

SEIZE THE SEA: THE TERRITORIAL CONFLICT BETWEEN THE UNITED STATES AND CHINA OVER MILITARY OPERATIONS IN THE SOUTH CHINA SEA

The United Nations Convention on the Law of the Sea (UNCLOS) has left a battle of interpretation that the United States and China have been clashing over for decades.¹ One particular focus of their disagreement is over certain U.S. military operations in the South China Sea.² The United States wants its military presence to endure and China believes the United States does not have any right to conduct military operations in “its” waters.³ Both countries cite support from UNCLOS, which further highlights the need for clarification of which position should be accepted in international law.⁴

The South China Sea is in the middle of a world trade route on which all major trading nations depend;⁵ over one third of all seaborne commercial trade goes through the South China Sea.⁶ But China has allegedly infringed on the freedom of navigation⁷ and has built up artificial islands among the Spratly Islands⁸ hundreds of miles from China’s mainland baseline.⁹ China supports its

¹ See Jill Goldenziel, *International Law Is the Real Threat to China’s South China Sea Claims*, DIPLOMAT (Nov. 3, 2015), <http://thediplomat.com/2015/11/international-law-is-the-real-threat-to-chinas-south-china-sea-claims/>; United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

² David Larter, *Navy Will Challenge Chinese Territorial Claims in South China Sea*, NAVY TIMES (Oct. 7, 2015), <http://www.navytimes.com/story/military/2015/10/07/china-territory-island-dispute-south-china-sea-navy/73525862/>.

³ Jim Sciutto & Katie Hunt, *China Says It Warned and Tracked U.S. Warship in South China Sea*, CNN (Oct. 27, 2015, 11:48 PM), <http://www.cnn.com/2015/10/27/asia/us-china-south-china-sea/>.

⁴ See Jonathan G. Odom, *Why US FON Operations in the South China Sea Make Sense*, DIPLOMAT (Oct. 31, 2015), <http://thediplomat.com/2015/10/why-us-fon-operations-in-the-south-china-sea-make-sense/>; James W. Houck & Nicole M. Anderson, *The United States, China, and Freedom of Navigation in the South China Sea*, 13 WASH. U. GLOBAL STUD. L. REV. 441, 448 (2014).

⁵ Patrick M. Cronin, *America Must Take a Stand in the South China Sea*, NAT’L INT. (Sept. 5, 2015), <http://nationalinterest.org/feature/america-must-take-stand-the-south-china-sea-13779>.

⁶ *Id.*

⁷ *Id.*

⁸ Ben Blanchard & Andrea Shalal, *Angry China Shadows U.S. Warship Near Man-Made Islands*, REUTERS (Oct. 27, 2015, 7:21 PM), <http://www.reuters.com/article/2015/10/27/us-southchinasea-usa-idUSKC N0SK2AC20151027>.

⁹ See Gabriel Dominguez, *China’s Nine-Dashed Line Has ‘No Basis Under International Law,’* DEUTSCHE WELLE (July 27, 2015), <http://www.dw.com/en/chinas-nine-dashed-line-has-no-basis-under-international-law/a-18609290>; DAVID J. BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS* 126–27 (2d ed. 2006) (explaining that a coastal state’s baseline is the low-tide mark on the beach from which the coastal state measures the respective limits for its territorial sea, Exclusive Economic Zone (EEZ), and the continental shelf).

contention that its construction of the islands does not violate international law—and therefore does not constitute an impediment to freedom of navigation—with its “nine-dash line.” The nine-dash line is based upon a 1940s map,¹⁰ which China uses to support claims that the territory at issue has been a part of Chinese territory “since ancient times.”¹¹ China’s claim to the majority of the South China Sea also grossly overlaps with the maritime claims of Vietnam and the Philippines.¹² The general consensus among scholars is that China’s nine-dash line “egregiously violate[s] UNCLOS.”¹³

This Essay ultimately argues that the United States’ interpretation and application of UNCLOS is more meritorious than that of China; however, more explicit provisions in UNCLOS concerning the authorization of military operations in a foreign country’s Exclusive Economic Zone (EEZ) and around artificial islands would provide a more robust legal framework to resolve this international dispute.

Part I provides an overview of the provisions of UNCLOS that apply to the permissibility of the U.S. freedom of navigation patrols within China’s EEZ and within twelve nautical miles of its artificial islands. Part II presents the conflicting claims of both the United States and China. Part III suggests certain resolutions that could mitigate the growing dispute. Part IV provides a conclusion.

I. WHAT UNCLOS DOES AND DOES NOT SAY

UNCLOS is the controlling international agreement governing activity in international maritime zones.¹⁴ The version of UNCLOS in effect today was negotiated from 1973 to 1982, making it the longest-running international law negotiation in history.¹⁵ While UNCLOS, the “constitution for the oceans,” addresses a multitude of interests, certain provisions are subject to debate.¹⁶

¹⁰ See David Tweed, *U.S. Calls China’s South China Sea Building Efforts ‘Troubling,’* BLOOMBERG (June 19, 2015, 12:20 AM), <http://www.bloomberg.com/news/articles/2015-06-19/u-s-calls-china-s-south-china-sea-building-efforts-troubling->.

¹¹ Demetri Sevastopulo & Charles Clover, *China Accuses US Navy of Illegal Incursion in South China Sea*, FIN. TIMES (Oct. 27, 2015), <https://www.ft.com/content/8a05582e-7c18-11e5-98fb-5a6d4728f74e>.

¹² See Matikas Santos, *Key Points of the Arbitral Tribunal’s First Ruling in Philippines vs China Case*, INQUIRER.NET (Oct. 30, 2015, 4:09 PM), <http://globalnation.inquirer.net/130215/south-china-sea-arbitration-philippines-china-spratly-islands-west-philippine-sea>.

¹³ Dominguez, *supra* note 9.

¹⁴ Houck & Anderson, *supra* note 4, at 442.

¹⁵ BEDERMAN, *supra* note 9, at 125.

¹⁶ *Id.* at 125–26.

China is a party to UNCLOS, but the United States is not;¹⁷ however, the United States has accepted UNCLOS as customary international law, and acts in accordance with its assertions.¹⁸ Most of the provisions in UNCLOS were developed over centuries through their practice and recognition in the international arena, making it customary international law.¹⁹ Article 38 of the Statute of the International Court of Justice states that international custom is “evidence of a general practice accepted as law.”²⁰ As such, UNCLOS is binding upon the United States.²¹

As a general matter, under the Convention, the closer to the shore of a country that an area of the sea is, the more likely it falls under the jurisdiction of that country.²² In accordance with the Convention, any coastal state may claim a territorial sea that extends no more than twelve nautical miles from the state’s baseline,²³ which is the state’s “low-water line along the coast.”²⁴ UNCLOS defines a country’s EEZ as the water beyond and adjacent to a country’s territorial sea²⁵ that shall not extend more than 200 nautical miles from that country’s baseline.²⁶ Article 58 grants all countries operating in another country’s EEZ the freedoms referred to in Article 87, which sets forth the freedom of the high seas.²⁷ The high seas are defined as “all parts of the sea that are not included in the [EEZ], in the territorial sea or in the internal waters of a State.”²⁸ The freedoms of the high seas explicitly enumerated in Article 87 include, *inter alia*, the freedom of navigation and the freedom of overflight.²⁹ The freedom of navigation patrols that the United States continues to conduct are not included in the freedoms granted by Article 87; however, the list of freedoms provided in Article 87 is not exhaustive and the freedom of navigation

¹⁷ Houck & Anderson, *supra* note 4, at 442. *See also* BEDERMAN, *supra* note 9, at 126 (explaining that the United States signed, but did not ratify, UNCLOS since most of the provisions are part of customary international law).

¹⁸ BEDERMAN, *supra* note 9, at 126.

¹⁹ *The Law of the Sea Convention: Hearing on Treaty Doc. 103-39 Before the U.S. S. Comm. on Foreign Relations*, 112th Cong. 13 (2012) (statement of Steven Groves, Bernard and Barbara Lomas Fellow, Heritage Found.).

²⁰ Statute of the International Court of Justice art. 38, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.

²¹ *Customary International Humanitarian Law: Questions & Answers*, INT’L COMM. RED CROSS (Aug. 15, 2005), <https://www.icrc.org/eng/resources/documents/misc/customary-law-q-and-a-150805.htm>.

²² BEDERMAN, *supra* note 9, at 126.

²³ UNCLOS, *supra* note 1, art. 3.

²⁴ *Id.* art. 5.

²⁵ *Id.* art. 55.

²⁶ *Id.* art. 57.

²⁷ *Id.* art. 58, ¶ 1.

²⁸ UNCLOS, *supra* note 1, art. 86.

²⁹ *Id.* art. 87, ¶ 1.

patrols are therefore not excluded.³⁰ UNCLOS further explains that no country may “subject any part of the high seas to its sovereignty.”³¹

In a joint press conference with President Obama, China’s President Xi Jinping conceded that China is constructing artificial islands in the South China Sea.³² Under Article 60 of the Convention, artificial islands are not granted the legal status of islands.³³ As such, artificial islands are not granted a territorial sea, but rather are limited to a safety zone that may not exceed 500 meters, unless otherwise allowed by customary international law, and may not interfere with international navigation.³⁴ This list of classifications, which is not exhaustive and vague given the developments in the decades-long dispute between the United States and China, have led to incompatible interpretations of international maritime law.

II. CONFLICTING CLAIMS

The principal struggle between the United States and China centers around whether the United States is permitted under UNCLOS to conduct freedom of navigation patrols within China’s EEZ³⁵ and within twelve nautical miles of the artificial islands.³⁶ The United States asserts that it may conduct freedom of navigation patrols in China’s greater EEZ³⁷ and around the artificial islands.³⁸ The official position of the United States is “not to take a position” on the otherwise internationally disputed sovereignty of the artificial islands.³⁹ Instead, the United States challenges the validity of China’s claim to a twelve-nautical mile territorial sea for the artificial islands in light of the Convention.⁴⁰ China

³⁰ *Id.* art. 87.

³¹ *Id.* art. 89.

³² See President Barack Obama, U.S. & President Xi Jinping, China, Remarks at Joint Press Conference (Sept. 25, 2015).

³³ UNCLOS, *supra* note 1, art. 60, ¶ 8.

³⁴ *Id.* art. 60, ¶ 5, 7–8.

³⁵ Houck & Anderson, *supra* note 4, at 441.

³⁶ See Blanchard & Shalal, *supra* note 8.

³⁷ Bonnie S. Glaser, *Contingency Planning Memorandum: Conflict in the South China Sea*, COUNCIL ON FOREIGN REL. (Apr. 2015), <http://www.cfr.org/asia-and-pacific/conflict-south-china-sea/p36377>.

³⁸ See Blanchard & Shalal, *supra* note 8.

³⁹ Marjorie Ellen Gallagher, *The Time is Now: The United States Needs to Accede to the United Nations Convention on the Law of the Sea to Exert Influence over the Competing Claims in the South China Sea*, 28 TEMP. INT’L & COMP. L.J. 1, 23 (2014).

⁴⁰ See Shannon Tiezzi, *The Truth About US Freedom of Navigation Patrols in the South China Sea*, DIPLOMAT (Sept. 22, 2015), <http://thediplomat.com/2015/09/the-truth-about-us-freedom-of-navigation-patrols-in-the-south-china-sea/>; Ankit Panda & Prashanth Parameswaran, *South China Sea Update: Assessing the US*

claims that the United States has no right to conduct military operations in China's EEZ⁴¹ or within twelve nautical miles of the artificial islands.⁴² China claims that because the freedom of navigation patrols conducted by the United States are not deliberately provided for under UNCLOS, they are not permitted.⁴³ Moreover, China claims that its artificial islands are due a twelve-nautical mile territorial sea limit, justified only by its widely unpopular nine-dash line.⁴⁴

A. *The United States' Claims*

The United States emphasizes the importance of the international law and regional norms to which China should be bound.⁴⁵ The United States believes that, in accordance with international and customary law, it is authorized to assert its presence through freedom of navigation patrols within twelve nautical miles of China's artificial islands⁴⁶ and within China's EEZ.⁴⁷ The United States draws support from several UNCLOS provisions, including Articles 58 and 87, which grant the freedom of navigation through a country's EEZ and across the high seas, respectively.⁴⁸ The Convention does not expressly prevent the right of the United States, or any other country, to conduct military activities in another country's EEZ.⁴⁹ The United States routinely exercises its "right to conduct military activities in EEZs around the world" with support from the "UNCLOS text, [and] international state practice."⁵⁰ The United States also garners support from the fact that several other countries have been known to operate military vessels in other states' EEZs, including Australia, Russia, South

Freedom of Navigation Operation in the Parcel Islands, DIPLOMAT (Feb. 5, 2016), <http://thediplomat.com/2016/02/south-china-sea-update-assessing-the-us-freedom-of-navigation-operation-in-the-parcel-islands/>.

⁴¹ Houck & Anderson, *supra* note 4, at 447.

⁴² Blanchard & Shalal, *supra* note 8.

⁴³ Houck & Anderson, *supra* note 4, at 448.

⁴⁴ See Julian Ku, *While the Courts Have Ruled, China Is Not Leaving the South China Sea*, NAT'L INT. (July 15, 2016), <http://nationalinterest.org/blog/the-buzz/while-the-courts-have-ruled-china-not-leaving-the-south-16980>; Dominguez, *supra* note 9.

⁴⁵ See Cronin, *supra* note 5.

⁴⁶ See Sam LaGrone, *U.S. Destroyer Passes Near Chinese Artificial Island in South China Sea Freedom of Navigation Operation*, U.S. NAVAL INST. NEWS (May 10, 2016, 8:25 AM), <https://news.usni.org/2016/05/10/u-s-destroyer-passes-near-chinese-artificial-island-in-south-china-sea-freedom-of-navigation-operation>.

⁴⁷ Zhou Bo, *Can China and the US Agree on Freedom of Navigation?*, DIPLOMAT (July 27, 2016), <http://thediplomat.com/2016/07/can-china-and-the-us-agree-on-freedom-of-navigation/>.

⁴⁸ UNCLOS, *supra* note 1, art. 58, 87.

⁴⁹ See *id.* art. 58; Gallagher, *supra* note 39, at 22.

⁵⁰ Houck & Anderson, *supra* note 4, at 443.

Africa, the United Kingdom, and China.⁵¹ Most notably, China has admitted that it conducts surveillance in other countries' EEZs, including that of the United States.⁵² This conduct is arguably in defiance of Article 19 of the Convention, which prohibits acts "aimed at collecting information to the prejudice of the defence or security of the coastal State."⁵³

Moreover, it is clear from the UNCLOS text that China cannot even claim maritime zones beyond its 200-nautical mile EEZ limit.⁵⁴ Several of China's artificial islands in the Spratly archipelago are at least approximately 740 miles away from China's baseline⁵⁵ and clearly fall within the Philippines' EEZ.⁵⁶ A maritime law expert for the Chinese government has even admitted that he did not know what the basis was for this boundary.⁵⁷ The majority of UNCLOS scholars (with the exception of those from China) agree that China's nine-dash line, which is China's only support for its vast claim of the South China Sea, is absurd.⁵⁸ It is therefore widely recognized that it is completely unreasonable for a State to claim nearly an entire sea, up to hundreds of miles away from that State's baseline, as its sovereign waters. While UNCLOS leaves some room for interpretation about activities that may or may not be permitted in foreign countries' EEZs, it clearly states that the artificial islands are afforded no more than a 500-meter safety zone since they are not granted the status of islands,⁵⁹ thereby making the United States' military activities surrounding the islands permissible.

B. *China's Claims*

China has asserted its status as a new military power in the region,⁶⁰ and claims that the United States cannot conduct any military operations in the

⁵¹ *Id.* at 445. See Kimberly Hsu & Craig Murray, *China's Expanding Military Operations in Foreign Exclusive Economic Zones*, U.S.-CHINA ECON. & SECURITY REV. COMMISSION (June 19, 2013), http://www.uscc.gov/sites/default/files/Research/Staff%20Backgrounder_China%20in%20Foreign%20EEZs.pdf.

⁵² Houck & Anderson, *supra* note 4, at 445.

⁵³ UNCLOS, *supra* note 1, art. 19, ¶ 2(c).

⁵⁴ Dominguez, *supra* note 9.

⁵⁵ Cronin, *supra* note 5. See Dominguez, *supra* note 9.

⁵⁶ See Santos, *supra* note 12.

⁵⁷ David Lague, *Analysis: China's Nine-Dashed Line in South China Sea*, REUTERS (May 25, 2012, 1:18 AM), <http://www.reuters.com/article/2012/05/25/us-china-sea-boundary-idUSBRE84O07520120525#wddeZE GcHUAedKyW.97>.

⁵⁸ Dominguez, *supra* note 9.

⁵⁹ UNCLOS, *supra* note 1, art. 60.

⁶⁰ Sevastopulo & Clover, *supra* note 11.

waters it claims in the South China Sea.⁶¹ Even though China's artificial islands lie in the high seas well beyond China's 200-nautical mile EEZ limit,⁶² and despite the clear language of the Convention stating that artificial islands receive no more than a 500-meter safety zone,⁶³ China justifies its claims through its historic nine-dash line.⁶⁴ This nine-dash line was first published on a map in 1947,⁶⁵ and claims about ninety percent of the 1.35 million-square-mile South China Sea.⁶⁶ By extension of the nine-dash line, China claims that the artificial islands are within its jurisdiction and thus are not subject to the 500-meter safety zone delineated in Article 60 of the Convention.⁶⁷

China also claims that military activities are not permitted in a foreign coastal state's EEZ without that state's permission⁶⁸ because such activity is "not expressly permitted by UNCLOS," despite the fact that China sails through other countries' EEZs.⁶⁹ The actions of countries that do not have such developed maritime surveillance tools validate China's position.⁷⁰ Malaysia and Vietnam, for example, have their own interests in the South China Sea and have adopted restrictions on military activities in their respective EEZs.⁷¹ However, general state practice and assertions made by most countries provide that coastal states may not regulate foreign military actions in the coastal state's EEZ.⁷² The failure to reconcile these opposing views could have potentially immense implications for future relations between the United States and China.

⁶¹ Jeremy Page & Trefor Moss, *China's Claims in the South China Sea*, WALL STREET J.: THE SHORT ANSWER (May 27, 2015, 2:44 AM), <http://blogs.wsj.com/briefly/2015/05/27/chinas-claims-in-the-south-china-sea-the-short-answer/>.

⁶² See Dominguez, *supra* note 9.

⁶³ UNCLOS, *supra* note 1, art. 60.

⁶⁴ Gallagher, *supra* note 39, at 17.

⁶⁵ MarEx, *Indonesian President Rejects China's Nine-Dashed Line*, MAR. EXECUTIVE (Mar. 23, 2015, 1:48 AM), <http://www.maritime-executive.com/article/indonesian-president-rejects-chinas-nine-dashed-line>.

⁶⁶ Paul Carsten, *China Decries US Comments on South China Sea as 'Not Constructive'*, LIVE MINT (Feb. 9, 2014, 11:00 AM), <http://www.livemint.com/Politics/9BmUw5HmrJuseoVk61gmBL/China-decries-US-comments-on-South-China-Sea-as-not-constru.html>.

⁶⁷ Gallagher, *supra* note 39, at 15–16.

⁶⁸ Jing Geng, *The Legality of Foreign Military Activities in the Exclusive Economic Zone Under UNCLOS*, 28 UTRECHT J. INT'L & EUR. L. 22, 27–28 (2012).

⁶⁹ Houck & Anderson, *supra* note 4, at 445–46, 448.

⁷⁰ Shannon Tiezzi, *Pentagon Denounces 'Excessive Maritime Claims' in the South China Sea*, DIPLOMAT (Aug. 21, 2015), <http://thediplomat.com/2015/08/pentagon-denounces-excessive-maritime-claims-in-the-south-china-sea/>.

⁷¹ *Id.*

⁷² Gallagher, *supra* note 39, at 21–22.

III. SUGGESTED RESOLUTIONS

Various commentators have presented their opinions about how the United States and China could best reach an understanding over the United States' military presence in the South China Sea.⁷³ Article 59 of UNCLOS describes the “[b]asis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone.”⁷⁴ It states that where the Convention does not specifically grant rights or jurisdiction and a conflict arises, “the conflict should be resolved on the basis of equity . . . taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.”⁷⁵ Thus, the dispute over whether the U.S. freedom of navigation patrols are included in the Convention under Article 87 should be resolved equitably.

Even though China does not seem to be concerned with its failure to reach a settlement,⁷⁶ an amendment to the Convention may be sufficient to force a new response. Since the United States argues that UNCLOS does not expressly prohibit military activities in China's EEZ or around the artificial islands,⁷⁷ and China argues that UNCLOS does not expressly permit such activities,⁷⁸ an amendment to the Convention would resolve that issue. The state practice of countries across the world, including that of China, supports the United States' stance that military operations are permitted in foreign countries' EEZs.⁷⁹ Adding language reflecting that practice to either Article 58 (“Rights and duties of other States in the exclusive economic zone”),⁸⁰ Article 87 (“Freedom of the

⁷³ See Glaser, *supra* note 37 (arguing, among other things, that the United States should press China and all parties in the region to be transparent about their intentions and pursue their claims peacefully); Cronin, *supra* note 5 (asserting that the United States should both utilize existing technology and develop new methods to modernize operations in the South China Sea); Truong-Minh Vu & Trang Pham, *International Law and the South China Sea*, DIPLOMAT (Dec. 22, 2014), <http://thedi diplomat.com/2014/12/international-law-and-the-south-china-sea/> (“having the U.S. defend the validity of existing rules and procedures, and their usefulness in dispute management in the South China Sea, is a major asset, especially given that all claimants seek the moral high ground”); Gallagher, *supra* note 39 (arguing that the United States should accede to UNCLOS); Ashley Townshend, *China May Fear Reputation Damage More Than Military Threats Over South China Sea*, GUARDIAN (Aug. 28, 2015, 7:00 PM), <http://www.theguardian.com/commentisfree/2015/aug/29/china-may-fear-reputation-damage-more-than-military-threats-over-south-china-sea> (“To effectively prevent China from militarising its new islands, the US should look to regional economic, rather than military, threats”).

⁷⁴ UNCLOS, *supra* note 1, art. 59.

⁷⁵ *Id.*

⁷⁶ Gallagher, *supra* note 39, at 16 (discussing China's “unique interpretation” of UNCLOS provisions).

⁷⁷ *Id.* at 22.

⁷⁸ UNCLOS, *supra* note 1, art. 87.

⁷⁹ Gallagher, *supra* note 39, at 21–22.

⁸⁰ UNCLOS, *supra* note 1, art. 58, ¶ 4.

high seas”),⁸¹ or both, could eliminate any disparity between the countries’ claims.⁸² UNCLOS also plainly states that artificial islands are not considered islands for the purpose of having territorial waters, and are therefore not permitted more than a 500-meter safety zone.⁸³ This provision of UNCLOS does not seemingly leave any doubt as to the freedom of navigation within twelve nautical miles of the artificial islands in question, but it begs enforcement.

China hides behind its nebulous nine-dash line to legitimize its claims of sovereignty over the majority of the South China Sea despite the fact that much of that territory lies hundreds of miles away from the mainland.⁸⁴ China benefits more than any other country by maintaining its nine-dash line and interpreting the imprecise wording of UNCLOS to its advantage.⁸⁵ An alteration to UNCLOS should state that a coastal state can neither make maritime claims beyond that state’s EEZ⁸⁶ nor infringe on another state’s territory granted under the Convention.⁸⁷

China has exempted itself from “compulsory arbitration and other dispute settlement procedures” in the International Tribunal for the Law of the Sea⁸⁸ and has thwarted the Philippines’ attempts to have China submit the issue to international arbitration.⁸⁹ In clear defiance of UNCLOS, China has also not agreed to any of the other dispute settlement options provided in UNCLOS.⁹⁰ As such, changing the Convention may prove to be ineffective.

Regardless of any potential changes in the Convention, the situation unquestionably requires realistic foreign policy and a strong showing of the United States’ proven strength.⁹¹ Retired Admiral Dennis Blair noted that his

⁸¹ *Id.* art. 87, ¶ 4.

⁸² See Houck & Anderson, *supra* note 4.

⁸³ UNCLOS, *supra* note 1, art. 60, ¶¶ 4–5.

⁸⁴ Beina Xu, *South China Sea Tensions*, COUNCIL ON FOREIGN REL. (May 14, 2014), <http://www.cfr.org/china/south-china-sea-tensions/p29790>.

⁸⁵ Lague, *supra* note 57.

⁸⁶ Dominguez, *supra* note 9.

⁸⁷ Gregory B. Poling, *The South China Sea in Focus: Clarifying the Limits of Maritime Dispute*, CTR. FOR STRATEGIC & INT’L STUD. (July 2013), http://csis.org/files/publication/130717_Poling_SouthChinaSea_Web.pdf.

⁸⁸ Vu & Pham, *supra* note 73.

⁸⁹ Glaser, *supra* note 37; Shannon Tiezzi, *Why China Won’t Accept International Arbitration in South China Sea*, DIPLOMAT (Dec. 9, 2014), <http://thediplomat.com/2014/12/why-china-wont-accept-international-arbitration-in-the-south-china-sea/>.

⁹⁰ Tiezzi, *supra* note 89.

⁹¹ Franz-Stefan Gady, *Top Us Admiral: ‘Nobody Owns’ the South China Sea*, DIPLOMAT (Oct. 24, 2015), <http://thediplomat.com/2015/10/top-us-admiral-nobody-owns-the-south-china-sea/>.

experience suggests that China will respect the United States' position more once the United States does something, instead of continuing to merely voice disapproval and talk about each country's respective claims.⁹² The United States should coordinate its military actions with the overall economic and political strategy it adopts moving forward.⁹³ By presenting a cohesive, unified front, the United States and any other countries that hope to assert their claims in the South China Sea could take a significant step in garnering the respect from China needed to change China's position.⁹⁴ Ultimately, maintaining the status quo will not bode well for any country's interests in the South China Sea.

CONCLUSION

There are myriad factors at play in the clash of interests and interpretations between the United States and China. The United States wants to ensure its own security, the security of its allies in the region, and the stability of the region as a whole.⁹⁵ Trillions of dollars in trade pass through the South China Sea each year, giving the United States a heightened interest in maintaining peace in the area.⁹⁶ While China shares an interest in maintaining peace, its interests also include maintaining its vast claims over the South China Sea and limiting the activities of other countries, which directly conflicts with U.S. interests.⁹⁷ While the Convention provides some clarity about the status of the artificial islands in the scheme of international maritime law,⁹⁸ it inconveniently leaves room for disagreement over whether the freedom of navigation patrols, as military operations of the United States, are permitted both in China's EEZ and within twelve nautical miles of the artificial islands.⁹⁹ Even though China argues that

⁹² Keith Johnson & Dan De Luce, *U.S. Gears Up to Challenge Beijing's 'Great Wall of Sand,'* FOREIGN POL'Y (Sept. 22, 2015), <http://foreignpolicy.com/2015/09/22/u-s-gears-up-to-challenge-beijings-great-wall-of-sand-obama-xi-south-china-sea/>.

⁹³ See *Great Power Politics in the South China Sea*, STRATFOR (Oct. 26, 2015, 9:30 AM), <https://www.stratfor.com/analysis/great-power-politics-south-china-sea>.

⁹⁴ Glaser, *supra* note 37.

⁹⁵ See Ryan Maass, *U.S. Navy Destroyer USS Fitzgerald Patrols South China Sea*, UNITED PRESS INT'L (Nov. 16, 2015, 12:31 PM), http://www.upi.com/Business_News/Security-Industry/2015/11/16/US-Navy-destroyer-USS-Fitzgerald-patrols-South-China-Sea/4921447691245/.

⁹⁶ Elliot Brennan, *China's Dangerous \$5 Trillion Dollar Bet: A South China Sea ADIZ?*, NAT'L INT. (May 14, 2015), <http://nationalinterest.org/blog/the-buzz/chinas-dangerous-5-trillion-dollar-bet-south-china-sea-adiz-12887>.

⁹⁷ Steven Mufson, *Chinese Activity in South China Sea Poses Complications for Obama*, WASH. POST (Sept. 11, 2015), https://www.washingtonpost.com/business/economy/chinese-maneuvers-in-the-south-china-sea-complicating-matters-for-obama/2015/09/11/21e9472e-588b-11e5-b8c9-944725fed3b9_story.html.

⁹⁸ UNCLOS, *supra* note 1, art. 60, ¶ 8.

⁹⁹ Houck & Anderson, *supra* note 4, at 443.

these activities are not permitted by UNCLOS,¹⁰⁰ it conducts its own military operations in other countries' EEZs around the world.¹⁰¹ China nonetheless remains staunchly opposed to negotiating a settlement with the United States, let alone acquiescing to the United States' position.¹⁰²

While China consenting to any form of settlement seems improbable at this point,¹⁰³ an amendment to the Convention could prove quite effective in compelling China to change both its interpretation of UNCLOS and its application of the nine-dash line.¹⁰⁴ Regardless, the United States needs to assert itself as a power in the region and should continue to challenge China's weak claim based on the nine-dash line.¹⁰⁵ The minimal action taken thus far by the United States has clearly not secured consideration for its interpretation of UNCLOS, leaving some to suggest that more robust action is needed.¹⁰⁶ The United States has nearly boundless resources and to prevent this disagreement from progressing any further, China must feel international pressure to adjust its outdated interpretation of the law.¹⁰⁷ The void left in the wording of UNCLOS has caused tensions to rise between the United States and China, and between China and nearby countries with their own claims to the South China Sea.¹⁰⁸ Since China is disinclined to actively work towards a resolution, it is left to the United States to change the discussion so that China gives the Convention its due respect.

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¹⁰⁰ *Id.* at 447.

¹⁰¹ *Id.* at 445.

¹⁰² Vu & Pham, *supra* note 73.

¹⁰³ *US Navy Commander Warns of Possible South China Sea Arms Race*, CNBC (Dec. 15, 2015, 8:55 PM), <http://www.cnbc.com/2015/12/15/us-navy-commander-warns-of-possible-south-china-sea-arms-race.html>.

¹⁰⁴ Yi-Hsuan Chen, *South China Sea Tension on Fire: China's Recent Moves on Building Artificial Islands in Troubled Waters and Their Implications on Maritime Law*, 1 MAR. SAFETY & SECURITY L.J. 1 (2015).

¹⁰⁵ Julian Ku, *For the First Time, U.S. Says China's South China Sea Nine Dash Line Is Inconsistent with International Law*, OPINIO JURIS (Feb. 6, 2014, 8:44 PM), <http://opiniojuris.org/2014/02/06/first-time-u-s-says-chinas-south-china-sea-nine-dash-line-inconsistent-international-law/>.

¹⁰⁶ See Dan De Luce & Paul McLeary, *In South China Sea, a Tougher U.S. Stance*, FOREIGN POL'Y (Oct. 2, 2015), <http://foreignpolicy.com/2015/10/02/in-south-china-sea-a-tougher-u-s-stance/>.

¹⁰⁷ See Greg Torode & Manuel Mogato, *China May Pay "International Price" in South China Sea Legal Case, Experts Say*, REUTERS (Dec. 2, 2015, 1:08 PM), <http://in.reuters.com/article/southchinasea-china-court-idINKBN0TL09S20151202>.

¹⁰⁸ Chen, *supra* note 104.

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