Anatomy of China’s Maritime Strategy: Threatening the Maritime Order Through Its National Legislation and Self-Centered Interpretation of UNCLOS

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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

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), often referred to as the “Constitution of the Sea,” establishes an objective framework for the coordinated handling of the use of the sea by States in the exercise of their legislative, judicial, and executive powers. Its provisions are intended to be incorporated into national legislation for domestic implementation. The Convention is a universal multilateral treaty to which 168 countries are parties as of January 1, 2023. Generally, State parties to UNCLOS effectively implement the Convention by enacting national ocean and coastal laws that conform with the articles of UNCLOS and customary international law relating to the sea. As UNCLOS is a codification of the customary international law and forty years have passed since the adoption of the Convention, many of the articles of UNCLOS have also acquired the status of customary international law through State practice, which is binding on non-parties to the Convention.

To establish the “Rule of Law” in the international community, each State must comply with treaties and customary international law. Therefore, each State normally stipulates in its constitution the obligation to comply with international law. However, there are no articles in the Chinese Constitution that refer to its relationship with international law. As a result, it is not clear how China views the relationship between treaties and its Constitution, nor is it clear whether its domestic laws or international treaties have primacy. China confers its legislative power to the Standing Committee of China’s National People’s Congress (Standing Committee). The Standing

3. For example, Article VI of the Constitution of the United States stipulates “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.” U.S. CONST. art. VI, cl. 2. Article 98 paragraph 2 of the Constitution of Japan also stipulates “The treaties concluded by Japan and established laws of nations shall be faithfully observed.” “Established laws” here is the customary international law. See Kenpo, Nov. 3, 1946, art. 98, para. 2. Even Russia, a country with an authoritarianism similar to that of China, has a constitutional requirement to comply with international law in Article 15.4 of the Constitution of the Russian Federation (1993). See Konstitutsii Rossiiskoi Federatsii art. 15.4.
Committee ratified UNCLOS on May 15, 1996. The problem is that China’s legislative bodies, in enacting domestic laws for the fulfillment of treaty obligations, distort such obligations into domestic laws to secure their own national interests. The distortion consists of the alteration of the articles of UNCLOS through national legislation and the perversion of the Convention through the self-centered interpretation of UNCLOS.

Indeed, China shows no hesitation to enact domestic laws that deviate from the text of UNCLOS in order to secure its own “core interests.” Although China is a State party to UNCLOS, China enacts domestic laws that conflict with the text of UNCLOS and adopts a different interpretation of UNCLOS than other parties in order to secure its own maritime interests. Although a State party is required to interpret its domestic laws in conformity with the Convention, China does not. On the contrary, China continues to put pressure on the rights of neighboring countries based on their own domestic legal provisions that violate UNCLOS.

However, a multilateral treaty such as UNCLOS is established by the agreement of the negotiating countries, or in other words, by the joint will of each country, and cannot be unilaterally changed by the will of an individual country such as China. The Vienna Convention on the Law of Treaties, to which China is a party, provides that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith” and confirms that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

This is also confirmed by the International Court of Justice (ICJ) in its advisory opinion Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, which stated that “it is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty.”

6. Id. art. 27.
7. Id. art. 27.
Today, in the twenty-first century, China’s willingness to deviate from the international legal order through self-centered interpretation of UNCLOS articles violates these basic rules of international law and has resulted in various disputes with neighboring countries in the South China Sea and East China Sea.

II. DISTORTION OF UNCLOS THROUGH DOMESTIC LEGISLATION

A. Denying the Right of Innocent Passage

The first time the term “maritime rights and interests” appears in Chinese domestic law is in the Law on the Territorial Sea and the Contiguous Zone of 25 February 1992 (China’s Territorial Sea Law). Article 1 of China’s Territorial Sea Law stipulates, “this law is formulated in order to enable the People’s Republic of China (PRC) to exercise its sovereignty over its territorial sea and its rights to exercise control over its contiguous zone, and to safeguard State security as well as its maritime rights and interests.”9 It is crystal clear that the purpose of this domestic law is to secure national security and maritime rights and interests. China’s Territorial Sea Law consists of seventeen articles, and it is consistent with Part II (Territorial Sea and Contiguous Zone) of UNCLOS, except for two parts.

The first exception is that although UNCLOS recognizes the right of innocent passage in foreign territorial waters for all vessels, including warships, China stipulates in Article 6.2 of China’s Territorial Sea Law that “to enter the territorial sea of the People’s Republic of China, foreign warships must obtain permission from the Government of the People’s Republic of China.”10 Tommy Koh, who served as the chairman of the Third United Nations Conference on the Law of the Sea, clearly says, “I think the Convention is quite clear on this point. Warships do, like other ships, have a right

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10. However, it is said that there are more than forty countries that do not recognize the right of innocent passage for foreign warships or place some restrictions on it. See ELEANOR FREUND, FREEDOM OF NAVIGATION IN THE SOUTH CHINA SEA: A PRACTICAL GUIDE 12 n.2 (Belfer Center Special Report, June 2017), https://www.belfercenter.org/sites/default/files/files/publication/SCS%20Report%20-%20web.pdf.
of innocent passage through the territorial sea, and there is no need for warships to acquire the prior consent or even notification of the coastal State.”

China’s Territorial Sea Law therefore violates articles of UNCLOS. Professor Hyun-Soo Kim of the Korea Naval Academy maintained that China should revise its Territorial Sea Law in accordance with the UN Convention.

Article 17 of UNCLOS (located under a subsection labelled “Rules Applicable to All Ships”) states that “ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.” UNCLOS adopts an activity-based regulation rather than a ship-type-based regulation by listing activities from (a) to (l) in paragraph 2 of Article 19 as “harmful to the peace, good order or security of the coastal State” and thus accepts the right of innocent passage of all vessels, including warships.

This is confirmed by the International Tribunal for the Law of the Sea (ITLOS). In 2019, in the case Detention of Three Ukrainian Naval Vessels, ITLOS stated: “Under the Convention, passage regimes, such as innocent or transit passage, apply to all ships.”

As is well known, China made the following interpretative declaration at the time of its ratification of UNCLOS on June 7, 1996:

The People’s Republic of China reaffirms that the provisions of the United Nations Convention on the Law of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal State to request, in accordance with its laws and regulations, a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warships through the territorial sea of the coastal State.

Similarly, Romania’s interpretative declaration indicated that “Romania reaffirms the right of coastal States to adopt measures to safeguard their security interests, including the right to adopt national laws and regulations relating to the passage of foreign warships through their territorial sea.” Conversely, Germany released a statement on March 9, 1983, objecting that “[n]one of the provisions of the Convention, which in so far reflect existing international law, can be regarded as entitling the coastal State to make the innocent passage of any specific category of foreign ships dependent on prior consent or notification.”

Under international law, there is a distinction between reservations and interpretive declarations. China’s interpretative declaration constitutes a “conditional interpretative declaration” according to the Guide to Practice on Reservations to Treaties adopted by the International Law Commission in 2011. The declaration has the legal effect of rendering China’s participation in UNCLOS subject to China’s specific interpretation requiring prior permission for foreign warships to pass through its territorial waters. This kind of “conditional interpretative declaration” becomes a “reservation” when its interpretation is different from the text of the convention or agreements among other State parties. Reservations are banned by Article 309 of UNCLOS. As a matter of fact, 120 of the State parties of UNCLOS do not require warships to provide prior notification nor request permission to pass through their territorial waters.

However, Chinese international law scholars repeatedly make the following arguments in defense of China’s Territorial Sea Law. For example, Professor Shao Jin of Peking University argues that “the Title of Subsection A of Section 3, Part II of the UNCLOS (Rules Applicable to All Ships) is a ‘misnomer’ because it was left unchanged from draft articles during UNCLOS I” and “titles do not have independent legal existence and as such have no legal force.” Professor Zhao Jianwen of the Institute of International Law, China Academy of Social Sciences claims, “UNCLOS as well as customary international law indeed permits warships’ the innocent passage
through territorial sea. Meanwhile, the UNCLOS also allows coastal States on prior notification or permission” and “from the ‘right to protect security interests,’ UNCLOS does not prohibit coastal States to adopt law or regulations on the ‘prior authorization’ requirement.”20 Professor Jin Yonming asserts “unauthorized passage may well constitute ‘political and legal provocation’ and will fall into category of activity in Article 19 (1).”21

As a result of the “Freedom of Navigation Program” by the United States and China’s conditions on innocent passage of warships, the countries have harshly confronted each other in the South China Sea.22 The circumstances will persist since China will continue in the near future to maintain the China Territorial Sea Law. It is noteworthy that some young Chinese researchers have come out in support of the revision of the China Territorial Sea Law.23

B. Extension of Jurisdiction of National Security to the Contiguous Zone

The second exception can be observed in Article 13 of the China Territorial Sea Law, which stipulates “The People’s Republic of China has the authority to exercise powers within its contiguous zone for the purpose of preventing or punishing infringement of its security, customs, fiscal sanitary laws and regulations or entry-exit control within its land territories, internal waters or territorial sea.” Article 33 of UNCLOS allows States to exercise control necessary to “prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations” within its contiguous zone. China adds “security” to Article 13 of its law. Thus, China is extending its jurisdiction over security to the contiguous zone. This provision of China’s Territorial Sea Law is in clear violation of UNCLOS.24

As a result, an asymmetry has arisen with regard to the contiguous zones between China and Japan. China Coast Guard (CCG) vessels almost daily

23. See, e.g., Bao, supra note 5, at 92.
24. Kim, supra note 12, at 903. There are five states (Cambodia, China, Sudan, Syria, and Vietnam) in the international community claiming jurisdiction over security matters in the contiguous zone.
enter the contiguous zones around the Senkaku (Chinese name: Diaoyu) Islands, which are effectively controlled by Japan, while Japanese Coast Guard (JCG) patrol vessels guard the surrounding waters against intrusion into territorial waters. However, JCG vessels do not prevent CCG vessels from entering Japan’s contiguous zones on security grounds as UNCLOS does not allow Japan to do so. As mentioned above, the reverse is not true. Warships and public vessels of other nations, not just Japan, cannot enjoy the freedom of navigation in China’s territorial waters and contiguous zones.

C. Distortion Through China’s Coast Guard Law

1. Vague Concept of “Waters Under the Jurisdiction of China”

China’s expansion of its jurisdiction will be a tangible threat to other countries with the enactment of the Coast Guard Law of the People’s Republic of China in 2021 (CCG Law). UNCLOS, as international law, provides the clear definition of the sea areas over which the coastal States can exercise their jurisdictions and the conditions to the exercise such jurisdictions. Accordingly, it is against international law for a State, based on its domestic laws, to exercise its jurisdiction over the sea area over which it is not allowed to exercise such jurisdiction under UNCLOS, and thereby China infringes upon the sovereignty and jurisdictions of other countries.

An example of China’s expansion of jurisdiction can be found in Article 3 of the CCG Law. Article 3 broadly and ambiguously defines the CCG jurisdiction as “[w]here a coastal guard agency conducts the activities of maritime rights protection and law enforcement on and over the waters under the jurisdiction of the People’s Republic of China (hereinafter referred to as ‘waters under the jurisdiction of China’).” Under UNCLOS, waters under a State’s jurisdiction are internal waters, territorial sea, contiguous zone, EEZ, and continental shelf, including any extended continental shelf. However, China has created a vague concept of waters under the jurisdiction of

China in its domestic laws. China’s domestic laws clearly stipulate that the CCG may conduct law enforcement operations to protect maritime interests in waters over which they cannot exercise jurisdiction under UNCLOS (e.g., the waters within the nine-dash line in the South China Sea). What is noteworthy is that the CCG Law states, in Article 3, that the CCG “conducts the activities of maritime rights protection and law enforcement on and over waters under the jurisdiction of China.”28 The airspace above the territorial sea is indeed national airspace, and it is permissible under international law for a State to exercise jurisdiction over violations in such airspace. However, the airspace above the EEZ, like the high seas, allows freedom of overflight, and exercising jurisdiction over it is a violation of international law as well as UNCLOS.

The CCG Law is not the first time the concept of “sea areas under the jurisdiction of the People’s Republic of China” has appeared in Chinese domestic law. It first appeared in Article 2 of the Fisheries Law of the People’s Republic of China,29 which broadly applies to “all other sea areas under the jurisdiction of the Fisheries Law.”30 In Article 2 of the Marine Environment Protection Law of the People’s Republic of China (1999) the concept is found again: “This Law shall apply to the internal waters, territorial seas, contiguous zones, exclusive economic zones, continental shelf and other waters within the jurisdiction of the People’s Republic of China.”31 The term

28. Id. art. 3 (emphasis added).
29. Fisheries Law of the People’s Republic of China (Adopted at the 14th Meeting of the Standing Committee of the National People’s Congress and promulgated by Order No. 34 of the President of the People’s Republic of China on January 20, 1986, and effective as of July 1, 1986 amended in 2000), https://english.mee.gov.cn/Resources/laws/envir_elatedlaws/200710/t20071009_109918.shtml. Article 2 provides as follows: “All productive activities of fisheries, such as aquaculture and catching or harvesting of aquatic animals and plants, in the inland waters, tidal flats, territorial waters and exclusive economic zones of the People’s Republic of China and in all other sea areas under the jurisdiction of the People’s Republic of China shall be conducted in accordance with this Law.”
30. As maritime law enforcement agencies are tasked with maritime rescue, the laws and regulations of many countries use ambiguous expressions. For example, Article 2 of Japan Coast Guard Act uses the phrase “encouragement of the law at sea,” and Article 89 of the U.S. Coast Guard Act (14 U.S.C. § 89) uses the phrase “upon the high seas and waters over which the United States has jurisdiction” and adopts the phrase “upon the high seas and waters over which the United States has jurisdiction.” In China’s case, the problem is that it is considering exercising jurisdiction in waters over which it is inherently incapable of enforcement jurisdiction, waters that it refers to as historical rights that were denied in the South China Sea arbitration award.
31. Marine Environment Protection Law of the People’s Republic of China (Adopted at the 24th Meeting of the Standing Committee of the Fifth National People’s Congress on
“all other sea areas under the jurisdiction of the People’s Republic of China” is thought to refer to the “nine-dash line,” which China claims as its historical rights in the South China Sea. The concept of “historical rights” also appears in China’s domestic law, the Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China. Article 14 of this law stipulates that “the provisions in the Law shall not affect the rights that People’s Republic of China has been enjoying ever since the days of the past” and referred to so-called “historical rights of the People’s Republic of China” in addition to EEZs and continental shelves. Furthermore, the Standing Committee passed the Revised Maritime Traffic Safety Law of the People’s Republic of China on April 29, 2021, which went into effect on September 1, 2021. Article 2 of the law states, “this law shall be applicable to the navigation, berthing, operation and other activities related to maritime traffic safety in the sea areas under the jurisdiction of the People’s Republic of China.” Similar to the CCG Law, this law can be adopted in the area around the Senkaku islands, which are within the nine-dash line in the South China Sea.

After this law came into force, USS Benfold, a U.S. warship assigned to U.S. Seventh Fleet, conducted a freedom of navigation operation (FONOP) by conducting normal operations within twelve nautical miles of Mischief Reef, a low-tide elevation not entitled to a territorial sea under UNCLOS.

August 23, 1982; revised at the 13th Meeting of the Standing Committee of the Ninth National People’s Congress on December 25, 1999 and promulgated by Order No. 26 of the President of the People’s Republic of China on December 25, 1999), http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384046.htm.


Mischief Reef, which is within the EEZ of the Philippines, has several claimants, including the Philippines, but is presently occupied by China. This operation represents a strong U.S. commitment to challenge China’s double violation of its international obligations. It is a repudiation of Chinese domestic law requiring prior permission for foreign warships to pass through its territorial waters and a repudiation of China’s actions in establishing “territorial waters” around an artificial island in the EEZ of the Philippines. The award of the South China Sea Arbitration clearly states “that, as low-tide elevations, Mischief Reef and Second Thomas Shoal do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation.”

The award confirmed that artificial islands could not create territorial waters, EEZs, or continental shelves. Speaking against the Freedom of Navigation Program of the United States, Senior Colonel Tian Junli, spokesperson for the PLA Southern Theater Command, stated, “U.S. behavior is serious interference with China’s sovereignty and security” and “the U.S. is a risk maker and the greatest destroyer of peace and stability in the South China Sea.”

The problem is that the country that enacts these domestic laws in violation of international law is the country with the world’s largest maritime police agency that can overwhelm other States. For example, reportedly, Vietnamese fishermen have been frequently attacked by CCG vessels in the SCS. Another example is that based on its claim to the nine-dash line in the South China Sea, China interferes with the operations of Philippine fishing vessels inside the EEZ of the Philippines because China refuses


to recognize the Philippines’ EEZ claim. Additionally, China has exercised its legislative jurisdiction based on China’s Territorial Waters Law (1992) and established territorial waters around the Senkaku Islands, which are Japanese territory. It is now guaranteed under Chinese domestic law that China exercises jurisdiction over the Japanese territorial sea by claiming the waters around the Senkakus as Chinese territorial waters or “waters under the jurisdiction of China.”

2. Coercive Measures Against Warships and Government Vessels

Article 21 of the CCG Law stipulates:

[W]here a foreign military vessel or foreign government vessel used for a non-commercial purpose violates any law or regulation of China in the waters under the jurisdiction of China, a coast guard agency shall have the power to take necessary precautionary and control measures to stop such vessel and order it to immediately leave the relevant waters; and if it refuses to leave and causes serious harm or presents a serious threat, the coast guard agency shall have the power to take such measures as forcible expulsion and forcible ejection by towing.40

However, Article 32 of UNCLOS provides “with such exceptions as are contained in subsection A and in Articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes” and confirms the immunity of government vessels from the jurisdiction of coastal States. If the CCG takes “forcible ejection by towing” against warships or government vessels, it will be a clear violation of UNCLOS. Moreover, Article 30 of UNCLOS provides that a coastal State may only request that the warship leave its waters. Therefore, if “adopt relevant regulations” means more forceful measures than a request to leave, such domestic regulation will violate UNCLOS as well.41 It is likely that China’s intention to counter the U.S. Freedom of Navigation Program in the South China Sea has been codified in Article 21 of the CCG Law.

Article 120 of the Revised Maritime Traffic Safety Law stipulates “where official vessels of foreign nationality navigating, berthing or operating in the territorial sea of the People’s Republic of China violate the laws or administrative regulations of the People’s Republic of China, they shall be punished

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40. Coast Guard Law of the People’s Republic of China, supra note 27, art. 21.
41. Pedrozo, supra note 26, at 967.
in accordance with the relevant laws and administrative regulations.” In the East China Sea, this could apply to Japanese government vessels conducting marine surveys in the territorial waters of the Senkaku Islands. Furthermore, although it is said to be handled in accordance with relevant laws, as mentioned above, UNCLOS confirms the immunity of warships and other government vessels operating for non-commercial purposes, and if such measures were taken, they would be in violation of UNCLOS, notwithstanding the territorial waters are Japanese.

3. Vague Standard for Use of Weapons

In general, while use of weapons by law-enforcement authority is critically important, the standard for use of weapons in the CCG Law is vague and does not provide clear understanding. Article 22 of the CCG Law stipulates:

> When the national sovereignty, sovereign rights, or jurisdiction is being illegally violated at sea by a foreign organization or individual, or is in imminent danger of illegal violation, a coast guard agency shall have the power to take all necessary measures including the use of weapons to stop the violation and eliminate the danger according to this Law and other applicable laws and regulations.42

It is unclear whether the words “foreign organization” mean “foreign State’s organization” or “foreign terrorism organization.” Given that China’s sovereignty is targeted in the article, “foreign organization” may include “foreign State’s organization.” In addition, Article 46 stipulates that “in any of the following circumstances, the personnel of the coast guard organization may use police equipment or other equipment and tools on the spot.” The article includes “(2) Forcibly evicted or towed away from the ship according to law; (3) Obstacles or nuisances encountered in the execution of duties according to law.” Furthermore, Article 49 states, “Coastal police personnel who use weapons in accordance with the law but are too late to warn or may cause more serious harm after warning, they may use weapons directly.”

In the past, the CCG used weapons based on Articles 10 and 11 of the “People’s Police Law”; Articles 2, 4, 9, 10, and 11 of the “People’s Police Regulations on Security Equipment and Use of Weapons”; and Article 9 of

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42. Coast Guard Law of the People’s Republic of China, supra note 27, art. 22.
the “Regulations on Maritime Law Enforcement Activities by Public Security Agencies.” Based on these provisions,

law enforcement personnel on a maritime patrol vessel may fire shots only when necessary. When firing shots, a verbal warning or warning shots must generally be given first. Firing shots shall not be fired unnecessarily, nor shall they fire upon the vessel under investigation unnecessarily. The use of weapons should be limited to subduing the other party.

In comparison, Article 22 of the CCG Law extended the target to foreign organizations and Articles 46 and 49 seem to admit a more objective usage of weapons. While Article 22 has conditions of “a foreign organization or individual, or is in imminent danger of illegal violation,” it still contends the possible use of weapons by CCG vessels against Japanese fishing boats in the Senkaku Islands, which China calls their territory and under the exercise of China’s jurisdiction. In addition, the provision in Article 46, subparagraph 3, “in the event that an officer of a maritime police agency encounters an obstacle or interference in the course of performing his duties under the law,” means that when a JCG patrol vessel interrupts a CCG vessel’s pursuit of a Japanese fishing vessel in the waters surrounding the Senkakus, the possibility of the use of weapons by the CGC vessel cannot be excluded as “an obstacle or interference” under the CCG Law. Japan needs to be prepared to respond to these new developments in Chinese law.

However, in the case of the use of force against individuals, ITLOS, in its M/V Saiga (No. 2) judgment, has indicated the following three requirements: (1) the use of force must be avoided as far as possible, (2) it must not go beyond what is reasonable and necessary in the circumstances, and (3) all

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43. For the details of Article 10 of the People’s Police Law of the People’s Republic of China and Article 9 of the People’s Police Regulations on Security Equipment and Use of Weapons, see SHIGEKI SAKAMOTO, JAPAN’S MARITIME POLICY AND MARITIME LAW 449 (2d ed. 2019).

44. Japan-China Maritime Traffic Safety Talk Report, PEKING UNIVERSITY SCHOOL OF INTERNATIONAL STUDIES 38–39 (May 27, 2014), https://www.spf.org/projects/docs/%E6%97%A5%E4%B8%AD%E6%8B%B7%E5%B5%B7%E5%91%B1%E5%8A%A0%E5%FA%AE%E8%A9%BA%E5%9B%BE%E5%8C%97%E6%97%A5%E6%8C%8B%E9%8E%9B%EF%BC%98%E6%97%A5%E6%9C%AC%E8%AA%9E%EF%BC%89.pdf.
efforts should be made to ensure that life is not endangered. If a CCG vessel responds to a Japanese fishing vessel in a manner different from these requirements, it will be in violation of international law.

It is reported that these provisions of the CCG Law arose from a key party conference on the “Rule of Law” held in Beijing on November 16 and 17, 2020. At that conference, Chinese President Xi Jinping stated that in order to protect sovereignty and security interests, “the struggle must be waged through the comprehensive use of legislative, law enforcement, judicial and other means” and directed “accelerated strategic deployment of the rule of law in foreign affairs.” On March 8, 2021, Li Zhanshu, Chairman of the Standing Committee of the National People’s Congress of China, in his report on his activities, stated that the purpose of enacting the CCG Law was “to carry out the Xi Jinping strong military idea and meet the need for national defense and military construction in the new era” and revealed that the CCG is actually a “second navy.” In the future, China is expected to accelerate its strategy to counter the United States, Japan, and other countries by developing laws in line with its own assertions.

Even more disturbingly, Article 83 of the CCG Law states, “the CCG should execute missions, including defense operations, based on relevant laws, such as the National Defense Law and the People’s Armed Police Law, and orders from the Central Military Commission.” In other words, it clearly states that the CCG is an organization with the dual functions of a navy conducting defense operations in waters under its jurisdiction (military activities) and a maritime law enforcement agency (law enforcement activities). The law transformed the CCG into an organization with the mission of national defense.

ITLOS, in the case concerning the Detention of Three Ukrainian Naval Vessels of May 25, 2019, in which the interpretation of “military activities” in Article 298(1)(b) of the UNCLOS was at issue, stated in its Order on Provisional Measures that three criteria for distinguishing between military and law enforcement activities should be taken into account. First, the determination “cannot be based solely on whether naval vessels or law enforcement vessels are employed in the activities in question;” however, “[t]his may be a

relevant factor.” Second, ITLOS stated, “[n]or can the distinction between military and law enforcement activities be based solely on the characterization of the activities in question by the parties to a dispute.” In its comprehensive examination, ITLOS made clear that “[t]he distinction between military and law enforcement activities must be based primarily on an objective evaluation of the nature of the activities in question, taking into account the relevant circumstances in each case.”

Third, ITLOS found “it is necessary . . . to examine a series of events preceding the arrest and detention . . . [because] . . . those events may shed light on whether the arrest and detention took place in the context of a military operation or a law enforcement operation.” In this way, ITLOS focused on objective facts and considered the intention of a State party to be collateral. In the event of future physical collisions between CCG vessels and JCG patrol vessels in the waters surrounding the Senkaku Islands, the key characteristic will be the context in which they occur.

Cooperation between the CCG Bureau and the Chinese Navy has already begun. In July 2020, a joint exercise was held between the CCG Bureau and the Chinese Navy on Woody Island (Yongxing Island) in the Paracel Islands. In this exercise, the Chinese Navy’s Type 071 landing ship and other vessels participated. The CCG Bureau’s troops, supported by the navy, landed on the island and conducted a drill to subdue the resisting citizens. Considering that the responsibility of the CCG includes “vigilance of priority islands” under Article 12(1) of CCG Law, the possibility cannot be ruled out that the training may have been conducted with an eye toward landing on the Senkakus. Thus, China is distorting its obligations under UNCLOS by its domestic laws to secure its own maritime interests.

47. Detention of Three Ukrainian Naval Vessel, supra note 13, ¶ 64. For a different opinion, see 2 A HANDBOOK ON THE NEW LAW OF THE SEA 1247–48 (René-Jean Dupuy & Daniel Vignes eds., 1991); NATALIE KLEIN, DISPUTE SETTLEMENT IN THE UN CONVENTION ON THE LAW OF THE SEA 312–13 (2005).

45. Detention of Three Ukrainian Naval Vessel, supra note 13, ¶ 65.


50. Detention of Three Ukrainian Naval Vessel, supra note 13, ¶ 67.

4. Distortion of UNCLOS Through Self-Centered Interpretation

Typical Chinese distortion of UNCLOS can be observed in the interpretation of the South China Sea Arbitration award in 2016. Neighboring States oppose the distortion by China based on the articles of UNCLOS. These articles have been developed through the interpretation of, for example, ITLOS, ICJ, and arbitral tribunals based on Annex VII of UNCLOS. Nevertheless, China has not complied with such rulings and continues to apply its own relevant domestic laws that are in conflict with UNCLOS. Such an attitude not only violates the obligations of State parties to the Convention, which require good faith compliance with the Convention, but also creates conflicts with neighboring countries that abide by UNCLOS.

In the South China Sea arbitration, the arbitral tribunal established under UNCLOS Annex VII, concluded on July 12, 2016, that,

upon China’s accession to the Convention and its entry into force, any historic rights that China may have had to the living and non-living resources within the “nine-dash line” were superseded, as a matter of law and as between the Philippines and China, by the limits of the maritime zones provided for by the Convention.

The tribunal denied China’s claim of the nine-dash line. China, however, claims the award is illegal and invalid and refuses to comply with the decision. Paragraph 1 of Article 296 of UNCLOS stipulates “any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute” and constitutes res judicata. China’s refusal to implement the award violates UNCLOS.

52. Some scholars criticize the award of the South China Sea Arbitration with regard to the tribunal’s interpretation of paragraph 3 of Article 121, as it is contrary to the aims and objectives, preparatory work of UNCLOS, and State practice. See Xu Qi, Reflection on the Awards Concerning the Legal Status and Maritime Entitlement of Marine Features in the South China Sea Arbitration, in MARITIME AND TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA: FACES OF POWER AND LAW IN THE AGE OF CHINA’S RISE 196–200 (Yih-Jye Hwang & Edmund Frettingham eds. 2021).

53. South China Sea Arbitration (Phil. v. China), supra note 36, ¶261.

54. The arbitral tribunal’s interpretation of “rocks,” “human habitation,” and “economic life of their own” in Article 121(3) is not consistent with the precedents of other international courts and national judgments, and in terms of precedents, and therefore, some scholars rated it as ephemeral rather than final. See STEFAN TALMON, THE SOUTH CHINA SEA ARBITRATION JURISDICTION, ADMISSIBILITY, PROCEDURE 377 (2022).
i. Historic Right

Chinese academia is not unified in its understanding of the legal status of the nine-dash line.55 Professor Zou Keyuan Zou states that China’s claim is not a claim to historic waters in the traditional sense but “historic rights with tempered sovereignty,” which is not complete sovereignty, but includes sovereign rights to exploit natural resources (biological and non-biological) and jurisdiction over scientific research of the sea, the establishment of artificial islands, and the marine environment.56 The question, however, is whether a maritime claim of this nature is really recognized under current international law. China has consistently adopted a position of not providing an official explanation for the nine-dash line.57 This position is said to be intentional.58 As a result, as Indonesia points out, there continues to be no clear explanation of the “legal basis, demarcation method, and status”59 of the nine-dash line.

In 2009, China sent a note verbale to the Secretary General of the United Nations that claimed:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof . . . . The above position is consistently held by the Chinese Government and is widely known by the international community.60

57. However, the Chinese government has repeatedly stated that freedom of navigation and overflight will be respected in the South China Sea, so it will not be possible to adopt a legal structure that would restrict this freedom in the nine-dash line.
58. Peter Dutton, Three Disputes and Three Objectives: China and the South China Sea, 63 NAVAL WAR COLLEGE REVIEW 45 (2011). Zhang Haiwen, then deputy director of the Institute of Maritime Affairs of the State Oceanic Administration of China, claimed that China did not have a necessity and obligation to explain the legal nature and meaning of this area. See Taikoku Ikeshima, China’s Dashed Line in the South China Sea: Legal Limits and Future Prospects, 10 WASEDA GLOBAL FORUM 17, 32–33 (2013).
The nine-dash line that encircles a large part of the South China Sea has attracted widespread attention since it was shown on a map attached to China’s note verbale requesting that the Commission on the Limits of the Continental Shelf not consider the joint submission of Malaysia and Vietnam. Notwithstanding its professed adherence to UNCLOS, China claims almost the entirety of the South China Sea, and the majority of the maritime features therein, as its own. Specifically, China claims “sovereignty” or “sovereign rights” to over 70 percent of the South China Sea’s waters and underlying seabed within the nine-dash line. As Professors Florian Dupuy and Pierre-Marie Dupuy have rightly pointed out: “the relation between the map and historic rights is unclear, and maps do not constitute titles in international law.”61 They further expounded: “It is uncertain whether the map has any legal relevance to the delimitation of China’s boundaries in the South China Sea, because China has never provided any explanation as to the meaning of Nine-Dash line.”62 In any case, it is hard to imagine that such a map, which does not even show latitude and longitude coordinates, would be effective in demarcating the boundaries of the ocean.63

Needless to say, the validity of historical rights claims must be assessed internationally, and for this purpose, they must be made known so that other States can actually recognize them. This is because other States must be in a position to protest.64 The roots of the nine-dash line can be traced back to

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62. Id.
64. Id. at 230.
the “Comparative Table of New and Old Names of the Nankai Islands” and “Location Map of the Nankai Islands” drawn by the Regional Bureau of the Ministry of the Interior of the Republic of China on December 1, 1947, and promulgated by the Nationalist Government. In this table and map, the Republic of China drew an eleven-dash line to indicate the geographical scope of its authority over the South China Sea. Thereafter, the People’s Republic of China in 1949 officially circulated a map in which there was an eleven-dash line. Two dashes were removed from the eleven-dash line in 1953 when the territorial title for the Bach Long Vi Island in the Gulf of Tonkin was transferred from China to Vietnam. The first two lines lay within the Beibu Gulf or Gulf of Tonkin, bordered by Vietnam and China. When the nine-dash line emerged in the 1950s, the two States were politically close, with each having a three-mile territorial sea.65

China’s understanding is that the nine-dash line is a historical right of China that is not covered by UNCLOS. China argues that, with the exception of Article 10(6) and Article 15 of UNCLOS, UNCLOS has no provisions on historical rights and that the nine-dash line cannot be resolved through the application of UNCLOS. According to Judge Zhiguo Gao of the ITLOS and Professor Bing Bing Jia of Tsinghua University, the nine-dash line was well-known as a trade route during the great voyages of Zheng He (1405–33) in the Ming Dynasty and was also used for fishing.66

The controversy over these claims of China’s historical rights in the South China Sea was rekindled in relation to Malaysia’s application to the Commission on the Limits of the Continental Shelf for the extension of its continental shelf, dated December 12, 2019. China, in a note verbale to the Secretary-General on December 12, 2019, claimed, “China has historic rights in the South China Sea. The above positions of China comply with relevant international law and practice. They are clear and consistent, and known to the international community including the Government of Malaysia.”67

65. Some Chinese scholars have noted that the international community never spoke out against the nine-dash line when it was declared, and this silence amounted to tacit approval. See Li Jinming & L. Dexia, The Dotted Line on the Chinese Map of the South China Sea: A Note, 34 OCEAN DEVELOPMENT & INTERNATIONAL LAW 290 (2003). The question is how publicly known this declaration was since the contents of the declaration must first be known to neighboring countries before any protest can be made.
In response, a verbal note to the UN Secretary-General from the Permanent Mission of Indonesia to the UN dated May 26, 2020, refuted China, stating that “the Nine-Dash Line map implying historical rights claim clearly lacks international legal basis and is tantamount to upset the UNCLOS 1982.” The Permanent Mission of the United States to the United Nations, in a letter to the Secretary-General of the United Nations dated June 1, 2020, also stated:

Specifically, the United States objects to China’s claim to “historic rights” in the South China Sea to the extent that the claim exceeds the maritime entitlements that China could assert consistent with international law as reflected in the Convention. The United States notes in this regard that the Tribunal unanimously concluded in its ruling—which is final and binding on China and the Philippines under article 296 of the Convention—that China’s claim to historic rights is incompatible with the Convention to the extent it exceeds the limits of China’s possible maritime zones as specifically provided for in the Convention.

Likewise, the United States disagrees with China’s claim.

In response to these protests by various countries, China reiterated in its note verbale dated June 2, 2020, that:

China has historic rights in the South China Sea. China’s sovereignty over Nanhai Zhudao and its maritime rights and interests in the South China Sea are established in the long course of historical practice and consistent with international law, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea (UNCLOS), [and that] the Arbitral Tribunal exercises jurisdiction ultra vires, clearly errs in ascertaining facts and applying the law. The conduct of the Arbitral Tribunal and its award . . . gravely infringes China’s legitimate rights as a sovereign State and a State Party to UNCLOS and thus are unjust and unlawful. The

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Chinese Government has solemnly declared that China neither accepts nor recognizes the awards. This position is consistent with international law.\(^{70}\)

It is clear, however, that it is not the South China Sea arbitration ruling that is wrong, but China. In response to China’s refutation, New Zealand stressed that “there is no legal basis for states to claim ‘historic rights’ with respect to maritime areas in the South China Sea, as confirmed in the 2016 South China Sea Arbitral Award.”\(^{71}\)

ii. China’s Claim of Archipelagic Water

China proclaimed straight baselines around the Xisha/Paracel Islands in the South China Sea and Senkaku Islands in the East China Sea in 1996 and 2012, respectively. The possibility of applying straight baselines to other groups in the South China Sea cannot be totally excluded in the foreseeable future.\(^{72}\) In fact, Professors Lie and Jie argue that Part V of UNCLOS does not clearly define whether the archipelago system is applicable to offshore archipelagos, outlying archipelagos, or mid-ocean archipelagos of continental States.\(^{73}\) An offshore archipelago is an archipelago that does not meet the geographical conditions specified in either Article 7 (straight baselines) or Article 47 (archipelagic baselines) of UNCLOS. As Professors Robin Churchill and Vaughan Lowe clearly point out, “only an archipelagic State can draw archipelago baselines around an archipelago.”\(^{74}\) Thus, archipelago States do not include mainland States which possess non-coastal archipelagos, such as Demark (with the Faroes), Ecuador (the Galapagos Islands), Norway (Svalbard), Portugal (the Azores), and Spain (the Canaries). This means that archipelagic baselines cannot be drawn around such archipelagos.


\(^{73}\) Jiang Li & Zhang Jie, A Preliminary Analysis of the Application of Archipelagic Regime and the Delimitation of the South China Sea, 2010 CHINA OCEAN LAW REVIEW 167 (2010).

nor in many cases would it appear to be justifiable under the law of the Sea Convention to construct straight baselines around them.\textsuperscript{75}

The supporters of the baselines surrounding a mid-ocean archipelago commonly claim that there is an “uncertainty,” “ambiguity,” or a “lacuna” within the UNCLOS regime. Nevertheless, it does not mean that the coastal State may draw a baseline even if the archipelagos do not satisfy the conditions of either Article 7 or 47.\textsuperscript{76}

China has strengthened its claim to the Nanhai Zhuado (including Nansha Islands) as offshore archipelagos or mid-ocean archipelagos. On October 15, 2015, Zhang Ying of the China Institute for Marine Affairs (formerly the Institute of Maritime Affairs of the State Oceanic Administration of China) published an article titled \textit{Analysis of the Legal Status of the Nansha Archipelago} in the \textit{China Ocean News}, which further deepened the argument of the 2014 Chinese Foreign Ministry “position statement,” arguing that the Philippines is taking the title issue of individual reefs to court, but the Nansha Islands are an archipelago and should be treated as a unified entity.\textsuperscript{77} According to Professor Zhang, the Nansha Islands, China’s offshore archipelagos, have been regarded as a single geographical, economic, and political unit since the Song Dynasty and should be treated as an indivisible unit that meets the definition of “archipelago” in Article 46(b) of UNCLOS and is therefore entitled to a straight baseline.\textsuperscript{78} However, the Arbitration Tribunal stated, “[t]he Tribunal is aware of the practice of some States in employing straight baselines with respect to offshore archipelagos to approximate the effect of archipelagic baselines. In the Tribunal’s view, any application of straight baselines to the Spratly Islands in this fashion would be contrary to the Convention.”\textsuperscript{79} Professor Ashley J. Roach clearly points out: “Using straight

\textsuperscript{75} Id.

\textsuperscript{76} Yukari Ishii, \textit{A Critique Against the Concept of Mid-Ocean Archipelago}, in \textbf{IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA} 133, 136–37 (Dai Tamada & Keyuan Zou eds., 2021).

\textsuperscript{77} Zhang Ying, \textit{Analysis of Legal Status of Nansha Islands, CHINA OCEAN NEWS (ZHONGGUO HAIYANG BAO)} (Oct. 10, 2015).

\textsuperscript{78} Id.

\textsuperscript{79} South China Sea Arbitration, supra note 36, ¶ 575; see also \textit{Reading Between the Lines: The Next Spratly Legal Dispute}, ASIA MARITIME TRANSPARENCY INITIATIVE (Mar. 21, 2019), https://amti.csis.org/reading-between-lines-next-spratly-dispute/.
baselines to enclose offshore archipelagos—that do not qualify as archipelagic states under Article 46 of the Law of the Sea Convention—is not authorized by the Convention or customary international law.”80

In response to China’s argument, New Zealand issued a note verbale in 2021 and strongly opposed China:

There is no legal basis for continental states to claim archipelagic status. UNCLOS provides that archipelagic states must consist wholly of one or more archipelagos. There is therefore no legal basis on which to draw straight archipelagic baselines in the South China Sea, nor any legal basis to draw straight baselines around island groups in the South China Sea.81

In a note verbale to the Secretary-General of the United Nations dated August 16, 2021, China rejoined as follows:

III. . . . Foreign warships entering the territorial sea of a coastal State shall respect the relevant laws of the coastal State. It is consistent with international law, including UNCLOS, and international practice. China firmly opposes any country infringing on the sovereignty or undermining the security of a coastal State under the pretext of “freedom of navigation” or “innocent passage.”

IV. UNCLOS does not exclude a coastal State’s historic rights that have been established in the long-term practice. Relevant international judicial cases have recognized the historic rights. The complete denial of the historic rights by the South China Sea arbitration awards seriously distorts international law including UNCLOS. This is extremely wrong.82

China has publicly stated that it will not abide by the arbitration decision, which means that the permanent member of the UN Security Council will deny the “Rule of Law” in the international community. In order to establish the “Rule of Law” in the South China Sea, China, as a responsible superpower, must respect the award, and at the same time, the international community must not allow China to change the status quo by force.

Just before the South China Sea Arbitration award, on June 25, 2016, China announced “The Declaration of the Russian Federation and the People’s Republic of China on the Promotion of International Law” with Russia. In the declaration, “the People’s Republic of China and the Russian Federation reaffirm the principle of peaceful settlement of disputes and express their firm conviction that States shall resolve their disputes through dispute settlement means and mechanism that they have agreed upon.”

However, if the principle of peaceful settlement of disputes only permits settlement by agreement of both parties to the dispute, the procedures of mandatory settlement under Part XV of UNCLOS can hardly exist. The international community must not tolerate a breach of its international obligations by ignoring the binding decision on China and must strive to make the South China Sea a peaceful sea to which UNCLOS applies.

In November 2002, China and the ASEAN countries agreed on the Declaration on the Conduct of Parties in the South China Sea (DOC). The DOC is merely a political pledge and not legally binding. The problem is that even after this agreement, China continued to ignore the DOC and proceeded to make territorial possession of reefs and other areas in the South China Sea a fait accompli. After the South China Sea arbitration, negotiations got underway between China and ASEAN countries for the early formulation of a legally binding Code of Conduct (COC) to replace the DOC. China has three basic demands regarding COC: the region should not be covered by the UNCLOS treaty, joint military exercises with countries outside the region must have the prior consent of all parties to the agreement, and resource development should not be conducted with countries outside the region. However, if the ASEAN countries were to accept these demands, such a COC would enhance and legitimize China’s position, which would be detrimental to regional peace and stability. Of course, it would invalidate the tribunal’s award on the nine-dash line.

87. MUNTARBHORN, supra note 85, at 78.
Furthermore, based on its own domestic law, China aggressively claims that the waters within the nine-dash line are “waters under the jurisdiction of China,” and Article 3 of the CCG Law adopts the phrase “waters under the jurisdiction of China” and specifies that the CCG will conduct law enforcement operations to protect maritime interests in waters over which they cannot exercise jurisdiction under UNCLOS (waters within the nine-dash line in the South China Sea). China, which has the world’s largest maritime police agency, does not recognize the Philippines’ EEZ claim and prevents Philippine fishing vessels from operating there. Such unilateral law enforcement activities in the undelimited sea area violate Articles 74(3), 83(3), and 300 of UNCLOS in the sense that they call into question the willingness to settle disputes in good faith. Youri Logchem claims this with the following expression:

For example, a State by starting with unilateral drilling or through taking enforcement action in response to alleged violation of its rights has seemingly lost its willingness to negotiate in good faith on settling dispute. Also, the possibility of an abuse of right might enter into the picture if a State decides to act on its rights with regard to a disputed maritime area, by authorizing an activity or starting with a physical activity unilaterally.88

China has thus enacted domestic laws in violation of UNCLOS and has made its own interpretations of UNCLOS provisions in order to secure its maritime rights and interests. China’s behaviors have eroded the international legal order of the sea and are a dangerous element of that order’s stability.

III. CONCLUSIONS

The world must remain vigilant against China’s aggressive maritime expansion. That is because there are “cases in which Chinese authorities give explanations which are not true or refuse to acknowledge facts about Chinese military activities.”89 Hong Kong’s one-country-two-systems system, which was supposed to be guaranteed until 2034 by the 1984 Sino-British Joint Declaration on the Question of Hong Kong, was buried by China’s domestic

law: the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region. The treaty obligation that the fundamental human rights and freedoms of the people of Hong Kong “will remain unchanged for 50 years” was breached by China. China ignores the principle of *pacta sunt servanda*, which means that “treaties must be observed.”

China seemingly believes that treaties are binding on other countries and not on itself if they threaten China’s system of governance or core interests. In short, China is a country that either abides by treaties or does not abide by them on a case-by-case basis. As pointed out earlier, there is no article in China’s Constitution that stipulates compliance with treaties.

Recent actions in the South China Sea and East China Sea by China, a maritime power, seek to “change the status quo by power,” backed by its military power and maritime police agencies. There is an anti-hegemony clause in Article 2 of the 1978 Treaty of Peace and Friendship between Japan and the People’s Republic of China that provides that “the Contracting Parties declare that neither of them should seek hegemony in the Asia-Pacific region or in any other region and that each is opposed to efforts by any other country or group of countries to establish such hegemony.” While Japan and China may have had the former Soviet Union in mind at the time, now Asian countries, including Japan, think that China should be the concern of this clause.

As a major power in the twenty-first century, China will continue to conclude numerous multilateral and bilateral treaties. There is no rule in international law that once China characterizes an issue covered by a treaty provision as a “core interest,” it is exempt from the obligation to comply with that treaty.

UNCLOS is a treaty that all nations of the international community are expected to abide by in order to protect the international order of the seas. If China aspires to be a great nation, it must be a State that abides by the Convention.

On the other hand, getting China to understand the concept of the “Rule of Law” in the international community will be easier said than done. According to some Chinese scholars, “the rules and operations of international law are, to a large extent, a political game, rather than a purely legal issue. In

this case, ignoring the close connection between international law and international politics, or ignoring the political context of international law, can easily lead to wrong judgments.”92

Chinese leadership speaks of “legalism” domestically but never of the “Rule of Law.” The “Rule of Law” is indeed a multifaceted concept, but its essence is the idea that State power is bound by law, and it is those in power who are bound. The purpose is to guarantee the rights and freedoms of those who are governed by it. However, what China calls “legalism” aims at governing the nation by law, and it is the people who are bound by law, not the government or State power. In the case of legalism, as long as a law has the form of a law, it is a law, even if it is a bad law. In China, where compliance with international law is not a constitutional requirement, even domestic laws that violate international law will enter into force. The international community must continue to demand that China abide by UNCLOS.

On February 17, 2017, at a National Security Work Conference in Beijing, Chinese President Xi Jinping declared the international order was clearly in need of reform to cope with the demands of a new age, and China was well qualified to take the reins of leadership.93 At the May 2021 seminar, “Xi Jinping’s Thought on Legalism and International Law,” co-sponsored by the China Society of International Law and Hainan University, the application of international law from the perspective of studying and operating international law with the Xi Jinping’s thought on legalism as guidance was discussed.94 According to an article by a Chinese researcher, Xi Jinping stated that:

the basic principles and rules of international law are the cornerstone for building and maintaining the fundamental order of the modern international community . . . [and that] . . . promoting the perfection of international law is an important means to reform the unfair and unreasonable global governance system and promote the building of a more just and rational international order and international system. It is an important means of promoting the establishment of a more just and rational international order and system, . . . [and that] . . . all states should oppose distortions of international law and to exercise their rights to oppose acts that

violate the legitimate rights and interests of other states in the name of the “Rule of Law” and undermine peace and stability.95

That is to say, Xi Jinping recognizes that there are distortions in the current international legal order and that it is necessary to establish a more just and rational international order and system, in other words, to perfect an international legal order that reflects China’s interests. It is true that the current international legal order may not be perfect in all respects, but imperfection does not mean that one can ignore international legal rules that are inconvenient to one’s own country.

At the 20th National Congress of the Chinese Communist Party, which concluded on October 22, 2022, “two establishments” were included in the Constitution of the Communist Party to China, establishing Xi’s “core position” within the Chinese Communist Party and the “leading position” of his ideology. This means we need to closely watch how China will deal with international law through the “Xi Jinping’s thought on legalism idea” in the future. It is necessary to carefully assess whether China will shift to a stance of faithful compliance with UNCLOS, or whether it will emphasize the distortion of UNCLOS and maintain domestic legislation and interpretations that modify UNCLOS for domestic implementation.96
