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The Conflict of Laws in the South China Sea and Its Threats to the Indo-Pacific Rules-Based Order

Rex Lien Doan
Loyola University Chicago Law School

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Comment

The Conflict of Laws in the South China Sea and Its Threats to the Indo-Pacific Rules-Based Order

*Rex Lien Doan**

History has warned the world of the grave consequences of territorial disputes between neighboring states. The turn of the early 2020s has been no different. As the war between Ukraine and Russia persists, the South China Sea territorial and maritime conflict is gradually reemerging after a lull.

Despite an international arbitral tribunal ruling against China in 2016 (the Award), the situation in the South China Sea remains in a gridlock years later. Minimal progress has been made toward a lasting, peaceful resolution or a stable, rules-based regional order. The realization of any joint security agreement remains elusive, especially as China, in defiance of the tribunal's decision, has promulgated domestic legislations that contravene the core tenets of the United Nations Convention on the Law of the Sea (UNCLOS)—a convention to which China is a signatory. Conversely, the United States and its allies have firmly embraced the legal determinations of the Award and increased their support for regional claimants within the Indo-Pacific.

Efforts by intergovernmental organizations and individual nations to address Russia's actions in Ukraine have proven largely ineffective. A new proxy war, pitting Eastern and Western coalitions against one another, is emerging—carrying with it perilous risks and uncertainties. Given the shifts in global supply chains, changes in governmental administrations, and heightened tensions in the Taiwan Strait, this Comment explores the imminent threats to the security equilibrium in the Indo-Pacific. With the challenges facing the existing frameworks of the UNCLOS in mind, this Comment examines the dynamics of geopolitical spheres of influence considering the tug-of-war between global superpowers. Additionally, this Comment examines the limitations in enforcing the Award and highlights the shortcomings

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of the strategic ambiguities exhibited by the U.N., the U.S., and the Association of Southeast Asian Nations compared to China's assertive stance. Finally, this Comment proposes policy objectives that could foster peace, stability, and economic connectedness within the contested waterways.

| | |
|---|----|
| INTRODUCTION | 10 |
| I. THE RISE OF THE TIDES: POST–WORLD WAR II TO 2015 | 19 |
| A. <i>The Importance of the South China Sea for Each Stakeholder</i> | 20 |
| B. <i>Inception of the Nine-dash Line</i> | 21 |
| C. <i>The United Nations Convention on the Law of the Sea</i> | 22 |
| D. <i>Attempts at Diplomatic Solutions</i> | 25 |
| II. UNFINISHED BUSINESS | 26 |
| A. <i>The Permanent Court of Arbitration's South China Sea Award</i> | 26 |
| 1. <i>Content of the Award</i> | 27 |
| 2. <i>Significance and Implications to the Indo-Pacific Rules-Based Order</i> | 29 |
| B. <i>Division of Enforcement Among Stakeholders</i> | 30 |
| 1. <i>China's Denial of UNCLOS and the 2016 South China Sea Award</i> | 32 |
| 2. <i>The United States' Insistence on China's Compliance</i> | 36 |
| 3. <i>The Philippines' Dilemma in the Enforcement Stage</i> | 39 |
| 4. <i>Impasse among ASEAN Nations</i> | 40 |
| C. <i>Friends and Foes: The Formation of Coalitions</i> | 41 |
| III. EXISTING REALITY: THREATS TO THE INDO-PACIFIC RULES-BASED ORDER | 44 |
| A. <i>Zero-Sum Game Between the United States and China</i> | 45 |
| B. <i>China's Vision for the Indo-Pacific Region</i> | 48 |
| C. <i>U.S. Balancing Acts</i> | 51 |
| D. <i>The Courtship of ASEAN</i> | 56 |
| IV. PROPOSED SOLUTIONS: A SAFE, STABLE, AND PROSPEROUS SOUTH CHINA SEA | 61 |
| A. <i>Reconciliation</i> | 62 |
| B. <i>Ratification and Revision</i> | 64 |
| C. <i>Consolidation</i> | 68 |
| CONCLUSION | 72 |

INTRODUCTION

Since the twentieth century, few geopolitical conflicts have sparked as many controversial legal debates, military hostilities, and diplomatic wranglings as the South China Sea dispute. However, on July 12, 2016, the Permanent Court of Arbitration (Tribunal), constituted under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS or the Convention), issued a ruling against the People's Republic of China (PRC) concerning its ambitious territorial assertions over the maritime region.¹ For decades, the people of Southeast Asian nations have patiently waited for an effective solution, and the 2016 South China Sea Award (Award) was a mark of optimism for a more stable and peaceful maritime region.² Indeed, many expected the rulings to be the finale of territorial and maritime disputes between the seven adjacent neighbors—given that the Award was considered legally binding between all parties involved.³

Notably, the Tribunal ruled in favor of the Philippines on fourteen of its fifteen claims, invalidating China's nine-dash line on the basis of its incompatibility with the exclusive economic zone (EEZ) delineated in UNCLOS.⁴ The Award also serves as a credible foundation for the eventual development of international law by providing an explicit guideline for appropriate conduct and encouraging the adoption of suitable policies among all relevant claimants.⁵ In fact, the Award holds considerable value for the existing Indo-Pacific maritime security order because it reinforces the acceptable international legal standards of governing the

1. See generally *S. China Sea Arbitration* (Republic of Philippines v. People's Republic of China), Case No. 2013-19, Award (Perm. Ct. Arb. 2016).

2. See Bernard H. Oxman, *The South China Sea Arbitration Award*, 24 U. MIA. INT'L & COMPAR. L. REV. 235, 281 (2017) (examining the long-term legal impact of the Award).

3. See *S. China Sea Arbitration, Award*, ¶ 112 (detailing all of the Philippines's fifteen claims against China's nine-dash line, which encompasses the majority of the South China Sea and conflicts with the maritime zones delineated in the United Nations Convention on the Law of the Sea (UNCLOS)).

4. *Id.* ¶¶ 276–78 (providing the decisions reached by the PCA Tribunal).

5. Claimants in the South China Sea includes Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. See, e.g., Nguyen Hong Thao & Nguyen Thi Lan Huong, *The South China Sea Arbitration Award: 5 Years and Beyond*, DIPLOMAT (July 21, 2021), <https://thediplomat.com/2021/07/the-south-china-sea-arbitration-award-5-years-and-beyond/#> [<https://perma.cc/P2QV-XM9U>] (highlighting how the Award has shaped legal opinion in important ways); Lucy Reed & Kenneth Wong, *Marine Entitlements in the South China Sea: The Arbitration Between the Philippines and China*, 110 AM. J. INT'L L. 746, 758–60 (2016) (discussing the ramification of the Award).

seas.⁶ Likewise, it also establishes a valid legal basis for external nations⁷ with geopolitical interests within the region to intervene and deter Beijing's encroachments.⁸ The Award also stands as an anomaly that most regional and extra-regional countries can agree on by jointly declaring UNCLOS to be "the most important legal instrument for tackling all matters and activities at sea" and "the basis for determining maritime entitlements, sovereign rights, jurisdiction and legitimate interests over maritime zones."⁹ Most importantly, the Award is the seed that has led to the eventual development of a unified ASEAN stance on resolving maritime disputes.¹⁰

While the potential benefits are abound, implementation and enforcement of the Award have proven to be strenuous, inflaming a series of public condemnations between multiple state actors.¹¹ Years later, the effectiveness of the Award has been called into question and considered rather underwhelming as China's intimidating conduct in the region is growing more dangerous day by day.¹² In fact, China's resistance sharply soared after the close of the Tribunal's rulings.¹³ Despite the COVID-19

6. See Reed & Wong, *supra* note 5 at 760 (examining the impact of the Award in international maritime law).

7. In this Comment, the term 'external nations,' 'extra-regional,' and 'external stakeholders' refers to countries without any territorial and maritime claims in the South China Sea, such as Australia, India, Japan, United Kingdom, and the United States. However, these countries have existing geopolitical interests in preserving the stability of the maritime region. See *infra* Sections II.C, III.C.

8. See Nguyen & Nguyen, *supra* note 5. The term "Beijing" is used as a synonym for "China" in this Comment.

9. *Id.*

10. *See id.*

11. See, e.g., Hannah Beech, *China's Sea Control is Done Deal, 'Short of War With the U.S.'*, N.Y. TIMES (Sept. 20, 2018), <https://www.nytimes.com/2018/09/20/world/asia/south-china-sea-navy.html> [<https://perma.cc/97FL-UPBQ>] (describing the political tensions between China and U.S. since the arbitral ruling); see also Editorial, *China's Claims to the South China Sea Are Unlawful. Now What?*, N.Y. TIMES (July 27, 2018), <https://www.nytimes.com/2020/07/27/opinion/pompeo-south-china-sea.html> [<https://perma.cc/W5NM-HED6>] (condemning China's claims over the region as "completely unlawful").

12. See George Wright, *South China Sea: Philippine and Chinese Vessels Collide in Contested Waters*, BBC (Dec. 10, 2023), <https://www.bbc.com/news/world-asia-67668930> [<https://perma.cc/2HYH-RBTG>] (discussing the collision between the primary claimants); Brad Lendon, *US Navy challenges Chinese claims in South China Sea for second time in a week*, CNN (July 16, 2022), <https://www.cnn.com/2022/07/16/asia/us-navy-freedom-of-navigation-spratly-islands-south-china-sea-intl-hnk-ml/index.html> [<https://perma.cc/92PW-QWUF>] (indicating the escalation of heated ongoing disputes in the South China Sea); Katherine Morton, *China's Ambition in the South China Sea: Is a Legitimate Maritime Order Possible?*, 92 INT'L AFFS. 909, 936 (2016) (assessing China's key motivations in controlling the maritime region).

13. See, e.g., Oriana Skylar Mastro, *How China is Bending the Rules in the South China Sea*, STAN. FREEMAN SPOGLI INST. FOR INT'L STUD. (Feb. 17, 2021),

pandemic outbreak, Beijing remained steadfast in maintaining a firm military grip over the South China Sea and publicly ignored the validity of the Award.¹⁴ This controversy, however, was foreseeable by many international legal experts because at an early stage, the Award was deemed “destined to be ignored.”¹⁵ Indeed, enforcement of a State-to-State Arbitration Award largely depends on “good will, diplomacy, and international pressure.”¹⁶ In the absence of any clear-cut legal mechanisms or enforcement institutions to compel compliance, good faith and genuine cooperation among claimants are unlikely to result. In response to international pressure, Beijing heavily questioned the credibility of the Tribunal because it was not part of a United Nations organ and its procedural characteristic as ad hoc arbitration—which China contended was illegally initiated by Manila.¹⁷ As such, “no one expected China to quietly conform in accordance with the Tribunal’s rulings.”¹⁸

Yet Beijing argued that it was not doing anything new; it was simply following a well-established precedent by great powers that had come before it.¹⁹ Remarkably, even when the Philippines secured a victory in

china-bending-rules-south-china-sea [<https://perma.cc/2WPU-XJM8>] (summarizing China’s behaviors upon the conclusion of the 2016 Award).

14. See Yen Nee Lee, *Beijing May Be Using the Coronavirus Pandemic to Advance its Interests in the Disputed South China Sea*, CNBC (Apr. 13, 2020), <https://www.cnbc.com/2020/04/14/china-advances-claims-in-south-china-sea-despite-coronavirus-pandemic.html> [<https://perma.cc/FE8Q-CDZE>] (detailing China’s expansion over the region despite the spread of the pandemic).

15. See Euan Graham, *The Hague Tribunal’s South China Sea Ruling: Empty Provocation or Slow-Burning Influence?*, COUNCIL FOR FOREIGN RELS. (Aug. 18, 2016), <https://www.cfr.org/councilofcouncils/global-memos/hague-tribunals-south-china-sea-ruling-empty-provocation-or-slow-burning-influence> [<https://perma.cc/2S9G-4EPK>] (“Without an enforcement mechanism, the tribunal’s ruling is destined to be ignored, or worse still, constitute an empty provocation to a vengeful Beijing bent on turning the South China Sea into a Chinese lake, according to this point of view.”).

16. See, e.g., MARGARET MOSES, *THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* 272–73 (3rd ed. 2017) (highlighting the limitations in the enforcement stage of a state-to-state arbitration award).

17. See *Permanent Court of Arbitration Clarifies Role in South China Sea Case*, GLOB. TIMES (July 16, 2016), <https://www.globaltimes.cn/content/994642.shtml> [<https://perma.cc/KTZ8-8YR5>] (“The Permanent Court of Arbitration (PCA) said on Friday that it is not a UN organ and only provided registry services to the South China Sea arbitral tribunal.”). Additionally, the term “Manila” is used as a synonym for the Philippines in this Comment.

18. See Sam Bateman, *The South China Sea Arbitration: Challenges and Opportunities*, ASPI STRATEGIST (Aug. 2, 2016), <https://www.aspistrategist.org.au/south-china-sea-arbitration-challenges-opportunities/> [<https://perma.cc/5ESD-JDC6>] (“No one expects China to quietly accept the ruling. Other countries, including the US, are open to allegations of hypocrisy if they are excessively critical of China in this regard. There’s a long tradition of big nations ignoring decisions when they lose cases.”).

19. See, e.g., Graham Allison, *Of Course China, Like All Great Powers, Will Ignore an International Legal Verdict*, DIPLOMAT (July 11, 2016), <https://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/> [<https://perma.cc/9WR8-R9YV>] (emphasizing that other major countries in the past had ignored rulings from international courts).

a historic legal battle, Manila suddenly became inconsistent with its prior powerful rhetoric and remained cautious about whether the rulings would change the situation in the waters.²⁰ These erratic responses reflected the lack of legal consensus among claimants during the enforcement stage of the State-to-State arbitration award, naturally undermining the integrity of the existing rules-based order and the credibility of UNCLOS.

Despite their fruitful trade cooperation that has contributed significantly to global economic growth over the last decades, U.S.-China relations have dramatically soured over the course of the Trump administration.²¹ It is increasingly challenging for the United States and China to find common ground on any security, geopolitical,²² or trade issues.²³ The South China Sea maritime dispute is no exception and remains a divisive legal issue between the China-led coalition and its U.S.

20. See Bill Birtles, *South China Sea Decision a Hollow Victory for the Philippines*, ABC NEWS (July 12, 2016), <https://www.abc.net.au/news/2016-07-13/south-china-sea-philippines-hollow-victory/7623460> [<https://perma.cc/8B8F-P3PN>] (“But the short three-sentence statement read out by Philippines Foreign Minister Perfecto Yasay shows how little the country’s international legal win over China will change the situation on the water.”).

21. See Gideon Rachman, *A New Cold War: Trump, Xi and the Escalating US-China Confrontation*, FIN. TIMES (Oct. 4, 2020), <https://www.ft.com/content/7b809c6a-f733-46f5-a312-9152aed28172> [<https://perma.cc/MU3S-55AA>] (comparing the current U.S.-China relations to the Cold War with the Soviet Union); see generally *U.S.-China Relations (1949–2022)*, COUNCIL ON FOREIGN RELS. (2022), <https://www.cfr.org/timeline/us-china-relations> [<https://perma.cc/NQ6H-2KJ5>].

22. See generally Hong Kong Human Rights and Democracy Act of 2019, Pub. L. No. 116-76, 133 Stat. 1161 (2019).

23. See, e.g., Ken Thomas & Paul Wiseman, *Trump Orders Huge Tariffs on China, Raises Trade War Worries*, AP NEWS (Mar. 22, 2018), <https://apnews.com/article/china-north-america-technology-business-donald-trump-73e5e5aa7be2408892e9904d642d2137> [<https://perma.cc/YN9F-YM5Q>] (“Primed for economic combat, President Donald Trump set in motion tariffs on as much as \$60 billion in Chinese imports to the U.S. on Thursday and accused the Chinese of high-tech thievery, picking a fight that could push the global heavyweights into a trade war. China threatened retaliation, and Wall Street cringed, recording one of the biggest drops of Trump’s presidency.”); see also *USTR Releases Product Exclusion Process for Chinese Products Subject to Section 301 Tariffs*, OFF. OF THE U.S. TRADE REP. (July 6, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/ustr-releases-product-exclusion> [<https://perma.cc/E27S-5FMJ>] (issuing tariffs against Chinese import); see also Raymond Zhong, *China Strikes Back at Trump’s Tariffs, but Its Consumers Worry*, N.Y. TIMES (July 6, 2018), <https://www.nytimes.com/2018/07/06/business/china-trump-trade-war-tariffs.html> [<https://perma.cc/76V3-MUKY>] (“Accusing the United States of ‘typical trade bullying,’ China on Friday imposed \$34 billion in retaliatory tariffs on American soybeans, cars and other products, suggesting dim prospects for resolving a potentially bruising trade war between the two economic powerhouses.”); see also *Trump: China, Other Nations Have Become ‘Spoiled’ on Trade*, REUTERS (May 17, 2018), <https://www.reuters.com/article/us-usa-trade-china-trump/trump-china-other-nations-have-become-spoiled-on-trade-idUSKC N1I2MD> [<https://perma.cc/XCF4-WC2R>] (“Trump has threatened to impose up to \$150 billion in punitive tariffs to combat what he says is Beijing’s misappropriation of U.S. technology through joint venture requirements and other policies. Beijing has threatened equal retaliation, including tariffs on some of its largest U.S. imports, including aircraft, soybeans and autos.”); see generally Exec. Order No. 13,873, 84 C.F.R. § 96 (2019).

counterparts.²⁴ Since 2019, various ideological clashes between the two global superpowers have become more pronounced.²⁵ Following the 2019–2020 Hong Kong protests, China has been resolute in implementing its “One-China Policy” against Taiwan and further expanding its geopolitical influence over the Indo-Pacific.²⁶ Unsurprisingly, the United States and its allies vehemently oppose China’s vision for the region.²⁷ Even when there is an ongoing proxy war with Russia, Washington²⁸ continues to view Beijing as “the greatest challenger to the United States and its allies” in the twenty-first century.²⁹ With this backdrop, it is

24. See Niharika Mandhana, *How Beijing Boxed America Out of the South China Sea*, WALL ST. J. (Mar. 11, 2023), <https://www.wsj.com/articles/china-boxed-america-out-of-south-china-sea-military-d2833768> [https://perma.cc/8C8T-D6BN] (describing the current tensions between the United States and China in the South China Sea); see, e.g., *The Rivalry Between America and China Will Hinge on South-East Asia*, ECONOMIST (Feb. 27, 2021) [hereinafter *The Rivalry*], <https://www.economist.com/leaders/2021/02/27/the-rivalry-between-america-and-china-will-hinge-on-south-east-asia> [https://perma.cc/V7YX-SGXH] (arguing that the South China Sea will be the pivotal and key region for the battle between the United States and China).

25. Compare Xinhua, *Tensions Escalate as US-manipulated G7 Sparks Confrontation*, CHINA INTERNET INFO. CTR. (May 22, 2023), http://www.china.org.cn/world/2023-05/22/content_85479141.htm [https://perma.cc/2T8A-QL2S] (highlighting China’s opposition to the G7 Summit and its policy objectives), with Press Release, The White House, *G7 Hiroshima Leaders’ Communiqué* (May 20, 2023) [hereinafter *United States G7 Communiqué*], <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/g7-hiroshima-leaders-communicue/> [https://perma.cc/NMW4-RKL5] (listing a number of criticisms that the G7 has for China’s behaviors in recent years).

26. *Foreign Ministry Spokesperson’s Remarks on G7 Hiroshima Summit’s Hyping up of China-related Issues*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE’S REPUBLIC OF CHINA (May 20, 2023) [hereinafter *PRC Remarks on G7*], https://www.fmprc.gov.cn/eng/xwfw_665399/s2510_665401/2535_665405/202305/t20230520_11080748.html [https://perma.cc/T6PU-3Z5X] (“Taiwan is China’s Taiwan. Resolving the Taiwan question is a matter for the Chinese, a matter that must be resolved by the Chinese. The one-China principle is the solid anchor for peace and stability in the Taiwan Strait.”); accord *What is the ‘One China’ Policy?*, BBC NEWS (Oct. 6, 2021), <https://www.bbc.com/news/world-asia-china-38285354> [https://perma.cc/4BPD-EC7W] (“The One China policy is a key cornerstone of Sino-US relations. It is also a fundamental bedrock of Chinese policymaking and diplomacy. However, it is distinct from the One China principle, whereby China insists Taiwan is an inalienable part of one China to be reunified one day.”).

27. See United States G7 Communiqué, *supra* note 25 (“There is no legal basis for China’s expansive maritime claims in the South China Sea, and we oppose China’s militarization activities in the region. We emphasize the universal and unified character of the UNCLOS and reaffirm UNCLOS’s important role in setting out the legal framework that governs all activities in the oceans and the seas. We reiterate that the award rendered by the Arbitral Tribunal on July 12, 2016, is a significant milestone, which is legally binding upon the parties to those proceedings, and a useful basis for peacefully resolving disputes between the parties.”).

28. In this Comment, the term “Washington” is used as a synonym for the United States.

29. *The 2022 National Security Strategy*, WHITE HOUSE 23 (Oct. 2022) [hereinafter *National Security Strategy*], <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf> [https://perma.cc/EK9G-J272] (“The PRC is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it. Beijing has ambitions to create an enhanced sphere of influence in the Indo-Pacific and to become the world’s leading power.”);

crucial for the United States to assert its global standing—diplomatically, economically, militarily, and technologically—to curb China’s encroachment, preserve free trade, and safeguard regional allies from imminent threats.³⁰

Recent geopolitical shifts and their impacts have underscored the importance of the South China Sea. The region has emerged as a prospective alternative for Russia’s sanctioned exports in light of volatile global oil and natural gas prices.³¹ Because hundreds of millions of potential petroleum reserves have yet to be explored, there are strategic incentives for the United States, China, and the countries of the Indo-Pacific to assert control and sovereignty over this rich oceanic area.³² Nonetheless, the geopolitical interest of the South China Sea primarily revolves around its strategic importance to the world’s trade routes and its macro-economic impacts on surrounding developing economies.³³ For instance, the

see, e.g., Edward Wong & Ana Swanson, *U.S. Aims to Constrain China by Shaping Its Environment*, *Blinken Says*, N.Y. TIMES (May 26, 2022), <https://www.nytimes.com/2022/05/26/us/politics/china-policy-biden.html> [<https://perma.cc/WQ74-RJS7>] (“Secretary of State Antony J. Blinken said Thursday that despite Russia’s invasion of Ukraine, China remains the greatest challenger to the United States and its allies, and that the Biden administration aims to ‘shape the strategic environment’ around the Asian superpower to limit its increasingly aggressive actions.”).

30. See *National Security Strategy*, *supra* note 29, at 24 (“In the competition with the PRC, as in other arenas, it is clear that the next ten years will be the decisive decade. We stand now at the inflection point, where the choices we make and the priorities we pursue today will set us on a course that determines our competitive position long into the future.”); accord *How the Crisis Over Taiwan Will Change US-China Relations*, ECONOMIST (Aug. 11, 2022), <https://www.economist.com/china/2022/08/11/how-the-crisis-over-taiwan-will-change-us-china-relations> [<https://perma.cc/4V7B-LDSX>] (highlighting how the heightened escalations at the Taiwan Strait will impact on the U.S.-led rules-based order).

31. See *What’s Next for Oil and Gas Prices as Sanctions on Russia Intensify*, J.P. MORGAN CHASE & CO. (Mar. 10, 2022), <https://www.jpmorgan.com/insights/research/oil-gas-energy-prices> [<https://perma.cc/9CUY-5U6L>] (detailing the impact of western sanctions on oil supplies and prices); see also *Contested Areas of South China Sea Likely Have Few Conventional Oil and Gas Resources*, U.S. ENERGY INFO. ADMIN. (Apr. 3, 2013), <https://www.eia.gov/todayinenergy/detail.php?id=10651#> [<https://perma.cc/6NTY-G7DN>] (indicating the amount of natural resources reserves in the maritime region).

32. See Andrew Hayley, *China’s CNOOC Makes 100 Million Ton Oilfield Discovery in South China Sea*, REUTERS (Mar. 7, 2024), <https://www.reuters.com/business/energy/chinas-cnooc-make-s-100-million-ton-oilfield-discovery-south-china-sea-2024-03-08/> [<https://perma.cc/C476-YY4A>] (indicating recent discovery of an oil field in the South China Sea); see also Tim Daiss, *Why the South China Sea Has More Oil Than You Think*, FORBES (May 22, 2016), <https://www.forbes.com/sites/timdaiss/2016/05/22/why-the-south-china-sea-has-more-oil-than-you-think/> [<https://perma.cc/5XSS-54HG>] (providing the numerical figures of natural resources that are potentially embedded in the oceanic area).

33. Antony J. Blinken, Sec’y of State, Opening Remarks Before the Senate Committee on Appropriations On the President’s FY24 Budget Request: Investing in U.S. Security, Competitiveness, and the Path Ahead for the U.S.-China Relationship (May 16, 2023) (“The Indo-Pacific is the most dynamic and fastest-growing region in the world—50 percent of the world’s population, 60 percent

repercussions of the trade war and the COVID-19 pandemic have manifestly exposed the fragility of the supply chain between China and the rest of the world, prompting a movement toward deglobalization and economic nationalism.³⁴ However, relocating factories and manufacturing jobs back to developed nations would require years of transition.³⁵ Thus, the first logical step for multinational corporations is to decentralize China's market share in the supply chain and diversify manufacturing hubs to nearby countries like Vietnam, which recently emerged as a more hospitable and economical alternative.³⁶ Since most global goods are mass-produced in Southeast Asia, the United States has a vested interest in preserving free trade routes and protecting reliable energy shipping lanes around the Indo-Pacific region.³⁷ Therefore, the potential diversification of the supply chain to countries with less political tension ensures

of global GDP, eight of the top 15 U.S. export markets. It supports 3 million jobs here in the United States, provides about \$900 billion in foreign direct investment to our country, and it's driven about 75 percent of global economic growth over the last five years.”).

34. See Susan Helper & Evan Soltas, *Why the Pandemic Has Disrupted Supply Chains*, WHITE HOUSE (June 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/06/17/why-the-pandemic-has-disrupted-supply-chains/> [<https://perma.cc/4P4E-WV7J>] (indicating the United States' trade policies amid the COVID-19 pandemic); see, e.g., Rana Foroohar, *Davos and the New Era of Deglobalisation*, FIN. TIMES (May 22, 2022), <https://www.ft.com/content/1afaa628-41cb-4620-84c9-48b4b6b5b956> [<https://perma.cc/59GX-W3R9>] (indicating the movement towards deglobalization in world economies); see also Chris Giles, *Deglobalisation: Will Backlash Against Russia Lead to Downturn in Open Trade?*, FIN. TIMES (Apr. 3, 2022), <https://www.ft.com/content/279d0bf0-a58f-40c5-951f-84ecd54fe3f0> [<https://perma.cc/22QE-XTP3>] (describing the impact of the Russia-Ukraine war on supply chain links).

35. See Ana Swanson & Jeanna Smialek, *Factories May Be Leaving China, but Trade Ties Are Stronger Than They Seem*, N.Y. TIMES (Aug. 29, 2023), <https://www.nytimes.com/2023/08/29/business/economy/china-us-trade-supply-chain.html> [<https://perma.cc/AJ4G-ANK9>] (discussing the difficulties U.S. corporations face in shifting production out of China).

36. See Roula Khalaf, *Vietnam Becomes Vital Link in Supply Chain as Business Pivots from China*, FIN. TIMES (July 2, 2023), <https://www.ft.com/content/29070eda-3a0c-4034-827e-0b31a0f3ef11> [<https://perma.cc/H9R6-6UDE>] (redrawing the global supply chains by companies). Compare Daisuke Wakabayashi & Tripp Mickle, *Tech Companies Slowly Shift Production Away from China*, N.Y. TIMES (Sept. 1, 2022), <https://www.nytimes.com/2022/09/01/business/tech-companies-china.html> [<https://perma.cc/S48H-2ML6>] (describing that many U.S tech companies are considering moving their manufacturing factories away from China), with Ana Swanson & Jim Tankersley, *Companies May Move Supply Chains Out of China, But Not Necessarily to the U.S.*, N.Y. TIMES (July 22, 2022), <https://www.nytimes.com/2020/07/22/business/companies-may-move-supply-chains-out-of-china-but-not-necessarily-to-the-us.html> [<https://perma.cc/9H59-88PY>] (indicating the difficulties of U.S companies to move their manufacturing hubs back home).

37. *National Security Strategy*, *supra* note 29, at 37 (“The Indo-Pacific fuels much of the world’s economic growth and will be the epicenter of 21st century geopolitics. As an Indo-Pacific power, the United States has a vital interest in realizing a region that is open, interconnected, prosperous, secure, and resilient.”).

economic benefits for its domestic corporations and minimizes the possibility of unpredictable price increases for U.S. consumers.³⁸

Nonetheless, China is well aware of the threats to its economy and insists on preserving its current market share of international trade.³⁹ By posturing to be the gatekeeper of affected export hubs, China perceives itself as the principal regulator of these shipping routes, offsetting the potential benefits other countries could derive from a market shift.⁴⁰ As tensions escalate, ASEAN members continue to walk a thin line between upholding the principles of “ASEAN Centrality,” maintaining trade relationships with China, and welcoming security commitments from the United States.⁴¹ The main hurdle lies in achieving consensus among all ten ASEAN nations on a standard security policy for the region, which so far has resulted in a series of unsuccessful attempts.⁴²

38. *Id.* at 38 (“The prosperity of everyday Americans is linked to the Indo-Pacific and the United States has long been a regional trade and investment leader. . . . No region will be of more significance to the world and to everyday Americans than the Indo-Pacific.”); see Lydia O’Neal, *U.S. Companies Face Hurdles in Moving Production Closer to Home*, WALL ST. J. (Apr. 19, 2022), <https://www.wsj.com/articles/u-s-companies-face-hurdles-in-moving-production-closer-to-home-11650301164> [<https://perma.cc/B8BH-4HUN>] (“Companies looking to make their supply chains more resilient with nearshoring strategies may only be bringing production problems closer to home, experts say.”).

39. See, e.g., Amy Gunia, *Yahoo and LinkedIn are Ditching China. Here’s Why Most U.S. Businesses Are Staying Put*, TIME (Nov. 5, 2021), <https://time.com/6113375/yahoo-linkedin-companies-leaving-china/> [<https://perma.cc/X3CJ-RYAF>] (“A survey released in September by the American Chamber Commerce in Shanghai (AmCham Shanghai) found that of 338 respondents, almost 78% said they were optimistic or slightly optimistic about the five-year business outlook. More than 70% of respondents said they had no plans to move their supply chains out of China in the next three years.”); *PRC Remarks on G7*, *supra* note 26 (“As for ‘economic coercion,’ the massive unilateral sanctions and acts of ‘decoupling’ and disrupting industrial and supply chains make the US the real coercer that politicizes and weaponizes economic and trade relations. We urge the G7 not to become an accomplice in economic coercion.”).

40. See Alexander Neill, *South China Sea: What’s China’s Plan for its ‘Great Wall of Sand’?*, BBC (July 14, 2020), <https://www.bbc.com/news/world-asia-53344449> [<https://perma.cc/JE4A-83B2>] (describing China’s grand plan for the South China Sea).

41. See, e.g., *South-East Asia’s Regional Club Faces its Greatest Tests Yet*, ECONOMIST (Oct. 30, 2021) [hereinafter *Regional Club Tests*], <https://www.economist.com/asia/2021/10/30/south-east-asias-regional-club-faces-its-greatest-tests-yet> [<https://perma.cc/6C96-GXBD>] (highlighting the dilemmas that Southeast Asian nations are facing in balancing their diplomatic relationships with both the United States and China).

42. There are ten countries in the ASEAN, including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. However, there are only seven claimants in the South China Sea, including China, Taiwan, Brunei, Malaysia, Indonesia, the Philippines, and Vietnam. Therefore, because the Code of Conduct is primarily negotiated through ASEAN and not just the claimant states, it would likely need approval and ratification from all ten members, even if some countries do not have any claim in the maritime region. See Zhuoran Li, *What Does ASEAN Centrality Mean to China?*, DIPLOMAT (June 2, 2022), <https://thediplomat.com/2022/06/what-does-asean-centrality-mean-to-china/> [<https://perma.cc/228B-6DDX>]

Ultimately, the confrontation between two opposite ideological systems is reaching a climactic point within China's front corridors, providing an opportunity for the United States to demonstrate its global stature.⁴³ Conversely, China will not tolerate external nations humiliating its political objectives or exerting influence over a maritime region to which it considers historically its own.⁴⁴ The outcome of the battle for "spheres of influence" among ASEAN members will also heavily impact the existing rules-based order and general principles of international law.⁴⁵ If China can persuade or coerce surrounding claimants to adopt its legal standards, Beijing will inevitably become the leading and absolute powerhouse in the Indo-Pacific region. This dominance would enable China to further spread its influence across the continent, signifying its growing status against the United States.⁴⁶ On the other hand, if the United States succeeds in forming alliances with regional claimants—upholding existing rules-based norms—America will demonstrate that it can contain China's expansionism and defend its position as the number one global superpower.

This Comment will proceed as follows. Part I examines the legal constraints in enforcing the Award. In doing so, it highlights how China's uncompromising conduct poses a substantial threat to the prevailing rules-based order, which the United States has predominantly led since the end of World War II.

(detailing the concept of ASEAN Centrality and describing the delayed process of formulating a Code of Conduct); accord Duong Van Huy, *Why ASEAN's Centrality Matters*, ASIA & PACIFIC POL'Y F. (Aug. 22, 2022), <https://www.policyforum.net/why-aseans-centrality-matters/#> [<https://perma.cc/TEQ3-DT8Q>] (indicating the importance of ASEAN centrality in managing disputes and counteracting against foreign influences).

43. *National Security Strategy*, *supra* note 29, at 12–13 ("The world is now at an inflection point. This decade will be decisive, in setting the terms of our competition with the PRC, managing the acute threat posed by Russia, and in our efforts to deal with shared challenges, particularly climate change, pandemics, and economic turbulence."); *see also The Rivalry*, *supra* note 24 (indicating that the South China Sea is the primary region for the Sino-U.S. competition).

44. *See* Steven Lee Myers & Jason Gutierrez, *With Swarms of Ships, Beijing Tightens Its Grip on South China Sea*, N.Y. TIMES (Apr. 3, 2021), <https://www.nytimes.com/2021/04/03/world/asia/swarms-ships-south-china-sea.html> [<https://perma.cc/B5KM-5UJG>] (detailing the development of China's encroachments against other claimants in recent years).

45. *Cf.* U.N. Charter art. 2, ¶ 3 ("All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."); *cf.* U.N. Charter art. 2, ¶ 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."); *see also* TOM GINSBURG, *DEMOCRACIES AND INTERNATIONAL LAW* 216 (2021) (discussing Russia and China's Joint Declaration on the Promotion of International Law in relation to UNCLOS and the Award).

46. *See* GINSBURG, *supra* note 45, at 253 (discussing China's challenges to current liberal order in connection with the internet, human rights, sovereignty claims in the South China Sea, and global trade).

Part II provides an overview of the historical background of the territorial and maritime disputes in the South China Sea. Through exploring the geopolitical and economic objectives of the United States, China, and ASEAN countries, Part II underscores the importance of the waterways. Part II then describes the enactment of UNCLOS and emphasizes the key provisions and principles relevant to the disputes. Part III delves into a comprehensive discussion of the Award and underlines its legal significance for international law. Part III then discusses the coalition split in interpreting the substantive rulings of the Award and elucidates how conflicting responses among regional stakeholders have created a heated atmosphere within the maritime region.

Part IV scrutinizes the impact of recent geopolitical events on the existing rules-based order and the delicate situation in the South China Sea's waterways. Considering the shifts in the global supply chain, transitions in governing administrations, and instability surrounding the Taiwan Strait, Part IV examines the present perspectives and future political outlooks of China, the United States, and ASEAN members in relation to the maritime region. Part IV also highlights the limitations of each stakeholder's policies and their adverse effects on the peaceful and diplomatic resolution of disputes. Part IV then analyzes three possible outcomes for the South China Sea region. Finally, Part V puts forth proposals aimed at reconciling relationships, mitigating tensions, and fostering a peaceful environment among interested stakeholders in the Indo-Pacific region. Though there have been signs of progress made by China, the United States, and ASEAN members, Part V argues that further steps must be taken. Specifically, the formulation and adoption of the "Code of Conduct" for the South China Sea is the primary path to achieve meaningful resolutions.

I. THE RISE OF THE TIDES: POST-WORLD WAR II TO 2015

This Part provides a comprehensive historical overview of the maritime and territorial disputes in the South China Sea. The historical context surrounding the issue at hand holds immense relevance in the modern world. The competing claims and potential ramifications for international law make it imperative to fully comprehend the historical and legal aspects of this complex topic. First, Section I.A examines the strategic significance of the South China Sea for ASEAN claimants, China, and the United States. Specifically, three primary reasons will be discussed to explore the causes for a hotly contested maritime region. Second, Section I.B will trace the introduction and evolution of the nine-dash line, explaining why it remains a controversial legal topic in the realm of

international law. Third, Section I.C discusses the history of establishing UNCLOS as the primary legal framework governing the world's oceans. This section provides relevant provisions that are directly at issue in the South China Sea. Finally, Section I.D highlights the early attempts at dispute resolution among the stakeholders, with an emphasis on the important role of the "Declaration on the Conduct of Parties in the South China Sea" in laying the groundwork for the proposed Code of Conduct.

A. The Importance of the South China Sea for Each Stakeholder

There are three main reasons why multiple countries are contentiously disputing over the South China Sea and its geographic features. First, though primarily consisting of small islands, submerged rocks, and coral reefs, the maritime region extends across numerous Southeast Asian nations—spanning from the coast of Singapore to the Strait of Malacca in the Southwest and to the Strait of Taiwan in the Northeast.⁴⁷ This juxtaposition renders the South China Sea a vital trade artery, facilitating the passage of goods valued at \$5.3 trillion per annum—approximately one-third of all global maritime trade.⁴⁸ Moreover, this maritime region serves as a conduit for trade routes in the Global South, supplying imports to some of the most advanced economies and granting access to a continental market with a population of over 2.5 billion people.⁴⁹

Second, estimates by U.S. oil experts suggest that the South China Sea may contain around 11 billion barrels of oil and 190 trillion cubic feet of natural gas.⁵⁰ Meanwhile, the Chinese National Offshore Oil Company

47. See U.S. ENERGY INFO. ADMIN., SOUTH CHINA SEA 1 (Feb. 7, 2013) (discussing the geographic scope of the South China Sea).

48. See *id.*; see also U.N. CONFERENCE ON TRADE AND DEVELOPMENT, REVIEW OF MARITIME TRANSPORT 17 (2005) [hereinafter REVIEW OF MARITIME TRANSPORT] (estimating that roughly 80 percent of global trade by volume and 70 percent by value is transported by sea. Of that volume, 60 percent of maritime trade passes through, with the South China Sea carrying an estimated one-third of global shipping); see also Uptin Saiidi, *Here's Why the South China Sea is Highly Contested*, CNBC (Feb. 7, 2018), <https://www.cnbc.com/2018/02/07/heres-why-the-south-china-sea-is-highly-contested.html> [<https://perma.cc/DXH7-FJER>] (“[T]he South China Sea is a prominent shipping passage with \$5.3 trillion worth of trade cruising through its waters every year.”).

49. See REVIEW OF MARITIME TRANSPORT, *supra* note 48, at 4 (discussing the amount of global trade that passes through the South China Sea); see also China Power Team, *How Much Trade Transits the South China Sea*, CHINA POWER CSIS (Aug. 2, 2017), <https://chinapower.csis.org/much-trade-transits-south-china-sea/#> [<https://perma.cc/25J6-FATU>] (describing the importance of the South China Sea to China's economic security, particularly in the context of the fact that 60 percent of China's trade volume by value occurs via sea travel, as well as describing that because the Strait of Malacca connects the South China Sea and, consequently, the Pacific and Indian oceans, China, Taiwan, Japan, and South Korea all depend heavily on its waters).

50. See U.S. DEP'T OF THE INTERIOR, U.S. GEOLOGICAL SURV., ASSESSMENT OF UNDISCOVERED OIL AND GAS RESOURCES OF SOUTHEAST ASIA 1 (2010), <https://pubs.usgs.gov/fs/2020/3046/fs20203046.pdf> [<https://perma.cc/XC79-XGYQ>] (discussing the amount of unexplored natural resources in the South China Sea); see also Saiidi, *supra* note 48.

posited that the oceanic area contains approximately 125 billion barrels of oil and 500 trillion cubic feet of natural gas.⁵¹ The South China Sea's potential energy reserves offer strategic and economic incentives for claimants to assert sovereignty over the sea, particularly considering that many neighboring developing and developed nations require substantial oil and natural gas to sustain their fast-growing economies. In fact, by 2035, it is estimated that 30 to 40 percent of the world's oil consumption will be attributed to China and ASEAN members, creating a justifiable motivation to secure larger portions of the ocean for domestic production.⁵²

Third, the South China Sea is home to more than 50 percent of the world's fishing vessels, and its waters account for 12 percent of the global fish catch, generating an annual revenue of \$100 billion and employing over 3.7 million people.⁵³ China and ASEAN claimants consider control of the waterways not just a key security concern but also a crucial economic and energy matter.⁵⁴

B. Inception of the Nine-dash Line

The nine-dash line delineates a contested boundary over the South China Sea's waterways.⁵⁵ Initially, after its liberation from Japanese Imperialist occupation in 1947 and under the governance of the nationalist Kuomintang party, China inscribed the eleven-dash line on a map, encompassing 90 percent of the South China Sea.⁵⁶ However, after Mao Zedong declared the birth of the PRC, the Chinese Communist Party streamlined the border to a nine-dash line in 1953, which Beijing continues to cite as the historical and legal basis for its expansive territorial

51. See U.S. ENERGY INFO. ADMIN., *supra* note 47.

52. See *id.*

53. See Gregory B. Poling, *Illuminating the South China Sea's Dark Fishing Fleets*, OCEAN CSIS (Jan. 9, 2019), <https://ocean.csis.org/spotlights/illuminating-the-south-china-seas-dark-fishing-fleets/> [<https://perma.cc/K7TH-JCS3>] (describing the fishing industry in the region); Elizabeth R. DeSombre, *The Security Implications of Fisheries*, 95 INT'L AFFS. 1019, 1020 (2019) (same).

54. See, e.g., Clay Dillow, *US on Edge Over New Powder Keg in the South China Sea*, CNBC NEWS (Oct. 21, 2016), <https://www.cnbc.com/2016/10/21/china-and-the-philippines-could-ink-oil-exploration-deal-in-south-china-sea.html> [<https://perma.cc/755Z-9TST>] (discussing the U.S. and China's oil interests).

55. See, e.g., Zhiguo Gao & Bing Bing Jia, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, 107 AM. J. INT'L L. 98, 102–05 (2013) (examining the emergence and evolution of the nine-dash map)

56. *Id.*; see *China's Maritime Disputes*, COUNCIL ON FOREIGN REL. (2020), <https://www.cfr.org/timeline/chinas-maritime-disputes> [<https://perma.cc/8A8D-9GJR>] (describing the origin of the nine-dash line).

claims.⁵⁷ The contested area that China argues belongs to it envelopes a myriad of rights and resources: overflight air rights, geographic features—both emergent and or submerged, like the Paracel Islands in the Northwest and the Spratly Islands to the Southeast—and all underlying resources.⁵⁸

Even though the nine-dash line lacks specificity and Beijing has never clarified the precise coordinates of its assertions, the map nevertheless holds significant legal value to China—enabling them to build artificial islands, install aircraft runways, explore natural resources, and conduct military patrols.⁵⁹ In fact, Beijing considers the nine-dash line a symbol of national interest, instilling this controversial map to millions of school children at an early age and emblazoning it on Chinese official passports.⁶⁰ For China, the maritime region also represents a historical national legacy that traces its roots back to the Qing dynasty in the fifteenth century, asserting that Chinese natives have been fishing there and using the islands as shelter for centuries.⁶¹ While there is no concrete evidence to support China’s historical contention, Beijing continues to employ the nine-dash line to justify its behavior in all the confrontations against neighboring claimants and international legal communities.⁶²

C. *The United Nations Convention on the Law of the Sea*

The UNCLOS was established in Montego Bay, Jamaica, in 1982.⁶³ It defines the rights and responsibilities of nations in their use of

57. See Shigeki Sakamoto, *Historic Waters and Rights Revisited: UNCLOS and Beyond?*, MINISTRY OF FOREIGN AFFS. OF JAPAN (Mar. 31, 2015), <https://www.mofa.go.jp/files/000074505.pdf> [<https://perma.cc/V983-N7P3>] (discussing the transition from an eleven-dash line to a nine-dash line).

58. *Id.*

59. See Gao & Jia, *supra* note 55, at 113–20 (discussing China’s claim to the islands of the South China Sea in the context of the doctrine of historic title); see also Bill Hayton, *The Modern Creation of China’s ‘Historic Rights’ Claim in the South China Sea*, 49 *ASIAN AFFS.* 1, 3 (2019) (detailing China’s argument for historic rights to exclusive control over the waterways); accord Hannah Beech, *Just Where Exactly Did China Get the South China Sea Nine-Dash Line From?*, *TIME* (July 19, 2016), <https://time.com/4412191/nine-dash-line-9-south-china-sea/> [<https://perma.cc/c42TF-SQNK>] (detailing the history of the nine-dash map).

60. See Beech, *supra* note 59; see generally Zou Keyuan, *Historic Rights in International Law and in China’s Practice*, 32 *OCEAN DEV. & INT’L L.* 149, 159 (2001).

61. See Beech, *supra* note 59, at 2 (noting the vagueness of China’s claim).

62. See Hayton, *supra* note 59; see also Sean Mirski, *The South China Sea Dispute: A Brief History*, *LAWFARE* (June 8, 2015), <https://www.lawfareblog.com/south-china-sea-dispute-brief-history> [<https://perma.cc/J5D7-HC3K>] (highlighting China’s actions prior to the 2016 Award).

63. U.N. Convention on the Law of the Sea art. 320, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]; see also *United Nations Convention on the Law of the Sea*, UNITED NATIONS TREATY COLLECTION 1–2, [https://treaties.un.org/doc/Publication/MTDSG/Volume II/Chapter XXI/XXI-6.en.pdf](https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXI/XXI-6.en.pdf) [<https://perma.cc/3SMC-XVRH>] (last modified Apr. 9, 2024).

surrounding waters based on a system of EEZ and continental shelves.⁶⁴ UNCLOS also prescribes “a comprehensive regime of law and order in the world’s oceans and seas establishing rules governing all uses of the oceans and their resources,” emphasizing the principle that all territorial disputes within the ocean space are closely interrelated and need to be addressed in a single instrument of settled international norms.⁶⁵ In 1994, UNCLOS fully entered into force, and received broad acceptance from more than sixty countries within one year—indicating its status as a widely embraced and influential legal instrument in the realm of maritime affairs.⁶⁶

Relevant to the matter, UNCLOS stipulates several key legal concepts, such as EEZ and Freedom of Navigation, in dealing with matters in the world’s oceans. Article 3 of UNCLOS grants Coastal States complete sovereignty over their territorial sea up to a limit of twelve nautical miles.⁶⁷ However, foreign vessels are allowed “innocent passage through” those waters.⁶⁸ Similarly, Article 38 states that ships and aircrafts of all countries are allowed “transit passage” through straits used for international navigation.⁶⁹ Articles 57 and 58 provide that coastal states have sovereign rights in a 200-nautical mile EEZ with respect to exploiting natural resources and certain economic activities, and exercising jurisdiction over marine science research and environmental protection.⁷⁰ Articles 58 and 87 are explicit in that all States have freedom of navigation, overflight, scientific research, and fishing in the EEZ, as well as freedom to lay submarine cables and pipelines.⁷¹ States are obliged to adopt, or cooperate with other States in adopting measures to manage marine pollution and conserve living resources under Article 194.⁷² Article 77 declares that coastal states have sovereign rights to explore and

64. UNCLOS, *supra* note 63, art. 57 (defining “Exclusive Economic Zone” as areas of the ocean, extending 200 nautical miles from the shores to which a coastal nation has jurisdiction to regulate economic activities).

65. *See id.*; *United Nations Convention on the Law of the Sea of 10 December 1982*, UNITED NATIONS: OCEANS & L. SEA, https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm# [<https://perma.cc/SF3Z-DT3J>] (last updated Mar. 30, 2024) (providing the details of exclusive economic zones under UNCLOS); *see generally* Sara McLaughlin Mitchell & Andrew P. Owsiak, *Judicialization of the Sea: Bargaining in the Shadow of UNCLOS*, 115 AM. J. INT’L L. 579, 581 (2021).

66. *United Nations Convention on the Law of the Sea*, *supra* note 63, at 2–4.

67. UNCLOS, *supra* note 63, art. 3.

68. *Id.* art. 17.

69. *Id.* art. 38.

70. *Id.* art. 57–58.

71. *Id.* art. 87.

72. *Id.* art. 194.

exploit the continental shelf, in which can extend at least 200 nautical miles from the shore.⁷³ Article 121(3) provides that rocks which could not sustain human habitation or economic life of their own would have no economic zone or continental shelf.⁷⁴

Additionally, Part XV mandates that State Parties settle all interpretation and application disputes “by peaceful means.”⁷⁵ If an international court or tribunal renders a decision for claims brought under UNCLOS, Article 11 of Annex VII states that the Award “shall be final and without appeal” and “shall be complied with by the parties to the dispute.”⁷⁶

Some describe the treaty as the “constitution of the seas” since 169 countries have signed and ratified or acceded to the Convention, which cements its status as one of the most universally acknowledged legal instruments in maritime law.⁷⁷ Nations including Brunei, China,⁷⁸ Indonesia, Malaysia, the Philippines, and Vietnam are official parties of UNCLOS;⁷⁹ however, the United States remains a non-ratifier.⁸⁰ Despite participating in the drafting and development, the United States only recognizes UNCLOS as customary international law rather than being bound

73. *Id.* art. 77.

74. *Id.* art. 121.

75. *Id.* art. 279.

76. See UNCLOS, *supra* note 63, annex VII, art. 11; see also SHICUN WU, MARK VALENCIA & NONG HONG, UN CONVENTION ON THE LAW OF THE SEA AND THE SOUTH CHINA SEA, at 12–13 (2015) (discussing the application of Annex VII under UNCLOS).

77. Tullio Treves, *United Nations Convention on the Law of the Sea*, U.N. AUDIOVISUAL LIBR. OF INT’L L. 1 (2008), https://legal.un.org/avl/pdf/ha/uncls/uncls_e.pdf [<https://perma.cc/QPH9-6BFA>] (“It is considered the ‘constitution of the oceans’ and represents the result of an unprecedented, and so far never replicated, effort at codification and progressive development of international law.”); *United Nations Convention on the Law of the Sea*, *supra* note 63, at 1.

78. China was one of the first countries to sign the treaty on December 10, 1982, and eventually ratified UNCLOS in 1996. *United Nations Convention on the Law of the Sea*, *supra* note 63, at 2.

79. In general, there is a difference between a signatory and a country that has ratified, adopted, or acceded to the treaty. *Id.* Signatories to a treaty are not the same as parties to a treaty. There are self-executing treaties, like the CISG, where if a party signs, then its country becomes a party to the treaty. *Id.* But most international treaties are not self-executing, so when a country signs, that does make it a party to the treaty. Signing means that the signatories intend to have their countries ratify or accede to the treaty, but it does not always happen. *id.* In other words, a signatory is a country that has signed as an indication of support for the treaty, but that does not make the treaty binding on that signatory. *id.*

80. The United States only signed the 1994 Amendment Agreement, and it has neither confirmed, acceded to nor ratified the Convention. See *Agreement Relating to the Implementation of Part XI of the Convention*, UNITED NATIONS, https://www.un.org/Depts/los/convention_agreement_s/texts/unclos/closindxAgree.htm [<https://perma.cc/4BGK-V4K2>]; see also *United Nations Convention on the Law of the Sea*, *supra* note 63, at 2–4; CAITLIN KEATING-BITONTI, CONG. RSCH. SERV., R47744, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS): LIVING RESOURCES PROVISIONS 1, 4 (2023).

by its explicit provisions.⁸¹ The U.S. abstention from the Convention has been a double-edged sword; affording the United States the flexibility to advance its economic, military and strategic interests in the region without any legal constraints, but allows China to criticize its hypocrisy.⁸²

D. Attempts at Diplomatic Solutions

Aside from UNCLOS, protracted discussions have persisted among regional claimants to establish a comparable framework to address the legal disputes along the EEZ in the South China Sea. To alleviate the heightened tensions in the late twentieth century, China and ASEAN members agreed on a “Declaration on the Conduct of Parties in the South China Sea.”⁸³ After six years of negotiations in 2002, the declaration outlined brief conflict resolution guidelines and laid the groundwork for the envisioned “Code of Conduct.”⁸⁴ In particular, the parties pledged to abide by several key principles: (1) to reaffirm their commitments to the purposes and principles of the Convention; (2) to commit to exploring ways for building trust and confidence; (3) to reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea; (4) to undertake to resolve their territorial and jurisdictional disputes by peaceful means; and (5) to undertake to exercise self-restraint.⁸⁵ Before the Award, the declaration represented a commendable endeavor by China and ASEAN members to resolve their disputes peacefully.⁸⁶ However, the declaration ultimately stopped short of becoming anything more than a non-binding multilateral agreement. As later developments have revealed, it lacks a mechanism strong enough to block or disincentivize China’s offensive push.⁸⁷

81. *United Nations Convention on the Law of the Sea*, *supra* note 63, at 2–4; KEATING-BITONTI, *supra* note 80, at 3–4 (stating that the United States continues to view UNCLOS as customary international law).

82. *See, e.g.*, Will Schrepferman, *Hypocri-sea: The United States’ Failure to Join the UN Convention on the Law of the Sea*, HARVARD INT’L REV. (Oct. 31, 2019), <https://hir.harvard.edu/hypocri-sea-the-united-states-failure-to-join-the-un-convention-on-the-law-of-the-sea-2/> [<https://perma.cc/D5CE-GJKA>] (highlighting the drawbacks of U.S. policies by not ratifying the Convention).

83. *See 2002 Declaration of the Conduct of the Parties in the South China Sea*, CTR. FOR INT’L L. (Nov. 4, 2002), <https://cil.nus.edu.sg/wp-content/uploads/2017/07/2002-Declaration-on-the-Conduct-of-Parties-in-the-South-China-Sea.pdf> [<https://perma.cc/ZB73-J94R>] (laying out the principles for managing the disputes in the South China Sea between ASEAN and China).

84. *Id.*

85. *Id.*

86. *See id.*; *see also* Mirski, *supra* note 62 (discussing positive improvements in relations between China and ASEAN members as evidenced by the signing of the Declaration on the Conduct of Parties in the South China Sea in 2002).

87. Mirski, *supra* note 62.

II. UNFINISHED BUSINESS

This Part will provide an in-depth analysis of the Award and explore the various events that occurred after the rulings. Section II.A describes the contextual background of the Philippines' legal claims against China and examines the decisions rendered by the Permanent Court of Arbitration, shedding light on the geopolitical intricacies and legal complexities of the case. Section II.A also explores the broader significance and implications of the Award within the realm of international law, involving an evaluation of its legal ramifications and the establishment of precedents for future disputes. Next, Section II.B assesses the division among stakeholders during the enforcement stage, thereby providing insight into the challenges faced in implementing the Award's rulings. Section II.C then analyzes the formation of coalition and spheres of influence against the backdrop of 2020s geopolitical events, explaining the evolving dynamics and alliances within the South China Sea region.

A. The Permanent Court of Arbitration's South China Sea Award

In response to large-scale land reclamations and provocative encroachments upon its EEZ by Chinese law enforcement, the Philippines initiated an arbitration proceeding against China in 2013 under Annex VII of the UNCLOS.⁸⁸ The Philippines presented several legal issues to the Tribunal, primarily seeking resolutions on: (1) the role of historical rights of China's nine-dash map; (2) the proper legal characterizations of the maritime features claimed by both parties; and (3) the lawfulness of certain actions by China that the Philippines alleged violated the Convention.⁸⁹

Following the Philippines' notice of arbitration, China issued the "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" and objected to the Tribunal's jurisdiction.⁹⁰ Specifically, in the paper, China contended that because the claims brought by the Philippines were inherently legal questions of territorial sovereignty over maritime features, they fell outside the scope of

88. *See* S. China Sea Arbitration (Republic of Philippines v. People's Republic of China), Case No. 2013-19, Award, ¶¶ 28–29 (Perm. Ct. Arb. 2016); *see also* Oxman, *supra* note 2, at 237 (examining the legal basis of the Philippines' claims for China's violation of UNCLOS).

89. *See* S. China Sea Arbitration, Award, ¶¶ 112–18 (providing the Philippines's "Final Submissions" to the Tribunal).

90. *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*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE'S REPUBLIC OF CHINA (Dec. 7, 2014), https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201412/t20141207_679387.html [<https://perma.cc/5J7E-JVMK>] (indicating China's position on the notice of arbitration).

UNCLOS.⁹¹ China maintained that the Tribunal lacked jurisdiction over the dispute because UNCLOS was not applicable or relevant to the Philippines' legal claims.⁹² Further, even if UNCLOS were relevant to the dispute, China asserted that the Tribunal had no authority to delimit the maritime boundaries between the nations, citing its previous exclusion from dispute resolution provisions.⁹³ Instead, China claimed that the Philippines had breached its legal obligations, given that both countries had earlier agreed to settle disputes through bilateral negotiations.⁹⁴ By skipping the negotiation phase and unilaterally commencing an arbitration proceeding, China insisted that the Philippines itself was in violation of international law.⁹⁵ As a result, China neither accepted jurisdiction nor participated in the subsequent hearings.⁹⁶

Nonetheless, under Articles 288 and 9 of Annex VII of UNCLOS, the proceedings moved forward without China.⁹⁷ To ensure the credibility of the subsequent proceedings and the final decision, the Tribunal conducted various hearings to determine its jurisdiction to hear the case and assess the viability of the Philippines' legal claims.⁹⁸ The Tribunal concluded in its "Award on Jurisdiction and Admissibility" that it possessed proper jurisdiction to hear and decide the dispute and rejected all of China's arguments in the paper.⁹⁹ The Tribunal also found that all of the Philippines' claims had factual merits concerning the legal application of UNCLOS.¹⁰⁰

1. Content of the Award

The Tribunal explicitly emphasized that it did not rule on questions of sovereignty over land territory within the maritime region, nor did it

91. *Id.*

92. *Id.*

93. *Id.* ("Even assuming, *arguendo*, that the subject-matter of the arbitration were concerned with the interpretation or application of the Convention, that subject-matter would constitute an integral part of maritime delimitation between the two countries, thus falling within the scope of the declaration filed by China in 2006 in accordance with the Convention, which excludes, *inter alia*, disputes concerning maritime delimitation from compulsory arbitration and other compulsory dispute settlement procedures . . .").

94. *Id.*

95. *Id.*

96. *Id.*

97. *See* S. China Sea Arbitration (Republic of Philippines v. People's Republic of China), Case No. 2013-19, Award, ¶¶ 145–52 (Perm. Ct. Arb. 2016) (summarizing the Tribunal's award of jurisdiction).

98. *Id.* ¶¶ 145–68 (stating reasons why the PCA has jurisdiction under UNCLOS to hear the dispute).

99. *Id.* ¶¶ 164–68.

100. *Id.*

demarcate any boundaries between the parties, as these issues were beyond the scope of UNCLOS.¹⁰¹ In examining the nine-dash line's validity and China's historic rights claim, the Tribunal found that the nine-dash map was incompatible with the explicit text of UNCLOS since the drafters had comprehensively allocated the rights and maritime zones among all signatories.¹⁰² Even if China had possessed historic rights over the waterways, these rights were terminated upon the introduction and its ultimate ratification of UNCLOS.¹⁰³ The Tribunal further concluded that although historical evidence indicated the presence of Chinese nationals on the disputed islands, these territories had been legally part of the high seas, where anyone could freely navigate.¹⁰⁴ In fact, no evidence suggested China had exercised exclusive control over these areas; other States' nationals also sailed and sought shelter on these islands.¹⁰⁵ Thus, the Tribunal found no valid legal basis for China to claim historic rights to resources in sea areas falling within the nine-dash line.¹⁰⁶

The Tribunal also concluded that all of the Spratly Islands claimed by China were legally classified as "rocks," incapable of generating an EEZ or maritime zone as a unit.¹⁰⁷ The Tribunal noted that the presence of constructed installations and human personnel was to be disregarded since China had artificially altered the geographic features.¹⁰⁸ It concluded that these geographic features, in their natural condition, could not sustain a stable community of people, and no historical evidence indicated otherwise.¹⁰⁹

The Tribunal found that by interfering with the Philippines' petroleum exploration at Reed Bank, prohibiting Philippine vessels from fishing within the Philippines' EEZ, failing to prevent Chinese fishermen from fishing within the Philippines' EEZ, and constructing artificial islands, China also violated the Philippines' sovereign rights under UNCLOS.¹¹⁰

Furthermore, the Tribunal reasoned that China's actions had caused severe harm to the marine environment. By reclaiming land, building

101. *Id.* ¶¶ 169–71 (providing the scope of issues that the PCA could decide).

102. *Id.* ¶¶ 202–78 (analyzing China's legal basis for the nine-dash line and explaining how it is not in accordance with the provisions under UNCLOS).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* ¶¶ 382–84, 643–48 (identifying the proper legal status of the disputed features in the South China Sea and concluding that as "rocks," these features cannot form their own exclusive economic zones).

108. *Id.*

109. *Id.* ¶¶ 688–95.

110. *Id.* ¶¶ 688–716 (concluding that China had breached its obligations under UNCLOS, and it had violated the Philippines's rights within their respective exclusive economic zones).

artificial islands at seven geographic features in the Spratly Islands, and failing to prevent Chinese fishermen from harvesting endangered species on a substantial scale, China violated its legal obligations under Articles 192 and 194 of UNCLOS.¹¹¹

Relating to the physical obstruction at Scarborough Shoal, the Tribunal concluded that by repeatedly approaching at high speed and crossing ahead of the Philippine vessels at close distance, China had unlawfully created a severe risk of confrontation and disobeyed its obligations under Article 94 of UNCLOS and the Convention on the International Regulations for Preventing Collisions at Sea.¹¹²

Finally, the Tribunal stressed that since both the Philippines and China are legally bound by the rules of UNCLOS involving good faith and appropriate conduct, China has the duty to respect the Philippines' rights and freedoms under the treaty.¹¹³ Additionally, because Article 11 provides that the "[a]ward . . . shall be complied by the parties to the dispute," the Tribunal considered the Award to be "final and binding" on all relevant parties.¹¹⁴

2. Significance and Implications to the Indo-Pacific Rules-Based Order

Following the landmark rulings by the Permanent Court of Arbitration, the South China Sea Award fostered profound legal significance and implications for the Indo-Pacific rules-based order.¹¹⁵ This Award reaffirmed the fundamental principles of acceptable conduct in accordance with the law of the sea, intending to promote a peaceful, stable, and prosperous maritime region. In resolving the Philippines' claims, the Award provided an explicit interpretation and practical legal application of the relevant provisions to all signatories under UNCLOS.¹¹⁶ Not only did

111. *Id.* ¶¶ 992–93 (noting that China had violated Articles 192 and 194); UNCLOS, *supra* note 63, art. 192 (“States have the obligation to protect and preserve the marine environment.”); UNCLOS, *supra* note 63, art. 194 (obligating States to cooperate in preventing, reducing, or controlling pollution of the marine environment).

112. S. China Sea Arbitration, Award, ¶¶ 757, 814, 1109.

113. *Id.* ¶¶ 1191–96 (concluding that both parties are legally bound by the Tribunal’s decisions).

114. *Id.* ¶ 1172 (quoting U.N. Convention on the Law of the Sea art. 11, Dec. 10, 1982, 1833 U.N.T.S. 397); *Id.* ¶ 1199 (same).

115. See Caitlin Campbell & Nargiza Salidjanova, *South China Sea Arbitration Ruling: What Happened and What’s Next?*, U.S.-CHINA ECON. & SEC. REV. COMM’N 5–6 (July 12, 2016), [https://www.uscc.gov/sites/default/files/Research/Issue Brief_South China Sea Arbitration Ruling What Happened and What’s Next071216.pdf](https://www.uscc.gov/sites/default/files/Research/Issue%20Brief_South%20China%20Sea%20Arbitration%20Ruling%20What%20Happened%20and%20What%27s%20Next071216.pdf) [<https://perma.cc/RT4U-WY7K>] (highlighting the impacts of the Award).

116. See *id.*; see also Max Fisher, *The South China Sea: Explaining the Dispute*, N.Y. TIMES (July 14, 2016), <https://www.nytimes.com/2016/07/15/world/asia/south-china-sea-dispute-arbitration-explained.html> [<https://perma.cc/VE4D-BVNK>] (discussing the impact of the Award).

the Award help surrounding claimants reassess their policies and approaches in the South China Sea, but it also served as a valuable reference for resolving similar maritime disputes in other oceanic areas.¹¹⁷

Importantly, the Award laid a solid legal foundation for the United States, ASEAN claimants, and their allies to unite in counteracting China's encroachments.¹¹⁸ For instance, the Award established an important legal precedent for other claimants that contemplate suing China over the maritime dispute.¹¹⁹ Likewise, the verdict implicitly granted the U.S. and its allies the authority to continue conducting Freedom of Navigation Operations¹²⁰ across the South China Sea.¹²¹ Experts have also predicted that the Award would reduce the temptation to invoke historical use of the high seas as a legal basis for claims of control, mitigate disputes over small maritime features, lessen environmental damage, and reinforce the integrity of UNCLOS and its settlement system to the rule of law in international affairs.¹²²

B. Division of Enforcement Among Stakeholders

Despite the transformative impact of the Tribunal's rulings, a surprising division emerged among the parties during the enforcement stage of

117. See Jeremy Page, *Tribunal Rejects Beijing's Claims to South China Sea*, WALL ST. J. (July 12, 2016), <https://www.wsj.com/articles/chinas-claim-to-most-of-south-china-sea-has-no-legal-basis-court-says-1468315137> [<https://perma.cc/7LYC-54UE>] (discussing the impact of the rulings on international law); see also Mitchell & Owsiak, *supra* note 65 (arguing “[s]tates parties are less likely to contest maritime claims diplomatically, less likely to experience militarized conflicts, and more likely to employ peaceful strategies for resolving maritime disputes”).

118. See Campbell & Salidjanova, *supra* note 115 at 3, 5–6; see also *ASEAN Foreign Ministers' Statement on Maintaining and Promoting Stability in the Maritime Sphere in Southeast Asia*, ASEAN (Dec. 30, 2023), <https://asean.org/wp-content/uploads/2023/12/Final-Draft-ASEAN-FMs-Statement-on-Maintaining-and-Promoting-Stability-in-the-Maritime-Sphere-in-SEA.pdf> [<https://perma.cc/DZG6-RJMU>] (stating ASEAN shared commitment to maintaining and promoting peace, security, and stability in the South China Sea).

119. See, e.g., Euan Graham, *The Hague Tribunal's South China Sea Ruling: Empty Provocation or Slow-Burning Influence?*, COUNCIL ON FOREIGN RELS. (Aug. 18, 2016), <https://www.cfr.org/councilofcouncils/global-memos/hague-tribunals-south-china-sea-ruling-empty-provocation-or-slow-burning-influence> [<https://perma.cc/789J-FU8A>] (highlighting the policy implications of the rulings); see also Campbell & Salidjanova, *supra* note 115, at 6 (explaining that other claimants may be encouraged by the tribunal rulings to initiate their own cases).

120. Under Article 87(1) of UNCLOS, Freedom of Navigation, also referred as Freedom of the Seas, means that the high seas are open to all States to sail through without interference. UNCLOS, *supra* note 63, art. 87(1). Article 89 further states that “No State may validly purport to subject any part of the high seas to its sovereignty.” UNCLOS, *supra* note 63, art. 89.

121. ELEANOR FREUND, *FREEDOM OF NAVIGATION IN THE SOUTH CHINA SEA: A PRACTICAL GUIDE* 27–43 (2017), [https://www.belfercenter.org/sites/default/files/files/publication/SCS Report - web.pdf](https://www.belfercenter.org/sites/default/files/files/publication/SCS%20Report%20web.pdf) [<https://perma.cc/2MYZ-AC8L>] (detailing U.S. “Freedom of Navigation” operations after the rulings).

122. See Oxman, *supra* note 2, at 280–281 (providing an assessment of the long-term consequences of the Award).

the Award. According to data compiled by the Asia Maritime Transparency Initiative, twenty-six governments formally endorsed the rulings as of November 2023.¹²³ Although the United States did not sign or ratify the Convention, it nonetheless expressed support for the Award.¹²⁴ Meanwhile, seventeen countries issued positive acknowledgments of the verdict but refrained from explicitly calling for parties to abide by it.¹²⁵ Notably, relevant claimants such as Indonesia, Malaysia, and Vietnam were among this group.¹²⁶ In contrast, eight countries—China, Montenegro, Pakistan, Russia, Sudan, Syria, Taiwan, and Vanuatu—openly opposed the decision.¹²⁷

The Office of the Spokesperson for the Secretary-General of the United Nations expressed no position regarding the legal and procedural merits of the Award or the disputed claims.¹²⁸ Instead of affirming the validity of the Tribunal’s jurisdiction and its substantive rulings, the Secretary-General urged all claimants to continue consultations in pursuit of a “Code of Conduct.”¹²⁹ These contradicting responses from national governments and intergovernmental institutions reflected the arduous obstacles in enforcing a non-appealable award and demonstrated the looming threats to the credibility of the rules-based order within the Indo-Pacific region. If the Award fails to alter China’s behavior in the long term, it will undoubtedly signal to the global community that adherence to general principles of international law is non-compulsory and entirely optional. Such a stance would be detrimental to the perception of UNCLOS

123. See Asia Maritime Transparency Initiative, *Arbitration Support Tracker*, CTR. FOR STRATEGIC & INT’L STUD. (Nov. 7, 2023), <https://amti.csis.org/arbitration-support-tracker/> [<https://perma.cc/XXV7-YFP3>] (highlighting the split of interpretation).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. See e.g., Stéphane Dujarric, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General (July 12, 2016), <https://press.un.org/en/2016/db160712.doc.htm> [<https://perma.cc/PMP8-AND6>] (“[T]he UN doesn’t have a position on the legal and procedural merits of the case or on the disputed claims. And, you know, as for the details concerning the settlements of disputes mechanism under the Convention of the Law of the Sea that are set forth in paragraph . . . in Part XV and relevant annexes to that treaty; thus, the Secretary-General does not have anything to add in this regard.”).

129. See *id.* (“The Secretary-General has consistently called on all parties to resolve their disputes in the South China Sea in a peaceful and amicable manner through dialogue and in conformity with international law, including the UN Charter. It remains important to avoid actions that would provoke or exacerbate those tensions.”).

as the primary legal mechanism in ensuring lawful use of the seas and settling maritime disputes.¹³⁰

1. China's Denial of UNCLOS and the 2016 South China Sea Award

Having signed and ratified UNCLOS, it was incumbent upon China to comply with the Award accordingly.¹³¹ However, even years after the conclusion of the proceedings, China persistently challenges the Tribunal's jurisdiction and rejects the enforceability of the verdict through its "Four No's" policy: "(1) no acceptance, (2) no participation, (3) no recognition, and (4) no implementation of the South China Sea Arbitration."¹³² Specifically, in its extensive 500-page position paper titled "The South China Sea Arbitration Award: A Critical Study" (Paper) released in 2018, the Chinese Society of International Law maintained that the Tribunal did not have jurisdiction to properly decide legal issues of territorial sovereignty and boundaries between parties. The Paper contended that the Tribunal erroneously resolved the claims in the Philippines' favor based on groundless facts and unwarranted legal applications of the Convention.¹³³ As such, the Paper claimed that errors made by the Tribunal inevitably deprived the Award of its validity and contended that the rulings had undermined the international rule of law.¹³⁴ The Paper further emphasized that China is confident the Award would have no effect on its territorial sovereignty or maritime rights and interests in the waterways. In its proposal, China stressed that one-on-one negotiations and consultations

130. See Campbell & Salidjanova, *supra* note 115, at 5–6 (“[I]f the ruling fails to alter China’s behavior in the longer term, it would send a signal to the rest of the world that adherence to international law is optional.”).

131. *United Nations Convention on the Law of the Sea*, *supra* note 63, at 2, 11; UNCLOS, *supra* note 63, art. 305–10.

132. See *China Stays Committed to Peace, Stability and Order in the South China Sea*, MINISTRY OF FOREIGN AFFS. OF CHINA (Mar. 23, 2023, 11:55 PM) [hereinafter *Chinas Commitment*], https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/bianhaisi_eng_665278/plpb_o/202204/t20220409_10666104.html [<https://perma.cc/S3BY-JFYQ>] (“As the South China Sea arbitral award is null and void, it is preposterous that the Study sees the award as international law applicable to the South China Sea.”); see also Robert D. Williams, *Tribunal Issues Landmark Ruling in South China Sea Arbitration*, LAWFARE (July 12, 2016, 11:28 AM), <https://www.lawfareblog.com/tribunal-issues-landmark-ruling-south-china-sea-arbitration> [<https://perma.cc/8H8K-W8YA>] (“China’s position all along with respect to these proceedings can be summed up as ‘no acceptance, no participation, no recognition, and no implementation.’”); see also Fu Ying, *Why China Says No to the Arbitration on the South China Sea*, FOREIGN POL’Y (July 10, 2016), <https://foreignpolicy.com/2016/07/10/why-china-says-no-to-the-arbitration-on-the-south-china-sea/> [<https://perma.cc/6SGV-LZCV>] (explaining why China will not adhere to the rulings).

133. See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, 17 CHINESE J. INT’L L. 207, 649–54 (2018) (indicating the reasons for China’s refusal to accept the Tribunal’s rulings).

134. See *id.* at 653–54 (stating that China was confident the Tribunal’s awards “do not affect China’s territorial sovereignty and maritime rights and interests in the South China Sea”).

would be the preferred method to resolve disputes among relevant claimants instead of adjudication by an international court that lacked any recognized precedence.¹³⁵

Given that China viewed the Award as inherently biased and “just a piece of paper,” it declared the rulings as “null and void [with] no binding force.”¹³⁶ In line with the PRC’s official interpretation of the Award, Chinese state media insisted that more than seventy nations had supported China’s opposition and that the U.S. and its close allies were the only countries that had publicly endorsed the rulings as legally binding.¹³⁷ China also claimed that it was, in fact, following a well-established precedent by pointing out that other prominent UN Security Council members had similarly disregarded the Tribunal’s decisions in the past.¹³⁸

Instead of adhering to the Award, Beijing engaged in “lawfare”¹³⁹ by enacting various domestic laws reinforcing its maritime claims.¹⁴⁰ In an

135. *See id.* at 649, 654 (asserting that the subject-matter of the dispute between the Philippines and China is one of territorial sovereignty, and as such, negotiation and consultation are the most effective means for peaceful settlement).

136. *See, e.g., Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines*, MINISTRY OF FOREIGN AFFS. OF CHINA (July 12, 2016, 5:12 PM), https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201607/t20160712_679470.html [<https://perma.cc/E3VS-9ND8>] (rejecting the Award’s validity); *see also President Xi Says China Rejects Any Proposition, Action Based on S. China Sea Arbitration Award*, PEOPLE’S DAILY (July 12, 2016, 8:03 PM), <http://en.people.cn/n3/2016/0712/c90883-9085068.html> [<https://perma.cc/UTC3-GDQY>] (stating that Chinese President Xi Jinping “will not accept any proposition or action” by the South China Sea arbitral tribunal); *see also Catherine Wong, ‘Nothing More Than a Piece of Paper’: Former Chinese Envoy Dismisses Upcoming Ruling on South China Sea Claims*, S. CHINA MORNING POST (July 6, 2016, 10:45 AM), <https://www.scmp.com/news/china/diplomacy-defence/article/1986029/nothing-more-piece-paper-former-chinese-envoy-dismisses> [<https://perma.cc/GZ7S-PM3U>] (detailing China’s reaction to the issuance of the Award).

137. *See Hannah Beech, China Slams the South China Sea Decision as a ‘Political Farce’*, TIME (July 13, 2016, 4:54 AM), <https://time.com/4404084/reaction-south-china-sea-ruling/> [<https://perma.cc/3MXC-QFAH>] (describing China’s responses to international pressure to comply to the Award).

138. *See id.* (explaining that “the tribunal’s ruling is not enforceable and other powers, like the U.S. have ignored the PCA before”); *see also Allison, supra* note 19 (“[N]o permanent member of the UN Security Council has ever complied with a ruling by the PCA on an issue involving the Law of the Sea.”).

139. *Lawfare*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/lawfare> [<https://perma.cc/3ACN-3D7X>] (last visited Feb. 22, 2024) (defining lawfare as “the use of legal action to cause problems for opponent”).

140. *See Shigeiki Sakamoto, China’s New Coast Guard Law and Implications for Maritime Security in the East and South China Sea*, LAWFARE (Feb. 16, 2021, 1:37 PM), <https://www.lawfare-blog.com/chinas-new-coast-guard-law-and-implications-maritime-security-east-and-south-china-seas> [<https://perma.cc/HJ2L-KHC8>] (discussing the contradictions between UNCLOS and China’s

effort to legitimize the nine-dash line, these laws introduce ambiguities regarding maritime boundaries and expand China's influence over disputed zones, directly challenging UNCLOS and contradicting the established norms of the rules-based order.¹⁴¹ For example, the Supreme People's Court has stated that the Chinese courts' jurisdiction extends to all areas under the nation's "sovereign control," including the islands in dispute.¹⁴² This regulation, if fully implemented, would directly undermine the role of international courts and arbitral tribunals under UNCLOS to hear and adjudicate any future maritime disputes arising out of the South China Sea. Moreover, its restructuring of several maritime law enforcement agencies allows China to strategically manage and control the disputed territories at sea.¹⁴³ To further controvert the enforceability of the Award, Beijing passed the Coast Guard Law of the People's Republic of China and the Maritime Traffic Safety Law in 2021,¹⁴⁴ which emboldened Chinese law enforcement with the authority to regulate waterways and intimidate neighboring states if they were to sail into China's claimed territories.¹⁴⁵ Although Beijing argues that these domestic regulations

domestic maritime laws); see also Diane A. Desierto, *China's Maritime Law Enforcement Activities in the South China Sea*, 96 INT'L L. STUD. 257, 268–73 (2020) (explaining that there is no legal basis for China's maritime law enforcement activities within the nine dash line map); Douglas Guilfoyle, *The Rule of Law and Maritime Security: Understanding Lawfare in the South China Sea*, 95 INT'L AFFS. 999, 1005–17 (2019) (discussing China's strategic use of law in consolidating its control of the South China Sea).

141. See Sarah Lohschelder, *Chinese Domestic Law in the South China Sea*, 13 NEW PERSPS. FOREIGN POL'Y 33, 33–34 (2017), https://csis-website-prod.s3.amazonaws.com/s3fs-public/171004_China_domestic_law_lohschelder.pdf [<https://perma.cc/G66E-CXM3>] (indicating the laws and policies that China has enacted to impose its influence over the maritime region); see generally Andrew S. Erickson et al., *Surging Second Sea Force: China's Maritime Law-Enforcement Forces, Capabilities, and Future in the Gray Zone and Beyond*, 72 NAVAL WAR COLL. REV. 11, 11–12 (2019).

142. See Lohschelder, *supra* note 141, at 33 (noting that this "sovereign control" included "jurisdictional seas," meaning inland waters, the territorial sea, contiguous zones, China's exclusive economic zone, and continental shelf).

143. *Id.* at 33–34 (explaining how China has strategically used domestic law).

144. Zhonghua Renmin Gongheguo Hai Jing Fa (中華人民共和國海警法) [Coast Guard Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Jan. 22, 2021, effective Feb. 1, 2021), art. 84, 2021 P.R.C. LAWS 71 (China); Zhonghua Renmin Gongheguo Haishang Jiaotong Anquan Fa (中華人民共和國海上交通安全法) [Maritime Traffic Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 2, 1983, rev'd Nov. 7, 2016, rev'd Apr. 29, 2021, effective Sept. 1, 2021), art. 2, 2021 P.R.C. LAWS 79 (China).

145. See Sakamoto, *supra* note 140; see also Wataru Okada, *China's Coast Guard Law Challenges Rule-Based Order*, DIPLOMAT (Apr. 28, 2021), <https://thediplomat.com/2021/04/chinas-coast-guard-law-challenges-rule-based-order/#> [<https://perma.cc/4KFH-8FG3>] (indicating the conflict between Chinese Coast Guard Law and UNCLOS); see also Oriana Skylar Mastro, *How China is Bending the Rules in the South China Sea*, INTERPRETER (Feb. 17, 2021), <https://www.lowyinstitute.org/the-interpreter/how-china-bending-rules-south-china-sea> [<https://perma.cc/4MW2-B4XA>]

align with international laws, legal experts have concluded that the majority of these provisions conflict with UNCLOS and the Award.¹⁴⁶

To enforce its domestic maritime laws, China has resorted to the use of physical force against other states' vessels and coercion of civilians to follow its preferred order. Over the past few years, the Chinese People's Liberation Army Navy (PLA Navy) has repeatedly encroached upon other coastal states' EEZ. The PLA Navy was also involved in numerous intentional collisions and deliberate harassment of Japanese, Vietnamese, and the Philippine fishing vessels across the South China Sea.¹⁴⁷ In tightening its grip over the maritime region, China also has established research stations, created new administrative districts, and named geographic features within the disputed territories.¹⁴⁸ In fact, China has

(describing China's behavior in the South China Sea in recent years); Jill I. Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1102–08, 1128–29 (2021) (explaining the use of lawfares to advance China's nine-dash line).

146. See Nguyen Thanh Trung & Le Ngoc Khanh Ngan, *Codifying Waters and Reshaping Orders: China's Strategy For Dominating The South China Sea*, ASIA MARITIME TRANSPARENCY INITIATIVE (Sept. 27, 2021), <https://amti.csis.org/codifying-waters-and-reshaping-orders-chinas-strategy-for-dominating-the-south-china-sea/#> [<https://perma.cc/96UD-UZ54>] (“In sum, while China's legal warfare is not accompanied by good reason or proper justification, it does come with military power and the threat of economic pressure. Thus, while its effects may not be felt immediately, it has appropriately raised the alarm among regional states and the rules-based international community.”); see also Tara Davenport, “*Lawfare*” in the South China Sea Disputes, INTERPRETER (Apr. 1, 2022), <https://www.lowyinstitute.org/the-interpreter/lawfare-south-china-sea-disputes> [<https://perma.cc/GQ4K-7Z45>] (discussing the impact of the South China Sea Award on international law); see generally Raul (Pete) Pedrozo, *Maritime Police Law of the People's Republic of China*, 97 INT'L L. STUD. 465 (2021); see also Raul (Pete) Pedrozo, *China's Revised Maritime Traffic Safety Law*, 97 INT'L L. STUD. 956, 957 (2021) (describing the 2021 revisions to China's Maritime Traffic Safety Law as “another demonstration of Beijing's total disregard of its international legal obligations,” and indicative of China's efforts to disrupt the international legal order regarding the law of the seas).

147. Nirahika Mandhana, *Surge and Swarm: How China's Ships Control the South China Sea*, WALL ST. J. (Nov. 9, 2023, 12:07 AM), <https://www.wsj.com/world/china/surge-and-swarm-how-chinas-ships-control-the-south-china-sea-ac8fa61c> [<https://perma.cc/MM8S-R2TE>] (highlighting China's collisions with other claimants); Nirahika Mandhana, *Chinese Coast Guard Blasts Philippine Boats With Water Cannons*, WALL ST. J. (Dec. 9, 2023, 6:46 AM), <https://www.wsj.com/world/asia/chinese-coast-guard-blasts-philippine-boats-with-water-cannons-f6908d61> [<https://perma.cc/T3G4-NPKQ>] (reporting maritime confrontations in late 2023); see Abraham Denmark et al., *Same as It Ever Was: China's Pandemic Opportunism on Its Periphery*, WAR ON ROCKS (Apr. 16, 2020), <https://warontherocks.com/2020/04/same-as-it-ever-was-chinas-pandemic-opportunism-on-its-periphery/> [<https://perma.cc/M4SP-NAXK>] (highlighting numerous incidents with other vessels that China People's Liberation Army have engaged in); see Rob McLaughlin, *An Incident in the South China Sea*, 96 INT'L L. STUD. 505, 506–08 (2020) (portraying an instance where a foreign vessel sailed through the contested maritime region).

148. See Lucio Blanco Pitlo III, *Are Beijing's Bold Moves in the South China Sea Mere Opportunism Amid Covid-19 or the New Normal?*, S. CHINA MORNING POST (May 7, 2020, 9:30 AM), <https://www.scmp.com/comment/opinion/article/3082931/are-beijings-bold-moves-south-china->

transformed many of these former “rocks” features into fully militarized islands, arming them with advanced military defensive and offensive equipment.¹⁴⁹ An American Indo-Pacific Commander described this as “the largest military buildup since world war two [*sic*] by the PRC.”¹⁵⁰

Since the issuance of the Award, China’s actions demonstrate that it has managed to underpin the legitimacy of its nine-dash line, enabling the country to possess and control one of the most desirable waterways in the world.¹⁵¹ The consequences of these developments reveal that China has largely succeeded in deflecting attention from the rulings and rendering the Tribunal’s decisions irrelevant, indicating that it is unwavering in opposing the existing rules-based order under UNCLOS.¹⁵² Instead, through the enactment of domestic laws and the use of military force over the years,¹⁵³ Beijing has steadily attained substantial strategic, economic, and military advantages over the U.S. and surrounding claimants, seeking to infringe, weaken, and alter general principles of international law.¹⁵⁴ As a result, the present circumstances in the South China Sea are vastly different from those envisioned by the UNCLOS drafters and its parties.

2. The United States’ Insistence on China’s Compliance

Immediately after the Award rulings, the U.S. Department of State released a press statement expressing unequivocal support for it and endorsing the necessity for both China and the Philippines to honor, respect,

sea-mere-opportunism-amid-covid [<https://perma.cc/TX7K-B8XS>] (describing how China has exerted legitimacy over the islands).

149. *Id.*

150. See, e.g., *China Has Fully Militarized Three Islands in South China Sea, US Admiral Says*, GUARDIAN (Mar. 20, 2022, 1:47 PM), <https://www.theguardian.com/world/2022/mar/21/china-has-fully-militarized-three-islands-in-south-china-sea-us-admiral-says> [<https://perma.cc/D4AF-RCB7>] (“China has fully militarized at least three of several islands it built in the disputed South China Sea, arming them with anti-ship and anti-aircraft missile systems, laser and jamming equipment and fighter jets in an increasingly aggressive move that threatens all nations operating nearby, a top US military commander said Sunday.”).

151. *China Has Militarized the South China Sea and Got Away With It*, ECONOMIST (June 21, 2018), <https://www.economist.com/asia/2018/06/21/china-has-militarised-the-south-china-sea-and-got-away-with-it> [<https://perma.cc/K6F3-AKZ7>] (highlighting China’s military maneuvers to capture the majority of disputed islands).

152. *Chinas Commitment*, *supra* note 132 (indicating Beijing’s opposition to the South China Sea Award and the United States’ actions in the waterways).

153. See Sakamoto, *supra* note 140 (explaining China’s domestic law over the years).

154. See LYNN KUOK, BROOKINGS INST., HOW CHINA’S ACTIONS IN THE SOUTH CHINA SEA UNDERMINE THE RULE OF LAW 1 (2019), https://www.brookings.edu/wp-content/uploads/2019/11/FP_20191118_china_scs_law_kuok.pdf [<https://perma.cc/9GGT-UXJX>] (detailing how China’s resistance towards the South China Sea Award has impacted the rules-based order).

and implement the Tribunal's decisions.¹⁵⁵ The press statement from the U.S. also reaffirmed the paramountcy of the rule of law, urging all claimants to refrain from further provocations through the use of force and to act in accordance with the established laws enshrined in UNCLOS.¹⁵⁶

The State Department issued a study in January 2022, unveiling its strategic objectives to counter China's transgressions in the region. The study asserted that all of China's expansive maritime claims and historical rights are flagrantly inconsistent with international law since they greatly exceed China's legitimate entitlements as reflected in the Convention.¹⁵⁷ As such, the State Department concluded that China was unlawfully claiming sovereignty over most of the South China Sea, gravely undermining UNCLOS and infringing the Indo-Pacific security order.¹⁵⁸

While the United States does not assert any territorial claims in the South China Sea and adopts a neutral stance on questions of sovereignty over the geographic features, it primarily clashes with China over the interpretation of the Convention and Freedom of the Seas principles.¹⁵⁹ On the one hand, Washington fundamentally views UNCLOS as a legal instrument empowering coastal states to solely regulate economic activities within their respective EEZ despite not being an official party to UNCLOS and lacking any legal standing to enforce its laws. On the other hand, China—as an official party to the treaty—construes the Convention as an authorization to regulate economic endeavors and exert control over the navigation of foreign military vessels and the overflight of aircraft within the bounds of the disputed territory.¹⁶⁰

155. See Press Statement, U.S. Dep't of State, Decision in the Philippines-China Arbitration (July 12, 2016), <https://2009-2017.state.gov/r/pa/prs/ps/2016/07/259587.htm> [<https://perma.cc/5N4T-4RTF>] (expressing the United States' position following the Tribunal's rulings).

156. *Id.* (“In the aftermath of this important decision, we urge all claimants to avoid provocative statements or actions. This decision can and should serve as a new opportunity to renew efforts to address maritime disputes peacefully.”).

157. Compare U.S. DEP'T OF STATE, LIMITS OF THE SEAS, NO. 150, PEOPLE'S REPUBLIC OF CHINA: MARITIME CLAIMS IN THE SOUTH CHINA SEA 29–30 (2022) [hereinafter U.S. SEA LIMITS] (discussing China's policies and recommendations for U.S. responses); with *Chinas Commitment*, *supra* note 132 (stating Beijing's opposition to the Study).

158. U.S. SEA LIMITS, *supra* note 157, at 29–30.

159. See *id.* (concluding that each of China's “expansive” maritime claims made since 2014 and 2016 are in violation of international law); see also BEN DOLVEN ET AL., CONG. RSCH. SERV., IF10607, CHINA PRIMER: S. CHINA SEA DISPUTES 1–2 (2021) (examining the difference in interpreting UNCLOS between the United States and China); see generally Goldenziel, *supra* note 145, at 1102–40.

160. See Goldenziel, *supra* note 145, at 1104–08, 1128–29 (assessing China's lawfare).

There has been a discernible shift toward a more stringent and resolute response to China's activities since the Trump administration.¹⁶¹ By publicly espousing the Freedom of the Seas principle and respect for sovereignty under UNCLOS, the United States has increasingly portrayed itself as the protector of the rules-based order and, thus, as the enforcer of the Award.¹⁶² In a press statement in 2020, former Secretary of State Mike Pompeo labeled Beijing's actions as "completely unlawful," expressed the possibility of heightened military cooperation with ASEAN claimants, and threatened to impose sanctions against Chinese companies that supported the island-building projects.¹⁶³ To counteract China's amplified militarization, the U.S. Navy and Air Force have substantially augmented Freedom of Navigation Operations over the past years and conducted joint military exercises with regional allies, thereby reaffirming the principles of international navigational rights and freedom in the waterways.¹⁶⁴ The 2021 Annual Freedom of Navigation Report by the Department of Defense exhibits a sharp upswing in the frequency of U.S. military patrols throughout the South China Sea.¹⁶⁵ Additionally, the United States has lived up to its rhetorical commitments by reviving the Mutual Defense Treaty (MDT) with the Philippines and holding the most extensive joint military exercises in three decades.¹⁶⁶

161. See, e.g., Edward Wong & Michael Crowley, *U.S. Says Most of China's Claims in South China Sea Are Illegal*, N.Y. TIMES (July 13, 2020), <https://www.nytimes.com/2020/07/13/world/asia/south-china-sea-pompeo.html> [<https://perma.cc/T5B3-3222>] ("Secretary of State Mike Pompeo announced . . . that China's expansive maritime claims across most of the South China Sea were 'completely unlawful,' setting up potential military confrontations with Beijing and sanctions against companies as the United States seeks to push back Chinese activity in the region.").

162. *Id.*

163. See *id.* (discussing strategies for the United States); see also Press Statement, U.S. Sec'y of State Michael R. Pompeo, U.S. Position on Maritime Claims in the South China Sea (July 13, 2020) [hereinafter Pompeo Maritime Claims], <https://2017-2021.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/index.html> [<https://perma.cc/X6E2-YBVY>] (stating the Trump administration's position on China's claims over the South China Sea).

164. See Brad Lendon, *US Navy Destroyer Performs Freedom of Navigation Exercise in South China Sea*, CNN (July 14, 2022, 2:12 AM), <https://www.cnn.com/2022/07/13/asia/us-navy-south-china-sea-freedom-of-navigation-intl-hnk-ml/index.html> [<https://perma.cc/3K5H-9FM5>] (reporting the increase of freedom of navigations operations carried out by the U.S. Navy).

165. See, e.g., U.S. DEP'T OF DEF., ANNUAL FREEDOM OF NAVIGATION REPORT, FISCAL YEAR 2021 (2022), [https://policy.defense.gov/Portals/11/Documents/FON Program Report_FY2021.pdf](https://policy.defense.gov/Portals/11/Documents/FON%20Program%20Report_FY2021.pdf) [<https://perma.cc/YKG9-999H>] (noting the frequency of U.S. Freedom of Navigations Operations).

166. See Andreo Calozzo, *U.S., Philippines to Hold Largest Military Drill in Decades*, BLOOMBERG (Mar. 23, 2022, 4:44 AM), <https://www.bloomberg.com/news/articles/2022-03-23/us-to-hold-largest-military-drill-in-decades-with-philippines> [<https://perma.cc/8JN9-5QHS>] ("The U.S. and Philippines will hold their biggest military drills in three decades as tensions grow with China, injecting new life into a defense alliance that had languished in recent years.").

3. The Philippines' Dilemma in the Enforcement Stage

Despite securing a milestone legal victory against China, Manila's initial response to the Award was strained with cautiousness and policy flip-flops.¹⁶⁷ Between 2016 and 2019, the Duterte administration publicly downplayed the territorial disputes with China and de-emphasized the importance of security relations with the United States.¹⁶⁸ Instead, President Duterte viewed Beijing as a critical ally¹⁶⁹ and sought to form closer economic ties.¹⁷⁰ The divergent responses from the Philippines stemmed from a majority of Southeast Asian countries seeing China as the Indo-Pacific region's most influential power, coupled with a lack of confidence in the US as a reliable partner or provider of regional security.¹⁷¹

When the anticipated trade agreements with Beijing failed to materialize, the Duterte administration swiftly changed course and invoked the Award to remind China of its international legal obligations under UNCLOS. In an address to the U.N. General Assembly in 2020, President Duterte stated that "the Award is now part of international law, beyond compromise and beyond the reach of passing governments to dilute, diminish, or abandon."¹⁷² Seven months later, however, he contradicted his previous statement by threatening to discard the verdict "in the waste

167. See Richard Javad Heydarian, *China's Premature Bid for Hegemony in Southeast Asia*, BROOKINGS INST. (Nov. 28, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/11/28/chinas-premature-bid-for-hegemony-in-southeast-asia/> [<https://perma.cc/VWT5-KCLF>] (highlighting the inconsistencies of interpreting the Award from the Manila government).

168. See *id.* (explaining that Manila "downgraded security relations with Washington"); see also Gregory Poling & Conor Cronin, *The Dangers of Allowing U.S.-Philippine Defense Cooperation to Languish*, WAR ON ROCKS (May 17, 2018), <https://warontherocks.com/2018/05/the-dangers-of-allowing-u-s-philippine-defense-cooperation-to-languish/> [<https://perma.cc/96G2-8LN7>] (discussing the implications of China and the Philippines' diplomatic relationships during the Duterte administration).

169. See Jane Perlez, *Rodrigo Duterte and Xi Jinping Agree to Reopen South China Sea Talks*, N.Y. TIMES (Oct. 20, 2016), <https://www.nytimes.com/2016/10/21/world/asia/rodrigo-duterte-philippines-china-xi-jinping.html> [<https://perma.cc/ZN7R-LYMK>] (discussing the Philippines' shift toward a warmer relationship with China after the issuance of the Award).

170. See *id.* (discussing different investments to strengthen economic ties); see also Heydarian, *supra* note 167 (explaining China's economic strategy).

171. See Dewey Sim, *Southeast Asia's Anxiety by Disillusionment with US and China Deepen: Poll by Singapore Think Tank*, S. CHINA MORNING POST (Jan. 16, 2020, 5:00 AM), <https://www.scmp.com/week-asia/politics/article/3046261/southeast-asias-anxiety-and-disillusionment-washington-beijing> [<https://perma.cc/536X-HZPQ>] (examining the Southeast Asian countries' concerns).

172. See Nguyen & Nguyen, *supra* note 5 (reporting that the Duterte's pronouncement was made "[a]fter a period of opting for caution and downplaying" the Award).

basket.”¹⁷³ Subsequently, in July 2021, Teodoro Locsin Jr., former foreign affairs secretary of the Philippines, issued a press statement emphasizing the Award’s importance to international law and vehemently rejecting any attempts to undermine it.¹⁷⁴ These inconsistent responses reveal the dilemma faced by Manila in its attempt to satisfy both Beijing and Washington. Nonetheless, the lack of clarity from the Philippine government has naturally undermined the enforceability and implementation of the Award that it had legitimately fought for.

4. Impasse among ASEAN Nations

In contrast to the Philippines’ turbulent stance, other surrounding countries have been much more determined to urge China to respect and abide by the substantive rulings of the Award.¹⁷⁵ Between 2019 and 2020, a series of comprehensive diplomatic note exchanges, known as the “Battle of the Notes,” took place among Australia, Brunei, China, Malaysia, the Philippines, Indonesia, the United States, and Vietnam.¹⁷⁶ Through these diplomatic correspondences, all countries expressed positions in alignment with the Award decisions, firmly asserting that China’s nine-dash line lacks any legal foundation in international law and directly contradicts UNCLOS.¹⁷⁷ By stating that no party can unilaterally modify or negotiate the Award, all nations concurred that the rulings must be

173. Pratik Jakhar, *Whatever Happened to the South China Sea Ruling?*, INTERPRETER (July 12, 2021), <https://www.lowyinstitute.org/the-interpreter/whatever-happened-south-china-sea-ruling> [<https://perma.cc/A445-Z5GL>] (highlighting President Duterte’s actions); see generally Malcolm Cook, *Duterte the Defier*, INTERPRETER (May 21, 2021), <https://www.lowyinstitute.org/the-interpreter/duterte-defier> [<https://perma.cc/4NPB-FDPC>].

174. See generally *Statement of Foreign Affairs Secretary Teodoro L. Locsin, Jr. on the 5th Anniversary of the Issuance of the Award on the South China Sea Arbitration*, PHIL. DEP’T OF FOREIGN AFFS. (July 12, 2021), <https://dfa.gov.ph/dfa-news/statements-and-advisoriestupdate/29134> [<https://perma.cc/M6H7-KQK9>] (reporting the comments made by Secretary Locsin Jr. with respect to the Award’s credibility).

175. See Dominic Ziegler, *South-East Asian Countries Are Trapped between Two Superpowers*, ECONOMIST (Nov. 17, 2020), <https://www.economist.com/the-world-ahead/2020/11/17/south-east-asian-countries-are-trapped-between-two-superpowers> [<https://perma.cc/DHH8-PU3L>] (“No part of the world risks suffering more from the economic, strategic and military rivalry now playing out between the United States and China than the 11 nations of South-East Asia.”).

176. See, e.g., Nguyen Hong Thao, *South China Sea: The Battle of the Diplomatic Notes Continues*, DIPLOMAT (Aug. 4, 2020) [hereinafter Nguyen, *The Battle of Notes Continues*], <https://the-diplomat.com/2020/08/south-china-sea-the-battle-of-the-diplomatic-notes-continues/> [<https://perma.cc/LFU6-N8BA>] (describing the Battle of the Notes between internal and external state actors relating to the enforcement of the Award); see also Nguyen Hong Thao, *South China Sea: New Battle of the Diplomatic Notes among Claimants in 2019–2021*, 6 ASIA-PACIFIC J. OF OCEAN L. & POL’Y 165, 185–91 (2021) (examining the impact of diplomatic notes among claimants on the prospect for the peaceful settlement of the maritime disputes in the South China Sea).

177. Nguyen, *The Battle of Notes Continues*, *supra* note 176 (examining the international stance on China’s claim).

considered final and non-appealable.¹⁷⁸ The significance of these note exchanges cannot be understated, as they offered a glimpse of what a united coalition against China's encroachments would look like. Furthermore, the exchanges also reinforced the respect for the existing rules-based order, with all nations acknowledging the UNCLOS as the exclusive legal basis for defining and resolving maritime claims.¹⁷⁹ Although these notes did not dissuade China's actions, they established a commendable foundation for all claimant states and extra-regional actors to commence negotiation and agree on common principles for the South China Sea waterways—a sign that China should be wary.¹⁸⁰

C. *Friends and Foes: The Formation of Coalitions*

Since 2021, when the Biden administration assumed executive control, it has adopted an assertive approach in clarifying its legal interpretations of UNCLOS and the Award.¹⁸¹ In July 2022, Secretary of State Antony Blinken issued a press statement to commemorate the sixth anniversary of the Arbitral Ruling, reaffirming that the rules of global waterways and standard procedures for resolving maritime disputes are directly governed by UNCLOS.¹⁸² Secretary Blinken also reiterated the U.S. alignment with the Award and emphasized that China's nine-dash claim has “no basis in international law,”¹⁸³ and firmly declared Washington's security commitments to the Philippines by stating that “[an] armed attack on Philippine armed forces, public vessels, or aircraft in the South China Sea would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.-Philippines Mutual Defense Treaty.”¹⁸⁴ Moreover, Secre-

178. *Id.* (stating that the Tribunal's award is final).

179. *Id.* (“[A]ny maritime claim inconsistent with UNCLOS, is unacceptable including the nine-dash line . . .”).

180. *Id.*

181. *Compare* Press Statement, The White House, Joint Statement of the Leaders of the United States and the Philippines (May 1, 2023) [hereinafter Joint U.S. and Philippines Statement], <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/joint-statement-of-the-leaders-of-the-united-states-and-the-philippines/> [<https://perma.cc/GQB4-CJ3E>] (stating common grounds and commitments made between the United States and the Philippines), *with* U.S. SEA LIMITS, *supra* note 157 (discussing China's policies and recommendations for U.S. responses).

182. *See* Press Statement, Secretary of State Antony J. Blinken, Sixth Anniversary of the Philippines-China South China Sea Arbitral Tribunal Ruling (July 11, 2022), <https://www.state.gov/sixth-anniversary-of-the-philippines-china-south-china-sea-arbitral-tribunal-ruling/> [<https://perma.cc/MKS2-G7VM>] (reiterating the United States' position toward the Award six years later and the application of UNCLOS to the dispute).

183. *See id.*

184. *Id.*; Joint U.S. and Philippines Statement, *supra* note 181 (“President Biden reaffirms the United States' ironclad alliance commitments to the Philippines, underscoring that an armed attack

tary Blinken called upon Beijing to comply with its legal obligations under international laws, and highlighted the prospect of cooperating with ASEAN nations to “protect and preserve the rules-based order.”¹⁸⁵ Following this statement, the US Navy immediately intensified its Freedom of Navigation Operations in the South China Sea and around geographic features claimed by China¹⁸⁶—which, in light of its escalating tensions with Taiwan, enraged Beijing.¹⁸⁷

With the transfer of political power to the Marcos Jr. administration, Manila abandoned its prior erratic stance and adopted a more assertive position toward China’s activities.¹⁸⁸ Lately, the U.S. and the Philippines have been bolstering their historical alliances and labeling their bilateral relationship as “irreplaceable.”¹⁸⁹ In contrast with his predecessor, President Marcos Jr. vowed that he would not cede “even a square inch of territory” to any foreign power, and sought to revitalize the MDT with the U.S. by increasing joint military exercises and modernizing the Philippines’ armed forces.¹⁹⁰ As competing pressures rise between the two superpowers, Manila’s pivot away from Beijing and toward Washington could play an essential role in shaping future negotiations and resolutions in the maritime region.¹⁹¹ Moreover, to forge closer ties in the Indo-

on Philippine armed forces, public vessels, or aircraft in the Pacific, including in the South China Sea, would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.-Philippines Mutual Defense Treaty.”).

185. See Press Statement, Secretary of State Antony J. Blinken, *supra* note 182 (reaffirming U.S. policy of maritime claims in the South China Sea).

186. E.g., Brad Lendon, *US Navy Destroyer Enters Chinese-Claimed Waters for Third Time in a Week*, CNN (July 20, 2022), <https://www.cnn.com/2022/07/20/asia/us-navy-destroyer-taiwan-strait-intl-hnk-ml/index.html> [<https://perma.cc/LH74-NW8C>] (reporting the increase of freedom of navigations operations carried out by the U.S. Navy after Blinken’s statement).

187. See Jim Gomez, *China Accuses US of ‘Navigation Bullying’ in South China Sea*, AP NEWS (July 29, 2022, 3:51 PM), <https://apnews.com/article/russia-ukraine-china-asia-beijing-philippines-2ad93bc67233e987f8ef6d0f32fb2f60> [<https://perma.cc/WL7S-63WG>] (“China blasted a top U.S. Navy official Friday after he criticized Beijing’s increasingly aggressive actions in the South China Sea, saying it’s America’s military deployments in the disputed waters—which it called “navigation bullying”—that could spark confrontations.”).

188. See Daniel Flatley et. al., *Blinken Vows to Stand by Philippines Amid China Tensions*, BLOOMBERG (Aug. 6, 2022, 2:29 AM), <https://www.bloomberg.com/news/articles/2022-08-06/blinken-visits-philippines-to-boost-alliance-amid-china-tensions> [<https://perma.cc/KB3G-38CC>] (“Secretary of State Antony Blinken sought to bolster America’s alliance with the Philippines under President Ferdinand Marcos Jr., calling the Southeast Asian nation an ‘irreplaceable’ ally as tensions between the US and China spike. Blinken, the first US cabinet official to visit the new Philippine leader, reiterated in a meeting with Marcos on Saturday America’s commitment to the 1951 Mutual Defense Treaty, which pledged support in case of foreign attack.”).

189. *Id.*

190. See *id.* (discussing President Marcos’s policy shift in the South China Sea dispute).

191. See Joint U.S. and Philippines Statement, *supra* note 181 (indicating strong cooperation between President Biden and President Marcos Jr. in tackling the issues within the South China Sea).

Pacific region, numerous high-ranking U.S. officials have visited and engaged in diplomatic dialogues with other ASEAN members, including Cambodia, Thailand, Singapore, Indonesia, Taiwan, and Vietnam.¹⁹² These trips demonstrate a firm intent to collaborate with surrounding claimants in deterring and containing China's expansionist ambitions.

The U.S. has also rejuvenated the Quadrilateral Security Dialogue coalition (QUAD), a political agreement without a formal alliance, with Australia, India, and Japan.¹⁹³ The primary objective of the QUAD is to cooperate on advancing a free and open Indo-Pacific region, counteracting China's growing power and influence, pushing back against coercion in the South China Sea, and upholding the rules-based order.¹⁹⁴ Despite an earlier decade of limited collaboration, each QUAD member has suddenly become wary of Beijing's unilateral disregard for the status quo after experiencing geopolitical clashes with China.¹⁹⁵

In a joint statement in September 2021, the QUAD emphasized their commitment to "promoting the free, open, rules-based order, rooted in international law and undaunted by coercion, to bolster security and prosperity in the Indo-Pacific and beyond."¹⁹⁶ The QUAD also reinforced their adherence to the "rule of law, freedom of navigation and overflight,

192. See Yen Nee Lee, *Kamala Harris Kicks off Vietnam Visit by Calling Out China's 'Bullying' Tactics*, CNBC NEWS (Aug. 25, 2021, 4:25 AM), <https://www.cnbc.com/2021/08/25/vp-kamala-harris-talks-south-china-sea-in-vietnam-amid-us-china-rivalry.html> [<https://perma.cc/GR95-6SHC>] (noting Vice President Kamala Harris's trip to Vietnam in 2021); see also Sebastian Strangio, *Blinken Bound for Southeast Asia and Africa Amid China Tensions*, DIPLOMAT (Aug. 1, 2022), <https://thediplomat.com/2022/08/blinken-bound-for-southeast-asia-and-africa-amid-china-tension> [<https://perma.cc/2DTE-KBTH>] (detailing Secretary Blinken's trip to Cambodia and the Philippines); Paul Mozur et al., *Nancy Pelosi Arrives in Taiwan, Drawing a Sharp Response From Beijing*, N.Y. TIMES (Aug. 2, 2022), <https://www.nytimes.com/2022/08/02/us/politics/nancy-pelosi-taiwan-beijing.html> [<https://perma.cc/BCF4-VC4N>] (noting Nancy Pelosi's trip to Taiwan).

193. See John Power, *What is the Quad, and How Will It Impact US-China Relations under the Biden Administration*, S. CHINA MORNING POST (Feb. 24, 2021, 4:29 PM), <https://www.scmp.com/week-asia/explained/article/3122933/what-quad-and-how-will-it-impact-us-china-relations-under-biden> [<https://perma.cc/89LV-CAJ7>] (describing the history and formation of the QUAD).

194. *Id.*

195. *Id.* (examining the geopolitical clashes of each Quad member with China).

196. See Press Statement, The White House, Joint Statement from Quad Leaders (Sept. 24, 2021) [hereinafter Joint Quad], <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/24/joint-statement-from-quad-leaders/> [<https://perma.cc/D7SR-5BTX>]; Sadanand Dhume, Opinion, *The Quad Enters the Ring with China*, WALL ST. J. (Sept. 30, 2021, 6:24 PM), <https://www.wsj.com/articles/india-china-aucus-quad-japan-indo-pacific-australia-huawei-11633033358> [<https://perma.cc/8KF3-BYSJ>] ("But the four nations have signed on to an ambitious strategy, spanning cooperation on vaccines, infrastructure and technology, designed to blunt Beijing's challenge. Taken together with the new Aucus military pact . . . and a thickening web of bilateral agreements across the region, these initiatives signal clear intent to combat Beijing.").

peaceful resolution of disputes, democratic values, and territorial integrity of states.”¹⁹⁷

In a demonstration of their shared aspirations, the QUAD unveiled the Indo-Pacific Maritime Domain Awareness (IPMDA) in May 2022—a satellite-based initiative designed to help regional countries monitor territorial incursions, human and weapons trafficking, illegal fishing, and Chinese maritime militias.¹⁹⁸ Notably, the IPMDA directly defies Beijing’s challenges to international laws, particularly with the Freedom of Navigation and overflight over the disputed EEZs.¹⁹⁹ By equipping smaller nations with sophisticated resources and advanced tools to effectively manage their maritime domains, it is hoped that the IPMDA serves as a potent deterrent against China’s transgression in the Indo-Pacific region.²⁰⁰

III. EXISTING REALITY: THREATS TO THE INDO-PACIFIC RULES-BASED ORDER

This Part delves into the existing reality in the South China Sea and its threats to the Indo-Pacific rules-based order. In doing so, Section III.A focuses on the ongoing struggle between two prominent global superpowers—the U.S. and China. The complex relationship of their competition in the region will be examined, shedding light on the overarching

197. See Joint Quad, *supra* note 196.

198. See *Indo-Pacific Partnership for Maritime Domain Awareness*, AUSTL. GOV’T DEP’T OF THE PRIME MINISTER AND CABINET (2023), <https://www.pmc.gov.au/resources/quad-leaders-summit-2023/indo-pacific-partnership-maritime-domain-awareness> [https://perma.cc/EL56-MSHX] (providing an overview of the IPMDA).

199. See, e.g., Demetri Sevastopulo & Kana Inagaki, *Quad Unveils Satellite-Based Maritime Initiative to Counter China*, FIN. TIMES (May 24, 2022), <https://www.ft.com/content/e6cae9a5-2ac8-42df-aac4-3bb58cb6a9e2> [https://perma.cc/5Y57-8YEC] (“The US, Japan, Australia and India have launched a satellite-based initiative to help countries in the Indo-Pacific region track illegal fishing and unconventional maritime militias, in their latest effort to counter China.”); see Demetri Sevastopulo, *‘Quad’ Security Group Plans System to Track Illegal Fishing by China*, FIN. TIMES (May 21, 2022), <https://www.ft.com/content/4066cc72-119a-48e2-b55c-980c4e3f6c9a> [https://perma.cc/N45D-9CPR] (analyzing the impact of IPMDA on monitoring intrusions and managing disputes); see also Alastair Gale, *Quad Members Have Eyes on China, No Collective Comment on Russia*, WALL ST. J. (May 24, 2022, 1:59 PM), <https://www.wsj.com/articles/quad-members-have-eyes-on-china-no-collective-comment-on-russia-11653382094> [https://perma.cc/C89Q-U76W] (detailing the concerns of Quad members within the boundaries of the South China Sea).

200. See Ravi Buddhavarapu, *The Quad’s New Maritime Initiative Has Potential to Spur Militarization of the Indo-Pacific*, CNBC (June 8, 2022, 10:55 PM), <https://www.cnbc.com/2022/06/09/quads-maritime-initiative-could-spur-militarization-of-indo-pacific.html> [https://perma.cc/MN N9-XSNT] (“The White House said the IPMDA will track ‘dark shipping’—or ships trying to evade detection by turning off their transponders which transmit identification and location data. It will also identify other tactical-level activities such as illegal transshipments of banned weapons or illegally caught fish. The data will integrate three critical regions—the Pacific Islands, Southeast Asia and the Indian Ocean region—in the Indo-Pacific.”).

power dynamics and their implications. Next, Section III.B will outline China's vision for the Indo-Pacific region, focusing on its strategic objectives in the South China Sea. By understanding China's motivations and actions, we can gain insight into the broader ramifications for regional stability and the existing security order. Section III.C then discusses U.S. policies that counter China's encroachments to preserve its hegemony. In doing so, Section III.C explores the diplomatic, economic, and military approaches adopted by the U.S. in response to China's activities. Finally, Section III.D will analyze the battle for spheres of influence among ASEAN countries as they navigate between the competing interests of Washington and Beijing. The complex geopolitical landscape and decision-making processes within the ASEAN community will be examined, highlighting the challenges and opportunities presented by these competing influences.

A. Zero-Sum Game Between the United States and China

Since the dawn of the 2020s, a series of geopolitical developments have emerged, causing significant disruptions and posing threats to the established rules-based order. As Russia declared the annexation of four regions across eastern Ukraine,²⁰¹ on the other side of the world, China assertively pushed toward its territorial assertions over Taiwan and the rest of the South China Sea.²⁰² These two parallel events reflect a revisionist challenge against the Western-led order established at the end of World War II.²⁰³ At a deeper level, these geopolitical events also shine a light on intergovernmental organizations' vulnerabilities and the

201. See Anton Troianovski, *Putin Signs Annexation Laws, Plowing Ahead with a Parallel Reality as Russia Loses Ground in Ukraine*, N.Y. TIMES (Oct. 5, 2022), <https://www.nytimes.com/2022/10/05/world/europe/putin-annexation-ukraine-russia.html> [<https://perma.cc/W6JU-WF3N>] (“President Vladimir V. Putin signed more than 400 pages of legislation annexing four Ukrainian regions, the Kremlin said on Wednesday, forging ahead with a parallel reality in which Russia pretends to exercise sovereignty over thousands of square miles of territory that its military does not actually control.”).

202. See, e.g., *China Is Using Civilian Ships to Enhance Navy Capability and Reach*, CNBC (Sept. 25, 2022, 10:57 PM), <https://www.cnbc.com/2022/09/26/china-is-using-civilian-ships-to-enhance-navy-capability-and-reach.html> [<https://perma.cc/QQJ4-VA8B>] (underlining China's military build-up).

203. See *National Security Strategy*, *supra* note 29, at 8 (explaining why China and Russia pose strategic challenges to the US in the current decade); see also *China Wants to Change, or Break, a World Order Set by Others*, ECONOMIST (Oct. 10, 2022), <https://www.economist.com/special-report/2022/10/10/china-wants-to-change-or-break-a-world-order-set-by-others> [<https://perma.cc/8LXD-EW3C>] (detailing the history and development of the liberal international order after World War II); see generally Caitlin Byrne, *Securing the 'Rules-Based Order' in the Indo-Pacific: The Significance of Strategic Narrative*, 16 SEC. CHALLENGES 10 (2020).

precariousness of current international legal frameworks.²⁰⁴ By observing how Moscow navigates around Western sanctions and international pressure, Beijing is quietly absorbing valuable lessons for its own military conquests.²⁰⁵ In the meantime, as China plans to reform the global governance system and assume the center stage, its military capacity and capability have grown powerful.²⁰⁶ As articulated by the Chinese defense ministers in the IISS Shangri-La Dialogue 2022²⁰⁷ and 2023,²⁰⁸ China may elevate its uncompromising behavior to a more perilous level if it deems itself capable of enduring the political backlash and legal repercussions from Western governments.

204. Press Release, Security Council, Wars in Gaza, Ukraine Dominate Security Council's 2023 Agenda, as Use of Veto Proliferates, Organ's Ability to Act Hampered, U.N. Press Release SC/15558 (Jan. 9, 2024) (reporting the instances where veto mechanisms in the U.N. Security Council hindered international response); *see also* J. Alex Tarquinio, *The U.N. Has Turned Turtle on the Ukraine War*, FOREIGN POL'Y (Mar. 1, 2023, 4:27 PM), <https://foreignpolicy.com/2023/03/01/ukraine-united-nations-russia-war-diplomacy/> [<https://perma.cc/W38N-PPK8>] (stating the struggles that the United Nations faces in resolving current global issues).

205. *See* C. Todd Lopez, *China May Draw Lessons from Russian Failures in Ukraine*, DEP'T OF DEF. NEWS (Sept. 8, 2022), <https://www.defense.gov/News/News-Stories/Article/Article/3153131/china-may-draw-lessons-from-russian-failures-in-ukraine/> [<https://perma.cc/T389-BNJT>] (indicating the lessons China would draw from Russia's experience).

206. *See National Security Strategy*, *supra* note 29, at 23–24 (“The PRC is also investing in a military that is rapidly modernizing, increasingly capable in the Indo-Pacific, and growing in strength and reach globally—all while seeking to erode U.S. alliances in the region and around the world.”); *see* Alexandra Stevenson, *China Launches Third Aircraft Carrier in Major Milestone for Xi Jinping*, N.Y. TIMES (June 17, 2022), <https://www.nytimes.com/2022/06/17/world/asia/china-aircraft-carrier.html> [<https://perma.cc/8FJ7-DUQC>] (“China launched its third and most advanced aircraft carrier on Friday, bringing the country one step closer to a modern navy capable of competing with the United States’ military naval power.”); *see generally* Guilfoyle, *supra* note 140.

207. *See, e.g.*, Chris Buckley & Sui-Lee Wee, *China Won't Hesitate to Fight for Taiwan, Defense Minister Warns*, N.Y. TIMES (June 12, 2022), <https://www.nytimes.com/2022/06/12/world/asia/china-taiwan-us.html> [<https://perma.cc/Z7WV-5PNH>] (“China has long said that it would take Taiwan by force if necessary, and General Wei’s comments left plenty of uncertainty about what . . . leaders in Beijing would consider a threshold event that justified doing so. But the comments from General Wei, Mr. Austin and others at the Singapore meeting have underscored how Taiwan remains the most volatile point of contention between China and the United States and its allies.”).

208. Nancy A. Youssef, *China Rebuffs Pentagon Chief, Blunting Push for Rapprochement*, WALL ST. J. (May 30, 2023, 2:50 AM), <https://www.wsj.com/articles/china-rebuffs-pentagon-chief-blunting-push-for-rapprochement-dd78d9bf> [<https://perma.cc/Z2CB-JQR5>] (portraying the meeting between Chinese and American Defense Ministers at the Shangri-La Dialogue 2023); *see also* Jack Lau & Minnie Chan, *Shangri-La Dialogue: China and the US Offer Competing Security Visions for the Asia-Pacific*, S. CHINA MORNING POST (June 4, 2023, 6:16 PM), <https://www.scmp.com/news/china/military/article/3222906/shangri-la-dialogue-china-and-us-offer-competing-security-visions-asia-pacific> [<https://perma.cc/8UEL-C8L5>] (describing Chinese Defense Minister Li’s criticism towards the United States).

In contrast, the U.S. recognizes the urgent imperative to safeguard the sovereignty of Taiwan and the EEZ of its regional allies.²⁰⁹ Consequently, coalitions are currently being formed and divided across the Western and Eastern Hemispheres.²¹⁰ The “no-limits” relationship—including military, trade, and ideological cooperation—between Beijing and Moscow should serve as a serious warning to the rest of the world.²¹¹

Looking to the South China Sea, it becomes evident that no country is willing to compromise its maritime claims under UNCLOS. After decades of negotiations, no joint agreements for a standardized Code of Conduct have been reached among the ASEAN members.²¹² Accordingly, established international laws enshrined under UNCLOS come under constant attack and are vulnerable to losing accreditation—which incentivizes claimants to behave erratically and make crucial decisions based on their respective national interests.²¹³

Nevertheless, the protection and preservation of UNCLOS, one of the most influential and widely respected international treaties, remains imperative. Safeguarding UNCLOS would discourage and deter other nations from replicating China’s actions in other oceans.²¹⁴ Failing to do

209. See *U.S. Relations With Taiwan: Fact Sheet*, U.S. DEP’T OF STATE (May 28, 2022), <https://www.state.gov/u-s-relations-with-taiwan/#> [<https://perma.cc/EH9B-M827>] (suggesting the importance of bilateral relationship between Taiwan and the United States).

210. See *National Security Strategy*, *supra* note 29, at 23 (“The PRC is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it. Beijing has ambitions to create an enhanced sphere of influence in the Indo-Pacific and to become the world’s leading power.”).

211. See Tom Mitchell et al., *Vladimir Putin’s Ukraine Woes Strengthen Xi Jinping’s Hands in ‘No Limits’ Partnership*, FIN. TIMES (Sept. 16 2022), <https://www.ft.com/content/d932adab-9b96-4142-b741-5a53a1d797c1> [<https://perma.cc/587T-BB5G>] (detailing the meeting between China and Russia in Uzbekistan in 2022); see also Keith Bradsher et al., *Challenges for Russia and China Test a ‘No-Limits’ Friendship*, N.Y. TIMES (Sept. 13, 2022), <https://www.nytimes.com/2022/09/13/world/asia/china-russia-xi-putin.html> [<https://perma.cc/RE7B-3VQ4>] (“The summit this week between President Vladimir V. Putin of Russia and Xi Jinping of China is a show of force by two autocratic leaders united against what they consider American hegemony.”).

212. See Hoang Thi Ha, ISEAS, *Pitfalls for ASEAN in Negotiating a Code of Conduct in the South China Sea*, 57 PERSPS. 1, 6 (2019) (“The COC is still under negotiation and nothing is concluded yet . . .”).

213. INT’L CRISIS GRP., *COMPETING VISIONS OF INTERNATIONAL ORDER IN THE SOUTH CHINA SEA*, ASIA REP. NO. 315, at 35 (2021) [hereinafter ASIA REP. NO. 315] (“Clear-eyed analysis of the South China Sea demands acknowledgment of irreducible facts about the situation in the near term. [1] China is not going to abandon either its artificial islands or its expansive claims. [2] the U.S. is not going to relinquish its commitment to upholding Freedom of Navigation or its role as guarantor of its Asian alliance system. [3] the Southeast Asian claimants lack the capacity to enforce their claims and have not yet evinced the will to resolve their intra-ASEAN disputes.”).

214. See Nikolaj Skydsgaard & Humeyra Pamuk, *Blinken Says Russia Has Advanced Unlawful Maritime Claims in the Arctic*, REUTERS (May 18, 2021, 7:28 AM), <https://www.reuters.com/world/>

so would allow Beijing to discredit and revise other international norms that do not align with its interests.²¹⁵ The United States and its allies understand these geopolitical implications and are deploying Freedom of Navigation operations across the disputed waterways at a higher rate than ever.²¹⁶ As a result, resolving the clash between these two competing legal frameworks rests upon these pivotal inquiries: Which legal provisions regulate the South China Sea? Which jurisdiction will ultimately prevail? And which legal system shall civilians adhere to?²¹⁷

B. China's Vision for the Indo-Pacific Region

With its remarkable economic growth and rapidly expanding political influence, China now views itself as the global leader of the twenty-first century.²¹⁸ Motivated by its historical experiences of the “century of humiliation,” Beijing disdains adherence to the Western rules-based order and is on a mission to set new legal standards—shaping the world according to its visions.²¹⁹ China’s success in suppressing democracy during the 2019–2020 Hong Kong protests evinces its intent and capabilities. Over the next decade, China aims to reunify Taiwan, leaving no room for

europe/russia-has-advanced-unlawful-maritime-claims-arctic-blinken-2021-05-18/ [https://perma.cc/T92E-5B35] (“U.S. Secretary of State Antony Blinken on Tuesday [criticized] Russia’s activities in the Arctic region, describing them as ‘unlawful maritime claims’ and repeated calls to avoid the [militarization] of the region, days before a gathering of Arctic nations.”).

215. See, e.g., *Why America and Europe Fret about China Turning Inwards*, ECONOMIST (Oct. 10, 2022), https://www.economist.com/special-report/2022/10/10/why-america-and-europe-fret-about-china-turning-inwards [https://perma.cc/7NZ8-4PHP] (discussing and analyzing China’s recent trade policies in response to the COVID-19 pandemic); Erickson et al., *supra* note 141; Guilfoyle, *supra* note 140 (explaining the use of lawfare to advance China’s interpretations that differ from those widely accepted).

216. U.S. DEP’T OF DEF., ANNUAL FREEDOM OF NAVIGATION REPORT, FISCAL YEAR 2022 (2023), https://policy.defense.gov/Portals/11/Documents/FON_Program_Report_FY2022.pdf [https://perma.cc/VBE4-8HMM] (providing the increase of freedom of navigation operations in the maritime region).

217. See ASIA REP. NO. 315, *supra* note 213, at 18–22 (detailing the frictions between two competing visions for the South China Sea); see also Pompeo Maritime Claims, *supra* note 163 (discussing China’s policies and recommendations for U.S. responses); see also Sakamoto, *supra* note 140 (discussing the impact of Chinese domestic maritime laws).

218. See *National Security Strategy*, *supra* note 29, at 23 (stating China’s vision for the global order in the 21st century); *For Western Democracies, The Price of Avoiding a Clash with China is Rising*, ECONOMIST (Oct. 10, 2022), https://www.economist.com/special-report/2022/10/10/for-western-democracies-the-price-of-avoiding-a-clash-with-china-is-rising [https://perma.cc/TRGM-PYX5] (analyzing China’s view of its role in the current and future global order).

219. ASIA REP. NO. 315, *supra* note 213, at 4 (“China’s position in the Sea is also a reflection of its aim to become a greater maritime power, both an instrument and symbol of the Party’s larger goal of ‘national rejuvenation,’ a concept referring to restoration of China’s pre-eminence following the ‘century of humiliation’ at the hands of the West and Japan.”).

deviation from the One-China Policy.²²⁰ Naturally, the South China Sea is also a key part of China's pursuit of regional dominance. From Beijing's perspective, the ability to exercise absolute sovereignty over the contested waterways would safeguard its strategic, economic, and security interests in the modern world.²²¹ Undermining UNCLOS and the Award is an essential step toward Beijing's quest to assert expansive territorial and maritime claims over the South China Sea.²²²

Beijing has sought to erode the authority of UNCLOS by enacting and enforcing its domestic maritime laws.²²³ UNCLOS and China's domestic laws embody two distinct and contradictory visions of how maritime sovereignty should be adjudicated. For example, UNCLOS explicitly delineates that the EEZ of each nation shall not extend beyond two hundred nautical miles from its shorelines.²²⁴ In stark contrast, China's legal construct of the nine-dash line contends that a nation can claim distant ocean areas one thousand nautical miles from its southern borders.²²⁵ According to UNCLOS and the Award, the EEZ rights of the Philippines,

220. See *Statement by the Ministry of Foreign Aff. of China*, MINISTRY OF FOREIGN AFF. OF CHINA (Aug. 2, 2022), https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/202208/t20220802_10732293.html [<https://perma.cc/LW3S-MC99>] (noting China's opposition to Nancy Pelosi's visit to Taiwan and reaffirming its One-China principle); see also *China Has Chilling Plans for Governing Taiwan*, ECONOMIST (Oct. 10, 2022), <https://www.economist.com/special-report/2022/10/10/china-has-chilling-plans-for-governing-taiwan> [<https://perma.cc/FCE8-9T4B>] (discussing the historical reasons for China's policy toward Taiwan).

221. ASIA REP. NO. 315, *supra* note 213, at 19 ("Since 2017, China's leaders have been explicit about playing a more active role in international politics and China's perceived obligation, in Chinese President Xi Jinping's words, to 'guide international society to collectively shape a more just and rational new international order.' With regard to the South China Sea, an influential Chinese scholar noted that there is 'tension between a new rules-based regional order built by China and joined by other countries in the region, and the US-led security structure based on alliances and power.'"); see generally Shicun Wu, *Preventing Confrontation and Conflict in the S. China Sea*, 2 CHINA INT'L STRATEGY REV. 36, 36–47 (2020).

222. ASIA REP. NO. 315, *supra* note 213, at 20 ("China's South China Sea policy exemplifies how Beijing is . . . attempting to carve out for itself exceptions to conventional readings of international law to suit its regional interests. . . . [I]t is offering new norms, such as novel interpretations of UNCLOS and the notion of its historic rights to the South China Sea. Some analysts believe that China's efforts to institutionalize its unilateral interpretations of UNCLOS undermine the international rule of law, with alarming implications for the predictability of inter-state relations.").

223. See Sakamoto, *supra* note 140; see also Lohschelder, *supra* note 141.

224. UNCLOS, *supra* note 63, art. 57.

225. See Sakamoto, *supra* note 140; see generally Pedrozo, *supra* note 146; see also Goldenziel, *supra* note 145 (stating that China asserted sovereignty over all of the South China Sea that falls within the nine-dash line).

Malaysia, Taiwan, Brunei, Indonesia, and Vietnam are diluted by Beijing's nine-dash line.²²⁶

In advancing the legitimacy of its domestic laws, Beijing imposes its political will over civilian populations to gradually win over the region without resorting to overt military force.²²⁷ China actively rallies support from other allies and capitalizes on opportunities to cultivate closer ties with Russia.²²⁸ Beijing and Moscow project themselves as a revisionist coalition that rejects prevailing international norms, intending to redefine and rewrite the Western rules-based order.²²⁹ In China's view, the United States is interfering in a region where it should not and is directly impeding China's sovereignty and its national security interests.²³⁰ Beijing further highlights what it perceives as a double standard in the United States' treatment of UNCLOS, particularly given that the U.S. Congress has not ratified the Convention.²³¹ Accordingly, China contends that the United States lacks legal standing to enforce the UNCLOS and the Award.²³² By characterizing the Western rules-based order as an obstruction to its rightful international role, China reminds the world that it would utilize

226. UNCLOS, *supra* note 63, art. 57; S. China Sea Arbitration (Republic of Philippines v. People's Republic of China), Case No. 2013-19, Award, ¶¶ 202–78 (Perm. Ct. Arb. 2016) (reasoning how China's nine-dash claim is incompatible with the EEZs under UNCLOS); *see also* U.S. SEA LIMITS, *supra* note 157, at 29 (discussing how the nine-dash map conflicts with UNCLOS).

227. *See* Lohschelder, *supra* note 141, at 34 (“These developments are part of China’s broader efforts to use domestic law as a vehicle to further entrench its maritime claims . . .”).

228. *See* Mitchell et al., *supra* note 211 (detailing Xi Jinping and Vladimir Putin’s relationship).

229. *See National Security Strategy*, *supra* note 29, at 8 (“It is their behavior that poses a challenge to international peace and stability—especially waging or preparing for wars of aggression, actively undermining the democratic political processes of other countries, leveraging technology and supply chains for coercion and repression, and exporting an illiberal model of international order.”); *see* Byrne, *supra* note 203, at 11–13 (assessing how rules-based order is under challenge).

230. *PRC Remarks on G7*, *supra* note 26 (“China firmly opposes interference by any external force in those affairs under the pretext of human rights. . . . The East China Sea and the South China Sea have remained overall stable. Relevant countries need to respect regional countries’ efforts to uphold peace and stability and stop using maritime issues to drive a wedge between regional countries and incite bloc confrontation.”); *see China Wants to Change, or Break, a World Order Set by Others*, *ECONOMIST* (Oct. 10, 2022), <https://www.economist.com/special-report/2022/10/10/china-wants-to-change-or-break-a-world-order-set-by-others> [<https://perma.cc/XJ5Z-2E46>] (“[China] is working to reshape the world order from within. When its efforts meet resistance, it pushes for vaguer rules whose enforcement becomes a question of political bargaining.”); *see* Byrne, *supra* note 203, at 11–13.

231. ASIA REP. NO. 315, *supra* note 213, at 25 (“In Beijing’s eyes, U.S. indignation about what it sees as excessive maritime claims is only a smokescreen for the United States’ desire to perpetuate its military primacy and its strategy of containment, while Washington’s failure to ratify UNCLOS lays bare the hypocrisy of U.S. sanctimony on international law.”).

232. *Id.* (according to China, the U.S. has no standing to enforce the maritime claims).

its military power to legitimize domestic laws and counteract UNCLOS principles.²³³

C. U.S. Balancing Acts

The success of “detering and containing” China’s actions hinge primarily on United States’ consistency and ability to maintain its foreign policies in the long run. Between 2022 to 2023, the Biden administration has undertaken concerted efforts to maintain the integrity of UNCLOS, uphold the Award, and support the existing rules-based order, thereby maintaining a steadfast opposition to China’s nine-dash line.²³⁴ UNCLOS, embodying the Freedom of the Sea principle, is foundational to the United States’ security, prosperity, and wealth;²³⁵ and it governs international maritime trade, navigation rules for military and fishing vessels, and ensures equitable allocation of exclusive access—contributing to world cooperation, which has greatly benefited the United States.²³⁶

Under President Biden, the United States has reasserted its enduring commitment to regional allies—such as Taiwan and the Philippines—and has worked to enhance bilateral relations with other ASEAN nations in the Indo-Pacific region to preserve its international stature.²³⁷ Departing from a stance of “strategic ambiguity,” the United States has unequivocally declared that it would defend Taiwan and the Philippines against any aggressive acts from China on their territories or maritime entitlements.²³⁸ The longevity of these alliances has been central to the regions

233. *Id.* at 22 (discussing China’s rapid military modernization and its advantages in the South China Sea).

234. See Press Statement by Antony J. Blinken, *supra* note 182 (“[T]he United States and our Indo-Pacific allies and partners are committed to preserving a system where goods, ideas, and people flow freely across land, sky, cyberspace, and the open seas.”).

235. ASIA REP. NO. 315, *supra* note 213, at 20–22 (discussing the U.S. policies for the Indo-Pacific region during the Obama and Trump administration); see, e.g., U.S. SEA LIMITS, *supra* note 157 (highlighting China’s policies and providing recommendations for U.S. responses).

236. See generally UNCLOS, *supra* note 63.

237. See *National Security Strategy*, *supra* note 29, at 11 (“We place a premium on growing the connective tissue—on technology, trade and security—between our democratic allies and partners in the Indo-Pacific and Europe because we recognize that they are mutually reinforcing and the fates of the two regions are intertwined. The United States is a global power with global interests. We are stronger in each region because of our affirmative engagement in the others. If one region descends into chaos or is dominated by a hostile power, it will detrimentally impact our interests in the others.”).

238. See Press Statement by Antony J. Blinken, *supra* note 182; see also Josh Wingrove, *Biden Says US Would Defend Taiwan From ‘Unprecedented Attack’*, BLOOMBERG (Sept. 18, 2022), <https://www.bloomberg.com/news/articles/2022-09-18/biden-says-us-would-defend-taiwan-from-unprecedented-attack> [<https://perma.cc/2YLT-K37F>] (“President Joe Biden said US military forces would defend Taiwan from “an unprecedented attack,” his latest pledge of support as his

stability; neglecting these bilateral security commitments would undermine the United States' role as the protector of the Indo-Pacific rules-based order.

The U.S. Department of Defense has also implemented policies to manage maritime conflicts and tensions, including increasing military capacity, denouncing China's claims, promoting Indo-Pacific Maritime Domain Awareness, backing the ASEAN Code of Conduct, engaging in legal diplomacy, sanctioning Chinese entities involved in militarizing the region and encouraging public statements from claimants.²³⁹ These policies are indispensable measures undertaken by Washington to deter and contain Beijing's maritime encroachments effectively. For instance, the United States' ability to freely patrol the waterways reminds China about the integrity of EEZ allocated under UNCLOS and the validity of the Award.²⁴⁰ Without this check on international maritime navigation rights from Washington, Beijing would have free rein to assume control of the maritime region and legitimize its nine-dash line.

However, while the Biden administration has been adamant about its position toward the legal interpretation of UNCLOS and the Award, there remains a question of whether Washington will continue to abide by its security obligations if there is a potential shift in the legislative and executive branches. Priorities often change when a new administration is voted into the White House every four or eight years. For instance, in light of the trade tensions with China, the Trump administration pursued a path of deglobalization and trade protectionism under the "Make America Great Again" campaign, which differed from the Obama administration's agenda of fostering interconnected growth within the global trade system.²⁴¹ Further, the Biden administration's complete withdrawal from its thirteen-year security commitments in Afghanistan illustrates a

administration seeks to deter China from increasing military pressure on the democratically elected government in Taipei."); see also Joint U.S. and Philippines Statement, *supra* note 181 (same).

239. See C. Todd Lopez, *Building Asymmetric Advantage in Indo-Pacific Part of DOD Approach to Chinese Aggression*, DEP'T OF DEF. NEWS (July 27, 2022), <https://www.defense.gov/News/News-Stories/Article/Article/3107197/building-asymmetric-advantage-in-indo-pacific-part-of-dod-approach-to-chinese-a/> [https://perma.cc/M7QT-WW4F] (outlining the Department of Defense strategies to counteracting China's aggressive behaviors in the South China Sea).

240. See, e.g., U.S. SEA LIMITS, *supra* note 160, at 9 (providing the key provisions laid out under UNCLOS).

241. See Foroohar, *supra* note 34; see also Jeffrey Kleintop, *Deglobalization is Political, Not Economic*, SCHWAB (Apr. 11, 2022), <https://www.schwab.com/learn/story/deglobalization-is-political-not-economic> [https://perma.cc/4HRR-C2UU] (discussing how U.S. politics have impacted economic globalization).

potential for Washington's abrupt policy changes.²⁴² Similarly, Washington and its NATO allies have put increased focus on territorial defenses in response to Russia's military advances in Ukraine.²⁴³ However, there is always a possibility that these strategic partnerships could dissolve if a future administration deems the intervention in Ukraine, the Taiwan Strait, and the South China Sea as a lost cause for U.S. geopolitical interests.²⁴⁴ In fact, historical patterns of U.S. policy volatility are illustrated by its withdrawal from South Vietnam after spending almost two decades there under the Eisenhower, Kennedy, Johnson, and Nixon administrations.²⁴⁵

These uncertainties underscore the pressing need for clear and steadfast U.S. security commitments to Taiwan, the Philippines, and the South China Sea claimants. As history has suggested, tensions within the waterways may persist for the next several generations.²⁴⁶ Without the will and determination to stand by regional allies during challenging times, the United States may eventually leave many of its allies with no option but to acquiesce to China's version of the rules-based order. Challenges to Freedom of Navigation in the South China Sea could reverberate globally.²⁴⁷ Since international law applies universally, contesting a principle of international law in one region may set a precedent for similar challenges elsewhere. Any limitation or erosion of the Freedom of

242. See, e.g., Karl Rove, Opinion, *The Afghanistan Withdrawal Debacle Didn't Have to Happen*, WALL ST. J. (Aug. 17, 2022, 6:16 PM), <https://www.wsj.com/articles/the-afghan-debacle-didnt-have-to-happen-michael-mccaull-report-kabul-isis-marines-withdrawal-taliban-preparation-anniversary-biden-trump-11660761159> [<https://perma.cc/V8JW-2WK6>] (“President Biden destroyed the value of America’s word, diminished our global influence, and made the world more dangerous when he surrendered in Afghanistan a year ago this week.”).

243. See Bureau of Pol.-Mil. Aff., *U.S. Sec. Coop. with Ukraine*, U.S. DEP’T OF STATE (May 9, 2023), <https://www.state.gov/u-s-security-cooperation-with-ukraine/#> [<https://perma.cc/CVR9-FHLU>] (discussing the amount of aids that the United States has contributed to Ukraine); see also *NATO Sec’y Gen. and U.S. Sec’y of State Address NATO’s Strong Response to Russia’s War on Ukraine*, NATO (Sept. 9, 2022, 4:01 PM), https://www.nato.int/cps/en/natohq/news_207180.htm [<https://perma.cc/ZP68-YTU7>] (detailing the assistance of NATO in the Ukraine war).

244. Leslie Vinjamuri, *What Another Trump-Biden Showdown Means for the World*, FOREIGN POL’Y (Jan. 3, 2024, 12:20 AM), <https://foreignpolicy.com/2024/01/03/us-elections-2024-trump-biden-policy-diplomacy-china-europe/> [<https://perma.cc/C8BZ-XXUL>] (highlighting Trump’s approach to these issues if he wins in 2024 Presidential Election).

245. See Elizabeth Becker, *The Secrets and Lies of the Vietnam War, Exposed in One Epic Document*, N.Y. TIMES (June 9, 2021), <https://www.nytimes.com/2021/06/09/us/pentagon-papers-vietnam-war.html> [<https://perma.cc/ZD4N-HTUZ>] (outlining the withdrawal of the U.S. from South Vietnam).

246. See generally *China’s Maritime Disputes*, *supra* note 56.

247. Peter A. Dutton, *China Is Rewriting the Law of the Sea*, FOREIGN POL’Y (June 10, 2023), <https://foreignpolicy.com/2023/06/10/china-sea-south-east-maritime-claims-law-oceans-us-disputes/> [<https://perma.cc/7AWL-WN56>] (analyzing the global consequences for the erosion of Freedom of Navigation principle).

Navigation principle would mark a departure from the long-standing legal tradition of treating the world's oceans as international waters. In particular, if China's interpretation gains broader recognition under international law, it could significantly affect U.S. naval operations worldwide.²⁴⁸ This, in turn, could impair the United States' capacity to utilize its military forces effectively in safeguarding various U.S. interests abroad. Nonetheless, recent U.S. actions, such as rejuvenating an existing bilateral security treaty with the Philippines, initiating a new policy approach with Taiwan, and fostering closer relations with ASEAN countries, show its commitment to defending UNCLOS and the Indo-Pacific rules-based order.²⁴⁹

But the United States cannot combat China's encroachment alone. Given the dramatic enhancement of the PLA Navy's military capabilities in recent years,²⁵⁰ figures and statistics reveal that China poses a dangerous threat to regional stability if it utilizes its powerful military force to enforce its domestic laws and to control the waterways.²⁵¹ Having fully militarized several islands in the South China Sea and forging closer ties with many other non-claimant ASEAN members,²⁵² China has many

248. *Id.*

249. See Calonzo, *supra* note 166; Taiwan Policy Act of 2022, S. 4428, 117th Cong. § 2 (2022); Andrew Desiderio, *U.S.-Taiwan Bill Sails Through Senate Panel Despite White House Misgivings*, POLITICO (Sept. 14, 2022, 5:47 PM), <https://www.politico.com/news/2022/09/14/taiwan-bill-clears-senate-panel-00056769> [<https://perma.cc/L6DD-U36L>] (“After a robust and sometimes heated debate, however, the Senate Foreign Relations Committee approved the Taiwan Policy Act by a vote of 17-5. The bill, which complements the Taiwan Relations Act of 1979, is aimed at boosting Taiwan’s ability to defend itself militarily against a potential Chinese invasion of the island while deepening symbolic U.S.-Taiwan ties that Beijing has blasted as a reversal of the status quo.”); *ASEAN-U.S. Special Summit 2022, Joint Vision Statement*, WHITE HOUSE (May 13, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/13/asean-u-s-special-summit-2022-joint-vision-statement/> [<https://perma.cc/7EJL-28FF>] (detailing the strategic objectives for the Indo-Pacific region between the U.S. and ASEAN nations).

250. Michael Hirsh, *The Pentagon Is Freaking Out About a Potential War with China*, POLITICO (June 9, 2023, 4:30 AM), <https://www.politico.com/news/magazine/2023/06/09/america-weapons-china-00100373> [<https://perma.cc/MMC4-RXSJ>] (portraying the military capabilities between China and the United States).

251. U.S. DEP’T OF DEF., ANNUAL REPORT TO CONGRESS, MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 2023 47–117 (2022) (providing the figures and statistics of the PLA Navy’s capabilities); see U.S. DEP’T OF DEF., SUMMARY OF THE NATIONAL DEFENSE STRATEGY OF THE UNITED STATES 4 (2022) [hereinafter STRATEGY OF THE UNITED STATES] (detailing the U.S. Department of Defense’s assessments of the People’s Liberation Army Navy capabilities in the Indo-Pacific region); see Alastair Gale, *China’s Military Is Catching up to the U.S. Is It Ready for Battle?*, WALL ST. J. (Oct. 20, 2022, 10:04 AM), <https://www.wsj.com/articles/china-military-us-taiwan-xi-11666268994> [<https://perma.cc/5CXD-AF3J>] (discussing and comparing the military capabilities between People’s Liberation Army and the United States).

252. Compare Kentaro Iwamoto, *7 of 10 ASEAN Members Favor China Over US: Survey*, NIKKEI (Jan. 16, 2020), <https://asia.nikkei.com/Politics/International-relations/7-of-10-ASEAN->

strategic advantages in the waterways compared to the U.S. Navy and its allies.²⁵³

The QUAD alliance, united under a shared interpretation of UNCLOS, would certainly serve as an effective coalition in backing the United States and ASEAN claimants' defense against China's nine-dash line. The QUAD, however, remains only a political agreement, still subject to its participants' consent.²⁵⁴ Absent a more robust commitment, each nation retains the ability to withdraw from its security and trade obligations under the agreement at any time, leaving its purpose unfulfilled.²⁵⁵ Yet the IPMDA has proven to be a worthy initiative under the guidance of the QUAD, providing surrounding claimants with advanced technological tools to monitor maritime activities within their respective EEZ.²⁵⁶ The ability to track real-time trespasses within maritime zones enables these claimants to promptly alert maritime law enforcement, safeguard their rightful boundaries, and prevent unexpected confrontations with foreign vessels.²⁵⁷

Support from Australia, India, and Japan would be necessary if there is ever a military conflict in the maritime region.²⁵⁸ In a scenario that demands confrontation with the PLA Navy, the United States, and its regional allies would require substantial military assistance from the QUAD to deter and contain China effectively. Alongside the pursuit of a public good agenda encompassing global health care, climate policy, infrastructure, disaster response, and education,²⁵⁹ the QUAD must also

members-favor-China-over-US-survey [<https://perma.cc/W6GL-TPAR>] (indicating that the majority of ASEAN states are pro-China), with Maria Siow, *Southeast Asia's Trust in China, U.S. Improves but More Believe ASEAN Needs to Choose Sides: Survey*, S. CHINA MORNING POST (Feb. 16, 2022), <https://www.scmp.com/week-asia/politics/article/3167214/southeast-asias-trust-china-us-improves-more-believe-asean-needs> [<https://perma.cc/2UWJ-DSM4>] (surveying ASEAN's level of trust between China and the United States).

253. See STRATEGY OF THE UNITED STATES, *supra* note 251, at 4 (describing the expansion and modernization of the PLA's military forces); see, e.g., ASIA REP. NO. 315, *supra* note 213, at i ("These islands have in turn facilitated the pervasive maritime presence of the People's Liberation Army Navy, the Chinese Coast Guard and China's maritime militia.").

254. ASIA REP. NO. 315, *supra* note 213, at 21–22 (listing the primary objectives of the Free and Open Indo-Pacific strategy by the Quad).

255. *Id.* ("Japan initiated the dialogue in 2007, but Australia's exit in 2009 over concerns about alienating China meant the Quad was dormant until 2017.").

256. See Sevastopulo & Inagaki, *supra* note 199.

257. *Id.*

258. Sharon Seah et al., *The State of Se. Asia: 2023 Survey Report*, ISEAS-YUSOF ISHAK INST. 32–33 (2023) (stating that a stronger Quad will be a positive development for the region).

259. See *Quad Leaders' Joint Statement*, WHITE HOUSE (May 20, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/quad-leaders-joint-statement/> [<https://perma.cc/7KWU-7YM4>] (detailing the QUAD agendas toward the Indo-Pacific region, such as the

establish a comprehensive security framework that details their respective strategic commitments and cooperation within the Indo-Pacific.

Furthermore, the QUAD ought to prioritize the enhancement of maritime security capabilities by actively providing coast guard ships to regional claimants and forging collaborative ties with the navies of ASEAN countries, thereby ensuring unfettered access to vital sea lanes. However, the QUAD should exercise prudence by refraining from imposing its political values, such as promoting freedom and democracy.²⁶⁰ The QUAD should concentrate its efforts on emphasizing the respect for the rules-based order, the preservation of territorial integrity under the auspices of UNCLOS, and the peaceful settlement of EEZ disputes—principles ASEAN members ardently support. Establishing a comprehensive security framework would reassure ASEAN countries of the QUAD's commitment to collective security, creating a more secure and stable Indo-Pacific region.²⁶¹

D. The Courtship of ASEAN

As the rivalry between the United States and China intensifies, ten of the ASEAN countries grapple with complex economic, strategic, and military dilemmas.²⁶² The United States is regarded by these nations as the only military power that can counter China's growing heft.²⁶³ While each

launch of the Quad Infrastructure Fellowship, the Quad Partnership for Cable Connectivity and Resilience, and the Quad Investors Network).

260. *Se. Asian Democracy is Declining*, ECONOMIST (Aug. 31, 2023), <https://www.economist.com/asia/2023/08/31/south-east-asian-democracy-is-declining> [<https://perma.cc/V2AD-WEXL>] (explaining the reasons behind the struggles of democratic ideals in the region); Joshua Kurlantzick, *The State of Democracy in Se. Asia is Bad and Getting Worse*, COUNCIL ON FOREIGN REL. (Aug. 14, 2023), <https://www.cfr.org/article/state-democracy-southeast-asia-bad-and-getting-worse> [<https://perma.cc/8ES6-PZ9R>] (highlighting the democratic regression among ASEAN countries).

261. Sharon Seah & Kei Koga, *ASEAN and the Quad Inch Closer Together*, FOREIGN POL'Y (May 24, 2023), <https://foreignpolicy.com/2023/05/24/quad-asean-southeast-asia-china-geopolitics-indo-pacific/> [<https://perma.cc/NKM7-LCZW>] ("The Quad, for its part, has indicated the importance to 'ensure all nations, large and small, continue to have a voice.' As views across Southeast Asia shift toward a more positive take on the Quad, now is the time for both blocs to seize the opportunity and move toward closer ASEAN-Quad cooperation.").

262. *National Security Strategy*, *supra* note 29, at 24 ("Many of our allies and partners, especially in the Indo-Pacific, stand on the frontlines of the PRC's coercion and are rightly determined to seek to ensure their own autonomy, security, and prosperity."); *see The Rivalry*, *supra* note 24 ("People across South-East Asia already see America and China as two poles, pulling their countries in opposite directions. . . . Governments feel under pressure to pick sides. . . . China's claim that almost all the South China Sea lies within its territorial waters and America's rejection of that assertion have sparked blazing rows in the main regional club, the Association of South-East Asian Nations which China has attempted to win over.").

263. Sharon Seah et al., *supra* note 258, at 30 (providing the United States as the region's top choice in maintaining a rules-based order and upholding international law); *but see e.g.*, *Se. Asian Countries are Trapped Between Two Superpowers*, ECONOMIST (Nov. 17, 2020), <https://www.econ>

seeks to preserve the validity of their EEZ entitlements under UNCLOS, they are reluctant to get involved in a direct military confrontation between the two superpowers. Conversely, due to their economic dependencies and geographical proximity to China, most ASEAN countries hesitate to oppose their primary trade partner and investor, fearing repercussions for their stake in the global supply chain.²⁶⁴ Naturally, many of the ASEAN governments exhibit little desire to emulate the political model embraced by the United States.²⁶⁵ Despite competing alliances within the ASEAN bloc, the regional claimants aspire to remain neutral and resolve their challenges autonomously, shielded from external powers' interference.²⁶⁶

Among ASEAN nations, unity between five claimants to the South China Sea—Brunei, Malaysia, the Philippines, Indonesia, and Vietnam—is vital to effectively deter China's nine-dash encroachment. However, reaching a consensus within ASEAN has been historically challenging due to competing territorial and maritime claims.²⁶⁷ China's position as the top trading partner with the region complicates these efforts, as Chinese investments and loans strongly influence ASEAN economies.²⁶⁸

omist.com/the-world-ahead/2020/11/17/south-east-asian-countries-are-trapped-between-two-superpowers [https://perma.cc/4AD4-ZVLJ] (“Above all, China is too close and already too mighty to turn against. It is by far South-East Asia's biggest trading partner and its second-biggest investor, behind Japan. ASEAN's prosperity is as bound to China as its supply chains are.”).

264. *ASEAN-China Joint Statement on Synergising the Master Plan on ASEAN Connectivity (MPAC) 2025 and the Belt and Road Initiative (BRI)*, ASEAN (Nov. 3, 2019), <https://asean.org/wp-content/uploads/2019/11/Final-ASEAN-China-Joint-Statement-Synergising-the-MPAC-2025-and-the-BRI.pdf> [https://perma.cc/VBA3-HSKR] (providing trade cooperation and bilateral commitments between ASEAN and China); *but see* Sharon Seah et al., *supra* note 258, at 39–41 (indicating ASEAN nations' concerns with China's economic and political influence).

265. *See* GINSBURG, *supra* note 45, at 201 (“As time has gone on, references to democracy have become less consistent. The ASEAN Political-Security Community Blueprint 2025 removed references to the charter principles of democracy, the rule of law and good governance, using such terms only in subsidiary sections as values, but revived reference to ‘principles of independence, sovereignty, equality, territorial integrity, non-interference and national identity.’”).

266. Huong Le Thu, *How to Survive a Great-Power Competition*, 102 FOREIGN AFF. 30 (2023) (explaining the policies adopted by ASEAN countries in balancing the interest between China and the United States).

267. ASIA REP. NO. 315, *supra* note 213, at 15–17 (discussing the drawbacks in delaying the Code of Conduct among ASEAN claimants).

268. *China Remains ASEAN's Largest Trading Partner*, STATE COUNCIL CHINA (Aug. 30, 2022), https://english.www.gov.cn/statecouncil/ministries/202208/30/content_WS630d613bc6d0a757729df66f.html [https://perma.cc/G6MQ-FDE4] (stating that China has been the largest trading partner of ASEAN for 13 years); *see also* *ASEAN-China Economic Relation*, ASEAN, <https://asean.org/our-communities/economic-community/integration-with-global-economy/asean-china-economic-relation/> [https://perma.cc/26ND-THYF] (providing trade figures between China and ASEAN); *The Belt and Rd. Initiative in the Glob. Trade, Inv. and Fin. Landscape*, OECD BUS. &

Thus, ASEAN nations without any claims to the South China Sea see little advantage in antagonizing China by agreeing to a Code of Conduct that could strain ties with their primary investor and creditor.²⁶⁹ Similarly, countries with claims in the contested waters—Indonesia, Malaysia, Brunei, and Vietnam—view their delicate positions between Beijing and Washington as picking the lesser of two evils.²⁷⁰ While sharing a distaste for China’s military encroachment and disagreeing with its interpretation of UNCLOS, most ASEAN claimants also distrust U.S. intentions—given its long history of colonialism and interference in domestic political affairs.²⁷¹ The abandonment of South Vietnam by the United States and concerns of being trapped in a similar situation further compound these sentiments among regional claimants.²⁷²

In recent years, the Chinese government and its state-owned entities have issued voluminous low-interest loans and no-strings-attached investments to ASEAN members—including Cambodia, Laos, Singapore, Indonesia, and Vietnam—as part of the Belt and Road Initiative.²⁷³ Despite Western critiques dubbing it as Beijing’s “debt-trap diplomacy,”²⁷⁴ China’s economic incentives often significantly outweigh some recipients’ urges to directly confront China’s maritime actions.²⁷⁵ Some recipients even consider resistance to China’s ascent to power as futile, leading them to believe it unwise to contradict the primary leader in the Indo-Pacific.²⁷⁶ As such, the split in the interpretation of the 2016 South China Sea Award reveals that no claimant is willing to challenge China’s nine-dash line and its intrusion upon the established rules-based order.²⁷⁷ As China solidifies its control over the disputed territories, many ASEAN nations prioritize strengthening their trade relationships with Beijing rather than assert their maritime sovereignty entitlements under UNCLOS.

FIN. OUTLOOK (2018) [hereinafter OECD], https://read.oecd-ilibrary.org/finance-and-investment/oecd-business-and-finance-outlook-2018/the-belt-and-road-initiative-in-the-global-trade-investment-and-finance-landscape_bus_fin_out-2018-6-en#page3 [<https://perma.cc/54QD-LRZJ>] (discussing China’s investments to ASEAN bloc under the BRI Initiative).

269. OECD, *supra* note 268.

270. *Id.*

271. See generally Becker, *supra* note 245.

272. *Id.*

273. OECD, *supra* note 268.

274. See *China is Exerting Greater Power Across Asia—and Beyond*, ECONOMIST (Oct. 10, 2022), <https://www.economist.com/special-report/2022/10/10/china-is-exerting-greater-power-across-asia-and-beyond> [<https://perma.cc/W6KQ-BQ29>] (explaining how Beijing uses political and economic leverage to coerce debtors into following its rules).

275. *Id.*

276. *Id.*

277. Asia Maritime Transparency Initiative, *supra* note 123 (outlining the division of interpretation of the 2016 arbitral award).

Given the discrepancy in trade surpluses and the potential for foreign direct investments between the United States and China,²⁷⁸ these claimants have minimal incentives to voice their frustrations.

Recognizing its waning influence in the Indo-Pacific, the Biden administration has re-engaged diplomatically—through bilateral and multilateral relationships—with ASEAN to regain trust, reflecting the strategic importance of the South China Sea to U.S. interests.²⁷⁹ Despite the global trend toward deglobalization post-COVID-19, the United States sees Southeast Asia as a critical manufacturing hub and seeks to protect international commerce and the sovereignty of trading partners to mitigate domestic inflation.²⁸⁰

The sudden Russian invasion of Ukraine has further motivated Washington to prevent a similar scenario in Taiwan—a long-term pro-democratic ally that encompasses most of the market share in the semiconductor industry.²⁸¹ Without ASEAN’s collaboration, U.S. efforts to counter China’s influence may falter, jeopardizing the enforcement of international principles under UNCLOS and the rulings of the Award.²⁸²

Several possible outcomes exist for the South China Sea territorial dispute. First, the South China Sea dispute could lead to China reshaping the maritime order, potentially rendering UNCLOS irrelevant and the Award

278. See ASEAN, ASEAN INV. REP. 2022: PANDEMIC RECOVERY & INV. FACILITATION (2022) (comparing the stark contrast between U.S. and China economic relations with ASEAN members’ economies).

279. See Katie Rogers & Jim Tankersley, *In His 3rd Summit with Se. Asian Leaders, Biden Bets on Face Time*, N.Y. TIMES (Nov. 12, 2022), <https://www.nytimes.com/2022/11/12/us/politics/biden-asean-summit.html> [<https://perma.cc/2HHG-T7BX>] (examining the implications of Biden’s trip to Phnom Penh in November 2022); ASEAN-U.S. Special Summit 2022 Joint Vision Statement, *supra* note 249 (detailing the strategic objectives for the Indo-Pacific region between the U.S. and ASEAN nations); Joint Leaders’ Statement: Elevating United States-Vietnam Relations to a Comprehensive Strategic Partnership, WHITE HOUSE (Sept. 11, 2023), (indicating a closer relationship between the United States and Vietnam).

280. See ASEAN-U.S. Special Summit 2022 Joint Vision Statement, *supra* note 249 (stressing the importance of the South China Sea stability and highlighting the plans discussed by the parties to achieve this objective).

281. *National Security Strategy*, *supra* note 29, at 24 (“We have an abiding interest in maintaining peace and stability across the Taiwan Strait, which is critical to regional and global security and prosperity and a matter of international concern and attention. We oppose any unilateral changes to the status quo from either side, and do not support Taiwan independence.”); *U.S. Relations With Taiwan: Fact Sheet*, *supra* note 209 (“Taiwan has become an important U.S. partner in trade and investment, health, semiconductor and other critical supply chains, investment screening, science and technology, education, and advancing democratic values.”).

282. *National Security Strategy*, *supra* note 29, at 38 (“For 75 years, the United States has maintained a strong and consistent defense presence and will continue to meaningfully contribute to the region’s stability and peace. We reaffirm our iron-clad commitments to our Indo-Pacific treaty allies—Australia, Japan, the Republic of Korea, the Philippines, and Thailand—and we will continue to modernize these alliances.”).

moot and establishing the nine-dash line as the de facto rule.²⁸³ A diminished capacity of the United States to intervene in the Taiwan Strait crisis or fulfill its treaty obligations with allies may prompt countries to reassess their defense strategies and foreign policies, resulting in a further change in the Indo-Pacific's security architecture. Consequently, many regional governments would naturally be inclined to sever their alliances with the United States to avoid backlash from China, thus, testing the integrity of UNCLOS globally.²⁸⁴ With this momentum, Beijing could continue contesting and revising other fundamental legal principles under the existing rules-based order, enabling greater Chinese influence in the region.²⁸⁵

The second scenario is the outbreak of war.²⁸⁶ While none of the stakeholders in the South China Sea desires a costly and bloody military conflict, the escalating tensions along the Taiwan Strait exhibit that such a situation is plausible. There may come a time when Chinese and American competing interests over the sovereignty of Taiwan or the South China Sea become irreconcilable, in which case, they will be forced to resolve their geopolitical conflict through warfare.²⁸⁷ Both sides have demonstrated in the past that they do not mind resorting to their military power to impose laws and coerce nations into following their preferred order.²⁸⁸ Given the recent intensification of the U.S. Freedom of Navigation operations within China's militarized zones, a simple miscalculation or misunderstanding could cause an all-out military confrontation—inevitably dragging in neighboring states.²⁸⁹

283. This outcome would allow Beijing to seize control of commercial trade routes, overflight rights, military navigations, natural resource explorations, and fishing activities. *See e.g.*, GREGORY B. POLING, ON DANGEROUS GROUND: AMERICA'S CENTURY IN THE SOUTH CHINA SEA, at 247–48 (2022) (outlining possible scenarios for the South China Sea dispute); *see generally* GRAHAM ALLISON, DESTINED FOR WAR: CAN AMERICA AND CHINA ESCAPE THE THUCYDIDE'S TRAP? (2017); *see also* Sakamoto, *supra* note 140; *see also* Goldenziel, *supra* note 145 (explaining the use of lawfares to advance China's maritime claims).

284. *See e.g.*, POLING, *supra* note 283, at 247 (evaluating the consequences of the first scenario).

285. *See generally* Caitlin Byrne, *supra* note 203.

286. POLING, *supra* note 283, at 247 (indicating the possibility of a military conflict); *see generally* ROBERT D. KAPLAN, ASIA'S CAULDRON: THE SOUTH CHINA SEA AND THE END OF A STABLE PACIFIC (2014).

287. *See National Security Strategy*, *supra* note 29, at 20 (“America will not hesitate to use force when necessary to defend our national interests. . . . The military will act urgently to sustain and strengthen deterrence, with the PRC as its pacing challenge.”).

288. *See* MELANIE W. SISSON, ET AL., MILITARY COERCION AND U.S. FOREIGN POL'Y: THE USE OF FORCE SHORT OF WAR (2020) (discussing the history of the U.S.'s use of military force to coerce states into adopting its preferred laws).

289. Karishma Vaswani, *China and the Philippines are on a Collision Course*, BLOOMBERG (Sept. 27, 2023), <https://www.bloomberg.com/opinion/articles/2023-09-28/china-and-the-philippines-are-on-a-collision-course-in-south-china-sea> [<https://perma.cc/S25W-4QE3>] (analyzing the risks of an all-out confrontation); Camille Elemia, *How a Decaying Warship Beached on a Tiny*

The third option is to seek compromise and cooperation among China, the United States, and ASEAN countries.²⁹⁰ Although UNCLOS serves this purpose, a revised Code of Conduct among relevant claimants could further establish clear boundaries and acceptable conduct for each nation to co-exist peacefully in the waterways. The South China Sea maritime dispute is such a complex and complicated issue that addressing all the parties' interests and rightful maritime claims may require an explicit set of regional legal principles. Through this option, all relevant parties would have the opportunity to present their legal rationale for their maritime assertions and find a common ground to incorporate their concerns into an explicit set of rules. Nonetheless, ASEAN claimants should keep in mind that the resolution of the South China Sea dispute must align with the will and interests of the Southeast Asian people. After all, the Southeast Asian claimants and their people will directly bear the consequences of any likely scenario. Therefore, incorporating "ASEAN Centrality" into the contemplated Code of Conduct would be a key factor in maintaining the independence and solidarity of smaller claimants against the demands of both Beijing and Washington.²⁹¹

IV. PROPOSED SOLUTIONS: A SAFE, STABLE, AND PROSPEROUS SOUTH CHINA SEA

This Part elucidates potential pathways toward achieving a harmonious and thriving maritime region amid the South China Sea disputes. First, Section IV.A explores how the United States and China can forge a collaborative approach to address their divergent perspectives on the legal interpretation of UNCLOS and the Award. Next, Section IV.B examines the ramifications that could transpire should the United States eventually

Shoal Provoked China's Ire, N.Y. TIMES (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/world/asia/philippines-sierra-madre-south-china-sea.html#> (indicating escalating tensions between the stakeholders); See Alastair Gale, *Chinese Jet Fighter Shadows U.S. Aircraft Over South China Sea*, WALL ST. J. (Feb. 24, 2023), <https://www.wsj.com/articles/chinese-jet-fighters-step-up-pressure-on-u-s-aircraft-over-south-china-sea-c2d1ac88> [<https://perma.cc/K49Z-L9CW>] (discussing aggressive engagements between the United States and China military jets); see also ALLISON, *supra* note 283, at 153 ("Although it will treat warfare as a last resort, should China conclude that long-term trend lines are no longer moving in its favor and that it is losing bargaining power, it could initiate a limited military conflict to teach an adversary a lesson.").

290. See POLING, *supra* note 283, at 248.

291. See *ASEAN Outlook on the Indo-Pacific*, ASEAN (June 23, 2019), https://asean.org/asean2020/wp-content/uploads/2021/01/ASEAN-Outlook-on-the-Indo-Pacific_FINAL_22062019.pdf [<https://perma.cc/8X7G-BG4E>] (indicating the common visions for the Indo-Pacific region); see Zhuoran Li, *What Does ASEAN Centrality Mean to China?*, DIPLOMAT (July 21, 2021), <https://the-diplomat.com/2022/06/what-does-asean-centrality-mean-to-china/> [<https://perma.cc/228B-6DDX>] (discussing the central themes of ASEAN centrality).

accept, approve, accede to, or ratify UNCLOS.²⁹² Finally, Section IV.C expounds upon the significance of the contemplated Code of Conduct in facilitating the resolution of the South China Sea dispute. By embarking on this comprehensive exploration, this Part aims to offer valuable insights that can contribute to the formulation of effective and sustainable solutions, thereby fostering a climate of enduring peace, harmony, and stability within this highly contentious and volatile maritime region.

A. Reconciliation

Addressing maritime tensions in the South China Sea may hinge on initiating high-level security dialogue between China and the United States, aimed at fostering long-term stability and peaceful coexistence.²⁹³ Despite the frail state of U.S.-China relations, both countries share some foundational interests.²⁹⁴ All relevant stakeholders aspire to avert a major military conflict in the South China Sea, keep commercial trade routes open, accessible, and orderly, and preserve the natural marine environment for future generations.²⁹⁵

To resolve differences in the legal interpretations of UNCLOS and the Award, the United States, China, and ASEAN claimants should articulate the specifics of their maritime and territorial claims, access control, and natural resources explorations. Ideally, an independent United Nations panel should be established to review, evaluate, and adjudicate each

292. To be a party to a treaty, a State must give its explicit consent to be bound by the treaty. This explicit consent generally is in the form of an instrument of ratification, acceptance, approval, or accession. The State submits this instrument to the appropriate authoritative body for that treaty. *See generally* UNCLOS, *supra* note 63, art. 305–10.

293. United States G7 Communiqué, *supra* note 25, at 44 (“We stand prepared to build constructive and stable relations with China, recognizing the importance of engaging candidly with and expressing our concerns directly to China. We act in our national interest. It is necessary to cooperate with China, given its role in the international community and the size of its economy, on global challenges as well as areas of common interest.”).

294. Remarks, Antony J. Blinken, *supra* note 33 (“We do not seek conflict with China or a new Cold War. We’re not trying to contain China. And in fact, the United States continues to have a comprehensive trade and investment relationship with China, as do most of our allies and partners. We are, however, resolutely for de-risking and diversifying, not decoupling.”).

295. United States G7 Communiqué, *supra* note 25, at 45 (“We call on China to engage with us’ A growing China that plays by international rules would be of global interest. We are not decoupling or turning inwards. At the same time, we recognize that economic resilience requires de-risking and diversifying.”); *see e.g.*, Susan Thornton, *Averting Conflict in the South China Sea: Steps to Restore Rules and Restraint*, in *THE FUTURE OF US POLICY TOWARD CHINA: RECOMMENDATIONS FOR THE BIDEN ADMINISTRATION*, BROOKINGS INST. 1 (Ryan Hass, Ryan McElveen & Robert D. Williams eds., 2020) (advocating for a high-level security dialogue between the U.S. and China to resolve issues in the maritime region).

claimant's legal positions, duly taking into consideration UNCLOS, China's nine-dash line, and the Award to clarify boundaries along their corresponding EEZ. For instance, the primary inflection point of contention between Beijing and Washington is the regulation of military vessels through territorial seas and EEZ. China advocates for prior notification and authorization from foreign vessels, while the United States perceives such protocols as unnecessary.²⁹⁶

In exchange for China's voluntary acceptance of the Freedom of Navigation principle and the demarcated EEZ prescribed by UNCLOS, the United States, and its regional allies could reciprocate by acknowledging limited maritime and geographical claims asserted by China, extending only to the Paracel Islands and no further. Moreover, Beijing and Washington ought to reach a consensus on incident management mechanisms and clarify the red lines by providing explicit definitions of unacceptable conduct within the waterways. If adopted, the IPMDA could then effectively monitor and report any instances of trespass or violations within these maritime zones to an independent judiciary panel for appropriate legal ramifications.²⁹⁷

This approach has its limitations as it may discount the perception of national interests from other regional governments and give rise to the view that China and the United States are exerting undue influence over the South China Sea. To avoid the narrative that the U.S. and China are indifferent about the rest of Southeast Asian claimants' maritime rights, the bilateral agreement between the two countries should also explicitly incorporate the recognition and acknowledgment of the lawful EEZ of ASEAN countries. A regional mechanism that all stakeholders can agree upon for the South China Sea could be modeled after the legal framework established by the Mekong River Agreement of 1995.²⁹⁸ For instance, Article 1 of that agreement binds Cambodia, Laos, Thailand, and Vietnam to "cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources" within the Mekong River Basin.²⁹⁹ Since the Mekong River Agreement also embodies the principles of Freedom of Navigation under Article 9, it would also serve as a valuable blueprint for all regional claimants in crafting a comparable cooperative agreement and guideline for the South

296. See Sakamoto, *supra* note 140.

297. See e.g., Sevastopulo & Inagaki, *supra* note 199.

298. See *generally Agreement on the Coop. for the Sustainable Dev. of the Mekong River Basin*, MEKONG RIVER COMM'N (Apr. 5, 1995).

299. See *id.* at 3.

China Sea.³⁰⁰ Ultimately, in resolving their differences, the United States and China should actively support regional cooperation among ASEAN countries and assist them in reasonably managing their respective waterways.³⁰¹ By shaping a regional rules-based order based on universally supported regulations, Beijing and Washington will reduce the likelihood of engaging in public condemnations, political retaliations, or military conflicts.

B. Ratification and Revision

To safeguard, preserve, and fortify the prevailing rules-based order in the Indo-Pacific region, it is imperative for the United States to ratify UNCLOS. The failure to do so has been a double-edged sword as it has undermined the U.S.'s position as an enforcer of the maritime principles under UNCLOS and has cast doubt on the validity of the Award. As long as the U.S. remains a non-official participant in the Convention, China will continue to highlight Washington's double standard and question its credibility, arguing that the U.S. is primarily interested in upholding its Freedom of the Sea principle rather than genuinely protecting the interests of its regional allies.³⁰² In fact, solely acknowledging UNCLOS as customary international norms proves inadequate given that customary international law lacks universal acceptance and is susceptible to change over time.³⁰³ The absence of United States' membership under UNCLOS also diminishes its influence in potential rule-making and amendment processes, and weakens bilateral relationships with its regional partners.³⁰⁴ ASEAN claimants will constantly question the United States'

300. *See id.* at 5.

301. *See* Joint U.S. and Philippines Statement, *supra* note 181 ("The leaders welcome cooperation with partners that share the United States' and the Philippines' commitment to international law and mutual respect, and in that spirit, they reaffirm their strong support for ASEAN centrality and the ASEAN Outlook on the Indo-Pacific.").

302. *See Chinas Commitment*, *supra* note 132 ("While refusing to ratify UNCLOS, the US always styles itself as an UNCLOS arbitrator and willfully takes the Convention out of context. It also seeks to impose its flawed interpretation of UNCLOS on the States Parties to the Convention. What it has done undermines the authority and integrity of UNCLOS and seriously disrupts the international rule of law at sea. . . . This is double standard at its worst."); *see* Lau & Chan, *supra* note 208 (condemning the United States' actions in the South China Sea as double standards); *see* Anya Wahal, *On International Treaties, the United States Refuses to Pay Ball*, COUNCIL ON FOREIGN REL. (Jan. 7, 2022), <https://www.cfr.org/blog/international-treaties-united-states-refuses-play-ball> [<https://perma.cc/4YWJ-G5MC>] (providing the dangerous consequences that the U.S. faces by not ratifying UNCLOS).

303. *See* Robert Delaney, *Why Won't the U.S., Wary of China's Ambitions in the South China Sea Join a UN Agreement on Ocean Rights?*, S. CHINA MORNING POST (Jan. 4, 2024), <https://www.scmp.com/news/china/article/3247072/why-wont-us-wary-chinas-ambitions-south-china-sea-join-un-agreement-ocean-rights> [<https://perma.cc/F64G-QT9U>] (examining the reasons for the United States to not acceding to UNCLOS).

304. *See e.g.*, POLING, *supra* note 283, at 253.

intentions in the waterways, seeking clarification on which laws the U.S. truly seeks to enforce when it lacks a legal standing to intervene under UNCLOS. In fact, the Russian government advances similar arguments, contending that the U.S. and its allies had no legal basis to directly intervene in the territorial dispute between Russia and Ukraine due to the latter's non-membership in NATO.³⁰⁵

By ratifying UNCLOS, the United States would codify its current position toward the Award, send a positive signal to the international community about its enduring commitment to protecting the rules-based order, and uphold the original spirit of the treaty.³⁰⁶ Moreover, becoming an official party to UNCLOS would grant the United States legal standing to directly participate in critical discussions relating to its interpretation and dispute management mechanisms, allowing it to intervene and defend the treaty's provisions as a full party. Therefore, the United States and its allies would possess a legitimate foundation to demand China's compliance with its legal obligations under UNCLOS and the Award.³⁰⁷ As doubts are dispelled, ASEAN countries would be more inclined to cooperate and strengthen their diplomatic ties with the U.S. in matters of security, economics, and geopolitics, fostering a more robust coalition in defending and advancing the principles of the treaty.³⁰⁸ Furthermore, as U.S. corporations are looking to diversify their supply chains to Southeast Asian countries, ratifying UNCLOS would benefit the United States economically by providing its domestic companies the legal certainty and stability, reducing the overall investment risk and cost.³⁰⁹ Accession to the treaty would also enable the United States to be a member of the International Seabed Authority.³¹⁰ This membership would grant the U.S. direct involvement in establishing and voting on policies concerning mineral-related operations in the international seabed region, especially as the global demand for critical minerals rises due to the transition to a green economy.³¹¹

305. See *Address by the President of the Russian Federation*, KREMLIN (Sept. 21, 2022), <http://en.kremlin.ru/events/president/news/69390> [<https://perma.cc/67BL-BD9F>] (stating that NATO has no legal basis to intervene in Ukraine).

306. See Nealie Deol, *How Ratifying UNCLOS Can Help the U.S. Counter China's Aggressive Activities and Unlawful Maritim Claims in the South China Sea*, BROWN POL. REV. (Apr. 26, 2022), <https://brownpoliticalreview.org/2022/04/ratify-unclos-to-counter-china/> [<https://perma.cc/7VRH-7SJX>] (discussing the possible political implications from the U.S. by ratifying UNCLOS).

307. See SHICUN WU ET AL., *supra* note 76, at 258–64 (2015) (proposing solutions for the territorial disputes in the South China Sea).

308. See *ASEAN-U.S. Special Summit 2022 Joint Vision Statement*, *supra* note 249.

309. See Delaney, *supra* note 303.

310. UNCLOS, *supra* note 63, art. 156–91.

311. See Delaney, *supra* note 303.

Nevertheless, the process of ratifying UNCLOS will encounter various arduous hurdles within a divided U.S. Congress.³¹² While the U.S. President signs treaties, the path to ratification necessitates approval from two-thirds of the Senate.³¹³ Opponents to ratification argue that since the U.S. is the preeminent international naval power and the global leader in curbing excessive maritime claims, it is unnecessary for Washington to ratify UNCLOS to protect its maritime rights.³¹⁴ Furthermore, opponents stress that even if the U.S. were to ratify UNCLOS, there is no unequivocal indication that China would suddenly reform its behavior or adhere to the provisions of the treaty.³¹⁵ Instead, membership in UNCLOS would expose the U.S. to potential international lawsuits, deprive it of the benefits of exempting royalties from oil and gas production on its extended continental shelf, and infringe upon its national sovereignty.³¹⁶

While the concerns voiced by opponents are well-founded, the U.S. can no longer tolerate China's advancement of the "hypocrisy" counterargument.³¹⁷ The alarming threats to the rules-based order and the persistent undermining of UNCLOS far outweigh the drawbacks highlighted by opponents. Thus far, the United States' failure to ratify UNCLOS has substantially benefited Beijing's interests. The lack of ratification erodes the trust of regional stakeholders in the U.S.'s long-term commitments, provides China with a loophole to discredit UNCLOS when it is not in its own best interest, and lessens the public perception of U.S. sincerity.³¹⁸

312. *Id.*

313. U.S. CONST. art. II, § 2, cl. 2.

314. See e.g., Steven Groves, *Should the U.S. Ratify the UN Convention on the Law of the Sea*, HERITAGE FOUND. (June 13, 2022), <https://www.heritage.org/global-politics/commentary/should-the-us-ratify-the-un-convention-the-law-the-sea> [<https://perma.cc/CQ8S-MXVY>] (discussing the reasons why the U.S. should not ratify the UNCLOS).

315. See Ted R. Bromund et al., *7 Reasons U.S. Should Not Ratify UN Convention on the Law of the Sea*, HERITAGE FOUND. (June 4, 2018), <https://www.heritage.org/global-politics/commentary/7-reasons-us-should-not-ratify-un-convention-the-law-the-sea> [<https://perma.cc/ZJ8H-YJAF>] (arguing that the U.S. should preserve its independence from UNCLOS principles).

316. See Groves, *supra* note 314.

317. See Rebecca Choong Wilkins et al., *U.S.-China Handshake Fails to Stem Fears of Conflict in Asia*, BLOOMBERG (June 4, 2023), <https://www.bloomberg.com/news/articles/2023-06-04/us-china-handshake-fails-to-stem-asia-s-fear-of-another-ukraine#> [<https://perma.cc/U3KT-3J8G>] (discussing China's accusations of the United States' double standards to international laws); see e.g., Alex Lo, *The U.S. Should Ratify UNCLOS or Shut Up*, S. CHINA MORNING POST (Sept. 14, 2022), <https://www.scmp.com/comment/opinion/article/3192479/us-should-ratify-unclos-or-shut> [<https://perma.cc/U9BR-5TL5>] (“[The] US has refused to ratify UNCLOS and so has no standing among disputants that have fully ratified the convention such as Malaysia, Indonesia, the Philippines and Vietnam. . . .” The US is attacking China for breaching UNCLOS to which it is not a party.”); see also Wahal, *supra* note 302.

318. See ASIA REP. NO. 315, *supra* note 213, at 30 (“That affirmation would put to rest the argument that Washington is hypocritically criticizing China for non-compliance with a treaty that

Assuming the U.S. does ratify UNCLOS, all 170 member states should then consider adding and amending provisions that specifically address legal issues concerning the contesting claimants, reflecting the current geopolitical landscape of the modern world. Particularly, given that UNCLOS and the Award remain silent on the question of sovereignty over the contested Spratly and Paracel islands,³¹⁹ China, the Philippines, Malaysia, Indonesia, Taiwan, and Vietnam continue to dispute the sovereignty of these islands.³²⁰ Hence, the parties of UNCLOS could engage in negotiations and agree to extend its scope to encompass the territorial questions, thereby enabling the settlement of sovereignty disputes through official, international courts of law rather than through public condemnation and military conflict. Consequently, international courts and arbitral tribunals would gain original jurisdiction under Annex VII to decide future claims regarding China's extensive land reclamation projects, ensuring that such claims are adjudicated in a neutral and fair forum rather than by Chinese domestic courts. The extension of UNCLOS's application would subsequently incentivize and encourage the regional claimants to bring similar claims against China's nine-dash line to international courts and to arbitral tribunals.

Considering that the Permanent Court of Arbitration has only decided and issued rulings in fourteen cases since UNCLOS came into force in 1994,³²¹ the initial "flood of claims" resulting from the expanded scope would establish significant and contemporary legal precedents for the State-to-State arbitration system. It would also further legitimize the rulings of the Award if similar claims are decided with analogous reasonings. America and ASEAN claimants could utilize future precedents from these potential cases to reinforce the rules-based order and enhance the credibility of UNCLOS's application in international law.³²² As each claimant's maritime and territorial claims are distinct and unique based on their respective geographies, ASEAN countries would then possess

it has not even ratified and make it more difficult for Beijing to deflect calls for its own compliance.").

319. The South China Sea Arbitration (Republic of Philippines v. People's Republic of China), Case No. 2013-19, Award, ¶¶ 165–68 (Perm. Ct. Arb. 2016).

320. See e.g., U.S. SEA LIMITS, *supra* note 157, at 29 (stating the ongoing territorial disputes among features in the South China Sea).

321. See e.g., *United Nations Convention on the Law of the Sea*, PERMANENT CT. OF ARB., <https://pca-cpa.org/en/services/arbitration-services/unclos/> [<https://perma.cc/7LZK-4XNF>] (detailing that the PCA has only issued rulings for fourteen cases under UNCLOS).

322. See ASIA REP. NO. 315, *supra* note 213, at 31 ("While U.S. ratification of the treaty would not necessarily shift China's [behavior] in the near term, it could help over the longer term. It would bolster the treaty regime, raising the reputational costs to China for flouting the law and making it more likely that an eventual resolution of the disputes can be achieved within its framework.").

greater authorities to support their legal arguments and build specific cases against China's claims over the islands. Consequently, each claimant would be encouraged to settle its disputes through the rule of law instead of by resorting to military force.

C. Consolidation

Even within a politically divided Congress, the introduction of the Taiwan Policy Act of 2022 (TPA) serves as evidence that the legislative and executive branches can find common ground on U.S. foreign policy in the Indo-Pacific region.³²³ The TPA, if enacted, would relinquish any lingering doubts about Washington's prior "strategic ambiguity," and definitively convey the United States' stance toward Taiwanese sovereignty.³²⁴

Therefore, it is advisable for the U.S. Congress to adopt a parallel declaration concerning the South China Sea disputes. Such a declaration would naturally reinforce the validity of the Award and provide legal authorization for the U.S. to act as the enforcer of UNCLOS. In light of heightening tensions, a small group from the Democratic Party has advocated the passage of legislation to ratify the treaty.³²⁵ This presents a rare opportunity for the legislative branch to draft, pass, and enact policies to address the maritime disputes in the region and clarify Washington's relationships with surrounding ASEAN claimants.

The proposed "South China Sea" Policy Act should explicitly outline the United States' long-term commitment to the region, such as (1) promoting the security of the waterways, (2) ensuring regional stability, and (3) deterring China's encroachment against other ASEAN claimants' EEZs.³²⁶ In addition, this suggested piece of legislation could also create a new security initiative that seeks to bolster the defense capabilities of the Philippine, Malaysian, Indonesian, and Vietnamese armed forces

323. See, e.g., Taiwan Policy Act of 2022, S. 4428, 117th Cong. § 2 (2022) (resulting from bipartisan support for the Taiwan Policy Act of 2022).

324. See Phelim Kine, *Biden Leaves No Doubt: 'Strategic Ambiguity' Toward Taiwan is Dead*, POLITICO (Sept. 19, 2022), <https://www.politico.com/news/2022/09/19/biden-leaves-no-doubt-strategic-ambiguity-toward-taiwan-is-dead-00057658> [<https://perma.cc/E52R-WUZ9>] (indicating the change of U.S. strategic objectives toward the sovereignty of Taiwan).

325. See KEATING-BITONTI, *supra* note 80, at 4 (providing that in the 117th and 118th Congress, some Members have expressed an interest in U.S. accession to UNCLOS, and called upon the U.S. Senate to ratify the Convention); see also Deol, *supra* note 306 ("A newfound push by Democratic members of Congress to ratify UNCLOS presents a pivotal opportunity for the United States to bolster its opposition to the PRC's spurious maritime claims in the South China Sea.").

326. South China Sea and East China Sea Sanctions Act of 2023, S. 591, 118th Cong. § 1 (2023) (providing the details of the proposed the South China Sea and East China Sea Sanctions Act of 2023).

through generous security assistance packages.³²⁷ It could also specifically address how the United States intends to bolster the participation and integration of ASEAN countries in international organizations and multilateral trade agreements. For instance, strengthening trade linkages and swiftly increasing U.S. foreign direct investment within Southeast Asia would naturally offset the economic leverage that China currently has over these countries.³²⁸ In line with these objectives, the introduction of the Indo-Pacific Economic Framework for Prosperity (IPEF) in May 2022 signifies an initial stride in the right trajectory for the United States to support regional partners in cultivating their economic and political independence from China's coercion.³²⁹ This framework provides a platform for cultivating mutually beneficial cooperation among key stakeholders. It establishes four core pillars that encompass various crucial aspects, namely: (1) Connected Economy, (2) Resilient Supply Chains, (3) Clean Energy, Decarbonization, and Infrastructure, and (4) Tax and Anti-Corruption.³³⁰ These principles serve as a foundational framework that Congress could further refine and adopt in this proposed legislation, thereby promoting harmonious engagement within the South China Sea region.³³¹ Moreover, this envisaged Policy Act could provide concrete steps the U.S. would take in countering China's nine-dash claim and promoting cross-cultural fellowship programs between the parties.³³² As a result, robust security alliances, cultural exchanges, and trade partnerships with the regional claimants are the United States' most important

327. See STRATEGY OF THE UNITED STATES, *supra* note 251, at 14–15 (highlighting the Department of Defense's strategies and objectives in the Indo-Pacific region).

328. See Lingling Wei, *China Reins In its Belt and Road Program, \$1 Trillion Later*, WALL ST. J. (Sept. 26, 2022), <https://www.wsj.com/articles/china-belt-road-debt-11663961638> [<https://perma.cc/3F9N-ULMC>] (discussing the impact of China's Belt and Road Initiative upon the debtors); see also Joint U.S. and Philippines Statement, *supra* note 181 (providing various trade partnership proposals between the Philippines and the United States).

329. *Fact Sheet: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity*, WHITE HOUSE (May 23, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/> [<https://perma.cc/P8DN-U57Y>] (providing the details of the IPEF framework).

330. *Id.*

331. See Alan Beattie, *The U.S. Trade Pledge to the Indo-Pacific is Empty*, FIN. TIMES (June 7, 2023), <https://www.ft.com/content/42a87796-8228-445b-8ad5-63a5c35d5144> [<https://perma.cc/VHV7-FRUH>] (indicating the shortcomings of the IPEF).

332. See Secretary Antony J. Blinken with Nguyen My Linh of VTC1 and VietnamNet, U.S. DEP'T. OF STATE (Apr. 16, 2023), <https://www.state.gov/secretary-antony-j-blinken-with-nguyen-my-linh-of-vtc1-and-vietnamnet/> [<https://perma.cc/SQE9-LR6V>] [hereinafter *Blinken Interview With Nguyen*] (proposing the potential for educational exchange programs for Vietnamese students in the United States).

strategic asset and an indispensable element contributing to peace and stability in the South China Sea.³³³

Nevertheless, in the current polarized political climate, the prospects for U.S. ratification of UNCLOS or the passage of a bill concerning the South China Sea remain uncertain and could be prolonged indefinitely. Until Washington resolves these internal matters, it is equally crucial for ASEAN claimants to continue negotiations and agree on common principles governing appropriate conduct in the maritime region.³³⁴ Ultimately, the South China Sea should be governed and regulated in alignment with the interests of the people of the surrounding countries, including Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. In line with the objectives of “ASEAN Centrality,” member states should strive to maintain autonomy against both Chinese and U.S. interests, as dependence on either nation could result in legal concessions of their lawful maritime entitlements.³³⁵

After decades of unsuccessful attempts and various disagreements,³³⁶ China and ASEAN members are currently engaged in negotiations of a Code of Conduct for the South China Sea.³³⁷ The envisioned ASEAN

333. See Remarks, Antony J. Blinken, *supra* note 33 (detailing budget proposals by Secretary Blinken to compete militarily and economically with China in the Indo-Pacific region).

334. See *Chairman’s Statement: The ASEAN Post Ministerial Conference (PMC) 10+1 Sessions with the Dialogue Partners and Trilateral Meetings*, ASEAN (July 13, 2023), <https://asean.org/wp-content/uploads/2023/07/FINAL-Chairmans-Statement-PMC-101-with-DPs-and-Trilateral-.pdf> [<https://perma.cc/2D5Z-X54J>] (noting the progress of the COC negotiation); *Blinken Interview with Nguyen*, *supra* note 332 (“We’re also working together to support, for example, work being done in ASEAN to develop a code of conduct consistent with international law so that all countries play by the same rules.”); see also *China Does Not Have it All its Way in the South China Sea*, *ECONOMIST* (Jan. 15, 2022), <https://www.economist.com/asia/2022/01/15/china-does-not-have-it-all-its-way-in-the-south-china-sea> [<https://perma.cc/EL8A-YL76>] (“For years China dragged its feet on agreeing with ASEAN a code of conduct on the South China Sea, a principle agreed on 20 years ago in order to promote co-operation and reduce tensions.”); *Regional Club Tests*, *supra* note 41 (noting the division within ASEAN members in adhering to the principle of ASEAN Centrality).

335. See *ASEAN Outlook on the Indo-Pacific*, *supra* note 291 (discussing ASEAN members’ objectives and proposing solutions for the South China Sea); see also Duong, *supra* note 42 (“A strong ASEAN is the only way for a group of relatively small countries to come together as a mediating power in the world. Accordingly, its centrality should be reflected in more ASEAN-led regional forums to promote regional cohesion, economic integration, and crucially, greater international influence.”).

336. See Bill Hayton, *After 25 Years, There’s Still No South China Sea Code of Conduct*, *FOREIGN POL’Y* (July 21, 2021), <https://foreignpolicy.com/2021/07/21/south-china-sea-code-of-conduct-asean/> [<https://perma.cc/CB5G-C8UK>] (“It has been one of the diplomatic world’s longest gestations. . . . Twenty-five years later, the code is only a little closer to being delivered.”).

337. See Dewey Sim, *Beijing, ASEAN to Start on Third Reading of South China Sea Code of Conduct*, *S. CHINA MORNING POST* (Oct. 27, 2023), <https://www.scmp.com/news/china/diplomacy/article/3239398/beijing-asean-start-third-reading-south-china-sea-code-conduct> [<https://perma.cc/83GX-Y9EK>] (“Beijing and the Association of South East Asian Nations have agreed to start on the third reading of a long-delayed code of conduct for the South China Sea amid rising tensions in the disputed waterway.”).

Code of Conduct would serve as a gap-filler for any ambiguities and territorial questions not currently covered under UNCLOS. Thus, this represents a vital opportunity for all relevant claimants to determine the Code of Conduct's geographical scope, legal status, dispute resolution, and enforcement mechanisms.

Stability in the waterways can undoubtedly be achieved if policymakers are willing to support "ASEAN Centrality" in managing potential disputes between major powers.³³⁸ A united ASEAN would foster regional cohesion, economic integration, and greater international influence. However, ASEAN countries must exercise caution when considering China's one-sided terms, and they are advised to incorporate all established principles under UNCLOS while preserving the interests of external stakeholders.³³⁹ In addition to UNCLOS, the Code of Conduct ought to incorporate other foundational legal frameworks that are universally adopted—United Nations Charter, Treaty of Amity and Cooperation in Southeast Asia, and Five Principles of Peaceful Coexistence.³⁴⁰ The Code of Conduct must also include the respect for the Freedom of Navigation principle, the commitment to resolving disputes peacefully, and the condemnation concerning the use of force or coercion. Most importantly, the Code of Conduct must be legally binding among all regional and extra-regional countries, and its provisions should specifically provide robust legal mechanisms for handling compliance and enforcing unilateral violations. To do so, the Code of Conduct must institute effective legal consequences and impose strict penalties, deterring countries from perceiving the benefits of breaching its provisions as outweighing the associated costs. Finally, by maintaining neutrality in regard to both Chinese and U.S. influence, the Code of Conduct would inevitably gain broad recognition and acceptance from the international legal community.³⁴¹ Amid the heightened confrontations, the completion of the Code

338. See ASIA REP. NO. 315, *supra* note 213, at 34 ("Washington should accordingly support the negotiations from a distance by encouraging ASEAN members, and especially claimant states, to be more proactive in proposing their own visions of how the South China Sea should be collectively managed").

339. See Hayton, *supra* note 336 (highlighting the concerns that the U.S. and its allies have for the Code of Conduct given that China has the leverage to coerce the ASEAN members to agree to its one-sided terms).

340. See generally U.N. Charter; Treaty of Amity and Cooperation in Southeast Asia, July 15, 1976; LUIS ESLAVA ET AL., BANDUNG, GLOBAL HISTORY AND INTERNATIONAL LAW: CRITICAL PASTS AND PENDING FUTURES (2017).

341. See Blinken Interview With Nguyen, *supra* note 332 ("[A] code of conduct that every country adheres to, that is consistent with international law, I think could be a good way of strengthening and ensuring peace, stability, and especially the freedom of the seas which is so vital to Vietnam and vital to the United States.").

of Conduct would be a significant stride toward security and peace within the Indo-Pacific region.

CONCLUSION

The future of the Indo-Pacific rules-based order stands at a critical juncture, where the destinies of Southeast Asian nations and the region's stability hang precariously in the balance. The intricate interplay of factors hinges upon the unique political landscapes of each ASEAN claimant, the complex web of their economic entanglements with China and the United States, and the depth of their commitments to existing and prospective bilateral and multilateral agreements. To mitigate the specter of escalating tensions and avert the looming threat of military conflict, it is incumbent upon the United States and China to engage in sustained and substantive security dialogues, tirelessly striving to reconcile their divergent legal interpretations of UNCLOS and the Award. In this context, the ultimate ratification of UNCLOS by the United States assumes paramount importance. The proposed course of action would serve as an unequivocal testament of Washington's enduring dedication to upholding the Indo-Pacific rules-based order, thus reaffirming its unwavering stance on preserving the stability and principles that have underpinned the region for decades. The ramifications of such ratification would solidify the United States' position as the primary and credible enforcer of international law, dispelling any lingering doubts and cynicism surrounding its intentions.

However, while awaiting the realization of U.S. ratification of UNCLOS, time remains of the essence. It becomes imperative for the ten ASEAN nations to persevere in their negotiations and forge ahead with the long-overdue Code of Conduct—a vital instrument for governing interactions in the South China Sea. Through this collective endeavor, ASEAN claimants can reclaim their independence and shape their own fates while actively promoting the principles of “ASEAN Centrality.” By doing so, they can chart a path that transcends the overwhelming dominance of external influences from the two superpowers and steadfastly safeguards their rightful interests. Embracing these imperatives, ASEAN countries can ardently usher in an era of stability, security, and peace—a legacy that future generations will inherit with gratitude and hope.