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Disputed Vietnamese Territories in the South China Sea: Structure, Physical-Geographical Characteristics, Management of Areas and Development

Non-Compliance of Judgments and the Inherent Jurisdiction of the ICJ

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Editor's Comments

Dear *JTMS* Readers,

We are pleased to present this issue of *JTMS* with a number of interesting and fresh offerings to start 2020 off on the right foot. This past year has seen a number of hot spots flare up such as the tensions between Pakistan and India over Kashmir and the usual South China Sea tensions. In this issue, we bring readers articles dealing with Indian territorial claims, Vietnam's South China Sea claims, a historical case of the DPRK fiercely defending its maritime sovereignty and more. The details of this issue are as follows.

First, Sarah Fisher and Florian Justwan examine the foreign policy views of Indians regarding Arunachal Pradesh. Using the results of an original face-to-face survey of Indian respondents, they test whether two foreign policy orientations, militant internationalism and cooperative internationalism, influence public opinion toward the Sino-Indian dispute over Arunachal Pradesh. They find that foreign policy orientations are somewhat generalizable to an Indian context and that these orientations impact individuals' support for compromise in border disputes, a critical issue since uncompromising individuals have the potential to motivate governments to pursue hardline policies

Then, Chunjuan Nancy Wei and Mai Frndjibachian investigate four interrelated but poorly understood questions: (1) How many features does Vietnam physically occupy in the Spratly Islands? (2) How does Vietnam administer these features? (3) What are Vietnam's historical, and geopolitical motivations in further reclaiming Spratly's Islands? (4) What are the challenges Vietnam faces in reclaiming said islands? They find that Vietnam is a crucial player in the South China Sea, and its activities influence other players' actions. This paper offers clarification of Vietnam's holdings in the contested water as well as its strategic stance.

Next, Edgardo Sobenes Obregon reviews the existence of an inherent jurisdiction of the International Court of Justice to settle disputes arising from the non-compliance of its judgments, which emanates from its identity as a judicial organ and the necessity to ensure the fulfillment of its judicial function. He also reflects on the inherent jurisdiction of the Court in regard to non-compliance with provisional measures and its similarities to non-compliance with judgments on the merits of a case; as well as the difference between the power conferred to the Security Council in regard to the enforceability of the judgments from the Court and those of the Court from its inherent jurisdiction in matters concerning to non-compliance of its

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own judgments. He then concludes by inviting the reader to revive and to engage in further discussion on this issue.

Benjamin R. Young uses former Eastern bloc archival documents and North Korean periodicals in conjunction with a multi-causal theoretical framework from an ancient Greek historian, Thucydides, in order to analyze the importance of fear, honor, and interest within North Korea's regime and society. He argues the North Korean regime's fear of South Korea's imminent economic supremacy and rising Japanese militarism along with defending the honor of Kim Il Sung and the DPRK's territorial boundaries and advancing the interests of the global revolutionary movement factored greatly into Pyongyang's decision-making process in 1968 when the *Pueblo* Crisis unfolded. Young argues, that in this context, the DPRK took a number of concerns into account and acted rationally in their capture of the *Pueblo*.

Finally, Vincent P. Cogliati-Bantz attempts to assess proposals to "freeze" the maritime entitlement of coastal States in the face of sea-level rise by placing it in the context of climate change in the Anthropocene and briefly looking at the international community's responses, identifying the particular concerns of small island developing States. He then examines the current law of the sea on baselines and maritime zones, and responses within the law to mitigate the impact of sea-level rise. He proceeds to examine some solutions recommended in academic circles, as well as official calls within international bodies, to fix the outer limits of maritime zones to ensure they remain unaffected by sea-level rise, arguing that several crucial aspects of such solutions are left undetermined and that thorough, balanced and carefully designed solutions are needed.

We would like to thank our editorial board, our authors, our peer reviewers and you, our readers, for continued support of the journal. We look forward to bringing you even more great research and the ongoing improvement of *JTMS*.

Ajin Choi
Editor

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Surveying Indians' Foreign Policy Orientations in Territorial Disputes: A Case Study

Sarah Fisher and *Florian Justwan*

Structured Abstract

Article Type: Research Paper

Purpose: This project tested whether two foreign policy orientations, militant internationalism and cooperative internationalism, influence public opinion toward the Sino-Indian dispute over Arunachal Pradesh.

Design, Methodology, Approach—This article presents results from an original face-to-face survey (N = 1,048) in which Indian respondents were asked a series of questions about a territorial dispute.

Findings: Our findings suggest that (1) foreign policy orientations are somewhat generalizable to an Indian context and (2) these orientations impact individuals' support for compromise in border disputes.

Practical Implications—This article presents the results of an original face-to-face survey in India with useful findings for both policymakers and academics. Foreign policy attitudes regarding border disputes are a critical issue since uncompromising individuals have the potential to motivate governments to pursue hardline policies.

Originality, Value—While international relations theory often claims generalizability, few studies have focused on mass foreign policy orientations outside of Western Europe and North America. Moreover, the conflict management literature

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has only recently begun examining individual level determinants of attitudes toward territorial disputes. This article tests theoretical assumptions about attitudes toward border disputes at the individual level of analysis and in a non–Western context.

Keywords: foreign policy orientations, India,
original survey, territorial disputes

I. Introduction

This article presents results from a face-to-face survey (n=1,048[1]) in which Indian respondents were asked a series of questions about a territorial dispute. The goal for this project was to test whether foreign policy orientations, militant internationalism (MI) and cooperative internationalism (CI), influence individuals' opinions toward the Sino-Indian dispute over Arunachal Pradesh. There are many factors that influence attitudes toward territorial conflict, and this article examines whether foreign policy orientations influence attitudes toward compromise in territorial disputes. At their core, foreign policy orientations capture how individuals view the primacy of the use of force and the likelihood of cooperation in world affairs. Building on previous work on foreign policy orientations,[2] this paper argues that an individual's general foreign policy orientation impacts specific policy preferences in territorial disputes. The authors find those ranking high on militant internationalism are more likely to support hardline policies and disapprove of compromise solutions. By contrast, Indian citizens with a general penchant for cooperation were more likely to support peaceful conflict management proposals in the case of Arunachal Pradesh.

This project combines previous work on foreign policy orientations, based almost exclusively in the U.S. and Western Europe, and research on policy preferences about territorial disputes. International relations scholars have shown that ordinary citizens have a coherent belief structure that impacts their opinions on foreign policy issues. In particular, previous research has identified militant internationalism, cooperative internationalism, and isolationism as three foreign policy orientations that influence policy preferences with regard to specific issues.[3]

Despite theoretical and conceptual advances, researchers still do not know if and how these basic orientations influence public opinion with regard to territorial disputes. This is a shortcoming for two important reasons. *First*, the field still knows little about the general factors that shape individual level policy preferences in border disputes. Conflict management has only recently begun to study the determinants of public opinion in this issue area.[4] *Second*, while international relations theory often pays lip service to generalizability, very few studies focus on mass foreign policy orientations outside of Western Europe and North America.[5] This study is one of the first attempts to test theories about foreign policy orientations in an Indian context.

This article contributes to the field in several ways. First, results suggest that militant internationalism and cooperative internationalism impact attitudes toward

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specific policies regarding border disputes. Thus, in order to fully understand conflict management and territorial disputes, one must consider the individual level of analysis. Second, it suggests that these underlying foreign policy orientations can be applied beyond the Western context, and India is a particularly valuable case when examining issues related to conflict management.

II. Territorial Disputes and Foreign Policy Orientations

As leaders in a democracy, foreign policy executives must be conscious of public opinion when creating foreign policy.[6] Various factors influence the settlement of territorial disputes, and previous scholars have found that public opinion is a crucially important determinant for the likelihood of settlement.[7] Most existing studies that focus on societal attitudes in this issue area examine how country- or dispute-level variables such as regime type or issue salience influence aggregate public opinion. For example, conflicts over homeland territories have been found to create relatively hawkish foreign policy preferences.[8] While these studies are valuable, they obscure differences within countries. To date, very few studies examine the individual-level determinants of public opinion about territorial disputes. Tanaka[9] shows that Japanese respondents who live closer to a territorial dispute are more likely to favor concessions than those who live far away from the disputed territory. This finding suggests that citizen-attitudes toward conflict management can be predicted with basic individual-level attributes. Nevertheless, beyond Tanaka's work, the field knows very little about other causes of mass opinions in this realm. This article works to fill that gap by (1) examining intrastate variation and (2) examining how an individual's general outlook on foreign policy influences preferences toward conflict management policies.

One way of studying mass foreign policy attitudes is through examining foreign policy orientations. There is a rich literature on the precise character, number, and labeling of these foreign policy orientations. Detailed discussions of the debates within this subfield are beyond the scope of this paper,[10] but foreign policy orientations lend themselves to the study of territorial disputes. In a similar way as liberals or conservatives in the United States might view domestic policy proposals through an ideological lens, foreign policy orientations provide citizens with "ontological assumptions"[11] about a state's role in the world, the primacy of the use of force, or the level of threat in the international environment. Simply put, a citizen's general foreign policy postures will inform her attitudes toward specific issue areas.[12] These orientations, then, should impact an individual's attitudes toward conflict management proposals in territorial disputes.

There are at least three dimensions through which citizens view foreign policy: militant internationalism (MI), cooperative internationalism (CI), and isolationism.[13] The MI, CI, and isolationist framework highlights several sets of values: internationalism/isolationism and militant/cooperative. Those scoring high on the internation-

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alist orientation see international issues, as opposed to domestic issues, as a primary concern for the state. On the other hand, isolationists think the state should primarily look inward; states should be concerned with what happens within their borders rather than actively seeking out conflict or cooperation with neighbors.

In conjunction with the internationalist/isolationist axis, research suggests that internationalists need to be further divided along militant and cooperative lines. Citizens who score high on MI see security and strength as primary drivers for foreign policy. Militant internationalists view hard power as the primary and the most effective tool in international politics. By contrast, CI correlates with a willingness to strengthen ties with a former enemy or support working with an international organization.[14] Rather than thinking primarily as a citizen of a country for whom traditional national security concerns are paramount, those with CI values identify with and have "concern for all human beings."[15] Likewise, individuals who support a multilateral or cooperative approach are more likely to show concern for the "wider community" in survey questions regarding foreign aid or the global environment.[16]

Studies in the U.S. and elsewhere suggest that these general orientations impact how individuals interpret specific foreign policy issues.[17] For example, these orientations have been applied to examining cooperation in the European Union. Studying German Members of Parliament (MP), Bayram found that cooperative internationalism (what she also calls "multilateralism") correlates with positive attitudes toward European integration whereas militant internationalists and isolationists are more hostile to European integration. The general foreign policy orientations acted as heuristics, allowing MPs to wade through complex issues surrounding cooperation on the continent.[18]

Though these approaches were originally developed in a U.S. Cold War context, studies in Sweden,[19] the United Kingdom, France, and Germany[20] suggest that these viewpoints have some applicability to citizenries outside of the United States. However, with few notable exceptions[21] and one study of Indian elites,[22] these studies are still limited to the U.S. and Western Europe. Applying foreign policy orientations cross-nationally is challenging. For instance, Ganguly et al.'s[23] study applies MI and CI to Indian foreign policy elites with some caveats. For example, Ganguly et al. note that labeling someone "militant," as in militant internationalist, has negative and unintended connotations ("Militant" is exchangeable with "Jihadi"). Even so, their work shows that "attitudes of survey respondents on specific issues are not random but are organized according to more general belief systems."[24] Yet, the field has not yet fully explored foreign policy orientations beyond policymaking elite or in a non–Western context.

Using the most established framework for studying foreign policy orientations, this study argues that foreign policy orientations affect how members of the general public view a border dispute. These broad orientations, MI and CI, serve as a heuristic for individuals weighing the pros and cons for particular policy choices.[25] In particular, MI and CI foreign policy orientations[26] can and should be applied to the study of public opinion in border disputes. We apply this framework to Indian atti-

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tudes toward the border dispute between China and India over Arunachal Pradesh, a territory in Northeast India.

At their core, MI and CI reveal preferences toward the use of force and the likelihood of cooperation, respectively. Border disputes present states with a menu of foreign policy options, such as the application of military force or the granting of territorial concessions. States may choose policies that emphasize compromise, or they can pursue hardline policies toward their international rivals. When confronted with such policy choices, an individual's general foreign policy attitude will influence their degree of support for certain policies. The authors have differing expectations for cooperative internationalist and militant internationalist foreign policy frames.

As noted, cooperative internationalism reflects values of "self-sacrifice and service to others."[27] This framework values solidarity in global affairs, adhering to a logic that through cooperation states can achieve more than through defection. Given these underpinnings, cooperative internationalist values should be particularly important in border disputes. Rather than seeing the world as zero-sum game, cooperative internationalist believe that "cooperation leads to mutual gains."[28] Cooperation in international relations often requires compromise with other states. In border disputes, refusal to entertain proposals that give up any ground (literally and figuratively) stops negotiations before they begin. Willingness to give up a territorial claim in exchange for a peaceful settlement represents some sort of compromise. Those with cooperative internationalist values should be more supportive of these types of policy proposals, thus leading to Hypothesis 1.

Hypothesis 1: Individuals scoring high on cooperative internationalism will be more likely to support policies that involve compromise in exchange for peaceful settlement than individuals scoring low on cooperative internationalism.

Militant internationalist values, by contrast, should correspond with more hawkish, assertive, hardline foreign policy attitudes. People who hold these values believe that "lack of credibility and signs of weakness invite challenges by aggressive foes in a dangerous environment."[29] Individuals with MI values think that a state should have a strong military force, robust defensive capabilities, and be ready to deploy those capabilities if needed. Moreover, these military forces are the primary way to achieve goals in the international arena. Those expressing militant internationalist values will be less supportive of policy proposals that involve compromise. Compromising on border disputes is likely seen as a weakness, an invitation to allow others to trespass on a state's territory. Those who score high on militant internationalist views should approve of hardline policies that refuse any compromise solutions.

Hypothesis 2: Individuals scoring high on militant internationalism will be more likely to support uncompromising policies than respondents who score low on militant internationalism.

In sum, this article expects that MI and CI will predict individual level attitudes about territorial disputes. This leaves the third frame, isolationism. Unlike some

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foreign policy dilemmas, such as a country's stance on free trade or climate change, border disputes in which one's state is a defender forces an isolationist to engage. Thus, the authors have no strong theoretical expectations for isolationism. Measurement of isolationism is discussed in the control section.

III. Case Selection

We chose to focus on the border dispute between India and China over Arunachal Pradesh for three reasons. First, the clearly bilateral nature of the dispute makes it a good candidate to test theories about foreign policy orientations and territorial disputes. Historically, Arunachal Pradesh has been a place of contention between India and China since even before Indian independence or the 1962 Sino-Indian War. Currently, China challenges Indian control over about 32,000 square miles in what is now Northeast India.[30] China continues to regard the Indian state of Arunachal Pradesh as its own territory and claims it as "South Tibet."[31] Not all of India's territorial disputes are as clear cut. For instance, the India-Pakistan-Kashmir dispute involves at least three relatively powerful actors, that of the central government in India, the central government in Pakistan, and the state government of Jammu and Kashmir. Our goal for this project was to explore public opinion about interstate territorial disputes, not to apply foreign policy orientations to what might be viewed as a domestic issue between India and Kashmir. The Arunachal Pradesh dispute presents a cleaner research design to test theories about foreign policy orientations.

Second, for both politicians and ordinary citizens, the dispute over Arunachal Pradesh has become more contentious in recent years.[32] China has recently begun issuing "stapled visas" to residents of Arunachal Pradesh wishing to travel to China. These documents have no legal standing from the Indian government's perspective, but the Chinese government claims that residents of Arunachal Pradesh have no need for a regular, "stamped" Chinese visas. From China's perspective, citizens in Arunachal Pradesh are already living in Chinese territory, thus a visa is redundant.[33] Moreover, in June 2016, reports surfaced that the Peoples Liberation Army went beyond the Line of Actual Control (the de facto border between both countries) in Arunachal Pradesh. China denied these allegations; a Chinese spokesperson said that the "China and India border has not yet been demarcated."[34] China's actions have sparked various protests. In addition to one Indian Member of Parliament saying he would "prefer to take a bullet on the chest"[35] than file for a stapled visa, China's actions have sparked public protests. During one protest in Delhi, university students and other demonstrators from the Arunachal Civil Society group held signs with "Stop Chinese Movement in Arunachal Pradesh" and "Who am I, Indian or Chinese?"[36] These, along with even more recent incursions, suggest that this dispute is salient among the Indian population.

Third, Arunachal Pradesh is linked to other border conflicts between India and China—such as Aksai Chin. The latter is a relatively small piece of territory in the

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Himalayas, held by China but claimed by India. China controls about 17,000 square miles of land in Aksai Chin.[37] Over the years, some creative proposals have been made to solve this dispute. In one proposal from 1960, the Chinese Premier proposed a trade. India would give up claims to Aksai Chin, and China would give up claims to Arunachal Pradesh.[38] Reports surfaced again in 2013 that the Indian government was "willing to give up its claims to Aksai Chin if China does the same for Arunachal [Pradesh]."[39] Despite attempts to solve these disputes, the territories remain contentious.

IV. Survey Design and Methodology

To test theoretical expectations, the researchers rely on original survey data. To conduct this survey, the authors contracted with a survey research firm in India. The firm, Market-Xcel, conducted a face-to-face survey of 1,048 individuals in the National Capital Territory of Delhi.[40] The survey was administered in both English and Hindi and included questions about foreign policy attitudes and standard demographic questions.[41] Given that geographic location likely has a strong impact on attitudes toward territorial disputes, this research design holds respondents' geographic location constant. The primary purpose for this survey was to test whether and how MI and CI influence attitudes toward policy proposals, not whether proximity to a border claim influences one's attitude toward territorial disputes.[42] Thus, the survey provides a representative sample of one of India's 36 subnational regions (India has 29 states and 7 union territories), the National Capital Territory of Delhi (NCT). Within this area, the survey was aimed at the broadest cross section possible; the sampling firm ensured that gender, age, education, and religion were roughly representative of the selected region.[43]

After providing their consent to the terms of the survey and answering standard demographic questions, respondents were asked to turn their attention to the territorial dispute over Arunachal Pradesh. Respondents were read the statement, "As you may know, China has long claimed a large part of Arunachal Pradesh. China wants to incorporate this region into its own territory. Over the past few decades, leaders from both countries have unsuccessfully tried to resolve this disagreement [...]." Respondents were then asked how much they would support/oppose policies if they were pursued by the Indian government.

V. Variable Measurement

Dependent Variables: Policy Proposals for Arunachal Pradesh

Hypotheses were tested using three dependent variables. Each variable corresponds with a different policy option (summarized in Table 1). For each policy, respondents used a scale from 1 to 5 with 1 being "Strongly Oppose" and 5 being "Strongly Support." Since the authors are mostly interested in preferences toward a

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particular policy, it was recoded from a five-point scale into a binary indicator that takes on a value of "1" if a respondent supported or strongly supported a given policy and "0" otherwise.

Option 1 is a hardline proposal to "refuse any compromise solution and retain firm control over the entirety of Arunachal Pradesh." Authors expect that individuals with more militant internationalist values will approve of this option whereas people with higher levels of cooperative internationalist values will disapprove. Furthermore, two solutions were included that might resolve the conflict through some form of concessions. Option 2 suggested a compromise. India would "give up parts of Arunachal Pradesh to China in exchange for a guarantee that the dispute is resolved." Finally, Option 3 asked respondents to consider "giv[ing] up the claim to Aksai Chin in return for China dropping its claim to Arunachal Pradesh." Individuals that scored high on cooperative internationalist values were expected to approve of these options and those who scored high on militant internationalism to be less supportive of these policies.

Table 1: Dependent Variables—Policy Proposals

I have a list of some potential policies regarding the dispute over Arunachal Pradesh. If these policies were pursued by the Indian government, how much would you support these on a scale of 1 to 5 where 1 means "Strongly Oppose" and 5 means "Strongly Support"? (N = 1,048; options were randomized)

1. Refuse any compromise solution and retain firm control over the entirety of Arunachal Pradesh.
2. Compromise with China: give up parts of Arunachal Pradesh to China in exchange for a guarantee that the dispute is resolved.
3. Compromise with China: give up the claim to Aksai Chin in return for China dropping its claim to Arunachal Pradesh.

Independent Variables: Militant Internationalism and Cooperative Internationalism

To create the primary independent variables, two additive scales were created. Both scales consist of five survey items. The reliability coefficient (alpha) is 0.75 for both scales.

There are a variety of survey items that have been used to identify militant internationalism and cooperative internationalism. However, some of the existing measures for these concepts are problematic for present purposes. Since most studies on foreign policy orientations have been conducted in the United States or Western Europe, many existing survey items are too country-specific or only applicable to a particular historical context (such as the Cold War). For example, authors did not include the question "There is considerable validity in the domino theory that when one nation falls to communism, others nearby will soon follow a similar path."[44] This question is reasonable in the U.S. during the Cold War, but not in 21st-century India.

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Authors surveyed the literature for generalizable questions to construct measures for two primary independent variables of interest.

Table 2: Survey Items Used to Create "Militant Internationalism"

1. India should spend more money on its armed forces even if it means spending less in other areas.[1] N = 1,026
2. India needs to be able to project military force into the Gulf.[1] N = 1,016
3. India needs to adopt more tough-minded measures to limit illegal immigration.[2] N = 1,028
4. India should retaliate against foreign powers supporting terrorists.[2] N = 1,020
5. India should use force to attain its foreign policy goals.[2] N = 1,007

1. From Ganguly et al. (2016, p. 425). Used to measure attitudes toward military capabilities.
2. From Ganguly et al. (2016, p. 425). Used to measure attitudes toward forcefulness.

Militant internationalism was created using five survey items. These items have all been previously used to measure attitudes toward military capabilities and forcefulness,[45] and they tap into individuals' attitudes toward the importance of national defense and the validity of the use of force in international affairs. As such, these statements capture a respondent's "willingness to meet the world with a clenched fist."[46] For instance, the first two items ("India should spend more money on its armed forces even if it means spending less in other areas" and "India needs to be able to project military force into the Gulf") are intended to tap into a respondent's general attitudes toward traditionally defined "hard power." While cooperative internationalism does not exclude the possibility of military force, MI places more value in hard power than soft power. Each survey item was measured with a five-point scale in which higher values correspond with higher levels of MI. Respondents were asked how much they agreed/disagreed with statements such as "India should use force to attain its foreign policy goals" and "India should retaliate against foreign powers supporting terrorists." Response categories for all survey items were: strongly disagree, somewhat disagree, neither agree nor disagree, somewhat agree, and strongly agree. An additive index was created based on the five survey questions displayed in Table 2, and then the measure was re-scaled to make the scores bounded between 0 and 1.

Like militant internationalism, the cooperative internationalism measure was created using five survey items. These survey questions have been previously employed to measure CI values[47] or components of CI, such as cooperation and multilateralism.[48] Survey items 1 and 4 are adapted from Kertzer[49] who used these items to measure cooperative internationalist values in the United States. In addition, three items included from Ganguly et al.[50] were designed to measure attitudes toward international cooperation and multilateralism. These items are straightforward. For example, the survey question, "India needs to cooperate more with the United Nations" gets at whether a respondent is willing to work with an international organization

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on global issues. A willingness to work with other countries fits neatly into the standard formulation of CI. In a similar question, respondents evaluated the statement, "It is essential for India to work with other nations to solve problems such as overpopulation." Similarly, this question gauges respondents' willingness to work with other countries and their interest in dealing with non-security related issues such as population. Agreement with these survey questions indicates positive attitudes toward "multilateral behavior aimed at collective welfare issues at the international level."[51] Individuals responded to each statement using the same five-point scale. Similar to the MI scale, authors created an additive measure (re-scaled to make it bounded between 0 and 1). The scale reliability coefficient for this item is 0.75. A complete list of survey items used to capture cooperative internationalism is included in Table 3.

Table 3: Survey Items Used to Create "Cooperative Internationalism"

1. It is essential for India to work with other nations to solve problems such as overpopulation.[1] N = 1,021
2. India's foreign policy goals can be attained more effectively by pursuing collective global welfare.[2] N = 989
3. India should continue to espouse the cause of nuclear disarmament.[3] N = 984
4. India needs to cooperate more with the United Nations.[1] N = 1,017
5. It is in India's interest to support the emergent global norm of "responsibility to protect."[3] N = 1,004

1. From Kertzer et al. (2014, Supplemental materials, p. 3). Used to measure cooperative internationalism.
2. From Ganguly et al. (2016, p. 425). Used to measure attitudes toward multilateralism.
3. From Ganguly et al. (2016, p. 425). Used to measure attitudes toward cooperation.

Other Independent Variables

For control purposes, the authors also included a measure of isolationism. Wittkopf focuses primarily on the cooperative internationalist and militant internationalist dichotomy, but others have added a third dimension, isolationism.[52] Individuals who hold isolationist views are likely to focus on domestic goals rather than internationalist goals. For instance, individuals who think that protecting American jobs is a top policy priority are more likely to harbor isolationist views. Isolationist views are distinct from cooperative internationalism and militant internationalism because they stem from the notion that one's country "should avoid political entanglements with other countries."[53] While isolationism may be a crucial element if a country is debating a foreign aid budget or the merits of a far-flung military intervention, we argue that border disputes force an isolationist to engage. When faced with a border dispute, strong isolationist preferences offer little in the way of policy preferences. Isolationist values might suggest ignoring the dispute; for low salience territorial disputes, this might be an option. However, given the prominence of territorial dis-

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putes in the Indian public, isolationism was not expected to be the most important predictor of policy approval/disapproval. On the other hand, the dispute over Arunachal Pradesh is not open conflict, so it is possible that some respondents might fall back on isolationist tendencies. Moreover, India has a long history of non-alignment, so it is possible that respondents might simply want to avoid conflict. Thus, isolationism is an important control variable. Isolationism was measured on a five-point scale ranging from strongly disagree (1) to strongly agree (5). Individuals who strongly agreed with "This country would be better off if we just stayed home and did not concern ourselves with problems in other parts of the world" are more isolationist than those who disagreed.[54]

Authors included a range of other standard control variables from the public opinion literature. Gender is coded as 0/1 with zero being female and one being male. Education was measured with an ordinal scale ranging from "illiterate" to "graduate degree." Income is operationalized on an ordered five-point scale in which higher values indicate lower levels of income. Furthermore, authors included a dummy variable for whether an individual self-identifies as Hindu.

For attitudes toward politics, authors included measures of ideology, general threat perception, and whether a given respondent is a Bharatiya Janata Party (BJP) supporter. Authors were particularly interested in whether being a BJP supporter influenced respondents' opinions toward policy choices. Prime Minister Modi is a member of the BJP, a party generally considered to be a right-wing Hindu nationalist party.[55] Although much of Modi's foreign policy stance focuses on attracting foreign direct investment, Modi has rejected proposals to compromise over the costal border between the northwest state of Gujarat and Pakistan. He has also criticized the previous government's position on China as "naiveté."[56] Authors expect BJP supporters to be in line with more hardline stances with regard to border disputes. In this dataset, BJP supporters are coded as "1" and non–BJP supporters are coded as "0." In addition, respondents were asked to consider how threatened they think India is by other countries. This variable is coded on a scale from 1 to 4 where smaller values correspond to lower levels of perceived threat. Individuals who feel India is very threatened will be more drawn to hardline policies. Finally, the study included a control variable for what role the government should play in the economy as way of approximating political ideology. Higher values on this variable indicate that a respondent thinks that the government should not play a major role in the economy. Descriptive statistics for all variables can be found in Appendix A. All survey questions used to generate the relevant variables are listed in Appendix D.

VI. Results

Three logistic regressions were estimated to test the hypotheses. Overall, this article found strong support for militant internationalist values corresponding with support for hardline policies (Hypothesis 2). Militant internationalism behaves as expected in all three of the models. The variable has a statistically significant and

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positive effect on support for a policy to refuse any compromise over Arunachal Pradesh (Model 1), and negative effects on the two compromise proposals (Model 2 and Model 3). The authors also found some support for cooperative internationalism corresponding with policies that emphasize compromise (Hypothesis 1). Increased cooperative internationalism corresponded with stronger approval for the "exchange" option, in which respondents considered giving up India's claim over Aksai Chin in exchange for China dropping its claim to Arunachal Pradesh. The full results can be found in Table 4, and a more detailed discussion of results follows.

Model 1's policy proposal was uncompromising. Respondents were asked to consider the policy to "refuse any compromise solution and retain firm control over the entirety of Arunachal Pradesh." In Model 1, militant internationalists were expected to approve of this proposal and cooperative internationalists disapprove of this proposal. Militant internationalism behaved as expected ($p \leq 0.01$). Respondents who scored high on this variable were more likely to support this hardline

Table 4: Support for Policy Proposals

Results from Logit Models with coefficients and standard errors (in parentheses)			
	Model 1	Model 2	Model 3
Independent Variables	DV: Refuse Compromise	DV: Give Up Part of Claim	DV: Give up AC in exchange for AP
Militant Internationalism	3.759**	−4.884**	−4.779**
	(0.842)	(1.433)	(0.997)
Cooperative Internationalism	0.272	1.765	4.454**
	(0.828)	(1.451)	(0.932)
Isolationism	−0.178*	0.514**	−0.116
	(0.086)	(0.127)	(0.064)
Age	0.008	−0.019	0.004
	(0.009)	(0.013)	(0.007)
Gender	−0.173	−0.141	−0.171
	(0.229)	(0.325)	(0.196)
Education	0.228**	−0.017	0.167**
	(0.049)	(0.080)	(0.049)
Overall Level of Threat	−0.064	−0.535**	0.261*
	(0.081)	(0.158)	(0.104)
Income	−0.244*	0.137	0.049
	(0.124)	(0.183)	(0.100)
BJP Supporter	0.055	0.669*	0.288
	(0.231)	(0.322)	(0.192)
Hindu	−0.373	0.177	0.478
	(0.323)	(0.477)	(0.273)
Ideology	0.035	−0.575	−0.881**
	(0.166)	(0.270)	(0.154)
Constant	−3.291	4.074	−2.032
	(0.911)	(1.168)	(0.758)
N	936	936	936
Pseudo R^2	0.115	0.190	0.174
Log likelihood	−330.016	−180.184	−403.045

*** = p ≤ 0.05, ** = p ≤ 0.01**

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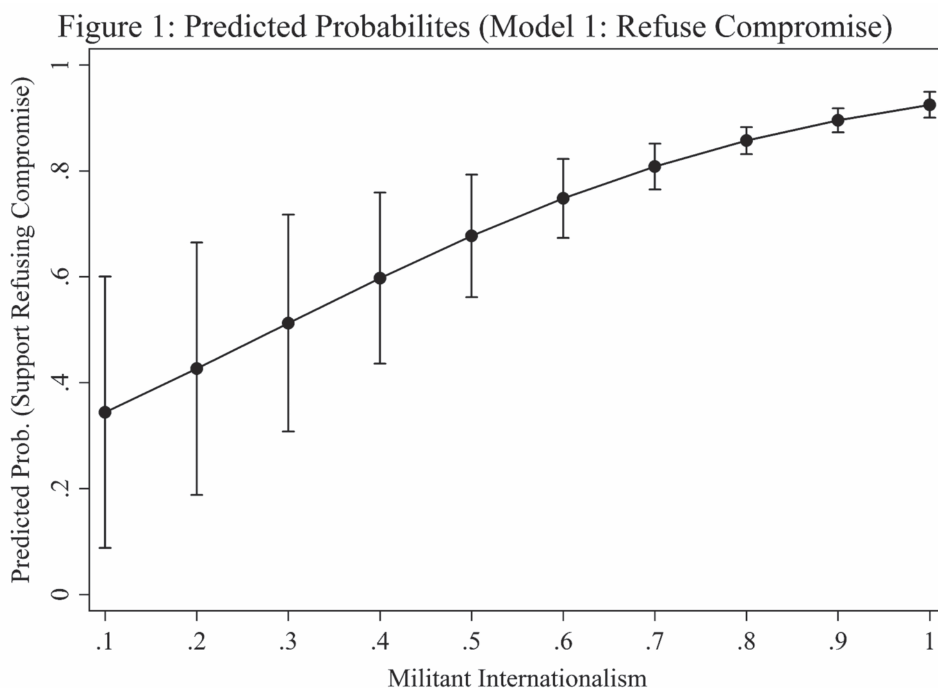
policy with regard to Arunachal Pradesh. In Figure 1, those with more militant internationalist values have a very high probability (92.5 percent) of supporting a no compromise approach to Arunachal Pradesh. At the low end of the militant internationalist spectrum, there is a higher level of uncertainty, but citizens were less likely to approve of a no compromise solution (34.4 percent). This suggests that the underlying foreign policy belief system extends to specific policy areas, such as territorial disputes. Cooperative internationalism, however, is not statistically significant in this model. However, given that China is the clear challenger in this dispute, it is not terribly surprising that even cooperative internationalist values are not enough to lead individuals to disapprove of a hardline policy.



Models 2 and 3 also lend support for the militant internationalism hypothesis. For the dependent variable in Model 2, respondents were asked to consider a compromise with China. The Indian government would give up some part of Arunachal Pradesh in exchange for a guarantee that China would drop the claim to the remaining piece of land. While cooperative internationalism was not statistically significant, higher levels of militant internationalism corresponded with lower levels of support for this policy ($p \leq 0.01$). More specifically, respondents with very high militant internationalist values had a 2.7 percent probability of approving of territorial concessions whereas those with the lowest level of militant internationalist values had a 53.9 percent probability of supporting territorial concessions (see Figure 2).

Model 3, the "exchange" model, produced a similar result for militant internationalism. Higher levels of this variable corresponded with lower levels of support

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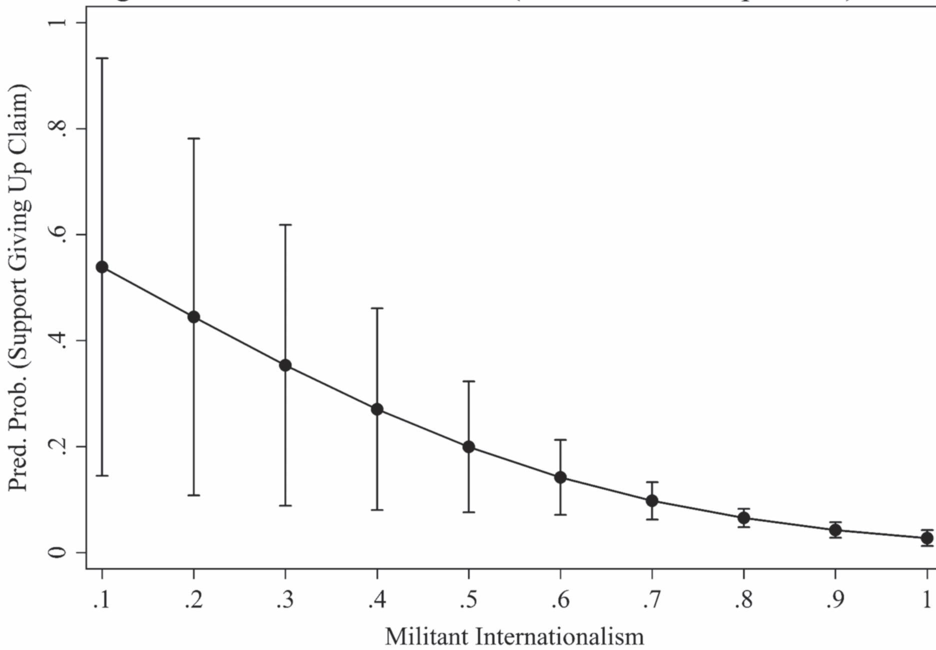

for the proposal to drop India's claim over Aksai Chin in exchange for China dropping its claim over Arunachal Pradesh ($p \leq 0.01$). Across the full range of the MI variable, the predicted probability of policy support decreases from 80 percent to 13.4 percent (see Figure 3). This provides further evidence for Hypothesis 2. Interestingly, cooperative internationalism was predictive of positive views toward this policy option ($p \leq 0.01$). For high levels of cooperative internationalism, the probability of supporting the exchange was 37.2 percent. By contrast, at low levels of cooperative internationalism, the predictive margin is only 2.1 percent. This is an especially interesting finding given that there is some evidence that government officials might consider this proposal.[57]

Control variables also presented some notable results. A summary of the results discussed here can be found in Table 5. First, results suggest that isolationism is related to more compromising attitudes in the conflict over Arunachal Pradesh. More specifically, individuals who believe that India would be better off if it "did not concern [itself] with problems in other parts of the world" are more likely to *reject* the uncompromising policy in Model 1 and more likely to *support* territorial concessions in Model 2. Substantively, support for "compromise refusal" decreases by 9.7 percent across the full range of the isolationism variable (from 80.4 percent at low levels of isolationism to 90.1 percent at the maximum of the variable). Similarly, the predicted probability that an individual expresses favorable attitudes about unilateral concessions increases by 15.7 percent (from 2.3 percent to 18.0 percent). These results are consistent with the notion that isolationists would not want to provoke China; rather, those viewing the world through an isolationist lens would rather

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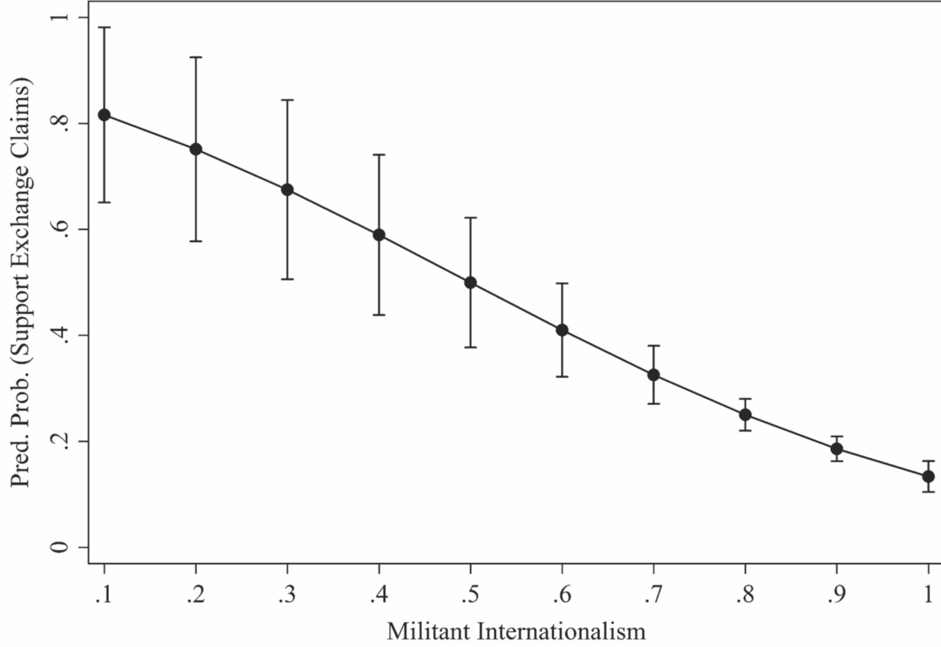

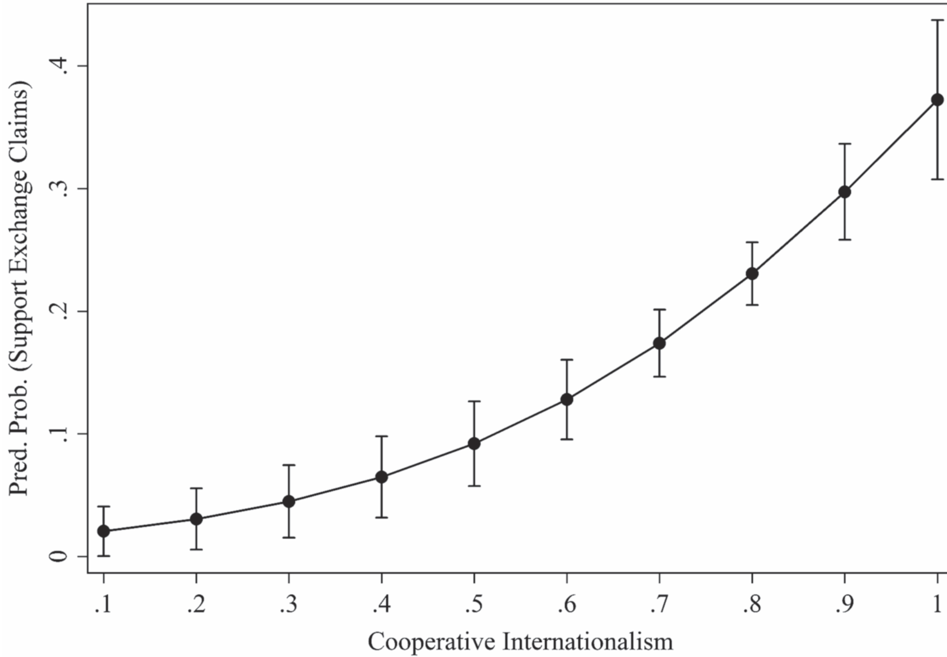

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compromise with China than risk further hostile engagement. This also suggests that isolationism is an important part of studying foreign policy orientations.

Table 5: Substantive Effect of Control Variables

	Min	Max	Pr at Min	Pr at Max	Change
Model 1: Refuse Compromise					
Isolationism	1	5	90.1%	80.4%	−9.7%
Income	1	5	92.7%	83.9%	−8.8%
Model 2: Give Up Part of Claim					
Isolationism	1	5	2.3%	18.0%	+15.7%
Overall Level of Threat	1	4	19.6%	3.5%	−16.1%
BJP Supporter	0	1	4.5%	7.9%	+3.4%
Model 3: Exchange Claims					
Overall Level of Threat	1	4	12.2%	25.1%	+12.9%

All other variables were held at their observed values.

Second, as expected, respondents who felt as though India was in a very threatening international environment were less likely to support giving up territory in exchange for a peaceful settlement (predicted probability: 3.5 percent) than individuals who believed that India is generally fairly safe (predicted probability: 19.6 percent). At the same time, perceived external threat leads to more *positive* attitudes toward the claim exchange policy proposal. In particular, people who felt "very threatened" by other countries had a 25.1 percent probability of supporting a claim exchange whereas the corresponding value for individuals who felt "not at all threatened" was 12.2 percent.

While these findings appear to be contradictory at first glance, they are not entirely surprising. In Model 2, individuals respond to a policy proposal in which India makes unilateral territorial concessions. It seems likely that subjects who feel very threatened are skeptical about this policy since it would make India look vulnerable at the world stage and thereby possibly invite further territorial demands. By contrast, if individuals feel relatively safe in India's international environment, one-sided concessions appear to be less dangerous. For the claim exchange variable analyzed in Model 3, the dynamics are different. Here, threatened individuals should be *more* supportive of the presented policy since the outcome of this deal would eliminate China's threat to Arunachal Pradesh and therefore improve India's overall security position.

Third, in Model 1, income has a statistically significant and negative effect on a respondent's willingness to "refuse compromise" in the dispute over Arunachal Pradesh. More specifically, at the lowest value of this variable, the predicted probability that a respondent expresses favorable attitudes toward an uncompromising strategy toward China is 92.7 percent. By contrast, individuals with high levels of income have a somewhat lower predictive margin (83.9 percent). This suggests that socioeconomic characteristics also influence individual-level attitudes about conflict management proposals.

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Finally, the party ID variable did not correspond with expectations. Authors theorized that BJP supporters would be more likely to favor hardline policies on territorial disputes, but the variable was only statistically significant in Model 2. In this model, BJP supporters were more likely to approve of territorial concessions to China. A possible explanation is that Arunachal Pradesh has a history of unrest and cultural difference, and the territory is tucked away in far-flung Northeast India and connected only by the "chicken neck," a small piece of land connecting Northeast India to Bihar.[58] Given BJP's roots in right-wing Hindu nationalism, Arunachal Pradesh, with its high religious diversity, geographic isolation, and cultural difference, might not be seen as a priority for making India a more Hindu state.

VII. Conclusion

Identifying the factors that influence public opinion toward foreign policy issue areas is of crucial importance for both scholars and practitioners. This project is the first step to identify if, how, and when general orientations about foreign policy impact opinions toward specific conflict management policies. The results suggest that general foreign orientations have an impact on individuals' likelihood to support specific policy proposals. This study found the most support for militant internationalist values corresponding with refusal to compromise. Values of cooperative internationalism are associated with policies that open the door for compromise such as asking China to drop its claim to Arunachal Pradesh in exchange for dropping the dispute over Aksai Chin. In addition to testing a specific issue area, this article applies the established MI/CI framework to a new context, mass attitudes in India. This is one of the first studies of its kind, and we hope that this study encourages other scholars to (1) test supposedly universal theories in a non–Western context and (2) conduct more survey work in India in particular. Given India's large population, diversity, and global status, this state will only become more important in world affairs. Moreover, India is an underutilized case study for a variety of pressing questions in the field, whether those be questions about border disputes, political tolerance, democracy, or social trust. The authors hope to continue work on public opinion in India; expanding this survey to a population center in South India might be especially interesting given South India's history and politics. In addition, exploring whether and how these views influence voting preferences would be an excellent avenue for future research.

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Appendix

Appendix A: Descriptive Statistics

Variable	Min	Max	Mean	Std. Dev.
Dependent Variables: Policy Proposals				
Refusing any compromises	0	1	0.87	0.33
Give up part of Arunachal Pradesh in exchange for resolution	0	1	0.06	0.23
Give up claim in Aksai Chin in exchange for China giving up claim in Arunachal Pradesh	0	1	0.22	0.41
Independent Variables: Foreign Policy Attitudes				
Militant Internationalism	0.1	1	0.85	0.17
Cooperative Internationalism	0.1	1	0.79	0.18
Control Variables				
Isolationism	1	5	2.89	1.45
Age	18	86	36.72	12.08
Gender	0	1		
Education	1	8	4.98	2.25
Overall Level of Threat	1	4	3.07	1.07
Income	1	5	1.86	1.12
BJP Supporter	0	1		
Hindu	0	1		
Ideology	0	5	1.73	0.88

Appendix B: Sample Representativeness

Variable	Population	Sample
Age		
18–29	36.75%	30%
30–39	24.51%	30%
40–49	17.87%	28%
50–59	10.66%	7%
60 or older	10.21%	4%
Gender		
Male	53.29%	61%
Female	46.71%	39%
Education		
Illiterate	16.09%	19%
Literate	83.91%	81%
Religion		
Hindu	81.68%	78%
Muslim	12.86%	14%
Other	5.46%	8%

The survey was designed to be representative of the population in the NCT region on four major dimensions: age, gender, education, and religion. Furthermore, the survey firm also ensured broad representation of various income groups (although population parameters are not available for this particular variable). Above is a comparison of cell percentages for the sample and the population in the National Capital Territory region (obtained from the 2011 Census).

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Appendix C: Sampling Method

Period of Data Collection: January-February 2017.

Sample Provider: Market-Xcel; New Delhi (website: http://www.market-xcel.com)

Method of data collection: face-to-face interviews.

Sample Stratification:

- There are 70 "constituencies" in the National Capital Territory. Within each of those constituencies, there are numerous "polling areas." The latter are administrative regions that determine in which specific buildings residents cast their ballot during regional elections.
- The survey firm randomly selected 3 polling areas per constituency for interviews. Thus, there were 210 "interview zones" (3 polling areas in each of New Delhi's 70 constituencies).
- Market X-cel had access to the electoral roll in the NCT territory. This allowed the company to randomly select 5 households in each "interview zone."
- One respondent was interviewed in each randomly selected household.
- The final number of interviews was 1,048 (5 interviews in each of the 210 interview zones).

Appendix D: Survey Questions

Dependent Variables:

Attitudes About Concessions: I have a list of some of the potential policies regarding the dispute over Arunachal Pradesh. If these policies were pursued by the Indian government, how much would you support these on a scale of 1 to 5 where 1 means "Strongly oppose" and 5 means "Strongly support"?

	Strongly Oppose	Oppose	Neither support nor oppose	Support	Strongly Support
Refuse any compromise solution and retain firm control over the entirety of Arunachal Pradesh	1	2	3	4	5
Compromise with China: give up parts of Arunachal Pradesh to China in exchange for a guarantee that the dispute is resolved	1	2	3	4	5
Other policy options (not relevant for this project) omitted.	1	2	3	4	5

Attitudes About Claim Exchange (Arunachal Pradesh/Aksai Chin): Aksai Chin is a piece of territory controlled by China and claimed by India as the easternmost part of Jammu & Kashmir. There is no human population there. How much would you support or oppose each of the following policies related to this dispute if they were pursued by the Indian government?

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	Strongly Oppose	Oppose	Neither support nor oppose	Support	Strongly Support
Compromise with China: give up the claim to Aksai Chin in return for China dropping its claim to Arunachal Pradesh	1	2	3	4	5
Other policy options (not relevant for this project) omitted.	1	2	3	4	5

Main Independent Variables:

Militant Internationalism: Now I have with me a list of views related to Indian foreign policy. We are interested in knowing your extent of agreement with these. Please rate these on a scale of 1 to 5 where 1 means "Strongly Disagree" and 5 means "Strongly Agree."

	Strongly Disagree	Disagree	Neither Disagree nor Disagree	Agree	Strongly Agree
India should spend more money on its armed forces even if it means spending less in other areas.	1	2	3	4	5
India needs to be able to project military force into the Gulf.	1	2	3	4	5
India needs to adopt more tough-minded measures to limit illegal immigration.	1	2	3	4	5
India should retaliate against foreign powers supporting terrorists.	1	2	3	4	5
India should use force to attain its foreign policy goals.	1	2	3	4	5

Cooperative Internationalism: Now I have with me a list of views related to Indian foreign policy. We are interested in knowing your extent of agreement with these. Please rate these on a scale of 1 to 5 where 1 means "Strongly Disagree" and 5 means "Strongly Agree."

	Strongly Disagree	Disagree	Neither Disagree nor Disagree	Agree	Strongly Agree
It is essential for India to work with other nations to solve problems such as overpopulation	1	2	3	4	5
India's foreign policy goals can be attained more effectively by pursuing collective global welfare.	1	2	3	4	5
India should continue to espouse the cause of nuclear disarmament.	1	2	3	4	5
India needs to cooperate more with the United Nations	1	2	3	4	5
It is in India's interest to support the emergent global norm of "responsibility to protect"	1	2	3	4	5

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Control Variables:

Isolationism: This country would be better off if we just stayed home and did not concern ourselves with problems in other parts of the world.

1. Strongly Disagree
2. Disagree
3. Neither agree nor disagree
4. Agree
5. Strongly Agree

Age: Sir/Madam, can you please tell me your age in completed years?
Gender: Are you male or female?

- Male
- Female

Education: What is the highest level to which you have studied?

- Illiterate.
- Literate but no formal education
- School up to 4 years
- School (between 5 and 9 years).
- School (SSC/HSC)
- Some college but not graduate
- Graduate/Post Graduate (General)
- Graduate/Post Graduate (Professional)

Threat Perception: In general, please let me know how threatened do you think is India by other countries?

1. Not at all threatened
2. Not very threatened
3. Somewhat threatened
4. Very threatened

Income: How would you define your current financial position with respect to your personal income? Which of the following statements comes closest to how you feel?

1. I am living comfortably on my present income.
2. I am coping on my present income.
3. I am finding it difficult on my present income.
4. I cannot survive on my present income.
5. I do not have any source of income.

Partisanship: Of all the political parties listed below, which party if any do you feel closest to?

1. Aam Aadmi Party (AAP)
2. Bharatiya Janata Party (BJP)
3. Bahujan Samaj Party (BSP)

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4. Communist Party of India (CPI).
5. Communist Party of India (Marxist) (CPIM)
6. Indian National Congress (INC)
7. Nationalist Congress Party (NCP)
8. Other National Party
9. Other (Specify ________________________)
10. No preference/Do not want to reveal

Religious Background: Please tell me, what is your religion background?

1. Hindu
2. Muslim
3. Christian
4. Sikh
5. Buddhist
6. Other
7. None

Ideology (government role in the economy): On a scale from 1 to 5, where 1 indicates a preference for an active government role in the economy and 5 a preference for no government role in the economy at all, where would you place yourself?

1. Government should play a very active role in the economy.
2. Government should play an active role in the economy.
3. Government should play a moderately active role in the economy.
4. Government should play a limited role in the economy.
5. Government should not play any role in the economy.

Notes

1. Models presented in this paper all have over 900 responses. The total number of respondents was 1048, but some cases were dropped due to missing data. The authors obtained IRB approval from their respective institutions. The authors contracted with the survey firm Market Xcel based in Delhi, India. Informed consent was obtained for each respondent. A full discussion of survey methodology is found in research design section.

2. Whether or not ordinary citizens have a coherent belief structure with regard to foreign policy has been debated. For an outline of this debate, see Ole R. Holsti, "Public Opinion and Foreign Policy: Challenges to the Almond-Lippmann Consensus Mershon Series: Research Programs and Debates," *International Studies Quarterly* 36 (4) (1992), pp. 416–22, https://doi.org/10.2307/2600734; Brian Rathbun et al., "Taking Foreign Policy Personally: Personal Values and Foreign Policy Attitudes," *International Studies Quarterly* 60 (2016), p. 124, https://doi.org/10.1093/isq/sqv012; for a study of elite foreign policy attitudes in India, see Sumit Ganguly, Timothy Hellwig, and William R. Thompson, "The Foreign Policy Attitudes of Indian Elites: Variance, Structure, and Common Denominators," *Foreign Policy Analysis* 13(2) (2017), pp. 416–22.

3. Holsti, 1992, pp. 449–50; Brian Rathbun et al., 2016, pp. 125–26; A. Burcu Bayram, "Cues for Integration: Foreign Policy Beliefs and German Parliamentarians' Support for European Integration," *German Politics & Society* 35(1)(2017), pp. 19–21, https://doi.org/10.3167/gps.2017.350102.

4. Seiki Tanaka, "The Microfoundations of Territorial Disputes: Evidence from a Survey Experiment in Japan," *Conflict Management and Peace Science* 33 (5) (2017), pp. 516–17, https://doi.org/10.1177/0738894215581330.

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5. For a recent example of applying foreign policy orientations beyond a Western context, see Sumit Ganguly et al., 2017, p. 418.

6. Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42 (3) (1988), p. 430, https://doi.org/10.1017/S0020818300027697.

7. Kyle Beardsley and Nigel Lo, "Third-Party Conflict Management and the Willingness to Make Concessions," *Journal of Conflict Resolution* 58 (2) (2014), p. 364, https://doi.org/10.1177/0022002712467932.

8. Todd L. Allee and Paul K. Huth, "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover," *The American Political Science Review* 100, no. 2 (2006): 227, https://doi.org/10.1017/S0003055406062125; Paul R. Hensel et al., "Bones of Contention: Comparing Territorial, Maritime, and River Issues," *The Journal of Conflict Resolution* 52 (1) (2008), p. 139, https://doi.org/10.1177/0022002707310425.

9. Tanaka, 2017, pp. 516–18.

10. for an overview, see William O. Chittick, Keith R. Billingsley, and Rick Travis, "A Three-Dimensional Model of American Foreign Policy Beliefs," *International Studies Quarterly* 39 (1995), pp. 323–24. and Ganguly, Hellwig, and Thompson, 2017, pp. 424–5.

11. Ganguly, Hellwig, and Thompson, 2017, p. 419.

12. Jon Hurwitz and Mark Peffley, "How Are Foreign Policy Attitudes Structured? A Hierarchical Model," *The American Political Science Review* 81 (4)(1987), pp. 1104–05, https://doi.org/10.2307/1962580; Rathbun et al., 2016.

13. Eugene R. Wittkopf, "The Structure of Foreign Policy Attitudes: An Alternative View," *Social Science Quarterly* 62 (1)(1981), pp. 288, 314–16; Chittick, Billingsley, and Travis, 1995, pp. 314–16; Eugene R. Wittkopf, "Faces of Internationalism in a Transitional Environment," *Journal of Conflict Resolution* 38 (3)(1994), p. 376, https://doi.org/10.1177/0022002794038003002.

14. Eugene Wittkopf, *Faces of Internationalism: Public Opinion and American Foreign Policy* (Duke University Press, 1990), p. 9. Note that in this book, Wittkopf shows that public opinion on American foreign policy can be divided into four categories: internationalists, isolationists, accommodationalists, and hardliners. While the terminology might be different, these concepts are very close to the MI/CI framework; Wittkopf, 1994, pp. 378–83.

15. Rathbun et al., 2016, p. 125.

16. Chittick, Billingsley, and Travis, 1995, p. 318.

17. In this article, MI and CI are used as independent variables that influence specific attitudes towards policy proposals. There has been some recent work on the underlying values and moral foundations of foreign policy orientations. For more on this, see Rathbun et al., pp. 128–29, and Kertzer, Powers, Rathbun, and Iyer, "Moral Support: How Moral Values Shape Foreign Policy Attitudes," *Journal of Politics* 76, no. 3 (2014): 825, https://doi.org/10.1017/S0022381614000073.

18. Bayram, 2017, pp. 21–24.

19. Ulf Bjereld and Ann-Marie Ekengren, "Foreign Policy Dimensions: A Comparison Between the United States and Sweden," *International Studies Quarterly* 43 (1999), p. 503, https://doi.org/10.1111/0020-8833.00132.

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21. Including Costa Rica Jon Hurwitz, Mark Peffley, and Mitchell A. Seligson, "Foreign Policy Belief Systems in Comparative Perspective: The United States and Costa Rica," *International Studies Quarterly* 37 (3)(1993), https://doi.org/10.2307/2600808.

22. Ganguly, Hellwig, and Thompson, 2017.

23. Ganguly et al. (2016, pp. 425–426) show that these two dimensions are applicable to the Indian foreign policy elite. But, they take issue with, among other things, the labeling of MI/CI. For example, they argue that labeling someone "militant," as in *militant* internationalist, has negative and unintended connotations ("Militant" is exchangeable with "Jihadi"). They advocate reconceiving of these terms as assertive/nonassertive policy strategies and liberal/realist policy orientations. These debates are important, but beyond the scope of this paper. The primary purpose

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is to test whether these MI/CI foreign policy orientations influence attitudes towards border disputes.

24. Ganguly, Hellwig, and Thompson, 2017, p. 417.

25. Bayram, 2017. Bayram tested whether the MI/CI and isolationist framework influenced German politician's views toward European integration. Bayram draws from work on heuristics in political psychology noting that heuristics are a way to help humans deal with complex situations. These foreign policy belief structures help guide politicians when making decisions regarding specific policy proposals. Our causal mechanism is similar. When faced with a complex situation, such as Arunachal Pradesh, and given varying levels of knowledge about the dispute, we expect respondents to rely on their general worldview to assess policy options.

26. Eugene R. Wittkopf and Michael A. Maggiotto, "The Two Faces of Internationalism: Public Attitudes Toward American Foreign Policy in the 1970s—and Beyond?" *Social Science Quarterly* 64 (1983), p. 288.

27. Rathbun et al., 2016, p. 125.

28. *Ibid.*

29. *Ibid.*, p. 126.

30. Sergey Radchenko, "The Rise and Fall of Hindi Chini Bhai Bhai," *Foreign Policy* (2014, September 18), n.p.

31. In northeast India more broadly, conflict over Dolam Plateau, a piece of territory in the Siliguri Corridor (or the "Chicken Neck") connecting the northeast to the rest of India, has led to tensions between Bhutan, India, and China. Steven Lee Meyers, Ellen Barry, and Max Fisher, "How India and China Have Come to the Bring Over a Remote Mountain Pass," *New York Times* 2017, July 26, n.p.

32. The issues discussed here also bring up the difficult subject of Tibet. With the Dalai Lama currently residing in India, troops stationed at the border in recent years, and even controversy over China attempting to block an Indian loan in 2009, these territorial disputes are highly contentious for both India and China. Edward Wong, "China and India Dispute Enclave on Edge of Tibet," *New York Times* 2009, n.p.

33. Nitya Singh, "How to Tame Your Dragon: An Evaluation of India's Foreign Policy Toward China," *India Review* 11 (3)(2012), p. 150, https://doi.org/10.1080/14736489.2012.705632.

34. PTI, "China Rejects Allegation of Incursion in Arunachal Says Army Was Conducting 'Normal Patrols,'" *The Indian Express,* 2016, June 15.

35. Press Trust of India, "Arunachal Mp Wants to Visit China but Not on Stapled Visa," *Business Standard,* 2016.

36. PTI, "Arunachal Pradesh Activists Protest Stapled Visa Issue," *The Economic Times,* 2014.

37. Radchenko, n.p.

38. *Ibid.*

39. Saurabh Shukla, "India 'Ready to Let China Keep Aksai Chin' If Neighbor Country Drops Claim to Arunachal Pradesh," *Daily Mail India,* 2013.

40. India's incredible diversity makes collecting a nation-wide representative survey impractical. To note just one measure of diversity, India is home to over 450 languages. Rather than attempt to collect a low-quality sample of such a large country, we opted for a high-quality sample of the capitol region. This area is very diverse, and the survey firm ensured that the sample was as representative of Delhi in terms of age, gender, education, and religion. A significant portion of respondents was domestic migrants, people whose original home state/union territory something other than Delhi. All in all, there were 19 states/union territories represented in the sample. While this is not perfectly representative of India as a whole, Delhi, as the major capitol city, was a good choice for the sample because we expected to get some variation in place of origin. We only had one respondent from Arunachal Pradesh. This is not enough to test any meaningful hypotheses about place of origin's impact on attitude towards the dispute.

41. A detailed discussion of the sampling method can be found in Appendix C.

42. For work on individual's proximity to territorial dispute's influence on attitudes, see Tanaka (2017, pp. 516–517).

43. A comparison between population parameters and sample statistics can be found in Appendix B. To further increase the representativeness of the dataset, authors applied sampling

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weights for age, gender, and education. Weighting the sample did not change substantive interpretation of models.

44. Kertzer et al., 2014, Supplemental Material p. 1.
45. Ganguly, Hellwig, and Thompson, 2017, p. 425.
46. Rathbun et al., 2016, p. 125.
47. Kertzer et al., 2014, Supplemental Materials p. 3.
48. Ganguly, Hellwig, and Thompson, 2017, p. 425.
49. Kertzer et al., 2014.
50. Ganguly, Hellwig, and Thompson, 2017, p. 425.
51. *Ibid.*, p. 426.
52. Rathbun et al., 2016, pp. 125–26; Chittick, Billingsley, and Travis, 1995, pp. 323–24.
53. Rathbun et al., 2016, p. 126.
54. Hurwitz, Peffley, and Seligson, 1993, p. 252.
55. James Traub, "Is Modi's India Safe for Muslims?," *Foreign Policy,* 2015, June 26.
56. Howard Schaffer and Teresita C. Schaffer, "India: Modi's International Profile," *Brookings,* 2013, December 12.
57. Shukla, 2013, n.p.
58. Pinaki Bhattacharyya, "The Shiliguri Corridor Question Mark on Security," *South Asia Terrorism Portal,* 2001.

Biographical Statements

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Disputed Vietnamese Territories in the South China Sea: Structure, Physical-Geographical Characteristics, Management of Areas and Development

Chunjuan Nancy Wei and *Mai Frndjibachian*

Structured Abstract

Article Type: Research Paper

Purpose—This paper investigates four inter-related but poorly-understood questions: (1) How many features does Vietnam physically occupy in the Spratly? (2) How does Vietnam administer these features? (3) What are Vietnam's historical, and geopolitical motivations in further reclaiming Spratly's Islands? (4) What are the challenges Vietnam faces in reclaiming said islands?

Design/Methodology/Approach—Utilizing sources published in Vietnamese, Chinese and English, this study surveys Vietnam-controlled features in the Spratly as well as their administrative structures and strategic values for reclamation.

Findings—Vietnam controls 30 features, including 21 disputed islands, reefs, and cays, along with 5 major underwater banks, and 4 smaller shoals making up Rifleman Bank. It has reclaimed land on at least ten of these at varied speed and scope. It governs via the Truong Sa Island (Spratlys) District, under which three

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administrative hubs—Truong Sa, Song Tu Tay, and Sinh Ton Villages—and one oil economic administration are created. Factors that influence Hanoi's decisions to reclaim include strategic significance, geographical proximity to the hubs or rival-controlled features, costs, logistics, technology, weather patterns and the surrounding sea.

Practical Implications—Vietnam is a crucial player in the South China Sea, and its activities influence other players' actions. Hanoi's reclamation results in four big islands—Spratly Island, West Reef, Southwest Cay, and Sin Cowe Island—along with seven little ones.

Originality/Value—The paper makes original contributions by clarifying Vietnam's holdings in the contested waters as well as its strategic stance.

Keywords: island reclamation; Sino-Vietnamese territorial disputes; South China Sea; Spratly Islands; Vanguard Bank; Vietnam territory

I. Introduction

The ongoing standoff between Hanoi and Beijing over the energy-rich Vanguard Bank highlights tensions between the two communist countries over resources in the South China Sea (SCS). On July 3, 2019, Chinese Coast Guard and maritime militia escorted a survey ship toward the oil and gas block 06–01 where a Russo-Vietnam joint venture was operating hydrocarbon drilling. The bank is controlled by Vietnam but claimed by China. Vietnam, the world's 15th-largest nation with 95 million people, views the region as part of its continental shelf within its 200-mile exclusive economic zone (EEZ), resources from which Hanoi is entitled to exploit. China, on the other hand, sees it as a disputed area because it falls in Beijing's nine-dashed line map. To prevent Hanoi from "poaching" its resources, Beijing sent the survey ship accompanied by its Coast Guard. In response, Vietnam reportedly dispatched one of its advanced guided missile frigates manufactured by the Russian factory Zelenodolsk.[1] At the time of writing, the standoff continues, though both countries have downplayed it. Vanguard Bank represents the worst conflict in the SCS since the Haiyang Shiyou 981 oil rig standoff in May 2014.

Vietnam and China constitute only part of the multinational territorial disputes which also involve Taiwan, the Philippines, Malaysia, and Brunei. As a major flashpoint in Asia, the SCS repeatedly squeezes itself into international headlines, thanks to their potential to bring the United States, the current security guarantor, and China, the potential challenger, into conflict. To understand the complexity and predict its future course of conflict, scholars and pundits have to understand Vietnam, the second most important claimant in the SCS, which claims both the Spratly and the Paracel archipelagoes just like China. While Hanoi does not control any territory in the Paracels, it occupies the most features in the Spratly Archipelago. Despite its importance, Vietnam's claims and actual holdings in the SCS remain under-studied. This paper aims at shedding light to four inter-related but poorly understood questions: (1) How many features does Vietnam physically occupy in

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the Spratly? (2) How does Vietnam administer these features? (3) What are Vietnam's historical, and geopolitical motivations in further reclaiming Spratly Islands? (4) What are the challenges Vietnam faces in reclaiming said islands? It reviews the fraught bilateral relations, surveys the individual islands and reefs within the contested waters, and investigates the challenges faced by Hanoi in defending its holdings in the SCS.

II. Historical Entanglements

The tensions between China and Vietnam have deeper roots. Modern Vietnamese textbooks teach that the nation was invaded by China 17 times. Nearly all of Vietnam's national heroes have fought its northern neighbor. The country was conquered and integrated with China for a millennium until it gained independence in the 10th century. Chinese records documented repeated rebellions from Vietnam, known as Annam, literally meaning "Pacifying the South." Vietnam characterized this period (111 BCE–938 CE) as Chinese colonization. During the remaining millennium, Hanoi recognized China's pre-eminence, sending tributes to various Chinese dynasties as part of the Sino-centric tributary system until France colonized it in the mid–19th century. To China's chagrin, Western and Japanese encroachment eventually led to the collapse of its tributary system. China and Vietnam each went through a communist revolution and arduous decolonization in order to regain full independence, after which they were enemies again.

Before relations turned bitter, Hanoi and Beijing shared a revolutionary bond described by Mao Zedong as "close as lips and teeth" during the decades of Vietnam's wars against Saigon, Paris and Washington. After the end of World War II, Vietnam was divided between the two Cold War camps. Sino-Vietnamese friendship, carefully nurtured by their communist founders Mao and Ho Chi Minh, was evidenced not only in photos of handshakes, but in the secret deal over an island in the Gulf of Tonkin in 1957. Then, as the Korean War ended and events leading to the Vietnam War escalated; Ho was in Beijing on an important mission. Upon Ho's request, Chinese Premier Zhou Enlai and Mao made the decision to grant Bai Long Vi (BLV),[2] one of the largest islands in the SCS, to Ho's Vietnam so that the latter, their "comrades and brothers," could prevail in its war against the South Vietnam and the United States. The deal resulted in a distribution of the Gulf of Tonkin, granting 53.23 percent to Vietnam and 46.77 percent remaining under Chinese control. This allowed Vietnam to gain strategic depth for the coastal city Haiphong and the inland capital Hanoi. More importantly, this meant that Hanoi has access to more oil, gas, and marine resources than Beijing does. Today's BLV is a highly guarded military frontline while Chinese leaders and netizens are noting the losses resulting from this exchange.[3]

In the 1970s, while China was engaged in the Cultural Revolution and the U.S. "in effect wrote off Indochina as a serious foreign policy priority,"[4] Vietnam achieved two major triumphs and one blunder. First, it spearheaded a national unification in

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1975, becoming the first divided nation to accomplish such a feat.[5] Second, it was emboldened to seize unoccupied islets in the SCS, much like the United States occupation of the "guano islands" scattered throughout the Pacific and the Caribbean in the late 19th century, albeit on a much smaller scale.[6] The result was that Vietnam controlled the most islands in the SCS. The blunder it committed was the invasion of Cambodia on Christmas Day, 1978, and the subsequent regime change there. Like the Soviet Union's ill-fated adventures in Afghanistan, Hanoi's invasion did not grow out of moral considerations to stop the atrocities committed by Pol Pot's regime. Rather, it was a calculated decision to consolidate its domination of former French Indochina.[7] This soured the relationship with Beijing. Fierce international resistance eventually led to Vietnamese withdrawal in 1989 after a decade-long occupation.

The triangular relationships between the U.S., China and Vietnam was by no means stable, then as much as now. Cold War–era realignment saw China first in the Soviet bloc and then in the U.S. camp. Hanoi and Beijing's friendship was first dimmed by Nixon's China visit, and then buried in Deng Xiaoping's border war of 1979, in the name of punishing Vietnam for invading Cambodia.[8] Further, two sea skirmishes (against South Vietnam in 1974 and unified Vietnam in 1988) resulted in Hanoi's loss of control of its half of the Paracel group and six islets in the Spratlys. The ramifications of these actions still vibrate today, in diplomatic settings, online chatrooms, and mass protests.[9] "Vietnamese nationalism is aggressive only toward China, an historical enemy, but not toward any other state in the region," articulated a leading entrepreneur in Ho Chi Minh city, the former capital of South Vietnam, known as Saigon.[10] This resentment is irrespective of Vietnam's asymmetric economic dependence on China.

For China, the two skirmishes provided many opportunities. Now it is not only in full control of the entire Paracels; it has also gained a foothold in the Spratlys, the farthest SCS group from its shores, with its southern most islet on the same latitude as Saigon. In addition, since the 1980s the Chinese government has adopted a set of measures, including "patriotic education" campaigns, aimed at improving its citizens' "maritime consciousness." An unprecedented public opinion survey on China's maritime disputes, conducted in five major cities in local languages in March 2013, noted that eight out of ten Chinese surveyed view the disputes in the SCS as a matter of national humiliation, a continuation from the nation's painful "Century of Humiliation," thanks to the involvement of the United States.[11] Ironically, people in both China and Vietnam see themselves as victims of the other's "aggressive" policies in the SCS. These sentiments add to the difficulties for a solution through negotiation.

Worse, different methods of calculation, along with inaccurate and unreliable information often complicate even expert analysis, which in turn causes public confusion as to who occupies which features in the region. By focusing on Vietnam, with research related to both foreign and domestic sources, this paper aims to capture the complete picture of individual islands, reefs, cays, and underwater banks with durable/permanent structures occupied by Vietnam in the hope to provide greater insight into the increased instability in the SCS. With more accurate information,

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this study hopes to facilitate understanding and dialogue about the disputed territory.

III. Geographic Significance and Counting Problems

In its entirety, the Spratly Archipelago consists of approximately 100 islands and/or reefs that are relatively small in size, scattered over an area of nearly 410,000 km^2 (158,000 mi^2), with rich fishing grounds yielding up to 7.5 tons of fish per square kilometer in addition to potential deposits of oil and gas.[12] However, the natural islands themselves only amount to less than 5 km^2 with 0 percent of arable land. In addition, they represent maritime hazards due to their numerous reefs and shoals. In terms of weather patterns, the Spratlys enjoy cool summers and warm winters, with a dry season spanning from February to early May, and a rainy season from late May to January of the following year. During the dry season, waves are calm, and the sea is relatively peaceful, allowing for fishery activities and tourism.[13] However, the people inhabiting the Spratly Archipelago also experience harsh conditions, with about 131 stormy days per year and at least 13 days of strong winds above level 6 on the Beaufort Scale per month.[14] Nevertheless, the region is considered prime fishing ground for sea turtles, tuna, lobsters, sea cucumbers, and other nutritious cephalopods. Furthermore, the Spratlys hold great strategic significance due to their location near primary shipping lanes and ports.[15] It is estimated that approximately 300 ships sail through the SCS per day, 20 percent of which are large cargo ships weighing more than 30,000 tons.[16] The sea surrounding the Spratlys plays a vital role in international commercial trade.

The Paracel Archipelago is similar to the Spratlys. It consists of about 130 relatively small coral islands and reefs divided into two distinct groups, including the Amphitrite in the northeast and the Crescent in the west, covering an area approximately 7.75 km.[217] Interestingly, another source claims that the archipelago only includes approximately 30 islands, reefs, and cays that are largely submerged below the surface, spanning over 30,000 km.[2] Regardless, the Paracels are short on arable land for agricultural purposes, rendering them uninhabitable in their natural state.[18] The archipelago enjoys hot summers and cool winters. Air temperatures around the Paracels fluctuate from a low of 22° Celsius in January to a high of 29° Celsius in July, then back to 25° Celsuis in December. Annual rainfall averages around 1,200–1,600 mm, mostly concentrated in the five-month rainy season from May to October. Humidity year-round averages around 80–85 percent and it is not affected by the change of seasons.[19] In addition, the Paracels are surrounded by rich fishing ground for lobster and sea cucumbers, as well as potential deposits of conventional resources. The archipelago wields much significance in terms of commercial utility for littoral countries to develop their economies.

Similar to China, Vietnam claims both the Spratly (known in Vietnam as Truong Sa) and the Paracel (Hoang Sa) archipelagoes. While Hanoi does not control any

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territory in the Paracels, Vietnam has been among the most active claimants, as it controls the largest number of disputed features in the Spratlys and has extended the physical area of ten islets under its occupation. Nevertheless, different sources put forth varied answers as to the exact number of features Vietnam controls. The Vietnamese Communist Party (VCP) claims to occupy only 21 features, but the Asia Maritime Transparency Initiative (AMTI) argues for 27.[20] Most Chinese sources suggest 29, while a 2015 congressional testimony by a senior U.S. defense official specified 48,[21] and the 2018 VOA South China Sea Project asserts 25.[22] This information discrepancy severely hinders expert analysis regarding the development of the SCS disputes; thus, a recounting of all Spratly features under Vietnam's occupation using the number of permanent buildings on top of the features as the measuring unit is needed for enhanced international understanding.

IV. Vietnam's Position and Administrative Structures

As previously mentioned, Vietnam claims both the Spratly and Paracel archipelagoes, as does China and Taiwan. In 1975, Vietnam's Ministry of Foreign Affairs published a White Paper asserting sovereignty over Truong Sa and Hoang Sa, noting that "their very modest size by no means lesser the importance given them by the Vietnamese: to Vietnamese hearts, these remote insular territories are as dear as could be any other part of the fatherland."[23] In December 2009, the Ministry of Defense published another White Paper in which Vietnam reasserts its sovereignty over both archipelagoes while reminding other contenders, especially the PRC, that it remains open to peaceful negotiations based on protocols established by the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and that the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC) as well as the subsequent Code of Conduct (COC) should be upheld at all times.[24] As a whole, Vietnam's position in the SCS disputes has remained largely consistent as it demands full recognition of sovereignty over both the Paracels and the Spratlys in their entirety.

In an effort to further cement its sovereignty over the archipelagoes, Vietnam passed Decree No. 193-HDBT through the Council of Ministers in 1982, establishing the administration of Khanh Hoa Province (southeast Vietnam) over the Spratly Islands and the administration of Quang Nam Province—Da Nang City (central Vietnam) over the Paracel Islands.[25] In 2007, Hanoi decided through Decree 65/2007/ND-CP that features in the Spratly Archipelago would be administered under Truong Sa Village, Song Tu Tay Village, and Sinh Ton Village—all under Truong Sa Island District (TSID) in Khanh Hoa Province.[26]

Considering Vietnam's unswerving position regarding the disputed features and its reasserting effort, it is not surprising that Vietnamese leaders also practice land reclamation, which can be defined as the gain of land from the sea, wetlands, or other water bodies to provide space via artificial methods, on features under Vietnamese

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Figure 1: Vietnam's governance structure in the Spratly Archipelago. This original South China Sea image from the Library of Congress (1995) is edited by Nguyen Nguyen.

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control. Against the continuous expansion of mainland China and other contenders, Vietnam's reclamation[27] efforts and constructions serve as a means to enhance its physical presence in the disputed region and strengthen the country's territorial claims.

Regardless, the three administrative hubs—Truong Sa Village, Song Tu Tay Village, and Sinh Ton Village—along with the independent administrative unit DK1 rigs make up the full picture of features under Vietnam's occupation.

V. Features in the Spratly Archipelago Under Vietnamese Occupation

The Truong Sa Island District (TSID) administers Vietnam's disputed territories in four different groups. The first three consist of the 21 features that are organized around their administrative hubs and the last group is based on its categorization as the DK1 area for service stations. In the following pages, a survey of all the three "villages" in the Truong Sa Island District is introduced. Truong Sa Village, the center of Vietnam's SCS presence, manages more than half of the features, followed by the Sinh Ton Village (eight features), and the Song Tu Tay Village (two features). The last group contains the DK1 rigs built on top of nine underwater features.

A. Truong Sa Village/Island District

Truong Sa Village embodies the most significant group of islands among Vietnam's holdings due to its strategic values. With the Spratly Islands at the western center accompanied by four surrounding bases (West Reef, Central Reef, East Reef, and Ladd Reef), Vietnam forms a "wall" of reefs across the southern part of the contested waters, limiting other countries' opportunities in the disputes. As shown in the solid line box on Figure 1, the "reef wall" aims to prevent China from reaching southward, Malaysia northward, and the Philippines westward, while keeping rival forces on Cuarteron Reef (China) and Commodore Reef (Philippines) in check.

1. Spratly Island (see the ★ in the box in Figure 1). Approximately 470 km away from Cam Ranh Bay, at 8°38'30"N, 11°54'50"E, lies the largest feature of Vietnam's territories in the Spratly Archipelago with a shape resembling an isosceles triangle whose base spans 750 meters northeast-southwest and apex 350 meters in distance. Internationally recognized as Spratly Island, also known as 南威岛 (Nanwei Dao) and Dao Truong Sa, the island was formed from the organic remnants of coral and covers an area measuring at 0.15 km^2, standing 2.4 meters above the high water mark and 3.4 to 5 meters above the lowest tide.[28] On the surface of the island is a lagoon about 2 meters deep, containing brackish water convenient for planting and human needs. Currently, the island is the Administrative Center of Truong Sa Island District in Khanh Hoa Province.[29] Concerning land reclamation, satellite images released in 2016 by AMTI show that the country has reclaimed about 0.15 km^2, almost doubling the original size of the island.[30] It is also reported that since 2008, 7 Vietnamese

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households with 82 civilian residents[31] have inhabited the feature, planting herbs, fruits, and raising poultry for food.[32] Other construction projects, including a lighthouse, civilian shelters, religious pagodas, and memorials, have also been built to satisfy the inhabitants' needs.

2. West Reef. Located at 8°51'N, 112°11'E, approximately 37 km to the northeast from Spratly Island.[33] Otherwise known as 西礁 (Xi Jiao) or Da Tay, the reef makes up the larger London Reefs alongside East Reef, Central Reef, and Cuarteron Reef. West Reef resembles an oval shape with an axis running about 10 km long in the northwest-southeast direction and a width of about 5.5 km, covering an area of 40 km^2 that remains largely below the surface of the water, with only 0.008 km^2 above sea level.[34] West Reef dries at its extremities in the east and west; on top of the eastern reef lies a sand dune that can be up to 0.7 meters high.[35] The lagoon in the center is filled with coral heads but can be measured to 14.6 meters deep.[36] West Reef has a short dry season (February–April) and a long rainy season (May–January) with an average temperature of about 30° Celsius and 80 percent humidity.[37] Regarding land reclamation, 2016 satellite images show that the VCP has reclaimed 0.28 km^2 on top of the emerging 0.008 in only 1 to 2 years,[38] turning West Reef into an area for specialized maritime activities as well as fishery logistic services and a pilot aquaculture complex.[39]

3. Central Reef. Also a part of London Reefs, Central Reef is 11.1 km to the northeast of West Reef and 24.1 km to the northwest of East Reef at 8°56'6"N, 112°2-0'54"E.[40] Known as 中礁 (Zhong Jiao) in China and Truong Sa Dong in Vietnam, the coral reef resembles a circle covering an area of about 1 km^2 with a sand dune aligning east-west on top that spans 200 meters long and 60 meters wide in the eastern section and up to 15 meters wide in the southern section.[41] It is reported that Central Reef has a thin layer of coral hummus in its soil, making it very difficult to plant trees and vegetables.[42] However, Vietnamese marines have transformed the reef, with rows of eagle trees and coconut trees covering 80 percent of the reef's total habitable area.[43] In addition, the feature is close to several fishing grounds for tuna, sea cucumber, sea turtle, etc., making it a place of frequent fishing activities. The Vietnamese government has also greatly improved living conditions on the reef, providing freshwater tanks, green energy, and medical services for its deployed marines.[44] Regarding land reclamation, by 2016, Vietnam had reclaimed approximately 0.017 km^2 on this reef.[45]

4. East Reef. Another feature forming part of the London Reefs is East Reef, also called 东礁 (Dong Jiao) or Da Dong.[46] Lying about 35.2 km to the east from West Reef at 8°49'42"N, 112°35'48"E, the coral reef aligns east-west and becomes steeper from south to north.[47] When tides retreat to a height of about 0.4 meters, the northern section emerges whereas the southern section remains submerged until tides are only 0.2 meters high.[48] East Reef enjoys cooler summers and warmer winters than the mainland of Vietnam; however, days in the dry season are much harsher due to extending heat waves and salt mist, while days in the rainy season tend to have frequent thunderstorms.[49] It is reported that Vietnam has constructed several outposts on the reef to provide stationing platoon facilities for basic activities; however, the government has yet to execute its reclamation project on the reef.

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5. Ladd Reef. Located at 8°40'42"N, 111°40'12"E, about 25.9 km away from Spratly Island in the west, is Ladd Reef, also called 日积礁 (Riji Jiao) or Da Lat. Aligned in the northeast-southwest direction, the submerged reef runs 5.9 km long and 1.6 km wide, covering an area of about 9.9 km^2 below the surface of the water.[50] When tides retreat, boulders on the reef appear and define a lagoon with white sand at the bottom that seems to not have an entrance.[51] Ladd Reef enjoys short dry seasons (February–April) and long rainy seasons (May–January) with an average temperature of 30° Celsius and 80 percent humidity, alongside salt mist that quickly spoils food and damages military weapons. From July to December, storms with strong gusts of wind above level 6 in the Beaufort Scale tend to be frequent, making it extremely difficult for boats coming to shore.[52] Captain Phan Van Binh, chief commander of the platoon stationed on Ladd Reef, revealed that in June 1994, the first lighthouse was erected on the feature, serving as the brightest lighthouse among the current nine in the area of SCS occupied by Vietnam. It stands 40 meters high with a luminous effect of almost 27.78 km^2 during daytime and 33.34 km^2 at nighttime.[53] Concerning land reclamation, the VCP may have started reclaiming in late 2016. U.S. satellite images noted undeclared ships dredging watercourse and carrying soil onto the reef; however, Vietnam has yet to officially admit or deny the reported activities.[54]

6. Pearson Reef. Approximately 26 km to the southwest of Alison Reef, at 8°58'6"N, 113°41'54"E, lies Pearson Reef, also known as 毕生礁 (Bisheng Jiao) and Dao Phan Vinh. Dao Phan Vinh was previously called Hon Sap by the Vietnamese; nevertheless, in 1978, the feature was renamed after former Lieutenant Nguyen Phan Vinh—the heroic commander of several unmarked ships during the Vietnam War, to motivate Vietnamese marines to defend the reef when tension escalated in the SCS. Geographically speaking, Pearson Reef is the emerging part of a much larger largely submerged reef and runs 9.3 km long.[55] Overall elevation of the entire feature fluctuates as the cay in the northeast stands 2 meters tall while the southwest stands only 1 meter high.[56] It is reported that in the west of Pearson Reef lies a wrecked ship which emerges above water surface; when tides are the lowest, one can walk from the edge of the reef to the ship ruins.[57] According to satellite images provided by AMTI, by 2016, the VCP had already reclaimed about 0.024 km^2 on this feature, expanding the total area of the reef to approximately 0.03 km^2—about six times its original size.[58]

7. Cornwallis South Reef. It is also known as 南华礁 (Nanhua Jiao) or Da Nui Le. Lying about 44.5 km away from Tennent Reef, this submerged oblong-shaped feature is located at 8°42'36"N, 114°11'6"E and aligns in a north-south direction,[59] running 8.69 km long and 3.78 km wide.[60] When tides are low and the reef is dry, a 9-meter-deep lagoon is exposed and can be entered through a channel spanning 0.36 km wide.[61] Cornwallis South Reef has cool summers and warm winters; however, distribution of rainfall throughout the year is uneven, with continuous heavy rain from May to October.[62] Concerning land reclamation, Vietnam has reclaimed roughly 0.007 km^2 southwest and 0.01 km^2 southeast of Cornwallis South Reef.[63] It is unclear whether this feature is listed as one of the primary subjects for reclamation, but it is expected that the project will continue at varying speeds on the reef.

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8. Tennent Reef. Located at 8°51'18"N, 114°39'18"E, it is also called 无乜礁 (Wumie Jiao) and Da Tien Nu. This triangular reef covers an area approximately 3.4 km^2.[64] Reportedly, when tides retreat to a height approximately 0.7 meters, several drying corals in the northern and eastern edge of the reef will surface[65]; when tides remain 0.1 meters high, the entire coral edge spanning 300–500 meters surrounding the feature will emerge above the water's surface,[66] revealing a lagoon about 5.8 km long and 2.3 km wide.[67] In terms of natural conditions, Tennent Reef is similar to other features, however, rainfall is very unevenly distributed. Most often rain will not fall even once during the dry season, while during the rainy season, it can sometimes amount to 300 mm per day.[68] Concerning land reclamation, it seems Vietnam has yet to execute its plan on this coral reef; nonetheless, Tennent Reef remains part of an important chain of communication with other features south of the Spratly Archipelago, including Pearson and Cornwallis South Reefs.

9. Alison Reef. Also called 六门礁 (Liumen Jiao) or Da Toc Tan, the feature has an oval shape aligning southeast-northwest with an axis measuring 18.5 km, covering an average area of about 75 km^2.[69] It lies 11 km away from Cornwallis South Reef in the northwest at 8°48'42"N, 113°59'0"E, closer to the Philippines than to Vietnam. Interestingly, the coral shelf in the north of Alison Reef is wider, with more continuous land mass, whereas the southern coral shelf is narrower and more interrupted by shallow watercourse.[70] Alison Reef is largely submerged, with patches of high drying rocks marking entrances to a lagoon that may be 15–25 meters deep.[71] It is reported that Vietnam has built three durable houses on the reef, namely Toc Tan A in the southeast, Toc Tan B in the northwest, and Toc Tan C in the north.[72] In these structures, marines grow vegetables such as spinach and cabbage in cubes of soil brought from the mainland, and also keep dogs to help guard areas on the feature. Concerning land reclamation, no activity has been detected on Alison Reef.

10. Amboyna Cay. Otherwise known as 安波沙洲 (Anbo Shazhou) and Dao An Bang, the cay is claimed by Vietnam as its southernmost land feature, roughly on the same latitude as Vietnam's southernmost tip on the mainland. Located at 7°52'10"N, 112°54'10"E, about 139 km in the southeast from Spratly Island,[73] running 200 meters long and 20 meters wide.[74] With a height of about 2–2.5 meters above high water and an area covering approximately 0.0158 km^2,[75] Amboyna Cay is surrounded by rough tides that make the cay the most difficult place to reach by boats among all features occupied by Vietnam in the contested waters.[76] Tides also cause great hardship to the lives of Vietnamese marines stationed on the cay, as they tend to wash away soil intended for planting vegetables and chase away nearby fish.[77] Perhaps it is due to the difficulties in navigation that the VCP built only one lighthouse on the cay in 1995 plus the necessary facilities needed for the stationing of their navy and has yet to reclaim land on Amboyna Cay. Nevertheless, the cay acts as an important linkage between the Spratly Archipelago and Vietnam's southern continental shelf in addition to being an outer shield, along with other reefs, to guard and monitor foreign activities.

11. Barque Canada Reef. Also known as 柏礁 (Bai Jiao) and Da Thuyen Chai, this reef lies roughly 38.9 km in the northeast from Amboyna Cay at 8°10'N, 113°18'E

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and aligns east-southwest, running 28.7 km long and 3.7 km wide.[78] On the reef, there stands several drying rocks above the surface of the water; at the southwest extremity lies a 4.5-meter-high rock, whereas other unnamed drying rocks emerge along the northeast-southwest side.[79] When Barque Canada Reef dries and the tides retreat to about 0.5 meter, a lagoon and three small sand dunes are revealed.[80] Concerning land reclamation, no activity from the Vietnamese has been reported. Nevertheless, several durable shelters, connected by bridges, have been erected on the reef to serve the navy and the fishermen.[81]

B. Sinh Ton Village

Sinh Ton Village is *the* area in which Vietnam confronts most of its maritime contenders—the Philippines, Mainland China, and Taiwan. Here rivals have set up their own headquarters: Taiwan at the Itu Aba, the largest Spratly Island; the Philippines, at Thitu Island, the second largest, and China, with its Big Three reclaimed islands forming a Subi Reef-Fiery Cross-Mischief Reef triangle, and most of its smaller islands concentrated in this area (See 2 in Figure 1). Obviously, China has the strongest presence in this area. Nevertheless, with Sin Cowe Island and Grierson Reef forming the base, while Sand Cay functions as the cap, Vietnam creates its own circle of influence within the highly sensitive waters. In conjunction with Truong Sa Village, Sinh Ton Village, which has the following features, works to rival China's influence in the region.

1. Sin Cowe Island. Otherwise known as 景宏岛 (Jinghong Dao) or Dao Sinh Ton, the island stands on top of small coral patches and runs east-west spanning 400 meters long and 140 meters wide.[82] Located at 9°53'7"N, 114°19'47"E, the feature is only a few nautical miles away from Johnson Reef, which China seized from Vietnam during the 1988 conflict. Thus, to the Vietnamese, Sin Cowe Island plays a strategic role in maintaining the country's presence in the area, making it one of the most prioritized locations for land reclamation. In the ten-year period from 2006 to 2016, an additional 0.1 km^2 was reclaimed, expanding the island's boundary to a total of 0.13 km^2—five times the original size.[83] Furthermore, public facilities such as energy stations and schools, as well as military barracks have been constructed and consolidated over the years to encourage popular migration onto the island.[84] Regarding natural resources, Sin Cowe has little to offer its inhabitants. The feature does not have freshwater; all water sources for daily activities come from mainland Vietnam, which are stored in underground water tanks. It also does not have fertile soil for farming; all vegetables currently grown on the island were originally planted in layers of soil transferred from the mainland.[85] Nonetheless, living conditions on the island are rapidly improving, so is its physical presence in the South China Sea.

2. Grierson Reef. Locating 27.8 km to the east of Sin Cowe Island (thus the alternative name Sin Cowe East Island),[86] it is also called 染青沙洲 (Ranqing Shazhou) or Dao Sinh Ton Dong. The feature is a congregate of coral dunes, with a length of 160 meters and a width of 60 meters[87] surrounded by wide sand shores spanning up

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to 10 meters laying on top of submerged coral patches running northwest-southeast.[88] When tides reach their lowest, the reef's surface emerges roughly 3 meters above the water.[89] The reef does not have freshwater reserves, and its land is mainly composed of coral sand; thus, Vietnamese marines can only grow vegetables and fruits in small squares of soil to provide for their nutritional needs.[90] Due to its relative proximity to Sin Cowe Island and China's Johnson Reef, Grierson is also prioritized in Vietnam's land reclamation project. Satellite images captured in 2012 indicate that the reef was expanded roughly 0.01 km^2; however, images captured in 2016 show that Vietnam has increased the speed of the project as the total area of Grierson Reef now reaches 0.02 km,^{2} more than doubling its original size.[91]

3. Sand Cay. Sand Cay is a part of the great Tizard Bank and Reefs, located at 10°22'36"N, 114°28'42"E. Also called 敦谦沙洲 (Dunqian Shazhou) or Dao Son Ca, the cay resembles an oval shape running northwest-southeast surrounded by coral shelves.[92] The cay does not have natural freshwater, yet, it possesses fertile layers of soil composed of hummus and guano, which allow for the growing of trees of various kinds that act as habitat for nightingales, giving the cay the name Son Ca in Vietnamese.[93] Besides trees, inhabitants of Sand Cay grow pomelos, jackfruits, and guavas for income and food.[94] In addition, the sea surrounding Sand Cay is home to a variety of fish, such as plaice, tuna, and mackerel, making it a place of frequent fishing and seafood processing with significant commercial benefits.[95] Satellite images from AMTI indicate that Vietnam commenced land reclamation on Sand Cay around 2011. In 2016, images of Sand Cay show that the feature has expanded by 0.37 km^2, almost doubling the cay's overall size.[96]

4. Namyit Island. Situated at 10°10'54" N 114°21'36" E, Namyit Island, also called 鸿庥岛 (Hongxiu Dao) or Dao Nam Yet, is part of the larger Tizard Bank and Reefs.[97] The island has an oval-like shape that spans 650 meters long and 200 meters wide, covering an area of approximately 0.097 km^2.[98] It also stands roughly 3.5 meters high above the water's surface and is reported to have a relatively steep and deep topography in the southern outer layer, as well as a shallow and wide inner layer facing north.[99] In terms of natural conditions, Namyit Island has an average temperature of about 25° Celsius to 29° Celsius with large amounts of rain and strong winds from August to December, causing great difficulties for boats coming to shore. The average humidity on the island is 79 percent and tends to carry salt mist that quickly spoils food and damages military weapons.[100] Namyit Island provides habitat for 58 types of land animals, 185 phytoplanktons, 141 zooplanktons, 225 benthic organisms, 298 types of corals, 186 coral fishes, and 8 types of sea turtles.[101] Highlighting these geographical characteristics of Namyit Island, the study by An Duc Le et al. prompted the signing of Decree 742/QD-TTG by Prime Minister Nguyen Tan Dung in 2010,[102] which prompted the 200-km^2 Nam Yet Marine Preservation Zone to be constructed in 2013.[103] So far, Vietnam has yet to carry out its land reclamation project on Namyit Island; nevertheless, from one perspective, the preservation project has already acted as an alternative method for the government to assert its sovereignty over the island.

5. Petley Reef. Petley Reef, also called 舶兰礁 (Bolan Jiao) or Da Nui Thi, is yet another part of the Tizard Bank and Reefs, lying 11.1 km from Sand Cay in the north-

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east. Situated at 10°25'36"N, 114°34'50"E, the coral reef of Petley Reef is currently administered by Sinh Ton Village of Truong Sa Island District.[104] Spanning roughly 2 km long and 1.3 km wide with an area of about 1.72 km^2, the reef forms itself into a circular shape, a bit flattened on the two northeast-southwest sides, and becomes steeper as one heads southeast.[105] Regardless, when high tides reach 1.2 meters, the entire reef submerges approximately 0.6 meters under water; even when Petley Reef is 0.3 meters above surface, parts of the middle of the reef remain submerged.[106] The reef enjoys a short dry season (February–April) and a long rainy season (May–January) with an average temperature of 28° Celsius and 80 percent humidity with salt mist that quickly spoils food and damages military weapons.[107] Petley has very strong storms and winds that cause high tidal waves, preventing boats from coming to shore between July and December.[108] At present, there have been no known reports about activities of land reclamation on this reef; it seems that Petley Reef will remain untouched for quite some more time due to difficulties in transportation.

6. Discovery Great Reef. Lying 51.9 km southwest from Namyit Island is the Discovery Great Reef, also known as 大现礁 (Daxian Jiao) or Da Lon. Located at 10°03'42"N, 113°51'6"E, the reef aligns north-south in a narrow, steep shape, measuring 18.5 km long and 1.9 km wide with an area of approximately 35.15 km^2.[109] Compared to other reefs, the Discovery Great Reef has a harsher dry season with extended heat waves from early morning until evening; nonetheless, this is also the time in which the sea surrounding the reef stays calmest, making it convenient for boats and ships to pass through.[110] In terms of commercial significance, the reef is surrounded by fishing grounds that include highly profitable fish such as tuna, mackerel and plaice, along with other nutritious seafood, making it a popular spot for fishery activities.[111] That being said, to the Vietnamese, this reef holds major commercial and strategic importance as it situates near Gaven Reef (Mainland China) and Itu Aba (Taiwan). Between 1988 and 1994, Hanoi built three outposts (A, B, and C) wherein Vietnamese marines reside and keep watchful eyes on the area.[112] So far, there have yet to be any reports on reclamation on Discovery Great Reef; nonetheless, the country is focusing on providing green energy as well as firmer outposts to improve the overall quality of life for the marines living on the reef.

7. Collins Reef. At 9°46'13"N, 114°15'25"E, about 17 km to the southwest from Sin Cowe Island, is Collins Reef, regionally called 鬼喊礁 (Guihan Jiao) or Da Co Lin. The reef appears to be similar to a triangle with relatively rounded sides.[113] While most speculate that the reef is a dune formed by coral debris, others insist that it is actually a coral ridge in the shape of a dune.[114] When tides are high, the reef is completely submerged; when tides are low, only a few rocks emerge above the surface of the water.[115] Collins Reef enjoys the typical cool summers, warm winters of the entire Spratly Archipelago with a harsh dry season from February to May in which heat waves extend from 4 a.m. to 7 p.m.[116] The area surrounding the reef includes several profitable fishing areas for tuna, mackerel, and sea cucumber.[117] Regarding land reclamation, it seems that Vietnam has yet to operate on this reef, most likely because of the close proximity between Collins Reef and Johnson Reef the PRC occupies. Nonetheless, Collins Reef remains a major outpost for monitoring foreign activities and serving

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as an integral part of the shield protecting the eastern coast of Southern mainland Vietnam, in addition to containing China's Johnson Reef alongside Sin Cowe Island.

8. Lansdowne Reef. Lansdowne Reef, also known as 琼礁 (Qiong Jiao) and Da Len Dao, is another reef administered by Sinh Ton Village of Truong Sa Island District.[118] At 9°46'48"N, 114°22'12"E, the reef is roughly 12 km from Sin Cowe Island in the southeast and 24 km from Grierson Reef in the southwest.[119] Topographically, the reef is relatively flat; during high tides, Lansdowne Reef submerges about 1.8 meters below the water's surface and only emerges when tides are lowest.[120] Each year, the wind moves the white sand dune on top of the reef in a full circle with the Vietnamese outpost at the center. Interestingly, several news reporters claim that around March or April when the northeast wind blows, the sand dune moves further down to the southwest of the reef and form a shape resembling mainland Vietnam on the map.[121] That being said, to many Vietnamese, Lansdowne Reef remains an important historical landmark alongside Collins Reef and Johnson Reef that reminds them of the 1988 skirmish with the PRC. So far, the Vietnamese government has yet to start land reclamation project on this feature, most likely due to China's presence near the reef.

C. Song Tu Tay Village:

Song Tu Tay Village is the group of islands furthest from Vietnam's mainland in the Spratly Archipelago. With Southwest Cay as the main base, Vietnamese authority aims to keep a firm defense against the Philippines forces on Northeast Cay (See 3 in Figure 1).

1. Southwest Cay. Also named 南子岛 (Nanzi Dao) and Dao Song Tu Tay,[122] situated at 11°25'79"N, 114°19'78"E, the feature resembles an oval extending 650 meters long and 280 meters wide, at 4 meters above sea level, making it the highest island in the entire Archipelago and the sixth largest feature.[123] This fact is a wonder in itself, for features formed on top of coral reefs from sand accumulation like Southwest Cay tend to be lacking in height and size. Different from most reefs and cays in the Spratly archipelago, Southwest Cay is full of brackish water convenient for raising cattle, planting greens, and human activities.[124] AMTI images from 2016 reveal that 0.03 km^2 of land has been reclaimed on the cay, expanding the total area from 0.155 km^2 to 0.185 km^2.[125] In addition, other construction projects such as a soccer field, three storage buildings, a weather station and pagodas were constructed to satisfy physical and emotional needs of Vietnamese navy living on the cay.

2. South Reef. Lying about 6.6 km southwest from Southwest Cay, at 11°23'31"N, 114°17'54"E, is South Reef, otherwise known as 奈罗礁 (Nailuo Jiao) or Da Nam.[126] Defined in geographic terms as a coral reef and not an island, the feature covers an area of 2.7 km^2 and is shaped like an axe-head.[127] South Reef aligns northeast-southwest; when tides retreat, several individual rocks standing about 0.3 meters emerge above water surface. In the east of the reef lies a small, narrow lagoon about 600 meters long and 150 meters wide that reaches up to 15 meters deep when tides are the lowest.[128] South Reef enjoys an average temperature of 25° to 29° Celsius with 80 percent humidity plus salt mist that quickly spoils food and damages military

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weapons.[129] Vietnam reportedly has yet to start a land reclamation project on Da Nam, most likely because Hanoi intends to prioritize scarce resources on primary features with strategic significance.

D. DK1 Rigs: Economic, Scientific and Technological Service Stations

DK1 rigs is a collection of service stations with complex outpost structures administered by Brigade 171 of Navy Zone 2, roughly 463–648 km from Vietnam's mainland, that are independent of the TSID administration. The features in this area are built upon a continental shelf up to 1,700 meters thick, with layers of corals that have developed overtime. The features here enjoy cool summers and warm winters as well as an average temperature of 28° Celsius with strong gusts of northeastern wind from November to February and southwestern wind from June to September. Storms tend to occur from late October to January, with a climax of frequency in November; thus, April is the safest time to carry out fishery activities, followed by early October. Notably, the banks of DK1 rigs are located at important international sea lanes from Northeast Asia to Southeast Asia with fishing grounds and deposits of natural gas currently used by the Vietnamese authority, making them the major outposts for Vietnam's economic interests.

Nonetheless, it is noteworthy that the DK1 area is responsible for the discrepancy regarding the exact number of features Vietnam occupies in the SCS. On one hand, Hanoi considers the features as part of its southern continental shelf and refuses to identify them as part of the disputed area. On the other hand, the different methods used in identifying individual features located in this area contribute to the confusion of information: On a macro level, six major underwater banks can be identified, including Vanguard (Bai Tu Chinh), Rifleman (Bai Vung May/Ba Ke), Prince of Wales (Bai Phuc Tan), Prince Consort (Bai Phuc Nguyen), Grainger (Bai Que Duong), and Alexandra Banks (Bai Huyen Tran). On a micro scale, the area encompasses more than six features, since Rifleman Bank perceivably consists of four smaller shoals which are not recognized by other contenders nor major maritime organizations. Believing in specificity over generalization with regard to areas of territorial disputes, it is best that the four smaller shoals be counted into the overall number of features Vietnam occupies.

That being said, aiming to mark the country's territorial claims in addition to extracting economic benefits, Vietnam has built several service stations—durable structures—which are listed below.

1. Vanguard Bank. Vanguard Bank, or Bai Tu Chinh and 万安滩 (Wan'an Tan), is located at 7°29'N, 109°37'E, with its highest point about 424 km from Vung Tau—Vietnam's southernmost point on the mainland. From 1989 to 1995, Vietnam constructed a total of five service stations on the feature, including DK1/1, DK1/5, DK1/11, DK1/12, and DK1/14. In 1999, after a decade of functioning in harsh weather conditions, DK1/5 collapsed, followed by DK1/14, which was rebuilt in 2001. Currently, only DK1/11, DK1/12, and DK1/14 are in use.[130]

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It is at this particular location that the worst Sino-Vietnamese standoff since the 2014 oil rig clash has occurred.[131] In July 2019, Chinese survey ship *Haiyang Dizhi 8* (*HD8* [Marine Geology 8]), escorted by its Coast Guard and maritime militia, appeared at the Vanguard Bank in an effort to stop the Russo-Vietnamese joint drilling. However, it remains unclear whether the Hanoi ever deployed *Quang Trung*, for there exists neither governmental statements nor reports from major Vietnamese news channels about the dispatch; thus, some private news websites have considered the action a Vietnamese fluke, suggesting that the vehicle was just a naval patrol ship.[132] Nevertheless, Ryan Martinson, assistant professor in the U.S. Naval War College, claimed the supposed *Quang Trung* left the hotspot to return ashore on August 22.[133] Despite the ship's departure, tension has yet to subside. An article published on September 5 in the *South China Morning Post* reports the appearance of China's over 13,000-ton crane vessel *Lan Jing*, including a 7,500-ton capacity crane with 4,000-ton additional crane and an auxiliary 1,600-ton hook, just 56 miles (approximately 90 km) from the Vietnamese coastline near the region spanning from Da Nang to Quy Nhon.[134] Although *HD8*, after two months on sea, seems to have positioned itself further from Vietnamese coast than *Lan Jing* has, satellite images from Marine Traffic look as if the two ships are spearheading China's ambitions over its nine-dashed line, pointing directly to Vietnam's South Central Coast and Southeast regions.[135] Vanguard Bank, for the time being, is a crucial location in need of meticulously close surveillance for analysis.

2. Prince Consort Bank. Lying southwest of Vanguard Bank is Prince Consort Bank, otherwise known as Bai Phuc Nguyen or 西卫滩 (Xiwei Tan), located at 7°48'N, 109°55'E. In 1990 and 1995, Vietnam built stations DK1/6 and DK1/15, however, a major storm heavily damaged DK1/6 in 1990, leaving the rig foundations with which Brigade 171 built station 2A/DK1/6, which later collapsed in 1998 during a heavy storm. Currently, only DK1/15 is in use.[136]

3. Prince of Wales Bank. Located at 8°44'N, 110°35'E is Prince of Wales Bank, also called Bai Phuc Tan or 广雅滩 (Guangya Tan). Among the six banks, Prince of Wales is probably among the most sensitive due to the high volume of fishery activities from Hong Kong and the Philippines, making it a security hotspot. From 1989 to 1997, Vietnamese authorities constructed a total of four service stations on the feature. In 1989, Vietnam constructed DK1/3 on the bank, which collapsed in 1990 during a heavy storm. In 1993, DK1/2 was completed, followed by DK1/16 as well as DK1/17 in 1996 and DK1/18 in 1997, all of which are in use today.[137]

4. Alexandra Bank. Alexandra Bank, otherwise known as Bai Huyen Tran or 人骏滩 (Renjun Tan), is located at 8°1'N, 110°37'E. In 1991, Vietnam built DK1/7 on the bank, aiming at creating a network of service among Alexandra, Vanguard, Prince Consort, and Prince of Wales Banks so as to accelerate the speed of organizing facilities for utilizing seaway activities. To this day, DK1/7, accompanied by a lighthouse and a meteorological observatory, is in use.[138]

5. Grainger Bank. Located at 7°47'N, 110°29'E is Grainger Bank, also called Bai Que Duong or 李准滩 (Lizhun Tan). Notably, the bank has one of the most complex weather patterns among the six contested features in DK1 rigs. Here, heavy rain

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occurs from late June to early February with strong winds up to level 7 on the Beaufort Scale, resulting in waves about 2.5 meters high on average and 8 meters high at maximum. In 1991, Vietnam built DK1/8 on the feature, followed by DK1/19 in 1997. Currently, both service stations are in use with DK1/8 featuring a lighthouse.[139]

6. *Rifleman Bank.* Rifleman Bank, known as Bai Vung May or 南薇滩 (Nanwei Tan), is located at 7°32'N, 111°45'E. The bank includes four smaller features, Bombay Castle (or Bai Ba Ke and 蓬勃堡), Orleana Shoal (or Bai Dat and 奥南暗沙), Kingston Shoal (or Bai Dinh and 金盾暗沙), and Johnson Patch (or 常骏暗沙—Vietnam does not have a name for this feature). Rifleman Bank in its entirety is another security hotspot due to the high volume of foreign fishery activities as well as scouting military ships from other SCS contenders. In 1989, Vietnam built DK1/4, which collapsed in 1990 due to a heavy storm. In 1993, the country constructed DK1/9 on the feature, followed by DK1/20 and DK1/21 in 1998, all of which are in use today.[140]

VI. Conclusion

This paper investigates four inter-related but poorly understood questions on the actual number of features Vietnam physically occupies in the Spratly Islands, its administrative structures, the historical, and geopolitical motivations behind Vietnam's reclamation of the Spratlys Islands and the challenges Vietnam faces in reclaiming said islands. Although Vietnam claims to occupy and administer a total of 21 features, this study confirms that Hanoi actually controls a total of 30 features, including 5 major underwater banks and 4 smaller banks that make up Rifleman Bank in the DK1 rigs. We note that the country has reclaimed land on at least ten features at varied speed. These efforts have produced Vietnam's "Big Four"—Spratly Island, West Reef, Southwest Cay, and Sin Cowe Island. The remaining six features, Sand Cay, Pearson Reef, Central Reef, Grierson Reef, Cornwallis South Reef, and Ladd Reef, have seen limited land reclamation that is not as significant as the first four when compared to their original sizes. As for the rest of the 20 features, it is uncertain whether Vietnam has plans for reclamation.

To Vietnam, a middle-sized power, reclaiming an island on a large scale in the SCS presents at least three problems: First, the cost. Dredging and reclaiming land in the ocean is expensive. It requires complicated logistical support, transportation, navigation, plus high technological capability. China has passed laws banning export of its most-advanced dredgers. Second, land reclamation damages the environment and could lead to international backlash. Third, since 90 percent of the SCS is in disputed areas, it leads to geopolitical tensions, especially between Vietnam and its northern neighbor, China. At this time, it is anticipated that most of Vietnam's features will remain untouched for quite some time. Adding to the difficulties are weather patterns and the geographical proximity to those features occupied by China. Any sudden move from the Vietnamese side would certainly provoke counteractions from Beijing and further complicate the situation. Regardless of land reclamation, to Vietnam, each and every feature under its occupation holds great commercial and strategic significance.

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Notes

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Non-Compliance of Judgments and the Inherent Jurisdiction of the ICJ

Edgardo Sobenes Obregon

Structured Abstract

Article Type: Research Paper

Purpose—The aim of this paper is to review the existence of an inherent jurisdiction of the International Court of Justice to settle disputes arising from the non-compliance of its judgments, which emanates from its identity as a judicial organ and the necessity to ensure the fulfillment of its judicial function. This paper also reflects on the inherent jurisdiction of the Court in regard to non-compliance with provisional measures and its similarities to non-compliance with judgments on the merits of a case; as well as the difference between the power conferred to the Security Council in regard to the enforceability of the judgments from the Court and those of the Court from its inherent jurisdiction in matters concerning to non-compliance of its own judgments. The author invites the reader to revive the most needed reflection on this point and to motivate further discussion.

Design, Methodology, *Approach*—The author bases his analysis on the functional approach, which provides the appropriate grounds to argue that the Court enjoys an inherent jurisdiction to settle disputes arising from the non-compliance of its own judgments. The author also refers to three relevant cases of the Court, i.e., the *Nuclear Test*, *Frontier Dispute* and the *Alleged Violations* cases.

Findings—This paper provides evidence of the potential existence of an inherent jurisdiction of the International Court of Justice to settle disputes arising from the non-compliance of its judgments on the basis of its judicial function. The paper also

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suggests that there is no conflict between the enforceability of the judgments from the Court under article 94 of the UN Charter and the inherent jurisdiction of the ICJ in cases of non-compliance of its judgments.

Originality, Value—This paper brings to the attention of the readers the most important question of non-compliance with the judgments of the International Court of Justice and the Court's inherent jurisdiction to hear such cases, which has not been subjected to sufficient analysis and legal scrutiny. This paper is one of a small number of articles that have ventured into this question, which in turn represents an invitation to continue with the analysis and study of the topic.

Keywords: *Alleged Violations* case, Article 94 UN Charter, compliance, Frontier Dispute case, ICJ, inherent jurisdiction, jurisdiction of the International Court of Justice, non-compliance, Nuclear Test case, paragraph 63, *res judicata*.

The views expressed in this paper are strictly those of the author.

I. Introduction

The question of whether the International Court of Justice ("ICJ" or "Court") has an inherent jurisdiction to settle disputes arising from the non-compliance of its judgments, is a jurisdictional question that has not been addressed sufficiently in the doctrinal studies of the ICJ, nor is it a usual jurisdictional basis sought by States in cases of non-compliance with the judgments of the Court.[1]

It was not until recently that a State directly advanced the argument that the ICJ possess an inherent jurisdiction to settle disputes arising from the non-compliance of its judgments.[2] In the *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia) case[3] ("*Alleged Violations case*"), the Applicant based the jurisdiction of the Court on two grounds, Article XXXI of the Pact of Bogotá and the inherent jurisdiction of the Court.[4] The case concerns the alleged violations of Nicaragua's sovereign rights and maritime zones declared by the Court in its 2012 judgment.[5] In accordance to Nicaragua's Application, the inherent jurisdiction of the Court lied in the inherent power of the ICJ to pronounce on the actions required by its Judgments of 2012, which it claimed, is the basis of alternative grounds for jurisdiction.

In support of the existence of such an alternative basis for jurisdiction, the Applicant argued that there is a clear distinction between the power conferred to the Security Council ("SC") in regard to the enforceability of the judgments from the Court under Article 94 of the United Nations Charter, and those of the Court from its inherent jurisdiction in matters concerning the non-compliance of its own judgments.[6]

Colombia, on the other hand, contested the existence of such jurisdiction and argued that there is no basis on the law and practice of the Court for Nicaragua's alternative assertion that "the jurisdiction of the Court lies in its inherent power to

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pronounce on the actions required by its [previous] judgments."[7] Furthermore, Colombia claimed that if Nicaragua's argument about the inherent jurisdiction were to be taken seriously, "it would strike at the foundation of consensual jurisdiction under Article 36, paragraphs 2 and 3 [because it] ignores any conditions which States may have attached to their consent to jurisdiction."[8]

The arguments advanced by both parties are very interesting and raise important questions, which to date have not been answered by the ICJ. In its Judgment on Preliminary Objections, the Court found that it had jurisdiction over the case on the basis of the Pact of Bogotá, and thus considered that there was no need for it to deal with Nicaragua's alternative grounds for jurisdiction,[9] leaving the question of its existence unanswered.

Despite the fact that the Court did not rule on this matter, the *Alleged Violations* case touches upon certain elements that bring the question back to the attention of public international lawyers and call for a review of this point.

As discussed in this paper, the source for inherent jurisdiction originates from the necessity to fulfill a judicial body's basic judicial functions, thus, "the scope of a court's inherent jurisdiction must necessarily be limited to the functions conferred by the judicial body's mandate."[10] In this regard, the inherent jurisdiction "can be viewed from an unique angle as a kind of a 'niche power' attached to judicial bodies only out of necessity of fulfilling the aims of international justice."[11] On the basis of functional justification, such jurisdiction may not only serve the most important principle of fair administration of justice, but also the conduct to discharge its judicial functions.[12]

To some extent, this type of jurisdiction was also addressed by the Court in the Nuclear Test case. In the realm of this case, the Court dealt with a request from New Zealand for an "examination of the situation" on the basis of paragraph 63 of its 1974 judgment. In accordance to New Zealand, paragraph 63 provided for "the right to return to the Court [...] if a factor underlying the Court's Judgment of 1974 ceased to be applicable on account of future conduct by France."[13] New Zealand maintained that the Judgment expressly reserved to it the right to request an examination of the situation and "to reopen the case instituted by the Application of 9 May 1973."[14] As explained below, the ICJ did not controvert the argument advanced by New Zealand. If anything, it confirmed that such inherent jurisdiction existed if certain conditions were to be met.

There are not many papers that address the inherent jurisdiction of the Court in cases of non-compliance or the role of the Court "to ensure that [its] judgments and decisions are duly complied with."[15] The conclusion reached by most commentators has been that such inherent jurisdiction contradicts the most sacred principle of consent. Yet, the question remains—consent to do what? To solve the dispute? A request for non-compliance does not relate to a new case that will require a new basis of jurisdiction. It relates to the non-compliance of a previous judgment; over which consent has already been given, and where jurisdiction has already been established.

This paper is divided as follows; first, Section II provides general comments on

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the inherent jurisdiction of the Court; Section III provides a brief reference to the Court's most relevant cases concerning inherent jurisdiction; Section IV offers an analogy with the orders of provisional measures. Finally, Section V refers to the relation between the SC (Article 94 of the UN Charter) and the ICJ as the principal judicial organ of the United Nations; and Section VI contains brief conclusions on the topic.

II. The Inherent Jurisdiction of the ICJ

According to the *Oxford English Dictionary*, "inherent" describes something which "exist[s] in something as a permanent attribute or quality; forming an element, esp[ecially] a characteristic or essential element of something; belonging to the intrinsic nature of that which is spoken of."[16] The inherent jurisdiction of the Court might thus be said to be one derived from its permanent quality as a court of law, which belongs to its intrinsic nature.

The Statute of the Court and the Rules of Court are silent regarding the jurisdiction arising from the non-compliance of its judgments. However, it is precisely the inherent nature of this type of jurisdiction which makes its expressed indication unnecessary. As pointed out by the Applicant in the *Alleged Violations* case, the ICJ's "'inherent jurisdiction' is not expressly provided for, but it stems from the very nature of the [ICJ] as a court of law and is implied in the texts determining [its own] jurisdiction […]."[17]

The roots of the functional approach concern the purpose of the Court. Thus, in order to have a proper understanding of the scope of its application, it is necessary to determine the purpose of the ICJ and what is provided for in its constitutive charter. The main purpose of the Court, as the principal judicial organ of the UN, is to settle, in accordance with international law, legal disputes submitted to it by States,[18] which makes it fundamental to clarify whether a dispute is actually settled by the issuance of a judgment or by the implementation and/or compliance with the judgment.

A judgment of the Court is not the end of a dispute, it is the end of a litigation process. Undoubtedly, the dispute can continue and its conclusion depends on the will of the parties.[19] However, it is problematic to the very purpose for which the Court was created, to assume that the Court would fulfill its fundamental function if one of the parties to a specific dispute refuses to adopt and comply with a judgment of the Court and, at the same time, the Court cannot exercise its inherent jurisdiction to hear cases of non-compliance. This would create an inescapable deadlock in the dispute, and leave the affected party without a judicial option.

The defiance of a judgment that enjoys the force of *res judicata* prevents the Court from fulfilling its function of settling legal disputes, in a way that strengthens international peace, security, and the rule of law. It is in this scenario that the functional justification could find its nest and appropriate grounds to argue that the Court could enjoy such inherent jurisdiction to settle disputes arising from non-compliance with its own judgments.

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One can parallel the underlying legal justification for inherent powers to inherent jurisdiction. As has been considered by other international tribunals and courts, inherent powers are not explicitly granted in their constitutive instrument, but rather emanate as "a necessary consequence of the parties' fundamental intent to create an institution with a judicial nature."[20]

In connection to this, Judge Trindade stated in his Separate Opinion to the Order of April 2013 in the *Certain Activities* and the *Road* cases,[21] that the doctrinal construction of inherent powers "was intended to assert the powers of the juridical *persona* at issue for the accomplishment of its goals, as provided for in its constitutive charter."[22] This basically refers to two broad aspects that characterize the inherent nature of powers and jurisdiction; first, inherent means that they are not expressly stated in the constitutive instruments; and two, the source is the need of international courts to ensure the fulfillment of their judicial functions. In reflecting on these issues, Thirlway reminded us of the words of Prof. Fitzmaurice by pointing out that "[t]he true justification for an inherent jurisdiction must be [...] that 'the power to exercise it [...] is a necessary condition of any court of law [...] being able to function at all,'[23] but.... What is meant by 'to function'"? What does this entail for an international court whose judgments are final and without appeal?[24]

To answer the first question, "to function" is to fulfill its mandate, which is to "*settle*, in accordance with international law, legal disputes submitted to it by States." In addressing the second question, the affirmation of the existence of an inherent jurisdiction of the Court does not—in any way—contradict the general principle of *res judicata.* To the contrary, it intends to strengthen the realization of justice at an international level by upholding the imperative value of the Court's judgments and by underlining the need to extend the domains of the Court to hear cases of non-compliance.[25]

As discussed below, the ICJ can act to provide for the orderly settlement of all matters in dispute and the jurisdiction to do so "derives from the *mere existence of the Court as a judicial organ* established by the consent of States [...], in order that its basic judicial functions may be safeguarded."[26]

There is an important difference from the consent given by the States, in becoming parties to the Court's Statute, and the consent for the jurisdiction of the Court over a specific case. In relation to the latter, the Parties to a dispute can consent to the jurisdiction of the Court by means of a bilateral or multilateral treaties, special agreement, an optional clause or by means of *forum prorogatum.* Since this article refers to cases of non-compliance, there is an obvious assumption that the jurisdiction over the merits in the previous case is not disputed; what is controversial is the existence of an inherent jurisdiction of the Court in cases of non-compliance, and the question of temporal limitations. This paper does not provide a definitive answer to these questions, yet, it lays down legal considerations that indeed seem to support the existence of such inherent jurisdiction. It is important to reflect that the inherent jurisdiction is not a *carte blanche* for jurisdiction. The question is not about the Court enjoying enforcement powers or having a monitory function like the Inter-American Court of Justice.[27] The question concerns the inherent jurisdiction of the

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Court to hear cases of non-compliance, when a party submits a request as such. As controversial as this might sound, this reflects the ultimate aim of the parties to a dispute, which should be to actually resolve the dispute.

In order to have a holistic approach to the question of consent, one has to see the legal proceedings as a whole, which begin with the application of a case and end with the settlement of the dispute. This is pivotal to ensure a good and fair administration of justice[28] and the fulfillment of the functions of the Court.[29] To illustrate the importance of the latter, one may refer to the words of Judge Pinto de Albuquerque, who in *Fabris v. France case* stated that

> it is evident that the jurisdictional nature of the Court would be dangerously at risk if the Court did not react to infringements of its judgments and, even worse, if the final word on the execution of its judgments were *de facto* dependent on the will of the first addressees of the judgments themselves: the governments. The entire system of human rights protection would be sacrificed on the altar of politics, the Court's judgments being downgraded to provisional statements on disputes in need of a subsequent political *satisfecit* to be effective.[30]

Up to this date, the *status quo* suggests that the judgments of the ICJ could indeed be mistakenly considered as a provisional statement on disputes.[31] There are no judicial enforcement organs in place in international legal orders or, to any effect, a body that monitors compliance. In face of the lack of such body, non-compliance with a judgment of the principal judicial organ of the UN becomes a complex problem that could diminish the Court's authority and undermine its most important goal of settling legal disputes. A depletion of the effectiveness of the Court's judgment could be detrimental to the Court's appeal. As has been identified in doctrinal studies, "non-compliance [...] can erode a court's legitimacy, or alter the way a court makes subsequent ruling."[32]

III. Jurisprudence of the ICJ

There are two cases that shed light on the inherent jurisdiction of the Court; the *Nuclear Test* case and the *Frontier Dispute* case.

On 20 December 1974, the Court delivered two judgments on the *Nuclear Test* case. In said judgments, it concluded that the dispute between the Parties had disappeared and the claims advanced by them no longer had any object.[33] The Court based its findings "on the conclusion that the objective of Australia and New Zealand had been achieved inasmuch as France, in various public statements, had announced its intention of carrying out no further atmospheric nuclear tests on the completion of the 1974 series."[34] What is most relevant to the present article is that the Court stated in those proceedings that it possesses an inherent jurisdiction which enables "it to take actions as may be required [...] to provide for the orderly settlement of all matter in dispute" and that such jurisdiction "derives from the *mere existence of the Court as a judicial organ* established by the consent of States, and is conferred

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upon it, in order that its basic judicial functions may be safeguarded."[35] It continues its reasoning and observed

> that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot by itself constitute an obstacle to the presentation of such a request.[36]

As evidenced in this case, the Court recognizes its power to retain jurisdiction over a case, even if one of the parties denunciates the jurisdictional basis upon which the jurisdiction of the original case is based. The approach adopted by the Court in the *Nuclear Test* case seems to confirm that indeed it has an inherent jurisdiction to examine a situation of non-compliance with one of its previous judgments.

In its judgment on *The Request for an examination of the Situation in Accordance with Paragraph 63 of the Court's Judgments of 20 December 1974 in the Nuclear Test (New Zealand v. France)* case, the Court clarified that by laying down in paragraph 63 that the Applicant could request an examination of the situation in accordance with the provisions of the Statute, it did not "intend […] to limit the Applicant's access to legal procedures such as the filing of a new application (Statute, Art. 40, para. l), a request for interpretation (Statute, Art. 60) or a request for revision (Statute, Art. 61), which would have been open to it in any event,"[37] but that "by inserting the above-mentioned words in paragraph 63 of its Judgment, the Court *did not exclude a special procedure*, in the event that the *circumstances* defined in that paragraph were to arise, in other words, circumstances which 'affected' the 'basis' of the Judgment."[38]

In the realms of *Alleged Violations* case, Colombia referred to this *special procedure*, which, in accordance to it, confirms that "the Court will make such a reservation only in rare situations."[39] It is true that the Court made a reservation due to the unique situation of that case, but that is beside the point. What matters is that the Court considered that nothing in the UN Charter, its own Statute, Rules or its own settled jurisprudence prevented it from making such a reservation. Additionally, one could argue that there is no need for a reservation to be included by the Court. The parties to a dispute, and all the members of the UN, have already accepted an obligation to comply with a decision of the Court. This treaty obligation was already recognized in the early years of the PCIJ, when the Court stated that it "neither can nor should contemplate the contingency of the judgment not being complied with"[40] due to the obligations already undertaken by the members of the UN.

The fact that no provisions are made for in the principal text governing the "structure, powers, and work of the Court"[41] does not prevent the Court from exercising such jurisdiction if needed. The Special Court of Sierra Leone embraced this by stating in one of its decision that "the exercise of the inherent power of the court does not extend to an act that will be inconsistent with the express provisions of the rules. *It is a different thing where the court has jurisdiction or duty to grant a remedy*

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but the rules are silent as to the procedure."[42] Similarly, the Appeals Chamber in the *Tadic* case recognized the existence of residual powers that "derive from the requirements of the 'judicial function' itself" which concerns the inherent jurisdiction of the Court "from the exercise of [its] judicial function," and "does not need to be expressly provided for in the constitutive documents of those tribunals."[43]

The latter was also addressed by a Chamber of the ICJ in the case between Burkina Faso and Mali. After the Chamber delivered its judgment on the merits, and in accordance to Article IV of a Special Agreement concluded between the Parties, it proceeded to appoint three experts to assist "the Parties in the operation of demarcation of their frontier in the disputed area."[44] This was considered to be a rare situation because the role of the experts was related to a post-adjudicate phase, i.e., implementation of a judgment. However, after some consideration the Chamber concluded that "there is nothing in the Statute of the Court, nor in the settled jurisprudence, to prevent the Chamber from exercising this power, the very purpose of which is to enable the Parties *to achieve a final settlement* of their dispute in implementation of the Judgment which it has delivered."[45] This statement clarifies the question referred above; What is meant by "to function"? If we take the approach adopted by the Chamber of the Court in the *Frontier Dispute* case, to function is to *achieve a final settlement* of the dispute submitted to it by States.

The *Nuclear Test* case and the *Frontier Dispute* case provide evidence that the Court can exercise its inherent jurisdiction, either by its own initiative or by the expressed request of the parties, and that no provision of its constitutive instruments prevent it from doing so. The fact that both cases have been considered unique does not challenge the existence of the inherent jurisdiction of the Court. On the contrary, it confirms it. Moreover, it is important to underline that there are no legal obligations that require the ICJ to have certain "court practice" to solidify the existence of its inherent jurisdiction over matter concerning non-compliance. It only takes one pronouncement from it for such jurisdiction to be proven to exist.

IV. Provisional Measures

In his Separate Opinion in the *Alleged Violation* case, Judge Trindade expressed that "[e]ven in the absence of an express provision […], international tribunals are entitled to exercise their inherent powers in order to secure the sound administrations of justice."[46] Proof of the exercise of such inherent power is manifested in cases of violation of an order indicating provisional measures.

In the landmark case between *Germany v. United States of America,* the Court acknowledged that

> Where the Court has jurisdiction to decide a case, it also has jurisdiction to deal with submissions requesting it to determine that an order indicating measures which seeks to preserve the rights of the Parties to this dispute has not been complied with.[47]

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Since the judgment in the *LaGrand* case, it has become undeniable that "provisional measures indicated by the Court impose upon the party or parties to whom they are directed a binding obligation of compliance."[48] The Court has dealt on numerous occasions with requests for provisional measures, and, in many cases, the parties have failed to comply with the orders, the *Certain Activities* case between Costa Rica and Nicaragua being one example.

In its final submission, Costa Rica contested that Nicaragua breached its obligations arising from the Orders of the Court indicating the provisional measures of 8 March 2011 and 22 November 2013. The Court acknowledged in its judgment on the merits that it had already ascertained the facts put forward by Costa Rica in its Order of 22 November 2013, and clarified that that statement "was only instrumental in ensuring the protection of the rights of the Parties during the judicial proceedings" and that "[t]he judgment on the merits [was] the appropriate place for the Court to assess compliance with the provisional measures." The Court then ensured that

> contrary to what was argued by Nicaragua, a statement of the existence of a breach to be included in the present Judgment cannot be viewed as "redundant." Nor can it be said that any responsibility for the breach has ceased: what may have ceased is the breach, not the responsibility arising from the breach.[49]

Under the circumstances of the case, the Court found that Nicaragua "breached the obligations incumbent upon it under the Order indicating provisional measures issued by the Court on 8 March 2011."[50] Could a breach of a judgment over the merits of a case be considered less of a breach than a breach of an Order for provisional measures? Is it not the jurisdiction of the Court to decide on the non-compliance with an Order for provisional measures the same as the one over the merits of the case? The answer to the latter is yes, and to the former is no. The fact that the statute is silent on the inherent jurisdiction in provisional measures proceedings has not precluded the Court from deciding disputes arising in such cases.[51] This confirms that the Court "can […] punish failures to respect its previous judgment,"[52] and that it has a role "to ensure that [its] judgments and decisions are duly complied with."[53]

In the *LaGrand* case, Germany advanced an argument that can easily be extrapolated and applied to disputes arising from the non-compliance of a judgment on the merits. In that case Germany argued that "[p]rovisional [m]easures indicated by the International Court of Justice [are] binding by virtue of the law of the United Nations Charter and the Statute of the Court."[54] The same applies to the judgments of the Court. Germany continued arguing its position by referring to the "principle of effectiveness," to the binding nature of provisional measures as a "necessary consequence of the bindingness of the final decision," to "Article 94 (l), of the United Nations Charter," to "Article 41 (l), of the Statute of the Court" and to the "practice of the Court."[55] All of the above apply to the merits of a case—with the clear exception of Article 41. Yet, these are not the only arguments that could support the existence of an inherent jurisdiction. It is important to include Article 60 of the Statute, the importance of *res judicata* and the need to ensure the proper and sound administration of justice. Judge Trindade reflected on this issue, when stating that "[e]ven

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in the absence of an express provision thereon, international tribunals are entitled to exercise their inherent powers in order to secure the sound administration of justice" and are "endowed with inherent powers or *facultés* to take the decision that ensures compliance with the provisional measures [and to the effect of this paper, judgments] it has ordered, and thus safeguard of the right at stake."[56]

One could hardly argue that the Court *can* exercise an inherent jurisdiction to decide on non-compliance with orders of provisional measures and *cannot* enjoy the same inherent jurisdiction in cases of non-compliance with judgments on the merits of a case. It would be self-defeating to argue that the Court enjoys a more extensive jurisdiction over provisional measures, than over the merits of a case.

The above suggests that the Court has exercised its inherent jurisdiction in previous cases, not because there is an expressed provision in the Statute, but as part of its obligations as an international court to settle disputes between states and in accordance with the objectives and purposes of its own Statute. Accepting the operation of such inherent jurisdiction in cases arising from the non-compliance with its own judgments will allow the Court to enhance the pure realization of justice at the international level.

V. The Inherent Jurisdiction of the Court and Its Relation to Article 94 UN Charter

Paragraph 1 of Article 94 of UN Charter echoes the well-known general principle of international law establishing the binding nature of the decisions of the ICJ, which is also contained in Articles 59 and 60 of the Statute of the Court.

Article 94 (1) states that "[e]ach Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." The term *decision* applies to judgment and any other decision rendered by the Court.[57]

The obligation spelled out in paragraph 1 constitutes a general obligation to all Members of the UN. However, the operation of such an obligation is activated only for those states that are part of a dispute before the ICJ. Thus, the obligation *per se* is an individual obligation for each of the parties to a dispute, which has been undertaken *a priori* by becoming a Member of the UN.[58] As a result, all the parties to a dispute before the ICJ have a treaty obligation to comply with a decision taken by the Court.[59]

Paragraph 2 of Article 94[60] on the other hand, provides an enforcement mechanism in case of non-compliance with a Court's judgments. It states that

> 2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

It has been repeatedly stated that the role of the SC is political and corresponds to a post-adjudicate phase.[61] This was foreseen by the Washington Committee of

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Jurists while drafting the Statute of the ICJ. The Committee decided not to include the question of enforcement of the Court's judgments in the Statute of the Court, because it considered that it was a political issue and not a legal one. Instead, it proposed to include it in the UN Charter.[62] The ICJ stressed this point in the *Military and Paramilitary Activities* case, where it affirmed that "the [SC] has functions of a political nature assigned to it, whereas the Court exercises purely judicial functions."[63] In this line, Rossene observed that

> the efficacy of the institutional post-adjudication process will not be determined by a judicial examination of the situation brought by the non-compliance, but will depend on immediate and even ephemeral political consideration.[64]

It is this judicial examination that will be required from the Court, and not a political consideration as the one attributed to SC. In this regard, several aspects need to be emphasized: (1) the SC is not intended to carry out a *de novo* judicial examination of the non-compliance; (2) the SC has room for flexibility in the sense that it *may*—if it deems necessary—make recommendations or decide upon *measures* to be taken to give *effect* to the judgment; (3) enforcements by the SC are *per se* of a political nature; and (4) Article 94 (2) refers only to the *enforcement* of judgments and not to the legal settlement of disputes or the performance of a judicial analysis arising from the non-compliance under international law. In accordance with the Charter and the Statute of the Court, only the ICJ has the authority to discuss substantial juridical aspects of its own judgment.

In the *Alleged Violation* case, the Applicant considered that there is a clear distinction between enforcement power on the one hand and competence with regard to compliance with judgments on the other. Such distinction reflects the difference between the power conferred to the Security Council regarding the enforceability of the judgments of the ICJ and those of the Court emanating from its inherent jurisdiction over matters concerning non-compliance. The argument advanced by Nicaragua seems to be plausible, but clearly it does not settle the matter. Indeed, by finding its jurisdiction in the Pact of Bogotá, the Court left the question of its inherent jurisdiction unanswered.

Finally, the fact that there has not been a single instance in which positive action has been taken by the SC under Article 94 (2)[65] gives, in turn, more importance to the clarification of the existence of an inherent jurisdiction of the Court in cases of non-compliance. It has been suggested that cases of non-compliance are not referred to the SC, in part because such cases "regularly involved a permanent member either on the applicant or the respondent side, reinforcing the institution's Cold War stasis,"[66] or if not directly involved in the case, a permanent member most likely will have an interest in one party prevailing over the other. Ultimately, the practical use of the inherent jurisdiction of the ICJ, and its legal value, will have to be determined by the States themselves.

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VI. Conclusion

The ICJ is the principal judicial organ of the United Nations, whose main purpose is to settle legal disputes submitted to it by States. The inherent jurisdiction referred to in this paper emanates from its identity as a judicial organ and the necessity to ensure the fulfillment of its judicial function.[67] The Court's judgments are final, binding, and without a means of appeal. These characteristics together with the original basis of jurisdiction and the judicial nature of the Court, provide the fertile ground for an inherent jurisdiction in situations of non-compliance. If a State seizes the Court with a request over a non-compliance, it would not be doing so in order to argue a new case or to bring new elements to the dispute that could affect the principle of *res judicata*, but to request the Court to settle the unresolved dispute between the parties.

The Court would have to first determine if indeed there is a situation of non-compliance and, if the request does not constitute a new case, before it can decide whether it can or cannot exercise inherent jurisdiction described in this paper. The necessary condition for it to have jurisdiction depends on the non-compliance *per se* and additional considerations the Court has to determine on a case by case basis. The position expressed in this paper is not definitive, and the Court has to clarify its inherent jurisdiction through its own jurisprudence. It is important to reiterate in these conclusions that the non-compliance of judgments not only violates and diminishes the authority of the Court and its decisions, but also threatens the maintenance of peace and international security. Such impunity should not have a place in the international legal order.

For all the reasons expressed above, it seems not only plausible, but also desirable to recognize the inherent jurisdiction of the Court to settle disputes arising from non-compliance with its own judgment, and thus, allow it to fulfill its utmost important function. This topic is indeed fascinating and one can only hope that this article motivates further research and discussion on it.

Notes

1. In accordance to recent data, there has only been 4 occasions, in which States have openly chosen to disregard a judgment of the Court; i.e., Corfu Channel, Fisheries Jurisdiction, Tehran Hostages, and Military and Paramilitary Activities case. See C. Schulte, *Compliance with Decisions of the International Court of Justice* (Oxford, 2004), p. 271, https://doi.org/10.1093/acprof:oso/9780199276721.001.0001. However, this number might be far from the real number of cases in which a party has not complied with a judgment of the Court, be it partially, fully, or temporarily. There are studies that suggest that between 1987 and 2004 compliance with the ICJ decision was 60 percent. C Paulson, "Compliance with Final Judgments of the International Court of Justice Since 1987," AJIL 98 (2004) pp. 434–61, https://doi.org/10.2307/3181640. These data should be treated with great caution, and be the subject of further analysis.
2. Written Statement of the Republic of Nicaragua to the Preliminary Objections of the Republic of Colombia, in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, April 20, 2015, p. 61, para. 5.9.
3. This case is still pending before the ICJ at the time of the submission of this article.
4. In its Judgment on Preliminary Objections, the Court found its jurisdiction on the basis

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of Article XXXI of the Pact of Bogotá, and thus considered that there was no need for it to deal with Nicaragua's claim of inherent jurisdiction. See *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* (Preliminary Objection), Judgment of March 17, 2016, para. 104, p. 39.

5. Nicaragua's Application, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, 26 November 2013, p. 22, para. 18.

6. See *supra Note 3*, p. 68, para. 5.25.

7. Preliminary Objections of the Republic of Colombia, December 19, 2014, para. 1.16. This article does not intend to settle the divergence of opinion between Nicaragua and Colombia, but to address the general legal argument that refers to the existence of such inherent jurisdiction.

8. Preliminary Objections of the Republic of Colombia, December 19, 2014, para. 5.3.

9. See *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* (Preliminary Objection), Judgment of March 17, 2016, para. 104, p. 39.

10. J. Liang, "The Inherent Jurisdiction and Inherent Powers of International Criminal Courts and Tribunals: An Appraisal of Their Application," *New Criminal Law Review*, 15(3) (2012), p. 389, https://doi.org/10.1525/nclr.2012.15.3.375.

11. *Ibid.*

12. *Ibid.* See also El-Sayed (Decision on Jurisdiction and Standing), at 148.

13. *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand V. France)* Case, ICJ, Reports 1995, p. 288, para. 32.

14. *Ibid.*, p. 288, para.32.

15. Separate Opinion of Judge Cancado Trindade, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* (Preliminary Objection), Judgment of March 17, 2016, p. 67, para. 72.

16. *Oxford English Dictionary* (1933 ed.), vol. V, p. 293.

17. *See Supra* note 3, p. 62, para. 5.11.

18. *See* Article 38 of the Statute of the Court.

19. For more on compliance see C. Schulte, *Compliance with Decisions of the International Court of Justice* (Oxford, 2004).

20. Decision Ruling on Request for Revision by Iran, July 1, 2011, *Iran V. United States*, Decision n° 134-A3/A8/A9/A14/B61-FT, para. 59, citing D. Caron, L. Caplan and M. Pellonpää (ed.), *The UNCITRAL Arbitration Rules: A Commentary*, 2006, p. 915, https://doi.org/10.1093/law:iic/9780199297597.book.1, and C. Brown, "The Inherent Powers of International Courts and Tribunals," *BYbIL*, Vol. 76, 2005, p. 228, https://doi.org/10.1093/bybil/76.1.195.

21. In said Order the Court decided to join both procedures.

22. Separate Opinion of Judge Cancado Trindade, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica V. Nicaragua) Proceedings Joined with Construction of a Road in Costa Rica Along the San Juan River (Nicaragua V. Costa Rica) on 17 April 2013*, [2013] ICJ Rep. 166, at 174, para. 6.

23. H. Thirlway, "The Law and Procedures of the International Court of Justice 1960–1989: Part Nine," 69 *British Yearbook of International Law* 1 (1998), p. 21, https://doi.org/10.1093/bybil/69.1.1.

24. *See* Article 59 and 60 of the Statute of the Court. For more see A. Zimmermann et al. (ed.), *The Statute of the International Court of* Justice, Second Edition (2012), https://doi.org/10.1093/law/9780199692996.001.0001; H. Thirlway, *The Law and Procedure of the International Court of Justice, Fifty Years of Jurisprudence*, Vol. I and II (2013), https://doi.org/10.1093/law/9780199673384.001.0001.

25. See Separate Opinion of Judge Cancado Trindade, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* (Preliminary Objection), Judgment of March 17, 2016, p. 67, para. 72.

26. *Nuclear Tests (Australia v. France*), Judgment of December 20, 1974, [1974] ICJ Rep. 1974, 253, at 259–260 (*italic added*). *Nuclear Tests (New Zealand v. France*), Judgment of December 20, 1974, [1974] ICJ Rep. 1974, 457, at 463.

27. See for example the Inter-American Court of Justice. Article 65 of the Convention states that "[t]o each regular session of the General Assembly of the Organization of American States

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the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations."

28. Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing of November 10, 2010, para. 45.

29. The integrity of proceedings was acknowledged by ICSID Tribunal in the *Hrvatska Elektroprivreda V. Slovenia* case. In this case ICSID recognized that "as a juridical formation governed by public international law, the Tribunal has an inherent power to take measures to preserve the integrity of the proceedings […] independently of any statutory reference." See *Hrvatska Elektroprivreda V. Slovenia,* ICSID Case No. ARB/05/24, Ruling (May 6, 2008), para. 33.

30. E.C.H.R., Grand Chamber, February 7 2013, *Fabris V. France*, Application no. 16574/08, Concurring Opinion of Judge Pinto de Albuquerque, *Rec.*, p. 31.

31. For example, in discussing the 2012 judgment of the Court in the *Territorial and Maritime Dispute (Nicaragua V. Colombia)*, the President of Colombia stated that "All these [the Judgment] are omissions, errors, excesses, inconsistencies, we cannot accept them," See https://colombiareports.com/icj-ruling-on-san-andres-a-serious-judgement-error-santos/. Another striking example is the 2008 Judgment of the Supreme Court of the United States in *Medellin v. Texas*, which declared that the 2004 decision of the International Court of Justice (ICJ) in *Mexico v. United States (Avena)*, "requiring the United States to provide further 'review and reconsideration' of the convictions of petitioner Medellin and 51 other Mexican nationals on death row in the U.S., was not binding federal law and was therefore, absent an implementing statute, not enforceable by federal courts against Texas," Medellin v. Texas: Supreme Court Holds ICJ Decisions under the Consular Convention Not Binding Federal Law, Rejects Presidential Enforcement of ICJ Judgments over State Proceedings, ASIL Insight vol. 12, issue 6; and Medellin v. Texas [2008], 552, U.S. 491.

32. H. Alexandra, "Compliance with Judgments and Decision," in C. Romano et al., *The Oxford Handbook of International Adjudication* (Oxford, 2015), p. 442 (reference omitted).

33. *Nuclear Tests (New Zealand* v. *France*), Judgment of December 20, 1974, [1974] ICJ Rep. 457, at 476, para. 59. *See* also *Nuclear Tests (Australia* **v.** *France)*, Judgment of December 20, 1974, [1974] ICJ Rep. 253, at 271, para. 56.

34. http://www.icj-cij.org/en/case/59, accessed August 22, 2019.

35. *Supra* note 27, 259–260 (*italics added*).

36. *Ibid.*, p. 476, para. 63 and p. 272, para. 60.

37. *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand V. France) Case*, ICJ Reports 1995, p. 288, para. 52.

38. *Ibid.,* p. 288, para. 53 (*italics added*).

39. Preliminary Objection of the Republic of Colombia, in the case concerning *Alleged Violations of Sovereign Rights and Maritimes Spaces in the Caribbean Sea (Nicaragua v. Colombia*), December 19, 2014, p. 137, para. 5.17.

40. *Factory at Chorzow, P.C.I.J., Series A, No. 17,* p. 63.

41. R. Mackenzie et al., *The Manual on International Courts and Tribunals* (Oxford University Press, 2010), p. 5.

42. Decision on Prosecution Appeal Against the Trial Chamber's Decision of August 2, 2004, Refusing Leave to File an Interlocutory Appeal, Case No.SCSL-04-14-T, Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa, January 17, 2005 (*italics added*).

43. ICTY, *The Prosecutor V. Dusko Tadić,* IT-94-1-AR72, Appeals Chamber, Decision, October 2, 1995, para. 14 and 18.

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and *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665, Operative Part, para. 126.

50. *Ibid.*, Operative Part, para. 229 (3).

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52. Robert Kolb, *The International Court of Justice* (Hart Publishing, 2013), p. 830.

53. Separate Opinion of Judge Cancado Trindade, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* (Preliminary Objection), Judgment of March 17, 2016, p. 67, para. 72.

54. *LaGrand (Germany* v. *United States of America*), Judgment of June 27, 2001, [2201] ICJ Rep. 466, at 498, para. 93 (quoting the Memorial of Germany).

55. *Ibid.*

56. *Supra* note 26, p. 51, para. 20.

57. *LaGrand (Germany v. United States of America*), Judgment of June 27, 2001, [2201] ICJ Rep. 466, at. 506, para. 108.

58. Other options are (a) acceding to the Statute of the Court [without signing the UN Charter] on conditions to be determined by the General Assembly upon recommendations of the SC (Article 93[2] UN Charter) or; (b) when a State is not a party to the Statute of the Court, by lodging a declaration with the Registry of the Court that meets the requirements established by the SC (Article 35[2] Statute of the Court).

59. *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua* v. *United States of America*), Jurisdiction and Admissibility, Judgment of November 26, 1984, [1984] ICJ Rep. 392, pp. 437–438, para. 101.

60. See E. Sobenes, "Recourse to the Security Council under Article 94 (2) of the United Nations Charter," *Max Planck Encyclopedia of International Procedural Law* [MPEiPro].

61. S. Rosenne and Yaël Ronen, *The Law and Practice of the International Court, 1920–2005* (Brill, 2006) 242. *See* also K. Skubiszewski, "The International Court of Justice and the Security Council, in V. Lowe and M. Fitzmaurice," *Fifty Years of The International Court of Justice* (Cambridge, 1996) 607.

62. Documents of the United Nations Conference on International Organization San Francisco 1945 ('UNCIO') vol. 14, 209, 853. See also See E. Sobenes, "Recourse to the Security Council under Article 94 (2) of the United Nations Charter," *Max Planck Encyclopedia of International Procedural Law*" [MPEiPro], para. 3.

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64. *Supra Note* 62, 240 (Rosenne).

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67. *Supra* note 21, 228–9 (C. Brown).

Biographical Statement

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Thucydides in Pyongyang: Fear, Honor and Interests in the 1968 *Pueblo* Incident

Benjamin R. Young

Structured Abstract

Article Type: Research Paper

Purpose—On January 23, 1968, North Korean naval forces captured a U.S. spy ship, the USS *Pueblo*, off the coast of Wonsan. This incident nearly led to a second Korean War and heightened hostilities between the U.S. and North Korean governments. This article demystifies the strategic thinking of Kim Il Sung's regime and clarifies the reasoning behind Pyongyang's risky undertaking in capturing the *Pueblo* and its crewmen as a rational and pragmatic action.

Design, Methodology, Approach—While the *Pueblo* crisis has been examined by a number of historians, this article, which is based on former Eastern bloc archival documents and North Korean periodicals, uses a multi-causal theoretical framework from an ancient Greek historian, Thucydides, in order to analyze the importance of fear, honor, and interest within North Korea's military culture.

Findings—This article argues that North Korean regime's *fear* of South Korea's imminent economic supremacy and rising Japanese militarism along with defending the *honor* of Kim Il Sung and the DPRK's territorial boundaries and advancing the *interests* of the global revolutionary movement factored greatly into Pyongyang's decision-making process in 1968.

Practical Implications—In analyzing North Korea's seemingly irrational aggression, it is vital to take a multi-causal approach, such as the one provided by Thucydides, into understanding North Korea's past and present actions.

Originality, Value—Rather than arguing the 1968 *Pueblo* crisis as one motivated

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by internal or external concerns, this article posits that the North Korean leadership took a number of concerns into account and acted rationally in their capture of the *Pueblo* spy ship.

Keywords: culture, Kim Il Sung, military, North Korea, *Pueblo* incident

I. Introduction

In his timeless account of the Peloponnesian War, Thucydides pinpoints fear, honor, and interest as the causes of military conflict. Although Thucydides' *History of the Peloponnesian War* is most often credited as being the birthplace of realist theory in international relations, the ancient Athenian historian also prioritized the more malleable concept of emotion as the driver of war. As Thucydides himself explained, "The subsequent development of our power was originally forced upon us by circumstances; fear was our first motive; afterwards honor, and then interest stepped in."[1] Prominent members of the U.S. government have recently evoked the insights of Thucydides. In 2012, U.S. General Martin Dempsey, former Chairman of the Joint Chiefs of Staff, said, "Thucydides in the 5th century B.C. said that all strategy is some combination of reaction to fear, honor and interests; and I think all nations act in response to one of those three things."[2] In 2013, U.S. National Security H.R McMaster wrote in a *New York Times* op-ed, "People fight today for the same reasons Thucydides identified 2,500 years ago: fear, honor and interest."[3] Meanwhile, U.S. General James Mattis mentioned the Thucydidean trinitarian analysis in his own confirmation hearing as U.S. Secretary of Defense.[4] Due to the universal applicability of Thucydides' timeless approach and the near eruption of a second Korean War in the late 1960s, I use fear, honor, and interest as a lens into the causes of the 1968 USS *Pueblo* crisis in which a U.S. intelligence vessel was captured by North Korean armed forces in international waters.

Historians have debated the reasons why North Korean leader Kim Il Sung took a massive risk on January 23, 1968, by capturing the USS *Pueblo* in international waters and detaining the 83 crewmen for 11 months. Many scholars have linked the escalation of the U.S. war effort in Vietnam with the North Korean leader's military adventurism in the late 1960s.[5] Since the U.S. was bogged down militarily in Southeast Asia, the Democratic People's Republic of Korea (the official title of North Korea, hereafter DPRK) could afford to be more risky in its inter–Korean context and also assist their North Vietnamese allies by distracting the U.S. on two fronts in Asia. Nonetheless, more recent scholarship has disputed the coordination of events in Vietnam with the heightening of tensions on the Korean peninsula in the late 1960s. For example, historian Mitchell Lerner emphasizes the domestic environment of North Korea in the late 1960s and the need for Kim Il Sung's regime to divert public attention from economic issues by suddenly capturing the U.S. naval ship and creating war hysteria internally.[6] Historian Balázs Szalontai argues that Kim Il Sung pursued his own self-interested militant strategy during the late 1960s and that the Vietnam War did not influence the North Korean capture of the *Pueblo*.[7] This article

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takes a different approach into examining the causes behind the North Korea's capture of the *Pueblo* and argues that the regime's *fear* of South Korea's imminent economic supremacy and rising Japanese militarism along with defending the *honor* of Kim Il Sung and North Korea's territorial boundaries and advancing the *interests* of the global revolutionary movement factored greatly into Kim Il Sung's decision-making process in 1968.

II. Thucydides' Trinity

Spurred on by Harvard University Professor Graham's Allison idea of the "Thucydides trap," many political scientists have recently evoked the work of Thucydides in regard to great power transition and the fear of a rising China.[8] However, Thucydides' linkage of honor and interests as also being drivers of warfare has been largely ignored within the field of international relations. Allison's overemphasis on fear has distracted scholars from engaging with Thucydides' three-tiered articulation of honor and interests as also being war igniters. As Professor Albert B. Wolf explains, "Despite the length of Allison's book, its overwhelming emphasis is placed on just one of these three drivers: fear. Insufficient space and attention is paid to great powers' search for honor or status."[9]

Allison's engagement with Thucydides has oversimplified the nuanced and complex nature of *The Peloponnesian War*. In fact, as Lowell Gustafson describes, Allison honed in on only one sentence in Thucydides' massive 600-page book, *The Peloponnesian War*, to describe his argument: "It was the rise of Athens and the fear that this instilled in Sparta that made war inevitable." As Gustafson explains, "Important people could portray themselves as intellectually profound by discussing the work of a renowned Harvard professor and a famous author of antiquity, and only had to remember one sentence about war erupting between ruling, fearful Sparta and rising Athens. Seldom has the ability to project erudition come so easily."[10] In other words, evoking Thucydides has become a superficial way to demonstrate one's sophistication and intellectualism. Compressing Thucydides' complex theories of human nature into one sentence is not just oversimplified but dangerous in justifying a confrontational U.S. approach to contemporary China. By engaging with all three of Thucydides' drivers of war, I hope to bring the ancient Greek historian's multi-causal theoretical framework into the forefront of international relations and military history.

One of the criticisms of the "Thucydides trap" theory revolves around the idea that Allison's argument was never applied to a non–Western context. As David Kang and Xinru Ma correctly argue in their article "Thucydides Didn't Live in East Asia," Allison's use of twelve European case studies "has led to an over-expectation that power transitions and the rise and decline of great powers relative to each other are a prime factor for war." Kang and Ma are right to call out Allison's Eurocentrism. This idea that Thucydides only talked about fear-based power transitions as a driver of war fundamentally neglects the wider scope of the ancient Greek historian's work, especially his argument that honor and interests play an equally important role in

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starting wars. By condensing all of Thucydides' complexity into one simple sentence, Allison has not only misrepresented the ancient Greek historian's complex theories of the human condition but also invoked a number of other scholars' responses to his book that reiterate his distortion of Thucydides. Nevertheless, as Kang and Ma correctly assert, case studies should go beyond Europe in explaining Thucydides' theories of war origins. In this article, I hope to do that with the 1968 *Pueblo* incident and the broader military culture of the DPRK.

Maritime issues and territorial disputes still factor into the DPRK's foreign policy. As evidenced by the DPRK's bombardment of Yeonpyeong Island in 2010, territorial integrity greatly influences Pyongyang's maritime strategy in Northeast Asia. North Korea's state-run media stated that this bombardment was retaliation for South Korea's shelling in the DPRK's waters. The North Korean news agency said the DPRK will "continue to make merciless military attacks with no hesitation if the South Korean enemy dares to invade our sea territory by 0.001mm."[11] From capturing Chinese fishermen who entered North Korean waters to claiming Dokdo as DPRK territory, Pyongyang views maritime security as regime security.[12] The origins of this maritime-regime security conflation began during the Cold War era, with crises such as the *Pueblo* incident.

The U.S. State Department in 1968 explained, "North Korea is the most denied of denied areas and the most difficult of all intelligence targets. Estimates of North Korean strength, intentions, and capabilities, therefore, cannot be made with a high degree of confidence."[13] For the purposes of investigating the history of North Korean foreign relations, Thucydides' theory of fear, honor, and interests as drivers of war dissipates some of the opaqueness of Kim Il Sung's foreign policy in the late 1960s. As internal North Korean archival documents are inaccessible, researchers often to look into the archives of Pyongyang's former communist allies, such as Hungary, as ways to gain insight into the regime's mindset. This article uses materials from the North Korean state-run media and newly available Russian, Czechoslovakian, and Romanian archival documents housed digitally at the Wilson Center's North Korea International Documentation Project (NKIDP). Although these Eastern Bloc documents provide valuable assistance to the modern historian in accessing Pyongyang's diplomatic relations, the actual decision-making processes of the often-mysterious North Korean leadership remain little understood without an analytical framework. Thus, the universalism of Thucydides' trinitarian analysis can help demystify Kim Il Sung's reasoning for his armed forces' reckless capture of the *Pueblo* on January 23, 1968. Using Eastern bloc documents and North Korean periodicals, this article uses fear, honor, and interests as a window into the causes of the *Pueblo* crisis from the DPRK leadership's perspective.

III. Fear

From the mid–1950s to the mid–1960s, the DPRK government prided itself on being the more economically superior country on the Korean peninsula. The

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Chollima Movement of the late 1950s and early 1960s propelled North Korean industrialization and economic development.[14] However, in the late 1960s, it became more apparent that North Korea's Stalinist economy was beginning to falter while South Korea's capitalist economy was on the rise. A February 9, 1968, Czechoslovakian diplomatic report said, "Today, when it is already clear that the DPRK cannot expect to surpass South Korea economically in the near future—and everything shows the DPRK abandoned these goals for good—the possibility of peaceful unification of the country is disappearing…."[15] Czechoslovakian diplomats noted in 1968 that the North Korean leadership followed "with growing anxiety" South Korea's economic development, which was brought back "from the brink of total collapse" under President Park Chung Hee's policies and stabilized with West German, Japanese, and U.S. investment.[16] This reversal of economic statuses between the two Koreas caused fear north of the DMZ as the Kim Il Sung's regime had to look for a new source of legitimacy in order to retain prestige.

In addition to South Korea's growing economic power, the North Korean leadership also feared rising Japanese militarism. The North Korean ambassador to the Soviet Union told his counterpart in May 1968, "The Japanese authorities are increasing their penetration of South Korea, they are entering into an ever closer conspiracy with the South Korean puppets: the Japanese militarists are preparing plans for war against the DPRK."[17] This fear of a Japanese invasion loomed large in the North Korean consciousness as imperialist Japan had colonized the Korean peninsula from 1910 to 1945. Due to this recent historical memory, North Korean leadership believed its socialist allies "underestimated the danger of a revival of Japanese militarism."[18] The fear of a rising South Korean economy and a militaristic Japan pushed the North Korean leadership into a more militant direction itself. In 1968, Kim Il Sung forthrightly stated, "We don't want war, but also we are not afraid of it. The people and the army of the DPRK will answer each single action of the enemy with a counteraction and will answer total war with total war."[19]

As its Eastern bloc allies understood well, the DPRK's unique political culture developed out of its distinctly anti-colonial heritage. In the 1930s, a majority of the North Korean leadership with Kim Il Sung as its commander fought a protracted guerrilla war against Japanese colonialists in the mountains of Manchuria. This guerrilla fighting experience of its leadership later gave the North Korean state a militant and anti-colonial character.[20] In 1968, the East German ambassador to the DPRK said, "Before and during World War II, Korea had been a brutally exploited Japanese colony in which the brutality of the occupiers exceeded that of the German fascists." He continued, "The Korean Workers' Party [KWP, ruling body of the North Korean government] never had any experience of bourgeois democracy, of struggle for the economic rights of the workers, and, in our opinion, is therefore not ready at the present time to either understand or influence the economic struggle of the South Korean workers." He concluded, "The only path in which it is richly experienced is the military one, the path of arms."[21] As its leaders were guerrilla fighters at their core, the North Korean regime began to tie its legitimacy to the military in the late 1960s. Amid South Korea's growing economic superiority and fear of its own inad-

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equacy vis-à-vis Seoul, Pyongyang pursued a militant direction that it was familiar with and in which it had vast experience. Thus, the Kim regime's rash capture of the *Pueblo* and its other insurgent actions in the late 1960s, such as the January 21, 1968, Blue House raid in Seoul by DPRK commandos and the downing of a U.S. EC-121 aircraft in 1969 by North Korean pilots in open air space, begin to make sense within this framework of fear and military-oriented legitimacy.

In the late 1960s, the North Korean government pushed new rhetoric that called for the violent reunification of the Korean peninsula. Czechoslovakian diplomats in Pyongyang noticed in 1968 that the slogan "peaceful and democratic unification of the country" disappeared from domestic propaganda and that "the main source and cause of persistent tension on the Korean Peninsula is the fact that Korea remains a divided country, and that strong South Korean and American armies, with modern arms, stand in the South."[22] Perhaps envious of North Vietnam's drive to reunify their own country, Kim Il Sung began pushing a new domestic propaganda campaign in January 1967 that urged the population to reunify the peninsula within the lifetime of the present generation.

The Romanian embassy in the DPRK also became increasingly nervous in 1968 that North Korean aggression would lead to war on the peninsula. A day after the capture of the *Pueblo*, a Romanian diplomatic report said, "We believe that the provocations which have emerged recently are attributable to the North Koreans entirely and in this way they put into practice the motto: 'let us be ready and take initiative to welcome the forthcoming great revolutionary event of the reunification of the motherland.'"[23] North Korea's capture of the *Pueblo* perplexed foreign observers that questioned why such a small nation dared to once again draw the powerful giant across the Pacific into a military conflict it was bound to lose. However, North Korea's loss of economic legitimacy vis-à-vis South Korea provoked fear among its leadership that the regime may soon lose inter-Korean legitimacy as a whole. This fear activated North Korea's insurgent character and made the regime pursue a more aggressive strategy, such as the *Pueblo* incident, in order to boost its new military-oriented legitimacy.

Despite being an absolute autocracy, Kim Il Sung's North Korea still depended on a degree of popular support. Amid economic liberalization measures in other parts of the Eastern Bloc, the regime in Pyongyang most likely felt its own inter–Korean legitimacy slip away vis-à-vis Seoul's growing international profile during the late 1960s. As a divided nation, the DPRK's political culture depended on peninsular legitimacy. Thus, the capture of the *Pueblo* can be tied back to Pyongyang's own economic insecurities vis-à-vis South Korea in the late 1960s and its subsequent pursuit of militancy that was derived from its leadership's guerrilla experiences during the Japanese colonial period.

Thucydides referenced the ancient Syracusian general Hermocrates as saying, "Nobody is driven into war by ignorance, and no one who thinks he will gain anything from it is deterred by fear … when there is mutual fear, men think twice before they make aggressions upon one another."[24] In 1968, North Korea toed the fine line between military skirmish and all-out war. Echoing Hermocrates' quote above, the

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leadership in Pyongyang understood an all-out war would destroy their regime but also assumed that the U.S. did not want a two-front war in Asia with conflicts in both Vietnam and Korea. Thus, the DPRK's detention of the *Pueblo* crewmen was opportunistic given the U.S. military's limitations in 1968 and the growing anti-war sentiments within the U.S. population at the time. On this occasion, mutual fear may have saved the Asia-Pacific region from another devastating war.

IV. Honor

In 1968, North Korea political culture took on an increasingly sycophantic nature. Czechoslovakian diplomats explained, "Especially in the last year, the personality cult of Kim Il Sung reached unprecedented magnitude. Attributes attached to his name often run several lines. Kim Il Sung is credited with all successes and victories past and present without regard to historical facts."[25] By 1968, Kim Il Sung had cemented his place as absolute authority of the DPRK and created one of the most pervasive personality cults in the communist world. Due to the declining economic conditions of the DPRK in the late 1960s, the cultish leader worship of Kim Il Sung rested upon his supposed greatness as an anti–Japanese guerrilla fighter in the 1930s and military leader who once brought the U.S. military to a standstill in the Korean War. In other words, his honor as the "Great Leader" rested on his military prowess. As Thucydides explained, "Yet to me personally, war brings honor … for I believe that the sense of a man's own interest will quicken his interest in the prosperity of the state."[26]

According to the founding DPRK Constitution of 1948, the capital of the DPRK was officially Seoul.[27] The shift from Seoul to Pyongyang as the DPRK's official capital city was only changed in the amended 1972 constitution.[28] Thus, the military adventurism of the DPRK in January 1968 makes sense within this propagandistic context of Kim Il Sung as the symbol of a unified Korea. Since the DPRK government officially claimed the entire Korean peninsula as its territory and Kim Il Sung as "the leader of forty million Korean people," the honor of defending the DPRK's sovereignty intertwined with the cultish leader worship of the "Great Leader." As Fyodor Tertitskiy explains, Kim Il Sung's personality cult grew extensively in April and May 1967, which changed the DPRK "from a Soviet-style relatively moderate dictatorship into the rather grotesque autocracy North Korea is now known to be."[29] This growth in power of Kim Il Sung's personality cult after 1967 seemed to have an immediate effect on the DPRK's foreign policy, thereby making Pyongyang more militaristic and aggressive in its pursuit of advancing its notion of national sovereignty.

Despite the social control and autocratic nature of North Korea in 1968, Kim Il Sung still needed to reinforce his domestic authority by occasionally demonstrating his military skills and ability to defend the DPRK's territorial integrity. As later evidenced by the assassination of Romanian autocrat and Kim Il Sung's personal friend Nicolae Ceausescu, the demands of an isolated population should not be completely ignored and authoritarian regimes need to have a source of legitimacy from which

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to draw from during times of internal economic distress. In other words, the daily sacrifices of the citizenry need to be validated. For Kim Il Sung's government, as its economic development stalled in the late 1960s, this legitimacy source began to be the military and the regime's ability to defend the North Korean people from foreign forces.

Thus, the *Pueblo* incident of January 1968 was tied to Kim Il Sung's newfound legitimacy source of military honor. As Eastern bloc allies noted in the late 1960s, the North Korean leadership officially followed a parallel development line in both the economic and military sectors but the build-up of national defense gradually started to overshadow the economic concerns. The East German ambassador to the DPRK explained in mid–February 1968, "Retreat from the path of [becoming] an economic model and [of pursuing] peaceful unification had also been foreshadowed by giving new content to the old policy of parallel development of the DPRK's economy and defense." The ambassador added, "The whole economy is being effectively subordinated to armament requirements—an area in which the DPRK has a lead over South Korea, which only plans to build its first armament plants this year."[30] Kim Il Sung could not fulfill all the material necessities of his countrymen but would protect the nation from foreign invasion. This was the message broadcasted to the North Korean population from Pyongyang in 1968.

The events of January 1968 triggered an atmosphere of paranoia in North Korea and made many in the DPRK believe a war would breakout on the peninsula at any moment. As a February 27, 1968, editorial in the *Rodong Sinmun*, the primary newspaper of the KWP, proclaimed, "Let's fight against the U.S. imperialists' frenzied war-fighting measures and further strengthen the nation's defense power." The editorial explained, "Now in our country, the systematic aggression of U.S. imperialism and their provocations are becoming more and more serious, and the situation is very tense."[31] North Korean propaganda depicted the *Pueblo* incident as a clear sign of U.S. aggression and intention to invade the DPRK. Czechoslovakian diplomats explained that North Korean propaganda "makes every effort to convince the DPRK citizens and the world that the situation is quite analogous to that just before the beginning of the Korean War." Slogans, such as those urging citizens to build the DPRK into an "invincible fortress of steel," circulated in North Korean propaganda and the unavoidability of war was theoretically vindicated, as trepidation of military conflict with the imperialists was a signal of bourgeois pacifism and socialist revisionism.[32]

One of the major factors in North Korea's unwillingness to release the *Pueblo* crewmen was the leadership's belief that Kim Il Sung's honor, and by extension the honor of the nation itself, was affronted when the *Pueblo* supposedly crossed into the DPRK's territorial waters on January 23, 1968. Based on a request from the North Korean government, representatives from the Soviet Union told U.S. officials in *Pueblo* negotiations that the crisis could partially be settled if the "national dignity of the DPRK is not insulted by making it responsible for the incident."[33]As an absolute autocracy with a pervasive personality cult, the Kim family regime was extremely concerned with the notion of honor and pride. To suggest the DPRK was

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a maverick aggressor was to slander the "Great Leader" Kim Il Sung himself. As Czechoslovakian diplomats pointed out in early February 1968, "[North] Korean propaganda places an equal sign between Kim Il Sung and Korea, while Korea is presented as an example for other countries."[34] Thus, the North Korean government took national honor and pride very seriously in its foreign relations as it was directly tied to the personality cult of Kim Il Sung.

The Soviets strongly urged the DPRK government in February 1968 to release the *Pueblo* crewmen and explained to the North Koreans "that by adopting tough measures for defense of its sovereignty, the DPRK has [already] politically won." By releasing the prisoners, the Soviets "told [the] Korean comrades that such a step from their side could not be interpreted as weakness; on the contrary, it would be appreciated everywhere as a show of a responsible approach, and it would strengthen even more the international position of the DPRK."[35] The North Koreans did not follow this advice from their Soviet allies and instead held onto the crewmen for ten more months and subjected them to numerous torture sessions and propaganda photo-ops. The North Koreans only released the crewmen after they had publicly declared in front of state-run media that they had violated the sovereignty of the DPRK and the U.S. government admitted to crossing into their territorial waters.[36] The U.S. government underestimated the importance of national dignity and pride to the Kim family regime and may have prolonged the suffering of the crewmen by not publicly apologizing to the DPRK government earlier. While this false admission would have been an early propaganda coup for the North Koreans, the crewmen endured months of torture and harsh conditions as a result of the U.S. government's inability to do so sooner.

During the domestic economic volatility in 1968, the regime's ability to repel foreign intervention and Western imperialist aggression bolstered the North Korean masses' support for Kim Il Sung's leadership. North Korea's capture of the *Pueblo* crewmen signaled to the domestic audience that violations of the DPRK's territorial integrity would not be tolerated, which evoked a militant fervor among the DPRK's population. As the East German ambassador in Pyongyang explained in a March 4, 1968, letter, "The most significant element of the current domestic situation in the DPRK is the creation, respectively fueling, of an all-out war psychosis among the population. Given their limited sources of information, average citizens must arrive at the conclusion that war is imminent in the very immediate future."[37] While the U.S. government confirmed that the *Pueblo* never entered the DPRK's territorial waters, Pyongyang insisted that the U.S. spy ship had illegally entered their waters and thus violated their national sovereignty. As a declassified CIA document from January 23, 1968, explained, "The closest point of approach [of the *Pueblo*] to the North Korean cost was to be 13 nautical miles (the Koreans claim territorial waters of 12 nautical miles)."[38] In 1968, North Korea's insistence on its territorial waters may have seemed absurd to U.S. policymakers. The same CIA document noted, "This incident points up North Korea's constant concern over possible border violations—heightened in this case by direct U.S. involvement." However, as a small divided nation with a stagnant economy, the regime's emphasis on national security

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and borders was tied to Kim Il Sung's personal honor as a supposed protector of the North Korean people.

In negotiations with the U.S. Rear Admiral John V. Smith in Panmunjom on January 24, 1968, North Korea's Major General Pak Chung Kook referred to the *Pueblo*'s violation of the DPRK's territorial waters as a "piratical act." Pak told Smith, "I strongly demand that you frankly admit the violations, provocations, and aggressive acts committed by your side in the demilitarized zone and in our coastal waters."[39] The DPRK government's demand for an official U.S. apology tied back to Pyongyang's constant assertion of its national sovereignty. As the official U.S. cryptologic history of the *Pueblo* incident explains, the DPRK's attack was a "deliberate act" and "the North Koreans were prepared to face a period of sharply heightened tensions" as a result of their aggression.[40] Thus, the *Pueblo* incident seems to have been a diplomatic crisis manufactured by Kim Il Sung to mobilize the North Korean public into a revolutionary fervor and militant anti–American zeal. By supposedly crossing into the DPRK's territorial waters, Pyongyang depicted the *Pueblo* as a genuine example of U.S. imperialism and war provocations.

North Korea's daringness to prolong negotiations with the U.S. government over the release of the *Pueblo* crewmen indicates that the regime saw themselves as operating from a position of strength. In a March 13, 1968, meeting with Romanian diplomats in Pyongyang, the President of the Supreme People's Assembly of the DPRK Baek Nam-un said, "If the United States dared to attack us, we look forward to it, because this will mark their defeat and their definitive expulsion from our land."[41] This type of bravado was partially performance but also indicative of North Korean overconfidence in their sociopolitical system.

While the DPRK military was undeniably weaker than that of the U.S. in 1968, the North Koreans were equipped with the ideology of Kim Il Sung. The "Great Leader" himself even admitted as such at the 20th Anniversary of the Korean People's Army (KPA) when he noted, "Political-moral superiority provides the opportunity to defeat even an enemy which is better equipped technologically."[42] While Kim Il Sung's ideology provided no actual protection from gunfire, the political indoctrination and pervasiveness of the personality cult was so complete by 1968 that North Korean soldiers may have genuinely felt the morally inferior U.S. armed forces would lose in a second Korean War, especially since it was bogged down in Vietnam and losing its battle to the Vietnamese Communists.

The servicemen and servicewomen of the Korean People's Army also became tied to the cultish leader worship of Kim Il Sung. Defense Minister Kim Jangbong said in his speech at the 20th Anniversary of the KPA, "Our Korean People's Army has solidly armored itself with the unitary ideology of our party. She is fiercely loyal only to the great revolutionary ideology of Comrade Kim Il Sung, our respected and beloved leader, and does not know of any other ideology."[43] A July 1968 article from the North Korean magazine *Chollima* on the *Pueblo* crisis explains, "Even the brutal U.S. imperialists would not dare to fight the heroic People's Army again, whose hearts are filled with devotion to their Great Leader. If the bastards forget this lesson and rush into it again, it will be death and corpses."[44] The U.S. government's inability

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to understand the North Korean concept of military honor and its linkage to Kim Il Sung's personality cult most likely impeded Washington's ability to negotiate the early release of the *Pueblo* crewmen.

V. Interests

Amid the Sino-Soviet split of the late 1960s, the leadership in Pyongyang adroitly navigated the complexities of this ideological conflict. One of the ways in which the North Korean regime did so was by generating the idea of a new unified anti-imperialist front that consisted of small revolutionary countries.[45] While Moscow and Beijing quarreled over the role of the rightful torchbearer of international communism, the North Korean leadership saw itself, Cuba, and North Vietnam as being the three-headed vanguard of world revolution and sought to create a formal international organization under the rubric of "Parties of small countries." The Soviet Foreign Affairs Ministry explained in 1968, "In the opinion of the Korean leaders the DPRK, Cuba, and the Democratic Republic of Vietnam [official title of North Vietnam, DRV], who stand 'at the front lines of the revolutionary anti-imperialist struggle,' should become the nucleus of such an organization."[46] Thus, North Korea's self-interests in 1968 were linked to the struggles of the Cuban and Vietnamese revolutions. As the Soviets explained, "Kim Il Sung is promoting a 'strategy' of fighting imperialism with the forces of 'small revolutionary' countries which are to 'tear American imperialism apart' everywhere."[47] North Korea's capture of the *Pueblo* was very much tied to the war in Vietnam as well as an attempt to distract the U.S. from interfering in the Cuban revolution as it once did at the Bay of Pigs invasion in 1961.[48] Evoking Thucydides' quote, "For true expediency is only this—to have an enduring sense of gratitude towards good allies for their services, while we do not neglect our own immediate interest," the *Pueblo* incident benefited both Pyongyang and its two revolutionary allies in the Third World.[49]

In the summer of 1965, Kim Il Sung met North Vietnamese Deputy Prime Minister and Politburo member Le Thanh Nghi in Pyongyang. During their conversation, the North Korean leader offered large amounts of DPRK assistance to the Vietnamese and explained, "We are determined to provide aid to Vietnam and we do not view such aid as constituting a heavy burden on North Korea. We will strive to ensure that Vietnam will defeat the American imperialists, even if it means that North Korea's own economic plan will be delayed."[50] In that same summer, Kim told a visiting Chinese Friendship Delegation, "If the American imperialists fail in Vietnam, then they will collapse in Asia." He added, "We are supporting Vietnam as if it were our own war. When Vietnam has a request, we will disrupt our own plans in order to try to meet their demands."[51] Kim Il Sung also offered to send "volunteer [military] forces" to assist the Vietnamese Communists but Ho Chi Minh declined this request for unknown reasons.[52]

Thus, while there is no smoking gun document that directly links the *Pueblo* crisis to solidarity with the Vietnamese Communists, the rhetoric from the leadership

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in Pyongyang indicated that the North Korean government saw the war in Vietnam as a yardstick to measure one's revolutionary commitment to anti-imperialism. Only a few weeks after capturing the *Pueblo*, the North Korean government released a statement that said, "The Korean people are effectively prepared and always ready to fight alongside the Vietnamese people, whenever the Vietnamese people need it."[53] Capturing the *Pueblo* was Kim Il Sung's attempt to further the global dismantlement of U.S. imperialism and assist the Vietnamese Communists on his own accord. As Bill Streifer highlighted in his 2016 *North Korean Review* article based on newly declassified CIA materials, North Korea's capture of the *Pueblo* "was probably aimed at 'generating diversionary pressures on the U.S. at a time when Communist forces in South Vietnam are poised to launch a major country-wide offensive.'"[54]

The North Koreans also took great interest in the continuation of the Cuban revolution. In 1968, diplomatic relations between the two countries were so close that Cuban Deputy Premier Raul Castro said, "If someone is interested in what the Cubans' opinion is on certain questions, he should ask the [North] Koreans." He continued, "And if someone asks what [North] Korea's standpoint may be in certain cases, he can safely ask the Cubans about that. Our views are completely identical in everything."[55] Meanwhile, in a speech at a 1968 North Korean industrial exhibition in Havana, Cuba's Minister of Foreign Trade Marcelo Fernandez "referred to [North] Korea as the sole country besides Cuba where there was a spirit of real internationalism."[56] Pyongyang reciprocated this friendly rhetoric in 1968 by stressing the correctness of the Cuban government's revolutionary line and called Fidel Castro "the great leader of the Cuban revolution and the Cuba people."[57] A Soviet diplomat in the DPRK said "bringing the armed struggle against American imperialism to the forefront is typical of the position of the KWP and the Cuban Communist Party."[58] In addition to rhetorical solidarity, North Korea reportedly sent a group of 700 volunteers with weapons and equipment to Cuba.[59] To borrow the phrase typically reserved for Sino–North Korean solidarity, relations between Cuba and the DPRK were truly "as close as lips to teeth" in the late 1960s. The North Korean leadership attached a sort of ideological romanticism to Cuba as it was a small island nation vigorously opposing U.S. imperialism in the Western hemisphere. Within the North Korean consciousness, the Cubans were brave revolutionaries that also occupied an imaginary frontline in the global battle against U.S. imperialism.

Beginning in 1955, North Korean leadership proclaimed an attachment to the *Juche* philosophy, which translated directly from Sino-Korean characters means master of one's body and is typically rendered in English-language scholarship as self-reliance, subjectivity, or self-importance. Some scholars have used North Korea's nationalistic ideology of *Juche* as a way to explain DPRK's self-imposed reclusiveness and isolation.[60] However, this explanation of North Korea's *Juche* ideology neglects the massive importance that Pyongyang historically tied to international revolutionary movements, especially those in Vietnam and Cuba. As Kim Il Sung told an East German official in April 1968, "We talk a lot about self-reliance, and many people misunderstand that. We don't ask, however, for self-reliance outside the socialist camp. We ask for self-reliance in the interest of consolidating the unity of the socialist

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camp." Kim added, "We ask for self-reliance in the interest of the education of our people. Some countries want us to follow them blindly, but we cannot do that."[61]

During the late 1960s, the North Korean perception of its self-interests was linked to the successes of the Vietnamese and Cuban revolutions. The North Korean philosophy of "self-reliance" was not a nationalistic policy *per se* if these two other respective anti-imperialist nations are taken into account. North Korean newspapers, speeches, and financial resources both devoted a significant amount to the Vietnamese and Cuban struggles for autonomy. This reflects an internationalist anti-imperialist attitude, not one of nationalistic self-interests. Thus, North Korean subjectivity during the late 1960s included Vietnam and Cuba. As Cuban Foreign Minister Raul Roa said at a January 1968 Cuba–DPRK friendship rally, "There existed a great triangle in world politics, and this was Cuba-Vietnam-Korea. These three countries were the sole true manifestations of armed revolution."[62]

North Korea's capture of the *Pueblo* seems to have been a way to divert American attention from the war in Vietnam, resist U.S. suppression of the Cuban revolution, and perhaps provoke the U.S. military into a two-front war in Asia. North Korea's military expenditure in 1968 certainly signaled that the leadership was preparing for war. In 1968, the Soviet Foreign Affairs Ministry scoffed at the massive allocation of North Korea's state resources to its national defense. A Soviet report on the DPRK's military stated, "According to unofficial data, in 1968 the actual expenses for military purposes exceeded 40% of the state budget."[63] As discussed in the previous section on honor, North Korean overconfidence and militant zeal was a product of Kim Il Sung's ubiquitous personality cult. The sycophancy and martial vigor embedded within this cultish leader worship resulted in a massive garrison state. This garrison state was going to be wielded by Pyongyang for its own self-interests and to also assist its revolutionary comrades in Vietnam and Cuba. To the leadership in Pyongyang, small anti-imperialist nations were the only true vanguard of world revolution that backed up its radical rhetoric with militant actions.

VI. Conclusion

The Western media often labels North Korean leaders as "irrational," "crazy," or mad."[64] However, when critical analysis is applied to situations from Pyongyang's perspective, seemingly irrational actions such as the 1968 capture of the *Pueblo* can be seen as logical and coherent. Thucydides intended his work to be "a possession for all time" and his insights have informed the likes of Thomas Hobbes, Thomas Jefferson, John Adams, and contemporary U.S. political and military leaders.[65] While Thucydides most likely would have never predicted a state as draconian as the DPRK would develop, his theoretical insights into the human condition and national interests allow the modern scholar to grasp onto the timeless applicability of fear, honor, and interests. Much like the ancient Athenians and Spartans, the North Koreans are no different when it comes to its actions and these three modes of analysis can explain most, if not all, of the regime's decisions. In addition, as the U.S. and North

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Korean leaderships currently negotiate the terms of Pyongyang's denuclearization, the errors of the past and the U.S. government's inability to understand the DPRK perspective should be taken into account.

Ultimately, all-out war did not erupt on the Korean Peninsula during the late 1960s. Thus, Thucydides' multi-causal framework of fear, honor, and interests falls a bit short in its application to the *Pueblo* incident. Pyongyang's bellicose rhetoric and militant zeal during this time period may seem like it was mere propaganda. However, in the context of absolute autocracies such as the DPRK, this mobilization of emotions could have lead directly to military conflict. Internal observations of the DPRK after the *Pueblo* crisis indicate that paranoia and panic permeated throughout North Korea. As the Romanian embassy explained, "A state of general tension prevails in Pyongyang; troop movements and neighborhood anti-air defense drills continue; night alarm drills using planes and floodlights are intensifying; in Pyongyang and in the suburbs, anti-air bunkers from the Korean War have been restored and new bunkers have been built between apartment buildings and next to every single household."[66] Without a system of checks and balances, absolute autocracies such as Kim Il Sung's North Korea can become so entangled in emotions-based mobilization campaigns that they extend into full-on military conflicts. With power concentrated in the hands of a single strongman, fighting wars over emotions may seem superficial and irrational but in the context of absolute autocracies, they can quickly become the main drivers of military conflict. As contemporary negotiations drag on between Washington and Pyongyang regarding North Korea's nuclear development, understanding the character of the DPRK's system is essential for U.S. foreign policy.

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Sea-Level Rise and Coastal States' Maritime Entitlements: A Cautious Approach

Vincent P. Cogliati-Bantz

Structured Abstract

Article Type: Research Paper

Purpose—The aim of this paper is to assess the proposals to "freeze" the maritime entitlements of coastal States in the face of sea-level rise.

Approach—The paper first places sea-level rise in the context of climate change in the Anthropocene and briefly looks at the international community's responses, identifying the particular concerns of small island developing States. It then examines the current law of the sea on baselines and maritime zones, and responses within the law to mitigate the impact of sea-level rise. The paper then turns to solutions recommended in academic circles, as well as official calls within international bodies, to fix the outer limits of maritime zones to ensure they remain unaffected by sea-level rise. The paper argues that several crucial aspects of such solutions are left undetermined, and cautions that thorough, balanced and carefully designed solutions are needed.

Findings—Concerted solutions are necessary to respond to the current (and future) plight of affected States, particularly low-lying island States. While the permanent fixing of the limits of maritime spaces is a possible solution, the question remains whether it is currently the most appropriate solution, and what safeguards may be envisaged to prevent possible perverse or unintended consequences.

Practical Application—This paper is intended as a fresh contribution to the current debate on the legal effects of sea-level rise on coastal States' maritime entitlements.

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Value—While there is a plethora of academic writings breathlessly advocating for the permanent fixing of coastal States' maritime entitlements, there is a shortage of critical and balanced analyses.

Keywords: climate change, coastal States, International Law Association, maritime jurisdiction, sea-level rise, United Nations Convention on the Law of the Sea

I. Introduction

Sea-level rise raises long-term issues that are, perhaps, even more critical than the preservation of maritime spaces. Recent writings have been examining such questions as the continuity of the legal personality of "de-territorialized" States, the transfer of populations onto artificial islands or the displacement or migration of populations as a result of environmental disaster.[1]

Yet sea-level rise is also predicted to impact of States' maritime entitlements, by regression or even disappearance of the coastline. This paper focuses on the UN Convention on the Law of the Sea (Convention),[2] analyzes the current law and critically evaluates the proposals to "freeze" maritime entitlements. Such proposals are made in academic writings and by learned societies such as the International Law Association at its 2018 Sydney Conference. They are also raised within international bodies and have attracted enough attention for the International Law Commission to put the topic "Sea-level rise in relation to international law" on its agenda. Nevertheless, some States are also calling for careful assessment and caution in approach. The following analyses are intended as a fresh contribution to the current debate and, in particular, assesses the International Law Association's recommendation.

II. Coastal States and Sea-Level Rise

2.1. Climate Change as Identified Factor

In his 2017 Report on the Oceans and the Law of the Sea, the UN Secretary-General indicated that "[h]uman-induced warming of the atmosphere and oceans is unequivocal."[3] The same Report emphasized that during the past four decades, 75 percent of sea-level rise can be attributed to glacier mass loss and ocean thermal expansion.[4] The fifth Report of the Intergovernmental Panel on Climate Change (IPCC) deemed it "extremely likely" that human influence has been the dominant cause of the observed warming since the mid–20th century, and "very likely" that there is a substantial anthropogenic contribution to the global mean sea-level rise since the 1970s, causing glacier mass loss and ocean thermal expansion.[5] While sea-level rise may also be influenced by natural factors such as winds and ocean currents, vertical movements of the land, isostatic adjustment of the levels of land and coastal erosion,[6] it remains highly likely that less than 50 percent of the sea-level rise

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observed in the 20th century would have occurred in the absence of global warming.[7] It is estimated that global mean sea-level rise has risen by 0.19 meters over the period 1901–2010, and that the mean rate of sea-level rise was 1.7 mm/year between 1901 and 2010. Between 1993 and 2010, the rate was very likely higher at 3.2 mm/year.[8]

While sea-level rise is far from affecting solely nations in the South Pacific,[9] the UN emphasized that it poses a significant risk to

> small island developing States and other low-lying States… including through the loss of territory for some…. Low-lying islands provide no possibility of retreat from sea level rise, leaving their populations with no other alternative than moving elsewhere, threatening their survival and viability.[10]

2.2. Small Island Developing States as Particularly Vulnerable

At least as early as the 1989 Male Declaration, small coastal and island States warned against the effects of sea-level rise. The Declaration also called on industrialized States to adopt mechanisms to assist small affected States.[11] Similar calls were made in Rio in 1992.[12] Chapter 17 of Action 21 (protection of the oceans) identified Small Island Developing States (SIDS) as extremely vulnerable to sea-level rise.[13] From 1990, small coastal and island States formed a coalition, "AOSIS,"[14] an ad hoc group of small island and low-lying coastal developing States, giving them a voice within the UN system. The sub-group of Pacific SIDS (PSIDS) has also materialized.[15] The Barbados Conference acknowledged that SIDS "are among those that contribute least to global climate change and sea-level rise, [yet] they are among those that would suffer most from the adverse effects."[16] It was acknowledged that the "inundation of outlying islands … may result in loss of exclusive economic rights."[17]

In the following twenty years, the international community reminded itself of the grave concerns of the SIDS for their own survival.[18] Sea-level rise and the threat it causes to SIDS occupied an important place again in Rio in 2012.[19] In Samoa, in 2014, the impact of sea-level rise on maritime spaces seems to have been on the minds of the participants, for the Heads of States called for support for the efforts of SIDS to "improve the baseline monitoring of island systems … to enable better projections of the future impacts on small islands."[20] Yet, nothing indicates that the protection of baselines would be undertaken by anything other than material and prophylactic measures, within a capacity-building framework and the UN Framework Convention on Climate Change (UNFCCC).[21] Recently, the UN General Assembly welcomed the "continuing commitment of the international community to take urgent and concrete action to address the vulnerabilities of [SIDS]."[22] Legal solutions pertaining specifically to baselines and maritime zones are not identified.

The SIDS are not satisfied with the pace of progress: in 2002, Tuvalu's Prime Minister threatened to sue the U.S. and Australia before the International Court of Justice (ICJ) over their emissions of greenhouse gases. This was abandoned in 2006

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for lack of evidence of a causal link between sea-level rise affecting Tuvalu and the two countries' emissions.[23] In 2011, Palau requested that the General Assembly seek an advisory opinion from the ICJ on the responsibility of States under international law to ensure that activities under their jurisdiction emitting greenhouse gases not damage other States.[24] Enquiries about international climate change litigation (and the difficulties involved) are increasing.[25] Up to now, the international community has fixed emissions targets and mitigation and adaptation goals in the 1992 UNFCCC, the 1997 Kyoto Protocol and the 2016 Paris Agreement.[26] The 23rd annual Conference of Parties to the UNFCCC (Bonn) in 2017 reaffirmed the international community's support of regional initiatives, such as the Framework for Resilient Development in the Pacific, developed by the Pacific Islands Forum.[27] "Ocean Pathway" was launched by the presidency of the Conference (Fiji), stressing the link between oceans and climate change.[28]

III. Maritime Zones and the Impact of Sea-Level Rise

3.1. Are Baselines Ambulatory?

It is a core principle that "the land dominates the sea." This, in fact, means that the coastal State's maritime zones and its rights over the sea are a consequence of its sovereignty over the landmass. This has been repeated many times in case law and by writers.[29] While the Convention does not expressly mention the principle, it says that the relevant maritime zones' outer limits are measured from the "baseline,"[30] that is, the juridical representation of the coastline (*terra firma*).

The Convention distinguishes between four types of baselines from which the breadth of the territorial sea (and, by implication, the other maritime zones) is measured:

- the "normal baseline" is described as the low-water line along the coast.[31] The coast may be continental or insular but artificial islands, installations and structures do not possess the status of islands; hence, they have no territorial sea of their own.[32]
- coastal States may draw a "straight line" across the mouths of a river between points on the low-water line of its banks, and may also draw a "closing line" between the low-water marks of the natural entrance points of a bay or a "straight baseline" within the bay, depending on the circumstances.[33]
- "Straight baselines" may be employed by joining appropriate points (on the low-water line), where the coastline is deeply indented and cut into, or where there is a fringe of islands along the coast, or also where the coastline is highly unstable because of a delta and other natural conditions.[34]
- Archipelagic States may draw "straight archipelagic baselines" joining the outermost points (on the low-water line) of the outermost islands and drying reefs of an archipelago.[35]

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It should also be noted that the outer limit of the continental shelf may not exceed either 350 nautical miles from the baselines, or 100 nautical miles from the 2,500-meter isobath.[36]

An essential question is whether the baselines are ambulatory, that is, whether they are affected by, and move along with, physical changes of the coastline, notably brought by sea-level rise. For normal baselines, Article 5 of the Convention indicates that the low-water line is that "marked on large-scale charts officially recognized by the coastal State." Other types of baselines are either shown on charts or designated by geographical coordinates of points.[37] The vast majority of writers, with only a few exceptions,[38] agree that charts and lists of coordinates are not the source of the State's entitlement to maritime spaces, but only a representation of the physical reality. Only it may be the basis on which the baselines for international law purposes are derived.[39] When Article 5's predecessor[40] was debated by the International Law Commission (ILC), the assumption was that coastal States would not excessively move their low-water lines on charts.[41]

The International Law Association (ILA) committee on baselines looked at numerous domestic laws, many of which make no reference to charted lines in the definition of baselines. Some States refer to the role of charts and the weight to be given to them, as evidence of the baseline; the weight varies from "mere evidence" to "conclusive evidence."[42] The committee agreed that conclusive evidence is not sustainable in the case of outdated charts.[43] International cases equally confirm that it is the physical reality, and contemporary evidence that seeks to establish it, that count.[44] Having reviewed available scholarship, the committee on baselines of the ILA concluded that "the normal baseline is ambulatory" as a matter of *lex lata*, as it moves with the low-water line.[45] Coastal States may not "protect and preserve territory through … the legal fiction of a charted line that is unrepresentative of the actual low-water line."[46] Only a minority of writers considers that the charted line, regardless of coastal changes and until updated by the coastal State, is the Article 5 normal baseline; for the ILA committee, the normal baseline is the actual low-water line.[47] The *lex lata* has not changed and the most recent publications do not suggest it has.[48] The committee on baselines opined that the existing law does not offer an adequate solution to the potentially serious problem of sea-level rise; therefore, it recommended that the issue be considered further by a committee established for this specific purpose.[49] That committee, the committee on sea-level rise, expressly acknowledged that its proposals were made *de lege ferenda*.[50]

Ambulation also applies to the other types of baselines, in the light of their mode of construction identified earlier.[51] Hence, the outer limits of maritime zones are equally ambulatory, given that they are defined by way of a specified distance from the baseline. The two exceptions to this principle (one relating to straight basslines under Article 7[2], the other concerning the outer limit of the continental shelf according to Article 76[8]) will be examined later.[52]

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3.2. Remedial Responses to Threats to Baselines Caused by Sea-Level Rise

3.2.a. Threats to Baselines. The most serious threat is of course the disappearance of the land. In Micronesia, where the mean sea-level rise was 10–12 mm/year between 1993 and 2012, several islands either disappeared or were affected by sea-level rise.[53] When an island or part of an island disappears, the low-water line and hence, the baseline, disappear with it. The disappearance of a low-tide elevation (LTE) situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, means that the LTE's low-water line may no longer be used as the baseline for measuring the breadth of the territorial sea.[54] The disappearance of islands may also modify the configuration of a fringe of islands along the coast, to the detriment of the use of straight baselines under Article 7(1). Further, the States which have declared themselves archipelagic under Part IV of the Convention, all of which being SIDS except Indonesia and the Philippines,[55] may see the drawing of straight archipelagic baselines affected by the disappearance of some basepoints.[56] In addition, while Articles 7(4) and 47(1) allow the use of LTE as basepoints under certain conditions, they may no longer be used if completely submerged at all times.

Total disappearance of territory and its appurtenant maritime spaces is only the last stage of threats. But sea-level rise could, for instance, affect the indentation of a bay or the distance between the low-water of its natural entrance points and, hence, the closing line (Article 10). While the regression of the coastline means more generally the regression of maritime zones, the impact of sea-level rise on a zone as large as the exclusive economic zone (EEZ) may be minimal.[57] Nevertheless, marine transgression may affect the status of land formations themselves. A low-lying island[58] could become an LTE, affecting the drawing of baselines. Sea-level rise could affect the ability of the State to rely on Article 6[59] or Article 47(7)[60]: if, for instance, a fringing reef is incomplete as a result of submersion in some places, to what extent may gaps be joined by straight lines?[61]

The question may be asked whether an island could also become a "rock" if the consequence of sea-level rise render it unable to sustain human habitation or economic life of its own and, hence, unable to generate an EEZ or continental shelf.[62] Interestingly, the Arbitral Tribunal in the *South China Sea* drew a distinction between the intrinsic capacity of a feature to sustain human habitation, and habitation that can no longer be sustained because of intervening forces such as "[w]ar, pollution or environmental harm."[63] Yet, the Tribunal does not expressly say that the feature in these circumstances will remain a fully-entitled island. It could all depend on whether the feature, in its natural state, will eventually remain capable of sustaining human habitation; while war or pollution may be temporary phenomena (even if prolonged), sea-level rise is more likely to be enduring.[64]

3.2.b. SIDS' Maritime Spaces: A Crucial Economic Issue. It may be thought that the SIDS of the Pacific received disproportionate advantages under the Convention:

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for instance, Tuvalu has a landmass of 26 km² and an EEZ of 749,790 km²; Nauru's EEZ is almost 15,000 times larger than its landmass.[65] Yet, fisheries and tourism are a large part of these nations' economies, and their GDP per capita are among the world's lowest. Thus, the export of fishing products constitutes more than 60 percent of the Marshall Islands's GDP; Kiribati's 2018 budget indicates a Government Revenue of A$ 204 million, 134 million being generated by fishing licensing revenue and fishing transhipment fees.[66] Fifty-eight percent of tuna caught in the Western Pacific come from SIDS.[67] Further, these nations count on the revenue generated by sustainable tourism, and by the mineral resources of their continental shelves.[68]

3.2.c. Physical Protection of Baselines. Nothing prevents States from taking coastal prophylactic measures. For instance, the Dutch Government indicated at the Security Council that it would continue to take action to secure itself from the effects of further rises in sea level, and that it was willing to share its knowledge with other delta countries, particularly in the developing world.[69] While the outermost permanent harbor works forming an integral part of the harbor system are regarded as forming part of the coast,[70] the ILC considered that jetties and coast protective works are assimilated to harbor works.[71] Even when protective works (such as moles and seawalls) are not part of the harbor system, it seems that practice has taken them to form part of the coast.[72] A recent UN report mentions 133 projects assisting SIDS in the Pacific, notably coastal protection.[73] Coastal protection, however, is not without its detrimental impacts[74] although these, too, need careful overall assessment.[75]

Similarly, nothing prevents States from reinforcing or fortifying an island or an LTE, so long as this is done in good faith to protect the existing feature's status rather than to change a feature's status to the State's advantage.[76] Ultimately, the costs involved will need to be assessed against the benefits brought by the portion of maritime zone which the land concerned generates.[77]

IV. Maintaining Maritime Spaces as Legal Solution

4.1. Sea-Level Rise and Law of the Sea: Recent Enquiries at the UN

Legal consequences of sea-level rise are less well documented than material ones. Apart from the question of industrial States' liability identified earlier,[78] it is noteworthy that the UN Secretary-General raised the following:

> Neither the [Convention] nor customary international law addresses the impact of a total or partial loss of land territory that may result from sea-level rise on maritime limits. Specified in the Convention are the maximum breadth of maritime zones and the sovereignty, sovereign rights and jurisdiction that coastal States can exercise therein…. As a consequence of sea-level rise, the land territory of coastal States may be dramatically diminished or, in extreme cases, disappear.

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> Baselines that may have been fixed and deposited with the Secretary-General, and the outer limits of maritime zones or delimitation lines measured therefrom, may represent the configuration of the coastline before sea-level rise. With the exception of article 7 (2), … the Convention does not pertain to variations in coastal geography.[79]

The topic of focus of the eighteenth meeting of the UN Open-Ended Informal Consultative Process on Oceans and the Law of the Sea in 2017 was: "The effects of climate change on oceans." There, many delegations expressed concern about the possibility of total or partial loss of territory as a result of sea-level rie and its effect on maritime zones and boundaries, in particular for low-lying islands and coasts.[80] Some delegations called for the issue of sea-level rise and its legal implications for SIDS to be discussed by the Sixth Committee of the General Assembly or the ILC. However, concern was also expressed regarding those proposals.[81]

Further, in June 2017 during the high-level UN Conference to Support the Implementation of Sustainable Development Goal 14, Tuvalu's prime minister sought clarification of the implications of sea-level rise for baselines and, hence, the territorial sea and EEZ, and also wished to refer the matter to the ILC. He believed that Tuvalu's baselines and maritime zones, once established, "should remain in time, irrespective of the effects of sea-level due to climate change."[82] The Conference took no further action. The ILC, at its seventieth session in 2018, decided to include the topic "Sea-level rise in relation to international law" in its long-term program of work.[83] The topic, suggested by five ILC members, would examine the law of the sea, statehood and the protection of persons affected by sea-level rise. They emphasized, in particular, that the topic "will not propose modifications to existing international law, such as the [Convention]."[84] At the Sixth Committee of the General Assembly later in the year, delegates responded positively to the new inclusion.[85] However, some opined that the ILC should focus on how to reconcile the changing circumstances resulting from sea-level rise within the existing law-of-the-sea regime.[86] Others considered that sea-level rise was a scientific and political topic, and should not be tackled by the ILC.[87] For Slovakia, while sea-level rise "might well reflect the needs of some States in respect of the progressive development and codification of international law, [it] was not convinced that it was at a sufficiently advanced stage in terms of State practice to permit progressive development and codification."[88]

4.2. Unstable Coastlines

It is sometimes argued that Article 7(2) of the Convention may be used in the context of sea-level rise.[89] This seems incorrect. Article 7(2) says:

> Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

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Even if one agrees that Article 7(2) is to be read independently from, and not cumulatively with, Article 7(1),[90] it is difficult to sustain that the coastline is rendered "highly unstable" by sea-level rise, a very slow phenomenon. Further, instability must be caused by a "delta *and* other natural conditions" (emphasis added).[91] While regression of the low-water line may be caused by sea-level rise, Article 7(2) eventually requires the State to *change* its baselines.[92]

4.3. "Freezing" Titles to Maritime Spaces

4.3.a. Can a Practice Be Identified? SIDS in the Pacific have recently embarked on the task of defining baselines and also the outer limits of maritime zones, with geographical coordinates and usually also illustrative maps.[93] Some have claimed that this constitutes a "coordinated regional effort to secure the maritime boundaries of the Pacific [SIDS] potentially threatened by sea-level rise."[94] But such a purpose is not expressed as such in the laws concerned.[95] Some States in the region have long designated the outer limit of their EEZ.[96] In addition, States must, in any event, show their baselines (or the limits derived therefrom) on charts or by means of lists of coordinates; States must also deposit these charts or lists with the UN.[97] The same duty applies to delimitation lines between States with adjacent or opposite coasts.[98]

Some recent official publications and declarations have addressed the designation of outer limits of maritime spaces and the impact of sea-level rise. Thus, in the 2014 Palau Declaration, leaders of the Pacific Islands Forum called for "strengthened regional efforts to fix baselines and maritime boundaries to ensure that the impact of climate change and sea-level rise does not result in reduced jurisdiction."[99] In 2015, Polynesian leaders called upon States Parties to the UNFCCC to acknowledge the importance of EEZ for Polynesian Islands States and "permanently establish the baselines … without taking account of sea-level rise."[100] In 2017, the Commonwealth Secretariat indicated that depositing information on baselines and maritime limits "will put [Pacific islands] in a stronger position in the face of potential loss of maritime space due to rising sea levels."[101] In March 2018, eight Pacific islands leaders agreed to "pursue legal recognition of the defined baselines established under the [Convention] to remain in perpetuity irrespective of sea-level rise."[102] The ILA committee on sea-level rise saw in all this (including the relevant domestic laws) "strong evidence of emerging State practice in the Pacific region regarding the intent of many island States to maintain their maritime entitlements in the face of sea-level rise."[103] There certainly is a practice identifying the grave concerns of the relevant coastal States; one may also be inclined to read in the above statements a wish by certain States in the region to have their maritime zones recognized as "fixed" despite sea-level rise. But one would need to exercise caution before identifying a consistent regional (or international) practice to "freeze" maritime zones simply by adopting baselines and outer limits (leaving aside the permanent seaward limit of the continental shelf under Article 76 identified below).[104] Even if the rudiments of such practice existed, the enquiries at the UN[105] currently show no *opinio juris* on the matter and, hence, no rule of customary international law.[106] It is equally impossible at this

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stage, despite the ILA committee's allusions,[107] to identify a "subsequent practice in the application of the [Convention] which establishes the agreement of the parties regarding its interpretation."[108] In any event, the presumption is that subsequent practice does not amend or modify the treaty.[109]

4.3.b. Modes of "Freezing" Maritime Spaces. The only exception to the ambulatory nature of outer limits is arguably the outer limit of the continental shelf. Beyond 200 nautical miles, the limits are established by the State on the basis of the recommendation of the Commission on the Limits of the Continental Shelf (CLCS), and "shall be final and binding" (Article 76[8]). This is arguably explained by the high costs involved in preparing a submission to the CLCS, and the need for legal certainty for investors,[110] and for the Authority and contractors. The final limits therefore do not move with new geological surveys or changes in the coastline.[111] Similarly, if the edge of the margin does not extend up to 200 nautical miles, the outer limit is also "permanently" described on charts and relevant information deposited with the UN and the Authority (Articles 76[9] and 84[2]).[112] Still, it could be questioned whether the disappearance of an island does not impact on the permanence of the outer limit of its continental shelf.[113] It is sovereignty over the landmass which generates sovereign rights over the continental shelf; neither LTE nor, *a fortiori*, submerged features, may be appropriated.[114]

Caron and Soons had, early on, suggested the development of a new norm (conventional or customary) that maritime spaces should be fixed at a certain point in time.[115] The ILA committee on sea-level rise does not depart from past suggestions and, to a large extent, merely repeats them.[116] It expressly concedes that these are *de lege ferenda*.[117] Hence, it wondered whether either baselines or outer limits should best be maintained, and advanced arguments for and against.[118] While the coastal State would be allowed to preserve its entitlements, the committee thought it appropriate to "minimize" changes to settled rules.[119] It recommended:

> States should accept that, once the baselines and the outer limits of the maritime zones … have been properly determined in accordance with the detailed requirements of the [Convention] that also reflect customary international law, these baselines and limits should not be required to be readjusted should sea level change affect the geographical reality of the coastline.[120]

While this proposal is laudable, it leaves some crucial matters to be sorted out:

Firstly, it does not distinguish clearly between regression of the coastline, disappearance of an island or disappearance of all islands (of an archipelagic State). Disappointingly, the committee on sea-level rise did not continue its discussions on total loss of territory in light of the "great sensitivity" of the question.[121] Surely, the maintenance of maritime zones and the disregard for the ambulatory nature of baselines is of no lesser sensitivity.

Secondly, the recommendation does not say when maritime spaces' limits are fixed; it is unclear whether this is achieved by the due publicity given to charts and coordinates, or whether the State must express a will to fix. The ILA Conference,

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when endorsing the committee's recommendation, also indicated that the State's existing claims must be made in compliance with the Convention and published "*prior* to physical coastline changes brought about by sea-level rise."[122] This may prove difficult to apply in light of the gradual and unequal changes brought by sea-level rise. It is also unclear whether the State may subsequently modify its baselines or outer limits, such as when the coast accretes seaward through sedimentation. Of interest in that respect is the fact that the committee recommendation, and the ILA Resolution, allow for the baselines *and* the outer limits to be maintained. It is unclear whether the coastal State could elect to maintain one or the other.

Thirdly, the committee requires that existing maritime claims be in compliance with the Convention and duly published or notified to the UN.[123] Yet depositing charts or lists with the UN does not ensure the legality of the claims; hence, who will say whether a claim is in conformity with the Convention? Is it enough for one State or a group of States to protest against a baseline or a basepoint to prevent the "freezing" of outer limits? Should the dispute settlement mechanism be involved each time, and how will this be solved when, for instance, a State has made a declaration under Article 298(1)(a) (which deals with relevant optional exceptions to compulsory dispute settlement under the Convention)? Also under that provision, what about disputes involving the concurrent consideration of sovereignty over land?[124] Such disputes already exist between the Marshall Islands and the U.S. on Wake Island (Enenkio), and between France and Vanuatu on Hunter and Matthew Islands (Leka and Umaenupne).

Lastly, the committee does not investigate the causes of sea-level rise. In 2017, Soons opined that the findings of the committee on seal-level rise would apply to coastline changes irrespective of cause.[125] Yet, the committee introduced its work by extensive remarks on climate change in the Anthropocene.[126] It would, therefore, have been useful to identify the circumstances when the recommended rule applies, and when it does not.[127]

The committee clearly sought to elaborate a rule of general application, not a regional rule or a rule benefiting certain States only. But it does not specify to what extent the geography of the coastline must be affected by sea-level rise for baselines and outer limits to be legitimately maintained, nor under which precise conditions sea-level rise must affect the coastline. One can easily imagine cases where sea-level rise could be used as a pretext to solidify claims to spaces with the intent to conceal a pre-existing dispute.[128] Creeping jurisdiction is nothing new.

4.3.c. "Freezing" Maritime Delimitation Lines. It is often claimed that maritime delimitation agreements, or delimitations decided by international courts and tribunals, are immune to changes brought by new geographical circumstances.[129] The oft-quoted exception are agreements which only stipulate the method used (such as equidistance).[130] Moving boundaries are well-known to international practice, when they are defined by reference to natural formations susceptible to change over time.[131] A similar issue seems to be raised by maritime delimitation agreements which, although they stipulate geographical co-ordinates, rest expressly on equidistance to

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the baselines from which the breadth of the territorial sea is measured: even though the line is not in itself "ambulatory," there comes a time when the co-ordinates no longer correspond to the definition of the delimitation line. Such agreements include those between Micronesia and Palau (2006) and between the Cook Islands and Kiribati (2012).

It is therefore crucial in each case to determine whether the parties intended to permanently fix the delimitation line.[132] Such intention could, for instance, be found in agreements that only contain a list of coordinates when they define the delimitation lines between EEZ and continental shelves. Among the agreements that only contain coordinates and no method of delimitation, one may cite the agreement between the Marshall Islands and Micronesia (2006), Tuvalu and Kiribati (2012) or the U.S. and the Cook Islands (1980). The argument has indeed been made that, by opting for geographical coordinates, the "contracting parties protected the boundary line against natural variation."[133] Some of the more recent treaties mention the possibility of adjusting the delimitation line by agreement between the parties, in case of significant shift in the location of islands used as basepoints,[134] or of the basepoint coordinates.[135] This plainly shows that, even though many agreements do not specify a method used, in the vast majority of cases they are based on equidistance, strict, simple or modified.[136] "Permanence" may therefore be relative.

Article 62 of the Vienna Convention on the Law of Treaties is often mentioned to prevent a party to a delimitation agreement from invoking a fundamental change of circumstances due to sea-level rise as a ground for withdrawing from it or terminating it; this would be evidence of the stability of maritime delimitation agreements.[137] It is certain that boundaries, land or maritime, need stability.[138] Stability is of course conducive to predictability of outcomes, which is essential to a vast array of transactions, and is generally acknowledged as promoting long-term peaceful relations. Yet, absolute stability may be less conducive to peaceful relations; there may be cases where the need for stability of boundaries may conflict with core legal principles, not the least being the principle that the land dominates the sea. In other words, "the principle of finality [of boundaries] has to be seen in conjunction with, and subject to, various factors."[139] In each case, it is imperative to determine how the rule of law is best preserved.

One may be tempted to analogize maritime delimitation agreements to treaties establishing boundaries for the purposes of Article 62(2), arguing that they both share the same need for stability.[140] Yet, without giving a definitive answer, the ILC could conceive that "it is possible that the stabilizing effect of article 62 does not extend to certain lines of maritime delimitation."[141] One of the drawbacks of assimilating delimitation lines with boundaries is the creeping territorialization of maritime spaces where the State does not have full sovereignty. Reflecting such tendency, the ILA committee on sea-level rise referred to the "stability of territorial entitlements."[142] Nevertheless, it also took the view that it did not need to offer a definitive view as to whether maritime boundaries were intended to be, or should be, covered by the exception to the *clausula rebus sic stantibus* rule in Article 62(2).[143] It recommended that sea-level rise should not be regarded as a fundamental change of

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circumstances.[144] Writers remain divided and often adopt opposing views on the negotiation of Article 62.[145] Further arguments against the invocation of a change of circumstances is that the change must not have been foreseen by the parties when the treaty was concluded; hence it is opined that, since sea-level rise was known at least since the mid–80s, agreements concluded thereafter could have taken it into consideration.[146] Yet, there is a distinction between foreseeable changes, and changes that the parties have foreseen in the treaty.[147] Furthermore, there exist other grounds for withdrawal from, or suspension of, a treaty.[148]

Are judicially pronounced delimitations immune from change? Taking the ICJ here as an example, one must distinguish, on the one hand, the fact that its judgments are binding and final for the parties[149] and, on the other hand, that a judgment may be revised under strict conditions.[150] Further, nothing prevents a party from bringing before another court a claim of nullity of an ICJ judgment, for example on the ground of insufficient reasons or lack of reasons.[151] Perhaps more importantly, there are three stages to maritime delimitation: establishment of a provisional delimitation line; adjustment of the line in order to achieve an equitable result; and confirmation that no great disproportionality of maritime areas is evident.[152] The Court may select any delimitation method it sees fit.[153] Yet, if the delimitation line described in the operative part of the judgment no longer reasonably corresponds to the reasons which underpin it, and absent an agreement between the parties, one could imagine that one of the parties, now feeling prejudiced by changes brought by sea-level rise, might seek a fresh ruling.

Lastly, it is sometimes claimed that maritime delimitation agreements bind third States, as an "objective" situation and an exception to the *pacta tertiis* rule.[154] This may be questioned. Indeed, it may be argued that "objective" situations derive rather from elements outside of the agreement, such as acquiescence or recognition, and that treaty-based objective regimes are limited to territorial situations.[155] Further, while a maritime delimitation agreement necessarily impacts third States,[156] and while maritime entitlements must of course be respected, it should be asked whether a third State could argue that an area subject to the delimitation agreement has become high seas when the territory that generated the area concerned has become submerged. A State cannot maintain by delimitation agreement what it no longer has under general law.[157]

V. Consequences and Conclusions

The ILA committee on sea-level rise did not expand on the possible sources of the new recommended rule but suggested, among others, and as writers had done in the past, an amendment to the Convention, a new agreement, a decision of the Meeting of States Parties to the Convention, or a protocol to the UNFCCC. A new rule of customary law has also been suggested.[158] All these solutions raise issues.

Amendment of the Convention is arguably not a preferred solution. In the Convention, the applicable procedures for the adoption and entry into force of amend-

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ments are by no means easy.[159] This might explain why the procedures have, so far, never been used. Amendment of the Convention, perhaps more fundamentally, might be perceived as challenging the integrity of the Convention which needs to be maintained.[160] This also explains, perhaps, why a perceived new challenge such as the conservation and sustainable use of marine biological diversity beyond national jurisdiction (BBNJ) is currently being addressed in an instrument "under the Convention" and "without altering the existing legal order established therein."[161]

A new agreement raises the question of its relation to the Convention, seen as "universal and unified."[162] Only the 1994 Agreement relating to the implementation of Part XI, concluded *before* the entry into force of the Convention and negotiated by those well-versed in the purposes of the Convention, says that it prevails in case of inconsistency (Article 2[1]). The Agreement was negotiated with a view to ensuring universal participation in the Convention itself.[163] Agreements concluded since its entry into force reaffirm their consistency with the Convention.[164] Negotiations currently undertaken on BBNJ have emphasized that the new agreement should be fully consistent with the Convention[165]; yet some opposition of views remains on crucial aspects, including the relationship with the Convention.[166] Difficulties would no doubt be compounded with the negotiation of an instrument purporting to modify some core premises of the law of the sea.

The Meeting of States Parties theoretically only exercises administrative functions.[167] While in practice it has taken some decisions without express legal basis, these involved issues of deadlines.[168]

A Protocol to the UNFCCC does not seem an appropriate avenue: the ultimate objective of the UNFCCC and any related legal instrument is to achieve stabilization of greenhouse gas concentrations in the atmosphere (Article 2). While the Parties are guided by the special needs of developing countries particularly vulnerable to climate change, the maintenance of maritime zones should arguably be addressed, if at all, within the framework of the Convention.[169]

A new rule of custom, as favored notably by Caron,[170] certainly also raises the question of the unified nature of the Convention and its integrity. Future analyses on the topic, in particular the work of the ILC, will undoubtedly need to enquire whether consistent and unambiguous general State practice as well as *opinio juris* may be identified.[171] While the development of a rule of customary international law amending a treaty cannot be discounted as a matter of theory of sources of law,[172] the threshold for the identification of a consistent practice and *opinio juris* will undoubtedly be very high. The Convention was precisely negotiated to stabilize the haphazard, and hard to control, escalating claims and counterclaims that had characterized the customary development of the law of the sea for centuries. "The only plausible basis for achieving stability in the law of the sea for the foreseeable future is respect for the rules set forth in the Convention."[173]

Ultimately, the most pressing issue is less one of the law of the sea than one of the tangible contemporary impacts of climate change on populations and infrastructures and the necessary ensuing international solidarity. Undoubtedly, sea-level rise and the loss of territory may result in disputes with neighbors over EEZs.[174] While

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"freezing" maritime zones is currently not allowed, some justify it by the argument that nothing would be gained by coastal States or lost by third States.[175] But it needs to be asked whether the *status quo ante* ("*ante*," when?) as a possible solution is the most stable and acceptable solution at this stage and whether carving out exceptions to the principle that the land dominates the sea is more acceptable than redistribution of resources (for instance when EEZ become high seas as a consequence of the baselines receding inland). The ILA committee on sea-level rise agreed that a paper should be developed on the principle that "the land dominates the sea" as a part of the further work by the committee.[176] Caron, in particular, considered that the principle that the land is the source of authority over the ocean assumed that baselines were relatively constant.[177] Others have also pointed that the Convention "was tailored to the geographical circumstances of its own time, not the ones yet to come."[178] Yet, one would be well-advised to explore alternatives before suggestions are made that, when the sea begins to dominate the land by the mechanical action of sea-level rise, the sea itself, irrespective of a coastal front, becomes a sort of quasi-territorial source of rights. In that case, the Grotian argument that the sea is incapable of ownership since it is not occupiable might be resuscitated *a contrario* to justify claims to the sea under modern technological conditions.

Apart from the fact that the Convention itself in Article 89 prohibits sovereignty claims over the high seas (and EEZ), it should perhaps be remembered that jurisdictional claims to the sea, however extensive, were historically linked to coastal interests (and possibly supplemented by customs or treaties as in the case of Venetian claims to the Adriatic). The lines drawn by Pope Alexander VI from pole to pole and corrected in the Treaty of Tordesillas of 1494 were in essence land boundaries on water and were intended to define the respective spheres of influence of Portugal and Spain and to identify the land (not sea) areas that could be discovered and explored or traded with by each.[179] When the law of the sea already spent decades crafting a delicate balance between coastal and non-coastal interests over maritime zones, departure from the principle that the land dominates the sea is unlikely to be welcomed with open arms.[180]

The Convention was conceived as an instrument capable of adapting to unforeseen circumstances and it contains certain means to accommodate change while preserving its integrity, be it through interpretation, incorporation of generally accepted international rules or perhaps malleable instruments like soft law.[181] Hence, it also needs to be asked whether it is possible to look for alternative solutions for threatened nations such as special additional quotas over common resources, income or usufruct, without maintaining maritime spaces; and how the recommended legal adaptations to the benefit of coastal States will be combined with other forms of assistance, legal or material, to coastal or landlocked States victims of climate change. In that respect, the permanent fixing of maritime spaces, while justified for some, may not be so for others, for instance when oceans warming affects fish stocks.

"Le mieux est l'ennemi du bien"—Voltaire, La Bégueule

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Notes

1. On the latter, see the recent efforts of the international community such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (2015) and the Global Compact on Migration (2018) and, for learned societies, the International Law Association's 2018 Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise.

2. 1833 UNTS 3, adopted December 10, 1982 and entered into force November 16, 1994.

3. UN Doc. A/72/70 (March 6, 2017), para. 4.

4. *Ibid.*, para. 17.

5. IPCC, *Climate Change 2013: The Physical Science Basis. Summary for Policymakers* (Cambridge: Cambridge University Press, 2013), pp. 17, 19.

6. See UN Doc. A/70/112, *Summary of the First Global Integrated Marine Assessmen*t (July 22, 2015), p. 16, para. 48.

7. Robert Kopp et al., "Temperature-Driven Global Sea-Level Variability in the Common Era," *Proceedings of the National Academy of Sciences of the United States of America* 113(11) (March 2016), p. E1438, https://doi.org/10.1073/pnas.1613396113. Certainly, gaps persist in understanding sea temperature, sea-level rise, etc., and in the use of sea-level data in models to determine changes in shorelines: UN Doc. A/72/70, p. 21, para. 56.

8. IPCC, *Climate Change 2013: The Physical Science Basis. Technical Summary* (Cambridge: Cambridge University Press, 2013), p. 46.

9. For Asia, Africa, Latin America and the Caribbean, see World Bank, *The Impact of Sea Level Rise on Developing Countries: A Comparative Analysis Policy (Research Working Paper 4136)* (Washington, 2007). In Europe, it has been projected that the average global relative sea-level rise would be around 21 and 24 cm by the 2050s under representative concentration pathways RCP4.5 and RCP8.5; it is projected to accelerate, reaching 53 and 77 cm respectively by the year 2100. The largest increases in mean sea-level are projected along North Sea and Atlantic coasts: Michalis Vousdoukas et al., "Extreme Sea Levels on the Rise Along Europe's Coasts," *Earth's Future* 5 (2017), p. 308, https://doi.org/10.1002/2016EF000505. In 1990, it was estimated that four highly populated developing countries (India, Bangladesh, Vietnam and Egypt) are especially vulnerable to sea-level rise because their low lying coastal plains are already suffering the effects of flooding and coastal storms: J. Dronkers et al., *Strategies for Adaption to Sea Level Rise* (Geneva: IPCC, 1990), p. iv.

10. UN Doc. A/72/70, para. 20.

11. Text in Doc. OIC/OPC-IV/Inf.2, Fourth session of the OIC Committee on Ocean Processes and Climate (Paris, February 27–March 1, 1991).

12. Doc. A/CONF.151/26/Rev.l, Report of the UN Conference on Environment and Development (Rio de Janeiro, June 3–14, 1992), vol. III, *Statements Made by Heads of State or Government*.

13. *Ibid.*, vol. I, *Resolutions Adopted by the Conference*, p. 271, para. 17.126. UNCTAD was the first body of the UN, in 1972, to recognize the particular challenges facing SIDS: see UNCTAD Doc. TD/B/64/9 (July 10, 2017). UNCTAD lists 28 SIDS for statistical purposes: https://unctad.org/en/pages/aldc/Small%20Island%20Developing%20States/UNCTAD%C2%B4s-unofficial-list-of-SIDS.aspx, accessed September 10, 2019. The UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and SIDS established its own list: http://unohrlls.org/about-sids/country-profiles/

14. "Alliance of Small Island States": see http://aosis.org.

15. E.g., https://sustainabledevelopment.un.org/index.php?page=view&type=6&nr=980&menu=139, accessed September 10, 2019.

16. UN Doc. A/CONF.167/9, Report of the Global Conference on the Sustainable Development of Small Island Developing States (Bridgetown, April 25–May 6, 1994), Resolution I, Annex I (Declaration of Barbados), p. 3.

17. *Ibid.*, p. 10, para. 18.

18. E.g., UN Doc. A/CONF.207/11, Annex II (Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of SIDS), p. 9, para 16 (2005); UN Doc. A/RES/65/2, Outcome Document of the High-level Review Meeting on the Implementation of the Mauritius Strategy (2010), para. 6.

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19. Doc. A/CONF.216/16, Report of the UN Conference on Sustainable Development (Rio de Janeiro, June 20–22, 2012), Resolution I, "The Future We Want," para. 178.

20. UN Doc. A/CONF.223/10, Report of the Third International Conference on SIDS (Apia, September 1–4, 2014), Resolution I (Samoa Pathway), p. 13, para. 44(b). As at Rio in 2012, sea-level rise is described as an adverse impact of climate change: *ibid.*, p. 11, para. 32.

21. *Ibid.*, pp. 12–13, paras. 41–43.

22. Doc. A/RES/72/217 (December 20, 2017), para. 4. See also UN Doc. A/RES/71/312 (July 6, 2017), Annex, "Our Ocean, Our Future: Call for Action," para. 13(k) for adaptation and mitigation measures. On September 27, 2019, the General Assembly will hold a one-day high level review of the progress made in addressing the priorities of SIDS.

23. Hunt Janin and Scott Mandia, *Rising Sea Levels: An Introduction to Cause and Impact* (Jefferson, NC: McFarland, 2012), p. 86.

24. https://www.un.org/press/en/2012/120203_ICJ.doc.htm, accessed September 10, 2019.

25. E.g., Philippe Sands, "Climate Change and the Rule of Law: Adjudicating the Future in International Law," *Journal of Environmental Law* 28 (2016), p. 19, https://doi.org/10.1093/jel/eqw005.

26. See notably the Warsaw Mechanism for Loss and Damage (2013), "subject to the availability of financial resources": Doc. FCCC/CP/2013/10/Add.1, Decision 2/CP.19 (November 23, 2013), para. 17. Under Article 9(1) of the Paris Agreement, "developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention." For the measures needed, see, e.g., http://aosis.org/wp-content/uploads/2018/06/AOSIS-Submission-on-22type-and-nature-of-actions-to-address-loss-and-damage-for-which-finance-may-be-required22-1.pdf (February 26, 2018), accessed September 10, 2019.

27. See *Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management 2017–2030*, Suva, Pacific Community (2016).

28. http://sdg.iisd.org/news/ocean-pathway-launched-at-cop-23/.

29. E.g., *Maritime Boundary Dispute Between Norway and Sweden* (*Grisbadarna*), Award of October 23, 1909, *American Journal of International Law* 4(1) (1910), p. 231; *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, ICJ Rep. 1985, p. 41, para. 49; *Maritime Delimitation and Territorial Questions (Qatar V. Bahrain (Merits)*, Judgment, ICJ Rep. 2001, p. 97, para. 185; Bing Bing Jia, "The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges," *German Yearbook of International Law* 57 (2014), p. 63.

30. Articles 4 (territorial sea), 33(2) (contiguous zone), 57 (exclusive economic zone), 76(5) (continental shelf), 48 (archipelagic baselines).

31. Article 5. The International Hydrographic Organization (IHO) resolved that the Lowest Astronomical Tide be normally adopted as chart datum: Resolution 3/1919, as amended. "Coast" is defined by the IHO as "the edge or margin of the land next to the sea." "Land" is defined as "the solid portion of the Earth's surface": see *Hydrographic Dictionary*, Part I (5th ed., Monaco, 1994), p. 42, para. 850, and p. 122, para. 2635.

32. Article 60(8). An island is a naturally formed area of land, surrounded by water, above water at hide tide: Article 121(1.)

33. Articles 9 and 10.

34. Article 7(1) and (2). Among the conditions that must be fulfilled, the drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast: Article 7(3). On the appropriate points being located on the low-water line, see notably *Fisheries Case (United Kingdom V. Norway)*, Judgment, ICJ Rep. 1951, pp. 129–130.

35. Article 47(1). On these questions, see Vincent Cogliati-Bantz, "Archipelagic States and the New Law of the Sea" in Lilian del Castillo (ed.), *Law of the Sea, from Grotius to the International Tribunal for the Law of the Sea. Liber Amicorum Judge Hugo Caminos* (Leiden: Brill, 2015), pp. 299–317. An archipelagic States is defined in Article 46 as a State constituted wholly by one or more archipelagos.

36. Article 76(5). The 2,500 metre isobath is also measured from the baselines: see UN Doc. CLCS/11, *Scientific and Technical Guidelines of the Commission of the Limits of the Continental Shelf* (May 13, 1999), para. 4.4.2.

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37. Articles 16(1) and 47(8).

38. E.g., D. Kapoor and Adam Kerr, *A Guide to Maritime Boundary Delimitation* (Toronto: Carswell, 1986), p. 31.

39. Of themselves, maps cannot constitute a territorial title: see *Frontier Dispute (Burkina Faso/Mali)*, Judgment, ICJ Rep. 1986, p. 582, para. 54.

40. Article 3 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

41. See UN Doc. A/CN.4/61/Add.1/Corr.1, Second Report on the Régime of the Territorial Sea, by Mr. J.P.A. François, Special Rapporteur (May 18, 1953), *Yearbook of the ILC* 1953(II), p. 77.

42. International Law Association, Committee on baselines, *Report of the Seventy-fifth Conference (Sofia, 2012)*, pp. 405–408. In the case of Barbados's straight baselines, "certified charts shall be judicially noticed for all purposes of the law as indicating the baselines": *ibid.*, p. 408.

43. *Ibid.*, p. 413. Rule 27 of chapter 5 of the International Convention for the Safety of Life at Sea (SOLAS) indicates: "Nautical charts … shall be adequate and up to date."

44. See *Award in the Arbitration Regarding the Delimitation of the Maritime Boundary Between Guyana and Suriname,* Award of September 16, 2007, *Reports of International Arbitral Awards*, vol. XXX, p. 110, para. 396; *Territorial and Maritime Dispute (Nicaragua V. Colombia)*, Judgment, ICJ Rep. 2012, p. 644, paras. 35–36.

45. ILA, 2012, p. 426. The low-water line may recede landward as a result of erosion or sea-level rise or expand seaward because of accretion.

46. *Ibid.*, p. 424.

47. *Ibid.*, pp. 416, 417. "As a matter of evidence for proving the location of the normal baseline the charted line appears to enjoy a strong presumption of accuracy. However, where significant physical changes have occurred so that the chart does not provide an accurate representation of the actual low-water line at the chosen vertical datum, extrinsic evidence has been considered": *ibid.*, p. 417. Thus Lathrop suggests that baselines may be fixed temporarily with an obligation of the coastal State to update in the event of significant geographic changes: Coalter G. Lathrop, "Baselines" in D. Rothwell et al., *The Law of the Sea* (Oxford: Oxford University Press, 2015), pp. 77–78, https://doi.org/10.1093/law/9780198715481.003.0004.

48. See, e.g., Kai Trümpler, "Article 5," in A. Proelss (ed.), *United Nations Convention on the Law of the Sea. a Commentary* (Munich: C.H. Beck, 2017), pp. 59–60; Yoshifumi Tanaka, *The International Law of the Sea*, 3rd ed. (Cambridge: Cambridge University Press, 2019), p. 55; Nilufer Oral, "International Law as an Adaptation Measure to Sea-Level Rise and Its Impacts on Islands and Offshore Features," *International Journal of Marine and Coastal Law* 34 (2019), pp. 426–428, https://doi.org/10.1163/15718085-13431094.

49. ILA, 2012, p. 426.

50. See *infra*, IV.

51. Thus, for a concrete case on straight baselines, see for instance *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua V. Honduras)*, Judgment, ICJ Rep. 2007, p. 743, para. 278.

52. See *infra* IV.2 and IV.3.b.

53. Patrick Nunn et al. "Identifying and Assessing Evidence for Recent Shoreline Change Attributable to Uncommonly Rapid Sea-Level Rise in Pohnpei, Federated States of Micronesia, Northwest Pacific Ocean," *Journal of Coastal Conservation* 21(6) (2017), p. 721, https://doi.org/10.1007/s11852-017-0531-7. For similar results in the Solomon Islands, see Albert et al., 2016, p. 1.

54. Article 13(1) of the Convention. The same provision defines an LTE as a naturally formed area of land surrounded by and above water at low tide but submerged at high tide. That said, States are free to select any high-water datum that reasonably corresponds to the ordinary meaning of the term "high tide": *South China Sea Arbitration (Philippines/People's Republic of China)*, Award of July 12, 2016, para. 311. For an early view on the impact of sea-level rise on LTE, see Hugo Ignacio Llanos, "Low-Tide Elevations: Reassessing Their Impact on Maritime Delimitation," *Pace International Law Review* 14 (2002), p. 264.

55. See http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf, accessed September 10, 2019.

56. Articles 47(1)-(3). On the Indonesian archipelagic baselines in a changing environment, see https://www.iho.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf5/Presentations/Session6-Presentation2-Patmasari.pdf (October 17, 2008), accessed September 10, 2019.

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57. The EEZ may not extend beyond 200 nautical miles from the baselines: Convention, Article 57.

58. An island is defined in the Convention as a naturally formed area of land, surrounded by water, above water at high tide: Article 121(1).

59. "In the case of islands situated on atolls or of islands having fringing reefs, the baselines … is the seaward low-water line of the reef."

60. The drawing of straight archipelagic baselines is subject to a certain land/water ratio (Article 47[1]). Under Article 47(7), land areas may include waters lying within fringing reefs of islands and atolls.

61. See UN Office for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea* (New York: United Nations, 1989), p. 12, para. 27 and p. 37, para. 85; Robert Hodgson and Robert Smith, "The Informal Single Negotiating Text (Committee Il). A Geographical Perspective," *Ocean Development and International Law* 3 (1976), p. 230, https://doi.org/10.1080/00908327609545570. While coral growth may be stimulated by moderate sea-level rise, it is also impaired by rising sea temperatures, ocean acidification and diseases; see, e.g., http://www.reefresilience.org/coral-reefs/stressors/climate-and-ocean-change/sea-level-rise/ and, for recent analyses, Chris T. Perry et al., "Loss of Coral Reef Growth Capacity to Track Future Increases in Sea Level," *Nature* 558(No. 7710) (2018), p. 396, https://doi.org/10.1038/s41586-018-0194-z.

62. Article 121(3). See, e.g., Eric Bird and Victor Prescott, "Rising Global Sea Levels and Maritime Claims," *Marine Policy Reports* 1 (1989), p. 186.

63. *South China Sea Arbitration*, 2016, para. 549. The Tribunal made it clear though that a feature's status must be ascertained on the basis of natural conditions, "prior to the onset of significant human modification": *ibid.*, para 511.

64. A "rock" submerged at high tide will in any event become an LTE.

65. See https://www.spc.int/our-members, accessed September 10, 2019.

66. http://www.mfed.gov.ki/sites/default/files/Government%20of%20Kiribati%202018%20Budget%20-%20as%20presented%205%20Dec_0.pdf, p. 5. For Tuvalu's equivalent proportions in 2017, see http://www.tuvaluaudit.tv/wp-content/uploads/2014/05/FINAL_2017-National-Budget.pdf, p. 116.

67. http://www.un.org/depts/los/consultative_process/icp18_presentations/moses.pdf (Speech of the Ambassador of Nauru to the UN [May 16, 2017]).

68. For Kiribati, see http://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/Tanielu_1314_Kir.pdf (December 2013).

69. UN Doc. S/PV.5663, Security Council, 5663rd meeting (April 17, 2007), p. 22.

70. Convention, Article 11.

71. UN Doc. A/3159, *Report of the ILC Covering the Work of Its Eighth Session*, *Yearbook of the ILC* 1956(II), p. 270.

72. ILA, 2012, p. 420.

73. https://sustainabledevelopment.un.org/content/documents/18577Review_of_Partnerships_for_SIDS.pdf (May 2018), accessed September 10, 2019.

74. E.g., seawalls, breakwaters and groynes may disrupt coastal processes such as fluxes of sediments, reef growth, contribute to beach erosion or impact on tourism.

75. For island erosion which may be balanced by progradation on other sectors of shorelines, see Arthur Webb and Paul Kench, "The Dynamic Response of Reef Islands to Sea-Level Rise: Evidence from Multi-Decadal Analysis of Island Change in the Central Pacific," *Global and Planetary Change*, 72(3) (2010), p. 234, https://doi.org/10.1016/j.gloplacha.2010.05.003. For coastal protection methods, costs and impacts, see https://www.theprif.org/documents/regional/other/guidance-coastal-protection-works-pacific-island-countries (November 2017), accessed September 10, 2019.

76. See Convention, Article 300 and, e.g., *South China Sea Arbitration*, 2016, paras. 305–306, 511; Clive Symmons, "Some Problems Relating to the Definition of 'Insular Formations' in International Law: Islands and Low-Tide Elevations," *IBRU Maritime Briefing* 1(5) (1995), p. 3. For Japan's reinforcement of the Okinotori islets, see Andrew Silverstein, "Okinotorishima: Artificial Preservation of a Speck of Sovereignty," *Brooklyn Journal of International Law* 16 (1990), p. 409. For the foreseen necessity to artificially protect some basepoints in the Indonesian system of

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archipelagic baselines, see https://www.iho.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf5/Papers/Session6-Paper2-Patmasari.pdf (October 17, 2008), pp. 7–8, accessed September 10, 2019.

77. The legal solutions proposed by the ILA in response to sea-level rise (see *infra* IV.3.b.) are in part justified by the high costs of artificially maintaining territorial extents: see International Law Association, Committee on international law and sea-level rise, *Report of the Seventy-Eighth Conference (Sydney, 2018)*, p. 919. Yet, costs are not an objective reason to reject a solution if effective distributive justice international mechanisms (e.g., aid and capacity-building) are designed. The Maldives is currently building a new city, "City of Hope," on an artificial island: see https://www.newscientist.com/article/2125198-on-front-line-of-climate-change-as-maldives-fights-rising-seas/, accessed September 10, 2019.

78. *Supra* II.2.

79. Doc. A/72/70, para. 54. It is doubtful that customary law or the Convention is silent on the effects of loss of territory: see *infra*. Nevertheless, not a single reference to climate change or sea-level rise was made during the ten years of negotiation of the Convention.

80. UN Doc. A/72/95, *Report on the Work of the UN Open-ended Informal Consultative Process at Its Eighteenth Meeting* (June 16, 2017), para. 25.

81. *Ibid.*, para. 26. One delegation noted that the workload of the Sixth Committee was already heavy: *ibid.*, para. 111. The question was taken up again by some States at the Sixth Committee in November 2017: see UN Doc. A/C.6/72/SR.19-20, SR.22, SR.24.

82. https://sustainabledevelopment.un.org/content/documents/24716tuvalu.pdf (accessed September 10, 2019).

83. UN Doc. A/73/70, *Report of the ILC on the Work of Its Seventieth Session* (September 21, 2018), p. 299, para. 389.

84. *Ibid.*, p. 355, para. 14. The ILC intends to work on the law of the sea aspects of the topic over the next two years.

85. See, e.g., UN Doc A/C.6/73/SR.20, General Assembly, Sixth Committee, *Summary Record of the 20th Meeting* (October 20, 2018), para. 34 (CARICOM); para. 40 (Marshall Islands).

86. *Ibid.*, para. 68 (China).

87. *Ibid.*, SR.21, 21st meeting (October 23, 2018), para. 15 (Czechia).

88. *Ibid.*, para. 28; see also para. 68 (Greece, emphasizing the need to preserve the integrity of the Convention). Slovakia's doubts were shared by the U.S.: *ibid.*, SR.29, 29th meeting (October 31, 2018), para. 27.

89. E.g Rosemary Rayfuse, "Sea Level Rise and Maritime Zones," in Michael Gerrard and Gregory Wannier, *Threatened Island Nations. Legal Implications of Rising Seas and a Changing Climate* (Cambridge: Cambridge University Press, 2013), pp. 181–182.

90. On Article 7(1), see *supra* II.1. Cumulative reading is suggested by the UN Secretariat: see *Baselines*, 1989, p. 24, para. 48. Independent reading is supported by the ILA: see International Law Association, Committee on baselines, *Report of the Seventy-Sixth Conference (Washington, 2014*), pp. 225–226, para. 62. The second interpretation finds support in Bangladeshi practice in relation to the Ganges delta: see notably Muhammad Hoque, *The Legal and Scientific Assessment of Bangladesh's Baseline in the Context of Article 76 of the United Nations Convention on the Law of the Sea* (New York: United Nations, 2006), https://doi.org/10.18356/91394ea0-en.

91. Only the Russian language version of the Convention says "or" and not "and."

92. Robin Churchill and Alan Lowe, *The Law of the Sea*, 3rd ed. (Manchester: Manchester University Press, 1999), p. 38.

93. See, e.g., the legislation of Samoa (2017); the Marshall Islands (2016); Kiribati (2014); Niue (2013); Cook Islands (2012); Tuvalu (2012); Palau (2008).

94. David Freestone and Clive Schofield, "Current Legal Developments. Republic of the Marshall Islands," *International Journal of Marine and Coastal Law* 31(4) (2016), p. 740, https://doi.org/10.1163/15718085-12341413. They repeated their view in "Islands Awash Amidst Rising Seas: Sea Level Rise and Insular Status Under the Law of the Sea," *International Journal of Marine and Coastal Law* 34(3) (2019), pp. 406–408, https://doi.org/10.1163/15718085-13431098.

95. See also on this point Stuart Kaye, "The Law of the Sea Convention and Sea Level Rise After the South China Sea Arbitration," *International Law Studies* 93 (2017), p. 445.

96. See Fiji's Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order 1981 and Nauru's 1997 Proclamation Providing the Geographical Coordinates of Points for the

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Drawing of the Straight Baselines and Outer Limits of the Territorial sea, Contiguous Zone and Exclusive Economic Zone.

97. Articles 16 et 75. Eighty States have fulfilled this obligation: see http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm, accessed September 10, 2019.

98. Articles 75 and 83. In the South Pacific, baselines and maritime delimitation agreements are developed with the support of "Pacific Maritime Boundaries," an international partnership: see Robyn Frost et al., "Redrawing the Map of the Pacific," *Marine Policy* 95 (2018), p. 302, https://doi.org/10.1016/j.marpol.2016.06.003. Initially, the purpose was to clarify the extent of EEZ for the purpose of sharing income from fishing license fees under the 1987 Treaty on Fisheries between certain Pacific Island States and the U.S.: *ibid.*

99. http://www.forumsec.org/wp-content/uploads/2017/11/2014-Palau-Declaration-on-%E2%80%98The-Ocean-Life-and-Future%E2%80%99.pdf, para. 10, accessed September 10, 2019.

100. http://www.samoagovt.ws/wp-content/uploads/2015/07/The-Polynesian-P.A.C.T.pdf, accessed September 10, 2019.

101. Commonwealth Secretariat, *Ocean Governance: Our Sea of Islands* (London, 2017), p. 19.

102. Quoted in ILA, 2018, p. 885.

103. *Ibid.*, p. 888. The language of the committee fluctuated throughout the report, referring also to "*prima facie* evidence of the development of a regional State practice in the Pacific islands" and to practice that "appears to be a deliberate attempt to pre-empt arguments" that physical changes to coastlines have resulting impacts on baselines and the outer limits of maritime zones. *Ibid.*, pp. 886, 887.

104. See *infra*, IV.3.b.

105. *Infra* IV.1.

106. The ILA committee cautiously added that the "emergence of a new customary rule will require a pattern of State practice, as well as *opinio juris*" (ILA, 2018, p. 887), making it seemingly clear that it was unable to identify a rule yet. The committee was also conscious of the fact that the rule at stake, if any, should be global, not regional: *ibid.*

107. *Ibid.*, p. 888.

108. Article 31(3)(b) of the Vienna Convention on the Law of Treaties. Such practice must establish "the agreement of *all* the parties": UN Doc. A/73/10, Report of the ILC on the work of its seventieth session (April 30–June 1, July 2 and August 10, 2018), p. 31, para. 16 (emphasis added).

109. *Ibid.*, p. 63, para. 38.

110. Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea: The Ninth Session," *American Journal of International Law* 75 (1981), p. 230, https://doi.org/10.2307/2201252.

111. See Commission on Marine Science, Engineering and Resources, *Our Nation and the Sea: A Plan for National Action* (Washington, D.C.: U.S. Government Printing Office, 1969), p. 145. The foot of the slope plays a fundamental role in the definition of the outer edge of the margin beyond 200 n.miles: Article 76(4). Distance from the baselines and depth play a role for the contraint lines: Article 76(5).

112. Note that outer limits are different from lines of delimitation: see *infra* IV.3.c.

113. Solution notably advocated by Moritaka Hayashi, "Sea Level Rise and the Law of the Sea: How Can the Affected States Be Better Protected?," in Moon-Sang Kwon et al. (eds.), *Limits of Maritime Jurisdiction* (Leiden: Brill, 2013), pp. 613–614.

114. *Territorial and Maritime Dispute*, 2012, p. 641, para. 26.

115. David Caron, "When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of Rising Sea Level," *Ecology Law Quarterly* 17 (1990), p. 647; Alfred Soons, "The Effects of a Rising Sea Level on Maritime Limits and Boundaries," *Netherlands International Law Review* 37 (1990), p. 225, https://doi.org/10.1017/S0165070X00006513. Caron also envisages a liberal interpretation of Article 7 or a historic title, but clearly saw difficulties there: *ibid.*, pp. 650–651.

116. See, e.g., Bird and Prescott, 1989, p. 177; David Freestone and John Pethick, "Sea Level Rise and Maritime Boundaries," in Gerald Blake (ed.), *Maritime Boundaries* (London: Routledge, 1994), p. 73; David Caron, "Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict," in Seoung-Yong Hong and Jon Van Dyke (eds.), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* (Leiden: Nijhoff, 2009),

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p. 1, https://doi.org/10.1163/ej.9789004173439.i-308.7; Moritaka Hayashi, “Sea-Level Rise and the Law of the Sea: Future Options,” in Davor Vidas and Peter Johan Schei (eds.), *The World Ocean in Globalisation* (Leiden: Nijhoff, 2011), p. 187; Hayahsi, 2013, p. 609; José Luis Jesus, “International Tribunal for the Law of the Sea,” in Jon van Dyke et al. (eds.), *Governing Ocean Resources* (Leiden: Nijhoff, 2013), p. 25; Rayfuse, 2013, p. 167; Jenny Stoutenburg, *Disappearing Island States in International Law* (Leiden: Nijhoff/Brill, 2015), https://doi.org/10.1163/9789004303010; Julia Xue, “Climate Change and the Law of the Sea,” in Keyuan Zou (ed.), *Sustainable Development and the Law of the Sea* (Leiden: Brill/Nijhoff, 2016), p. 243; Sarra Sefrioui, “Adapting to Sea Level Rise: A Law of the Sea Perspective,” in Gemma Andreone (ed.), *The Future of the Law of the Sea* (Cham: Springer, 2017), p. 3, https://doi.org/10.1007/978-3-319-51274-7_1; Oral, 2019, p. 415.

117. International Law Association, Committee on sea-level rise, *Report of the Seventy-seventh Conference (Johannesburg, 2016*), p. 852; ILA, 2018, p. 879 (referring to “the finding *de lege lata* that the Baselines Committee passed on to this Committee for further study and for the formulation of proposals *de lege ferenda*”).

118. ILA, 2018, pp. 881–883. Thus, in the case of maintaining baselines, the breadth of the maritime zones would remain compliant with the Convention and the incentive to artificially preserve baselines would be removed, but the chart showing the baselines would be a legal fiction which might also pose risks to navigational safety. In addition, the coastal State may find itself with offshore maritime areas where the physical features have ceased to retain the characteristics required by the Convention and, by maintaining existing baselines, coastal States would prevent high seas areas from expanding and prevent territorial sea areas from becoming EEZ, contrary to a global public interest. In the case of maintaining outer limits, the baseline would move to reflect physical reality and the charts would reflect the actual coastline, but the breadth of the maritime zones might exceed the limit in the Convention, and high seas would be prevented from expanding, which might be seen as contrary to a global public interest.

119. *Ibid.*, p. 881.

120. *Ibid.*, p. 888.

121. *Ibid.*, p. 896.

122. Resolution 5/2018, *ibid.*, p. 30 (emphasis added).

123. *Ibid.*, p. 883.

124. See *Arbitration Regarding the Chagos Marine Protected Area Between Mauritius and the United Kingdom*, Award of March 18, 2015, *Reports of International Arbitral Awards*, vol. XXXI, p. 460, paras. 220–221.

125. Committee on Sea-level Rise, Inter-sessional Meeting (Lopud, September 15–16, 2017), https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=5536&StorageFileGuid=2ea2e2e2-3406-4a46-a302-709fe3879fe5, p. 5 (accessed September 10, 2019).

126. ILA, 2018, pp. 868–874.

127. In its draft Principles on the Protection of Persons Displaced in the Context of Sea Level Rise, the committee defined sea-level rise as “the sole or combined and cumulative impacts of the effects of climate change and subsidence or land uplift on the change of the sea level in a given location”: *ibid.*, p. 899 (subsidence or land uplift may or may not be due to climate change: *ibid.*, p. 900).

128. An interesting analogy is the Franco-Mexican dispute over Clipperton Island: by decree of 1978, France declared an EEZ around the island, with a map indicating the outer limit. On November 30, 2010, co-ordinates were communicated to the UN under Article 75(2) of the Convention: Doc. M.Z.N. 80.2010.LOS. Mexico, considering that the island is a “rock” under Article 121(3) and has no EEZ, protested by note verbale of May 14, 2012: *Law of the Sea Bulletin*, 79 (2013), p. 64. Yet, by agreement of March 29, 2007, France granted to Mexican vessels registered with the Inter-American Tropical Tuna Commission, free of charge, unlimited yearly fishing licenses 200 nautical miles around Clipperton. A new agreement was concluded on January 17, 2017, which now prohibits fishing in the Clipperton territorial sea (a newly-designated marine protected area by France).

129. E.g., Alejandra Torres Camprubi, *Statehood Under Water* (Leiden: Brill, 2016), p. 97, https://doi.org/10.1163/9789004321618.

130. E.g., Agreement between France and Tonga of January 11, 1980, on the delimitation of the EEZ (Articles 1 and 2).

131. Such as forests, swamps, mountain crests or seabed: see Daniel Bardonnet, “Les fron-

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tières terrestres et la relativité de leur tracé," *Recueil des cours de l'academie de droit international* 153 (1976), p. 83.

132. Thus, the Treaty of April 7, 1961 between Argentina and Uruguay, specifying that the boundary on the Uruguay River "shall be permanent and unalterable and shall not, except as provided for in…, be affected by any natural or artificial changes" (Article 3[2]).

133. *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon V. Nigeria: Equatorial Guinea Intervening)*, Judgment, ICJ Rep. 2002, p. 336, para. 43 (argument of Cameroon).

134. Marshall Islands/Micronesia agreement of 2006, Article 2(5).

135. Agreement of 2016 between Vanuatu and the Salomon Islands, Article 5.

136. The Tuvalu/Kiribati agreement of 2012 specifies that the line lies seaward of Nanumea and Nuitao islands (Tuvalu), and Tabiteuea, Tamana and Arorae islands (Kiribati). The method used may be identified in the bilateral negotiations: for the U.S./Cook Islands agreement of 1980, see https://www.state.gov/documents/organization/58566.pdf, p. 10, accessed September 10, 2019 (equidistance).

137. E.g., Sefrioui, 2017, p. 19; Soons, 1990, p. 228. Article 62 says in part: "A fundamental change of circumstances …which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound … and (b) the effect of the change is radically to transform the extent of obligations still to be performed…. 2. A fundamental change of circumstances may not be invoked…: (a) if the treaty establishes a boundary."

138. See *Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)*, Award of July 7, 2014, p. 63, para. 216.

139. Kaiyan Homi Kaikobad, "Some Observations on the Doctrine of Continuity and Finality of Boundaries," *British Year Book of International Law* 54 (1984), p. 126, https://doi.org/10.1093/bybil/54.1.119.

140. Notably, *Aegean Sea Continental Shelf (Greece V. Turkey)*, Judgment, ICJ Rep. 1978, p. 36, para. 85; *Case Concerning the Delimitation of Maritime Boundary Between Guinea-Bissau and Senegal*, Decision of July 31, 1989, *Reports of International Arbitral Awards*, vol. XX, p. 144, para. 63.

141. *Yearbook of the ILC* II (2)(1982), p. 61, para. 6.

142. ILA, 2018, p. 891.

143. *Ibid.*, pp. 890–891.

144. *Ibid.*, p. 895. Such proposal is arguably also made *de lege ferenda*: although the committee "was acutely conscious of the potential for major physical impacts on coastal geography that sea-level rise could have in a relatively longer-term perspective, [it] noted that if its recommendations regarding the maintenance of existing entitlements to maritime zones were accepted, then the same principle should apply to maritime areas delimited by international agreements." *Ibid.*

145. See for instance Julia Lisztwan, "Stability of Maritime Boundary Agreements," *Yale Journal of International Law*, 37 (2012), p. 189 (maritime delimitation fall under Article 62[2]); Snjolaug Arnadottir, "Termination of Maritime Boundaries Due to a Fundamental Change of Circumstances," *Utrecht Journal of International and European Law* 32 (2016), p. 108 (maritime delimitation does not fall under Article 62[2]), https://doi.org/10.5334/ujiel.335; Thomas Giegerich, "Article 62. Fundamental Change of Circumstances," in Oliver Dörr and Kirsten Schmalenbach (eds.), *Vienna Convention on the Law of Treaties: A Commentary*, 2d ed. (Berlin: Springer, 2018), p. 1169, para. 77 (expressing doubts).

146. In that sense, Torres Camprubi, 2016, p. 96.

147. Giegerich, 2018, p. 1163, para 58. Of importance is whether the change is expressly, or by necessary implication, provided for in the treaty or in any other relevant agreement between the parties: *Yearbook of the ILC* II (1957), p. 33.

148. E.g., Article 61 (supervening impossibility of performance).

149. Statute, Articles 59–60.

150. Statute, Article 61.

151. Lucius Caflisch, "Cent ans de règlement pacifique des différends interétatiques," *Recueil des cours de l'academie de droit international* 288 (2001), p. 431.

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152. *Maritime Delimitation in the Black Sea (Romania V. Ukraine)*, Judgment, ICJ Rep. 2009, pp. 102–103, https://doi.org/10.1017/S0002930000019989.

153. E.g., *Nicaragua V. Honduras*, pp. 742–745 (lack of reliable basepoints rendering equidistance impossible to apply). As a general rule, the judicial body is only preoccupied with the physical reality at the time of the delimitation: *Bay of Bengal Arbitration*, para. 215.

154. In that sense, Stoutenburg, 2015, p. 140.

155. See Paul Reuter, *Introduction au droit des traites*, 3d ed. (Philippe Cahier ed.) (Paris: PUF, 1995), pp. 112–113. See also *Yearbook of the ILC* II (1964), p. 26 (Third report on the law of treaties by Sir Humphrey Waldock, limiting the effect of such treaties to third States which either consented to them or did not oppose them within a certain timeframe). See also the doubts expressed by Geoffrey Marston, "The Stability of Land and Sea Boundary Delimitations in International Law," in Gerald Blake (ed.), *Maritime Boundaries* (London: Routledge, 1994), pp. 150–151, 159.

156. The vessel of a third State arrested in one party's EEZ could hardly claim that it was arrested in the other party's EEZ: see Maurice Mendelson, "On the Quasi-Normative Effect of Maritime Boundary Agreement," in Nisuke Ando et al. (eds.), *Liber Amicorum Judge Shigeru Oda*, vol. 2 (The Hague: Kluwer, 2002), p. 1070.

157. For the ILA committee recommendation that coastal States should be allowed to maintain their maritime entitlements when the areas concerned are delimited by international agreement or international court decisions, see ILA, 2018, p. 895.

158. *Ibid.*, p. 887.

159. E.g., Alan Boyle, "Further Development of the Law of the Sea Convention: Mechanisms for Change," *International and Comparative Law Quarterly* 54(3) (2005), pp. 563–565, https://doi.org/10.1093/iclq/lei018.

160. UN Doc. A/RES/73/127 (December 11, 2018).

161. UN Doc. A/69/780, para. 12 (February 13, 2015).

162. E.g., UN Doc. A/RES/72/73 (December 5, 2017), p. 2.

163. See David Anderson, "Efforts to Ensure Universal Participation in the UN Convention on the Law of the Sea," *International and Comparative Law Quarterly* 43 (1994), p. 886, https://doi.org/10.1093/iclqaj/43.4.886.

164. E.g., UN Doc. A/CONF.164/37 (September 8, 1995) (UN Fish Stocks Agreement), Article 4. See Article 311(3) on the extensive restrictions to agreements modifying the Convention among some parties.

165. UN Doc. A/CONF.232/2019/10 (September 13, 2019).

166. See, e.g., *Earth Negotiations Bulletin* 25(218) (September 2, 2019), p. 4.

167. Convention, Article 319(2); Annex II, Article 2(3); Annex VI, Articles 4(4), 18(5)–(7) and 19(1); Final Act, Resolution I, para. 10.

168. E.g., UN Doc. SPLOS/73 (June 14, 2001), paras. 78–84. See Tullio Treves, "The General Assembly and the Meeting of States Parties in the Implementation of the LOS Convention," in Alex Oude Elferink (ed.), *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Leiden: Brill, 2005), p. 55. On the Meeting of States Parties tackling substantive issues of general interest, see the warning in UN Doc. SPLOS/324 (July 9, 2018), para. 98.

169. On this aspect, see also Hayashi, 2011, p. 199. In 1990, the Coastal Zone Management Subgroup of the IPCC recommended the adoption of a protocol to provide a framework for cooperation in dealing with the impacts of sea-level rise on the coastal zone but the recommended measures are material and practical: Dronkers, 1990, p. ix.

170. Caron, 1990, p. 647.

171. The selection of acts and statements to analyze will need to be carefully identified. Freestone and Schofield, 2019, p. 406, mention the Pacific Islands Forum Secretariat, "Boe Declaration on Regional Security" (September 5, 2018) and the Pacific Islands Forum Secretariat, "Communiqué of the Forty-Ninth Pacific Islands Forum, Yaren, Nauru" (September 3–6, 2018) but these documents are bereft of any reference to maintaining limits of maritime zones despite coastal change. The latter declaration acknowledges the importance of securing the region's maritime boundaries and resolving outstanding maritime boundary claims. The former declaration reaffirms that climate change remains the single greatest threat to the peoples of the Pacific.

172. See, e.g., Kerstin von der Decken, "Article 39. General Rule Regarding the Amendment of Treaties," in Oliver Dörr and Kirsten Schmalenbach (eds.), *Vienna Convention on the Law of*

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Treaties: A Commentary, 2nd ed. (Berlin: Springer, 2018), p. 762; Philippe Sands, "Article 39," in Olivier Corten and Pierre Klein (eds.), *Vienna Conventions on the Law of Treaties* (Oxford: Oxford University Press, 2011), p. 973; Reuter, 1995, p. 125.

173. Bernard H. Oxman, "Law of the Sea," in Oscar Schachter and Christopher Joyner (eds.), *United Nations Legal Order,* vol. 2 (Cambridge: Cambridge University Press, 1995), p. 704.

174. UN Doc. A/64/350, *Climate Change and Its Possible Security Implications. Report of the Secretary-General* (September 11, 2009), para. 17. And for disputes over the sudden expansion of shared or undemarcated resources, see *ibid.*, para 18. On Tuvalu's concerns about the securitization of climate change, fearing that it will lead to greater militarization, see UN Doc. S/PV.8144 (December 20, 2017), p. 65.

175. E.g., Jesus, 2013, p. 36.

176. ILA, 2018, p. 885.

177. Caron, 2009, p. 17.

178. Davor Vidas, "Sea-Level Rise and International Law: At the Convergence of Two Epochs," *Climate Law* 4 (2014), p. 75, https://doi.org/10.1163/18786561-00402006.

179. Lucius Caflisch, "A Typology of Borders," in B. Vukas and T. Sosic (eds.), *International Law: New Actors, New Concepts—Continuing Dilemmas* (Leiden: Nijhoff, 2010), p. 212, https://doi.org/10.1163/ej.9789004181823.i-614.53.

180. See, e.g., Note Verbale No.000228 from the Philippines to the UN Secretary-General (April 5, 2011): https://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/phl_re_chn_2011.pdf, accessed October 28, 2019.

181. See, e.g., Boyle, 2005, pp. 567–574; Catherine Redgwell, "Treaty Evolution, Adaptation and Change: Is the LOSC 'Enough' to Address Climate Change Impacts on the Marine Environment,?" *International Journal of Marine and Coastal Law* 34 (2019), pp. 446–452, https://doi.org/10.1163/15718085-13431096.

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Call for Papers

JTMS Summer/Fall 2020 Issue

The *Journal Territorial and Maritime Studies* (*JTMS*) is soliciting submissions for its Summer/Fall 2020 issue. In the interest of increasing submissions for this recently launched publication, *JTMS* is offering authors of articles successfully passing peer review and selected for publication in the Summer/Fall 2020 issue an honorarium of $1,000. *JTMS* is an interdisciplinary journal of research dealing with territorial and maritime issues sponsored by the Northeast Asia History Foundation with editorial offices hosted by Yonsei University in South Korea. The journal provides an academic medium for the announcement and dissemination of research results in the fields of history, international law, international relations, geography, peace studies, and any other relevant discipline. The journal covers all continental areas across the world, and it discusses any territorial and maritime subjects through the various research methods from different perspectives; moreover, practical studies as well as theoretical works, which contribute to a better understanding of territorial and maritime issues, are encouraged.

For consideration in the Summer Fall 2020 issue, manuscripts should be submitted electronically to jtms@yonsei.ac.kr by February 1, 2020. Submitted papers should include four major sections: the title page, structured abstract, main body, and references. The title page should contain the title of the paper, the author's name, the institutional affiliation, and keywords. To be considered, manuscripts must follow the *JTMS* style guide available on our website. A length of maximum 9,000 words is preferred for an article, including endnotes, and approximately 2,000 words for a review. Inquiries may be sent via the email address provided above.

Our style guide and other journal information may be found on our website at:
http://www.journalofterritorialandmaritimestudies.net/.

JTMS Call for Blog Entries

The blog of *Journal of Territorial and Maritime Studies* welcomes submissions for blog entries. This forum is intended to discuss topics related to recent territorial and maritime news, research, and policy. It is hoped that this blog will help bring a

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fresh perspective on how to deal with territorial and maritime issues and the complexities these issues present.

Those wishing to submit a blog post can send their post to jtms@yonsei.ac.kr along with the author's contact information, bio, and a recent photograph.

Style Guide

General Guidelines

JTMS is a scholarly journal. Paragraphs must be fully developed without contractions, first and second person pronouns, repetition, jargon, sexist language, awkward syntactical constructions. Use a limited number of succinct headings and subheadings that is underlined or italicized as appropriate. Carefully honed style that is in a mellifluous prose is as important as substantive content. *JTMS* recommends attaining asking colleagues whose writing style you respect for review and revision. Please note that all accepted material is subject to editorial emendation.

Length: Research articles should be no more than 9,000 words, commentary essays no more than 4,000 words and Book Reviews no more than 1,500 words.

Format: Research should be saved as Microsoft Word document formatted Times New Roman, 12-point font, double-spaced. There should be generous margins, no right-hand justification, and pages numbered consecutively.

Title Page: Title page must include 1.) the title of the paper, 2.) author's contact information including name, affiliation, address, phone number, fax number, email address 3.) A structured abstract (see samples below) and few key words of the paper.

Biography: Author's biographical statement (75 words or less)must be underneath his/her contact information. This will be edited and published in the *Journal of Territorial and Maritime Studies*.

Headings: *JTMS* uses three levels of headings. Major headings (heading level 1) is left justified in bold with the first sentence following the heading indented. Secondary heading (heading level 2) is left justified in italic with the first sentence after the heading indented. Tertiary heading (heading level 3) is left justified in italic with the first sentence after the heading beginning on the same line.

Tables & Figures: Insert each table or figure on a separate page at the end of the text. Indicate the position of the table or figure in the text (e.g. Insert Table 2 here). The page containing the table or figure should be placed after the page that first references the table/figure in the text. Authors have the responsibility of providing high quality figures and other kinds of illustrative materials. Supporting materials may be submitted as hard copies for scanning or through e-mail submission. Please forward all materials to the editor.

Endnotes: Use full citation endnotes with no bibliography or reference list. Endnotes should be brief, used sparingly, and consecutively numbered with subscript Arabic numbers. Please convert all footnotes to endnotes.

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Book

1. Robert Jervis, *The Meaning of the Nuclear Revolution: Statecraft and the Prospect of Nuclear Armageddon* (Ithaca, NY: Cornell University Press, 1989), p. 167.

2nd endnote

2. Jervis 1989, p. 160.

Consecutive endnote

3. Ibid. p. 50.

Journal

2. David Karl, "Proliferation Pessimism and Emerging Nuclear Powers," *International Security* 21(3) (1996–97), p. 89.

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3. Sangwon Yoon and David Lerman, "Hagel Calls on North Korea to Tone Down Rhetoric," *Bloomberg News*, April 11, 2013, http://www.bloomberg.com/news/2013-04-10/south-korea-braces-for-possible-missile-test-from-north-today.html, accessed January 21, 2014.

Newspaper Article

4. Andrei Lankov, "Stay Cool. Call North Korea's Bluff," *New York Times*, April 9, 2013.

Footnote

5. The classic optimist-pessimist debate can be found in Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons: An Enduring Debate*, 3d. ed. (New York: W. W. Norton & Company, 2013). For detailed surveys of the literature more generally, see Peter Lavoy, "The Strategic Consequences of Nuclear Proliferation: A Review Essay," *Security Studies* 4(4) (1995), pp. 695–753; and Francis Gavin, "Politics, History and the Ivory Tower-Policy Gap in the Nuclear Proliferation Debate," *The Journal of Strategic Studies* 35(4) (2012), pp. 573–600.

One File: Submit the paper as one file in the following order: Title, Structured Abstract, Text, Endnotes, Tables and Figures, and Biographical Statement.

Structured Abstract

Article Classification: JTMS categorizes articles into 6 of the following classifications: Research Paper, Viewpoint, Technical Paper, Conceptual Paper, Case Study,

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and General Review. Please write *one* of the categories in which your paper belongs on the article title page.

The article title page must include a structured abstract with 4–5 of the following subheadings: 1.) Purpose, 2.) Design/Methodology/Approach, 3.) Findings, 4.) Practical Implications, 5.) Originality/Value. The structured abstract, including keywords and article classification, must be 200 words or less.

Structured Abstract Samples

Sample 1

Article Type: Research Paper

Purpose—Some scholars imprint an academic discipline by their contribution to the manner in which people think and research, namely, by putting forward novel concepts and insights. The purpose of this paper is to examine the impact of Sumantra Ghoshal's work on the study of subsidiaries and multinational enterprises and organizational formats for foreign operations.

Design, Methodology, Approach—A bibliometric study on Bartlett and Ghoshal's well-known book *Managing Across Borders: The Translational Solution* is performed to assess its impact in international business (IB) research. The entire record of publications in the top leading IB journal, Journal of International Business Studies (JIBS), is examined.

Findings—Theoretically supported, Ghoshal's work was keenly influenced by his corporate experiences and his constant questioning of the dominant theories and assumptions. The analyses in this paper show the impact of the work on the "transnational solution," namely, on the understanding of multinationals and subsidiaries, thus being one of the most notable contributions for IB research over the past 20 years.

Practical Implications—Useful for graduate students and in writing a literature review, this paper presents an interesting manner to examine a scholar's and a theory's impact on a discipline.

Originality, Value—This paper presents an extensive bibliometric analysis of research published over a time-span of 22 years in international business studies.

Sample 2

Article Type: Research Paper

Purpose—While many studies on institutional environment have primarily focused on the influence of the host country environment, limited insights have been offered on how the different dimensions of home institutions affect firm internationalization. This paper aims to fill this gap by investigating the effects of regulatory institutions at home.

Design, Methodology, Approach—Using country governance quality to proxy quality of regulatory institutions, this study attempts to reveal how regulatory institutions at home facilitate a multinational enterprise's (MNE's) international expansion and

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why the influence differs in different country clusters. Using hierarchical linear modeling and cluster analysis, proposed hypotheses were tested with a three-year panel 511 firms from 38 countries.

Findings—The results provide substantial support for authors' hypotheses that MNEs with high governance quality at home are more engaged in internationalization than those with low governance quality at home. Moreover, differences in institutional effect do exist between country clusters.

Practical Implications—This study provides evidence that while country difference exists, governance quality at home can facilitate MNE's expansion into foreign markets. This finding will help managers of any MNEs to consider country-level factors and evaluate the governance quality at home before committing resources into foreign operations.

Originality, Value—Building on the institutional environment literature, this theory and results make original contributions by underscoring how the consideration of regulatory institutions at home can significantly improve understanding of institutional influence on MNEs. The findings have important implications for both international business researchers and managers of MNEs.

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