partnership.

While Japan has increasingly sought to balance the PRC's power in East Asia, ROK does not share Japan's hostility towards China, and is wary of joining a US-Japanese anti-China coalition. Seoul is deepening its security ties with Washington in order to deter the Democratic People's Republic of Korea (DPRK), but also needs Beijing's cooperation for alleviating tensions on the Korean Peninsula. Korea is trying to pursue a delicate balancing act between maintaining a strong alliance with the US and developing a cordial relationship with China. In contrast to Tokyo, Seoul opts for engaging Beijing. As the geopolitical tension between the US-Japan alliance and the PRC is growing, making territorial concessions to Japan would appear to undermine ROK's national security interests.

The expansion of Japan's security role, which is demonstrated by the recent lifting of the collective self-defence ban and the SDF's shift towards southwestern defence, is perceived by ROK as an indirect threat to its security. While the strengthening of Japan's maritime capabilities is primarily aimed at defending Tokyo's territorial interests (and possibly sea lanes) in the ECS, for Korea, these same capabilities are also

relevant in the Dokdo/Takeshima dispute due to the geographical proximity of these territories, as well as SLOCs passing through the area [Lee, 2013]. Therefore, Korea's recent naval modernisation, notably beyond peninsular defence, is underpinned by ROK's strategic mistrust of Japan, along with the DPRK's threat.

**Map 5: China's maritime defensive perimeter**



ROK's government has announced that it intends to invest in enhancing Dokdo's infrastructure and construct a naval base on Ulleung island (88 km from Dokdo/Takeshima). The base would be used for both maritime defence and ROK's force projection in this maritime zone. ROK, therefore, is clearly seeking to assert its sovereignty over the islets and deter Japan from challenging Korea.

Japan's strategic options are limited. It does not have administrative control over Dokdo/Takeshima, and, in contrast to the Senkaku/Diaoyu, cannot rely on US military or diplomatic support – especially since Washington is careful to avoid getting involved in this dispute due to its respective alliances with Tokyo and Seoul. It is unlikely that Japan would attempt to use military force in order to seize the contested islets, while renouncing its sovereignty claims over Dokdo/Takeshima would not improve Japan's relative power position in Northeast Asia either. Korea will not ally with Japan against China. Additionally, such a move would have implications for the other two sovereignty disputes in which Japan is involved.

### **Southern Kurils/Northern Territories**

Three aspects related to the current shifts in regional (and global) power dynamics are relevant to the Russia-Japan dispute. These include the changing geostrategic significance of the islands to Russia due to the opening of the Arctic Northern Sea Route, the China factor in Russo-Japanese relations and Russia's deteriorating relations with the West.

The Northern Sea Route, which has emerged since 2000, shortens the distance of seaborne trade between Europe and Asia, and is safer for vessels than SLOCs passing through the Suez Canal and the Strait of Malacca (see Map 6). This route has increased the strategic significance to Moscow not only of the Arctic region (valuable for its expected energy resources), but also of the Far East. Clearly, controlling navigation in the Sea of Okhotsk of foreign (naval) vessels departing for the Arctic, as well as the shipping lanes around the Kurils, has become a new military-strategic objective for the Kremlin, not least with China in mind [Kato, 2013].

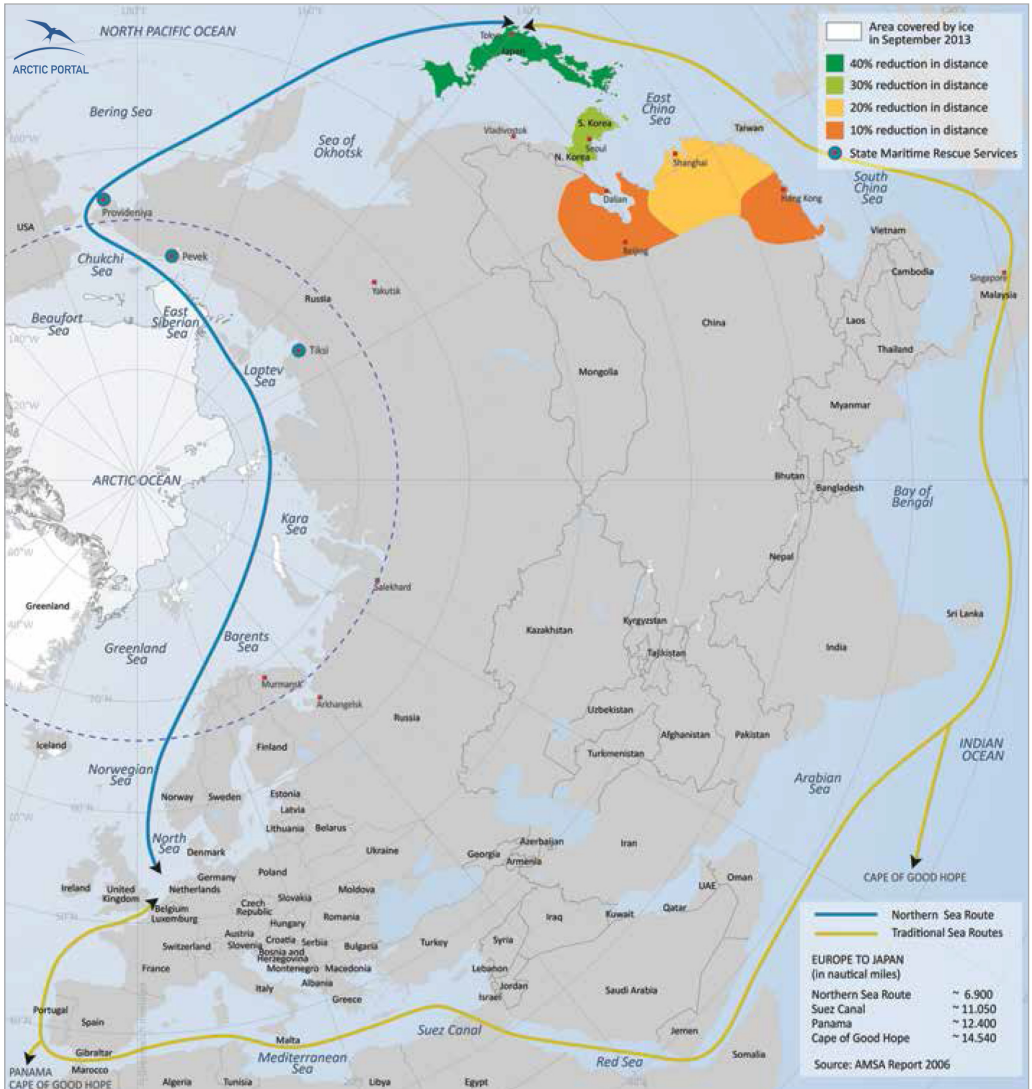
Russia's reinforcement of its military presence in the Far East, including through military drills and modernisation of its forces deployed on the Kurils, is primarily a response to the PRC's growing use of the Northern Sea Route and its advances in the Arctic Ocean [Hyodo, 2014]. Moscow's move is thus aimed at securing its maritime sphere of influence *vis-a-vis* Beijing, especially in the Sea of Okhotsk. This, however, impacts negatively upon the dispute with Tokyo, for Japan perceives this as Russia's attempt to actively assert its sovereignty over the Southern Kurils/Northern Territories. Admittedly, the changing geostrategic importance of the islands from the viewpoint of controlling SLOCs in the area may partly explain why the Kremlin is now less willing to make territorial concessions to Tokyo.

The China factor both encourages and limits Russo-Japanese *rapprochement*. Japan, as discussed earlier, perceives the PRC as a security threat. Improving ties with Russia is thus for Tokyo a way to counterbalance a rising China. Moscow, too, harbours its own suspicions about Beijing's geopolitical objectives, notably, in regard to the Russian Far East and Central Asia. The Kremlin's fears of Chinese regional domination are intensified by the growing disparity in military and economic power between Russia and the PRC. Forging a stronger Japan-Russia partnership, demonstrated by the



launch in 2013 of their first ‘2+2’ meeting, can be seen as a joint attempt to stabilise the balance of power in the region against the backdrop of China’s rise. It seems likely that Tokyo and Moscow have established such a mechanism in the absence of a peace treaty.

**Map 6: The Northern Sea Route**



Source: Arctic Portal – Strategic Assessment of Development of the Arctic (SADA) – Assessment conducted for the European Union, 2014.

On the other hand, shared concerns about China are not sufficient for either side to propose an innovative formula for resolving the dispute, let alone make territorial concessions, in order to deepen the Russo-Japanese partnership. Although Russia is seeking to expand its relations with China's neighbours, such as Japan, India and Vietnam, it is wary of being drawn into a (Japan-led) anti-PRC coalition. Making territorial concessions to Tokyo might be perceived by China in this light. Importantly, Moscow needs Beijing in order to counter US global dominance, which is an objective not shared by Japan. The signing in 2014 of a Russia-China gas pipeline deal (worth US\$400 billion) can be seen as the Kremlin's reinforcement not only of its growing energy cooperation with Beijing, but also of the strategic partnership between the two countries. For Japan, yielding its sovereignty claim on the Southern Kurils/Northern Territories would not significantly enhance its power position relative to China due to the limitations that Moscow places on its ties with Tokyo.

Finally, Russia's confrontation with the West further contributes to the non-resolution of the dispute, by exposing the impact of the US factor on Russo-Japanese relations. In order to show support for the policies of its US ally (and the G7) in the ongoing Ukraine crisis, Tokyo in 2014 followed Washington and imposed (albeit mild) sanctions on Russia. Moscow showed its displeasure by conducting military drills on the contested islands. As a result, Japan-Russia negotiations on dispute settlement were stalled again. Even without the Ukraine crisis, there are no strong strategic incentives for Japan and Russia to seek a resolution of the dispute. This is all the more the case given that the territorial issue *per se* is not a direct obstacle to a deepening of the bilateral security and economic ties between the two countries.

To sum up: the economic, territorial and strategic value of the contested islands is highest in the Senkaku/Diaoyu case. The escalation of tensions between Japan and China since 2012 is a direct outcome of their growing competition for energy resources and their naval rivalry in the ECS. Furthermore, the reinforcement of Tokyo's and Beijing's respective claims has gradually led to a militarisation of the dispute.

The trend towards militarisation observed in the ESC is clearly absent in the other two disputes. Power and energy security considerations are not direct, or significant, sources of tension in either the Dokdo/Takeshima case or the Southern Kurils/Northern Territories case. Accordingly, these two disputes are unlikely to escalate into military confrontation in the foreseeable future.

At the same time, conflicting interpretations of the rightful ownership of the contested territories under the post-World War II agreements are drivers in all three cases. The historical dimension will be explored in more detail in the next chapter.

Finally, in all three cases, settling the territorial issue is imperative for resolving the related EEZ disputes.

## II. NATIONALISM, HISTORY AND IDENTITY POLITICS

Domestic political environments and identity politics are key to an understanding of the three territorial disputes in Northeast Asia analysed in this report. Competing nationalisms, the history of the region, and each country's self-perception all have a direct impact on the disputes. The use (and abuse) of nationalistic feelings, mutually antagonistic historical narratives and strong identities are embedded in the Senkaku/Diaoyu, Dokdo/Takeshima and Southern Kurils/Northern Territories quarrels.

In contrast to Europe – where the EU softens political differences – nationalism, history and identity politics still inform the positions taken by politicians in the countries involved in the disputes. Furthermore, public opinion often puts pressure on politicians to link these issues to the region's territorial disputes. Thus, it would be misleading to argue that they are being used by politicians to support their countries' territorial claims. Even though there might be an element of political leaders making use of them, the truth is that nationalist, historical and identity perceptions are shared across most groups in the different countries of Northeast Asia.

Considering that domestic issues fuel disputes in the region, this chapter will focus on these internal sources of tension. Nationalism, history and identity politics will be linked to the three territorial disputes analysed in this report. The last section of the chapter will examine the extent to which internal factors can serve to ease tensions in Northeast Asia.

### **Nationalism as a catalyst**

It is generally acknowledged that nationalism is a potent force in Northeast Asia. The Pew Global Attitudes Survey 2014 reports that 96% of Chinese, 92% of Russians and 79% of Japanese have a keen sense of nationalistic pride. Similarly, the Korean General Social Survey 2012 shows that 84% of South Koreans express a similar sense of national and cultural pride. Clearly a strong nationalistic sentiment is widespread among the population of the countries involved in Northeast Asia's territorial disputes. Nationalism therefore shapes the way in which the region's countries interact with each other.

Northeast Asian nationalism is primarily based on ethnicity and history. A study by political scientist James Fearon indicates that South Korea and Japan are, in this order, the second and third most ethnically homogeneous countries in the world – only surpassed by North Korea. Meanwhile, China – where 91% of the population is Han Chinese – ranks fifth in the world in terms of ethnic homogeneity. Furthermore, history – as will be explained in the next section – plays a role in Northeast Asia's

nationalism insofar as China, Japan and (South) Korea can all claim to have millennial histories. As a result, Northeast Asia is home to countries in which nation, ethnicity and state are understood as interchangeable.<sup>3</sup> This underpins the centrality of nationalism to the region's politics.

### **Chinese nationalism**

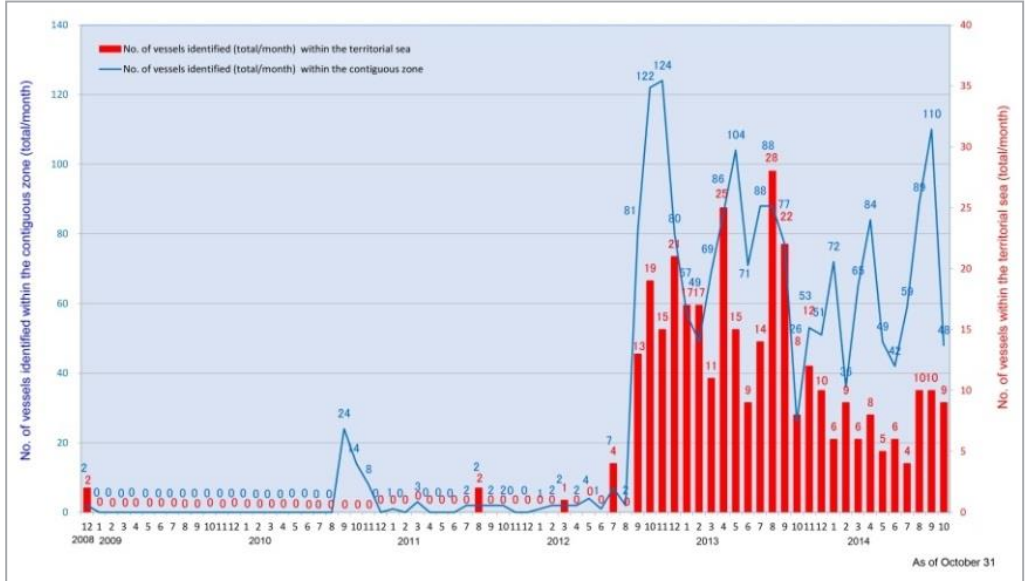
Modern Chinese nationalism directly builds on the 'century of humiliation' that China underwent from 1839 to 1949. The country was forced to open its doors to trade from Europe, suffered during the Opium Wars and was subjected to a number of 'unequal treaties', resulting in a partial occupation of its territory by Western powers. Finally, it experienced defeat in the First Sino-Japanese War of 1894-5, the downfall of the imperial family, and a civil war that spelled the end of China's historical supremacy in East Asian politics. Defeat in the 1894-95 war not only resulted in territorial losses – most notably, the occupation of Manchuria – but also in the shock of realising that Japan had become the most powerful Asian country. Tokyo's abhorrent treatment of Chinese nationals during its colonisation of Manchuria and World War II encourages today's narrative of a China humiliated by its neighbour. Beijing, therefore, cannot make any concession on the Senkaku/Diaoyu dispute, since it considers that the islands were part of China prior to Japan's occupation.

Concurrently, nationalism in the country is also fuelled by China's rise. China overtook Japan to become the world's second-largest economy in 2011, a source of considerable pride. Beijing has also become a diplomatic power, holding annual bilateral summits with the EU and the US while occupying a central role in relation to issues such as climate change or financial governance. Militarily, China's build-up has rapidly strengthened its capabilities: in January 2009, the country's navy was deployed in an anti-piracy mission to the Gulf of Aden – the first time in China's modern history that its navy was sent beyond its territorial waters. This rise has made Beijing only more willing to assert its territorial claims, including those in the East and South China seas. As Map 1 (p. 7) shows, Beijing has competing claims with six other countries in the region.

The Communist Party of China (CPC) has traditionally exploited nationalism as a tool to legitimise its power. Most notably, the establishment of the People's Republic of China in 1949 was presented as the end of the century of humiliation by the CPC. More recently, President Xi Jinping's Chinese Dream concept has put the CPC at the centre of efforts to increase prosperity – crucially involving a more powerful military in this task. Casting himself as a strong military leader, President Xi hopes to further legitimise the CPC as the best possible government. As Graph 1 shows, China's empowerment of its military since he became president has resulted in a significant increase in the number of vessels – both civilian and military – entering the waters surrounding Senkaku/Diaoyu.

<sup>3</sup> Note that both China and South Korea claim sovereignty over Taiwan and North Korea, respectively. They are considered to be part of the same nation.

**Graph 1: Chinese vessel incursions in Senkaku/Diaoyu waters**



Source: Japan Coast Guard, Japan Ministry of Foreign Affairs website (2014)

This trend is also prevalent in Chinese public opinion, as attested by the number of Chinese expressing nationalistic views and sentiments. When it comes to international relations, 85% of Chinese claim that their country is a positive influence, according to the Country Ratings Poll 2014. This belief serves to underpin the government’s assertive nationalist stance. On the one hand, a more active Beijing represents the wishes of a population that feels pride in the country’s history and accomplishments. On the other hand, it is felt that an assertive posture towards Japan can be justified by the historical grievances of the Chinese population, which a more powerful Beijing is now in a position to address: this will be explored in detail in the next section.

**Japanese nationalism**

Nationalism in Japan is also partially based on the country’s history. Following the end of World War II, a new Japanese constitution was enacted in 1947. Article 9 of the constitution commits Tokyo to renounce war and belligerency (see Box 1, p. 10). This assuages the fears of Japan’s East Asian neighbours who suffered the consequences of the country’s aggressive militarism in the first half of the twentieth century. For decades, however, this article in the constitution has been a constant source of debate in Japan. Supporters of a constitutional revision maintain that it would make Japan a ‘normal’ country with its own military – technically, Japan does not have its own army, but rather Self-Defence Forces. Following the deployment of

the country's forces in Iraq from 2004-06, the debate about Article 9 was reopened. Meanwhile, Japan's navy has been deployed in support of international missions in Afghanistan and the Gulf of Aden since the turn of the century, further contributing to the debate about Japan's commitment to renouncing war and belligerency. Right-wing nationalists in Japan have used these deployments to bolster their claims for Article 9 to be modified to reflect the *de facto* role of the military.

**Box 4: Constitution of Japan, Article 9 (1947)**

1. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
2. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

The re-election of conservative Shinzo Abe as the prime minister of Japan in December 2012 strengthened right-wing nationalism in Japan. Prime Minister Abe's grandfather was a member of the Japanese cabinet during World War II. This seems to have shaped his views regarding Japan's behaviour during the war. Most notably, a year after being re-elected prime minister, Abe visited the Yasukuni Shrine in December 2013, causing great controversy in China and South Korea – among others, 14 A-Class war criminals are buried in the shrine. Coupled with these visits, the Abe administration reinterpreted Article 9 of the constitution in July 2014. Provided that Abe succeeded in passing relevant legislation, Japan would be able to deploy its military to exercise the right of collective self-defence and to protect its allies in the event of an attack. This could potentially include cooperation with the US in the disputes about Senkaku/Diaoyu and the Southern Kurils/Northern Territories.

Another recent source of rising nationalism in Japan derives from a perception of decline and vulnerability. In stark contrast to their Chinese counterparts, only 50% of Japanese think that their country is a positive influence in world affairs, according to the Country Ratings Poll 2014. This negative perception is the result of several factors, including a shrinking population, the March 2011 tsunami and subsequent Fukushima nuclear plant crisis, as well as slow economic growth when measured by GDP. This perception has led a growing number of Japanese to perceive assertiveness in the country's territorial disputes as an antidote to decline.

Japanese nationalists also exert pressure on politicians in relation to territorial quarrels through lobbying. More specifically, the League of Residents of Chishima and Habomai Islands affects the position of the Japanese government with regard to the Southern Kurils/Northern Territories. Made up of the descendants of inhabitants of

the islands expelled when control of the islands passed to the Soviet Union, this and other similar organisations have an uncompromising stance towards any concession Tokyo might make in its official position.

### **(South) Korean nationalism**

South Korea's modern nationalism is also the result of twentieth-century events. Japan's colonisation of Korea between 1905 and 1945 is its main driver. Like China, Korea suffered heavily at the hands of Japan. Hundreds of thousands of Korean nationals – labelled as 'comfort women' – were used as sexual slaves and cheap labour and/or executed. A powerful independence movement emerged during the years of occupation. The spirit of this movement remains in contemporary South Korea in the form of opposition to any real or perceived provocation from Japan. This includes Dokdo/Takeshima, which was first occupied by Tokyo as a platform to invade Korea. Thus, the dispute over these islands is intrinsically linked to the notion of South Korea as an independent country.

Recently, another source of nationalist pride affecting Seoul's international relations has emerged. It is the notion that South Korea has now become a developed economy and middle power punching about its weight. This new perception of South Korea as a powerful country has been boosted by the appointment of Ban Ki-moon as Secretary General of the UN in January 2007, Seoul hosting the 2010 G20 and 2012 Nuclear Security summits or Pyeongchang being selected as the host of the 2018 Winter Olympics. Furthermore, 68% of South Koreans consider their country a positive influence in world affairs, according to the Country Ratings Poll 2014. The flip side of the coin is that South Korean nationalism does not conceive the country making concessions on its core international interests – including the Dokdo/Takeshima issue.

The inauguration of Lee Myung-bak as South Korea's president in February 2008 marked the return of a conservative government to power after ten years of left-wing rule. With Park Geun-hye replacing Lee as president in February 2013, conservatives are poised to remain in power until at least the next election, scheduled for late 2017. Both presidents have taken a leading role among right-wing South Korean nationalists critical of Japan's allegedly limited atonement for its past behaviour. In August 2012, Lee became the first South Korean president to set foot on Dokdo/Takeshima. President Lee explicitly linked this visit to his wish for Japan to discuss the comfort women issue. For her part, President Park has refused to meet with Prime Minister Abe since taking office. She has even declined to reconvene a trilateral head of government-level summit also involving China, which was launched in 2008 during the Lee administration. President Park has explicitly linked a meeting with Prime Minister Abe to Japan taking a 'sincere' approach towards the comfort women issue.

Surviving comfort women form a pressure group that no South Korean government can ignore. During World War II tens of thousands of women were forced into

prostitution and raped by Japanese soldiers. Today, there are less than 60 known survivors. In the past, Tokyo has offered compensation to surviving comfort women and apologised for the behaviour of its military. Nevertheless, today many Japanese still deny the existence of comfort women. Prime Minister Abe himself has been ambiguous as to whether Tokyo should have apologised for this issue. This helps to spark South Korean nationalism and hostility towards Japan, since the comfort women issue is widely seen as a grave offence in the country.

### **Russian nationalism**

Nationalism seems to play a less important role in driving Russia's position towards territorial disputes in Northeast Asia. Nonetheless, there is a place where nationalism appears to be important in relation to this issue – the Russian State Duma. Over the years, the Duma has been critical of any possible compromise with Japan regarding the Southern Kurils/Northern Territories. For Russian right-wing nationalists – who have a majority in the Duma – the islands are fair retribution for the Soviet Union being on the winning side in World War II. Therefore, there is no possible discussion about the sovereignty of the islands.

Meanwhile, President Vladimir Putin is representative of the vast majority of Russians who think that their country remains a great power. Up to 77% of Russians polled in the Country Ratings Poll 2014 believe that their country is a positive influence in international relations. This view is related to the position that many Russians hold that their country was eviscerated following the end of the Cold War, and therefore should not lose – if not reclaim – more territory. In 2009, for example, a poll conducted by the Russian Public Opinion Research Centre (VTsIOM) found out that 89% of Russians think that Moscow should not make any territorial concessions in the Southern Kurils/Northern Territories. This fits within the narrative of Russia as a great power.

There is also a group putting pressure on the Russian government not to make any concessions. The Ainu people, descendants of the original inhabitants of the Southern Kurils/Northern Territories, reject the idea of ceding any of the islands to Tokyo. Certainly, they are very few in number – some 1,000 Ainu remain alive in Russia today. Yet they have written to President Putin in the past requesting him not to reach an agreement with Japan, as he did with Prime Minister Mori Yoshiro in 2001.

### **Unresolved historical disagreements**

Northeast Asia is home to countries with long and intertwined histories. China, Japan and Korea all trace their emergence as sovereign countries further back in time than most other countries around the world. Russia's history, meanwhile, also stretches back centuries. Whether real or imagined, the prevailing national narrative in each country posits that they have existed in their current form for a very long period of time. This fosters a sense of nationalistic pride in the population at large.



Such long histories have inevitably led to problems among the countries in the region. China sometimes claims that the Northern part of the Korean Peninsula originally belonged to it. Japan sought to occupy Korea and Manchuria several times, until it eventually succeeded in the early decades of the twentieth century. Korea owned parts of Manchuria in the past; today, a sizeable Korean community lives in the region. Russia, for its part, had its own aspirations over the Korean Peninsula and Manchuria between the late nineteenth century and the first half of the twentieth century. These past disputes translate into disagreements today regarding the perception of Northeast Asia's history. They spill over into the territorial disputes over Senkaku/Diaoyu, Dokdo/Takeshima and the Southern Kurils/Northern Territories.

### **History in the Senkaku/Diaoyu Islands dispute**

The historical legacy of Japan's colonisation of Manchuria and other parts of China has a direct bearing on the Senkaku/Diaoyu dispute. The Japan-China Public Opinion Poll 2014 reports that only 11% of Chinese have a positive view of Japan, whereas 86% have a negative one. Meanwhile, only 6% of Japanese have a positive perception of China, compared with 93% who perceive China negatively. Even though there are many reasons for such negative perceptions, history is among the most important. According to the same poll, up to 59% of Chinese consider Japan's lack of remorse over its wartime conduct to be a central reason for their negative impressions of their neighbour – second only to the Senkaku/Diaoyu dispute in terms of importance. Conversely, 52% of Japanese consider criticism over historical issues an important factor driving their negative views of China – almost on a par with Chinese behaviour with regard to international rules and its quest for resources.

The modern history of the Senkaku/Diaoyu dispute has been marked by almost uninterrupted Japanese *de facto* control over the islands, as Box 2 (p. 12) shows. For Beijing, this helps to prove that Tokyo has yet to atone for its history, since it considers that the islands have been illegally occupied by Japan since the end of the First Sino-Japanese War in 1895. After the two sides officially agreed that they had different views 'regarding the tensions in recent years in the waters around the Senkaku/Diaoyu islands', President Xi agreed to meet Prime Minister Abe in a bilateral meeting on the sidelines of the November 2014 APEC summit held in Beijing.

Notwithstanding this recent thaw in relations, the rise of historical revisionism in Japan is affecting relations with China. This is exemplified by the controversy regarding school textbooks. Generally, these textbooks minimise Japanese responsibility for the events that took place between 1895 and 1945 – some books, for example, dispatch the comfort women issue and the Nanking Massacre of 1937 in one footnote each. Beijing sees this as an example of right-wing movements in Japan playing down the country's past treatment of its neighbours. Tokyo's behaviour over Senkaku/Diaoyu is thus linked to Japan's failure to come to terms with its history.

### **History in the Dokdo/Takeshima Islands dispute**

History is essential to understand relations between Japan and South Korea, with the Dokdo/Takeshima dispute being no exception. The Joint Japan-South Korea Public Opinion Poll 2014 reveals that 20% of Japanese have a favourable opinion of South Korea, compared to 54% holding a negative view. On the South Korean side, 17% of the population maintain a good impression of Japan, with 70% having a negative one. Again, the spectre of history is the main reason behind these mostly negative perceptions. Up to 73% of Japanese argue that criticism of their own country's history is the main reason for their negative image of South Korea. Meanwhile, 76% of South Koreans cite Japan's refusal to acknowledge its wartime past as the most important reason for having a negative opinion of their neighbour. Incidentally, the Dokdo/Takeshima issue is regarded as the second most relevant issue for these mutual negative views by respondents in both countries. History and disagreements over these islands are therefore closely linked to each other.

*De facto* control over Dokdo/Takeshima has shifted in modern history, as Box 2 shows. Japan administered the islands from 1905 until the end of World War II. South Korea has been the administrator of the islands following the signing of the San Francisco Treaty in 1951. Seoul considers that it is the rightful owner of Dokdo/Takeshima. Successive Korean governments have maintained a clear position: Japan illegally occupied Dokdo/Takeshima when it annexed Korea, since the islands belonged to Korea before; therefore, there is no dispute over Dokdo/Takeshima. For South Korea (as well as for North Korea) the fact that Japan claims ownership of the islands proves that it is yet to fully acknowledge its past colonisation of Korea. Different interpretations of history again emerge as a central element of this dispute.

The role of history in the Dokdo/Takeshima quarrel is embedded in broader discussions about Japan's attitude to its past. As in the case of Beijing, Seoul accuses Tokyo of historical revisionism. President Lee explicitly linked the Dokdo/Takeshima dispute to the comfort women issue following his visit to the island in August 2012, as mentioned in the previous section. For her part, President Park has so far refused to hold a formal bilateral summit with Prime Minister Abe; the latter's visits to the Yasukuni Shrine and apparent lack of remorse for Japan's past behaviour are cited as the main reason behind her refusal. History is thus weakening the relationship between two countries which otherwise have many things in common.

### **History in the Southern Kurils/Northern Territories dispute**

While this dispute has a historical component to it, the historical driver does not seem to be as strong as it is in the two other territorial disputes analysed in this report – at least in the case of Japan. Indeed, the Pew Global Attitudes Survey 2014 reports that just 23% of Japanese have a positive image of Russia, whereas 69% have a negative opinion.<sup>4</sup> Yet this seems to be related to Moscow's domestic and international behaviour rather than a reflection of history-related animosity. In the same poll, 70%

<sup>4</sup> There seems to be no reliable publicly available data on Russians' views of Japan.

of Japanese maintain that the Russian government does not respect the freedoms of the country's citizens. Tokyo has also denounced Moscow's annexation of Crimea, with Foreign Minister Kishida Fumio asking in July 2014 for the rule of law to be upheld in the dispute between Russia and Ukraine. Japan has also imposed sanctions on Russia in relation to the Crimea issue.

It is Russia that seems to link history and the Southern Kurils/Northern Territories issue more closely. For Russians, sovereignty over the islands is directly linked to victory in World War II, as mentioned above. According to Russia, both the Yalta Agreement of 1945 and the San Francisco Treaty of 1951 explicitly recognised Moscow's sovereignty over the Southern Kurils/Northern territories (see Box 3). This is denied by Japan, with Tokyo also arguing that Russia did not sign the San Francisco Treaty. Either way, most Russians believe that the islands are spoils of the Soviet Union which the country deserved for having joined the coalition that defeated Japan in 1945.

Since history is not as central to the Southern Kurils/Northern Territories dispute for Japan, over the years Tokyo has floated several agreements to end the dispute. These agreements would ultimately allow Japan to regain control over two of the four islands – Shikotan and Habomai, as originally proposed by the Russians in the 1956 Soviet-Japanese Joint Declaration. Today, Tokyo acknowledges that obtaining control over the four of them is unrealistic in the short term. The latest two-plus-two agreement was reached by Prime Minister Mori and President Putin in 2001. This led to an upsurge of nationalism in Japan, leading Prime Minister Koizumi to withdraw the concession. The agreement, therefore, was removed on nationalistic rather than historical grounds.

### **The role of identity politics**

Identity politics are prevalent across the world, and Northeast Asia is no exception. The issue of national identity came to prominence in the region once superpower politics vanished with the end of the Cold War. Furthermore, work to create a regional identity has failed, as efforts to establish a regional institution in Northeast Asia, such as ASEAN or the EU, have not materialised. Identity politics therefore are central to understand the international relations landscape of the region, including the Senkaku/Diaoyu, Dokdo/Takeshima and the Southern Kurils/Northern Territories disputes.

Identity politics are closely linked to nationalism and history, which have already been discussed. Thus, this section will not focus on these two aspects of identity politics; instead, it will focus on the identity politics of the 'other'; that is, on how the countries in the region present themselves *vis-à-vis* their counterparts – especially in relation to the three disputes analysed in this report. As social scientist Alexander Wendt argues, countries have multiple identities. One facet of these concerns the way in which a country sees

itself in a relationship with another country – the ‘other’ just referred to. Understanding this identity makes it possible to better comprehend a country’s position.

### **Identity politics and the Senkaku/Diaoyu Islands dispute**

China presents itself as a great yet also aggrieved power in its relationship with Japan. It cannot be denied that China’s economic, political and military rise in recent years has made Beijing more willing to flex its muscles. This fits within President Xi’s ‘great revival of the Chinese nation’ narrative, which aims to restore China to its perceived rightful place at the apex of global affairs. At the same time, China is an aggrieved power insofar as it is incomplete, with some of its territories missing. The most obvious is Taiwan, which Beijing considers to be part of China. Another one is Senkaku/Diaoyu which, according to the Chinese government, rightfully belongs to China. Hong Kong and Macau have already been returned to Beijing. Taiwan might be in the future. In Beijing’s view, Senkaku/Diaoyu should join them and also be returned. Beijing’s expansion of its East China Sea ADIZ in November 2013 – which was *de facto* based on the idea that the islands belong to China – forms part of this identity politics game.

For its part, Japan portrays itself as an equal to China in its bilateral relationship. Constant talk about the rise of China and the perceived stagnation – if not decline – of Japan has made Tokyo more assertive in its relationship with its neighbour. Most notably, the decision by Prime Minister Abe to reinterpret Article 9 of the Japanese constitution has been linked to the projection of a stronger Japan. Many Japanese analysts consider that China has become more aggressive in its foreign policy. Tokyo would thus need to become more assertive in order to counter Beijing’s aggressiveness, and to prevent China from gaining the upper hand in the dispute. This would in turn demonstrate that Japan is not in decline. Thus, Japan’s Self-Defence Forces have dispatched fighter jets to Senkaku/Diaoyu whenever Chinese jets have entered their airspace. Tokyo’s decision to purchase three of the islands – discussed earlier – can also be portrayed as Japan engaging in identity politics.

### **Identity politics in the Dokdo/Takeshima Islands dispute**

Japan plays identity politics differently in the case of Dokdo/Takeshima. Tokyo does not have to prove to Seoul that it is in an equal relationship, so this does not feature in the way that it presents itself in the dispute. Instead, Japan portrays its position as that of an aggrieved party asking for the return of the islands to the legitimate owner. It also presents itself as a rational actor seeking to solve the issue peacefully – the implication being that South Korea is acting aggressively by allegedly occupying the islands and refusing to discuss the issue. Tokyo argues that Seoul has been using force to assert itself in Dokdo/Takeshima since it took over management of the islands in 1952. In contrast, Japan has sought to transfer the dispute to the ICJ on three occasions, as mentioned earlier. In short, it can be said that Japan perceives itself as a wronged party which nonetheless seeks to act reasonably.

As for South Korea, its stance regarding the Dokdo/Takeshima issue is primarily based on the idea that Korea was – and is – an independent country that suffered under Japanese colonisation. Tokyo's claims over the islands are therefore illegitimate insofar as the islands themselves always belonged to Korea until the country was occupied by Japan. Indeed, the South Korean government considers the presence of Japanese troops on Dokdo/Takeshima during the Russo-Japanese War as the first step in the colonisation of Korea. Therefore, Seoul should assert its sovereignty over the islets. This explains why South Korea's Coast Guard patrols the waters around these territories, a small contingent of police officers guards them, and President Lee had the right to visit there in 2012. These actions are all necessary to demonstrate that Dokdo/Takeshima is an inalienable part of an independent and strong South Korea.

### **Identity politics in the Southern Kurils/Northern Territories dispute**

Japanese identity politics in relation to these territories play out in a similar way to those linked to Dokdo/Takeshima. Tokyo presents itself as an aggrieved party who is nonetheless willing to solve the dispute through talks and negotiations. Tokyo portrays Russia as an occupying force that illegally took over the Southern Kurils/Northern Territories in the aftermath of World War II – expelling 17,000 Japanese inhabitants from the islands in the process. Japan argues that it would not expel current Russian inhabitants from the islands were it to regain control of them. Again, Tokyo seeks to present itself as a rational party willing to act with restraint. Meanwhile, the Japanese government links resolution of this issue to the signature of a peace treaty with Russia. The implication appears to be that Moscow is unwilling to deal with Tokyo's grievance in return for a formal end to World War II hostilities.

In contrast, identity politics do not seem to be central to Russia's position regarding the Southern Kurils/Northern Territories. If anything, Moscow portrays itself as the rational actor in this dispute. It accuses Tokyo of jeopardising bilateral relations for the sake of a group of islands that rightfully belong to Russia. In particular, Russia points out what it considers to be Japan's irrational behaviour in refusing to negotiate a World War II peace treaty because of the territorial issue. However, the Russian government seeks to improve relations with its Japanese counterpart and overall tries to downplay the dispute. Moscow even accepted a two-plus-two solution in the past in spite of domestic opposition.

### **Internal sources of tension**

Throughout this section, we have seen the extent to which nationalism, history and identity politics are domestic sources of tension fuelling territorial disputes in Northeast Asia. Nevertheless, internal developments in the different countries in the region can also have a positive impact in the Senkaku/Diaoyu, Dokdo/Takeshima and the Southern Kurils/Northern Territories quarrels. In particular, accommodative domestic constituencies and confidence-building measures can serve to reduce problems in the region.

There are domestic constituencies across Northeast Asia willing to put the necessary effort into alleviating tensions emanating from the territorial disputes. In this regard, less conservative groups in China, Japan and South Korea – especially in the last two countries – have generally been more open to downplay territorial disputes and focus on the positive aspects of relations in the region. Furthermore, business, track two, student and people-to-people exchanges have been maintained even when tensions have risen. Even government contacts have not ceased – in the midst of tensions sparked by China’s expansion of its East China Sea ADIZ, Ministry of Economy representatives from China, Japan and South Korea were discussing a possible trilateral Free Trade Agreement (FTA).

The Trilateral Cooperation Secretariat also plays an important role in limiting the effect of territorial tensions and building trust. Based in Seoul, the secretariat was launched in September 2011 to coordinate different cooperation and consultative mechanisms between China, Japan and South Korea and to promote further cooperation. Even though the trilateral summit has not been held since 2012, the existence – and vitality – of the Trilateral Cooperation Secretariat keeps cooperation alive at other levels.

With regard to defusing tensions, two examples stand out. Symbolic gestures from highest-level leaders are an important part of the healing process between countries. For example, Japanese Prime Minister Tanaka Kakuei agreed to a joint statement recognising Japan’s responsibility for the ‘serious damage’ caused to China, during a visit to Beijing in September 1972. Similarly, Emperor Akihito expressed his ‘remorse’ for the suffering that Japan had brought to Korea in the past during a meeting with South Korean President Roh Tae-woo in May 1990. These gestures led to a thaw in relations between Japan and, respectively, China and South Korea. Clearer apologies or similarly symbolic gestures – not qualified later by other leaders – would serve to ease territorial tensions.

A second potent tension-easing mechanism would be a joint history textbook written by Chinese, Japanese and South Korean historians. This idea has been floated several times in the past. President Park sought to revive it during a speech she gave in November 2013, in which she cited the example of the benefits from a similar effort undertaken by Germany, France and Poland. Certainly, finding a common position on the territorial disputes would be very difficult even for dispassionate historians. In any case, the mere fact of sitting down around a table to discuss a joint textbook would be a significant step forward.

Ultimately, the internal sources of tension discussed in this chapter have not prevented an improvement in economic, diplomatic and people-to-people relations across Northeast Asia. Even serious military clashes have been avoided so far, in spite of repeated warnings by many analysts that they might take place at any moment. Thus, nationalism, history and identity politics need not preclude an easing of tensions in Northeast Asia’s territorial disputes.

### III. TRUST THROUGH COOPERATION

As much as sovereignty disputes focus on the need to agree on clearly defined borders, the popular adage ‘good fences make good neighbours’ simply cannot apply to the maritime domain. For these disputes concern more than abstract lines and spaces on navigational charts: the disputed waters and subsoil abound with natural resources and seaborne activity. Fish and hydrocarbon reserves do not recognise geopolitical borders and can only be explored and developed through cooperation among the littoral states. Straddling across national borders, they can therefore constitute the most natural basis for cooperation – not competition or conflict.

Northeast Asia is notorious for simmering security and diplomatic tensions, which are heavily impacted by sovereignty disputes. Competition over natural resources, environmental degradation, or illicit transboundary activities have the potential to further exacerbate existing tensions and pose a threat to regional stability in the long run. The management of these issues therefore requires concerted security cooperation which is of national interest and economic benefit to all parties. As opposed to sovereignty, which cannot be divided, natural resources *can* be shared.

Addressing issues of common interest at sea, especially in politically sensitive geographical areas, can help pave the way to negotiations and progressive settlement of disputes. Joint exploration and development of non-living resources, as well as other provisional arrangements in the disputed waters, represent the most plausible way to alleviate tensions. Without prejudicing the respective positions of the littoral states regarding sovereignty or boundary delimitation, various cooperative mechanisms can facilitate dialogue, establish communication channels, and in the long run, set the institutional basis for wider regional security cooperation. Finally, by promoting transparency and capacity building, cooperative mechanisms can serve as instruments for confidence and trust building – which are perhaps the most valued commodities in the region.

A number of cooperative schemes have been put in place bilaterally, from joint development to common fisheries arrangements, which will be examined in more detail in this chapter. While throughout the 1990s and early 2000s, parties exercised restraint and agreed to set aside disputes to work towards mutual economic benefits, the situation started to deteriorate especially over the past ten years – in the context of China’s rising strategic ambitions. In all littoral states, growing economic and strategic uncertainties give rise to nationalistic tensions, which hamper diplomatic relations and progress in negotiations. As a result, we are still far from witnessing a stable, more institutionalised maritime security regime in the region.

Cooperation on functional issues of common interest is a pragmatic interim solution with a promising stabilising potential, as argued by proponents of the ‘functionalist’ theory of international relations. That is also the rationale at the heart of the European strategic thinking and security architecture. Could this logic possibly apply to Northeast Asia’s security environment? What are the multilateral initiatives in place in the region and how instrumental could they be for soothing current tensions? Considering the level of security stakes, it is an option that certainly deserves further attention. When doing so, examples from all around the world can serve as an inspiration, with the European model at the forefront. Building trust through cooperation in strategically less sensitive security areas is the focus of the most recent Korea-led regional initiative: the Northeast Asia Peace and Cooperation Initiative (NAPCI) - drawing directly on Europe’s Cold War Helsinki process.

### **A matter of law and common sense**

The need for cooperation is logically dictated by the distinctive nature of the maritime realm itself. All maritime activities, be it transportation, exploitation of natural living and non-living resources, marine scientific research, coordinated Search and Rescue (SAR) or marine environmental protection require international cooperation. The interconnected, transnational character of the maritime environment suppresses the logic of territorialisation or unilateral action. As the pioneer of the concept of ocean governance, Elisabeth Mann-Borghese, has observed, it shifts the security focus from *territorial* to *functional*, and as such ‘limits, transforms and transcends the concept of sovereignty’ [Mann-Borghese, 1999]. Existing international legal frameworks, with UNCLOS at the forefront, reflect this logic and provide a comprehensive set of rules for the equitable management of virtually all maritime issues and activities, which should be accepted, in principle, by all regional parties.

Cooperation among states bordering enclosed or semi-enclosed seas is specifically stipulated in Article 123 of Part IX of UNCLOS, stressing the need ‘to coordinate the management, conservation, exploration and exploitation of the marine environment and living resources; implementation of their rights and duties with respect to the protection and preservation of the marine environment; scientific research policies and to cooperate with other parties involved where appropriate.’<sup>5</sup> Regardless of who owns what, as semi-enclosed seas, the East China Sea, the Sea of Japan/East Sea and the Okhotsk Sea should be treated as a Common Pool Resource (CPR) by the surrounding countries, and consequently managed in a cooperative manner. The need for international cooperation and an ecosystem-based approach to the management of marine natural resources and environment is also stressed in other international conventions, such as the 1992 United Nations Convention on Environment and Development (UNCED, ‘Agenda 21’), or the 1995 UN Fish Stock Agreement of 1995.

5 The United Nations Convention on the Law of the Sea (UNCLOS), Part IX, Article 123. Available at [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part9.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part9.htm).



As examined in chapter one of this report, economic gains stemming from the exploitation of natural resources – whether hydrocarbon resources or fisheries – drive sovereignty disputes in Northeast Asia to some extent. However, boundary settlement is not a necessary prerequisite for joint exploration and development. The management of straddling resources in case of unresolved boundaries is specifically addressed in Articles 74(3) and 83(3), recommending the establishment of Joint Development Arrangements (JDA) or other ‘provisional agreements of practical nature, allowing for the utilisation of resources pending the resolution of the dispute’. Joint development of oil and gas and joint fishery agreements in overlapping zones are typical examples of such provisional arrangements that can be found in the region. Besides the practical and economic advantages, such arrangements have the potential to bring governments to the negotiating table, provide communication channels, and ultimately help to build trust and foster habits of cooperation at sea.

The concept of joint development of undersea resources was first introduced by the ICJ decision on the North Sea Continental Shelf case in 1969, urging states to put in place ‘a regime of joint jurisdiction, use or exploitation for the zones of overlap or any part of them’.<sup>6</sup> In 1989, the British Institute of International and Comparative Law, proposed a more elaborate definition, referring to ‘an agreement between two States to develop so as to share jointly in agreed proportions by inter-State cooperation and national measures the offshore oil and gas in a designated zone of the seabed and subsoil of the continental shelf to which both or either of the participating States are entitled in international law’.<sup>7</sup> Depending on the agreement, states are free to choose the preferred model of joint development (see Box 5 below).

#### **Box 5: Three models of joint development**

1. **‘One state’ or ‘Single state’ model:** one of the concerned states manages the exploitation and distributes profits to others (minus development costs); development activity and actors are subject to the jurisdiction of the developing state
2. **Compulsory joint venture:** concerned states agree to establish a joint venture composed of corporations of both states to operate in a designated zone
3. **Joint authority:** states agree to establish a joint authority or organisation, with a juridical personality under the domestic laws of each involved country, with rights of regulation and supervision; requires delegation of authority and intensive cooperation

6 ICJ Reports 1969, p 53, paragraph 101(C) (2).

7 British Institute of International and Comparative Law, *Joint Development of Offshore Oil and Gas: A Model Agreement for States for Joint Development with Explanatory Commentary* (London: British Institute of International and Comparative Law, 1989).

**Table 2. Current joint development schemes**

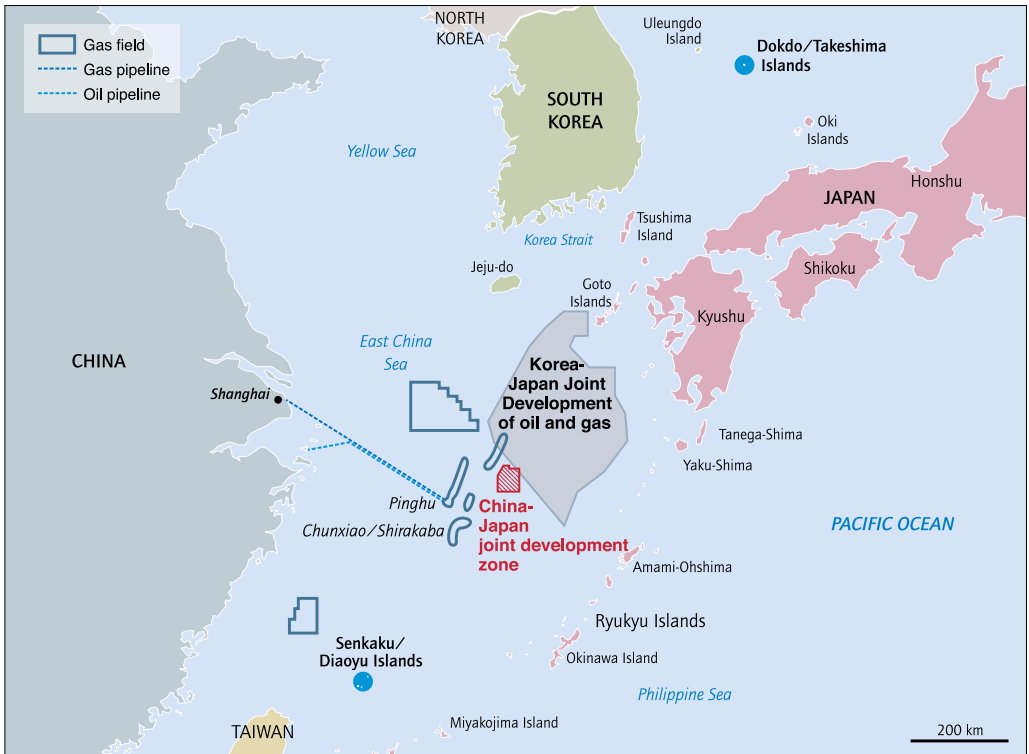
<b>Cooperation Dispute</b>	<b>Oil &amp; Gas</b>	<b>Fisheries</b>
<b>East China Sea</b>	The ‘Principled Consensus on the ECS’ (2008) (legally not a real joint development agreement, but still an effort at shared resource development) delineates a small area for joint development in the north of the disputed waters. It does not include waters around the Senkaku/Diaoyu Islands.	Joint Fisheries Agreement (1997) – leaves out the area around the Senkaku/Diaoyu Islands as ‘high seas’, where flag-state responsibility applies. It establishes a Provisional Measures Zone (PMZ) in the overlapping area.
<b>Sea of Japan/East Sea</b>	Joint Development Agreement between Japan and the ROK (1974) in the East China Sea (does not apply to waters surrounding the Dokdo/Takeshima Islands)	Joint Fisheries Agreement (1999) – with joint-use PMZ in waters surrounding the Dokdo/Takeshima Islands (3-12 nm)
<b>Okhotsk Sea/ Northern Territories</b>	None	Japan-Russia Reciprocal Fisheries Agreement (1984) – Japanese fishermen are free to fish in waters surrounding the Southern Kurils/Northern Territories (although cases of persecution by Russian coast guards have been recorded)

China and Japan have ratified UNCLOS in 1994, followed by the ROK in 1996 and Russia in 1997. All regional countries discussed are therefore legally bound by its provisions. Since their accession, all four countries have tried to engage in rudimentary forms of cooperation bilaterally, such as joint fisheries arrangements, joint development of mineral resources, and marine scientific research (see Table 2). While these are precisely the types of recommended practical provisional arrangements according to international law, they have not managed to provide the desired level of stabilisation or generate overspill to greater institutionalisation so far [Manicom, 2007]. Quite the opposite: the few regimes already in place encounter difficulties as diplomatic tensions continue to rise.

## Joint development of oil and gas

Development of offshore oil and gas in Northeast Asia dates back to the early 1970s when reports of possibly rich undersea hydrocarbon reserves emerged. Eleven seabed petroleum blocks were built in the East China Sea, by the still then-occupying US forces, in waters around South Korea, Japan, Okinawa and Taiwan. After the withdrawal of US forces, Japan applied the median line principle for the delimitation of its maritime border, while China and South Korea applied the Continental Shelf principle, arguing that it represents the natural prolongation of their land territory. By the end of the 1970s, all three involved countries discussed the establishment of a joint exploitation scheme covering the East China Sea, but without reaching a multilateral agreement. To date, there is only one ‘real’ example of a Joint Development Agreement of Oil and Gas in Northeast Asia: that concluded between Japan and the Republic of Korea. Nevertheless, the possibility has been also explored by China and Japan, to a certain extent.

**Map 7: Joint development of oil and gas in Northeast Asia**



### **Japan-ROK Joint Development Agreement**

The first joint development agreement in East Asia was reached between Japan and South Korea already in 1974. Tokyo and Seoul agreed on the continental shelf delimitation in the Sea of Japan/East Sea and the Tsushima Strait relatively easily, setting aside the issue of sovereignty of the Dokdo/Takeshima Islands. Parties agreed to shelve the issue of boundary delimitation, noting that ‘nothing in the Agreement shall be regarded as determining the question of sovereign right over all or any portion of the Joint Development Zone’ (Article 28). The Agreement corresponds to the second, ‘compulsory joint venture’ model of joint development, whereby a Japanese operator therefore operates on the Japanese side of the median line, obeying Japanese law, and vice versa for the Korean side. Although it does not include waters surrounding the Dokdo/Takeshima Islands, the agreement set the precedent for the establishment of other joint development regimes in the region – including the one between China and Japan.

### **The East China Sea: Sea of Cooperation and Friendship?**

Sino-Japanese tensions in the East China Sea have made the headlines as probably the hottest security topic in the region over the past two years. Despite the existence of sovereignty issues, the possibility of joint development has been on the discussion agenda since 1985. China began to exploit oil and gas from the Pinghu field (70 km west from the median line) in 1998, raising concerns in Japan, which accused China of tapping into the reserves on the other side of the median line. In 2008, the two countries reached a so-called ‘Principled Consensus’, promising to transform the East China Sea into a ‘Sea of Cooperation and Friendship.’ The document addresses cooperation between the two countries during a transitional period pending the resolution of the territorial dispute; joint development of the delimited zone based on the principle of reciprocity; and the participation of a Japanese Legal Person in the development of the Chunxiao/Shirakaba oil and gas field according to Chinese law.

The area agreed for joint development is a small 2,700 sq km zone in the north of the disputed waters – between the Japanese-drawn median line and the Chinese Continental Shelf claim in the East China Sea (see Map 7). Located on the Chinese side of the median line, it applies Chinese jurisdiction. Japanese corporations are welcome to participate along with the Chinese enterprises, obeying Chinese laws specifically designed for foreign cooperation in the offshore areas. Nevertheless, the benefits that Japan derives from the Chunxiao/Shirakaba field remain limited, also due to logistical difficulties in terms of access and transportation (Japan has to use LNG carriers loadable offshore, while China uses an undersea pipeline from the Pinghu gas field).

Although the ‘Consensus’ is a laudable attempt to introduce some kind of regime for resource exploitation and cannot be overlooked, it has not really managed to bring stability into the East China Sea. First of all, the agreement has no legal value, and

has been officially always presented simply as a 'Japan-China Joint Press Statement'. Secondly, it remains contested, especially by the Chinese, who consider it as a 'breach of trust', signed precipitately and under pressure in the preparation for the 2008 Olympics in Beijing. Finally, it only tackles the management of two concrete areas of the disputed waters (the Joint Development Zone and the Chunxiao/Shirakaba field), leaving the rest open for consultations. The most important stumbling block to any form of enhanced cooperation in the East China Sea remains the sovereignty of the Senkaku/Diaoyu Islands – or rather the complex domestic political dynamics described in chapter two. Since Japan's 'nationalisation' of the islands in September 2012, any progress in negotiations on boundary delimitation has been virtually impossible.

### **Fisheries cooperation**

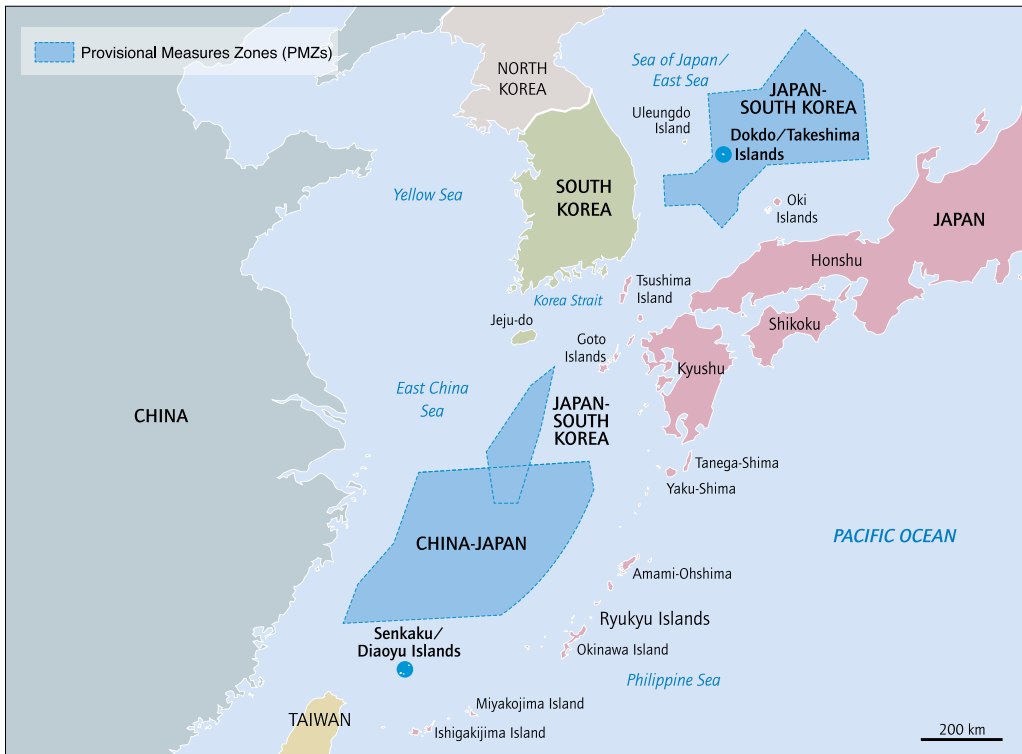
The fishing industry constitutes the oldest and most natural maritime economic activity in the region. The cold and shallow seas of Northeast Asia are among the most productive fishing grounds in the world. Seafood is the principal source of protein and a favourite component of everyday diet of the littoral countries, which are dependent on fishing for consumption as well as exportation. Rapid economic and population growth has increased the demand for fish and triggered harsher competition within the industry. As a result of new technologies and industrial fishing vessels, regional fish stocks have begun to decline dramatically. Territorial disputes have moreover limited traditional deep-sea fishing, confining fishermen to fishing grounds closer to the coastal areas or putting them at risk of confrontation with law enforcement agencies of the opponent country. Sustainable management, exploitation and conservation of the region's precious living maritime resources constitutes therefore one of the most vital areas of functional cooperation.

Fishermen from all littoral countries have used the seas of the region throughout history and basic fishing agreements had already been concluded between China and Japan, China and South Korea, Japan and South Korea, and Japan and Russia before the introduction of formal international legal obligations. Current joint fishing arrangements benefit the fishermen, the marine ecosystem, as well as regional peace. They bring order into waters within overlapping jurisdictions that would normally remain lawless and therefore more prone to clashes and resource degradation. Similarly to joint development regimes, joint fishing agreements represent provisional measures taken by parties in disputed border areas, establishing zones of common management, called the Provisional Measures Zones (PMZ).

The governance of those PMZs is usually ensured by Joint Fisheries Committees (JFCs), composed of governmental representatives of each participating country, which introduces a degree of institutionalisation. Based on assessments by fishing experts and scientists, these provide consultations and recommendations on quotas

of catch, fishing grounds and licences, as well as deciding on the order of fishing operations and dealing with conservation matters. With the JFC, joint fishing regimes can also be considered as rudimentary tools of preventive diplomacy, as disagreements within the PMZs are settled through direct negotiation, without the intervention of a third party.

**Map 8: Joint fisheries arrangements in Northeast Asia**



**Japan-South Korea Joint Fisheries Agreement**

A joint fisheries agreement has been reached between Japan and South Korea also in areas surrounding the disputed Dokdo/Takeshima Islands (something the two countries have not managed to deliver in the oil and gas domain). After three years of negotiations, a compromise was found in 1999, declaring the disputed waters around the Dokdo/Takeshima Islands as ‘middle waters’ – an area for joint management (see map above). Within the Sea of Japan/East Sea PMZ, each party agrees to manage its own vessels and to relinquish the right to intercept vessels of the other party. Fishermen of both countries are allowed to fish in the EEZs of the other side, pursuant to the principle of reciprocity. This means that fishermen of one country need to apply for a licence to fish in the EEZ of the other country and obey

its domestic regulations. In the case of seizure or detention, however, the ship shall be promptly returned to its country of origin. Nevertheless, skirmishes still occur due to suspicions of overfishing (especially of stocks of the highly valued snow crab), with both parties mutually accusing each other of not respecting the quota. Despite the existence of the agreement, fishing disputes continue to exacerbate tensions surrounding Dokdo/Takeshima, as the richest fishing grounds are arguably to be found precisely around the disputed islands.

### **China-Japan Joint Fisheries Agreement**

Concluded in 1997, the Sino-Japanese Joint Fisheries Agreement came into force in June 2000. Its terms are very similar to the Japan-South Korea Joint Fisheries Agreement. Although it does not include the Senkaku/Diaoyu Islands, the establishment of the PMZ represents significant progress in terms of the negotiation of the maritime boundaries between the two countries. The provisional character of the boundary delimitation is stated in Article 12 of the Agreement, emphasising that none of its provisions should be prejudicial to the position of parties. The implications of the PMZ in terms of territorial delimitation has also been the main reason behind the lengthy process of negotiation of the Agreement [Zou, 2005].

#### **Box 6: Taiwan-Japan Fisheries Agreement: the pragmatic solution**

Possibly the finest example of how sovereignty disputes can be overcome is the fishing agreement between Japan and Taiwan, a direct outcome of the Taiwanese 'East China Sea Peace Initiative'. In April 2013, in the midst of the major diplomatic deadlock between China and Japan following the nationalisation of the islands in September 2012, Tokyo and Taipei agreed to open the sought-after waters to fishermen from both parties up to 12 nautical miles from the islands. Taiwan, geographically closest to the Senkaku/Diaoyu Islands, has been one of the most vocal claimants of its sovereignty. Occasional landings of activist groups and violent clashes between Taiwanese fishermen and Japanese Coast Guards have regularly made the headlines. The 2013 Agreement therefore represents not only a pragmatic solution to a concrete functional problem, but also a powerful diplomatic statement. Taiwan thus gained free access to new rich fishing grounds, which significantly boosted its economy, and at the same time managed to demonstrate its *de facto* sovereignty and maturity as a regional political actor. Needless to say, the move triggered criticism in Beijing, which views the Agreement as a betrayal by its renegade province, and at the same time blames Japan for trying to undermine its One China policy.

### **Japan-Russia fisheries cooperation**

Similarly to the two previous cases, Japan and Russia have been cooperating on fisheries in waters surrounding the disputed Southern Kurils/Northern Territories since the 1950s. The Japan-Russia Reciprocal Fisheries Agreement signed in 1984 defines a provisional EEZ boundary and establishes a Joint Fisheries Council that supervises the implementation of the provisions, the environmental status of fish

stock and allocation of fish quotas – especially the highly prized snow and king crab and Russian salmon. The 1985 Japan-Soviet Fisheries Cooperation Agreement focuses specifically on salmon – establishing joint management of salmon from Russian rivers, quotas for fishing, and sponsored scientific studies. The development of artificial reproduction of salmon is often considered as the most successful example of Russo-Japanese bilateral cooperation in the field of fisheries and environmental protection. Finally, the 1998 Operation Framework Agreement for the Waters Surrounding the Northern Islands is as close as we can imagine to being a regime for joint resource management in the disputed waters. It establishes annual meetings at the governmental and non-governmental levels, as well as providing quotas and fees for fishermen, without prejudice to Japan’s claims to the islands.

Overall, current fisheries arrangements represent so far a highly efficient, albeit also the only, example of cooperative maritime regimes in Northeast Asia. Despite their undoubtedly positive contribution to the regional maritime security environment, there are still a number of shortcomings. Considering the range of migratory fish stocks, the strictly bilateral character of the arrangement is open to criticism. Clashes continue over the northern part of the PMZ, with South Korean fishermen who contest the 30° 40’N limit of the Agreement. Similarly, China has contested a border area delimited in the Japan-South Korea Joint Agreement. The establishment of a trilateral agreement in the East China Sea would have been an optimal solution to these problems, which could, moreover, bring all three littoral governments around the same negotiating table.

### **Multilateral maritime cooperation in Northeast Asia**

Cooperation on functional security issues is widely recognised in International Relations as a tool for building trust, confidence and interdependence among nations. The management of less sensitive, everyday maritime issues can also serve as a catalyst for enhancing broader security cooperation, as dictated by the logic of overspill – triggering closer political cooperation, regional integration and more stable security architecture in the long term – as proven, for instance, by the European experience. Northeast Asia has so far defied this logic. Can cooperation in functional maritime issues bring regional countries closer together? Transnational seaborne issues like piracy, fisheries, shipping safety, Search and Rescue (SAR) and Humanitarian Assistance and Disaster Relief (HADR) or environmental protection and resource conservancy are today addressed within a number of regional multilateral frameworks, including the ARF and the East Asia Summit. It is also the need for cooperation on those issues of common interest that managed to drive, over the years, the institutionalisation of the region’s security architecture.



### The Northwest Pacific Action Plan

Besides bilateral efforts, a number of maritime issues – especially related to resource conservancy, environmental protection and marine scientific research – need to be addressed multilaterally, in an ecosystem-based approach. The only such example in the region, involving precisely China, Japan, the ROK and Russia, is the UNEP's Northwest Pacific Action Plan (NOWPAP), a multilateral body in charge of the protection, management and development of the marine and coastal environment. NOWPAP was established after years of negotiation in 1994, largely thanks to bottom-up pressure from civil society (NGOs and ecological activists) in Japan, South Korea and Russia after revelations in 1993 that Russia had been dumping nuclear waste in the Sea of Japan. Despite being a very 'soft' institutional arrangement, the exchange of marine scientific data and regular expert meetings organised within the NOWPAP framework do represent an added value for the region's scientific community. As has been observed, its existence signals an increasing awareness of the need for a common approach to marine environmental issues [Tsunekawa, 2005]. Moreover, its Regional Activity Centres (RACs) can serve as useful national focal points for enhancing communication and coordination even in other functional maritime-related areas.

**Table 3: NOWPAP structure**

<b>Member country</b>	<b>Regional Activity Centres (RACs)</b>	<b>Hosting organisation</b>
<b>Japan</b>	Special Monitoring and Coastal Environment Assessment Regional Activity Centre (CEARAC)	Northwest Pacific Region Environmental Cooperation Centre (NPEC) in Toyama
<b>People's Republic of China</b>	Data and Information Network Regional Activity Centre (DINRAC)	Policy Research Centre for Environment & Economy of the Ministry of Environmental Protection (MEP) in Beijing
<b>Republic of Korea</b>	Marine Environmental Emergency Preparedness and Response Regional Activity Centre (MERRAC)	Maritime and Ocean Engineering Research Institute in Daejeon
<b>Russia</b>	Pollution Monitoring Regional Activity Centre (POMRAC)	Pacific Geographical Institute (PGI) of the Far East Branch of the Russian Academy of Sciences in Vladivostok

**Maritime cooperation as a catalyst for institution-building**

Maritime security has been the fundamental component of the ASEAN Security Community and a central driver of wider regional security cooperation (see Table 4.). The 2011 ARF Work Plan on Maritime Security formalises the need for information-sharing, confidence and capacity building, and commits to a regular dialogue. ASEAN-centred multilateral initiatives, to which all four Northeast Asian countries are party, have made reasonable progress in trying to bring all regional actors together on functional maritime security issues. The newly established Expanded ASEAN Maritime Forum (EAMF) includes even more sensitive issues like the adherence to UNCLOS principles or how to move forward with the Code of Conduct in the South China Sea. While often criticised, regional institutional structures have made substantial progress over the past twenty years and should be given credit at least as platforms for socialisation.

**Table 4: Key regional institutions promoting functional maritime cooperation to which all four countries are parties**

Organisation	Membership	Area of focus
<p><b>ASEAN Regional Forum (ARF),</b> since 1994</p>	<p>ASEAN + Australia, Bangladesh, Canada, China, DPRK, EU, India, Japan, Mongolia, New Zealand, Pakistan, Papua New Guinea, ROK, Russia, Sri Lanka, Timor-Leste, United States</p>	<p>Maritime CBM and PD, territorial disputes (SCS), transnational security (organised crime, piracy, ARAS, smuggling of persons and goods); regular ARF Inter-Sessional Meetings (ISM) on Maritime Security (dialogue). The EU is a full member since July 2012</p>
<p><b>Expanded ASEAN Maritime Forum (EAMF),</b> since 2012</p>	<p>EAS countries (ASEAN + Australia, China, India, Japan, New Zealand, ROK, Russia, United States)</p>	<p>Maritime connectivity and capacity building, infrastructure and equipment upgrading, seafarers’ training, protecting the marine environment, promoting eco-tourism and fishery regimes in East Asia, and identifying best practices</p>

<p><b>Western Pacific Naval Symposium (WPNS),</b> since 1988 (China joins 2014)</p>	<p>Australia, Brunei, Cambodia, Canada, Chile, France, Indonesia, Japan, Malaysia, New Zealand, Papua New Guinea, China, Philippines, ROK, Russia, Singapore, Thailand, Tonga, United States and Vietnam</p>	<p>‘Track 1.5’ mechanism; meets once every two years to discuss maritime cooperation and conduct joint naval exercises. The most recent achievement includes the approval of the Code for Unintended Encounters at Sea (CUES) in Qingdao, in April 2014</p>
<p><b>Council for Security Cooperation in the Asia-Pacific (CSCAP),</b> since 1992-3</p>	<p>Australia, Brunei, Cambodia, Canada, China, the EU, India, Indonesia, Japan, DPRK, ROK, Malaysia, Mongolia, New Zealand, Papua New Guinea, Philippines, Russia, Singapore, Thailand, United States and Vietnam</p>	<p>Track Two mechanism providing input to the ARF and potentially other regional security mechanisms (ADMM+, EAS) has extensively tackled maritime security issues, notably on maritime CBM, maritime cooperation, safety of navigation and Good Order at Sea. The EU is a member since December 2013.</p>

However, issues directly involving sovereignty or border disputes, including joint management or dispute settlement, have not been addressed in any meaningful way. The ARF so far lacks any dispute settlement mechanism, although it is increasingly interested in moving beyond confidence building, and exploring the possibility to use various forms of preventive diplomacy, including mediation. Surely, international legal arbitration – whether through the ICJ or ITLOS – would be the optimal solution for settling sovereignty and maritime boundary disputes in Northeast Asia. The main obstacle to the intervention of international tribunals derives from the core understanding of sovereignty, the principle of non-intervention and the refusal to delegate authority on sovereignty matters to any third party. Any potential loss of sovereignty in the ruling, in any of the four countries, could have presumably serious repercussions on the domestic political scene, which is a risk that neither of the concerned governments is willing to take.

### **Building trust at sea**

In response to the deteriorating security environment in the region, new discreet efforts at conflict prevention and management have emerged – such as the high-level dialogue on maritime security between China and Japan, as well as thawing tensions between Seoul and Tokyo. South Korean President Park’s flagship project for regional security, the Northeast Asia Peace and Cooperation Initiative (NAPCI), applies the functionalist model to improve diplomatic relations in Northeast Asia. Inspired by the Cold War Helsinki Process in Europe, it aims at building trust through cooperation in non-traditional, ‘soft’ security areas of common interest,

such as environmental security, public health, energy security, climate change and disaster relief. For all the reasons previously mentioned in this report, perhaps the one domain where all littoral countries could start is precisely at sea. Putting in place joint regimes for the development of living and non-living resources, information sharing and capacity building in marine scientific research, as well as maritime constabulary, SAR and HADR cooperation significantly enhance transparency and build confidence and trust in the long run. Strengthening trilateral or even wider regional cooperation on common functional maritime issues can help prevent legal skirmishes and tensions, and at the same time serve as a stepping stone to greater regional integration.

Building trust is a complex process, requiring time, dedication and resources. In order to dispel the climate of tension, experts, academics and NGOs should work along with governmental officials in a multi-stakeholder approach. The use of non-governmental or informal mechanisms for confidence building and preventive diplomacy has been increasingly applied in Asia. The various so-called 'Second-Track' and 'Track 1.5' fora, such as CSCAP or the WPNS, allow for the discussion of issues that would be difficult to tackle at the official levels, gathering scientific evidence, building capacity and confidence and providing platforms for communication and networking. Functional cooperation can work, provided countries are actually *willing* to build and maintain friendly ties. The maritime realm, by its very nature, creates links which bind nations and continents. It is people, with their pride and prejudices, who break those bonds.

The EU is today trying to imprint its mark on the region's security landscape. Because of its historical record and evolution, it is a natural partner for any country or organisation interested in promoting peace and stability through cooperation, regional integration and institutionalisation. It is no surprise that the EU, with its experience with Trustpolitik during the Cold War, has become the partner of choice for NAPCI. ASEAN increasingly seeks to emulate the EU's comprehensive approach to managing maritime security, especially the focus on regional inter-agency cooperation and coordination, information sharing and institution building. As an active member of the ARF and CSCAP, there are clearly multiple avenues for the EU and Asian countries to work together for a more stable, rule-based maritime security environment.

## ANNEXES

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## ABBREVIATIONS

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ADIZ	Air Defence Identification Zone
ADMM+	ASEAN Defence Ministers Meeting Plus
APEC	Asia-Pacific Economic Cooperation
ARAS	Armed robbery at sea
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
CBM	Confidence-building measures
CPC	Communist Party of China
CS	Continental Shelf
CSCAP	Council for Security Cooperation in the Asia-Pacific
DPRK	Democratic People's Republic of Korea
EAS	East Asia Summit
EEZ	Exclusive Economic Zone
ECS	East China Sea
FTA	Free Trade Agreement
HADR	Humanitarian Assistance and Disaster Relief
ICJ	International Court of Justice
ITLOS	International Tribunal of the Law of the Sea
JCG	Japan Coast Guard
JDA	Joint Development Area
JFC	Joint Fisheries Committee
LNG	Liquefied Natural Gas
NAPCI	Northeast Asia Peace and Cooperation Initiative
NGO	Non-Governmental Organisation
NOWPAP	Northwest Pacific Action Plan
PD	Preventive Diplomacy
PLA	People's Liberation Army
PMZ	Provisional Measures Zone
PRC	People's Republic of China
ROC	Republic of China on Taiwan
ROK	Republic of Korea
SAR	Search and Rescue
SCS	South China Sea
SDF	Self-Defence Forces, Japan
SLOCs	Sea lines of communication
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
WPNS	Western Pacific Naval Symposium



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