
INTERNATIONAL LAW STUDIES

— *Published Since 1895* —

Does the Revised U.S. South China Sea Policy Go Far Enough?

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99 INT'L L. STUD. 72 (2022)

Volume 99



2022

Published by the Stockton Center for International Law

ISSN 2375-2831

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The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

I. INTRODUCTION

Recognizing that a change in direction was needed to maintain a free and open Indo-Pacific, the United States issued a statement on July 13, 2020, outlining the *U.S. Position on Maritime Claims in the South China Sea*.¹ The statement supplements existing U.S. policy for the South China Sea (SCS), making clear that the People's Republic of China's (PRC's) "claims to offshore resources across most of the South China Sea are completely unlawful, as is its campaign of bullying to control them."² The revised U.S. policy relies heavily on the Award of the SCS Arbitral Tribunal, which issued a unanimous decision on July 12, 2016, that rejects the PRC's maritime claims in the SCS as having no basis in international law.³

A week before the revised U.S. policy was issued, on July 7, 2020, the Australian and Japanese Defense Ministers, and the U.S. Secretary of Defense, convened a virtual trilateral defense ministerial meeting where they "reaffirmed their joint commitment to enhance security, stability, and prosperity in the Indo-Pacific region [including the SCS] keeping with their shared values and longstanding alliances and close partnerships."⁴ Specifically, the ministers expressed their "strong opposition to the use of force or coercion to alter the status quo [in the SCS], and reaffirmed the importance of upholding freedom of navigation and overflight."⁵ They also highlighted Beijing's continued militarization of disputed features; dangerous and coercive actions being taken by the China Coast Guard (CCG) and People's Armed Forces Maritime Militia (PAFMM); and China's interference with other nations' resource rights in their respective exclusive economic zones (EEZ). The ministers additionally reiterated "the importance of peaceful resolution of disputes in accordance with international law," including the United Nations Convention on the Law of the Sea (UNCLOS), and called

1. Press Release, Office of the U.S. Secretary of State, U.S. Position on Maritime Claims in the South China Sea (July 13, 2020), <https://2017-2021.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/index.html> [hereinafter U.S. SCS Policy 2020].

2. *Id.*

3. South China Sea Arbitration (Phil. v. China), Case No. 2013-19, Award, (Perm. Ct. Arb. 2016) [hereinafter SCS Arbitration Award].

4. Press Release, U.S. Department of Defense, Australia-Japan-United States Defense Ministers' Meeting Joint Statement (July 7, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2266901/australia-japan-united-states-defense-ministers-meeting-joint-statement/source/GovDelivery/>.

5. *Id.*

on regional States “to take meaningful steps to ease tension and build trust.”⁶ Finally, they stressed that the SCS Code of Conduct currently being negotiated should “be consistent with existing international law,” including UNCLOS; should not “prejudice the interests of third parties or the rights of any State under international law;” and should reinforce the “existing inclusive regional architecture.”⁷

Talk is of little value if not backed by action. To quote a Chinese proverb, “talk doesn’t cook rice.” Nonetheless, the ministers’ poignant and frank comments, as well as the revised U.S. SCS policy, present an opportunity for the United States to re-look and re-shape U.S. policy with respect to the SCS, a policy that has remained stagnant and ineffective since the mid-1990s. This new policy must reassure regional allies and partners of America’s commitment to a safe, secure, prosperous, and free Indo-Pacific region, and must also send a clear message to Beijing that the PRC must adhere to the rules-based international order or face the consequences.

II. U.S. POLICY ON THE SOUTH CHINA SEA (1995)

Concerned that a pattern of unilateral actions by the PRC and reactions by the other claimants in the SCS had increased regional tensions,⁸ the Department of State announced the *U.S. Policy on Spratly Islands and South China Sea* on May 10, 1995. The policy was based on four pillars: (1) oppose the use or threat of force to resolve competing claims; (2) intensify diplomatic efforts to resolve the competing claims, taking into account the interests of all parties, and which contribute to peace and prosperity in the region; (3) maintain freedom of navigation by all ships and aircraft in the SCS; and (4) take no position on the legal merits of the competing claims to sovereignty over the various features in the SCS, but view with serious concern any maritime claim or restriction on maritime activity in the SCS that is inconsistent with international law, including UNCLOS.⁹

While the 1995 pronouncement may have initially caused the PRC some angst in formulating its salami-slicing strategy for the SCS, the U.S. policy to counter the PRC’s vision for the SCS began to unravel in April 2001. This

6. *Id.*

7. *Id.*

8. Uli Schmetzer, *Reefs in the China Sea Could Spark an Asian Battle*, CHICAGO TRIBUNE (Apr. 11, 1995), <https://www.chicagotribune.com/news/ct-xpm-1995-04-11-9504110172-story.html>.

9. Daily Press Briefing, U.S. Department of State (May 10, 1995).

was after a Chinese F-8 fighter plane intercepted and inadvertently collided with an U.S. Navy EP-3 reconnaissance plane that was legally operating in international airspace about seventy nautical miles from Hainan Island.¹⁰ This aggressive Chinese behavior was consistent with their policy. Since 2001, the PRC has engaged in a concerted effort to de-stabilize the region and change the status quo in the SCS through coercion and threats.

A few examples of Chinese disruptive behavior that has undercut U.S. policy and challenged the established international rules-based legal order over the years include:

(1) The PRC has refused to recognize the competency of the Arbitral Tribunal in *The South China Sea Arbitration*, participate in the proceedings at the Hague, or accept the Tribunal's Award, indicating that the decision is "null and void and has no binding force."¹¹

(2) The People's Liberation Army-Navy (PLAN), CCG, and PAFMM routinely challenge, and unsafely and unprofessionally interfere with, U.S. and other nations' military ships and aircraft operating lawfully in international waters and airspace in the SCS.¹²

10. SHIRLEY A. KAN ET AL., CONG. RSCH. SERV., RL30946, CHINA-U.S. AIRCRAFT COLLISION INCIDENT OF APRIL 2001: ASSESSMENTS AND POLICY IMPLICATIONS (Oct. 10, 2001), <https://crsreports.congress.gov/product/pdf/RL/RL30946>.

11. SCS Arbitration Award, *supra* note 3, ¶ 11; *Full Text of Statement of China's Foreign Ministry on Award of South China Sea Arbitration*, China Daily, July 12, 2016, https://www.chinadaily.com.cn/world/2016scsi/2016-07/12/content_26062029.htm.

12. RONALD O'ROURKE, CONG. RSCH. SERV., R42784, U.S.-CHINA STRATEGIC COMPETITION IN SOUTH AND EAST CHINA SEAS: BACKGROUND AND ISSUES FOR CONGRESS (Updated Dec. 21, 2021), <https://crsreports.congress.gov/product/pdf/R/R42784>; Raul Pedrozo, *Close Encounters at Sea*, NAVAL WAR COLLEGE REVIEW, Summer 2009, at 101–12; Press Release, U.S. Department of Defense, Statement by Pentagon Press Secretary Peter Cook on Incident in South China Sea (Dec. 16, 2016), <https://www.defense.gov/Newsroom/Releases/Release/Article/1032611/statement-by-pentagon-press-secretary-peter-cook-on-incident-in-south-china-sea/>; Amaami Lyle, *DoD Registers Concern to China for Dangerous Intercept*, DOD NEWS (Aug. 22, 2014), <https://www.defense.gov/Explore/News/Article/Article/603111/dod-registers-concern-to-china-for-dangerous-intercept/>; Carl Prine, *Pacific Fleet Says Chinese Destroyer Came Dangerously Close to Navy Ship*, NAVY TIMES (Oct. 2, 2018), <https://www.navytimes.com/news/your-navy/2018/10/02/us-pacific-fleet-says-chinese-destroyer-came-dangerously-close-to-navy-ship/>; Lisa Martin, *Australian Navy Pilots Hit With Lasers During South China Sea Military Exercise*, THE GUARDIAN (May 28, 2019), <https://www.theguardian.com/australia-news/2019/may/29/australian-navy-pilots-hit-with-lasers-during-south-china-sea-military-exercise>; SCS Arbitration Award, *supra* note 3, ¶¶ 1113, 1116, 1118, 1121, 1123, 1126, 1127; Michael Green et al., *Countering Coercion in Maritime Asia: The Theory and Practice of Gray Zone Deterrence*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES 169–201 (May 2017), <https://www.csis.org/analysis/countering->

(3) The PRC reclaimed and militarized over 3,200 acres of land on several of the features it occupies in the Spratly and Paracel Islands, to include seven military installations—three of which are the size of the U.S. naval base at Pearl Harbor—thus dramatically altering the military balance of power in the SCS.¹³

(4) Filipino and Vietnamese fishermen are systematically harassed by the PLAN, CCG, and PAFMM, and are prevented from fishing within their respective EEZs and on the high seas.¹⁴

coercion-maritime-asia [hereinafter *Countering Coercion in Maritime Asia*]; Andrew Greene, *Australian Warships Encounter Chinese Navy in Contested South China Sea*, ABC NEWS (July 22, 2020), <https://www.abc.net.au/news/2020-07-23/australian-warships-encounter-chinese-navy-south-china-sea/12481514>.

13. U.S. DEPARTMENT OF DEFENSE, *THE ASIA-PACIFIC MARITIME SECURITY STRATEGY: ACHIEVING U.S. NATIONAL SECURITY OBJECTIVES IN A CHANGING ENVIRONMENT* (2015), https://dod.defense.gov/Portals/1/Documents/pubs/NDAA%20A-P_Maritime_Security_Strategy-08142015-1300-FINALFORMAT.PDF; U.S. DEPARTMENT OF DEFENSE, *ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* (2016), <https://dod.defense.gov/Portals/1/Documents/pubs/2016%20China%20Military%20Power%20Report.pdf>; U.S. DEPARTMENT OF DEFENSE, *ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* (2019), https://media.defense.gov/2019/May/02/2002127082/-1/-1/1/2019_CHINA_MILITARY_POWER_REPORT.pdf; Press Release, U.S. Department of Defense, Remarks by Secretary James N. Mattis at Plenary Session of the 2018 Shangri-La Dialogue (June 2, 2018), <https://www.defense.gov/Newsroom/Transcripts/Transcript/Article/1538599/remarks-by-secretary-mattis-at-plenary-session-of-the-2018-shangri-la-dialogue/>.

14. SCS Arbitration Award, *supra* note 3, ¶¶ 764–814, 1044–1109; *Philippines Asks China to Stop Coast Guard from Taking Fishermen's Catch in Scarborough*, REUTERS (June 11, 2018, 7:01 AM), <https://www.reuters.com/article/us-southchinasea-philippines-china/philippines-asks-china-to-stop-coast-guard-from-taking-fishermens-catch-in-scarborough-idUSKBN1717Q>; Renato Cruz de Castro, *Incident at Reed Bank: A Crisis in the Philippines' China Policy*, ASIA MARITIME TRANSPARENCY INITIATIVE, (June 20, 2019), <https://amti.csis.org/incident-at-reed-bank-a-crisis-in-the-philippines-china-policy/>; Hoang Chau, *Chinese Ships Attack Vietnamese Fishermen*, ASIA NEWS (Sept. 1, 2017, 7:01 PM), <http://www.asianews.it/news-en/Chinese-ships-attack-Vietnamese-fishermen-41670.html>; Knanh Vu, *Vietnam Protests Beijing's Sinking of South China Sea Boat*, REUTERS (Apr. 4, 2020, 1:39 AM), <https://www.reuters.com/article/us-vietnam-china-southchinasea/vietnam-protests-beijings-sinking-of-south-china-sea-boat-idUSKBN21M072>; Press Release, U.S. Department of Defense, *China Coast Guard Sinking of a Vietnam Fishing Vessel* (Apr. 9, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2143925/china-coast-guard-sinking-of-a-vietnam-fishing-vessel/>; Press Release, U.S. Department of State, *PRC's Reported Sinking of a Vietnamese Fishing Vessel in the South China Sea* (Apr. 6, 2020), <https://vn.usembassy.gov/prcs-reported-sinking-of-a-vietnamese-fishing-vessel-in-the-south-china-sea/>; Drake Long, *China Announces Summer Fishing Ban in the South China Sea*, RADIO FREE ASIA

(5) The PRC routinely challenges and interferes with Malaysian, Filipino, and Vietnamese oil and gas development in their respective EEZs.¹⁵

(6) Chinese diplomats have stonewalled any meaningful progress on developing a binding Code of Conduct for the South China Sea.¹⁶

(7) The PRC forcefully displaced Filipino fishermen from their traditional fishing grounds at Scarborough Shoal in 2012 and established de facto control of the feature, despite the SCS Arbitral Tribunal holding that denying such access was illegal.¹⁷

Through these and other actions, the PRC has effectively dismantled each of the four pillars of the 1995 policy and disrupted long-standing international law and norms, thereby solidifying its illegal claims in the SCS to the detriment of the other SCS claimants, as well as the international community at large.

The PRC's advances in the region occurred despite the feeble U.S. "pivot" to Asia announced by the Obama Administration in 2011. The "pivot" purportedly committed the United States, among other things, to

(May 1, 2020), <https://www.rfa.org/english/news/china/scs-fishing-05012020194131.html>.

15. Jamestown Foundation, *China and the Philippines: Implications of the Reed Bank Incident*, REF WORLD (May 6, 2011), <https://www.refworld.org/docid/4dcb94172.html>; Raul (Pete) Pedrozo, *The Building of China's Great Wall at Sea*, 17 OCEAN & COASTAL LAW JOURNAL 253–89 (2012); *Countering Coercion in Maritime Asia*, *supra* note 12, at 202–23; Nguyen Thanh Trung, *Vietnam's Uphill Battle in the South China Sea: A Need for More International Actors*, ASIA MARITIME TRANSPARENCY INITIATIVE (Aug. 23, 2019), <https://amti.csis.org/vietnams-uphill-battle-in-the-south-china-sea-a-need-for-more-international-actors/>; *Malaysia Picks a Three-Way Fight in the South China Sea*, ASIA MARITIME TRANSPARENCY INITIATIVE (Feb. 21, 2020), <https://amti.csis.org/malaysia-picks-a-three-way-fight-in-the-south-china-sea/>.

16. Lee Ying Hui, *A South China Sea Code of Conduct: Is Real Progress Possible?*, THE DIPLOMAT (Nov. 18, 2017), <https://thediplomat.com/2017/11/a-south-china-sea-code-of-conduct-is-real-progress-possible/>; Carl Thayer, *A Closer Look at the ASEAN-China Single Draft South China Sea Code of Conduct*, THE DIPLOMAT (Aug. 3, 2018), <https://thediplomat.com/2018/08/a-closer-look-at-the-asean-china-single-draft-south-china-sea-code-of-conduct/>; Nguyen Ming Quang, *Saving the China-ASEAN South China Sea Code of Conduct*, THE DIPLOMAT (June 29, 2019), <https://thediplomat.com/2019/06/saving-the-china-asean-south-china-sea-code-of-conduct/>; South China Sea Expert Working Group, *A Blueprint for South China Sea Code of Conduct*, ASIA MARITIME TRANSPARENCY INITIATIVE (Oct. 11, 2018), <https://amti.csis.org/blueprint-for-south-china-sea-code-of-conduct/>; Nguyen Minh Quang, *Negotiating an Effective China-ASEAN South China Sea Code of Conduct*, EAST ASIA FORUM (July 31, 2019), <https://www.eastasiaforum.org/2019/07/31/negotiating-an-effective-china-asean-south-china-sea-code-of-conduct/>.

17. SCS Arbitration Award, *supra* note 3, ¶¶ 760–70, 810–14.

safeguard “freedom of navigation and overflight, unimpeded lawful commerce, and peaceful management and resolution of disputes . . . , including through freedom of navigation operations.”¹⁸ Yet in the last two years of his presidency, Obama only authorized four freedom of navigation operations (FONOPS) in the South China Sea—compared to twenty-six FONOPS conducted by the Trump Administration.¹⁹ President Biden appears to have adopted a similar and more assertive posture towards China, authorizing five FONOPS since taking office in January 2021.²⁰

The “pivot” was also intended to strengthen U.S. treaty alliances with several regional partners, including the Philippines. Yet, when a confrontation between China and the Philippines at Scarborough Shoal reached a critical point in 2012, the United States negotiated an agreement for both sides to withdraw their naval forces, but only the Philippines complied. As a result, China has exercised de facto control over the shoal since 2012 and continues to interfere with Filipino fishermen operating in the area. The Obama Administration did nothing to hold China accountable for its failure to withdraw from the shoal as agreed, thus sending the message to the region that Chinese aggression was acceptable.²¹

As part of the “pivot” the Obama Administration also promoted “the use of third-party dispute settlement mechanisms,” such as those under UNCLOS, “to underscore that international law should be the sole basis for maritime claims in the region.”²² Yet, despite the landmark decision in *The South China Sea Arbitration* case, the Obama Administration once again abandoned the Philippines by failing to pressure China to abide by the ruling, opting instead to pressure the Philippines to accept China’s offer to engage in bilateral discussions to resolve the festering dispute.²³

18. Press Release, The White House, Advancing the Rebalance to Asia and the Pacific (Nov. 16, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/11/16/fact-sheet-advancing-rebalance-asia-and-pacific/> [hereinafter Rebalance to Asia Fact Sheet].

19. U.S. DEPARTMENT OF DEFENSE, ANNUAL FREEDOM OF NAVIGATION REPORTS, FISCAL YEARS 2016-2020, <https://policy.defense.gov/OUSSDP-Offices/FON/>.

20. U.S. DEPARTMENT OF DEFENSE, ANNUAL FREEDOM OF NAVIGATION REPORT, FISCAL YEAR 2021.

21. Gordon G. Chang, *2012 Scarborough Shoal Crisis: The Blueprint for Joe Biden’s China Policy?*, THE NATIONAL INTEREST (Aug. 24, 2020), <https://nationalinterest.org/feature/2012-scarborough-shoal-crisis-blueprint-joe-bidens-china-policy-167575>.

22. Rebalance to Asia Fact Sheet, *supra* note 18.

23. Chang, *supra* note 21.

III. U.S. SOUTH CHINA SEA STATEMENT (2020)

By revising its SCS policy in July 2020, the United States seeks “to preserve peace and stability, uphold freedom of the seas in a manner consistent with international law, maintain the unimpeded flow of commerce, and oppose any attempt to use coercion or force to settle disputes.”²⁴ The United States warns that these deep and abiding interests to preserve the rules-based international order have come under unprecedented threat from the PRC. Specifically, the PRC “uses intimidation to undermine the sovereign rights of Southeast Asian coastal states in the South China Sea, bully them out of offshore resources, assert unilateral dominion, and replace international law with ‘might makes right.’”²⁵

To counter the PRC’s malign behavior, the revised policy relies heavily on the ruling of the SCS Arbitration case. The U.S. statement re-emphasizes that “the Arbitral Tribunal’s decision is final and legally binding on both parties,” and aligns U.S. policy on the PRC’s “maritime claims in the SCS with the Tribunal’s decision.”²⁶ In particular, the U.S. position indicates that:

—The PRC cannot lawfully assert maritime claims, including EEZ claims derived from Scarborough Reef and the Spratly Islands, “*vis-à-vis* the Philippines in areas that the Tribunal found to be in the Philippines’ EEZ or on its continental shelf.” The PRC’s “harassment of Philippine fisheries and offshore energy development within those areas is unlawful, as are any unilateral PRC actions to exploit those resources.” Consistent with the Tribunal’s Award, the PRC “has no lawful territorial or maritime claim to Mischief Reef or Second Thomas Shoal, both of which fall fully under the Philippines’ sovereign rights and jurisdiction.” Additionally, the PRC may not generate any territorial or maritime claims from these features.²⁷

—“[T]he United States rejects any PRC claim to waters beyond a 12-nautical mile territorial sea” derived from its claimed features in the Spratly Islands (without prejudice to other States’ sovereignty claims over such features). Accordingly, “the United States rejects any PRC maritime claim in the waters surrounding Vanguard Bank (off Vietnam), Luconia Shoals (off Malaysia), waters in Brunei’s EEZ, and Natuna Besar (off Indonesia).” “Any

24. U.S. SCS Policy 2020, *supra* note 1.

25. *Id.*

26. *Id.*

27. *Id.*

PRC action to harass other states' fishing or hydrocarbon development in these waters—or to carry out such activities unilaterally—is unlawful.”²⁸

—“The PRC has no lawful territorial or maritime claim to (or derived from) James Shoal, an entirely submerged feature only 50 nautical miles from Malaysia and some 1,000 nautical miles” from the PRC’s coast. “International law is clear: An underwater feature like James Shoal cannot be claimed by any state and is incapable of generating maritime zones.”²⁹

The statement concludes by reassuring Southeast Asian nations that the United States will stand with its allies and partners to protect “their sovereign rights to offshore resources, consistent with their rights and obligations under international law.”³⁰ The United States will also stand with the international community to defend “freedom of the seas and respect for sovereignty and reject any push to impose ‘might makes right’” in the SCS or the wider region.³¹

Of note, the revised policy aligns the U.S. position with the Tribunal’s rulings regarding the PRC’s maritime claims. It does not, however, affect the existing U.S. position reflected in the Fourth Pillar of the 1995 policy of not taking sides on the competing claims to the SCS islands, other than to clarify that sovereignty claims may only be asserted over high-tide features. The PRC may not claim sovereignty or sovereign rights over low-tide elevations, such as Mischief Reef and Second Thomas Shoal, which are located within the EEZ or continental shelf of another nation, or over totally submerged features, like James Shoal, wherever located.³²

The 2020 position also reinforces the First Pillar of the 1995 policy by opposing the PRC’s use of coercion or force to settle disputes and to impose “might makes right” in the SCS or in the wider region. Although the United States is not a party to UNCLOS, the new policy reiterates the long-standing U.S. position, reflected in the Third Pillar of the 1995 policy, that the United States will stand with the international community to defend “freedom of the seas and respect for sovereignty . . . in the SCS.” The PRC routinely criticizes the United States for not being a party to the convention.³³

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. SCS Arbitration Award, *supra* note 3, ¶¶ 305, 309, 1040.

33. Mark Nevitt, *Secretary Pompeo’s Surprising Defense of International Law, Allies, and the Law of the Sea Convention*, JUST SECURITY (July 15, 2020), <https://www.justsecurity.org/71423/secretary-pompeos-surprising-defense-of-international-law-allies-and-the-law-of-the-sea-convention/>.

Two days after the U.S. statement was released, former Secretary of State Michael Pompeo reiterated the need to intensify diplomatic efforts to resolve the competing claims in the SCS. Consistent with the Second Pillar of the 1995 policy, Pompeo indicated that the United States would “support countries all across the world who recognize that the PRC has violated their legal territorial [and maritime] claims.”³⁴ Specifically, he stated that the United States would provide such nations with assistance using all the tools at its disposal, “whether that’s in multilateral bodies, . . . in ASEAN, [or] . . . through legal responses.”³⁵

IV. U.S. SOUTH CHINA SEA STATEMENT (2021)

The Biden Administration has continued to apply pressure on China to abide by the rules-based maritime order and conform its activities in the SCS consistent with the legal framework set out in UNCLOS. In August 2021, U.S. Secretary of State Antony Blinken was invited to address the UN Security Council on the importance of maritime security and the maintenance of international peace and security.

During his address, the Secretary warned that the rules-based maritime order and international law, as reflected in UNCLOS, were under serious threat. Without mentioning China by name, Secretary Blinken indicated that there had been “dangerous encounters between vessels at sea and provocative actions to advance unlawful maritime claims” in the SCS.³⁶ Again, without specifically identifying China, he also expressed concern over “actions that intimidate and bully other states from lawfully accessing their maritime resources,” and highlighted the “unanimous and legally binding” decision of the SCS arbitral tribunal that firmly rejected unlawful and expansive SCS maritime claims “as being inconsistent with international law.”³⁷

34. Arshad Mohammed & Humeyra Pamuk, *U.S. to Back Nations that Say China Violated their South China Sea Claims*, REUTERS (July 15, 2020, 11:01 AM), <https://www.reuters.com/article/us-usa-china-southchinasea-pompeo/u-s-to-back-nations-that-say-china-violated-their-south-china-sea-claims-idUSKCN24G25U>.

35. *Id.*

36. U.S. Department of State, Remarks by Secretary of State Antony J. Blinken at the United Nations Security Council Meeting on Maintenance of International Peace and Security: Maritime Security (Aug. 9, 2021), <https://www.state.gov/secretary-antony-j-blinken-at-the-united-nations-security-council-meeting-on-maintenance-of-international-peace-and-security-maritime-security/>.

37. *Id.*

Secretary Blinken also took the opportunity to rebut the assertion by some States that resolving the SCS dispute “is not the business of the United States or any other country that is not a claimant to the islands and waters.”³⁸ He reiterated that it is the responsibility of all States to defend the rules-based maritime order, emphasizing that a conflict in the SCS “would have serious global consequences for security and for commerce,” and that if a State “faces no consequences for ignoring these rules, it fuels greater impunity and instability everywhere.”³⁹ He therefore called on all States to “re-commit to defending and strengthening the maritime rules and principles” that the international community “forged together and committed to uphold.”⁴⁰

Nonetheless, three months after Secretary Blinken made these poignant statements before the Security Council, China once again demonstrated its disdain for the rules-based maritime order by ordering the CCG to block the resupply of the Philippine Marine contingent on board the *BRP Sierra Madre* at Second Thomas Shoal.⁴¹ Although this is not the first time China has illegally interfered with the resupply of the Second Thomas Shoal outpost, China’s new Maritime Police Law empowers the CCG to demolish foreign outposts on land features within China’s claimed sea areas.⁴²

Philippine Secretary of Foreign Affairs Teodoro Locsin condemned China’s actions “in the strongest terms,” indicating that based on the tribunal’s ruling, it is clear that the CCG’s interference with the supply vessel is illegal and that China lacks any law enforcement jurisdiction over Second Thomas Shoal or its surrounding waters. Locsin vowed that the Philippines would continue to resupply the *Sierra Madre* and would not ask permission from China to do what it needs to do to exercise its sovereignty, sovereign rights, and jurisdiction.

Likewise, the United States condemned the CCG’s interference with the resupply, indicating that China’s actions threaten regional peace and stability, escalate regional tensions, infringe on freedom of navigation, and undermine

38. *Id.*

39. *Id.*

40. *Id.*

41. Karen Lema, *Philippines Tells China to “Back Off” after South China Sea Standoff*, REUTERS (Nov. 18, 2021, 12:21 AM), <https://www.reuters.com/world/china/philippines-condemns-chinese-coast-guards-action-south-china-sea-2021-11-18/>.

42. Maritime Police Law of the People’s Republic of China art. 20 (promulgated by Standing Committee, 13th Nat’l People’s Cong., Jan. 22, 2021, effective Feb. 1, 2021), https://www.airuniversity.af.edu/Portals/10/CASI/documents/Translations/2021-02-11%20China_Coast_Guard_Law_FINAL_English_Changes%20from%20draft.pdf.

the rules-based international order. More importantly, the U.S. statement re-affirmed that “an armed attack on Philippine public vessels in the South China Sea would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S. Philippines Mutual Defense Treaty.”⁴³

V. PROPOSED WAY FORWARD

While the revised SCS policy, Secretary Blinken’s remarks before the Security Council, and the U.S. response to the Second Thomas Shoal incident are a welcome change, they do not go far enough and are destined to fail like the milquetoast policies of past administrations. To succeed, the United States must implement more robust and unambiguous measures to convince Beijing that, unlike previous administrations, the days of Chinese bullying and coercion are over and will not be tolerated by the Biden Administration. That means taking sides with our partners and allies regarding their territorial and maritime claims and continuously challenging the PRC’s excessive claims in the SCS to reinforce the rules-based international legal order.

A. Revise the Position of Neutrality on Sovereignty Claims

First, the revised policy and subsequent actions by the United States regrettably reaffirm the failed position of neutrality espoused in the 1995 policy. The position of neutrality is the weakest link in the 1995 policy, has emboldened the PRC’s malign behavior, and must be abandoned immediately. Without question, this U.S. indifference directly contributed, albeit unwittingly, to the PRC’s militarization of the SCS and interference with the sovereign resource rights of the other SCS claimants. It is time for the United States to affirmatively state, without taking sides, that the PRC does not have a valid claim to any of the SCS features, and demand that the PRC vacate its unlawful outposts, particularly those that have been constructed on low-tide elevations, like Mischief Reef, that lie within the Philippine EEZ/continental shelf.⁴⁴

43. Press Release, U.S. Department of State, On the Situation in the South China Sea (Nov. 19, 2021), <https://www.state.gov/on-the-situation-in-the-south-china-sea/>.

44. Raul (Pete) Pedrozo, *China Versus Vietnam: An Analysis of the Competing Claims in the South China Sea*, Center for Naval Analysis Occasional Paper (Aug. 2014), https://www.cna.org/cna_files/pdf/iop-2014-u-008433.pdf [hereinafter *China Versus Vietnam*].

1. Paracel and Spratly Islands

Vietnam's title to the Paracels dates to the eighteenth century and is well founded in both history and law. The PRC's sovereignty claim, on the other hand, did not occur until 1909, two centuries after Vietnam had legally and effectively established its title to the islands. A Vietnamese government-sponsored company was established in the early eighteenth century to exploit and manage the islands' resources. The Paracels' annexation in the early nineteenth century was followed by peaceful, effective, and continuous administration of the islands by successive Nguyen dynasties until the advent of the French colonial period.⁴⁵

The French colonial government continued to exercise sovereignty and effectively administer the islands on behalf of Vietnam and physically took possession and occupied the Paracels in the 1930s. Thereafter, France asserted its sovereignty over the Paracels until its departure from Indochina in 1956, with a hiatus of several years during Japan's occupation of the islands during World War II. Following the French withdrawal, South Vietnam (and subsequently a unified Vietnam) exercised sovereignty and effectively administered the islands until 1946.⁴⁶

France annexed the Spratly Islands as *terra nullius* in 1933 at the time when occupation (conquest) by force was a valid method of acquiring sovereignty over territory under the prevailing international law. Conquest did not become invalid until 1945 when the UN Charter entered into force. Great Britain, which had controlled some of the Spratly Islands in the 1800s, abandoned its claims following the French annexation and effective occupation, so French title to the Spratlys was legally and peacefully established. France's title to the islands was ceded to South Vietnam in the 1950s and the South Vietnamese government (and subsequently a united Vietnam) effectively and peacefully controlled the Spratlys until 1946.⁴⁷

At the conclusion of the Second World War, General Douglas MacArthur directed that all Japanese forces in French Indo-China north of 16° north latitude (which included the Spratlys and the Paracels) surrender to Generalissimo Chiang Kai-shek, while Japanese forces in French Indo-China south of 16° north latitude would surrender to the British (Supreme Allied

45. *Id.*

46. *Id.*

47. *Id.*

Commander South East Asia Command).⁴⁸ The order did not, however, transfer title of the Spratly and Paracels Islands to the Republic of China (ROC).

On the contrary, the Nationalist troops were temporarily present in the islands until they reverted to French sovereignty. In fact, the ROC and France agreed in February 1946 that French troops would relieve the Nationalist forces in Indochina north of 16° north latitude no later than March 31, 1946.⁴⁹ Accordingly, as an occupation force, the Nationalist troops had a legal obligation to depart French Indochina, including the Paracels and Spratlys. ROC forces illegally remained on Itu Aba and Woody Islands after the Allied occupation of Indochina formally ended in March 1946, which violated Article 2(4) of the UN Charter and, therefore, does not provide the PRC or ROC with clear title to the Paracels or Spratlys. Similarly, the PRC's invasion of the Paracels on January 21, 1974, which ousted the South Vietnamese garrison in the Crescent Group, and its illegal occupation of Fiery Cross Reef and other features in 1988 through use of force against the Socialist Republic of Vietnam, violated the UN Charter. Accordingly, these unlawful acts by the PRC and ROC cannot be used as a basis to claim title over the SCS islands.⁵⁰

Based on the available evidence and general principles of international law regarding the acquisition of territory, it is clear that the PRC does not have a valid claim to the SCS islands.⁵¹ Even if the United States does not want to take sides and recognize Vietnam's sovereignty over the Paracels and Spratlys, Washington can at least categorically state that the PRC does not enjoy sovereignty over any of these features.

2. Scarborough Shoal

Philippine sovereignty over Scarborough Shoal dates to the Spanish and American colonial periods of the nineteenth and twentieth centuries.⁵² The

48. Supreme Commander for the Allied Powers, General Order No. One, Sept. 2, 1945, <http://www.taiwandocuments.org/surrender05.htm>.

49. Exchange of Letters between China and France Relating to the Relief of Chinese Troops by French Troops in North Indochina, Chungking, Feb. 28, 1946, 14 U.N.T.S. 151, <https://treaties.un.org/doc/Publication/UNTS/Volume%2014/v14.pdf>.

50. China Versus Vietnam, *supra* note 44.

51. *Id.*

52. François-Xavier Bonnet, *Geopolitics of Scarborough Shoal*, RESEARCH INSTITUTE ON CONTEMPORARY SOUTHEAST ASIA 17, (Nov. 2012), <https://www.irasec.com/ouvrage.php?id=34&lang=en>.

shoal, which is about 120 nautical miles west of the Island of Luzon, was first surveyed by the Philippine-based Spanish frigate *Santa Lucia* in April 1800. The shoal is reflected on a Spanish chart from 1808 and documents held by the Spanish Hydrographic Office (Anuario de la Dirección de Hidrografía, año 4, número 56, 1866) describe search and rescue operations conducted by Philippine-based Spanish Navy units to assist mariners that had become shipwrecked on the shoal.⁵³ Search and rescue responsibility passed to the U.S. Revenue Cutter Service and U.S. Life-Saving Service—the predecessor organizations of the U.S. Coast Guard—after the United States assumed control over the Philippines after the Spanish-American War.⁵⁴ There is no evidence that China objected to Spanish or American administration of the shoal, which is located over 470 nautical miles from mainland China.

The Philippines assumed effective control of the shoal after it gained its independence from the United States in 1946, building a lighthouse on the rock in 1965 without PRC objection.⁵⁵ Since 1965, Philippine authorities have continued to conduct hydrographic and scientific research surveys in and around the shoal, used the shoal as an impact range for military exercises, leased the rocks to the United States for military training, and exercised law enforcement jurisdiction over smuggling and illegal fishing activities, all of which demonstrate Philippine sovereignty over the reef.⁵⁶

Nonetheless, the PRC seized Scarborough Shoal and has exercised de facto control of the shoal since June 2012, thus preventing Filipino fishermen access to their traditional fishing grounds in-and-around the shoal, which are well within the Republic of the Philippines' two hundred nautical mile EEZ. The PRC's actions in preventing access to the shoal were found

53. *Id.*; DAVID HANCOX & VICTOR PRESCOTT, A GEOGRAPHICAL DESCRIPTION OF THE SPRATLY ISLANDS AND AN ACCOUNT OF HYDROGRAPHIC SURVEYS AMONGST THOSE ISLANDS 24 (1995).

54. Bonnet, *supra* note 52, at 17.

55. Robert C. Beckman, *Scarborough Shoal: Flashpoint for Confrontation or Opportunity for Cooperation*, RSIS (Apr. 24, 2012), https://www.rsis.edu.sg/rsis-publication/idss/1734-scarborough-shoal-flashpoint/?doing_wp_cron=1642620006.4922599792480468750000#.Yehkav7MKUk; Zou Keyuan, *Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?*, INTERNATIONAL BOUNDARIES RESEARCH UNIT BOUNDARY AND SECURITY BULLETIN 71 (Summer 1999), https://www.durham.ac.uk/media/durham-university/research-/research-centres/ibru-centre-for-borders-research/maps-and-databases/publications-database/boundary-amp-security-bulletins/bsb7-2_keyuan.pdf.

56. *Id.*; Jay Batongbacal, *Scarborough Shoal: A Red Line?*, ASIA MARITIME TRANSPARENCY INITIATIVE (Apr. 25, 2016), <https://amti.csis.org/scarborough-shoal-red-line/>.

to be illegal by an international arbitral tribunal.⁵⁷ Moreover, if the PRC reclaims and militarizes the shoal, as it has done in the Spratlys, it will complete a strategic triangle connecting the Paracels, the Spratlys, and Scarborough Shoal that will allow Beijing to better monitor foreign naval and air activities in the SCS and effectively control the strategic sea lines of communication in this vital waterway.⁵⁸

It is therefore imperative that the United States draw a line in the sand at Scarborough Shoal, unlike the chemical weapons red line announced by the Obama Administration in Syria, and recognize Philippine sovereignty over the feature. Doing so will unequivocally bring the shoal under the umbrella of the U.S.-Philippine Mutual Defense Treaty (MDT), which provides “that an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.”⁵⁹ For purposes of the treaty, “an armed attack on either of the Parties” includes “an armed attack on . . . the Island territories under its jurisdiction in the Pacific Ocean.”⁶⁰ The ambiguous U.S. position regarding the status of Scarborough Shoal clearly contributed to the U.S. failure to support its treaty ally during the 2012 dust-up. Subsequent messaging to Beijing must make it clear, in no uncertain terms, that the United States will live up to its defense obligations under the MDT should the PRC choose to cross the line.

B. Refuse to Recognize Any Maritime Zones

Second, the revised policy tacitly recognizes PRC sovereignty over the Spratlys by acknowledging the PRC can delimit twelve nautical mile territorial seas from some of its claimed features. The territorial sea is not a self-generating zone; it must be “established” by a sovereign coastal State.⁶¹ Territorial Sea claims range from three to two hundred nautical miles.⁶² The United States,

57. SCS Arbitration Award, *supra* note 3, ¶¶ 760–70, 810–14.

58. Batongbacal, *supra* note 56; Yoji Kora, *Japan’s Perceptions of and Interests in the South China Sea*, ASIA POLICY, Jan. 2016, at 29.

59. Mutual Defense Treaty Between the Republic of the Philippines and the United States of America art. 4, Aug. 30, 1951, 3 U.S.T. 3947, 177 U.N.T.S. 133 [hereinafter US-RP MDT].

60. *Id.* art. 5.

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

62. Central Intelligence Agency, *Maritime Claims*, in THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/field/maritime-claims/> (last visited Jan. 19,

for example, claimed a twelve nautical mile territorial sea in 1988.⁶³ However, none of the claimants, including the PRC, have established territorial seas around any of their claimed features in the SCS. Given that the United States does not recognize any country's sovereignty claims over the SCS islands, acknowledging maritime zones around these features is a contradiction of terms. Moreover, if the PRC were to declare maritime zones around its claimed features, the declaration would be legally void because the PRC has not established indisputable sovereignty over the SCS islands.

Accordingly, until the sovereignty issue has been resolved to the satisfaction of all concerned parties, U.S. ships and aircraft should conduct naval and air operations in the vicinity of the SCS islands as if these features did not generate maritime zones or national airspace. That means ships can and should exercise high seas freedoms within twelve nautical miles and military aircraft can overfly the features without notice or consent of any of the claimants. There is obvious risk to forces involved in conducting operations in and over the PRC's man-made militarized islands, and Beijing will strenuously object to what it perceives as U.S. provocative behavior. However, it is unlikely that the PRC will resort to armed force to counter these more pronounced U.S. assertions, and if it does use force, the United States may, consistent with international law, respond in self-defense.

C. Demand the PRC Vacate All Occupied Features

Third, the statement indicates that the United States is aligning its policy with the SCS Arbitral Tribunal decision. With the assistance of an expert hydrographer, the Tribunal evaluated archival materials and historical hydrographic surveys and determined that Hughes, Gaven (South), Subi, and Mischief Reefs, as well as Second Thomas Shoal, were low-tide elevations.⁶⁴ As such, they are not capable of appropriation by any State, including the PRC. The Tribunal additionally concluded that Mischief Reef, Second Thomas Shoal and Reed Bank were low-tide elevations that form part of the Philippine

2022). Any claim in excess of twelve nautical miles, however, is illegal under international law. UNCLOS, *supra* note 61, art. 3.

63. Proclamation No. 5928, Territorial Sea of the United States, 54 Fed. Reg. 777 (Jan. 9, 1989), *reprinted in* 103 Stat. 2981 (1989).

64. SCS Arbitration Award, *supra* note 3, ¶ 383.

EEZ and continental shelf, and that China had violated the Philippines' sovereign rights with respect to its EEZ and continental shelf in the sea areas around these features.⁶⁵

Yet, despite the Tribunal's ruling, the PRC illegally occupied, reclaimed, and militarized Hughes, Gaven, Subi, and Mischief Reefs. This affront to the rule of law must be publicly and categorically denounced by the United States. U.S. military activities in the vicinity of these features should take into consideration the invalidity of the PRC's maritime and airspace claims. Although the United States is not a party to UNCLOS, the United States considers that the provisions of the convention with respect to traditional uses of the oceans generally confirm existing maritime law and practice and fairly balance the interests of all States. In 1983, the United States affirmed that it would recognize the rights of other States in the waters off their coasts, as reflected in UNCLOS, but only to the extent that U.S. rights and freedoms under international law, and those of other States, are recognized by such coastal States. Accordingly, "the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis . . . consistent with the balance of interests reflected in the convention."⁶⁶

The 2017 National Security Strategy recognizes that the PRC's "efforts to build and militarize outposts in the South China Sea endanger the free flow of trade, threaten the sovereignty of other nations, and undermine regional stability."⁶⁷ Coupled with the PRC's rapid military modernization, U.S. access to the region is threatened. The PRC's intimidation and coercion of its SCS neighbors calls into question Beijing's stated intentions and broader policy goals for the region. Moreover, they are in direct contradiction to President Xi's public assurances to President Obama that the PRC would not militarize its SCS features.⁶⁸

Since 2018, China's Spratly outposts "have been equipped with advanced anti-ship and anti-aircraft missile systems and military jamming equipment, marking the most capable land-based weapons systems deployed by any

65. *Id.* ¶ 1024.

66. Statement on United States Ocean Policy, 19 WEEKLY COMP. PRES. DOC. 383 (Mar. 10, 1983).

67. THE WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2017).

68. Jeremy Page et al., *China's President Pledges No Militarization in Disputed Islands*, WALL STREET JOURNAL (Sept. 25, 2015), <https://www.wsj.com/articles/china-completes-runway-on-artificial-island-in-south-china-sea-1443184818>.

claimant . . .” in the SCS.⁶⁹ China has also regularly used its Spratly outposts to support PLAN and CCG operations in the SCS, and in 2020 “deployed KJ-200 anti-submarine warfare and KJ-500 airborne early warning aircraft to Fiery Cross Reef.”⁷⁰ These outposts additionally have airfields, berthing areas, and resupply facilities that allow China “to maintain a more flexible and persistent military and paramilitary presence in the area.”⁷¹ These enhancements improve China’s “ability to detect and challenge activities by rival claimants or third parties and widens the range of response options available to Beijing.”⁷²

Any new U.S. policy for the SCS must explicitly challenge PRC aggression and misbehavior, in particular the PRC’s militarization of the SCS, if the United State and its partners are to maintain a free and open Indo-Pacific region that provides prosperity and security for all nations.

D. Clarify What Constitutes an Armed Attack Under the MDT

The United States should make it abundantly clear to China that continued interference with the resupply of the Marine contingent on the *Sierra Madre* will have serious consequences. As discussed above, under Article IV of the U.S.-Philippine MDT, an armed attack in the “Pacific Area” on either of the parties triggers the collective self-defense obligations under the treaty. An armed attack under the treaty includes, inter alia, an attack on either party’s armed forces, public vessels, or aircraft in the Pacific.⁷³ In 2019, former Secretary of State Michael Pompeo reassured his Philippine counterpart that the SCS is part of the Pacific and that any armed attack on Philippines forces, aircraft, or public vessels in the SCS would trigger the mutual defense obligations under Article IV of the MDT.⁷⁴ In 2021, Secretary of State Antony Blinken again reassured Foreign Secretary Locsin that the MDT applies to

69. U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 104 (2021).

70. *Id.*

71. *Id.*

72. *Id.*

73. US-RP MDT, *supra* note 59, at art. 5

74. Press Release, U.S. Department of State, Remarks by Secretary of State Michael R. Pompeo with Philippine Foreign Secretary Teodoro Locsin, Jr. at a Press Availability (Mar. 1, 2019), <https://2017-2021.state.gov/remarks-with-philippine-foreign-secretary-teodoro-locsin-jr/index.html>.

the SCS.⁷⁵ That interpretation of the MDT was reaffirmed at the 9th U.S.-Philippines Bilateral Strategic Dialogue in November 2021.⁷⁶ These reassurances did not, however, deter Beijing from ordering the CCG to use water cannons against Philippine supply ships to prevent the resupply of the *Sierra Madre* outpost at Second Thomas Shoal.⁷⁷

Although the use of a water cannon may not meet the traditional criteria of an “armed attack” as defined by the International Court of Justice in the *Nicaragua* case because it does not constitute a “most grave form[] of the use of force,”⁷⁸ the United States does not subscribe to the “gap theory.” It considers that any threat or use of force triggers the right of self-defense under the UN Charter. United States commanders have the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. Under the U.S. Standing Rules of Engagement, a hostile act and a demonstration of hostile intent includes force used directly to preclude or impede the mission and/or duties of U.S. forces.⁷⁹

Given that the MDT is a bilateral agreement between the United States and the Philippines, the parties could agree that the use of a water cannon, coupled with past Chinese threats and aggressive acts against the Philippines that impede the ability of the Philippines to resupply the Marines at Second Thomas Shoal, is tantamount to an illegal use of force that would trigger the collective self-defense obligations under the MDT. Washington should therefore inform Beijing that the United States will consider any action by the PLAN, CCG, or PAFMM directed at a Philippine government resupply ship that is unsafe and places the Philippine ship and its crew in extremis, to be an attack under the MDT. This would include Chinese attempts to ram Philippine resupply vessels or use water cannons against them.

75. Press Release, U.S. Department of State, Secretary Blinken’s Call with Philippine Foreign Secretary Locsin (Apr. 8, 2021), <https://www.state.gov/secretary-blinkens-call-with-philippine-secretary-of-foreign-affairs-locsins-2/>.

76. Press Release, U.S. Department of State, Joint Vision for a 21st Century United States-Philippines Partnership (Nov. 16, 2021), <https://www.state.gov/joint-vision-for-a-21st-century-united-states-philippines-partnership/>.

77. See Press Release, *supra* note 43.

78. Military and Paramilitary Activities in and against Nicaragua (*Nicar. v. U.S.*), Judgment, 1986 I.C.J. 14, ¶ 191 (June 27).

79. Chairman, Joint Chief of Staff, Instruction 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces (June 13, 2005).

E. Words Matter

Finally, the U.S. statement, perhaps inadvertently, fails to take a position on possible maritime zones generated by the Paracel Islands, leaving open the possibility for the PRC to claim a two hundred nautical mile EEZ from these features. Although the Tribunal did not address the status of the Paracels, the United States should confirm that it does not recognize any maritime claims associated with those features and conducts its naval and air operations accordingly. Moreover, despite the assertion that the revised statement is intended to align U.S. policy with the Tribunal's decision, the statement refers to "islands" claimed by the PRC in the Spratlys. Yet, the Tribunal specifically found that none of the Spratly features were "islands" under Article 121 of UNCLOS. This careless slip of the tongue will not go unnoticed by the PRC propaganda machine.

VI. CONCLUSION

Regional friends and allies are looking for U.S. leadership to maintain a rules-based legal order that respects all nations' sovereignty, independence, and economic well-being. Success in this regard will depend, in part, on changing the narrative in the SCS. The United States cannot successfully execute a revised SCS strategy that continues to embrace the failed policies of previous administrations. Continued reliance on the ineffective 1995 policy is a recipe for failure and facilitates PRC hegemony over the Indo-Pacific region in the near term, and more alarming, impacts regional stability in the long term. If the United States is to preserve its position as the preeminent naval power in the region, the United States must not acquiesce in unilateral acts designed to prevent States from exploiting their natural resources, as well as restrict navigational rights and freedoms, and other lawful uses of the seas, guaranteed to all nations. Only then will other States be encouraged to support policies that counter the PRC's malign behavior and help ensure a safe, secure, prosperous, and free Indo-Pacific region for all.