

**SOUTH CHINA SEA DISPUTE & ITS
IMPLICATIONS ON INTERNATIONAL TRADE
LAW**

**Dissertation submitted to the National University of Advanced Legal
Studies, Kochi in partial fulfilment of the requirements for the award
of LL.M. Degree in International Trade Law**



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DECLARATION

I, **ABHEESH B S**, do hereby declare that this dissertation work titled “**SOUTH CHINA SEA DISPUTE & ITS IMPLICATIONS ON INTERNATIONAL TRADE LAW**” researched and submitted by me to **The National University of Advanced Legal Studies** in partial fulfilment of the requirement for the award of degree of Master of Laws in **International Trade Law** under the guidance and supervision of , **Mr. Hari S. Nayar, Assistant Professor, The National University of Advanced Legal Studies** is an Original, Bonafide and Legitimate work. It has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this university or any other university.

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PREFACE

The present dissertation represents the culmination of my academic pursuit in the field of international trade law, inspired by the growing legal, strategic, and economic significance of the South China Sea. At the intersection of international law, geopolitics, and commerce, the South China Sea dispute presents not only a pressing regional issue but a global challenge to the rules-based international order.

My choice to examine this subject stemmed from a deep interest in how unresolved sovereignty claims and legal ambiguities in maritime zones directly impact global trade, regional cooperation, and international legal frameworks such as the United Nations Convention on the Law of the Sea (UNCLOS). What began as an academic inquiry evolved into a multidimensional study of how maritime conflict, trade law, and enforcement mechanisms intersect and where they fail to align.

Throughout this dissertation, I have attempted to balance doctrinal legal research with practical insight. The study draws upon arbitral decisions, legal treaties, scholarly opinions, and comparative case studies to offer a comprehensive understanding of the South China Sea dispute. In doing so, I have aimed not merely to critique existing frameworks but to propose realistic, legally sound recommendations that may serve academic, diplomatic, and institutional discourse.

This work would not have been possible without the academic environment and support provided by the National University of Advanced Legal Studies, and I am sincerely thankful for the guidance and encouragement of my faculty mentors and peers.

Above all, this dissertation represents a sincere effort to contribute to the evolving scholarship in international legal studies and to encourage further exploration of trade-linked legal enforcement in maritime conflict zones.

ABHEESH B S

LIST OF ABBREVIATIONS

Abbreviation	Full Form
ASEAN	Association of Southeast Asian Nations
UNCLOS	United Nations Convention on the Law of the Sea (1982)
PCA	Permanent Court of Arbitration
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Sea
EEZ	Exclusive Economic Zone
JDZ	Joint Development Zone
COC	Code of Conduct (in the SCS context)
DOC	Declaration on the Conduct of Parties in the South China Sea
ROC	Republic of China (Taiwan)
PRC	People's Republic of China
SCS	South China Sea
FDI	Foreign Direct Investment
RCEP	Regional Comprehensive Economic Partnership
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
TFA	Trade Facilitation Agreement (WTO)
WTO	World Trade Organization
SF Treaty	San Francisco Peace Treaty (1951)
GATT	General Agreement on Tariffs and Trade
UNGA	United Nations General Assembly
LOSC	Law of the Sea Convention (alternative for UNCLOS)
MDA	Maritime Domain Awareness
SAR	Search and Rescue (used in maritime policy contexts)
AIS	Automatic Identification System (used in maritime surveillance)
MARPOL	International Convention for the Prevention of Pollution from Ships
IMO	International Maritime Organization
CBM	Confidence Building Measure
EEZCL	Exclusive Economic Zone Claim Line (used in map/legal texts)

LTA	Long-Term Agreement (in trade/maritime development contexts)
FTA	Free Trade Agreement
G7/G20	Group of Seven / Group of Twenty (economic and political forums)

CASE LAWS

Sl. No.	Name of case
1	South China Sea Arbitration (Philippines v. China) , PCA Case No. 2013-19, Award of July 12, 2016
2	Romania v. Ukraine , Judgment, I.C.J. Reports 2009, p. 61
3	Maritime Dispute (Peru v. Chile) , Judgment, I.C.J. Reports 2014, p. 3
4	Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia) , I.C.J. Reports 2002, p. 625
5	Territorial and Maritime Dispute (Nicaragua v. Colombia) , Judgment, I.C.J. Reports 2012, p. 624
6	Fisheries Jurisdiction (United Kingdom v. Iceland) , Merits, Judgment, I.C.J. Reports 1974, p. 3
7	Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States) , I.C.J. Reports 1984, p. 246
8	Anglo-Norwegian Fisheries Case (United Kingdom v. Norway) , I.C.J. Reports 1951, p. 116

9	Qatar v. Bahrain , Maritime Delimitation and Territorial Questions, I.C.J. Reports 2001, p. 40
10	The MOX Plant Case (Ireland v. United Kingdom) , ITLOS Case No. 10, Order of Dec. 3, 2001
11	Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) , I.C.J. Reports 1992, p. 351
12	Guyana v. Suriname , PCA Award of Sept. 17, 2007, under Annex VII of UNCLOS

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CHAPTER 1: INTRODUCTION

1.1 OVERVIEW OF THE SOUTH CHINA SEA DISPUTE

Background and Significance

Among modern maritime regions, the South China Sea has arguably become the most geopolitically sensitive due to overlapping sovereignty and trade interests. It spans approximately 3.5 million square kilometres and is a crucial conduit for international trade, with nearly one-third of global shipping passing through its waters. Rich in natural resources, including oil, gas, and fisheries, the SCS holds immense economic and strategic value for claimant states and global powers alike.

UNCLOS currently serves as the central treaty outlining coastal state rights over EEZs and maritime entitlements, though its effectiveness in regional enforcement remains debated.

Beyond its legal and economic significance, the SCS dispute influences regional security and diplomatic relations, impacting global trade stability. The increasing militarization of contested islands and regular confrontations among naval forces exacerbate the tensions. Moreover, the strategic location of the SCS links major economies, including China, the U.S., Japan, and India, making the dispute a central issue in international diplomacy.

1.2 KEY PLAYERS IN THE DISPUTE

China:

- Claims nearly 90% of the SCS based on historical rights.
- Engages in large-scale island-building and military installations.
- Ignores the 2016 Permanent Court of Arbitration (PCA) ruling invalidating the Nine-Dash Line.

The Philippines:

- Won the 2016 PCA ruling under UNCLOS, rejecting China's historical claims.
- Faces challenges in enforcing legal victories due to China's naval presence.

Vietnam:

- Claims sovereignty over the Paracel and Spratly Islands.
- Regularly confronts Chinese naval patrols in its EEZ.

Malaysia and Brunei:

- Focus primarily on EEZ rights over hydrocarbon reserves.
- Less confrontational but assert claims through diplomatic channels.

United States and Other Stakeholders:

- Advocates for Freedom of Navigation Operations (FONOPs) under international law.
- Strengthens alliances with ASEAN nations to counter China's regional dominance.
- Enforces economic sanctions and diplomatic pressure to maintain trade stability.

1.3 RESEARCH QUESTIONS**Core Research Question**

- How does the South China Sea dispute impact international trade law and maritime legal frameworks?

Supporting Questions

- What legal principles under UNCLOS and other international treaties govern the dispute?
- How do territorial disputes affect freedom of navigation and trade security?
- What role do economic sanctions and trade disruptions play in the conflict?
- What legal remedies exist to resolve these disputes under international law?
- How does the dispute impact global supply chains and foreign direct investments?

- How can enforcement mechanisms under international law be improved to ensure compliance with tribunal rulings?

1.4 RESEARCH OBJECTIVES

- To critically examine the legal implications of territorial claims under UNCLOS.
- To analyse the economic and trade disruptions caused by regional conflicts.
- To evaluate existing legal remedies and dispute resolution mechanisms under international law.
- To assess the role of ITLOS, ICJ, and WTO dispute resolution mechanisms in addressing maritime conflicts.
- To explore potential reforms to strengthen UNCLOS enforcement mechanisms.

1.5 RESEARCH GAPS AND SIGNIFICANCE OF STUDY

Challenges in Enforcing Maritime Law

- China's resistance to UNCLOS-based adjudications underscores the structural gaps in enforcing maritime rulings under international law.
- Limited global consensus on effective trade dispute resolution in maritime conflicts.
- The absence of a compulsory compliance mechanism in UNCLOS for dispute resolution.

Potential for Alternative Trade Routes

- Exploration of alternative maritime routes such as the Straits of Malacca, Makassar, and Luzon.
- Economic feasibility of diversifying trade routes to reduce dependency on the SCS.

- Legal implications of rerouting trade under WTO and regional free trade agreements.

Implications for ASEAN and Global Trade

- How trade security policies of non-claimant states (India, Japan, EU) influence dispute resolution.
- The legal implications of China's unilateral actions on WTO trade regulations.
- The role of regional economic treaties (RCEP, CPTPP) in mitigating trade risks.

Need for Legal and Policy Reforms in Trade Law

- Examination of how prolonged disputes impact the evolution of customary international law.
- Potential amendments to WTO trade security provisions to address emerging maritime conflicts.
- Strengthening the role of regional arbitration tribunals for maritime disputes.

1.6 METHODOLOGY

Legal Research Methods

- **Doctrinal Analysis:** The research draws on doctrinal techniques to examine treaty law, case law particularly PCA decisions and customary maritime practices.
- **Case Law Study:** Examining past legal disputes and enforcement challenges under ICJ, ITLOS.
- **Comparative Analysis:** Studying similar maritime disputes and their legal resolutions, such as the East China Sea conflict and Arctic sovereignty disputes

1.7 STRUCTURE OF THE DISSERTATION

This dissertation is structured into six chapters, each addressing a specific dimension of the South China Sea dispute and its implications on international trade law.

Chapter 1: Introduction

This chapter introduces the research topic, providing background information on the South China Sea dispute, key stakeholders, legal implications, research questions, objectives, research gaps, and methodology.

Chapter 2: Historical perspective of SCS Dispute

The chapter deals with dispute over sovereignty in the South China Sea (SCS) is not merely a matter of maritime boundaries under international law it is deeply rooted in divergent historical narratives that each claimant uses to assert legitimacy.

Chapter 3: Legal Framework of the South China Sea Dispute

This chapter explores the international legal framework governing maritime disputes, with a particular focus on UNCLOS, PCA rulings, and relevant WTO regulations. It also examines regional treaties, including ASEAN agreements and bilateral maritime treaties

Chapter 4: Trade and Economic Implications of the Dispute

This chapter analyses the economic impact of the dispute on global trade, focusing on disruptions to shipping lanes, risks to foreign direct investment, and the effect on regional trade agreements, including environmental trade off. It also discusses potential alternative trade routes and their feasibility.

Chapter 5: Case Studies and Comparative Analysis

This chapter presents case studies of key incidents in the South China Sea, such as the Scarborough Shoal standoff and Vietnam's legal challenges. It also provides a comparative legal analysis of similar maritime disputes, such as the East China Sea dispute and Arctic sovereignty claims.

Chapter 6: Policy and Legal Recommendations

This chapter proposes legal and policy-based solutions to mitigate trade risks and resolve territorial disputes. It examines the role of international arbitration, regional dispute resolution mechanisms, and potential legal reforms in UNCLOS and WTO frameworks.

Chapter 7: Conclusion

The final chapter summarizes the key findings, discusses the broader implications of the research, and suggests areas for future research in international trade law and maritime dispute resolution.

Each chapter is designed to build sequentially toward answering the core research question, combining legal doctrine with economic analysis.

1.8 LITERATURE REVIEW

The body of academic work addressing the South China Sea (SCS) dispute reveals a multidimensional concern spanning historical interpretations, international maritime law, and the commercial consequences of protracted regional instability. Scholars such as Zhang have pointed out that China's reliance on historic rights narratives stands in conflict with the legal architecture of UNCLOS, which seeks to govern maritime entitlements through clearly defined legal instruments rather than ancestral memory. This line of reasoning is reinforced by Huang's analysis of the 2016 arbitral ruling in *Philippines v. China*, where the tribunal decisively ruled that there was no legal basis for China's "nine-dash line." These assessments collectively suggest that the international legal community favours codified treaty law over historicized sovereign assertions.

Trade-related scholarship, meanwhile, directs attention to the operational risks that legal ambiguity poses for international shipping. Bateman and Ho highlight the practical difficulties in maritime enforcement when legal jurisdiction is contested, while Deng underscores how perceived instability in SCS waters may elevate insurance costs, reroute vessels, and delay port operations. Their work is supported by Friedman, who contends that ongoing militarization efforts in the area especially through artificial island construction exacerbate trade insecurity and signal a departure from freedom-of-navigation principles that global trade depends on.

From a strategic and geopolitical standpoint, Klein focuses on external factors such as the United States and its Freedom of Navigation Operations (FONOPs), viewing these actions as critical interventions to uphold maritime norms. Pérez provides a regional

counterpoint, examining ASEAN's dual role as both a mediator and a stakeholder, while also recognizing its limitations in presenting a united legal or diplomatic front.

Finally, Cohen broadens the conversation by situating the South China Sea within the larger framework of international trade governance. He cautions that unresolved maritime conflicts may have downstream effects on global supply chains, foreign direct investment flows, and the credibility of trade dispute mechanisms under institutions like the WTO.

Taken together, the literature positions the South China Sea not simply as a theatre of territorial contention, but as a testing ground for international law, multilateral diplomacy, and economic interdependence. Scholars converge on the idea that enduring legal ambiguity, if left unchecked, risks undermining not only regional peace but also the structural integrity of global maritime commerce. The emphasis, therefore, is on crafting enforceable legal frameworks that can balance sovereign interest with international trade stability.

1.9 CITATIONS

1. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.
2. Permanent Court of Arbitration, *The South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award (July 12, 2016).
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CHAPTER 2: HISTORICAL PERSPECTIVE OF SOUTH CHINA SEA DISPUTE

2.1 INTRODUCTION

The dispute over sovereignty in the South China Sea (SCS) is not merely a matter of maritime boundaries under international law, it is deeply rooted in divergent historical narratives that each claimant uses to assert legitimacy. Although these narratives carry political weight, their coherence and legal validity remain highly contested in modern legal discourse.¹

Historical maps, records of naval expeditions, and colonial-era treaties are frequently cited by claimant states, especially China, the Philippines, and Vietnam, to substantiate their respective claims. However, the reliability of such evidence and its compatibility with modern legal norms remains contentious. The arbitration initiated by the Philippines in 2013 and decided by the Permanent Court of Arbitration (PCA) in 2016 exposed the tension between historic rights and legal entitlements defined under UNCLOS.²

This chapter explores the evolution of these claims, analysing how colonial legacies, post-war geopolitics, and cartographic assertions, particularly the controversial Nine-Dash Line shaped the dispute, and how international law increasingly rejects historical argumentation in favour of jurisdictional clarity.

2.2 CHINA’S HISTORICAL CLAIMS AND THE EMERGENCE OF THE NINE-DASH LINE

a. Origins of the Nine-Dash Line

China’s contemporary claim to much of the South China Sea is primarily based on a vague cartographic marker: the “Nine-Dash Line.” First introduced as an “Eleven-Dash

¹ Ambrine El Kihel, *Historic Rights and Historic Titles in Maritime Territories: An Analysis of the Concepts in the Light of the United Nations Convention on the Law of the Sea and the South China Sea Arbitration*, 2024, at 6–7, https://ma-jus-cule.fr/wp-content/uploads/2025/01/maritime-territories-an-analysis-of-the-concepts-in-the-light-of-the-united-nations-convention-of-the-law-of-the-sea-and-the-south-china-sea-arbitration_ambrine-el-kihel.pdf.

² *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award (July 12, 2016), ¶ 215, <https://pca-cpa.org/en/cases/7/>.

Line” by the Republic of China (ROC) in 1947, the map encompassed almost 90% of the SCS and was later adjusted to nine dashes after the ROC ceded parts of the Gulf of Tonkin to North Vietnam.³

In 2009, China formally presented its Nine-Dash Line map to the United Nations as part of its response to overlapping maritime claims.⁴ This act marked a pivotal transition shifting what had long been a domestic narrative into the realm of international legal scrutiny. China asserted that it had “indisputable sovereignty” over the islands and their adjacent waters based on historical usage by Chinese fishermen and administration dating back to dynastic eras.

However, critics have noted that early Chinese maps including those during the Ming and Qing Dynasties did not clearly show the Spratly or Paracel Islands as part of China’s territorial domain.⁵ Moreover, the 1947 map lacked international recognition and was never deposited with any international treaty registry.

b. Legal Response under UNCLOS

China’s historical narrative has come under increasing scrutiny for its inconsistency with UNCLOS, which recognizes exclusive economic zones (EEZs) and continental shelves based on geography, not history. The 2016 PCA ruling found no legal basis for China’s claim of historic rights within the Nine-Dash Line and declared such claims invalid under UNCLOS.⁶

Importantly, the Tribunal clarified that UNCLOS supersedes all prior concepts of “historic rights” unless they can be categorized as “historic titles”, which refer to sovereignty over land or internal waters, not general maritime zones.⁷ Since China failed to provide evidence of continuous, exclusive, and recognized control over the areas in question, the Nine-Dash Line lacked legal substance.

³ Lianzi He, *The Evolution of the Nine-Dash Line: Historical Origins and Legal Implications*, J. Asian Legal Hist. 12 (2023), at 112–114.

⁴ United Nations, *China’s Note Verbale CML/17/2009*, Commission on the Limits of the Continental Shelf (May 7, 2009).

⁵ J. Batongbacal, *Different Strokes for Different Folks: A Second Look at UNCLOS Part XV and the South China Sea Disputes*, in *Establishing a Normative Order in the South China Sea*, 145–148 (2019), <https://www.elgaronline.com/view/book/9781786437525/book-part-9781786437525-22.xml>.

⁶ *South China Sea Arbitration*, PCA Award, *supra* note 2, ¶¶ 239–240.

⁷ *Id.* at ¶¶ 229–231.

Despite the ruling, China rejected the Tribunal's jurisdiction and outcome, continuing its activities in the region, including land reclamation and naval patrols. Yet from a legal standpoint, the case set a crucial precedent: historical maps or assertions without legal formalization and international acceptance are insufficient to override the maritime zones prescribed under UNCLOS.

2.3 HISTORICAL CLAIMS AND SOVEREIGNTY

The South China Sea dispute has been shaped, and often intensified, by competing historical narratives put forward by several claimant states most notably China, Vietnam, and the Philippines. Each state presents a distinct version of historical entitlement that, while politically strategic, carries differing degrees of legal weight under international law. These narratives are not merely academic constructs; they serve as foundational tools in domestic justification, diplomatic posturing, and international legal argumentation.

a. China's Historical Sovereignty Narrative

China asserts that its maritime rights over the South China Sea date back as far as the Han Dynasty (2nd century BCE), with intermittent references to ancient naval expeditions and Chinese fishermen operating around the Paracel and Spratly Islands.⁸ The most widely cited legal justification comes from the 1947 Eleven-Dash Line map, later amended to nine dashes, which the Republic of China released to depict its claimed maritime domain.⁹

However, there is limited verifiable historical evidence of actual state administration or continuous sovereign control over the islands prior to the 20th century.¹⁰ Most Chinese references involve indirect references to imperial patrols or maritime exploration not governance or exclusive occupation. The Permanent Court of Arbitration (PCA) in

⁸ Zou Keyuan, *Historic Rights in International Law and in China's Practice*, 32 *Ocean Dev. & Int'l L.* 149, 151 (2001).

⁹ Lianzi He, *The Evolution of the Nine-Dash Line: Historical Origins and Legal Implications*, *J. Asian Legal Hist.* 12 (2023), at 113

¹⁰ J. Batongbacal, *UNCLOS and Historic Rights: Clarifying the Legal Framework*, *ASEAN Mar. J.* 8, 15 (2020), <https://www.aseanmaritimejournal.org/fulltext/2020UNCLOSHistoricRights.pdf>.

2016 confirmed that such historic use does not translate into lawful maritime entitlements under UNCLOS.¹¹

b. Vietnam's Position: Historical Claims and Colonial Continuity

Vietnam's claim is also rooted in centuries-old usage, tracing back to the Nguyễn Dynasty's alleged administrative authority over the Paracels and Spratly's as early as the 17th century.¹² French colonial records, when France exercised sovereignty over Indochina, provide more concrete documentation. France formally annexed parts of the Spratly archipelago in 1933 by decree, claiming to exercise administrative control.¹³ This colonial move, while recognized internally, did not produce universal recognition and remains a focal point in Vietnam's legal assertions.

After gaining independence, the Republic of Vietnam (South Vietnam) reaffirmed these claims, stationing troops and conducting maritime patrols. Vietnam argues that such acts of state, recognized by other powers, constitute legitimate exercises of sovereignty. However, it faces criticism for inconsistencies during the Cold War period, when both North and South Vietnam made ambiguous declarations under shifting ideological alliances.¹⁴

Still, Vietnam's reliance on colonial-era administration, coupled with post-independence efforts to maintain presence, makes its claim more structured and legally grounded than China's broader historical assertions.

c. The Philippines and the Kalayaan Island Group

The Philippines' claim to parts of the Spratly Islands termed the Kalayaan Island Group (KIG) relies on a combination of discovery doctrine, effective occupation, and proximity. In 1956, Filipino explorer Tomas Cloma issued a declaration claiming parts

¹¹ *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award ¶ 227, <https://pca-cpa.org/en/cases/7/>.

¹² Nguyen Hong Thao, *Vietnam's Position on Maritime Disputes in the South China Sea*, 3 Asian J. Int'l L. 23, 25 (2013).

¹³ Nguyen Thi Lan Anh, *Sovereignty Claims in the South China Sea: Legal Approaches and Historical Records*, 11 J. Mar. Aff. & Pol'y 33, 35 (2019).

¹⁴ Bill Hayton, *The South China Sea: The Struggle for Power in Asia*, 122–124 (Yale Univ. Press, 2014).

of the Spratly's as "Freedomland," later incorporated into Philippine territory via Presidential Decree No. 1596 (1978).¹⁵

Although Cloma's claim lacked legal status at the time, the Philippine government later formalized its position based on effective administration and UNCLOS-defined EEZ principles.¹⁶ Importantly, the Philippines distinguishes its claim from historical entitlement, framing it instead around international law and geographic entitlement. This shift was central to its legal argument in the 2013–2016 arbitration, which focused not on ancient claims, but on the illegality of China's activities under UNCLOS.¹⁷

2.4 FRAMING HISTORY: DIVERGENT NARRATIVES AMONG CLAIMANTS

Though all three major claimants- China, Vietnam, and the Philippines invoke history to justify their presence in the South China Sea, the manner in which they frame these historical claims varies significantly in form, purpose, and legal ambition. Beijing's position often invokes cultural memory and long-standing presence, articulated through the lens of so-called 'historic rights' a concept UNCLOS does not endorse. Its position is often articulated through cultural memory and cartographic assertions, rather than legally recognized sovereignty acts.¹⁸

Vietnam, in contrast, blends historical presence with documented colonial-era governance, attempting to show continuity from French control to post-independence administration. This grounding in public acts of sovereignty, such as decrees, military installations, and public services, gives its claim a more structured legal trajectory, albeit one that still faces contestation.¹⁹

¹⁵ Presidential Decree No. 1596, Establishing the Kalayaan Island Group (1978) (Phil.), https://lawphil.net/statutes/presdecs/pd1978/pd_1596_1978.html.

¹⁶ Jay Batongbacal, *The Philippines' Legal Strategy in the South China Sea Arbitration*, 41 Asian Pol'y Briefs 11, 14 (2017).

¹⁷ *South China Sea Arbitration*, PCA Award, supra note 4, at ¶¶ 211–213.

¹⁸ Zou Keyuan, *Historic Rights in International Law and in China's Practice*, 32 Ocean Dev. & Int'l L. 149, 152–154 (2001)

¹⁹ Nguyen Thi Lan Anh, *Sovereignty Claims in the South China Sea: Legal Approaches and Historical Records*, 11 J. Mar. Aff. & Pol'y 33, 35–36 (2019), <https://www.aseanmaritimejournal.org/fulltext/2019nguyen.pdf>

The Philippines, rather than attempting to construct a long pre-colonial or dynastic history, has instead focused on geographic entitlement under modern law. While it initially relied on individual discovery narratives (like Tomas Cloma), its contemporary legal posture has shifted toward using UNCLOS-based arguments and international arbitration as the principal tools to assert its rights.²⁰ This pragmatic reframing places legal process above historical assertion, reflecting a strategic recognition that history alone offers little protection in the absence of international legal validation.

2.5 COLONIAL LEGACY AND INTERNATIONAL LAW

The modern legal confusion surrounding sovereignty in the South China Sea (SCS) cannot be fully understood without addressing the profound influence of colonial-era treaties, territorial rearrangements, and administrative voids. Colonialism fragmented political control in Southeast Asia, disrupted pre-existing governance structures, and produced contradictory legal documents that still affect claims made by China, Vietnam, and the Philippines today.

a. Western Treaties and Shifting Authority

Much of the present-day dispute stems from the Treaty of Paris (1898), which ended the Spanish–American War and transferred sovereignty over the Philippines from Spain to the United States.²¹ Notably, the treaty left maritime frontiers ambiguous, excluding detailed reference to islands and features in the Spratly region.²² This legal ambiguity has had lasting effects, seeding much of today’s dispute into foundational treaty language.

Similarly, the San Francisco Peace Treaty of 1951, which addressed Japanese territorial renunciations after World War II, stated that Japan would renounce all claims to the Spratly and Paracel Islands.²³ However, the treaty did not specify a beneficiary, thereby failing to assign sovereignty to any specific state. Both China and Vietnam later cited

²⁰ Jay Batongbacal, *The Philippines’ Legal Strategy in the South China Sea Arbitration*, 41 Asian Pol’y Briefs 11, 14–15 (2017), https://asiapacificpathways.com.ph/wp-content/uploads/2021/07/Philippines_Legal_Strategy_SCSa.pdf

²¹ Treaty of Peace Between the United States and Spain, U.S.–Spain, Dec. 10, 1898, 30 Stat. 1754.

²² Batongbacal, *UNCLOS and Historic Rights*, supra note 3, at 17

²³ Treaty of Peace with Japan, Sept. 8, 1951, 3 U.S.T. 3169, art. 2(f).

this ambiguity to support their claims. The lack of clarity in these pivotal treaties created what some scholars refer to as a "legal vacuum" in the South China Sea.²⁴

b. French and British Colonial Claims

Vietnam's legal arguments partially rely on French administrative acts during the colonial period. In 1933, France formally claimed several Spratly Islands, publicly declared sovereignty, and integrated them into Bà Rịa province of Cochinchina.²⁵ These acts included establishing weather stations, lighthouse construction, and naval visits, which scholars argue amount to effective occupation and control two key criteria under international law for asserting sovereignty.

However, post-colonial transitions disrupted continuity. When the French left Indochina, there was no formal handover of maritime territories to Vietnam's successor states, creating room for contestation by China and others.²⁶

In contrast, the British did not assert territorial rights over the Spratly's but occasionally treated the region as international waters. British archival records show that in the 1930s and 1940s, their approach was non-interventionist, often deferring to French and Japanese activities.²⁷ These colonial omissions contribute to the present uncertainty and overlapping jurisdictional assertions.

c. Colonialism's Legacy in Modern Legal Claims

Post-colonial states have interpreted these gaps to their advantage. China argues that the absence of Western sovereignty validates its "recovery" of the islands after WWII.²⁸ Vietnam invokes the colonial principle of state succession, asserting that it inherited rights from France. Meanwhile, the Philippines highlights that neither Spain nor the U.S. had valid claims to the Spratly's, leaving room for discovery and occupation by Filipino nationals in the 1950s.²⁹

²⁴ Yann-Huei Song, *The South China Sea Dispute and the San Francisco Peace Treaty*, 5 Am. J. Chin. Stud. 17, 20–21 (1998).

²⁵ Nguyen Thi Lan Anh, *Sovereignty Claims in the South China Sea: Legal Approaches and Historical Records*, 11 J. Mar. Aff. & Pol'y 33, 36–37 (2019).

²⁶ Clive Schofield, *Blurring the Lines: Maritime Zones and the South China Sea*, 3 Int'l J. Mar. & Coast. L. 197, 201 (2012).

²⁷ Bill Hayton, *The South China Sea: The Struggle for Power in Asia*, at 67–68 (Yale Univ. Press, 2014).

²⁸ Zou Keyuan, *Historic Rights in International Law and in China's Practice*, 32 Ocean Dev. & Int'l L. 149, 155 (2001).

²⁹ Presidential Decree No. 1596, *supra* note 8.

International law, particularly as codified in UNCLOS, prioritizes acts of sovereignty, effective administration, and geographic entitlement over vague historic or colonial references. Yet these colonial legacies remain embedded in political discourse, complicating resolution efforts and reinforcing deeply held nationalist narratives across the region.

2.6 EVOLUTION OF THE SOUTH CHINA SEA DISPUTE

The South China Sea dispute has not arisen in a vacuum, nor has it remained static. Over the past century, the region has undergone a profound transformation from a poorly mapped maritime frontier to one of the most geopolitically sensitive and legally contested waters in the world. Understanding this transformation requires a close look at key historical developments that have shaped the conflict into its present form.

a. 1947–1958: The Invention of the “Dash Line” and Early Declarations

The dispute gained form in 1947, when the Republic of China published the now-infamous Eleven-Dash Line map, asserting undefined sovereignty over vast swathes of the South China Sea.³⁰ After the People’s Republic of China (PRC) was established, it adopted this map, modifying it into the Nine-Dash Line in the 1950s.³¹ These early cartographic claims lacked precise coordinates, yet became central to China's maritime assertions.

In 1958, China issued a unilateral declaration claiming a 12-nautical mile territorial sea and sovereignty over “all islands” in the SCS, further reinforcing its ambiguous historic-rights-based argument.³² While these assertions were not widely challenged at the time, they sowed the seeds for later disputes.

b. 1970s–1990s: Military Incidents and Legal Silence

The 1970s saw significant geopolitical shifts. After France withdrew from Indochina, both North and South Vietnam asserted sovereignty over the Spratly and Paracel

³⁰ Zou Keyuan, *Historic Rights in International Law and in China's Practice*, 32 Ocean Dev. & Int'l L. 149, 150 (2001).

³¹ Lianzi He, *The Evolution of the Nine-Dash Line: Historical Origins and Legal Implications*, J. Asian Legal Hist. 12 (2023), at 112.

³² China Declaration on Territorial Sea, Sept. 4, 1958, Ministry of Foreign Affairs of China.

Islands. In 1974, China forcefully seized the Paracel Islands from South Vietnam in a brief naval clash an event that remains central to the Sino-Vietnamese dispute.³³

In 1978, the Philippines formally claimed part of the Spratly's via Presidential Decree No. 1596, citing proximity and effective occupation.³⁴ Meanwhile, discoveries of oil and gas deposits in the seabed heightened the stakes. The 1990s brought further tensions, especially after China occupied Mischief Reef in 1995, triggering protests from Manila.³⁵ At this point, it became clear that the SCS dispute was transitioning from historical rhetoric into strategic and resource-centred confrontation.

c. 2002–2012: Attempts at Diplomacy and Rising Maritime Assertiveness

In 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC). Though politically significant, the document was non-binding and did not prevent future incidents.³⁶ Meanwhile, China increased its maritime presence through patrols, research expeditions, and infrastructure development.

In 2012, tensions peaked when the Chinese Coast Guard blocked Filipino access to Scarborough Shoal, located well within the Philippines' EEZ. This prompted a prolonged standoff that directly influenced Manila's decision to pursue international arbitration.³⁷

d. 2013–2016: Legal Turning Point at The Hague

The Philippines filed a case under Annex VII of UNCLOS at the Permanent Court of Arbitration (PCA) in 2013. In a historic ruling in July 2016, the tribunal held that China's "historic rights" claim had no legal basis, and declared several features, including Mischief Reef and Subi Reef, as low-tide elevations not capable of generating EEZs.³⁸

³³ Nguyen Hong Thao, *Vietnam's Legal Position on Maritime Disputes*, 3 Asian J. Int'l L. 23, 27 (2013)

³⁴ Presidential Decree No. 1596 (1978), *supra* note 8.

³⁵ Jay Batongbacal, *Mischief Reef and the Philippines' Maritime Strategy*, ASEAN Mar. J. 5, 9 (1996), <https://aseanmaritimejournal.org/issues/vol5>.

³⁶ ASEAN-China, *Declaration on the Conduct of Parties in the South China Sea* (2002), https://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

³⁷ Richard Heydarian, *Scarborough Shoal and the Limits of Philippine Diplomacy*, Asia Maritime Transparency Initiative (2016), <https://amti.csis.org>.

³⁸ *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award, ¶¶ 215, 277 (July 12, 2016), <https://pca-cpa.org/en/cases/7/>.

This ruling marked a definitive legal rejection of the Nine-Dash Line. It also established precedent regarding marine environmental protection, ruling that China's artificial island construction caused irreversible ecological harm.³⁹ However, China refused to participate in the proceedings and rejected the award outright.

e. Post-2016: The Legal-Strategic Deadlock

Since 2016, the dispute has entered a new phase of legal stagnation and strategic manoeuvring. While ASEAN continues to push for a Code of Conduct, little progress has been made toward a binding agreement. Meanwhile, China has expanded its maritime militia, constructed military-grade airstrips, and increased patrols, especially near the Spratly's and Paracels.⁴⁰

Regional states, including the Philippines, Vietnam, and Malaysia, have responded with a mix of legal diplomacy, naval modernization, and economic hedging. As legal avenues plateau, the role of international pressure from the United States, Japan, Australia, and the European Union has become increasingly important.

Despite the lack of enforcement, the 2016 ruling continues to serve as a legal touchstone for rejecting excessive maritime claims, supporting UNCLOS principles, and guiding future negotiations in the region.

2.7 UNCLOS AND PCA 2016: HISTORIC RIGHTS REJECTED

The 2016 ruling of the Permanent Court of Arbitration (PCA) under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) marked a definitive legal turning point in the South China Sea dispute. Filed by the Philippines, the arbitration sought to test the validity of China's claims particularly the "historic rights" associated with the Nine-Dash Line against the legal standards established by UNCLOS.⁴¹

The Tribunal ruled that China's claims to historic rights within the Nine-Dash Line lacked legal foundation under UNCLOS, which is the prevailing international legal

³⁹ Id. at ¶¶ 805–814.

⁴⁰ Tara Davenport, *Legal Implications of China's Maritime Militia in the SCS*, Law of the Sea Institute, NUS (2019), <https://cil.nus.edu.sg/wp-content/uploads/2020/11/LOSI-Davenport-SCS.pdf>.

⁴¹ *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award (July 12, 2016), ¶ 146, <https://pca-cpa.org/en/cases/7/>.

regime governing maritime entitlements.⁴² Article 298 of UNCLOS allows for optional exceptions from compulsory dispute settlement mechanisms, but the Tribunal determined that it retained jurisdiction, as the case concerned the interpretation of maritime zones, not delimitation of boundaries.⁴³

The Tribunal made several key findings:

- UNCLOS does not formally recognize a category of ‘historic rights,’ except in specific contexts such as internal waters or historic bays.⁴⁴
- China’s extensive fishing and navigational presence did not establish exclusive historic rights, nor could they override the EEZ and continental shelf rights of other states.⁴⁵
- None of the disputed features (such as Mischief Reef or Subi Reef) were legally capable of generating an EEZ.⁴⁶

This judgment underscored the primacy of UNCLOS over customary or historical claims that are not explicitly preserved in the treaty. In legal terms, maritime rights must be generated through lawful entitlement not inherited through dynastic maps or fishing customs. Such legal precision plays a critical role in disentangling modern maritime entitlements from legacy-based arguments. While the ruling lacked an enforcement mechanism, it provided a durable legal precedent for rejecting overbroad sovereignty assertions in international waters.

2.8 CONCLUSION:

History Meets Law

The historical narratives surrounding the South China Sea are politically potent but legally insufficient. While China, Vietnam, and the Philippines each present different versions of their historical presence in the region, these accounts rooted in dynastic

⁴² Id. at ¶¶ 215–220.

⁴³ UNCLOS, art. 288, Dec. 10, 1982, 1833 U.N.T.S. 397.

⁴⁴ Id. at arts. 10, 15; see also PCA Award, *supra* note 1, at ¶ 230.

⁴⁵ Id. at ¶¶ 263–267.

⁴⁶ Id. at ¶¶ 552–553.

activity, colonial transitions, and discovery claims rarely meet the legal standards required to establish sovereignty under modern international law.

Colonial legacies further complicated this picture, producing vague treaties and inconsistent transfers of authority that left successor states grappling with fragmented legal inheritances. Yet despite these ambiguities, UNCLOS provides a structured and legally coherent framework for resolving maritime disputes based on geographic entitlement, effective control, and environmental obligations.

The 2016 PCA ruling decisively affirmed that history, while relevant in shaping diplomatic posture, cannot unilaterally determine maritime entitlements. It also confirmed that historic rights absent legal codification cannot prevail over the rights of coastal states under UNCLOS.

While historical claims form the basis of sovereignty narratives, their legal ambiguity contributes directly to instability in maritime trade. Competing interpretations of colonial treaties and dynastic records have led to overlapping jurisdictional assertions, which in turn create uncertainty for commercial navigation and resource development. In the absence of legally recognized and enforceable boundaries, shippers face increased insurance premiums, and investors are deterred from engaging in offshore energy and infrastructure projects. Thus, the historical framing of sovereignty, while politically resonant, carries real economic risks illustrating that the unresolved historical narrative continues to breed legal uncertainty, directly impacting navigation security and maritime commerce. As a legal researcher, I found that most references to dynastic control or postcolonial inheritance struggle to meet the bar of international legal recognition. The deeper I examined the evidentiary standards required by UNCLOS, the more apparent it became that history though influential cannot operate in legal isolation.”

In conclusion, as the dispute over the South China Sea continues, any durable resolution must reconcile historical narratives with the normative force of international law. Without that synthesis, the region remains trapped in a legal vacuum where ancient maps and modern militarization continue to collide.

CHAPTER 3: LEGAL FRAMEWORK GOVERNING MARITIME DISPUTES

- SOUTH CHINA SEA

3.1 INTRODUCTION

The South China Sea dispute represents one of the most complex and enduring geopolitical flashpoints in contemporary international relations. At the heart of the conflict lies overlapping territorial and maritime claims involving several countries, notably China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan.⁴⁷ These disputes are centred on both sovereignty over a myriad of islands, reefs, and atolls such as the Spratly and Paracel Islands as well as rights to the surrounding waters that are believed to be rich in oil, gas, and fisheries.⁴⁸

China's claim, marked by the controversial 'nine-dash line,' spans close to 90% of the South China Sea and stands well beyond the limits codified by international maritime law.⁴⁹ This claim, however, clashes with the United Nations Convention on the Law of the Sea (UNCLOS), to which China is a party⁵⁰. In 2016, an arbitral tribunal constituted under Annex VII of UNCLOS ruled in Favor of the Philippines, declaring that China's expansive claims lacked legal foundation.⁵¹ Despite the ruling, China rejected the decision and continues to fortify its presence in the region through land reclamation and the construction of military facilities on disputed features.⁵²

The dispute is not merely about territory; it also engages broader questions of international law, freedom of navigation, and regional security. The South China Sea serves as a vital conduit for global trade, with one-third of the world's shipping passing through its waters.⁵³ Consequently, external powers such as the United States, Japan,

⁴⁷ Clive Schofield, *Dangerous Ground: A Geopolitical Overview of the South China Sea*, in *Security and International Politics in the South China Sea* 7, 7–10 (Sam Bateman & Ralf Emmers eds., 2009)

⁴⁸ Robert C. Beckman, *The South China Sea Disputes: A Legal Analysis*, 107 Am. Soc'y Int'l L. Proc. 155, 157–59 (2013)

⁴⁹ U.S. Dept. of State, *Limits in the Seas No. 143: China: Maritime Claims in the South China Sea* 3–4 (2014), <https://www.state.gov/wp-content/uploads/2019/10/LIS-143.pdf>.

⁵⁰ United Nations Convention on the Law of the Sea arts. 55–75, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁵¹ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award (Perm. Ct. Arb. July 12, 2016)

⁵² Mira Rapp-Hooper, *Parting the South China Sea: How to Uphold the Rule of Law*, 95 Foreign Aff. 76, 80–81 (2016)

⁵³ Michael Green et al., *Counter-Coercion Series: China-Vietnam Oil Rig Standoff*, Ctr. for Strategic & Int'l Stud. (June 12, 2017), <https://www.csis.org/analysis/china-vietnam-oil-rig-standoff>

and Australia have also expressed concerns over the freedom of navigation and the need to uphold the rule-based international order.⁵⁴

For international legal scholars, the South China Sea dispute presents a compelling case study on the limits of international adjudication, the political challenges of enforcing arbitral awards, and the evolving interpretation of maritime entitlements under UNCLOS. It is also emblematic of the growing tension between state sovereignty and cooperative regional governance in the context of a shifting global power balance.⁵⁵

3.2 ROLE OF INTERNATIONAL LAW IN RESOLVING MARITIME CONFLICTS:

International law plays an important part in shaping how maritime disputes are addressed, offering a framework that balances sovereign interests with global obligations. At the core of this legal architecture is the United Nations Convention on the Law of the Sea (UNCLOS), often described as the “constitution for the oceans”.⁵⁶ By defining maritime zones such as territorial seas, exclusive economic zones (EEZs), and continental shelves UNCLOS establishes legal clarity over jurisdictional rights and duties in ocean spaces.

One of the key aspects of international law in this context is its dispute resolution mechanism. UNCLOS provides multiple avenues for resolving disagreements, including arbitration, adjudication before the International Tribunal for the Law of the Sea (ITLOS), and special arbitral tribunals.⁵⁷ These mechanisms allow states to pursue peaceful settlement of conflicts without resorting to coercion or force, thereby reinforcing the broader principles of international peace and security.

A well-known illustration of this is the South China Sea arbitration between the Philippines and China, where an arbitral tribunal under Annex VII of UNCLOS

⁵⁴ Patrick M. Cronin & Ryan D. Neuhard, *Confronting a Classic Deterrence Dilemma in the South China Sea*, 45 Wash. Q. 55, 56–58 (2022)

⁵⁵ Natalie Klein, *Maritime Security and the Law of the Sea* 235–38 (2011)

⁵⁶ Tommy T.B. Koh, *A Constitution for the Oceans*, Statement at the Final Session of the Third United Nations Conference on the Law of the Sea (Dec. 11, 1982),

https://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf

⁵⁷ United Nations Convention on the Law of the Sea arts. 286–287, Dec. 10, 1982, 1833 U.N.T.S. 3.

clarified legal ambiguities regarding maritime entitlements and historic rights.⁵⁸ Although compliance remains an ongoing challenge, such rulings play a critical role in shaping state behaviour and developing customary international law.

Beyond specific disputes, international law fosters cooperative governance through institutions and agreements that promote joint resource management, marine environmental protection, and navigational freedoms.⁵⁹ For instance, regional arrangements and bilateral treaties often grounded in UNCLOS principles allow states to manage fisheries or oil exploration in overlapping areas without necessarily resolving their underlying sovereignty disputes.⁶⁰

Recent developments have further demonstrated the evolving utility of international law in maritime contexts. In May 2024, ITLOS issued an advisory opinion recognizing that greenhouse gas emissions can constitute marine pollution under UNCLOS, expanding state obligations to include climate-related environmental impacts.⁶¹

Tensions in the South China Sea also continue to test the enforceability of legal rulings. In June 2024, a maritime incident involving Chinese and Philippine vessels near Second Thomas Shoal reignited legal debates over sovereignty and navigation rights.⁶²

In an effort to consolidate its maritime claims, the Philippines passed the Maritime Zones Act and the Archipelagic Sea Lanes Act in late 2024, aligning its domestic legal framework with UNCLOS provisions.⁶³

⁵⁸ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award (Perm. Ct. Arb. July 12, 2016)

⁵⁹ Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* 4–6 (2005)

⁶⁰ David Freestone, *The Role of International Law in Protecting the Global Marine Environment*, 31 Geo. Envtl. L. Rev. 307, 310–13 (2019)

⁶¹ Request for Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Requesters), Advisory Opinion, Case No. 31, ITLOS Rep. 2024, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf

⁶² China-Vietnam Oil Rig Standoff and South China Sea Developments in 2024, China-US Dynamics (ICAS), <https://chinaus-icas.org/research/navigating-the-south-china-sea-key-developments-in-2024-and-what-to-expect-in-2025/>

⁶³ Jim Gomez, *Philippines Asserts Rights With New Laws on Maritime Zones*, AP News (Nov. 26, 2024), <https://apnews.com/article/4ecec3f00ab9367d948e5af3959aea21>.

Meanwhile, NATO launched the Baltic Sentry mission in January 2025 in response to sabotage threats against undersea infrastructure in the Baltic Sea, marking a shift toward applying international legal protections in hybrid security contexts.⁶⁴

Another landmark development came in October 2024 when Commonwealth nations agreed to uphold existing maritime boundaries of island states, regardless of sea-level rise. This consensus reflects the flexibility of international legal norms in the face of environmental change, aiming to protect the maritime entitlements of vulnerable nations.⁶⁵

In sum, international law not only provides the rules for resolving maritime conflicts but also adapts to new challenges be they geopolitical, environmental, or technological ensuring that oceans remain a space governed by order rather than chaos.

3.3 INTERNATIONAL LEGAL FRAMEWORKS FOR MARITIME DISPUTES:

3.3.1 The United Nations Convention on The Law of Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982 and in force since 1994, serves as the principal legal framework governing the world's oceans. Often referred to as the "constitution of the oceans," it codifies a broad array of maritime norms ranging from navigational rights to resource entitlements while promoting peaceful coexistence among states.

a) Maritime Zones under UNCLOS;

UNCLOS delineates various maritime zones, each with differing degrees of sovereign rights and jurisdiction.

- **Territorial Waters:** According to Article 3, every coastal state has sovereignty up to 12 nautical miles from its baseline. Within this belt, the coastal state exercises

⁶⁴ Christopher Miller, *NATO Launches Naval Mission to Defend Undersea Infrastructure*, Fin. Times (Jan. 26, 2025), <https://www.ft.com/content/3447d821-ea41-4c85-b403-e7cc7cc49b4c>

⁶⁵ Alistair Smout, *Sinking Nations Should Keep Maritime Zones, Commonwealth Leaders Say*, Reuters (Oct. 26, 2024), <https://www.reuters.com/world/commonwealth-leaders-say-sinking-nations-should-keep-their-maritime-boundaries-2024-10-26/>

full legal authority similar to its land territory, although foreign vessels retain the right of *innocent passage* under Article 17.⁶⁶

- Exclusive Economic Zone (EEZ): Extending 200 nautical miles from the baseline, the EEZ is defined in Part V, especially Articles 55 and 57. Here, states possess sovereign rights for exploring and exploiting natural resources, both living and non-living, in the water column and seabed.⁶⁷ However, other states maintain the freedom of navigation and overflight, as long as they do not interfere with the economic interests of the coastal state.
- Continental Shelf: Under Article 76, coastal states may claim rights over the continental shelf beyond the EEZ, up to 350 nautical miles in some cases. These rights are sovereign but not full sovereignty focused primarily on the seabed and subsoil for activities like drilling or seabed mining.⁶⁸ Importantly, such rights exist automatically and do not require express declaration.

b) Legal Rights of States in Disputed Areas;

The UNCLOS framework encourages dialogue and mutual restraint in overlapping maritime zones, rather than adversarial assertion of right. When maritime zones of different states intersect especially in semi-enclosed seas or archipelagic regions states are urged under Article 74 (for EEZs) and Article 83 (for continental shelves) to achieve an equitable solution through agreement.⁶⁹ While UNCLOS Favors diplomatic resolution, it also recognizes the rights of states to continue limited economic or scientific activity in contested waters, as long as such actions do not exacerbate tensions or prejudice final outcomes.

In disputed areas, states must exercise restraint, avoid unilateral exploitation of resources, and engage in provisional arrangements of a practical nature until a formal resolution is achieved.⁷⁰

⁶⁶ United Nations Convention on the Law of the Sea arts. 3, 17, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁶⁷ United Nations Convention on the Law of the Sea. arts. 55–57

⁶⁸ United Nations Convention on the Law of the Sea art. 76

⁶⁹ United Nations Convention on the Law of the Sea arts. 74, 83

⁷⁰ United Nations Convention on the Law of the Sea arts. 74, 83

c) Dispute Resolution Mechanisms under UNCLOS;

One of UNCLOS's greatest contributions to international law is its structured dispute resolution framework, provided under Part XV (Articles 279–299). The system is rooted in peaceful settlement, and parties may choose among several forums:

- International Tribunal for the Law of the Sea (ITLOS): Created under Annex VI of UNCLOS and headquartered in Hamburg, ITLOS offers a specialized judicial body for marine disputes, especially concerning arrest of vessels, conservation measures, and provisional relief.⁷¹
- International Court of Justice (ICJ): The ICJ retains jurisdiction when both parties consent or have declared acceptance under the UN Charter. It has addressed maritime delimitation cases involving EEZs and continental shelves, often applying equitable principles to reach a decision.⁷²
- Permanent Court of Arbitration (PCA): When states opt for arbitration under Annex VII, the PCA facilitates hearings and binding awards, as in the landmark 2016 South China Sea Arbitration case between the Philippines and China.⁷³

Each of these institutions offers distinct advantages, and states may make a declaration under Article 287 specifying their preferred forum. If no agreement is reached, arbitration under Annex VII is the default mechanism.

• APPLICATION OF UNCLOS TO SOUTH CHINA SEA DISPUTE;

The South China Sea dispute has become a critical test case for the effectiveness and enforcement of international maritime law under the United Nations Convention on the Law of the Sea (UNCLOS). While multiple states including China, the Philippines, Vietnam, Malaysia, Brunei, and Taiwan assert overlapping claims over islands, reefs, and maritime zones, the real legal friction lies in interpreting how UNCLOS applies to these contested waters.

⁷¹United Nations Convention on the Law of the Sea annex VI

⁷² See, e.g., *Maritime Delimitation in the Indian Ocean (Som. v. Kenya)*, Judgment, 2021 I.C.J.Rep.35

⁷³ *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award (Perm. Ct. Arb. July 12, 2016)

UNCLOS and Maritime Entitlements:

At the heart of the dispute is China's claim to vast stretches of the South China Sea based on the so-called "nine-dash line", a historical boundary that predates UNCLOS and is not rooted in its legal framework. This claim appears to overlap with the exclusive economic zones (EEZs) and continental shelves of other coastal states, which UNCLOS clearly defines under Articles 55–57 and Article 76 respectively.⁷⁴ UNCLOS grants coastal states sovereign rights over natural resources within 200 nautical miles from their baselines, regardless of historical assertions.

China's expansive claims are challenged by the Philippines, which invoked the dispute resolution provisions under Annex VII of UNCLOS and brought a case before the Permanent Court of Arbitration (PCA) in 2013. In a landmark decision issued on July 12, 2016, the tribunal ruled that China's nine-dash line has no legal basis under UNCLOS, as the Convention does not recognize historical rights beyond what is granted by maritime zones defined in its provisions.⁷⁵

- Legal Status of Features and Maritime Zones:

The tribunal further clarified how features such as rocks, reefs, and low-tide elevations should be legally classified under Article 121 of UNCLOS. For example, it found that none of the Spratly Islands are capable of generating an EEZ, as they cannot sustain human habitation or economic life of their own.⁷⁶ This significantly reduces the maritime area over which sovereignty and sovereign rights can be claimed in the region.

Additionally, artificial islands, such as those constructed by China on previously submerged features, were deemed incapable of generating maritime entitlements under UNCLOS. This ruling further restricted the basis for China's claimed jurisdiction in the region.

- Obligations During Disputes:

UNCLOS not only outlines entitlements but also imposes behavioural obligations on states engaged in maritime disputes. Under Articles 74(3) and 83(3), states must make

⁷⁴ United Nations Convention on the Law of the Sea arts. 55–57, 76, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁷⁵ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award (July 12, 2016), <https://pca-cpa.org/en/cases/7/>

⁷⁶ UNCLOS, *supra* note 1, art. 121(3)

every effort to reach an equitable solution, and are discouraged from undertaking unilateral actions that could escalate tensions.⁷⁷ However, despite the tribunal's ruling, China has continued military and construction activities in disputed areas, raising questions about the enforceability of international rulings.

- UNCLOS and the Limits of Legal Resolution:

The South China Sea arbitration highlights both the strengths and limitations of UNCLOS. On one hand, the Convention provides a clear legal structure for maritime entitlements and a binding mechanism for dispute settlement. On the other, its effectiveness is challenged by non-compliance, especially when states with significant geopolitical influence choose to disregard adverse decisions. Notably, while the award is final and legally binding under Article 296, UNCLOS lacks direct enforcement powers.⁷⁸

The international community including ASEAN members, the European Union, and the United States has emphasized the importance of respecting the rule of law at sea, invoking the arbitration ruling as a legitimate reference point for future negotiations.⁷⁹

3.3.2 Customary International Law & Sovereignty Claims

Customary international law has long served as a foundation for asserting and evaluating claims of sovereignty, particularly in the absence of codified treaty law or in areas of interpretive ambiguity. It consists of practices consistently followed by states out of a sense of legal obligation (*opinio juris*) and is binding even on states that are not party to relevant treaties. Sovereignty claims over land or maritime territory often invoke customary principles like historical title, effective occupation, and acquiescence. These doctrines are increasingly tested in complex disputes like the South China Sea, where states such as China attempt to justify expansive territorial assertions through historical narratives, sometimes at odds with codified legal norms such as the United Nations Convention on the Law of the Sea (UNCLOS).

⁷⁷ UNCLOS, *supra* note 1, arts. 74(3), 83(3)

⁷⁸ UNCLOS art. 296

⁷⁹ See U.S. dept. of State, Limits in the Seas No. 150: People's Republic of China: Maritime Claims in the South China Sea 2–5 (Jan. 2022), <https://www.state.gov/wp-content/uploads/2022/01/LIS-150.pdf>.

China's Nine-Dash Line vs. UNCLOS Principles:

One of the most prominent legal controversies involving customary international law is China's claim to the majority of the South China Sea based on the “nine-dash line.” This ambiguous demarcation, which first appeared in Chinese maps in the mid-20th century, is presented by China as evidence of historic rights or historical title over maritime areas well beyond the EEZs of neighbouring countries.⁸⁰

However, these claims are incompatible with the legal regime established under UNCLOS, to which China is a party. UNCLOS restricts maritime entitlements to specific zones territorial seas (12 nautical miles), EEZs (200 nautical miles), and continental shelves as per Articles 3, 55–57, and 76, and does not recognize historic rights beyond these maritime zones.⁸¹

In the 2016 arbitral ruling initiated by the Philippines, the Permanent Court of Arbitration (PCA) rejected the legal validity of the nine-dash line under international law, holding that any claim to maritime space must be based on UNCLOS, and not on vague notions of history.⁸² The tribunal concluded that even if China historically exercised control over features or waters in the region, those actions did not establish sovereignty or exclusive resource rights beyond the limits recognized by UNCLOS.⁸³

Doctrines of Sovereignty in Customary International Law:

When treaty law like UNCLOS does not explicitly settle sovereignty disputes, customary doctrines remain highly relevant. The three most frequently cited principles include:

1. Historical Title:

Under customary law, a state may claim sovereignty based on historical title, which requires continuous and exclusive authority exercised over a territory for a significant period of time, and recognized (or at least not opposed) by other states.⁸⁴ However,

⁸⁰ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award 71–73 (July 12, 2016), <https://pca-cpa.org/en/cases/7/>

⁸¹ United Nations Convention on the Law of the Sea arts. 3, 55–57, 76, Dec. 10, 1982, 1833 U.N.T.S.3

⁸² South China Sea Arbitration, *supra* note 1, 278

⁸³ United Nations Convention on the Law of the Sea arts 259–260

⁸⁴ See *Island of Palmas (Neth. v. U.S.)*, 2 R.I.A.A. 829, 838–40 (Perm. Ct. Arb. 1928)

mere discovery or intermittent use is not sufficient; historical control must be demonstrated through effective governance.

2. Effective Occupation:

This principle refers to a state's actual and visible exercise of administrative authority and control over a territory. Courts and tribunals generally favour effective occupation over historical claims, especially when assessing relatively modern disputes.⁸⁵

3. Acquiescence:

Acquiescence occurs when other states do not object over time to a particular state's exercise of sovereignty, thereby tacitly acknowledging the claim. This doctrine is especially important in maritime or island sovereignty cases, but its threshold is high: states must show both clear conduct and prolonged silence from others.⁸⁶

China has invoked these doctrines particularly historical title to support its claims in the South China Sea. However, the arbitral tribunal found no sufficient evidence of continuous, exclusive, or internationally recognized administration over the maritime areas in question.⁸⁷

Finally Customary international law continues to play a vital role in sovereignty disputes, especially where treaty law is silent or ambiguous. While historical title, effective occupation, and acquiescence provide essential interpretive tools, their application must meet strict evidentiary standards and respect contemporary legal frameworks like UNCLOS. The case of China's nine-dash line serves as a compelling illustration of how customary claims, even if historically rooted, can be deemed legally untenable when they conflict with universal norms and codified treaty obligations.

⁸⁵ Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay. v. Sing.), Judgment, 2008 I.C.J. Rep. 12, ¶¶ 122–127

⁸⁶ Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.; Nicar. intervening), Judgment, 1992 I.C.J. Rep. 351, ¶ 384.

⁸⁷ South China Sea Arbitration, *supra* note 1, ¶¶ 274–278.

3.3.3 Maritime Dispute Resolution Mechanisms

As global maritime boundaries grow increasingly contested driven by competing territorial claims, natural resource interests, and navigational rights the role of international adjudicatory and arbitral bodies in peacefully resolving such disputes has gained prominence. Among the most recognized institutions in this domain are the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), and the Permanent Court of Arbitration (PCA). Each forum provides a structured legal environment to interpret international law, most notably the United Nations Convention on the Law of the Sea (UNCLOS), and help maintain order at sea.

- International Court of Justice (ICJ)-

The ICJ, established under the UN Charter, serves as the primary judicial organ of the United Nations and has played a pivotal role in maritime boundary delimitation and sovereignty disputes. Its jurisdiction is based on state consent, which may be given through treaties, special agreements, or declarations under Article 36 of its Statute.⁸⁸

Cases like the Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) demonstrate the Court's ability to interpret UNCLOS principles while balancing equitable maritime boundaries and state interests.⁸⁹

Strengths:

- Authoritative and widely respected.
- Produces binding decisions that contribute to the development of customary international law.

Weaknesses:

- Relies on consent, limiting its accessibility in politically sensitive disputes.
- Proceedings may be lengthy and procedurally complex.

⁸⁸ Statute of the International Court of Justice art. 36, June 26, 1945, 59 Stat. 1055, T.S. No. 993.

⁸⁹ Maritime Delimitation in the Indian Ocean (Som. v. Kenya), Judgment, 2021 I.C.J. Rep. 35.

- International Tribunal for the Law of the Sea (ITLOS)-

The ITLOS is a specialized judicial body created by UNCLOS in 1996, located in Hamburg, Germany. It has jurisdiction over disputes arising directly from the interpretation and application of the Convention.⁹⁰

ITLOS has presided over cases involving vessel arrests, environmental obligations, and delimitation disputes. In MOX Plant (Ireland v. United Kingdom) and Prompt Release cases, it has offered timely provisional measures.⁹¹

Strengths:

- Offers expedited proceedings, including provisional measures under Article 290.
- Judges have deep maritime expertise.

Weaknesses:

- Only applicable to UNCLOS parties.
- Limited to disputes strictly governed by the Convention.

- Permanent Court of Arbitration (PCA)-

Though established in 1899, the PCA gained prominence in maritime law through UNCLOS Annex VII arbitration, which provides a default mechanism for states that haven't agreed to other forums. The most influential case under its administration is the South China Sea Arbitration (Philippines v. China).⁹²

⁹⁰ United Nations Convention on the Law of the Sea arts. 287, annex VI, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁹¹ The MOX Plant Case (Ir. v. U.K.), Case No. 10, Order of Dec. 3, 2001, 41 I.L.M. 405 (2002).

⁹² South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award (July 12, 2016), <https://pca-cpa.org/en/cases/7/>

Strengths:

- Offers flexible procedures and allows selection of arbitrators.
- Can hear cases even if parties have not recognized other forums.

Weaknesses:

- No enforcement power—awards depend on states' voluntary compliance.
- Arbitral rulings are not binding precedents, reducing broader legal influence.

- Strengths and Weaknesses of International Arbitration:

Strengths:

- Neutrality: Arbitration provides a forum free from national bias, enhancing credibility.
- Party Autonomy: Parties may select arbitrators with specific expertise.
- Flexibility: Procedures can be adapted to meet the needs of both parties.
- Speed and Efficiency: In many cases, arbitration is faster than litigation.

Weaknesses:

- Enforcement Gaps: Even binding awards require domestic courts for enforcement, which may be politically sensitive.
- Costs: Arbitrator fees, tribunal expenses, and legal costs can be substantial.
- Lack of Precedent: Arbitration does not contribute to consistent legal development.
- Limited Transparency: Proceedings are often confidential, which may limit public accountability.

3.3.4 The 2016 Permanent Court of Arbitration and Its Legal Implications

The South China Sea dispute has become a landmark example of the intersection between geopolitics and international law. When the Philippines initiated arbitration proceedings against China in 2013 under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS), it brought longstanding territorial and maritime

tensions into a formal legal forum. The Permanent Court of Arbitration (PCA) issued its award on July 12, 2016, producing a ruling with far-reaching legal implications.

Legal Arguments Presented by the Philippines:

The Philippines' case revolved around several key legal issues:

1. Rejection of the Nine-Dash Line: The Philippines argued that China's historic claims based on the nine-dash line were incompatible with UNCLOS and lacked legal basis, particularly where they overlapped with the Philippines' EEZ.⁹³
2. Legal Status of Features: The Philippines sought a determination on whether certain maritime features were "islands," "rocks," or "low-tide elevations," emphasizing that under Article 121(3) of UNCLOS, many features claimed by China could not generate extended maritime zones.⁹⁴
3. Violation of Sovereign Rights: It alleged that China had interfered with its sovereign rights within its EEZ, including obstructing fishing and petroleum exploration activities.⁹⁵
4. Environmental Harm: The Philippines contended that China's land reclamation and construction activities caused severe environmental damage to coral reefs, violating obligations under UNCLOS Articles 192 and 194(5).⁹⁶

China's Refusal to Participate and Its Position-

China refused to participate in the proceedings, claiming that:

- The tribunal lacked jurisdiction because the issues related to territorial sovereignty, which UNCLOS does not cover.
- China favoured bilateral negotiations over multilateral legal processes and viewed the arbitration as politically motivated.

⁹³ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award ¶¶ 209–210 (July 12, 2016), <https://pca-cpa.org/en/cases/7/>

⁹⁴ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award ¶¶ 471–474, United Nations Convention on the Law of the Sea art. 121(3), Dec. 10, 1982, 1833 U.N.T.S. 3

⁹⁵ South China Sea Arbitration, *supra* note 1, ¶¶ 666–671.

⁹⁶ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award ¶¶ 981–991; UNCLOS, *supra* note 2, arts. 192, 194(5)

- Its claims were based on historical rights, which it asserted were long recognized in the South China Sea.⁹⁷

China issued a strong rebuttal to the ruling, branding the arbitration as “null and void” and accusing the tribunal of political bias. It maintained that disputes should only be resolved through bilateral negotiation. Chinese commentary also accused the U.S. and other powers of manipulating the process to contain Beijing’s rise.⁹⁸

Key Findings of Permanent Court of Arbitration Ruling:

In July 2016, the Permanent Court of Arbitration (PCA) delivered a landmark decision in the maritime dispute between the Philippines and China over the South China Sea. This case, unprecedented in both scope and geopolitical significance, reshaped the legal landscape under the United Nations Convention on the Law of the Sea (UNCLOS). Despite the legally binding nature of the ruling, China outright rejected the verdict and refused to participate in the proceedings—raising critical questions about enforcement and the role of international law in power-based geopolitics.

Key Legal Observations

1. China’s Nine-Dash Line Has No Legal Standing:

The tribunal decisively ruled that China’s historical claims based on the so-called “nine-dash line” had no grounding in international law under UNCLOS. This line, which encloses around 90% of the South China Sea, was declared inconsistent with the Convention and incompatible with the exclusive economic zones (EEZs) of other coastal states.⁹⁹

The ruling emphasized that UNCLOS supersedes vague historic claims unless explicitly recognized in the Convention.

⁹⁷ Ministry of Foreign Affairs of the People’s Republic of China, *Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration* (Dec. 7, 2014), https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml

⁹⁸ Michael D. Swaine, *Chinese Views on the South China Sea Arbitration Case Between the People’s Republic of China and the Philippines*, China Leadership Monitor, no. 51 (2016), <https://carnegieendowment.org/files/CLM51MS.pdf>.

⁹⁹ L. Reed & K. Wong, *Marine Entitlements in the South China Sea: The Arbitration Between the Philippines and China*, 110 Am. J. Int’l L. 746, 751–52 (2016), <https://doi.org/10.1017/ajil.2016.59>

2. None of the Spratly Features Are Legally Classified as Islands:

According to the tribunal, none of the contested features in the Spratly Islands meet the legal definition of an “island” under Article 121(3) of UNCLOS. Most were ruled to be “rocks” or “low-tide elevations,” meaning they cannot generate an EEZ or continental shelf claims.¹⁰⁰

This significantly limited the maritime zones China could claim from those features.

3. China Violated the Philippines’ Sovereign Rights:

China was found to have violated the sovereign rights of the Philippines within its EEZ by:

- Blocking Filipino fishermen, interfering with oil exploration, building artificial islands, failing to prevent Chinese fishermen from exploiting marine resources.¹⁰¹

4. Environmental Harm Due to Land Reclamation:

The tribunal reprimanded China for causing severe ecological damage through its land reclamation and construction activities. Such actions breached its obligation under UNCLOS to preserve and protect the marine environment, particularly in coral reef systems.¹⁰²

5. Artificial Islands Provide No Legal Basis for Maritime Claims:

The PCA clarified that artificial island regardless of their construction scale do not qualify for maritime entitlements. Therefore, China’s extensive reclamation projects could not generate any new EEZs or territorial seas.¹⁰³

¹⁰⁰Douglas Guilfoyle, *The South China Sea Award: How Should We Read the UN Convention on the Law of the Sea?* 8 Asian J. Int’l L. 51, 60 (2018), <https://doi.org/10.1017/S2044251317000224>

¹⁰¹ Permanent Court of Arbitration, *The South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award (July 12, 2016), <https://pca-cpa.org/en/cases/7/>

¹⁰² Julian Ku, *The South China Sea Ruling: What You Need to Know*, Lawfare (July 12, 2016), <https://www.lawfareblog.com/south-china-sea-ruling-what-you-need-know>

¹⁰³ Peter Dutton, *The South China Sea Arbitration: Implications for China*, 110 Am. Soc’y Int’l L. Proc. 264, 266 (2016)

6. Tribunal's Jurisdiction Affirmed Despite China's Boycott:

Despite China's refusal to participate, the tribunal held that it had jurisdiction over the claims because the core of the case involved the interpretation and application of UNCLOS not territorial sovereignty. China's prior ratification of UNCLOS obligated it to accept compulsory dispute resolution mechanisms under certain conditions.¹⁰⁴

Broader Impact

Although the PCA ruling lacked direct enforcement mechanisms, it fundamentally reshaped the legal context of maritime claims in the particular region. It clarified key legal concepts and put significant pressure on states to bring their claims in line with UNCLOS. The judgment also strengthened the Philippines' legal position and inspired similar legal explorations by other ASEAN states.¹⁰⁵

- China's Response and Non-compliance:

The 2016 ruling by the Permanent Court of Arbitration (PCA) was widely viewed as a legal milestone in upholding the maritime entitlements under the United Nations Convention on the Law of the Sea (UNCLOS). However, China's explicit rejection of the ruling has spotlighted the limitations of international law in restraining the geopolitical ambitions of great powers. Beijing's continued militarization in the South China Sea despite legal condemnation has escalated regional tensions and raised questions about the efficacy of global norms and mechanisms.

- Rejection of the PCA Ruling:

From the outset, China refused to participate in the arbitration proceedings, labelling them as "unilateral," "politically motivated," and beyond the tribunal's jurisdiction. Beijing argued that the tribunal lacked authority to adjudicate issues

¹⁰⁴ R. Beckman, *UNCLOS and the South China Sea Disputes*, 107 Am. Soc'y Int'l L. Proc. 142, 147 (2013).

¹⁰⁵ Mira Rapp-Hooper, *Parting the South China Sea: How to Uphold the Rule of Law*, Foreign Aff., Sept.–Oct. 2016, at 76.

that touch upon territorial sovereignty an area that UNCLOS is not mandated to address.¹⁰⁶

China's foreign ministry declared the ruling "null and void," asserting that any decisions by the PCA held no binding force upon China. Official statements emphasized that the matter should be resolved strictly through bilateral negotiations, not third-party arbitration.¹⁰⁷

- Continued Militarization of the South China Sea:

Even after the PCA ruling invalidated most of China's expansive claims, satellite imagery and defence reports showed continued Chinese activity reclaiming land, constructing runways, deploying anti-aircraft systems, and even establishing radar stations on disputed reefs and shoals. These militarized installations include key features such as Fiery Cross Reef, Mischief Reef, and Subi Reef.¹⁰⁸

Despite rhetoric about maintaining peace and promoting dialogue, China has turned many of these artificial islands into strategic military outposts. This behaviour contradicts not only the tribunal's conclusions but also the spirit of the 2002 ASEAN–China Declaration on the Conduct of Parties in the South China Sea.¹⁰⁹

- Implications for International Law Enforcement:

The case starkly illustrates the core weakness of international adjudication: enforcement depends largely on voluntary compliance. UNCLOS does not possess its own enforcement arm. The PCA's ruling, while legally binding, lacks teeth if the state in question refuses to recognize or abide by it.¹¹⁰

China's non-compliance also reflects a broader trend of selective adherence to international norms where powerful states dismiss rulings that challenge their

¹⁰⁶ Ministry of Foreign Affairs of the People's Republic of China, *Statement on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration*, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379492.shtml.

¹⁰⁷ Michael D. Swaine, *Chinese Views on the South China Sea Arbitration Case Between the People's Republic of China and the Philippines*, China Leadership Monitor, no. 51 (2016), <https://carnegieendowment.org/files/CLM51MS.pdf>.

¹⁰⁸ Bonnie S. Glaser, *Armed Clash in the South China Sea*, Council on Foreign Relations Contingency Planning Memorandum No. 14 (2015), <https://www.cfr.org/report/armed-clash-south-china-sea>

¹⁰⁹ Centre for Strategic and International Studies (CSIS), *Asia Maritime Transparency Initiative: Island Tracker*, <https://amti.csis.org/>

¹¹⁰ Julian Ku & Chris Mirasola, *The South China Sea Ruling: What You Need to Know*, Lawfare (July 12, 2016), <https://www.lawfareblog.com/south-china-sea-ruling-what-you-need-know>

strategic interests. This poses a dilemma for the rule-based global order: if rules do not constrain great powers, how can smaller states trust in law over force?¹¹¹

- **Regional Stability at Risk:**

Beijing's defiance has intensified mistrust among neighbouring countries such as Vietnam, Malaysia, and the Philippines. The South China Sea has become a flashpoint for naval standoffs, economic pressure, and aggressive "grey-zone" tactics actions that fall short of war but destabilize peace. The U.S. has maintained regular freedom of navigation operations (FONOPs) in the region, further complicating relations. The risk of miscalculation is significant. Without a neutral enforcement mechanism or genuine commitment to multilateral frameworks, the region faces prolonged volatility¹¹². The long-term risk is not just to ASEAN unity or local maritime rights, but to the integrity of the international legal order itself.¹¹³

China's rejection of the PCA ruling and its continued militarization of disputed maritime zones illuminate the limits of international law in high-stakes geopolitical arenas. While the tribunal's decision marked a principled stand for maritime rights under UNCLOS, its practical influence remains constrained by China's strategic defiance. Unless mechanisms for enforcement and confidence-building are improved, the South China Sea may remain a hotbed of contestation undermining both regional stability and the credibility of the rules-based international order.

3.3.5 REGIONAL TREATIES AND AGREEMENTS GOVERNING MARITIME DISPUTES

3.3.5.1 ASEAN (ASSOCIATION OF SOUTHEAST ASIAN NATIONS)-

ASEAN role in maritime disputes resolution:

As maritime disputes in the South China Sea (SCS) continue to provoke geopolitical tension, regional frameworks have emerged to promote peaceful resolution and cooperation. Among these, ASEAN's declarations and codes represent a uniquely

¹¹¹ Douglas Guilfoyle, *The South China Sea Award: How Should We Read the UN Convention on the Law of the Sea?*, 8 Asian J. Int'l L. 51, 58 (2018), <https://doi.org/10.1017/S2044251317000224>.

¹¹² Robert McLaughlin, *The Law of the Sea and PRC Gray-Zone Operations in the South China Sea*, 116 Am. J. Int'l L. 301 (2022), <https://doi.org/10.1017/ajil.2022.27>.

¹¹³ RAND Corporation, *The Political Geography of the South China Sea Disputes* (2022), <https://www.rand.org/pubs/perspectives/PEA2021-1.html>.

Southeast Asian approach emphasizing diplomacy, multilateral dialogue, and normative pressure over hard enforcement. While these instruments have not always succeeded in preventing escalation, they underscore ASEAN's evolving role as a key diplomatic actor in maritime governance.

ASEAN Declaration on the South China Sea (1992):

Early Diplomatic Momentum;

ASEAN's first collective step toward managing the South China Sea issue came through the 1992 ASEAN Declaration on the South China Sea. Signed in Manila, this non-binding agreement marked the beginning of ASEAN's unified voice on maritime disputes. The declaration emphasized:

- Peaceful dispute resolution in line with international law.
- Freedom of navigation.
- Regional stability through restraint in actions and dialogue¹¹⁴.

While it lacked enforcement mechanisms, the declaration was significant in setting a diplomatic tone for regional dispute management. It signalled that ASEAN viewed the SCS issue as a multilateral concern, not just a matter of bilateral claims.

ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC), 2002:

Ten years later, ASEAN advanced its diplomatic engagement through the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC). Signed in 2002 in Phnom Penh, this declaration was the first multilateral political agreement between ASEAN and China concerning SCS tensions.

Core Objectives of the 2002 DOC:

- Foster mutual trust through confidence-building measures.

¹¹⁴ ASEAN Secretariat, *Declaration on the South China Sea*, Manila, Philippines (1992), <https://asean.org/wp-content/uploads/images/archive/asean/docs/ASEAN-Declaration-on-South-China-Sea.pdf>.

- Commit parties to refrain from occupying uninhabited features.
- Promote cooperation in scientific research, environmental protection, and navigation safety.
- Reaffirm respect for UNCLOS and peaceful negotiation.

While politically non-binding, the DOC was seen as a major diplomatic breakthrough, especially for involving China in a regional dialogue process for the first time.¹¹⁵

ASEAN's Role in Preventing Conflicts:

Despite limitations, ASEAN has contributed meaningfully to conflict prevention in the South China Sea by:

1. Creating Diplomatic Space

ASEAN's declarations offer a non-confrontational platform for managing tensions. Even in the face of provocations, such as maritime standoffs or land reclamation, ASEAN's multilateral dialogues have served to defuse immediate crises and reduce the chances of accidental military escalation.

2. Establishing Norms of Behaviour

Through political documents like the 1992 Declaration and the 2002 DOC, ASEAN has encouraged self-restraint and peaceful conduct. These norms, while not legally binding, act as soft pressure tools influencing parties to think twice before taking aggressive steps.¹¹⁶

3. Preventing a Regional Arms Race

By keeping SCS disputes within a diplomatic framework, ASEAN has helped deter an overt regional arms race though militarization has still occurred. ASEAN-led dialogues prevent a security vacuum that could otherwise invite greater confrontation.

¹¹⁵ Zou Keyuan, *Implementing the DOC: A Long and Arduous Task*, in *The South China Sea Disputes and Law of the Sea* 195–210 (Edward Elgar 2014).

¹¹⁶ Robert Beckman, *The ASEAN-China DOC: A Political Agreement to Manage Tensions*, 107 Am. Soc'y Int'l L. Proc. 142, 145 (2013).

4. Avoiding Polarization

ASEAN has resisted external pressures to align firmly with either China or the U.S., maintaining its role as a neutral convening authority. This has helped prevent the South China Sea issue from becoming an even more polarized great-power contest.

Why the DOC Failed to Prevent Further Disputes?

Despite its significance, the DOC failed to halt further tensions in the region. Several reasons explain its limited effectiveness:

1. Lack of Legal Binding Force-

The DOC was not a treaty but a political declaration. Parties were encouraged, but not legally required, to comply. Consequently, China and other claimants continued land reclamation, military buildup, and resource exploration activities without formal consequence.

2. No Dispute Resolution Mechanism-

The DOC offered no tribunal or arbitration path relying entirely on bilateral negotiation. This favoured stronger parties (like China), who could set terms or delay progress indefinitely.

3. ASEAN's Internal Divisions-

Member states have different strategic interests. Cambodia, for instance, has repeatedly blocked ASEAN consensus statements critical of China. This divergence undercuts ASEAN's collective bargaining strength.

4. Delayed and Stalled Code of Conduct (COC)-

Although the DOC promised to develop a legally binding Code of Conduct (COC), this has remained under negotiation for over two decades. China has insisted that the COC exclude "external actors" (e.g., the U.S.), while some ASEAN states advocate for broader inclusion and stronger enforcement tools.¹¹⁷

¹¹⁷ Carlyle A. Thayer, *ASEAN, China and the Code of Conduct in the South China Sea*, 33(2) SAIS Rev. Int'l Aff. 75, 79–80 (2013).

ASEAN- CHINA Code of Conduct (COC) Negotiations:

The ASEAN–China Code of Conduct (COC) negotiations represent the most significant ongoing diplomatic initiative aimed at reducing tensions in the South China Sea. Launched as a follow-up to the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), the COC aspires to provide a legally binding framework for managing disputes and ensuring maritime stability. However, despite over two decades of talks, a final agreement remains elusive. The slow progress can be attributed to structural, legal, and political challenges—especially China’s calculated tactics and ASEAN’s internal divergence.

Challenges in Creating a Legally Binding Framework

1. Vagueness in the 2002 Declaration (DOC)

The COC effort originated from the non-binding 2002 DOC, which lacked clear provisions for enforcement, monitoring, or arbitration. The vagueness of the DOC has persisted into COC talks, as parties struggle to define terms like “self-restraint” or “non-militarization.”¹¹⁸

2. Differing Strategic Interests Among ASEAN States

ASEAN comprises diverse countries with varying relationships with China. For instance, Cambodia and Laos tend to side with Beijing diplomatically, while Vietnam and the Philippines seek stronger constraints on Chinese activities. These internal divisions weaken ASEAN’s collective bargaining power.¹¹⁹

3. China’s Resistance to External Involvement

China insists that the South China Sea is a regional issue that should be addressed without “external interference.” This stance directly challenges efforts by ASEAN to keep the COC consistent with international norms under UNCLOS and to allow third-party oversight or arbitration.¹²⁰

¹¹⁸ Zou Keyuan, *Implementing the DOC: A Long and Arduous Task*, in *The South China Sea Disputes and Law of the Sea* 195–210 (Edward Elgar 2014).

¹¹⁹ Carlyle A. Thayer, *ASEAN, China and the Code of Conduct in the South China Sea*, 33(2) SAIS Rev. Int’l Aff. 75, 79–80 (2013).

¹²⁰ Robert Beckman, *International Law, UNCLOS and the South China Sea*, 107 Am. Soc’y Int’l L. Proc. 142, 147 (2013).

4. Enforceability vs. Flexibility

ASEAN wants a legally binding document to deter provocative actions. In contrast, China prefers a “political agreement” without enforcement provisions. This divide on the nature of the agreement binding vs. voluntary remains one of the largest obstacles.¹²¹

China’s Strategic Manoeuvres in COC Negotiations:

China has approached the COC process as a geostrategic chessboard, employing several calculated tactics to maintain its leverage in the region while appearing cooperative.

1. Delaying Tactics (Prolonged Negotiation Process)-

China has prolonged negotiations through procedural debates and semantic disagreements. This has allowed it to continue land reclamation and militarization on various reefs, which could eventually be used to justify sovereignty claims.¹²²

2. Bilateral Engagement Preference-

While engaging in multilateral COC talks, China has preferred bilateral negotiations with individual ASEAN states. This “divide and engage” tactic enables Beijing to exploit weaker states or those with economic dependencies on China.

3. Soft Power and Economic Leverage-

Through trade, investment, and infrastructure projects (especially under the Belt and Road Initiative), China exerts indirect pressure on ASEAN countries, influencing their positions within COC discussions.

4. Proposal of Ambiguous Provisions-

China has suggested vague terms in the COC draft such as avoiding “activities that may cause tension” without clarifying what these are. This ambiguity benefits China, as it retains room to manoeuvre while keeping legal consequences at bay.¹²³

¹²¹ Ian Storey, *Assessing the ASEAN-China Framework for a Code of Conduct in the South China Sea*, ISEAS Perspective, No. 62 (2017)

¹²² Patrick M. Cronin et al., *Countering Coercion in Maritime Asia: The Theory and Practice of Gray Zone Deterrence*, Center for a New American Security (2017).

¹²³ Tran Truong Thuy, *COC Negotiations: Navigating Between Expectations and Reality*, S. Rajaratnam School of International Studies, RSIS Commentary No. 174 (2018).

The ASEAN–China Code of Conduct negotiations highlight both the promise and pitfalls of regional diplomacy in complex maritime disputes. While the COC aspires to bring order and predictability to the South China Sea, its progress is hindered by legal ambiguities, political asymmetry, and China's strategic manoeuvring. As of 2025, the COC remains a negotiated draft, not a finalized document. While ASEAN and China have completed multiple rounds of talks and even agreed on a Single Draft Negotiating Text, the road to a final, binding, and effective Code remains complex. For the COC to succeed, ASEAN must maintain internal unity and insist on a rules-based framework one that aligns with UNCLOS and includes real enforcement teeth.

3.3.5.2 The Treaty of Amity and Cooperation in South East Asia:

In a region characterized by competing territorial claims and great-power rivalries, the Treaty of Amity and Cooperation in Southeast Asia (TAC) represents a diplomatic cornerstone of ASEAN's commitment to peace, non-interference, and the rule of law. Signed in 1976 in Bali, the TAC establishes a framework for regional cooperation and peaceful dispute resolution. Over time, it has evolved into a diplomatic tool that also welcomes accession by external partners, including major powers like China, the U.S., and India. China's accession in 2003 was seen as a significant gesture of commitment to ASEAN values.¹²⁴

Legal Framework for Peaceful Dispute Resolution;

The TAC, signed in Bali in 1976, was originally envisioned as a code of conduct for ASEAN members. Its guiding principles include:

- Respect for sovereignty and territorial integrity;
- Non-interference in internal affairs;
- Settlement of disputes by peaceful means;
- Renunciation of threat or use of force.

The TAC also envisions a High Council, mechanism to mediate and reconcile disputes though it has never been activated. Despite this, the treaty has come to define ASEAN's

¹²⁴ Treaty of Amity and Cooperation in Southeast Asia, art. 1–2, Feb. 24, 1976, ASEAN, available at <https://asean.org/treaty-of-amity-and-cooperation-in-southeast-asia-indonesia-24-february-1976/>.

diplomatic DNA, often referred to as the “ASEAN Way.” This approach Favors consensus, informality, and diplomacy over confrontation or legal enforcement.¹²⁵

China’s Accession to TAC in 2003;

China's accession to the TAC in October 2003 made it the first major external power to formally endorse ASEAN’s regional norms. This move was part of a broader effort by China to build soft power and reassure Southeast Asian nations of its peaceful rise.

- It came alongside the signing of the ASEAN-China Strategic Partnership for Peace and Prosperity.
- China’s accession was also a precondition for full participation in the East Asia Summit and ASEAN Regional Forum.¹²⁶

Does TAC Influence Chinese Behaviour?

Normative Influence:

China’s accession to the TAC helped soothe strategic concerns among ASEAN members in the early 2000s. It supported efforts toward:

- The 2002 ASEAN-China Declaration on Conduct (DOC);
- Establishing maritime hotlines;
- Participating in joint marine scientific research.

These were viewed as confidence-building measures aligned with the TAC’s core values. The move temporarily softened China's regional posture, allowing it to gain greater diplomatic access.¹²⁷

¹²⁵ Treaty of Amity and Cooperation in Southeast Asia art. 2, July 24, 1976, 1025 U.N.T.S. 149, 151; see also ASEAN Secretariat, *Treaty of Amity and Cooperation*, <https://asean.org>.

¹²⁶ Mely Caballero-Anthony, *The ASEAN Way and the Rule of Law: Navigating Norms and Interests in the South China Sea*, in *The South China Sea Disputes and Law of the Sea* 25, 30–32 (S. Jayakumar et al. eds., 2014).

¹²⁷ Ian Storey, *China’s Rising Influence in Southeast Asia: Diplomacy, Soft Power and Security Implications*, 32 Southeast Asian Aff. 34, 39–42 (2011).

Practical Constraints: Limited Impact

Despite these gestures, China's conduct in the South China Sea post-2010 has contradicted the TAC's peaceful settlement mandate:

- Construction of artificial islands;
- Militarization of disputed reefs;
- Interference with other nations' maritime operations.

The TAC lacks enforcement mechanisms and dispute resolution mandates that can bind sovereign conduct. China's behaviour illustrates that political symbolism does not guarantee legal compliance, especially in asymmetrical power dynamics.¹²⁸

The Treaty of Amity and Cooperation has provided a stable diplomatic framework for Southeast Asia. Its principles remain vital in promoting peace and interstate civility. China's accession in 2003 was a diplomatic high point, showcasing temporary alignment with ASEAN norms.

However, symbolism without enforcement has proven inadequate. China's strategic behaviour in the South China Sea shows that while TAC is a useful diplomatic tool, it lacks the legal coercion necessary to ensure compliance from major powers.

3.3.5.3 The Five Power Defence Arrangement (FPDA):

Formed in 1971, the Five Power Defence Arrangements (FPDA) bring together the United Kingdom, Australia, New Zealand, Malaysia, and Singapore under a loose but enduring military cooperation framework. Although not a formal alliance like NATO, the FPDA provides for consultation and joint exercises in the event of external threats to Malaysia or Singapore. Over the past five decades, the FPDA has contributed to regional security, especially in maritime awareness and deterrence capabilities. With growing tensions in the South China Sea, the FPDA's significance is being revisited—both as a security mechanism and as a potential normative influence on great-power competition in Southeast Asia.

¹²⁸ Donald R. Rothwell, *Assessing the Limits of the ASEAN Treaty of Amity and Cooperation*, 34 *Austl. Y.B. Int'l L.* 213, 215–219 (2015).

Malaysia's Central Role:

Hosting and Coordination;

Malaysia is not only a founding member but also one of the principal beneficiaries of the FPDA. The arrangement was originally designed to safeguard post-colonial Malaysia following Britain's military withdrawal east of the Suez. Today:

- Malaysia continues to host FPDA's Integrated Air Defence System (IADS) in Butterworth.
- It participates in regular multilateral exercises, such as *Exercise Bersama Lima*, which enhances interoperability among the five states.

Malaysia sees the FPDA as an insurance mechanism for its sovereignty and as a hedge against both regional instability and major power rivalry in the South China Sea.¹²⁹

The United Kingdom: From Imperial Legacy to Global Engagement

Though geographically distant, the UK maintains a strong symbolic and strategic role in the FPDA:

- It provides high-level defence consultations and contributes warships and aircraft to annual exercises.
- In recent years, the UK has used FPDA engagements to reinforce its "Global Britain" posture.

The UK's involvement reflects a strategic interest in maintaining freedom of navigation and regional balance amid China's growing maritime assertiveness.¹³⁰

Australia and New Zealand: Regional Anchors

Australia and New Zealand treat the FPDA as both a regional stability platform and an extension of their defence diplomacy. Key roles include:

- Supporting capacity-building among Southeast Asian states.

¹²⁹ Tim Huxley, *Defending the Lion City: The Armed Forces of Singapore* 141–143 (Allen & Unwin 2000).

¹³⁰ Euan Graham, *Britain's Return to East of Suez: An FPDA Perspective*, Lowy Institute Commentary (2018), <https://www.lowyinstitute.org/the-interpreter/britain-s-return-east-suez-fpda-perspective>

- Sharing intelligence and conducting joint training operations.
- Promoting a rules-based maritime order, especially in contested zones like the South China Sea.

Australia, in particular, has used the FPDA to signal its commitment to open sea lanes and lawful maritime conduct.¹³¹

FPDA's Strategic Relevance in the South China Sea Dispute:

While the FPDA does not explicitly cover the South China Sea, its operational footprint and signalling value carry implicit relevance:

- FPDA military drills increasingly incorporate maritime surveillance and air-sea interoperability, indirectly countering assertive maritime behaviour.
- Member states like the UK and Australia have conducted freedom of navigation operations (FONOPs), consistent with UNCLOS norms.

By maintaining a multilateral military presence in maritime Southeast Asia, the FPDA serves as a soft deterrent without provoking direct confrontation.¹³²

Limitations and Future Outlook

Despite its strengths, the FPDA faces several limitations:

- It lacks collective defence guarantees, operating more as a consultative group.
- Its ambiguous mandate means it is not obligated to respond to crises like escalating tensions in the South China Sea.
- Diverging political positions—especially Malaysia's cautious diplomacy toward China limits its capacity for assertive regional intervention.

¹³¹ Andrew Carr & Joanne Wallis, *Reflecting on the FPDA at 50*, ANU Strategic & Defence Studies Centre Policy Brief, 2021, at 5–7, https://sdsc.bellschool.anu.edu.au/sites/default/files/uploads/2021-10/fpda_50th_pb.pdf.

¹³² Ian Storey, *The Five Power Defence Arrangements: An Enduring Security Agreement in Southeast Asia*, ISEAS Perspective No. 18 (2017), at 2–4, https://www.iseas.edu.sg/wp-content/uploads/pdfs/ISEAS_Perspective_2017_18.pdf.

Nevertheless, the FPDA remains a unique and credible security mechanism that complements ASEAN's diplomatic efforts and helps maintain regional equilibrium.

The Five Power Defence Arrangements illustrate how a legacy pact has evolved into a valuable instrument for regional confidence-building and maritime security. Each member especially Malaysia, the UK, Australia, and New Zealand plays a distinct but interconnected role in preserving Southeast Asia's strategic stability.

Though not designed for major power competition, the FPDA subtly shapes the strategic environment of the South China Sea by bolstering regional deterrence and promoting norms of lawful behaviour.

3.3.6 CHALLENGES IN ENFORCING INTERNATIONAL MARITIME LAW-

Lack of enforcement mechanism in UNCLOS:

The United Nations Convention on the Law of the Sea (UNCLOS) has long been hailed as the "Constitution of the Oceans," providing a detailed legal framework for maritime governance. It defines rights and obligations for states on territorial waters, exclusive economic zones (EEZs), and maritime boundaries. Yet, despite its comprehensiveness, UNCLOS suffers from a critical weakness: a lack of direct enforcement mechanisms. The implementation and compliance with UNCLOS are entirely dependent on state consent and political will, making it vulnerable to selective adherence. The South China Sea dispute and China's rejection of a 2016 arbitral ruling exemplify this structural challenge.

UNCLOS: A Strong Legal Regime Without Enforcement Teeth

UNCLOS provides a robust legal framework for defining maritime zones, regulating navigation, preserving marine environments, and resolving disputes through peaceful means. It includes mechanisms such as:

- Compulsory dispute resolution (e.g., tribunals under Annex VII),
- Arbitration through the International Tribunal for the Law of the Sea (ITLOS),
- Advisory opinions via the International Court of Justice (ICJ).

However, none of these mechanisms have coercive authority they lack enforcement power, such as the ability to impose sanctions, deploy peacekeeping forces, or compel compliance.

As Judge Tullio Treves of ITLOS noted, UNCLOS remains dependent on the "good faith" of states for implementation, and this reliance creates a significant enforcement vacuum.¹³³

No Centralized Maritime “Police” Under UNCLOS;

Unlike domestic legal systems that possess courts backed by enforcement agencies, UNCLOS does not establish a global maritime police force. Even if a tribunal delivers a binding ruling:

- There is no mechanism to punish non-compliance.
- Enforcement is left to political and diplomatic channels.
- Great powers may ignore rulings without immediate legal consequence.

The absence of enforcement bodies significantly weakens the deterrent effect of international maritime law.¹³⁴

The Role of Political Will in Enforcement;

Because enforcement under UNCLOS depends on state cooperation:

- Geopolitical interests override legal obligations.
- States selectively comply when it aligns with national strategy.
- Powerful countries, especially those with veto powers in the UN Security Council, face few consequences for non-compliance.

In the South China Sea, diplomatic pressure by the U.S. and other powers has not deterred China’s maritime assertiveness, further exposed the limits of the international legal system when faced with realpolitik.¹³⁵

¹³³ Tullio Treves, *Enforcing the Law of the Sea*, 24 Eur. J. Int’l L. 7, 13–14 (2013), <https://academic.oup.com/ejil/article/24/1/7/481288>

¹³⁴ Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* 306–308 (Cambridge Univ. Press 2005)

¹³⁵ Raul Pedrozo, *China Versus UNCLOS: A Threat to the Rule of Law*, 15 U.S. Naval War College Int’l L. Stud. 122, 126–129 (2016), <https://digital-commons.usnwc.edu/ils/vol92/iss1/43>.

3.4 CONCLUSION:

The South China Sea dispute exemplifies the challenges and complexities of enforcing international maritime law in a politically volatile and strategically vital region. At the heart of the legal framework lies the United Nations Convention on the Law of the Sea (UNCLOS), a comprehensive treaty designed to balance sovereign rights and common interests over the world's oceans. Yet, the dispute has revealed the treaty's structural limitations, particularly its lack of direct enforcement mechanisms.

The 2016 arbitral ruling in favour of the Philippines issued by the Permanent Court of Arbitration was a significant legal milestone that reaffirmed core UNCLOS principles. However, China's outright rejection of the ruling, and its continued assertive behaviour in the region, underscored a hard truth: compliance with international law ultimately depends on political will, especially when global institutions lack the authority to compel powerful states.

In parallel, ASEAN-led regional efforts, including the 1992 Declaration on the South China Sea and the 2002 ASEAN–China Declaration on the Conduct of Parties (DOC), represent Southeast Asia's commitment to diplomacy and peaceful negotiation. These instruments, however, are non-binding and have struggled to manage tensions effectively, largely due to divergent national interests and China's strategic reluctance to accept any legally constraining multilateral agreements.

Negotiations for a more robust Code of Conduct (COC) between ASEAN and China offer hope but are bogged down by procedural ambiguities, differing expectations, and geopolitical manoeuvring. Similarly, frameworks like the Treaty of Amity and Cooperation (TAC), while foundational to ASEAN's diplomatic philosophy, lack the legal power to restrain aggressive conduct in contested waters.

Beyond ASEAN, the Five Power Defence Arrangements (FPDA) play a quiet but crucial role in regional security. While not directly involved in maritime legal enforcement, the FPDA's sustained presence and joint exercises provide a strategic counterbalance and help build maritime resilience among Southeast Asian states.

Collectively, these efforts reflect a dual-layered legal and security architecture international law on one side and regional diplomacy and defence collaboration on the other. But both are hindered by limited enforcement capabilities, power asymmetries, and the strategic calculus of dominant actors like China. This research finds that while UNCLOS provides the letter of the law, regional instruments often embody the spirit of conflict management. In reflecting on the PCA's ruling, the outcome offers clarity in law, but it remains ambiguous in terms of enforcement realism.

Ultimately, resolving the South China Sea dispute and upholding maritime order will require more than just legal instruments. It calls for stronger regional unity, greater international support for multilateralism, and the political courage to hold all states regardless of size accountable to the same rules. Until then, the region must navigate the tension between law and power, principle and pragmatism

CHAPTER 4: TRADE IMPLICATION OF SOUTH CHINA SEA DISPUTE - ECONOMIC AND ENVIRONMENTAL

4.1 INTRODUCTION

Beyond its strategic disputes, the South China Sea operates as a central maritime route critical to modern commerce and an ecological treasure trove. Stretching across one of the world's busiest maritime corridors, the SCS facilitates nearly one-third of global shipping traffic, amounting to over \$3.4 trillion in annual trade, including energy supplies, industrial components, and consumer goods.¹³⁶ Yet, the region's centrality to trade is increasingly overshadowed by intensifying territorial disputes involving China, the Philippines, Vietnam, Malaysia, Brunei, and Taiwan. These disputes create a volatile mix of economic uncertainty, legal ambiguity, and environmental degradation that threatens not only regional prosperity but the integrity of international maritime order.

As rival claimants assert sovereignty and expand military presence, the SCS risks shifting from a global trade hub to a geopolitical hazard zone.

4.2 ECONOMIC UNCERTAINTIES FROM TERRITORIAL TENSIONS:

1. Increased Cost of Trade and Insurance Premiums-

Rising tensions, including military standoffs and airspace incursions, lead shipping companies to factor in higher insurance premiums and potential rerouting costs. Commercial vessels navigating disputed waters face greater legal exposure, especially if a conflict triggers exclusion zones or sanctions.¹³⁷

Even the perception of maritime insecurity has tangible cost implications for global trade networks.

¹³⁶ Center for Strategic and International Studies (CSIS), *How Much Trade Transits the South China Sea?* (2023), <https://www.csis.org/analysis/how-much-trade-transits-south-china-sea>.

¹³⁷ Gregory B. Poling, *The South China Sea in Focus: Clarifying the Limits of Maritime Dispute*, CSIS Report (2013), at 8–10, https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/130717_Poling_SouthChinaSea_Web.pdf

2. Risks to Energy Transit and Supply Chains-

The SCS is a conduit for energy imports particularly for Japan, South Korea, and China, which are heavily reliant on Middle Eastern oil and liquefied natural gas (LNG) shipped via this route. Disruptions, even temporary, could significantly raise energy prices and slow industrial output across East Asia.¹³⁸

3. Legal and Investment Challenges-

The absence of a stable legal framework given the non-recognition of international rulings like the 2016 PCA decision by China makes foreign investors hesitant to back infrastructure or resource extraction projects in the SCS. The legal limbo also complicates fisheries management, seabed mining rights, and oil exploration.

Legal ambiguity affects not just state behaviour, but corporate confidence in long-term economic engagement.

4.3 ENVIRONMENTAL RISKS AMID STRATEGIC RIVALRY:

1. Coral Reef Destruction and Ecosystem Collapse-

China's large-scale land reclamation and dredging especially on features like Mischief Reef and Subi Reef have destroyed coral reef ecosystems critical for regional biodiversity. According to marine scientists, nearly 7 square kilometres of reef systems have been buried or damaged.¹³⁹

These coral systems act as breeding grounds for fish stocks essential to the food security of millions in Southeast Asia.

2. Overfishing and Illegal Maritime Exploitation-

Disputed sovereignty claims have led to unregulated fishing, with national fleets especially China's venturing into contested waters. This has caused stock depletion,

¹³⁸ United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2022*, at 74–76, https://unctad.org/system/files/official-document/rmt2022_en.pdf.

¹³⁹ Clive Schofield, *Dangerous Ground: The South China Sea and the Risk of Armed Conflict in Southeast Asia*, Pac. Rev. (2009), at 136–138, <https://www.researchgate.net/publication/233437697>.

habitat destruction, and tension with coastal communities reliant on artisanal fisheries.¹⁴⁰

3. Pollution and Maritime Waste-

Construction debris, ship discharge, and fuel leaks from increased naval and coast guard operations have introduced hazardous pollutants into the SCS. The lack of a cooperative marine conservation framework means that transboundary pollution remains unchecked.

The South China Sea dispute is more than a sovereignty issue it is a multifaceted challenge threatening global trade security and environmental sustainability. The economic fallout ranges from higher shipping costs and energy insecurity to regulatory paralysis and stalled investment. Simultaneously, strategic manoeuvres by claimants have accelerated marine degradation, coral reef loss, and biodiversity threats that could take generations to reverse.

For the SCS to remain a stable trade corridor and an ecologically viable region, stakeholders must prioritize not just sovereignty, but legal cooperation and environmental stewardship.

4.4 ECONOMIC IMPLICATIONS OF SOUTH CHINA SEA DISPUTE:

The South China Sea (SCS) serves as one of the world's most vital economic corridors linking East Asian manufacturing hubs with markets across Europe, the Middle East, and Africa. The South China Sea facilitates one of the highest volumes of maritime trade globally, making it central to East Asia's commercial flow, including over 60% of China's maritime commerce and a significant share of Japanese, Korean, and ASEAN exports.¹⁴¹

However, the region's strategic value also makes it a flashpoint of sovereignty disputes, particularly involving China, the Philippines, Vietnam, Malaysia, Brunei, and Taiwan.

¹⁴⁰ ISEAS–Yusof Ishak Institute, *Overfishing in the South China Sea: A Looming Crisis*, Perspective No. 2021/104, at 3–5, https://www.iseas.edu.sg/wp-content/uploads/2021/08/ISEAS_Perspective_2021_104.pdf.

¹⁴¹ Center for Strategic and International Studies (CSIS), *How Much Trade Transits the South China Sea?* (2023), <https://www.csis.org/analysis/how-much-trade-transits-south-china-sea>.

These ongoing tensions have generated serious economic uncertainties, logistical risks, and legal ambiguity disrupting trade flows and driving up costs. The lack of conflict resolution, combined with militarization and unilateral actions, increasingly threatens both regional economic integration and global supply chain stability.

1) Trade Disruptions and Economic Costs:

a) Uncertainty in Shipping Lanes Affects Global Commerce-

Commercial shippers face rising legal and security risks due to contested claims over sea lanes. Vessels passing through or near contested areas (like the Spratly Islands) encounter:

- Ambiguous sovereignty claims that raise liability concerns.
- The threat of military confrontation or “grey-zone” encounters.
- The potential for sudden freedom of navigation restrictions.

As Rory Medcalf points out, “any significant escalation could severely disrupt the arterial flows of maritime trade that support the Indo-Pacific economy.”¹⁴²

b) Increased Transportation Costs from Security Risks & Rerouting-

In response to rising tensions, shipping firms sometimes reroute through the Sunda or Lombok Straits, bypassing contentious waters. This adds hundreds of nautical miles to journeys, increasing:

- Fuel costs and logistical delays,
- Insurance premiums due to perceived risk exposure,
- Total operational costs for exporters, importers, and carriers alike.¹⁴³

Even in the absence of open conflict, heightened military presence such as radar installations, naval patrols, and flyovers contributes to a risk-laden environment for international commerce.

¹⁴² Rory Medcalf, *Indo-Pacific Empire: China, America and the Contest for the World's Pivotal Region* 112–114 (Manchester Univ. Press 2020).

¹⁴³ UNCTAD, *Review of Maritime Transport 2022*, at 76–78, https://unctad.org/system/files/official-document/rmt2022_en.pdf.

c) Economic Losses for ASEAN, China, and Global Partners

Southeast Asian economies especially Vietnam, the Philippines, and Malaysia rely heavily on fisheries, offshore energy, and shipping tied to the SCS. The disputes lead to:

- Delays in oil and gas exploration projects due to overlapping EEZ claims.
- Displacement of local fishermen by coercive coast guard tactics.
- Hesitation from investors due to lack of clear legal jurisdiction.

China, while economically dominant in the region, also suffers reputational damage and heightened costs of regional instability. For global players like the EU, Japan, and the U.S., rerouted shipping, volatile energy prices, and reduced maritime predictability impact their trade competitiveness.

According to the World Economic Forum, a month-long disruption of the SCS could cost the global economy over \$30 billion in diverted trade.¹⁴⁴

The South China Sea dispute is no longer just a legal or territorial concern it is an economic fault line with global consequences. From disrupted shipping lanes to elevated transport costs and missed energy opportunities, the region's instability undermines trade efficiency, investor confidence, and supply chain reliability.

While diplomatic efforts continue, without binding conflict resolution mechanisms and cooperative maritime governance, the economic toll of the SCS dispute will only grow affecting not just Southeast Asia but global commerce at large.

2) Impact on Regional and global trade agreements:

The South China Sea (SCS) is more than a geopolitical tinderbox it is a central artery of the global economy. With one-third of the world's maritime trade traversing its waters, any instability here doesn't remain regional; it spills into the larger frameworks of international trade and economic diplomacy.¹⁴⁵

¹⁴⁴ World Economic Forum, *How a Dispute in the South China Sea Could Affect Global Trade* (2021), <https://www.weforum.org/agenda/2021/07/south-china-sea-dispute-global-trade>.

¹⁴⁵ Center for Strategic and International Studies (CSIS), *How Much Trade Transits the South China Sea?* (2023), <https://www.csis.org/analysis/how-much-trade-transits-south-china-sea>.

Amid competing sovereignty claims and growing military presence particularly from China this dispute is influencing not just maritime security but also the future of trade agreements like the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Furthermore, China's ambitious Belt and Road Initiative (BRI) intersects directly with these waters, giving rise to new strategic calculations. All of this takes place within a broader context of increasing trade friction between China, ASEAN, the United States, and the European Union.

RCEP: Integration vs. Instability

The RCEP, which includes ASEAN, China, Japan, South Korea, Australia, and New Zealand, is the world's largest trade pact, aiming to streamline trade across Asia-Pacific economies. While designed to foster economic unity, the South China Sea tensions complicate this integration:

- Countries like Vietnam and the Philippines are hesitant to deepen trade dependence on China while facing continued maritime pressure.
- Joint development efforts in disputed EEZs are delayed or abandoned due to legal uncertainties.¹⁴⁶
- While RCEP binds partners economically, it does not address geopolitical disputes, leaving unresolved tensions to simmer beneath economic ties.

CPTPP: Trade Values and Strategic Scepticism

The CPTPP, a successor to the TPP, emphasizes high-standard trade rules, transparency, and fair competition. China's interest in joining CPTPP has been met with suspicion:

- Members like Australia, Japan, and Vietnam link market access to strategic behaviour, including conduct in the SCS.
- The dispute undermines the perception of China as a reliable partner committed to rule-based trade.¹⁴⁷

¹⁴⁶ ASEAN Secretariat, *ASEAN and RCEP: Economic Integration Progress Report*, at 13–15 (2022), <https://asean.org>.

¹⁴⁷ Mireya Solís, *The CPTPP: Setting the Gold Standard for Asia-Pacific Trade?*, Brookings Institution (2018), at 6–8, <https://www.brookings.edu/articles/the-cptpp-setting-the-gold-standard>.

The escalation of military presence within the SCS undermines perceptions of economic reliability core to frameworks like the CPTPP.

Belt and Road Initiative (BRI): Strategic Importance at Risk

The BRI's Maritime Silk Road component passes through the South China Sea. Infrastructure investments in ports, pipelines, and shipping lanes have been promoted as hallmarks of peaceful development. However:

- Territorial disputes raise suspicions about whether BRI ports serve economic goals or dual-use (military) functions.
- Smaller Southeast Asian states fear becoming economically dependent and strategically constrained.¹⁴⁸

The BRI's strategic credibility rests on the perception of peaceful connectivity. SCS aggression puts that perception at risk.

Trade Tensions: China, ASEAN, the U.S., and the EU

1. China–ASEAN: Strained Economic Trust-

While China remains ASEAN's top trading partner, maritime tensions affect bilateral and multilateral confidence:

- Joint exploration deals in disputed areas are either cancelled or politically delayed.
- ASEAN states struggle to balance economic dependence with sovereignty defence.

2. U.S. and EU Response: Strategic Diversification-

Both the United States and European Union are recalibrating trade policies in response to Chinese assertiveness:

¹⁴⁸ Nadège Rolland, *China's Belt and Road Initiative: Motives, Scope, and Challenges*, 12 Nat'l Bureau Asian Rsch. Special Rep. 3, at 10–12 (2017), <https://www.nbr.org/publication/chinas-belt-and-road-initiative>.

- Increased investment in Indo-Pacific infrastructure, digital corridors, and alternative shipping routes (e.g., India-Middle East-Europe Economic Corridor).
- Enhanced diplomatic efforts to support freedom of navigation, especially around global commons.

These dynamics contribute to an emerging economic decoupling, where geopolitical friction dictates trade strategy more than market logic.

The South China Sea dispute is reshaping not only security postures but also the economic architecture of the Indo-Pacific. Regional trade agreements like RCEP and CPTPP now operate under the shadow of unresolved territorial tensions, while the Belt and Road Initiative faces scepticism regarding its peaceful intent. Additionally, trade relations between China, ASEAN, the U.S., and the EU are increasingly influenced by strategic mistrust driven by maritime behaviour.

Unless maritime disputes are addressed through credible, rule-based frameworks, the South China Sea risks becoming not only a chokepoint for shipping but also a bottleneck for multilateral economic cooperation.

3) Investment risks and economic uncertainty;

The South China Sea (SCS) remains one of the most economically consequential and politically volatile regions in the world. While its strategic importance as a trade artery is well known carrying roughly one-third of global maritime trade what is less often discussed is how this geopolitical turbulence affects foreign direct investment (FDI), regional economic planning, and long-term development strategies.¹⁴⁹

Ongoing tensions, including sovereignty disputes, military build-ups, and lack of legal resolution, have created a cloud of economic uncertainty, prompting foreign investors to hesitate or withdraw. Investors prioritize political stability, predictability, and legal clarity all of which are jeopardized by the evolving crisis in the SCS.

¹⁴⁹ Center for Strategic and International Studies (CSIS), *How Much Trade Transits the South China Sea?* (2023), <https://www.csis.org/analysis/how-much-trade-transits-south-china-sea>.

Security Risks Undermining Investor Confidence

One of the primary concerns for investors is the risk of disruption due to political or military escalation. The SCS is increasingly militarized, with China's artificial island installations and regular naval encounters between claimant states. While direct conflict hasn't erupted, the constant threat of confrontation erodes investor trust.

As noted by the ISEAS–Yusof Ishak Institute, “the uncertainty of the region’s security environment is a significant deterrent to foreign investment, especially in sectors like offshore energy and logistics.”¹⁵⁰

Infrastructure projects such as oil and gas extraction, subsea cable installations, and port development become less attractive in areas where territorial claims are unresolved or disputed.

Lack of Legal Clarity in Disputed Maritime Zones

Many of the overlapping maritime claims, particularly within Exclusive Economic Zones (EEZs), result in jurisdictional ambiguity. For foreign investors, this means:

- Contracts signed with one state may later be contested by another.
- There is limited confidence in the enforceability of commercial rights in disputed areas.
- International legal rulings, such as the 2016 PCA award in *Philippines v. China*, lack enforcement mechanisms, weakening the perception of rule-of-law protections.¹⁵¹

In high-capital projects, legal certainty is paramount without it, risk premiums rise, or projects stall.

¹⁵⁰ ISEAS–Yusof Ishak Institute, *The South China Sea Dispute and Foreign Investment: A Risk Assessment*, Perspective No. 2020/32, at 3–5, <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2020-32/>.

¹⁵¹ Permanent Court of Arbitration, *Award in the Matter of the South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, at ¶¶ 278–283, <https://pca-cpa.org/en/cases/7/>.

4.5 FOREIGN INVESTOR CONCERNS IN THE BROADER ECONOMIC CONTEXT

ASEAN States Struggle to Reassure Markets

Countries like Vietnam, the Philippines, and Malaysia have aggressively sought FDI, particularly in energy and maritime infrastructure. However:

- Their participation in the South China Sea dispute reduces investor confidence in long-term operational stability.
- Periodic maritime confrontations with Chinese vessels further amplify the perception of fragility in regional governance.

Even multilateral trade frameworks like RCEP and CPTPP offer limited relief, as they lack dispute resolution mechanisms for territorial issues.¹⁵²

China's Paradox: Economic Giant, Strategic Risk

Ironically, while China is a dominant economic player in Asia and a key partner in infrastructure funding via the Belt and Road Initiative (BRI), its assertiveness in the SCS deters investor confidence in other parts of the region:

- China's rejection of international legal mechanisms, such as the PCA ruling, sets a dangerous precedent for foreign firms reliant on legal protection.
- Strategic tensions between China and the West including the U.S. and EU have fuelled investment diversion strategies and trade alignment shifts.

As a result, investors are increasingly weighing geopolitical risk over market size or cost efficiency.

The South China Sea dispute, while primarily legal and strategic in nature, casts a long economic shadow. For foreign investors, the region represents a high-stakes environment where rich opportunities are matched by significant risks. Political instability, lack of legal enforceability, and rising strategic tensions continue to stall or divert investment flows. Unless these disputes are effectively managed through

¹⁵² Mireya Solís, *The CPTPP and Asia's Trade Architecture*, Brookings Institution (2018), at 6–8, <https://www.brookings.edu/articles/the-cptpp-setting-the-gold-standard>.

diplomatic resolution and legal clarity, Southeast Asia risks losing a crucial engine for sustainable development and economic integration.

4.6 ENVIRONMENTAL TRADE OFF IN SOUTH CHINA SEA:

The South China Sea (SCS) is not only a strategic shipping route and geopolitical flashpoint it is also one of the world's most ecologically significant marine ecosystems. Rich in biodiversity and home to vital fish stocks, the SCS sustains millions of people across coastal Southeast Asia who rely on it for livelihoods, food security, and cultural heritage. However, the overlapping maritime claims, combined with the absence of effective governance, have led to rampant overfishing, ecological degradation, and profound economic losses for local fishing communities.¹⁵³

What was once a shared resource has become an unregulated zone where economic and strategic competition overrides environmental protection. This chapter critically examines how the environmental trade-off especially the overexploitation of marine resources due to disputed jurisdictions translates into tangible socio-economic harm for the region's coastal populations.

Overexploitation of Marine Resources and Unregulated Fishing

1. Territorial Ambiguity Fuels the Tragedy of the Commons

The lack of clarity in sovereignty claims compounded by China's expansive "nine-dash line" and overlapping EEZs claimed by Vietnam, the Philippines, and Malaysia has resulted in a "governance vacuum."

Without agreed-upon rules or joint enforcement:

- Fishing fleets operate freely and often aggressively in contested zones.
- Large-scale trawling and dredging go unchecked, damaging coral reefs and marine nurseries.

¹⁵³ Clive Schofield, *Dangerous Ground: The South China Sea and the Risk of Armed Conflict in Southeast Asia*, 11 Pac. Rev. 135, 137–138 (2009), <https://www.researchgate.net/publication/233437697>.

- Foreign-flagged vessels, particularly from China, frequently fish within the EEZs of other claimants, creating friction and ecological pressure.¹⁵⁴

According to the Food and Agriculture Organization (FAO), fisheries in the South China Sea are among the most overexploited globally, with some species facing near collapse.¹⁵⁵

2. Illegal, Unreported, and Unregulated (IUU) Fishing

Disputed territorial claims make IUU fishing enforcement difficult, as states avoid confrontation or lack legal authority to prosecute foreign fishers:

- Maritime law enforcement becomes inconsistent, fragmented, or politicized.
- The absence of regional environmental treaties further weakens monitoring and cooperation.

A 2020 study by the Stimson Centre found that over 50% of fishing activity in the SCS is either illegal or unregulated, leading to severe ecosystem stress.¹⁵⁶

Economic Loss for Coastal Communities:

1. Shrinking Fish Stocks, Shrinking Livelihoods

For communities in Vietnam, the Philippines, and Malaysia, small-scale fishing has long been a pillar of economic survival. Yet:

- Overfishing and depleted stocks force fishers to venture further and stay at sea longer.
- Higher fuel costs and diminishing returns erode household income.
- In some cases, families abandon fishing altogether, leading to displacement or urban migration.

¹⁵⁴ Gregory Poling, *Illuminating the South China Sea's Dark Fishing Fleets*, Center for Strategic and International Studies (CSIS) (2020), at 4–6, <https://www.csis.org/analysis/illuminating-south-china-seas-dark-fishing-fleets>.

¹⁵⁵ Food & Agriculture Organization (FAO), *The State of World Fisheries and Aquaculture 2022*, at 45–46, <https://www.fao.org/publications/sofia/2022/en/>.

¹⁵⁶ Sally Yozell & Amanda Shaver, *IUU Fishing in the South China Sea*, Stimson Center (2020), at 8–10, <https://www.stimson.org/2020/iuu-fishing-south-china-sea/>.

In the Philippines alone, fishers report up to 40% income reduction in areas closest to contested waters.¹⁵⁷

2. Unequal Impact and Rising Maritime Conflict

Not all actors in the SCS are equal. Larger, state-backed fleets (especially from China) outcompete local artisanal fishers:

- Encroachments by Chinese vessels are regularly reported within the EEZs of other states.
- Clashes between foreign and domestic fleets result in boat damage, loss of equipment, and at times, arrests or fatalities.

These incidents not only cause economic harm but also strain diplomatic relations, turning a resource-sharing issue into a sovereignty battle.

In February 2024, *Reuters* reported that Philippine authorities accused China's coast guard of aggressively manoeuvring and using water cannons against Filipino fishing boats near the Second Thomas Shoal, resulting in minor injuries and damage to several small vessels. This sparked a diplomatic protest and renewed concerns over China's coercive tactics in contested waters.¹⁵⁸

The South China Sea illustrates a classic case of environmental trade-off in a contested geopolitical landscape. While states focus on strategic dominance and economic control, marine ecosystems are collapsing under pressure from unregulated exploitation and legal uncertainty. The result is not just ecological loss but also deep economic harm for coastal communities who depend on fisheries for food and income.

4.7 IMPACT OF MARITIME INFRASTRUCTURE AND MILITARIZATION:

The South China Sea (SCS) is a complex theatre where geopolitical ambition meets environmental consequence. It is not only a vital commercial maritime route but also

¹⁵⁷ ISEAS–Yusof Ishak Institute, *Fishing in Troubled Waters: Coastal Economies and the South China Sea Dispute*, Perspective No. 2021/45, at 3–5, <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective>.

¹⁵⁸ Karen Lema, *Philippines Says Chinese Coast Guard Harassed Fishing Boats Near Disputed Reef*, *Reuters* (Feb. 15, 2024), <https://www.reuters.com/world/asia-pacific/philippines-says-chinese-coast-guard-harassed-fishing-boats-2024-02-15/>.

an ecologically sensitive region home to coral reefs, endangered marine species, and productive fisheries. The escalation of territorial disputes, particularly through maritime militarization and infrastructure development, has introduced serious environmental trade-offs. Among the most pressing is the construction of artificial islands, notably by China, which has resulted in the destruction of marine habitats and altered the dynamics of global trade and security.¹⁵⁹

At the legal level, the United Nations Convention on the Law of the Sea (UNCLOS) remains the principal instrument for balancing maritime development with environmental protection. Yet, its effectiveness is constrained by enforcement limitations, jurisdictional disputes, and strategic state behaviour.

1. Artificial Islands and Ecological Destruction

In recent years, China has constructed over 3,200 acres of artificial land atop coral reefs in the Spratly Islands, including on Mischief Reef, Subi Reef, and Fiery Cross Reef.¹⁶⁰ These projects involved extensive dredging, land reclamation, and the deployment of concrete structures military-grade runways, ports, and surveillance outposts.

The environmental cost has been catastrophic: studies have shown widespread coral reef destruction, degradation of marine biodiversity, and disruption of fish spawning grounds vital to coastal economies.¹⁶¹

Dredging for island-building alone smothers coral beds and displaces sediment across kilometres, killing organisms crucial to reef health. The absence of environmental safeguards in these projects highlights a dangerous precedent where strategic gain takes precedence over ecological integrity.

2. Militarization and Its Ripple Effects

Beyond environmental harm, militarization in the SCS particularly through the deployment of missile systems, radar domes, and naval installations further impacts:

¹⁵⁹ Nguyen Dang Thang, *The South China Sea: Navigating Strategic and Environmental Challenges*, 13 Asian J. Int'l L. 233, 238–240 (2023).

¹⁶⁰ Asia Maritime Transparency Initiative (AMTI), *Island Tracker: South China Sea*, Center for Strategic and International Studies (2023), <https://amti.csis.org/island-tracker/>.

¹⁶¹ John McManus, *Coral Reefs of the South China Sea: The Impact of Militarization*, Mar. Pollut. Bull. 114(1), 7–9 (2017), <https://doi.org/10.1016/j.marpolbul.2016.08.021>.

- Navigation safety, as commercial vessels must manoeuvre around militarized zones;
- Underwater noise pollution, affecting migratory and reproductive patterns of marine life;
- Deterrence of scientific collaboration, as research vessels avoid disputed waters.

These actions also elevate the risk of conflict, indirectly impacting trade confidence, port planning, and regional cooperation on marine protection.

3. Trade Route Vulnerabilities and Artificial Islands

While no country has openly blocked commercial shipping, the artificial island chains pose a strategic risk to freedom of navigation:

- China's positioning of surveillance and naval platforms enables control over key maritime chokepoints, creating insecurity for nearby ASEAN states and international stakeholders.
- Artificially altered maritime features could be used to assert de facto control over transit lanes critical to the movement of oil, gas, and manufactured goods.

As noted by maritime expert Rory Medcalf, the militarization of artificial islands turns international sea lanes into strategic chessboards, shifting the balance of power without formal conflict.¹⁶²

This complicates not only trade logistics but also the diplomatic calculus of countries dependent on the SCS for uninterrupted commerce.

4.8 UNCLOS AND ENVIRONMENTAL PROTECTION

The United Nations Convention on the Law of the Sea (UNCLOS) establishes duties for states to protect the marine environment, including:

- Article 192: General obligation to protect and preserve the marine environment;

¹⁶² Rory Medcalf, *Indo-Pacific Empire: China, America and the Contest for the World's Pivotal Region* 149–153 (Manchester Univ. Press 2020).

- Article 194: Requires states to take “all measures necessary” to prevent pollution and habitat destruction;
- Part XII: Mandates Environmental Impact Assessments (EIAs) before undertaking activities that may harm marine ecosystems.

Despite these clear provisions, UNCLOS faces two major implementation challenges:

1. Lack of enforcement mechanisms- tribunals cannot impose sanctions.
2. Ambiguity in jurisdiction, especially when a state does not recognize tribunal rulings, as China did in 2016.

The 2016 PCA ruling in *Philippines v. China* specifically held that China’s island-building caused “irreparable harm to the marine environment” and violated Articles 192 and 194 of UNCLOS.¹⁶³ Yet, the ruling was ignored, highlighting the gap between legal judgment and political reality.

The South China Sea reflects one of the clearest examples of an environmental trade-off shaped by geopolitical strategy. Infrastructure development and militarization, particularly through artificial islands, have led to irreversible ecological damage and heightened security risks that extend beyond the region. Although UNCLOS provides a legal framework to regulate such activities, its limitations in enforcement and political authority leave the marine environment increasingly vulnerable.

4.9 SUPPLY CHAIN DISRUPTIONS AND TRADE SECURITY:

Vulnerabilities in global supply chains;

The South China Sea (SCS) is not just a contested maritime zone it is a lifeline of global commerce, particularly for supply chains reliant on just-in-time delivery, energy transport, and raw materials. Each year, goods valued at over \$3.4 trillion pass through

¹⁶³ Permanent Court of Arbitration, Award in the Matter of the South China Sea Arbitration (Philippines v. China), PCA Case No. 2013-19, at ¶¶ 944–947, <https://pca-cpa.org/en/cases/7/>.

this vital corridor, making the SCS one of the most significant strategic chokepoints in the global economy.¹⁶⁴

However, persistent tensions, overlapping territorial claims, and the militarization of key islands have exposed systemic vulnerabilities in global supply chains. These risks aren't merely theoretical growing political instability and potential naval confrontation could cause massive disruptions to trade, delay critical industrial inputs, and inflate costs for multinational firms.

The South China Sea: A Critical Transit Point

The SCS connects major East Asian economies like China, Japan, South Korea, and Taiwan with energy suppliers in the Middle East and Africa and markets in Europe. Its importance is anchored in:

- Energy supply, with over 80% of China's oil imports transiting the region;
- Electronics and semiconductors, as components produced in Japan and Taiwan are shipped via SCS routes;
- Container shipping, accounting for about 60% of global maritime trade volume.¹⁶⁵

Even minor disturbances in SCS transit such as rerouting or naval standoffs can have a cascading effect across industries worldwide, particularly those operating on thin inventory margins.

Trade Route Instability and Legal Uncertainty

1. Legal Ambiguity for Multinational Companies

The absence of clear maritime boundaries, due to unresolved sovereignty claims, creates a regulatory vacuum that impacts business planning. Multinational corporations face:

- Uncertainty over shipping routes, leading to higher insurance premiums;

¹⁶⁴ Center for Strategic and International Studies (CSIS), *How Much Trade Transits the South China Sea?* (2023), <https://www.csis.org/analysis/how-much-trade-transits-south-china-sea>

¹⁶⁵ United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2022*, at 42–44, https://unctad.org/system/files/official-document/rmt2022_en.pdf.

- Fear of jurisdictional disputes, especially when transiting near features militarized by China or disputed by Vietnam or the Philippines;
- Difficulty accessing arbitration or compensation if cargo is delayed or seized in contested waters.

The lack of universally recognized legal boundaries in the SCS complicates not only trade routes but also supply chain logistics and contract enforcement.

2. Naval Tensions Create Logistical Insecurity

Even in peacetime, freedom of navigation operations (FONOPs) and close encounters between rival naval vessels raise the spectre of unplanned escalation. A maritime conflict, even short-lived, could:

- Close key shipping lanes temporarily, such as the Luzon Strait or Strait of Malacca;
- Cause panic rerouting and spike oil and LNG prices;
- Delay delivery of crucial raw materials and high-tech components.

4.10 CASE STUDY: HOW NAVAL CONFLICT COULD IMPACT SEMICONDUCTOR & ENERGY SUPPLY CHAINS

Semiconductors

Semiconductors critical to everything from smartphones to defence equipment are produced primarily in Taiwan, South Korea, and Japan, all of which rely on SCS transit routes for exports.

A naval blockade or standoff could:

- Halt delivery of semiconductor wafers and microchips to North America and Europe;
- Severely affect manufacturing giants like TSMC (Taiwan) and Samsung (South Korea);

- Disrupt downstream sectors such as automotive, aviation, and defence.¹⁶⁶

For instance, the COVID-era chip shortage which did not involve military disruption led to a \$210 billion global revenue loss across industries. A conflict-induced halt would be even more devastating.¹⁶⁷

Energy Supply Chains

The SCS is a crucial route for oil and LNG deliveries to East Asia. A conflict or de facto naval control of strategic chokepoints would:

- Disrupt supply to China, Japan, and South Korea, driving up energy costs;
- Delay tankers and cause supply shocks for refineries and industrial users;
- Increase global oil prices, creating inflationary pressure worldwide.

A simulation by the Brookings Institution showed that a three-week closure of key SCS lanes would result in \$160 billion in disrupted trade, much of it in energy and electronics.¹⁶⁸

The South China Sea dispute is not merely a maritime or territorial issue it's a looming threat to global supply chain stability. As trade routes remain vulnerable to military activity and legal ambiguity, the economic consequences for multinational corporations are both immediate and systemic. Sectors such as semiconductors and energy, which are central to national economies and security architectures, stand particularly exposed.

Unless peaceful maritime governance and legal clarity are enforced, the SCS will continue to be a fault line where law, logistics, and geopolitics intersect with high economic stakes.

¹⁶⁶ James A. Lewis, *Semiconductors and National Security*, CSIS Report (2022), at 5–7, <https://www.csis.org/analysis/semiconductors-and-national-security>.

¹⁶⁷ McKinsey & Company, *Global Chip Shortage Impact Report* (2021), at 3, <https://www.mckinsey.com/industries/semiconductors/our-insights>.

¹⁶⁸ Brookings Institution, *What If There's a Conflict in the South China Sea?*, Strategic Simulations Report (2021), at 9–11, <https://www.brookings.edu>.

4.11 TRADE SECURITY AND MARITIME LAW ENFORCEMENTS

In today's hyperconnected economy, the security of maritime trade routes is essential to sustaining global supply chains. With over 80% of global trade by volume transported via sea, disruptions whether from piracy, unauthorized military activity, or legal ambiguity can trigger a ripple effect across multiple industries.¹⁶⁹ One region that exemplifies both the economic value and strategic fragility of maritime trade is the South China Sea (SCS), where overlapping claims and increased naval activity create significant pressure on trade flow and legal enforcement.

Two of the most important legal frameworks guiding trade security are the International Maritime Organization (IMO) conventions and the United Nations Convention on the Law of the Sea (UNCLOS). These instruments seek to regulate maritime conduct, ensure freedom of navigation, and prevent interference with international shipping while state navies and coalitions play an increasingly visible role in upholding these principles in contested waters.

- **International Maritime Organization (IMO) and Trade Security**

The IMO, established in 1948 under the United Nations framework, serves as the chief global authority for shipping safety, security, and environmental protection. Among its many conventions, the International Ship and Port Facility Security (ISPS) Code, introduced in 2004, marked a significant leap in how maritime infrastructure is protected against unlawful interference.

The ISPS Code introduced:

- Mandatory security assessments for port facilities and vessels;
- Requirements for ship security officers and continuous monitoring;
- Enhanced communication between states, flag registries, and ports for threat response.

¹⁶⁹ United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2022*, at 5–6, https://unctad.org/system/files/official-document/rmt2022_en.pdf.

While originally developed in response to terrorism, the Code has become increasingly relevant for maintaining trade security in contested regions, including the SCS.¹⁷⁰

The IMO's framework reinforces state accountability while emphasizing global cooperation, making it indispensable to maintaining predictability in maritime commerce.

- **UNCLOS and Legal Norms on Trade Route Protection**

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, governs the legal regime of ocean space, including navigation, sovereignty, and maritime security. As a treaty signed by over 160 states, it provides both rights and obligations, particularly with regard to protecting international trade routes.

- Freedom of Navigation and Legal Protections

UNCLOS enshrines the principle of freedom of navigation under Article 87, which permits all states regardless of location to navigate through international waters without obstruction. This is particularly crucial in Exclusive Economic Zones (EEZs), where coastal states do not hold full sovereignty over the water column.¹⁷¹

The legal framework supports uninterrupted movement of commercial shipping, while discouraging unilateral control over critical sea lanes.

However, the growing presence of naval vessels and artificial structures in contested EEZs especially by China in the SCS has led to disputes over the lawfulness of military activity in EEZs, where UNCLOS is somewhat vague.

- Unauthorized Military Activity and Enforcement Gaps

UNCLOS does not explicitly prohibit military activity in EEZs, leading to conflicting interpretations:

- Some states (e.g., the U.S., Australia) argue that foreign military surveillance in EEZs is lawful.

¹⁷⁰ International Maritime Organization (IMO), *ISPS Code Implementation Guide*, at 12–14, <https://www.imo.org/en/OurWork/Security/Pages/ISPSCode.aspx>.

¹⁷¹ United Nations Convention on the Law of the Sea art. 87, Dec. 10, 1982, 1833 U.N.T.S. 3.

- Others (e.g., China, India) maintain that such actions require prior consent.

This legal grey zone has caused diplomatic standoffs, where commercial vessels and naval escorts are entangled in sovereignty disputes, increasing the risk of escalation and undermining the security of trade routes.¹⁷²

While UNCLOS outlines legal protections, its lack of enforcement capability means that compliance depends largely on political will and naval deterrence.

- Naval Patrols: A De Facto Enforcer of Maritime Law

In response to legal ambiguity and rising threats, naval patrols whether state-led or multilateral have become key actors in enforcing trade security. These patrols serve multiple functions:

- Protecting merchant vessels from piracy or harassment;
- Monitoring unauthorized military presence in EEZs;
- Demonstrating resolve through Freedom of Navigation Operations (FONOPs).

Naval patrols by countries such as the United States, France, Australia, and Japan in the SCS are often accompanied by statements reaffirming UNCLOS principles, even when legal recourse is unavailable. These patrols signal an intention to prevent any single power from controlling international sea lanes.

For instance, the U.S. Navy’s routine transits through the Taiwan Strait and near contested reefs in the SCS are cited as part of its commitment to “freedom of the seas.”¹⁷³

While these operations are symbolic and preventive, they provide a pragmatic layer of enforcement in areas where legal tools fall short.

The protection of maritime trade routes today rests on a complex blend of international law and strategic enforcement. While the IMO and UNCLOS provide the legal backbone for regulating maritime conduct and ensuring freedom of navigation, their effectiveness depends heavily on state cooperation and active enforcement. In zones

¹⁷² Robert Beckman, *Military Activities in the EEZ: A U.S.–China Dialogue on Rule of Law*, 107 Am. Soc’y Int’l L. Proc. 175, 177–179 (2013).

¹⁷³ Center for Strategic and International Studies (CSIS), *Freedom of Navigation Operations in the South China Sea*, at 3–5 (2022), <https://www.csis.org/analysis/fonops>.

like the South China Sea, where geopolitical tensions blur legal boundaries, naval patrols function as real-time enforcers, bridging the gap between written law and operational reality. The future of trade security in international waters will depend on the ability of legal frameworks to adapt and on states' commitment to uphold them, not merely in courts, but also on the seas.

4.12 ALTERNATIVE TRADE ROUTES AND THEIR LEGAL COMPLEXITIES:

As geopolitical instability increases in the South China Sea (SCS) a region central to global trade states and commercial actors are exploring alternative trade corridors to hedge against the legal and security uncertainties associated with the heavily militarized maritime zone. The idea of rerouting or diversifying supply chains is attractive in theory, but in practice, it introduces a host of legal, logistical, and diplomatic complexities.

This chapter explores three prominent alternative trade frameworks:

- China's Belt and Road Initiative (BRI),
- The emerging India–Middle East–Europe Economic Corridor (IMEC), and
- The increasingly navigable Arctic shipping lanes.

Each offers a potential workaround to the SCS chokepoint but all carry distinct legal challenges, particularly regarding jurisdiction, international agreements, environmental obligations, and enforcement mechanisms.

Belt and Road Initiative (BRI): Strategic Connectivity with Legal Risks

The Belt and Road Initiative (BRI), launched by China in 2013, aims to develop a network of infrastructure across Asia, Africa, and Europe to facilitate land and sea trade. The BRI's Maritime Silk Road explicitly aims to diversify shipping away from vulnerable chokepoints, including the SCS.

However, BRI projects have drawn criticism for:

- Opaque contracting processes,

- Debt-based diplomacy, and
- Lack of adherence to international legal standards on procurement, dispute resolution, and environmental assessment.¹⁷⁴

From a legal standpoint, BRI faces two fundamental risks:

- Unclear governing law in cross-border agreements, often skewed toward Chinese legal frameworks;
- Limited access to neutral arbitration venues for foreign investors or host states in the event of disputes.

These challenges have led countries like Malaysia and Sri Lanka to restructure or cancel BRI deals, citing sovereignty and transparency concerns.¹⁷⁵

In this sense, while the BRI offers a partial trade route alternative to the SCS, it introduces contractual uncertainty and legal asymmetry in international trade law.

India–Middle East–Europe Economic Corridor (IMEC): A Rules-Based Alternative?

Unveiled at the G20 Summit in 2023, the India–Middle East–Europe Economic Corridor (IMEC) proposes a trade route linking Indian ports with the UAE and Saudi Arabia, then connecting through rail to Jordan and Israel, and onward to Europe via Mediterranean shipping.

IMEC is being promoted as a geopolitical counterbalance to the BRI, emphasizing:

- Rule-based cooperation under existing bilateral and multilateral treaties;
- Transparent infrastructure funding, often backed by the EU, India, and the U.S.;
- An intention to comply with international investment and arbitration norms.

¹⁷⁴ Nadège Rolland, *China's Belt and Road Initiative: Motives, Scope, and Challenges*, 12 Nat'l Bureau Asian Rsch. Special Rep. 3, at 11–13 (2017), <https://www.nbr.org/publication/chinas-belt-and-road-initiative>.

¹⁷⁵ Jonathan E. Hillman, *The Emperor's New Road: China and the Project of the Century*, Yale Univ. Press 2020, at 103–106.

Legally, IMEC's strength lies in:

- Potential alignment with UNCITRAL arbitration mechanisms;
- Avoidance of maritime chokepoints like the Strait of Malacca and the SCS.

However, challenges remain:

- The corridor passes through conflict-prone regions like the Middle East, which raises security risks;
- There's no comprehensive multilateral agreement yet governing the full corridor's legal framework.

Despite its promise, IMEC's legal infrastructure is still under construction, and its enforceability will depend on the coherence of treaties signed among transit states.¹⁷⁶

Arctic Shipping Lanes: Legally Navigable, but Politically Tense

The Arctic region, due to climate change and melting ice caps, is opening up new northern shipping routes namely the Northern Sea Route (NSR) along Russia's coast, and the Transpolar Route across the central Arctic Ocean.

Advantages include:

- Shorter shipping distance from East Asia to Europe (up to 40% less compared to SCS routes);
- Bypassing contested waters like the SCS altogether.

However, the legal complexities are formidable:

- The NSR is controlled largely by Russia, which enforces strict national regulations, contrary to UNCLOS Article 234, which governs ice-covered areas but does not grant full regulatory control to coastal states.¹⁷⁷

¹⁷⁶ European Commission, *Global Gateway and IMEC: A Sustainable Trade Route*, at 4–7 (2023), https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/global-gateway_en.

¹⁷⁷ Erik J. Molenaar, *The Legal Regime of Arctic Shipping: The Role of UNCLOS and the Polar Code*, 2 J. Mar. L. & Com. 221, at 228–231 (2016).

- The Arctic Council a governance body composed of Arctic states has no binding legal authority over shipping regulations.
- Environmental legal obligations, including under the Polar Code (IMO), restrict vessel types, emissions, and routing in Arctic waters.

While legally viable, the Arctic routes remain dependent on national laws, particularly Russian approval, raising concerns over politicization, sanctions, and uncertain dispute resolution.¹⁷⁸

4.13 CONCLUSION:

The South China Sea dispute, long viewed through the lens of territorial sovereignty and strategic power play, holds equally serious economic and environmental implications that ripple far beyond the region. Throughout this chapter, examined how this contested maritime space crucial for nearly a third of global maritime commerce has become a fault line in both trade security and ecological balance.

From a trade perspective, the economic uncertainties created by the territorial conflict have introduced significant risks to global commerce. It has been seen how tensions affect shipping lanes, forcing rerouting and raising transportation and insurance costs. These shifts impact not only regional actors like ASEAN and China but also distant economies reliant on these routes for supply chain continuity. Furthermore, as explored in the context of investment risks and legal ambiguity, foreign investors remain wary of engaging in infrastructure or offshore projects in such a politically volatile region.

On a broader scale, the dispute undermines the stability of regional and global trade agreements. While initiatives like RCEP and CPTPP aim to integrate trade across Asia-Pacific, their effectiveness is hindered by geopolitical mistrust and overlapping maritime claims. China's Belt and Road Initiative (BRI), although envisioned as a diversification strategy, introduces its own legal complexities, particularly in terms of debt diplomacy and lack of neutral arbitration. The emerging India–Middle East–

¹⁷⁸ IMO, *Polar Code Implementation*, at 9–10, <https://www.imo.org/en/OurWork/Safety/Pages/polar-code.aspx>.

Europe Corridor (IMEC) and even Arctic shipping lanes, while promising, come with jurisdictional and environmental challenges of their own.

The environmental costs are equally troubling. The unchecked construction of artificial islands and the growing militarization of the sea have led to significant degradation of marine ecosystems. Meanwhile, unregulated and illegal fishing, fuelled by the absence of a clear legal authority in disputed zones, has pushed fish stocks to collapse, threatening the livelihoods of coastal communities who rely on these waters for survival. The destruction of coral reefs, critical breeding grounds for regional biodiversity, underscores the irreversible trade-offs being made in the name of power projection.

Although UNCLOS offers a robust legal framework to govern freedom of navigation and environmental responsibility, its enforcement mechanisms remain weak. The 2016 ruling in *Philippines v. China*, which highlighted the environmental violations and unlawful maritime claims, remains unenforced exposing the limits of international law in the face of geopolitical realpolitik.

In summary, the South China Sea dispute is not just a question of borders or strategic dominance. It is a multidimensional crisis where global supply chains, trade security, environmental sustainability, and regional livelihoods are all at stake. The long-term consequences will depend not only on diplomatic restraint but on the strengthening of legal enforcement, commitment to cooperative frameworks, and a shared understanding that the sea is more than territory it is a shared resource and global lifeline.

CHAPTER 5: COMPARATIVE CASE STUDIES IN MARITIME DISPUTE RESOLUTION

5.1 INTRODUCTION

While the South China Sea (SCS) dispute presents a unique convergence of geopolitics, law, Trade and environmental security, it is by no means an isolated legal challenge. The international legal system has dealt with several notable maritime disputes in other regions, where legal doctrine and judicial reasoning offer instructive guidance. This chapter examines four significant maritime case studies; the Black Sea delimitation (Romania v. Ukraine), the Peru–Chile maritime boundary dispute, the Indonesia–Malaysia conflict over Sipadan and Ligitan islands, and the Scarborough Shoal standoff between China and the Philippines.

Each of these cases involves varying degrees of legal complexity, ranging from the interpretation of effective occupation, customary maritime boundaries, environmental harm, and enforcement gaps under the United Nations Convention on the Law of the Sea (UNCLOS). By analysing these precedents, this chapter aims to derive normative and procedural insights that can be applied to the enduring tensions in the SCS.

5.2 ROMANIA V. UKRAINE: DELIMITATION IN THE BLACK SEA (ICJ 2009)

The International Court of Justice’s (ICJ) judgment in *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* is often cited for its clarity and methodical approach to maritime boundary setting.¹⁷⁹ At the core of the case was a dispute over a maritime area in the Black Sea, centred around Serpent’s Island, a small rocky outcrop claimed by Ukraine but considered by Romania to be legally insignificant in maritime delimitation.

Legal Framework and Reasoning

The ICJ followed a three-step approach consistent with prior jurisprudence:

¹⁷⁹ *Maritime Delimitation in the Black Sea (Rom. v. Ukr.)*, Judgment, 2009 I.C.J. Rep. 61 (Feb. 3).

- (1) drawing a provisional equidistance line,
- (2) considering relevant circumstances for adjustment, and
- (3) applying a proportionality test.¹⁸⁰

The Court ruled that Serpent's Island did not merit its own maritime entitlement due to its size and lack of human habitation, invoking Article 121(3) of UNCLOS.¹⁸¹

The ruling is a landmark for its treatment of small features and their limited role in influencing maritime boundaries a critical aspect in the SCS where China has constructed artificial islands to claim extensive maritime zones.

Lessons for the South China Sea

The Court's distinction between land sovereignty and maritime entitlements is instructive for SCS claimants. The rejection of Serpent's Island's influence parallels the Philippines' successful argument in the 2016 PCA ruling that China's reclaimed features do not generate EEZs or continental shelves.¹⁸² This reinforces the idea that features incapable of sustaining human life or economic activity hold limited legal weight in maritime delimitation.

Moreover, Romania and Ukraine complied with the ICJ judgment without further escalation demonstrating that peaceful adjudication, even in politically sensitive areas, is achievable when states accept legal outcomes in good faith.¹⁸³ This stands in contrast to China's rejection of the PCA ruling, highlighting the enforcement dilemma in international law.

Trade and Resource Implications

Beyond the legal boundary delimitation, the ICJ's decision significantly impacted regional economic interests particularly access to energy resources in the Black Sea. The maritime area at stake was believed to hold substantial reserves of oil and natural

¹⁸⁰ Id. at 101–103.

¹⁸¹ United Nations Convention on the Law of the Sea art. 121(3), Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

¹⁸² *In the Matter of the South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award of July 12, 2016, ¶¶ 573–575, <https://pca-cpa.org/en/cases/7/>.

¹⁸³ B. Sepúlveda-Amor, *Contribution of the International Court of Justice to the Development of the Law of the Sea*, 1 Aegean Rev. L. Sea & Maritime L. 1, 8 (2010), <https://link.springer.com/article/10.1007/s12180-009-0004-4>.

gas. Following the Court's ruling, Romania gained access to several offshore blocks, enabling partnerships with Western oil companies for exploration and development.¹⁸⁴

This aspect mirrors similar concerns in the South China Sea, where disputed zones overlap with lucrative hydrocarbon reserves. The ruling thus highlights how international adjudication can unlock economic potential and facilitate lawful foreign investment provided maritime entitlements are clarified through peaceful means. The ICJ's ruling brought clarity to boundary delimitations, reducing maritime tensions in the Black Sea and enhancing regional stability for shipping routes and energy exploration.

Moreover, by settling the boundary, Romania and Ukraine reduced investor risk, thereby strengthening maritime trade flows and infrastructure development in the western Black Sea.¹⁸⁵ The lesson for the South China Sea is clear: peaceful boundary resolution enhances not only legal clarity but also economic security and investor confidence in maritime industries.

5.3 PERU V. CHILE: CUSTOMARY AGREEMENTS AND MARITIME ECONOMIC ZONES (ICJ 2014)

The *Maritime Dispute (Peru v. Chile)* decided by the International Court of Justice (ICJ) in 2014 involved a long-standing disagreement over the maritime boundary between the two South American neighbours. Although the parties had agreed on a land boundary, no formal treaty existed regarding their respective maritime entitlements. Peru contended that no maritime boundary had ever been legally established, while Chile asserted the existence of a de facto boundary based on past fishing arrangements and mutual practice.¹⁸⁶

Legal Approach and Delimitation Logic

The ICJ was asked to determine whether an agreed maritime boundary existed and, if so, how it should be drawn. The Court held that a customary maritime boundary did

¹⁸⁴ Iulian Romanynshyn, *Romania v Ukraine: A Case Study in Maritime Dispute Resolution and Its Energy Trade Outcomes*, 6 Oil, Gas & Energy L. Intell. (OGEL) 4, 11–13 (2009), <https://www.ogel.org/article.asp?key=2936>.

¹⁸⁵ Id. at 14.

¹⁸⁶ *Maritime Dispute (Peru v. Chile)*, Judgment, 2014 I.C.J. Rep. 3 (Jan. 27), ¶ 44

exist up to a distance of 80 nautical miles, based on consistent practice between the parties, particularly through fisheries agreements and naval patrols. Beyond that point, however, the Court ruled that no formal agreement existed and proceeded to delimit the remaining boundary using the equidistance method in accordance with UNCLOS principles.¹⁸⁷

This splits decision recognizing a partial customary boundary and applying equidistance thereafter demonstrates the ICJ's flexibility in dealing with hybrid legal claims. Notably, the Court reaffirmed that fishing activity alone is insufficient to establish full maritime sovereignty, unless such practice is explicitly accepted by both parties over a prolonged period.¹⁸⁸

Trade and Fisheries Implications

The maritime zone in question was not only symbolic but economically vital. The area harboured some of the world's richest fishing grounds, including species central to both Peru's and Chile's commercial fishing industries.¹⁸⁹ The ruling led to Peru gaining sovereign rights over roughly 50,000 square kilometres of maritime territory, previously regarded by Chile as within its jurisdiction. This result allowed Peru to expand access to fisheries and maritime resources critical to its export economy.

This case offers a key lesson for the South China Sea dispute, where historical fishing practices are often used by China to claim expansive maritime zones under the guise of "historic rights." The ICJ's refusal to accept informal fishing arrangements as conclusive evidence of sovereignty parallels the PCA's 2016 ruling rejecting China's nine-dash line claim.¹⁹⁰

Moreover, the Peru–Chile resolution enhanced regional maritime stability, clarifying economic zones and reducing investor risk in maritime infrastructure, shipping, and trade.¹⁹¹ Like in the Black Sea case, legal adjudication contributed to both dispute

¹⁸⁷ Id. at ¶¶ 178–183

¹⁸⁸ Id. at ¶¶ 134–135.

¹⁸⁹ B. Sepúlveda-Amor, *Custom and the ICJ: Peru v. Chile as a Fisheries Precedent*, 1 J. Mar. Pol'y & L. 22, 25 (2015), <https://link.springer.com/article/10.1007/s12180-009-0004-4>.

¹⁹⁰ *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award of July 12, 2016, ¶¶ 262–267.

¹⁹¹ H. Oxman, *The Chile–Peru Maritime Dispute*, Am. Soc'y Int'l L. Insights, Vol. 18, Issue 5 (2014), <https://www.asil.org/insights/volume/18/issue/5/chile-peru-maritime-dispute>.

resolution and the expansion of lawful maritime trade routes emphasizing the economic benefits of clarity under UNCLOS.

Relevance to the South China Sea

The implications of this ruling extend far beyond the bilateral interests of Peru and Chile. The ICJ's nuanced rejection of long-standing fishing practices as a sole basis for sovereign entitlement underlines the centrality of formal legal recognition. This finding directly echoes the tribunal's approach in the South China Sea arbitration, where historical fishing activity was found to be insufficient in justifying expansive maritime claims under UNCLOS.¹⁹²

Moreover, the peaceful acceptance of the ICJ's judgment by both Peru and Chile stands in contrast to the persistent refusal of China to recognize the PCA's 2016 ruling in the South China Sea case. The Peru–Chile example demonstrates that legal determinations, when honoured in good faith, can de-escalate maritime disputes and help establish operational clarity for navies, coast guards, and commercial actors.¹⁹³

Importantly, the economic consequences of this decision were tangible. Peru's gain of over 50,000 square kilometres of maritime space home to valuable fish stocks had a direct impact on its national fisheries industry. As a result, the country was able to better regulate its fishing zones, attract investment, and increase export capacity in maritime products.¹⁹⁴

This outcome illustrates how clearly delimited maritime zones, when achieved through lawful and peaceful means, not only reduce the likelihood of interstate conflict but also enhance investor confidence and economic development. These outcomes are particularly relevant to South China Sea littoral states, many of which rely heavily on maritime trade and fisheries for their economic well-being. In essence, *Peru v. Chile* reinforces that international law, if supported by compliance can serve as a stabilizing force that harmonizes legal certainty with economic opportunity.

¹⁹² *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award of July 12, 2016, ¶ 262.

¹⁹³ H. Oxman, *The Chile–Peru Maritime Dispute*, Am. Soc'y Int'l L. Insights, Vol. 18, Issue 5 (2014), <https://www.asil.org/insights/volume/18/issue/5/chile-peru-maritime-dispute>.

¹⁹⁴ B. Sepúlveda-Amor, *Fisheries Implications in Peru's Maritime Zone*, *supra* note 4, at 26–27.

5.4 SOVEREIGNTY AND EFFECTIVE CONTROL: THE SIPADAN AND LIGITAN ISLANDS DISPUTE (ICJ 2002)

The territorial dispute between Indonesia and Malaysia over the Sipadan and Ligitan islands presented the International Court of Justice (ICJ) with a classic sovereignty case, grounded not in maritime delimitation but in ownership of land territory, which, under UNCLOS, has direct implications for maritime rights.¹⁹⁵ The islands located off the eastern coast of Borneo were small, uninhabited, and strategically situated near lucrative fishing grounds and vital shipping lanes.

Legal Reasoning and Judgment

The ICJ approached the case primarily through the doctrine of “effectivities”, examining acts of administration and governance by the two parties over time. Indonesia based its claim largely on historical title inherited from the Dutch colonial administration, while Malaysia relied on more recent and concrete evidence of state conduct such as regulation of tourism and environmental protection on the islands.¹⁹⁶

The Court ultimately awarded sovereignty to Malaysia, emphasizing that demonstrable, peaceful, and continuous acts of authority even on small, disputed features could outweigh historical claims unsupported by effective administration.¹⁹⁷

Although the case did not directly involve maritime boundaries, the ruling had broader implications under UNCLOS. Sovereignty over Sipadan and Ligitan could influence entitlement to territorial seas and possibly exclusive economic zones (EEZs), thereby affecting the delimitation of resource and navigation rights in surrounding waters.¹⁹⁸

Strategic and Economic Dimensions

Beyond sovereignty, the Sipadan-Ligitan ruling carried significant trade and economic implications. The islands lie near the Makassar Strait, a key conduit for regional shipping between the Pacific and Indian Oceans. Malaysian control over the islands

¹⁹⁵ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon. v. Malay.)*, Judgment, 2002 I.C.J. Rep. 625 (Dec. 17), ¶ 9

¹⁹⁶ *Id.* at ¶¶ 122–125.

¹⁹⁷ *Id.* at ¶ 135.

¹⁹⁸ Tara Davenport, *Islands and Maritime Entitlements under UNCLOS*, in *Law of the Sea in Southeast Asia* 78, 82–83 (2020).

reinforced its strategic position in regional maritime security and enhanced its claim to fisheries and underwater resources around the islands.¹⁹⁹

Furthermore, Malaysia's management of Sipadan as a marine protected area boosted tourism revenues and international environmental partnerships, indirectly strengthening its blue economy footprint in the region.²⁰⁰ The case therefore illustrates how legal sovereignty when supported by effective governance can translate into tangible economic and strategic advantages.

Relevance to the South China Sea

For South China Sea claimants, the Sipadan-Ligitan case reinforces the critical importance of effective and peaceful administration over disputed territories. China's expansive historical claims, including its nine-dash line theory, find no support in this jurisprudence unless backed by verifiable and accepted state functions.²⁰¹ The PCA's 2016 ruling echoed this standard, rejecting China's maritime claims based on ambiguous historical narratives in favour of UNCLOS-defined entitlements.²⁰²

Additionally, the case highlights how control over small islands even uninhabited can project broader maritime rights and affect trade corridors. The lesson for ASEAN claimant states is clear: the path to securing maritime economic zones begins with demonstrable governance over relevant features, not historical rhetoric or military presence.

5.5 SCARBOROUGH SHOAL STANDOFF: SOVEREIGNTY, COERCION, AND THE LIMITS OF LEGAL ENFORCEMENT

The dispute over Scarborough Shoal, a low-tide elevation located in the northeastern South China Sea, captures the limitations of international legal adjudication when met with political resistance and power imbalance. Claimed by both the Philippines and China, the Shoal is situated well within the Philippines' 200-nautical mile exclusive

¹⁹⁹Gillian Triggs, *Maritime Boundary Disputes in the South China Sea*, Sydney Law School Research Paper No. 09/63, at 14 (2009), <https://ilss.net/wp-content/uploads/2021/02/Maritime-Boundary-Disputes-in-the-South-China-Sea-International-Legal-Issues.pdf>.

²⁰⁰N. Tan & A. Noraini, *Tourism and Marine Conservation in Sipadan*, 11 J. Southeast Asian Tourism 92, 96–97 (2016).

²⁰¹*Sovereignty over Pulau Ligitan*, supra note 1, at ¶ 129.

²⁰²*South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award ¶ 597, <https://pca-cpa.org/en/cases/7/>.

economic zone (EEZ), as recognized by the United Nations Convention on the Law of the Sea (UNCLOS).²⁰³ Despite this, China has maintained a physical and maritime presence in the area since 2012, effectively excluding Filipino fishermen and undermining Manila's sovereign rights.

Legal Basis and Arbitral Findings

In response to China's expansive maritime claims, the Philippines initiated arbitration under Annex VII of UNCLOS in 2013. The Permanent Court of Arbitration (PCA) ruled in 2016 that China's historic rights claim embodied in the "nine-dash line" was incompatible with UNCLOS and therefore invalid.²⁰⁴ Specifically, the Tribunal found that Scarborough Shoal, while a feature above water at high tide, was entitled only to a 12-nautical mile territorial sea, and did not generate an EEZ or continental shelf.²⁰⁵ Moreover, the ruling condemned China's actions for violating the Philippines' fishing rights and causing environmental harm to coral reefs within the Shoal.²⁰⁶

Strategic and Economic Consequences

Although the legal outcome was clear, the decision lacked enforcement teeth. China rejected the PCA's jurisdiction and refused to recognize the award, maintaining its presence around Scarborough Shoal through coast guard patrols and maritime militia.²⁰⁷ The direct consequence was continued exclusion of Filipino fishermen and the disruption of marine-based livelihoods in affected coastal communities, particularly in Zambales and Pangasinan provinces.²⁰⁸

The economic implications extend beyond artisanal fishing. Scarborough Shoal's location near key shipping routes and rich fishing grounds makes it a strategic choke point. By enforcing de facto control, China effectively restricts lawful economic activity and asserts leverage over regional maritime flows posing a direct threat to trade stability in the northern South China Sea.

²⁰³ United Nations Convention on the Law of the Sea arts. 55–57, Dec. 10, 1982, 1833 U.N.T.S. 397

²⁰⁴ *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award of July 12, 2016, ¶¶ 215–220, <https://pca-cpa.org/en/cases/7/>.

²⁰⁵ *Id.* at ¶¶ 274–278.

²⁰⁶ *Id.* at ¶¶ 805–814.

²⁰⁷ V. Roeben, *The Equitable Distribution of Marine Resources by Agreement of States—The Case of the South China Sea*, 1 Chinese J. Glob. Governance 36, 49–50 (2015), https://brill.com/view/journals/cjgg/1/1/article-p36_4.xml.

²⁰⁸ Richard Javad Heydarian, *Beijing's Gray Zone Strategy in the South China Sea*, Asia Maritime Transparency Initiative (2020), <https://amti.csis.org/beijings-gray-zone-strategy/>.

Implications for Broader Maritime Governance

Unlike other case studies where legal rulings were accepted and implemented such as *Peru v. Chile* or *Romania v. Ukraine*, the Scarborough Shoal standoff reflects the gap between legal principle and geopolitical reality.²⁰⁹ Despite a clear judgment, the absence of an enforcement mechanism under UNCLOS leaves weaker states reliant on diplomatic pressure and alliance-building to assert their rights.

Nonetheless, the PCA ruling provides an enduring legal precedent: it reaffirmed the primacy of UNCLOS as the governing framework for maritime entitlements and rejected unilateral interpretations based on ambiguous historical claims.²¹⁰ For ASEAN claimants, the Scarborough Shoal case serves as both a warning and a legal foundation: while international law may not deter coercion in the short term, it builds normative legitimacy and provides a legal roadmap for future multilateral diplomacy.

5.6 CONCLUSION

Toward a Legally Anchored and Economically Stable South China Sea:

The four case studies examined in this chapter present a range of legal strategies and dispute resolution mechanisms that contrast sharply with the ongoing stalemate in the South China Sea. From the peaceful compliance seen in *Romania v. Ukraine* and *Peru v. Chile*, to the ICJ's emphasis on effective occupation in the *Sipadan–Ligitan* case, and the juridical clarity offered but not honoured in the *Scarborough Shoal* standoff, these precedents offer both inspiration and caution.

A recurring theme is the centrality of legal clarity to economic certainty. Where maritime boundaries are judicially established, as in the Black Sea and Peru–Chile cases, states have enjoyed enhanced control over natural resources, increased investor confidence, and greater stability in maritime trade. These outcomes underscore the practical, not merely symbolic, value of international adjudication under UNCLOS.

²⁰⁹Tara Davenport, *Normative Impact of the SCS Ruling: What Has Changed?*, Law of the Sea Inst. Working Paper (2019), <https://cil.nus.edu.sg/wp-content/uploads/2020/11/LOSI-Davenport-SCS-Award.pdf>.

²¹⁰PCA Case No. 2013-19, *supra* note 2, at ¶ 231.

The contrast between accepted rulings and China's rejection of the 2016 PCA decision in the South China Sea reveals the limitations of law in the absence of enforcement, but also the enduring normative power of legal precedent. Even when compliance is lacking, legal determinations help structure regional diplomacy, legitimize coastal state claims, and offer platforms for coalition-building among affected actors.

For ASEAN states and the broader international community, these comparative cases reinforce the urgency of pursuing legal, multilateral solutions not only to affirm maritime entitlements but to secure economic futures that depend on unobstructed trade, sustainable fisheries, and lawful access to sea lanes. The challenge, then, is to convert legal norms into enforceable realities a goal that must inform both regional diplomacy and international advocacy moving forward.

CHAPTER 6 -POLICY AND LEGAL RECOMMENDATION

6.1 INTRODUCTION

The South China Sea (SCS) dispute represents one of the most intricate legal and geopolitical tensions in contemporary international relations. It embodies a clash of maritime entitlements, strategic military posturing, and contested economic interests, particularly in light of the region's centrality to global trade and fisheries. While the legal framework, notably the United Nations Convention on the Law of the Sea (UNCLOS), has provided a normative baseline, enforcement gaps and non-compliance, especially with the 2016 arbitral ruling against China continue to challenge regional stability. Thus, beyond legal interpretation, there is a pressing need for actionable, context-specific policies that align with international legal standards and geopolitical realities. This chapter proposes a series of policy and legal recommendations grounded in prior chapters' legal and trade analysis, and aimed at advancing a rules-based, cooperative framework for the SCS.

6.2 RECOMMENDATIONS

I. Strengthening ASEAN-Based Multilateralism

One of the foremost challenges in the South China Sea is the fragmented response from the Association of Southeast Asian Nations (ASEAN). Despite early instruments like the 1992 ASEAN Declaration and the 2002 Declaration on the Conduct of Parties (DOC), the absence of a binding code has weakened regional leverage. The long-anticipated Code of Conduct (COC) with China remains stalled, hampered by bilateral dependencies and divergent national interests.²¹¹

Policy Recommendation: ASEAN must finalize and adopt a legally binding COC that explicitly incorporates UNCLOS provisions and mandates neutral dispute resolution mechanisms. This code should also include enforceable commitments to marine environmental protection and data-sharing protocols.²¹²

²¹¹ United Nations Convention on the Law of the Sea art. 74, Dec. 10, 1982, 1833 U.N.T.S. 3

²¹² United Nations Convention on the Law of the Sea art. 123

Legally, the COC should reflect the spirit of UNCLOS Articles 74 and 123, which emphasize regional cooperation and peaceful dispute resolution.²¹³ Political cohesion within ASEAN can be strengthened by depoliticizing maritime security discussions and institutionalizing collective decision-making, possibly through an ASEAN Maritime Security Council.²¹⁴

Such a unified ASEAN stance will enable more assertive legal diplomacy in bilateral and multilateral forums, while also providing smaller claimant states like the Philippines and Vietnam with a diplomatic shield against unilateral coercion.²¹⁵

II. Legal Empowerment of Smaller Claimant States

Countries like the Philippines, Malaysia, and Vietnam have made significant strides in asserting their maritime rights, but continue to suffer from structural weaknesses in legal, technical, and maritime enforcement capacity.²¹⁶

Policy Recommendation: Regional and international actors including the European Union and legal capacity-building NGOs should invest in training programs for legal scholars, diplomats, and technical experts in maritime law and dispute resolution. Assistance should also extend to the documentation and archiving of historical claims, in accordance with the evidentiary requirements of tribunals such as the Permanent Court of Arbitration (PCA) and the International Tribunal for the Law of the Sea (ITLOS).²¹⁷

Further, states should develop real-time maritime domain awareness systems utilizing satellite tracking, open-source intelligence, and AI-enabled analytics. This would allow

²¹³ Fabian Gielis, *The South China Sea Arbitration: A Comprehensive Analysis of China's Response*, at 14–16 (2020), <https://www.researchgate.net/publication/344745828>.

²¹⁴ Clive Schofield, *Dangerous Ground: A Geopolitical Overview of the South China Sea*, in *Security and International Law in the South China Sea Dispute* 7, 14 (Shicun Wu & Keyuan Zou eds., 2016), <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315549439-1>.

²¹⁵ Mark J. Valencia, *The South China Sea Disputes: A Legal Primer*, 36 *Asian Persp.* 183, 188–90 (2012), <https://www.jstor.org/stable/42704606>.

²¹⁶ Nguyen Dang Thang, *UNCLOS and the South China Sea Dispute: What Role for Regionalism?*, 6 *Asia-Pacific J. Ocean L. & Pol'y* 82, 95 (2021), <https://www.koreascience.or.kr/article/JAKO202111659655007>.

²¹⁷ Pierre-Marie Dupuy & Florian Dupuy, *A Legal Analysis of China's Historic Rights Claim in the South China Sea*, 107 *Am. J. Int'l L.* 124, 136 (2013), <https://doi.org/10.5305/amerjintlaw.107.1.0124>.

for lawful documentation of incursions, illegal fishing, and environmental damage thereby enhancing evidentiary strength in legal forums.²¹⁸

The PCA ruling in *Philippines v. China* has already shown the power of well-documented legal submissions and systematic use of technical evidence.²¹⁹

III. Joint Development Zones (JDZs): Balancing Sovereignty and Resource Sharing

In areas where sovereignty claims overlap and tensions remain unresolved, joint development arrangements offer a legally sound and politically viable solution. JDZs provide a temporary framework to allow resource exploration and extraction without prejudicing territorial claims.²²⁰ Such models already exist globally and are endorsed by UNCLOS under Articles 74(3) and 83(3), which call for provisional arrangements pending final boundary agreements.²²¹

Policy Recommendation: ASEAN should promote bilateral and multilateral JDZs in contentious areas of the SCS. These arrangements can function as confidence-building measures while allowing cooperative resource use particularly in fisheries and hydrocarbon sectors. The Malaysia–Thailand Joint Development Area offers a practical regional precedent.²²²

To ensure legitimacy and sustainability, JDZs must include clear environmental obligations and third-party verification mechanisms. Coordination with UNCLOS obligations especially those related to marine conservation under Articles 61 and 192 is vital to prevent overexploitation and ecological harm.²²³

²¹⁸ Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* 214–16 (2005).

²¹⁹ International Tribunal for the Law of the Sea (ITLOS), *Overview of Proceedings*, <https://www.itlos.org/en/main/> (last visited Apr. 17, 2025)

²²⁰ Robert Beckman, *Joint Development in the South China Sea: What Can Be Done?*, Ctr. for Int'l L. (2013), at 3–5, <https://cil.nus.edu.sg/wp-content/uploads/2020/11/Policy-Brief-No-1-Joint-Development-in-South-China-Sea-Robert-Beckman.pdf>.

²²¹ UNCLOS, *supra* note 1, arts. 74(3), 83(3).

²²² S. Jayakumar, *The Malaysia–Thailand Joint Development Area: A Case Study in Conflict Resolution*, 29 Asian J. Int'l L. 123, 125–28 (2019).

²²³ UNCLOS, *supra* note 1, arts. 61, 192.

Moreover, each JDZ agreement should contain a clause explicitly affirming that participation does not waive or recognize competing sovereignty claims. This reflects the neutral approach favoured by UNCLOS, thereby preserving legal integrity while facilitating peaceful cooperation.²²⁴

IV. Sustainable Marine Governance and Ecological Protection

Environmental degradation in the South China Sea particularly due to island-building, overfishing, and dredging has undermined ecological balance and violated UNCLOS duties. Notably, the 2016 arbitral tribunal held China responsible for causing “irreparable harm” to coral reefs and marine life in violation of Articles 192 and 194 of UNCLOS.²²⁵

Policy Recommendation: ASEAN states should adopt a region-wide Marine Ecology Charter that prohibits destructive practices in contested waters and institutionalizes joint environmental monitoring.²²⁶ This should include bans on dredging and artificial land reclamation in ecologically sensitive zones, aligned with UNCLOS mandates for protection of the marine environment.²²⁷

Further, collaboration with international bodies such as UNEP or the IMO could provide technical and funding assistance for coral reef restoration and sustainable fishing.²²⁸ The legal foundation for this lies in UNCLOS Article 197, which encourages states to cooperate globally and regionally for environmental protection.²²⁹

To monitor compliance, ASEAN should establish a transparent, satellite-based ecological surveillance platform ideally managed by a neutral scientific consortium.²³⁰

²²⁴ Tara Davenport, *Joint Development and Sovereignty in the South China Sea: Managing Tensions, Enabling Cooperation*, 50 Ocean Dev. & Int’l L. 191, 196–98 (2019), <https://doi.org/10.1080/00908320.2019.1576011>.

²²⁵ *In the Matter of the South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, Award of July 12, 2016, ¶¶ 945–949, <https://pca-cpa.org/en/cases/7/>.

²²⁶ MJ Butt et al., *Maritime Dispute Settlement Law Towards Sustainable Fishery Governance*, 7 Fishes 81, 84 (2022), <https://www.mdpi.com/2410-3888/7/2/81/pdf>.

²²⁷ UNCLOS, *supra* note 1, arts. 192, 194.

²²⁸ See Int’l Mar. Org. (IMO), *Integrated Technical Cooperation Programme*, <https://www.imo.org/en/OurWork/TechnicalCooperation/Pages/ITCP.aspx> (last visited Apr. 17, 2025).

²²⁹ UNCLOS, *supra* note 1, art. 197.

²³⁰ Natalie Klein, *Protecting the Marine Environment in Disputed Areas: Legal Framework and Enforcement Options*, 36 Int’l J. Mar. & Coastal L. 1, 23–26 (2021).

This would enhance accountability and help document future violations for legal remedy.

V. Strengthening Rule-of-Law Diplomacy and Enforcement

The 2016 arbitral ruling by the PCA in favour of the Philippines marked a legal milestone, but its limited impact underscores the structural weakness of international law enforcement in the SCS.²³¹ While binding under UNCLOS Annex VII, the absence of a coercive enforcement mechanism renders such decisions vulnerable to political resistance.

Policy Recommendation: The Philippines and other claimant states should work with allies at the United Nations General Assembly to pass resolutions reaffirming the PCA ruling and urging compliance with UNCLOS-based mechanisms.²³² Such resolutions, although non-binding, carry diplomatic weight and can frame global narratives.

Additionally, South China Sea provisions should be raised in G7 and G20 communiqués as part of a broader call for adherence to international maritime law.²³³ Targeted sanctions against state-owned enterprises involved in illegal island-building could also serve as an economic deterrent.²³⁴

Finally, ITLOS and PCA procedures should be streamlined through proposed reforms, including expedited hearings for environmental violations and enhanced participation rights for affected coastal communities.²³⁵

²³¹ H.D. Phan & L.N. Nguyen, *The South China Sea Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions*, 8 Asian J. Int'l L. 1, 5–7 (2018), <https://research-portal.uu.nl/files/61876972/south.pdf>.

²³² Nien-Tsu Alfred Hu, *The South China Sea Disputes and the UN*, in *Marine Policy and the South China Sea* 102, 110 (Routledge, 2021).

²³³ Fabian Gielis, *The South China Sea Arbitration: A Comprehensive Analysis of China's Response*, at 14 (2020), <https://www.researchgate.net/publication/344745828>.

²³⁴ Leszek Buszynski, *The South China Sea: Oil, Maritime Claims, and US–China Strategic Rivalry*, 35 Wash. Q. 139, 142 (2012), <https://doi.org/10.1080/0163660X.2012.706519>

²³⁵ S. Fietta & J. Saadeh, *The South China Sea Award: A Milestone for International Environmental Law*, 29 Geo. Env't. L. Rev. 1, 20–23 (2016), <https://gielr.wordpress.com/wp-content/uploads/2018/02/zsk00417000711.pdf>.

VI. Enhancing Legal Mechanisms: Reforming Dispute Resolution under UNCLOS

Despite the procedural avenues UNCLOS provides through Part XV, including arbitration (Annex VII) and access to the International Tribunal for the Law of the Sea (ITLOS), the South China Sea (SCS) dispute has exposed critical enforcement and procedural shortcomings. Non-compliance by major powers such as China's refusal to participate in or honour the 2016 arbitral ruling undermines the legitimacy of the rules-based maritime order.²³⁶

Policy Recommendation: The UNCLOS dispute resolution system should be re-evaluated through soft-law processes, such as General Assembly working groups or ASEAN-led legal symposia. Areas for improvement include the establishment of expedited procedures for urgent environmental or commercial harm and a default system for enforcing PCA or ITLOS rulings through economic penalties.²³⁷

To promote procedural transparency and legitimacy, regional claimant states should also advocate for greater observer status and *amicus curiae* provisions, allowing legal scholars, affected communities, and environmental experts to participate in or monitor proceedings.²³⁸

The ASEAN Code of Conduct (COC), once finalized, should explicitly refer to the binding nature of UNCLOS dispute settlement mechanisms and affirm the jurisdiction of international tribunals for inter-state maritime disputes.²³⁹ Linking regional diplomacy with international legal enforcement will strengthen the foundation of a durable legal order in Asia-Pacific maritime governance.²⁴⁰

²³⁶ Michael Sheng-ti Gau, *Reassessing UNCLOS in Light of the South China Sea Arbitration*, 8 Asian J. Int'l L. 25, 29–31 (2018).

²³⁷ S. Michael, *Examination of the Viability of UNCLOS as a Premise for Maritime Dispute Resolution*, SSRN Working Paper (2024), <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5133551>

²³⁸ J.Y. Yang, *Lessons from the South China Sea Ruling: Med-Arb as the Recommended Dispute Resolution Method*, 19 Cardozo J. Conflict Resol. 785, 810–13 (2017), <https://www.cardozojcr.com/s/Lessons-from-the-South-China-Sea-Ruling-Med-Arb-as-the-Recommended-Dispute-Resolution-Method-for-Asi.pdf>

²³⁹ A.A. Encomienda, *Proposed Solutions to Maintain Navigation Freedom in the SCS After the Hague Ruling*, Ocean Mgmt. J. (2020), <https://cyberleninka.ru/article/n/proposed-solutions-to-maintain-navigation-freedom-in-the-south-china-sea-after-the-hague-pca-ruling.pdf>.

²⁴⁰ Nong Hong, *State Practice of UNCLOS in the South China Sea*, in *The Law of the Sea and the South China Sea Disputes* 125–28 (2016), <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315549439-17>.

6.3 CONCLUSION:

Legal adjudication alone cannot resolve a conflict as multifaceted as the South China Sea dispute. What is required is a carefully layered response grounded in UNCLOS, bolstered by regional diplomacy, and enforced through transparent, coordinated institutions. Through a mix of binding legal mechanisms, environmental cooperation, resource-sharing agreements, and diplomatic pressure, it is possible to shift the current trajectory away from militarized confrontation toward peaceful, rules-based governance.

A reinvigorated ASEAN role, increased legal empowerment of smaller states, functional joint development zones, and institutional reforms at the level of the PCA and ITLOS together represent a forward-looking policy roadmap. By integrating legal obligations with geopolitical pragmatism, the international community can restore faith in maritime law and ensure the South China Sea remains a space of lawful navigation, trade, and ecological balance.

CHAPTER 7 – CONCLUSION

7.1 OVERVIEW OF HYPOTHESIS

This dissertation set out to examine the South China Sea (SCS) dispute not solely as a matter of sovereignty, but as a pressing challenge to international trade law. The central hypothesis proposed that the dispute adversely impacts international trade via disruptions in shipping routes, increased insurance premiums, and political risks and that existing international legal frameworks, particularly UNCLOS, are insufficient to address these consequences. The research further posited that improved enforcement mechanisms and legal reform could meaningfully stabilize the region and mitigate trade disruptions.

The findings across Chapters 2 through 6 confirm this hypothesis. The SCS is not only a contested maritime zone but also a fragile artery for global commerce. Legal instruments exist, but enforcement gaps persist. The mismatch between law and state behaviour exposes the structural weakness of current frameworks and underscores the need for reform.

7.2 RESPONSES TO RESEARCH QUESTIONS

Core Research Question:

How does the South China Sea dispute impact international trade law and maritime legal frameworks?

The dispute undermines both trade law and maritime governance. It disrupts navigational freedoms, causes route insecurity, and exposes gaps in UNCLOS and WTO enforcement. Legal frameworks struggle to adapt to hybrid threats such as militarized artificial islands, state-controlled fishing fleets, and non-compliance with tribunal rulings. The result is a **disconnect between law in theory and trade stability in practice.**

Supporting Questions:

Q1. What legal principles under UNCLOS and other international treaties govern the dispute?

UNCLOS governs maritime entitlements, delimitation, environmental duties, and freedom of navigation. Other instruments include the 2002 ASEAN Declaration on Conduct (DOC), WTO trade facilitation provisions, and bilateral fisheries or joint development agreements. Yet only UNCLOS has binding legal authority, and even that is limited by weak enforcement and interpretative ambiguity.

Q2. How do territorial disputes affect freedom of navigation and trade security?

As demonstrated in Chapters 3 and 4, territorial claims especially China's Nine-Dash Line have translated into coercive exclusion of other states from fishing grounds and EEZs. Naval blockades (e.g., Scarborough Shoal), coast guard confrontations, and artificial island militarization have eroded navigational certainty, raising costs and risk for commercial shipping and energy flows.

Q3. What role do economic sanctions and trade disruptions play in the conflict?

While full-scale sanctions are rare, informal economic coercion (e.g., Chinese bans on Filipino agricultural imports post-Scarborough standoff) has been used to retaliate. Trade disruption results more from strategic deterrence and legal ambiguity than from formal sanctions, though the risks to investment and supply chains remain high.

Q4. What legal remedies exist to resolve these disputes under international law?

UNCLOS Part XV offers dispute settlement mechanisms including arbitration (e.g., PCA 2016), ITLOS adjudication, and ICJ referrals. However, these rely on state consent. Chapter 5 demonstrated that where such remedies are accepted (e.g., *Romania v. Ukraine*), maritime order stabilizes. Where they are ignored (e.g., China's rejection of PCA), the law loses traction.

Q5. How does the dispute impact global supply chains and foreign direct investments?

The SCS dispute threatens \$3.5–5 trillion in annual trade, with major implications for Japan, South Korea, the EU, and ASEAN. Chapter 4 showed that perceived instability deters FDI in regional port infrastructure, fisheries, and offshore energy. Investors prefer jurisdictions with clear maritime entitlements and legal predictability.

Q6. How can enforcement mechanisms under international law be improved to ensure compliance with tribunal rulings?

As Chapter 6 suggests, enforcement could be improved through:

- Multilateral coalitions (e.g., G7/G20 trade clauses)
- Conditional trade agreements requiring UNCLOS compliance
- Empowering ASEAN to create a binding Code of Conduct
- Institutional reform in UNCLOS dispute settlement, including compliance monitors and economic countermeasures for non-observance

7.3 RESEARCH OBJECTIVES: OUTCOMES ACHIEVED

Objective 1: To critically examine the legal implications of territorial claims under UNCLOS

Accomplished in Chapters 2 and 3. The PCA ruling and legal principles under Articles 121, 56, and 60 were analysed in detail. China's "historic rights" claim was shown to have no legal standing.

Objective 2: To analyse the economic and trade disruptions caused by regional conflicts

Fulfilled in Chapter 4. Trade route volatility, insurance hikes, and supply chain uncertainty were linked directly to territorial tensions in the SCS.

Objective 3: To evaluate existing legal remedies and dispute resolution mechanisms under international law

Addressed in Chapters 3, 5, and 6. Legal forums like PCA, ITLOS, and ICJ were examined, with both their successes and limitations outlined.

Objective 4: To assess the role of ITLOS, ICJ, and WTO dispute resolution mechanisms in addressing maritime conflicts

Chapters 3 and 6 cover this. While ITLOS and ICJ offer legal pathways, political non-cooperation hampers effectiveness. WTO provisions on trade facilitation are rarely invoked in maritime contexts but remain an untapped avenue.

Objective 5: To explore potential reforms to strengthen UNCLOS enforcement mechanisms

Fully achieved in Chapter 6 and reaffirmed here. Proposals include hybrid tribunals, regional compliance frameworks, and functional use of trade leverage as enforcement.

7.4 KEY LEGAL AND ECONOMIC FINDINGS

- **UNCLOS is foundational but insufficient.** It lacks enforcement tools for dealing with non-compliance or hybrid coercive actions at sea.
- **Historical claims conflict with legal norms.** Sovereignty assertions based on dynastic history are incompatible with UNCLOS, as the PCA confirmed.
- **Legal uncertainty undermines trade.** Costs, investor confidence, and strategic access are all diminished by unresolved boundaries and militarization.
- **Multilateralism is essential.** ASEAN, though fragmented, is uniquely positioned to lead in legal and diplomatic harmonization, if it acts with cohesion.
- **Trade law and maritime law must integrate.** Current legal silos between UNCLOS and WTO frameworks create vulnerability for global supply chains.

7.5 ORIGINAL CONTRIBUTION TO LEGAL RESEARCH

Doctrinal Advancement in Maritime Legal Enforcement-

The primary legal contribution of this dissertation lies in exposing and addressing the enforcement lacunae in UNCLOS. While the 1982 United Nations Convention on the Law of the Sea remains the cornerstone of international maritime governance, it lacks binding force in situations where non-compliant state actors notably China reject tribunal decisions. This research builds on *Philippines v. China*, PCA Case No. 2013-19, where the tribunal categorically invalidated the Nine-Dash Line. However, China's non-participation and post-award disregard of the ruling illustrates that UNCLOS arbitration, while legally valid, is practically unenforceable in high-stakes geopolitical disputes.

This dissertation advances the doctrinal discussion by proposing enforcement mechanisms rooted in treaty law cross-linking a rare integration of UNCLOS with the Vienna Convention on the Law of Treaties (VCLT) and WTO norms. Specifically, it draws upon VCLT Article 60, which allows treaty suspension upon material breach, and repurposes it for economic tools that could incentivize compliance with maritime rulings.

Bridging Public International Law and International Trade Law-

Unlike prior studies that focus exclusively on maritime sovereignty or navigation, this work explores how unresolved maritime disputes directly undermine international trade, both legally and economically. Through evidence in Chapter 4, this dissertation documents how the South China Sea dispute:

- Increases insurance premiums for maritime cargo
- Forces rerouting of vessels to avoid conflict zones
- Discourages Foreign Direct Investment (FDI) in offshore projects
- Causes commercial legal uncertainty for MNCs operating in ASEAN

This study establishes a legal and economic link by arguing that UNCLOS provisions (e.g., Articles 74, 83) must be interpreted alongside WTO trade facilitation principles, especially when legal instability results in tangible trade disruption. It is among the first scholarly works to frame the SCS dispute as a trade-law compliance challenge, rather than solely a jurisdictional issue.

Prescriptive Legal Reform: ASEAN Code of Conduct as Binding Treaty-

The research contributes an original, legally viable model for a binding ASEAN Code of Conduct (COC). Past efforts, such as the 2002 Declaration on the Conduct of Parties (DOC), have remained non-binding. Drawing from international treaty practices, this dissertation outlines the structure of a treaty-based COC that includes:

- Binding dispute resolution clauses (modelled on UNCLOS Annex VII)
- Joint surveillance and environmental enforcement mechanisms

- Neutral arbitration under ASEAN–China frameworks
- Sanctions for non-compliance (modelled on WTO Dispute Settlement Body penalties)

This approach turns a diplomatic instrument into a treaty-grade legal mechanism, offering practical tools to resolve the SCS conflict without undermining sovereign equality.

Comparative Legal Insight from Global Maritime Adjudication-

Chapter 5 offers comparative analysis of landmark maritime cases including *Romania v. Ukraine* (2009), *Peru v. Chile* (2014), and *Indonesia/Malaysia* (2002). From these, the dissertation distils three consistent adjudicative principles:

- Equity and proportionality in delimitation (ICJ standard)
- Inadmissibility of unilateral militarization
- Reliance on objective geographic features over historic claims

These insights are synthesized into an adjudication framework suitable for the South China Sea, which this research proposes as a reference model for any future PCA or ICJ cases involving overlapping maritime claims in Asia.

Incorporation of Environmental Legal Duties into Maritime Dispute Law-

This work foregrounds UNCLOS Articles 192 and 194, often underutilized in legal literature, which place affirmative obligations on states to prevent pollution and preserve marine biodiversity. The dissertation documents ecological degradation caused by China’s island-building and dredging and proposes that:

- Environmental violations be integrated into legal rulings as standalone breaches
- Environmental reparations be modelled on international climate litigation (e.g., Loss and Damage frameworks)
- Joint ASEAN marine ecological charters be adopted as binding regional legal instruments

This perspective shifts environmental harm from a side concern to a central legal obligation, expanding the functional interpretation of maritime law.

7.6 FINAL REFLECTION: INTEGRATING LEGAL INSIGHT WITH SCHOLARLY THOUGHT-

Reframing the South China Sea Dispute Through Legal Synthesis-

This dissertation engages with the South China Sea (SCS) conflict not simply as a geopolitical flashpoint but as a legal crisis that tests the structural resilience of international law. Unlike surface-level diplomatic commentary, this work develops enforceable, treaty-compatible legal reforms by examining the dispute at the intersection of UNCLOS, WTO norms, and regional treaty dynamics.

Aligning and Expanding Scholarly Legal Positions-

This study builds upon the foundational legal arguments of scholars such as Robert Beckman, who identifies UNCLOS's normative strength but enforcement fragility. While acknowledging this, the dissertation goes further by proposing a cross-regime legal linkage between UNCLOS compliance and international trade privileges. This hybrid enforcement mechanism is legally grounded in treaty theory and WTO conditionality principles a rarely explored angle in maritime legal scholarship.

Challenging Historic Rights with Regional Treaty Mechanisms-

Supporting Zhang and Valencia's rejection of unilateral historic claims under international law, this research proposes the ASEAN Code of Conduct (COC) as a treaty-grade legal solution. Unlike the 2002 DOC, the proposed COC includes arbitration mandates, neutral surveillance bodies, and compliance review panels, elevating regional diplomacy into enforceable legal structure under Articles 74, 83, and 123 of UNCLOS.

Elevating Environmental Obligations in Maritime Law-

In agreement with Dupuy and Dupuy, who highlight the neglect of environmental duties in militarized maritime zones, this research advances UNCLOS Articles 192 and 194 as enforceable legal obligations not aspirational goals. The proposal for a regional ecological enforcement charter, embedded in ASEAN treaties, places marine protection at the centre of legal design in SCS governance.

Comparative Jurisprudence as a Legal Template-

Drawing from decisions in *Peru v. Chile*, *Romania v. Ukraine*, and *Indonesia/Malaysia*, the study extracts recurring legal principles-equity, proportionality, and rejection of historic title. These are developed into a model framework for adjudication that could be replicated in future PCA or ICJ submissions regarding the South China Sea.

Original Legal Framework: Trade-Linked Legal Accountability (TLLA)

The most significant original contribution is the formulation of a Trade-Linked Legal Accountability model. By integrating UNCLOS compliance with access to regional trade agreements (RCEP, CPTPP), this model transforms tribunal rulings into legally consequential instruments, rooted in treaty law (VCLT Article 60) and WTO logic (GATT Articles XX and XXI). This is a first-of-its-kind enforcement theory that unites legal doctrine with practical sanctioning power.

Advancing Legal Scholarship in Maritime Governance

Ultimately, this dissertation pushes legal scholarship forward by turning gaps in enforcement into proposals for structural remedy. It blends doctrinal analysis, treaty interpretation, and comparative adjudication to deliver a cohesive legal framework for maritime stability. Its conclusions are not theoretical alone they are actionable, enforceable, and built upon the foundations of international law.

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APPENDICES

Appendix I

Map of the South China Sea and Maritime Claims

This map illustrates the overlapping maritime claims of China, the Philippines, Vietnam, Malaysia, Brunei, and Taiwan. It highlights key geographic and legal features such as the Nine-Dash Line, the Spratly Islands, the Paracel Islands, and the Exclusive Economic Zones (EEZs) of claimant states.

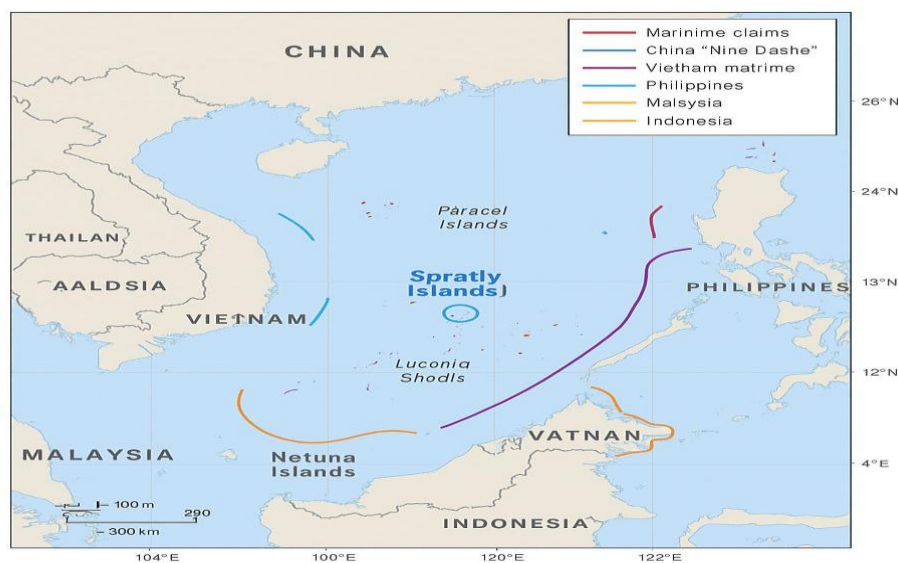


Figure A1: Map of the South China Sea Illustrating Competing Maritime Claims

Source: Permanent Court of Arbitration, *Philippines v. China*, PCA Case No. 2013-19, Annexes, July

Source: Permanent Court of Arbitration *South China Sea* 314. Annexes: July 2016. Accessed at: <https://pca-cpa.org/en/en/cases/7>.

Permanent Court of Arbitration, *South China v. China*, PCA Case N. 2013-19, Annexes, July 2016

Appendix II

Key Provisions from the United Nations Convention on the Law of the Sea (UNCLOS)

- **Article 74** – Delimitation of the Exclusive Economic Zone between States with opposite or adjacent coasts.
- **Article 83** – Delimitation of the Continental Shelf between States.
- **Article 121** – Regime of Islands.

- **Article 192** – Obligation to protect and preserve the marine environment.
- **Article 194** – Measures to prevent, reduce, and control pollution of the marine environment.

Appendix III

Summary of the PCA Award in *Philippines v. China*, PCA Case No. 2013-19

- The tribunal concluded that China's claim to historic rights within the Nine-Dash Line had no legal basis under UNCLOS.
- The Spratly Islands features were determined to be rocks, not islands, and therefore not entitled to EEZs.
- China's activities caused significant ecological damage, violating Articles 192 and 194 of UNCLOS.
- Despite the tribunal ruling in favour of the Philippines, China rejected and did not comply with the award.

Appendix IV

ASEAN Legal Instruments Referenced

- Treaty of Amity and Cooperation in Southeast Asia (TAC), 1976: Establishes principles of peaceful dispute settlement and regional cooperation.
- Declaration on the Conduct of Parties in the South China Sea (DOC), 2002: Provides a non-binding framework to manage tensions and foster dialogue between claimant states.

Appendix V

Comparative Case Summary of Maritime Disputes

Case	Tribunal	Legal Issue	Compliance Outcome
<i>Romania v. Ukraine</i> (2009)	ICJ	Maritime boundary delimitation in Black Sea	Fully complied
<i>Peru v. Chile</i> (2014)	ICJ	Maritime boundary adjustment	Fully complied
<i>Indonesia/Malaysia</i> (2002)	ICJ	Sovereignty over Sipadan & Ligitan Islands	Fully complied
<i>Philippines v. China</i> (2016)	PCA	Historic rights & environmental obligations	Non-compliance



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