

# A Mismatch Between Ambition and Reality: The EU's Efforts to Counterbalance China and the US in East Asia

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Politically, the agreement with Indonesia will serve as a milestone for PCAs with other countries in the region. The PCA will allow the EU to assume greater responsibility and influence in a region which traditionally tends to be orientated towards and influenced by China and the US. By virtue of the PCA, the EU will promote European values and enhance concrete cooperation in a wide range of areas of mutual interest. Finally, the Agreement will be regarded as a positive example for a partnership of civilizations, given that Indonesia is the third most populous country in Asia and the largest Muslim country in the world.—European Commission, COM (2009) 492 final

## Introduction

In 2009, when proposing a Council Decision on the conclusion of the Partnership and Cooperation Agreement between the EU and Indonesia (EU-Indonesia PCA), the European Commission put forward four major contributions the EU-Indonesia PCA would make: economic and political influence, values, and culture. Economically, according to the Commission, PCAs with member countries of the Association of the Southeast Asian Nations (ASEAN) would constitute prerequisite frameworks for negotiations of free trade agreements (FTAs). In terms of political influence, the European Union (the EU) would be able to assume greater responsibility and exert greater influence in a region dominated by China and the United States (the US). The Commission also suggested that the EU would be able to better promote European values and enhance concrete cooperation on matters of mutual interest. Finally, the EU-Indonesia PCA could be seen as an example of an

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inter-civilisational partnership given that Indonesia is the world's most populous Muslim country.

The EU's interest on Asia is longstanding. In 1977, following the establishment of the ASEAN, the EU (then, the European Economic Community, EEC) became one of the organisation's first dialogue partners<sup>1</sup>; this dialogue partnership was institutionalised through a formal Cooperation Agreement between the EU and ASEAN in 1980.<sup>2</sup> More recently, the EU has been negotiating PCAs with a number of ASEAN member countries. An FTA between the EU and Singapore has also been inked.<sup>3</sup> The Northeast Asian countries Japan, China and South Korea are all EU strategic partners. The EU has already concluded an FTA with South Korea,<sup>4</sup> and is negotiating an FTA with Japan.<sup>5</sup> Regarding China, the EU and China are currently updating and upgrading the 1985 Cooperation Agreement,<sup>6</sup> and the two sides have launched the negotiations for a stand-alone bilateral investment treaty (BIT).<sup>7</sup> In addition, the Commission has published strategy papers addressing its relations with Asia, including *Toward a New Asia Strategy*,<sup>8</sup> *Europe and Asia: A Strategic Framework for Enhanced Partnerships*,<sup>9</sup> and *A New Partnership with South East Asia*.<sup>10</sup>

In view of the EU's renewed interest in Asia and its high ambition to counter-balance the influence of China and the US in Southeast Asia, this chapter explores whether existent policy tools are sufficient for the EU to achieve its goals. To this end, this chapter firstly maps the image of Asia in the eyes of the EU and investigates EU strategy papers on Asia. This chapter then examines the legal and policy instruments by which the EU weaves its relationship with Asia, and the various fora in which the EU exercises its influence in the region. This chapter then explores the EU's role in Asian geopolitics. This chapter argues that there is a

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<sup>1</sup> Yeo (2009), p. 45 (46).

<sup>2</sup> Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand—member countries of the Association of South-East Asian Nations, OJ [1980] L 144/ 2.

<sup>3</sup> Legal text, except the investment chapter, has been made public, available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore>.

<sup>4</sup> Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ [2011] L 127/6.

<sup>5</sup> European Commission Press Release, A Free Trade Agreement between the EU and Japan, MEMO/13/572, 17 June 2013.

<sup>6</sup> Trade and Economic Cooperation Agreement between the European Economic Community and the People's Republic of China, OJ [1985] L 250/2.

<sup>7</sup> European Commission Press Release, Commission proposes to open negotiations for an investment agreement with China, IP/13/458, 23 May 2013

<sup>8</sup> [European Commission](#), Communication from the Commission to the Council: Toward a New Asia Strategy, COM(94)314 final.

<sup>9</sup> European Commission (2001) Communication from the Commission: Europe and Asia: A Strategic Framework for Enhanced Partnerships, COM(2001)469 final.

<sup>10</sup> European Commission (2003) Communication from the Commission: A New Partnership with South East Asia, COM(2003)399 final.

mismatch between ambition and reality when the EU aims to counterbalance China and the US in (Southeast) Asia. This is especially evident when it comes to high politics. Further, in forging its trade relations with Asian countries, the EU is more a follower of the US than a counterbalancing power. The major role the EU plays in East Asia relates to the provisioning of humanitarian aid, which corresponds to its image of itself as a “civilian power”.

## **Asia in the Eyes of the EU**

Asia is a diverse, difficult to define region. When it comes to interregional relations between the EU and Asia, the EU typically thinks of ASEAN plus three (APT, the three being Japan, China and South Korea). However, with the expansion of dialogue partners from the ASEAN (from ASEAN plus three to ASEAN plus six) and the inclusion of participants of the ASEAN Regional Forum (ARF) and Asia-Europe Meeting (ASEM),<sup>11</sup> limiting Asia to APT may run the risk of missing the whole picture. Additionally, concentrating on APT may overlook the geopolitical complexities associated with the Taiwan issue. That said, the vast diversity of Asia makes it difficult to conceptualise and analyse EU-Asia relations. Nevertheless, an operative definition of the region is necessary for the purpose of this chapter. Being fully aware of these limits and constraints, the author delimits the region as constituted by ASEAN and its Northeastern counterparts plus Taiwan. In this chapter, “EU-Asia relations” serves as shorthand for the relationship between the EU and East Asian countries.

Even limiting our exploration of EU-Asia relations to the relationship between the EU and East Asian countries, there is still a vast diversity within East Asia, ranging from economic development, political and social systems, and to religious beliefs. This diversity is also reflected in the region's image in the eyes of the EU. Asia may be seen as a threat to European security and the international legal order, a strategic partner in the international world, a market for European enterprises, and a region receptive to the European integration model.

### ***Asia as a Threat***

In the eyes of the EU, Asia may be a potential threat. This threat can be defined in two senses: as a threat to European security and a threat to the existent international legal order. The former relates to the nuclear activities of North Korea, and terrorists and criminals in Southeast Asia; the latter relates to the threat posed by China's rise.

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<sup>11</sup> Breslin (2010), p. 1 (3).

The threat to European security posed by nuclear proliferation, terrorism and criminal activities is presented vividly in the European Security Strategy (ESS),<sup>12</sup> adopted by the European Council in 2003. The ESS states that, “in an era of globalisation, distant threats may be as much a concern as those that are near at hand”.<sup>13</sup> The ESS highlights the nuclear activities of North Korea, and terrorism and criminal activities in Southeast Asia as activities of concerns to Europe, and which may be a threat to European countries and their citizens.<sup>14</sup>

The threat to the existing international legal order posed by China’s rise is a consequence firstly of China’s rise as an economic power. In that regard, the main task is to integrate China into the world trading system and subject it to the regulation of the multilateral trade disciplines of the World Trade Organisation (the WTO). The large trade deficit between the EU and China draws the EU’s attention to the undervaluation of China’s currency, the yuan, and encourages the EU to urge China to revalue its currency. Further, thanks to its rapid economic growth and accumulation of a huge stockpile of foreign reserves, China has become a major source of international development aid. Given that Chinese delivery of development aid deviates from the existent practices of the Organisation of Economic Cooperation Development (OECD) Development Assistance Committee, and that the Chinese development model differs sharply from those of the western countries, China presents a huge challenge to the international development order.<sup>15</sup> The threats posed by China’s rise point to the fundamental divergence between the EU and China in their efforts to shape the international legal order. The Treaty on the European Union (the TEU) dictates that EU actions on the international scene be guided by a commitment to democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.<sup>16</sup> It is doubtful such a vision of the international legal order is shared by China.

### *Asia as a Strategic Partner*

When the European Council adopted the ESS, it also raised the idea of developing strategic partnerships with countries that share its goals and values.<sup>17</sup> The ESS

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<sup>12</sup> European Security Strategy: A Secure Europe in a Better World (2003) adopted by the European Council, 12 December 2003.

<sup>13</sup> European Security Strategy: A Secure Europe in a Better World (2003) adopted by the European Council, 12 December 2003, p. 6.

<sup>14</sup> European Security Strategy: A Secure Europe in a Better World (2003) adopted by the European Council, 12 December 2003, p. 6

<sup>15</sup> See Wu (2012), p. 106.

<sup>16</sup> Consolidated version of the Treaty on European Union (TEU), [2012] OJ C 326/13, Art. 21(1).

<sup>17</sup> European Security Strategy: A Secure Europe in a Better World (2003) adopted by the European Council, 12 December 2003, p. 15. Since the inception of the strategic partnership in the ESS, what

designated China and Japan, along with Canada and India, as countries with which to develop such strategic partnerships. The list of EU strategic partners gradually expanded, significantly adding South Korea in 2010 during the course of the EU-South Korea FTA negotiations. As of January 2015, the EU has ten strategic partners, of which three are East Asian countries.

### *Asia as a Market*

In Global Europe strategy,<sup>18</sup> wherein the EU lifted its *de facto* moratorium for FTA talks and shifted focus from multilateralism to bilateralism, the European Commission reviewed the pitfalls of existent EU bilateral agreements. According to the Commission, while the existing bilateral agreements support its neighbourhood and development objectives well, its main trade interests are less well served. The European Commission cited Asia as an example for this policy failure. With a view to correcting this deficiency and articulating a trade policy that will help create jobs and drive growth, “economic factors must play a primary role in the choice of future FTAs”.<sup>19</sup>

The Commission has put forward two key economic criteria for the selection of new FTA partners: market potential (economic size and growth), and the level of protection in place against EU export interests (tariffs and non-tariff barriers). Particular regard should also be paid to negotiations between the EU's potential partners and competitors. In accordance with these criteria, the Commission identified ASEAN, South Korea, and Mercosur as key priorities. Regarding China, the Commission found that it met many of the criteria, and was careful to highlight the opportunities and risks that China presented.<sup>20</sup> Given these complexities, the European Commission has opted for a cautious approach in including China as one of its FTA negotiating partners. Therefore, as Global Europe strategy shows, Asia—meaning ASEAN, South Korea and China—is viewed as a viable market for the EU to pursue its trade interests and for initiating FTA negotiations.

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this partnership entails is not clearly elaborated. The subsequent practices reveal that this partnership would result in summits, high-level dialogues and sectoral dialogues. However, the EU is not always able to convince its strategic partners to act in concert or with their support. On critique for the strategic partnership, see Renard (2012), p. 1.

<sup>18</sup> Communication from the Commission to the Council (2006) the European Parliament, the European Economic and Social Committee and the Committee of Regions, Global Europe: Competing in the World, COM(2006)567.

<sup>19</sup> Communication from the Commission to the Council (2006) the European Parliament, the European Economic and Social Committee and the Committee of Regions, Global Europe: Competing in the World, COM(2006)567, p. 8.

<sup>20</sup> Communication from the Commission to the Council (2006) the European Parliament, the European Economic and Social Committee and the Committee of Regions, Global Europe: Competing in the World, COM(2006)567, p. 9.

## *Asia as a Region for Exporting the European Model*

Because of its own history and continuous intergovernmental negotiations, the EU is said to be multilateral at its core, and strongly inclined to pursue multilateral solutions to common problems.<sup>21</sup> When it comes to external relations, the EU is keen to promote regional integration based on its own experiences. In engaging with third countries, the EU prefers a region-to-region approach, or interregionalism.<sup>22</sup> ASEAN, or East Asia, is a region targeted for exporting the European integration model and forging interregional relations.<sup>23</sup>

## **EU Strategy Papers on Asia**

In shaping its policy toward Asia, the European Commission has released several policy documents, including strategy papers for individual countries as well as the region as a whole. In *Toward a New Asia Strategy*, the Commission spelled out the EU's overall objective to "strengthen the Union's economic presence in Asia in order to maintain the Union's leading role in the world economy".<sup>24</sup> The Commission firstly recalled the EU's existent policy tools in engaging with Asia, including bilateral and multilateral relations, common commercial policy, generalised systems of preferences (GSP), development and humanitarian aid.<sup>25</sup> In recognition of the inevitable increase of political weight resulting from its economic weight in world economy, the Commission then explored possible new political approaches toward Asia, focusing specifically on arms control and non-proliferation, human rights, and drugs.<sup>26</sup>

In 2001, the Commission published *Europe and Asia: A Strategic Framework for Enhanced Partnerships*, wherein the Commission reiterated the objective of "strengthening the EU's political and economic presence across the region, and raising this to a level commensurate with the growing global weight of an enlarged EU".<sup>27</sup> Since its 1994 Communication, *Toward a New Asia Strategy*, the

<sup>21</sup> TEU, Art. 21(1); see also Cameron (2004), p. 157 (157–158); Jørgensen (2009), p. 1; Jørgensen (2006), p. 30.

<sup>22</sup> See e.g., Aggarwal and Fogarty (2005), p. 533; Söderbaum and Van Langenhove (2005), p. 249.

<sup>23</sup> Gilson (2005), p. 307; Camroux (2008), pp. 3–6.

<sup>24</sup> European Commission, Communication from the Commission to the Council: Toward a New Asia Strategy, COM(94)314 final, p. 3.

<sup>25</sup> European Commission, Communication from the Commission to the Council: Toward a New Asia Strategy, COM(94)314 final, pp. 4–6.

<sup>26</sup> European Commission, Communication from the Commission to the Council: Toward a New Asia Strategy, COM(94)314 final, pp. 11–13.

<sup>27</sup> European Commission (2001) Communication from the Commission: Europe and Asia: A Strategic Framework for Enhanced Partnerships, COM(2001)469 final, p. 3.

Commission has moved beyond a merely economic presence and looked to consolidate a political presence that corresponds with the increased weight of the enlarged Union. The Commission has also focused on the role of ASEAN and ARF in channelling political and security dialogues addressing global security questions and responding to global challenges, such as drugs and transnational crime.<sup>28</sup>

In 2003, the Commission published *A New Partnership with South East Asia*, elaborating on the economic interests driving the enhancement of EU relations with ASEAN, and pointing out that the EU's major economic partners and competitors were forging economic partnerships and alliances with ASEAN, and might thereby challenge the EU's economic interests. Consequently, the Commission proposed both offensive (aiming to improve the EU's position in the ASEAN market) and defensive (aiming to protect its existing economic interests) strategies for dealing with ASEAN trade relations.<sup>29</sup>

## Forging EU-Asia Relations: Instruments and Forum

### *Legal and Policy Instruments for Weaving EU-Asia Relations*

In engaging with East Asia, the EU has a number of legal and policy instruments in hand: strategic partnerships, PCAs, FTAs, BITs, GSP and development and humanitarian aid. These instruments differ in nature and serve different objectives, ranging from dialogue to inking international agreements, and cover both political and economic dimensions.

### Strategic Partnership

The idea of a strategic partnership was first proposed by the ESS in 2003. However, the ESS does not provide much detail regarding this strategic partnership. As Thomas Renard observes, a strategic partnership may cover two dimensions: a strategic approach to foreign relations, and bilateral relations with other powers.<sup>30</sup> In practice, such a strategic partnership entails summits, high-level official dialogues and sectoral dialogues. The aim of this strategic partnership goes beyond bilateral relations and aims to turn this partnership into a vehicle for solving global challenges.<sup>31</sup>

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<sup>28</sup> European Commission (2001) Communication from the Commission: Europe and Asia: A Strategic Framework for Enhanced Partnerships, COM(2001)469 final, p. 21.

<sup>29</sup> Wu (2013), p. 329 (354–356).

<sup>30</sup> Renard (2011), p. 1.

<sup>31</sup> Renard (2011), p. 5.

Early on, the European Council designated Japan and China as strategic partners, and subsequently added South Korea to the list in 2010, and has been building up strategic partnerships with the three Northeast Asian countries. The question thus arises whether there is an imbalance in attention the EU pays to Northeast, and Southeast, Asia. Should EU-ASEAN relations be upgraded to a strategic partnership? As Joergen Ørstrøm Møller observes, ASEAN may be of greater importance than some of the EU's strategic partners.<sup>32</sup> Upgrading the ASEAN to the status of strategic partner may signal two messages to East Asia: firstly, it would convey the message that the EU values equally its relations with Northeast Asian countries and Southeast Asian countries; secondly, it would help to highlight the EU's support for regional economic integration, especially in light of the fact that the ASEAN Economic Community explicitly declares that it takes the EU as a role model.<sup>33</sup>

In 2010, the European Council instructed the EU and its Member States to “act more strategically so as to bring Europe's true weight to bear internationally” in accordance with the Lisbon Treaty that entered into force on 1 December 2009 and in line with the ESS.<sup>34</sup> To that end, the EU and its Member States should identify clearly their strategic interests and objectives at a given moment, and reflect deeply on the best means of pursuing them. Herein, strategic partnerships play a key role in the EU's pursuit of its objectives and interests in the wider world. The European Council has also underlined the importance of the full participation of emerging countries in the international system as an effective means of ensuring that such countries benefit from the system equitably, and assuming their share of responsibilities evenly. In this context, trade with strategic partners constitutes a crucial objective; concrete steps should be taken with a view to finalising an ambitious FTA, gaining market access to these emerging economies, and deepening regulatory cooperation.<sup>35</sup>

## Partnership and Cooperation Agreement

PCAs aim to lay down a general framework for cooperation between the EU and third countries, and cover a wide range of subject matter. They may cover political and security issues, economic and development cooperation, and institutional arrangements. PCAs are an important instrument for establishing the broader context governing bilateral relations between the EU and third countries. The EU is currently negotiating a PCA with China to replace the 1985 Cooperation Agreement with a view to establishing a stronger legal basis for further cooperation. In some cases, a PCA is a prerequisite for the negotiation of FTAs—such is the case in the EU-ASEAN relations.

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<sup>32</sup> Ørstrøm Møller (2007), p. 465 (469–470).

<sup>33</sup> Wu (2010), p. 331 (355–356).

<sup>34</sup> European Council (2010) Conclusions, 16 September 2010, EUCO 21/1/10 Rev 1, para. 3.

<sup>35</sup> European Council (2010) Conclusions, 16 September 2010, EUCO 21/1/10 Rev 1, para. 4.



PCAs are generally characterised by “essential elements” and “fundamental elements”, which generally set out obligations with respect to human rights, democratic principles, and the rule of law.<sup>36</sup> The difference between “essential elements” and “fundamental elements” lies in the possibility of triggering the sanction mechanism should obligations be unfulfilled. These “essential elements” and “fundamental elements” are referred to as human rights conditionality in EU external agreements.<sup>37</sup>

“Essential elements” and “fundamental elements” have been viewed as obstacles to the conclusion of the EU-China PCA negotiations, as China will be far from happy to include human rights and democracy clauses in its bilateral agreement with the EU. It is thus argued that, in view of the deadlock in PCA negotiations, the end result may be two independent agreements: one for trade and economic issues, the other covering political and security dialogue.<sup>38</sup>

By contrast, the PCA negotiations between the EU and ASEAN member countries have yielded the successful inclusion of “essential clauses” in the final legal texts. For example, in the EU-Indonesia PCA, the Parties express their respect for democratic principles and fundamental human rights, as enshrined in the UN Declaration of Human Rights and other international human rights instruments<sup>39</sup>; agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction by ensuring the full, effective implementation of their existent obligations under multilateral disarmament and non-proliferation agreements, and other relevant international legal instruments under the auspice of UN Charter<sup>40</sup>; and commit to cooperate in, and contribute to, the fight against organised economic and financial crimes and corruption, the recovery of assets, and curtailing funding, through strict adherence to, and full implementation of, mutual obligations stemming from existent international legal instruments.<sup>41</sup> These provisions constitute the “essential elements” of the EU-Indonesia PCA. In cases of “a material breach of the agreement” defined as the “repudiation of the agreement not sanctioned by the general rules of international law”<sup>42</sup> or “violation of an essential element of the agreement”,<sup>43</sup> appropriate actions may be taken. On 23 July 2014, at the occasion of the 20th anniversary of EU-ASEAN ministerial meeting, the Ministers agreed to work toward a strategic partnership and thus entrusted their senior officials to develop a roadmap for this goal. However, whether and how this roadmap leads to a strategic partner between the EU and ASEAN remains to be seen.

<sup>36</sup> Smith (1998), p. 253 (263–264).

<sup>37</sup> On human rights conditionality, see generally Bartels (2005) Human Rights Conditionality in the EU's International Agreements, 2005; see also Horng (2004), p. 677.

<sup>38</sup> Sautenet (2007), p. 699 (726–728).

<sup>39</sup> EU-Indonesia Partnership and Cooperation Agreement, OJ [2014] L 125/17, Art. 1.1.

<sup>40</sup> EU-Indonesia Partnership and Cooperation Agreement, OJ [2014] L 125/17, Art. 3.2.

<sup>41</sup> EU-Indonesia Partnership and Cooperation Agreement, OJ [2014] L 125/17, Art. 35.

<sup>42</sup> EU-Indonesia Partnership and Cooperation Agreement, OJ [2014] L 125/17, Art. 44.4(i).

<sup>43</sup> EU-Indonesia Partnership and Cooperation Agreement, OJ [2014] L 125/17, Art. 44.4(ii).

## Free Trade Agreement

Based on the framework underpinned by the PCAs or cooperation agreements, the EU may pursue greater market access and trade liberalisation through FTA negotiations. The targeted countries identified in Global Europe are South Korea, ASEAN and Mercosur. Since the release of Global Europe, the landscape of international trade and the FTA games have changed a great deal. The EU has successfully concluded an FTA with South Korea, to which the Commission referred to as a “new-generation agreement”.<sup>44</sup> Regarding ASEAN, the EU has given up its interregional approach and switched to a bilateral approach targeting individual ASEAN member countries. An FTA with Singapore was concluded while FTA negotiations with other ASEAN member countries, Vietnam and Indonesia, were ongoing. The impossibility of concluding the EU-ASEAN FTA is regarded as a failure of the EU as an international actor.<sup>45</sup> A more important FTA between the EU and Japan is still under negotiation; such a development would have been unimaginable in the GATT era, or even during the 1990s, when the Quad (the US, the EU, Canada, and Japan) accounted for the greater part of international trade.

The concluded EU-South Korea FTA and EU-Singapore FTA represent a template on which the EU will base future FTA negotiations. These two FTAs cover deep regulatory cooperation and a wide range of WTO-plus provisions covering labour rights and sustainable development, cultural cooperation, government procurement, competition policy and investment. Given that foreign direct investments (FDI) constitute part of the common commercial policy and became the exclusive competence of the EU by virtue of the Lisbon Treaty,<sup>46</sup> much attention has been paid to the investment chapter of these two FTAs. However, the EU-South Korea FTA touches upon investment liberalisation only and does not address investment protection. The investment chapter of the EU-Singapore FTA has not been finalized, but given that the EU-Canada FTA is expected to include investor-State arbitration, it is believed that the EU-Singapore FTA will cover investment protection.

## Bilateral Investment Treaties

As noted above, following the entry into force of the Lisbon Treaty, the EU enjoys exclusive competence over FDI. The European Commission is keen to include investment policies as a core element of its common commercial policy with a view to strengthening the EU’s competitiveness. In *Toward a Comprehensive European*

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<sup>44</sup> See Horng (2012), p. 301.

<sup>45</sup> See Robles (2008), p. 541.

<sup>46</sup> On the EU’s competence over FDI, see Dimopoulos (2011); Bungenberg (2010), p. 123; Wu (2011), p. 375; Shan and Zhang (2010), p. 1049.

*Investment Policy*,<sup>47</sup> the Commission maintains that it might be desirable to pursue a stand-alone BIT with China, in which a large proportion of greenfield investments would be covered.<sup>48</sup> To date, the European Commission has requested and been granted, a mandate to open BIT negotiations with China.

The EU appears to be more interested in conducting BIT negotiations than China. At the outset, the EU market is already quite open to foreign investments while the Chinese market remains relatively closed. Besides, whereas EU investors demand better investment protection in China, as the largest recipient of inbound investment, China is not necessarily motivated to meet such demands. Further, owing to the integration of the EU's internal market, Chinese investors may simply identify the most liberal EU Member States in which to invest, and then enter other European markets via the free movement of goods (and perhaps services). Regarding Chinese outbound investments to the EU, a large proportion comes from State-owned enterprises, or from those supported by governments, which may give rise to strategic and security concerns. Worries have been voiced that Chinese investors in the EU may steal the technological know-how of European enterprises instead of bringing about technological improvement in the EU through technological diffusion.<sup>49</sup> Therefore, the EU may have less leverage than does China during BIT negotiations.

### Generalised System of Preferences

The GSP is an autonomous policy instrument through which the EU engages with (some) East Asian countries. The GSP finds its legal basis in the Enabling Clause of the GATT/WTO system.<sup>50</sup> The GSP was challenged by India, which argued that it is WTO-incompatible because the inclusion of a special incentive to combat drug trafficking in Pakistan was neither in the interest of developing countries, nor based on objective standards.<sup>51</sup> A reformed GSP links the special incentive mechanism to international agreements and standards on good governance and sustainable development. The latest version of the GSP came into effect on 1 January 2014.<sup>52</sup>

<sup>47</sup> European Commission Communication (2010) Towards a comprehensive European international investment policy, COM(2010)343 final.

<sup>48</sup> European Commission Communication (2010) Towards a comprehensive European international investment policy, COM(2010)343 final, p. 7.

<sup>49</sup> Meunier (2014), p. 996 (1009–1010).

<sup>50</sup> Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries, GATT Document L/4903, BISD 26S/203, 28 November 1979.

<sup>51</sup> Report of the Appellate Body, *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/AB/R, paras. 181–183 and 187–188; see also Harrison (2005), p. 1663.

<sup>52</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ [2012] L 303/1.

According to the current GSP, China, Indonesia, Laos, the Philippines, Thailand and Vietnam are eligible for the general scheme; Cambodia and Myanmar/Burma are eligible for the special incentive scheme for least developed countries under the “everything but arms” (EBA) programme. The GSP lays down a procedure for third countries to apply for the special incentive scheme for sustainable development and good governance.

In the EU’s engagements with East Asia, the GSP is of particular relevance to Myanmar/Burma. Because of the nature of the political regime, and human rights violations in Myanmar/Burma, the EU long imposed sanctions against the country. These sanctions included denying the country benefits derivative of the GSP.<sup>53</sup> The EU’s attitude toward Myanmar/Burma started to change following the remarkable political changes that commenced in that country in 2012. The High Representative of the EU, Catherine Ashton, in her speech before the European Parliament, welcomed efforts made by the current Myanmar/Burma President U Thein Sein.<sup>54</sup> The Council then decided to suspend and to repeal its former decision on restrictive measures against Myanmar/Burma through the adoption of Council Regulation (EU) No 978/2012.<sup>55</sup> Further, the Council decided to reopen the European market to products from Myanmar/Burma under the EBA scheme of the GSP.<sup>56</sup>

With a view to supporting the democratic transition of Myanmar/Burma by bringing together all of the tools and mechanisms available to the EU, both political and economic, an EU-Myanmar Task Force was established. Its first meeting was held 13–15 November 2013.<sup>57</sup>

## Development Cooperation and Humanitarian Aid

Development cooperation and humanitarian aid are two different, but connected, policy instruments; the former is aimed at improving the general legal, political and social infrastructure of a partner country, while the latter is aimed at addressing humanitarian needs in case of emergencies. Development cooperation and humanitarian aid play key roles in EU external relations, as they are not much concerned

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<sup>53</sup> See Bünthe and Portela (2012)

<sup>54</sup> European Commission (2012) Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Speech on Myanmar European Parliament Strasbourg, Speech/12/273, 17 April 2012.

<sup>55</sup> Council Decision 2013/184/CFSP of 22 April 2013 concerning restrictive measures against Myanmar/Burma and repealing Decision 2010/232/CFSP, OJ [2013] L 111/75.

<sup>56</sup> Council Regulation (EU) No 607/2013 of the European Parliament and of the Council and of the Council of 12 June 2013 repealing Council Regulation (EC) No 552/97 temporarily withdrawing access to generalized tariff preferences from Myanmar/Burma, OJ [2013] L 181/13.

<sup>57</sup> European Commission, Press Release, EU-Myanmar Task Force, IP/12/1062, 11 November 2013.

with self-interest and involve no military threat or physical power, and thus fit nicely into the EU's posture as a "civilian power".<sup>58</sup>

During the period from 2006 to 2013, development cooperation with Asian countries was governed mainly by Regulation (EC) No 1905/2006,<sup>59</sup> which put forward geographical programmes and thematic programmes. In cooperating with its Asian partners on development programmes, special emphasis was placed on pursuing Millennium Development Goals in the field of health and education, addressing governance issues, encouraging greater regional integration, controlling epidemics and new diseases leaping the species barrier and promoting sustainable development.<sup>60</sup> The EU has also supported a number of trade related assistance schemes, including the Trans-Regional EU-ASEAN Trade Initiative; ASEAN Regional Integration Support Programme and Enhancing ASEAN FTA Negotiating Capacity Programme.

With respect to humanitarian aid for East Asian countries, one of the most illustrative examples concerns Cyclone Nargis, which hit Myanmar/Burma in 2008. In 2008, the Council called on the authorities in Burma/Myanmar to offer free and unfettered access to international humanitarian experts and to take urgent action to facilitate the flow of aid.<sup>61</sup> The Commissioner for Development and Humanitarian Aid visited Myanmar/Burma with a view to securing access to the affected region. At the same time, leaders of Member States, including France and the United Kingdom (the UK), condemned the Myanmar/Burma Junta for refusing humanitarian aid.<sup>62</sup> The intransigence of the junta contributed to the debate over the "responsibility to protect".<sup>63</sup>

### *Venues for the EU to Exercise Its Influence in East Asia*

There are three major venues through which the EU may exercise influence in East Asia. The first relates to bilateral summits, high-level and sectoral dialogues. Bilateral summits apply to the EU and its strategic partners—in the context of this chapter, Japan, China and South Korea; high-level and sectoral dialogues may also exist in EU-ASEAN relations. The second and third venues relate to ARF and

<sup>58</sup> On "civilian power" and its critique, see e.g., Bull (1982), p. 149.

<sup>59</sup> Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, OJ [2006] L378/41.

<sup>60</sup> Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, OJ [2006] L378/41, Art. 7.

<sup>61</sup> Council of the European Union, General Affairs and External Relations, 9270/08, Press Release 13 May 2008, p. 6.

<sup>62</sup> BBC (2008).

<sup>63</sup> See e.g., Wong (2009), p. 219.

ASEM, which are sometimes referred to as examples of interregionalism. These different venues will be examined below.

### **Summits, High Level Dialogues, and Sectoral Dialogues**

Summits are one of the key features of relations between the EU and its strategic partners. Since the entry into force of the Lisbon Treaty, the European side is represented by the Presidents of the European Council and the European Commission, assisted by the High Representative of the EU for Foreign Affairs and Security Policy/Vice President of the European Commission. The summits cover a wide range of topics, ranging from political and security concerns to economics and trade. Topical issues include the appreciation of Chinese yuan, security in the Korean peninsula, the South China Sea, negotiations of the EU-China PCA, the EU-Japan Strategic Partnership Agreement, and the EU-Japan Economic Partnership Agreement/FTA. However, it should be noted that while EU officials take the lead, the summits are subject to the political climate of the EU and its strategic partners. For example, the EU-China Summit in 2008 was postponed because of tensions arising from the visit of Dalai Lama to France.

In addition to summits, the EU holds regular ministerial meetings with East Asian countries, including ASEAN. For example, the EU and China maintain political and high-level economic and trade dialogues—the political dialogues also cover human rights. There is an annual ASEAN-EU Ministerial Meeting (AEMM), and the EU maintains a number of sectoral dialogues with East Asian countries, on topics including climate change, intellectual property rights, employment, and social affairs.

### **ASEAN Regional Forum**

ARF was initiated at the twenty-sixth ASEAN Ministerial Meeting and Post Ministerial Conference, held in Singapore, 23–25 July 1993. The first inaugural meeting was held in Bangkok 25 July 1994. The objectives of the ARF are to sustain and enhance peace and prosperity. To this end, a three-stage approach was advanced: promotion of confidence-building measures; development of preventive diplomacy mechanisms; development of conflict resolution mechanisms. Since the coming into being of the ARF, the EU has consistently participated in this forum. In addition to the EU, other non-ASEAN actors in the ARF include ASEAN's dialogue partners, North Korea, Mongolia, Pakistan, Timor-Leste, Bangladesh and Sri Lanka.

Writing in 2003, Alfredo C. Robles Jr. cites the cases of North Korea and East Timor as examples of the EU's limited role as a security actor in Southeast Asia through the ARF.<sup>64</sup> Lay Hwee Yeo also observes that the EU's participation in the

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<sup>64</sup> Robles (2003), p. 19 (22–28).

ARF is, in fact, lukewarm, and argues that compared to Northeast Asian countries, the EU pays little attention to ASEAN's potential as a strategic partner, and thus undermines the EU's capacity to act as security actor in Southeast Asia.<sup>65</sup>

By contrast, Jürgen Haacke argues that the EU may have a significant role to play in non-traditional security situations, such as disaster relief. The EU has taken up the "shepherd's" role in promoting ARF cooperation, and coordinating implementation of relevant recommendations during ARF meetings.<sup>66</sup> Further, post-11 September 2001 developments, including the Bali Bombing in 2002, have shifted the EU's attention to terrorist activities.<sup>67</sup> In view of this, the EU may have a stronger incentive to invest more in Southeast Asia and the ARF, and to demonstrate its ambition and capacity for acting as a security actor in the region.

### Asia Europe Meeting

The ASEM was an informal cooperation and dialogue initiative launched in Bangkok, Thailand, in 1997, with the objective of strengthening relations between Europe and Asia. The original partner countries of the ASEM consisted of the 15 EU Member States and seven ASEAN member countries plus the European Commission, Japan, China and South Korea. The ASEM gradually expanded by virtue of EU and ASEAN enlargement, and the accession of some European and Asian countries to ASEM, including Australia, New Zealand, Norway, Russia, Switzerland, etc. The ASEAN Secretariat also participates in the ASEM process. As of January 2015, the ASEM is composed of 53 partner countries, including the European Commission and ASEAN Secretariat.

Writing in 1997, Christopher Dent argues that the ASEM process represents a new level of partnership between the EU and East Asia. Bilateral relations between the EU and East Asian States may be subsumed into the region-to-region framework if East Asian countries are able to resolve their collective action problem and coordinate their actions. Dent also argues that the ASEM process is significant in that the forum provides an opportunity for the EU to realise its potential to counterbalance the interests of other powers in the region.<sup>68</sup> That position is also shared by Bart Baens, who argues that the role played by the EU in the ASEM process helps to contain the economic dominance of Japan and China in this region. The comparative advantage of the ASEM process lies in its informality and multidimensionality, which allow partner countries to develop mutual understandings in sensitive areas, to promote common interests in global fora, and to identify priorities for concerted actions in pursuit of these interests.<sup>69</sup> In addition to

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<sup>65</sup> Yeo (2010), p. 9 (16–17).

<sup>66</sup> Haacke (2009), p. 427 (440).

<sup>67</sup> Yeo (2010), p. 9 (21–22).

<sup>68</sup> Dent (1997–1998), p. 495 (513–515).

<sup>69</sup> Gaens (2008), p. 9 (23–25).

managing global challenges, the ASEM process may also contribute to intra-regional integration and region building in East Asia.<sup>70</sup>

The EU nonetheless faces tremendous challenges in seeking to achieve these goals. The ASEM process involves multiple layers and multiple actors, with States and non-State actors operating at the regional level and state level. Attempts to coordinate between the EU and its Member States are not always successful. This undermines the EU's credentials as a stakeholder in that region and threatens the legitimacy of the EU in upholding its political and economic interests. Conversely, the expectations of Asian countries may differ from those of the EU. The human rights issue is a glaring example. While some Asian countries are not willing to see human rights issues included on the agenda, the failure to include them has led some EU Member States to abstain from ASEM meetings. For example, the Danish, Greek, Spanish and Swedish prime ministers did not participate in the 1996 ASEM Meeting.<sup>71</sup>

As to whether or not the EU might coordinate with its Asian counterparts to take concerted actions to advance their common interests, Howard Loewen and Dirk Nabers answer in the negative after surveying the reform of international financial system in the International Monetary Fund (IMF), multilateral dialogues on trade in the WTO and negotiations on investments in the WTO and the OECD. The absence of measurable progress in these three areas illustrates the inability of the ASEM process to produce a mutual understanding of their common interests in the wider world, and the difficulty the ASEM experiences in seeking to play a significant role in global governance.<sup>72</sup>

## EU's Role in Asian Geopolitics

In Asian geopolitics, three issues are of pertinent importance: the Korean Peninsula, Taiwan-China relations, and Myanmar/Burma. Overall, the EU has a limited role to play in Asian geopolitics, except for the Myanmar/Burma issue. This is because the Myanmar/Burma issue concerns mostly humanitarian assistance and has few implications for high politics.

### *Six Party Talk on Korean Peninsula*

Nuclear activities in North Korea have been identified as a threat to European security in the ESS. Regardless, the EU, in stark contrast to the situation in Iran, has

<sup>70</sup> Gilson (2005), p. 307 (321–323).

<sup>71</sup> Forster (2000), p. 787 (799–800).

<sup>72</sup> Loewen and Nabers (2008), p. 95 (104–110).



not made any significant contribution to containing North Korea's nuclear activities. With respect to Iran, the key players are Russia, China, the US, the EU, the UK, Germany and France, the so-called E3/EU+3 Iran Talks.<sup>73</sup> The EU, in conjunction with its three most powerful Member States, participates in the Iran Talks along with the other three permanent members of the Security Council of the United Nations. Given that Iran is close to the European continent, European countries do have a lot at stake in the Iran issue, and the EU, in cooperation with the UK, Germany and France, is eager to play a significant role in the talks.

The EU does not seem to have such a stake in the Korean Peninsula. While the ESS recognises that the nuclear activities of North Korea may threaten European security, that concern has not been translated into action. Instead, the Korea Peninsula issue is being dealt with mainly through the Six Party Talks, by North Korea, South Korea, China, Japan, Russia, and the US. China is believed to be able to exert the influence over the North Korean leadership, while the US has a great influence on Japan and South Korea. There seems to be no role for the EU, or even the UK and France—the two European permanent members in the Security Council—to play in the Korean Peninsula. While it is argued that the EU can serve as an alternative to the US, as the EU presents a worldview that differs from that of hardliners in Washington, DC,<sup>74</sup> the EU seems to be more successful in its role as a humanitarian aid provider than a non-proliferation enforcer, and will most likely continue to play that role.<sup>75</sup>

### *Taiwan-China Relations*

The second factor in Asian geopolitics is Taiwan-China relations. Since the EU established formal relations with China in 1975, the EU has adopted the “One China policy” and maintained only trade and economic relations with Taiwan. In its engagements with China, two issues repeatedly arise: its arms embargo on China, and market economy status. In the context of Asian geopolitics, the arms embargo is of greater relevance.

The arms embargo was imposed as an immediate response to the Tiananmen Square massacre; ever since, China has repeatedly attempted to persuade the EU to lift its arms embargo. Some Member States, in particular France, have sought to lift the arms embargo because of the lobbying of interest groups. With a view to preventing the EU from lifting its arms embargo, Taiwan has also made great efforts to lobby the European Parliament. In consequence, various symbolic and non-symbolic arguments have been advanced as to whether or not the ban should

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<sup>73</sup> On E3/EU+3 Iran Talks and the EU's engagement with Iran, see e.g., Harnischa (2007), p. 1; Dryburgh (2008), p. 253.

<sup>74</sup> Lee (2005), p. 33 (34).

<sup>75</sup> Van der Geest (2006), p. 131 (142–143); Moltz and Quinones (2004), p. 136 (142).

be lifted.<sup>76</sup> In this debate, the US plays a critical role.<sup>77</sup> The US has urged the EU not to lift its arms embargo through a number of channels. In 2005, both the House and Senate passed resolutions urging the EU to maintain its arms embargo on China.<sup>78</sup> Finally, China's adoption of the Anti-Secession Law, obliging Chinese authorities to use force if Taiwan, under whatever name or method, seeks to formalise its separation from China, if a major event occurs that leads to Taiwan's separation from China, or if peaceful unification is impossible, dampened the debates over lifting the arms embargo.

### *Myanmar/Burma Issue*

Myanmar/Burma presents a complex issue for the EU. To begin with, Myanmar/Burma is a test of the effectiveness of EU sanctions. The EU has long suspended preferential trade arrangements for products from Myanmar/Burma. Other sanctions, including visa bans and an arms embargo, are also in place. Secondly, when the EU started to negotiate an FTA with ASEAN, Myanmar/Burma was deemed as an obstacle to the region-to-region approach as the EU would not accept the inclusion of Myanmar/Burma in the negotiation processes. Thirdly, Myanmar/Burma is a major destination of humanitarian aid from the EU, and the intransigence of the Junta following Cyclone Nargis constituted a challenge to the EU in providing aid.

The commencement of political reform in Myanmar/Burma in 2012 nonetheless presented an opportunity and challenge to EU efforts to facilitate the democratisation process in that country. In March 2013, the Presidents of the European Council and European Commission welcomed the visit of the President of Myanmar/Burma U Thein Sein to Brussels. The EU has also lifted its sanctions against Myanmar/Burma, except for the arms embargo, and reopened trade benefits for products from Myanmar/Burma under the GSP. An EU-Myanmar Task Force was also established with a view to providing comprehensive support of the transition in Myanmar/Burma.

### **Conclusion**

This chapter takes its departure point from the EU's ambition to counterbalance China and the US in (South)East Asia, as reflected in the Commission's proposal for the conclusion of an EU-Indonesia PCA. This chapter first explores how Asia

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<sup>76</sup> See Vennesson (2007), p. 417 (423–433).

<sup>77</sup> Tang (2005), p. 313 (319); Cabestan (2011), p. 80 (83).

<sup>78</sup> Archick et al. (2005), pp. 33–35.

appears in the eyes of the EU, and finds that Asia is viewed as a threat, a strategic partner, a market, and a region for exporting European model. This chapter then traces various EU policy papers on Asia and finds that the EU's interests in Asian have gradually intensified. In exploring whether the EU's aim to counterbalance China and the US may be achieved, this chapter examines various legal and policy instruments for the EU to weave its relations with East Asia and to exert influence to this region. Those legal and policy instruments include strategic partnerships, PCAs, BITs, FTAs, GSP, development cooperation and humanitarian aid; those fora include Summits, High-Level Dialogues and Sectoral Dialogues, ASEM and ARF. This chapter then examines the EU's role in three major geopolitics issues in East Asia: Korean Peninsula, Taiwan-China relations and Burma/Myanmar.

This chapter finds a mismatch between ambition and reality in the EU's efforts to counterbalance China and the US in East Asia. The EU's failure in translating its ambition into effective action is most evident in issues concerning high politics. The EU plays a limited role on the Korea Peninsula and in Taiwan-China relations, but is rather more successful in providing humanitarian aid to Burma/Myanmar. The reasons for this may be many fold. On the one hand, the EU has not learned to think and act strategically because of its self-image as a "civilian power"; on the other hand, the failure of the EU to act as an international actor in East Asian political and security issues may derive from its lack of competence and policy tools in political and security issues. Most importantly, the EU's interests in Asia are not as serious as its interests in the Balkans, Eastern Europe, and around the Mediterranean basin.

Moving beyond high politics, even in the trade and economic relations, the EU follows the footsteps of the US more often than it acts spontaneously. In concluding FTAs with South Korea and Singapore, the EU efforts are by no means original, but rather occur in response to the free trade agreements concluded by the US with South Korea and Singapore.<sup>79</sup> The biggest challenge for the EU in pursuit of trade and economic relations with East Asian countries comes from the trend towards mega FTAs in that region, for example, the Trans-Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP). The former is dominated by the US, while the latter is mainly driven by China. To date, the EU has no grand strategy to respond to the TPP and RCEP. Thus, there is a huge gap between ambition and reality in the EU's efforts to counterbalance China and the US in East Asia.

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<sup>79</sup> Similarly, Dür argues that the EU's trade agreements with Mexico and Chile are an immediate response to NAFTA and US-Chile FTA. These two agreements are seen as an instrument to help EU exporters to gain their access to Mexican and Chilean market. Dür (2007), p. 833.

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