

# Historically Mine

## The (Potentially) Legal Basis for China's Sovereignty Claims to Land in the South China Sea

CAPT AARON S. WOOD, USA

*The time when foreign aggressors tramped China's sovereignty under feet and grabbed away its lands and islands is long gone and will never be allowed to happen again. Keeping its sovereignty and territory intact is not only its solemn right and responsibility as a sovereign state, but also an obligation called for by international justice and righteousness.*

—Ambassador Sun Xianghua

### Introduction

In September 2019, DreamWorks Animations released the animated children's movie "Abominable."<sup>1</sup> The movie, featuring a Chinese girl and a Yeti monster, outperformed all other movies then in theaters,<sup>2</sup> earned an impressive 181 million USD during its theatrical run,<sup>3</sup> and had an 81-percent "fresh" rating on the *Rotten Tomatoes* website at the time this article was written.<sup>4</sup> Within several weeks of the movie's release, however, it was banned from movie theaters in Vietnam, Malaysia, and the Philippines.<sup>5</sup> What could justify such a ban on an animated children's movie? A single scene set in the Chinese girl's home, with a map hanging on the wall in the background depicting the area of the South China Sea (SCS).

The box office performance of a children's movie may seem an unusual starting point for an article intended for legal professionals. However, the seemingly absurd banning of a children's movie in multiple countries over the brief depiction of a map highlights the importance of the area shown on the map. The map was only visible a handful of times during the movie, and for no more than several seconds total, but that was long enough to identify the SCS with China's "Nine-Dash line."<sup>6</sup>

The Nine-Dash line is an area outlined in and encompassing most of the SCS.<sup>7</sup> It is so named because, on most maps, it is literally an outline of nine dashes creating a semicircular area stretching from the Gulf of Tonkin, south past Vietnam to Malaysia, and then northeast past the Philippines to just east of Taiwan.<sup>8</sup> This area represents China's territorial claims in the SCS, based on a similar line on a map issued and used by the Republic of China in 1948 to claim sovereignty and maritime rights in the SCS.<sup>9</sup> China's claims of sovereignty over the Nine-Dash line area conflict with the sovereignty claims of Vietnam, Malaysia, and the Philippines. Beijing's claims were so offensive to these three neighbors of China that

they banned the movie. These countries all take competing claims of sovereignty in the SCS seriously, even if the claims are found in children's entertainment. China's competing claims in the SCS have resulted in armed conflict<sup>10</sup> and international arbitration,<sup>11</sup> and they threaten the security of a strategically vital region.<sup>12</sup> Consequently, China's claims are relevant to the economic, diplomatic, and military interests of the United States.

Generally, the United States has acted as if China's Nine-Dash line claims of sovereignty are invalid. Senior leaders across the US government have stated that China's actions in the SCS are contrary to international law.<sup>13</sup> However, for many years, the US Department of State did not officially state that China's claims and actions in the SCS violate international law and, instead, described the differences between Washington's and Beijing's positions regarding the SCS as a "disagreement" over territorial claims.<sup>14</sup> The United States officially expressed concerns that China actions in the SCS show a disregard of rights granted under international law and undermine regional peace and security.<sup>15</sup> This changed in July 2020, when Washington officially stated that China's maritime territorial claims in the SCS were mostly invalid.<sup>16</sup> However, the United States limited its statement to maritime claims and did not officially address China's claims regarding landmasses in the SCS.<sup>17</sup> Additionally, US military actions and statements of support for regional allies in the SCS region are inconsistent with China's claims.<sup>18</sup> The actions of the United States and the statements by US officials suggest and directly state that China has no legal claim to most of the SCS and that China is using its economic, diplomatic, and military strength to force the other claimants to cede their legal claims to areas in the SCS. China's claims in the SCS have even shaped the United States' *National Security Strategy*, which states, "[China's] efforts to build and militarize outposts in the SCS endanger the free flow of trade, threaten the sovereignty of nations, and undermine regional stability. . . . China has mounted a rapid military modernization campaign designed to limit U.S. access to the region and provide China a freer hand there."<sup>19</sup>

While it is likely that China's actions and claims in the SCS violate international law, China's actions in the SCS cannot be fully understood or predicted if it is assumed that China's actions were violations of international law. Neither can China's actions be understood if the legality of China's claims is judged solely based on modern international law. Rather, all China's potential justifications regarding the legality of its claims must be considered, in conjunction with modern law. This article will attempt to provide an explanation of the potential basis for some of China's claims of sovereignty in the SCS.

China's claims in the SCS can be divided into claims of sovereignty over the landmasses within the SCS and claims over the waters under applicable maritime

laws. Both subjects are highly complex. In general, sovereign and jurisdictional claims over water are strengthened when a nation has sovereign control over the land adjoining the water.<sup>20</sup> If Beijing is successful in claiming sovereign control over landmasses in the SCS, China may then have a stronger claim to the adjoining waters. This article will focus on China's sovereignty claims to the land in the SCS rather than on the legal basis of other countries' conflicting claims of sovereignty within the SCS or the proper delineation of maritime jurisdiction within the SCS under modern international law.<sup>21</sup> By framing the potential basis for Beijing's claims in the SCS, along with potential issues with these claims, we can develop a requisite baseline understanding to judge the legality of China's claims and actions under modern international laws.

### **Importance of the South China Sea**

Situated between China, Taiwan, the Philippines, Brunei, Malaysia, and Vietnam, the SCS is one of the most hotly disputed territories in the world.<sup>22</sup> Each of these countries claims partial or complete sovereignty over the SCS and the islands, reefs, and rocks ("landmasses") located therein.<sup>23</sup> To enhance or strengthen these competing claims, many of these states have built artificial islands or increased their military capabilities in the region.<sup>24</sup> Of the six claimants to the area, only Brunei has not enhanced or constructed reefs and islands in the SCS in an attempt to bolster its claims.<sup>25</sup> China's actions in the region have been particularly aggressive.<sup>26</sup> As mentioned above, Beijing claims sovereignty over landmasses and adjacent waters within its Nine-Dash line, which consists of most of the area within the SCS.<sup>27</sup> While other countries bordering the SCS also claim sovereign areas and jurisdictions within the SCS, none of these claims are as extensive as China's.<sup>28</sup> These claims conflict with China's broad claim over the SCS and its landmasses, resulting in the conflicts and disputes between the countries.<sup>29</sup>

The claimants to the region have multiple reasons for desiring control over the SCS. The SCS has historic significance for multiple claimants,<sup>30</sup> is a highly resource-rich area with abundant fish and maritime life as well as vast reserves of oil, and offers countries a strategic advantage through control of vital trade routes and communications lines.<sup>31</sup> States from outside the region are also gravely concerned with the status of the SCS. Those nations, such as the United States, want to preserve free access to the critical shipping and transportation lanes that traverse the SCS, with no single nation capable of obstructing access or leveraging control of the area to gain an advantage over its neighbors. The disputes over the SCS are one of the main strategic issues in the Indo-Pacific.<sup>32</sup> These competing strategic interests result in the conflicts described above.

It would be difficult to overstate the importance of the SCS. Whether from historical significance of the area; the strategic military, economic, and political advantages offered by the area; the abundant resources; or a combination of these factors, there are many motivations for why states are interested in asserting control over the area. It is because of the importance of the SCS that the governments of the claimant states are willing to take extreme actions to protect their sovereignty claims, from taking military action to preventing children from watching fluffy, white, cartoon monsters.

### **The Legal Basis of China's Claims**

*China is actually the victim with regards to the South China Sea issue. The Chinese people were the first to discover, name and develop the South China Sea Islands. Successive Chinese government have exercised continuous jurisdiction over the islands by means of administrative control, military patrol, production and business operations and maritime disaster relief.*

—Ambassador Zhan Yongxin

### ***Historical Rights and Sovereignty***

While Beijing has not clarified the exact legal theory of China's claims to the SCS and its landmasses, it is clear that China relies on a claim of historical right to the area.<sup>33</sup> Beijing claims that China was the first country to discover the islands in the SCS, that it was the first country to establish an administration over these islands, that the Chinese people were the first people to live on the islands, and that China was the first country to conduct economic activity in the SCS: “[R]oughly at the time of Alexander the Great in the west, China has already carried out frequent fishing, planning and shipping activities in the [SCS].”<sup>34</sup> According to Chinese ambassador Liu Xiaoming, “as early as 200 BC, during China’s Han Dynasty, the Chinese had large-scale and frequent sea-faring and fishing activities in the SCS. . . . It follows that because of frequent shipping [through the SCS], the Chinese became the first to discover the Islands in the SCS.”<sup>35</sup> In another statement, China reiterated this argument: “The activities of the Chinese people in the SCS date back over 2,000 year ago. China is the first to have discovered, named, and explored and exploited [the SCS and its islands] . . . thus establishing territorial sovereignty . . . in the SCS.”<sup>36</sup>

China states that this territorial sovereignty in the SCS has been continuously held by China for thousands of years: “During the 2000 years since China discovered and administrated the [SCS], its sovereignty over the island and reefs has never been challenged except for very recent years.”<sup>37</sup> In another statement, China

said, “Successive Chinese governments have exercised continuous jurisdiction over the islands [in the SCS].”<sup>38</sup> Beijing clearly believes China’s sovereignty over the landmasses in the SCS is a well-established historical fact and that its claims have been maintained and never been relinquished by China since they were first established thousands of years ago.

### ***Customary International Law***

International law recognizes multiple modes for a state to gain sovereignty over territory.<sup>39</sup> Before the enactment of international treaties, customary international law set the conditions by which a state gained sovereignty over land.<sup>40</sup> Before the eighteenth century, a state gained sovereignty by “discovering” the land.<sup>41</sup> Subsequent changes to customary international law permitted a state to gain sovereignty over land when the state occupied land that belonged to no one and the territory was occupied in a manner that was both visible and effective.<sup>42</sup> This change in law required that the occupying state take possession of the land and establish an administration over the land for the state.<sup>43</sup>

From Beijing’s statements, it appears that China thinks it satisfied these legal requirements: “China is . . . the first to have exercised sovereignty and jurisdiction over [the SCS and its landmasses] . . . continuously, peacefully, and effectively.”<sup>44</sup> Beijing thinks China’s claims of sovereignty over the islands and reefs are valid, based on historical evidence of Chinese activity on the landmasses and surrounding areas in the SCS. It thinks that the evidence demonstrates that China exercised control over the landmasses in a continuous, peaceful, and effective manner and that this control was a sufficiently visible and effective manner of occupation to establish sovereignty. Through this evidence, China believes that it has satisfied its legal requirements to gain sovereignty over the landmasses. Consequently, Beijing believes China’s claims of sovereignty are legally valid, and that the actions of other countries in the SCS amount to “invasion and illegal occupation.”<sup>45</sup>

### ***Facts Supporting China’s Claims***

China’s legal claims are underpinned by a significant number of facts. In 111 BCE, the Han dynasty patrolled the islands in the SCS.<sup>46</sup> Chinese records from 220–265 CE, during China’s Three Kingdoms Period, contain descriptions of some of these islands, indicating that the Chinese had traveled there.<sup>47</sup> Ruins of inhabited Chinese living structures and pottery from the Tang and Song dynasties have been found on some of the islands and reefs, indicating actual Chinese habitation.<sup>48</sup> Chinese coins from the Tang and Ming dynasties, dating from 713–1425, were found in reefs in the SCS.<sup>49</sup> During the Ming dynasty in the

1400s, Chinese naval envoys passed through the area, writing about the islands.<sup>50</sup> A map dated from about 1775 and maps from between 1810 to 1817, all made during the Qing dynasty, show the islands as Chinese territories.<sup>51</sup> Germany ceased conducting a survey of the islands in 1883, after the Qing dynasty protested the survey and claimed that the islands belonged to China.<sup>52</sup> A British publication from 1923 stated that Chinese fishermen worked and lived on islands in the SCS.<sup>53</sup> A French publication in 1933 stated that Chinese people lived on the islands.<sup>54</sup> Japan seized control of islands in the SCS in 1939 and, following Japan's surrender in World War II, the Republic of China took control of the islands back and sent ministers to set up their administration.<sup>55</sup> In 1947, the Republic of China published Chinese names for islands in the SCS, and no country protested.<sup>56</sup> When the People's Republic of China (PRC) was established in 1949, Beijing claimed sovereignty over the landmasses within the Nine-Dash line area.<sup>57</sup> In 1955, the International Civil Aviation Organization, an organization including representatives from the United States, adopted a resolution asking the Republic of China to supply daily weather reports for some of the islands in the SCS.<sup>58</sup> In 1992 and in 1996, the PRC reasserted its rights to the islands in its domestic laws.<sup>59</sup>

Viewing only this and similar evidence, China's claims of sovereignty over the islands in the SCS are understandable and appear to be legal. This evidence, at minimum, suggests that the Chinese people were openly living and using land in the SCS at multiple points during the last several thousand years and that the Chinese people were the first to use the area. China views this as sufficient evidence to support its stance that its claims of sovereignty in the SCS are legally valid and, as a result, believes that other countries' sovereignty claims within the SCS encroach on its historically recognized territory.

### **Issues with China's Sovereignty Claims**

While Beijing may be convinced that China's legal claims are valid and buttressed by history, issues regarding the sufficiency of the evidence, whether a culture rather than a nation-state can establish sovereignty, and *which* "China" is the successor to any valid claims of sovereignty, should all cause us to question China's legal claims.<sup>60</sup> Beijing views the evidence of the Chinese peoples' activities in the SCS through Chinese Communist Party's (CCP) own perspective of what it means to be "China" and ends its analysis there. As a result, Beijing believes the evidence is sufficient to establish a modern claim of sovereignty over the landmasses located therein.

In referencing China's historic claims, Beijing refers to the Chinese people and not to any particular government or country: "The *Chinese people* were the first to

[claim the land masses in the SCS]<sup>61</sup> (emphasis added). And, “The activities of the *Chinese people* in the SCS date back to over 2,000 years ago<sup>62</sup> (emphasis added). Similarly, “The *Chinese* became the first to discover the islands in the SCS<sup>63</sup> (emphasis added). And, “Ever since China’s Tang Dynasty, about 1,200 years ago, *successive Chinese governments* have exercised jurisdiction over the SCS<sup>64</sup> (emphasis added). Additionally, “China enjoys sovereignty over [the islands in the SCS] . . . since ancient times. . . . China has continuously exercised sovereignty in a peaceful, effective and uninterrupted manner.”<sup>65</sup> These statements show that Beijing views “China” as a cultural group of people, rather than as a particular nation-state or government. With this viewpoint, China looks at the evidence of activity of Chinese people in the SCS and the evidence of Chinese claims of sovereignty over the SCS as inextricably intertwined. Despite the fact that this evidence spans multiple governments and thousands of years, Beijing concludes that the efforts of these separate groups of people and separate governments established China’s modern-day legal sovereignty. In Beijing’s view, all these efforts were from the Chinese people and therefore from “China.”

As discussed earlier, Beijing relies on documentary and archeological evidence—indications of Chinese activity in the SCS spanning thousands of years—to support China’s sovereignty claims. At first glance, this proffered evidence may appear to be sufficient proof of China’s claims of sovereignty, especially when China’s sovereignty is assumed, and evidence is sought to support these claims. The archeologists who discovered archeological evidence in the SCS are Chinese and in some cases are sponsored by Beijing,<sup>66</sup> potentially biasing them to conclude that the evidence proves China’s ownership of the islands and to disregard other potential sources of the evidence such as shipwrecks, temporary stops by Chinese ships, or even planting of the evidence by interested individuals or groups. When viewed without the lens of Beijing’s unique perspective on what “China” is and without a foregone conclusion of sovereignty, this evidence is less conclusory, and it is no longer clear that the evidence establishes China’s claims.

If authentic, the coins, pottery, and living quarters establish that Chinese people were likely living on the islands at different points in history. However, such artifacts do not prove that the government in power at those times considered the islands part of China or made any claims of exclusive sovereignty. Neither do such relics show that other groups were not also living and trading in the islands, nor that other countries did not consider the islands as part of their sovereign territory. Naval expeditions may show that Chinese mariners traveled through the area but do not prove that these seafarers made exclusive claims of sovereignty over the islands or that other groups were not there at the time. Maps may show that a particular Chinese government claimed the islands as part of its sovereign

territory, but such documents do not show that the islands were uninhabited by other groups or that other countries did not also claim the islands. These various remnants of history do not show that the Chinese government openly claimed the islands as part of its territory, and perhaps most important, they do not show that China's neighbors agreed that these lands belonged to China.

The evidence would better support China's claims that an early Chinese government established sovereignty if it had occurred closer together in history's timeline. However, with the evidence scattered over thousands of years, it is not clear that any one Chinese government or group satisfied all the elements to establish sovereignty over the islands in the SCS.

Assuming that a single Chinese government was successful in establishing sovereignty over the islands in the SCS at some point in the Chinese people's history, it is unclear whether subsequent Chinese governments were successors to the sovereignty claim or whether the sovereignty claim was abandoned. China has had many dynasties and governments in the history of its peoples and cultures.<sup>67</sup> Even today there is the PRC, the Republic of China, and the semi-autonomous region of Hong Kong—all in what we call the greater area of "China."<sup>68</sup> It is difficult to pinpoint exactly how many dynasties and governments have governed all or portions of the area now considered to be part of China.<sup>69</sup> These dynasties potentially include at least 15 different governments in China since 206 BCE, covering the periods where China claims evidence of sovereignty in the SCS.<sup>70</sup> Some of these dynasties were controlled by non-Chinese invaders, such as the Mongols or Japanese, and could be considered as evidence of sovereign control in the SCS by non-Chinese claimants.<sup>71</sup> At times, several different dynasties controlled portions of modern China simultaneously, and it is not clear whether these different dynasties made conflicting claims of sovereignty in the SCS or whether any prior sovereignty claims were abandoned.<sup>72</sup> While Beijing does not dispute the successive dynasties of China's past, the CCP relies on a concept of a unitary and continuous Chinese culture as its claim to be the successor of all prior governments' establishment of sovereignty in the SCS. History shows the Chinese people's past to be more fractured than Beijing's view. With the many different, and often competing, governments in the Chinese people's history, Beijing's claim to continuous and unitary sovereignty begins to unravel.

Even if China demonstrates sufficient evidence to show that a single Chinese government established unitary and exclusive sovereignty over the islands in the SCS and that these claims were maintained through the successive Chinese governments to the present, it is not clear which "China" would be the successor of those sovereignty claims. This article has referred to the PRC, the current government of mainland China,<sup>73</sup> as "China." Prior to 1949, the area we call "China" was

governed by the Nationalist Government of the Republic of China.<sup>74</sup> The Nationalist Government of the Republic of China was established after the fall of the Qing Empire in 1911.<sup>75</sup> Following a period of external and internal wars, the CCP defeated the Nationalist Government and established the PRC, while the Nationalist Government fled to the island of Taiwan.<sup>76</sup> This Nationalist Government is still in existence, controlling modern Taiwan.<sup>77</sup> The evidence that the PRC uses as part of its claims of sovereignty from 1911–1949 occurred while the current government of Taiwan controlled “China.” Taiwan also claims sovereignty over the landmasses in the SCS, relying on the same and similar evidence and arguments put forth by Beijing.<sup>78</sup> The PRC does not recognize Taiwan as a separate, legitimate country,<sup>79</sup> and it follows that Beijing would not accept Taiwan’s claims as valid. However, with a previous government of “China” still in existence and making the same claims as the PRC, it is not clear why Beijing’s claims of historic Chinese sovereignty rights over islands in the SCS are more valid than those made by the Taiwanese government.

Beijing may believe the PRC’s claims of sovereignty, but this is likely a result of the CCP’s unique view of what “China” is: a culture and not a nation-state. It is a view where sovereignty can be created and retained by the Chinese people and culture, rather than a view where sovereignty is created and retained by nations and governments. It is a view where sovereignty is unimpeded by the multitude of Chinese governments or Chinese countries. It is a view squarely at odds with the Western concept of nation-states.<sup>80</sup>

## **Conclusion**

From children’s movies to national defense strategies, the impact of Beijing’s sovereignty claims in the SCS is broad, and these claims are not likely to change in the near future. The PRC will not easily relinquish claims to land it considers part of its sovereign territory—especially when those lands extend China’s military and economic reach hundreds and thousands of miles into the lucrative region. China’s claims of sovereignty appear valid when viewed from the CCP’s unique viewpoint but fail when those views and assumptions are not shared. The conflict between Beijing’s refusal to relinquish the PRC’s claims, and the likelihood that those claims will be rejected by the international community, will result in continued legal, diplomatic, economic, and military competition and conflict in the region. However, countries are best prepared to navigate this competition and conflict when they understand the basis of Beijing’s claims, rather than simply dismissing the claims as violations of current international law. ❖

### Capt Aaron S. Wood, USA

Captain Wood is an attorney in the United States Army 8th Theater Sustainment Command Office of the Staff Judge Advocate. The author would like to thank the instructors, senior mentors, leaders, and fellow students of the Regional Leader Development Program-Pacific 19-03 for their instruction and discussion on the claims within the South China Sea and the attorneys at the 8th Theater Sustainment Command Office of the Staff Judge Advocate for their thoughts and feedback regarding this article. The author would especially like to thank Maj Jodie L. Grimm and Col Michael C. Friess for their inputs. The views expressed are those of the author and do not reflect the official policy or position of the Department of Defense or the US government.

### Notes

1. Jill Culton and Todd Wilderman, dirs., *Abominable* (Glendale, CA: DreamWorks, 7 September 2019).
2. Gabe Cohn, 'Abominable' Dominates the Box Office," *New York Times*, 29 September 2019, <https://www.nytimes.com/>.
3. Culton and Wilderman, dirs., *Abominable*.
4. Culton and Wilderman, dirs., *Abominable*.
5. Neil Charm, "PHL, Malaysia Ban Abominable," *BusinessWorld*, 22 October 2019, <https://www.bworldonline.com/>.
6. As is customary with most US and foreign authors, and unless otherwise noted, the term "China" is used in this article to refer to the People's Republic of China, with its government in Beijing, and not the Republic of China, with its government in Taipei.
7. Marina Tsirbas, "What Does the Nine-Dash Line Actually Mean?" *The Diplomat*, 2 June 2016, <https://thediplomat.com/>.
8. Tsirbas, "What Does the Nine-Dash Line Actually Mean?"
9. Tsirbas, "What Does the Nine-Dash Line Actually Mean?"
10. Vietnam and China engaged in battles over islands in the South China Sea in 1974 and again in 1988. See: Ngo Minh Tri and Koh Swee Lean Collin, "Lessons from the Battle of the Paracel Islands," *The Diplomat*, 23 January 2014, <https://thediplomat.com/>.
11. See: Ted L. McDorman, "The South China Sea Arbitration," *American Society of International Law*, 18 November 2016, <https://www.asil.org/>; and Nargiza Salidjanova, "South China Sea Arbitration Ruling: What Happened and What's Next?," U.S.-China Economic and Security Review Commission, 12 July 2016, <https://www.uscc.gov/>. In this arbitration case, the tribunal ruled that many of China's claims and actions in the South China Sea were unlawful. China protested the jurisdiction of the tribunal and does not recognize the ruling as legally valid.
12. *National Security Strategy of the United States of America* (Washington, DC: The White House, 2017), 46.
13. Senior US leaders do not accept China's claims of sovereignty in the South China Sea and view China's actions there as a violation of international law. See: ADM Phil Davidson, "China Power: Up for Debate," US Indo-Pacific Command, 2018, <https://www.pacom.mil/>; ADM Phil Davidson, House Armed Services Committee (HASC) *Opening Remarks U.S. Indo-Pacific Command* (2019), <https://www.pacom.mil/>; Christopher Bodeen, "Recent developments surrounding the South China Sea," *AP News*, 11 March 2019, <https://apnews.com/>; and Jim Mattis and John Chipman, "Remarks by Secretary Mattis at Shangri-La Dialogue," Department of Defense, 3 June 2017, <https://www.defense.gov/>.
14. See: "U.S. Relations with China," Department of State, 2018, <https://www.state.gov/>.

15. Morgan Ortagus, “China Escalates Coercion against Vietnam’s Longstanding Oil and Gas Activity in the South China Sea,” US Embassy and Consulates in China, 2019, <https://china.usembassy-china.org.cn/>.

16. Michal R. Pompeo, “U.S. Position on Maritime Claims in the South China Sea” (press statement, Department of Defense, 13 July 2020), <https://www.state.gov/>.

17. Pompeo, “U.S. Position on Maritime Claims.” It is interesting to note that Australia issued a declaration at the UN soon after the United States took an official position regarding the SCS, seemingly bolstered by US actions. Australia did not limit its objections to solely maritime claims but objected to China’s “historic rights” as well as “maritime rights and interests.” See: Australian Mission to the United Nations, Statement N° 20/026, 23 July 2020, <https://www.un.org/>.

18. The United States has conducted freedom of navigation operations in the South China Sea, which would not be legally permissible if China’s broad claims were valid. Additionally, China’s actions in the South China Sea may trigger America’s mutual defense obligation to protect the Philippines, which would not be the case if China’s claims were valid and the Philippines were the aggressor in the South China Sea. See: Adrien Chorn and Monica Michiko Sato, “Maritime Gray Zone Tactics: The Argument for Reviewing the 1951 U.S.-Philippines Mutual Defense Treaty Maritime Gray Zone Tactics: The Argument for Reviewing the 1951 U.S.-Philippines Mutual Defense Treaty,” *Center for Strategic and International Studies*, 2019, <https://www.csis.org/>; and Christopher Bodeen, “Recent developments surrounding the South China Sea,” *AP News*, 11 March 2019, <https://apnews.com/>.

19. *National Security Strategy of the United States of America*, 46.

20. “The sovereignty of a coastal state extends, beyond its land territory and internal waters . . . to an adjacent belt of sea.” United Nations Convention on the Law of the Sea, Article 2, 10 December 1982.

21. For discussions on China’s claims over the waters of the South China Sea, see: Dustin E. Wallace, “An Analysis of Chinese Maritime Claims in the South China Sea,” *Naval Law Review* 63 (2014), 128; and Robert T. Kline, “The Pen and the Sword: The People’s Republic of China’s Effort to Redefine the Exclusive Economic Zone Through Maritime Lawfare and Military Enforcement,” *Naval Law Review* 122 (2013), 216.

22. See: John Power, “Has the US already lost the battle for the South China Sea?,” *South China Morning Post*, 18 January 2020, <https://www.scmp.com/>.

23. “Territorial Disputes in the South China Sea,” *Global Conflict Tracker*, 2020, <https://www.cfr.org/>.

24. Power, “Has the US already lost the battle.”

25. See: “Asia Maritime Transparency Initiative,” *Island Tracker Archive*, 2020, <https://amti.csis.org/>.

26. See: “Territorial Disputes in the South China Sea,” *Global Conflict Tracker*.”

27. Liu Zhen, “What’s China’s ‘nine-dash line’ and why has it created so much tension in the South China Sea?,” *South China Morning Post*, 12 July 2016, <https://www.scmp.com/>.

28. Zhen, “What’s China’s ‘nine-dash line.’” Note that Taiwan makes claims that mirror those made by mainland China, as discussed in Section V. However, as both governments consider itself to be the legitimate government of “China,” and because both governments take the position that they are successors to the same sovereignty rights as the other government, these conflicting claims have not been separated out in this section for comparison with the extent of the claims of other governments.

29. McDorman, “The South China Sea Arbitration”; Salidjanova, “South China Sea Arbitration Ruling”; and *National Security Strategy of the United States of America*.

30. Brian John Halliden, “Chinas historic rights in the South China Sea: a time for reconsideration and pacific settlement” (thesis, Naval Postgraduate School, 2014).

31. “Territorial Disputes in the South China Sea,” *Global Conflict Tracker*.”

32. ADM Phil Davidson, Commander, USINDOPACOM, has stated that “Beijing maintains maritime claims in the South China Sea that are contrary to international law and pose a substantial long-term threat to the rules-based international order.” “U.S. Relations with China,” Department of State, 2018, <https://www.state.gov/>.

33. While failing to clarify exactly how the scope of its “historic rights” claim and how its claim fits into relevant legal theories granting sovereignty, China discussed its claims of historic right extensively in response to the arbitration referenced in note 12. See Chinese Society of International Law, “The South China Sea Arbitration Awards: A Critical Study,” *Chinese Journal of International Law* 17, no. 2 (2018), 420–72.

34. Sun Xianghua, “South China Sea: Respect Law and Facts rather than Tricks and Plots,” *Public Eye* (Lesotho), 5 June 2016, <https://www.fmprc.gov.cn/>.

35. Liu Xiaoming, “China is a Staunch Force for Peace and Stability in the South China Sea” (speech, International Institute for Strategic Studies: China is a Staunch Force for Peace and Stability in the South China Sea, 2016), <https://www.fmprc.gov.cn/>.

36. Foreign Ministry, People’s Republic of China, “Statement of the Government of the People’s Republic of China on China’s Territorial Sovereignty and Maritime Rights and Interests in the South China Sea,” 2016, <https://www.fmprc.gov.cn/>.

37. Xianghua, “South China Sea.”

38. Liu Xinfu, “The South China Sea Issue: Justice naturally inhabits man’s heart,” *The Standard*, 2016, <https://www.fmprc.gov.cn/>.

39. Seokwoo Lee, “Continuing Relevance of Traditional Modes of Territorial Acquisition in International Law and a Modest Proposal,” *Connecticut Journal of International Law* 16 (2000): 1–22.

40. Teh-Kuang Chang, “China’s claim of sovereignty over the Spratly and Paracel Islands: A Historical and Legal Perspective,” *Case Western Reserve Journal of International Law* 23 (1991), 399, 408–10.

41. Lee, “Continuing Relevance of Traditional Modes.” See also: Chang, “China’s claim of sovereignty”; and Lauren Benton and Benjamin Straumann, “Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice,” *Law and History Review* 28, no. 1, (February 2010): 1–38, arguing that it was not until the latter half of the eighteenth century that legal scholars developed the theory of occupation that was amenable to the expansion of empires and that the legal theory of discovery proposed by previous legal scholars made the occupation of territories by expanding empires unlawful.

42. Lee, “Continuing Relevance of Traditional Modes”; Chang, “China’s claim of sovereignty”; and Benton and Straumann, “Acquiring Empire by Law.”

43. Lee, “Continuing Relevance of Traditional Modes”; Chang, “China’s claim of sovereignty”; and Benton and Straumann, “Acquiring Empire by Law.”

44. Foreign Ministry, People’s Republic of China, “Statement of the Government of the People’s Republic of China.”

45. Foreign Ministry, People's Republic of China, "Statement of the Government of the People's Republic of China."

46. Chang, "China's claim of sovereignty," 403; Junwu Pan, "Regional Focus and Controversy: Maritime and Territorial Dispute in the South China Sea; Territorial Dispute between China and Vietnam in the South China Sea; A Chinese Lawyer's Perspective," *Journal of East Asia and International Law* 5 (2012), 213, 214.

47. Chang, "China's claim of sovereignty," 403; and Pan, "Regional Focus and Controversy," 214.

48. Chang, "China's claim of sovereignty," 404. To put these dynasties in relation to the other evidence, the Tang dynasty controlled areas in China between 618–906 CE and the Song dynasty between 960–1279 CE. See: "1000–1450 CE: China's Golden Age; The Song, the Mongols, and the Ming Voyages," *Asia for Educators*, 2021, <http://afe.easia.columbia.edu/>.

49. Chang, "China's claim of sovereignty," 407.

50. Chang, "China's claim of sovereignty," 404.

51. Chang, "China's claim of sovereignty," 405.

52. Chang, "China's claim of sovereignty," 405.

53. Chang, "China's claim of sovereignty," 406.

54. Chang, "China's claim of sovereignty," 406.

55. Chang, "China's claim of sovereignty," 406; Pan, "Regional Focus and Controversy," 216.

56. Chang, "China's claim of sovereignty," 407. While Beijing appears to rely on this fact as demonstrating that China openly claimed sovereignty and all other countries accepted this claim, this line of argument ultimately fails. Simply attaching a name in a particular language to an area does not establish sovereignty. Indeed, many countries publish world maps with names in the country's native language, even when other states claim sovereignty to the named areas and use a different naming convention. As a result, publishing a name for an area and not receiving an objection cannot be the sole basis to establish sovereignty. If the state claiming sovereignty asserts control over an area and openly publishes its claim along with its naming of the area, then the naming would support the claim of sovereignty. When Beijing argues that the ruling Chinese Communist Party published names for islands in the SCS and no country objected, China fails to explain why the circumstances in publishing the names would cause a country to assume China was asserting sovereignty and object, or even to explain why the nations of the world would have noticed China's publication.

57. Chang, "China's claim of sovereignty," 408; and Pan, "Regional Focus and Controversy," 216.

58. Ministry of Foreign Affairs, Taiwan, "Peace in the South China Sea, National Territory, Secure Forever" (position paper on ROC South China Sea Policy, 1989), <https://www.mofa.gov.tw/>. The United States was a founding member of the International Civil Aviation Organization; see: "Convention on International Civil Aviation done at Chicago on the 7th Day of September 1944," <https://www.icao.int/>. See also: Chang, "China's claim of sovereignty," 402.

59. See: Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (promulgated by the Standing Committee of the National People's Congress, 25 February 1992), <http://www.asianlii.org/>; and "Decision of the Standing Committee of the National People's Congress on Approval of the United Nations Convention on the Law of the Sea" (promulgated by the Standing Committee of the National People's Congress, 15 May 1996), <http://www.asianlii.org/>.

60. For more discussion on China's claims, see: Florian Dupuy and Pierre-Marie Dupuy, "Agora: The South China Sea; A Legal Analysis of China's Historic Rights Claim in the South China Sea," *American Journal of International Law* 107 (2013), 124.

61. Zhang Weidong, “Some Questions and Answers on the South China Sea Issue Article by Ambassador of China to Iceland Zhang Weidong on South China Sea Issues Published on Icelandic Newspaper” (statement, Foreign Ministry, PRC, 2016), <https://www.fmprc.gov.cn/>; and Wen Zhenshun, “The Territorial Sovereignty and Maritime Rights of China in South China Sea Are Not Allowed to be Violated ‘Dnevnik’ publishes article on the South China Sea issue written by Ambassador Wen Zhenshun” (statement, Foreign Ministry, PRC, 2016), <https://www.fmprc.gov.cn/>.

62. Foreign Ministry, People’s Republic of China, “Statement of the Government of the People’s Republic of China.”

63. Xiaoming, “China is a Staunch Force for Peace.”

64. Xiaoming, “China is a Staunch Force for Peace” and Xinfu, “The South China Sea Issue.”

65. Yang Yanyi, “Some Prevailing Arguments and Perceptions over the South China Sea Issue Are Simply Wrong” (statement, Ministry of Foreign Affairs, PRC, 2016), <https://www.fmprc.gov.cn/>.

66. See: “Archaeological Survey of Xisha Qundao,” *National Marine Data and Information Service*, 17 March 2017, <http://en.thesouthchinasea.org.cn/>; “Chinese Archaeologists Discover Ancient Ceramics off Xisha Islands,” *Xinhua News Agency*, 10 May 2007, <http://www.china.org.cn/>; and “Archaeologists Wrap up Underwater Excavation in Xisha,” *China Daily*, 26 May 2015, <http://www.chinadaily.com.cn/>.

67. “Timeline of Chinese History and Dynasties,” *Asia for Educators*, 2020, <http://afe.easia.columbia.edu/>.

68. See: Eleanor Albert, “China-Taiwan Relations” (backgrounder, Council on Foreign Relations, 22 January 2020), <https://www.cfr.org/>; Eleanor Albert and Lindsay Maizland, “Democracy in Hong Kong” (backgrounder, Council on Foreign Relations, 30 June 2020), <https://www.cfr.org/>.

69. For an interesting video illustrating the possible areas controlled by successive dynasties in China, see: EarthDirect, “China - 3,000 Years of History in a Minute,” *YouTube*, 11 January 2013, <https://www.youtube.com/>.

70. “Timeline of Chinese History and Dynasties,” *Asia for Educators*.

71. “Timeline of Chinese History and Dynasties,” *Asia for Educators*.

72. “Timeline of Chinese History and Dynasties,” *Asia for Educators*.

73. “Timeline of Chinese History and Dynasties,” *Asia for Educators*.

74. US Department of State, “The Chinese Revolution of 1949,” <https://history.state.gov/>.

75. Government Portal of Republic of China, Taiwan, “History,” <https://www.taiwan.gov.tw/>.

76. US Department of State, “The Chinese Revolution of 1949.”

77. Government Portal of Republic of China, Taiwan, “History.”

78. Ministry of Foreign Affairs, Taiwan, “Peace in the South China Sea.”

79. “Taiwan condemns China’s ‘dictatorship’ on 70th anniversary of communist rule,” *Reuters*, 30 September 2019, <https://www.reuters.com/>.

80. The Treaty of Westphalia established the modern understanding of the nation-state, where the state holds sovereign authority. See: Winston P. Nagan and Aitza M. Haddad, “Sovereignty in Theory and Practice,” *San Diego International Law Journal* 13 (2012), 429.

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