

**THE DEATH OF NEUTRALITY IN DJIBOUTI: INVITING STRATEGIC  
COMPETITORS, THE UNITED STATES AND CHINA, TO BUILD  
MILITARY BASES WITHIN ITS BORDERS**

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I. Introduction

The United States and the People's Republic of China (P.R.C.) are engaged in a strategic power competition.<sup>1</sup> The United States has declared that the P.R.C. is the only competitor "capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system."<sup>2</sup> As the United States attempts to outpace the P.R.C., it must also prepare to militarily defeat it both at home and abroad.

The challenges surrounding this defense preparedness have increased as the P.R.C. updates and expands its military capabilities. More specifically, the P.R.C. recently increased defense spending to include building military bases overseas,<sup>3</sup> and in 2017, the P.R.C. opened its first

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<sup>1</sup> See THE WHITE HOUSE, INTERIM NATIONAL SECURITY STRATEGIC GUIDANCE 8 (2021) [hereinafter INTERIM NATIONAL SECURITY STRATEGIC GUIDANCE].

<sup>2</sup> *Id.*

<sup>3</sup> Debra Orock Enoru, *The Rise of the People's Republic of China Poses a Potential Strategic Challenge to the United States* 4 (2021) (Ph.D. dissertation, National American University) (ProQuest).

overseas military base in the Republic of Djibouti (Djibouti), located in East Africa.<sup>4</sup> The U.S. Department of Defense (DoD) reports that, “Beyond its base in Djibouti, the P.R.C. is pursuing additional military facilities to support naval, air, ground, cyber, and space power projection.”<sup>5</sup> This same report identified several countries, including the United Arab Emirates (UAE), as potential locations for future P.R.C. military bases.<sup>6</sup> The UAE, like Djibouti, already hosts a U.S. military installation.<sup>7</sup> If the P.R.C.’s plan to expand its overseas presence is accomplished, more U.S. and P.R.C. installations located in the same countries becomes inevitable. Currently, this reality only exists in Djibouti, making it ripe for a case study.

In the event of an international armed conflict (IAC) between the United States and the P.R.C., countries like Djibouti, which have allowed both nations to build military installations within their borders, may become third-party hosts to that conflict, raising significant legal questions. One such legal question is whether a host country can claim neutrality when it invites competitor military bases within its borders. This paper explores this question via the present Djibouti situation and concludes that Djibouti cannot be a neutral state when it invites competitor foreign militaries to build within its borders.

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<sup>4</sup> *Investing in America’s Security in Africa: A Continent of Growing Strategic Importance: Hearing Before the S. Armed Servs. Comm.* 117th Cong. 3 (2022) (Statement of Gen. Stephen A. Townsend, Commander, USAFRICOM) [hereinafter 2022 USAFRICOM Posture Statement].

<sup>5</sup> OFF. OF SEC’Y OF DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA* 130 (2021) [hereinafter 2021 P.R.C. DEVELOPMENTS]. Section 1202 of the National Defense Authorization for Fiscal Year 2000 requires the Secretary of Defense to submit this annual report to Congress addressing the P.R.C.’s military and security developments. National Defense Authorization for Fiscal Year 2000, Pub. L. No. 106-65, 113 Stat. 512, 781 (1999).

<sup>6</sup> 2021 P.R.C. DEVELOPMENTS, *supra* note 5, at 130-31.

<sup>7</sup> MATTHEW WALLIN, AM. SEC. PROJECT, *U.S. MILITARY BASES AND FACILITIES IN THE MIDDLE EAST* 2, 10 (2018). Since World War II, the U.S. military has established bases throughout the world, with approximately 750 military installations in more than eighty countries and territories. David Vine, *The United States Probably Has More Foreign Military Bases Than Any Other People, Nation, or Empire in History*, THE NATION (Sept. 14, 2015), <https://www.thenation.com/article/world/the-united-states-probably-has-more-foreign-military-bases-than-any-other-people-nation-or-empire-in-history>; David Vine, *Lists of U.S. Military Bases Abroad, 1776-2021*, AM. UNIV. DIGITAL RSCH. ARCHIVE (July 4, 2021), <https://doi.org/10.17606/7em4-hb13>.

The discussion below proceeds in five parts. Part II provides a background of U.S. and P.R.C. involvement and military presence in Djibouti. Part III explores the legal agreements between the United States and Djibouti that govern the U.S. military presence within Djibouti's borders. Part IV evaluates the law of neutrality and how Djibouti's declaration of neutrality, if recognized, would affect military operations. Part V analyzes the P.R.C.'s recent actions and Djibouti's response, which are inconsistent with a neutral stance. Finally, Part VI provides a proposed U.S. approach to Djibouti's potential declaration of neutrality.

## II. Background: The United States, the P.R.C., and Djibouti

Two competitor nations constructing military bases in Djibouti creates a complex environment for neutrality. To understand why the United States and the P.R.C. constructed these military bases, a look at each state's national and defense strategies and the geographic importance of the region is necessary.

### A. The U.S National Security Strategy and National Defense Strategy

The United States regularly publishes its *National Security Strategy* (NSS), which outlines the current presidential administration's goals and policies.<sup>8</sup> The NSS informs U.S. agencies, including the DoD, of the "proposed uses of all facets of U.S. power needed to achieve the [N]ation's security goals."<sup>9</sup> In 2021, President Joseph Biden signed the Interim National Security Strategic Guidance, which states that ensuring our national security requires the United States to "[p]romote a favorable distribution of power to deter and prevent adversaries from directly threatening the United States and our allies, inhibiting access to the global commons, or dominating key regions."<sup>10</sup> The interim guidance was followed by the 2022 NSS, which states, "Amid intensifying competition, the military's role is to maintain and gain warfighting advantages while limiting those of our competitors. The military will act urgently to sustain

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<sup>8</sup> *National Security Strategy*, HIST. OFF., OFF. OF THE SEC'Y OF DEF., <https://history.defense.gov/Historical-Sources/National-Security-Strategy> (last visited June 1, 2023).

<sup>9</sup> *Id.*

<sup>10</sup> INTERIM NATIONAL SECURITY STRATEGIC GUIDANCE, *supra* note 1, at 9.

and strengthen deterrence, with the [P.R.C.] as its pacing challenge.”<sup>11</sup> Applying this strategy to Djibouti, the United States must deter and prevent the P.R.C. from dominating and threatening the United States and its allies through its military presence in the region.

The Office of the Secretary of Defense implements the NSS by creating the *National Defense Strategy* (NDS), a report outlining how the DoD will contribute to the mission.<sup>12</sup> The 2022 NDS identifies four defense priorities, two of which directly reference the P.R.C: “Defending the homeland, paced to the growing multi-domain threat posed by the [P.R.C.]” and “[d]eterring aggression, while being prepared to prevail in conflict when necessary—prioritizing the [P.R.C.] challenge in the Indo-Pacific.”<sup>13</sup> These DoD priorities highlight the importance of preparing first to deter the P.R.C. while preparing to defeat the P.R.C. if deterrence fails and conflict is necessary.

After the DoD published its 2018 NDS, Congress created a commission to independently review it and make recommendations.<sup>14</sup> The 2018 NDS review emphasized the necessity of military presence to deter adversaries from dominating regions: “Forward posture is a key component of deterring competitors and adversaries and assuring allies and partners.”<sup>15</sup> The United States, per the 2018 NDS, recognizes the importance of strengthening alliances under its strategic approach and identifies its plan to do so in Africa.<sup>16</sup> Specifically, in Africa, the United States “will bolster existing bilateral and multilateral partnerships and develop new relationships to address significant terrorist threats that threaten U.S. interests.”<sup>17</sup> In addition, the United States will work with

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<sup>11</sup> THE WHITE HOUSE, NATIONAL SECURITY STRATEGY 20 (2022) [hereinafter 2022 NATIONAL SECURITY STRATEGY].

<sup>12</sup> *National Defense Strategy*, HIST. OFF., OFF. OF THE SEC’Y OF DEF., <https://history.defense.gov/Historical-Sources/National-Defense-Strategy> (last visited June 1, 2023).

<sup>13</sup> U.S. DEP’T OF DEF., 2022 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 7 (2022) [hereinafter 2022 U.S. NATIONAL DEFENSE STRATEGY].

<sup>14</sup> COMM’N ON THE NAT’L DEF. STRATEGY FOR THE U.S., PROVIDING FOR THE COMMON DEFENSE: THE ASSESSMENT AND RECOMMENDATIONS OF THE NATIONAL DEFENSE STRATEGY COMMISSION 1 (2018) [hereinafter COMM’N ON THE NAT’L DEF. STRATEGY].

<sup>15</sup> *Id.* at 33.

<sup>16</sup> U.S. DEP’T OF DEF., SUMMARY OF THE 2018 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 10 (2018).

<sup>17</sup> *Id.*

local partners to counter threats and “limit the malign influence of non-African powers.”<sup>18</sup>

Thus, the 2022 NDS demonstrates that the DoD’s current strategy is consistent in its focus to deter the P.R.C. overseas. “The NDS directs the [DoD] to act urgently to sustain and strengthen U.S. deterrence, with the [P.R.C.] as the pacing challenge for the [DoD].”<sup>19</sup> Specific to Africa, the NDS states the United States will increase coordination with “[a]llies, multilateral organizations, and regional bodies that share U.S. objectives . . . to disrupt malign [P.R.C.] . . . activities on the continent.”<sup>20</sup>

The U.S. presence in Djibouti assists in countering the P.R.C.’s “malign” influence throughout the region.<sup>21</sup> Djibouti has become a key partner in the U.S. effort to accomplish its national security and defense strategies in a key region of the world.

#### B. Post-9/11 Relationship between the United States and Djibouti

Since World War II, the United States has established a forward posture by building a military presence throughout the world.<sup>22</sup> At the end of the Cold War, the United States decreased its overseas military presence, but after the 9/11 terrorist attacks, the United States once again expanded its footprint.<sup>23</sup> Just after the events of 9/11, the United States created the Combined Joint Task Force-Horn of Africa (CJTF-HOA) in Djibouti to conduct operations in the Horn of Africa.<sup>24</sup> In November 2002, CJTF-HOA “conducted its operations from the USS *Mount Whitney*, moored in the port of Djibouti, while negotiations began with the Djibouti

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<sup>18</sup> *Id.* (including “violent extremism, human trafficking, trans-national criminal activity, and illegal arms trade”).

<sup>19</sup> 2022 U.S. NATIONAL DEFENSE STRATEGY, *supra* note 13, at iii.

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *See id.* at 10 (explaining that the United States’ “posture” will help deter P.R.C. attacks).

<sup>22</sup> Bruna dos Santos Lersch & Josiane Simão Sarti, *The Establishment of Foreign Military Bases and the International Distribution of Power*, in 2 UNIVERSIDADE FEDERAL DO RIO GRANDE DO SUL, *MODEL UNITED NATIONS: QUESTION OLD STRUCTURES FORGE THE FUTURE* 84, 85 (2014).

<sup>23</sup> *Id.* at 85-87.

<sup>24</sup> *See About the Command*, COMBINED JOINT TASK FORCE-HORN OF AFRICA, <https://www.hoa.africom.mil/about-the-command> (last visited June 21, 2023).

government to host a U.S. presence ashore.”<sup>25</sup> The parties identified Camp Lemonnier, a previous French Foreign Legion outpost, as the location for the U.S. presence.<sup>26</sup> “The U.S. and Djibouti governments signed a land lease agreement for the use of the facility in April 2003.”<sup>27</sup>

Presently, CJTF-HOA continues to be headquartered at Camp Lemonnier in Djibouti and is the only enduring U.S. military presence in Africa.<sup>28</sup> Originally, Djibouti and CJTF-HOA were part of the U.S. Central Command (USCENTCOM), but, in 2007, they transitioned to the new U.S. Africa Command (USAFRICOM).<sup>29</sup> The DoD’s creation of USAFRICOM reflected Africa’s growing strategic importance.<sup>30</sup> Although the United States did not have a focus on Djibouti during the Cold War, “since 9/11 this small city-state has gained pivotal importance in [U.S.] military strategy in terms of power projection in the Horn of Africa, the Gulf, and the Sahel.”<sup>31</sup> As the only enduring base in the region, Djibouti is regionally and strategically crucial to U.S. operations in Africa and the Middle East.<sup>32</sup>

### C. Djibouti’s Strategic Importance to the United States

Djibouti is located near the strategically important opening of the Red Sea and the narrow Bab al-Mandab Strait:

With Djibouti located at the entrance to the Red Sea—one of the most sensitive straits in global trading—the small nation plays a major role for stakeholders far and wide. Positioned directly at the Bab al-Mandab Strait, anyone

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<sup>25</sup> CTR. FOR ARMY LESSONS LEARNED, NO. 16-19, COMBINED JOINT TASK FORCE-HORN OF AFRICA: FROM CRISIS ACTION TO CAMPAIGNING, at 1 (July 2016).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Katie Lange, *What is Combined Joint Task Force Horn of Africa?*, U.S. DEP’T OF DEF. (Apr. 19, 2019), <https://www.defense.gov/News/News-Stories/Article/Article/1819068/what-is-the-combined-joint-task-force-horn-of-africa>.

<sup>29</sup> See *History of U.S. Africa Command*, U.S. AFR. COMMAND, <https://www.africom.mil/history-of-us-africa-command> (last visited June 22, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> Degang Sun & Yahia H. Zoubir, *The Eagle’s Nest in the Horn of Africa: US Military Strategic Deployment in Djibouti*, 51 AFR. SPECTRUM 111, 112 (2016).

<sup>32</sup> Lange, *supra* note 28.

wanting to travel from Asia to Europe or vice versa by ship via the Suez Canal has to pass through Djibouti.

Over 10 [percent] of world trade passes along the coast of Djibouti. Therefore, various economic world powers have a stake in securing their goods that pass through the strait, especially with their military presence.<sup>33</sup>

Moreover, Djibouti is “[s]trategically located in the Horn of Africa . . . and is a key U.S. partner on security, regional stability, and humanitarian efforts across the region.”<sup>34</sup> Djibouti is also near Somalia, where Al-Shabaab, a terrorist organization associated with Al Qaeda, is based.<sup>35</sup>

General Stephen A. Townsend, former Commander of USAFRICOM, described East Africa, which includes Djibouti, as “vital to U.S. [n]ational [s]ecurity.”<sup>36</sup> Further, when describing the three facilities that make up the Djibouti base cluster—Camp Lemonnier, Chabelley Airfield, and the Port of Djibouti—General Townsend stated, “[T]his vitally important base . . . enables the [United States] to protect the [sea line of communication] through the Red Sea and project power across East, Central, and Southern

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<sup>33</sup> Jan Philipp Wilhelm, *Djibouti's Role in Geopolitics*, DEUTSCHE WELLE (Aug. 8, 2021), <https://www.dw.com/en/tiny-but-mighty-djiboutis-role-in-geopolitics/a-57136069>.

<sup>34</sup> See *U.S. Relations with Djibouti*, U.S. DEP'T OF STATE (Nov. 7, 2022), <https://www.state.gov/u-s-relations-with-djibouti> [hereinafter *U.S.-Djibouti Relations*].

<sup>35</sup> Claire Klobucista, Jonathan Masters, & Mohammed Aly Sergie, *Al-Shabaab*, COUNCIL ON FOREIGN RELS. (Dec. 6, 2022), <https://www.cfr.org/backgrounder/al-shabab>. Al-Shabaab has conducted attacks in Somalia, Kenya, Uganda, Ethiopia, and Djibouti. *References—Terrorist Organizations*, CENT. INTEL. AGENCY: WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/references/terrorist-organizations> (last visited June 23, 2023). In 2020, Al-Shabaab attacked a U.S. airfield in Kenya, killing three Americans. Abdi Guled, Tom Odula, & Cara Anna, *Extremists Attack Kenya Military Base, 3 Americans Killed*, ASSOCIATED PRESS (Jan. 5, 2020), <https://apnews.com/article/somalia-us-news-ap-top-news-international-news-east-africa-65926ee82091f779d28d6a9644fb739f>. The United States responded by bombing Al-Shabaab in Somalia during the summer of 2021. Harun Maruf, *US Military Targets Al-Shabaab in Somalia with More Air Strikes*, VOICE OF AM. NEWS (Aug. 1, 2021), [https://www.voanews.com/a/africa\\_us-military-targets-al-shabab-somalia-more-airstrikes/6209034.html](https://www.voanews.com/a/africa_us-military-targets-al-shabab-somalia-more-airstrikes/6209034.html).

<sup>36</sup> See *National Security Challenges and U.S. Military Activities in the Greater Middle East and Africa: Hearing Before the H. Armed Servs. Comm.* 117<sup>th</sup> Cong. 11 (2021) (statement of Gen. Stephen A. Townsend, Commander, USAFRICOM) [hereinafter 2021 USAFRICOM Posture Statement].

Africa as well as into the USCENTCOM and [U.S Indo-Pacific Command areas of responsibility].”<sup>37</sup>

Camp Lemonnier helps the United States not only project power but also conduct humanitarian operations, such as support missions during the COVID-19 pandemic.<sup>38</sup> Djibouti remains one of the few stable nations in the region, which makes it a reliable U.S. ally.<sup>39</sup> However, the United States is not the only nation that has recognized the strategic importance of Djibouti.<sup>40</sup> Djibouti is also home to bases controlled by Japan, France, Italy, and the P.R.C., with a regular military presence from other nations, including Germany, the United Kingdom, and Saudi Arabia.<sup>41</sup>

When the United States recognized that two of its major competitors—the P.R.C. and Russia—were gaining influence in Djibouti, it leveraged its relationship with Djibouti to prevent Russia from building a base there.<sup>42</sup> Djibouti denied Russia’s request, stating that “it doesn’t want to become a battleground for the competing interests of superpowers.”<sup>43</sup> However, shortly after denying Russia, Djibouti allowed the P.R.C. to

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<sup>37</sup> *Id.*

<sup>38</sup> See, e.g., Senior Airman Gage Daniel, *Task Force Supports Djibouti’s COVID-19 Fight*, U.S. DEP’T OF DEF. (July 1, 2020), <https://www.defense.gov/News/Feature-Stories/Story/Article/2242373/task-force-supports-djiboutis-covid-19-fight>.

<sup>39</sup> Jessica Borowicz, *Port in The Desert Djibouti as International Lessor*, 1 *ÆTHER: J. OF STRATEGIC AIRPOWER & SPACEPOWER* 81, 82 (2022).

<sup>40</sup> In 2019, General Thomas D. Wauldhauser, then-Commander, USAFRICOM, stated, “Djibouti, a nation about the size of New Jersey, remains congested with a preponderance of foreign forces from the [United States], France, Germany, Japan, and China maintaining bases and competing for access and airspace.” *United States Africa Command and United States Southern Command: Hearing Before the S. Comm. on Armed Servs.*, 116th Cong. 35 (2019) (statement of Gen. Thomas D. Wauldhauser, Commander, USAFRICOM); see also Wilhelm, *supra* note 33; Richard Milner, *Why Djibouti Has So Many Military Bases*, GRUNGE (May 27, 2023, 7:00 PM), <https://www.grunge.com/1296703/why-djibouti-has-foreign-military-bases>; Abu Mubarik, *Why Tiny Djibouti Hosts Both China and U.S. Military Bases – Only a Few Kilometers Apart*, FACE2FACE AFR. (Sept. 29, 2020 1:20 PM), <https://face2faceafrica.com/article/why-tiny-djibouti-hosts-both-china-and-u-s-military-bases-only-a-few-kilometers-apart>.

<sup>41</sup> Nigusu Adem Yimer, *How Djibouti Surrounded Itself by Military Bases*, POLITICS TODAY (Mar. 17, 2021), <https://politicstoday.org/djibouti-surrounded-by-military-bases-of-china-us-france-uk-germany-others>.

<sup>42</sup> Ivan Ulises Kentros Klyszcz, *Russia’s Thwarted Return to the Red Sea*, RESPONSIBLE STATECRAFT (Nov. 15, 2020), <https://responsiblestatecraft.org/2020/11/15/russias-thwarted-return-to-the-red-sea>.

<sup>43</sup> Mubarik, *supra* note 40.



build a base within its borders, which “blindsided” the United States.<sup>44</sup> To better understand why the P.R.C. is interested in Africa and identified Djibouti as strategically important, a review of its national strategy and objectives follows.

#### D. The P.R.C.’s National Strategy

The 2021 DoD annual report states that the P.R.C.’s national strategy “aims to achieve ‘the great rejuvenation of the Chinese nation’ by 2049.”<sup>45</sup> As part of the great rejuvenation, the P.R.C. “continued its efforts to advance its overall development including steadying its economic growth, strengthening its armed forces, and taking a more assertive role in global affairs.”<sup>46</sup> The P.R.C. views the United States as trying to “contain” it, and “[P.R.C.] leaders are increasingly willing to confront the United States and other countries in areas where interest diverge.”<sup>47</sup>

The P.R.C. has moved towards these objectives by taking an active role in global affairs in Africa and building up its military presence in key areas like Djibouti. In 2020, the P.R.C. continued “emphasizing a greater global role for itself . . . through delivering COVID-19 aid abroad and the pursuit of overseas military facilities, in accordance with the [P.R.C.’s] defense policy and military strategy.”<sup>48</sup>

The P.R.C.’s presence in Djibouti provides it “with the ability to support a military response to contingencies affecting . . . investments and infrastructure in the region and the approximately [one] million [P.R.C.] citizens in Africa and 500,000 in the Middle East.”<sup>49</sup> The decision to build the base in Djibouti, along with future plans to build other overseas bases,

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<sup>44</sup> Andrew Jacobs & Jane Perlez, *U.S. Wary of Its New Neighbor in Djibouti: A Chinese Naval Base*, N.Y. TIMES (Feb. 25, 2017), <https://www.nytimes.com/2017/02/25/world/africa/us-djibouti-chinese-naval-base.html>.

<sup>45</sup> 2021 P.R.C. Developments, *supra* note 5, at 1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 30.

<sup>49</sup> *Id.* at 53.

is likely driven by the P.R.C.'s "One Belt, One Road" initiative and the "perceived need to provide security for [One Belt, One Road] projects."<sup>50</sup>

#### E. The P.R.C.'s Rise in Djibouti

The One Belt, One Road initiative seeks to connect Asia with Africa and Europe via land and maritime networks to stimulate the P.R.C.'s economic growth and improve diplomacy.<sup>51</sup> The P.R.C. invests heavily in African nations to achieve this goal, which, in turn, causes some of these nations to be heavily indebted to the P.R.C.<sup>52</sup> Djibouti has welcomed the P.R.C.'s investment and has accumulated a significant debt; a 2019 Washington Post report stated that "Beijing now holds over 70 percent of Djibouti's gross domestic product in debt."<sup>53</sup> The P.R.C.'s investments in Djibouti have placed them in a "debt trap," which allows the P.R.C. to "reinforce its influence on the continent."<sup>54</sup>

The P.R.C. gains influence through not just its financial investments, it also creates multi-lateral forums to generate engagements.<sup>55</sup> In 2018, the P.R.C. hosted the first "China-Africa Defense and Security Forum."<sup>56</sup> Also in 2018, the P.R.C. held the Forum on China-Africa Cooperation, where it "announced a China-Africa Peace and Security Fund and pledged

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<sup>50</sup> U.S. DEP'T OF DEF., ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA 2019, at 3 (2019). It must be noted that the P.R.C. decision to build a military base in Djibouti is inconsistent with its "stated position of not interfering in foreign countries' internal affairs." *Id.* at 113.

<sup>51</sup> Scott Kennedy & David A. Parker, *Building China's "One Belt One Road,"* CENTRE FOR STRATEGIC INT'L STUDS. (Apr. 3, 2015), <http://csis.org/publication/building-chinas-one-belt-one-road>.

<sup>52</sup> Harry G. Broadman, *Africa's Debt Dance with China in Creating the Belt Road Initiative*, AFR. REP. (Apr. 21, 2021), <https://www.theafricareport.com/81857/africas-debt-dance-with-china-in-creating-the-belt-road-initiative>.

<sup>53</sup> Max Bearak, *In Strategic Djibouti, a Microcosm of China's Growing Foothold in Africa*, WASH. POST (Dec. 30, 2019, 5:00 AM), [https://www.washingtonpost.com/world/africa/in-strategic-djibouti-a-microcosm-of-chinas-growing-foothold-in-africa/2019/12/29/a6e664ea-beab-11e9-a8b0-7ed8a0d5dc5d\\_story.html](https://www.washingtonpost.com/world/africa/in-strategic-djibouti-a-microcosm-of-chinas-growing-foothold-in-africa/2019/12/29/a6e664ea-beab-11e9-a8b0-7ed8a0d5dc5d_story.html); see also Mordecai Chaziza, *China Consolidates Its Commercial Foothold in Djibouti*, THE DIPLOMAT (Jan. 26, 2021), <https://thediplomat.com/2021/01/china-consolidates-its-commercial-foothold-in-djibouti> (last visited June 22, 2023).

<sup>54</sup> Chaziza, *supra* note 53.

<sup>55</sup> 2021 P.R.C. DEVELOPMENTS, *supra* note 5, at 134.

<sup>56</sup> LAURA P. BLANCHARD & SARAH R. COLLINS, CONG. RSCH. SERV., IF11304, CHINA'S ENGAGEMENT IN DJIBOUTI 1 (2019).

to support programs on law and order, peacekeeping, antipiracy, and counterterrorism.”<sup>57</sup> If the P.R.C.’s investments and community engagement do not indicate its intent to remain in Djibouti for the long term, its construction of a military installation in Djibouti provides additional evidence of its plans.

#### F. The P.R.C.’s Military Base in Djibouti

In 2017, the P.R.C. built its first—and currently only—overseas military base in Djibouti.<sup>58</sup> While the P.R.C. has military installations throughout the South China Sea, including three militarized artificial islands,<sup>59</sup> the base in Djibouti is its first installation that is not located in areas adjacent to its mainland.<sup>60</sup>

Initially, the P.R.C. would not acknowledge that its new base in Djibouti was anything more than a logistical facility.<sup>61</sup> The P.R.C. wanted the base to be recognized as part of a peace-keeping effort to help combat piracy in the Red Sea and Bab al-Mandab Strait.<sup>62</sup> Nevertheless, the P.R.C. has continued to expand the base “into a platform to project power across the continent and its waters,” including a “large naval pier.”<sup>63</sup> With the completion of this pier, the P.R.C. can use its base in Djibouti to

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<sup>57</sup> *Id.*

<sup>58</sup> *China Formally Opens First Overseas Military Base in Djibouti*, REUTERS (Aug. 1, 2017), <https://www.reuters.com/article/us-china-djibouti/china-formally-opens-first-over-seas-military-base-in-djibouti-idUSKBN1AH3E3>.

<sup>59</sup> Jim Gomez & Aaron Favila, *AP Exclusive: US Admiral Says China Fully Militarized Isles*, ASSOCIATED PRESS (Mar. 21, 2022), <https://apnews.com/article/business-china-beijing-xi-jinping-south-china-sea-d229070bc2373be1ca515390960a6e6c>.

<sup>60</sup> At this time, it is unclear how far the P.R.C. will go with building military installations throughout the world. The United States identified several potential locations in its 2021 report on the P.R.C.: “The PRC has likely considered Cambodia, Myanmar, Thailand, Singapore, Indonesia, Pakistan, Sri Lanka, United Arab Emirates, Kenya, Seychelles, Equatorial Guinea, Tanzania, Angola, and Tajikistan among other places as locations for PLA military logistics facilities.” U.S. DEP’T OF DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA 2022*, at 145 (2022) [hereinafter 2022 P.R.C. DEVELOPMENTS].

<sup>61</sup> Jean-Pierre Cabestan, *China’s Djibouti Naval Base Increasing its Power*, E. ASIA F. (May 16, 2020), <https://www.eastasiaforum.org/2020/05/16/chinas-djibouti-naval-base-increasing-its-power>.

<sup>62</sup> *See id.*

<sup>63</sup> 2021 USAFRICOM Posture Statement, *supra* note 36, at 5.

accommodate an aircraft carrier and other Chinese naval ships,<sup>64</sup> transforming what the P.R.C. was touting as a logistical facility to a fully capable military installation. In addition, the P.R.C. is “planning to construct a permanent spaceport . . . [and] seeks to establish additional military and space facilities in multiple African countries, notably on the West Coast.”<sup>65</sup>

Although, the DoD has determined that the current threat from P.R.C. basing in Djibouti is marginal, its “expanded” military presence allows it “to project power against the United States, our allies, or global commerce.”<sup>66</sup> Moreover, as discussed more below, the P.R.C. base’s short distance from Camp Lemonnier—just twelve kilometers away—raises logistical issues and security concerns for the United States.<sup>67</sup> The United States may not be able to slow down the P.R.C.’s expansion in Djibouti; however, it can continue to enter into and rely on legal agreements that provide Djibouti and the region with stability and an alternative geopolitical partner to the P.R.C.

### III. Agreements Between the United States and Djibouti

#### A. Types of Agreements

States can enter into several types of agreements to facilitate cooperation among nations.<sup>68</sup> Common agreements that relate to the DoD include status of forces agreements (SOFA), defense cooperation

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<sup>64</sup> Tsukasa Hadano, *China Adds Carrier Pier to Djibouti Base, Extending Indian Ocean Reach*, NIKKEI ASIA (Apr. 27, 2021), <https://asia.nikkei.com/Politics/International-relations/Indo-Pacific/China-adds-carrier-pier-to-Djibouti-base-extending-Indian-Ocean-reach>. “In late March 2022, a FUCHI II class (type 903A) supply ship *Luomahu* docked at the 450-meter pier for resupply; the first such reported [People’s Liberation Army] Navy port call to the Djibouti support base, indicating that the pier is now operational.” 2022 P.R.C. DEVELOPMENTS, *supra* note 60, at 144.

<sup>65</sup> *Hearing on the Posture of United States Central Command and United States Africa Command in Review of the Defense Authorization Request for FY 2024 and the Future Years Defense Program, Hearing Before the S. Armed Serv. Comm.*, 118th Cong. 10 (2023) (statement of Gen. Michael E. Langley, U.S. Marine Corps, Commander, USAFRICOM) [hereinafter 2023 USAFRICOM Posture Statement].

<sup>66</sup> *Id.* at 11.

<sup>67</sup> See 2021 USAFRICOM Posture Statement, *supra* note 36, at 5.

<sup>68</sup> This article does not provide the exhaustive list of agreements that states may enter or that may involve the DoD.

agreements (DCA), base land-lease agreements, logistics agreements including acquisition and cross-servicing agreements (ACSA), and arms sales.<sup>69</sup> Each relationship the United States has with other states is unique and may include all or some of the agreements stated above. The U.S. relationship with Djibouti is governed by the 2003 Access Agreement and 2014 Implementing Arrangement.<sup>70</sup> The United States works “with the base commander, the CJTF-HOA commander, and their teams, to ensure that our access, rights, and privileges under those agreements are fully respected.”<sup>71</sup>

### *1. 2003 Access Agreement between the United States and Djibouti*

In 2003, the United States entered into a written agreement for access to and use of facilities in Djibouti (2003 Agreement), including Camp Lemonnier and Djibouti’s port facilities and airport.<sup>72</sup> The 2003 Agreement acknowledges the United States and Djibouti’s “need to enhance their common security, to contribute to international peace and stability, and to initiate closer cooperation . . . that will support their defense relations and the fight against terrorism.”<sup>73</sup> The terms of the agreement include, but are not limited to: use of facilities, logistics support, entry and exit of U.S. personnel, status of U.S. personnel, bearing of arms and wearing of uniforms, contracting, taxation, importation and exportation, claims, movement of aircraft and vehicles, security, and utilities and communications.<sup>74</sup>

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<sup>69</sup> This article references these agreements to provide context to the complexity they add to state relations but does not go into great detail for each one.

<sup>70</sup> See U.S. DEP’T OF STATE, INTEGRATED COUNTRY STRATEGY: DJIBOUTI 8 (2022) [hereinafter ICS-DJIBOUTI].

<sup>71</sup> *Id.*

<sup>72</sup> Agreement between the U.S. and Djibouti, U.S.-Djib., art. II, Feb. 19, 2003, T.I.A.S. No. 03-219 [hereinafter 2003 Agreement]. This agreement replaced the SOFA, which was previously in place between the United States and Djibouti. *Id.* art. XX(2).

<sup>73</sup> *Id.* p.mbl.

<sup>74</sup> See *id.* arts. II to XV. Many of these terms could also be found in a status of forces agreement between states. See NAT’L SEC. L. DEP’T, THE JUDGE ADVOC. GEN.’S LEGAL CTR. & SCH., U.S. ARMY, OPERATIONAL LAW HANDBOOK 286 n.40 (2020) [hereinafter OPERATIONAL LAW HANDBOOK] (“Standard SOFA provisions typically address the following topics: entry and exit, import and export, taxes, licenses or permits, jurisdiction,

The 2003 Agreement also states that disputes shall “be resolved by consultation between the Parties or their Executive Agents, including, as necessary, through diplomatic channels, and will not be referred to any national or international tribunal or any third party for settlement.”<sup>75</sup> There is also a termination clause, which allows either party to terminate the agreement by “one year’s written notice through diplomatic channels.”<sup>76</sup> Notably, the agreement does not include termination language in the event of an IAC.<sup>77</sup> This means that the agreement will still apply in the event of an IAC and that it cannot be referred to international tribunals if there is a dispute.

## *2. 2014 Implementing Arrangement between the United States and Djibouti*

In 2014, the Obama administration negotiated a ten-year deal to keep the U.S. military base in Djibouti for approximately \$63 million a year, which added an implementing arrangement (2014 Implementing Arrangement) to the original 2003 Agreement.<sup>78</sup> The 2014 Implementing Arrangement grants the U.S. access—sometimes exclusive access—to important facilities such as airfields and ports.<sup>79</sup> Namely, the arrangement authorizes the United States unimpeded access to and use of the Chebelley

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claims, property ownership, use of facilities and areas, positioning and storage of defense equipment, movement of vehicles, vessels, and aircraft, contracting procedures, services and communications, carrying weapons and wearing uniforms, official and military vehicles, support activities services, currency and foreign exchange.”).

<sup>75</sup> 2003 Agreement, *supra* note 72, art. XIX.

<sup>76</sup> *Id.* art. XX(1).

<sup>77</sup> *See id.* (“This Agreement, of which Annex A forms an integral part, will enter into force upon the date of signature, and shall have an initial term of one year. Thereafter, it shall continue in force unless terminated by either Party on one year’s written notice through diplomatic channels.”).

<sup>78</sup> Zachary A. Goldfarb, *U.S., Djibouti Reach Agreement to Keep Counterterrorism Base in Horn of Africa Nation*, WASH. POST (May 5, 2014), [https://www.washingtonpost.com/politics/us-djibouti-reach-agreement-to-keep-counterterrorism-base-in-horn-of-africa-nation/2014/05/05/0965412c-d488-11e3-aae8-c2d44bd79778\\_story.html](https://www.washingtonpost.com/politics/us-djibouti-reach-agreement-to-keep-counterterrorism-base-in-horn-of-africa-nation/2014/05/05/0965412c-d488-11e3-aae8-c2d44bd79778_story.html); ICS-Djibouti, *supra* note 70, at 7.

<sup>79</sup> *See* Arrangement in the Implementation of the “Agreement Between the Government of the United States of America and the Government of the Republic of Djibouti on Access to and Use of Facilities in the Republic of Djibouti” of February 19, 2003, Concerning the Use of Camp Lemonnier and Other Facilities and Areas in the Republic of Djibouti, U.S.-Djib., May 1, 2014 [hereinafter 2014 Implementation Arrangement].

Airfield, which is where the DoD's air assets are located.<sup>80</sup> The arrangement also includes dispute language that requires the parties to resolve issues through "consultation or through diplomatic channels" and implements a bilateral interagency working group.<sup>81</sup> Within the bilateral interagency working group, the United States and Djibouti agree to address a variety of issues. These issues include "security assistance, military cooperation, . . . logistics and labor issues . . . [and] other matters that may arise concerning the interpretation of this Implementing Arrangement or related arrangements and agreements." Further, the 2014 Implementing Arrangement's termination language requires one year's written notice, consistent with the 2003 Agreement.<sup>82</sup> Again, nothing within the termination clause indicates that the agreement terminates in the event of an IAC. Moreover, the 2014 Implementing Arrangement references a series of memorandums of understanding that the parties previously agreed to, which further evidences the complexity and extensive commitments between the two nations.<sup>83</sup>

### *3. Logistical Agreements Between the United States and Djibouti*

Logistics, in the context of Djibouti, is largely covered by the 2003 Agreement and the 2014 Implementing Arrangement. However, the 2003 Agreement further references the ACSA between the DoD and Djibouti.<sup>84</sup> An ACSA allows the DoD to provide logistical support, supplies, and services on a reciprocal basis.<sup>85</sup> The support an ACSA provides must be reimbursed through replacement-in-kind, payment-in-kind, and equal-

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.* para. 11.

<sup>82</sup> *Id.* para. 15.

<sup>83</sup> *Id.* at 1.

<sup>84</sup> 2003 Agreement, *supra* note 72, art. III. The acquisition and cross-servicing agreement in the 2003 Agreement focuses on the government of Djibouti providing U.S. forces with logistical support, supplies, and services, but the United States can also use the ACSA to obtain reimbursement if it were to provide logistical supplies. *Id.*

<sup>85</sup> Ryan A. Howard, *Acquisition and Cross-Servicing Agreements in an Era of Fiscal Austerity*, ARMY LAW., Oct. 2013, at 26, 27.

value exchange.<sup>86</sup> In addition to these agreements, the United States has a train-and-equip partnership with the Djibouti military.<sup>87</sup>

In 2019, the United States delivered fifty-four new Humvees as “part of a \$31 million train-and-equip partnership” between the United States and Djibouti.<sup>88</sup> Overall, “The U.S. military’s direct and indirect payments total over \$200 million annually, equivalent to around 10 percent of Djibouti’s gross domestic product.”<sup>89</sup> “The U.S. [G]overnment is also Djibouti’s second-largest employer, behind only the government of Djibouti, including its port operations.”<sup>90</sup>

#### 4. Cooperation and Security Agreements

According to the Embassy of Djibouti in Washington, D.C., since 2003, “more than [twenty] bilateral agreements have been signed relating to civil, judicial, and military cooperations and the installation of the American forces on our territory.”<sup>91</sup> The United States provides Djibouti with security assistance, including border security, coastal security, regional stabilization, and counterterrorism.<sup>92</sup> Since fiscal year 2006, the DoD has spent over \$150 million in assistance to Djibouti in “‘global train-and-equip’ counterterrorism assistance.”<sup>93</sup> The United States also conducts joint exercises with Djibouti’s military, including a two-week exercise in 2021 to “improve information sharing and promote security.”<sup>94</sup>

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<sup>86</sup> *Id.* at 28.

<sup>87</sup> *U.S. Provides Djibouti’s Rapid Intervention Unit Tactical Vehicles Seven Months Early*, U.S. AFR. COMMAND (Dec. 26, 2019), <https://www.africom.mil/article/32454/u-s-provides-djiboutis-rapid-intervention-unit-tactical-vehicles-seven-months-early> (describing how the United States delivered these vehicles to the Armed Forces of Djibouti for use by its “Rapid Intervention Battalion,” an infantry battalion that the U.S. military has been training and equipping).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Djibouti-U.S. Relations*, EMBASSY OF THE REPUBLIC OF DJIBOUTI IN WASHINGTON, D.C., <https://djiboutiembassyus.org/page/djibouti-us-relations> (last visited June 26, 2023).

<sup>92</sup> LAUREN PLOCH BLANCHARD, CONG. RSCH. SERV., IF11303, DJIBOUTI 2 (2022).

<sup>93</sup> *Id.*

<sup>94</sup> *US Navy Brings 15 Nations Together in Djibouti for Exercise Focused on Maritime Crime, Information Sharing*, STARS & STRIPES (July 27, 2021), <https://www.stripes.com/>



Djibouti is also part of the State Partnership Program (SPP), a DoD security cooperation program that the Chief of National Guard Bureau manages and that geographic commands execute.<sup>95</sup> As such, the Djibouti military is one of fifteen African nations partnered with a U.S. National Guard unit to “enhance global security, understanding, and cooperation.”<sup>96</sup> As the only enduring military installation in Africa, the U.S. presence in Djibouti is critical to the SPP and military agreements with other African nations.<sup>97</sup>

### 5. *Additional Partnerships and Initiatives*

In addition to agreements, the United States also implements several initiatives in Djibouti. These initiatives benefit Djibouti by providing jobs and paying for local resources.<sup>98</sup> In 2015, the DoD implemented the “Djibouti First Initiative,” which was focused on procuring products and services to “strengthen U.S.-Djibouti ties and solidify an enduring presence in Africa.”<sup>99</sup> In 2017, the “Africa First Initiative” replaced the Djibouti First Initiative.<sup>100</sup> The Africa First Initiative gives “authority to limit competition by providing host-nation preference to contracts awarded in support of U.S. operations in Africa.”<sup>101</sup> In addition, the United States has engaged in exchange programs with Djibouti: “Through the Young African Leaders Initiative (YALI), the International Visitors Leadership Program, the Fulbright Program, and English language programs, Djiboutian leaders and American experts are exchanging ideas and expertise on issues of mutual interest and developing leadership and

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branches/navy/2021-07-27/cutlass-express-includes-15-nations-this-year-2325950.html [hereinafter STARS & STRIPES].

<sup>95</sup> *State Partnership Program*, U.S. AFR. COMMAND, <https://www.africom.mil/what-we-do/security-cooperation/state-partnership-program> (last visited June 26, 2023).

<sup>96</sup> *Id.*

<sup>97</sup> See STARS & STRIPES, *supra* note 94. The United States conducted a “[fifteen]-nation exercise designed to offer mostly African countries U.S. support in developing their navies and fighting piracy, trafficking and illegal fishing . . . in Djibouti.” *Id.* The United States has many lasting SOFAs and DCAs in Africa; for example, as recently as 2020, the United States signed a SOFA with Rwanda. See Agreement Between the United States of America and Rwanda, U.S.-Rwanda, May 28, 2020, T.I.A.S. No. 20-528.

<sup>98</sup> Rachel E. Herald, *The Africa First Initiative and Local Procurement 2* (Mar. 22, 2018) (M.S. thesis, Air Force Institute of Technology), <https://scholar.afit.edu/etd/1842>.

<sup>99</sup> *Id.*

<sup>100</sup> See *id.* at 3.

<sup>101</sup> *Id.*

skills training.”<sup>102</sup> These initiatives, investments, cooperations, and agreements highlight the importance of an enduring U.S. presence in Djibouti.

#### B. The Importance of Agreements

In the absence of neutrality, the agreements discussed above provide an important framework for the U.S.-Djibouti relationship. These agreements, especially the 2003 Agreement and 2014 Implementing Arrangement, spotlight a shared commitment to “support their defense relations and the fight against terrorism.”<sup>103</sup> In addition, the agreements are indications of the U.S. commitment to Djibouti and the region.<sup>104</sup>

The U.S.-Djibouti relationship is strong in the “increasingly vital but volatile region.”<sup>105</sup> Nonetheless, the United States continues to engage with Djiboutian leadership to explore ways to strengthen it.<sup>106</sup> United States Marine Corps General (Gen.) Michael Langley, current USAFRICOM Commander, visited Djibouti in August 2022.<sup>107</sup> During Gen. Langley’s visit, he expressed the United States’ gratitude for Djibouti’s leadership and contributions “to the African Union Transition Mission in Somalia and the gracious hospitality the Djiboutians show to our troops.”<sup>108</sup> Further, Gen. Langley discussed the U.S.-Djibouti relationship, stating, “I look forward to continuing to foster our enduring, strong, and cooperative relationship.”<sup>109</sup> Both Gen. Langley’s statements and his visit to Djibouti call to attention the importance of the U.S. relationship with Djibouti and the cooperation agreements between the parties.

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<sup>102</sup> *U.S.-Djibouti Relations*, *supra* note 34.

<sup>103</sup> 2003 Agreement, *supra* note 72, pmbl.

<sup>104</sup> *Id.* (The U.S. within the purpose of the 2003 Agreement states among the reasons that it is “to contribute to international peace and stability”).

<sup>105</sup> 2022 USAFRICOM Posture Statement, *supra* note 4, at 7.

<sup>106</sup> See *Langley Makes First Visit to Africa as Commander*, U.S. AFR. COMMAND (Sept. 1, 2022), <https://www.africom.mil/pressrelease/34687/langley-makes-first-visit-to-africa-as-commander>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

In the event of an IAC between the United States and the P.R.C., these agreements provide the legal basis for the United States to maintain its presence in Djibouti and exercise self-defense against the P.R.C. to maintain “international peace and stability.”<sup>110</sup> With the intent of the agreements in mind, the DoD began an “ambitious [\$1 billion] military construction effort” at Camp Lemonnier.<sup>111</sup> “This sent a clear message to the Government of Djibouti: The [U.S.] military presence . . . [is] evolving from expeditionary mode to a more enduring one.”<sup>112</sup> Further, the United States has “invested more than \$338 million in Djibouti over the last [twenty] years.”<sup>113</sup>

Beyond investment, the United States has announced a new Sub-Saharan Africa Policy. The policy identifies the P.R.C.’s attempt to undermine the “rules-based international order” and “weaken U.S. relations with the African peoples and governments” in contrast to the United States’ “high-standards, values-driven, and transparent investments” approach.<sup>114</sup> Further, the Sub-Saharan Policy identifies the U.S. goal of assisting “partners’ security, intelligence, and judicial institutions to identify, disrupt, degrade, and share information on terrorists and their support networks.”<sup>115</sup> These significant goals compliment the intent of the agreements between Djibouti and the United States. A declaration or attempted declaration of neutrality would run counter to this established intent and impede the access the United States must maintain to provide these critical capabilities. Although this article argues that neutrality under the circumstances does not exist, the effect and application of the law of neutrality must be analyzed to fully comprehend the significance of the status.

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<sup>110</sup> 2003 Agreement, *supra* note 72, pmb1.

<sup>111</sup> ICS-DJIBOUTI, *supra* note 70, at 5.

<sup>112</sup> *Id.*

<sup>113</sup> *U.S. Renews Its Commitment to Djibouti with \$9 Million Development Objective Grant Agreement*, U.S. EMBASSY IN DJIBOUTI (July 6, 2020), <https://dj.usembassy.gov/u-s-renews-its-commitment-to-djibouti-with-9-million-development-objective-grant-agreement>.

<sup>114</sup> THE WHITE HOUSE, U.S. STRATEGY TOWARD SUB-SAHARAN AFRICA 5 (2022).

<sup>115</sup> *Id.* at 8.

#### IV. The Law of Neutrality

Within neutrality, a state can be considered either a belligerent state, neutral state, or non-belligerent state.<sup>116</sup> A belligerent state is engaged in an IAC.<sup>117</sup> A neutral state does not take part in the IAC.<sup>118</sup> A non-belligerent state refrains from active participation in hostilities while departing from or abandoning non-participant duties.<sup>119</sup> Djibouti is a non-belligerent state because, as discussed below, it has created conditions that preclude its neutrality. Nonetheless, it is important to understand the dramatic impact that Djibouti's neutrality—if recognized—would cause. This section introduces the law of neutrality and its impact in a potential IAC in Djibouti. It then makes the case for Djibouti's inability to declare neutrality in the modern legal and geopolitical landscape.

The law of neutrality permits a state to avoid taking sides in an IAC and “seeks to prevent . . . states from being drawn into an armed conflict” and to “minimiz[e] the effects of armed conflict” on the neutral state.<sup>120</sup> The rights and duties of neutrality are largely provided in two 1907 Hague Conventions: Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land<sup>121</sup> and Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War.<sup>122</sup> The law of neutrality is also mentioned in several other documents, including the Hague Convention (III),<sup>123</sup> *San Remo Manual*,<sup>124</sup> the 1977 Additional

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<sup>116</sup> OFF. OF GEN. COUNS., U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE LAW OF WAR MANUAL § 15.1.2 (12 June 2015) (C2, 13 Dec. 2016) [hereinafter LAW OF WAR MANUAL].

<sup>117</sup> *Id.* § 15.1.2.1.

<sup>118</sup> *Id.* § 15.1.2.2.

<sup>119</sup> *Id.* § 15.1.2.3.

<sup>120</sup> *Id.* § 15.1.3.

<sup>121</sup> Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, pmbl., Oct. 18, 1907, 36 Stat. 2310 [hereinafter Hague (V)].

<sup>122</sup> Hague Convention (XIII) Convention Concerning the Rights and Duties of Neutral Powers in Naval War, Oct. 18, 1907, 36 Stat. 2415 [hereinafter Hague (XIII)].

<sup>123</sup> Hague Convention (III) Relative to the Opening of Hostilities, Oct. 18, 1907, 36 Stat. 2259.

<sup>124</sup> SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA (Louise Doswald-Beck ed., 1995).

Protocol I to the Geneva Conventions,<sup>125</sup> and the *DoD Law of War Manual*.<sup>126</sup>

In the event that an IAC between the United States and the P.R.C. occurs, this armed conflict may not be isolated to the South China Sea or North America.<sup>127</sup> An IAC may start elsewhere and trickle into Djibouti, or it may begin in Djibouti and extend elsewhere. Because Djibouti relies heavily on both the United States and the P.R.C. for aid and its economy, Djibouti may not want to be involved in the conflict and, therefore, declare neutrality. In the event neutrality is recognized, the neutral state and belligerents will have obligations and duties towards one another.

#### A. Neutral Power Obligations

A neutral power must observe two main concepts. First, in order to be a neutral power, the state must abstain from participation in the conflict.<sup>128</sup> Second, a neutral is required to treat each belligerent impartially.<sup>129</sup> “The law of neutrality . . . rest[s] on the principle that nations which are not engaged in a war are bound to observe absolute impartiality towards the belligerents and to abstain from all acts of war . . . .”<sup>130</sup> In addition, “Every measure of restriction or prohibition taken by a neutral Power . . . must be impartially applied by it to both belligerents.”<sup>131</sup> Abstention and

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<sup>125</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 87, June 8, 1977, 1125 U.N.T.S. 3.

<sup>126</sup> LAW OF WAR MANUAL, *supra* note 116.

<sup>127</sup> History shows IACs are not isolated geographically to the borders of the warring nations. For example, during World War II, the United States fought Nazi Germany in North Africa. Basil Liddell Hart, *Operation Torch*, BRITANNICA, <https://www.britannica.com/event/North-Africa-campaigns/Operation-Torch> (last visited June 27, 2023). Similarly, the United States fought Japan throughout the South Pacific as far south as New Guinea and the island of Guadalcanal. *The Pacific Strategy, 1941-1944*, NAT'L WWII MUSEUM, <https://www.nationalww2museum.org/war/articles/pacific-strategy-1941-1944> (last visited June 27, 2023).

<sup>128</sup> LAW OF WAR MANUAL, *supra* note 116, § 15.3.2.

<sup>129</sup> Hague (V), *supra* note 121, art. 9; *see also* LAW OF WAR MANUAL, *supra* note 116, § 15.3.2.

<sup>130</sup> George Greenville Phillimore, *The Future Law of Neutrality*, 4 TRANSACTIONS OF THE GROTIUS SOC'Y, 43, 43 (1918).

<sup>131</sup> Hague (V), *supra* note 121, art. 9.

impartiality are the two overarching concepts a neutral must follow when enforcing its neutral status and meeting its neutral obligations.

### *1. Hague Convention V*

Under Hague Convention V, which addresses war on land, a neutral “must not allow” certain acts “to occur on its territory.”<sup>132</sup> These acts include allowing belligerents to move troops or convoys of munitions or supplies across the neutral territory.<sup>133</sup> Moreover, the neutral “must not allow” belligerents to erect any devices on its territory to communicate with its forces on the land or sea.<sup>134</sup> This also includes the use of communication apparatuses established before the war on neutral territory for “purely military purposes” if the apparatus has not been opened for public messages.<sup>135</sup> Further, the neutral “must not allow” belligerents to recruit assistance within the neutral territory.<sup>136</sup>

The neutral has additional obligations when belligerent troops enter or are already present within its territory. It must intern belligerent troops “as far as possible” from the conflict and provide the interned with “food, clothing, and relief required by humanity.”<sup>137</sup> The neutral may, but is not required to, authorize the belligerent’s sick and wounded to pass through its territory.<sup>138</sup> In addition to these robust land-based responsibilities under Hague Convention V, the neutral has additional duties related to its waters pursuant to Hague Convention XIII.

### *2. Hague Convention XIII*

Neutral powers have a variety of duties and obligations to prevent hostilities within their territorial waters. Under Hague Convention XIII, which addresses naval war, a neutral is obligated to use surveillance to

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<sup>132</sup> *Id.* art. 5 (“A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.”).

<sup>133</sup> *Id.* art. 2.

<sup>134</sup> *Id.* art. 3.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* art. 4.

<sup>137</sup> *Id.* arts. 11-12.

<sup>138</sup> *Id.* art. 14.

prevent violations of the convention in its ports and waters.<sup>139</sup> Hague Convention XIII strictly forbids belligerents from preventing warships from exercising their power to search in the territorial sea of the neutral.<sup>140</sup> In addition, neutrals must prevent a belligerent's use of neutral ports and waters to engage their adversaries or establish communication stations with "belligerent forces on land or sea."<sup>141</sup> Further, the neutral power may prevent the fitting out or arming of vessels that it has reason to believe will be engaged in hostilities.<sup>142</sup> Moreover, under Hague Convention XIII, a neutral is expected to prevent belligerent warships from completing its crew, resupplying, or increasing supplies of war material or armament in "neutral ports, roadsteads, or territorial waters."<sup>143</sup>

Although the above is not an all-inclusive list of the neutral's obligations on land and sea, it provides a framework for the complexity of the obligation and the friction that neutrality can cause.

### *3. Enforcing Neutrality Is Not a Hostile Act*

According to Hague Convention V, belligerents may not treat a neutral that is enforcing its obligations within the neutral's territory and water as unfriendly or hostile.<sup>144</sup> The neutral nation has a duty to prevent hostile acts within its borders and, if necessary, enforce neutrality by force.<sup>145</sup> Exercising this right to enforce neutrality does not provide the belligerents with a basis to respond in kind unless enforcement exceeds what is necessary.<sup>146</sup> A belligerent's obligations under the conventions to not violate the neutral territory or waters is a recognition that a neutral's waters are sovereign and its territory inviolable.<sup>147</sup>

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<sup>139</sup> Hague (XIII), *supra* note 122, art. 25.

<sup>140</sup> *Id.* art. 2.

<sup>141</sup> *Id.* art. 5.

<sup>142</sup> *Id.* art. 8.

<sup>143</sup> *Id.* art. 18.

<sup>144</sup> Hague (V), *supra* note 121, art. 10; Hague (XIII), *supra* note 122, art. 26.

<sup>145</sup> *See* Hague (V), *supra* note 121, art. 10; Hague (XIII), *supra* note 122, art. 26.

<sup>146</sup> PROGRAM ON HUMANITARIAN POL'Y AND CONFLICT RSCH. AT HARV. UNIV., HPCR MANUAL ON INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE 390 (2013) (para. X.II.169(2)).

<sup>147</sup> Hague (V), *supra* note 121, art. 1; Hague (XIII), *supra* note 122, art. 1.

While the steps a neutral must take to maintain its neutrality are not considered hostile, they are not without impact. The following section analyzes these effects in the case of an IAC in Djibouti.

#### B. Neutrality's Effects and Belligerents' Obligations

A neutral has an obligation to enforce neutrality, but belligerents also have an obligation under neutrality to comply with the Hague Conventions and respect the state's neutral status.<sup>148</sup> In terms of inviolability, belligerents are prohibited from entering the neutral nation unauthorized.<sup>149</sup> Simply put, belligerents may not attack the neutral territory or use the neutral territory to attack another belligerent.

In Djibouti, legal agreements authorize the U.S. military's presence in-country, providing exclusive use and unimpeded access to certain facilities within Djibouti, including airports and seaports.<sup>150</sup> Separate agreements authorize the P.R.C. military's presence in Djibouti.<sup>151</sup> Neutrality directly conflicts with these agreements' purposes. In an IAC between the United States and the P.R.C., Djibouti would need to deny entry to any troops from both these belligerent nations. It would also need to intern these nations' troops already within its territory.<sup>152</sup> Moreover, a

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<sup>148</sup> See, e.g., Hague (V), *supra* note 121, art. 2 ("Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power."); *id.* art. 3.

Belligerents are likewise forbidden to: (a) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea; (b) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

*Id.*

<sup>149</sup> See Hague (V), *supra* note 121, art. 1. See also Lieutenant Colonel Jimmy Gutzman, *State Responsibility for Non-State Actors in Times of War: Article VI of the Outer Space Treaty and the Law of Neutrality*, 80 A.F. L. REV. 87, 104 (2019) (citing Michael Bothe, *The Law of Neutrality*, in HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 571, 559 (Dieter Fleck ed., 2d ed. 2008) ("Above all, this means that the armed forces of the parties to the conflict may not enter neutral territory. They may not in any way use this territory for their military operations, or for transit or similar purposes.")).

<sup>150</sup> See, e.g., 2014 Implementation Arrangement, *supra* note 79.

<sup>151</sup> See PLOCH BLANCHARD, *supra* note 92, at 2.

<sup>152</sup> See Hague (V), *supra* note 121, art. 11.



neutral Djibouti must prevent U.S. supplies and equipment from entering Djibouti, which would directly violate the terms of the U.S.-Djibouti agreements.<sup>153</sup>

As mentioned above, Hague Convention V forbids belligerent munition and supplies from moving across neutral territory.<sup>154</sup> This is especially problematic for the United States given Camp Lemonnier's role as the main support for operations throughout Africa and adjunct support to operations in the Middle East. Preventing troops and convoys to enter Djibouti's neutral territory or territorial seas during an IAC threatens the United States' ability to protect its national security interests in Africa and abroad.

Moreover, access to and use of ports is crucial to U.S. operations in the region. The inability to stay in port long-term, to re-supply, or use the naval base in the territorial sea of Djibouti for naval operations against its adversaries would drastically impede U.S. military capabilities. Both the U.S. and P.R.C. bases have ports, and to end hostilities in the region, the United States would need to engage and defeat the P.R.C.'s navy from its ports in Djibouti.

As identified above, U.S. recognition of Djibouti's neutrality would be problematic and affect U.S. military operations in the region against the P.R.C., counterterrorism operations, and humanitarian operations. However, because Djibouti created the conditions for international armed conflict by inviting competitor militaries within its borders, it cannot declare neutrality. If Djibouti chooses to not participate in an IAC between the United States and the P.R.C., it can only be classified as a non-belligerent.<sup>155</sup> Nonetheless, even if the United States recognized Djibouti as a neutral power, it would not be without remedy if Djibouti failed to

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<sup>153</sup> See 2003 Agreement, *supra* note 72. The 2003 Agreement allows U.S. forces and contractors to import "any equipment, supplies, material or services required for their operations in the Republic of Djibouti" and further states that importation in accordance with the agreement shall not be restricted by the Djibouti Government. *Id.* art. X.

<sup>154</sup> *Id.* art. 1.

<sup>155</sup> See LAW OF WAR MANUAL, *supra* note 116, § 15.1.2.3.

meet its neutral duties, which would include its inability or unwillingness to prevent the P.R.C. from violating Djibouti's neutrality.<sup>156</sup>

### C. Evolving Neutrality

"International concepts are not final, they are not immutable, nor embodied in cement. An approach that may have been satisfactory in 1907 may no longer reflect the view of the present time and may no longer be fully acceptable."<sup>157</sup> The law of neutrality is no exception. Some experts have argued that neutrality "disappeared" with the adoption of the United Nations (U.N.) Charter because, in legal terms, "'war' was outlawed and . . . therefore there were no actions that would allow states to remain neutral."<sup>158</sup> In practice, however, the international community still recognizes the concept of neutral states; even the concept of a permanent neutral state has survived.<sup>159</sup> The U.N. Charter also identifies situations in which neutrality could not exist: The "[U.N.] Security Council could require an otherwise neutral [s]tate to cease economic relations with a belligerent . . . require a [s]tate to cease telegraphic, radio, and other means of communications with an aggressor . . . [and] could also require military action against an aggressor."<sup>160</sup>

This article does not take the position that a neutrality has disappeared; rather, it argues, as the U.N. Charter suggests, that under certain

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<sup>156</sup> A neutral nation is obligated to prevent belligerents from violating its neutrality and from entering or using its land, air, or sea. *Id.* § 15.4.2. If Djibouti is unable or unwilling to do so, the law of neutrality authorizes belligerents to use force on neutral territory against the belligerent that is violating that territory's neutrality. Ashley Deeks, *Unwilling or Unable: Toward a Normative Framework for Extra-Territorial Self-Defense*, 52 VA. J. OF INT'L L., 483, 499 (citing ERIK CASTREN, *THE PRESENT LAW OF WAR AND NEUTRALITY* 441 (1954)) ("These sources make clear that neutrality law permits a belligerent to use force on a neutral state's territory if the neutral state is unable or unwilling to prevent violations of its neutrality by another belligerent."). Overall, this article is premised on the basis that Djibouti is not a neutral state and the unable and unwilling criteria will not be required although it further bolsters the conclusion that there is no neutrality under these conditions.

<sup>157</sup> Egon Gutzman, *The Concept of Neutrality Since the Adoption and Ratification of the Hague Neutrality Convention of 1907*, 14 AM. U. INT'L L. REV. 55-60, 58 (1998).

<sup>158</sup> Detlev F. Vagts, *The Traditional Legal Concept of Neutrality in a Changing Environment*, 14 AM. U. INT'L L. REV. 83, 89 (1998).

<sup>159</sup> As recently as 1995, the U.N. recognized Turkmenistan as a permanent neutral state. Gutzman, *supra* note 149, at 109.

<sup>160</sup> *Id.* at 108.

circumstances neutrality is not possible. A state may intertwine its military practices to a level at which a state is no longer capable of declaring neutrality. If that state does not participate in the conflict, it would be a non-belligerent, and neutrality restrictions would not apply to the belligerents in the conflict.

In this case, Djibouti is host to several foreign militaries.<sup>161</sup> Its intense popularity across the international community—thanks to its uniquely geostrategic location—shines a spotlight on the implications that our increasingly globalized world has on international law. This shifting global landscape necessitates a fresh look at the doctrine of neutrality and its non-applicability to circumstances involving foreign basing. Djibouti’s militarization through foreign military basing has evolved and, therefore, so should the doctrine of neutrality. The following examination of the U.S. position on neutrality over time and the recent Russia-Ukraine War further support this argument.

#### D. The U.S. Position on “Qualified Neutrality” and the Russia-Ukraine War

##### *1. The U.S. Position of “Qualified Neutrality”*

The United States availed itself of the law of neutrality as early as 1793, when President George Washington proclaimed neutrality in the war between Great Britain and France.<sup>162</sup> President Washington declared that the United States “would engage in conduct friendly and impartial towards the belligerent powers.”<sup>163</sup> In 1939, Congress enacted the Neutrality Act

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<sup>161</sup> While the landscape is constantly changing, a 2021 report included Germany, Spain, Italy, France, the United Kingdom, and Saudi Arabia in the list of militaries present in Djibouti in addition to the United States and China. Nigusu Adem Yimer, *How Djibouti Surrounded Itself by Military Bases*, POLITICS TODAY (Mar. 17, 2021), <https://politicstoday.org/djibouti-surrounded-by-military-bases-of-china-us-france-uk-germany-others>.

<sup>162</sup> HARLOW GILES UNGER, “MR. PRESIDENT”: GEORGE WASHINGTON AND THE MAKING OF THE NATION’S HIGHEST OFFICE 165-66 (2013).

<sup>163</sup> *Id.* at 165.

in an effort to keep the United States from “being dragged into war through trade.”<sup>164</sup>

As the law surrounding armed conflicts has evolved, so has the U.S. position on neutrality. During World War II, the United States adopted “qualified neutrality,” a position that gives neutral states the ability to support belligerent states who are the victim of “flagrant and illegal wars of aggression.”<sup>165</sup> Thus, neutral states no longer had to treat all states equally; rather, they could “discriminate in favor of” a victim state and provide them with support.<sup>166</sup> The U.S. position was controversial.<sup>167</sup> However, as discussed below, it became widely accepted over time.

## 2. “Qualified Neutrality” and the Russia-Ukraine War

In February 2022, Russia invaded the eastern borders of Ukraine.<sup>168</sup> After Russia’s invasion, several nations, including the United States, provided the Ukraine with “billions of dollars in lethal military aid, including weapons and ammunition.”<sup>169</sup> The transfer of arms, which was “inconsistent with the traditional law of neutrality, have been justified . . . under the concept of qualified neutrality.”<sup>170</sup> Once a controversial position, several states have used qualified neutrality to maintain neutral

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<sup>164</sup> Aaron Xavier Fellmeth, *Divorce Waiting to Happen: Franklin Roosevelt and the Law of Neutrality, 1935-1941*, 3 BUFF. J. INT’L L. 413, 422 (1997) (citing Neutrality Act of 1939, 54 Stat. 4, 4 (1939)).

<sup>165</sup> LAW OF WAR MANUAL, *supra* note 116, § 15.2.2.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* The United States is no stranger to taking policy positions that are supported by the law but may not be widely accepted. For example, in addition to qualified neutrality, the United States recognizes anticipatory self-defense. Under this concept, the United States may exercise national self-defense to preemptively strike before an adversary attacks. KARL P. MUELLER, STRIKING FIRST: PREEMPTIVE AND PREVENTIVE ATTACK IN U.S. NATIONAL SECURITY POLICY 6 (2006). (“National Security Strategy and other recent policy statements use the ‘preemption’ label to refer to a wide range of actions that involve striking the first blow against perceived security threats . . .”). Anticipatory self-defense is “controversial in the international community.” OPERATIONAL LAW HANDBOOK, *supra* note 74, at 6.

<sup>168</sup> *Timeline: The events leading up to Russia's invasion of Ukraine*, REUTERS (Mar. 1, 2022), <https://www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28>.

<sup>169</sup> Raul (Pete) Pedrozo, *Ukraine Symposium – Is The Law Of Neutrality Dead?*, ARTICLES OF WAR (May 31, 2022), <https://lieber.westpoint.edu/is-law-of-neutrality-dead>.

<sup>170</sup> *Id.*

status while providing lethal arms to the conflict zone during the Russia-Ukraine War.

The Russia-Ukraine War—and the international community’s willingness to get involved via qualified neutrality—demonstrates how law of neutrality has, and is able to, evolve based on the circumstances. Similarly, two competitor military bases located in the same state necessitates an evolution of the law of neutrality. In this case, the modern reality should lead to the conclusion that Djibouti is not a neutral state, and the law of neutrality may not exist based on the conditions it has created by inviting competitor militaries into its borders.

#### E. Djibouti’s Degradation of Neutrality

Djibouti has degraded its potential claim of neutrality in various ways. First, Djibouti has entered into basing agreements with competing nations, which allows a robust military presence within its borders. Second, neutrality will violate or frustrate the binding agreements by disallowing military operations within Djibouti. Third, under the law of neutrality, Djibouti will not be able to enforce its neutrality against the P.R.C. nor will it be able to distinguish between military versus civilian activities based on the P.R.C.’s civil-military fusion. Fourth, under the law of neutrality, it is unable to remain impartial based on its economic reliance to the P.R.C.

First, by allowing both the United States and the P.R.C., strategic competitors, to build military bases within its borders, Djibouti has precluded its ability to declare neutrality in an IAC involving these countries. The invitations to build military bases within Djibouti has created a robust military presence within its borders. As discussed in the next section this has already created tension between the United States and the P.R.C. It is foreseeable that the two competing nations or the other militaries with bases in Djibouti would have conflict based on the close proximity of the militaries. The militarization of Djibouti alone is sufficient to question neutrality, however, the legally binding agreements further support the idea of no neutrality.

Second, Djibouti has entered into various agreements which allow two competitor militaries to base within its borders. In other words, military

presence in Djibouti by the United States and P.R.C. is authorized via binding agreements. Therefore, the U.S. and P.R.C. military presence is legally authorized within Djibouti within the parameters of the agreements which at least in the United States' case is quite expansive, as previously defined. The U.S. forces are legally in Djibouti based the 2003 Access Agreement and 2014 Implementing Arrangement, which allows the DoD access to and use of the Djibouti base cluster. The agreements authorize military operations to contribute to peace and stability, enhance cooperation, and fight against terrorism.<sup>171</sup> Djibouti presently permits both militaries to conduct operations within its borders. For example, the United States has conducted several anti-piracy military operations from Djibouti.<sup>172</sup> Similarly, the P.R.C. has also conducted military operations against piracy in the region.<sup>173</sup> Neutrality would challenge these capabilities and violate or frustrate the intent of these agreements as it requires belligerent troops in the neutral territory to be interned by the neutral power.<sup>174</sup> The United States would be unable to contribute to peace and stability or fight terrorism within the agreement if its military members are not authorized to move and must be interned.<sup>175</sup> This, combined with the other legal instruments that Djibouti has signed with the United States, creates an extensive reliance on the agreements to ensure regional peace and stability. The U.S. military provides training of partner militaries, security to fragile governments against “destabilizing forces,” and “directly support[s] partner missions in the United Nations and African Union missions.”<sup>176</sup> The U.S. base in Djibouti is used by the U.S. military to protect American lives in the region and build stability for other African states.<sup>177</sup> The United States exercises its rights regularly under the agreements. “The U.S. military accounts for just over half of all flights from Djibouti’s airport. The U.S. Navy regularly refuels . . . warships at Djibouti’s oil terminal.”<sup>178</sup>

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<sup>171</sup> 2003 Agreement, *supra* note 72, at 1.

<sup>172</sup> Jessica Martin, *Djibouti, Africa: A Potential Point of U.S.-China Engagement*, ICAS (Nov. 25, 2020), <https://chinaus-icas.org/research/djibouti-africa-a-potential-point-of-u-s-china-engagement>.

<sup>173</sup> *Id.*

<sup>174</sup> See Hague (V), *supra* note 148, art. 11.

<sup>175</sup> 2003 Agreement, *supra* note 72, at 1.

<sup>176</sup> ICS-DJIBOUTI, *supra* note 70, at 8.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 6.

The stability and security that the U.S. provides to Djibouti and neighboring nations, while also protecting U.S. national security interests, is the intent of the agreement between the states. Taking away these capabilities via neutrality frustrates the purpose of the agreement and leaves an already vulnerable region unprotected against malign P.R.C. forces.

Third, Djibouti has drastically weakened its ability to prevent either the United States or the P.R.C. from using its territory for hostilities when it allowed the P.R.C., a potential U.S. adversary, to build a base within its borders and in such close proximity to the U.S. base. If Djibouti attempts to declare neutrality, the United States should be concerned about Djibouti's ability to enforce neutrality by controlling the P.R.C.'s troop movement and naval operations within its territory (as required by a neutral nation).<sup>179</sup> Djibouti's military strength is small with approximately "10,500 active troops (8,000 Army; 250 Naval; 250 Air; 2,000 Gendarmerie)."<sup>180</sup> Djibouti's military is not as sophisticated as either the U.S. or P.R.C. military, as they are armed with "older French and Soviet-era weapons systems."<sup>181</sup> The P.R.C. "base includes personnel from various branches, including marines and special forces."<sup>182</sup> The base has a "heliport which can also be used by drones" and a 660 meter-long pier for its ships.<sup>183</sup> "Underground, the base is equipped with cyber and electronic warfare facilities."<sup>184</sup> In addition, the P.R.C., as previously established, is investing heavily in military capabilities and continues to develop its base in Djibouti. Based on the capabilities listed and the P.R.C.'s continual advancement, Djibouti does not appear to have the military capabilities to enforce neutrality or prevent P.R.C. actions directed towards the United States.

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<sup>179</sup> See Hague (V), *supra* note 148, art. 2; Hague (XIII), *supra* note 122, art. 18.

<sup>180</sup> *Djibouti*, CENT. INTEL. AGENCY: WORLD FACTBOOK (Feb. 16, 2022), <https://www.cia.gov/the-world-factbook/countries/djibouti/#military-and-security> (last visited Feb. 25, 2022).

<sup>181</sup> *Id.*

<sup>182</sup> Jean-Pierre Cabestan, *China's Djibouti Naval Base Increasing Its Power*, EAST ASIA FORUM (May 16, 2020), <https://www.eastasiaforum.org/2020/05/16/chinas-djibouti-naval-base-increasing-its-power>.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

An additional challenge created by Djibouti allowing the P.R.C. to build a base in the region is whether Djibouti can determine if activities conducted by the P.R.C. are civil or military in nature. The P.R.C. integrates the civilian mariner population a maritime militia to support the P.R.C.'s armed forces.<sup>185</sup> The P.R.C. intertwines its military and civilian sector in its maritime operations, which creates ambiguity as to whether a vessel or actor is civilian or military in nature. "The militia is an armed reserve force of civilians available for mobilization. It is distinct from the People's Liberation Army's (PLA) reserve forces. Militia units organize around towns, villages, urban sub-districts, and enterprises and vary widely in composition and mission."<sup>186</sup> The Maritime militia also trains for "anti-air missile defense, light weapons use, and sabotage operations" as well as reconnaissance and surveillance.<sup>187</sup> This ability to change the nature of the vessel becomes challenging for Djibouti or the United States to determine whether it is engaged in civilian business or military operations. This is also challenging because Djibouti is reliant on P.R.C. imports and exports. As of 2022, the P.R.C. is approximately 43 percent of Djibouti's imports and 27.5 percent of its exports.<sup>188</sup> All civilian P.R.C. vessels that import and export could have military capabilities based on the P.R.C.'s maritime militia. The United States could board and search these vessels outside of neutral waters to ensure they are not carrying contraband to support the military objectives of the P.R.C.<sup>189</sup> However, this may be impractical based on the volume of vessels coming in and out of Djibouti. These issues add to the unique situation Djibouti has created within its borders and support the degradation of neutrality.

Fourth, as previously established Djibouti has significant debt to the P.R.C. Djibouti holds the highest debt burden to the P.R.C. among nations that it has invested in.<sup>190</sup> This creates significant risk that the P.R.C. will

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<sup>185</sup> Andrew S. Erickson & Connor M. Kennedy, *China's Maritime Militia* 1, CNA CORPORATION, [https://www.cna.org/archive/CNA\\_Files/pdf/chinas-maritime-militia.pdf](https://www.cna.org/archive/CNA_Files/pdf/chinas-maritime-militia.pdf) [hereinafter *Maritime Militia*].

<sup>186</sup> 2021 P.R.C. DEVELOPMENTS, *supra* note 5, at 75.

<sup>187</sup> *Maritime Militia*, *supra* note 185, at 6.

<sup>188</sup> *Djibouti*, OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/country/dji?yearlyTradeFlowSelector=flow0> (last visited Feb. 25, 2022).

<sup>189</sup> U.S. DEP'T OF NAVY, NWP 1-14M, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS para. 7.6 (2022).

<sup>190</sup> Katharina Buchholz, *The Countries Most in Debt to China [Infographic]*, FORBES (Aug. 19, 2022), <https://www.forbes.com/sites/katharinabuchholz/2022/08/19/the-countries-most-in-debt-to-china-infographic/?sh=218a888f61d8>.



use its economic power to influence Djibouti. The P.R.C. has shown that it is willing to use its economic and political influence to further its agenda. In October 2022, the P.R.C. used its economic power to influence the United Nations Human Rights Council to defeat a motion calling for a debate on human rights violations against Uyghur Muslims in Xinjiang, China.<sup>191</sup> Many of the 47 nations that voted on the motion are poor nations that fear publicly speaking out against the P.R.C. and jeopardizing future investment in their respective nations.<sup>192</sup>

Based on the significant investment and subsequent debt that Djibouti has created with the P.R.C., it is foreseeable that the P.R.C. will use its economic power as it did with the U.N. to influence Djibouti to ignore P.R.C. violations of neutrality in fear of economic consequences. This, combined with the complexity of the P.R.C.'s civil-military fusion and Djibouti's limited military capabilities, provides the United States with a strong argument to not recognize a neutral Djibouti.

These factors all contribute to the conclusion that Djibouti has degraded its ability to declare neutrality to the point that it no longer exists, which precludes them from declaring neutrality in an IAC involving the United States and the P.R.C. The P.R.C.'s actions towards the United States within Djibouti's borders, which have created tension between the states, further support this assertion.

## V. The P.R.C.'s Misconduct and U.S. Self-Defense

### A. Misconduct in Djibouti

It did not take long after the P.R.C. established its base in Djibouti for disagreements to arise between it and the United States. The bases' close quarters, with a mere twelve kilometers separating them, is fertile ground

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<sup>191</sup> Angeli Datt, *How Long Can Beijing Avoid Accountability for Its Abuses in Xinjiang?*, THE DIPLOMAT (Oct. 20, 2022), <https://thediplomat.com/2022/10/how-long-can-beijing-avoid-accountability-for-its-abuses-in-xinjiang>.

<sup>192</sup> Emma Farge, *U.N. Body Rejects Debate on China's Treatment of Uyghur Muslims in Blow to West*, REUTERS (Oct. 6, 2022), <https://www.reuters.com/world/china/un-body-rejects-historic-debate-chinas-human-rights-record-2022-10-06>.

for issues.<sup>193</sup> For example, in 2018, the United States formally complained to the P.R.C. and requested that it investigate its use of high-grade lasers, which were pointed at a U.S. aircraft.<sup>194</sup> The high-grade lasers the P.R.C. used can temporarily blind a pilot, and they caused two American Airmen minor eye injuries from the exposure.<sup>195</sup> The P.R.C. subsequently denied directing any lasers at U.S. aircraft.<sup>196</sup>

Just over a year later, the United States accused the Chinese military of “irresponsible actions” and attempting to gain entry to Camp Lemonnier.<sup>197</sup> Rear Admiral Heidi Berg, Director of Intelligence, USAFRICOM, described these irresponsible actions: “China tried to ‘constrain international airspace’ by barring aircraft from flying over the Chinese military base, flashed ground-based lasers into the eyes of American pilots and deployed drones designed to interfere with U.S. flight operations.”<sup>198</sup> Again, the P.R.C. denied the allegations and responded by accusing the United States of violating international law.<sup>199</sup> The P.R.C. stated:

[I]t was the [U.S.] warplanes that flew over the PLA Support Base in Djibouti, attempting to gather military intelligence, which seriously threatened the security of the Chinese base and personnel.

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<sup>193</sup> See 2021 USAFRICOM Posture Statement, *supra* note 36, at 5.

<sup>194</sup> Paul Sonne, *U.S. Accuses China of Directing Blinding Lasers at American Military Aircraft in Djibouti*, N.Y. TIMES (May 4, 2018, 3:36 AM), <https://www.washingtonpost.com/news/checkpoint/wp/2018/05/03/u-s-accuses-china-of-directing-blinding-lasers-at-american-military-aircraft-in-djibouti>.

<sup>195</sup> *Id.*

<sup>196</sup> *China Denies U.S. Accusation of Lasers Pointed at Planes in Djibouti*, REUTERS (May 3, 2018, 1:29 PM), <https://www.reuters.com/article/us-usa-china-djibouti/china-denies-u-s-accusation-of-lasers-pointed-at-planes-in-djibouti-idUSKBN1I429M>.

<sup>197</sup> Geoff Hill, *China, U.S. Military Clash over Djibouti Airspace*, WASH. TIMES (June 16, 2019), <https://www.washingtontimes.com/news/2019/jun/16/china-us-military-clash-over-djibouti-airspace>.

<sup>198</sup> *Id.*

<sup>199</sup> Guo Yuandan & Liu Xuanzun, *China Dismisses ‘Irresponsible Actions’ Accusation by US in Djibouti*, GLOB. TIMES (June 17, 2019), <https://www.globaltimes.cn/content/1154646.shtml>.

It is the [United States] who should reflect on what it did and stop this act that violates the international law.<sup>200</sup>

Djibouti officials have rejected U.S. attempts to warn them about the P.R.C.<sup>201</sup> Chairman Aboubaker Omar Hadi, chairman of the ports and free-trade authority in Djibouti, stated, “I think the American politicians are manipulated, they are given wrong information, they are far away from Africa and Djibouti.”<sup>202</sup> The P.R.C. is unwilling to confirm any allegations made by the United States and is actively engaged with the United States outside of Djibouti as well. These peacetime examples demonstrate that Djibouti, by not confronting the P.R.C., is unlikely to act as a neutral.

#### B. Disagreements between the United States and the P.R.C. Outside of Djibouti

A historical background of all conflicts the United States and the P.R.C. have engaged in is outside the scope of this article, but the following provides some current examples to highlight the possibility of an IAC between the United States and the P.R.C. outside of Djibouti. Recently, spokesperson Tan Kefei, China’s Ministry of National Defense, stated, “[T]he United States has aggravated tension by blatantly sending military ships and aircraft to the South China Sea.”<sup>203</sup> In addition, the P.R.C. described the United States as a “troublemaker” instead of “a ‘defender’ of free navigation and overflight.”<sup>204</sup>

In January 2022, Qin Gang, the P.R.C. ambassador to the United States, accused Taiwan of moving towards independence and further warned that the United States “could face ‘military conflict’ with China

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<sup>200</sup> *Id.*

<sup>201</sup> See Geoffrey York, *Parting the Red Sea: Why the Chinese and U.S. Armies Are Fortifying This Tiny African Country*, GLOBE & MAIL (June 6, 2019), <https://www.theglobeandmail.com/world/article-parting-the-red-sea-why-the-chinese-and-us-armies-are-fortifying>.

<sup>202</sup> *Id.*

<sup>203</sup> Xinhua, *US is South China Sea ‘Troublemaker’: Military Spokesperson*, CHINA.ORG.CN (Feb.25, 2022), [http://www.china.org.cn/china/2022-02/25/content\\_78070939.htm](http://www.china.org.cn/china/2022-02/25/content_78070939.htm).

<sup>204</sup> *Id.*

over the future status of Taiwan.”<sup>205</sup> Recently, P.R.C. military aircraft entered into Taiwan’s declared air defense zone.<sup>206</sup> The United States responded by stating that this act was a provocation of military action that “could lead to conflict.”<sup>207</sup> In September 2022, President Biden, while referring to the P.R.C.’s potential invasion of Taiwan, said the United States would defend Taiwan.<sup>208</sup>

Just after the 2022 Winter Olympic Games concluded in Beijing, North Korea’s Kim Jun Un praised the P.R.C. and “vowed to strengthen cooperation with China and together ‘frustrate’ threats and hostile policies from the United States and its allies.”<sup>209</sup>

Just days later, the P.R.C. blamed the United States for Russia’s invasion of the Ukraine.<sup>210</sup> Instead of condemning Russia’s military action towards the Ukraine, the P.R.C. stated that the United States caused the invasion.<sup>211</sup> “Those who follow the [United States’] lead in fanning up flames and then shifting the blame onto others are truly irresponsible.”<sup>212</sup>

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<sup>205</sup> Steve Inskip, *China’s Ambassador to the U.S. Warns of ‘Military Conflict’ Over Taiwan*, NPR (Jan. 28, 2022, 5:09 AM), <https://www.npr.org/2022/01/28/1076246311/chinas-ambassador-to-the-u-s-warns-of-military-conflict-over-taiwan>.

Further, Ambassador Qin Gang added that although the P.R.C. does not want war with Taiwan, it remains a big issue, and if Taiwan seeks independence, it may result in a military conflict between the P.R.C., Taiwan, and the United States. *Id.*

<sup>206</sup> Richard Sisk, *Taiwanese Fighters Scrambled Amid Fears Beijing Could Be Emboldened by Ukraine Invasion*, MILITARY.COM (Feb. 24, 2022), <https://www.military.com/daily-news/2022/02/24/taiwanese-fighters-scrambled-amid-fears-beijing-could-be-emboldened-ukraine-invasion.html>.

<sup>207</sup> *Id.*

<sup>208</sup> David Brunnstrom & Trevor Hunnicutt, *Biden Says U.S. Forces Would Defend Taiwan in the Event of Chinese Invasion*, REUTERS (Sept. 19, 2022, 10:09 AM), <https://www.reuters.com/world/biden-says-us-forces-would-defend-taiwan-event-chinese-invasion-2022-09-18>.

<sup>209</sup> Thomas Maresca, *N.Korea’s Kim Congratulates China on Olympics, Says Together They Will ‘Frustrate’ U.S. Threats*, REUTERS (Feb. 21, 2022, 5:01 PM), <https://www.reuters.com/world/asia-pacific/nkoreas-kim-congratulates-china-olympics-says-together-they-will-crush-us-2022-02-21>.

<sup>210</sup> Simone McCarthy, *As War Breaks Out in Europe, China Blames the US*, CNN WORLD (Feb. 25, 2022), <https://www.cnn.com/2022/02/25/china/china-reaction-ukraine-russia-intl-hnk-mic/index.html>.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

These examples highlight how complex the U.S.-P.R.C. relationship is throughout the world.

Based on the two superpowers' diverging interests in Djibouti and the South China Sea, it is possible that an IAC in one location spills over to the other regions, especially in Djibouti, where the militaries sit just twelve kilometers apart.<sup>213</sup> The P.R.C. has continued to develop its military presence in Djibouti and can project a stronger presence through their ability to accommodate warships. Based on the conflicts that have occurred both in and out of Djibouti between the United States and the P.R.C., Djibouti is on notice that an IAC may occur.<sup>214</sup> In the event of an IAC, international law permits the United States to exercise self-defense while seeking a U.N. security resolution, which is discussed in more detail below.

### C. United Nations Security Council Resolution and the Right to Self-Defense

For the United States to lawfully engage in an IAC, it must seek a U.N. Security Council (UNSC) resolution or act in self-defense under Article 51 of the U.N. Charter.<sup>215</sup> The general rule under U.N. Charter Article 2(4) is as follows: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the [U.N.]"<sup>216</sup> In other words, nations have an obligation to be peaceful. If a nation violates Article 2(4), the United States may threaten or use force if a UNSC resolution under Chapter VII of the U.N. Charter authorizes such actions.<sup>217</sup> However, the UNSC has five permanent members: the P.R.C., France, Russia, the United Kingdom, and the United States.<sup>218</sup> Decisions of the UNSC require "concurring votes of [all]

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<sup>213</sup> 2021 USAFRICOM Posture Statement, *supra* note 36, at 5.

<sup>214</sup> *See also* York, *supra* note 201 (describing how Aboubaker Omar Hadi, chairman of the ports and free trade authority in Djibouti, "agrees that the Chinese and U.S. troops are in close enough proximity to trigger an accidental conflict").

<sup>215</sup> *See* OPERATIONAL LAW HANDBOOK, *supra* note 74, at 2.

<sup>216</sup> U.N. Charter art. 2, ¶ 4.

<sup>217</sup> *See* U.N. Charter ch. VII.

<sup>218</sup> U.N. Charter art. 23, ¶ 1.

permanent members.”<sup>219</sup> In the case at hand, the P.R.C. would undoubtedly veto any resolution that the United States proposed to use force against it, effectively blocking the ability to secure a UNSC resolution.

Although the P.R.C.’s inevitable veto makes a U.N. resolution unattainable, the United States would still be authorized to act in self-defense. The U.N. Charter reads: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence [sic] if an armed attack occurs against a Member of the [UN], until the Security Council has taken measures necessary to maintain international peace and security.”<sup>220</sup> In the U.S. view, this includes the right to anticipatory self-defense.<sup>221</sup> Further, the U.S. position is that the right of self-defense exists against any illegal use of force, including when use of force does not rise to the level of armed attack.<sup>222</sup> Based on the P.R.C.’s provocations of the United States, the self-defense route to legal justification is the more plausible path than obtaining a UNSC resolution. The United States maintains its inherent right to self-defense against the P.R.C. The P.R.C. has used drones to restrict airspace and P.R.C.-operated lasers have injured U.S. pilots.<sup>223</sup> Although the United States has not declared these actions use of force, it could interpret similar behavior in the future as triggering the U.S. right to self-defense.

As the United States could have a legal basis for engaging China in an IAC, judge advocates and commanders must prepare for the possibility that this conflict may erupt in Djibouti, and that Djibouti may respond by declaring neutrality. The U.S. approach to Djibouti’s neutrality must be well-planned and transparent from the outset. The following section articulates this position.

## VI. Proposed U.S. Position

If Djibouti declares neutrality, the United States must remain operable in the Horn of Africa. Judge advocates and commanders must prepare to

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<sup>219</sup> *Id.* art. 27, para. 3.

<sup>220</sup> *Id.* art. 51.

<sup>221</sup> LAW OF WAR MANUAL, *supra* note 116, § 1.11.5.2 (Use of Force Versus Armed Attack).

<sup>222</sup> *Id.*

<sup>223</sup> 2021 P.R.C. DEVELOPMENTS, *supra* note 5, at 131-32.

legally continue operations under these conditions. The U.S. response to Djibouti's neutrality must first emphasize that the law of neutrality does not exist in Djibouti or, more generally, when any state invites competing powers to base troops within its borders. Since neutrality could not exist in Djibouti, the United States must create an operational plan to degrade the P.R.C.'s capabilities as soon as possible. The United States would do this militarily by utilizing the access and capabilities its agreements with Djibouti provide. At the same time, the United States must emphasize to Djibouti that U.S. Armed Forces must maintain maximum operational freedom. This proposed U.S. viewpoint can be summarized as: (1) deny claims of neutrality, (2) utilize legal agreements, and (3) maintain operational freedom.

#### A. Deny Claims of Neutrality in Djibouti

Competitor foreign military forces' basing in Djibouti necessitates a re-evaluation of the law, and the U.S. military should embrace this evolution. Inviting competitor military bases and intermingling the state's economic viability with foreign militaries strain the neutral state's ability to abstain or remain impartial, which are key elements of neutrality. A state like Djibouti, which relies upon foreign military assistance and funding for security and economic stability, will not be able to remain impartial or have the appearance of impartiality.<sup>224</sup> In addition, Djibouti's heavy reliance on the P.R.C. economically, including large amounts of debt,<sup>225</sup> further emphasizes that abstention and impartiality are impossible under these conditions.

The United States cannot risk its only enduring military capabilities in Africa on Djibouti's ability to abstain or remain impartial. Indeed, in the past, Djibouti failed to heed U.S. warnings, continuing instead to support the P.R.C., and failed to condemn P.R.C. aggression towards the United States, which is largely explained by the P.R.C.'s economic influence over Djibouti. The United States is also enmeshed in Djibouti's economy via

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<sup>224</sup> See, e.g., 2021 P.R.C. DEVELOPMENTS, *supra* note 5, at 85. Djibouti's forces have participated in exercises and training with not just the United States, but also with the People's Liberation Army Navy Marine Corps, which supports the P.R.C.'s military diplomacy. *Id.*

<sup>225</sup> See Chaziza, *supra* note 53.

security assistance, aid, and jobs, which further complicates Djibouti's ability to abstain and maintain impartiality.

Additionally, the law of neutrality is designed to prevent states from being pulled into the conflict and minimizing the overall effects of IAC on the neutral state.<sup>226</sup> In this case, Djibouti has invited the competitor states, or belligerents, to set up shop within its own borders. The 1907 view of neutrality likely did not consider a state allowing competitor foreign militaries to build bases within its borders. Under such circumstances, in an IAC between the United States and the P.R.C. in Djibouti, Djibouti cannot expect to be completely unaffected. In fact, Djibouti's leaders have admitted that a conflict between the two nations within its country are possible.<sup>227</sup> Creating the conditions in which foreign militaries can conduct IAC operations within the potential neutral state's borders is counter to the concepts of neutrality. A state that has intertwined its capabilities through cooperation agreements and invited competitor bases within the state in a modern view of the law cannot expect to avoid the effects on the state or to not be pulled into the conflict by one of the belligerents.

For similar reasons, the United States must conclude that Djibouti will be unable or unwilling to enforce neutrality on the P.R.C. A failure to comply with the obligations under neutrality means Djibouti, or a similar state, fits into the legal status of a non-belligerent.<sup>228</sup> The effect of such a status is that Djibouti can attempt to refrain from being part of the conflict without having to enforce its obligations impartially under neutrality to the parties. Also, this means that the United States would not be bound by the strict rules of neutrality because Djibouti would not be a neutral state.

The viewpoint that neutrality does not exist is further supported by the legal agreements that the parties have entered.<sup>229</sup> A state that enters into binding legal agreements to have a foreign military base within its borders must have an expectation that the foreign military will conduct military operations from within its borders. As discussed in Section II.F above,

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<sup>226</sup> LAW OF WAR MANUAL, *supra* note 116, § 15.3.2.

<sup>227</sup> See *supra* note 214 and accompanying text.

<sup>228</sup> LAW OF WAR MANUAL, *supra* note 116, § 15.1.2.3.

<sup>229</sup> These agreements include terms regarding the use and exclusive use of a port, airfield, and land capabilities for military operations, security, and stability. See 2003 Agreement, *supra* note 72; 2014 Implementation Arrangement, *supra* note 79; *supra* Section III.A.



both the United States and the P.R.C. have conducted military operations from Djibouti. In this case, where a host state allowed competitor militaries to build bases and operate within its borders, the risk of an IAC is amplified, and the state should bear that risk.

#### B. Utilize Legal Agreements

Through various agreements, the United States has contracted for the right to operate its military in Djibouti's air, land, and sea.<sup>230</sup> "Aircraft, vessels, and vehicles operated by or for U.S forces may enter, exit, and move freely within the territory of the Republic of Djibouti."<sup>231</sup> The parties' intentions were stated within the four corners of the agreements. Among these intentions was a recognition of "the need to enhance their common security, to contribute to international peace and stability, and to initiate closer cooperation."<sup>232</sup> The parties also acknowledged a desire to enhance "cooperation between the United States of America and the Republic of Djibouti that will support their defense relations and the fight against terrorism."<sup>233</sup> The United States must not ignore the importance of these agreements and must exercise its legal rights within them. These legal agreements do not become void because of an IAC; they have legal effect that the parties must respect. If there is a dispute, the parties must follow the process delineated within agreements.<sup>234</sup> If Djibouti wishes to terminate the agreements, it must do so as outlined in the agreement, by providing "one year's written notice through diplomatic channels."<sup>235</sup>

The United States, or any nation building military bases, expects to utilize its base for military operations, including during an IAC. In Djibouti, the United States and the P.R.C. are peer and geopolitical competitors with extensive military capabilities within 20 kilometers of one another. Judge advocates must work with all levels of the legal domain to provide context and explain why the 2013 Agreement and 2014 Implementing Arrangement remain legally enforceable in an IAC and support Djibouti's lack of neutrality. Taking a transparent approach early

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<sup>230</sup> See *supra* Section III.A.

<sup>231</sup> 2003 Agreement, *supra* note 72, art. XII(1).

<sup>232</sup> *Id.* pmb1.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.* art. XIX.

<sup>235</sup> 2003 Agreement, *supra* note 72, art. XX, para. 1.

on is important; waiting for an IAC is not the appropriate time to begin to advance the U.S. position.

Declaring neutrality must not become a way for a state to avoid or circumvent its duties under an agreement when that state also invited competing interests to its table. Judge advocates must emphasize that the United States will exercise its existing rights under the agreements to resolve any potential disputes with Djibouti, including those that may arise due to an IAC.

### C. Maintain Operational Freedom

Judge Advocates must help commanders and leaders understand neutrality's threat to maximum operational freedom before a potential IAC. "U.S. Mission Djibouti's top priority is to ensure long-term viability, reliable logistics (especially at the ports), and maximum operational freedom for our American military presence."<sup>236</sup> In order for the United States to maintain operational freedom, judge advocates must reference the legal language within the agreements and reference international law to advise commanders. During this time, the United States must be clear that if Djibouti does not become a co-belligerent with the P.R.C., it is not the target of operations. All U.S. operations will comply with the intent of the agreements to enhance peace, stability, and security with Djibouti.

In this effort, judge advocates need to ensure that the United States presents its position clearly to Djibouti and articulates that they will only target the P.R.C., specifically just the military capabilities that threaten the United States, minimizing the effect on Djibouti. Engagement with Djibouti's military and government early and often will help establish the legal standards and expectations for continued cooperation within the strong relationship.

As engagements occur with Djibouti's leadership, U.S. military leadership must educate Djibouti on the NSS and NDS driving these considerations. Namely, the NSS is clear that the military "will act urgently to sustain and strengthen deterrence, with the [P.R.C.] as its

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<sup>236</sup> ICS-DJIBOUTI, *supra* note 70, at 5.

acing challenge.”<sup>237</sup> The 2022 NDS also specifically identifies the P.R.C. pacing challenge when discussing its goal to “meet growing threats to vital U.S. national security interests and to a stable and open international system.”<sup>238</sup> It is imperative that Djibouti understands that in order to accomplish the intent of its shared agreements and NDS priorities, the United States must maintain a forward posture.<sup>239</sup> Djibouti must also understand that U.S. presence alone is not enough to deter the P.R.C.; the United States must have maximum operational freedom in the region.

The U.S. military understands the importance of its relationship with Djibouti and the strategic location in which it sits. “With the inclusion of the Iranian threat, East Africa is a nexus of four of the five major threats identified in the [NDS]: The [P.R.C], Russia, Iran, and violent extremist organizations.”<sup>240</sup> If an IAC occurs, the United States cannot shut down operations with major threats present in the region.

United States Africa Command created four campaign objectives, all of which, if accomplished, can help U.S. military leadership guide conversations with Djibouti leadership. The objectives are: “1) [g]ain and maintain strategic access and influence, 2) [d]isrupt [violent extremist organization] threats to U.S. interests, 3) [r]espond to crises to protect U.S. interests, [and] 4) [c]oordinate action with allies and partners to achieve shared security objectives.”<sup>241</sup> Accepting Djibouti’s position of neutrality would severely frustrate these four objectives, leaving the United States and its national security interests vulnerable. As Djibouti is home to the majority of U.S. forces in the region, the United States must reject any claims of neutrality, as they would derail the United States’ ability to work toward these critical campaign objectives.

## VII. Conclusion

This article used Djibouti as a case study to argue that a state can create the conditions in which neutrality cannot exist through various actions, such as inviting adversarial or competitor foreign militaries to militarize

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<sup>237</sup> 2022 NATIONAL SECURITY STRATEGY, *supra* note 11, at 20.

<sup>238</sup> 2022 U.S. NATIONAL DEFENSE STRATEGY, *supra* note 13, at 1.

<sup>239</sup> COMM’N ON THE NAT’L DEF. STRATEGY, *supra* note 14, at 3.

<sup>240</sup> 2021 USAFRICOM Posture Statement, *supra* note 36, at 6.

<sup>241</sup> *Id.* at 7.

the state. The U.S. base in Djibouti is central to counterterrorism operations in Africa and the Middle East, military cooperation agreements in the region, international peace, and stability of African states, including Djibouti. Camp Lemonnier is vitally important to protecting U.S. national security interests on the continent, including maligning the P.R.C.'s influence in Africa. Based on this, the United States must adopt a position to ensure that it can accomplish these objectives.

Denying claims of neutrality, utilizing existing legal agreements, and maximizing operational freedom is the best U.S. approach in the face of an IAC against the P.R.C. in Djibouti. This approach is transparent and based on modern interpretations of existing international law and the policy to restore peace and stability in the region. Just as the Russia-Ukraine War has caused the international community to adopt positions it did not contemplate before, the situation in Djibouti challenges the traditional view of neutrality.

While Djibouti is currently the only state that has both a U.S. and P.R.C. military base within its borders, this situation may not be unique in the future given the P.R.C.'s plans to expand its global presence. This proposed U.S. viewpoint can not only get out in front of a potential IAC in Djibouti, but also, it can serve as a guidepost for managing international relationships and expectations as the global landscape continues to evolve.