

Norms, Navies, Negotiations:

A Constructivist Approach to US Security Policy and Territorial Claims in the South China Sea

On March 10th of 2023, the *USS Makin Island*'s Amphibious Ready Group partook in naval exercises in the Gulf of Thailand in line with a longstanding series of strategic endeavours in the South China Sea (SCS).¹ United States (US) military presence in the region has been largely contested by the People's Republic of China (PRC, or China), namely over China's sovereign claims to territories within its legally debated "nine-dash line" that is bound up in international legal ambiguity.² What has ensued within the 21st century is a complex conflict that has been of immense strategic and discursive importance to the US and China, as the two adversarial powers compete for global hegemony. This essay will be guided by this discussion of the conflict, asking the question of why has there been a naval conflict within the South China Sea during the 21st century?

This essay states that the SCS conflict is a result of competing normative justifications about international law and state identities between the US and China that influence the perceived legitimacy of their rivalling naval presences. This topic intersects with discussions of naval strategy, international maritime law, strategic culture, and territorial conflicts, creating a complicated conflict that is unlike other conflicts and interventions that the US has engaged in. This essay uses a qualitative and explanatory methodology to dissect the various aspects of the SCS conflict, beginning with an overview of the constructivist theory that undergirds the paper. This theoretical discussion is followed by a brief literature review, then by a summary of the basic issues, with the larger portion of the essay dedicated to understanding actor identities, instances of conflict, and pertinent international legal norms. Finally, the essay will conclude

¹ "USNI News Fleet and Marine Tracker: March 13, 2023," *United States Naval Institute* (Annapolis, Maryland), March 13, 2023, <https://news.usni.org/2023/03/13/usni-news-fleet-and-marine-tracker-march-13-2023>

² Zhiguo Gao and Bing Bing Jia, "The Nine-Dash Line in the South China Sea: History, Status, and Implications," *The American journal of international law* 107, no. 1 (2013): 108-120

with a brief restatement of the arguments expressed and the final significance of the SCS conflict within the field of global politics.

Constructivism is an immensely useful tool in understanding the conflict in the SCS, as it provides a framework for linking actor identities to material interests and actions. Constructivism is described by Nicholas Onuf as a conversation between the “language of work and the language of play”, creating “rules [that] perform regulative and constitutive functions” that create informal norms/conventions and formal laws.³ Constructivism’s underlying ontological approach is one that does not conceptualize material factors in isolation, but rather links said material factors to ideational dimensions. It is paramount to constructivist theory that these norms and laws are socially-created products that can ebb and flow, yet still constrain and shape actors. In context of the SCS, it is arguably not fully substantive to view any one actor’s naval presence as the sole eventual result of competing power relations and anarchy. The discussion of international law and soft power norms help substantiate reality, as created patterns of behaviour reinforce what are (in)appropriate conducts of naval diplomacy in the SCS.⁴

This material-ideational linkage differs from the realist theoretical approach to international relations, which ascribes resulting power relations to the anarchic world system and prioritizes material powers. The principal actor in realist theory is the state, and according to structural realists, acts in “strategically smart ways most of the time” that are not undermined by “domestic political calculations.”⁵ Certain realists include a degree of threat calculation in reference to national interests, stating that some actors will act when they feel their “survival is at

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Nicholas Onuf, *Making Sense, Making Worlds: Constructivism and Social Theory in International Relations* (London: Routledge, 2013), 34-35.

⁴ Onuf, *Making Sense*, 34.

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John J. Mearsheimer, “Reckless States and Realism,” *International relations* 23, no. 2 (2009): 246.

stake.”⁶ Constructivist critiques of these threat calculations state that threat analysis is a product of the “intersubjective, rather than material” factors that are a part of its own individual and shared identities and realities.⁷ A state can describe what it sees as a threat based on its constructed, subjective relations within the world. As Alexander Wendt states, “500 British nuclear weapons are less threatening to the United States than 5 North Korean nuclear weapons, because the British are friends of the United States and the North Koreans are not.”⁸ Thus, describing the conflict in the SCS in material terms does not necessarily reflect all the aspects that contribute to the conflict. Simply, there are other ideational factors that drive the US to take interest in an area that it itself has no sovereign claims to, not just the mere presence of Chinese naval envoys. To fully understand conflict in the SCS, it is necessary to understand how state identities and international maritime law can shape the behaviour of all actors. These norms are as important as the constraining geopolitical/material impacts of American or Chinese naval presence in the SCS.

The constructivist approach is also distinct from theoretical counterparts that critique realist materialism, such as post-modernism or post-structuralism. Constructivist and post-positivist theories share a similar criticism of objective truths and the rationalist view of realism (war is a natural, rational consequence of anarchy), yet differ in what constitutes objectivity. Carmel Flaskas discusses in a psychological lens the tenets of constructivism vs post-modernism, which offer insights into their applications within international relations. In their theoretical bases, post-modernism and post-structuralism see no objective reality to be

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Mearsheimer, “Reckless States,” 247.

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Alexander Wendt, “Collective Identity Formation and the International State,” *The American political science review* 88, no.2 (1994): 385.

⁸ Alexander Wendt, “Constructing International Politics,” *International security* 20, no. 1 (1995): 71–81.

viewed through any lens; the world is made up of intermingling constructs that offer no objectivity. Constructivism offers less of rejection of objectivity, by stating that identities and actors have their own socially constructed views on certain material realities.⁹ In the context of international relations, post-modernism/post-structuralism reject realist knowledge bases like rationality and anarchy, whereas constructivists see rationality and anarchy as socially amorphous ideas that states construct, yet still accept their existence and importance as constraints. This essay recognizes the fundamental cleavage between the theories in the context of the SCS conflict, as it sets the baseline for actor behaviour and how these actors recognize, and not reject, the material realities of the conflict.

The SCS conflict has largely lent itself to realist theoretical understandings within literature, both in offensive and defensive veins. Sheng Zhang states that China's actions within the SCS are based on geopolitical importance, stressing that the region serves "as a national frontier of defence" against adversaries, "whether it is AUKUS, a freshly trilateral security alliance... or QUAD."¹⁰ Zhang further states that China's military actions within the SCS reflect less of an offensive strategy and more of a defensive strategy in protecting reef reclamations, as China has "not yet deployed offensive fleets to garrison" in its naval strategic plans.¹¹ For offensive realists like Xiaoting Li, Chinese behaviour within the region is a result of the "unbalanced regional system" amongst local states, and that the SCS' current state presents little opportunity for adversaries of China to leverage attacks without "significant opportunity costs"

⁹ Carmel Flaskas, "Postmodernism, constructionism and the idea of reality: A contribution to the 'ism' discussions," *Australian and New Zealand journal of family therapy* 16, no. 3 (1995): 143–146.

¹⁰ Sheng Zhang, "Rise of China and its behaviours in the South China Sea: an analysis of the defensive realism perspective," *Liberal Arts and Social Sciences International Journal* 6, no. 1 (2022): 294.

¹¹ Zhang, "Rise of China," 298.

on trade or diplomacy.¹² Li further states that this balance of power is enabled through PRC's strategic undercutting of other sovereignty claims made by regional states and "preventing Washington from gaining influence in Asia at China's expense."¹³

The liberal school of thought generally defers to a legalist standpoint in reference to the SCS, while some scholars defer to understanding shifting liberal orders as cause for the conflict. Renato De Castro recognizes a difference in actor approaches, stating that the Philippines (a stakeholder in SCS relations and US strategic ally) leverages international legal frameworks to settle a dispute between the Philippine Navy and Chinese fisherman, rather than resorting to power-politicking.¹⁴ Nong Hong discusses the role of the United Nations Convention on the Laws of the Sea (UNCLOS) in depth, stating that dispute settlement measures in international legal conventions for SCS stakeholders should be pragmatically leveraged in reference to the conflict.¹⁵ Gilford John Ikenberry introduces the general idea that global conflicts involving US-Chinese adversarial relations are driven by a shifting liberal world order that is largely non-American.¹⁶

The constructivist school of thought presents an alternative to both these approaches. Constructivist literature regarding the SCS is not as present in comparison to the realist theoretical approach, but certain scholars such as Andy Yee see great importance in using

¹² Xiaoting Li, "Applying offensive realism to the rise of China: structural incentives and Chinese diplomacy towards the neighboring states," *International relations of the Asia-Pacific* 16, no. 2 (2016): 247.

¹³ Li, "Applying offensive realism," 246.

¹⁴ Renato De Castro, "The Philippines Confronts China in the South China Sea: Power Politics vs Liberalism-Legalism," *Asian perspective* 39, no. 1 (2015): 82-88.

¹⁵ Nong Hong, "A pragmatic settlement regime for the SCS dispute," in *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (Oxford: Routledge, 2012), 209-238.

¹⁶ Gilford John Ikenberry, "The Future of the Liberal World Order," *Foreign Affairs* 90, no. 3 (2011): 65.

constructivism to discuss the SCS. Yee describes how identities of various SCS stakeholders (US vs PRC vs ASEAN members) affect diplomatic conducts pertaining to Southeast Asian diplomacy, namely Sino-ASEAN relations and their views on “shared Asian values.”¹⁷ Mohamad Rosyidin describes the idea of Chinese strategic culture as the motivation for China to engage in naval conflicts within the SCS, stating that it is a culmination of “geography, politics, and social” factors that help China define their threats.¹⁸ Rosyidin continues to describe how historical and discursive practices (such as China calling the SCS the South Sea) reinforce China’s sovereign claims to disputed territories within the SCS.¹⁹ With reference to these sovereign claims, it is important to understand the basic context surrounding these disputed territories and China’s nine-dash line.

The South China Sea holds immense strategic and economic importance for its stakeholders, offering various opportunities in oil reserves, trade routes, exclusive economic zones (EEZs, a UNCLOS-recognized economic zone for resource access), and largely disputed island territories.²⁰ Stakeholders like the Philippines, Vietnam, Brunei, Malaysia, and Taiwan lay de facto claim to certain atolls, reefs, inlets and islands that are incorporated into their purported sovereign territory and EEZs. The Chinese strategic and economic policies in the SCS from the 1980s forward reflect how China has engaged in economic reforms and military modernisation that has resulted in a more “assertive strategic policy” within the region.²¹ The Spratly Islands

¹⁷ Andy Yee, “Maritime Territorial Disputes in East Asia: A Comparative Analysis of the South China Sea and the East China Sea,” *Journal of current Chinese affairs* 40, no.2 (2011): 182-183.

¹⁸ Mohamad Rosyidin, “China’s Strategic Culture and the Challenge of Security Management in the South China Sea Dispute,” *East Asia* 34, no. 2 (2017): 135-137.

¹⁹ Rosyidin, “China’s Strategic Culture,” 140.

²⁰ United States Energy Information Administration, “South China Sea,” Government of the United States of America, 7 February, 2013.

²¹ Leifer, Michael, “Chinese Economic Reform and Security Policy: The South China Sea Connection,” *Survival* 37, no. 2 (1995): 45

and Paracel Islands are notable within the SCS, as they are encompassed in China's controversial nine-dash line. The nine-dash line is a geographic boundary set by China that encompasses its sovereign territory claims. This nine-dash line is the source of contest for the SCS stakeholders as it is considered by China "synonymous with a claim of sovereignty over the island groups that always belonged to China," despite current disputed claims from other stakeholders.²²

The flare-ups in contestation have ranged from legal disputes under the UNCLOS legal framework to live exercises with ammunition and naval ships. Naval standoffs have occurred between military and civilian fishing craft, some involving intentional naval craft ramming, arrests of crews, "aggressive behaviours directed at individuals or equipment," and ammunition/artillery being fired at individuals and ships.²³ One instance for example occurred in 2019, lasting from the 16th of June until the 23rd of October, involving harassment efforts carried out by the China Coast Guard against Vietnamese fishing and law enforcement vessels within Vietnam's EEZ.²⁴ These regional spats demonstrate the material realities and possibilities for larger-scale naval conflicts, especially between those in and along China's nine-dash line. It must be noted that these incidents have not been devoid of American interjection.

In terms of US involvement, the SCS continues to be patrolled by US naval fleets engaging in Freedom of Navigation Operations (FONOPs), which are defined by certain parameters in the UNCLOS. Before defining FONOPs, some clarification is needed; the US is not a signatory to the UNCLOS, yet still engages in these FONOPs through its own Freedom of

²² Gao and Jia, "The Nine-Dash Line," 107-108.

²³ "South China Sea Incident Tracker," Center for Strategic and International Studies, accessed 20 March, 2023.

²⁴ Center for Strategic and International Studies, "South China Sea Incident Tracker."

Navigation program in agreement with UNCLOS.²⁵ This is different from being an UNCLOS signatory with full ratification of the convention (a status held by China), as it allows the US to derogate from UNCLOS without legal repercussion. The American Department of Defense describes that their operations are a part of a “two-pronged, complementary strategy to support the global mobility of U.S. forces and the unimpeded traffic of lawful commerce,” stating that their main goal is operationally countering “excessive maritime claims.”²⁶ All naval ships of any kind who conduct these FONOPs are still bound by loose agreements within the UNCLOS, where passage is considered appropriate under certain hospices. The UNCLOS defines certain conventions of naval travel, such as the nature of passage (Article 18, continuous and expeditious passage, unless in distress), with the biggest focus on passages not being “prejudicial to the peace, good order, or security of the coastal State” (Article 19).²⁷ It is not difficult to find instances where this law is derogated from, however. An incident involving Chinese aircraft carrier *Liaoning* and its surrounding fleet and American missile cruiser *USS Cowpens* almost resulted in collision, resulting in competing allegations that the incident was a strategic provocation by the other party and legally dubious.²⁸ For both parties, does this reflect the upholding of UNCLOS’ point on good order and security, or a mismatched view on the boundaries and limitations of the UNCLOS? Even then, what constitutes good order in international law?

²⁵ Cameron Moore, *Freedom of Navigation and the Law of the Sea: Warships, States, and the Use of Force* (Oxford: Routledge, 2021), 8

²⁶ Department of Defense. “Annual Freedom of Navigation Report.” United States Government. 31 December, 2018.

²⁷ “United Nations Convention on the Law of the Sea,” Documents, United Nations, accessed 20 March 2023.

²⁸ Carl Thayer, “*USS Cowpens* Incident Reveals Strategic Mistrust Between U.S. and China,” *The Diplomat*, 17 December, 2013.

It is important to understand the ambiguous nature of applying international law, as certain fields of international law are based upon collective agreements and/or convention and not treaties that explicitly define codes of conduct. The maritime law regime is largely derived from convention and signatory relationships, as its central framework, UNCLOS, did not have a treaty element until March 2023 (that being the High Seas Treaty, which does not address security issues). The body of UNCLOS that pertains to security issues and more aptly, sovereignty disputes, is lauded in legal ambiguity. Not only that, but not all states that engage in the maritime activities are ratified signatories of UNCLOS, which allows for certain actors to steer away from these international frameworks without any significant legal ramifications. This subjectivity is discussed by Jutta Brunnée and Stephen J Toope, who view international law as a product of socially and politically constructed mutual ideals, and not just a material, pre-existing, and binding constraint, as a liberal-legalist may view it as.²⁹ Following Brunnée and Toope's understanding, the UNCLOS can be viewed simply as a set of intersubjective idea of how states should engage in areas with naval activities, sovereign island territorial claims, and the rest of the pertinent naval norms. This intersubjective view becomes convoluted when applied in the context of the SCS conflict, where enforcing claims to sovereignty, military-civilian ship boarding, or claiming another actor's reckless behaviour can be seen as a provocative measure.

This constructivist view of the UNCLOS does not absolutely void its power and authoritative role in the conflict of the SCS, as it was referred to in an arbitration case launched by the Philippines against China for its conduct in the SCS. In 2016, the Permanent Court of Arbitration in Hague undertook a tribunal that referred to the UNCLOS and found that China had directly contravened UNCLOS by acting "with no legal basis" in resource expeditions in its

²⁹ Jutta Brunnée and Stephen J. Toope, "International Law and Constructivism: Elements of an Interactional Theory of International Law," *The Columbia journal of transnational law* 39, no.1 (2000): 40-43

nine-dash line.³⁰ China has negated these claims and deemed the Philippines' claims to the Permanent Court of Arbitration as "null and void in law," citing that the Philippines claims do "not concern the interpretation or application of the Convention."³¹ The contest between the two states are about competing sovereign claims over the Nansha Islands, with China constituting the islands as part of their EEZ. Furthermore, China's 2014 position paper hinges on the terms "agree" and "agreement" claiming that agreements made between the two states were unilaterally trumped when this arbitration was filed.³² Interestingly, China evidently takes on its own constructivist understanding by pointing out the shortcomings of the Philippines' interpretation of the UNCLOS and hence deems it illegitimate. China effectively establishes this interpretive disconnect from the Philippines throughout the position paper, stating that their dispute and arbitration should only be handled bilaterally and peacefully. China, as of 23 March, 2022, states that the Nansha Islands are historically Chinese territory and rejects US allegations against these claims.³³

From December of 2014 into June of 2019, Chinese vessels engaged with Philippine vessels in sixteen instances of naval-civilian vessel ramming, harassments, and standoffs, resulting in arrests of Chinese fishermen and prolonged diplomatic tension between the states.³⁴ This demonstrates a discrepancy between action and normative assumptions on the part of the Chinese government. These actions directly subvert the UNCLOS' prospects for good order on

³⁰ Permanent Court of Arbitration, "The South China Sea Arbitration," 12 July 2016.

³¹ Ministry of Foreign Affairs of the People's Republic of China, "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," Government of the People's Republic of China, 7 December 2014.

³² Ministry of Foreign Affairs of the People's Republic of China, "Position Paper." see esp. Point 38.

³³ Ministry of Foreign Affairs of the People's Republic of China, "China Stays Committed to Peace, Stability, and Order in The South China Sea," Government of the People's Republic of China, 23 March, 2022.

³⁴ Center for Strategic and International Studies, "South China Sea Incident Tracker."

China's purported sovereign coastal territory, yet China continues to bank on legal points and their interpretative understandings of international law. In response, the US has continuously set its agenda in the SCS as an upholder of a "rules-based international maritime order," citing American interest in upholding collective security through its regional agreements.³⁵ At the 2022 ASEAN-US Special Summit, the US and Association of Southeast Asian Nations (ASEAN, who have members involved in SCS territorial disputes) reaffirmed their commitments to UNCLOS and the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC).³⁶ Furthermore, the Philippines and US have re-stated their commitments to their bilateral Enhanced Defense Cooperation Agreement (EDCA), which legally establishes parameters around US strategic positioning involving the Philippines, including naval operations.³⁷ This consistent US deferral to legal frameworks not only represents a shared rules-based identity with its ASEAN partners, but it juxtaposes itself against China's "irredentist maritime claims" in the SCS.³⁸

Emmanuel Adler describes state identity as an important constraint on military strategy, stating that strategy "results not only from material objects or independent subjective beliefs, but also from dynamic intersubjective understandings based on shared historical experience, epistemic criteria, expectations of proper action, and, most important, the existence or lack of

³⁵ Ned Price, "U.S. Support for the Philippines in the South China Sea," United States Department of State, 13 February 2023.

³⁶ Association of Southeast Asian Nations, "ASEAN-U.S. Special Summit, 2022 Joint Vision Statement," accessed 20 March, 2023.

³⁷ Official Gazette of the Republic of the Philippines, "Enhanced Defense Cooperation Agreement between the Philippines and the United States," Government of the Republic of the Philippines, 29 April, 2014.

³⁸ Jonathan Dixon, "East China Sea or South China Sea, They Are All China's Seas: Comparing Nationalism Among China's Maritime Irredentist Claims," *Nationalities papers* 42, no. 6 (2014): 1063-1068.

mutual trust.”³⁹ The approaches to tackling the SCS conflict from both the US and China derive from their state identities and how they view themselves (internal factors shaping identity), as well as their views in the international sphere derived from external states (external factors shaping identity). The deconstruction of US and Chinese state identity reveals pertinent forces that drive their strategies in the SCS. In the case of US state identity, the internal and external factors derive from American strategic culture and international exceptionalism. John Ruggie states that how the US conducts itself multilaterally represents “marginal utility but also reflect[s] America’s sense of self as a nation.”⁴⁰ In the context of the SCS, the US’ constant deferral to international legal frameworks and reaffirmations of bilateral/multilateral relations reflects how it wants to express itself globally. This exceptionalism reflects within American strategic documents, reifying American attempts to establish a rules-based international order based on American interpretations of international law.

In the US Government’s 2022 National Security Strategy, it explicitly states that the US is engaged in “a strategic competition to shape the future of the international order” and that “there is no nation better positioned to lead with strength and purpose than the United States of America.”⁴¹ The National Security Strategy further describes how China “tilts the global playing field to its benefit” with “repression at home and coercion abroad.”⁴² What the US states clearly that it is the necessary enforcer of the international world order, and in turn defers to partner-led

³⁹ Emmanuel Adler, “Seizing the Middle Ground: Constructivism in World Politics,” *European journal of international relations* 3, no. 3 (1997): 346.

⁴⁰ John Ruggie, “What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge,” *International organization* 52, no. 4 (1998): 863

⁴¹ United States White House, “National Security Strategy,” Government of the United States of America, 12 October, 2022.

⁴² United States White House, “National Security Strategy.”

efforts and international legal frameworks. Diplomatically and militarily, the US attempts to establish a world order framed by its interpretations; one that hinges on its exceptional interpretation of what it deems legitimate. The US, by continuing its FONOPs, establishes a framework that demonstrates a legitimate world order by relying on legally-protected operations. This results in allied states within ASEAN, while up to their inter-subjective interpretations, largely following this world order predicated on principles of “freedom of the seas” and UNCLOS adherence.⁴³

Katherine Morton underscores how China’s approach to the South China Sea suffers from issues with legitimacy in the eyes of the US, and how its legal approach differs from American approaches. Morton points out that the “legal ambiguity [of the nine-dash line] serves a useful political purpose in placating competing state interests and mobilizing nationalist support.”⁴⁴ Expanding on Morton’s ideas, it is important to understand that China’s claims to sovereignty hold legitimacy in Chinese strategic thought due to historical justifications. An analysis of the Chinese 2019 Defense White Paper, China regards its conducts in the SCS as an exercise of “its national sovereignty” on “the basis of respecting historical facts and international law.”⁴⁵ The clarification that the US is not a signatory of UNCLOS is contextualized by this reference to international law, as it lends itself to Chinese justifications of American illegitimacy in the SCS. These subjective normative understandings of history and international law give room for interpretation, especially considering that customs and legal ambiguity are baselines of most international maritime law. The Defense White Paper implicates the US and its strategic

⁴³ Katherine Morton, “China’s ambition in the South China Sea: is a legitimate maritime order possible?,” *International affairs* 92, no. 4 (2016): 925-926

⁴⁴ Morton, “China’s ambition,” 920.

⁴⁵ Ministry of National Defense, “China’s National Defense in the New Era,” Government of the People’s Republic of China. 24 July, 2019.

allies and their “frequent close-in reconnaissance” near China’s coast as “undermining China’s national security.”⁴⁶ This deferral to norms and international law is akin to American strategic understandings, except it applies itself to a visionary sense of Chinese nationalism; a vision of a historically accurate and unified nation. China’s reference to national sovereignty and its historic claims to disputed territories show that it views these islands as distinctly Chinese, and that these disputed claims from other states and their military actions (or US military actions) wade on illegality and illegitimacy. Both major powers see these claims to sovereignty differently, and in turn, determine what international legal frameworks and actions are deemed legitimate. None of these claims are objectively right or legitimate in themselves, but each of the powers’ subjective views, opinions, and ambitions shape their naval presence and culminate in action.

When understanding why the US stresses importance of the SCS for its strategic prospects and grounds for collaboration, it is not enough to take it at face value as just a naval battlefield. To understand why the US would care about a set of small, disputed territories in a region it holds no sovereign land claims to, it requires insights on not only the material facts, but a look at how ideas shape how states view the region. Simply put, the conflict in the SCS derives from competing American and Chinese conceptions of what a legitimate maritime order means. For the US, maritime legitimacy hinges on respect for legal action and multilateralism, and its enforcement through FONOPs demonstrating that it need not provoke China but prove its dominance by sailing a ship off China’s coast. For China, maritime legitimacy derives from historical conceptions of land ownership and a nationalist view of a unified China, and any legal frameworks ought to be conceptualized and operationalized to fit a distinctly Chinese historical narrative. The discussion of the SCS proves that ideational factors hold as much weight as the

⁴⁶ Ministry of National Defense, “China’s National Defense.”

material factors, and the conventionality and customary nature of maritime law and identity lend themselves to competing justifications. To strategically place a naval vessel in the path of your adversary's fleet is one thing, but how you justify its placement and function in an international court is another.

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