FISH, FRIENDS, AND FLASHPOINTS IN THE SOUTH CHINA SEA

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How should the United States and the international community respond to China’s increasingly assertive activities in the South China Sea? The future of East Asia is strongly tied to the resolution of that question. Recently, a United Nations Dispute Tribunal ruled against China in an arbitration case that was brought due to a dispute between China and the Philippines in the South China Sea. Rather than provide clarity on such a contentious issue, this Note argues that the Tribunal’s 2016 decision simply added more ambiguity to the legality of China’s activities, threatening to ignite a regional powder keg. After briefly discussing the importance of the South China Sea and a history of the many disputes arising from it, this Note explores the Tribunal’s decision and analyzes its potential economic, security, and diplomatic consequences. This Note then proposes that as a solution to this critical problem, the United States should adopt an East Asian foreign policy strategy of limited balancing.

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I. Introduction

A recent United Nations (“U.N.”) Dispute Tribunal (the “Tribunal”) decision risks turning the South China Sea (“the sea”) into a regional powder keg.\(^1\) In 2016, China lost an arbitration case under the U.N. Convention on the Law of the Sea Treaty (“LOST”) against the Philippines, a key U.S. ally in the Pacific. Among other things, the dispute turned on two issues: (1) whether Chi-
na’s long-standing “nine-dash line” maritime claims were legally effective and (2) how the Tribunal intended on classifying various land features in the sea. The Tribunal’s decision invalidated Beijing’s nine-dash line and left open the question of which nation enjoyed sovereignty over the disputed South China Sea features.

Legal ambiguity fuels Chinese militarization of land features in both the South China Sea and East China Sea. The fact that the South China Sea impacts nearly two-thirds of Asian maritime trade routes, while hosting several disputed fisheries, magnifies the importance of recent militarization efforts. Industrialization, the central role of fish to sustaining national populations, and East Asian arms competitions further raise the stakes of the Tribunal’s decision.

Amid the simmering tension that belies the Philippines-China decision, this Note forecasts the economic, security, and diplomatic consequences of the

3. Id. at ¶ 8.
4. Id. at ¶ 1203(B)(2).
5. Id. at ¶¶ 5–6.
10. See Jackson, supra note 1.
11. See Baker, supra note 9; Rees, supra note 9.
Tribunal’s decision. Economically, the decision will impact regional trade, fishing rights, and deep-sea mining operations, all while incentivizing regional competition rather than cooperation. Militarily, the Tribunal’s decision will fuel pre-existing arms races due to ambiguity regarding which nations own disputed South China Sea land features, such as the Scarborough Shoal (commonly referred to as the Spratly Islands). Diplomatically, the arbitration will expose multilateralism’s inability to resolve South China Sea territorial sovereignty disputes through institutional mechanisms, like LOST and the Association of Southeast Asian Nations (“ASEAN”), as well as highlight the growing importance of bilateral channels for resolving sovereignty conflicts in the sea.

The Tribunal’s decision exposes two important categories of considerations for sovereignty disputes in the sea: (1) those that involve China and (2) those that shape a regional order to mitigate inevitable flare ups. This Note recommends responding to South China Sea sovereignty disputes through American adoption of an East Asian foreign policy strategy called “limited balancing,” modeled off of off-shore balancing.

Part II of this Note discusses the background contextualizing the Tribunal’s decision and American, as well as Chinese, foreign policy. Part III analyzes and forecasts the economic, regional-security, and diplomatic consequences to the Tribunal’s decision. Part IV provides a recommendation reconciling the two considerations listed above in conjunction with U.S. goals in East Asia. Finally, Part V summarizes the economic, security, and diplomatic issues in light of this Note’s recommendation while forecasting the enduring importance of promptly resolving South China Sea and East China Sea sovereignty disputes.

II. BACKGROUND

A. Factual Background

1. South China Sea’s Geography Makes Border Drawing Difficult

Situated south of China’s mainland, connected by narrow waterways and straits with the Indian Ocean to the west and the Pacific Ocean to the east, the South China Sea is semi-enclosed, extending southwest from the northeast. Lying to its north are the Chinese mainland and Taiwan; to its south are the Sumatra Island and the Kalimantan Island; to its east is the Philippine Archipelago; and to its west are the Malay Peninsula and the Indo-China Peninsula.

The sea differs from the rest of the Pacific Rim. Located in the Western Pacific, the South China Sea’s distinction stems from its wide continental shelves with deeply incised gulf and numerous coastal waterways. In contrast, North American and South American Pacific coasts feature narrow continental shelves and easily delineated coastlines. Wide continental shelves make delineating maritime territory in the Western Pacific uniquely difficult, a fact accentuated by the reality that “most waterways [in the South China Sea] are not broad enough to allow many of the region’s nations to claim full 200-nautical-mile exclusive economic zones . . . without bumping up against their neighbors.”

Only Indonesia, Russia, the Philippines, and Japan enjoy clear exclusive economic zones (“EEZ”). Even so, these EEZs only exist in narrow, limited stretches of the South China Sea and East China Sea. Every other country has gone through the process of negotiating its EEZs with the nations neighboring it. Negotiations leave maritime borders unresolved, providing fertile ground for flashpoints and interstate conflict. This is where China’s infamous “nine-dash line” maritime claim comes into play.

2. China’s Nine-Dash Line Claim Dates Back to 1947

To understand the complexities underpinning East Asian maritime sovereignty disputes, it is necessary to first understand China’s nine-dash line, a loose boundary line that is illustrative of Chinese maritime claims in the South China Sea.

Drawn up during China’s civil war in 1947 by the then-ruling Kuomintang (“KMT”) government, the nine-dash line is based on an earlier maritime claim known as the eleven-dash line. Once Japanese occupation ended, the KMT government dispersed survey teams and naval officers throughout the sea to map various islands, islets, and banks. In 1948, the Internal Affairs Minis-

15. Id.
17. See V.I. Radchenko, Historical Trends of Fisheries and Stock Condition of Pacific Salmon in Russia, 1 North Pac. Anadromous Fish Comm’n Bull. No. 1 (Pacific Research Fisheries Ctr., Vladivostok, Russ.), 1998, at 34.
21. Id.
24. CHINESE FOREIGN MINISTRY, supra note 13, ¶ 30.
try published a map with an eleven-dash line enclosing most of the sea.\textsuperscript{25} This map, despite lacking specific delimitation, formed the foundation of China’s modern claims in 1949 when the government in Beijing promulgated Hai Nan Te Qu Xing Zheng Zhang Guan Gong Shu Zu Zhi Tiao Li (Regulations on the Organization of the Office of the Chief Executive of the Hainan Special District), which placed South China Sea islands and islets under Chinese jurisdiction.\textsuperscript{26} By 1953, the current nine-dash line emerged after China eliminated two of the eleven dashes.\textsuperscript{27}

The map below\textsuperscript{28} demonstrates where China lays its current claims in the sea based on the nine-dash line:

\textsuperscript{25} Id.; Baker, supra note 23.
\textsuperscript{26} CHINESE FOREIGN MINISTRY, supra note 13, ¶ 31; Baker, supra note 23.
\textsuperscript{27} Baker, supra note 23.
\textsuperscript{28} Id.
3. China’s Nine-Dash Line Conflicts with the Philippines’ Exclusive Economic Zone

China’s nine-dash line places it in numerous regional competitions for control of strategic islands and islets. Specifically, in May 2013, Philippines Defense Secretary Voltaire Gazmin alleged that Beijing placed a naval frigate, among other vessels, around the Second Thomas Shoal.\(^{29}\) The coral reef, which is roughly three miles wide and nine miles long, is located 120 miles (105 nautical miles) from Palawan (the Philippines’ western island) and is included within the Philippines’ 200-nautical-mile EEZ.\(^{30}\) Since 1999, when the U.S.-built BRP Sierra Madre—a tank landing ship—deliberately ran aground to mark the territory, the reef has been under the Philippines’ control.\(^{31}\) Not only does the U.S.-built vessel serve as an outpost for the Philippine military today, it is also located on the southeastern fringe of China’s nine-dash line.\(^{32}\) Notably, the Second Thomas Shoal is a strategic waterway to Reed Bank (called “Recto Bank” by Philippine people), which is rumored to hold vast natural gas and oil resources.\(^{33}\)

The 2013 standoff, in addition to China’s 2012 seizure of Scarborough Shoal after a Philippine warship confronted several Chinese fishing vessels near the shoal,\(^{34}\) prompted Manila to initiate arbitration proceedings against Beijing under LOST.\(^{35}\) The map below illustrates the two countries’ overlapping claims in the South China Sea.\(^{36}\)

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30. Id.
31. Id.
32. Id.
36. China, Philippines: The Latest Conflict in the South China Sea, supra note 29.
B. Relevant Legal Doctrine

1. The Law of the Sea Treaty (“LOST”)

Arbitration between China and the Philippines is based on the 1982 LOST. Both the Philippines and China are parties to LOST.37 One hundred and sixty-six other countries have also ratified LOST as a “constitution for the oceans, in order to settle all issues relating to the law of the sea.”38

Among the other important functions LOST serves, the chief function is delimiting maritime boundaries and classifying maritime land features to clarify EEZs.39 LOST’s biggest limitation, however, centers on its inability to make rulings as to which State enjoys sovereignty over various land features.40

40. Id. at ¶ 5.
2. Synthesizing the U.N. Tribunal’s Decision

Under Article 286 of the 1982 LOST, “any dispute concerning the interpretation or application of this Convention shall . . . be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.”

Under Article 287(5) of LOST, “[i]f the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration . . . unless the parties otherwise agree.”

Pursuant to LOST Article 287, the Philippines initiated arbitration proceedings against China in January 2013. Manila arbitrated for two main reasons. First, it aspired to invalidate China’s long-standing “nine-dash line” claims in the South China Sea. Second, it sought to settle whether certain disputed maritime territories claimed by both China and the Philippines—namely, parts of the Nansha Islands and the Scarborough Shoal—were islands, low-tide elevations, or submerged banks capable of generating territorial entitlements to EEZs greater than twelve meters. Arbitration also concerned Chinese interference with the Philippines’ EEZ through the Scarborough Shoal, discussed previously, and that interference’s consequences for fishing rights. China refused to participate in the arbitration proceedings and further refused to accept the Tribunal’s final decision. Instead, Beijing insisted that the two nations resolve the territorial issues bilaterally.

Nevertheless, the Tribunal’s decision created three important legal and geopolitical results. First, the Tribunal invalidated China’s long-standing “nine-dash line” territorial claims in the South China Sea. Second, the Tribunal’s decision concluded that Scarborough Shoal is a rock, entitled to no EEZ, and that the Second Thomas Shoal is a low-tide feature incapable of sustaining human life, which entitled it to no EEZ as well. Third, the Tribunal’s decision did not resolve which nation(s) control the maritime features in dispute. Part III analyzes and forecasts the economic, security, and diplomatic consequences to these results.

42. Id.
43. REPUBLIC OF PHIL. DEPT’T FOREIGN AFF., PHL PRC INT NOTIFICATION AND STATEMENT OF CLAIM ON WEST PHILIPPINE SEA 1 (Jan. 22, 2013).
45. Id. at ¶ 8.
46. Id. at ¶ 649.
47. Id. at ¶ 717.
48. Compare id. at ¶ 116, with CHINESE FOREIGN MINISTRY, supra note 13, ¶ 120.
49. CHINESE FOREIGN MINISTRY, supra note 13, at ¶ 85.
51. Id. at ¶ 554.
52. LOST, supra note 41, at 442.
54. Id. at ¶ 532.
55. Id. at ¶¶ 5–6.
C. Analytical Foundations

1. American Foreign Policy: Maximize Influence in East Asia

Geography forms the foundation of foreign policy. While values matter, geography remains the crucial starting point by emphasizing how conflicting national imperatives and territorial constraints play out in various international settings. Put differently, topography illustrates what a nation already has, which then clarifies what international needs (interests) it must satisfy.

The United States’ geography guarantees substantial economic power while also providing excess border security from invasions. Economic power is geographically secured through interconnected waterways located in the middle third of the United States, which possesses more kilometers of navigable internal waterways than every other nation combined. Geography also grants the United States substantial border security from threats of foreign invasion. Two massive oceans protect the country from hostile European and Asian powers planning to invade from either coast. While dense forests and large lakes insulate the northern states from Canadian population centers, massive deserts separate the southern states from Mexico.

American interests in East Asia follow from this foundation. Since the United States lacks neighboring security threats, the country’s primary interest is to maintain its status in East Asia as a major Pacific power through strong diplomatic engagement and a large military presence. Secondarily, the United States seeks to bolster its regional influence by maximizing leverage over regional adversaries through a combination of economic and security alliances.

America’s power projection in East Asia reflects these interests. In South Korea, the United States stations over 28,000 ground forces to act as a trip wire should North Korea invade the South. By contrast, in Japan, the United States stations about 54,000 military personnel—including the Seventh Fleet—primarily to enable Japan to counter China.

2. Chinese Foreign Policy: Minimize Naval Interference in Trade Routes

Geography shapes modern Chinese foreign policy interests in a different manner. Beijing’s actions in the South China Sea result from a geographically and economically created interest, thereby providing broader context to regional dynamics.

Topography historically rendered China essentially an island. Wastelands, mountains, and jungles enclosed and protected the country. While not encircled
by bodies of water, this terrain made traversing China difficult in nearly every direction.  

Two components form China’s interior: the Han-China heartland and non-Chinese buffer regions. Most Chinese people, the ethnic Han, reside east and south of a line called the fifteen-inch isohyet in the heartland. West of this line features minimal rainfall, whereas east of the line averages fifteen inches of rainfall per year. Importantly, the heartland compromises an area half the size of the United States, yet over a billion people reside there. The map below illustrates China’s population density distribution along the fifteen-inch isohyet.

![15-inch Isohyet and China Population Density](https://www.stratfor.com/analysis/geopolitics-china-great-power-enclosed)

Two major rivers define the Chinese heartland. To the north flows the Yellow River, while the Yangtze River provides water to the region’s south. This heartland features the vast majority of China’s agricultural output despite

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60. Id.
63. Geopolitics of China, supra note 61.
the fact that the region possesses roughly one-third the amount of arable land per person as the rest of the globe.\textsuperscript{64}

Non-Han buffer regions form a shell around China’s agricultural heartland. These regions include Manchuria, Inner Mongolia, Xinjiang province, and Tibet. Historically, whenever China was weak, these buffers broke away, whereas when China was strong, these regions came under Chinese rule.\textsuperscript{65} Today, China is strong and controls these buffer regions. China’s buffer regions provide defensible land borders and grant the country insulation from most neighboring threats.

To the southeast of China lies Vietnam. The Vietnamese border is China’s most easily navigated land border for commerce and large armed groups. In fact, this vulnerability incited Chinese expansion into Vietnam in the past—most recently in 1979.\textsuperscript{66} In contrast, the remainder of China’s southeastern border—where Yunnan province touches Myanmar and Laos—is a “hilly jungle, difficult to traverse, with almost no major roads.”\textsuperscript{67} Major incursions across this border are nearly impossible and China is secure in this region.

To the west along China’s southern border are the Himalayas. At nearly 19,000 feet tall, Hkakabo Razi forms the border between India, China, and Myanmar.\textsuperscript{68} This southwestern frontier is where Nepal, Bhutan, and India border Tibet, which is under Chinese control today. Running north, this border forms an arc past Pakistan, Tajikistan, and Kyrgyzstan, ending at a 25,000-foot mountain (Pik Pobedy) that forms the border between Kazakhstan, Kyrgyzstan, and China. Traversing this border entails substantial logistical difficulties for military forces and trade routes because of both the mountainous terrain and the distance. China is secure in this region primarily due to the barrier that the Himalayas provide from much of Central and Southwest Asia.

Further north and east is China’s border with Russia and Mongolia. Unlike most of China’s southern and western borders, this northern stretch to the Pacific is easily traversed. In fact, the one successful occupation of China occurred when Mongolian horsemen launched attacks from higher grounds in Mongolia.\textsuperscript{69} Today, however, China is secure in this border through control over two buffer regions—Inner Mongolia and Manchuria.

The final piece of China’s geographic puzzle is the Pacific coast. China’s Pacific coast fosters substantial maritime trade due to its numerous harbors. Despite this fact, China has never been a maritime power because, prior to the mid-1800s, the country never confronted enemies capable of posing a naval

\textsuperscript{64} Id.; see also Bart Dessein, \textit{Historical Narrative, Remembrance, and the Ordering of the World: A Historical Assessment of China’s International Relations, in China’s International Roles: Challenging or Supporting International Order?} 22, 23 (Sebastian Harnisch et al. eds., 2015).

\textsuperscript{65} Geopolitics of China, supra note 61.


\textsuperscript{67} Geopolitics of China, supra note 61.

\textsuperscript{68} Id.

\textsuperscript{69} Id
Even when China developed some naval capabilities for expanding trade via the Indian Ocean in the fifteenth century, the country quickly abandoned the prospect of building a navy. Starting with European arrivals in the mid-1800s, however, China’s most vulnerable border shifted to being its Pacific coast border. Beyond periodic, limited incursions by Europeans, “China suffered its most significant military encounter—and long and miserable war—after the Japanese invaded [from the coast] and occupied large parts of eastern China . . . in the 1930s.” Put into context, China’s initial eleven-dash line claim (the precursor to today’s nine-dash line) first appeared in the immediate aftermath of Japan’s naval invasion and occupation. China is least secure on this coast.

China’s central problem, stemming from geography, is economic. Starting in the late 1970s, and continuing until the 2008 financial crisis, China utilized an economic model founded on export-driven growth—just as Japan, South Korea, and Taiwan did in the 1960s–1970s. Despite its advantages, this model placed China in a position of dependency. To grow economically, China relied on the desire and capability of other nations to import its products. China also required an ability to physically protect and ship those products. Any disruption to this outflow directly impacted the Chinese economy. The 2008–2009 financial crisis, which decreased Chinese exports, compelled China to start reorienting its economic model away from low-value exports towards domestic consumption and high-value exports, similar to Taiwan in the late 1970s. China is in the middle of this massive economic transition as of the time of this Note.

China’s economic transition deepens its dependency problem in two ways. First, the transition increases short-term reliance on exports. To preserve

70. Id.
72. Geopolitics of China, supra note 61.
73. See Mark Beeson, Developmental States in East Asia: A Comparison of the Japanese and Chinese Experiences, 33 ASIAN PERSP. 5, 27 (2009).
77. See Beeson, supra note 73, at 29–30.
80. See Cumings, supra note 76, at 32–33.
social stability during the transition, Beijing must balance between protecting the coastal population’s wealth, on one hand, and improving the interior’s living standards enough to support a domestic consumption base, on the other. This balancing compels China to seek additional markets to sell goods to and to bolster the country’s navy for securing transport of those products. Second, the transition expands dependency on imports because a larger consumption base requires additional resources and commodities that China lacks domestically.

China’s main foreign policy interest today flows from its coastal vulnerability, previous economic model, and current economic transition. That interest is protecting strategic trade routes, supply chains, resource imports, and markets from foreign subordination. This interest drives Chinese foreign policy in tandem with domestic imperatives because “China imports as much of its key commodities as it produces.” International trade and outbound investments further compel Beijing to limit supply chain vulnerability by expanding its maritime activities and broadening its international political presence.

Coastal vulnerability, magnified by increasing dependency on imports, helps to explain China’s approach in the South China Sea. Even though China’s old foreign policy rested on noninterference, growing international economic exposure makes it tougher for Beijing to retain such a policy. From Beijing’s view, America’s regional naval presence poses a substantial threat to Chinese maritime trade—a lynchpin to China’s economic transition. Advancing anti-ship missile technology, modernizing naval capabilities, and reclaiming land features are all meant to deter foreign intervention in the South China Sea that could otherwise threaten China’s economic well-being. Importantly, Beijing views these activities as defensive reactions to an increasingly large U.S. naval presence that seeks to contain China.

Geographic analysis demonstrates that China has substantial economic power and relative border security on most flanks. China’s geopolitical interest in the South China Sea follows from this foundation: protect strategic maritime

81. Stratfor, supra note 62, at 17.
84. Id.
85. Id.
87. See Andrew S. Erickson, Chinese Anti-Ship Ballistic Missile (ASBM) Development: Drivers, Trajectories and Strategic Implications 10–119 (2013).
trade routes, supply chains, resource imports, and access to international markets from foreign involvement. In turn, China’s pursuit of this interest creates ripple effects manifested in regional economic, military, and diplomatic dynamics.

3. **Regional Economics: A Neighborly Competition for Resources**

Economics drive modern East Asia. Most sea-cargo traffic that supports the world economy passes through or near the South China Sea. 90 Seven of the world’s ten largest container ports are in China, while two of the remaining three are in South Korea and Singapore. 91 Two-thirds of regional trade, 92 the majority of East Asian energy supplies, 93 and more than half of the world’s annual merchant fleet 94 pass through the South China sea.

Fishery areas incentivize competition. Nations touching the sea rely on fish for food supplies and economic sustenance. While fish are numerous in the sea, the Western Pacific’s continental shelves make distinguishing maritime borders—and thus determining which country owns which fisheries—nearly impossible.

Deep-sea resources present another area of potential conflagration. Some scholars argue that energy reserves in the South China Sea drive regional competition. 95 Others contend that resource extraction promotes economic cooperation. 96 Either way, technological obstacles 97 and uncertain reserves 98 dampen the potential for military confrontation and escalation.

National interests color the broader forest to each of these trees. Opponents argue that this realist view of interstate affairs is incorrect and counterproductive. 99 Proponents respond by stressing the importance of domestic poli-

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91. *China’s Moves in the South China Sea: Implications and Opportunities*, supra note 6.
94. *Id.*
and deep-seated regional distrust in shaping Asia’s modern security architecture. The importance of fish to feeding populations and securing jobs, however, constrains countries and generates competing domestic imperatives that generally—subject to few exceptions—favor national economic competition over multilateral economic cooperation.


Ambiguity begets arms races in East Asia. Uncertainty over other countries’ intentions fosters a security environment favoring self-help and instability. While some argue that uncertainty incites defensive reactions through “band wagoning” with—or balancing against—a stronger power, others press that nations resort to offensive military posturing. In the end, both viewpoints believe that uncertain security situations produce arms races.

Mistrust, military modernization, and re-militarization motivate Asia’s arms races. Despite efforts to coalesce around a regional identity, national interests and deep mistrust stand as obstacles that dampen the potential to eliminate arms races.

Widespread military modernization acts as an accelerant to this spark for instability. For example, China continues to modernize its naval, air force, and organizational capabilities. Beijing’s actions are even prompting Japan to take steps to remilitarize. A flurry of recent defense armament agreements


101. Chu Hao & Chen Qunghong, Maritime Security Cooperation in the South China Sea, in INTERNATIONAL ORDER AT SEA 221, 229 (Jo Inge Bekkevold & Geoffrey Till eds., 2016); Jackson, supra note 1, at 365–66.


104. Hao & Qinghong, supra note 101, at 229.


are further flooding the region with weapons. Defense agreements complement pre-existing military modernization efforts by other East Asian countries. Fueled further by diverging national imperatives, arms races threaten to undermine regional confidence in consensus-driven multilateral diplomacy as a conflict-resolving mechanism.

5. Regional Diplomacy: Ambivalence Toward Bilateralism & Multilateralism

Some believe in the effectiveness of multilateralism in resolving issues that plague the South China Sea. Multilateral proponents contend either that: (1) LOST’s legal framework and mission to promote maritime stability can handle sovereignty issues, or (2) ASEAN’s deep interest in regional stability should compel the association to compromise with China on sovereignty matters.

Others remain skeptical and instead support bilateral initiatives. Bilateral proponents, in contrast to multilateral proponents, press that country-to-country mediation is necessary to promote trust and de-escalate tensions.

The biggest variables bearing on diplomatic efficacy in the sea are: (1) deep-seated, region-wide distrust; (2) domestic politics dependent on nationalism; and (3) Chinese preferences.

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III. ANALYSIS

An analysis of economic, military, and diplomatic repercussions reveals two important issues in East Asian maritime sovereignty disputes: (1) China must be involved in formulating and implementing any resolution, and (2) flare-ups between South China Sea claimant countries are inevitable and must be mitigated.

A. Economic Forecasts

This Note forecasts that the recent Tribunal decision will substantially impact regional trade through altering supply-chain leverage, blurring national fishing rights, and incentivizing economic competition.

1. Substantial Influence on Regional Trade

China’s arbitration with the Philippines will strongly influence regional trade.

China possesses acute trade vulnerabilities in the South China Sea.\(^{114}\) In 2010, Beijing designated the area as a “core interest” while declaring that no outside interference would be tolerated.\(^{115}\) This is unsurprising as nearly 85% of Chinese maritime crude oil imports and 55% of maritime natural gas imports pass through the contested waters.\(^{116}\) China’s growing dependence on mineral and energy resource imports arriving via the sea underscores the need to secure Beijing’s cooperation in mitigating the inevitable flare-ups that will occur in the region.\(^{117}\)

LOST and its Tribunal decisions impact the status of East Asian maritime territories.\(^{118}\) Territorial statuses influence regional trade in three ways.

First, maritime land features are used for trade leverage over supply chains due to transport costs and the ability to exert control over an EEZ.\(^{119}\) Here, China’s former claims provided lots of leverage due to the extent of Beijing’s nine-dash line policy. Now, China’s claims are without international le-
gal effect. The ramification for regional trade is that China is accelerating its search for additional areas of leverage in the region. To secure this leverage, China is increasing its investment levels in Southeast Asia. The map below presents data from 2014 on Southeast Asian reliance on Chinese investments as a percentage of each nation’s total trade.

Second, territorial status demarcates national fishing rights. Failing to rule on which nation enjoys sovereignty over maritime land features exacerbates pre-existing legal ambiguity regarding fishing rights.

Third, maritime territories are vital for nations claiming access to deep-sea resources, such as mineral (e.g. manganese, copper, cobalt, and nickel) and energy (e.g. oil and natural gas) deposits.

122. See, e.g., Baker, supra note 9; Peter Dutton, Three Disputes and Three Objectives: China and the South China Sea, 64 NAVAL WAR C. REV. 42, 47 (2011); M. Taylor Fravel, China’s Strategy in the South China Sea, 33 CONTEMP. SE. ASIA 292, 303–05 (2011); see also infra Part III.B.
123. MARITIME TERRITORIAL DISPUTES, supra note 114, at 27.
In short, the recent Tribunal decision will exert a substantial impact on regional, as well as global, trade through altering supply-chain leverage, clouding regional fishing rights, and determining access to deep-sea mineral resources.
2. Deepen Fishery Competition

The South China Sea ruling will strongly impact regional fishing rights and national economies.

Fish are plentiful in the South China Sea. Western Pacific continental shelves make for favorable fishing, especially in the Sahul and Sunda shelves, which undergird maritime Southeast Asia. The Sunda and Sahul shelves contain uniquely shallow waters—which some estimate as constituting nearly 20% of total shelf area worldwide—that feature prime growing conditions for sea life: shallow water, sunlight, and nutrient flows from major Asian river systems that empty into the sea. Consequently, the sea alone contains over 3,000 species of fish.

Nations lining the Pacific coast depend on fish for food and economic security. East Asian fisheries account for half the world’s total capture production, with six of the top ten producers of marine products located in the region. Fish make up over 10% of the protein supply in Taiwan, Thailand, and Vietnam, while contributing 15–20% of the protein supply in Cambodia, Indonesia, Malaysia, the Philippines, South Korea, and Japan. In contrast, seafood accounts for around 5% of protein consumption in Germany, the United Kingdom, and the United States. Meanwhile, nearly two million fishing vessels ply the waters of the South China Sea, employing over five million people. In 2014 alone, the region contributed a third of global seafood exports.

Land feature rights derived from legal status and boundaries determine how much fish each country has access to through EEZs. In turn, EEZs impact national food supplies and economies through productivity and seafood exports.

Sensitive EEZs were at the center of the Philippines-China dispute, which arose out of Manila’s complaints over Beijing’s boats overfishing in the Philippines’ EEZ. This dispute is not anomalous, as other contentious maritime sovereignty conflicts in the South China Sea center on fishing rights as well. Legal ambiguity over maritime boundaries resulting from the Tribunal’s decision, coupled with the migratory nature of fish, exacerbates overfishing risks.

Thus, the South China Sea ruling will strongly impact fishing rights due to territorial classification uncertainty, economic dependency on fishing, and national food security.

124. Rees, supra note 9.
126. Rees, supra note 9.
127. Id.
128. Id.
129. Id.
130. Id.
131. Id.
132. See LOST, supra note 41, at 36.
133. China, Philippines: The Latest Conflict in the South China Sea, supra note 29.
3. **Minimally Influence Deep-Sea Resource Allocation Fights**

The South China Sea ruling will likely exert little impact on regional deep-sea mining operations for energy and mineral resource extraction.

Despite uncertainties over the amount of resources in the sea, deep-sea mining is crucial to Southeast Asia’s industrialization.\(^\text{135}\) Accurate assessments of oil and natural gas reserves in the South China Sea do not exist because much of the sea has never been fully explored.\(^\text{136}\) The U.S. Department of Energy’s Energy Information Administration reported in 2013, however, that the sea contains 190 trillion cubic feet of proved or probable natural gas reserves as well as 11 billion barrels of proved or probable oil reserves.\(^\text{137}\)

LOST’s classification allows nations to claim these resources for themselves or to use resource rights as a bargaining chip during trade negotiations.\(^\text{138}\) Although some observers claim that the Tribunal’s decision significantly impacts energy resource leverage,\(^\text{139}\) the ruling will not influence energy competition in the short-term for two reasons.

First, the Philippines-China dispute centers less on mineral and energy resources than on fishing rights. Beyond China and the Philippines, most of the potentially exploitable energy and mineral resources lay in undisputed areas near claimant coastlines.\(^\text{140}\) Even where disputes arise, short-term exploration and joint development contracts typically prevent energy competition from jeopardizing regional stability.\(^\text{141}\)

Second, technological issues impede full exploitation of potential energy and mineral resources in the South China Sea. Technological issues arise from the fact that much of the South China Sea is too deep to effectively drill in; most existing resources have been developed in shallow coastal waters.\(^\text{142}\)

Consequently, the Tribunal’s ruling will not strongly influence deep-sea resource allocation because (1) most resources are in less contentious maritime

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136. DOLVEN ET AL., supra note 89, at 25.


138. LOST, supra note 41, at 28.


141. See DOLVEN ET AL., supra note 89, at 26.

142. Compare id. at 25 (explaining drilling obstacles to extraction), with *China: Methane Hydrates Extracted From South China Sea*, STRATFOR (May 18, 2017, 1:52 PM), https://www.stratfor.com/situation-report/china-methane-hydrates-extracted-south-china-sea/ (observing China’s recent, first-time success in extracting methane hydrates from the South China Sea, but citing high extraction costs and lack of price competition with other forms of energy as reasons why “[Chinese] commercial development of methane hydrates is at least a decade away and may never actually happen”).
areas, and (2) technological obstacles prohibit extraction in deep-sea waters where most of the potential energy reserves lie.

4. **Overall: Fuel Regional Competition**

The biggest takeaway from this Section is that the Tribunal ruling will encourage more economic—and, consequently, security—competition than cooperation.

When national interests conflict with supranational concerns, national interests almost always prevail. National interests trump supranational ones because national leaders are held accountable first and foremost by constituents at home. This is especially true for zero-sum resource allocation, where one nation’s decline in producing—or extracting—a finite resource opens the door for a neighbor—or competitor—to fill the void and derive the benefit.

China’s reaction to the Tribunal proceeding and ruling illustrates the above principle. On one hand, China’s national interests lie in securing goods, trade routes, natural resources, and food for its population. On the other hand, China remains a signatory to LOST, whose supranational interest includes allocating and enforcing EEZs. When China opted against participation in the Tribunal proceedings and later chose not to recognize the Tribunal’s ruling, it placed its national interest ahead of LOST’s supranational one.

China’s behavior risks setting a dangerous precedent by encouraging zero-sum competition in the region for trade leverage and resource allocation. As discussed above, supply-chain leverage and fishing rights are vital economic national interests to all East Asian coastal countries. Both supply chains and fishing rights are zero-sum, which further contributes to economic competition. If multilateral tribunals—such as the U.N. Court of Permanent Arbitration—fail to stabilize economic competition in East Asia’s contentious waters, competition will only grow, as weaker countries look outside the region for help to secure their national interests—such as fish and supply chains.

Thus, the Tribunal’s ruling’s broadest impact will manifest in increased regional economic competition in lieu of cooperation, which will contribute to the ruling’s regional security ramifications. While regional economic cooperation will not collapse entirely, this conclusion and forecast illustrate two broader points. First, China must engage in the formation and implementation of any regional solution to maritime territory issues. Second, regional tensions and future flare-ups tied to South China Sea sovereignty issues are inevitable.

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143. MEIRSHEIMER, supra note 103, at 2; Son & Jenner, supra note 100, at 133; BRADLEY THAYER, DARWIN AND INTERNATIONAL RELATIONS: ON THE EVOLUTIONARY ORIGINS OF WAR AND ETHNIC CONFLICT 75–76 (2004); George Friedman, The Love of One’s Own and the Importance of Place, STRATFOR (Nov. 25, 2011, 3:14 PM), https://worldview.stratfor.com/article/love-ones-own-and-importance-place.

144. See e.g., MEIRSHEIMER, supra note 103, at 2; Yoon & Jenner, supra note 115, at 243.

145. Khanna, supra note 119.

146. LOST, supra note 41, at 36.

147. See supra Parts III.A.1 and III.A.2.

148. For example, economic cooperation will likely endure where short-term national economic interests align. See Rees, supra note 9.
B. Security Forecast: Fueling Arms Racing

This Note forecasts that the recent Tribunal decision will encourage additional regional arms races in East Asia as ambiguity over land feature interpretations and maritime boundaries pushes nations to militarize.

Uncertainty in international relations drives nations toward self-help. When nations resort to self-help, militarization becomes a more attractive way to advance national interests, such as securing natural and mineral resources.

Before the Tribunal’s decision, nations bordering the South China Sea existed in an environment of self-help for three reasons. First, multilateral organizations tasked with stimulating regional cooperation failed to establish a consensus in the face of diverging national interests. Second, historical animosity over disputed land features persisted despite attempts to coalesce around a regional identity. Third, claimants to land features in the South China Sea refused to designate which features were islands and which were rocks.

Under Article 121 of LOST, “[a]n island is a naturally formed area of land, surrounded by water, which is above water at high tide.” Designating a land feature as an island creates certainty while conferring significant legal benefits such as: a continental shelf, an EEZ, a contiguous zone, and territorial seas. Under the same article of LOST, “[r]ocks . . . cannot sustain human habitation or economic life of their own [and thus] . . . have no EEZ or continental shelf.” In contrast to islands, rocks generate no significant international legal benefit.

China’s naval build-up in the South China Sea occurred amidst this backdrop of legal uncertainty. The United States contributed to the arms race as well through its deployment of sophisticated, interconnected joint-operational platforms, including unmanned naval drones.

149. WALT, supra note 102, at 21–22; Kenneth N. Waltz, Structural Realism After the Cold War, 25 INT’L SECURITY 5, 5 (2000); Friedman, supra note 143.
150. Carlyle A. Thayer, Chinese Assertiveness in the South China Sea and Southeast Asian Responses, 30 J. CURRENT S.E. ASIAN AFF. 77, 84 (2011).
151. See Jon M. Van Dyke, Regional Cooperation in the South China Sea, in THE SOUTH CHINA SEA, supra note 82, at 266.
152. Id. at 273.
154. LOST, supra note 41, at 66.
155. Severino, supra note 153, at 32.
156. LOST, supra note 41, at 66.
157. Severino, supra note 153, at 32.
The South China Sea ruling has contributed to this pre-existing environment of self-help for two reasons. First, while the decision clarified the status of the Scarborough Shoal as a rock, it failed to rule which nation owned the feature. Strategic ambiguity is the type of uncertainty that feeds national self-help behavior. Applied to the South China Sea, strategic ambiguity stems from which nation controls which land feature and whether that claimant-nation classifies the land feature as an island or a rock. Thus, the arbitration process contributes to strategic ambiguity by: (1) not ruling on which nation owns disputed land features in the sea and (2) discouraging claimants, such as China, from agreeing to classify these features as islands or rocks. Second, the ruling deters other claimant-countries from using multilateral arbitration as a mechanism to resolve maritime conflicts because China refuses to participate.

Strategic ambiguity undermines regional security. Instead of cooperating more, several nations recently signed a host of defense armament arrangements that will increase the amount and type of arms throughout the region. China contributes to this dynamic through military reorganization and development and deployment. When combined with difficulties inherent in controlling entrepreneurial fishermen in disputed waters, regional arms races significantly raise tensions in the South China Sea and East China Sea.

Although some preventive measures exist to de-escalate tensions, such as cooperating through ASEAN or implementing joint development deals, each measure merely masks deep regional distrust.

While the risk of outright military conflict remains low, destabilization is likely in the coming decades and will impact the global economy by disrupting trade routes that pass through disputed territories and by stymieing regional economies through fishery access competition.

Thus, the Tribunal decision will act as fuel to an already simmering fire that is waiting to erupt as nations acquire various arms in preparation for regional destabilization. Two broad takeaways emerge from this Section. First, China, as East Asia’s strongest power, must participate in any solution crafted to resolve regional maritime disputes. Second, future regional tensions tied

163. See, e.g., Hao & Qinghong, supra note 101, at 229; Jackson, supra note 1, at 365–66; Cooperation as a Means to All Ends in the South China Sea, supra note 13.
164. See, e.g., Christopher Layne, The Unipolar Exit: Beyond the Pax Americana, 24 CAMBRIDGE REV. INT’L AFF. 149, 151 (2011); Christopher Layne, This Time It’s Real: The End of Unipolarity and the Pax Americana, 56 INT’L STUD. Q. 203, 204–05 (2012).
to arms racing are inevitable due to diverging national imperatives and legal ambiguity.

C. Diplomatic Forecasts

This Note forecasts that the recent Tribunal decision will undermine multilateralism and promote bilateralism as the diplomatic mechanism for resolving maritime-land-feature sovereignty disputes in the South China Sea.

1. East Asian Nations Will Resort to LOST Less Often

LOST’s arbitration process will lose popularity as a mechanism for resolving maritime-land-feature sovereignty disputes between South China Sea stakeholders for several reasons.

First, deciding sovereignty over maritime land features is beyond LOST’s scope. Although LOST will retain legitimacy and jurisdiction over internationally accepted classifications in East Asia, the treaty lacks power to award sovereignty over these features. As analyzed above, maritime boundary disputes in the South China Sea center on which stakeholder enjoys sovereignty over which land features. Consequently, LOST’s inability to resolve the crux of South China Sea conflicts is rendering it increasingly obsolete.

Second, LOST arbitration decisions are unenforceable. Even though LOST’s charter binds national signatories, the treaty lacks any enforcement mechanism to either reward parties that comply with rulings or punish those that fail to adhere to results. Thus, while South China Sea stakeholders may occasionally file claims using LOST, these nations will increasingly turn to other diplomatic channels to resolve maritime-land-feature sovereignty conflicts.

Third, China refuses to accept LOST’s jurisdiction and any arbitration results. Beijing’s refusal alone compromises LOST—even if the treaty could determine maritime land sovereignty and enforce those decisions—because China stands at the center of most South China Sea sovereignty disputes. Therefore,

166. LOST, supra note 41, at 36. All littoral states in the South China Sea, except Cambodia, have ratified LOST. Anh, supra note 111, at 176–77.
167. See supra Part II.C.1.
China’s decision to ignore Tribunal decisions will further undermine LOST’s popularity as a forum to resolve South China Sea maritime sovereignty disputes.

Taken together, these three reasons illustrate why LOST’s arbitration process will be less and less attractive for South China Sea stakeholders to use in resolving maritime-land-feature sovereignty conflicts.

2. **Using the Association of Southeast Asian Nations For Negotiations Will Be Difficult**

ASEAN will also fail to resolve South China Sea maritime-land-feature sovereignty disputes for several reasons.

First, diverging interests between member states hinder ASEAN’s efficacy. ASEAN’s effectiveness hinges on consensus among its member states. On one hand, when the forum achieves consensus, the leverage and bargaining power of each member state both increase for resolving regional issues, such as economic inequality. On the other hand, when consensus fails, the forum loses effectiveness as coordinated policies flounder. As illustrated by the meeting immediately following the Philippines-China decision in 2016, ASEAN currently lacks consensus on South China Sea disputes involving maritime land features. ASEAN’s failure to generate consensus on South China Sea conflicts reflects long-term complications among its members—such as fluctuating domestic politics and conflicting strategic imperatives. Consequently, diverging interests between ASEAN members undermine the association’s ability to resolve South China Sea disputes through consensus-building.

Second, China refuses to engage with ASEAN on sovereignty disputes arising from the sea. This means that even if ASEAN built a consensus, China would still forgo resolving South China Sea issues multilaterally. Despite recent success in reaching an agreement as to a preliminary legal framework, several past failed attempts at negotiating a code of conduct further underscore...

Thus, ASEAN will fail to resolve South China Sea maritime-land-feature sovereignty disputes due to Beijing’s unwillingness to “multilateralize” the area and the association’s inability to generate consensus.

3. \textit{East Asian Nations Will Increasingly Use Bilateralism to Resolve South China Sea Disputes}

Claimant-states will increasingly use bilateral channels to resolve sovereignty disputes in the South China Sea for several reasons, despite trade-offs and other obstacles.


Second, as discussed above,\footnote{See supra Part III.C.2.} multilateralism is increasingly ineffective in the South China Sea. LOST suffers from enforcement difficulties, ASEAN reflects disunity, and China refuses to “multilateralize” South China Sea disputes. Taken together, these realities render bilateralism the only viable diplomatic channel.

Despite bilateralism’s potential to mitigate outstanding sovereignty claims, several obstacles could jeopardize its prospects for long-term success.

Joint development is one example of bilateral cooperation between South China Sea claimant-states that illustrates the point above. The most recent proposal involves the Philippines and China jointly developing fishing farms in disputed areas of the sea.\footnote{Cooperation as a Means to All Ends in the South China Sea, supra note 13.} China’s support for joint development dates to the
late 1970s, and continues today, while the Philippines’ support stems from a strategy that seeks to maximize leverage by playing Beijing against Washington.  

Recent joint development deals have met success and failure. In 2000, China and Vietnam successfully negotiated a border delimitation agreement creating joint development zones for fisheries in the Gulf of Tonkin. Some advocate using this agreement as a framework for maritime sovereignty disputes in the South China Sea. In 2005, however, a joint development agreement between China, Vietnam, and the Philippines to use seismic surveys failed due to domestic politics in the Philippines.

Several issues stand as obstacles to joint development deals between South China Sea claimant-states today. The first issue is regional distrust. Despite Beijing’s increased overtures since the 1990s, regional suspicions that joint development disproportionately benefits China have caused deal proposals to falter. For example, domestic polarization over recognizing China’s sovereignty around Reed Bank (near the Spratly Islands) derailed a 2011 joint exploration agreement between China National Offshore Oil Corp. and the Philippines.

The second issue concerns domestic politics. Joint development deals are political lightning rods today because countries must first recognize China’s maritime sovereignty claims, which risks domestic backlash. From China’s perspective, this provision is necessary for the Chinese Communist Party’s nationalist-based legitimacy. From the claimants’ view, this provision is politically infeasible due to domestic distrust of Beijing’s intentions and the perception that acceptance validates China’s controversial expansionism in the South China Sea.

183. Rees, supra note 9.
185. Cooperation as a Means to All Ends in the South China Sea, supra note 13.
187. Cooperation as a Means to All Ends in the South China Sea, supra note 13.
188. Id.
190. Cooperation as a Means to All Ends in the South China Sea, supra note 13.
192. Ba & Storey, supra note 171, at 73; Cooperation as a Means to All Ends in the South China Sea, supra note 13.
Therefore, although claimant-states will increasingly be drawn to bilateral arrangements, distrust and domestic political risks will constrain the capabilities of diplomats.

The Tribunal’s declarations, however, are merely the tip of a deeper iceberg regarding disputed maritime sovereignty in the South China Sea. Disputes over sovereignty in East Asian waters will likely influence America’s Pacific relations for years to come.\(^\text{193}\)

IV. RECOMMENDATION

This Note recommends that the United States adopt an East Asian strategy of limited balancing to mitigate the fallout from inevitable South China Sea disputes. This Part focuses on major issues facing the sea, U.S. goals in the region, and why limited balancing best addresses both issues while advancing American regional ambitions, as opposed to the alternative foreign policy strategy of primacy (also commonly referred to as “forward engagement”).

A. Issues

As analyzed above,\(^\text{194}\) the wake of the Philippines-China arbitration illustrated two major issues that plague South China Sea maritime sovereignty disputes. One major issue concerns China’s role in resolving maritime sovereignty conflicts over land features.\(^\text{195}\) Another major issue, inevitable instability, stems from the sea’s unique geographic and political environment.\(^\text{196}\)

1. Chinese Interests

Any strategy adopted for East Asia, and handling South China Sea disputes specifically, must be sufficiently flexible to account for Chinese interests. Due to ambiguity linked to its nine-dash-line claims, China is involved in nearly all South China Sea maritime sovereignty disputes.\(^\text{197}\) Beijing’s actions range from island-building efforts and naval exercises to preparing air defense identification zones.\(^\text{198}\) China’s widespread activities mean it must have a seat

194. See supra Part III.
195. See supra Parts II.B.1–2, III.
196. See supra Parts II.A.1, II.C.3–5.
197. See Valencia, supra note 170, at 64–67; China, Philippines: The Latest Conflict in the South China Sea, supra note 29; Rees, supra note 9.
at any diplomatic resolution of disputes, regardless of which channel is used—be it multilateral, bilateral, or trilateral. Thus, this first issue means U.S. strategy must take Beijing’s interests into account when formulating and executing its East Asian foreign policy.

2. Inevitable Regional Flare-Ups

America’s East Asian strategy must also address inevitable regional competition and conflict in the South China Sea. Several factors contribute to inevitable tension in the region, including: the sea’s unique continental shelves that make drawing maritime borders nearly impossible, domestic political reliance on nationalist narratives in several claimant-states, and strong regional distrust based on historical and contemporaneous animosity. Consequently, this second issue means that U.S. strategy must focus on mitigating, rather than wishfully eliminating, tensions through applying various tools of leverage on regional actors.

B. American Goals: Burden-Sharing, Leverage, and Stability

American goals in the South China Sea, specifically, and East Asia, generally, are informed by U.S. geography and strategic imperatives. Three goals drive U.S. foreign policy engagement in East Asia and the South China Sea: (1) support the current evolution in Asian power politics to establish a stable regional balance of power; (2) free regional players, such as Japan, the Philippines, South Korea, and Vietnam, to shoulder some of the burdens of balancing China’s growing power; and (3) maximize leverage over China without destroying Sino-American relations.

C. Available East Asian Strategies

1. Limited Balancing

The first option, limited balancing, is an extension of “offshore balancing.” Offshore balancing refers to a foreign policy strategy that seeks to “insulate the United States from future great power wars and maximize its relative power position in the international system.” This Note proposes a variation

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202. Layne, supra note 13, at 112.
of offshore balancing that seeks to minimize U.S. military exposure to regional conflicts over the South China Sea while preserving U.S. economic and diplomatic leverage.

Take military engagement in East Asia as an example. As an “offshore balancer” in East Asia, the United States would completely disengage from its military commitments in Japan and South Korea. In contrast, as a “limited balancer” in East Asia, the United States would substantially disengage from its military commitments in Japan and South Korea. Instead of total disengagement, as offshore balancing advocates, limited balancing favors partial disengagement to preserve leverage and prod East Asian allies into action.

Limited balancing’s flexibility, sustainability, and dependability make it an ideal strategy for pursuing American goals in East Asia. First, balancing supports the current trend in Asian power politics toward multiple regional powers, including China, Japan, and potentially North Korea (if Pyongyang continues nuclearization efforts). To accomplish that end, the strategy advocates removing U.S. ground troops from East Asia while preserving American naval and aerial forces in South Korea and Japan. Leaving a naval and air presence will suffice to both deter military conflict in the South China Sea and allow a regional equilibrium to develop.

Second, limited balancing empowers regional actors, including Japan, the Philippines, Vietnam, and South Korea, to balance China. For example, the strategy advocates securing bilateral free trade deals between the United States and regional players. Access to select American markets and goods will reduce dependency on Chinese investment and enable East Asian countries to economically balance Beijing. Similarly, the United States can choose whether—and when—to leverage its position as the world’s most technologically advanced military power by selectively selling arms to regional allies that seek to balance Beijing militarily, such as Vietnam or Taiwan.

Third, balancing maximizes U.S. leverage over China without jeopardizing Sino-American relations. Limited balancing banks on American naval dominance and China’s acute trade vulnerabilities in the South China Sea to achieve


maximum leverage, even though a U.S. troop reduction would appease Beijing. The strategy specifically proposes a focused East Asian alliance structure with nations lining maritime choke points in the South China Sea through bilateral free trade deals, naval exercises, military training, and limited arm sales. A combination of economic leverage from free trade deals and security leverage from exercises, training, and arm sales will allow the United States to shape engagement with China and mitigate inevitable regional flare-ups by acting as a mediator.

Despite the disadvantages to pursuing this strategy in East Asia, the advantages outweigh the potential costs. Limited balancing risks alliance backlash and diluting American influence abroad. Opponents principally argue that U.S. influence will diminish under this strategy because former beneficiary states will possess little reason to defer to U.S. interests in the absence of U.S. troop presence. While valid, these concerns overlook the value that economic and security leverage generates in shaping regional balances of power. Moreover, limited balancing will save billions of dollars from unsustainably high military spending by minimizing troop levels and expanding bilateral trade ties.

2. Primacy

An East Asian strategy of primacy, or forward engagement, represents the alternative to balancing for a potential U.S. foreign policy. Primacy principally aims to preserve America’s international status as the undisputed global hegemon. Primacy proponents frequently advocate that the United States outspend other militaries, underwrite the security of regional allies, and act unilaterally. According to proponents, America’s core national interest

209. Brands, supra note 208, at 43.
consists of keeping the rest of the world chaotic to preserve America’s unique international position.217

Despite several advantages to pursuing this strategy in East Asia,218 the disadvantages overshadow the potential gains. Advantages to pursuing primacy in East Asia center on the importance of hard power—or military power—in dissuading adversaries from challenging the United States’ position219 while simultaneously encouraging allies to bandwagon with America.220 From proponents’ point of view, the alternative of military disengagement not only risks sapping U.S. diplomatic influence,221 but it also promotes regional destabilization.222

Primacy’s strategy is self-fulfilling, however, for several reasons. First, the international system is transitioning from unipolarity223 to multipolarity,224 which makes power more diffuse.225 Second, regional states are already counter-balancing American power,226 such as China’s proposed Free Trade Area of the Asia-Pacific,227 the Asian Infrastructure Investment Bank,228 and the

217. Schmidt, supra note 102, at 16.
223. Unipolarity refers to an underlying power distribution in the international system where one major superpower wields disproportional material resources relative to other countries. See Ikenberry et al., supra note 214, at 2 (defining unipolarity). Some scholars believe the world remains unipolar due to numerous factors, such as American military superiority and expansive latent power. Brooks & Wohlfforth, supra note 207, at 66; Tonghi Kim, The Supply Side of Security: A Market Theory of Military Alliances 50 (Stan. Univ. Press 2016).
224. Multipolarity refers to a power distribution in the international system where three or more major superpowers wield disproportional material resources relative to other states. Brooks & Wohlfforth, supra note 207, at 64 (defining multipolarity, bipolarity, and unipolarity).
Shanghai Cooperation Organization,\(^229\) among other potential trade blocs. Balancing and power diffusion mean that the United States is already losing influence from its forwardly engaged positions. This dilutes the biggest advantage to primacy, which centers on the presumption that the United States will remain unchallenged internationally. Moreover, primacy risks the United States succumbing to imperial overstretch by overextending the country’s limited resources.\(^231\)

In short, primacy’s advantages are too outdated, and the strategy fails to fulfill the United States’ three core goals in East Asia and the South China Sea. First, attempting to preserve American power undermines the region’s evolution in power diffusion (multipolarity). Second, acting unilaterally encourages regional allies to free ride\(^232\) off U.S. military spending without balancing China themselves. Third, projecting an image of encirclement to China undercuts relations without acquiring meaningful leverage. Thus, primacy’s disadvantages outweigh and nullify its potential advantages in East Asia.

D. Tying Goals to a South China Sea Regional Strategy

Compared to primacy, balancing’s disadvantages are minimal and better advance the United States’ three core goals in East Asia and the South China Sea. First, reducing ground force commitments removes an obstacle slowing the region’s power diffusion. Second, reducing regional dependency on Chinese investment and selling arms to allies frees regional actors to better balance Beijing. Third, forging an alliance structure along chokepoints in the South China Sea maximizes leverage over China by capitalizing on vulnerability without directly confronting Beijing and rupturing relations in the process.

Limited balancing also better addresses the two issues identified above: (1) flexibility to respond to China’s evolving interests and (2) sustainability to mitigate inevitable regional flare-ups.\(^233\) In contrast to primacy’s inflexibility toward Beijing, balancing provides economic, military, and diplomatic room to handle China. For example, balancing promotes bilateral ties, which are more fluid and capable of adapting to changes in regional power dynamics. Additionally, in contrast to primacy’s emphasis on troops and force exposure, balancing best mitigates inevitable South China Sea tensions through limited en-

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engagement. Leverage and limited engagement allow the United States to position itself as a regional mediator when necessary without overextending American resources. Balancing also creates a sustainable South China Sea strategy premised on mitigating tension escalation through economic (e.g., free trade deals), military (e.g., training and sales), and diplomatic (e.g., bilateral mediation) levers.

V. CONCLUSION

In 2016, a Tribunal decision between China and the Philippines added legal ambiguity to uncertain maritime borders in the South China Sea. Historically, wide continental shelves made delimiting maritime borders nearly impossible, leading to periods of competition and limited cooperation between claimant-states for the sea’s plentiful fish. Recently, competition mounted among claimant-states for sovereignty over land features in the sea to secure fishery access and trade leverage due to the growing importance of maritime trade routes. This was where the Tribunal’s decision came into play. China, sensitive to encroachment near its vulnerable Pacific coast, refused to participate and to accept the Tribunal’s decision invalidating Beijing’s nine-dash-line policy. Importantly, the Tribunal failed to address which nation enjoyed sovereignty over these land features. China’s behavior, however, was particularly problematic due to its involvement in most other sovereignty disputes in both the South China Sea and East China Sea. China’s behavior stemmed from national imperatives, such as protecting trade routes and supply chains, that constrain the country’s ability to offer meaningful concessions to South China Sea claimant-states.

This Note forecasts that the Tribunal’s decision will affect national economies, regional security dynamics, and international diplomacy. Claimant-states depend on the sea for food security, seafood exports, jobs, and supply-chain leverage. Failing to address land-feature sovereignty and to eliminate China’s bright-line territorial claims creates ambiguity that will fuel regional economic competition and encourage limited cooperation. This ambiguity, combined with strong regional distrust and pervasive nationalism in domestic politics, will accelerate regional arms races. Full-scale military conflagration is unlikely, however, despite arms races’ potential to destabilize the region economically. Moreover, LOST’s enforcement challenges, ASEAN’s disunity, and China’s reluctance to “multilateralize” South China Sea disputes foreshadow a shift in conflict resolution from multilateral to bilateral channels.

Limited balancing offers the best available response from the U.S. perspective, even if the strategy entails certain costs. East Asia is undergoing a power transition from a system where the United States was the sole power to one where multiple powers are emerging, including China, Japan, South Korea, and North Korea. Balancing best addresses this shift by empowering allies to
confront China without the United States directly doing so, thereby preserving bilateral relations. Limited engagement also reduces U.S. force exposure to inevitable flare-ups between states as they jockey for regional power.

The South China Sea was, is, and will remain a regional powder keg. The Philippines-China decision merely acts as an accelerant to pre-existing fishery competition, friendly arm procurement agreements, and other flashpoints in the sea.
No. 5] FISH, FRIENDS, AND FLASHPOINTS 1923