

Territorial Conflicts in Europe: Possible Lessons for Japan?

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Abstract

Territorial conflicts in Europe are complex and determined by geopolitical, strategic, historical, and ideological factors. The European Union, consisting of member states, has agreed to submit to certain principles and rules to limit escalation risks. These disputes are managed through diplomatic means and rules of law and arbitration, rather than force. Japan faces conflicts in Asia, such as China and the Senkaku question, which are manifestations of deeper tensions. Comparing these conflicts is difficult but may be enlightening due to their fundamental differences.

Territorial issues are complex issues that are determined by geopolitical and strategic factors as well as historical and ideological factors. In Europe, even within the European Union, there are or have been numerous territorial conflicts between nation-states constituted according to the Westphalian system. Some of these conflicts have been resolved, others remain unresolved, and the degree of tension, including military tension, varies. However, territorial disputes involving one or more members of the European Union are very different from those facing Japan in its own geographical area.

One of the fundamental reasons for this is that the European Union, whatever its borders, is composed of member states that, in order to join, have agreed to submit to a certain number of principles and rules that help to limit or control the risks of escalation. Territorial disputes are not systematically resolved, but they are managed through diplomacy and the application of rules, laws and arbitration rather than through the use or threat of force.

In this context, the question arises whether a comparison is possible. According to Diez, Stetter, and Albert, four types of conflicts can be defined that involve or have involved EU states—conflict episodes, issue conflicts, identity conflicts, and subordination conflicts—with the last two types having an existential dimension for the political regime or the population.¹ While the first two types (conflict episodes and issue conflicts) are more common in Europe than the last two, it is the last two (identity and subordination conflicts), sometimes combined with the second, that Japan faces in Asia. One of the fundamental differences is the general willingness of European member States—despite exceptions often related to the recent nature of the European socialization process or to the involvement of a non-EU member State—to reach a settlement or at least to avoid escalation. In Asia, on the other hand, conflicts express a fundamental disagreement and allow the use of force (military or non-military) or tension as a means of managing bilateral relations. In other words, the conflicts Japan faces in Asia are manifestations of deeper tensions that have little to do with the object of the conflict itself. In the case of China and the Senkaku issue, behind the territorial issue are threats of escalation, i.e., the intensification of military or quasi-military activities on the part of the PRC (People's Republic of China) aimed at establishing

¹ Thomas Diez, Stephan Stetter, Mathias Albert, "The European Union and Border Conflicts: The Transformative Power of Integration," *International organization*, vol. 60, n° 3 (Cambridge University Press, Summer 2006).

a balance of power with Japan in the region and beyond.

The comparison is therefore difficult, but perhaps instructive, because of these fundamental differences.

Contrary to popular belief, there are more than twenty active conflicts involving EU states, either among themselves, with entities not recognized as states (autonomist or independence movements), or with non-EU states. Despite common elements, each conflict is different, including in the number and characteristics of the actors involved, and we will not deal with all the conflicts facing the European Union. Because they are too different from the issues facing Japan, we will also not deal with internal conflicts that historically have often been the most violent, with a dimension of cultural tension as well as terrorism or civil war, such as the Basque question, Northern Ireland, or Catalonia. We have chosen to focus on conflicts within the European Union using four examples: France and the Netherlands, Spain and the United Kingdom, Slovenia and Croatia, and one conflict involving an EU state (Greece) and a non-EU state (Turkey). These four conflicts offer a gradation of tension, from the least tense (France–Netherlands) to the tensest (Greece–Turkey). In addition, we will focus not on the legal conditions, as views on legitimacy are generally divided among possible interpretations, but on the resolution or non-resolution of these conflicts and the determining factors in this resolution—or non-resolution—of the conflicts.

France and the Netherlands: a resolved conflict in the Caribbean

The conflict

Once again, contrary to popular belief, not all conflicts involving EU member States take place on European territory; some arise in far-off lands. One conflict emblematic of this type involves France and the Netherlands and is a legacy of the 17th century. On March 23, 1648, the Treaty of Concordia (*Traité du Mont des Accords* in French), consisting of nine articles originally written in Latin, defined the terms of coexistence between the two parts of Saint Martin, an island divided between the Kingdom of France and the United Provinces (Netherlands).² According to the text of the agreement, which was imprecise in its wording, France received 56 km² of the territory of the island, located in the Caribbean Sea 250 km from Guadeloupe, and the Netherlands 34 km². The nine articles of the treaty provide for the peaceful coexistence of the two populations, the sharing of resources, a form of judicial cooperation and the free settlement of each in its preferred zone. The Treaty of Concordia was confirmed and clarified by the Franco–Dutch Convention of November 28, 1839, particularly with regard to the sharing of resources, judicial extradition and free settlement. In 2015, a report submitted to the French National Assembly highlighted the need to strengthen police cooperation between the two parts of the island, whose Dutch part has been an autonomous state of the Netherlands since 2010 following referendums and whose French part has become an overseas collectivity.³

While relations have long been functional, tensions rose in the 2010s, particularly over the issues of crime control and immigration, more important on the Dutch side. Due to the special status of the Dutch part, which unlike the French part is not subject to the rules of the European Union, the issue of money laundering linked to tax conditions in Sint Maarten has been raised, as well as that of the difference in social rights, which encourages companies to set up in the Dutch part.⁴ Although there are three border crossings, the border is open because of the constantly invoked rule of free movement. The disputed territory is that of Oyster Pond, which is poorly defined. In 2017, French police conducted a check on a Dutch reconstruction site after it was

² <https://www.assemblee-nationale.fr/14/rapports/r2649.asp>

³ *Ibid.*

⁴ <https://www.capital.fr/economie-politique/ile-de-saint-martin-le-business-cote-neerlandais-la-deglingue-cote-francais-1233910>

destroyed by a cyclone. The Dutch, who claim the entire bay, which is important for its tourist resources, denounced this as a violation of its territory. France, which demanded that the dividing line pass through the middle of the bay, took the issue to the UN while negotiations continued.

The current situation

After complex negotiations lasting more than six years, and despite the small size of the territory concerned, an agreement was signed on May 26, 2023 between French Minister of the Interior Gérald Darmanin and Prime Minister of the Autonomous Territory of Sint Maarten Silveria Jacobs. The French position of a median water sharing was accepted and the new agreement renews the principle of cooperation established in the Treaty of Concordia.⁵

By fixing the border, the agreement, described as historic, has allowed the resumption of work and the development of tourism—the island’s main resource—in the Oyster Pond area, which was severely affected by Hurricane Irma in 2017. It is intended to confirm the good understanding between France and the Netherlands, two states of the European Union, stating that “it illustrates the excellence of the friendly relations between France and the Netherlands.”⁶ The agreement also provides for the maintenance of freedom of movement and the creation of a cross-border commission to manage issues related to tourism, fishing, education, health and security.

The border conflict between France and the Netherlands, which lasted for several years, is the lowest on the tension scale and can be defined as a conflict episode with elements of a conflict of interests.⁷

Spain and the United Kingdom: the insoluble question of Gibraltar

The question of Gibraltar between Spain and the United Kingdom, like the previous one, is partly inherited from history, but it is more complex, oscillating between a conflict of identity in the tensest periods and a conflict of interests. An additional dimension is that of the will of the local population concerned. This is a factor that the British never took into account when they handed over their colony of Hong Kong to the PRC, as Beijing rejected the very principle of consulting the population.

The conflict

Gibraltar is a British overseas territory that was ceded to the British Crown by the Treaty of Utrecht on July 13, 1713, after having been captured in 1704. The Treaty of Utrecht ended the the Spanish Succession War (1701–1713), in which Spain, France, Great Britain, Austria, and the Netherlands were involved. Under the terms of the Treaty of Utrecht, the King of Spain ceded Gibraltar, the fortress and its port “forever” to the British Crown. In addition to Spain’s regularly stated desire to see an end to “British colonization” and the return of Gibraltar to Spain, the most specific points of contention today concern the portion of the territory extending from the city walls as they existed in 1704 to the current border marked by the British in 1804 and materialized in 1908.⁸ Spain also disputes the United Kingdom’s right to territorial waters around Gibraltar

⁵ <https://www.interieur.gouv.fr/actualites/communiqués-de-presse/signature-dun-accord-entre-france-et-pays-bas-relatif-a-frontiere>

⁶ Ibid.

⁷ Thomas Diez et. al. Op.cit.

⁸ <https://publications.parliament.uk/pa/cm199899/cmselect/cmfaff/366/36604.htm>

and its port.⁹ Today, 27% of the world's maritime trade passes through the Strait of Gibraltar. During World War II, Gibraltar played an important role for the Allies, while Franco's Spain was officially neutral. Since 1945, however, Spain has reasserted its claim to Gibraltar. Under Franco's dictatorship, Spain demanded the return of Gibraltar in gratitude for its neutrality during World War II, and sought the support of the UN, which in fact favored "decolonization" before 1969. The Spaniards demanded the return of Gibraltar to Spain, the annulment of the Treaty of Utrecht while nonetheless allowing the British to maintain a military base in Gibraltar—at a time when, especially during the Cold War, control of the Strait was vital for NATO, of which Spain was not a member¹⁰—and the guarantee of a special status for the inhabitants of Gibraltar under UN guarantee. However, the will of the people of Gibraltar to remain British has been reaffirmed time and again. The first referendum was held in 1967, and in 1969 Gibraltar was granted a form of self-government by the Gibraltar Constitution Order 1969. The gist of the constitution was that "the sovereign status shall not be altered without the consent of the people of Gibraltar."¹¹ To protest this rejection, the government in Madrid gradually closed the border and all points of land contact with Gibraltar in 1967. Other referendums have been held, most notably in 2002, when the people of Gibraltar also rejected the principle of joint Spanish–UK sovereignty proposed by Spain.

In the name of the right of peoples to self-determination, the British authorities refuse to discuss the sovereignty of Gibraltar and a bilateral agreement with Spain without the consent of the inhabitants.

After Franco's death and the adoption of a democratic constitution in Spain in 1978, the situation eased considerably, accentuated by Spain's gradual accession to the European Community and NATO. In 1980, the Spanish and British foreign ministers signed the "Lisbon Declaration," in which both countries declared their willingness "to resolve the question of Gibraltar in a spirit of friendship, to overcome differences, to re-establish communication and to develop cooperation, while reaffirming their position on questions of sovereignty."¹² The border was reopened in 1985, on the eve of Spain's entry into the European Community in 1986.

New plans for joint sovereignty were proposed by Spain in 1985, but were again rejected by the people of Gibraltar. In 2006, Britain, Spain and Gibraltar signed a cooperation agreement, the Cordoba Agreement, to improve communication, and in 2009 the Spanish foreign minister visited Gibraltar for the first time.¹³

However, tensions have not gone away. In 2009, Britain denounced incursions by the Spanish coastguard into what London considers its territorial waters, and the Spanish press criticized the restructuring of the Spanish military presence in the Strait to the benefit of the British.¹⁴ New tensions over fishing rights emerged in 2013.

⁹ Gerry O'Reilly, "Gibraltar: Sovereignty Disputes and Territorial Waters", *IBRU Boundary and Security Bulletin*, Spring 1999 on https://www.durham.ac.uk/media/durham-university/research-/research-centres/ibru-centre-for-borders-research/maps-and-databases/publications-database/boundary-and-security-bulletins/bsb7-1_oreilly.pdf.

¹⁰ Spain joined NATO in 1982.

¹¹ <https://www.gibraltarlaws.gov.gi/legislations/gibraltar-constitution-order-1969-1835>

¹² <https://publications.parliament.uk/pa/cm199899/cmselect/cmfaff/366/36604.htm>

¹³ <https://www.ladepêche.fr/article/2006/09/19/34333-accords-historiques-sur-gibraltar.html>

¹⁴ "España cede el control del estrecho", *ABC*, 09-03-2009 on https://www.abc.es/espana/abci-espana-cede-control-estrecho-200903090300-913640194561_noticia.html?ref=https%3A%2F%2Fwww.google.com%2F

The current situation

The Gibraltar issue, which also involves two EU member States, although Spain only joined in 1986 and the United Kingdom left the EU in 2020 after Brexit, is therefore unresolved, but has not escalated dramatically and is still being managed by diplomatic means, especially since Spain became a democratic power after the end of Francoism. At the time of Brexit, Spain used its status as a member state of the European Union by threatening to use its veto until the President of the Commission, the President of the Council and all the member states signed a document stating that “no agreement on Gibraltar can take place without the agreement of Spain.” The sovereignty issue has not been resolved and the UK position remains that no agreement can be reached without the consent of the people of Gibraltar. One of the reasons for Spain’s opposition to these talks is also the question of separatism that the Madrid government is facing in other parts of the country.

Slovenia and Croatia: a legacy of the dissolution of Yugoslavia

Like other conflicts in the region, the conflict between Slovenia and Croatia over several border points is a legacy of the breakup of Yugoslavia in 1991, but also of older tensions dating back to the Austro–Hungarian Empire. Although Slovenia and Croatia have become two independent states, there is no precise demarcation of the border, especially the maritime border in the Bay of Piran.

The conflict

Croatia, citing the first part of Article 15 of UNCLOS, requests that the boundary in the Bay of Piran be established at an equal distance from both shores. Slovenia, citing the second part of Article 15, which mentions exceptions based on historical rights or special circumstances, claims the right of free access to the international waters it enjoyed when it was part of Yugoslavia.¹⁵

Discussions continued in 2000 and 2010. In 2001, the prime ministers of Slovenia and Croatia, Janez Drnovšek and Ivica Račan, signed an agreement (Drnovšek/Račan Agreement) defining the border, including the maritime border, between the two countries in the name of peaceful cooperation and in the interest of both states and their citizens.¹⁶ The agreement was ratified by the Slovenian parliament, but the Croatian parliament, influenced by nationalist and populist currents, refused to ratify the agreement. In 2005, the two countries signed the Brijuni Declaration, which mentions the desire of both parties to avoid incidents at the border. In 2007, two new prime ministers, meeting in Bled, agreed in principle to resolve the border issue by submitting it to the arbitration tribunal in The Hague.

Between 2008 and 2009, Slovenia blocked Croatia’s accession to the European Union until the Croatian parliament passed a resolution accepting the principle of arbitration by the International Court of Justice in The Hague. It did, and Croatia joined the European Union in 2013.

The current situation

On June 29, 2017, the Hague Court of Arbitration issued its ruling, awarding 80% of Piran Bay to Slovenia and a high seas access corridor to Croatia.¹⁷ Slovenia has accepted the decision, but Croatia has said it will not implement it.¹⁸ The situation between the two EU states remains

¹⁵ https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

¹⁶ https://www.assidmer.net/doc/Drnovsek-Racan_Agreement.pdf

¹⁷ <https://pcacases.com/web/sendAttach/2172>

¹⁸ Luigi Lonardo, “Republic of Slovenia versus Republic of Croatia: Am I My Brother’s Keeper? International Agreement by Member States and the Limits of the European Court of Justice’s Jurisdiction,” *European Law Review*, 105 (2021)

unresolved but, as in previous cases, does not cause major tensions between the two countries, although nationalist sentiments are being expressed, particularly in the Croatian parliament.

Turkey and Greece: an almost existential conflict in the Aegean Sea

The fourth conflict we are considering, between a member state of the European Union and a non-member state that has been a candidate for membership since 1999, is the one that remains the tensest and includes a dimension of military tension, albeit limited. The conflict is neither a relatively simple conflict of interests nor an episodic one; it has a long history, going back to the historically conflictual relations between Christianity and Islam, between the Ottoman Empire and Greece with the Greek War of Independence between 1821 and 1829, and continuing after World War I and the partition and subsequent demise of the Ottoman Empire (1918–1922). Even today, the relationship between Greece and Turkey is one of the tensest involving a European Union state.

The conflict

The extremely complex conflict concerns the definition of the continental shelf, the status of the islets—former possessions of the Ottoman Empire—ceded to Greece by Italy after World War II, and the unlawful occupation (according to Greece) by Turkey of some islets ceded directly to Greece by the Ottoman Empire after World War I.

The conflict mobilizes divergent interpretations of the law of the sea but, as in the case of Japan and China (Senkaku archipelago) or Japan and Korea (Takeshima), the rise of military tensions and nationalist rhetoric is the consequence rather than the primary cause of tensions between the two countries.

In the Aegean case, Turkey refused to sign the first continental shelf convention in 1964 and is not a member of UNCLOS (1982) because of this territorial dispute with Greece.

Between 1987 and 1996, tensions between the two countries were particularly high, almost reaching the level of military conflict, with numerous incidents around the island of Imia (Kardak in Turkish). Between 1998 and 2010, as Turkey sought to begin the process of joining the European Union, things calmed down. However, since 2010 and a move towards a more authoritarian and populist regime with the election of Recep Erdogan as president of the Republic in 2014, tensions have flared up again.

According to Article 12 of the Treaty of Lausanne (1923), one of the treaties imposed on the Ottoman Empire as a defeated power at the end of World War I, virtually all the islands, rocks and islets in the Aegean Sea were allocated to Greece.¹⁹ Turkey was allowed to keep only those islets that were within 2.6 nautical miles of its coastline. The most important of these are Imbros (Gökçeada) and Tenedos (Bozcaada) at the entrance to the Dardanelles. Greece now accuses Turkey of occupying 17 islets outside this 2.6 nautical mile zone, including the island of Imia/Kardak.

In 1947, following the end of World War II, the Treaty of Ankara also ceded to Greece the Dodecanese islands, which the Italians had seized from the Ottoman Empire in 1913. Turkey believes that these islands should have been returned to Turkey at the end of World War II.

The current situation

Despite the fact that both Greece and Turkey are members of NATO, the tensions between Greece and Turkey, far from easing, are being raised by Turkey to an almost existential conflict. The Turkish president's nationalism plays a major role in the rising tensions. Turkey denounces the renewal of the mutual defense treaty to contribute to stability in the region signed between

¹⁹ There are approximately 1416 features.

Greece and the United States in 2021, as well as Greece's "militarization of the islands" and debates concerning the possibility of maintaining a military contingent on a Greek island in the Aegean Sea, the Turkish argument being that these islands should remain demilitarized. In October 2022, a political ally of President Erdogan declared: "The islands you occupy do not bind us..."²⁰

Factors leading to tensions and failure to resolve crises

One of the main factors of tension remains the nationalism or national-populism of one or both of the parties, regardless of their common strategic interests.

For instance, in the case of South Korea with the Dokdo/Takeshima Islands, relations with Japan remain highly dependent on the political evolutions in Seoul, as demonstrated by the very significant improvement in relations since the election of President Yoon Suk Yeol in 2022. In Turkey also, Devlet Bahçeli, a supporter of Erdogan's coalition, took a particularly aggressive stance on the issue of sovereignty over the Aegean islands on the eve of the 2023 elections.²¹ In the conflict between Slovenia and Croatia, Zmago Jelinčič's role as leader of the nationalist Slovenian National Party was instrumental in blocking for a time Croatia's accession to the European Union. In the case of Gibraltar, a nationalist dimension remains extant in Spain, albeit less pronounced than under the dictatorship of General Franco, but it is also present in the fierce opposition of the Gibraltarian population to being tied to Spain and their fervent desire to maintain their specific status as British subjects. On the other hand, this dimension was much less present historically on the island of Saint Martin between France and the Netherlands, although this did not prevent the conflict from requiring six years of negotiations to resolve.

In the case of Greece and Turkey, where tensions are at their highest, the membership of both states in NATO has not helped to resolve tensions, especially since Turkey's position within NATO and its relations with Russia have been the subject of debate, especially but not only since the war in Ukraine began. Under these conditions, Washington's position is to express its wish that the two parties avoid tensions.²²

A peacemaking role for the European Union?

Despite its limitations, the European Union, in its various historical forms, was and is seen as an important factor for peace on the European continent. The European framework encourages the peaceful resolution of disputes through dialogue and negotiation and respect for international law. Member states are expected to resolve their disputes in a peaceful manner, favoring a peaceful, non-confrontational approach. After World War II, the Constitution of the European Union in its initial form was first and foremost an instrument for bringing the Western camp closer together and consolidating it, and it could be argued that the main factor bringing reconciliation between France and Germany was their membership in the same "camp."²³ The resolution or prevention of conflicts on its eastern borders was also one of the main motivations for the enlargement of the European Union after 1991. The question is whether this factor can play a role in resolving all conflicts. Actually, the European Union has not played a significant role in resolving conflicts, especially internal sovereignty conflicts, and it lacks the instruments to intervene in a binding manner.

²⁰ Ryan Gingeras, "Why Erdogan Might Choose War with Greece," *War on the Rocks*, 05-10-2022.

²¹ Ibid.

²² Ibid.

²³ Valérie Niquet, "The Franco-German reconciliation model does not correspond to the challenges of the Japan-PRC relationship," *Japan Review*, vol 5, 2022 on https://www.jiia-jic.jp/en/japanreview/pdf/JapanReview_Vol5_04_Niquet.pdf

In matters of sovereignty internal to member states, it cannot itself mediate between member states on issues of sovereignty, let alone impose a decision.²⁴ Each member state determines the boundaries of its own territory in accordance with international law.²⁵ This does not mean, however, that the European Union has no role to play, especially when both parties to a conflict ask the European Union to mediate.

However, the European Union can act as a normative and reassuring example, not only for its member states but perhaps even more so for those aspiring to join. For example, while Turkey was hoping to join the European Union, tensions with Greece were lower. Similarly, Croatia initially accepted arbitration by the Hague Tribunal to have Slovenia withdraw its veto on Croatia's accession to the European Union. However, these motivations were not strong enough to lead to real solutions to the problems once the veto was lifted or Turkey's hopes for rapid integration into the European Union were dashed.

However, member states are also obliged to cooperate with each other and to resolve any disputes promptly and in accordance with international law.²⁶

Conclusion

Conflicts within the European Union involving member states are therefore by no means rare. However, when such conflicts do occur, their level of tension—especially military tension—is essentially based on factors related to the political or ideological positioning of the parties involved. Whatever legal arguments may be used or argued, including in international arbitration at the UN or The Hague, it is the political will to defuse or even resolve the conflict that plays a decisive role. In Europe, the nationalist or populist dimension plays a role, as may be the case between Japan and South Korea. In conflicts involving the PRC, on the other hand, it is the dimension of power rivalry and the Chinese regime's determination to gradually change the regional status quo and the international order by force or the threat of force that is the primary factor in the rise or fall of tensions. In that case, the resolution and dealing with conflicts in Europe, and particularly between European Union member States offers a very limited model.

²⁴ Nikos Skoutaris, "Problematising the Role of the EU in Territorial Sovereignty Conflicts," *Revistas Ideas*, 15-02-2021 on <https://revistaidees.cat/en/problematising-the-role-of-the-eu-in-territorial-sovereignty-conflicts/>

²⁵ Josef Weinzierl, "Territoriality Beyond the State: The EU's Territorial Claims and the Search for Their Legitimacy," *German Law Journal*, (2021)

²⁶ *Ibid.*