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“Maritime Security in the Indo-Pacific and the UN
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Chinese Maritime Coercion in East Asia: What Tools Can be Used to Respond?

Chairmen Bera and Courtney, Ranking Members Chabot and Wittman, distinguished members of the House Committee on Foreign Affairs subcommittee on Asia, the Pacific, Central Asia and Nonproliferation, and the House Committee on Armed Services subcommittee on Seapower and Projection Forces, thank you for the opportunity today to testify at this joint hearing on “Maritime Security in the Indo-Pacific and the UN Convention on the Law of the Sea.”

China’s maritime “gray zone” operations pose growing challenges to the United States and our allies and partners in maritime East Asia. These operations are designed to seek to alter the status quo without provoking a conventional military response, and therefore are difficult to counter effectively. The U.S. is at a disadvantage since it lacks gray zone forces of its own in the region with which to contest Beijing’s paranaival activities.

My testimony today will focus on Chinese destabilizing behavior in the East China Sea, South China Sea and the Taiwan Strait. After a brief review of recent developments, I will discuss the potential application of international law and diplomatic mechanisms to address coercion, and more broadly to manage and resolve territorial and maritime disputes in East Asia. I will conclude with specific policy recommendations to help counter China’s gray zone tactics.

Recent Developments: Chinese Maritime Coercion Against Neighbors

East China Sea

China’s maritime strategy requires exerting sea denial, and eventually sea control, over the waters between China’s coastline and the first island chain, which extends from the Japanese-claimed Kuril islands to Taiwan, the Philippines, and Borneo, Indonesia. The Chinese are also amassing capabilities to extend their defensive depth to the second island chain, which stretches from the Marianas, to Guam, and the Caroline Islands. The Chinese navy routinely sends its warships into waters around Japan and through the straits of the Ryukyu Islands, exercising its ability to transit chokepoints and reach the blue waters of the Pacific Ocean.

In early April 2021, the Chinese aircraft carrier Liaoning and five escort ships sailed through the Miyako Strait. It was the fifth time that the Chinese carrier has sailed through the strategic chokepoint since it was commissioned in 2012. The strike group reportedly included for the first time the Type 055 Renhai-class guided-missile destroyer, which is equipped with vertical launch missiles and is capable of launching long-range cruise missiles and anti-ship weapons.¹

¹ “Large Chinese destroyer spotted in waters near Japan for first time,” *Japan Times*, March 20, 2021, <https://www.japantimes.co.jp/news/2021/03/20/national/china-destroyer-japan/>; “China sends aircraft carrier strike

The Sino-Japanese contest over the Senkaku Islands, and the broader dispute over the Continental Shelf and Exclusive Economic Zone (EEZ) boundary in the East China Sea, should be seen in the context of China's broader strategy to expand control over the East China Sea to bolster its maritime security and geostrategic position.² Since 2012, China has been engaged in a persistent effort to unilaterally change the status quo around the Senkaku Islands, which are administered by Japan but also claimed by China and Taiwan. Chinese Coast Guard vessels operate almost daily in the contiguous zone, which extends for 12nm beyond the territorial sea. Last year, Chinese vessels made a record 333 trips into the contiguous zone, exceeding the previous year's record of 282 trips. These law-enforcement ships intrude into the territorial sea around the Senkakus at a frequency of about three times per month.

Chinese coast guard vessels harass Japanese fishing boats operating near the Senkaku Islands. In one instance, Chinese vessels sailed on a Japanese fishing boat's tail for 27 hours and came as close as 40-50 meters from its stern. Moreover, Chinese "white hulls" are sailing for longer periods inside the Senkakus' territorial waters. In October 2020, two Chinese coast guard ships sailed inside the 12nm around the islands for a record 57 hours and 39 minutes.³ Such attempts to exercise law-enforcement powers indicate that China has gone beyond mere presence operations and is attempting to challenge Japanese administrative control.⁴ Chinese actions around the Senkakus undermine the principles enshrined in the Convention on the Law of the Sea.

China's recent passage of a new Coast Guard law has drawn strong concerns from Japan, as well as from the United States, the Philippines, and other regional governments. The new law stipulates that China's Coast Guard (CCG) has the authority to respond to situations in which the nation's sovereignty is infringed. It allows CCG vessels to use forcible measures, including weapons, against foreign ships that it sees as illegally entering its waters, sparking worries that Japanese ships navigating around the Senkaku Islands will be targeted. Article 3 of the Coast Guard law defines the geographical scope of application to "waters under the jurisdiction of China," but what constitutes China's jurisdictional waters is left ambiguous.

Especially troubling are Articles 20, 21 and 22 of the law. Article 22 empowers the coast guard to "take all necessary measures including the use of weapons" in response to violations or imminent violations of Chinese national sovereignty, sovereignty rights or jurisdiction. Article 20 grants the CCG the power to order or force the removal of unapproved foreign buildings, structures, or "fixed or floating device of any kind in the waters or islands under the jurisdiction of China. Article 21 grants the CCG powers to issue stop or leave orders to foreign military or government vessels that violate "any law or regulation of China in the waters under the jurisdiction of China" and, if the vessel refuses and "causes serious harm or presents a serious threat," to forcibly expel the vessel. The law is widely interpreted as signaling a tougher

group near Okinawa in message to U.S. and Japan," *The Japan Times*, April 5, 2021, <https://www.japantimes.co.jp/news/2021/04/05/national/china-aircraft-carrier-okinawa-liaoning/>.

² Peter Alan Dutton, *Securing the Seas: China's Quest for Maritime Security through International Law of the Sea*, Dissertation: King's College London, December 2018.

³ "Chinese ships remain in Japan waters near Senkakus for record time," *Kyodo News*, October 13, 2020, <https://english.kyodonews.net/news/2020/10/8c669beaa966-update4-chinese-ships-remain-in-japan-waters-near-senkakus-for-record-time.html>.

⁴ Alessio Patalano, "What is China's Strategy in the Senkaku Islands?" *War on the Rocks*, September 10, 2020, <https://warontherocks.com/2020/09/what-is-chinas-strategy-in-the-senkaku-islands/>.

approach to enforcing China's maritime claims, but it remains to be seen whether it will be used to justify more aggressive actions by the CCG against Japan and other Chinese neighbors.⁵

The new law may increase the risk of conflict between China and Japan, which could involve the United States. In an effort to prevent Chinese miscalculation and bolster deterrence, the Biden administration has repeatedly reaffirmed that the U.S.-Japan security treaty covers the Japanese-administered Senkaku Islands. Even if conflict is averted, China's use of law enforcement vessels for coercive purposes to advance its territorial claim poses a threat to the international maritime rules-based order.

Taiwan

China is implementing a multifaceted pressure campaign against Taiwan that is aimed at preventing its democratically elected government from pushing for independence and eroding the will of the people of Taiwan to resist so they will consent to unification with China. Military coercion against Taiwan is being employed as a broader strategy of psychological warfare that also includes diplomatic isolation and economic pressure. It is also intended to warn the United States against strengthening ties with Taiwan in ways that threaten Chinese redlines.

The operational tempo of Chinese military coercion against Taiwan has accelerated in the past six months. In September 2020, Chinese fighter jets and bombers crossed the median line of the Taiwan Strait almost 40 times during the visit to Taipei of then-U.S. Under Secretary of State for economic, energy and environmental affairs, Keith Krach. Since then, incursions by PRC military aircraft into Taiwan's Air Defense Identification Zone (ADIZ) have occurred almost daily. The flights complement amphibious landing exercises, naval patrols, and cyber attacks,

The PLA Air Force (PLAAF) flew about 380 sorties near Taiwan's southwest coast last year and the tally this year has already reached 260 sorties so far.⁶ On April 12, 2021 twenty-five Chinese military aircraft flew in Taiwan's ADIZ—14 Jian-16 fighter jets, four Jian-10 fighter jets, four H-6K bombers, two Y-8 anti-submarine warfare planes, and one KJ-500 airborne early warning aircraft—marking the largest incursion by Chinese planes to date. The flights took place a day after U.S. Secretary of State Antony Blinken condemned Beijing's "increasingly aggressive actions" against Taiwan and warned that any attempt to change the status quo would be a "serious mistake."

Chinese airpower displays also serve the purpose of providing operational training for PLA AF crews as well as opportunities for signals intelligence collection. Bomber flights signal increasing Chinese capabilities as well as strategic resolve to defend Chinese claims against the

⁵ "Force Majeure: China's Coast Guard Law in Context," Asia Maritime Transparency Initiative, Center for Strategic and International Studies, March 30, 2021, <https://amti.csis.org/force-majeure-chinas-coast-guard-law-in-context/>.

⁶ Alistair Gale, "U.S. Concerns About China Put Focus on Taiwan's Defensive Weakness," *The Wall Street Journal*, April 22, 2021, <https://www.wsj.com/articles/u-s-concerns-about-taiwan-put-focus-on-islands-defensive-weakness-11619113253>.

United States. Circumnavigations of Taiwan by Chinese electronic warfare (EW) aircraft enable the PLA to learn more about Taiwan's east coast defenses.

Chinese warships routinely conduct military drills near Taiwan, to intimidate its government and to practice "anti-access, area denial" maneuvers that in wartime could prevent the U.S. from coming to Taiwan's defense. Both of China's aircraft carriers, the Liaoning and the Shandong, have sailed through the Taiwan Strait. In early April, after transiting the Miyako Strait, a Chinese aircraft carrier battle group led by the Liaoning sailed close to Taiwan as part of a blue-water training exercise. A PLA Navy spokesperson stated that such naval exercises would be held on a "regular basis" going forward. The purpose, he said, is to "enhance its capability to safeguard national sovereignty, safety and development interests."⁷

The risk of a Chinese attack on Taiwan exists, but it is not an imminent danger. Even as the PRC refuses to renounce the use of force against Taiwan and continues to prepare for military contingences, achieving unification peacefully remains Beijing's preference. Like his predecessors, Xi Jinping views the Taiwan issue as fundamentally a political problem, not a military one.⁸ Beijing's policy toward Taiwan, which Xi inherited from his predecessor Hu Jintao and was reaffirmed most recently at the annual National People's Congress this past March, is to pursue "peaceful development of cross-Strait relations." On a recent inspection tour in Fujian, Xi urged provincial officials to "be bold in exploring new paths for integrated cross-Strait development," including offering economic policies that would benefit the people of Taiwan and deepen mutual understanding.⁹ Rather than visit a front-line PLA unit, Xi inspected a mobile corps of the People's Armed Police Force.¹⁰

Xi Jinping's October 2013 statement that cross-Strait political differences must eventually be resolved step by step, and not passed down from generation to generation¹¹, reflects growing impatience to begin political negotiations with Taiwan, but does not suggest urgency to achieve unification within a specific timeframe. Xi's assertion in a January 2019 speech that reunification is "critical to the rejuvenation of the Chinese nation" is not likely a hard deadline.¹² There is no evidence that Xi's intended message was that achieving national rejuvenation, which is set for the 100-year anniversary of the founding of the PRC in 2049, is impossible without reunification.

⁷ "China says its carrier group exercising near Taiwan, drills will become regular," *Reuters*, April 15, 2021, <https://www.reuters.com/article/china-taiwan-security-idINKBN2BT055>.

⁸ Evan S. Medeiros and Jude Blanchette, "Beyond Colossus or Collapse: Five Myths Driving American Debates About China," *War on the Rocks*, March 19, 2021, <https://warontherocks.com/2021/03/beyond-colossus-or-collapse-five-myths-driving-american-debates-about-china/>.

⁹ "Xi Urges Chinese Province to Deepen Ties with Democratic Taiwan," *Bloomberg*, March 25, 2021, <https://www.bloomberg.com/news/articles/2021-03-25/xi-urges-chinese-province-to-deepen-ties-with-democratic-taiwan?sref=e0X6oOeR>.

¹⁰ Li Gang, "Xi inspects armed police corps in Fujian," *People's Daily Online*, March 27, 2021, <http://en.people.cn/n3/2021/0327/c90000-9833149.html>.

¹¹ Alan D. Romberg, "From Generation to Generation: Advancing Cross-Strait Relations," Taiwan and Cross-Strait Relations Project, Stimson Center, February 22, 2014, <https://www.stimson.org/wp-content/files/file-attachments/CLM43AR.pdf>.

¹² Xi Jinping, "Speech at the 40th Anniversary Conference of the Book of Compatriots to Taiwan," (January 2, 2019), Xinhua, http://www.xinhuanet.com/tw/2019-01/02/c_1210028622.htm.

Invading Taiwan would be an extremely risky proposition. The Chinese know that an attempt to seize Taiwan by force would very likely result in a military conflict with the United States. Such a war could quickly escalate, and the PLA would not be assured of complete victory. Military conflict with the US would jeopardize the realization of Xi's vast domestic agenda. A failed attempt or a prolonged, costly war would risk undermining Communist Party legitimacy at home.¹³

While the U.S. should take measures to strengthen deterrence in the Taiwan Strait, Chinese coercion against Taiwan poses the most immediate and urgent challenge. China's gray zone pressure is putting strain on Taiwan's political, economic, and military institutions and eroding the confidence of Taiwan's people in their future as well as their confidence in the United States.

South China Sea

China is seeking to expand control over the waters and airspace of the South China Sea. Since 2009, China has advanced its vast territorial claims in the contested waters through a variety of gray zone tactics, including building artificial islands and transforming them into military outposts, establishing administrative institutions¹⁴, using diplomatic pressure, employing economic incentives and punitive measures, conducting scientific research operations, applying domestic laws, and relying on non-military assets such as coast guard vessels and maritime militia.

The availability of China's outposts in the Spratly Island chain for resupply and replenishment has enabled sustained lengthy deployments throughout the nine-dash line for the conduct of persistent harassment and coercion operations. In recent years, Chinese state-owned survey vessels, coast guard and paramilitary boats have harassed oil and gas operations in Vietnam's exclusive economic zone, while at the same time Chinese marine research vessels have undertaken seismic surveys of oil and gas blocks off Vietnam's coast. Thus, as Beijing attempts to prevent new unilateral energy activities anywhere within its "nine-dash line," which demarcates its claims in the South China Sea, China is unwilling to refrain from exploring and exploiting hydrocarbons in disputed waters.

Chinese fishing and coast guard vessels have also operated without permission in the EEZs of Vietnam, Malaysia, the Philippines, Brunei, and Indonesia. In November 2020, a CCG vessel and a Royal Malaysian Navy ship were involved in a standoff over hydrocarbon exploration after the Chinese vessel harassed a drilling rig and its supply ships operating just 44 nautical miles from Malaysia's Sarawak State.¹⁵ In 2020, the CCG not only maintained a persistent presence at

¹³ Richard Bush, Bonnie Glaser, and Ryan Hass, "Opinion: Don't Help China By Hying Risk Of War Over Taiwan," *NPR*, April 8, 2021, <https://www.npr.org/2021/04/08/984524521/opinion-dont-help-china-by-hying-risk-of-war-over-taiwan>.

¹⁴ Zachary Haver, "Sansha and the Expansion of Chinas South China Sea Administration," Asia Maritime Transparency Initiative, Center for Strategic and International Studies, May 12, 2021, <https://amti.csis.org/sansha-and-the-expansion-of-chinas-south-china-sea-administration/>.

¹⁵ "China and Malaysia in Another Staredown Over Offshore Drilling," Asia Maritime Transparency Initiative, Center for Strategic and International Studies, November 25, 2020, <https://amti.csis.org/china-and-malaysia-in-another-staredown-over-offshore-drilling/>.

Second Thomas Shoal, Luconia, Shoals and Scarborough Shoal, but even increased the frequency of patrols during the pandemic.¹⁶

Beginning in December 2018, repair and upgrade activities by the Philippines on Thitu Island—Manila’s largest occupied feature in the Spratlys—led to sustained harassment by swarms of Chinese maritime militia vessels.¹⁷ This past March, hundreds of these lightly armed paramilitary boats amassed at Whitson Reef, a boomerang-shaped submerged land feature that is part of Union Banks and is located inside the Philippines’ EEZ.¹⁸ The presence of over 200 Chinese maritime militia vessels prompted concern that China may attempt to occupy the reef, reclaim it by dredging, and construct a runway and other military facilities on it. Whitson Reef is situated only 170 nautical miles west of Palawan.

China’s Foreign Ministry insisted that the vessels were fishing boats taking refuge from inclement weather, but satellite imagery proved otherwise.¹⁹ Two experts from the U.S. Naval War College, Andrew Erickson and Ryan Martinson, identified several of the boats as part of known maritime militia units that conduct coercion and harassment regularly in the South China Sea.²⁰ Their research has proven that China’s maritime militia is organized and controlled by the Chinese state and operates under a direct military chain of command to conduct Chinese state-sponsored activities.

Chinese operations at Whitson Reef are just the latest episode of Beijing’s use of its expansive kit of coercion tools. To aid its harassment of other claimants’ activities within the nine-dash line, China has deployed surveillance platforms that are equipped with sensors and communications, and a network of sonar arrays laid on the sea floor. These capabilities are bolstering China’s ability to monitor, interfere with, and eventually control all activities that take place in the contested waters of the South China Sea.

¹⁶ “Still on the Beat: China Coast Guard Patrols in 2020,” Asia Maritime Transparency Initiative, Center for Strategic and International Studies, December 4, 2020, <https://amti.csis.org/still-on-the-beat-china-coast-guard-patrols-in-2020/>.

¹⁷ “The Long Patrol: Staredown at Thitu Island Enters its Sixteenth Month,” Asia Maritime Transparency Initiative, Center for Strategic and International Studies, March 5, 2020, <https://amti.csis.org/the-long-patrol-staredown-at-thitu-island-enters-its-sixteenth-month/>.

¹⁸ Steven Lee Meyers and Jason Gutierrez, “With Swarms of Ships, Beijing Tightens Its Grip on South China Sea,” *New York Times*, April 3, 2021, <https://www.nytimes.com/2021/04/03/world/asia/swarms-ships-south-china-sea.html>.

¹⁹ Brad Lendon, “Beijing has a navy it doesn’t even admit exists, experts say. And it’s swarming parts of the South China Sea,” *CNN*, April 13, 2021, <https://www.cnn.com/2021/04/12/china/china-maritime-militia-explainer-intl-hnk-ml-dst/index.html>.

²⁰ Andrew S. Erickson and Ryan D. Martinson, “Records Expose China’s Maritime Militia at Whitsun Reef,” *Foreign Policy*, March 29, 2021, <https://foreignpolicy.com/2021/03/29/china-militia-maritime-philippines-whitsunreef/>.

International Legal, Diplomatic, and Other Tools for Managing and Resolving Maritime Disputes

International law can play an important role in managing maritime disputes, but only if the parties to the dispute are willing to avail themselves of the law.²¹ International treaty law—in particular the United Nations Convention on the Law of the Sea (UNCLOS)—has established norms of behavior among sovereign states. The convention has been ratified by 168 parties, which includes 167 states and the European Union. An additional 14 UN member states have signed, but not ratified the convention.

Although China has ratified UNLCOS, it has not yet fully adopted its norms. For example, China maintains numerous excessive, non-normative baseline claims, as well as a claim of historic and other rights within the nine-dash line that were ruled to have “no legal basis” under international maritime law by an arbitral tribunal in July 2016. Beijing’s persistent claim of such rights in a large swath of the South China Sea is the main source of friction between China and its Southeast Asian neighbors.

In addition to UNCLOS, countries can negotiate bilateral or multilateral agreements to prevent incidents or manage them if they occur. Such arrangements are consistent with UNCLOS, since the Convention provides an obligation to settle disputes by any peaceful means chosen by the Parties.

Beijing has preferred to use bilateral mechanisms to manage or settle territorial disputes. In one instance, bilateral negotiations succeeded in resolving a portion of the maritime boundary between China and Vietnam in the Gulf of Tonkin. More recently, China established “bilateral consultation mechanisms” with the Philippines (2016) and with Malaysia (2019). These are essentially platforms for dialogue and cooperation, not dispute settlement mechanisms.

In 2018, Japan and China established a bilateral maritime and aerial communication mechanism which is aimed at averting unintended clashes between Japan’s Self-Defense Forces (SDF) and the PLA. The two countries have agreed to establish a hotline between their defense authorities, set up rules for direct communications in the event that SDF and PLA forces come into close proximity, and host annual meetings of director-general and division chief level officials. In addition, the two sides agreed that their vessels and aircraft would communicate using protocols in the Code of Unplanned Encounters at Sea (CUES), which was adopted in 2014 by 21 countries, and the Convention on International Civil Aviation. The Sino-Japanese bilateral

²¹ This section draws from publications by and conversations with Peter Dutton, a leading scholar on maritime international law, including Peter Dutton, “Viribus Mari Victoria? Power and Law in the South China Sea,” (paper presented at Managing Tensions in the South China Sea, Washington, D.C., June 5-6, 2013), https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/attachments/130606_Dutton_ConferencePaper.pdf; and Peter Dutton, “Testing the Boundaries: A Research Report for the Maritime Dispute Resolution Project,” U.S.-Asia Law Institute, <https://usali.org/testing-the-boundaries>.

mechanism is of limited utility in managing tensions around the Senkaku Islands, however, because the mechanism does not cover Japanese and Chinese coast guard vessels.²²

Multilateral approaches have also been used to manage territorial disputes in the South China Sea. In November 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea, which commits the parties to “undertake to resolve their territorial and jurisdictional disputes . . . through friendly consultations and negotiations.”²³ In 2016, Chinese and ASEAN officials approved guidelines for a hotline between foreign ministries for use during maritime emergencies. They also agreed that CUES would apply to naval vessels sailing in the South China Sea.

China and ASEAN started negotiations on a Code of Conduct (COC) in 2013 to regulate maritime behavior in the South China Sea. In 2017, they reached a draft Framework COC, and in 2018, a Single Draft Negotiating Text. The following year a 20-page First Draft was completed. The document contains proposals to adopt protocols to operationalize the Parties’ obligation to exercise self-restraint.²⁴ Beijing has set a target of 2021 to complete the COC, but it is highly unlikely that an agreement will be reached by the end of this year.

So far, China-ASEAN negotiations have made little progress toward lowering tensions in the South China Sea. One problem is that Southeast Asia’s claimants remain wary of one another; rather than cooperate to cope with an ever more powerful China, they have mostly opted to pursue independent strategies to deal with Beijing. In addition, there are serious disagreements between China and the ASEAN claimants on whether the COC should be legally binding; on its geographical scope; and on the code’s dispute resolution process. Moreover, China has actively sought to divide ASEAN to prevent it from applying collective pressure on China. Although there is potential for the COC to play a role in preventing and managing disputes, there is widespread skepticism that it will play an effective role in addressing the sources of instability in the South China Sea. The crux of the problem is that ASEAN countries want to curb China’s aggressive behavior inside their EEZs, but China wants to avoid any constraints on its actions.

A third available means of international dispute resolution involves one state party inviting the other party to submit the dispute to conciliation. This is a voluntary process under UNCLOS. A conciliation commission composed of experts selected by the parties is established, which then makes proposals to the parties that they can accept or reject. Conciliation under UNCLOS is extremely rare—the only case to date is that between Timor-Leste and Australia. However, it could be an option for parties to the South China Sea disputes to pursue.

When the above approaches have failed, state parties to UNCLOS are permitted under the convention to initiate “compulsory procedures entailing binding decisions.” These include adjudication and arbitration, which can take place in one of three venues: the International

²² Shinichi Akiyama, “Japan, China launch maritime-aerial communication mechanism,” *The Mainichi*, June 8, 2018, <https://mainichi.jp/english/articles/20180608/p2a/00m/0na/002000c>.

²³ Association of Southeast Asian Nations, “Declaration on the Conduct of Parties in the South China Sea,” October 17, 2012, https://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

²⁴ Carlyle A. Thayer, *From Confidence Building, Preventive Diplomacy and Dispute Resolution to the ASEAN-China South China Sea Code of Conduct*, Presentation to the Session 6 of the 10th South China Sea International Conference, DaNang, Vietnam, November 7-9, 2018.

Tribunal on the Law of the Sea, the International Court of Justice (ICJ), or ad hoc arbitration. For a case to be heard in the ICJ, the states involved in the dispute must consent to the Court's jurisdiction. Judgments are binding upon the parties concerned. China and the U.S. have both withdrawn from the ICJ's compulsory jurisdiction. Beijing refused to participate in the arbitration case brought by the Philippines against it in 2013 and rejected the ruling against it issued by an arbitral tribunal in 2016.

Vietnam has not ruled out bringing an international arbitration case against China over its coercion in the South China Sea. Vietnamese deputy foreign minister Le Hoai Trung suggested in November 2019 that Hanoi could consider "fact-finding, mediation, conciliation, negotiation, arbitration, and litigation measures" as potential countermeasures against China's maritime assertiveness.²⁵ UNCLOS requires that Hanoi first exhaust all diplomatic options before filing for any arbitration. In addition, Vietnam has to weigh the potential risks of pursuing arbitration against China, and whether a favorable ruling would positively affect Chinese calculations and behavior.

In the East China Sea, China seeks to establish a boundary based on a claim to an extended continental shelf, while Japan seeks to draw the boundary based upon the median line between their respective mainland coastlines. In addition, China and Japan both claim sovereignty to the Senkaku Islands. A rules-based approach could be applied to resolve these disputes if the political will exists to do so. Previous cases have used a median line to delineate a maritime boundary, and legal experts agree that there are no special circumstances in this situation that would warrant a modification from that median line. To address their sovereignty dispute over the Senkaku Islands, Tokyo and Beijing could agree to submit the dispute to the ICJ. Since both Japan and China have judges on the ICJ, this suggests that both countries are willing to adjudicate disputes in the court. Once the ICJ rules which state has sovereignty over the islands, a 12 nautical mile territorial sea would be drawn for that state.²⁶

The sovereignty dispute between China and Taiwan and the fact that neither extends diplomatic recognition to the other make the utilization of legal dispute settlement methods all but impossible. Taipei and Beijing could consider implementing crisis prevention or confidence building measures (CBMs), but so far, they have not done so. Military CBMs such as cross-Strait communication links and a code of conduct for unexpected contact between military aircraft and vessels in the Taiwan Straits were deliberated during the first term of President Ma Ying-jeou but were later rejected.²⁷

²⁵ Richard Javad Heydarian, "Vietnam's Legal Warfare Against China: Prospects and Challenges," Asia Maritime Transparency Initiative, Center for Strategic and International Studies, November 21, 2019, <https://amti.csis.org/vietnams-legal-warfare-against-china-prospects-and-challenges/>.

²⁶ Based on conversation with Jonathan G. Odom, a judge advocate (licensed attorney) in the U.S. Navy, who currently is a Military Professor of International Law at the George C. Marshall European Center for Security Studies, located in Garmisch-Partenkirchen, Germany.

²⁷ "La test defense whitepaper includes confidence measures with China," *Taiwan News*, October 21, 2009, <https://www.taiwannews.com.tw/en/news/1086503>.

Policy Recommendations

South China Sea

Pressure China to Comply with the July 2016 Ruling

In July 2020, the Trump administration modified U.S. policy on the South China Sea, aligning the policy more closely with the 2016 arbitral tribunal ruling that found China has no legal basis to assert historic rights or make other claims beyond those permitted by UNCLOS.²⁸ The U.S. explicitly declared China's excessive claims to be illegal along with Chinese fishing, oil and gas exploration and other economic activities in other claimants' rightful EEZs.

President Biden's Secretary of State, Antony Blinken, reaffirmed this policy in a phone conversation with Philippine Secretary of Foreign Affairs Teodoro Locsin on January 27, 2021. In that call, he stated that "the United States rejects China's maritime claims in the South China Sea to the extent they exceed the maritime zones that China is permitted to claim under international law as reflected in the 1982 Law of the Sea Convention" and pledged to stand with Southeast Asian claimants in the face of PRC pressure."

Subsequently, similar policy adjustments were made by key U.S. allies. A few days after the new U.S. policy was announced, Australia submitted a note verbale to the United Nations rejecting PRC maritime claims that are inconsistent with UNCLOS.²⁹ In an unprecedented joint action, the U.K., France and Germany submitted a note verbale to the UN in September 2020 in which the three countries stated that China's exercise of "historic rights" in the South China Sea does not comply with international law.³⁰ The U.S. should encourage more countries to endorse this position as part of a broader effort to pressure China to comply with the July 2016 ruling.

Issue Collective Statements

The U.S. should attempt to issue joint statements with allies and like-minded partners in support of 1) maintaining freedom of navigation; 2) preserving the legal rights of the South China Sea's claimants other than China; and 3) ensuring that disputes are resolved peacefully and without coercion. The Group of Seven (G7) or the expanded "Democratic Ten" (D10) that brings in Australia, India, and South Korea provide potential platforms for more forceful statements in support of enforcing the arbitral tribunal's 2016 ruling.

²⁸ United States State Department, United States Embassy in Laos, "Statement by Secretary Michael R. Pompeo, U.S. Position on Maritime Claims in the South China Sea," July 21, 2020, <https://la.usembassy.gov/statement-by-secretary-michael-r-pompeo-u-s-position-on-maritime-claims-in-the-south-china-sea/>.

²⁹ The Commonwealth of Australia, The Permanent Mission of the Commonwealth of Australia to the United Nations, *Note Verbal to the Secretary-General of the United Nations*, July 23, 2020, https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_07_23_AUS_NV_UN_001_OLA-2020-00373.pdf.

³⁰ The Government of the United Kingdom, The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations, *Note Verbal to the Secretariat of the United Nations*, September 16, 2020, https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_09_16_GBR_NV_UN_001.pdf.

Make Archives Public

U.S. leaders should urge Taipei to make public its historical archives on the origins of the eleven-dash line, the precursor to the nine-dash line, which was established by the Republic of China. Making the historical record public will help in clarifying the original intent behind the drawing of the nine-dash line and weaken Beijing's expansive claim. The U.S. could also consider encouraging Taiwan to adjust its claim in the South China Sea to bring it into line with international law.

Impose Economic Sanctions

The Trump administration imposed sanctions on Chinese individuals and companies that allegedly engaged in dredging and construction in the South China Sea. The decision to impose costs on China for its destabilizing actions was important, but the steps taken are unlikely to affect China's calculus. Individuals directly involved in Beijing's island-building activities probably won't suffer much if they can't travel to the United States because of visa restrictions. The 24 Chinese companies that were added to the Department of Commerce's Entity list can probably do business elsewhere. In short, the sanctions imposed so far are largely symbolic and will probably not change Chinese behavior.

Rather than sanctioning companies for dredging and construction undertaken years ago that are unlikely to be undone, the Biden administration should consider sanctioning Chinese companies operating illegally in other countries' EEZs. Vessels engaged in fishing, tourism, scientific surveys, or oil and gas exploration in claimants' EEZs without permission would be the targets.³¹ In addition to visa restrictions, blocking of property and financial sanctions should be considered. The goal of such sanctions would be to impose costs on Chinese state-run and private companies that carry out such illegal activities and induce them to change their behavior.

In addition, a robust effort should be undertaken to surveil, identify, and categorize Chinese maritime militia boats that are using coercion against other claimants. Once documented, this information should be shared with U.S. allies and partners to attempt to garner support for imposing sanctions on Chinese fishing companies aimed at incentivizing changes in their behavior. Sanctions should be imposed on known state-owned maritime militia units operating in the Spratlys and potentially on Chinese individuals who support, direct, or facilitate militia activity. Costs can also be imposed on private Chinese fishing companies that engage in maritime militia activities on a part-time basis. The U.S. can blacklist companies, bar seafood imports from them, and ban U.S. investment in these companies. Such actions would not only be intended to curb current coercive activity by Chinese fishing companies, but also disincentivize other companies from engaging in coercion.

³¹ Gregory Poling and Zack Cooper, "Washington Tries Pulling Economic Levers in the South China Sea," Asia Maritime Transparency Initiative, Center for Strategic and International Studies, August 28, 2020, <https://amti.csis.org/washington-tries-pulling-economic-levers-in-the-south-china-sea/>.

Enhance Capacity Building

The Pacific Deterrence Initiative is a step in the right direction to bolster the capabilities of regional allies and partners to resist Chinese coercion and protect their sovereignty. Working with Japan, Australia, and other countries with an interest in preserving stability and the rules-based order, the U.S. should further enhance smaller littoral states' maritime domain awareness abilities. Intelligence should be provided to help regional claimants respond more effectively.

The Indo-Pacific Maritime Security Initiative (included in the Strategic Competition Act of 2021) should be adequately resourced, with priority placed on enhancing the maritime security capabilities of the military or security forces of regional countries that have maritime missions. The provision in the draft Act to counter the use of grey zone tactics by adversaries through "a joint, interagency task force to assess, respond to, and coordinate with allies and partners" should be implemented.

Ratify UNCLOS

The U.S. should ratify UNCLOS. As a party to the Convention, the U.S. would be able to strengthen its role in the development of international law of the sea. Joining the Treaty would give the U.S. a voice in debates about matters such as the rules of innocent passage through territorial seas and operations by military ships in EEZs. The U.S. could lead an effort to forge consensus on these and other issues, rather than cede rule-making to others.

Ratifying UNCLOS would bolster the reputation of the United States as a country that is willing to play by the rules and demonstrate American commitment to diplomatic solutions in state-to-state maritime disputes. The U.S. refusal to ratify UNCLOS has enabled Beijing to score points by accusing the U.S. of acting hypocritically by asking others to abide by international law while being unwilling to commit itself to the Convention. Frankly, other countries are baffled by U.S. observance of customary international law, but reluctance to ratify the Treaty.

Staying outside UNCLOS deprives the U.S. of an opportunity to participate in the international process of maritime dispute resolution. As a state party to the Convention, the U.S. would be able to nominate members of the Law of the Sea Tribunal and the Continental Shelf Commission and ensure that discussions about Freedom of Navigation align with American interests. As a Treaty member, the U.S. could legally challenge China's objections to activities in its territorial sea. It could also challenge China's straight baselines around the Paracel Islands.

East China Sea

Engage in Joint Contingency Planning and Response

The U.S. should work together with Japan to develop combined contingency plans for some gray zone scenarios. This would give allied military commanders clear guidance, so that they could respond to Chinese coercion expeditiously, rather than waiting for orders from their home

capitals.³² The U.S. could also consider periodically responding to Chinese incursions with joint Japanese-U.S. patrols to show that more Chinese incursions will trigger greater interoperability between the SDF and the U.S. military.

Taiwan

*Bolster Deterrence and Support Taiwan*³³

The United States should enhance its capacity to defend Taiwan, including through long-range power projection. Together with Taiwan, the U.S. should strengthen the ability to deter Chinese coercion and aggression.

It is my view that adopting a position of strategic clarity—stating that the U.S. would come to Taiwan’s defense in any and all contingencies—could provoke an attack by China, rather than deter it.³⁴ But the U.S. can and should issue strong declaratory statements and take other measures to signal Beijing that U.S. intervention in the event of a Chinese attack on Taiwan is likely. Secretary of State Blinken’s recent statement that “it would be a serious mistake for anyone to try to change that status quo by force” is an example of a declaratory statement that can strengthen deterrence while preserving strategic ambiguity.³⁵

Congress should require an annual report on Taiwan’s progress in defense planning, training, and procurements to ensure that it is focused on developing asymmetric capabilities to resist a PLA attack and defend itself if necessary.

The United States urgently needs to take steps to strengthen Taiwan’s resilience in the face of gray zone pressure from China. These include:

- Negotiating a bilateral free trade agreement with Taiwan and help Taiwan diversify its trade relations.
- Using creative means, such as the Global Cooperation Training Framework, to help Taiwan share its expertise with other countries and earn dignity and respect on the world stage.
- Integrating Taiwan into evolving networks of like-minded countries that are designed to strengthen the resilience of democracies.
- Encouraging US allies and partners to signal in various ways that they have an interest in the preservation of peace and stability in the Taiwan Strait.

³² Zack Cooper, “Flashpoint East China Sea: Policy Implications and Recommendations,” Asia Maritime Transparency Initiative, Center for Strategic and International Studies, April 30, 2018, <https://amti.csis.org/flashpoint-east-china-sea-policy-implications-recommendations/>.

³³ For additional policy recommendations, see The CSIS Task Force on U.S. Policy toward Taiwan, “Toward a Stronger U.S.-Taiwan Relationship,” October 2020, https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/201021_Glaser_TaskForce_Toward_A_Stronger_USTaiwan_Relationship_0.pdf.

³⁴ Bonnie S. Glaser, et al. “Dire Straits: Should American Support for Taiwan Be Ambiguous?” *Foreign Affairs*, September 24, 2020, <https://www.foreignaffairs.com/articles/usa/2020-09-24/dire-straits>.

³⁵ “Blinken warns of China’s ‘increasingly aggressive actions’ against Taiwan,” *Reuters*, April 11, 2021, <https://www.reuters.com/world/china/blinken-warns-chinas-increasingly-aggressive-actions-against-taiwan-2021-04-11/>.