

CHARLES UNIVERSITY
FACULTY OF SOCIAL SCIENCES
Institute of Security Studies

Master thesis



2019

Wietse Straatsma

CHARLES UNIVERSITY
FACULTY OF SOCIAL SCIENCES

Institute of Security Studies

Wietse Straatsma

**China's Maritime Lawfare in the South
China Sea**

Master thesis

Prague 2019

Author: Ba. Wietse Straatsma

Supervisor: PhDr. Vít Střítecký, M.Phil., Ph.D

Academic Year: 2018/2019

Bibliographic note

STRAATSMA, Wietse. *China's Maritime Lawfare in the South China Sea*. Prague, 2018. 83 pages. Master's thesis (Mgr.) Charles University, Faculty of Social Sciences, Institute of Political Studies. Department of Security Studies. Supervisor PhDr. Vít Střítecký, M.Phil., Ph.D.

Abstract

The primary aim of this thesis is to examine if and how the People's Republic of China uses legal warfare to strengthen its maritime power in the South China Sea. To examine this, Dunlap's interpretation of lawfare has been combined with a lawfare typology from Kittrie to create a framework from which China's behavior has been examined. The paper posits that China's behavior in and related to the South China Sea meets the criteria of lawfare. China utilizes both instrumental lawfare and compliance-leverage disparity lawfare to justify its legal claims on the South China Sea's maritime sphere and the landforms that lie within it. This lawfare combined with enforcement has led to China gaining substantial maritime power. The islands China occupies and their militarization have granted it marine resources, naval power, and bases to project power from. The thesis contributes to the literature on China's behavior in the South China Sea by providing a lens through which to view its actions. Moreover, it contributes to the growing literature on the novel concept of lawfare.

Keywords

China, Lawfare, Maritime Power, South China Sea, UNCLOS, International Law.

Range of thesis: 155.820 characters including spaces, 83 pages.

Declaration of Authorship

1. The author hereby declares that he compiled this thesis independently, using only the listed resources and literature.
2. The author hereby declares that all the sources and literature used have been properly cited.
3. The author hereby declares that the thesis has not been used to obtain a different or the same degree.

Prague 10/05/2019

Wietse Straatsma

Acknowledgments

The author would like to convey his gratitude to PhDr. Vít Střítecký for his valuable guidance during the writing process. He thanks Michal Kolmaš for providing him with the background knowledge on the issues of the South China Sea. He furthermore thanks his fellow students who helped him enormously with their advice and provided him with a sounding board for his ideas and arguments. These fellow students consist of, but are not limited to, Mathieu Rochambeau, Erin Currie, Minna Westlund, Anja Burlica, Daniel Krack, Caspar Brüsewitz, Tabea Grünewald, and Alexandre Cuby. Lastly, special thanks to Stijn Wijker for his excellent translation work and Joe Katz for his continuing support.

Notations and Conventions

Notation of any concepts used which are originally Mandarin Chinese will conform to characters and pinyin writing in accordance with the work from which it was cited.

Leaving aside the discussion on the one-China policy, this paper will focus on the claims of the People's Republic of China (PRC). To be clear, when "China" and its claims are mentioned, it refers to the People's Republic of China. Despite the considerable overlap of claims between the PRC and the Republic of China (ROC), the latter shall be left outside the scope of this paper.

CHARLES UNIVERSITY
FACULTY OF SOCIAL SCIENCES
Institute of Security Studies

Diploma thesis project

**China's Maritime Lawfare in the South
China Sea**



Author: Wietse Straatsma

Supervisor: PhDr. Vít Střítecký, M.Phil., Ph.D

Study program: International Security Studies

Year of proposal submission: 2019

Introduction

The relationship between law and war is a long and complicated one. Throughout history laws have been created to prevent war or regulate it. However, due to the anarchic nature of international society, international laws are difficult to uphold. This is especially the case during war. In a time where international institutions have become more powerful and pervasive and conventional war increasingly a faux-pas, it is interesting to see how some nations choose to pursue their interest with such legal constraints. Some nations seek the fringes or loopholes of the international laws, others consciously use the framework of international law to their advantage. An interesting area where conflict and law meets is the maritime sphere. Although two-thirds of the planet is covered by water, its laws and borders are much less clearly defined than those on land. Now that mankind is increasingly able and in need to exploit maritime resources, the ambiguity of maritime law and borders increasingly leads to conflict. This is especially the case for rapidly developing countries. China, for example, has various disputes with its neighbors in the South China Sea (SCS). At times, international maritime law is very clear about the “rightful” claimant in a conflict and at other times it’s more ambiguous. Regardless, to protect its interests, China has pushed ahead and taken a more assertive position in the area. Due to its regional power, the country has been able to oppose claims from neighboring states. Besides using its conventional regional power, China has supported its claims with legal foundations. However, in doing so, China has built a record of occasionally siding with commonly accepted interpretations of maritime international law and on occasion not doing so. It is interesting to study how china uses a combination of power and legal ambiguity to further consolidate its power and claims in the South China Sea. In a time where the international society relies heavily on international law, such infringements on its credibility and applicability should be taken seriously. International law protects the weakest states in the international system and strengthens international stability. Through China’s efforts it positions itself in a way that it is the regional hegemon of conventional power with weakened international constraints on its will to further its political goals. If China continues down this path international law in its entirety could be weakened.

Research target, research question

In order for this thesis to be able to answer how china uses lawfare to strengthen its maritime power in the South China Sea, several sub-questions have to be answered first. For starters the likelihood of China using legal warfare as a tool needs to be addressed. It is necessary for this paper to establish whether the PRC would use legal warfare before can be established if it would do so in the South China Sea as well. Also, needs to be established that such behavior does not coincidentally coincide with lawfare, but is part of a thought-out approach or overarching strategy.

Q1 Is it likely that the People's Republic of China would purposefully employ a legal warfare strategy

Q2 Is it likely that the People's Republic of China would purposefully use a legal warfare strategy in the South China Sea?

Having established whether or not China uses behavior consistent with the concept of lawfare in these bodies of water, the paper can move on to the next issue. China may make legal claims to the South China Sea, but does this reflect the current state of the area? This question shall address how China's claims coincide with its actual presence in the South China Sea

Q3 What does China's presence in the South China Sea look like?

The fact that China uses a strategy similar to lawfare in the South China Sea does not necessarily mean China is successfully consolidating its maritime power in this body of water. Therefore, the next sub-question needs to address whether China is successfully strengthening its maritime power in regional waters.

Q4 Is China's behavior strengthening its maritime power in the South China Sea?

Having established whether China is indeed following a conscious strategy of Lawfare in the South China Sea, we can finally answer the overarching research question that's at the heart of this paper.

Q0 How does China use lawfare as a strategy to strengthen its maritime power in the South China Sea?

Literature review

Lawfare

It can be said that the Dutch Hugo Grotius, the so-called “father of international law” was the first to link law and warfare together (Kittrie, 2016; 4). During the 17th century, competition between European countries over seafaring trade routes was intense. As part of this, Portugal was trying to protect its lucrative spice trade from the Dutch East India Company (DEIC) by deploying its navy. The DEIC tasked Hugo Grotius to devise a theory under which “war might rightly be waged against, and prize taken from the Portuguese” as they had “wrongfully tried to exclude the Dutch” (Kittrie. 2016; 4). In 1609, Grotius published his classic work, *Mare Liberum*. In this book, Hugo Grotius made the case that under the “Law of Nations,” “the sea is common to all” (Kittrie, 2016; 5). By the start of the 1700s, many states had adopted his idea the freedom of the seas. In effect, by creating the concept of freedom of the seas as part of international law, Grotius had allowed the Dutch to use law to accomplish an objective which their navy could not have achieved.

Although the nexus between warfare and law is not new, the term ‘lawfare’ as coined by Charles Dunlap, Jr. in 2001 has given a new perspective on the interplay between war and law. The term ‘lawfare’ is a portmanteau of the words law and warfare, as it refers to the combination of the two concepts. However, as this combination of the two concepts is still quite broad, this deserves further explanation. In his seminal work on lawfare, published in 2001, Dunlap first defined lawfare as “the use of law as a weapon of war” (Dunlap, 2001; 2). He continued that this is the most recent facet of 21st century combat. In this same work, Dunlap defined lawfare a second time, slightly differently, as “a method of warfare where law is used as a means of realizing a military objective” (Dunlap, 2001; 4). As discussion on this concept grew after his first publication, Dunlap further developed and specified his definition. In his following essays, Dunlap adopted a third definition of lawfare, defining it as “the strategy of using-or misusing- law as a substitute for traditional military means to achieve a warfighting objective” (Dunlap, 2015; 824). The key to lawfare is that it describes circumstances when law can be used to create similar effects as those often pursued through conventional war. This final definition is the one this paper will build upon. It is worth noting that Dunlap’s final interpretation of lawfare is neither positive nor negative, but value neutral. Lawfare is simply a tool which can be wielded by either-or both- side(s) of a conflict. As Dunlap

himself put it quite eloquently, lawfare is “simply another kind of weapon, one that is produced, metaphorically speaking, by beating law books into swords” (Kittrie, 2016; 6). Oftentimes authors will consider lawfare as being inherently negative and destructive to international law. Even Dunlap’s initial 2001 approach to lawfare was a negative perspective on the strategies being used against the United States.

Another important source for this paper is the in 2016 published book by Orde F. Kittrie; *Lawfare: Law as a Weapon of War*. This work is the first book to be written about lawfare as defined by Dunlap. Besides giving a summary of the evolution of the concept since 2001, Kittrie further expands on these works.

The concept of lawfare has also been used in a domestic or business sector sense. In this interpretation it is often used by big businesses to tie competition down in longwinded legal disputes. However, this is much different from the conceptualization of Dunlap, so it falls outside the scope of this paper. Kittrie spends ample attention to the typology of lawfare in his work. According to him, lawfare can be divided into two interrelated forms, namely “instrumental lawfare” and “compliance-leverage disparity lawfare”. The former of the two relates to “the instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic military action” (Kittrie, 2016; 11). A wide variety of laws and forums can be used as instrumental lawfare to achieve objectives. Generally, this is the type of lawfare most used by Western state and non-state actors. These actors can range from international organizations and states to militias, NGOs, and even individual activists. These various actors can use a wide array of legal tools such as international, national, and sub-national laws and forums and even combinations of these. Through these means, actors can create new laws, reinterpret existing laws, prosecute adversaries, generate intrusive and protracted investigations and influence law advisory opinions. As this paper focuses on China’s use of Lawfare in the maritime sphere, the paper will adjust its framework within lawfare accordingly. Therefore, it will focus on the instruments a state actor uses in international law to achieve their goals.

Compliance-leverage disparity lawfare is typically used on the battlefield and “is designed to gain advantage from the greater influence that law, typically the law of armed conflict, and its processes exerts over an adversary” (Kittrie 2016; 11). The concept becomes much clearer when it is broken down. Compliance refers to compliance with the law rather than with the demands of an adversary. The disparity is the difference in pull a certain (type of) international law may have over different actors. Kittrie defines

compliance-leverage disparity as “the leverage which law and its processes (or particular laws and their processes) exert, over a particular actor, in the direction of compliance (Kittrie, 2016; 20). It is this disparity that creates an opportunity for lawfare practitioners. Because of the nature of this kind of lawfare where the actor uses lawfare against another actor over which law has more leverage, this is often used more by non-state actors such as terrorists. Various factors can influence the disparity in leverage that a law or forum has over different lawfare targets. Different political and legal cultures attribute varying importance to compliance with law. This difference in ‘law abidingness’ is highly dependent on the importance of law for an actor (Kittrie, 2016; 21). Furthermore, the benefits of compliance must be taken into account, this will often differ between lawfare targets and lawfare practitioners. Moreover, the prospects of the future and precedents a current issue may set for the future has to be taken into account.

China’s Lawfare

Despite the fact that the concept of lawfare was first coined by a US general, the United States has not taken advantage of the full potential of the subject, nor has it realized any consolidated efforts to counter other’s lawfare strategies. This is contrasted by China, which has fully embraced lawfare as one of their foreign policy tools. As a matter of fact, China has included lawfare as a major component of its strategic doctrine. This is illustrated by the PRC military’s *Basics of International Law for Modern Soldiers* which conveys to its readers that “we should not feel completely bound by specific articles and stipulations detrimental to the defense of our national interests. We should therefore always apply international laws flexibly in the defense of our national interests and dignity, appealing to those aspects beneficial to our country while evading those detrimental to our interests” (Kittrie, 2016; 22). For this reason, the importance of viewing China’s actions and strategy in its regional seas through the perspective of lawfare cannot be understated.

Already in 1996, PRC President Jiang Zemin advised Chinese experts on international law that China needed to be “adapt at international law as a weapon.” (Kittrie, 2016; 5). Moreover, several Chinese books have been written by law experts with ties to the Chinese government (Cheng, 2012). Most of these Chinese works use the same word to describe a concept very similar to Dunlap’s interpretation of lawfare, this word being ‘Falü Zhan’ (法律戰). This concept is also part of the “three warfares” (Cheng,

2012)¹. The fact that this concept has so readily been embraced by the PRC shows its significance. Sadly, in the West lawfare has not been widely used as a framework to analyze and explain some of China's behavior in the international sphere. Due to the language barrier, an in-depth literature review of falu zhan cannot be included in this paper. Therefore, Dunlap's definition and interpretation of lawfare will be the basis and guideline this paper will build on to examine China's legal warfare in the South China Sea.

Theoretical/conceptual framework

In order for this paper to address the research question and its sub-questions mentioned before, the concepts used in these questions need to be addressed and conceptualized. To reiterate, this thesis will aim to answer how the People's Republic of China uses lawfare to strengthen its maritime power in the South China Sea. To fully grasp the intentioned scope of this work several concepts need to be examined, these being; lawfare, international maritime law, and maritime power.

Lawfare has been addressed thoroughly in the literature review. The concept used in this paper will be based on Charles Dunlap Jr.'s definition. Moreover, Kittrie's work expounding on the typology will be used to establish the framework used in this paper. Within this framework lawfare practitioners will be used to refer to on an ad hoc basis in situations where they can be considered to be using lawfare. Similarly, in these cases lawfare targets are those against whom lawfare is or was aimed. This distinction needs to be made clear as an actor can be a lawfare practitioner in one situation and a target in another. Maritime power itself is a concept that arguably deserves an entire literature review of itself. Maritime power is not to be confused with Sea Power or Naval Power, which are generally used to explain the means by which a nation extends its military power onto the seas. Despite its varied interpretations, maritime power is often used to describe a nation's capacity to use the seas to its utmost in defiance of rivals and competitors. The concept can consist of diverse elements such as naval ships, shoreline length, harbors, exclusive economic zone, army and air force support, nuclear capabilities, fisheries, resources, geographic locale, offshore oil, marine treaties, and

¹ Chinese analyses often use the term "three warfares" (san zhan) to refer to three interrelated and mutually reinforcing facets of warfare. These three warfares are; public opinion warfare, psychological warfare, and legal warfare (Cheng, 2012).

more. These elements can be divided into four facets, namely ports and harbors, merchant marine, oceanic economic resources, and naval power (Ahmad 2014).

Methodology and data

Key to analyzing any country's use of lawfare is of course how it uses which types of laws and the forums related to them. In the case of analyzing China's use of lawfare in regional waters, the international law dealing with the maritime sphere need to be examined. International maritime law is primarily built upon the United Nations Convention on the Law of the Sea (UNCLOS). The PRC took part in negotiations from 1973 to 1982 and ratified the convention in 1996. Therefore, not only is this convention guiding for any legal maritime conflicts in the world, it should be binding international law for China as well. This legal text and the forums created around it since, will be used to examine how China's actions in regional waters compared to the predominant interpretation of international maritime law. One example of the forums used to enforce UNCLOS is the Permanent Court of Arbitration, which was established under Annex VII of the UNCLOS. Rulings, such as the South China Sea Arbitration between China and the Philippines, will play an important role in establishing whether or not China complies with international law.

China's actions will largely be studied through open source intelligence. China's current actions in its regional waters and particularly in the South China Sea have drawn considerable attention. As a result, many sources can be found on China's presence in the area. This includes but is not limited to naval presence, island-building, and resource exploitation. By using these sources China's evolving presence and activities in its regional waters can be analyzed. These actions can then be compared to any important international laws which applies to China's regional waters. Furthermore, Chinese strategic documents will prove invaluable in establishing whether or not the PRC uses a conscious strategy of lawfare. Any explicit mentioning of using and misusing law as a part of strategic advantage gives credence to the case that China's actions are part of a conscious strategy rather than simply coincidental. As this thesis is a case study on China's use of maritime lawfare, it will focus on qualitative methods to gather foundational information to answer the research question.

Planned thesis outline

- Introduction
- Literature review lawfare
 - What is lawfare
 - Framework for this paper
 - Criticisms
 - Basics of international maritime law
- Methodology
- China's lawfare
 - China's view of legal warfare
 - Falu zhan
 - Is it likely that China would employ legal warfare
- China's presence in the South China Sea
 - Reasons for China's interest in the area
 - China's island-building
 - China's maritime claims in the area
- China's maritime power
 - What is maritime power
 - China's maritime power
 - How do China's islands influence maritime power
- China's actions from a lawfare perspective
 - Ties all previous chapters together
 - China's legal foundation for its claims in the South China Sea
 - China's lawfare in the South China Sea
 - How has this lawfare strengthened China's maritime power in the SCS
- Future of falu zhan and responses
 - Likely developments in the South China Sea
 - Recommended responses for dealing with China's SCS behavior
- Conclusion

References

- Cheng, D. (2012). *Winning Without Fighting: Chinese Legal Warfare*. [online] The Heritage Foundation. Available at:
https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare#_ftn5 [Accessed 27 Dec. 2018].
- Dunlap Jr., C. (2001). Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts. *Duke Law School*, Conference Paper.
- Dunlap Jr., C. (2010). Does Lawfare Need an Apologia?. *Case W. Res. J. Int'l L.*, 43, pp.121-143.
- Dunlap Jr., C. (2015). Lawfare. In: J. Norton Moore, R. Turner and G. Roberts, ed., *National Security Law & Policy*, 3rd ed. Durham: Carolina Academic Press, pp.823-838.
- Dunlap Jr., C. (2017). Lawfare 101: A Primer. *Military Review*, 97, pp.8-17.
- Hsiao, A. (2016). China and the South China Sea “Lawfare”. *Issues & Studies*, 52(2), pp.1-42.
- Hughes, D. (2016). What does Lawfare mean?. *Fordham Internaitonal Law School*, 40, pp.1-37.
- Kittrie, O. (2016). *Lawfare: Law as a Weapon of War*. New York: Oxford University Press.
- Kline, R. (2013). The Pen and the Sword: The People's Republic of China's Effort to Redefine the Exclusive Economic Zone Through Maritime Lawfare and Military Enforcement. *Military Law Review*, 216, pp.122- 169.
- Trachtman, J. (2016). Integrating Lawfare and Warfare. *B.C. Int'l & Comp. L. Rev.*, 39(2), pp.267-282.
- Vanhullebusch, M. and Shen, W. (2016). China's Air Defence Identification Zone: Building Security through Lawfare. *China Review*, 16(1), pp.121-150.

*“To win one hundred victories in one hundred battles is not the
pinnacle of excellence; defeating the enemy without fighting is the
pinnacle of excellence”*

- Sun Tzu

Contents

CONTENTS.....	1
GLOSSARY OF ACRONYMS AND ABBREVIATIONS	2
INTRODUCTION.....	3
1. LAWFARE	6
2. METHODOLOGY	15
3. CHINA’S LAWFARE	17
4. CHINA’S PRESENCE IN THE SOUTH CHINA SEA	26
5. CHINA’S MARITIME POWER.....	37
6. CHINA’S ACTIONS FROM A LAWFARE PERSPECTIVE.....	44
7. FUTURE OF FALU ZHAN AND RESPONSES	52
CONCLUSION	57
BIBLIOGRAPHY	61
LIST OF APPENDICES	70
APPENDICES	71
LIST OF TABLES	77
TABLES.....	78

Glossary of Acronyms and Abbreviations

ADIZ	Air defense identification zone
CCP	Chinese Communist Party
CIL	Customary international law
DEIC	Dutch East India Company
EEZ	Exclusive economic Zone
FONOP	Freedom of navigation operation
MOOTW	Military operations other than warfare
NGOs	Non-governmental Organizations
Nm	Nautical mile (one nm = 1,85 km)
PLA	People's Liberation Army
PLAN	People's Liberation Army Navy
PRC	People's Republic of China
ROC	Republic of China
SCS	South China Sea
UNCLOS	United Nations Convention on the Law of the Sea

Introduction

Every now and then when you open the newspaper or turn on the television, there will be another story about an American ship sailing through China's contested waters. These exercises, mainly done by the U.S. but at times also by other states such as Japan and England, are part of a freedom of navigation operation (FONOP). These incursions into disputed territory are aimed at contesting China's highly disputed claims over regional waters. In recent history, China has become increasingly assertive at claiming and asserting control over vast swaths of regional waters. Many of these claims are contested by the country's neighbors. On top of that, regional actors have objected to China's interpretation of the United Nations Convention on the Law of the Sea (UNCLOS). According to China's interpretation of UNCLOS, it has much more sovereignty over certain waters than is generally understood. As such, foreign naval vessels are not allowed to navigate waters claimed by China without explicit consent. This is all part of China's increasingly assertive position in the South China Sea. The People's Republic of China (PRC) supports its growing presence in regional waters by claiming it has legal rights over them (Hsiao 2016). It does this by interpreting international law differently from much of the international community and using legal warfare strategies to reinforce their claims. This illustrates how China uses law as a tool to justify its maritime presence in regional waters. The international community is having difficulties dealing with this behavior. Whilst the various FONOP missions have served their purpose of contesting China's legal claims, it has not stopped the country from forming artificially created islands in the South China Sea. These islands are now being militarized as is evident from pictures of radar installations, airfields, bunkers, and more (Banyan 2018). The islands are subsequently used by the PRC to support thinly veiled legal claims on the waters around those artificial islands. China's actions all seem to be part of a carefully thought out strategy to consolidate its maritime power in the waters directly surrounding the country. To understand China's behavior in the South China Sea, it is important to understand how it uses law as a tool.

The relationship between law and war is a long and complicated one. Throughout history laws have been created to prevent war or regulate it. However, due to the anarchic nature of international society, international laws are difficult to uphold. In a time when international institutions have become more powerful and pervasive and conventional warfighting increasingly a faux-pas, it is interesting to see how some nations choose to

pursue their interest with such legal constrains. Some nations seek the fringes or loopholes of the international laws, others consciously use the framework of international law to their advantage. An interesting area where conflict and law meet is the maritime sphere. Although two-thirds of the planet is covered by water, its laws and borders are much less clearly defined than those on land. Now that mankind is increasingly able and in need to exploit maritime resources, the ambiguity of maritime law and borders increasingly leads to conflict. This is especially the case for rapidly developing countries. China, for example, has various disputes with its neighbors in the East China Sea (ECS) and South China Sea (SCS). At times, international maritime law is very clear about the rightful claimant in a conflict and at other times it's much more ambiguous. Regardless, to protect its interests, China has pushed ahead and taken a more assertive position in both seas. Due to its regional power, the country has been able to oppose claims from neighboring states. Besides using its conventional power, China has supported its claims with legal foundations. However, in doing so, China has built a record of occasionally siding with commonly accepted interpretations of maritime international law and on occasion opposing it. It is worth-while to examine how China uses a combination of power and legal tools to further consolidate its maritime power and claims in the South China Sea. In a time when international society relies heavily on international law, such infringements on its credibility and applicability should be taken seriously. International law protects the weakest states in the international system and strengthens international stability. If China continues down this path international law in its entirety could be weakened.

International law is currently more consolidated and omnipresent than ever before. Whilst this may constrain states in their actions, both outside of and during warfare, it also opens up new avenues to be used. Lawfare, as first coined by Charles Dunlap Jr. (2001) is a relatively new concept which looks into this. Lawfare focuses on how law, in this case international maritime law, can be used or misused by states as a tool to pursue war fighting objectives normally achieved through conventional means. China has successfully expanded its maritime claims and strengthened its grip on the SCS by carefully combining its regional power with ostensibly legal claims. This makes China's actions in the area an excellent case study to examine how the country uses lawfare as a tool to consolidate its maritime power in the South China Sea. Due to the importance of the subject, the various countries and economies impacted by this, and the seemingly inadequate response from the international community, this is an important topic to

analyze. Moreover, these actions can set a precedent for future misuse of international law and maritime law specifically. Only after examining how and why China uses this strategy can be discussed how this should be addressed by regional powers or the international community.

The aim of this paper is to examine if and how the People's Republic of China uses lawfare as a strategy to strengthen its maritime power in the South China Sea. In doing so it will help make sense of China's actions in this body of water. Understanding its actions will help a great deal in finding a resolution to the conflicts that China's actions have stirred up in the area. Although this paper mainly aims to make sense of China's actions and possible strategy in the South China Sea, it also serves as an example of how states may use lawfare as a strategy to consolidate maritime power. If the PRC is indeed successful at strengthening maritime power through lawfare, it is not unlikely that other countries may attempt to duplicate this tactic.

This paper will examine China's behavior in the South China Sea in an effort to answer if and how China uses a lawfare strategy in the South China Sea to consolidate its maritime power there. Every chapter will address an underlying aspect of the overarching research question. Chapter one will give a review of what lawfare is and how it came to be. It will outline the definition for lawfare and the lawfare framework that will shape the subsequent chapters. Chapter two will expound on the methodology that shall be used to examine China's possible use of legal warfare in the South China Sea and whether it has influenced its regional maritime power. The subsequent three chapters will each address a sub-question in order to answer the overarching research question. Chapter three will examine China's relation with legal warfare. By examining PRC writings and behavior it will aim to answer whether China can be said to use lawfare as a strategy. In chapter four, China's presence in the South China Sea will be discussed, focusing on PRC legal claims and island-building in the area. In doing so it will show how China uses legal warfare to justify its claims and island-building. Chapter five will discuss maritime power and how China's legal warfare and island-building have consolidated its maritime power in the South China Sea. Chapter six serves to combine the information from the previous chapters to analyze whether or not China indeed uses a strategy of lawfare to consolidate its maritime power in the South China Sea. The next chapter will expound on the future of China's lawfare strategy in the South China Sea and offers advice for regional actors and the international community to deal with such behavior. Naturally, the paper will end

with a conclusion to summarize the findings and answer the overarching research question.

1. Lawfare

1.1 History

It can be said that the Dutch Hugo Grotius, the so-called “father of international law” was the first to link law and warfare together (Kittrie 2016b). During the 17th century, competition between European countries over seafaring trade routes was intense. As part of this, Portugal was trying to protect its lucrative spice trade from the Dutch East India Company (DEIC) by deploying its navy. The DEIC tasked Hugo Grotius to devise a theory under which “war might rightly be waged against, and prize taken from the Portuguese” as they had “wrongfully tried to exclude the Dutch” (Kittrie 2016b, 4). In 1609, Grotius published his classic work, *Mare Liberum*. In this book, Grotius made the case that under the “Law of Nations,” “the sea is common to all” (Kittrie 2016b, 5). By the start of the 1700s, many states had adopted his idea of the freedom of the seas. In effect, by creating the concept of freedom of the seas as part of international law, Grotius had allowed the Dutch to use law to accomplish an objective which their navy could not have achieved. It is exactly this that also lies at the heart of the modern interpretation of lawfare.

Charles Dunlap first coined the concept of lawfare as a term to discuss law as a weapon of war in a paper that was published in November 2001 (Dunlap 2001). Dunlap had used the term in speeches and writings since the early 1990s because he needed a “bumper sticker” term, so a wide variety of audiences would better understand the way that law was altering warfare in recent times (Dunlap 2008). At this point Dunlap, and a few other academics, had taken note of the new relationship between law and war. The NATO commander at the time, General James L. Jones, had observed this as well and remarked that fighting a battle used to be a simple thing, “But that’s not the world anymore, ...[now] you have to have a lawyer or a dozen. It’s become very legalistic and very complex” (Winik 2003). Dunlap’s seminal 2001 paper in which he introduced the term lawfare, was partly framed as a response to an essay from the previous year, written by David Rivkin and Lee Casey. In this work, Rivkin and Casey argued that both U.S. allies and rivals have used international law “as a means to check, or at least harness, American power.” (Rivkin and Casey 2000, 35). The authors warned that “if the trends of international law in the 1990s are allowed to mature, international law may prove to

be one of the most potent weapons ever deployed against the United States.” (Rivkin and Casey 2000, 36). The authors did make it clear that international law could also be used to pursue U.S. national interest. By integrating foreign policy coordination with international law imperatives, U.S. policy goals could be addressed more holistically. It is from this idea that Dunlap deduced his overarching concept of lawfare.

Although the word ‘lawfare’ as portmanteau of law and warfare had been used prior to Dunlap’s 2001 paper, the word had a very different meaning and was sparsely used (Kittrie 2016b). It was not until Dunlap married this word to his interpretation of law as a weapon of war that the concept became more widely circulated in international legal and policy spheres.

1.2 Reason for conceptualization

Law is becoming an increasingly important and prevalent part of war. This development can be explained by the role of globalization and the growing importance of international law, as well as the increasing number of tribunals and non-governmental organizations (NGOs) which focus on the laws of armed conflict and related issues. The growing omnipresence of law in contemporary military affairs has created new opportunities to fight enemies. If used systematically and skillfully, lawfare can be a realistic alternative to kinetic warfare (Kittrie 2016b). Naturally, it is highly unlikely that lawfare will ever completely replace kinetic warfare. However, its application in specific situations may reduce the cost of lives of a conflict. As stated by attorney and former U.S. Army officer Phillip Carter, “it is vastly preferable to the bloody, expensive, and destructive forms of warfare that ravaged the world in the 20th century (Carter 2005). He continued, “I would far prefer to have motions and discovery requests fired at me than incoming mortar or rocket-propelled grenade fire” (Carter 2005). Not only does lawfare offer an alternative with a lower cost of life and less destruction, it is almost always less financially costly than traditional warfare (Kittrie 2016b). This makes it particularly suitable for modern democracies where the public is averse to the loss of life and high military spending. In democracies, even a limited armed conflict requires broad public support. Such support can quickly dissipate if the public perceives a conflict to be conducted in an unlawful or inhumane manner, regardless of the true merit of a political objective. Granted, belligerents have used public perception to increase support for themselves and erode support for their foes in the past. However, by adding the facet of legality this becomes increasingly complex. Actors can exploit the desire of states to

adhere to international law as a weakness. This vulnerability can be considered as what Carl von Clausewitz would term a ‘center of gravity’(Dunlap 2008). Furthermore, at times lawfare can be more effective than traditional warfare. For example, using sanctions to take away the money of despots will likely hit them more than the death of their citizens for which they may not care much (Kittrie 2016b).

Any actor which perceives itself to be the target of lawfare should not simply ignore this, as silence does not take away the credibility of the lawfare practitioner. Instead, lawfare should be countered with lawfare (Scharf and Pagano 2010). International law relies heavily on customary law and precedents. Therefore, ignoring lawfare may aid the lawfare practitioner in its actions. On the other hand, escalating the issue through conventional means often is not possible or preferable. Resorting to violence to resolve conflict is the biggest faux-pas in international relations. Therefore, fighting lawfare with lawfare makes the most sense.

In short, as law is becoming an increasingly powerful facet of warfare, its use in warfare should be better understood. Despite the growing prevalence of the use of law as a weapon of war, the existing literature on the topic is still relatively thin. Diving further into this concept will be beneficial for both lawfare practitioners and lawfare targets.

1.3 Definition

In the last few years, lawfare has become the primary term in English language academic spheres to describe law as a weapon of war. Lawfare, however has also been used in other situations and with different meanings. Therefore, it makes sense to clarify the exact definition of the concept that is used in this paper. Over time, and as Dunlap developed his interpretation of lawfare, the exact definition has been altered and specified. In his seminal essay, Dunlap called lawfare the newest feature of 21st century combat and initially defined it as “the use of law as a weapon of war” (Dunlap 2001, 2). Later in the same paper, Dunlap slightly specified his earlier definition, stating that “lawfare describes a method of warfare where law is used as a means of realizing a military objective” (Dunlap 2001, 4). Over time, as Dunlap’s interpretation of the concept was challenged and discussed by others, he further specified and developed his definition. In subsequent and most recent essays, Dunlap defines lawfare as “the strategy of using – or misusing – law as a substitute for traditional military means to achieve a warfighting objective (Dunlap 2010, 122; Dunlap 2017). This most recent definition helps the uninitiated reader to narrow down what lawfare exactly means, as it does not describe

every single imaginable relation between law and warfare. It focuses primarily on situations where law can be used as a tool to create the same or similar effects as may normally be pursued through conventional war practices. In military terms, lawfare can best be understood as a form of effects-based operations. In general, effects-based operations are not concerned with the particular methodologies but more with the effects that contribute to military and political goals.

Much like the definition, Dunlap has altered his interpretation of the value of lawfare since his initial inception of the idea. Dunlap's 2001 work was very much inspired by his perception of foreign powers using the law as a form of asymmetrical warfare to counter the United States' considerable traditional military power. As such, his initial conceptualization of lawfare clearly had a negative value and connotation. In his following publications Dunlap evidently changed his perspective on this. Nowadays, lawfare is considered by most scholars to be a value neutral tool or weapon that can be used either in accordance with the spirit of international law, or against it. Dunlap has compared it to metaphorically beating law books into swords. Its value depends wholly on who is wielding it, how they do it, and why (Dunlap 2008). Much like any conventional weapon of war, lawfare can be used by friend and foe alike. This interpretation of lawfare is not entirely embraced by all of those who use it, both the exact definition as the neutral value of the concept have been criticized. These critiques shall be addressed later on.

1.4 Framework

Dunlap himself has published several works in which he discusses lawfare at length. This combined body of work summarizes the basics of lawfare well. Another important source for this paper is the recently published book by Orde F. Kittrie; *Lawfare: Law as a Weapon of War* (2016b). This is the first book to provide a broad and systematic overview of the current framework for lawfare as defined by Dunlap. Besides giving a summary of the evolution of the concept since 2001, Kittrie further expands on these works. The combined works of Dunlap and Kittrie form the foundation for this paper. As Kittrie's work is in line with, and further builds upon that of Dunlap (Kittrie 2016b, 8). The final definition of lawfare as put forward by Dunlap and mentioned above will be the guiding principle of the framework. Although the other definitions do not contradict the most recent one, they are not as specific and explicit.

According to Kittrie, for something to qualify as lawfare, an action has to meet two criteria. Firstly, "the actor uses law to create the same or similar effects as those

traditionally sought from conventional kinetic military action – including impacting the key armed force decision-making and capabilities of the target.” Secondly, “one of the actor’s motivations is to weaken or destroy an adversary against which the lawfare is being deployed” (Kittrie 2016b, 8). This first criteria speaks for itself, the action must meet the definition of lawfare as a legal tool meant to pursue the same goals as conventional warfare. The second criterium is meant to weed out any actions that do not specifically aim to weaken or destroy a particular state or non-state actor. Key element here, is the intent of the lawfare practitioner. Although this is notoriously difficult to establish, it is nevertheless an important part of lawfare, as general legal actions not aimed or meant for specific purposes made by states or non-state actors should not be considered lawfare.

Kittrie spends ample attention to the typology of lawfare in his work. He divides lawfare into two interrelated forms, these being instrumental lawfare and compliance-leverage disparity lawfare. The former of the two relates to “the instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic military action” (Kittrie 2016b, 11). A plethora of states, international organizations, and NGO’s have used this form of lawfare in pursuit of their goals. Instrumental lawfare lends itself to a vast range of actors due to its breadth. A wide variety of laws and forums can be used for instrumental lawfare to achieve objectives. Generally, this is the type of lawfare most used by Western state and non-state actors (Kittrie 2016b). These actors can range from international organizations and states to militias, NGOs, and even individual activists. These various actors can use a wide array of legal tools such as international, national, and sub-national laws and forums and even combinations of these tools. Through these means, actors can create new laws, reinterpret existing laws, prosecute adversaries, generate intrusive and protracted investigations and influence law advisory opinions. China, for example, has made various efforts to reinterpret international laws related to space and cyberlaw in its favor. As this paper focuses on China’s use of lawfare in the maritime sphere, the paper will adjust its framework within lawfare accordingly. Therefore, it will focus on the instruments a state actor may be able to use within the realms of international law to achieve their goals in the maritime sphere.

The second form of lawfare, compliance-leverage disparity lawfare, is typically used on the battlefield and “is designed to gain advantage from the greater influence that law, typically the law of armed conflict, and its processes exerts over an adversary” (Kittrie 2016b, 11). The concept becomes much clearer when it is broken down.

Compliance refers to compliance with the law rather than with the demands of an adversary. The disparity is the difference in pull a certain (type of) international law may have over different actors. Kittrie defines compliance-leverage disparity as “the leverage which law and its processes (or particular laws and their processes) exert, over a particular actor, in the direction of compliance” (Kittrie 2016b, 20). It is this disparity that creates an opportunity for lawfare practitioners. In contrast to instrumental lawfare, this type of lawfare can be used by far fewer actors. Because of the nature of this form of lawfare, where the actor uses lawfare against another actor over which law has more leverage, this is often used more by non-state actors such as terrorists. In the past, the Islamic State (IS), the Taliban, and Hamas have all used compliance-leverage disparity (Kittrie 2016b). This type of lawfare, however, is not exclusive to non-state actors. China has a history of abusing the international legal system by becoming a signatory state to nuclear nonproliferation treaties just to have its rivals comply with it, all the while not complying to these treaties itself (Nuclear Control Institute n.d.).

Various factors can influence the disparity in leverage that a law or forum has over different lawfare targets. Different political and legal cultures attribute varying importance to compliance with law. This difference in ‘law abidingness’ is highly dependent on the importance of law for an actor. In the case of international law, not all states attribute the same value to it and therefore are more or less likely to act in accordance with it. Take for example the case of the United States. Despite the fact that the U.S. has chosen not to ratify several important international treaties, it is still very likely to act in accordance with them. Even though the U.S. has not ratified the United Nations Convention on the Law of the Sea, it has been one of the staunchest defenders of the values set forth in this treaty. China on the other hand, has been suspected of ratifying treaties so their rivals will as well, but subsequently not acting in accordance with said treaties. Furthermore, the benefits of compliance must be taken into account, this will often differ between lawfare targets and lawfare practitioners. Both sides to a conflict will likely have diverging views on the perceived benefits of complying with international law. This will be the case for issues on an ad hoc basis, or the wish for a long-term reputation of being law abiding or not. Prospects of the future and the precedents a current issue may set for the future has to be considered. Lastly, the objective and subjectively perceived risks of actual or alleged non-compliance with the law affect different actors in different ways. The risk an actor faces when engaging in lawfare consists of four components: the probability of being subjected to proceedings, the costs of such

proceedings, the likelihood of actually being penalized for a violation, and the penalty for violation (Kittrie 2016b, 23).

1.5 Criticisms

Not everyone welcomes the introduction of lawfare to the debate on warfare, and some that do criticize the way the concept has been defined. Many critics of Dunlap's interpretation of lawfare do not agree with the neutral value attributed to it. These authors consider lawfare as being inherently negative and destructive to international law (Hughes 2016). Dunlap's earliest interpretation of lawfare itself can be seen as a critique of the concept as it is defined nowadays. As was mentioned before, Dunlap initially approached lawfare as an exclusively negative practice. In his 2001 paper, Dunlap wrote that "there is disturbing evidence that the rule of law is being highjacked into just another way of fighting (lawfare), to the detriment of humanitarian values as well as the law itself" (Dunlap 2001, 2). At the time Dunlap mainly considered lawfare as an asymmetrical tool of warfare used primarily by enemies of the U.S. Critics of lawfare could point to this as a reason for the current neutral interpretation of lawfare being flawed or even as an argument against the whole concept itself. However, as Dunlap himself has explained in subsequent articles, there are also numerous examples of lawfare being beneficial to the national security of the United States (Kittrie 2016b). One of the examples he used was how the United States has used legal processes to counter terrorist financing. Whilst this can be classified as 'financial warfare' as well, it also depends heavily on legal instruments and methods, the two can overlap.

There are those who are offended by the sheer notion of "bad" actors abusing law for nefarious purposes. To them, this is the same as implying that there is something inherently bad with international law itself (Dunlap 2010). Naturally, this is not the case. As with any type of law there are those who will seek out the grey areas or loopholes to their advantage. This is a part of the judiciary system and does not mean that the law itself, its institutions, or even the lawyers are bad. As with any type of system there will always be those who will seek to use it to their advantage. Regardless of ones believe whether or not lawfare is a negative thing or not, one cannot deny the fact that international laws are used by countries to further their political and military goals. Understanding how this can be part of a strategy is therefore imperative, not only to understand world politics but also to counter any such strategy. Moreover, there are also ample examples of positive outcomes of lawfare. In *Lawfare: Where Justice Meets Peace*

(2010), the Honorable James Ogoola, Principal Judge of the Uganda High Court, makes his case in favor of lawfare. The judge uses Uganda as a case study to illustrate how lawfare can be used to fight the ills of war. At the end of more than two decades of widespread death in the country, Uganda successfully used the law to serve justice.

Other critics believe that lawfare as a concept is too broad to have any added value. Authors such as Sadat and Geng, argue that lawfare is an unhelpful term. They believe that lawfare has no fixed meaning and the distorted use of the term has led to fruitless debate about semantics instead of careful analysis (Sadat and Geng 2010). Whilst Dunlap's initial definition can certainly be considered quite broad, this is not the case anymore. Both Dunlap and other authors have since further specified and narrowed down the meaning of lawfare. Moreover, although the initial definition was not very specific, lawfare was never meant to encompass every possible relation between warfare and law (Dunlap 2010). The aforementioned most recent definition of the concept illustrates this. That being said, this definition of lawfare is not universally accepted.

Critics have also voiced their concern that the mere existence of the concept and its frequent association with alleged terrorists will lead to those with bad intent to discredit any valid legal processes related to security issues (Horton 2010). They warn that valid claimants may be viewed together with terrorists who abuse the legal system (Dunlap 2010). For example, Wouter Werner voices his concern that the current use of the term lawfare risks undermining the integrity of law due to its overly one-sided and negative view on the role of law in armed conflict (Werner 2010). Although there are certainly those who may abuse the concept, this does not discredit the need for the term. As was mentioned before, lawfare is a value neutral term and should be considered as a tool. Therefore, it may be used for different goals by various actors. Moreover, even if lawfare was mainly considered to be used for nefarious activities, this would not diminish the need to study the concept. If anything, this would be all the more reason to draw more attention to the phenomena. This way the methods and reasoning of these actors could be better understood and countered more effectively. Furthermore, whether lawfare is used negatively is a very subjective interpretation. What some may view as an abuse of the law can be seen by others as a valid legal route to get justice. As the right to remedy is a firmly established principle in international law (Scharf and Pagano 2010). Dunlap himself concludes that, even though lawfare does lend itself to abuse, it remains a useful term to help explain how law can be used in war as a substitute for traditional warfare. Moreover, according to Dunlap the international community should argue less about semantics and

embrace the opportunities lawfare offers to replace traditional warfare with a high cost of life (Dunlap 2010). Lastly, in *Carl Schmitt and the Critique of Lawfare*, Luban responds to critics by arguing that lawfare critique is just as abusive and political as alleged lawfare practices (Luban 2010).

1.6 International Maritime Law

Being the primary body of legal work on maritime rights and duties, the United Nations Convention on the Law of the Sea (UNCLOS) will be an important aspect of this paper. UNCLOS was drafted in 1982 and entered into force 8 years later, in 1994. UNCLOS establishes a multilateral international agreement outlining the legal rights and responsibilities of states concerning global oceans and superjacent airspace (U.N. Office of Legal Affairs 2012). UNCLOS formally establishes the globally accepted judicial framework which regulates maritime navigation and economic interests. Crucially, UNCLOS addresses the limits of State sovereignty in maritime zones by setting measurable boundaries for activities. In doing so, UNCLOS has successfully created distinct regimes which include the territorial sea, the contiguous zone, and the Exclusive Economic Zone (EEZ)². Each of these regimes incorporates its smaller predecessor. Starting at the baseline at the shore and moving to the EEZ, a coastal state's sovereignty decreases at each regime. The baseline is the crux of these regimes, all following maritime areas can only exist where a baseline is present. Therefore, many coastal states will try to establish as many baselines as possible at maritime features.

Extending 12 nautical miles (nm) from the baseline, territorial waters afford full sovereignty over all waters and the underlying seabed within this area. Fundamental to maritime law is the Exclusive Economic Zone. Generally, an EEZ extends two-hundred nautical miles into sea from the baseline of a coastal state. However, in many cases the EEZ will not extend that far due to geography or the EEZ of neighboring states. In the South China Sea many of these EEZs come together³. China's claims according to the nine-dash line conflict with the EEZ of Vietnam, Indonesia, Malaysia, Brunei, and the Philippines⁴. As such, this claim is fervently contested by all parties. The coastal state does not have sovereignty over the EEZ area, nor is it a part of the high seas. Rather, a

² For a visual depiction of the maritime regimes see appendix 1.

³ See appendix 2 for a map of EEZs claimed by regional states.

⁴ The nine-dash line (九段线), also referred to as the U-shaped line, refers to the ambiguously defined and located maritime claims of the People's Republic of China in the South China Sea. See appendix 3 for a map depicting China's nine-dash line.

coastal state has sovereign rights over the natural resources within the EEZ, which includes fishing grounds, oil, gas, and minerals. Other states do have the right to exercise freedom of navigation, overflight, and laying subsea pipelines and cables, as is allowed on the high seas. Because of UNCLOS, islands became significantly more important than they previously were. An additional baseline created from an island can give the claimant right to a radius of 200nm. Important to note is that in accordance with UNCLOS an island is defined as “a naturally formed area of land, surrounded by water, which is above water at high tide” (“U.N. Convention on the Law of the Sea” 1982, Art. 121). To exclude any barren outcrops from the definition, UNCLOS further states that “rocks which cannot sustain human habitation or economic life of their own shall have no economic zone or continental shelf” (“U.N. Convention on the Law of the Sea” 1982, Art. 121).

Since entering into force in 1994, 162 countries have ratified the treaty, strengthening the argument that UNLOS reflects customary international law (Kline 2013) . Moreover, like all claimants in the South China Sea, the People’s Republic of China itself is a signatory state to the treaty. Theoretically, accession to UNCLOS means that a state has abandoned any prior stances which may contradict with UNCLOS. This treaty was the result of concerted efforts by global powers to assert formal control over maritime areas throughout history. Many states were concerned about the consequences of not having defined and formally accepted maritime regime. The fact that the majority of states globally saw the need of a maritime regime and subsequently developed and formally accepted it is an indication of the gravitas of China’s possible abuse of it. Even for many states that are not traditional maritime powers it is in their best interest to have a stable maritime regime for reasons of security, commercial needs and economic needs. However, creating consensus on UNCLOS was a complicated and lengthy process which resulted in deliberately ambiguous clauses within UNCLOS (Flecker 2017; Saunders 2016). As a result, many issues are open for interpretation, which is at the root of the disputes in the South China Sea.

2. Methodology

The purpose of this paper is to examine if and how the People’s Republic of China uses legal warfare to consolidate its maritime power in the South China Sea. The thesis will use qualitative methods to answer its research question. This will lead to a more profound understanding of the situation in the South China Sea and China’s actions. Numerous articles have been written about how international maritime law should be

interpreted when applied to the South China Sea (Wallace 2014; Hong 2016; Saunders 2016). This work shall not repeat those attempts, for one because this would add little to the current debate, and for another because the author is not trained and proficient in the intricacies of international maritime law. However, these articles which analyze how China's claims relate to the commonly understood interpretations of maritime law will be used as a source to put China's behavior into a legal warfare perspective. This shall be done by examining such articles through the lawfare lens. The works of Charles Dunlap and Orde F. Kittrie shall be used to create a framework from which China's actions can be examined from a lawfare perspective (Kittrie 2016b; Dunlap 2001, 2008). Through his typology of lawfare, Kittrie has provided a framework which can be used to examine China's behavior in and regarding the South China Sea. This paper shall apply this framework to scholarly and journalistic articles regarding China's behavior and legal claims in the SCS, to determine whether or not this behavior can be deemed lawfare.

To help answer whether China uses legal warfare to strengthen its maritime power, the overarching question will be divided into smaller more manageable sub-questions. The three following chapters shall be dedicated to each answering one of these sub-questions respectively. First, chapter three will address the likelihood of the PRC using legal warfare as a means. China has not -and probably will not in the future- explicitly stated that it is pursuing a lawfare strategy in the South China Sea. It is therefore necessary for this paper to deduce whether this is the case. This chapter will examine Chinese publications and behavior to assess if it can be deemed probable that the PRC will use legal warfare in the South China Sea. Having proven that it is likely that China would employ a lawfare approach to the SCS, the subsequent chapter will examine China's presence and claims in the area. A mix of primary and secondary sources will be utilized to examine the case and substantiate the claims made. Primary sources will be used when the language barrier allows it. These sources will be used for an inductive analysis. As the author is not a qualified lawyer, the paper will not go deep into the specifics of international maritime law and its interpretations. Rather, a superficial assessment of the main law arguments combined with the publications of law professionals shall be used to put China's claims and behavior in a lawfare perspective. To examine China's island-building and maritime power, open source intelligence will be used to assess its capabilities. Particularly the database constructed by the Center for Strategic Studies (CSIS) will be of immense use. The CSIS' Asia Maritime Transparency Initiative (AMTI) is an open database which gives access to China's recent island-building efforts in the

South China Sea (Asia Maritime Transparency Initiative 2019a). These findings are primarily based on aerial as well as satellite imaging. The subsequent chapter will give more clarity on how these claims and maritime features have influenced China's maritime power. This will be done by assessing four main elements of maritime power, namely: ports and harbors, merchant marine, oceanic economic resources, and naval power (Ahmad 2014). For this the CSIS database on AMTI as well as China Power project will give valuable information. The CSIS' China Power project provides various information about China's rising power from economic to militaristic sense (China Power Project 2019). It is compiled from various sources ranging from RAND reports to U.S. DoD papers. This database will be exceptionally helpful in unpacking the PRC's maritime power. The information from both databases shall be supported by academic research. These three chapters will culminate in an answer to the overarching research question in chapter six. Following this, the author will attempt to provide the reader with likely developments of China's lawfare and regional actions in the future and provide some recommendations to regional actors.

3. China's Lawfare

3.1 Falu Zhan

Now that the concept of lawfare has been addressed, it is time to examine China's possible relations to legal warfare. The idea of law as a weapon of war was actually used by two People's Liberation Army (PLA) colonels before Dunlap coined the term lawfare. In 1999, the PLA published a treatise called *Unrestricted Warfare*, in which Qiao Liang and Wang Xiangsui propose various tactics that developing countries such as China could use as a form of asymmetric warfare (Kittrie 2016a). Using law as a weapon of war was one of the tactics addressed in this book, but it should be noted that this played only a marginal role in the overall publication (Werner 2010). The authors' perspective on the changing nature of war may give some insight into the possible view of the PRC government. Qian and Wang argue that "war is no longer the continuation of politics with the inclusion of other means" rather, "it is politics that has become the continuation -or even just one of the manifestations- of war" (Werner 2010, 65). It is interesting to note how these authors and Dunlap both arrived at the importance of law as a weapon of war through different logic. While Qiao and Wang argue that war is breaking away from traditional restrictions, Dunlap on the other hand witnessed unprecedented legal restraints on the conduct of warfare.

The Chinese term used more or less interchangeably with lawfare in the PRC's relatively advanced literature on the use of law as a weapon of war, is *faluzhan* (法律戰). This term roughly translates to legal warfare and will be used here as the translation and Chinese interpretation of lawfare. Since this initial publication, the term *faluzhan* has been used in various other writings. The fact that the PLA embraced this term so readily indicates that China takes this concept much more seriously than many of its rivals. Moreover, at the moment the PRC is waging warfare much more diligently than any other country (Kittrie 2016b). When compared to the U.S. -China's primary rival in the regional maritime sphere- the country has a much more systematic and coordinated approach towards lawfare.

Essential to the PRC's interest in legal warfare lies a fundamentally different view on the role of law and the perception that other states already use forms of legal warfare. Contrasting with the West's view on law, China historically and culturally views law more as a tool to be used by authority rather than something which can control it (Cheng 2012). This can be illustrated by some of China's actions, such as unilaterally imposed identification zones in the maritime and aeronautical spheres. These identification zones could be used to ward off rivals from certain areas.

3.2 History of Falu Zhan

Over the last two decades, several books addressing *faluzhan* have been published by the PRC's People's Liberation Army. In 1999, two PRC colonels wrote a book titled *Unrestricted Warfare*, which was published by the PRC military. This book repeatedly mentioned the use of law as a weapon of war ("PLA Senior Colonels on Globalism and New Tactics: 'Unrestricted Warfare': Part III" 2000). Among a list of examples of non-military warfare, the writers included "establishing international laws that primarily benefit a certain country". The book went on to promote "the use of domestic trade law on the international stage", which it stated, "can have a destructive effect that is equal to that of a military operation". It is not difficult to draw similarities between this interpretation of law as a weapon of war and lawfare. China's perspective on lawfare is also in line with the doctrines of important historical figures (Cheng 2012). In *The Art of War*, Sun Tzu mentioned that "defeating the enemy without fighting is the pinnacle of excellence". By means of lawfare, China can achieve goals otherwise only attainable through armed conflict. More recently, Chairman Mao Zedong argued that kinetic force

was only one facet of a conflict, and not necessarily the most important one (Kintner 1959). This view allows for much strategic creativity, such as using law as a weapon of war.

3.3 Writings on Falu Zhan

Despite the fact that the concept of lawfare was first coined by a US general, the United States has not taken advantage of the full potential of the subject, nor has it realized any consolidated efforts to counter other's lawfare strategies. This is contrasted by China, which has fully embraced lawfare as one of their foreign policy tools. As a matter of fact, China has included lawfare into major component of its strategic doctrine (Kline 2013). For this reason, the importance of viewing China's actions and strategy in its regional seas through the perspective of lawfare cannot be understated.

Already in 1996, PRC President Jiang Zemin advised Chinese experts on international law that China needed to be "adapt at international law as a weapon." (Kittrie 2016b, 5). The number of Chinese books that deal with lawfare related topics currently outnumber those in English. Moreover, the PRC has adopted lawfare as a major component of their strategic doctrine, illustrating the importance attributed to it by China. Since the publication of *Unrestricted Warfare*, several other official PRC military texts have been written about falu zhan. In 2004, the PLA published the *Analysis of 100 Cases of Legal Warfare*. This book examines and describes cases where other countries used law as a weapon of war. The book concludes by stating that in any future military conflict, the Chinese army should be proficient in using the law as a weapon of war to get the best outcome (Kittrie 2016a). One year later, the PLA published *Legal Warfare in Modern War*, written by attorney and high-ranking officer Xun Hengdong. Xun argues that no country ever fully complies with the law of armed conflict during war. Therefore, he concludes, the law of armed conflict should not be considered inviolable, but rather as a tool to manipulate the perceptions of international society (Kittrie 2016a). In 2007, the PLA published another text, titled *Under Informatized Conditions: Legal Warfare*. This text defined legal warfare as "activities conducted by using the law as the weapon and through measures and methods such as legal deterrence, legal attack, legal counterattack, legal restraint, legal sanctions, and legal protections." (Kittrie 2016a, 162). This definition nicely illustrates the overlap between falu zhan and lawfare. Moreover, in these various writings the neutral connotation of lawfare is consistent with the Chinese term falu zhan (Cheng 2012).

Additionally, the People's Republic of China has explicitly included "legal warfare" in their "three warfares" strategic doctrine. This makes legal warfare a major component of Chinese strategic thinking. The three warfares (*san zhan*) consist of; psychological warfare, media warfare, and legal warfare (Kline 2013). At its most basic, legal warfare involves "arguing that one's own side is obeying the law, criticizing the other side for violating the law, and making arguments for one's own side in cases where there are also violations of the law" (Cheng 2012). Furthermore, the PRC military's Basics of International Law for Modern Soldiers states: "We should not feel completely bound by specific articles and stipulations detrimental to the defense of our national interests. We should therefore always apply international laws flexibly in the defense of our national interests and dignity, appealing to those aspects beneficial to our country while evading those detrimental to our interests" (Peiying 1996).

All these writings exemplify how *falü zhan*, or law as a weapon of war, has been given serious consideration by China's military branches. This is an indication that it is not just possible, but actually highly likely that China would consciously use lawfare as a strategy in current and future conflicts in the South China Sea. Sadly, the majority of these publications are currently not publicly available in English. Because of this, and the significant overlap between lawfare and *falü zhan*, Dunlap's conceptualization of lawfare will be used to analyze China's behavior in the South China Sea.

3.4 China's Instrumental Lawfare

Historically, law has been an instrument rather than a constraint of state power in China (Kittrie 2016a). This perspective of law seems to have also influenced China's activities in the international arena. Kittrie defines instrumental lawfare as, "the instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic military action" (Kittrie 2016b, 11). Some ways China has employed instrumental lawfare is through reinterpreting existing laws, creating domestic laws, prosecuting rivals under its own laws, influencing law advisory opinions, and crafting scholarly articles in its favor. China is currently waging instrumental lawfare in the maritime, aviation, space, and cyber spheres in an effort to tilt the battleground to its advantage in possible future conflict (Kittrie 2016a). In the maritime, aviation and space arenas, the PRC is using lawfare in similar ways to strengthen international legitimacy to support their desire for expanding China's sovereign rights in each of the respective spheres. Take for example the unilaterally imposed identification zones in the

South China Sea or behavior where China misstates or misapplies international legal norms as a trend in line with lawfare (Kline 2013). The PRC asserts that all these actions are in line with the country's own interpretations of international law. However, they are inconsistent with how international law is generally understood by the international community. China's reinterpretation of international law has not gone by regional actors unnoticed. In a 2011 speech, President Obama mentioned how the United States welcomes a peaceful rising China, but also pointed out that "It's important for them to play by the rules of the road". He continued by stating "there are going to be times when they're not, and we will send a clear message to them that we think that they need to be on track in terms of accepting the rules and responsibilities that come with being a world power." ("Press Release, The White House, Remarks by President Obama and Prime Minister Gillard of Australia in Joint Press Conference" 2011).

China's continued misinterpretations of international law seems to be aimed at changing customary international law. As Kittrie summarizes; "Customary international law can be nullified or even changed through state practice undertaken in conjunction with an assertion that such practice is consistent with international law" (Kittrie 2016a, 166). When it comes to maritime law, this can be affected, over time, by countries through maritime operations, domestic legislation, legal publications, and diplomatic statements.

Particularly China's lawfare in the maritime and aviation areas have gained the attention from the rest of the world. In the maritime sphere, China has used a lawfare strategy to deny regional actors' warships and aircrafts access to its coastal seas. China claims that under its interpretations of UNCLOS, foreign naval operations done within the 200 nautical mile EEZ of another nation should be subject to the approval of said state (Cheng 2012). The PRC increasingly uses international law as a tool to deter rivals from traveling through its waters (Kraska and Wilson 2009). One of the tactics used is the reinterpretation of UNCLOS in a way that is favorable to China. Domestically, the PRC ensures that domestic law and official statements mirror the country's own interpretations of international law (Kittrie 2016a). In doing so the PRC grants itself justification for its assertive behavior in the South China Sea. One way it does this is by harassing rival claimants' ships in the area. By pushing rival ships further from its coastline through lawfare means, the PLA navy has an advantage in a possible future conflict and China takes a step in consolidating its hold on the island chains in the South China Sea. The PRC has attempted to do so by arguing that it may regulate maritime and aviation traffic in the exclusive economic zone (EEZ) which extends two hundred nautical miles from its

coastal baseline. General consensus on UNCLOS is that a state is not allowed to regulate maritime passage or overflight over its EEZ. Under these thinly veiled legal justifications, China has intercepted and harassed numerous ships and aircrafts which entered the country's EEZ. Oftentimes ostensibly privately-owned fishing vessels were used to harass these ships. This adds another facet to the lawfare strategy, giving the Chinese government plausible deniability. Whilst this may give a legal deniability, the patterns make it undeniably a part of China's maritime strategy. To further cement its interpretation of the EEZ China has incorporated declaratory statements into its ratification of UNLOS in its domestic legislation, used domestic legislation to claim security interests in the country's EEZ, and supported these actions by producing legal articles (De Tolve 2012). To add on to this, China promotes the production of scholarly articles and symposia which are in line with their own interpretation of international law. For example, in recent years it has not only been the Chinese government which has argued against the jurisdiction of the arbitration tribunal and the outcome of the South China Sea arbitration case. Chinese legal scholars and students of international law have similarly raised issues. Moreover, the ruling has sparked debates in the field of Chinese international law and dozens of legal publications on the subject matter (Hong 2016). All of these actions are meant to strengthen China's claims on the South China Sea and the landforms therein.

A well-known case of China's lawfare is the so called nine-dash line, which the country uses to claim vast swaths of the South China Sea⁵. By disseminating this map, the PRC hopes to increase its credibility. In 2009, Beijing circulated two formal documents among U.N. member states. These documents included a map of the nine-dash line, alongside China's claim that "China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map)." (U.S. Department of State 2014, 1). The note went on to claim that this position was consistently held by the PRC government and well known by international society. This is an excellent example of how China uses diplomatic statements to support its claims.

Besides the broad nine-dash line, the PRC also seems to be keen on establishing their claim on specific islands. These islands can subsequently be used as baseline to claim control over the surrounding waters. This is also one of the explanations for China's

⁵ See appendix 3 for a map delineating China's claims according to the nine-dash line.

island-building in the South China Sea. In accordance with UNCLOS article 121, an island is “a naturally formed area of land, surrounded by water, which is above water at high tide” (“U.N. Convention on the Law of the Sea” 1982, Art. 121). Moreover, mere rocks which are unable to sustain human habitation or economic life do not create any maritime zones. These criteria, however, have not stopped China from creating man-made islands from previously submerged reefs and subsequently claiming ownership of surrounding waters. These artificial islands clearly fall outside of the UNLOS definition. Yet they give the PRC a legal-sounding argument to use towards the international community and their own citizens (Kittrie 2016a). Furthermore, for both customary international law and UNCLOS it is vital to demonstrate continuing control over a maritime feature to claim sovereignty. China’s successful administration over artificial islands and disputed islands strengthens their claim over them in the long run. China’s rivals can counter these claims by contesting them, according to international law inaction equates acquiescence to the claims. For many regional powers this is difficult to do, due to China’s overwhelming military power. The militarization of the islands sends a clear signal that China is able and willing to defend them if need be. Currently, it has primarily fallen to powerful regional actors such as the United States and Japan to challenge China’s claims. As China’s claims need to be regularly contested, this is not a sustainable solution to the issue.

3.5 China’s Compliance-Leverage Disparity Lawfare

China seems to be well-aware of the compliance-leverage disparity between itself and many of its rivals. Beijing has an established reputation of abusing the international legal system by entering into legally binding nonproliferation treaties with no intention of actually abiding by them (Nuclear Control Institute n.d.). China is aware that its rivals will be more likely to comply with the legal obligations, while it secretly violates the terms of these treaties. Kittrie explains China’s modus operandi for compliance-leverage disparity lawfare by breaking down the countries non-proliferation actions in three steps (Kittrie 2016a). First, China enters into a legally binding agreement with its rivals and formally adheres to the obligations that come with it. While China receives the benefits of the treaty due to its rivals’ compliance with it, the PRC uses proxies to go around the obligations. Thus, the disparity of law-abidingness between the PRC and its rivals leads to China reaping all the benefits of formal adherence and those of violating the obligations that come with it. In practice this has led to China’s allies such as North Korea obtaining

nuclear weapons, whilst regional rivals such as South Korea and Japan have been strongly discouraged from doing so by the United States. China has shown similar behavior when it comes to Iran's nuclear program (Kittrie 2016a). These are merely examples of China's awareness and conscious use of compliance-leverage disparity lawfare. In theory this same strategy can be used on other lawfare issues. Given China's awareness of this compliance-leverage disparity between itself and many other countries, it is likely that it will employ this in the South China Sea if it were to pursue lawfare in the area.

3.6 Risk Components of China's Lawfare

As was stated in the previous chapter, the risk a country faces as a result of actual or alleged non-compliance can be divided into four components (Kittrie 2016b). Firstly, the disparate probability each state has of being subjected to proceedings. Not all states are equally likely to be subjected to legal proceedings. States that have a more open legal system are much more likely to be held accountable for non-compliance through lawsuits or criminal proceedings by NGOs or other actors. In the case of China, this means that any legal action from domestic non-state actors is unlikely. On the other hand, some legal violations are rarely enforced. The weakness in international law lies in the fact that there is no 'international police' to enforce the rules when they are broken. It is up to the international community to make sure this happens. Although states such as the United States and Japan have often done freedom of navigation operations (FONOP) challenging China's claims in South China Sea, any significant accountability to China's actions has remained elusive. Despite the fact that both the PRC and the Philippines are signatories of UNCLOS, Beijing has refused to submit to the UNCLOS arbitration. Despite the ruling of an international court of arbitration in favor of the Philippines, the PRC has been able to continue its actions mostly unimpeded (Hong 2016). Moreover, China usually makes sure that reservations about the clause of judicial settlement by international courts are included in the treaties to which it is a party (Hong 2016). In the case of UNCLOS, China declared in 2006 that under Article 298 certain disputes are excluded from the jurisdiction of international arbitration. According to China these exclusions included those concerning maritime boundaries, historic bays, and military use of the ocean. China's non-participation and subsequent non-acceptance of the South China Sea arbitration is consistent with this.

The second factor influencing the risk a country faces from non-compliance is the disparate cost of being subjected to any proceedings. Regardless of the outcome of legal

proceedings, an adjudication process can be extremely costly. However, whilst this has stopped non-state actors from contesting some legal proceedings, it is unlikely that this would be a reason for a large state such as China not to do so.

Thirdly, different state and non-state actors will have different objective and subjective probabilities of an adverse judgement. Besides the probability and cost of being subject to merely the proceedings, actors need to consider the probability and subsequent costs of a negative outcome of the judgements. The forum in which a case is brought to trial can influence the likelihood of the outcome as well. This is partly dependent on the similarity of the interpretations and ideological leanings of the forum and the actors. Penalties imposed are not the only negative result that may be the outcome. Losing an important judicial proceeding may hurt a state's reputation or set a precedent for the future. Considering the fact that China's interpretation of maritime law is different from the common consensus, it is likely that a ruling will be unfavorable to the country. This is also likely a reason why China prefers to solve its disputes in the South China Sea through bilateral negotiations (Hong 2016; Kane 2016). However, the financial and reputational costs seem to be less of a deterrent for China, again as the South China Sea arbitration has shown.

Lastly, different state and non-state actors will be impacted differently if they are found to be in non-compliance with a particular law. This risk is in line with the underlying idea of the compliance-leverage disparity. Not all actors will be equally concerned by the fact that their behavior is in non-compliance with a law. Some actors, such as terrorist organizations, simply do not care or actively go against laws of armed conflict. In a case related to human rights any western country would be hit far harder by a negative ruling than any terrorist organizations. Other actors have enough power not to worry about repercussions, or simply cannot be made to comply as easily. China clearly falls in the latter category. It will be very difficult for any international institution to force a ruling on the country. Such an action would require the broad support of many powerful countries, many of which have an interest in retaining positive relations with the PRC.

3.7 China's use of Lawfare

To surmise, China has included legal warfare as a major component of its strategic doctrine. Due to the numerous publications on *fa lu zhan*, combined with statements from PRC officials, it is likely that China would use lawfare in any current or future conflicts. Some have argued that China already has used lawfare in the past (Kittrie 2016a;

Vanhullebusch and Shen 2016). It can be argued that it has done so in maritime, cyber, space and aeronautical spheres. China's behavior fits both instrumental lawfare and compliance-leverage disparity lawfare. Due to the anarchic nature of international society, as well as China's power position, the country is not very susceptible to the four risks of lawfare. All these factors, combined with its resistance to compliance-leverage disparity, it is likely that China will use lawfare in areas where it deems necessary.

Furthermore, specifically China's behavior in the South China Sea has been interpreted as lawfare by some analysts (Kline 2013). Now that we have established that China has incorporated legal warfare into its strategic doctrines and has shown past behavior which falls within the frameworks of lawfare, we shall examine how this takes shape in the South China Sea.

4. China's Presence in the South China Sea

4.1 Reasons for China's Increasing Assertiveness

To understand China's presence in the South China Sea, one has to understand its reasons for being interested in the area. This section will illustrate the legal-strategic assessment of China's lawfare. For the past five decades, the South China Sea has been a source of territorial and maritime disputes for several regional actors. At the heart of these disputes lie differing national interpretations of maritime and island ownership. China plays an important role in these disputes, as its expansive claims resulting from the nine-dash line conflict with claims of many neighboring countries. Within this line are several hotly contended islands, reefs, atolls, and shoals. In the South China Sea there are at least five claimants which occupy nearly 70 disputed maritime features spread across the area. Together, these claimants have built over 90 outposts on these contested islands and reefs. In recent years many of these outposts have seen significant expansion. The geopolitical importance of the South China Sea is immense. The 800,000 square kilometer area is home to vast natural resources and more than fifty percent of global maritime commerce (Wallace 2014). Moreover, the Strait of Malacca, which is one of the world's most critical and vulnerable geographic chokepoints, is located in the SCS as well. This strait contains numerous critical sea lines of communications and has seen frequent stand-offs between the U.S. navy and China's People's Liberation Army Navy (PLAN), the world's two most powerful navies (Wallace 2014; Lanteigne 2008). China reaffirmed the South China Sea as of major importance to it when it proclaimed that the South China Sea's sovereignty

and territorial integrity is a “core interest” to the PRC (Wallace 2014). In essence, this means that China puts its maritime claims in the SCS at the highest level of its national security interests, on par with Xinjiang, Taiwan, and Tibet. China’s designation of the SCS as a “core interest” means that it will use force to protect its sovereignty and territorial integrity, and that Beijing is unwilling to discuss the issue from the context of international diplomacy. China’s renewed maritime presence in regional waters can be explained by various interests which all play a role to some degree. Broadly these interests can be divided into resources, economic interests, security, and nationalism.

Around the 1990s the natural resources found within the South China Sea further complicated preexisting territorial disputes. The South China Sea is believed to be home to vast natural resources, both in the sea itself and under the seabed (Kline 2013). It is estimated that the South China Sea holds around 190 trillion cubic feet of natural gas and 11 billion barrels of oil (Asia Maritime Transparency Initiative 2019a). According to a U.S. Geological Survey from 2012, that amount could be doubled by undiscovered deposits in the area (Asia Maritime Transparency Initiative 2019a). Particularly the presence of hydrocarbons such as oil and natural gas have sparked the attention of regional actors. Growing global demand for energy made the oil and gas reserves found in the SCS a key element of the conflict (Buszynski 2012). Global energy demand is rising, and major consumers such as the PRC are actively looking for new sources to supply their expanding economies. It has become especially important for China as it became a net energy importer in 1993 to support its growing economy. Moreover, China became the second largest consumer of oil in 2009, and its consumption will likely double by 2030 (Buszynski 2012). In 2018, China’s oil consumption was an estimated 12,8 million barrels per day. In order for China to become less dependent on foreign oil and transport, the country has sought to diversify its energy supplies by increasing offshore production in the South China Sea.

Another important resource found in the South China Sea are fishing grounds. Much like hydrocarbons, the PRC needs increasing supplies of fish to support its growing economy and population. Also, much like hydrocarbons, rivalries over fishing grounds in the area have contributed to rising tensions. Vietnam claims that over 63 fishing vessels have been seized by China since 2005 in the area. China has put a ban on fishing in the area and used converted naval vessels to enforce this ban and protect its own fishing boats (Buszynski 2012).

The South China Sea is also of crucial importance for China's maritime trade and transport. The sea lanes that pass through the region are crucial pathways for energy resources and input for the fuel and resource poor industrial economies in East-Asia, including China (deLisle 2012). More than a third of all maritime traffic passes through the SCS. For an export driven economy such as China's, securing maritime trade and transport is crucial to sustain its growing economy. More than 30 percent of China's exports have to cross the South China Sea to get to their markets. But it's not just export that is important for China. To keep its economy going the country needs the right resources as well as ample energy supply. In 2010, the PRC imported 52 percent of its oil from the Middle East, Saudi Arabia and Angola alone made up 66 percent of oil imports (Buszynski 2012). China may feel that in order for it to safeguard its interest it needs to control the area itself, rather than leave it to the international community.

This brings us to the next crucial interest for China in the South China Sea. The area is of immense strategic importance to the PRC. The country is not just a major continental power, it also has an expansive coastline. The country's geography has protected it with natural barriers such as the Himalayan mountains, Tibetan plateau, and Gobi and Taklamakan deserts at its continental borders for much of its history. This leaves China's coastline as a relative weakness that needs addressing. For a long time after the establishment of the PRC, China adopted a strategy of active defense to confront the threat of an all-out war. The strategy involved luring the enemy into the heartland of China to wage a decisive battle there. Fighting would be close quarters to minimize the impact of technological advantages of the adversaries (Qian 2012). Over time, as China modernized and with the development of new technologies used in combat, this strategy evolved. China's active defense strategy has adapted to modern times to prefer battle as far away as possible. When it comes to the maritime sphere, the first and second island chain provide a natural delineation to put defensive zones into practice⁶. Since 2010, the South China Sea also became important for China's naval strategy and the United States' focus on these waters (Buszynski 2012). According to Chinese strategic thinking, zonal defense is crucial to China's maritime security. The concepts of the first and second island chains are often used by both China and commentators to explain China's maritime behavior and security. The first island chain stretches from Japan to Taiwan via the Philippines around most of the South China Sea. The second island chain is considerable further away and

⁶ See appendix 4 for a map of the first and second island chains.

stretches from Japan past Guam. These zones play a role in creating sanctuaries for China's maritime forces as well as creating passageways to the open sea. For this to work, however, foreign navies have to be kept at a sufficient distance so they cannot interfere (Buszynski 2012). This makes the South China Sea, and China's effective control over it vital for China's defense.

Lastly, nationalist sentiment has also played an important part in China's claim on the island groups in the South China Sea (Hayton 2019). This is a facet that is influenced by the various previously mentioned interests in the South China Sea, as well as by vociferous rhetoric in the media and official claims by the PRC government. These claims shall be discussed next.

4.2 China's Maritime Claims

China has made considerable efforts to build a legal foundation to support its claims in the South China Sea. In the PRC's domestic law, its legal claims to the majority of the South China Sea revolve around four legal documents: the 1992 Law on the Territorial Sea and Contiguous Zone, the 1996 Declaration on the Baselines of the Territorial Sea, the 1996 Declaration upon Ratification of UNCLOS, and the 1998 Exclusive Economic Zone and Continental Shelf Act (Wallace 2014). By combining these laws with UNCLOS, the PRC has merged its historic rights claims which it has voiced for over half a century, with legal claims under international maritime law. The People's Republic of China's legal claims in the South China Sea can broadly be divided into three kinds; 1) claiming sovereignty over the sea; 2) claiming sovereignty over landforms and subsequent rights in adjacent maritime zones and; 3) for reasons of China's national security rights (deLisle 2012). The various assertions of China's legal claims on (parts of) the South China Sea can be divided into these types. Different actors ranging from media to legal scholars to PRC officials have based China's claims on different legal foundations.

Firstly, China's most expansive and radical legal arguments are based on the assertion that four-fifths of the South China Sea is part of its territorial waters. According to this claim, China would have nearly full sovereign powers over the area. The basis of the claim is one of the interpretations of China's ubiquitous nine-dash line. Frequently, the nine-dash line is used in conjunction with the claim that all the islands, rocks, and reefs in the area are part of the sovereign territory of the PRC. These land features subsequently form baselines for adjacent maritime regimes. However, there are those who believe that

the nine-dash line delineates a zone within which all the maritime area is part of China. The exact interpretation of the nine-dash line remains ambiguous. The PRC has never explicitly stated whether its claims are water-based or land-based. In its 2009 communication to the United Nations, the PRC stated that “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof” (deLisle 2012, 614). Some have interpreted this to mean a more modest claim on only the land features. However, due to the vagueness of the writing, the other option cannot be excluded. Multiple Chinese defense analysts believe the nine-dash line to map out “sea domains under Chinese jurisdiction” as well as an “area of China’s national sovereignty” (Dutton 2011).

China’s claims over the South China Sea often assert that the PRC has a historical claim on the maritime area. This has particular bearing on the water-based interpretation of the nine-dash line. In China’s 1998 Law on the Exclusive Economic Zone and Continental Shelf, which is seen as the ratification of UNCLOS in Chinese domestic law, the law states that UNCLOS legislation does not affect China’s historic rights (*Exclusive Economic Zone and Continental Shelf Act* 1998). This gives weight to the water-based interpretation of the nine-dash line, as UNCLOS is part of the law of the sea and therefore cannot determine sovereignty over landforms. UNCLOS does allow for coastal states to use the history argument for maritime zones that are larger than the ordinary scope under UNCLOS rules. However, the convention is generally interpreted as giving limited regard to historical arguments. China, on the other hand, chooses to interpret this as broadly as possible. Furthermore, Chinese experts often reiterate PRC legislation and choose to supplement UNCLOS with predating customary international law which gives more deference to historical rights of states (Zhang 2011). Although China remains ambiguous and vague in official communications, domestically there is much support for the water-based claims among scholars, official PRC spokespersons, and nationalists segments of society (deLisle 2012).

Secondly, the PRC’s most predominant claims to the South China Sea are based on the landforms within the nine-dash line and the rights China derives from these. According to UNCLOS, sovereignty over islands gives the coastal state rights over adjacent maritime regimes. For China’s claims three groups of maritime features are important: the Spratly Islands (Nansha), the Paracel Islands (Xisha), and the Scarborough

Shoal (Huangyan)⁷. China's land-based claims are built on a complex multi-step argument about these features and their importance. For starters, China claims sovereignty over all the landforms that are found within the nine-dash line, not just the ones it effectively controls in the Paracels and Spratlys. This claim is also asserted in domestic laws and statements made in international institutions. Both China's 1958 Declaration on the Territorial Sea and 1992 Law on Territorial Waters and the Contiguous Zone reaffirmed China's claim on all features within the line and used them to form a baseline for China's territorial sea. China subsequently assumes that all features are Chinese sovereign territory, so they can be attributed 12nm zones of territorial sea. On top of this, China states that its aforementioned 1998 Law on the EEZ and Continental Shelf preserves the PRC's pre-UNLOS rights over surrounding waters. Moreover, China has used relevant factors used to attribute sovereignty such as: discovery, occupation, and exercise of sovereignty, to support its controversial claims (deLisle 2012). Unfortunately for China, discovery is considered a weak foundation to claim territorial sovereignty under contemporary international law. Occupation and exercise, however, are widely accepted in international law. China has actively sought to fulfil these requirements by placing all the island groups under jurisdiction of Hainan and by making Woody Island (located in the Paracels) the seat of Sansha, a prefecture level city. As a prefecture level city, it comes with a elected municipal people's congress, mayor, and city government. The PRC has also ensured that it asserts regulatory control over the islands and waters. Beijing has issued directives on matters such as fishing and oil drilling, and has resisted other states from doing the same. As China has increasingly exercised sovereignty over the islands and surrounding waters, crisis and conflicts have similarly increased. In cases where conflict turned violent, the PRC has consistently defended its actions by stating that it has the legal right to use force in order to protect its sovereign territory.

This brings us to the third form of legal claims the People's Republic of China uses to assert its rights over the SCS, which relates to its national security rights. The focus for these claims is often the naval hegemon in the South China Sea, the United States. These claims are distinctly different from the aforementioned water-based and land-based claims. These rights revolve around China's perceived rights to national security and the correlative obligations other states have. Issues that have arisen due to this form of claims is largely the result of differing interpretations of international law between China and

⁷ The exact maritime features China occupies in these island groups can be found in the table in the appendix.

other states. China believes it has a much larger level of sovereignty over waters, to such an extent where it can restrict or even prohibit the activities of military vessels from other states as well as the imposition of an air defense identification zone. China has systematically tried to tie its national security arguments to rights derived from maritime regimes. One way the country has tried to do so is by working with several other states to push for security as legitimate basis for coastal state regulation in maritime regimes ranging from the EEZ to the contiguous zone, during the drafting process of UNCLOS. Despite China's efforts it was unsuccessful to include this. Despite this, the PRC incorporated security as a valid basis for regulating activities in its maritime zones in several of its domestic laws (deLisle 2012). Whilst doing so, Beijing has made sure not to explicitly state that it challenges international laws which administer maritime navigation and overflight in the SCS.

4.3 China's Island-building

China's determination to claim much of the South China Sea is clearly exemplified by the case of Mischief Reef. Mischief Reef is located 125 nautical miles off Palawan, placing it well within the Philippines' EEZ. It is over 600 nautical miles from Hainan, China's closest point to the reef. At high tide the feature is entirely submerged. These factors did not stop China from claiming it. In 1994, China quietly started construction of three steel platforms to support blockhouses on the reef. When the Philippines found out it voiced its indignation but was powerless to act against China (Flecker 2017). Nowadays the reef has become a substantial island thanks to major reclamation work⁸. This powerlessness vis-a-vis China is something most of the regional actors in the SCS need to deal with.

Although the disputes in the South China Sea have been lingering for decades, China's recent actions have escalated the stakes. The PRC has increased its efforts to attempt to limit foreign maritime and aviation traffic in the body of water, as well as ramping up its island-building and militarization. The PRC's island-building and construction of bases in the South China Sea probably began in late 2013, before becoming public in early 2014 (O'Rourke 2019). China's maritime outposts in the South China Sea can be divided up into those at the Paracel Islands, Spratlys and Scarborough Shoal. The country currently has twenty outposts in the Paracel Islands and seven in the

⁸ See the table in the appendix for more information on the location, reclamation, and facilities of Mischief Reef.

Spratlys. Although it has yet to start constructions on the Scarborough Shoal which it seized in 2012, there is a constant naval presence guarding it (Asia Maritime Transparency Initiative 2019a). Since the start of its land reclamation in the Spratlys in 2013, China has dredged an estimated 3,200 acres of land. At the same time the country significantly expanded its presence in the Paracels. Although other claimants in the South China Sea have also engaged in land reclamation and construction on disputed islands, these efforts are dwarfed by China's activities. Despite claims from Xi Jinping that it would not happen, both island groups have seen increasing militarization in recent years (Banyan 2018).

China has engaged in land reclamation and the construction of facilities in most of the islands it occupies in the Spratlys. In 2016, construction on the islands mainly focused on infrastructure on the Spratlys. Particularly Fiery Cross Reef, Subi Reef, and Mischief Reef have seen considerable growth. In the same year a milestone was reached when the first civilian aircraft landed on each of these islands, and the first military transport landed on Fiery Cross. All three islands now have considerable runways, large port facilities, and a large number of buildings⁹. As it stands now, the PRC has constructed fixed-weapons positions, hangars, barracks, administration buildings, and communications facilities at its three main islands in the Spratlys. These islands can now house a considerable number of soldiers and aircrafts. At its four smaller outposts in the Spratlys, China has completed fixed land-based naval guns and improved communications infrastructure. In 2018, China installed electronic jamming equipment, surface-to-air-missiles, and anti-ship missiles to its new outposts in the South China Sea (O'Rourke 2019).

Construction at the Paracel Islands has been comparatively modest. Just like in the Spratlys, China has used land reclamation to enlarge pre-existing features to a size where they can be used. Subsequent construction up until now has mainly focused on infrastructure¹⁰. Satellite images show China has dredged harbors, constructed helipads, build administrative buildings, installed renewable energy infrastructure such as wind turbines and solar arrays on the Paracel Islands (Asia Maritime Transparency Initiative 2017). Although less than on the Spratlys, militarization of the Paracels has also taken place. Out of China's twenty outposts in the Paracels, three have protected harbors which can host large numbers of civilian and naval vessels. Five other islands contain small

⁹ Please refer to the table in the appendix for an exact breakdown of the islands China occupies in the South China Sea and the facilities it has built on them.

¹⁰ See appendix 5 for a map depicting China's Paracel Islands infrastructure.

harbors. Another five islands contain helipads, Duncan Island houses an entire helicopter base, and Woody Island has acquired an airbase. The latter is also considered as China's main military base in the Paracels and the official administrative capital of the three island chains China claims in the South China Sea.¹¹ Woody Island also has stationed on it HQ-9 surface to air missiles and anti-ship cruise missiles (Asia Maritime Transparency Initiative 2017).

The PRC has claimed that these developments in the Spratlys and Paracels are meant to improve the living conditions of those who are stationed on the outposts, as well as for safety of navigation and research purposes. The majority of analysts outside of China see China's behavior as a way for it to consolidate its de facto control of the South China Sea. The outposts will allow China's coast guard and navy to maintain a continuous presence in the area. Consequently, action by other claimants can quickly be noticed and acted upon. Although this construction alone does not strengthen China's legal claim on the islands or the area, it does allow it to de facto establish its sovereignty over them and denying other claimants the same. As a report by the U.S. Department of Defense stated: "Although its land reclamation and artificial islands do not strengthen China's territorial claims as a legal matter or create any new territorial sea entitlements, China will be able to use its reclaimed features as persistent civil-military bases to enhance its presence in the South China Sea and improve China's ability to control the features and nearby maritime space" (Department of Defense 2017)¹².

4.4 Island Lawfare

So how do China's actions in the South China Sea fit within the lawfare framework? Let's start by looking at the two criteria Kittrick established to determine whether something qualifies as lawfare. According to the first criteria, "the actor uses law to create the same or similar effects as those traditionally sought from conventional kinetic military action – including impacting the key armed force decision-making and capabilities of the target." (Kittrick 2016b, 8). Normally, for a country to establish its sovereignty or dominance over an area, be it maritime or landforms, it would need to use kinetic power to do so. In the case of the South China Sea, China has used a combination of legal

¹¹ The three island chains in the South China Sea are the Paracel Islands, Spratly Islands, and Scarborough Shoal. This should not be confused with China's first and second island chains which it uses for zonal maritime defense.

¹² See appendix 7 and 8 for maps depicting China's estimated power projection in the South China Sea.

justifications to claim sovereignty over the majority of the area. That being said, China's legal claims and arguments alone have not been sufficient to deter rival claimants. As conflicts with Vietnam and the Philippines have shown, the PRC has had to use its kinetic power to enforce these claims. However, having enforced these claims in a few instances has successfully sent a message that China is ready to defend all its claims within the nine-dash line. Therefore, it can be argued that law has been used to create similar effects as those traditionally sought from kinetic military action. According to the second criteria, "one of the actor's motivations is to weaken or destroy an adversary against which the lawfare is being deployed" (Kittrie 2016b, 8). The key element of this criteria is the intent of the lawfare practitioner. China's actions have shown that it simultaneously wants to enforce its own claims on the South China Sea, whilst deterring other claimants to do the same. In doing so, China aims to weaken both the claims and the maritime power of its rivals in the area. Now that we have established that China meets both criteria for lawfare, it is time to examine how it uses lawfare to establish its claims on the South China Sea and the landforms it contains.

China has used a wide variety of instrumental lawfare tools to consolidate its claims on the landforms in the South China Sea. China's domestic laws concerning the maritime sphere and ratification of UNCLOS have been worded in such a way that China can maintain its claims on the SCS. This despite the fact that accession to UNCLOS technically supersedes any prior claims. Moreover, in the international laws itself, China has sought to influence the writing in such a way that it may claim additional rights in the South China Sea. The aforementioned case of seeking support from other states to include security concerns into UNCLOS is one example of this. Moreover, China has included exceptions to international dispute settlements in many of the international agreements it has become a signatory of. To assert its claims in the SCS in situations where international law may not support them, China has employed diplomatic pressure to either revise international law or create an ad hoc exception to it (Buszynski 2012). At times when China could not influence international law, it simply chose to use the ambiguous wording to its advantage. In doing so, China has chosen to interpret certain sections of UNCLOS in a way that contradicts common readings of them. To add to this and to solidify its differing viewpoints, the PRC has promoted academic articles and conventions which are in line with its own interpretations. In a practical effort to create a basis for legal claims, China has also attempted to conform to the needs for effective occupation and exercise of sovereignty. Effective occupation, which entails "an ability and intention to exercise

continuous and uninterrupted jurisdiction, which is distinguished from conquest” (Buszynski 2012, 140). Examples of how it has done so are the promotion of Sansha to a prefecture-level city, and China’s constant use of fishing and drilling bans which it subsequently enforced.

China’s advantage through compliance-leverage disparity likewise plays an important role. When it comes to China’s adherence to international law, it has found various ways to avoid it. Take for example the ruling of the international court of arbitration. The PRC has completely ignored the ruling by this court. From the onset of the proceedings the PRC held a position of non-participation and subsequent non-acceptance of the ruling. Furthermore, China has a record of using proxies to circumvent international agreements. One way it has allegedly done so in the South China Sea is by using fishing vessels to enforce its claims and harass rival claimants and their ships.

China can use these various lawfare tools due to the low risks it faces as a result of them. Due to its insertion of exclusions from international dispute settlements in many agreements it is unlikely that the country will be subject to any proceedings. Moreover, due to the lack of enforcement of many treaties, there is no downside to China’s position of non-participation and non-acceptance of any rulings. Therefore, costs as a result of the proceedings itself and possible subsequent penalties do not impede the PRC’s actions in the South China Sea.

Looking beyond just lawfare and to China’s own interpretation of legal warfare, *faluzhan*, it is clear how this applies to the South China Sea. As Cheng has translated; according to *faluzhan*, legal warfare at its most basic involves “arguing that one’s own side is obeying the law, criticizing the other side for violating the law, and making arguments for one’s own side in cases where there are also violations of the law” (Cheng 2012). Moreover, *faluzhan* sees legal warfare much more as an addition to traditional warfighting, rather than something to completely replace it. Therefore, although China’s claims alone do not give it effective control over the landforms and waters, the claims in combination with enforcement does work. Only a few claims need to be enforced for rival claimants to understand that the other claims are off limits as well.

To conclude, occasional FONOP missions from powerful regional actors have been used to contest China’s maritime claims, but they have done nothing to counter China’s reclamation and militarization efforts of the landforms in the South China Sea. The next chapter will address how these efforts have influenced China’s maritime power in the South China Sea.

5. China's Maritime Power

5.1 Importance of Maritime Power

Whilst maritime strategy is as old as the earliest naval powers, the strategic and economic benefits of maritime strategy remain just as relevant today. The importance of maritime power cannot be understated. Well over two-thirds of the earth is covered by water and 85 percent of all nations have some degree of a shoreline. Any nation that is an island, archipelago or peninsula will need a broadly maritime strategy. This need for a maritime strategy, however, does not confine itself to such island or archipelagic states. Any state which depends on sea lanes for trade or which has vast exposed seaboard needs to take the maritime sphere into account when defining its national strategy. Some would argue that any nation aspiring for more power, security or wealth needs to be able to traverse the seas freely and assert their right to do so whenever deemed necessary (Spithead 2012). Even landlocked countries are not immune to the importance of the maritime sphere. During the early stages of the campaign in landlocked Afghanistan, carrier based aircraft were used with great effectiveness against the Taliban (Mattonen 2002).

In the maritime sphere various possible roots for conflict can be found. The sea is like a global highway, used by many countries for transport of goods and people, and to stay connected globally. Ensuring the freedom of navigation is an important requirement for this. On the other hand, competition for resources on land is mirrored by competition for valuable resources beneath the sea. Increased competition for resources will spill over to the maritime sphere more and more as resources on land becomes scarcer and technology for maritime resource extraction develops. As competition over waterways, maritime resources, freedom of the high seas and the right of innocent passage continuous to rise, conflict between coastal states and maritime states will likely increase (Spithead 2012). This will lead to coastal states increasingly encroaching on the freedoms of maritime states to ensure their own interests. Consequently, this leads to coastal states making excessive jurisdictional claims over maritime territory and the resources within it. In areas where maritime boundaries are disputed or with contradictory claims to resources to be exploited, tensions may lead to conflict. The South China Sea offers a glimpse of this.

Due to its long history, warfare at sea has been addressed by numerous strategic thinkers. The terms maritime power and naval power have often been mixed by the uninitiated (Ahmad 2014). It is therefore prudent to elucidate the interpretation of

maritime power that this paper follows. Let's start with 'naval power', this term has been widely used to outline strategic thought that concerns itself with warfare at, under, above and from the sea. Historically much has been written about this concept. Nowadays, however, the various branches of the military are much more integrated than they used to be. As a result, the distinction between sea power and land power is not as clear cut as it used to be, as is exemplified by amphibious forces and land based anti-ship cruise missiles. This is where the term 'maritime power' comes into play. Success in maritime warfare requires the ability to operate at sea, in the air, and on land simultaneously (Spithead 2012). Moreover, whereas naval power generally remains confined to narrow weaponry alone, such as vessels and anti-ship weaponry, maritime power is much broader and may include any national maritime capabilities. The latter includes harbors, mercantile marine and maritime industry, fishing, and any resources found in the ocean (Ahmad 2014).

5.2 Elements of Maritime Power

Maritime power is a dynamic concept. The term has often been reexamined by strategists and practitioners, each attributing different constituents, importance, and utility to the concept. Some attribute a very narrow scope, focusing solely on warships, submarines and other naval vessels, whilst others allow for a broader interpretation which includes such elements as ports and maritime resources. The former often uses maritime power interchangeably with naval power. The interpretation and constituents of maritime power have not only changed depending on author, but also as a result of changing times. For example, technological developments have influenced naval warfare and maritime affairs, and as such maritime power. Similarly, the advent of UNCLOS has had its effects on maritime power (Sakhuja 2015). The introduction of UNCLOS created maritime regimes which led to the establishment of degrees of sovereignty over the seas. The "territorialization" of the seas as a result of the implementation of UNCLOS has given rise to a new element of maritime power (Kearsley 1992, 17).

The interpretation used in this paper is that maritime power relates to the ability of a state to use the sea to its optimum (Sakhuja 2015). This interpretation is a broad view of maritime power and takes into account naval power as well as the resources and economic opportunities that the seas offer. For the purpose of this paper, a wider scope is more appropriate to fully comprehend the various influences that China's island-building in the South China Sea has had on its maritime power.

Although the elements making up maritime power are quite broad, they can generally be divided into four basic types; ports and harbors, merchant marine, ocean economic resources, and combatant forces (Ahmad 2014). China's view on maritime power is similarly broad and includes these elements as well (McDevitt 2016). Firstly, ports and harbors are the most fundamental element of maritime power. Without them, no maritime activity can take place. Ports are essential for the transport of passengers and resources, as well as safe havens for ships. For military purposes, ports provide a place for berthing, repairs, transport, and the onloading of necessary personnel and resources. Strategic placement of bases can considerably add to the reach of naval power. Secondly, coastal states are generally to a considerable degree reliant on the sea for its economic interests. The majority of global trade still takes place via the oceans, making a stable and growing economy reliant on mercantile ships. This makes the merchant marine a nation has an important element of its maritime power. It allows a country to maintain its trade, create wealth, and boost employment. Moreover, it is well known that some countries have used merchant and fishing ships as proxies to pursue their maritime interests (Ahmad 2014). The third element of maritime power is oceanic economic resources. These are the assets and materials found in the maritime sphere which generate economic activity or welfare for a state. Oceanic economic resources typically refer to all living and non-living resources, this means everything ranging from fishing grounds to minerals and hydrocarbons found in the oceans. The fourth element of maritime power is combatant forces or naval power. Understandably, naval power is an important facet of maritime power. This allows a state to secure its sovereignty as well as the other elements of maritime power. For coastal states naval power is essential for national defense as well as regional stability.

Key to maritime power is the ability to use the sea to one's own advantage whilst denying its use to a potential rival or enemy. The ability to do so has been referred to as 'command of the sea' by prominent historical maritime strategists such as Rear Admiral Alfred Thayer Mahan (Mahan 2016). In more recent times, complete command of the sea has become highly unlikely. Because of this, modern strategists prefer to use the term 'sea control' to refer to limited command of the sea (Spithead 2012). The duration and degree of sea control any actor can have is dictated by various factors, such as topography, distance, weather, and respective forces and capabilities at either side. Sea control is instrumental to the projection of maritime power. The degree of sea control directly influences the risks a state takes when pursuing any maritime objective.

Related to sea control is sea denial. Rather than being able to control the sea oneself, when using sea denial one party denies its rivals the ability to control that area (Spithead 2012). To incorporate sea denial into maritime strategy a state does not need to be able or even willing to control that area itself. Sea denial can be enacted by means of sea mines, submarines, airplanes, or shore-based missile systems.

5.3 China's Maritime Power

Whilst China is a major land power, bordering 14 countries and covering 5 time zones, the importance of its seaboard cannot be understated. During the fifteenth century China was a major maritime power, overshadowing most of its contemporaries. The impressive voyages of admiral Zheng He are well known in both China and the rest of the world. China was by far the strongest Asian sea power during that time (Sakhuja 2015). The Ming Emperor Ren-Song understood the importance of the different elements of the maritime sphere when he noted that “To make China rich and strong, we must control the seas. But while wealth comes from the sea, danger does also” (Sakhuja 2015, 14). Subsequent dynasties were not as interested in the oceans however. During the sixteenth century, China turned its gaze inwards, eschewing a navy. At first this decision allowed pirates to plunder along the coast of China. Particularly in the eighteenth century, this decision proved disastrous when China was unable to adequately defend itself against foreign intervention and subsequent invasion in the nineteenth and twentieth centuries. From the Opium Wars¹³ until the founding of the PRC in 1949, the country was invaded from the sea more than 470 times (Sakhuja 2015). Newfound understanding of the importance of maritime powers did not fully happen until the four modernizations program of Deng Xiaoping. This program helped reinvigorate academic thought on maritime power. Considerable attention was spent on marine environment, resource exploitation, and the foundation of a powerful navy capable of protecting China's maritime interests. The PRC has learned its lesson from history. The PLAN takes a comprehensive approach on maritime power which include a wide range of maritime interests such as trade and resources (Sakhuja 2015; Tobin 2018). In 2012, then-President Hu Jintao set a goal for China to become a “maritime power” (*haiyang qiangguo*) capable

¹³ The Opium Wars were two wars in the nineteenth century which involved Great Qing (China) and the British Empire. These conflicts were the result of Britain's imposition of the opium trade on China, thus compromising its sovereignty and economic power for nearly a century. The First Opium War lasted from 1839-1842 and the Second Opium War lasted from 1856-1860.

of securing its maritime interests and rights (China Power Project 2019). As part of this China “should enhance [its] capacity for exploiting marine resources, develop the marine economy, protect the marine ecological environment, resolutely safeguard China’s maritime rights and interests, and build China into a strong maritime power” (McDevitt 2016, 1). In 2018, President Xi Jinping reiterated this view and added that “the task of building a powerful navy has never been as urgent as it is today” (China Power Project 2019).

China’s modernization efforts of the PLAN have led to a substantial growth in size and capabilities (Murphy and Roberts 2018). At the current rate, China is producing and purchasing submarines five times faster than the U.S. (Spithead 2012). Since 2018, the PLA Navy consists of over 300 ships¹⁴ (Office of the Secretary of Defense 2018). These ships have become increasingly modern and large, so they can accommodate advanced armaments and systems. The rapid growth of the PLAN has been made possible by China’s growing shipbuilding capacities (China Power Project 2019). Through all this, China is creating offensive and defensive capabilities which seek to enable the PLAN to gain maritime superiority within the first island chain. Beyond the first island chain, the PLAN’s ability to perform missions is still relatively modest, but it is gaining experience and more advanced platforms to pursue this in the near future (Office of the Secretary of Defense 2018).

5.4 China’s Maritime Power resulting from Maritime Outposts

China’s island-building and claims in the South China Sea will help the country to secure its maritime interests in the first island chain, as well as provide a foothold for the PLAN to extend its operations into the second island chain. The island-building also helps China consolidate its maritime power through the four elements which comprise it.

The people’s Republic of China became the global leader in mercantile shipbuilding in 2010 (McDevitt 2016). Its merchant fleet is similarly world class and China has set its sight on becoming self-sufficient in sea trade. It seems to be on track to achieve this, over the past decade China’s merchant fleet has more than tripled in size (McDevitt 2016). The influence of China’s island-building and claims on the mercantile fleet is relatively modest. Besides being able to offer these ships more safety, there is little added benefit. On the other hand, the ports and harbors which have been constructed on many of the

¹⁴ For a breakdown of PLAN ships from 2005-2017 see appendix 6.

islands will add to China's maritime power in the area. In the Paracels, China has built three large harbors on Tree Island, Woody Island, and Duncan Island, and five smaller harbors on its other islands¹⁵. In the Spratlys, Fiery Cross Island, Subi Reef, and Mischief Reef have the largest harbors. These facilities can be used by both civilian vessels and naval vessels. The ports offer China's ships in the South China Sea shelter as well as a place for refueling, repairing, and berthing of troops or goods. In the near future these goods may consist of the resources that China has extracted from the area. China's maritime claims would endow it with vast marine resources. As it stands, China is already the global leader when it comes to fishery products. To sustain this, the country has built the largest fishing fleet in the world (McDevitt 2016). The rich fishing grounds within the nine-dash line provide this large fleet with the resources it needs. Similarly, China's economy is starved for other natural resources such as the minerals and hydrocarbons that can be found in the seabed. The 190 trillion cubic feet of natural gas and 11 billion barrels of oil that are estimated to be in the seabed, would help diversify China's energy consumption, making it less dependent on import and more energy secure (Asia Maritime Transparency Initiative 2019a). The new landforms may also mitigate various logistical challenges that come with the energy exploitation by Chinese companies in the area (Dolven et al. 2015). In short, China's large mercantile fleet combined with the various harbors scattered over the area will allow China to take advantage over the various natural resources in the area.

China's naval power, which is a major part of its maritime power, will likewise benefit greatly from the island-building and subsequent militarization in the South China Sea. Since 2014, the PRC has significantly improved its ability to monitor and project power throughout the SCS, thanks to the construction of dual civilian-military bases at its outposts located in the Spratly and Paracel Islands¹⁶. The facilities at these bases include radar and communications arrays, shelter for missile platforms, and mobile surface-to-air and anti-ship cruise missile systems (Asia Maritime Transparency Initiative 2019b). Moreover, several of the bases have substantial harbors and air bases with airstrips and hangars to accommodate combat aircraft. Thanks to the construction of these facilities on the outposts, China has already tipped the strategic balance in its favor (Flecker 2017). If China were to boost its missile defense systems in the area further, it would be able to

¹⁵ See appendix 5 and table 2 for more information.

¹⁶ See appendix 7 and appendix 8 for maps containing the estimated power projection of China in the South China Sea.

progressively restrict movement and supply lines of rival claimants, thus fortifying its own claim (Heydariyan 2018). As it stands, China is already well on its way to creating a zone of anti-access/area denial (A2/AD) in the South China Sea (Bitzinger 2018). The missile systems, air bases, and radar arrays already placed on the islands support this. These developments give the PRC the sea control and sea denial to secure its maritime interests. As China's maritime power in the South China Sea continues to grow, it will be increasingly difficult and costly for other countries to resist it. Some Western analysts have speculated that, in time, China will be able to block any activity in the South China Sea, by weaker neighbors as well as the U.S. (O'Rourke 2019). In recent years the U.S. has regularly sailed warships through disputed waters in the SCS, in an effort to refute China's claims. Although these actions do signal a refusal to acknowledge China's claims over the area, they do nothing to address China's island-building and the subsequent shift in power.

With these outposts nearing completion, they merely lack deployed troops in order for the PRC to project its power beyond the first island chain (Admiral Davidson 2018). In the words of U.S. Admiral Philip Davidson, "[...] China is now capable of controlling the South China Sea in all scenarios short of war with the United States" (Admiral Davidson 2018). As the PRC consolidates its naval dominance in the South China Sea and beyond, the international maritime laws it has used through legal warfare will constrain it even less (Tham 2018).

This newfound maritime power does need to be taken with a grain of salt. Whilst China's militarization of its outposts in the South China Sea do give it a significant degree of additional maritime power in the area, it is debatable how sustainable these outposts are in the event of an escalation of any conflict. Unlike the unsinkable aircraft carrier that is Taiwan, these artificial islands are quite vulnerable to attack¹⁷. Due to the fact that these artificial islands have a foundation of sand, at times holding back the waters with seawalls, and the buildings are clustered together, they are vulnerable to targeted attacks (Dolven et al. 2015). Moreover, the outposts may have limited capacities for repair work and rely on supply lines from the mainland. This does not take away the additional maritime power due to them, especially vis-à-vis China's less powerful neighbors. However, although the militarization of the outposts will significantly increase the cost of interference from a

¹⁷ U.S. general Douglas MacArthur referred to Taiwan as an unsinkable aircraft carrier. MacArthur believed the island provided the U.S. with a strong foothold for its containment policy towards China.

great power such as the U.S., it will not entirely deny the area to such a powerful navy in an event of war.

6. China's Actions from a Lawfare Perspective

6.1 Criteria of Lawfare

The goal of this paper is to answer if and how the People's Republic of China uses legal warfare to strengthen its maritime power in the South China Sea. To do so, Kittrie's typology of lawfare has been used to examine China's behavior in and related to the South China Sea. Some have already claimed that China consistently uses lawfare in this body of water, however, few have systematically approached China's behavior from a lawfare perspective to establish this (Wallace 2014). Therefore, this paper uses the lawfare framework as established by Kittrie to analyze China's legal warfare in the South China Sea. According to Kittrie, for an action to be considered lawfare, it must meet two criteria. The first criteria is that "the actor uses law to create the same or similar effects as those traditionally sought from conventional kinetic military action – including impacting the key armed force decision-making and capabilities of the target." (Kittrie 2016b, 8). The PRC has used lawfare to lay claim to 80 percent of the South China Sea and the landforms that lie within it. Gaining such an extensive amount of territory would normally only be possible through conventional military action. The PRC has used legal warfare to fabricate an ostensibly legal claim to this area, before using enforcement to impose it. In doing so, the PRC has also strengthened its maritime power. Like the territory gained, the vast amount of valuable resources that China can now exploit would usually only be achievable through military means.

The second criteria lawfare behavior must meet is that "one of the actor's motivations is to weaken or destroy an adversary against which the lawfare is being deployed" (Kittrie 2016b, 8). China's behavior can be said to meet this criterion in two ways. First by weakening the claims of rival claimants in the South China Sea and second by strengthening its own claims thus further weakening rival claims relative to its own. Similarly, China uses its lawfare to consolidate its maritime power in the region. China's growth in maritime power diminishes the maritime power of rival claimants in the area, as the division of resources and territory is a zero-sum game.

Fundamental to these two criteria is the underlying assumption that the lawfare practitioner intends to use legal warfare. Although intent is notoriously difficult to

establish, we can establish with a reasonable degree of certainty that China could and would use legal warfare to pursue its goals in the South China Sea. Although in the West lawfare is still a concept mostly relegated to academic circles, China promotes it as formal part of its military doctrine (Kline 2013). The ‘three warfares’ doctrine was adopted by the Chinese Communist Party (CCP) in 2003. Essentially, the three warfares are “non-military tools used to advance or catalyze a military objective” (Department of Defense 2011). Considering that *falu zhan* is one of the ‘three warfares’, legal warfare is likely to be used by China as a tool to “advance or catalyze a military objective”. The past has shown that China is ready to use legal warfare, as the example of China’s misuse of non-proliferation treaties has shown. Combined with the fact that China has stated that the South China Sea is a “core interest” to the country, it is highly likely that the PRC would use lawfare to safeguard its interests in the area. Therefore, China meets both criteria of lawfare as well as likely intent to use lawfare in the South China Sea.

To add to this, the risks that the PRC faces when using lawfare in the South China Sea will do little to constrain the country. The risks as put forward by Kittrie consist of; the probability of being subjected to proceedings, the costs of such proceedings, the likelihood of actually being penalized for a violation, and the penalty for violation (Kittrie 2016b, 23). China’s behavior in the South China Sea has caused several rival claimants and other regional actors to raise concern. However, it is unlikely that these actors would subject the PRC to any legal proceedings. China endeavors to settle any conflicts on a bilateral basis with the respective rival claimants (Hong 2016). Often, when this does not happen on a bilateral basis it will go through ASEAN. Moreover, China makes it a habit to ensure that reservations are included in the clauses of judicial settlement by international courts within the treaties it signs. In the case of UNCLOS, China declared in 2006 that under Article 298 certain disputes are excluded from the jurisdiction of international arbitration (Trachtman 2016). These means ensure that it is unlikely for China to be subject to any international law proceedings. When it does come to proceedings, the PRC would be much less impacted by the cost of said proceedings than any of its rival claimants. The likelihood of adverse judgement does seem to be high for China. The PRC’s legal positions related to the South China Sea are generally understood as misinterpretations or even misuse of international maritime law. The ruling on the South China Sea Arbitration case between the Philippines and the PRC has given a glimpse of this. China’s efforts to solve issues bilaterally and include reservations in international law seem to indicate that Beijing is aware of this. That being said, an actual

negative ruling does not seem to influence China's behavior in the South China Sea. China's position of non-participation and subsequent non-acceptance of the South China Sea arbitration ruling shows the weakness of international law. As long as there is no way to enforce a ruling related to the South China Sea, none of the risks will influence China's behavior in the area.

6.2 China's use of Instrumental Lawfare in the South China Sea

China's lawfare behavior in the South China Sea can be divided into two interrelated forms, instrumental lawfare and compliance-leverage disparity lawfare. Instrumental lawfare offers the PRC a wide range of tools to pursue its maritime interests in the South China sea. China can use a variety of laws and forums related to international maritime law as well as domestic law. In his typology, Kittrie gave several examples of how instrumental lawfare can be used. According to him actors can create new laws, reinterpret existing laws, prosecute adversaries, generate intrusive and protracted investigations and influence law advisory opinions (Kittrie 2016b). China has used most of these examples to support its claims in the South China Sea. The PRC has reinterpreted existing international maritime law such as UNCLOS, created domestic laws to support its own interpretations of international law, prosecuted rival claimants who entered disputed waters, and created academic articles and forums which support its view of international maritime law. To examine China's lawfare, it can best be divided into four distinct but interrelated arguments which the PRC uses simultaneously, namely China's historical claims, customary international law, UNCLOS, and Chinese domestic law (Kline 2013).

China's argument in favor of its historic claims over the islands rests on its depiction of national history, customary international law, and self-created precedent (Kline 2013). According to supporters of China's 'historic rights' claim, China has maintained control of the landforms within the nine-dash line for thousands of years. This claim is supported by naval patrols, scientific surveys, and mapping done by Chinese forces dating back centuries. Mapping plays an important role in this argument. Supporters of the historical claim point to ancient Chinese maps which name many of the landforms in the SCS. Some opponents have questioned the validity of pre-1947 maps depicting China's claims in the South China Sea (Malik 2013). More recently, the in 1947 introduced nine-dash line has been used to assert China's claims on regional waters. According to supporters, this line was meant to indicate and reconfirm China's ownership of the landforms and surrounding

waters. The map has become one of the most influential and ubiquitous representation of PRC maritime claims in the South China Sea. China has attempted to strengthen the validity of this map by dispersing it among UN member states as well as include it in official documents such as Chinese passports (U.S. Department of State 2014; Beech 2016). The PRC relies on the historical rights argument to assert varying degrees of sovereignty over the South China Sea. Through this argument, the country endeavors to gain a foothold on disputed landforms, which subsequently establish baselines and accompanying maritime regimes (Kline 2013). To support these legal claims, the PRC has employed both naval and civilian patrols within the nine-dash line to thwart what it considers “illegal military activities” by regional actors (Wallace 2014). Moreover, it proactively uses fishing bans and detention of those who engage in “illegal fishing activities” to strengthen its historic claim to sovereignty over the area (Torode 2010).

China’s claims under historical rights is closely intertwined with China’s claims under the customary international law argument. Unfortunately for China, historic arguments do not carry much weight in international law (Schofield 2018). Moreover, historic claims rely heavily on the extent to which this claim is contested by other states. It is important that these rival claimants take action to indicate their disagreement, as inaction may be equal to acquiescence. China has used its coastal and naval forces, as well as allegedly using civilian fishing vessels, to enforce its claims on the South China Sea. Under CIL, a state can use the sovereign control argument to claim an island or maritime area. The criteria for this is that a state’s control is clear, effective, continuous, and long term (Kline 2013). Through China’s assertive behavior in the SCS, it has already indicated that it controls the area and will oppose any other claimants’ efforts to do so. This is exemplified by its establishment of Sansha as a prefecture level city and its enforcement of imposed bans in the South China Sea. If it continues this whilst using force to keep rival claimants at bay, it strengthens its position from a sovereign control perspective. China’s continued misinterpretations of international law seems to be aimed at changing customary international law. As Kittrie summarizes; “Customary international law can be nullified or even changed through state practice undertaken in conjunction with an assertion that such practice is consistent with international law” (Kittrie 2016a, 166). When it comes to maritime law, this can be affected, over time, by countries through maritime operations, domestic legislation, legal publications, and diplomatic statements. All of which have been done by the PRC, as previous chapters have shown.

UNCLOS also provides China with an important avenue to support its claims. As the primary body of international maritime law, shaping the interpretation of clauses can influence a state's position fundamentally. In the case of the South China Sea, UNCLOS' definitions for what legally constitutes an island, rock, or shoal is essential for the subsequent maritime regimes that a claimant is entitled to. This definition can be found in article 121, which states that an island is a "naturally formed area of land, surrounded by water, which is above water at high tide." ("U.N. Convention on the Law of the Sea" 1982, Art. 121). Islands are entitled to a territorial sea, contiguous zone, and EEZ. On the other hand, "rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf." ("U.N. Convention on the Law of the Sea" 1982, Art. 121). Thus, it benefits a state to argue that their landforms are considered islands, rather than lifeless rocks. UNCLOS offers China the opportunity to anchor its claims on the waters surrounding the islands within formal law. China's lawfare use of UNCLOS consists of two steps. First, the country tries to establish sovereignty over the landforms within the nine-dash line. It supports this by simultaneously chipping away at legal rights of foreign vessels allowed to navigate in the SCS. This way China emulates a self-enforced precedent. Following this, China must ensure that these landforms are considered islands, giving it the subsequent sovereignty and adjacent maritime zones. The ruling in the South China Sea arbitration, however, stated that China's occupied islands in the Spratlys are mere rocks, thus not establishing an EEZ (Hong 2016). China has chosen not to accept this ruling and continues its claims. Besides this, China has tried to reinterpret established terms within international maritime law. Concerted effort by Chinese scholars to argue that established maritime law terms used in CIL and UNCLOS have different meanings from those understood by the West (Kline 2013). These efforts to redefine specific terms are a form of lawfare meant to establish areas of control in otherwise contested waters. There is little doubt that the PRC is trying to use UNCLOS as a way to restrict naval operations of powerful rivals at a time when it's navy does not have the capability to do this directly (Cheng 2012).

Lastly, The PRC has made consistent use of its domestic laws to reflect its interpretation of international law. China deliberately words its domestic legislation in a way that bolsters its maritime claims. This can be noted in its 1992 Law on the Territorial Sea and the Contiguous Zone. While this law was meant to ratify UNCLOS provisions relating to the rights of a coastal state in territorial waters and the contiguous zone, China used it to further its own claims. The text explicitly states that the islands in the South

China Sea are part of China's territorial land (*Law on the Territorial Sea and the Contiguous Zone* 1992). The same is done with the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and Continental Shelf. Similarly to the 1992 law, it was meant to codify UNCLOS provisions. However, this law was made as an addition to the 1992 law, and claims an EEZ which extends from each landform in the South China Sea respectively (*Exclusive Economic Zone and Continental Shelf Act* 1998). Together, these two domestic laws are meant to establish Chinese sovereignty over the landforms within the SCS and subsequent EEZ emanating from them.

6.3 China's use of Compliance-Leverage Disparity Lawfare in the South China Sea

The second form of lawfare outlined by Kittrick is compliance-leverage disparity. Although it influences much of China's instrumental lawfare, it can be discussed more succinctly. This form of lawfare "is designed to gain advantage from the greater influence that law, typically the law of armed conflict, and its processes exerts over an adversary" (Kittrick 2016b, 11). Although it is often used on the battlefield, it also plays an important role in instrumental lawfare which takes place in law forums. Moreover, in the case of the South China Sea the diverging influence of international maritime law is more applicable than the law of armed conflict. At least as long as the conflict does not escalate. The disparity in compliance-leverage of international maritime law is used by China in its enforcement of its claims. The benefits of non-compliance with the general interpretation of international maritime law is high for China and the disadvantages of non-compliance are low. China has used its compliance-leverage disparity in various ways in the South China Sea.

In the South China Sea, the PRC has made consistent use of proxies to enforce its claims and harass rivals. The last two years, numerous Chinese fishing vessels have been harassing and spying on Filipino vessels traversing and constructing infrastructure in the South China Sea (Manthorpe 2019). It is suspected that these fishing ships are part of the PLA's Maritime Militia, which is estimated to consist of around 300 vessels and 4,000 personnel. These irregular forces are made up of civilian fishermen who receive regular military training. Generally, their ships are not armed, but have water cannons and reinforced hulls meant for ramming other ships. Moreover, many of these ships also have sophisticated communications equipment on board which allow close coordination and espionage (Manthorpe 2019). The power in these irregular forces lies in the ambiguity of their status. Due to the difficulty rivals have with differentiating between real fishermen

and these militia forces, they are often forced to act with restraint. Any use of excessive force may lead to international accusations of human rights abuses. The maritime militia is crucial to China's strategy in the South China Sea as it allows it to enforce its claims whilst evading serious confrontations. The militia proved its worth in 1974, when it was at the forefront of the sea battle that led to Beijing's capturing of the last island Vietnam held in the Paracels (Manthorpe 2019).

China primarily uses civilian maritime law enforcement agencies in maritime disputes, selectively using the PLAN to provide overwatch in case of escalation (Office of the Secretary of Defense 2018). In cases where the People's Liberation Army Navy is used, its personnel will likely still use a form of compliance-leverage disparity lawfare. As the PRC military's Basics of International Law for Modern Soldiers states: "(...)We should therefore always apply international laws flexibly in the defense of our national interests and dignity, appealing to those aspects beneficial to our country while evading those detrimental to our interests." (Peiying 1996). Considering China's view of the South China Sea as a "core interest", it is likely that it's forces will use international law flexibly to protect its maritime interests. One such example is that when PLAN forces arrest rival claimant's fishing vessels in disputed waters, they often imprison them for extended periods of time (Wallace 2014). Despite the fact that Article 73 of UNCLOS states that "arrested vessels and their crews shall be promptly released upon the posting of bond or other security" and punishments for violations of fishing laws "may not include imprisonment." ("U.N. Convention on the Law of the Sea" 1982, Art. 73).

Beside China's compliance-leverage disparity lawfare on the ground, or in this case on the seas, it has also employed this type of lawfare in the context of international legal forums. The best example of China's general indifference towards international maritime law that may impact it negatively, is the South China Sea Arbitration case. Not only did the People's Republic of China decide not to participate in the arbitration proceedings, it also explicitly stated that it would not comply with the ruling. This despite the fact that the court of arbitration was within UNCLOS boundaries, of which the PRC is a signatory state. While Western countries such as the U.S tend to focus on the interplay between law and counterinsurgency operations, the PRC's approach to legal warfare views it more as an offensive weapon which can be used to hamstring an opponent and seize political initiative (Cheng 2012). China's compliance-leverage disparity is also a large part of the reason for the country's low perceived risks of using lawfare.

6.4 Lawfare to Maritime Power in the South China Sea

As a result of China's instrumental lawfare as well as compliance-leverage disparity lawfare, the country created a multilayered legal justification for its actions in the South China Sea. By combining historical claims, customary international law, UNCLOS, and Chinese domestic law, the PRC created an ambiguous claim on the area within the nine-dash line which demarcates 80 percent of the entire South China Sea. The ambiguity of this claim lies in whether China's claims are land-based or water-based. Regardless, the PRC has used its legal justifications to validate its increasing assertiveness and island-building in the area. This despite the fact that the vast majority of these islands are heavily disputed. China's legal warfare has pushed rival ships from its coastline, allowing the PRC to take a step in consolidating its hold on the island chains in the South China Sea. Thanks to this lawfare approach China was able to consolidate its maritime power in the South China Sea. This strengthened maritime power is the result of the new ports and harbors the islands offer, the considerable natural resources in the form of biomass and inorganic resources found within the sea within nine-dash line, and considerable added naval power as a result of the militarization of the artificial islands. The islands' civil-military bases provide the PRC with the ability to locate, exploit, and safeguard the various maritime interests which the People's Republic of China has in the South China Sea. The radar arrays, anti-ship missiles, surface-to-air-missiles, and facilities which sustain naval vessels and aircraft, grant the PRC a substantial degree of A2/AD and sea denial. This way, China has used its layered legal warfare actions to consolidate its maritime power in the South China Sea. This newfound maritime power in turn helps the PRC enforce its claims, thus mutually reinforcing and strengthening one another.

6.5 Discussion

This paper has used the work of Dunlap and Kittrie to examine if and how the People's Republic of China uses lawfare to strengthen its maritime power in the South China Sea. The author has argued that China does indeed use lawfare in the South China Sea and this has subsequently added to the country's maritime power in the area. Moreover, China's lawfare behavior as well as increasing maritime power will likely continue in the future. The extent to which China's behavior in the South China Sea is showing signs of effectiveness is evident by the amount of academic and political discussions on the topic. As Kline aptly stated, "Only ineffective strategies may be ignored" (Kline 2013, 168). This conclusion does come with two footnotes. Firstly, Dunlap defines lawfare as "the

strategy of using – or misusing – law as a substitute for traditional military means to achieve a warfighting objective (Dunlap 2010, 122; Dunlap 2017). Although China has certainly used legal warfare to pursue its goals in the South China Sea, it would be difficult to claim that this legal warfare was a substitute to kinetic warfare, rather than a supplement to it. At times, China has supported its maritime claims with outright military action (Wallace 2014). However, considering Dunlap’s earlier definitions of lawfare and general interpretation of it, it is unlikely that he would exclude these actions from the lawfare debate. Moreover, the Chinese interpretation of legal warfare is in fact explicitly in favor of combining legal and kinetic warfare. PRC discussions on *faluzhan* emphasize the importance of coordinating military and legal operations (Cheng 2012). Therefore, although the lawfare definition raises some questions about kinetic enforcement, China’s actions are certainly in line with *faluzhan* and a broad interpretation of legal warfare. Secondly, the maritime power China gained as a result of its lawfare and island-building is fragile. The artificial islands themselves need to be protected by sea barriers and the structures on them are clustered together. This makes them susceptible to targeted strikes. Although in any cold conflict it is sustainable, any escalation to a level of kinetic warfare with a commanding opponent may see this maritime power quickly dissipate along with the artificial islands.

7. Future of Falu Zhan and Responses

7.1 The Future of Falu Zhan

Considering the fact that the People’s Republic of China has repeatedly reiterated its stance that the South China Sea is a “core interest”, it is unlikely that China will back down from its claims on much of the area. What’s more, the PRC has spent much in resources and foreign relations to support and sustain its claims in the South China Sea (deLisle 2012). These considerable costs make it unlikely for China to simply give up its claims. If China’s increasing assertiveness and militarization of the area in recent years is any indication, it will likely continue this behavior in the future. As has been shown, China’s actions as well as use of lawfare in the South China Sea has exacerbated conflict in the area. Whereas the issues could have been resolved relatively easily if they just concerned territorial disputes, this is no longer the case. Due to the addition of essential natural resources, as well as strategic importance of the area as perceived necessity for

China's defense, it is unlikely that this conflict will be solved through diplomacy alone (Buszynski 2012).

Moreover, as China actively maintains its claims whilst it continues to employ its lawfare strategy and grow its maritime power, it will become increasingly difficult for the Chinese leadership to diffuse any future intensification of the conflict (Buszynski 2012). These developments may lead to powerful institutional stakeholders in China's security establishment to seize the opportunity to realize their own ambitions and to restore the People's Republic of China to its former position of power. The high-profile territorial disputes are also an increasingly important issue for China's vociferous nationalists among its netizens and media commentators, which Chinese senior policy members view as driving hardline standpoints (deLisle 2012). Similarly, regional actors ranging from China's neighbors to the United States may see their hands tied when any intensification of the conflict occurs. It is therefore essential for all parties to the conflict to work towards a peaceful resolution of the issues in a timely matter. There will come a point when regional actors can no longer appease the PRC's expansion in the South China Sea. Any physical conflict in the South China Sea thus far has not involved any great powers. So far China has been able to use its considerable power relative to many other claimants in cases where it deemed force was necessary. Similar situations such as the naval clashes with Vietnam where scores of deaths occurred or smaller-scale confrontations with the Philippines where lives have been lost, have not happened with any great power regional actors such as the U.S. Up until now, China has largely refrained from enforcing its claims during America's FONOP missions. It is likely that as China's maritime power and assertiveness in the South China Sea intensifies, it will also start to enforce its claims vis-à-vis larger powers. These larger powers will probably not be as easily perturbed as many of China's neighbors, which might result in an escalated conflict involving kinetic warfare. Should armed conflict break out between the PRC and any regional or international actors revolving around the South China Sea, China would likely employ various forms of offensive instrumental lawfare (Kittrie 2016a). Considering the place China gave *fa lu zhan* in its strategic doctrine and the thorough development of the concept, it is probable that the PRC will be much better prepared than its potential rivals to employ lawfare during armed conflict (Kittrie 2016a). As such, the PRC will likely see it as an advantage and employ it widely.

Furthermore, according to Chinese analysis, international law and all its facets should be considered through the lens of legal warfare and how it may be exploited to

counter the interests of the United States and its allies (Cheng 2012). This no doubt also applies to the interests of the U.S. and its allies in the South China Sea. China will likely become increasingly adept at waging lawfare in the near future (Kittrie 2016a). The PRC has quickly caught up with the rest of the international community with regards to its engagement with international law. Besides not having a history where law played an important role, they also only became a member of the U.N. system in 1971, when the PRC replaced the ROC. This means that the PRC did not have a seat at the table when many international agreements were written. Nowadays, China has sophisticated legal institutions which have allowed it to partake in international organizations as an assertive and proactive player. The PRC will likely employ this newfound lawfare power outside the battlefield as well. It would be logical for China to attempt to influence new international conventions and reinterpret existing ones in a manner that is more amenable to it. In cases where this is not achievable to a sufficient extent, China will likely use its compliance-leverage disparity to circumvent any negative effects.

Additionally, a more powerful PRC will attempt to impose its claims further on neighboring countries which will become increasingly strategically vulnerable and economically dependent in the future. The cost for such states, as well as the U.S., to intervene, will significantly increase in the future. In such a situation, China may attempt to avoid conflict and induce other claimants and stakeholders to come to a negotiated solution which will likely be more in line with the PRC's legal claims. Likewise, China can seek collaboration with like-minded or bandwagoning states to reshape or reinterpret international law in a way that Beijing's claim to much of the SCS is less radical. This would seriously diminish the possibility for normative arguments against China's actions (deLisle 2012).

That being said, it is possible for a more powerful China to sway towards currently predominant interpretations of maritime law in the future. As the PRC takes a larger role in global affairs, it may seek opportunities for distant force-projection power, much like the U.S. navy today. In such a scenario, weaker coastal states rights would actually be preferable for Beijing (deLisle 2012). Such a situation seems far off today, and likely will not affect Beijing's planning in the near future.

7.2 Recommended Responses to Legal Warfare

Considering the fact that the People's Republic of China has incorporated legal warfare into its strategic doctrine through *fa lu zhan* it would be wise for any state, not just

regional actors, to understand what this means and how this may affect their interests. As China becomes an increasingly important global player and a proficient and assertive actor in the international legal system, it will likely use legal warfare to pursue its goals in various ways. It would be wise for any actor that has to deal with China to understand the implications of this. Therefore, the author has compiled several recommendations for potential responses that regional and international actors follow to learn how to cope with China's lawfare behavior.

- In general, the international community and states who are party to the disputes in the South China Sea need to be much more conscious of the affects that lawfare may have. The possibilities offered by legal warfare is still underappreciated in the West. Both instrumental and compliance-leverage disparity lawfare options are available to the PRC. When it comes to instrumental lawfare China won't just employ this on the battlefield but also in international institutions. The international community needs to be aware of legal warfare as a valid tool for China to pursue its interests in South China Sea related matters and beyond. Particularly regional actors must be prepared for the possibility of lawfare and incorporate defensive measures into its strategic, operational, and tactical policies.
- Regional actors which suffer from China's actions in the South China Sea should become more knowledgeable of China's legal systems (Kittrie 2016a). Experts should analyze the PRC's military legal system to understand their adherence to international law. Particularly China's "three warfares" doctrine and "falun zhan" are noteworthy. This will allow them to counter China through their own forms of lawfare. Publication of any inconsistencies of China's own interpretations will help convince other states in the international community and may influence China's own citizens as well. Moreover, this can help identify PRC weak points for lawfare.
- The numerous stakeholders in the South China Sea should consider options to increase PRC compliance to established legal doctrines and interpretation thereof. This relates back to the compliance-leverage disparity, where China has a distinct advantage compared to many of its rivals in the SCS. This compliance can either be achieved by making adherence preferable to the PRC or by finding ways to force compliance.

- The international community should carefully consider how new international commitments can be used as a tool by lawfare. Cheng even goes as far as to recommend the U.S. to remain a non-signatory state of UNCLOS, so the convention cannot be used against it (Cheng 2012). However, not only is this not an option for many of the actors in the SCS which are already signatory states, this also sends the wrong message about international law. Rather than avoiding international law not to be entangled by it, international law should be made with the consideration that it may be used perniciously by some actors. To minimize this, such laws should be as clear and specific as possible, leaving no room for actors to interpret them themselves.
- For the international community it will be crucial to proactively identify possible lawfare arenas and types of lawfare which China will likely engage in in the future (Kittrie 2016a). This means both preparing for lawfare arenas which can be used peacefully to pursue the PRC's goals, as well as lawfare areas meant to lay the foundation for an advantage during possible future conflict. For example, if conflict were to intensify, it is possible that the PRC may employ a form of economic lawfare (Kittrie 2016a). Regional and international actors should be conscious of such possibilities and prepare accordingly.
- China has already made an effort to coordinate legal and military operations, as opposed to most western countries which still view them as being distinct from typical military activities (Cheng 2012). As it stands it is likely that lawfare operations will be integrated more smoothly by China than its opponents. Compared to other states, PRC decision-making on lawfare operations are far more integrated into its traditional warfighting capabilities. This will give it an edge if it ever comes to battle. Other states would do well to learn from China and take lawfare just as serious as the PRC. One way this can be done is by incorporating lawfare countermeasures into the operational planning and training of states. Israel's "operational verification" measures provides its combat units with trained documentation teams who are tasked with providing real-time documentation of military operations (Cheng 2012). This documentation can subsequently be used to counter any charges of illegal activities. Unfortunately, this form of countermeasure does give a degree of credence to the claims of the opposing side.

- Issues of legal interoperability with allied and friendly forces needs to be addressed before any conflict has the chance to arise (Cheng 2012). Allied and friendly states need to avoid potential problems as a result of incompatible legal structures by addressing them preemptively. Much like communications, logistics, and other support functions, legal policies cannot be coordinated as they comes.
- Last but certainly not least, Chinese authors note that the goal of lawfare is military victory, not legal victory (Cheng 2012). In the case of the South China Sea, this means that effective PRC control of the area is China's fundamental goal, not the changing legal situations that may allow it. De facto control will weigh much more for China than solely de jure justification of its claims. Rival claimants need to remain conscious of this.

Conclusion

In conclusion, to answer whether China is using a lawfare strategy to consolidate its maritime power in the South China Sea, several smaller questions had to be addressed. Important was to examine whether China is likely to use a legal warfare strategy and whether China's maritime power actually increased in the South China Sea. To do this, a framework of lawfare was established first. Dunlap's foundation combined with Kittrie's typology of lawfare provided the framework from which China's behavior in the South China Sea could be examined. Subsequently, the thesis worked towards exploring three aspects which would combine to answer the overarching research question. Firstly, China's relation with legal warfare was analyzed to establish whether it is likely that the PRC would use lawfare to pursue its goals in the South China Sea. Secondly, China's presence in the South China Sea was addressed, focusing on PRC legal claims and island-building in the area. Thirdly, the maritime power that may have been established as a result of China's lawfare and island-building was discussed.

The concept of lawfare has been used to create a framework to analyze China's behavior in the South China Sea, in international legal institutions, and domestically. The PRC has officially included legal warfare into its strategic doctrine through the concept of *falü zhan*. Considering how both academics and policymakers have embraced legal warfare as an avenue to pursue China's interests, it is likely that the PRC will employ it in situations that are central to PRC goals. The South China Sea has been deemed a "core

interest” for the PRC and is therefore a likely area in which China would use lawfare. There are various reasons for why the South China Sea has been deemed a “core interest” by the Chinese leadership. Although conflict in the area started as a result of solely territorial disputes, the resources and strategic importance of the South China Sea have made the area crucial to many claimants, including China. The 800,000 square kilometer area is home to vast natural resources, more than fifty percent of global maritime commerce, and critical and vulnerable geographic chokepoints (Wallace 2014). On top of this, the area is of profound strategic importance for China’s defense. The South China Sea falls within the first island chain, an area described by Chinese and foreign analysts as critical for China’s naval defense strategies (Martinson 2018). For these reasons, the PRC has consistently worked towards strengthening its legal claims on the South China Sea and the landforms that lie within it. It has done so through claims on historical rights, customary international law, UNCLOS, and Chinese domestic law. In doing so, the PRC has employed different, ambiguous, and overlapping legal claims. To illustrate this, the nine-dash line is ubiquitous to China’s legal claims, yet the country has never explicitly stated whether this line delineates an area within which all the landforms are claimed or an area in which all the seas and landforms are claimed. Despite this and objection from rival claimants, China has ramped up its island-building and subsequent militarization in the South China Sea. Since land reclamation in the Spratlys began in 2013, China has dredged an estimated 3,200 acres of land. Nowadays, many of the landforms in the SCS which are occupied by China have runways, harbors, radar arrays, communication facilities, and various buildings. The PRC has always maintained that these developments are not for military purposes but to improve the living conditions of those who are stationed on the outposts, and for research and navigational purposes. In reality these developments have helped China strengthen its maritime power. Although the elements which constitute maritime power are quite broad, they can generally be divided into four types; ports and harbors, merchant marine, ocean economic resources, and combatant forces. China’s claims and enforcement in the South China Sea has allowed it to use these four factors to strengthen its maritime power. The civilian-military bases on the islands provide harbors for naval and civilian vessels, the surrounding waters are rich in natural resources, and the militarization of the islands has created a strong foothold for China’s navy in the area. The radars, missile systems, airbases, and ships that these islands support have allowed China to credibly use a sea denial and sea control strategy in the South China Sea. Many of the various and numerous steps China has taken to get to this point

fall within the framework which Kittrie provided to analyze lawfare. It is clear that China consciously uses lawfare and that its behavior in the South China Sea is meant to achieve goals normally pursued through conventional warfare. China can use a legal warfare strategy in the area as it faces low risks from the consequences. Enforcement of international law is a well-known caveat, and this is further reinforced by China's compliance-leverage disparity. China's lawfare seems to mainly revolve around justifying their own interpretation of international maritime law whilst attempting to bend general interpretation to one that suits their goals better.

In short, China behavior in the South China Sea fits the criteria of lawfare and is likely part of a concerted effort by the PRC to solidify its legal claims on the area within the nine-dash line. As a result of these actions, China has been able to create and militarize its artificial islands in the area, which strengthened its maritime power in several ways. It should be noted that it is unlikely that China would have been able to achieve this through lawfare alone. Enforcement of its claims were and remain essential to support its lawfare. The misuse of international law and use of force to implement it has been noted by regional actors. Apprehension about China's deviation from internationally accepted norms related to maritime law is present among academics and policymakers alike. Such deviation will likely have consequences on commerce, security, and navigational freedoms stretching well beyond the region.

Through this paper, the author hopes to add a different perspective to how the developments in the South China Sea are viewed and understood. Rather than only viewing how China's interpretations are not in line with commonly understood interpretations of international maritime law, the international society should be conscious of why and how China chooses to misinterpret these laws. Only by understanding this can any step towards conflict resolution be taken. Furthermore, by employing a systematic analysis on a contemporary topic, this paper will help add to the burgeoning new field of lawfare. The concept is still developing and has largely remained relegated to academic spheres in the West. By using lawfare to examine an important and current topic such as the South China Sea, more policymakers may be drawn to the value of understanding legal warfare. As is already the case in China.

An important limitation to this study is the language barrier. The author was largely dependent on using secondary sources which examined *fa lu zhan*. A more profound understanding of China's use of *fa lu zhan* and the differences with Dunlap's interpretation of lawfare may further clarify China's behavior in the South China Sea. Furthermore,

considering the neutral value attributed to lawfare by Dunlap, another fair question to ask is whether China's use of lawfare really is that egregious. Although forcibly imposing ones will on rival claimants is a bad thing, using lawfare as means of doing so might not be. Would lawfare not be the preferred method of solving a conflict vis-à-vis traditional armed conflict which may cost the lives of numerous soldiers and potential collateral loss of life. Regardless, if China manages to retain the landforms and maritime power it has gained thus far, it will have achieved through lawfare what it traditionally would have had to achieve through conventional power.

Bibliography

- Admiral Davidson, Philip. 2018. "Advance Policy Questions for Admiral Philip Davidson, USN Expected Nominee for Commander, U.S. Pacific Command." https://www.armed-services.senate.gov/imo/media/doc/Davidson_APQs_04-17-18.pdf.
- Ahmad, Azhar. 2014. "Maritime Power and Strategy." *Pakistan National Defence Univeristy Journal* 28: 23–42. <https://doi.org/10.1142/9284>.
- Asia Maritime Transparency Initiative. 2017. "Update: China's Continuing Reclamation in the Paracels." Center for Strategic and International Studies. 2017. <https://amti.csis.org/paracels-beijings-other-buildup/>.
- . 2019a. "CHINA ISLAND TRACKER." Center for Strategic and International Studies. 2019. [https://amti.csis.org/island-tracker/china/#Spratly Islands](https://amti.csis.org/island-tracker/china/#Spratly_Islands).
- . 2019b. "Chinese Power Projection Capabilities in the South China Sea." Center for Strategic and International Studies. 2019. <https://amti.csis.org/chinese-power-projection/>.
- . 2019c. "Comparing Aerial and Satellite Images of China's Spratly Outposts." Center for Strategic and International Studies. 2019. <https://amti.csis.org/comparing-aerial-satellite-images-chinas-spratly-outposts/>.
- Banyan. 2014. "Joining the Dashes." *The Economist*. 2014. <https://www.economist.com/asia/2014/10/04/joining-the-dashes>.
- . 2018. "China Has Militarised the South China Sea and Got Away with It." *The Economist*. 2018. <https://www.economist.com/asia/2018/06/21/china-has-militarised-the-south-china-sea-and-got-away-with-it>.
- Beech, Hannah. 2016. "Just Where Exactly Did China Get the South China Sea Nine-Dash Line From?" *Time*. 2016. <http://time.com/4412191/nine-dash-line-9-south->

china-sea/.

- Bitzinger, Richard A. 2018. "Why Beijing Is Militarizing the South China Sea." *Asia Times*. 2018. https://www.asiatimes.com/2018/05/opinion/why-beijing-is-militarizing-the-south-china-sea/?_=1350493.
- Buszynski, Leszek. 2012. "The South China Sea: Oil, Maritime Claims, and U.S.—China Strategic Rivalry." *The Washington Quarterly* 32 (1): 139–56. <https://doi.org/10.1080/0163660X.2012.666495>.
- Carter, Phillip. 2005. "Legal Combat." *Slate*. 2005. http://www.slate.com/articles/news_and_politics/jurisprudence/2005/04/legal_combat.single.html.
- Cheng, Dean. 2012. "Winning Without Fighting: Chinese Legal Warfare." The Heritage Foundation. 2012. <https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare>.
- China Power Project. 2019. "How Is China Modernizing Its Navy." Center for Strategic and International Studies. 2019. <https://chinapower.csis.org/china-naval-modernization/>.
- deLisle, Jacques. 2012. "Troubled Waters: China's Claims and the South China Sea." *Orbis* 56 (4): 608–42. <https://doi.org/10.1016/j.orbis.2012.08.007>.
- Department of Defense. 2011. "Annual Report to Congress on Military and Security Developments Involving the People's Republic of China 2011." Washington, D.C.
- . 2017. "Annual Report to Congress on Military and Security Developments Involving the People's Republic of China 2017." Washington, D.C.
- Dolven, Ben, Jennifer K Elsea, Susan V Lawrence, Ronald O'Rourke, and Ian E Rinehart. 2015. "Chinese Land Reclamation in the South China Sea: Implications and Policy Options." *Current Politics and Economics of Northern and Western Asia* 24 (2/3): 319–51.

- <https://search.proquest.com/docview/1841074047?accountid=13828>.
- Dunlap, Charles J. 2001. "Law and Military Interventions : Preserving Humanitarian Values in 21 St Conflicts." (*Paper Prepared for the Humanitarian Challenges in Military Intervention Conference, Carr Ctr. for Human Rights Policy, Kennedy Sch. of Gov't, Harvard Univ., Washington, D.C., Nov. 29, 2001*).
- . 2008. "Lawfare Today: A Perspective." *Yale Journal of International Affairs* 3: 146–54.
- . 2010. "Does Lawfare Need an Apologia?" *CASE W. RES. J. INT'L L* 43: 121–43.
- . 2017. "Lawfare 101 A Primer." *MILITARY REVIEW* 7 (June): 7–18.
- Dutton, Peter. 2011. "Three Disputes and Three Objectives—China and the South China Sea." *Naval War College Review* 64 (4).
- Exclusive Economic Zone and Continental Shelf Act*. 1998. promulgated by the Standing Comm. Nat'l People's Cong.
- <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CHN.htm>.
- Flecker, Michael. 2017. "Early Chinese Voyaging in the South China Sea: Implications on Territorial Claims." *Journal of Maritime Studies and National Integration* 1 (1): 1–21.
- Hayton, Bill. 2019. "The Modern Origins of China's South China Sea Claims: Maps, Misunderstandings, and the Maritime Geobody." *Modern China* 45 (2): 127–70.
- <https://doi.org/10.1177/0097700418771678>.
- Heydarian, Richard Javad. 2018. "Short of War, China Now Controls South China Sea." *Asia Times*. 2018. <https://www.asiatimes.com/2018/05/article/short-of-war-china-now-controls-south-china-sea/>.

- Hon. Ogoola, James. 2010. "Lawfare: Where Justice Meets Peace." *Case Western Reserve Journal of International Law* 43: 181–88.
- Hong, Nong. 2016. "The South China Sea Arbitral Tribunal Award: Political and Legal Implications for China." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 38 (3): 356–61.
- Horton, Scott. 2010. "The Dangers of Lawfare." *Case Western Reserve Journal of International Law* 43: 163.
- Hsiao, Hsiu-An. 2016. "China and the South China Sea ' Lawfare .'" *Issues & Studies* 52 (2): 1–43. <https://doi.org/10.1142/S1013251116500089>.
- Hughes, David. 2016. "What Does Lawfare Mean?" *Fordham International Law Journal* 40: 1–37.
- Kane, Thomas M. 2016. "The Diplomacy of Chinese Seapower." In *Chinese Grand Strategy and Maritime Power*, 108–27. New York: Routledge.
- Kearsley, H.J. 1992. *Maritime Power and the Twenty-First Century*. Aldershot: Dartmouth Publishing Company.
- Kintner, William R. 1959. *Protracted Conflict: A Challenging Study of Communist Strategy*.
- Kittrie, Orde F. 2016a. "The Chinese Government Adopts and Implements a Lawfare Strategy." *Lawfare*, 161–96.
<https://doi.org/10.1093/acprof:oso/9780190263577.003.0004>.
- Kittrie, Orde F. 2016b. *Lawfare: Law as a Weapon of War*. 1st ed. Oxford: Oxford University Press.
- Kline, Robert T. 2013. "The Pen and the Sword: The People's Republic of China's Effort to Redefine the Exclusive Economic Zone through Maritime Lawfare and Military Enforcement." *Military Law Review* 216: 122–69.

- Kraska, James, and Brian Wilson. 2009. "China Wages Maritime 'Lawfare.'" *Foreign Policy*. <https://foreignpolicy.com/2009/03/12/china-wages-maritime-lawfare/>.
- Lanteigne, Marc. 2008. "China's Maritime Security and the 'Malacca Dilemma.'" *Asian Security* 4 (2): 143–61. <https://doi.org/10.1080/14799850802006555>.
- Law on the Territorial Sea and the Contiguous Zone*. 1992. promulgated by the Standing Comm. Nat'l People's Cong. https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf.
- Luban, David. 2010. "Carl Schmitt and the Critique of Lawfare." *Case Western Reserve Journal of International Law* 43: 457.
- Mahan, Alfred Thayer. 2016. *The Influence of Sea Power upon History*. 1st ed. New York: Dover Publications.
- Malik, Mohan. 2013. "Historical Fiction: China's South China Sea Claims." *World Affairs Institute* 176 (1): 83–90.
- Manthorpe, Jonathan. 2019. "Beijing's Maritime Militia, the Scourge of South China Sea." *Asia Times*. 2019. <https://www.asiatimes.com/2019/04/article/beijings-maritime-militia-the-scourge-of-south-china-sea/>.
- Martinson, Ryan D. 2018. "Echelon Defense: The Role of Sea Power in Chinese Maritime Dispute Strategy." 15th ed.
- Mattonen, J. K. 2002. "Globalization and Naval Aviation." In *Globalization and Maritime Power*, edited by S Tangredi, 357–73. Washington, D.C.: Institute for National Strategic Studies.
- McDevitt, Michael. 2016. "Becoming a Great 'Maritime Power': A Chinese DreamBECOMING A GREAT 'MARITIME POWER': A CHINESE DREAM."
- Murphy, Martin N., and Peter Roberts. 2018. "The Reality of China's Maritime

Capability.” *RUSI Journal* 163 (3): 74–86.

<https://doi.org/10.1080/03071847.2018.1494352>.

Nuclear Control Institute. n.d. “China’s Non-Proliferation Words vs. China’s Nuclear Proliferation Deeds.” Nuclear Control Institute. Accessed May 8, 2019.

<http://www.nci.org/i/ib12997.htm>.

O’Rourke, Ronald. 2019. “China’s Actions in South and East China Seas: Implications for U.S. Interests—Background and Issues for Congress (R42784).” Washington, D.C.

Office of the Secretary of Defense. 2018. “Military and Security Developments Involving the People’s Republic of China 2018.” Washington, D.C.

Page, Jeremy. 2016. “Tribunal Rejects Beijing’s Claims to South China Sea.” *The Wall Street Journal*. 2016. <https://www.wsj.com/articles/chinas-claim-to-most-of-south-china-sea-has-no-legal-basis-court-says-1468315137>.

Peiyong, Zhao. 1996. *Basics of International Law for Modern Soldiers* 3. (quoted in Jonathan G. Odom, A China in the Bull Shop? Comparing the Rhetoric of a Rising China with the Reality of the International Law of the Sea, 17 *Ocean & Coastal L.J.* 201, 222 (2012)).

“PLA Senior Colonels on Globalism and New Tactics: ‘Unrestricted Warfare’: Part III.”

2000. Translation of Book by U.S. Embassy Beijing. 2000.

<https://fas.org/nuke/guide/china/doctrine/WEBRES3.htm>.

“Press Release, The White House, Remarks by President Obama and Prime Minister Gillard of Australia in Joint Press Conference.” 2011. 2011.

<https://www.whitehouse.gov/the-press-office/2011/11/16/remarks-president-obama-and-prime-minister-gillard-australia-joint-press>.

Qian, Peng Guang. 2012. “The Twenty-First Century War: Chinese Perspectives.” In

- The Oxford Handbook of War*, edited by Julian Lindley-French and Yves Boyer, 1st ed., 287–301. Oxford: Oxford University Press.
- Rivkin, David B, and Lee A Casey. 2000. “The Rocky Shoals of International Law.” *The National Interest* 62: 35–45.
- Sadat, Leila Nadya, and Jing Geng. 2010. “On Legal Subterfuge and the So-Called "Lawfare " Debate.” *Case Western Reserve Journal of International Law* 43: 153.
- Sakhuja, Vijay. 2015. *Asian Maritime Power in the 21st Century*. 2nd ed. Singapore: ISEAS Publishing.
- Saunders, Imogen. 2016. “The South China Sea Award, Artificial Islands and Territory.” *Australian Year Book of International Law* 34 (1974): 31–39.
<https://library3.webster.edu/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=124536389&site=ehost-live>.
- Scharf, Michael P, and Shannon Pagano. 2010. “FOREWORD: LAWFARE!” *Case Western Reserve Journal of International Law* 43 (1): 1–10.
- Schofield, Clive. 2018. “A Landmark Decision in the South China Sea : The Scope and Implications of the Arbitral Tribunal ’ s Award A Landmark Decision in the South China Sea : The Scope and Implications of the Arbitral Tribunal ’ s Award” 38 (3): 339–47.
- Spithead, Lord West of. 2012. “Maritime Warfare and the Importance of Sea Control.” In *The Oxford Handbook of War*, edited by Julian Lindley-French and Yves Boyer, 1st ed., 430–43. Oxford: Oxford University Press.
- Tham, Jansen. 2018. “Is the South China Sea Dispute a Foregone Conclusion?” *The Diplomat*. 2018. <https://thediplomat.com/2018/05/is-the-south-china-sea-dispute-a-foregone-conclusion/>.
- The Fletcher School. 2019. “Chapter 2: Maritime Zones.” Tufts University. 2019.

- <https://sites.tufts.edu/lawofthesea/chapter-two/>.
- Tobin, Liza. 2018. "UNDERWAY: Beijing's Strategy to Build China into a Maritime Great Power." *Naval War College Review* 71 (2): 17–49.
- <http://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=a9h&AN=128759178&site=eds-live&scope=site&custid=ns056238>.
- Tolve, Robert C De. 2012. "JAGC, USN, At What Cost? America's UNCLOS Allergy in the Time of 'Lawfare.'" *Naval Law Review* 61 (1).
- Torode, Greg. 2010. "China Ban on Fishing as Tension Runs High." *South China Morning Post*. 2010. <https://www.scmp.com/article/714471/china-ban-fishing-tension-runs-high>.
- Trachtman, Joel P. 2016. "Integrating Lawfare and Warfare." *Boston College International and Comparative Law Review Volume* 39 (2): 267–82.
- "U.N. Convention on the Law of the Sea." 1982. 1982.
- https://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.
- U.N. Office of Legal Affairs. 2012. "United Nations Convention on the Law of the Sea: A Historical Perspective." Div. for Ocean Affairs and the Law of the Sea. 2012.
- https://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm.
- U.S. Department of State. 2014. "Limits in the Seas No. 143 China: Maritime Claims in the South China Sea." <https://www.state.gov/documents/organization/234936.pdf>.
- Vanhullebusch, Matthias, and Wei Shen. 2016. "China's Air Defence Identification Zone: Building Security through Lawfare Building Security through Lawfare." *China Review* 16 (1): 121–50.
- Wallace, Dustin E. 2014. "An Analysis of Chinese Maritime Claims in the South China Sea." *Naval Law Review* 63: 128–59.

Werner, Wouter G. 2010. "The Curious Career of Lawfare." *CASE W. RES. J. INT'L L* 43: 61–72.

Wingfield-Hayes, Rupert. 2014. "China's Island Factory." BBC. 2014.
<https://www.bbc.co.uk/news/resources/idt-1446c419-fc55-4a07-9527-a6199f5dc0e2>.

Winik, Lyric Wallwork. 2003. "A Marine's Toughest Mission." *Parade Magazine* Jan 19.

Zhang, Haiwen. 2011. "Indisputable Sovereignty." *Beijing Review* 23.

List of appendices

Appendix 1: Schematic Representation of Maritime Zones

Appendix 2: South China Sea Territorial Claims

Appendix 3: China's Nine-Dash Line

Appendix 4: First and Second Island Chains

Appendix 5: Paracel Islands Infrastructure

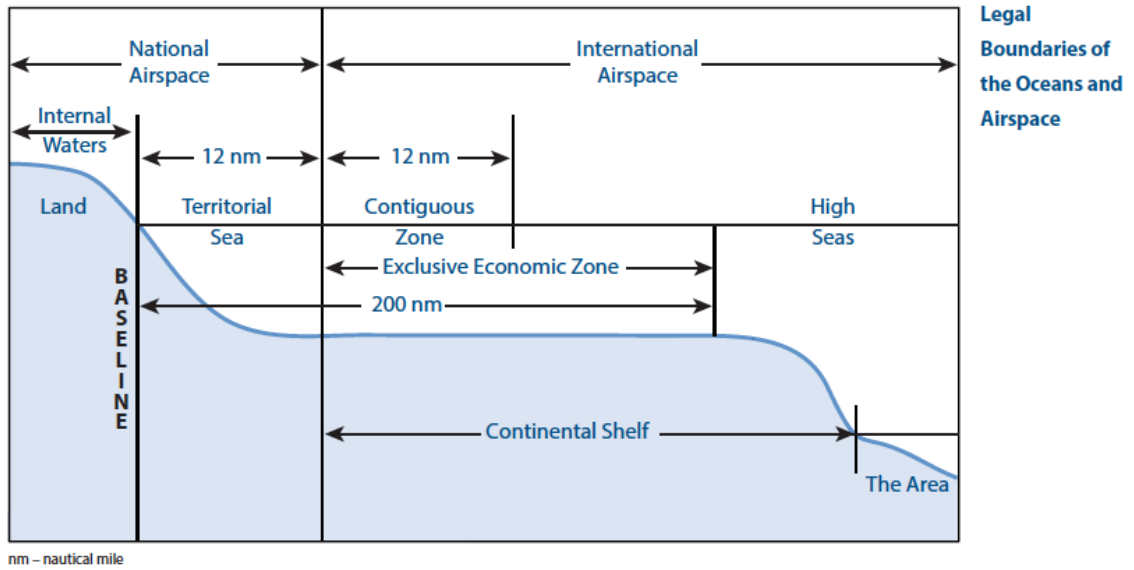
Appendix 6: Breakdown of PLAN's Surface Fleet (2005-2017)

Appendix 7: China's Estimated Naval Power Projection in the South China Sea

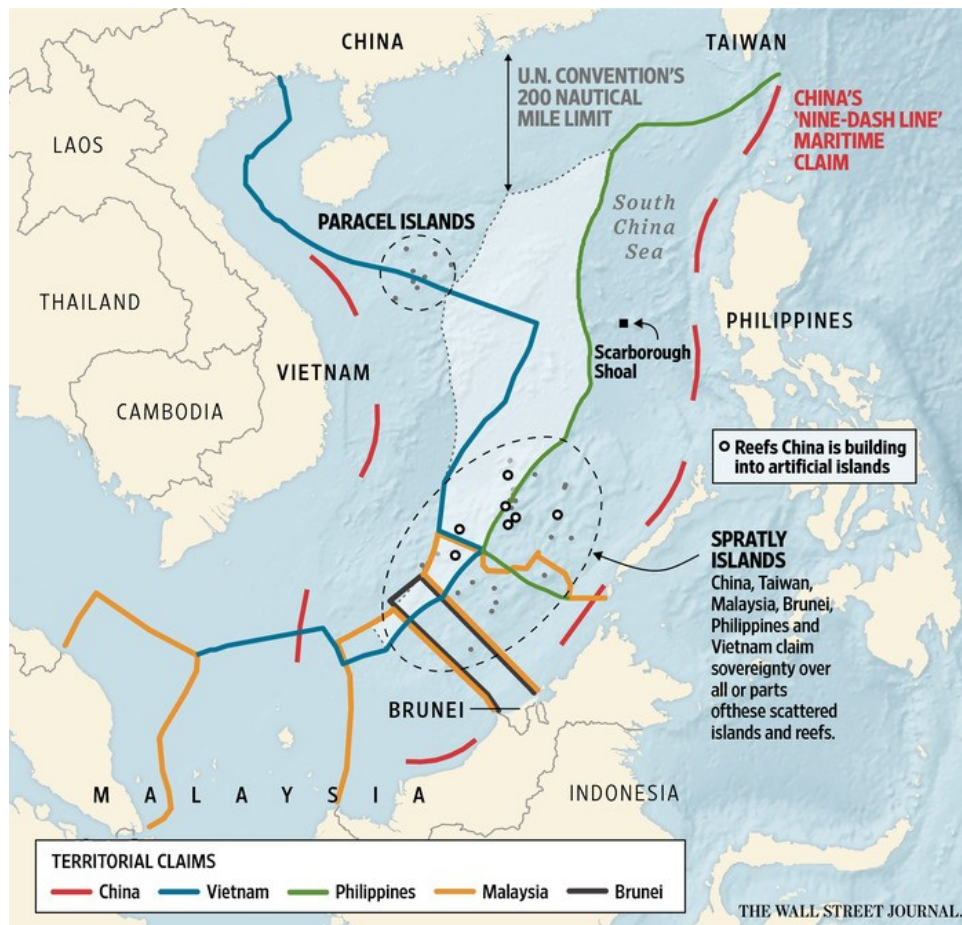
Appendix 8: China's Estimated Aerial Power Projection in the South China Sea

Appendices

Appendix 1: Schematic Representation of Maritime Zones (figure)¹⁸



Appendix 2: South China Sea Territorial Claims (map)¹⁹



¹⁸ Source: (The Fletcher School 2019)

¹⁹ Source: (Page 2016)

Appendix 3: China's Nine-Dash Line (map)²⁰



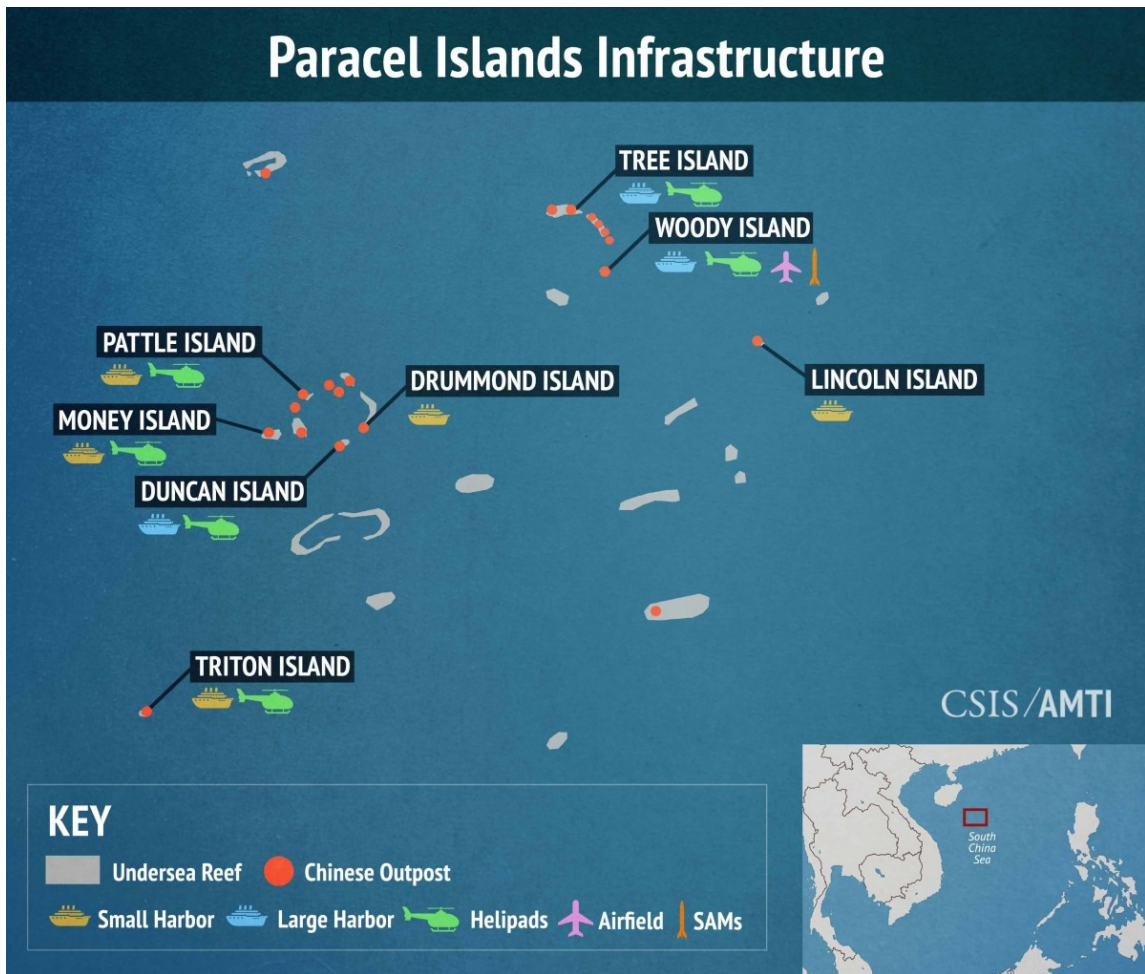
Appendix 4: First and Second Island Chains (map)²¹



²⁰ Source: (Banyan 2014)

²¹ Source: (Wingfield-Hayes 2014)

Appendix 5: Parcel Islands Infrastructure (map)²²

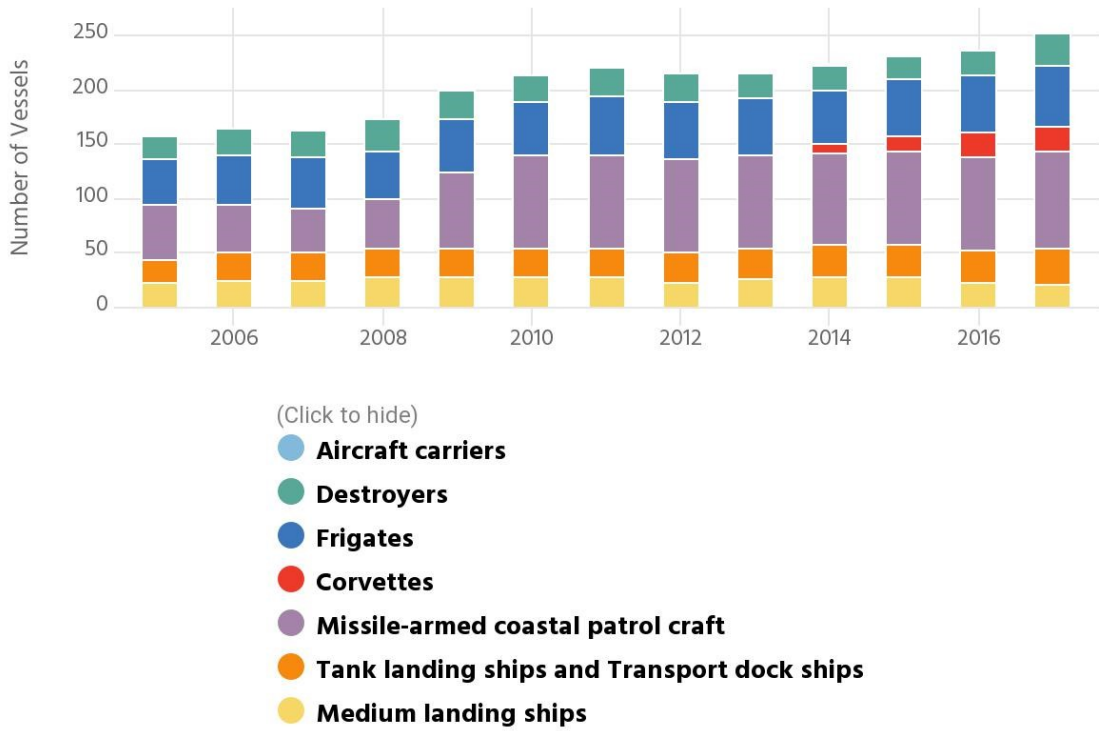


²² Source: (Asia Maritime Transparency Initiative 2017)

Appendix 6: Breakdown of PLAN's Surface Fleet (2005-2017) (figure)²³

Breakdown of PLAN's Surface Fleet (2005-2017)

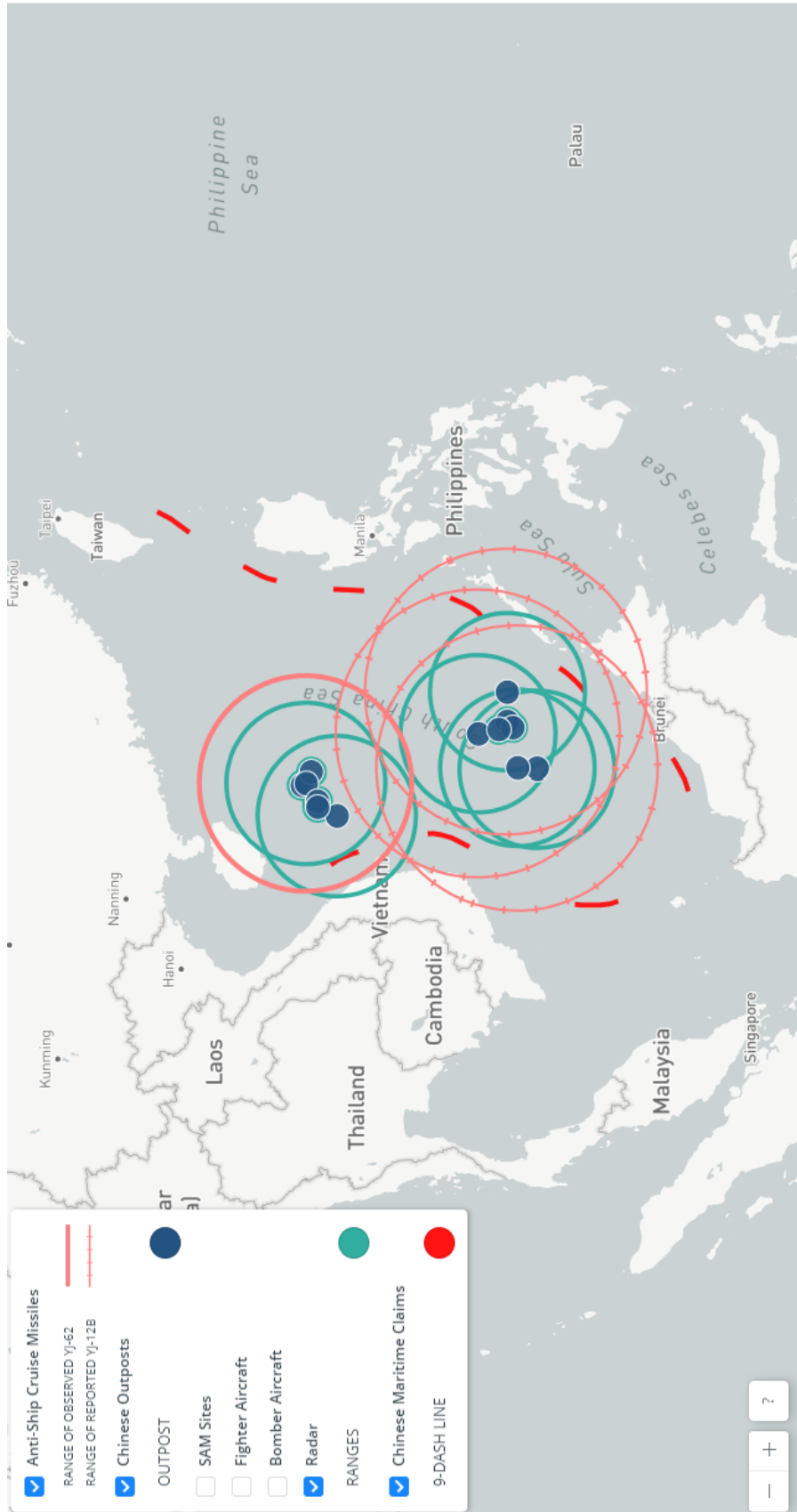
Figures based upon PLAN ships presented in annual DOD reports to Congress



CSIS China Power Project | Source: Congressional Research Service

²³ Source: (China Power Project 2019)

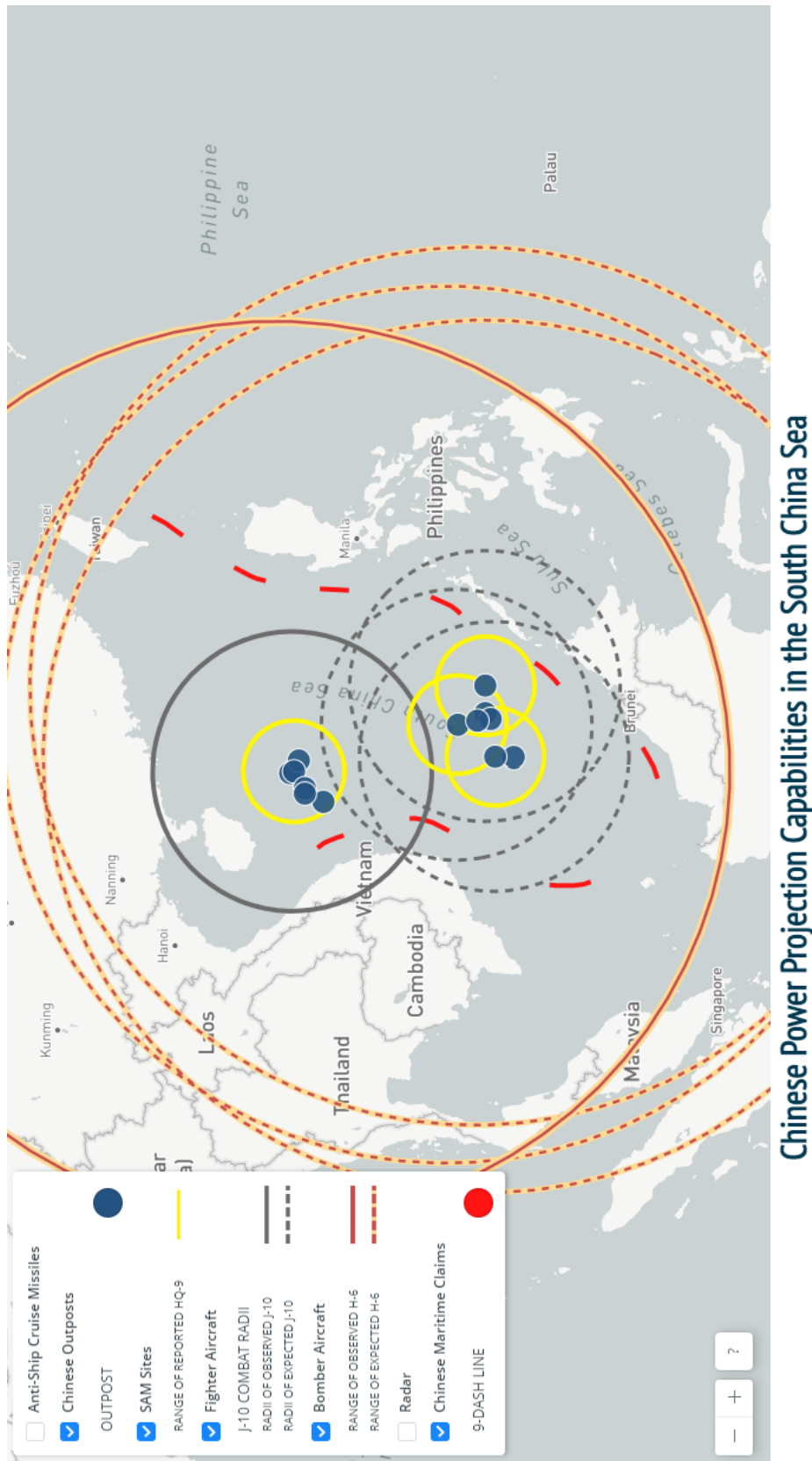
Appendix 7: China's Estimated Naval Power Projection in the South China Sea (map)²⁴



Chinese Power Projection Capabilities in the South China Sea

²⁴ Source: (Asia Maritime Transparency Initiative 2019b)

Appendix 8: China's Estimated Aerial Power Projection in the South China Sea (map)²⁵



Chinese Power Projection Capabilities in the South China Sea

²⁵ Source: (Asia Maritime Transparency Initiative 2019b)

List of Tables

Table 1: Landforms in the Spratly Islands

Table 2: Landforms in the Paracel Islands

Table 3: Other Features

Tables

The following is an overview of the islands China claims and actively controls in the South China Sea. These islands are located in the three island chains which are claimed by china; the Paracels, the Spratlys, and the Scarborough Shoal. The data for this overview comes from the Center for Strategic and International Studies' (CSIS) Asia Maritime Transparency Initiative (AMTI)²⁶. Landforms defined as “rocks/islands” have no definitive legal status at this time.

Spratly Islands	
U.S. name	Cuarteron Reef
China name	Huayang Jiao 华阳礁
Legal status	Rock
GPS	08° 51' 45" N, 112° 50' 15" E
Structures	yes; communications tower, lighthouse, point defense emplacements, administrative building, radar
Reclaimed	yes; 56 acres
Controlled	China since 1988
U.S. name	Fiery Cross Reef
China name	Yongshu Jiao 永暑礁
Legal status	Rock
GPS	9° 32' 45" N, 112° 53' 15" E
Reclaimed	yes; 677 acres
Structures	yes; runway, hangars, communications tower, radar, point defense facility, sensor facilities, large harbor
Controlled	China since 1988
U.S. name	Gaven Reefs
China name	Nanxun Jiao 南薰礁
Legal status	Rock
GPS	10° 12' 24" N, 114° 13' 25" E
Reclaimed	yes; 34 acres
Structures	yes; solar panels, administrative building, headquarters, communications tower, wind turbines, communications tower

²⁶ Source: (Asia Maritime Transparency Initiative 2019a, 2019c)

Controlled	China since 1988
U.S. name	Hughes Reef
China name	Dongmen Jiao 东门礁
Legal status	Low-tide elevation
GPS	9° 54' 30" N, 114° 29' 50" E
Reclaimed	yes; 19 acres
Structures	yes; administrative building, communications tower, sensor tower
Controlled	China since 1988
U.S. name	Johnson Reef
China name	Chiguo Jiao 赤瓜礁
Legal status	Rock
GPS	9° 43' 1" N, 114° 16' 54" E
Reclaimed	yes; 27 acres
Structures	yes; point defense, communications tower, solar panels, wind turbines, sensor tower, lighthouse, administrative building
Controlled	China since 1988
U.S. name	Mischief Reef
China name	Meiji Jiao 美济礁
Legal status	Low-tide elevation
GPS	09° 54' 00" N, 115° 32' 00" E
Reclaimed	yes; 1,379 acres
Structures	yes; sensor/communications facility, point defense facilities, three sensor/communications towers, storage tunnels, runway, hangars, radio beacon, large harbor
Controlled	China since 1995
U.S. name	Subi Reef
China name	Zhubi Jiao 渚碧礁
Legal status	Low-tide elevation
GPS	10° 55' 25" N, 114° 5' 5" E
Reclaimed	yes; 976 acres
Structures	yes; storage tunnels, sensor/communications facility, mobile shipping crane, point defense facilities, lighthouse, runway, hangars, radar array, hardened structures, large harbor
Controlled	China since 1988

Paracel Islands	
U.S. name	Antelope Reef
China name	Lingyang Jiao 羚羊礁
Legal status	Rock/Island
GPS	16° 27' 45" N, 111° 35' 20" E
Structures	yes; small buildings
Controlled	China since 1974
U.S. name	Bombay Reef
China name	Langhua Jiao 浪花礁
Legal status	Rock/Island
GPS	16° 2' 27" N, 112° 30' 41" E
Structures	yes; lighthouse, platform
Controlled	China since 1974
U.S. name	Drummond Island
China name	Jinqing Dao 晋卿岛
Legal status	Rock/Island
GPS	16° 27' 46"N, 111° 44' 29" E
Structures	yes; small harbor
Controlled	China since 1974
U.S. name	Duncan Islands
China name	Chenhang Dao 琛航岛
Legal status	Rock/Island
GPS	16° 26' 59" N, 111° 42' 27" E
Structures	yes; helicopter base, hangars, large harbor
Controlled	China since 1974
U.S. name	Lincoln Island
China name	Dong Dao 东岛
Legal status	Rock/Island
GPS	16° 40' 0" N, 112° 43' 47" E
Structures	yes; small harbor
Controlled	China
U.S. name	Middle Island
China name	Zhong Dao 中岛
Legal status	Rock/Island
GPS	16° 57' 17" N, 112° 19' 28" E
Structures	no
Controlled	China

U.S. name	Money Island
China name	Jinyin Dao 金银岛
Legal status	Rock/Island
GPS	16° 26' 52" N, 111° 30' 29" E
Structures	yes; small harbor, helipad, various structures
Controlled	China
U.S. name	North Island
China name	Bei Dao 北岛
Legal status	Rock/Island
GPS	16° 57' 49" N, 112° 18' 37" E
Structures	yes; administrative building
Controlled	China
U.S. name	Observation Bank
China name	Yin Yu 银屿
Legal status	Rock/Island
GPS	16° 34' 46" N, 111° 42' 15" E
Structures	yes; small buildings
Controlled	China
U.S. name	Pattle Island
China name	Shanhu Dao 珊瑚岛
Legal status	Rock/Island
GPS	16° 32' 3" N, 111° 36' 26" E
Structures	yes; small harbor and helipad
Controlled	China
U.S. name	Quanfu Island
China name	Quanfu Dao 全富岛
Legal status	Rock/Island
GPS	16° 34' 30"N, 111° 40' 25"E
Structures	yes; small buildings
Controlled	China
U.S. name	Robert Island
China name	Ganquan Dao 甘泉岛
Legal status	Rock/Island
GPS	16° 30' 20"N, 111° 35' 8"E
Structures	no
Controlled	China

U.S. name	South Island
China name	Nan Dao 南岛
Legal status	Rock/Island
GPS	16° 56' 49" N, 112° 20' 2" E
Structures	no
Controlled	China
U.S. name	South Sand
China name	Nan Shazhou 南沙洲
Legal status	Rock/Island
GPS	16°55'47"N, 112°20'44"E
Structures	no
Controlled	China
U.S. name	Tree Island
China name	Zhaoshu Dao 赵述岛
Legal status	Rock/Island
GPS	16° 58' 46" N, 112° 16' 15" E
Structures	yes; helipad, large harbor, solar arrays, wind turbines
Controlled	China
U.S. name	Triton Island
China name	Zhongjian Dao 中建岛
Legal status	Rock/Island
GPS	15° 47' 3" N, 111° 12' 11" E
Structures	yes; small harbor, helipad
Controlled	China
U.S. name	West Sand
China name	Xi Shazhou 西沙洲
Legal status	Rock/Island
GPS	16° 58' 39" N, 112° 12' 43" E
Structures	no
Controlled	China
U.S. name	Woody Island
China name	Yongxing Dao 永兴岛
Legal status	Rock/Island
GPS	16° 50' 4" N, 112° 20' 23" E
Structures	yes; 2 large harbors, air base, runway, hangars, missile platforms,
Controlled	China since 1955
Note	Main military base in the Paracels and official administrative capital of the three island chains China claims

U.S. name	Yagong Island
China name	Yagong Dao 鸭公岛
Legal status	Rock/Island
GPS	16° 33' 59" N, 111° 41' 11" E
Structures	yes; small buildings
Controlled	China

Other Features

U.S. name	Scarborough Shoal
China name	Huangyan Dao
Legal status	Rock
GPS	15° 8' 55" N, 117° 45' 50" E
Structures	No
Controlled	China