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Challenging the Limitations of Asserting Jurisdiction: A Case Study of the South China Sea

Abstract

The South China Sea dispute challenges the future development of maritime legal order and international law. China's behavior in the South China Sea challenges widely accepted rules governing maritime jurisdiction worldwide as it tries to expand the limits of its jurisdiction. In China's view, the Arbitral Tribunal in *Philippines v. China* also challenged the jurisdiction of the UNCLOS by taking a highly political issue related to sovereignty. This thesis argues that mere rhetorical rejection of China's actions in the South China Sea will not determine the resolution of the dispute. China's behavior will be dependent on striking the right balance between domestic and international priorities. These priorities include a combination of political stability, economic satisfaction, third-party involvement, and balance of power. This thesis examines the development of international law and its limitations in light of China's domestic and foreign policies, justification for its behavior, and the reaction of other states.

Document Type

Thesis

Degree Name

M.A.

Department

Josef Korbel School of International Studies

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Keywords

Domestic challenges, Foreign policy, Freedom of navigation, International law, South China Sea

Subject Categories

Asian Studies | International and Area Studies | International Law | International Relations | Law | Political Science

Publication Statement

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Challenging the Limitations of Asserting Jurisdiction: A Case Study of the South China
Sea

A Thesis

Presented to

the Faculty of the Josef Korbel School of International Studies

University of Denver

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

Joshua Villanueva

August 2021

Advisor: Tom Farer

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Title: Challenging the Limitations of Asserting Jurisdiction: A Case
Study of the South China Sea
Advisor: Tom Farer
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ABSTRACT

The South China Sea dispute challenges the future development of maritime legal order and international law. China's behavior in the South China Sea challenges widely accepted rules governing maritime jurisdiction worldwide as it tries to expand the limits of its jurisdiction. In China's view, the Arbitral Tribunal in *Philippines v. China* also challenged the jurisdiction of the UNCLOS by taking a highly political issue related to sovereignty. This thesis argues that mere rhetorical rejection of China's actions in the South China Sea will not determine the resolution of the dispute. China's behavior will be dependent on striking the right balance between domestic and international priorities. These priorities include a combination of political stability, economic satisfaction, third-party involvement, and balance of power. This thesis examines the development of international law and its limitations in light of China's domestic and foreign policies, justification for its behavior, and the reaction of other states.

ACKNOWLEDGMENTS

I would like to thank Professor Tom Farer for his critiques, continuous support, and invaluable supervision. I would like to thank the members of my thesis committee, Douglas Allen, Jack Donnelly, Ved Nanda, and Nader Hashemi for the feedback they offered. Additionally, I would like to express gratitude to those who supported my research including Professor Griet Vankeerberghen, my former teacher in Early Chinese History, Wentian Fu for helping me understand the Chinese translations, and Dr. Johannes L. Kurz at the Universiti Brunei Darussalam for sharing his insight into China's historical engagement with the South China Sea. I would like to thank those who were willing to proofread and offer suggestions and critiques including Professor Tom Rowe and Professor Arie Kacowicz. My appreciation also goes to my parents for their guidance, support, and encouragement. I especially want to thank my late grandmother, Delia P. Deauna, who provided significant support for my education. In memory of her love and affection, I dedicate this milestone to her.

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LIST OF ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BRI	Belt and Road Initiative
CCP	Chinese Communist Party
CINCPAC	Commander in Chief, Pacific Command
CLCS	Commission on the Limits of the Continental Shelf
CNOOC	China National Offshore Oil Corporation
CCSBT	Convention for the Conservation of Southern Bluefin Tuna
EEZ	Exclusive Economic Zone
FONOPs	Freedom of Navigation Operations
ICJ	International Court of Justice
INDOPACOM	United States Indo-Pacific Command
IOC	UNESCO Intergovernmental Oceanographic Commission
ITLOS	International Tribunal for the Law of the Sea
PLAN	People's Liberation Army Navy
PRC	Republic of China
ROC	Republic of China
UNCLOS	UN Convention on the Law of the Sea
VFA	Visiting Forces Agreement

INTRODUCTION

Lights! Amidst the sticky summer heat of Times Square in New York City, people bustle beneath illuminated billboards advertising Broadway productions, the latest Apple gadget, and the McDonald's McRib. The year is 2016. There is too much entertainment news going on. No one expects to see an international dispute in this part of town. However, between July 23 and August 3, *Xinhua*, the Chinese State news agency, produced a three-minute video clip that was shown 120 times a day on a giant screen hovering 2 Times Square at the corner of 46th St. and 7th Ave.¹ The video starts with pictures of fishing boats and islands followed by captions describing how China discovered the South China Sea islands in the 2nd century BCE. Next, it tells how other countries never contested how China exercised sovereignty over the islands since they were discovered. The video continues to denounce how the "Arbitral Tribunal vainly attempted to deny China's territorial sovereignty, maritime rights, and interests in the South China Sea." Further, it argues that "China did not participate in the illegal South China Sea arbitration, nor accepts the Award so as to defend the solemnity of international law." John Ross, former policy director of Economic and Business Policy for the Mayor's Office of London, Catherine West, UK Shadow Minister for Foreign

¹ Nancy Kong. "South China Sea video playing in Times Square." *China Daily*, (2016). http://www.chinadaily.com.cn/world/2016-07/27/content_26235718.htm Accessed January 20, 2021; Gu Liping. "South China Sea video displayed at NY Times Square." *Xinhua*, (2016) <http://www.ecns.cn/2016/07-28/220094.shtml> Accessed January 20, 2021.

Affairs in 2016, and Masood Khalid, Pakistan's Ambassador to China, are shown in the video voicing support for China's calls to bilaterally settle the dispute between China and Southeast Asian countries.

The South China Sea is bounded by Taiwan and the Hainan Province to the north, Vietnam to the west, the Philippines to the east, and Borneo to the South. It is estimated that about 60% of the world's maritime shipping passes through the South China Sea and the seabed contains one of the world's largest oil and natural gas reserves.² Two island groups are primarily contested: the Spratly Islands located about 175 nautical miles west of the Philippine-island of Palawan and the Paracel Islands located 120 nautical miles east of Vietnam's Quảng Ngãi Province.

The way China made known its position on the arbitration, from July 23 to August 6 at Times Square, speaks volumes as to how China wanted to influence international public opinion and thereby influence governments to conclude that its claims are legitimate. Not only was Times Square an unusual venue to disseminate propaganda on a global issue, but it was also concerning that the Chinese state was spreading a narrative that distorted the facts in the middle of one of the world's busiest pedestrian areas.

Two weeks before the Times Square show, on July 12, 2016, the Permanent Court of Arbitration in the Hague unanimously ruled that China's historical and jurisdictional claims in the South China Sea were incompatible with the U.N. Convention on the Law

² CSIS. "How Much Trade Transits the South China Sea?" <https://chinapower.csis.org/much-trade-transits-south-china-sea/> Accessed June 8, 2021; CSIS. "South China Sea Energy Exploration and Development." <https://amti.csis.org/south-china-sea-energy-exploration-and-development/> Accessed June 8, 2021

of the Sea (UNCLOS) in *Philippines v. China*. The Philippines had filed a complaint against China in 2013 arguing that (1) the seabed and the maritime features of the South China Sea were to be governed under the UNCLOS, (2) that China's "historical rights" and "nine-dash line" theories were invalid, and (3) that China violated the Philippines Exclusive Economic Zone (EEZ) and the UNCLOS provisions on artificial islands.³ The Tribunal ruled that (1) China did not have historic title over the islands in the South China Sea, (2) China was obligated to protect marine environment, and (3) there was a difference between entitlement and maritime delimitation disputes that would give the Tribunal jurisdiction to hear the case.

There is no doubt the South China Sea dispute presents the international community with a challenge to the future development of maritime legal order. While there is literature discussing China's refusal to observe international maritime order, I am not aware of papers discussing the South China Sea dispute as a challenge to what had been widely accepted as the rules governing maritime jurisdiction worldwide. In addition, there has been little discussion of the compatibility of China's assertions with the idea of the legal equality of sovereign states, a concept central to the legal order expressed in the United Nations Charter. In this paper, I argue that mere rhetorical rejection of China's actions in the South China Sea will not determine the resolution of the dispute. China's behavior will be dependent on striking the right balance between domestic and international priorities. These priorities include a combination of political stability, economic satisfaction, third-party involvement, and balance of power. I intend this thesis

³ South China Sea Arbitration (Award), 112(B)(2), 122(B)(12)(a), and 192

to examine the development of public international law and its limitations in light of China's approach to international law, justification for its behavior, and the reaction of other states.

I will first discuss the history of China's evolving claims in the South China Sea. An analysis of the Tribunal's decision on admissibility and the award in *Philippines v. China* will follow. This section will discuss the scope of UNCLOS and how the South China Sea dispute challenges the limitations of international legal order and the freedom of the seas concept. The following section will consider what possible motivations China may have for taking a more assertive foreign policy in the South China Sea. Lastly, I will forecast the future of the South China Sea by analyzing current trends and recommend actions for the U.S. and Southeast Asian countries, specifically a concerted campaign to articulate and unanimously support a Code of Conduct in the South China Sea that attempts to draw China into negotiations with the affected states. This discussion would also include implications for U.S. foreign policy.

CHAPTER ONE: China's Evolving Claims and the History of the South China Sea Dispute

China's main argument for the legitimacy of its claims over the South China Sea islands is based on historical legacies as seen in the quixotic Times Square video clip and the "nine-dash line" Chinese map presented to the U.N. Secretary General on May 7, 2009.⁴ This sense of entitlement to the islands is what drives Chinese foreign policy and as long as UNCLOS provisions and U.S. Freedom of Navigation Operations (US FONOPS) are enforced, Chinese foreign policy and the international community are bound for a collision course. In order to get a clearer understanding of what China's historical claims are, I will use Chinese primary sources and show how China's evolving claims have gone from obscured distortion to blatant propaganda.

It is important to note that historical claims are not fully codified in UNCLOS but rather based on customary international law.⁵ For example, the International Law Commission in 1962 studied historical rights in relation to the maritime realm. It "examined the elements of title to historic waters, the issues of burden of proof, the legal

⁴ The Note Verbale from the Permanent Mission of the People's Republic of China to the United Nations to the Secretary-General of the United Nations, No. CML/17/2009 (7 May 2009) (Annex 191) was accompanied by maps depicting the "nine-dashed line."

⁵ UNCLOS, arts. 5, 10, 298

status of waters regarded as historic waters, and the settlement of disputes.”⁶ The study concluded that historical claims can only be exercised if:

1. authority must be actively exercised over the area by the state claiming it as historic waters;
2. such exercise of authority must be continuous; and
3. other states must acquiesce.⁷

The following discussion will show that China does not meet these criteria.

Although sources may be biased, numerous scholars have relied on Chinese or American news media for evaluating Chinese claims.⁸ One of the first academic articles in English defending China’s claims in the South China Sea was written by Tao Cheng, a professor of political science at Trenton State University. He said, “It [South China Sea] has been an important part of the sea route from Europe to the Orient since the sixteenth century, a haven for fishermen from the Hainan Island, and the gateway for Chinese merchants from south China to Southeast Asia since earlier times.”⁹ However, none of the writers were maritime historians but lawyers, political scientists, and geographers, and their reliance on their sources must be verified.¹⁰ China did not play a dominant role in the South China Sea trade, and it shared the seas with Malays, Indians, Arabs, and

⁶ Juridical Regime of Historic Waters, Including Historic Bays, Rep. of the Int’l Law Comm’n, 14th session Apr. 24–June 29, 1962, U.N. Doc. A/CN.4/143 (1962)

⁷ Ibid. p.125 and 13, 80

⁸ Hayton, p.9; Cheng relied on Chinese commercial magazines from the 1933-34, 1956, and 1974 including the Shanghai-based Foreign Affairs Review and the state-owned National News Weekly and Renmin Ribao. Hungdah Chiu and Choon-Ho Park also used similar sources in their paper. Hayton notes that the sources referenced by these authors were written when the South China Sea was highly politicized. France annexed the Spratly Islands and angered China in 1933. Tomas Cloma, a Filipino businessman claimed the Spratlys for the Philippines in 1956. In 1974, the Battle of the Paracels provoked a new wave of claims.

⁹ Cheng 1975, p.266

¹⁰ Hayton. p.9

Europeans.¹¹ Early 20th century sources reveal that China did not even have the naval capacity to govern the Chinese coast. In January 1908, The *Times of London* reported uncontrolled piracy along the West River in Guangzhou.¹² Similarly, in 1909, several foreigners decided to begin illegal mining operations on Hainan Island without alerting Chinese authorities until much later.¹³ What can be agreed upon is that China lacked the capabilities and did not assert sovereignty on the South China Sea islands consistently for centuries.

Mistranslations and the Modern Origins of China's Claim to the South China Sea

Johannes Kurz's article, "The South China Sea and How It Turned into 'Historically' Chinese Territory in 1975," discusses the ancient Chinese texts that the modern Chinese government is now using to justify its claims. Kurz finds that sentences have been twisted, translations distorted, and words inserted. In 1975, "Shi Dizu," a pseudonym for the members of the Historical Geography Group in the Chinese Academy of Sciences, published in *Renmin Ribao*, the Communist Party's mouthpiece, a reassertion that islands in the South China Sea historically belonged to China.¹⁴ The article included classical texts that purportedly support their claims.

From the Song dynasty's *Taiping Yulan*, it says:

¹¹ Bonnet, p.13; Granados, p.444

¹² Chinese Foreign Relations, p. 5

¹³ China and Her Islands, p.8

¹⁴ Fish, Eric. "China's Angriest Newspaper Doesn't Speak for China." *Foreign Policy*. (2017) <https://foreignpolicy.com/2017/04/28/chinas-angriest-newspaper-doesnt-speak-for-china/> Accessed January 20, 2021.; See Gitter and Fang for more information on the CCP's relationship with the People's Daily and how it functions as the CCP's mouthpiece.

Chen Mao from Runan once was a mounted escort/aide-de-camp attendant (biejia) in Jiaozhi [a position] that corresponds to that of regional acting prefect of old and he had not crossed the rising ocean. When prefect Zhou Chang took to the sea and a wind arose that threatened to overturn the vessel, Mao with his sword drawn, reproached the water god and the wind immediately subsided.¹⁵

However, there is no indication in this quote that China acquired sovereignty over territory. At best, it only indicates travel through the sea. According to Jianming Shen, law professor at St. John's University School of Law, a quote from the Han dynasty's *Yiwu Zhi*, “Zhanghai qitou, shui qian er duo cishi” translates to “There are islets, sand cays, reefs and banks in the South China Sea, and the water there is shallow and filled with magnetic rocks.”¹⁶ He claims that this quote is evidence that China has title over the South China Sea. However, the original sentence does not have anything to do with the South China Sea or Chinese jurisdiction over a territory as shown in the original text below. The text referred to is inside the red box. According to Wentian Fu, a professor of Chinese History at McGill University, the translation is more like, "According to *Nanzhou yiwuzhi*, Gouzhi is 800 li away from Yuyou. There is a mouth of river which runs from southwest to northeast. Gigantic rocky reefs show up in Zhanghai, which is shallow and abundant in magnetic rocks."¹⁷

¹⁵ Taiping yulan 60.1b (p.287)

¹⁶ Shen, p.19

¹⁷ Probably an error with the original text here since 與遊 should be 典遜

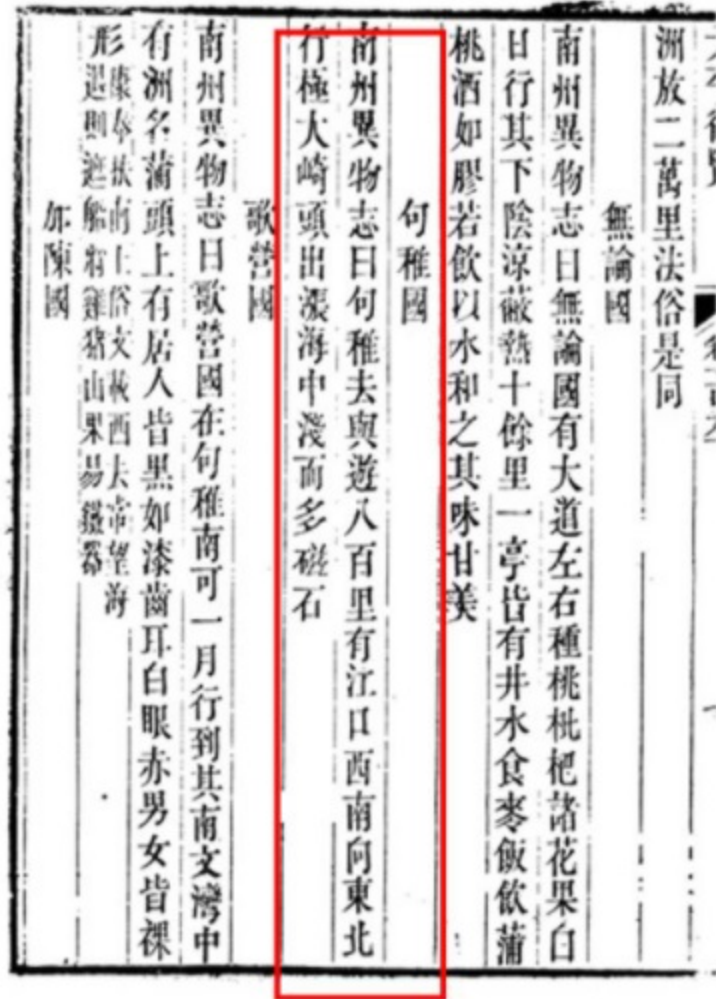


Figure 1. Yiwu Zhi (Record of Foreign Matters) Han dynasty

The Chinese Foreign Ministry repeated Shen's translations on November 17, 2000, to assert its historical claims over the Nansha (Spratly) Islands.¹⁸ Shen further translates the following sentence of the Song dynasty's *Taiping yulan*: "wai jiao ren cheng da chuan, jie yi tie die die zhi. Zhi ci guan, yi cishi, bu de guo" to:

There are islets, sand cays, reefs and banks in the South China Sea, and the water there is shallow and filled with magnetic rocks. Officers on patrol missions took

¹⁸ Ministry of Foreign Affairs of the People's Republic of China. "Historical Evidence To Support China's Sovereignty over Nansha Islands." FMPRC. (Nov. 17, 2000) https://www.fmprc.gov.cn/mfa_eng/topics_665678/3754_666060/t19231.shtml Accessed January 20, 2021.

big boats all covered with iron; when they approached the area, they could not proceed further because of the magnetic rocks.¹⁹

Again, Shen's translation is inaccurate. The original sentence does not have anything to do with officers, patrol missions, and areas. According to Johannes Kurz, Shen misinterpreted rocks into "islets, sand cays, reefs and banks"; "rising sea" into the South China Sea; and foreigners into "officers on patrol missions."²⁰ Shen mistranslated a foreign boat into a Chinese vessel to provide evidence that Chinese officials inspected a maritime area controlled by China without reference that the area was actually shared by several Southeast Asian mariners including China. The original text is copied below for reference. The arrow marks where the passage begins.

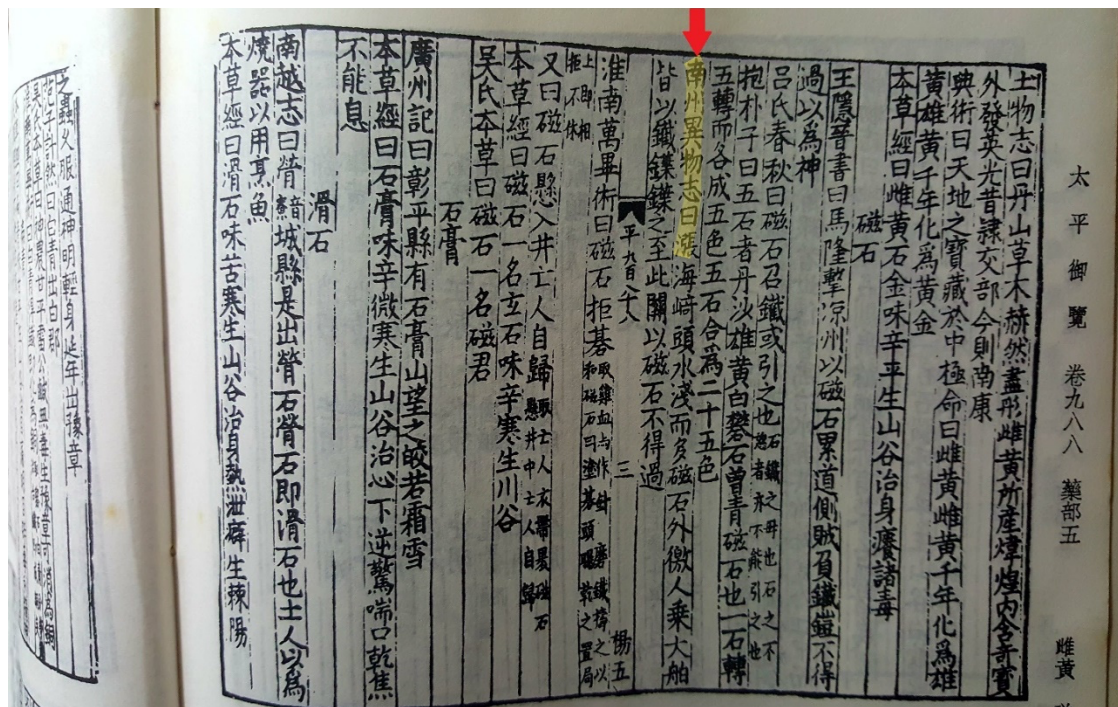


Figure 2. Taiping Yulan (Imperial Reader) Song dynasty

¹⁹ Shen, p.19

²⁰ Kurz (2019), p. 139

According to Wentian Fu, the translation more likely goes,

According to *Nanzhou yiwuzhi (Records of Exotic Matters in the Southern Region)*, rising sea and rocky stones, is of shallow water and magnetic rocks. The big boats of some foreigners were covered by iron clads. So when they sailed here, they cannot pass because of the magnetic rocks.

Thus, the mistranslations show that Jianming Shen and Tao Cheng tried to spread a narrative that distorted the facts. These mistranslations were the basis of statements from the Chinese Foreign Ministry since 2000.

One aspect of China's historical rights claim is that it was the first country to develop the Spratly Islands, one of the most important island clusters in the South China Sea and partly claimed by the Philippines. According to the British Navy's *1868 Guide to the South China Sea*:

fishermen from Hainan Island went to Zhenhe Isles and Reefs and lived on sea cucumber and shells they got there. The footmarks of fishermen could be found in every isle of the Nansha Islands and some of the fishermen would even live there for a long period of time. Every year, there were small boats departing from Hainan Island for the Nansha Islands to exchange rice and other daily necessities for sea cucumber and shells from the fishermen there.

However, evidence contradicting this claim is strong. One of the most telling pieces of evidence contradicting China's claims is a statement by Lai Enjue, a military general during the Qing dynasty. In 1841, he reported to the Qing government that Hong Kong was in the "outer seas."²¹ Similarly, in the 1850s, the provincial admiral of Guangdong reported that "the barbarian seas of Black Water (Heishui) facing Hong Kong" was part

²¹ Memorial by Yishan, Qi Shen, Qigong, and Liang Baochang, DG 21/11/xinwei (2 January 1842), YWSM DG 40/26.

of the “outer seas to the southwest.”²² By labeling Hong Kong’s surrounding waters as “outer seas,” the Qing acknowledged that those waters went beyond their jurisdiction. Further, labelling them as “barbarian seas” seems to be projecting otherness and distances the Qing from people living in Hong Kong waters. Although the 1868 British navy guidebook quote may imply that Chinese fishermen went to the Spratlys for trade, it certainly does not give China sovereignty over the Spratlys.

The Foreign Ministry also notes how fishermen’s “Road Maps” or “genglubu,” nautical guidebooks are historical sources proving China claim to the South China Sea. In 2016, the Chinese government reported that Su Chengfen, an elderly Chinese fisherman living in Hainan, possessed a 600-year old genglubu that shows how to get to the Spratlys, Xisha (Paracels), and Huangyan (Scarborough Shoal).²³ According to state-run media, the ancient guidebook provided “ironclad proof of Chinese ownership” and sovereignty over the islands.²⁴ However, when John Sudworth from the *BBC* tried to ask Su Chengfen to see the route book, Sudworth was told that he threw it away because it was already damaged, a proposition that challenges credulity in light of the obvious evidentiary value for the Chinese position such a guidebook would have.²⁵ The mysterious disappearance

²² Report by the Admiral of the Guangdong Provincial Water Force, undated (c. 1850s), FO 931/1047.

²³ Marnie O’Neill. “China says 600-year-old fisherman’s book ‘iron-clad’ proof of sovereignty over disputed South China Sea islands.” *News.com.au*. <https://www.news.com.au/technology/science/china-says-600yearold-fishermans-book-ironclad-proof-of-sovereignty-over-disputed-south-china-sea-islands/news-story/b489f29673e27dc5f9e8f1074ede8a9a> Accessed January 20, 2021; Li Xiaokun and Liu Xiaoli. “Ancient book ‘provides ironclad proof of Chinese ownership.’” *China Daily*. (May 24, 2016) http://www.chinadaily.com.cn/china/2016-05/24/content_25433846.htm Accessed January 20, 2021.

²⁴ Ibid.

²⁵ John Sudworth. “South China Sea: Does a book prove China’s claim?” *BBC*. (June 19, 2016) <https://www.bbc.com/news/av/world-asia-36562116> Accessed January 20, 2021.

of the genglubu might point out that it had no supporting evidence of China's claims.

After all, this source would have significantly improved China's argument in the South China Sea.

In the same statement, the Foreign Ministry also claimed that China was the first country to exercise jurisdiction over the Spratlys. The Qing dynasty did not recognize Hong Kong's waters as its territorial sea and therefore could not assert jurisdiction farther out. However, the Ministry's article claims that the Memorial Tablet of the Tomb to General Qian Shicai of the Hainan Garrison Command of the Ming Dynasty reads: "Guangdong is adjacent to the grand South China Sea, and the territories beyond the Sea all internally belong to the Ming State." According to the Ministry, "General Qian led more than ten thousand soldiers and 50 huge ships to patrol tens of thousands of li on the South China Sea."

Reaction vs. Entitlement from the End of Qing dynasty to the End of the Civil War

China tried to make its historical claims persuasive. Some Chinese scholars and China's Ministry of Foreign Affairs constructed a national narrative that China's claims could be traced back to ancient texts. However, mistranslations, garbled sentences, and confusing Chinese claims have raised more questions than answers and shaped the geopolitical situation in the South China Sea today. Moreover, China's claims in the 20th century were shaped by the decline of economic satisfaction and nationalist legitimacy and not preexisting claims. Thus, China's historical argument is unpersuasive and appears more reactionary rather than a strong entitlement to the islands. The following

discussion shows that China did not exercise continuous presence in the South China Sea. This implies that China's claims are not well founded.

China first asserted sovereignty on Pratas Island, about 410 km southwest of Taiwan, in 1909. However, China reacted with reluctance after U.S. Secretary of War William Taft told the Qing government on his visit to China in December 1907 that Nishizawa Yoshizi, a Japanese entrepreneur, settled in Pratas and started a guano collecting business.²⁶ Taft may have been worried about the implications of a Japanese settlement near the Philippines, a newly acquired U.S. colony.²⁷ Nevertheless, China took two years to gather a fleet and force out Nishizawa to complete the 1909 Pratas settlement, suggesting that China did not continuously exercise sovereignty over Pratas.²⁸

The next time China asserted sovereignty on the South China Sea was in 1933. However, examining the period between 1909 and 1933 may reveal their motivations to make their claims publicly known within China.²⁹ In 1911, the Qing government finally collapsed after dealing with the Chinese Famine of 1907. People had mixed feelings with foreign armies stationed in China and they were discontent with the way the Qing failed

²⁶ *Hong Kong Daily Press*. "Japan and the island of Pratas." December 7, 1907. p.2

²⁷ Hayton (2018), p. 134

²⁸ *Japan Weekly Chronicle*. "Settlement of the Pratas Island question" October 21, 1909. p.730; *Straits Times*. "The Pratas settlement: China to receive island back on certain terms." October 28, 1909. p.7

²⁹ All publications by the Chinese related to asserting claims in the South China Sea prior to 1975 were written in Chinese. The first English article asserting claims was published on December 12, 1975 as a translation of Shi Dizu's article published on November 24, 1975 in *Renmin Ribao*. This suggests that prior to the 1975 English article, China first wanted to secure that its population agreed with claiming the South China Sea before publicizing them internationally.

to uphold Chinese sovereignty in the wake of foreigners whom the people distrusted.³⁰

The Wuchang Uprising led to the creation of a new central government, the Republic of China (ROC), in Nanjing with Sun Yat-sen as its head. Qing loyalists staged revolts and China fell into disarray. In 1913, Guangdong officials refused to pay for lighthouses in the Paracels despite demands from ships running aground or wrecking on the reefs.³¹ In 1921, Sun Yat-sen licensed the Paracels Archipelago Industries Ltd. to mine guano on the islands. This started a controversy that the company was a front for Japanese interests and people demanded the license revoked.³² According to Ulises Granados, British intelligence reported, that “the southern government also negotiated a so-called ‘Hainan Loan’ with a Japanese national so as to cede all development rights of the island in exchange for an alleged sum of 20 million yen”³³ Arguably, what led Sun to agree to foreign development were the economic, political, and social challenges his Nationalist government was facing as well as China’s incapability to sustain travel between mainland China and the Paracels. The implications of the North China Famine of 1920 starved millions and warlords battled with politicians for control over resources.³⁴ The Chinese Communist Party, founded in 1921, presented a challenge to Sun’s fledgling government’s efforts to gain legitimacy. The South China Sea islands gained Chinese

³⁰ Only a decade before, the Eight-Nation Alliance, a coalition of British, American, Japanese, Russian, German, French, Italian, and Austro-Hungarian forces, invaded North China in 1900 to relieve foreigners in Beijing trapped by the Boxer militia. The Boxers were trying to drive out foreigners from China.

³¹ *South China Morning Post*. “Paracels Reef: the need for a light.” December 1, 1913. p. 6

³² Granados, 448–49

³³ Ibid. 454–56

³⁴ Fuller, p. 821

attention again in February 1928 when Guangdong officials convened a conference appointing Professor Shen Pengfei of the Sun Yat-sen University in Guangzhou, to investigate the situation of the Paracels.³⁵ Bill Hayton hypothesizes that the timing for Chinese renewed interest in the Paracels may have been because China viewed Japan as a military threat now and asserting sovereignty over the Paracels was a means to legitimize the nationalist government after the Communist-led Guangzhou Uprising.³⁶ Sun's government wanted to show legitimacy in the face of a rising Communist government and Japan. The ability to show control over territory was important for Sun's government as the Communists and Japan were challenging Sun's government. This is evidence that China's assertion of sovereignty was reactionary and not well founded. It should also be added that starting in December 1927, China was going through "excessive dryness" and locusts had brought "natural calamity" to seventy counties in north China.³⁷ Faced with the threat of disunity, the newly installed Chiang Kai-shek launched his own Department for Relief Affairs in 1928 and partnered with the China International Famine Relief Commission to provide relief services in famine-stricken provinces.³⁸ Shen's *Reports on the Investigation of the Paracel Islands* published in 1928 focused on the need to develop the islands, extract its resources, and establish Chinese sovereignty. It starts with a

³⁵ Hayton (2019): p. 141

³⁶ Ibid. p. 141

³⁷ CIFRC, 1928, p. 7; In fact, reports show that only 100 of 1,000 locomotives travelled to north China to deliver grain as civil war loomed on the horizon in 1929. Godement, pp.90-93

³⁸ CIFRC, Annual Report 1929, 1930, p. 42; Xia, 2000, p. 388

declaration “The Paracel archipelago is our nation’s southernmost territory.”³⁹ In 1928, Guangdong authorities commissioned Chen Tianxi to write *A Compilation of Materials Concerning the Xisha and Dongsha Islands Case* as evidence supporting their historical claim to the islands. Arguably, scarcity of resources in the homeland forced the government to find resources offshore. For the Chiang government, claiming the Paracels as historically Chinese unified public opinion towards the goal of restoring entitlement as well as establish a new source for food and resources. Chiang’s government established the Inspection Regulations of Land and Water Maps and mandated the Land and Water Maps Review Committee in January 1930 to legitimize its new claims. However, due to political instability, it would take three years to hold its first meeting on June 7, 1933, in time for another crisis.⁴⁰

In the face of Chinese claims, on July 14, 1933, France annexed the Spratly Islands and included them in French Indochina.⁴¹ However, the Chinese Foreign Ministry protested stating: “The coral islands between the Philippines and Annam are inhabited only by Chinese fishermen, and are internationally recognized as Chinese territories.”⁴² China based its protests on the 1887 Sino-French treaty.⁴³ The treaty says, “The north-

³⁹ Quoted in Samuels, p.56

⁴⁰ Li and Li, p.289

⁴¹ On 13 April 1930 France claimed to have taken possession of Spratly Island. It proceeded to claim all the islands between 7° and 12° North latitude and between 111° and 117° East longitude, but formal notice was not published until 1933. Marston Ably recounts the resulting diplomatic exchanges between Britain and France because of an inchoate claim that Britain had to Spratly Island and Amboyna Cay. Martson, 1986: 344-56

⁴² Official Note of the Republic of China (“ROC”) Diplomatic Mission in Paris dated on September 29, 1932. Shen Shungen (1992) *Keai de Nansha*, Shanghai: Yuandong: 106 as translated in Lu, 1993: 32.

⁴³ Cordner, *supra* note 16, at 64

south line passing through the eastern point of island of Tcha's-Kou or Ouan-Chan (Tra Co) which form the boundary, are also allocated to China.” Thus, the treaty established a French claim to areas in the South China Sea lying west of a line 105° 43' and Chinese sovereignty on anything east of the line. While the Spratlys do lie east of the line, the purpose of the text was to allocate coastal islands in the Gulf of Tonkin and did not mention archipelagos or islands and reaffirmed Paragraph 2, Art. 3 of the 1885 Treaty of Tientsin. Further, it took China until 1988 to physically occupy any of the islands.

Putting the misinterpretation of the 1887 Sino-French treaty in context, the fact was China did not know where the Paracel or Spratly islands were to begin with. When there were news of French and Japanese infringement of Chinese territory, China responded with confusion over the location of the Spratlys and the Paracels.⁴⁴ Francois-Xavier Bonnet found U.S. records attesting that Chinese authorities in Nanjing requested their consul in Manila to ask the American colonial authorities for a map showing where the Spratly Islands were located.⁴⁵ In a meeting of China's Military Council on September 1, 1933, it was recorded that “All our professional geographers say that Triton Island [in the Paracels] is the southernmost island of our territory” and China acknowledged that it had no claim over the Spratlys.⁴⁶ However, the Southwest Political Council was convinced that France annexed Chinese territory.⁴⁷ Bill Hayton argues that

⁴⁴ “French Claim to Nine Pacific Islands,” *North China Herald*, August 2, 1933, p. 162.

⁴⁵ Bonnet, *supra* note 41, p. 16.

⁴⁶ Wai Jiao bu nan hai zhu dao dang an hui bian [Compilation by the Department of Foreign Affairs of All the Records Concerning the Islands in the South Sea], Vol. 1 (Taipei, 1995), pp. 47–49, quoted in Bonnet, *supra* note 41, p. 99 and Hayton 2017, p.27

⁴⁷ “Island Dispute—Nanking Orders an Investigation,” *South China Morning Post*, August 1, 1933, p. 14.

this confusion “provoked consternation and nationalist anger among the Chinese public.”⁴⁸ Three years later, Bai Meichu, a geography professor at the Beijing Normal University, drew the first U-shaped line in the South China Sea in his 1936 *New Atlas of China's Construction*.⁴⁹

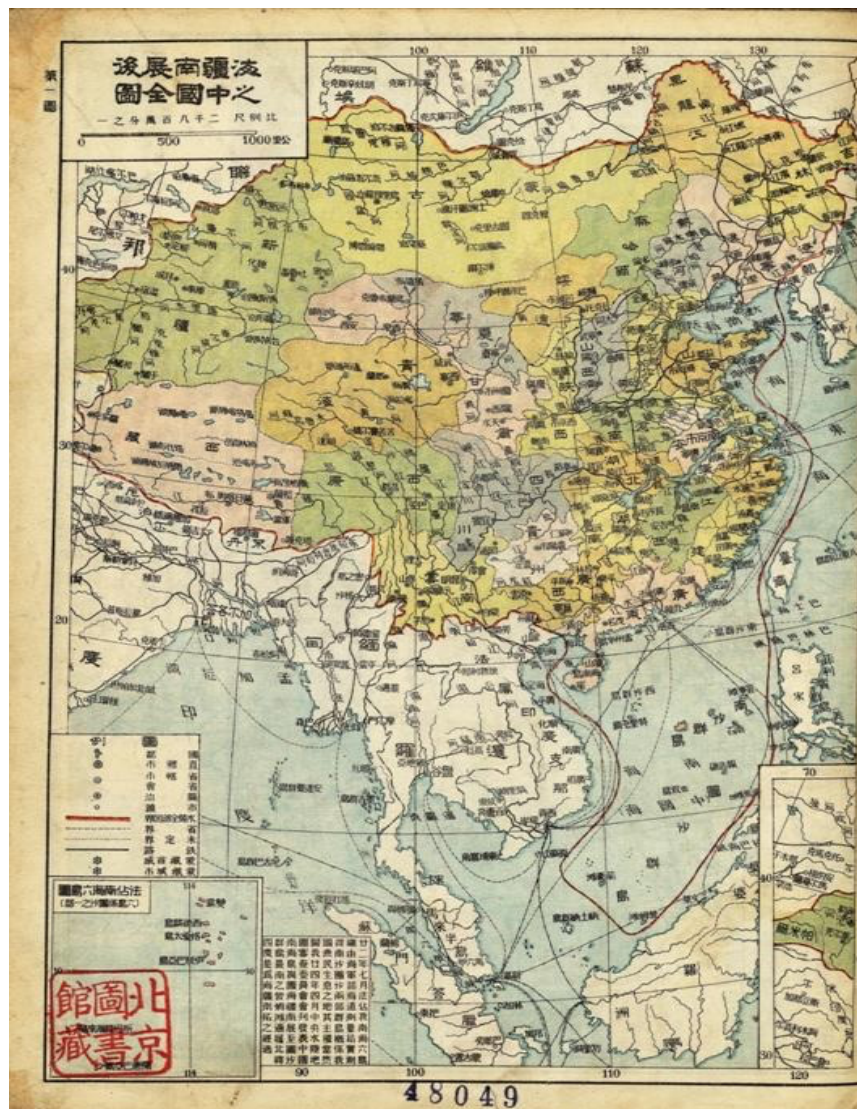


Figure 3. Bai Meichu's 1936 New Atlas of China's Construction

⁴⁸ Hayton 2017, p. 25

⁴⁹ Bai Meichu, *New Atlas of China's Construction*, 1936.
http://bnu.cuepa.cn/show_more.php?doc_id=613549. Accessed January 20, 2021

A closer look also reveals non-existent islands. Recreating the U-shaped line on a modern map shows that the China's southernmost claim that should represent James Shoal is in the wrong place when compared to a modern map.

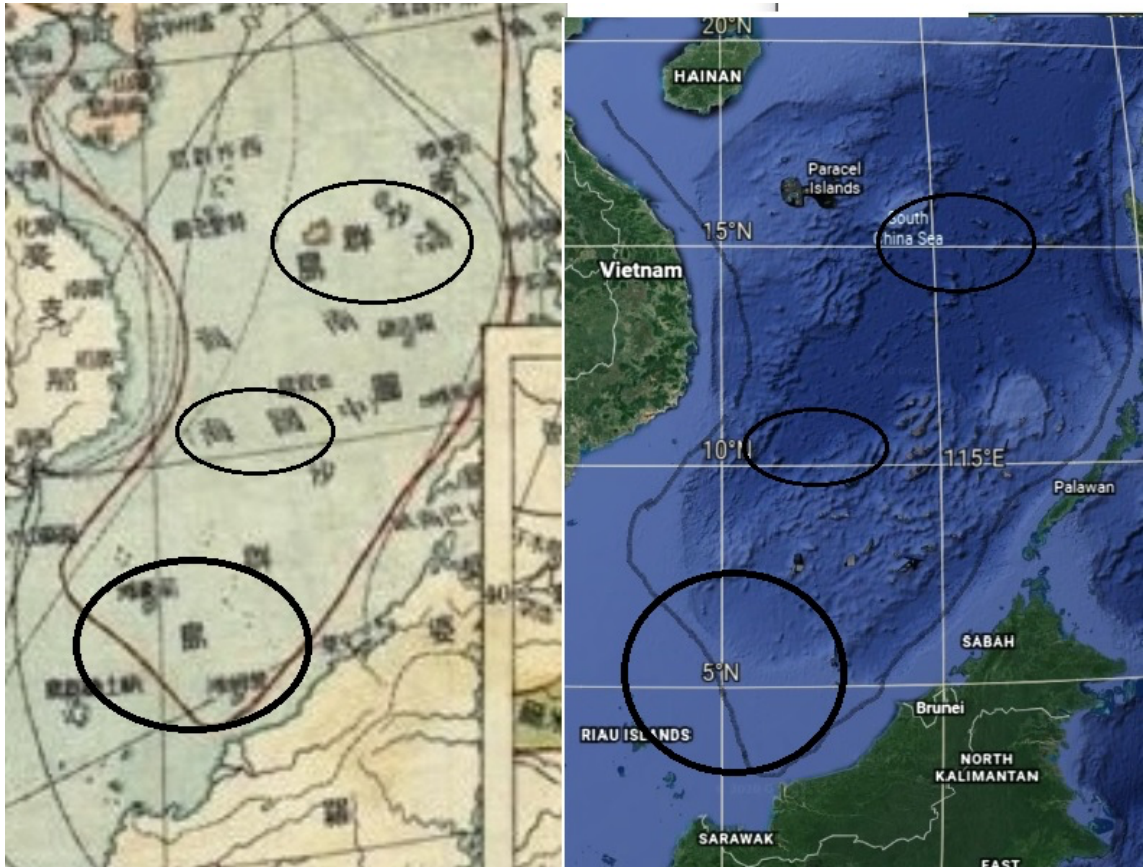


Figure 4. Closeup of Bai Meichu's 1936 New Atlas of China's Construction (U-shaped line on the satellite image was drawn by the author)

The French fled the South China Sea in 1939 when Japan took over during World War II. Japan used the Spratly's strategic location to launch invasions and block Allied shipping.⁵⁰ After the war, Japan retreated from the islands. In 1946, in accordance with the 1943 Cairo Declaration, Chiang Kai-shek's Nationalist government coordinated a diplomatic and military plan to take over the Paracels by the end of 1946. This does not

⁵⁰ Teresa Poole. "Spratly Islands under Shadow of Expansionism." *The Independent*. Feb. 13, 1992, p.14.

validate China's historical rights to the islands, but Chiang's government found this opportunity to unify the country in light of the islands economic and nationalistic potentials.⁵¹ The first issue was timing. In a joint meeting between the Foreign Ministry, Defense Ministry, Minister of the Interior, and the Naval Command, it was mentioned that stationing and inspection could be carried out simultaneously, because "if the troops arrive after the scouting is done, it will take too long and may draw the attention of other countries, or we may even lag behind them."⁵² The second issue was how to occupy the islands. This included officials from the Foreign and Defense Ministries, Naval Command, and the Guangdong province to land on the Paracels followed by troops, building weather stations, and housing.⁵³ The third aspect to consider was the permanent construction plans for the islands, including establishing governance institutions, ensuring logistics, and developing the islands.⁵⁴ The fourth issue was how to respond to diplomatic pressure. The meeting concluded that "with regard to the sovereignty issue, it is better to create established fact," and thus the government of the ROC "would not raise the issue of sovereignty for the time being." "All source materials concerning sovereignty" would be "compiled by the Ministry of the Interior, the Ministry of Defense, and the Naval Command and transmitted to the Foreign Ministry for future use." The

⁵¹ Qianping, pp. 74 and 78

⁵² Guofangbu zhi waijiaobu dai dian [Telegram from the Ministry of Defense to the Foreign Ministry], October 8, 1946, Waijiaobu dang'an: Xisha qundao (5), file no. 020-049904-0005-0068a-0072x.; Quoted Ibid. p.78

⁵³ Ibid.

⁵⁴ Ibid.

Ministry of Education would be responsible for the revision of geography textbooks.⁵⁵

The fact that the government was concerned about how to assert sovereignty over the islands is evidence that they did not always control the islands and taking over the islands now may politically backfire if other nations protested China's claims. On one of these trips, Zheng Ziyue, a geographer professor at the Beijing Normal University and a committee member of the Ministry of the Interior, joined the Nationalist fleet to survey the islands.⁵⁶ He was instrumental to producing the *Location Sketch Map of the South China Sea Islands* in 1946, the first official publication of a map showing a U-shaped dashed line.⁵⁷ Going back to the archives, Chris Chung points out that the minutes agreed upon on September 26, 1946, accompanying the *Location Sketch Map*, by the Nationalist government included the scope of what China would claim in the South China Sea.⁵⁸

Resolved matters:

The case of how to delimit the scope of what is to be received [from Japan] for the purpose of reclaiming [lit., "receiving"] each of the islands in the South China Sea.

Resolution: As according to the scope shown in the Ministry of the Interior's copy of the Location Sketch Map of the South China Sea Islands, After the Executive Yuan has checked and approved [the scope], it will order the Guangdong provincial government to comply [and carry it out]. (MOFA, file series 019.3/0012, file 097)

⁵⁵ Ibid.

⁵⁶ Qianping, p. 74

⁵⁷ Ibid., p.83 at this time, it had 11 dashes; Chung p.43; Although the map was agreed upon in 1946, it was printed in Jan. 1947.

⁵⁸ Chung, p.42

Chung argues that in the original text, the dual use of the verb “to receive” 接收 reflected China’s view that the islands were originally theirs. It was “reclaiming” them from Japan, which had recently surrendered.⁵⁹ He also points out that mention of waters around the islands is absent.⁶⁰ This implies that not all of the area within the U-shaped line was being claimed by China but only its islands. This contradicts China’s claims today that everything within the nine-dash line is China’s territorial sea. It is also interesting to note that the Location Map printed in 1947 contains the inaccurate non-existent islands at the southern edge of Bai Meichu’s 1936 map. A comparison below (Figure 6) shows their similarities.

Another noteworthy feature in the comparison is the change from Bai Meichu’s continuous line to the 1947 broken line. Although it is unclear what brought about this change, it may be argued that the dashed line was not meant to be a maritime boundary line but only a scope of territory without claiming the waters surrounding the islands.⁶¹

⁵⁹ Ibid. p.43

⁶⁰ Ibid.

⁶¹ Ikeshima, p. 33

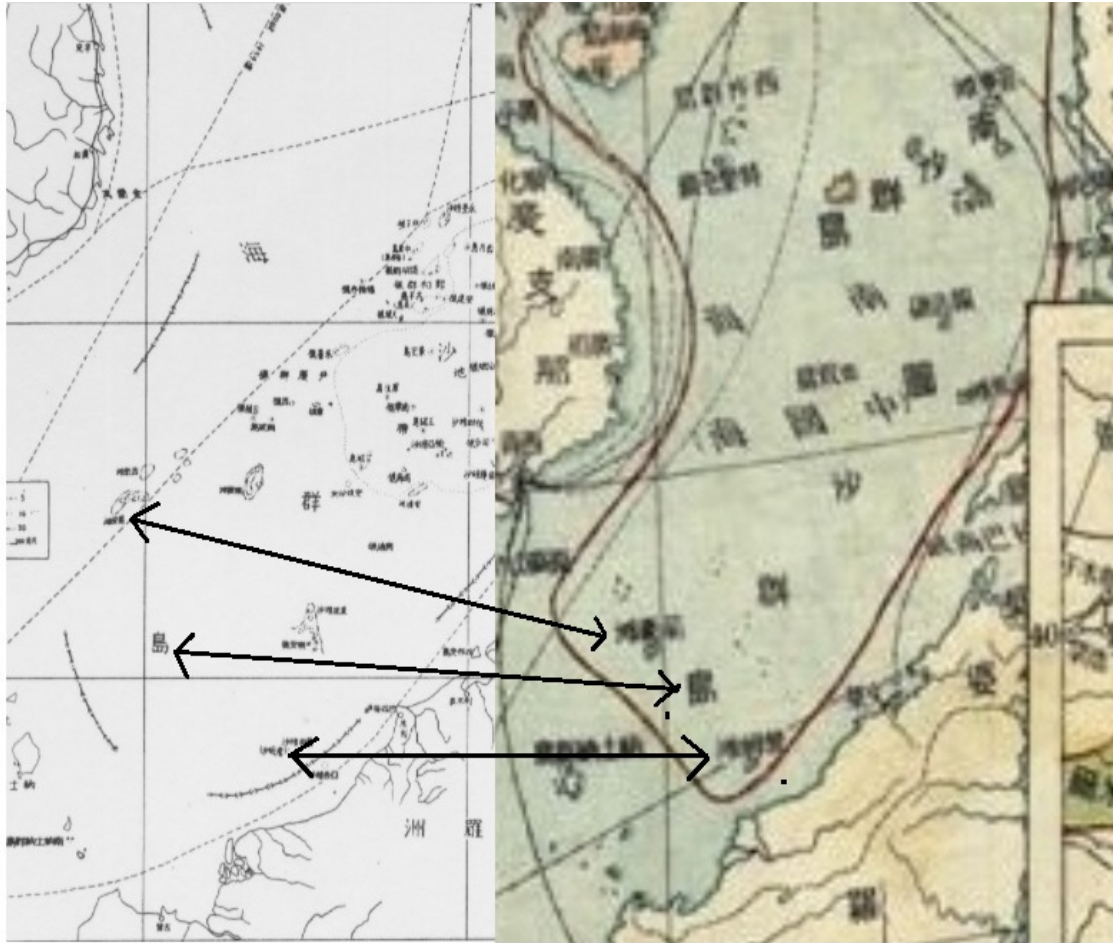


Figure 6. 1947 Location Map vs. Bai Meichu's 1936 Map (arrows drawn by the author)

Therefore, the years between the Cairo Declaration in 1943 and China's takeover of the Spratlys in 1947 were critical for China's assertion of sovereignty over the islands and the genesis of its evolving claims in the South China Sea. Chiang's Nationalist government was also embroiled in a civil war with Communist forces from 1945 to 1949 and lost the Chinese mainland by the end of 1949. Mao Zedong proclaimed the People's Republic of China (PRC) on October 1, 1949, and the Communist party took over the government.

Mao Zedong's Policy on the South China Sea

Shortly after, in 1949, China dropped its claims in the Gulf of Tonkin, changing the eleven dashes to nine. Some scholars point out that Zhou Enlai and Mao Zedong approved the deletion of the two dashes when China transferred its sovereignty on Bạch Long Vĩ Island over to Vietnam to support its resistance against the French and anti-communist forces.⁶² Under Mao, China only claimed over the islands and did not intend the South China Sea to be part of its territorial sea as stated in the 1958 Declaration on China's Territorial Sea.

The breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles. This provision applies to all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas.

Although there is no mention of the nine-dash line, China acknowledged that it has jurisdiction on "all other islands belonging to China which were separated from the mainland and its coastal islands by the high seas." However, it also noted that high seas existed. Thus, it would not be possible for China to extend its claim over the entire South China Sea as its historic waters.

To be clear, China has not defined how it classifies the nine-dash line. It does seem to claim the 12 nautical mile territorial sea starting from the Paracels and Spratlys

⁶² Li & Li, p. 41, p. 290; Zou, pp. 3 and 24; Mao, *Bianfang lun*, p.137. "Interviews," Beijing, June-July 2001.

baseline, not from individual islands. However, the baselines cannot be awarded this right because many of these features are artificial islands and cannot sustain life.⁶³

The year 1956 saw a renewed interest in the South China Sea. China's People's Liberation Army (PLA) reestablished its garrison on Yongxing Island in the Paracels while the remnant Nationalist government in Taipei (ROC) stationed troops on Taiping Island in the Spratlys.⁶⁴ Shao Xunzheng, a researcher in the No. 3 History Research Institute of the Chinese Academy of Sciences, wrote in *Renmin ribao* that there were texts that supported China's historical claims over the Paracels.⁶⁵ Given that *Renmin ribao* (*People's Daily*) is the official newspaper of the Central Committee of the Chinese Communist Party (CCP) and publications are carefully curated by the Party, the CCP was charting a course that would determine the narrative of its assertion of sovereignty in the South China Sea moving forward.

Challenging China's Claims

⁶³ Oriana Skylar Mastro. "How China is Bending the Rules in the South China Sea." Lowly Institute. <https://www.lowyinstitute.org/the-interpreter/how-china-bending-rules-south-china-sea> Accessed June 8, 2021; In the Note Verbale China submitted to the UN in 2009 regarding the extent of its claims, China said that it "has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof." It then directs the reader to the attached map with the nine-dash line. Although not possible under international law because artificial islands cannot generate territorial waters, If China only claimed sovereignty over the islands, then its territorial sea could only extend 12 nautical miles in every direction from the islands. Thus, China's statement that it "has indisputable sovereignty over the islands in the South China Sea" is inconsistent with the nine-dash line that encompasses about 90% of the entire South China Sea.

⁶⁴ Kivimäki 2002, p. 13.

⁶⁵ Kurz, p.135

However, China's claims have been challenged. South Vietnam reestablished the abandoned French camp on Shanhui Island in the Paracels, however its focus on defeating North Vietnam proved to be expensive and it scaled back its forces in Shanhui Island to a weather observation garrison. There are no records that China objected to South Vietnamese presence in the Paracels despite North Vietnam's recognition of the Paracels and Spratlys as China's territory.⁶⁶ Filipino lawyer and businessman Tomás Cloma financed an expedition to the Spratlys and claimed it as *Freedomland* for the Philippines in 1956.⁶⁷ In his "Notice to the Whole World", Cloma based his claims on *terra nullius* since Japan renounced ownership of the Spratlys in the San Francisco Peace Conference in 1951. The ROC sent naval vessels to the Spratlys to contest Cloma's claims and demanded that Cloma recognize the Spratlys as Chinese territory.⁶⁸ Cloma lost his claims to the Spratlys, but Philippine president Ferdinand Marcos declared a majority of the Spratlys as Philippine territory in 1978.⁶⁹

The South China Sea remained tense but peaceful between 1956 and 1973. During this time, North and South Vietnam were embroiled in disputes. This conflict would later be a proxy war between the U.S., China, and the Soviet Union. On the domestic front, China went through a chaotic Cultural Revolution from 1966 to 1976.

⁶⁶ Taylor, p. 269; Taylor hypothesizes that Chinese control of Bạch Long Vĩ Island may have exchanged for North Vietnam's 1958 decision to recognize China's claims to the Paracels and Spratlys. Although there are no sources for this speculation, the timing of Hanoi's decision in 1958 suggests that this is a possibility. It should also be noted that North Vietnam was the first 3rd party to recognize the PRC as the lawful claimant of the Spratlys and Paracels.

⁶⁷ Wu and Zou, p. 17

⁶⁸ Position Paper on ROC South China Sea Policy. March 21, 2016

⁶⁹ Philippines Presidential Decree No. 1596

According to Mao Zedong, the Revolution's goal was to crack down on remnants of capitalism in Chinese society. The Philippines established diplomatic ties with China in 1975. It claimed some islands near the Spratlys as *Kalayaan Island Group* (KIG), 280 nautical miles northwest of mainland Philippines after the Taiwanese navy attacked a Philippine fishing boat on Itu Aba in 1971.⁷⁰

Solidifying its Claims to the Islands

The next drama to unfold in the South China Sea was the Battle of the Paracel Islands in 1974 between China and South Vietnam. This time, it was about energy security rather than food security. In mid-1973, South Vietnam granted energy exploration rights to Western companies to conduct geological surveys near the Crescent Group in the Paracels. In the summer of 1973, South Vietnam formally declared Saigon's administrative control over the Paracels. It would later send warships to protect its claim. Brunei also partnered with Shell to start offshore drilling in 1972.⁷¹ In October 1973, two Chinese fishing trawlers landed on Duncan Island and planted Chinese flags to claim sovereignty, followed by the construction of a seafood processing plant on Robert Island.⁷² China also began drilling oil wells on Woody Island in December 1973.⁷³ Due to

⁷⁰ Pak, p. 92

⁷¹ U.S. Energy Information Administration. "South China Sea." https://www.eia.gov/international/content/analysis/regions_of_interest/South_China_Sea/south_china_sea.pdf p. 5 Accessed January 20, 2021.

⁷² Guo Fuwen, p. 4

⁷³ Li Bingfu, pp. 80–83

the Cultural Revolution, China's naval fleet was falling apart and China scrambled to assemble its forces and respond to South Vietnam's moves.⁷⁴ South Vietnam's assertion of sovereignty on Chinese claimed territory might have threatened China. It could also be argued that China already calculated that it could now use force to take away South Vietnam's claims since a North Vietnamese victory seemed likely by the end of 1973.⁷⁵ On January 19, 1974, South Vietnamese and Chinese naval forces clashed in the Paracels. The Chinese chose smaller and faster ships to outmaneuver the large and slower-firing Vietnamese fleet.⁷⁶ China won the Battle of the Paracels, took over the Vietnamese-occupied islands, and braced for a counterattack that never came. This was the first time China used its military to forcefully remove a claimant in the South China Sea. What was different now was that China had superior material capability to assert sovereignty over the Paracels compared to South Vietnam. The appearance of missile-armed frigates tipped the regional naval balance of power in China's favor.⁷⁷ China calculated that the

⁷⁴ Yoshihara, p.48

⁷⁵ The previous month, on December 3, 1973, the Viet Cong hit the Nhà Bè fuel depot, the largest fuel storage facility in South Vietnam with approximately 80% of the nation's storage capacity and the South Vietnamese were taking heavy losses because of the U.S. withdrawal according to the Paris Peace Accords signed in January 1973. South Vietnam was already losing the war by the time the Battle of the Paracels occurred and China may have exploited this opportunity to take over the Paracels and side with North Vietnam on this issue. North Vietnam was the first 3rd party to recognize China as the legitimate claimant of the Paracels and the Spratlys.

⁷⁶ Li Zhaoxin, p. 35. Li was a cryptographer working in the intelligence section of the South Sea Fleet headquarters.

⁷⁷ Before the Sino-Soviet split, the Soviet Union and China were close allies and Soviet design, equipment, and technology were sent to China to help its modernization. The Kronshtadt-class submarine chaser and Hainan-class submarine chasers that China used were Soviet designed. As part of reinforcements, China dispatched its East Sea Fleet equipped with Type 01 Chengdu-class guided-missile frigates and SY-1 subsonic antiship cruise missiles. The reserve fleet also included the Type 033 Romeo-class submarines. Yoshihara, p. 50

U.S. would not aid South Vietnam since it just withdrew from the region following heavy losses during the Vietnam War. This left South Vietnam to fend for itself.⁷⁸ Further, the U.S. was trying to warm up relations with China following the Sino-American rapprochement in 1972. It could be argued that China knew the U.S. would think twice before confronting Chinese forces and risk jeopardizing each other's partnership in counterbalancing the Soviet Union. China found the Battle of the Paracels as an opportunity to assert sovereignty over the islands, show technological superiority and modernization, effectively use smaller vessels to outmaneuver the larger Vietnamese fleet and, most importantly, the opportunity to write history. China's success was well calculated and critical for its stake in the South China Sea.

China restarted its information campaign, and an article was published in *Renmin ribao* by "Shi Dizu," a pseudonym used by the members of the Historical Geography Group in the Geography Institute in the Chinese Academy of Sciences.⁷⁹ This article, published on November 24, 1975, asserted that China had historical claims in the South China Sea.⁸⁰ For the first time, an English translation was also published on December 12. It could be argued that China felt more confident now than before to make its claims public and international since previous publications were only in Chinese and presented

⁷⁸ South Vietnam requested the aid of the U.S. Seventh Fleet, but the U.S. declined. Ibid.

⁷⁹ Kurz, p. 136

⁸⁰ Besides citing historical texts, the 1975 article also claimed that they found artifacts such as Chinese coins and ceramics that led them to conclude that the "Xisha Islands [Paracel Islands] since ancient times have been China's sacred territory" (Wang Hengjie 1992, 776-777 and Wang Hengjie 1997, 68-69). However, there is no definite way to extrapolate evidence of China's sovereignty over the Paracels using archaeological evidence alone. Lassere (1999) argues that one of the major problems is that there is no certain way to know how ceramics, coins, and other artifacts reached the islands.

to local and regional audiences. China used history as a tactic to target Southeast Asian countries laying claims to the South China Sea since they suspected that Southeast Asian countries did not have any historical records to challenge China.⁸¹ Further, regulations such as UNCLOS were still being developed. Kurz argues that China was prompted to publish its claims as a first line of defense against a potential U.S. intervention in favor of South Vietnam.⁸² The fact that China republished the article in English may also point to China's intent to notify the U.S. and the Western English-speaking states about its position in the South China Sea.

Fourteen years after the Battle of the Paracels, a now-unified Vietnam clashed with China in the Spratlys. On March 14, 1988, the Johnson South Reef Skirmish resulted in a Chinese victory and occupation of the reef. The previous year, the 14th UNESCO Intergovernmental Oceanographic Commission (IOC) authorized China to build an observation post in the Spratlys. This was accompanied by Chinese vessels conducting surveys and naval patrols in the area.⁸³ China chose Fiery Cross Reef because it was large enough and isolated from other islands claimed by other countries.⁸⁴ However, in the late 1970s and early 1980s, Soviet naval forces made extensive use of Vietnam's Cam Ranh Bay, which may have threatened China's assertion of jurisdiction over the Spratlys. China chose Fiery Cross Reef to balance the Soviet navy. China

⁸¹ Ibid. p.136

⁸² Ibid. p.135

⁸³ Koo, p. 154

⁸⁴ Ibid.

became more assertive in the area, wanting to establish a permanent hold over the Spratlys under the diplomatic guise of a UNESCO mandate.⁸⁵ On January 31, 1988, two armed Vietnamese cargo ships with construction materials approached Fiery Cross Reef to assert their claim in the Spratlys when warships from China's People's Liberation Army Navy (PLAN) intercepted the Vietnamese cargo ships.⁸⁶ The conflict escalated on March 14 when a PLAN guided missile escort ship intercepted and sank the armed Vietnamese ships. Within half an hour, all Vietnamese ships were sunk along with the 74 Vietnamese crew members who perished.⁸⁷ China's superior technology determined the outcome of the skirmish. After this incident, China became more aggressive in the South China Sea. By the end of 1988, China occupied six reefs and atolls in the Spratlys and increased military presence on Hainan to defend against the Soviet threat and counter Vietnam's search for oil.⁸⁸ By this time, China was solidifying its claims using its military might and advances in naval technology.

⁸⁵ Even if there was a Soviet-Vietnamese Treaty of Friendship and Cooperation signed in 1978 and the Soviet navy was docked in Vietnam, the Soviet Union did not intervene in the skirmish. This raises the question: what was the real value of the Soviet-Vietnamese Treaty? It could be argued that the Soviet Union did not intervene because it was also trying to warm up relations with China. On the domestic front, the Soviet Union's economic instability was getting more serious starting in the 1980s. Faced with imminent economic collapse and political rebellion, Gorbachev found it important to engage China and find an economic partner.

⁸⁶ Koo, p.154

⁸⁷ Ibid.

⁸⁸ Ibid.; Koo argues that Deng Xiaoping's reform policy shifted China's economic center of gravity from the hinterland back to the coastal provinces in the 1980s.⁸⁸ Given the increasing importance of coastal assets, Deng's reforms included increasing maritime defense, securing access to maritime resources especially hydrocarbon energy, and exploring oil and gas to sustain China's economic development.; Lo points out that it was no coincidence that offshore oil and gas exploration was one of the first projects that China opened to foreign participation in early 1979. p. 126

In 1988, Philippine President Corazon Aquino visited Beijing to discuss trade issues with China's paramount leader, Deng Xiaoping. While Aquino raised the issue of the Kalayaans and the Philippine claims in the Spratlys, there is no evidence that China protested Philippine claims.⁸⁹ Deng and Aquino agreed to put aside the sovereignty question and jointly explore and exploit maritime resources. In May 1994, the Philippine Department of Energy approved Vaalco, a U.S. oil company, to conduct "desk-top" oil explorations with its Philippine subsidiary Alcorn near Reed Bank, 400 nautical miles west of Palawan.⁹⁰ Beijing protested Manila's actions and characterized it as a violation of Chinese sovereignty and an infraction of the joint exploration agreement in 1988. This incident was the beginning of deteriorating Sino-Philippine relations. In January 1995, Chinese patrols detained a Philippine fishing vessel on Mischief Reef and a month later, China claimed Mischief Reef, a maritime feature within the Philippines EEZ, and began constructing "a shelter by Chinese fishermen, not for any military purpose" as well as extract energy resources.⁹¹ The Philippines and the Association of Southeast Asian Nations (ASEAN) protested China's actions. Philippine President Fidel Ramos condemned the Chinese structures as "inconsistent with international law and the spirit and content of the 1992 Manila ASEAN Declaration on the South China Sea to which both [countries] are parties."⁹² For the Philippines, diplomatic strategy was the only

⁸⁹ "Aquino returns from China". *Kyodo International News*, 17 April 1988

⁹⁰ Storey, p. 97

⁹¹ Shenon, Philip. "Manila Sees China Threat On Coral Reef" February 19, 1995, Section 1, Page 9; Makinano, op. cit., p.20; "Senior Office Outlines China's Naval Ambitions," *Far Eastern Economic Review*, April 16, 1992; *Straits Times*, April 21, 1992

⁹² "Ramos: Sinos occupying RP reef in Spratlys". *Philippine Daily Inquirer*. February 9, 1995.

realistic answer to China's aggression since it did not have the material capabilities to militarily counter China.⁹³ Further, the U.S. removed all of its military bases and turned over Subic Naval Base to the Philippine government. Ramos faced political instability on the domestic front and decreasing involvement from the U.S., the Philippines most important ally. Ramos could not simply acquiesce to China. After rounds of diplomatic negotiations, China and the Philippines signed a Code of Conduct in August 1995. However, that did not diffuse the dispute. Minor skirmishes between Chinese and Philippine warships were reported between January and May 1996 on Mischief Reef as China strengthened its defense systems in the Spratlys.⁹⁴ China continued to assert sovereignty and the Philippine navy increased reconnaissance activities by taking pictures of Chinese vessels unloading construction materials on Mischief Reef. At the 1998 Asia-Pacific Economic Cooperation (APEC) summit, newly elected Philippine President Joseph Estrada raised the issue with Chinese President Jiang Zemin and the two agreed to refer the matter to a panel of experts on finding ways to jointly use facilities.⁹⁵ Estrada also met with U.S. Vice-President Al Gore at the APEC summit and told Gore that he

⁹³ At that time, the Philippines and Singapore were having strained diplomatic relations, there was political instability as a result of the Abu Sayyaf raids in Mindanao, and the controversial dagdag-bawas 1995 general election in the Senate. Steven Rood. "Looking Back as May 2010 Philippine General Elections Approach." *The Asia Foundation*. (April 28, 2010) <https://asiafoundation.org/2010/04/28/looking-back-as-may-2010-philippine-general-elections-approach/> Accessed January 20, 2021.

⁹⁴ Armed Forces of the Philippines reported that between March and May 1996, facilities on Mischief Reef were being upgraded with the addition of "electronic equipment". "Military official says China upgrading structures on Mischief Reef BBC Monitoring Service: Asia Pacific, March 5, 1996; and "Philippines navy 'not alarmed' by new Chinese structures on disputed reef". BBC Monitoring Service: Asia Pacific, May 22, 1996.

⁹⁵ "Estrada, Jiang discuss Mischief", *Philippine Daily Inquirer*, Nov. 18, 1998.

was pushing the Philippine Senate to ratify the U.S.-Philippines Visiting Forces Agreement (VFA) and modernize the Philippine military.⁹⁶

The U.S. Gets Involved: The Emergence of a Third-party Threat

The emergence of a third-party threat was to balance China and tip the balance of power in favor of Southeast Asian countries. U.S. involvement changed the power dynamics in the region and forced China to negotiate a Code of Conduct. On May 27, 1999, the U.S.-Philippines VFA was ratified, allowing U.S. troops to be temporarily stationed in the Philippines. The U.S. renewed its commitment to the Philippines. U.S. Ambassador to the Philippines Thomas Hubbard declared that the U.S. would defend the Philippines if it was attacked in the South China Sea pursuant to the 1951 Mutual Defense Treaty.⁹⁷ Joint *Balikatan* military exercises were quickly resumed in May 1999, including a series of exercises near Palawan in the South China Sea between February and March 2000. The U.S. expected that China would accelerate its militarization of the South China Sea after Taiwanese President Lee Teng Hui declared the “two state theory” in July 1999. In a broader context, 1999 was a year of political instability for China when the CCP launched a campaign to “eradicate” Falun Gong, a spiritual practice of Buddhism and Taoist traditions, on July 20. The CCP saw Falun Gong as a counter to the CCP’s teaching of state atheism. Further, while the U.S. bombing of the Chinese embassy in Yugoslavia in May could have been accidental, Jiang Zemin’s decision to quietly wait

⁹⁶ “Erap wins US support on Mischief”. *Philippine Daily Inquirer*, Nov. 19, 1998.

⁹⁷ *Philippine Star*, May 25, 1999

for the Politburo Standing Committee to reach a consensus on settling the incident with the U.S. instead of taking more drastic diplomatic measures shows that China valued its relationship with the U.S. Jiang cautiously moved ahead when he had the support of the Politburo to ensure that there would be no public backlash that could threaten the integrity of the government. The U.S. showed support for Taiwan's "two state theory" by sending in two U.S. aircraft carriers, the *Kitty Hawk* and *Constellation*, to the South China Sea. In August 2001, the U.S. sent two more aircraft carriers, the *Carl Vinson* and *Constellation*, with 13 escort vessels to conduct military exercises with Taiwan on a simulated Beijing attack on Taiwan.⁹⁸ Since Russia was about to vacate Cam Ranh Bay in Vietnam, Dennis Blair, Commander in Chief of the Pacific Fleet (CINCPAC) visited Hanoi to propose American naval access to the bay, but Vietnam declined the American proposal out of fear of Chinese retaliation.⁹⁹

U.S. involvement in the South China Sea changed the power dynamics in the region. China realized that further coercing Southeast Asian countries would push them to get militarily closer to the U.S. and open their port facilities to American military and commerce. In view of third-party threats, balancing distribution of power, and crumbling political stability, China renewed interest in a South China Sea Code of Conduct.¹⁰⁰

China presented its Code of Conduct draft in March 2000 at the ASEAN-Chinese SOM

⁹⁸ David Lague, "U.S. Holds Tighter to Taiwan's Hand". *Far Eastern Economic Review*, August 30, 2001; *Straits Times*, August 18, 2001.

⁹⁹ "Hanoi Rules out U.S. Cam Ranh Bay Treaty." *CNN*. February 14, 2002.
<http://edition.cnn.com/2002/WORLD/asiapcf/southeast/02/10/vietnam.camranh/index.html> Accessed January 20, 2021.

¹⁰⁰ Buszynski, p. 354

in Cha-Am, Thailand, but China's insistence on resolving the disputes on a bilateral basis failed to persuade ASEAN to sign on.¹⁰¹ However, China still wanted to negotiate a code. After several negotiations, China finally accepted that a multilateral code would be its only choice, but it rejected the Philippines demand banning new structures on islands and reefs and replaced it with Article 5 agreeing to "refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features". To make sure ASEAN had its hands tied, China also demanded the words "on the basis of consensus" be included as Article 10.¹⁰² China and ASEAN finally signed the Declaration on the Conduct of Parties in the South China Sea at the 8th ASEAN summit at Phnom Penh in November 2002.

However, the U.S. threat was only temporary as China gained confidence with its new military capabilities. The next major Chinese assertion of jurisdiction in the South China Sea was on March 17, 2009, when it "shadowed and aggressively maneuvered in dangerously close proximity to USNS *Impeccable*, in an apparent coordinated effort to harass the U.S. ocean surveillance ship while it was conducting routine operations in international waters."¹⁰³ According to a Pentagon spokesman, the incident was "one of the most aggressive actions we've seen in some time."¹⁰⁴ Perhaps China saw the U.S.

¹⁰¹ Thailand's Deputy Director General of the Foreign Ministry's East Asia Department, Seehasak Phaungketkeow, revealed that the code would recognize that disputes should be resolved on a bilateral basis, a concession to the Chinese position. The code would cover four areas: the management of disputes in the South China Sea; trust and confidence building; cooperation in maritime issues and environmental protection; and modes of consultation. *Philippine Daily Inquirer*, March 16, 2000

¹⁰² *Business Times*, November 2, 2002

¹⁰³ "Pentagon says Chinese vessels harassed U.S. ship." *CNN*. (2009) <https://www.cnn.com/2009/POLITICS/03/09/us.navy.china/index.html> Accessed January 20, 2021

¹⁰⁴ *Ibid.*

acquiescing to China's demands in the South China Sea in return for stronger economic interdependence. After all, the U.S. was in the middle of a financial crisis and China surpassed Germany to become the world's third largest economy.¹⁰⁵ Indeed, when U.S. Secretary of State Hillary Clinton visited China in February 2009, she made it clear that cooperation with China to tackle the financial crisis took precedence over U.S. concerns about human rights in China.¹⁰⁶ A week after the *Impeccable* incident, China dispatched the *Yuzheng 311*, its largest fishing patrol, to the Paracels and challenged Vietnam's claims to the islands.¹⁰⁷ Despite China's growing economy, Chinese leadership felt threatened when Vietnam and Malaysia made a joint submission on May 6, 2009 to the Commission on the Limits of the Continental Shelf (CLCS) to clarify their claims to the "southern part of the South China Sea."¹⁰⁸ For China, losing dominance in the South China Sea meant cutting off a lifeline that could threaten the Chinese economy. China

¹⁰⁵ "China passes Germany in economic rankings." *CNN*. (2009) <http://edition.cnn.com/2009/WORLD/asiapcf/01/15/china.economy/index.html?iref=topnews> Accessed January 20, 2021.

¹⁰⁶ Arshad Mohammed and Benjamin Kang Lim. "Economic woes trump rights as Clinton visits China." *Reuters*. (Feb. 20, 2009) <https://www.reuters.com/article/us-china-clinton/economic-woes-trump-rights-as-clinton-visits-china-idUSTRE51J43520090221> Accessed January 20, 2021.

¹⁰⁷ Zhang Xin. "2nd ship to patrol South China Sea." *China Daily*. (March 28, 2009) https://www.chinadaily.com.cn/china/2009-03/28/content_7625985.htm Accessed January 20, 2021.

¹⁰⁸ UNCLOS grants coastal states up to 360 nautical miles of continental shelf, which is also measured from the territorial sea if the coastal state submits continental shelf information to CLCS within 10 years of the entry into force of UNCLOS for that state UNCLOS, Meeting of States Parties, 11th mtg., Decision Regarding the Date of Commencement of the Ten-Year Period for Making Submissions to the Commission on the Limits of the Continental Shelf Set Out in Article 4 or Annex II to the United Nations Convention on the Law of the Sea, U.N. Doc. SPLOS/72 (May 29, 2001); Navin Rajagopal. "The 2009 claims that changed the dynamics in the South China Sea." *The Strait Times*. (2009) <https://www.straitstimes.com/opinion/the-2009-claims-that-changed-dynamics-in-the-s-china-sea> Accessed January 20, 2021.

objected to Vietnam and Malaysia's joint submission. It claimed that it violated Chinese historical sovereignty over the South China Sea.¹⁰⁹

Balancing Power and Diplomacy in the Face of a Rising China

China strengthened its assertiveness of sovereignty in the region after it surpassed the U.S. as the largest consumer of energy worldwide in 2010.¹¹⁰ Besides meeting domestic demands, China saw more value in securing East and South China Seas trade routes for oil tanker shipments as the country became the second-largest consumer and net importer of oil.¹¹¹ Realizing China's rapid steps towards securing the region for itself, U.S. Secretary of State Clinton affirmed the U.S. position of "open access to Asia's maritime commons" at the July 22 U.S.-ASEAN Ministerial Meeting. Clinton's statement was seen as an expansion of American involvement and support for Vietnam's claim that China violated international norms by imposing a fishing moratorium on Vietnamese fishing.¹¹² Despite expanded U.S. involvement in the region, Chinese

¹⁰⁹ Ibid.

¹⁰ Jonathan Watts. “China overtakes US as world’s biggest energy consumer.” *The Guardian*.
<https://www.theguardian.com/environment/2010/aug/03/china-overtakes-us-energy-consumer> (Aug. 3,
2010) Accessed January 20, 2021; U.S. Energy Information Administration.
[https://www.eia.gov/international/data/country/CHN/total-energy/total-energy-
consumption?pd=44&p=000000001006&u=0
&f=A&v=mapbubble&a=-&i=None&vo=value&vb=44&t=C&g=None&l=249--
38&s=315532800000&e=1514764800000&ev=false](https://www.eia.gov/international/data/country/CHN/total-energy/total-energy-consumption?pd=44&p=000000001006&u=0&f=A&v=mapbubble&a=-&i=None&vo=value&vb=44&t=C&g=None&l=249--38&s=315532800000&e=1514764800000&ev=false) Accessed January 20, 2021.

¹¹¹ Spencer Swartz and Shai Oster. “China Tops U.S. in Energy Use.” *Wall Street Journal*. (July 18, 2010) <https://www.wsj.com/articles/SB10001424052748703720504575376712353150310> Accessed January 20, 2021.

¹¹² Hung Nguyen. “China’s relations in the Asia-Pacific: Vietnam.” *The Diplomat*. (2011) <https://thediplomat.com/2011/02/vietnam/> Accessed January 20, 2021.

assertiveness against the Philippines and Vietnam increased significantly between January and June 2011, including a near-fatal encounter on February 25 when *Dongguan* 560, a Jianghu-V Class missile frigate, fired on Philippine makeshift fishing vessels at Jackson Atoll 140 nautical west of Palawan.¹¹³ To meet domestic demands for energy, China launched a mega oil and gas-drilling platform in March 2011 to be used by the China National Offshore Oil Corporation (CNOOC) in the South China Sea. This was China's first deep-sea drilling project.¹¹⁴

Philippine President Benigno Aquino responded by increasing funds to modernize the Philippine military. He also emphasized lobbying ASEAN colleagues to form consensus in pushing for a Code of Conduct and increasing defense cooperation with the U.S. to continue diplomatic pressure on China. However, potential UN involvement and increased U.S. presence may have prompted China to push for implementing the Code of Conduct. During his state visit to Brunei, President Aquino said "We are completing the data on about six to seven instances since February. We will present it to [China] and then bring these to the appropriate body, which normally is the United Nations."¹¹⁵ On May 14, President Aquino and his Cabinet flew to the USS *Carl Vinson* in the South China Sea as it made its way to the Philippines on a "routine port call and goodwill visit."

¹¹³ Tessa Jamandre. "China fired at Filipino fishermen in Jackson atoll." *ABS CBN*. (June 2, 2011) <https://news.abs-cbn.com/-depth/06/02/11/china-fired-filipino-fishermen-jackson-atoll> Accessed January 20, 2021.

¹¹⁴ Michael Richardson. "China steps up drilling, intimidation." *The Japan Times*. (June 1, 2011) <https://www.japantimes.co.jp/opinion/2011/06/01/commentary/china-steps-up-drilling-intimidation/> Accessed January 20, 2021.

¹¹⁵ Johana Paola d. Poblete, "Philippines preparing issues for UN about China 'intrusions'," *Business World*, June 2, 2011; Jim Gomez, "Philippines plans new UN protest as China denies aggressive acts in Spratly Islands," *Associated Press*, June 3, 2011.

The *Carl Vinson* was accompanied by other U.S. navy ships including the *Bunker Hill*, *Shiloh*, and *Gridley*.¹¹⁶ A week later, Chinese Defense Minister General Lian Guanglie met with Philippine Defense Secretary Voltaire Gazmin to find ways to cooperate on territorial disputes in the Spratlys. In their joint statement, they said:

“both ministers expressed hope that the implementing guidelines of the 2002 Declaration of Conduct would soon be finalized and agreed upon, that responsible behavior of all parties in the South China Sea issue would help keep the area stable while all parties work for the peaceful resolution ... Both ministers recognized that unilateral actions which could cause alarm should be avoided.”¹¹⁷

Immediately after the meeting, Sun Yi, Deputy Chief of Political Section at the Chinese Embassy in Manila, issued a statement saying that China looked forward to an “accelerated dialogue” with the Philippines but insisted that the dispute was still a bilateral issue.¹¹⁸

In Vietnam’s case, domestic pressure forced Prime Minister Nguyen Tan Dung to make a strong statement defending national sovereignty on June 9, 2011 saying, “We continue to affirm strongly and to manifest the strongest determination of all the Party, of all the people and of all the army in protecting Vietnamese sovereignty in maritime zones of the country.”¹¹⁹ Prime Minister Dung also reaffirmed that Vietnam’s sovereignty over

¹¹⁶ Christine O. Avendano, Dona Pazzibugan, and Jerome Aning, “Palace sees no terror backlash against Aquino visit to ship,” *Philippine Daily Inquirer*, May 16, 2011.

¹¹⁷ Jim Gomez. “China, Philippine defense chiefs discuss Spratlys.” *NY Daily News*. (2011) <https://www.nydailynews.com/sdut-china-philippine-defense-chiefs-discuss-spratlys-2011may23-story.html> Accessed January 20, 2021; Simone Orendain. “Philippines, China Support Discussion on South China Sea.” *VOA*. <https://www.voanews.com/east-asia-pacific/philippines-china-support-discussion-south-china-sea> (May 23, 2011) Accessed January 20, 2021.

¹¹⁸ Pia Lee-Brago, “China welcomes dialogue to end ‘Nansha’ dispute,” *Philippine Star*, May 25, 2011.

¹¹⁹ Interview with Thanh Nien quoted by *Agence France Presse*, “Vietnam PM says sea sovereignty ‘incontestable’,” June 9, 2011.

the Paracel and Spratlys was "incontestable." Although China announced that it would conduct naval exercises in the Western Pacific, Vietnam forged ahead by publicly announcing a live-fire exercise.¹²⁰ The 9-hour exercise occurred on June 13 and the Vietnamese Foreign Ministry characterized it as "a routine annual training activity of the Vietnam navy."¹²¹ The exercise included anti-ship missiles fired from Sukhoi jet aircraft.¹²² At the same time, Vietnamese students used Facebook and social media to arrange anti-China demonstrations over twelve weeks in Ho Chi Minh City.¹²³ Holding signs saying, "Down with China" and "Stop Chinese invasion of Vietnam's islands," protestors marched to the Chinese embassy.¹²⁴ After numerous calls from the people, the Vietnamese government sent Deputy Foreign Minister Ho Xuan Son to Beijing to meet his Chinese counterpart, State Councilor Dai Bingguo, to discuss the South China Sea. On June 25, Vietnam and China released a joint statement saying,

The two sides agreed to speed up the tempo of negotiations so as to early sign an "Agreement on basic principles guiding the settlement of sea issues between Vietnam and China," and boost the implementation of the Declaration on Conduct of Parties in the East Sea [sic] (DOC) and follow-up activities so that substantial progress will soon be achieved.¹²⁵

¹²⁰ Ben Blanchard and Michael Martina, "China says to hold 'routine' navy drills in western Pacific," *Reuters*, June 9, 2011

¹²¹ John Ruwitch, "Vietnam welcomes international help as sea dispute escalates," *Reuters*, June 11, 2011; Margie Mason, "Vietnam plans live-fire drill after China dispute," *Associated Press*, June 10, 2011.

¹²² Zou and Song p. 41

¹²³ Ian Timberlake, "'Facebook effect' stirs Vietnam-China tensions," *Agence France Presse*, June 10, 2011.

¹²⁴ "South China Sea: Vietnamese hold anti-Chinese protest." *BBC*. (June 5, 2011) <https://www.bbc.com/news/world-asia-pacific-13661779> Accessed January 20, 2021.

¹²⁵ "Vietnam-China joint press release." Communist Party of Vietnam. (June 26, 2011) <https://en.vietnamplus.vn/vietnamchina-joint-press-release/29466.vnp> Accessed January 20, 2021.

Although China realized that it was going to be outmaneuvered diplomatically as a result of U.S. military threats and recent calls for Vietnam and Philippines to counter China's claims, China pursued a two-track strategy of coercion and diplomacy. In late 2010, China agreed to revive the ASEAN-China Joint Working Group to Implement the Declaration on Conduct of Parties to limit further damage of its reputation.¹²⁶ Negotiations lasted from December 2010 to April 2011. However, now that China had more power to leverage, it insisted that sovereignty disputes could only be solved bilaterally. Unlike in 2002, China now demanded the clause mentioning how ASEAN members would first gather consensus before meeting with China be removed from the document.¹²⁷ ASEAN negotiators acquiesced to China's demands and on July 20, 2011, ASEAN and China reached an agreement and signed The Guidelines for the Implementation of the Declaration on Conduct.

China Breaks its Promise

Not long after the agreement, the Philippine Navy spotted Chinese fishing vessels in Scarborough Shoal, within the Philippine EEZ, on April 8, 2012.¹²⁸ The situation escalated when the Philippines sent the *BRP Gregorio del Pilar*, the Philippine Navy's

¹²⁶ Carlyle A. Thayer. "South China Sea disputes." *East Asia Forum*. (July 14, 2011) <https://www.eastasiaforum.org/2011/07/14/south-china-sea-disputes-asean-and-china/> Accessed January 20, 2021.

¹²⁷ Ibid.

¹²⁸ "China, Philippines locked in naval standoff." *CNN*. (April 11, 2012) <https://www.cnn.com/2012/04/11/world/asia/philippines-china-naval-standoff/index.html> Accessed January 20, 2021.

flagship, and attempted to arrest the Chinese fishing boats.¹²⁹ The standoff lasted for a month until China sent government vessels to force the Philippines to leave Scarborough.¹³⁰ The U.S. mediated to diffuse tensions on the condition that both parties withdraw from Scarborough.¹³¹ However, after both parties withdrew, Chinese ships returned soon and have remained on Scarborough since then. China blocked Filipino fishermen from accessing the vicinity of the shoal. Clearly, this was a breach of the Code of Conduct.¹³² China also banned the importation of Philippine bananas and other fruits that affected \$75 million in the market with 200,000 jobs.¹³³ In January 2013, the Philippines filed a formal claim against China asking the Permanent Court of Arbitration to invalidate China's claims to the South China Sea. This was followed the following year when the Philippines filed supporting evidence to the UN in March 2014.¹³⁴ Details of the case and tribunal's ruling will be discussed in the next chapter.

The Hai Yang Shi You 981 oil rig standoff between China and Vietnam on May 4, 2014 was another breach of the Code of Conduct. China did not contest the Paracels

¹²⁹ "Philippine warship 'in standoff' with Chinese vessels" *BBC*. (April 11, 2012) <https://www.bbc.com/news/world-asia-17673426> Accessed January 20, 2021.

¹³⁰ Paterno R. Esmaguél. "China sends more ships to Scarborough." *Rappler*. (May 2, 2012) <https://www.rappler.com/nation/china-sends-more-ships-to-scarborough> Accessed January 20, 2021.

¹³¹ Jim Gomez. "Philippine diplomat to China: Don't turn shoal into island." *PhilStar*. (2016) <https://www.philstar.com/headlines/2016/04/12/1572446/philippine-diplomat-china-dont-turn-shoal-island> Accessed January 20, 2021.

¹³² Storey, p.9

¹³³ June Teufel Dreyer. "Sansha: New City in the South China Sea." *Jamestown Foundation*. (Aug. 17, 2012) <https://jamestown.org/program/sansha-new-city-in-the-south-china-sea/> Accessed January 20, 2021.

¹³⁴ "Philippines files case to UN in South China Sea dispute." *BBC*. (March 31, 2014) <https://www.bbc.com/news/world-asia-26781682> Accessed January 20, 2021.

since 2009, but in 2014, China moved its oil rig to the south of the Paracels and declared an exclusive zone around it. Vietnam protested China's actions immediately and sent 29 ships to disrupt the rig's construction.¹³⁵ On May 7, the standoff escalated when Chinese military vessels used high powered water cannons and rammed several Vietnamese warships. Violent anti-Chinese protests erupted throughout May.¹³⁶ For many Vietnamese industrial workers who protested, anti-Chinese sentiments extended beyond the incident. They believed Chinese businesses were exploiting them.¹³⁷ Further, the workers were frustrated with the Vietnamese government for its perceived willingness to sacrifice territorial sovereignty in exchange for better economic ties with China.¹³⁸

From the end of 2014 through 2015, China accelerated its reclamation projects in the South China Sea.¹³⁹ Chinese Foreign Minister spokeswoman Hua Chunying justified China's actions by saying, "We are building shelters, aids for navigation, search and rescue as well as marine meteorological forecasting services, fishery services and other

¹³⁵ Gregory Poling. "China-Vietnam Tensions High over Drilling Rig in Disputed Waters." *CSIS*. (May 7, 2014) <https://www.csis.org/analysis/china-vietnam-tensions-high-over-drilling-rig-disputed-waters> Accessed January 20, 2021.

¹³⁶ Kate Hodal. "Factories forced to close as Vietnamese rage mounts over China oil rig." *The Guardian*. (May 17, 2014) <https://www.theguardian.com/world/2014/may/18/vietnamese-rage-over-china-oil-rig> Accessed January 20, 2021.

¹³⁷ Donald Kirk. "Vietnam's Anti-China Protests Reflect Grievances Far Beyond China's Rig in South China Sea." *Forbes*. (May 17, 2014) <https://www.forbes.com/sites/donaldkirk/2014/05/17/vietnamese-anti-china-protests-reflect-grievances-far-beyond-chinas-oil-rig/?sh=5a6ef07278c8> Accessed January 20, 2021.

¹³⁸ Bill Hayton. "Vietnam-China tensions: Why protests are not just jingoism." *BBC*. (May 16, 2014) <https://www.bbc.com/news/world-asia-27435612> Accessed January 20, 2021.

¹³⁹ Sui-Lee Wee and Ben Blanchard. "China Building Artificial Islands in South China Sea." *Washington Free Beacon*. (April 9, 2015) <https://freebeacon.com/national-security/china-building-artificial-islands-in-south-china-sea/> Accessed January 20, 2021.

administrative services” for China and its neighbors.¹⁴⁰ Responding to China’s reclamation projects, U.S. Defense Secretary Ash Carter instructed the Department of Defense to look into military options, including flying Navy surveillance aircraft over the disputed islands and sending U.S. naval warships within 12 nautical miles of the Spratlys to challenge China’s claims in May 2015.¹⁴¹ The purpose was to deter Chinese presence in the region and demonstrate globally that the U.S. did not recognize China’s excessive claims. By October 2015, the U.S. State Department and the Department of Defense agreed to implement U.S. FONOPs in the South China Sea.¹⁴² U.S. President Barack Obama publicly voiced concern about China’s claims during the 2015 APEC summit meeting in Manila: “We agree on the need for bold steps to lower tensions, including pledging to halt further reclamation, new construction and militarization of disputed areas in the South China Sea.”¹⁴³ The first official FONOP was launched on October 27, 2015,

¹⁴⁰ Sui-Lee Wee and Ben Blanchard. “China mounts detailed defense of South China Sea reclamation.” *Reuters*. (April 8, 2015) <https://www.reuters.com/article/cnews-us-china-southchinasea-reef-idCAKBN0N001N20150409> Accessed January 20, 2021.

¹⁴¹ “U.S. Military Proposes Challenge to China Sea Claims.” *Wall Street Journal*. (May 12, 2015) <https://www.wsj.com/articles/u-s-military-proposes-challenge-to-china-sea-claims-1431463920> Accessed January 20, 2021.

¹⁴² Mira Rapp Hooper. “All in Good FON.” *Foreign Affairs*. (Oct. 12, 2015) <https://www.foreignaffairs.com/articles/united-states/2015-10-12/all-good-fon> Accessed January 20, 2021.

¹⁴³ Michael D. Shear. “Obama Calls on Beijing to Stop Construction in South China Sea.” *New York Times*. Nov. 18, 2015) <https://www.nytimes.com/2015/11/19/world/asia/obama-apec-summit-south-china-sea-philippines.html> Accessed January 20, 2021.

when the USS *Lassen* navigated within 12 nautical miles of the Spratlys.¹⁴⁴ China protested the operation calling it a “deliberate provocation.”¹⁴⁵

Throughout early 2016, China continued expanding its reclamation projects in the Paracels, including setting up an International Maritime Judicial Center to parallel UNCLOS’s role.¹⁴⁶ In May, China also launched war drills in the South China Sea, including its fleet of submarines.¹⁴⁷ There were no new developments in the region until July 12 when the Permanent Court of Arbitration rejected China’s historical claims over the South China Sea and presented the Philippines with a unanimous award.¹⁴⁸ Details of the court’s decision will be discussed in the next chapter. Would China go so far as to defy the tribunal? Arguably, China's next steps would be crucial to its ambitions to be a major global player. The next chapter will discuss the details of the court's decision.

¹⁴⁴ Eleanor Freund. “Freedom of Navigation in the South China Sea: A Practical Guide.” *AMTI-CSIS*. (Aug. 10, 2017) <https://amti.csis.org/freedom-of-navigation-practical-guide/#:~:text=On%20May%2010%2C%202016%2C%20the,Philippines%2C%20Taiwan%2C%20and%20Vietnam>. Accessed January 20, 2021. The U.S. has been sending more warships to the South China Sea since 2013, however these operations were not officially under the FONOPs umbrella. When FONOPs program was announced in October 2015, operations were officially a joint effort between diplomatic initiatives from the State Department and show of force from the Department of Defense.

¹⁴⁵ Helene Cooper and Jane Perlez. “White House Moves to Reassure Allies With South China Sea Patrol, but Quietly.” *New York Times*. (Oct. 28, 2015) <https://www.nytimes.com/2015/10/28/world/asia/south-china-sea-uss-lassen-spratly-islands.html> Accessed January 20, 2021.

¹⁴⁶ Victor Robert Lee. “Satellite Images: China Manufactures Land at New Sites in the Paracel Islands.” *The Diplomat*. (Feb. 2016) <https://thediplomat.com/2016/02/satellite-images-china-manufactures-land-at-new-sites-in-the-paracel-islands/> Accessed January 20, 2021; “China Sea territorial disputes to be handled by International Maritime Judicial Center created by Beijing.” *Manila Livewire*. (March 14, 2016) <https://www.manilalivewire.com/2016/03/china-sea-territorial-disputes-to-be-handled-by-international-maritime-judicial-center-created-by-beijing/> Accessed January 20, 2021.

¹⁴⁷ “South China Sea Watch: China starts drills, showcase isles.” *AP News*. (May 9, 2016) <https://apnews.com/article/320ea286370f45b58d2cd0e9ee4e6245> Accessed January 20, 2021.

¹⁴⁸ Adam Harvey. “Philippines celebrates victory in South China Sea case, despite China’s refusal to accept result.” *ABC.net.au*. (Nov. 27, 2016) <https://www.abc.net.au/news/2016-07-13/philippines-celebrates-victory-in-south-china-sea-case/7623440?nw=0> Accessed January 20, 2021.

CHAPTER TWO: *Philippines v. China*: Historical and Legal Perspectives

Chapter 1 discussed China's evolving claims in the South China Sea dispute, stretching from the Han and Song dynasties to the 20th century. China's interest in the region was to secure and extract resources to sustain its economic prosperity. As its military power grew, China started coercing Vietnam and the Philippines to drop their maritime claims and yield to China's demands. Unsuccessful implementation of the ASEAN Code of Conduct also weakened Southeast Asian countries' claims. The international community never weighed in on the issue, but it was soon to change when the Philippines brought the dispute to the Permanent Court of Arbitration in The Hague.

The first part of Chapter 2 will discuss the Philippines and China's stances towards the dispute, China's two-track diplomatic strategy, a description of the Permanent Court's award, and the reaction of both parties and other countries to it. The second part will analyze the Tribunal's jurisdiction over the dispute and the case's admissibility. Since the UNCLOS is not concerned with sovereignty over land territory and islands, applying UNCLOS assumes that sovereignty issues have been resolved before assessing delimitation. To avoid characterizing the proceedings as a territorial or maritime delimitation dispute, the Tribunal separated entitlement versus maritime delimitation disputes. As the second part will examine in detail, there are also precedents

to entertain territorial sovereignty issues as long as the dispute was ancillary to Article 288(1) that says, “A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.” The third section of this chapter will examine the Tribunal’s awards given to the Philippines’ Submissions on July 12, 2016. This section will also highlight important points that Tribunal made in explaining its rationale for the decision. This includes the Tribunal’s view of China’s historical rights claim and the differences of rights versus title as well as the environmental aspect of the dispute and the legal implications of the ruling for the international community. UNCLOS articles referred in this chapter are copied in Appendix A.

Following China’s forceful removal of Filipino fishers from Scarborough Shoal in 2012, the Philippines initiated arbitral proceedings against China on January 22, 2013, under Articles 286 and 287 and Annex VII of the UNCLOS.¹⁴⁹ Article 287, Part XV of the UNCLOS provides rules for dispute settlements. Article 287 allows states to choose a certain dispute settlement procedure such as the International Tribunal for the Law of the Sea established in accordance with Annex VI (ITLOS), the International Court of Justice (ICJ), an arbitral tribunal constituted in accordance with Annex VII, or a special arbitral tribunal.¹⁵⁰ However, “if the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with

¹⁴⁹ *South China Sea Arbitration* (Rules of Procedure), August 27, 2013; The 2012 Scarborough Shoal incident was considered the gravest situation between China and the Philippines since the Mischief Reef incident in 1994. Bautista, p.121

¹⁵⁰ UNCLOS Article 287 (a), (b), (c)

Annex VII, unless the parties otherwise agree.”¹⁵¹ Since China did not express consent with the Philippines on selecting a dispute procedure, the Philippines could only initiate proceedings with the arbitral tribunal in accordance with Annex VII. These proceedings were focused on the maritime disputes between the Philippines and China in the Spratlys. For the Southeast Asian countries, this litigation was significant. This was the first time a claimant to the South China Sea filed a complaint against China in an international setting. The Philippines’ bold move was characterized by Philippine President Benigno Aquino as a “game changer” in the South China Sea dispute.¹⁵²

Philippines and China: Positions on the Arbitral Proceedings

In its complaint, the Philippines declared that China’s claim to sovereignty over waters and islands within the “nine-dash line” “interfered with exercise by the Philippines of its rights under the Convention, including within its own exclusive economic zone and continental shelf, in violation of UNCLOS.”¹⁵³ Among other issues, the Philippines sought relief on three important points that went to the heart of China’s claims. It wanted an award that:

1. Declares that China’s maritime claims in the South China Sea based on its so-called “nine dash line” are contrary to UNCLOS and invalid.
2. Declares that Scarborough Shoal, Johnson Reef, Cuarteron Reef and Fiery Cross Reef are submerged features that are below sea level at high tide, except that each has small protrusions that remain above water at high tide, which are “rocks” under Article 121(3) of the Convention and which therefore generates entitlements only to a

¹⁵¹ UNCLOS Article 287, paragraph 5

¹⁵² Oliver Teves, “Philippines pushes arbitration in China sea row,” (Oct. 22, 2014) <https://apnews.com/article/afa2c4199757431686153d8dd19b41c1> Accessed June 11, 2021

¹⁵³ *South China Sea Arbitration* (Notification and Statement of Claim), paragraph 2

- Territorial Sea no broader than 12 M; and that China has unlawfully claimed maritime entitlements beyond 12 M from these features.
3. Declares that China has unlawfully claimed, and has unlawfully exploited, the living and non-living resources in the Philippines' Exclusive Economic Zone and Continental Shelf, and has unlawfully prevented the Philippines from exploiting living and non-living resources within its Exclusive Economic Zone and Continental Shelf.¹⁵⁴

The Philippines also stressed that it did not “seek in this arbitration a determination of which Party enjoys sovereignty over the islands claimed by both of them.”¹⁵⁵

On February 19, 2013, China declared that it would neither accept nor participate in the arbitration proceedings. It noted that “the two countries have overlapping jurisdictional claims over parts of the maritime area in the South China Sea and that both sides had agreed to settle the dispute through bilateral negotiations and friendly consultation.”¹⁵⁶ China kept true to its word and did not participate directly in the proceedings. China's next communication was on July 29 when it declined to comment on the Tribunal's draft Rules of Procedure and reiterated “its position that it does not accept the arbitration initiated by the Philippines.”¹⁵⁷

Despite China's absence, the Philippines requested that the Tribunal move forward with the process pursuant to Article 9 of Annex VII to the Convention on August 27. Perhaps worried about its reputation, China sent its ambassador to the United Kingdom to request a meeting with the President of the Tribunal on November 14.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ *South China Sea Arbitration* Press Release, (July 13, 2015)

¹⁵⁷ *South China Sea Arbitration* Award (Jurisdiction)

However, the Tribunal reminded the two parties to refrain from *ex parte* communications with members of the Tribunal.¹⁵⁸ Between February 2014 and July 7, 2015, the Tribunal received written arguments from third parties such as Vietnam citing “legal interests and rights may be affected” as well as two letters from the Chinese Ambassador to the Netherlands stressing that the Tribunal did not have jurisdiction over the dispute and urged bilateral negotiations for settlement.¹⁵⁹ China’s Ministry of Foreign Affairs also published a “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” on December 7, 2014 and forwarded it to the Tribunal the following day.¹⁶⁰ The Tribunal gave China until August 17, 2015 to comment on the jurisdiction and admissibility hearing held on July 7, 8, and 13, 2015. China neither responded nor participated. On October 29, 2015, the Tribunal unanimously agreed that it had jurisdiction over the case and that China’s refusal to participate did not prevent the Tribunal from having jurisdiction over the dispute based on five reasons.¹⁶¹

First, the Tribunal rejected China’s objection that the disputes deal with territorial sovereignty and therefore were beyond the Tribunal’s jurisdiction.¹⁶² In China’s view, neither the Tribunal nor the UNCLOS had anything to do with the dispute since territorial

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ministry of Foreign Affairs of the People’s Republic of China. “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines.” (Dec. 7, 2014) https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1368895.htm Accessed February 3, 2021.

¹⁶¹ *South China Sea Arbitration Award* (Jurisdiction)

¹⁶² Ibid. p. 60

sovereignty had not been established by China and its neighbors. China argued that the Tribunal would inevitably have to rule on territorial sovereignty if it reviewed the case, and that would go beyond the Tribunal's scope. Second, the Tribunal rejected China's argument in the Position Paper. China claimed that the parties' disputes concerned maritime boundary delimitation. China wanted the dispute to be excluded from the Tribunal's jurisdiction in light of China's 2006 Declaration under the UNCLOS Article 298 that says it would not "accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b), and (c) of Article 298 of the Convention."¹⁶³ Article 298 allows States Parties to declare that they do not accept one or more of the compulsory procedures entailing binding decisions found in section 2 of Part XV, with respect to disputes concerning the interpretation or application of the articles dealing with delimitation of the territorial sea. Therefore, in China's view, "disputes concerning the interpretation or application of articles 15, 74, and 83 relating to sea boundary delimitations, or those involving historic bays or titles" were beyond the jurisdiction of the Tribunal. Third, the Tribunal rejected China's demands that the parties resolve the disputes solely through negotiations.¹⁶⁴ Fourth, the Tribunal ruled that there was no other State indispensable to the proceedings.¹⁶⁵ Fifth, the Tribunal ruled that the Philippines met Article 283's requirement that the parties exchange views regarding the settlement of

¹⁶³ Ibid.; https://www.un.org/Depts/los/convention_agreements/convention_declarations.htm UN Division for Ocean Affairs and the Law of the Sea - Declarations and Statements Accessed July 15, 2021. https://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China

¹⁶⁴ Ibid. p.95

¹⁶⁵ Ibid. p. 71

their disputes before consulting an international body and rejected China's statement that "the two countries have never engaged in negotiations with regard to the subject-matter of the arbitration."¹⁶⁶

China's Ministry of Foreign Affairs shot back saying that the Tribunal's decision to assess the case was "null and void" and the decision had no binding effect on China.¹⁶⁷ China characterized it as a "political provocation." It stood by its August 25, 2006 declaration under Article 298 of the UNCLOS stating that it "does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1(a)(b) and (c) of Article 298 of the Convention."¹⁶⁸ Despite China's protest, the Philippines sent fifteen submissions to the Tribunal for adjudication on November 30, 2015, and the proceedings went ahead.¹⁶⁹ On July 12, 2016, the Tribunal ruled in favor of the Philippines and awarded all of the Philippines' submissions except Submission 15 in which the Philippines asked a declaration from the Tribunal that China shall do what it is already obliged by the Convention to do. The Tribunal said that it was not necessary or appropriate for it to

¹⁶⁶ Ibid. p. 120; Quote from China Position Paper

¹⁶⁷ Ministry of Foreign Affairs of the People's Republic of China. "Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the Arbitral Tribunal Established at the Request of the Republic of the Philippines." (Oct. 30, 2015) https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1310474.shtml Accessed February 3, 2021.

¹⁶⁸ U.N. Oceans & Law of the Sea, Division for Ocean Affairs and the Law of the Sea, Declarations and statements

¹⁶⁹ *South China Sea Arbitration* Award (Jurisdiction), paragraph 112; For the complete list of the 15 Submissions, see Appendix B

make any further declarations. Summaries of the Tribunal's decisions for each Submission is copied below.

Submission 1: The Convention defines the scope of maritime entitlements in the South China Sea, which may not extend beyond the limits imposed therein.

Submission 2: China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention. The Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein.

Submission 3: Scarborough Shoal contains, within the meaning of Article 121(1) of the Convention, naturally formed areas of land, surrounded by water, which are above water at high tide. However, under Article 121(3) of the Convention, the high-tide features at Scarborough Shoal are rocks that cannot sustain human habitation or economic life of their own and accordingly shall have no exclusive economic zone or continental shelf.¹⁷⁰

Submission 4: Scarborough Shoal, Cuarteron Reef, Fiery Cross Reef, Johnson Reef, McKennan Reef, and Gaven Reef (North) are high-tide features. Hughes Reef, Gaven Reef (South), Subi Reef, Mischief Reef, Second Thomas Shoal are low-tide elevations.

Submission 5: Mischief Reef and Second Thomas Shoal are located within 200 nautical miles of the Philippines' coast on the island of Palawan and are located in an area that is not overlapped by the entitlements generated by any maritime feature claimed by China. It follows, therefore, that, as between the Philippines and China, Mischief Reef and Second Thomas Shoal form part of the exclusive economic zone and continental shelf of the Philippines.¹⁷¹

Submission 6: High-tide features at Gaven Reef (North) and McKennan Reef are rocks that cannot sustain human habitation or economic life of their own and accordingly shall have no exclusive economic zone or continental shelf.¹⁷²

Submission 7: Johnson Reef, Cuarteron Reef, and Fiery Cross Reef contain, within the meaning of Article 121(1) of the Convention, naturally formed areas of land, surrounded by water, which are above water at high tide. However, for purposes of Article 121(3) of the Convention, the high-tide features at Johnson Reef, Cuarteron Reef, and Fiery Cross

¹⁷⁰ *South China Sea Arbitration* (Award), pp. 259 to 260

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

Reef are rocks that cannot sustain human habitation or economic life of their own and accordingly shall have no exclusive economic zone or continental shelf.¹⁷³

Submission 8: China has, through the operation of its marine surveillance vessels with respect to M/V Veritas Voyager on 1 to 2 March 2011 breached Article 77 of the Convention with respect to the Philippines' sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank. Further, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese flagged vessels, China has breached Article 56 of the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone.

Submission 9: China has, through the operation of its marine surveillance vessels in tolerating and failing to exercise due diligence to prevent fishing by Chinese flagged vessels at Mischief Reef and Second Thomas Shoal in May 2013, failed to exhibit due regard for the Philippines' sovereign rights with respect to fisheries in its exclusive economic zone. Accordingly, China has breached its obligations under Article 58(3) of the Convention.

Submission 10: China has, through the operation of its official vessels at Scarborough Shoal from May 2012 onwards, unlawfully prevented Filipino fishermen from engaging in traditional fishing at Scarborough Shoal. The Tribunal records that this decision is entirely without prejudice to the question of sovereignty over Scarborough Shoal.

Submission 11 and 12(b): China has, through its toleration and protection of, and failure to prevent Chinese fishing vessels engaging in harmful harvesting activities of endangered species at Scarborough Shoal, Second Thomas Shoal and other features in the Spratly Islands, breached Articles 192 and 194(5) of the Convention. The Tribunal further finds that China has, through its island-building activities at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef and Mischief Reef, breached Articles 192, 194(1), 194(5), 197, 123, and 206 of the Convention.

Submission 12(a) and (c): China has, through its construction of installations and artificial islands at Mischief Reef without the authorisation of the Philippines, breached Articles 60 and 80 of the Convention with respect to the Philippines' sovereign rights in its exclusive economic zone and continental shelf. The Tribunal further finds that, as a low-tide elevation, Mischief Reef is not capable of appropriation.

Submission 13: China has, by virtue of the conduct of Chinese law enforcement vessels in the vicinity of Scarborough Shoal, created serious risk of collision and danger to Philippine vessels and personnel. The Tribunal finds China to have violated Rules 2, 6, 7,

¹⁷³ Ibid.

8, 15, and 16 of the COLREGS and, as a consequence, to be in breach of Article 94 of the Convention.

Submission 14: China has in the course of these proceedings aggravated and extended the disputes between the Parties through its dredging, artificial island-building, and construction activities.

The Philippines Submissions will be referenced throughout this chapter and are copied in Appendix B for convenience.

For this chapter, the Tribunal’s “Award on Jurisdiction and Admissibility” on October 29, 2015, will be referred to as “*South China Sea Arbitration Award (Jurisdiction)*” in the footnotes. The Tribunal’s award on the merits of the Philippines Submissions on July 12, 2016, will be referred to as “*South China Sea Arbitration (Award)*” in the footnotes.

China’s Two-Track Diplomatic Strategy

Despite ongoing proceedings, China changed the status quo by continuing its construction and installation of military-capable infrastructures in the Spratlys. China’s construction increasingly took a strategic character as it built runways, port facilities, and deployed military equipment for reconnaissance.¹⁷⁴ Instead of participating directly in the Tribunal’s proceedings, China launched a two-track diplomatic strategy. It ramped up its “dual-track approach” by addressing “negotiations and consultations among countries directly concerned” and declaring that “China and the ASEAN countries should work

¹⁷⁴ French, Howard W. “What’s behind Beijing’s drive to control the South China Sea?” *The Guardian* (July 28, 2015) <https://www.theguardian.com/world/2015/jul/28/whats-behind-beijings-drive-control-south-china-sea-hainan> Accessed February 3, 2021.

together to safeguard peace and stability in the South China Sea.”¹⁷⁵ Chinese Foreign Minister Wang Yi characterized this as the “most practical and feasible way to resolve the South China Sea Issue.” This track included attempts to meet informally with members of the Tribunal and send them unofficial documents for review. Notably, prior to the Tribunal’s decision on jurisdiction, China campaigned globally to enlist support from at least 70 countries, including the League of Arab States and the Shanghai Cooperation Organization.¹⁷⁶ China convinced countries bilaterally and multilaterally to reject the Tribunal’s proceedings. Most of them were beneficiaries of China’s Belt and Road Initiative (BRI).

Although some countries supported China on the grounds that the Tribunal had no jurisdiction over the case, other countries supported China’s position of resolving the disputes through consultations and negotiations pursuant to the Declaration on the Conduct of Parties. All of them, however, endorsed the following four points:¹⁷⁷

1. China does not participate in the arbitration nor accept, recognize, or implement the award.
2. China will adhere to peaceful negotiations and settlements of the South China Sea dispute.
3. While disputes should be settled by the parties directly concerned in accordance with the Declaration on the Conduct of Parties in the South China Sea (DOC), China will work with ASEAN countries to maintain peace and stability in this region.

¹⁷⁵ Wang Yi. “Dual-Track Approach” Is the Most Practical and Feasible Way to Resolve the South China Sea Issue.” Ministry of Foreign Affairs of the People’s Republic of China. (April 21, 2016) https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1358167.shtml Accessed February 3, 2021.

¹⁷⁶ Wang Wen and Chen Xiaochen. “Who Supports China in the South China Sea and Why.” *The Diplomat*. (July 2016) <https://thediplomat.com/2016/07/who-supports-china-in-the-south-china-sea-and-why/> Accessed February 3, 2021.

¹⁷⁷ These views were cited by the *Diplomat*. I went through all available statements from countries supportive of China and can confirm that these four points appeared in some way or form in other countries’ statements.

4. The temporally-established (ad hoc) arbitral tribunal is neither a part of the Permanent Court of Arbitration (PCA) nor the International Court of Justice (ICJ). It does not have jurisdiction over territorial disputes, which is the core of the arbitration. The arbitration itself is flawed in procedure. Thus, the award is not legally-binding, nor representing international law.

China's attempt to enlist support shows its preference for bilateral negotiations and consultations among claimant states. China's strategies in the South China Sea "reflect an overall reorientation of diplomacy in Southeast Asia, which many scholars characterize as a "charm offensive" or "soft power."¹⁷⁸

Analysis of the Tribunal's Jurisdiction and Admissibility of the Case

The following section will analyze the jurisdiction of the Annex VII Arbitral Tribunal over the case and the admissibility of the Philippines Submissions. In the end, the Tribunal found that it had jurisdiction to consider the Philippines' Submissions Nos. 3, 4, 6, 7, 10, 11, and 13.¹⁷⁹ The Tribunal reserved consideration of Submissions Nos. 1, 2, 5, 8, 9, 12, and 14 to the Award phase of the proceedings.¹⁸⁰

Philippines v. China, also known as the *South China Sea Arbitration*, is a "mixed dispute" – i.e., disputes concerning sovereignty over land territory (continental or insular) and maritime entitlements.¹⁸¹ In past cases involving mixed disputes such as *Eritrea v. Yemen*, *Qatar v. Bahrain*, *Cameroon v. Nigeria*, and *Nicaragua v. Colombia*, the ICJ expected the parties to resolve the sovereignty issue before asking the court to adjudicate

¹⁷⁸ Singh, pp. 90-91; Li, p.56

¹⁷⁹ *South China Sea Arbitration Award* (Jurisdiction), paragraph 413

¹⁸⁰ Ibid. H and I

¹⁸¹ Dupont, p.32

a maritime boundary dispute.¹⁸² This principle stems from the ICJ's decision in the 1969 *North Sea Continental Shelf* case that the "land dominates the sea...because the land is the legal source of the power which a State may exercise over territorial extension to seaward."¹⁸³ The UNCLOS is not concerned with sovereignty over land territory and islands. It assumes that sovereignty issues have been resolved before assessing delimitation.¹⁸⁴

Separating Entitlement and Maritime Delimitation Disputes

Two points summarize China's arguments.¹⁸⁵ First, the subject of the arbitration was territorial sovereignty over maritime features in the South China Sea. Thus, neither the Tribunal nor the UNCLOS had anything to do with the dispute since China and its neighbors had not established territorial sovereignty. China argued that the Tribunal would inevitably have to rule on territorial sovereignty if it reviewed the case, and that would go beyond the Tribunal's scope. Second, ruling on the dispute would touch on maritime delimitation. However, China declared on August 25, 2006, that it would not

¹⁸² Fietta and Cleverly stress "the need to resolve land boundary, island, or other sovereignty disputes related to land territory as a necessary precursor to any maritime delimitation exercise." p.28

¹⁸³ *North Sea Continental Shelf* cases, paragraph 96; Fietta and Cleverly, p.27

¹⁸⁴ When assessing offshore jurisdictional zones, three issues should be considered. First, the width of the various zones, Second, the seaward and lateral limits of the zones. Third, the baseline, which is an important juridical feature of the state, is measured. Waters landward of the baseline are internal waters of the coastal state. Waters seaward of the baseline are the territorial sea. Further out, the coastal state can claim a 200-nautical mile exclusive economic zone (EEZ) in which the coastal state may exercise certain "sovereign rights" over living and nonliving resources. The regulations for delimiting baselines are in Articles 5 through 14 of UNCLOS III. Alexander pp.503 to 506

¹⁸⁵ *South China Sea Arbitration Award* (Jurisdiction), paragraphs 133 to 139; China's Position Paper, parts 2 and 4

“accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b), and (c) of Article 298 of the Convention.”¹⁸⁶ Article 298 allows a State to decline compulsory procedures on maritime delimitation.

Jiangyu Wang, a noted Chinese expert in international law, finds the Tribunal’s jurisdiction to assess the case still debatable. Wang argues that two weaknesses in the Tribunal’s jurisdiction and admissibility stand out. One is on the sovereignty nature of the disputes. The Tribunal took on highly political issues which are related to sovereignty, without gaining the consent of the parties. The other weakness was the Tribunal’s narrow and restrictive interpretation of Article 121(3) of the UNCLOS.¹⁸⁷ China’s main argument was that even though the Tribunal explicitly said that it would not “rule on any question of sovereignty over land territory and would not delimit any maritime boundary between the Parties,” the Tribunal’s rejection of the nine-dash line and ruling that “China has breached Article 77 of the Convention with respect to the Philippines’ sovereign rights over the non-living resources of its continental shelf is obviously handling a dispute about sovereignty over maritime features.”¹⁸⁸

In contrast, the Philippines claimed that its complaint did not require the Tribunal to address territorial sovereignty. Arguing for the Philippines before the Tribunal, Philippe Sands said:

¹⁸⁶ UN Division for Ocean Affairs and the Law of the Sea - Declarations and Statements https://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China Accessed July 15, 2021

¹⁸⁷ Wang, p. 186

¹⁸⁸ Ibid.

The determination of whether a particular feature is an island, or a rock, or a low-tide elevation, does not require any prior determination of which state has sovereignty over the feature. The fact that state A or state B or state C or state Z has sovereignty over a particular feature is entirely irrelevant to the question of its characterization. The fact that two or more states may dispute the matter of sovereignty over a feature -- assuming that there can be sovereignty at all -- is entirely irrelevant to its characterization.¹⁸⁹

Therefore, determining the character of a maritime feature does not require any prior determination of which state has sovereignty over the feature.

However, the Tribunal rejected both views. Instead, it considered the possibility to entertain the Philippines' Submissions without rejecting China's claims that it had sovereignty over Scarborough Shoal and the Spratlys. This way, the Tribunal did not characterize the proceedings as a territorial or maritime territorial delimitation dispute.¹⁹⁰

The Tribunal said:

a dispute concerning the existence of an entitlement to maritime zones is distinct from a dispute concerning the delimitation of those zones in an area where the entitlements of parties overlap. While fixing the extent of parties' entitlements and the area in which they overlap will commonly be one of the first matters to be addressed in the delimitation of a maritime boundary, it is nevertheless a distinct issue. A maritime boundary may be delimited only between States with opposite or adjacent coasts and overlapping entitlements. In contrast, a dispute over claimed entitlements may exist even without overlap, where—for instance—a State claims maritime zones in an area understood by other States to form part of the high seas or the Area for the purposes of the Convention.¹⁹¹

¹⁸⁹ Presentation by Sands, Hearing on Jurisdiction and Admissibility, Day 1, July 7, 2015 <https://pcacases.com/web/sendAttach/1399>

¹⁹⁰ *South China Sea Arbitration Award* (Jurisdiction), paragraphs 152 to 153

¹⁹¹ *South China Sea Arbitration Award* (Jurisdiction), paragraph 156

Although the Tribunal did not provide examples of how a state can claim maritime zones in the high seas, the Philippines referred to China's objection to Japan's claim for a continental shelf for Oki-No-Tori-Shima as a "textbook example" because China's coast is very far from Oki-No-Tori-Shima.¹⁹² Thus, China recognized that an entitlement dispute could be separated from a maritime delimitation dispute.

Entertaining Territorial Sovereignty and Article 288

The Tribunal also highlighted the difference between this case and the *Chagos Marine Protected Area* arbitration. The Tribunal acknowledged that the majority's decision in *Chagos* implied a decision on sovereignty, the real objective of Mauritius' claims.¹⁹³ However, that was not the case in *South China Sea*. According to the Tribunal's dictum in *Chagos*, if the issue of the case concerned the Convention's application, the Tribunal's jurisdiction extended to issues supporting or ancillary to the issue itself. The Tribunal in *Chagos* said: "The Tribunal does not categorically exclude that in some instances a minor issue of territorial sovereignty could indeed be ancillary to a dispute concerning the interpretation or application of the Convention."¹⁹⁴

Thus, the Tribunal implied that it could entertain "a minor issue of territorial sovereignty" as long as it was related to the dispute that fell within Article 288(1). However, the Tribunal did not invoke this ancillary issue in *South China Sea*. The

¹⁹² Presentation by Oxman, Hearing on Jurisdiction and Admissibility, Day 2, July 8, 2015

¹⁹³ *South China Sea Arbitration* Award (Jurisdiction), paragraph 153

¹⁹⁴ *Chagos* Award, paragraph 221

Tribunal first had to determine whether the ancillary issue applied and if a territorial issue would be within Article 288(1). International legal scholars and current and former judges of the ITLOS have argued that international courts and tribunals have jurisdiction over mixed disputes or even if a territorial issue was ancillary to the case. Alan Boyle argues that “in some cases the delimitation of a maritime boundary may necessarily require a decision concerning disputed sovereignty over land, for example where an island is used as a basepoint for an EEZ or continental shelf claim.”¹⁹⁵ Judge Wolfrum, former President of ITLOS said: “Issues of sovereignty or other rights over continental or insular land territory, which are closely linked or ancillary to maritime delimitation, concern the interpretation or application of the Convention and therefore fall within its scope.”¹⁹⁶

Similarly, Judge Chandrasekhara Rao said, “where no exclusionary declaration is applicable with respect to delimitation disputes under article 298, a court or tribunal would be competent to deal with a mixed dispute.”¹⁹⁷ Given that the Tribunal in *South China Sea* did not invoke the ancillary issue, the judges did not see a need to apply it because they did not see the case as a territorial issue in the first place. By taking a more proactive stance in *Chagos* and *South China Sea*, the Tribunal placed its judicial authority

¹⁹⁵ Boyle, p.49

¹⁹⁶ Statement by Rüdiger Wolfrum to the Informal Meeting of Legal Advisers of Ministries of Foreign Affairs, Oct. 23, 2006, p. 6
https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/legal_advisors_231006_eng.pdf Accessed July 15, 2021.

¹⁹⁷ Rao, p. 892; Rao made this statement in his discussion about *Qatar v. Bahrain* in which the ICJ found: “In order to determine what constitutes Bahrain’s relevant coasts and what are the relevant baselines on the Bahraini side, the Court must first establish which islands come under Bahraini sovereignty” It then follows that if there is no necessary connection between disputed land territory issues and maritime delimitation, the parties must first determine which islands belong to whom before discussing maritime delimitation.

in the center of the arbitration and showed the international community that an international court or tribunal could impact the development of international law.

What has Part XV Got to Do with the South China Sea? Applying Article 281

The application of Article 281 to *South China Sea* shows a new development in interpreting the statute compared to *Southern Bluefin Tuna*. The Tribunal in *South China Sea* presented the three relevant parts in Article 281 that provide the procedure where the parties have reached no settlement:¹⁹⁸

1. no settlement has been reached by recourse to the agreed means,
2. the Parties' agreement does not exclude any further procedure, and
3. any agreed time limits have expired.

If these three requirements have not been met, the dispute settlement framework in Part XV of the UNCLOS would not apply. A comparison of *Southern Bluefin Tuna* and *South China Sea* would show the differences in applying Article 281.

In *Southern Bluefin Tuna*, Japan argued that the dispute did not concern the interpretation or application of the UNCLOS but rather the 1993 Convention for the Conservation of Southern Bluefin Tuna (CCSBT). Therefore, ITLOS did not have jurisdiction to hear the case. Second, Japan contended that "Australia and New Zealand had not exhausted the procedures for amicable dispute settlement under Part XV, Section 1 of the Convention, in particular Article 281 ... before submitting the dispute to a procedure under Part XV."¹⁹⁹ Australia and New Zealand countered that the 1993

¹⁹⁸ *South China Sea Arbitration Award* (Jurisdiction), paragraph 195

¹⁹⁹ *Southern Bluefin Arbitration* (Award) (2000), paragraph 56

Convention did not provide a compulsory dispute settlement procedure that entailed a binding decision required by Article 282.²⁰⁰ ITLOS rejected Japan's argument saying that a dispute arising under the Convention did exist and met the requirements of Article 279 of Section 1.²⁰¹ Further, ITLOS found that even if the CCSBT might also apply, this "does not preclude recourse to the procedures in Part XV, section 2, of the Convention on the Law of the Sea."²⁰² Thus, ITLOS said that it did have jurisdiction over the dispute.²⁰³ However, when it came to the merits stage, ITLOS reversed course upon analyzing Article 16 of the CCSBT. Article 16 of the CCSBT established the possibility of arbitration under that agreement with both parties' consent. However, if consent was not forthcoming, the parties were obliged by Article 16, to continue to pursue resolution by peaceful means to exclude other dispute settlement mechanisms. In ITLOS's view, the dispute was at this stage at the time of review.²⁰⁴ Thus, ITLOS concluded that Article 16 of the 1993 CCSBT excluded any procedure within Article 281(1) of the UNCLOS and the Tribunal did not have jurisdiction after all to assess the merits of the dispute.²⁰⁵

In *South China Sea*, the Tribunal took a different view in applying Article 281, stating that "the better view is that Article 281 requires some clear statement of exclusion

²⁰⁰ Ibid., paragraph 53 to 54

²⁰¹ Ibid., paragraph 52

²⁰² Ibid., paragraph 55

²⁰³ Ibid., paragraph 62

²⁰⁴ Ibid., paragraph 57

²⁰⁵ Ibid., paragraphs 59 and 65

of further procedures.”²⁰⁶ According to the Tribunal, Article 281 provides for an “opting out” of the Part XV procedure where the parties’ agreement “does not exclude any further procedure.”²⁰⁷ It does not contain an “opting in” requirement whereby the Parties must positively agree to Part XV procedures. An “opting in” is only required where the parties have chosen an alternative compulsory and binding procedure, as set out in Article 282. Second, parties are required to express exclusion from Article 281 if they do not want Part XV procedures to apply to them. As a result of exclusion, the rest of the overall object and purpose of the UNCLOS as a comprehensive agreement remains the same.²⁰⁸ Thus, even if China disagreed with the Part XV dispute procedures, objecting to the Tribunal’s jurisdiction would not make any difference because it first needed to have an agreement with the Philippines to exclude the UNCLOS as in Article 16 of the CCSBT in *Southern Bluefin Tuna*. Further, China should have expressed exclusion of Article 281 before it objected in *South China Sea* just as Japan did in *Southern Bluefin Tuna*.

Comparing the two cases show different approaches to Article 281. In *Southern Bluefin Tuna*, ITLOS stressed the “peaceful means of their own choice” set out in Article 16 of the CCSBT and the UNCLOS.²⁰⁹ ITLOS interpreted Article 281 more broadly and gave the parties more leeway to settle the dispute. Resolution of the dispute is then left to the political will of the parties. In *South China Sea*, the Tribunal applied Article 281 more narrowly. It interpreted the resolution of Article 281 as a global interest when the

²⁰⁶ *South China Sea Arbitration Award* (Jurisdiction), paragraph 223

²⁰⁷ *Ibid.*, paragraph 224

²⁰⁸ *Ibid.*, paragraph 225

²⁰⁹ *Southern Bluefin Arbitration* (Award), paragraphs 45, 46, and 56

Tribunal stressed that the parties were subject to the UNCLOS. Thus, the Tribunal played a more significant role in *South China Sea* because it decided that it had jurisdiction to apply Part XV dispute procedures to the case.²¹⁰ It could be argued that the Tribunal expanded its jurisdiction in *South China Sea*.

Interestingly, the Permanent Court of Arbitration repeated its application of Article 281 in *South China Sea to Timor Sea Conciliation*. In 2016, Timor-Leste referred to the compulsory conciliation procedures to settle the dispute with Australia and argued that only a legally binding agreement would be relevant for the purposes of Article 281.²¹¹ However, Australia claimed that the 2003 Exchange of Letters between the Prime Ministers of Timor-Leste and Australia as well as the 2006 Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea (CMATS) were “agreements.” The purpose of these “agreements” was to pursue the delimitation of maritime boundaries between the two countries through negotiation and excluded further procedures.²¹² Australia did not view these documents as binding and argued that a binding agreement was not required for the purposes of Article 281.²¹³ The Commission referred to the application of Article 281 in *South China Sea* and ruled that

²¹⁰ Yoshifumi Tanaka defines this contrasting approach in interpreting Article 281 as the voluntarist vs. objectivist approaches. He describes the application of Article 281 in *Southern Bluefin Tuna* as the voluntarist approach that is influenced by the Westphalian conception of international law stressing the safeguarding of state sovereignty. The voluntarist approach lets the dispute settlement system of the UNCLOS be “ancillary to political decisions of states.” However, in *South China Sea*, the Tribunal’s interpretation of Article 281 uses the objectivist approach in which the international legal order is superior to the decision of individual states. Tanaka, pp. 41 and 42

²¹¹ *Timor Sea Conciliation* (Decision on Competence), paragraph 54

²¹² *Ibid.*, paragraph 53

²¹³ Cited in Decision on Competence, paragraph 53; Competence Hearing Tr. (Final) 244:19 to 245:2; 412:3-15.

in this case, Article 281 required a legally binding agreement.²¹⁴ Thus, the narrow application of Article 281 in *Timor Sea Conciliation* reaffirmed its application in *South China Sea*. The Tribunal ruled that it had jurisdiction over the case and proceeded to examine the Philippines' Submissions.

The Awards

On July 12, 2016, the Tribunal issued the merit award covering three major issues:

1. maritime entitlement of the nine-dashed line
2. legal regime of maritime features and
3. the legality of a handful activities conducted by China in the South China Sea.

In the first award, the Tribunal addressed three issues. It included the nature of the disputes between China and the Philippines, the procedural requirements for the Philippine submission, and the limitations and exceptions under Articles 297 and 298 of the UNCLOS.

On the nature of the dispute, the Tribunal referred to its summary of the award on jurisdiction held on October 29, 2015. It reaffirmed that the Tribunal proceedings were in accordance with Annex VII of the UNCLOS. This pushed back on China's assertion that the Tribunal lacks jurisdiction as set out in its Position Paper.²¹⁵ The Tribunal supported the Philippines Submissions on the basis of the existence of a dispute between the two

²¹⁴ Ibid., paragraph 56

²¹⁵ *South China Sea Arbitration Award* (Jurisdiction), paragraph 164 and 166

parties.²¹⁶ The Tribunal considered Submissions 1 and 2, in which the Philippines requested that the Tribunal hold “China is entitled only to those rights provided for by the Convention and that these rights are not supplemented or modified by any historic rights, including within the area marked by the ‘nine-dash line’ on Chinese maps.”²¹⁷ In the Award, The Tribunal again addressed the applicability of Article 298(1)(a)(i) that was discussed in the Award on Jurisdiction and questioned whether China had historic title in the South China Sea and what possible implications there are to a title.²¹⁸ The Tribunal concluded that China does not claim historic title to the waters of the South China Sea, but a “constellation of historic rights short of title” not subject to the exception to jurisdiction in Article 298(1)(a)(i) that is limited to disputes involving historic titles.²¹⁹ Thus, after examining China’s historical claims, the Tribunal held that China did not have historical title or rights and its present claims were contrary to the UNCLOS.²²⁰ As a signatory to the Convention, China could not unilaterally modify the statutes by State practice. It would require the acquiescence of other states with similar interests and

²¹⁶ Ibid., paragraph 153

²¹⁷ Ibid., paragraph 169 (Award)

²¹⁸ Ibid., paragraph 202 to 205; In the Award on Jurisdiction (paragraphs 155 to 159), The Tribunal has already addressed the first exception to jurisdiction in Article 298(1)(a)(i) of the Convention, which applies to disputes concerning the interpretation or application of articles 15, 74, and 83 of the Convention relating to sea boundary delimitations. Although China claimed that Article 298 did not apply to the dispute, the Tribunal found it applicable to the South China Sea.

²¹⁹ Ibid., paragraph 229 (Award)

²²⁰ *South China Sea Arbitration* Award, paragraph 276 to 278; The Tribunal said that it would be necessary to show that China had historically sought to prohibit or restrict the exploitation of such resources by the nationals of other States and that those States had acquiesced in such restrictions (Award, 275). Although historic rights were mentioned in China’s *Exclusive Economic Zone and Continental Shelf Act*, nothing was indicated that would enable another State to know the nature or extent of the rights claimed since the adoption of the Convention in 1996. The extent of the rights asserted within the ‘nine-dash line’ only became clear with China’s Notes Verbales of May 2009 (Award, 275).

sufficient time to establish its right.²²¹ The Tribunal found no acquiescence from other states. Thus, China had neither acquired historic title nor acquired them by the time it ratified UNCLOS.

The Tribunal examined Submissions 3 to 7, which dealt with the differences in understanding and applying the UNCLOS to the South China Sea's maritime features. It was differentiating between features covered at high tide and features that could support habitation. The Tribunal also examined the differences between a "low-tide elevation," features exposed at low tide but covered with water at high tide, and "islands," features above water at high tide. "Rocks" were defined as high-tide features that "cannot sustain human habitation or economic life of their own." UNCLOS Article 121(3) says, that "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." For high-tide features which are not rocks, these fall within Article 121(2) and enjoy the same entitlements as other land territory under the Convention. The Tribunal defined them as "fully entitled islands."²²²

The Tribunal first examined Submissions 4 and 6. The Philippines argued that Mischief Reef, Second Thomas Shoal, and Subi Reef were low-tide elevations. They do not generate entitlement to a territorial sea, EEZ, or continental shelf. These reefs were not capable of occupation and should be governed by Article 13 of the Convention, which provides that "a low-tide elevation...situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own." The Tribunal concluded that out of nine maritime features submitted by the Philippines, six

²²¹ Ibid., paragraph 275

²²² Ibid., paragraph 280

maritime features: Scarborough Shoal, Cuarteron Reef, Fiery Cross Reef, Johnson Reef, McKennan Reef, and Gaven Reef (North), remain above water at high tide and thus, qualify as high-tide features.

On Submissions 3, 5, and 7, the Tribunal addressed the entitlement of rocks and islands by applying Article 121 of the UNCLOS. The Tribunal closely interpreted Article 121(3) “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”²²³ The Tribunal stated that Article 121(3) served as a limitation to prevent expanding the jurisdiction of a country’s EEZ.²²⁴ In its ruling, the Tribunal made nine points that clarified Article 121(3).

1. The word “rock” does not limit the provision to features composed of solid rock. The geological and geomorphological characteristics of a high-tide feature are not relevant to its classification pursuant to Article 121(3).
2. The status of a feature is to be determined on the basis of its natural capacity, without external additions or modifications intended to increase its capacity to sustain human habitation or an economic life of its own.
3. With respect to “human habitation”, the critical factor is the non-transient character of the inhabitation, such that the inhabitants can fairly be said to constitute the natural population of the feature, for whose benefit the resources of the exclusive economic zone were seen to merit protection.
4. The Tribunal considers that the “economic life” in question will ordinarily be the life and livelihoods of the human population inhabiting and making its home on a maritime feature or group of features.
5. The Tribunal considers that a maritime feature will ordinarily only possess an economic life of its own if it is also inhabited by a stable human community.
6. Determination of the objective capacity of a feature is not dependent on any prior decision on sovereignty, and the Tribunal is not prevented from assessing the status of features by the fact that it has not and will not decide the matter of sovereignty over them.
7. The Tribunal considers that the principal factors that contribute to the natural capacity of a feature can be identified. These would include the presence of water, food, and shelter in sufficient quantities to enable a group of persons to live on the feature for an indeterminate period of time.

²²³ Ibid., paragraph 479 to 506

²²⁴ Ibid., paragraph 502 to 503

8. A feature that is only capable of sustaining habitation through the continued delivery of supplies from outside does not meet the requirements of Article 121(3).
9. If a feature is entirely barren of vegetation and lacks drinkable water and the foodstuffs necessary even for basic survival, it will be apparent that it also lacks the capacity to sustain human habitation.

Of the nine points made, the second and sixth points went to the heart of China's artificial island-building campaign and sovereignty claims over artificial islands.

Applying this interpretation to the Spratlys, the Tribunal concluded that the original and natural conditions of high-tide features cannot "generate entitlements to an exclusive economic zone or continental shelf" and should be considered as rocks as defined by Article 121(3).²²⁵ Further, the Tribunal concluded that the Spratlys are not an archipelago from which to draw straight baselines.²²⁶

The Tribunal examined Submissions 8 to 13. These Submissions relate to the application of the UNCLOS on China's activities in the South China Sea, its exploration and extraction of natural resources, fishing, construction at sea, and marine environment protection. Submission 8 showed China's violation of the Philippines jurisdiction, interference with the Philippines' petroleum exploration, and seismic survey on Reed Bank located within the Philippines' EEZ.²²⁷ China's 2012 fishing moratorium 12°N latitude through the Hainan Regulation prevented Philippine vessels from fishing at Mischief Reef and Second Thomas Shoal. Construction and installations on artificial islands at Mischief Reef, without the authorization of the Philippines, also violated the

²²⁵ Ibid., paragraph 646

²²⁶ Ibid., paragraph 575

²²⁷ Ibid., paragraph 716

UNCLOS.²²⁸ The Tribunal's decision on Submission 8 rejected China's nine-dash line and found Mischief Reef and Second Thomas Shoal, located within 200 nautical miles of the Philippine coast of Palawan, within the Philippines' EEZ and continental shelf.²²⁹

While the Tribunal based its decisions for the other submissions on Submission 1 to 7, its decision for Submission 11 was notable. It reads,

the Tribunal finds that China has, through its toleration and protection of, and failure to prevent Chinese fishing vessels engaging in harmful harvesting activities of endangered species at Scarborough Shoal, Second Thomas Shoal and other features in the Spratly Islands, in breach of Articles 192 and 194(5) of the Convention.²³⁰

As will be discussed later, the Tribunal accepted the Philippines argument that China violated its obligations under the UNCLOS to protect and preserve the marine environment. The Philippines' Submission 11 had standing even though China's actions on the environment did not directly injure the Philippines.²³¹

After the ruling, eight countries, including the U.S. and the Philippines, called for the Tribunal's decision to be respected. Only a few EU countries issued independent statements, but all signed on an EU statement representing the position of all members. The general EU document acknowledged the ruling, but it did not call for compliance. Eight countries made neutral statements without addressing the decision. They called for

²²⁸ Ibid.

²²⁹ Ibid., paragraph 647

²³⁰ Ibid., paragraph 992

²³¹ Ibid., paragraph 815

a solution on the “basis of international law.”²³² Notably, ASEAN’s statement did not refer to the Tribunal’s ruling, but the implementation of the 2012 Declaration of the Conduct of Parties.²³³ Its neutral stance reflected how ASEAN states could not get consensus on how to counter China. Seven countries including China and Russia opposed the ruling entirely. Although 70 countries supported China’s rejection of the Tribunal’s jurisdiction, many of these countries chose to remain silent after the Tribunal’s ruling.

In the Philippine Presidential campaign, the future president, Rodrigo Duterte, announced that he would “shut up” about the South China Sea if China built a railway that would link Manila to Mindanao.²³⁴ However, he also joked about taking a jet ski to the disputed islands to plant a Philippine flag and assert jurisdiction.²³⁵ Following his election, Duterte began sending mixed signals about countering China. Duterte announced his “separation” from the U.S. and began realigning Philippine foreign policy with China when he visited Beijing in October 2016.²³⁶ Two months later, Duterte

²³² Ministry of Foreign Affairs – Algeria. “Mer de Chine méridionale: l’Algérie appelle à une solution "sur la base du droit international" (MAE).” (July 16, 2016) http://www.mae.gov.dz/news_article/4183.aspx Accessed February 3, 2021.

²³³ ASEAN. “Joint Statement of the Foreign Ministers of ASEAN Member States and China on the Full and Effective Implementation of the Declaration on the Code of Conduct of Parties in the South China Sea.” (July 2016) <https://asean.org/wp-content/uploads/2016/07/Joint-Statement-on-the-full-and-effective-implementation-of-the-DOC-FINAL.pdf> Accessed February 3, 2021.

²³⁴ Richard C. Paddock. “Rodrigo Duterte, Poised to Lead Philippines, Is Expected to Take New Approach to China.” *New York Times*. (May 12, 2016) <https://www.nytimes.com/2016/05/12/world/asia/philippines-election-rodrigo-duterte.html> Accessed February 3, 2021.

²³⁵ *Politiko*. “Duterte to ride jetski, plant flag in Spratlys and challenge China: Suntukan o barilan?” <https://politics.com.ph/duterte-to-ride-jetski-plant-flag-in-spratlys-and-challenge-china-suntukan-o-barilan/> Accessed February 3, 2021.

²³⁶ *The Guardian*. “Duterte: Philippines is separating from US and realigning with China.” (Oct. 20, 2016) <https://www.theguardian.com/world/2016/oct/20/china-philippines-resume-dialogue-south-china-sea-dispute> Accessed February 3, 2021.

announced that “In the play of politics, now, I will set aside the arbitral ruling. I will not impose anything on China” and repeated threats to expel American forces after the Obama administration criticized his bloody war on drugs campaign.²³⁷ The Duterte administration partnered with China through trade, finance, and development infrastructure. As recent as June 2019, the administration was heavily criticized for not doing anything after a Chinese vessel crashed into a Philippine fishing boat near Reed Bank, a reef well within the Philippines’ EEZ. Duterte downplayed the incident as a “little maritime accident” and did not take measures to rescue the fishermen or issue a warning to China.²³⁸ Duterte’s willful ignorance of the Tribunal’s ruling proved detrimental as China accelerated its building campaign in the South China Sea. In light of Duterte’s bid for economic development aid from China, Gregory Poling, Senior Fellow for Southeast Asia and Director, Asia Maritime Transparency Initiative at the Center for Strategic and International Studies (CSIS) characterized the Philippines maritime policy as “well-intentioned but naïve.”²³⁹

²³⁷ *The Guardian*. “Philippines to 'set aside' South China Sea tribunal ruling to avoid imposing on Beijing.” (Dec. 17, 2016) <https://www.theguardian.com/world/2016/dec/17/philippines-to-set-aside-south-china-sea-tribunal-ruling-to-avoid-imposing-on-beijing> Accessed February 3, 2021.

²³⁸ Isabel Guarco. “Is Duterte Really Asking for U.S. Aid Against China?” *Foreign Policy*. (July 18, 2019) <https://foreignpolicy.com/2019/07/18/is-duterte-really-asking-for-u-s-aid-against-china/> Accessed February 3, 2021.

²³⁹ In an interview with the *Rappler*, Greg Poling at CSIS characterized Duterte’s reluctant approach on countering China’s claims in the South China Sea as “well-intentioned but naïve.” Esmaquel, Paterno. “Duterte admin 'naive' on West Philippine Sea – expert.” *Rappler*. (February 8, 2018) <https://www.rappler.com/nation/duterte-naive-west-philippine-sea-gregory-poling-csis> Accessed February 3, 2021; In 2016, Beijing pledged to fund Duterte’s “Build, Build, Build” economic development program. This pledge amounted for US \$9 billion, but he has only received US \$924 million in loans and grants from China. The latest projects (2019) agreed to include a US \$530 million bridge connecting Panay and Guimaras in the central Philippines and an expressway in Davao, Duterte’s hometown. Both projects are funded and constructed by CCCC Highway Consultants, a state-owned Chinese construction firm. Robles, Raissa. “China promised Duterte US\$9 billion. He’s had only US\$924 million in loans and grants. Why?” *South China Morning Post*. (Oct. 26, 2019) <https://www.scmp.com/week->

Examining the Tribunal's View on Historical Title versus Historical Rights

This subsection will build on the chronology discussed in Chapter 1 and examine the Philippines' Submissions 1 and 2. The debate on the validity and conformance of China's "nine-dash line" with the UNCLOS was a source of contention between China and the Philippines. The Philippines argued that:

1. China's maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those expressly permitted by the United Nations Convention on the Law of the Sea;
2. China's claims to sovereign rights jurisdiction, and to 'historic rights' with respect to the maritime areas of the South China Sea encompassed by the so called 'nine dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements expressly permitted by UNCLOS.²⁴⁰

It was similar to the Note Verbale the Philippines issued on April 5, 2011, arguing that the "so-called 9-dash line ... would have no basis under international law, specifically UNCLOS."²⁴¹ China immediately rejected the Note by publishing its Note of April 14, 2011, claiming that "China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence."²⁴² The Tribunal's decision to entertain the Philippines Submissions 1 and 2 was dependent on whether historic rights were excluded from jurisdiction over "historic bays or titles" in

[asia/politics/article/3034666/china-promised-duterte-us9-billion-infrastructure-hes-had-only](https://asia.politics/article/3034666/china-promised-duterte-us9-billion-infrastructure-hes-had-only) Accessed February 3, 2021.

²⁴⁰ *South China Sea Arbitration* (Award), paragraph 112

²⁴¹ *Ibid.*, cited in paragraph 165

²⁴² *Ibid.*, cited in paragraph 166

Article 298.²⁴³ In the end, the Tribunal ruled that “China’s claims in the South China Sea do not include a claim to ‘historic title’, within the meaning of Article 298(1)(a)(i).”²⁴⁴ Further, the Tribunal found that “China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect.”²⁴⁵

As shown in Chapter 1, China’s nine-dash line evolved from its first appearance in 1933 to broken indeterminate lines ranging from nine to twelve dashes. Having no exact geographic coordinates, the line had dubious origins and characterizations.

As far as precedence was concerned on whether China’s nine-dash line implied title or rights to the South China Sea, the ICJ stated in the *Frontier Dispute* case that “maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title.”²⁴⁶ In the *Kasikili/Sedudu Island* case, Judge Oda of the ICJ said, “A map on its own, with no other supporting evidence, cannot justify a political claim.”²⁴⁷ According to the Judgement in the *Frontier Dispute*, maps may acquire legal force “when maps are annexed to an official text of which they form an integral part.”²⁴⁸ Accuracy also plays a

²⁴³ Ibid., paragraph 393

²⁴⁴ *South China Sea Arbitration* (Award), paragraph 1203 A(1)

²⁴⁵ Ibid., paragraph 1203 B(2)

²⁴⁶ *Frontier Dispute*, (Judgement) paragraph 54

²⁴⁷ *Kasikili/Sedudu Island*, Judge Oda – Separate Opinion, paragraph 40

²⁴⁸ *Frontier Disputes*, (Judgement) paragraph 54

significant role when using maps as evidence of sovereignty. Max Huber, the arbitrator in the *Island of Palmas* case, said, “The first condition required of maps that are to serve as evidence on points of law is their geographical accuracy.”²⁴⁹ Given China’s inaccurate and vague claims in the South China Sea, the 1947 map it uses as evidence of sovereignty would arguably be invalid. Its claims of having “abundant historical and legal evidence” to support the nine-dash line’s validity are hollow.²⁵⁰

There is no reference to “historic rights” in the UNCLOS. However, there is mention of historic title in Articles 15 and 298(1)(a)(i). On August 25, 2006, China declared it “does not accept any of the procedures provided for in Section 2 of Part XV of the Convention which respect to all the categories of disputes referred to in paragraph 1(a)(b) and (c) of Article 298.”²⁵¹ Therefore, in China’s view, “disputes concerning the interpretation or application of articles 15, 74, and 83 relating to sea boundary delimitations, or those involving historic bays or titles” were beyond the jurisdiction of the Tribunal. However, for the Tribunal, did China really have historic title over the South China Sea? The Tribunal differentiated historic rights versus and historic title and found China to have neither. The Tribunal said:

The term ‘historic rights’ is general in nature and can describe any rights that a State may possess that would not normally arise under the general rules of international law, absent particular historical circumstances. Historic rights may include sovereignty, but may equally include more

²⁴⁹ *Island of Palmas*, (Award) 853

²⁵⁰ The phrase “abundant historical and legal evidence” is from China’s Note of April 14, 2011 responding to the Philippines Note Verbale.

²⁵¹ UN Division for Ocean Affairs and the Law of the Sea - Declarations and Statements https://www.un.org/Depts/los/convention_agreements/convention_declarations.htm Accessed July 15, 2021.

limited rights, such as fishing rights or rights of access, that fall well short of a claim of sovereignty. ‘Historic title’, in contrast, is used specifically to refer to historic sovereignty to land or maritime areas. ‘Historic waters’ is simply a term for historic title over maritime areas, typically exercised either as a claim to internal waters or as a claim to the territorial sea, although “general international law . . . does not provide for a single ‘régime’ for ‘historic waters’ or ‘historic bays’, but only for a particular régime for each of the concrete, recognised cases of ‘historic waters’ or ‘historic bays’.” Finally, a ‘historic bay’ is simply a bay in which a State claims historic waters.²⁵²

Past judgements align with this interpretation. In the *Fisheries* case, the ICJ wrote, “By ‘historic waters’ are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title.”²⁵³ Thus, historic title is related to territorial sovereignty. It could then be argued that the historic bay or title in Article 298(1)(a)(i) was referring to the territorial sea. *Qatar v. Bahrain* discusses the recognition of sovereignty by activity. The ICJ ruled that Bahrain’s historic pearl diving industry in the Gulf

seems in any event never to have led to the recognition of an exclusive: quasi-territorial right to the fishing grounds themselves or to the superjacent waters. The Court, therefore, does not consider the existence of pearling banks, though predominantly exploited in the past by Bahrain fishermen, as forming a circumstance which would justify an eastward shifting of the equidistance line as requested by Bahrain.²⁵⁴

In this case, Bahrain’s activity did not constitute sovereignty. Applying this concept to *South China Sea*, China cannot enjoy historical title on the basis of historical fishing. In *Eritrea/Yemen*, the Tribunal ruled that “‘historic rights’ which accrued in

²⁵² *South China Sea Arbitration* (Award), paragraph 225

²⁵³ *Fisheries*, (Judgement), p. 130

²⁵⁴ *Qatar v. Bahrain*, Judgement (Merits), paragraph 236

favour of both parties through a process of historical consolidation as a sort of ‘*servitude internationale*’” falls short of territorial sovereignty.²⁵⁵ For China to legitimately assert its jurisdiction over the South China Sea, it should have claimed historic title and part of its territorial sea rather than historic rights. However, China could not modify its narrative now because China accepted the freedom of navigation and overflight in the South China Sea. As late as 2015, when China’s Foreign Ministry was asked to comment on the USS *Lassen* passing within 12 nautical miles off Zhubi Reef in the Spratlys, Spokesperson Lu Kang said:

The Chinese side respects and safeguards the freedom of navigation and over-flight in the South China Sea to which all countries are entitled under international law, but stands firmly against the harm caused by any country to China's sovereignty and security interests under the cloak of navigation and over-flight freedom.²⁵⁶

Besides innocent passage, states neither enjoy freedom of navigation nor overflight in the territorial sea.²⁵⁷ Therefore, allowing freedom of navigation and overflight while claiming sovereignty over the South China Sea is contradictory. The Tribunal viewed China’s contradictory claims as a signal that China “does not consider the sea areas within the ‘nine-dash line’ to be equivalent to its territorial sea or internal waters.”²⁵⁸ The Tribunal further said: “China declared baselines for the territorial sea

²⁵⁵ *Eritrea/Yemen*, paragraph 126

²⁵⁶ Ministry of Foreign Affairs of the People’s Republic of China. “Foreign Ministry Spokesperson Lu Kang's Remarks on USS *Lassen*'s Entry into Waters near Relevant Islands and Reefs of China's Nansha Islands.” (Oct. 27, 2015) https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t1309567.shtml Accessed January 28, 2021.

²⁵⁷ UNCLOS, Art. 17

²⁵⁸ *South China Sea Arbitration* (Award), paragraph 213

surrounding Hainan and the Paracel Islands ... China would presumably not have done so if the waters both within and beyond 12 nautical miles of those islands already formed part of China's territorial sea (or internal waters) by virtue of a claim to historic rights through the 'nine-dash line.'"²⁵⁹ Thus, China did not have historic title over the South China Sea. China cannot exclude Article 298(1)(a)(i) because it did not have historic title in the first place.

Obligation to Protect Marine Environment and Granting Legal Standing

The Tribunal's decision to assess and ruling on the Philippines' Submission 11 is notable because it provides a precedent for an international body to adjudicate a case brought by a party not directly impacted by the breach that concerns the protection of community interests. This was the first time these community interests were discussed in the context of marine environmental protection. The Tribunal accepted the Philippines argument. China violated its obligations under the UNCLOS to protect and preserve the marine environment even though China's actions on the environment did not directly injure the Philippines. The Tribunal ruled:

The Tribunal thus considers the harvesting of sea turtles, species threatened with extinction, to constitute a harm to the marine environment as such. The Tribunal further has no doubt that the harvesting of corals and giant clams from the waters surrounding Scarborough Shoal and features in the Spratly Islands, on the scale that appears in the record before it, has a harmful impact on the fragile marine environment. The Tribunal therefore considers that a failure to take measures to prevent these practices would constitute a breach of

²⁵⁹ Ibid.

Articles 192 and 194(5) of the Convention, and turns now to consider China's responsibility for such breaches.²⁶⁰

Indeed, expert ecologists testifying before the Tribunal on China's activities in the South China Sea said: "More recently, fishermen in the South China Sea are reported to utilise the propellers of their boats to excavate shells from reef flats in the Spratly Islands on an industrial scale, leading to near-complete destruction of the affected reef areas."²⁶¹ Further, "the most widespread issue has been overfishing, which...has likely reduced the growth capacities of some of the reefs."²⁶² Regarding China's artificial island-building campaign, John McManus, a marine biology expert, told the Tribunal that China's "presence of the extended and new islands will undoubtedly lead to increased fishing pressure in their vicinities as settled fishing populations increase and transient fishers stay nearby for safety reasons."²⁶³

The next step for the Tribunal was to assess whether China fulfilled its obligations under the UNCLOS to conduct an environmental impact assessment and monitor mechanisms to oversee its activities in the South China Sea. Article 204 says: "States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment." Article 205, says, "States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent

²⁶⁰ *South China Sea Arbitration* (Award), paragraph 960

²⁶¹ *Assessment of the potential environmental consequences of construction activities on seven reefs in the Spratly Islands in the South China Sea*. Independent Expert Report – Coral Reef Environment, April 26, 2016 p. 11

²⁶² McManus report, p.18

²⁶³ *Ibid*, p. 18

international organizations, which should make them available to all States.” Further, in Article 206, States are required to “assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205” if “harmful changes to the marine environment” are expected. However, neither the Tribunal nor the Philippines identified “any report that would resemble an environmental impact assessment that meets the requirements of Article 206 of the Convention, or indeed under China’s own Environmental Impact Assessment Law of 2002.”²⁶⁴ Thus, the Tribunal concluded, China did not fulfill its obligations under Articles 204, 205, and 206.

When it ruled that China failed to protect the environment, the Tribunal expected that states would cooperate to enforce the protection of the South China Sea. The Tribunal referenced Article 197 and the ITLOS decision in the *MOX Plant* case: “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law.”²⁶⁵ Article 197 requires States to cooperate on a global or regional basis “directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment.” The ICJ ruled similarly in *Argentina v. Uruguay*, saying: “The Court observes that it is by co-operating that the States concerned can jointly manage the risks of damage to the environment that might be

²⁶⁴ *South China Sea Arbitration* (Award), paragraph 989

²⁶⁵ *South China Sea Arbitration* (Award), paragraph 946

created by the plans initiated by one or other of them, so as to prevent the damage in question.”²⁶⁶

As shown, there are precedents for the Court to assess concerns regarding the protection of community interests in the context of marine environmental protection. However, can a State, not directly impacted by another State’s actions have legal standing and ask the Court to assess the actions of the other State which is breaking its obligations under the Convention? The Court’s approach to this issue has varied, but *South China Sea* made it clear that a State does not necessarily have to show injury to have standing. The following cases show the Court’s approach to assessing cases in which neither party had jurisdiction over the violation.

In 1966, the ICJ rejected Ethiopia and Liberia’s standing in *South West Africa* because they had not experienced direct impacts of South Africa’s apartheid situation. The Court said:

the "necessity" argument falls to the ground for lack of verisimilitude in the context of the economy and philosophy of that system. Looked at in another way moreover, the argument amounts to a plea that the Court should allow the equivalent of an "actio popularis", or right resident in any member of a community to take legal action in vindication of a public interest. But although a right of this kind may be known to certain municipal systems of law, it is not known to international law as it stands at present²⁶⁷

However, the Court applied the concept of *erga omnes* in *Barcelona Traction* saying:

²⁶⁶ *Argentina v. Uruguay* (Judgement), paragraph 77

²⁶⁷ *South West Africa* (Judgement) July 18, 1966, paragraph 88

an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.²⁶⁸

The Court further clarified,

Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law.²⁶⁹

From a public relations standpoint, *Barcelona Traction* was a major about-face from *South West Africa* because not only did the Court reassert its position, but it also defined the international community's obligation to defend international law.²⁷⁰

In the 1974 *Nuclear Tests* case, Australia and New Zealand argued that France's nuclear testing in the South Pacific violated the "rights of all members of the international community."²⁷¹ However, the Court did not examine this argument. In the end, the Court accepted the French Foreign Minister's argument, "France was 'still reserving to itself the right to carry out atmospheric nuclear tests' so that 'In legal terms, Australia has nothing from the French Government which protects it against any further atmospheric tests.'"²⁷²

²⁶⁸ *Barcelona Traction* (Judgement) February 5, 1970, paragraph 33

²⁶⁹ *Ibid.*, paragraph 34

²⁷⁰ Tams and Tzanakopoulou, p. 792

²⁷¹ *Nuclear Tests* (Judgement)

²⁷² *Ibid.*, paragraph 47

Arguably, the Court had different views on when it could give standing to parties not directly impacted by the action being questioned. However, the fact that the Court expands and contracts its jurisdiction is a projection of power dynamics.²⁷³ The Court's definition of *erga omnes* in *Barcelona Traction* opened a new mindset. This new mindset could not have been possible had the Court decided that the case was beyond its jurisdiction. The concept of third-party involvement was now applied to enforcing values that the international community agreed upon. Further, each state had an obligation to protect these fundamental values.

Implications for Maintaining International Peace and Security

One of the purposes of the UNCLOS was to establish “a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans.”²⁷⁴ The South China Sea dispute is testing the legal order and the maintenance of international peace and security.

As shown in Chapter 1, the South China Sea is home to natural resources that sustains China and its Southeast Asian neighbors. China has militarized the area and poses a threat to freedom of navigation. Besides its importance to Asia, the South China Sea is the main trade route for global trade. U.S. FONOPs keep China in check, making sure ships enjoy the freedom of navigation. Since the late 1970s, the U.S. has been

²⁷³ In his article, “The Procedural Foundation of Substantive Law,” Thomas Main points out that “Procedure is an instrument of power that can, in a very practical sense, generate or undermine substantive rights.” p.802

²⁷⁴ UNCLOS preamble at 4

conducting FONOPs to counter excessive claims by coastal States and to enforce the concept of the freedom of the seas. However, U.S. enforcement of the Tribunal's ruling and the freedom of navigation in the South China Sea risks escalation. While U.S. naval power is bent on defending the status quo and invoking international law as its justification, China is using its rising power to question this status quo.

Enforcing the Tribunal's decision and the freedom of the seas concept risks a conflict between the U.S. and China. Both countries are sleepwalking into a Thucydides trap. The current climate in the South China Sea could be compared to pre-World War I Europe. Although the period before World War I witnessed important progress in the codification of international law and the institutionalization of the peaceful settlement of disputes, codified international law did not prevent the outbreak of war. Similarly, the Tribunal or the UNCLOS will not compel China to respect international law if it finds more benefit in breaking it. Another point of comparison to pre-World War I is that the defense of international legal order was also a primary reason for the Allied Powers such as Britain and France to enter the war in 1914. They considered themselves "engaged in the defense of international law and justice," affirming "the sanctities of treaties" against the "dangerous challenge to the fundamental principles of public law" posed by Germany.²⁷⁵ On the other hand, Germany challenged international law by arguing that international law had to be shelved when there was military necessity to use force and national self-preservation at stake. In the context of the South China Sea, the interest of

²⁷⁵ Sir Graham Bower, cited in *The American Law Review*, Volume 50, p. 623

the revisionist and the status quo power, in this case China and the U.S. depends on their ability to avoid any miscalculations that can escalate and lead to a violent confrontation.

In light of the South China Sea's security and economic importance, under what conditions will China increasingly challenge the jurisdiction of international waters by coercively taking control of the South China Sea? Can China's domestic politics shed light on China's increasingly aggressive foreign policy? China's domestic challenges and development of a more assertive foreign policy will be addressed in the next chapter.

CHAPTER THREE: China's Shift Towards an Assertive Foreign Policy

This chapter addresses the following research questions: Under what conditions is China's foreign policy affected by domestic factors? How does China's domestic politics persuade the CCP to modify its strategy and take a more coercive position? I argue that four contextual factors: symmetrical distribution of power, economic satisfaction, third-party threats, and political stability shape how and when China decides to employ extreme forms of coercion to acquire territory or otherwise compromise the vital interests of other states.

The first part of the chapter will examine China's political economy and how its domestic developments and crises impact China's relations with the U.S. and Southeast Asian countries on issues such as the South China Sea dispute. Compared to its foreign policy in the 1990s through the early 2000s, China dramatically increased its assertiveness on foreign policy since 2008. The first part of the chapter examines what led China's approach to foreign policy to shift from peaceful to more active and confrontational. The second part of the chapter will introduce my "escapement" framework to show how the presence or absence of a combination of domestic and international factors could force a state to deviate from its initial strategy. The framework will also be applied to the five events when China asserted jurisdiction over the South

China Sea from 1973 through 2016. Appendix C discusses how the escapement framework was put together.

China's Relatively Peaceful Rise in the 1990s

China approached foreign policy as a careful, tactful player focusing on maintaining contact with the outside world while making its foreign relations conducive to China's economic development. As China was navigating its way out of political instability following the 1989 Tiananmen Square Massacre, the government focused on increasing economic satisfaction and maintaining political stability. Although China still projected power during the 1996 Mischief Reef skirmishes with the Philippines and the 1995-1996 Taiwan Strait Crisis, China emphasized the need to strengthen diplomatic ties with major world powers. China established strategic partnerships with Russia and the U.S in 1996 and 1997, respectively. In 1998, China held the first Sino-European Summit with the EU and launched bilateral negotiations with India.²⁷⁶

China also participated in multilateral mechanisms and international organizations during the 1990s to show the international community that its intentions were peaceful. By participating in international organizations, China saw the opportunity to strengthen ties with other nations and pursue trade and cooperation with the global community as it benefitted China's domestic economic development. Plans to implement this strategy were already in the making as early as 1986 when Zhao Ziyang, China's former Premier, reported to the National People's Congress,

²⁷⁶ Yong Deng, "Remolding Great Power Politics: China's Strategic Partnerships with Russia, the European Union, and India," *Journal of Strategic Studies*, Vol. 30, No. 4-5 (August-October 2007), pp. 863-903.

China is a developing socialist country with a population of over 1 billion. We are well aware of our obligations and responsibilities in the world. We will therefore continue to work hard on both fronts, domestic and international, to push forward the socialist modernization of our country and to make greater contributions to world peace and human progress.”²⁷⁷

To assure the international community of its peaceful intentions, China ratified the UNCLOS in 1996 and signed the Comprehensive Test Ban Treaty the same year.²⁷⁸

As its economy increased, China used these multilateral forums to demonstrate its economic importance to the international community. From joining the World Trade Organization (WTO) to promoting the China-ASEAN free trade agreement, China has viewed its economic diplomacy as an opportunity to encourage trade and economic interdependence to reduce tensions over disputes and competing ideologies.²⁷⁹

Regionally, China expanded its engagement with Southeast Asian nations by pursuing negotiations bilaterally and multilaterally.²⁸⁰ In 1996, it became a dialogue partner with ASEAN. The following year, along with Japan and South Korea, China joined the ASEAN Plus Three forum to increase dialogue and cooperation with Southeast Asian countries. This forum was essential in signing the “Declaration on the Conduct of

²⁷⁷ Cited in Dept. of Commerce, Economics & Statistic's Division's May 1994 NATIONAL TRADE DATA BANK (NDTB) CD-ROM, SuDoc C1.88:994/5/V.2 Processed 6/10/1994 by RCM (UM-St. Louis Libraries)/ AAH90086 <http://www.chaos.umd.edu/history/part5> Accessed June 24, 2021

²⁷⁸ Elizabeth Economy and Michel Oksenberg eds., *China Joins the World: Progress and Prospects* (New York: Council on Foreign Relations Press, 1999).

²⁷⁹ Vincent Wei-Cheng Wang, “The Logic of China -Asean Fta: Economic Statecraft of ‘Peaceful Ascendancy,’” in Khai Leong Ho, Ho Khai Leong, and Samuel C. Y. Ku eds., *China and Southeast Asia: Global Changes and Regional Challenges* (Singapore: Institute of Southeast Asian Studies, 2005), pp. 17–41.

²⁸⁰ David Shambaugh. “China Engages Asia: Reshaping the Regional Order.” *Brookings*. (Jan. 1, 2005) <https://www.brookings.edu/articles/china-engages-asia-reshaping-the-regional-order/> Accessed July 16, 2021

Parties in the South China Sea” in 2002 and the “Treaty of Amity and Cooperation in Southeast Asia” in 2003.²⁸¹

China’s increased participation in regional and international forums convinced some scholars that China’s appearance as a revisionist with its increasing military capabilities could actually be moderated and its policies could be brought in line with the U.S.-led world order.²⁸² However, this outlook changed when China shifted its strategy towards a more confrontational foreign policy in 2008. Based on the timeline of events, China’s foreign policy from the 1990s to 2008 followed Deng Xiaoping’s policy to “hide one’s capabilities and bide one’s time.”

China’s Shift Towards Assertive Foreign Policy

Since 2008, China has been taking a more confrontational approach to crafting its foreign policy. Scholars in Chinese and East Asian studies such as Michael D. Swaine and Thomas J. Christensen have described China’s new foreign policy as “assertive.”²⁸³

²⁸¹ Leszek Buszynski, “Asean, the Declaration on Conduct, and the South China Sea,” *Contemporary Southeast Asia*, Vol. 25, No. 3 (December 2003), pp. 343–362.

²⁸² Writing in 1999, Gerald Segal’s “Does China Matter?” dismissed China’s ambitions to great power competition and called on other scholars to stop overrating Chinese power and influence. He said that China is no more than a “second-rank middle power,” a “theatrical power” than a great power. Gerald Segal. “Does China Matter?” *Foreign Affairs*. (September/October 1999) <https://www.foreignaffairs.com/articles/asia/1999-09-01/does-china-matter> Accessed July 16, 2021; Gordon Chang’s *The Coming Collapse of China*, predicted that the CCP would eventually melt down unless it leveraged its membership in regional and international forums to improve its economy and if the international community maintained a tolerant attitude toward China’s noncompliant behavior.; Avery Goldstein also argues that “international relations theory provides persuasive reasons to expect China’s growing power to increase the frequency and intensity of international conflicts.” However, concerns about China engaging in a major war may be “unnecessarily alarmist.” Goldstein, p.38

²⁸³ Thomas J. Christensen. “The Advantages of an Assertive China: Responding to Beijing’s Abrasive Diplomacy.” *Brookings*. (March 25, 2011) <https://www.brookings.edu/articles/the-advantages-of-an-assertive-china-responding-to-beijings-abrasive-diplomacy/>

They cite examples such as Wen Jiabao, China's former Premier, criticizing the U.S. for its economic mismanagement as well as the increasing cyber-attacks on foreign firms in China such as Google and strong indications that the CCP was behind the attacks.²⁸⁴ Indications of China's more assertive foreign policy were also evident in the CCP's response to President Obama's decision in late 2009 to sell arms to Taiwan and meet with the Dalai Lama. Chinese leadership warned the U.S. with strong retaliatory responses, including threats to sanction U.S. defense industry companies operating in China such as Boeing.²⁸⁵ Geoff Dyer writes, "While China has reacted angrily to US arms sales to Taiwan before—by cutting off military-to-military ties—and has in effect blacklisted some companies, this is the first time it has threatened sanctions publicly."²⁸⁶

China showed new assertiveness in the South and East China Seas around this time. As discussed in Chapter 1, China harassed the USNS *Impeccable* on March 17, 2009. Ten days before, on March 7, a Chinese intelligence ship contacted the *Impeccable* via bridge-to-bridge radio calling *Impeccable*'s operations illegal and ordering the ship to

<https://carnegieendowment.org/2010/05/03/perceptions-of-assertive-china-pub-40724> Accessed July 16, 2021.

²⁸⁴ Michael Wines. "China Issues Sharp Rebuke to U.S. Calls for an Investigation on Google Attacks." (Jan. 25, 2010) <https://www.nytimes.com/2010/01/26/world/asia/26google.html> Accessed July 16, 2021. Michael Wines says that "a broadside in China's state-run news media on Monday that cast the United States as a cyberhegemonist, trying to dominate the global information flow by meddling in Chinese Internet policies."

²⁸⁵ Josh Rogin. "What U.S. officials heard in Beijing." *Foreign Policy*. (March 9, 2010) <https://foreignpolicy.com/2010/03/09/what-u-s-officials-heard-in-beijing/> Accessed July 16, 2021.

²⁸⁶ "China flexes its diplomatic muscles." *Financial Times*. (Jan 31, 2010) <https://www.ft.com/content/dd773774-0e8d-11df-bd79-00144feabdc0> Accessed July 16, 2021.

leave the area immediately or “suffer the consequences.”²⁸⁷ China increased its assertiveness against the Philippines and Vietnam in 2011, culminating in the forced removal of Filipino fishermen in Scarborough Shoal on April 8, 2012. Although there were attempts to revive the ASEAN-China Joint Working Group to Implement the Declaration on Conduct of Parties, ASEAN acquiesced to China’s demands to remove the clause mentioning how ASEAN members would first gather consensus before meeting with China. During this time, China also increased power projection by conducting naval exercises, including firing anti-ship missiles at Philippine makeshift fishing vessels at Jackson Atoll on February 25, 2011. China also showed assertiveness in the East China Sea. In 2010, a Chinese fishing boat collided with Japan’s Coast Guard near the disputed Senkaku/Diaoyu Islands. After Japan arrested the boat’s captain, China demanded that Japan release the captain and immediately apologize. In addition, China suspended trade of rare earth elements and cancelled high-level bilateral negotiations with Japan.²⁸⁸

Politically, China also began modifying its outlook to match its new assertive behavior. This could be seen in its increased usage of economic sanctions, increased engagement with countries both multilaterally and bilaterally by establishing its own organizations such as the Asian Infrastructure Investment Bank (AIIB) and the Belt and

²⁸⁷Tony Capaccio. “Chinese Vessels Harass U.S. Navy Ship, Pentagon Says.” *Bloomberg*. (March 9, 2009). <https://web.archive.org/web/20121024044349/http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aUMS9YLJ2OmM&refer=asia> Accessed July 16, 2021.

²⁸⁸ Wenran Jiang. “New Twists over Old Disputes in China-Japan Relations.” *Jamestown Foundation*. (Oct. 8, 2020) <https://jamestown.org/program/new-twists-over-old-disputes-in-china-japan-relations/> Accessed July 16, 2021.

Road Initiative unveiled in 2013, and shifting its language in government documents from “basic interests” or “major concerns” to “core interests.”²⁸⁹

For decades before 2008, China denounced unilateral economic sanctions as an immoral punishment of innocent, vulnerable populations.²⁹⁰ However, that changed around 2007 and 2008 when Chinese scholars began advocating to include economic sanctions in China’s foreign policy toolbox. Liu Wei, an economics professor at Wuhan University, said, “The argument that economic sanctions bring about a humanitarian disaster is increasingly weak,” “This provides China with a new opportunity to implement economic sanctions.”²⁹¹ Jian Jisong, an international law expert at Zhongnan University said,

As China increases its international economic influence, China should increase its use of unilateral economic sanctions in order to maintain its legal international interests and achieve its foreign policy objectives. China should liberate its thinking, and fully utilize the important tool of unilateral sanctions. In order to fully and effectively use this foreign policy and legal tool, China should also establish supportive domestic laws and regulations.²⁹²

Since 2008, China has expanded its reach of economic sanctions. In 2010, Liu Xiabo, a Beijing author calling for more democracy in China, was awarded the Nobel Peace Prize.

²⁸⁹ Although the AIIB was officially launched in 2013, creating the AIIB was first proposed by the Vice Chairman of a newly created, but politically influential think tank, the China Center for International Economic Exchanges (CCIEE), to combat slumping confidence and global output in 2009. Callaghan and Hubbard, p. 121

²⁹⁰ Reilly, p. 122

²⁹¹ Liu Wei, “Guoji jingji zhicai xintedian ji woguo yingai duicelue” [New Characteristics of International Economic Sanctions, and the Countermeasures China Should Take], *Shangwu Jingji yanjiu* [Commercial Economic Research] 28 (2008), p. 32.

²⁹² Jian Jisong, “Guanyu danbian jingji zhicai de ‘sifaxing’ yu ‘hefaxin’ tansuo,” [Investigation into the Judicial and Legal Aspects of Unilateral Sanctions], *Faxue* [Legal Studies] 1 (2007), p. 87.

In response, China cancelled a ministerial trade delegation to Norway, imposed economic sanctions on Norway, prompting a drop in total salmon imports from 90% to less than 30%, and started a disinformation campaign that Norwegian fish is “unhealthy” because Norwegians are “of bad quality” and “badly behaved.”²⁹³ Another example was discussed in Chapter 1. Following the Scarborough Shoal incident with the Philippines in 2012, China also banned the importation of Philippine bananas and other fruits that affected \$75 million in the market with 200,000 jobs. Bananas are the Philippines’ second-largest export that employs about one-third of the population and almost half of all Philippines’ banana exports are shipped to China. Beijing wanted to pressure Manila to give up Scarborough Shoal in exchange for loosening economic sanctions.²⁹⁴

China has also played a more assertive role in WTO trade negotiations since 2008. Beginning with the Doha Round, China refused to concede to U.S. demands that it should commit to special agricultural products and certain industrial sectors. China viewed this demand as unjustified relative to the concessions the U.S. was willing to make. Had China conceded, Doha Round negotiations would have been concluded in 2008.²⁹⁵ China also began taking a more proactive role in the UN as the U.S. cut off \$80 million in annual funding to the UNESCO, about 22% of its entire budget, to retaliate

²⁹³ Benjamin David Baker. “Soul or Salmon? Norway’s Chinese Dilemma.” *The Diplomat*. (May 4, 2014). <https://thediplomat.com/2014/05/soul-or-salmon-norways-chinese-dilemma/> Accessed July 16, 2021.

²⁹⁴ Andrew Higgins. “In Philippines, banana growers feel effect of South China Sea dispute.” *Washington Post*. (June 10, 2012) https://www.washingtonpost.com/world/asia_pacific/in-philippines-banana-growers-feel-effect-of-south-china-sea-dispute/2012/06/10/gJQA47WVTV_story.html Accessed July 16, 2021.

²⁹⁵ Hopewell, p.323

against the organization's acceptance of Palestine as a member organization in 2011.²⁹⁶

Beijing raced to fill in the vacuum, increased monetary contributions fivefold, and declared itself a “champion of multilateralism.”²⁹⁷ China's investment in the UN would be important for its assertive foreign policy while protecting itself from controversial topics such as the human rights violations in Xinjiang and Tibet and its policy to isolate Taiwan. China has leveraged its increased influence in the UN to legitimize its authoritarian rule.

Regionally, China has been taking more assertive steps to impose its vision of a regional order that shifts Southeast Asia's geopolitics in its favor. In 2014, China hosted the Conference on Interaction and Confidence-building Measures in Asia (CICA) in Shanghai, and the APEC summit in Beijing. President Xi announced a “New Asian Security Concept” at CICA, emphasizing that problems within Asia should be solved by Asians themselves.²⁹⁸ China also initiated a “Free Trade Area of the Asia-Pacific” (FTAAP) at the 2014 APEC summit that was designed to make it an attractive alternative to the Trans-Pacific Partnership (TPP).²⁹⁹ These regional initiatives have been important

²⁹⁶ Colum Lynch. “As U.S. Retreats From World Organizations, China Steps in to Fill the Void.” *Foreign Policy*. (Oct. 6, 2017) <https://foreignpolicy.com/2017/10/06/as-u-s-retreats-from-world-organizations-china-steps-in-the-fill-the-void/> Accessed July 16, 2021.

²⁹⁷ Kristine Lee. “Coming Soon to the United Nations: Chinese Leadership and Authoritarian Values.” *Foreign Affairs*. (Sept. 16, 2019) <https://www.foreignaffairs.com/articles/china/2019-09-16/coming-soon-united-nations-chinese-leadership-and-authoritarian-values> Accessed July 16, 2021.

²⁹⁸ Xi Jinping. “New Asian Security Concept For New Progress in Security Cooperation” (May 21, 2014) https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1159951.shtml Accessed July 16, 2021.

²⁹⁹ “The 22nd Asia-Pacific Economic Cooperation (APEC) Economic Leaders' Meeting Held in Beijing.” (Nov. 11, 2014) https://www.fmprc.gov.cn/mfa_eng/topics_665678/ytjhzzdrsrcldrfzshyjsxghd/t1210349.shtml Accessed July 16, 2021; Shannon Tiezzi. “China's Push for an Asia-Pacific Free Trade Agreement.” *The Diplomat*.

stepping stones for China to influence ASEAN and sign on to the Regional Comprehensive Economic Partnership (RCEP), a China-led trade agreement. Introduced during the 19th ASEAN meeting in 2011 and formally signed in 2020, RCEP could be argued as a significant win for China. It reinforces the economic interdependence regionally and brings ASEAN closer into China's economic influence. This would let China have more influence over the regulations and standards as it has already done with the BRI.³⁰⁰ It would also create more efficient supply chains for China as it tries to bolster its economic resilience to trade tensions and dampen negative impacts of “decoupling.”³⁰¹ Ultimately, China's regional initiatives would sway U.S. allies in the Indo-Pacific to ally with China. China is taking this opportunity to set the rules in Southeast Asia.

At the center of China's new assertive policies was shifting its language in government documents from “basic interests” or “major concerns” to “core interests.” Michael D. Swaine notes how the term “core interests” was first used in official Chinese government public statements alongside the term “major concerns.” However, usage of the term “core interests” skyrocketed in 2008.³⁰² From 2008 onwards, the term was used alongside phrases such as “sovereignty and territorial integrity,” “national security,” and

(Oct. 30, 2014) <https://thediplomat.com/2014/10/chinas-push-for-an-asia-pacific-free-trade-agreement/> Accessed July 16, 2021.

³⁰⁰ “RCEP trade deal: a geopolitical win for China.” *IJSS*. (Nov. 25, 2020) <https://www.ijss.org/blogs/analysis/2020/11/rcep-trade-deal> Accessed July 16, 2021

³⁰¹ *Ibid.*

³⁰² Swaine, p.4

“national unity” or reunification.”³⁰³ China’s State Councilor Dai Dai Bingguo) publicly defined the general elements of China’s core interests in July 2009, during a session of the U.S.-China Strategic and Economic Dialogue (S&ED). Dai stated in his closing remarks at the S&ED that the term includes three components:

1. preserving China’s basic state system and national security,
2. national sovereignty and territorial integrity and
3. the continued stable development of China’s economy and society.³⁰⁴

“Core interests” was again mentioned in 2009 during President Obama’s visit to China.

Both sides said in a joint statement, “The two sides agreed that respecting each other’s core interests is extremely important to ensure steady progress in China-US relations.”³⁰⁵

China has also conveyed privately to U.S. government senior officials that it considers both South and East China Seas as part of China’s “core interests.”³⁰⁶

Possible Origins of China’s New Assertive Foreign Policy

The timeline of events in Chapter 1 chronicling China’s assertion of jurisdiction suggests that domestic factors played a significant role in prompting China to defend its

³⁰³ Ibid., p.4

³⁰⁴ “First round of the Sino-U.S. Economic Dialogue: In addition to the main discussion of the Moon,” China News Online), July 29, 2009, available at 首轮中美经济对话:除上月球外主要问题均已谈及 (July 29, 2009) <http://www.chinanews.com.cn/gn/news/2009/07-29/1794984.shtml> Accessed July 16, 2021; State Councilor Dai Bingguo, “Closing Remarks for U.S.-China Strategic and Economic Dialogue,” Washington, DC, July 28, 2009, available at <https://2009-2017.state.gov/secretary/20092013clinton/rm/2009a/july/126599.htm> Accessed July 16, 2021.

³⁰⁵ “China-US Joint Statement (November 17,2009)” Embassy of the People’s Republic of China in the United States of America. <http://www.china-embassy.org/eng/zmgx/doc/more/t944394.htm> Accessed July 16, 2021.

³⁰⁶ Edward Wong. “Chinese Military Seeks to Extend Its Naval Power.” *New York Times*. (April 23, 2010) <https://www.nytimes.com/2010/04/24/world/asia/24navy.html?pagewanted=all> Accessed July 16, 2021.

claims in the South China Sea. In 1921, when Sun Yat-sen licensed the Paracels Archipelago Industries Ltd. to mine guano in the Paracels, Sun faced economic and political challenges. He had to deal with the implications of the North China Famine of 1920 that starved millions while local warlords battled with politicians for control over resources. The Chinese Communist Party, founded in 1921, also presented a challenge to Sun's fledgling government's efforts to gain legitimacy. In 1928, after the Communist-led Guangzhou Uprising in 1927, Sun sent ships to the Paracels again to gather data and investigate the islands. In December 1927, China was going through "excessive dryness," and locusts had brought "natural calamity" to seventy counties in north China. In 1928, Guangdong authorities commissioned Chen Tianxi to write *A Compilation of Materials Concerning the Xisha and Dongsha Islands Case* as evidence supporting their historical claim to the islands. These are just two examples of when China decided to claim historic rights to the Sea. Thus, there is reason to examine China's domestic factors to determine how domestic politics and societal interests could critically shape China's assertive foreign policy.³⁰⁷ This section will show how China's turbulent politics and economic challenges have both driven the government to adopt a more assertive foreign policy. Although it may be argued that its use of diplomacy and cooperation in the South China Sea from 2008 onward was much less compared to 1990s, the only difference in how China used its foreign policy tools was that it was more on par with the capabilities and influences of other global powers. As China emerged from the 2008 financial crisis as the world's third-largest economy, it knew that its decisions had more impact on geopolitical

³⁰⁷ Robert Putnam has argued that domestic politics and international relations are often inextricably entangled. pp. 427-460

issues. It could afford to take a more assertive foreign policy without fearing immediate backlash that could threaten the existence of the state. China's cycles of political and economic challenges have not changed. The only thing that changed is the way it is being expressed now.

Political Challenges: Dissonance in Crafting Foreign Policy

There are dysfunctional dynamics within China's domestic politics that prevent the government from making a clear decision-making process. Michael D. Swaine argues that civil-military relations between the PLA and the civilian agencies have lacked a coordinating mechanism that poses a significant problem for China's foreign policy.³⁰⁸ This problem would have critical implications especially given the expanded scope of PLA activities and the increasing presence of the PLA beyond China's borders. In maritime security issues, China's top leadership relies heavily on the PLA Navy since CCP officials have limited military experience. Christopher D. Yung, an expert in PLA Navy strategy, has identified four points on how the PLA Navy shapes central authorities' decision-making process:

1. Shaping the leadership's understanding of the strategic or security environment
2. Formulating options and giving the Politburo Standing Committee recommendations on the risks involved in conducting military operations
3. Providing advice on how to conduct a military operation once the Central Committee has approved that operation
4. Providing advice on the resources needed to carry out a specific military operation or military operations in general³⁰⁹

³⁰⁸ Saunders and Scobell, p. 160

³⁰⁹ Ibid. p. 296

Although the Politburo has the last word on whether or not to continue an operation, the lack of stable civil-military relations could create more problems. For example, establishing an air defense identification zone in the East China Sea covering the disputed Senkaku/ Diaoyu Islands in 2013 seemed to be at odds with President Xi's foreign policy vision since he emphasized that his new leadership should focus on restoring China's relations with its regional neighbors, launching a more constructive approach toward an eventual agreement on a Code of Conduct in the South China Sea, and avoiding escalating territorial disputes.³¹⁰ However, the PLA still pushed for an air defense identification zone in the East China Sea.³¹¹

To add to the dysfunctional mechanisms of formulating China's foreign policies, managers of state-owned industries may favor certain national interests to complement their businesses. Linda Jakobson and Dean Knox, experts in Chinese foreign policy and industries, have observed that executives of state-owned enterprises hold ministerial or vice-ministerial ranks, and some serve as alternate members of the Central Committee.³¹² Executives and high-ranking CCP officials working on foreign policy deliberations closely operate. This collaboration is especially seen in the relationship between large oil companies and the political establishment. Writing in 2010, Jakobson and Knox also observed that in the past five years, two members of the China National Petroleum

³¹⁰ CSIS Asia Team. "China's Air Defense Identification Zone: Impact on Regional Security." (November 26, 2013) <https://www.csis.org/analysis/chinas-air-defense-identification-zone-impact-regional-security> Accessed July 16, 2021.

³¹¹ Shinji Yamaguchi, "The Foreign Policy of Xi Jinping's Administration and the Establishment of China's Air Defense Identification Zone," *NIDS Briefing Memo*, September 2014.

³¹² Jakobson and Knox, p. 25

Corporation were transferred over to the Ministry of Foreign Affairs and appointed to senior diplomatic posts in the country where they used to work for the petroleum company.³¹³ Thus, the participation of leaders from state-owned enterprises in crafting foreign policy risks formulating policies that only benefit a certain business, not the national interest.

When the interests of state-owned enterprise executives intersect with the state, such as in the case of the National Development and Reform Commission (NDRC) energy security strategy, corporations are found to have more leverage in crafting the foreign policy. The NDRC's energy security strategy is based on oil and gas extraction at the well.³¹⁴ To secure energy resources at the point of extraction, the PLA Navy maintains a military presence to ensure these wells are not threatened. The policy has been strongly supported by oil companies benefitting from state subsidies for diversifying their sources of supply.³¹⁵ Letting the PLA Navy guard these wells risk further militarizing the South China Sea and escalating an already tense situation. Another example of the danger of allowing state-owned enterprises have more leverage on foreign policy could be seen in China's foreign policy during the 2011 Libyan Civil War. Although the UN passed a resolution imposing sanctions on the Qaddafi regime, Chinese

³¹³ Ibid., p. 26

³¹⁴ Ibid., p. 26

³¹⁵ Ibid., p.26

state-run weapons firms continued to coordinate arms sales with Qaddafi's government.³¹⁶

The dysfunctional internal dynamics within the government's decision-making process are drivers for China's provocative behavior.³¹⁷ As different ministries and agencies such as maritime agencies, military, and extractive industries compete to influence foreign policy to their favor, the result is an incoherent plan.³¹⁸ In this case, whichever stakeholder has the will to resort to jingoism wins over the other stakeholders. This has led political elites to amplify China's hawkish policies. For example, Colonel Dai Xu, a PLA Air Force official, explained in his 2009 book, *C-Shaped Encirclement*, that China was encircled in a C-shape by U.S. allies to destroy China. According to Colonel Dai Xu, war with the U.S. was inescapable. Since the U.S. provoked China by supporting regional allies, it was the responsibility of Chinese leaders to end the cooperation with the U.S. and instead form plans to take the offensive.³¹⁹ In 2018, Dai Xu suggested that the PLA Navy should ram and use intimidation tactics against U.S. Navy ships passing through the South China Sea.³²⁰ A year later, Colonel Liu Mingfu's book, *The China Dream*, advocated for a more hawkish foreign policy. It called on the Chinese

³¹⁶ "China confirms Libya arms sale talks." *Financial Times*. (September 5, 2011) <https://www.ft.com/content/77a3e566-d7bb-11e0-a06b-00144feabdc0> Accessed July 16, 2021.

³¹⁷ Liao, p. 101

³¹⁸ Christensen; Lai and Kang

³¹⁹ 戴旭 [Dai Xu], *C形包围—内忧外患下的中国突围* [C Shape Encircle, China's Breakthrough with the Internal Concerns and External Dangers] (Beijing: Wenhui Chubanshe, 2009)

³²⁰ Duncan Deaeth. "Senior Chinese military official urges PLAN to attack US naval vessels in S. China Sea." *Taiwan News*. (Dec. 9, 2018) <https://www.taiwannews.com.tw/en/news/3592985> Accessed July 17, 2021.

leadership to abandon the modest foreign policy from Deng Xiaoping's era and instead build the world's strongest military to deter the U.S. from challenging China's rise.³²¹ The dissonance between political elites could be illustrated by the debate on whether the South China Sea should be considered among China's "core interests." Although CCP officials were hesitant to put the South China Sea among China's "core interests," they refrained from contradicting political opponents such as Dai Xu to avoid unwanted criticism.³²²

Economic Challenges: Unrest and Anxiety as Drivers of a Hawkish Foreign Policy

China's economic growth has been slowing down since 2008. From 2008 to 2018, China's overall debt increased from 164% to 300%.³²³ Domestic factors such as labor unrest have resulted from the economic slowdown, and Chinese leaders have responded by being ever more focused on preserving Party rule in the face of economic challenges. Challenges at home caused anxiety for workers. This can arguably drive the China's foreign policy to push the BRI and seek opportunities to keep its people employed. In this regard, China's hawkish foreign policy is an effort to sustain its economic growth and employment, preserve the Party's legitimacy as a provider for people's economic satisfaction, and a chance to shape rules and norms to China's advantage.

³²¹ 刘明福 [Liu Mingfu], 中国梦 [The China Dream] (Beijing: Youyi Chuban Gongshi, 2010)

³²² Liao, p. 102

³²³ Chase Carmichael. "3 Reasons China's Slowdown Is Cause for Concern." *Investopedia*. (Feb. 29, 2020) <https://www.investopedia.com/articles/markets/062016/3-reasons-chinas-slowdown-cause-concern.asp> Accessed July 17, 2021.

Since the legality of labor strikes in China is ambiguous, accurate information on strikes and protests is unavailable.³²⁴ However, in 2011, the China Statistics Press released data showing the rise of “mass incidents” from 1993 to 2010. China’s uses the term, “mass incidents,” to collectively describe strikes, protests, and riots.

Although the media is strongly suppressed especially when it features unrest in China, several incidents have caught the eye of news services outside China. Notable examples include when workers at a Honda parts plant in Zhongshan, Guangdong Province, went on strike demanding higher pay, better working conditions, and more representative union in June 2010.³²⁵ Another example is when about 2,000 workers at the state-owned Pangang Group Chengdu Steel and Vanadium Co. struck to demand higher pay, more stable contracts, and the dismissal of managers whom workers felt were “lazy, redundant personnel.”³²⁶

³²⁴ The right to strike was removed from the Chinese Constitution in 1982. Taylor, Chang, and Li, p. 33; Articles 290-292 of the 1997 Criminal Law prohibits, “gathering a crowd to disturb public order.” However, Article 27 of the 2001 Trade Union Law implies that strikes are legal.

³²⁵ Alison Leung. “New strike hits Honda parts supplier in China.” *Reuters*. (July 14, 2010) <https://www.reuters.com/article/us-china-labour/new-strike-hits-honda-parts-supplier-in-china-idUSTRE66E12C20100715> Accessed July 17, 2021.

³²⁶ Chengdu Steel Factory Workers Strike for More Pay.” *China Labor Watch*. (January 4, 2013) <https://chinalaborwatch.org/chengdu-steel-factory-workers-strike-for-more-pay/> Accessed July 17, 2021.

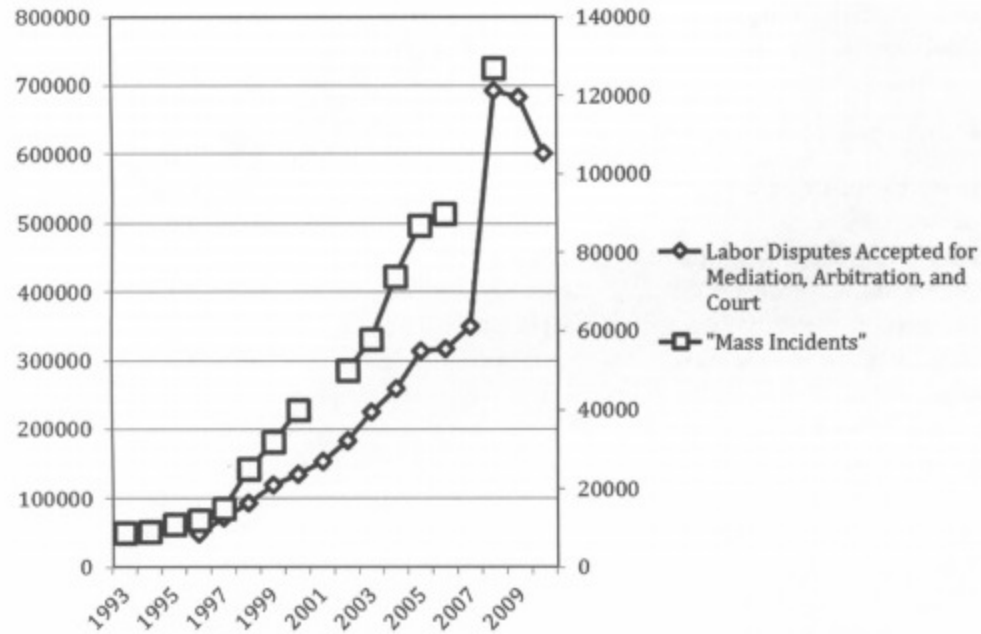


Figure 7. “Mass Incidents” and Labor Disputes Accepted for Mediation, Arbitration, and Court, 1993-2010³²⁷

Figure 7, from the 2011 China Labor Statistical Yearbook, shows a significant increase in disputes for 2008 when cases doubled from 350,182 to 693,495 involving 1.2 million workers according to China’s Department of Population and Employment Statistics 2011. However, even before the spike, there was already a clear upward trend of “mass incidents.”

Before 2008, strikes and protests were described as “reactive” or “defensive.”³²⁸ Throughout the late 1990s, there was an increase in unrest by workers from rural China who migrated to cities to work in coastal factories. These workers only had limited rights

³²⁷ Source: China Labor Statistical Yearbook (2011); Also cited in Elfstrom and Kuruvilla, p. 455; In this graph, labor dispute figures are on the left axis. “Mass incident” figures are on the right axis.

³²⁸ Elfstrom and Kuruvilla, p. 456

and access to urban social insurance and schools for their children.³²⁹ However, they resorted to legal routes and NGOs to seek help. This shows that they were empowered to use the law to pressure state institutions and demand for equal workers' rights.³³⁰ However, Manfred Elfstrom and Sarosh Kuruvilla, scholars in China's industrial relations, argue that since 2008, Chinese workers have been striking more "offensively," demanding more money, better working conditions, and more respect from employers.³³¹ After gathering data, they found that the number of strikes increased from 3.6 actions per month in 2008 to 32.1 actions per month in 2012.³³² Workers after 2008 are less easily satisfied monetarily than previous generations. They demand more leisure, measures for worker satisfaction, and respect for the work they do.³³³ Workers are also more flexible, leaving their employer when their demands are not met. Employers have also witnessed employees taking violent actions over small disagreements.³³⁴ Social media and faster communication also suggest that strikes and protests are more coordinated now.³³⁵ How can the increase of unrest affect China's foreign policies? Can it in anyway cause the government to adopt a more hawkish foreign policy. The answer may be in the way the government has employed its "social management" strategy to control unrest.

³²⁹ Chan (2001); Pun (2005)

³³⁰ Chan (2006); Halegua (2008)

³³¹ Elfstrom and Kuruvilla, p. 466

³³² Ibid. p. 465

³³³ Ibid., p. 467

³³⁴ Ibid., p. 468

³³⁵ Ibid., p. 469

Besides increasing surveillance and internet policing, China also launched a social management strategy to expand its measures of propaganda and indoctrination to influence public attitudes towards the government. In February 2011, President Hu Jintao outlined the improvement of social management and placed the initiative at the top of the agenda. The following month, at the annual session of the National People's Congress, he specified four categories for the purpose of the initiative: alleviating inequality and social hardship, heightened indoctrination, decentralization of service provision, and improving public security.³³⁶ The goal of this initiative was to remove sources of public grievances and keep social unrest in check.

Since 2008, China's central government has implemented stricter measures to influence public opinion using propaganda and indoctrination. During the 2008 Olympic Games in Beijing, China bombarded residents and visitors with propaganda posters and President Hu Jintao's "harmonious society," a catchphrase for his social management strategy. Posters flooded Beijing's streets that said, "Welcome Olympic Games with joyfulness and construct a harmonious society."³³⁷ In 2008, the CCP's Central Propaganda Department also restricted television stations from reporting on air quality

³³⁶ The original link has been removed by *Xinhua*. However, it is cited in other sources with the original web page title: "Hu Jintao: Firmly Raise the Standard for Scientification of Social Management" [Hu jintao: zhazha shishi tigao shehui guanli kexuehua shuiping], *Xinhua*, 19 February 2011, Cited in Göbel and Ong, p. 54 "2011 Annual Report." Congressional-Executive Commission on China. <https://www.cecc.gov/publications/annual-reports/2011-annual-report#1302a> Accessed July 17, 2021.

³³⁷ Ben Blanchard. "Beijing rolls out the propaganda to welcome Games." *Reuters*. (August 9, 2008) <https://www.reuters.com/article/us-olympics-slogans/beijing-rolls-out-the-propaganda-to-welcome-games-idUSPEK5790420080810> Accessed July 17, 2021.

and food safety due to political reasons.³³⁸ The following year, China launched a round-the-clock English-language news channel as part of President Hu Jintao's plan to "go global" and make "the voice of China better heard in international affairs." According to Nicholas Bequelin, a senior researcher at Human Rights Watch, the goal of this initiative was to ensure that information broadcast should reflect the government's views while adapting to Western style media marketing to compete with other international news networks.³³⁹ The public was also banned from physically attending China's 2009 National Day military parade.³⁴⁰ People who were specifically invited to attend were ordered to sign secrecy agreements prohibiting them from talking to journalists and posting pictures of rehearsals.³⁴¹ The PLA logistics department said the parade was "a comprehensive display of the party's ability to rule and of the overall might of the nation."³⁴²

China's propaganda campaign went beyond using just the media. It also increased its efforts to indoctrinate politicians and the general population through patriotic education in schools such as teaching and testing Chinese students that James Shoal is the southernmost point of Chinese territory and that the "nine-dash line" has always belonged

³³⁸ "Central Propaganda Department Restricts Reporting on Air Quality, Food Safety." Congressional-Executive Commission on China. (May 5, 2008) <https://www.cecc.gov/publications/commission-analysis/central-propaganda-department-restricts-reporting-on-air-quality> Accessed July 17, 2021.

³³⁹ Nicholas Bequelin. "China's New Propaganda Machine." *Wall Street Journal*. (Jan. 30, 2009) <https://www.wsj.com/articles/SB123326012456829891> Accessed July 17, 2021.

³⁴⁰ Tania Branigan. "China's National Day parade: public barred from celebrations." *Guardian*. (Sept. 30, 2009) <https://www.theguardian.com/world/2009/sep/30/china-national-day-parade-communism> Accessed July 17, 2021.

³⁴¹ Ibid.

³⁴² Ibid.

to China.³⁴³ This also seems true with Chinese international legal scholarship.

Throughout the research, I have not found literature written by a Chinese scholar working in China criticizing the Chinese government's position on the South China Sea dispute or the Tribunal's decision in 2016. There has been a significant push to strengthen China's practical and academic international legal training guided by CCP initiatives. The Xiamen Academy of International Law aims "to be both practical and highly scholarly."³⁴⁴ The young generation of aspiring Chinese international lawyers is expected "to develop distinctively Chinese theories of international law."³⁴⁵ The Chinese approach to international law includes: a flexible and functional approach to benefit from and exploit the international order without amending the law, reinterpreting existing law to shape legal norms to advance its interests, and using international law to legitimize or delegitimize actions that either support or go against China's ambitions.³⁴⁶ Arguably, welcoming China's perspectives would increase diverse opinions. However Chinese scholarship is hampered by partisanship. Articles about the South China Sea written by

³⁴³ Göbel and Ong, p.55; Zheping Huang & Echo Huang. "China's citizens are livid at the South China Sea ruling because they've always been taught it is theirs." *Quartz*. (July 13, 2016) <https://qz.com/730669/chinas-citizens-are-livid-at-the-south-china-sea-ruling-because-theyve-always-been-taught-it-is-theirs/> Accessed July 17, 2021.

³⁴⁴ Xiamen Academy of International Law website. *About Us*. <http://www.xiamenacademy.org/aboutus.aspx?BaseInfoCateId=75&CateID=75&CurrCateID=75&showCateID=75> Accessed July 17, 2021.

³⁴⁵ During a roundtable series in April 2014, Chatham House and China University of Political Science organized a four-day meeting to discuss international law and the rights of individuals from China's perspectives. During the event, Chinese participants described how at the first meeting of the Chinese Society of International Law, the late Wang Tieya, former judge at the International Criminal Tribunal for the former Yugoslavia and one of China's most famous international lawyers, and other senior Chinese international lawyers challenged the younger generation to develop distinctively Chinese theories of international law. Chatham House, p. 3

³⁴⁶ Williams, p. 10

Chinese scholars working in China have centered on China's purported historical rights, the Chinese government's position paper, and the rejection of the Tribunal's jurisdiction over the dispute. There is no discussion on the UNCLOS, EEZs, and territorial entitlement.

The 12th Five-Year Plan also allowed more extensive government involvement in producing popular entertainment such as films, literature, and art.³⁴⁷ At the Sixth Plenum of the Seventeenth National Congress of the CCP in October 2011, the CCP called for intensifying propaganda work, improving cultural education, and producing attractive cultural content.³⁴⁸ It includes making films and writing books with patriotic and nationalistic overtones. This would also provide the momentum to produce films such as *Abominable* in 2019 in which the “nine-dash line” is featured as China's territory, or place restrictions on films that struck too close to the CCP's home.³⁴⁹ Thus, there is a clear resurgence of nationalism to implement a social management strategy and control social unrest.

³⁴⁷ National Development and Reform Commission, “12th Five-Year Guidelines.”

³⁴⁸ “Central Committee of the Chinese Communist Party Decision Concerning Deepening Cultural Structural Reform.” (Oct. 18, 2011) <https://chinacopyrightandmedia.wordpress.com/2011/10/18/central-committee-of-the-chinese-communist-party-decision-concerning-deepening-cultural-structural-reform/> Accessed July 17, 2021; “Decision of the CPC Central Committee on Major Issues Pertaining to Deepening Reform of the Cultural System and Promoting the Great Development and Flouring of Social Culture.” (Oct 18, 2011) <http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=160202> Accessed July 17, 2021; Note how in the translation provided by www.lawinfochina.com, an online legal information service established by Peking University, the word “propaganda” is translated to “publicity” and the section, “Strengthening and Improving News and Public Opinion Work” where “propaganda” is discussed at length is omitted from the www.lawinfochina.com version.

³⁴⁹ Roc Su. “Abominable: Nine Dashes of Controversy.” *Medium*. (May 21, 2020) <https://medium.com/cineast/abominable-nine-dashes-of-controversy-f2ae12dd5c89> Accessed July 17, 2021.

China's hawkish foreign policy and attempts to rewrite global norms could be argued as a response to complement the resurgence of Chinese nationalism. Elizabeth Economy, a senior fellow for China studies at the Council on Foreign Relations writes,

China's drive to remake global norms is also fueled by a resurgent nationalism that heartens back to the days when China was a world trading power. For some Chinese officials, the past century—in which China has been largely absent as an economic and military force—was merely a historical aberration. In their eyes, things are now returning to normalcy.³⁵⁰

Chinese leadership has encouraged popular nationalism and followed popular nationalist calls for a more confrontational approach against the West to defend China's national interests.³⁵¹ In response to nationalist sentiment, China's leadership is forced to adapt its foreign policy to preserve its claim to legitimacy.³⁵² Thus, China began harassing foreign vessels in the South China Sea, opposed U.S. joint naval exercises with allies in the region, and challenged disputes against the Philippines, Vietnam, and Japan in the South and East China Seas. As nationalism began to surge, people turned to China's history for answers. However, historical narratives with vestiges of the CCP's characteristics will yield skewed results. Edward Friedman, an expert on Chinese foreign policy, notes, "It is China's goal of Asian predominance, a supposed return to China's supposedly historical and natural role, which undermines peaceful possibilities."³⁵³

³⁵⁰ Elizabeth Economy. "The Game Changer." *Foreign Affairs*. (November/December 2010) <https://www.foreignaffairs.com/articles/china/2010-11-01/game-changer> Accessed July 17, 2021.

³⁵¹ Zhao, p. 536

³⁵² Liao, p. 103

³⁵³ Friedman, p. 231

China's political and economic challenges drive China's hawkish foreign policy. Although the correlation between domestic challenges and foreign policy may be expressed differently today compared to the pre-2008 period, the pattern remains the same: the absence of economic satisfaction and political stability can prompt China to take a more hardline stance.

Developing the "Escapement" Concept

When the state decides on how to approach international law, it frequently deploys normative arguments.³⁵⁴ This leads to the question how can we justify a state's normative judgement and theory? For this thesis, the question is: how can China justify its actions in the South China Sea? How can it go against UNCLOS when it is a signatory to the Convention and claims it is still in compliance with international law?³⁵⁵ China could consider the increasing demand for resources and control over the South China Sea and test them against their own general beliefs in international norms and vice versa. Through a process of revision and reflection, the state can either discard its principles by breaking its promise to its citizens or breaking its commitment to international law. It can modify its interpretation of international law or let one principle override the validity of the other. The state can also change its opinion or history of the principles to conform

³⁵⁴ Aust, p.333; Ammann, p.198

³⁵⁵ China has argued that "By not accepting and not participating in the arbitration initiated by the Philippines, China is observing international law in the true sense." "People's Daily: China is observing international law in the true sense." (Dec. 21, 2015) https://www.fmprc.gov.cn/mfa_eng/topics_665678/nhwt/t1326344.shtml Accessed May 8, 2021.

with its beliefs by deciding that international law is not relevant in this scenario.

Whichever decision the state takes, it has moved towards a new equilibrium.

My “escapement” framework considers four factors that are essential for a state to maintain its initial strategy: symmetrical distribution of power, economic satisfaction, third-party threats, and political stability. I argue that these four factors shape how and when China decides to employ extreme forms of coercion to acquire territory or otherwise compromise the vital interests of other states. Further, I argue that at least three of the four factors should be absent from the framework to persuade China to modify its initial strategy. Appendix C details how the escapement framework was put together along with game theory, statistical evidence, and graphical representation.

Applying the Escapement Framework to the South China Sea Case

As covered in Chapter 1, five periods that stand out in the history of Chinese assertion of jurisdiction in the South China Sea. Since China’s assertion of jurisdiction from 1973 through 2016 has been discussed in Chapter 1, this section will only summarize the information pertinent to the escapement framework. Graphs for each case to illustrate the application of the framework are in Appendix D. I will discuss the 2017 case in depth because I have not covered China’s resumption of operations after the Tribunal’s ruling.

January 1974: Battle of the Paracel Islands – Throwing the Gauntlet

Symmetric balance of power: No – Although the Vietnamese fleet had better weapons than the Chinese fleet, the Chinese had smaller boats that

outmaneuvered Vietnam's larger boats. However, the U.S. Navy detected additional Chinese guided missile frigates on their way to the Paracels from Hainan.³⁵⁶

Economic Satisfaction: No – The economic decline and increasing chaos were due to the Cultural Revolution.³⁵⁷

Political stability: No – China was dealing with political struggles due to the Cultural Revolution.

3rd-party threat/involvement: No – The U.S. was withdrawing from the region following heavy losses during the Vietnam War (Paris Peace Accords). The U.S. was also trying to warm up relations with China following the Sino-American rapprochement in 1972.

Based on the timeline, it seems that China's cue to assert sovereignty over the Paracels was South Vietnam's losing situation in the battle with North Vietnam. On December 3, 1973, the Viet Cong hit the Nhà Bè fuel depot, the largest fuel storage facility in South Vietnam accounting approximately 80% of the nation's storage capacity. South Vietnam was also taking heavier losses due to America's absence. China may have exploited this opportunity to take over the Paracels and side with North Vietnam on this

³⁵⁶ Yoshihara, p. 50

³⁵⁷ "Rise and fall of Lin Biao." In *Encyclopedia Britannica*. <https://www.britannica.com/event/Cultural-Revolution/Rise-and-fall-of-Lin-Biao-1969-71> Accessed May 26, 2021.

issue. Thus, the asymmetry would be the last factor to fail while the absence of a third-party threat is only second on China's motivations to deviate from their initial strategy.

March 1988: The Johnson South Reef Skirmish – China's Second Round with Vietnam

Symmetric balance of power: No – China had superior naval technology compared to Vietnam. China used its guided missile escort ships that overpowered Vietnamese forces, sinking all Vietnamese ships within half an hour.³⁵⁸

Economic Satisfaction: No – Although grain harvest was at a record high and the trade deficit significantly reduced, 1987 showed significant inflation and food shortages. The economy started to have macroeconomic imbalances.³⁵⁹ China began to take an interest in the South China Sea's hydrocarbon and fisheries resources in 1985. China's economic model rapidly increased its demand for energy while launching fishing enterprises for profit.³⁶⁰

Political stability: No – Throughout late 1986 and early 1987, students led demonstrations calling for more individual rights and freedoms. This caused a rift in the CCP and communist hard-liners called for the suppression of the

³⁵⁸ Koo, p. 137

³⁵⁹ Prime, pp. 19-20

³⁶⁰ Guo Jinfu, "Nansha yuye ziyuan de baohu he heli kaifa" [Protection and rational development of Spratly fisheries resources], speech at inaugural Symposium on Spratly Comprehensive Scientific Surveys, Chinese Academy of Sciences, January 1988, in Nansha Wenti Lunwen Ziliao Huibian, pp. 298–303; and SOA, Zhongguo Haiyang Nianjian 1994–1996 (Beijing: Haiyang Chubanshe, 1997), p. 45

“bourgeois liberalism.”³⁶¹ Perhaps economic and future uncertainty with China’s economic reform program also fed into the political instability that would lead to the Tiananmen Square protests in 1989. Uncertainty with orderly succession and ideological direction at the 13th Party Congress in October 1987 may have forced Deng Xiaoping to tighten the party’s grip on Chinese society. Thus, political stability seemed to be the last factor to fail before China changed its initial strategy.

3rd-party threat/involvement: No - Han Yujia of the PLA General Staff Department's Intelligence Division told a naval research center that, because China was already at war with Vietnam on the land border, fighting Vietnam in the Spratlys “will not have much of an effect internationally ... we estimate that the US and USSR will not stand with China, nor directly oppose China ... in military terms the probability of their direct involvement is low.”³⁶² There are also other internal documents echoing this observation.³⁶³ This turned out to be true. Neither the U.S. nor the Soviet Union based at Cam Ranh Bay intervened.

Although there is debate on who authorized the Chinese navy to fire on the Vietnamese, the party leadership in Beijing approved the navy’s assertive actions that led

³⁶¹ “Tiananmen Square Incident.” In *Encyclopedia Britannica*.
<https://www.britannica.com/event/Tiananmen-Square-incident> Accessed May 27, 2021.

³⁶² Han Yujia, “Nanhai Zhanlüe,” pp. 61–62

³⁶³ *Nansha Wenti Lunwen Ziliao Huibian*, pp. 54, 108, 118–119, 129

to conflict, including the seizure of six disputed reefs.³⁶⁴ Since the first clash was in January 1988 between two Vietnamese armed cargo ships and the Chinese navy, the data examined for the four factors were from 1987.³⁶⁵ During this period of political and economic uncertainty, China's goal was to secure the resources in the South China Sea, even if it meant violence. The last factor to fail was political stability. Economic dissatisfaction seemed to have only fueled political instability.

1992 to 1995 – Chinese oil drilling, seizure of Mischief Reef within Philippines EEZ, and deterioration of Sino-Philippine relations

Symmetric balance of power: No – China's military was superior to the Philippines.

Economic Satisfaction: No – China's demand for energy resources continued to increase while production growth flattened.³⁶⁶ Although China's assertion may have weakened after 1995 due to increased reliance on the global market, it may be argued that the threat of energy insecurity initially contributed to the push for energy bids in the South China Sea.

Political stability: Yes – Following the Tiananmen crisis, China's police and criminal courts adopted harsh intimidation tactics and massive government

³⁶⁴ There seems to be no record of the CCP leadership authorizing the navy to attack Vietnamese forces. Fravel, p. 296. This may be another example of China's dysfunctional civil-military relations when the military's decision became more important than civil leadership as described earlier in this chapter.

³⁶⁵ Koo, p. 154

³⁶⁶ Lee, p. 187

propaganda campaign portraying dissent as a “counterrevolutionary criminal conspiracy.” This reminded people that the government still had the power to be powerful.³⁶⁷

3rd-party threat/involvement: No – U.S. removed all of its military bases and turned over Subic Naval Base to the Philippine government in 1992. This period was also in the aftermath of the Soviet Union’s collapse, so there was no Soviet threat stationed at Cam Ranh Bay.

Beijing protested Manila’s actions and characterized them as a violation of Chinese sovereignty and an infraction of the joint exploration agreement in 1988, the beginning of deteriorating Sino-Philippine relations. In January 1995, Chinese patrols detained a Philippine fishing vessel on Mischief Reef and a month later, China claimed Mischief Reef, a maritime feature within the Philippines EEZ. China began constructing “a shelter by Chinese fishermen, not for any military purpose” and extracting energy resources. Based on the timeline and on China’s intent, the renewed assertion of jurisdiction in 1992 was fueled by need for economic resources. According to datasets prepared by Andrew Chubb in his article “PRC Assertiveness in the South China Sea: Measuring Continuity and Change, 1970–2015,” “more than one-third of the newly assertive Chinese actions identified in 1992–94 concerned energy resources, compared to around 10 percent in earlier surge periods.”³⁶⁸ Thus, in 1992, the energy resources factor

³⁶⁷ Baum, p. 492

³⁶⁸ Chubb, Andrew, 2021, "Appendix for 'PRC Assertiveness in the South China Sea: Measuring Continuity and Change, 1970-2015,' *International Security*, Vol. 45, No. 3 (Winter 2020/21), pp. 79–121, doi.org/10.1162/isec_a_00400", <https://doi.org/10.7910/DVN/3Y7NRU>, Harvard Dataverse, V1

was the last to fail before China changed its initial strategy while political stability remained.

March 5, 2009 – Chinese Gray Zone Tactics: Hitting Below the Belt

Symmetric balance of power: No – Compared to other Southeast Asian countries with interests in the South China Sea, China's naval capabilities are superior. However, it may be argued that China's plans to patrol the South China Sea regularly dated back to October 2000 when the State Council allocated 1.6 billion yuan to deploy thirteen large oceangoing patrol vessels.³⁶⁹ 2009 was notable because it challenged a 3rd-party (USNS *Impeccable*) and began using intimidation tactics.

Economic Satisfaction: No – There is evidence that China's renewed assertiveness was due to a significant increase in energy resources. China's dependence on oil imports increased from 28% in 2001 to 50% in 2008.³⁷⁰ This prompted Chinese leadership to gain more control over the South China Sea's shipping lanes and increase its navy's capabilities. Since 2008, Chinese workers have been striking offensively for more money, better working conditions, and more respect from employers.

<https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/3Y7NRU> Accessed May 27, 2021 Chubb, p. 110

³⁶⁹ Su Tao, "Zhongguo Haijian xinxing chuanbo, feiji jianzao ceji" [Profiling CMS's new vessel and aircraft construction], Zhongguo Haiyang Bao [China Ocean News], December 17, 2007.

³⁷⁰ Schofield, Maritime Energy Resources, p. 41

Political stability: No – According to the 2011 U.S.-China Economic and Security Review Commission Report to Congress, “outbreaks of ‘mass unrest’ which sometimes include violent demonstrations against the government and its policies, have increased from 8,700 incidents in 1998 to over 120,000 incidents in 2008.”³⁷¹

3rd-party threat/involvement: No – Although the Quad organized naval exercises in the region in September 2007, it fell apart because Australia and India did not want to jeopardize their bilateral relationships with China.³⁷² Further, the Quad has resisted identifying China as its primary target.³⁷³

All four factors point to an escapement. However, China’s new naval technology allowed them to develop new strategies mandating “the unity of maritime rights defense and stability maintenance” – a strategy to meet China’s needs while avoiding further instability.³⁷⁴ Thus, China began gray zone operations such as ramming, intimidation, and

³⁷¹ Report to Congress of the U.S.-China Economic and Security Review Commission, p. 107 https://books.google.com/books?id=EWsrAPFx-88C&pg=PA107&lpg=PA107&dq=%E2%80%9COutbreaks+of+%E2%80%9Cmass+unrest,%E2%80%9C+which+sometimes+include+violent+demonstrations+against+the+government+and+its+policies,+have+increased+from+8,700+incidents+in+1998+to+over+120,000+incidents+in+2008.%E2%80%9D&source=bl&ots=ZfzOqqSgWq&sig=ACfU3U2Ea3xYhcWlsEyauS_SHoc7iMpHBQ&hl=en&sa=X&ved=2ahUKEwjr8uZruvwAhVmAZ0JHa1WArMQ6AEwAHoECAIQAw#v=onepage&q&f=false Accessed May 27, 2021

³⁷² Derek Grossman. “The Quad Is Poised to Become Openly Anti-China.” *RAND Blog*. (July 28, 2020) Soon <https://www.rand.org/blog/2020/07/the-quad-is-poised-to-become-openly-anti-china-soon.html> Accessed May 27, 2021

³⁷³ Ibid.

³⁷⁴ NISCSS, 2007 Nian Nanhai Xingshi, pp. 38–39; SOA, Zhongguo Haiyang Nianjian 2009, pp. 14, 18–19; and Liu Cigui, “Qianghua dui haiyang shiwu de guanli yu chuangxin” [Strengthen management and innovation in maritime affairs], SOA, March 29, 2011, https://www.gov.cn/gzdt/2011-03/29/content_1833868.htm. Accessed May 27, 2021

actions below the threshold of war. According to the 2008 U.S. Department of Defense (DoD) Annual Report to Congress, this meant fighting and winning local wars under conditions of informatization and building toward integrated joint operations, with stress on asymmetric warfare to “make the best use of our strong points to attack the enemy’s weak points.”³⁷⁵ China describes this new strategy as “using inferiority to defeat superiority.”³⁷⁶ In U.S. military doctrine, this strategy is regarded as “anti-access tactics.”³⁷⁷ Thanks to technology, the deniability of gray zone tactics such as cyber warfare, anti-space warfare such as jammers and directed energy weapons, and sea mine warfare driven by artificial intelligence (AI) allows China to engineer the security environment of the South China Sea and its resources without claiming responsibility, avoiding further cost, and using weapons not yet regulated by international law. Since China cannot afford the high cost of formally declaring war to protect its interests, it will find ways to fight in the shadows to keep its presence in the region and perform regular deniable coercive actions in the nine-dash line. For this period, meeting economic needs seemed to be China’s primary motivation for the renewed assertion. Economic satisfaction was the last factor to fail before China resorted to gray zone tactics.

2012 to July 2016 – China’s seizure of Scarborough Shoal, acceleration of island reclamation and development of artificial islands, and oil rig standoff with Vietnam

³⁷⁵ Department of Defense, Annual Report to Congress, p. 22

³⁷⁶ Roger Cliff, Anti-Access Measures in Chinese Defense Strategy, Testimony presented before the U.S. China Economic and Security Review Commission (January 2011), pp. 2-3

³⁷⁷ Ibid.

Symmetric balance of power: No – Compared to other Southeast Asian countries with interests in the South China Sea, China’s naval capabilities are superior.

Economic Satisfaction: No – China’s economic growth rate has been slowing down since 2014.³⁷⁸ President Xi launched the BRI over concerns that access to the sea, raw materials, and markets was vital to ensuring sustained growth of the Chinese economy.³⁷⁹ Further, there seems to be a heightened concern for the environment and conservation.³⁸⁰ However, this also increases anxiety about unemployment.

Political stability: No - A 2012 survey by the Pew Research Center’s Global Attitudes Project reported that 50% of respondents said that corrupt officials are a very big problem (up from 39% in 2008).³⁸¹ Chinese officials often identify government corruption as the greatest threat to the CCP and the state and President Xi has carried out an extensive anti-corruption campaign since taking office. However, analysts contend that government anti-corruption campaigns are mainly used to settle political scores with out-of-favor officials.³⁸²

³⁷⁸ “China economic growth slowest in 25 years.” *BBC*. (January 19, 2016) <https://www.bbc.com/news/business-35349576> Accessed May 27, 2021.

³⁷⁹ Scobell et al. p. 13

³⁸⁰ “Environmental Concerns on the Rise in China.” *Pew Research Center*. (September 19, 2013) <https://www.pewresearch.org/global/2013/09/19/environmental-concerns-on-the-rise-in-china/> Accessed May 27, 2021; Liz Carter. “Why Anxiety Is on the Rise in China.” *Atlantic*. (May 17, 2013) <https://www.theatlantic.com/china/archive/2013/05/why-anxiety-is-on-the-rise-in-china/275967/> Accessed May 27, 2021

³⁸¹ Pew Research Global Attitudes Project, Growing Concerns in China about Inequality, Corruption, October 16, 2012.

³⁸² The Washington Post, *China’s Leader, Xi Jinping, Consolidates Power with Crackdowns on Corruption, Internet*. October 3, 2013.

3rd-party threat/involvement: Yes - The U.S. mediated to diffuse tensions on the condition that both parties withdraw from Scarborough. However, after both parties withdrew, Chinese ships returned soon and remained on Scarborough since then. The U.S. also launched FONOPs in October 2015.

China's renewed assertion over the South China Sea starting in 2012 seems to have been driven by decreased economic satisfaction and climate change regulation. After all, China's seizure of Scarborough Shoal was primarily due to illegal harvesting of corals, giant clams, and overfishing. To monopolize the resources, China imposed a fishing ban in the area that remains in effect.³⁸³ The goal of developing and militarizing artificial islands function as China's security to maritime trade. The Hai Yang Shi You 981 oil rig standoff between China and Vietnam on May 4, 2014 was due to China's hydrocarbon drilling. China did not contest the Paracels since 2009, but in 2014, China moved its oil rig to the south of the Paracels and declared an exclusive zone around it. Vietnam protested China's actions immediately and sent 29 ships to disrupt the rig's construction.

Due to heightened environmental concerns, the CCP promised to pass legislation regulating pollution in 2012.³⁸⁴ Regulations came at the expense of economic growth.

³⁸³ Manuel Mogato and Julian Elona. "Philippines says fishermen still blocked from Scarborough Shoal." *Reuters* (July 15, 2016) <https://www.reuters.com/article/us-southchinasea-ruling-philippines/philippines-says-fishermen-still-blocked-from-scarborough-shoal-idUSKCN0ZV183> Accessed May 27, 2021.

³⁸⁴ Chu Long. "What the smog can't conceal." *China Dialogue*. (January 19, 2012) <https://chinadialogue.net/en/pollution/4734-what-the-smog-can-t-conceal/> Accessed May 27, 2021

Growth rate has dropped from above 10% in 2010 to below 7% sometime before 2016. Further, regulations have hurt jobs and risked mass unemployment.³⁸⁵ Thus, to compensate the loss on the mainland, China may have seen the South China Sea as another opportunity to exploit. Economic satisfaction was the last factor to fail before China renewed coercion. Third-party threats were still present, hence that category will be in the lower right quadrant of the escapement matrix in Figure 38, Appendix D.

February 2017: A Year of Reckoning

After the Tribunal ruled in favor of the Philippines in *Philippines v. China* and invalidated China's claim on disputed and artificial islands outside of China's EEZ, China took measures to partially comply with the ruling despite its refusal to participate in the proceedings formally. China's State Council statement after the tribunal's decision offered some hope.

Pending final settlement, China is also ready to make every effort with the states directly concerned to enter into provisional arrangements of a practical nature, including joint development in relevant maritime areas, in order to achieve win-win results and jointly maintain peace and stability in the South China Sea.³⁸⁶

³⁸⁵ Daniel Shane. "China takes economic hit as environment nears 'point of no return'" *CNN*. (November 27, 2017) <https://money.cnn.com/2017/11/27/news/economy/china-crackdown-pollution-economy/index.html> Accessed May 27, 2021; Wei Yao, an economist at Societe Generale said "Chinese people are very concerned about pollution, so it makes sense for the leading party to respond, What's most important to [the party] is social stability." "The pace of implementing the anti-pollution moves is the critical element," she said, warning that the government could risk mass unemployment if it moves too quickly.

³⁸⁶ "Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea," MFA of China, 12 July 2016 http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379493.shtml Accessed May 25, 2021

By including the phrase “enter into provisional arrangements,” China signals an alignment with the language of UNCLOS, Article 74, paragraph 3 and Article 83, paragraph 3.

Para 3. “Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

“Joint development” may imply that China is only contesting the disputed islands and high-tide features that the tribunal included and not the entire nine-dash line that includes international waters. As late as June 2017, China partially complied with the tribunal court’s ruling by refraining from militarily supporting illegal Chinese fishing in Indonesia’s EEZ. It permitted Philippine and Vietnamese fishermen to fish in Scarborough Shoal after blockading it in 2012. These were consistent with the tribunal’s ruling that fishermen may continue to enjoy traditional fishing rights. Beijing also did not stop or condemn Vietnam’s oil drilling project in a disputed area that China had already leased to a company.³⁸⁷

Although China’s economy seemed stable and GDP growth increased to 6.9%, it was still recovering from the significant slowdown in 2016.³⁸⁸ Nevertheless, the CCP

³⁸⁷ Lynn Kuok. “Progress in the South China Sea?” *Foreign Affairs*. (July 21, 2017) <https://www.foreignaffairs.com/articles/east-asia/2017-07-21/progress-south-china-sea> Accessed May 25, 2021.

³⁸⁸ Sara Hsu “Three Things That Weakened China's Economy In 2016.” *Forbes*. (Dec. 13, 2016) <https://www.forbes.com/sites/sarahsu/2016/12/13/three-things-that-weakened-chinas-economy-in->

praised Chinese President Xi's leadership at the 19th Party Congress in 2017.³⁸⁹ Besides taking control of the South China Sea, President Xi also cut off official contacts with Taiwanese officials when President Tsai Ing-wen of the DPP was elected. This included military incursions into Taiwan's waters and airspace.³⁹⁰ President Xi said, "our country must be reunified, and will surely be reunified."³⁹¹ During the Congress, President Xi announced the transformation of the PLA's operations and capabilities with the goal of reforming the military to "world-class forces by 2049, the 100th anniversary of the PRC's founding."³⁹² Thus, compared to the Southeast Asian countries with interests in the South China Sea. The distribution of power was asymmetrical. There also seemed to be no significant political violence before China resumed operations in the South China Sea.

What Went Wrong?

[2016/?sh=71f0cf18512f](https://www.brookings.edu/opinions/in-year-of-big-political-decisions-chinese-economy-appears-stable/) Accessed July 17, 2021; David Dollar. "In year of big political decisions, Chinese economy appears stable." *Brookings*. (April 20, 2017) <https://www.brookings.edu/opinions/in-year-of-big-political-decisions-chinese-economy-appears-stable/> Accessed May 26, 2021.

³⁸⁹ Eleanor Albert, Lindsay Maizland, and Beina Xu. "The Chinese Communist Party – Backgrounder." *Council on Foreign Relations*. (June 23, 2021) <https://www.cfr.org/background/chinese-communist-party> Accessed May 26, 2021.

³⁹⁰ David Skidmore. "Trouble on China's Periphery: The Stability-Instability Paradox." *The Diplomat*. (August 18, 2020) <https://thediplomat.com/2020/08/trouble-on-chinas-periphery-the-stability-instability-paradox/> Accessed May 26, 2021.

³⁹¹ Michael Green and Evan Medeiros. "Is Taiwan the Next Hong Kong?" *Foreign Affairs*. (July 8, 2020) https://www.foreignaffairs.com/articles/east-asia/2020-07-08/taiwan-next-hong-kong?utm_medium=newsletters&utm_source=twofa&utm_campaign=Is%20Taiwan%20the%20Next%20Hong%20Kong?&utm_content=20200710&utm_term=FA%20This%20Week%20-%2020112017 Accessed May 26, 2021.

³⁹² Joel Wuthnow and Phillip C. Saunders, "Chairman Xi Remakes the PLA," pp. 1-3.

China was cautiously walking a tightrope between trade sanctions and increased U.S. military opposition in the South China Sea. Either way, China's actions would damage the prospect of long-term economic partnerships with smaller states targeted by the BRI. It would also demonstrate an incapacity to lead a rule-based international order should China not comply with the rulings. As noted in Chapter 1, the U.S. has been conducting FONOPs in the region since 2015 to keep sea lanes accessible, suggesting that China recognized the diplomatic cost of completely ignoring the ruling. However, in late July 2017, the conflict took a downturn. China accused the US of stirring up trouble with FONOPs.³⁹³ China used this to justify its stronger assertion of claims in the South China Sea, but the U.S. has been conducting FONOPs in the area since 2015. What was different now that would prompt Beijing to act more aggressively?

Perhaps confusion and mixed signals from U.S. President Trump's administration could have prompted Beijing to assert more control over the disputed islands. Testifying before the Senate Foreign Relations Committee on January 11, 2017, former Secretary of State Rex Tillerson said, "We're going to have to send China a clear signal that, first, the island building stops and, second, your [China's] access to those islands also is not going to be allowed."³⁹⁴ Similarly, on January 23, former White House spokesman Sean Spicer said, "The U.S. is going to make sure that we protect our interests there," referring to the

³⁹³ "China Accuses U.S. Warship of 'Provocation' in South China Sea" *Reuters*. (July 3, 2017) <https://www.nbcnews.com/news/world/china-accuses-u-s-warship-provocation-south-china-sea-n779221> Accessed May 25, 2021.

³⁹⁴ David Brunnstrom, Matt Spetalnick. "Tillerson says China should be barred from South China Sea islands." *Reuters*. (January 11, 2017) <https://www.reuters.com/article/us-congress-tillerson-china/tillerson-says-china-should-be-barred-from-south-china-sea-islands-idUSKBN14V2KZ> Accessed May 25, 2021.

South China Sea.³⁹⁵ However, Trump ordered FONOPs to stop as soon as he took office.³⁹⁶ America's withdrawal from the region was consistent with Trump's agenda of "America First" since it gave the impression to Trump's base that America does not have obligations overseas.

From January to May of 2017, no FONOPs were conducted. The decision not to challenge China's territorial claims represents a remarkable deference toward Beijing from an administration increasingly turning towards President Xi Jinping for help in pressuring North Korea.³⁹⁷ With North Korea escalating provocative behavior and launching nine missile tests since President Trump came into office, his administration adopted a more conciliatory tone with China and the suspension of FONOPs in exchange for more pressure on North Korea.

China saw the absence of FONOPs and President Trump's relaxed attitude towards the South China Sea as opportunities to advance the militarization of the disputed islands. Aerial imagery from mid to late 2017 shows that China deployed anti-ship cruise missiles, surface-to-air missiles and electronic jammers to the Spratly Islands:

³⁹⁵ "U.S. says will prevent China taking over territory in international waters." *Reuters*. (January 23, 2017) <https://www.reuters.com/article/usa-china-southchinasea/u-s-says-will-prevent-china-taking-over-territory-in-international-waters-idUSW1N1DW01D> Accessed May 25, 2021.

³⁹⁶ Helene Cooper. "Trump's Turn Toward China Curtails Navy Patrols in Disputed Zones." *New York Times*. (May 2, 2017) <https://www.nytimes.com/2017/05/02/world/asia/navy-south-china-sea.html> Accessed May 25, 2021.

³⁹⁷ "Zerstörer auf heikler Fahrt." *Frankfurter Allgemeine Zeitung*. (July 17, 2021) <https://www.faz.net/aktuell/politik/von-trump-zu-biden/nordkorea-konflikt-amerika-uebt-mit-marinemanoever-druck-auf-china-aus-15147257.html> Accessed May 25, 2021

Fiery Cross Reef, Subi Reef, and Mischief Reef.³⁹⁸ This included improvements suggesting a communications and intelligence gathering center for Chinese forces in the area.

Without U.S. support, the countries increased their military capabilities and turned to self-help.³⁹⁹ Its absence in the region failed to check China's aggressive push in the South China Sea. FONOPs send the important message that countries care about a maintained open South China Sea and rules matter. Trump finally resumed FONOPs in late May 2017, but by then, China had already significantly increased its presence in the region and further militarized its artificial islands.⁴⁰⁰ Trump tried to compensate by increasing FONOPs and reportedly hit a record high in 2019.⁴⁰¹

³⁹⁸ "A Constructive Year for Chinese Base Building." *CSIS*. (December 14, 2017) <https://amti.csis.org/constructive-year-chinese-building/> Accessed May 25, 2021; Based on a comparison of aerial imagery taken in 2016 and 2017, China significantly accelerated militarizing the islands, building underground storage areas, and setting up large radar and sensor arrays for reconnaissance purposes.

³⁹⁹ Trump's mixed signals also fed uncertainty to key allies in the region. In Taiwan, officials worried that the Trump administration may delay arms sales, including a sales pitch for F-35 stealth fighter jets, for fear of inflaming tensions with China. In early May, Japan sent their biggest naval force into the region since World War II. There were also discussions for a joint Australian-Indonesian patrol in the region. The uncertainty coming from the Trump administration resulted into a security dilemma for the affected countries. Franz-Stefan Gady. "Taiwan Pushes For Sale of F-35 Fighter Jets." *The Diplomat*. (May 3, 2017) <https://thediplomat.com/2017/05/taiwan-pushes-for-sale-of-f-35-fighter-jets/> Accessed May 26, 2021; "South China Sea: bringing power to bear." *IISS*. (June 5, 2018) <https://www.iiss.org/blogs/analysis/2018/06/south-china-sea-power> Accessed May 26, 2021.

⁴⁰⁰ Idrees Ali and David Brunnstrom. "U.S. warship drill meant to defy China's claim over artificial island: officials." *Reuters*. (May 24, 2017) <https://www.reuters.com/article/us-usa-southchinasea-navy/u-s-warship-drill-meant-to-defy-chinas-claim-over-artificial-island-officials-idUSKBN18K353> Accessed May 26, 2021.

⁴⁰¹ John Power. "US freedom of navigation patrols in South China Sea hit record high in 2019." *South China Morning Post*. (February 5, 2020) <https://www.scmp.com/week-asia/politics/article/3048967/us-freedom-navigation-patrols-south-china-sea-hit-record-high> Accessed May 26, 2021; However, reining in Beijing may be too late prompting Alexander Huang, a strategic studies professor at Tamkang University in Taiwan to say "I think the United States is already very late in terms of showing their interest and determination to maintain its presence in the South China Sea... The reality is that the United States did not

A comparison of Beijing's behavior in the first and second years after the tribunal's ruling suggests that it responds to coordinated pressure to abide by international law and takes advantage at times when the world looks away. As a great power, the U.S. should spearhead regional and international efforts to insist that Beijing comply with international law. In this case, where political stability is still present, the third-party threats quadrant is the last factor to fail before deviating from its initial strategy.

This chapter has shown that domestic factors play a significant role in China's hawkish foreign policy. The significant breaking points in China's assertion of jurisdiction in the South China Sea correlated to political and economic challenges at home. Although China has displayed forms of nationalism in the past, today's resurgence of nationalism is consequential because China is now a global player with an advanced military. It now has the capability to shape global affairs to align with its ambitions and alter important relations with ASEAN and the U.S. However, China's response to its domestic challenges carries with it Chinese characteristics that are determined by the CCP and challenges the U.S.-led liberal international order. What would China's likely strategy be moving forward? How will China's grand strategy likely impact the U.S. and what can the U.S. do to mitigate it? Using the four factors in the "escapement"

do enough in terms of stopping China's land reclamation and occupation or militarization of the South China Sea artificial islands." Quoted in Ralph Jennings "Why Trump Has Gotten Extra Tough in Monitoring China at Sea" article <https://www.voanews.com/east-asia/why-trump-has-gotten-extra-tough-monitoring-china-sea> (June 21, 2019) Accessed May 26, 2021.

framework, the next chapter will forecast China's four possible strategies and recommend a two-level foreign policy strategy for the U.S.

CHAPTER FOUR: Strategic Forecasting and Recommendations for U.S. Foreign Policy

I proposed a framework in Chapter 3 isolating four factors that would persuade a state to shape its initial strategy: symmetric distribution of power, economic satisfaction, third-party threats, and political stability. The hypothesis was that the likelihood of a state to “escape” the matrix or shift the equilibrium increases when at least three of the four factors are not present. These factors influence the way a state may shape its strategy.

The same framework will be used in Chapter 4 to identify which two factors would drive China's strategy in the South China Sea on the basis of analysis of China's historical behavior. From this analysis, four scenarios will be designed to aid in forecasting China's likely strategy in the next ten to fifteen years. These scenarios will be based on trends analysis. There will be a discussion on how China's grand strategy could impact U.S. foreign policy. The chapter will end with discussions on whether or not the U.S. should join UNCLOS based on China's likely strategy. At the end of the chapter, there will be recommendations for U.S. foreign policy. The recommendations will consider compromises of any kind the U.S. and ASEAN states can propose to the Chinese to pursue a Code of Conduct in the South China Sea.

What the Future Holds for the South China Sea: Four Possible Scenarios

Using the framework in Chapter 3, I created four differentiated scenarios exploring the changing geopolitical landscape for states with interests in the South China Sea. Each scenario was informed using trends analysis to find high-impact drivers and their implications. This included reviews of Congressional testimonies from former U.S. Indo-Pacific (INDOPACOM) Commander, Admiral Philip S. Davidson, the U.S. State Department's (DoS) Indo-Pacific Strategy published on November 4, 2019, the U.S. Department of Defense's (DoD) Indo-Pacific Strategy Report published on June 1, 2019, the DoD's Pacific Deterrence Initiative (PDI) published in May 2021, and the Office of Director of National Intelligence's (ODNI) *Global Trends 2040* report. Horizon scanning open-source materials on the internet and social media to understand China's perspective and ambitions in the region was also used in the process. Intellectual sources of China's conduct such as the CCP's views on political significance of opinion, culture, and tradition, and the links between the "Go" board game, Sun Tzu's *Art of War*, and current Chinese strategy were also considered to understand China's ideologies.

Each scenario suggests that the South China Sea will play a more important role in the future. The resources and geography the South China Sea offers will be crucial for the development of Southeast Asian nations and the preservation of a free, open, and rules-based international order in the Indo-Pacific.

Figure 8 shows the indicators and drivers used for each axis. Since the DoD and DoS documents that were reviewed mainly focused on China's increasing military capabilities as well as economic and demographic challenges, I will focus on these indicators because they seem to be high-impact and high-risk factors. The economic axis

considers China’s uneven development, economic contraction, and fragility. For the symmetrical distribution of power axis, I chose indicators that may affect China’s ability to alter the distribution discreetly by leveraging its advanced cyber and military technological capabilities. Although the U.S. and China have built a relationship of competitive coexistence by prioritizing economic interdependence and avoiding the risk of a major war, would gray zone operations such as offensive cyber capabilities, unmanned vehicles, and covert special forces change the power dynamics? Would these operations create geopolitical friction between China and the U.S. and violate economic interdependence? The scenarios show that advancements in military technology could potentially create more asymmetry and cause more conflict.

Variables Across Scenarios

X: Economic Satisfaction	Y: Symmetrical Distribution of Power
<ul style="list-style-type: none"> • GDP growth • Inequality • Environment • Demographics 	<ul style="list-style-type: none"> • Missile systems and Hypersonics • Cyber capabilities and weaponized emerging technologies • Naval, Aviation, and Space capabilities • Special forces

Figure 8. Scenario Axes

To generate the four scenarios, the variables in Figure 1 form the X and Y axes of the deductive model in Figure 2. On the X axis, + or – for economic satisfaction is interpreted as increased (+) economic satisfaction and decreased (-) economic satisfaction. On the Y axis, + or – for symmetrical distribution of power is interpreted as

increased (+) symmetry and decreased (-) symmetry or increased asymmetrical distribution. Pictures and labels are used for easy reference.⁴⁰²



Figure 9. Scenario 2x2 Matrix

Each scenario is named for easy reference and to provide a bumper sticker summary of the possible implications. These labels were taken from a poem by Cao Cao entitled “Viewing the Ocean.” Cao Cao was a Chinese statesman and poet who rose to power during the final years of the Eastern Han dynasty around 200 CE. The poem is copied below in its entirety.

⁴⁰² Credits for pictures: "South China Sea" by angela7dreams is licensed with CC BY-NC 2.0. To view a copy of this license, visit <https://creativecommons.org/licenses/by-nc/2.0/> ; "Big Wave" by puliarf is licensed with CC BY 2.0. To view a copy of this license, visit <https://creativecommons.org/licenses/by/2.0/> ; "The lonely pier" by Chad McDonald is licensed with CC BY-ND 2.0. To view a copy of this license, visit <https://creativecommons.org/licenses/by-nd/2.0/>; "Carry On" by tipiro is licensed with CC BY 2.0. To view a copy of this license, visit <https://creativecommons.org/licenses/by/2.0/>

*East, looking down from the Jieshi,
 I scan the endless ocean:
 waters restlessly seething,
 mountain islands jutting up,
 trees growing in clusters,
 a hundred grasses, rich and lush.
 The autumn wind shrills and sighs,
 great waves churn and leap skyward.
 The sun and moon in their journeying
 seem to rise from its [the ocean's] midst,
 stars and Milky Way, brightly gleaming,
 seem to emerge from its depths.
 How great is my delight!
 I sing of it in this song. (translation by Burton Watson)⁴⁰³*

The upper right-hand corner (“Scan the Endless Ocean”) is a scenario where China and the U.S. will prioritize economic interdependence and strengthen trade relations. While both countries will still compete over political influence in Southeast Asia, the South China Sea dispute will be manageable and China will find it beneficial to negotiate a Code of Conduct with ASEAN. The lower left-hand corner (“Great Waves Churn and Leap Skyward”) is a directionless and volatile scenario. This is the worst-case scenario. International rules will no longer be followed and China will aggressively move to seal the Luzon Strait, declare the nine-dash line as its own territorial waters, and eventually annex Taiwan. The upper left-hand corner (“The Autumn Wind Shrills and Sighs”) considers the implications of increasing the symmetry between U.S. and China military capabilities while China’s economic satisfaction decreases. In this scenario, China will

⁴⁰³ Fang Zhaoling. “Viewing the Ocean (Guan cang hai), a poem by Cao Cao.” Ink on paper. 1985. Asian Art Museum Chong-Moon Lee Center for Asian Art and Culture.
<http://onlinecollection.asianart.org/view/objects/asitem/Objects@16057/44/titleSort-asc;jsessionid=80D6418BE66E1ED174F6E615E1E25DDD?t:state:flow=7c060d03-9b3b-4d53-838f-c1aef0bac602> Accessed June 15, 2021.

isolate its economy to avoid future supply chain disruptions. Demographic challenges will feed into China's shrinking economy. To keep social unrest from spreading, China will be forced to crack down aggressively on internal security. Although China will be busy with domestic issues, it will use the South China Sea dispute as a way to divert attention away from weaknesses at home. The lower right-hand corner ("A Hundred Grasses Rich and Lush") is a scenario in which China will achieve most national strategies and plans, but not all of its mid-century goals. Among its goals not achieved is the annexation of Taiwan. Chinese leadership will find conciliatory and cooperative policies as best serving the national interest and the South China Sea Code of Conduct will include stipulations on how to best mitigate environmental damage. China's cyber and emerging technologies will focus on mitigating environmental issues. China and the U.S. will bilaterally agree on a cyber mitigation strategy to prevent the disruption of supply chains necessary for access to resources.

Since China finds the South China Sea an important resource to support its economy and political stability as shown in Chapter 1, economic satisfaction will only be examined from China's perspective. According to Admiral Davidson's testimony, U.S. allies and partners in the region are looking for the surety that the U.S. will be a reliable partner to balance China in the South China Sea.⁴⁰⁴ Thus, the symmetrical distribution of power will be a comparison between China and the U.S. It should be noted that the U.S. can no longer rely on its conventional military strength to perform coercive diplomacy or retributive actions to defend the South China Sea against unconventional threats from

⁴⁰⁴ ADM Davidson (Senate hearing); However, he cautions that the reality is that the conventional military balance of power in the Indo-Pacific is getting worse, not better.

China. China has been working within the confines of gray zone operations. Considering all the variables in Figure 8, I now put them together to create narratives for each scenario for China by 2035.

China and the South China Sea: Four Scenarios for 2035

Scenario 1: Scan the Endless Ocean

Increase in economic satisfaction and balance of power

Symmetric balance of power: Yes

Economic Satisfaction: Yes

Political stability: Yes

3rd-party threat/involvement: Yes

Economy

Productivity and economic development will increase for both the U.S. and China. China will surpass the U.S. to become the world's largest economy in terms of GDP by 2030. Both countries will prioritize economic interdependence and competition over strategic advantage. Trade will be prioritized over disputes and China will find negotiating a Code of Conduct in the South China Sea to its benefit.

Inequality may decrease depending on the rate of distribution of advanced technology and education to rural China. This would include developing agribusinesses in the rural areas. It may also come at the cost of relocating rural populations with agricultural businesses to urban areas for manufacturing. Since shifting the economy from agriculture to manufacturing industries suddenly may increase inequality, China

will relocate fishers to take over agricultural production to compensate and dampen the impact.⁴⁰⁵

Advances in renewable energy generation and storage and in carbon capture technologies will dampen the growth of emissions, but not fast enough to prevent catastrophic impacts. Climate challenges have been partly put aside in favor of short-term economic gains. However, technology and innovation will increase options for renewable energy solutions.

Fertility will increase as economic satisfaction increases. However, the replacement will not be fast enough to mitigate the shrinking labor force by 1% a year to 2035. Although income increases, labor shortage will force China to outsource or encourage domestic and foreign migrants to address the labor shortage. As long as the Chinese government can deliver economic satisfaction and guarantee job security among its citizens, political stability will be maintained.

Military capabilities

In the short term, China and the U.S. will practice deterrence by denial to show each side that the cost to take aggressive action against one another is too high. The U.S. will maintain the momentum of the PDI as China continues to militarize the region. The U.S. will match China's capabilities by developing an agile and lethal Joint Force in the first and second island chains, establishing a network of compatible and interoperable allies in Southeast Asia, and regaining positional advantages by distributing capabilities

⁴⁰⁵ Kuznets argued that economies that shift from agriculture to manufacturing, or from rural to urban, tend to experience rising inequality.

in the Indo-Pacific. Once China's economic slowdown begins to impact economic satisfaction, China will turn towards trade to stimulate the economy. Thus, in the long run, there would be a decreased incentive to invest and deploy missile systems as China tries to persuade the international community that it respects freedom of navigation in the South China Sea. China and the U.S. would de-escalate the region, cooperate on arms control, and refrain from pursuing aggressive behavior as a policy of renewed interest in economic interdependence flourishes. China will remain assertive, but the economic benefits it receives from trade with the U.S. and its Southeast Asian allies will contain China's ambitions for revisionism and aggression. The U.S., China, and Southeast Asian countries will cooperate to mitigate disruption of economic interdependence.

Although strengthened economic interdependence lowers the risk of an all-out war, China will leverage its advanced cyber capabilities for corporate espionage and other means to maintain a competitive edge without risking a destructive war.

Chinese and U.S. companies will expand their roles to maintain space systems. They will cooperate on Earth observation satellites to monitor climate change and invest in space lift capabilities. Deterrence will be determined by monitoring and left-of-launch capabilities to disable opponent's missiles immediately after launch. China's Air and Naval innovation will take cues from U.S. military innovation. China and the U.S. will cooperate on using autonomous underwater vehicles to avoid navigational collisions with cargo ships.

China will scale down military equipment in the Paracels and replace them with Jiaolong special forces and amphibious equipment to keep Taiwan and Pratas in check. To ensure domestic control and eliminate possible pockets of resistance within China,

Xuefeng special forces from Xinjiang and Tibet will be used to suppress protests brought by ethnic resentment of internal migration. However, there will be economic satisfaction for a majority of the Chinese population.

Scenario 2: Great Waves Churn and Leap Skyward

Decrease in economic satisfaction and balance of power

Symmetric balance of power: No

Economic Satisfaction: No

Political stability: No

3rd-party threat/involvement: Yes

Economy

Productivity and economic development will decrease. The majority of China's income will be spent on military expenditure and investing in AI technology and unmanned aerial or naval vehicles. China will use military coercion to settle the South China Sea and stabilize political legitimacy in the face of lower economic satisfaction.

Inequality will rapidly increase and force China's leadership with a choice between oligarchy or autocracy.⁴⁰⁶ To keep social unrest from breaking out, China will choose autocracy. The narrow circle of top CCP and government officials will pursue an aggressive information campaign to secure its legitimacy. China will experience a surge

⁴⁰⁶ Milanovic, Branko. "China's Inequality Will Lead It to a Stark Choice." *Foreign Affairs*. February 11, 2021. <https://www.foreignaffairs.com/articles/china/2021-02-11/chinas-inequality-will-lead-it-stark-choice> Accessed July 17, 2021.

of popular protests against rising inflation. Widespread corruption among local officials and worsening unemployment in one provincial capital spread to cities across China. This scenario will be similar to the Cultural Revolution in which China will witness widespread social and political upheaval.

China will experience many of the same environmental and societal problems, but the government will attempt to use its power to create stronger social cohesion and trust, agile direction from centralized authority, and ability to repress competing voices in an effort to mitigate political instability. However, poor health quality and wellbeing will contract the economy and people will protest against the government for its inability to provide basic needs. There will be critical water shortages especially in northern China. Famine will contribute to economic failure and increase in sociopolitical instability. Thus, China will secure resources in the South China Sea for itself as demand for food increases at home. China's move to deny access to any country trying to access the South China Sea will also be a prestige strategy for the CCP.

The decline in fertility from its population planning policies will halt the growth of its labor force. It will further burden labor force growth with a doubling of its population over 65 during the next two decades to about 350 million. This doubling is projected to be the largest by far of any country.⁴⁰⁷ China will hit a middle-income trap by the 2030s, which may challenge domestic stability and prompt internal security forces to tighten their grip on society.

⁴⁰⁷ Global Trends, p. 29

To dampen the impact of its economic and demographic challenges, China will try to shape international law by spreading its influence and acquiring allies. To acquire allies, China will accelerate the development of the BRI and launch more infrastructure development programs in the developing world. It will try to shape international law and set technology standards to fit with its agenda. Although governments of developing countries will enjoy the profit from China's market and assistance such as surveillance and security technology, only a few will want to live under a Chinese-led international order.

Military capabilities

With a decreased incentive to preserve economic interdependence, China's main goal would be to choke the Luzon Strait and control shipping and communications passing through the South China Sea and telephony services connecting Hong Kong, Taiwan, Japan, and South Korea.⁴⁰⁸ Given its weak economy, the CCP will pursue a "prestige strategy" to keep its legitimacy. It will include the annexation of Taiwan and the declaration of the nine-dash line as its territorial waters.

China will increase investment in hypersonic missiles. China's military leadership will see this technology as an important element of its regional warfighting strategy and

⁴⁰⁸ Donald Greenlees and Wayne Arnold. "Asia scrambles to restore communications after quake – Business – International Herald Tribune." *New York Times*. December 28, 2006. <https://www.nytimes.com/2006/12/28/business/worldbusiness/28iht-connect.4042439.html> Accessed July 17, 2021; Most submarine cables providing data and telephony services to Hong Kong, Taiwan, Japan, and South Korea are located in the Luzon Strait.

possibly its strategic deterrent. More Chinese anti-ship missiles (DF-21D) will be deployed on the mainland and the artificial islands.

China will increasingly cyberattack communications to disrupt the U.S. network with regional allies before deploying small amphibious vessels to secure remaining islands in the nine-dash line claimed by other Southeast Asian countries. Underwater quantum communications and AI will support unmanned underwater vehicles and the use of directed energy weapons to disable communications and sensitive monitoring instruments will increase. In this scenario, weakened international rules of behavior, lack of multilateral cooperation, and technology will fail to provide solutions.

China will deploy anti-ship YJ-12 supersonic weapons on 5th generation stealth fighters such as the J-20. The RENHAI guided-missile cruiser and the LUYANG III MOD guided-missile destroyer will provide China's PLAN greater maneuverability and flexibility to perform a diverse set of missions, ranging from littoral warfare to far-seas operations. By 2025, China will have a 3:1 ratio of aircraft carriers compared to the U.S. while the ratio for amphibious assault ships will be 6:2. Space capabilities will include intelligence, surveillance, and reconnaissance (ISR). More satellites will be deployed to pursue counter-space technologies such as satellite jammers and directed energy and direct-ascent kinetic weapons. The U.S. will respond by trying to match these threats. It will deploy long-range ground-based precision fires to Guam and enhance the Guam Defense System with naval and land missile defense systems such as the MK-41 VLS, Aegis Ashore, and SM3/SM6 missile systems. The new U.S. warfighting architecture that integrates maritime, land, air, cyber, and space capabilities will not deter China. China will first use cyber and directed energy weapons to disable U.S. monitoring assets and

then use autonomous torpedoes launched from unmanned underwater vehicles to sink U.S. navy ships. The cost to undermine international law will be low for China as it seeks domestic political legitimacy and economic satisfaction. Both countries will be in a security dilemma.

Jiaolong special forces will focus to fight short wars against regional adversaries while having a technological advantage. China will increase investment in amphibious landing operations to invade Taiwan and the Pratas Island. After calculating that it would take weeks before the U.S. or another power to position combat assets to counter a Chinese attack on Taiwan, Chinese amphibious forces will surround the island rapidly by using swarm tactics Drone swarms will be used to degrade Taiwanese air-defense systems.⁴⁰⁹ The sudden appearance of Chinese special forces off Taiwan's coast will take the Taiwan and the U.S. by surprise and force the Legislative Yuan, Taiwan's governing body, to dissolve and acquiesce to China's demands for annexation. By achieving its objectives without firing a shot, China will stay true to Sun Tzu's doctrine: *The supreme art of war is to subdue your enemy without fighting.*

Scenario 3: *The Autumn Wind Shrills and Sighs*

Decrease in economic satisfaction and increase in balance of power

⁴⁰⁹ Franz-Stefan Gady. "How Chinese Unmanned Platforms Could Degrade Taiwan's Air Defense and Disable a US Navy Carrier." *The Diplomat*. (June 8, 2021) <https://thediplomat.com/2021/06/how-chinese-unmanned-platforms-could-degrade-taiwans-air-defense-and-disable-a-us-navy-carrier/> Accessed July 17, 2021.

Symmetric balance of power: Yes

Economic Satisfaction: No

Political stability: No

3rd-party threat/involvement: Yes

Economy

GDP will decrease due to a decrease in market competition. Limited resources and market access are going to be hit hard as both import and export markets dry up. Economic stagnation will foster widespread insecurity prompting domestic security forces to increase their counter-terrorism efforts. There will be friction between the CCP and ethnic minorities, fueling a struggle among ethnic and religious identities, strained societies, fragmented states, and spreading instability.

Trade and economic interdependence will be disrupted, and China's economy will isolate to dampen the impact of future supply disruptions. However, this would also contribute to massive financial losses and inefficiency.

Inequality will slowly increase, and a slower industrial output will occur as the income gap between rural areas and cities widen.

In the short run, there will be an increase in illegal mining jobs in the South China Sea driven by increased efficiency in exploiting natural resources for export. It will lead to environmental damage and a growing number of climate refugees. Given the symmetrical distribution of power, China will scale down its dredging operations. However, it will cyberattack U.S. and allies monitoring instruments to disrupt observation and take advantage of the time to accelerate harvesting of resources. In this

scenario, there will be a lack of coordinated multilateral efforts to mitigate emissions and address climate-sensitive issues.

New waves of ethnic migrants will head to cities hoping to escape extreme poverty and increasingly harsh environmental conditions. However, their hopes are crushed when the government ultimately fails to deliver jobs and opportunities and instead becomes increasingly techno-authoritarian to deter crime and suppress political dissidents. Migration to cities will put a strain on the welfare system which will create an increased demand of resources from the government.

Military Capabilities

China will accelerate missile systems programs to maintain a military edge in the region. However, the U.S. will have a first-mover advantage as it first deploys a 360-degree air and missile defense capability to complement existing weapons of the Guam Defense System. Show of force will primarily be used to contest scarce resources such as in the South China Sea, Arctic, and space. Since China will be more focused on internal security, it will avoid direct armed conflict in the South China Sea. Although rivalry will be based on a competition for scarce resources, flash points of conflict will decrease. Chinese threats to attack U.S. or Southeast Asian assets in the South China Sea will mainly be used to divert attention from domestic problems and rally public support for the CCP's legitimacy.

In the short run, China will use its cyber advantage to disrupt the U.S. network with allies. Since China will focus more on domestic security, advances in technology will be used to improve surveillance within China's borders rather than for coercive

means against the U.S. and its allies. The CCP will increasingly become more authoritarian and use technology to sow confusion, ignorance, prejudice, and chaos, thereby facilitating manipulation and undermining accountability. While China cannot directly confront U.S. naval assets in the Indo-Pacific, its main goal would be to aggressively propagate a disinformation campaign about their historic rights to the South China Sea.

China will focus on military technology capable of enhancing speed such as AI as well as deploy more conventional and nuclear hypersonic weapons. To maintain a strategic advantage and gain political objectives, China will shift its strategy towards surprise disruptive attacks on its adversaries using outer space assets and intensify gray zone competition to create asymmetry.

Working with the Chinese Coast Guard, the Chinese Jiaolong special forces will continue to seek asserting China's hold over its militarized assets in the South China Sea. Since China's economy will be isolated, choking the Luzon Strait would cost less. The Jiaolong will routinely monitor this Strait to provoke Taiwan. The purpose would be to create a nationalistic narrative to unify China's population against a perceived enemy threat.

Scenario 4: *A Hundred Grasses, Rich and Lush*

Increase in economic satisfaction and decrease in balance of power

Symmetric balance of power: No

Economic Satisfaction: Yes

Political stability: Yes

3rd-party threat/involvement: Yes

Economy

By 2030, China will successfully surpass the U.S. economy and become the world's largest economy. U.S. and China will prioritize economic interdependence and competition over strategic advantage, and China will find negotiating a Code of Conduct in the South China Sea to its benefit. China will achieve most national strategies and plans, but not all of its mid-century goals. While China has become the world's largest economy, it continues to lag slightly behind the U.S. in technology and innovation.

Despite the periodic economic challenges, the CCP's reputation as a legitimate government will stand the test of time with its proven ability to deliver jobs, goods, and services. The CCP will show that by delivering a growing economy, public health, and safety, it can tolerate slight traces of political dissent without losing social trust and endangering political stability. China's massive middle class will largely be quiescent now. However, Chinese leadership will tread cautiously because an economic slowdown could change this.

Inequality may slowly decrease as more rural Chinese migrate to cities. Although there will be small pockets of localized unrest due to rural-urban inequality, Tibet, Xinjiang, and Hong Kong will maintain relative social stability.

China's large corporations will concentrate on advancing technological solutions to food, climate, and health challenges. This will open opportunities for the CCP to collaborate with progressive European political parties. China will lead in exploiting new

energy technologies. With a rising economy, China will find it less costly to seek alliances with populations hardest hit by climate change and expand its BRI network. Global priorities will take precedence over national interests, and the South China Sea Code of Conduct will include stipulations on how to mitigate environmental damage effectively.

Fertility will increase as economic satisfaction increases. However, this will be a steep climb. China's shrinking workforce, rapidly aging population, and internal migration from rural to urban will raise concerns about the future sustainability of the basic urban pension fund. If the total spending will start to exceed contributions in 2028, reserves will then decline exponentially, leading to a full depletion of the fund by 2035. The economic pressures created by the decline in China's working-age population and the increase in aging cohorts have been mitigated by bringing in guest workers from Southeast Asia.

Military capabilities

To sustain economic satisfaction, there would be a decreased incentive to increase deployment of military assets to the South China Sea in exchange for more commercial trade to pass through these waters. China will persuade the U.S. to give up FONOPs in exchange for pressure on North Korea and restarting negotiations on the South China Sea Code of Conduct. The U.S. will give up FONOPs hoping that this move will incentivize China to loosen its grip in the South China Sea. However, the U.S. will still operate behind the scenes by encouraging Southeast Asian allies to assume responsibility of FONOPs. Instead, the interoperable military equipment between the U.S. and its allies as

well as the strong U.S. defense network in the Indo-Pacific will provide a credible third-party deterrent. Given the third-party threat in the region, China will keep its militarized islands in the South China Sea, but it will refrain from taking drastic actions such as claiming the nine-dash line as its territorial waters. Missile systems will continue to be a reminder of China's ambitions, but trade will flourish under the shadow of China's threat to impede the freedom of navigation.

China's cyber and emerging technologies will focus on mitigating environmental issues. China and the U.S. will bilaterally agree on a cyber mitigation strategy to prevent the disruption of supply chains necessary for access to resources. Both countries will realize that a cyberattack will cost significant losses in revenue and disrupt the economic interdependent relationship.

Although China will be the dominant military force in the Indo-Pacific, the military will have to develop its capabilities to reach parity with the U.S. China will use its economic success as leverage for all of Asia-Pacific, except India, to accept China as the primary guarantor of regional security and the core engine of regional economic dynamism. In this scenario, India's military has also modernized and possesses improved naval capabilities, especially in the Indian Ocean. As it prioritizes economic interdependence, China will loosen its hold on the South China Sea. Instead, it will project power by mining in space and on the moon. This will include extracting Helium-3 and lithium to sustain its renewable energy investments in batteries and nuclear power.

Anticipating the centenary of the PRC's founding in the next fifteen years, Beijing will remain disappointed that the Taiwan unification remains unresolved in 2035. Although China will maintain good relationships with Taiwan, Jiaolong special forces

will covertly stand ready in the Paracels. It will use speed to create an asymmetrical advantage against Taiwan if Beijing's Politburo Standing Committee decides to use a military solution. The Jiaolong's strategy will hold true to Sun Tzu's teaching: *Let your plans be dark and impenetrable as night, and when you move, fall like a thunderbolt.*

Based on the escapement framework, listed below each scenario, the first scenario is the strongest. The second scenario is the weakest among the four scenarios and the equilibrium is more likely to escape. This is followed by the third scenario which is slightly more stable since there is symmetry in the distribution of power between China and the U.S. along with its Southeast Asian countries. The equilibrium in the fourth scenario is more stable and there is rich potential for both countries to cooperate.

China's Grand Strategy

According to China's 2019 "China and the World in the New Era," a white paper published by the State Council Information Office, China's goal is to have a persistence of peace and development, a shifting balance of global power, the deepening of economic globalization, a changing mode of global governance, and trends toward multipolarity.⁴¹⁰ These observations were echoed during the CCP's 19th Party Congress in 2017. The Congress report said that "peace and development" had become "irreversible trends."⁴¹¹ These initiatives are fundamental to the "China Dream" advocated by President Xi during

⁴¹⁰ State Council Information Office, "China and the World in the New Era," white paper, September 27, 2019. cited in RAND "China's Quest for Global Primacy" (2021), p. 24

⁴¹¹ Cui Can. "9th Beijing Xiangshan Forum opens." (Oct. 21, 2019) http://www.china.org.cn/china/2019-10/21/content_75323743.htm Accessed June 16, 2021.

the 19th Party Congress. “China Dream” aims to increase Chinese standard of living and launch China into a wealthy, prosperous power under CCP leadership by the centennial anniversary of the founding of the PRC in 2049.⁴¹² However, in light of China’s upcoming challenges, countertrends such as China’s slower growth will make it harder for China to achieve its goals.

Based on the discussion in Chapter 3, China’s potential to succeed and ensure steady growth, stability, and security of its interests will depend on economic satisfaction and political order. Although China’s grand strategy is to have a persistent presence of peace and development, Chinese cyber forces’ main objective would be to erode the U.S.-led network of allies in the Indo-Pacific by disrupting communications and compromising intellectual property from U.S. defense industries and research institutions. If China sees the benefit to pursue a strategy of cyber brinksmanship, China’s goal would be to weaken U.S. capabilities while building a technologically superior force. The goal would be to turn scenario two in favor of China and persuade the U.S. to reconsider its commitments in the Indo-Pacific. China’s goal is to cut off Southeast Asian countries especially Taiwan from U.S. support so that the U.S. will lose regional allies.

China cannot afford to directly coerce the U.S. into armed conflict. It will pursue strategic advantage while avoiding armed conflict. To lower the cost while protecting its interests, China will engage in consolidating Chinese control over disputed regions and extending Beijing’s influence.⁴¹³ As the balance of power becomes more asymmetric,

⁴¹² *Xinhua*, “Full Text of Xi Jinping’s Report at 19th CPC National Congress” (November 3, 2017) http://www.xinhuanet.com/english/special/2017-11/03/c_136725942.htm Accessed June 16, 2021.

⁴¹³ *Ibid.* p. 157

China will then pursue a strategy to remove the U.S. as a credible third-party threat. As outlined in the RAND Report “China’s Quest for Global Primacy,” China will move in three ways related to the South China Sea to reduce U.S. influence.⁴¹⁴ First, China will deter the U.S. military from operations threatening CCP rule by developing cyber capabilities to disrupt U.S. political and economic systems. Second, China will deter the U.S. military from intervening in any contingency in the first island chain. China will do this by fielding cyber and directed energy weapons to disable U.S. naval and air interventions and developing superior amphibious capabilities to seal off the Luzon Strait and ward off any U.S. attempts to help Taiwan. China will aggressively propagate a disinformation campaign by asserting its historic rights to the South China Sea while smearing the U.S. as an incompetent ally to lure Southeast Asian countries away from the U.S. Third, China will also develop credible deterrence capabilities in nuclear, space, and cyber domains.

According to the RAND report, China’s strategy against U.S. competition will rest on four points as described in China’s defense white paper published in 2019, “China’s National Defense in the New Era.”⁴¹⁵ All four points target the erosion of bilateral relationships between the U.S. and its regional allies. First, China will protect CCP rule, eliminating any suspected Western efforts to disparage or threaten CCP credibility. Leveraging its advancements in cyber, China’s State Council can direct the

⁴¹⁴ Ibid. p. 158

⁴¹⁵ Ibid. pp. 159 to 163

PLA to go on the offensive by interfering in U.S. domestic politics.⁴¹⁶ Second, China will protect sovereignty and territory. According to China's 2019 defense white paper published in 2019, national unity strategy will include initiatives to "oppose and contain 'Taiwan independence,'" "crack down on proponents of separatist movements such as 'Tibet independence' and the creation of 'East Turkestan'" (in Xinjiang), and "safeguard China's maritime rights and interests."⁴¹⁷ Third, China will "safeguard China's overseas interests" including support for China's "sustainable development."⁴¹⁸ China will leverage economic incentives to consolidate client states and turn them against the U.S. As the U.S. loses allies in the Indo-Pacific, China will capture these states and adopt alliances. Fourth, China's mission is to "deepen bilateral and multilateral security cooperation," develop a "coordinated, inclusive, and complementary cooperation among security mechanisms," and provide a "security architecture featuring equality, mutual trust, fairness, justice, joint contribution and shared benefits."⁴¹⁹ Although China's intentions may look virtuous at first, "the PLA could increase participation in bilateral and multilateral exercises with U.S. allies and other countries as a way of eroding those alliances" according to the RAND (2021) report.⁴²⁰ China will stabilize BRI investments

⁴¹⁶ China has already been caught meddling with U.S. elections. "China, Caught Meddling in Past Two U.S. Elections, Claims 'Not Interested' in 2020 Vote," *Voice of America*. (April 30, 2020) <https://www.voanews.com/east-asia-pacific/china-caught-meddling-past-two-us-elections-claims-not-interested-2020-vote> Accessed June 16, 2021.

⁴¹⁷ State Council Information Office. "China's National Defense in the New Era," July 24, 2019.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

⁴²⁰ RAND (2021), p. 162

by building rapport with U.S. allies along the BRI routes to secure its economic agenda.⁴²¹

In addition, China's vision on global governance on cyber, space, and international law is to outcompete the U.S. and shape rules and norms to accommodate its economic challenges. Understanding China's short-term priorities and long-term objectives require an approach that considers interests and ideas. A close examination of CCP statements, speeches, and authoritative writings reveals a tight connection between the CCP's words and deeds. As John Garnaut, an authority on Chinese elite politics, argues, "There is no ambiguity in Xi's project. We see in everything he does and - even in a system designed to be opaque and deceptive - we can see it in his words."⁴²² On September 12, 2016, China's Politburo held a study session on global governance in which President Xi said the "structure of global governance depends on the international balance of power."⁴²³ He further said that China "must make the international order more reasonable and just to protect the common interests of China and other developing countries."⁴²⁴

In the cyber domain, China seeks to take the lead in crafting cyberspace governance. Starting in 2014, President Xi organized a new Internet Security Group to

⁴²¹ Ibid., p. 162

⁴²² John Garnaut, "Engineers of the Soul: Ideology in Xi Jinping's China," speech to an internal Australian government seminar, August 2017, in Bill Bishop, ed., *Sinocism*, (January 6, 2019) <https://sinocism.com/p/engineers-of-the-soul-ideology-in> Accessed June 16, 2021.

⁴²³ Xinhua, "Xi Stresses Urgency of Reforming Global Governance," *China Daily*. (October 14, 2016) http://www.chinadaily.com.cn/china/2016-09/29/content_26931697.htm Accessed June 16, 2021.

⁴²⁴ Ibid.

address “a major strategic issue concerning a country’s security and development as well as people’s life and work” in internet security and informatization.⁴²⁵ Later that year, President Xi established the Cyberspace Administration of China to control online content, boost cybersecurity, and develop the digital economy.⁴²⁶ According to the RAND (2021) report, “China’s Quest for Global Primacy,” China’s vision is to create a stronger international coalition in support of its leadership on cyber governance, persuade countries to favor Chinese norms and technology standards, maintain a cyber defense against the U.S., and create a cyber force capable of launching offensive operations against U.S. networks.⁴²⁷

In the space domain, China has developed the PLA Strategic Support Force to deny U.S. access into space. Chinese military theorists have said, “whoever controls space will control the Earth.”⁴²⁸ China’s 2019 defense white paper states that “Outer space is a critical domain in international strategic competition. Outer space security provides strategic assurance for national and social development.”⁴²⁹ China views space supremacy as a political advantage by denying the U.S. entry into this domain. It also sees space as an essential element to boost economic development and cyber governance.

⁴²⁵ Shannon Tiezzi. “Xi Jinping Leads China’s New Internet Security Group.” *The Diplomat*. (February 28, 2014) <https://thediplomat.com/2014/02/xi-jinping-leads-chinas-new-internet-security-group/> Accessed June 16, 2021.

⁴²⁶ Adam Segal. “When China Rules the Web.” *Foreign Affairs*. (September/October 2018) <https://www.foreignaffairs.com/articles/china/2018-08-13/when-china-rules-web> Accessed June 16, 2021.

⁴²⁷ RAND (2021), p. 153

⁴²⁸ Cited in Kevin Pollpeter, “Space, the New Domain: Space Operations and Chinese Military Reforms,” *Journal of Strategic Studies*, Vol. 39, No. 5–6, August 2016, p. 712

⁴²⁹ State Council Information Office, “China’s National Defense in the New Era,” July 24, 2019

According to the RAND (2021) report, China wants to create a stronger international coalition to support its leadership in space, persuade space-capable nations such as Japan and India as well as incoming space nations such as North Korea, Iran, and Pakistan to favor Chinese norms and technology standards in space, and deter the U.S. from attacking Chinese space assets by securing defense assets and fielding offensive weapons capable of taking down space weapons.

China's ambitions to shape international law are integral to China's vision of global governance. President Xi said, "China must lead the reform of the global governance system with the concept of fairness and justice."⁴³⁰ Chinese Foreign Minister Wang Yi explained to *People's Daily* that China would "push forward the international order toward a fairer and more rational direction."⁴³¹ Wang argued that "justice" required "opposing the interference in the internal affairs of other countries and opposing the act of imposing one's will on others." Wang further argued that UN documents have begun adopting Chinese concepts such as the "community of common destiny," as evidence of China's growing influence. According to the RAND (2021) report, China wants its narrative of order to prevail over that of the U.S., international organizations to adopt the Chinese vision of international law, and lead the way for global media, commerce, and academic discourse.⁴³² China has also tried to implement domestic law in the South

⁴³⁰ Xinhua. "Xi urges breaking new ground in major country diplomacy with Chinese characteristics." (June 24, 2018) http://www.xinhuanet.com/english/2018-06/24/c_137276269.htm Accessed June 16, 2021.

⁴³¹ Wang Yi [王毅], "Use Xi Jinping's Thought in the New Era for Socialism with Chinese Characteristics to Break New Ground in China's Diplomacy [以习近平新时代中国特色社会主义思想引领中国外交开新境界]," *People's Daily 人民日报*, December 19, 2017.

⁴³² RAND (2021), p. 153

China Sea, where international law should be applied instead. In its *note verbale* submitted to the UN in 2009, China said, “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.”⁴³³ However, words such as “adjacent” or “relevant” in UNCLOS do not designate sovereignty. China’s highest judicial body, the Supreme People’s Court, also declared that the court’s jurisdiction extended to “jurisdictional seas” including “contiguous zones, exclusive economic zones, continental shelves, and other sea areas under China’s jurisdiction.”⁴³⁴ The term “jurisdictional seas” is not in UNCLOS. By applying domestic law in international waters, China is evidentially claiming that its jurisdiction goes beyond UNCLOS rules. For example, non-Chinese fishermen in the South China Sea may be in compliance with international law but in violation of Chinese domestic law. In this case, fishermen may be imprisoned for up to one year.⁴³⁵ In another example, a vessel may perform innocent passage and be in compliance with international law. However, if China decides that the vessel is not in compliance with domestic law,

⁴³³ China’s 2009 Note Verbale to UN
https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf
Accessed June 16, 2021.

⁴³⁴ *Xinhua*. “China’s maritime jurisdiction extends to cover all jurisdictional seas.” (March 12, 2017)
http://www.xinhuanet.com/english/2017-03/12/c_136121825.htm Accessed June 16, 2021.; *Xinhua* also reported that China’s Supreme People’s Court “stepped up guidance to maritime courts to improve their capacity and promoted international maritime law studies, in a bid to turn China into an international maritime judicial center” as well as stepping up “trials of foreign-related business and maritime cases to serve the Belt and Road Initiative and the strategy of building China into a major maritime power.”

⁴³⁵ Ben Blanchard, “China Court Warns against Illegal Fishing in Riposte to South China Sea Ruling.” *Reuters*. (August 2, 2016) www.reuters.com/article/ussouthchinasea-ruling-idUSKCN10D0B1. Accessed June 16, 2021.

China's judiciary has the power under domestic law to prosecute and imprison violators up to one year.⁴³⁶ In 2013, China's maritime agencies were consolidated to form the Chinese Coast Guard command. Ryan Martinson, a member of the China Maritime Studies Institute at the U.S. Naval War College, argued that the reorganization was part of a bigger plan to implement a "'strategic management of the sea,' which appears to mean a comprehensive state effort to achieve maritime dominance of [China's] near seas in peacetime."⁴³⁷ China's new Coast Guard Law which took effect on February 1, 2021, allows the coast guard to use lethal force on foreign ships operating in China's claimed waters.⁴³⁸ Article 3 of the new law states, "the CCG [China Coast Guard] Organization shall conduct law enforcement operations in the waters under the jurisdiction of China and in the airspace above the waters under the jurisdiction of China and apply this Law."⁴³⁹ A few months later, China revised its Maritime Traffic Safety Law requiring foreign vessels passing through waters claimed by China to obtain permission first.⁴⁴⁰ The new law also allows the Chinese Coast Guard to take "necessary measures" to stop the passage of foreign ships into "territorial waters."⁴⁴¹ Enforcement of this domestic law

⁴³⁶ Ibid.

⁴³⁷ Ryan Martinson. "From Words to Actions: The Creation of the China Coast Guard, Center for Naval Analyses." (July 28–29, 2015) www.cna.org/cna_files/pdf/creationchina-coast-guard.pdf Accessed June 16, 2021.

⁴³⁸ Nguyen Thanh Trung. "How China's Coast Guard Law Has Changed the Regional Security Structure." *AMTI CSIS*. <https://amti.csis.org/how-chinas-coast-guard-law-has-changed-the-regional-security-structure/> Accessed June 16, 2021.

⁴³⁹ Ibid.

⁴⁴⁰ Jennings, Ralph. "China Seen Increasing Control in Disputed Asian Sea with Revised Maritime Law." *VOA*. May 7, 2021. <https://www.voanews.com/east-asia-pacific/china-seen-increasing-control-disputed-asian-sea-revised-maritime-law> Accessed June 16, 2021.

⁴⁴¹ Ibid.

would violate innocent passage rights under the UNCLOS and allow China to extend its right of hot pursuit within its claims of “jurisdictional waters.” This law will take effect on September 1, 2021.⁴⁴²

Examining China’s Trends and its Likely Strategy

If China’s trends continue and nothing is done to mitigate their directions, a scenario similar to “Great Waves Churn and Leap Skyward” may likely be China’s strategy. China has launched gray zone operations to harass U.S. naval ships, fishing vessels from the Philippines and Vietnam, and impede freedom of navigation.⁴⁴³ It has also launched drills simulating an amphibious invasion of Taiwan.⁴⁴⁴ China has plans to deploy electromagnetic weapons in the South China Sea and has reportedly fired a laser

⁴⁴² *Xinhua*. “China revises maritime traffic safety law.” (April 29, 2021) http://www.xinhuanet.com/english/2021-04/29/c_139915186.htm Accessed June 16, 2021.

⁴⁴³ Tom O’Connor and Naveed Jamali. “As China Gray Zone Warfare Escalates, U.S. May Stand to Lose First Shooting Battle.” *Newsweek*. (March 4, 2021) <https://www.newsweek.com/china-gray-zone-wars-us-lose-first-battle-1573318> Accessed June 17, 2021.

⁴⁴⁴ Liu Xuanzun. “PLA conducts amphibious landing drills amid latest US provocation on Taiwan question.” *Global Times*. (June 8, 2021) <https://www.globaltimes.cn/page/202106/1225733.shtml> Accessed June 17, 2021; Kinling Lo. “China’s military to hold live-fire drills off Taiwan as US delegation visits the island.” *South China Morning Post*. (April 14, 2021) <https://www.scmp.com/news/china/military/article/3129534/chinas-military-hold-live-fire-drills-taiwan-us-delegation> Accessed July 17, 2021; Yimou Lee, David Lague, and Ben Blanchard. “China launches ‘gray-zone’ warfare to subdue Taiwan.” *Reuters*. (December 10, 2020) <https://www.reuters.com/investigates/special-report/hongkong-taiwan-military/> Accessed June 17, 2021.

weapon at a U.S. Navy's P-8A in February 2018.⁴⁴⁵ China's defense budget has increased by 6.8% and China has built the world's largest naval fleet.⁴⁴⁶

Economic satisfaction is projected to decrease. China's economy is beginning to contract and economic growth is projected to decrease due to demographic challenges such as population decrease and an aging population.⁴⁴⁷ According to UN projections, China's population will decline by 2030, but China's state media has been more pessimistic by predicting population decrease in the next few years.⁴⁴⁸ Constraints on sustainable economic growth will be driven by an aging population impeding the accumulation of human capital and a low total fertility rate.⁴⁴⁹

⁴⁴⁵ "China May Attack US Ships in South China Sea with Lasers, Electro-Magnetic Weapons." DefenseWorld.net. (March 18, 2020) https://www.defenseworld.net/news/26540/China_May_Attack_US_Ships_in_South_China_Sea_with_Lasers_Electro_Magnetic_Weapons#.YPNzsOhKjIV Accessed July 17, 2021.

⁴⁴⁶ "Understanding China's 2021 Defense Budget." CSIS. (March 5, 2021) <https://www.csis.org/analysis/understanding-chinas-2021-defense-budget> Accessed July 17, 2021; Brad London. "China has built the world's largest navy. Now what's Beijing going to do with it?" CNN. (March 5, 2021) <https://www.cnn.com/2021/03/05/china/china-world-biggest-navy-intl-hnk-ml-dst/index.html> Accessed June 17, 2021.

⁴⁴⁷ Keith Bradsher. "China's Economy Shrinks, Ending a Nearly Half-Century of Growth." *New York Times*. (July 15, 2021) <https://www.nytimes.com/2020/04/16/business/china-coronavirus-economy.html> Accessed July 17, 2021; Bill Conerly. "China's Economic Miracle is Ending." *Forbes*. (May 4, 2021) <https://www.forbes.com/sites/billconerly/2021/05/04/chinas-economic-miracle-is-ending/?sh=740f0d8faa9d> Accessed July 17, 2021; "China Bets on Productivity Over Population to Drive Its Economy." *Bloomberg*. (May 11, 2021) <https://www.bloomberg.com/news/articles/2021-05-11/china-bets-on-productivity-over-population-to-drive-its-economy> Accessed June 17, 2021.

⁴⁴⁸ Ryan Woo and Kevin Yao. "China demographic crisis looms as population growth slips to slowest ever." *Reuters*. (May 10, 2021) <https://www.reuters.com/world/china/china-2020-census-shows-slowest-population-growth-since-1-child-policy-2021-05-11/> Accessed June 17, 2021.

⁴⁴⁹ Xun Wang, p. 58

If China's economic growth fails, it may be argued that political instability will increase and the CCP would strengthen its authoritarian statism.⁴⁵⁰ There is already evidence that the CCP is in a leadership crisis as the CCP has expanded its campaign to silence critics.⁴⁵¹ In 2015, David Shambaugh, a noted expert in Chinese domestic politics, wrote that "The endgame of Chinese communist rule has now begun ... and it has progressed further than many think."⁴⁵² Andrew J. Nathan, an expert in Chinese politics, has argued that the CCP still believes that it is under "siege from enemies at home colluding with enemies from abroad; ... that economic reform must take a back seat to ideological discipline and social control; and ... that the party will fall to its enemies if it allows itself to be internally divided."⁴⁵³ In his new book, *The China Nightmare: The Grand Ambitions of a Decaying State*, Dan Blumenthal has argued that political elite split, citizen backlash against repression, and the absence of a secure and peaceful transition of power after President Xi will create anxiety and internal dissension.⁴⁵⁴ Blumenthal also projects that if the U.S. successfully undermines China's agenda in the

⁴⁵⁰ Alexis Leggeri. "What Happens to the CCP If China's Economic Growth Falters?" *The Diplomat*. (October 29, 2020) <https://thediplomat.com/2020/10/what-happens-to-the-ccp-if-chinas-economic-growth-falters/> Accessed June 17, 2021.

⁴⁵¹ Sarah Cook. "Behind Xi Jinping's Steely Façade, a Leadership Crisis Is Smoldering in China." *The Diplomat*. (October 9, 2020) <https://thediplomat.com/2020/10/behind-xi-jinpings-steely-facade-a-leadership-crisis-is-smoldering-in-china/> Accessed June 17, 2021.

⁴⁵² David Shambaugh. "The Coming Chinese Crackup." *Wall Street Journal*. (March 6, 2015) <https://www.wsj.com/articles/the-coming-chinese-crack-up-1425659198> Accessed June 17, 2021.

⁴⁵³ Andrew J. Nathan. "The New Tiananmen Papers." *Foreign Affairs*. (July 17, 2021) <https://www.foreignaffairs.com/articles/china/2019-05-30/new-tiananmen-papers> Accessed June 17, 2021.

⁴⁵⁴ Blumenthal, Ch. 7

South China Sea, President Xi will be blamed in China for imperial overreach.⁴⁵⁵ Thus, the CCP's legitimacy will be compromised. However, China has set up internal security measures to respond to this crisis. According to CSIS, China leads in exercising total information control such as the "Great Firewall" and establishing a "credit score" for political obedience.⁴⁵⁶ It has also used internment and political indoctrination tactics, AI-enabled mass surveillance systems, and biometric databases to combat potential dissenters.⁴⁵⁷

U.S. presence in the Indo-Pacific is projected to continue as the DoD shifts its focus to securing the Indo-Pacific and countering China. Admiral Davidson told the Senate Armed Services Committee that a military showdown between Taiwan and mainland China could come "in the next six years."⁴⁵⁸ In the same hearing, Admiral Davidson said that INDOPACOM will prioritize the PDI and provide "the foundation for establishing a forward-deployed, defense-in-depth posture that defends our interests abroad, deters aggression, assures allies and partners, and provides flexible response options should deterrence fail." This means that the U.S. should maintain a persistent presence in the region and strengthen military assets in Guam to create a defense in depth structure. INDOPACOM has requested Congress for an increase in additional funding for

⁴⁵⁵ Daniel Blumenthal. "A Strong but Frustrated China Poses a Special Kind of Danger." *Atlantic*. (November 12, 2020) <https://www.theatlantic.com/ideas/archive/2020/11/strong-frustrated-china-poses-special-kind-danger/617076/> Accessed June 17, 2021.

⁴⁵⁶ Brannen et al., p. 22

⁴⁵⁷ Ibid, p. 22

⁴⁵⁸ Admiral Philip S. Davidson, Former USINDOPACOM Commander. United States Indo-Pacific Command Armed Services Senate Hearing. (March 9, 2021) <https://www.armed-services.senate.gov/hearings/21-03-09-united-states-indo-pacific-command> Accessed June 17, 2021.

missile defense systems and ballistic missile threats in the Pacific.⁴⁵⁹ Secretary of Defense Lloyd Austin also established a DoD China Task Force to "provide a baseline assessment of DoD policies, programs, and processes on China-related matters and provide the secretary of defense recommendations on key priorities and decision points to meet the China challenge."⁴⁶⁰ The U.S. will maintain its presence in the South China Sea as a deterrent against China.

Given China's trends, China's likely strategy would be similar to the "Great Waves Churn and Leap Skyward" scenario. The U.S. should develop a short and long-term strategy to mitigate escapement. In the short-term, the U.S. should go for "The Autumn Wind Shrills and Sighs" scenario by taking the first-mover advantage in balancing China's capabilities. As the first mover, the U.S. will make a strong impression on ASEAN which can be leveraged to create more consensus on negotiating and implementing a Code of Conduct. As the first mover, the U.S. can gain an advantage when there is a high cost for ASEAN nations to switch alliances with China especially in light of China's goal to win over ASEAN nations to China's side. Although the prospects of a scenario like "A Hundred Grasses, Rich and Lush" are currently low, influencing China's trends to work towards that scenario would require a delicate balance between coercion and conciliation. If U.S.-China relations succeed in this long-term goal, this

⁴⁵⁹ Jen Judson. "DoD wish list seeks more funds to boost Pacific missile defense, weapons cybersecurity." *DefenseNews*. (June 10, 2021) <https://www.defensenews.com/pentagon/2021/06/10/dod-desires-more-funding-to-boost-missile-defense-in-the-pacific-in-wish-list-to-congress/> Accessed June 17, 2021.

⁴⁶⁰ John Liang. "Austin holds first meeting with DOD China Task Force." *Inside Defense*. (March 1, 2021) <https://insidedefense.com/insider/austin-holds-first-meeting-dod-china-task-force> Accessed June 17, 2021.

scenario would prompt China to negotiate a Code of Conduct in the South China Sea as China benefits more with economic interdependence over military coercion.

The Impact on U.S. Foreign Policy

First, the implications of China's grand strategy on U.S. foreign policy underscores the importance of maintaining strong alliances with Indo-Pacific partners, especially those along the BRI routes. China considers this network to be America's strongest strategic advantage and deterrent. It will move to weaken alliances by capturing allies through economic incentives and technology transfer. Second, China's grand strategy compels the U.S. to boost its international image and leadership bilaterally among regional allies and in multilateral forums such as ASEAN and APEC. The U.S. should invest in shaping international organizations and prove that China's narrative against the U.S. about ineffectiveness is not sound. The goal would be to persuade countries to follow a U.S.-led global order that is enshrined in freedom rather than China's authoritarian agenda. Finally, U.S. foreign policy should not decouple from the Indo-Pacific because, as Admiral Davidson testified to the Senate Armed Services Committee, "The Indo-Pacific is the most consequential region for America's future and remains the United States' priority theater."⁴⁶¹

China's grand strategy of cultivating influences in Africa, the Middle East, and Latin America will impact America's ability to compete with China in the Indo-Pacific.

⁴⁶¹ Admiral Philip S. Davidson, Former USINDOPACOM Commander. United States Indo-Pacific Command Armed Services Senate Hearing. (March 9, 2021) <https://www.armed-services.senate.gov/hearings/21-03-09-united-states-indo-pacific-command> Testimony Accessed June 16, 2021.

The RAND report (2021) gives the example of how China could successfully consolidate influence in the Middle East and ultimately affect Japan and India's willingness to constrain Chinese power.⁴⁶² Thus, the U.S should project leadership in economic development and leverage China's lack of allies before China's economy overtakes the U.S. There are already trends supporting China's goal to gain more regional allies through trade. In addition to signing on to China's BRI, ASEAN nations, collectively, overtook the EU and the U.S. as China's largest trading partner in the first quarter of 2020.⁴⁶³ ASEAN-China trade increased by 6% to US\$140 billion and accounted for 15% of China's total trade volume. Chinese-Japan ties have strengthened recently. At the end of 2019, Japan's total stock of foreign direct investment in China was around \$130.3 billion, which was significantly less than Japan's investment in the U.S.⁴⁶⁴ More than 7,750 Japanese businesses operate in China which is significantly higher than Japanese firms operating in the U.S. or EU.⁴⁶⁵ As of today, Japan is China's third-largest source of foreign investment and third-largest trading partner.⁴⁶⁶ Although South Korea is gingerly

⁴⁶² RAND (2021), p. 184

⁴⁶³ ASEAN Report. "ASEAN Overtakes EU to Become China's Top Trading Partner in Q1 2020." (May 15, 2020) <https://www.aseanbriefing.com/news/asean-overtakes-eu-become-chinas-top-trading-partner-q1-2020/>

⁴⁶⁴ Tobias Harris. "The Surprising Strength of Chinese-Japanese Ties." *Foreign Affairs*. (May 4, 2021) <https://www.foreignaffairs.com/articles/china/2021-05-04/surprising-strength-chinese-japanese-ties> Accessed July 18, 2021.

⁴⁶⁵ Ministry of Economy, Trade and Industry (METI). "Summary of the 49th Basic Survey on Overseas Business Activities." (2019) <https://www.meti.go.jp/english/statistics/tyo/kaigaizi/pdf/h2c412je.pdf> Accessed July 18, 2021.

⁴⁶⁶ John West. "The China-Japan Economic Relationship Is Getting Stronger." BrinkNews. (January 20, 2020) <https://www.brinknews.com/the-china-japan-economic-relationship-is-getting-stronger/> Accessed July 18, 2021.

stepping closer to China, BRI projects are now common throughout the Korean peninsula.⁴⁶⁷ China's share of South Korea's exports accounts for about a quarter of their annual total income and foreign direct investment has also increased by 10%.⁴⁶⁸ As mutual dependence increases, South Korea enters deeper into China's sphere of influence. China is Taiwan's biggest trading partner accounting for about 24.3% of Taiwan's total exports.⁴⁶⁹ Although Taiwan attempted to reduce dependence on China's economy by implementing market diversification policies under the New Southbound Policy, COVID-19 disrupted trade and investment flows and Taiwan was forced to increase its dependence on Chinese goods.⁴⁷⁰

In light of China's ambitions to shape cyber governance, space, and international law through coercive means, U.S. global posture should first be established on deterrence and then followed by strategic restraint. Investing in military diplomacy with allies in the Indo-Pacific will be important as China tries to sell them military equipment, military technology, and surveillance technologies. In the short-term, the absence of a credible

⁴⁶⁷ Keith Ayago. "South Korea gets chummy with China." *The London Economic*. (November 20, 2020) <https://www.thelondoneconomic.com/lifestyle/discussion/south-korea-gets-chummy-with-china-211217/> Accessed July 18, 2021.

⁴⁶⁸ "South Korea: value of goods exported to China since FTA 2015-2019." *Statista*. (March 5, 2021) <https://www.statista.com/statistics/657617/south-korea-exported-goods-value-to-china-since-free-trade-agreement/> Accessed July 18, 2021; Tim Larkin. "As Ties to China Increase, South Korea Risks Falling into Beijing's Sphere of Influence." *International Policy Digest*. (September 13, 2020) <https://intpolicydigest.org/as-ties-to-china-increase-south-korea-risks-falling-into-beijing-s-sphere-of-influence/> Accessed July 18, 2021.

⁴⁶⁹ International Trade Administration. "Taiwan - Country Commercial Guide." (September 24, 2020) [https://www.trade.gov/knowledge-product/taiwan-market-overview#:~:text=China%20is%20Taiwan's%20largest%20trading,Hong%20Kong%20\(6.7%20percent\)](https://www.trade.gov/knowledge-product/taiwan-market-overview#:~:text=China%20is%20Taiwan's%20largest%20trading,Hong%20Kong%20(6.7%20percent)) Accessed July 18, 2021.

⁴⁷⁰ Bonnie Glaser and Jeremy Mark. "Taiwan and China Are Locked in Economic Co-Dependence." *Foreign Policy*. (April 14, 2021). <https://foreignpolicy.com/2021/04/14/taiwan-china-economic-codependence/> Accessed July 18, 2021.

deterrent will encourage China to militarily secure the BRI routes to ensure trade continuity. The U.S. should present a credible deterrent by deploying capabilities that can rapidly respond to crisis such as an invasion of Taiwan and present a military superiority against the PLA. In the short-term, U.S. investment in military capabilities, with the goal of strengthening conventional deterrence, will avoid a chaotic scenario similar to “Great Waves Churn and Leap Skyward.” Instead, the U.S. should work towards the “The Autumn Wind Shrills and Sighs” scenario in which the presence of symmetric balance of power and third-party threats will prevent escapement. A strong U.S. military capability as a guarantor of regional security will incentivize regional powers such as Japan and India to resist Chinese coercion and incentives. This move does not necessarily mean investing in additional platforms such as ships and aircraft, but focusing on efficient force development and missile defense systems to protect U.S. sovereignty of Guam⁴⁷¹

In the long-term, the U.S. should find ways to strengthen U.S.-China trade, supply chain linkages, and restore U.S.-China investment flows. Targeting these issues would strengthen economic interdependence and convince Chinese leadership that China is better off prioritizing trade, promoting freedom of navigation in a demilitarized South China Sea, and signing a Code of Conduct to avoid collisions and protect marine ecosystems. The goal would be to coax China into the fourth scenario, “A Hundred Grasses, Rich and Lush.” China and the U.S. can cooperate by pursuing an envisioned relationship built on economic and scientific interdependence.

⁴⁷¹ Bryan Clark and Dan Patt. “Fix the Pacific Deterrence Fund—and the Deeper Problem It Reveals.” *DefenseOne*. (June 23, 2021) <https://www.defenseone.com/ideas/2021/06/fix-pacific-deterrence-fundand-deeper-problem-it-reveals/174898/> Accessed July 18, 2021.

First, China and the U.S. have coordinated in the past by securing trade and public goods through joint effort. U.S. trade with China has grown despite tensions over the South China Sea and Taiwan. According to Phase 1 of the Economic and Trade Agreement that went into effect on February 14, 2020, China agreed to expand purchases of certain U.S. goods and services by a combined \$200 billion for the two-year period from January 1, 2020, through December 31, 2021, above the 2017 baseline levels.⁴⁷² Although Phase 1 of the trade deal fell short, China's willingness to agree on this deal may show that it still recognizes trade as an important factor in U.S.-China relations.⁴⁷³ China has held a record of cooperation if it sees a plan that helps both countries. In a discussion about the 2008 financial crisis, former U.S. treasury secretary Hank Paulson argued that China helped him get things done if they were things China wanted to see done.⁴⁷⁴ However, there was no cooperation on issues that were not within China's interests.

Second, persuading China to adopt the fourth scenario would include a mutual understanding that solving real problems that affect real people globally will be challenging if the two most powerful countries are not coordinating for the public good, but rather opposing each other on every issue due to different ideologies. For example,

⁴⁷² "Economic And Trade Agreement Between The Government Of The United States Of America And The Government Of The People's Republic Of China Text" Article 6.2. Office of the U.S. Trade Representative. <https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/text> Accessed June 17, 2021.

⁴⁷³ Chad P. Brown. "Anatomy of a flop: Why Trump's US-China phase one trade deal fell short." *PIIE*. (February 8, 2021) <https://www.piie.com/blogs/trade-and-investment-policy-watch/anatomy-flop-why-trumps-us-china-phase-one-trade-deal-fell> Accessed June 17, 2021.

⁴⁷⁴ Hank Paulson. Six Crises: Hank Paulson on Coordinating with China During the Financial Crisis (2008). Lecture. <https://www.youtube.com/watch?v=nwTW9kvDK4Y>. *Carnegie Endowment*. April 10, 2020. Accessed June 18, 2021.

China and the U.S. have collaborated on stopping the spread of the Ebola crisis from 2014 to 2016, agreed to reduce the use of hydrofluorocarbons, cooperated on reducing the impact of the 2008 financial crisis, and ensuring food safety.⁴⁷⁵ U.S.-China cooperation could be improved by first avoiding sensitive issues such as sovereignty issues in the South China Sea. Instead, both countries could spearhead collaborative projects on the African continent. The U.S. could find shared interests with China ranging from security, economic development, and public health.⁴⁷⁶ China and the U.S. should look at ways to cooperate on science diplomacy issues such as jointly combatting pandemics, climate change, and AI research.

Third, the U.S. should develop a strategy to mitigate China's projected economic collapse. China has already started moving towards the "The Autumn Wind Shrills and Sighs" scenario in which China will isolate its economy to avoid future supply chain disruptions. China's new "Five-Year Plan," published in March 2021, focuses on self-reliance and a "dual circulation" economic model in science and technology to ensure

⁴⁷⁵ Cui et al.; "U.S., China agree to reduce use of hydrofluorocarbons." *Reuters*. (June 8, 2013) <https://www.reuters.com/article/us-usa-china-environment-idINBRE9570EX20130608> Accessed July 18, 2021; In the financial realm, Hank Paulson has advocated for a "targeted reciprocity approach that focuses "reciprocal rules, market access, and actions" that helps both U.S. and Chinese economies. First, business leaders in both countries need to help shape a US-China economic relationship that works in today's world. Second, the US and Chinese governments are going to have to decide where, how, and under what rules American companies are allowed to compete in China—and Chinese companies in America. "Remarks by Henry M. Paulson, Jr. on an Approach of Targeted Reciprocity." *Paulson Institute*. (April 20, 2021) https://www.paulsoninstitute.org/press_release/remarks-by-henry-m-paulson/ Accessed July 18, 2021; "U.S. and China Agree to Continue Cooperation on Food Safety." *FoodSafety*. (December 15, 2012) <https://www.food-safety.com/articles/3070-us-and-china-agree-to-continue-cooperation-on-food-safety> Accessed June 18, 2021.

⁴⁷⁶ R. Maxwell Bone and Ferdinando Cinotto. "Can the US and China Cooperate in Africa?" *The Diplomat*. (February 23, 2021) <https://thediplomat.com/2021/02/can-the-us-and-china-cooperate-in-africa/> Accessed June 18, 2021.

that China's supply chain for producing semiconductors is secure.⁴⁷⁷ According to the U.S. Chamber of Commerce and Rhodium Group, decoupling from China's economy will cost the U.S. economy a loss of more than \$1 trillion worth of production and long-term global competitiveness.⁴⁷⁸ China's manufacturing infrastructure will also collapse without foreign technology. China's industries still lag behind U.S. innovation and remain dependent on U.S. know-how.⁴⁷⁹ Thus, actions that impede U.S.-China trade relations would have significant economic consequences.⁴⁸⁰ As Robert Rubin and Hank Paulson, two former U.S. treasury secretaries, wrote in the *Atlantic*, "the greatest American threat to China's economic future is the possibility that America's economic

⁴⁷⁷ Li Zhan. "Rely on science and technology to become self-reliant and build new advantages in development." *Xinhua*. (March 2, 2021) http://www.xinhuanet.com/techpro/2021-03/02/c_1127155742.htm Accessed June 18, 2021.

⁴⁷⁸ Daniel H. Rosen and Lauren Gloudeman. "Understanding US-China Decoupling: Macro Trends and Industry Impacts." Rhodium Group. (February 17, 2021) <https://rhg.com/research/us-china-decoupling/> Accessed June 18, 2021.

⁴⁷⁹ "China Still Buying \$300 Billion of Chips From U.S., Elsewhere." *Bloomberg*. (August 26, 2020) <https://www.bloomberg.com/news/articles/2020-08-26/china-still-buying-300-billion-of-chips-from-u-s-elsewhere> Accessed July 20, 2021; "China says manufacturing 'greatness' still 30 years away." *BBC*. (March 8, 2021) <https://www.bbc.com/news/business-56316943> Accessed June 18, 2021.

⁴⁸⁰ Chinese officials, entrepreneurs, and academics recognize China's challenges ahead. They have evoked the "patriotic spirit of scientists" and called on Chinese students and entrepreneurs to "gnaw on the hard bones" to help China build an independent, controllable supply chain.; For example, sanctions that cut off Huawei's supply chain of semiconductors have been labeled as a "death sentence." Kathrin Hille, Edward White, and Kana Inagaki. "Chip and phone supply chain shaken as Huawei faces mortal threat." *ArsTechnica*. (August 18, 2020) <https://arstechnica.com/gadgets/2020/08/chip-and-phone-supply-chain-shaken-as-huawei-faces-mortal-threat/> Accessed June 18, 2021. Jin Li. "Strengthen the training of basic research talents (by everyone)." *China Daily*. (December 28, 2020). <https://china.chinadaily.com.cn/a/202012/28/WS5fe92d4da3101e7ce9737b06.html> Accessed June 18, 2021; Zhang Xinxin and Zhou Yuan. "Nibbles on the 'hard bones' to forge new advantages-Xiao Yaqing, Minister of Industry and Information Technology, talks about the strengths of the industrial communications industry in 2021." *Xinhua*. (January 4, 2021) http://www.xinhuanet.com/fortune/2021-01/04/c_1126944382.htm Accessed June 18, 2021.

success could come to an end; the greatest economic danger China poses to the U.S. is the chance that China's economy fails to grow."⁴⁸¹

In the "A Hundred Grasses, Rich and Lush" scenario, there is rich potential for China and the U.S. to cooperate on economic and scientific issues. Both countries will realize that the resilience of their interdependent relationship will be defined by how closely they work together. Persuading China towards the "A Hundred Grasses, Rich and Lush" scenario will be the most challenging aspect of U.S.-China cooperation to 2035. China's goal of achieving sustainable, balanced, and high-quality growth will be China's main challenge. The U.S. goal of ensuring that China's economy does not collapse will have to be a balance between incentives and sanctions. The U.S. will be challenged as it reimagines a new relationship with China built on economic and scientific interdependence.

Should the U.S. Join the UNCLOS? Why Joining the UNCLOS Mitigates the Worst-Case Scenario

The debate on whether or not the U.S. should join the UNCLOS has long been an issue in U.S. politics. After a decade of UNCLOS negotiations, the U.S. still refused to sign the treaty in 1982 because it objected to Part XI, which dealt with deep seabed resources beyond national jurisdiction.⁴⁸² The U.S. argued that the provisions of Part XI

⁴⁸¹ Henry M. Paulson Jr. and Robert E. Rubin. "Why the U.S. Needs to Listen to China" *The Atlantic*. (June 2015) (<https://www.theatlantic.com/magazine/archive/2015/06/the-blame-trap/392081/> Accessed June 18, 2021.

⁴⁸² Bernard Gwertzman. "U.S. Will Not Sign Sea Law Treaty." *New York Times*. (June 10, 1982) <https://www.nytimes.com/1982/07/10/world/us-will-not-sign-sea-law-treaty.html> Accessed June 18, 2021.

were not friendly towards free market economies and was biased in favor of Communist states. President Ronald Reagan issued the United States Oceans Policy Statement saying that the U.S. views the UNCLOS as customary international law and fulfills U.S. interest in “a comprehensive legal framework relating to competing uses of the world’s oceans.” Succeeding administrations have used President Reagan’s statement to legitimize Freedom of Navigation operations such as those in the South China Sea. The U.S. suggested further negotiations to amend the UNCLOS, and in 1994, the Clinton administration sent the Convention to the Senate for advice and consent.⁴⁸³ However, the Senate failed to ratify it. The Convention went into effect on July 28, 1996.

Opponents of ratification such as Senators Rob Portman and Kelly Ayotte have argued that “no international organization owns the seas.”⁴⁸⁴ In 2012, 34 senators released a statement explaining why they opposed the ratification.

We simply are not persuaded that decisions by the International Seabed Authority and international tribunals empowered by this treaty will be more favorable to U.S. interests than bilateral negotiations, voluntary arbitration, and other traditional means of resolving maritime issues. No international the seas, and we are confident that our nation will continue to protect its navigational freedom, valid territorial claims, and other maritime rights. On balance, we believe that the treaty’s litigation exposure and impositions on U.S. sovereignty outweigh its potential benefits.⁴⁸⁵

⁴⁸³ U.S. Senate. “Message From the President of the United States Transmitting UN Convention on the Law of the Sea.” (1994) https://www.foreign.senate.gov/imo/media/doc/treaty_103-39.pdf Accessed June 18, 2021.

⁴⁸⁴ Austin Wright. “Law of the Sea treaty sinks in Senate.” *Politico*. (July 16, 2012) <https://www.politico.com/story/2012/07/law-of-the-sea-treaty-sinks-in-senate-078568> Accessed June 18, 2021.

⁴⁸⁵ Carlo Munoz. “Republicans have the votes to sink sea treaty.” *The Hill*. (July 16, 2012) <https://thehill.com/policy/defense/238151-senate-republicans-sink-law-of-the-sea-treaty> Accessed June 18, 2021.

However, Senator Ben Cardin argues that joining UNCLOS “would communicate that for the United States, resolution of maritime disputes in the South China Sea is not a question of being for or against any particular country or its claims, but rather for being on the side of international law, institutions and norms.”⁴⁸⁶ Recently, Senators Mazie Hirono, Lisa Murkowski, and Tim Kaine, have introduced a resolution in the Senate calling for the ratification of the UNCLOS. Senator Hirono, Chair of the Senate Seapower Subcommittee, “

Our world faces the evolving challenges of those seeking to prevent international freedom of navigation across the world, including in the Strait of Hormuz, the South China Sea, the Arctic, and the Black Sea. It is time for the United States to become party to the United Nations Convention on the Law of the Sea, which provides a legal framework to protect the right of free passage through territorial seas, the United States should play an active role in decisions that impact Hawaii and the ocean around us.”⁴⁸⁷

Based on the “Great Waves Churn and Leap Skyward” scenario, China threatens freedom of navigation as it applies domestic law in international waters. China will choke the Luzon Strait to control shipping and communications passing through the South China Sea and reach its eventual goal of annexing Taiwan. Based on China’s behavioral trends in the South China Sea, the customary international law the U.S. has relied on to legitimize U.S. FONOPs has had limited impact to convince China to respect

⁴⁸⁶ Ben Cardin. “The South China Sea Is the Reason the United States Must Ratify UNCLOS.” *Foreign Policy*. (July 13, 2016) <https://foreignpolicy.com/2016/07/13/the-south-china-sea-is-the-reason-the-united-states-must-ratify-unclos/> Accessed June 18, 2021.

⁴⁸⁷ “Senators Hirono, Murkowski, Kaine Introduce Resolution Calling on the Senate to Ratify UN Convention on the Law of the Sea.” Press Release. (May 18, 2021) <https://www.hirono.senate.gov/news/press-releases/senators-hirono-murkowski-kaine-introduce-resolution-calling-on-the-senate-to-ratify-un-convention-on-the-law-of-the-sea> Accessed June 18, 2021.

international law. U.S. FONOPs have not stopped China's militarization of artificial islands. U.S. FONOPs have not stopped China from taking aggressive gray zone tactics that increase risk of collisions. U.S. FONOPs have not also prevented China from enforcing domestic law, claiming sovereignty on the high seas, and denying Southeast Asian countries their resource rights to their respective EEZs. Thus, U.S. strategy compelling China to respect international law has been limited so far. On the other hand, joining the UNCLOS does not present any threat that may limit the U.S. from conducting military activities.

Given the low cost to enter the treaty and the treaty's potentially high payoff for the U.S. as an UNCLOS member, joining the UNCLOS outweighs the risks argued by those opposing ratification. The U.S. should ratify the UNCLOS to legally deter China from declaring the South China Sea as its territorial waters. Joining the UNCLOS would not prevent the U.S. from conducting military activities to balance China. Instead, this action may make "The Autumn Wind Shrills and Sighs" scenario a reality in which China will be deterred from claiming the South China Sea as its own. In fact, the U.S. runs the risk as a nonparty of allowing favorable national security provisions which are in the convention to be eroded such as losing the freedom of navigation in the South China Sea. As a party member to the UNCLOS, the U.S. would be in a stronger position to invoke the treaty's provisions as well as prevent any potential proposals to amend the Convention that may be inconsistent with U.S. national interests such as limiting the freedom of navigation. Although another argument against ratification is that U.S. intelligence operations will be limited if the U.S. signed on to the Convention, current U.S. intelligence gathering activities avoid operations while transiting through territorial

waters are also consistent with UNCLOS Articles 19 and 20 that deal with innocent passage. Thus, joining the UNCLOS would not change current U.S. naval practices. Strategic mobility is more important now that China is beginning to build up its military capabilities intended to deny the U.S. and its allies entry into a major trading route. The oceans are fundamental to that maneuverability. Joining the convention supports the freedom to pass through international waterways without a permission slip. The convention also provides a stable and predictable legal regime to conduct U.S. FONOPs and deter China from taking the “Great Waves Churn and Leap Skyward” scenario. Participation in the Convention better positions the U.S. to influence trend directions in the South China Sea.

As China’s economic and political forecast points to an increased assertion of national jurisdiction in the South China Sea, the greatest maritime legal risk to the U.S. is that the law of the sea will change.⁴⁸⁸ As a member of the Convention, the U.S. will reinforce international law and give the U.S. more bargaining power to develop the law of the sea within its national interests. The U.S. should use its leadership and influence to promote a rules-based order that stresses the importance of freedom of navigation, responsible use of marine resources, and respect for sovereignty.

⁴⁸⁸ Wachman “By challenging the understanding of what is permissible in the EEZ, the Chinese analysts may be hoping that other states will follow suit, adjusting what would then be seen as customary international law and hoping that the legal justifications they offer will likewise become the new norm.” Valencia, “[C]ertain UNCLOS provisions, formulated 30 years ago in a very different political and technological context, may be inappropriate and consequently should be reinterpreted in light of these new circumstances. What is needed is an assessment of how the maritime security paradigm is changing, a delineation of the resultant emerging international issues, and an analysis of possible responses.”

Recommendations for U.S. Foreign Policy

Based on China's likely strategy, the U.S. should mitigate the negative trends to prevent China from choosing the "Great Waves Churn and Leap Skyward." As discussed in the section about how China's grand strategy can impact U.S. foreign policy, the U.S. should strategize to move China towards the third scenario, "The Autumn Wind Shrills and Sighs." The goal is to get U.S.-China relations in the South China Sea to the first ("Scan the Endless Ocean") or fourth ("A Hundred Grasses, Rich and Lush") scenario by 2035. It involves a two-tier strategy. The first tier is the short-term strategy that focuses on balancing China's military capabilities by deploying advanced military equipment and preserving the freedom of the seas. The goal is to deter China from taking adverse actions. The second tier is a long-term strategy that focuses on how U.S.-China relations can become stronger based on economic and scientific interdependence. The following section will cover five tactical recommendations for each tier. These recommendations are based on the previous discussion on how China's grand strategy can impact U.S. foreign policy.

Tier 1: Short-Term Recommendations

1. ***Take the first-mover advantage*** and deploy 360-degree air and missile defense capabilities, including the MK-41 VLS, Aegis Ashore, SM3/SM6 missile systems, and ground-based long-range precision fires to enhance the Guam Defense System. This new joint force warfighting architecture would integrate maritime, land, air, cyber, and space capabilities and could be built on the DoD's PDI. This arrangement could possibly deter China from taking aggressive action

and reassure allies in the Indo-Pacific that the U.S. will defend the freedom of navigation.

2. ***Secure access to the First and Second Island Chains*** to ensure freedom of navigation and deter China from engaging in aggressive action against U.S. allies in the South China Sea. Monitoring Chinese amphibious operations along the Taiwan and Luzon Straits and features in the First Island Chain should be prioritized. Deterring China includes ensuring a persistent air and missile defense system and a rotational forward-deployed joint force capable of responding swiftly to an attempted invasion of Taiwan and Pratas Island. Although there may be repercussions if China decides to take the slow strategy of blockading Taiwan, the U.S. could use gray zone tactics such as cyberattacks and directed energy weapons to disable Chinese ships blockading Taiwan. This would include cyberattacks on Yulin Naval Base and Chinese military assets in the Paracels. The goal would be to coerce China with deniability. While the Chinese ships and communications are disabled, the U.S. could communicate to China that it will launch a counter-blockade strategy unless China pledges to settle the Taiwan issue diplomatically.
3. ***Reassure allies and partners in the Indo-Pacific*** that a strong alliance with the U.S. is what will deter China from taking aggressive actions and is in their interests. For example, the U.S. should strengthen ties with India because it is already a democracy and emphasize that it shares common concerns about

China's military buildup on India's northern border as well as China's naval expansion in the Indian Ocean. India's geographic location in the middle of the Indo-Pacific allows better reach into the South China Sea and Indian Ocean. Its demographic diversity and emerging technology capabilities are expected to surpass China, and it is a target of China's BRI. The U.S. could also pursue a similar security framework with Japan and Australia. Although these countries have their own relationships with China, they are mostly suspicious of China's real intentions.

4. ***Strengthen the Mission Partner Environment (MPE) program*** and promote a network security and data-sharing architecture that is interoperable, uses cloud-based technologies, and a centralized command and control center to monitor Chinese gray zone operations in the South China Sea. This would allow for better and quicker coordinated decision-making within the Joint Forces Command and with allies in the Indo-Pacific.
5. ***Establish mandatory education on Chinese strategic thought and culture*** for Department of State and Department of Defense personnel handling East Asia and Indo-Pacific affairs. The goal is to learn about Chinese stratagem skills and intellectual sources that affect China's conduct. As Sun Tzu puts it, "know your opponent and know yourself, in a hundred battles you will never be in peril."

Tier 2: Long-Term Recommendations

1. *Strengthen areas of existing U.S.-China cooperation and spearhead science*

diplomacy with China. Both countries do not need to engage directly on sensitive issues related to the South China Sea. The U.S. would engage China within its sphere of influence, but it does not threaten it by competing against Chinese influence. It could include partnerships between U.S. and Chinese Centers for Disease Control and Prevention (CDCs), U.S. Food and Drug Administration and the China Drug Administration, USAID and the China International Development Cooperation Agency, and U.S. National Institutes of Health and the Chinese Academy of Medical Sciences. Launching economic development and public health partnerships in Africa, where both countries already have collaborated during the Ebola crisis, could be a stepping-stone towards improving U.S.-China cooperation. On emerging technologies, China and the U.S. can cooperate on preventing an AI arms race by first setting up a bilateral governance committee prohibiting the use of unmanned vehicles in the South China Sea. Due to the technical limitations of AI systems, weapons relying on AI systems could misfire and rapidly escalate conflict. If the AI governance committee is successful, a cyber governance committee could be built to regulate what kind of cyber weapons are permissible in certain contexts.

2. *Spearhead the creation of a Code of Conduct in the South China Sea.* Building on the strong alliance network established in Tier 1, the U.S. could influence Southeast Asia and ASEAN's role in the region's security architecture and

encourage it to speak with consensus on key issues related to China and its excessive claims in the South China Sea. The U.S. should start by encouraging those countries with direct interests in the South China Sea and frame the negotiations among claimants as a fisheries management, environmental cooperation, and gas development agreement. Issues about sovereignty should be avoided. ASEAN remains at the center of a free and open U.S. Indo-Pacific strategy.

3. ***Test China's intentions and avoid posing an economic life-threatening situation for China.*** It may include decreasing or eliminating U.S. FONOPs to incentivize China to de-escalate the South China Sea and encourage maritime trade. The goal would be to convince China that maritime trade encourages economic and scientific interdependence. The U.S. should frame interdependence as something more beneficial for China's growth. Although the U.S. will maintain a third-party threat to China's sphere of influence in the South China Sea to interrupt China's strategic outlook, U.S. strategy will be more open to long-term options.⁴⁸⁹ The U.S. threat will mainly come from its defense systems in Guam and the advanced interoperable allied network in the First and Second Island Chains. China will be

⁴⁸⁹ This strategy of indirectly targeting its real objective is characteristic of Chinese calculated strategic thinking. For example, in the 1960s, China solicited African support to become a member of the UN by building sports stadiums in many African countries. Although it may seem unconnected to China's real objective, China's patient "stadium diplomacy" worked and China became a UN member in 1971. A strategy that indirectly targets its real objective is also in line with "Go" strategy. If White places a stone two intersections away from Black's stone, White attacks Black's sphere of influence and block's Black's strategic outlook, but it does not initiate a capture (surrounding) of Black's stone. Black will either have to secure territory or abandon its stone and pursue the center of the board. Thus, Black's response will reveal what its intentions really are.

left with two options: either declare the nine-dash line as its territorial waters and run afoul of international law or withdraw its forces and project itself as a peaceful rising power that respects international law. Depending on its decision, China will reveal what its true intentions are.

4. ***Implement the Code of Conduct*** by framing it as an economic necessity to ensure China's access to the market. As the U.S. lightens FONOPs in the South China Sea, points of compromise between ASEAN and China may include refraining any military vessel from patrolling the region in exchange for Chinese recognition that the Philippines and other Southeast Asian countries have valid claims to the resources. Building on the U.S.-China cooperation on science and diplomacy, both countries will be optimistic because there is rich potential for implementing a Code of Conduct based on mutual economic and environmental concerns. The U.S. should assist Southeast Asian nations in accelerating their marine industry technology to create a Nash equilibrium with China. The maritime rights game will be cooperative if both sides have symmetric real-time monitoring capabilities to track vessels, marine information technology, and rapid intervention systems to respond to emergencies such as collisions, oil spills, and disaster management. Cooperation could be strengthened by establishing a marine environmental protection regime headed by an epistemic community appointed by a third-party such as the UN. The Treaty of Amity and Cooperation's High Council can then function as an arbitration instrument between ASEAN and China on South China Sea issues.

5. *Assist ASEAN members' coast guards to focus on enforcing the Code of*

Conduct. This would include giving ASEAN members' capabilities to monitor and prevent human activities that could destroy the South China Seas' marine environment, such as discharge of untreated waste, illegal fishing, and poaching of endangered species. Armed with advanced monitoring capabilities from the U.S., ASEAN countries can detect immediately if China has violated its pledge to protect the environment in the Code of Conduct. The rapid detection mechanism may deter China from resuming aggression and threatening the economic potential of the South China Sea. ASEAN and China can launch task forces to study the North Pacific Coast Guard Forum, which is a cooperation between the coast guards of Japan, South Korea, Russia, China, Canada, and the U.S. The cooperation between ASEAN and China should be non-binding, voluntary, and non-political. These operations are independent of overlapping claims in the South China Sea and should not address sovereignty claims.

CONCLUSION

China's actions in the South China Sea have increasingly been provocative since China showed its propaganda video at Times Square in 2016. The aftermath of the Tribunal's ruling shows that the international legal order is still struggling to assert itself in the face of a major power such as China.

Implementing the Tribunal's Award in *South China Sea* in its entirety will unlikely be anytime soon. Examining the U.S. and China's views on the dispute reveal that both powers cite international law to support their positions. Both countries agree that international law exists and is relevant. However, they disagree about substantive elements of the UNCLOS. China has clearly rejected the authority of the mechanism established by the treaty, hence by international law, to provide definitive binding interpretations of the UNCLOS. With 60% of the world's maritime shipping passing through the South China Sea, a seabed containing one of the world's largest oil and natural gas reserves, and an important food source for China and Southeast Asian countries, China's claims and actions in the South China Sea are strategically important both materially and symbolically. They are symbolic because they challenge U.S. interpretation of international law and, more broadly, of international order. Just as codifying international law and institutionalizing dispute settlement did not prevent World War I from breaking out, the arbitral proceedings provided by the UNCLOS have

not led to a peaceful settlement. Although it has not yet led to armed conflict, the proceedings have complicated the dispute in China's view. China claims that its rights to the South China Sea is based on history and is well within its rights provided by international law to defend its territory. Similarly, the U.S. claims that its presence in the South China Sea protects the freedom of navigation and the credibility of international law and multilateral institutions. The U.S. has invoked the Tribunal's decision and declared that China's claims are inconsistent with the UNCLOS. Thus, neither international law nor mere rhetorical rejection of China's actions in the South China Sea will determine the resolution of the dispute.

Although China is aware that it is challenging the provisions of the UNCLOS, China's domestic issues force its foreign policy to take on hardline positions in the South China Sea. Historically, the Chinese government's actions to claim islands in the South China Sea were driven by a desire to counter the decline of economic satisfaction and promote nationalist legitimacy. China's actions were not solely to protect preexisting claims, as China often argues.

China's hardline policy on the South China Sea will be detrimental to the global economy and international public order. China's economy and political stability are projected to decline within the next decade. If nothing is done to mitigate the danger, China and the U.S. will sleepwalk into a Thucydides trap. The implications of this situation would even more strain U.S., ASEAN, China relations and doom any hope for a code of conduct to be signed and implemented. In an extreme scenario, violent conflict may break out. Maintaining peace between the revisionist and the status quo powers, in

this case China and the U.S., will depend on their ability to avoid any miscalculations that can escalate and lead to a violent confrontation.

The South China Sea dispute challenges international law as a limit to asserting jurisdiction beyond its borders. Will the tensions in the South China Sea ultimately lead to a major war? Unless China or the U.S. gives up defending and instead focuses on cooperating on mutually beneficial issues, the prospects of escalating conflict remain on the horizon. Despite both countries' technological and scientific advances, human nature's desire to secure economic satisfaction and political survival remains the same. The governments of both countries should look to the past to avoid repeating the same mistakes in the future. Understanding human nature and showing empathy for the other side will be fundamental to break this cycle of conflict. The lessons of history will always be a great light to dispel the shadows of an uncertain future.

BIBLIOGRAPHY

- Abbott, Kenneth W. "Modern International Relations Theory: A Prospectus for International Lawyers." *The Yale Journal of International Law* 14, no. 2 (1989): 335.
- Alderman, Harold, John Hoddinott, and Bill Kinsey. 2004. "Long Term Consequences of Early Childhood Nutrition." HiCN Working Papers 09, Households in Conflict Network.
- Alesina, Alberto and Roberto Perotti. "Income distribution, Political instability, and Investment". *European Economic Review* 1996: 1203-1228.
- Alexander, Lewis M. "Baseline Delimitations and Maritime Boundaries." *Virginia Journal of International Law* 23, no. 4 (1983): 503.
- Ammann, Odile. *Domestic Courts and the Interpretation of International Law*. Brill, 2019.
- Aust, Helmut Philipp, and Nolte, Georg. *The Interpretation of International Law by Domestic Courts*. International Law in Domestic Legal Orders. Oxford: Oxford University Press. 2016.
- Bautista, Lowell. "Philippine Arbitration against China over the South China Sea." *Asia-Pacific Journal of Ocean Law and Policy* 1, no. 1 (2016): 121-26.
- Baum, Richard. "Political Stability in Post-Deng China: Problems and Prospects." *Asian Survey* 32, no. 6 (1992): 491-505.
- Bercovitch, Jacob. "Understanding Mediation's Role in Preventive Diplomacy." *Negotiation Journal* 12, no. 3 (1996): 241-58.
- Bickman, Leonard. "The Social Power of a Uniform." *Journal of Applied Social Psychology* Vol. 4, Issue 1. March 1974. pp. 47-61
- Blainey, Geoffrey. *The Causes of War*. 3rd edition London: Macmillan 1988.
- Blair, Robert J.R. "The Neurobiology of Impulsive Aggression." *Journal of Child and Adolescent Psychopharmacology*. 26 (1): 4 – 9 Feb. 1, 2016.
- Blattman, Christopher and Edward Miguel. "Civil War." *NBER Working Paper Series 14801*, Cambridge: National Bureau of Economic Research. 2009.
- Blumenthal, Dan. *The China Nightmare: The Grand Ambitions of a Decaying State*. American Enterprise Institute. 2020.
- Bonnet, François-Xavier "Geopolitics of Scarborough Shoal," Irasec's Discussion Papers, No. 14, November 2012.

- Boyle, Alan E. "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction." *International and Comparative Law Quarterly* 46, no. 1 (1997): 37–54.
- Brannen, Samuel J., Christian S. Haig, and Katherine Schmidt. *The Age of Mass Protests: Understanding an Escalating Global Trend*. CSIS. March 2020.
- Buszynski, Leszek. "ASEAN, the Declaration on Conduct, and the South China Sea." *Contemporary Southeast Asia* 25, no. 3. 343-62. 2003.
- Callaghan, Mike & Paul Hubbard. The Asian Infrastructure Investment Bank: Multilateralism on the Silk Road." *China Economic Journal*, 9:2, 116-139. 2016.
- Carr, E.H., and Michael. Cox. *The Twenty Years' Crisis, 1919-1939* Reissued with a New Preface from Michael Cox / by E.H. Carr ; Edited by Michael Cox. 1st Ed. 2016. ed. 2016.
- Chan, Anita. *China's Workers Under Assault: The Exploitation of Labor in a Globalizing Economy*. London: M. E. Sharp. 2001.
- Chan, Jenny. "Chinese Women Workers Organize in the Export Zones." *New Labor Forum*. 15(1): 19-27. 2006.
- Chang Liao N. "Domestic Politics and China's Assertive Foreign Policy: Why China's Rise May Not Be Peaceful." In: Leng TK., Aoyama R. (eds) *Decoding the Rise of China*. Palgrave Macmillan, Singapore. 2018.
- Cheng, Tao. "The Dispute Over the South China Sea Islands." *Texas International Law Journal* 10 (1975): 265-77
- China International Famine Relief Commission (1928) *Annual Report 1927 Series A No. 23*. Peking.
- China International Famine Relief Commission (1929) *Annual Report 1928 Series A No. 26*. Peiping (Beijing).
- China International Famine Relief Commission (1930) *Annual Report 1929 Series A No. 28*. Peiping (Beijing).
- China International Famine Relief Commission (1930) *Series B No. 41*. Peiping (Beijing)
- "China and Her Islands – Keeping an Eye on Foreign Nations." *The Examiner*, June 12, 1909.
- "Chinese Foreign Relations" *The Times*. (London), January 18, 1908.
- China's Maritime Gray Zone Operations*, ed. Andrew S. Erickson and Ryan D. Martinson. Annapolis, MD: Naval Institute Press, 2019.
- Chen, Qianping. "The Nationalist government's efforts to recover Chinese sovereignty over the islands in the South China Sea after the end of World War Two." *Journal of Modern Chinese History*, 11:1, 72-96. 2017.

- Chin, Gregory T. "China's Bold Economic Statecraft." *Current History*; Oakland Vol. 114, Iss. 773. pp. 217-223. Sept. 2015.
- Chiu, Hungdah, and Choon-Ho Park. "Legal Status of the Paracel and Spratly Islands." *Ocean Development & International Law* 3, no. 1 (1975): 1–28.
- Christensen T.J. "More Actors, Less Coordination? New Challenges for the Leaders of a Rising China." In: Rozman G. (eds) *China's Foreign Policy*. Asan-Palgrave Macmillan Series. Palgrave Macmillan, New York. 2012.
- Chubb, Andrew. "PRC Assertiveness in the South China Sea: Measuring Continuity and Change, 1970–2015." *International Security* 2021; 45 (3): 79–121.
- Chubb, Andrew, "Chinese Nationalism and the "Gray Zone": Case Analyses of Public Opinion and PRC Maritime Policy" (2021). CMSI Red Books, Study No. 16.
- Chung, Chris P. "Drawing the U-Shaped Line: China's Claim in the South China Sea, 1946–1974." *Modern China* 42, no. 1 (2016): 38-72.
- Collier, Paul and Anke Hoeffler. "Greed and Grievance in Civil War." *Oxford Economic Papers* 56, no. 4 (2004): 563-95.
- Collier, Paul, Anke Hoeffler, and Dominic Rohner. "Beyond Greed and Grievance: Feasibility and Civil War." *Oxford Economic Papers* 61, no. 1 (2009): 1-27.
- Colson, David A, and Hoyle, Dr. Peggy. "Satisfying the Procedural Prerequisites to the Compulsory Dispute Settlement Mechanisms of the 1982 Law of the Sea Convention: Did the Southern Bluefin Tuna Tribunal Get It Right?" *Ocean Development and International Law* 34, no. 1 (2003): 59-82.
- Compaoré, Ali, Montfort Mlachila, Rasmané Ouedraogo, and Sandrine Sourouem. "The Impact of Conflict and Political Instability on Banking Crises in Developing Countries." IMF Working Paper. February, 2020.
- Connor DF, Carlson GA, Chang KD, Daniolos PT, Ferziger R, Findling RL, Hutchinson JG, Malone RP, Halperin JM, Plattner B, Post RM, Reynolds DL, Rogers KM, Saxena K, Steiner H, Stanford. "Howard/AACAP Workgroup on Juvenile Impulsivity and Aggression." *J Clin Psychiatry*. 2006 May; 67(5):808-20.
- Cordner, Lee G. "The Spratly Islands Dispute and the Law of the Sea." *Ocean Development and International Law* 25, no. 1 (1994): 61-74.
- Cruttwell, C. R. M. F., and Royal Institute of International Affairs. *A History of Peaceful Change in the Modern World*, by C. R. M. F. Cruttwell. Legal Classics Library. London; New York: Oxford University Press, 1937.
- Cui, Shunji. "China in the Fight Against the Ebola Crisis: Human Security Perspectives." *Human Security and Cross-Border Cooperation in East Asia* 155–180. 2 Sep. 2018, doi:10.1007/978-3 319-95240-6_8

- Del Vecchio, Angela, and Roberto Virzo, eds. *Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals*. Cham, Switzerland: Springer International Publishing, 2019.
- Dupont, Pierre-Emmanuel. "Contested Sovereignty over Land Territory and Maritime Zones". In *Stress Testing the Law of the Sea*. (Leiden, The Netherlands: Brill | Nijhoff, 2018)
- Economy, Elizabeth C. "The Game Changer: Coping with China's Foreign Policy Revolution," *Foreign Affairs*, Vol. 89, No. 6 (November/December 2010), pp. 150–151.
- Elfstrom, Manfred, and Sarosh Kuruvilla. "The Changing Nature of Labor Unrest in China." *Industrial & Labor Relations Review*. 67.2 (2014): 453–480.
- Fietta, S. and R. Cleverly. *Practitioner's Guide to Maritime Boundary Delimitation*. Oxford University Press, 2016.
- Fuller, Pierre. "North China Famine Revisited: Unsung Native Relief in the Warlord Era, 1920–1921." *Modern Asian Studies* 47, no. 3 (2013): 820–50.
- Fravel, M. Taylor. *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes*. Princeton Studies in International History and Politics. Princeton: Princeton University Press, 2008.
- Friedman, Edward. "China's Ambition, America's Interests, Taiwan's Destiny, and Asia's Future." *Asian Survey* 53, no. 2 (2013): 225-244.
- Garfinkel, Michelle R. and Stergios Skaperdas. "Economics of Conflict: An Overview." In Todd Sandler and Keith Hartley, eds., *Handbook of Defense Economics*. Elsevier. 2007.
- Gewirtz, Paul. *Limits of Law in the South China Sea*. Brookings, 2016, www.brookings.edu/wp-content/uploads/2016/07/Limits-of-Law-in-the-South-ChinaSea-2.pdf. Accessed June 16, 2021
- Gitter, David and Leah Fang. "The Chinese Communist Party's Use of Homophonous Pen Names: An Open-Source Open Secret." *Asia Policy* 13, no. 1 (2018): 69-112.
- Glennon, Michael J. *Limits of Law, Prerogatives of Power: Interventionism after Kosovo*. 1st ed. New York: Palgrave, 2001.
- Gobel, Christian and Ong, Lynette H., "Social Unrest in China." Long Briefing, Europe China Research and Academic Network (ECRAN), 2012, Available at SSRN: <https://ssrn.com/abstract=2173073>
- Goldsmith, Eric A., and Jack L. Posner. *The Limits of International Law*. Oxford; New York: Oxford University Press, 2005.
- Goldsmith, Jack Landman, and Eric A. Posner "The Limits of International Law Fifteen Years Later." (March 12, 2021). Available at SSRN: <https://ssrn.com/abstract=3803696> or <http://dx.doi.org/10.2139/ssrn.3803696>

- Goldstein, Avery. "Great Expectations: Interpreting China's Arrival." *Quarterly Journal: International Security*, vol. 22. no. 3. (Winter 1997/1998): 36-73.
- Godement, F. "La Famine de 1928 à 1930 en Chine du Nord et du Centre". Master's thesis, Université Paris-VII. 1976.
- Granados, Ulises. "As China Meets the Southern Sea Frontier: Ocean Identity in the Making, 1902-1937." *Pacific Affairs* 78, no. 3 (2005): 443-61.
- 郭富文 [Guo Fuwen], "那场英勇的海战" [That Heroic Sea Battle], People's Navy, 21 January 2014, p. 4.
- Gupta, Dipak, M.C.Madhavan, and Andrew Blee. "Democracy, Economic Growth and Political Instability: An Integrated Perspective". *Journal of Socio-Economic* 1998: 587-611.
- Guzman, Andrew T. *How International Law Works: a Rational Choice Theory*. Oxford: Oxford University Press, 2008.
- Hairen, Zong. "Responding to the "Two States Theory". *Chinese Law and Government* 35, no. 2 (2002): 14-36.
- Halegua, Aaron. "Getting Paid: Processing the Labor Disputes of China's Migrant Workers." *Berkeley Journal of International Law* 26 (1): 254-322. 2008.
- Harrold, Peter and Rajiv Lall. "China: Reform and Development in 1992-93." *World Bank Discussion Papers*. August 1993.
- Hayton, Bill. "When Good Lawyers Write Bad History: Unreliable Evidence and the South China Sea Territorial Dispute." *Ocean Development and International Law* 48, no. 1 (2017): 17-34.
- Hayton, Bill. "Writing the History of the South China Sea Disputes." In Spangler, Jonathan, Dean Karalekas, and Moises Lopes de Souza, eds. *Enterprises, Localities, People, and Policy in the South China Sea: Beneath the Surface*. Critical Studies of the Asia-Pacific. 2018
- Hayton, Bill. "The Modern Origins of China's South China Sea Claims: Maps, Misunderstandings, and the Maritime Geobody." *Modern China* 45, no. 2 (2019): 127-70.
- Heath, Timothy R., Derek Grossman, and Asha Clark. "China's Quest for Global Primacy: An Analysis of Chinese International and Defense Strategies to Outcompete the United States." Santa Monica, CA: *RAND Corporation*, 2021.
https://www.rand.org/pubs/research_reports/RRA447-1.html.
- Heslin, Alison. "Riots and Resources: How Food Access Affects Collective Violence." *Journal of Peace Research* 58, no. 2 (2021): 199-214.
- Hobbes, Thomas, G. A. J. Rogers, and Karl Schuhmann. *Thomas Hobbes Leviathan: a critical edition*. 2006.

- Hong-Pyo, Lee. "China's Petroleum Trade." *The Journal of East Asian Affairs* 4, no. 1. pp. 184-221. 1990.
- Hongyi Lai & Su-Jeong Kang. "Domestic Bureaucratic Politics and Chinese Foreign Policy." *Journal of Contemporary China*, 23:86, 294-313. 2014.
- Hopewell, Kristen. "Different paths to power: The rise of Brazil, India and China at the World Trade Organization." *Review of International Political Economy*. 22:2, 311-338. 2015.
- Hu, Richard W. and Steve Chan. "China's New Generation of Leaders and Regional Challenges in East Asia." *Eurasian Geography and Economics*. 53:6, 674-687. 2012.
- Ikeshima, Taisaku. "China's Dashed Line in the South China Sea: Legal Limits and Future Prospects." Waseda Global Forum No. 10, 2013, 17–50
- Institute of Southeast Asian Studies. *Entering Uncharted Waters? ASEAN and the South China Sea*. Edited by Pavin Chachavalpongpou.
- Jain-Chandra, Sonali, Niny Khor, Rui Mano, Johanna Schauer, Philippe Wingender, and Juzhong Zhuang. "Inequality in China – Trends, Drivers and Policy Remedies." *IMF Working Paper No. 18/127*. June 5, 2018.
- Jakobson, Linda and Dean Knox, "New Foreign Policy Actors in China." *SIPRI Policy Paper*, No. 26 (September 2010).
- Jayakumar, Beckman, Koh, Jayakumar, S., Beckman, Robert L., Koh, Tommy. *The South China Sea Arbitration: The Legal Dimension*. Edited by S. Jayakumar, Tommy Koh, Robert Beckman. NUS Centre for International Law Series. 2018.
- Johnson, Richard R. "Psychological Influence of the Police Uniform." *FBI Law Enforcement Bulletin* Volume: 70 Issue: 3. March 2001 Pages: 27-32
- Justino, Patricia and Philip Verwimp. 2006. "Poverty Dynamics, Violent Conflict and Convergence in Rwanda." HiCN Working Paper 16, Falmer: Households in Conflict Network.
- Kacowicz, Arie Marcelo. *Peaceful Territorial Change*. Studies in International Relations (Columbia, S.C.). Columbia, S.C.: University of South Carolina Press, 1994.
- Kivimäki, Timo. *War Or Peace in the South China Sea?* NIAS Press. 2002
- Koo, Min Gyo. *Island Disputes and Maritime Regime Building in East Asia Between a Rock and a Hard Place*. 1st Ed. 2010. ed. The Political Economy of the Asia Pacific. 2010.
- Kurz, Johannes L. "The South China Sea and How it Turned 'Historically' Chinese Territory in 1975." in Vol. 3 *China and the World – the World and China*. 2019. 133-60
- Kurz, Johannes L. "Gauging the South China Sea: Route Books (*genglubu*) since 1974." in *The China Quarterly*, 240, December 2019, pp. 1135 – 1143.

- Lardy, Nicholas R. *The State Strikes Back: The End of Economic Reform in China?* Peterson Institute for International Economics. January 2019.
- Lassere, Frédéric. "Once forgotten reefs... historical images in the scramble for the South China Sea", *Cybergeo: European Journal of Geography* 92, April 22, 1999.
- Lee Hong-Pyo, "China's Petroleum Trade," *Journal of East Asian Affairs*, Vol. 4, No. 1 (Winter/Spring 1990), pp. 184–221.
- Li Jinming and Li Dexia. (2003) "The dotted line on the Chinese map of the South China Sea: a note." *Ocean Development & Int. Law* 34, 3–4: 287–95.
- 李炳夫 [Li Bingfu], "西沙海战中的永兴岛钻探" [Drilling at Woody Island during the Paracels Battle], *China Petrochem*, no. 16 (August 2012), pp. 80–83.
- 李兆心 [Li Zhaoxin], "我所经历的西沙海战" [What I Experienced during the Paracels Sea Battle], *Party History Collection*, no. 7 (2009)
- Lo C. *China's policy towards territorial disputes: The case of the South China Sea islands*. Routledge, New York. 1989.
- Main, Thomas O. "The Procedural Foundation of Substantive Law", 87 *WASH. U. L. REV.* 801 (2010).
- Marston, G. "Abandonment of Territorial Claims: The Cases of Bouvet and Spratly Islands", *British Year Book of International Law*, 1986: 335-56.
- Malozemov, Andrew. *Russian far eastern policy: 1881-1904. With special emphasis on the causes of the Russo-Japanese war*. Berkeley: University of California Press. 1958.
- Mansfield, Edward and Jack Snyder, "Democratization and the Danger of War," *International Security*, Vol. 20, No. 1 (Summer 1995).
- Mbengue Makane Moïse. "The South China Sea Arbitration: Innovations in Marine Environmental Fact-Finding and Due Diligence Obligations." *Ajil Unbound* 110 (2016): 285–89.
- McManus, J. W. "Offshore Coral Reef Damage, Overfishing, and Paths to Peace in the South China Sea." *International Journal of Marine and Coastal Law*, 32(2), 199-237. 2017.
- Mearsheimer, John J. *The Tragedy of Great Power Politics*. New York: W. W. Norton. 2001.
- Merliza Makinano, *Understanding the South China Sea Dispute* (Quezon City, Philippines: Office of Strategic and Special Studies, Armed Forces of the Philippines, 1998).
- Miall, Hugh. *The Peacemakers: Peaceful Settlement of Disputes since 1945*. New York: St. Martin's Press, 1992.
- Milgram, Stanley. "The Perils of Obedience." *Harper's*, Dec 01, 1973, 62.

Milgram, Stanley. *Obedience to authority*. New York. Harper Perennial. Republished 2017.

Minas, Stephen, and Jordan Diamond. *Stress Testing the Law of the Sea: Dispute Resolution, Disasters and New Challenges (Conference) (2016: Dickson Poon School of Law)*, Transnational Law Institute, and Law of the Sea Institute.

Mingjiang Li, “Reconciling Assertiveness and Cooperation: China’s Changing Approach to the South China Sea Dispute”, *Security Challenges*, Vol 6, No. 2, Winter 2010.

Murphy, John Francis. *The Evolving Dimensions of International Law Hard Choices for the World Community*. New York: Cambridge University Press, 2010.

Ndiaye, Tafsir Malick, Mensah, Thomas A, Wolfrum, Rüdiger, and Kojima, Chie. *Law of the Sea, Environmental Law, and Settlement of Disputes*. Boston: Brill, 2007.

Nelson RJ, Trainor BC: Neural mechanisms of aggression. *Nat Rev Neuroscience* 8:536–546, 2007.

Nish, Ian. *The Origins of the Russo-Japanese War*. London; New York: Longman, 1985.

Office of the Director of National Intelligence. *Global Trends 2040*. National Intelligence Council. March 2021.

Ohlin, J. D. "Nash Equilibrium and International Law." *European Journal of International Law* 23, no. 4 (2012): 915-40.

P. Chandrasekhara Rao, and Philippe Gautier. *The International Tribunal for the Law of the Sea*. Elgar International Law and Practice Series. Cheltenham, Gloucestershire: Edward Elgar Publishing, 2018.

Parisi, Francesco and Daniel Pi. “The economic analysis of international treaty law.” In Kontorovich, Eugene, and Francesco Parisi. *Economic Analysis of International Law* / Edited by Eugene Kontorovich, Francesco Parisi. 2016.

Pak Hŭi-gwŏn. *The Law of the Sea and Northeast Asia: A Challenge for Cooperation*. Publications on Ocean Development, V. 35. The Hague: Boston, 2000.

Powell, Robert. “Stability and the Distribution of Power.” *World Politics* 48 (January 1996). 239-67.

Prime, Penelope. “Low Expectations, High Growth: China's Economy in 1987.” In Anthony J. Kane, ed., *China Briefing, 1988*, pp.19-36. Boulder, CO: Westview, 1988.

Pun, Ngai. *Made in China: Women Factory Workers in a Global Workplace*. Durham, NC: Duke University Press. 2005.

Putnam, Robert D. “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization*, Vol. 42, No. 3 (Summer), pp. 427–460. 1988.

Pyle, Kenneth B. *The Making of Modern Japan*. Lexington, Mass: D.C. Heath. 1996.

Ramsbotham, Woodhouse, Miall, Woodhouse, Tom, and Miall, Hugh. *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts*. 2nd ed. Cambridge, UK; Malden, MA: Polity, 2005.

Raustiala, Kal. "Refining 'The Limits of International Law'." *The Georgia Journal of International and Comparative Law* 34, no. 2 (2006): 423.

Reilly, James. "China's Unilateral Sanctions," *The Washington Quarterly*, Vol. 35, No. 4, pp. 121–133. 2012

Renmin ribao 人民日报 November 25, 1975.

Rodger, A. B. *The War of the Second Coalition, 1798 to 1801, a Strategic Commentary*. Oxford: Clarendon Press, 1964.

Roundtable Meeting Summary: Exploring Public International Law and the Rights of Individuals with Chinese Scholars. Chatham House. April 14 – 17, 2014.

<https://www.chathamhouse.org/2014/04/exploring-public-international-law-and-rights-individuals-chinese-scholars-part-one> Accessed June 29, 2021.

Rosecrance, Richard N. *Action and Reaction in World Politics; International Systems in Perspective*. Boston: Little, Brown, 1963.

Rosen, Stanley. "China in 1987: The Year of the Thirteenth Party Congress." *Asian Survey* 28, no. 1 (1988): 35-51. Accessed May 27, 2021. doi:10.2307/2644871.

S Fietta and R. Cleverly. *Practitioner's Guide to Maritime Boundary Delimitation*. Oxford University Press, 2016.

Samuels, Marwyn S. *Contest for the South China Sea*. New York: Methuen, 1982.

Schofield, Clive, ed. *Maritime Energy Resources in Asia: Energy and Geopolitics*. Seattle: The National Bureau of Asian Research, 2011: 1-198.

Scobell, Andrew. Edmund J. Burke, Cortez A. Cooper III, Sale Lilly, Chad J.R. Ohlandt, Eric Warner, and J.D. Williams. "China's Grand Strategy: Trends, Trajectories, and Long-Term Competition." Santa Monica, CA: *RAND Corporation*. 2020.

https://www.rand.org/content/dam/rand/pubs/research_reports/RR2700/RR2798/RAND_RR2798.pdf

Scobell, Andrew, and Phillip C. Saunders. *PLA Influence on China's National Security Policymaking*. Stanford, California: Stanford Security Studies, 2015.

Scott, Robert E, and Stephan, Paul B. *The Limits of Leviathan*. Cambridge: Cambridge University Press, 2006.

Setear, John K. "An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law." *Harvard International Law Journal* 37, no. 1 (1996): 139.

Setear, John K. "Responses to Breach of a Treaty and Rationalist International Relations Theory: The Rules of Release and Remediation in the Law of Treaties and the Law of State Responsibility." *Virginia Law Review* 83, no. 1 (1997): 1-126.

Shelef, Nadav G. *Homelands: Shifting Borders and Territorial Disputes*. Cornell University Press. 2020.

Shen, Jianming. "International Law Rules and Historical Evidences Supporting China's Title to the South China Sea Islands." *Hastings International and Comparative Law Review* 21, no. 1 (1997): 1.

Shi Dizu 史棣祖. "Nanhai zhudao zigu jiushi woguo lingtu" 南海诸岛自古就是我国领土,

Singh, Leishangthem Bimolchand. "China's Strategy on the South China Sea Disputes." *World Affairs: The Journal of International Issues*, Vol. 21, No.1 pp. 80-99.

Siverson, Randolph M, and Tennefoss, Michael R. "Power, Alliance, and the Escalation of International Conflict, 1815-1965." *The American Political Science Review* 78, no. 4 (1984): 1057-069.

Song, Yann-huei, and Zou, Keyuan. *Major Law and Policy Issues in the South China Sea. Contemporary Issues in the South China Sea*. Farnham: Routledge, 2014.

Spiegel, Mickey., and Human Rights Watch. *Dangerous Meditation: China's Campaign against Falungong*. New York, NY: Human Rights Watch, 2002.

Storey, Ian. "Can the South China Sea Dispute Be Resolved or Better Managed?" *Strategizing Change in Asia: The 27th Asia-Pacific Roundtable*. 2013.

Shicun Wu and Keyuan Zou. *Arbitration Concerning the South China Sea: Philippines Versus China*. Routledge. March 2, 2016.

Storey, Ian James. "Creeping Assertiveness: China, the Philippines and the South China Sea Dispute." *Contemporary Southeast Asia* 21, no. 1 (1999): 95-118.

Swaine, Michael D. "China's Assertive Behavior Part One: On "Core Interests." *China Leadership Monitor*, no. 34. November 15, 2010.
<https://carnegieendowment.org/2010/11/15/china-s-assertive-behavior-part-one-on-core-interests-pub-41937> Accessed June 25, 2021

Talmon, Stefan. "The South China Sea Arbitration: Observations on the Award on Jurisdiction and Admissibility." *Chinese Journal of International Law* (Boulder, Colo.), 2016

Tams, Christian J, and Tzanakopoulos, Antonios. "Barcelona Traction at 40: The ICJ as an Agent of Legal Development." *Leiden Journal of International Law* 23, no. 4 (2010): 781-800.

Tanaka, Yoshifumi. *The South China Sea Arbitration: Toward an International Legal Order in the Oceans*. Oxford, New York: Hart, 2019.

- Thaxton Jr, Ralph A., *Salt of the Earth: The Political Origins of Peasant Protest and Communist Revolution in China* (Berkeley, 1997).
- Trachtman, Joel P. *The Economic Structure of International Law*. Cambridge, Mass.: Harvard University Press, 2008.
- Taylor, Bill, Kai Chang, and Qi Li. *Industrial Relations in China*. Cheltenham, UK, and Northampton, MA: Edward Elgar Publishing. 2003.
- Tung, William L. *The Political Institutions of Modern China*. The Hague: M. Nijhoff, 1964.
- United Nations, Department of Economic and Social Affairs, Population Division (2015). *World Population Ageing 2015* (ST/ESA/SER.A/390).
- U.S. Department of Defense. *Pacific Deterrence Initiative Fiscal Year 2022*. Office of the Under Secretary of Defense. May 2021.
- U.S. Department of Defense. Indo-Pacific Strategy Report. June 1, 2019. <https://media.defense.gov/2019/Jul/01/2002152311/-1/-1/1/DEPARTMENT-OF-DEFENSE-INDO-PACIFIC-STRATEGY-REPORT-2019.PDF> Accessed June 10, 2021.
- U.S. Department of State. A Free and Open Indo-Pacific: Advancing a Shared Vision. November 4, 2019. <https://www.state.gov/wp-content/uploads/2019/11/Free-and-Open-Indo-Pacific-4Nov2019.pdf> Accessed June 10, 2021
- Useem, Bert, and Michael Useem. "Government Legitimacy and Political Stability." *Social Forces* 57, no. 3 (1979): 840-52. Accessed May 7, 2021. doi:10.2307/2577357.
- Valencia, Mark J. "Foreign Military Activities in Asian EEZs: Conflict Ahead?" *National Bureau of Asian Research Special Report* 27. May 2011.
- Vernon, James. *Hunger a Modern History*. Belknap Press of Harvard University Press. London 2007.
- Wachman, Alan M. "Playing by or Playing with the Rules of UNCLOS?" in *Military Activities in the EEZ*. 107, 113-14. Peter Dutton, ed. 2010.
- Waltz, Kenneth N. *Theory of International Politics*. London: Addison Wesley. 1979.
- Wang Hengjie 王恒杰. "Xisha qundao de kaogu diaocha" 西沙群岛的考古调查, *Kaogu* 考古 1992.9, 769-777
- Wang Hengjie 王恒杰. "Nansha qundao kaogu diaocha" 南沙群岛考古调查, *Kaogu* 考古 1997.9, 64-70.
- Wilkenfeld, Jonathan et al. *Mediating International Crises*. Routledge Advances in International Relations and Global Politics; 34. New York; London: Routledge, 2005.
- Xia, M. (2000) *Minguo shiqi ziran zaihai yu xiangcun shehui* [Natural Disasters and Rural Society in the Republican Era]. Zhonghua shuju, Beijing.

Xu Wang. "Convergence and Prospects." In *China 2049: Economic Challenges of a Rising Global Power*. edited by David Dollar, et al., Brookings Institution Press, 2020.

Yoshihara, Toshi. "The 1974 Paracels Sea Battle." *Naval War College Review* 69, no. 2 (2016): 41-65.

Wang, Jiangyu. "Legitimacy, Jurisdiction and Merits in the South China Sea Arbitration: Chinese Perspectives and International Law." *Chinese Journal of Political Science* 22, no. 2 (2017): 185-210.

Williams, Robert D. "International Law with Chinese Characteristics: Beijing and the 'Rules-Based' Global Order." *Brookings Institution*. October 2020.

Zhao, Suisheng. "Foreign Policy Implications of Chinese Nationalism Revisited: The Strident Turn." *Journal of Contemporary China*. 22:82, 535-553. 2013.

Zou Keyuan. "China's U-shaped Line in the South China Sea Revisited", 43

Appendix A: List of UNCLOS Articles Referenced in Chapter 2

Article 9 - *Default of appearance*

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Article 15 - *Delimitation of the territorial sea between States with opposite or adjacent coasts*

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Article 77 - *Rights of the coastal State over the continental shelf*

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 121 - *Regime of islands*

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in

accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Article 192 - General obligation

States have the obligation to protect and preserve the marine environment.

Article 197 - Cooperation on a global or regional basis

States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Article 204 - Monitoring of the risks or effects of pollution

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.
2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

Article 205 - Publication of reports

States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.

Article 206 - Assessment of potential effects of activities

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

Article 279 - Obligation to settle disputes by peaceful means

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

Article 281 - Procedure where no settlement has been reached by the parties

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.
2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

Article 282 - Obligations under general, regional or bilateral agreements

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

Article 283 - Obligation to exchange views

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

Article 286 - Application of procedures under this section

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

Article 287 - Choice of procedure

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
 - a. the International Tribunal for the Law of the Sea established in accordance with Annex VI;
 - b. the International Court of Justice;
 - c. an arbitral tribunal constituted in accordance with Annex VII;
 - d. a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.
3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.
4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.
5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.
6. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.
7. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.
8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

Article 288 - Jurisdiction

1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.
2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.

3. The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.
4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

Article 298 - Optional exceptions to applicability of section 2

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
 - a.
 - (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
 - (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;
 - (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;
 - b. disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

- c. disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.
- 2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in this Convention.
- 3. A State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in this Convention as against another State Party, without the consent of that party.
- 4. If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.
- 5. A new declaration, or the withdrawal of a declaration, does not in any way affect proceedings pending before a court or tribunal in accordance with this article, unless the parties otherwise agree.
- 6. Declarations and notices of withdrawal of declarations under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties

Appendix B: Fifteen Submissions of the Republic of the Philippines

On the basis of the facts and law set forth in this Memorial, the Philippines respectfully requests the Tribunal to adjudge and declare that:

1. China's maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those permitted by the United Nations Convention on the Law of the Sea ("UNCLOS" or the "Convention");
2. China's claims to sovereign rights and jurisdiction, and to "historic rights", with respect to the maritime areas of the South China Sea encompassed by the so-called "nine-dash line" are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under UNCLOS;
3. Scarborough Shoal generates no entitlement to an exclusive economic zone or continental shelf;
4. Mischief Reef, Second Thomas Shoal and Subi Reef are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, and are not features that are capable of appropriation by occupation or otherwise;
5. Mischief Reef and Second Thomas Shoal are part of the exclusive economic zone and continental shelf of the Philippines;
6. Gaven Reef and McKennan Reef (including Hughes Reef) are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, but their low-water line may be used to determine the baseline from which the breadth of the territorial sea of Namyt and Sin Cowe, respectively, is measured;
7. Johnson Reef, Cuarteron Reef and Fiery Cross Reef generate no entitlement to an exclusive economic zone or continental shelf;
8. China has unlawfully interfered with the enjoyment and exercise of the sovereign rights of the Philippines with respect to the living and non-living resources of its exclusive economic zone and continental shelf;
9. China has unlawfully failed to prevent its nationals and vessels from exploiting the living resources in the exclusive economic zone of the Philippines;
10. China has unlawfully prevented Philippine fishermen from pursuing their livelihood by interfering with traditional fishing activities at Scarborough Shoal;
11. China has violated its obligations under the Convention to protect and preserve the marine environment at Scarborough Shoal and Second Thomas Shoal;
12. China's occupation of and construction activities on Mischief Reef
 - a. violate the provisions of the Convention concerning artificial islands, installations and structures;
 - b. violate China's duties to protect and preserve the marine environment under the Convention; and

- c. constitute unlawful acts of attempted appropriation in violation of the Convention;
- 13. China has breached its obligations under the Convention by operating its law enforcement vessels in a dangerous manner causing serious risk of collision to Philippine vessels navigating in the vicinity of Scarborough Shoal;
- 14. Since the commencement of this arbitration in January 2013, China has unlawfully aggravated and extended the dispute by, among other things:
 - a. interfering with the Philippines' rights of navigation in the waters at, and adjacent to, Second Thomas Shoal;
 - b. preventing the rotation and resupply of Philippine personnel stationed at Second Thomas Shoal; and
 - c. endangering the health and well-being of Philippine personnel stationed at Second Thomas Shoal; and
- 15. China shall desist from further unlawful claims and activities.

Appendix C: Escapement Framework

As described in Chapter 3, the “escapement” framework considers four essential factors for a state to maintain its initial strategy. This appendix uses game theory, statistical evidence, and graphical representation, to discuss how the concept of “escapement” was put together. It describes a framework showing when a state’s equilibrium “escapes” the threshold of a matrix. Keeping the equilibrium within the matrix is essential for a state to maintain its initial strategy. Equilibrium is defined as a state’s adherence to a certain strategy. Once a state has reached a stable strategy or a steady point in which it is not expected to change strategies spontaneously, it has reached equilibrium. A matrix with four contextual factors: symmetrical distribution of power, economic satisfaction, third-party involvement, and political stability, will be used to show that the presence or absence of these factors could shape how a state decides to employ extreme forms of coercion to acquire territory or otherwise compromise the vital interests of other states.⁴⁹⁰ Escapement is a deviation from the state’s initial strategy. It refers to a threshold when a state’s equilibrium “escapes” the matrix and the state is forced to modify its initial strategy. This equilibrium model is driven by E.H. Carr’s suggestion in his book, *The Twenty Years’ Crisis*, that striving for peace is a quest for the equilibrium between power and morality.

⁴⁹⁰ E.H. Carr writes, “The problem of ‘peaceful change’ is, in national politics, how to effect necessary and desirable changes without revolution and, in international politics, how to effect such changes without war. Every effective demand for change, like every other effective political force, is compounded of power and morality; and the object of peaceful change can be expressed in terms neither of pure power nor of pure morality.” Thus, in Carr’s view, the problem of peaceful change is dependent on finding the equilibrium between power and morality. Carr, pp. 191-192

To find the balance that forces a state to escape equilibrium, I have five hypotheses to be tested.

- Escapement is less likely when the distribution of power between the parties is somewhat symmetrical.
- Escapement is less likely when there is general economic satisfaction and availability of choices for people to enjoy the value of doing or being something.
- Escapement is less likely when there is a third-party threat or involvement against at least one of the parties directly involved in the territorial issue.
- Escapement is less likely when the state's political stability and its governing capabilities are not threatened.
- Any combination of at least three failures of the four factors increases the likelihood of escapement. Assuming there is an underlying conflict between two entities, one state's chance to take coercive action against the other is greater if any of these factors change.

For graphical reference, the factors may be arranged using a matrix.

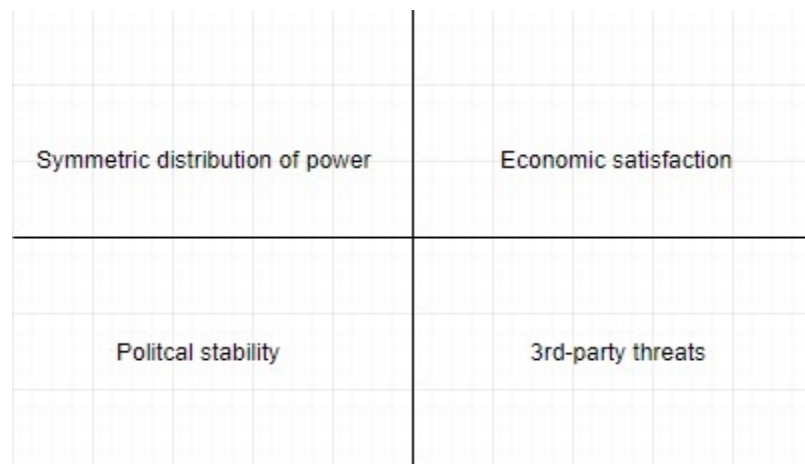


Figure 10: Escapement Matrix

As long as equilibrium is kept among these four quadrants, peaceful or no territorial change is likely. For this study, I will use the following parameters: military capabilities to measure power distribution, economic factors to determine well-being, political

stability, and 3rd party involvement as an interventionist. I argue that when three or more factors are absent, the prospect of a state engaging in violent predation is high.

Distribution of Power and Military Capabilities

The distribution of power is essential to understanding any process involving negotiation and bargaining. This structural variable determines the parameters and opportunities of interaction whether both parties are symmetric or asymmetrical. My first hypothesis is: Escapement is less likely when the distribution of power between the parties is somewhat symmetrical. By somewhat symmetrical, I argue that peace is more likely when states have roughly equal amounts of capability. Although predicting a peaceful or violent outcome based on distribution of power is debatable, I argue that nations having equal amounts of power will be cautious about pursuing their goals violently. They see their chances of winning as a low payoff if the other state retaliates or simply resists.⁴⁹¹ It is also important to note that incentives to use force are not

⁴⁹¹ Randolph Siverson and Michael Tennefoss show in their article, "Power, Alliance, and the Escalation of International Conflict, 1815-1965," that "equality of national power, supplemented by major power alliances for those nations that are weak, tends to restrain the likelihood that a conflict will escalate." They collected 256 conflicts from 1815 to 1965 and cross-tabulated the conflict data by the power of the revisionist and the status quo powers. They found that differences in power had a significant impact on the level of the conflict. On a scale of 1 to 3, with 1 being the lowest level of coercion and 3 being the highest level of violence, 61.7% of the conflicts never moved beyond the lowest level, and only relatively few (19.8%) involved mutual military action. In cases where there was asymmetry in power distribution, a much higher proportion escalated to more violence.

In his article "Stability and the Distribution of Power," Robert Powell considers both schools of thought. The balance-of-power school argues that an even distribution of power is more stable. The preponderance-of-power school generally argues the opposite, that a preponderance of power is more stable. Powell uses game theory to argue that the probability of war is minimal when the distribution of the revisionist's power mirrors the status quo distribution. When power is symmetric, the gains of using force are too small to outweigh the cost of fighting. However, when the disparity between the revisionist and status quo powers is large, then a state may be willing to use force to overturn the other.

necessarily reserved for the stronger power. As it will be shown later, the asymmetry of the distribution in the power structure, not a certain state's bargaining power, is the significant factor. My concept is only concerned about how much power variance between the two parties may exacerbate or prolong the dispute.

Economic Satisfaction Factors

Amartya Sen's 1999 book, *Development as Freedom*, defined economic well-being using his capability approach as having functions and capabilities. The concept of functioning, how a person may value doing or being, is subjective. Sen argues that, "This is not because income and wealth are desirable for their own sake, but because, typically, they are admirable general-purpose means for having more freedom to lead the kind of lives we have reason to value." Capabilities, on the other hand, refer to opportunities people can utilize functioning. The capabilities approach ties the two together. Using this approach to measure economic satisfaction, the availability of choices, whether to enjoy certain functions or well-being indicators such as decent labor and living standards, is more important than wealth accumulation. I argue that when citizens of State X are satisfied with their lives and enjoy well-being, State X will be less incentivized to take coercive action against State Y. However, if State X already has economic dissatisfaction and decides to go against State Y, the impact of State Y's retaliation on State X's slumping economy would not be felt as much compared to a critical attack on a country with a good economy. Thus, my second hypothesis is: Escapement is less likely when there is general economic satisfaction and an availability of choices for people to enjoy

the value of doing or being something. To measure well-being and capabilities, I use life expectancy, years of education, and GDP per capita. Later, I will combine all three variables to measure the Human Development Index (HDI) for each country used in the datasets. If people are given the capability to perform tasks and earn income to help them live the way they want to, the risk of conflict with other states will decrease.⁴⁹²

Factors of Credible Third-Party Threats or Involvement

The perception of third-party threats directly relates to the power scheme described in my first hypothesis. The historian George Blainey suggests, “It is not the actual distribution or balance of power which is vital: it is rather the way in which national leaders *think* that power is distributed.”⁴⁹³ I take the position that perception of a credible third-party threat or involvement is also dependent on psychological aspects. These would include the third party as an authoritative figure that could alter the balance of power between the two states or a judicial entity that could classify an action as illegal

⁴⁹² Several studies have shown that sharp economic downturns and low levels of income increase the likelihood of conflicts. Paul Collier and Anke Hoeffler show how there seems to be a causal direction running from economic conditions to conflict. There is also literature showing how severe lack of positive health and education outcomes resulting from poverty correlates with conflict. Collier has shown how growth rates are strongly associated with risks of conflict. The study finds that an increase in 1% from the mean would decrease the risk of conflict by 0.6 percentage points to 4%. Michelle Garfinkel and Stergios Skaperdas have also shown using game-theoretic tools such as the contest model to correlate human development, governance, and conflict. When human development is low, resources may not be allocated properly and efficiently by a weak government due to institutional instability and low human capital. Revolutionary leaders could exploit the government’s fault, and chances of overthrowing the current government increases unless it corrects its faults or suppresses resistance. Thus, low human development can incentivize rebellion and risk political instability. To compensate, leaders of these impoverished countries have resorted to authoritarianism to protect the legitimacy of the state. This will be the subject of political stability, a closely linked issue to economic satisfaction.

⁴⁹³ Italics in original; Blainey, p. 114

and the violating state would risk losing its place in the international community if it does not change its behavior. The third-party does not necessarily need to engage in coercion to be effective. For this factor, I first assess the threat from the third-party and then analyze under what conditions the threat functions. Does the threat function as an ally to one or both conflicting parties? Does the third party have any self-interest in intervening? Despite the topic's subjectivity, I generalize both questions and record only the presence or absence of a third-party. Thus, my third hypothesis is: Escapement is less likely when there is a credible third-party threat or threats against at least one of the parties directly involved in the territorial issue.⁴⁹⁴ This is irrespective of whether the threat is against the status quo or the revisionist state.

Third-party threats or involvement play a significant role in encouraging another state to comply with the law. On the other hand, a state will have an incentive to violate the law if it forecasts a greater payoff than the risk of negative consequences.

Political Stability

Richard Rosecrance argues in his book, *Action and Reaction in World Politics*, that the primary determinant of international stability and peace in the Westphalian

⁴⁹⁴ Based on eighty-one international conflicts and major civil disputes between 1945 and 1985, Hugh Miall has shown historical data supporting the argument that early third-party intervention positively correlates with peaceful resolution. Several scholars have also found similar results. In "Understanding Mediation's Role in Preventive Diplomacy," Jacob Bercovitch found that about two-thirds of post-Cold War conflicts that were successfully settled had been mediated by a third-party – there was some formal or institutionalized intervention by an outsider or a third party. Collecting conflicts between 1918 and 1996, Jonathan Wilkenfeld et al. found that two-thirds of settled international crises involved third-party mediation. The third-party pressured the parties to resolve the conflict or altered the balance of power by allying with one of the parties.

system from 1740 to 1960 was internal stability and the resulting security of elites, while domestic instability and elite insecurity were associated with external war. He also argues that numerous historical case studies suggest that a major cause of individual wars was political leaders' motivation to solve their internal problems through a diplomatic or military victory abroad. Studies also indicate that internal politics have the greatest impact on foreign policy, providing incentives or disincentives for going to war. I take the position that political stability and instability relate to a government's legitimacy. Combining this position with Rosecrance's second argument, I find that political leaders are incentivized to go to war and win to show their legitimacy as a leader.⁴⁹⁵ To examine this aspect of the matrix, I use the rule of law index, political violence, institutionalized democracy scores, health equality, and corruption indices. Thus, my fourth hypothesis is: Escapement is less likely when the political stability of a state and its governing capabilities are not threatened.

Putting the Matrix Together

⁴⁹⁵ States pursue "prestige strategies" to seek international success and bolster their domestic popularity. This is done to deter domestic political movements from threatening the government's stability and governance. Governments that choose these "prestige strategies" sometimes provoke war in the pursuit of a popular military victory. A.B. Rodger has shown that Napoleon's demand to increase the French naval fleet to challenge Britain's maritime superiority in North Africa was connected to his need for military success to sustain his domestic legitimacy. Similarly, Russia's maritime strategy in the North Pacific during the Russo-Japanese War reflected the need to win a conflict with Japan to avoid backlash from Russia's elite. Japan also adopted a similar strategy in the early 20th century. Kenneth B. Pyle showed how increased Japanese nationalism was the government's response to the Showa Depression and social instability due to diminished resources. As vestiges of Marxist and Communist influences and the apparent success of Soviet Russia started to appear in Japan's domestic politics, the government's validation for legitimacy was industrialization and expansion. These factors dictated Japan's security agenda into the 1930s and Japanese ambitions for hegemony in World War II. Manfield and Snyder, pp. 33-34; Rodger, pp. 18-21; Malozemov, pp. 41 to 68; Nish, pp. 163, 247

To graphically explain the escapement concept, I will use supply and demand curves and the escapement matrix in Figure 10. As discussed earlier, escapement is the tendency of a state to deviate from its normal behavior. I will first identify the equilibrium, the steady point in which an entity is not expected to change or take drastic action spontaneously. I will then explore what changes will be required to keep the curves within the matrix when either supply or demand changes.

While the factors in the matrix may change, the last factor to fail for a given conflict should be placed in the lower or upper right quadrant. To show how an equilibrium shifts, I will use a supply and demand graph.

As shown in Figure 11, suppose that the supply curve for food is $Q_s = 2P$. The demand curve for food is $Q_D = 12 - P$. To find the equilibrium, I will set quantity demanded and quantity supplied equally: $Q_D = Q_S$.

$$\begin{aligned} Q^D &= Q^S \\ Q^D = 12 - P &= 2P = Q^S \\ 12 &= 3P \\ 4 &= PE \end{aligned}$$

Plugging the optimal P (PE) into the supply or demand curve equations, I get $Q_E = 8$.

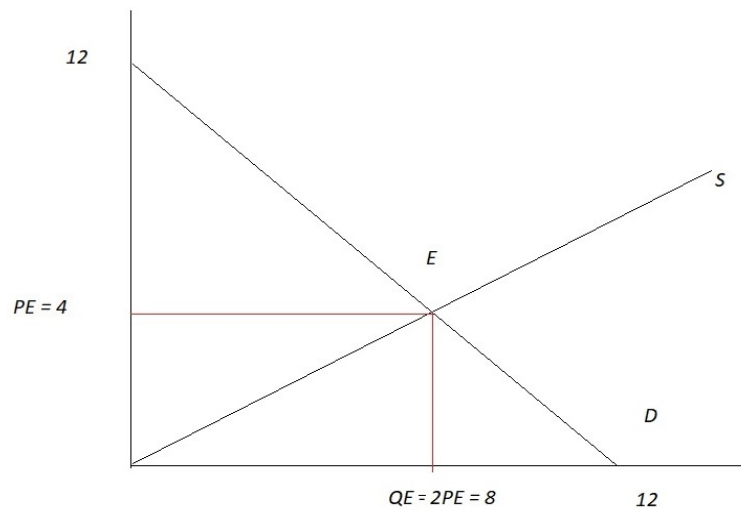


Figure 11: Supply and Demand Curves for Food

However, if the population increased and groceries ran out of food, this would cause the demand curve to become $Q^D = 27 - P$ as shown in Figure 12.

$$\begin{aligned}
 Q^D &= Q^S \\
 Q^D &= 27 - P = 2P = Q^S \\
 27 &= 3P \\
 9 &= PE
 \end{aligned}$$

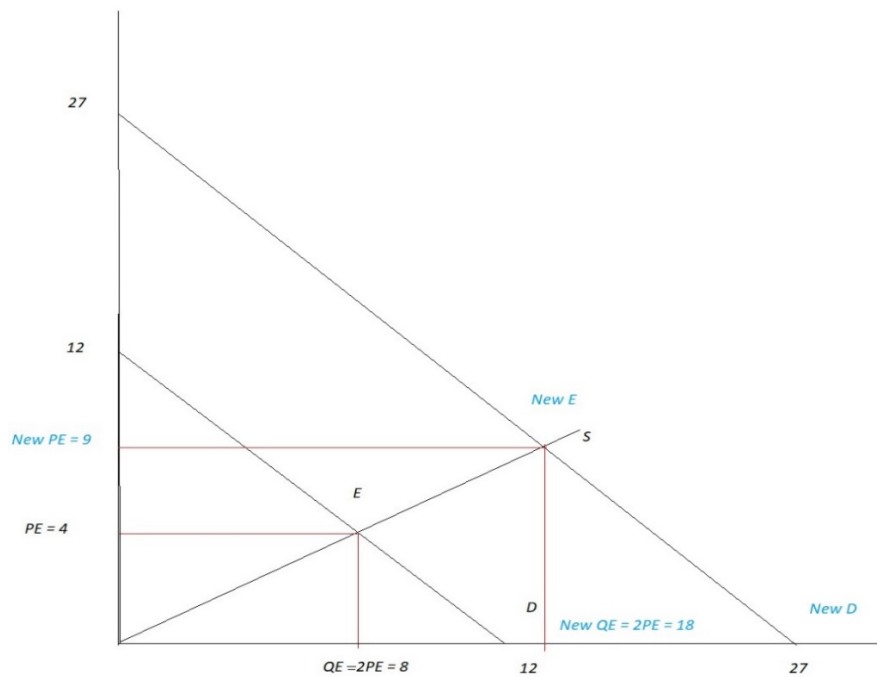


Figure 12: Supply and Increased Demand for Food

Since the equilibrium has shifted due to the increased demand, supply will also need to increase to meet people's demands. If supply remains constant, this would also increase food prices as shown by the new price equilibrium ($PE = 9$) as shown in Figure 12. However, an increase in food prices would force people to find alternatives to satisfy their needs. Depending on the severity of the food shortage, people's reactions may include peacefully finding alternate groceries with food, protesting the government, or resorting to violence. Prices will increase if nothing is done, so quantity demanded must shift the supply curve to the right as shown in Figure 13 to keep the same price. The government and the market will need to find ways to increase supply and reduce the price. It could be done by increasing the number of sources and introducing alternate products to the market.

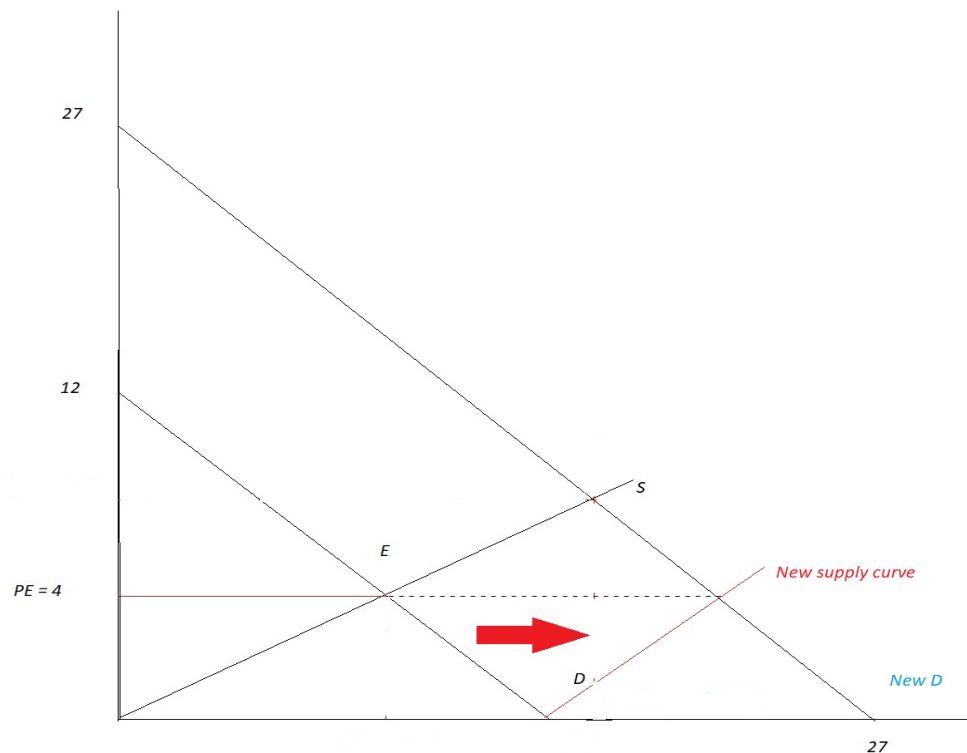


Figure 13: Supply Increases to Keep Price

In a territorial conflict, this scenario can be translated as two countries vying for dominance over a resource. In this case, a state with increasing demand and few resources will need to increase the number of resources for supply. However, how far would the state go to find these additional resources? Would this mean violating another state's territory and challenging its jurisdiction? How strong would be the incentive to resort to violence? Applying the escapement matrix, I argue that this method may determine to what extent people may react.

The matrix rotates allowing the last factor to fail to be in the lower or upper right quadrant whichever the equilibrium last rested before escapement.⁴⁹⁶ The circle allows for situations with all four factors present. However, even then, it cannot achieve perfect equilibrium. In situations where a line passes through the circle, all four factors are present, but at varying strengths.

Putting the four factors together, Figure 14 shows the escapement model in perfect equilibrium.

⁴⁹⁶ Since not all factors could possibly be equal in strength in a given situation, the last factor to fail will be critical in keeping peace.

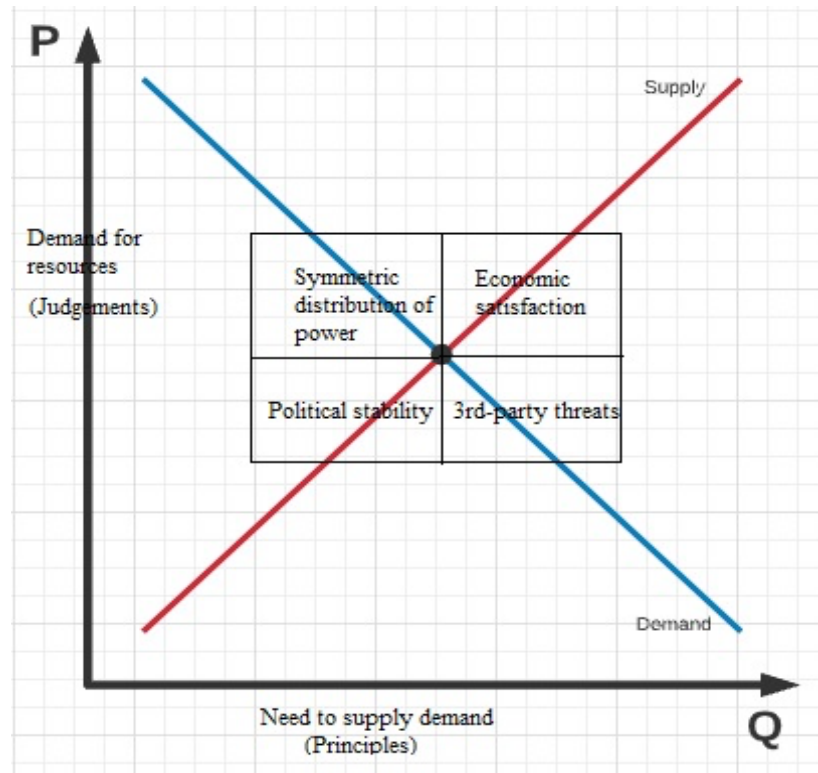


Figure 14: Escapement Model in Perfect Equilibrium

I substituted price (vertical line) with judgments and quantity (horizontal line) with principles. Applying John Rawls' reflective equilibrium argument, that getting to a decision where there is a balance between our principles and our judgment of what is right or wrong, I find that the state's principles include the responsibility to protect and provide to satisfy the demands of its citizens.⁴⁹⁷ It includes upholding the rule of law and

⁴⁹⁷ In *A Theory of Justice*, Rawls argues that We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium. Rawls, p. 18, Likewise, the state weighs factors before deciding to violate the law.; In Chapters 13 and 14 of the *Leviathan*, Thomas Hobbes describes the social contract as the responsibility of the sovereign to make and enforce laws to secure a peaceful society. Similarly, John Locke believed that the role of government was to protect its citizens' rights to life, liberty, and property. If the government failed to provide these protections, the social contract was broken, and the people had the right to revolt and

good governance. The government provides its services to fulfill these responsibilities, and providing services is correlated with the quantity that may be needed to supply the demand. On the judgement line, the state's initial judgement or reaction to a situation includes actions that are innate and automatic self-preserving behavior patterns to ensure survival in an anarchic context. Since the state is composed of people, the brain's natural function as the source of primitive emotions such as fear and aggression will arguably be present regardless of the state.⁴⁹⁸ However, given a person's cognitive abilities, the final decision will result from finding the equilibrium after the competition between principles and judgements. The state's initial reaction or judgement correlates with the price people want to pay to satisfy their demands for a resource.

Escaping the Matrix

Perfect equilibrium, where all four factors are equally present and stable, will not be achievable. The model is dynamic, and a factor will always dominate the matrix. The following models show the relationship when either supply or demand is controlled.

establish a new government. Charles Montesquieu also followed this argument and wrote that the main purpose of government is to maintain law and order, liberty, and protect the property of the citizen.

⁴⁹⁸ The discussion on how the brain works is beyond the scope of this study. However, research has shown that it is natural for all people to have aggression and impulsive reactions because of the brain's neurobiology. Connor et al. 2006; Nelson and Trainor 2007; and Blair 2016.

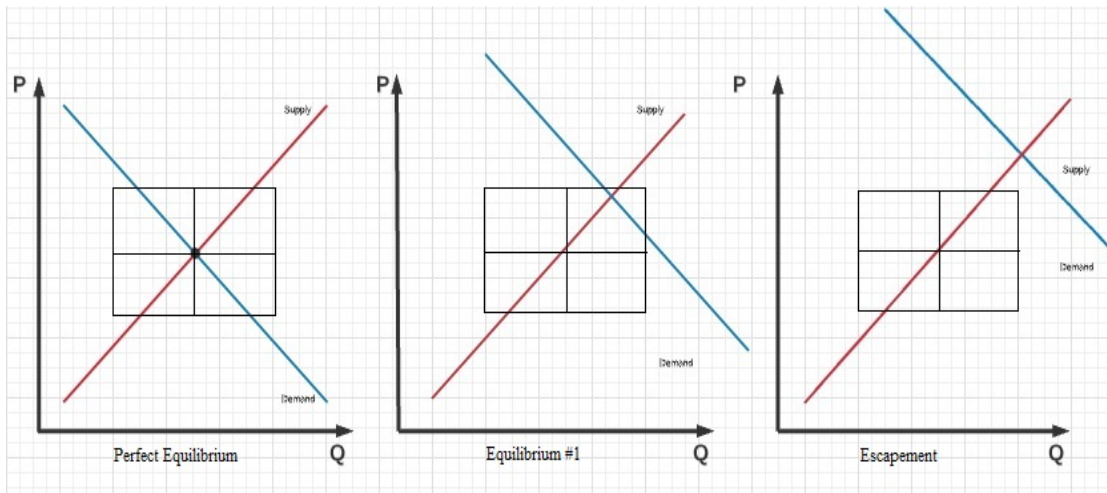


Figure 15: Controlling the Supply Curve

As shown in Figure 15, when supply stays the same while demand increases, the same amount of supply will only go so far before the equilibrium escapes the matrix. In this case, the equation will be similar to Figure 13, where Q^D increased from 12 to 27.

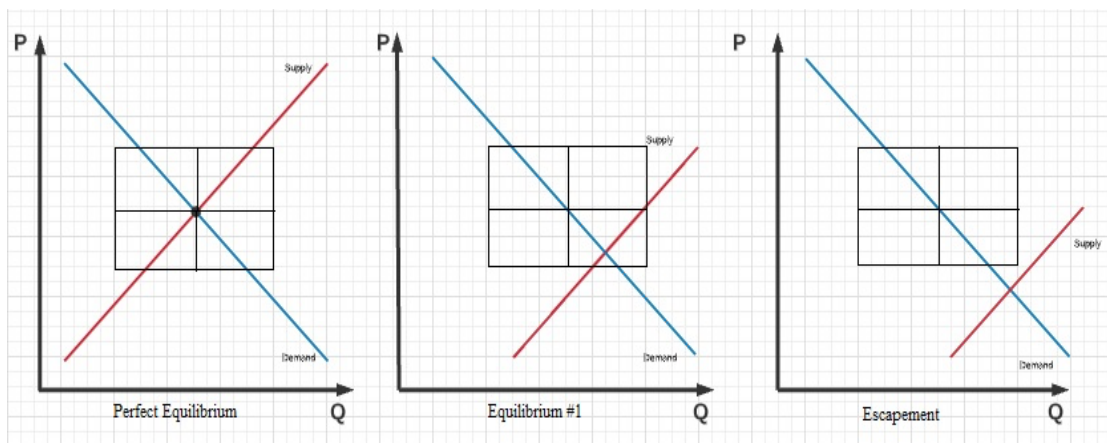


Figure 16: Controlling the Demand Curve

Likewise, if the demand curve is controlled and supply increases, the same amount of demand will only go so far before the equilibrium escapes the matrix. In this case, the model will be similar to Figure 16. As shown in Figures 15 and 16, every time one of the curves moves, the equilibrium significantly moves up or down. This shift in the

equilibrium may result in the severity or likelihood of changing its initial strategy. To prevent this, the supply and demand curves need to shift simultaneously as shown in Figure 17. In this case, when demand increases, supply will also increase.

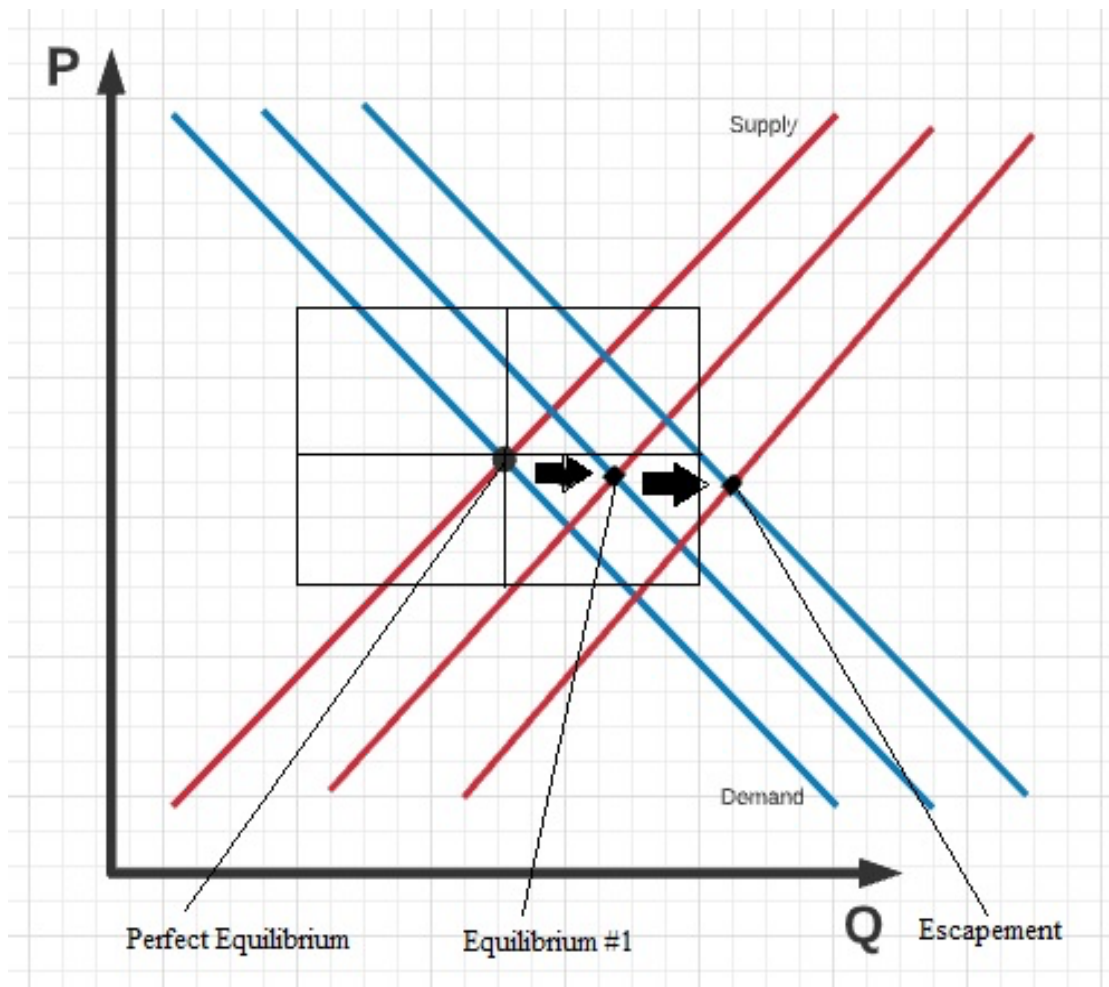


Figure 17: Simultaneous Shift

A simultaneous shift would keep the equilibrium at roughly similar levels. However, this would not last long. There is only limited supply. If the supplier wants to keep the same equilibrium level, it will have to increase supply as the demand increases even if that

means escaping the matrix. Breakpoints may be identified as the threshold before the equilibrium escapes. As the supply curve traverses less quadrants, the likelihood of deviating to a new strategy increases. If the curve only runs through one quadrant, the equilibrium will likely escape the matrix and the state will deviate from its initial strategy. The supply or demand curve must traverse at least the two right quadrants of the matrix to maintain peace. This corresponds to the fifth hypothesis that at least three failures of the four factors increase the likelihood of escapement. However, what keeps the equilibrium from moving? The Nash equilibrium and game theory may provide insight on keeping the equilibrium within the matrix.

Game Theory, Nash equilibrium, and Compliance with International Law

Although I am not aware of works discussing what may move the equilibrium, there is literature written about how a state keeps the equilibrium by complying with international law. Several schools of thought explain why states comply with international law. First, some schools of thought say that states act in their self-interest and ignore international legal norms when they run against the state's agenda.⁴⁹⁹ Another school concludes that states follow international law because states risk losing reputation and hinder the ability to increase reputational interests and negotiate future agreements

⁴⁹⁹ Abbott, p. 337-338; Setear (1996), p.139

that are in their interests.⁵⁰⁰ However, both schools agree that states do not comply with international law simply because it is the law.

Jack Goldsmith and Eric Posner's *The Limits of International Law* used basic economics and game theory to explain how international law emerges from and is sustained by states acting rationally to maximize their interests. They argued that states follow international law because participants are in a Prisoner's Dilemma.⁵⁰¹ In their recent review of *Limits*, Goldsmith and Posner summarized their theory.

International law refers to equilibrium outcomes in games of cooperation and coordination among rational, self-interested states...International law can be, and often is, effective and stable because once cooperation begins, it is in the rational self-interest of states to maintain it. But international law can be, and often is, violated, as the relative power of states change, the preferences of states changes, and new problems arise...International law may be normatively desirable for the simple reason that it facilitates mutual gains across states. But it need not be: states frequently act in predatory fashion, and can use international law to entrench normatively undesirable outcomes.⁵⁰²

The equilibrium mentioned in their book is defined as a point where “two states will continue engaging in this behavior as long as the underlying payoffs do not change.”⁵⁰³

According to their theory, a new equilibrium or a proposal to revise existing international

⁵⁰⁰ Setear (1997), pp. 1, 8, 74-75

⁵⁰¹ Goldsmith and Posner (2005) says “[w]hen states cooperate in their self-interest, they naturally use the moralistic language of obligation rather than the strategic language of interest. But saying that the former is evidence of moral motivation is like saying that when states talk of friendship or brotherhood they use these terms, which are meant to reflect aspirations for closer relations, in a literal sense” pp. 32 and 184

⁵⁰² Goldsmith and Posner (2021) p.4

⁵⁰³ Goldsmith and Posner (2005), p. 28

law happens when it better serves the interests of the state and the interests of other states that have sufficient power and influence.⁵⁰⁴ Several scholars criticized Goldsmith and Posner's rational choice framework and use of game theory. They claimed that the book's arguments framed international law as irrelevant or nonexistent.⁵⁰⁵ Others argued that these approaches were simply incompatible with international law.⁵⁰⁶ However, the common criticism was that Goldsmith and Posner focused too closely on international law as a function of national interest and distribution of power. As the authors acknowledged in their recent review, the book was based on theories and minimal empirical work.⁵⁰⁷

Other scholars have also examined international law from a game theory perspective. Applying the Prisoner's Dilemma to explain compliance, Andrew T. Guzman's *How International Law Works – A Rational Choice Theory* argues that states are more likely to comply with their legal obligations if a violation of international law will negatively impact the State's "three Rs of compliance: reciprocity, retaliation, and repudiation. Reciprocity refers to States' incentive to honor their international law obligations out of fear that other States will violate their corresponding obligations if the State does not honor its obligations. Retaliation refers to the threat of sanctions against States that do not comply with their obligations. Repudiation refers to the claim that

⁵⁰⁴ Ibid. p. 195

⁵⁰⁵ Trachtman p.117; Murphy, p.3

⁵⁰⁶ Raustiala, p.429

⁵⁰⁷ Goldsmith and Posner (2021), p. 8

States suffer “reputational payoffs” when they violate their obligations under international law.⁵⁰⁸

Robert E. Scott and Paul B Stephan’s *The Limits of Leviathan: Contract Theory and the Enforcement of International Law* argues that “formal enforcement” for cooperative relationships can happen when verified by a third party with credible coercive powers. If there is no coercive power to enforce compliance, they will rely on “informal enforcement”.⁵⁰⁹ They define formal enforcement as a legally binding decision rendered by an independent tribunal, while informal enforcement is when states comply with the law because they fear retaliation from a third party or the victim itself.⁵¹⁰ Borrowing from literature written about game theories and contract law, Scott and Stephan argue that self-enforcement or compliance with international law is driven by reputational costs and reciprocity.⁵¹¹

In their article, “The emergence and evolution of customary international law,” Francesco Parisi and Daniel Pi examine compliance with international law from the

⁵⁰⁸ Guzman says, “[W]hen states enter into international agreements, they are in effect pledging their repudiation as a form of bond. If they violate the agreement, they give up some of this reputational collateral, and this fact both increases the likelihood that they will comply and makes their promise more credible.” Guzman, p. 40

⁵⁰⁹ Scott and Stephan, p.16-20

⁵¹⁰ Ibid. pp 8-9

⁵¹¹ Scott and Stephan use Ernst Fehr and Klaus Schmidt’s inequity aversion theory to argue that people compare themselves with others in their group to find the equality of distribution. Inequity aversion forces people to respond to an inequity in a contractual relationship either by rewarding a generous action or punishing a selfish action. Scott and Stephan find the theory to have important implications on self-enforcement. They say, “If one can count on self-enforcement to deliver the same gross benefits as formal enforcement, self-enforcement will be superior simply because it is less costly. In addition, parties to self-enforcing agreements can condition performance on observable factors that might not be verifiable to a third party. Ibid. pp. 89-92

perspective of a fragile equilibrium between short-sighted opportunism and long-term rules. They first consider the Prisoner's Dilemma, but they critique its application to comply with international law because the game is conditional that the players are not allowed to communicate.⁵¹² They also consider other coordination games but conclude that self-interest is what motivates states to comply with the agreement.⁵¹³ Considering ways to avoid treaty fragmentation, they argue that "forming agreements limited to participation by homogenous nations, i.e., where costs and benefits for all the parties are similar" creates a situation where "low-cost/high-benefit nations may avoid the problem of treaty fragmentation that may arise from multilateral agreements with heterogeneous parties."⁵¹⁴ It may also include tailoring treaties to the economic and technological development of states by setting variable requirements in the treaty.⁵¹⁵

So far, the arguments in the articles discussed focus on the state's self-interest to comply with international law. However, Jens David Ohlin's article, "Nash Equilibrium and International Law," argues that "the best way to understand international law is as a Nash Equilibrium—a focal point that states gravitate toward as they make rational decisions regarding strategy in light of strategies selected by other states." This may be another perspective to explore why countries would deviate from their initial strategy.⁵¹⁶

⁵¹² Parisi and Pi, p. 109

⁵¹³ Ibid. p. 110

⁵¹⁴ Ibid. p.119

⁵¹⁵ Ibid. p. 119

⁵¹⁶ Ohlin, Abstract

The Nash Equilibrium may explain the reason why a state would not unilaterally change its strategy because it sees no reason why it should.

The self-enforcing nature of the Nash Equilibrium is often illustrated using the driving game. Suppose two cars are driving at each other from perpendicular directions. The stoplight is red for one car and green for the other. The Nash Equilibrium would argue that even without a police force to regulate traffic, both drivers would have incentives to follow the law. If both drivers go, they will crash into each other. If both drivers stop, they will waste time. However, if one goes and the other stops, the one with the green light gets to the destination quicker than the one with the red light. Following the stop light is a Nash Equilibrium because there is no incentive for either driver to switch strategies. Switching strategies that run against the stoplight would either cause a crash or waste time.

However, it should be added that this scenario is only applicable under three conditions. First, both cars must be capable of running at more or less the same speed. Second, both drivers do not have very strong incentives to get to their destination quickly so far as to risk crashing into each other. Third, both drivers must agree that they are better off following the law.

It is also possible to move the equilibrium in this scenario. This is where escapement may be applied. Violating the stop light requires three conditions. First, one car must be capable of moving faster than the other. Second, one of the drivers must have a very strong incentive to get to the destination quickly even if it means running the risk of crashing into each other. Third, one driver must be satisfied that the violating the law

was justified. A strong incentive is not enough to not cooperate. The driver would still need a faster car and risk-taking mindset to prevent a crash and successfully outwit the other driver.

This scenario can be translated to international law. States cannot predict when the Security Council will authorize the use of force. Therefore, they cannot rely on the Council to protect them in case another state attacks them. In this case, states reserve the right to use force in self-defense because even if another state changes strategy and decides to use force, the victim state can defend itself by deploying a proportional response. Given the uncertainty about both states' strategies, it would be in the best interest of both states to comply with international law and restrain the use of force unless the incentive to violate the law is too strong, the violator state is much more powerful and finds that it can get away with using force, and the violator state is satisfied that violating the law is justified. Thus, a revisionist state needs to satisfy certain criteria before projecting actual power and establishing new norms or move to a new equilibrium. The concept of escapement may provide a framework to determine the criteria a state needs to meet and become a revisionist.

Applying Statistics

Sources

Military capabilities

Correlates of War Project - National Material Capabilities (v5.0)

<https://correlatesofwar.org/data-sets/national-material-capabilities> Accessed March 21, 2021

Singer, J. David, Stuart Bremer, and John Stuckey. (1972). "Capability Distribution, Uncertainty, and Major Power War, 1820-1965." in Bruce Russett (ed) *Peace, War, and Numbers*, Beverly Hills: Sage, 19-48.

Economic Factors

Life expectancy. Gapminder (gapminder.org), drawing on Human Mortality Database (2008), Riley (2005a, 2005b), Human Life Table Database (2007), United Nations Population Division (2010). Clio Infra (clio-infra.eu), drawing on Human Mortality Database (2008), Human Life Table Database (2017), World Bank (2013), Montevideo-Oxford Latin America Economic History Database (<http://moxlad.fcs.edu.uy/es/basededatos.html>).

Average years of education in the total population aged 15 years and older. Clio Infra (clio-infra.eu), drawing on Mitchell (1998a, 1998b, 1998c), US Census Bureau, UNESCO, Földvári and van Leeuwen (2014), Leeuwen, van Leeuwen-Li, Földvári (2011), Leeuwen, van Leeuwen-Li, Földvári (2012), Didenko, Foldvari, van Leeuwen (2012).

GDP per capita. Maddison Project Database, version 2020

<https://www.rug.nl/ggdc/historicaldevelopment/maddison/releases/maddison-project-database-2020> Accessed March 21, 2021

Political Stability

Rule of law index. V-Dem Codebook v10" Varieties of Democracy (V-Dem) Project. 2020. <https://www.v-dem.net/en/data/data/v-dem-dataset-v11/> Accessed March 21, 2021

Political Corruption index. V-Dem Codebook v10" Varieties of Democracy (V-Dem) Project. 2020. <https://www.v-dem.net/en/data/data/v-dem-dataset-v11/> Accessed March 21, 2021

Political violence. V-Dem Codebook v10" Varieties of Democracy (V-Dem) Project. 2020. <https://www.v-dem.net/en/data/data/v-dem-dataset-v11/> Accessed March 21, 2021

Institutionalized democracy. V-Dem Codebook v10" Varieties of Democracy (V-Dem) Project. 2020. <https://www.v-dem.net/en/data/data/v-dem-dataset-v11/> Accessed March 21, 2021

Health equality. V-Dem Codebook v10" Varieties of Democracy (V-Dem) Project. 2020. <https://www.v-dem.net/en/data/data/v-dem-dataset-v11/> Accessed March 21, 2021

Third-Party involvement

Third-party involvement was done by surveying each case study and identifying another country expressing interest or actively participating in the dispute.

Dataset Description

Collecting territorial transitions from 1817 to 1992, I sampled 97 case studies in total: 74 non-violent and 23 violent territorial disputes. The sample datasets are based on Garry Goertz and Paul Diehl's *Territorial Change Coding Manual* and from C.R.M.F. Cruttwell's *A History of Peaceful Change in the Modern World*.

Year	Territory	Status quo	Revisionist	Outcome
1853	Palestine	Russia	France	Crimean War
1877	Turkey	Turkey	Russia	War of 1877-78
1878-79	Atacama	Chile	Bolivia	Pacific War
1913	Bulgaria	Bulgaria	Serbia	2nd Balkan War
1929-32	Chaco Boreal	Paraguay	Bolivia	Chaco War
1932 to 1939	Lake Khasan, Manchuria	Japan	USSR	stagnation
1938	Czechoslovakia	UK/France	Germany	invasion (1939)
1939	Finland	Finland	USSR	Winter War
1941	Oriente/Mainas	Peru	Ecuador	war, stagnation
1947-49	Palestine	Israel	Transjordan	war, stagnation
1947-48	Kashmir	India	Pakistan	Kashmir
1950	Korea	South Korea, US	North Korea, USSR	Korean War
1948	Hyderabad	Hyderabad	India	invasion - Annexation of Hyderabad
1954	Taiwan Strait	Taiwan	China	Taiwan Strait Crisis
1961	Goa	Portugal	India	invasion (1961)
1961	West Irian	Netherlands	Indonesia	invasion (1961)
1962	Aksai Chin	China	India	China-India War

1963	Sarawak	Malaysia	Indonesia	"Confrontation"
1949-64	Kashmir	India	Pakistan	Kashmir War (1965)
1971	Bangladesh	Pakistan	India	secession, war
1973	Sinai, Golan	Israel	Arab states	Yom Kippur War
1976	Ogaden	Ethiopia	Somalia	war (1976-)
1982	Falkland Islands	UK/France	Argentina	war and stagnation
1992	Nagorno-Karabakh	Azerbaijan	Armenia	war

Figure 18. Sample of Violent Territorial Change

Year	Territory	Status quo	Revisionist	Outcome
1815	Switzerland	Prussia, Austria	France	Status change
1817	Great Lakes	UK	US	Status change
1818	Oregon, Astoria	UK	US	exchange
1819	Florida	Spain	US	mixed transfer
1839	Belgium	Netherlands	Belgium	Status change
1842	Maine	UK	US	mixed transfer
1846	Oregon, Astoria	UK	US	mixed transfer
1851	Yaguaron	Uruguay	Brazil	cession
1853	Arizona	Mexico	US	cession
1860	Amazonas	Venezuela	Brazil	cession
1860	Savoy/Nice	Italy	France	cession
1864	Ionian Island	UK	Greece	mixed transfer
1866	Atacama	Bolivia	Chile	cession
1867	Alaska	Russia	US	cession
1867	Acre-Abuna	Bolivia	Brazil	cession

1867	Luxembourg	Netherlands	France	status change
1875	Sakhalin/Kuriles	Japan	Russia	exchange
1878	Cyprus	Turkey	UK	status change
1878	Bosnia/Herzegovina	Turkey	Austria	status change
1878	Dobruja/Bessarabia	Romania	Russia	exchange
1878	Ardahan/Kars/Batumi	Russia	Turkey	exchange
1878	Antivari	Turkey	Montenegro	status change
1881	Thessaly/Epirus	Turkey	Greece	cession
1881	Illi Valley	Russia	China	cession
1895	Misiones	Argentina	Brazil	cession
1899	Br. Guiana/Venezuela	UK	Venezuela	mixed transfer
1900	Amapa	France	Brazil	mixed transfer
1902	Patagonia/Los Andes	Chile	Argentina	exchange
1903	Alaska	UK	US	mixed transfer
1903	Acre-Abuna	Bolivia	Brazil	exchange
1904	Pirara	UK	Brazil	mixed transfer
1904	Iza	Ecuador	Brazil	cession
1907	Apaporis	Colombia	Brazil	cession
1909	Acre-Abuna/Madre de Dios	Bolivia	Peru	cession
1920	Teschen	Czechoslovakia	Poland	exchange
1920	Carinthia	Yugoslavia	Austria	cession
1920	Trieste	Yugoslavia	Italy	cession
1920	Schleswig North	Germany	Denmark	cession
1921	Burgenland	Hungary	Austria	cession
1921	Batumi	Turkey	USSR	cession
1921	Aland Island	Finland	Sweden	status change
1922	Arauca/Yavita	Venezuela	Colombia	cession
1922	Upper Silesia	Poland	Germany	exchange

1922	Shantung	Japan	China	cession
1925	North Sakhalin	Japan	USSR	cession
1929	Tacna/Arica	Chile	Peru	cession
1934	Leticia	Peru	Colombia	cession
1934	Cuba	US	Cuba	status change
1933	Saar	France	Germany	cession
1951	Chandernagor	France	India	mixed transfer
1954	Trieste	Italy	Yugoslavia	status change
1955	Austria	USSR	US/UK/France	status change
1957	Saar	France	Germany	cession
1958	Tarfaya	Spain	Morocco	mixed transfer
1959	Wadi Halfa	Sudan	UAR	status change
1959	Antartic Island	UK	Chile, Argentina	status change
1960	Indus Canal	India	Pakistan	status change
1960	Coco River	Honduras	Nicaragua	cession
1960	Namwan Tract	Burma	China	exchange
1961	Mt. Everest	China	Nepal	cession
1963	Sinkiang	China	Pakistan	cession
1963	Eastern Hodh	Mauritania	Mali	exchange
1963	Chamizal Tract	US	Mexico	cession
1968	Rann of Kutch	India	Pakistan	exchange
1969	Ifni	Spain	Morocco	mixed transfer
1970	Gadaduma Wells	Kenya	Ethiopia	exchange
1971	South Tirol	Italy	Austria	status change

1971	Ryukyu Island	US	Japan	mixed transfer
1975	Shatt-al-Arab	Iraq	Iran	cession
1975	Spanish Sahara	Spain	Morocco	mixed transfer
1977	Panama Canal	US	Panama	mixed transfer
1978	Sinai	Israel	Egypt	cession
1984	Hong Kong	UK	China	status change
1984	Beagle Channel	Chile	Argentina	status change
1989	Taba	Israel	Egypt	cession

Figure 19. Sample of Peaceful Territorial Change

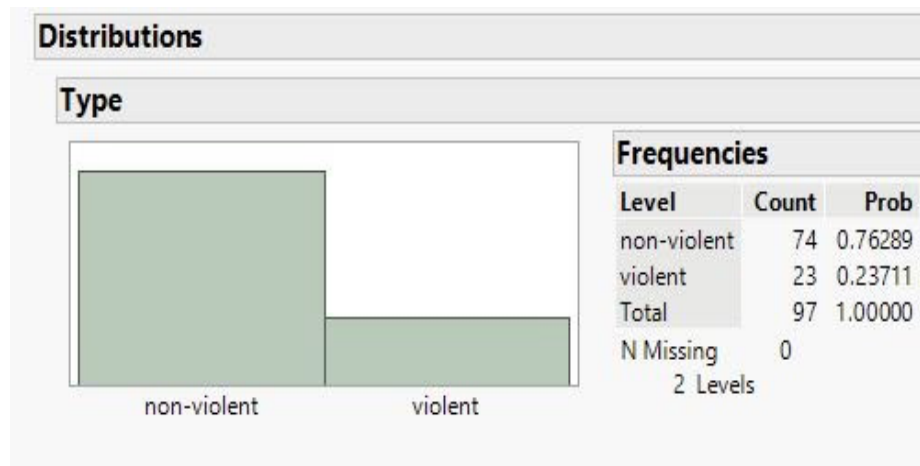


Figure 20. Distribution of Violent vs. Non-Violent Case Studies

Variables

1. **Year** – Date of the transfer (nominal)
2. **Territory** – Disputed territory (nominal)
3. **Status quo** – Country initially controlling disputed territory (nominal)
4. **Revisionist** – Country contesting disputed territory (nominal)
5. **Iron/steel production (thousands of tons)** measures trends from 1816 to 2012. The data also looks at transitions concerning the categories of iron produced and the types of fuels used in making iron and steel. Since iron and steel are widely used for military products such as ammunition, this data can indicate a country's military capability. (continuous)

6. **Military expenditure (in thousands)** measures each state's total military budget in each year from 1816 to 2012. For data before 1914, the data was converted to British pounds. Data after 1914 is in U.S. dollars. According to a RAND report, "the size of the defense budget serves to identify the relative importance of the coercive arm in comparison to other organs of state, and it conveys a general sense of the size of the military establishment in absolute terms." Military expenditure will be used to analyze power distribution. (continuous)
7. **Military Personnel (in thousands)** measures a state's military personnel in each year for the period 1816-2012. These are people under the command of the national government intended to defend the country against foreign adversaries. (continuous)
8. **Primary energy consumption (in thousands)** measures a state's consumption of energy in each year from 1816 to 2012. (continuous)
9. **Life expectancy** measures the expected longevity at birth based on current age-specific mortality rates in each year from 1800 to 2018. (continuous)
10. **Years of education** measures the average years of education in the total population aged 15 years and older in each year from 1820 to 2019. (continuous)
11. **GDP per capita** measures gross domestic production on a per capita basis in each year from 1789 to 2016. (continuous)
12. **Rule of law index** measures the extent laws are transparently, independently, predictably, impartially, and equally enforced, and to what extent do the actions of government officials comply with the law. (continuous)
13. **Political violence** measures how often non-state actors have used political violence domestically in each year from 1900 to 2019. (ordinal and index) How often is political violence each year?
 - 0: Not at all. Non-state actors did not use political violence.
 - 1: Rare. Non-state actors rarely used political violence.
 - 2: Occasionally. Non-state actors occasionally used political violence.
 - 3: Frequently. Non-state actors frequently used political violence.
 - 4: Often. Non-state actors often used political violence.
14. **Institutionalized democracy** measures the presence of institutions and procedures through which citizens can express effective preferences about alternative policies and leaders, the existence of institutionalized constraints on the exercise of power by the executive and the guarantee of civil liberties to all citizens in their daily lives and in acts of political participation. The Democracy indicator is an additive eleven-point scale with 0 representing no democracy and 10 representing strong democracy.
15. **Health equality** measures the extent high quality basic healthcare guaranteed to all, sufficient to enable them to exercise their basic political rights as adult citizens. (ordinal)
 - 0: Extreme - 75% of citizens' ability to exercise their political rights as adult citizens is undermined.
 - 1: Unequal – 25% of citizens' ability to exercise their political rights as adult citizens is undermined.

- 2: Somewhat equal - 10 – 25% of citizens' ability to exercise their political rights as adult citizens is undermined.
- 3: Relatively equal – 5 – 10% of citizens' ability to exercise their political rights as adult citizens is undermined.
- 4: Equal - less than 5% of citizens cannot exercise their basic political rights as adult citizens.

- 16. **Political corruption index** measures both “petty” and “grand” offenses. (continuous)
- 17. **Third-party involvement** categorizes whether or not another country actively supporting or making threats. (dummy-ordinal)

Before testing the four variables, descriptive statistics were first used to determine how each variable may impact an outcome. To give a bird's-eye view of the dataset, distributions and correlations are used to chart the variables from 1817 to 1992 and compare peaceful and violent variables. Comments on the implications for each comparison are provided below each graph. These appendices provided an initial foundation to build the contingency tables in the next section.

Contingency Tables

To identify joint frequencies, joint probabilities, and conditional probabilities, contingency tables were constructed.

First hypothesis: *Escapement is less likely when the distribution of power between the parties is somewhat symmetrical.*

To analyze if the power distribution between countries has an impact on a violent or peaceful outcome, the percentage of military expenditure relative to its GDP was first taken. This meant isolating cases where both military expenditure and GDP were reported. According to a RAND report, “the size of the defense budget serves to identify the relative importance of the coercive arm in comparison to other organs of state, and it

conveys a general sense of the size of the military establishment in absolute terms.” Thus, the share of military expenditure from the GDP was calculated to determine the size of the defense budget relative to the state’s overall income. A larger share of the defense budget may indicate an increased interest in arming the country, while a small share of the defense budget may indicate a decreased interest in financing the military. After the military expenditure percentages were determined, they were compared between the two competing powers - revisionist military expenditure versus status quo military expenditure. To classify them as symmetrical or asymmetrical distribution, anything above 0.09 (Yes) or below -0.09 (Yes) was scored as asymmetrical. Anything in between was considered symmetrical (No). Based on the Yes/No classification, a contingency table was constructed.

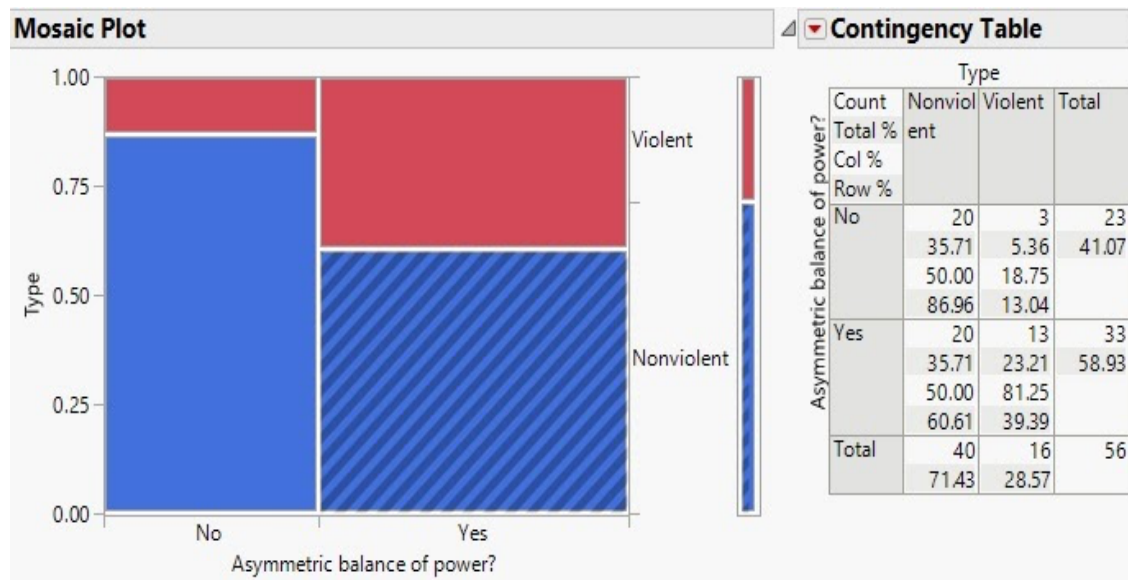


Figure 21. Asymmetric Balance of Power? Distribution of Power Contingency Table

The table shows that there is an 81.25% chance of violent transition when there is asymmetrical balance of power between the parties. There is a 50% chance of nonviolent transition when there is symmetrical balance of power.

Second hypothesis: *Escapement is less likely when there is general economic satisfaction and an availability of choices for people to enjoy the value of doing or being something.*

A higher HDI score, an indicator capturing the population's well-being, shows a slight preference to be a peaceful revisionist. After HDI scores were calculated using $HDI = \sqrt[3]{LEI \times EI \times II}$, the scores were ranked on an ordinal scale. 1 = 0 to .25, 2 = .25 to .50, 3 = .50 to .75, 4 = .75 to 1. Since there were no scores in the fourth rank, only three categories were used.⁵¹⁷

⁵¹⁷ In the equation, the acronyms are LEI (life expectancy index), EI (education index), and II (GNI per capita). For case studies with no GNI available, II was replaced with GDP. Four indices were used, life expectancy at birth (to assess a long and healthy life); adult literacy (percentage of the population aged over 15 years who can read and write); educational enrolment rates (percentage of population in the relevant age cohort enrolled in primary, secondary, and tertiary education); gross domestic product (GDP) per capita (to assess standard of living). <https://ourworldindata.org/human-development-index> Accessed May 29, 2021; https://frdelpino.es/investigacion/en/category/01_social-sciences/02_world-economy/03_human-development-world-economy/?lang=en Accessed May 29, 2021.

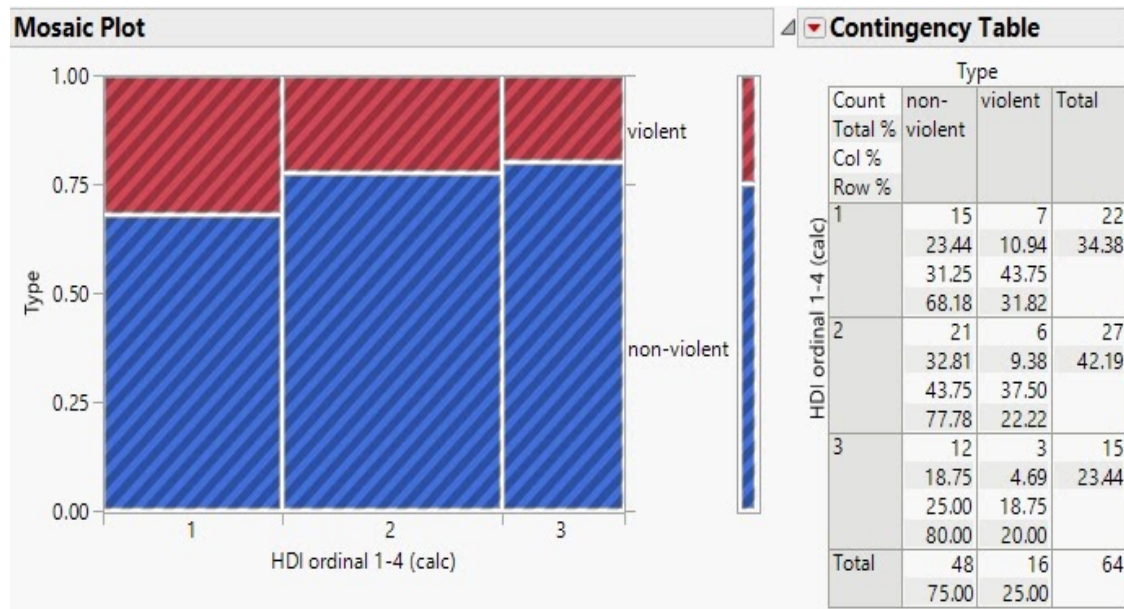


Figure 22. HDI Contingency Table

There is an 18.75% joint probability that the revisionist will choose a violent transition when its HDI is between .50 and .75. There is a 25% joint probability that the revisionist will choose a non-violent transition when its HDI is between .50 and .75. Similarly, there is a 43.75% joint probability of violent transition when HDI is between 0 and .25.

However, there is only a 31.25% joint probability for non-violent transition when HDI is between 0 and .25.

Third hypothesis: *Escapement is less likely when there is a third-party threat or threats against at least one of the parties directly involved in the territorial issue.*

The presence or absence of a third-party threat was qualitatively analyzed and answered with Yes (3rd-party present) and No (3rd-party absent). The table below shows that non-violent transition is more likely when a 3rd party is involved. There is a 71.62% joint probability that non-violent transition will occur when a 3rd party is present. There is a 52.17% joint probability that violence will occur when no 3rd party is present.

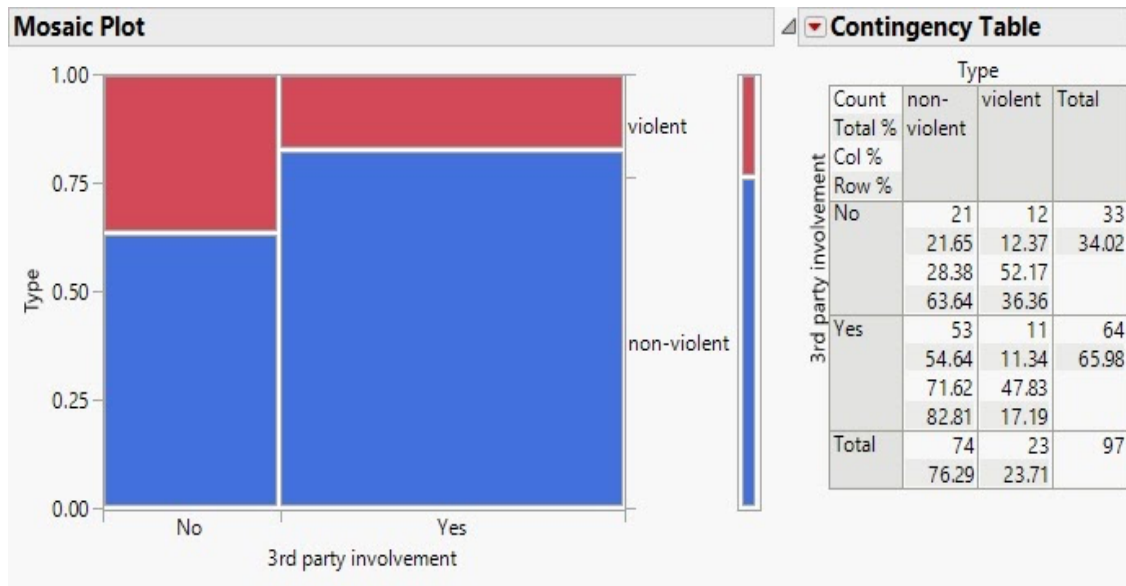


Figure 23. Contingency Table for 3rd- Party Participation

Out of a total of 97 case studies, 76.2% transitioned nonviolently: 55% with 3rd party involvement and 22% without. 23.7% transitioned violently: 10% with 3rd party involvement and 13% without. The pie graph below shows this.

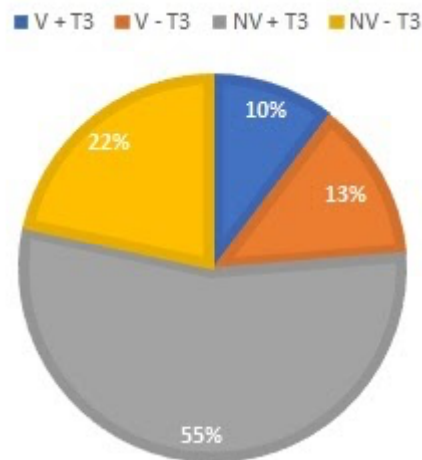


Figure 24. Share of 3rd-party Participation to Outcome

Fourth hypothesis: *Escapement is less likely when the political stability of a state and its governing capabilities are not threatened.*

Two contingency tables were constructed to measure the correlation between the political stability of the state and its tendency to become a revisionist. The first table measures the rule of law. The rule of law index was ranked to an ordinal scale by scoring the index: 1 = 0 to .25, 2 = .25 to .50, 3 = .50 to .75, and 4 = .75 to 1.0.



Figure 25. Contingency Table for Rule of Law

As shown in the table, a stronger presence of the rule of law may indicate a peaceful territorial transition. 93.55% of the territorial transition cases with a score of four were resolved peacefully. While scores 2 and 3 have at least 70% chance of peaceful settlement, there is no significant difference between the two scores.

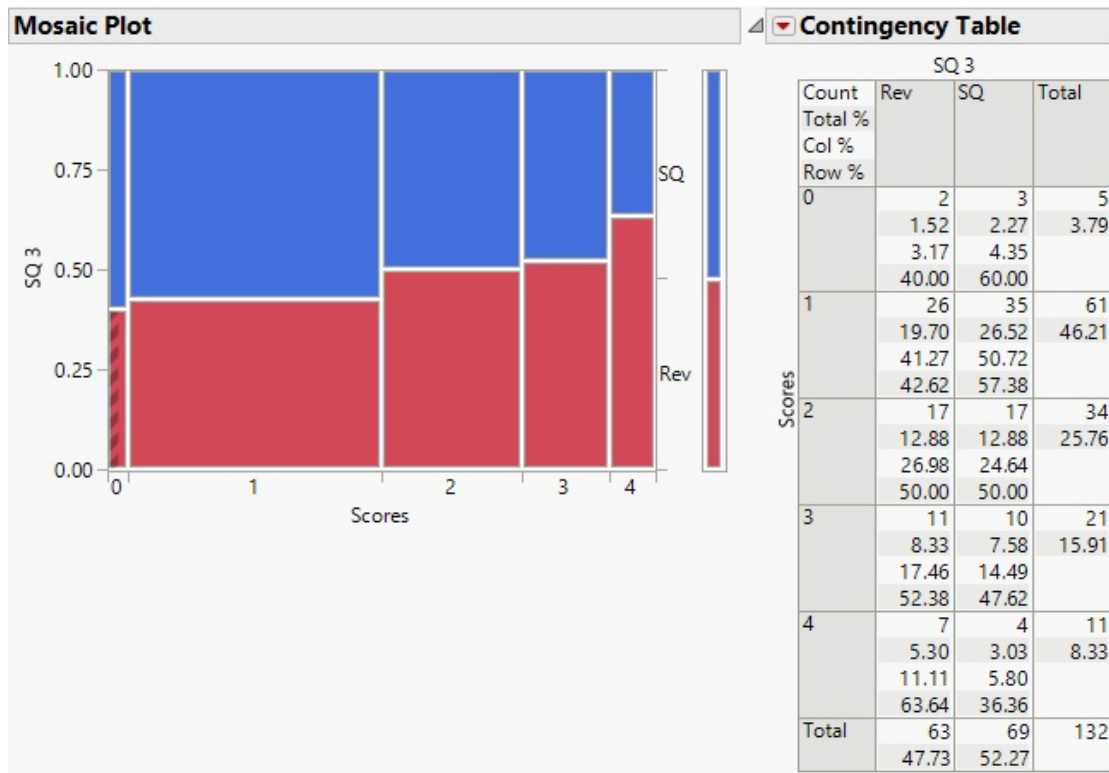


Figure 26. Contingency Table for Political Violence 1900 – 1992

The second contingency table (Figure 26) measures political violence to determine the level of political stability.⁵¹⁸ Due to the data limitation, the contingency table only considers conflicts from 1900 to 1992. The table ranges from 0 where there is no political violence and 4 where political violence happens often. As shown, category 4 tends to be a revisionist with 63.64% of cases in category 4 turning revisionist. For this table, I did not differentiate between peaceful or violent revisionist or status quo. On the other hand, 60% of cases in category 1, kept the status quo.

⁵¹⁸ Alesina and Perotti (1996), Gupta et al (1998), Rodriguez (2000), Blanco and Grier (2000) consider social unrest as political instability. Their measurement of political instability focuses more on a society's reaction towards government such as the number of protests or the episodes of political violence due to internal war as a measure of political instability.

Fifth hypothesis: *Any combination of at least three failures of the four factors increases the likelihood of escapement. Assuming that there is an underlying conflict between two entities, one state's chance to take coercive action against the other is greater if any of these factors change.*

Due to limitations in the dataset, the contingency table below only considers conflicts starting from 1920. Cases were chosen by the completeness of the data covering all four factors of the matrix. Cases with missing data were eliminated. In total, there were 28 peaceful and 20 violent cases.

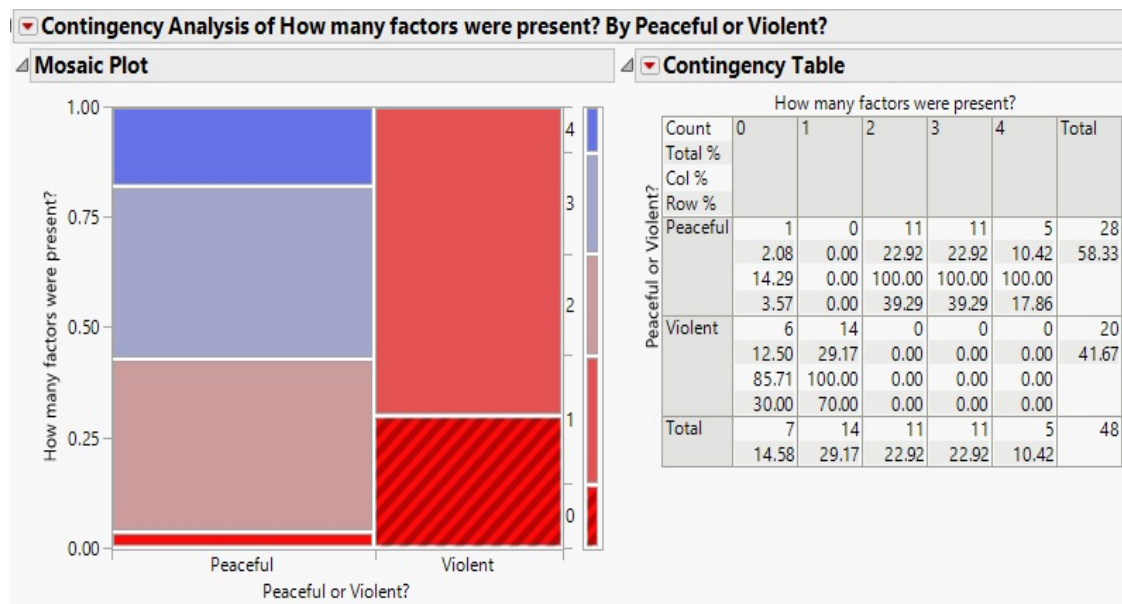


Figure 27. How Many Factors Were Present?

As the table shows, 85.71% of those with no factors present resorted to violence and 70% of violent cases only have one factor. Cases with two, three, and four factors present resulted in peaceful transition of territory. Thus, it takes at least three factors to be absent from the matrix to increase the likelihood of violent conflict.

Hypothesis tests for the Violent and Peaceful Revisionist

First hypothesis: *Escapement is less likely when the distribution of power between the parties is somewhat symmetrical.*

Statement to test Distribution of Power

Since the symmetrical balance of power assumes there are no power differences between State X and State Y, I assign 0 to represent symmetric distribution.

Null Hypothesis: The distribution of power in violent territorial transition is $\mu = 0$.

Alternate Hypothesis: The distribution of power in violent territorial change is $\mu \neq 0$.

1. Significance: $0.05 = 95\%$ confidence
2. Choice: t-test
3. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above + 1.96 or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
4. Sample-decision
 - a. Test statistic is 3.9813.
 - b. There is a 0.0012 higher probability than hypothesized value of 0.
 - c. There is a 0.0006 lower probability than hypothesized value of 0.
 - d. Since the test statistic is above 1.96, the null hypothesis should be rejected.

To find the critical value and rejection region, I calculated the mean.

Null Hypothesis: The distribution of power in violent territorial transition is $\mu < 10.6$.

Alternate Hypothesis: The distribution of power in violent territorial change is $\mu \geq 10.6$.

1. Significance: $0.05 = 95\%$ confidence
2. Choice: t-test
3. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above + 1.96 or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
4. Sample-decision
 - a. Test statistic is -1.9692.
 - b. There is a 0.9662 higher probability than hypothesized value of 10.6.
 - c. There is a 0.0338 lower probability than hypothesized value of 10.6.
 - d. Since the test statistic is above 1.96, the null hypothesis should be rejected.

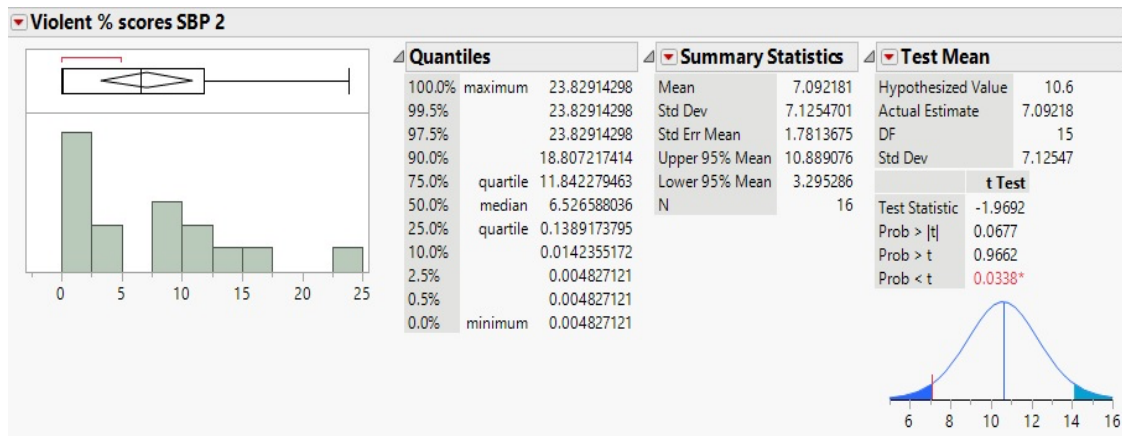


Figure 28. The Distribution of Power in Violent Territorial Change is $\mu \geq 10.6$

Null Hypothesis: The distribution of power in peaceful territorial transition is $\mu > 6.1$.

Alternate Hypothesis: The distribution of power in peaceful territorial change is $\mu \leq 6.1$.

1. Significance: $0.05 = 95\%$ confidence
2. Choice: t-test
3. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above $+1.96$ or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
4. Sample-decision
 - a. Test statistic is -1.9761 .
 - b. There is a 0.9724 higher probability than hypothesized value of 6.1 .
 - c. There is a 0.0276 lower probability than hypothesized value of 6.1 .
 - d. Since the test statistic is below 1.96 , the null hypothesis should be rejected.

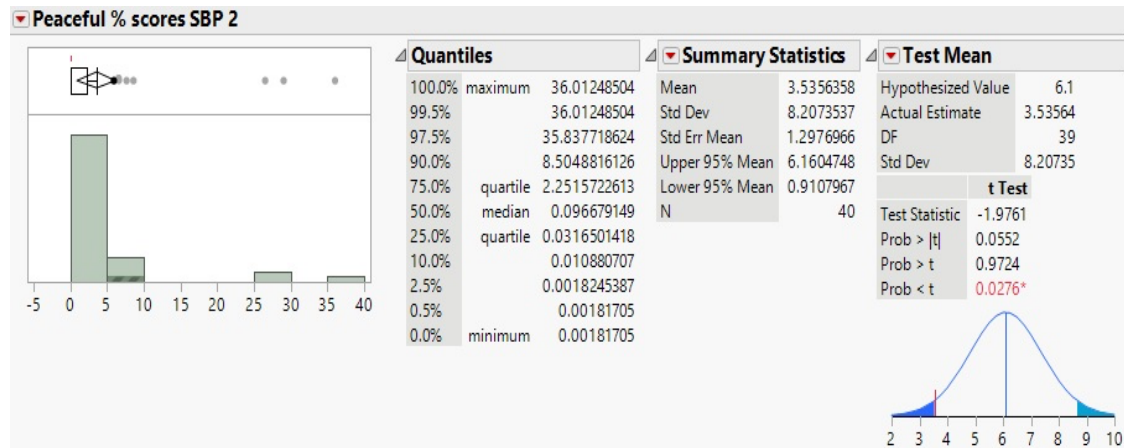


Figure 29. The Distribution of Power in Peaceful Territorial Change is $\mu \leq 6.1$

Interpretation

Therefore, peaceful territorial transition is more likely when the balance of power is more symmetric.

Second hypothesis: *Escapement is less likely when there is general economic satisfaction and an availability of choices for people to enjoy the value of doing or being something.*

Statement to test economic satisfaction based on HDI

Null Hypothesis: There is violent territorial change when HDI is somewhat high with $\mu > 0.25$.

Alternate Hypothesis: There is violent territorial change when HDI is somewhat low with $\mu \leq 0.25$.

1. Significance: 0.05 = 95% confidence
2. Choice: t-test
3. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above + 1.96 or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
4. Sample-decision
 - a. Test statistic is 1.9841.
 - b. There is a 0.0353 higher probability than hypothesized value of 0.28.
 - c. There is a 0.9647 lower probability than hypothesized value of 0.28.
 - d. Since the test statistic is above 1.96, the null hypothesis should be rejected.

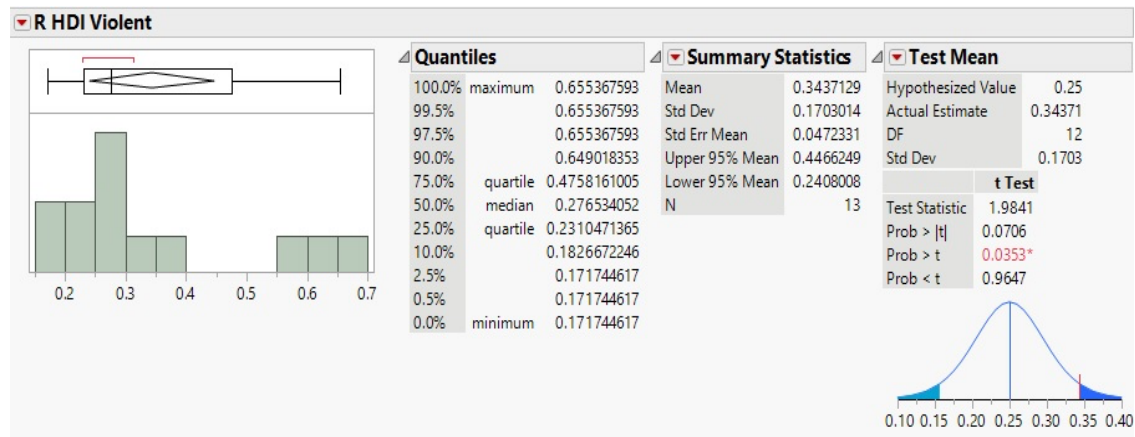


Figure 30. Revisionist Chooses Violent Territorial Change When HDI is $\mu \leq 0.25$

Null Hypothesis: There is peaceful territorial change when HDI is somewhat low with $\mu < 0.28$.

Alternate Hypothesis: There is peaceful territorial change when HDI is somewhat high with $\mu \geq 28$.

1. Significance: $0.05 = 95\%$ confidence
2. Choice: t-test
3. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above $+ 1.96$ or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
4. Sample-decision
 - a. Test statistic is 2.1074.
 - b. There is a 0.0416 higher probability than hypothesized value of 0.28.
 - c. There is a 0.9792 lower probability than hypothesized value of 0.28.
 - d. Since the test statistic is above 1.96, the null hypothesis should be rejected.

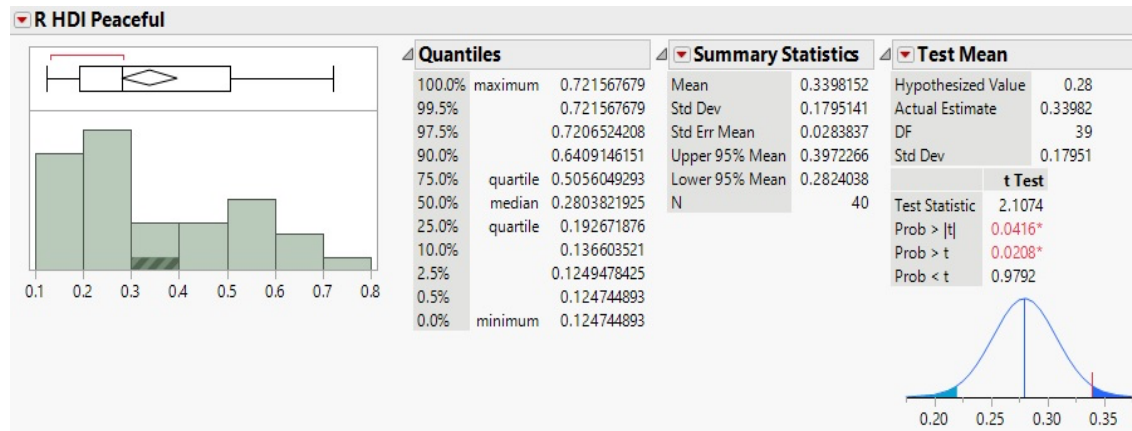


Figure 31. Revisionist Chooses Peaceful Territorial Change When HDI is $\mu \geq 0.28$

Interpretation

Therefore, the revisionist will choose a peaceful territorial transition when it has a slightly higher level of HDI.

Third hypothesis: *Escapement is less likely when there is a credible third-party threat or threats against at least one of the parties directly involved in the territorial issue.*

Since the presence or absence of a 3rd-party threat was qualitatively analyzed and answered with Yes (3rd-party present) and No (3rd-party absent), a t-test is not applicable. The contingency table in Figure 23 shows that more revisionists chose peaceful transition when a 3rd-party threat was present. Thus, the revisionist chose to be peaceful when a 3rd-party threat was present.

Fourth hypothesis: *Escapement is less likely when the political stability of a state and its governing capabilities are not threatened.*

I will use the political violence index to test the hypothesis.

Statement to test political stability based on the political violence index.

Null Hypothesis: There is violent territorial change when political violence is somewhat low when $\mu < 1.28$.

Alternate Hypothesis: There is violent territorial change when political violence is somewhat high when $\mu \geq 1.28$.

1. Significance: 0.05 = 95% confidence

2. Choice: t-test
3. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above + 1.96 or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
4. Sample-decision
 - a. Test statistic is -1.9922.
 - b. There is a 0.9682 higher probability than hypothesized value of 1.28.
 - c. There is a 0.0318 lower probability than hypothesized value of 1.28.
 - d. Since the test statistic is below 1.96, the null hypothesis should be rejected.

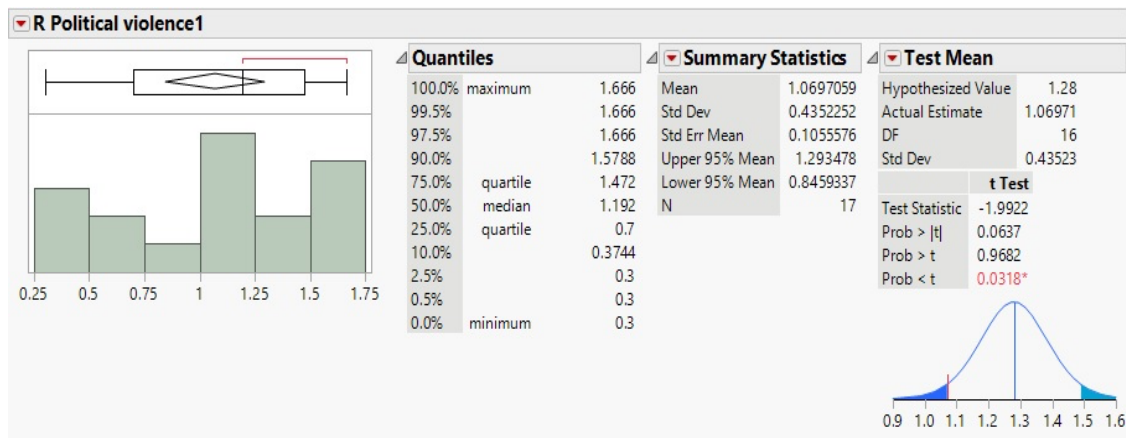


Figure 32. Revisionist Chooses Violent Territorial Change When Political Violence is $\mu \geq 1.28$

Null Hypothesis: There is peaceful territorial change when political violence is somewhat high when $\mu > 0.7$.

Alternate Hypothesis: There is violent territorial change when political violence is somewhat high when $\mu \leq 0.7$.

5. Significance: $0.05 = 95\%$ confidence
6. Choice: t-test
7. When $\alpha = 0.05$ level of significance for a two-tailed test, anything above + 1.96 or anything below -1.96 the null hypothesis should be rejected. This is a Type 1 error. The alternate hypothesis should be accepted.
8. Sample-decision
 - e. Test statistic is 2.6938.
 - f. There is a 0.0108 higher probability than hypothesized value of 0.7.
 - g. There is a 0.0054 lower probability than hypothesized value of 0.7.
 - h. Since the test statistic is above 1.96, the null hypothesis should be rejected.

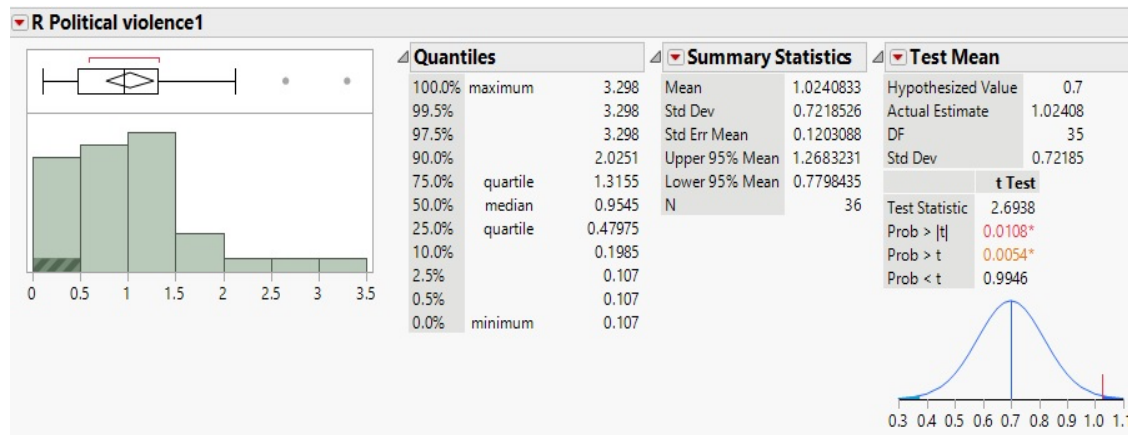


Figure 33. Revisionist Chooses Peaceful Territorial Change When Political Violence is $\mu \leq 0.7$

Interpretation

The revisionist will choose a peaceful territorial transition when it has lower levels of political violence.

Fifth hypothesis: *Any combination of at least three failures of the four factors increases the likelihood of escapement. Assuming that there is an underlying conflict between two entities, one state's chance to take coercive action against the other is greater if any of these factors change.*

Since the presence or absence of the four factors was qualitatively analyzed and answered with Yes and No answers, a t-test is not applicable. As shown in Figure 27, 85.71% of those with no factors present resorted to violence and 70% of violent cases only have one factor, while the revisionist chose peaceful transition during instances where there were at least two factors present. Thus, at least three failures of the four factors in the matrix significantly increases the likelihood of violence.

Appendix D: Escapement Graphs for China's Assertion in the South China Sea

January 1974: Battle of the Paracel Islands

Symmetric balance of power: No

Economic Satisfaction: No

Political stability: No

3rd-party threat/involvement: No

Symmetric balance of power was the last to fail between China and Vietnam's military capabilities. The absence of a third-party threat, in this case the U.S., is only second for China's motivations to deviate from their initial strategy.

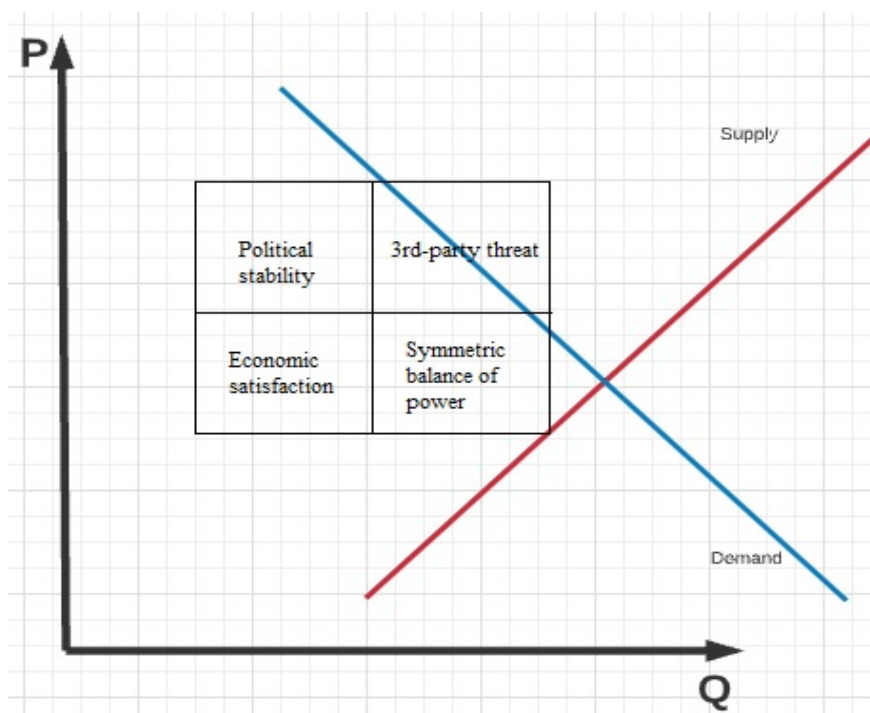


Figure 34. Escapement for the Battle of the Paracels (1974)

March 1988: The Johnson South Reef Skirmish

Symmetric balance of power: No

Economic Satisfaction: No

Political stability: No

3rd-party threat/involvement: No

During this period of political and economic uncertainty, China's goal was to secure the resources in the South China Sea, even if it meant violence. The last factor to fail was political stability. Economic dissatisfaction seemed to have only fueled political instability.

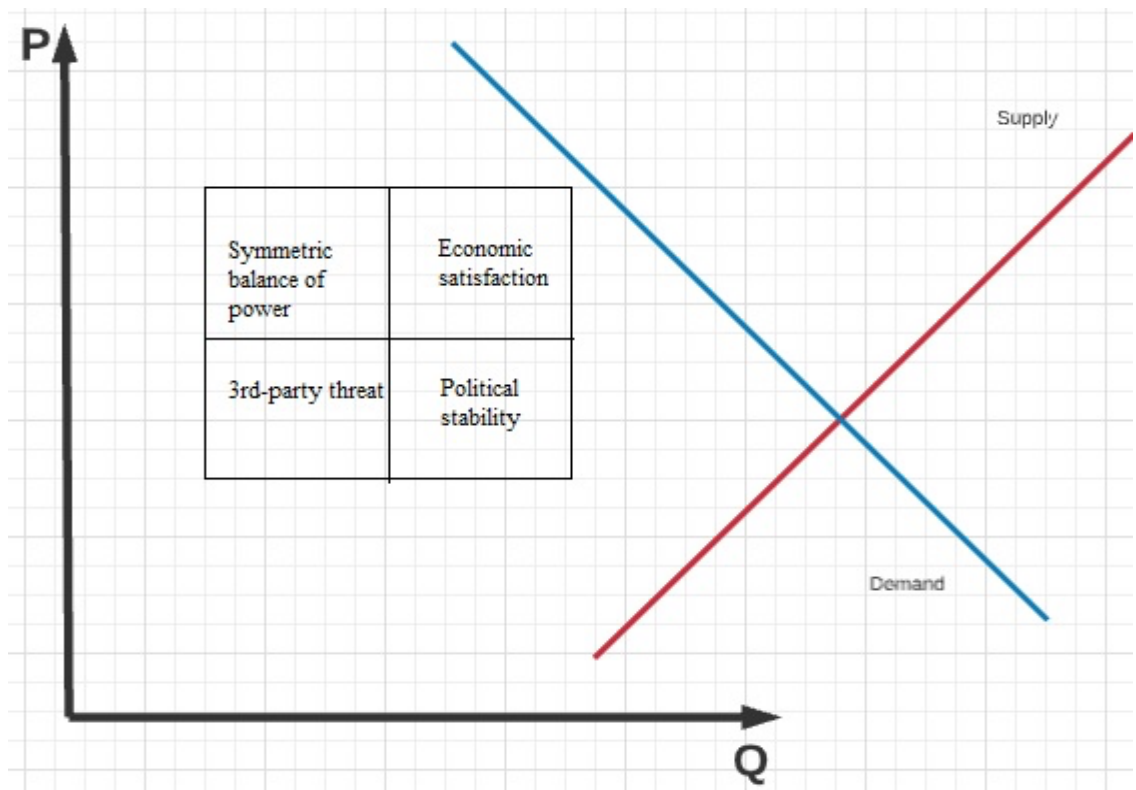


Figure 35. Escapement for Johnson South Reef Skirmish (1988)

1992 to 1995 – Chinese oil drilling, seizure of Mischief Reef within Philippines EEZ, and deterioration of Sino-Philippine relations

Symmetric balance of power: No

Economic Satisfaction: No

Political stability: Yes

3rd-party threat/involvement: No

Based on the timeline and on China's intent, the renewed assertion of jurisdiction in 1992 was fueled by need for economic resources. According to Andrew Chubb, "more than one-third of the newly assertive Chinese actions identified in 1992–94 concerned energy resources, compared to around 10 percent in earlier surge periods."⁵¹⁹

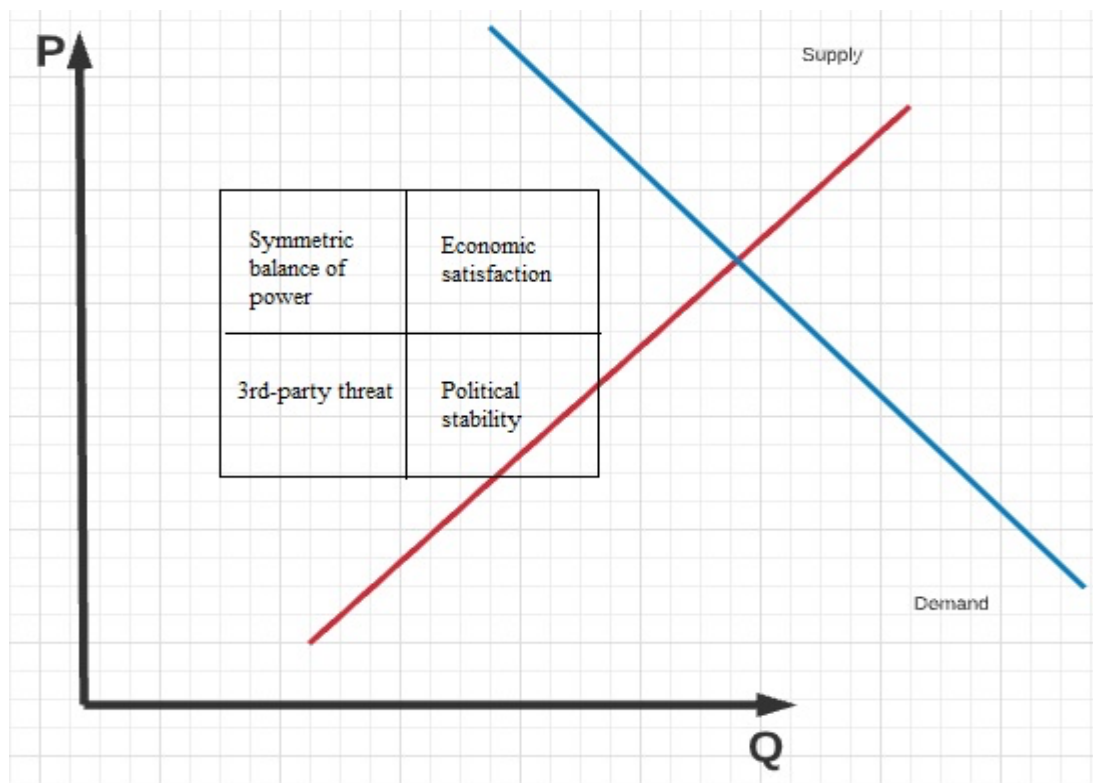


Figure 36. Escapement for Chinese Oil Drilling (1992 to 1995)

⁵¹⁹ <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/3Y7NRU> Accessed May 27, 2021 Chubb, p. 110

March 5, 2009 – Chinese Gray Zone Tactics

Symmetric balance of power: No

Economic Satisfaction: No

Political stability: No

3rd-party threat/involvement: No

For this period, meeting economic needs seemed to be China's primary motivation for the renewed assertion. Economic satisfaction was the last factor to fail before China resorted to gray zone tactics.

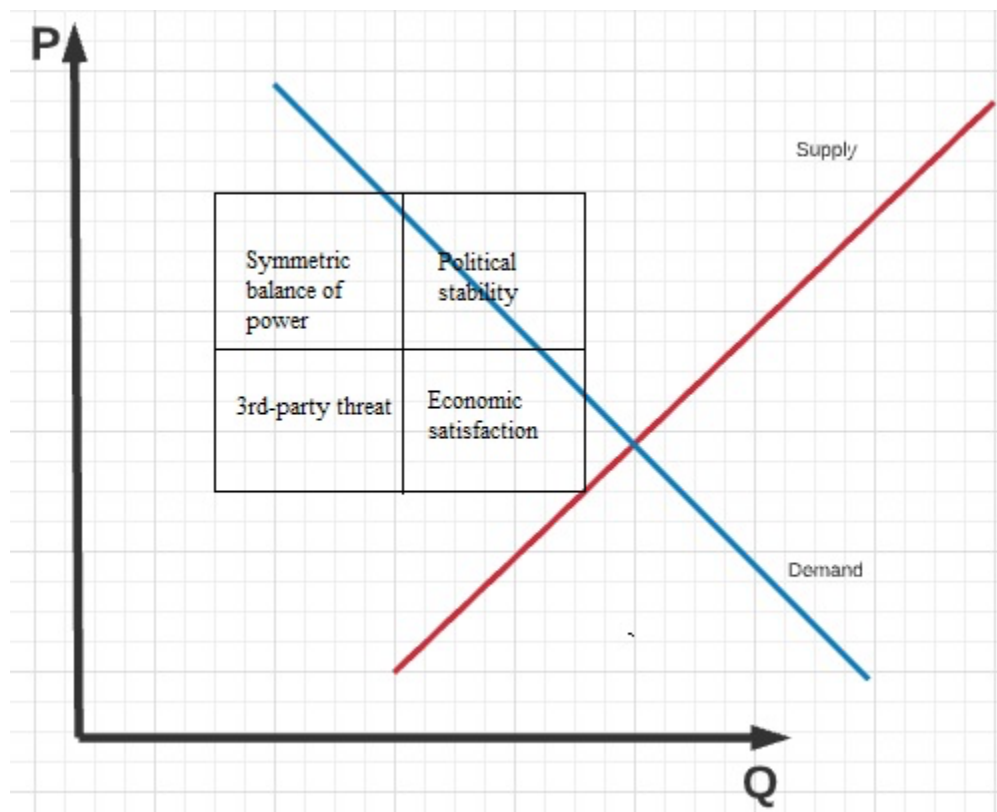


Figure 37. Escapement for Chinese Gray Zone Operations (2009)

2012 to July 2016 – China’s seizure of Scarborough Shoal, acceleration of island reclamation and development of artificial islands, and oil rig standoff with Vietnam

Symmetric balance of power: No

Economic Satisfaction: No

Political stability: No

3rd-party threat/involvement: Yes

Growth rate has dropped from above 10% in 2010 to below 7% sometime before 2016. Further, regulations have hurt jobs and risked mass unemployment.⁵²⁰ Thus, to compensate the loss on the mainland, China may have seen the South China Sea as another opportunity to exploit. Economic satisfaction was the last factor to fail before China renewed coercion. Third-party threats were still present, hence that category will be in the lower right quadrant.

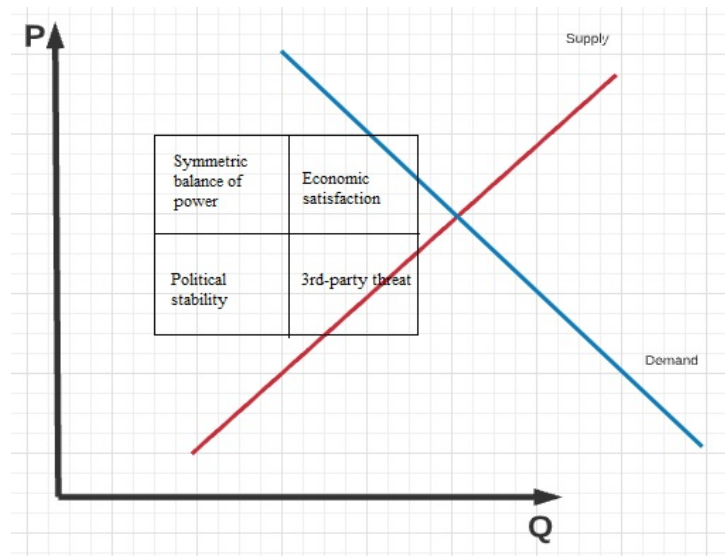


Figure 38. Escapement for China’s Seizure of Scarborough Shoal

⁵²⁰ Daniel Shane. “China takes economic hit as environment nears 'point of no return'.” *CNN*. (November 27, 2017). <https://money.cnn.com/2017/11/27/news/economy/china-crackdown-pollution-economy/index.html> Accessed May 27, 2021; Wei Yao, an economist at Societe Generale said "Chinese people are very concerned about pollution, so it makes sense for the leading party to respond,..What's most important to [the party] is social stability." "The pace of implementing the anti-pollution moves is the critical element," she said, warning that the government could risk mass unemployment if it moves too quickly.

February 2017: The Absence of a Third-Party Threat

Symmetric balance of power: No
Economic Satisfaction: No
Political stability: Yes
3rd-party threat/involvement: No

In this case, China's political stability is still present, but the third-party threats quadrant is the last factor to fail before deviating from its initial strategy.

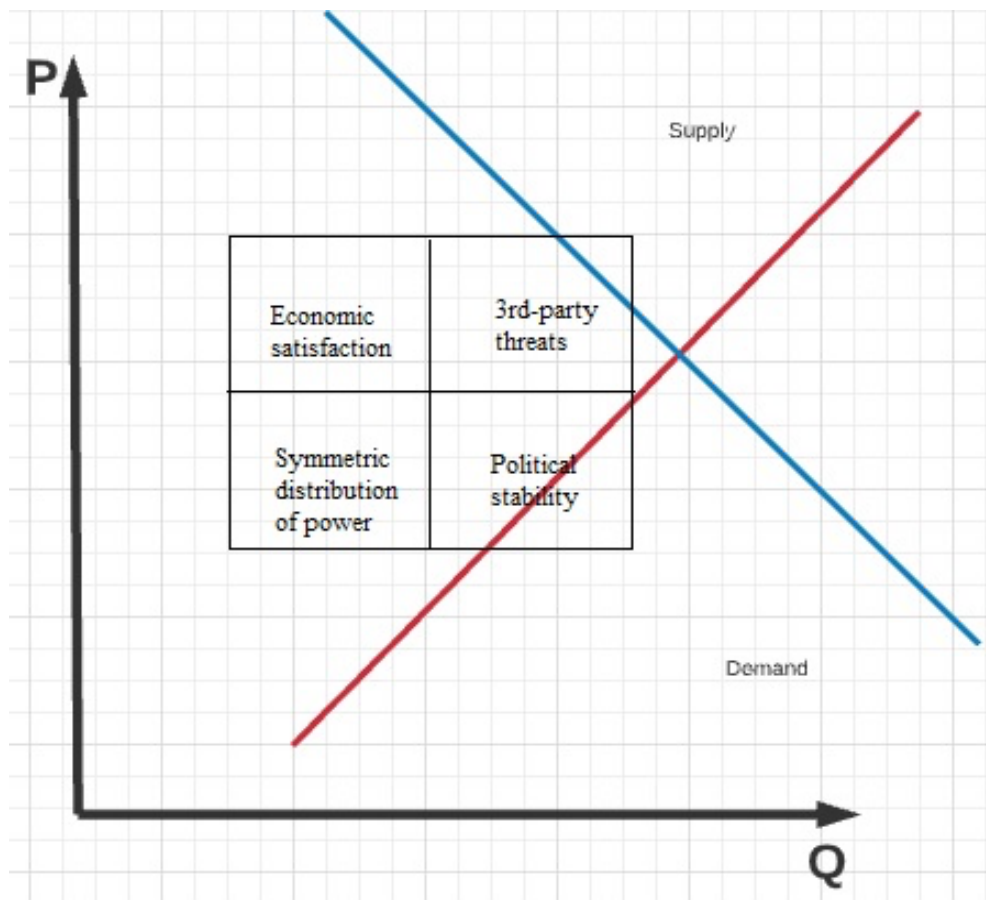


Figure 39. Escapement for 2017