LINES IN THE WATER:

WHY DO SOME MARITIME DISPUTES LINGER WHILE OTHERS GET RESOLVED?

by

BENJAMIN SWIFT PURSER, III

B.A., Carleton College, 2000

M.A., U.S. Naval War College, 2011

M.A., University of Colorado, 2013

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Professor Steve Chan

Professor Jaroslav Tir

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Lines in the Water: Why Do Some Maritime Disputes Linger While Others Get Resolved?

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To explore potential policy opportunities for managing the disputes of the South China Sea and the Arctic, this multi-method research combines quantitative and qualitative analysis of the population of all modern maritime disputes (since 1900). This inquiry engages multivariate analysis of a unique data set and comparative case studies in order to examine how different factors (of both the disputed areas and the claimant nation-states) can explain dispute duration, escalation, and resolution. While extant literature treats maritime disputes as the unexplained error term of territorial conflict, this project argues that there are three distinct types of maritime disputes and that each type follows its own pattern of behavior – as predicted by specific economic and political factors. This work not only contributes to theoretical understandings of how states resolve territorial disputes, but also sheds light on specific ways that China and Russia challenge legal and practical models of state behavior – and what can be done about those states' actions while protecting the maritime environment.

Dedication

This work is dedicated to my undergraduate advisor, Roy Grow. Roy recently passed away, but he shall live forever in the lives and work of his students. Thanks to Roy's inspiration, I studied Political Science and International Relations at Carleton College – then moved to China. Like Roy, I served in the military during a time of war and then pursued a doctorate in Political Science; I came to graduate school to follow in his footsteps. Roy was an amazing teacher who enriched both the lives of those around him and the larger world. I miss Roy, his wisdom, and his guidance.

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Outside of individuals within the Political Science department, I would like to thank my family for all the help they have provided. My wife, my parents, my sister, and my brother-in-law have supported my effort to complete this work in more ways than I can list here. I could not have done this without them. In particular, my wife has managed to help me while still completing her own doctorate in aerospace engineering; I am so impressed with how she has managed all of that with such grace.

Finally, I would like to thank the Veteran community here in Boulder – most importantly, Captain Stew Elliott (U.S. Navy Retired) for his mentorship and friendship.

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Chapter One: Introduction: The State of the Literature on Maritime Disputes

The Puzzle:

Why do some maritime disputes linger while others get resolved? This question is currently unanswered in political science and yet important for policy-makers around the world. For example, international news reflects the urgent and important tensions between nation-states over maritime disputes (MDs): Figures One and Two illustrate the recent and continuing English-language coverage of maritime disputes, in general, and of specific maritime disputes. Unfortunately, academic literature offers little guidance for how to think about such problems: conflict-oriented analysis of territorial disputes (TDs) focuses on the land and riparian (river) disputes – leaving disputes over ocean waters and their islands as the ignored, unexplained error term. This research project seeks to address that lacuna. Specifically, this dissertation argues that there are three distinct types of MDs: economic disputes over the delimitation of ocean waters for states' Exclusive Economic Zones (EEZ), symbolic disputes over islands close to shore (and thus with little to no economic), and complex disputes over islands distant from the shore (where economic and political factors must *both* align before resolution is possible). Most of the lingering MDs fall into this third category – like the MDs in the Arctic and South China Sea, areas that will receive special attention in Chapters 6 and 7, respectively. In short, this dissertation argues that the proposed typology explains when disputes linger, sheds light on what to expect of lingering disputes, and analyzes both existing and alternate policy steps that could be taken to facilitate resolution of the lingering maritime disputes.

Figure One: News Articles Per Month Including the Term "Exclusive Economic Zone"

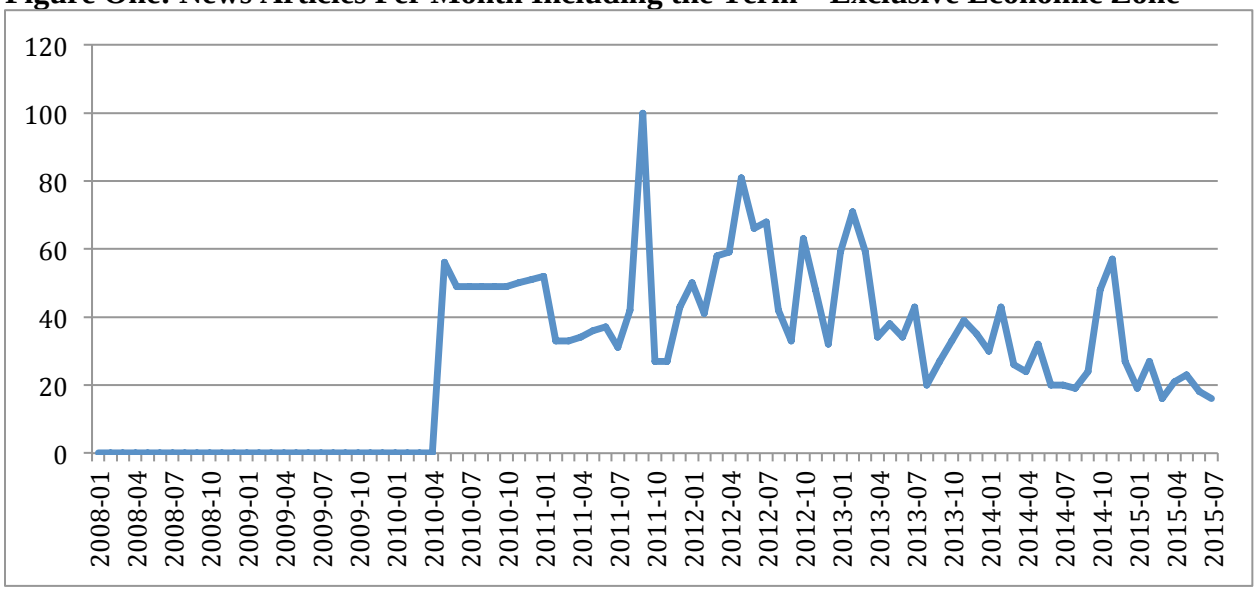
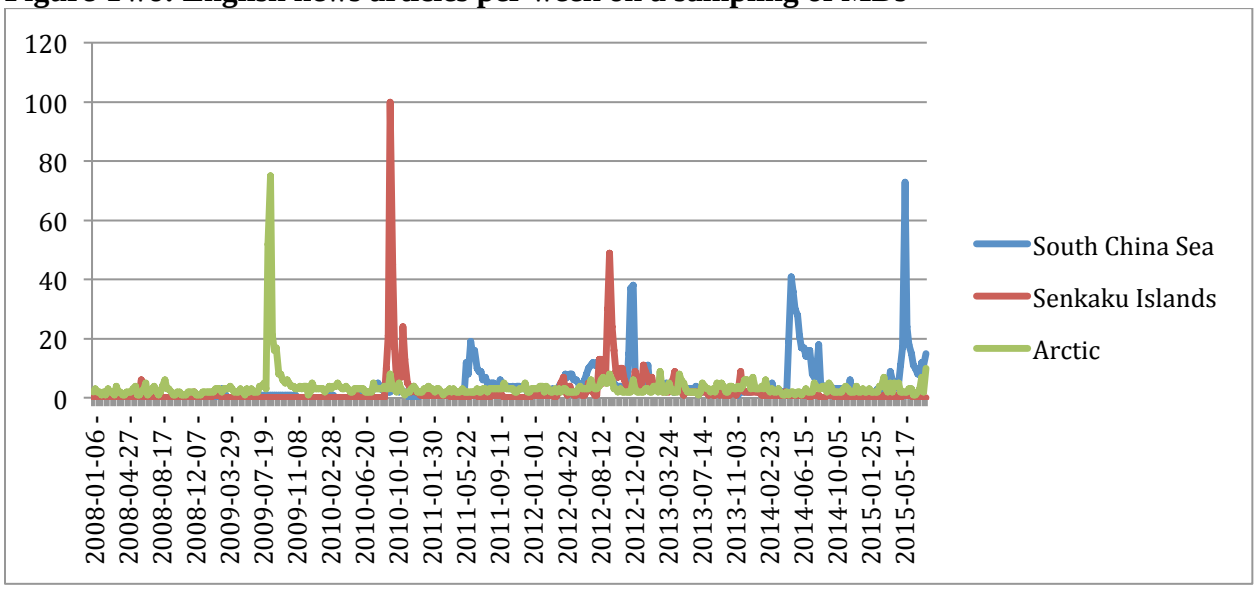


Figure Two: English news articles per week on a sampling of MDs



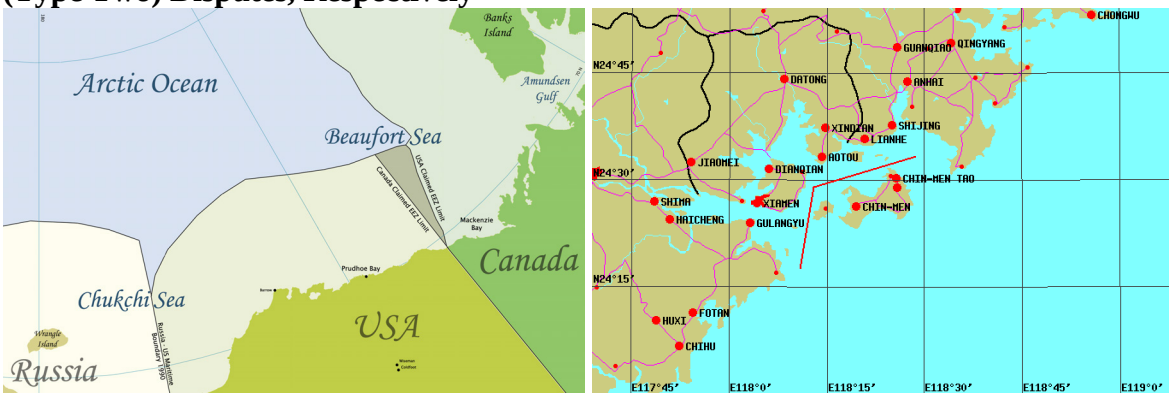
The Contribution to International Relations (IR) Theory:

This research project builds on existing political science literature in three ways. First, this project explicitly addresses the political importance that emerges from the intersection of international law and physical geography. Unlike extant literature, which largely ignores non-

political factors like geography,[1] this research prioritizes the role that geography plays in international law and the corresponding ways that such law drives the international behavior that effects the management of MDs.

Second, this research project argues that the creation of a typology allows for the isolation of causal stories: the first MD type is economic and explained in terms of the claimants' shared access to international mechanisms of arbitration and resolution (and is primarily explained in terms of international factors, or what Putnam's two-level game model refers to as Level I); the second MD type is symbolic and explained in terms of the claimants' domestic strength to negotiate the dispute (and is thus primarily explained in terms of Level II factors); the third type is a combination of the other two MD types and is thus both economic and symbolic – requiring alignment of international and domestic factors (i.e. both levels of Putnam's model). Figures Three, Four, and Five illustrates examples of these three dispute types.

Figures Three and Four: Examples of Water Delimitation (Type One) and Close Island (Type Two) Disputes, Respectively



(Arctic Econ and Global Security, respectively)

[1] While there are exceptions, like the research into how mountains matter for civil conflict, most of the work on conflict focuses on political and economic factors (Buhaug and Gates 2002, Vasquez 2005).

Figure Five: An Example of a Distant Island (Type Three) Dispute

(Economist 2012)

Third, this project argues that some MDs are the cause of international conflict and that others are the result. Specifically, this dissertation argues that a water delimitation dispute is the cause of strained relationships between nation-states, but that a dispute over close islands is the result of strained relationships; distant island disputes are complex in part because they are both a cause of a strained relationship and a result. While some scholars have explored ways that conflict can be avoided or minimized, none have offered a bright-line distinction between when disputes are the symptom and when they are the sickness, but this research project suggests an intellectual mechanism for making such a distinction. That differentiation allows for clarity of focus: for example, policy-makers who seek to improve a specific interstate relationship where there is an MD will be able to determine whether the MD itself must get resolved or whether the MD will get resolved when other matters are addressed.

The Relevance to Policy

This research project has three types of policy relevance. First, this work contextualizes the disparate discussions about MDs. It identifies three different signals within the noise of maritime disputes: the three different types of MDs have not been previously differentiated and

have seemed like noise instead of the three distinct signals that they are. Ongoing policy discussions conflate the problems of land disputes, riparian disputes, water delimitation disputes, close island disputes, and distant island disputes – wasting resources and risking escalation as policy-makers attempt to apply the bureaucratic tools of one dispute to another. By offering an intellectual framework for MDs, this dissertation helps avoid such inefficient and ineffective efforts.

Second, this project isolates the problematic type of MDs in order to allow for policy-makers to focus their attention on where the problems remain. Specifically, of the three types of MDs, it focuses on the important one (i.e. disputes over distant islands which are the most unresolved) and offers information on that type – both in terms of the trends for that type and important specifics of individual disputes within that type. To be explicit: this third category of disputes is the most difficult MDs to resolve and include the Svalbard, the Senkakus, the Arctic, and the South China Sea.

Third, this project analyses specific tools of governance for addressing the MDs that linger, escalate, and otherwise fail to reach resolution. It reviews the probabilities and patterns within the existing MD dispute framework (i.e. the one described by the United Conventions on the Law of the Sea). Additionally, it analyses the existing policy options that exist outside the UNCLOS arbitration framework: joint development programs and the use of alternate arbiters. Finally, it proposes an alternative policy approach, what Chapter 8 described as a reset to UNCLOS.

IR Literature: Conflict and Territory

The study of IR has consistently emphasized the importance of territory. Some of IR's primary theorists have prioritized territory as a source of state power (Waltz 1959, Rose 1998, Mearsheimer 2001). Research into the causes of conflict has highlighted territory's salience: it has led to more conflict than all other sources of international tension (Vasques 1995; Tir and Diehl 2002; Senese 2005); when conflicts over territory do rise to the level of war, those wars are more deadly (Huth 1989; Diehl 1999; Hensel 2000). Even when TDs are not causing military conflict, they can still prove costly for the involved states: for example, they reduce international trade between nation-states that have a dispute (Simmons 2005). Lingering conflicts seem to have wide-ranging impacts: unresolved TDs put pressure on the claimants to maintain centralized, war-oriented governments (Gibler 2012). Conversely, the resolution of TDs allows for even the most bitter of enduring rivals to develop a peaceful relationship (Owsiak and Rider 2013). Such research lends credence to the argument that the "democratic peace" is, in fact, a *territorial peace*: the resolution of territorial disputes explains both democracy and peace (Gibler 2007 and 2012). Similarly, the phenomenon known as "democratic clustering" seems rooted in states' abilities to resolve their territorial disputes (Gibler and Tir 2014). Territory thus seems to explain an increasingly wide range of international behavior.

Despite the increasing importance of territory, there is little research into the different kinds of territory or the ways that these characteristics might matter. Extant literature focuses on land and (neighboring) riparian zones (Hensel and Mitchell 2005; Hensel, Mitchell, and Sowers 2008, Hensel 2013). Beyond land and riparian disputes, there is a third and final geographical type of dispute, the maritime environment, which contains the majority of remaining contested territories (although a complete accounting for maritime disputes remains unfinished) (Simmons 2005,

Wiegand 2011, Hensel 2013). Individual case studies have explored some of these disputes in terms of states' interests in fisheries (Antinori 1987, Bergstad and Isaksen 1987, Mallory 2012) and deep sea drilling for oil and natural gas (Harrison 1977, Buszynski and Sazlan 2007), but these analyses have not pursued generalizable conclusions about maritime disputes or what they might mean for the claimants, the other nation-states or the field of political science. Specifically, there has been little progress in connecting what is know about the tangible (Goertz and Diehl 1992) and intangible (Hassner 2003 and 2007) significance of territory with the different legal and practical aspects of maritime (versus land) disputes (Burghardt 1973, Hensel et al 2008). Instead, existing scholarship treats maritime disputes as the error term: researchers note that the maritime claims do not follow the same pattern as the land-based disputes, but do not explore that behavior for its own significance (e.g. Fravel 2005). While much is known about territory, little is known about the subset of territorial disputes that is maritime.

There are obvious but important physical differences between maritime disputes and their land-based counterparts. One element to this is the physical reality that most of the disputed islands can only be controlled by one state or another – and there is no room for compromise: with certain exceptions (e.g. Ireland), contested islands are normally small enough that there is only one major port (and associated infrastructure) for importing and exporting the goods and services required. To err on the side of thoroughness, this project will explore all disputes that have (or have had) a maritime component. Accordingly, islands like Taiwan and Ireland are included in the dataset, but not included in the empirical tests; that dataset can be found in Appendix One and includes disputes over Cyprus, Taiwan, Ireland, Timor, Labrador, Svalbard, and the Virgin Islands. When there was a population that could sustain itself on the contested territory without outside assistance (e.g. food and water getting flown into Scarborough Shoal),

that dispute would not be included in the quantitative or qualitative analysis since those places follow the modes of traditional territorial claim staking (e.g., Burghardt 1973). While such population-sustaining islands are supposedly the only kind of maritime entity given the 200nm EEZ under the United Nations Convention on the Law of the SEA (UNCLOS), all of the disputes addressed in this work include multiple claimants that argue such historically unpopulated rocks are actually "islands." Notably, there are several islands (as aforementioned) where there is shared sovereignty – like Borneo, Hispaniola, New Guinea, et cetera – but these legal arrangements have not been included in this dataset because they pre-date modern times (e.g. Saint Martin's division in 1648).

As the island-hopping campaign of World War II illustrated, control of a maritime area lies in control of the island – and control of the island lies in its single airfield or port (Miller, 2007). This pattern of physical constraint impedes the ability for states to compromise on maritime disputes. The single exception to this dichotomous approach to maritime disputes is the Svalbard Treaty, which creatively solves the divisibility problem of distant islands. Norway has "the full and absolute sovereignty" over the Svalbard archipelago, but "Ships and nationals of all the High Contracting Parties [i.e. treaty signatories] shall enjoy equally the rights of fishing" and resource extraction from the islands and their surrounding waters (Spitsbergen Treaty). With Norway acquiring sovereignty (to this once *terra nullius*) and all other claimants keeping resource rights, Svalbard became the first and only multinational maritime free economic zone. With this exception, all other resolved maritime disputes have found resolution, not in shared access, but in the drawing of clear demarcation lines: one claimant gets sovereignty and resource rights on one side, the other getting rights and resources to the other side of the line.

Moreover, the physical nature of maritime disputes complicates the reality of drawing demarcation lines in the first place: unlike land, neither a state nor a people can permanently occupy water. Such an obvious difference impacts a number of the methods historically employed for staking a claim to territory.

> Traditionally, international law has listed four modes by which sovereignty over territory can be acquired: occupation, that is, establishing control over territory that was unadministered (*terra nullius* or *res nulls*) at the time of the claim; prescription, or the maintenance of effective control for a sufficiently long period of time; cessation, or transfer by treaty; and accretion, or growth of territory through acts of nature. A fifth mode, conquest, has, at least theoretically, been placed outside the law by Article 2 of the United Nations Charter (Burghardt, 1973).

As accretion is largely irrelevant and cessation involves the resolution of the dispute, states have only occupation, prescription, and conquest – all of which are fundamentally different and/or impossible for maritime claims.[2] This means that "the principal legal claim to territory," which "is the uncontested administration of the land and its resident population" is inapplicable to maritime claims (.ibid). Similarly, the legal and practical standard (i.e. "effective control is necessary for title") is inapplicable both to the maritime environment because a permanent presence is impossible (.ibid). Without a way to occupy or control either the open ocean or its islands, states employed alternate methodologies for maritime claim-staking. Historically, states have attempted to assert a claim to uninhabitable islands by simply "placing a plaque on a centrally located island" or by establishing a single settlement on a single island of an archipelago (.ibid). Given the perception that such territories are indivisible, these single physical markers have been used to justify ownership of an entire area. For example, "Britain, France, and Spain each claimed all the Falkland Islands on the basis of settlements established on

[2] Of note, these "modes by which sovereignty over territory can be acquired" miss a modern mechanism that China has been deploying in the South China Sea: the creation of territory. This issue will be addressed in the South China Sea chapter.

only a few" (.ibid). This treatment of islands and archipelagos as indivisible is both historically consistent (e.g. with North America, "The territorial integrity of Greenland was not to be violated despite the fact that all settlement was on the coast") as well as problematic: multiple nation-states could establish their own plaques and settlements in order to assert rights over a single territory (ibid.)[3]. Land disputes did not have this problem because states (and peoples) could establish a permanent presence that was mutually exclusive of another's presence – reinforcing the notion that the contested areas are zero-sum (Mackinder 1904; Gilpin, 1991; Goertz and Diehl, 1992; Huth, 1996; Murphy, 2001).[4]

An additional complication with maritime areas is that they must also offer free passage to all who wish it. According to the United Nations Convention on the Law of the Sea, states must allow others passage through their waters; conversely, claimants to a land dispute can simply fortify their border and prevent passage through the region – strengthening their claim to the territory (Dutton, 2009).

These unique elements of maritime disputes combine to make the problem of MDs quite different from their dry counterparts. For example, Simmons' analysis of "closed borders" and their impact on trade proves inapplicable to maritime disputes: the effort to close another states' maritime borders (i.e. a quarantine) is a *causus bellum* (2005, Rivkin and Casey 2006). The necessary flow of goods and people through maritime disputes thus begs important questions about the mechanisms and meanings of maritime contests over territory. Specifically, Simmons notes that the Kuril Island dispute drives down Russo-Japanese trade – in the same way that a closed, fortified border impedes interstate trade (2005). Such a finding reflects not that the

[3] Again, with the exception of Svalbard, which is explored in detail in its own chapter.
[4] While territorial disputes with so-called "blended populations" – TDs where ethnic groups are physically dispersed throughout the contested territory (like Bosnia, Jerusalem, and Ulster) – but are still "competing for control over territory," claimants still consider the territory indivisible and only pursue zero-sum approaches to getting the entirety of the contested area (Toft 2005).

realities of Russo-Japanese shipping is made difficult by the dispute, but that the dispute has high salience and impacts issues beyond the administration of maritime resources.[5]

Such emotional factors are an important feature of territory, in general, which is seen as having different kinds of value. First, territory can have economic worth: "In the most basic sense, territory may be important because of what it contains. Many disputed territories have contained (or have been thought to contain) valuable commodities or resources, such as strategic minerals or oil" (Hensel, 1999). Second, territory can have symbolic value: "Territory is argued to lie at the heart of national identity and cohesion, with the very existence and autonomy of a state being rooted in its territory" (ibid.). Third, territory can have strategic value: a nation-state can value territory that presents some sort of military advantage – in terms of power projection, for example (Huth 1998). Importantly, a contested area can have all or none of these kinds of values. Regardless of the type of value that a disputed territory has, the degree to which it is valued affects both how states approach negotiations as well as the chances of resolution (Kacowicz 1994, Fravel 2008).

Yet, such raw economic worth, "symbolic importance," or strategic value are not necessarily how claimants value them– according to rational choice theory (Hensel 1999): instead, states value the massive sunk costs of developing a maritime infrastructure[6] and often

[5] This high level of salience intersects with an issue addressed more fully in the quantitative chapter: once disputes have become contested, there is consistent evidence that most disputes remain contested. An oft-cited example for a dispute which has grown inactive, for example, is the dispute over Liancourt Rocks, but there is evidence that the dispute has been inconsistently pursued but never become "inactive" (Koo 2010, Yi 2011). Exceptions to this rule include disputes like over water delimitation through the Strait of Juan de Fuca, where the claimants — the United States and Canada — have no resources to contest and otherwise have a strong relationship; thus, there is neither economic nor symbolic value, but this issue is addressed more thoroughly in the quantitative chapter.

[6] Maritime infrastructures include both government organizations like navies and coast guards and physical elements like ports, harbors, and docks. While some of this infrastructure predates the discovery of maritime resources and thus likely relates more to coastal states' (perceived) need to have such things, some of the infrastructure relates directly to resource extraction (e.g., Feagin 1990, Cumbers 2000).

employ – or act *as if* they employ – prospect theory, which differentiates the framing from the valuation phases and illustrates the difficulty in determining a proper, objective value.[7]

> The fact that people sometimes frame around expectation or aspiration levels rather than the status quo suggests that the widely used concept of the status quo bias is misspecified. The bias is really a reference point bias, a greater tendency to move toward the reference point that expected-utility theory predicts. The reference point bias subsumes the status quo bias whenever the reference point is defined as the status quo, and under those conditions it will be stabilizing and reinforce the status quo. If the reference point is not congruent with the status quo, however, the reference point bias is destabilizing and reinforces movement away from the status quo (Levy, 1997).

As the economic and strategic worth of maritime disputes is normally aspirational – in that states are seeking to drill, fish, or build bases (on the islands)[8] – the problems with framing complicate how nation-states approach these territories and negotiations over them. For example, the reference point for the South China Sea (SCS) would not be the current perceived worth of distant reefs, but the value of the estimated fish, oil, and natural gas that could be extracted from the region after gaining recognized authority over those reefs. It is the expectation of vast economic gain that frames analysis of the SCS or other disputed MDs.

Separate from the problems of framing (the evaluation of) territorial worth, there are complications with how these different types of value exert different pressures on domestic and international politics. Wiegand, for example, noted that

> states do not necessarily dispute over territory because the territory itself has value or salience of the state… It could be that the disputed territory acts as a means to continue domestic mobilization or for other domestic benefits (2011, p41).

[7] This theory can also describe states' approaches to land disputes, but the different nature of the disparity in framing does not lead to such divergent behaviors because of the difference in startup costs between land and maritime resource extraction (Fisher 1964, Mancke 1974, Fagan 1997, Pinder 2001, Water 2011).

[8] Even when states are willing to expand significant resources to develop maritime capacity, it can take significant time. For example, China long wanted to exert control over the island of Taiwan, but needed over a decade just to develop the amphibious lift capability necessary for delivering forces across the Taiwan Strait (Christensen, 1996).

The most well known type of such mobilization comes in the form of a nationalist outpouring known as “rally-round-the-flag" in which the citizens of a nation-state unite behind national leadership (Brody 1984; Mueller 1973; Ostrom and Simon 1985; Russett 1990). Governments have long and successfully used territorial disputes for exactly such mobilization (Radcliffe 1998, Kimura and Welch 1998, Bonilla 1999; Hensel 2001). Ethnic and other symbolic factors can make TDs more powerful for such mobilization (Tir 2003). Accordingly, the value of TDs intersects strongly with states’ concerns about internal vulnerability and diversionary war theory[9] (Downs and Saunders 1996; James, Park, and Choi 2006, Tir 2010). Nation-states thus must balance the reasons to resolve the dispute with the need to avoid appearance of weakness:

> In territorial disputes, policies that can lead to domestic punishment include offers of territorial concessions by the target state or offers to drop the territorial claim by the challenger state, both of which lead to final settlement. Such policies can lead to domestic punishment because they involve some action that contradicts typical nationalist discourse, which tends to emphasize indivisibility, seeking retribution for an injustice, or unwillingness to compromise to maintain a reputation for resolve. Typical nationalist discourse promise domestic populaces that leaders would never consider dropping the claim or offering any territorial concession of any kind, emphasizing indivisibility[10], territorial integrity, and past or potential injustice. By using such discourse, leaders frame the dispute so that any action taken that contract the discourse inevitably damage the credibility and reputation of the leaders (Wiegand 2011, p 340).

This type of framing is particularly useful for national, militaristic, and even jingoistic rally-round-the-flag efforts that attempt to mobilize a claimant’s entire population – as high-salience

[9] While the empirical findings of this theory remain debated (Mitchell and Prins 2004; Tir 2010), there is an accepted belief that states sometimes aggravate tension with their neighbors for their own domestic political concerns (BDM et al. 2001, Levy and Thompson 2010). Research into this phenomenon has often focused on the timing of potentially diversionary behavior (Smith 2006) and its framing (Chiozza and Goemans 2003). Scholars have found consistent patterns — at least with respect to factors like regime-type and issue-type (Oneal and Tir 2006, Levy and Thompson 2010). Accordingly, it proves important to understand how domestic leaders find benefit from aggravating, or at least maintaining, a maritime dispute.

[10] As Chapter Two will argue, the notion of MD “indivisibility” is sometimes more contrived than real: different types of disputes have different degrees of divisibility – regardless of how much politicians argue for uncompromising positions. In short, the degree of divisibility relates to the geography of the dispute and the presence of contested resources: for example, disputes over water delimitation disputes with economic value (as Fearon predicts) are more easily resolved through – division and compromise – than are close island disputes with symbolic value.

issues like MDs lend themselves to domestic mobilization. Yet, alternate framing of this dispute allows leadership to appeal to specific populations and special interests. For example, by highlighting the importance of food security and disputed fisheries, claimants can mobilize fishing communities; similarly, by highlighting the importance of energy security and disputed hydrocarbons, claimants can mobilize big business and its supporters (Beckman et al. 2013, Wu and Zou 2014). Additionally, MDs can be framed as wedge issues much in the same way as more traditional security issues can be – empowering some politicians at the expense of others (Huth 1996, Busby 2007, Hillygus and Shields 2014). Such domestic-level scheming matters because MDs are not just problems to solve at any cost, but complicated issues for national decision-makers to carefully manage. When nation-states manage them well, the government gains legitimacy — both in democratic and autocratic states (Downs and Saunders 1996). Conversely, when these leaders manage the disputes poorly, they open themselves to accusations of weakness, become vulnerable to domestic challengers, and can lose control of their state (BDM et al 1992 and 1995; Fearon 1994, Downs and Saunders 1996, Chiozza and Goemans 2004). Thus, as Diehl and Goertz have found: remaining committed to "territorial disputes may be useful in maintaining or increasing one's reputation and prestige, and territorial expansion may be considered as an outgrowth of domestic and economic development" (1988, p104). How states manage their TDs reflects their domestic accountability (Chiozza and Choi 2003, Chiozza and Goemans 2004, Fravel 2008), domestic vulnerability (Radcliffe 1998), and strategic approach to their position in the international system (Wiegand 2011).

It is territory's role as an indicator of state strategy that is sometimes more pronounced than the innate value of the contested area itself. For example, states trade territory both to avoid war and to gain economic assistance, political support, or other sorts of rewards (Kacowicz 1994,

Fravel 2008); it is not always the resolution, or even its details, that matter most to the claimants (Tir 2003). For example, there is evidence that Tokyo's maintenance of the Kuril dispute with the USSR (and then Russia) helped the ruling party maintain power – proving, at least in the near-term, extremely valuable to the national leadership (Kimura and Welch 1998). This effort to balance national and international politics is best captured in Putnam's model of two-level games and its explanation of how national decision-makers must find "win-sets:" policy options that are successful at both the domestic and international levels (1988). In the language of Putnam, for a dispute to have resolution, all the claimants must find policy options that are win-sets.

Importantly, even when the claimants to an MD would consider bargaining within their mutually agreeable win-sets, there are problems with the process. Fearon's seminal work on bargaining itself helps shed light on why such good-faith efforts are not always successful (1995; Scheulling 1960, Blainey 1973). Specifically, information problems, commitment problems, and indivisibility can contribute to conflict (Wittman 1979, Pillar 1983, Reiter 2003, Slantchev 2003). While most of the research in this vein focused on the first two problems — those of information and commitment (Filson and Werner 2002, Smith and Stam 2004, Powell 2006) – those who examined issue indivisibility often focused on the intersection between bargaining theory and territory (Toft 2005, Hassner 2007). Accordingly, even when nation-states are willing to attempt good-faith efforts to bargain over a contested maritime area, it was often difficult to make progress.

Beyond just the states that claimed contested maritime areas, there is an additional complicating factor to MD resolution: the international organizations that assist with the process of arbitration and dispute resolution. Unlike land disputes, which have often been resolved

bilaterally, maritime disputes have more often been resolved via some type of international organization (Simmons 2005, Hensel et al. 2008, Nemeth et al. 2014)[11]. Since maritime borders cannot be fortified as land ones can, claimants to maritime disputes find themselves in the unique position of not just being able to take and hold contested area in order to benefit economically from the territory; because the extraction of maritime resources normally requires the participation of third-party actors – like the multinational oil corporations that do most of the world's off-shore drilling – the claimants to a maritime dispute are uniquely reliant on international recognition of the dispute.[12] Since such recognition normally only comes when all claimants agree to the terms of the resolution, a maritime dispute often cannot get resolved until all claimants are willing to submit the claim to the process of international arbitration.[13] This reliance on outside endorsement of resolutions makes maritime claimants both uniquely dependent on international organizations, but also uniquely susceptible to bias – as the legal claims for maritime sovereignty are more subjective (Dutton 2008).

Accordingly, the supposed "fairness" of the adjudicative institutions proves particularly salient for maritime disputes. Evidence of an unfair global order is not widely accepted (Weber, 2004; Helfer and Slaughter, 2005; Guilhot, 2011), but some find evidence that the international courts are unfair to developing states (Posner, 2001). There remains a long-running debate about

[11] While some works, like Nemeth et al. (2014), categorize these mechanisms differently, the important finding is that MDs are not traditionally resolved just amongst the nation-states contesting the maritime area: there is often some outside actor – like the intergovernmental organizations that Nemeth and his co-authors emphasize.

[12] Given the different kinds of technology necessary for using the maritime environment – whether that be the offshore oil platforms, the factory fishing ships, or the different infrastructure necessary to simply transport personnel across an ocean area – the start-up and maintenance costs are very different for the maritime environment than they are for the land-based one. These costs and the different types of technical skill necessary for exploiting such environments make many maritime nation-states reliant on the technology, corporations, or governments of the developed world. This is importantly different from a situation in which a state like the Sudan can seize contested areas and begin pumping oil cheaply and simply from the ground and trucking it elsewhere; there is no opportunity for such unsanctioned resource extraction in the maritime environment.

[13] While a few maritime disputes have been resolved amongst the claimants themselves – without external arbitration or adjudication – most of those outcomes have resulted from one side simply forsaking its claim. The best example of this is the case of Seranno Bank, when changing naval technology made the US base there unnecessary and so Washington decamped from the island in 1981 (Smith 1982, Milefsky 2004).

the use of such international arbitration (Gamble and Fischer 1976, Schwebel 1987, Schwebel and Krishnan 1987; Akhavan 2001, Scheffer, 2002, Snyder and Vinjamuri 2003/2004, Gilligan 2006; Ku and Nzelibe 2007).[14] Danner and Simmons have argued that when it comes to international institutions and their tribunals, "credibility is impossible to observe" (2007, p22); regardless of such asserts, there is evidence that international judgments have often been biased in favor of wealth, power, and democracy (Posner and De Figueiredo, 2004). Specifically, Posner has found that states temporarily "stopped using the [International Court of Justice] ICJ because the judges did not apply the law impartially" (2004, p1). There is additional evidence that such bias extends beyond the ICJ, to the European Court of Justice, and additional international mechanisms of adjudication (Posner and Yoo, 2004). Yet, ultimate proof of bias is not required to explain why some states might be disinclined to send their disputes to international courts as a state's national leadership does not require incontrovertible evidence that international courts are biased or are too "risky" (Simmons 2002, p831). Instead, claimants simply need a reason *not* to trust the international courts to treat their maritime claim fairly. Some states seem to have this belief; for example, in 2012, the Chinese Ministry of Foreign Affairs stated that what various international institutions, as led by the United States, have "done, in matters concerning China's core and important interests and major concerns, is unsatisfactory" (Mattis, 2012). Similarly, Beijing has repeatedly stated that the international system, which was created while the actual government of China was denied political recognition, does not fairly reflect the values or policy preferences of the Chinese people (Dutton 2008). Such contextual factors contribute to the limited utility that international institutions offer to maritime disputes – particularly when the claimants' national leadership has reason to distrust them. Ultimately,

[14] Part of the difficulty in evaluating such courts' effectiveness rests on the myriad of potential explanatory, mitigating, and moderating variables; part of the difficulty rests on the diverse legal and practical considerations that complicate the process of adjudication (Sumner, 2004).

when nation-states must rely on international organizations to assist with the resolution of MDs, but those states are unwilling to trust those institutions to treat them fairly, this will only prolong dispute duration and undermine chances of resolution.[15]

Separate from the issue of trusting those institutions to be objective, the very fact that those third-party organizations play a role can complicate, prolong, and deter maritime dispute resolution. As nation-states seek to resolve their disputes over maritime resources, which some claim to be common pool resources (CPR), they find themselves dealing with a complex set of patterns and procedures unique to such policy-centric areas (Schlager and Ostrom 1992, Gardner and Walker 1994, Keohane and Ostrom 1995, Jentoft et al. 1998, Dietz, Ostrom, and Stern 2003, Ribot and Peluso 2003; Gibson, Andersson, Ostrom, and Shivakumar 2005, Ostrom 2010). At both a local level and an international one, there is consistent evidence that CPRs complicate governance and contribute to conflict (Gardner and Walker 1994, Adams et al. 2003). This seems to be particularly true for maritime disputes (Keohane and Ostrom 1995). The analysis of maritime resources initially focused on fisheries and there remains a school of thought committed to explaining maritime disputes in those terms (Bergstad and Isaksen 1987, Caron 1989, Park 1989, Reinert 1995, Kedziora 1996, Rothwell and Stephens 2004; Mallory 2012). Yet, there is a separate explanation for maritime disputes that focuses on a different resource: deep-sea hydrocarbons (Harrison 1975, Harrison 1977, Antinori 1987, Buszynski and Sazlan 2007). Regardless of which deep-sea resource is being analyzed, the policy-centric framework seems to provide intellectual leverage for understanding how maritime disputes might persist or find resolution. For example, the fact that UNCLOS endows distant islands with functionally

[15] Despite evidence that nation-states benefit from membership in and use of international organizations (e.g., Abbott and Snidal 1998)), there is evidence that some international organizations are biased in their action states (e.g., Posner and De Figueiredo, 2004) and used differently by their members (e.g., Nemeth et al. 2014). Accordingly, this study does not control for mere membership in different types of IOs? and instead explores access to shared arbiters – as is addressed more thoroughly in the quantitative chapter.

different legal and economic rights than close islands illustrates the degree to which parties other than the maritime claimants themselves can matter in determining the process and outcome of maritime dispute resolution.

Significance and the Way Forward:

TDs are important to IR, but extant literature focuses on disputes over land and rivers – giving little attention to MDs. Just as TDs cause both the highest number of wars and the most deadly wars, MDs represent both the highest number of unresolved disputes and the most dangerous disputes (e.g., in that they risk violence between nuclear-armed nation-states in places like the South China Sea and the Arctic). In order to understand the under-explored phenomenon that is MDs, this project will take a series of analytical steps towards theoretically important, policy-relevant conclusions.

Chapter Two will explore how the legal and practical patterns of territorial disputes translate to the maritime environment. It will then offer a typology of MDs and their respective drivers. It argues that the traditional term "maritime dispute" really encapsulates three different types of disputes: disagreements over the delimitation of water (e.g., the Chilean–Peruvian dispute in the Pacific Ocean), disagreements over sovereignty of islands close to the mainland (e.g., the Doumeira Islands, which are less than a third of a nautical mile off the border of Eritrea and Ethiopia), and disagreements over the sovereignty of islands distant from the mainland (e.g., Serrana Bank, approximately 360 nautical miles (nm) off the coast of Columbia) and the waters around those islands.[16] Moreover, Chapter Two argues that these different MD types follow different patterns toward resolution – with respect to the value of the disputed maritime area, the claimants' shared access to mutually-trusted international mechanisms (for arbitration and

[16] The exact categories as well as the disputes which fall into them will be explained in Chapter Two.

resolution), and the claimants' internal strength (i.e. the governments' legitimacy and thus their ability to enter into negotiations over the MDs). It argues that some disputes are economic and predicted in terms of the claimants' shared ability to get a third-part arbiter to broker a compromise, some disputes are symbolic and their resolution can be predicted in terms of the claimants' shared ability to defend foreign policy decisions to domestic audiences, and some are a combination of them. These types synchronize with Putnam's two-level game model: Type One disputes are primarily Level I stories and Type Two disputes are primarily Level II stories; Type Three disputes are a complex combination thereof.

In Chapter Three, this typology of maritime dispute typology and resolution is quantitatively tested on a unique dataset of all modern maritime disputes (i.e. those since 1945, the first year for which quantitative data were available).[17] This chapter quantifies the typology and its propositions of Chapter Two – providing details on explanatory variables, proxies (when appropriate), and additional methods – and then addresses the findings and their significance. In addition to hypotheses testing, this chapter explores the strengths and weaknesses of the quantitative approach to maritime disputes in order to offer suggestions for how additional intellectual leverage could be brought to bear for this IR problem. Specifically, since the statistical tools offer the least analytical leverage against Type 3 disputes, which prove to be the most unresolved MD type, this chapter concludes with a need to explore that remaining MD type in detail and – based on the quantitative findings –offers a five-step method of evaluating MDs.

Chapters Four, Five, Six, and Seven qualitatively explore different Type 3 maritime disputes. The first two of these chapters examine the disputes of Svalbard and the East China Sea, respectively. These chapters examine the causal stories quantitatively tested in Chapter Two in

[17] Appendix One provides a summary of all these maritime disputes and Appendix Two offers conflict narratives for those disputes.

terms of two of the most important distant island disputes: one in Europe, Svalbard, and one in East Asia, Senkakus. These disputes are documented well enough that there is a body of evidence worthy of a thick description (which is arguably not true for contests over Clipperton Island or Chagos Archipelago, for example). Beyond basic evidential concerns, however, these two cases offer particular insights into how different regions, institutional (international) arrangements, and time periods mattered for Type 3 disputes. Additionally, the case of Svalbard proves important later in this work – in terms of how the resolution gets implemented – and so such issues must be explored qualitatively. These case studies analyze the tangible value of the contested areas themselves, the claimants' access to outside mechanisms of resolution, and the domestic strength of the claimants; each chapter ends with a consideration of the evidence and what it all likely means both of the individual disputes and the larger questions of MDs. Where Chapters Four and Five examine individual MDs, Chapters Six and Seven examine regions with multiple, overlapping, and intersecting MDs: the Arctic and the South China Sea. The Arctic includes lingering disputes related to the EEZs of distant islands, sovereignty over close islands, delimitation of water, and the status of islands' waters; these disputes include Arctic Ocean, the Barents Sea, the Beaufort Sea, Iceland's waters, Jan Mayen's waters, North Atlantic waters, the North Sea continental shelf, Norwegian waters, and Hans Island. Similarly, the South China Sea includes lingering disputes over Macclesfield Bank, the Paracel Islands, Pratas Island, the Spratly Islands, and delimitation of the West Philippine Sea. Notably, while these disputes are qualitatively described in the beginning of each respective chapter, it is important to note that not all claimants agree on what the individual dispute are or how to differentiate them (as is addressed within those respective chapters). At the end of each of these case studies, this project

includes an analysis of the qualitative findings and the degree to which these chapters find support for the proposed MD typology and its propositions.

Chapter Eight summarizes the quantitative and qualitative findings of this work, relates them to the extant literature (within political science and international relations), and offers general conclusions as to what these findings mean for both academic and policy-oriented work on territorial disputes, conflict, and international relations. Moreover, it analyzes specific tools of governance for addressing the MDs. After reviews the probabilities and patterns within the existing UNCLOS framework – which this dissertation addressed quantitatively in Chapter Three and qualitatively in Chapters Four through Seven – it then analyzes the policy options that exist outside that UNCLOS framework: specifically, joint development programs and the use of alternate arbiters. It concludes with a proposal for a new policy approach to maritime disputes and their potential resolution.

Chapter Two: A Typology of Maritime Dispute Resolution

Translating nation-states' territorial expectations to the maritime allows for the classification of MDs into three discrete types; this typology allows for the isolation of causal stories as well as the making of predictions about duration and probability of dispute resolution. Moreover, this typology can be combined with additional explanatory variables – specifically, ones that capture the economic worth of the disputed maritime area, the claimants' access to objective arbitration, and the claimant governments' domestic political strength – in order to make probabilistic estimations as to MD's likelihood of resolution as well as suggestions as to which factors and policy mechanisms should facilitate resolution.

Translating to the Maritime

An analysis of nation-state interest in MDs best begins with an exploration of the aforementioned reasons that states pursue those claims: the tangible and intangible value of the contested area. In terms of the former, nation-states seek control of territory for economic gains (e.g., Goertz and Diehl 1992); for MDs, these economic interests are fisheries and hydrocarbons (i.e. oil and natural gas). Of note, the exact value of these resources is difficult to detail. For the fisheries, there are heated debates over how fish populations evolve in response to over-fishing and other environmental factors. For the oil and natural gas, the nature of those extraction processes makes it impossible to predict how much could be extracted from any location; market fluctuations make it similarly difficult to predict the value that might be gained from whatever oil or natural gas is extracted. It is important to note the estimated economic impact of these resource types is large but of different magnitudes: the presence of hydrocarbons tend to add ten

to a hundred times as much money to a nation-state's economy as does the presence of fisheries. For example, the fisheries in the South China Sea are estimated at between $10 and $100 billion dollars, but the hydrocarbons are estimated at $800 trillion (e.g., EIA 2013). Given the disparity in these values, this dissertation notes their presence or absence; these values are recorded in binary: as being present if there is evidence that any of the claimants publicly advertise the belief that such resources are there (and they are marked as not being present if there is no such evidence). Notably, it is the perception that fisheries or hydrocarbons are present within a disputed maritime area– and not the exact value of either of those potential resources – that matters for claimants' approach to maritime disputes

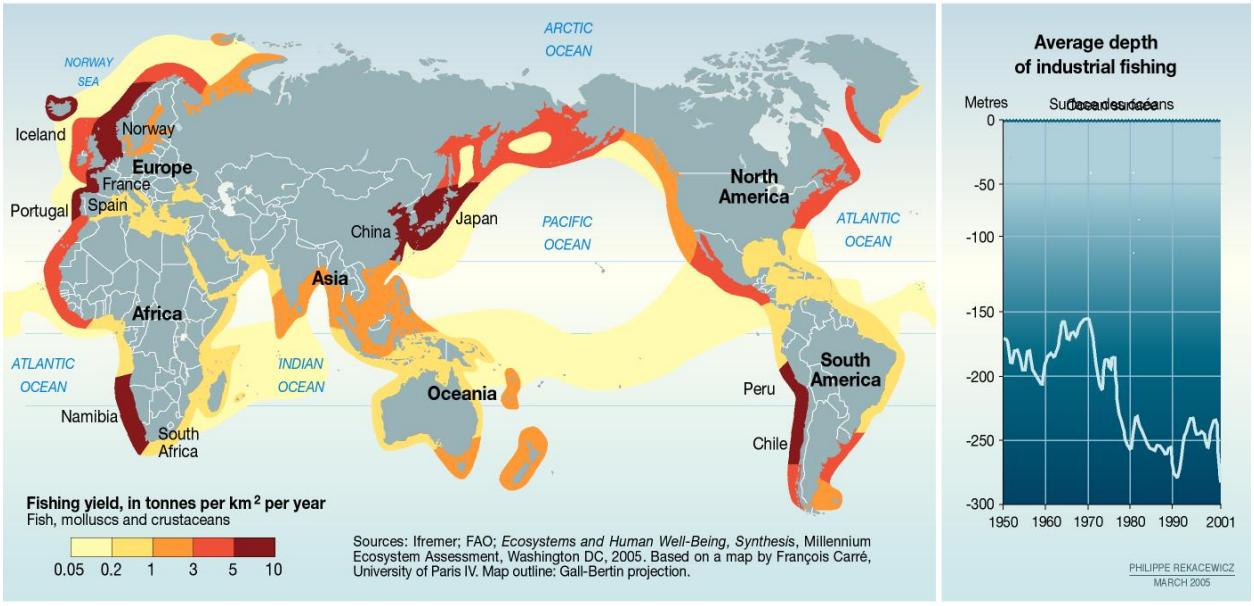
Regardless, neither of these tangible resources is present on the contested islands themselves, but instead are found within the contested waters – in the water column and underneath the ocean's crust (as illustrated in Figures Six and Seven). Since the extraction efforts often locate their infrastructure and workforces directly on the closest islands (as illustrated in Figures Seven through Thirteen), the fact that the islands are not the actual source of economic value is sometimes lost in both academic and policy-oriented debates. Regardless, the tangible value is offshore. Historically, this has not always been the case. One set of cases where the islands themselves contained the economic value would be the islands that the United States claimed through the Guano Act of 1856 (Guano Islands Act, O'Donnell 1993, Burnett 2005, Miller et al. 2007); although many of these islands remain contested – as is documented in Appendices One and Two, their economic value (i.e. the guano) was extracted over a century ago. Since the economic value of these islands is long gone, it seems both intellectually honest and analytically efficient to note the historic economic value as the initial cause for the dispute but otherwise treat those islands as any other – in that they lack intrinsic tangible value. The

other main set of islands that contained economic value within themselves is that of Svalbard, where the islands contain large deposits of hydrocarbons – in this case, coal. Chapter Four, the case study on this dispute, includes a thorough treatment of the presence of this economic factor and the interconnecting factors of the dispute.

Figure Six: The Location of Maritime Economic Resources

* The image of the fish represents the reality that fisheries are found in the water; the image of the hydrocarbon molecule represents the reality that oil and natural gas are found beneath the ocean floor. (Economist 2011)

Figure Seven: Map of Global Fishing



(Rekacewicz 2005)

Figure Eight: An Example of a Fishing Village: Scalloway, Shetland, Scotland, UK

* Author's photograph (2014)

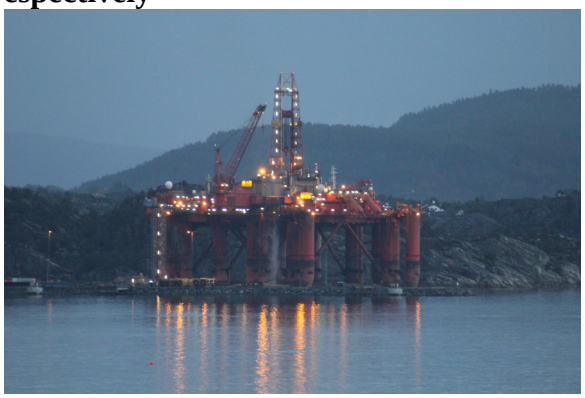
Figure Nine: An Example of a Pelagic Fishing Trawler

* Author's photograph (2014)

Figure Ten: Example of Fishing-Related Industry: Skretting, the UK's Largest Aquaculture Feeds Producer: Scalloway, Shetland, Scotland, UK

* Author's photograph (2014)

Figures Eleven and Twelve: Examples of Littoral Hydrocarbon Extraction Infrastructure: Northern Ireland and Shetland Islands, respectively



* Photographs courtesy of Meredith Purser and the author, respectively (2014)

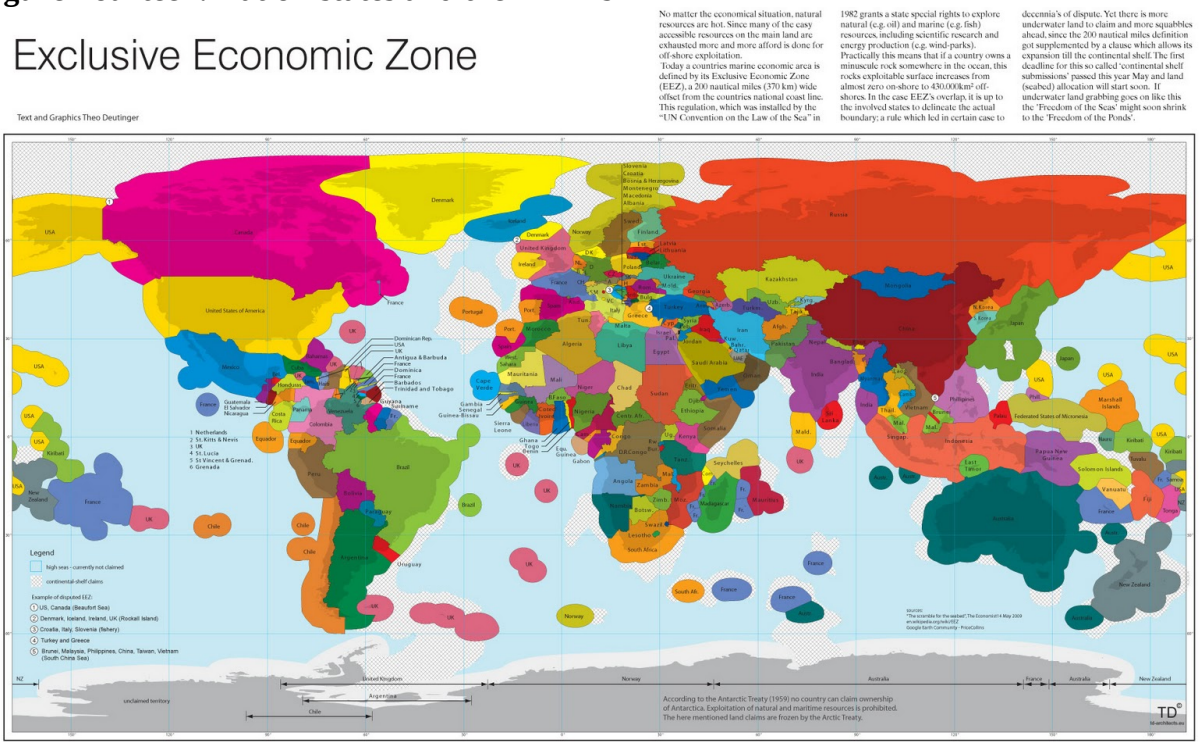
Figure Thirteen: Example of the Temporary Lodging Provided to Workers in Hydrocarbon Extraction: the Black and White Barge Serves as Floating Company Lodging

* Photograph courtesy of Meredith Purser (2014)

Yet, international law does not allow for states to claim water directly; nation-states may claim islands and EEZ (i.e. areas where only the sovereign state may extract resources) that emanate from both those islands as well as the (continental) landmass (Colombos and Higgins 1967). (Figure Fourteen shows all existing and disputed EEZs.) Each pertinent sovereign state may treat the first 12nm out from a landmass (the territorial water) as if it were the sovereign soil of that country and use the next 12nm (the contiguous zone) as a buffer area for protecting their territorial water. Beyond the continuous zone, nation-states have economic privileges for 200nm but not sovereign control: they have a monopoly on the economic benefits of any resources found there, but cannot prevent other nation-states or individuals from sailing in or through those waters.[18]

[18] Although some states – namely China, Iran, and Brazil – disagree with this interpretation of UNCLOS, this position remains a minority view; notably, Washington (which has not ratified UNCLOS), London, and Canberra all routinely conduct "Freedom of Navigation Operations" in which they sail their military ships through these claimed zones in order to highlight the freedom of the seas (Aceves 1995, Galdorisi 1996, Becker 2005).

Figure Fourteen: Nation-states and their EEZs



(Deutinger 2012)

Given the nature of coastal geography – with convex, concave, and complicated coastlines – nation-states often disagree over where their EEZs begin and end. These are the most pure type of economic disagreements that exist within MDs: claimants each seek the largest area possible where they can have exclusive rights to fishing and drilling. This type of MD is known as water delimitation and accounts for twenty-six of the modern maritime disputes, as Table One details.

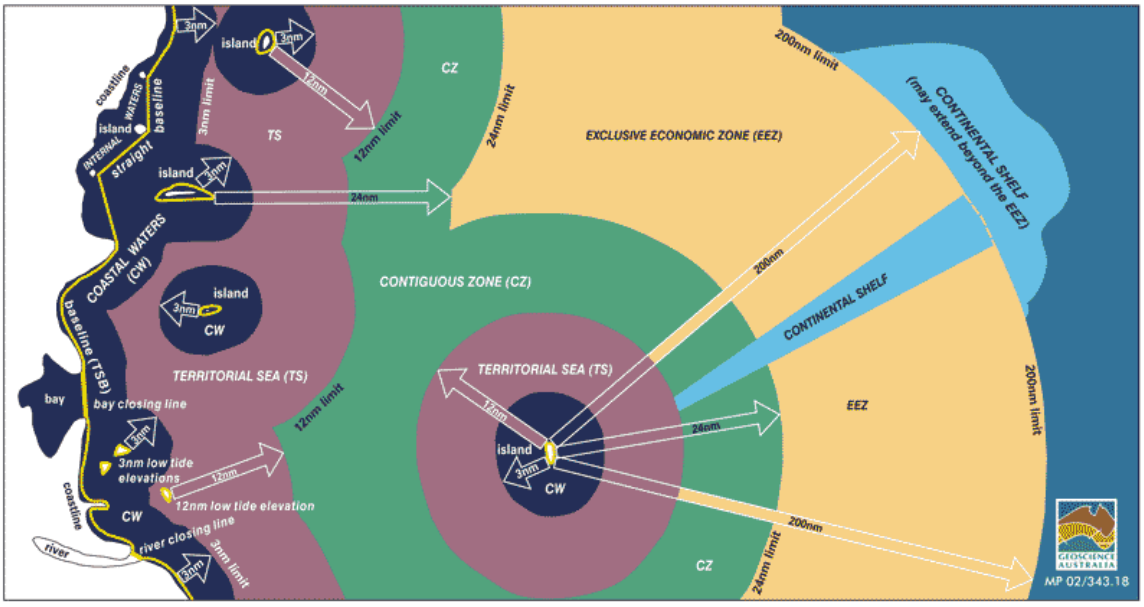
It is not just the coastline which complicates nation-states' claims to the maritime rights and privileges; it is also the ways that islands can be found scattered close to shore – as Figure Fifteen illustrates. The presence and sovereignty of offshore islands can matter:

Table One: Maritime Disputes Over Water Delimitation

Dispute Name	Claimants
Aegean Sea and Imia/Kardak Island	Greece, Turkey
Arctic Ocean	Canada, Denmark, Norway, Russia, US
Barents Dispute	Norway, Russia
Bay of Bengal	Bangladesh, Myanmar
Beaufort Sea	Canada, US
Caribbean Sea Delimitation	Barbados, Trinidad and Tobago
Chilean-Peruvian Delimitation	Peru, Chile
Dixon Entrance	Canada, US
Grisbadarna	Norway, Sweden
Guinea-Bissau and Senegal Seas	Guinea-Bissau, Senegal
Gulf of Fonseco and Conejo Island	El Salvador, Honduras
Gulf of Guinea	Cameroon, Nigeria
Gulf of Maine	Canada, US
Gulf of Piran	Croatia, Slovenia
Gulf of Sidra	Libya, Tunisia, Malta
Iceland's Southeastern Waters	UK, Iceland
Icelandic Waters	Germany, Iceland
Jan Mayen Waters	Denmark, Norway
North Atlantic Coast Fisheries	US, UK
North Sea Continental Shelf	Germany, Denmark, Netherlands
Northwest Passage	Canada, US
Norwegian Waters	Norway, UK
Strait of Juan de Fuca	Canada, US
Svalbard EEZ	Norway, Russia, Sweden, UK, US
West Philippine Sea Delimitation	China, Philippines
Yellow Sea (NLL)	North Korea, South Korea

* Disputes that are noted as "Inactive" are ones that have evidence of an official dispute, but not continuing evidence of a functional dispute. The best example of this will be the dispute over Havassa Island (between Haiti and the US), where the Haitian Constitution claims the island, but there hasn't been any evidence of a contest between the two countries over the island for (at least) several decades.

Figure Fifteen: Relationships of Maritime Features, Limits, and Zones



* In some cases the end of the continental shelf determines the end of the EEZ and not just the 200nm limit, as is addressed more fully in Chapters Four and Five (Geoscience Australia 2002)

This set of maritime laws functionally establishes a system by which coastal states can extend their EEZ – and thus their opportunity to benefit economically from the maritime environment – when they control offshore islands. Importantly, however, the location of those islands (with respect to the coastline) matters in terms of how much maritime area they add to the coastal state's EEZ. When those islands are close to the shore, they add (or subtract) relatively little size to the nation-state's EEZ. Conversely, when the islands are far from the shore, they add significantly to the size of the state's EEZ.

As noted in Chapter One, these islands are treated as indivisible: no nation-states have compromised by dividing islands between nation-states (in the past)[19] and no competing claimants seek to compromise over them now. These close islands are viewed as zero-sum

[19] Divided islands, like Borneo and Hispaniola, are both the exception – representing less than 0.001 of islands with populations – and the result of external conflicts in which external powers have divided the island as part of larger agreements (e.g., colonization).

games. Since these games happen inside the relatively larger EEZs, though, the losing claimant does not lose the entirety of an EEZ – only a relatively small fraction of what remains.

For example, the Minquiers islands are approximately eight nautical miles south of the British[20] island of Jersey and seventeen nautical miles north of Brittany, France; the British and French contest for sovereignty over these islands included a change in their respective EEZs, but a relatively small one – given the other coastal features and the overall sizes of the states' EEZ. This example illustrates the degree to which close islands have marginal effects on claimants' EEZ size: sovereignty over a close island adds slightly to the maritime area where a nation-state may fish and drill; loss of sovereignty over a close island cuts into the maritime area where a nation-state may extract resources.

In contrast, islands farther ashore (the distant islands of Type 3) offer their claimants not just a relative increase in EEZ, but a large additional area for fishing and drilling. Even a small island, like Swains Island, which is not even a sixth of a square mile in land area, provides a 200nm EEZ in every direction – giving its claimant an additional 125,600nm^2 in EEZ.[21] This type of change in EEZ, particularly in areas where fish and hydrocarbons are abundant, represents a zero-sum change for claimants: one state or another will gain exclusive rights to resource extraction there, but there will be no room for compromise or sharing of resources between claimants. As aforementioned, these islands are seen as indivisible: only one state gets sovereignty and all the economic rewards that go with it.[22] Such a windfall opportunity is fundamentally different from the economic changes that close islands represent.

[20] Technically, the Bailiwick of Jersey is a Crown Dependency and not part of the United Kingdom of Great Britain and Northern Ireland, but the International Court of Justice –and most others – ignores such distinctions (ICJ, 1953).
[21] For archipelagoes of distant islands, these additional areas can be exponentially larger – as with the Spratley Islands, for example.
[22] The exception of Svalbard will be addressed in Chapter Four.

While the broad differences are clear in cases like the Minquiers and Swains Island, it is important to establish a clear boundary between “close” and “distant” islands. As each piece of land (including islands) gets 12nm of territorial sea, islands closer than 24nm to each other have overlapping sovereignty claims. Additionally, for cases where the contested island is of contested size and status, a distant of 24nm offers simplicity in that it places the contested area within the contiguous zone of the claimant. Accordingly, it makes sense to use 24nm as the cutoff distance by which an island is considered “close;” islands farther out than 24nm are thus considered “distant.” This classification guideline allows for the typology of island dispute into broad categories of Close Island Disputes and Distant Islands disputes – as Tables Two and Three detail.

Table Two: Maritime Disputes Involving Close Islands

Dispute Name	Claimants
Banc du Geyser (Banc du Geysir)	France, Comoros, Madagascar
Beagle Islands (Picton, Lennox, and Nueva)	Chile, Argentina
Belize and its Cays	Belize, Guatemala, Honduras
Doumeira Islands	Djibouti, Eritrea
Europa Island (Île Europa)	Madagascar, France,
Hanish Islands and Zuqar	Yemen, Eritrea
Hans Island	Canada, Denmark
Hawar Islands	Qatar, Bahrain
Isla de la Juventud (Isla de Pinos)	US, Cuba
Ko Kra Islands	Malaysia, Thailand
Ko Losin	Malaysia, Thailand
Koh Wai (Poulo Wai, Wai Islands)	Cambodia, Thailand, Vietnam
Kuril Islands	Japan, Russia
Ligitan and Sipadan	Indonesia, Malaysia
Machias Seal Island	US, Canada
Matsu Islands	China, Taiwan
Miangas Island (Palmas)	US, Netherlands
Minquiers Islands and Ecrehos	France, UK
New Moore (South Talpatti)	Bangladesh, India
Quemoy (Jinmen)[23]	China, Taiwan
Savanna, Bobel, Port Royal and South Cay	Honduras, Nicaragua, El Salvador
Snake Island	Romania, Ukraine
Tunbs Islands	Iran, UAE
Tuzla Island (Тузла)	Ukraine, Russia

[23] This contested island remains part of the Sino-Taiwanese dispute and is thus not so much a freestanding dispute as it is a symptom of the larger relationship between China and Taiwan. Given this work's arguments about close island disputes – that they are symbolic and not the sort resolved through fungible resource compromises – the fact that this (and other) disputes are connected with larger international relations problems is neither problematic nor surprising.

Table Three: Maritime Disputes Involving Distant Islands

Dispute Name	Claimants
Bajo Nuevo Bank	Colombia, Jamaica, Nicaragua, US
Chagos Archipelago	Mauritius, UK
Clipperton Island	Mexico, France
Falkland Islands	Argentina, UK
Gageo Reef	China, South Korea
Isla Aves	Venezuela, Dominica
Liancourt Rocks	South Korea, Japan
Macclesfield Bank	China, Philippines
Navassa Island	Haiti, UK
Okinotori Islands	China, Japan
Paracel Islands	China, Vietnam
Pratas Islands	China, Taiwan
Rockall	Denmark, Iceland, Ireland, UK
Scarborough Shoal	China, Philippines
Senkaku Islands	China, Japan
Serrana Bank	Colombia, US
Serranilla Bank	Colombia, Honduras, Nicaragua, US
Socotra Rock	China, South Korea
South Georgia and South Sandwich Islands	Argentina, UK
South Shetland Islands	Argentina, Chile, UK
Spratly Islands	Brunei, China, Malaysia, Philippines, Vietnam, Taiwan
Swains Island	New Zealand, US

While this classification – of MDs into Water Delimitation Disputes, Close Island Disputes, and Distant Island Disputes – emerges directly from the economic claims to territory (and the intersection of international law and geography that empower nation-states to make such claims), it is a typology that has utility beyond economic motivations. On the one hand, this includes the symbolic reasons that nation-states pursue territory: interests that involve cultural, historical, and religious issues (Hassner 2003 and 2007). None of these interests are present within contested waters, but instead connect (or supposedly connect) people to specific islands. While some

nation-states and peoples have claimed historical connections to fishing in a certain area of water, for example, there is little evidence that such symbolic claims relate to exact locations. Specifically, there is no evidence that unique open-ocean spots possessed unique importance, despite the evidence that historical methods for celestial navigation offered seafarers the ability to precisely identify and return to precise at-sea locations; rather, there is only evidence that open-ocean areas were important in broad, interchangeable ways – like how any crossing of the equator was celebrated the same as any other crossing (Henningsen 1961, Lewis 1964, Dodd 1972, Finney 1974, Richardson 1977, Robinson 1998). These historical patterns remain the modern standard; for example, when Russia and China used submarines to plant flags on the seafloors of contested maritime areas, they provided evidence only of the seafloor flag and not any indication of where exactly it was (Crawford, Hanson, and Runnals 2008, Dodds 2010, Weitz 2011). Conversely, nation-states take great pains to document flags and troops on specific islands (Gallagher 1994, Lo 2003). Accordingly, states' symbolic claims are to islands and not the waters themselves (of maritime disputes).

Beyond such symbolic intangible value is what Huth calls "strategic:" the military utility of islands and waters. Given international law and the ability for all states to position their warships within another state's exclusive economic zone, contested waters themselves offer little strategic value.[24] Instead, the military utility of MDs comes from the islands themselves: the ability for nation-states' military and security organizations to place airports, artillery launchers, and intelligence-collecting equipment on islands. Yet, islands close to shore lack the ability to do little more than harass the nation-state on the mainland: the logistics of supporting a coastal

[24] Given certain changing technologies, there is some evidence that being able to sail off another country's coast does, in and of itself, grant strategic advantage (Mahnken 2011), but there is debatable utility in being able to simply sail through sea lanes. Although the ability to close sea lanes of communication is hugely important, it comes with such a global price (both literally, to the state in question, and as *casus belli*) that the so-called control of sea lanes is something largely within the purview of major navies like the American, Australian, British, and Russian navies.

island against a shore-based opponent preclude the use of the island for little more than tactical-level military operations (e.g. shelling the shore) – which the islands can neither sustain nor survive (when the mainland force responds in kind). (Figures 16-19 illustrate the changing nature of littoral defenses.)

Figure Sixteen: Traditional Littoral Defense, Ayr, Scotland

* Photo courtesy of the author

Figure Seventeen and Eighteen: Littoral defense, Lerwick, Shetland, Scotland

* Photos courtesy of the author

Figure Nineteen: Modern Littoral Defense: Multinational Military Exercise, North Atlantic, Scotland

* Photo courtesy of the author; a few of the 52 international ships and submarines participating in the largest international naval exercise, JOINT WARRIOR (Author's photograph 2014).

An example of this can be see in China's bombardments of Taipei-controlled islands during the Second Taiwan Strait Crisis (Pruessen 1991, Chang and Di 1993): despite terms like "unsinkable aircraft carrier" to describe island's abilities to facilitate power projection, islands too close to an adversary offer access without projection, exposure without opportunity.[25] Accordingly, these close islands allow for a military force to harass an opponent's force (or population), but do not change the nature of the strategic or operational relationship between maritime claimants. Extant literature reflects an accepted belief in the value of islands that can threaten a navigational closure – whether this potential navigational threat comes in the form of a state-specific quarantine or as a closure of a sea lane of communication. While the recognition of such concerns is understandable, there seems to be debate about the need for individual states to prioritize close islands as insulation against navigational threats. Given the degree to which even World War II era technology limited the utility of coastal defenses – and the centuries-old

[25] In this spirit, it is important to note that it was Taiwan (a Distant Island, according to the typology of this project) and not one of the Close Islands that was termed an "unsinkable aircraft carrier" (Ross 1997).

tradition of global naval powers protecting all international shipping routes – placing value on close islands for their ability to ensure safe passage seems unnecessary (Lapidoth 1974, Rolph 1992, Becker 2005). Notably, this is also the case for navigational concerns: if maritime claimants do not get along, their ships – and any other ship passing through the region – can still navigate without the use of a navigational aid located on such a close islands (Ueno 2000). (Figures 20-22 illustrate such navigational aids.) Conversely, distant islands play very important roles within the strategic context: they provide places to base aircraft, replenish ships, store equipment, position both offensive and defensive weapons, and operate as intelligence-collecting facilities. While distant islands are susceptible to long-range and strategic weapons (e.g. intercontinental missiles), those weapons are extremely expensive and infrequently used; the fact that distant islands are capable of being threatened by either such unique weapons – or of massive, amphibious assaults, like those that attacked Midway in World War II (Miller 2007) – makes them particularly powerful, from a strategic perspective. Additionally, the control of such distant islands is uniquely positioned to launch attacks at other states; distant islands facilitate naval blockades, interdictions, and a number of other conflict-related options. These factors help explain why the proximity of close islands makes them too vulnerable to the continental power, but the "tyranny of distance" empowers distant islands as strategic game changes (Lemke 1995). Thus, these close and distant islands have different levels of strategic utility – giving their claimants different types of strategic expectations.

Figures Twenty, Twenty-One and Twenty-Two: Uncontested Close Islands with Navigational Aids: Norway, Scotland, and Iceland, respectively

* Author's photograph (2014)

Disputes over water delimitation, close islands, and distant islands are thus seen to have very different value propositions. The reasons that nation-states pursue these MDs can be summarized for the different types of MDs as Table Four notes.

Table Four: Summary of Where Nation-States Can Expect to Find Value in MDs

	Water Delimitation	Close Islands	Distant Islands
Economic Value	Yes	No[26]	Yes*
Symbolic Value	No	Yes	Yes
Strategic Value	No	Yes	Yes

* Sovereignty over these islands allows for economic claims to surrounding waters, where the resources themselves are.

This breakdown highlights the alignment of symbolic and strategic value: they only exist where there is land to occupy. Conversely, economic value is found where there are fisheries and hydrocarbons -- meaning water delimitation disputes and distant island disputes. This can be represented in a set of traditional two-by-two tables, with Water Delimitation Disputes henceforth known as Type 1 Disputes, Close Island Disputes as Type 2 Disputes, and Distant Island Disputes as Type 3 Disputes (as shown in Tables Five and Six)

Tables Five and Six: Classification of Maritime Disputes

	No Territory to Occupy	Territory to Occupy
No Economic Value	Unrealized Maritime Claims	Close Islands
Economic Value	Water Delimitation	Distant Islands

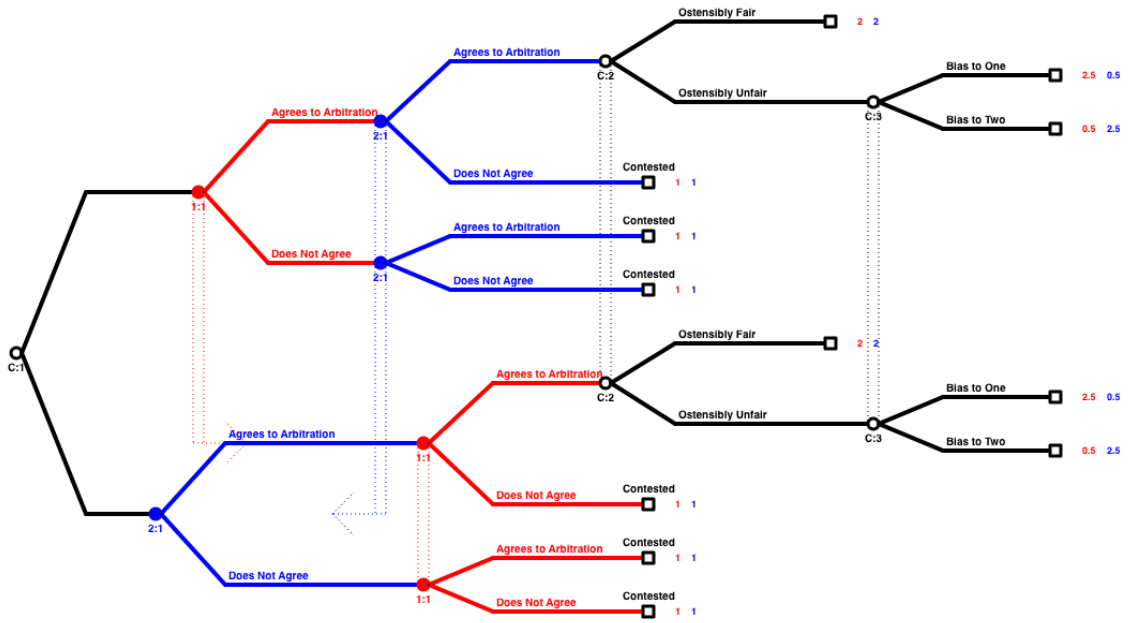
	No Territory to Occupy	Territory to Occupy
No Economic Value	Type 0	Type 2
Economic Value	Type 1	Type 3

[26] While UNCLOS does not deny such coastal islands any claim to surrounding resources, these close islands lack the kind of unilateral claim to resources that the distant islands possess. So, when a claimant argues that a coastal island increases that state's claim to contested fisheries, for example, this is not wrong, but it overstates the legal utility of that island for (ostensibly) political purposes – as will be addressed more in Chapter Three.

Type 1 Disputes: Water Delimitation

Type 1 disputes are economic; they involve disagreements over how to compromise. Claimants do not approach these disputes as zero-sum: they know there will have to be some division of desired EEZ space. Even when claimants are concerned about the resolution process being biased (as described in Chapter One), the result is only one of a claimant getting a slight bit less or more of an already-divided resource – as Figure Twenty-Three illustrates.

Figure Twenty-Three: Type One (Water Delimitation) Pathways



These disputes have limited utility in terms of domestic audiences because there is no physical manifestation of symbolic loss: there is no physical flashpoint where one side can place a flag at the other's expense. So, while the domestic strength of the claimants' government might matter some – as bad press coverage of a mismanaged international situation – any measures of that will be less important for Type 1 (than other disputes). Instead, these disputes

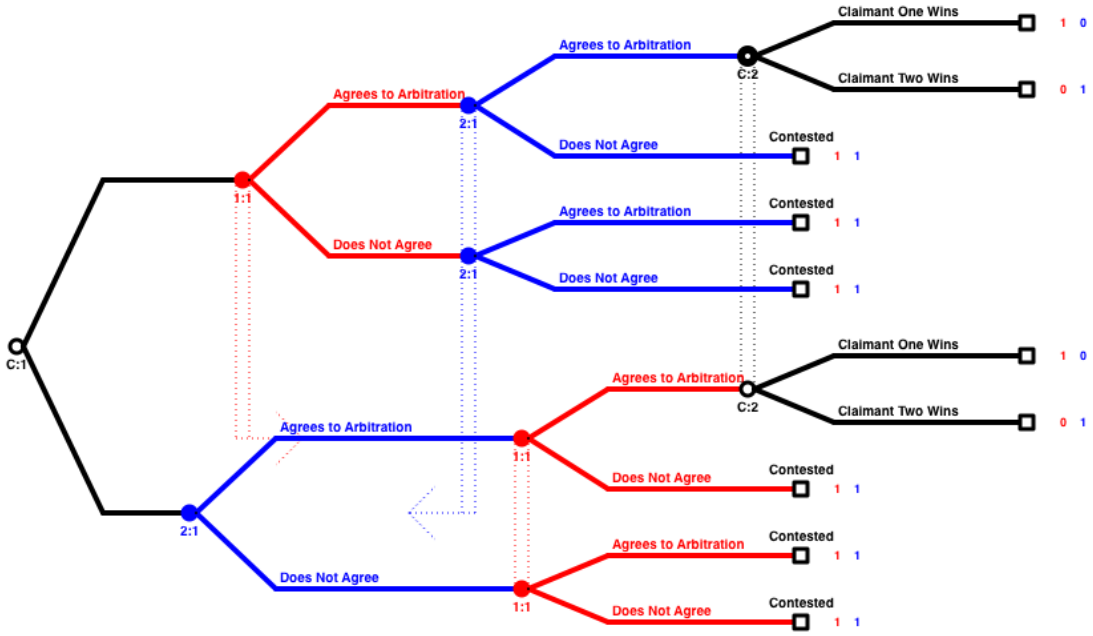
are a bargaining story: the claimants must simply agree on a mechanism for compromise. Unlike with the Type 2 and Type 3 disputes, here the claimants have no expectation of indivisibility; instead, they are exercises in the sort of fungibility and side-payments that Fearon describes. Predicting these MDs persistence, escalation and resolution involves analyzing how claimants to a Type 1 dispute bargain over the economic benefits – specifically, their access to mutually trusted parties, states, or institutions. Given the aforementioned importance of International Organization (IO) for the process of resolving MDs, understanding Type 1 resolution (or non-resolution) involves understanding claimants' access (or perceived access) to objective arbitration because it is only in those mechanisms – as noted in Chapter One – that these disputes can get resolved. As parties gain increased access to shared arbiters (e.g. allies), their chances of finding resolution increase. Importantly, the economic value of these disputes also seems to impact claimants' willingness to pursue these compromises: as the economic stake of the disputed territory increases (e.g. with the presence of oil), the chances of resolution decrease – as claimants delay the perceived loss of such potential income. While some could argue that these costs of deadlocks also increase, the stakes for these disputes are too high for claimants to risk losing. Thus, the relative stakes of the dispute and the access to resolution mechanisms explain intra-type variation in both outcome and duration.

Type 2 Disputes: Close Islands

Type 2 disputes are harassing disputes of no economic value and with no expectation of compromise. They are symbolic zero-sum games where claimants have no substantive economic gains (or losses) that they (or international arbitration mechanism) could attempt to translate into

side-payments to facilitate resolution: one state gets the symbolic victory at another's expense. Figure Twenty-Four illustrates this.

Figure Twenty Four Type Two (Close Island) Dispute Pathways



Importantly, these islands do not have tangible value, but they can have significant intangible value – making them important to domestic audiences. Predicting their resolution involves understanding the domestic pressures of the claimants and how they are approaching the intangible nature of the dispute. With the exception of Fravel (2005, 2008), extant literature on the nature of territorial resolution finds that nation-states have been more willing (or, at least, more able) to make concessions in order to resolve their disputes when their respective governments are domestically secure (Huth and Allee 2002, Wiegand 2011): Fravel, instead, argues that China made trades for territory in ways that made Beijing seem stronger to the

Chinese population; he argued that Beijing bargained when it was domestically weak in order to gain strength. To be clear: the other scholars argue that nation-states seek to make progress on territorial disputes from a position of strength, but Fravel argues that China has done the opposite. Notably, however, both arguments involve the analysis of territory that allowed for compromise: there was give and take across the border; such a back-and-forth is not possible with a maritime feature, which is (under the current UNCLOS system) demonstrably only one state's or another's.

What seems true for land disputes has applicability to Type 2 disputes, as these are disagreements over small pieces of land just off another country's coast. Without economic value,[27] these islands represent the very type of flashpoints that can prove costly to a national leadership concerned with audience costs: occupied by only one side or another, these close islands – particularly when festooned with flags and military assets of another state – can serve as powerful symbolic pieces of ineffective government policy.[28] As such, nation-states find political benefit from the resolution of these disputes, but risk paying publicly for failed efforts at resolution in that such a process could legitimate the other claimant's position and thus make permanent an potentially embarrassing situation. Accordingly, this dissertation argues that claimants to Type 2 disputes are only going to engage in efforts at resolution when their respective governments have the kind of regime legitimacy that would allow for them to risk what could be costly (at least, in the short term).

To understand Type 2 resolution, one must understanding claimants' belief in the intangible value of MDs and their own ability to manage the potential audience costs of resolution. This

[27] As is detailed later in this work, these close islands have some impact on EEZs, but only very little: "Islands have a limited role in resolving maritime boundary disputes. Islands can generate maritime zones, but they do not generate full zones when they are competing directly against continental land areas" (Van Dyke 1996, p400).
[28] Just as Quemoy never posed a threat to Mainland China, these close islands have limited military utility to offer strategic threats, as addressed earlier in this work.

does not involve access to international arbitration. Unlike Type 1 disputes, which are an international story, Type 2 disputes are a story of domestic factors: predicting their resolution involves understanding the intangible value that claimants place on the disputed islands and whether or not the claimants are domestically strong enough to engage in the policy steps necessary for resolving the dispute – whether that means working directly with the other claimant to resolve the dispute bilaterally or improving relations with the other claimant such that the dispute itself loses its intangible value.[29] Since the claimant states must both be strong at the same time, the causal story is one of aligned domestic strength: as claimants' aligned domestic strength increases, so does their likelihood of resolution.

To be clear, these disputes are the result of strained relationships between two nation-states: Type 2 Disputes are the *result* of a problematic relationship and not the *cause* of a problematic relationship. These disputes reflect the relationship instead of driving it. This distinction is important to appreciate both in terms of theoretical models and for the policy-relevant implications that can be drawn from them. For the former – the relevance to the theoretical model of MD behavior – this nature of Type 2 disputes as being symptomatic of the larger relationship between the claimants –means that an entirely different set of factors must be in alignment for these disputes to get resolved. This is not an arbitration, access, or fungibility story; it's a symbolic story of neighbors and rivals, of the intangible value they place on the dispute, and on their having the domestic political strength and political will to bury the hatchet that these Type 2 disputes represent. Of note, there is no quantitative measure of such intangible

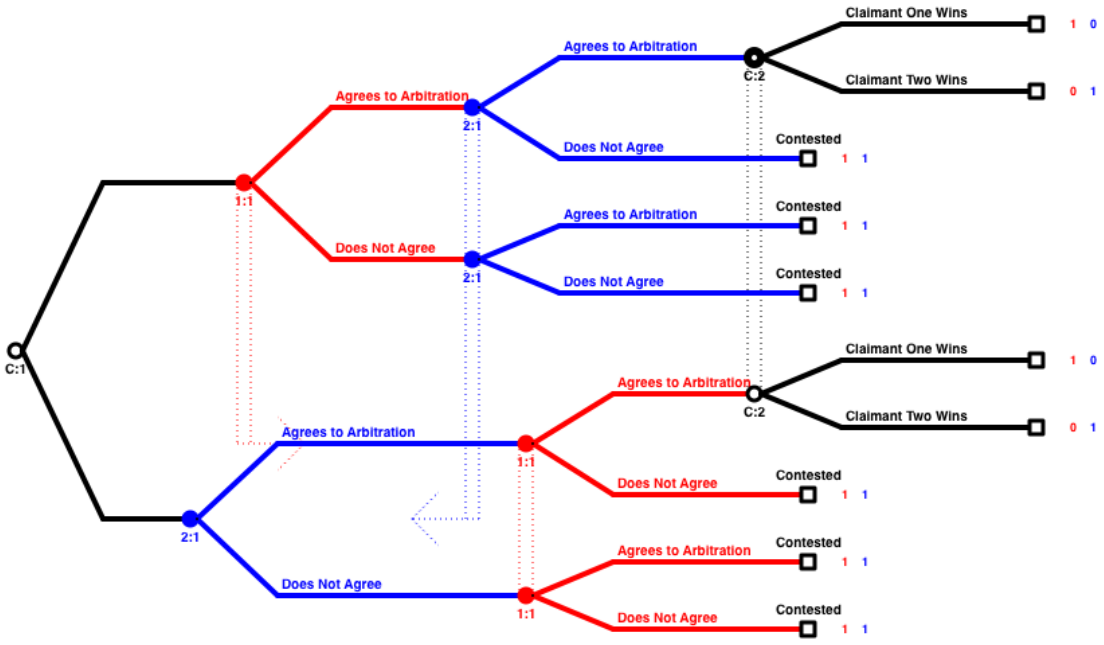
[29] Given the various findings about the costs of maintaining a territorial dispute (e.g. Simmons 2005), this project's assumption is that nation-states prefer to resolve their disputes. Thus, the analytical effort here is on determining when sufficient conditions exist for these states to resolve these disputes. This does not presume that incumbent leaders – and various other Level II leaders – would all benefit from resolution; nor does this assume that all leaders would work towards this goal. Instead, this project simply begins from the intellectual starting position that resolution is the end goal, but recognizes that others have incentives to prevent or delay that.

value. Accordingly, Chapter Three uses a proxy for domestic strength because the claimant government's legitimacy will play a key role in determining whether or not nation-states are willing to attempt to change the symbolic value assigned to an MD.

Type 3 Disputes: Distant Islands

The last type of maritime disputes, distant islands, involves the potential for significant economic, symbolic, and strategic rewards. In addition to offering uniquely powerful strategic leverage over the region, Type 3 disputes offer their (future) sovereign both large financial rewards as well as symbolic legitimacy. Accordingly, understanding the likelihood of Type 3 resolution requires understanding the international factors, the economic worth of the claimed territory, and the domestic factors (i.e. the intangible value that the claimants assign to these contested features). Notably, claimants approach these disputed areas as indivisible – much like with Type Two Disputes – where the game is zero-sum, but with massive economic rewards the party fortunate enough to get their claim validated (by ostensibly untrustworthy international mechanisms). Figure Twenty-Five helps illustrate the process for this MD type; while this figure is the same as the one for Type 2 disputes, the payoffs are not just symbolic – although they are also that: with Type 3 disputes, there are important tangible incentives in terms of fisheries and hydrocarbons.

Figure Twenty-Five: Type Three (Distant Island) Dispute Pathways



Given the nature of the pay-offs, both tangible and intangible, *Type 3 disputes require that both international and domestic factors align for resolution* --- as they are a combination of the tangible factors of Type 1 and the intangible factors of Type 2. Since these distant island disputes do require both domestic and international stages of the Putnam's Two Level games to align, they are much more difficult to resolve – as the "win-sets" are more difficult to get. Whereas Type 1 disputes are economic disputes awaiting an arbitration mechanism and Type 2 disputes are symbolic disputes awaiting an improvement in the relationship of the claimants, Type 3 disputes are a combination of both of these stories: disputes over distant islands have tangible and intangible significance – making them both a cause of interstate conflict and a reflection of it.

The Utility of the Typology:

This typology combines realities of geography, patterns of international law, and extant findings in political science in order to clarify both the primary nature of maritime disputes as well as their mechanisms of resolution. Specifically, Type 1 disputes require international factors to align for the division of tangible goods, Type 2 disputes require domestic factors to align for the treatment of intangible goods, and Type 3 disputes require both international and domestic factors to align. To delimit contested waters, claimants must trust a third-party to equally divide the economic spoils; to address symbolically valuable islands, claimants must have the domestic legitimacy to manage the audience costs of the sensitive issue;[30] to address distant islands with both tangible and intangible value, both those international and domestic factors must align. Table Seven summarizes these factors according to dispute type and the primary Game Level at which the dispute develops.

Table Seven: MD Types and Two Level Games

Type of Maritime Disputes	Geographical Feature	Primary Game Level
Type 1	Water Delimitation	International
Type 2	Close Islands	Domestic
Type 3	Distant Islands	International and Domestic

In the next chapter, these expectations are tested quantitatively. Where the econometrics tools are least helpful, additional chapters will supplement this analysis with qualitative efforts to test this MD typology's relevance to duration and resolution.

[30] While the qualitative chapters make efforts to address intangible value, Chapter Three accepts that there are not quantifiable measures for intangible value and instead measures the domestic legitimacy necessary for managing highly-salient but intangible issues like MDs.

Chapter Three: Quantitative Analysis

This chapter offers a quantitative analysis of all maritime disputes between 1946 and 2014. Before getting into the regressions and advanced econometrics, it is best to begin with a description of the population of MDs and the specific steps that were examined.

Table Eight offers a snapshot of the contemporary status of MDs: Type 1 disputes have an 84.62% chance of resolution, Type 2 disputes have a 83.33% chance of resolution, and Type 3 disputes have a much lower chance of resolution at 38.1%.

Table Eight: Resolved vs. Unresolved MDs by Type

	Geographical Features	Resolved	Unresolved
Type 1	Water Delimitation	22	4
Type 2	Close Islands	20	4
Type 3	Distant Islands	8	13

While this overview helps address initial expectations of which types of disputes are more likely to get resolved than remain contested, a duration model helps illustrate the patterns. In examining the population of all maritime disputes from 1946 to 2014 (the years for which the data can be quantified), there are statistically significant differences (as are detailed later in this chapter). For example, Table Nine highlights how the first quarter of Type 1 disputes were resolved almost a decade sooner than the first 25% of Type 2 disputes, which were resolved five years sooner than the same percentage of Type 3 disputes.

Table Nine: Duration Model of the Different Dispute Types

	25%	50%	75%
Type 1	1999	2009	2013
Type 2	2008	2013	---
Type 3	2013	---	---

These preliminary findings help support key claims of this project: that there are different types of MDs and that they have different resolution rates. Specifically, water delimitation disputes are almost all resolved, close island disputes are only slightly less resolved, and distant island disputes are the least resolved. There are additional details and models below for intra-type behavior and the statistical significance of specific explanatory variables.

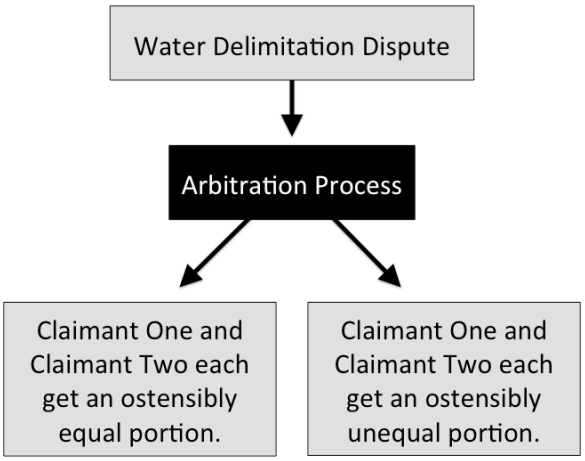
Of note, these are descriptions of the entire population of these MDs. When one differentiates which disputes are hotly contested from those that are simply contested, the findings are all the more striking: none of the hotly contested disputes have actually been resolved yet. This finding leads to important preliminary conclusions about which types have hotly contested disputes and which ones are simple, legal disagreements over boundaries and processes of resource extraction. Such issues are best explored by examining each dispute type.

Type 1 Disputes: Water Delimitation

These bargaining stories offer claimants relatively greater or lesser access to economic rewards – in terms of fisheries and hydrocarbons – and include no symbolic or strategic significance to threaten nation-states' intangible claims of domestic legitimacy. To simplify the

above figures, with this type of dispute, there are only two possible outcomes, as Figure Twenty-Six illustrates. [31]

Figure Twenty-Six: Type One Outcomes



While there can be bias and there has been concern over the politics of these resolutions, this is a matter of degree: Type 1 claimants go into the arbitration process knowing that they are going to get at least some measure of the contested waters. This expectation certainly contributes to claimants' willingness to engage in arbitration and helps explain the high rate of Type 1 resolution – as Table Ten details.

[31] These simplified figures, Figures 26, 27, and 28 are here to illustrate the binary nature of the results – regardless of the elaborate processes that the game theory trees illustrate in the previous chapter: complicated and sometimes counter-intuitive processes matter, but so the outcomes and it's the simple zero-sum nature of the outcomes that these figures intend to clarify.

Table Ten: Type One Disputes and Their Status

Dispute Name	Claimants	Resolution Year
		If Official
Aegean Sea and Imia/Kardak Island[32]	Greece, Turkey	
Arctic Ocean	Canada, Denmark, Norway, Russia, US	
Barents Dispute	Norway, Russia	2010
Bay of Bengal	Bangladesh, Myanmar	2012
Beaufort Sea	Canada, US	Inactive*
Caribbean Sea Delimitation	Barbados, Trinidad and Tobago	2006
Chilean-Peruvian Delimitation	Peru, Chile	2014
Dixon Entrance	Canada, US	Inactive
Grisbadarna	Norway, Sweden	1909
Guinea-Bissau and Senegal Seas	Guinea-Bissau, Senegal	1990
Gulf of Fonseco and Conejo Island	El Salvador, Honduras	1986
Gulf of Guinea	Cameroon, Nigeria	2002
Gulf of Maine	Canada, US	1984
Gulf of Piran	Croatia, Slovenia	2011
Gulf of Sidra	Libya, Tunisia, Malta	1985
Iceland's Southeastern Waters	UK, Iceland	1972
Icelandic Waters	Germany, Iceland	1972
Jan Mayen Waters	Denmark, Norway	1993
North Atlantic Coast Fisheries	US, UK	1910
North Sea Continental Shelf	Germany, Denmark, Netherlands	1969
Northwest Passage	Canada, US	Inactive
Norwegian Waters	Norway, UK	1951
Strait of Juan de Fuca	Canada, US	Inactive
Svalbard EEZ	Norway, Russia, Sweden, UK, US	Inactive
West Philippine Sea Delimitation	China, Philippines	
Yellow Sea (NLL)	North Korea, South Korea	

[32] As is detailed in Appendix Two, some of these disputes, like this one in the Aegean Sea are difficult to categorize. This dispute is ultimately placed here in Type 1 because of how the waters themselves seem to be contested more than the above-water features. While this is a subjective decision based on the claimants' diplomatic claims, public statements, and observed behavior (e.g., boats shouldering each other in contested waters instead of the type of flag-planting seen on contested islands in other MDs), classifying this dispute as Type 1 seems the most defensible. For context, the claimants do not agree on the nature or terms of the disagreement (Kariotis 1990, Van Dyke 1996); Istanbul denies that Greece even has grounds to make a claim as "the Greek islands are mere 'protuberances' of the Turkish continental shelf" (Kariotis 1990, p3). Notably, "[t]his Turkish position is legally unsupportable because it asserts that the dispute is not one of delimitation at all, but one of outright denial of any entitlement" (.ibid). Since Athens asserts a dispute over delimitation and Istanbul rejects that claim out of hand, it seemed intellectually honest to categorize this as a Type 1 dispute.

Notably, the only four of these disputes that have not gotten resolved are the ones that are debatably not part of this category.[33] Most important, the disputes over the Arctic and the Western Philippine Sea are part of larger disputes that include distant islands – and are dealt with conceptually in Chapters Six and Seven.[34] (They are only included here because some claimants have pursued them as simple water delimitation disputes and thus intellectual rigor demanded their inclusion.) The other two unresolved disputes listed here are complex disputes involving close islands – but the claimants to these disputes have used the language and legal procedures associated with water delimitation instead of close islands; this seems to be partly because these disputes emerged from armistice agreements and partly because both claimants for both of the disputes have largely militarized the small islands involved in these disputes. Notably, these two disputes reflect the residual affects of a conflict: Turkey and Greece fought over this contested space, as North and South Korea fought over the Yellow Sea around what is now known as the Northern Limit Line (NLL) which is illustrated in Figure Twenty-Seven. While these two disputes have thus previously been hotly contested, they are not any more.

Regardless of the specifics of the individual outliers, what one draws from this population of Type 1 dispute is that they only linger when there are other factors at play – like connected disputes, armistices, or other complicating factors that prevent the aforementioned Type 1 process from actually playing out as it is described. Table 11 summarizes the quantifiable elements of these disputes and their explanatory variables.

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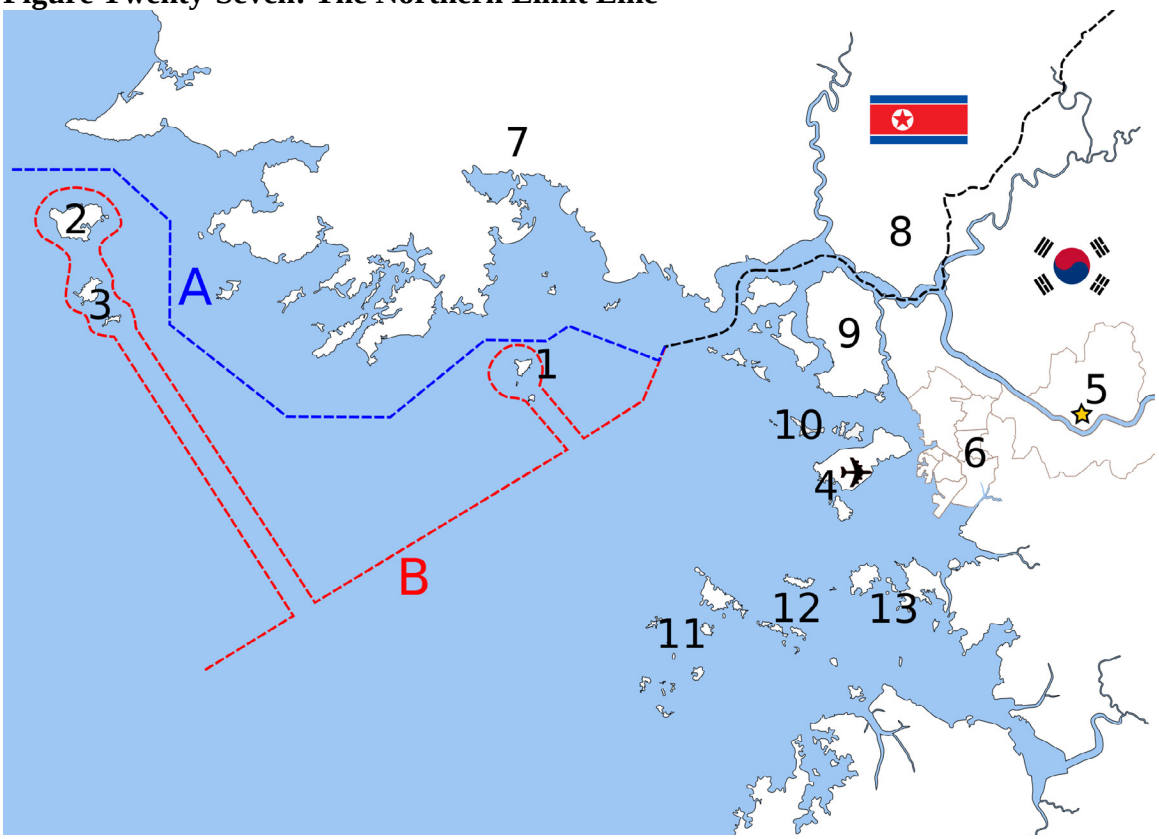
[33] Aside from the aforementioned issues with the Yellow Sea, there is also the complicated nature of the Aegean working arrangement. Specifically, although it could not be argued that this Greco-Turkish MD has been resolved or even gone inactive (Kariotis 1990), it is important to note that these claimants have worked out an operational arrangement: "In fact, it could be argued that Greece and Turkey have established a de facto joint use zone, particularly in the northern sector of the Aegean, where military exercises, navigation, and fishing, have been carried out by each country without interference by the other" (Van Dyke 1996, p401).

[34] Some of the disputes listed here as Inactive are officially part of the Arctic disputes and their ongoing processes.

Figure Twenty-Seven: The Northern Limit Line



(Tomchen1989 2010)

Table Eleven: Type One Disputes, Presence of Expected Resources, and Status.

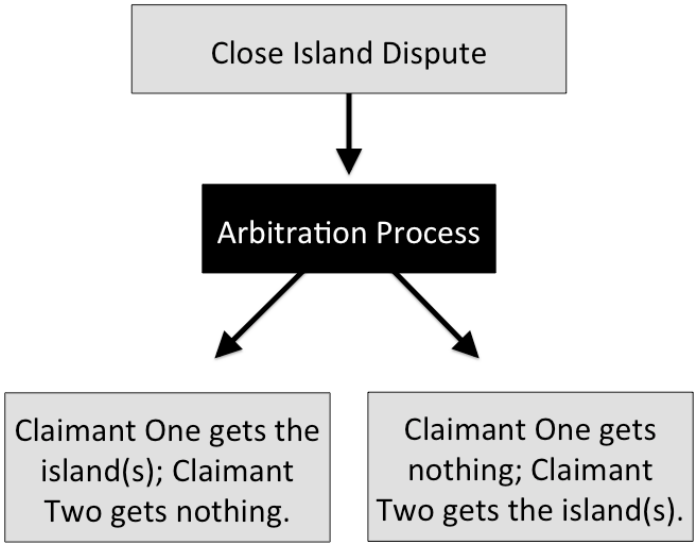
Type 1 Disputes	Resolved	Unresolved
No contested resources	6	1
Fisheries	16	2
Hydrocarbons	5	2

Type 2: Close Island Disputes

These disputes are symbolic, zero-sum games that seem to reflect the existing relationship of the claimants (instead of determining it). The participating claimants decide on the intangible value of these contested islands – not outside measures of potential economic utility or anything else; these are disputes that matter to domestic audiences and the claimant states' legitimacy. While different strategic decisions can be made, the outcomes for Type 2 disputes are simple:

one claimant wins the contested island and the other claimant gets nothing, as Figure Twenty-Eight illustrates.

Figure Twenty-Eight: Type Two Outcomes



Much like with Type 1 disputes, most of these disputes are all resolved – except for the four disputes that arguably do not belong to this category or have extenuating circumstance – as Table 12 details. (Please note that these two types have different duration models and follow different survival timelines so there is no argument that the disputes are one type.) One of these arguably does not belong here: the Hans Island dispute is properly included in a larger Type 3 dispute over the Arctic and how it is managed. The other three – the two disputes over China's offshore islands and MD between Japan and Russia over the Kurils – are part of larger political models; the former involves the Taiwan dispute and the latter involves a maritime arrangement already codified in international law (or laws, as the various post-WWII treaties have now been treated). What these additional circumstances means is that the claimants cannot simply work to resolve these disputes on their own through existing international mechanisms: for the former, Taiwan

cannot participate (as it is not recognized by UNCLOS) and for the latter Japan has already "lost" but objects. Regardless of the specifics, the significance is that these four Type 2 disputes cannot follow the previously described models. (For further treatment of the Arctic concerns: see Chapter Five.) A summary of the key findings for this type is detailed in Table 13.

Table Twelve: Type Two Disputes and Their Status

Dispute Name	Claimants	Resolution Year
		If Official
Banc du Geyser (Banc du Geysir)	France, Comoros, Madagascar	Inactive
Beagle Islands (Picton, Lennox, and Nueva)	Chile, Argentina	1984
Belize and its Cays	Belize, Guatemala, Honduras	Inactive
Doumeira Islands	Djibouti, Eritrea	Inactive
Europa Island (Île Europa)	Madagascar, France	Inactive
Hanish Islands and Zuqar	Yemen, Eritrea	1999
Hans Island	Canada, Denmark	
Hawar Islands	Qatar, Bahrain	2001
Isla de la Juventud (Isla de Pinos)	US, Cuba	1925
Ko Kra Islands	Malaysia, Thailand	Inactive
Ko Losin	Malaysia, Thailand	Inactive
Koh Wai (Poulo Wai, Wai Islands)	Cambodia, Thailand, Vietnam	Inactive
Kuril Islands	Japan, Russia	
Ligitan and Sipadan	Indonesia, Malaysia	2002
Machias Seal Island	US, Canada	Inactive
Matsu Islands	China, Taiwan	
Miangas Island (Palmas)	US, Netherlands	2005
Minquiers Islands and Ecrehos	France, UK	1953
New Moore (South Talpatti)	Bangladesh, India	2014
Quemoy (Jinmen)	China, Taiwan	
Savanna, Bobel, Port Royal and South Cay	Honduras, Nicaragua, El Salvador	2007
Snake Island	Romania, Ukraine	2009
Tunbs Islands	Iran, UAE	Inactive
Tuzla Island	Ukraine, Russia	Inactive

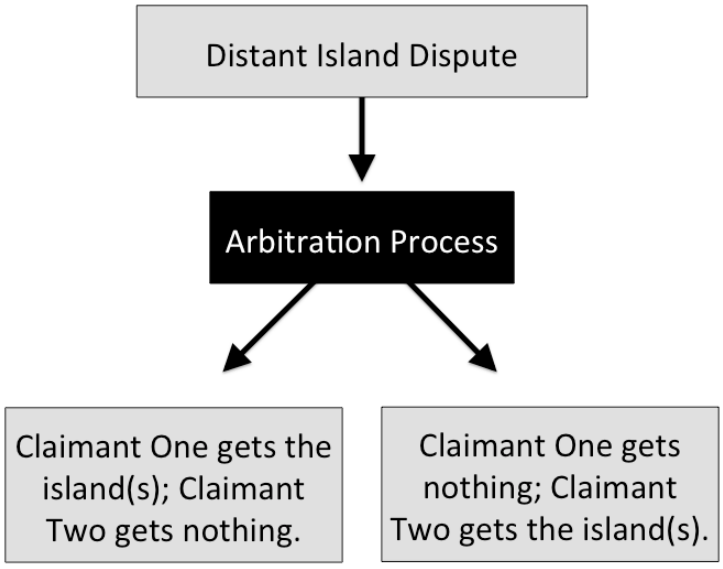
Table Thirteen: Type Two disputes, presence of expected resources, and status.

Type 2 Disputes	Resolved	Unresolved
No contested resources	16	4
Fisheries	3	0
Hydrocarbons	2	0

Type 3: Distant Island Disputes

These disputes are symbolic, zero-sum games that seem to reflect the existing relationship of the claimants (instead of determining it). Figure Twenty-Nine, a simplified version of the above strategic game model helps illustrate how these disputes can develop.

Figure Twenty-Nine: Type Three Outcomes



The individual disputes that fall within this category – and their ultimate result (or contemporary status) are detailed in Table 14.

Table Fourteen: Type Three Disputes and Their Status

Dispute Name	Claimants	Resolution Year
		If Official
Bajo Nuevo Bank	Colombia, Jamaica, Nicaragua, US	Inactive
Chagos Archipelago	Mauritius, UK	
Clipperton Island	Mexico, France	1931
Falkland Islands	Argentina, UK	
Gageo Reef	China, South Korea	
Isla Aves	Venezuela, Dominica	Inactive
Liancourt Rocks	South Korea, Japan	
Macclesfield Bank	China, Philippines	
Navassa Island	Haiti, UK	Inactive
Okinotori Islands	China, Japan	
Paracel Islands	China, Vietnam	
Pratas Islands	China, Taiwan	
Rockall	Denmark, Iceland, Ireland, UK	2014
Scarborough Shoal	China, Philippines	
Senkaku Islands	China, Japan	
Serrana Bank	Colombia, US	1981
Serranilla Bank	Colombia, Honduras, Nicaragua, US	2012
Socotra Rock	China, South Korea	
South Georgia and South Sandwich Islands	Argentina, UK	
South Shetland Islands	Argentina, Chile, UK	
Spratly Islands	Brunei, China, Malaysia, Philippines, Vietnam, Taiwan	
Swains Island	New Zealand, US	1981

All of the unresolved disputes here are those that could be considered hotly contested. Please note that much of these disputes are addressed qualitatively in Chapter Four and substantively in Chapter Five. Regardless, some broad observations can be made about these individual disputes, as Table 15 shows.

Table Fifteen: Type Three Disputes, Presence of Expected Resources, and Status

Type 3 Disputes	Resolved	Unresolved
No contested resources	5	0
Fisheries	3	14
Hydrocarbons	1	6

While this overview of MD types and the current status of the individual disputes within each of those types begins to illustrate certain patterns and lead to generalizable conclusions, specific theories must be rigorously and methodologically tested.

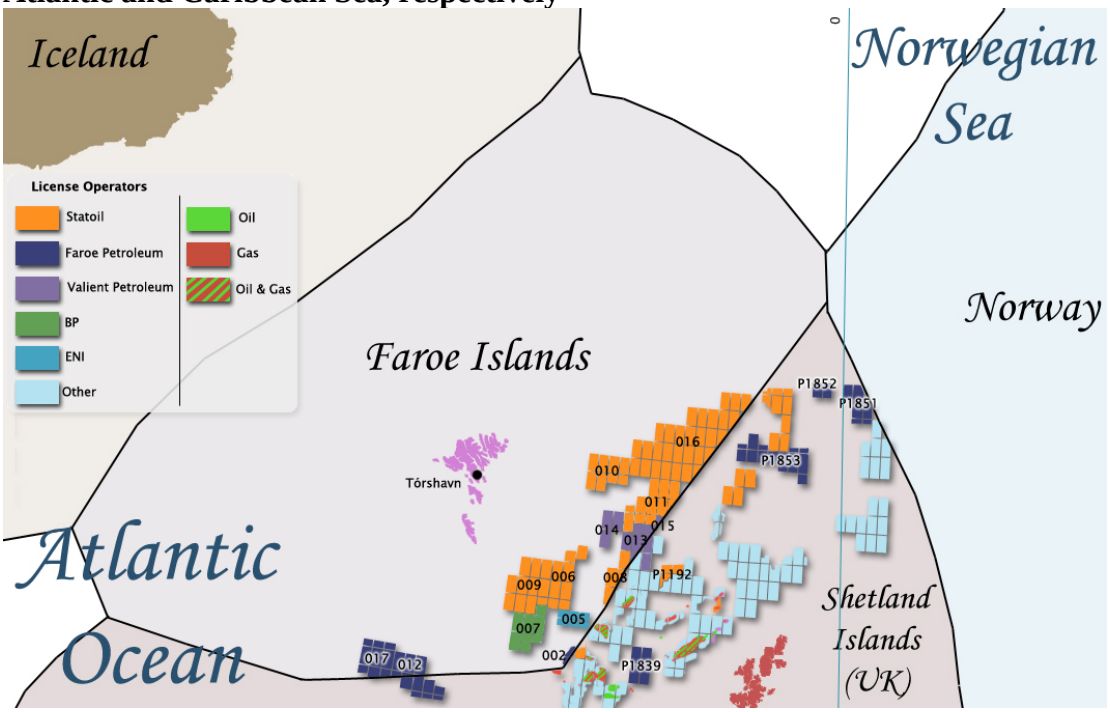
Methods:

This project argues that there are three distinct types of MDs and that the individual disputes in those categories are differently affected by identifiable factors: different causal mechanisms matter for resolution. Those international and domestic factors include: the tangible worth of the contested maritime area, the claimants' shared access to a mutually-trusted international mechanism of resolution, and the intangible value of the contested areas.

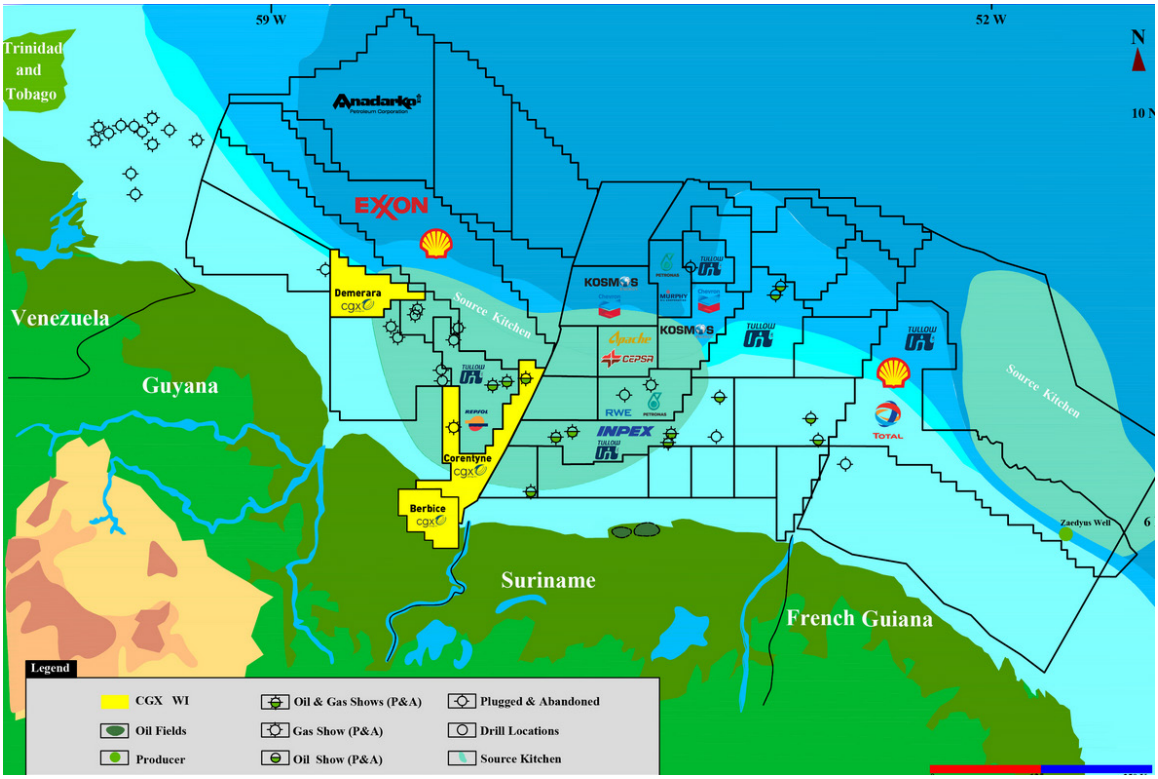
The tangible value of the dispute matters for all three types of disputes and is measured here with two dichotomous variables that note the presence (or absence) of hydrocarbons and fisheries, respectively. While these different types of resources can have broad ranges of economic worth, the different ranges – of hydrocarbons and fisheries, respectively – tend not to overlap; instead, they represent fundamentally different levels of income for the claimant nation-state. Additionally, they appeal to different constituencies and matter for different types of policy concerns (i.e. energy security and food security). These different variables thus not only capture the type of economic opportunity (e.g. for fishing communities along the coast versus industrial interests), but also the scale of it (i.e. oil and natural gas are significantly more profitable than fisheries). Notably, close islands, as aforementioned, do not offer unique EEZs to their claimants, but offer a small difference in terms of increasing the existing EEZ (or decreasing it, respectively); accordingly, while some of the language of this project treats Type 2 disputes as if they have no economic value, there is sometimes a measurable amount of

hydrocarbons or fisheries with these disputes and thus there should be a small but measurable impact for these two variables. These variables were hand-coded for this unique dataset based on an exhaustive review of legal documents, oil and natural gas charts, fisheries maps, international treaties, and peer-reviewed journals. (See Figures 30 and 31 for stylized examples of offshore hydrocarbon blocks and the companies to which they have been contracted.) These variables are called “hydrocarbons” and “fisheries” and are either coded either zero (no evidence of the resource) or one (evidence of the resource).

Figures Thirty and Thirty-One: Stylized Examples of Offshore Drilling Blocks: North Atlantic and Caribbean Sea, respectively



(Arctic Econ, 2012b)



(GT Mosquito 2015)

The second factor to test was the claimants' access to an international organization or other third-party actor that could be trusted to arbitrate, adjudicate, or resolve the dispute. This level of access to mutually-trusted parties was represented with a proxy: Polity scores for each claimant in every dispute-year). In short, there is an abundance of research which illustrates that states at different levels of democratization share different levels of membership and international acceptance; as such, it is reasonable to believe that states' degrees of democracy provide a measure of access to mutually-trusted arbiters. Specifically, when all the claimants possessed Polity scores of less than negative six, they are marked as Autocracies; when they are all above six, they are marked as Democracies; when they are all in between, they are marked as Anocracies. Dispute-years in which the claimants had mixed Polity were the reference category.

The third factor to test was intangible value that the disputes had for the claimant governments and their domestic audiences. As aforementioned, this is not a quantifiable concern; despite significant work on TD and MD salience, there were no yearly measures for all claimants and so an alternate effort was pursued for quantitatively analyzing this factor. Since this tangible value is something that can change – as claimants have decided to compromise or even abandon claims altogether – analysis shifted to the factors that allow for such changes, or that possibly even cause them to change. A thorough analysis of all the factors that Putnam highlights as Level II concerns (e.g., number and identify of veto players) did not seem appropriate for simply tracking whether or not MD claimants were able to change (or manage) the intangible value of a maritime claimant. For context, there are unresolved debates about the directionality of MD symbolism: some argue that the intangible value of MDs changes because the government drives change (e.g., Beijing creates, manages, and mobilizes anti-Japanese sentiment over the Senkakus); some argue that such symbolism and salience comes from popular opinion (e.g., Beijing responds to anti-Japanese sentiment amongst the Chinese citizenry); some argue that there is a combination of both effects and that directionality is impossible to confirm. Specifically, it does not seem that it will always be possible to tell when a government is inciting the population over an issue like maritime symbolism and when a government is responding to a popular opinions. Even in transparent, democratic societies, it is difficult to tell when a movement is "grassroots" and when it is "astro-turf;" accordingly, it is extremely difficult to make such distinctions for cases like Beijing's management of anti-Japanese sentiment over the Senkaku islands. Since the directionality of this phenomenon matters less for this dissertation's analysis of MDs than does the claimant government's ability to enter into an arbitration process over the MD – and thus commit resources either to redirected popular sentiment or to manage the

impending pushback over the potential "loss" of sovereignty that such arbitration might produce. Accordingly, this third factor will be quantified as a measure of when all the claimant governments have the domestic legitimacy to engage in such an endeavor. Specifically, since this work argues that some MDs are symbolic and are not about the trading of fungible goods but are instead discussion of symbolic sacrifices, the claimants that are entering into these negotiations must have the domestic legitimacy that makes them strong enough to enter into these international discussions in the first place. That argument operates under the assumption that states want to resolve these disputes; then, states will only make progress on MDs when both governments have domestic strength. Under the other assumption, that states benefit from having these disputes and only attract attention to these disputes in order to distract their populations from other problems (i.e. the diversionary theory of war argument), then claimants will only make progress on their MDs when they have low domestic strength. Regardless of directionality, the variable coded for this dataset is Aligned Domestic Strength (ADS): when all the claimants had Gross Domestic Product (GDP) growth of four percent or better, the dispute was marked as having ADS for the year.[35] To capture the reality that arbitration efforts take time, an additional measure of this domestic situation was coded: when all the claimants had ADS for three years or more, the dispute was noted as having Prolonged ADS. These two new variables are an effort at capturing the claimants' governments abilities to manage the intangible value of the contested areas.

All of these arguments and expectations can be translated into the following formalized hypotheses:

[35] This data came from the World Bank's GDP growth dataset.

H_1: The proposed dispute typology is statistically significant.
- The dummy variables will be statistically significant in Model One (all disputes) and there will be statistically significant differences for the other variables in the other (intra-type) models.

H_2: Distant Islands disputes are more likely to remain contested than are Close Islands, which are less likely to get resolved than are Water Delimitation disputes.
- The coefficients for both Close Islands and Distant Islands will be positive, with the latter being larger.

H_3: As the economic value of the disputes increase, the likelihood of resolution decreases.
- The coefficients for both fisheries and hydrocarbons will be positive, with the latter being larger.[36]

H_4: As claimants to a maritime dispute have increasing access to shared potential arbiters of the dispute, the likelihood of resolution increases.
- The coefficients for Democratic States, Anocratic States, and Autocratic States will all be negative.[37]

H_5: As the claimants to a maritime dispute all share domestic strength, the likelihood of resolution increases.
- The coefficients for ADS and Prolonged ADS will be positive, with the latter being significantly larger.

The hypotheses can be simplified into a single table of expectations. (See Table 16) Of note, the dependent variable for these regressions is "Contested." This uniquely-coded variable captures whether or not the MD was disputed in that year. For example, if a dispute were contested in 1998 but resolved in 1999, Contested would be 1 for 1998 but 0 for 1999. Accordingly, this work's theory can be summarized as:

$$\text{Contested} = \boldsymbol{\beta_0} + \boldsymbol{\beta_1} \times \text{close\_islands} + \boldsymbol{\beta_2} \times \text{distant\_islands} + \boldsymbol{\beta_3} \times \text{hydrocarbons} + \boldsymbol{\beta_4} \times \text{fisheries} + \boldsymbol{\beta_5} \times \text{democ} + \boldsymbol{\beta_6} \times \text{autoc} + \boldsymbol{\beta_7} \times \text{anoc} + \boldsymbol{\beta_8} \times \text{ads} + \boldsymbol{\beta_9} \times \text{p\_ads} + \boldsymbol{\varepsilon}.$$

[36] Since it is impossible to predict exact values of oil and natural gas that can be extracted from specific maritime areas – and because the values of fishery stocks are often highly contested – this analysis just uses proxies for the presence or absence of these potential resources.

[37] Democratic dyads (or sets of claimants) should have the greatest access to IOs and that autocratic ones would have the least – with transitioning states falling in between.

Table Sixteen: Expected Coefficients

Contestation: Expected Coefficients				
	All	Water Delimitation	Close Islands	Distant Islands
Close Islands	Positive	---	---	---
Distant Islands	Positive	---	---	---
Hydrocarbons	Positive	Positive	Positive	Positive
Fisheries	Positive	Positive	Positive	Positive
Democratic States	Negative	Negative	N/A	Negative
Autocratic States	Negative	Negative	N/A	Negative
Anocratic States	Negative	Negative	N/A	Negative
ADS	Negative	Negative	Negative	Negative
Prolonged ADS	Negative	Negative	Negative	Negative

Of note, the relationships between these variables are captured at least in part by the chi square analysis, as detailed in Table 17.

Table Seventeen: Pearson $\chi 2$ Scores and P Values

	Delim	Close	Distant	Hydrocarbons	Fisheries	Democ	Autoc	Anoc	ADS	P_ADS
Delim										
Close	1.30E+03 0.000									
Distant	1.10E+03 0.000	1.00E+03 0.000								
Hydrocarbons	39.6636 0.000	306.5384 0.000	133.8069 0.000							
Fisheries	215.2792 0.000	1.50E+03 0.000	607.6645 0.000	722.7687 0.000						
Democ	369.6451 0.000	42.0471 0.000	180.0138 0.000	57.3575 0.000	39.3592 0.000					
Autoc	56.5075 0.000	45.6328 0.000	0.7522 0.386	23.271 0.000	10.3242 0.001	365.2599 0.000				
Anoc	14.6487 0.000	24.2426 0.000	83.1572 0.000	5.7941 0.016	115.3531 0.000	201.6357 0.000	12.1544 0.000			
ADS	17.2685 0.000	46.9905 0.000	7.6093 0.006	19.6219 0.000	41.3414 0.000	74.1915 0.000	6.4329 0.011	2.0373 0.153		
P_ADS	22.9781 0.000	80.6858 0.000	18.4688 0.000	20.1004 0.000	54.2725 0.000	57.023 0.000	0.6094 0.435	0.7949 0.373	2.20E+03 0.000	

Results

To test the hypotheses, [38] logistic regression was used for Models One and Three (All Disputes and Close Island disputes, respectively) and penalized maximum likelihood logistic regression for Models Two and Four (for Water Delimitation and Distant Island disputes, respectively); dispute-year was the unit of analysis.[39] Of note, penalized maximum likelihood logistic regression has to be used for Two and Four because regular logistic regression would not produce a result for all of the explanatory variables.

As expected, the proposed typology of maritime disputes was statistically significant, as were the resources in the contested maritime area, the claimants' access to international arbitration, and the ADS. Notably, the presence of fisheries in water delimitation and close island disputes and the ADS variables were statistically significant in the opposite direction.

[38] An overview of the dataset used for this analysis is in Appendix One; the complete dataset can be found here: https://goo.gl/mEuYHM.
[39] Penalized maximum likelihood logistic regression was necessary for Models 2 and 4 as the strong relationship between specific causal variables and contestation resulted in multiple omissions.

Table Eighteen: Regression Results

Maritime Dispute (1946-2014) Contestation				
	All	Water Delimitation	Close Islands	Distant Islands
Close Islands	0.3430*** (0.1309)	--- ---	--- ---	--- ---
Distant Islands	2.061*** (0.1576)	--- ---	--- ---	--- ---
Hydrocarbons	1.051*** (0.1396)	0.9112*** (0.1673)	2.0609*** (0.4564)	3.468 (1.830)
Fisheries	-0.9854*** (0.1280)	-1.840*** (0.1917)	-1.6515*** (0.2421)	2.202*** (0.3391)
Democratic States	-1.447*** (0.1409)	-1.469*** (0.1978)	-0.1506 (0.2473)	-4.276*** (1.428)
Autocratic States	0.3581 (0.3399)	2.894* (0.1978)	0.2312 (0.3795)	-2.367 (2.014)
Anocratic States	-0.8212** (0.2586)	-1.573*** (0.3149)	1.118 (0.7598)	-7.725*** (2.565)
ADS	0.8212*** (0.2586)	1.078*** (0.1958)	0.4539 (0.2624)	0.6578 (0.4353)
Prolonged ADS	1.293*** (0.1876)	1.266*** (0.2454)	1.155*** (0.3187)	3.618*** (1.450)
Constant	1.710*** (0.165)	2.323*** (0.2298)	1.426*** (0.2233)	3.648* (1.462)
N	3,381	1,311	897	1,173
Wald Chi2	803.57***	258.27***	153.43***	68.42***
Pseudo R Square	0.2611	---	0.1880	---
Models One ("All Disputes") and Three ("Close Islands") are logit regressions; Models Two ("Water Delimitation") and Four ("Distant Islands") are penalized maximum likelihood logistic regression. Statistical significance at 0.010(*), 0.005(**), and 0.000(***). Standard errors in parentheses.				

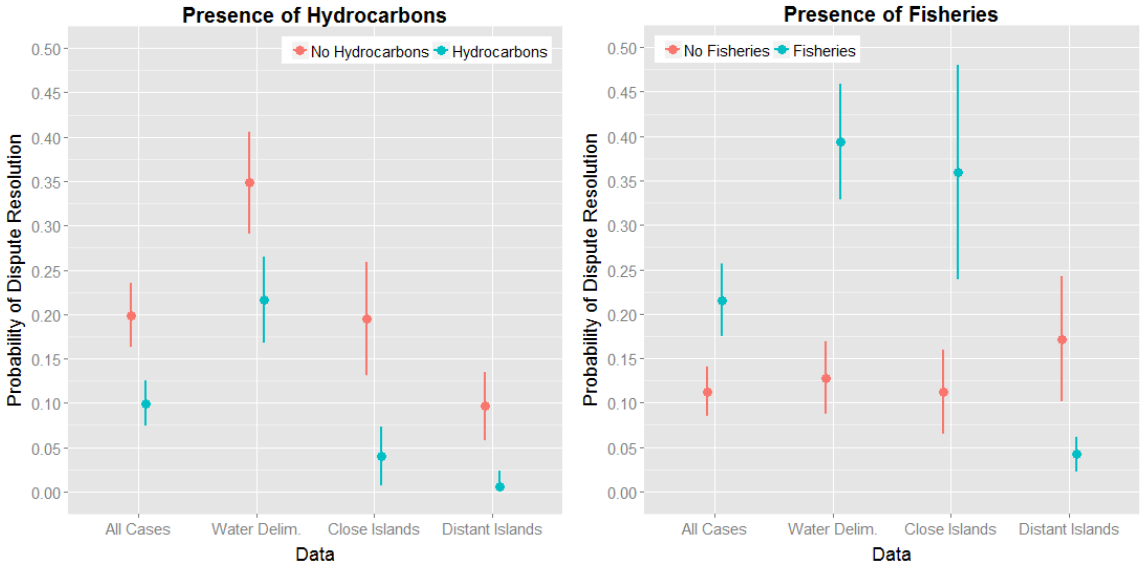
There is thus strong support for the first hypotheses: the proposed typology has statistical utility. Both of the dummy variables for the typology were statistically significant in the All Dispute model; additionally, there are important and consistent statistically differences in the other variables throughout the intra-type models (as can be seen above, in Table 18.

Additionally, Hypothesis Two has support: distant islands are the least likely to get resolved, with close islands being only slightly less likely to get resolved than water delimitation disputes. (Notably, the aforementioned arguments about which of these are economic are also supported in these models.)

There is mixed support for the third hypotheses. While there is strong statistical evidence for the expected relationship between hydrocarbons and contestation, the influence of fisheries is

flipped for two of the three subtypes. This influence likely relates to a combination of two factors. First, "cheating" is more easily achieved with fisheries than with hydrocarbons: it is easier to extract from contested fisheries than contested deposits of oil and natural gas. Second, the political pressure that fishing communities place on national leadership is different than that of the energy industry (and its advocates); whether these communities matter in terms of direct representation or autocratic responsiveness matters less than the fact that these are populations that are invested in gaining access to fishing grounds and thus exert influence in support of resolving disputes. Follow-on quantitative tests will shed light on this relationship and its influence. Regardless, there are large substantive effects of the presence of hydrocarbons and natural gas, as can be seen in Figures Thirty-Two and Thirty-Three.

Figures Thirty-Two and Thirty-Three:

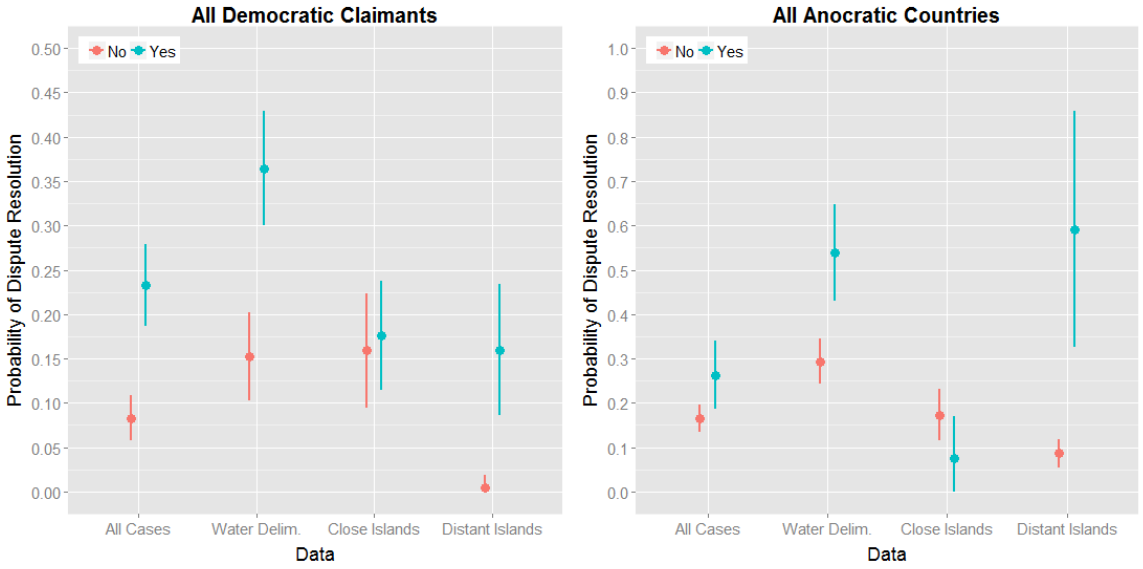


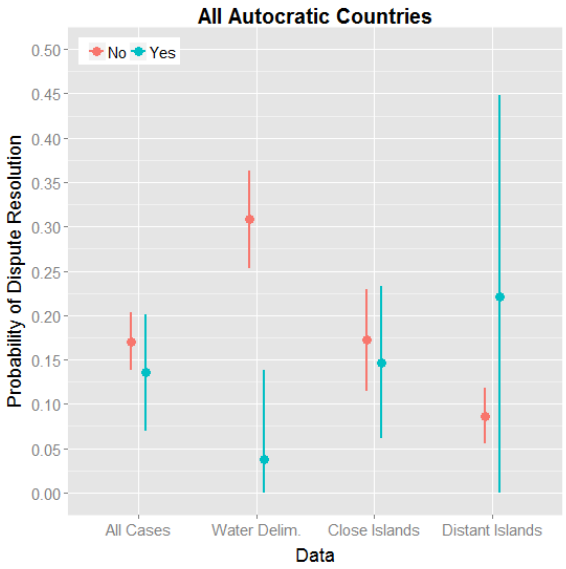
* Thanks to Jeff Harden for his assistance with R and these figures.

There is strong but mixed support for hypotheses six: that shared access to international arbitration increases the likelihood of resolution. For democratic dyads (and sets of claimants)

and anocratic dyads (and sets of claimants), the coefficient is large, negative, and statistically significant. (Importantly, it was not expected that this set of variables would matter for close islands and this is the result that was found.) Interestingly, when the claimants were all autocracies, they were even less likely to have resolved their dispute – opposite what this hypothesis predicted. Given the aforementioned literature on autocracies and international arbitration, this is hardly surprising: it makes sense that autocratic regimes would struggle to find an objective arbiter that all claimants could trust to resolve a dispute. The substantive effects, in Figures 34 through 38, help illustrate this.

Figures 34, 35, and 36:

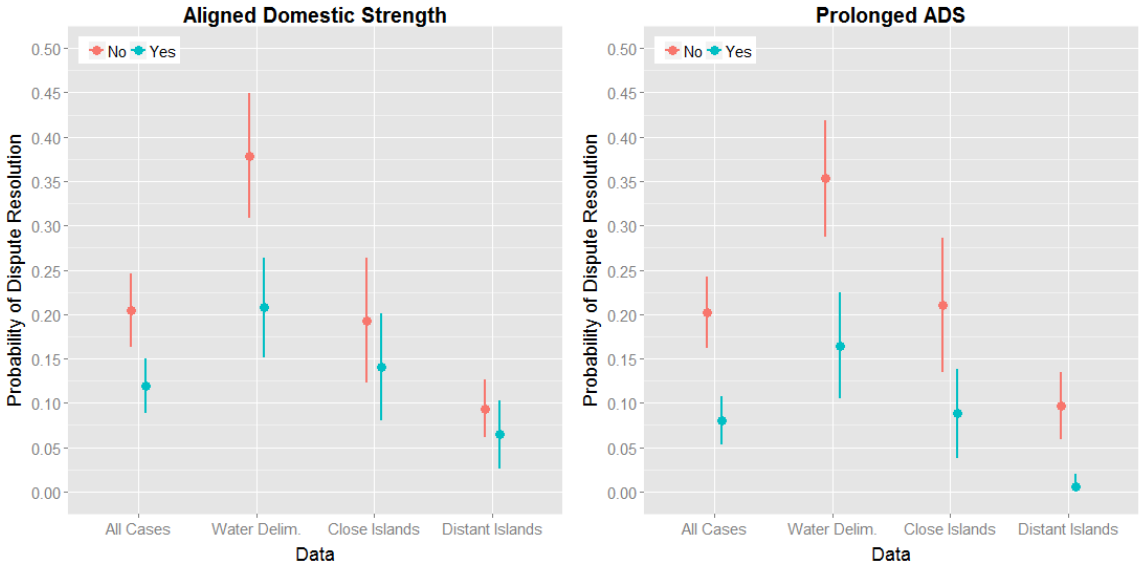




* Thanks to Jeff Harden for his assistance with R and these figures.

For hypotheses five, that ADS facilitates dispute resolution, there is strong statistical evidence that the exact opposite is true. For both ADS and Prolonged ADS, there is evidence that this hypothesis should be rejected – as the coefficients were statistically significant and large, but in the opposite direction from what was expected. This is consistent with arguments about how states benefit from having disputes as distractions from their populations – and that they only work on these disputes when they don't have economic growth. Notably, this is also consistent with Fravel's analysis of China's approach to border disputes with Russia, India, et alii: territorial compromises are made for larger strategic goals. (As noted above, however, such compromises are not possible over islands, which cannot be divided as the steppes could be.) As with the fisheries variable, these results will need to get explored in additional quantitative analytical treatments. Regardless, their substantive effects are sizable.

Figures 37 and 38:



* Thanks to Jeff Harden for his assistance with R and these figures.

Significance:

This work argues that there are three types of MDs: geographically distinct and politically different, these types follow different paths towards resolution. Contrary to the prediction, the presence of fisheries made disputes more likely to get resolved – except for distant island disputes – and this likely relates to the theory incorrectly predicting the importance that fishing communities can play in the international media and local politics. The presence of hydrocarbons made all disputes less likely to get resolved.

Disputes over the delimitation of open-ocean are economic disputes that nation-states are increasingly likely to resolve with increased access to international institutions (and other trusted third-parties). When claimants have greater access to arbitration options, they are more likely to

get their dispute resolved.[40] These disputes are economic problems that are the cause of problems between nation-states.

Disputes over the sovereignty of close islands are symbolic disputes that nation states are explained in terms of claimant states having Prolonged ADS, but in the opposite direction from what was predicted. These project found support for the diversionary theory approach: nation-states only addressed these disputes when they were domestically struggling.

Disputes over distant islands are complex disputes in which resolution is made less likely with the both presence of either resource type as well as Prolonged ADS. When the claimants have shared access to mutually trusted international mechanisms, they are more likely to get resolved. Unfortunately, these statistical findings were not as robust as for the other types of disputes, as is demonstrated by the fact that different types of logit models had to be used. Since these disputes are the ones still largely unresolved, these are the most important disputes to resolve. This requires a different exploration of these disputes and the ways that this theory explains the related international behavior.

Given the limited intellectual leverage that these tests provide for understanding Type 3 disputes, and the relative importance of the disputes in that category, additional tools must be applied to this problem. Accordingly, the next four chapters will qualitatively explore Type 3 MDs that are important intrinsically and to other disputes: Svalbard, the Senkaku Islands, the Arctic, and the South China Sea. Those case studies will each follow the same analytical approach; in translating territorial theories to the maritime and quantitatively examining the population of maritime disputes, five key analytical steps for MD analysis have become clear.

[40] Perhaps the greater access to arbitration mechanisms reflects both opportunity and willingness: as there are more ways to get the dispute resolved, there is greater pressure on the claimants to do so.

How to Examine Specific Maritime Disputes:

The theoretical and quantitative findings of this dissertation offer specific insights as to *how* to qualitatively analyze MDs. Specifically, they offer a five-step process for evaluating MDs. While this approach will be used for the next four chapters, it could also be used for the analysis of additional maritime disputes – including new disputes that might emerge in the future.

First, one must classify the dispute: this begins with geography of the dispute and a determination as to whether the nation-states are competing over water delimitation, a close island (within 24nm of the coast), or a distant one. In this determination, one must be attentive to the context of the dispute and whether or not there are related factors. For example, as aforementioned, the dispute between North and South Korea over their maritime border in the Yellow Sea includes islands, but is functionally a dispute over water delimitation (and the crabbing areas they contain). While North Korea contests the South's control over the related islands, Pyongyang only contests them in so much as it contests the South as an illegitimate government. One must thus make a qualitative decision as to whether the dispute is Type 1, to reflect the continuing disagreement over the fisheries, Type 2, to reflect the protracted political arrangement in which South Korean forces occupy islands that Pyongyang wants, or two separate disputes. For the purposes of this project, the dispute was classified as Type 1 to capture the historic emphasis of both the political rhetoric and observed behavior (i.e. what the nation-states, their militaries, and the fishermen were doing in the MD): the claimants seemed focused on the fisheries and so the dispute was categorized accordingly.[41] The classification of the MD is thus the type of subjective decisions that is informed by the geography of the dispute,

[41] When the dispute is split into two, with a Type 1 dispute over the fisheries and a Type 2 dispute over the islands' control, the findings are consistent with other work in this project: Pyongyang and Seoul do not disagree over specific things about the islands themselves, but have a strained relationship (as the Korean Armistice Agreement documents) and the status of their Yellow Sea islands reflects that flawed relationship.

but not constrained by it. Importantly, this is how one can analyze the disparate disputes of the Arctic or South China Sea and recognize them as individual elements of the larger Type 3 dispute.[42] Importantly, for the four chapters that follow, the MDs explored are all Type 3 and thus this step has already been performed.

Second, one must examine the larger context of these disputes – with a particular focus on the chronology of the disputes and how they evolved. This effort at understanding context involves exploring the patterns that have led to the dispute, its current state, and its likely future path. Exploring these types of factors provides support to the (previously made) classification of the dispute type and frames the next three steps. Such analysis should include previous diplomatic efforts at resolution, events that have occurred in the contested maritime area, and environmental factors that are aggravating (or ameliorating) the dispute. For example, the oceans' rise would likely have already submerged many of the contested South China Sea features – as happened with the previously disputed New Moore (South Talpatti Island) between India and Bangladesh – but the various claimants built up contested features, preserving the disputes. Specifically, this contextual analysis should explore the nuances behind the statistics. In the case of Hans Island, for example, some measures have the dispute marked as highlight escalated – because the Canadian and Danish militaries have deployed there yearly and within short time periods of each other; yet, when one explores how the militaries have a good working relationship (and even leave alcohol for each other to enjoy), these exercises seem less like shows of force and more like confidence-building measures. These patterns must be analyzed to be able to develop accurate understandings of the MDs.

[42] For the sake of intellectual rigor, the specific disputes that had already seen individual attention through international law were quantitatively tested in Chapter Three as individual disputes. For the remaining analysis of those disputes – in the Arctic and the South China Sea – they will be explored less as individual disagreements and more as smaller pieces of a larger whole.

Third, one must analyze the tangible (i.e. economic) worth of the contested maritime area – with a particular focus on the hydrocarbons and the fisheries. Since the presence of hydrocarbons consistently complicates and delays disputes, it is most important to confirm their status. Beyond simply confirming whether or not they are present, a qualitative assessment of a dispute best includes an exploration of the potential size of the hydrocarbon reserves (or expected find) and something as to the nature of the complexity of the extraction (if that is relevant, like it is in the Arctic). In terms of exploring the fisheries, it is important to address the degree to which the stocks are threatened or over-fished, as these factors matter both for the economic expectations as well as to the degree to which there might be at-sea confrontation.[43]

Fourth, one must analyze the intangible value of the contested maritime area. In order to understand claimants' willingness (and abilities) to pursue resolution, one must understand the nation-states' interest in the dispute –including the relationship with the other claimant(s) – and the legitimacy of the nation-states' own domestic control. The first half of this is important to understand in terms of the Level II factors aligning for dispute: it must be clear whether or not there is a win-set available at the domestic level and this means understanding the domestic appetite for the MD and its associated cost benefit analysis. For example, the Kuril Islands are controlled by Russia but historically claimed by the Japan; an analysis of the domestic factors here would reveal the degree to which Moscow intermittently shows their commitment to the islands – with events like major military maneuvers and even personal visits from Putin. While reading Russian sentiment can be difficult, in terms of what the population actually wants, interpreting signals from Putin requires less guessing. So, despite Japanese interest in regaining the islands, Moscow manifests only a commitment to keeping them and that rules out win-sets for Russia that do anything but keep the Kurils in their possession. The second half of this

[43] The scarcer the fish, the more desperate the fishermen.

domestic analysis is an exploration of the regime's legitimacy. Notably, this was not part of the original set of propositions of the MD typology, but emerged from the refutations of the fifth hypotheses in Chapter Three: the evidence is that strong states are more likely to have prolonged disputes – meaning that change happens under other conditions, like times of domestic instability. To look for such things in the case of the Kurils would be to explore the degree to which Putin (and Medvedev) maintained popular support – and what sort of chances there might be for diversionary efforts at addressing lingering MDs to show deliverables to their people. Given that Putin has delivered things like parts of Georgia and Ukraine – and maintains a political platform antithetical to giving up controlled islands – there is little reason to expect a Putin presidency to bode well for progress on the Kuril dispute.

Fifth, one must analyze the nation-states' shared access to ostensibly trustworthy third-party actors to adjudicate or facilitate the resolution. For the quantitative analysis, proxies were used – given the lack of simple measures for such complex relationships – but a qualitative analysis can properly address the unique institutional arrangements of MD claimants. For Type 2 disputes, of course, these are not relevant concerns: as simply a symptom of a larger problem, close island disputes do not require the kind of external authorities that the other two types do.

With this five-step analytical approach, there is an intellectual model for how to approach the following maritime disputes. It incorporates key factors that relate to the nation-states interests in the contested maritime areas – both tangible and intangible – and their shared access to trusted international mechanisms of arbitration: all three of these factors will need to be aligned for Type 3 disputes to get resolved.

Chapter Four: Qualitative Analysis: Svalbard

In order to better understand Type 3 disputes, this chapter explores one of the most important distant-island disputes: the contest over the archipelago of islands previously known as Spitsbergen and now known as Svalbard. Thick descriptions of this disputes reveal the degree to which complicated resource-oriented, international, and domestic factors drove the claimants to pursue these distant islands through diplomatic, economic, and other means. This MD represents the kind of complicated and interlocking tangible, intangible, and international factors that determine likelihood of MD resolution – but that are incompletely captured in the statistical work of the last chapter.

The archipelago located halfway between Norway and the North Pole (see Figures 39and 40, below) is a textbook Type 3 dispute: multiple nation-states claimed these far-flung islands and the resources that their ownership offered. Before the Svalbard Treaty, the international accord that would officially resolve this dispute in 1925, the archipelago was *terra nullius* or land that belong to no one (FRUS 1904, 1909, 1914, 1921); yet, "[f]or business ventures this meant that Svalbard was a *terra communis*, a “free-for-all land” (Björklund 2009, p14). After the Treaty, neither of these remained true (FRUS 1925, 1927, 1932). Regardless, given the relatively early date of resolution, the Svalbard dispute is not captured in the above quantitative analysis, but its attributes make it important to understand – because of both its regional importance (in that it shapes the perception and management of other disputes with the same claimants) and the degree to which its patterns have generalizability.

Figure 39: Svalbard Within the Arctic Ocean

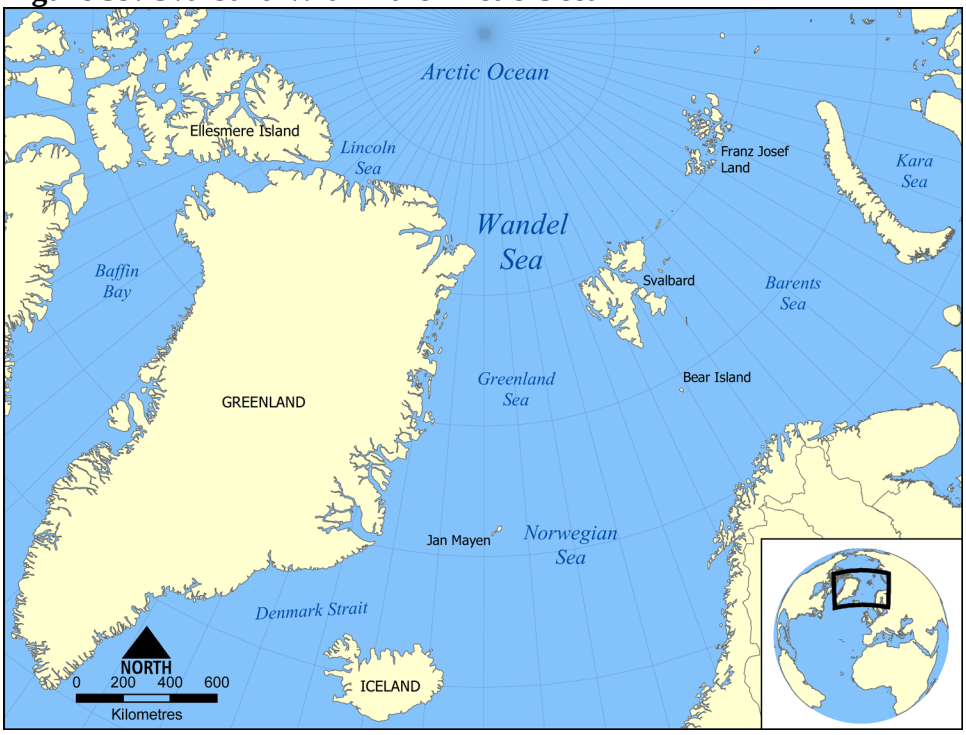


Figure 40: The Islands of Svalbard

(Mysid 2009)

An analysis of Svalbard must begin, however, with the recognition of the reality that the dispute emerged as modern Europe did. For example, Norway's slow transition to independence illustrates Svalbard's political origin story: Oslo (AKA Kristiania, until 1926) had long been party to a series of personal unions – first under Copenhagen and then under Stockholm – that relegated Norwegian concerns and otherwise kept Oslo from having its own foreign policy, which meant that the nation-state closest to the archipelago had neither an official approach to the archipelago nor a voice in the international discourse of the dispute (FRUS 1905, 1906, 1907, 1908):

> After the rediscovery in 1596 and right up to the beginning of the nineteenth century, Denmark-Norway had consistently laid claim to sovereignty over Svalbard. After the Napoleonic Wars, however, events took a new turn when Frederick VI of Denmark was forced at the Treaty of Kiel in 1814 to cede Norway to the King of Sweden, while the dependencies of Greenland, Iceland and the Faeroes were retained by Denmark. The status of Svalbard underwent no change, either at Kiel or in the following years. Gradually the idea gained ground that it was a no-man's-land, a belief also accepted in Norway. Nevertheless, it was the Norwegians who in the latter half of the nineteenth century took the lead in exploiting the resources of the archipelago. (Østreng 1978, p2).

While Norway was thus locked into a personal union with Denmark from 1536 to 1814, and then Sweden from 1814 to 1905, it could not pursue official policies towards the islands – instead, settling for unofficial policies that vacillated between tolerating and facilitating their citizens activities on and around Svalbard (FRUS 1905, 1906, 1907). Even such unofficial policies were constrained by the influences of competing MD claimants as they operated within the historical context of the dispute:

> Svalbard was discovered by the Dutch explorer Willem Barents in 1596. In 1613, the Muscovy Company, an English whaling operation, claimed exclusive rights to the islands, conflicting with claims of sovereignty forwarded by the then-united kingdom of Denmark-Norway. The Dutch countered with the principle of *Mare Liberum*, i.e. that the seas belong to everyone. In 1870, the Swedish-Norwegian Council of Ministers considered annexing Svalbard and setting up a colony on the

> islands, yet practical concerns and opposition from Russia prevented this from being carried out (Grydehøj, Grydehøj, and Ackren 2012, p100).

These external pressures and unofficial policies evolved when Norway finally gained its independence (Mathisen 1954a). Yet, “this newfound independence did not necessarily encourage Oslo to take strong or confrontational positions on Svalbard; the perception was that the Norwegians had too much to lose” (Mathisen 1954a, 23). Such perceptions had some basis in the traditional belief that Svalbard was a land apart (ibid). For example, the Russian Empire was the next closest nation-state to the MD, but had been distracted by "war with Japan and the domestic crisis" and was therefore following a "cautious foreign policy… in the Arctic" (Mathisen 1954a, p48). Russia only sought to play a strong role after realizing how other international actors were exploiting the islands:

> While at the same time conscious of their own weakness, the Russians seemed to fear that the investment of British and American capital in Svalbard might have political consequences. Viewed against this background, the attitude of the Russian Government is understandable. Moreover, if the Russians were anxious to drive a wedge between Norway and Sweden it might be expedient to encourage an active Norwegian policy on the archipelago (Mathisen 1954a, p49).

Thus power politics began to drive international behavior towards the MD. As the British Minister to Stockholm wrote in a letter in 1909, sympathies and enmities were solidifying in Scandinavia:

> The sympathies of Sweden are undoubtedly with Germany; partly from admiration for strength and determination, and partly from hatred for Russia, the yearlong, hereditary enemy. The Swedish like us, but not so much the Stockholm nobles as the Gothenburgers. The Civil Service is German, and the army distinctly Prussian. The army would much like to go for Norway, and war is by no means out of the question (Gwynn, p137).[44]

[44] The perception only grew increasingly extreme as the Great War approached; the same British diplomat later wrote that the relationship between Sweden and Germany was so tight that, "In case of war I think we should have to regard Sweden as German in effect" (Gwynn, p145).

London thus found itself pursuing anything that supported "good cooperation between the Scandinavian countries, and as far as possible to seek to wean them from Germany, with a view to achieving Swedish neutrality in the event of a future conflict" (Mathisen 1954a, p56). Importantly, Scandinavian cooperation was not a simple matter, due not only to the aforementioned Swedish-Norwegian tension, but also to the degree to which foreign powers chose sides along that divide (FRUS 1908, 1909, 1910).[45] By 1909, there were functionally two groups and efforts to resolve the dispute "had reached an unfortunate phase. On the one side stood Norway, supported by the United States, and on the other Sweden, which appeared to have all the other more or less interested great powers on her side" (Mathisen 1954a, 65). Both the would-be claimants and the related international players of the Svalbard dispute were thus concerned with the power politics of the modern age and how their approaches to the MD could facilitate those larger geopolitical goals.

Now that those historical relationships and biases are documented, it is possible to dive into the three factors that matter for MDs: the economic stake of the dispute itself (with a particular focus on the hydrocarbons and fisheries), the claimants' access to international mechanisms of arbitration and resolution, and the claimants' domestic factors.

Tangible Value of the Contested Area:

While the islands of this MD were long uninhabitable – except for a few short summer months – the archipelago was so rich in natural resources that people flocked to Svalbard for its short summers. Whaling and mining initially attracted small groups of interested individuals, but those groups grew.

[45] It is impossible to address "the attitude of the Danish, Dutch, and German Governments to" any specific Svalbard policy solution because "there is little material on which to base an opinion, as there is no evidence that these Governments had given the question any consideration at this time" (Mathisen 1954a, 53).

> After the turn of the [eighteenth] century Svalbard acquired greater economic significance. Coal mining now started, and at the same time hunting increased. In several places Svalbard has surface coal deposits; some of the deposits were known to the whalers as early as at the beginning of the 17th century, and names from that period [for Sptisbergen] such as Coalhaven are a reminder of this. In the nineteenth century Norwegian crews brought some coal over to Norway from these open seam casts (Mathisen 1954a, 40).

Thus, Svalbard, like modern MDs, involved disagreements over hydrocarbons and fisheries, but – unlike modern MDs, Svalbard's hydrocarbons were coalmines and its fisheries were whales.

Hydrocarbons

Coal was so obviously abundant in Svalbard that an American tourist, vacationing there in 1906 to see the Arctic glaciers and polar bears, immediately incorporated the Arctic Coal Company (ACC) and "submitted details of its claims in the archipelago to the Department of State" (Mathisen 1954a, 64).[46] Since nation-states were not then officially acting in the archipelago, it was the arena of private corporations: for a brief period of time, there were multiple coal companies attempting to mine the resources of Svalbard, but "Spitsbergen Coal and Trading Company, the only British company which had undertaken mining in Svalbard, stopped working in the autumn of 1908 and tried to sell its mines" (Mathisen 1954a, 56). It was not the only consolidation.

> Coal mining in Svalbard began in earnest around 1900. The earliest Svalbard mining companies underwent frequent changes in ownership, with the first Norwegian companies passing to buyers from Russia, the Netherlands, the UK, and the USA. In 1911, Sweden established mines at Pyramiden and Sveagruva but found it necessary to sell Sveagruva to Norway and Pyramiden to Russia in the 1920s. In 1916, the Norwegian government founded the Store Norske Spitsbergen Kulkompani (hereafter, Store Norske), which would later take over the mining at Sveagruva. The Soviet Union likewise took over mining activities in Barentsburg from the Dutch in the early 1930s (Grydehøj, Grydehøj, and Ackren 2012, p103).

[46] The name of Svalbard's capital, Longyearbyen, reflects the contributions that the ACC's founder, John Longyear, made to this archipelago.

The ACC, thereafter, was the sole player that pushed for changes to Svalbard's political status – seeking both a stable business environment and a pro-business one (i.e. one with low taxes) (ibid). While this initially meant that Washington pursued a continuation of the *terra nullius* status, those policy preferences began to evolve as the ACC dealt with the practical concerns of managing a corporation in a legal no-man's-land (FRUS 1908, 1910-1914).

> In the summer of 1911, the Arctic Coal Company had some trouble with its workers, in the course of which the manager, John Gibson, was assaulted… One result of this incident was that the company in its annual report to the State Department strongly emphasized the need for a police and judicial authority in Svalbard, although it still considered a comprehensive administrative and judicial organization superfluous (Mathisen 1954a, 88).

The only corporate entity operating within Svalbard thus began to seek the sorts of internal (to Svalbard) legal structures and authorities that were no longer consistent with the political status it sought for Svalbard. The American government, the ACC's voice and sponsor, found itself forced to change approaches in order to facilitate continued hydrocarbon extraction:

> The State Department, faced with a demand from the Arctic Coal Company for an authority capable of maintaining law and order in Svalbard, and moreover finding the draft convention unacceptable, set out, in the winter of 1912, to prepare a convention of its own, calculated to meet the needs of the American interests in the archipelago. Its main principles were laid down by the New York lawyer Robert Lansing who on various occasions had acted as advisor to the State Department (Mathisen 1954a, 89).

This new set of principles, that became known as the American Initiative, was normally aligned with Norwegian policy preferences. Yet, the ACC was not the only actor seeking to extract hydrocarbons from Svalbard.

> In 1914 a new company was formed with Russian capital. It was, however, taken over by a Norwegian, and only small quantities of coal were mined during the war. The other Russian company, the Grumant Mining Company, did not continue working, but the Russian authorities planned to increase the production of Svalbard coal as soon as conditions permitted (Mathisen 1954a, 101-102).

With the growing World War, however, resource extraction became increasingly difficult.[47] As is often the case with modern conflicts and dual-use items, maintaining an active international mining operation became impossible.

> Mining continued into the summer of 1915, but the supply difficulties forecast… did develop. As early as November 1914, lists of articles prohibited from export from Norway were published and copies transmitted in dispatches to the State Department. The lists grew longer in 1915, and included articles normally required for support and supply of the mining settlement on Spitsbergen, e.g., food, metals, lubricants, dynamite caps, tires, cattle, rubber, skis, electrical machines… The matter of resupply of parts and equipment became acute in the summer of 1915 (Singh 1980, p86).

The ACC shut down their mines in 1915 (Singh 1980). Notably, the ACC's Svalbard-based manager pursued various options in 1915, including a sale to Russian interests: "Before granting the option to buy to the agents of the Norwegian banking syndicate, [he] traveled to St. Petersburg where he could find no authorities with whom to discuss the sale of the Spitsbergen properties" (Singh 1980, 86). Without any real alternatives, the ACC made a deal with an Oslo-based corporation: "All four American tracts were sold to a Norwegian banking syndicate in 1916" (Singh 1980, p84). That syndicate would become Store Norske Spitsbergen Kulkompani (SNPK or Store Norske). American economic concerns thus departed Svalbard (FRUS 1914-1916).[48]

The fact that World War One effectively killed all non-Norwegian hydrocarbon extraction from Svalbard proves an interesting twist to the normal economic evaluation. While the presence of hydrocarbons that are extracted from the ocean floor requires claimants (and the corporations doing the extracting) to have mobile infrastructure, the coal mines of Svalbard

[47] Mining operations only occurred during the four-month summer. Thus, there was approximately only a month of work left in 1914 before the ACC shut down operations for the winter.

[48] The deal actually required John Longyear, the ACC's founder and majority owner, to maintain a quarter share of the new Svalbard coal operations. SNPK had believed that Longyear's wealth and connections would keep the US State Department contributing to the Svalbard political dialogue in a way that would serve the interests of the company. They were mistaken: Washington never advocated on behalf of SNPK's interests (Mathisen 1954b; Singh, 1980).

required the opposite: claimants like the ACC sunk money into mines, machinery, and company towns across the archipelago that they could not afford to maintain when the Great War changed the costs and accessibility options. Where modern drilling rigs could be floated to another part of the world for drilling at alternative sites, coalmines could not. Accordingly, claimants were drawn to Svalbard for the hydrocarbons, but effectively eliminated by the war: Oslo took advantage of the economic opportunity to buy out the depreciated interests of the ACC and thus eliminated American interest in the distant islands.

Fisheries:

While the waters around Svalbard had historically been rich in fisheries – and have remained so since the Treaty, the period of international tension that preceded the Treaty focused less on the fisheries than the hydrocarbons. Importantly, the claimants did not initially seek to deny each other access to the fisheries:

> The exchange of notes in 1871-72… clarified Svalbard's political position. It now had to be definitely assumed that the archipelago was to be regarded as a no man's land, accessible to subjects of any state anxious to exploit its natural resources. Norway and England, which had claimed sovereignty over the territory during the whaling period, did not restate their old claims. The West European powers adopted the attitude which the Netherlands had formerly maintained, viz. to demand the right to exploit freely the riches of the coastal waters. They evinced less interest in the land. This standpoint and practice were the result of a long development, and the economic and geographical reason for this attitude seemed to be that the country had come to be regarded as practically uninhabitable and as offering no promise of economic gain. It was primarily the wealth of the sea for which men had striven in the inhospitable regions. During the first period of whaling the land stations had, of course, played an important role, but in time their significance, too, ceased. In the nineteenth century a certain amount of competition admittedly arose between Norwegian and Russian trappers, but it never resulted in any conflict of importance or involved diplomatic negotiations (Mathisen 1954a, 29).

The nature of the Svalbard dispute, at least as it was in the decades before its resolution, did not focus on the fisheries (FRUS 1904, 1908, 1910-1914). Notably, the lack of attention to fisheries concerns arguable created several related MDs between Iceland, Norway, Russia, and the UK (Pedersen 2006, Anderson 2009, Henriksen and Ulfstein 2011).

Intangible Value of the Contested Area:

The Nordic claimants maintained a vocal commitment to the symbolic value of Svalbard and the relationship that their citizens had with the contested islands. Yet, such commitments were not always expressed in the kinds of nationalistic or even jingoistic ways that modern scholars might expect; instead, some attribute Oslo's willingness to share resource rights to cultural evaluations: "Norway is just an unusually generous and collaborative country" (Andersen 2012). More rigorous analysis, however, recognizes larger patterns of political modernization and what they meant for claimants' domestic legitimacies and priorities (with respect to Svalbard). For example, the post-independence tension between Sweden and Norway was visceral and many politicians actively worked to avoid any topics that might serve as opportunities for friction:

> Looking back at the dogged tug-of-war that had been going on between Norway and Sweden, one clearly sees how greatly it was influenced by narrow considerations of prestige, and it is difficult to understand the matter unless one takes into account the relations obtaining between the two countries in the years immediately following the dissolution of the union. Added to this was the rivalry of the great powers; some of them had repeatedly declared that they were inspired by the desire for impartial arbitration, but nevertheless they were bent on exploiting the situation to their own advantage. The result was a compromise (Mathisen 1954a, 74).

What was then known as "prestige" might now be called "face" in other parts of the world, but the exact term used is less important than the nature of the factor: domestic factors meant that

some politicians sought tension while others sought to avoid it – not because of the economic value of the dispute or the exact arbitration mechanisms, but because of their domestic utility.

Additionally, there was a crisis of domestic legitimacy for the Russian leadership – resulting in a civil war and the ultimate rise of the Soviet Union (FRUS 1915-1919); these domestic factors functionally removed Russia from diplomacy over the dispute. With the end of the Russian Empire, as it suffered a revolution and the start of a civil war, Russia dropped out of the Svalbard arena. Russian internal events not only changed Russian near-term interest and attitude towards the archipelago, but also Russian ability to play official roles in Svalbard-related negotiations. These domestic concerns removed Russian voices from the dialogue until international recognition of the new Soviet state in 1924.

> The revolution of 1917 completely destroyed all old economic, social and political relations, and by substituting a new society for the old one, in virtue of the sovereignty of a revolving people, has transferred the state authority in Russia to a new (different) social class. By so doing it has severed the continuity of all obligations which were essential to the economic life of the social class which has disappeared (Taracouzio 1935, 249-250).

These changes meant that Russian positions in pre-war discussions became irrelevant: while the Russian people and their government might have still considered Svalbard to have extremely high intangible value, they lacked a bureaucratic mechanism for pursuing or protecting those symbolic interests. The changes within the former Russian Empire were so extreme that even official discussions were initially impossible: the institutions and individuals that had previously participated in the Svalbard dialogues were no longer accessible (or, later, in existence). As the civil war raged and then the Soviet Union waited for political recognition, Russian interests had no representation on Svalbard: "Germany and Russia were eliminated for the moment from the participation on Svalbard – Germany as loser of the war and Russia because of its Revolution" (Finne 1977, 56). Notably, Germany found itself without a voice because of the war and thus

less because of domestic factors, but the shackles placed on Germany by Versailles did not give Berlin much freedom to push the Svalbard issue (FRUS 1918-1921). Regardless, the important consideration that emerges from an analysis of the claimants' interest in the intangible value of the islands and their respective abilities to pursue them is that such internally-oriented pressures cannot only push nation-states both towards and away from conflict – as is noted in Chapters One and Two with issues like diversionary wary theory and rally-round-the-flag – but that they can also remove claimants from the dispute process – both in terms of having a legal voice (like when Norway was in a personal union) and in terms of having an actual foreign policy (like when Russia was in the throws of communist revolution).

Access to International Mechanisms of Arbitration and Resolution:

As aforementioned, Norway, the closest (modern) country to the islands, was not even a recognized nation-state at the outset of the MD dispute. When Oslo could act internationally, though, it did so; the newly independent Norwegian government almost immediately took steps to determine other states' positions and their willingness to move forward with a dialogue:

> A few months after the new Government had taken power [in March of 1908] it approached the other interested states suggesting that they should give their diplomatic representatives in Oslo instructions to discuss with the Norwegian Government the measures which should be taken in order to put right the unfavorable conditions in Svalbard, and to work out a proposal for an international agreement. This could then be submitted to the Government of the various countries. It believed that the conference would have to delimit the geographical area subject to the agreement, and declare that area a no man's land open to nationals of all countries. It would further have to decide on civil law and rules of procedure; an arrangement for punishing crimes and misdemeanors and rules for police supervision would also have to be worked out, and finally regulations for covering the expenses of the administration must be agreed on. (Mathisen 1954a, 50-51)

While the modernization and normalization of Scandinavian states clarified the political status and policy positions of the claimants, the outset of World War One prevented progress on the MD.[49] During the period of the Great War, July, 1914 – November, 1918, Svalbard remained locked in political limbo. All diplomatic exchanges related to the archipelago ceased; with very few exceptions, there was no Svalbard-related dialogue during the War. This pattern emerged in part because Svalbard claimants were focused on the fighting and, in part, because they had been so concerned about the war that they had drawn down their presence on the islands:

> The belligerents abandoned their activities on the archipelago. The personnel from the German base... returned home to Germany in the autumn of 1914, and there was no subsequent work undertaken at the station (Mathisen 1954a, 101).

This lack of interest in Svalbard did not survive the peace, though, as Allies met in Paris to address issues just like the status of Svalbard: "Though the Sptisbergen Question was not a wartime issue, a final determination of the right ownership for the Archipelago was made in Paris" (Singh, 93). A portion of the thirty-nation conference initially questioned the propriety of deciding Svalbard's status in that venue – since "Norway was neutral during the war and Sptisbergen was not a contested region during the war" – but those concerns abated once the Svalbard issue was postponed "until after the signing of the treaty with Germany at Versailles" (Singh 1980, p93, p99). When finally allowed to submit a position, the "Norwegian Minister hastily drew together documents and supporting materials to plead the cause of awarding the Islands to Norway… on 10 April 1919, submitting his arguments for a Norwegian Spitsbergen" (Singh 1980, p97). Thus, Oslo took advantage of the Paris Peace Conference to break the stalemate that had come to define the last few years of Svalbard-related dialogue: while Norway

[49] Finland did not receive independence from the Russian Empire until 1917, and was therefore technically represented by St. Petersburg before and during the Great War.

arguably ought not have attempted to leverage the post-war institution in that fashion, they simply used it as a tool to solidify previous gains.

Norway worked with the other claimants – both inside and outside of the structures of the conference – to confirm that the proposal was amenable to the various parties. Washington had long backed Olso's position; at the conference this positioned Americans to play an active role in support of Norway (FRUS 1918-1924). While most of the American delegation supported the Norwegian proposal – and even lobbied for it – some were concerned about hegemonic efforts of dictating terms to the rest of the world. One admiral noted that, "It seems to me that our interests are very much more remote than are those of some neutrals powers that are closer to Spitsbergen," and that there might be unfortunate consequences if "the Five Great Powers… set out to regulate the world" (Minutes 184.00101/121). Similarly, the Dutch expressed "a sense of pique… that the hegemony by a group of powers over the world would have possible negative effects on the vital interests of the small states" (Singh 1980, 101). Such responses were outliers: most Allies and neutral states endorsed the proposal (FRUS 1921-25). The British, for example, "tended to be strategic and economic in focus;" they were consequently unconcerned with perceptions over whether the great powers were overstepping their bounds (Singh 1980, 94). Instead, the British made clear that their "only satisfactory solution would be for Spitsbergen to be Norwegian… [because] Spitsbergen was of strategic interest to Britain." (Singh 1980, 98) Even the Germans saw the Svalbard question in strategic terms and ultimately supported the Norwegian proposal provided that Berlin's economic interests were protected (Dispatch JN 14814). The single party excluded from Norway's thorough Paris-based discussions was Russia, which made radio announcements to document their displeasure with their exclusion from the process.

> Russia declares that the procedure is void as far as she is concerned. The Russian government will not permit others to dispose of her international affairs without her knowledge, even if she may not have any serious objection to the proceedings as they are executed (Singh 1980, 109).[50]

Regardless, the conference produced a treaty that almost all parties supported, or at least found themselves willing to endorse, so long as their own respective economic interests were protected. Since protecting those various economic interests meant allowing for each of the claimant states – or any of the treaty signatories – to benefit from the resources of the disputed islands and waters, Svalbard became the first free maritime economic zone.

There are thus two important take-aways from the role that international mechanisms played with respect to the Svalbard MD. The first is the degree to which key claimants were denied a voice – either because they lost the war (i.e. Germany and its ally Sweden) or because they were not participating in international processes because of their own domestic concerns (i.e. Russia, as will be addressed more below). The second is the unique approach that Oslo took of forsaking a unique claim to Svalbard's resources: granting all claimants the right to economically benefit is both politically important and historically unrepeated (and now explicitly disavowed under UNCLOS). While many have debated the degree to which Svalbard might have been managed differently in a more inclusive (or fair) international process, there is little disagreement that the decision to share resource rights was important.[51]

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[50] Singh cites a diplomatic note which cites an article which cites the radio announcement: Dispatch, Schmededeman to the Secretary of State, 17 February 1920, No. 1475, 850d.00/380, Decimal File, R.G. 59, NA, enclosing newspaper article, "Bolsehvist Protest Against the Sptisbergen Treaty: A radio message to the Foreign Office," Norske Intelligenssedler, 17 February, 1920.

[51] The degree to which this might or might not be replicated with the Arctic or the South China Sea is addressed explicitly in the final chapter.

Findings:

This case study sheds light on several of the hypotheses – specifically, those related to tangible value, intangible value, and access to international mechanisms. (Analysis of a Type 3 dispute does not help address hypotheses about the larger typology or inter-type likelihood of resolution; as such, neither this chapter nor any of the next three will contribute directly to those questions.) Beyond addressing those specific hypotheses, though, or this case study's significance for them, it is important to analyze the current state of the dispute what that reveals about the larger analysis of MDs. Since some could argue that this dispute is resolved only in law and not in practice, that analysis proves particularly important for the following chapters and the bigger picture of maritime disputes and the factors that matter to their resolution.

Hypotheses & Significance:

The Svalbard MD offers important contributions both to our understanding of Type 3 disputes and to the specific causal stories – the importance of the tangible, the intangible, and the international mechanisms available to the claimants.

With Svalbard, the presence of resources made the MD more difficult to resolve in that the various claimants all wanted the islands for themselves; notably, while the Treaty predated UNCLOS, none of the claimants to Svalbard envisioned a division of the archipelago; they all wanted everything. In such a zero-sum game, none of the claimants wanted to compromise on the vast promises of hydrocarbon wealth. The Svalbard case study supports the economic story: the economic value of the contested area itself, in terms of hydrocarbons and fisheries, matters in terms of attracting claimant interest. The fact that Svalbard Treaty took an unconventional approach to those resources (i.e. creating a free maritime economic zone) does not take away

from the importance of the tangible values –in terms of motivating and maintaining claimants' commitment to the dispute. Similarly, Svalbard's hydrocarbons were of a different nature and thus exerted different pressures in terms of actors' interest in prolonging the dispute (or at least maintaining their commitment to the dispute through periods of non-extraction). Such specifics aside, this case study supports the claim that the presence of resources matters.

The Svalbard case study supports the arguments that the claimants' commitment to the intangibles and their abilities to pursue them both matter for predicting the likelihood of dispute resolution. Svalbard claimants made strategic decisions – or lacked the ability to make strategic decisions – because of domestic factors. While the claimants that had previously expressed symbolic commitment to Svalbard (e.g., Norway and Sweden) did not change their commitment to their peoples' intangible but significant connection with the archipelago, not all of the claimants' governments maintained the abilities to keep pursuing those claims. This was most clearly evidenced in the way that Russia was removed from the dispute process. While Gjems-Onstad's terminology is different, his conclusions are the same:

> It seems fair to say that Russia's fall from grace… allowed for an active Norwegian Svalbard policy and sovereignty over the archipelago. When the Norwegian authorities were investigating the possibilities of changing the treaty, Russia had returned in the form of the Soviet Union. Thus it seemed impossible to achieve any change that would strengthen Norway's position. Power relations within the international arena were decisive in both cases (2012, p17-18).

The degree to which the governments' of Svalbard's claimant nation-states maintained both the capability *and* the willingness to pursue the dispute was *decisive*. These intangible factors mattered for Svalbard as they matter for Type 3 disputes, in general.

The case of Svalbard helps illustrate the importance of claimants' access to international mechanisms of dispute arbitration and resolution. While the Paris Peace Conference series of treaties were most certainly unique, the forum that they presented for some actors to navigate the

power politics and processes is not. Additionally, this international forum proved important in terms of dispute timing – as they offered a venue for escalation or resolution – which scholars like Thompson might consider part of multiple causation strains (2003). These international factors most certainly mattered for the Svalbard MD and this helps support the claim that Putnam's first level plays an important role here.

The resolution of the Svalbard MD was thus the result of an alignment of disparate factors that related to resources, claimant governments' abilities to pursue the claim, and the international options for resolution:

> That the solution came when it did was the result of a number of factors, including the USA's declining economic interest in Svalbard; the desire of World War I's victors to reward Norway for its aid; and the post-war disempowerment of Germany and unrecognized status of the Bolshevik government in Russia, both countries that had interests in Svalbard and that might otherwise have driven a hard bargain at the negotiating table (Grydehøj, Grydehøj, and Ackren 2012, p101).

Such an alignment of diverse factors is consistent with this research project's thesis – in terms of explaining the lingering, and resolution of MDs, but it is not the end of Svalbard analysis. The results of the Svalbard Treaty require exploration.

Status of the Dispute:

Beyond examining the degree to which this MD sheds light on the proposed typology and the related causal stories, Svalbard – as the first Type 3 dispute to get resolved and the only Type 3 dispute to get resolved through an international mechanism (as opposed to one side abandoning a claim, see Appendix Two for details) – Svalbard must be considered in terms of whether or not the Treaty functionally or just officially resolved the MD. Specifically, three legacies of Svalbard's resolution require attention.

First, the management problems that Svalbard has posed for Oslo do not establish this model as a precedent that other claimants would want to follow in so much as the Svalbard Treaty set up Norway in the difficult position of managing a territory (intermittently) important to the competing world powers. Although, depending on different interpretations, various scholars have competing opinions on the degree to which Norway was actually empowered to "manage" Svalbard. Officially, " Svalbard is under Norwegian sovereignty, yet its governance is rooted in international law" – giving Oslo legal control over the archipelago (Grydehøj, Grydehøj, and Ackren 2012, p100). Such official control is demonstrated by events like the Svalbard Act, a Norwegian domestic law, passed in 1928, in which the " Norwegian government has proclaimed itself to be the rightful owner to all land which was not in private ownership when the treaty was signed" (Gjems-Onstad 2012, p19). This functionally annexed all of Svalbard that had not already been previously claimed (which was most of it) – giving the national Norwegian government additional freedom to make decisions about the archipelago; for example, when others might want to acquire land there, they would need to try to convince Oslo to sell it to them (Björklund 2009, p19).[52] Yet, Oslo did not have free reign to manage the archipelago however it wanted to; there were key limits:

> …limitations on the exercise of sovereignty can be compared to servitudes on property ownership rights. A servitude is a device that limits an owner's freedom of decision over his or her own property. Exercising ownership rights is thus restricted, but ownership rights are not desisted from. Such servitudes were introduced in the Svalbard Treaty because Norwegian companies were not alone on Svalbard. Without servitudes, non-Norwegian interests would risk being excluded from any further economic exploitation of the archipelago (Björklund 2009, p16).

The exact ways that such limitations were operationalized evolved as outside actors put pressures on the Norwegians: "international law does not operate in an arena bereft of politics. Between

[52] Oslo turned most of Svalbard into national parks, nature reserves, wildlife sanctuaries, or other protected areas.

Norway and the Soviet Union especially, there has been disagreement about the prerogative of Norwegian sovereignty (Björklund 2009, p17). Since the Svalbard Treaty was ratified, Moscow ahs put significant pressure on Oslo for how it managed Svalbard – particularly with respect to the West: "Moscow saw it as important to prevent any Western power from gaining a stronger foothold on Svalbard, and wanted Norwegian acceptance for the notion of a privileged Soviet position on the archipelago" (Gjems-Onstad 2012, p20). One way that Russia exerted this pressure was through their physical presence on the island of Spitsbergen , where "the Russian settlements probably generated much less than they cost" (Björklund 2009, p31). As one American Ambassador to Oslo observed in a diplomatic cable, the Russian miners might be more than just miners:

> There is no question that the Soviet Union runs its mines primarily, if not solely, as an excuse to keep a political pressure in a strategically important island, and it is also logical to assume that it maintains a good many more men at Barentsburg than are justified by the coal it manages to extract. It is also logical to assume that the miners have some military training and in the case of an emergency would be able to use it (POL NOR-USSR 1/1.70, Svalbard, C:195-197).

The Norwegians had long been aware of this potential military force within its official borders; Prime Minister Gerhardsen noted that, “The Russians have a large workforce up there, and we know that there is no long stretch between a worker’s and a soldier’s uniform” (Gjems-Onstad 2012, p23). Despite the Svalbard Treaty's ban on military forces, this pressure from Moscow remained for decades.[53] Accordingly, then, "During the Cold War, Norway’s Svalbard policy focused on national security" (Grydehøj, Grydehøj, and Ackren 2012, p106). Perhaps unsurprisingly, Moscow's pressures were countered by an opposite reaction from Washington: "Norway’s early entry into the North Atlantic Treaty Organization (NATO) and the 1950

[53] Treaty prohibitions against the militarization of Svalbard have always proved difficult to interpret or enforce; for example, “As recently as 2010, debate flared up concerning the use for military purposes of photos of Iraq taken by the Norwegian-operated Svalbard Satellite station” (Grydehøj, Grydehøj, and Ackren 2012, p109).

creation of a NATO joint command covering Svalbard and Jan Mayen were reactions to concerns over Soviet expansionism" (Grydehøj, Grydehøj, and Ackren 2012, p109). Teasing out which American or Soviet move, vis-à-vis Svalbard, was cause or effect is less important than noting that these great powers placed Oslo in the unenviable position of managing the territory over which Moscow and Washington were competing.

> The US security analysis of Svalbard can in the main be considered the opposite of the Soviet stance. The US ascribed less importance to Svalbard than did the Soviets because the archipelago was, quite simply, further away from US territory. The main focus of US Svalbard policy was to prevent the Soviets from strengthening their position and using the archipelago as a launch pad for offensive operations (Gjems-Onstad 2012, p21).

This focus on prevention was not unique to the American side. It was not so much that external forces competed to develop the archipelago, but that they actively tried to make sure that no one else did – partly because of the difficult logistics necessary for developing those distant islands.

> A useful measure of both American and Soviet interest in Svalbard was the archipelago's location and accessibility. By and large the potential of Svalbard's location, meaning the archipelago's possible strategic value, was considered limited. The same can be said of Svalbard's accessibility. This resulted in both the US and the Soviet Union being satisfied with denying the other side a stronger foothold on the archipelago. Both countries therefore approached Svalbard politics from a perspective of denial. Moscow was, however, somewhat more interested than Washington because of the archipelago's proximity to Kola and historical Russian attachments to the High North (Gjems-Onstad 2012, p21-22).

With the worlds most powerful nation-states long working to keep Svalbard a strategic no man's land, Oslo hardly enjoyed the type of sovereignty or even sense of self-control over the archipelago that the official resolution of a MD might imply. At a minimum, the Treaty has created a situation in which Oslo lacks control of territory for which it has responsibility.

> Because the Spitsbergen Treaty is so open to interpretation, Svalbard's jurisdiction depends significantly on precedent and perception. It is usual to think of Russia as possessing special rights in Svalbard compared with other treaty signatories, yet this is the case only in practice, not in law. Russia's tenacious maintenance of a community at Barentsburg has ensured its continued influence

> in the territory, despite a world war, a cold war, the collapse of the Soviet Union, and periods of economic crisis. If, relative to the great tides of geopolitics, influence over museum displays, tourist flights, and an unprofitable mining operation appears petty, it is only because Russia's role in Svalbard has come to be taken for granted. This, it may be argued, is exactly what Russia wants. By any standards elsewhere in the world, the existence of a nearly untaxed state-run commercial outpost within another state's sovereign territory would be close to unthinkable. Barentsburg is vital to Russia in the same way as Longyearbyen is vital to Norway: they are important because they exist, rather than because important work is done there (Grydehøj, Grydehøj, and Ackren 2012, p111).

This unique arrangement of checked sovereignty seems to have placed Oslo in the difficult position of managing competing – and more powerful – nation-states and their efforts at keeping Svalbard marginalized and undeveloped (Björklund 2009, Gjems-Onstad 2012).[54] The Svalbard Treaty and the way that it gave Norway responsibility without authority seems to set a difficult precedent with respect to how other MD claimants might see their options with respect to a Svalbard-style arrangement.

A second legacy of the Svalbard Treaty has been the difficulty of access to the archipelago that has ultimately resulted. While connected with the strategic jockeying for power – and perhaps directly the result of it – the problems with access are a distinctly different concern: if the MD's resolution was intended to allow for the extraction of resources or even just access to the archipelago, it has not been equally successful. For example, in terms of even coal mining – arguably the type of hydrocarbon extraction, which catapulted Svalbard into modern discussions and then catalyzed its namesake treaty – the archipelago has hardly offered equal access to all would-be corporations or Treaty signatories.

> From the start, Norway sought to overcome some of its Spitsbergen Treaty-imposed weaknesses by purchasing mining rights from other states whenever they became available; and, since the 1930s, Russia has done the same. The result

[54] The exceptions to this rule are when these competing nation-states have sought to use Svalbard as a platform for making political demonstrations – as Russia did in the spring of 2015, by sending a government official to Svalbard, supposedly in violation of travel bans (Pettersen 2015, RT 2015).

> being that, for the past 80 years, these have been the only states to exercise mining rights (Grydehøj, Grydehøj, and Ackren 2012, p103).

The additional signatories have thus been functionally prevented from leveraging their treaty benefits. Yet, even these two states have had only marginal success at profitably mining coal.

> Although Store Norske has historically depended on Norwegian state subsidies, it has managed to turn a profit during recent years… Trust Arktikugol [the Russian hydrocarbon firm] has similarly been heavily subsidized by the Russian state. The uncertain profitability – and often, certain unprofitability – of mining operations in Svalbard suggest that the Norwegian and Russian operations exist due to a perceived political need to maintain settlements in the archipelago (Grydehøj, Grydehøj, and Ackren 2012, p104).

While some sources claim a greater level (and history) of Norwegian mining profitability (e.g., Store Norske 2015), there is little evidence that economically-oriented operations there have been simple, successful, or easy. One of the reasons that efforts have been difficult is the degree to which Svalbard has been divided into different zones: "Svalbard has always been a territory without internal borders, yet there existed a de facto distinction between different national zones" (Grydehøj, Grydehøj, and Ackren 2012, p107). Officially, "there was interaction between the residents of Svalbard's Russian and Norwegian settlements in the past," but it was logistically difficult, carefully managed, and always "viewed with suspicion by the settlements' respective government authorities" (ibid). Within these different zones, different government-owned corporations long ran these communities however they saw fit.

> Svalbard's jurisdictional status has inspired unique community-level policy solutions. Until recently, all settlements in Svalbard were company towns. The companies that ran them had de facto control over their populations (who lived there, what work they did, what goods they could purchase, etc.). For instance, in Longyearbyen, Norwegian, currency only came into use in 1980, when the central bank of Norway requested that Store Norske cease printing the wage vouchers that had been used instead of money (Grydehøj, Grydehøj, and Ackren 2012, p105).

Across Svalbard, there were different rules, currencies, and communities that functioned inefficiently and without oversight; for example, those "Soviet mining communities were not regulated by the Norwegian authorities" (Björklund 2009, p13) and the northern village of Ny-Ålesund, which relied on Longyearbyen for all logistics that entered or left Svalbard (which was almost everything) was run by a different company than the one that ran Longyearbyen – and the two firms had difficult histories and incompatible approaches to different problems (Björklund 2009; Henriksen and Ufstein 2011; Gjems-Onstad 2012; Grydehøj, Grydehøj, and Ackren 2012). While there has been some progress in recent years, it has been slow; for example, "Only in 2002 did Longyearbyen gain a measure of local democracy, with the creation of the Longyearbyen Community Council" where only Norwegian citizens were allowed to vote over a subset of the policies that actually governed the lives of everyone in town (Grydehøj, Grydehøj, and Ackren 2012). Even in Ny-Ålesund, which has been repurposed (or, at least, rebranded) as a research station, there have been problems of inequality and inefficiency (Schild 1996).

> [F]ollowing the cessation of mining activities at Ny-Ålesund, Norway transformed the settlement into a research centre in part to prevent its being taken over by the Russians and in part to maintain Norway's status vis- à-vis other states that had begun oil exploration activities in Svalbard (Grydehøj, Grydehøj, and Ackren 2012, p112).

The reasons for research stations and the policies that guide them all find a basis in either Norway's competition with Russia or in the larger tri-lateral relationship in which Oslo finds itself trying to balance the demands of Moscow and Washington (Schild 1996; Gjems-Onstad 2012). Grydehøj, Grydehøj, and Ackren observed this both in Ny-Ålesund and across the other communities of Spitsbergen:

> In Svalbard, research cannot merely be taken at face value but must also be regarded as political activity engaged in by the national governments that fund the researchers. Even at the time of its establishment, the Norwegian Polar Institute was viewed as an instrument for achieving influence (2012, p112).

When research institutes, and their research, is supported (or not) based on an evaluation of the degree to which those programs support nationalistic agendas, the science suffers (Schild 1996). Additionally, collaboration becomes difficult and the very "framework for community life in Svalbard" gets "driven by Norway's and Russia's desire to affirm their rights in the archipelago. International relations have always been at the core of Svalbard policy" (Grydehøj, Grydehøj, and Ackren 2012, p109). Whether the work on Svalbard is evaluated in terms of profitability, scientific efficacy, or some other relevant standard of utility, the result is that "the prism of international relations," particularly Russo-Norwegian relations, presents "practical challenges to creating genuinely international territories" (Grydehøj, Grydehøj, and Ackren 2012, p100). This hardly sets a good precedent for how to resolve other disputed maritime areas: Svalbard-style management does not set up interested parties for success with whatever they choose to pursue in the maritime area. Thus, parties to disputes that are willing to compromise on sovereignty still might not be satisfied with how an area is managed – as Washington, Moscow, and others have been with Oslo.

The third and perhaps most important legacy of Svalbard's ostensible resolution is the degree to which it has catalyzed a series of other maritime disputes. In short, there has been a cascade effect of MDs from the Svalbard treaty: instead of resolving things, the Treaty set into motion a series of different disputes.

> Once imagined as the jewel of Norway's Arctic possessions, [Svalbard] was recognized as Norwegian by the Svalbard Treaty of 1920. The treaty subjected the recognition of Norwegian sovereignty to stipulations, which have caused a number of disputes between Norway and other parties to the treaty, some of which remain unresolved. The sovereign's sole right to petroleum deposits on the continental shelf surrounding the archipelago and fishery regulation in the adjacent seas are the main bones of contention (Björklund 2009, p5).

Some of these residual or resulting MDs remain contentious. For example, in the spring of 2015, Moscow protested Norwegian hydrocarbon-related surveying and drilling – claiming that it violated agreements and laws (Pettersen 2015b). Some of these disputes, however, have eventually been resolved. For example, Oslo and Moscow eventually resolved their Type 1 disputes over delimiting the Barents:

> The agreement between Norway and Russia on a maritime boundary in the Barents Sea marks an end to an almost 40-year process. It is not coincidental that agreement was reached in a period of significant international attention on the Arctic. The prospect of the sea-ice loss, the opening of the region to maritime transport and access to natural resources, particularly potential petroleum deposits, was probably influential for the parties to reach agreement at this stage… The settlement of the maritime boundary with Russia will likely contribute to the consolidation of the maritime zones claimed or established by Norway on the basis of Svalbard. But the two parties have formally reserved their rights by including a clause in the September 2010 treaty ensuring that their rights and obligations under multilateral treaties are not prejudiced by the delimitation. The focus in coming years will be on the question of the application of the Svalbard Treaty within these zones. The wider impact of the Norwegian-Russian treaty on Arctic maritime delimitation is more uncertain. The treaty will, however, add to the orderly governance of the Arctic region (Henriksen and Ufstein 2011, p10)

Not all scholars agree with the Henriksen and Ufstein about the merits of the Svalbard Treaty. For example, Grydehøj, Grydehøj, and Ackren – in examining the same Barents Sea MD resolution – noted that Moscow only "compromised on its claims and negotiated with Norway a maritime border in the Barents Sea" because of " foreign policy considerations" and noted that, Russo-Norwegian [d]isputes nevertheless continue regarding fisheries rights, with the Norwegian Coast Guard seizing the Russian trawler Sapphire II on 28 September 2011" (2012, p109). Notably, Moscow is not the only state unsatisfied with Oslo's interpretation of the Treaty and its impact on maritime resource extraction.

> Conflict has also arisen concerning Svalbard’s territorial borders. The Spitsbergen Treaty predates legal concepts such as exclusive economic zones and maritime zones outside the territorial sea (Scotcher, 2011). Whereas Norway contends that

> the Spitsbergen Treaty covers only land and territorial sea to a distance of 12 nautical miles (around 22 km), some other states regard the treaty as applying to the fisheries zone and the continental shelf (.ibid).

The Treaty thus helped resolve issues about the archipelago, but catalyzed other problems with water delimitation and other islands – including Jan Mayen Island (Church 1985). Despite the problems posed by the Treaty, the Norwegian government has "quite concretely refusing to engage in international debate on revising the Spitsbergen Treaty" – at least in part because it is "[o]ne of the means by which the Norwegian government seeks to maintain the status quo" which it has ultimately decided is better than the loss of sovereignty over Svalbard (Grydehøj, Grydehøj, and Ackren 2012, p111).

> Although the Spitsbergen Treaty created a legislative framework for discussing the 'Svalbard question', the question itself remains unresolved. Since the end of the Cold War, focus has declined on the possibility of outright military conflict between the East and the West. Instead, Svalbard has increasingly become subject to strategic concerns related to the world economy. Norway and Russia may be fighting the same old battles in Svalbard, but they are doing so in new ways: the Norwegian government makes no effort to hide that its maintenance of sovereignty over Svalbard is an end in itself, and Russia has shown a willingness to spend money and engage the Norwegian courts for the sake of its presence in the territory. As far as these two countries are concerned, the nurturing of national rights in Svalbard is necessary not so much for the benefits these rights convey as for the way in which they deny other states the strategic benefits that hegemony over Svalbard could potentially bestow (Grydehøj, Grydehøj, and Ackren 2012, p113).

Of course, whether or not these Svalbard-catalyzed legal battles will spill into larger Arctic concerns (as addressed explicitly in Chapter 8) is a different question; the important issue here is that there is a legacy of the Svalbard Treaty that is unhelpful for those interested in maritime dispute resolution: the Treaty catalyzed additional MDs, not all of which are resolved almost a hundred years later.

While it is difficult to call an international treaty a failure, it is important to recognize the limitations of the resolution of the Svalbard agreement. Specifically, it seems to have been

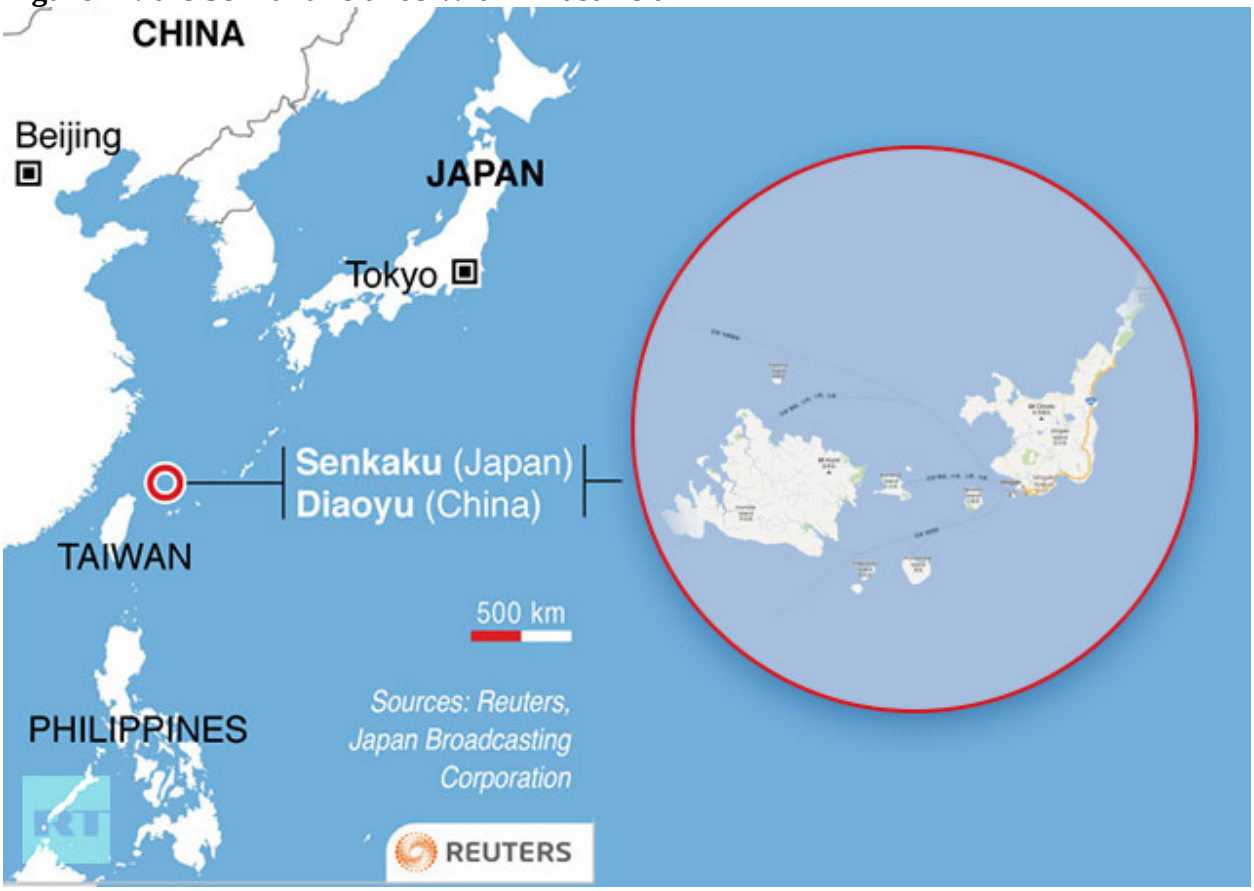
unwise to have given a *relatively* weaker nation-state the sovereignty over the disputed territory; although Norway has a security government and strong military, it has struggled both with the strategic need to balance competing global interests (with respect to the Cold War and modern Moscow-Washington tension) and the community-level responsibility to enforce the Treaty in a way that manages international concerns. Additionally, it seems that the Treaty neglected to adequately address the related or residual disputes of the contested maritime area. Although the Treaty predates modern maritime law, it lacked the mechanisms necessary for organically resolving intrinsic or cascading conflicts. Accordingly, future MD resolutions, which leverage the Svalbard model, should address these concerns.

Chapter Five: Qualitative Analysis: Senkakus

Like the Svalbard case study, the Senkaku MD evolved as its claimants emerged as modern and independent nation-states; additionally, this dispute in the East China Sea proves important regionally and offers an abundance of evidence for the purposes of reaching generalizable conclusions. In terms of the region, it helps to orient analysis of the Senkakus around the islands location (see Figure 41, below): “These five small islands and three rocky outcroppings lie 90nm northeast of Taiwan and 220nm west-southwest of Okinawa” (Cole 2010, p30). The dispute over these tiny islands has not yet been resolved: “Today, ownership of these uninhabited islands has become one of the most complicated territorial disputes in the world” (Suganuma 2000, p11).[55] Accordingly, this analysis of the Senkaku MD cannot include a resolution, as one has not been reached yet, but it will address what actions have been taken and what they mean for an understanding of Type 3 disputes.

[55] Like many MDs, the Senkaku islands MD is not a dispute in which there is exact agreement on the extent (or nature) of the disagreement; specifically, some argue that sovereignty of the Senkaku is integral to the water delimitation dispute, but others want these to be differentiated. Most government analysts and scholars argue that they are the same disputes – which is how this chapter treats them – but some argue the opposite. For context, here is an example of that alternative take on these disputes: "Sino-Japanese maritime disputes in the East China Sea concern two issues: the territorial sovereignty of the Diaoyu Islands (called the Senkaku Islands in Japanese) and maritime delimitation. The sovereignty dispute over the Diaoyu Islands has always been a key factor in negotiations on East China Sea issues. If this dispute can be disentangled from the maritime delimitation issue through an agreement to exclude the Diaoyu Islands as a basis for delimitation issue might be handled more easily, since most confrontations and reciprocal distrust to date are rooted in the sovereignty dispute" (Gong 2011, p111).

Figure 41: the Senkaku Islands Within East Asia



(Reuters 2010)

In terms of the origin of the dispute, one must navigate the complicated and storied relationship between Imperial China and Imperial Japan. The Senkakus had been "considered to be Chinese, based on a fourteenth-century claim, until acquired by Japan under the Treaty of Shimonoseki following its victorious war with China in 1895" (Cole 2010, p30). From there, interpretations begin to diverge (Inoue 1972, Check 1974, Ma 1984, Deans 1996, Austin 1998): scholars, politicians, and activists disagree

> …on whether the islands were free for the taking in 1894, how Japan obtained control in that year, whether the islands were traditionally associated with Taiwan or Okinawa (Ryuku), and what the implication of various peace treaties are (Koo 2009, p104).

The Chinese side argues that the Treaty of Shimoneseki was nullified "the 1943 Cairo Declaration, 1945 Potsdam Proclamation, and Article 2 of the San Francisco Peace Treaty" (Koo 2009, p105). The Japanese side argues that the Senkaku, like Svalbard, had been "*terra nullius*… and thus that they were legitimately incorporated as part of Okinawa Prefecture" and were thus part of Japan and not something which needed to be returned (Koo 2009, 105). To support this claim, those sympathetic to the Japanese position cite the "1971 Okinawa Reversion Agreement with the US as validating its sovereignty over the disputed islands" in that the Unites States returned control of Okinawa and the Diaoyu (where it had been conducting military training for a decade) to Tokyo. Although neither the Chinese government or Taiwan, nor the Chinese government on the Mainland (which was then not recognized, as will be addressed below) officially protested any of these treaties,[56] there is evidence that Beijing and Taipei were unhappy with the documents and diplomatic developments (Suganuma 2000, Gries 2004, Koo 2009, Cole 2010, Smith 2014).

Regardless of what Chinese leadership thought of the treatment of the Senkaku before Japan and the People's Republic of China normalized relations in 1972, the Chinese leadership explicitly addressed it in that process. Deng Xiaoping stated…

> 'We call it Tiaoyu Island, but you call it by another name. It is true that the two sides maintain different views on the question. It doesn't matter if this question is shelved for some time, say, ten years. Our generation is not wise enough to find common language this question. Our next generation will certainly be wiser. They will surely find a solution acceptable to all' (Smith 2014, p103).

[56] For example: "Furthermore, in 1951, when Japan and the United States negotiated the San Francisco Peace treaty (or Multilateral Treaty of Peace with Japan), the Nationalist government did not express any objection regarding the Diaoyu Islands. Instead they support this treaty. Indeed, before signing this treaty, the representatives of the Republic of China advocated no objection whatsoever to the fact that these islands were placed under the American administration on the basis of Article 3 of the San Francisco Peace Treaty" (Suganuma 2000, p121).

In setting aside this MD for future generations, the Sino-Japanese normalization functionally established a procedure by which the Senkaku were simply avoided in diplomatic dialogues between Beijing and Tokyo.

Starting in the 1980s, and accelerating in each decade since, China's military – particularly its navy, the People's Liberation Army Navy (PLAN) – began modernizing and expanding in size (ONI 2008, 2015). On the other side of the East China Sea, Tokyo was constitutionally restrained in its ability to modernize, grow, or train. This contrast was particularly clear when Beijing began overtly deploying its military and para-military forces into the East China Sea (ONI 2008, Goldstein 2010, ONI 2015).

> In recent years, China's (largely military) presence in the East China Sea has clearly increased. In particular, PLAN warships have entered and exited the East China Sea through narrow seas between Japanese islands on several occasions since 2004. Although such waters are regarded as high seas and thus open for passage under UNCLOS, these transits have been regarded with concern by the Japanese government. Some of these deployments were unprecedented in the number and sophistication of the ships involved, and signaled a clear increase in China's ability to operate naval vessels in a coordinated manner over much further distances from home (Swaine and Fravel 2010, p7-8) [this also happened with aircraft]

Such surface operations and exercises were supplemented with air operations and exercises, then joint exercises including both surface ships and aircraft – signaling an ability to conduct the kind of coordinated operations necessary for fighting a war in the East China Sea (ECS) (Swaine and Fravel 2010, Dutton 2009, Li 2010, ONI 2015). Arguably, Beijing similarly signaled with their subsurface assets and operations (Dutton 2009, ONI 2015). Collectively, these Chinese military developments and deployments conveyed a commitment to the ECS that substantively changed the tone of the discussions as well as the potential consequences of disagreement over ultimate resolution – without ever mentioning the Senkakus by name.

While the Senkakus themselves were not mentioned explicitly in official documents, China and Japan ostensibly made progress on their ECS disputes in 2008. Specifically, there was a joint statement and the signing of a Principled Consensus:

> On May 8, 2008, Chinese president Hu Jintao and Japanese prime minister Yasuo Fukuda signed a Sino-Japanese joint statement promising comprehensive promotion of strategic and mutually beneficial relations… In order to realize the goal set forward in the statement, leaders of the two countries signed the China-Japan Principled Consensus on the East China Sea on June 18, 2008, indicating a bright and promising future toward peaceful settlement of both the long-standing territorial claims and the maritime delimitation negotiations pertaining to the East China Sea. Since the principled consensus itself is not an operational agreement, the realization of joint development and cooperative development depends on the conclusion of a treaty and an exchange of notes between the two governments (Gong 2011, p111).

While these developments seemed good for both regional stability and potential MD resolution, they produced little in terms of measurable results. Notably, the different sides did not agree on what prevented future progress. Some noted that, since the "memorandum of understanding (MOU) for joint development was… not legally binding," there was not any "relevant progress" on "the negotiations for furtherance of the cooperative and joint development scheme under the MOU. Bilateral talks have been neither regular nor particularly productive" (Kanehara 2011, p140). Others places the locus of blame elsewhere:

> Increasingly impatient, the Japanese government has criticized China for breaching the principled consensus by starting unilateral operations on the Chinese side of the median line. Meanwhile, China has been responding by claiming that the Chunxiao oil and gas field is located in waters where China has inherent sovereign rights over the natural prolongation of its continental shelf (Gong 2011, p111).

Such general arguments about impatience and inflexibility were supplemented by frustrations with specific elements of the agreements and the degree to which they were followed.

> More troublesome are the Diaoyu (Senkaku in Japanese) Islands where both sides have been unable to maintain self-restraint since the release of the Consensus. In the same month that two countries released the Consensus, China lodged a protest

> with Japan on the "over-flight inspection" of the Diaoyu/Senkaku Islands by a Japanese congressperson. In December 2008, Chinese marine surveillance vessels entered the waters near the Diaoyu/Senkaku Islands, claiming they were "conducting usual patrol in waters within China's jurisdiction." Not surprisingly, there was a strong protest from Japan. Japan made plans for the deployment of a vessel in the waters of the Diaoyu/Senkaku Islands, with the purpose to defend against the "invasion" from Chinese marine surveillance ships. China expressed great concern over the matter and warned Japan that it would respond vigorously if Japan escalated the conflict (Zhang 2011, p54)

These problems over how to fish, sail through, or even patrol the ECS became increasingly difficult – particularly when they resulted in direct confrontations between Chinese and Japanese parties in the ECS. Although countless interactions occur each day without incident – given the degree of congestion in the ECS, the proximity of different fishing areas to those sea lanes, the multitude of other oceanographic and commercial factors which contribute to ECS congestion – the few incidents that did occur became increasingly difficult. For example, in the autumn of 2010, a disagreement over fishing (and the enforcement of fishing) flared when China and Japan both seemed to deviate from their traditional ways of managing the ECS.

> In September 2010, Beijing took a very aggressive, diplomatic stance toward Tokyo in reaction to Japan's arrest of a Chinese fishing boat captain on suspicion of intentionally ramming his vessel into Japan Coast Guard ships near the disputed Senkaku/Diaoyu Islands. Beijing initially protested the Japanese decision to seize the Chinese fishing vessel and hold the captain and crew, and then markedly intensified its response after Tokyo decided to hold the captain (after releasing the rest of the crew) and announced that it would investigate the incident. China's response included a variety of actions, some quite aggressive. In addition, after Japan released the captain of the Chinese fishing boat, Beijing, rather than moving to defuse the tensions, requested that Tokyo apologize for detaining him and pay compensation. Tokyo refused to apologize, and demanded that China pay for repairs to the Japanese coast guard boats damaged in the collision (Swaine and Fravel 2010, p8).

While that issue eventually resolved itself, China and Japan struggled to reach an understanding with respect to managing events in the ECS. The functional problem came down to two related issues: determining how individuals and assets (e.g., ships) would interact with each other in the

contested maritime area and deciding how the two claimant governments would manage the incidents that rose to their attention. To a large extent, many of the problems in the ECS came down to differing expectations of the status quo.

> China's handling of the September 2010 incident with Japan was not solely an expression of unjustified assertiveness and nationalist pique... Although Beijing clearly overreacted, almost certainly in part due to domestic pressure, it was also responding to what it regarded as a clear departure by Japan from the status quo in handling such incidents. According to one deeply knowledgeable observer of Sino- Japanese interactions, precedent (including an incident in 2004 and one in 2008) suggested that Japan would not have detained the Chinese fishing boat captain, but instead would have deported him to China. That is part of why the Chinese reacted so strongly to Japan's actions: because they were unexpected (Swaine and Fravel 2010, p9).

After that incident was resolved, the problem of "unexpected" events continued to plague the Sino-Japanese relationship over the ECS – "causing observers to wonder whether tension in that body of water are mounting" (Gong 2011, p111). To be clear, the problem of "unexpected" policy decisions is that they represent a change from the status quo; since Deng effectively tabled the Senkaku dispute by way of attempting to freeze it at the status quo, even the smallest changes threatened the larger strategic perceptions on the ECS. This was the case for both events within the contested maritime area, as well as the larger, diplomatic world. For example, the Japanese government officially acquired ownership from the private Japanese family that had long officially owned the islands.

> The dispute heated up in April 2012, after the governor of Tokyo offered to buy the islands from their private owner, after which the Japanese government stepped in to broker a deal of their own involving the purchase of three of the disputed islands. Both cases featured official government involvement, escalating rhetoric, and in some cases, displays of force by naval vessels (Nyman 2013, p11-12).

The official Senkaku sale catalyzed official protests from Beijing, as well as street protests in several Chinese cites (Ryall 2012). A different example of events that escalated tensions over the ECS would be Beijing's 2013 announcement of an Air Defense Identification Zone (ADIZ)

over the ECS (as Figure 42 illustrates). While Beijing claimed that the zone was (and remains) consistent with international and regional practices, many disagree (Iwata 2013, Park 2013, Xinhua 2013). Regardless of the degree to which the ADIZ was officially or intrinsically escalatory, it has been seen as increasing the likelihood of accidental escalation in the MD:

> Approximately two dozen countries (including the United States, Japan and Korea) maintain some form of ADIZ, generally for the purpose of defending against hostile intrusions of airspace or de-conflicting air traffic. So long as these zones are immediately adjacent to states' own airspace, they are not very controversial. Indeed, by establishing clear patterns of behavior and requiring communication, they can be stabilizing. With no treaty that directly authorizes or regulates them and so little consistent state practice, however, it is hard to discern clear-cut and widely-recognized international rules for ADIZs… The greatest danger of China's move is not that it significantly reshapes the core territorial disputes. It is that expanded Chinese military patrols in the air, like its activities at sea, in such close proximity to those of rival players could lead to accidents, provocations, or miscommunications that might easily escalate. So as with maritime activities, for now diplomacy on air activities should focus on creating workable rules of the road and crisis communication mechanisms – and should not be distracted by claims that the ADIZ will substantially affect competing territorial claims (Waxman 2014).

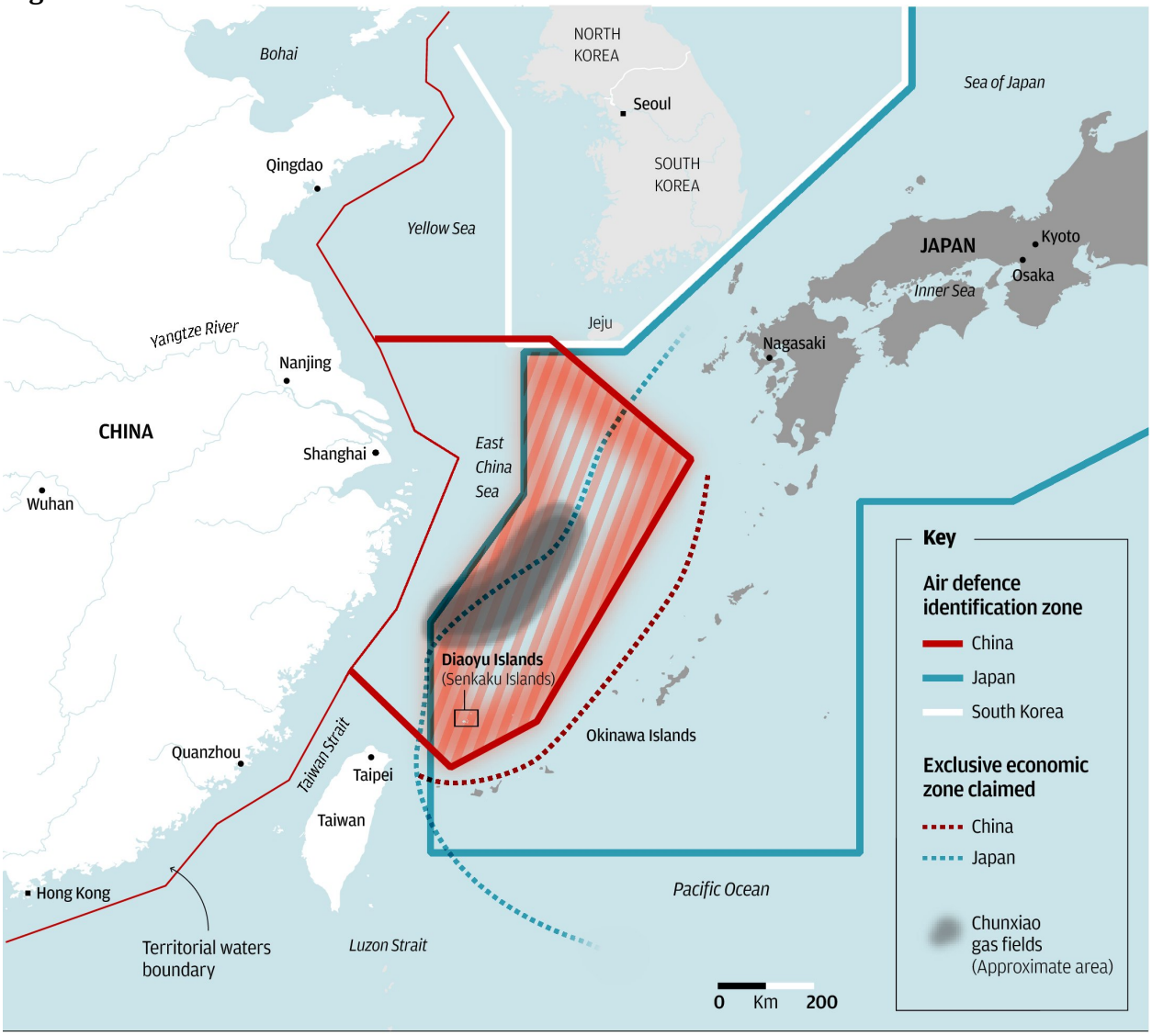
This type of dual focus – on tracking what innately changes the MD and what only indirectly changes the MD – illustrates the nuanced problems with the ECS and the types of multilevel strategies that China and Japan are employing over islands which have supposedly been tabled for only future generations to resolve – at least for China and Japan.

Deng's pledge to table the Senkaku issue effectively put the matter into stasis – but only with respect to the Sino-Japanese relationship; the United States was (and remains) a participant in the maritime dispute because of its role as the previous administrator of Okinawa (and its nearby islands, which administratively included the Senkakus) and the guarantor of Japan's security. This meant that Washington's words and deeds impacted the Senkaku MD. For example, "while stating that [the United States'] defense treaty with Tokyo applies to the Senkaku/Diaoyutai islands, Washington publicly urged for mutual restrain in this Sino-Japanese

dispute and disavowed any official position on the dispute itself" (Chan, 2013, p112). Yet, the United States has since clarified its obligation to defend Japan's sovereignty over the Senkaku (Green 2001, Chen 2013). In 2015, President Obama even stated, "I want to reiterate that our treaty commitment to Japan's security is absolute, and that Article 5 covers all territories under Japan's administration, including [the] Senkaku Islands" (Gertz 2015).[57] The state of the dispute is thus one in which international law seems to support the Japanese side, which America has committed to support, but China has taken issue with these claims – both in word and in deed.

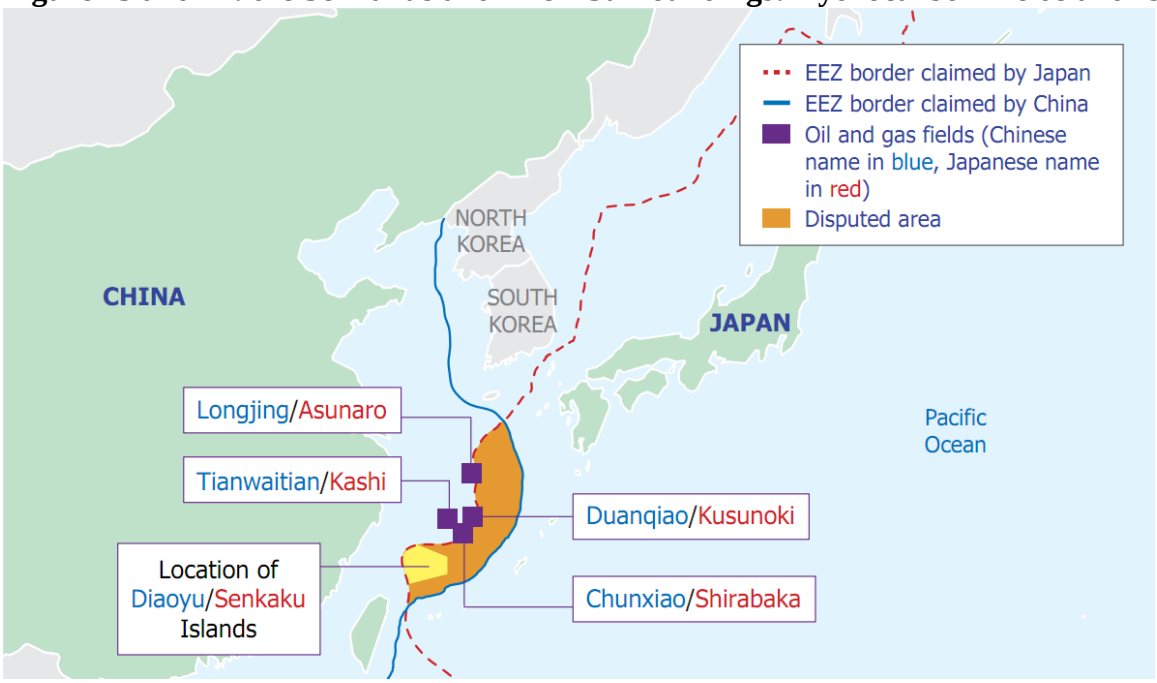
[57] Notably, Obama used the word "administration" and not "sovereignty," but there has been little evidence that the United States government considers the Senkakus to be anything but Japan's; for example, recent American military commanders have publicly commented on how they would defend (or retake) the Senkakus from Chinese forces (Harper 2014) and resulting diplomatic and public remarks left little room for interpreting American policy as anything other than a full endorsement of the Japanese position (O'Hanlon 2015).

Figure 42: the China's East China Sea Air Defense Identification Zone

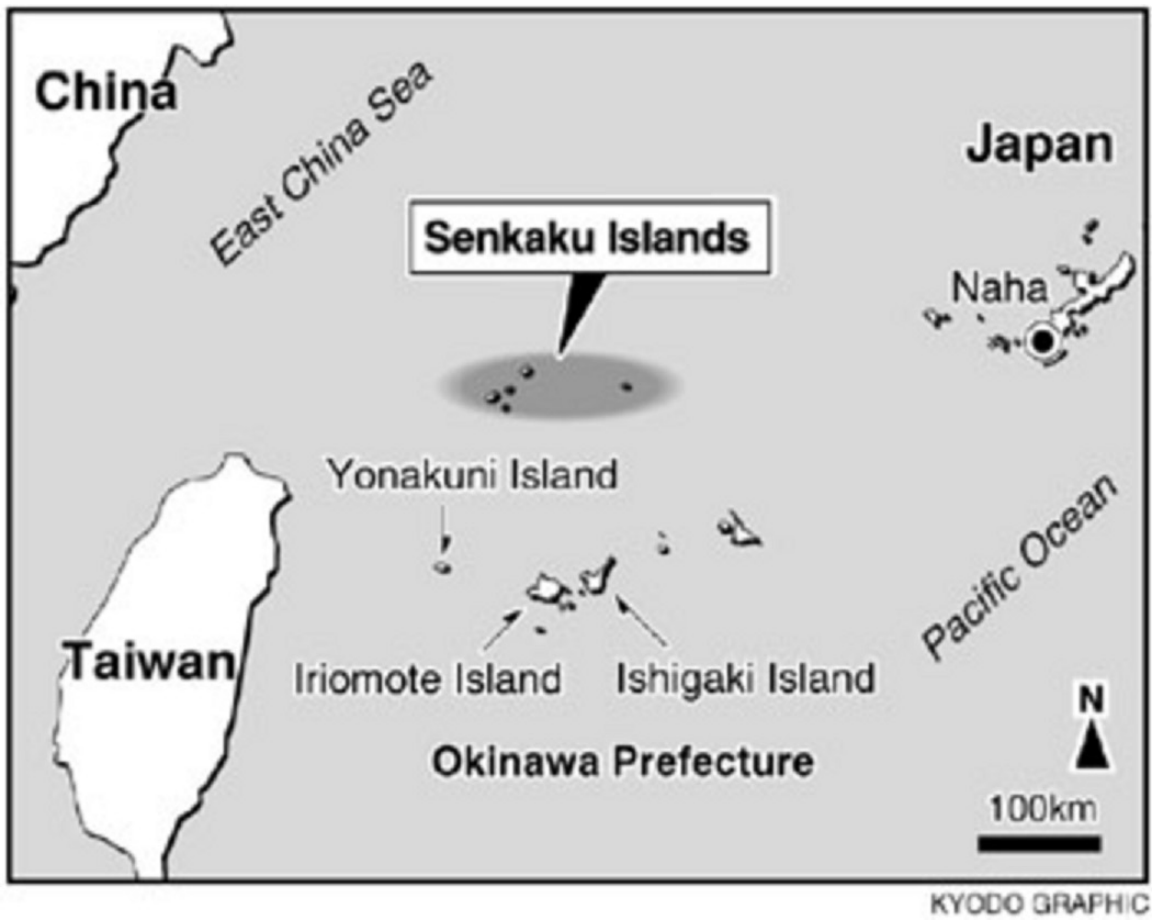


(SCMP 2013)

Figure 43 and 44: the Senkakus and Their Surroundings: Hydrocarbon Fields and Islands



(Pai 2013)



(COFDA 2013)

Tangible Value of the Contested Area:

Hydrocarbons were discovered near the Senkaku less than two years before China and Japan normalized relations (and Deng Xiaoping suggested the perpetual tabling of sovereignty discussions). Before that, the islands' "tangible significance had been limited to fishing resources" (Koo 2009, p104). The discovery of "oil and gas deposits in the continental shelf near the islands… [and] The global trend to adopt the UNCLOS further heightened the tangible values of those uninhabited islands (ibid.). This combination of fisheries and hydrocarbons intensifies both the discussions of the Senkaku and the crowded nature of those waters:

> Future access to resource is paramount. Japan has taken an expensive claim to its EEZ and China has invested heavily in reaping the East China Sea's marine end submarine resources. Moreover, Japanese and Chinese mariners share these waters with Korean and Taiwanese ships, and all four nations lay claim to the precious oil and gas fields thought to be in the seabed below. Policing the East China Sea are the coast guards, fisheries, and seabed research agencies as well as the navies of all four nations. Whether or not the potential resource benefits of the East China Sea will be realized, the enhancement of national maritime forces in this sea makes the contest over legitimate boundaries increasingly fraught." Smith 2014, p102

Both to understand the economic value of the MD and to analyze the ways that such fisheries and hydrocarbons might suggest second- and third-order effects for the MD, it is important to understand the exact factors on those fronts. Notably, the Chinese and Japanese governments have treated the hydrocarbon- and fisheries-related concerns differently – in both tone and practice. For example, although Beijing and Tokyo "concluded a fisheries treaty in 1975," they "set aside the matter of the disputed island waters" and similarly tabled specific discussions of hydrocarbon extraction: those "plans, already deemed technically difficult" because of the deep waters near the islands, also were set aside in the interest of peaceful diplomatic relations" (Smith 2014, p104).

Hydrocarbons:

Although many aspects of this MD receive international press attention, many scholars believe the hydrocarbons are the key factor; for example, Smith claims that "Today the potential for energy resources in the East China Sea dominates the headlines of the maritime boundary dispute between Japan and China" (Smith 2014, p102). Relative to other MDs, though, the hydrocarbons near the Senkaku were discovered late; in 1969, American- and then Japanese-led survey efforts concluded that the MD was rich in oil and natural gas:

> Both the [American] ECAFE and [Japanese] Niino surveys affirmed that Diaoyu Islands area contain one of the most prolific oil and gas reservoirs in the world. Naturally enough, the expectations of a great oil find produced much activity. By May 1969, nearly fourteen thousand applications for driving rights were filed with the RyuKyu Government of Okinawa Prefecture, and the number applications approached twenty-five thousand by September 1970 (Suganuma 2000, p131).

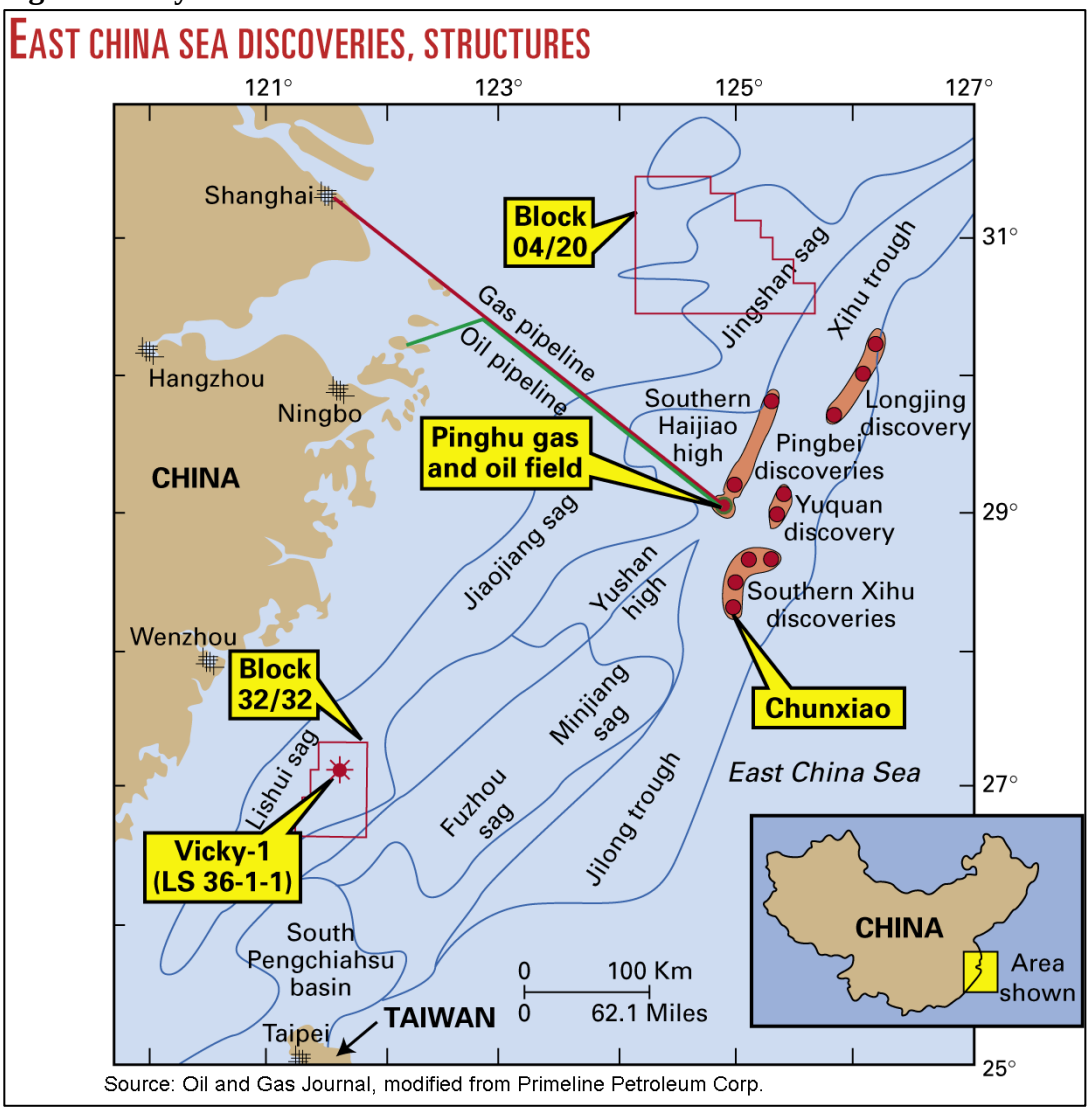
After this hydrocarbon discovery, the nature of the MD and the attitude of its claimants began to change, as can be observed with the type of public claims that the different claimants made:

> Not until the discovery of oil around the Diaoyu Islands in 1969 did both the Nationalist Chinese regime in Taiwan and the Communist Chinese regime on the mainland officially claim ownership of the Diaoyu Islands (Suganuma 2000, p116-117).

Beyond official statements and diplomatic claims, the discovery of hydrocarbons spurred a level of interest in, and activity around, the Senkaku that is best described as chaotic and escalatory (Koo 2000, Kastidinov 2013, Smith 2014). For example, China does not release details on the drilling authorized in the Chunxiao Gas Fields of the ECS, but Japan claims that Chinese efforts drill into contested deposits just over the disputed line – thus taking what Tokyo considers more than Beijing's share (Smith 2014) – as Figure 45 illustrates below. Notably, there was an agreement for Sino-Japanese energy development in the area, but it did not seem to motivate bilateral progress: "Although Beijing did agree in 2008 to jointly develop energy resources in the

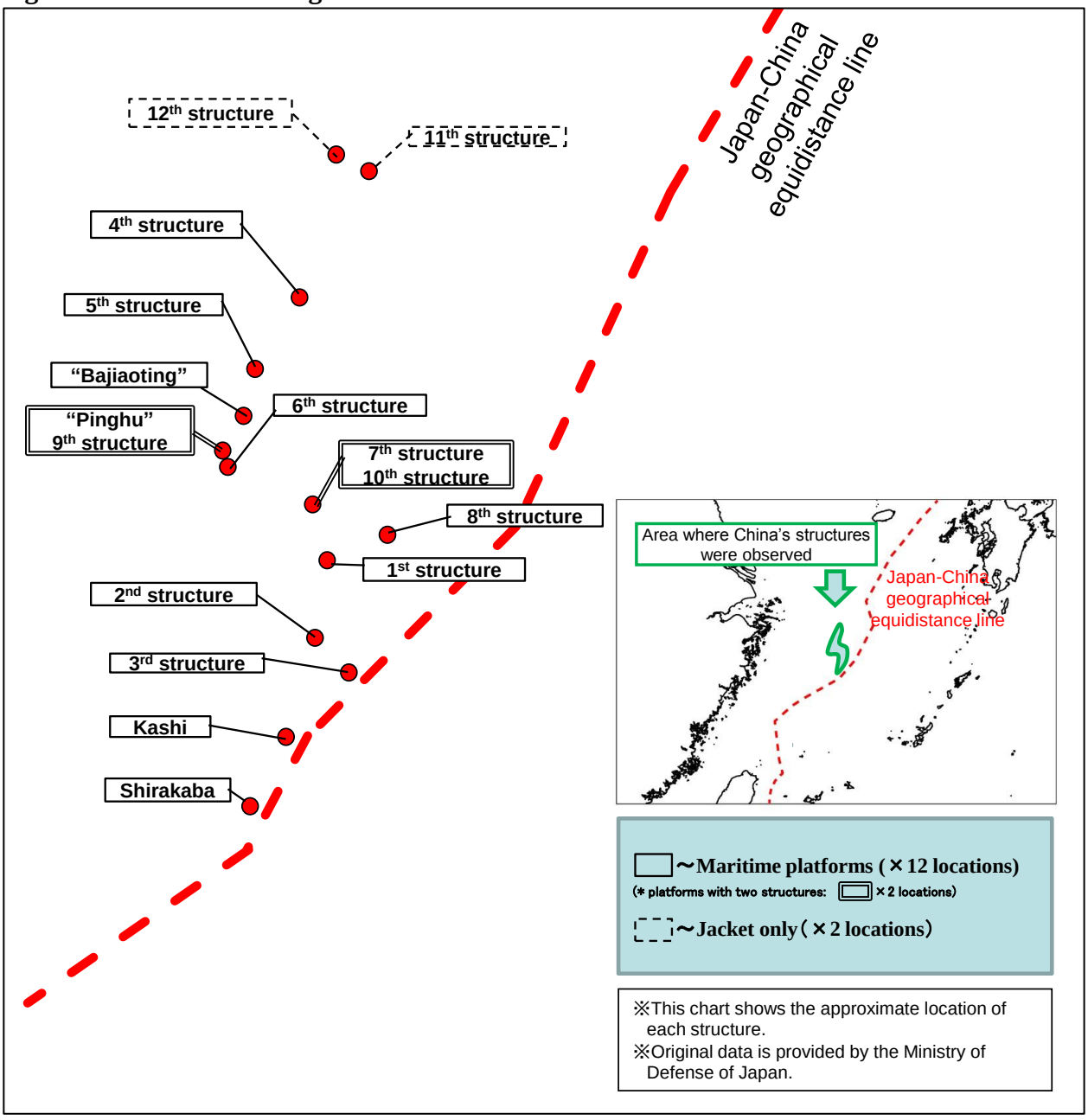
East China Sea, it did not follow through with the implementation treaty" (Smith 2014, p101-102). Regardless of the specific locations of individual drilling platforms or national efforts, the significance of Senkaku's hydrocarbons remains clear: the allure of both profits and additional energy security motivate claimant interest in the MD and specific international behaviors in and towards the contested area.

Figure 45: Hydrocarbons in the East China Sea



(Oil and Gas Journal 1999)

Figure 46: Chinese Drilling in the East China Sea



(Government of Japan 2015)

Fisheries:

Before 1969, there was no discussion of hydrocarbons in the waters around the Senkaku islands. Then, the dialogue – when it happened – focused on fisheries access for the respective claimants. While the aforementioned discovery of hydrocarbon deposits added an important

element to the Senkaku dispute, it did not obviate the fisheries concerns. In fact, reaching an agreement over fisheries had been one of the first things that China and Japan did after normalizing relations: they "concluded a fishery agreement in 1975 after Japan had recognized the Beijing government as representing China in 1972. After the adoption of UNCLOS and after the two countries had established their 200-nm zones, the new fishery agreement was concluded in 1998" (Kanehara 2011, p141-142). This Sino-Japanese Fishery Agreement, as it was officially known, "went into effect in 2000" and " is the first specific and legally binding provisional arrangement on the living resources in the two countries' EEZs" (Gong 2011, p119). Importantly, the Agreement "stipulates that every year Japan and China must determine the catch quotas, fishing areas, and other terms of fishing for the nationals and fishing vessels of the other signatory states allowed to fish in their EEZ" (Gong 2011, p120). Although this might have seen like a set of measures that would make the agreement more adaptive, it has proven problematic; worse, Beijing and Tokyo have not been able to agree on how to interpret key enforcement protocols or responsibilities.

> The agreement does not address which side should have jurisdiction over illegal activities by other countries, the protection and preservation of the marine environment, and other issues in the fishery zones, such as the exploration and exploitation of nonliving resources, marine scientific research, or the establishment and use of artificial islands, installations, and structures. Thus, in the aforementioned fishery zones, the potential for conflict over jurisdiction remains and may occasionally trigger tensions and confrontations (Gong 2011, p120).

Such concerns over interpretation, jurisdiction, and enforcement have grown increasingly difficult – particularly with the development of factory ships and modern, industrialized fishing fleets.

> In the past, it was fishermen who urged the Japanese government to come to the bargaining table with China. …Chinese fishermen initially stayed closer to shore, but as their boats got bigger and the demand for fish increased, China's fishing

> trawlers spread further out into the East China Sea and closer to the Japanese, Taiwanese, and Koran shores. Incidents involving fishing boats of all nations have resulted in government protests and carefully renegotiated fisheries agreements (Smith 2014, p102).

Notably, these fishing agreements and the behavior of individual fishing boats have proven flashpoints for this MD: activists from all sides have used private boats to gain access to the islands (for various political displays) and even cause incidents at sea – both with other fishermen and with maritime legal authorities (Koo 2000, Dutton 2008, Chan 2013, Kastidinov 2013, Smith 2014). While those incidents have been less about actual fisheries than perceived political opportunities, it is important to note the degree of freedom that bad actors have with respect to this MD vis-à-vis fishing claims; for contrast, it takes significant resources to bring to bear any hydrocarbon extraction infrastructure, but the financial costs of fishing assets are negligible.

> It does not take much to start an incident; it can be as simple as a fishing boat entering contested waters or a protestor landing on a disputed island. When reported by the mass media, nationalist sentiments are aroused on both sides, forcing the government in question to issue official protests and reiterate their respective sovereignty claims. (Chen, 2013, p120)

Accordingly, it is difficult to differentiate genuine interest in the economic value of the MD from the political interest in escalating the dispute.

Intangible Value of the Contested Area:

The international factors of the Senkaku MD illustrate the degree to which Putnam's Level I issues determined venue and timing of progress, but they neglect the sorts of domestic interests in the islands that arguably drove those behaviors. For the Senkaku dispute, it is important to highlight the degree to which these symbolic factors include historical, cultural, and regional perceptions of rivalry; as Gries notes, this rivalry was not just between Japan and China, but also

included Washington.[58] For example, he notes how frequently modern Chinese attitudes towards this MD "focus on Chinese perceptions of China's two most important rivals: America and Japan" (Gries 2004, p4). Even if one were to set aside the role of the rising rivalry with America, there are still important historical issues driving domestic concerns about the MD.

> The dispute is made particularly rich by virtue of the long and complex history of relations between China and Japan — and even more challenging by virtue of the fact that the subject of the dispute is a group of islands distantly removed from the cores of both societies. The dispute is both territorial and maritime, involving not only the discovery, occupancy, and use of the islands themselves, but also the sea-lanes[59] to and, in contemporary times, the water column and seabed near the islands. In short, the dispute over the Diaoyu Islands is a 'window' not only on Sino-Japanese rivalries in East Asia, but also on disputes at sea, over marine space, the ramifications of which are broadly relevant (Suganuma 2000, p1-2).

This complex relationship makes it difficult to determine when there was genuine outrage because of the MD and when the MD was used as a justification for acting against a rival. For example, there was a " popular boycott of Japanese products and manufacturing stoppages at Japanese firms in China resulting from these countries dispute over the Diaoyutai/Senkaku islands" which was so large that "financial media report that Japanese business losses stemming from this episode could exceed those caused by the 2011 tsunami" (Chan, 2013, p78-79).[60] While similar studies of MD-related economic events reveal similarly large costs (e.g., Simmons

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[58] Of note, these domestic pressures exist for the ECS both in general and with respect to the Senkaku, specifically: "The sovereignty dispute over the Diaoyu Islands has constantly been a key factor in Sino-Japanese negotiations on maritime delimitation. For China, it is hardly acceptable that Japan uses these disputed islands as the basis for a full EEZ and continental shelf, while simultaneously refusing to discuss the Diaoyu Islands issue in talks on East China Sea issues" (Gong 2011, p111).

[59] The oft-discussed sea-lanes of communication had little statistical significance, broadly speaking, as is documented in Appendix Three, but is frequently mentioned in both primary sources and analyses like this one.

[60] Notably, such escalatory behavior was not always encouraged. For example, Chan noted that the "highly politicized acrimonies can surface occasionally, as they have between China and Japan and between Japan and South Korea over their competing sovereignty claims to the Diaoyutai/Senkaku and Dokdo/Takeshima islands, respectively. Official protests and popular outbursts highlighted these much-publicized controversies in 2012. Remarkably, however, the governments involved have often acted to contain their territorial claims and by restraining their own citizens from undertaking provocative actions" (2013, p3-4). This complex disconnect between Sino-Japanese economic and political relations is difficult to predict or navigate, but has been accepted as standard; it now referred to as "so-called 'cold politics and hot economics'" and "has thus become a defining feature of Sino-Japanese relations" (Koo 2009, p104).

2005), these must be contextualized as happening within strained relationships. Gries has documented the ways in which the Chinese national leadership "sought both to suppress and to co-opt popular Diaoyu activism" (2003, p122). He elaborates:

> Lengthy English-Language articles in The China daily and The Beijing Review also made the case for Chinese sovereignty over the islands. Their purpose was likely twofold: to marshal Western opine against Japan, and, more importantly, to assuage domestic critics by appearing to champion Chinese nationalism on the international stage. Cleary, even when it chooses a streak of suppression, the Chinese state does not have the monopoly over nationalism that Western accounts suggest. And because popular nationalism can threaten the Party's legitimacy, it is an increasingly significant constraint on China's Japan policy (Gries 2004, p125).

Such threats to legitimacy stemmed from the role that Japan had played in recent Chinese history and the degree to which that role was belligerent and violent behavior towards the China and the Chinese people:

> …the unfortunate history of Sino-Japanese relations since the nineteenth century is of symbolic significance. Specifically, the humiliations suffered by China at the hands of the Japanese during the wars in 1895 and 1937 have motived the Chinese to confront Japan as an overt expression of dignity. Therefore, even if the Diaoyu Islands did not have any natural resources, the Chinese would not relinquish even an inch of what they consider their territory. In the end, China, as a former civilization suppler, would not tolerate that its former tributary nation, Japan, took over sovereign rights to the Diaoyu Islands (Suganuma 2000, p13).

These historical matters are difficult to parse out of the different Chinese concerns about safety, security and sovereignty. For example, with the aforementioned incident in which China and Japan struggled to resolve an incident over a seized fishing ship in 2010, the historical factors were consistently included in both diplomatic statement and press reporting as "context" for the ECS dispute. Yet, such

> contextual factors suggest that although China was again reacting to what were viewed as potentially dangerous and provocative actions by others (in the form of nearby military exercises), it was also being more broadly assertive by couching its objection within a larger official stance of opposition to the conduct of any activities affecting China's security and interests taking place in coastal waters

> (which overlap considerably with China's EEZ). The episode was also propelled by the role of the media in stoking public opinion, which created an opportunity for military commentators to speak out on the issue... (Swaine and Fravel 2010, p13).

So, while there were historical frustrations and ostensibly legitimate safety concerns, they fed off of each other to aggravate Sino-Japanese tensions. These developments reflect a complicated bilateral relationship in which both claimants face great domestic pressures against weakness, compromise, or anything that might be conceived as such; restraint, however, has been possible.

> China's assertiveness in handling maritime sovereignty and other incidents with Japan continues to remain subject to a larger political and strategic need to maintain or even deepen cooperative relations with Tokyo. It is clearly not in China's interest to allow such incidents to escalate to the point where they can create serious damage to relations with a key economic partner and important geostrategic player in the Asia Pacific. The same holds true for Japan. Hence soon after the September 2010 incident, China and Japan agreed to resume high-level bilateral contacts on a regular basis and reaffirmed the need for cooperation (Swaine and Fravel 2010, p10).

Such constraints were felt on the Japanese side, as well. The democratic nature of Japanese politics makes it easier to document the partisan and public ways that leadership in Tokyo struggled with this MD.

> But for Japan, the island dispute remained contentious. Even in the final negotiations over the 1978 treaty, there was deep disagreement in the Liberal Democratic Party (LDP) on the terms of peace with China, and the diplomats in the Japanese Ministry of Foreign Affairs were hard-pressed to de-link this severity dispute from the overall normalization negotiations. To make matters worse, in May 1978, a flotilla of Chinese fishing vessels appeared near the Senkaku Islands, feeding concerns about Beijing's intentions in an already sensitive debate in the ruling party over bilateral talks (Smith 2014, p107).

Those types of domestic divisions have remained part of the Japanese domestic discussion of the Senkakus (Suganuma 2000). This was the case, at least in part, because of the way that Japan considered the Senkakus resolved – as they had been one of the few territories that Tokyo was allowed to keep after World War II: "Regarding the Senkaku Islands, there is a difference of

positions between China and Japan. Japan has taken the stance that without any doubt the islands belong to Japan in accordance with both history and international law" (Kanehara 2011, p140). Additionally, this issue was important because of the way that the Senkaku are seen as a part of the larger Okinawan issue and thus Tokyo's relationship with America.

> Japan's diplomatic opening to China coincided with the reversion of Okinawa to Japan, thus linking the negotiations over contested sovereignty claims and the terms of the postwar peace between Japan and China to the US-Japan alliance (Smith 2014, p108).

Regardless of whether these incidents were cause or effect, they are important to consider for the role that they have on Chinese and Japanese leadership: they face complex pressures to address the MD.

Moreover, domestic factors have prevented claimants from participating in the international processes – or functional efforts – towards resolving a dispute. For example, China suffered a series of domestic developments that took priority over the Senkaku MD.

> In addition, the Chinese government suffered the internal crisis of the Taiping Rebellion in 1851 and the Boxer Rebellion in 1900, as well as external crises such as the negotiation of "unequal treaties" with Western powers. As a result, the Chinese seemed to lose sight of the uninhabited Diaoyu Islands in the East China Sea (Suganuma 2000, p118).

Domestic factors prevented China from acting as it might have liked towards this MD, but that is also the case with Japan: its constitution limits what sorts of capabilities it can develop and deploy around the Senkaku (Smith 2014). In these ways, domestic factors – both in terms of claimants' perceptions of intangible value *and* in terms of those claimant governments' respective abilities to pursue the symbolic dispute: although the disputes do not escalate, they cannot get resolved and thus continue to linger. While there are ongoing efforts to modernize these WWII-era rules, that domestic process is complicated, time-consuming, and uncertain to

produce the results that Tokyo's current leadership wants. This process is interconnected with the Japanese-American relationship, its security arrangements, and the status of Taiwan.

> Some Chinese strategists appear to believe the Senkakus would no longer be defensible for the Japanese if Taiwan fell under Beijing's control. As one analyst states: "If Taiwan is in our hands, then hostile countries would quite possibly have to reconsider their policies. If our country establishes powerful naval and air forces on Taiwan… then those bases would significantly increase China's combat and deterrent power… Under such circumstances, it is possible that the Diaoyu island problem would develop in favor of or country." This observation conforms to the notion that Chinese possession of Taiwan would enable Beijing to turn Japan's southern maritime flank. Tokyo cannot but take an interest in the islands' fate, and the transpacific alliance would embroil Washington in this reconfigured Asia as well. In other words, even if we concede (for the sake of discussion) that Taiwan is unimportant to the Unites States strategically or operationally, as many Sinologists insist, its centrality to Tokyo's sense of security cannot be so easily dismissed. The value Japan attaches to Taiwan will remain a major component of US regional strategy unless Washington is willing to discount Tokyo's interests, gambling that Japan will greet the day after Taiwan with a shrug. Losing such a war would likely spell the end of the US-Japanese alliance, the lynchpin of US preeminence in Asia for the past six decades (Yoshihara and Holmes 2011, p67-68).

While these security arrangements are ostensibly international and thus part of the Putnam Level I analysis of the last section, they matter here for domestic reasons: intangible concerns issues like Taiwan and security posture in East Asia traditionally mobilize at least portions of the populations in all the involved nation-states – driving politics for those seeking to manage the MD while maintaining domestic constituencies or at least stability. This is the sort of salient symbolism that can impede claimants' abilities and willingness to seek resolution of a dispute.

Access to International Mechanisms of Arbitration and Resolution

Perhaps because of the role that international treaties and laws have played in the MD, there is a significant body of criticism towards both individual treaties and the larger legal

infrastructure of UNCLOS. For example, many consider the 1996 UNCLOS changes responsible for catalyzing increased tension:

> Before the UNCLOS, the two countries' negotiations over fisheries and energy resource development in the East China Sea had dealt with the dispute by simply excluding the area near the Senkaku Islands… so as to avoid the unresolved claims that each had on these islands (Smith 2014, p107).

Yet, the nature of UNCLOS required that the competing claimants leverage UNCLOS mechanisms for resolving those disagreements, which are not made easier by the process or its restrictions:

> Given that only 360 nautical miles across the East China Sea divide Japan and China, neither can claim as their exclusive economic zone the full 200-nautical mile area extending from their coastlines. Rather, their maritime boundaries must be negotiated according to the UNCLOS… China claimed the rights to waters above its continental shelf… but Japan argued for the negated median line that the UNCLOS recommended. Taiwan also has significant interests at stake, although it has been unable to ratify the UNCLOS because the United Nations does not recognize it as an independent state (Smith 2014, p103-104).

The mechanisms of international MD resolution thus catalyzed legal conflict and excluded specific claimants from the process. While Beijing did not object to Taipei being excluded from this process, China had previously objected to how it had been sidelined when Washington and Tokyo were dividing up East Asia's maritime areas (Gries 2004). What seemed to cause particular consternation with UNCLOS was the way that it did not specify an exact mechanism for resolving the disagreement.

> The case of the Diaoyu Islands cannot and will not be easily resolved by principles of international law because not only are the arguments based on international law regarding the Diaoyu Island' case controversial, but also there are no appropriate rules to settle this dispute. Depending upon who interprets internal law and what rules of international law one uses, the resolution of the Diaoyu dispute could vary (Suganuma 2000, p19).

To a certain extent, these criticisms of UNCLOS and its related mechanisms reflect the effort of international lawyers to create an adaptive mechanism for dealing with disparate problems

around the world. Unfortunately, those flexible frameworks elicit distrust from those who perceive themselves previously exploited by Western powers and their institutions.

> Because China was humiliated by the Western powers during the second half of the nineteenth century, it is not difficult to understand why the Chinese were strongly against the United Nations and against international law during the 1950s and 60s. From the Chinese viewpoint, that international law has served as a tool for Western imperialists to colonize and conquer countries in the third world, including China (Suganuma 2000, p22-23).

Far from being an abstract or historical concern that certain parties might have towards the notion of tribunals, these concerns about UNCLOS and its institutions are both consistently reiterated and specifically related to MDs (Gries 2004). Notably, these perceptions are arguably related to larger Chinese attitudes towards the maritime:

> Two factors have shaped Chinese attitudes toward the International Law of the Sea. One is that the sea has historically been a threat for the Chinese since the Western imperialists invaded the Middle Kingdom from the sea during the second half of the nineteenth century. The other is that natural resources, such as fish, oil, and natural gas, are economically important (Suganuma 2000, p28).

Regardless of the exact cause of concern as related to specific international mechanism for MD resolution, one cannot entirely ignore the nature of the region's increased (economic) interdependence and the opportunities for bilateral or multilateral progress that such interdependence offers. For example, some have argued that the region's

> …interstate relations are likely to become increasingly stable and peaceful. This optimistic view argues that mass protests and nationalist posturing, such as those reported by the international media in 2012 on the Sino-Japanese dispute over the Diaoyutai/Senkaku islands, tend to be less influential in shaking the region's future than ongoing trends toward greater complex interdependence (Chan, 2013, p25).

This close and continuing economic relationship has expanded both rapidly and significantly in the few short decades since the normalization of relations.

> China is the world's most populous country and the third largest in land area. Japan is the world's second largest economy and one of the largest maritime

> countries. Furthermore, the two East Asian giants have forged closer economic ties since their diplomatic rapprochement in 1972, currently making them one of the most important economic partners for each other (Koo, 2009 p103).

Such positive notes highlight the reality that there are historical examples of MDs that were resolved through international mechanisms other than UNCLOS and that its tribunals need not be seen as the only venue for arbitration or resolution.

Findings

Unlike the Svalbard dispute, the Senkaku one has obviously not yet been officially resolved, but that does not mean that important lessons cannot be learned from this qualitative analysis of it. After addressing the Senkaku dispute's contributions to this dissertation's hypotheses, there will be an analysis of the status of the dispute and what will likely occur with it.

Hypotheses & Significance:

The Senkaku MD offers important contributions both to our understanding of Type 3 disputes and to the specific causal stories of MDs as they relate to Type 3 disputes. The presence of the hydrocarbons and the fisheries has encouraged both claimants to pursue zero-sum approaches to the Senkakus, which are expected to influence the water delimitation process and thus endow the sovereign of the Senkaku with large tangible benefits. This case study, much like the Svalbard one, supports the economic story: the economic value of the contested area itself matters in terms of attracting claimant interest — as was most obvious in the way that interest in the MD increased exponentially after the discovery of hydrocarbons. Unlike with Svalbard, the claimants here pursued traditional approaches to the contested area and sought a monopoly on the economic rights to the area — as has been the case in most modern MDs. Similarly, this case

shows the degree to which claimants are (or, at least, one of them is) willing to escalate the dispute by deploying extraction equipment as far forward as possible; yet, this dispute also includes the reality that certain actors cannot or will not risk their assets in the region until the dispute has been officially resolved. These three observations — that the presence of hydrocarbons increases attention to the MD, that some will take advantage of the uncertainty to extract as much as possible, but that others will remain unwilling to risk either financial loss or political problems by acting in a contested environment — are consistent with the population of MDs and seem generalizable.

Beyond the tangible, this study supports the importance of understanding the claimants' commitment to the symbolic zero-sum ownership of the islands. These observations are more difficult to document for Chinese politics than they are for Japan, where democracy clarifies positions, parties, and platforms, but they remain discernible and important: historical and enduring tensions complicate simple, ostensibly-fungible disagreements over fishing, for example, and these larger tensions confuse discussions of maritime space management with security posturing. In other words, the symbolic becomes difficult to differentiate from the substantive. These are the ways that Type 3 disputes are like Type 2 disputes: the MD reflects the larger relationship and are difficult to analyze outside of that biased context. Yet, the larger Sino-Japanese relationship is most certainly reflected in the Senkaku dispute and so decisions that Beijing and Tokyo towards each other are important to the likelihood of dispute resolution.

Additionally, much like the last dispute, this one reveals the importance of international mechanisms for arbitration, management, and resolution. Claimants' access to these venues prove incredibly important for understanding sovereignty, access, and dispute duration. Notably, the claimants to this dispute maintained a traditional approach to the area (i.e. that it was

indivisible) and did not want to risk losing the entirety of their claim to an international process that they did not trust. While the initial Sino-Japanese agreement to table this dispute for future generations is interesting, it also reflects an understanding of the degree to which the legal system was (and remains) unpredictable for nation-states like China.

Status of the Dispute:

In terms of where the MD stands now, or what the chances are of likely near-term resolution, the chances are not good for an official arbitration through UNCLOS or bilateral agreement giving one of the states sovereignty. This is perhaps most visible in analysis of the 2008 Consensus and its results:

> Rather than serving as a prelude to a more stable international arrangement between Japan and China on how to approach the contested areas in the East China Sea, the Consensus has imposed a de facto moratorium on joint development in the agreed block as well as joint operations in the Chunxiao field. The Consensus has also failed to reduce tensions in areas of the East China Sea not covered by the Consensus (Zhang 2011, p55)

There has thus been some rhetorical progress, but little measurable progress in terms of how the area is managed or towards what the claimants can orient future dialogues. As Gong has noted, though, for there to be "cooperation on maritime energy resources" between China and Japan, "further compromise is required" (2011 p111); yet, on the same page, he finds that unlikely:

> If Japan insists on the unrealistic stance that no sovereignty dispute exists concerning the Diaoyu Islands, the East China Sea issues will remain unresolved and the confrontations over the sovereignty of the islands will very likely escalate (Gong 2011, p111).

Although not all scholars place the blame so squarely on one side, such pessimistic predictions are common.[61] (See Figure 47 for a recent cover of *The Economist* and their expectations.) For

[61] Some, like Gong, believe that there is a cycle Sino-Japanese tension that is less about individual incidents and more about the problematic nature of the claimants and the dispute: “These arguments, confrontations, and tensions

example, some note the "lack of reciprocity" and the "fragile nature" of the MD and agreements related to it (Zhang 2011, p53). What all of this means is that China and Japan are unlikely to resolve the dispute on their own. They are similarly unlikely to agree to outside arbitration or adjudication of the MD:

Figure 47: An Example of the International Press Coverage of the Senkaku Dispute in the Fall of 2012

(Economist, 2012)

seem to indicate that despite the conclusion of a principled consensus, disagreements over the key issues of the East China Sea remain and continually reemerge“ (2011, p111).

> …it is unlikely that the disputants over the continental shelf of the East China Sea would seek to resort to international adjudication for the settlement of this issue. To some extent, the zero-sum nature of judicial decision, where one party "wins" and the other "loses," causes much of the reluctance of states to entrust their interests to international adjudication. The unpredictability and the substantial loss of control over the ultimate outcome of the dispute discourage the parties concerned from submitting to judicial settlement, particularly because a huge oil resource is involved (Lee 1987, p596).

While Lee explicitly highlights the importance of the tangible value of the dispute, he also notes the symbolic value of the MD and its role in the claimants' calculus for deciding whether or not to pursue resolution through third-party courts or processes.

> Furthermore, both countries are "face-loving" countries in the cultural and historical sense. Any ruling as a result of international adjudication which they cannot predict or cannot control may become a national humiliation. If the ruling is favorable to Japan, the feeling of humiliation to the Chinese may increase with bitter memories of previous Sino-Japanese enmity (Lee 1987, p596).

Lee's analysis thus supports this work's proposed causal story for Type 3 disputes – in that he finds both the economic worth of the dispute important, the symbolic value of the dispute important for the claimants domestic audiences, and the combination here unlikely to result in resolution. Importantly, Lee predicts that, if there were a resolution of the Senkaku dispute, there would be the kind of post-resolution tension and cascading MDs that happened with the Svalbard archipelago:

> Even if the territorial sovereignty of Diao-yu-tai were settled, there would still be difficulty in delimiting the continental shelf boundary line. The "losing" side to the title claim may keep on arguing that these islands have no right to their own continental shelf because they are "rocks which cannot sustain human habitation or economic life of their own" while the "winning" side would probably de-fend an opposite position (Lee 1987, p597-8).

Given everything at stake in the dispute between Beijing and Tokyo over the Senkakus, it is unlikely that the states would agree to some type of outside international mechanism for

resolution, but – even if they were to do so – it is unlikely that the result would really resolve the dispute any better than the Svalbard Treaty actually answered all the questions over the islands and waters north of Norway.

What cannot be ignored about the Senkaku dispute, however, is the ability for the claimants to decide to change their approach to the symbolism of the islands. Given the way that past leaders were able to effectively table the dispute for decades, it is possible that an agreement could be reached in which Beijing and Tokyo similarly decide to ignore the Senkaku islands. Functionally, the Senkaku do not need to influence the currently related issues – like over the fishing grounds, joint development program, or the ADIZ. If both of the claimant governments wanted to de-prioritize the islands, they could: China is less happy with the status quo than Japan, but also would have an easier time controlling the domestic discussion over the MD. Accordingly, it might be possible for Beijing and Tokyo to reach some sort of larger ECS-oriented agreement which devalues the symbolism of the islands. Although such a scenario is not the most probable, it is an option that must be appreciated. If the claimants were to have some sort of alternate option (i.e. not just one of them owning the islands), such a deflation of intangible value would be much more likely – as is addressed in Chapter Eight.

Chapter Six: Qualitative Analysis: the Arctic

When policy-makers use the term "Arctic," they mean everything north of the circle of latitude known as the Arctic Circle – including the eponymous ocean, its islands, and the three continental edges that poke north of the of the polar circle at 66°33′45.9″ N – amounting to "roughly 8 percent of the earth, " as Figure 50 illustrates (CFR 2014). For modern human history, the Arctic has included another key feature: a massive ice pack that has perennially covered most of the Arctic Ocean, but this ice pack has shrunk significantly in the last ten years, as Figures 51-54 document, and is expected to shrink even more in the near future, as Figure 55 models. Accordingly, while many have traditionally thought of the Arctic as a frozen and inaccessible wasteland, these changing conditions are both literally and figuratively heating up the Arctic in ways that are forcing academics, policy-makers, and scientists to evaluate the underlying features of the Arctic (as shown in Figure 56) and use them to resolve ongoing disputes over the Arctic's islands and waters. Those disputes involve both traditional disagreements over island sovereignty (e.g. Hans Island) and water delimitation (as Figure 57 illustrates) as well as an additional dispute over transit routes – but centers around the "donut hole" around the North Pole.

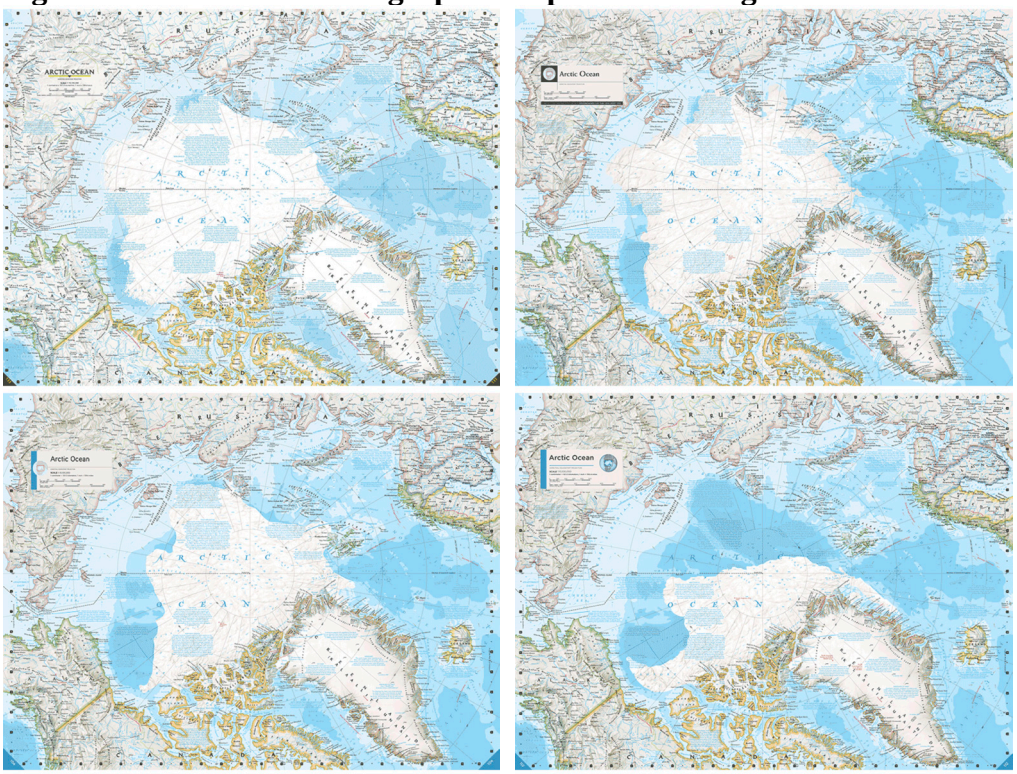
> The 1.1 million square miles of open water lying north of the five Arctic EEZs, sometimes referred to as the Arctic Ocean "donut hole," is considered high seas and outside national jurisdictions (CFR 2014).

Some of these component and related MDs are officially inactive, as they have not been discussed as their own dispute but are properly part of the larger set of Arctic Disputes. Others, like Hans Island, are disputes that make little sense outside of the context of the larger Arctic pattern – which is strategic to world powers.

Figure 48: The Artic: the Circle, the Ocean, the Continental Edges, and the Islands

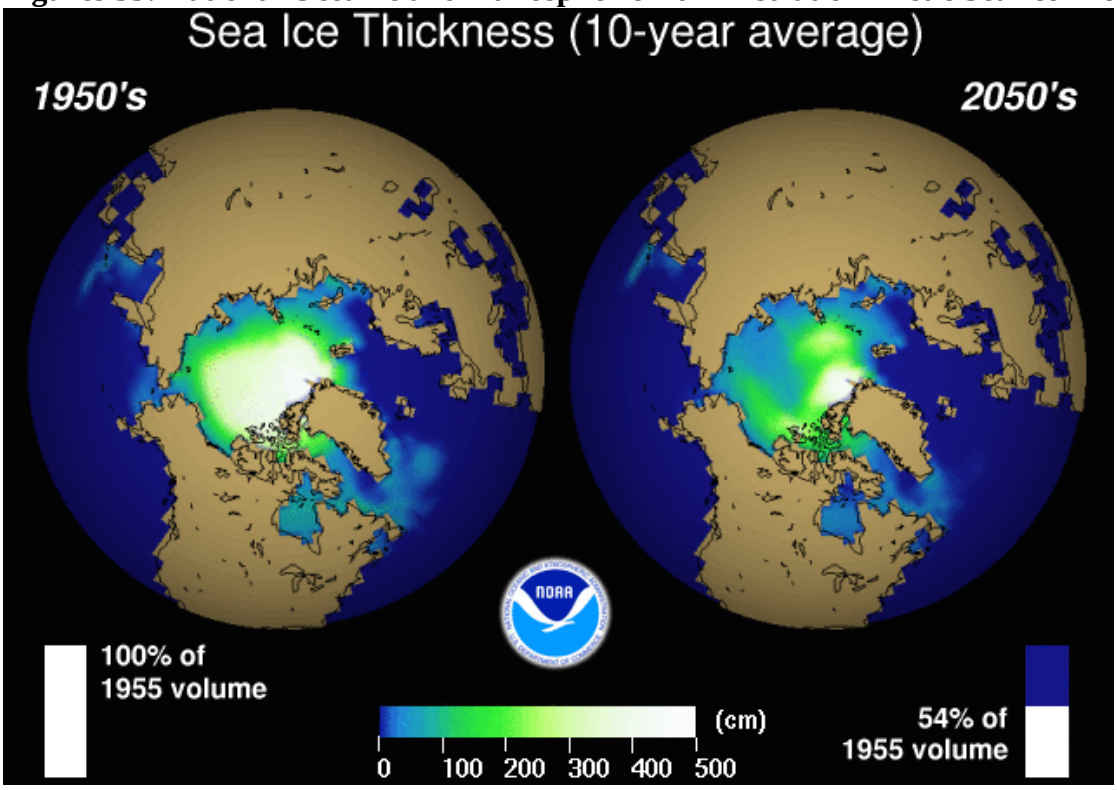
(Stackhouse 2014)

Figures 49-52: National Geographic Maps of Shrinking Arctic Ice Pack: 1999-2014



(National Geographic 2015)

Figures 53: National Oceanic and Atmospheric Administration Arctic Sea Ice Prediction



(Maksim 2006)

> The Arctic is of primary strategic significance to the five littoral Arctic Ocean states—the United States (Alaska), Canada, Russia, Norway, and Denmark (Greenland). Many observers consider Russia, which is investing tens of billions of dollars in its northern infrastructure, the most dominant player in the Arctic. But the region is also a focal point for the three other Arctic states—Iceland, Sweden, and Finland (CFR 2014).

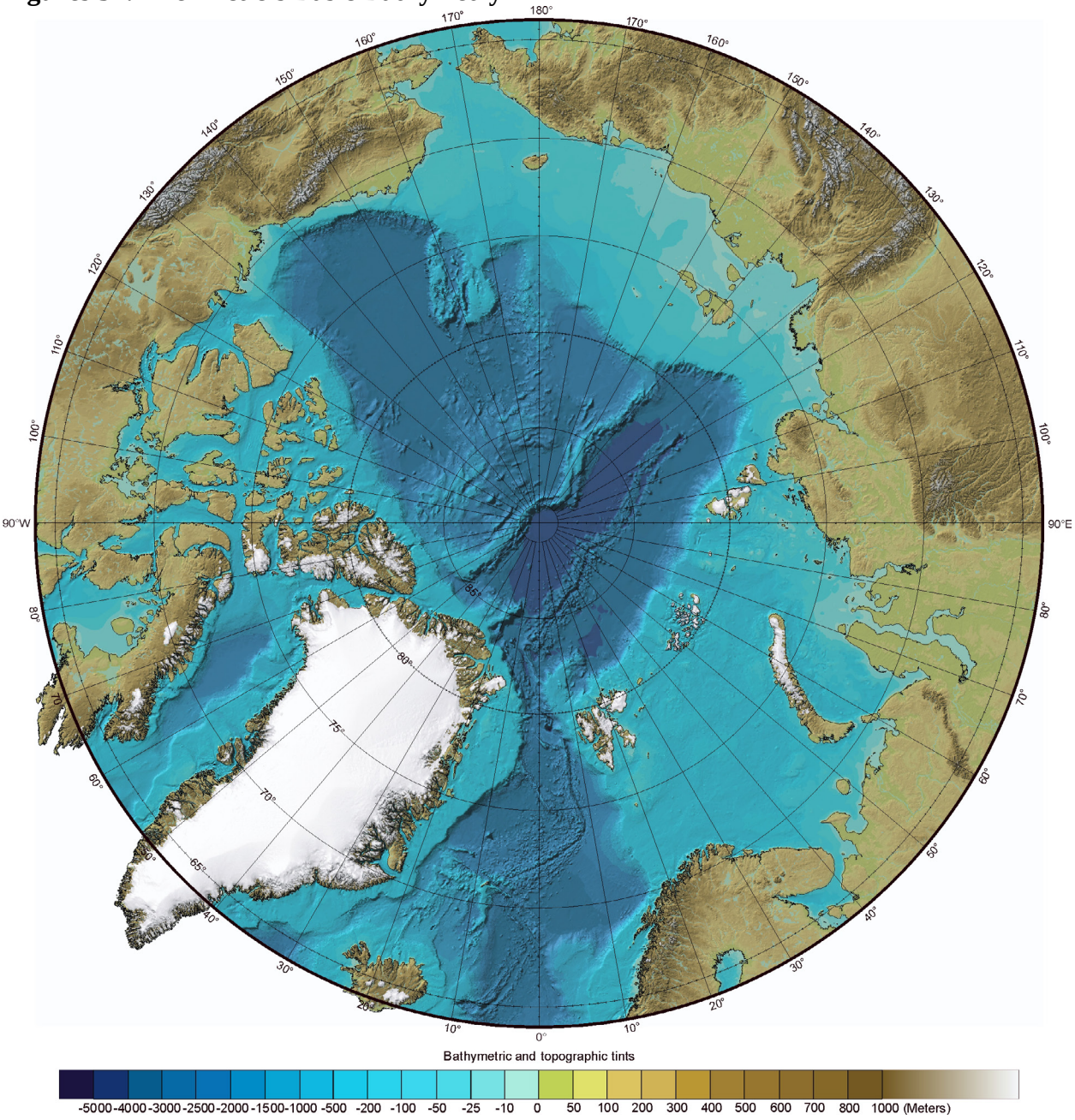
These nation-states here thus have disagreements with respect to water, ice, and islands (Gunitsky 2008, Holmes 2008, Gamble 2009, Byers 2010, Johnston 2010). These MDs present specific security implications (Killaby 2006, Macneill 2007, Åtland 2010, Keil 2014), legal concerns (Dubner 2005, Nicol 2010, Snyder 2011), and environmental concerns (Miller 2007, Isted 2008, Stokke 2011). This milieu has historically troubled world leadership and continues to do so:

> Much attention has been devoted to maritime boundary disputes involving the Arctic states, Canada, Denmark, Norway, Russia, and the US. Some analysts

> believe that the Arctic might witness conflicts between the littoral states caused by the quest for energy resources (Johnston 2010, p16).

Those disputes are supposedly based on the Arctic's underlying geography (Figure 56) and roughly captured in Figure 57.

Figures 54: The Arctic's Basic Bathymetry



(NOAA 2015)

Drawing proper boundaries is important because, as the world grows warmer, the Arctic Ocean, which is now frozen for more than half the year, will become increasingly valuable in terms of natural resources, commerce, and military activity (Holmes 2008, p324).

Figures 55: An Overview of Arctic Disputes

(Đenadija 2014)

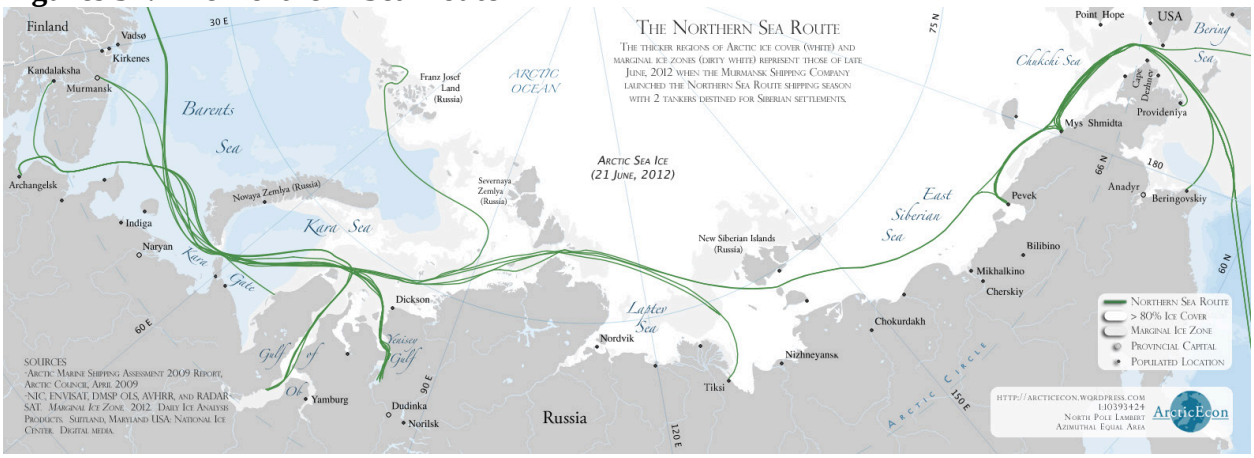
Notably, these additional disagreements over transit rights; specifically, Canada does not want ships treating the Northwest Passage as international waters (Figure 58) for reasons that will be addressed below. For context, there is significant transit usage of the Northern Sea Route, as the Arctic transit route through the Russian EEZ is known (Figure 59) and overall transit use is expected to increase drastically as the ice pack decreases enough to allow for central passage (Figure 60).

Notably, the Arctic was, historically, primarily a locus for military and security concerns. During both World Wars, the Arctic saw little combat but much in terms of maneuvers, logistics, and strategic efforts. With the start of the Cold War and the threat of nuclear annihilation beginning with cross-Arctic bombing runs, the Arctic was long a zone of militarily-controlled

Figures 56: The Northwest Passage

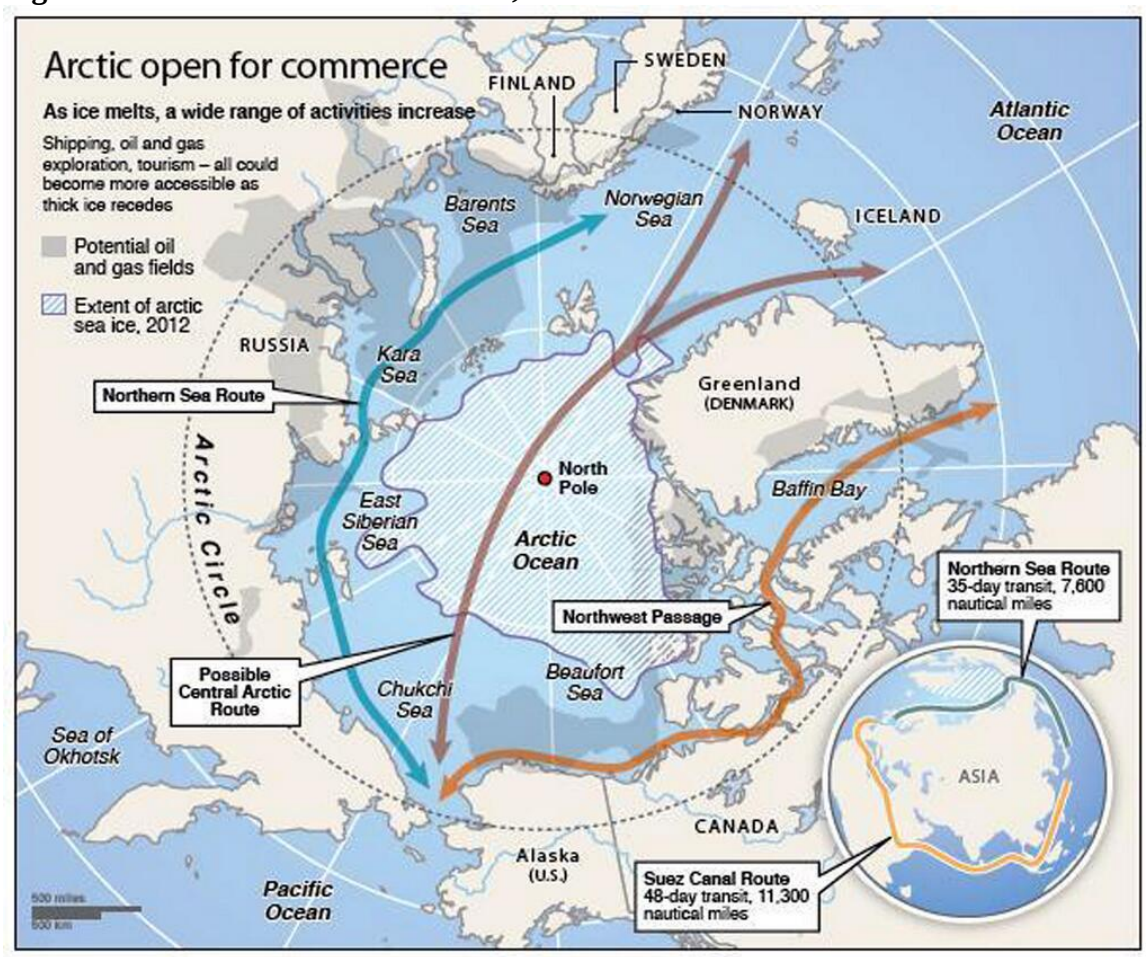
(Arctic Econ 2014b)

Figures 57: The Northern Sea Route



(Arctic Econ 2012)

Figures 58: The Arctic Centric Route, in Context



(Business Insider 2012)

operations and security-centric policies. Russia changed that.

> … President Mikhail Gorbachev, in a "Soviet-rhetoric" style speech, called for international co-operation in the Arctic, in the fields of development of natural resources, science, environmental co-operation and navigation in the Northern Sea Route. Moreover, he proposed to reduce military activities and increase confidence-building measures in northern seas and North Europe (Heininen and Nicol 2007, p137).

After the speech, "the Arctic assumed new proportions in foreign policy… as emphasis shifted away from maritime definitions of the region to a broader political and environmental constituency" that included the creation of regional institutions of coordination, monitoring, and even governance (Heininen and Nicol 2007, p147). Ultimately,

> In 1996, the eight Arctic states together with northern indigenous peoples' organisations established the Arctic Council including two main activities, or pillars, environmental protection and sustainable development (Heininen and Nicol 2007, p139).

Collectively, both claimants to the Arctic MDs and the other Arctic nation-states effectively began to manage issues related to safety (e.g., search and rescue operations) and minor environmental concerns, but remained conflicted about the larger MDs themselves.

These various disputes became increasingly difficult at the start of this century, potentially because increasing evidence of climate change, but directly because of specific claimants' policy choices. For example, shortly after Vladmir Putin took over in Moscow, Russia's approach to the Arctic began to change.

> In 2001, the Russian Federation became the first United Nations ("UN") member state to propose expanded outer limits of its continental shelf… After Russia's 2001 move to claim territory, nine other countries have been quick to follow their lead (Coston 2008, p153).

While the other Arctic nations, except for Norway, similarly filed requests for EEZ expansion, Russia continued to push the envelope with respect to both words and deeds.

> In August 2007, a Russian submarine surprised the world by planting the country's flag on the Arctic seabed, almost 14,000 feet below the North Pole. The titanium tricolor was the culmination of a scientific mission to demonstrate Russia's claim to a vast, potentially resource-rich region along its northern coast. Recent geological surveys suggest the Arctic may hold up to a quarter of the world's remaining oil and gas reserves. Predictably, other circumpolar powers criticized the Russian voyage. "This isn't the 15th century," said Canadian foreign minister Peter MacKay. "You can't go around the world and just plant flags and say 'We're claiming this territory'" (Gunitskiy 2008).

While "Russia's actions [i.e. the submarine flag-planting operations] are not a legitimate way of claiming territory," Moscow's "brazen acts have lit the proverbial fire under the other four countries in the running for that territory" (Coston 2008, p149-150).[62] For example,

> Around the same time, Denmark launched a month-long expedition to the Arctic. Like Russia, Denmark hopes to collect evidence that will support a claim that the continental shelf of Greenland-a province of Denmark-extends to the North Pole (Holmes 2008, p324).

Even Canada, which had not pursued any Arctic claims in decades, began to make comments about Moscow's Arctic activities and the region's MDs.

> The controversy surrounding Russia's conduct gained international attention, particularly among countries such as Canada and Denmark whose territorial claims directly conflict with those asserted by Russia. Indeed, Russia's surprising claims prompted Canadian Prime Minister Stephen Harper to respond that the Canadian government "has put a big emphasis on reinforcing, on strengthening our sovereignty in the Arctic" (Coston 2008, p154).

This set of developments fundamentally changed the tone and tempo of Arctic maritime disputes.

> Within the last year, international struggle for control of the Arctic's natural resources, navigational capacity, and military opportunities has dramatically increased. UNCLOS, the legal regime that should handle territorial disputes in the Arctic, is likely to be inadequate for determining sovereignty in the region, particularly in terms of disputes over the continental shelf because Norway is the only Arctic nation that has agreed to binding resolution of such disputes. Canada, Russia, and Denmark have all opted out of binding resolution, and the United States is not a party to UNCLOS (Holmes 2008, p351).

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[62] This author thought it was possibly not Moscow that catalyzed additional Arctic escalations: "other scientists claim that it is not necessarily Russia's actions that have caused so much activity in the Arctic but that it is simply the time of year that has induced other countries' recent interest in the seabed" (ibid.).

Separate from what nation-states do or claim with respect to the Arctic, there has been another aggravating factor: the changing climate. Although the Arctic is traditionally covered in ice, as aforementioned, most of the year, it is changing: it is "warming faster than many climate scientists expected—at nearly twice the rate of the rest of the planet" (CFR 2014). In short, "climate change is making it worse" (Rajabov 2008). Of course, climate change cannot change the underlying geography, like the "Lomonosov mountain ridge [that] runs through the Arctic Ocean (Holmes 2008, p338). That does not mean that nation-states won't attempt creative efforts:

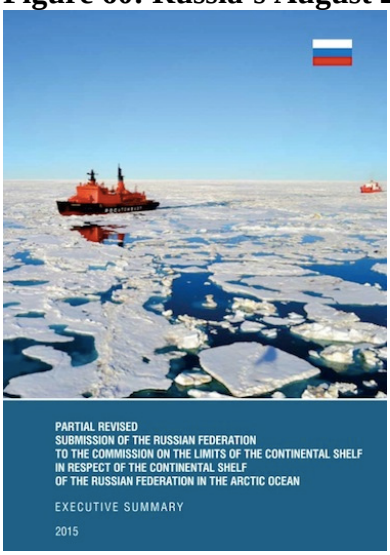
> Though resolution of continental shelf disputes in the Arctic will largely depend on geology, the world may see polar nations advance creative arguments, old and new, in order to establish sovereignty (Holmes 2008, p352).

In August of 2015, Russia tried just such a creative measure by offering new and as-of-yet unconfirmed bathymetric data in support of Moscow's position vis-à-vis the "donut hole" (i.e. the disputed zone north of the 200nm EEZ band) and the related MDs.

Figure 59: Russia's Flag-Planting Operation on the Arctic Seafloor

(Staalesen 2015)

Figure 60: Russia's August 2015 Legal Effort at Expanding Their EEZ

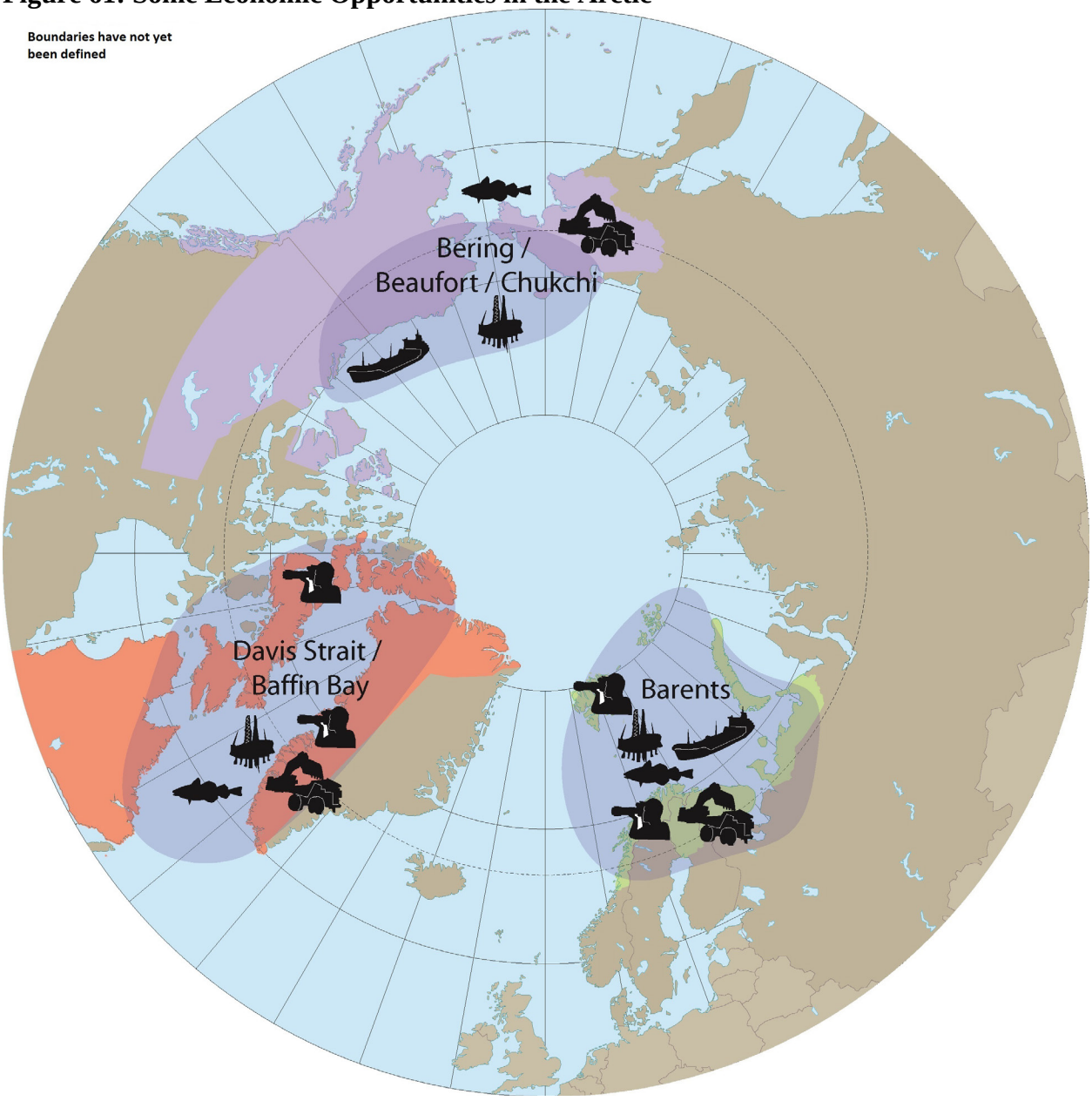


(Government of the Russian Federation 2015)

Tangible Value of the Contested Area:

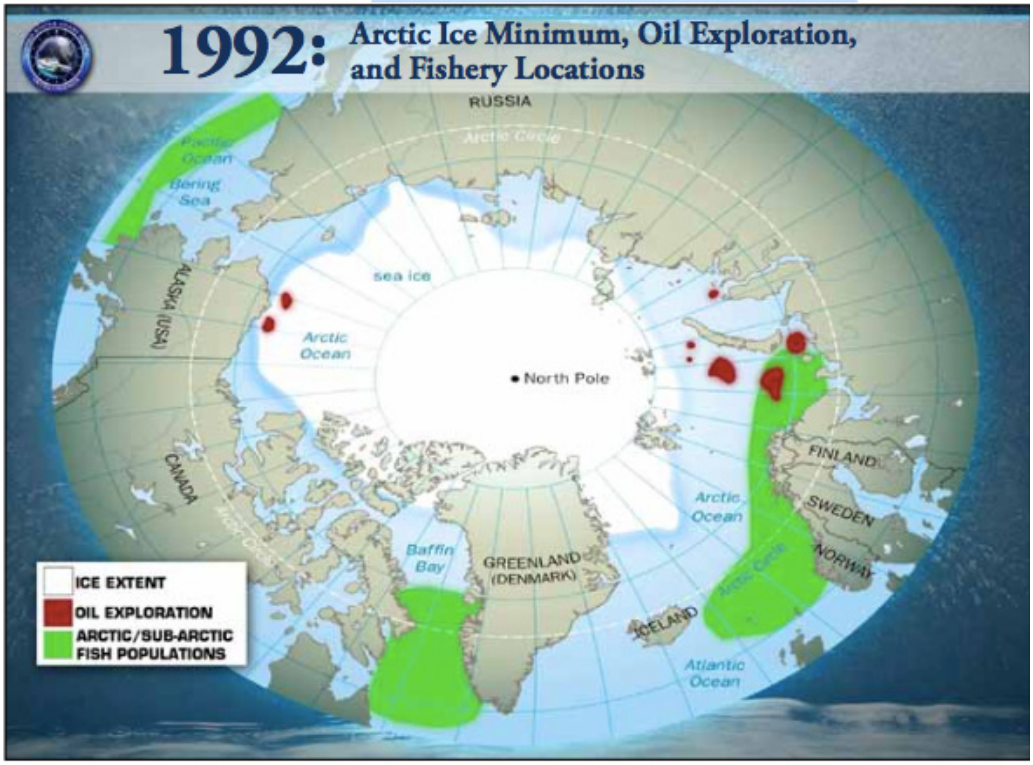
One of the most widely-held beliefs about the Arctic is that it holds incredible resources (Sater, Ronhovde, and Van Allen 1972, Council 2007, Beauchamp and Huebert 2008, Coston 2008, Gamble 2009, Byers 2010, Baker and Byers 2012, Johnston 2012). Specifically, there is evidence that the Arctic has substantial hydrocarbons and fisheries – and that climate change is making it easier to profit from these things: "As the Arctic ice cap continues to melt, coastal countries will continue to pursue expansion of their continental shelves. The mineral rich Arctic environment is simply far too lucrative to be ignored" (Coston 2008, p157). While some of these resources lie solidly within uncontested areas of claimants' EEZs, many of these resources lie within the contested areas – as the simplified graphic in Figure 63 illustrates.

Figure 61: Some Economic Opportunities in the Arctic



(AMAP 2013)

Figures 62 and 63: Shrinking Ice Caps and Growing Fishing Areas



(USCG 2015)

Hydrocarbons:

There is an abundance of evidence that the Arctic holds a substantial amount of hydrocarbons – both in that large deposits have already been found and in that significant reserves remain. Specifically, there is evidence that the Arctic holds a quarter of the worlds reserve supply of oil and natural gas:

> It is estimated that mineral deposits under the Arctic Ocean hold 25% of the world's current oil and natural gas reserves. These deposits were previously extremely difficult to access due to poor weather conditions, virtually impassable waters, and the large solid Arctic ice cap. In recent years, climate changes have thinned the ice and opened waterways, making exploration of the oil and natural gas deposits more feasible. Though a lot of the potentially mineral rich territory is still currently covered in thick ice, a recent study suggests that Greenland and Antarctica are losing a combined total of 125 gigatons of ice sheet per year. These developments have triggered the interest of countries that have coastlines bordering the region around the shrinking Arctic ice cap. These coastal countries are hoping to get a stake in the area now, so that if the ice continues to recede, retrieval of the minerals beneath may immediately commence (Coston 2008, p152).

These findings, that hydrocarbons are present in the Arctic and that the changing climate is making it increasingly easy to access them, have been replicated by multiple nation-states, their agencies, and multinationals operating in the Arctic. While the "precise quantities of these resources remains unknown,"

> …a study conducted in 2008 by the United States Geological Survey (USGS) suggests that the untapped oil and gas reserves in the Arctic region are substantial. The report notes that "the sum of the mean estimates ... indicates that 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids may remain to be found in the Arctic, of which approximately 84 percent is expected to occur offshore."4 Given that the study used a geology-based probabilistic methodology, the actual reserve amounts lie somewhere within a broad range. For oil, the amount of undiscovered reserves is estimated to lie between 44 billion barrels of oil (BBO) (>95% chance) and 157 BBO (5% chance). The study suggests that the Arctic may contain approximately 13% of the global mean estimate of undiscovered oil, which is approximately 618 BBO (Johnston 2010, p3).

Such statistics are for oil, but there is evidence that the Arctic's supply of natural gas is even more substantial:

> The estimated amount of undiscovered gas is more significant — approximately three-times as much as the estimated oil on an energy-equivalent basis. The range of potentially undiscovered gas lies between roughly 770 trillion cubic feet (TCF) (>95% chance) and approximately 2,990 TCF (5% chance). The median estimated amount represents some 30% of global estimated undiscovered gas. Of course, the existence of these resources does not mean that they will all be exploited. Ultimately, this will most likely be decided by the price of the resource weighed against the extraction, processing, and transportation costs of getting it to market (Johnston 2010, p4).

Notably, the USGS report did not address small oil or natural gas deposits – or other energy-related resources like gas hydrates, which exist in the Arctic in abundance.

> Gas hydrates may prove particularly useful in the future since it is estimated that there may be 6-600 times more gas hydrates than conventional gas globally. The Arctic region is known to possess significant amounts of gas hydrates although the technology needed to safely and profitably extract the resource on a commercial basis is not expected to be available before 2030 (Johnston 2010, p4).

Thus, there is significant evidence that the Arctic has hydrocarbons. It is worth noting, however, that there is some evidence that the majority of these hydrocarbons are not within the "donut hole" – and thus are not part of the contested stake.

> The report suggests that the deep ocean basin areas, those most contested in terms of border disagreements, contain little hydrocarbon resources. Most of the resources lie on the continental shelves or onshore. The report notes that 60% of the estimated oil resource is located in six locations: the Alaska Platform, the Canning-Mackenzie basin, the North Barents Basin, the Northwest Greenland Rifted Margin, the South Danmarkshavn Basin, and the North Danmarkshavn Salt Basin. Of these, the Alaska Platform is most significant in that it is estimated to contain approximately 31% of the undiscovered Arctic oil. Similarly, approximately 66% of undiscovered gas is believed to lie in just four areas: the South Kara Sea, the South Barents Basin, the North Barents Basin, and the Alaska Platform. Of these, the South Kara Sea, a Russian possession, is believed to contain nearly 39% of undiscovered gas. The borders claimed by the Arctic states are generally not disputed in the areas anticipated to contain the hydrocarbon deposits hence neither are the resources that lie within them (Johnston 2010, p16).

While Arctic claimants might already have access to regional hydrocarbons – regardless of what happens with the individual disputes – the point remains that the press and political statements alike both focus on the value at stake with the Arctic MDs:

> In recent years the world has become gripped with concerns about climate change and its impact on Arctic ice as well as the perception that increasing global energy consumption might surpass the capacity of energy markets. These seemingly unrelated issues come to a nexus in the Arctic region since melting ice coverage has led some analysts to believe that previously inaccessible oil and gas deposits may now be accessible permanently or periodically (Johnston 2010, p1).

Again, a strong connection is made between the presence of the hydrocarbon resources and the degree to which climate change is making them more accessible. This intersection seems to increase dispute salience and beg important questions about the costs and benefits of MD escalation:

> One continental shelf dispute concerning an area rich in natural gas exists between Russia and Norway in the Barents Sea. Both countries dispute the other's interpretation of where their borders extend into the offshore Economic Exclusion Zone (EEZ). While it is possible that there could be a conflict between the two countries over this area, it seems highly unlikely given the potential costs versus the potential benefits (Johnston 2010, p17).

While there is a considerable amount of hydrocarbons in the Arctic, there is also evidence that the return on investment would neither be certain nor easy to compute (Buslov 1983, Coakley and Stein 2010, Johnston 2012). The nature of operations there are complex and complicated. Part of the difficulty lies in the unique environment, where there could be

> …uncertain environmental impacts that any expansion of coastal State territorial claims might create. Shell's plans to drill exploration wells in the Beaufort Sea have already drawn concerns that more detailed environmental impact statements have not been drafted regarding Arctic drilling. The concerns range from harming endangered species such as polar bears, seals, and fish, to threatening the way of life of the local people who depend on some of these animals as a primary food source (Coston 2008, p155).

Beyond such normal operational concerns of the Arctic environment, there could be difficulties with storms and (relatively) extreme weather:

> Weather may provide another challenge to Arctic hydrocarbon extraction operations in the future. While it seems that there may be more open water in the coming decades, this comes with a risk. Climate scientists recently released a study suggesting that open water is a necessary precursor for violent storms that allows them to generate strength. The report predicts that the Arctic may be the scene of more extreme weather events in the near term as ice cover becomes less pervasive. The possibility of increasingly destructive storms in the Arctic will influence the investment decision-making of many oil and gas companies (Johnston 2010, p10).

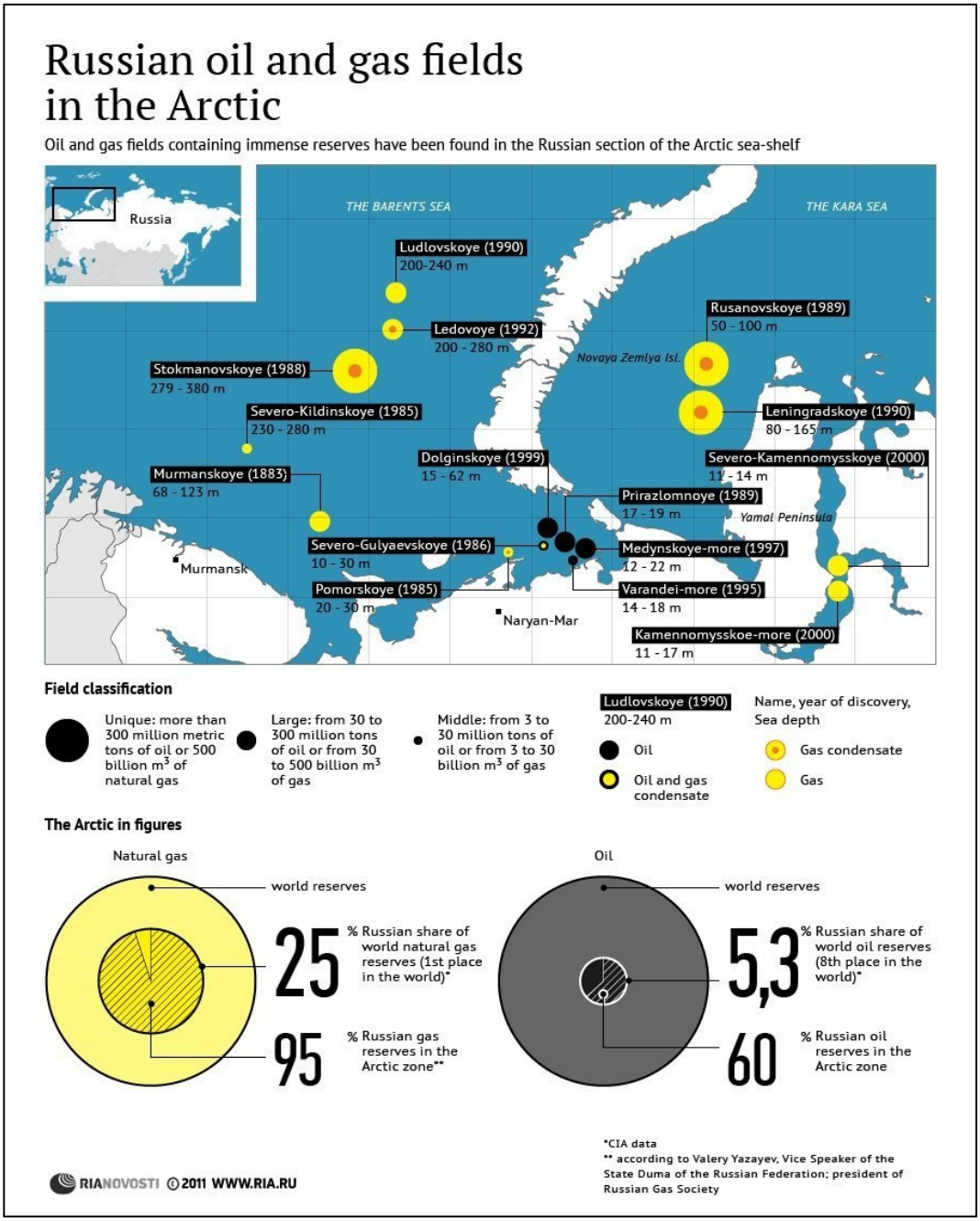
Weather and Arctic operations cloud calculations as to the exact return-on-investment that Arctic claimants face with hydrocarbon extraction – and are often discussed issues – but have not prevented claimants from successfully extracting hydrocarbons (and profits) out of the Arctic. Figures 66 and 67 show some of the specific places that some of the claimants have been drilling, but these areas are expanding. For example, on August 17, 2015, the United States "federal government on Monday gave Royal Dutch Shell the final permit it needs to drill for oil in the Arctic Ocean off Alaska's northwest coast for the first time in more than two decades" (Joling 2015). Although the multinational firm will only be able to operate for approximately six more weeks of this year, they have invested heavily in long-term hydrocarbon extraction efforts in the Arctic:

> Shell bid $2.1 billion on Chukchi Sea leases in 2008 and has spent upward of $7 billion on exploration there and in the Beaufort Sea… [Shell currently] has two drill vessels and about 28 support vessels in the Chukchi Sea (Joling 2015).

Of course, such investments are unique neither to this specific multinational oil firm, nor to the Unites States; these are the kinds of commitments that multiple claimants, their own national oil corporations, and other multinational oil firms have all been making in Arctic extraction of hydrocarbons (Sater, Ronhovde, and Van Allen 1972, Beauchamp and Huebert 2008, Gamble

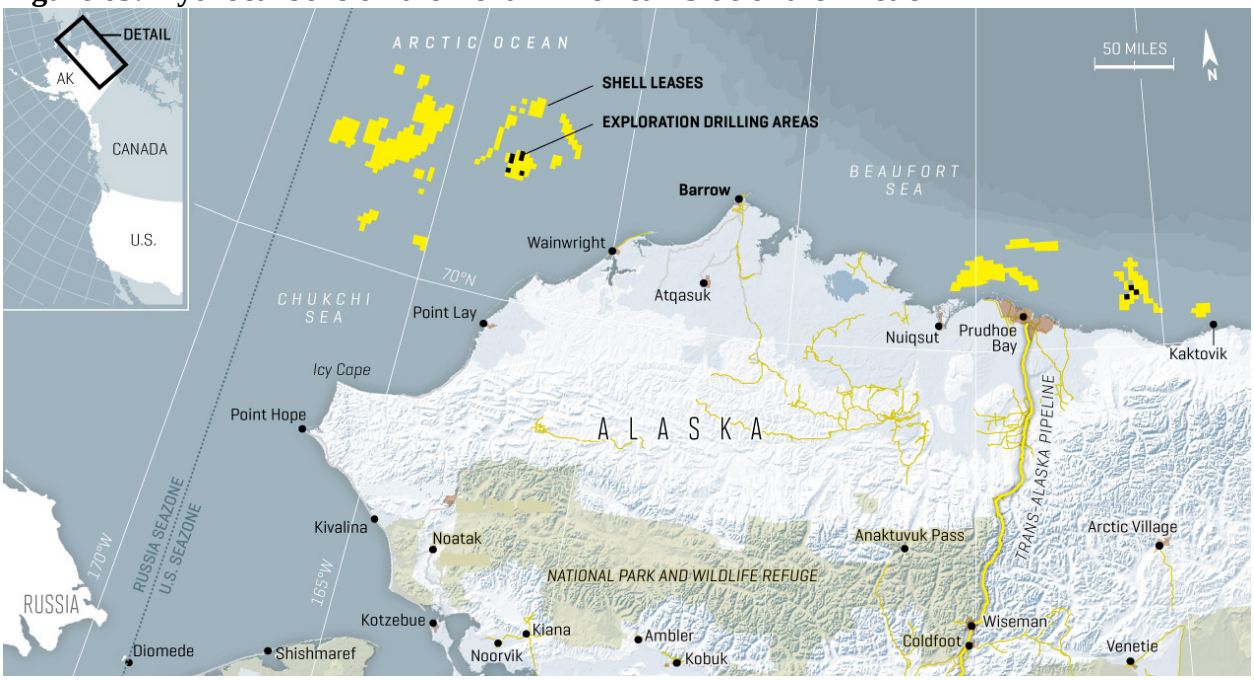
2009, Byers 2010, Baker and Byers 2012). From all of this emerges a clear picture that claimants to this dispute believe there are hydrocarbons in the Arctic, actively work to extract them, and seek to get more of them.

Figure 64: Hydrocarbons on the Eurasian Side of the Arctic



(RIA 2011)

Figure 65: Hydrocarbons on the North American Side of the Arctic



(ASIB 2014)

Figure 68: An Example of Hydrocarbons Extraction in the Arctic

(Arctic Journal 2013)

Figure 67 and 68: Supporting Equipment for Arctic Hydrocarbon Extraction

(OCI 2015; Gazprom 2013)

Fisheries:

In addition to large quantities of oil and natural gas, the Arctic also has an abundance of fisheries. While "the Arctic marine border is far from static but varies in conjunction with season and ongoing climate change," (Christiansen, Mecklenburg, and Karamushko 2014, p354), regardless of where one measures, "many fish stocks in arctic coastal waters could still be relatively pristine" (Zeller et al. 2011). This technically includes more fisheries than just those north of the Arctic Circle:

> The term 'Arctic' holds an aura of exotic, healthy and pristine qualities keenly used by tourism and seafood enterprises. Geographic borders are drawn opportunistically and include regions also outside the Arctic proper. For example, governance and management rhetoric claims a broad spatial view on 'Arctic fisheries' by counting also sub-Arctic/boreal seas (Molenaar and Corell, 2009; AFWG-ICES, 2013). Although the term 'Arctic fisheries' displays >5 million Google hits (30 August 2013), this does not detract from the fact that, in context of zoogeography, present-day industrial fisheries in the AOAS are undoubtedly boreal – not Arctic (Christiansen, Mecklenburg, and Karamushko 2014, p354-5).

Beyond what is currently profitable, with the Arctic fisheries, there is also a significant chance that additional and newly-profitable fish stocks could be identified:

> The Arctic, generally defined as the area within the 10°C summer isotherm, has about 4 million inhabitants. The marine part of this region consists of a large, ice-covered ocean, where the extent of the sea ice has declined in recent years due to climate change. The Arctic is one of the last and most extensive ocean wilderness areas in the world, and its significance in preserving biodiversity and genotypes, particularly given growing climate change pressures, is considerable (Zeller et al. 2011).

What these zoological conclusions mean for policy-makers in Arctic claimants is that their existing models for economic benefits from fisheries might be too low. This is not normally the case; while the Arctic has not been overfished, most other bodies of water have been:

> Traditionally, overfishing in the Arctic has not been a major concern given its ice cover and lack of commercially attractive species. However, warming conditions and migrating populations are prompting calls for new regulations, particularly on the high seas. Arctic coastal states manage fisheries within their EEZs, but

> international waters are exposed to overexploitation by non-Arctic states. Conservationists cite the overfishing of polock in the Bering Sea "donut hole" in the 1980s as a cautionary tale. In 2013, a majority of Arctic states pushed for an accord that would ban industrial fishing on the open water until further study was done on fish stocks, but an agreement has yet to be reached. Experts say several existing treaties provide useful precedents, including the 1995 UN Agreement on Straddling and Highly Migratory Fish Stocks (CFR 2014).

This leaves significant fisheries available to the claimant nation-states in terms of current opportunities for extraction and in connection with the resolution of the Arctic disputes.

Intangible Value of the Contested Area:

Since the end of the Cold War, most of the Arctic claimants have seen little domestic change: with the exception of Russia, the other states have remained democratic, capitalist, and largely focused on things other than the Arctic. Accordingly, there is consistent low-level interest in the Arctic MD, as can be seen with the various claimants' actions in the Arctic Council, for example, and continuous legitimacy.

Russia, the lone non-NATO Arctic claimants, has more overtly expressed its interest in the intangible importance of Russia – and struggled with the question of unambiguous government legitimacy. In 2000, Putin pledged to "make Russia strong again" (Traynor 2000); in 2015, he still speaks of how he "wants the whole world to honor Russia again" (Pravda 2015). Russia has pursued strength through various mechanisms — not the least of which has been Moscow's continuing commitments to its Arctic MDs. Yet, both before Putin took over in 2000 and since, Russia has dominated the Arctic, if not legally than practically (Roi 2010, Spielman 2009)

> Few countries have been as keen to invest in the Arctic as Russia, whose economy and federal budget rely heavily on hydrocarbons. Of the nearly sixty large oil and natural-gas fields discovered in the Arctic, there are forty-three in Russia, eleven in Canada, six in Alaska, and one in Norway, according to a 2009

> U.S. Department of Energy report. Development of energy in the Russian Arctic has been dominated by state-backed firms, but industry analysts expect Western petroleum companies to provide needed technology and management expertise, as demonstrated by the partnership of ExxonMobil and Rosneft (CFR 2014).

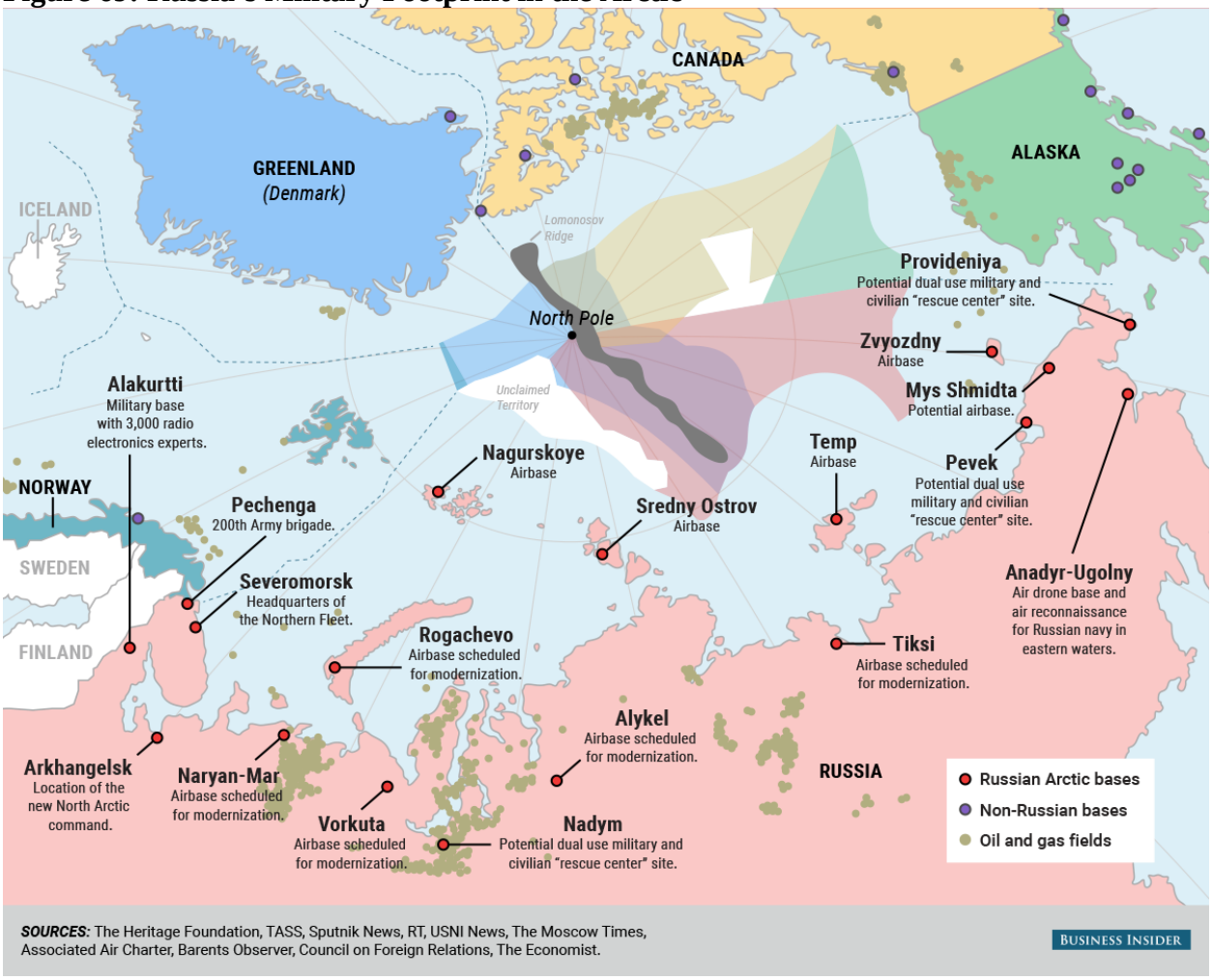
Separate from such traditional commitments to the region and the development of infrastructure, Moscow has also bolstered its ability to project power:

> Russia, the only non-NATO littoral Arctic state, has made a military buildup in the Arctic a strategic priority, restoring Soviet-era airfields and ports and marshaling naval assets. In late 2013, President Vladimir Putin instructed his military leadership to pay particular attention to the Arctic, saying Russia needed "every lever for the protection of its security and national interests there"(CFR 2014).

Such military efforts have been particularly strong in the Arctic (as Figure 71 shows), and the rhetoric has matched, although that is not new. Historically, Moscow has made clear the belief that the Arctic is a core nation interest; although that term has not been used, the message has been clear. For example, the Soviet era Foreign Minister Molotov had observed that "the Soviet Union was surrounded - the only way out was to the north" (Gjems-Onstad 2012, p23). Similarly, the current Foreign Minister has contextualized Russian commitment to the Arctic as something akin to religious fanaticism; he even illegally went to the archipelago and tweeted about how the Arctic was Russia's "Mecca" (Figure 72). Modern official doctrine (and policy) reflects such informal comments. In July, Putin unveiled Russia's first new maritime strategy since he took over Russia. While it had major changes from the last document, including a new emphasis on resisting NATO and creating a distinct administrative region for Antarctica, it largely staid the course on previous Arctic issues: "the Arctic focus is down to the growth of the Northern Sea Route, the need for free entry into the Atlantic and Pacific Oceans, and the wealth of the continental shelf" (Novichkov 2015). Given that Moscow submitted a renewed claim to

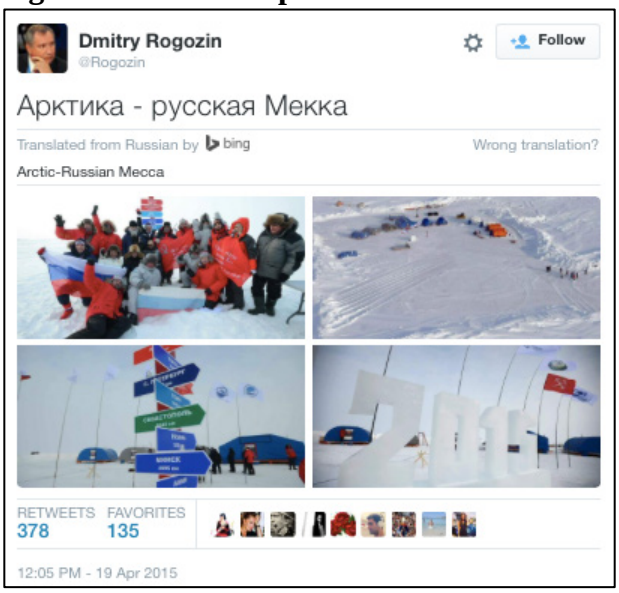
CLCS the month after this maritime strategy document was released, there is little reason to believe that Moscow intends to lessen its commitment to the Arctic and its MDs there. Despite major upheavals in Russia's economy – due in large part to international sanctions in response to Putin's annexation of Crimea (and the lion's share of Ukraine's EEZ in the Black Sea) – or perhaps because of them, Moscow has neither lightened nor altered its commitment to its Arctic claims.

Figure 69: Russia's Military Footprint in the Arctic



(Bender and Nudelman 2015)

Figure 70: An Example of Russia's Demonstrations of Commitment to the Arctic



* When banned from traveling internationally, the Russian Foreign Minister visited Svalbard.

After Russia, the next most dominant player in the Arctic is the United States, which has shown increasing attention to the Arctic, the resources there, and the ways that climate change are affecting American national interests there. Demonstrably, the US has participated in continuing NATO exercises in the Northern Atlantic and Arctic Oceans. To clarify US commitments, various US institutions have issued specific documentation. For example, the White House issued a National Strategy for the Arctic Region in 2013, but it only claimed that the American "desired end state as an Arctic Region stable and free of conflict, where nations act responsibly in a spirit of trust and cooperation, and where economic and energy resources are developed in a sustainable manner" (U.S. Navy 2014, p7). Similarly, the Department of Defense has documented its near-, medium-, and long-term strategies.

> Anticipating the impacts of climate change, the Navy will take deliberate steps to prepare for near-term (2014-2020), mid-term (2020-2030), and far-term (beyond 2030) Arctic Ocean operations… The Navy must make

> targeted investments in Arctic capabilities to hedge against uncertainty and safeguard enduring national interests (U.S. Navy 2014, p8).

While such documents, taken by themselves, might mean little, they combine with other statements and actions to illustrate an increased commitment to American interests in the Arctic:

> Within the US, for example, until recently, northern dimension foreign policy has meant, strictly speaking, the Baltic States and "security" issues. The development in 1997 of a North European Initiative was designed to address the issues of a new geopolitical order in the wake of the Cold War and dissolution of the USSR. Indeed, the US approach to the North can be understood as having two very separate sets of initiatives and policy directives, and is administered under two separate State Department programs. On the one hand, the NEI and e-PINE are steered towards foreign relations in which more general US policy goals of building democratic and stable societies and promoting free markets are met. In both, there has been a focus upon the sub-national level, with a broadening out to include actors such as NGOs, TNCs, multilateral organisations and others, as well as a broadening out of the definition of security interests to include a broad-based concept of human security including "economic deprivation, energy shortages, weakness of democratic institutions, communicable dis- eases, environmental degradation, crime, corruption and loss of cultural identity". On the other hand, a separate US State department program administers US participation in the Arctic Council, with virtually no overlap in personnel, program or policy development between the e-PINE and Arctic Council programs. There is no single 'northern dimension' to US foreign policy (Heininen and Nicol 2007, p150).

This multifaceted and multidimensional approach to the Arctic might make it difficult to observe the panoply of Washington's Artic-related actions, but it also illustrates the degree to which America is committed to the region and its various interests there (including the intangible). President Obama's recent visit to the Arctic – and the way it "was designed to snap the country to attention by illustrating the ways warmer temperatures have already threatened entire communities and ways of life" – illustrated

the United States' increasing attention to the Arctic and the effects that changes there have on larger American interests (Lederman 2015).[63]

While the US has suffered several difficult economic periods (e.g., the recent so-called Great Recession) and individual presidential administrations have suffered low polling numbers (e.g., at the end of George W. Bush's presidency), there was no major or prolonged crisis of legitimacy – the kind that might correlate with efforts at diversionary confrontation in the Arctic. Thus, there has been consistent, if not increasing, commitment to the Arctic and nothing to either prevent resolution or catalyze it. As long as Putin is managing Russia, there is no reason to expect anything but more of the same.

Canada, much like the United States, has maintained if not increased its commitment to the Arctic. Specifically, the most recent Prime Minister, a Conservative named Harper, has been particularly vocal on Arctic disputes and the degree to which Canadian interests there seem to be in jeopardy (Rennie 2014); in that spirit, Ottawa has engaged in additional Arctic military exercises (GoC 2015). Such words and deeds are arguably the direct result of how much climate change is affecting the large percentage of Canadian territory that is Arctic, but such changes are difficult to parse out from the Conservative party's ideological approach to Russia's international behavior in the Arctic and elsewhere (Ford, Smit, and Wandel 2006, Ford et al. 2007). Such efforts do create distance between Ottawa and the international mechanisms that exist for managing the Arctic or its disputes.

> If the goal is to broaden the northern dimension beyond a policy which deals almost exclusively with environment, the Canadian Government believes that the Arctic Council is uniquely placed to address not only environmental challenges faced in the circumpolar region, but to go beyond to face the broader challenges of developing new opportunities and enhancing capacity for trade and economic

[63] Obama is the first American President to visit the Arctic and has been accused of sending inconsistent messages as to what the United States' interests are in the Arctic, particularly on issues like offshore drilling there, which he has authorized (Horn 2015).

> development, “as well as educational opportunities and employment mobility for Canadian youth and children in the circumpolar North" (Heininen and Nicol 2007, p149).

Canada thus does not seem to have experienced the kind of domestic changes that would either preclude or catalyze changes in the status of its MDs in the Arctic. Nor does it look to anytime soon. While Harper and his Party could lose control at any point, there is no reason to consider Ottawa’s current approach to the Arctic so extreme that a Liberal government would change official Canadian positions; such a new government would likely take a different tone towards the other claimants, previous Liberal governments have taken similar positions on Canada’s Arctic MDs, and thus a future Liberal government would likely do the same.

Europe – to paint the EU and the other Arctic states in broad brush strokes – tries to approach the Arctic with strength, but does not seem to have the same commitment to the High North as Russia and Canada seems to have:

> the EU’s Northern Dimension was constructed to deal with common issues specific to the European Arctic states, both the EU member states (Sweden, Denmark and Finland), the two other Nordic countries (Iceland and Norway) as well as the Russian Federation. While in the Russian Federation, the idea of a northern dimension to replace old Soviet policies toward the Russian North is developing, it would be an exaggeration to say that a northern policy has fully formed. As was its predecessor, the USSR, Russia is very much a northern country and therefore, has strong national interests in the circumpolar North. But to Russians, where the “North” is a peripheral area of the nation, not necessarily a frontier but rather a strategic area for the utilisation of natural resources and for the military, the Soviet/Russian North has not been a focus for, or actor in, foreign policy or regionalization (Heininen and Nicol 2007, p146).

The EU nor the other Western European claimants are nation-states with developed economies and legitimate governments; there is no evidence that they have experienced the kind of crisis that might catalyze a diversionary set of policies – with respect to Arctic escalation or resolution. Given political patterns in those states, there is no reason to

think that any such crisis is expected. With there is domestic support for these states – and continued albeit marginal interest in the Arctic – there is no reason to expect any changes with respect to claimants' commitment to the intangible value of the Arctic.

Access to International Mechanisms of Arbitration and Resolution

Particularly since Gorbachev's speech, the Arctic has had more than its share of access to international organizations and institutions – including ad hoc cooperation mechanisms – but the regional institution has been the Arctic Council (Bloom 1999, Jarashow, Runnels 2006, Koivurova and VanderZwaag 2007, Stokke and Hønneland 2007, Council 2011, Axworthy et al. 2012). Like all other maritime areas, though, it has access to UNCLOS; yet, the Arctic's unique situation catalyzed special institutional developments.

> Territorial claim over the Arctic Ocean has long been a topic of debate between various countries that possess coastline along the ocean. As a result of these debates, Article 76 of the United Nations Convention on the Law of the Sea ("UNCLOS") established the Commission on the Limits of the Continental Shelf ("CLCS") to assess each Arctic nation's territorial claims. When this commission was established, the international concern with the Arctic Ocean was the ownership of waterways for the navigation of nuclear submarines. However, the shrinking Arctic ice cap has recently rendered exploration of the oil and natural gas deposits lying beneath more practicable, thereby further igniting territorial disputes. At the forefront of these disputes, Russia recently claimed that it controls an additional 1.2 million square kilometers beyond what is currently recognized as their territory in the Arctic (Coston 2008, p149).

Yet, like all other parts of UNCLOS (of which only Norway, of the Arctic claimants, is bound), there is no enforcement authority with the CLCS. Regardless of what it might conclude, how it might want to support a specific approach to dispute resolution, or even how it might like to mediate the Arctic disputes, it cannot force any nation-states to listen, participate, or comply.

> Even though CLCS may make a recommendation, the Commission has no actual jurisdiction or authority to decide land disputes. Thus, when more than one

> country attempts to claim the same area of the Arctic, the dispute would likely fall to negotiations between the clashing countries (Coston 2008 p151).

Notionally, claimants could take action to boost their claim, but results are not guaranteed. Since criteria for resolution and even mechanisms of resolution are not explicit, the weight or even efficacy of certain developments remains uncertain.

> Though UNCLOS does not provide a binding method of resolution for overlapping continental shelf disputes in the Arctic, these countries might use UNCLOS precedent to bolster their claims. The International Court of Justice ("ICJ") has decided three overlapping continental shelf disputes since its inception in 1946 (Holmes 2008, p340).

Recent example of such an efforts to bolstering an claims would be the updated documents that the claimants have been filing with CLCS: Russia submitted one in December of 2011, Denmark submitted one in December of 2014, and Russia has just submitted a revised update (CJICJ 2015). Since "it will take the CLCS at least 10 years to verify all the scientific data submitted by the coastal Arctic States" and states can continually submit revisions – as Canada tends to do in the fall of 2015 (Quinn 2015) – CLCS does not offer a reasonable mechanism of resolution:

> …the current legal regime is not adequate to resolve territorial disputes in the Arctic as there are no binding dispute resolution mechanisms. Taking into account the recent trend in Russian territorial disputes, the Russian policy in the Far North will show whether Russia will stick to the international laws related to the Arctic, or whether it will try to exert its own style of control with further militarization of the region and restoration of maritime power lost after the end of the Cold War. Therefore, the Arctic coastal States must establish proper mechanisms of cooperation and dispute settlement, such as entering into multilateral treaties (similar to the Antarctic Treaty of 1959), bilateral agreements, joint development agreements, and address international arbitration to settle existing and future territorial disputes in the Arctic region (CJICJ 2015).

While this support for the idea of joint development reinforces the themes of this research project, it is important to note that these legal findings (as the Cambridge Journal of International

and Comparative Law is oriented towards matters of law and jurisprudence) do not actually resolve the MDs.[64]

Despite this rich environment of international organizations, none are equally trusted by all (and some are actively distrusted). All of these organizations are perceived to have some sort of bias (like the ND) or are explicitly oriented in one direction or another (e.g., NATO) and are thus unable to serve as an objective mechanism for MD arbitration, negotiation, or resolution.

Findings:

The Arctic disputes offer important contributions to what is known about Type 3 disputes and to the specific causal stories of MDs as they relate to Type 3 disputes. One of the most important lessons from qualitative exploration of the Arctic is the degree to which the different disputes are all related to each other and connected with each other – as was first observed in the Svalbard analysis – and as is addressed below.

Hypotheses and Significance:

The Arctic offers important contributions both to our understanding of Type 3 disputes and to the specific causal stories of MDs as they relate to Type 3 disputes. The presence of the hydrocarbons and the fisheries has encouraged both claimants to pursue zero-sum approaches to the Arctic – including Russia's recent submission and its justification for giving Moscow the entire "doughnut hole." This case study, much like the Svalbard and Senkaku ones, supports the economic story: the economic value of the contested area itself matters in terms of attracting

[64] Notably, there are relatively new institutional players, like the EU's Northern Dimension, but such organizations and frameworks do not seem to have substantively changed the facts on the ground (or in the water) (Heininen and Nicol 2007). Notably, though, the ND has expressed concerns over American hegemony have kept out both the USA and Canada, which have a share a history of working well to address North American security and regional policy concerns (Heininen and Nicol 2007).

claimant interest. While extant IR theories claim that nation-states should be able to easily bargain over such fungible goods, the existing UNCLOS framework and the way that everything is dichotomous (even the status of nation-states as continental or archipelagic). The tangible value of the Arctic and the zero-sum nature of MD management encourage claimants to let the dispute linger. The exception is Russia, which has just invested in collecting oceanographic evidence of its claim – thus changing the status quo, but ostensibly in their favor.

Beyond the tangible, this case study supports the importance of understanding the claimants' commitment to the symbolic zero-sum ownership of the Arctic; as aforementioned, this is most stark with the Hans Island dispute, but has become the standard dialogue in the various bilateral and multilateral approaches. While a number of the claimants (e.g., Norway), have worked to demonstrate the symbolic value of the MD, Moscow's efforts have been most telling – most significantly their planning of the submarine flag and then the illegal visit to Svalbard with the claim that the Arctic is Russia's Mecca.

Additionally, the international mechanisms for arbitration, management, and resolution are numerous and are utilized by the various claimants – as Russia's recent submission illustrates (GOR 2015). Although Russia is the only non-Western nation-state, and thus arguably maintains some distrust of and distance from the various IOs and committees that play a role in attempting to govern the Arctic, Moscow participates fully and at least maintains the diplomatic position that resolution through the existing international bodies is an option. Notably, Norway is supposedly committed to only acting through ITLOS, but Oslo claims only a relative modest portion of the Arctic and has peacefully pursued arbitration and resolution to its other MDs.

Status of the Dispute:

Although the claimants might not agree, one could argue there are functionally three disputes – or, at least, groups of disputes within the Arctic; each of them has a different status and chance of resolution. First, there is the dispute over Hans Island between Canada and Denmark. Second, there is the dispute over how much (if any) of the "doughnut hole" is given to various claimants. Third, there are the East-West water delimitation disputes just South of the "doughnut hole" – like the dispute between Canada and the United States. Given the various mechanisms of governance in the Arctic, the degree of communication, and the solid history of dispute resolution (albeit incomplete resolution, as was noted above with Svalbard), the disputes of the Arctic are unlikely to escalate. Some of the disputes are even likely to get resolved. Johnston agrees: "While there are disagreements between the Arctic states as to the precise location of some boundaries, there is no reason to conclude that these disagreements cannot be resolved amicably" (2010, p18). His prediction proved correct for at least one of the disputes, as Russia and Norway resolved their Type 1 MD in the Barents just a few months later (Nilsen 2010). For the other disputes, even if there cannot be a series of resolutions, he has confidence that "[t]he existing vehicles for dispute resolution and cooperation in the region, UNCLOS and the Arctic Council, will also help to reduce tensions" and that "there are already examples of cooperation between states regarding the development of contested and non-contested areas" – so the official mechanisms of communication and collaboration are supplemented with unofficial opportunities; collectively, he argues, "It seems that the countries in question realize that they stand to gain more through cooperation than through confrontation" (Johnston 2010, p21).

There is an additional concern with these disputes, however: China's interests in the resources in and beneath the waters of the Arctic. Beijing has taken a vocal position on Arctic policies, committed resources to developing Arctic programs, and pursued a position on the Arctic Council – in order to play a role in the official decision-making of dispute resolution and policy management – although they have only managed to earn non-voting observer status (Jakobson 2012, Guilford 2013).

> Chinese officials now characterize their country as a "near-Arctic state," and Beijing has recently increased its investment in polar research, spending some $60 million annually, and ordered a second, $300 million ice-breaking research ship. China strengthened its toehold in the Arctic by signing a free trade agreement with Iceland, its first with a European country, and building an embassy that is Reykjavik's largest (CFR 2014).

Through words and deeds, Beijing has committed itself to finding a way to make money off of the Arctic: as "a retired Chinese navy rear admiral at a governmental meeting in 2010" argued on behalf of his government:" 'The Arctic belongs to all the people around the world as no nation has sovereignty over it,' and vehemently argued that "China should have a right to Arctic resources" (Guilford 2013). Given Beijing's stated approach to exploit all unclaimed resources anywhere – including on the moon – China's approach to the Arctic is consistent, but problematic (AFP 2013). Their efforts to demonstrate commitment have also been seen as escalatory; for example, when an American president visited the Arctic for the first time, Beijing sent warships just off the Alaskan coast.

> Pentagon officials said late Thursday that the five Chinese navy ships had passed through U.S. territorial waters as they transited the Aleutian Islands, but said they had complied with international law and didn't do anything threatening… The passage was seen as significant as Beijing has long objected to U.S. Navy vessels transiting its territorial waters or operating in international waters just outside. (Page and Lubold 2015).

While Beijing was operating its navy within the bounds of international law, its continued interest in the Arctic – and the ways it has demonstrated this commitment (e.g., the above

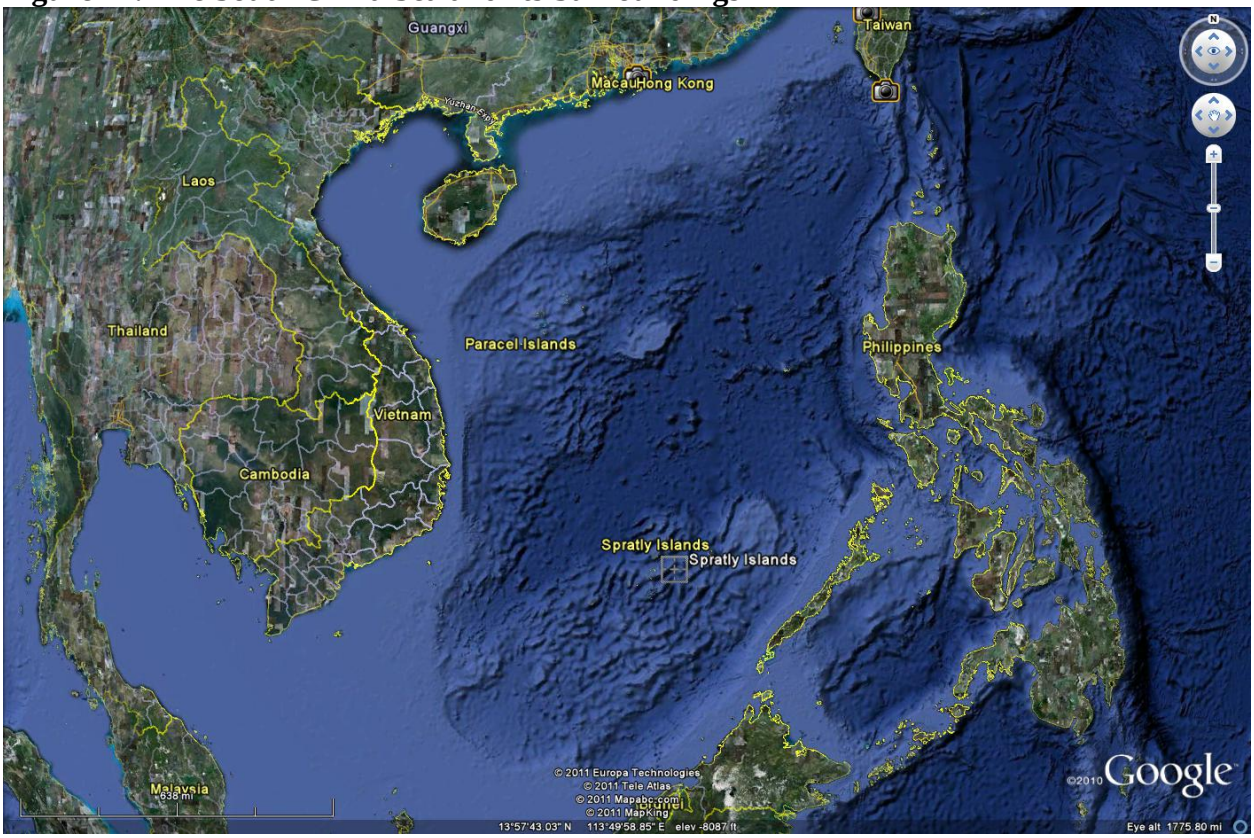
quotation from the admiral was seen as “bullying”) – have not helped the other claimants want to interact with China (Guilford 2013). Accordingly, it is difficult to predict what role Beijing might seek to play or how the Arctic states would receive Chinese intervention in dispute resolution or resource extraction. Given that Beijing has shown limited ability to operate effectively in the Arctic or Arctic-like environments – as demonstrated by how an Australian icebreaker had to save China’s single icebreaker after it had been stuck in ice for several days in 2014 – Chinese rhetoric on the region might prove less problematic than some fear (AFP 2014, CFR 2014, Daily Mail 2014). What matters, at least for this project, about China's interest in the Arctic is to the degree to which the naked interest in resources – both fish and hydrocarbons – reinforces the argument that MDs matter to nation-states because of the prospect of economic benefit.

Chapter Eight: Application: the South China Sea

The South China Sea (SCS) is arguably the most contested maritime area in the modern world. It is "is a large ocean space" with a "coastal geography" that is "both characterized and complicated by the presence of a profusion of predominantly small islands, islets, rocks, and reefs" (Schofield 2014, p12). This body of water is found "between the southern coast of China and Taiwan to the north, the mainland and peninsular costs of Southeast Asia to the west and the archipelagic island group of the Philippines, Borneo and Indonesia to the east and south" (.ibid). All of these nations-states, with the exception of Indonesia, maintain overlapping claims to the SCS waters and the maritime features within them. Of these claims, the so-called nine-dash line is both the oldest and the most controversial.

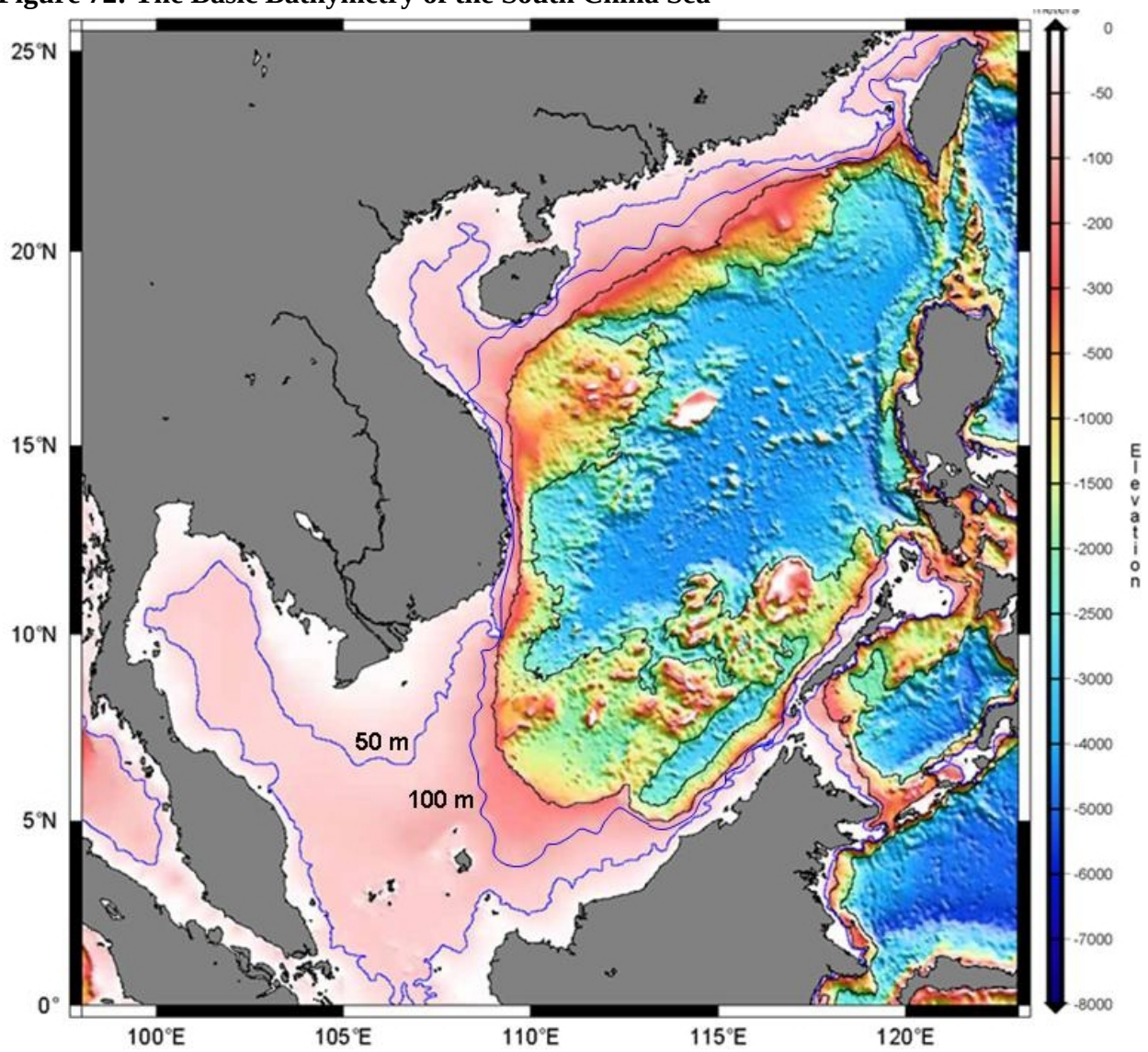
> Perhaps the most controversial maritime territorial claim is China and Taiwan's nine-dash line claim to the South China Sea. This has also been called the 'nine-dotted line', the 'nine interrupted-lines', the 'U-shaped line', the 'cow's tongue', as well as the official Chinese name: 'traditional maritime boundary line' (传统海疆线). The modern history of this line goes back to December 1914 when Hu Jinjie, a Chinese cartographer, published a map with a line around only the Pratas and Paracels, entitled 'The Chinese Territorial Map Before the Qianglong-Jiaqing Period of the Qing Dynasty (AD 1736–1820)'. In 1935, the Land and Water Maps Inspection Committee of the Republic of China (ROC) published a 'Map of Chinese Islands in the South China Sea' with an eleven-dotted line drawn around 132 islets and reefs of the four South China Sea archipelagos. In 1947, the ROC Ministry of Interior prepared a location map for internal use, renaming the islands in the South China Sea and formally allocating their administration to the Hainan Special Region. One year later the Atlas of Administrative Areas of the Republic of China was officially published, including the first official map with the line for the South China Sea. An eleven-segment line was drawn instead of the previous continuous line. In 1949, the newly-established People's Republic of China (PRC) published a 'Map of China' with the eleven-dotted line. In 1953, following Premier Zhou Enlai's approval, the two-dotted line portion in the Gulf of Tonkin was deleted. Chinese maps published since 1953 have shown the nine-dotted line in the South China Sea (Rosenberg 2013).

Figure 71: The South China Sea and Its Surroundings



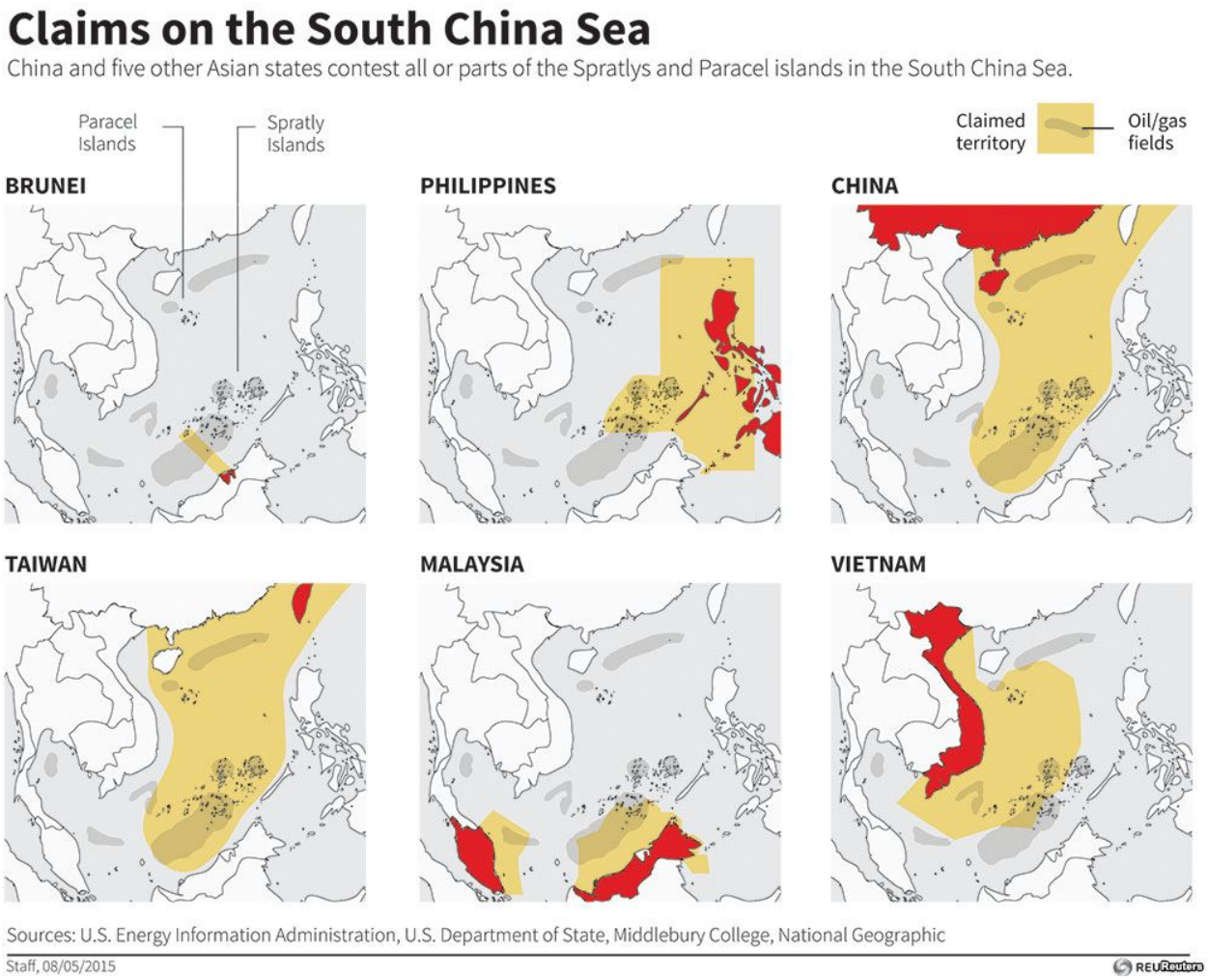
(Google 2011)

Figure 72: The Basic Bathymetry of the South China Sea



(Anderson 2014)

Figure 73: The Various Sovereignty Claims in the South China Sea



(Reuters 2015)

Figure 74: The Paracels: Chart of the Shoals, Reefs, and Rocks

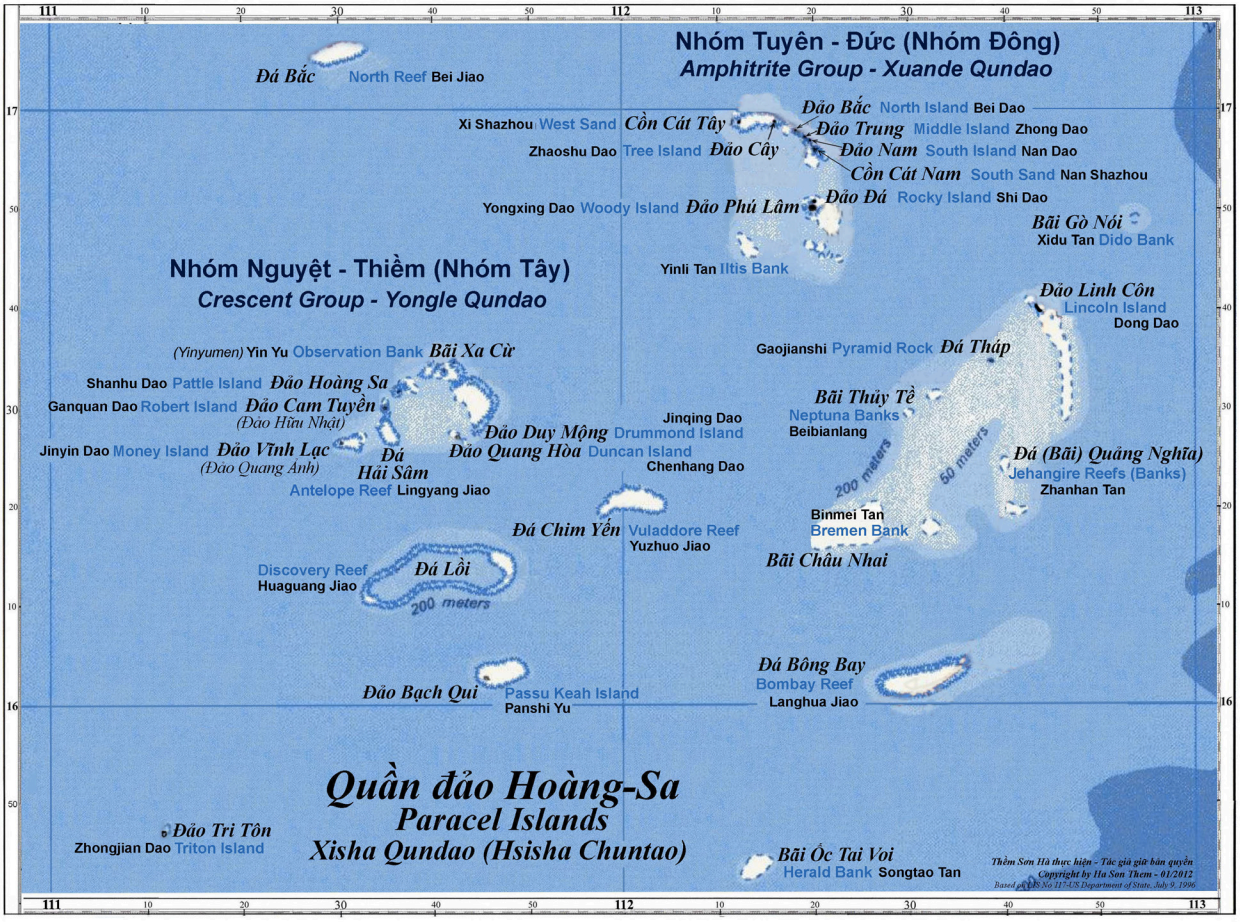
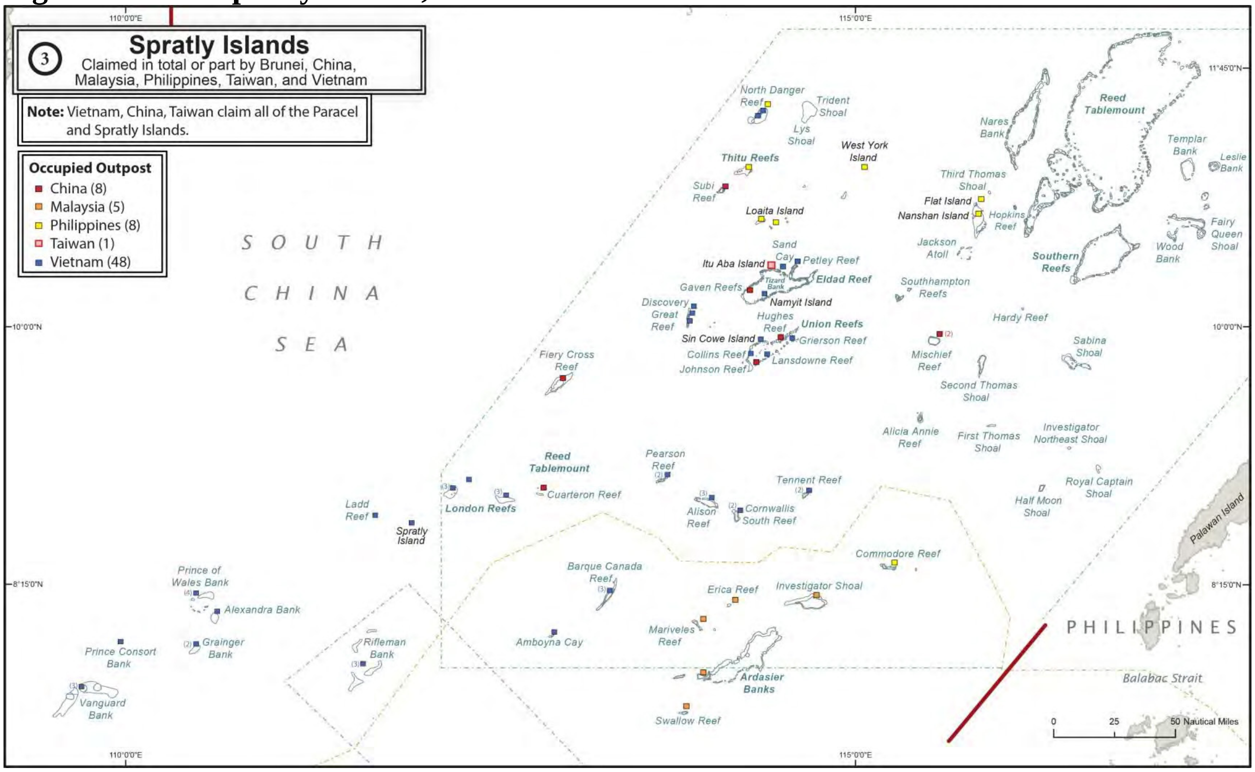
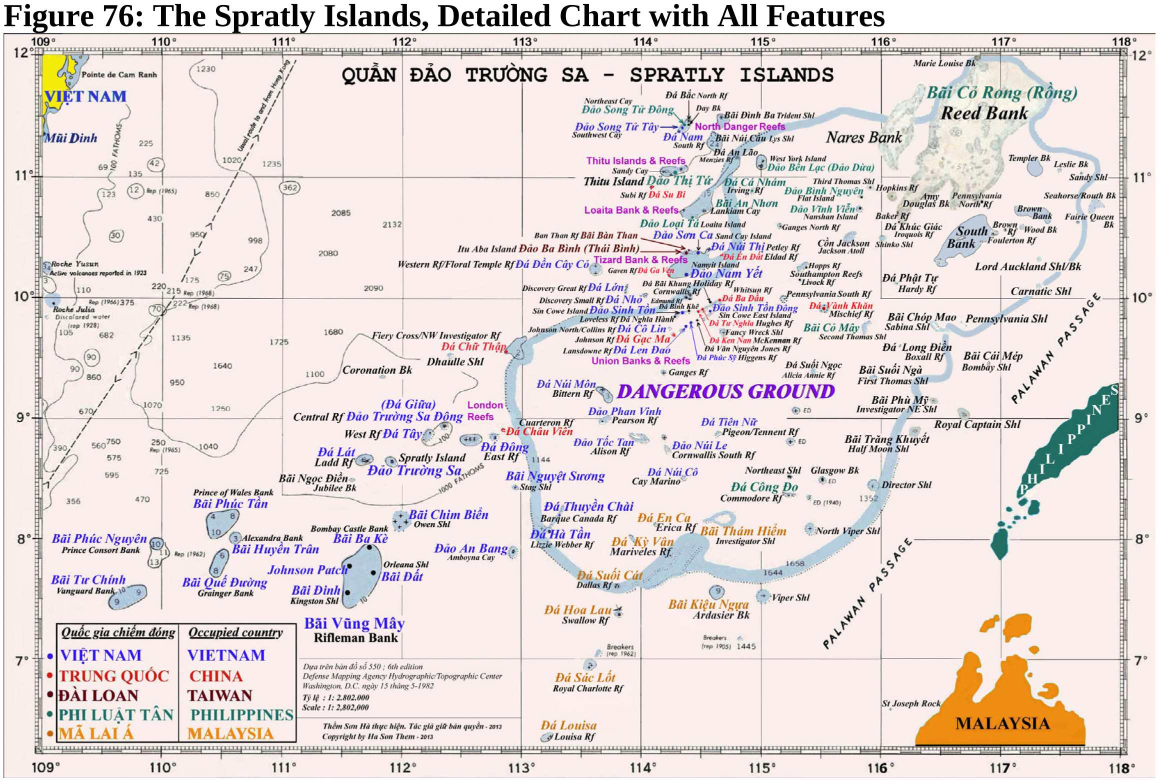


Figure 75: The Spratly Islands, Overview



(USN, 2015)

Figure 76: The Spratly Islands, Detailed Chart with All Features



(Ha 2013)

Figure 77: Overhead Picture of the Spratly Islands (before China's Island-Building Campaign Began)

(Himmelman 2013)

Figure 80: Example of a Pre-Island-Building Structure on Subi Reef

(Himmelman 2013)

China's claims, which Taiwan mirrors for reasons related to their cross-strait relationship, are not just legal or diplomatic; Beijing has historically taken action to strengthen its position in the SCS, arguably beginning in 1974, with a military assault that killed dozens of (South) Vietnamese sailors, injured several dozen more, and removed the Vietnamese entirely from the Paracels (Nordquist and Moore 1998). While the next two decades saw few changes in the SCS, things began to change when the US and Vietnam normalized relations in 1995; specifically, China began building on Mischief Reef, a maritime feature claimed by the Philippines.

> The Mischief Reef incident in 1995 marked a change in China's policy toward the South China Sea. China built infrastructure on a submerged reef in the Spratly Islands and well within the Philippines' exclusive economic zone (EEZ), which led to an unprecedented hostile confrontation between the two countries. Prior to the clash, China had only been antagonistic toward Vietnam, the only non-ASEAN member, in 1974 and 1988. After the Mischief Reef incident, ASEAN sought initiatives that could prevent existing disputes from escalating into conflicts (Tran 2011, p176).

By building on a submerged reef in Philippine waters, Beijing introduced the modification of the contested maritime areas *and* aggravated a nation-state other than Vietnam.[65] Although China had previously "only advocated for bilateral negotiations in order to take advantage of its position as a regional power and avoid any unified ASEAN front against its interest," it relented in 1995 and " agreed to discuss the South China Sea with ASEAN" (Tran 2011, p178).

> During the ARF meeting in July 1995, Chinese foreign minister Qian Qichen announced that Beijing was prepared to negotiate a peaceful settlement to the dispute in accordance with international law, particularly the 1982 UN Convention on the Law of the Sea (UNCLOS). This, however was arguably a tactic by the Chinese side to preserve its position after a new successful occupation, of taking "two steps forward, one step back" (.ibid).

Despite the opening of multilateral discussions, the next several years saw no real changes in the SCS itself or how claimants diplomatically maneuvered around each other.

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[65] Since Hanoi had long had such a difficult relationship with both its neighbors and Washington, the geopolitics of the SCS changed markedly when Vietnam began to integrate itself into the international and regional systems.

A series of incidents in 2001 changed the tone of those discussions and almost sparked larger escalations. Specifically, Chinese and American forces had incidents both on the surface of the SCS and in the air above it. In March of that year, a civilian ship owned by the US Navy, the USNS Bowditch, was confronted by a Chinese Navy (PLAN) warship in China's Exclusive Economic Zone, an area where only the coastal state may fish or drill, but where any nation-state can sail ships for a large number of reasons, including scientific surveys like the Bowditch claimed to be doing.[66] Since China maintains a minority interpretation of this part of UNCLOS – like Brazil and Iran – and seeks to control all operations within its claimed EEZ, the warship demanded the Bowditch leave the SCS or have Washington ask Beijing's permission. Although the Bowditch did depart, it returned the next day with an armed escort from the US Navy. This Sino-American tension got much worse several days later.

> On the morning of 1 April 2001, a week after the Bowditch incident discussed earlier, two Chinese F-8 fighter aircraft intercepted a U.S. EP-3 that was conducting a routine reconnaissance flight about seventy miles south/southeast of Hainan Island. After making several close approaches to the American aircraft, one of the F-8s lost control and collided with the EP-3. The F-8 was chopped in half; the nose cone and number-one propeller of the EP-3 were severely damaged. The Chinese pilot ejected but was never found and was presumed dead. The EP-3 was forced to make an emergency landing at the Lingshui military airfield on Hainan. The cause of the collision is still a matter of dispute. The PRC claims that the EP-3 swerved into the flight path and rammed the F-8. The United States claims that the F-8 ran into the larger, slower, and less maneuverable EP-3. I will not go into the details here but would only suggest that the laws of physics do not support the Chinese position—and leave it at that" (Pedrozo 2009).

Although the exact cause of the collision remains officially unconfirmed, the Chinese military kept the American aircrew hostage for eleven days and only returned the US Navy plane in pieces several months later (.ibid). These events reflect the tension that existed in the SCS – and

[66] The Bowditch is an unarmed ship operated by civilian mariners and crewed by scientists; it collects oceanographic information for organizations like the Naval Oceanographic Office and the National Oceanic and Atmospheric Administration. The data collected by the Bowditch, and other ships like her, are available for download either in raw form or as part of navigational or oceanographic products from the respective agencies' websites.

not just amongst the claimants; even though the U.S. is not a claimant there, Washington has historically prioritized Freedom of Navigation – as protected by UNCLOS – and has taken offense at Beijing's policies there. Notably, the escalating Sino-American tensions of 2001's spring and summer were tabled in the fall when 9/11 directed American security policy away from the South China Sea.

Although Washington (temporarily) deprioritized the SCS after 9/11, the MD's claimants remained committed and kept the dispute active. That commitment is reflected in the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DoC), which was "essentially an attempt at preventive diplomacy and was conceived to freeze the status quo in terms of prohibiting the “habitation” of unoccupied features, as well as to promote confidence-building measures" amongst the claimants.[67] Yet, the DoC " was a compromise document—a political declaration without binding legal force" that did not address what nation-states could do with the contested features they already controlled:[68] "while none of the claimants have occupied new features in the Spratlys since [the DoC] was signed, nearly all [the claimants] have vigorously expanded their existing facilities, thereby violating the spirit of the agreement if not the letter" (Storey 2011, p151). Thus, despite the signed agreement, resulted only in"[r]ising tensions" that "underscored the limited effectiveness of existing dispute management mechanisms" (Storey 2011, p151). Shortly thereafter, Beijing shifted the focus of discussions from the individual features to the actions of the claimants' fishermen in the contested waters.

> In January 2003 China enacted a new decree extending its control over the 200-mile economic zone from its coast. "This is a Chinese domestic law that is

[67] Taiwan was not asked to sign and not included in the confidence-building measures (CBM).
[68] Many believe that the only reason such an agreement was even reached was because there were not any features left to claim: "41 island reefs have been invaded and occupied successively by Vietnam, the Philippines, and Malaysia. Disputes over the ownership and sovereignty of Nansha Islands were started in the second half of the last century from the 1960s. Especially from the 1970s to date, island reefs that are above the water and their surrounding waters were successively invaded and occupied by the aforesaid countries" (Wang, 2010).

> inconsistent with international law and the law that we follow," said a defense official [from the United States]. "We have continued to maintain over the years that our military surveys are a high-seas freedom and are not subject to restrictions placed within any" exclusive economic zone" (GS 2014).

While the US and many other claimants ignored China's domestic law, it was seen as an effort at imposing Beijing-based restrictions on the fishing activities both in international waters (which remains legal, but many seek to change, as was mentioned in Chapter Five) and the claimants' own EEZs (Rowan 2005, Zhao 2009). At a minimum, Vietnam and the Philippines saw the law as an effort incompatible with the 2002 DoC and inconsistent with efforts to resolve the MDs of the SCS peacefully; in particular, other claimants saw hypocrisy in China's fishing law and how, "Every year, China continues to send vessels to conduct maritime research in areas adjacent to the coasts of other countries in the South China Sea" (Tran 2011, p185). When questioned about such an approach, the Chinese reply has literally been that "It's our territory and we can do whatever we want to." (Kwok, 2010) Regardless of individual so-called survey mission, however, there remained no larger progress. Ultimately, " even after the signing of the DoC, tensions over energy development have persisted, occasionally leading to diplomatic protests and naval confrontations" – including in July of 2007, when "the Chinese navy dispatched a campaign for gathering data needed to determine the extension of its continental shelf" (Tran 2011, p185). The juxtaposition of Chinese rhetoric and actions frustrated the other claimants, but became particularly problematic toward the end of 2007 (Buszynski and Sazlan 2007).

> In December 2007, China established the city of Sansha for administering the Paracel and Spratly Islands and the submerged reef of Macclesfield Bank, triggering strong official protest from Vietnam as well as anti-China demonstration in Hanoi and Ho Chi Minh City. In January 2010, Hanoi condemned China’s decision to establish local governing bodies in the Paracel Islands and develop the area’s tourism industry as a violation of Vietnamese sovereignty (Tran 2011, p185).

While many other claimants protested, these developments, the underlying concern for many of them seemed to be the degree to which Beijing had modernized, expanded, and improved its navy in the intervening years.

> Tensions over contested territorial and maritime boundary claims in the South China Sea have been rising since 2007 due to a combination of factors, including regional military modernization programs. In particular, the rapid expansion of the Chinese navy has strengthened Beijing's hand in the dispute, put Southeast Asian claimants at a disadvantage, and called into question the sustainability of the status quo (Storey 2011, p151).

As China was improving its ability to apply force within SCS, Washington was refocusing on the security concerns in East and Southeast Asia – including the force realignments that would later be rolled into the "rebalance" to Asia. This was not seen positively in Beijing, where it was perceived to threaten Chinese interests in the SCS; early in President Obama's administration, there was another incident between American and Chinese ships.

> On 08 March 2009 five Chinese vessels harassed an unarmed US Navy ship in the South China Sea. The American ship was conducting routine operations 75 miles south of Hainan Island. US officials protested to China about the naval incident in which American authorities said the Chinese sailors' conduct was "reckless" and "unprofessional." Chinese vessels maneuvered dangerously close to the USNS Impeccable, waving Chinese flags and ordering it to leave the area. The US ocean surveillance ship was unarmed and staffed by civilians conducting routine operations at the time. Some accounts said the Impeccable was towing sonar equipment to monitor Chinese submarine traffic. When the Chinese vessels moved dangerously close to the Impeccable, the U.S. military said the Americans sprayed water from the ship's fire hoses at one of the Chinese vessels. Crew members on the deck of the approaching patrol boat stripped to their underwear when they were sprayed with water, but US officials said the Chinese vessel did not change course, stopping only when it was about eight meters from the twin-hulled American vessel (GS 2014).

Notably, the "timing of this encounter is somewhat surprising as US Secretary of State Hillary Clinton had just announced the previous week in Beijing that the US would resume mid-level military exchanges with China" (Rosenberg 2009). Regardless of the timing, the event was concerning for both what it could have been and what it signaled.

> The Impeccable incident demonstrates that US-China tensions are never far below the surface. Seemingly small disputes can escalate rapidly… The Impeccable incident is similar to the collision between a US EP-3 surveillance aircraft and a Chinese fighter jet in Chinese EEZ waters on April 1, 2001. Both occurred near Hainan Island. Both occurred at the start of a new US administration. Both threatened a political crisis. (Rosenberg 2009)

After this incident, the tone of SCS-discussions became markedly more confrontational, both between Beijing and Washington and amongst the claimants themselves – particularly after UNCLOS claims became official (Agarwal and Agnihotri 2009).

> China's policy on settling maritime territorial disputes… became consistently more assertive in 2009 after Malaysia, Vietnam, and the Philippines submitted their claims to the UN Commission on the Limits to the Continental Shelf. In response to these perceived intrusions on its historic claims, China submitted its counter-claim, including its nine-dash line map. This appears to be the first time China has attached this map to an official communication to the UN. The claim is manifestly ambiguous, but has led some to conclude that China is officially claiming all the waters within the U-shaped line as its territorial or historic waters, a position which is contrary to UNCLOS (Rosenberg 2013).

Although Beijing did not elaborate upon that historic claim, they did soon provide political context for their commitment. Just months after filing the counter-claim, "senior Chinese officials told high-ranking U.S. visitors that China had classified the South China Sea as a 'core national interest,' making the country's territorial claim non-negotiable, and elevating it to the same level as Taiwan and Tibet" (Tran 2011, p185). Such a "new categorization" of the SCS was seen as "impl[ying] that China claims the authority to defend its national interest in the SCS by all means necessary, including the use of force" (Tran 2011, p185). The combination of political rhetoric, increasing military capabilities, and lingering MDs became increasingly worrying for scholars and policy-makers – particularly for those who saw trouble in China's growing military capability:

> The lack of progress in the concrete implementation of dispute management mechanisms for the South China Sea is all the more worrying because Asia's

> balance of military power is shifting decisively toward the People's Republic of China (Storey 2011, p152).

Adding to this tension, Beijing announced another domestic law as a way – according to many of the other claimants – of attempting to control the fishing activities of claimants in their own EEZs and within the (contested) international waters of the SCS:

> In December 2013, China's Hainan provincial government enacted a fisheries law demanding that all foreign fishing boats obtain permission to enter its domestic waters, which according to China cover nearly the entire span of the South China Sea. With other countries in the region vehemently protesting the move and the United States calling it "provocative and potentially dangerous", the seemingly innocuous exercise of a fishing-related legal apparatus has elevated political tension and rhetoric in the region (Song 2015, p60)

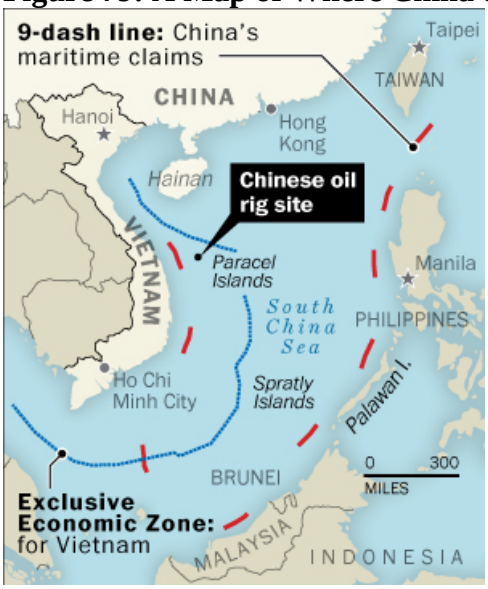
Although the other claimants were unified in their opposition to China's legal maneuver, the pattern remained the same as what had been observed for decades: Beijing establishes the tone and pace of what happens in the SCS – and everyone else is left responding to how Beijing decides to act.[69] Some Chinese scholars have admitted that such legal efforts are designed to give China advantages with respect to the SCS disputes and the other claimants; they are an "effective use of international and domestic laws" and it is only appropriate that Beijing should turn to "those laws that can be used as weapons, to defend China's maritime sovereignty and rights" (Guan and Hu, 2009). As one analyst noted, "It's easy to make China out as the villain in all of this. Most Western narratives do, even though several U.S. government officials assured me that

[69] Notably, Beijing does not consider itself to be setting the tone, but responding to others: "As for the South China Sea, some Chinese analysts assert other countries are exploiting Beijing's relatively restrained approach by nibbling away at China's interests. Zhu Chenghu, a vocal military scholar at National Defense University, writes that rival claimants are "plundering China's oil and gas resources without scruple, turning the South China Sea into an ATM machine" (Global Times, July 1). Many Chinese observers worry that Vietnam and the Philippines may try to draw in the United States to advance their own interests at China's expense. Some Chinese scholars even suggest the United States will take advantage of an opportunity to sow discord between China and the other countries with territorial claims in the South China Sea in pursuit of a broader strategy of "containment." Additionally, China's disagreement with the United States over what activity is permissible within China's exclusive economic zone (EEZ) is another source of tension. Chinese analysts complain U.S. reconnaissance activities in China's EEZ are increasing and they appear to believe these reconnaissance activities reflect hostile intentions toward China ("Assessing China's Response to U.S. Reconnaissance Flights," China Brief, September 2) (Chase 2015).

there weren't truly any 'good guys' in these territorial disputes," (Himmelman 2013). Such moral complexity has arguably since become more clear.

In 2014, Beijing again changed the nature of the SCS discussion by becoming the first claimant to have a national oil company capable of drilling in the deeper waters of the SCS. Beijing's China National Offshore Oil Corporation (CNOOC) deployed the oil rig Haiyang Shiyou 981 into contested waters of the SCS (See Figures 81 and 82).

Figure 79: A Map of Where China's Oil Rig Operated in 2014



(Taylor 2014)

Figure 80: A Chinese Ship Keeps Others Away From the Oil Rig (in 2014)

(Taylor 2014)

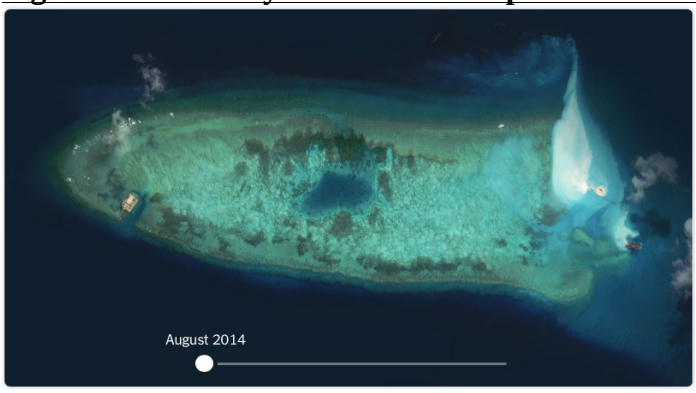
China's demonstration of the ability to drill in such deeper water would have been significant, but their willingness to demonstrate that so close to Vietnam's shore – and to surround their drill

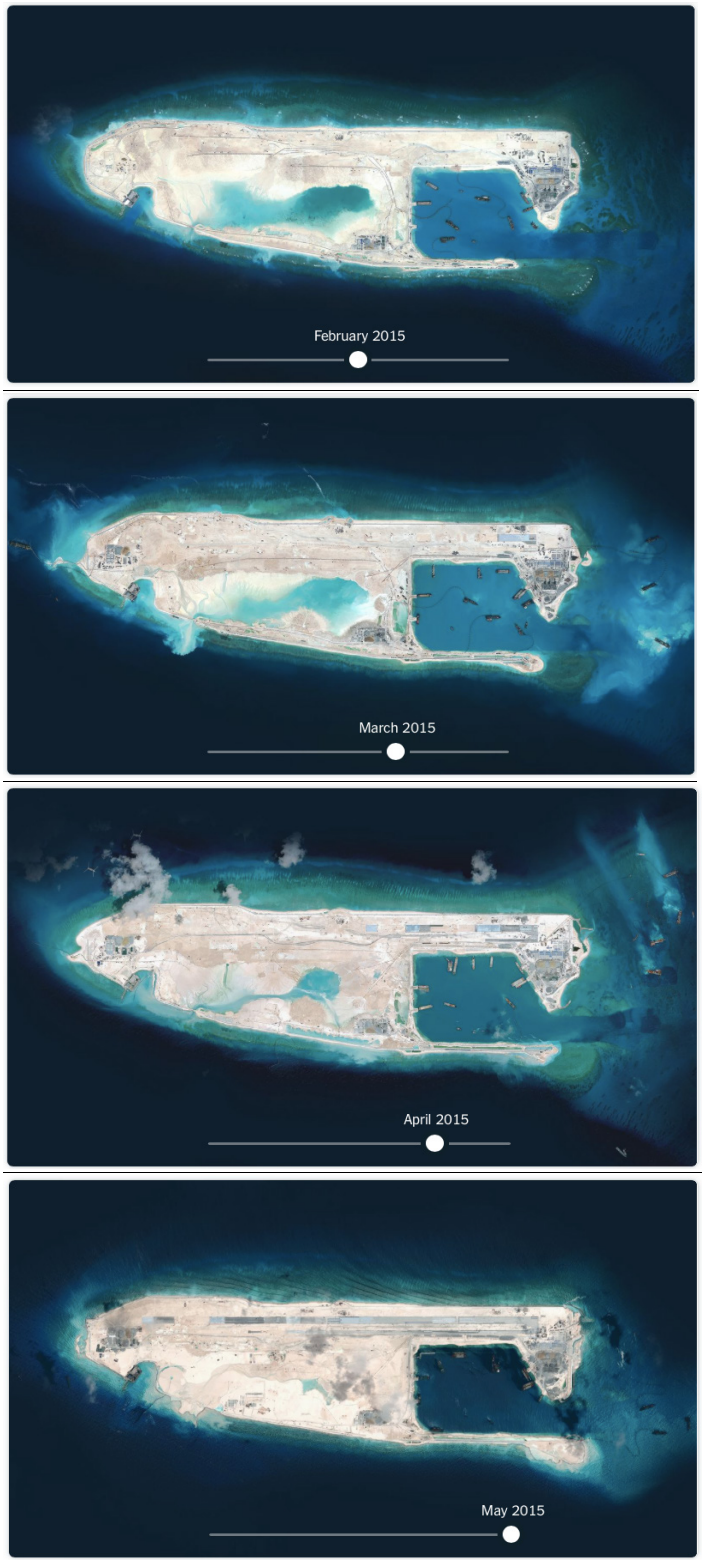
with heavily armed "coast guard" ships was seen as escalatory by both Vietnam and most other claimants (e.g., Taylor 2014). Given that the Chinese government and CNOOC have long referred to oilrigs as a type of "strategic weapon," the act was seen as intentionally inflammatory (Spegele and Ma 2012). Since none of the other claimants possessed the ability to drill in such waters with their own resources, their responses were limited to political statements and diplomatic protests.

The most recent and perhaps significant development in the maritime disputes of the SCS came at the end of 2014 – at least, the most significant development since Beijing seized the Parcels from Vietnamese forces in the 1970s. Specifically, it became known that China had launched a massive island-building campaign across the SCS. While many of the claimants had attempted to modernize their own island outposts – or at least keep them from completely being overtaken by the elements – Beijing changed the nature of the contest by building artificial islands. (Please see figures 83 to 90 and 91 for an overview of the kind of construction this program includes; figures 92 and 93 detail the kind of military capabilities that such artificial islands now offer Beijing.) Where there had historically only been reefs, shoals, or other underwater features, China built islands: "But they took shape only in the last several months, and they are already emerging as a major point of conflict in the increasingly bitter territorial disputes between China and other Asian nations" (Wong and Ansfieldjune 2014). For military, environmental, and legal reasons, these artificial islands concerned both the other SCS claimants and Washington.

> In one disputed area, the Spratly Islands, U.S. officials say China has created about 800 hectares (2,000 acres) of dry land since 2014 that could be used as airstrips. The U.S. argues that man-made constructions cannot be used to claim sovereignty and is closely watching for signs that China will seek to back up its claims by basing missile systems and fighter aircraft on the newly formed islands (AP 2015).

Figures 81-88: Fiery Cross Reef: Snapshots of China's Island-Building Program



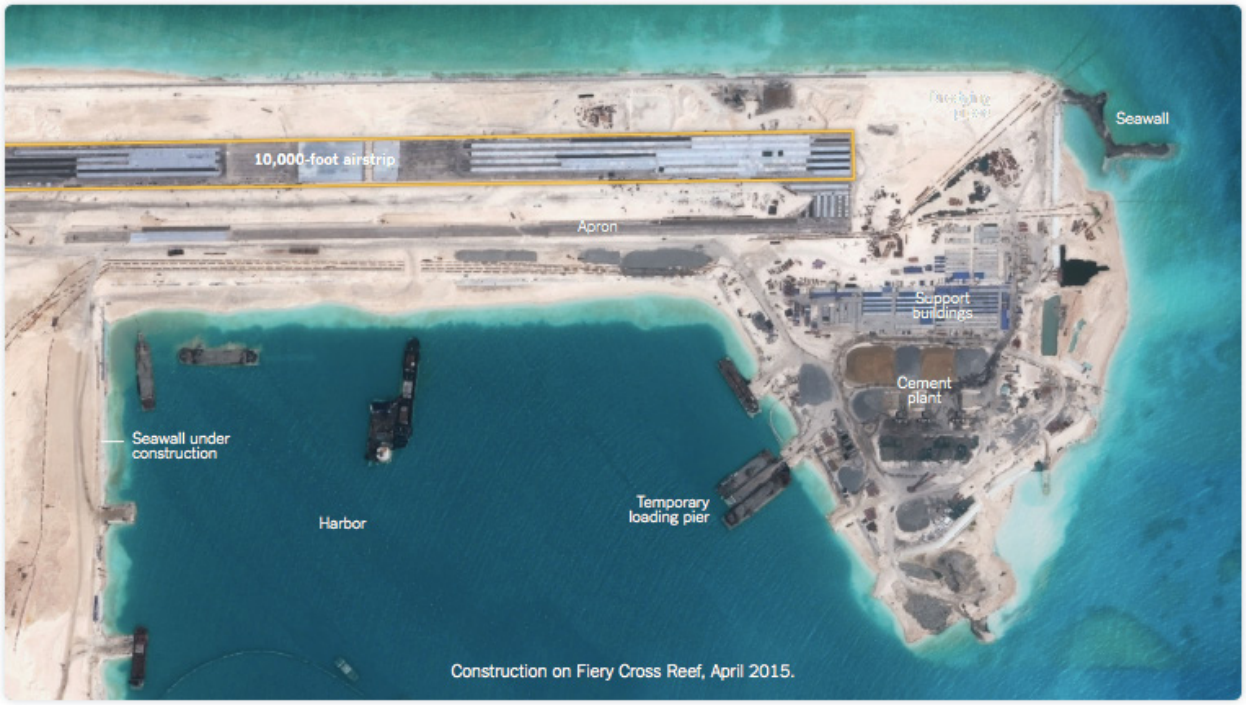


(Watkins 2015)

Figure 89: The Transformation of Subi: From Reef to Military Base

(@RajFortySeven, 2015)

Figures 90 and 91: Details of Fiery Cross Reef and Johnson South Reef



(Watkins 2015)

(Watkins 2015)

Although Washington, Manila, and others have claimed that these artificial islands *should* not count towards UNCLOS, that does not stop Beijing or others from speculating that they might. For example, Wong and Ansfieldjune argue that, in addition to providing a place for Beijing to place military equipment,[70]

> the new islands could allow China to claim it has an exclusive economic zone within 200 nautical miles of each island, which is defined in the United Nations Convention on the Law of the Sea. The Philippines has argued at an international tribunal that China occupies only rocks and reefs and not true islands that qualify for economic zones… "By creating the appearance of an island, China may be seeking to strengthen the merits of its claims," said M. Taylor Fravel, a political scientist at the Massachusetts Institute of Technology (Wong and Ansfieldjune 2014).

Although the strategic concerns about the artificial islands' potential utility vis-à-vis UNCLOS remain uncertain, the concerns over the program have only grown – particularly as increasing evidence becomes available as to the scope, scale, and impact of the program (Chase 2015, Lee 2015). Notably, evidence has emerged of how China has built islands across the Spratlys and Paracels – and can now both land launch most of their combat aircraft (Lee 2015, Chase and Purser 2015).

> Although China is not the first state to build an airstrip in the South China Sea, it is the first state to employ island-building technologies to transform a contested maritime feature into a military base that extends the reach of offensive military capabilities. Other countries have worked to project power *to* contested South China Sea features; with the airstrip on Fiery Cross Reef, China has worked to project power *from* them" [emphasis in original] (Chase and Purser 2015).

Although such island-construction is problematical from the security perspective, it is devastating from the environmental perspective. China has not just destroyed marine features by turning them into the foundation of military bases; it has damaged the surrounding areas and the sea life that live there.

[70] There is evidence that Beijing has already positioned artillery on the artificial islands and is preparing to keep attack aircraft and warships here (ONI 2015, Rosenberg 2015).

> Several reefs have been destroyed outright to serve as a foundation for new islands, and the process also causes extensive damage to the surrounding marine ecosystem. Frank Muller-Karger, professor of biological oceanography at the University of South Florida, said sediment "can wash back into the sea, forming plumes that can smother marine life and could be laced with heavy metals, oil and other chemicals from the ships and shore facilities being built." Such plumes threaten the biologically diverse reefs throughout the Spratlys, which Dr. Muller-Karger said may have trouble surviving in sediment-laden water (Watkins 2015)

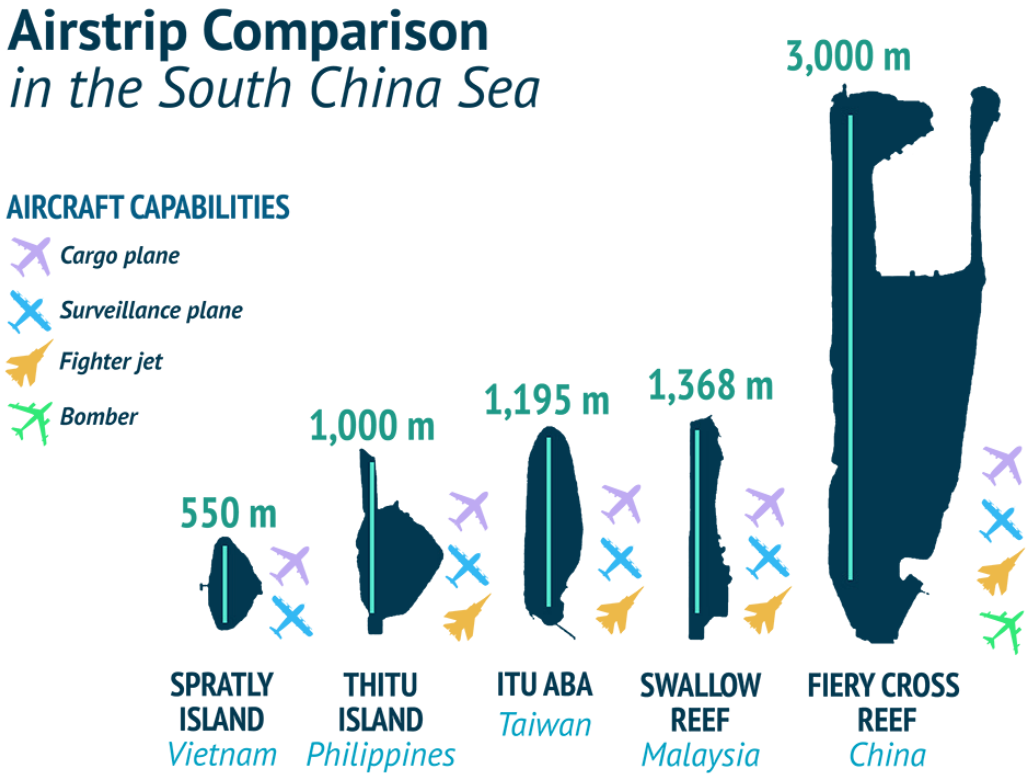
While scientists have been unable to approach the contested features to examine exactly what kind of damage has been done – making both short-term and long-term estimations difficult – it has become clear that the level of environmental destruction is wide-ranging; even inchoate studies estimate that the zoological implications will not only be innately destructive, but also be so destructive as to negatively impact the fisheries and thus the economies of the claimants.

> China's island-building activities have destroyed about 300 acres of coral reefs and are causing "irreversible and widespread damage to the biodiversity and ecological balance" of the South China Sea, a spokesman for the Philippine Department of Foreign Affairs said… "China has pursued these activities unilaterally, disregarding people in the surrounding states who have depended on the sea for their livelihood for generations," the spokesman, Charles Jose, said… He said China's neighbors in the South China Sea could lose up to $100 million a year because of the loss of the coral reefs, which are breeding grounds for high-value fish harvested by countries surrounding the sea (Whaley 2015).

The island-building campaign has thus begun to undermine the economic worth of the SCS, clarified Beijing's commitment to the nine-dash line, and demonstrated the vastly different resources that the different claimants bring to the disputes. (See Figures 94- 97 for comparisons of infrastructure, force structure, and construction timelines.)

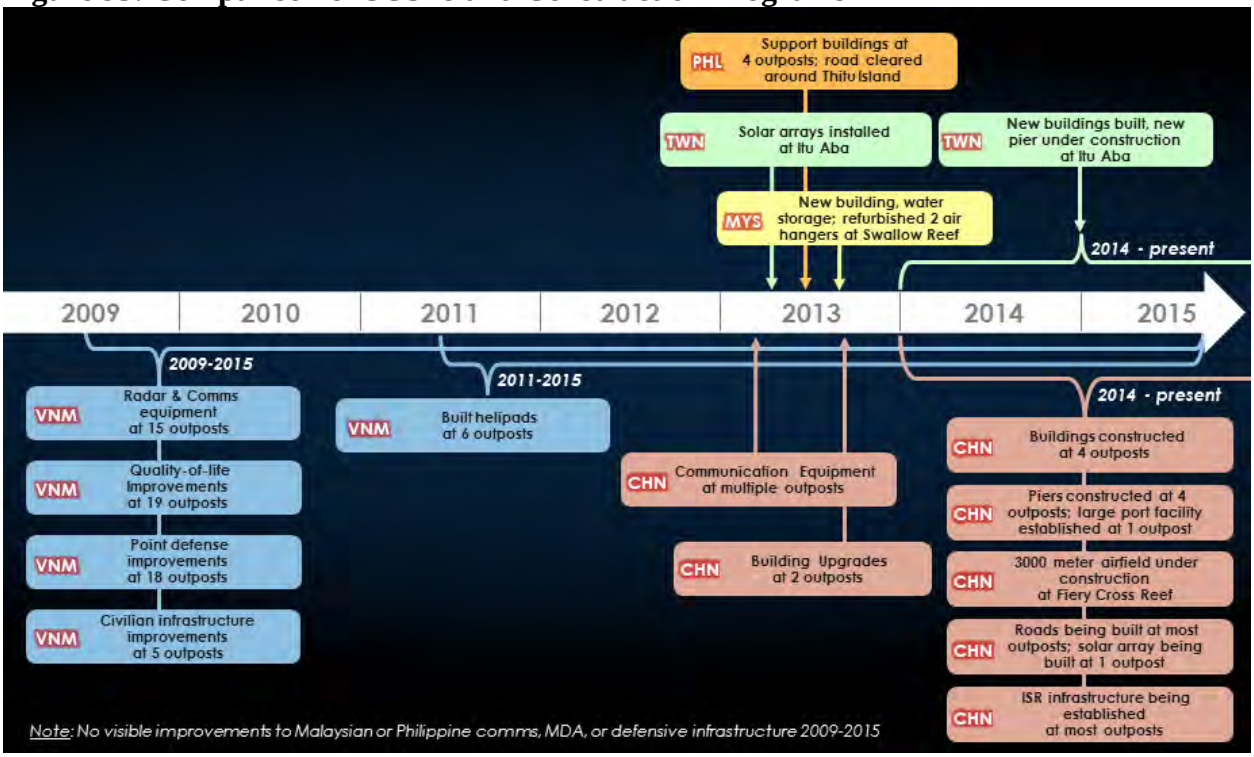
Notably, while the island-building was underway, Manila was petitioning UNCLOS for assistance in resolving the delimitation of the western portion of the SCS, but has made little progress in even getting China to participate in the process (Murski 2014, Murski 2015). This combination of factors – the changing military dynamic, the construction of artificial islands, and

Figure 92: Comparison of SCS Island Airfields



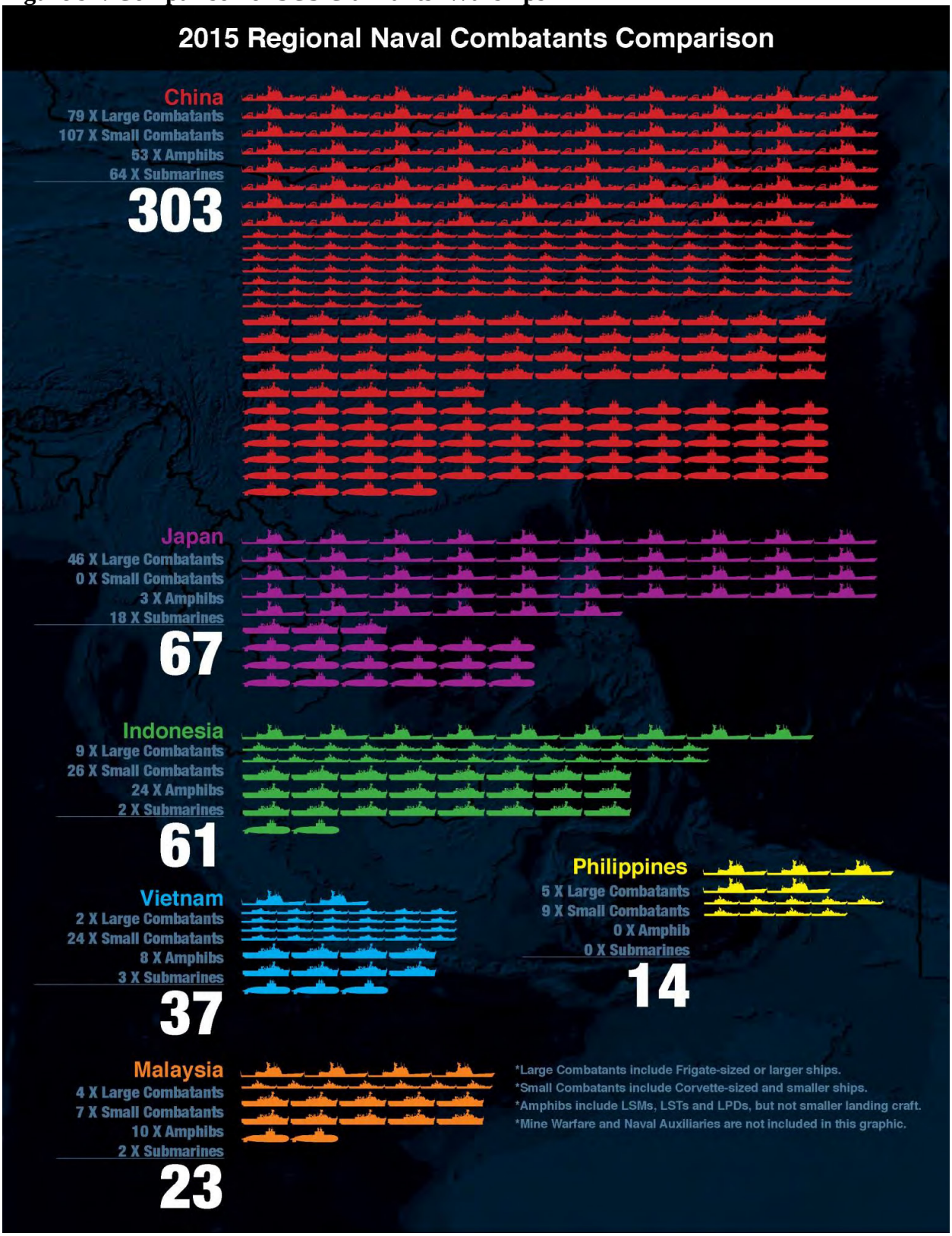
(AMTI 2015)

Figure 93: Comparison of SCS Island Construction Programs



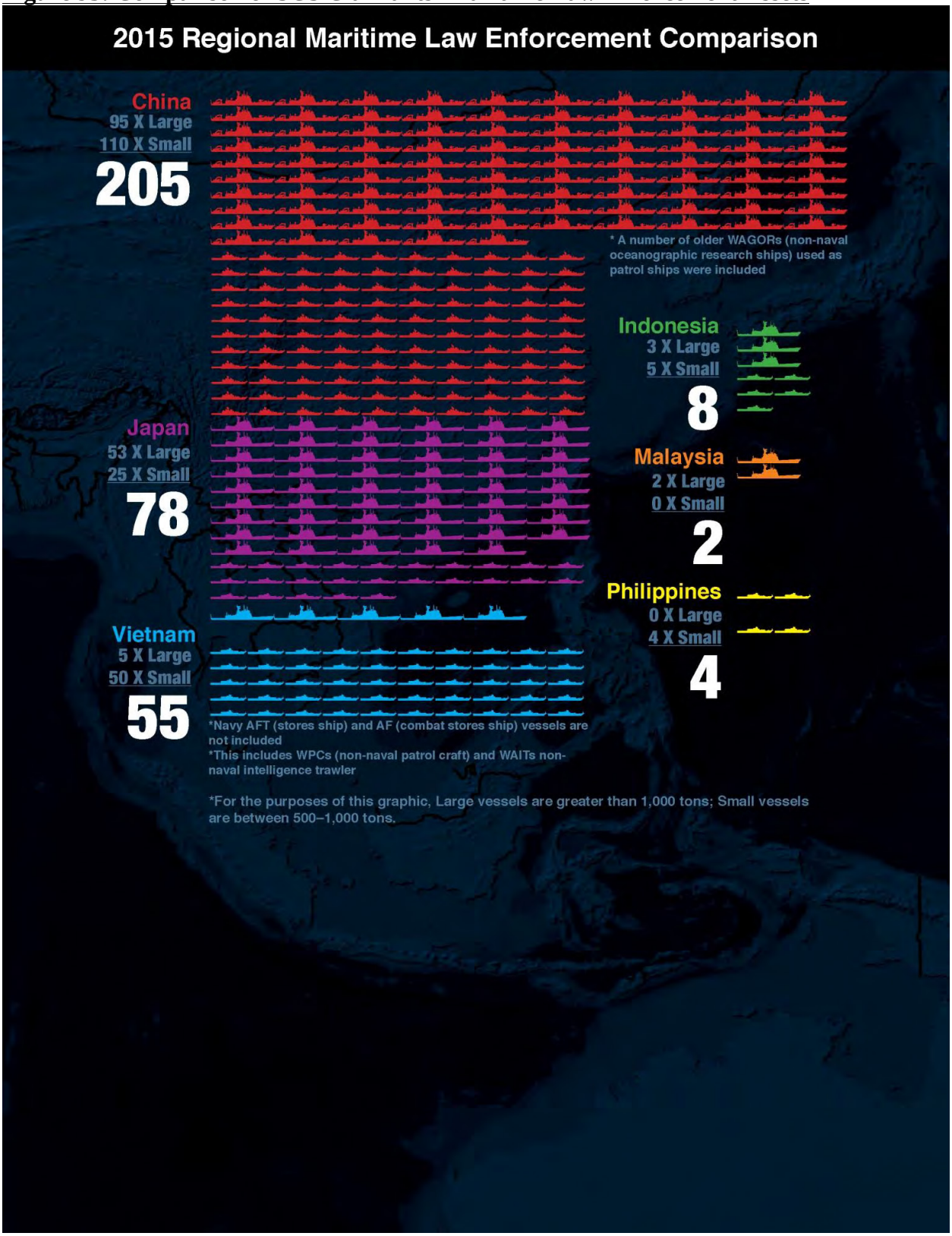
(AMTI 2015)

Figure 94: Comparison of SCS Claimants' Warships



(DoD 2015)

Figure 95: Comparison of SCS Claimants' Maritime Law Enforcement Assets



(DoD 2015

the unsuccessful legal efforts – exemplifies the tension and complexity of the SCS maritime disputes.

Tangible Value of the Contested Area:

Although SCS claimants offer a host of reasons for their commitments to the waters and islands of the contested maritime area, they are all quick to connect their claims with the resources they seek to extract there. As Rosenberg notes, "Maritime security concerns in the South China Sea are increasing" as nation-states argue over their "conflicting territorial claims to many of the islands and reefs" there that "especially important as an anchor for asserting an EEZ around the disputed islands and the oil and natural gas resources they are thought to contain" (2009). While he, like many other scholars, also addresses the fisheries (e.g. Rosenberg 2013), most analysis of the economic worth of the SCS begins with hydrocarbons. For example, when Beijing sent a submarine to plant a Chinese flag on the floor of the SCS, the leader of the program claimed that the "submarine's main task was to conduct mineral surveys" and argued explicitly that, "We were looking for minerals" (Chen, 2010). Regardless of exactly what resource the claimants are seeking, the evidence is that all of the claimants want as much as possible from the contested areas (Till, 1996; Cronin, 2009; Snyder, 2009). The nation-states and their representatives make plain their political and economic interest in the hydrocarbons and fisheries of the SCS (Petersona, 1992; Rosenberg, 1999; Ward and Meyers, 2005; Steinberg, 2011).

Hydrocarbons:

The supposed presence of vast amounts of oil and natural gas are a vital factor in the disputes over the South China Sea. Some have even claimed that if the SCS "were just an outlying area

where the competing claims could be shelved without detriment," the complex and overlapping claims of the different nation-states would "not merit much attention," but that the "search for new sources of energy reserves" has " has added a new urgency to the issue, particular as China struggles to meet exploding demands for energy. The claimants are now interested in exploiting the energy reserves of their respective claims" (Buszynski and Sazlan 2007, p144). The sheer size of the potential hydrocarbon value is important to the SCS:

> Estimates of the oil and gas receivers in the South China Sea have generally been high. The sea is described by some Chinese analysts as containing huge reserves of oil, gas, and combustible ice resources. It is estimated the oil reserves could reach 23-30 billion tons, or 168-220 billion barrels, accounting for one-third of China's aggregate oil and gas resource… Non-Chinese estimates of oil and gas reserves differ significantly. For example, the U.S. Energy Information Administration listed the proven oil reserves at just 7 billion barrels. A 1993/1994 estimate by the U.S. Geological Survey estimated the sum total of discovered oil reserves and undiscovered resources in the offshore basins of the South China Sea at 28 billion barrels. As with oil, estimates of the South China Sea's natural gas resources vary widely. One Chinese estimate for the entry are estimated natural gas reserves to be 2 quadrillion cubic feet. Another Chinese report estimates 225 billion barrels of oil equivalent in the Spratly Islands alone. In April 2006, Husky Energy, working with the Chinese National Offshore Oil Corporation (CNOOC), announced a find of proven natural gas reserves of nearly 4-6 trillion cubic feet near the Spratly Islands. One of the more optimistic Western estimates places total natural gas rescues in the Spraly Islands at just 35 trillion cubic feet (Tran 2011, p189).

To put those estimates into perspective, current prices of those resources can be used to estimate their dollar value. At $46 per barrel, estimated oil reserves are worth between $1.3 and $10.3 trillion; most of the last five years, oil has been almost three times that price – giving the estimate closer to $4 and $31 trillion. At $2.71 per million BTU, estimated natural gas reserves are worth between $95 billion and $5.4 trillion; much of the last five years, natural gas has been almost twice as expensive – giving the estimate closer to $200 billion and $11 trillion. This means that, for much of the last several years – when claimant governments were deciding how to approach the SCS – they were supposedly making decisions based on potential hydrocarbon

acquisitions of between $1.5 billion and $40 trillion dollars. Notably, previous surveys and resulting estimates have produced wide-ranging valuations – including a now-declassified National Intelligence Estimate that thought the natural gas alone in the SCS was worth $800 trillion (EIA, 2013). Importantly, the claimants efforts at better locating and estimating potential hydrocarbons has been a source of tension.

> Disputes between China and Vietnam over seismic surveys or drilling for oil and gas could also trigger an armed clash... China has harassed PetroVietnam oil survey ships in the past that were searching for oil and gas deposits in Vietnam's EEZ. In 2011, Hanoi accused China of deliberately severing the cables of an oil and gas survey vessel in two separate instances. Although the Vietnamese did not respond with force, they did not back down and Hanoi pledged to continue its efforts to exploit new fields despite warnings from Beijing. Budding U.S.-Vietnam relations could embolden Hanoi to be more confrontational with China on the South China Sea issue (Glaser 2012).

The tensions between China and other claimants over drilling has changed since Beijing developed the technical ability to unilaterally drill; before that, China had "not even drilled one" well because they were not willing to cooperate with foreign oil firms (Li 2010).

> Countries bordering the South China Sea have been partnering with more than 200 Western petroleum companies to open up over a thousand oil wells, unceasingly robbing the oil and gas resources in the South China Sea … however, China has not yet produced a single barrel of oil in such sea area so far (He 2009).

That discrepancy in success at resource extraction has inflamed the Chinese citizenry, who have argued that other SCS claimants' violation of Chinese sovereignty is "manifested… in their plundering of China's oil and gas resources" (Wang 2010). Countless calls for action have demanded that Beijing do something about the fact that an untold amount of "oil and gas resources that by rights belong to China have been brazenly run off with by these countries!" (Li, 2010) Largely in response to these domestic demands,[71] Beijing began to work towards

[71] While some Chinese did not want to work with foreigner firms, many Chinese writers argued that partnering with foreign firms – something that other SCS claimants had long been doing (Zhao, 2009) – better positioned China for

exploiting those hydrocarbons: "we cannot keep silent anymore… we should take part in exploitation; and … try to arrive at a 'win-win' result during exploitation. If they do not want a 'win-win' result, sorry, we will enter into operation by ourselves." (Qi, 2009) As such, China National Oil Company Limited (CNOOC) began working with Husky Oil China Limited, a subsidiary of Canada-based Husky Energy and "made (a) deepwater gas discovery in the South China Sea" (Xinhua 2009, Wilkins, 2010). Beijing then had to partner with a foreign firm because, domestically, China had "insufficient capabilities " for deep water drilling. (Qi, 2009) Of course, with the completion of Haiyang Shiyou 981, the deepwater drilling platform first deployed in 2014, China no longer needs foreign partners and can unilaterally act in areas where multinational oil firms would not be able to go.[72] Regardless of the specific technical capabilities of HS-981 or the degree to which CNOOC can actually manage unilateral hydrocarbon extraction, the point remains that Beijing recognizes the value of the hydrocarbons and has taken actions in support of getting these resources.

While the other claimants have not similarly pushed for independent capacity to drill, they have similarly voiced an interest in the hydrocarbons in the SCS. The oil and natural gas there have not only already made a difference for the claimants – perhaps most visibly to Brunei and China – but they look to offer claimants greater energy security and helpful boosts to their economies. Figures 98 and 99 illustrate some of the hydrocarbon blocks that have been identified and made available to the market by China and Vietnam.

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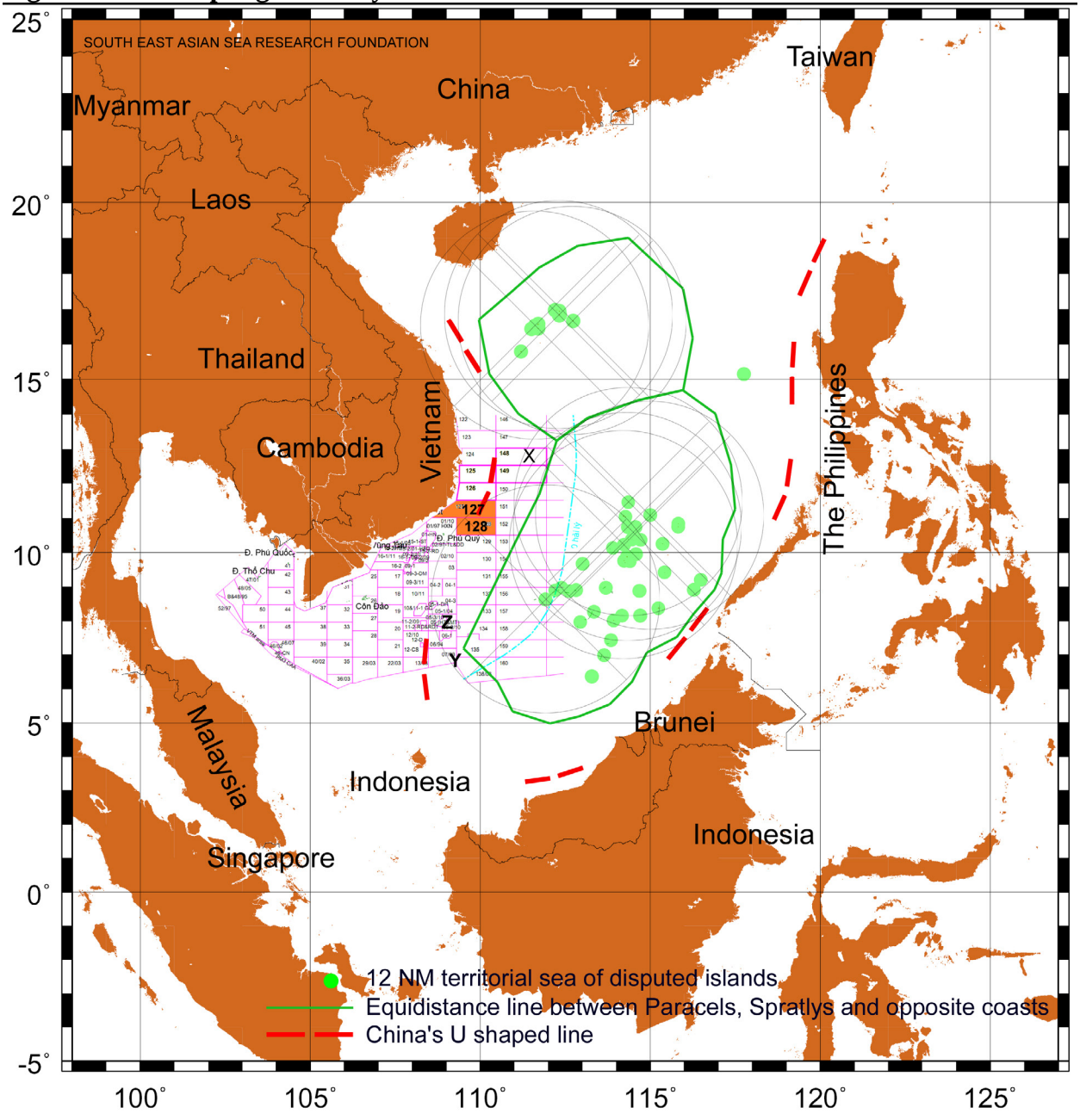
handling "a dispute or even a conflict" because "they can get the country of origin of these oil companies to show up to support them" (Li 2010).

[72] Factors include both insurance for getting an operation started as well as physical security at the work site; for the latter, it is quite easy for a rival claimant to get an operation ended early simply by deploying military or para-military assets to the area: "Occasionally, when companies undertake exploration in contested zones, activity has been halted by naval intervention, resulting in delays and considerable losses (Buszynski and Sazlan 2007, p140).

Figure 96: A Sampling of the Hydrocarbon Blocks that Vietnam Has Auctioned



(East Sea Studies 2014)

Figure 97: A Sampling of the Hydrocarbon Blocks that China Has Begun Developing

(Offshore Energy Today Staff, 2014)

Fisheries:

The claimants to the SCS have historically and consistently expressed their interests in the fisheries there –for both food security and the economic importance of the fishing industry (Ward and Meyers 2005, Buszynski and Sazlan 2007, Steinberg 2011, Tran 2011, Glaser 2012). Yet, diplomatic discussions of fishing in the SCS almost always include recognition for the reality that the waters there have "been devastated by human fishing" and that the "The marine ecosystem of the South China Sea is one of the most heavily affected by human fishing in the world" (Pitcher et al. 2000, p543). The ecological damage has not only reduced fish populations, but changed the kinds of populations that now get fished:

> the abundance of fish with trophic levels of 3.0 or more in the South China Sea area had declined, by 2000, to less than half its value in 1960. This is worrisome, as this generalizes to the entire region declining trends observed in local areas within the South China Sea. Moreover this estimate is almost surely too conservative, given the method we used. This declining trend is compatible however with the fishing 'down marine food webs', reported from well studied parts of the South China Sea, notably the Gulf of Thailand, where the mean trophic levels of landings have declined, indicating gradual replacement in the underlying ecosystems of large, long lived, high-trophic level fishes by small, short-lived, low trophic level species often described as 'trashfish' (Christensen et al. 2003).

Although the exact health of SCS is uncertain and disputed, that is largely a result of SCS claimants not allowing for scientists to conduct proper studies.

> The increasingly militarized SCS has not allowed for recent environmentally-oriented groups to conduct research and make projections about future fisheries (or other ecological elements), but the most recent studies paint a picture of a sea that is becoming fished into extinction (Pauly, 2000).

More recent studies – in so much as they have been possible – paint a similar picture of decimating fisheries (e.g., Rosenberg 2013). Consequently, most claimants recognize that the regional "long-term trends of coastal urbanisation, rising consumption, export-oriented industrialization and the resulting competition for vital resources, especially fisheries and

hydrocarbons" has not only devastated fisheries there, but also catalyzed additional tension between fishermen and their governments.

> A recent example began on 8 April 2012, when a Filipino Navy vessel attempted to detain eight Chinese fishing boats, which had entered waters around Scarborough Shoal, an area that both China and the Philippines claim. An armed boarding party from the Philippines' frigate BRP Gregoria del Pilar discovered that the fishing boats were in possession of a large illegal catch of coral, giant clams and live sharks. Before the fishing boats could be detained, two Chinese surveillance vessels blocked the frigate from pursuing any further action. Filipino and Chinese Foreign Ministry officials quickly moved to negotiate a diplomatic pause to the confrontation. But why did the Chinese fishermen venture so far into contested waters for illegal fishing in the first place? The simple and obvious answer is that it is profitable. The demand for fish has increased markedly in recent years, surpassing the fish catch supply in coastal waters, and encouraging fishermen to venture further abroad (Rosenberg, 2013).

Such concerns over uncontrollable fishermen interfaces with Song's work on the complex relationship that MD claimants have with fishermen. Those patterns seem present within the SCS – and problematic for how they escalate – bringing in claimants' military and para-military forces. Arguably, for example, China

> no longer hesitates to send armed maritime patrol ships to prevent their fishermen from being arrested by foreign nations. The China Marine Surveillance (CMS) and the Fishery Law Enforcement Command (FLEC) can both deploy paramilitary vessels to exert Chinese jurisdiction. The CMS appears to be an independent agency that can take action without authorization from the Foreign Affairs Ministry. This approach – when states or their navies support their fishermen, even when they are fishing illegally or poaching – unfortunately blurs the distinction between traditional and non-traditional security concerns. Arming marine police boats, however, increases the risk that a similar incident might escalate into a violent conflict (Rosenberg 2013).

These concerns over at-sea escalation around fishing efforts reinforces both the need to resolve these disputes (before accidents or escalations produce unmanageable situations) and the degree to which fisheries matter to the claimants and their populations.

Intangible Value of the Contested Area:

This dissertation argues that claimants' opinions of the intangible value (of the disputed area) are important to the likelihood of dispute resolution. Specifially, while evidence was found that domestic factors do matter, the statistical findings from Chapter Three support the diversionary theory – that the claimant governments were likely to pursue changes to the MDs only when they were all struggling with their domestic legitimacy. Accordingly, it is important to evaluate the domestic factors of the various SCS claimants in terms of the factors that matter for such diversionary uses of MDs: the ways that claimant governments express interest in the symbolic value of the disputed islands and whether or not the respective claimant governments have the kind of legitimacy necessary for maintaining the claims (or face domestic crises that might facilitate progress towards resolution). This project will now review those issues for the various SCS claimants.

China is "the most powerful country among the claimants" and "sets the tone for the dispute in the South China Sea" and will be where this project begins (Tran 2011, p197). Historically, China has remained committed to the SCS – not just in maintaining the rhetoric of its claims (e.g., that China "historic rights" should matter) – but also in terms of action in the contested maritime area itself (Gao and Jia 2013).

> Beijing has also on occasion taken more direct action against other claimants, for example, by detaining Vietnamese fisherman, expanding a fishing moratorium, and cutting seismic survey cables. In most cases, however, these activities, as with the above formal legal submissions, have taken place in response to what China views as growing and more assertive challenges to its claim occurring since roughly 2007, challenges that require a response in turn. These challenges from Beijing's perspective are listed in a table in the attached appendix. For example, when the Philippine Congress passed an archipelagic baseline law in February 2009, China declared publicly in March 2009 that one purpose of patrols by vessels from the Fisheries Administration was to "demonstrate sovereignty." More generally, China has sought to grapple with Vietnam's declared strategy of internationalizing the dispute launched at the end of 2009, namely, efforts to draw

> attention to and support from the international community for Vietnam's claims. China's series of naval exercises in the South China Sea in 2010 were perhaps one response to Vietnam's strategy. Finally, Chinese fishermen are also detained and shot at by vessels from other states in these waters, and vessels licensed by other Southeast Asian nations also regularly conduct seismic surveys and oil drilling in the disputed waters (Swaine and Fravel 2001, p7).

These capabilities to act come at least in part because of China's increasing abilities: "As China emerges as a global maritime power, it is natural that it should seek to augment its naval power. But the transformation of the PLA Navy (PLAN) changes the strategic context of the South China Sea dispute (Storey 2011, p152)." That context has now changed, as start of this chapter documented. Although China did not initially possess the kind of military abilities to alter the SCS by force (e.g., Liu 1996), it has since demonstrated the requisite capabilities (Tran 2011, Story 2011, ONI 2015, Rosenberg 2015). While entire volumes could be – and have been – written on the ways that Beijing has sought to manage this change in status and what it has meant for China's international relationships, it is important for this project to note that China has harnessed its economic power to modernize its military – causing some to see it as a threat but others to see it as an economic opportunity:

> The phenomenal rise of China as an economic power, as well as her heightened political and military clout that has been growing in tandem with this, inevitably brought forth, both regionally and globally, increasing concern over whether she is posing a threat to regional stability and prosperity, and if so, in what way. Despite also being viewed as a threat, China is more often regarded as an opportunity for her trade partners (Yeoh 2011).

These perceptions matter both for how the Chinese people view their government (i.e. as legitimately pursuing Chinese interests) and for how Beijing manages its relationships with the other claimants. Since one of the factors explaining MDs is the nature of the relationship between the claimants, it is important to understand whether or not these different nation-states

are moving towards or away from the kind of close relationship that will invalidate symbolic concerns over which nation-state occupies which island.

Given "China's sense of victimization over the issue" of territory, there is a strong domestic "desire for the return of the ‘lost territories'" that motivates a range of potentially troubling and escalatory behaviors (Buszynski and Sazlan 2007, p153). For example, the Chinese military recently released a recruitment video that explicitly addressed China's new-found strength and increased commitment to contested maritime areas.

> The appeal to nationalism -- and to China's territorial claims -- is hard to miss, what with footage of the Diaoyutai/Senkaku islets in the East China Sea, which are also claimed by Japan and Taiwan, as well as various features in the South China Sea, a source of rising tension in recent years … There is definitely an element of signaling, and it's not meant to be reassuring. If we put this together with a campaign that included a video, aired on CCTV last month, of exercises ostensibly simulating an assault on Taiwan's Presidential Office, the intention is to scare potential opponents, perhaps to win a war without having to fight. [Section Two then] tells us "71 percent of the globe we depend on is blue water... wherever there is blue water, we will be there to secure navigation… China's oceanic and overseas interests are expanding rapidly… our land is vast but we will not yield an inch of our territory to foreigners." … The text then claims that China has 3 million square kilometers of ocean under its jurisdiction, a territory that includes as many as 6,700 islands. "The struggle over our sea rights is not over,' it continues. 'We will not yield even the tiniest speck of our resources." Note that the text says "resources," not "territory," though the latter is implicit. In other words, territory and the resources it contains are China's alone (Balenia 2015).

With these messages, Beijing delivers information to its own citizens, the respective counter-claimant governments, and their populations[73]: China has the military capability and the political will to do whatever it takes to defend its MD claims. (Figures 100 and 101 are screenshots of the video: contested maritime features and offshore oilrigs.) Given the way China's government

[73] The complexity of China’s domestic governance is best left for another project, but it is important to note that, autocratic responsiveness aside, Beijing’s organs of control give it some freedoms in its pursuit of maritime claims that others lack: “One benefit of China’s political system, whatever its problems, is its farsightedness, its ability to stomach intense upheaval in the present in order to achieve a long-term goal. … The entire world has an interest in the South China Sea, but China has nearly 1.4 billion mouths and a growing appetite for nationalism to feed, which is a kind of pressure that no other country can understand” (Himmelman 2013).

works – meaning, specifically, that such a video could only be released with the highest levels of approval – the messages are unmistakable and unmistakably authorized. Of a slightly less unclear authority, another video was released on the 70th anniversary of WWII's end; although most analysts believe the video was also provided by the Chinese military, that has not been confirmed (Ballaban 2015, Dickey 2015). Regardless, the computer-generated video, "Battle to Capture an Island: a Full View of Chinese Military Strength" offers a narrative consistent with what groups like the Chinese Academy of Social Sciences have long argued: any maritime

Figures 98 and 99: Screenshots of the PLAN Recruitment Video

(PLAN 2015)

conflict would draw in American forces – that would be attacked both at sea and at their bases in Japan (ONI 2007, Dickey 2015, ONI 2015).

> Set ambiguously in the year "20XX" after maritime tensions have led to an attack on a Chinese airbase, the aggressive tone and intense narrative of the hypothetical conflict are well worth paying attention to. China announces its intention to "comprehensively fight back," using the full strength of the Chinese military to promote "peace through war." …The missile attacks succeed at destroying an airbase [that looks like the American facility on Okinawa] and a naval fleet, both of which are clearly meant to depict U.S. forces as the video includes unmistakably American platforms such as an F-22 Raptor and a ship with a strong resemblance to a Nimitz-class aircraft carrier… Looking beyond the obvious element of domestic Chinese consumption, the simulation sends an aggressive, startling signal (Dickey 2015).

(Figures 102 to 107 are screenshots of the images that have been considered least ambiguous.)

What these kinds of messages mean is that Beijing is not ignoring its MDs. While the

international developments that were documented above (e.g., the island-building program) could illustrate that, there is a discernable disconnect between what China does and what it allows its citizenry to see. Given that the quantitative findings from Chapter Three are consistent with the argument that states let their MDs linger when their economies are strong, it is telling that Beijing both acts in the SCS and celebrates its strength to its population.

Figures 100 to 102: Screenshots: Chinese Missiles Destroy a U.S. Navy Carrier Group

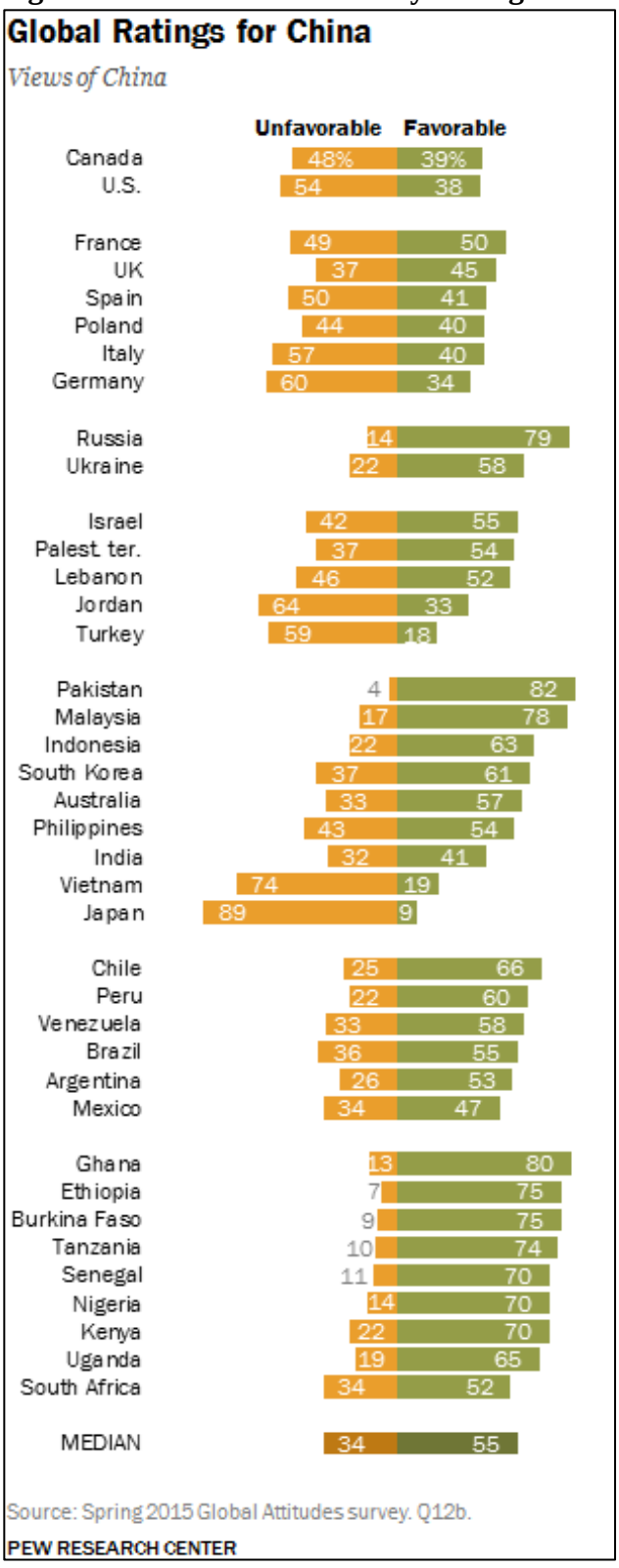
(Tencent 2015)

Figures 103 to 105: Screenshots: Chinese Forces Destroy the US Airfield on Okinawa

(Tencent 2015)

While China thus attempts to grow strong and keep its citizenry aware of their territorial commitments, Beijing has signaled in ways that have perhaps changed previous perceptions of China as a nation-state in a process of "peaceful rise," into a powerful nation-state that presents specific challenges to its neighbors and the world. Importantly, these are messages that the citizens of the other SCS claimants have been able to observe themselves. As Figures 108 to 114 illustrate, a large percentage of the populations of China's counter-claimants in the SCS (and elsewhere) now see China as a threat to themselves and their claimed territory.

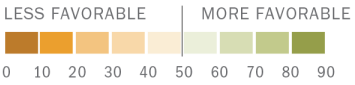
Figure 108: Global Favorability Ratings for China



(Pew 2015)

Figure 107-111: Regional and Topical Concerns

Asians' Views of Each Other



VIEWS OF ►	Japan	China	India	South Korea
VIEWS IN:				
Malaysia	84%	78	45	61
Vietnam	82	19	66	82
Philippines	81	54	48	68
Australia	80	57	58	61
Indonesia	71	63	51	42
Pakistan	48	82	16	15
India	46	41	–	28
South Korea	25	61	64	–
China	12	–	24	47
Japan	–	9	63	21
MEDIAN	71	57	51	47

Source: Spring 2015 Global Attitudes survey. Q12b, g, i, r.

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Less than Half See Xi, Abe, Modi Positively

Confidence in ___ to do the right thing regarding world affairs

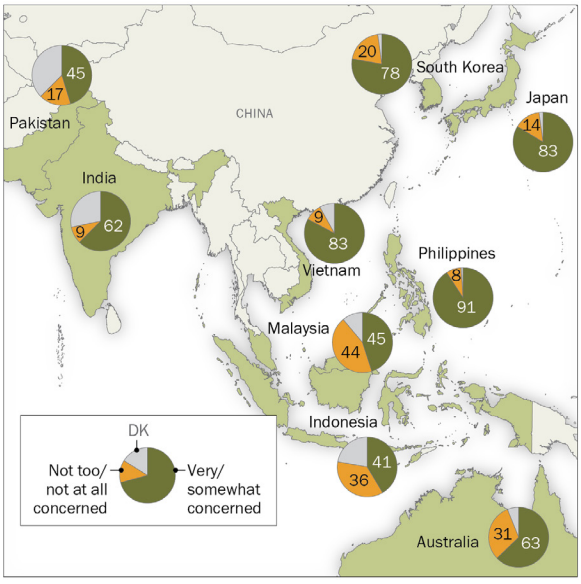
	Xi	Abe	Modi
	%	%	%
Malaysia	72	73	34
South Korea	67	7	39
Pakistan	59	34	7
Philippines	51	68	44
Australia	47	60	51
Indonesia	40	43	28
India	29	36	–
Vietnam	20	68	56
Japan	12	–	47
China	–	18	29
MEDIAN	47	43	39

Source: Spring 2015 Global Attitudes survey. Q25b-c, e.

PEW RESEARCH CENTER

Concern about Territorial Disputes with China

How concerned are you, if at all, about territorial disputes between China and neighboring countries?

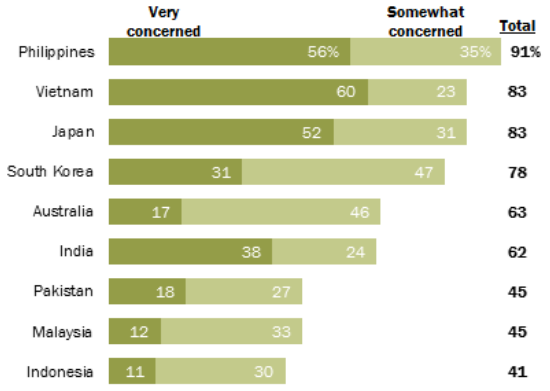


Source: Spring 2015 Global Attitudes survey. Q13d.

PEW RESEARCH CENTER

Philippines, Japan and Vietnam Concerned about Territorial Disputes with China

Concern about territorial disputes with China



Note: Data for "not too concerned" and "not at all concerned" not shown.

Source: Spring 2015 Global Attitudes survey. Q13d.

PEW RESEARCH CENTER

Relations with China

Which is more important?

	Being tough with China on territorial disputes	Having a strong economic relationship with China	Don't know
	%	%	%
Vietnam	74	17	9
South Korea	56	40	4
Japan	46	45	9
India	44	37	19
Philippines	41	43	16
Indonesia	38	36	26
Malaysia	7	83	10

Source: Spring 2015 Global Attitudes survey. Q136.

PEW RESEARCH CENTER

(Pew 2015)

The autocratic government of Vietnam has changed little since it normalized relations with the United States in the 1990s. Since then, Hanoi has worked to develop its economy and modernize its military. As "China's maritime actions have been interpreted by Vietnam as flagrant attempts… to undermine its sovereignty claims" and "thwart [Hanoi's] ambitious plans to exploit the country's maritime environment," Vietnam has taken umbrage, particularly since "Two of Vietnam's most lucrative maritime industries are offshore energy and fishery resources, both of which China has, in the eyes of Vietnam, sought to curtail" (Storey 2011, p160-161). These strategic and policy approaches have made Vietnam "Southeast Asia's principal protagonist in the South China Sea dispute" (Storey 2011, p160).

> As with China, Vietnam asserts "indisputable" sovereignty over the Paracel and Spratly Islands based on questionable historical evidence such as the activities of Vietnamese fishermen going back hundreds of years, inheritance from former

> colonial power France, and the occupation and administration of 21 islets in the Spratlys, the largest number occupied by any of the disputants (Storey 2011, p160).

Although Hanoi and Beijing similarly claimed historical and modern rights to contested SCS features, they are not alike in their success at maintaining these features: in the 1970s, "the PLA evicted South Vietnamese forces from the Paracels and in 1988 at Johnson Reef in the Spratlys" (Storey 2011, p160). Since then, Sino-Vietnamese relations have remain unpleasant; "As tensions have mounted since 2007, the frequency of verbal spats between Hanoi and Beijing has increased" (ibid). Specific incidents between the two have ratcheted up tensions:

> In 2011, relationships sharply deteriorated when Chinese patrol vessels cut the cables on survey ships operating in Vietnam's EEZ on at least two occasions, drawing sharp rebukes from the Vietnamese government and sparking anti-China protests in Hanoi and Ho Chi Minh City over nine consecutive weekends. While diplomacy remains Hanoi's favored approach to managing tensions with the PRC, the South China Sea dispute has become the primary driver of Vietnam's military modernization program (Storey 2011, p160).

After these incidents, and between them, Hanoi has sought redress, but "has been frustrated by the lack of progress on the diplomatic front — both with China and with ASEAN — and has implemented two supplementary strategies to strength its hand in the South China Sea" (ibid). One the one hand, Vietnam has "consolidated its physical presence" on the features it controls in the Spratleys (ibid).

> Over the past decade, Vietnam has actively expanded it military and civilian facilities on the 21 atolls under its control by constructing defensive positions and, on the larger islets, airstrips, barracks, schools, piers, seawalls , and even a cell phone network. For the Vietnamese, the building up of its infrastructure in the Spratleys is seen as a an essential process of strengthening the country's sovereignty claims and preparing for a time when China can bring overwhelming coercive military power to bear should it choose to do so (Storey 2011, p161).

Vietnam has thus sought to fortify what it can – in order to better manage the future onslaughts that Hanoi expects from the PLAN (and that have previously been successful at removing

Vietnamese forces from contested features in the SCS). In addition to these fortification programs on the contested features themselves, Hanoi has "accelerate[d] the modernization of its naval and air forces through the acquisition of foreign — primarily Russian — advanced military hardware" (Storey 2011, p161). Of the acquisitions, "the most significant procurement decision by Vietnam was the 2009 order for six Kilo-class submarines from Russia" which marked both a massive improvement in their submarine warfare capabilities and "a massive financial outlay for a developing country like Vietnam," particularly since the "approximately $2 billion" deal "was inked at a time when the Vietnamese economy was suffering a pronounced downturn due to the effects of the 2008 global financial crisis" (Storey 2011, p161). Notably, Hanoi has made it explicit that the submarines are intended to keep China out of the maritime area that Vietnam claims.

> Vietnam seeks to implement an access-denial strategy off its southeast coast and in the Spratlys in the same way as China has sought to do in the Taiwan Strait vis-à-vis the United States. And the fact that Hanoi has committed to such a large defense outlay at a time of economic hardship is a very strong indication of how unsettled the government is over China's military modernization program and its determination to uphold its sovereignty claims in the South China Sea (Storey 2011, p161).

Notably, in the last fifteen years, Vietnam has "supported the United States in its war against terrorism, provided assistance in checking suspicious financial transactions, and allowed U.S. planes to enter the country's airspace" – greatly improving and then strengthening the relationship between Hanoi and Washington; the United States has even included Vietnam in military exercises and overtly begun to discuss increased security ties with its former adversary (Tran 2011, p179). These developments have all been shared widely with the Vietnamese public, which has protested (and perhaps even rioted) in response to China's various actions against Vietnamese claims in the SCS – including the aforementioned deployment of the HS-981

into Vietnam's EEZ. Hanoi, in sharing all of these developments with its citizenry and allowing (or, perhaps, encouraging) street demonstrations, commits itself to the claims in the SCS. So, much like Beijing, Hanoi has committed its economic resources to military capacity and its political capital to its sovereignty claims in the SCS.

The Philippines has experienced a series of tumultuous elections, attempted coups, and democratic states of emergency, but the political fabric of Manila's government has remained largely unchanged for the last two decades. While the Philippines have thus maintained a legitimate government, they have not maintained their claimed maritime features in the SCS.

> Philippine claims overlap with those of China and Vietnam. Manila's formal claim to [the Spratlys] in 1978 became a bone of contention with the PRC into the 1980s; however, the issue came to dominate Sino-Philippine relations in 1995 when the PLA occupied and built structures on Mischief Reef. Possessing one of the weakest military forces in Southeast Asia, Manila had little option but to rely on diplomacy, both bilateral and multilateral, to mange the problem with Beijing. Diplomatic overtures were largely ineffective, and throughout the second half of the 1990s there occurred a series of tense standoffs between Chinese and Philippine naval forces in the Spratlys, though the two sides managed to avoid an armed clash (Storey 2011, p161).

In part, Manila has managed to avoid military clashes because the various Philipine presidents have largely sought "improved relations with China as a foreign policy priority" (Storey 2011, p161). Not that such efforts paid dividends for the Philippines; for example, the Joint Marine Seismic Undertaking was most famous for the corruption scandals in Manila (.ibid). Additionally, "The passage of legislation in the Philippines to update the country's archipelagic baseline claims, and Manila's subsequent submission to the CLCS in 2009, strained ties [with China] further" and SCS MDs "once again assumed center stage in Philippine-China relations" by "the end of the first decade of the 21st century" (Storey 2011, p163). In taking steps like approaching UNCLOS via domestic legislation, Manila made its approach to the SCS a path that explicitly included its population – unlike most of the other claimants. It also passed additional

domestic legislation, including the "Territorial Waters Base line Scheme" to develop the internal mechanisms for pursing its maritime claims in the SCS (Li 2010, Wang 2010). Yet, Manila lacked (and continues to lack) the military or even para-military capabilities that other SCS claimants have:

> Reliant on its treaty ally the United State for the country's external defense during the Cold War, Manila devoted limited financial resources to defense spending, resulting in the rapid degradation of the navy and air force's capability… China's occupation of Mischief Reef brought into bold relief the dilapidated condition of the Armed Forces of the Philippines (AFP) and prompted the Philippine Congress to introduce an ambitious defense modernization bill in 1995… so that the country could better defend its claims to the South China Sea and deter further Chinese encroachments (Storey 2011, p163).

Such grand plans for military development were delayed and ultimately denied by the 1998 financial crisis (ibid). Instead, Manila simply "ratified a Visiting Forces Agreement (VFA) with the United States in 1999" as a way to "normalize U.S.-Philippine defense ties" and "compensate for its limited military capabilities" – which had degraded significantly since "Manila had terminated the lease on military bases in 1991" (Storey 2011, p163). Notably, after 9/11, the US helped modernize the AFP and the US-Philippine security relationship grew strong again (ibid). Yet, Manila lacks the ability to resist Chinese actions in the SCS.

> Despite assistance from the United States, the Philippines' ability to provide for external defense and uphold its claims in the South China Sea is likely to remain weak for the foreseeable future… In a frank assessment, the PN admitted in 2008 that the country must rely on diplomacy to manage the dispute as it cannot match the military capabilities of the other claimants, especially China. Two years later, in front of United States Pacific Command (PACOM) Commander Admiral Robert Willard, AFP Chief General Ricardo David expressed the hope that conflict would not break out in the Spratlys as the Philippine military had "nothing to shoot with" (Storey 2011, p164).

The problems are seen as embarrassing – both for the people and its government (ibid). Much like the Vietnamese, the Philippine people protest in the streets when China (who is seen as the antagonist) acts against Manila in the SCS. Beyond that, there is evidence that the people

support developments which strengthen Manila's position – including the recent base leasing agreement, which

> returns the United States to a visible presence in the country for the first time since the American military gave up its sprawling naval and air bases, including one at Subic Bay, in 1992… The accord will also give the United States more flexibility to project its military assets in a region that has become increasingly tense, with China and its neighbors, including the Philippines, squabbling over territorial claims in the East and South China Seas (Landlerapril 2014).

Thus, while Manila still lacks some of the policy options of other, more powerful claimants, it has both a security agreement with the United States and an increasing collection of military units based near the contested areas. Thus, although the Philippine people seem to support a hard line on their maritime claims, the government does not seem to have much that it can do about it – although improving America's military footprint in the SCS certainly adds a layer of complexity and makes it more difficult to predict how other claimants are going to behave.

Malaysia maintains claims a portion of the Spratly Islands, and even occupies several of them, but has not had its relationship with China consumed by the SCS disputes – as Vietnam and the Philippines have. In fact, "Malaysia and China have enjoyed cordial political relations and strong economic ties for more than two decades" despite their "overlapping sovereignty claims in the South China Sea" (Storey 2011, p164).

> Malaysia staked its claim to a portion of the Spratly Islands in the late 1970s and has since occupied five atolls. Post-Cold War, even as Malaysia's political leaders rejected the "China threat" thesis, the government was intent on upholding its sovereignty claims in the South China Sea. Protecting the country's maritime claims has thus been a major driver of Malaysia's defense modernization program since the late 1980s. Malaysia's dual-track policy of playing down tensions in the South China Sea while simultaneously reinforcing the country's jurisdictional claims and ensuring that the Malaysian Armed Forces (MAF) is adequately equipped to deal with contingencies in the Spratlys has continued into the 21st century (Storey 2011, p164)

As Malaysia approached the SCS with this healthy combination of optimism and preparation, it sought to maintain a good relationship with Beijing – remaining attentive to the developments in the SCS, but not allowing themselves or their relationship with China to become consume by them (as other claimants supposedly had):

> The Sino-Vietnamese naval clash of 1988 and China's passage of the Territorial Law of the Sea in 1992 gave the dispute added prominence in the eyes of the Malaysian government, especially the armed forces. At the time, however, Kuala Lumpur was keep to improve political relations and trade links to the PRC; indeed in 1993 it became official government rhetoric to dismiss the idea that China's ascendance posed a threat to regional security. Malaysia's China policy has therefore sought to expand common political ground and boost economic linkages, but also to protect the country's sovereignty claims in the South China (Storey 2011, p165).

Yet, despite such an approach, Kuala Lumpor (KL) still saw Beijing's behavior in the SCS and its military modernization as "an important driver of Malaysia's defense modernization program" (Storey 2011, p165). Specifically, KL was "rattled" by China's aggressive behavior in the 1990s and responded to "the PLA's occupation of Mischief Reef" with "a series of messages that it was intent on defending its maritime claims" (Storey 2011, p165). Shortly thereafter, Malaysia then "occupied additional atolls in the Spratlys" (Storey 2011, p165). What all of this means is that KL is "better positioned than the other ASEAN disputants to defend its claim in the South China Sea" but that "the capability gap between the PLA and the MAF is still wide, and growing" (Storey 2011, p166). Notably, the Malaysian government has drawn attention to its commitments to the SCS; for example, "In 2008, during a visit to Swallow Reef, then deputy prime minister and defense minister Najib declared that the presence of the MAF in the Spratlys ensured 'people will be apprehensive about undermining the sovereignty of our nation'" (Storey 2011, p166). With such military outlays and public commitments, KL is both interested in defending its SCS MDs and ostensibly capably of doing so.

The Sultanate of Brunei maintains "the lowest profile" of the SCS claimants (Storey 2011, p166).[74] Brunei prioritizes diplomacy, prefers multilateralism, and maintains a professional but tiny military, which "consist[s] of only seven thousand active personnel, a veritable minnow by regional standards" (Storey 2011, p167). Despite such factors, "the need to protect the country's maritime claims has shaped the development of the country's armed forces over the past twenty years" (Storey 2011, p167).

> Brunei promulgated a 200-nm EEZ in 1982. Located within the country's EEZ lies Louisa Reef, though Brunei has not yet made a formal claim to sovereignty over the reef, nor has it occupied the atoll, despite possessing the requisite military forces. Brunei is thus the only claimant in the South China Sea dispute not to garrison any of the islets in the Spratly archipelago (Storey 2011, p167).

The Sultanate hus thus maintained a claim, but not in a way that has "hindered the development of Sino-Bruneian relations, which have been strengthened since the early 2000s primarily due to increased demand by China for Bruneian crude oil" (Storey 2011, p167). Accordingly, Brunei will remain committed to "protect[ing] vital maritime resources in the country's declared EEZ," the Sultanate "is not a major player in the South China Sea dispute" and will simply "continue to rely on diplomacy and multilateral mechanisms to promote stability in the South China Sea" (Storey 2011, p168). As a wealthy, autocratic state, Brunei has the freedom to modify these positions, but is unlikely to do so.

Such an overview of the various claimants' domestic factors allows for a few important conclusions. First, the claimants are not aligned in their need to distract their citizens from bad economies; instead, they are developing at different rates, but all making progress. Second, the primary players – China, Vietnam, and the Philippines – are not improving their individual

[74] While some could argue that Taiwan maintains the lowest profile, other would argue that Taipei is not a nation-state, not officially recognized by a number of relevant IOs – including UNCLOS – and not active in the rhetoric of the SCS. While Taiwan occupies Pratas Island, agreements with China keep Taipei silent on SCS developments and officially maintains the nine-dash line as its claim, but functionally does not participate in the SCS dialogue.

relationships; so, even if the contested islands of the SCS were just Type 2 disputes (i.e. symbolic and not economic), there is no reason to believe that the various bilateral and multilateral relationships are improving such that symbolic islands would no longer matter. Third, and perhaps most significantly, the various claimants are increasingly committed to the contested maritime areas: they are dedicating political capital, national treasure, or both, to their pursuit of the islands and waters of the SCS.

Access to International Mechanisms of Arbitration and Resolution

This work argues that MDs are more likely to get resolved when all the claimants have increasingly shared access to IOs. There was quantitative support for this proposition. Consistent with the analytical approach to MDs as described in Chapter Five, it is then important to evaluate the access that the claimants to an MD have to international organizations (IOs).

The SCS claimants do not share membership in a high number of IOs. Except for Taiwan, all the claimants are members of the UN and have ratified UNCLOS, but that is almost it. Much of that seems to do with how Beijing was long unwelcome in IOs (as it was not initially recognized as the legitimate government of China) and has since often avoided them, but the others have not; as noted above, the Chinese government does not trust either the international system; Beijing claims that Washington either biases international institutions again China or actively works with those institutions to slow or prevent China's rise (Dutton 2008, Mattis 2012).

The claimants are not members in the same regional security organization. Instead, many of the nation-states have bilateral security agreements with Washington – including the Philippines, Japan, Taiwan, South Korea, Australia, and New Zealand.[75] Such a hub-and-spoke system has

[75] One of these is not bilateral: the trilateral Australia, New Zealand, United States Security Treaty (ANZUS or ANZUS Treaty of 1951; however, the effect is the same: before the Vietnam War and since 9/11, Canberra and

often meant that the US or international organizations (that Washington has created) have served as a liaison or even a mediator. On the other side is China, its complicated relationship with North Korea, and the Sino-Singaporean Defense Treaty (which makes Beijing and Singapore official allies). This functionally means that Southeast Asia can be divided between those allied with Washington and those aligned with Beijing. This is perhaps most evidence in how China has founded the Shanghai Cooperation Organization, but none of Beijing's East Asian or Southeast Asian neighbors has joined it.[76]

Although there are two regional organizations, APEC and ASEAN, neither lends itself to playing a role in this crisis. The former lacks the kind of central authority that is necessary for dispute arbitration or resolution. The latter, as described at the start of this chapter, long wanted nothing to do with these disputes, and still ostensibly does not. If ASEAN members had the interest, and the organization had the capacity, there is evidence that China would actively avoid that:

> As in the final stages of the aforementioned CoC/DoC negotiations, the intervention of the United States into the South China Sea and increased U.S. cooperation with ASEAN countries possibly exerting influence on China's calculations. China's strategy has been to prevent the South China Sea issue from being multilateralized and internationalized and to minimize U.S. the Chinese Foreign Ministry warned that turning the South China Sea issue into an international or multilateral one will "only make matters worse and the resolution more difficult". In September 2010, China also tried to prevent the ASEAN-U.S. Summit from discussing this issue by voicing its opposition to U.S. proposals on the South China Sea. In China, the strength of Secretary Clinton's statement and the responses of a number of other countries have created a debate over China's elevation of the South China Sea as a "core interest" (Tran 2011, p186-7).

Such a collection of factors makes ASEAN seem les than ideal as an objective, third-party venue for resolving the MDs of the SCS.

Wellington have include Washington in all security decisions and have coordinated bilaterally very little without going through Washington.

[76] As the organization is supposedly oriented towards security in Central Asia, there are a number of reasons for why China's East and Southeast Asian neighbors would not join.

This leaves UNCLOS. In addressing UNCLOS and its mechanisms, it is important to note that China, despite having ratified UNCLOS, maintains a "unique" and minority interpretation of this law. Specifically, Beijing argues that "coastal state authorities" are allowed to "limit or prohibit foreign military activities in the exclusive economic zone" giving Beijing "exclusive military control over the water space within their U-shaped, nine-dashed line. Such control is tantamount to the control of sovereign exercises over its zones of maritime sovereignty" (US Senate Committee 2009). This interpretation of UNCLOS would functionally give coastal states "the right to impose legal restrictions on foreign military activities in their EEZ's" and is thus largely rejected by the international community; only seventeen of the 157 UNCLOS signatories consider this a possible interpretation of the law (US Senate Committee 2009). Yet, China maintains its interpretation and places blame for the uncertainty on UNCLOS itself: "The matter was never resolved and the [UNCLOS] guidelines remain ambiguous" (Chiu 1986). Similarly, Beijing sees continuing efforts to use UNCLOS to clarify SCS MDs as not just unhelpful, but wrong; in the ongoing tribunal over the Western Philippine Sea, Foreign Ministry spokesperson Hua Chunying argued UNCLOS arbitration itself is invalid and that the venue is just being used as an opportunity to mischaracterize China's behavior.[77]

> China also argues that the Philippines' arbitration case is itself a violation of previous agreements reached both bilaterally and multilaterally. The case "violates the consensus that has been repeatedly reached with China and violates the promise made in the Declaration on the Code of Conduct on the South China Sea," Hua said last Tuesday, repeating points made many times before (Tiezzi 2015).

[77] Notably, under Article 298 of UNCLOS, China excluded as many of its maritime disputes as possible from the Tribunal's authority: "Under Article 298, a State party to UNCLOS may file a declaration to exclude from the jurisdiction of compulsory procedures all disputes concerning delimitation of the territorial, the EEZ or continental shelf or involving historic bays or titles or relating to some other specified matters such as military activities. In its 2006 declaration, China excludes all the disputes that can be excluded. Accordingly, if a claim relates to delimitation or historic bays or titles, it is outside the jurisdiction of the Tribunal. Obviously a dispute on a step in the delimitation operation is a delimitation-related dispute; a question whose resolution has a bearing on the process is also such a dispute" (Yee 2015).

China's criticism of UNCLOS and the Philippine case there comes after a series events in which Beijing has literally not even bothered to send counsel (ibid.). Collectively, these events paint a picture in which the nation-state occupying the majority of contested maritime features refuses to validate or participate in UNCLOS efforts at dispute resolution.

With Beijing's rejection of UNCLOS and a paucity of other venues, the claimants seem to lack shared access to an existing IO for arbitration or resolution. With the only official options being APEC, ASEAN, and the UN – including UNCLOS – there have not been, and there are not now, good chances for these claimants to find a mutually-trusted arbiter.

Findings:

This analysis of the disputes in the SCS offers important insight into the priorities and processes of maritime dispute management. Much like with the Arctic disputes, the degree of dispute interconnectedness is important, as will be addressed below (and in Chapter Eight).

Hypotheses and Significance:

The SCS disputes offers important contributions both to our understanding of Type 3 disputes and to the specific causal stories of MDs as they relate to Type 3 disputes. The presence of the hydrocarbons and the fisheries has encouraged both claimants to pursue zero-sum approaches to the disputes. This case study, much like the previous three, supports the economic story: the economic value of the contested area itself matters in terms of attracting claimant interest. While extant IR theories claim that nation-states should be able to easily bargain over such fungible goods, the existing UNCLOS framework and the way that everything is

dichotomous (even the status of nation-states as continental or archipelagic). The tangible value of the SCS and the zero-sum nature of MD management encourage claimants to let the dispute linger as the various claimants seek to improve their own positions through a combination of legal, military, and non-standard (e.g., island building) maneuverings.

Beyond the tangible, this case study highlights the importance of understanding the claimants' commitment to the symbolic zero-sum ownership of the contested features. With claimant governments allowing (or encouraging) protests in response to SCS developments, expanding their military forces to project power into the SCS (and, for China, from the artificial islands it has constructed there). Since the claimants all maintained an interest in the symbolicly important features of the SCS – which could only go to one of the potential claimants (under the current UNCLOS system) – there was no interest in the type of resolution that would deny one of the claimants at the expense of another interested party.

Additionally, this case study lends support to the argument that the international mechanisms for arbitration, management, and resolution are important. Although China maintains the position that existing agreements preclude arbitration, as aforementioned, there larger point remains that the claimants have rushed to claim contested features but lacked a mutually-respected mechanism for adjudication.

Status of the Dispute:

Collectively, the MDs of the SCS are unlikely to get resolved in the near-term. The South China Sea includes multiple Type 3 disputes, which are the most difficult to resolve – requiring that the claimants have both the access to mutually-trusted arbitration and the domestic desire to resolve the disputes. Additionally, these disputes have high tangible value: the ultimate

sovereign(s) over the SCS will arguably gain access to vast riches of oil, natural gas, and fisheries. In terms of having access to mutually-trusted international mechanisms or arbitration or resolution, the claimants of the SCS are in particularly bad shape: while there are international actors that Beijing trusts (e.g., the SCO) and there are actors that the other claimants trust, there is no overlap; of the mechanisms that they are supposed to use (i.e. UNCLOS), Beijing not only shows little interest in pursuing arbitration through the available tribunal mechanisms, it argues that such efforts are contrary to previous agreements that the SCS claimants have made. In terms of the claimants' domestic factors (i.e. the Level II concerns), there are no win-sets that allow for compromise (at least amongst China, Vietnam, and the Philippines). Collectively, these issues add up to a very low likelihood of anything but lingering maritime disputes in the SCS.

This analysis is consistent with what other scholars conclude. For example, Storey has noted that SCS tensions have been cyclical for three decades and that the tension has only been increasing since 2007:

> Several reasons explain this trend: continued demand for energy resources, rising nationalism, disputes over fishing grounds, advances in military capabilities, and attempts by the various claimants to bolster their sovereignty claims through domestic legislation, the establishment of administrative bodies, and submissions to international legal regimes (Storey 2011, p151).

These claimant actions – the various steps taken to bolster maritime claims – have made SCS claims key to the legitimacy of various claimant governments, most specifically China, which cannot be seen to compromise on these claims (Buszynski and Sazlan 2007). For all claimants, the inability to compromise combines poorly with the continuation of efforts to demonstrate strength and commitment. In fact, the longer that these patterns continue, the greater the chance of escalation and disaster: "So long as tensions in the South China Sea persist, the risk of a military clash will escalate, with worrying implications for regional stability" (Storey 2011,

p152). Concerns over accidents and tragic escalation have become increasingly common (Lee 1987, Rosenber 2015). Specifically, there are growing concerns that SCS escalation will draw in the United States and thus result in a Sino-American conflict of horrible scale:

> …increases in China's strength relative to other powers in the western Pacific (including, perhaps, the United States), combined with the emergence of more-assertive actors not entirely controlled by the central civilian government (including, most likely, the military), a more open and active media, and rising levels of national self- confidence will together almost certainly increase the number and intensity of troublingly assertive behaviors by Beijing along its maritime periphery. Since most other countries involved in maritime disputes are much weaker than China, most of these incidents will be diplomatic and not military in nature. However, the potential for rapid escalation in some cases, and the arguably growing possibility that the U.S. might intervene militarily if coercion or conflict results, suggests that growing Chinese assertiveness over maritime sovereignty issues is arguably one of the most important potential causes of serious confrontation or even conflict between the U.S., allied powers, and China over the coming years (Swaine and Fravel 2001, p15).

Such predictions only add urgency to the need that policy-makers have for trying to resolve the lingering disputes of the SCS.

Notably, though, there is a room for the SCS claimants to allow for these disputes to grow inactive. Historically, there have been periods in which there has not been direct tension over the SCS features – like the 1980s and the decade after 9/11. In short, the claimants have previously demonstrated the ability to shift domestic focus away from the intangible concerns over the various SCS MDs and there is no reason to think that they might not choose to again pursue such a course of action. Although China's island-building campaign has arguably changed the nature of the symbolic value of the SCS, such an escalation (and many consider the island-building to be an escalation) might present an opportunity for the claimants to take a step back and evaluate alternate approaches to the SCS and its maritime disputes. Given the autocratic nature of the Chinese and Vietnamese governments and the powerful influence that

Washington is able to exert on Manila and Taipei, it is possible to envision an arrangement in which the claimants allow the disputes to grow inactive – if not become officially resolved.

Chapter Eight: Conclusions and Policy Recommendations

This research project began with the claim that it would build on existing political science by illustrating three things: first, that international law and physical geography intersect on the topic of maritime disputes to create a typology of MDs; second, that this typology allows for the isolation of causal stories; and, third, that two of those MD types are the causes of interstate conflict while the other type is the consequence.

Overview:

To do those things, this research project has explored maritime disputes – theoretically, quantitatively, and qualitatively. In general, this work has explored disputes that nation-states have over the delimitation of contested waters and the sovereignty of contested islands. Notably, these maritime disputes happen in an important geographical part of the world: although over a third of the planet is ocean, "Approximately 36 percent of the world's oceans are in the 200nm Exclusive Economic Zones (EEZs);" additionally, "75 percent of the [world's] population lives within 100 miles of a coast, and more than half of the known oil reserves are located there" (Wilson 2010, p437). Consequently, is is quite problematic that there is not a theoretical model for understanding the maritime disputes – particularly since so many of them remain unresolved (Smith 1982). Although there was not a specific typology or approach to MDs before this project, there were existing patterns and perceptions. For example, it has been well documented that these MDs are both problematic in and of themselves and because of "the tensions between the littoral states [that] make any solution to these complicates issues in the near future problematic" (Charney 1995, p749). Additionally, it has also been well known that these nation-

states struggle to determine what sort of strategic decisions to make: specifically, there is evidence that letting disputes linger is useful for the claimant government, but there is also evidence that prioritizing resolution is best: " Maintaining a dispute may be viewed as advantageous for a variety of reasons. The issue may be too insignificant to risk upsetting delicate diplomatic relations" (Lee 1987, p601). This project has worked to shed light on the respective reasons for resolving disputes and letting them linger – and to offer a stylized model for how to understand when MDs will go one way or the other.

Additionally, this project has highlighted the legal complications around MDs. Admiralty law, the law of the sea, and the provisions of UNCLOS are complex, complicated, and difficult to apply.[78] Part of the legal uncertainty involves debates over the exact rights endowed to different geographical features:

> the provision on "rocks" is unclear in many respects and gives rise to various questions of interpretation. What is a "rock"? Is it limited to rocks as defined by earth sciences? To "sustain human habitation or have an economic life of its own," must it be capable of complete self-sufficiency? Does self-sufficiency refer to the past, the present or the future? Does it refer to economic value? These serious questions regarding the application of this provision have yet to be resolved. They may be resolved by resort to the dispute settlement system of the LOS Convention or by a consensus of state practice derived from application of the rule (Charney 1995, p733).

In general, those general questions have not been resolved. Such uncertainty combines poorly with areas with complicated geographies -- making it difficult to predict how the various legal structures will play out with respect to specific MDs, like those in the Aegean (Langeraar 1986):

> The geographical configuration of the islands in the Aegean Sea, particularly when combined with the historical tension between Greece and Turkey, presents an extremely difficult challenge to those searching for an equitable solution to the maritime boundary dispute of this region (Van Dyke 1996, p397).

[78] Of note, admiralty law largely represents Western legal models – both within individual nation-states and for the international system, although there is some evidence that specific MD resolutions (e.g. the Eritrean-Yemen 1999 agreement) have incorporated non-Western notions of sovereignty (Kwiatkowska 2001).

Such legal uncertainty intersects with the aforementioned political tensions (between the desires to resolve disputes and those to let them linger) and create a complex, tense set of situations in which goals are unclear, processes are uncertain, and results are unpredictable (Jacovides 1979, Lagoni 1984, Churchill 1985).

Hypotheses and Findings:

The intersection of international law and geography was analyzed to develop a three-dispute typology that was quantitatively and qualitatively examined in combination with specific explanatory variables to test for cause and effect. Specifically, these claims were translated into five hypotheses.

The first two hypotheses examined the overall approach to MDs in terms of the proposed typology. The first hypotheses tested whether or not the proposed typology was statistically significant; it was. The second hypotheses tested propositions about relative likelihood of resolution (by MD type); the evidence supported the expectations: Type 3 disputes are the least likely to get resolved, with Type 2 disputes being less likely to get resolved than Type 1 disputes.

The other three hypotheses tested specific causal stories: about the tangible value of the contested territories themselves, about international factors of dispute resolution, and about the domestic factors of the claimants, respectively. The hypothesis on economic value found mixed support; the presence of hydrocarbons always made resolution less likely, but the presence of fisheries made resolution more likely for Types 1 and 2 disputes.

There are a number of reasons that the presence of fisheries proves both different from and more complicated than expected. First, fisheries historically mean fishing communities that put pressure – through the ballot box, by inciting incidents at sea, et cetera – on their leadership

to give them access to fishing grounds.[79] While hydrocarbon extraction often requires bringing in outside workers – like in the Shetland Islands – fishing communities are established political and historical entities that have political influence outside of specific drilling rigs or oil companies. The fact that such local pressures are different when the islands (and their EEZs) are distant is consistent with the types of technological and institutional arrangements that service distant fishing grounds: instead of small fishing ships and an interconnected community, distant fisheries are more the realm of factory fishing ships and financial entities that are less reliant on a single fishing area or community (given their very nature as operations that can fish at length on the high seas). Notably, the fragile nature of local fisheries sometimes contributes to the pressure to resolve MDs:

> During the last decades, focus has also shifted to the cooperative management and conservation of living maritime resources, such as transboundary fishing stocks, migratory species and their habitat or ecosystems. As global environmental conditions and over-exploitation of living maritime resources threaten the very existence of maritime living resources, states have embarked upon substantive and procedural strategies aimed at resolving maritime boundary claims and disputes by agreeing to co-manage these resources (Rodriguez-Rivera 2008, p2).

This push to resolve a maritime dispute in order to better manage the fisheries straddling a boundary area (or contested boundary area) emerges partly from the desire to better address environmental and ecological factors, but also comes at least in part from the recognition that nation-states have that their competition over the fisheries "pie" is particularly tricky when "in reality the pie is shrinking" (Hanich and Ota 2013, p36).[80] This concern over common pool

[79] Of note, the likely reason that fishing was a small but statistically relevant factor for Type 2 disputes, which have been largely described as being symbolic and not economic disputes, has to do with the small degree to which even close islands can sometimes play a role in giving states greater or lesser access to important fisheries. For example, in the Northern Atlantic and Arctic, this was the case with Danish-Norwegian concerns over Jan Mayen: "Even though Norway's tiny Jan Mayen island was minuscule in comparison with Denmark's Greenland, Norway was allocated a maritime zone sufficient to give it equitable access to the important capelin fishery that lies between the two land features" (Van Dyke 1996, p399).

[80] Notably, this argument predated this research project, as Mitchell, Nemeth, and Nyman noted in 2008: “The resources of the sea have long been a source of competition between states, although the pressing nature of these

resources contributes to the complexity of evaluating fisheries value, but can also add to the pressure for resolving disputes sooner rather than later.

A second factor relates to the nuanced nature of the relationship between those who fish and those who govern. Song recently used the dispute between North and South Korea over the delimitation of the Yellow Sea as a case study for exploring this phenomenon (2015). He noted that " South Korean fishing activities near a disputed maritime border between the two Koreas, called the Northern Limit Line, may be imbued with intentionality representing an indirect arm of the state's geopolitical agenda" (p60). Specifically, Song argued that the "South Korean government" uses fishermen "to reinforce the state objectives of boundary legitimization and defense of claimed waters" – by acting as the eyes, ears, and arms of the government – but that the fishermen actually "muddl[e] the state interventions through their own conduct and rationale" (p60). Song observes the ways that "the activities of civilian fishing boats often appear in the storyline" and how they catalyze "military provocations" and "physical clashes between naval forces" (Song 2015, p60): "For instance, both the 1999 and 2002 skirmishes in the Yellow Sea began as confrontations between North Korean and South Korean Navy patrol boats guarding their own fishing vessels near the disputed sea border" (.ibid). In arguing that Seoul seeks to use fishermen as a policy tool, though, Song observes the ways that fishermen can be motivated by

> … a rival logic, primarily inspired by economic and other idiosyncratic motives, which do not neatly align with the state-prescribed narratives of maintaining the NLL as a firm, impenetrable border. Thus, instead of serving the state's governing aims at a distance, fishing operations could create a disruptive outcome as they resist and alter the implementation of state power (2015, p68).

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common property resource (CPR) problems has become more acute over time. States' ability to extract oceanic resources has increased substantially through technological advances, and rapidly growing human populations have increased the demand for fishing, mineral, oil, and other maritime resources. This creates a tragedy of the commons where everyone has incentives to over-exploit maritime resources for their own advantage, leading to diminishing resource supplies for all" (p35).

Government efforts to control and exploit fishermen thus get subverted: sometimes fishermen end up "directly interfere[ing] with the military agenda of NLL defense" or just ignore the government altogether: "Under intense pressure to turn a profit, fishers are inclined to override security considerations and dismiss regulatory structures such as zoning and protection as excessive and even unhelpful" (Song 2015, p67). This places the government in the particularly difficult position of managing fishermen, as exemplified with the NLL case:

> Greater support to the fishing sector would widen the size and presence of the fishery around Yeonpyeong Island, leading to an expansion of the sector that likely would enhance the self-policing capacity of fishing boats and benefit the state's military objectives. Such policy direction is also consistent with the state's intention of maintaining an island population, which provides an added justification for South Korea's jurisdictional claim in the nearby disputed waters. Yet, a larger fishery would also mean, ceteris paribus, more fishers and fishing boats with the potential to take journeys that delegitimize the border, further disrupting the state agenda and putting an added strain on the military. Thus, the government is in a bind: it is given a delicate task of encouraging the fishery to flourish (more “pawns”) but also having to keep the movement of the fishing fleet under closer scrutiny (fewer “pirates”) (Song 2015, p69).

Such trade-offs represent the kind of complexity that nation-states face in managing maritime disputes where fisheries are present. By highlighting this, Song contrasts the traditional perception of the "seemingly innocuous resource activity" of fishing with the argument that it lies at "the center stage of power relations" as they relate to how nation-states "engag[e] with maritime boundaries" (Song 2015, p60). Given such arguments and findings, it makes sense that this research project produced unexpected results with respect to the presence of fisheries.

The hypothesis on international factors also found mixed support: for Types 1 and 3, where these factors were expected to matter, claimants with similar types of governments (and thus supposedly with comparable types of access to international mechanisms of arbitration) were more likely to find resolution – except when the claimants were all anocracies. These findings are consistent with recent scholarship – both with respect to international access and to proxies

for it (Mitchell and Hensel 2007, Gent and Shannon 2011, Nyman 2015).[81] Since anocratic governments are often seen as transitional (meaning that the various claimants could easily have very different levels of international access, or perceptions thereof), a variable tracking when all claimants are anocratic might not have much utility.

The last hypothesis, the one testing the proposition that MDs are more likely to get resolved when all the claimants have the domestic legitimacy to downplay symbolic value or otherwise risk negotiation, was not supported; instead, this project found quantitative evidence that such domestically legitimate regimes are much *less likely* to resolve their disputes as diversionary war theory predicts. Notably, this was statistically significant for Type 1 disputes when measured yearly, but statistically significant for *all three types* when measured over a three-year period: when all claimants had Prolonged ADS (i.e. strong GDP growth for three years), each of the MD types was significantly less likely to get resolved. This means that MDs are more likely to linger when their claimants are not all domestically strong. Given the nature of TD and MD terminology (and how "resolution" can come through any means, whether that requires force or through mutually-agreed upon arbitration), these findings do not necessarily mean that domestically weak claimants (or a mixed set of domestically-strong and –weak claimants) will resolve their disputes – just that strong ones will (probably) not.

Since these findings were weakest for Type 3 disputes, the category with the highest number of unresolved disputes, these propositions about causal stories were also qualitatively explored. The findings were consistent with the quantitative ones. The resources of Svalbard and the

[81] For example: Gent and Shannon observed that, "Research has shown that disputants with a higher number of institutional memberships that call for the peaceful settlement of disputes are more likely to submit to binding conflict management.. Simmons (1999) finds that vague multilateral treaties with binding provisions discourage the use of arbitration and adjudication, while more specifically crafted bilateral treaties encourage binding conflict management. Emboldening states to make specific provisions for adjudication or arbitration into their bilateral and multi-lateral treaties may even further promote their use of these techniques" (2011, p730).

Senkakus were extremely important both to the claimants and to the processes of their resolution and non-resolution, respectively. The opportunities for international access were also important: the unique international arrangement at the end of World War I with the League of Nations Treaty Series enabled the resolution of Svalbard; in contrast, Japan and China have lacked mutually-trusted mechanisms of addressing the Senkaku dispute. Similarly, the domestic factors have mattered: the Svalbard claimants (at least the ones allowed access to the Paris peace conference) possessed the domestic legitimacy to pursue change, but Japan and China have not had similar domestic levels of legitimacy at any point since the end of World War II. These specific case studies support the larger three-type MD model and the three-factor explanation of resolution: economic worth, international access, and domestic legitimacy.

These MDs seem to now be contextualized. Disputes over water and islands are legally, practically, and substantively different from those over land or riparian zones. Of maritime disputes, the contests over distant islands require both domestic and international factors to align for resolution and are thus both the most complex MDs as well as those least likely to get resolved. To elaborate: Type 1 disputes are economic and explained in terms of claimants' shared access to arbitration; the delimitation disputes are the cause of problems between the claimants, but are fixed through resolution. Type 2 disputes are symbolic and explained in terms of the claimants' desires to distract their populations from difficult domestic situations; they are the symptomatic of a strained relationship, not the cause of one. Type 3 disputes are both economic and symbolic; they require more factors to synchronize before resolution; they are both a cause and an effect of the strained relationship.

While much of this was confirmed quantitatively, the qualitative work reinforces what was statistically uncertain about the Type 3 disputes and teases out the ways that these different

causal stories evolve. It also illustrates the salience of these disputes – already known, but usefully documented

> Historically, the most salient territorial disputes tend to be about the demarcation of land borders, although contests over maritime jurisdictions have become more common recently (such as in the South China Sea, and Japan's disputes with China, South Korea and Russia over the Senkaku/Diaoyutai, Takeshima/Dokdo and Northern Territories/Southern Kuril Islands, respectively) (Chan, 2013, p51).

It is very important for MDs to be able to determine when the salience is the cause and when it is the result. This dissertation argues that, when the tangible and the intangible can be differentiated – as they can be with Type 1 and Type 2 disputes – progress towards resolution is increasingly likely, but when the two are either both present or are conflated – as they are in Type 3 – progress towards resolution is much less likely. Being able to parse out causal stories and determine appropriate policy mechanisms matter. If changing borders can promote peace – as existing scholarship shows (Tir 2006) – then resolving MDs could promote peace. This seems to be the case for MD Types 1 and 3. Yet, if some MDs are not the antecedent of conflict but the consequence of it – as they seem to be for Type 2 dispute – then focusing policy attention on the MD will not improve chances for peace. Since all of the claimants involved in the few unresolved Type 2 disputes are *also* involved in unresolved Type 3 disputes, this distinction between cause and effect is important.

Of note, while this research project was ongoing, other scholars have also explored MD and MD-related phenomena. Most significantly, Nyman offered a claimant-based constructivist theory in which she argues that what matters is the identity of the nation-states claiming contested maritime area (Nyman 2010, Nyman 2012, Nyman 2015). Ultimately, she concludes her "examination of disputed maritime areas in the Western Hemisphere and Europe from 1900 to 2001" with the finding "that indeed island states are both more likely to try and settle a

disputed maritime area, whether by force or by negotiated resolution" than are continental claimants (Nyman 2012, p221). Although such state-based are instructive in how they further highlight the themes of this research project – (e.g., maritime disputes are different from territorial ones and thus demand intellectual models of their own) – they prove limited in that they are neither generalizable nor useful to policy-makers seeking to prioritize specific approaches or policy tools.

Proposed Typology and Explanatory Variables

This work proposes a typology of maritime disputes that reflects the intersection of maritime geography,[82] international law, and political expectations (i.e. what claimants states can benefit from acquiring the contested maritime areas). Type 1 disputes are disagreements over how to delimit ocean water and thus divide the economic spoils of the EEZ; unlike the other disputes, these are not zero-sum contests, but instead just disagreements over how to compromise Type 2 disputes are symbolic disagreements over sovereignty of the islands close to the competing claimants; these are zero-sum disputes in which only one state can win the island(s). Type 3 disputes are over islands distant from the claimants; they are both symbolic contests over island sovereignty and economic contests over the resources around those distant islands; these are zero-sum disputes in which one claimant will get the islands and their additional resources while the other claimant(s) lose(s) everything.

Tangible Value and Resource Extraction:

This dissertation argues that the tangible value of the contested maritime area is an important factor in the disputes and their likelihood of resolution. In short, when the disputes are

[82] As Van Dyke has observed, "Geographical considerations will govern maritime boundary delimitations and nongeographic considerations will only rarely have any relevance" (1996, p398).

more valuable, they are less likely to get resolved – regardless of MD Type. Specifically, however, there are two key components to evaluating the worth of MDs: fisheries and hydrocarbons. The presence of fisheries in contested maritime areas is economically significant for economy of the nation-states in a number of ways – including at both the local level and for the overall economy (Rodriguez-Rivera 2008, Hanich and Ota 2013, Song 2015). The presence of hydrocarbons adds exponentially to the value of a contested maritime area and recently scholarship has found evidence that hydrocarbons are important for MDs (e.g. Nyman 2015).

Intangible Values and Domestic Factors:

This research project argues that the claimants to MDs can only resolve these disputes when both international factors *and* domestic factors both align to give the respective claimant governments the policy room to make progress (i.e. *win-sets*, in the language of Putnam). An examples of this include how Thailand and Cambodia set aside concerns over offshore islands when they normalized their relationship. The internal politics of nation-states – as they apply to the symbolic value of MDs and the claimant governments' abilities to pursue those intangible concerns – help determine MDs likelihood of resolution. Specifically, this research argues that when all of the claimant governments are domestically strong, those nation-states will have greater freedom to make progress on their MDs – and thus the MDs will have a greater likelihood of resolution. Of note, these domestic factors are less important for Type 1 disputes but particularly important for Type 2 disputes (where the aforementioned international factors do not matter); since Type 2 disputes do not require third-party legitimation, all that claimants need are each other's aligned domestic strength.

International Access

This project argues that Type 1 and Type 3 MDs require access to third-party international actors to arbitrate, adjudicate, or otherwise facilitate the resolution of contests over disputed waters and islands. Accordingly, when these disputes are more likely to get resolved as their claimants share increasing access to mutually-trusted international organizations and third-party nation-states. (Since Type 2 disputes are largely symbolic contests over close islands with little to no economic value, the international mechanism is significantly less important.)

Specific Policy-Relevant Conclusions

This research project has worked to analyze the population of modern maritime disputes, explore important disputes qualitatively, and reach generalizable conclusions about how to think about IR phenomenon. Additionally, though, this project seeks to identify specific policy opportunities for how the lingering MDs could be resolved. Specifically, since the UNCLOS options have already been analyzed, this work will now address two existing and intermittently applied policy tools – joint development programs and alternate arbitration mechanisms – and propose a unique policy approach to maritime dispute resolution.

It is important to begin an analysis of policy options with the caveat that some nation-states simply do not want to forsake claims to territory. For some, the processes of resolution are the problem. Some claimants "are generally reluctant to cede decision control in territorial, maritime, and river disputes" as is necessary in the process of MD settlement (Gent and Shannon 2011, p717). For some, there is just too much at stake – and that value is only expected to grow with time:

> A binding decision that cedes control of the territory to another state can have long-lasting detrimental consequences. Without access to the strategic territory or

> resources, the ‘‘losing’’ state will be at a disadvantage in future confrontations with the ‘‘winning’’ state. Moreover, the loss of access to resources may hurt the economic development of the losing state (Gent and Shannon 2011, p716-717).

For some claimants, the price of progress includes potential loss, and such potential harm is too much to bear.[83] For other claimants, such tangible concerns about the process or even the (potential) lost economic development are irrelevant; instead, they have a series of problems with the other claimant(s) and simply see the MD as an excuse for conflict – like with Greece and Turkey over the Aegean (e.g., Stroescu and Popa 2012). Similarly, for some, " the critical issue" is not delimitation of water or the sovereignty over islands, but "the prevailing narrative" and what it means for " securing the political perception of legitimacy" for an MD's claimant government (Song 2015, p64). In the case of the Yellow Sea dispute, for example, the key is about "continually recalling fear and threat from the North" and how "the NLL is a functional and indispensable military separation line, without which significant wartime repercussions are imminent in this highly volatile region" (Song 2015, p64). Thus, for some MDs, there is great resistance to the process of resolution – either because of concerns over how it could go – or because the lingering dispute itself serves some purpose.

That disclosure made, it is important to understand how to approach the lingering maritime disputes in order to efficiently and effectively do what can be done to minimize the opportunities for escalation, conflict, and war. In that spirit, this work offers three suggestions for policy options.

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[83] That potential loss has specific and high domestic costs for the nation-state: "Unfavorable settlements on salient issues can also lead to costs at the domestic level. For example, when a dispute is salient because of ethnic or historical reasons, achieving a preferable settlement may be an important part of a leader’s domestic agenda. In these cases, as Hensel (2001, 86) notes, ‘‘the costs of failing to achieve one’s desired issue position are much greater.’’ Given these increased international and domestic costs, the range of policy outcomes that a leader is willing to accept decreases as the salience of an issue increases. Since binding settlements can potentially result in unpalatable outcomes, a leader will be less likely to give up decision control to a third party when managing disputes over valuable issues. As Bilder (2007, 206) notes, ‘‘nations are less willing to agree to binding third-party settlement of very politically sensitive disputes’’ (Gent and Shannon 2011, p717).

Joint Development Programs

The first non-UNCLOS policy that has been applied to lingering MDs is to supplement the existing legal options with increased bilateral (or multilateral) joint development programs. Since the term “joint development” has meant different things over time (and to different audiences), it should be clarified that it’s use here means, "[a]n inter-governmental arrangement of a provisional nature, designed for functional purposes of joint exploration for and/or exploitation of hydrocarbon resources of the seabed beyond the territorial sea” (Miyoshi 1999, p2). For the sake of this work, "joint development" is not limited to hydrocarbon extraction;[84] instead, it is the process by which two or more nation-states cooperate to manage the resources of a contested area (and whether or not such efforts are really only "provisional" is addressed below).[85] While joint development programs (JDP) are often discussed as if they are a relatively modern response to maritime disputes, they have been around for decades:

> The current idea of joint development of offshore oil and gas dates back to the judgment of the International Court of Justice (ICJ) in the North Sea Continental Shelf cases of 1969. At that time the Court referred to the possibility of parties deciding on “a regime of joint jurisdiction, use, or exploitation for the zones of overlap or any part of them.” …However, the original idea of joint development seems to date further back to the 1930s when studies and judicial cases on joint petroleum development can be found in the United States. Some cases of joint development of coal, natural gas and petroleum across international boundaries on the European continent were also evidenced during the 1950s and 1960s (Miyoshi 1999, p1).

[84] Notably, they are particularly effective at managing hydrocarbon extraction: “The possible presence of valuable resources in the area to be delimited may act as an incentive for the parties to claim a particular offshore area, but this factor can also serve to make them cautious about dividing the area of overlapping claims for fear that the resources in question may eventually be discovered on the ‘wrong’ side of the line. This scenario may be especially the case for potential seabed hydrocarbon resources where uncertainty over the precise location of reserves can serve as a major deterrent to the delimitation of a boundary line. Entering into a joint development arrangement helps to defuse this concern as both parties are guaranteed at least a share of any resources found” (Schofield 2009, p25).

[85] This is thus different from cross-border unionization, which is when resources straddle borders or boundaries (Bastida et al. 2007). While much of the industry research and international law treats these phenomena as the same thing, this research project notes that there is a fundamental difference in how competitors agree to develop contested resources and how neighbors collaborate to maximize profits with a unified extraction effort (ibid).

Europe saw the first official maritime joint development program, but they have became an option for other regions and their disputes – most notably in East Asia, where

> …a turning point appears to have come with the conclusion of the Japan-South Korea Joint Development Agreement in January 1974. This represented the first application of the idea of joint development of offshore oil where the parties failed to agree on boundary delimitation, as indicated in the ICJ judgment of 1969. The Japan-Korea agreement was the outcome of unsuccessful negotiations for the settlement of the two countries' continental shelf disputes, spurred on by a report of the technical committee of the UN Economic Commission for Asia and the Far East (ECAFE) concerning its findings from a seismic survey in the East China Sea conducted in 1969. In fact this agreement was preceded by one day by the France-Spain agreement, but the latter differed significantly from the Japan-South Korea accord in that it devised a common zone for joint development across the agreed boundary line (Miyoshi 1999, p1-2).

In these cases, the joint development zones were facilitated by outside actors, but such third parties are not necessary for JDP. Instead, claimants can decide to pursue joint development on their own; some have.

> The delimitation of a maritime boundary line seems less relevant to states today than setting the stage for the efficient management and exploitation of their natural resources. If this means setting aside unproductive boundary disputes in order to negotiate cooperative management and joint development regimes with your neighbors, many states today are willing to do so in order to share equitably common natural resources. Boundary lines seem today less relevant and useful than mutually managed boundary zones (Rodriguez-Rivera 2008, p22).

While Rodriguez-Rivera might be correct about the potentially fading importance of defined maritime delimitation –at least in certain regions, as is addressed below – she is certainly correct in describing the reality that nation-states only require the desire to begin joint development (and not an outside arbiter). Importantly, though, such "political will" is "crucial" to the start of JDP and must be lasting:

> …the case of joint development though, such political [will] needs to be sustained over time. Where seabed resource development is contemplated it is worth considering that oil companies often embark on resource development projects with timelines measured in decades, meaning that any joint development arrangement concluded between interested States is likely to continue, and needs

> to be sustained, far beyond the lifetime of the governments that enter into it (Schofield 2009, p26).

Joint development efforts are thus not only the result of court-imposed, or third-party facilitated, settlements; instead, they are achievable so long as claimants have the political will for such programs – and can sustain such commitments over the years and decades that such JDP require.

In advocating that policy-makers attempt to implement (or encourage the implementation of) JDP in lingering MDs, it is important to note that such programs have historically been proposed for a number of reasons. Predominantly, they have been explicitly employed to allow nation-states to profit off of contested resources – regardless of whatever else the joint development might do for the dispute, the claimants, or the region. In the near-term, JDP allow MD claimants to sidestep the issue of sovereignty and focus on the economic extraction programs that deliver economic, tangible, and important deliverables.

> The concept of joint development is a valuable one that should be vigorously pursued. At a minimum, it could involve cooperative, government-to-government attempts to exploit the seabed resources… (Harding 1994, p149).

Such joint programs address concerns over food and energy security, work for fishing communities, additional ways to grow the GDP, et cetera. JDP also offer the claimants a mechanism for pursuing these near-term goals in an environmentally responsible way: "Joint development agreements have… been promoted as an environmentally responsible way to manage and exploit non-living maritime resources" (Rodriguez-Rivera 2008, p6). In the long-term, such joint programs can give nation-states and their peoples new and important ways to see each other as partners in a shared effort – instead of competitors for scarce resources. Many MD claimants have developed fraught at-sea relationships: fishermen stab each over lobster pots, government ships shoulder each other, and sometimes navies use a level of force that their

governments later deny (e.g., Schofield 2009).[86] Joint development programs, conversely, give these different actors both a reason and an opportunity to work together; these opportunities can become confidence-building measures that lead to improved international relations and the shelving or even permanent resolution of a dispute. Thus, in addition to near-term benefits, JDP are often sought for the potential that they might ultimately facilitate resolution of the dispute.

> More significantly, these agreements, taken together with the exploration, management and exploitation of common maritime natural resources, have become an effective mechanism for achieving peaceful resolution of maritime boundary disputes. As a result, joint development or cooperative management strategies have become a common component of modern maritime boundary delimitation treaties (Rodriguez-Rivera 2008, p1)

It is often for such *potential* indirect or long-term utility that JDP are advocated. Scholars and policy-makers alike have often suggested them as options for lingering disputes. For example, Van Dyke, in his analysis of the Greco-Turkish Type 1 dispute, noted that, "It has also become increasingly common for countries to establish joint development areas in disputed maritime regions, and such a joint zone may provide the logical solution in the northern part of the Aegean" (1996, p401). Similarly, Miyoshi argued that, despite the fact that, "the literature on joint development abounds, and one may suspect that there is little more left to discuss on the basic concept of joint development," he is still drawn to consider them:

> [I]n view of the many still undelimited maritime boundaries and consequent disputes in the worlds' seas, for example the Spratly Islands dispute in the South China Sea, there remains the need to discuss the basic concept of joint development further from not only theoretical but also practical viewpoints (Miyoshi 1999, p2).

These works, and many like them, have argued for JDP not so much for their own economic or environmental merit, but because prospect of joint development supposedly enables claimants to

[86] This is not a statement that intends to imply there is non-declared violence or that there might be classified material as to how navies manage escalation or violence to support or maintain a MD.

re-orient their discussions away from the previously unproductive discussions of delimitation and sovereignty.

> Fundamentally, when faced with a deadlock, States have seen the merit in cooperative arrangements that provide an alternative when negotiations become deadlocked, enabling the parties to sidestep seemingly intractable maritime disputes. Maritime joint development thus allows intractable and contentious disputes to be circumvented in such a way that the pragmatic development or management of the resources or environment in the area of overlapping claims can proceed without delay. In this context it has been argued that joint development agreements offer a means to shift the emphasis to "a fair division of the resources at stake, rather than on the determination of an artificial line" (Schofield 2009, p24-25).

Policy-makers and scholars have thus learned to see JDP as ways to change the intellectual and emotional focus of MD talks. Additionally, discussions oriented towards joint development offer claimants a way to hedge their bets against the zero-sum trade-offs that come with traditional sovereignty discussion:

> Joint management of resource fields is another option that might come into play as countries involved in a dispute might see more advantage in approaching the disagreement this way rather than losing a claim in an international tribunal (Johnston 2010, p18).

Locking in some gains with a JDP offers MD claimants an alternative to the risk of total loss that accompanies Type 3 disputes (or the risk of relative losses with Type 1 and 2 disputes).[87] Joint development thus offers three distinct goods: a way to capture near-term gains from lingering disputes, a method for re-framing lingering disputes in a way that supposedly increases the likelihood of dispute resolution, and a process that gives claimants a way to avoid a total "loss" of sovereignty, tangible gains, or face.

[87] While some states are willing to engage in JDP regardless of concerns over sovereignty or control, many nation-states perceive them to be something tantamount to losing sovereignty – that it is, in short, a loser's move (e.g., Johnston 2010). So, states concerned with intangible concerns over sovereignty and strength are unlikely to compromise – or give their domestic audiences the perception that they are compromising – by engaging in discussions of potential JDP.

Yet, not all lingering disputes are good candidates for JDP. As Schofield has observed, "joint development should not be viewed as some kind of panacea or as a 'last gasp' solution applicable simply because a deadlock in maritime delimitation negotiations has been reached" (2009, p26). Instead, he argues that

> It is also worth observing that the mere existence of a joint development mechanism does not in itself guarantee cooperation and that, furthermore, it certainly does not guarantee that sought after resources will actually be discovered in the joint zone. Nonetheless, it is abundantly clear that maritime joint development zones represent a valuable and arguably increasingly popular practical means to overcome intractable maritime disputes and to blur the lines of competing maritime claims so that cooperative development and management of ocean resources can proceed (2009, p27).

While JDP hold out the promise of near-term riches and longer-term peace, these results are not guaranteed. Instead, they are only a set of possible options available to the MDs where everything with the joint development effort goes well. In order to understand the conditions that facilitate such JDP success, one must examine successful joint development efforts. Rodriguez-Rivera has already done this.

> In sum, a culture of solidarity and peace has developed in the Caribbean and Latin American region which promotes the peaceful resolution of disputes. Taken together with several factors discussed earlier—such as these states' economic dependence on the sustainable development of living and non-living maritime common natural resources, the development of the technological means to exploit said resources in an equitable way, and the desire to focus on economic development opportunities instead of disputing over sovereignty issues—the Caribbean and Latin American countries have the adequate conditions, environment, opportunity, need and desire to peacefully resolve maritime boundary disputes by entering into joint development or other cooperative management agreements regarding common natural resources (Rodriguez-Rivera 2008, p21-22).

This regional analysis finds an important set of preconditions must exist for JDP success – including, but not limited to, economic dependence on the disputed resources, technical capacity

to extract the resources, and the political will for JDP success. Yet, she also found evidence for an important and perhaps unexpected factor: colonial relationships.

> Of these fifteen traditional maritime delimitation treaties [of the Caribbean and Latin America] entered into since 1970, only two were between sovereign Caribbean or Latin American states not subject to colonial dependence (Brazil – Uruguay (1972) and Cuba – Mexico (1976)). The other thirteen traditional maritime boundary delimitation treaties identified above involved at least one of the following former maritime metropolitan powers (United States, United Kingdom and France). These powers have much experience, technology and expertise in traditional maritime boundary making, which helps explain their inclination to use boundary treaties only to delimit boundary coordinates and markings (Rodriguez-Rivera 2008, p11).

In highlighting the importance of previous colonial dependence (and the continuing relationships that such previous colonial dependence creates), Rodriguez-Rivera provides important context for why so many of these MDs were able to effectively pursue JDPs: these claimants already had mechanisms for trusting and cooperating. These findings are consistent with previous research into the ways that colonial relationships can facilitate the resolution of territorial disputes (e.g., Prescott 1996), but important here for shedding light on the factors that help facilitate JDP success. In examining whether or not JDP are appropriate for a specific MD, one should consider whether or not the claimants have the kind of historical, political, or technological capacities for cooperation across a contested maritime border. Importantly, MD claimants' relationships with previous colonial powers (to encourage and facilitate JPD) do not seem to be either a necessary or a sufficient condition for JDP success. For example, "In March of 2007, Argentina withdrew from these Joint Declarations alleging that the United Kingdom was using the agreements to strengthen its control over the disputed area, as well as to discriminate against areas where Argentina has control" (Rodriguez-Rivera 2008, p17). These types of historical arrangements could, at best, be seen as a contributor to success. Since they sometimes seem to have contributed to the MDs in the first place – as British colonization of South Atlantic islands

has brought London into a series of conflicts with Buenos Aires – the nature of the claimants' relationships must be analyzed to determine whether or not a JDP is appropriate. (In other words, simply observing the presence or absence of previous colonial dependence is unhelpful.) Collectively, then, important factors for JDP viability include: an economic interests in the resources, the technical capabilities to extract those resources, a shared political will (amongst the claimants) for cooperation, an estimation that such political will is sustainable, and the political mechanisms necessary for cooperation.

Without such factors, JDP are unlikely to work. Additionally, the presence of specific factors is likely to signal JDP failure. Most significantly, there must be "the prohibition of unilateral action" and this must be made clear from the outset, when the claimants have "the duty to negotiate in good faith" (Lagoni 1984, p367). Importantly, both of these factors must be present: both good faith negotiating and an absence of unilateral action; either one of them can scuttle joint development efforts ineffective. For example, the China-Japan 2008 Principled Consensus on the ECS ostensibly had "good faith legal arguments to which the parties *mostly* limited themselves" [emphasis added], but the fact that all parties only "mostly" acted in good faith proved problematic for the deal – and the resulting unilateral action functionally left joint efforts without the trust necessary for making progress (Zhang 2011, p61). These are the exact sorts of problems that have long plagued Svalbard: as aforementioned, the Western powers arguably acted in bad faith by reaching an agreement when Russia was consumed by civil war – and Moscow has since acted unilaterally, as Oslo supposedly has as well. Even though Svalbard's arrangement is not considered a JDP, it follows similar patterns as official JDP and seems to suffer from the same problems that complicate official JDP. Regardless, in evaluating lingering MDs in order to determine whether or not they might be good candidates for JDP, one

must be attentive to whether or not there is "good faith" and the degree to which the respective claimants act unilaterally.

In terms of the disputes from earlier chapters, JDP are of limited utility. In the Arctic, there is already some joint development. What JDP exist have gone well; Cooperation between Norway and Iceland regarding the development of the Dreki field could serve as a model for similar arrangements in the future. (Johnston 2010, p18). In the JDP in the ECS, as addressed in Chapter Five has not made any progress since the claimants have agreed to terms. For the SCS, the JDP picture is much more complicated and analyzed (Harding 1994, Liu 1996, Buszynski and Sazlan 2007, Gao and Jia 2013, Thayer 2013).

> We are by no means the first to suggest the application of provisional arrangements of a practical nature, or maritime joint development, for the South China Sea… Arguably, the political will to proceed with co-operative arrangements and point development is likely to increase, not only because of the increasingly urgent need to somehow address issues of management of the South China Sea's marine environment, but also because no final resolution to the disputes is discernible on the horizon (Beckman et al., p4-5)

Beckman and his co-authors go on to list a series of in-principle joint development agreements in East and Southeast Asia, but ultimately observe how – with the exception of the Malaysia-Thailand agreements of 1979 and 1990 – they all expired or never produced results (ibid). Such limited progress emerges, at least in part, from an inability to agree on important but basic information.

> China and its ASEAN claimants have a common interest in the exploitation of those oil reserves but the maritime claims have acted as impediments. Efforts to propose joint development to circumvent sovereignty have been frustrated, particularly as formulae for allocating the benefits of joint development would depend on sovereignty in any case (Buszynski and Sazlan 2007, p137).

The fact that about a dozen joint development agreements were even reached in principle, though, reflects the disconnect between "hopeful" rhetoric and difficult details (Thayer 2013). Some have placed blame for this on Beijing.

> Past efforts to resolve the South China Sea problem visualized either a grand solution to the maritime claims, as though all claimants were equally interested in or capable of a settlement of those claims, or a conspicuous effort to ignore sovereignty by promoting joint development. These approaches struck against the Chinese leadership's obsession with sovereignty, the legacy of the humiliation of the 19th century, the severance of Taiwan from the mainland, and the corn about historical rights in the South China Sea. The margin of flexibility over this issue was limited for China's leaders, committed as they have been to a defense of China's sovereignty. The unresolved maritime claims have provided an uncertain environment for the exploration of the area's energy reserves and yet the demand for energy and fear of global shortages will intensify interest there (Buszynski and Sazlan 2007, p165-166).

Whether or not blame is rightly placed on Beijing, the fact remains that arguments about China's inability to compromise are both old and continual (e.g., Gao and Jia 2013). Accordingly, some have proposed that modified joint development program – with Svalbard as a model; specifically, many have proposed an arrangement in which China gets sovereignty of the SCS islands, but that the SCS resources are managed as a joint development zone (Liu 1996, Gao and Jia 2013): "The most appropriate solution to the Spratly dispute is an expedited joint development agreement giving China sovereignty" (Liu 1996, p891). Notably, Chinese scholars reject the proposals that include demilitarization, as the Svalbard Treaty had (e.g., Harding 1994). Regardless of the specifics, the point remains that joint development has been previously proposed (and intermittently tried), in varying forms, without success.

Since this work seeks to make policy-relevant recommendations, it is important to evaluate whether or not a joint development program (or even a Svalbard-style JDP) should be tried for the SCS. Given the aforementioned specific criteria for evaluating whether or not a maritime dispute (or set of maritime disputes) is a good candidate for a JDP – and preconditions including

economic dependence on the disputed resources, technical capacity to extract the resources, the political will for JDP success, and existing mechanisms for cooperating – the applicability of JDP to the SCS must be evaluated.

Although the SCS claimants might not be dependent on the hydrocarbons and fisheries would offer, they would all benefit from them. China potentially has the technical capacity for extraction, but the others do not. Instead of having evidence that the claimants have the political will for JDP success, there is evidence that the claimants are unwilling to even temporarily set aside sovereignty concerns in order to begin a JDP. Perhaps most significantly, the claimants lack the established patterns, protocols, or procedures that would allow for the cooperation necessary in a JDP; for example, instead of China and the Philippines having an established way of working together, they have an incredibly antagonistic relationship. Beyond preconditions for success, Chapter Five also offered two indicators of likely JDP failure: the appearance that actors are not operating in good faith and unilateral action. While the former is impossible to observe (given that there are not ongoing discussions of a SCS JDP), the latter is most certainly present – as China's island-building campaign perhaps best illustrates. In terms of evaluating the SCS as a candidate for a potential JDP, then, the score is bad: there is limited technical ability, uncertain political commitment, an absence of mechanisms for cooperation, and unilateral action within the contested maritime area. Accordingly, this project cannot recommend that policy makers pursue a joint development program to address the lingering maritime disputes in the SCS.

Alternate Actors and Venues for Resolution:

When joint development is not a good fit for a lingering maritime dispute, or when efforts towards JDP have been begun, but not achieved success, policy-makers have turned to a second existing policy option: increasing the available institutions and international options that can act

as venues for the resolution of MDs. While UNCLOS and its related institutions and mechanisms offer nation-states multiple avenues for pursing unresolved MDs – including the International Tribunal for the Law of the Sea (ITLOS) and the Permanent Court of Arbitration (PCA) – there is evidence both that these systems are biased *and* that the nation-states with lingering MDs consider them to be biased against them. Accordingly, maritime disputes which have not already found resolution through these long-established mechanisms are unlikely to do so now or in the future.

In order to capture all the aforementioned benefits that come with third-party dispute resolution, policy-makers should offer alternate venues that are considered neutral to the lingering MDs. This has been done successfully in the past – like with how the Vatican facilitated the resolution of the Beagle Islands MD (e.g., Garrett 1985). The Vatican was a mutually-respected third-party for the two Catholic nation-states, Argentina and Chile, which had previously been unable to resolve their MD. It was not some specific legal authority or expertise in admiralty law that positioned the Holy See to mediate; instead, it was the claimants' shared respect for the Pope that allowed the Holy See to help resolve the dispute. This research project argues that this is a policy option that could be again tried.

Notably, recent developments draw increased attention to the option additional venues of resolution. Specifically, the Singaporean government has finalized arrangements to serve as a regional location for ITCLOS: "A joint declaration was signed on 31 August between ITLOS President Vladimir Golitsyn and Permanent Secretary to the Ministry of Law Ng How Yue" (Lee 2015). This "allows Singapore to be a venue in Asia for the settlement of disputes relating to the law of the sea" (MarEx 2015). The Singaporean Foreign Minister claimed that this declaration "is a clear endorsement of Singapore as a neutral venue for the effective settlement of

international disputes" and "demonstrates Singapore's commitment to the international rule of law by facilitating access to ITLOS in order to serve the needs of the states of this region, with a view to promoting the peaceful settlement of disputes relating to the law of the sea" (MarEx 2015). It is not clear that nation-states of the region would consider Singapore a neutral venue: China and the city-state signed a "Defense and Security Agreement" in 2007 (Hsiao 2007); since then, their positions on regional security concerns have been aligned, they have reaffirmed their defense agreement and admitted that "good progress [has been] made in military cooperation" (CNA 2015). Although it is important to address the debatable neutrality of the venue, the fact that such a new venue exists reinforces the argument that there is interest in such an approach. The concerns that claimants might have with Singapore reflect the key issue for this policy approach: the need to find appropriate third-party actors to facilitate progress on the lingering disputes. For example, just because the Pope was respected by both Argentina and Chile does not mean that other MD claimants would willingly accept the Holy See as an objective facilitator – particularly given the Vatican's complicated relationship with powerful states (Renzi 1970, Pollard 2005). If policy-makers are to find non-traditional third-party actors to participate in MD resolution, they will have to carefully analyze the claimant states and the related factors in order to identify appropriate parties. Of note, Switzerland has a long history of pursuing neutrality as policy and thus might be a potential actor for such efforts (Sherman 1918, Ginsburgs 1960, Wildhaber 1970, Vetschera 1985, Ross 1989, Kriesi and Trechsel 2008). Of course, actual neutrality is difficult to prove, and even Geneva has developed special relationships (Mantovani 1999, Keukeleire 2003), so some might not consider it objective or trustworthy. Whether or not claimants to lingering MDs would want Switzerland specifically is less important than the reality

that festering disputes could be directed to alternate third-parties for arbitration, adjudication, or resolution.[88]

Certainly, for some MDs, it could be difficult or impossible to find a third-party that would be considered acceptable to all claimants. This could occur because the claimants exist within such different – or even opposed – parts of the international arena. For example, if China and Taiwan somehow found themselves looking for an objective third-party to facilitate dispute resolution, it is unlikely that Beijing and Taipei could find an entity that hasn't already taken a side in the feuds related to cross-strait diplomacy (as even supposedly objective actors like Switzerland and the International Standards Organization have taken one side or another). So, finding a willing and acceptable actor could prove itself a deal-breaker for some of the lingering disputes. Additionally, claimants could fail to agree on a third-party actor because they simply do not want to lose the dispute. As was analyzed above, with respect to traditional UNCLOS-related resolution mechanisms, some claimants simply prefer the lingering status quo to the potential "loss" that could come from resolution (e.g. Gent and Shannon 2011).

> To some extent, the zero-sum nature of judicial decision, where one party "wins" and the other "loses," causes much of the reluctance of states to entrust their interests to international adjudication. The unpredictability and the substantial loss of control over the ultimate outcome of the dispute discourages the parties concerned from submitting to judicial settlement (Lee 1987, p596).

Since the introduction of an additional third-party mediator does not change the ultimate zero-sum nature of Type 2 or Type 3 disputes, some MD claimants would likely reject these alternate avenues just as they rejected the traditional mechanisms of maritime dispute resolution (e.g., the PCA). Thus, whether the claimants lack a collectively-trusted third-party (that could serve as an

[88] Depending on the diplomatic commitments of the various claimants, some MDs might be officially required to be directed to UNCLOS, but legal mechanisms exist to redirect such obligations or otherwise manage them.

arbiter) or just remain opposed to any existing arbitration (and the risk of total loss that such resolution promises), this policy-option will not fit all lingering MDs.

Notably, for the SCS, there is not an obvious candidate. For example, despite Singapore's recent agreements with ITCLOS, the recently-renewed Sino-Singaporean defense pact makes it unlikely that states competing with China would see a tribunal in the city-state as an objective venue. Although there might be states that the SCS claimants would all distrust, it would be difficult to predict whether or not the states would distrust them equally or if the states could be trusted to act responsibility; an example of such a potentially poor actor would be Russia. Accordingly, this project cannot recommend a specific state or venue. Even if it could, there is evidence that Beijing might reject such an option in the same way it claims to perceive UNCLOS mediation as contrary to previous agreements. As such, this does not seem like a good approach for the disputes of the SCS.

Resetting UNCLOS:

Beyond the existing UNCLOS framework and the previously tried tools of JDP and alternate arbitration venues, there is another option for facilitating the resolution of MDs; this project argues that a unique option be tried: resetting UNCLOS to change the options. Specifically, policy-makers could work to revisit parts of UNCLOS in order to change the zero-sum options of the current maritime dynamic. Notably, this policy option has broad applicability and could be implemented to resolve a number of lingering MDs, but might take longer to produce results than the other two options; accordingly, the other options were prioritized for individual disputes and this policy option is recommended for addressing a large number of the lingering Type 2 and Type 3 disputes.

To provide historical context, it should be noted that only recent revisions to maritime law and updated version of UNCLOS endowed small islands with EEZs — giving even the tiniest of islands the claim to a 125,600nm^2 EEZ. As explained in Chapter Two, UNCLOS differentiates "islands" from "rocks" but not in a way that allows for strict categorization: as Part XIII of the 1982 revision states, "An island is a naturally formed area of land, surrounded by water, which is above water at high tide… Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf" (UNCLOS 1982). Yet, without making a clear distinction between the two categories, UNCLOS granted the former category almost no economic benefits and the latter category the same economic benefits as a continent – a 200nm EEZ in every direction – giving an island smaller than an acre an EEZ of almost 107 million acres (125,600nm^2). This bifurcation aggravated existing tensions over contested maritime areas and encouraged claimants to build up the various atolls, shoals, rocks, islets, and islands to make sure that they met the criterion for "island." Importantly, UNCLOS leaves no room for compromise: these features, regardless of their status (i.e. island or rock) belong to only one country or another – and contribute to the EEZ of its sovereign at the direct expense of the other claimants. By conferring these islands with huge economic benefits, but not offering clear criteria for what constitutes an "island" – or offering anything other than zero-sum outcomes – one could argue that it was UNCLOS which created these intransigent maritime disputes in the first place. A policy option, then, is to get UNCLOS to undo the damage it has done. This research project argues that policy-makers should work to update UNCLOS in order to undo the damage it has done.

Specifically, this work advocates for three changes to UNCLOS. First, the size of an "island" should be specified as something considerable, like 25 km^2, which is size of the smallest

functioning island community, Saint Barthélemy (Benoist 1964). Only maritime features with this much land above the waterline at high tide should be considered "islands" and granted the 200nm EEZ. The smaller features– the islets, rocks, atolls, shoals, and reefs – should be given neither their own EEZ nor territorial waters.

Second, this clear differentiation of "island" from the other maritime features should use the status of islands as they were the last year that UNCLOS was updated, 1982. This "baseline" of maritime features should use that year for three reasons. First, these proposed revisions to UNCLOS should serve to simply correct previous mistakes and thus reset back to that baseline. Second, establishing a specific year removes concerns over climate change altering the legal status of specific features. Notably, any claimants have attempted to justify land reclamation and even island-building as efforts to stave off the effects of ocean rise – and prevent a repeat of what happened with New Moore Island, when the sea level rose above its low coast. Third, this historic baseline allows for scientists to focus on the maritime features themselves and not the island-building campaigns that have reshaped many of the contested features. For these reasons, a historic baseline should clearly establish which features are (and shall remain) "islands" and which are, for lack of a better bathymetric term, "non-islands."

Third, policy-makers should work to fix a last element of UNCLOS: when the sovereignty of non-islands is contested, these features should default to being treated as protected areas. Specifically, in order to preserve the fragile marine environment (and the potential cultural value, as is addressed below), these contested non-islands should be made World Heritage Sites (WHS) – as administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO).[89] (Examples of WSH in Figures 115 and 116.) Although

[89] For purposes of sovereignty and control, these geographical features should be considered international zones – just like the part of New York City that was ceded to the UN.

Figures 112 and 113: World Heritage Sites 369 (Giant's Causeway, Northern Ireland) and 1152 (Thingvellir National Park, Iceland)


* Author's photograph (2014)

Post-Westphalian governance leaves little room for keeping the contested features *terra nullius* (as Svalbard remained before the claims to it were), modern international mechanisms provide a range of ways to protect fragile environments, with WHS being the premier worldwide option (Feilden and Jokilehto 1993; Smith 2002; Hall 2006; Gilmore, Carson, and Ascenção 2007; Subade 2007; Makino, Matsuda, and Sakurai 2009).[90] Importantly, making low-lying maritime features into WHS has been successful at facilitating conservation efforts – as the track records for places like Aldabra Atol, Malpelo island, and the Galápagos Islands reflect (Graham 1975; Swingland and Coe 1979; Lubin 1984; Mortimer et al. 2011; Bessudo et al. 2014). In the event that such a status for a non-island is unsatisfactory to one or more nation-states, their respective government(s) could petition to ITCLOS for a change of sovereignty.[91]

[90] Notably, various nation-states have employed different mechanisms for preserving such maritime features; an example of one in the United States is the Papahānaumokuākea Marine National Monument (previously known as the Northwestern Hawaiian Islands Marine National Monument).

[91] Should a nation-state win rights to the contested feature in ITCLOS, the maritime feature could be administratively removed from the list of WHS; there is precedent for sites loosing their status as WHS (UN 2007).

Similarly, this UNCLOS reset should protect international waters from fishing and other resource extraction.[92] Scientists and scholars have long advocated for such a policy (Faith 1996, Bernard 2012, McAdams 2015); policy-makers have finally recognized the need to act:

> The high seas—the vast roiling ocean that reaches beyond a coastal states' 320-kilometer exclusive economic zone, or EEZ—is Earth's largest biosphere. It represents about 58 percent of our planet's oceans and is mostly unexplored, exhaustively exploited and in rapid decline. That's why there was cause for celebration a few weeks ago when, after a decade of hair-pulling discussions, national representatives at the United Nations finally agreed that the high seas need protection… And it's also about time, based on the findings of the Census of Marine Life, a decadelong survey of the global oceans, which estimated that 90 percent of large predatory fishes, such as tuna, billfish and swordfish, have disappeared from the seas (Boyd 2015).

While these pledges of interest are quite different from a new agreement, they reflect the willingness to recognize previous stances on admiralty law as incomplete, incorrect, or out-of-date. The recognition of the existing fallacies and the pressing need to address them supports the arguments that these changes should happen *and* that they could happen.

Figures 117 and 118 reflect the current UNCLOS options and the alternate strategic choices that claimants would have in an UNCLOS reset, respectively. Similarly, Figures 119 through 121 illustrate the outcomes – both as the status quo has them for island and water delimitation disputes and how Type 3 disputes would work with the proposed UNCLOS reset.

[92] Such a reset should also remove the outdated distinction between archipelagic states and continental ones and clarify the rights that all states have to control passage within their waters and EEZ.

Figure 114: Type Three Disputes Within UNCLOS (i.e. the Status Quo)

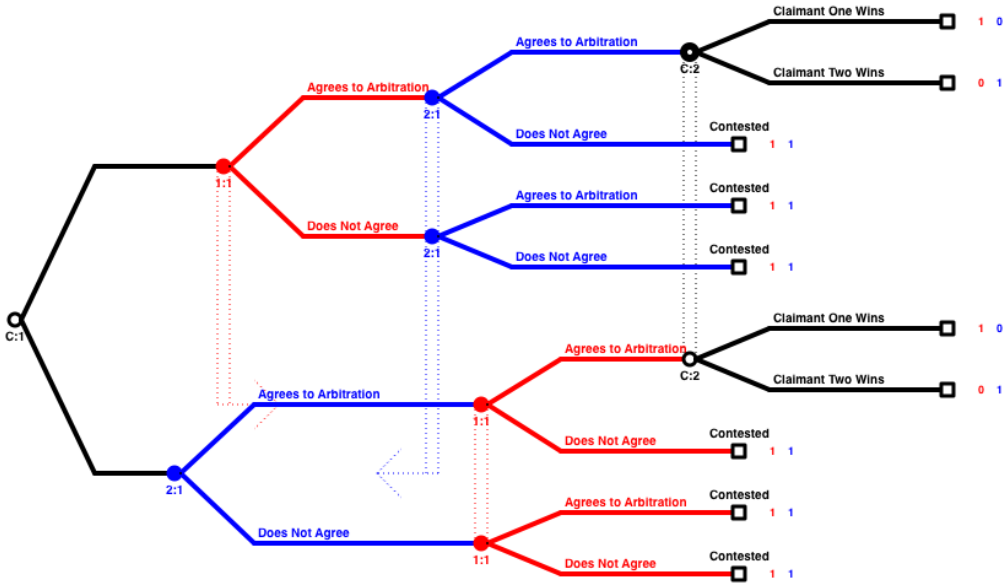


Figure 115: Type Three Disputes After An UNCLOS Reset

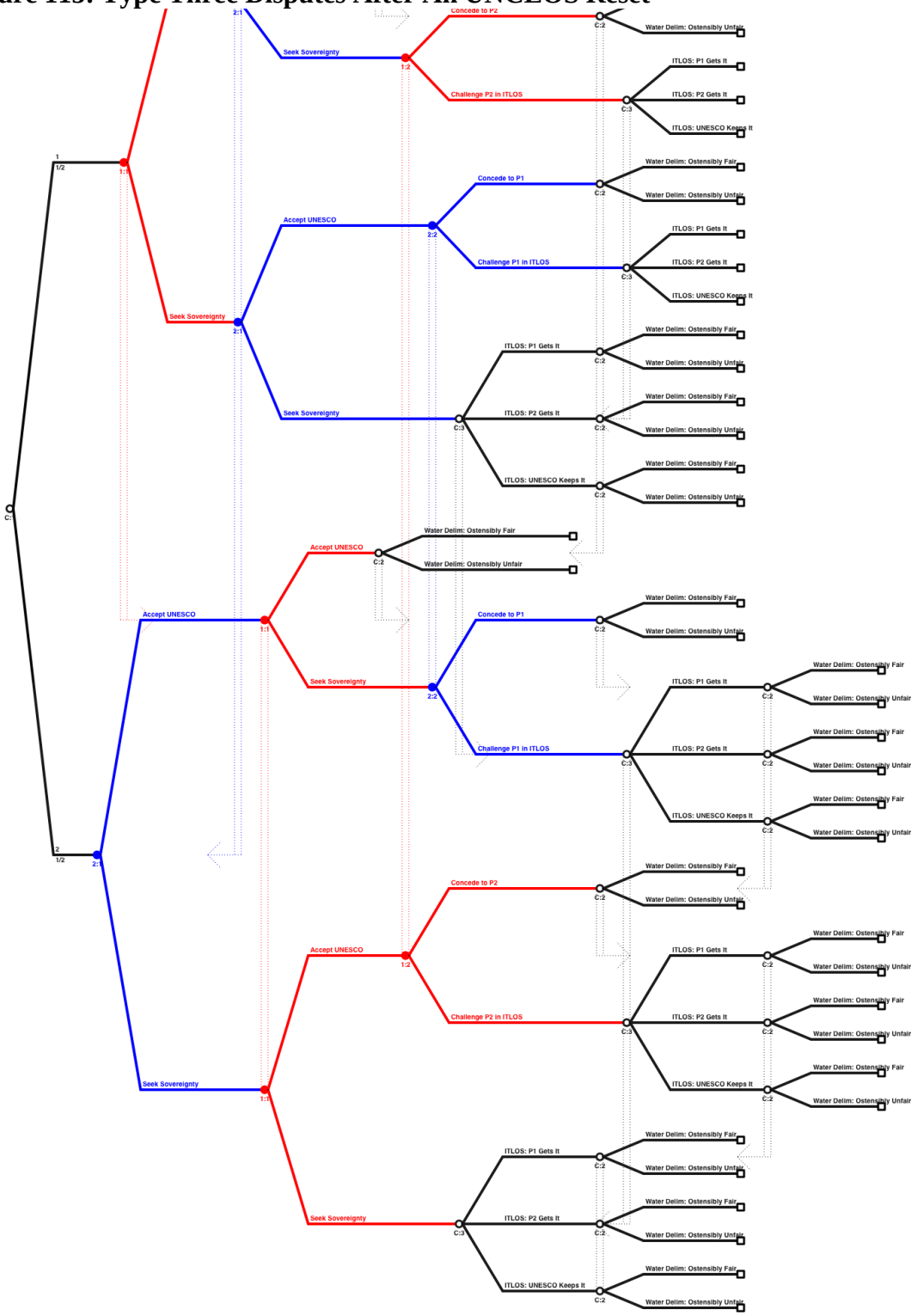


Figure 116-118: Type Three Dispute Outcomes Within UNCLOS (i.e. the Status Quo)

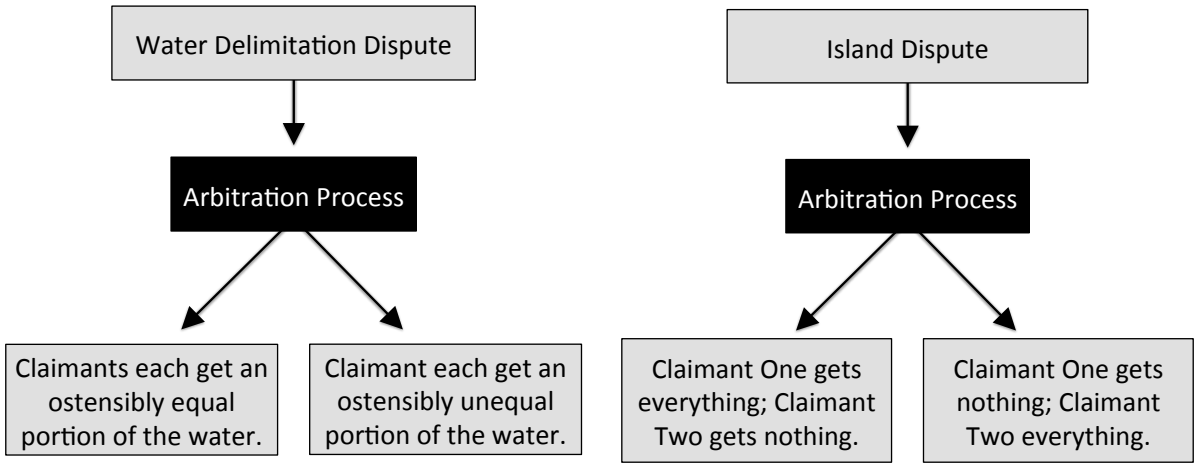
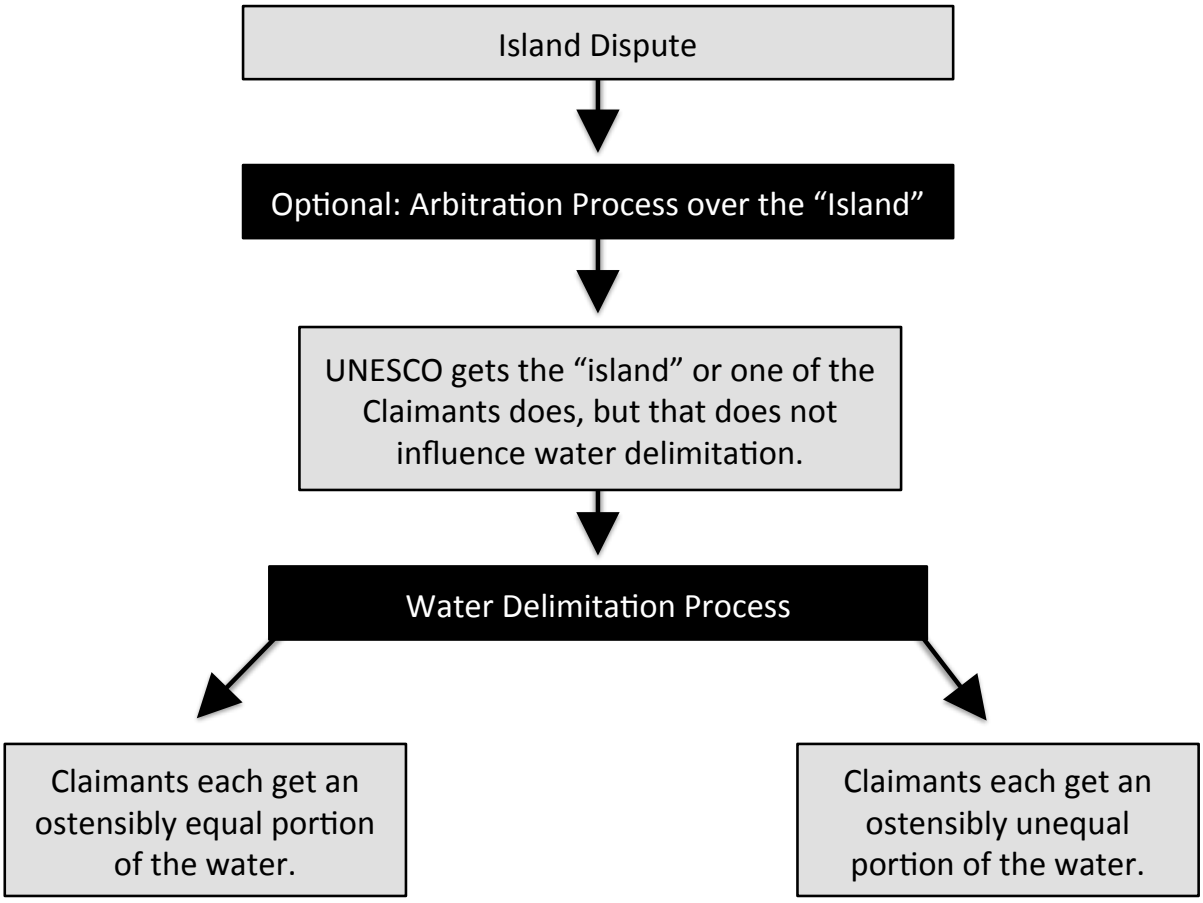


Figure 119: Type Three Dispute Outcomes After An UNCLOS Reset



This change in the default status of contested maritime features – in combination with the other two changes – produces three different benefits. First, this proposed policy approach

protects the contested maritime environments, many of which are being overfished and otherwise damaged by claimants' efforts to demonstrate sovereignty (e.g., by building facilities on the low-lying features). As WHS, there could not be any drilling, fishing, or military activity -- begging the process of allowing these areas' ecologies to recover.[93] Notably, this ecological preservation would also protect any of the claimed cultural or historical importance; this matters for the lingering MDs in which one or both claimants assert a cultural connection to the maritime area: if no one can build or otherwise modify the contested area until (or unless) ITCLOS allows it, there is no motivation for the various claimants to compete with each other to deploy military forces, fishermen, or others to the fragile ecosystems in question. Yet, WHS still allow for scientists and (properly managed) tourists to visit.[94]

Second, this policy approach (i.e. the proposed UNCLOS reset) would provide for an alternate outcome. The current zero-sum framework, in which island sovereignty is only awarded to one nation-state or another, denies the opportunity for compromise. The transition of lingering MDs into WHS would give claimants a way to avoid the political cost of "losing" the dispute. Since the symbolic importance of these islands has proven so salient, as detailed in Chapters One and Two, it would be an important policy development to be able to give states a way to for both to claim victory. For example, in the dispute over Hans Island, neither Copenhagen nor Ottawa would have to "lose;" they could agree that the island should be a WHS and let UNESCO administer it for both of their benefit. Importantly, this proposed arrangement means – for the Hans Island example and for the additional set of lingering MDs – that neither side is burdened with the potentially difficult process of administering the previously contested

[93] If these WHS were within the EEZ of a neighboring country, of course, then the respective nation-state would be allowed to extract resources from the areas around the WHS.
[94] Notably, no place has environmentally suffered from being made a WHS and many of them have actually made money from the sustainable tourism (e.g., Drost 1994).

areas. As the case of Svalbard illustrates, being responsible for such an area can cause problems. With UNESCO administering a protected WHS, the governments of the claimant states are able to deliver a victory to their domestic audiences: they have preserved the symbolic value of the island(s), they have preserved their access to the place, and they have avoided the hassle of being encumbered with the management of a sensitive site. This third potential outcome thus facilitates a near-term domestic "win" while saving the claimant from the medium- and long-term costs associated with what a "traditional" win would be.

Third, this UNCLOS reset would change the power dynamic for lingering dispute. For context, the existing framework encourages and enables bad behaviors. Specifically, it legitimizes the use of force (e.g., the strength of Beijing's claim to the Paracels comes at least in part from the fact that China controls them, but Beijing only controlled them after using force to seize them from Vietnam in the 1970s). Also, the current system functionally benefits strong claimants at the expense of their weaker neighbors: UNCLOS values the claims of states that have the ability to project power into the contested maritime area -- which has utility in terms of demonstrating the capability to manage the area over which the claimants seek to have sovereignty – but which disadvantages poorer states and incentivizes developing states to prioritize their military budget at the expense of items that can sorely afford the lost funds (e.g., Hanoi's recent purchase of submarines in order to try to protect their claims to what they call the East Sea). Additionally, the current system, incentivizes the occupation of non-islands with promises of EEZ proceeds – encouraging both nation-states and domestic actors (of uncertain allegiance) to go to these distant non-islands for symbolic purposes like flag raising and light-house construction; while these actions, in another place and time, might be innocuous, they are escalatory within this context. Such instances have brought in the claimants' navies and coast

goards – increasing tension and sometimes directly catalyzing small skirmishes. Moreover, by only addressing disputes in which all claimants seek mediation, UNCLOS effectively denies weaker states legal recourse; for example, the Philippines has attempted to gain legal assistance against China's actions in what some call the West Philippine Sea, but Beijing has simply declined to show up in court – muting Manila and marginalizing its concerns. While UNCLOS has thus allowed for a large number of maritime disputes to get resolved, it has created a terrible power dynamic for lingering disputes.

Resetting UNCLOS would undo these unhelpful pressures. Making disputes maritime areas into WHS would make it illegal for claimants to try to seize the territories – removing (some) incentives for claimants to commit resources to either offensive or defense naval capabilities; similarly, this change would remove the physical flashpoints on and around which fishermen, protestors, militaries, and para-militaries have been battling. By placing the burden of proof on claimants, this system would require that nation-states litigate their disputes in transparent courtrooms. While such litigious measures are likely to make some claimants unhappy, they will discourage the use of force and ultimately make regions with lingering MDs more stable.

Importantly, even if UNCLOS could not be modified to incorporate all of these changes, the effort at getting some of them – particularly the creation of turning contested maritime features directly into WHS – would likely facilitate changes in some of the lingering disputes. For example, neither Eritrea nor Djibouti actively seek to occupy the Doumeira Islands, but neither of them want the other to have the disputed features; there would likely be strong interest in making them a protected maritime area where neither claimant can deploy military forces, but to which they are both guaranteed access for scientific research, tourism, et cetera. Separately,

there might be diplomatic utility in the introduction of such alternative approaches to lingering disputes: a specific example of this is offered in Chapter Eight.

In summary, relatively recent revision to UNCLOS have set maritime neighbors on a collision course over hydrocarbons, fish, and cultural history; now that certain nation-states have the economic and technical capabilities, they are destroying contested maritime features in order to protect themselves from the losses that UNCLOS created. Policy-makers concerned about lingering maritime disputes should focus on revising the laws that established this politically unstable and environmentally destructive arrangement.

To clarify, this reset includes the creation of a bright-line distinction between islands and all other maritime features – with the former being larger than 25 km^2 as of 1982. Islands would get traditional 12nm territorial waters and 200nm EEZs, but non-islands would get neither; instead, non-islands would be automatically classified as maritime protected areas, specifically as World Heritage Sites. The changes would ban claimants from occupying, modifying, or deploying military forces to contested areas; instead, the burden of proof falls on claimants, who must justify to ITCLOS why these fragile marine environments should be exploited. Additionally, the reset would ban fishing and drilling outside of EEZs.

For the SCS, these changes would be dramatic. None of the contested maritime features are large enough to be islands; instead, they are all non-islands and would become protected areas. In the nearer term, this would mean that the claimants could no longer maintain their symbolic outposts in Paracels and Spratly Islands. In the longer term, this would mean that the SCS claimants could no longer attempt to justify massive extensions to their EEZs – with China, for example, no longer able to legally leap-frog from Hainan all the way across the SCS via the Paracels and the Spratly Islands. Arguably, it is the lily-pad utilization of these contested shoals

and reefs that has always been problematic (Cai, 2009, Schofield 2014); correcting that issue would do much to stabilize the SCS, Southeast Asia, and East Asia.

Instead of claimants getting EEZs that stretch across the SCS, the SCS would get an Arctic-style "doughnut hole" in the middle – allowing for the depleted fisheries to begin their recovery. Notably, much of the suspected hydrocarbons are actually located around the perimeter of the SCS and thus the claimants would still be largely free to address pursue the same policies on energy security.

Although this reset does not address the debate over the continental shelf versus the straight 200nm baseline, that would remain the only unresolved element of the SCS. Reducing the vast and overlapping SCS MDs into a single analysis of bathymetry (as the current approach to that continental shelf does) seems like a large improvement – particularly since many claim the existing set of SCS MDs is just "far too complicated to be settled legally through international courts" (Gong 2011, p127). Accordingly, many argue that any effort that could be undertaken to simplify the SCS legalities would be a welcome development, as the current "complexities of the problem" make the "prospects for a legal settlement to the sovereignty dispute" of the SCS "exceedingly slim" (Storey 2011, p152). Thus, while the proposed UNCLOS reset would not solve all MDs in the SCS, it would solve most of them *and* leave only a dispute that is easily solved with existing mechanisms and resources.

Separate from the legal problems of the SCS, this proposed legal reset would also prove incredibly important for the vast areas of marine ecosystem currently being brutalized. This policy change would allow for fish stocks to replenish, allow corral to regrow, and empower UNESCO to begin responsible conservation projects where they are sorely needed.

Given these factors and considerations, an UNCLOS reset would seem to be an excellent way to help resolve lingering MDs. This begs important questions about the process of getting such a reset, of course. While there are a number of legal and diplomatic mechanisms available for resetting UNCLOS, the real concern is not as to exactly which method policy-makers should pursue and instead how key nation-states might perceive such an effort.

It is possible that several of the claimants would welcome such a development as a way out of the deadlocked but escalating set of maritime disputes – including Brunei, Malaysia, and Taiwan. While Vietnam and the Philippines might not prefer smaller EEZs (than they currently envision getting, which prospect theory makes clear is how these things are evaluated), they might find such a scenario preferable to one in which China keeps building military bases across all the reefs, kills off the remaining fisheries, and gets legal cover to keep drilling for hydrocarbons inside the 200nm EEZs from their shores.

It is China that would likely resist any such changes to UNCLOS. Given the vast resources that Beijing has committed to the MDs of the SCS, anything but complete victory would likely be seen as failure. Yet, it is possible that China might recognize a scenario in which it does not "lose" any territory to a competitor – instead allowing for conservation – is a scenario that it can sell to its population.

Of course, even if China were adamantly opposed to these kinds of changes, it is likely that most states would not be. The only nation-states that could be immediately find frustration with the effort are those that engage in commercial fishing in international waters – the largest participants in that industry are Japan, South Korea, and Taiwan. While it is possible that these states would oppose changes to UNCLOS, they might also consider the lost income from the fishing a small price to pay for resolving MDs in their region, and of which they are claimants.

Given Simmons' work on the costs of MDs, such costs might be offset by the other gains, but exact estimations of states' return on investment (in dispute resolution) is less significant than the larger political pattern: these states might still support UNCLOS changes as a way of addressing regional security concerns.

Moreover, those fishing nation-states, and others, might support such an UNCLOS reset just as a way to check China's behavior. Although Beijing might see the proposed UNCLOS reset as a face-saving way out of costly and intractable problems of territory (the most sensitive issue in modern China), it might see the proposed changes to modern maritime law as an affront. Given the difficult relationships that Beijing has with many of its neighbors – and many other nation-states that care about environmental concerns – resetting UNCLOS might get support simply because it spites China.

Separate from the larger issue of whether or not UNCLOS gets reset, the ideas that motivated that policy proposal could still be applied to the disputes of the SCS – as mentioned in Chapter Five – if all of the claimants are willing to accept those goals and a mechanism for reaching them. So, even if an overall effort to fix UNCLOS were stopped, the claimants of the SCS could still ostensibly agree to the creation of a maritime protected area. As Schofield observed, it is the environment that matters for the long term:

> While there continues to be a strong perception that the South China Sea is host to substantial seabed energy resources, it is suggested that, even should substantial oil and gas reserves exist, they are unlikely to solve escalating regional energy security concerns. Arguably of more urgent importance is ensuring the protection of the South China Sea's marine environment with a view to ensuring the sustainability of the South China Sea's fish stocks upon which millions depend for their primary protein needs (2013, p46)

Instead of continuing to build artificial islands (at the expense of entire marine ecosystems), this proposed policy approach gives Beijing a way of *not losing* territory while preserving China's

access to resources for the long term. Moreover, this proposed policy approach accomplishes this through diplomatic and legal efforts, not military ones. This approach thus offers the opportunity of resolution to a lingering dangerous dispute – in a way that protects the environment and jeopardizes no human lives.

This project closes with a recommendation that policy-makers consider resetting UNCLOS to correct for the environmentally destructive and politically dangerous ways that it places claimants on a crash course for island sovereignty. This dissertation found that disputes with islands are more likely to linger than get resolved; this proposed policy approach functionally reduces the number of disputed "islands." This project also found that disputes with resources are more likely to linger than get resolved; this proposed policy approach functionally reduces the number of disputes that include resources. This project additionally found that disputes are more likely to linger when the claimants lack a mechanism for transitioning a contested maritime area into a resolved one; this proposed policy approach functionally ends that problem entirely – by channeling all would-be claimants through the same process (that values and rewards responsible nation-state behavior, not destructive and destabilizing behavior). In seeking to explain why some maritime disputes linger while others get resolved, this project thus offers a stylized answer and a policy approach to resolution that preserves the maritime environment while empowering international law.

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Dispute Name	Dispute's End Year	Year	Dispute Year	Dispute Type			*Tangible Value*		Political F
				Type 1	Type 2	Type 3	Hydrocarbons	Fisheries	Democratic
Aegean Sea & Imia/Kardak		1946	11946	1	0	0	0	0	1
Arctic Ocean		1946	21946	1	0	0	1	0	1
Bajo Nuevo Bank		1946	31946	0	0	1	0	0	0
Banc du Geyse		1946	41946	0	1	0	1	0	1
Barents Dispute	2010	1946	51946	1	0	0	1	1	1
Bay of Bengal	2012	1946	61946	1	0	0	0	0	1
Beagle Island	1984	1946	71946	0	1	0	0	0	0
Beaufort Sea		1946	81946	1	0	0	0	1	1
Belize and its Cays		1946	91946	0	1	0	0	0	0
Caribbean Sea Delimitation	2006	1946	101946	1	0	0	0	1	1
Chagos Archipelago		1946	111946	0	0	1	0	1	1
Chilean-Peruvian Delimitation	2014	1946	121946	1	0	0	0	0	0
Dixon Entrance		1946	151946	1	0	0	0	1	1
Doumeira Islands		1946	161946	0	1	0	0	0	1
Europa Island (Île Europa)		1946	171946	0	1	0	0	0	1
Gageo Reef		1946	201946	0	0	1	0	1	0
Guinea-Bissau & Senegal Seas	1990	1946	221946	1	0	0	0	0	1
Gulf of Fonseco & Conejo Island	1986	1946	231946	1	0	0	0	0	0
Gulf of Guinea	2002	1946	241946	1	0	0	1	1	1
Gulf of Maine	1984	1946	251946	1	0	0	0	1	1
Gulf of Piran	2011	1946	261946	1	0	0	0	0	1
Gulf of Sidra	1985	1946	271946	1	0	0	0	1	1
Hanish Islands & Zuqar	1999	1946	281946	0	1	0	0	0	1
Hans Island		1946	291946	0	1	0	0	0	1
Hawar Islands	2001	1946	301946	0	1	0	0	0	1
Iceland's Southeastern Waters	1972	1946	311946	1	0	0	0	1	1
Icelandic Waters	1972	1946	321946	1	0	0	0	1	1
Isla Aves		1946	341946	0	0	1	0	0	0
Jan Mayen Waters	1993	1946	371946	1	0	0	1	1	1
Ko Kra Islands		1946	381946	0	1	0	0	0	0
Ko Losin		1946	391946	0	1	0	0	0	0
Koh Wai		1946	401946	0	1	0	0	0	0
Kuril Islands		1946	411946	0	1	0	0	0	1
Liancourt Rocks		1946	431946	0	0	1	0	1	1
Ligitan & Sipadan	2002	1946	441946	0	1	0	0	0	0
Macclesfield Bank		1946	451946	0	0	1	1	1	0
Machias Seal Island		1946	461946	0	1	0	0	0	1
Matsu Islands		1946	471946	0	1	0	0	0	0
Miangas Island (Palmas)	2005	1946	481946	0	1	0	0	1	1

Minquiers Islands & Ecrehos	1953	1946	491946	0	1	0	0	1	1
Navassa Island		1946	501946	0	0	1	0	0	0
New Moore / South Talpatti	2014	1946	511946	0	1	0	0	0	1
North Sea Continental Shelf	1969	1946	531946	1	0	0	0	1	1
Northwest Passage		1946	541946	1	0	0	0	0	1
Norwegian Waters	1951	1946	551946	1	0	0	1	1	1
Okinotori Islands		1946	561946	0	0	1	0	1	0
Paracel Islands		1946	571946	0	0	1	1	1	0
Pratas Islands		1946	581946	0	0	1	1	1	0
Quemoy		1946	591946	0	1	0	0	0	0
Rockall	2014	1946	601946	0	0	1	1	1	1
Savanna, Bobel, Port Royal & South Cay	2007	1946	611946	0	1	0	1	1	0
Scarborough Shoal		1946	621946	0	0	1	1	1	0
Senkaku Islands		1946	631946	0	0	1	1	1	0
Serrana Bank	1981	1946	641946	0	0	1	0	1	0
Serranilla Bank	2012	1946	651946	0	0	1	0	1	0
Snake Island	2009	1946	661946	0	1	0	0	0	0
Socotra Rock		1946	671946	0	0	1	0	1	0
South Georgia & South Sandwich Islands		1946	681946	0	0	1	0	1	0
South Shetland Islands		1946	691946	0	0	1	0	1	0
Spratly Islands		1946	701946	0	0	1	1	1	0
Strait of Juan de Fuca		1946	711946	1	0	0	0	1	1
Svalbard EEZ		1946	731946	1	0	0	1	1	1
Swains Island	1981	1946	741946	0	0	1	0	0	1
Tunbs Islands		1946	751946	0	1	0	0	0	0
Tuzla Island		1946	761946	0	1	0	0	0	1
West Philippine Sea Delim		1946	781946	1	0	0	1	1	0
Yellow Sea (NLL)		1946	791946	1	0	0	0	1	1

Regimes: All Claimants Are		Aligned Domestic Strength		Year-to-year Tracker of Dispute Status		
Autocratic	Anocratic	ADS	Prolonged ADS	0 = inactive; 1 contested; 2 resolved	1 contested; 0 resolved	Inactive
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	1	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	0		1
0	0	1	0	0		1
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0	0	1	0	1	1	0
0	0	1	0	1	1	0
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0	0	1	0	1	1	0
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0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	0		1
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	1	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	1	1	0

0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	0		1
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0	0	1	0	1	1	0
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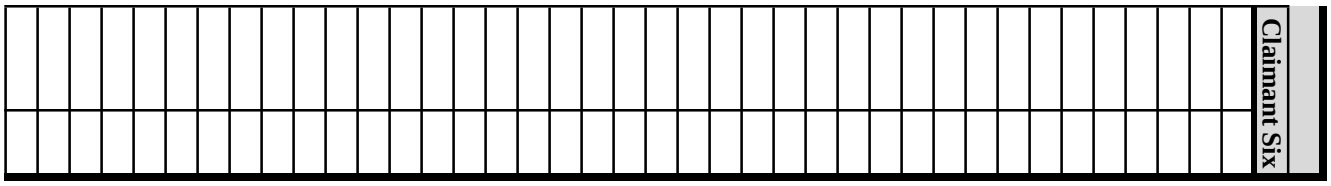
0	0	1	0	1	1	0
0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	0		1
0	0	1	0	1	1	0
0	0	1	0	0		1
0	0	1	0	0		1
0	1	1	0	1	1	0
0	0	1	0	1	1	0

Status in 2014		Claimants and Their Country Codes									
Never Resolved	Ultimately Resolved	Claimant One		Claimant Two		Claimant Three		Claimant Four		Claimant Five	
1	0	Greece	350	Turkey	640						
1	0	Canada	20	Denmark	390	Norway	385	Russia	365	US	2
0	0	Colombia	100	Jamaica	51	Nicaragua	93	US	2		
0	0	France	220	Comoros	581	Madagascar	580				
0	1	Norway	385	Russia	365						
0	1	Bangladesh	771	Myanmar	775						
0	1	Chile	155	Argentina	160						
0	0	Canada	20	US	2						
0	0	Belize	80	Guatemala	90	Honduras	91				
0	1	Barbados	53	Trinidad and Tobago	52						
1	0	Mauritius	590	UK	200						
0	1	Peru	135	Chile	155						
0	0	Canada	20	US	2						
0	0	Djibouti	522	Eritrea	531						
0	0	Madagascar	580	France	220						
1	0	China	710	South Korea	732						
0	1	Guinea-Bissau	404	Senegal	433						
0	1	El Salvador	92	Honduras	91						
0	1	Cameroon	471	Nigeria	475						
0	1	Canada	20	US	2						
0	1	Croatia	344	Slovenia	349						
0	1	Libya	620	Tunisia	616	Malta	338				
0	1	Yemen	679	Eritrea	531						
1	0	Canada	20	Denmark	390						
0	1	Qatar	694	Bahrain	692						
0	1	UK	200	Iceland	395						
0	1	Germany	255	Iceland	395						
0	0	Venezuela	101	Dominica	54						
0	1	Denmark	390	Norway	385						
0	0	Malaysia	820	Thailand	800						
0	0	Malaysia	820	Thailand	800						
0	0	Cambodia	811	Thailand	800	Vietnam	816				
1	0	Japan	740	Russia	365						
1	0	South Korea	732	Japan	740						
0	1	Indonesia	850	Malaysia	820						
1	0	China	710	Philippines	840						
0	0	US	2	Canada	20						
1	0	China	710	Taiwan	713						
0	1	US	2	Netherlands	210						

0	1	France	220	UK	200						
0	0	Haiti	41	US	2						
0	1	Bangladesh	771	India	750						
0	1	Germany	255	Denmark	390	Netherlands	210				
0	0	Canada	20	US	2						
0	1	Norway	385	UK	200						
1	0	China	710	Japan	740						
1	0	China	710	Vietnam	816						
1	0	China	710	Taiwan	713						
1	0	China	710	Taiwan	713						
0	1	Denmark	390	Iceland	395	Ireland	205	UK	200		
0	1	Honduras	91	Nicaragua	93	El Salvador	92				
1	0	China	710	Philippines	840						
1	0	China	710	Japan	740						
0	1	Colombia	100	US	2						
0	1	Colombia	100	Honduras	91	Nicaragua	93	US	2		
0	1	Romania	360	Ukraine	369						
1	0	China	710	South Korea	732						
1	0	Argentina	160	UK	200						
1	0	Argentina	160	Chile	155	UK	200				
1	0	Brunei	835	China	710	Malaysia	820	Philippines	840	Vietnam	816
0	0	Canada	20	US	2						
0	0	Norway	385	Russia	365	Sweden	380	UK	200	US	2
0	1	New Zealand	920	US	2						
0	0	Iran	630	UAE	696						
0	0	Ukraine	369	Russia	365						
1	0	China	710	Philippines	840						
1	0	North Korea	731	South Korea	732						


Claimant Six

						Taiwan																				
						713																				