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Weak Enforcement, Flawed Procedure, Dangerous Precedent: Analyzing the Effectiveness of International Law Through the Lens of the South China Sea Dispute

ABSTRACT. International treaty law, while playing a crucial role in keeping states in check with one another, remains flawed both in terms of its procedural and enforcement measures. States are incentivized not to engage with international actors, like the International Court of Justice, instead choosing to avoid or outright ignore international attempts at dispute settlements for political or sovereignty-based reasons. The South China Sea dispute, involving several states in the Asia-Pacific vying for control over the region, serves as a key example of how nation-states have chosen to take advantage of weaknesses in both international judicial institutions and international law as a broader governing structure. This article seeks to analyze the effectiveness of international law and assess its legitimacy by using the South China Sea arbitration case to identify shortcomings in the procedure and enforcement of international law. It will also delve into how international law and treaty enforcement can be strengthened, including recommendations for changes in dispute resolution procedure as well as the establishment of stronger enforcement mechanisms.

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INTRODUCTION

China has slowly but steadily overstepped its presence in the seas, raising tensions among neighboring rivals across Southeast Asia as each nation competes to justify claims of territorial sovereignty and maritime jurisdiction.¹ Countries like the Philippines, Indonesia, Malaysia, and Vietnam have each asserted their rights over the territorial waters for decades. Many factors contribute to these various attempts at claiming sovereignty over the South China Sea, including economic expansion, resource development, and geopolitical interests in the region. When several nation-states compete for a historically disputed territory, non-state actors like the International Court of Justice (ICJ) or the Permanent Court of Arbitration (PCA) help facilitate the application of international law to settle the dispute diplomatically. Furthermore, dispute settlement mechanisms outlined in international treaties, such as the United Nations Convention on the Law of the Sea (UNCLOS), have served as general guidelines to facilitate agreements between nation-states on issues of conduct concerning maritime laws. But what happens when these efforts are not enough to reach a peaceful resolution?

The South China Sea dispute exposes fundamental weaknesses of international legal frameworks as a broader governing structure. In the struggle to lay claim to numerous overlapping parts of the South China Sea, countries have brought each other to court on an international scale. In the 2016 South China Sea arbitration case, which ruled overwhelmingly in favor of the Philippines, China's position of non-acceptance, non-participation, and non-compliance indicates a shift in approach to solving territorial disputes between states, ignoring international laws and standards of compliance.

Cooperation with international law has primarily been a "stag hunt game,"² but China is taking a different approach. Weak enforcement allows states like China to bend rules established and otherwise observed, which poses a threat beyond China and the Philippines' two-state dispute. It sets a dangerous precedent from which other

¹ Center for Preventative Action, *Territorial Disputes in the South China Sea*, Council on Foreign Relations, Sept. 17, 2024,

<https://www.cfr.org/global-conflict-tracker/conflict/territorial-disputes-south-china-sea>.

² Where states constantly weigh the short and long-term costs (as well as potential incentives) of compliance by carefully watching peers choose to either cooperate or defect, just as two hunters might when trying to catch a stag. While either hunter could choose to defect and go after a hare, they are bound by the knowledge that cooperation may just result in success, in which the stag would bring better sustenance to both of them.

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states may be emboldened to ignore global actors like the ICJ and weaken international law compliance.

This paper aims to examine the effectiveness of international law as a governing structure and assess its legitimacy. Despite the 2016 arbitration ruling, the case of the South China Sea remains a contentious zone that continues to strain relations among claimant states. I plan to use the South China Sea arbitration case to identify shortcomings in the procedure and enforcement of international law. In doing so, I will examine what makes China's behavior a potentially dangerous departure from the typical protocol of state compliance, given its position on the global stage as a major economic power, particularly within the Indo-Pacific.³ I will examine the concepts of consent and the idea of international treaties being "binding," with a particular focus on UNCLOS. Ultimately, I hope to analyze the broader implications for international territorial and maritime dispute resolution and explore ways in which the undermining of international law and authority can be successfully combated.

I. CONTEXT ON THE SOUTH CHINA SEA DISPUTE

The first section of this paper will delve into the context of the South China Sea dispute, including the region's geopolitical significance. It will also introduce UNCLOS as the main governing structure used to form the procedural basis for resolving disputes on maritime issues. In addition to identifying its strengths and weaknesses as a framework convention, this paper will discuss the South China Sea issue as a landmark deviation from an otherwise relatively clean record of state compliance with UNCLOS, with China setting a potentially hazardous standard which may result in the fragmentation of international law.⁴

A. Significance of the South China Sea Dispute

The South China Sea is one of the world's busiest and most vital waterways, teeming with natural resources such as oil, gas, and abundant fish stocks. Located in the Indo-Pacific region, it is surrounded by several nations, including China, the

³ Anthony H. Cordesman, *China's Emergence as a Superpower*, CSIS, Aug. 15, 2023, https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-08/230811_Cordesman_China_Emerging_0.pdf?VersionId=..HHmddmPzOORBebR6scpJaS9fgVq23G.

⁴ Natalie Klein et al., *Measuring Compliance and the Decisions of UNCLOS Dispute Settlement Bodies*, EJIL: Talk!, Apr. 3, 2024, <https://www.ejiltalk.org/measuring-compliance-and-the-decisions-of-unclos-dispute-settlement-bodies/>.

Philippines, Vietnam, Taiwan, Malaysia, and Brunei, that all lay some level of territorial claim to the sea and various islands. An estimated \$5.3 trillion worth of goods pass through its waters annually, accounting for almost 12 percent of the global fish catch in 2015 alone.⁵ While the South China Sea is home to potentially 3.6 billion barrels of petroleum and other liquid resources, the area remains relatively underexplored due to territorial disputes.⁶ This conflict has become an obstacle for many countries reliant on the region and its vast resources. The South China Sea's importance as a maritime passageway that has facilitated international trade for centuries has only grown over time, with disputes among countries over the region becoming increasingly tense.

The name South China Sea is also highly controversial—China refers to this region as *Nan Hai* (Southern Sea), whereas Vietnam calls it *Bien Dong* (Eastern Sea), and the Philippines claims it to be *Dagat Kanlurang Pilipinas* (West Philippines Sea).⁷ According to Vietnam historian Nguyen Nha, “Vietnamese people have been calling [it] the East Sea for thousands of years and the name is embedded in our folk culture.”⁸ For these countries, names are important indicators of national affinity and cultural significance, which point to historic ties to the region and bolster a sense of ownership over the various parts of the sea. Through this, it is evident that the historical, political, and economic stakes are high for each country. Claimant countries have also emphasized their ownership of several smaller, uninhabited island chains scattered throughout the region known as the Spratly and Paracel Islands.

⁵ China Power Team, *How Much Trade Transits the South China Sea?*, China Power, Jan. 25, 2021, <https://chinapower.csis.org/much-trade-transits-south-china-sea/>.

⁶ U.S. Energy Info. Admin., *Regional Analysis Brief: South China Sea* (Mar. 21, 2024), https://www.eia.gov/international/content/analysis/regions_of_interest/South_China_Sea/south_china_sea.pdf.

⁷ David Scott, *Conflict Irresolution in the South China Sea*, Asian Survey, Dec. 1, 2012, <https://doi.org/10.1525/as.2012.52.6.1019>.

⁸ *In the South China Sea, Even the Name is Disputed*, Radio Free Asia, Feb. 7, 2022, <https://www.rfa.org/english/news/vietnam/southchinasea-name-02072022145513.html>.

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Figure 1: Map of the Nine-Dash Line and EEZs⁹

The Spratly and Paracel Island chains are of significant interest due to their geographic locations within the South China Sea. The establishment of the exclusive economic zone (EEZ) in UNCLOS stipulates that these areas are subject to specific legal regimes where coastal states obtain sovereign rights and are granted access to all living and non-living resources as well as jurisdiction in that particular area. The articulation of the EEZ has made these islands valuable because they provide a basis for countries to establish their EEZs in a manner that would grant them full sovereignty and exclusive territorial access to the vast reserves of natural resources. This would not only help strengthen one's economy but also boost a nation's regional importance. China has claimed the largest area within the South China Sea, encompassing both the Spratly and Paracel islands, drawing a nine-dash line (shown in Figure 1) from which the loose boundaries for the country's historical maritime claims have been established.¹⁰ The nine-dash line serves as an ambiguous but crucial representation of

⁹ Voice of Am., *South China Sea claims map*, Wikimedia Commons, Jul. 31, 2012, <https://commons.wikimedia.org/w/index.php?curid=108589636>.

¹⁰ U.S. Energy Info. Admin., *supra* note 6, at 4.

what China believes to be its rightful ownership over the majority of the South China Sea, inviting international controversy.¹¹

Competing nations have repeatedly clashed over the South China Sea. The first armed conflict occurred on March 14, 1988, when the Chinese navy sank three Vietnamese ships off the coast of the Johnson Reef in the Spratly Islands. This conflict marked the beginning of China's foray into establishing a more assertive presence in the South China Sea, coinciding with the country's economic-oriented expansion of maritime trade and resource extraction.¹² This pattern of events changed very little over the following decades; in October of 2024, Vietnam accused China of attacking a fishing vessel that was operating within the Paracel archipelago of Vietnam.¹³ Vietnam maintained the position that its fishermen were operating in territory rightfully claimed by Vietnam. China asserted the opposite, rejecting Vietnam's demands that China recognize Vietnam's full sovereignty over the Paracel Islands.

These skirmishes are just a representation of the broader, long-standing struggle over the South China Sea. The sheer complexity of intertwining claims over the Spratly and Paracel Islands continues to hinder multilateral negotiations and threaten the stability of economic activity in the Indo-Pacific region. This includes state actors who cannot lay claim to the territory but still benefit from its vital tradeways, such as the United States, Japan, and South Korea. For these countries, the South China Sea is a critical trade route through which commercial products and energy resources pass. South Korea, for example, is heavily dependent on the oil that transits through the South China Sea, supplied almost entirely by the Middle East.¹⁴ Comparatively, the US views China's claims over the South China Sea as both a threat to their economic interests in the Indo-Pacific, as well as an underhanded attempt at establishing a sphere of influence.¹⁵ Additionally, states with diplomatic ties to the region refrain from asserting themselves in the dispute for fear of jeopardizing their relationships with

¹¹ Alec Caruna, *Maritime Affairs Program (MAP) Handbill Spotlight Nine-Dash Line*, ICAS, Jul. 25, 2023, <https://chinaus-icas.org/research/map-spotlight-nine-dash-line/>.

¹² *1895 – 2024 China's Maritime Disputes*, Council on Foreign Relations, <https://www.cfr.org/timeline/chinas-maritime-disputes>.

¹³ Nguyen Dieu Tu Uyen & Philip J. Heijmans, *Vietnam Accuses China of 'Brutal' Attack on Fishing Boat in South China Sea*, TIME, Oct. 4, 2024, <https://time.com/7038886/vietnam-south-china-sea-attack-boat-injuries/>.

¹⁴ Lee Jaehyon, *South Korea and the South China Sea: A Domestic and International Balancing Act*, 2016 Asia Pol'y. 36.

¹⁵ Michael D. Swaine, *America's Security Role in the South China Sea*, Carnegie Endowment for International Peace, Jul. 23, 2015, <https://carnegieendowment.org/posts/2015/07/americas-security-role-in-the-south-china-sea?lang=en>.

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either China or the member states of the Association of Southeast Asian Nations (ASEAN). Ultimately, the South China Sea dispute and rising tensions between claimant countries pose a serious political and economic threat to global trade and security. Thus, it becomes essential that international law plays a role in enforcing international standards of peacekeeping and dispute resolution.

B. United Nations Convention on the Law of the Sea (UNCLOS)

When resolving territorial claims, international courts first seek out established treaties or conventions to gather information on what has been collectively agreed upon among countries, in which ratification would bind signatory states to its terms. Judicial actors, such as the ICJ, use a “tripartite” hierarchical rule of thumb that guides their decisions: treaty law, *uti possidetis*, and then effective control.¹⁶ In the case of the South China Sea dispute, the applicable treaty that discerns relevant legal frameworks is the United Nations Convention on the Law of the Sea, entered into force in 1996 and signed by 169 parties (including China).¹⁷ UNCLOS established an international standard of maritime regulation and state access to the sea, with provisions on territorial integrity, EEZs, and contiguous zones. It also prohibits signatories from entering reservations (asserted in Article 309), which are statements from states joining treaties that wish to avoid being bound to certain obligations dictated by their provisions.¹⁸ This means that all states that have agreed to adopt UNCLOS have consented to abide by the Convention in its entirety—there is no ability to opt out *or* to pick and choose what legal provisions to follow unless otherwise expressly permitted by the Convention.

Part V of UNCLOS articulates the logistics of the EEZ, which extends to a maximum of 200 nautical miles beyond a nation’s established territorial sea and allows for the complete control and regulation of resources as well as the penalization of any state that violates the coastal state’s sovereignty.¹⁹ Disputes surrounding this particular zone invite states to find an equitable resolution “taking into account the respective importance of interests involved to the parties as well as to the international

¹⁶ Brian Taylor Summer, *Territorial Disputes at the International Court of Justice*, 53 Duke L. Rev. 1808 (2004).

¹⁷ UNCLOS, Curtis, Mallet-Prevost, Colt & Mosle LLP, www.curtis.com/glossary/public-international-law/unclos (last visited Jan. 15, 2025).

¹⁸ Richard W. Edwards, Jr., *Reservation to Treaties*, 10 Mich. J. Int’l L. 362 (1989).

¹⁹ Rögnvaldur Hannesson, Exclusive Economic Zone 150-153 (Encyc. Energy, Nat. Res., & Env’t Econ. 2013).

community as a whole.”²⁰ This highlights the treaty’s ambiguous approach to resolving EEZ-related issues, promoting state-to-state dialogue and negotiation rather than detailing a strict step-by-step protocol.

Section 2 from Part XV of UNCLOS, titled Settlements of Disputes, further outlines the dispute resolution procedure, establishing that if no settlement is reached, any country can submit a case to a court or tribunal. The compulsory binding dispute settlement system allows parties to choose the method in which they can strive for a resolution, including (1) the Tribunal for the Law of the Sea, (2) the International Court of Justice, (3) an arbitral tribunal, or (4) a special arbitral tribunal.²¹ If the involved parties disagree on the manner of settlement, arbitration becomes the automatic option. A court or tribunal in that case would apply the rules of the Convention and other applicable international law customs to conclude. Any final decision “shall be complied with by all the parties to the dispute” based on the understanding that voluntary ratification by states means that they agree to comply.²²

UNCLOS is known as a framework or “umbrella” convention, meaning that although it sets up broad and comprehensive principles of international conduct, it does not detail how provisions should be followed. Instead, the Convention calls for other international institutions to “give effect to its provisions,” indicating that UNCLOS serves as an overarching guide from which specific regulations are developed in an organic, flexible manner.²³ This ensures that a convention as old as UNCLOS, which was established in 1982 during the Third Conference on the Law of the Sea, remains applicable as a legal framework. This is a strength of the Convention, as its adaptability insulates it from external pressures that may seek to destabilize or delegitimize its authority.

Additionally, the structure of UNCLOS allows elaboration on existing provisions to reflect the development of new goals or increasingly pressing concerns.²⁴ This feature is exemplified by UNCLOS’s adoption of the 1995 Fish Stocks Agreement, which expanded the framework for how states should both manage and conserve fish

²⁰ U.N. Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 44.

²¹ *Id.* at 131.

²² *Id.* at 133.

²³ House of Lords, Int’l Relations and Def. Comm., UNCLOS: The Law of the Sea in the 21st Century, HL Paper No. 159 (2022) (U.K.),

<https://committees.parliament.uk/publications/9005/documents/159002/default/>.

²⁴ Press and Information Team of the Delegation to the UN in New York, *EU Statement – UN General Assembly: Adoption of the UN Convention on the Law of the Sea (UNCLOS)*, European External Action Service (Aug. 12, 2022).

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stocks both within and outside EEZs.²⁵ In this respect, UNCLOS is a living instrument; it can maintain fundamental aspects, such as its dispute settlement regime, while simultaneously adapting to the demands of the ever-changing global context.

Because UNCLOS is an umbrella framework, the text is intentionally vague to create mechanisms through which states can smoothly engage in the dispute settlement process. Disallowing reservations strengthens the legitimacy of UNCLOS as a historically well-observed convention compared to other United Nations international treaties that struggle with ratification despite allowing reservations. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is an instrument for safeguarding the rights of migrants that only has 40 signatories.²⁶ The Migrant Workers Convention is one of the most poorly ratified human rights treaties in the world because states view it as (1) not politically viable and (2) a threat to their sovereign rights.²⁷ It also allows states to declare reservations, picking and choosing what provisions to follow or ignore. By contrast, UNCLOS boasts approximately four times the number of signatories. Many coastal states have also complied with the treaty on a domestic level, with 144 Parties amending the distance of their territorial sea claims to conform with UNCLOS standards.²⁸ The high ratification rates and concrete examples of observance demonstrate that the Convention is a long-standing legal framework that has set the standards for global maritime activities since the turn of the 21st century.

However, UNCLOS is not immune to maneuvering and flagrant disregard. Major powers, whether they are a signatory or not, hold power over applications of the treaty. The US, for example, is not a signatory to the Convention and does not hold itself to the standards demanded by UNCLOS. China also ignores its responsibilities as a signatory of UNCLOS by disregarding the agreed-upon EEZ limits. This illustrates the extent to which the Convention is reliant on states' voluntary submission and the principle of consent—UNCLOS only holds power *because* signatories consent to abide

²⁵ U.N. Dep't of Econ. & Soc. Affairs, 1995 United Nations Fish Stock Agreement, <https://sustainabledevelopment.un.org/topics/oceans/unfishstock> (last visited Jan. 29, 2025).

²⁶ U.N.T.S., International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families at 3, U.N. Doc. A/RES/45/158 (Dec. 18, 1990).

²⁷ Euan MacDonald & Ryszard Cholewinski, The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, EU/EEA perspectives at 64, U.N. Doc. SHS.2007/WS/7 (2007).

²⁸ James Kraska, *The Law of the Sea Convention: A National Security Success - Global Strategic Mobility Through the Rule of Law*, 39 Geo. Wash. Int'l L. Rev. 543 (2007).

by its provisions, which explicitly state that any decisions rendered by a court or tribunal shall be complied with.²⁹ The issue that arises is that there is no official enforcement mechanism tasked with overseeing state compliance.

C. The International Court of Justice & Permanent Court of Arbitration

UNCLOS has played an integral role in establishing the law of the sea for decades, but there are rising concerns about the Convention's dispute settlement regime, especially as an authoritative framework that can effectively address issues beyond its scope.³⁰ UNCLOS functions as an international legal regime that establishes the overarching rules for governing the ocean and asserts that disputes arising from differing or clashing interpretations of its provisions must be resolved elsewhere. In such cases, the ICJ and the PCA are essential.

The ICJ presides over states as an international legal body, holding the power to rule on contentious cases or produce advisory opinions on legal questions submitted by the United Nations and other agencies.³¹ Known as the judicial organ of the United Nations, the ICJ is composed of 15 judges who serve nine-year terms and are elected by the General Assembly and the Security Council.³² In solving legal disputes, the ICJ is summoned under specific conditions in which states agree to accept its jurisdiction as either members of the United Nations or under exceptional circumstances. The ICJ can entertain disputes by "virtue of a jurisdictional clause," where international treaties allow signatory states to defer to the court to resolve disputes over specific provisions.

The PCA is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA is not an arbitral tribunal, it facilitates the arbitration process and other dispute resolution proceedings for large-scale entities such as states or intergovernmental organizations.³³ The PCA has 124 Contracting Parties, entities that agree to observe one or both of the

²⁹ U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 132.

³⁰ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, 21 *Contemp. Se. Asia* 386 (1999).

³¹ *How the Court Works*, International Court of Justice, <https://www.icj-cij.org/how-the-court-works> (last visited Jan. 18, 2025).

³² *Uphold International Law*, U.N., [https://www.un.org/en/our-work/uphold-international-law#:~:text=The%20principal%20judicial%20organ%20of,Court%20of%20Justice%20\(ICJ\)](https://www.un.org/en/our-work/uphold-international-law#:~:text=The%20principal%20judicial%20organ%20of,Court%20of%20Justice%20(ICJ)) (last visited Jan. 18, 2025).

³³ *About us*, Permanent Court of Arbitration, <https://pca-cpa.org/en/about/> (last visited Feb. 25, 2025).

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Court's founding conventions.³⁴ Similarly to UNCLOS, these entities are mostly states that expressed consent to be bound by the terms and conditions decided by the PCA. Additionally, the PCA is unique in that it has established a line of communication with the International Tribunal for the Law of the Sea (ITLOS), another intergovernmental organization that adjudicates maritime disputes, agreeing to operate on matters both parties deem important.

The PCA and ICJ are both judicial entities that preside over transnational matters, however, the ICJ engages in *adjudication* while the PCA engages in *arbitration*. Adjudication is a formalized process that oversees mostly non-monetary claims, and international courts like the ICJ are generally viewed as independent and impartial. By contrast, arbitration is a less formalized procedure, perceived as more efficient, taking up contentious state-to-state disputes that usually involve monetary claims.³⁵ Arbitration and adjudication both provide the necessary platform for states and other entities to reach a peaceful conclusion by facilitating the international dispute resolution system.

The ICJ is a relatively effective international adjudicating body—as of 2014, compliance with the Court's decisions was around 75 percent.³⁶ Though there are no official statistics on the compliance rates (measures of state adherence) of the PCA, it nevertheless holds an important role in promoting interstate mediation and conciliation as an arbitral institution. The ICJ functions as a diplomatic tool for facilitating peaceful dispute resolutions between states, emphasizing the importance of addressing issues in a non-adversarial manner. But the issue remains that the jurisdiction of these international judicial institutions is dependent on the consent of states. Parties can only seek out legal justification if they agree to engage with these judicial bodies. Conventions like UNCLOS provide an appropriate starting point for states to engage in a legal conversation, such as allowing states to dispute settlements using the ICJ or arbitral tribunals like the PCA as facilitators.³⁷ However, the expectation that losing parties will readily accept and act upon decisions regarding

³⁴ *Contracting Parties*, Permanent Court of Arbitration, <https://pca-cpa.org/en/about/introduction/contracting-parties/> (last visited Feb. 25, 2025).

³⁵ Anna T. Katselas, *International Arbitration vs. International Adjudication for the Settlement of Disputes Between States and International Organizations*, 1-19 (2011) (International Legal Studies L.L.M. Candidate Seminar Paper, University of Vienna Law School on file with University of Vienna).

³⁶ Joan E. Donoghue, *The Effectiveness of the International Court of Justice*, 108 ASIL Proc. 114 (2014).

³⁷ Robert Beckman, *Professor Robert Beckman on the Role of UNCLOS in Maritime Disputes* (Andrea Ho, interviewer), Georgetown Journal of International Affairs (May 6, 2021), gija.georgetown.edu/2021/05/06/professor-robert-beckman-on-the-role-of-unclos-in-maritime-disputes.

national sovereignty made by international judges is idealistic. This omnipresent principle of consent is a crucial step in the application of international law as it functions as the bedrock from which dispute settlement can be successfully achieved.

D. China Setting a Dangerous Precedent

The glaring weakness of UNCLOS and international treaties is that they rely on formulaic procedures outlined in Part XV of the Convention for how dispute settlements should be carried out, which usually refers states to international courts like the ICJ or PCA. While China remains a signatory to UNCLOS, it has openly flaunted the Convention's most fundamental concepts, like the EEZ, by invalidating other states' claims to the South China Sea. This is particularly dangerous regarding the credibility of international law, as legitimacy is afforded to conventions based on the shared agreement between states to observe the standards of conduct outlined in the treaties and respect rulings made by adjudicating/arbitral actors. If a state as powerful as China refuses to comply with the conditions that it has willingly agreed upon, the question that remains is what use is international law in governing and checking state behavior? Not only is China committing itself to its pursuit of the South China Sea and destabilizing the region, it is also setting a dangerous precedent by rejecting its responsibilities as a member state, particularly in the case of *The Republic of Philippines v. The People's Republic of China* (2016).

II. THE REPUBLIC OF PHILIPPINES V. THE PEOPLE'S REPUBLIC OF CHINA (2016)

This section will delve into the legal and social ramifications of the arbitration case brought against China by the Philippines in 2013. This case reveals the flawed nature of the international dispute settlement regime put in place by framework conventions like UNCLOS and carried out by international judicial actors like the ICJ and PCA.

A. Background

The Philippines initiated *The Republic of the Philippines v. The People's Republic of China*—also known as the South China Sea Arbitration Case—against China on January 22, 2013, by invoking the Notification and Statement of Claim under Article 287 and Annex VII of UNCLOS. Article 287 refers to the *Choice of Procedure* section of the Convention's dispute settlement regime, allowing member states to freely

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choose how they wish to resolve disputes.³⁸ Under normal circumstances, by the time a case was put forth and accepted by an Arbitral Tribunal and agreed to be facilitated by the PCA, each State Party would appoint an agent to represent their respective country. China instead responded on February 19th through a diplomatic note and refused to acknowledge the Philippines' Notification. Notwithstanding, the Tribunal selected its group of arbitrators and began the arbitration process. As discussed in the previous section, the PCA, much like the ICJ, is expected to use the provisions of UNCLOS and other applicable rules of international law in informing its final decision.

B. The Philippines' Position

The Philippines brought three "interrelated matters" up to the Tribunal concerning the South China Sea in hopes that it would provide the legal ammo needed to push back against what it perceived as Chinese encroachment:

(1) China is not entitled to exercise "historic rights" over the waters, seabed, and subsoil beyond the limits of its entitlements under the Convention in the areas encompassed within its so-called "nine-dash line"; (2) Various maritime features relied on by China as a basis upon which to assert its claims in the South China Sea are not islands that generate entitlement to an exclusive economic zone ("EEZ") or continental shelf, but rather are "rocks" within the meaning of UNCLOS Article 121(3), or are low-tide elevations or submerged banks incapable of generating such entitlements; and (3) China has unlawfully interfered with the exercise of the Philippines' sovereign rights and freedoms under UNCLOS and other rules of international law not incompatible with the Convention.³⁹

The Philippines emphasized that UNCLOS does not account for the "historic rights" that China has used as a basis for establishing its nine-dash line in the South China Sea. China's decision to become a signatory state of the Convention in 1996 would indicate its consent to be bound by the limits established by UNCLOS, negating the argument

³⁸ U.N. Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 131.

³⁹ Memorial of the Philippines, The South China Sea Arbitration (Phil. v. China), 2013-19 P.C.A. 2 (Mar. 30, 2014).

that China has historic claims over this territory. Furthermore, the Philippines maintained that China directly “violated the sovereign rights and jurisdiction of the Philippines, by both exploiting the resources in these areas and preventing the Philippines from exploiting them,” which violates the provisions of UNCLOS and the norms of conduct established by international law.⁴⁰

The Philippines presented its legal arguments with evidence supporting its claims by filing a Memorial, the main mode of communication between states and the Tribunal. The Philippines pointed to the economic significance of the South China Sea, detailing how the coastal States make use of the abundant fisheries and their underwater biodiversity. It also detailed the history in which the routes within the South China Sea were used by early Filipinos for means of trade, as early as 982 A.D.⁴¹ In addition, it presented evidence of 13th-century trade that occurred between Luzon in the Philippines and Fujian in China.⁴² Aside from historical context, the Philippines compared its maritime legislation with the claims made by China. The Philippines maintained that it adhered to the provisions of UNCLOS since 2009, particularly in respect to its 200M EEZ claims. The nation asserted that China failed to adhere to UNCLOS-mandated maritime entitlements and, instead, expanded upon its claims, threatening the sovereign rights and jurisdiction of the Philippines.⁴³ Figure 2 shows China’s nine-dash line and how it overlaps with the Philippines’ 200M EEZ limit.

⁴⁰ Memorial of the Philippines, *supra* note 39, at 5-6.

⁴¹ *Id.* at 24-25.

⁴² Anthony Reid, *Charting the Shape of Early Modern Southeast Asia* 47 (Silkworm Books, 2014) (ebook).

⁴³ Memorial of the Philippines, *supra* note 39, at 60-61.

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Figure 2: Overlap of the Philippines' EEZ and China's Nine-Dash Line⁴⁴

The Memorial discusses the specific maritime features in the South China Sea, applying Articles 13 and 121 of UNCLOS to analyze the entitlements granted to each feature. The Philippines sought to clarify what constitutes a low-tide elevation, an island, or just a collection of rocks, ultimately requesting that the Tribunal affirm its position that none of the features claimed by China be granted an EEZ or continental shelf. In their argument, the Philippines brought up the case of Oki-no-Toris Shima, a feature claimed by Japan 940 M off its coast, which China protested. China applied Article 121(3) of UNCLOS to make its argument, in which “rocks which cannot sustain [1] human habitation or [2] economic life of their own shall have no exclusive economic zone or continental shelf.”⁴⁵ A formal acknowledgement of Japan’s jurisdiction over Oki-no-Shima would, in China’s view, “have adverse impact[s] [on]

⁴⁴ Memorial of the Philippines, *supra* note 39, at 47.

⁴⁵ U.N. Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 66.

the maintenance of an equal and reasonable order for oceans.”⁴⁶ The Philippines utilized this particular issue to bring attention to the fact that China has not only explicitly confirmed its understanding and application of Article 121(3) but also recognized that a feature in its most natural state must be capable of generating enough economic activity to support life.⁴⁷ This is inconsistent with China’s claims and unauthorized activity around features scattered across the Spratly Islands. These features are, by definition, not islands and can therefore not generate an EEZ or continental shelf worth asserting jurisdiction over.⁴⁸ Ultimately, the Philippines aimed for the Tribunal to recognize China’s contradictory behavior.

C. China’s Position of Non-Acceptance and Non-Participation

While the Philippines’ Memorial detailed several aspects of its legal argument against China’s claims over the South China Sea, China adopted a position of non-acceptance and non-participation. According to UNCLOS’s dispute resolution regime, even if a Party deliberately chooses not to appear in front of the Tribunal to make its case, the other party can decide to unilaterally proceed with the arbitration process.⁴⁹ The Chinese government refused to accept the unilaterally initiated arbitration, claiming the Tribunal had no jurisdiction. China’s bilateral exchanges with the Philippines, leading up to the arbitration in 2013, demonstrate that this is not a behavior change. In 2011, China asserted that its claim over the Spratly Islands fell squarely under UNCLOS’s relevant provisions, dictating the establishment of EEZs and continental shelves.⁵⁰ This represents a continuation of China’s one-sided efforts to undermine other competing states’ claims. China’s strategy was unconventional, as it chose to reject transparent bilateral communication with the mediation of a third party by rebuffing the Philippines’ offer to settle disputes peacefully through arbitration, refusing to acknowledge the PCA’s authority.

D. Ruling

⁴⁶ Memorial of the Philippines, *supra* note 39, at 125.

⁴⁷ *Id.* at 130.

⁴⁸ *Id.* at 159.

⁴⁹ U.N. Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 188.

⁵⁰ Memorial of the Philippines, *supra* note 39, at 159.

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The Arbitral Tribunal issued its ruling on July 12, 2016, approximately three years after the Philippines initiated its arbitration request. The Tribunal ruled overwhelmingly in favor of the Philippines, making note of China's position—which included a refusal to participate in any of the proceedings or hearings, a refusal to submit Counter-Memorials, and a refusal to respond to the Tribunal on the matter of procedure and logistical costs of the arbitration itself.⁵¹ Despite China's best efforts to reject all forms of participation in the arbitration process, the Tribunal reiterated how China was bound under international law, and by extension, the awards rendered by the Tribunal.⁵²

The Tribunal concluded that UNCLOS, as an overarching treaty, superseded any historic or sovereign rights that exceeded limits outlined by the convention. Additionally, none of the maritime features claimed by China were deemed "islands" capable of generating an EEZ. This automatically negated any legal or historical claims made by China over its alleged jurisdiction of the areas within its arbitrarily drawn nine-dash line. Finally, the Tribunal found China in violation of interfering with the Philippines' ability to use natural resources within its recognized territorial waters, such as preventing fishing vessels from operating. The Tribunal reminded both Parties that they were obliged to comply with the dispute resolution mechanism established by the Convention and urged China to engage in further measures of dispute resolution in good faith.⁵³

E. Issues of Consent, Procedure, and Enforcement

Observing what has occurred since the Tribunal's ruling in 2014 reveals that not only does the South China Sea dispute persist, but China continues to assert the same claims it made over a decade ago in its response to the Philippines' Notification. Instead of presenting its arguments through the legal channel of a Counter-Memorial, China provided the Tribunal with a Position Paper. China declared that its lack of participation in the arbitration process was a sovereign right, and that it opposed the "abuse of the compulsory arbitration procedures" laid out by UNCLOS.⁵⁴ This is a

⁵¹ South China Sea Arbitration (Phil. v. China), PCA Case Repository 46 (Perm. Ct. Arb. 2016).

⁵² *Id.* at 55.

⁵³ *Id.* at 468-69.

⁵⁴ Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines, Ministry of Foreign Affairs, The People's Republic of China, Dec. 7, 2014, https://www.fmprc.gov.cn/nanhai/eng/snhwtlwcwj_1/201606/t20160602_8527277.htm.

direct attack on UNCLOS's dispute resolution regime, particularly on the provision that grants Parties the ability to unilaterally escalate an issue and invite the intervention of bodies like the ICJ or PCA. Furthermore, China stated that it saw no reason to follow proceedings brought by the Philippines, and declared the Tribunal's findings to have no binding effect on China.⁵⁵

The South China Sea arbitration case highlights issues surrounding the consent, procedure, and enforcement of the Convention and other international treaties as a whole. States may willingly ratify treaties and provide explicit agreement to abide by their provisions, but this does not guarantee that signatories will honor this agreement if they perceive a threat or violation to their sovereign rights. The dispute resolution mechanism laid out by UNCLOS inadvertently allows for non-acceptance and non-participation, which is exactly the path China chose to take when disregarding the entirety of the arbitration process. Although this function is advantageous for states seeking legal clarification or mediation from an impartial third party, the failure to appear and make submissions by the opposing party means that they do not acknowledge the PCA's jurisdiction. Just as the Tribunal noted when rendering its awards, the South China Sea arbitration case faced practical and logistical challenges because China refused to utilize the formal procedures laid out by UNCLOS. This presents a clear procedural challenge. Lastly, there is an evident problem with enforcement. Although the Tribunal affirmed most of the Philippines' original claims, the conclusion of the South China Sea case in 2016 did not bring major reform to China's behavior. China instead strengthened its resolve to reassert its territorial sovereignty and maritime rights in the region by continuously engaging in confrontations with other claimant states. In August of 2024, China and the Philippines recorded six occurrences of air and naval confrontations.⁵⁶ China has also continued bolstering its military presence in the region by deploying military personnel and constructing outposts throughout the Paracel and Spratly Islands. Ultimately, there were no real-life consequences, both in the short and long term, that could successfully force China to comply with the Arbitral Tribunal's ruling.

⁵⁵ Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the Arbitral Tribunal Established at the Request of the Republic of the Philippines, Ministry of Foreign Affairs, The People's Republic of China, Oct. 30, 2015, https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367307.html.

⁵⁶ *China reasserts South China Sea sovereignty amid Philippine boundary laws*, Aljazeera, Nov. 10, 2024, <https://www.aljazeera.com/news/2024/11/10/china-reasserts-south-china-sea-sovereignty-amid-philippine-boundary-laws>.

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These intertwining issues signal a dangerous underlying implication for UNCLOS as a global governing treaty. The dispute resolution system's failure to create an effective and substantive change in behavior from China indicates that compliance with international law is voluntary. This is the exact opposite of what conventions like UNCLOS aim to achieve. Addressing the issues of consent, procedure, and enforcement should be a top priority in order to combat the risk of undermining the stability of international maritime law.

III. OTHER CASE STUDIES

China's response to the PCA is not an isolated incident. This section focuses on other inter-state disputes similar to the South China Sea arbitration case, and draws parallels between China's behavior to that of other countries, explicitly ignoring the Conventions upon which they have previously agreed to comply.

A. Netherlands v. Russia (2013): The Arctic Sunrise Arbitration Case

In 2013, the Netherlands initiated arbitral proceedings against Russia through ITLOS on the grounds that the Russian Federation wrongfully boarded and detained members of the Arctic Sunrise vessel per the freedom of navigation clause of Article 58 in UNCLOS.⁵⁷ The Netherlands sought the Tribunal's judicial recognition of Russia's wrongful conduct, as well as a formal apology and financial compensation.⁵⁸ Russia rejected the Netherlands' request to proceed, claiming that it had no intention of participating in the arbitration process. Upon ratifying the Convention, Russia made a declaration against the binding decisions arising from disputes about law-enforcement activities that might impinge upon its sovereign rights.⁵⁹ The Netherlands responded to this by contending that Russia's declaration could be interpreted as a reservation, strictly prohibited by Articles 309 and 310 of UNCLOS.⁶⁰ This would render the declaration null and void, ultimately having no effect on Russia's responsibility to participate in the arbitral process. The Tribunal recognized this to be the case—Russia and the Netherlands, as signatories to UNCLOS, were bound by the dispute resolution regime set up by the Convention.⁶¹ Although the Tribunal ultimately

⁵⁷ U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 44.

⁵⁸ Arctic Sunrise (Neth v. Russ), Case No. 22, Order of Nov. 22, 2013, 22 ITLOS Rep. 230, 236.

⁵⁹ *Id.* at 245.

⁶⁰ *Id.* at 240.

⁶¹ *Id.*

ordered Russia to provide the members of the crew of the Arctic Sunrise with monetary compensation, Russia has refused to comply with this order.

This is yet another example of an arbitration case that illustrates the inherent weaknesses of the UNCLOS dispute regime. Similarly to China, Russia failed to make an appearance during the public sitting and also declined to present its observations to the Tribunal. It chose a position of non-acceptance and non-participation, rejecting the authority of the Arbitral Tribunal despite being a member state of the Convention. *Netherlands v. Russia* parallels the issues present in the South China Sea arbitration case, as one party refused to accept the jurisdiction of the UNCLOS-appointed arbitrator and deliberately chose not to comply with the resulting demands. This case reveals that this pattern of state behavior is not limited only to the South China Sea dispute, as countries like Russia and China have increasingly attempted to maneuver around UNCLOS and avoid the overarching authority of the Convention. One major difference between these arbitration cases is that the Arctic Sunrise case only involves two states, in which the Netherlands demands explicit acknowledgement of wrongdoing and compensation from Russia. The South China Sea dispute is a much more complex, long-standing issue that involves multiple actors and spans across decades of rising tensions, with *The Republic of Philippines v. The People's Republic of China* being the first legal articulation that highlights the current state of affairs in the region. *Netherlands v. Russia* is nevertheless valuable as an important indicator that China's behavior is not isolated, even among signatories of UNCLOS. It brings attention to the concerning fact that other great powers like Russia are entirely able and willing to dismiss international dispute settlements and behavior reform.

B. *The Liancourt Rocks Dispute*

Whereas the Arctic Sunrise dispute between the Netherlands and Russia is unambiguous, the Liancourt Rocks dispute between South Korea and Japan is filled with legal ambiguities and long, conflicting narratives. Much like the South China Sea case, it involves historically antagonistic states wrestling over a group of islets that hold cultural and economic significance. The Liancourt Rocks (called *Dokdo* by Korea and *Takeshima* by Japan) are almost equidistant from each country and have been a point of contention since as early as the 17th century.⁶² The two nations possess a strained

⁶² Alexandra Genova, *Two Nations Disputed these Small Islands for 300 Years*, National Geographic, Nov. 14, 2018, <https://www.nationalgeographic.com/history/article/history-dispute-photos-dodko-rocks-islands>.

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relationship, complicated by the fact that Korea was previously a colony of Japan from 1910 to 1945, during which the Liancourt Rocks were formally annexed by the Axis power along with the rest of the Korean Peninsula.

This case represents a failure to bring a dispute to the arbitration or adjudication stage. Japan suggested bringing the dispute up as a joint submission to the ICJ in 1954 and 2012, but South Korea rejected its invitations, citing Japan's lack of sovereignty over the islets as its reasoning.⁶³ Although both states possess the right to bring the dispute to the ICJ, this action remains more of a symbolic threat than a practical possibility. It would force South Korea and Japan to present concrete legal arguments to a third party, indicating their recognition of the judicial body's authority, and requiring both parties to abide by the ensuing ruling. This hesitation to engage in international arbitration and dispute resolution mirrors China's non-acceptance of the Philippines' unilateral escalation of its arbitral proceedings. Even though a joint submission to an adjudicating body like the ICJ indicates a clear commitment to the authority of international law and reinforces the rules-based order, the Liancourt Rocks dispute demonstrates the extent to which countries remain skeptical of the efficacy and the value of the dispute resolution system within international law. This is especially true in the case of politically sensitive issues like the South China Sea and the Liancourt Rocks cases, where disputes transcend simple legal altercations.

IV. STRENGTHENING INTERNATIONAL LAW

A. Where Did International Law Go Wrong?

The case studies point to the flaws within international law as a global regime that promotes a rule-based order. The issue that pervades international law, including treaties like UNCLOS and judicial actors like the ICJ and PCA, is that enforcement does not exist as it does on a domestic level. There is no binding effect that keeps states in check other than a shared understanding that each state will abide by the rules. Consent and compliance are expected, but the steps to enforce these important concepts remain underdeveloped. In the case of UNCLOS, the notion of enforcement is only expressed with financial contracts or coastal states exercising their sovereign rights against foreign vessels.⁶⁴ The failure to fully outline the consequences of violating

⁶³ J. Berkshire Miller, *The ICJ and the Dokdo/Takeshima Dispute*, *The Diplomat*, May 13, 2014, <https://thediplomat.com/2014/05/the-icj-and-the-dokdotakeshima-dispute/>.

⁶⁴ U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 113, 155.

the treaty may be a strategic decision to avoid portraying the Convention as strict and unsupportive of state sovereignty. International treaties become more successful as more states ratify them, as it not only demonstrates political viability but also creates new international norms. Conversely, the lack of support and ratification of a treaty indicates less acceptance and consensus. This is exemplified by the previous discussion about human rights treaties such as the Migrant Workers Convention, which is poorly ratified despite allowing states to make reservations. In turn, the treaty is viewed less as an authoritative power and more as a suggestion. After weighing their options against the commitment cost of ratifying treaties, countries may end up diverting more effort towards pursuing national interests. States may also use international treaties as more of an “expressive tool” to garner reputational or political leverage rather than a genuine commitment to upholding the global rule of law.⁶⁵

B. Strengthening Procedure and Enforcement Mechanisms

Given the fundamental weaknesses of international law, the question now is what measures can be taken to strengthen the procedural and enforcement mechanisms of global treaties that codify legal principles on a transnational level. This section will focus particularly on what can be done specifically for UNCLOS within the context of the South China Sea dispute, but will also contain broader recommendations for international law.

Firstly, when tackling the *flawed procedure aspect* of UNCLOS, the answer lies in the dispute resolution regime itself. There should be an amendment to Section 5 of UNCLOS that (1) details ways to reduce bureaucratic barriers to arbitration and adjudication and (2) raises the costs of non-participation. This may be done by establishing measures to assist states with financial or procedural burdens that may otherwise discourage them from escalating disputes with other states. Although states remain relatively powerful actors in their own right, bureaucratic obstacles and drawn-out legal battles may inhibit them from pursuing arbitration or litigation processes that can be financially draining in the long term. For example, in its lengthy arbitration case against China, the Philippines government paid its legal representation approximately \$7 million for their services, spanning across two and a half years.⁶⁶ While economically prosperous states may have no problems funding these legal

⁶⁵ Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 Yale L. Rev. 2019 (2002).

⁶⁶ Ellen T. Tordesillas, *How much did PH pay for foreign lawyers in case vs China?*, VERA Files, Jul. 21, 2016, <https://verafiles.org/articles/how-much-did-ph-pay-for-foreign-lawyers-in-case-vs-china>.

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battles, smaller states with lower GDPs may benefit from financial assistance with legal fees associated with international courts. Raising the costs of non-participation is also crucial in that it will disincentivize states from following in the footsteps of countries like China by fully articulating the consequences of refusing to cooperate. This may come in the form of withholding UNCLOS-member privileges such as explicit legal protections for freedom of navigation or rights to research, explore, and exploit natural resources in international waters.⁶⁷ Amending UNCLOS to include the costs of non-participation will create a dispute resolution process with positive and negative inducement provisions that strengthen state participation in peaceful negotiations. The more the ICJ and other arbitral tribunals engage in cases, the more they build upon their legitimacy as international judicial actors. Arbitration and adjudication should be normalized so dispute resolution becomes a well-established norm that states actively seek out.

Tackling the broader problem of international treaty compliance and the issue with weak enforcement involves addressing UNCLOS's lack of an effective non-compliance mechanism (NCM). A solution to this should aim to facilitate the globalization of law while simultaneously localizing the aims of UNCLOS. This would also involve creating a system in which cooperation and coordination override state non-compliance compulsions. This could bolster global attention to state failures to comply with the international order, solving the dilemma associated with the "stag hunt game". UNCLOS can follow in the footsteps of international environmental treaties like the 1997 Kyoto Protocol, which boasts a facilitative and enforcement branch as part of its NCM by establishing a multilateral UNCLOS Compliance Committee.⁶⁸ This Committee would mandate that each country have a UNCLOS investigative committee that audits the signatory's compliance with the Convention and creates a special UNCLOS report that compiles the findings of these audits on a five-year basis. To address any concerns of possible corruption and bias, the auditors would be brought in from different countries. This would empower international actors and insulate them from various domestic pressures, incentivizing them to investigate with full transparency without fear of retaliation or interference. UNCLOS should also create a report that compiles audits and holds a conference among state

⁶⁷ *A Collective Vision of a Shared Future*, International Seabed Authority, <https://www.isa.org.jm/equitable-sharing-of-benefits/> (last visited Mar. 4, 2025).

⁶⁸ *Compliance Under the Kyoto Protocol Introduction*, U.N. Climate Change, <https://unfccc.int/process-and-meetings/the-kyoto-protocol/compliance-under-the-kyoto-protocol/introduction#:~:text=In%20the%20case%20of%20the,until%20the%20Party%20is%20reinstated> (last visited Mar. 4, 2025).

representatives to discuss the discoveries and address any major concerns. An internal report would signal to signatories that they are being monitored closely, and the publication of the report would promote accountability out of fear of incurring reputational costs. This could facilitate face-to-face discussion amongst nations in the context of a global forum. The establishment of an NCM would work alongside the ICJ and PCA to reinforce their authority, elevating their legitimacy as international judicial institutions.

If these proposed measures were implemented, China would likely incur costs that could influence its behavior in the South China Sea. What China seeks to prevent is an internationalization and regionalization of the South China Sea dispute, as well as developments that may strengthen solidarity-building within ASEAN, undermining China's strategy of bilateral engagement and coercion.⁶⁹ This is exemplified by the Chinese diplomatic and economic pressure, resulting in the retraction of a joint statement of concern regarding China's behavior in the South China Sea during a meeting between ASEAN foreign ministers.⁷⁰ This debacle reveals the importance of globalizing the South China Sea issue as well as identifying and emphasizing the stakes involved for all parties. As mentioned previously, the South China Sea is economically significant with major stakeholders both inside and outside the Indo-Pacific. Strategic interest in the region is not just limited to China or other ASEAN countries like the Philippines. The US, for example, has economic ties that make growing instability in the South China Sea important to monitor. The seas are a physical manifestation of an increasingly globalized world, connecting people and accounting for approximately 80 percent of the flow of goods throughout the world.⁷¹ This makes the seas a productive area for complex interdependence between states. To effectively combat an aggressive state actor such as China, building solidarity that plays to the advantages of this collective interdependence must be a priority. UNCLOS must transform to reflect the needs of this newly realized goal.

In international law, it is impossible to create a new, supranational body that presides above all states. Instead, it must focus attention on identifying what the common global interest is, what the stakes are for each state, and what changes should be made to implement a self-enforcing mechanism. The countries that tend not to

⁶⁹ Ronald O'Rourke, Cong. Rsch. Serv., R42784, U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress (2024).

⁷⁰ Caitlin Campbell & Nargiza Salidjanova, South China Sea Arbitration Ruling: What Happened and What's Next? 3 (U.S.-China Economic and Sec. Rev. Comm., 2016).

⁷¹ U.N. Trade and Development, Review of Maritime Transport 2021, U.N. Doc. UNCTAD/RMT/2021 (Nov. 18, 2021).

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follow international law are also the most powerful, possessing the military and economic capabilities to ignore calls for negotiation and peaceful resolution. These countries operate unilaterally with the understanding that they can get away with such behavior. Similarly, states may ratify treaties disingenuously, as the current state of enforcement in international law is minimal to non-existent. However, through purposeful amendments to the dispute resolution procedure, the creation of an auditing process, and the establishment of a Compliance Committee, compliance with the law of the sea may change. Heightening international attention may force states to face audience costs and a loss in public reputation. A study in 2020 found that the Chinese government may be at risk of incurring domestic audience costs from citizens, making it harder to backtrack or take a more flexible approach to its already aggressive South China Sea policy.⁷² While these proposed measures are designed to influence state behavior on the governmental level, it does not necessarily account for domestic perspectives.

CONCLUSION

The problems that plague international law are not simple questions with simple answers. However, there are small yet concrete steps that can be taken to address more specific issues regarding flawed procedure and weak enforcement, particularly within the context of the law of the sea. In this article, I used the South China Sea dispute as a case study to demonstrate the effectiveness and legitimacy of international law. I identified the lack of a truly binding effect of international treaties, necessitating the strengthening of compliance mechanisms. My recommendations included amending the UNCLOS dispute resolution to include an auditing process with institutional oversight of state compliance, as well as the creation of a self-enforcing mechanism that would leverage global solidarity. Despite these reforms, powerful states may still choose to further their unilateral goals through intimidation or rejection of international norms. However, it is through these incremental changes made on a smaller scale that significant change can occur in the future. Amending UNCLOS will demonstrate the overall feasibility of strengthening international law by targeting a specific aspect of its framework. Ultimately, even modest reforms can lead to the creation of a multilateral effort critical for safeguarding the legitimacy of international law. Establishing and normalizing a new procedure will create a legal circle composed of international

⁷² Gregory J. Moore & Christopher B. Primiano, *Audience Costs and China's South China Sea Policy*, 7 J. Asian Sec. & Int'l Aff. 325 (2020).

judicial bodies, enforcement mechanisms, and public scrutiny that will entrap countries straying from the provisions of international treaty law. This will allow international law to evolve into a more resilient and authoritative force in resolving transnational disputes.