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Law Conference Keynote Address:

“International Law Considerations
for 21st Century Engagements at Sea”

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“International Law Considerations
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Good morning. I'm honored to be with you today. It's especially great to see such a distinguished group of people—both practitioners and academics—gathered together in person once again to exchange ideas and views on some of the most important issues we face as a Navy.

The challenges that lie ahead are both very real and very dynamic—and we should all be grateful for this opportunity to learn from one another in this setting—I certainly am.

I'd like to thank the Naval War College, particularly Rear Admiral Chatfield, as well as Professor James Kraska of the Stockton Center, and Mrs. Nancy Cushing Evans for inviting me to provide some thoughts with you this morning.

I'll start by sharing a few words from our Secretary of the Navy, the Honorable Carlos Del Toro. In his strategic guidance, called "One Navy-Marine Corps Team," Secretary Del Toro sums up the key challenge we face using the language of international law:

In the 76 years following the end of World War II, the U.S. Navy and Marine Corps—working alongside like-minded allies and partners—have kept the seas open and free. On station, around the globe, and around the clock, we have helped sustain a maritime order based on international law that has benefited the whole of humankind. Yet today, after three quarters of a century of relative maritime stability, that order is now in jeopardy. Authoritarian nations are once again challenging international norms and laws, while transnational threats present unprecedented challenges to our stability and security.

The Secretary's guidance, published last October, could not have been more prophetic. Today, the maritime order he talks about is being both actively confronted and purposefully eroded in an attempt to undermine the very international law upon which maritime stability rests.

The alliances and partnerships he mentions are being tested in unprecedented ways—but at the same time showing strength and resilience under pressure. And all of us—"the whole of humankind"—who benefit from this order are watching an international armed conflict that is likely to shape future approaches to international law, including how the world responds to violations of that body of law.

These foundational principles have galvanized—in an unparalleled way—a multinational coalition of States and international organizations to

respond decisively to the Russian Federation's unlawful actions and to support Ukraine's resistance efforts.

A fundamental tenet of international law is being defended—that each State is free to govern its own territory and internal affairs. It's reassuring and often inspiring—but, it's not exactly easy to watch.

As human beings, it's normal for us to feel a sense of unease about Russia's actions and its potential next moves—and to feel great sympathy for the Ukrainian people.

But as international law practitioners, we also need to take a step back and consider the long-term implications of these actions and the impacts on other potential flash points, particularly as the conflict drags on. We need to keep a close eye on State practice as it evolves.

In a more practical and immediate sense, though, the timely actions taken by a notable segment of the international community have demonstrated just how decisive diplomacy and partnerships can be.

Russia's war against Ukraine is also focusing attention on the evolving character of naval warfare in the twenty-first century. The developments we're currently seeing in the Black Sea region give us a window into how naval warfare might look in future fights. Just in the last few weeks, we have witnessed Russian fast patrol boats and a Russian missile cruiser defeated by modern technologies used by the Ukrainian military. We are seeing Russian Kalibr missiles launched from submarines in the Black Sea—according to press reports, perhaps as far as fifty meters below the surface—striking distant Ukrainian targets. And this is all in relatively confined sea space.

These incidents demonstrate how powerful recent technological advancements can be during a naval engagement.

How this war unfolds and how the world reacts to it—particularly through our alliances and partnerships and through technological developments—could set the stage for naval warfare in the coming decades and inform our thinking about potential future conflicts.

And while Russia's war against Ukraine has focused our attention on the immediate threat on NATO's doorstep, our strategic focus in the U.S. Navy continues to be on the significant, anticipated challenges in the Indo-Pacific region posed by our chief global competitor, the People's Republic of China, the PRC.

The U.S. Navy's Chief of Naval Operations, Admiral Mike Gilday, refers to the PRC as “our most pressing long-term strategic threat.”

The PRC has, in his words, “*strengthened all dimensions of their military power to challenge us and our allies and partners from the seabed to space and in the information*

domain,” and the PRC is expanding its global network of infrastructure to control access to critical waterways.

Our strategic competition with the PRC has taken center stage as our most demanding defense and foreign policy concern. At the core of this “pacing challenge,” as it’s been called, is a struggle over different approaches to the rules-based international order.

Competition with the PRC is predicated on whether the dominant approach in the region will be a free and open system that benefits all States, or an order that exists primarily to serve the interests of Beijing at the expense of much of the rest of the international community—an order driven by might and not principle.

As Admiral Gilday pointed out in his January 2021 Navigation Plan (NAVPLAN), both Russia and the PRC are undermining the freedom of navigation, intimidating their neighbors, enforcing unlawful claims, and attempting to turn incremental gains into long-term advantages.

The U.S. Navy, together with our maritime allies and partners, plays a pivotal role in confronting these challenges head-on. To do so effectively, though, requires fleet commanders and ship captains who know the rule-book.

Navy judge advocates play a critical role in this. Judge advocates train and advise our leaders on international law and the rules that underpin the maritime order both here at the schoolhouse in Newport and in the fleet.

Our judge advocates are forward-deployed. They’re serving at sea. They’re advising on ongoing operations, often in real time. They empower operators to address these long-term challenges.

I mentioned working together with our allies and partners in confronting challenges to the rules based international order—it’s a critical point. The U.S. Navy simply can’t face the sizable challenges posed by Russia and the PRC alone, credibly—but also practically. Strengthening military-to-military relationships with existing allies, leveraging specialized experience in regional operations, and deepening our partnerships with like-minded democracies are all priorities for the U.S. Navy.

The role of relationships among partners and allied States has made a considerable difference in the current war in Ukraine. The swift and robust response by the thirty-member NATO alliance to condemn Russia’s further invasion of Ukraine, to support bilateral assistance and arms transfers, and to activate defense plans for the deployment of elements of the NATO Response Force has been unprecedented in recent memory. In a word, NATO itself has proven to be dynamic. Something I wouldn’t have said three months ago.

The potential expansion of the alliance to include new member States—including those with recent histories embracing neutrality—such as Finland and Sweden—is telling.

The alliance has withstood several challenges in the decades since it was founded, but Russia’s war against Ukraine has demonstrated that it can respond quickly when the situation demands. In other words—NATO is back. We’re seeing a resurgence of both confidence and capability. The Alliance found itself with a major conflict at its border and close to six million refugees fleeing to many of its member States. But, it also found the ability to move at speed—and with consensus—in response to these challenges. This underlines the importance of our NATO alliance and it demonstrates just how effective alliances can be, even in dynamic environments.

While the North Atlantic Treaty and the legal underpinnings of NATO are truly unique, the United States has alliances throughout the Indo-Pacific region grounded in treaty. We are fortunate to share a network of robust and resilient relationships that have been impactful—many of which have been in place for decades. I’d like to touch on just a few.

Our alliance with Australia was formalized over seventy years ago with the ANZUS Treaty, and has only strengthened over time. Marking the occasion last September, Secretary of State Antony Blinken recognized the continuing importance of the United States-Australia alliance and reaffirmed the U.S. commitment to advancing shared values, democratic processes, and global security—and noted that the alliance “*helps underpin the stability of the region and democracy in the Indo-Pacific.*”

With the recent signing of the Australia-United Kingdom-United States partnership, or AUKUS, this alliance has been further reinforced. As recently as a month ago, the leaders of our three States reaffirmed the commitment to a free and open Indo-Pacific, the rule of law, and the peaceful resolution of disputes. They noted that their commitment has only grown in the wake of Russia’s further unlawful invasion of Ukraine.

Our alliance with Japan has also been strengthened and reaffirmed time and again. Earlier this year, Secretary of Defense Lloyd Austin and Secretary Blinken met with their Japanese counterparts during the 2022 United States-Japan Security Consultative Committee—the so-called “2+2.” Secretaries Austin and Blinken called the U.S. commitment to the defense of Japan “absolute” and affirmed that the Senkaku Islands in the East China Sea fall within the scope of the United States-Japan Treaty of Mutual Cooperation and Security. They said publicly that the United States remains opposed to

any attempts to undermine Japan's administration of these islands. The President made similar statements in response to PRC Coast Guard vessels entering the territorial seas surrounding the Senkaku Islands.

Our alliance with the Republic of Korea is likewise approaching its seventieth anniversary. We continue to work with our ROK colleagues through the Combined Forces Command—a standing, bilateral military organization that is fully integrated. We coordinate closely with the ROK on implementing many aspects of the U.S. Indo-Pacific strategy.

And more recently, Secretary Austin affirmed the seventy-one-year United States-Philippines alliance and the importance of ensuring peace and stability in the South China Sea. He reiterated—together with his Philippine counterpart—his “ironclad” commitment to the alliance. This reaffirmation followed an incident last November during which two Philippine civilian boats delivering supplies to the Philippine navy ship *Sierra Madre* at Second Thomas Shoal were blocked and harassed by three PRC Coast Guard vessels. In response, the United States reaffirmed to the Philippines its intent to invoke U.S. commitments under the United States-Philippines Mutual Defense Treaty should it become necessary.

While Secretary Austin's response demonstrated continued U.S. support for our alliance with the Philippines, it's important to note that the incident itself shows the PRC's continued disregard of the 2016 Arbitral Tribunal ruling in the South China Sea matter. *A ruling that is binding on the PRC*. As many of you know, the tribunal ruling rejected the PRC's claims to Second Thomas Shoal and waters in the South China Sea constituting part of the Philippines' exclusive economic zone.

While these formal security alliances have decades-long histories, other partnerships in the region are also essential to U.S. strategic interests.

The United States has been a steadfast strategic partner to the Association of Southeast Asian Nations, or ASEAN, since 1977, with a focus on promoting maritime cooperation to ensure security in the Indo-Pacific. ASEAN member States are located adjacent to some of the world's busiest maritime sea lanes, rendering this partnership strategically important, particularly since the United States and ASEAN both are deeply committed to sustaining the rules-based order in the region.

The Quadrilateral Security Dialogue—or the “Quad”—brings together the United States, Australia, India, and Japan, to work on a broad agenda of security, economic, and health issues. The March 2021 Joint Statement notes that Quad leaders “*commit to promoting a free, open, rules-based order, rooted in international law . . . to advance security and prosperity, and counter threats to both in the*

Indo-Pacific and beyond.” The Statement further notes that the signatories “*support the rule of law, freedom of navigation and overflight, peaceful resolution of disputes, democratic values, and territorial integrity,*” and also notes their “*strong support*” for ASEAN.

This network of alliances and partnerships—not just in the Indo-Pacific region, but across the world—is unmatched by our adversaries.

The PRC has called the U.S. Indo-Pacific strategy “dangerous” and compared the establishment of the Quad to the expansion of NATO in Eastern Europe. The PRC also seems to be testing U.S. partnerships in recent months—through increasing assertiveness in the Western Pacific and expanding its influence in the islands of the South Pacific. The PRC is using its substantial financial resources in a region eager for economic development, new infrastructure, and foreign aid.

In this context, the PRC’s recent signing of a security pact with the Solomon Islands should be cause for unease and increased alertness. It reflects just one example of the potential political and diplomatic shift of small Pacific island States to the PRC and away from Western allies and Taiwan. Nurturing strong coalitions of allies and partners of our own, across the region, remains crucial to maintaining an Indo-Pacific that is free and open to navigation by all States—and also crucial to tempering the PRC’s ambitions with regard to Taiwan.

One way we maintain free and open navigation is through the freedom of navigation program—peaceful operational assertions that challenge excessive maritime claims to demonstrate non-acquiescence. To counter the excessive claims of several claimants in the South China Sea, there has been a marked uptick in U.S. Freedom of Navigation Operations, or FONOPs, since 2017. In fiscal year 2021 alone, U.S. forces challenged multiple excessive claims in the South China Sea multiple times. This includes excessive straight baseline claims, prior permission requirements for innocent passage in the territorial sea, and territorial sea and airspace claims around features not entitled to them, such as low-tide elevations. Since last May, the U.S. Navy has also conducted at least six transits of the Taiwan Strait, consistent with international law and our commitment to a free and open Indo-Pacific. At the same time, it’s worth noting that FONOPs are not directed at any one State—they are performed worldwide and are routine, and often protest the excessive claims of allies and partners.

Judge advocates are key enablers of FONOPs. Every step of the process of planning and carrying out a FONOP involves judge advocates; from the moment the operation is conceived to its actual execution. At the tactical and

Fleet levels, judge advocates work with commanders to ensure the operations are planned and executed in accordance with international law and appropriately challenge excessive claims.

Our allies have also increased their presence in the South China Sea. Just last September, the Royal Navy conducted its own transit of the Taiwan Strait. Allied warships from Australia, Canada, and France have also conducted Taiwan Strait transits in recent years. The Netherlands joined us as part of the Royal Navy's Carrier Strike Group 21—or CSG 21—during the U.S. Marine Corps' F-35 deployment on the HMS *Queen Elizabeth* last year. This cooperation during CSG 21's deployment was important to ensuring interoperability among the United States and United Kingdom. The navies of Australia, France, India, Japan, and New Zealand—to name a few—also joined with CSG 21 for critical exercises in the Indo-Pacific region.

Judge advocates play a key role in facilitating these deployments with our allies and partners. Judge advocates work to ensure a common understanding among all participating forces of the rules of engagement and national caveats, developing solutions to challenging legal issues that are presented, and building relationships with our counterparts that will enable successful combined operations in the future.

Greater interoperability and cooperation with allies and partners are crucial to addressing future PRC activity inconsistent with international law, and to counter the PRC's sizable advancements in technology as well as the rapid expansion of its fleet.

As the CNO has noted, while many aspects of technological development are not new, the scale of the threat and the explosive rate of technological change is. As a result, the United States will need a more lethal fleet and its composition and capabilities may matter even more than size.

We'll also need a broad array of networks to link distributed forces and reliable logistics to support them. In short, keeping up with the challenges posed by our competitors will require us to field state-of-the-art systems at a rapid pace.

As the CNO recently estimated, the U.S. Navy will need a fleet of about 513 ships to meet the nation's national security needs. That number includes 100 logistics and supply ships and 263 manned combatants—including twelve aircraft carriers and nine big-deck amphibious vessels. It also includes destroyers, frigates, attack submarines, and about a dozen ballistic missile submarines. So what constitutes the other 150 or so vessels that get us to the number 513?

Maybe there's a better question to ask. Is the bedrock of naval warfare still large manned platforms? The full impact of the recent sinking of the *Moskva* during the course of Russia's war against Ukraine is still being unpacked, but here's the undeniable reality—a major surface combatant was destroyed in combat for the first time in decades.

Moskva was sunk by a Ukrainian Neptune, an advanced cruise missile, and the incident shows just how vulnerable large platforms can be—even to smaller, lower-cost systems that are more technologically advanced, more maneuverable, and in many cases, more readily available.

Along this line of thought, the CNO's estimate of a 513 ship Navy includes the need for 150 unmanned vessels. The U.S. Navy is already accelerating the fielding of full spectrum unmanned capabilities and investing in advanced autonomy, networks, and human-machine teaming efforts. Unmanned technologies can provide maritime domain awareness, detect underwater mines, deliver supplies, and engage in intelligence, surveillance, and reconnaissance from fast and maneuverable platforms that are both expendable and survivable.

In this context, I want to mention the success of some of the testing conducted by Task Force 59, which stood up last September. TF 59—which is the first U.S. Navy task force of its kind—is seeking to rapidly integrate unmanned systems and artificial intelligence, or AI, with maritime operations in the Arabian Gulf. Vice Admiral Brad Cooper, commander of U.S. Fifth Fleet, said the goal of the task force is to “*develop and integrate unmanned systems and AI as a means to do two things, enhance our maritime domain awareness, and increase deterrence.*”

TF 59 has been at the forefront of testing and learning from these new capabilities, with the goal of fielding them in the fleet quickly and efficiently. Importantly, the focus has not been on large or medium-sized unmanned surface vehicles, but instead the focus has been on small, expendable unmanned systems that could help us address capability gaps.

Some of these systems were recently tested ahead of the International Maritime Exercise, or IMX 2022, in Bahrain this past February. It included over eighty unmanned systems from ten States. Multiple different types of unmanned surface vehicles, or USVs, were tested over an eighteen-day period during training that involved mine countermeasure operations, mass casualty response, and visit, board, search, and seizure procedures.

The accomplishments of the U.S. Fifth Fleet and Task Force 59 have demonstrated significant progress—both in terms of our collaboration with allies and partners and our technological advancements. The CNO has gone

so far as to state recently that the success of TF 59 has caused him to reconsider whether medium USVs are even necessary in these contexts, especially given how much smaller, less expensive systems have been able to accomplish during the testing phase. I'm sure we will hear much more about these efforts during the panels taking place later today.

We are not alone in preparing for a future focused on unmanned systems. The PRC is also conceptualizing a future battlefield dominated by autonomy and AI and is investing in unmanned technologies at an extremely rapid rate. From the PRC perspective, autonomy and AI are more than the future of warfare—they may also provide a counterbalance to the technological superiority of the U.S. military. The People's Liberation Army-Navy, the PLAN, already has the largest navy in the world, numerically. And as noted in a recent DoD report to Congress, the PRC continues to pursue advanced technologies with significant military potential. This includes autonomy and AI, but also advanced computing, quantum information sciences, biotechnology, and advanced manufacturing.

These developments should prompt us to consider the future of the fleet, and how we can ensure that our own forces are not destined for the same fate as the *Moskva*. Admiral Gilday notes in the NAVPLAN that the U.S. Navy “*will master new technologies and adapt the way we fight.*” Part of that mastery and adaptation will involve how we, as lawyers, shape the norms and the legal framework surrounding the employment of autonomy and the use of AI in various contexts.

While the use of some degree of autonomy in military applications is not new, how we use these technologies in combat has changed. For the Navy JAG Corps, we will need to carefully consider how the law applies to these advancements. Developers will continue to propose novel and lethal uses of technology. That is a given. We need to keep pace.

In the context of AI and machine learning, and the autonomous functions they may enable, developing a deeper understanding of how a system is processing information may take lawyers outside of their comfort zones. Today, attorneys are asked to pore over a sizable amount of information to become familiar with the technology, to understand how the system works, and then to apply the analysis under the law of armed conflict—including the elements of unnecessary suffering, distinction, and proportionality.

As a result, the analysis is getting increasingly complex. For instance, an unarmed, unmanned vessel generally does not itself need to be reviewed for compliance with the law of armed conflict. But, if we place a weapons payload onboard that vessel, how does the analysis change?

What if the weapons system is closely integrated with the vessel's computer processors and sensors to the point that that it relies on them to identify targets or trigger weapons release?

As we know, only warships can engage in belligerent activities at sea during an international armed conflict. If we arm unmanned vessels, do they qualify as warships?

These are some of the tough questions that judge advocates are working through as they think about enabling dynamic and lethal, yet lawful, maritime operations.

We need our academics and other legal practitioners to help shape this framework. Too much of the narrative in the public space is dominated by non-State organizations that advocate for policies and applications of the law that, while well-intentioned, are grounded in the belief that autonomy itself is a concept that should be largely feared and opposed. Today, that's an impractical position to take, especially as some future applications of autonomy and AI may enable our commanders to strike military objectives with more accuracy and less risk of harm to civilians and civilian objects and less collateral damage.

As lawyers, we should be positioned to help senior leaders parse out issues of law from those of policy or ethics—which are often conflated in this context. We should also seek to help shape public discourse to enable these leaders to do their jobs. This is important, because as the CNO has recognized, integrating autonomy and AI into our naval systems will support our ability to achieve “decision superiority in combat” and to maintain our advantage at sea.

Advances in autonomous systems and other technologies have the potential to help us to fight and win in contested spaces. Especially where our adversaries have made significant progress and will continue to challenge us.

Russia's war against Ukraine has forced us to rewrite our National Security Strategy in real time. It should prompt all of us as military officers, government officials, or legal scholars to engage in self-reflection and consider our own circumstances if we were to face a large, well-organized, and fully prepared adversary in the future.

The PRC is watching Russia's invasion, as well as Western responses to it very closely. PRC leaders will be noting what works and perhaps more importantly, what doesn't work, as they look to the future.

As international law practitioners, these considerations should also motivate us to closely examine the application of existing legal frameworks to current developments in naval warfare.

It's more essential now than it has been in decades that we uphold the foundational principles of international law upon which our rules-based order is founded with the help and cooperation of our allies and partners. Allies and partners are vital to our collective effort to ensure a continuously free and open maritime domain.

I charge each of you to discuss these important issues over the next three days. Think about how our adversaries are challenging these principles and what we can do about it. This is important work, and I'm encouraged by the number of people here with both the experience and expertise to make it a useful and productive dialogue.

Thank you for your attention and for your participation this week.

And again, my thanks to the Naval War College and the Stockton Center for inviting me to speak this morning.