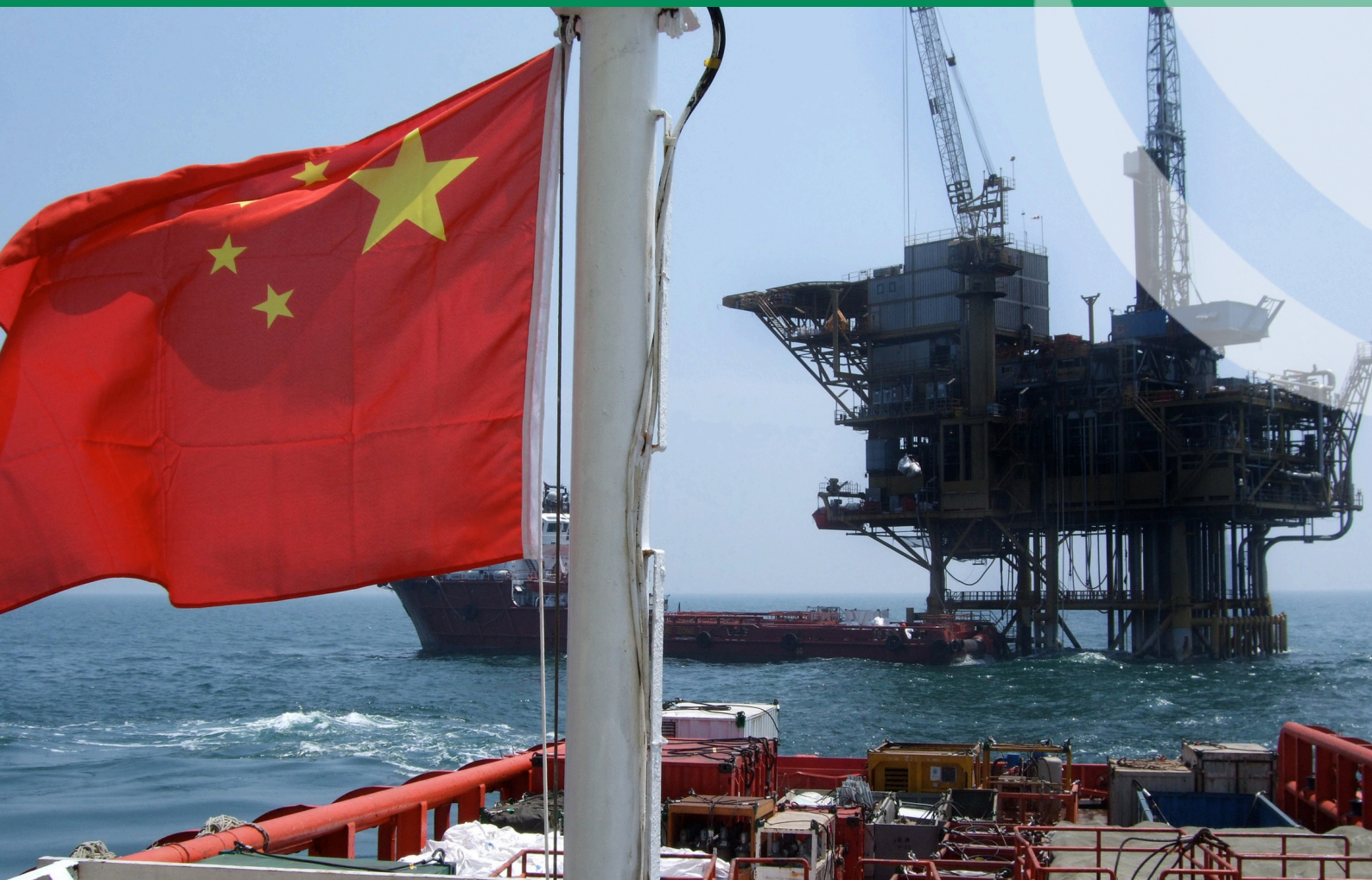


China's Approach to the Law of the Sea

A Maritime Power Instrumentalizing International Norms

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China’s Approach to the Law of the Sea *A Maritime Power Instrumentalizing International Norms*

Anissa Aroun, Justine Collignon, Mila Issolah

Second prize – Prix Asia Centre 2025

In February 2025, the arrest of Chinese nationals in the Philippines for military espionage near the Spratly Islands rekindled tensions in the South China Sea, fully highlighting Beijing's geopolitical and maritime ambitions. Such confrontations are not unfamiliar to the region: China has, for decades now, adopted a particular stance regarding the legal rules, and in particular the international law of the sea governing it.

Adopted in 1982 at Montego Bay, the United Nations Convention on the Law of the Sea (UNCLOS) defines the rules governing the use of maritime spaces. Each coastal state can claim a territorial sea of up to 12 nautical miles, where it exercises total sovereignty, as well as an exclusive economic zone (EEZ) of 200 nautical miles, giving it exclusive rights over the exploitation of natural resources¹. Beyond this, the continental shelf can extend to 350 miles under certain conditions, while the high seas remain an international area governed by the freedom of navigation principle².

In certain strategic regions, the application of international laws on maritime delimitation has given rise to numerous tensions, notably in the South China Sea. This key economic and geopolitical zone is marked by multiple territorial claims to islands and reefs, which provide crucial access to maritime resources and trade routes. China, seeking to assert its regional influence, relies on a contested interpretation of the international law of the sea to justify its claims. But its ambitions go far beyond the legal framework, and are fuelled by complex geopolitical considerations, which combine security concerns - such as the protection of trade routes and access to natural resources - with economic interests, notably linked to fishing zones and hydrocarbons.

These tensions crystallize around the famous “nine-dash line”, a delimitation claimed by Beijing that is based on historical grounds, which was rejected in 2016 by the Permanent Court of Arbitration. This decision further deepened disagreements over the application of UNCLOS in the region, fuelling a climate of persistent rivalries. Consequently, this calls for an analysis of how China approaches the law of the sea.

In order to gain a better understanding of China’s stance on the law of the sea, it is crucial to consider the relationship between the Chinese power and the maritime domain, which plays a central role in shaping its perception of international law (I), as well as to analyse how it seeks to free itself from the system of international norms by adopting a selective adherence to

¹ Articles 55 to 75 UNCLOS

² Articles 86 to 120 UNCLOS

UNCLOS (II). Finally, the consequences of this attitude regarding international law of the sea will be assessed (III).

I. China’s emergence as a maritime power

The evolution of the Chinese maritime power

Historically, China began its maritime development under the imperial dynasties, building an advanced merchant and military fleet. This ambition was gradually abandoned due to an imperial strategy that prioritized domestic security³. However, this geopolitical choice was not sustainable in the face of Europe’s maritime powers. In the 19th and 20th centuries, Western commercial expansion reached the country and had a negative impact on its power and economy. China entered what it calls the “century of humiliation” - stretching from the First Opium War to the establishment of the People’s Republic of China (1840-1949) - during which China found itself vulnerable and isolated⁴.

In 1949, China sought to modernize and embarked on a series of ambitious economic, social and political reforms. It was in these circumstances that the country reopened itself to the sea, and developed a geopolitical strategy based on maritime development. It decided to exploit the advantages offered by its position on the ocean and adopted a dual approach (civil and military) in all maritime domains.

There are several reasons that explain why Beijing turned to the ocean. First, the inherent richness of the oceans and their economic importance. The Chinese population’s need for food is immense. The country’s food security is ensured by fishing, which accounts for 5 to 8% of the global catch, feeding 300 million people in South-East Asia. In addition, mining and undersea hydrocarbon deposits generate significant economic gains and meet the region’s industrial needs. Finally, its dazzling commercial growth has made it impossible to conceal its ambitions, leading the country to equip itself with a navy capable of protecting its interests around the world⁵.

The assertion of China’s maritime power in the 21st century and the protection of its “maritime rights and interests”

Since the end of the “century of humiliation”, China’s involvement in maritime affairs has steadily increased. In 2005, the country started a strategy of maritime expansion. As this continues to develop today, it has already mobilized significant military, commercial and scientific resources. In November 2012, President Hu Jintao declared at the 18th Chinese

³ Eudeline, H. (2024). Géopolitique de la Chine : une nouvelle thalassocratie. PUF Géopolitiques.

⁴ Ikram, A. (2025). The Century of Humiliation & Chinese Strategic Culture. Paradigm Shift. <https://www.paradigmshift.com.pk/century-of-humiliation/>

⁵ Prazuck, C. (2021). Mer de Chine et droit de la mer : Le paradoxe chinois. Ifri. <https://www.ifri.org/fr/editoriaux/mer-de-chine-et-droit-de-la-mer-le-paradoxe-chinois>

Communist Party Congress that China’s new goal was to become a *haiyang qiangguo*, meaning a “great maritime power”⁶.

Current President Xi Jinping has reaffirmed and deepened China’s commitment by mobilizing the state to implement “active countermeasures” to protect the country’s “maritime rights and interests”. According to I.B. Kardon, these rights and interests constitute the point of convergence of the legal, political, strategic and economic elements of China’s maritime ambitions. They are never explicitly defined and correspond to a broad set of objectives and activities that guide its vision of the law of the sea⁷. This vagueness allows Beijing to adjust them according to political circumstances and to claim rights that are sometimes not recognized by international law. Although there is no precise definition, certain characteristics of these maritime rights and interests have been identified. According to Beijing, they are legitimate, exclusive, threatened by internal and external actors, and subject to change depending on China’s maritime capabilities and the evolution of the international law of the sea regime⁸.

China’s ambitious maritime policy in pursuit of oceanic dominance

China’s ambition to dominate the seas is reflected in an active maritime policy across all sectors. The country is investing heavily in its naval capabilities, thereby strengthening its presence among contested maritime areas, notably the South China Sea⁹. The Chinese navy, which is still in full expansion, is also tasked with protecting its trade routes. It plays a key role in supporting the development of the Belt and Road Initiative (BRI). When it comes to maritime infrastructure projects, China is pursuing a strategy known as the “String of Pearls”. This refers to the idea of creating a series of naval bases, ports and infrastructures along the maritime route linking China to the Indian Ocean and the Middle East¹⁰.

These projects strengthen China’s influence on strategic maritime routes and help secure its energy supplies. This is part of the solution to the “Malacca dilemma”, which refers to China’s dependence on the Strait of Malacca shipping route for its oil imports and trade¹¹. In addition, the BRI was extended in 2017 with the integration of the Polar Silk Road, which represents great potential for resource extraction and shipping in the Arctic region¹².

Under President Xi Jinping, Beijing’s interest in the exploration and exploitation of deep-sea mineral resources has also intensified. For instance, China is a very active member of the International Seabed Authority. It is the leading beneficiary of deepwater mineral exploration

⁶ McDevitt, M. (2016). Becoming a Great “Maritime Power”: A Chinese Dream. CNA.

<https://www.cna.org/reports/2016/IRM-2016-U-013646.pdf>

⁷ Hayton, B. (2024). China’s Law of the Sea: The New Rules of Maritime Order: Isaac B. Kardon. *Asian Affairs*, 55(4), 738–740. <https://doi-org.sid2nomade-1.grenet.fr/10.1080/03068374.2024.2441961>

⁸ Kardon, I.B. (2015). China’s Maritime Rights and Interests: Organizing to Become a Maritime Power. CNA.

https://www.cna.org/archive/CNA_Files/pdf/china-maritime-rights.pdf

⁹ Eudeline, H. (2018). L’extraordinaire essor de la puissance navale chinoise. *Revue Défense Nationale* n°807.

<https://www.defnat.com/e-RDN/vue-article.php?article=21674>

¹⁰ Amelot, L. (2010). La stratégie chinoise du « collier de perles ». *Outre-Terre* n°25-26(2). pp 187-189.

https://shs.cairn.info/article/OUTE_025_0187#s2n4

¹¹ Amelot, L. (2010). Le dilemme de Malacca. *Outre-Terre* n°25-26(2). pp 249-271. <https://shs.cairn.info/revue-outre-terre1-2010-2-page-249?lang=fr#s1n2>.

¹² Heggelund, G., Lamazhapov, E. et Stensdal, I. (2023). China’s Polar Silk Road: Long Game or Failed Strategy?. The Arctic Institute. <https://www.thearcticinstitute.org/china-polar-silk-road-long-game-failed-strategy/>

licenses, with several sites in the Pacific and the Clarion-Clipperton zone and is well positioned to secure future exploitation contracts¹³.

II. China's selective adherence to the international law of the sea

An extensive interpretation of sovereign rights

China’s maritime strategy is marked by a paradox: while being a signatory to UNCLOS and striving to become a world-class maritime power, it is challenging some key principles of the law of the sea, and most notably the delimitation of maritime spaces. Since 1947, it has asserted claims based on the “nine-dash line”, which encompasses 80% of the South China Sea and largely encroaches on the exclusive economic zones of neighbouring states (Philippines, Vietnam, Malaysia, Indonesia, Brunei, Taiwan). China makes no distinction between areas under its sovereignty (internal waters, territorial sea) and areas under its jurisdiction (contiguous zone, EEZ, continental shelf).

In areas under sovereignty, the state exercises total control, as it does on its land territory: it applies its laws, controls navigation and exploits resources. On the other hand, in jurisdictional zones such as the EEZ, a coastal state has sovereign rights to explore and exploit natural resources¹⁴ but navigation and other maritime activities remain unrestricted¹⁵.

China deliberately keeps its claims to the South China Sea vague, calling them “historic Chinese waters”, “areas of unquestionable sovereignty” and “traditional fishing grounds”¹⁶. It invokes a long-standing presence based on maps from the 1930s, which were used at the time to counter Western powers¹⁷, but have no basis in international law. By claiming sovereignty over areas that are normally under shared jurisdiction, such as EEZs, China is infringing upon the rights of other states in contradiction with the law of the sea. This ambiguity enables it to impose its own legal interpretation and legitimize military intervention in disputed areas.

China adopts an extensive reading of the law of the sea by redefining straight baselines, thus extending its territorial waters beyond the 12 nautical miles provided for by UNCLOS. It contests the harmless passage of military vessels and demands prior notification in its EEZ¹⁸. These requirements are deemed excessive in the eyes of international law. In 2013, the

¹³ Gueguen, N. et Pina, C. (2024). L’exploitation des ressources minières des grands fonds marins internationaux dans le Pacifique : le rêve de Nauru, de la Chine... et des Etats-Unis. IRSEM. Brève stratégique-72.

<https://www.irsem.fr/publications-de-l-irsem/brevs-strategiques/breve-strategique-n-72.html>

¹⁴ Article 56 UNCLOS

¹⁵ Le Shom (2023), Le Shom, expert des délimitations maritimes. <https://www.shom.fr/fr/liste-actualites/le-shom-expert-des-delimitations-maritimes>

¹⁶ Prazuck, C. (2021), op. cit.

¹⁷ *Chine : la mer, la puissance et le (non) droit* - Le Dessous des cartes | ARTE

https://youtu.be/KMkQkOKPCJ0?si=LXlw9Jx_skzkHO_K

¹⁸ Notification and statement of claim on west philippine sea, The Embassy of the People’s Republic of China, 22 Janvier 2013, Manille. <https://seasresearch.wordpress.com/wp-content/uploads/2014/12/notification-and-statement-of-claim-on-west-philippine-sea.pdf>

publication of a map including a “ten-dash line” rekindled regional tensions¹⁹. These moves reflect a desire to reshape the maritime legal order to suit its own interests.

The construction of artificial islands as a circumvention of international law

While China recognizes the link between maritime sovereignty and territorial control in the 1958 Geneva Convention, it circumvents the rules of the EEZ through its “Great Wall of Sand”, by occupying by force islets that have become administrative entities²⁰. Beijing thus imposes a strategy of *fait accompli* by claiming EEZs around the zones it controls²¹.

According to Article 121 of UNCLOS, only islands capable of sustaining human habitation or an independent economic life can have an EEZ, which excludes rocks. To circumvent this rule, China is building artificial islands on reefs and islets. However, Article 58 specifies that these structures do not have the status of islands and cannot generate maritime rights. In 2016, the Permanent Court of Arbitration concluded that part of the Spratlys are rocks²².

Subsequently, China gradually abandoned the reference to individual islands and the nine-dash line in favour of a discourse based on four archipelagos. The purpose of this is to set aside the 2016 court decision, which denied the right to generate an EEZ to the Spratly islands. China is now reclassifying the islands as archipelagos which, in its view, can generate maritime areas in accordance with the law of the sea²³.

According to article 46 of UNCLOS, an archipelago is “a group of islands”. But an EEZ can only be generated by islands that meet the UNCLOS criteria, and not by a grouping of islets. China seeks to link remote islands and reefs by drawing straight baselines, as it did in 1996 around the Paracels Islands. However, according to Article 7 of UNCLOS, such lines are only authorized in specific cases (highly indented and indented coasts or a chain of coastal islands close to the mainland). However, the Paracels and Spratlys are scattered groups of islands, unconnected to the Chinese coast, which invalidates this method. A method that once again illustrates China's attempt to use the law to justify its maritime claims.

China's distrust of international mechanisms

Beijing opposes its own vision of law of the sea to “Western” standards²⁴ and refuses to recognize the judgment of the Permanent Court of Arbitration. Although a signatory to UNCLOS, China has expressed reservations - particularly regarding dispute settlement - and in 2006, it invoked via Article 298 to exclude several disputes from compulsory procedures,

¹⁹ Alexeeva, O. et Lasserre, F. (2024), École normale supérieure de Lyon, *Carte à la une. En mer de Chine méridionale, le jeu politique de l'interprétation du droit de la mer*, Géoconfluences. <https://geoconfluences.ens-lyon.fr/informations-scientifiques/a-la-une/carte-a-la-une/mer-de-chine-meridionale>

²⁰ Saint-Paul, P. (2015). *Pékin construit une « grande muraille de sable » en Mer de Chine*. Le Figaro. <https://www.lefigaro.fr/international/2015/04/13/01003-20150413ARTFIG00089-pekin-construit-une-grande-muraille-de-sable-en-mer-de-chine.php>

²¹ Boniface, P. (2024). Les conflits en mer de Chine | Expliquez-moi. <https://www.youtube.com/watch?v=9oTsRmZL4EM>

²² FDBDA - Fonds de dotation Brousse Dell' Aquila. (2021, 16 septembre). *Les positions chinoises en droit de la mer contestées lors d'un récent échange de notes verbales aux Nations Unies*. <https://www.fdbda.org/2021/09/les-positions-chinoises-en-droit-de-la-mer-contestees-lors-dun-recent-echange-de-notes-verbales-aux-nations-unies/>

²³ Alexeeva, O. et Lasserre, F. (2024), op. cit.

²⁴ Hébrard, P. et Niquet, V. (2016), op. cit.

including those on maritime delimitation and military activities²⁵. By avoiding international jurisdictions, it maintains a favourable interpretation of the law and limits the influence of outside players. It favours bilateral negotiations, exploiting the balance of power, as in the case of the Sino-Vietnamese agreement on the Gulf of Tonkin in 2000.

In its dispute with the Philippines, Beijing refused to participate in the arbitration launched in 2013, contesting the tribunal's jurisdiction. The 2016 ruling invalidated the “nine-dash line”, which China rejected as “null and void”²⁶. Beijing sees this as a legal provocation, part of a hybrid war waged against its interests. This refusal to accept an unfavourable ruling call into question its willingness to respect its international commitments, as illustrated by its failure to withdraw from the Scarborough Shoal despite American mediation.

China's rejection of international arbitration is not just a power strategy, but a historical distrust of international law perceived as a tool of Western domination²⁷. This distrust, rooted in China's colonial heritage and political culture, favours bilateral negotiations over third-party arbitration, which is seen as threatening. The Western composition of the tribunals, notably the majority presence of European judges in 2016 and of a Japanese president at ITLOS²⁸, fuels suspicions of bias and justifies, in Beijing's eyes, the rejection of the decisions issued.

III. The consequences of China’s stance on the law of the sea

China’s challenge to international law of the sea as a neutral and impartial tool for shared water governance

China’s stance toward the law of the sea must be understood considering its broader, historically rooted perception of international law. Chinese diplomacy views it not only with distrust but also as a legacy of colonial dominance in the 20th century. This stems especially from the Opium Wars, after which China signed unequal treaties with Western powers and Japan, losing sovereignty through the forced opening of ports and unrestricted foreign naval access to inland waters²⁹.

Some scholars note “psychological obstacles” to legal mechanisms in China, due to its history and an Asian preference for amicable resolution³⁰. Consequently, China often reinterprets treaties to serve its own interests, despite having contributed to the drafting of UNCLOS³¹. This aligns with a Chinese proverb: « ... *above there are policies, but below, there are counter-*

²⁵ Notification and statement of claim on west philippine sea, op. cit.

²⁶ Llc, A. L. (2020, 16 janvier). *Arbitrage Relatif à la Mer de Chine Méridionale*. Aceris Law. <https://www.acerislaw.com/fr/arbitrage-relatif-a-la-mer-de-chine-meridionale/>

²⁷ Balsano, P. et Lasmole, O. (2019), *Éléments de compréhensions juridiques et géopolitiques en mers de Chine*, Revue Défense Nationale, p.92 à 98 <https://shs.cairn.info/revue-defense-nationale-2019-8-page-92?lang=fr>

²⁸ *Ibid.*

²⁹ Mengin F. Legs coloniaux et formation de l’État dans le monde chinois. 2005. fhal-01065616f <https://sciencespo.hal.science/hal-01065616>

³⁰ Balsano, P. et Lasmole, O. (2019). *Éléments de compréhensions juridiques et géopolitiques en mers de Chine*. Revue Défense Nationale, N° 823(8), 92-98, <https://shs.cairn.info/revue-defense-nationale-2019-8-page-92?lang=fr>

³¹ Sachica, C. Lawfare: China’s new gambit for global power. (s. d.). Global Affairs and Strategic Studies. <https://www.unav.edu/web/global-affairs/lawfare-china-s-new-gambit-for-global-power>

policies »³², implying that decisions made by authorities (such as treaty ratification) may later be deemed invalid if they restrict Chinese geopolitical or national interests. In 2019, Chinese authorities did in fact call for a rewrite of the Convention to align it with China’s maritime law.

The law of the sea: between instrumentalization and powerlessness

Though China sees international law as biased, it still uses it strategically to justify maritime expansion. Its interpretations of UNCLOS often diverge from core principles, fuelling tensions in the region. Clashes have increased in recent years, particularly between Vietnamese fishermen and Chinese vessels near the Paracel Islands, and similarly between Philippine boats and the Chinese navy around Scarborough Shoal³³. These disputes have led to new legal alignments, particularly with U.S. involvement. As a matter of fact, Washington now conducts Freedom of Navigation Operations (FONOPs), invoking the Montego Bay Convention to assert that the U.S. will operate wherever international law allows, challenging China’s excessive claims³⁴.

China’s selective approach to legal norms erodes its authority, setting a dangerous precedent that prompts others to do the same. Japan’s stance on Okinotori-shima, seen by Peter Dutton as part of a broader “legal erosion,” reflects this trend³⁵. Such practices erode the universality and enforceability of law of the sea, which risks becoming a mere bargaining chip in geopolitical rivalries. Strengthening and adapting UNCLOS is therefore essential to preserve its credibility and ensure fair application for all.

The South China Sea: a theatre of lawfare

China’s use of the law of the sea is often seen as “*lawfare*” — the strategic use of legal arguments to assert geopolitical claims without resorting to force³⁶. References to international law are frequently found in institutional dialogues and academic research aimed at countering neighbouring countries’ claims over the South China Sea. For instance, Chinese scholars Zhang Haipeng and Li Guoqiang of the Chinese Academy of Social Sciences claim that “Japan’s occupation of the Ryukyu Islands has no legal basis and is therefore completely illegal.” Similarly, China invokes UNCLOS to challenge the U.S. military presence in the South China Sea, citing Article 58 of the Convention — which concerns the rights and obligations of states within the EEZ of another state — in areas it claims and through which the U.S. Navy conducts FONOPs.

³² Allayarov, S. International Law with Chinese Characteristics - The South China Sea Territorial Dispute | Institute of International Relations Prague - Expertise to impact. (s. d.). <https://www.iir.cz/en/international-law-with-chinese-characteristics-the-south-china-sea-territorial-dispute-1#:~:text=China%20claims%20that%20its%20maritime,territorial%20sea%20only%20with%20permission.>

³³ White, E., & Hille, K. (2024, 2 octobre). Vietnamese fishermen injured in clash with Chinese vessels. Financial Times. <https://www.ft.com/content/705d8ec6-cdd6-48ed-947c-cfd5d58a8092?>

³⁴ Gédéon, L. (2022). Les opérations FONOPS. Geopole. <https://geopole.hypotheses.org/409>

³⁵ Dutton, P. A. (2023, 23 juin). Is China Reshaping the Global Oceans Regime? Foreign Policy.

<https://foreignpolicy.com/2023/06/10/china-sea-south-east-maritime-claims-law-oceans-us-disputes/>

³⁶ Schultheiss, C. (2022). La Chine et les limites conceptuelles et pratiques de la guerre juridique en mer de Chine méridionale. Revue Défense Nationale, N° 852(7), 31-37. <https://shs.cairn.info/revue-defense-nationale-2022-7-page-31?lang=fr>

Since 2003, China has formalized its own version of lawfare — *falü zhan* — a doctrine aimed at achieving legal dominance to support political and military goals.³⁷ This concept, embedded in the CCP’s military strategy, seeks to legitimize China’s actions and carries specific meaning within China’s domestic legal and institutional context. Thus, China uses international law less to comply with global standards than to reinforce its sovereignty claims and strategic agenda, often privileging national law over international obligations.

The limited impact of China’s stance on the law of the sea

China’s use of *lawfare* suggests that the law of the sea retains authority — as legal arguments work only if the law is seen as effective. Still, China’s strategy has limits. Its alternative vision of law of the sea yields tangible results only through risky *faits accomplis*, which lead to the constant militarization of the region, contradicting the supposed aim of replacing warfare with lawfare.

Overall, the law of the sea has not been fundamentally undermined despite the pressure it faces from China’s interpretation. As scholar Isaac B. Kardon argues, China is not so much rewriting the rules of law of the sea as it is downplaying their importance.³⁸ Indeed, China exercises this influence only within its own region.³⁹

Additionally, it would be incorrect to see China’s behaviour as the sole obstacle to the effective application of international law. China draws much of its approach from the United States’ own stance toward the law of the sea. Washington has never ratified the Montego Bay Convention, viewing it as a constraint on U.S. political ambitions. As a result, the U.S. cannot be held legally accountable under this Convention before international courts. This flexible posture — rooted in prioritizing strategic interests — threatens the universality of UNCLOS as the constitution of the seas. The impact is exacerbated by the American military’s visible presence in the region through its freedom of navigation operations, which provoke strong Chinese protest and further fuel existing rivalries.

Thus, it is not China’s actions alone that challenge the law of the sea, but rather a broader resurgence of state sovereignty against international law that defines our century.

³⁷ Monteiro Da Silva, C. (2022). Falü zhan : la « guerre du droit », une version chinoise du lawfare ? Raisons politiques, 85(1), 89-99. <https://shs.cairn.info/revue-raisons-politiques-2022-1-page-89?lang=fr>

³⁸ Kardon, I. B. (2023). China’s Law of the Sea. Yale University Press.

³⁹ Dutton, P. A. (2023), op. cit.