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## Contention One is Arctic Drilling

**Gardner ‘12 of the ASP[[1]](#footnote-1)** explains that U.S. oil companies are currently prohibited from drilling outside of our exclusive economic zone, or 200 nautical miles off the coast, thanks to inadequate legal protection from international law. This protection can ONLY be awarded by the International Seabed Authority to a country that is a member of UNCLOS. Without this legal protection, companies are barred from Arctic drilling, as **Gardner[[2]](#footnote-2)** furthers that companies NEED the maximum level of international legal certainty provided by UNCLOS before they invest in Arctic drilling. Unfortunately, giving companies this assurance would open the floodgates for Arctic drilling, as **jeff ‘16 of Business Insider[[3]](#footnote-3)** explains that the Arctic holds 90 billion barrels of oil, three times more than all U.S oil reserves today. The impact is methane release. **Walsh ‘12[[4]](#footnote-4)** reports that the Arctic holds 1.7 trillion cubic feet of methane gas in the ocean floor that can be released as a byproduct of drilling. **Chestney ‘12[[5]](#footnote-5)** **of the Scientific American** explains that drilling and subsequent methane release would substantially melt the Arctic and accelerate climate change - costing $60 trillion directly in damage.

## Contention Two is Big Ship Energy

**Bo of the National Interest observes[[6]](#footnote-6)** that the situation in the South China Sea is cooling down and reaching a stalemate due to America’s powerful forces in and around the South China Sea deter Chinese aggression for maritime hegemony.

It is critical for the U.S to retain this hard power naval dominance in the South China Sea through freedom of navigation operations

**Lan of the AMTI[[7]](#footnote-7)** finds that China’s rejection of the tribunal ruling shows that the struggle in the South China sea is political, not legal. He furthers that FONOPS are crucial to solving this political struggle because they allow the US to send clear and costly signals to China.

These operations have worked historically. **Brands of The Naval War College[[8]](#footnote-8)** writes that in both 2014 and 2016, a containment strategy stopped China from land reclamation efforts through explicit, high level warnings.Brandsreasons that this success exists because China is only assertive when it believes it can advance without resistance, but operations draw the line firmly against action. Fortunately, **Panda of the Diplomat in 2018[[9]](#footnote-9)** observes that under Trump, the U.S. has significantly increased the frequency of its freedom of navigation operations in the South China Sea.

Unfortunately, acceding to UNCLOS would get rid of these operations in two ways.

**First, Restrictions**

**Article 301[[10]](#footnote-10)** of UNCLOS demands that “States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State”. Furthermore, **Article 279 of UNCLOS[[11]](#footnote-11)** states that “Parties shall settle any dispute…concerning…this Convention by peaceful means…” **Middendorf[[12]](#footnote-12)** corroborates that the mandatory dispute resolution mechanism in UNCLOS can be used by China to curtail military operations because it is unclear in the treaty what is defined as peaceful military operations.

**Second, China’s winning interpretation.**

**Jacobson[[13]](#footnote-13)** finds that US ratification would restrict and regulate American maritime rights, and the US would become just one voice with one vote among 163 countries. In fact, **Ku of Foreign Policy[[14]](#footnote-14)** finds that drawing a distinction between commercial and military vessels, no country, except the United States believes that military vessels can sail wherever they want because it is against international law, and that several other countries agree with China on this interpretation of UNCLOS. He concludes that if China is able to drag the United States into UNCLOS, the legitimacy of U.S. FONOPs will inevitably erode.

There are two impacts

**First, Containing China**

[**Kuock of Brookings**](https://www.brookings.edu/wp-content/uploads/2016/07/The-US-FON-Program-in-the-South-China-Sea.pdf)[[15]](#footnote-15)finds that FONOPs are now conducted to preempt South China Sea claims, and that FONOPS directly counter China’s attempts to assert De Facto control in the area. Problematically, **Edel[[16]](#footnote-16)** explains that failing to carry out FONOPS gives Beijing the blank check that it can expand without repercussions. China’s intentions are clear, as [**The National Interest who writes in 2017 finds[[17]](#footnote-17),**](http://nationalinterest.org/blog/the-buzz/china-has-nearly-conquered-the-south-china-sea-24371) a policy of appeasement further emboldens China to further militarize its artificial islands. **Robert Farley of the National Interest[[18]](#footnote-18)** finds that further expansion of Chinese interests and capabilities would mean direct military conflict in the South China Sea.

**Second, Regional Balance**

**Khalizad[[19]](#footnote-19)** notes that without an American Security blanket, regional powers will rearm in an attempt to balance against emerging threats. In fact, **Caffrey[[20]](#footnote-20)** explains by writing that “A key trend in the Asia pacific region would be the shift from a traditional focus on territorial defense towards power projection. Khalizadconcludes that under this scenario without the United States, East Asian states would be emboldened to make aggressive moves in their region and there would be a heightened possibility of miscalculation spiraling into all-out conflict.

Fortunately, **Stachwick of the East West Institute[[21]](#footnote-21)** concludes that a fundamentally peaceful status quo in the South China Sea can be preserved with US Military Presence.

**Thus, Negate.**

1. Posted By Robert Gardner On Jun 13, 2012, 6-13-2012, "US Must Ratify Law of Sea Convention,", <https://www.americansecurityproject.org/us-must-ratify-law-of-sea-convention/>

The UNCLOS [Commission on the Limits of the Continental Shelf](http://translations.state.gov/st/english/texttrans/2012/05/201205236199.html#axzz1x7BDYEpF) is currently considering states territorial claims to Arctic seabed, where resources could be recovered. Canada, Denmark (for Greenland), Norway, Iceland, and Russia have all put fourth [claims](https://www.americansecurityproject.org/blog/2012/arctic_law_of_the_sea/) for Arctic seabed on their extended continental shelves. **Without being party to the treaty, the US cannot make claims to Arctic seabed beyond 200 miles off its coast, as designated by the treaty.**

About The, 4-10-2014, "Arctic Indigenous Peoples, Climate Change Impacts, and Adaptation," E-International Relations, <https://www.e-ir.info/2014/04/10/arctic-indigenous-peoples-climate-change-impacts-and-adaptation/> [↑](#footnote-ref-1)
2. Secretary of State Clinton attempted to debunk this argument in a recent Senate Foreign Relations Committee hearing. Clinton asserted that companies have expressed their need for[**“the maximum level of international legal certainty before they will or could make the substantial investments”**](http://translations.state.gov/st/english/texttrans/2012/05/201205236199.html#axzz1x7BDYEpF) **in expensive and risky Arctic exploration.** In addition Clinton stated “[our ability to challenge other countries’ behavior should stand on the firmest and most persuasive legal footing available.](http://translations.state.gov/st/english/texttrans/2012/05/201205236199.html#axzz1x7BDYEpF)” Supporting Clinton, **the chairman of Lockheed Martin** (along with other business leaders) **has written to the senate supporting the treaty, saying investment in the region “**[**is only going to be secured for rights clearly recognized and protected within the established treaty-based framework.”**](http://wherepoliticsstops.wordpress.com/2012/05/23/crying-unclos/) **In sum, companies won’t drill in the Arctic until they are backed by the legal framework of UNCLOS. UNCLOS provides the legal certainty companies need; bi-lateral treaties won’t cut it.** [↑](#footnote-ref-2)
3. Jeff Desjardins, 4-7-2016, "This infographic shows how gigantic the Arctic's undiscovered oil reserves might be," Business Insider, <https://www.businessinsider.com/how-gigantic-arctics-undiscovered-oil-reserves-might-be-2016-4>

In terms of oil, it's estimated that the Arctic has 90 billion barrels of oil that is yet to be discovered. That's equal to 5.9% of the world's known oil reserves - about 110% of Russia's current oil reserves, or 339% of U.S. reserves. [↑](#footnote-ref-3)
4. **Walsh 12** (Bryan Walsh, senior writer for TIME magazine covering energy and the

environment, 20 July 2012, “It’s Not Just Spills—the Climate Risks of Arctic Drilling”

http://science.time.com/2012/07/20/its-not-just-spills-the-climate-risks-of-arctic-drilling/ DOA

7/8/18) MDS

But a new report by the NGO Clean Air Task Force (CATF) shows that an oil spill isn’t the only risk that Arctic drilling poses to the environment. **Methane** and black carbon, two potent greenhouses gases, **will likely be emitted in significant amounts if drilling in the Arctic proves as lucrative as many oil companies are hoping for**. Exactly how much additional greenhouse gas will be released by the production of Arctic oil isn’t clear—and depends on whether drillers and regulators take steps to reduce the warming side effects of drilling. “It’s ironic that climate change has led to the opening of the Arctic for drilling, but we aren’t paying much attention to the climate change that drilling will help cause,” says Jonathan Banks, senior climate policy advisor for CATF and the author of the report. **The main problem isn’t the oil itself**—although, of course, if the 90 billion barrels of oil believed to be obtainable in the Arctic are burned in cars or trucks, the carbon released will help undoubtedly help intensify climate change. **It’s chiefly the natural gas that will be produced along with that oil. Natural gas is essentially methane—and methane is a powerful, albeit short-lived greenhouse gas, with more than 20 times the warming potential of plain old carbon dioxide**. By some estimates, **there’s as much as 1.7 trillion cubic ft. of natural gas to be found in the Arctic**. But companies like Shell aren’t braving the elements in the Arctic to bring back natural gas. They’re there for the oil, which is worth far more—and not incidentally, is a lot easier to store and transport than gas. Natural gas either needs a pipeline network that can allow it to be shipped from the well to a consumer, or it needs to be cooled to super-low temperatures, after which it can be shipped on an LNG tanker. (Oil, by contrast, can be loaded without any intermediary steps onto a tanker.) There are neither many pipelines nor many LNG facilities in the far North, which means it’s not easy nor cheap for oil companies to actually do anything with the natural gas they’ll be producing alongside all that lovely oil. “The race in the Arctic is about the oil,” says Banks. “But the gas that goes along with it can be a huge source of carbon.” [↑](#footnote-ref-4)
5. **Chestney 12** Nina Chestney, 2012, "Arctic Methane Release Could Cost Economy $60 Trillion," Scientific American <https://www.scientificamerican.com/article/arctic-methane-release-could-cost-60t/> //DF

LONDON (Reuters) - **A release of methane in the Arctic could speed the melting of sea ice and climate change with a cost to the global economy of up to $60 trillion over coming decades**, according to a paper published in the journal Nature. (Scientific American is part of Nature Publishing Group.) Researchers at the University of Cambridge and Erasmus University in the Netherlands used economic modeling to calculate the consequences of a release of a 50-gigatonne reservoir of methane from thawing permafrost under the East Siberian Sea. They examined a scenario in which there is a release of methane over a decade as global temperatures rise at their current pace. They also looked at lower and slower releases, yet all produced "steep" economic costs stemming from physical changes to the Arctic. "The global impact of a warming Arctic is an economic time-bomb," said Gail Whiteman, an author of the report and professor of sustainability, management and climate change at the Rotterdam School of Management, part of Erasmus University. "In the absence of climate-change mitigation measures, the model calculates that it would increase mean global climate impacts by $60 trillion," said Chris Hope, a reader in policy modeling at the Cambridge Judge Business School, part of the University of Cambridge. That approaches the value of the global economy, which was around $70 trillion last year. The costs could be even greater if other factors such as ocean acidification were included, the study said, or reduced to some $37 trillion if action is taken to lower emissions. **As much as 80 percent of the costs would likely be borne by developing countries experiencing more extreme weather, flooding, droughts and poorer health as the Arctic melt affects the global climate**, the paper said. Methane is a greenhouse gas usually trapped as methane hydrate in sediment beneath the seabed. As temperatures rise, the hydrate breaks down and methane is released from the seabed, mostly dissolving into the seawater. [↑](#footnote-ref-5)
6. ####  Hu Bo, 8-20-2018, "No One Lost the South China Sea (And No One Will Win)," National Interest, <https://nationalinterest.org/feature/no-one-lost-south-china-sea-and-no-one-will-win-29337>

**As we all see, the situation in the South China Sea is cooling down,** and the biggest variable is the emerging Sino-U.S. maritime strategic competition. There have been three major views, all of which stem from anxiety, in the western strategic sphere recently on this issue, namely, the so-called [Chinese expansionism](https://nationalinterest.org/feature/china-waging-maritime-insurgency-south-china-sea-its-time-united-states-counter-it-28062), U.S. fecklessness and China’s control of the South China Sea with at the cost of others’ interests. That would contribute to much of China-lashing rhetoric these days. In my observation, all the above points are biased to some degree. **No one lost the South China Sea and no one will.** Firstly, **no power including China and the United States has the capacity to control the South China Sea regardless its intentions, as we are living in a world where power is more balanced.** It’s true that China has made great strides in terms of military modernization and increased power presence, but other South China Sea littoral states and outside powers such as the United States are all strengthening their power presence and military deployments in the region as well. In the foreseeable future, it’s difficult to imagine that China or any other country could achieve predominance in the South China Sea.

Secondly, when we talk about sea power and sea control in our current times, it just means relative influence and comparative advantage in some maritime areas, because today’ sea power is definitely an inclusive system rather than exclusive one. With China’s rise, it is increasingly difficult for the United States to impose the Mahan doctrine on China in the South China Sea; and **no matter how far China develops, it is not likely to pursue so called “maritime hegemony,” given United States’ powerful forces in and around the South China Sea.** After a long term competition, both sides will finally find out that there is no choice but to establish a common and inclusive security order with ASEAN Member States and other stakeholders. [↑](#footnote-ref-6)
7. ####  Ngo Di Lan, 1-26-2018, "The Usefulness of "Redundant" Freedom of Navigation Operations," Asia Maritime Transparency Initiative, <https://amti.csis.org/usefulness-redundant-fonops/>

As the tempo of U.S. freedom of navigation operations (FONOPS) under the administration of Donald Trump increases, some scholars have argued that the United States should reevaluate the program entirely to avoid unnecessarily provoking China. If FONOPs were intended purely to challenge China’s maritime claims on a legal front, this argument would have been reasonable. After all, China’s rejection of the PCA ruling in 2016 shows that **the current struggle in the South China Sea is primarily a political rather than a legal one. However, the effects of U.S. FONOPs are primarily politic al. By conducting repeated FONOPs in the South China Sea, the United States** could **send[s] clear and costly signals to China[,]** and other countries in the region **that it will not tolerate unilateral changes in the** maritime **status quo.** [↑](#footnote-ref-7)
8. <https://halbrands.org/wp-content/uploads/2017/12/SCS.pdf>

containment has worked in certain isolated cases that might serve as “proof of concept” for a larger strategy. **In a little-noted incident in 2014, for instance, China stopped seeking to prevent resupply of Philippine marines stationed on Second Thomas Shoal after the United States signaled its commitment by placing a maritime surveillance plane overhead.** In this episode, Vice Admiral Robert Thomas, commander of the U.S. Seventh Fleet, also made a clear statement of U.S. resolve by saying, “Without going into hypotheticals, the Seventh Fleet is going to support this alliance, period.” 31 Similarly, although the United States failed to prevent China from taking effective control of Scarborough Shoal in 2012, **public reports indicate that, in 2016, China backed away from a planned effort to begin land reclamation there after U.S. officials issued explicit, high-level warnings that doing so might disrupt seriously the Sino-American bilateral relationship. 32 In other words, China may be increasingly assertive, but only when it believes it can advance without encountering serious resistance.**

Containment accepts Chinese gains made to date, in recognition of just how difficult and dangerous it would be to reverse those gains**, but draws the line firmly—including by threat or use of military force—against further advances.** [↑](#footnote-ref-8)
9. Ankit Panda, The Diplomat, 5-28-2018, "South China Sea: Two US Navy Warships Conduct Freedom of Navigation Operation in Paracel Islands," Diplomat, https://thediplomat.com/2018/05/south-china-sea-two-us-navy-destroyers-conduct-freedom-of-navigation-operation-in-paracel-islands/

**Under** the **Trump** administration, t**he U.S. Navy has increased the frequency of its freedom of navigation operations in the South China Sea and not all operations have been publicly reported.** The U.S. Department of Defense did not make any on-record statement confirming the latest reported FONOP in the Paracels. [↑](#footnote-ref-9)
10. <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>

**Article 301** Peaceful uses of the seas In exercising their rights and performing their duties under this Convention, **States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State,** or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations [↑](#footnote-ref-10)
11. **Article 279**

**UNCLOS Full Text** – (http://www.un.org/depts/los/convention\_agreements/texts/unclos/unclos\_e.pdf, CD - JO)

PART XV

SETTLEMENT OF DISPUTES

SECTION 1. GENERAL PROVISIONS

Article 279 Obligation to settle disputes by peaceful means

States **Parties shall settle any dispute** between them **concerning** the interpretation or application of **this Convention by peaceful means** in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter. [↑](#footnote-ref-11)
12. Middendorf, William J. "[***Statement of William J. Middendorf: On The United Nations Convention on the Law of the Sea (April 8, 2004)***](http://www.globalsecurity.org/military/library/congress/2004_hr/040408-middendorf.pdf)." Testimony before the Senate Armed Service Committee, April 8, 2004. [ [**More**](https://www.unclosdebate.org/citation/1348/statement-william-j-middendorf-united-nations-convention-law-sea-april-8-2004) (5 quotes) ]

On the other hand, the risks to national security posed by the Convention are often understated. For example, Deputy Assistant Secretary of Defense for Negotiations Policy Mark T. Esper, who testified in favor of the Convention, told the Senate Foreign Relations Committee in an October 21, 2003, hearing that **the mandatory dispute resolution mechanism could be used by states unsympathetic to the U.S. to curtail its military operations even though such operations are supposed to be exempt from the mechanism. This is because it is unclear by the terms of the treaty what activities will be defined as military.** While the Bush Administration believes that it will be up to each State Party to determine for itself what activities are military, it is uncertain enough about the issue that it is recommending the U.S. submit a declaration reserving its right to determine which activities are military. Unfortunately, **it is not at all certain that a declaration will suffice to protect vital U.S. national security interests. Other states may choose to accept or ignore the declaration, or a future administration may accept the jurisdiction of a tribunal and be surprised if precedent-setting decisions go against U.S. interests.** While in the future the Navy may recommend that the U.S. reject a claim of jurisdiction for a tribunal, civilian authorities both inside and outside the Department of Defense may overrule the Navy. Amending the text of the treaty may be the only certain way to protect U.S. interests against overreaching by other states regarding the mandatory dispute resolution mechanism. This is my view, in part, because I am not aware of a precedent for such a mandatory dispute settlement mechanism that could extend to such sensitive areas.

[ *Page 8-9* ] [↑](#footnote-ref-12)
13. " IDPP Center, http://www.idppcenter.com/UNLOSTreaty-RatifyingHarmsUSA-Sovereignty-Part1.pdf, accessed 7-9-2018 Josh B.

LOST established the International Seabed Authority as the global administrative institution to implement the provisions of the Treaty. All National Parties are ISA members, and the headquarters is in Kingston, Jamaica [Part XI, Art. 156]. “"e Authority” has three principal organs: the Assembly, a Council, and the Secretariat [Art. 158], plus a commercial Enterprise, and the International Tribunal for the Law of the Sea (see Mandatory Dispute Resolution). !e Assembly, “the supreme organ,” has one representative from each of the 162 Party Nations, each with one vote. It has power to: “establish general policies,” elect the Council members, elect the ISA SecretaryGeneral, and for the Enterprise, elect the Governing Board and its Director-General [Part XI, Arts. 159, 160]. It also has powers “to assess the contributions of members” (tax Party Nations for revenues), and share (redistribute) income from taxes and activities in “the Area” (all international waters). Both the Assembly and the Council have separate powers to establish any subsidiary global organizations “necessary for the exercise of (ISA) functions” [Arts. 160, 162]. !e Council has 36 members elected from among the Assembly by that body, from its various groups of nations, for whom they speak. "e Council serves as “the executive organ of the Authority”; picks the candidates for Secretary-General, Director-General and the Board; decides whether to “approve plans of work” (e.g., drilling, mining requests); initiates proceedings against countries or companies for non-compliance; may “issue emergency orders” to stop operations; can “disapprove areas for exploitation”; and creates “speci!c policies” based on the Treaty and the “general policies established by the Assembly” [Art. 162]. Unlike the Permanent Members of the United Nations Security Council, no member of the ISA Council has a “veto” despite the repeated statements to the contrary by proponents of LOST. In addition, an entity called the Enterprise was established to “carry out the functions” of ISA worldwide, including commercial enterprises of “transporting, processing and marketing of materials” [Part XI, Arts. 158, 170]. !e Secretariat, or administration, is comprised of the Secretary-General (SG) and sta$ necessary to “ful!ll the administrative functions of the Authority.” "e SG is elected by the Assembly for a four-year term, serves as the ISA’s chief administrative o%cer, and prepares the !rst dra& of the budget [Part XI, Arts. 166, 167, 172]. Since 2008, Mr. Nii A. Odunton of Ghana has been Secretary-General. Somewhat disconcerting is the requirement that the SG and sta$ function exclusively as “international o%cials,” who “shall not seek or receive instructions from any government or from any other source external to the Authority” [Art. 168]. "e ISA classi!ed itself as an “international legal personality” with “privileges and immunities” that cover its leaders, representatives of Member Nations, personnel, property, assets, documents, archives, industrial secrets, and proprietary data, plus exemption “from all direct taxation” on personnel or goods exported or imported [Part XI, Arts. 176-183]. If the USA does not ratify LOST, it retains all of its sovereign rights over its territorial waters, continental shelf, and the airspace above, plus all the rights in and above international waters recognized in international law. **If the USA ratifies LOST, all of their maritime rights** mentioned above **are restricted and regulated by the ISA and its Member Nations, and the USA would become just one voice with one vote among 163 nations, with no veto power, and far less influence than it enjoys in other international bodies**, such as the United Nations Security Council. Any American plans for exploration or exploitation of resources within international waters would require Council approval, which could also stop operations at anytime. "e U.S. Government and American companies would be required to provide proprietary information to the ISA for any activities or 2 Page Issue Brief www.freedomalliance.org 3 operations in the Area, but would have no control over that information, and be prohibited from prosecuting any ISA personnel for misuse of that information. In fact, the ISA is authorized to transfer “technology and scienti!c knowledge” to developing nations [Part XI, Arts. 144, 150 (d)]. "e U.S. Government and American companies would likely have little in#uence on the Secretariat, whose leaders and sta$ would be prohibited from receiving any special in#uence or “instructions” from them. Also, the USA would be required to grant ISA leaders and representatives the same “privileges and immunities” that high o%cials and diplomats from foreign nations enjoy. In addition, while the ISA would collect revenues (taxes) from the USA and royalties (taxes) from American companies with operations in international waters, ISA leaders, sta$, and goods cannot be taxed [↑](#footnote-ref-13)
14. Julian G. Ku and M. Taylor Fravel. Foreign Policy, 5-16-2016 Freedom of Navigation Operations in the South China Sea Aren't Enough, https://foreignpolicy.com/2016/05/16/freedom-of-navigation-operations-in-the-south-china-sea-arent-enough-unclos-fonop-philippines-tribunal/, 7-9-2018RS

In fact, it tried to isolate the U.S. legal position. **Drawing a distinction between commercial and military vessels,** the Chinese foreign ministry spokesman stated that “**no country, except the United States believes in military vessels sailing wherever they want, which is against international law.”** The spokesman went on to say the U.N. Convention on the Law of the Sea (UNCLOS) “allows innocent passage by foreign vessels through others’ territorial waters, but there is no specific term stating that military vessels have such a right.” **China then pointed out that several other countries agree with China on the this interpretation of UNCLOS that.** **The Chinese government is correct that some countries have continued to argue that the rights of innocent passage guaranteed by Article 19 of UNCLOS does not apply to warships.** The plain language of Article 19 (“ships of all States”) suggests otherwise since the Convention specifies “warships” in other contexts when naval vessels have special treatment. But the disagreement has persisted over the years. China’s shift from complaining about U.S. violations of its sovereignty to dueling interpretations of UNCLOS reflects a possible shift in its rhetorical and diplomatic strategy. While complaining about U.S. threats to sovereignty would only highlight the aggressiveness of China’s territorial claims, complaining about expansive U.S. naval operations is an issue with which other nations can find common ground with China. Indeed, China’s diplomatic corps has been working overtime to line up sympathetic nations to its non-acceptance of the pending UNCLOS arbitral tribunal case brought by the Philippines. Shifting focus toward arcane interpretations of international law is better and more solid ground for China. The United States has the better and more persuasive interpretation of UNCLOS. **But if China is able to drag the United States into the technical arguments over UNCLOS,** some of **the political force of the U.S. FONOPs will inevitably erode.** While it should not abandon FONOPs, the United States needs to come up with different ways to challenge China’s land reclamations and expansionism. FONOPs are not going to be enough. Put simply, FONOPs were never intended to be used as a tool in territorial or maritime jurisdictional disputes involving third parties. The purpose of the program is limited to asserting navigational freedoms and that “excessive claims” to maritime jurisdiction by other states would restrict or constrict in ways that are inconsistent with “high seas freedoms” in UNCLOS. They are operational assertions using military vessels to reinforce U.S. declaratory policy on freedom of navigation, not actions to deter how states pursue their claims in maritime disputes. By definition, FONOPs are usually a reaction to claims already made by third parties, to demonstrate that the United States does not recognize them. In the South China Sea, FONOPs can be used to challenge excessive claims from the various land features under dispute. Recently, as Julian notes, FONOPs have been used only to challenge restrictions on the transit of military vessels through a 12 nautical mile territorial sea, such as prior permission or prior notification. Looking forward, they could be used to challenge claims to maritime jurisdiction from some artificial islands that China has created, at least four of which would not be entitled to even a territorial sea because they are artificial structures built upon a low-tide elevation. [↑](#footnote-ref-14)
15. ####  Lynn Kuock, https://www.brookings.edu/wp-content/uploads/2016/07/The-US-FON-Program-in-the-South-China-Sea.pdf

In the South China Sea, FON operations have taken on additional significance given China’s strategic ambiguity**. In the past, FON operations were undertaken to challenge excessive maritime claims. They are now, however, arguably being conducted to pre-empt them—a course of action necessitated by China’s continued refusal to clarify its claims.** Such operations may, accordingly, be better framed as assertions of maritime rights (so that these rights are reinforced and not detracted from in the future), rather than as challenges to excessive maritime claims. This recasting is particularly appropriate in the Spratlys where China has been especially vague about its maritime claims. **Effectively employed, FON operations could help counter China’s attempts to assert de facto control over the South China Sea. They will also raise the costs of Beijing declaring straight baselines around the Spratlys and attempting to convert the waters within these lines to internal waters.** [↑](#footnote-ref-15)
16. **Rapp-Hooper**, Mira, and Charles Edel. “Adrift in the South China Sea.” **Foreign Affairs**, Foreign Affairs Magazine, 27 July **2017**,<https://www.foreignaffairs.com/articles/asia/2017-05-18/adrift-south-china-sea?cid=nlc-twofa-20170518&sp_mid=54093816&sp_rid=cnVkeXRpcnJlQGdtYWlsLmNvbQS2&spMailingID=54093816&spUserID=MjEwNDg3NDk2MzU5S0&spJobID=1163043860&spReportId=MTE2MzA0Mzg2MAS2>

**But the operations send an important legal message—that the South China Sea is an international waterway over which China is not entitled to make spurious maritime claims—and failing to carry them out suggests to Beijing that it can expand its reach with impunity.** Worse, it could lead China’s neighbors to accept Beijing’s military outposts and expansive claims as legitimate. Last year, an international tribunal ruled that those claims had no basis in international law. [↑](#footnote-ref-16)
17. Supreme Court Associate Justice Antonio Carpio, a leading national voice on South China Sea issues, lambasted the Duterte administration’s **“[a] policy of appeasement**”, which has **further “embolden[s] China to further militarize its artificial islands in the Spratlys.”** “Has the Philippines been sold? It’s worrisome to see that China’s military bases are almost complete in the [South China Sea],” lamented Senator Benigno Aquino IV, a relative of former president Aquino and a leading voice of opposition.aw [↑](#footnote-ref-17)
18. This has changed. The **[further] expansion of Chinese interests and capabilities means** that we can envision several different scenarios in which **direct military conflict between China and the United States** might begin. These still include a Taiwan scenario and North Korea scenario, but now also involve disputes in the East and South China Seas , as well as potential conflict with India along the Tibetan border. [↑](#footnote-ref-18)
19. **Zalmay Khalilzad, 2-8-2011, "The Economy and National Security," National Review,** [**https://www.nationalreview.com/2011/02/economy-and-national-security-zalmay-khalilzad/**](https://www.nationalreview.com/2011/02/economy-and-national-security-zalmay-khalilzad/)

American retrenchment could have devastating consequences. **Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict.** Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions. [↑](#footnote-ref-19)
20. Military spending across the Asia-Pacific region has boomed in recent years as regional economies have grown. [Rising tensions around the South China Sea](http://edition.cnn.com/2016/07/13/asia/south-china-sea-global-conflict-risks/?iid=EL) could be a catalyst to splash out more cash.

"**A key trend in [Asia-Pacific] is the shift from a traditional focus on territorial defense towards power projection**," said Craig Caffrey, a principal analyst at IHS Jane's. "This is new for the region and is likely to increase military-to-military contact between states."

China is already the world's number two spender on defense. But its growth trajectory means that by 2020 it will be spending four times more than the United Kingdom and its budget will top the combined outlays of western European powers. [↑](#footnote-ref-20)
21. <https://www.eastwest.ngo/idea/leveraging-us-military-power-south-china-sea>

The solution is not for either country to concede current ground or presence in the region, but to concede those prospective build-ups and capabilities that would fuel more intense competition. Many analysts believe China will use any substantial increases in U.S. military presence in the South China Sea as pretext to deploy forces to its (for now) largely empty bases in the Spratly Islands. But **if** China agrees to keep its fighter squadrons and missile regiments on the mainland in return for **the United States keeping its (as-yet notional) expeditionary containment capabilities out of the Western Pacific, a** tense but **fundamentally peaceful status quo in the South China Sea can be preserved without either power being seen to withdraw.** Implicit acceptance of the status quo may be dissatisfying, but it saves all parties the humiliation of officially conceding their claims, and has the virtue of being a dissatisfaction that is equitably distributed. [↑](#footnote-ref-21)