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## China's New Law on Foreign Relations: Transforming the Rules- Based International Order with Chinese Characteristics

*Raul (Pete) Pedrozo*

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# China’s New Law on Foreign Relations: Transforming the Rules-Based International Order with Chinese Characteristics

*Raul (Pete) Pedrozo\**

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The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

## I. THE FOREIGN RELATIONS LAW OF CHINA

On June 28, 2023, the Standing Committee of the 14th National People's Congress adopted a new, comprehensive Law on Foreign Relations of the People's Republic of China.<sup>1</sup> The law took effect July 1, 2023. The stated purpose of the law is to (1) safeguard China's sovereignty, national security, and development interests; (2) protect and promote the interests of the Chinese people; (3) build China into a great modernized socialist country; (4) realize the great rejuvenation of the Chinese nation; (5) promote world peace and development; and (6) build a community with a shared future for mankind.<sup>2</sup> The law applies to the conduct of Chinese diplomatic relations, and cultural, economic, and other exchanges and cooperation with other countries, as well as China's relations with the United Nations and other international organizations.<sup>3</sup> Implementation of the law will be guided by "Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Important Thinking of Three Represents, the Scientific Outlook on Development, and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era."<sup>4</sup> The importance of socialism is reiterated in Article 17, which emphasizes that China's foreign relations will be conducted "to uphold its system of socialism with Chinese characteristics, safeguard its sovereignty, unification and territorial integrity, and promote its economic and social development."<sup>5</sup>

This extensive revisionist "rule by law" manifesto is just another recent example of Chinese legal warfare<sup>6</sup> and the Chinese Communist Party's (CCP) goal of supplanting the existing rules-based international order, which has

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1. The Law on Foreign Relations of the People's Republic of China art. 45 (adopted by the Standing Committee of the 14th National People's Congress, June 28, 2023), [https://english.news.cn/20230628/28c7aedd386440ba9c370eb22476d430/c.html?utm\\_source=substack&utm\\_medium=email](https://english.news.cn/20230628/28c7aedd386440ba9c370eb22476d430/c.html?utm_source=substack&utm_medium=email) [hereinafter PRC Foreign Relations Law].

2. *Id.* art. 1.

3. *Id.* art. 2.

4. *Id.* art. 3.

5. *Id.* art. 17.

6. Kerry Gershaneck, *To Win Without Fighting: Defining China's Political Warfare*, MARINE CORPS UNIVERSITY PRESS (June 17, 2020), <https://www.usmcu.edu/Outreach/Marine-Corps-University-Press/Expeditions-with-MCUP-digital-journal/To-Win-without-Fighting/>; Jordan Link, Nina Palmer & Laura Edwards, *Beijing's Strategy for Asserting Its "Party Rule by Law" Abroad*, U.S. INSTITUTE OF PEACE (Special Rep. No. 512, Sept. 29, 2022), <https://www.usip.org/publications/2022/09/beijings-strategy-asserting-its-party-rule-law-abroad>.

promoted cooperation and development and has benefited all nations since the end of the Second World War. Riddled with Chinese propaganda and falsehoods, the new law describes Xi Jinping's vision<sup>7</sup> of dismantling the existing international system with a new world order where might makes right and winners take all.<sup>8</sup> By enacting the new law, China seeks to "build a new type of international relations"<sup>9</sup> and "reform . . . the global governance system."<sup>10</sup> In short, President Xi and the CCP seek to transform the rules-based order with a new sovereignty-based order that better reflects its domestic and global interests and allows the CCP "to act with impunity at home and in their perceived spheres of influence."<sup>11</sup>

This article examines select articles of the new law to demonstrate that China's actions are in direct opposition to the words in the law. In essence, the law admonishes nations to "do as I say, not as I do," an acknowledgment that China is hypocritical and sees itself above the rules-based international order.

## II. PEACEFUL SETTLEMENT OF DISPUTES

Let's begin with Article 4, which disingenuously asserts that China is "committed to settling international disputes by peaceful means and opposes the use of force or threat of force in international relations."<sup>12</sup> Similarly, Article 19 states that China is committed to upholding "the international system with the United Nations at its core . . . and the fundamental norms governing international relations based on the purposes and principles" of the UN

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7. Qin Gang, H. E. State Councilor and Foreign Minister of China, Keynote Speech at Opening Ceremony of the Lanting Forum on Chinese Modernization and the World (Apr. 21, 2023), [https://www.fmprc.gov.cn/eng/wjdt\\_665385/zyjh\\_665391/202304/t20230421\\_11062902.html](https://www.fmprc.gov.cn/eng/wjdt_665385/zyjh_665391/202304/t20230421_11062902.html).

8. Antony J. Blinken, U.S. Secretary of State, Remarks at Meeting with National Security Advisor Jake Sullivan, Director Yang, and State Councilor Wang (Mar. 18, 2021), <https://www.state.gov/secretary-antony-j-blinken-national-security-advisor-jake-sullivan-chinese-director-of-the-office-of-the-central-commission-for-foreign-affairs-yang-jiechi-and-chinese-state-councilor-wang-yi-at-th/>.

9. PRC Foreign Relations Law, *supra* note 1, art. 4.

10. *Id.* art. 18.

11. NATIONAL INTEL. COUNCIL, GLOBAL TRENDS 2040: A MORE CONTESTED WORLD 98 (Mar. 2021), [https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\\_2040.pdf](https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends_2040.pdf).

12. PRC Foreign Relations Law, *supra* note 1, art. 4.

Charter.<sup>13</sup> Article 20 further provides that China is “committed to safeguarding international peace and security and upholding the authority and stature” of the UN Security Council.<sup>14</sup> Despite the purported support for the United Nations reflected in these articles, China is one of a handful of nations that has not condemned the Russian invasion of Ukraine, a clear violation of Article 2(4) of the UN Charter<sup>15</sup> and an affront to the entire UN system by a permanent member of the Security Council.

On March 2, 2022, the UN General Assembly overwhelmingly passed a resolution condemning Russia’s invasion of Ukraine as a violation of Article 2(4) of the UN Charter and demanding, *inter alia*, that Russia “immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State.”<sup>16</sup> The vote was 141 in favor, 5 against, with 35 abstentions, including China.<sup>17</sup> If China is truly opposed to the use of force in international relations and is committed to upholding the authority and stature of the Security Council, it should have voted in favor of the resolution and condemned Russia’s act of blatant aggression.

Moreover, since the war began in February 2022, China has assisted Russia by-pass sanctions<sup>18</sup> imposed by the European Union (EU)<sup>19</sup> and the

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13. *Id.* art. 19.

14. *Id.* art. 20.

15. U.N. Charter art. 2(4) (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”).

16. G.A. Res. A/RES/ES-11/1, Aggression Against Ukraine (Mar. 18, 2022).

17. Press Release, General Assembly, General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops, U.N. Press Release GA/12407 (Mar. 2, 2022), <https://press.un.org/en/2022/ga12407.doc.htm>.

18. Maia Nikoladze et al., *How is China Mitigating the Effects of Sanctions on Russia?*, ATLANTIC COUNCIL (June 14, 2023), <https://www.atlanticcouncil.org/blogs/econographics/how-is-china-mitigating-the-effects-of-sanctions-on-russia/>.

19. Council Reg. 269/2014 of Mar. 17, 2014, Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, 2014 O.J. (L 78/6); Council of the European Union, *Timeline—EU Restrictive Measures Against Russia Over Ukraine*, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/history-restrictive-measures-against-russia-over-ukraine/> (last visited Sept. 15, 2023).

United States.<sup>20</sup> The Chinese yuan has become Russia's most traded currency, enabling Moscow to make international transactions. China and Russia have established currency swap facilities to allow their central banks to exchange rubles for yuan, which can be accessed by Russian commercial banks to inject yuan into the local economy. Finally, Russia has tapped into its central bank reserves held in China, allowing Moscow to manage the ruble's value by using these reserves to engage in foreign exchange transactions.

Russia is additionally exporting more oil (\$88 billion in 2022) and natural gas (about 22 billion cubic meters in 2023) to China to offset lost revenues in the EU market. China has also ramped up exports of electronic equipment—\$170 billion in integrated circuit exports in 2022—basic computers and transport equipment to Russia.<sup>21</sup> Chinese assistance has, therefore, directly enabled Russia to sustain its warfighting capabilities. China expressed continued support for the Kremlin, most recently in a statement released in late June 2023 after the failed Wagner group revolt. The statement reiterates that Russia is a “friendly neighbor and comprehensive strategic partner of coordination for the new era” and that China “supports Russia in maintaining national stability.”<sup>22</sup>

### III. AMICABLE RELATIONS WITH NEIGHBORS

Like Article 4, Article 18 unscrupulously pledges that China will work to “grow relations with its neighboring countries in accordance with the principle of amity, sincerity, mutual benefit, and inclusiveness and the policy of enhancing friendship and partnership with its neighbors.”<sup>23</sup> Nonetheless, for the past twenty-plus years, China has engaged in a concerted effort to destabilize the region and change through coercion and intimidation the status quo in the South and East China Seas. The number of Chinese transgressions against its neighbors in the South China Sea is too many to catalog in a single

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20. U.S. Dep't of the Treasury, Off. of Foreign Assets Control, *Ukraine/Russia-Related Sanctions Program* (updated June 16, 2016), <https://ofac.treasury.gov/media/8741/download?inline>.

21. Nikoladze, *supra* note 18.

22. Foreign Ministry Spokesperson, Ministry of Foreign Affairs of the People's Republic of China, Remarks on the Wagner Group Incident (June 25, 2023), [https://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/202306/t20230625\\_11103407.html](https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/202306/t20230625_11103407.html).

23. PRC Foreign Relations Law, *supra* note 1, art. 18.

article, but suffice it to say that China has engaged in a series of malign activities that have directly interfered with the resource rights of its neighbors in their respective exclusive economic zones (EEZ) and continental shelves by sinking fishing boats, harassing survey vessels and offshore oil rigs, illegally seizing fishing equipment and fish catches, and coercing foreign oil companies to abandon offshore projects.<sup>24</sup>

On April 21, 2023, for example, the People's Liberation Army Navy (PLAN) corvette CNS *Changzhou* aggressively challenged two Philippine Coast Guard (PCG) cutters—BRP *Malapascua* and BRP *Malabrigo*—while they were conducting a routine patrol about seven nautical miles off Pagasa (Thitu) Island in the South China Sea.<sup>25</sup> During the seven-day patrol, the PCG ships also spotted over one hundred China People's Armed Forces Maritime Militia (PAFMM) vessels illegally operating in the vicinity of Sabina Shoal, Iroquis Reef, Lawak, Patag (Flat), Likas (West York), Parola, and Pagasa Islands, Tizzard Bank, Julian Felipe Reef, and Ayungin Shoal.<sup>26</sup> Two days later, two Chinese Coast Guard (CCG) ships (*CCG 5201* and *CCG 4202*) intercepted two PCG ships in the vicinity of Second Thomas (Ayungin) Shoal. The CCG vessels engaged in aggressive and dangerous maneuvers, coming within fifty yards of a PCG ship. The PCG ship was forced to stop its engines and reverse course to avert a potential collision.<sup>27</sup> More recently, on June 30, 2023, CCG vessels harassed, obstructed, and conducted

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24. South China Sea Arbitration (Phil. v. China), Case No. 2013-19, Award ¶¶ 818–993 (Perm. Ct. Arb. 2016) [hereinafter SCS Arbitration Award]; Raul (Pete) Pedrozo, *Does the Revised U.S. South China Sea Policy Go Far Enough?*, 99 INTERNATIONAL LAW STUDIES 72 (2022); Raul (Pete) Pedrozo, *Is a South China Sea Code of Conduct Viable?*, 97 INTERNATIONAL LAW STUDIES 937 (2021); Collin Koh, *David vs. Goliath: Southeast Asia Can Resist China's Gray Zone Aggression in the South China Sea . . . with Help*, U.S. NAVAL INSTITUTE PROCEEDINGS (May 2023), <https://www.usni.org/magazines/proceedings/2023/may/david-vs-goliath-southeast-asia-can-resist-chinas-gray-zone>; Bonny Lin et al., *A New Framework for Understanding and Countering China's Gray Zone Tactics*, RAND (2022), [https://www.rand.org/pubs/research\\_briefs/RBA594-1.html](https://www.rand.org/pubs/research_briefs/RBA594-1.html); Samir Puri & Greg Austin, *What the Whitsun Reef Incident Tells Us About China's Future Operations at Sea*, INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES (Apr. 9, 2021), <https://www.iiss.org/online-analysis/online-analysis/2021/04/whitsun-reef-incident-china>; Michael Green et al., *Countering Coercion in Maritime Asia*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (May 9, 2017), <https://www.csis.org/analysis/countering-coercion-maritime-asia>; Pete Pedrozo, *The U.S.-China Incidents at Sea Agreement: A Recipe for Disaster*, 6 JOURNAL OF NATIONAL SECURITY LAW & POLICY 207 (2012).

25. Dzirhan Mahadzir, *Philippine Coast Guard Cutters, Chinese Warship Almost Collide in South China Sea*, USNI NEWS (May 1, 2023), <https://news.usni.org/2023/05/01/philippine-coast-guard-cutters-chinese-warship-almost-collide-in-south-china-sea>.

26. *Id.*

27. *Id.*

dangerous maneuvers against PCG vessels supporting a Philippine naval operation near Second Thomas Shoal. The PCG ships were forced to reduce speed to prevent a collision.<sup>28</sup>

An arbitral tribunal previously ruled that similar dangerous activities by Chinese vessels violated Rules 6, 8, 16, 21, and 25 of the Convention on International Regulation for Preventing Collisions at Sea (COLREGS).<sup>29</sup> The tribunal also concluded that Second Thomas Shoal is a low-tide elevation that forms part of the Philippine EEZ and continental shelf and is therefore not capable of appropriation by China.<sup>30</sup>

In addition to this malign behavior directed at its neighbors, China established military outposts on reclaimed artificial islands that have forever changed the status quo of the South China Sea and pose a direct threat to the sovereignty and territorial integrity of the other South China Sea claimants. Between 2013 and 2015, China reclaimed over 3,200 acres of land<sup>31</sup> on seven of the eight features<sup>32</sup> it occupies in the Spratly Islands.<sup>33</sup> In 2016, an arbitral tribunal ruled that China's reclamation activities also caused extensive environmental damage to the fragile ecosystem in and around Cuarteron, Fiery Cross, Gaven (North), Johnson, Hughes, Subi, and Mischief Reefs<sup>34</sup> in violation of China's treaty obligations under the UN Convention on the Law of the Sea (UNCLOS).<sup>35</sup>

Upon completion of these land reclamation projects in 2015, China turned to infrastructure development on each of the reclaimed outposts. Shore-based infrastructure improvements have been completed on its four smallest outposts—Johnson, Gaven, Hughes, and Cuarteron Reefs—to in-

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28. Karen Lema, *Philippines Accuses China of More "Harassment" Near Disputed Reef*, REUTERS (July 5, 2023), <https://www.reuters.com/world/asia-pacific/philippines-accuses-china-more-harassment-near-disputed-reef-2023-07-05/>.

29. Convention on International Regulation for Preventing Collisions at Sea, Oct. 20, 1972, 28 U.S.T. 3459, T.I.A.S. No. 8587, 1050 U.N.T.S. 16 [hereinafter COLREGS]; SCS Arbitration Award, *supra* note 24, ¶¶ 1085–1109.

30. SCS Arbitration Award, *supra* note 24, ¶¶ 383, 633, 647.

31. By comparison, the other South China Sea claimants have reclaimed 172 acres in forty years. See U.S. DEP'T OF DEF., ASIA-PACIFIC MARITIME SECURITY STRATEGY 16 (2015).

32. These features include Fiery Cross, Subi, Mischief, Johnson, Gaven, Hughes, and Cuarteron Reefs.

33. ASIA-PACIFIC MARITIME SECURITY STRATEGY, *supra* note 31, at 16.

34. SCS Arbitration Award, *supra* note 24, ¶¶ 818–993.

35. United Nations Convention on the Law of the Sea arts. 192, 194(1), 194(5), 197, 123, 206, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].



clude fixed land-based naval guns, administrative buildings, sensor emplacements, and improved communications facilities.<sup>36</sup> More substantial improvements were made to Fiery Cross, Subi, and Mischief Reefs, including new airfields, deep channels to improve ship access, large port facilities with berthing areas for larger ships, water and fuel storage facilities, fighter-sized hangars, fixed-weapons positions, administration buildings, communication and surveillance facilities, and barracks.<sup>37</sup> These improvements allow China “to house up to three regiments of fighters in the Spratly Islands,”<sup>38</sup> as well as increase capabilities to support military operations against its South China Sea neighbors.<sup>39</sup>

By militarizing these artificial features, China has established a robust power projection capability in the South China Sea that is being used to intimidate its neighbors. New military airfields with combat-capable aircraft, improved port facilities capable of servicing large warships and patrol vessels, and enhanced logistics hubs provide the CCG and PLAN with a more flexible and continuous presence in the South China Sea. This persistent presence improves “China’s ability to detect and challenge activities by rival claimants or third parties, widens the range of capabilities available to the PRC, and reduces the time required to deploy them.”<sup>40</sup> This further complicates diplomatic initiatives aimed at reducing tensions and ultimately resolving the underlying territorial disputes. The United States has called on China to “avoid addressing disputes through coercion or intimidation,”<sup>41</sup> labeling

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36. U.S. DEP’T OF DEF., ANNUAL REPORT TO CONGRESS, MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 12 (2017) [hereinafter DOD ANNUAL REPORT (2017)]; U.S. DEP’T OF DEF., ANNUAL REPORT TO CONGRESS, MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 17 (2018) [hereinafter DOD ANNUAL REPORT (2018)].

37. U.S. DEP’T OF DEF., ANNUAL REPORT TO CONGRESS, MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 13 (2016) [hereinafter DOD ANNUAL REPORT (2016)]; DOD ANNUAL REPORT (2017), *supra* note 36, at 12.

38. DOD ANNUAL REPORT (2017), *supra* note 36, at 12.

39. DOD ANNUAL REPORT (2018), *supra* note 36, at 17.

40. DOD ANNUAL REPORT (2016), *supra* note 37, at 13; DOD ANNUAL REPORT (2017), *supra* note 36, at 12; DOD ANNUAL REPORT (2018), *supra* note 36, at 17.

41. Media Note, U.S. Dep’t of State, U.S.-China Diplomatic and Security Dialogue (Nov. 9, 2018), <https://2017-2021.state.gov/u-s-china-diplomatic-and-security-dialogue-3/index.html>.

China's militarization and territorial expansion in the South China Sea as "illegal and dangerous" and a threat to the sovereignty of its neighbors.<sup>42</sup>

China's actions in the South China Sea clearly cannot be characterized as "amicable." Rather, they demonstrate the malign behavior of a regional hegemon that considers threats and coercion as a means to steal precious resources from its neighbors and as an acceptable way to conduct foreign relations with competing claimants.

#### IV. COOPERATION WITH DEVELOPING COUNTRIES

Article 21 of the new Foreign Relations Law expresses China's vision of global development—a vision that "is equitable, inclusive, open, cooperative, comprehensive, well-coordinated, innovation-driven and interconnected."<sup>43</sup> Article 27 similarly states, *inter alia*, that China will provide foreign aid to boost economic development and social advances in developing countries.<sup>44</sup> Article 18 further indicates that China will work "to strengthen solidarity and cooperation with other developing countries,"<sup>45</sup> aspirations it has failed to achieve when it comes to meaningful debt relief for African countries (e.g., Kenya, Zambia, Ghana, Congo, Ethiopia) and Asian countries (e.g., Laos, Mongolia, Pakistan, Sri Lanka) most indebted to China.<sup>46</sup> Between 2000 and 2017, China provided over \$800 billion to finance foreign projects.<sup>47</sup> As the world's largest bilateral creditor, "China's participation is [therefore] essential to meaningful debt relief."<sup>48</sup> However, unlike the International Monetary Fund, the World Bank, and the Paris Club, China "has

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42. Michael R. Pence, U.S. Vice President, Remarks at the East Asia Summit Plenary Session (Nov. 15, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/prepared-remarks-vice-president-pence-east-asia-summit-plenary-session/>.

43. PRC Foreign Relations Law, *supra* note 1, art. 21.

44. *Id.* art. 27.

45. *Id.* art. 18.

46. Adam Behsudi, *The "Rift is There": China vs. the World on Global Debt*, POLITICO (Apr. 11, 2023), <https://www.politico.com/news/2023/04/11/china-lending-imf-world-bank-00090588>; Bernard Condon, *China's Loans Pushing World's Poorest Countries to Brink of Collapse*, AP NEWS (May 18, 2023), <https://apnews.com/article/china-debt-banking-loans-financial-developing-countries-collapse-8df6f9fac3e1e758d0e6d8d5dfbd3ed6>.

47. Behsudi, *supra* note 46.

48. Janet L. Yellen, U.S. Secretary of the Treasury, Remarks on the U.S.-China Economic Relationship at Johns Hopkins School of Advanced International Studies (Apr. 20, 2023), <https://home.treasury.gov/news/press-releases/jy1425>; Behsudi, *supra* note 46.

not moved in a comprehensive and timely manner” to provide meaningful debt relief but rather “has served as a roadblock to necessary action.”<sup>49</sup>

Zambia, for example, borrowed billions of dollars from China over the last twenty years to build dams, railways, and roads.<sup>50</sup> The loans initially improved the Zambian economy, but interest payments were so high that the government was forced to “cut spending on healthcare, social services, and subsidies to farmers.”<sup>51</sup> In November 2020, unable to make payments on its loans, Zambia defaulted, resulting in a 50 percent increase in inflation, a 17-year high unemployment rate, and a 30 percent devaluation of the nation’s currency.<sup>52</sup>

China’s unwillingness to restructure or forgive loans effectively stifles any future economic growth for developing countries that have fallen prey to its debt-trap lending practices. In effect, Beijing’s “debt-trap diplomacy” saddles developing countries with loans they cannot repay so that China can seize “ports, mines, and other strategic assets.”<sup>53</sup>

## V. SOUND INTERACTION WITH MAJOR COUNTRIES

China’s commitment in Article 18 to promote “sound interaction with other major countries” rings hollow, particularly regarding interactions with the United States and Japan. China and the United States do not share similar views on States’ rights and obligations under the international law of the sea. Most States agree with the United States that coastal State authority over foreign flag vessels and aircraft seaward of the territorial sea is limited.<sup>54</sup> A

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49. *Id.*

50. Condon, *supra* note 46.

51. *Id.*

52. *Id.*

53. *Id.*; Brahma Chellaney, *China’s Debt-Trap Diplomacy*, THE HILL (May 2, 2021), <https://thehill.com/opinion/international/551337-chinas-debt-trap-diplomacy/>; Michael R. Pence, U.S. Vice President, Remarks on the Administration’s Policy Toward China (Oct. 4, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-vice-president-pence-administrations-policy-toward-china/>.

54. Raul (Pete) Pedrozo, *Military Activities in the Exclusive Economic Zone: East Asia Focus*, 90 INTERNATIONAL LAW STUDIES 514, 515–21, 540–41 (2014) [hereinafter Pedrozo, *Military Activities in the EEZ*]. See also Raul (Pete) Pedrozo, *Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China’s Exclusive Economic Zone*, 9 CHINESE JOURNAL OF INTERNATIONAL LAW 9, 16–18 (2010); Raul (Pete) Pedrozo, *Responding to Ms. Zhang’s Talking Points on the EEZ*, 10 CHINESE JOURNAL OF INTERNATIONAL LAW 207, ¶ 16 (2011); Raul (Pete) Pedrozo, *Military Activities In and Over the Exclusive Economic Zone*, in FREEDOM OF THE SEAS, PASSAGE RIGHTS, AND THE 1982 LAW OF THE SEA CONVENTION 235,

handful of States, including China, argue unconvincingly that coastal States retain residual rights in the EEZ that allow coastal States to impede high seas freedoms of navigation and overflight and other internationally lawful uses of the seas related to these freedoms, such as military activities.<sup>55</sup> As a result, U.S. military ships and aircraft routinely challenge China's excessive maritime claims by conducting presence operations, non-threatening transits of straits and territorial seas, flight operations, military surveys, freedom of navigation (FON) assertions, military exercises, and surveillance and reconnaissance operations. Increasingly, PLAN ships and aircraft closely monitor U.S. military activities and, at times, aggressively interfere with U.S. ships and aircraft lawfully operating in and over the East and South China Seas.

Some of the more notable examples of unsafe and unprofessional behavior by Chinese ships and aircraft include: (1) in March 2001, September 2002, March 2009, and May 2009, PLAN ships and aircraft confronted and harassed the USNS *Bowditch*, *Impeccable*, and *Victorious* while they were lawfully conducting survey and ocean surveillance operations in China's EEZ; (2) on April 1, 2001, a Chinese fighter plane collided with a U.S. Navy EP-3 electronic surveillance aircraft that was operating in international airspace about sixty-five miles southeast of China's Hainan Island, forcing the EP-3 to make an emergency landing on Hainan; (3) on December 5, 2013, USS *Compens* was monitoring a Chinese naval exercise in the South China Sea when a PLAN amphibious dock ship crossed *Compens*'s bow at one hundred meters and came to a full stop, forcing the U.S. cruiser to take evasive action to avoid a collision; (4) between March and August 2014, Chinese fighters conducted four "close intercepts" of U.S. surveillance aircraft, including an aggressive and dangerous intercept by a Chinese Su-27 fighter that came within twenty to thirty feet of a U.S. Navy P-8 maritime patrol aircraft that was conducting routine surveillance in international airspace about 135 miles east of Hainan Island on August 19; (5) on May 17, 2016, Chinese fighters flew within fifty feet of a U.S. Navy EP-3 surveillance aircraft in international airspace in the South China Sea; and (6) between 2016 and 2018, PLAN ships and aircraft engaged in eighteen unsafe and unprofessional encounters with

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237 (Myron H. Nordquist, Tommy T. B. Koh & John Norton Moore eds., 2009); Raul Pedrozo, *Close Encounters at Sea: The USNS Impeccable Incident*, 62 NAVAL WAR COLLEGE REVIEW 101 (2009); Raul Pedrozo, *Coastal State Jurisdiction over Marine Data Collection in the Exclusive Economic Zone: U.S. Views*, in MILITARY ACTIVITIES IN THE EEZ: A U.S.-CHINA DIALOGUE ON SECURITY AND INTERNATIONAL LAW IN THE MARITIME COMMONS 23, 23–26 (Peter Dutton ed., 2010).

55. Pedrozo, *Military Activities in the EEZ*, *supra* note 54, at 521–24.

U.S. forces, including an incident on September 30, 2018, when a PLAN destroyer overtook the USS *Decatur*, which was conducting a FON operation near Gaven Reef in the Spratlys, close by on the U.S. destroyer's port side (forty-five yards off the bow), forcing *Decatur* to turn starboard to avoid a collision.<sup>56</sup>

Unsafe and unprofessional interactions by Chinese ships and aircraft have not been limited to U.S. forces. For instance, between December 2021 and November 2022, Chinese fighters intercepted over sixty Canadian surveillance aircraft participating in UN sanctions enforcement operations off the coast of China. Over two dozen of these intercepts were considered dangerous by Canadian authorities.<sup>57</sup> Chinese fighters have engaged in similar dangerous maneuvers against Australian military aircraft. In June 2022, a Chinese J-16 jet cut across the nose of an Australian P-8 surveillance plane at a very close distance. The J-16 then released a "bundle of chaff" containing small pieces of aluminum, some of which were ingested into the engine of the P-8."<sup>58</sup> More recently, in May 2023, a Canadian surveillance plane engaged in UN sanctions enforcement against North Korea was repeatedly intercepted by Chinese fighters. Some of the intercepts were described as dangerous by Canadian military authorities.<sup>59</sup>

To avert the risk of miscalculation during encounters at sea and in the air, the United States and China have entered several bilateral arrangements, including the Military Maritime Consultative Agreement, the Rules of Behavior for Safety of Air and Maritime Encounters (Annex I & II), and the Supplement to Rules of Behavior for Safety of Air and Maritime Encounters

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56. *Id.* at 515, 522–23; RONALD O'ROURKE, CONG. RESEARCH SERV., R42784, U.S.-CHINA STRATEGIC COMPETITION IN SOUTH AND EAST CHINA SEAS: BACKGROUND AND ISSUES FOR CONGRESS 53–57 (updated June 5, 2023), <https://s3.documentcloud.org/documents/23836815/us-china-strategic-competition-in-south-and-east-china-seas-background-and-issues-for-congress-june-5-2023.pdf>.

57. Aaron D'Andrea, *Canadian Military Plane "Intercepted" by Chinese Jets During Latest Mission*, GLOBAL NEWS (Nov. 30, 2022), <https://globalnews.ca/news/9314402/china-canada-military-plane-interception/>.

58. Daniel Hurst, "A Dangerous Act": How a Chinese Fighter Jet Intercepted an RAAF Aircraft and What Happens Next, GUARDIAN (June 7, 2022), <https://www.theguardian.com/australia-news/2022/jun/07/a-dangerous-act-how-a-chinese-fighter-jet-intercepted-an-raaf-aircraft-and-what-happens-next>.

59. Todd Coyne, *Canadian Military Plane Subjected to "Unsafe" Chinese Intercepts, DND Says*, CTV NEWS (June 5, 2023), <https://vancouverisland.ctvnews.ca/canadian-military-plane-subjected-to-unsafe-chinese-intercepts-dnd-says-1.6427681>.

(Annex III).<sup>60</sup> China has additionally agreed to abide by the Western Pacific Naval Symposium Code for Unplanned Encounters at Sea (CUES) and is a party to UNCLOS, COLREGS, and the Convention on International Civil Aviation (Chicago Convention).<sup>61</sup> All these agreements and arrangements contain binding and non-binding guidance and procedures to ensure safety at sea and in the air when ships and aircraft encounter one another. Of paramount importance are the need to exercise professional seamanship and airmanship, take prompt and adequate measures to avoid the risk of collision by maintaining safe separation and active communications, and give due regard for the rights, freedoms and lawful uses of the sea and airspace by other States' military ships and aircraft.<sup>62</sup>

Nonetheless, despite its legal and moral obligations under these instruments, Chinese ships and aircraft continue to engage in unsafe and unprofessional conduct when encountering U.S. military ships and aircraft. For example, on May 30, 2023, a Chinese J-16 fighter jet conducted an “unnecessarily aggressive maneuver during the intercept of a U.S. Air Force RC-135 aircraft” that was conducting a routine surveillance operation over the South China Sea in international airspace. The Chinese jet “flew directly in front of

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60. Agreement on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety, China-U.S., Jan. 19, 1998, T.I.A.S. No. 12924 [hereinafter MMCA]; Memorandum of Understanding Between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters, Nov. 9–10, 2014, [https://dod.defense.gov/Portals/1/Documents/pubs/141112\\_MemorandumOfUnderstandingRegardingRules.pdf](https://dod.defense.gov/Portals/1/Documents/pubs/141112_MemorandumOfUnderstandingRegardingRules.pdf); Supplement to the Memorandum of Understanding on the Rules of Behavior for Safety of Air and Maritime Encounters Between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China, Sept. 15–18, 2015, [https://china.usc.edu/sites/default/files/article/attachments/US-CHINA\\_AIR\\_ENCOUNTERS\\_ANNEX\\_SEP\\_2015.pdf](https://china.usc.edu/sites/default/files/article/attachments/US-CHINA_AIR_ENCOUNTERS_ANNEX_SEP_2015.pdf) [hereinafter SROB].

61. Code for Unplanned Encounters at Sea, Apr. 22, 2014, <http://www.ions.global/sites/default/files/CUES-10-Approvedat-the-14th-WPNS-2014422.pdf> [hereinafter CUES]; UNCLOS, *supra* note 35; COLREGS, *supra* note 29; Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 [hereinafter Chicago Convention].

62. UNCLOS, *supra* note 35, arts. 56, 58, 86–87, 89–90, 94–96, 300; COLREGS, *supra* note 29, r. 2, 6–8, 14–17; Chicago Convention, *supra* note 61, art. 3, Annex 2; MMCA, *supra* note 60, art. I; CUES, *supra* note 61, §§ 1.1, 2.1, 2.6, 3.3; ROB, *supra* note 60, Annex I, § II, Annex II, §§ I, II, IV; SROB, *supra* note 60, Annex III, §§ I–IV.

the nose of the RC-135, forcing the U.S. aircraft to fly through its wake turbulence.”<sup>63</sup> A few days later, on June 3, 2023, a PLAN destroyer—*Luyang III*—executed unsafe maneuvers in the vicinity of USS *Chung-Hoon* while the U.S. warship was conducting a routine transit through the Taiwan Strait.<sup>64</sup> Consistent with Article 36 of UNCLOS, all ships and aircraft enjoy high seas freedoms of navigation and overflight through the EEZ corridor of the Taiwan Strait.<sup>65</sup> During the transit, the PLAN destroyer overtook *Chung-Hoon* on its port side and crossed its bow at 150 yards, forcing the U.S. destroyer to slow to ten knots to avoid a collision. The Chinese warship crossed *Chung-Hoon*'s bow a second time starboard to port at two thousand yards and remained off *Chung-Hoon*'s port bow.<sup>66</sup> Both of these recent unsafe and unprofessional encounters violate China's treaty commitments under the Military Maritime Consultative Agreement, UNCLOS, COLREGS, and the Chicago Convention, as well as its commitments under CUES, the Rules of Behavior for Safety of Air and Maritime Encounters, and its Supplement, and clearly do not promote “sound interaction” between the two countries.

China's maritime encounters with Japan are equally abhorrent. As an example, Japan and China have an ongoing sovereignty dispute over the Senkaku Islands.<sup>67</sup> Japan has exercised effective administration and control over the islands since 1895, when the Japanese government incorporated the islands as *terra nullius*, except for the period between 1951 and 1972 when the

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63. U.S. Indo-Pacific Command Public Affairs, Statement on Unprofessional Intercept of U.S. Aircraft Over South China Sea (May 30, 2023), <https://www.pacom.mil/Media/News/News-Article-View/Article/3410337/usindopacom-statement-on-unprofessional-intercept-of-us-aircraft-over-south-chi/>.

64. U.S. Indo-Pacific Command Public Affairs, Statement on Unsafe Maritime Interaction (June 3, 2023), <https://www.pacom.mil/Media/News/News-Article-View/Article/3415952/usindopacom-statement-on-unsafe-maritime-interaction/>.

65. UNCLOS, *supra* note 35, art. 36; Pete Pedrozo, *Unpacking the Distinction: One China Principle v. One China Policy*, LAWFIRE (Aug. 19, 2022), <https://sites.duke.edu/lawfire/2022/08/19/prof-pete-pedrozo-on-unpacking-the-distinction-one-china-principle-v-one-china-policy/>.

66. USINDOPACOM Statement (June 3, 2023), *supra* note 64.

67. Ministry of Foreign Affairs of Japan, , The Basic View on the Sovereignty Over the Senkaku Islands (May 8, 2013), <https://www.mofa.go.jp/region/asia-paci/senkaku/basic-view.html>; Ministry of Foreign Affairs of People's Republic of China, Diaoyu Islands Belong to China (Oct. 22, 2012), [https://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/diaodao\\_665718/201210/t20121022\\_701844.html](https://www.fmprc.gov.cn/mfa_eng/topics_665678/diaodao_665718/201210/t20121022_701844.html).

islands were under U.S. administration pursuant to Article 3 of the San Francisco Peace Treaty.<sup>68</sup> The United States returned administrative control of the islands to Japan in 1972 pursuant to Article I of the Okinawa reversion treaty. Pursuant to Article II of the reversion treaty, the islands also fall within the scope of Article 5 of the 1960 U.S.-Japan Treaty of Mutual Cooperation and Security.<sup>69</sup> Thus, Japan clearly has a superior claim to the islands.<sup>70</sup>

Despite Japan's best efforts to negotiate a peaceful settlement of the disagreement, China has signaled it has no intentions of resolving the sovereignty issue amicably, elevating the status of the Senkakus dispute to a "core interest" in April 2013.<sup>71</sup> Instead, China has done everything in its power to change the status quo by engaging in acts of aggression, intimidation, and coercion. Examples of China's provocative and dangerous behavior include two incidents in January 2013. On January 19th, a PLAN frigate illuminated a Japan Maritime Self-Defense Force helicopter with its fire control radar, and on January 30th, a PLAN frigate locked its fire control radar on a Japanese destroyer while both were operating in the East China Sea. Locking a fire control radar on another ship is highly provocative and dangerous, as it could be viewed by the other ship as a threat of an impending use of force.<sup>72</sup> Moreover, since 2013, armed CCG and PAFMM vessels have maintained a near year-round constant presence in Japanese waters around the Senkakus in an apparent effort to demonstrate that Japan does not exercise effective administrative control of the islands.<sup>73</sup>

Despite Japan's strong diplomatic protests, Chinese vessels continue to intrude into Japan's territorial sea and contiguous zone around the Senkakus

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68. Ministry of Foreign Affairs of Japan, Situation of the Senkaku Islands (May 8, 2013), [https://www.mofa.go.jp/a\\_o/c\\_m1/senkaku/page1we\\_000010.html](https://www.mofa.go.jp/a_o/c_m1/senkaku/page1we_000010.html); Treaty of Peace with Japan art. 3, Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 45 (entered into force Apr. 28, 1952).

69. Agreement Between the United States of America and Japan Concerning the Ryukyu Islands and Daito Islands, U.S.-Japan arts. I–II, June 17, 1971, 23 U.S.T. 446; Treaty of Mutual Cooperation and Security Between Japan and the United States art. 5, Jan. 19, 1960, 11 U.S.T. 1632 T.I.A.S. No. 4509, 373 U.N.T.S. 186.

70. Raul (Pete) Pedrozo, *International Law and Japan's Territorial Disputes*, 92 INTERNATIONAL LAW STUDIES 119, 136–52 (2016).

71. *China Officially Labels Senkakus a "Core Interest,"* JAPAN TIMES (Apr. 27, 2013), <https://www.japantimes.co.jp/news/2013/04/27/national/china-officially-labels-senkaku-a-core-interest/>.

72. Japan Ministry of Defense, Defense of Japan 2022, 178–82.

73. *Id.* at 48–50.



daily, peaking at 1,222 ships in 2021.<sup>74</sup> During the first six months of 2023, forty-six CCG and PAFMM vessels have entered the territorial sea around the Senkakus, and another 640 vessels have been observed operating in the contiguous zone.<sup>75</sup> At that pace, 2023 will see a record number of illegal incursions by Chinese vessels into the waters surrounding the Senkakus. It is difficult to see how these continued incursions will promote “sound interaction” between the two countries.

## VI. ARMS CONTROL

Article 20 commits China to uphold “international regimes of arms control, disarmament and non-proliferation,” not engage in an “arms race . . . , oppose and prohibit proliferation of weapons of mass destruction in any form,” fulfill its “relevant international obligations,” and engage in “international cooperation on non-proliferation.”<sup>76</sup> While these aspirations may be laudable, they are at odds with China’s “long-term modernization plans to enhance its strategic deterrence capabilities.”<sup>77</sup> For example, in 2021, China launched over 135 ballistic missiles for testing and training—“more than the rest of the world combined.”<sup>78</sup> China is also growing its inventory of DF-26 intermediate-range ballistic missiles, which can conduct both conventional and nuclear precision strikes against land and maritime targets. Additionally, China has developed “new intercontinental ballistic missiles (ICBM) that will significantly improve its nuclear-capable missile forces.”<sup>79</sup> Furthermore, China continues construction at three solid-fueled ICBM silo fields that will “contain at least 300 new ICBM silos” capable of fielding both DF-31 and DF-41 class ICBMs.<sup>80</sup> This project suggests that China “intends to increase the peacetime readiness of its nuclear force by moving to a launch-on-warning (LOW) posture.”<sup>81</sup>

There is also growing evidence that China is modernizing, diversifying, and expanding its nuclear forces by “investing in, and expanding, the number of its land-, sea-, and air-based nuclear delivery platforms and constructing

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74. *Id.* at 48.

75. *Id.* at 48–50.

76. PRC Foreign Relations Law, *supra* note 1, art. 20.

77. U.S. DEP’T OF DEF., MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 64 (2020).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

the infrastructure necessary to support this major expansion of its nuclear forces.”<sup>82</sup> The modernization of the submarine force has been a priority. The PLAN currently operates six *Jin*-class (Type 094) ballistic missile submarines (SSBN), which can carry up to twelve JL-2 and JL-3 submarine-launched ballistic missiles (SLBM). These submarines represent China’s first credible sea-based nuclear deterrent, and the increased range of the JL-3 SLBM (7,450 miles) allows China to target the U.S. mainland from the near seas. To support this expansion, China is increasing its “capacity to produce and separate plutonium by constructing fast breeder reactors and reprocessing facilities.”<sup>83</sup> In 2021, the U.S. Department of Defense estimated China had over four hundred operational nuclear warheads in its arsenal and will likely have fifteen hundred by 2035. China has additionally fielded the DF-41 (road-mobile and silo-based ICBM) with multiple independent reentry vehicles, which has “improved range and accuracy over DF-31 class ICBMs.”<sup>84</sup> In short, unimpeded by bilateral nuclear arms control treaties, China is fueling the arms race and is expanding its strategic warfighting capabilities to include missiles with multiple nuclear warheads, nuclear-capable precision-strike and hypersonic weapons, and nuclear submarines armed with JL-3 SLBMs.

Article 35 of the new law imposes additional requirements on China regarding the implementation of sanction resolutions and relevant measures adopted by the UN Security Council.<sup>85</sup> In this regard, China is waning in its nonproliferation obligations by failing to adequately enforce UN sanctions aimed at curtailing North Korea’s (DPRK) nuclear weapons and missile programs. After the DPRK conducted a nuclear weapons test in 2006,<sup>86</sup> the UN Security Council imposed sanctions on the DPRK pursuant to Chapter VII of the UN Charter.<sup>87</sup> Continued DPRK nuclear and ballistic missile tests after 2006 resulted in further UN sanctions against Pyongyang.<sup>88</sup> Despite these

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82. *Id.* at 94.

83. *Id.*

84. *Id.*

85. PRC Foreign Relations Law, *supra* note 1, art. 35.

86. *9 October 2006—First DPRK Nuclear Test*, COMPREHENSIVE NUCLEAR-TEST BAN TREATY ORGANIZATION, <https://www.ctbto.org/our-work/detecting-nuclear-tests/2006-dprk-nuclear-test> (last visited Sept. 15, 2023).

87. S.C. Res. 1718 (Sept. 14, 2006); *see also* U.N. Charter, art. 41.

88. UN Security Council Resolutions on North Korea, ARMS CONTROL ASSOCIATION (Jan. 2022), <https://www.armscontrol.org/factsheets/UN-Security-Council-Resolutions-on-North-Korea>; S.C. Res. 1874 (June 12, 2009); S.C. Res. 2087 (Jan. 22, 2013); S.C. Res. 2094 (Mar. 7, 2013); S.C. Res. 2270 (Mar. 2, 2016); S.C. Res. 2321 (Nov. 30, 2016); S.C. Res.

robust measures, the DPRK continues to evade sanctions, particularly through illicit ship-to-ship transfers of refined petroleum products and coal.<sup>89</sup>

A ship-to-ship transfer occurs when cargo is moved from one ship to another while at sea to conceal the origin or destination of the transferred cargo.<sup>90</sup> The DPRK operates twenty-eight tankers that can engage in ship-to-ship transfers of refined petroleum products and thirty-three cargo ships that can transport coal.<sup>91</sup> Most ship-to-ship transfers of refined petroleum products occur in the East China Sea off the coast of China, and to a lesser extent in the Yellow Sea off the Chinese and DPRK coasts, and the Sea of Japan off the coasts of Russia and DPRK.<sup>92</sup> Despite the sanctions, “China continues to import North Korean coal by sea” and “fails to act against prohibited ship-to-ship transfers in their territorial waters,” clear evidence that China is not cooperating to suppress the DPRK’s nuclear ambitions.<sup>93</sup> Rather than setting an example of strict compliance with the sanctions, China is skirting its treaty obligations as a permanent member of the Security Council.

## VII. HUMAN RIGHTS

Articles 22 and 23 of the new law contain several pronouncements about the need to respect and protect human rights and China’s commitment to the principle of universality of human rights.<sup>94</sup> While these aspirational state-

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2356 (June 2, 2017); S.C. Res. 2371 (Aug. 5, 2017); S.C. Res. 2375 (Sept. 11, 2017); S.C. Res. 2397 (Dec. 22, 2017).

89. U.S. DEP’T OF STATE, U.S. DEP’T OF TREASURY & U.S. COAST GUARD, NORTH KOREA SANCTIONS ADVISORY: UPDATED GUIDANCE ON ADDRESSING NORTH KOREA’S ILLICIT SHIPPING PRACTICES 1 (2019) [hereinafter NORTH KOREA SANCTIONS ADVISORY (2019)]; U.S. DEP’T OF STATE, U.S. DEP’T OF TREASURY & U.S. COAST GUARD, GUIDANCE TO ADDRESS ILLICIT SHIPPING AND SANCTION EVASION PRACTICES (2020).

90. Raul (Pete) Pedrozo, *DPRK Maritime Sanctions Enforcement*, 96 INTERNATIONAL LAW STUDIES 98, 103 (2020).

91. NORTH KOREA SANCTIONS ADVISORY (2019), *supra* note 89, at 2.

92. *Id.* at 3.

93. *Id.*

94. PRC Foreign Relations Law, *supra* note 1, art. 22 (“The People’s Republic of China respects and protects human rights; it is committed to the principle of universality of human rights and its observance in light of the realities of countries. The People’s Republic of China promotes comprehensive and coordinated development of all human rights, carries out international exchanges and cooperation in the field of human rights on the basis of equality

ments are laudable, they do not reflect China's documented record of extensive human rights abuses. The most recent reports published by the U.S. State Department, United Nations Human Rights Office of the High Commissioner, and Human Rights Watch document acts of genocide and crimes against humanity "against predominantly Muslim Uyghurs and members of other ethnic and religious minority groups in Xinjiang."<sup>95</sup> Examples of some of the crimes committed by Chinese officials include:

the arbitrary imprisonment or other severe deprivation of physical liberty of more than one million civilians; forced sterilization, coerced abortions, and more restrictive application of the country's birth control policies; rape and other forms of sexual and gender-based violence; torture of a large number of those arbitrarily detained; and persecution including forced labor and draconian restrictions on freedom of religion or belief, freedom of expression, and freedom of movement.<sup>96</sup>

According to a U.S. State Department report, Chinese government officials and security services personnel routinely commit human rights abuses with impunity. Documented evidence of human rights abuses includes credible reports of:

arbitrary or unlawful killings . . . , forced disappearances . . . , [and] torture by the government; harsh and life-threatening prison and detention conditions; arbitrary arrest and detention by the government including . . . more than one million Uyghurs and members of other predominantly Muslim minority groups in extrajudicial internment camps, prisons, and an additional unknown number subjected to daytime-only "re-education" training; political prisoners; . . . arbitrary interference with privacy including pervasive and intrusive technical surveillance and monitoring . . . ; punishment

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and mutual respect, and works for the sound development of the global cause of human rights."), art. 23 ("The People's Republic of China calls on all countries to rise above national, ethnic and cultural differences and uphold peace, development, equity, justice, democracy and freedom, which are common values of humanity").

95. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (INCLUDES HONG KONG, MACAU, AND TIBET) [hereinafter DEP'T OF STATE HUMAN RIGHTS COUNTRY REPORT (2022)]; UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, OHCHR ASSESSMENT OF HUMAN RIGHTS CONCERNS IN THE XINJIANG UYGHUR AUTONOMOUS REGION, PEOPLE'S REPUBLIC OF CHINA (Aug. 31, 2022); HUMAN RIGHTS WATCH, WORLD REPORT 2023: CHINA, <https://www.hrw.org/world-report/2023/country-chapters/china> (last visited Sept. 15, 2023).

96. DEP'T OF STATE HUMAN RIGHTS COUNTRY REPORT (2022), *supra* note 95.

of family members for offenses allegedly committed by an individual; serious restrictions on free expression and media, including physical attacks on and criminal prosecution of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others; . . . substantial interference with the freedom of peaceful assembly and freedom of association . . . ; severe restrictions and suppression of religious freedom; substantial restrictions on freedom of movement; refoulement of asylum seekers to North Korea . . . ; forced sterilization and coerced abortions; violence targeting members of national, racial, and ethnic minority groups; trafficking in persons, including forced labor; . . . and child labor.<sup>97</sup>

Fundamentally, China's human rights record is abysmal at best.

### VIII. GLOBAL ENVIRONMENTAL GOVERNANCE

Article 25 makes the outlandish claim that:

China plays an active part in global environmental and climate governance and endeavors to strengthen international cooperation on green and low-carbon development; it is committed to jointly enhancing global ecological conservation and building a global system of environmental and climate governance that is fair, equitable, cooperative and beneficial to all.<sup>98</sup>

Recent studies show that China emits more greenhouse gas than all the developed world combined, nearly one-third of total emissions.<sup>99</sup> This includes being the world's largest emitter of carbon dioxide and methane.<sup>100</sup> In short, China is the world's leading polluter.

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97. *Id.*

98. PRC Foreign Relations Law, *supra* note 1, art. 25.

99. Alfredo Rivera et al., *Global Greenhouse Gas Emissions: 1990–2020 and Preliminary 2021 Estimates*, RHODIUM GROUP (Dec. 19, 2022), <https://rhg.com/research/global-greenhouse-gas-emissions-2021/>; *Report: China Emissions Exceed All Developed Nations Combined*, BBC NEWS (May 7, 2021), <https://www.bbc.com/news/world-asia-57018837>.

100. Ian Tiseo, *Distribution of Carbon Dioxide Emissions Worldwide in 2021 by Select Country*, STATISTA (June 16, 2023), <https://www.statista.com/statistics/271748/the-largest-emitters-of-co2-in-the-world/>; Andriy Blokhin, *The 5 Countries That Produce the Most Carbon Dioxide (CO2)*, INVESTOPEDIA (updated Apr. 11, 2023), <https://www.investopedia.com/articles/investing/092915/5-countries-produce-most-carbon-dioxide-co2.asp>; Ian Tiseo, *Largest Methane-emitting Countries Worldwide in 2021*, STATISTA (Mar. 28, 2023), <https://www.statista.com/statistics/1356760/global-methane-emissions-by-leading-country/#statisticContainer>.

China is also the kingpin of illegal, unreported, and unregulated (IUU) fishing.<sup>101</sup> IUU fishing undermines “efforts to sustainably manage global fisheries and effectively conserve ocean biodiversity” and is thus a “major threat to ocean ecosystems worldwide.”<sup>102</sup> IUU “is also a significant economic and social disruptor, is detrimental to the legal fishery trade and has been linked to organized crime.”<sup>103</sup> By depleting fish stocks, “IUU fishing threatens global food security,” as well as “the livelihoods of some 40 million people who are employed worldwide in capture fishing alone, plus millions more in associated industries.”<sup>104</sup> IUU fishing exploits “corrupt administrations and . . . weak management regimes, in particular those of developing countries lacking the capacity and resources” to monitor, control, and surveil IUU fishing effectively.<sup>105</sup> IUU fishing can occur on the high seas or in areas under national jurisdiction. By removing “fisheries resources available to bona fide fishers,” IUU fishing “can lead to the collapse of local fisheries, with small-scale fisheries in developing countries proving particularly vulnerable.”<sup>106</sup>

Of the 152 coastal States rated by the IUU Fishing Index, China was the worst-performing country overall in combating IUU fishing, with an overall score of 3.93 in 2019 and 3.86 in 2021.<sup>107</sup> Index rankings are based on a set of forty indicators related to the prevalence of IUU fishing in each State and each State’s vulnerability and response to IUU fishing, relying on coastal, flag, port, and other State responsibilities.<sup>108</sup>

China has the largest distant water fishing fleet in the world—at three thousand vessels, representing 36 percent of the world’s distant water fishing

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101. IUU FISHING INDEX, CHINA 2021 COUNTRY RESULTS, <https://www.iuufishingindex.net/profile/china> (last visited Sept. 15, 2023) (the Index provides a measure of the degree to which States are exposed to and effectively combat IUU fishing).

102. IUU FISHING INDEX, GLOBAL INITIATIVE 2021 RESULTS, <https://iuufishingindex.net/ranking>.

103. *Id.*

104. *Id.*

105. U.N. FOOD AND AGRIC. ORG., ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING, <https://www.fao.org/iuu-fishing/en/> (last visited Sept. 15, 2023).

106. *Id.*

107. GLOBAL INITIATIVE, IUU FISHING INDEX 2021 RESULTS, <https://iuufishingindex.net/ranking> (last visited Sept. 15, 2023).

108. G. MACFADYEN ET. AL., THE ILLEGAL, UNREPORTED AND UNREGULATED FISHING INDEX (Jan. 2019), <https://globalinitiative.net/wp-content/uploads/2019/02/IUU-Fishing-Index-Report-web-version.pdf>; Raul (Pete) Pedrozo, *China’s IUU Fishing Fleet: Pariah of the World’s Oceans*, 99 INTERNATIONAL LAW STUDIES 319 (2022).

capacity.<sup>109</sup> An exhaustive report on IUU fishing conducted by the Financial Transparency Coalition found that 33 percent of all IUU fishing vessels are flagged in China, and eight of the top ten companies that own nearly 25 percent of total vessels involved in IUU fishing are from China.<sup>110</sup> The report also noted that China does not vigorously regulate its distant water fishing fleet and “has a weak record of engaging with the international community and complying” with regional fisheries management organization obligations. In addition, China has not joined “some fundamental marine conventions, such as the Fund for Compensation for Oil Pollution Damage of 1992 (International Chamber of Shipping, 2019), the Forced Labour Convention (1930) and the Freedom of Association and Protection of the Right to Organise (1948).” Additionally, China has yet to ratify the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing, which aims to “strengthen controls in ports where the fisheries catches are landed and reported, denying access to vessels suspected of IUU activity.”<sup>111</sup>

Finally, as briefly discussed in Part III, an arbitral tribunal found that China engaged in numerous environmental transgressions, both by harmful fishing activities and through its artificial island-building efforts in the South China Sea. Specifically, the tribunal found that China’s “harvesting of sea turtles, species threatened with extinction, to constitute a harm to the marine environment . . . and . . . that the harvesting of corals and giant clams from the waters surrounding Scarborough Shoal and features in the Spratly Islands . . . had a harmful impact on the fragile marine environment.”<sup>112</sup> The tribunal, therefore, considered that China’s failure to take measures to prevent these practices constituted a breach of its treaty obligations under UNCLOS, Articles 192 and 194(5).<sup>113</sup> Moreover, China was additionally responsible for “widespread environmental degradation caused by propeller chopping for giant clams across the Spratlys,” which breached its obligation to “protect and preserve the marine environment.”<sup>114</sup>

The tribunal also examined the “environmental impact of China’s extensive island-building project at seven reefs” in the Spratlys, which included

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109. Alfonso Daniels et. al., *Fishy Networks: Uncovering the Companies and Individuals Behind Illegal Fishing Globally* 25, FINANCIALTRANSPARENCY.ORG (Oct. 2022), <https://financialtransparency.org/wp-content/uploads/2022/10/FTC-fishy-Network-OCT-2022-Final.pdf>.

110. *Id.* at 15, 20.

111. *Id.* at 22.

112. SCS Arbitration Award, *supra* note 24, ¶ 960.

113. *Id.*

114. *Id.* ¶¶ 965–66, 992.

the reclamation of about 12.8 million square meters of land “from millions of tons of dredged coral, rocks and sand.”<sup>115</sup> Based on compelling evidence, the tribunal found “that China’s artificial island-building activities on the seven reefs . . . caused devastating and long-lasting damage to the marine environment.”<sup>116</sup> Accordingly, the tribunal found that China “breached its obligation under [UNCLOS] Article 192 to protect and preserve the marine environment,” polluted the marine environment with sediment from its dredging activities in breach of Article 194(1), and “violated its duty under Article 194(5) to take measures necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.”<sup>117</sup>

These egregious examples of Chinese environmental devastation reflect that Beijing is not the environmental steward that it purports to be in Article 25 of the new law.

#### IX. FOREIGN TRADE AND THE GLOBAL ECONOMY

China’s commitments outlined in Article 26 of the new law regarding, *inter alia*, foreign trade, foreign investment, the multilateral trading system, and the global economy are not supported by China’s record of non-compliance at the World Trade Organization (WTO). When China joined the WTO in 2001, “it voluntarily agreed to embrace the WTO’s open, market-oriented approach and to embed it in China’s trading system and institutions,” as well as “to take on the obligations set forth in existing WTO rules.”<sup>118</sup> Unfortunately, after more than twenty years of WTO membership, China has not lived up to its promises and its “record of compliance with these terms has been poor.”<sup>119</sup> Despite its own representations, China continues to embrace “a state-led, non-market approach to the economy and trade, despite other WTO Members’ expectations . . . that China would transform its economy and pursue the open, market-oriented policies endorsed by the WTO.”<sup>120</sup>

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115. *Id.* ¶ 976.

116. *Id.*

117. *Id.* ¶¶ 983, 993.

118. U.S. TRADE REPRESENTATIVE, 2022 REPORT TO CONGRESS ON CHINA’S WTO COMPLIANCE 2 (Feb. 2023).

119. *Id.*

120. *Id.*



China's "state-led, non-market approach to the economy and trade has increased . . . over time, and the mercantilism that it generates" severely harms and disadvantages workers and companies of other WTO members.<sup>121</sup>

China also routinely violates, disregards, and evades "WTO rules to achieve its industrial policy objectives."<sup>122</sup> In this regard, "China continues to use numerous and constantly evolving unfair, nonmarket, and distortive trade policies and practices in pursuit of harmful and anticompetitive industrial policy objectives." At the same time, China seeks to frustrate WTO oversight mechanisms by failing to adhere to its WTO transparency obligations.<sup>123</sup> Thus, China has been able to use its WTO membership to develop rapidly, "but in an anticompetitive manner that comes at the expense of others."<sup>124</sup>

China has no intentions of fundamentally changing its economic and trade regime to comply with WTO rules and practices. WTO "was designed for countries that are truly committed to market principles, not for an economically powerful country [like China] determined to maintain a state-led, non-market system."<sup>125</sup> The CCP employs "a wide array of interventionist industrial policies and supporting measures, which provide substantial government guidance, massive financial resources, and favorable regulatory support to domestic industries across the economy, often in pursuit of specific targets for capacity and production levels and market shares."<sup>126</sup> China also limits "market access for imported goods and services," restricts "the ability of foreign manufacturers and services suppliers to do business in China," and uses illicit "means to secure foreign intellectual property and technology to further its industrial policy objectives."<sup>127</sup>

Critical sectors of the global economy, such as steel, aluminum, solar, and fisheries, have been systematically distorted by the industrial policies that flow from China's nonmarket economic system, "devastating markets in the United States and other countries."<sup>128</sup> China's industrial policies also displace "companies in new, emerging sectors of the global economy, as the Chinese

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121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 3.

125. *Id.* at 4.

126. *Id.*

127. *Id.*

128. *Id.* at 5.

government and the Chinese Communist Party . . . intervene in these sectors on behalf of Chinese companies.”<sup>129</sup>

#### X. COMPLIANCE WITH TREATY OBLIGATIONS

Article 30 commits China to fulfill its treaty obligations in good faith.<sup>130</sup> One need look no further than China’s reaction to the previously discussed South China Sea arbitral decision to realize that China’s commitment to comply with its treaty obligations is an empty promise. China ratified UNCLOS on June 7, 1996, with a declaration that it would not accept compulsory dispute settlement procedures with respect to any disputes concerning (1) the interpretation or application of UNCLOS articles relating to sea boundary delimitations, or those involving historic bays or titles; (2) military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities regarding the exercise of sovereign rights or jurisdiction over marine scientific research and fisheries; and (3) situations in which the UN Security Council is exercising the functions assigned to it by the UN Charter.<sup>131</sup>

On January 22, 2013, the Philippines initiated arbitration proceedings against China pursuant to UNCLOS Articles 286 and 287 and in accordance with Annex VII, Article 1.<sup>132</sup> China rejected the arbitration and returned the Notification and Statement of Claim to the Philippines, electing not to participate in the arbitration.<sup>133</sup> China’s decision to refrain from participating in the proceedings did not affect the jurisdiction of the tribunal to consider the case.<sup>134</sup> Thus, the tribunal determined that China was a party to the arbitration and would be bound by any award issued by the tribunal.<sup>135</sup>

129. *Id.*

130. PRC Foreign Relations Law, *supra* note 1, art. 30.

131. See Declaration of China Under Article 298, *Status of United Nations Convention on the Law of the Sea*, U.N. TREATY COLLECTION (status as of Sept. 14, 2023), [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec) (“The Government of the People’s Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b), and (c) of Article 298 of the Convention”).

132. SCS Arbitration Award, *supra* note 24, ¶ 28; UNCLOS, *supra* note 35, arts. 286, 287, art. 1 to Annex VII.

133. SCS Arbitration Award, *supra* note 24, ¶¶ 11, 29.

134. *Id.* ¶ 12; UNCLOS, *supra* note 35, art. 9 to Annex VII.

135. SCS Arbitration Award, *supra* note 24, ¶ 12; UNCLOS, *supra* note 35, art. 296(1), art. 11 to Annex VII.

The arbitration concerned disputes between the Philippines and China regarding the legal basis of maritime rights and entitlements in the South China Sea, the status of certain geographic features in the South China Sea, and the lawfulness of certain actions taken by China in the South China Sea.<sup>136</sup>

On July 12, 2016, the arbitral tribunal unanimously decided the case in favor of the Philippines. The tribunal rejected China's claim to historic rights to resources within the sea areas falling within the "nine-dashed line"<sup>137</sup> in the South China Sea as having no basis in international law.<sup>138</sup> The tribunal also found that Mischief Reef and Second Thomas Shoal were low-tide elevations within two hundred nautical miles of Palawan Island and, therefore, formed part of the Philippine EEZ and continental shelf.<sup>139</sup> The tribunal additionally determined that China has violated Philippine sovereign rights in its EEZ and continental shelf by (a) interfering with Philippine fishing in its EEZ and petroleum exploration at Reed Bank, (b) constructing artificial islands at Mischief Reef without Philippine permission, and (c) failing to prevent Chinese fishermen from fishing in the Philippine EEZ at Mischief Reef and Second Thomas Shoal.

As discussed in Part III above, the tribunal further held that Chinese law enforcement vessels had violated COLREGS when they physically obstructed Philippine vessels, which also constituted a breach of China's obligations under UNCLOS, Article 94.<sup>140</sup> Also, the tribunal found that China's large-scale land reclamation and construction of artificial islands in the Spratlys caused severe harm to the coral reef environment and violated China's obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species.<sup>141</sup> Finally, the tribunal found that China violated its obligations under international law by failing to prevent Chinese fishermen from illegally harvesting endangered sea turtles, coral, and giant clams on a substantial scale in the South China Sea using fishing methods that inflict severe damage on the coral reef environment.<sup>142</sup>

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136. SCS Arbitration Award, *supra* note 24, ¶ 2.

137. Note Verbal, Permanent Mission of the People's Republic of China to the United Nations, CML/18/2009 (May 7, 2009), [https://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](https://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf).

138. SCS Arbitration Award, *supra* note 24, ¶¶ 169–278.

139. *Id.* ¶¶ 279–648.

140. *Id.* ¶¶ 649–814, 1044–1109.

141. *Id.* ¶¶ 815–993; UNCLOS, *supra* note 35, arts. 123, 192, 194, 197, 206.

142. UNCLOS, *supra* note 35, arts. 192, 194; SCS Arbitration, *supra* note 24, ¶¶ 815–993.

Contrary to the tribunal's decisions, the Chinese Foreign Ministry issued a statement following the hearing stating that the Award was "null and void" and had "no legal binding force" on China.<sup>143</sup> China's refusal to comply with the decision is in direct violation of its treaty obligation under UNCLOS, Article 296, which specifies that "any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute."<sup>144</sup>

China's reaction to the tribunal's award can perhaps be best explained by Beijing's untenable view on the primacy of domestic law over international law, as reflected in Article 31 of the new law—"the implementation and application of treaties and agreements shall not undermine the sovereignty of the State, national security, and public interests."<sup>145</sup> In other words, China claims that its domestic laws and policies have primacy over its international treaty obligations.

## XI. FLOODING THE UNITED STATES WITH FENTANYL

In Article 39, China agrees, *inter alia*, to strengthen its "international cooperation in areas such as combating transnational crimes and corruption."<sup>146</sup> Yet, China has failed to live up to this pledge when it comes to policing the illicit transport of fentanyl and fentanyl-related substances from China to U.S. drug markets, resulting in the death of tens of thousands of Americans each year.<sup>147</sup>

Illicit fentanyl, fentanyl analogs, and their immediate precursors are normally produced in China and "shipped through mail carriers directly to the United States or . . . to transnational criminal organizations . . . in Mexico,

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143. Ministry of Foreign Affairs of the People's Republic of China, Statement on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines, CHINA.ORG (July 12, 2016), [http://www.china.org.cn/world/2016-07/12/content\\_38864668.htm](http://www.china.org.cn/world/2016-07/12/content_38864668.htm).

144. UNCLOS, *supra* note 35, art. 296; *see also* Press Release, Office of the U.S. Secretary of State, Fifth Anniversary of the Arbitral Tribunal Ruling on the South China Sea (July 11, 2021), <https://www.state.gov/fifth-anniversary-of-the-arbitral-tribunal-ruling-on-the-south-china-sea/>; Press Release, Office of the U.S. Sec'y of State, U.S. Position on Maritime Claims in the South China Sea (July 13, 2020), <https://2017-2021.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/>.

145. PRC Foreign Relations Law, *supra* note 1, art. 31.

146. *Id.* art. 39.

147. *Drug Overdose Deaths Remain High in 2021*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Aug. 22, 2023), <https://www.cdc.gov/drugoverdose/deaths/index.html>.

Canada, and the Caribbean” and then smuggled into the United States for sale in the illicit U.S. drug market.<sup>148</sup> Although China has implemented some domestic controls on multiple fentanyl analogs, these measures have proven to be ineffective in stemming the flow of fentanyl and fentanyl analogs to the United States. As a result, hundreds of thousands of counterfeit pills, some containing lethal doses, and unknown quantities of other fentanyl products have been trafficked into the United States from China over the past seven years.<sup>149</sup>

China's vast chemical and pharmaceutical industrial complex is unwieldy, weakly regulated, and poorly monitored. Given its magnitude, Chinese regulatory and law enforcement authorities are incapable of effectively managing the over 5,000 pharmaceutical facilities and over 160,000 chemical companies operating both legally and illegally in the country. This sprawling industrial complex is tasked with mass-producing inexpensive generic drugs and pharmaceutical materials to generate revenue. Some chemical facilities can produce up to one million pills a day. Moreover, to encourage increased production, the Chinese government also provides tax incentives to pharmaceutical companies that export their products abroad, making China the world's number one manufacturer and exporter of pharmaceutical products.<sup>150</sup>

Compounding the problem is the ease with which even legitimate companies can illegally divert and adulterate chemicals used to produce fentanyl and fentanyl-like products from valid pharmaceutical uses. Moreover, because fentanyl is not a drug of choice in China, local authorities do not prioritize controlling its production and export. This lackadaisical attitude facilitates the production and export of illicit fentanyl and fentanyl analogs.<sup>151</sup>

Apart from these regulatory weaknesses, widespread corruption among local authorities and a lack of enforcement capacity and capability hamper government oversight. It is not uncommon for local authorities to actively

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148. *Drug Fact Sheet: Fentanyl*, U.S. DRUG ENFORCEMENT ADMIN. (Apr. 2020), [https://www.dea.gov/sites/default/files/2020-06/Fentanyl-2020\\_0.pdf](https://www.dea.gov/sites/default/files/2020-06/Fentanyl-2020_0.pdf); SEAN O'CONNOR, FENTANYL: CHINA'S DEADLY EXPORT TO THE UNITED STATES, U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION 3 (Feb. 1, 2017) [hereinafter USCC FENTANYL REPORT].

149. USCC FENTANYL REPORT, *supra* note 148, at 5; Lauren Greenword & Kevin Fashola, *Illicit Fentanyl from China: An Evolving Global Operation* 2–3, 7–8 (U.S.-China Economic and Security Review Commission Issue Brief, Aug. 24, 2021), [https://www.uscc.gov/sites/default/files/2021-08/Illicit\\_Fentanyl\\_from\\_China-An\\_Evolving\\_Global\\_Operation.pdf](https://www.uscc.gov/sites/default/files/2021-08/Illicit_Fentanyl_from_China-An_Evolving_Global_Operation.pdf).

150. USCC FENTANYL REPORT, *supra* note 148, at 3, 5, 7–8.

151. *Id.*

undermine chemical production regulations. Moreover, illicit drug activities in rural areas are conducted with impunity since most Chinese law enforcement personnel are stationed in urban centers. This lack of police presence also makes it easier for “small, unregistered drug labs to evade authorities.”<sup>152</sup> Given the number of facilities producing large amounts of chemicals daily, it is physically impossible for regulatory and law enforcement authorities to inspect every production and distribution facility.<sup>153</sup>

## XII. CONCLUSION—PROMOTING THE RULE OF LAW

For over seventy-five years, the three pillars of the United Nations—international peace and security, human rights, and development—guided by the rule of law, have been the basis for amicable and equitable relations between States. The rule of law is a “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>154</sup> This principle “requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”<sup>155</sup> Since the end of the Second World War, adherence to the rule of law has been essential “to international peace and security and political stability; to achieve economic and social progress and development; and to protect people’s rights and fundamental freedoms,” as well as to place restraints on the abuse of power.<sup>156</sup> All nations, including China, have benefited greatly from this liberal world order. China’s economy and geopolitical influence have grown exponentially since the end of the Cold War.

In Article 39 of the new law, China pledges to strengthen and promote cooperation on the rule of law.<sup>157</sup> Nonetheless, as discussed throughout this article, the CCP has decided that the post-WWII rules-based international

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152. *Id.* at 8.

153. *Id.* at 3, 5, 7–8; USCC FENTANYL REPORT, *supra* note 148, at 4.

154. *What is the Rule of Law*, U.N. AND THE RULE OF LAW, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (last visited Sept. 15, 2023).

155. *Id.*

156. *Id.*

157. PRC Foreign Relations Law, *supra* note 1, art. 39.

order threatens its authority at home and restrains China's regional and global ambitions. As a result, China seeks to supplant the existing global order with a new system based on might makes right that is receptive to its "highly personalized and repressive type of autocracy."<sup>158</sup>

China is the only nation "with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective."<sup>159</sup> Beijing's malign behavior discussed above poses a direct threat to international peace and stability by significantly enhancing and modernizing the PLA and its nuclear weapons program, militarizing the South China Sea, circumventing or violating trade rules, using economic power to coerce countries, actively undermining the democratic political processes of other nations, ignoring the rule of law, interfering with the resource rights of other States, leveraging technology and supply chains for coercion and repression, and layering its authoritarian governance with a revisionist foreign policy to create a new world order.<sup>160</sup>

The international community is at a crossroads. China would have nations abandon the universal values that have sustained so much of the world's progress and prosperity over the past seventy-five years. Do we allow China to reshape the international system that undermines peace and security, freedom of navigation, and free trade to accommodate its authoritarian style of governance and achieve its political and economic objectives? Are nations really prepared to embrace the global order that existed prior to 1945, a system responsible for two world wars that cost over \$4.2 trillion and resulted in over 1.25 billion casualties?<sup>161</sup> Or do we stand united against China in defense of the existing order based on the rule of law, international agreements, principles, and institutions forged after the two world wars to manage

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158. WHITE HOUSE, NATIONAL SECURITY STRATEGY (2022); Harry S. Truman, U.S. President, Address to the U.N. Conference in San Francisco (Apr. 25, 1945), <https://www.presidency.ucsb.edu/documents/address-the-united-nations-conference-san-francisco>.

159. NATIONAL SECURITY STRATEGY (2022), *supra* note 158, at 8.

160. *Id.* at 23.

161. *The First World War: Aftermath*, NAT'L ARCHIVES OF THE U.K., [https://www.nationalarchives.gov.uk/pathways/firstworldwar/aftermath/counting\\_cost.htm](https://www.nationalarchives.gov.uk/pathways/firstworldwar/aftermath/counting_cost.htm) (last visited Sept. 15, 2023) (World War I costs were \$208 billion); *The Cost of U.S. Wars Then and Now*, NORWICH UNIV. ONLINE (Oct. 20, 2020), <https://online.norwich.edu/academic-programs/resources/cost-us-wars-then-and-now> (World War II costs were \$4 trillion); *World War I Casualties*, U.S. CENSUS BUREAU (2011) <https://www.census.gov/history/pdf/reperes112018.pdf> (the total number of military and civilian casualties in WWI was about 41 million); Aaron O'Neill, *Second World War: Fatalities Per Country 1939–1945*, STATISTA (Aug. 18, 2022), <https://www.statista.com/statistics/1293510/second-world-war-fatalities-per-country/> (the total death count for WW II was between 70 and 85 million).

relations between States, prevent conflict, create opportunities, and uphold the rights of all nations, big and small, against coercion and aggression? The choice should be an easy one.