



NHSMUN

ICJ

BACKGROUND GUIDE

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Renata Venzor

Esteemed Judges,

My name is Nicolas Valayannopoulos and I am thrilled to lead you all on your journey with the International Court of Justice for Session I of the 51st edition of NHSMUN. For this year's conference, Aurora and I have selected two timely topics that will expose you to the limitations of public international law drafted in the last century, and how to apply it in new spaces and issues. The first case, Egypt v. Ethiopia examines the usage of international waterways and whether or downstream effects can supersede state sovereignty. The second topic, the advisory opinion on the South China Sea Arbitration will challenge you to understand this decade-old conflict and seek to apply both codified and customary law to come up with an expert opinion.

But, before I spoil the rest of this background guide, let me introduce myself properly. I am a sophomore at MIT studying Electrical Engineering and Math, with a minor in Philosophy. I was born and raised in Paris, France, to Greek parents, and moved to the US about ten years ago. I am passionate about technology and engineering. Still, I also share interests in international law, music, traveling, and linguistics and would love to chat about any of these subjects! This will be my sixth year with NHSMUN and my sixth year on the Court! I have participated in ICJ for four years as a delegate, and was the Assistant Director for Session I last year. In my free time, I enjoy sailing in the Boston Harbor and going on runs along the Charles River.

As you embark on your research journeys, I hope this background guide can serve as a good jumping point for you to enter the complex legal topics we will be exploring. If you have any questions in the course of your research, please do not hesitate to contact Aurora and me we will be more than happy to help out!

Good luck, and I look forward to meeting you all in March!

Kind regards,

Nicolas Valayannopoulos

Director, International Court of Justice

NHSMUN 2025, Session I

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Dear Judges,

My name is Aurora Lai, and I am so excited to welcome you to the International Court of Justice for NHSMUN 2025! I can't wait to serve as your Director for Session II of this conference. This will be my second year as an NHSMUN staffer. Last year I was the Assistant Director of this committee for NHSMUN 2024. This year will be my sixth year at the conference.

Nicolas and I have chosen to simulate two timely topics that will introduce you to conflicts and calamities relevant to the global stage and in the field of international law. The first case before the Court is Egypt v. Ethiopia, a contentious case covering the construction of the Grand Ethiopian Renaissance Dam while the second is an Advisory Opinion on the South China Sea Arbitration.

A little bit about myself! I was born in San Diego, California, but I grew up in Delaware and now live in Florida! As the daughter of Taiwanese and Romanian immigrants, I have always had a deep passion for international relations. I am currently a second-year student at the University of Florida double majoring in International Studies and Political Science with a minor in Spanish! Once I graduate, I plan on attending law school. On campus, I am very involved with our undergraduate mock trial team (the LitiGators), the Bob Graham Center for Public Service, and the Panhellenic Council. Outside of school, I love riding around on my Vespa (the love of my life), playing pickleball, and watching Gossip Girl!

Considering that NHSMUN was the first Model UN conference I attended as a freshman in high school, it truly has a special place in my heart. I am grateful to be part of an activity that has pushed me to become a better version of myself, alongside introducing me to a staff of people who work tirelessly to ensure this conference's success. From befriending people of different backgrounds and cultures to engaging in discourse over heightened topics, I hope you indulge in all of what NHSMUN 2025 has to offer!

As March approaches, it will be vital for you to stay updated on any recent developments. If you have any questions about these topics, ICJ, NHSMUN, or MUN in general, please do not hesitate to reach out! I cannot wait to meet you all soon!

Aurora Lai

Director, International Court of Justice

NHSMUN 2025, Session II

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A Note on the NHSMUN Difference

Esteemed Faculty and Delegates,

Welcome to NHSMUN 2025! We are Terry Wang and Jordan Baker, and we are this year's Secretary-General and Director-General. Thank you for choosing to attend NHSMUN, the world's largest and most diverse Model United Nations conference for secondary school students. We are thrilled to welcome you to New York City in March.

As a space for collaboration, consensus, and compromise, NHSMUN strives to transform today's brightest thinkers, speakers, and collaborators into tomorrow's leaders. Our organization provides a uniquely tailored experience for all through innovative and accessible programming. We believe that an emphasis on education through simulation is paramount to the Model UN experience, and this idea permeates throughout numerous aspects of the conference:

Realism and accuracy: Although a perfect simulation of the UN is never possible, we believe that one of the core educational responsibilities of MUN conferences is to educate students about how the UN System works. Each NHSMUN committee is a simulation of a real deliberative body so that delegates can research what their country has said in the committee. Our topics are chosen from the issues currently on the agenda of that committee (except historical committees, which take topics from the appropriate time period). We also strive to invite real UN, NGO, and field experts into each committee through our committee speakers program. Moreover, we arrange meetings between students and the actual UN Permanent Mission of the country they are representing. Our delegates have the incredible opportunity to conduct first-hand research, asking thought-provoking questions to current UN representatives and experts in their respective fields of study. These exclusive resources are only available due to IMUNA's formal association with the United Nations Department of Global Communications and consultative status with the Economic and Social Council. No other conference goes so far to deeply immerse students into the UN System.

Educational emphasis, even for awards: At the heart of NHSMUN lies education and compromise. Part of what makes NHSMUN so special is its diverse delegate base. As such, when NHSMUN distributes awards, we strongly de-emphasize their importance in comparison to the educational value of Model UN as an activity. NHSMUN seeks to reward students who excel in the arts of compromise and diplomacy. More importantly, we seek to develop an environment in which delegates can employ their critical thought processes and share ideas with their counterparts from around the world. Given our delegates' plurality of perspectives and experiences, we center our programming around the values of diplomacy and teamwork. In particular, our daises look for and promote constructive leadership that strives towards consensus, as real ambassadors do in the United Nations.

Debate founded on strong knowledge and accessibility: With knowledgeable staff members and delegates from over 70 countries, NHSMUN can facilitate an enriching experience reliant on substantively rigorous debate. To ensure this high quality of debate, our staff members produce detailed, accessible, and comprehensive topic guides (like the one below) to prepare delegates for the nuances inherent in each global issue. This process takes over six months, during which the Directors who lead our committees develop their topics with the valuable input of expert contributors. Because these topics are always changing and evolving, NHSMUN also produces update papers intended to bridge the gap of time between when the background guides are published and when committee starts in March. As such, this guide is designed to be a launching point from which delegates should delve further into their topics. The detailed knowledge that our Directors provide in this background guide through diligent research aims to increase critical thinking within delegates at NHSMUN.

Extremely engaged staff: At NHSMUN, our staffers care deeply about delegates' experiences and what they take away from their time at NHSMUN. Before the conference, our Directors and Assistant Directors are trained rigorously through hours of workshops and exercises both virtual and in-person to provide the best conference experience possible. At the conference,

delegates will have the opportunity to meet their dais members prior to the first committee session, where they may engage one-on-one to discuss their committees and topics. Our Directors and Assistant Directors are trained and empowered to be experts on their topics and they are always available to rapidly answer any questions delegates may have prior to the conference. Our Directors and Assistant Directors read every position paper submitted to NHSMUN and provide thoughtful comments on those submitted by the feedback deadline. Our staff aims not only to tailor the committee experience to delegates' reflections and research but also to facilitate an environment where all delegates' thoughts can be heard.

Empowering participation: The UN relies on the voices of all of its member states to create resolutions most likely to make a meaningful impact on the world. That is our philosophy at NHSMUN too. We believe that to properly delve into an issue and produce fruitful debate, it is crucial to focus the entire energy and attention of the room on the topic at hand. Our Rules of Procedure and our staff focus on making every voice in the committee heard, regardless of each delegate's country assignment or skill level. Additionally, unlike many other conferences, we also emphasize delegate participation after the conference. MUN delegates are well researched and aware of the UN's priorities, and they can serve as the vanguard for action on the Sustainable Development Goals (SDGs). Therefore, we are proud to connect students with other action-oriented organizations to encourage further work on the topics.

Focused committee time: We feel strongly that face-to-face interpersonal connections during debate are critical to producing superior committee experiences and allow for the free flow of ideas. Ensuring policies based on equality and inclusion is one way in which NHSMUN guarantees that every delegate has an equal opportunity to succeed in committee. In order to allow communication and collaboration to be maximized during committee, we have a very dedicated administrative team who work throughout the conference to type up, format, and print draft resolutions and working papers.

As always, we welcome any questions or concerns about the substantive program at NHSMUN 2025 and would be happy to discuss NHSMUN pedagogy with faculty or delegates.

Delegates, it is our sincerest hope that your time at NHSMUN will be thought-provoking and stimulating. NHSMUN is an incredible time to learn, grow, and embrace new opportunities. We look forward to seeing you work both as students and global citizens at the conference.

Best,

Terry Wang
Secretary-General

Jordan Baker
Director-General

A Note on Research and Preparation

Delegate research and preparation is a critical element of attending NHSMUN and enjoying the debate experience. We have provided this Background Guide to introduce the topics that will be discussed in your committee. We encourage and expect each of you to critically explore the selected topics and be able to identify and analyze their intricacies upon arrival to NHSMUN in March.

The task of preparing for the conference can be challenging, but to assist delegates, we have updated our [Beginner Delegate Guide](#) and [Advanced Delegate Guide](#). In particular, these guides contain more detailed instructions on how to prepare a position paper and excellent sources that delegates can use for research. Use these resources to your advantage. They can help transform a sometimes overwhelming task into what it should be: an engaging, interesting, and rewarding experience.

To accurately represent a country, delegates must be able to articulate its policies. Accordingly, NHSMUN requires each delegation (the one or two delegates representing a country in a committee) to write a position paper for each topic on the committee's agenda. In delegations with two students, we strongly encourage each student to research each topic to ensure that they are prepared to debate no matter which topic is selected first. More information about how to write and format position papers can be found in the NHSMUN Research Guide. To summarize, position papers should be structured into three sections:

I: Topic Background – This section should describe the history of the topic as it would be described by the delegate's country. Delegates do not need to give an exhaustive account of the topic, but rather focus on the details that are most important to the delegation's policy and proposed solutions.

II: Country Policy – This section should discuss the delegation's policy regarding the topic. Each paper should state the policy in plain terms and include the relevant statements, statistics, and research that support the effectiveness of the policy. Comparisons with other global issues are also appropriate here.

III. Proposed Solutions – This section should detail the delegation's proposed solutions to address the topic. Descriptions of each solution should be thorough. Each idea should clearly connect to the specific problem it aims to solve and identify potential obstacles to implementation and how they can be avoided. The solution should be a natural extension of the country's policy.

Each topic's position paper should be **no more than 10 pages** long double-spaced with standard margins and font size. **We recommend 3–5 pages per topic as a suitable length.** The paper must be written from the perspective of your assigned country and should articulate the policies you will espouse at the conference.

Each delegation is responsible for sending a copy of its papers to their committee Directors via [myDais](#) on or before **February 21, 2025**. If a delegate wishes to receive detailed feedback from the committee's dais, a position must be submitted on or before **January 31, 2025**. The papers received by this earlier deadline will be reviewed by the dais of each committee and returned prior to your arrival at the conference.

Complete instructions for how to submit position papers will be sent to faculty advisers via email. If delegations are unable to submit their position papers on time, please contact us at info@imuna.org.

Delegations that do not submit position papers will be ineligible for awards.

Committee History

Established in 1945 with the primary objective of settling legal disputes between states and issuing advisory opinions on public international law, the International Court of Justice (ICJ) serves as the primary judicial organ of the United Nations (UN).¹ Over time, the scope of its mandate has evolved to encompass a broader range of international issues.² The ICJ finds its origins in the Permanent Court of International Justice, an extension of the League of Nations created in 1920. At the end of World War II, and with the creation of the UN in 1945, the ICJ was formed as a replacement to establish a more efficient global judicial system.¹

The Court, based in the Peace Palace in The Hague, Netherlands, is composed of 15 judges of different nationalities, each elected for 9-year terms.² All 193 UN member states are parties to the ICJ's Statute (its "constitution"), meaning that they can bring a case before the Court, and non-UN members can become parties to specific situations set out by the General Assembly (Article 93, UN Charter).³ One way that cases can be brought to the ICJ is through states signing a special agreement that allows the Court to hear the case. This agreement will outline the international conflict and the stipulations. Additionally, a case can be called to the Court through treaties that use the ICJ to resolve disputes related to the treaty. Party states can also submit to the Court's compulsory jurisdiction per Article 36(2) of its Statute, meaning that they will automatically recognize without special agreement the Court's jurisdiction.⁴ Furthermore, the ICJ exercises two types of jurisdictions: contentious and advisory. For the former, the Court can only act if the party states have accepted its authority through the above-mentioned ways (special agreement or compulsory jurisdiction). In its advisory capacity, the ICJ delivers non-binding opinions on questions of international law as called for by the General Assembly that, despite not being obligatory, often set precedents for future cases.⁵

Each case is guided by Article 38 of the ICJ Statute. The main contributors to ICJ decisions are international conventions and treaties that have been largely accepted by states. These are crucial since they represent binding rules that states, with full international rights and abilities, have accepted. Next are international customs, which are general state practices that have grown into binding international laws through general acceptance and application. Finally, there are general principles of international law and expert publications. Once states consent to the Court hearing the dispute in a contentious case, written arguments are submitted, followed by live arguments before the judges. Afterwards, the judges issue a binding majority opinion. Dissenting opinions can also be attached with the approval of the majority of judges.⁶

The Court lacks its mechanism to ensure enforcement, relying on the U.N. Security Council to address failed obligations (Article 94, U.N. Charter).⁷ The Court's reliance on consent and deficiency of a proper way to ensure compliance frequently restricts its ability to engage in complex contentions and hold the Security Council's permanent members accountable. Still, the ICJ's major accomplishments include resolving territorial disputes, interpreting international treaties, and fostering the peaceful settlement of conflicts. With climate obligations and cyberwarfare on the horizon, the jurisdiction and abilities of the ICJ will likely be tested.

1 "The Court," International Court of Justice, 2017–2024, accessed September 20, 2024, <https://www.icj-cij.org/court>.

2 S. Gozie Ogbodo, "An Overview of the Challenges Facing the International Court of Justice in the 21st Century," *Annual Survey of International & Comparative Law* 18, no. 1 (2012): Article 7, <http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/7>.

3 International Court of Justice, "The Court."

4 International Court of Justice, "The Court."

5 United Nations General Assembly, United Nations Charter, 1 UNTS XV, 17 (June 26, 1945), <https://www.un.org/en/about-us/un-charter/chapter-14>.

6 United Nations General Assembly, International Court of Justice Statute, 33 UNTS 993, 26 (June 26, 1945), <https://www.icj-cij.org/statute>.

7 United Nations General Assembly, International Court of Justice Statute, 33 UNTS 993, 26 (June 26, 1945), <https://www.icj-cij.org/statute>.

8 International Court of Justice, "The Court."

Simulation

The International Court of Justice is, by nature, a unique deliberative body. Although it is an organ of the United Nations, its procedures are distinct from the other organs. Accordingly, the ICJ at NHSMUN functions unlike any other committee. The most significant difference is that the ICJ's responsibility to agree on one decision, as opposed to producing a variety of resolutions. The Court's rules and procedures work to create an atmosphere that promotes discussion and compromise, allowing Judges to reach a comprehensive and united decision. This procedure is outlined at the end of this section and it is imperative that Judges familiarize themselves with it before the start of committee.

Role of the Delegate

Delegates on the ICJ represent Judges of the Court. They do not represent a country or any specific policy; instead, their opinions are based solely on their own legal experience and moral compass. Judges are chosen from a variety of countries in order to promote objectivity; however, they do not make decisions based on their country's policies. They are appointed to the Court as independent jurists, separate from any specific legal policy or national agenda. This means that it is possible for a Judge to make a decision that is contrary to their homeland's legal policies or moral practices. As Judges of the Court at NHSMUN, delegates are expected to make decisions based on their own belief system, not that of a specific country. This allows for a more objective decision on matters of international law. It also means that delegates must come to the conference with a well-articulated opinion on both topics and, once at the conference, must remain open to the opinions of other judges.

Because the Court writes one final decision, it is crucial that all Judges participate in discussion and debate. There is no formal speakers list in the ICJ, and communication among judges is conducted much like everyday conversation. If some judges are not participating, the Court may choose to voice their opinions round-robin-style, ensuring that everyone's ideas are heard. This requires that all Judges enter committee well prepared because everyone's knowledge affects the Court's ability to come to a collective decision.

In writing a decision, it is also important that delegates understand the types and applicability of international law, especially international criminal law. International law consists of both customary law and codified law (such as treaty law), and it is crucial that both are understood. Furthermore, it is important that Judges pay close attention to treaty law, judicial precedent, and the Vienna Convention on the Law of Treaties, beyond only those excerpts of international law discussed in this background guide.

Court Procedure

The Court may address two types of cases: advisory opinions and contentious cases. Although the format of the two cases is very different in the Background Guide, their deliberation in committee will be very similar.

The first thing that needs to be done in committee is the setting of the agenda. This will be done through a brief discussion among the delegates and will be followed by a vote to set the order in which the two topics will be debated. In the discussion, it is important for delegates to consider the following:

- I. Which topic is timelier?
- II. Which topic is more interesting to the judges at present?
- III. Which case will result in a more effective decision?

After delegates set the agenda, judges will each be given the opportunity to voice their initial opinion on the verdict of the cases.

After each person expresses his or her views and justifies it with factual background, committee will move into formal deliberation. However, delegates are more than welcome to change their opinion over the course of the deliberation and do not need to feel tied to their initial opinion. One of the first steps of the deliberations will be to determine if the Court has jurisdiction in the case at hand, consulting the Memorials, the Statute of the Court, as well as other relevant legal instruments.

Unlike other NHSMUN committees, which utilize a speakers list as the default form of debate, the ICJ uses a semi-permanent moderated caucus. This moderated caucus has no set time limit or speaking time and will be reverted to as one would revert to a speakers list in a normal NHSMUN committee. In practice, the Court will often depart from this, and the chair may set speaking times if it determines that some Judges do not have sufficient opportunity to talk.

Judges may depart from the permanent moderated caucus using several motions. All the following are procedural and require a majority vote to pass:

- Motion to add a topic or speaking time to a moderated caucus.
- Motion for an unmoderated caucus.
- Motion for a straw poll—These informal votes are used to assess the Court’s opinion on a given matter to evaluate the Court’s current thoughts and alignments.
- Motion for a roundtable discussion—This is an unmoderated caucus where everyone stays in their seats but is free to discuss issues with each other as if in an unmoderated caucus.
- Motion for a round robin—This means that, for a given issue, each judge may speak one-by-one, proceeding in a circular order around the room with a set speaking time until all Judges have had the opportunity to speak.

The decision that the Court will write is voted on piece by piece. For each subtopic, Judges will submit “findings” as they are resolved during debate. These findings are the Court’s opinion on a given subtopic of the case. Each finding will build upon the previous ones, so that by the end the decision is a comprehensive document outlining the Court’s opinions on all aspects of the case brought before it.

The voting on findings is relatively informal and will usually proceed along the following lines:

1. Judges write up their findings, collaborate on them, and debate them during both moderated and unmoderated caucuses.
2. Once a finding is written, it will be submitted to the dais, who may suggest any edits before allowing it to be introduced.
3. Once the dais has approved the introduction of the finding, a Judge may motion to introduce it to debate. This is a procedural vote. If accepted, Judges may then decide to debate the finding; if not, it will remain un-introduced until the Court decides otherwise.
4. Once Judges feel that the finding has been discussed sufficiently, they may move to vote on the finding. Again, this is a procedural vote.
5. If a majority of the Court votes in favor of a finding, that finding will become part of the “majority opinion” of the Court. The dais will record the names of those Judges who vote in favor of and vote against the majority opinion.
 - a. Judges who vote against the majority opinion are encouraged to write up their own, contrary findings and submit them as “dissenting opinions.”

- b. Furthermore, Judges who vote in favor of the majority opinion are allowed to submit “concurring opinions,” which agree in principle with the majority opinion but may cite somewhat different reasons than expressed in the majority finding or expand or clarify on the majority opinion.
- c. Concurring and dissenting opinions will not be subject to vote but will include the names of all the Judges that agree with the respective opinion. In this way, the Court will make sure that every Judge’s opinion is accounted for and represented in the final decision.

When the Court’s decision is final, there will be a formal vote to vote on the decision in its entirety. This is the ICJ’s equivalent of “voting procedure.” Although there is room for both types of opinions in the final decision, it does not mean that both types of opinions have to or will be present in the decision. There is never any pressure to side with the majority, and it is encouraged that all Judges maintain their own views and do so with legitimate reasoning.



ICJ

NHSMUN 2025

TOPIC A: EGYPT V. ETHIOPIA

Photo Credit: NASA/METI/AIST/Japan Space Systems, and U.S./Japan ASTER Science Team

Memorial of the Arab Republic Of Egypt

Chapter I: Introduction

1.1 This case was initiated by a Special Agreement dated July 13, 2024. It was filed with the International Court of Justice by the Arab Republic of Egypt on July 16, 2024.

1.2 Following a meeting held by the President of the Court with representatives of the Parties on July 30, 2024, the Court fixed January 18, 2025, as the time limit for the filing by the Arab Republic of Egypt by Order dated September 5, 2024. This Memorial is submitted under that Order.

1.3 Following Article 49 of the Rules of the Court, this Memorial contains the following:

1.3.1 A statement of facts outlined in Chapter II;

1.3.2 A statement of law in Chapter III;

1.3.3 The Arab Republic of Egypt's submission to the Court in Chapter IV, which sets out formal requests for relief.¹

1.4 In this Memorial:

1.4.1 The International Court of Justice will be referred to either as the Court or the ICJ;

1.4.2 The Arab Republic of Egypt will be referred to as Egypt;

1.4.3 The Federal Democratic Republic of Ethiopia will be referred to as Ethiopia;

1.4.4 The Grand Ethiopian Renaissance Dam will be referred to as GERD or the GERD;

1.4.5 The Nile Waters Agreements of 1929 and 1959

will be collectively referred to as the Nile Waters Agreements.²

1.5 Under Article 36(1) of the Rules of the Court, the ICJ should retain jurisdiction over this case since there is a Special Agreement in place and the matter concerns an international dispute over a transboundary water resource.³

1.6 This Memorial will establish that Ethiopia's actions during the construction and operation of the GERD violate Egypt's rights under the international law principles of *equitable and reasonable utilization* and *obligation to prevent significant harm*. This Memorial will also show that the Nile Waters Agreements are binding upon Ethiopia and that Ethiopia's actions are threatening Egypt's social and economic stability.

Chapter II: Statement of Facts

Historical Importance

2.1. Ancient Times

2.1.1 Throughout history, Egypt has been known as the "Gift of the Nile."⁴ This phrase perfectly describes how the Nile River made civilization possible in Egypt.

2.1.2 The Nile had a predictable flooding cycle. Because of this, ancient Egyptians could grow food in large amounts. This allowed Egypt's population to grow. This led to the first big societies in Africa and the world.⁵

2.1.3 The cities grew larger. The Nile River made trade and communication between the cities.

2.2 Medieval Times

¹ "Rules of the Court (1978)," *International Court of Justice*, April 14, 1978, accessed August 6, 2024, <https://www.icj-cij.org/rules>.

² United Arab Republic and Sudan, *Agreement (with annexes) for the Full Utilization of the Nile Waters*, November 8, 1959, No. 6519, registered by the United Arab Republic on February 7, 1963, Official text in Arabic.

³ "Rules of the Court (1978)," *International Court of Justice*, April 14, 1978, accessed August 6, 2024, <https://www.icj-cij.org/rules>.

⁴ J. Gwyn Griffiths, "Hecataeus and Herodotus on 'A Gift of the River,'" *Journal of Near Eastern Studies* 25, no. 1 (1966): 57–61, <http://www.jstor.org/stable/543141>.

⁵ "Egypt's Wheat Production Soars Amid New Government Policies," *Food and Agriculture Organization of the United Nations (FAO)*, accessed July 24, 2024, <https://www.fao.org/country-showcase/item-detail/en/c/1287824/>.

2.2.1 During the Medieval period, the Nile continued to be very important for Egypt. It supported commercial activities. This led to the creation of important ports. These ports connected Egypt with sub-Saharan Africa and the Mediterranean.⁶

2.3 Colonial Times

2.3.1 During the colonial era, many European powers saw the Nile as important for strategic purposes. In particular, the British contributed heavily to its development during their time in power between 1882 and 1952.⁷

2.3.2 The first dam on the Nile was constructed by the British in 1902. This was called the *Aswan Low Dam*.⁸ About 50 years later, the British completed the construction of the *Aswan High Dam*. These two dams marked the beginning of Egypt's reliance on the Nile for purposes other than irrigation.⁹ The *Aswan Dams* were used for flood control and hydroelectric

power. This allowed Egypt to modernize its economy. It also increased agricultural production.¹⁰

2.4 Contemporary Times

2.4.1 In the modern day, the Nile remains Egypt's primary water source. It supplies 95 percent of all water demand in the country.¹¹ As a freshwater source, it is predominantly used for irrigation, drinking water, fishing, and hydroelectric power.¹²

2.4.2 Despite its decreased role in international trade with the construction of the Suez Canal, the Nile River continues to support agriculture and local industries. This makes it very important for Egypt. Numerous ships treat the Nile as a "highway", for inter-city transport, along with providing fertile soil.¹³

2.4.3 Over 95 percent of Egyptians live along the Nile itself, or the thriving delta region, placing the incredible onus on its importance to daily life.¹⁴

⁶ William R. Day. *Before European hegemony: The World System A.D. 1250-1350*. London: Routledge, 2017.

⁷ Hamdy A. Hassan and Ahmad Al Rasheedy, "The Nile River and Egyptian Foreign Policy Interests," *African Sociological Review / Revue Africaine de Sociologie* 11, no. 1 (2007): 25–37, <http://www.jstor.org/stable/24487584>.

⁸ Hassan and Rasheedy, "The Nile River and Egyptian Foreign Policy Interests"

⁹ Hassan and Rasheedy, "The Nile River and Egyptian Foreign Policy Interests"

¹⁰ John Waterbury. *The Nile Basin: National Determinants of Collective Action*. New Haven: Yale University Press, 2002.

¹¹ "Nile River," *National Geographic Education*, accessed July 24, 2024, <https://education.nationalgeographic.org/resource/nile-river/>.

¹² "Nile River."

¹³ "Nile River."

¹⁴ "Nile River."



Nile River

Credit: Marc Ryckaert (MJJR)

Thus, it cannot be overstated how important the Nile River is to Egypt’s security and stability during these ongoing disputes over water allocation.¹⁵

Modern Importance of the Nile

2.5 Legal Status

2.5.1 The Arab Republic of Egypt believes that the present legal status of the Nile can be found in the 1929 and 1959 Nile Waters Agreements.

2.5.2 The 1929 agreement was drafted and passed during the colonial period. This was because the British wanted Egypt and Sudan to cooperate when it came to using the Nile. The 1959 agreement was drafted and passed after the British stopped their rule in 1952.¹⁶ This agreement was mainly an adjustment to the 1929 agreement. Similar to the previous agreement, the 1959 agreement stated that the majority of the Nile belonged to Egypt and Sudan.¹⁷ This was because these states were directly downstream from the river.¹⁸

2.5.3 There is ongoing tension regarding these treaties. However, Egypt wants to affirm that these are the only two binding legal documents regarding the Nile’s usage up to today. Efforts to update these to include greater participation from upstream states, like Ethiopia, have not been successful.¹⁹

2.6 Socio-Economic Importance

2.6.1 Economically speaking, the Nile River is Egypt’s most important resource.

2.6.2 The Nile Delta and Valley are the most fertile and densely populated areas in the country. Despite covering only about 5 percent of Egypt’s total land area, over 95 percent of the Egyptian population lives in these two regions.²⁰

2.6.3 The population density around the Nile can reach values north of 1000 people per square kilometer. In contrast, the national average is only about 100 people per square kilometer.²¹

2.6.4 The River’s water is key to the Egyptian agricultural sector. By helping the growth of crops like wheat, rice, and cotton, the Nile has been very important to Egypt.²² For example, the Nile produces around 9 million metric tons of rice every year. This brings home over 100 million USD in rice exports.²³ Additionally, exports of cotton have been an important contributor to Egypt’s foreign exchange earnings.

2.6.5 Finally, about 60 percent of the 1.5 million metric tons of fish that are caught every year in Egypt come from the Nile. Also, the 7 million heads of cattle and 8 million sheep and goats are all sustained. This is all because of the Nile’s waters.²⁴

2.6.6 From a social standpoint, the Nile plays an important role in cultural and religious practices. Many cultural festivals celebrate the Nile every year. For example, there is the holiday of “Wafaa El-Nil”. This translates to “Fidelity of the Nile.” This festival has thousands of boats, music, and dances. It is all in honor of the river.²⁵

15 United Nations Environment Programme (UNEP). *Africa Water Atlas*. Nairobi: UNEP, 2010.

16 United Nations, “Agreement Between the Republic of the Sudan and the United Arab Republic for the Full Utilization of the Nile Waters,” *United Nations Treaty Series* 453, no. 6519 (1959), <https://treaties.un.org/doc/Publication/UNTS/Volume%20453/volume-453-I-6519-English.pdf>.

17 “Agreement Between the Republic of the Sudan and the United Arab Republic for the Full Utilization of the Nile Waters.”

18 “Agreement Between the Republic of the Sudan and the United Arab Republic for the Full Utilization of the Nile Waters.”

19 “Nile Basin Initiative.” Nile Basin Initiative. Accessed July 2, 2024. <http://nilebasin.org/>.

20 “Egypt,” *The World Factbook*, Central Intelligence Agency, accessed July 24, 2024, <https://www.cia.gov/the-world-factbook/countries/egypt/>.

21 Amr Hamzawy, “Climate Change in Egypt: Opportunities and Obstacles,” *Carnegie Endowment for International Peace*, October 2023, <https://carnegieendowment.org/research/2023/10/climate-change-in-egypt-opportunities-and-obstacles?lang=en>.

22 “Egypt’s Wheat Production Soars Amid New Government Policies,” *Food and Agriculture Organization of the United Nations (FAO)*, accessed July 24, 2024, <https://www.fao.org/country-showcase/item-detail/en/c/1287824/>.

23 “Egypt’s Wheat Production Soars Amid New Government Policies.”

24 John Mukum Mbaku, “The Controversy Over the Grand Ethiopian Renaissance Dam,” *Brookings*, accessed July 24, 2024, <https://www.brookings.edu/articles/the-controversy-over-the-grand-ethiopian-renaissance-dam/>.

25 Anton Gill. *Ancient Egyptians: The Kingdom of the Pharaohs Brought to Life*. London: HarperCollinsEntertainment, 2004.



GERD
Credit: Prime Minister Office Ethiopia

Construction of the Grand Ethiopian Renaissance Dam

2.7 Project Objectives

2.7.1 Construction on the GERD started in April 2011. It is still going even today. The goal of this project was to construct a dam that could generate over 6000 megawatts of electricity per day. This would make it Africa's largest power plant.²⁶

2.7.2 For Ethiopia, the GERD has been presented as critical to their national development. However, construction on the dam started in haste. Downstream countries like Egypt and Sudan were not consulted about this dam.²⁷ These countries rely on the Nile.

2.7.3 Constructing a dam will alter the flow of the Nile. Ethiopia is not thinking about the impacts the dam will have across borders. The Dam is a domestic product. Also, it is being called a "key" to solving Ethiopia's poverty and energy needs. However, the

way this project has moved forward has only come at the expense of downstream countries.²⁸

2.8 Project Specifications & Progress

2.8.1 The dam is being constructed in the Benishangul-Gumuz region of Ethiopia. This is just 40 kilometers east of the Sudanese border.²⁹

2.8.2 When it is finished, the dam will be around 1800 meters long and 145 meters high. It will have a reservoir capacity of 74 billion cubic meters. That is the amount of water the dam will be able to hold. 74 cubic meters is around 0.1 percent of the total volume of the Nile River.³⁰ While this may not seem like much, the ability to hold back so much water can negatively affect downstream countries by following arbitrary filling and emptying cycles.³¹

2.8.3 Most concerning to Egypt has been the rapid and rushed progress on the dam. Despite financial and logistical challenges, Ethiopia has started prematurely

26 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD)," *International Hydropower Association*, accessed July 24, 2024, <https://www.hydropower.org/sediment-management-case-studies/ethiopia-grand-ethiopian-renaissance-dam-gerd>.

27 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD),"

28 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD),"

29 "Grand Ethiopian Renaissance Dam (GERD)," *African Union Program for Infrastructure Development in Africa (PIDA)*, accessed July 24, 2024, <https://www.au-pida.org/view-project/427/>.

30 Mohammad Rashad Yousef, "High Dam in Egypt, Sudan's Dams, Grand Ethiopian 'Renaissance Dam' and its Effect on the Water Budget of Egypt," (Kuwait Met Office, n.d.), accessed July 24, 2024.

31 Yousef, "High Dam in Egypt, Sudan's Dams, Grand Ethiopian 'Renaissance Dam' and its Effect on the Water Budget of Egypt."

filling the reservoirs in 2020.³² This is nearly 5 years before its expected completion.³³ This move has been seen as very provocative to downstream countries like Egypt. This is because the downstream countries need the dam to live.³⁴

2.9 International Reactions

2.9.1 The rushed construction of the GERD has caused significant regional controversy. This is mainly among downstream states. Egypt and Sudan have voiced their concerns about the project’s negative impacts on their water supplies. Egypt is facing a multi-million cubic meter reduction in its flow. This could dramatically change its agricultural yield, drinking water supply, and the economy as a whole.³⁵

2.10.1 Based on initial assessments, the Egyptian Ministry of Water Resources and Irrigations believes that the dam could reduce Egypt’s annual Nile water share by up to 15 billion cubic meters annually. This is a reduction of about 25 percent.³⁶

2.10.2 Additionally, the construction of the dam will likely reduce the transport of sediment downstream. This will negatively impact the agricultural productivity of the Nile Delta. The minerals that the sediment transports are very important. The Ministry of Water Resources and Irrigation says this could affect up to 60 percent of Egypt’s agricultural output.³⁷

2.10.3 Finally, environmental experts have predicted that the changes in the Nile River’s flow could disrupt the habitats of many aquatic species. These species are very important sources of food for many residents of the Nile.³⁸

Current Status and Impacts

2.10 Environmental Impacts

2.11 Social Impacts

³² Yousef, “High Dam in Egypt, Sudan’s Dams, Grand Ethiopian ‘Renaissance Dam’ and its Effect on the Water Budget of Egypt.”
³³ “The Long-Term Water Politics of Ethiopia’s Nile River Mega-Dam,” *Stratfor Worldview*, accessed July 24, 2024, <https://worldview.stratfor.com/article/long-term-water-politics-ethiopia-nile-river-mega-dam>.
³⁴ “The Long-Term Water Politics of Ethiopia’s Nile River Mega-Dam.”
³⁵ “The Long-Term Water Politics of Ethiopia’s Nile River Mega-Dam.”
³⁶ Nader Noureddin, “Water Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries,” *Arab Center Washington DC*, May 27, 2021, <https://arabcenterdc.org/resource/water-conflict-between-egypt-and-ethiopia-a-defining-moment-for-both-countries/>.
³⁷ “Security Implications of Growing Water Scarcity in Egypt,” *Climate Diplomacy*, accessed July 24, 2024, <https://climate-diplomacy.org/case-studies/security-implications-growing-water-scarcity-egypt>.
³⁸ “Security Implications of Growing Water Scarcity in Egypt.”

Hydroelectric power plant situated on the dam
 Credit: Orlova-tpe



2.11.1 The International Organization for Migration estimates there will be 4.4 million displaced Ethiopians, in 2024, spread out across over 2,600 sites in Ethiopia.³⁹ This was done without much consideration for their economic and social needs and has ultimately been a detriment to their quality of life.

2.11.2 Moreover, Egypt’s agricultural sector—which employs over a third of the population—is at threat from the decrease in water availability. If the GERD is allowed to operate at full capacity, experts predict up to a 30 percent decrease in crop yield.⁴⁰

2.11.3 According to the Egyptian National Water Research Center, if the GERD is fully completed, there is a potential 10 percent decrease in water availability. This would drop the state’s drinking water supply.⁴¹ Additionally, due to the dam’s location at the exit of Ethiopia, this would impact the majority of the Nile River’s freshwater, affecting over 140 million people in both Egypt and Sudan.⁴²

2.11.4 All in all, it is fairly clear that millions of Egyptians will have reduced access to water and food as a result of the full operation of the GERD. This phenomenon can lead to high rates of both poverty and unemployment. This could bring social unrest into the country. Ultimately, it would put Egypt in a risky situation.

Demands for Mitigation

2.12 Environmental Demands

2.12.1 In an attempt to mitigate the risks posed to Egypt’s access to water, the Arab Republic of Egypt needs Ethiopia to create mitigation measures that address all potential dangers from the GERD’s daily operation. One solution is the phased filling of the dam, to prevent the issue of drastic changes to water levels, and to account for the seasonality of the weather in the region.⁴³

2.12.2 Firstly, Egypt wants a controlled release schedule for water. This would ensure that a minimum of at least 40 billion cubic meters be released annually to prevent droughts in downstream regions.⁴⁴

2.12.3 Secondly, Egypt wants continuous monitoring of the GERD’s effects on the environment. This would be done through various metrics. For example, water quality will be tested. Other metrics include pollution and species richness. Egypt demands this data be shared in real-time through an independent international body.⁴⁵

2.13 Diplomatic and Legal Actions

2.13.1 However, until these demands can be met, Egypt calls for an immediate suspension of the reservoir filling process and its operation. This is until a binding legal agreement is reached, as per the negotiation framework set out by the African Union.

2.13.2 Egypt has filed complaints with the UNSC. The state has also sought the ICJ as a third party in this matter. This is to protect Egypt’s historical and legal water rights.

39 “Over 3 Million Displaced in Ethiopia, More Than Half Due to Conflict, New IOM Report.” 2024. International Organization for Migration. May 29, 2024. <https://www.iom.int/news/over-3-million-displaced-ethiopia-more-half-due-conflict-new-iom-report>.

40 Mohamed E. Elsayed and Mohamed Sultan, “Unintended Consequences of the Grand Ethiopian Renaissance Dam on Sudan and Egypt Using GRACE Data,” *Environmental Research Letters* 16, no. 8 (2021): 084022, <https://iopscience.iop.org/article/10.1088/1748-9326/ac0ac9>.

41 Mirette F. Mabrouk, “Egypt Has a Water Problem, and No, It’s Not Only the GERD,” *Atlantic Council*, June 24, 2020, <https://www.atlanticcouncil.org/blogs/menasource/egypt-has-a-water-problem-and-no-its-not-only-the-gerd/>.

42 Holly Dagres. 2020. “Nile Basin’s GERD Dispute Creates Risks for Egypt, Sudan, and Beyond.” *Atlantic Council*. July 13, 2020. <https://www.atlanticcouncil.org/blogs/menasource/nile-basins-gerd-dispute-creates-risks-for-egypt-sudan-and-beyond/#>

43 Kevin G. Wheeler, Marc Jeuland, Jim W. Hall, Edith Zagana, and Dale Whittington. 2020. “Understanding and Managing New Risks on the Nile With the Grand Ethiopian Renaissance Dam.” *Nature Communications* 11 (1). <https://doi.org/10.1038/s41467-020-19089-x>.

44 Wheeler, Jeuland, Zagana, and Whittington. “Understanding and Managing New Risks on the Nile With the Grand Ethiopian Renaissance Dam.”

45 Wheeler, Jeuland, Zagana, and Whittington. “Understanding and Managing New Risks on the Nile With the Grand Ethiopian Renaissance Dam.”

Conclusion

2.14 Concluding Remarks

2.14.1 The GERD presents pressing environmental and social impacts. Moreover, it directly threatens Egypt’s water security and national stability.

2.14.2 Egypt needs comprehensive mitigation measures and diplomatic actions. This is to ensure a fair solution is made before damage is done.

Chapter III: Statement of Law

3.1 Legal Framework

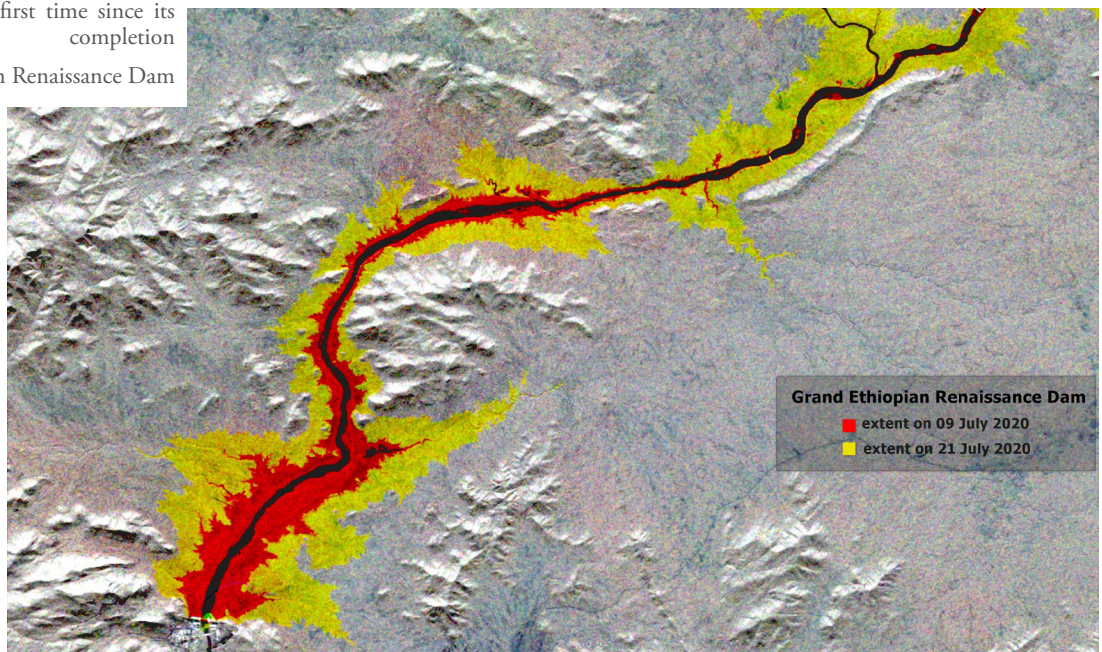
3.1.1 This Chapter shall cover the legal framework in the dispute between Egypt and Ethiopia.

3.1.2 The legal principles and reasoning mentioned in this chapter will be sourced from customary international law. Namely, it will reference the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses.⁴⁶ However, other relevant treaties will also be referenced.

⁴⁶ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses,” May 21, 1997, United Nations Treaty Series, vol. 2999, p. 77, Accessed August 10, 2024 <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVII/XXVII-12.en.pdf>.

On 21 July 2020, the maximum capacity of the dam reservoir was reached for the first time since its completion

Credit: The Grand Ethiopian Renaissance Dam



3.1.3 Due to its historical claim on the Nile, Egypt would like the Court to recognize that Ethiopia violates the principles of fair and reasonable usage. Egypt also believes that Ethiopia violates its obligation to prevent significant harm, as well as the duty of notification and consultation.

3.2 Equitable and Reasonable Utilization

3.2.1 Egypt’s claims rely mainly on the international law principle of equitable and reasonable utilization. This principle is key to international water law. This is especially applicable in the context of transboundary watercourses. These are bodies of water that cross international borders. The Nile River is an example of one.

3.2.2 Article 5 of the 1997 Convention notes that

3.2.3 “*Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom,*

*consistent with adequate protection of the watercourse.*⁴⁷

As previously established in Chapter II, the Arab Republic of Egypt needs the Nile River. Over 95 percent of the Egyptian population lives in the Nile Delta and in the Nile River Valley.⁴⁸ The Nile is the backbone of Egyptian agriculture and the economy at large.

3.2.4 Despite this, Ethiopia has moved forward with the construction and filling of the GERD. Egypt believes that this was done without any formal agreement between Ethiopia and its neighbors.

3.2.5 Egypt believes that since there is a lack of such an agreement, it is a violation of *equitable and reasonable utilization*. Also, it is a violation of Article 5 of the 1997 Convention. Egypt wants the ICJ to recognize this.

3.2.6 The evidence mentioned above shows that constructing the GERD will reduce water flow going upstream in the Nile. This threatens Egypt's livelihood and needs. This would decrease Egypt's share of the Nile. It is an unjust split that Egypt deems unreasonable. Moreover, it was not discussed.

3.2.7 Finally, Egypt's historical usage of the Nile and its lack of any alternative water sources makes this claim a priority in water allocation under international law.

3.2.8 As such, the construction of the GERD violates *equitable and reasonable utilization*. This is because Egypt's share of the Nile waters is inequitably decreased. Also, Egypt believes that Ethiopia's rushed filling is reckless and unreasonable. Egypt wants its construction and filling to be halted until an agreement is reached.⁴⁹

3.3 Obligation Against Significant Harm

3.3.1 Furthermore, Egypt would like to bring light to another international law principle that it believes the Court shall consider.

3.3.2 As codified in Article 7 of the 1997 Convention, the *obligation to prevent significant harm* is an important concept of international water law. This concept protects countries that are impacted by changes in international watercourses.

3.3.3 Specifically, Article 7 notes that:

3.3.4 "*Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.*"⁵⁰

3.3.5 The operation of the GERD unquestionably poses a big risk to Egypt's water security. Estimates show the filling process will decrease upstream water flow by up to 25 percent. This reduction will directly harm the millions of Egyptians who need the Nile's waters.⁵¹ Food insecurity is a prominent concern among Egyptian authorities. Unemployment and social unrest are also quite likely as a result.⁵²

3.3.6 For this reason, Egypt would like to assert that Ethiopia is in direct violation of its obligation to prevent significant harm. For one, there is a lack of environmental impact assessments. Also, there is a general absence of any mitigation measures during the dam's filling period. These two examples are proof of this behavior. Egypt would like to see legal corrections as a result.

3.4 Obligation to Cooperate

⁴⁷ United Nations, "Convention on the Law of the Non-Navigational Uses of International Watercourses," May 21, 1997, United Nations Treaty Series, vol. 2999, p. 77, Accessed August 10, 2024.

⁴⁸ Central Intelligence Agency, "The World Factbook: Egypt," accessed August 10, 2024, <https://www.cia.gov/the-world-factbook/countries/egypt/>

⁴⁹ United Nations, "Convention on the Law of the Non-Navigational Uses of International Watercourses," May 21, 1997, United Nations Treaty Series, vol. 2999, p. 77, Accessed August 10, 2024.

⁵⁰ United Nations, "Convention on the Law of the Non-Navigational Uses of International Watercourses."

⁵¹ International Crisis Group, "Bridging the Gap in the Nile Waters Dispute," March 20, 2019, Accessed August 10, 2024, <https://www.crisisgroup.org/africa/horn-africa/ethiopia/271-bridging-gap-nile-waters-dispute>.

⁵² International Crisis Group, "Bridging the Gap in the Nile Waters Dispute."

3.4.1 Additionally, international water law requires a minimum duty to cooperate and exchange information. This is to ensure that international watercourses are co-managed peacefully.

3.4.2 As reflected in Articles 8 and 9 of the 1997 Convention:

3.4.3 “*Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit, and good faith [...] in order to attain optimal utilization and adequate protection of an international watercourse.*” (Article 8)⁵³

3.4.4 “[W]atercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular, that of a hydrological, meteorological, hydrogeological, and ecological nature, as well as related forecasts.” (Article 9)⁵⁴

3.4.5 Egypt would like the ICJ to recognize a lack of transparency from Ethiopia’s camp in the planning process and construction of the GERD, as clarified in Chapter II.

3.4.6 This very lack of transparency has made it difficult for Egypt to appropriately assess and respond to the potential impacts of the GERD’s construction. Egypt has requested real-time data repeatedly. However, Ethiopia has failed to provide sufficient statistics on the GERD’s operation and filling.

3.4.7 As a result, Egypt would like the ICJ to conclude that Ethiopia’s failure to cooperate and provide this essential data is a violation of Ethiopia’s good faith obligation to cooperate. Ethiopia is recklessly constructing a dam that will have a major impact on Egypt. Also, it is keeping away crucial information to help Egypt address the harm that will be done.⁵⁵

3.5 Obligation to Notify

3.5.1 Another key principle of international law that Egypt would like the ICJ to consider is the *obligation to notify and consult*.

3.5.2 Formalized under Articles 11 and 12 of the 1997 Convention, this principle requires that all watercourse states that may be impacted by any new projects must be notified before any measures start taking effect.

3.5.3 Specifically, Articles 11 and 12 of the Convention require that:

3.5.4 “*Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.*”⁵⁶

3.5.5 “*Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof.*”⁵⁷

3.5.6 Ethiopia proceeded with the construction of the GERD in 2011. It also proceeded with the filling of the GERD in 2022. They did this without consulting their upstream neighbors. Given these examples, Ethiopia knowingly violated its obligation to notify under international law.

3.5.7 The lack of timely notifications and the lack of prior consultation on the matter prevented Egypt from assessing the project’s potential impacts on the country. Also, it deprived Egypt of the opportunity to negotiate mitigation measures with Ethiopia. These measures would help lessen the impact of the GERD.

3.5.8 Consequently, Egypt finds Ethiopia in breach

⁵³ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses,” May 21, 1997, United Nations Treaty Series, vol. 2999, p. 77, Accessed August 10, 2024.

⁵⁴ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”

⁵⁵ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”

⁵⁶ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses,” May 21, 1997, United Nations Treaty Series, vol. 2999, p. 77, Accessed August 10, 2024.

⁵⁷ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”

of its obligations under international law and must face appropriate consequences.⁵⁸

3.6 Environmental Obligations

3.6.1 A further fundamental requirement in international water law is the obligation to protect and preserve the ecosystems in international watercourses.

3.6.2 This principle is specifically enshrined in Article 20 of the 1997 Convention. It recognizes that the environment does not discriminate across international borders. Thus, all states must take measures to protect the ecosystems within international watercourses.

3.6.3 Briefly put, Article 20 of the Convention states that:

3.6.4 *“Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.”*⁵⁹

3.6.5 As highlighted in Chapter II, numerous environmental issues arise from the construction and operation of the GERD and the subsequent disruption to the Nile’s flow.

3.6.6 The Nile Delta is already an incredibly vulnerable ecosystem. This is because of the climate-related stresses it has dealt with over the past decade. If the Nile River’s flow decreases, this could be catastrophic for the Delta. Less sediment will be transported to the Delta. This is because of the GERD’s operation. This would lead to increased erosion on the banks of the Nile. It would also imply a decrease in cultivable land and a general decrease in nutrients that feed aquatic species.⁶⁰

3.6.7 Considering these facts together, there is no doubt that the full operation of the GERD will have

long-lasting impacts on the Nile Delta region, making the issues of climate change worse.

3.6.8 Egypt would like the Court to recognize that Ethiopia has yet to address the negative effects of the GERD, apart from a marine species passage. This failure not only threatens the environmental health of the Nile but also the very livelihood of Egypt and its socio-economic stability.

3.6.9 As such, Egypt finds Ethiopia in violation of its legal obligation towards the environment. Egypt demands immediate action to be taken before it is too late.

3.7 State Responsibility & Legal Consequences

3.7.1 The concept of “state responsibility” was treated as customary international law for a long time. It was officially codified into law in 2001 as the ILC adopted the *Articles on Responsibility of States for Internationally Wrongful Acts* (ARSIWA).

3.7.2 Article 1 of ARSIWA formalizes the idea that, if a state violates its international obligations, it is liable for the resulting harm caused and is required to make full reparations.⁶¹

3.7.3 In the language of the text, ARSIWA Articles 1 and 31 states that:

3.7.4 *“Every internationally wrongful act of a State entails the international responsibility of that State.”* (Article 1)⁶²

3.7.5 *“The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”* (Article 31)⁶³

3.7.6 Egypt would like the Court to affirm that Ethiopia’s construction and operation of the GERD

58 United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”

59 United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”

60 International Law Commission, “Articles on Responsibility of States for Internationally Wrongful Acts,” adopted November 2001, Report of the International Law Commission on the Work of its Fifty-Third Session, UN Doc. A/56/10, chap. IV.E.1, 43-365.

61 “Articles on Responsibility of States for Internationally Wrongful Acts.”

62 International Law Commission, “Articles on Responsibility of States for Internationally Wrongful Acts.”

63 International Law Commission, “Articles on Responsibility of States for Internationally Wrongful Acts,” adopted November 2001, Report of the International Law Commission on the Work of its Fifty-Third Session, UN Doc. A/56/10, chap. IV.E.1, 43-365.

without following its international obligations under the 1997 Convention—listed above—constitutes an “internationally wrongful act.”

3.7.7 Furthermore, Egypt believes that Ethiopia must provide full reparations for the harm that it has done. This includes but is not limited to, water and food insecurity, decreased agricultural production, and threats to socio-economic stability.

3.7.8 Specific measures for reparations are up to the discretion of the Court. However, Egypt would like the ICJ to strongly consider halting the GERD’s operation. This is one measure of reparation. Egypt recommends this halting, at least until an equitable agreement regarding its usage is reached.

3.7.9 Such a demand is consistent with established international legal principles. Egypt would like to underscore how crucial it is that Ethiopia faces legal consequences for its violations of its international obligations.

3.8 Concluding Remarks

3.8.1 The legal framework outlined in this Chapter shows that Ethiopia’s actions surrounding the GERD are in clear violation of its international legal duties. These violations include a breach of *equitable and reasonable utilizations, prevention of significant harm*, and obligations to cooperate, notify, and consult its neighboring upstream states.

3.8.2 Egypt finds that its usage of the *Convention on the Law of the Non-Navigational Uses of International Watercourses*, customary international law, and the principle of state responsibility provides a robust legal argument for its claims before the Court.

3.8.3 The Arab Republic of Egypt respectfully requests that the ICJ recognize these violations. Egypt requests that the ICJ grant the relief outlined in its submissions in the subsequent Chapter. This is to ensure the preservation of the Nile River. Moreover, it is to ensure a viable future for the “Gift of the Nile.”

Chapter IV: Submissions

4.1 For the foregoing reasons, the Arab Republic of Egypt respectfully requests the following prayers of relief from the ICJ.

4.2 May it please the Court to adjudge and declare that:

4.2.1 The Court has jurisdiction to hear this case;

4.2.2 The operation of the GERD is in violation of the international law principles of *equitable and reasonable use* and *no significant harm*;

4.2.3 Ethiopia must stop all activities related to the GERD that negatively impact Egyptian waters. This must be done until a collective agreement is reached among all Nile Basin stakeholders;

4.2.4 Ethiopia must provide all data regarding the construction of GERD. This includes all technical specifications, filling and emptying schedules, water management plans, technical safety reports, and ecosystem health assessments. This data is required per international law on cooperative management of shared water resources;

4.2.5 Ethiopia must re-enter negotiations with Egypt and Sudan. This must be done with a greater willingness to compromise and scale back the filling of the dam over a longer period with a final completion date at or after 2050;

4.2.6 The 1929 and 1959 Nile Water Agreements being the only legal documents that cover the full utilization of the Nile are valid and binding;

4.2.7 Ethiopia must take better mitigation measures that take into account not only the environmental issues but also the adverse social and economic effects the GERD brings to Egypt and other downstream states;

4.2.8 All future developments on the Nile—whether related to the GERD or not—shall undergo a rigorous pre-approval process. This would involve all

stakeholders;

4.3 Egypt reserves the right to update these demands should new information come out of the legal proceedings.

Counter-Memorial of the Democratic Republic of Ethiopia

Chapter I: Introduction

1.1 On July 16, 2024, the Arab Republic of Egypt notified the Registrar of a Special Agreement with the Federal Democratic Republic of Ethiopia. This gave rise to a dispute judged by the International Court of Justice.

1.2 The Court fixed January 18, 2025, as the time limit for the filing by the Federal Democratic Republic of Ethiopia. This Counter-Memorial is submitted following the stipulated timeline.

1.3 Following Article 49 of the Rules of the Court, this Counter-Memorial contains the following:

1.3.1 A statement of facts outlined in Chapter II;

1.3.2 A statement of law in Chapter III;

1.3.3 The Federal Democratic Republic of Ethiopia's submission to the Court in Chapter IV. This sets out formal requests for relief.⁶⁴

1.4 In this Counter-Memorial:

1.4.1 The International Court of Justice will be referred to either as the Court or the ICJ;

1.4.2 The Federal Democratic Republic of Ethiopia will be referred to as Ethiopia;

1.4.3 The Arab Republic of Egypt will be referred to as Egypt;

1.4.4 The Grand Ethiopian Renaissance Dam will be

referred to as GERD or the GERD.

1.5 Ethiopia contends that the ICJ does not retain jurisdiction over this case. Ethiopia refers to Article 36 of the Statute of the ICJ to back this contention.⁶⁵ Nonetheless, Ethiopia has submitted this Counter-Memorial to the Court in good faith.

1.6 This Counter-Memorial will refute all claims of wrongdoing stated by Egypt. Ethiopia claims that its actions surrounding the construction and operation of the GERD are in full compliance with international law. In particular, Ethiopia thinks the principles of *equitable and reasonable utilization* are complied with. Also, this Counter-Memorial will show that Egypt is looking at outdated treaties. For example, the Nile Waters Agreements. Ethiopia thinks that these treaties do not reflect the current needs of the Nile Basin states. Ethiopia believes that its actions are important for its development.

Chapter II: Statement of Facts

Historical Importance

2.1 Ancient Times

2.1.1 Ethiopian societies have depended on the Blue Nile for thousands of years. This is because the water and soil have helped grow crops like wheat and barley. This has helped move the state from a nomadic to a sedentary lifestyle.⁶⁶

2.1.2 The kingdom of Aksum thrived because of its use of the Nile. Aksum is the ancestor of the modern Ethiopian state. The people of Aksum grew crops at a surplus. They prospered from their agriculture. After cities were established, the Nile allowed trade between Africa, Arabia, and Rome. The port city of Adulis became one of Africa's major hubs for trade. It was key to ancient Ethiopian prosperity.⁶⁷

⁶⁴ "Rules of the Court (1978)," *International Court of Justice*, April 14, 1978, accessed August 6, 2024, <https://www.icj-cij.org/rules>.

⁶⁵ "Statute of the International Court of Justice," *International Court of Justice*, accessed August 6, 2024, <https://www.icj-cij.org/statute>.

⁶⁶ Karen Conniff, David Molden, Don Peden, Seleshi B. Awulachew, *Nile Water and Agriculture: Past, Present and Future*.

⁶⁷ Tadesse Ayalew, "Aksum: Water and Urbanization in Northern Ethiopia," In *A History of Water, Series 3, Vol. 1: From Jericho to Cities in the*

2.2 Medieval Times

2.2.1 Over a thousand years later, water continued to hold an important role in Ethiopian society. The Nile supported trade with Sudan and Egypt. It also helped spread Christianity in monasteries on its banks. The Nile was central to the modernization of Egypt.⁶⁸

2.2.2 The Nile remained crucial to maintaining political power. This was true when the Aksum kingdom was replaced by the Zagwe dynasty. It was also true in the later Solomonic dynasty.⁶⁹

2.3 Colonial Times

2.3.1 In the late 19th century, King Mesafit decentralized Ethiopia's political power. However, the federated regions of Ethiopia kept their independence. At the same time, their neighbors were fighting European colonization.

2.3.2 Under the leadership of Haile Selassie the First, Ethiopia defied colonial efforts from the British and Italians. They maintained sovereignty over the Nile.⁷⁰

2.4 Contemporary Times

2.4.1 This autonomy allowed Ethiopia to develop its water resources. They did not have a fear of external interference.

2.4.2 Over the mid-to-late 20th century, Ethiopia took advantage of humanitarian organizations' financing. They constructed a private underground reservoir. They also privately hand-dug water points in the Garri region.⁷¹

2.4.3 Development had advanced on the Nile. By the end of the 20th century, Ethiopia began exploring modern large-scale water projects. An example would be hydroelectric power and irrigation. This was done to transform its economy.

2.4.4 Political instability and financial constraints impeded many of these projects. However, this shows how Ethiopia has prioritized development on the Nile in contemporary times.⁷²

Modern Importance of the Nile

2.5 Legal Status

2.5.1 Ethiopia was left out of the 1929 and 1959 Nile Waters Agreements. Because of this, the majority of the Nile's flow was historically assigned to Egypt and Sudan.⁷³

2.5.2 For this reason, Ethiopia has long advocated for a more fair split on the usage of Nile waters.

2.5.3 Ethiopian diplomats have consistently argued that these treaties are outdated. Furthermore, they argue that these treaties do not reflect the rights and needs of all Nile Basin countries.⁷⁴

2.5.4 The 1929 Nile Waters Agreement gave 48 billion cubic meters of water per year to Egypt and a mere 4 billion cubic meters to Sudan.⁷⁵ It was signed between Egypt and Great Britain. Britain was representing its East African colonies, including Sudan.

2.5.5 The 1929 agreement had an imbalanced allocation.⁷⁶ On top of this, the agreement gave veto power to Egypt over any construction projects that

Seas: A History of Urbanization and Water Systems, 171-195. London: I. B. Tauris, 2014.

68 Karl W. Butzer. *Rise and fall of Axum, Ethiopia: A geo-archaeological interpretation* Karl W. Butzer. New York, NY: Cambridge University Press, 1981.

69 Binyam Yonatan and Verena Krebs, *'Ethiopia' and the World, 330–1500 CE. Elements in the Global Middle Ages* (Cambridge: Cambridge University Press, 2024).

70 Christophe Van der Beken, "Ethiopia: From a Centralised Monarchy to a Federal Republic," *Afrika Focus* 20, no. 1-2 (2007): 13-48.

71 Frank van Steenberg, Assefa Kumsa, and Nasser Al-Awlaki, "Understanding Political Will in Groundwater Management: Comparing Yemen and Ethiopia," *Water Alternatives* 8, no. 1 (2015): 774-799.

72 John Waterbury. *The Nile Basin: National Determinants of Collective Action*. New Haven: Yale University Press, 2002.

73 United Arab Republic and Sudan, *Agreement (with annexes) for the Full Utilization of the Nile Waters*, November 8, 1959, No. 6519, registered by the United Arab Republic on February 7, 1963, Official text in Arabic.

74 Nile Basin Initiative. "Nile Basin Initiative." Accessed July 2, 2024. <http://nilebasin.org/>.

75 "Nile Basin Initiative."

76 "Nile Basin Initiative."

would affect Egypt's share of water.

2.5.6 This clause gave Egypt full control over the Nile River Basin. This was done at the expense of its upstream neighbors who also depended on the river.

2.5.7 Ethiopia annually provides 85 percent of the Nile's flow through the Blue Nile. Nevertheless, it was not included in this agreement by the British.⁷⁷ This fact had no say in how the Nile water was allocated.

2.5.8 Sudan became independent in 1956. Following this, the 1959 Nile Waters Agreement was drafted. This reaffirmed Egypt and Sudan's control of the Nile. This new agreement increased Egypt's portion to 55.5 billion cubic meters of water per year. It also increased Sudan's portion to 18.5 billion cubic meters per year.⁷⁸

2.5.9 This updated split left close to nothing to the remaining countries on the Nile. Moreover, the agreement facilitated the construction of the Aswan High Dam in Egypt. This dam has since then been used to regulate and utilize the Nile waters for the benefit of Egypt and Sudan. However, it was to the detriment of other upstream countries.⁷⁹

2.5.10 As a result, this updated agreement did not make much progress from the time of British rule. Its exclusion of Ethiopia has led to unfair uses of the Nile.

2.5.11 40 years later, the Nile Basin Initiative (NBI) was signed in 1999.⁸⁰

2.5.12 For the first time, an official document included all ten countries that were impacted by the Nile's waters (Burundi, the DR of Congo, Egypt,

Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Sudan Tanzania, and Uganda).

2.5.13 Various programs helped the NBI build a level of water management that allowed more fair use of the Nile's waters. Some examples are the Shared Vision Program and the Subsidiary Action Program. These programs also allowed more joint investment projects and greater regional cooperation.⁸¹

2.5.14 The actual implementation of agreed-upon projects and water sharing faced great difficulties. This was because of political disagreement and financial constraints. For context, the NBI had no binding force on its member states.⁸²

2.5.15 Throughout history, the sharing of the Nile's waters has always been decided by uneven treaties. These treaties were drafted by the British. They favored Egypt and Sudan. They excluded Ethiopia and other upstream countries. The NBI tried to end this inequality. However, ongoing political tensions, technical deficiencies, and financial constraints prevented truly fair water sharing in the Nile River Basin.⁸³

2.6 Socio-Economic Importance

2.6.1 Firstly, the Nile River supports agriculture. This employs a majority of Ethiopia's population. Specifically, the Nile is Ethiopia's largest employer, comprising 70 percent of Ethiopia's workforce and 34 percent of Ethiopia's GDP.⁸⁴

2.6.2 In the agricultural sector alone, the vast majority of Ethiopia's large-scale irrigation projects rely on the Blue Nile.⁸⁵ For example, the *Koga Irrigation*

77 "Nile Basin Initiative."

78 Arthur Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties* (Nairobi: Law & Policy Research Foundation, Konrad Adenauer Stiftung, 2004).

79 Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties*

80 The Nile Basin Initiative Act, 2002, Uganda.

81 The Nile Basin Initiative Act, 2002, Uganda.

82 The Nile Basin Initiative Act, 2002, Uganda.

83 The Nile Basin Initiative Act, 2002, Uganda.

84 P. Boulanger et al., Policy Options to Support the Rural Job Opportunities Creation (RJOC) Strategy in Ethiopia, Pan African Network for Economic Analysis of Policies, Addis Ababa, November 6-8, 2019.

85 Dawit Mekonnen and Hua Xie, "Modeling the Optimal Energy Solutions for Irrigation in Ethiopia," *IFPRI Blog: Research Post, Environment and Production Technology (EPTD)*, September 23, 2022, <https://www.ifpri.org/blog/modeling-optimal-energy-solutions->

and Watershed Management Project in the Amhara region. This brings water to over 17,000 acres of farmland. The project single-handedly supports local agricultural productivity and food security.⁸⁶

2.6.3 Furthermore, the Nile supports the cultivation of crops such as teff, wheat, maize, and barley. These crops need a reliable water supply for their growth.

2.6.4 Finally, Ethiopia is a major world exporter of coffee. Known as the “birthplace of coffee,” Ethiopia generates over a third of its foreign exchange earnings through the export of Arabica coffee beans.⁸⁷ Yet again, the Blue Nile basin is essential to this industry. It provides water for coffee plantations in the regions of Jimma and Sidama.

2.6.5 Additionally, the Nile River is an excellent source of hydroelectric power. There are regional debates regarding the usage of the GERD’s output. However, it is expected to generate 6450 megawatts of electricity. This is double Ethiopia’s current electricity generation. Moreover, it is enough to electrify all of its rural and urban areas sustainably.⁸⁸

2.6.6 There are other significant projects, as well. For example, the *Gilgel Gibe Hydropower Complex*. Though it isn’t directly located on the Nile, the 1800 megawatts that this complex produces come from water systems in Ethiopia. These waters originate in the Nile.⁸⁹

2.6.7 Therefore, increased hydroelectric power from the Blue Nile would help Ethiopia achieve its

industrialization goals. It would provide an affordable source of electricity to industries, businesses, schools, and households. This would increase urbanization and help attract foreign direct investment.

2.6.8 Finally, the Blue Nile has deep cultural and historical significance.⁹⁰

2.6.9 The Blue Nile is a part of many Ethiopian traditions and legends. For example, the stories of Queen Sheba and the Solomonic dynasty.⁹¹

2.6.10 The Nile is also religiously important for many Ethiopians. They perform pilgrimages and ceremonies on its banks. It is considered sacred in Ethiopian Orthodox Christianity. The annual celebration of Timkat brings hundreds of thousands of people to the borders of the Blue Nile.⁹²

Construction of the Grand Ethiopian Renaissance Dam

2.7 Project Objectives

2.7.1 The GERD was officially launched in April 2011. The Dam’s primary objective is to generate around 6450 megawatts of electricity.⁹³

2.7.2 Statistically, this would make it Africa’s largest hydroelectric power plant. It would provide electricity to millions of Ethiopians.

2.7.3 Additionally, electricity from the dam would support the growing industrial sector. It would allow Ethiopia to sell the remaining energy to neighboring

irrigation-ethiopia.

86 Ayalew Gebre, Derese Getachew, and M. McCartney, “Stakeholder Analysis of the Koga Irrigation and Watershed Management Project,” study report submitted to the International Water Management Institute (IWMI), January 2008.

87 Rajesh Chauhan, M. S. Hooda, and Agena Anjulo Tanga, “Coffee: The Backbone of Ethiopian Economy,” *International Journal of Economic Plants* 2, no. 1 (2015): 018-022.

88 Steve Floyd, “Power Trials Commence at Grand Ethiopian Renaissance Dam Despite Stalled Negotiations and Regional Tensions,” *Lawfare*, May 19, 2022, <https://www.lawfareblog.com/power-trials-commence-grand-ethiopian-renaissance-dam-despite-stalled-negotiations-and-regional-tensions>.

89 “Gibe III Hydroelectric Project,” Webuild, accessed July 24, 2024, <https://www.webuildgroup.com/en/projects/dams-hydroelectric-plants/gibe-iii-hydroelectric-project/>.

90 Terje Tvedt, *The River Nile in the Age of the British: Political Ecology and the Quest for Economic Power*, London: I.B. Tauris, 2004.

91 Mamman Musa Adamu, “The Legend of Queen Sheba, the Solomonic Dynasty and Ethiopian History: An Analysis,” *African Research Review* 3, no. 1 (2009): 468-482.

92 Dawit Endeshaw, “Ethiopians Celebrate ‘Timket’ Festival That Marks Jesus’ Baptism,” *Reuters*, January 21, 2024, <https://www.reuters.com/article/ethiopians-celebrate-timket-festival>.

93 “Ethiopia: Grand Ethiopian Renaissance Dam (GERD),” International Hydropower Association, accessed July 24, 2024, <https://www.hydropower.org/sediment-management-case-studies/ethiopia-grand-ethiopian-renaissance-dam-gerd>.

countries. It would produce additional profit.⁹⁴

2.8 Project Specifications & Progress

2.8.1 Upon completion, the GERD will measure 1800 meters long and 145 meters high. This would make it the largest dam in Africa to date.

2.8.2 The GERD covers an area of 1874 square kilometers. Its reservoir will have a capacity of over 74 billion cubic meters. This is to regulate the flow of the Blue Nile. It also helps to maintain a steady supply of water to generate electricity at all times.⁹⁵

2.8.3 Moreover, the GERD has 16 Francis turbines. These generate about 400 megawatts of electricity each. This makes the GERD the largest electric power plant in the whole African continent.⁹⁶

2.8.4 Construction on the GERD has proceeded swiftly. There have been numerous challenges since the beginning of construction in April 2011. However key infrastructure components have been completed at the point of this being written.⁹⁷

2.8.5 Ethiopia reached an important milestone in 2022. They generated the first drops of electricity.⁹⁸

2.8.6 Currently, about 750 megawatts of electricity are produced daily from the two turbines which have been completed. These provide power to thousands of Ethiopian households and businesses.⁹⁹

2.9 International Reactions

2.9.1 The GERD has received mixed reactions at the

regional and international levels.

2.9.2 Downstream countries like Egypt and Sudan have expressed concern over a potential reduction in water flow. They have been uncooperative in negotiations and reaching an agreement.¹⁰⁰

2.9.3 On the other hand, Ethiopia views this dam as a sovereign right and a necessity for development. For this reason, they have engaged in multiple rounds of negotiations facilitated by the African Union and the United States. These were done to address and mitigate the apprehensions of its neighbors.¹⁰¹

2.9.4 The Republic of Ethiopia acknowledges that the construction and operation of the GERD can negatively affect agriculture in both Egypt and Sudan by reducing water availability.

2.9.5 However, Ethiopia stresses that it has taken all necessary measures to mitigate the negative environmental impacts of the GERD on downstream countries. Ethiopia argues that it has full sovereign right to build the dam on the Blue Nile.

2.9.6 Egypt has insisted that the filling of the dam should be extended over a longer period. This is to minimize the disruption to the river's flow. Egypt proposes a 12-21-year period for filling the reservoir that would end around 2040.¹⁰² In contrast, Ethiopia has aimed for a 4-7 year filling period. They want to quickly make use of the dam's benefits and bring power to the 45 percent of its population that still lives without access to stable electricity.¹⁰³

94 "Africa Region Profile," International Hydropower Association, accessed July 24, 2024, <https://www.hydropower.org/region-profiles/africa>.

95 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD)," International Hydropower Association, accessed July 24, 2024, <https://www.hydropower.org/sediment-management-case-studies/ethiopia-grand-ethiopian-renaissance-dam-gerd>.

96 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD)," International Hydropower Association, accessed July 24, 2024, <https://www.hydropower.org/sediment-management-case-studies/ethiopia-grand-ethiopian-renaissance-dam-gerd>.

97 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD)."

98 "Ethiopia: Grand Ethiopian Renaissance Dam (GERD)."

99 "Ethiopia Announces That Second Turbine in GERD Is in Operation," *Africa News*, August 11, 2022, <https://www.africanews.com/2022/08/11/ethiopia-announces-that-second-turbine-in-gerd-is-in-operation/>.

100 "Ethiopia Announces That Second Turbine in GERD Is in Operation."

101 United Nations Economic Commission for Africa (UNECA). *Transboundary River/Lake Basin Water Development in Africa: Prospects, Problems, and Achievements*. Addis Ababa: UNECA, 2000.

102 Nader Nouredin, "Water Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries," *Arab Center Washington DC*, May 27, 2021, <https://arabcenterdc.org/resource/water-conflict-between-egypt-and-ethiopia-a-defining-moment-for-both-countries/>.

103 Nader Nouredin, "Water Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries," *Arab Center Washington DC*, May 27, 2021, <https://arabcenterdc.org/resource/water-conflict-between-egypt-and-ethiopia-a-defining-moment-for-both-countries/>.

2.9.7 Throughout the dam’s construction, Ethiopia has made consistent efforts to address the Egyptian and Sudanese concerns. These include a phased filling of the reservoir during the rainy season. This would minimize the impact the dam has on water flow.¹⁰⁴

2.9.8 Moreover, during the round of negotiations hosted in Washington D.C., Ethiopia proposed to share real-time data on water levels. This is to increase transparency with its downstream neighbors.¹⁰⁵

2.9.9 Finally, Ethiopia also suggested the construction of an emergency water release mechanism. This mechanism would ensure Egypt and Sudan can receive adequate water from the dam during periods of drought.¹⁰⁶

pH, oxygen, and turbidity. Turbidity has to do with how clear the water is. These systems will help detect changes in water quality that could negatively impact aquatic ecosystems. These intervention measures can be taken before eutrophication or algal blooms occur.¹⁰⁸

2.10.4 Finally, to protect aquatic biodiversity, fish passages, and protected areas have also been added to the dam’s design. The passages allow migratory fish species to bypass the dam and continue to their natural spawning sites. All the while, the protected areas conserve important habitats for local aquatic species.¹⁰⁹

2.10.5 Through these measures, Ethiopia believes the GERD operates sustainably. Ethiopia thinks that it balances the benefits of hydropower generation with the need to protect the local environment.

2.11 Social Impacts

2.11.1 Approximately 20,000 people living in the Benishangul-Gumuz region have been affected by the construction of the dam and the flooding of their lands.¹¹⁰

2.11.2 To make up for this, the Ethiopian federal government constructed new villages for the displaced populations.¹¹¹ These resettlement villages have modern housing with running water and electricity. They were designed as improvements to the living standards of the displaced families.

Current Status and Impacts

2.10 Environmental Impacts

2.10.1 Measures have been put in place to ensure that the dam operates sustainably and with minimal harm to the environment.

2.10.2 Firstly, sediment traps have been constructed. These capture sediment before it reaches the reservoirs. Moreover, regular dredging operations are planned to remove the built-up sediments in the traps. This sediment reduces the dam’s capacity and decreases water quality downstream.¹⁰⁷

2.10.3 Moreover, real-time monitoring systems have been installed. These systems continuously check important water properties such as temperature,

104 “Water Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries.”

105 Janani Vivekananda, “The Politics of the Grand Ethiopian Renaissance Dam,” *Climate Diplomacy*, accessed July 24, 2024, <https://climate-diplomacy.org/magazine/conflict/politics-grand-ethiopian-renaissance-dam>.

106 Janani Vivekananda, “The Politics of the Grand Ethiopian Renaissance Dam,” *Climate Diplomacy*, accessed July 24, 2024, <https://climate-diplomacy.org/magazine/conflict/politics-grand-ethiopian-renaissance-dam>.

107 Mugahid Elnour, “The Impact of the Grand Ethiopian Renaissance Dam on the Water-Energy-Food Security Nexus in Sudan” (master’s thesis, Uppsala University, 2019).

108 Karim M. Morsy, Gaber Abdela Tif, and Mohamed K. Mostafa, “Comprehensive Assessment for the Potential Environmental Impacts of the Grand Ethiopian Renaissance Dam on the Downstream Countries: Itaipu Dam in the Rearview Mirror,” *Air, Soil and Water Research*, first published online September 8, 2021, <https://doi.org/10.1177/11786221211041964>.

109 Morsy, Tif, Mostafa. “Comprehensive Assessment for the Potential Environmental Impacts of the Grand Ethiopian Renaissance Dam on the Downstream Countries: Itaipu Dam in the Rearview Mirror.”

110 Morsy, Tif, Mostafa. “Comprehensive Assessment for the Potential Environmental Impacts of the Grand Ethiopian Renaissance Dam on the Downstream Countries: Itaipu Dam in the Rearview Mirror.”

111 Sarah Vaughan and Mesfin Gebremichael, *Resettlement of Gumuz Communities Around Ethiopia’s Blue Nile Dam*, FutureDAMS Working Paper 010 (Manchester: The University of Manchester, 2020), <https://hummedia.manchester.ac.uk/institutes/gdi/publications/workingpapers/futuredams/futuredams-working-paper-010-vaughan.pdf>.

2.11.3 Furthermore, the Ethiopian government has invested in public infrastructure. They opened over ten new primary and secondary schools in the last five years. This was done to ensure that displaced children have access to education.¹¹²

2.11.4 Along with these resettlement programs, displaced farmers have received patches of fertile land and access to irrigation facilities. This is part of their compensation packages. These packages have also included free seed bags and farming equipment distributed by the government. These are so that farmers can transition into their new environments while maintaining their crop yield.¹¹³

2.11.5 In addition to the farmer compensation packages, the government has financed various projects to provide alternative jobs to the displaced communities. These programs have included vocational training in skills such as carpentry, masonry, and tailoring to create new small-scale businesses.¹¹⁴

2.11.6 Business management skills have also been taught with a focus on the poultry farming and beekeeping trades. Finally, the government has also set aside funds to support projects that benefit the entire resettled community. These funds can be used for initiatives such as new water supply systems, market facilities, or communal farming projects.¹¹⁵

2.11.7 The most important long-term impact of the GERD's construction is the increased electrical production in Ethiopia. This increased output of electricity would be used to help develop the industrial sector and support factories and local manufacturing.¹¹⁶

2.11.8 Additionally, with access to cheap electricity, the government could distribute it to remote parts of the country and improve the living standards of regions that cannot afford to maintain their power grids. The electricity will be sourced sustainably. The dam will help Ethiopia reduce its reliance on fossil fuels.¹¹⁷

2.12 External Involvement

2.12.1 The GERD project gives Ethiopia an important opportunity to improve its relations with its neighbors. It also helps set better cooperative measures on domestic uses of the Nile. Nevertheless, it has posed numerous challenges in the fields of regional cooperation and diplomacy.

2.12.2 As previously mentioned, Ethiopia has participated in a series of roundtables hosted by both the African Union and the United Nations. These have attempted to mediate the GERD dispute. Moreover, these roundtables attempt to pass a fair binding agreement regarding the use of Nile waters.¹¹⁸

2.12.3 Egyptian politicians claim that continued international engagement is necessary. This is because the measures taken have been “too liberal”. Moreover, Ethiopian and Sudanese politicians highlight a lack of cooperation from Egyptian leaders in trying to fairly split the costs and resources of the GERD.¹¹⁹

2.12.4 Moreover, the GERD dispute has attracted the attention of powers outside of the African continent. These powers have provided various sources of support based on their respective interests in the region.¹²⁰

2.12.5 The United States has played a mediator role

112 Vaughan and Gebremichael. *Resettlement of Gumuz Communities Around Ethiopia's Blue Nile Dam*

113 “Water Justice and the Struggles of Minorities and Indigenous Peoples for Water Rights: A Planetary Perspective,” *Minority Rights Group International*, accessed July 24, 2024, <https://minorityrights.org/resources/trends2023-water-justice-and-the-struggles-of-minorities-and-indigenous-peoples-for-water-rights-a-planetary-perspective-26/>.

114 “Water Justice and the Struggles of Minorities and Indigenous Peoples for Water Rights: A Planetary Perspective.”

115 “Water Justice and the Struggles of Minorities and Indigenous Peoples for Water Rights: A Planetary Perspective.”

116 “Water Justice and the Struggles of Minorities and Indigenous Peoples for Water Rights: A Planetary Perspective.”

117 “Water Justice and the Struggles of Minorities and Indigenous Peoples for Water Rights: A Planetary Perspective.”

118 United Nations Educational, Scientific and Cultural Organization (UNESCO). *Managing Water Under Uncertainty and Risk*. Paris: UNESCO, 2012.

119 *Managing Water Under Uncertainty and Risk*.

120 *Managing Water Under Uncertainty and Risk*.

in several rounds of negotiations between Egypt, Ethiopia, and Sudan. They have tried to make an equitable agreement on the GERD's operation. In 2020, the U.S. Treasury Department hosted a series of talks in Washington D.C. These talks led to a draft agreement. However, this was not finalized. There were disagreements between the member parties on many clauses.¹²¹

2.12.6 China, on the other hand, has heavily invested in Ethiopia's infrastructure projects on the Nile, including the GERD. This is part of its *Belt and Road Initiative*. Institutions like the *Export-Import Bank of China* and the *China Development Bank* have provided a series of low-interest loans. These have helped finance the dam's construction. The *China Gezhouba Group Corporation* (CGGC) was one of the main contractors involved in digging and structural construction. This group provided engineering services and construction management for the dam project.¹²² Additionally, *Sinohydro* was another key player in Ethiopia's infrastructure development. *Sinohydro* is a subsidiary company of *Power Construction Corporation of China*). This company provided similar engineering and technical services as *CGGC*. Finally, firms like *China Electric* and telecom giant *Huawei* are actively involved in the electricity distribution part of the project. They focused on connecting the power generated by the dam to Ethiopia's national grid.¹²³

2.12.7 The European Union has also been involved. They have offered diplomatic support through its Special Representative for the Horn of Africa.¹²⁴

2.12.8 In short, these nations' involvement underscores the global significance of the Nile waters and the need for a stable and cooperative framework

for their management.

Conclusion

2.13 Concluding Remarks

2.13.1 The GERD has the potential to transform the Ethiopian economy. However, this is only if it can be completed. The Ethiopian Foreign Ministry has faced many challenges with its downstream neighbors. However, Ethiopia believes that the GERD can drive national development if there is careful management and cooperation.

Chapter III: Statement of Law

3.1 Legal Framework

3.1.1 This Chapter will cover the legal framework in the dispute between Egypt and Ethiopia.

3.1.2 The legal principles and reasoning mentioned in this chapter will be sourced from customary international law. For example, the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses. Other relevant international treaties for judicial precedent will also be mentioned.

3.1.3 Ethiopia has many developmental needs. Because of this, the state wants the Court to recognize that jurisdiction cannot be established in this case. Should it be established, Ethiopia has taken all necessary measures to act according to international legal principles.

3.2 Jurisdiction of the ICJ

3.2.1 The Federal Democratic Republic of Ethiopia would like to assert that the ICJ lacks jurisdiction to

121 Mohamed Helal and Hesham M. Bekhit, "So Near, Yet So Far: An Egyptian Perspective on the US-Facilitated Negotiations on the Grand Ethiopian Renaissance Dam," *Transboundary Waters* 45, no. 4 (2023): 580-614, <https://doi.org/10.1080/02508060.2023.2230851>.

122 Vivien Foster et al., *Building Bridges: China's Growing Role as Infrastructure Financier for Sub-Saharan Africa*, Trends and Policy Options No. 5 (Washington, DC: The World Bank, Public-Private Infrastructure Advisory Facility, 2009).

123 Xinhua, "Chinese Firms Give Crucial Impetus to Ethiopia's Infrastructure Ambition," *The State Council Information Office: The People's Republic of China*, December 25, 2018, <http://www.scio.gov.cn/m/32618/Document/1649352/1649352.htm>.

124 United Nations, "Security Council Calls on Egypt, Ethiopia, Sudan to Resume Negotiations on Grand Ethiopian Renaissance Dam, Reach Binding Agreement on Outstanding Issues," *UN Press*, September 15, 2021, <https://press.un.org/en/2021/sc14576.doc.htm>.

rule on this dispute.

3.2.2 As per Article 36(1) of the Statute of the Court, legal jurisdiction is dependent on the consent of all states involved.

3.2.3 Specifically, Article 36(1) notes that:

3.2.4 *“The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”*

3.2.5 Within the context of the construction and operation of the GERD, Ethiopia has not consented to the ICJ’s jurisdiction. Rather, Ethiopia has sought to resolve this dispute through regional bodies like the African Union.¹²⁵

3.2.6 As such, the Democratic Republic of Ethiopia asserts that the ICJ should not intervene in this dispute for a diplomatic resolution. Their ruling could undermine ongoing and future negotiations. It could also increase tensions between Ethiopia and its neighbors.¹²⁶

3.2.7 From a more legal standpoint, Ethiopia would like the Court to recognize that the dispute surrounding the GERD’s operation does not meet the criteria set out for ICJ’s adjudication.

3.2.8 Following Article 36(2) of the Statute of the Court, for a case to be considered by the ICJ, it must concern;

3.2.9 *“[T]he interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, or the nature or extent of the reparation to be made for the breach of an international obligation.”*

3.2.10 As clearly explained in Chapter II, this

disagreement is mainly a political, economic, and development issue. It is not a legal one. As such, Ethiopia believes it falls out of the Court’s scope.

3.2.11 Finally, Ethiopia would like to remind the Court of the principle of *exhaustion of local remedies*. Ethiopia has held roundtables in D.C. and with the EU. However, the regional mechanisms available through the African Union have not been exhausted yet.¹²⁷

3.2.12 Consequently, Ethiopia asserts that the ICJ must respect the *principle of subsidiarity*. The Court must allow African states to resolve their disputes through their regional frameworks. This is stated in Chapter VIII of the UN Charter.¹²⁸

3.3 Equitable & Reasonable Utilization

3.3.1 Should the Court establish jurisdiction; Ethiopia would like to note that its actions are consistent with the principle of equitable and reasonable utilization. This is found in Articles 5 and 6 of the 1997 Convention.

3.3.2 Ethiopia recognizes *equitable and reasonable utilization* as a fundamental principle in international water law. Ethiopia would, however, like to stress that Egypt has purposely left out an important condition of this principle. This pertains to riparian splitting their shares of a watercourse.

3.3.3 For a split to be considered both *equitable* and *reasonable*, it must take into account the benefits reaped from a watercourse. More specifically, it must look at the geography, hydrology, climate, population, and socio-economic needs of a given state.

3.3.4 As formerly asserted, Ethiopia provides 85 percent of the Nile’s flow through the Blue Nile. Moreover, Ethiopia has been historically marginalized

¹²⁵ United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses,” May 21, 1997, United Nations Treaty Series, vol. 2999, p. 77, Accessed August 10, 2024

¹²⁶ “Convention on the Law of the Non-Navigational Uses of International Watercourses,”

¹²⁷ International Crisis Group, “Bridging the Gap in the Nile Waters Dispute,” March 20, 2019, Accessed August 10, 2024, <https://www.crisisgroup.org/africa/horn-africa/ethiopia/271-bridging-gap-nile-waters-dispute>.

¹²⁸ “Bridging the Gap in the Nile Waters Dispute”

in its allocations of the Nile. This is due to uneven treaties signed by colonial powers.

3.3.5 Furthermore, the GERD is Ethiopia’s first attempt at using the Nile’s potential for energy to support national economic development. Ethiopia has a population of over 120 million. Almost a third of this population struggles with access to electricity. The GERD’s production would be very essential for the country. It will raise the living standard of Ethiopia.

3.3.6 In line with these facts, Ethiopia would not violate equitable and reasonable utilization. The principle itself justifies Ethiopia’s right to use the Nile. This is due both to its substantial contributions to the river’s flow—*equitable*—and due to its socio-economic needs—*reasonable*.¹²⁹

3.3.7 In sum, Ethiopia would like to remind the Court that the principle of equitable and reasonable utilization must be interpreted in a way that balances both the contributions and the needs of all states involved. Egypt’s claims of violation are context-blind. Ethiopia would like to see the Court recognize its fair usage of the Nile.

3.4 No Significant Harm

3.4.1 Furthermore, Ethiopia would like to address Egypt’s concerns regarding harm to downstream states.

3.4.2 Codified in Article 7 of the 1997 Convention, states must take all measures necessary to prevent causing harm to other states through the usage of shared watercourses.¹³⁰

3.4.3 Ethiopia would like to affirm that it has done everything to minimize the harm inflicted on downstream countries. Ethiopia has gradually filled its reservoir. It has also done environmental impact

assessments, and the state has also created fish passages. Ethiopia has taken appropriate measures to minimize both the economic and environmental harm done.

3.4.4 Furthermore, the potential harm cited by Egypt is all but speculative. They talk about food and water insecurity. These “harms” come from assessments that overestimate the impact of droughts. What makes this more speculative is that Ethiopia will adjust the dam’s operation during dry seasons to get more water downstream.

3.4.5 On the other hand, Ethiopia can confirm significant benefits to the Nile Basin from the construction of the GERD. This includes reduced sedimentation, improved flood control, and increased electricity which can be shared with neighboring power grids.

3.4.6 Finally, Ethiopia would like the Court to acknowledge a dilemma in balancing the *significant harm* principle and the *equitable and reasonable utilization* principle. A rigid interpretation of the *no significant harm* prioritizes downstream states’ interests over upstream states. However, this directly undermines the *equitable and reasonable utilization* principle. It prevents upstream states from developing economically.¹³¹

3.4.7 As such, Ethiopia finds that it would be hypocritical for the Court to favor one principle over the other. Both make up an important part of international customary law. Rather, the Court should consider the context of the GERD and balance both principles. The Court should conclude that Ethiopia is not violating the *significant harm* clause.¹³²

3.5 State Sovereignty

3.5.1 Additionally, Ethiopia would like to reiterate its sovereignty as a state, and its sovereignty over

129 United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”
 130 United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”
 131 United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”
 132 United Nations, “Convention on the Law of the Non-Navigational Uses of International Watercourses.”

the Nile. The principle of sovereignty is enshrined in international law, particularly under the United Nations Charter. The charter affirms the right of all states to govern their affairs without external interference.

3.5.2 Ethiopia, as a sovereign state, has an inherent right to utilize its natural resources for the welfare and development of its people. This includes the equitable and reasonable use of the Nile River, which flows through its territory. Ethiopia rejects any assertions that undermine its sovereign right to pursue projects that are important for its socio-economic development. One such project is the GERD.¹³³

3.5.3 Ethiopia's sovereignty and independence have been long fought for and preserved throughout history. At the Battle of Adwa in northern Ethiopia, on March 2, 1896, Ethiopians united to defeat the heavily mechanized Italian colonial forces. This decisive victory preserved Ethiopia's independence. Also, it provided a crucial ideological impetus for subsequent Pan-African struggles.¹³⁴ This historical legacy underscores Ethiopia's unwavering commitment to safeguarding its sovereignty. This includes its rights over its natural resources. Just as Ethiopia defended its sovereignty against external colonial forces in the past, it continues to assert its right to utilize the Nile waters for the development of its country.¹³⁵

3.6 Right to Development

3.6.1 Ethiopia asserts that the construction and operation of the GERD are consistent with the principles of international law, particularly the right to development. This right is seen in the United Nations Declaration on the Right to Development. It recognizes that all peoples have the right to participate in, contribute to, and enjoy economic, social, cultural, and political development.

3.6.2 Ethiopia has faced significant development challenges. It views the GERD as a transformative project that will provide electricity to millions of its citizens, alleviate poverty, and promote sustainable development.

3.6.3 The dam is expected to generate over 5,000 megawatts of electricity. This will not only benefit Ethiopia but also contribute to regional economic integration and development.

3.6.4 Ethiopia believes that its right to development should not be compromised by claims that disregard the fair utilization of shared resources.

3.7 African Solutions

3.7.1 Ethiopia also advocates for the principle of "African Solutions to African Problems." This approach emphasizes the importance of African states resolving their disputes. This is done through dialogue, cooperation, and regional mechanisms.¹³⁶

3.7.2 Ethiopia remains committed to finding a fair and balanced solution to the GERD issue through the frameworks provided by the African Union (AU) and other regional bodies. The ongoing negotiations under the auspices of the AU reflect Ethiopia's commitment to peaceful dialogue and regional cooperation.¹³⁷

3.7.3 It is in the best interest of all Nile Basin countries to collaborate on sustainable water management practices that ensure mutual benefit and avoid unnecessary conflict. Ethiopia calls upon Egypt and Sudan to engage constructively in these negotiations. This is to ensure that all parties involved will benefit.¹³⁸

3.8 Concluding Remarks

3.8.1 Ethiopia respectfully requests that the International Court of Justice recognize its sovereign

¹³³ "Bridging the Gap in the Nile Waters Dispute"

¹³⁴ Nouredin, "Water Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries,"

¹³⁵ Nouredin, "Water Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries,"

¹³⁶ "Bridging the Gap in the Nile Waters Dispute"

¹³⁷ United Nations, "Convention on the Law of the Non-Navigational Uses of International Watercourses."

¹³⁸ United Nations, "Convention on the Law of the Non-Navigational Uses of International Watercourses."

rights over its natural resources. This includes the Nile River and its legitimate right to development through the GERD project.

3.8.2 Ethiopia urges the Court to consider the historical context of its sovereignty, its commitment to equitable and reasonable use of the Nile waters, and its efforts to achieve a peaceful resolution through African-led mechanisms. Ethiopia believes that cooperation, rather than conflict, is the key to achieving sustainable development and regional stability in the Nile Basin.

the benefit of its people and any restrictions imposed by the Court would undermine Ethiopia's sovereignty and right to development;

4.3 Ethiopia reserves the right to update these demands should new information come out of the legal proceedings.

Chapter IV: Submissions

4.1 For the foregoing reasons, the Federal Democratic Republic of Ethiopia respectfully requests the following prayers of relief from the ICJ.

4.2 May it please the Court to adjudge and declare that:

4.2.1 The Court does not have jurisdiction to hear this case;

4.2.2 Even if the Court's jurisdiction can be established, the construction and operation of the Grand Ethiopian Renaissance Dam (GERD) is in full compliance with international law;

4.2.3 The GERD is a sovereign right of Ethiopia;

4.2.4 The 1929 and 1959 Nile Waters Agreements are not binding upon Ethiopia. They do not reflect the current needs of all Nile Basin countries. This makes them inequitable and obsolete;

4.2.5 Ethiopia has taken all necessary measures to minimize harm to downstream countries that could result from the construction and operation of the GERD;

4.2.6 Egypt has not provided sufficient evidence to prove the GERD will harm its water security or agricultural productivity in significant ways;

4.2.7 Ethiopia reserves the right to use its waters for

South China Sea Maritime Claims

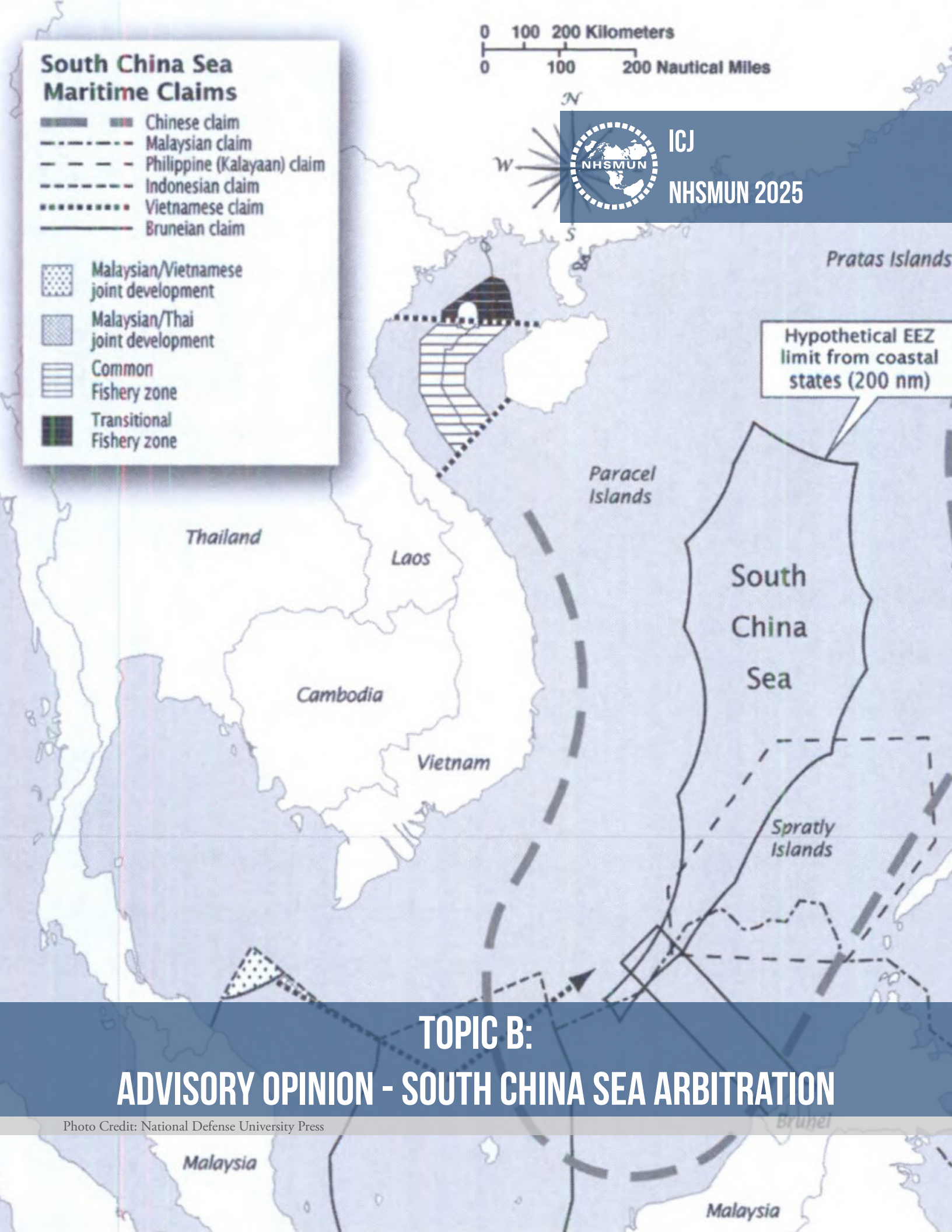
- Chinese claim
- Malaysian claim
- Philippine (Kalayaan) claim
- Indonesian claim
- Vietnamese claim
- Bruneian claim

- Malaysian/Vietnamese joint development
- Malaysian/Thai joint development
- Common Fishery zone
- Transitional Fishery zone

0 100 200 Kilometers
0 100 200 Nautical Miles



ICJ
NHSMUN 2025



TOPIC B: ADVISORY OPINION - SOUTH CHINA SEA ARBITRATION

Photo Credit: National Defense University Press

Chapter I: Introduction

1.1 On March 10, 2024, the International Maritime Organization (IMO), a specialized agency within the United Nations, adopted Resolution A 33/Res.1996 during its 33rd session. Resolution A 33/Res.1996 was a formal request for an advisory opinion from the International Court of Justice (the ICJ or the Court). The request was regarding arbitration in the South China Sea.¹ This report aligns with the Statute of the Court. Article 65(2) outlines that the ICJ may “give an advisory opinion on any legal question at the request of whatever body may be authorized by or following the Charter of the United Nations to make such a request.”² Although the case is fictitious, it follows real-world conflicts that should be treated with the utmost respect towards all parties. This document outlines definitions and international laws, historical explanations, and studies to help guide your opinions on answering the questions before the Court. The report is split up into the following sections:

1.2 Chapter II provides a text of the International Maritime Organization’s request for an advisory opinion.

1.3 Chapter III offers a verified copy of the International Maritime Organization Resolution A 33/Res.1996. This resolution formally requests the advisory opinion of the Court.

1.4 Chapter IV guides the Court with the necessary historical context, and the most relevant past and present events relating to the South China Sea arbitration.

1.5 Chapter V includes all of the relevant matters for legal consideration. From evaluating the Court’s jurisdiction on the matter to determining what legal consequences should be addressed, this section will allow the Judges to dive into the field of international law as it applies to the case.

Chapter II: Request for Advisory Opinion

2.1 On March 10, 2024, the International Maritime Organization (IMO) made a formal request to the ICJ. Following Article 96, paragraph 2 of the Charter of the United Nations, “other organs of the United Nations and specialized agencies, which at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.”³

2.1.1 The scope of the IMO’s responsibilities covers all areas affecting maritime safety and security including, but not limited to, technological development, the safety of navigation, and security and efficiency in shipping international trade shipping.⁴

2.1.2 The request posed the following questions:

Given the strategic and economic importance of the South China Sea to Southeast Asian member states and claimants, what obligation do states have in resolving disputes between historical and modern claims as it concerns their sovereignty?

How might states, concerning establishing exclusive economic zones (EEZs) and overlapping continental shelves, deal with the legality of the nine-dash line following the Permanent Court of Arbitration’s prior ruling?

To what extent does the United Nations Convention on the Law of the Sea (UNCLOS) permit member states to weaponize territorial claims in overlapping and disputed areas?

What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant damage to their sub-region, international commerce, and the

¹ ASEAN Foreign Ministers’ Statement on Maintaining and Promoting Stability in the Maritime Sphere in Southeast Asia (Jakarta: ASEAN, December 2023), <https://asean.org/wp-content/uploads/2023/12/Final-Draft-ASEAN-FMs-Statement-on-Maintaining-and-Promoting-Stability-in-the-Maritime-Sphere-in-SEA.pdf>.

² “Statute of the Court of Justice,” International Court of Justice, accessed August 3, 2024, <https://www.icj-cij.org/statute>.

³ “Organs and agencies authorized to request advisory opinions,” International Court of Justice, accessed August 3, 2024, <https://www.icj-cij.org/organs-agencies-authorized>.

⁴ International Maritime Organization, Contribution of the International Maritime Organization to the Secretary-General’s Report on Oceans and the Law of the Sea, 2008, https://www.un.org/depts/los/consultative_process/mar_sec_submissions/imo.pdf.

international community at large?

Chapter III: General Assembly Resolution A 33/Res.1196

3.1 The General Assembly,

“Reaffirming the shared commitment by member states, especially those in Southeast Asia, to maintain and promote peace, security, and stability in the region,

Recalling the peaceful resolution of disputes, including full respect for legal and diplomatic processes, without resorting to threat or use of force, by the universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS),

Recognizing the Joint Communique of the 56th ASEAN Foreign Ministers’ Meeting (AMM), in which member states recognized the need to maintain and enforce stability in the maritime sphere in Southeast Asia and underlined the importance of strengthening maritime cooperation and exploring new initiatives towards this end, as appropriate,

Following with concern over the recent developments in the South China Sea that may undermine peace, security, and stability in the region and maintaining the importance of promoting peace, safety, security, stability, and freedom of navigation in and overflight above the maritime sphere of Southeast Asia, particularly the South China Sea,

Recalling further the need to restore and enhance mutual trust and confidence as well as exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability

Emphasizing avoiding actions that may further complicate the situation and pursuing peaceful resolution of disputes following the universally recognized principles of international law, including the 1982 UNCLOS,

Recognizing further the benefits of having the South China Sea as a sea of peace, stability, cooperation, and prosperity and iterating the importance of peaceful dialogue that contributes constructively to the promotion of regional stability and cooperation in the maritime domain,

Underscoring the importance of the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) in its entirety and committed to working towards the early conclusion of an effective and substantive Code of Conduct in the South China Sea (COC) that is accordance with international law,

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the United Nations Convention on the Law of the Sea,”⁵

“Recalling the Permanent Court of Arbitration in its ruling on the South China Sea on July 12, 2016, between the Philippines and China clarified the delimitation of China’s nine-dash line as not having a historical basis yet the Chinese response denoting the ruling as being “null and void,”

Noting with profound alarm the necessity to respect international law as a means to mitigate an increase in violence in the South China Sea,

Noting with utmost concern the environmental impact of technology, such as dredgers, in reclamation efforts across the region,

Expressing serious concern as the international community’s growing response towards arbitration in the South China Sea must progress to mobilize equity and respect as drawn upon by the United Nations Convention on the Law of the Sea,”⁶

⁵ ASEAN Foreign Ministers’ Statement on Maintaining and Promoting Stability in the Maritime Sphere in Southeast Asia (Jakarta: ASEAN, December 2023), <https://asean.org/wp-content/uploads/2023/12/Final-Draft-ASEAN-FMs-Statement-on-Maintaining-and-Promoting-Stability-in-the-Maritime-Sphere-in-SEA.pdf>.

⁶ Congressional Research Service, “U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress

Decides, by Article 96 of the Charter of the United Nations, under Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

Given the strategic and economic importance of the South China Sea to Southeast Asian member states and claimants, what obligation do states have in resolving disputes between historical and contemporary claims as it concerns their sovereignty?

How shall states, concerning establishing exclusive economic zones (EEZs) and overlapping continental shelves, approach the legality of the nine-dash line following the Permanent Court of Arbitration’s prior ruling?

To what extent does the United Nations Convention on the Law of the Sea (hereafter referred to as UNCLOS) permit member states to weaponize territorial claims in overlapping and disputed areas?

What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant damage to their sub-region, international commerce, and the international community at large?

32nd plenary meeting

10 March 2024

3.2 Relevant Legislation

3.2.1. The request discusses specific pieces of legislation that the Court may draw on in its final opinion. Several are relied upon, most notably the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is universally recognized by those who have ratified it as the “Constitution” of the Sea. It establishes the framework for states “to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment.”⁷

3.2.2 UNCLOS defines an exclusive economic zone as an area of the ocean where a coastal state has control over the living and nonliving resources within its jurisdiction. It extends 200 nautical miles from the shore but may be drawn closer if states’ EEZs overlap.⁸

3.2.2 States are also to take actions “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.”⁹ Further, as it concerns the growing environmental impacts of reclamation efforts, states are to “observe, measure, evaluate, and analyze, by recognized scientific methods, the risks or effects of pollution of the marine environment” and to publish results and reports to international organizations like the Association of Southeast Asian Nations (hereafter referred to as ASEAN) and the International Maritime Organization (IMO).

3.2.3 The last pages of the request cites the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the duty of due diligence, and the rights recognized in the Universal Declaration of Human Rights. Additionally, the Convention on Biological Diversity, guarantees that “states have the responsibility to ensure that activities within their jurisdiction or control do not

(Washington D.C.: Congressional Research Service, February 2024), <https://sgp.fas.org/crs/row/R42784.pdf>.

⁷ Suisheng Zhao, “China and the South China Sea Arbitration: Geopolitics Versus International Law,” *Journal of Contemporary China* 27, no. 109 (2018): p. 8. doi:10.1080/10670564.2017.1363012.

⁸ National Ocean and Atmospheric Administration, “What is the “EEZ,” accessed August 3, 2024, <https://oceanexplorer.noaa.gov/facts/useez.html>.

⁹ John Hayward, “Pro-Beijing South China Sea propaganda video appears in Times Square,” *Breitbart*, July 29, 2016, <https://www.breitbart.com/national-security/2016/07/29/times-square-video-pushes-chinese-territorial-claims/>.

cause damage to the environment of other States or areas beyond the limits of national jurisdiction.”

3.2.4 It is crucial that delegates in their role as Judges before the Court do not assume that prior treaties alone may be precedent for the advisory opinion. It is important to remember that not every state has ratified or may interpret every agreement in the same light.

3.2.5 China, for instance, ratified UNCLOS despite violating its provisions, such as operating in the EEZs of other countries.¹⁰ Likewise to China, not every state has ratified every agreement. Ratification is the process that legally binds a State to enforce the agreement in which it has signed.¹¹

3.2.6 Under the Vienna Convention on the Law of Treaties, states have a fundamental duty to implement in good faith provisions of treaties they join.¹² Adjudicated rulings have been breached in the past as it relates to the ICJ. It is the responsibility of this Court to determine further what those legal consequences must be. ,

4.1.1 The International Court of Justice, also referred to as the World’s Court, is the principal judicial organ of the United Nations.¹³ Other Courts that rule upon international law that are of concern to this opinion include the Permanent Court of Arbitration (an observer to the UN) and the International Tribunal for the Law of the Sea (an independent entity that was drafted by the UNCLOS).¹⁴

4.1.2 Sovereignty is the right of a state to govern itself. It is the authority of a state in the decision-making process and within its government.¹⁵ The United Nations Committee on the Elimination of Racial Discrimination has stated that the right to self-determination involves “the right to all peoples to pursue their economic, social, and cultural development freely without outside interference.”¹⁶

4.1.3 Freedom of navigation is one of the oldest principles governing ocean space. It is considered the right for vessels to navigate streams passing through two or more states.¹⁷

4.1.4 Exclusive economic zone (EEZ) under the United Nations Convention on the Law of the Sea is defined as an area of the ocean extending up to 200 nautical miles beyond a nation’s territorial sea, within which a state has jurisdiction over the living and nonliving resources of that zone.¹⁸

4.1.5 A communique is a formal announcement, report, or statement issued by someone in authority, such as the United Nations, that is then sent to a body

Chapter IV: Facts and Background

4.1 Definitions for Opinion

Many fundamental principles of international law require an understanding of what a law, concept, or institution is made of. This section aims to outline the ones that Judges to this opinion will rely upon the most.

10 Jon Marek, “US-China International Law Disputes in the South China Sea,” *Wild Blue Yonder*, July 9, 2021, <https://www.airuniversity.af.edu/Wild-Blue-Yonder/Article-Display/Article/2685294/us-china-international-law-disputes-in-the-south-china-sea/>.

11 Legal Information Institute, “Ratify,” Cornell Law School, accessed August 3, 2024, <https://www.law.cornell.edu/wex/ratify>.

12 Allison Graham, “Of Course China, Like All Great Powers, Will Ignore an International Legal Verdict,” *The Diplomat*, July 11, 2016, <https://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>.

13 Karen Mingst, “International Court of Justice,” *Encyclopedia Britannica*, July 19, 2024, <https://www.britannica.com/topic/International-Court-of-Justice>.

14 “Uphold International Law,” United Nations, accessed August 3, 2024, <https://www.un.org/en/our-work/uphold-international-law>.

15 Britannica, T. Editors of Encyclopaedia, “sovereignty,” *Encyclopedia Britannica*, May 27, 2024, <https://www.britannica.com/topic/sovereignty>.

16 Aureliu Cristescu, *The Right to Self Determination: Historical and Current Development on the Basis of the United Nations Instruments* (New York, 1981), https://digitallibrary.un.org/record/25252/files/E_CN.4_Sub.2_404_Rev.1-EN.pdf.

17 Rüdiger Wolfrum, “Freedom of Navigation: New Challenges,” *International Tribunal for the Law of the Sea*, August 21, 2008, https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/freedom_navigation_080108_eng.pdf.

18 National Ocean and Atmospheric Administration, “What is the “EEZ,” accessed August 3, 2024, <https://oceanexplorer.noaa.gov/facts/useez.html>.

of people or a media outlet.¹⁹

4.1.6 A treaty is a legally binding agreement between multiple states.²⁰

4.2 Defining the South China Sea

4.2.1 The South China Sea is located within the Strait of Malacca in the southwest to the Strait of Taiwan in the northwest.²¹ It is a water body in the western Pacific Ocean, encompassing China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, Cambodia, Thailand, and Vietnam.²²

4.2.2 The South China connects world trade throughout the Pacific and Indian Oceans.²³ More than half of world maritime trade passes through the South China Sea as the world's busiest shipping lanes pass through the Islands.²⁴ In 2023 alone, 10 billion barrels of petroleum and petroleum products and 6.7 trillion cubic feet of liquefied natural gas passed through the Strait of Taiwan.²⁵ Numerically, the aquatic trade routes account for nearly 75 percent of China's oil imports, between 85 percent to 90 percent of Japanese and South Korean oil imports, and 33 percent of Japanese and South Korean liquefied natural gas.²⁶

4.2.3 As reported in 2016, approximately USD 3.4 trillion worth of international shipping trade passes through the South China Sea each year. Because Northeast Asia is highly dependent on the flow of

oil and commerce through the shipping lanes of the South China Sea, maintaining an open flow of trade is an important economic and security concern for many countries.²⁷

4.2.4 Within the sea, there are over 250 islands, atolls, and shoals grouped into three main archipelagos. An atoll is a ring-shaped island that, at its core, has an open lagoon and is bordered by a coral rim.²⁸ On the other hand, a shoal is a naturally submerged sea, lake, or river that is covered, in part, with sand.²⁹ The three archipelagos in the South China Sea are namely Pratas (or Dungsha), Paracel Islands (or Xisha), and of greatest significance to this opinion, the Spratly Islands (or Nansha).³⁰

4.2.5 The Spratly Islands consist of more than 100 small islands and reefs surrounded by fishing grounds and oil and gas reserves underneath the islands themselves. The waters adjacent to the Spratly Islands are critical to international trade and foreign interests. The states that surround the South China Sea rely heavily on the region for their economic growth and political stability.³¹

4.2.6 As a result of its geostrategic position, the Spratly Islands archipelago is claimed by the People's Republic of China (China), the Republic of China (Taiwan), Vietnam, the Philippines, Malaysia, and Brunei.³² With several countries claiming sovereignty over differing islands in the archipelago since the

19 "Communique," Vocabulary.com, accessed August 4, 2024, <https://www.vocabulary.com/dictionary/communique>.

20 Malcolm Shaw, "treaty," Encyclopedia Britannica, July 9, 2024, <https://www.britannica.com/topic/treaty>.

21 "Introduction," The South China Sea, accessed July 10, 2024, <https://www.southchinasea.org/introduction/>.

22 Eugene C. LaFond, "South China Sea," Encyclopedia Britannica, July 14, 2024, <https://www.britannica.com/place/South-China-Sea>.

23 Christopher Helman, "Whatever is Behind China's Spratly Island Showdown, It Isn't Drilling for Oil," *Forbes*, May 27, 2015, <https://www.forbes.com/sites/christopherhelman/2015/05/27/war-with-china-these-tiny-islands-could-trigger-it/>.

24 "Introduction," The South China Sea.

25 U.S. Energy Information Administration, *Regional Analysis Brief: South China Sea*. (Washington D.C.: U.S. Department of Energy, March 2024), https://www.eia.gov/international/analysis/regions-of-interest/South_China_Sea.

26 Mikkal E. Herberg, "The Role of Energy in Disputes over the South China Sea," *The National Bureau of Asian Research*, June 28, 2016, <https://www.nbr.org/publication/the-role-of-energy-in-disputes-over-the-south-china-sea/>.

27 Congressional Research Service, "U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress (Washington D.C.: Congressional Research Service, February 2024), <https://sgp.fas.org/crs/row/R42784.pdf>.

28 National Oceanic and Atmospheric Administration. "How a Coral Atoll Forms." Accessed July 11, 2024. https://oceanservice.noaa.gov/education/tutorial_corals/media/supp_coral04a.html.

29 Britannica, T. Editors of Encyclopaedia, "Shoal," *Encyclopedia Britannica*, September 17, 2010, <https://www.britannica.com/science/shoal>.

30 Eric Wikramanayake, "South China Sea Islands," One Earth, accessed July 11, 2024, <https://www.onearth.org/ecoregions/south-china-sea-islands/>.

31 Carlos S. Badger, *The Spratly Island Dispute and U.S. National Security Interests* (Carlisle Barracks: United States Navy, 1997), <https://apps.dtic.mil/sti/tr/pdf/ADA326537.pdf>.

32 "Spratly Islands," *Central Intelligence Agency*, July 10, 2024, <https://www.cia.gov/the-world-factbook/countries/spratly-islands/>.

1970s, ongoing territorial disputes persist.³³

4.3 History of the Spratly Islands

4.3.1 Before the multi-country claimants over the Spratly Islands, the archipelago was occupied by Japan during World War II, where it was utilized as a submarine base.³⁴ When Japan revoked its claim over the Islands in 1951, Taiwan, China, and Vietnam all declared themselves the rightful owners across the whole archipelago. Four years later, the Philippines claimed it had ownership as a result of its proximity to the Islands.³⁵

4.3.2 Following extensive geological surveys in 1968 and 1969, a report published by the UN Economic Commission for Asia and the Far East reported there were “substantial energy deposits” in the seabed between Taiwan and Japan known as the East China Sea.³⁶ Cross-country dialogue on energy exploration prompted consequential oil exploration in the South China Sea. In 1973, major oil fields were found just south, west, and immediately east of the Spratlys, making them extremely desirable to the Southeast Asian countries that border them.³⁷

4.3.3 As the Islands fall geographically between the coast of Vietnam on the west and the Philippines to the east, the position of the Spratlys is a potential blocking spot for ships needing to travel through the South China Sea. An airfield in the Spratlys may establish a military presence that would halt shipping in the South China Sea, creating a blockade to the economic prosperity of states.³⁸

4.3.4 Both of these strategies have become realities within the region as China, Taiwan, Vietnam, the Philippines, and Malaysia physically occupy parts of the islands. From the development of lighthouses and weather stations to the creation of military bases and naval patrols to protect their small claims, hostility in the region has been growing for decades.³⁹

4.3.5 China especially claims to hold ownership over the entirety of the Spratly Islands, asserting that it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters.”⁴⁰ In essence, China, with the desire to make use of the sea’s estimated eleven billion barrels of oil and 190 trillion cubic feet of natural gas, has antagonized other Southeast Asian countries considered claimants to the Islands.⁴¹ While eleven billion barrels is a considerably small oil reserve—only enough to power China for about 3 years—the natural gas reserves could power China for more than 30 years.⁴²

4.4 Implications of the Nine-Dash Line

4.4.1 The Chinese government published the first dashed line in 1947 in the shape of a U with eleven dashes encompassing the perimeters of the South China Sea. However, by 1952, the number of dashes was reduced to nine. This was because of a negotiation between China and Vietnam over the Gulf of Tonkin.⁴³ While Taiwan refers to perimeters as an eleven-dash line, this opinion will follow the widely recognized nine-dash line when referring to China’s territorial claims.

33 Center for Preventative Action, “Territorial Disputes in the South China Sea,” *Council on Foreign Relations*, June 25, 2024, <https://www.cfr.org/global-conflict-tracker/conflict/territorial-disputes-south-china-sea>.

34 Kenneth Pletcher, “Spratly Islands,” *Encyclopedia Britannica*, July 15, 2024, <https://www.britannica.com/place/Spratly-Islands>.

35 Kenneth Pletcher, “Spratly Islands.”

36 “China’s Maritime Dispute,” *Council on Foreign Relations*, 2024, <https://www.cfr.org/timeline/chinas-maritime-disputes>.

37 Brian K. Murphy, “*Dangerous Ground: The Spratly Islands and International Law*,” *Ocean and Coastal Law Journal* 1, no. 2 (1995), <https://digitalcommons.maine.edu/oclj/vol1/iss2/3/>.

38 Murphy, “*Dangerous Ground: The Spratly Islands and International Law*.”

39 Murphy, “*Dangerous Ground: The Spratly Islands and International Law*.”

40 “South China Sea Territorial Disputes,” Peace Palace Library, accessed July 10, 2024, <https://peacepalacelibrary.nl/research-guide/south-china-sea-territorial-disputes>.

41 Tracy Wholf, “5 things you should know about the South China Sea conflict,” PBS News, May 16, 2015, <https://www.pbs.org/newshour/world/5-things-didnt-know-south-china-sea-conflict>.

42 Wholf, “5 things you should know about the South China Sea conflict.”

43 Alec Caruana, “Maritime Affairs Program Handbill Spotlight Nine-Dash Line,” *Institute for China-America Studies*, July 25, 2023, <https://chinaus-icas.org/research/map-spotlight-nine-dash-line/>.

4.4.2 According to Chinese history books, China discovered the islands in the South China Sea as early as the second century B.C., marking the beginning of Chinese exploitation and development.⁴⁴ In The Three Kingdoms Period of China in which the nation's regions were at war with each other, the books *Nansho Yi Wu* (Strange Things of the Southern Provinces) by Zhen and *Fu Nan Zhuan* (An Account of Fu Nan) by Kang Tai revealed the geographical features of the Islands post-discovery.⁴⁵ Details of the books went so far as to recount the living quarters of those who lived on the Paracel and Spratly Islands.⁴⁶ Additionally, China argues it has a historical claim to the South China Sea, due to its previous naval expeditions during the 15th century.⁴⁷

4.4.3 Beyond the books, Chinese historians argue that maps dating back to the late 1700s and early 1800s provide evidence that the Paracel and Spratly Islands

are Chinese territories.⁴⁸ It was made official on December 11, 1947, by the Ministry of Interior of the Republic of China when China announced its claim to the Islands.⁴⁹ The claim covered the majority of the Sea, including the Pratas Islands, the Macclesfield Bank, and the Paracel and Spratly Islands, which China regained from Japan after World War II.⁵⁰

4.4.4 The Islands had been in Japanese possession following the signing of the Treaty of Shimonoseki after the Sino-Japanese War on April 18, 1895.⁵¹ While the Sino-Japanese war, fought between China and Japan, was over control of Korea, China was forced to cede territories, including the Islands, to Japan.⁵²

4.4.5 Once Japan revoked its claim to the Islands after World War II, China took advantage of the moment to reclaim it, beginning to draw the dashed line to

44 "Island of Palmas Case (Netherlands, USA)," *Reports of International Arbitral Awards* 2 (April 1928): 829-871, https://legal.un.org/riaa/cases/vol_II/829-871.pdf.

45 Teh-Kuang Chang, China's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective, *Case Western Reserve Journal of International Law* 23, no. 3 (1991), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1644&context=jil>.

46 Sam Ellis, "Why China is building islands in the South China Sea," *Vox*, February 17, 2017, <https://www.vox.com/videos/2017/2/17/14642818/china-south-china-sea-us-islands>.

47 Sam Ellis, "Why China is building islands in the South China Sea."

48 Sam Ellis, "Why China is building islands in the South China Sea."

49 Sam Ellis, "Why China is building islands in the South China Sea."

50 "China's Maritime Dispute," *Council on Foreign Relations*.

51 "China's Maritime Dispute," *Council on Foreign Relations*.

52 "China's Maritime Dispute," *Council on Foreign Relations*.

China's maritime claim (in red) and UNCLOS defined exclusive economic zones (in blue)

Credit: Goran tek-en



reflect its territorial claims. China relies on a variety of prior legislation to affirm its claim to the region, including the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea, the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf and the 1996 Decision of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea.⁵³

4.4.6 In 1949, Chinese communist leader Mao Zedong established the People's Republic of China (PRC).⁵⁴ The Chinese Communist Party (CCP)-led government removed the portion encompassing the Gulf of Tonkin from the eleven-dash line four years later. It was and is known as the nine-dash line.⁵⁵

4.4.7 The nine-dash line, while criticized and discounted by other South China claimant countries for its illegitimacy, is the standard in official Chinese maps whereas it is almost non-existent in non-Chinese maps.⁵⁶ This has sparked public controversy in the media world as producers and filmmakers alike leave images of maps containing the nine-dash line in the background of scenes.⁵⁷ Vietnam banned the Warner Bros studio Barbie movie and the film *Uncharted*, both of which depicted scenes or maps containing

what was seemingly the nine-dash line.⁵⁸

4.5 Island Building Consequences

4.5.1 From December 2013 to October 2015, China built artificial islands of nearly 3,000 acres on seven coral reefs in the Spratly Islands.⁵⁹ To build these islands, China relies on dredgers, which are pumps that remove huge amounts of sand from the ocean floor to build infrastructure and land reclamation projects.⁶⁰ The dredgers gather and deposit sand and gravel on top of the reefs to create man-made islands.

4.5.2 On the world stage, China is known for having reclaimed the most land from sea through a land reclamation strategy that prioritizes growth relative to the scale of the country.⁶¹ The scale and speed of China's activities in the South China Sea are a major concern to its neighboring Southeast Asian country claimants. By 2015, China had reclaimed 3,000 acres in comparison to Vietnam (80 acres of land), Malaysia (70 acres of land), the Philippines (14 acres of land), and Taiwan (8 acres of land).

4.5.3 Reclamation efforts are destroying the highly biodiverse aquatic life in the South China Sea as it is home to 571 species of coral reef, with the Spratly Islands carrying 333 coral reef species alone.⁶² China's island-building has exacerbated the coral reefs, such as the Fiery Cross Reef and Mischief Reef, destroying

53 "Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea," *Ministry of Foreign Affairs of the People's Republic of China*, July 12, 2016, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201607/t20160712_679472.html.

54 "China's Maritime Dispute," *Council on Foreign Relations*.

55 "China's Maritime Dispute," *Council on Foreign Relations*.

56 Alec Caruana, "Maritime Affairs Program Handbill Spotlight Nine-Dash Line."

57 "Warner Bros defends South China Sea map after Vietnam ban," *Al Jazeera*, July 7, 2023, <https://www.aljazeera.com/economy/2023/7/7/warner-bros-defends-south-china-sea-map-after-vietnam-ban>.

58 "Vietnam bans 'Barbie' movie over South China Sea map," *CNN Entertainment*, July 3, 2023, <https://www.cnn.com/2023/07/03/entertainment/vietnam-bans-barbie-movie-intl-scli/index.html>.

59 Matthew Southerland, *China's Island Building in the South China Sea: Damage to the Marine Environment, Implications, and International Law*, Washington D.C.: U.S.-China Economic and Security Review Commission, April 2016. https://www.uscc.gov/sites/default/files/Research/China%27s%20Island%20Building%20in%20the%20South%20China%20Sea_0.pdf.

60 Louise Watt, "Line in the sand: Chinese dredgers are stealing Taiwan, bit by bit," *Nikkei Asia*, June 16, 2021, <https://asia.nikkei.com/Spotlight/The-Big-Story/Line-in-the-sand-Chinese-dredgers-are-stealing-Taiwan-bit-by-bit>.

61 M. Martínez Eukliadiadas, "Reclaiming Land from the Sea: A Solution to Climate Change or an even Bigger Problem?" *Tomorrow. City*, July 1, 2021,

<https://www.tomorrow.city/reclaiming-land-from-the-sea-a-solution-to-climate-change-or-an-even-bigger/>.

62 Danwei Huang and Licuanan, Wilfredo, and Hoeksema, "Extraordinary diversity of reef corals in the South China Sea," *Marine Biodiversity* 45 (2015): 157-168, 10.1007/s12526-014-0236-1.

coral and other organisms and leading to the dispersion of heavy metals, oil, and other chemicals coming from the ships and shore facilities constructed.⁶³

4.5.4 Chinese dredgers in the Spratly Islands follow a shallow-water dredging process that removes sand, gravel, and the ecosystems of the lagoon and the reef, implicating aquatic life in the region.⁶⁴ As the dredgers pump sand, it damages the coral and blocks sunlight that cannot survive without it, such as reef-building corals.

4.5.5 With the damage of the dredgers, the reefs are not able to fully recover for up to ten to fifteen years. Beyond the destruction of these natural ecosystems, the damage may impact fisheries in Southeast Asia, which form a critical food source for coastal populations.⁶⁵

4.5.5 China intended to use the islands to support fishery production and service, aiming to increase the number of fishing boats to provide shelter, repair, and replenishment services.⁶⁶ For example, Fiery Cross Reef, a natural landmass less than 10,000 square meters in size, has been occupied by China since 1988 when it was under a charter to build weather stations for the UN; however, scientists admitted that they had been unaware of the conflicts in the region.⁶⁷ Today, it is China's largest airbase in the Spratly Islands. This actualizes a concern that has grown over recent years as Chinese Coast Guard vessels hoping

to protect fishing boats clash with those of other Southeast Asian countries.⁶⁸

4.6 Past Infringement on Territorial Claims

4.6.1 Although Taiwan, China, Vietnam, and the Philippines all declared themselves rightful owners of the Spratly Islands, many claimants are willing to go to combat over what they perceive to be their territory. Vietnam claims it has had possession over the Paracels and Spratly Islands since 1650, having maintained troops on at least twenty-two parts of the Spratly Islands since 1973.⁶⁹ Despite Chinese military units claiming sovereignty over the Spratly Islands in 1974, South Vietnam occupied part of the Islands in 1975.⁷⁰ North and South Vietnam unify in 1976.⁷¹

4.6.2 In 1978, China launched a war against Vietnam for invading and occupying the communist-Chinese-backed Khmer Rouge regime in Cambodia.⁷² Tensions between China and Vietnam rose in what became the Sino-Japanese War, with China failing to coerce Vietnam to leave Cambodia. This was the first in a series of conflicts between the two states over border disputes.⁷³ On March 14, 1988, conflict broke out on the Johnson Reef between China and Vietnam, marking China's first armed conflict over the Spratly Islands.⁷⁴ A Chinese navy ship sank three Vietnamese ships, killing seventy-four sailors. This comes right after China occupied Fiery Cross Reef in January 1987.⁷⁵ In retaliation, Vietnam occupied several reefs

63 Derek Watkins, "What China Has Been Building in the South China Sea," *The New York Times*, February 29, 2016, http://www.nytimes.com/interactive/2015/07/30/world/asia/what-china-has-been-building-in-the-south-china-sea2016.html?ref=asia&_r=0.

64 Derek Watkins, "What China Has Been Building in the South China Sea."

65 Matthew Southerland, *China's Island Building in the South China Sea: Damage to the Marine Environment, Implications, and International Law*.

66 China's National Development and Reform Commission, *National Development and Reform Commission Draws up a Plan for the Construction of Civilian Infrastructure on the Islands and Reefs in the Spratly Islands*, June 17, 2015, http://www.ndrc.gov.cn/xwzx/xwfb/201506/r20150617_696335.html.

67 "Militarisation," South China Morning Post, accessed July 10, 2024, <https://multimedia.scmp.com/2016/southChinaSea/explore.html>.

68 Andrew S. Erickson and Conor M. Kennedy, "China's Maritime Militia," CNA Corporation, March 7, 2016. https://www.cna.org/cna_files/pdf/Chinas-Maritime-Militia.pdf

69 Stanley E. Meyer, *Incident at Mischief Reef: Implications for the Philippines, China, and the United States* (Carlisle Barracks: United States Navy, 1997), file:///Users/auroralai/Downloads/451792.pdf.

70 "China and Vietnam: a timeline of conflict," *CNN*, June 27, 2011, <http://www.cnn.com/2011/WORLD/asiapcf/06/27/china.vietnam.timeline/index.html>.

71 "China and Vietnam: a timeline of conflict," *CNN*.

72 "China's Maritime Dispute," *Council on Foreign Relations*.

73 "China's Maritime Dispute," *Council on Foreign Relations*.

74 "China's Maritime Dispute," *Council on Foreign Relations*.

75 "China's Maritime Dispute," *Council on Foreign Relations*.

to watch over China's moves.

4.6.3 Around the same time, the Philippines built an airstrip in 1976 on Pagasa Island in the Spratly archipelago, one of the many islands that the Philippines claims.⁷⁶ In September 1994, the Philippines armed forces detained fifty-five Chinese fishers, charging them with illegal entry and possession of explosives. In response, China detained thirty-five Filipino fishers for a week in January 1995. Just one month later, on February 8, 1995, Philippine authorities identified eight Chinese ships near Mischief Reef.⁷⁷

4.6.4 In April 1995, Philippine authorities published the arrest of sixty-two Chinese fishermen, calling upon both the international community and media outlets to demonstrate China's disregard for the Philippine's claims and sovereignty as it fell within the Philippines exclusive economic zone under the United Nations Convention on the Law of the Sea (see more on EEZ and UNCLOS in Chapter II).⁷⁸ Sovereignty is defined as the ability of a state to govern itself.⁷⁹

4.6.5 By laying Chinese markers in the form of protected species of sea turtles and other Chinese materials, the Philippines contested that China violated Filipino and international law.⁸⁰ This marked the first conflict between China and an ASEAN (Association of Southeast Asian Nations) member other than Vietnam.⁸¹

4.6.6 On March 18, 1995, ASEAN Foreign Ministers

issued a joint statement expressing concern over the growing regional instability in the South China Sea, making it the first time issues in the South China Sea have been discussed multilaterally.⁸² China and ten ASEAN states reached an agreement, releasing the ASEAN-China Declaration on the Conduct of Parties in the South China Sea to create guidelines for resolving conflict.⁸³ The agreement follows six years of negotiations.⁸⁴

4.6.7 Despite attempts at reconciliation following a series of clashes in the South China Sea between China and ASEAN states, tensions started to rise again as the islands became more militarized. In 2012, a decade after the agreement was signed, China invaded Scarborough Shoal, a Philippine-controlled chain of reefs and rocks that is the largest atoll in the South China Sea.⁸⁵ Chinese coast guard ships set up barriers to the entry point of the shoal, employing what is known as the cabbage strategy.

4.6.8 The cabbage strategy is a form of swarming and overwhelming other states' territories into pressuring a state to cede their territory.⁸⁶ By surrounding Scarborough Shoal, which is located 124 miles off the Philippines and inside its EEZ, with Chinese coast guard ships, China left the Philippines in a standoff for the shoal. Chinese dinghies were tied together to block the lagoon's entrance despite a commitment to pull out all vessels inside the shoal.⁸⁷ Although the Philippines appealed to ASEAN to "take a stand," failure to resolve the conflict diplomatically escalated

76 Kenneth Pletcher, "Spratly Islands."

77 "China's Maritime Dispute," *Council on Foreign Relations*.

78 Stanley E. Meyer, *Incident at Mischief Reef: Implications for the Philippines, China, and the United States*.

79 Britannica, T. Editors of Encyclopaedia, "sovereignty," Encyclopaedia Britannica, May 27, 2024, <https://www.britannica.com/topic/sovereignty>.

80 Stanley E. Meyer, *Incident at Mischief Reef: Implications for the Philippines, China, and the United States*.

81 "China's Maritime Dispute," *Council on Foreign Relations*.

82 Ng, Justin, "What is the Mischief Reef incident?" *JC History Tuition*, November 22, 2022, <https://www.jchistorytuition.com.sg/what-is-the-mischief-reef-incident-south-china-sea-dispute-notes/>.

83 *2002 Declaration on the Conduct of Parties in the South China Sea*, Phnom Penh, November 2002. <https://cil.nus.edu.sg/wp-content/uploads/2017/07/2002-Declaration-on-the-Conduct-of-Parties-in-the-South-China-Sea.pdf>

84 "China's Maritime Dispute," *Council on Foreign Relations*.

85 Jim Gomez, "Chinese coast guard shadows Filipino activists sailing toward disputed shoal," *AP News*, May 15, 2024, <https://apnews.com/article/south-china-sea-scarborough-shoal-philippines-991e0ecee638f917e30b4947ee8c91ca>.

86 Harry Kazianis, "China's Expanding Cabbage Strategy," *The Diplomat*, October 29, 2013, <https://thediplomat.com/2013/10/chinas-expanding-cabbage-strategy/>.

87 Michaela Del Callar, "DFA: China boats blocking PHL vessels from Panatag Shoal," *GMA News Online*, July 18, 2012, <https://www.gmanetwork.com/news/topstories/nation/265889/dfa-china-boats-blocking-phl-vessels-from-panatag-shoal/story/>.

the situation.⁸⁸

4.6.9 Ultimately, China, with the constant deployment of coast guard and fishing boats, seized Scarborough Shoal.⁸⁹ The conflict at Scarborough Shoal prompted the Philippine government to appeal China's violation of the Philippines' sovereignty to the International Court of Justice (see more on the ruling in Chapter II), where the Permanent Court of Arbitration made its ruling.⁹⁰

4.7 Past Reactions & Mediations

On July 12, 2016, the Court ruled in favor of the Philippines, determining that major elements of China's claim over the South China Sea, such as the validity of its nine-dash line, land reclamation efforts, and infringement on Philippine waters, constitute violations of international law.⁹¹ Mediation attempts have been made by ASEAN states to hold China accountable despite pushback.

4.7.1 After the ruling was released, the Chinese government issued a White Paper that declared no participation, no recognition, no acceptance, and no compliance.⁹² Chinese Foreign Minister Wang Yi states that the Court lacked jurisdiction as the initiation of the arbitration, formation of the ruling, and its eventual outcome were all illegal.⁹³

4.7.2 China's rejection of the ruling comes from its need to make due on its promise to the Chinese people that they would be able to recover all of its rightful territory and grow as a superpower on the

world stage.⁹⁴ Backing down would risk China's loss at the resources in the South China Sea.

4.7.3 To undermine the ruling, Beijing claimed that the arbitration was part of an anti-China plot between Washington D.C. and Tokyo. This tactic, in which a state blames another country for its troubles to redirect the public's attention, is commonly used by the Chinese government. Xinhua News Agency, the official state press agency of China, published an article alleging that the ruling was a trap between Japan, the United States, and the Judges of the Court, all of which were bribed by the Philippines.⁹⁵

4.7.4 Media campaigns by the Chinese government were spread throughout the world, including a New York City Times Square broadcast featuring Beijing's position over its claim to the South China Sea. To further delegitimize the ruling, China sent strategic bombers to fly over Scarborough Shoal, announced tourist cruises to its claims in the South China Sea, and revealed new military combat. In this show of Chinese power, China hoped to discourage the Philippines, the United States, Japan, and other claimants from taking action against China.⁹⁶

4.7.5 By reaffirming its "territorial sovereignty and maritime rights" in the South China Sea militarily, the Chinese government expressed that the ruling had no binding force.⁹⁷ China's failure to acknowledge the validity of the ruling is an important burden for the international community at large. If China

88 Michael Green, Kathleen Hicks, Zack Cooper, John Schaus, and Jake Douglas, "Countering Coercion in Maritime Asia," *Center for Strategic & International Studies*, May 9, 2017, <https://www.csis.org/analysis/countering-coercion-maritime-asia>.

89 Martin Petty, "What is Scarborough Shoal in the South China Sea and why are China and the Philippines disputing it?" *Reuters*, September 26, 2023, <https://www.reuters.com/world/asia-pacific/what-is-risk-conflict-disputed-scarborough-shoal-2023-09-26/>.

90 Jim Gomez, "Chinese coast guard shadows Filipino activists sailing toward disputed shoal."

91 Congressional Research Service, "U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress (Washington D.C.: Congressional Research Service, February 2024), <https://sgp.fas.org/crs/row/R42784.pdf>.

92 "White Paper on South China Sea," *The People's Daily*, July 13, 2016, https://www.chinadailyasia.com/chinafocus/2016-07/13/content_15462174_10.html.

93 Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law," *Journal of Contemporary China* 27, no. 109 (2018): p. 8. doi:10.1080/10670564.2017.1363012.

94 Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law."

95 "News Analysis: Shinju Yanai, manipulator behind illegal South China Sea arbitration," *Xinhua*, July 17, 2016, https://news.xinhuanet.com/english/2016-07/17/c_135519215.htm.

96 John Hayward, "Pro-Beijing South China Sea propaganda video appears in Times Square," *Breitbart*, July 29, 2016, <https://www.breitbart.com/national-security/2016/07/29/times-square-video-pushes-chinese-territorial-claims/>.

97 Matthew Southerland, *China's Island Building in the South China Sea: Damage to the Marine Environment, Implications, and International Law*, Washington D.C.: U.S.-China Economic and Security Review Commission, April 2016. https://www.uscc.gov/sites/default/files/Research/China%27s%20Island%20Building%20in%20the%20South%20China%20Sea_0.pdf.

is unwilling to follow the Court's decision, it sends a signal to the rest of the world that adherence to international law is optional.⁹⁸

4.7.6 While advisory opinions are non-binding on the respective parties they concern, Article VII, Section 30 of the General Convention iterates that parties must accept the ICJ's advisory opinion as decisive. China's unwillingness to accept the decision bodes unwell for the international community.⁹⁹

4.7.7 Foreseeable conflict in the South China Sea and across Southeast Asia led to the creation of ASEAN, an agreement between countries devoted to transnationalism and to form regionalism.¹⁰⁰ Transnationalism is the exchange of economic, political, and cultural processes that contribute to globalizing a state.¹⁰¹ Slowly, ideas of self-determination and national interest were exchanged for solidarity and regional cohesion.

4.7.8 ASEAN, or the Association for the Southeast Asian Nations, was founded under principles of non-interference, quiet diplomacy, no use of force, and decision-making through consensus.¹⁰² These four pillars form the basis of the ASEAN Way. The principle of non-interference and the basis of quiet diplomacy ensures that countries do not interfere with another state's internal issues and when handling external issues, they are dealt with diplomatically.¹⁰³ ASEAN states include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.¹⁰⁴

4.8 International Response

4.8.1 As it concerns the South China Sea, ASEAN remains divided over how to approach China's assertiveness and dominance. China's fight in its geopolitical battle with the Philippines, dismissing the verdict as illegitimate and revealing strategic bombers and ballistic missiles placed on its man-made islands in the region.¹⁰⁵

4.8.2 Part of its willingness to disregard the ruling alongside China stems from a state's necessity to maintain diplomatic relations with China. In the case of Cambodia, relations with China are crucial for Cambodian security, with China allocating economic funding, political support, and military assistance.¹⁰⁶ While Cambodia is an ASEAN state that should, in theory, practice the ASEAN Way, it prioritizes its ties with China to better its own country.¹⁰⁷

4.8.3 In July 2016 at the ASEAN summit following the Permanent Court of Arbitration's decision, many ASEAN states, including the Philippines and Vietnam, wanted the group to adopt a separate statement on the ruling or issue a joint statement on the need to respect international law.¹⁰⁸ However, before the meeting, Cambodia opposed the proposed wording, supporting Beijing's opposition to any ASEAN stance on the South China Sea.¹⁰⁹

4.8.4 Despite the disagreement, ASEAN adopted a joint communique that highlighted regional and international issues, including the South China Sea.

98 Matthew Southerland, *China's Island Building in the South China Sea: Damage to the Marine Environment, Implications, and International Law*.

99 "Advisory Jurisdiction," International Court of Justice, accessed August 3, 2024, <https://www.icj-cij.org/advisory-jurisdiction>.

100 Leticia Simões, "The Role of ASEAN in the South China Sea Disputes," July 23, 2022, <https://www.e-ir.info/pdf/98115>.

101 Richard Huff, "transnationalism," Encyclopedia Britannica, August 15, 2014, <https://www.britannica.com/topic/transnationalism>.

102 *Association of Southeast Asian Nations Charter*. (Indonesia: ASEAN, 2008), <https://asean.org/asean-charter/>.

103 Harsh Mahaseth, "The USE of the ASEAN Way in Resolving Disputes," *Modern Diplomacy*, June 22, 2022, <https://moderndiplomacy.eu/2022/06/22/the-use-of-the-asean-way-in-resolving-disputes/>.

104 CFR.org Editors, "What is ASEAN," *Council on Foreign Relations*, September 18, 2023, <https://www.cfr.org/background/what-asean>.

105 Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law," *Journal of Contemporary China* 27, no. 109 (2018): p. 8. doi:10.1080/10670564.2017.1363012.

106 Sovinda Po and Christopher Primiano, "Cambodia's strategic positioning between the United States and China," *East Asia Forum*, January 27, 2024, <https://eastasiaforum.org/2024/01/27/cambodias-strategic-positioning-between-the-united-states-and-china/>.

107 Sovinda Po and Christopher Primiano, "Cambodia's strategic positioning between the United States and China."

108 Prashanth Parameswaran, "Assessing ASEAN's South China Sea Position in its Post-Ruling Statement," *The Diplomat*, July 25, 2016, <https://thediplomat.com/2016/07/assessing-aseans-south-china-sea-position-in-its-post-ruling-statement/>.

109 Manuel Mogato, Michael Martina, Ben Blanchard, "ASEAN deadlocked on South China Sea, Cambodia blocks statement." *Reuters*, July 26, 2016, <https://www.reuters.com/article/world/asean-deadlocked-on-south-china-sea-cambodia-blocks-statement-idUSKCN1050F6/>.

Still, the language used waters down the language needed to hold China accountable. The phrase “full respect for legal and diplomatic processes’ within a list of principles appeared in a draft of the communique yet was noticeably removed in its entirety from the South China Sea section.¹¹⁰ Although China is not an ASEAN member-state, it reflects its influence on those who are, halting the regional group from reaching widespread agreement.

4.8.5 Relations between China and the Philippines changed entirely after Rodrigo Duterte, who intended to reach a compromise with China, was elected President of the Philippines in May 2016. After a series of foreign visits between the two countries, China President Xi Jinping exclaimed that China and the Philippines were brothers who would “appropriately handle disputes” through bilateral talks.¹¹¹

4.8.6 In response to the Philippines’ dramatic shift towards China, Beijing offered the Philippines 9 billion dollars in low-interest loans and permitted Filipino fishermen to resume fishing at Scarborough Shoal. President Duterte stopped pressing China about the arbitration and ignored China’s militarization in the South China Sea.¹¹²

4.8.7 Ignoring China’s dredging and reclamation activities on reefs within the Philippines EEZ, President Duterte expressed that it was fruitless to pressure Beijing over its maritime activities. As the Philippines hosted the 2017 ASEAN summit, calls for halting land reclamation and militarization in the South China Sea that were initially introduced were

later dropped.

4.8.8 China effectively silenced the Philippines and ASEAN at large over the ruling that was heavily contested.¹¹³ Even the United States, a champion for diplomatic relations, backed away from its initially strong position to avoid confrontation with China.¹¹⁴ John Kerry, then United States Secretary of State, expressed to Chinese Foreign Minister Wang Yi that “the international community needs to be patient and flexible and not put China in a corner, while China must reformulate its policy in line with international law.”¹¹⁵

4.9 Recent Infringement on Territorial Claims

4.9.1 On May 18, 2018, a Chinese bomber landed on an island reef in the South China Sea for the first time in history.¹¹⁶ The long-range H-6K bomber was among those in a Chinese military drill to test whether China could reach all of its territories.¹¹⁷

4.9.2 Experts from the Asia Maritime Transparency Initiative said a video from the Chinese Community Party’s People’s Daily newspaper revealed an H-6K landing and taking off from a base on Woody Island, the largest of the Paracel Islands.¹¹⁸

4.9.3 Nearly a year later, on April 5, 2019, President Duterte warned China that he would send a “suicide mission” if Beijing did not stop interfering with the Philippines-occupied island after as many as 275 Chinese boats and ships had been spotted by the Island in the past few months.¹¹⁹

4.9.4 Between China and the Philippines’ long-shared

110 Prashanth Parameswaran, “Assessing ASEAN’s South China Sea Position in its Post-Ruling Statement.”

111 Max Fisher, “Rodrigo Duterte Plays U.S. and China Off Each Other, in Echo of Cold War,” *New York Times*, November 3, 2016, <https://www.nytimes.com/2016/11/04/world/asia/philippines-duterte-us-china-cold-war.html>.

112 Max Fisher, “Rodrigo Duterte Plays U.S. and China Off Each Other, in Echo of Cold War.”

113 “7 Asian nations increasingly falling into China’s orbit,” *Reuters*, May 3, 2017, https://article.wn.com/view/2017/05/02/Asian_nations_increasingly_falling_into_China_s_orbit/.

114 Li Ruohan and Wu Gang, “China, US should respect each other’s core interests: Xi,” *Global Times*, July 26, 2016, <https://www.globaltimes.cn/content/996490.shtml>.

115 Hong Thao Nguyen, “How to make China comply with the Tribunal Award,” The Maritime Awareness Project, accessed August 4, 2024, <https://maritimeawarenessproject.org/2016/08/10/how-to-make-china-comply-with-the-tribunal-award/>.

116 “China’s Maritime Dispute,” *Council on Foreign Relations*.

117 “South China Sea dispute: China lands bombers on island,” *BBC*, May 19, 2018, <https://www.bbc.com/news/world-asia-china-44180773>.

118 “South China Sea dispute: China lands bombers on island,” *BBC*.

119 Ben Westcott and Brad Lendon, “Duterte threatens ‘suicide mission’ if Beijing oversteps in South China Sea,” *CNN World*, April 5, 2019, <https://www.cnn.com/2019/04/05/asia/south-china-sea-duterte-beijing-intl/index.html>.

history in the South China Sea, President Duterte is unwilling to tolerate China's swarming tactics. Of the ships swarming the Philippines Thitu Island, some of these ships have been identified as fishing vessels, Chinese Coast Guard ships, and Chinese military navy ships.¹²⁰ The Asia Maritime Transparency Initiative speculated that the increase in ships acted as a response to the reclamation and construction of a beaching ramp by the Philippines government. The beaching ramp would make it easier to deliver construction equipment and supplies to the island.¹²¹

4.9.5 On July 3, 2019, Chinese survey ship, Haiyang Hizhi 8, and escort ships entered Vietnam's EEZ near an offshore oil block. Vietnamese officials demanded China remove the ships, but the ship did not leave until October.¹²² This standoff prompted international members to view this as China demonstrating its influence in the region, reducing the Vietnamese government to passively calling for reconciliation whilst maintaining its independence.¹²³

4.9.6 Throughout the coronavirus pandemic in 2020, China became more assertive in its claims, especially those against the Philippines and Vietnam. In February, a Chinese naval ship reportedly aimed its weapon control system at a Philippine naval ship in the Spratly Islands.¹²⁴ China opened new research stations containing defense silos and military-grade runways on Fiery Cross and Subi Reefs in March, and, by May, Beijing established two administrative districts to watch over the Paracel and Spratly Islands.¹²⁵ At this point, both the Philippines and

Vietnam have written formal complaints calling China out for its actions considering that a Chinese vessel ram and sunk a Vietnamese fishing boat by the Paracels Islands.¹²⁶

4.9.7 After four years of siding in and out with China on the 2016 Court ruling, President Duterte voiced strong support for the decision, arguing that China was violating its sovereignty by claiming islands within the Philippines EEZ. In an opening speech to the 75th session of the General Assembly on September 22, 2020, President Duterte addressed the significance of the ruling in international law, which reflects a hardening of the Philippines' position on maritime disputes.¹²⁷

4.9.8 Duterte recognized the number of countries, including France, Germany, and the United Kingdom, who have come forward offering their support for the ruling.¹²⁸ In March 2021, China deployed two hundred ships to Whitsun Reef, part of the Philippines' EEZ; it is not until 2023, with new Philippine President Ferdinand Marcos Jr. in office, that the state welcomes the U.S. military onto its bases.¹²⁹

4.10 Second Thomas Shoal

4.10.1 The Second Thomas Shoal is a submerged reef in the Spratly Islands possessed by the Philippines since 1999. It is located less than 200 nautical miles from the Philippines' province of Palawan and is in its EEZ. The outpost is the BRP *Sierra Madre*, a

120 Ben Westcott and Brad Lendon, "Duterte threatens 'suicide mission' if Beijing oversteps in South China Sea."

121 "China's Maritime Dispute," *Council on Foreign Relations*.

122 "China's Maritime Dispute," *Council on Foreign Relations*.

123 Grossman, Derek. 2019. "Vietnam Needs to 'Struggle' More in the South China Sea." RAND. November 15, 2019. <https://www.rand.org/pubs/commentary/2019/11/vietnam-could-struggle-more-in-the-south-china-sea.html>.

124 Renato Cruz de Castro, "Implications of the Recent Philippines-China Naval Stand-Off," *Asia Maritime Transparency Initiative*, May 7, 2020, <https://amti.csis.org/implications-of-the-recent-philippines-china-naval-stand-off/>.

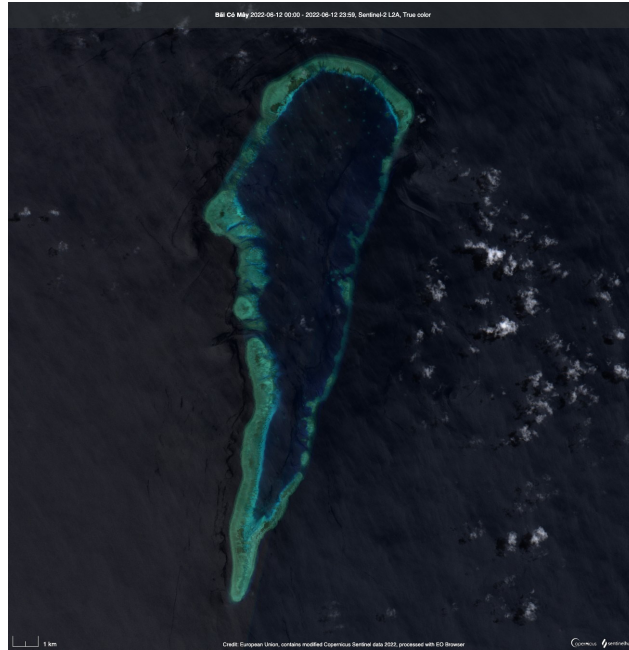
125 Huong Le Thu, "Fishing while the water is muddy: China's newly announced administrative districts in the South China Sea," *Asia Maritime Transparency Initiative*, May 6, 2020, <https://amti.csis.org/fishing-while-the-water-is-muddy-chinas-newly-announced-administrative-districts-in-the-south-china-sea/>.

126 "China's Maritime Dispute," *Council on Foreign Relations*.

127 Sebastian Strangio, "In UN Speech, Duterte Stiffens Philippines' Stance on the South China Sea," *The Diplomat*, September 23, 2020, <https://thediplomat.com/2020/09/in-un-speech-duterte-stiffens-philippines-stance-on-the-south-china-sea/>.

128 Sofia Tomacruz, "More Western powers join US in pressuring China over sea claims," *Rappler*, September 17, 2020, <https://rappler.com/world/global-affairs/more-western-powers-join-united-states-pressuring-china-over-sea-claims>.

129 "China's Maritime Dispute," *Council on Foreign Relations*.



Second Thomas Shoal in South China Sea
 Credit: Sentinel Hub EO Browser (ESA)

Philippine Navy transport ship grounded on the reef and regulated by Philippine marines.¹³⁰

4.10.2 While the Philippines regularly rotates and resupplies missions to deliver supplies and troops to the outpost, China has harassed its mission since 2013. However, since 2022, Chinese coast guard and militia ships have sought to block resupply missions more regularly, employing aggressive tactics to prevent Philippines vessels from reaching the *Sierra Madre*.¹³¹ In 2023, the average yearly number of ships during resupply missions jumped by nearly an additional ten ships by China.¹³²

4.10.3 China's repeated attempts to blockade the Second Thomas Shoal have made it significant to both sides.¹³³ Chinese forces seized two Philippine rubber boats delivering food and other supplies in a confrontation that left Filipino navy members

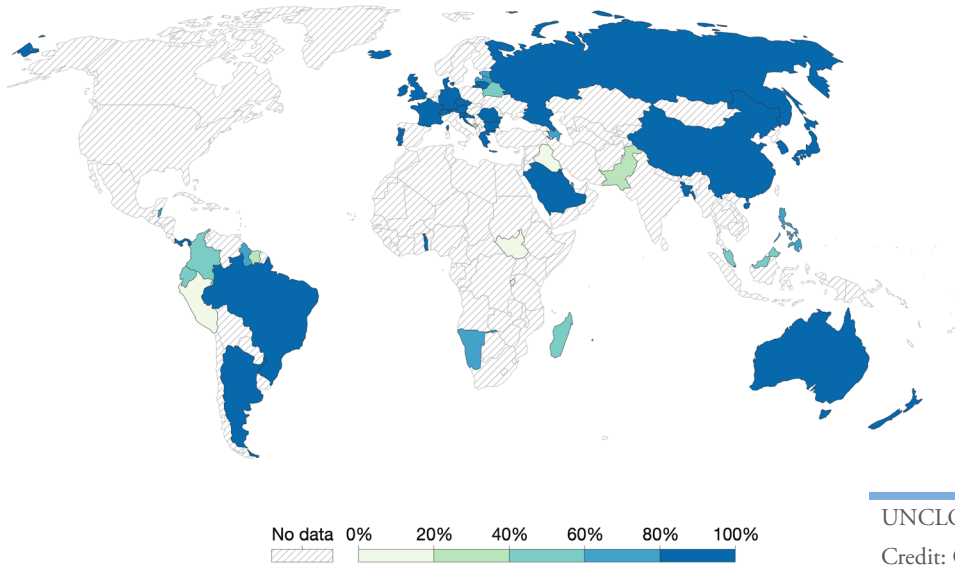
injured.¹³⁴ United States Secretary of State Kurt Campbell discussed China's actions with his Philippine counterpart, Maria Theresa Lazaro, in which the pair agreed that China's actions threatened regional stability. Campbell reaffirmed that the 1951 U.S.-Philippine Mutual Defense Treaty obliges the U.S. to defend the Philippines in times of conflict, including that at Second Thomas Shoal.¹³⁵

4.10.4 The BRP *Sierra Madre* remains an actively commissioned military vessel, meaning an attack on it would be determined as an act of war by China against the Philippines.¹³⁶ To be more specific, Philippine President Marcos Jr. explained that if a Philippine citizen were to be deliberately killed in a clash with the Chinese Coast Guard, it would constitute war.¹³⁷

4.10.5 As tensions continue to grow, it is imperative that action be taken, whether it be denouncing China's

130 "Second Thomas Shoal," Asia Maritime Transparency Initiative, accessed August 4, 2024, <https://amti.csis.org/second-thomas-shoal/>.
 131 "Tracking Tensions at Second Thomas Shoal," Asia Maritime Transparency Initiative, January 30, 2024, <https://amti.csis.org/tracking-tensions-at-second-thomas-shoal/>.
 132 "Tracking Tensions at Second Thomas Shoal," Asia Maritime Transparency Initiative.
 133 "Explainer: Why China, the Philippines keep fighting over tiny shoal," *Reuters*, December 11, 2023, <https://www.reuters.com/world/asia-pacific/why-china-philippines-keep-fighting-over-tiny-shoal-2023-12-11/>.
 134 Jim Gomez, "Chinese coast guard shadows Filipino activists sailing toward disputed shoal," *AP News*, May 15, 2024, <https://apnews.com/article/south-china-sea-scarborough-shoal-philippines-991e0ecee638f917e30b4947ee8c91ca>.
 135 Jim Gomez, "Chinese coast guard shadows Filipino activists sailing toward disputed shoal."
 136 Jim Gomez, "Chinese coast guard shadows Filipino activists sailing toward disputed shoal."
 137 Jesse Johnson, "Beijing slams 'ignoble' U.S. role in South China Sea dispute," *The Japan Times*, June 3, 2024, <https://www.japantimes.co.jp/news/2024/06/03/asia-pacific/politics/china-philippines-south-china-sea-row/>.

Progress in implementing the United Nations Convention on the Law of the Sea through legal, policy and institutional frameworks. Higher values indicate greater progress.



actions in the South China Sea or clarifying the rights of claimants over their sovereignty and territory. In resolving this issue, it is important to keep in mind global interests and allies when discussing issues such as freedom of navigation and the right to self-determination.¹³⁸

Chapter V: Matters for Legal Consideration

5.1 Adherence to International Law

5.1.1 In crafting a world order, one respected and bolstered by the member states of the United Nations, a balance must be struck that honors a state’s sovereignty yet holds its political and social decisions accountable. As the UN was created to promote international cooperation and dialogue after World War II, its resolutions and treaties actively work towards reaching that balance.¹³⁹ While international law is a set of rules and obligations that states and non-state actors recognize as “binding” on each other,

¹³⁸ Carlos S. Badger, *The Spratly Island Dispute and U.S. National Security Interests*.

¹³⁹ “Our Work,” United Nations, accessed August 3, 2024, <https://www.un.org/en/our-work>.

¹⁴⁰ John McCormick, *Introduction to Global Studies*, 2nd ed, (London: Bloomsbury Publishing, 2022), chap. 6.

¹⁴¹ “Election of five non-permanent members of the Security Council,” United Nations, accessed August 3, 2024, https://www.un.org/en/ga/62/plenary/election_sc/bkg.shtml.

¹⁴² “Election of five non-permanent members of the Security Council,” United Nations.

there is no mechanism to enforce these laws.¹⁴⁰

5.1.2 The UN Security Council (UNSC) is the exception in enforcing binding legislation and treaties as it can impose sanctions and authorize the use of force through peacekeeping missions. Considering that the United States, France, United Kingdom, China, and Russia are permanent members with veto power over proposed missions and resolutions, it perpetuates a lopsided balance of power. To enact any meaningful change, unanimous support is needed, a daunting task for many a sensitive issue.

5.1.3 According to Article 23 of the UN Charter, ten non-permanent members are elected by the General Assembly for a term of two years.¹⁴¹ Under Resolution 1991 A (XVIII), the General Assembly in its eighteenth session decided that the non-permanent members should be elected in a pattern that promotes equal opportunity and representation between African, Eastern European, Latin American, and Western European States.¹⁴²

5.1.4 As it is very difficult for any resolution to find support across all members, accountability rests in the hands of the international community. By drawing attention to abuses, threatening state sanctions, relying on diplomatic pressure, and appealing to international courts, like the ICJ, victimized states and communities may defend their rights.¹⁴³

5.1.5 Despite China's effort to minimize dialogue both over the South China Sea and its arbitration against the Philippines in 2016, maintaining discourse is imperative for addressing the issue. In a summary of the Legal Committee's meeting coverage from its seventy-fourth session (GA/L/3597), delegates noted that implementation of the rule of law principle on the international level, specific to the area of conflict resolution, "was being undermined by States failing to adhere to their international obligations, along with selective enforcement and exploitation of existing frameworks and mechanisms."¹⁴⁴

5.1.6 In that same statement, the representative of Vietnam recognized that the State's failure to follow international law perpetuates global tensions as he urged parties in the South China Sea to be courteous of international law, specifically the UNCLOS. Action cannot be compensated for urgency, thus bringing forth this opinion.

5.2 Navigating Jurisdiction to Interpret UNCLOS

5.2.1 Advisory opinions are distinct from contentious cases, such as the *Philippines v. China*, in their jurisdiction. Under Article 96, paragraph 2, of the Charter states that "other organs of the UN and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities." The

International Maritime's mission is "to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation."¹⁴⁵

5.2.2 In a contentious proceeding, jurisdiction is reliant upon the consent of the States. However, in which a treaty contains clauses relating to the jurisdiction of the Court, as does the UNCLOS, the Court may interpret this.¹⁴⁶ Under Article 287 Section 2, UNCLOS outlines the choice of procedure:

"When signing, ratifying, or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of written declaration, one or more of the following means for settlement of this Convention:

The International Tribunal for the Law of the Sea was established in accordance with Annex VI;

The International Court of Justice;

An arbitral tribunal constituted in accordance with Annex VII;

A special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein."¹⁴⁷

5.2.3 While this opinion is not a contentious case in that it does not prosecute or charge a certain state or does not address a conflict between solely two parties, it is important to recognize how the functions of the ICJ overlap with each other. Additionally, it is important to understand how, in past ICJ precedent, states have failed to consent to the Court's jurisdiction. This was the case for China in the *Philippines v. China*.

5.2.4 China interprets compulsory jurisdiction as against its state sovereignty. The state views it as an

143 John McCormick, *Introduction to Global Studies*, 2nd ed, (London: Bloomsbury Publishing, 2022), chap. 6.

144 United Nations General Assembly GA/L/3597, *States Not Adhering to International Obligations Undermine Rule of Law, Sixth Committee Delegates Say, as Debate on Principle Concludes* (New York City: Sixth Committee, October 14, 2019), <https://press.un.org/en/2019/gal3597.doc.htm>.

145 "Brief History of IMO," International Maritime Organization, accessed August 4, 2024, <https://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx>.

146 "Basis of the Court's jurisdiction," International Court of Justice, accessed August 4, 2024, <https://www.icj-cij.org/basis-of-jurisdiction>.

147 U.N. Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994).



Islands
島

12 nautical mile territorial sea,
200 nautical miles (EEZ) and the
continental shelf.

領海、排他的經濟水域、大陸棚



Rocks
岩

12 nautical mile territorial sea.

領海



Low-tide elevations
低潮高地

None of the above.

無し

UNCLOS Clarifications and Distinctions

Credit: Eurodollars

attack on their institutions.¹⁴⁸ China follows the practice of state immunity, which is a principle of international law that states employ to claim that a particular court or tribunal does not have jurisdiction over it. China often avoids ratifying treaties that require compulsory jurisdiction, which would require it to adhere to the Court's ruling. In cases in which it has submitted to that jurisdiction, China attempts to control and influence the panel of judges deciding its case.¹⁴⁹

5.2.5 Although China has ratified the UNCLOS, it fails to submit to its provisions. China is not the only state that has disputes over the specifics of the Convention, such as the boundaries of the EEZ and military operations. The Judges of this Court must not overlook the state's scrutiny of the provisions and clarify the interpretation of the Convention for all claimants of the South China Sea and, at large, territorial waters.¹⁵⁰

5.3 Clarifying UNCLOS Provisions

After advisory opinion requests have been filed, the Court calls upon states and international organizations to introduce relevant information on the questions before the Court. Judges may anticipate that written statements and oral proceedings will be introduced during the Committee Session. Judges need to be familiar with some of the more specific provisions of UNCLOS.

5.3.1 Under UNCLOS, offshore maritime features can either be islands, rocks, or low-tide elevations (LTEs). Under Article 13, low-tide elevations are maritime features that are only visible at low tide. Because they are submerged at high tide, they do not generate any maritime zones around themselves.¹⁵¹

5.3.2 Under Article 121, any natural high-tide feature at sea that can either support permanent life or provide economic materials independent from the mainland is considered an island. However, if a maritime feature lacks both of these elements, it is considered a rock. While islands can generate maritime territory over their territorial sea and EEZ, states may only claim a

¹⁴⁸ Julian G. Ku, *China and the Future of International Adjudication*, 27 Md. J. Int'l L. 154 (2012). https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1578&context=faculty_scholarship.

¹⁴⁹ Julian G. Ku, *China and the Future of International Adjudication*.

¹⁵⁰ Jon Marek, "US-China International Law Disputes in the South China Sea," *Wild Blue Yonder*, July 9, 2021, <https://www.airuniversity.af.edu/Wild-Blue-Yonder/Article-Display/Article/2685294/us-china-international-law-disputes-in-the-south-china-sea/>.

¹⁵¹ Pham Ngoc Minh Trang, "Second Thomas Shoal: A Legal Perspective," *Asia Maritime Transparency Initiative*, January 23, 2024, <https://amti.csis.org/second-thomas-shoal-a-legal-perspective/>.

12 nautical mile territorial sea around it.¹⁵²

5.3.3 Most significantly, while states can claim sovereignty over offshore rocks and islands, LTEs do not bear any legal status. If an LTE is located within a territorial sea or EEZ of a state, it automatically belongs to that state.¹⁵³

5.3.4 Regarding the aforementioned Second Thomas Shoal, the Court ruled that it is an LTE. While this means that no country can claim sovereignty over the shoal, it is within the EEZ of the Philippines. Therefore, the Court ruled that the Philippines has sovereignty over the Shoal. This analysis is important to determine what an offshore maritime feature constitutes and how UNCLOS interprets it.¹⁵⁴

5.4 Legal Violations

This section discusses legal principles necessary to understanding the violations of states in this Opinion.

5.4.1 The principle of freedom of the seas is defined as the treatment of the world's seas under international law in international waters. Freedom of the seas is often interchangeable with freedom of navigation, which is the right to the use of the sea guaranteed to all countries. Article 89 of the UNCLOS states regarding the freedom of the seas that “no state may validly purpose to subject any part of the high seas to its sovereignty.”¹⁵⁵

5.4.2 China's interpretation of UNCLOS prompts its violation of the freedom of the seas through its use of the nine-dash line and belief that coastal states have the right to regulate activities of foreign military forces in their EEZ. This prompted international concern as a challenge to a principle in international law, if

accepted, may serve as a precedent for challenging the principle in other parts of the world.¹⁵⁶

5.4.3 Some states are concerned that China's actions in the South China Sea and, on the international stage, Russia's actions in Ukraine, follow a “might makes right” principle. By using what is otherwise referred to as the law of the jungle, Judges need to recognize that these constitute violations against treaties and conventions like the UNCLOS.

5.4.4 There are several methods in the international field to acquire state territory. These include discovery, occupation, prescription, and conquest. China's claims over the Islands in the South China Sea are based on discovery and occupation.¹⁵⁷

5.4.5 Effective occupation is a doctrine in international law that holds that a country can only claim sovereignty over a territory it has effectively occupied. It can also encompass free newly discovered territory exercised by a power with no sovereign title to the land.¹⁵⁸ Under international law, the peaceful acquisition of territory must either not belong to any state or, if occupied, be in a visible and effective manner.¹⁵⁹

5.4.6 While the question became whether China exercised “continuous and peaceful occupation of state authority after discovery,” the reality seemingly shifted after the ratification of the UNCLOS. The Judges must deliberate on this regarding its interpretation.

5.4.6 The law of occupation under international humanitarian law oversees when a foreign power takes control of a territory during armed conflict. China's reliance upon its cabbage and salami strategies, in

152 Pham Ngoc Minh Trang, “Second Thomas Shoal: A Legal Perspective.”

153 Pham Ngoc Minh Trang, “Second Thomas Shoal: A Legal Perspective.”

154 Pham Ngoc Minh Trang, “Second Thomas Shoal: A Legal Perspective.”

155 Congressional Research Service, “U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress” (Washington D.C.: Congressional Research Service, February 2024), <https://sgp.fas.org/crs/row/R42784.pdf>.

156 Congressional Research Service, “U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress.”

157 Teh-Kuang Chang, China's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective, *Case Western Reserve Journal of International Law* 23, no. 3 (1991), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1644&context=jil>.

158 Teh-Kuang Chang, China's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective.

159 Teh-Kuang Chang, China's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective.

which its coastal navy encompasses a territory until it secedes, exacerbates this law as China essentially bullies its neighbors. Judges must consider how this factors into the legal consequences for states that employ such strategies.

5.5 Legal Consequences

5.5.1 The distress of claimants whose territorial claims may be stripped from them as a result of the military efforts of another state is an important factor for Judges to weigh. Whether it is a one-time incident or a perpetual conflict, it may determine the extremity of the consequences regarding how the Court advises claimants and future claimants on this issue.

5.5.2 As the IMO is responsible for ensuring there is a safe and secure oversight over international shipping, the boiling tensions in the South China Sea pose a risk to those activities. As Kerem Cosar and Benjamin Thomas of the University of Virginia found, a military conflict in the South China Sea would result in diverted trade routes that would be detrimental to the economy of many Southeast Asian states.¹⁶⁰

5.5.3 About 80 percent of global trade is carried by sea, with about 20 percent to 33 percent of that being traversed through the South China Sea. While the study assumes a complete closure of the Malacca Strait, an important trade passage connecting the Pacific and Indian Oceans through the South China Sea, would be shut down, this theory would do more than shut down the Strait. The rerouted trade routes would freeze international shipping for Southeast Asian states, causing double-digit shutdowns on the economy ranging in drops of 10 percent to 30 percent.¹⁶¹

5.5.4 Despite the study being hypothetical, the reality showcases how dependent the economies of states in the region are on international shipping in the South

China Sea and the Malacca Strait. Ensuring that these means of transit and transportation remain open and accessible globally is important for fulfilling the IMO's mission and a concern for the Judges of this Court to keep in mind.¹⁶²

5.5.5 The ICJ in its advisory opinion on states' obligation to respect climate change laid a precedent that ensures states consider their duties towards minimizing their global footprint. The environmental concerns, in this case, stem from land reclamation and dredgers used to build claimants' capacity, whether it be economically or militarily, in the islands. More about this specific topic can be found in Section 4.5.

5.5.6 With speculation over unexplored fishing and gas deposits in the region, the race to discover whether that is true or not will inevitably harm the environment it's searching in. The Judges should consider how States violate their obligation through marine exploration as another legal consideration before the Court. Striking a balance between respecting state sovereignty and promoting accountability under international law will be one of the many challenges the Judges face in drafting the opinion.

¹⁶⁰ "Conflict in the South China Sea: Analysing the Economic Toll," Vision of Humanity, accessed August 4, 2024, <https://www.visionofhumanity.org/conflict-in-the-south-china-sea-analysing-the-economic-toll/>.

¹⁶¹ "Conflict in the South China Sea: Analysing the Economic Toll," Vision of Humanity.

¹⁶² "Conflict in the South China Sea: Analysing the Economic Toll," Vision of Humanity.

Research and Preparation Questions

Your dais has prepared the following research and preparation questions as a means of providing guidance for your research process. These questions should be carefully considered, as they embody some of the main critical thought and learning objectives surrounding your topic.

Topic A

1. What are the different means by which the Court can obtain jurisdiction? Does the existence of a Special Agreement guarantee that a case is seen before the Court?
2. Forecasting of Harm: What are the difficulties in attributing a violation of state obligations with forecasted harm? If no significant harm has already occurred, can state violations already be attributed? What international conventions and customs may inform the Court on this matter?
3. Equitability: What determines equity in the use of water resources: is it the contribution of water flow, the necessity of the resource, or the harm done to each party? Can the Court clarify what “equitable and reasonable” means for environmental resources?
4. Cooperation: How does the obligation to cooperate change when one party is uncooperative or resistant? How do you assess whether a state has been engaging in enough cooperation?
5. Reasonable: Is something “reasonable” solely based on its role within one country? How many parties or perspectives should the evaluation of something being “reasonable” take into account?
6. Environmental Rights and Obligations: How might the Court assess the balance between Ethiopia’s sovereign right to utilize its natural resources and its obligation under international law governing shared watercourses to avoid causing significant harm to Egypt?
7. Shared Responsibility: How could the Court apply the principle of shared responsibility to address potential negative consequences, enabling both the development of the Grand Ethiopian Renaissance Dam (GERD) and the protection of Egypt’s water rights and interests?

Topic B

1. Legal Framework and Precedent: Beyond UNCLOS, what international conventions and customs elaborate on states’ sovereign rights at sea and their ability to expand their maritime territories through peaceful or forceful acquisition? How might these play a role in this non-contentious opinion?
2. Historical Accounts: What weight should the Court assign historical accounts, particularly those with only one perspective? How should the Court treat consistent behavior regarding territorial claims? How should the Court view consistent resistance to actions potentially violating international law?
3. Environmental: In light of the Court’s Advisory Opinion on Climate Change, how can state obligations towards transboundary harm be translated to disputed territories?
4. Mechanisms for Enforcement: Are there any violations that can be defined? How can states be held accountable without the Court having coercive powers? What diplomatic or legal frameworks could the Court recommend to facilitate long-

term compliance with international rulings in the South China Sea dispute, particularly in light of China's resistance to third-party arbitration?

5. Differing Views of Power: How should the Court weigh one-sided claims to land? How should differing perspectives be reconciled under international law? Can the Court develop criteria for the balancing and fact-finding of these views?
6. Application of this Issue: Can this advisory opinion be informed by and the decision expanded to other geographical regions? What other areas have experienced (and possibly remedied) similar issues?
7. Acquisition: Are there any consequences for states that acquire territory with non-prescribed methods? How do the peaceful and militaristic acquisition strategies play different roles under international law? To what extent does China's development of infrastructure on artificial islands impact the balance of rights over the Exclusive Economic Zones (EEZs), and what role should the Court play in regulating such constructions within the disputed areas?

Important Documents

Topic A

- “Grand Ethiopian Renaissance Dam (GERD).” African Union Program for Infrastructure Development in Africa (PIDA). Accessed July 24, 2024. <https://www.au-pida.org/view-project/427/>.
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