

# US-China Competition in the South China Sea and International Law

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## Abstract

*The conflict in the South China Sea (SCS) is a complex imbroglio, spanning several territorial and maritime claims and involving two major island groups, the Paracels and the Spratlys. It has become a major source of geopolitical competition between the United States and China.*

*The overall objective of this study is to understand China's policy of land reclamation and its assertive behaviour in the South China Sea, which lies between the western Pacific and the Indian Ocean. Over half of global commerce passes through these waterways, which host a great deal of marine life and hydrocarbon deposits. China's landfilling and island-building strategy in the South China Sea is motivated by its goal of controlling all these riches as well as the routes through the SCS. This would raise China to the pinnacle of world power status, thus allowing it to threaten the dominance of the United States. The study also examines China's modernization plans and the United States' quest for supremacy through the lens of realists. While using the qualitative method of analysis, the study examines China's Nine-Dash Line claims and Exclusive Economic Zones (EEZs), UNCLOS, and US-China divergence over international law considerations, and how tensions in the South China Sea can be reduced.*

**Keywords:** US, China, competition, South China Sea, UNCLOS

## Introduction

The politics of the Asia-Pacific region is currently at centre stage in global politics due to the growing Sino-US rivalry in the South China Sea within the overarching contest among great powers. China's expansionist tactics and the territorial disputes in the South China Sea (SCS) in the last two decades have sparked widespread concerns. Geographically, the region has significance as more than 80 per cent of the petroleum products destined for Japan, Taiwan, and South Korea are transported through the SCS. US air force and naval aircraft perform routine Freedom of Navigation (FON) operations within the SCS to enforce international law

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in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). The Chinese government also conducts FON activities in this airspace and waters in keeping with its claim over the nine-dash line. Concerning China's breach of UNCLOS, including frequent harassment of western boats, the United States pursues international law based on customary international law because the US Senate did not approve UNCLOS in 1994. In light of the tensions between the US and China in the South China Sea, the United States is regularly urged by its allies and domestic stakeholders to ratify the 1994 agreement to UNCLOS to boost its credibility among allies in the region and put more pressure on China by applicable standards. Though the United States' military FON operations comply with international law, UNCLOS approval is mandatory.

This paper explores the possible answers to the following questions:

- (1) Why China's rise necessitates US efforts to contain and encircle it through lending a hand to strategic partners and allies in the South China Sea.
- (2) Why the South China Sea dispute is so complex.
- (3) What US-China international law considerations are regarding the South China Sea.

The paper has been divided into five sections:

- (1) Statement of the problem.
- (2) Theoretical framework.
- (3) South China Sea Security conundrum.
- (4) Power competition in the South China Sea Strait.
- (5) US-China international law considerations/UNCLOS, and, finally, Conclusion.

### **Statement of the problem**

China has become a major player on the global stage in the last decade.<sup>1</sup> Its rapid military modernization, economic, and political control in East Asia has triggered security concerns.<sup>2</sup> The territory China claims in the

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<sup>1</sup> Christopher Layne, 'This Time It's Real: The End of Unipolarity and the Pax Americana,' *International Studies Quarterly*, 2012.doi: 10.1 111 Vol. 56, No. 1 , pp. 203-213.

<sup>2</sup> Michael D. Swaine, 'Perceptions of an Assertive China,' *China Leadership Monitor*, No. 32 (May2010), p. 19,

South China Sea has also been claimed by other nations, such as the Philippines, Vietnam, Taiwan, Brunei, and Malaysia. The South China Sea is dotted with reefs, islands, and shoals, and the importance of the area is both geographical and political. For along time, China has been claiming its right to full sovereignty over the South China Sea.<sup>3</sup> Its claim is covered by the Nine-Dash Line, also known as the U-shaped Line.<sup>4</sup> China has strengthened its hold on the territory by the construction of bunkers and artificial islands.<sup>5</sup> Its historic claims in the South China Sea do not align with international law as established by UNCLOS.<sup>6</sup> This has become the source of serious contention between the US and China and other claimants in the South China Sea.

### Theoretical/conceptual framework

The theory of offensive realism, which has both aggressive and rational roles for its practitioners, is the primary theoretical framework for this research. Neorealists see conflict as the inevitable result of structural circumstances: international anarchy and power distribution. The offensive realist theory addresses the issue of attaining core national interests that might result in confrontation, but which serve the purposes of power play.<sup>7</sup> They place the prevalent peace and stability at stake and encourage dominance and hegemony in economic, military, and political affairs. The motivation for preparedness for any possible war is usually the outcome of offensive realism, leaving no room for compromise over self-interest and with minimal regard for international political norms and ethics.<sup>8</sup>

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<https://www.hoover.org/sites/default/files/uploads/documents/CLM32MS.pdf>. 2011.

<sup>3</sup> M. Taylor Fravel, 'China's Strategy in the South China Sea,' *Contemporary South Asia*, 2011, 33 (3), p. 292, <https://doi.org/10.1355/cs33-3b>

<sup>4</sup> Michael McDevitt, 'The South China Sea and US Policy Options,' *American Foreign Policy Interests*, 2013, 35 (4): pp. 175–187, <https://doi.org/10.1080/10803920.2013.817923>

<sup>5</sup> Michael D. Swaine and M. Taylor Fravel, 'China's Assertive Behavior—Part Two: The Maritime Periphery,' *China Leadership Monitor*, 2011, No. 35 (September), p. 29.

<https://taylorfravel.com/documents/research/fravel.2011.CLM.maritime.periphery.pdf>.

<sup>6</sup> *Ibid.*, p. 9.

<sup>7</sup> Gilbert Rozman, *US Leadership, History, and Bilateral Relations in Northeast Asia* (Cambridge: Cambridge University Press, 2011), p. 79.

<sup>8</sup> R. Harrison Wagner, *War and the State* (Ann Arbor: University of Michigan Press, 2007), p. 49.

The offensive-realist theoretical framework stresses the effects of power struggles increasingly contributing to armed struggle, extended alignments, challenges, and threats, and the breaking out of conflicts and wars. Traditional offensive realism emphasizes conflict as part of the international relations system; the anarchic world holds the possibility of the occurrence of inter-state conflicts. In international relations, conflicts are the outcome of value-based foreign policies, where every state amasses power at the expense of other states.<sup>9</sup> In the South China Sea conflict, realists believe that China's strategy in the region is based primarily on power dynamics, and that its actions in the region tend towards offensive realist understandings of strategy.

Offensive realist features, such as power maximization, pre-emptive strikes, and the unreliability of international institutions serve as the basis of US-China competition in the South China Sea. China believes in the accumulation of power, military modernization, and balancing, while being assertive in its territorial claims in the South China Sea, about which it is increasingly vocal. These claims are a potential for proactive actions to secure its strategic interests. China is skeptical of Western-led institutions, such as the UN, and prefers bilateral or regional arrangements. The presence of the People's Liberation Army Navy (PLAN) in the South China Sea as part of an inevitable buildup in Chinese military capacity is in line with its offensive realist designs. Island building, the navy's new Liaoning aircraft carrier, increased naval patrols, planting of Chinese flags in remote parts of the SCS, and arrests of foreign fishermen all serve the purpose of Chinese expansion and collection of security resources so that Beijing can one day achieve regional hegemony.<sup>10</sup> The PRC is bound to clash with the United States on its way to great power status; thus, the most important strategic function of the South China Sea for Beijing's offensive realist policy is power projection. Control of the SCS would allow China to push its operational ability deep into the Asia-Pacific and past the first chain of archipelagos, an important step in securing hegemony.

Confronted with the anarchic reality of the international political discourse, the United States has reasons for keenly following the offensive realist device through the formation of close economic, political, strategic, and diplomatic ties with the countries of the region. According to offensive realists, a sufficient incentive for the anarchic system is the absence of current established powers, with only revisionist powers in

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<sup>9</sup> Ibid., p. 17.

<sup>10</sup> Ibid., p. 34.

existence.<sup>11</sup> The US is maintaining its global primacy through alliances, military presence, economic inter-dependence, drone strikes, preemptive cyberattacks, and interventions based on potential threats. It has made selective engagement with institutions, with an emphasis on alliances and bilateral power dynamics. The level of extending economic amalgamation between the US and China serves to limit US behaviour in the South China Sea. The factors for China's economic rise and its growing military power, and the shifting dynamics of China's foreign policy are some directly dependent variables in the competing policies of the US and China to contain each other in South China Sea.

### **South China Sea security conundrum**

Insecurities among several Southeast Asian countries have been sparked by China's continued economic and military expansion, resulting in a security rivalry in the region.<sup>12</sup> Each country has aggressive military capabilities, making them all a threat to each other's existence.<sup>13</sup> Moreover, there is no transnational body within the international system that can act as a barrier to limit China in the case of an emergency. The world of self-help compels states to enhance their skills for survival, creating the security dilemma of a new weapons race. No matter how good a state's intentions are, other governments will respond to a perceived threat by increasing their security measures.<sup>14</sup> According to academic literature, Chinese assertiveness and violence dominated the situation in the South China Sea during 2009 and 2010. In the ongoing conflict over the SCS, China has made several moves to assert its territorial claims. Consequently, tensions have arisen with the United States, Vietnam, and the Philippines. Vietnam's installation of an oil rig in its Exclusive Economic Zone (EEZ) in 2014 is one instance of its assertive behaviour in the water body.

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<sup>11</sup> Michael Cox, *From the End of the Cold War to a New Global Era? In The Globalization of World Politics: An Introduction to International Relations*, edited by John Baylis, Steve Smith, and Patricia Owens (Oxford and New York: Oxford University Press, seventh edition, 2017), pp.68-82.

<sup>12</sup> Lui Feng, 'China's Security Strategy towards East Asia,' *The Chinese Journal of International Politics*(2016) 9 (2): pp. 151-179, <https://doi.org/10.1093/cjip/pow003>

<sup>13</sup> John J. Mearsheimer, 'The Gathering Storm: China's Challenge to US Power in Asia,' *The Chinese Journal of International Politics*,3 (4): pp. 381-396, <https://doi.org/10.1093/cjip/poq016>

<sup>14</sup> Shiping Tang, 'The Security Dilemma: A Conceptual Analysis,' *Security Studies*,18 (3): pp. 587-623, <https://doi.org/10.1080/09636410903133050>

China's historical marine vulnerability is a driving factor in the country's growth and military modernization. China has always prioritized the defence of its porous borders, which have been a prime target for external aggressors throughout history. The Century of Humiliation, covering the middle of the 19th century to the 20th century, is responsible for China's present status in global relations.<sup>15</sup> Thus, China perceives the SCS as a marine security threat. Its rapid military upgrading and land reclamations in the SCS are two visible signs of the underlying worries.<sup>16</sup>

### **Maritime territorial disputes and land reclamations**

China is involved in various maritime and territorial disputes in the SCS. The Paracel Islands are claimed by China and Vietnam, but China occupies them; China, Vietnam, Taiwan, Philippines, Malaysia, and Brunei make claims to the Spratly islands; and China controls the Scarborough Shoal since 2012, but it is also claimed by the Philippines and Taiwan.<sup>17</sup>

Land reclamation and the construction of facilities are tools China is utilizing to increase its influence in the area. China is trying to challenge the status quo in the disputed seas by utilizing man-made islands for military installations to control the region with its anti-ship and anti-missile systems, an action consistent with an aggressive and offensive realist approach. The other claimants to the South China Sea have been forced to boost their capabilities in reaction to China's rising military might, either by fortifying their territory or increasing their naval forces. This further aggravates the security dilemma in which one nation's efforts to defend itself make other nations feel insecure.<sup>18</sup>

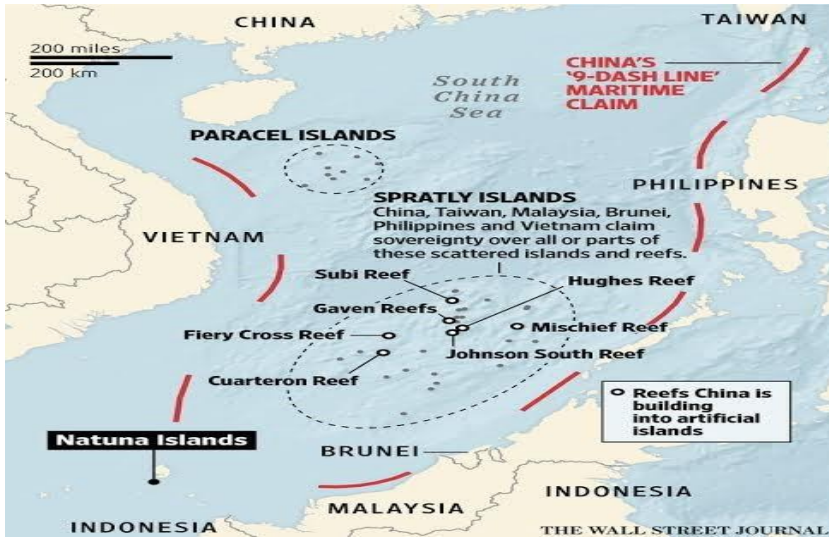
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<sup>15</sup> Sean M. Lynn-Jones, 'Realism and America's Rise: A Review Essay,' *International Security* 1998), 23 (2), pp. 157-182, <https://doi.org/10.1162/isec.23.2.157>

<sup>16</sup> Andrew Scobell, 'China's Evolving Civil-Military Relations: Creeping Guojiahua,' *Armed Forces & Society*, 31 (2): pp 227-244, <https://doi.org/10.1177/0095327X0503100204>

<sup>17</sup> 'US-China Strategic Competition in South and East China Seas: Background and Issues for Congress,' *Congressional Research Service (CRS)*, updated 26 January 2022.

<sup>18</sup> Lidya Christin Sinaga, 'China's Assertive Foreign Policy in South China Sea Under XI Jinping: Its Impact on United States' and Australian Foreign Policy,' *Journal of ASEAN Studies*, 3 (2), pp. 133-149. doi:10.21512/jas.v3i2.770



Source: <https://www.nationsonline.org/oneworld/map/South-China-Sea-political-map.htm>

### Nine-Dash Line and Exclusive Economic Zone (Conflict Zone)

China's claims over the Nine-Dash Line encompass territorial disputes in the Spratly Islands, the Paracel Islands, and the Scarborough Shoal. Since 2014, China has been strengthening its claim by constructing and developing artificial infrastructure by dredging in these lands. According to UNCLOS provisions, building artificial islands to justify a country's claims in the Nine-Dash Line is unlawful.<sup>19</sup> UNCLOS says that states have a 'sovereign right' to resources within 200 nautical miles of their coastal lines, an area termed an Exclusive Economic Zone (EEZ). According to UNCLOS, any state can sail through an EEZ, but only the claimant state is legally allowed to utilize its resources. Through the construction of artificial islands, China supports its claim for control of the Nine-Dash Line (NDL). Claiming that the entirety of the NDL is within China's EEZ allows China to gather a huge amount of hydrocarbon resources to boost its economy and stability. The international community has criticized China for its island-building in the South China Sea; as US Secretary of Defence Ashton Carter said<sup>20</sup> when the US condemned China for island building that it was 'out of step' with international rules and norms. Artificial islands in the South China Sea will help China to assert control over an EEZ within the NDL and

<sup>19</sup> 'US-China Strategic Competition in South and East China Seas,' op. cit.

<sup>20</sup> R. K. Stewart, 'Strategic Puzzle in the South China Sea: Perception, Power, and Money: Chinese Plans for Hegemony?'

serve economic purposes, and power projection far beyond China's coast and into the first island chain. But the NDL is disputed by other nations, including the Philippines, which has a mutual defence agreement with the United States and which Washington uses for forward basing in Asia.

Artificial island-building in defiance of international law indicates that China sees the physical possession of the SCS as a strategic imperative. Military structures on islands such as Woody Island, Fiery Cross Reef, and Scarborough Shoal, are used as bases for Chinese armed forces. Fiery Cross Reef has a dozen protective shelters with retractable roofs for missile launches. Bases in the South China Sea could allow the PLA to extend its operational range by up to 1,000 kilometres, according to the Council on Foreign Relations (2014).<sup>21</sup> Island bases in the SCS give the PLA the ability to deploy 'anti-access and area denial' (A2AD) tactics and to station weapons such as cruise missiles, surface-to-air missiles, and fighter jets across the sea even before it has developed fully operational carrier strike groups like those of the United States navy. Beijing has already declared an Air Defence Identification Zone (ADIZ) in the East China Sea, where it contests the sovereignty of the Diaoyu/Senkaku islands with Japan. The use of A2AD tactics could one day allow China to make a claim to the SCS before its navy is fully modernized or formidable.<sup>22</sup>

There is divergence in the views of China and the United States on whether international law gives a state the right to regulate foreign military activities in China's EEZ. China claims that UNCLOS assigns the right to regulate economic as well foreign military activities in EEZs. This dilemma seems to be at the epicentre of tension between the US and China to justify claims in the Nine-Dash Line. The United States has increased its Freedom of Navigation activities within the Nine-Dash Line, while challenging the Chinese claims. The United States has been firm in its enforcement of UNCLOS's regulations relating to Freedom of Navigation (FON) in the skies and waters outside of the Nine-Dash Line. US FON deployments are compatible with customary international law, despite the fact that it has never ratified UNCLOS. China believes that US FON operations are based on its policy of curbing China's global rise. The United States affirms that, under UNCLOS, coastal states enjoy the right to regulate economic activities in their EEZs only, and do not extend to foreign military activities beyond their 12 nautical miles territorial

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



waters. The United States claims that its military activities in the EEZs are aligned with international law.<sup>23</sup>

China places a high strategic value on the South China Sea, as it would boost Beijing's power. Because of the region's strategic location and the wealth of natural resources lying latent under the seas, the area is vital to the ongoing development of the global economy. One-third of the world's commercial shipping lanes pass through this region; if China conquers it, the United States will have a reduced footprint and fewer operating options. But China's power projection abilities are still maturing; it is not yet in a position to challenge the US presence in the South China Sea or try to shift the balance of power by outside balancing. To preserve its credibility as a strategic partner and as an ally in the area, the US needs unfettered access to the South China Sea. Its involvement in the area is critical, as the West's imperial age wanes and the United States tries to exert its influence over the global system.

### **Power competition in the South China Sea Strait**

The implications of China's rise area highly contested issue in international relations. China could either be a danger to the current global system or a benign rising power. Realists hold that states are influenced and constrained in their behaviour by the international system and its systemic incentives. The international community's attention is focused on the South China Sea owing to China's increasing assertiveness as a rising power. According to structural realists, the international system's intrinsic anarchy encourages states to expand their authority to achieve their goals.

#### *Accumulation of power*

According to offensive realists, China is trying to increase its power and influence, while accelerating its economic growth, by changing the current distribution of power. The international power balance is shifting, most notably through the economic strength, growing international status, and influence of emerging powers and developing countries. As western supremacy wanes, China becomes stronger because its gains exceed any potential losses. Due to growing tensions in the SCS, China is pursuing a domestic balancing policy that prioritizes military modernization and expansion of its naval capabilities.<sup>24</sup> Its military

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<sup>23</sup> 'The Dispute Over the South China Sea,' *World History/Current Issues*, Constitutional Rights Foundation, [www.crf-usa.org](http://www.crf-usa.org). winter(2018), pp. 3-7.

<sup>24</sup> Shicun Wu, *Solving Disputes for Regional Co-operation and Development in the South China Sea: A Chinese Perspective* (Witney, United Kingdom: Elsevier

spending has increased with the growth in the economy: it has been spending a significant amount on its military modernization. According to China's national military papers, defence spending in 2010 was 532.11 billionyuan (almost \$77 billion dollars), which has multiplied in recent years.<sup>25</sup> Besides, under-reporting of its defence budget serves China's geopolitical interests, since rising military expenditures in the area might sow unease among its neighbours.

Offensive realists believe that all governments are armed to varying degrees and that no one can know the true motivations of other nations. The Chinese leadership has said in multiple white papers that it will never pursue hegemony and will never adopt the path of military expansionism, regardless of how prosperous the country becomes. These white papers include 'China's National Defence in 2010', 'China's Peaceful Development', 'The Diverse Use of China's Armed Forces', and 'China's Military Strategy', all of which were released in 2011.<sup>26</sup> However, China is establishing its authority in the area to increase its relative strength, and its heightened military capabilities are being utilized to protect Chinese national objectives in the South China Sea.

China's nuclear might is also on the rise, as the country may have expansionist designs. It is conceivable that the United States and its allies may try to strike a balance in response to increased Chinese military activities and the questions about Beijing's intentions in the South China Sea.<sup>27</sup> China has a long way to go before it catches up with the United States. It would be hazardous for other states to align themselves with China and upset the existing power balance, which reduces the chances of China confronting the US in the near term via external balance. US interest in the area has been revived in part because of China's military changes and advancements. By upgrading its military capacity, China is shaking things up and is thus seen as a potential danger. To form a balanced coalition with the United States in the lead, the other claimants in the South China Sea should strengthen their capacities internally. However, China will maintain a favourable offence-defence balance because the Chinese government ceased publishing army data after 2015. The United States is worried about

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Science & Technology, 2013, <http://ebookcentral.proquest.com/lib/aalborguniv-ebooks/detail.action?docID=1581388>.

<sup>25</sup> Gungwu Wang, *The Nanhai Trade: Early Chinese Trade in the South China Sea*, Marshall Cavendish International (2003), p.142.

<sup>26</sup> Jihyun Kim, 'Possible Future of the Contest in the South China Sea: Table 1, *The Chinese Journal of International Politics* 9 (1), pp. 27-57, <https://doi.org/10.1093/cjip/pow001>

<sup>27</sup> Michael D. Swaine, op. cit.

Chinese moves and therefore is ready to counterbalance China's domestic balance measures, if necessary.<sup>28</sup>

### *Modernization*

With its growing military power, China will eventually be able to challenge US hegemony in the region by establishing Chinese sovereignty over the waters within its Exclusive Economic Zone (EEZ). However, the Chinese have long been accused of a lack of openness regarding their defence policy and military modernization in their white papers on national defence and military strategy.<sup>29</sup> It is evident that the Chinese government continues to emphasize building its army's capability for winning; it is protecting its sovereignty and territorial interests, while limiting information and communication technologies. Uncertainty over how to resolve the security issue, along with the United States' sustained presence and regional influence are major factors that link these problems. The capacity to project force is crucial, given the nautical context of the dispute. As a result, the current military capabilities within the South China Sea determine the potential for greater power projection. Increasing one's sense of safety will only frighten other states. Because of China's belligerence, the littoral states have had to beef up their military spending and naval forces to maintain their presence in the region. Particularly important is the fact that China's attitude towards the other claimants in the South China Sea issue has been at variance to its attitude towards the dispute itself. On a bilateral basis, it has been strong in its dealings with the Philippines, whereas it has been more moderate with Malaysia, Indonesia, and Brunei. Conflicts have broken out between China and the Philippines because of conflicting claims in the South China Sea. Malaysia and Brunei, on the other hand, have fewer claims and thus are friendlier to China.<sup>30</sup> As a consequence of China's aggressive policy, Vietnam and the Philippines have turned to

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<sup>28</sup> Ronald O' Rourke, 'China's Actions in the South and East China Seas: Implications for US Interests-Background and Issues for Congress', 19 July 2018, CRS-R42784, CRS Report for Congress. Library of Congress.

Congressional Research Service, <https://www.hsdl.org/?abstract&did=m>

<sup>29</sup> Jian Zhang, 'China's Defense White Papers: A Critical Appraisal,' *Journal of Contemporary China*, 21 (77), pp. 881-898.

<https://doi.org/10.1080/10670564.2012.684969>.

<sup>30</sup> Wayne M. Morrison, 'China's Economic Conditions,' CRS-7-5700, CRS Report for Congress. Library of Congress. *Congressional Research Service* 2009, <https://apps.dtic.mil/docs/citations/ADA511980>

the United States for military aid.<sup>31</sup> They have also been more assertive in their claims to sovereignty than other claimants.

Disputes with China have arisen many times, most prominently in 2012 over the Scarborough Shoal, and again in 2016, when the ICJ ruled in favour of the Philippines.<sup>32</sup> Although they have softened their posture, the Philippines is still a strategic ally of the United States and will expect to receive US assistance in the event of a conflict. However, as evident from their bilateral talks with the US for an updated rocket system, the Philippines is still seeking increased capability to defend its sovereign claim to discourage Chinese military militarization in the region.<sup>33</sup>

Vietnam's military spending has gradually increased over the years, and it has begun to modernize its military forces in reaction to China's increased capabilities. The Vietnamese navy needs more training before it can challenge China's claims in the South China Sea. Like the Philippines, Vietnam was at odds with China in the area as a major contestant to China's claim. The construction of an oil rig in 2014 and the subsequent harassment of fishing vessels in 2011 are two instances. Vietnam is enhancing its naval presence and bolstering its sovereignty claims with portable missile launchers in response to the rapid militarization of the South China Sea. Further, to dissuade China, the Vietnamese government has strengthened its defences with the help of Russian military supplies as well as US backing.<sup>34</sup>

## US-China international law considerations

### *Offensive realism and international law*

Offensive realists believe states will follow international law only when it serves their interests. They value power maximization and survival, and compliance becomes contingent on its contribution to these goals. This might involve selective interpretation, manipulation of loopholes, and

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<sup>31</sup> Jihyun Kim, 'Territorial Disputes in the South China Sea: Implications for Security in Asia and Beyond,' *Strategic Studies Quarterly*, 2015, 9 (2): pp. 107–141, <http://www.jstor.org/stable/26271078>.

<sup>32</sup> Jianming Shen, 'China's Sovereignty Over the South China Sea Islands: A Historical Perspective,' *Chinese Journal of International Law*, 2002, 1 (1), pp. 94–157, doi:10.1093/oxfordjournals.cjilaw.a000432.

<sup>33</sup> Zhenhua Lu, 'US, Philippines in Talks on American Rocket System to Deter China,' *South China Morning Post*, 2 April 2019, <https://www.scmp.com/news/china/diplomacy/article/3004372/us-philippines-said-be-talks-rocket-system-deter-beijings>

<sup>34</sup> John Zumerchik, Steven Laurence Danve, *Seas and Waterways of the World: An Encyclopedia of History, Uses, and Issues* (2010), p.259.

outright violation when deemed necessary. Offensive realism emphasizes the anarchic nature of the international system, where powerful states operate with greater freedom and can dictate or influence the development and interpretation of international law. Weaker states may be bound by its constraints, while stronger ones can bend it to their will. They view international law as a tool that states use to advance their power interests. They consider it relevant when it offers opportunities to weaken rivals, legitimize actions, or build alliances. However, they see it as secondary to power considerations and readily disregard it when deemed strategically disadvantageous. The absence of a central authority in the anarchic system weakens the enforcement mechanisms of international law. Offensive realists argue that coercion against powerful states violating the law is unlikely, as it risks triggering costly conflicts. This means powerful states enjoy greater impunity, further undermining the law's effectiveness.

#### *UNCLOS and US-China perspectives*

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982 and modified in 1994, lays down a comprehensive regime of international law and order, governing all issues regarding the world's oceans, seas, and use of marine resources. UNCLOS has established EEZs as a basic feature of international law. Up until 2019, 168 nations had joined the treaty, but the US has not. According to UNCLOS, a coastal nation's exclusive economic zone (EEZ) lies up to 200 nautical miles from its coast and territorial waters at 12 nautical miles from the coast.

China's assertive claims in the South China Sea can be seen through an offensive realist lens. While China participates in UNCLOS, its expansionist interpretations and disregard for the rights of other claimants align with the notion of using the law for strategic advantage. The US' approach to UNCLOS can also be interpreted through an offensive realist lens. Its selective application of the Law of the Sea Convention, notably regarding freedom of navigation in disputed areas, reflects prioritizing its power interests over strict adherence to legal norms.

Freedom of navigation, overflight for foreign vessels and aircraft, and the right of coastal areas to defend their marine assets in their EEZ are guaranteed under UNCLOS. It is not permissible under international law for China to restrict the entry of foreign armed vessels and aircraft into the EEZ. The United States' FON operations are predicated on the assertion of the right to freedom of navigation and over flight inside the EEZ. FON activities have been around for 400 years, and the United

States has utilized its armed might to uphold them continuously for almost 200 years. In accordance with the Law of the Sea Convention, US FON operations work to preserve for all states the legitimate balance of interests created by customary international law.<sup>35</sup>

China has tried to use domestic laws passed in 1992 and 1998 to provide legal justification for its Nine-Dash border assertions. Several islands in the China Sea are under dispute, although China asserts sovereignty over them all under its 1992 Law on the Territorial Sea and Contiguous Zone. As stated in the 1998 Law of China on the EEZ and the Continental Shelf, China's EEZ includes all of its land sovereignty, including assertions on territories defined by the Nine-Dash Line. China's domestic law—not international law—provides the basis for its claims to the territory delineated by the nine dashes. China claims that UNCLOS prohibits foreign militaries from acting in the EEZ it claims, despite the absence of any such clause in the treaty. China is not alone in claiming the right to control the military efforts of other powers inside its EEZ. This is also the case for some other countries, including Algeria, Ecuador, Iran, Malaysia, Pakistan, and Uruguay. Coastal countries are also said to have jurisdiction over scientific discoveries inside their EEZ under UNCLOS.

China's 2002 Surveying Law of China widely defined research activities and provided the justification for military equipment performing Intelligence, Surveillance, and Reconnaissance (ISR) to be deemed scientific research.<sup>36</sup> It also claims it has the right to control foreign military operations in its proclaimed EEZ because of a UNCLOS clause allowing governments to oversee science studies in its EEZ and China's own classification of military ISR as scientific investigation. To support its efforts in prohibiting US FON activities within its EEZ and its self-established Nine-Dash Line regions, China once again invokes both domestic laws and treaty law.

According to the Chinese interpretation of international law, armed vessels should be prohibited from operating inside China's EEZ. It also tries to distinguish between 'navigation' and 'passing,' whenever it comes to military activities in its EEZ. It asserts it has no issue with military ships or planes travelling through its airspace. However, whenever these

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<sup>35</sup> C. Michael Hogan, 'South China Sea,' in P. Saundry (ed.), *Encyclopedia of Earth*, National Council for Science and the Environment, Washington, DC (2011), p. 65.

<sup>36</sup> John Baylis, Steve Smith, and Patricia Owens (eds.), *The Globalization of World Politics: An Introduction to International Relations* (seventh edition) (Oxford University United Kingdom), pp. 1-11.

units engage in ISR while ‘navigating,’ they are acting in a way that is antithetical to international rules regarding freedom of navigation. The assertion is also at odds with China’s regular harassment of foreign civilian boats inside the Nine-Dash Line region, a contested maritime area.<sup>37</sup>

The US Senate approved four laws of the Ocean Convention at the first UNCLOS meeting in 1958. These conventions served as the basis for the 1982 UNCLOS. In 1982, the US ultimately decided not to ratify the pact, due to a contentious issue concerning the seafloor. Senate opposition has frequently thwarted efforts to ratify UNCLOS out of fear of a reduction in US independence and its claim that UNCLOS is already entrenched as customary international law.<sup>38</sup> The then-Secretary of State, Michael Pompeo, stated in this regard:<sup>39</sup>

The United States champions a free and open Indo-Pacific. Today we are strengthening US policy in a vital, contentious part of that region –the South China Sea. We are making clear: Beijing’s claims to offshore resources across most of the South China Sea are completely unlawful, as is its campaign of bullying to control them. In the South China Sea, we seek to preserve peace and stability, uphold freedom of the seas in a manner consistent with international law, maintain the unimpeded flow of commerce, and oppose any attempt to use coercion or force to settle disputes. We share these deep and abiding interests with our many allies and partners who have long endorsed a rules-based international order.

## Conclusion

In view of the parameters of the offensive realist paradigm, it can be concluded that the US’ struggle to maintain its hegemony in the South China Sea and the Asia-Pacific region is based on its policy of controlling the region’s economic opportunities, its strategic posturing spreading to all fields. Such dynamics frequently impact aspects of China’s power, which pose serious challenges to almost all US ambitions and interests in the region.

Some irrefutable truths about the situation must be acknowledged. First, China has no intention of stepping back from its practice of using

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<sup>37</sup> Keyan Zou, *Law of the Sea in East Asia: Issues and Prospects* (London/New York: Routledge, 2005), p. 56.

<sup>38</sup> William Pesek, ‘Making Sense of the South China Sea Dispute,’ *Forbes*, 22 August 2017, <https://www.forbes.com/sites/outofasia/2017/08/22/making-sense-of-the-south-china-sea-dispute>

<sup>39</sup> *Ibid.*

man-made islands or backing down in its territorial disputes. Secondly, the United States will not back down from its stance as a guarantor of its Asian alliance system or from its commitment to protecting Freedom of Navigation. Thirdly, Southeast Asian claimants have not shown any signs of trying to settle intra-ASEAN issues or shown the capacity to do so. This being the case, ASEAN claimants should make a concerted effort to collaborate and, together with China and Taiwan, try to ease tensions wherever feasible.

Since the United States is not a signatory to UNCLOS, it cannot seek resolution of maritime disputes through this forum. The US' non-party status makes it more difficult to secure collaboration with allies in the area. It is thought that the United States may limit China's expansionism if it becomes a party to UNCLOS and impact its terms and the neighbours of China who are affected by China's Nine-Dash Line claim. If the US does not ratify this convention, it will damage its reputation as a reliable proponent of international law, which might encourage China to continue its aggressive posture in the area. Unlike the US, which has not ratified UNCLOS, yet enforces some aspects via its FON activities, Beijing has ratified UNCLOS, while rejecting certain of its enforceable aspects. Given the established norms of customary international law, it seems that the United States' ratification of UNCLOS would be moot. In attempting to maintain freedom of the seas in the SCS and challenge China's unproven claims, the US and its allies are expected to keep up their FON activities.

Offensive realism provides a valuable lens for understanding how states may approach international law, emphasizing its strategic utility and potential limitations. It is crucial to consider its limitations and acknowledge alternative perspectives to gain a more nuanced understanding of the complex relationship between law and power in the international arena. The role of international law is advisory: there is no effective legal mechanism for implementing these laws in their essence and following a rules-based order, unless both China and the US take collaborative measures and quicken and deepen high-level discussions to reduce tensions in the South China Sea. There is concern amongst Southeast Asian countries about the consequences of the rivalry between China and the United States. Both countries, as major world powers, have a special responsibility to avoid escalating this dispute into a full-fledged war that would destabilize the whole region.