

# Land Dominates the Sea: ASEAN and Legal Certainty in Maritime Boundary Disputes

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The principle that “land dominates the sea” is the doctrinal cornerstone of international maritime boundary law, affirming that all maritime entitlements derive from lawful sovereignty over land territory under the United Nations Convention on the Law of the Sea (UNCLOS, 1982). This study re-examines the principle through a comparative analysis of four landmark cases; *Ligitan and Sipadan* (2002), *Black Sea* (2009), *Colombia v. Nicaragua* (2012), and the *South China Sea Arbitration* (2016), to assess how courts and tribunals have applied land-based entitlement and to identify gaps between judicial authority and state compliance. Using a normative-doctrinal approach, the paper traces the doctrinal sequence of title, entitlement, method, and compliance, revealing that while jurisprudence has strengthened legal certainty, enforcement remains undermined by power asymmetry and institutional fragmentation. To address this gap, the paper proposes targeted legal innovations, including an Implementing Agreement under UNCLOS Part XV, expanded advisory jurisdiction of ITLOS, and a binding ASEAN–China Code of Conduct (COC) to reinforce regional compliance and cooperation. The findings demonstrate that transforming the “land dominates the sea” doctrine into an operational rule of enforcement is essential for ensuring equity, predictability, and stability in contemporary maritime governance.

## KEY WORDS

- ~ Land dominates the sea
- ~ Legal certainty
- ~ Maritime boundary disputes
- ~ UNCLOS
- ~ Maritime delimitation
- ~ Geopolitics
- ~ Power asymmetries
- ~ Regional cooperation

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## 1. INTRODUCTION

The principle that “land dominates the sea” is the doctrinal cornerstone of international maritime boundary law, affirming that all maritime entitlements derive from lawful sovereignty over land territory under the United Nations Convention on the Law of the Sea (UNCLOS, 1982). This study re-examines the principle through a comparative analysis of four landmark cases: *Ligitan and Sipadan* (2002), *Black Sea* (2009), *Colombia v. Nicaragua* (2012), and the *South China Sea Arbitration* (2016), to assess how courts and tribunals have applied land-based entitlement and to identify gaps between judicial authority and state compliance. Using a normative-doctrinal approach, the article traces the doctrinal sequence of title, entitlement, method, and compliance, revealing that while jurisprudence has strengthened legal certainty, enforcement remains undermined by power asymmetry and institutional fragmentation. To address this gap, the paper proposes targeted legal innovations, including an Implementing Agreement under UNCLOS Part XV, expanded advisory jurisdiction of ITLOS, and a binding ASEAN–China Code of Conduct (COC) to reinforce regional compliance and cooperation. The findings demonstrate that transforming the “land dominates the sea” doctrine into an operational rule of enforcement is essential for ensuring equity, predictability, and stability in contemporary maritime governance.

This study undertakes a comprehensive examination of the “land dominates the sea” principle’s crucial role in resolving maritime boundary disputes through rigorous doctrinal legal analysis and comparative case studies: *Colombia v. Nicaragua* (2012), the *South China Sea Arbitration* (2016), *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia v. Malaysia) (2002), and *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) (2009) (ICJ, 2012; PCA, 2016; ICJ, 2002; ICJ, 2009). These pivotal cases, adjudicated by the International Court of Justice (ICJ) and the Permanent Court of Arbitration (PCA), offer critical insights into both the consistent application of the principle and its inherent limitations in complex geopolitical contexts (Crawford, 2012; Kolb, 2013). While the *Sovereignty over Pulau Ligitan and Pulau Sipadan* case exemplifies successful rule-based delimitation based on the ascertainment of land sovereignty, China’s emphatic rejection of the *South China Sea Arbitration* ruling underscores the significant enforcement challenges that arise when geopolitical power intersects with international legal pronouncements (Chinese Society of International Law, 2018; DeLisle, 2016). Similarly, the *Maritime Delimitation in the Black Sea* case provides a detailed illustration of the principle’s application in scenarios involving overlapping continental shelf claims and the delicate balancing of equidistance with other relevant circumstances (Charney & Alexander, 1993).

Positioned within the extensive body of scholarship on UNCLOS interpretation and enforcement (e.g., Klein, 2005; Roach & Smith, 2012; Talmon, 2007), this research aims to bridge the critical gap between abstract legal theory and the often-resistant realities of state practice. It offers empirically grounded, policy-oriented strategies to strengthen the authority of international jurisprudence and foster more effective regional cooperation, particularly by empowering less powerful states to achieve equitable outcomes in maritime disputes (Bateman & Emmers, 2009; Lathrop, 2016). Specifically, this study addresses identified gaps in the existing literature regarding the nuanced practical application and often-precarious enforcement of the “land dominates the sea” principle when faced with the complexities of geopolitical maneuvering and strategic state behavior (Dupuy & Vignes, 1991; O’Connell, 1982). While much existing scholarship meticulously analyzes the intricate legal framework of UNCLOS and the foundational “land dominates the sea” principle, there is comparatively less attention to the specific challenges posed by state non-compliance, the pervasive influence of power imbalances in negotiation and adjudication, and the difficulties in ensuring consistent application of legal norms across diverse geopolitical contexts (Brown, 1994; Franck, 1990). Furthermore, this research seeks to formulate actionable recommendations to enhance the effectiveness of both international and regional mechanisms in upholding the “land dominates the sea” principle and ensuring more equitable and stable outcomes in resolving contentious maritime boundary disputes (Charney, 1994; Kwiatkowska, 2010).

Despite its fundamental and widely recognized role as a cornerstone of maritime law, the “land dominates the sea” principle frequently faces significant challenges in ensuring genuine legal certainty amid competing state interests, the strategic pursuit of maritime advantage, and the often-uneven distribution of power and influence within the international system (Oxman, 2006; Sohn & Gustafson, 1984). Geopolitical strategies, often driven by national security concerns and the pursuit of economic advantage, along with the enduring legacy of historical claims sometimes lacking a clear legal basis under contemporary international law, frequently undermine the land-based framework established by UNCLOS. This raises serious questions about the principle’s practical efficacy and the robustness of its enforcement mechanisms in a world marked by persistent interstate competition (Roach & Smith, 2012). This study addresses these critical gaps by rigorously investigating the following key questions:

1. How does the “land dominates the sea” principle function as a legally binding norm within the framework of international law, specifically in the context of adjudicating and resolving complex maritime boundary disputes? (Shaw, 2017)
2. In what specific ways have international courts and tribunals, particularly the International Court of Justice and the Permanent Court of Arbitration, interpreted and applied this foundational principle in landmark cases such as

Colombia v. Nicaragua, the South China Sea Arbitration, Sovereignty over Pulau Ligitan and Pulau Sipadan, and Maritime Delimitation in the Black Sea? (ICJ, 2012; PCA, 2016; ICJ, 2002; ICJ, 2009)

3. What significant challenges arise from the intricate interplay between established legal norms, often representing an idealized vision of international order, and the pragmatic pursuit of geopolitical strategies by individual states, particularly concerning the pervasive influence of power asymmetries and the potential for unilateral actions that disregard international legal consensus? (Carr, 2016; Morgenthau, 1948)
4. What concrete measures and strategies can be implemented to strengthen the “land dominates the sea” principle in practice, thereby enhancing its capacity to uphold the rule of law in the maritime domain while simultaneously addressing the persistent challenges posed by power asymmetries and ultimately promoting more equitable and stable maritime governance in the 21st century? (Franck, 1990; Slaughter, 2009)

This paper is structured to address these critical questions through a rigorous combination of doctrinal legal analysis, comparative case study examination, and a constructive normative critique of existing practices and potential avenues for reform (Czapliński & Danilenko, 1990; Kelsen, 1967). It aims to contribute significantly to both academic scholarship and ongoing policy discourse on maritime conflict resolution and the maintenance of a stable and equitable international legal order in the maritime realm. The following sections will detail the methodological framework employed in this study, present a comprehensive analysis of the findings from the case studies and legal analysis, engage in a critical discussion of the implications of these findings, and conclude by offering concrete and actionable recommendations for strengthening the practical application of the “land dominates the sea” principle in the contemporary international legal landscape. Reinforcing legal certainty through the development of robust and universally respected institutional frameworks is critical for fostering lasting peace, promoting fairness in maritime resource management, and ensuring the overall stability of maritime governance in an increasingly interconnected world (Franck, 1990; Slaughter, 2009).

The analysis links four disputes along a single chain – land title → entitlement → delimitation method → compliance. Ligitan/Sipadan (2002) foregrounds terrestrial title as the legal gateway; South China Sea (2016) clarifies feature status and negates extra-UNCLOS historic rights; Black Sea (2009) demonstrates a disciplined three-stage method for turning land-based entitlements into boundary lines; and Nicaragua–Colombia (2012; 2022) exposes where the doctrine–practice gap opens – post-judgment implementation. Treating these together justifies the comparative method and ties each case to the same cornerstone: when land truly dominates the sea, institutions must ensure functionality after adjudication, not merely doctrinal elegance at adjudication.

## **2. THE ESSENCE AND CONCEPT OF THE “LAND DOMINATES THE SEA” PRINCIPLE**

The foundational logic of the law of the sea is land-to-sea: maritime rights flow from title to land territory. UNCLOS embeds this logic: coastal State sovereignty extends to the territorial sea (Art. 2); the continental shelf is legally defined as the natural prolongation of land territory to the outer edge of the continental margin or 200 nautical miles (Art. 76); and “rocks” unable to sustain human habitation or economic life of their own generate no EEZ or continental shelf (Art. 121(3)). Read together, these provisions operationalize the maxim that land dominates the sea, requiring any seaward claim to be anchored in land title and the objective status of maritime features.

Doctrinally, the principle has a substantive role (“no entitlement without land”) and a procedural role (adjudicators first establish the terrestrial territorial situation and the relevant coasts, then delimit seaward). The Black Sea judgment crystallized a replicable three-stage method: identify relevant coasts, draw a provisional equidistance line, and adjust for relevant circumstances, showing how land-derived coasts translate into predictable boundary lines.

The principle also limits broad claims not connected to land title. The South China Sea Arbitration (2016) rejected “historic rights” within the nine-dash line beyond UNCLOS limits and clarified the status of features under Article 121, confirming that entitlement is based on UNCLOS criteria, not historical narratives.

## **3. RESULTS AND DISCUSSION**

### **3.1. The Binding Function of the “Land Dominates the Sea” Principle in Maritime Boundary Disputes**

The “land dominates the sea” principle is a cornerstone of the international legal framework governing the oceans, unequivocally affirming that a state’s sovereign rights and maritime entitlements – including the territorial sea, Exclusive Economic Zone (EEZ), and continental shelf – are fundamentally derived from its established sovereignty over adjacent land territory (UNCLOS, 1982). Codified in the United Nations Convention on the Law of the Sea (UNCLOS, 1982), this principle serves as a primary and legally binding norm in resolving maritime boundary disputes, consistently guiding the judicial reasoning and decision-making of international courts and tribunals tasked with adjudicating such complex matters (Shaw, 2017). Article 2(1) of UNCLOS explicitly states that “the sovereignty of a coastal State extends beyond its land territory and

internal waters... to an adjacent belt of sea, described as the territorial sea,” thereby establishing a direct legal link between land sovereignty and the innermost zone of maritime jurisdiction (UNCLOS, 1982). Similarly, Article 76 of UNCLOS defines the continental shelf of a coastal State as comprising “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin” (UNCLOS, 1982). These foundational provisions clearly state that the various maritime zones and the rights associated with them are legally understood as extensions of the terrestrial sovereignty of coastal states, requiring that states seeking to assert maritime claims must first demonstrate a lawful and internationally recognized title to the relevant land territory (Prescott & Schofield, 2005; Roach & Smith, 2012).

Jurisprudence from international courts and tribunals has consistently upheld and reinforced the binding nature of this fundamental principle (Aust, 2010; Crawford, 2012). In the landmark case of *Colombia v. Nicaragua* (2012), the International Court of Justice (ICJ) explicitly affirmed that “it is the terrestrial territorial situation that must be taken as the starting point for the determination of the maritime rights of a coastal State” (ICJ, 2012, para. 141). This pronouncement underscores the primacy of land sovereignty in the judicial determination of maritime entitlements. Likewise, in the *South China Sea Arbitration* (2016), the Permanent Court of Arbitration (PCA) unequivocally held that “maritime entitlements... must be based on entitlements to land features,” thereby rejecting expansive claims predicated on historical narratives or other non-legal grounds not directly linked to recognized land sovereignty under UNCLOS (PCA, 2016, para. 262; Hayashi, 2020). In the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan* (*Indonesia v. Malaysia*) (2002), the ICJ applied the “land dominates the sea” principle as the central framework for resolving the dispute over island sovereignty, recognizing that the determination of which state held sovereign title to the islands would dictate the extent of their respective maritime zones in the surrounding Celebes Sea (ICJ, 2002, para. 126). Similarly, in the case of *Maritime Delimitation in the Black Sea* (*Romania v. Ukraine*) (2009), the ICJ consistently prioritized the established land boundaries between the two states as the essential starting point for the complex process of delimiting their overlapping continental shelf claims and Exclusive Economic Zones in the Black Sea region (ICJ, 2009, para. 77).

The enduring binding force of the “land dominates the sea” principle stems from its inherent dual nature, functioning both as a substantive normative rule and as a critical procedural guideline in the adjudication of maritime disputes (Brownlie, 2008; Dupuy & Vignes, 1991). Normatively, it establishes a fundamental legal threshold that all maritime claims must meet to be valid under international law. Procedurally, it provides a clear framework that international courts and tribunals must follow when framing and adjudicating maritime disputes, ensuring that the determination of land sovereignty forms the essential and logical starting point for any subsequent delimitation of maritime boundaries. By mandating a demonstrable land-based title as the prerequisite for asserting maritime rights, the principle curbs the potential for unilateral and excessive claims not grounded in recognized legal principles, as illustrated by the rejection of China’s expansive “nine-dash line” claim in the *South China Sea Arbitration*, which was found to lack a valid basis in recognized land entitlements under UNCLOS (PCA, 2016; Roach & Smith, 2012). This crucial function of the principle promotes greater legal predictability in the maritime realm and significantly limits the scope for arbitrary and unsubstantiated assertions of maritime jurisdiction.

Despite its robust legal foundation and consistent reaffirmation in international case law and multilateral instruments, the practical application of the “land dominates the sea” principle faces inherent challenges (Oxman, 2006; Sohn & Gustafson, 1984). Disputes often arise over the legal status and entitlement-generating capacity of various land features, such as small islands, rocks, and low-tide elevations, complicating the straightforward application of the principle in complex maritime scenarios (Churchill & Lowe, 1999; Prescott, 2016). Additionally, non-compliance with international legal rulings, particularly by powerful states seeking to advance their strategic interests, can challenge the principle’s authority and undermine its consistent application (Franck, 1990; Slaughter, 2009). Nevertheless, the consistent reaffirmation of the principle in judicial decisions and multilateral legal instruments ensures its continued status as a fundamental and binding norm of international maritime law, providing an essential framework for resolving maritime boundary disputes.

In summary, the “land dominates the sea” principle is a central and indispensable element of the overarching legal framework governing maritime boundary disputes. By firmly anchoring maritime entitlements to established sovereignty over land territory, it reinforces the primacy of land-based legal titles, sets a clear and objective legal standard for determining maritime rights, and effectively mitigates the potential for excessive and unfounded claims in the maritime domain. This makes a crucial contribution to maintaining legal order and stability in the governance of global oceans (Roach & Smith, 2012).

### **3.2. Application of the “Land Dominates the Sea” Principle in Key International Court Cases**

The “land dominates the sea” principle, a fundamental norm of international maritime law, stipulates that a state’s maritime entitlements – including territorial seas, Exclusive Economic Zones (EEZs), and continental shelves – must derive from its sovereignty over land territory (UNCLOS, 1982; Roeben, 2015). Codified in the United Nations Convention on the Law of the Sea (UNCLOS, 1982), this principle has consistently guided international courts and tribunals in resolving complex

maritime boundary disputes (Aust, 2010; Shaw, 2017). This section examines the application of this principle in four landmark cases that have significantly shaped the jurisprudence of maritime delimitation: *Colombia v. Nicaragua* (2012), the South China Sea Arbitration (2016), *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia v. Malaysia) (2002), and *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) (2009).

In *Colombia v. Nicaragua* (2012), the International Court of Justice (ICJ) applied the “land dominates the sea” principle to resolve a complex maritime dispute in the Caribbean Sea (ICJ, 2012). Nicaragua asserted extensive maritime zone claims based on the geographical proximity of certain features to Colombia’s San Andrés and Providencia islands. However, the ICJ firmly prioritized the principle of land sovereignty as the determinative factor in maritime delimitation, explicitly stating, “it is the terrestrial territorial situation that must be taken as the starting point for the determination of the maritime rights of a coastal State” (ICJ, 2012, para. 141). This ruling established that the delimitation of maritime boundaries must be fundamentally anchored in established sovereignty over land territory, thereby rejecting Nicaragua’s claims based solely on geographical proximity without a corresponding demonstration of land title.

The South China Sea Arbitration (2016) provides a salient example of the principle’s crucial role in rejecting expansive maritime claims lacking a basis in established land sovereignty (PCA, 2016; Roach & Smith, 2012). In this case, the Permanent Court of Arbitration (PCA) unequivocally ruled against China’s assertion of the “nine-dash line,” a historical claim encompassing vast portions of the South China Sea. The tribunal emphasized that maritime entitlements under UNCLOS must derive from valid entitlements to specific land features, not from historical claims or other non-legal grounds, stating, “maritime entitlements... must be based on entitlements to land features” (PCA, 2016, para. 262). By invalidating maritime claims lacking a foundation in recognized land-based title, the tribunal reinforced the land-centric framework established by UNCLOS and underscored the primacy of the “land dominates the sea” principle in contemporary maritime law (Hayashi, 2020; Valencia, 1995).

The case of *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia v. Malaysia) (2002) illustrates the practical application of the “land dominates the sea” principle in resolving competing territorial claims. The International Court of Justice (ICJ) focused on which state held sovereignty over the islands, recognizing that this determination would directly influence the delimitation of maritime zones in the Celebes Sea, including continental shelf and Exclusive Economic Zone (EEZ) entitlements. Sovereignty was ultimately awarded to Malaysia based on its effective administration, reaffirming the principle that control over land features determines maritime rights. However, this case also reflects broader challenges associated with international adjudication. After negotiations between Indonesia and Malaysia collapsed in 1998, the matter was brought before the ICJ, illustrating reliance on legal mechanisms when diplomacy fails. A similar pattern emerged in the Philippines’ decision to refer its South China Sea dispute with China to the Permanent Court of Arbitration (PCA) following unsuccessful bilateral talks. Yet, the mixed aftermath of these proceedings, particularly regarding enforcement and compliance, raises questions about the ultimate effectiveness of such legal pathways in settling maritime boundary disputes, even when the “land dominates the sea” principle is clearly invoked (Pratomo & Kwik, 2020).

Similarly, the case of *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) (2009) provides a complex example of how the “land dominates the sea” principle is applied in situations involving overlapping continental shelf and Exclusive Economic Zone claims between neighboring states (ICJ, 2009). In this case, the ICJ began its analysis by meticulously establishing the relevant coasts and land boundaries between Romania and Ukraine, recognizing that these terrestrial boundaries would serve as the fundamental basis for the subsequent delimitation of the maritime zones. The Court emphasized that “the land territory dictates the extent of maritime rights,” thereby reinforcing the primacy of the “land dominates the sea” principle in guiding the equitable delimitation of maritime boundaries in complex geographical and legal contexts (ICJ, 2009, para. 77; Charney & Alexander, 1993).

These four landmark cases collectively demonstrate the critical and consistent role of the “land dominates the sea” principle in ensuring that maritime entitlements are firmly grounded in valid and recognized sovereignty over land territory. The cases of *Colombia v. Nicaragua* and *Sovereignty over Pulau Ligitan and Pulau Sipadan* underscore the importance of establishing clear land-based titles as the essential prerequisite for maritime delimitation, while the South China Sea Arbitration highlights the principle’s function in curbing expansive maritime claims that lack such a land-based foundation. The *Maritime Delimitation in the Black Sea* case illustrates the principle’s practical application in complex scenarios involving overlapping maritime claims and the need to balance legal principles with considerations of equitable outcomes, thereby reinforcing the principle’s contribution to legal certainty and stability in maritime governance (Churchill & Lowe, 1999).

### **3.2.1. Synthesis: How the Four Cases Interrelate**

Across the four decisions, a clear continuum emerges. *Ligitan/Sipadan* (2002) establishes that effective occupation of land territory is the gateway to any maritime entitlement. By awarding sovereignty to Malaysia based on continuous effectivities, the Court made explicit that maritime entitlements depend entirely on proven land title. Without settling terrestrial

sovereignty first, no lawful claim to territorial sea, EEZ, or continental shelf can exist. This judgment anchors the entire land-dominates-the-sea chain and remains the clearest doctrinal statement that land title is the legal precondition for maritime jurisdiction. South China Sea (2016) limits entitlement by the objective characteristics of features and rejects “historic rights” beyond UNCLOS. Black Sea (2009) codifies a disciplined three-stage method – identifying relevant coasts, drawing a provisional equidistance line, and adjusting for relevant circumstances – that translates land title into equitable maritime boundaries. The Court’s three-stage delimitation method has since become the template for modern maritime boundary practice. It operationalizes land dominates the sea by transforming terrestrial geography into predictable, reproducible boundary lines and minimizing discretionary manipulation. Nicaragua–Colombia (2012 merits; 2022 violations) highlights the enforcement gap once adjudication ends. Taken together, the sequence title → entitlement → method → compliance shows where doctrine is stable and where institutional design must evolve to make the principle operational in practice.

To provide a clearer comparative overview of the application of the “land dominates the sea” principle in these key maritime delimitation cases, Table 1 presents a concise summary of their respective legal contexts, the institutional venues in which they were adjudicated, the primary outcomes, and the observed levels of compliance with the rulings.

Case	Legal claim	Court / Tribunal	Outcome	Compliance status
<b>Colombia v. Nicaragua (2012)</b>	Maritime entitlements based on proximity vs sovereignty over islands	International Court of Justice (ICJ)	ICJ upheld land sovereignty as the basis; rejected Nicaragua’s proximity claims	Partially compliant; some contestation remained
<b>South China Sea Arbitration (2016)</b>	China’s “nine-dash line” historical claim vs land-based entitlements	Permanent Court of Arbitration (PCA)	PCA ruled against China’s claim; reaffirmed UNCLOS land-based entitlements	Non-compliant; China rejected ruling
<b>Pulau Ligitan &amp; Sipadan (Indonesia v. Malaysia, 2002)</b>	Competing sovereignty claims over two islands affecting maritime zones	International Court of Justice (ICJ)	ICJ awarded sovereignty to Malaysia based on effective occupation	Fully compliant
<b>Maritime Delimitation in the Black Sea (2009)</b>	Continental shelf and EEZ claims between Romania and Ukraine	International Court of Justice (ICJ)	Delimitation based on relevant coasts; equitable outcome	Fully compliant

Table 1: Comparative Application of the ‘Land Dominates the Sea’ Principle in Maritime Delimitation Cases

As demonstrated in Table 1, while the “land dominates the sea” principle is consistently applied across various judicial forums and serves as a fundamental guiding principle in maritime delimitation, actual levels of state compliance with the resulting rulings can vary significantly depending on the prevailing geopolitical context and the distribution of power among the states involved in the dispute (Franck, 1990; Slaughter, 2009). While the ICJ rulings in the Maritime Delimitation in the Black Sea and Sovereignty over Pulau Ligitan and Pulau Sipadan cases were fully implemented by the states concerned, the ruling in the South China Sea Arbitration, which involved more contentious regional powers and significant geopolitical interests, faced outright rejection by China (Chinese Society of International Law, 2018; DeLisle, 2016). This divergence in compliance behavior underscores the persistent need for stronger enforcement mechanisms and more effective regional institutional support to bridge the frequent gap between the clarity of legal principles and the practical challenges of securing political will for their consistent application in the complex realm of international relations (Bateman & Emmers, 2009; Lathrop, 2016).

### 3.3. Challenges in Applying the “Land Dominates the Sea” Principle Amid Legal and Geopolitical Tensions

Although the *land dominates the sea* principle is doctrinally established, its practical application remains inconsistent. Persistent power asymmetries allow dominant maritime states to disregard judicial awards with minimal consequence, as demonstrated by China’s rejection of the South China Sea Arbitration (2016) ruling. Additionally, institutional fragmentation within the UNCLOS dispute-settlement system means that, while decisions are binding, there is no standing compliance-monitoring mechanism to ensure implementation. Geopolitical rivalries in semi-enclosed seas, particularly the South China Sea, further undermine cooperation even after legal delimitation. Regional organizations such as ASEAN, whose mandates are consultative rather than adjudicative, also struggle to translate legal norms into coordinated enforcement. These interlocking constraints reveal that jurisprudence alone cannot ensure stability and that stronger follow-up mechanisms are essential for the principle’s effectiveness (Franck, 1990; Slaughter, 2009).

A related challenge lies in the uncertain classification of maritime features, which generates overlapping interpretations of entitlement. In *Colombia v. Nicaragua* (2012), the International Court of Justice reaffirmed that delimitation must begin with recognized land sovereignty, yet faced disagreement over the legal status of low-tide elevations, which may not generate full maritime zones under UNCLOS (1982, Art. 13; ICJ, 2012, para. 141). Similarly, in *Sovereignty over Pulau Ligitan and Pulau Sipadan* (2002), differing views on the entitlement-generating capacity of small islands delayed final delimitation until sovereignty was conclusively settled (ICJ, 2002, para. 126). These examples demonstrate that even where the principle's normative core is settled, factual ambiguities over feature status continue to complicate uniform implementation (Churchill & Lowe, 1999; Roach & Smith, 2012).

### **3.4. Enforcing the “Land Dominates the Sea” Principle: Strengthening the Rule of Law While Addressing Power Asymmetries in Maritime Disputes**

The land dominates the sea principle remains the cornerstone of international maritime law, anchoring all entitlements in established land sovereignty (UNCLOS, 1982; Roeben, 2015). Its consistent reaffirmation in international adjudication has strengthened the rule of law in ocean governance (Aust, 2010; Franck, 1990), yet enforcement often falters when power asymmetries distort compliance or when major powers resist binding decisions (Morgenthau, 1948; Slaughter, 2009).

The jurisprudence of *Colombia v. Nicaragua* (2012) demonstrates the Court's reliance on terrestrial sovereignty as the starting point for delimitation, rejecting proximity-based claims lacking lawful title to land (ICJ, 2012, para. 141). Similarly, the South China Sea Arbitration (2016) reaffirmed that maritime entitlements must derive from legally recognized land features, invalidating China's "nine-dash line" for lacking a land-based foundation (PCA, 2016, para. 262; Hayashi, 2020). However, China's non-compliance exposed the structural limitation of international adjudication – legal authority remains fragile without political will (Chinese Society of International Law, 2018; DeLisle, 2016). These cases highlight that legal clarity alone cannot guarantee compliance without stronger institutional and collective incentives (Oxman, 2006).

International bodies such as the International Tribunal for the Law of the Sea (ITLOS) and the Permanent Court of Arbitration (PCA) provide impartial venues for smaller states to assert their rights (ITLOS Statute; PCA Convention). Yet, their efficacy ultimately depends on states' willingness to accept jurisdiction and execute awards, underscoring the need to enhance post-judgment accountability through regular compliance reporting, diplomatic support, and capacity-building for enforcement (Franck, 1990; Slaughter, 2009).

At the regional level, organizations like ASEAN can complement global frameworks by embedding UNCLOS norms within binding cooperative instruments and fostering a culture of rule-based hydro-diplomacy (MacKay & Collins, 2024; Emmers, 2010; Hu, 2021). Strengthening regional surveillance mechanisms, promoting transparent data sharing, and applying collective diplomatic or economic responses to non-compliance would help counteract the disadvantages smaller states face in asymmetrical disputes (Bateman & Emmers, 2009; Lathrop, 2016). Coordinating such regional mechanisms with global judicial institutions would transform the land dominates the sea principle from a declarative norm into an operational framework for equitable and predictable maritime governance. The persistent enforcement gap highlighted above makes it essential to examine how regional frameworks, particularly ASEAN, can complement global adjudicative mechanisms in ensuring compliance and promoting cooperative, rules-based maritime governance.

### **3.5. Strengthening Regional Mechanisms for Maritime Dispute Resolution**

The "land dominates the sea" principle, as codified in the United Nations Convention on the Law of the Sea (UNCLOS, 1982), provides a robust legal framework for resolving maritime boundary disputes by firmly anchoring maritime entitlements to established land sovereignty (UNCLOS, 1982; Roeben, 2015). However, as demonstrated in prominent cases such as the South China Sea Arbitration (2016) and *Colombia v. Nicaragua* (2012), the principle's efficacy is often undermined by the complex interplay of geopolitical strategies and power asymmetries, particularly when powerful states resist complying with international legal rulings or seek to assert dominance in strategically important maritime regions (PCA, 2016; ICJ, 2012; Morgenthau, 1948). To effectively address these persistent challenges and strengthen the application of the "land dominates the sea" principle, regional mechanisms offer a critical means of reinforcing the rule of law in the maritime domain, fostering cooperative approaches to dispute resolution, and promoting more equitable and sustainable maritime governance (Bateman & Emmers, 2009; Lathrop, 2016).

Regional organizations like ASEAN (Association of Southeast Asian Nations) have a unique capacity to serve as effective mediators and facilitators in maritime disputes, acting as crucial intermediaries between the universal norms of international law and the specific practices and strategic interests of individual states in the region (Churchill & Lowe, 1999; Dupuy & Vignes, 1991). In the complex and highly contested South China Sea, for example, ASEAN has played a pivotal

role in promoting dialogue and negotiation among the various claimant states, despite significant challenges posed by diverse and often conflicting national interests and persistent pressures from external powers (Hu, 2021; Valencia, 1995). The 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), though non-binding, represents a crucial expression of ASEAN's collective commitment to a rules-based approach to maritime governance, emphasizing fundamental principles such as self-restraint in the conduct of activities, peaceful resolution of disputes through dialogue and negotiation, and avoidance of actions that could escalate tensions or complicate the situation (ASEAN, 2002). However, the DOC's inherent limitations, particularly its lack of robust enforcement mechanisms and its vulnerability to unilateral actions, highlight the ongoing need for stronger and more legally binding regional frameworks to effectively uphold the "land dominates the sea" principle (Thayer, 2013).

Scholarly analyses often argue that ASEAN could significantly enhance its role in regional maritime affairs by developing a legally binding Code of Conduct (COC) that explicitly aligns with the principles and provisions of UNCLOS and firmly reaffirms the primacy of the "land dominates the sea" principle, thereby providing a more solid foundation for legal certainty and predictability in resolving maritime disputes (Chinese Society of International Law, 2018). Such a legally binding framework would provide a crucial regional mechanism to effectively operationalize the rulings of international tribunals, as exemplified by the South China Sea Arbitration, where the tribunal's rejection of China's expansive "nine-dash line" underscored the fundamental principle that maritime entitlements must be derived from recognized land-based entitlements under UNCLOS (PCA, 2016; Roach & Smith, 2012). This Code of Conduct could include specific provisions for systematic monitoring of state behavior in the maritime domain, clear and transparent reporting of violations of agreed norms or legal principles, and the application of calibrated diplomatic or economic pressure to incentivize compliance and deter unilateral actions that undermine the "land dominates the sea" principle (Bateman & Emmers, 2009; Thayer, 2013).

Comparative insights from other regions further demonstrate the significant potential of regional mechanisms to enhance maritime law enforcement and promote peaceful dispute resolution. In the Caribbean, for example, the Organization of American States (OAS) has played a constructive role in facilitating dialogue and cooperation in maritime disputes, such as those between Honduras and Nicaragua, by actively promoting confidence-building measures, encouraging technical cooperation among states, and providing a platform for peaceful negotiation and mediation (OAS, n.d., "Honduras and Nicaragua (1999 - 2007)" section; Cerna, 2018; Treves, 2015). The OAS's success in fostering bilateral negotiations and encouraging a cooperative approach to dispute resolution highlights the significant value of regional platforms in complementing international adjudication and providing alternative mechanisms for conflict management. Similarly, the African Union (AU) has demonstrated its capacity to support maritime boundary delimitation in complex cases, such as the Kenya-Somalia dispute, by actively integrating the principles and provisions of UNCLOS, including the "land dominates the sea" principle, into its regional governance frameworks and promoting a rules-based approach to maritime affairs (Harefa & Astuti, 2025). These diverse regional experiences suggest that ASEAN could adopt similar strategies to strengthen its role in maritime governance, such as establishing a dedicated regional body focused on maritime dispute resolution, leveraging technical expertise to clarify complex legal and geographical issues surrounding disputed land and maritime boundaries, and developing regional guidelines for applying the "land dominates the sea" principle, thereby enhancing its practical implementation and overall effectiveness (Valencia, 1995; Prescott & Schofield, 2005).

However, it is essential to recognize that regional mechanisms also face significant obstacles and internal challenges that can hinder their effectiveness in promoting and enforcing the "land dominates the sea" principle. In ASEAN's case, for example, the diverse economic dependencies of member states on China have often led to internal divisions and a lack of consensus on contentious maritime issues, weakening the organization's ability to present a unified front and effectively enforce UNCLOS principles in response to assertive actions by external powers (Gonzales, 2025; Hu, 2021). To address these inherent challenges and maximize its potential, ASEAN could adopt a phased and strategic approach to strengthening its maritime governance framework. First, ASEAN could prioritize practical and technical cooperation among member states, such as conducting joint hydrographic surveys to clarify the precise status and legal classification of disputed land features, directly supporting the application of the "land dominates the sea" principle by grounding maritime claims in verifiable and legally recognized terrestrial sovereignty. Second, ASEAN could work toward institutionalizing more formalized and legally binding dispute resolution processes, drawing inspiration from the OAS mediation model in the Caribbean, to provide a viable and effective regional alternative to international adjudication in certain cases. Finally, ASEAN could foster dialogue and collaboration with non-claimant states and relevant international organizations, such as the United Nations, to enhance its legitimacy, expand its resources, and ensure that regional mechanisms and initiatives are fully aligned with global legal norms and principles (Tan & Lin, 2024; Treves, 2015).

The effective integration of regional mechanisms into the broader framework of international maritime law offers a promising pathway to reinforce the "land dominates the sea" principle, promote peaceful and cooperative relations among states, and enhance the overall stability and predictability of maritime governance. By actively promoting cooperation among states, clarifying land-based entitlements, and addressing persistent challenges posed by power imbalances, regional organizations can significantly enhance the enforceability of the "land dominates the sea" principle and contribute to

establishing a more equitable and rule-based maritime order. For ASEAN, this involves carefully balancing diplomatic engagement with a commitment to legal rigor, strategically leveraging its collective influence to uphold the provisions of UNCLOS, and drawing on global best practices and lessons from other regions to develop robust and effective regional frameworks for maritime governance. Such concerted efforts not only strengthen the rule of law in the maritime domain but also foster more equitable and sustainable outcomes in maritime disputes, ensuring that the "land dominates the sea" principle remains a cornerstone of just and stable ocean governance in the 21st century (Bateman & Emmers, 2009). The comparative findings above show that doctrinal coherence alone is insufficient without parallel institutional and compliance innovations.

#### 4. CONCLUSION

The principle that "land dominates the sea" remains the cornerstone of international maritime law under the United Nations Convention on the Law of the Sea (UNCLOS, 1982), as reaffirmed in landmark cases such as *Ligitan and Sipadan* (2002), *Black Sea* (2009), *Colombia v. Nicaragua* (2012), and the *South China Sea Arbitration* (2016), where international courts consistently upheld that maritime entitlements derive solely from established land sovereignty. Despite its doctrinal clarity, persistent enforcement gaps, power asymmetries, and geopolitical rivalries continue to challenge its uniform application, highlighting the need for institutional mechanisms that ensure compliance beyond adjudication. To enhance its effectiveness, targeted legal innovations are necessary, such as a narrow Implementing Agreement under UNCLOS Part XV to codify post-judgment compliance duties, the expansion of ITLOS advisory jurisdiction to provide authoritative guidance for regional organizations like ASEAN, and a binding ASEAN–China Code of Conduct that reaffirms land-based entitlement, mandates compulsory conciliation, and establishes transparent compliance reporting. These complementary measures would transform the "land dominates the sea" doctrine from a static legal axiom into a dynamic instrument of maritime governance, bridging the gap between international legality and geopolitical reality, and ensuring that the rule of law continues to anchor equity, stability, and predictability in the world's oceans.

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#### CONFLICT OF INTEREST STATEMENT

The author declares no conflict of interest.

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