

# *The South and East China Sea Disputes and Their Influence on a Revised World Order*

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## Abstract:

The chapter argues that the maritime disputes in China's neighbourhood are important because they confront the key strategic interests of China and the United States (US) as well as their perceptions of how to define proper conduct and justify sovereignty claims in accordance with international law. Developments in these disputes are central to revisions in the fundamental principles of the future world order. As China's economic and military capabilities rise, Beijing is increasing capable of implementing what it defines as China's sovereign rights and security needs in the South and East China Sea. This increases the level of conflict since China's neighbours and the US do not willingly accept that an increased Chinese presence and attempts to change the rules of conduct infringes on their rights and freedom of action. In this environment, a kind of agree to disagree order based on mutual acceptance of different interpretations of proper conduct and rights might help preserve peace and stability.

## **Introduction**

In April 2012, following skirmishes between the Philippine Navy and eight Chinese fishing vessels in the vicinity of Scarborough Shoal, two Chinese maritime surveillance vessels blocked the entrance to the shoal, thereby preventing the arrest of the fishermen. The standoff lasted for two months, after which the Philippines withdrew from the shoal, leaving it under Chinese control. China has turned down participation in the Philippine request for arbitral proceedings with regard to Manila's bilateral dispute with the PRC. Nevertheless, the Philippines filed the case and it is expected that the arbitral tribunal, which has its seat in The Hague and for which the International Bureau at the Permanent Court of Arbitration serves as the Registry, rules on the case in 2016.

In September 2012, the Japanese government bought three of the Diaoyu/Senkaku Islands in the East China Sea. Both China and Japan claim sovereignty over the islands. Tokyo bought the islands from a private Japanese citizen claiming to be their owner. In the months leading up to the acquisition Japan had tried to persuade China that their intention was to preserve stability in the area and avoid that unpredictable actions taken by private citizens contribute

to conflict escalation. The Obama administration of the United States (US) warned Japanese Prime Minister Abe that the acquisition might cause a crisis in Sino-Japanese relations, encouraging Tokyo to change its mind. Japan chose to go ahead and buy the islands. Initially, China reacted by criticizing the decision of the Japanese government and harassing Japanese businessmen in China. Subsequently, the Chinese coast guard stepped up patrolling in the seas surrounding the Diaoyu/Senkaku islands. Both countries consider the islands to be their territory. . From September 2012 until 2015, the frequency of confirmed Chinese patrols is between 5 and 28 per month, with a stable frequency from 2014 to lower navigation safety risks.<sup>1</sup> China has established a semi-permanent maritime presence in the waters in the vicinity of the Diaoyu/Senkaku islands. More than 300 Japanese flights over the islands with fighter aircraft in 2013 signify that Tokyo closely surveys the Chinese presence. Moreover, Japan uses the media to draw attention to China's activities in the East China Sea.

In the US and among US allies in Europe and Asia, China has been met with general condemnation as regards its behaviour in the South and East China Sea. China is considered to be performing regular illegal breaches of the freedom of the high seas and airspace in what is defined as international waters by the majority. Moreover, China is accused of breaching the sovereign rights of neighbouring countries in the South and East China Seas. By contrast, in China's view the diplomatic and physical situations of conflict with neighbouring states reflect the growing assertiveness of the US alliance system. According to China, this assertiveness involves illegal encroachments on Beijing's alleged sovereign rights and on the right of regional states to exercise effective control and manage security issues in their neighbourhood without third party interference. China's perception of threats towards its basic security interests engenders China to focus on redressing the balance of power in its favour and on promoting its interpretation of legitimate conduct in its maritime neighbourhood.

This chapter argues that the conflicts in China's maritime neighbourhood derive their significance from the fact that they confront central Chinese and US strategic interests and perceptions of rights and responsibilities with regard to sovereignty issues. As a consequence, developments in the South and East China Seas are essential to the definition of the rules of conduct of the future regional and global order. As China gradually builds up the economic and military capabilities that are necessary to implement Beijing's definition of its sovereign

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<sup>1</sup> Japan Coast Guard, 'Number of intrusions of Chinese law enforcement vessels into Japan's territorial sea around the Senkakus,' 2015, <http://www.kaiko.mlit.go.jp/mission/senkaku/senkaku.html>.

rights and security needs in its maritime neighbourhood, tension levels between China and the US and its allies and partners increase. China's neighbours do not accept voluntarily to have their freedom of action and rights reduced due to an increased Chinese presence.

### **Interests, Objectives and Strategy in the South and East China Sea**

China has numerous interests in the South and East China Seas. Resource considerations are at times pointed to as central to China's behaviour in its maritime neighbourhood. Although resources play a central role in state interaction and have been a source of contention and cooperation between the claimants, I argue that these are not significant enough to explain that the South and East China Sea disputes have become key issues between China, its East Asian neighbours and the US. Hydrocarbon, mineral and fish resources all play a role in the area. The oil and gas reserves are unknown and for the most part expensive to exploit. The fish resources are highly important due to the swiftly growing demand for animal protein as the Chinese middle class continues to grow. In addition, the sea lanes of the South China Sea are central to commercial and military traffic. One of the most important sea lanes in the world is the Malacca Strait, linking the Indian and Pacific Oceans and carrying about a quarter of the world's traded goods, including export of Chinese manufactured products and Middle Eastern oil exports to China.

China's strategic interests in the South and East China Seas are significant since these areas allow China maritime access to the Indian Ocean and the Pacific. China feels threatened by the US alliance system which ironically is at its strongest in China's maritime near abroad. China's response is to gradually increase its presence in the area to expand its sphere of influence and push back the maritime based US alliance system.

China's naval base on Hainan Island, which is China's southernmost province, includes an underwater submarine base and constitutes an administrative and strategic centre for China's interests in the South China Sea. In the South China Sea, Woody Island, which is the largest island in the Paracels, is the main Chinese forward outpost and holds an upgraded airstrip and a division-level garrison. Qingdao in the eastern province Shandong hosts China's North Sea Fleet and China's first aircraft carrier Liaoning. The carrier was moved here in 2013. The carrier is under the direct control of China's Central Military Commission, which is chaired by President Xi Jinping.

Some of China's actions in the South China Sea can be seen as tests of the US alliance system. For example, when China's first aircraft carrier Liaoning made its first training deployment to the South China Sea in 2013, the US dispatched the guided-missile cruiser *USS Cowpens* to monitor the exercise. This caused the Chinese People's Liberation Army Navy (PLAN) to send one of the surface ships in the battle group to block its path, thereby risking a collision with the US cruiser.<sup>2</sup> The Chinese action sent the signal that it considers the waters to be under Chinese sovereignty, whereas the US considers it to be international waters. Consequently, the incident resulted in mutual US-Chinese public accusations of irresponsible behaviour. Another example is China's announcement of an Air Defence Identification Zone (ADIZ) in the East China Sea in November 2013. China's ADIZ overlaps with the existing Japanese ADIZ. Both zones encompass the Diaoyu/Senkaku Islands. The Air Defence Identification Zone heralded China's decision to duplicate its maritime strategy in the air in the sense that China started patrolling the airspace over the Diaoyu/Senkaku Islands. Immediately after China's announcement the US overflew the Diaoyu/Senkakus with two B-52 bombers without asking Beijing for permission. The US overflight was carried out despite Beijing's prior announcement that China would exercise effective control within the ADIZ. China chose not to respond to the US action. Thereby, further destabilization was avoided. China, the US and Japan has subsequently continued the game for rights in the airspace with repeated unannounced overflights, causing continuous concern about a possible collision.

### **The Vision of the Chinese Motherland**

China's long-term aspiration in the South and East China Sea is to restore what it considers to be historic Chinese motherland. The submission of the Chinese empire to Western powers and Japan in the late nineteenth century resulted in Japan's attempt to establish a so-called Japanese co-prosperity sphere which resulted in Japanese occupation of territory across Southeast and East Asia, including key islands in the South and East China Sea. In some cases, demonstration of effective control was merely a question of Japanese soldiers marking islands with flags, thereby applying Western rules of sovereignty. In China's view, another understanding of sovereignty applied in Asia which did not entail effective occupation but

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<sup>2</sup> Richard D Fisher Jr., 'Liaoning completes successful first South China Sea trip', *IHS Jane's*, 5 January 2014 <<http://www.janes.com/article/32100/liaoning-completes-successful-first-south-china-sea-trip>> accessed 10 May 2016..

rather symbolic recognition of ownership of territory and maritime space by other countries' heads of state combined with Chinese people's recurring use of the space. Hence, China does not recognize Japan's Western-style sovereignty claims, which entailed placing markers on islands that were declared unoccupied territory to identify them as Japanese and occupation of key strategic islands in the South China Sea. Moreover, Beijing argues that the 1943 Cairo Declaration between the US, the United Kingdom (UK) and China which ejected Japan from all the territories it had conquered, including the South China Sea island groups and the Diaoyu/Senkakus, implied that these territories should be returned to China. China's long-term aspiration is to recover territories that were not returned after the Second World War.

Restoration of China's motherland to the alleged state it had before foreign powers forced the Chinese empire to submit to their reign is an emotional aspiration. It is tied in with the belief amongst the Chinese population at large that Chinese greatness is certain to be restored. Part of this process entails that justice will be served, at least in the sense defined by most Chinese people. However, it is not a feasible objective in Beijing's contemporary strategic planning to attempt to achieve control of this vast maritime space in view of the presence of the US alliance system in this area and the considerable capabilities required to establish effective control over the maritime heartland of Southeast Asia. The vision might be compared to the US vision of spreading liberal democracy to the rest of the world. Certainly, this vision informs Washington's foreign and defence policy. However, it is rarely at the top of the US policy agenda since it is not an objective that can be realized for the foreseeable future. In addition, it also clashes with other central US national interests.

Similarly, China is not able to realize the vision of restoring the Chinese motherland for the foreseeable future. Instead, China has more limited and as such more feasible contemporary objectives intended to meet more immediate national interests. These encompass enormous domestic challenges, such as growing social, economic and ethnic inequality, food security, air pollution, corruption, and an insufficient health care system. These challenges imply that China has a need for stability and benevolent relations with its neighbours and with the US despite fundamental conflicts of interest. However, the conflicts with the US concerning central questions such as the basic principles of regional order, the status of Taiwan, the US right to survey China up to 12 nautical miles from the mainland's coast line, regulating cyber space, airspace and international trade and the organization and prioritization of the international financial system also means that a key Chinese national interest is to push back the US alliance system from China's territory. The US alliance system is perceived as a threat

to China's security. This is also the reason that during the last decade, China has established closer foreign and defence policy coordination with Russia. Both states try to push back what is considered a threatening US alliance system, attempting to establish a buffer between their territory and the US alliance system and increase their influence in their immediate neighbourhood.

### **Possibilities and Limitations on China's Role in the World Order**

The objective of pushing back the US alliance system is not going to change despite occasional thaws in relations, such as that which took place at the APEC summit in November 2014. On this occasion, China and Japan agreed to disagree that they have different views on the issue of enhanced tensions in the area surrounding the Diaoyu/Senkakus in later years. Moreover, Beijing and Tokyo agreed to resume dialogue and consultations to prevent further deterioration in the area. They have since held dialogues in the context of the so-called high level consultations on maritime affairs which are supported by expert panel consultations.<sup>3</sup> So far, these mechanisms serve to keep talks between China and Japan open. However, the meetings have not yet resulted in agreement on fundamental crisis management mechanisms. The Chinese-Japanese dialogue reflects agreements that have been negotiated between the US and China in the run-up to the APEC summit. In the context of the 1998 US-China Military Maritime Consultative Agreement,<sup>4</sup> in the autumn of 2014 Washington and Beijing agreed to build mutual trust mechanisms, notifying each other of major military activities and establishing a code of conduct for safe conduct of naval and air military encounters.<sup>5</sup> This type of agreement is intended to prevent unwanted conflict escalation due to misunderstandings between vessels and aircraft patrolling the areas and contribute to decreasing the number of patrols and hence the risk of accidents. However, the agreement is so far mainly a rhetorical device without much substance in the South and East China Sea.

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<sup>3</sup> Ministry of Foreign Affairs of the People's Republic of China, 'China and Japan Hold Third Round of High Level Consultations on Maritime Affairs', 22 January 2015 <[http://www.fmprc.gov.cn/mfa\\_eng/wjbxw/t1231273.shtml](http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1231273.shtml)> access 10 May 2016.

<sup>4</sup> Agreement Between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety, 19 January 1998 <<http://fas.org/nuke/control/sea/text/us-china.pdf>> accessed 10 May 2016. Hereinafter MMCA.

<sup>5</sup> Bonnie Glaser, 'A Step Forward in US-China Military Ties: Two CBM Agreements', 11 November 2014 <<http://amti.csis.org/us-china-cbms-stability-maritime-asia/>> accessed 10 May 2016.

The minor improvements in US and Japanese maritime relations with China occur against the background of a significant strengthening of the US-Japan alliance. Japan is increasing its defence expenditures, focusing in particular on expanding its maritime capabilities such as its coast guard. A main reason for these defence plans is stated as China's unilateral assertion of its rights.<sup>6</sup> To strengthen Japan's ability to play a proactive security role in an even more severe security environment, including strengthening the prime minister's ability to dispatch Japan's Self-Defence Forces overseas, Japan has centralized decision-making on security issues in December 2013 with the establishment of a National Security Council and a National Security Strategy which includes endorsement of Japan's right to exercise collective self-defence and participate in collective security measures of the United Nations (UN). These domestic reforms prepared the way for Washington's and Tokyo's announcement in April 2015 of Revised US-Japan Defence Cooperation Guidelines. These guidelines include that the Japanese Self-Defence Forces play a leading role, with the US in a supporting role, in defending Japan's outlying islands, including the Diaoyu/Senkaku Islands in the East China Sea.<sup>7</sup> In principle, the revised guidelines allow Japan and the US to conduct joint patrols and surveillance in the South China Sea. These announcements are most likely meant to deter China from further advancing its alleged sovereign rights in its maritime neighbourhood. However, they arise at a point where Japan is increasing its diplomatic, economic and political relations with the ASEAN member states, emphasizing that Japan and ASEAN face similar challenges with regard to China's alleged maritime assertiveness.<sup>8</sup>

In Southeast Asia, China has fairly solid institutional cooperation which contributes to regional stability. In 2003, China accepted that the Association of South-East Asian Nations (ASEAN) defines the rules of conduct in Southeast Asia when Beijing signed ASEAN's Treaty of Amity and Cooperation. Since then relations have been expanded and constitute comprehensive economic and political cooperation. However, these more positive sides of China's relationship to its Southeast Asian neighbours must be seen in the context of US-China relations. The hardening of positions between Washington and China reflects China's determination to push back the US alliance system and US determination to counter these

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<sup>6</sup> *National Defense Program Guidelines*, for Fiscal Year 2014 and beyond, approved by the Security Council and the Cabinet on 17 December 2013, Tokyo, Japan, 3, para 2 <[http://www.mod.go.jp/j/approach/agenda/guideline/2014/pdf/20131217\\_e2.pdf](http://www.mod.go.jp/j/approach/agenda/guideline/2014/pdf/20131217_e2.pdf)> accessed 10 May 2016.

<sup>7</sup> *The Guidelines for U.S.-Japan Defense Cooperation*, 27 April 2015 <[http://www.defense.gov/Portals/1/Documents/pubs/20150427\\_--\\_GUIDELINES\\_FOR\\_US-JAPAN\\_DEFENSE\\_COOPERATION.pdf](http://www.defense.gov/Portals/1/Documents/pubs/20150427_--_GUIDELINES_FOR_US-JAPAN_DEFENSE_COOPERATION.pdf)> accessed 10 May 2016.

<sup>8</sup> *National Security Strategy*, 17 December 2013, Tokyo, Japan <<http://www.cas.go.jp/jp/siryou/131217anzenhoshou/nss-e.pdf>> accessed 10 May 2016.

efforts by strengthening the alliance system in Asia. Close non-military cooperation between China and Southeast Asia does not have a spill-over effect on traditional security and strategic relations, which have deteriorated in later years. Hence, expanding economic, social, institutional and cultural ties have not resulted in greater maritime stability and security.

This is not surprising in view of the general strategic situation whereby China is gradually suggesting revisions to the current world order which the US is not willing to endorse. This process of adjusting the existing world order to Chinese demands and interests insofar as China continues to rise is a decade-long process which takes place across numerous issue areas and is more conflictual in some areas than in others. In the maritime domain, a central issue of disagreement is the freedom of the high seas on which the functioning of the US alliance system depends. Since the US alliance system is a central structure that allows Washington to exercise influence across the world's regions this is a key point of contention which will not be resolved easily. Since conflicting US-Chinese views on the freedom of the high seas run up against each other in China's maritime neighbourhood, volatile relations are likely to remain in place for the foreseeable future. As a consequence, benevolent Chinese-Southeast Asian relations in other areas might continue to develop, but they do not solve fundamental disagreements on security and strategic issues. Since the maritime issue reflects key concerns about the future world order, Beijing is likely to continue to focus on the long-term objective of increasing its presence in its maritime near abroad in the South and East China Sea. These conflicts of interest also entail that ASEAN in practice no longer plays a main role in providing effective platforms for dialogue on contentious issues, which in the past has contributed to lowering tension levels between the Asia-Pacific great powers.

In Beijing's view, China is a leading developing country. In this capacity, Beijing cooperates with non-Western strategic partners across the world to revise the existing world order. The main instrument is gradual change with a view to ensuring that the world order is better suited to Chinese interests and to the interests of developing countries. China has realized that it cannot change the rules of conduct unilaterally. As a consequence, China attempts to obtain legitimacy through cooperation with other states on the basis of the UN system. Compared to the West, China as well as numerous non-Western countries has a different interpretation of the fundamental principles of world order and how they are to be implemented. These countries do not constitute a united front. Instead they agree on some issues and differ on others. However, this can be compared to US-European disagreements, and it does not change the fact that the main disagreement is between developing non-Western countries and



developed Western countries and US core allies. China increasingly cooperates with other developing countries in non-Western institutions on promoting its understanding of how to manage global problems. Examples include the BRICS, an acronym for the association of Brazil, Russia, India, China and South Africa, and the Shanghai Cooperation Organization (SCO), which besides China encompasses Russia and the Central Asian states as core member states.

ASEAN cooperates with both China, the US and Japan. As such, it is one of few institutions which has the potential to provide platforms for engaging powers with a presence in the region in constructive dialogue and cooperation. But the flexible, accommodating qualities of ASEAN only go so far. At present, the majority of ASEAN member states look to the US for basic security guarantees. This is also the case for states such as Indonesia and Vietnam which for decades have not formed part of the US alliance system. This strategic leaning towards the US means that ASEAN is no longer a convincing convener of dialogue and cooperation between the region's major powers on key strategic issues. Essentially, the US and its numerous East Asian allies and partners challenge China's global and regional efforts to change the rules of conduct where these efforts have local strategic impact.

### **China Changes the *Status Quo* Without Using Military Force**

China's strategy in its maritime near abroad is similar to China's other initiatives of political change in the sense that China gradually tries to change the *status quo* without using military force or aggression in a way which might justify a military response. China seeks to carve out space for itself alongside the US, Southeast Asian and Japanese presence. This occurs predominantly by enhancing China's civilian maritime force and by encouraging a situation of agreeing to disagree. This entails acceptance that states might subscribe to different interpretations of international law without letting such disagreements prevent policy coordination and cooperation. To this end, in view of the existence of overlapping claims to territory and maritime space, China prefers to shelve the sovereignty disputes and undertake joint resource development projects on a bilateral basis. These objectives are to be achieved by means of a strategy of increasing China's influence and push back the US alliance system in China's neighbourhood without the use of deadly force by, first, shifting the balance of power to China's advantage and second, by obtaining recognition of the legitimacy of China's claims in the South China Sea.

The first means of shifting the balance of power to China's advantage to prevent challenges to China's claim to sovereignty in the South China Sea requires building capable military forces. China has gradually built up its civilian capabilities from the Maritime Police Bureau and China's Coast Guard to maintain a substantial permanent presence in the South and East China Sea. Beijing has announced its intent to build 36 more law enforcement ships over the next five years and incorporate another 11 retired PLAN vessels into the civilian law enforcement force after modifying them by removing their heavy armament.<sup>9</sup>

China primarily sends unarmed or lightly armed civilian vessels from China's coast guard to semi-permanently patrol Chinese claim areas. PLAN vessels and aircraft are dispatched to the area less frequently, usually remaining at some distance from the islands to provide a means of last resort for China to respond with force in the event that China's civilian vessels are met with aggression. This deployment pattern emerges from the shortcomings of China's capabilities and the signalling value in focusing on civilian and paramilitary capabilities. The Chinese Navy suffers from shortcomings with regard to its fleet's air defence, logistics support, anti-submarine warfare and training. In particular, developing better combat and technical training and air defence is necessary for China to command regional naval power capabilities. These are needed if China were to rely on the PLAN to protect its alleged sovereign rights in the South and East China Sea.<sup>10</sup> China's focus on civilian and military capabilities can be interpreted as a signal that Beijing does not seek to change the *status quo* by using deadly military force. By sending this signal, Chinese strategists seek to avoid a war they are not confident China can win, while attempting to demonstrate that China does not have hostile intentions. Nonetheless, China will not allow itself to be the victim of perceived aggression against its territorial claims.<sup>11</sup>

An example is China's response to the Japanese government's acquisition of three of the Diaoyu/Senkaku Islands from a private Japanese citizen who claimed to be their owner in September 2012. The Chinese government attempted to take the moral high ground by depicting the Japanese actions as a political attack on Chinese sovereignty. It responded with political and diplomatic means and limited paramilitary law enforcement and military measures. Beijing could easily have ordered the PLAN to station destroyers or frigates off the

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<sup>9</sup> Li Daguang, 'China plans to build 36 marine law enforcement vessels in next five years', *People's Daily*, 25 January 2013 <<http://english.people.com.cn/90786/8107265.html>> accessed 10 May 2016.

<sup>10</sup> Michael S Chase, Jeffrey Engstrom, Tai Ming Cheung, Kristen A. Gunness, Scott Warren Harold, Susan Puska and Samuel K Berkowitz, *China's Incomplete Military Transformation: Assessing the Weaknesses of the People's Liberation Army (PLA)* (Rand Corporation, 2015) 87-101.

<sup>11</sup> Zhang Yingli, 'China's National Security Strategy' (2013) 23 *Contemporary International Relations* 1-12.

Diaoyu/Senkakus in view of the fact that China has maintained a quantitative advantage over its immediate neighbours with regard to surface ships since 2000.<sup>12</sup> However, its dispatch of civilian government maritime and air forces was arguably calculated to prevent an early escalation to using military force which China is ill-equipped to handle and which would invite to escalation. This counterfactual argument only provides circumstantial evidence of China's strategy. Nevertheless, it reveals a choice of deploying available capabilities that appear to be less aggressive than they could have been. China's course of action seems to support the argument that rather than aiming for effective control, China's strategic objective is to resolve the sovereignty issue through negotiations, which require that the Japanese government first acknowledge that a dispute over the islands exists. Furthermore, Beijing aims to deter Japan from taking further actions to escalate the crisis.<sup>13</sup>

The South China Sea also provides examples of China foregoing the option of deploying surface capabilities that would appear as an aggressive response and encourage escalation. In May 2014, China deployed an oil rig controlled by China National Offshore Oil Corporation (CNOOC) in the Paracels in the South China Sea in an area where China and Vietnam have overlapping claims to resources. The rig appeared unannounced. In response, Vietnam dispatched government vessels to confront the rig, leading to a series of ramming incidents between Chinese and Vietnamese vessels. Similarly, instead of deploying its surface fleet, China removed the rig from disputed waters in mid-July after CNOOC said it had completed drilling and exploration in the waters around Triton/Zhongjian Island.<sup>14</sup>

To better manage China's civilian maritime law enforcement efforts, the Maritime Police Bureau was created in 2013 to oversee the new China Coast Guard.<sup>15</sup> Working in tandem with the State Oceanic Administration, the Maritime Police Bureau is intended to provide unified command for China's multiple paramilitary/civilian maritime forces and ensure that all Chinese forces operate under a single command and with similar rules of engagement. These actions are attempts at increasing China's effective control in the South and East China

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<sup>12</sup> Chase *et al.* (n 10) 90.

<sup>13</sup> CNTV, 'China urges negotiation in Diaoyu Islands dispute', *Xinhua*, 11 October 2012 <<http://english.cntv.cn/program/newsupdate/20121010/106226.shtml>> accessed 10 May 2016.

<sup>14</sup> Brian Spegele and Vu Trong Khanh, 'China, Vietnam, Try to Repair Ties After South China Sea Dispute', *The Wall Street Journal*, 28 August 2014 <<http://online.wsj.com/articles/china-vietnam-try-to-repair-ties-after-oil-rig-dispute-in-south-china-sea-1409200670>> accessed 10 May 2016.

<sup>15</sup> Wang Qian, 'Meng named head of Maritime Police Bureau', *China Daily*, 19 March 2013 <[http://www.chinadaily.com.cn/china/2013-03/19/content\\_16320703.htm](http://www.chinadaily.com.cn/china/2013-03/19/content_16320703.htm)> accessed 10 May 2016.

Sea while signalling non-aggression and interest in a peaceful settlement of the disputes without the use of force.

The second means of shifting the balance of power is to demonstrate resolve in reacting to violations of China's sovereignty and territorial integrity with proportional means. Shifting the balance of power is tied in with China's ability to defy US attempts to exercise control over China's strategic freedom of action. Just as it was unacceptable for the US to have Soviet missiles stationed on Cuba because it would have defied the US as a great power in control of its immediate hemisphere, it is similarly unacceptable for China that the US dominates its regional hemisphere with military means. One example is China's response to continued US surveillance of China up to 12 nautical miles from the Chinese border despite Chinese demands for changing this practice. In China's view, military vessels operating within 200 nautical miles from the Chinese coastline need permission to enter. Within 200 nautical miles, a country can declare an exclusive economic zone. According to standard interpretations of international law adhered to by the US, this zone entitles a state to control the maritime resources. However, with regard to the freedom of navigation and overflight the waters and airspace are considered international and as such, vessels and aircraft are not under any obligation to identify themselves. In 2013, China began to retaliate against US insistence to continue to closely survey China's coastline by occasional surveillance of the US coastline in the Pacific by Guam and Hawaii within 200 nautical miles. China's surveillance is taking place on a much smaller scale than that of the US and will only slowly be enhanced since China is far from being able to match US surveillance capabilities. Nevertheless, China's initiatives signal dissatisfaction with what China sees as serious encroachments of its right to control its maritime near abroad.

Similarly, US President Obama's announcement in November 2011 that while the US does not take sides in the dispute, Washington has a powerful stake in maritime security in general, and in the resolution of the South China Sea issue specifically, is interpreted in Beijing as a challenge to China's status as a regional great power.<sup>16</sup> The US definition of the South China Sea issue as being in the US national interest was not new, but Obama's statement may have been interpreted as enhanced US willingness to back up the Southeast Asian claimant states in their efforts to deny China access to the areas they claim as being

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<sup>16</sup> Jackie Calmes, 'Obama and Asian Leaders Confront China's Premier', *The New York Times*, 19 November 2011 <[http://www.nytimes.com/2011/11/20/world/asia/wen-jiabao-chinese-leader-shows-flexibility-after-meeting-obama.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/11/20/world/asia/wen-jiabao-chinese-leader-shows-flexibility-after-meeting-obama.html?pagewanted=all&_r=0)> accessed 10 May 2016.

within their jurisdiction. It was a public defiance of China's request that the South China Sea disputes were not discussed at the East Asian Summit. The US statement prompted Chinese Premier Wen Jiabao to warn that outside forces had no excuse to get involved in a complex dispute over the South China Sea.<sup>17</sup> The verbal test of strength came on the heels of growing tensions between China and the Philippines in the South China Sea in 2011, fuelled by mutual accusations of alleged intrusions into each other's claimed area. Adding to tensions were also US-Filipino war games near disputed territory, which took place over three weeks in October 2011.<sup>18</sup> Repeated incidents reached a climax in April 2012 with a two month standoff between Chinese patrol ships and the Philippine Navy which ended with the Philippines' departure. The area has remained under Chinese control.<sup>19</sup> By 2015, the Chinese-Philippine skirmishes are duplicated in the airspace over the South China Sea, with Chinese planes asking Philippine patrol aircraft to leave the disputed area.<sup>20</sup>

The third means of shifting the balance of power is to communicate China's resolve and capabilities to the recipients that it intends to deter. The Chinese aircraft carrier Liaoning's trip through the South China Sea in 2013 is a case in point. For the first time, it exercised in a battle group formation of about 12 ships. The exercise provided the carrier with an opportunity to operate in high sea state conditions, to simulate actual combat conditions, and to train target designation capabilities, integrated communications, navigation, meteorological support capabilities, and airspace management. For the latter purpose, official imagery showed formations of four Xian JH-7A and four Shenyang J-11 land-based fighters flying over the ships. In addition, a new version of the Avic helicopter was shown that can be used for carrier logistic support operations. This display of capabilities is intended to communicate that China has very capable military forces that can be put to use in the event of challenges to its sovereignty claims in the South China Sea.<sup>21</sup>

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<sup>17</sup> Aljazeera, 'China cautions 'outside forces' on sea issue', 18 November 2011 <<http://www.aljazeera.com/news/asia-pacific/2011/11/2011111873957589100.html>> accessed 10 May 2016.

<sup>18</sup> Al Labita, 'Philippines roils South China Sea', *Asia Times Online*, 10 November 2011 <[http://www.atimes.com/atimes/Southeast\\_Asia/MK10Ae01.html](http://www.atimes.com/atimes/Southeast_Asia/MK10Ae01.html)> accessed 10 May 2016.

<sup>19</sup> Jerry Esplanada, 'China ships stay in Panatag Shoal', *Philippine Daily Inquirer*, 19 June 2012 <<http://globalnation.inquirer.net/40487/china-not-pulling-out-7-vessels-around-scarborough-shoal/>> accessed 10 May 2016; Raul Dancel, 'China "boosting shoal defence"', *The Straits Times*, 7 December 2014 <<http://news.asiaone.com/news/asia/china-boosting-shoal-defence>> accessed 10 May 2016.

<sup>20</sup> Manuel Mogato, 'China warns military planes away from disputed sea area: Manila', *Reuters*, 7 May 2015 <<http://www.reuters.com/article/2015/05/07/us-southchinasea-philippines-idUSKBN0NS0GN20150507>> accessed 10 May 2016.

<sup>21</sup> James Legge, 'Video: China's Liaoning aircraft carrier completes sea trials', *The Independent*, 2 January 2014 <<http://www.independent.ie/world-news/asia-pacific/video-chinas-liaoning-aircraft-carrier-completes-sea-trials-29883829.html>> accessed 10 May 2016.

In the East China Sea, China announced joint naval drills with Russia in May 2014. The Chinese defence ministry announced the joint drills as having the purpose of deepening practical cooperation between China's and Russia's militaries, raising their ability to jointly deal with maritime security threats. China's and Russia's navy conduct joint exercises regularly, implying that the exercises are not necessarily directed specifically at Japan.<sup>22</sup> However, they do signal that as Japan strengthens defence relations with the US, Russia and China pursue a similar pattern of growing defence relations. The May 2014 exercise signalled unprecedented good Chinese-Russian relations. These have of late been confirmed with China's participation in Russia's military parade in May 2015 which commemorated the end of World War II. The parade, which was boycotted by the US and numerous allies, had Chinese President Xi Jinping as its guest of honour.<sup>23</sup> Similarly, China's and Russia's announcement of two joint naval drills in 2015 in the Mediterranean and in the Pacific indicated their mutual concern about Washington's bid to strengthen its maritime presence and the alliance system.<sup>24</sup> China displays its intention to push back the US alliance system and its prioritization of deepening cooperation with states that have similar intentions.

### **The Legitimacy Issue**

China's efforts to obtain recognition of the legitimacy of its claims in the South and East China Sea are founded in a combination of historical presence and effective control. Legitimacy concerns obtaining recognition from other states that China's claims are in line with universal principles of international conduct within the UN system. China's historical claim has been called into question as a mythical resurrection of China's imperial past that has no basis in international law and which contributes to the depiction of China as a state that bullies its neighbours, promoting national interests while not taking into account that these are not immediately reconcilable with the interests of neighbouring states.

China's neighbourhood is not positively disposed towards Beijing's interpretation of history. Recognizing this state of affairs, China uses more and more resources to demonstrate

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<sup>22</sup> Zachary Keck, 'China, Russia Military Ties Deepen With Naval Drill in East China Sea', *The Diplomat*, 2 May 2014 <<http://thediplomat.com/2014/05/china-russia-military-ties-deepen-with-naval-drill-in-east-china-sea/>> accessed 10 May 2016.

<sup>23</sup> Shannon Tiezzi, 'At Russia's Military Parade, Putin and Xi Cement Ties', 9 May 2014, *The Diplomat* <<http://thediplomat.com/2015/05/at-russias-military-parade-putin-and-xi-cement-ties/>> accessed 10 May 2016.

<sup>24</sup> Ankit Panda, 'Russia, China to Hold 2015 Naval Exercises in Mediterranean, Pacific', *The Diplomat*, 22 November 2014 <<http://thediplomat.com/2014/11/russia-china-to-hold-2015-naval-exercises-in-mediterranean-pacific/>> accessed 10 May 2016.

effective control in areas where China has sovereignty claims. China's effective control is enhanced as its ability to operate far from China's shores is growing. In the South China Sea, China has pursued this strategy for a long time. China's establishment of effective control in the Paracels and the Spratlys, which took off in 1974 and in 1988, is an early example of China's attempt to apply universally recognized legal principles by establishing a physical presence which China hoped would facilitate maritime zone claims with rights to resource exploration and exploitation within the zones. These actions can be seen as a response to the third UN conference on the law of the sea that took place between 1973 and 1982, resulting in new rules on maritime zones for littoral states and states in possession of islands. China has delineated a number of baselines, including baselines around the Paracels in the northern part of the South China Sea. These efforts are intended to help China argue that its claims are in line with international law.

Since 2013, China's coordination of domestic legal measures, law enforcement activities and military and police activities so as to mutually support China's maritime claims have been enhanced. One example is the passing in November 2013 of regulations requiring foreign vessels to ask for permission to enter waters for purposes of fishing and surveillance of fisheries resources under the authority of Hainan province. These regulations encompass China's claims in the South China Sea. The regulation that took effect 1 January 2014 comes a year after Hainan's announcement of rules that gives police the right to board and seize foreign ships involved in unauthorized entry, imposing damage to coastal defence facilities and engaging in publicity that threatens national security.<sup>25</sup>

China's land reclamation activities in the South China Sea is another means of consolidating Chinese sovereignty claims by expanding the territory of particular features. This in turn allows for the construction of additional facilities on these features. Vietnam and the Philippines have also reclaimed land in the South China Sea for military purposes, but it is on a much smaller scale than the Chinese activities.<sup>26</sup> Beijing's activities have been identified on features also claimed by Southeast Asian states in the South China Sea. China's foreign ministry has publicly stated that after construction, the islands and reefs will be able to provide all-round and comprehensive services to meet various civilian demands besides

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<sup>25</sup> 'U.S.: China new sea rules "provocative"', *BBC News*, 10 January 2014 <<http://www.bbc.com/news/world-asia-25666849>> accessed 10 May 2015.

<sup>26</sup> 'Images show Vietnam's South China Sea land reclamation', *Aljazeera America*, 8 May 2015 <<http://america.aljazeera.com/articles/2015/5/8/images-show-vietnams-south-china-sea-reclamation.html>> accessed 10 May 2016.

satisfying the need of necessary military defence, including China's ability to better safeguard territorial sovereignty and maritime rights and interests.<sup>27</sup> The land reclamation efforts have prompted ASEAN to issue an official statement claiming that China's land reclamation efforts has eroded trust and confidence and may undermine peace, security and stability in the South China Sea.<sup>28</sup> The US has responded by using military aircraft and vessels to directly contest Chinese territorial claims to the expanding artificial islands. These include authorizing US navy vessels to sail within 12 nautical miles of features to manifest that the US considers these areas to be international waters with rights of overflight and navigation of third countries.<sup>29</sup>

In the East China Sea, China has only recently initiated a similar practice because here, China faces greater challenges. Japan exercises administrative control with the Diaoyu/Senkaku Islands. Tokyo's control is recognized by the US although Washington is not taking a position on the sovereignty issue. As a consequence, China runs a greater risk by challenging Japan. China's establishment of an ADIZ which encompasses the islands in November 2013 implies that China is beginning to establish effective control. In this case it occurs by demanding that aircraft which enters the zone identifies themselves towards the Chinese authorities. Until now, China has not exercised this control. One reason is that China needs more time to change the balance of power with regard to the militarily strong Japan compared to the weaker Southeast Asian states. In addition, the US has been relatively offensive in confronting China's behaviour in the East China Sea. This is underlined by the fact that US aircraft regularly fly through the ADIZ without identifying themselves. China conducts regular overflights in Japan's ADIZ which overlaps with that of China, resulting in Japan's scrambling of fighter planes and risks of accidental collision.<sup>30</sup>

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<sup>27</sup> Shannon Tiezzi, 'Revealed: China's Reasons for Island-Building in the South China Sea', *The Diplomat*, 10 April 2015 <<http://thediplomat.com/2015/04/revealed-chinas-reasons-for-island-building-in-the-south-china-sea/>> accessed 10 May 2016.

<sup>28</sup> 'South China Sea island-building "may undermine peace" – Asean', *BBC News*, 28 April 2015 <<http://www.bbc.com/news/world-asia-32476951>> accessed 10 May 2016.

<sup>29</sup> Eva Dou and James Hookway, 'China Lashes Out Over U.S. Plan on South China Sea', *The Wall Street Journal*, 13 May 2015 <<http://www.wsj.com/articles/china-lashes-out-over-u-s-plan-on-south-china-sea-1431508182>> accessed 10 May 2016.

<sup>30</sup> M. Taylor Fravel, 'Explaining Stability in the Senkaku (Diaoyu) Islands Dispute,' in *Getting the Triangle Straight: Managing China-Japan-US Relations*, eds. Gerald Curtis, Ryosei Kokubun and Wang Jisi (Washington, D.C.: The Brookings Institution Press, 2010) 160.



### **China's Strategy a Partial Success**

China's maritime strategy signals a defensive approach to the maritime disputes which is meant to deter other states from further encroachments on China's sovereignty claims, to prioritize the use of other instruments than deadly force which performs the function of backup in order to consolidate China's claims, and to make innovative use of China's capabilities. Beijing does this by emulating the behaviour of other states so as to ensure that it continues to improve its relative position of power, but without being seen to be the first mover that changes the state of play. For example, Chinese land reclamation activities in the South China Sea to bolster Chinese sovereignty claims emulate Vietnamese practices, only on a larger scale. A significant reason that China nevertheless ends up being seen as the aggressor, even if China's instruments are often reactive and not more provocative than the activities of other claimant states, occurs because China has a global security and foreign policy role and is a regional great power with growing military and law enforcement capabilities. In combination with strategic objectives that are often at odds with neighbouring countries' central national interests, Chinese activities constitute a threat to the old regional balance.

China's strategy has been successful in the sense that China has shifted the regional balance of power. China has been a *de facto* power in the South China Sea for decades, having a permanent maritime civilian and military presence alongside the US and Southeast Asia. In the East China Sea, since 2010 China has established a semi-permanent maritime and aerial presence. These efforts signal that China can be expected to remain in the area together with Japan and the US. Southeast Asian claimants in particular have trouble matching China's capabilities and presence. At the same time, nationalism increases pressures on their governments as well as on Beijing to defend sovereignty claims.

China has yet to achieve legitimacy concerning its alleged sovereignty claims. This engenders distrust among neighbouring states in China's willingness to honour agreements. Consequently, its agree to disagree approach to ensure peace and stability in China's maritime neighbourhood has received little attention as a viable basis for future settlement. China's approach implies that the claimant states recognize that they disagree on how to interpret international law, accepting that despite such disagreement all powers with a *de facto* presence in East Asia's maritime neighbourhood have an interest in coexistence to preserve peace and stability. From this position, China argues that the parties should create

mechanisms to ensure that individual use of the maritime space, including resource exploration and extraction, is coordinated so as to avoid the use of force and allow all parties to benefit economically from their maritime neighbourhood. This approach appears unconvincing as a genuine attempt to create peace and stability because China's claims are seen as illegitimate and founded in a myth about China's historical greatness and its resurrection.

Increased legitimacy is essential to obtain long-term stability in the South and East China Sea because legitimacy is likely to decrease mutual threat perceptions. Under the current circumstances, China's lack of legitimacy implies that China's commitment to coexistence is seen as an excuse for buying time to build up its capabilities rather than a genuine attempt to pursue regional peace and stability. Consequently, US security guarantees are seen as essential to Southeast Asia's and Japan's security. Developments such as the US return to the naval base Subic Bay in the Philippines and the strengthening of US defence cooperation with Vietnam and Japan imply that Washington attempts to meet these security needs. If China is to increase its legitimacy, a general change of behaviour is required from all parties concerned which entail greater transparency, increased dialogue and recognition that different interpretations of international law can be adhered to without undermining the ability of the UN system to facilitate peace and stability. However, both the US as well as China's Asian neighbours are unlikely to accept China's proposal of agreeing to disagree due to the lack of trust in China's benevolent intentions and commitment to self-restraint. The summit in November 2014 between China's and Japan's heads of state and the two parties' mutual recognition that they have different positions on the causes of tensions in the East China Sea in later years can be seen as a minor improvement. However, there is a big difference between small steps towards continued dialogue and general acceptance of fundamentally different interpretations of international law which will change the standard definition of the freedom of the high seas and airspace. Such a development is not to be expected since it would undermine the US alliance system and free trade principles. As a consequence, a significant change of behaviour in interaction patterns in the South and East China Sea is unlikely. Thus, the South and East China Sea are likely to continue to be central lines of conflict in the world order for the foreseeable future.

### **Efforts to Promote Maritime Peace and Stability**

In a maritime environment marked by continued US-Chinese strategic rivalry over right and wrong conduct at sea and in the air, the best way for small and middle powers in and outside the region is to keep the door open to both US and Chinese proposals for regional cooperation to ensure that threat perceptions are kept at modest levels. China's establishment of the Asian Infrastructure Investment Bank (AIIB) in 2014 illustrates the dilemmas of states which are presented with a choice between supporting US and Chinese concepts of world order. AIIB was formally established 24 October 2014 by China. This occurred against the background of several years of pressure from China and numerous non-Western developing countries for reform of the financial institutions the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF) so as to allow non-Western countries such as China greater decision-making influence. These efforts were to no avail. At the same time, the US is in the process of establishing the Trans Pacific Partnership (TPP) free trade initiative which does not encompass China. China's establishment of AIIB can be seen as a response to this situation.

On the day of the establishment of AIIB, the Southeast Asian ASEAN member states joined the bank.<sup>31</sup> By contrast, the US criticized China's establishment of the AIIB, seeing it as a competitor to the IBRD and the IMF. Indeed, as a result of US pressures core allies such as Australia and South Korea did not initially join AIIB. However, when the UK decided to join the bank in March 2015, Australia and South Korea finally came on board despite continued US resistance. Thus, the AIIB's establishment ended up being a huge diplomatic victory for China which revealed the weaknesses in US efforts to preserve the *status quo* and the differences between the dynamics of the current world order and that of the Cold War.

The geographic and ideological divisions of the Cold War forced small and middle powers to choose sides between the East and West bloc. However, in the current volatile world order the US and China are competing for partners across a wide range of issue areas. Moreover, they both have a significant presence in all the world's regions. However, China's presence is based on economic-strategic interest-based influence in contrast to the value-based global US liberal alliance and free trade system. China's embrace of essential market economic principles and its engagement in the UN system imply that both powers have interests in

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<sup>31</sup> Indonesia's membership was delayed due to presidential elections at the time of the establishment of the AIIB.

preserving significant institutions of world order. Rather than being revolutionary powers wanting to replace existing structures, they both seem to seek adjustments in existing structures to better suit their interests. As a consequence, Washington and Beijing are not willing to use hard power to the same extent as was the case during the US-Soviet competition of the Cold War. The costs would be too high because both US and Chinese wealth depend on peace and stability far from their shores and not only on stability in their neighbourhood. This situation allows small and middle powers to side with the US on some issues and with China on others. The small and middle powers of Southeast Asia and Western Europe tend to take the view that it is advisable to keep the door open to China in the economic sphere instead of rejecting China's attempt to establish institutions that better suit Chinese international interests. They see AIIB as complementary rather than competitive to the institutions and principles remaining from the old world order.

Can humanitarian issues play a role in facilitating maritime peace and stability in East Asia by engendering US-Chinese cooperation? The area of maritime human disaster relief might be a possibility. However, so far the US and China have mainly exposed each other's weaknesses on these occasions. For example, China's contribution to the US ally the Philippines when it was hit by typhoon Haiyan in 2013 was widely criticized for being small compared to US and Japanese contributions and not involving military capabilities.<sup>32</sup> Usually, the US and China do not coordinate their contribution. The problem with the humanitarian area is that the stakes for the US and China are not high, beyond demonstrating their humanitarian concerns. Moreover, they do not need to cooperate with each other on these occasions, since humanitarian disaster relief usually involves numerous institutional and local actors which the contributing states prioritize working with rather than directly with states which they do not have much cooperation with in the first place. As a consequence, strategic issues surface and contribute to mutual accusations of ignoring the common interest in peace and stability. The scenes of human disaster relief becomes arenas for competition, as has arguably been the case in the disaster relief efforts in Nepal following the earthquake disaster in 2015.<sup>33</sup>

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<sup>32</sup> Philip Wen, 'China boosts typhoon Haiyan aid donation to Philippines after initial sum raises eyebrows', *The Sydney Morning Herald*, 15 November 2013 <<http://www.smh.com.au/world/china-boosts-typhoon-haiyan-aid-donation-to-philippines-after-initial-sum-raises-eyebrows-20131114-2xji1.html>> accessed 10 May 2015.

<sup>33</sup> 'Disaster politics, India, China, Pak compete in quake-hit Nepal', 28 April 2015, *Hindustan Times* <<http://www.hindustantimes.com/world-news/in-post-quake-aid-rush-nepal-s-neighbours-jockey-for-position/article1-1341682.aspx>> accessed 10 May 2016.

## **Conclusions**

Rather than hoping to facilitate cooperation between contending parties in the region, a more realistic option is to proceed with the pattern from the AIIB/TPP case. In other words, embracing the fact that the US and China are increasingly establishing competing institutions and practices of international cooperation, regulation and management is probably the more realistic option. This means accepting to cooperate with institutions established by the US as well as by China, at least when such choices do not raise serious security concerns. Both European and East Asian states are well-positioned to keep a lid on threat perceptions and ensure that both the US and China remain engaged in efforts to contribute to peace and stability. Of course institutional membership must be undertaken with concern for not violating basic strategic interests or values, and without alienating neither the US nor China. As a consequence, relations with organizations such as BRICS and SCO might be more limited. Nevertheless, formal dialogue and interaction, even from a more distant position as for example observer, give opportunities for suggesting greater contributions to international peace and stability in areas where both the US and China have potentially compatible security objectives, but also conflicts of interest. Both the EU and ASEAN have opportunities to suggest US and Chinese security contributions that are not in conflict. For example, a greater role for China in anti-terrorist efforts in Afghanistan could be suggested in the SCO context, provided the US is persuaded to accept the establishment of a coordinating forum that involves both NATO, SCO and individual post-conflict contributions so as to avoid working at cross-purposes. Both the AIIB and the BRICS bank could be engaged in post-disaster reconstruction efforts in places such as Nepal alongside contributions from Western-based institutions. By engaging in institutional rather than functional areas of cooperation outside of such frameworks, the European Union (EU) and ASEAN is better able to insist that activities are based on formally defined rules of conduct, giving them opportunities to hold member states accountable for their actions in areas of cooperation. For example, the SCO is based on the UN Charter. As such, some basic principles constraining foreign policy objectives and instruments are in place even if the interpretation of those principles is different from that used in Western institutions. Even if such institutional efforts is not likely to result in much tangible cooperation, the main issue is the signalling value of engaging with institutions initiated by China rather than rejecting them from the start as platforms for driving wedges in between the US and its allies. This is only feasible against a background of continued

commitment to the US security and economic institutions as the main venues for international cooperation.