



Christian Schultheiss

Ocean Governance and Conflict in the East and South China Sea

Negotiating Natural Resources,
Institutions and Power

Amsterdam
University
Press

A X
U X
P X

Amsterdam
University
Press

Ocean Governance and Conflict in the East and South China Sea



Amsterdam
University
Press

Politics and International Relations in Asia

The rise of Asia, in particular China and India, and also Southeast Asia, has generated significant interest in these countries' domestic politics, foreign policy behavior, and impact on international politics. There is increasing demand from scholars, students, and the general public for research that will help us better understand the rapid growth of Asia and how these changes are impacting relations between them as well as regional and international politics. This series aims to provide theoretically and empirically-informed robust research on Asia. It is interested in regionalism and regional order in Asia, and the impact of power transitions on regional order and world order. The series is also interested in cross-regional comparative studies, for instance, between Asia and Europe, Asia and Africa, Asia and Latin America. Cross-regional comparisons are less common, but can be valuable in deepening our understanding of Asia.

Series editors

Selina HO 何莉菁, Lee Kuan Yew School of Public Policy, National University of Singapore, Singapore

Kanti Prasad Bajpai, Lee Kuan Yew School of Public Policy, National University of Singapore, Singapore



Amsterdam
University
Press

Ocean Governance and Conflict in the East and South China Sea

Negotiating Natural Resources, Institutions and Power

Christian Schultheiss

Amsterdam University Press



Amsterdam
University
Press

Cover photo: Improvisation 31 (Sea Battle) by Wassily Kandinsky. Courtesy National Gallery of Art, Washington

Cover design: Coördesign, Leiden

Lay-out: Crius Group, Hulshout

ISBN 978 94 6372 899 7

e-ISBN 978 90 4855 797 4 (pdf)

DOI 10.5117/9789463728997

NUR 697

© The author / Amsterdam University Press B.V., Amsterdam 2024

All rights reserved. Without limiting the rights under copyright reserved above, no part of this book may be reproduced, stored in or introduced into a retrieval system, or transmitted, in any form or by any means (electronic, mechanical, photocopying, recording or otherwise) without the written permission of both the copyright owner and the author of the book.

Every effort has been made to obtain permission to use all copyrighted illustrations reproduced in this book. Nonetheless, whosoever believes to have rights to this material is advised to contact the publisher.

For Selma



Amsterdam
University
Press

Table of Contents

List of Maps	11
List of Tables	13
Acknowledgements	15
I Introduction – Three Decades of Negotiations in the East and South China Sea Disputes	17
II Natural Resource Institutions, Conflict Management, and the Perils of Cooperation	51
1 Conflict Management and Natural Resource Institutions	53
1.1 Cooperative Response and Continuation of Conflict by Other Means?	59
2 Power – How Institutions Can Be Weaponized	63
2.1 Three Mechanisms: Precedent without Legal Force, Restrictions on Conflict Behaviour, and the Manipulation of Risk	69
2.2 Precedent without Legal Force and Focal Points	69
2.3 Restrictions on Conflict Behaviour, Coalition Formation, and Access	72
2.4 The Management and Manipulation of Risk	75
2.5 Power Asymmetries and Institutions that Alter Power	76
3 Alternative Explanations: Legal Entitlements, Domestic Politics, and Fragmented Coalitions in Negotiations	78
3.1 The Nine-Dash Line and Negotiations with(out) Legal Entitlements	78
3.2 The Role of Domestic Politics and Nationalism in Negotiations	82
3.3 ASEAN as a Fragmented Coalition in Multilateral Negotiations	86
4 Methodology	88
III Institutions for Marine Natural Resources in the South China Sea	95
1 China and the Philippines	103
1.1 The Joint Marine Seismic Undertaking: From ‘Breakthrough for Peace’ to Liability	103



1.2	Resource Sharing after the JMSU: Philippine Law vs Joint Jurisdiction	113
1.3	Joint Development after the South China Sea Arbitration?	119
1.4	The Politics of Sino-Philippine Joint Development Reconsidered	123
1.5	Fisheries in Sino-Philippine Relations: Incidents, Impasse, Scarborough Shoal, and Arbitration	127
2	China and Vietnam	143
2.1	Boundary Delimitation and Trans-Boundary Cooperation in the Gulf of Tonkin	145
2.2	The Sino-Vietnamese Fisheries Agreement 2004	146
2.3	Extending the Gulf of Tonkin Cooperation into the South China Sea	149
2.4	Gulf of Tonkin Agreements Reconsidered	153
3	The Philippines and Taiwan: Comprehensive Pressure, Minimal Cooperation	155
3.1	The Fisheries Law Enforcement Agreement and its Barriers	160
4	Brunei and Malaysia: From Confrontation to Boundary Delimitation and Resource Sharing	164
IV	Institutions for Marine Natural Resources in the East China Sea	169
1	China and Japan	174
1.1	Energy without Politics? Joint Development Negotiations 1985–2008	174
1.2	From ‘New Historic Starting Point’ to Conflict – the Principled Consensus	183
1.3	The Sino-Japanese Fisheries Agreements in the East China Sea 1950–2000	189
1.4	The Senkaku/Diaoyu Islands, the Fisheries Agreement, and the Management of Incidents 2010–2017	202
2	The Republic of Korea, Japan, and China	207
2.1	The Republic of Korea and Japan: Fisheries Agreements 1965–1999	207
2.2	The Sino-Korean Fisheries Agreement: Effective despite Rampant Violations?	212
2.3	An Innovative Approach? Three Overlapping Bilateral Fisheries Agreements	216



3	Japan and Taiwan	217
3.1	Agreement between Rivals, Impasse between Partners?	217
3.2	The Japanese–Taiwanese Negotiations Reconsidered	229
4	The Impact of Fisheries Agreements on Incidents and Coast Guard Behaviour in the East and South China Sea	231
V	Institutions for Conflict Behaviour in the East and South China Sea	241
1	China and ASEAN Members: The Long March towards a South China Sea Code of Conduct	243
1.1	The First March towards a Code of Conduct: 1992–2002	245
1.2	The Second March towards a Code of Conduct: 2003–2016	256
1.3	The Third March towards a Code of Conduct after the South China Sea Arbitration: Procedural Novelties and Old Divisions	262
1.4	Code of Conduct Negotiations Reconsidered	273
2	Institutions for Crisis Management in the East and South China Sea	277
2.1	The Japan–China Air and Sea Communication Mechanism 2008–2020	279
2.2	Air and Sea Communication Reconsidered	287
2.3	The Code for Unplanned Encounters 2003–2018	288
2.4	Institutions for Crisis Management Reconsidered	295
VI	Conclusions	301
	Appendix: Overview of Cases	319
	Bibliography	323
	Index	379





Amsterdam
University
Press

List of Maps

Map 1	Claims in the South China Sea	98
Map 2	The Joint Marine Seismic Undertaking (JMSU)	107
Map 3	Maritime boundary agreement and fisheries agreement in the Gulf of Tonkin	148
Map 4	Areas for joint surveys in the Gulf of Tonkin	151
Map 5	Overlapping continental shelf claims and joint development in the East China Sea	173
Map 6	Map of one profile of China's continental shelf claim in the East China Sea	176
Map 7	Fisheries agreements in the East China Sea	194
Map 8	Japan–Taiwan Fisheries Agreement	220
Map 9	Common fishing zones (details)	226





Amsterdam
University
Press

List of Tables

Table 1	Fisheries agreements and proposals in the East and South China Sea	232
Table 2	Cases in the South China Sea	319
Table 3	Cases in the East China Sea	320
Table 4	Cases on conflict management in the East and South China Sea	321



Amsterdam
University
Press



Amsterdam
University
Press

Acknowledgements

This work would not have been possible without the support of many colleagues, universities, and research institutes. I have benefited from the collegial environments of Cambridge's Department of Politics and International Studies, and Centre for Geopolitics and Lauterpacht Centre for International Law, as well as the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. As this book has evolved over several years, I have benefited from discussions with many colleagues. I am very greatly indebted to Kun-Chin Lin and Marc Weller for their detailed criticism and numerous suggestions with respect to the direction the content of this book has taken. I wish to give thanks to the members of the Asian Center of the University of the Philippines, the National Institute for South China Sea Studies, Renmin University, and Keio University for hosting me during field research. Special thanks go to Yuichi Hosoya and his team for their research support in Tokyo. I would like to posthumously acknowledge Aileen Baviera for her invaluable research support in Manila. I owe her many thanks. Many officials and experts from China, Japan, the Philippines, Malaysia, Vietnam, and Taiwan generously offered their time and experience, and I am most grateful for their inspiring interviews. I thank Amrita Narlikar, Stein Tønnesson, John Nilsson-Wright, Peter Dutton, and the anonymous reviewers for Amsterdam University Press for the insightful and constructive comments and suggestions regarding earlier versions of this manuscript. The book also benefited from very helpful suggestions from Carolyn Moser and the entire ENSURE team at the Max Planck Institute. I thank Rocío Bargon Sánchez and Jule Sommer for editorial support. For supporting my research and making this book possible, I wish to thank the Friedrich-Ebert-Stiftung, the University of Cambridge, and the Max Planck Institute for Comparative Public Law and International Law. Finally, I am appreciative of the support of the production team at Amsterdam University Press who guided me throughout the process.



Amsterdam
University
Press



Amsterdam
University
Press

I Introduction – Three Decades of Negotiations in the East and South China Sea Disputes

Abstract

This book explains why claimant states in the East and South China Sea disputes reach agreements on oil and gas, fisheries, crisis communication, and conflict behaviour in some cases, but not in others. Negotiations about cooperative institutions governing marine natural resources are almost as old as the disputes themselves. This is the first comprehensive and theoretically informed investigation that analyses how East and Southeast Asia's middle powers negotiate with China about dispute settlement and ocean governance in Asia's maritime disputes. To this end, this book analyses the bargaining processes of the past three decades and how the law of the sea and the UN Convention on the Law of the Sea (UNCLOS) affects negotiations. To cooperate, state actors need to be confident that a cooperative institution does not expand an opponent's bargaining power in disputes.

Keywords: East and South China Sea, law of the sea, UNCLOS, dispute settlement, natural resource institutions, ocean governance, cooperation, bargaining

This book in a nutshell

Why have claimant states in the East and South China Sea disputes reached agreements for oil and gas, fisheries, crisis communication, and conflict behaviour in some cases, but not in others? Why, for example, did Japan and China agree on a fisheries agreement that covers most disputed areas, but an arrangement on a small bloc for joint gas development reached after

Schultheiss, Christian: *Ocean Governance and Conflict in the East and South China Sea. Negotiating Natural Resources, Institutions and Power.*

Amsterdam: Amsterdam University Press, 2024.

DOI: 10.5117/9789463728997_CH01



Amsterdam
University
Press

twenty-three years of consultations ran aground? Why did all negotiations between China and the Philippines on joint oil and gas projects end in an impasse except for one arrangement concluded over the period 2004- 2005? Why did China and Vietnam agree on a sea boundary and joint natural resource governance in the Gulf of Tonkin while several attempts to extend this cooperation into small parts of the South China Sea ended in an impasse? Why did South Korea's forceful response to rampant Chinese fishing activities not escalate in the Yellow Sea while much less severe incidents escalated in the South China Sea? Why is it so difficult to design incident prevention and crisis communication arrangements, even if the disputing states know from experience that frighteningly mundane incidents can escalate beyond measure? What has prevented members of the Association of Southeast Asian Nations (ASEAN) from developing a strong internal consensus around a code of conduct?

These questions represent central knowledge gaps in our understanding of the East and South China Sea disputes. When negotiating options to resolve disputes, the disputing states have almost exclusively considered institutions for marine natural resources and conflict behaviour. The efforts to reach cooperative arrangements in a step-by-step process are anything but recent; they go back at least three decades and, in some cases, up to six decades. Yet China, Japan, South Korea, Taiwan, the Philippines, Vietnam, Malaysia, and Brunei have hardly ever negotiated the settlement of territorial disputes and have considered sea boundary delimitation in only a few cases in the East and South China Sea. The question of when and why claimant states reach and implement agreements on marine natural resources and rules for conduct, and when and why negotiations end in an impasse is therefore central to the East and South China Sea disputes, and by extension, to international security in the Indo-Pacific. This book is the first study to ask and answer this question. It offers, for the first time, a comprehensive and theoretically informed analysis of the claimant states' efforts to design institutions governing marine natural resources and conflict behaviour.

This book argues that the claimant states have recognized that the specific types of agreements under consideration prevent further clashes, help overcome escalatory risks, and allow coordinated action on natural resources without touching directly upon territorial and sea boundary settlements. Yet, while the disputing actors have treated the respective institutions as enablers for limited and voluntary cooperation, they have also realized and know from experience that these institutions help an opponent to expand its power in these disputes and consolidate unilateral advancements with institutional means. To cooperate, the disputing parties have needed not only



to reconcile security-related or economic interests, align with geopolitical objectives, or agree on a division of gains from joint action. The agreements have not been prevented by disagreements regarding these questions. To reach and implement agreements, the parties need to be confident that a cooperative institution does not expand a rival's power in disputes.

This book has the following objectives: First, it seeks to explain when and why negotiations on agreements for the common governance of marine natural resources and conflict behaviour result in agreements in some cases but end in impasses in other cases. Island and maritime disputes in the East and South China Sea are central drivers for escalation, instability, destruction of the marine environment, and great power competition in the Indo-Pacific. Yet the claimant states – China, Japan, South Korea, Taiwan, Philippines, Vietnam, and other members of ASEAN – have hardly ever negotiated the settlement of territorial (island) disputes. Instead, claimants have negotiated about institutions for the common governance of marine natural resources and conflict behaviour. This book, therefore, focuses on the interactions about the types of agreement that the disputing states have considered in the past decades – fisheries agreements, agreements for the joint development or exploration of offshore oil and gas, agreements for maritime law enforcement cooperation, codes of conduct, and arrangements for incident prevention and crisis communication.

Second, claimant states in the East and South China Sea interact 'in the shadow' of the law of the sea. In contrast to, for instance, territorial disputes, claims to maritime zones are subject to a relatively well-codified legal regime – the law of the sea and the United Nations Convention of the Law of the Sea (UNCLOS).¹ Beyond questions of compliance or non-compliance with UNCLOS, the existence of a relatively well-codified legal regime impacts relations in several ways. UNCLOS clarifies the maritime rights that states can claim at sea. Claimant states, therefore, negotiate based on existing (or non-existing) legal entitlements to maritime zones. UNCLOS also contains a comprehensive dispute settlement system that has allowed the Philippines to initiate arbitral proceedings. While the issue of the existence or absence of legal entitlements has a distinct effect on resource-sharing negotiations, this book illustrates that this effect results from a broader, underlying factor. Moreover, some of the types of agreements the claimants consider, such as agreements for the joint development of hydrocarbon resources and fisheries agreements, have emerged in international law through subsequent state

¹ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1183 UNTS 396.



practice. UNCLOS adopts these as ‘provisional arrangements of a practical nature.’² The law of the sea hence offers cooperative governance options in lieu of and in addition to comprehensive sea boundary delimitation. Some negotiators characterize these options as pragmatic step-by-step approaches to the resolution of disputes. To better understand the relationship between natural resource cooperation and conflict,³ this book examines how these types of arrangements contribute to reducing conflict risks. This book shows that, when comparing all the agreements negotiated in the East and South China Sea, the most effective instruments in preventing an escalation of Asia’s maritime disputes have been the fisheries agreements in the East China Sea – even if these agreements have been subject to profound challenges. These arrangements not only prevent conflict over fisheries, but also help avoid escalation in disputes subject to rivalry and great power confrontation. This then raises the question of why claimants have not reached more agreements for marine natural resources and why states in the South China Sea have not emulated the fisheries agreements of the East China Sea.

Third, to understand the observable barriers in the negotiations and the variation between agreement and impasse it is necessary to recognize that two different aspects of institutions are closely interwoven. While institutions make cooperative behaviour durable, they can also help one actor make an opponent do what the opponent would not otherwise do. On the one hand, institutions restrain behaviour, overcome collective action problems, and allow durable, coordinated, and joint action in response to problems actors face.⁴ Disputing states in the East and South China Sea have sought cooperative institutions in response to the problems they face, namely escalatory risks, costs to bilateral and regional relations, and access to natural resources. Some surprisingly resilient institutions allow durable

2 UNCLOS, articles 74(3) and 83(3).

3 For a recent review of the literature, see Nina von Uexkull and Halvard Buhaug, ‘Security Implications of Climate Change: A Decade of Scientific Progress’, *Journal of Peace Research* 58, no. 1 (January 2021): 3–17; also see Nils Petter Gleditsch, ‘Whither the Weather? Climate Change and Conflict’, *Journal of Peace Research* 49 (2012): 3–9; Nils Petter Gleditsch, ‘Armed Conflict and the Environment: A Critique of the Literature’, *Journal of Peace Research* 35, no. 3 (1998): 381–400. Many studies focus on river agreements. Also see Jaroslav Tir and Douglas M. Stinnett, ‘Weathering Climate Change: Can Institutions Mitigate International Water Conflict?’, *Journal of Peace Research* 49, no. 1 (January 2012): 211–25; and Paul R. Hensel et al., ‘Bones of Contention: Comparing Territorial, Maritime, and River Issues’, *Journal of Conflict Resolution* 52, no. 1 (2008): 117–43.

4 Elinor Ostrom, *Governing the Commons, The Evolution of Institutions for Collective Action* (CUP, 1990); Thráinn Eggertsson, *Economic Behavior and Institutions*, Cambridge Surveys of Economic Literature (CUP, 1990); Barbara Koremenos et al., ‘The Rational Design of International Institutions’, *International Organization* 55, no. 4 (2001): 761–99.

and coordinated action even in the face of repeated incidents. On the other hand, institutions can also serve as ‘weapons of coercion’⁵ from which actors gain ‘strategic advantages’⁶ that consolidate predatory behaviour⁷ and bring about vulnerabilities.⁸ This raises the question of how institutions can be ‘weaponized’. This book argues that the underlying theoretical condition for the possibility of institutions being weaponized is that some institutions increase or decrease actors’ power in their interactions.⁹ Yet the possibility that actors gain power advantages does not make institutions undesirable. In the East and South China Sea, claimants continue to consult on institutions. It is therefore important to understand when actors agree on institutions even if these can be weaponized. This raises several questions: first, how institutions alter power between actors and, second, how this condition affects negotiation processes about institutions. This book identifies characteristics by virtue of which the institutions under consideration in the East and South China Sea can affect the disputing states’ power.

Furthermore, this book describes how rival claimants have implemented agreements to address these concerns. Various actors have sought to reach the benefit of cooperative institutions without the peril of exposing a claim to vulnerability. But when actors have realized that an opponent could use an institution as a ‘weapon of coercion’, actors have then not reached an effective agreement or let agreements expire. The cost of cooperation between rival actors in the East and South China Sea is not so much the possibility that actors renege on terms or the costs associated with creating an institution but that actors gain power advantages. Sticking points in negotiations have revolved around neutralizing potential perils. Negotiations have been more likely to reach an agreement if negotiators are confident that an implemented agreement will not expose a claim to perils; otherwise, they have resulted in impasses. To cooperate, actors need then not only to

5 Terry M. Moe, ‘Political Institutions: The Neglected Side of the Story’, *Journal of Law, Economics, and Organization* 6 (1990): 213–53, 213. For a recent adoption of the ‘institutions as weapons’ metaphor, see Henry Farrell and Abraham L. Newman, ‘Weaponized Interdependence: How Global Economic Networks Shape State Coercion’, *International Security* 44, no. 1 (July 2019): 42–79.

6 Gregory K. Dow, ‘The Function of Authority in Transaction Cost Economics’, *Journal of Economic Behavior & Organization* 8, no. 1 (March 1987): 13–38, 20.

7 R. Harrison Wagner, *War and the State: The Theory of International Politics* (University of Michigan, 2007), chapter 5, 184–7.

8 Barbara F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton UP, 2002).

9 Terry M. Moe, ‘Power and Political Institutions’, *Perspectives on Politics* 3, no. 2 (2005): 215–33.

agree on a division of gains from joint action and on measures to improve compliance, but they need to rule out the expansion of an opponent's power.

Fourth, this book discusses alternative explanations for the observable variation, namely the influence of domestic politics and nationalism, as well as the impact of some characteristics of multilateral negotiations. It considers the question of whether disputed islands are located within the geographic scope of agreements and power asymmetries. While these variables and perspectives offer important insights into disputes and negotiations, they do not explain the observable variation. Moreover, this book goes beyond a focus on China. Undoubtedly, China's claims and behaviour underlie most changes to the status quo. Yet this book shows that interactions and negotiations in cases excluding China have often been no less difficult than negotiations including China. This book attempts not to read history 'backwards' nor to look at the interactions of the past decades through the lenses of current levels of great power confrontations. In this vein, this book corrects the literature on the East and South China Sea that often focuses on China and great power struggles but neglects the perspectives of East and Southeast Asian middle powers.

Fifth, this is the first theoretically informed study that analyses how East and Southeast Asia's middle powers have negotiated with China (and with each other) about institutions in a context where China's outward expansion challenges the existing law of the sea and where geopolitics, lifelines of global trade, and the need to protect the marine environment intersect. The literature discusses many aspects of the East and South China Sea disputes, the historical and legal contexts of the claims and the role of the law of the sea, the issues at stake, and a characterization of China's tactics as well as the relationship between China's rise and great power competition. The literature also refers to single cooperative agreements as role models for moving forward. Numerous authors conclude their papers with a call for practical cooperation, confidence building, and measures for conflict management. However, there is no comprehensive analysis of the disputing countries' attempts to reach agreements for the maritime domain. An explanation for the observable variation between agreements and impasses is missing.

The research puzzle

At first glance, one may be tempted to construe the puzzle in the following way: As sensitive territorial disputes and claims to large maritime zones are



Amsterdam
University
Press

interconnected in complex ways in the East and South China Sea, as control over strategic waterways and rich natural resources, reputation, and the reordering of East Asia are at stake, and as China intransigently pursues partly invalid claims, it is surprising that claimants have reached cooperative agreements at all. At second glance, however, it may appear possible to construe the puzzle in the opposite way. A body of literature refers to the parties' efforts to devise cooperative arrangements on 'low-hanging fruits',¹⁰ as 'a creative approach',¹¹ and as 'all the more attractive when considering alternatives'.¹² Emphasizing the claimants' decades-long efforts to initiate a 'step-by-step'¹³ process of 'face-saving' compromises, looking at myriad policy proposals, and describing single agreements as 'role models' for that process, the question is why the disputing actors have not reached more arrangements. Both views, however, are simplistic and disregard the observable variation of agreements and impasses.

In the South China Sea, China, the Philippines, Vietnam, Malaysia, Brunei, and other ASEAN members have negotiated in bilateral, trilateral, and multilateral formats about institutions for fisheries, hydrocarbon resources and seismic research, crisis communication, and codes of conduct for three decades. In the East China Sea, China, Japan, South Korea, and Taiwan¹⁴ have negotiated bilateral institutions for fisheries, the joint development of oil and gas, and incident prevention over several decades. In both China Seas, claimant states have hardly ever negotiated the settlement of territorial disputes. The parties have adopted an incremental approach whereby the negotiated options are agreements about single issues such as natural resources and measures to prevent incidents and reduce tensions. None of the agreements at the negotiation table would settle the territorial and maritime disputes comprehensively. The parties have entered into ten arrangements between the 1990s and the early 2020s and continue consultations about further arrangements at the time of writing.¹⁵ Eight of these ten

10 See subsection below: 'Ocean governance as a step-by-step approach to conflict resolution'.

11 M. Taylor Fravel, 'Explaining Stability in the Senkaku (Diaoyu) Islands Dispute', in *Getting the Triangle Straight: Managing China–Japan–US Relations*, edited by G. Curtis et al. (Brookings Institution Press, 2010), 144–164, 160.

12 Robert Beckman et al., 'Moving Forward on Joint Development in the South China Sea', in *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources*, edited by Robert Beckman et al. (Edward Elgar, 2013), 312–31, 330.

13 Hasjim Djalal, 'The South China Sea: The Long Road towards Peace and Cooperation', in *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, edited by Tommy T. B. Koh et al. (Brill, 2009), 25–50.

14 On Taiwan's status question, see the respective case studies.

15 See the tables in the appendix.

arrangements have been fully implemented, a ninth was implemented but expired, and a tenth has been partly implemented. In another ten cases, negotiations have stalled or ended in an impasse. All parties have suggested agreements that go beyond existing agreements. China itself has entered into seven arrangements, of which five are currently implemented, a sixth was implemented but expired and a seventh is partly implemented. This number excludes ineffective arrangements such as the Declaration on Conduct of 2002. Some bilateral negotiations between claimant states excluding China – for example, between the Philippines and Taiwan, or Brunei and Malaysia – were no less difficult than negotiations including China. While access to marine natural resources has been subject to confrontations, claimants have agreed on the shared governance of these in some cases. While territorial disputes are always sensitive, six agreements have a geographic scope covering disputed territories. It is because of the escalation risks that stem from the combination of territorial and maritime disputes with potential for great power confrontations that the parties have sought ways to manage their disputes.

Moreover, the fact that China has claimed maritime rights beyond the limits of UNCLOS in the South China Sea offers a possible and intuitive explanation for the absence of more negotiation processes on resource sharing in the South China Sea.¹⁶ However, in most cases where China and other claimants have negotiated, China has had valid maritime claims. Thus, this fact alone cannot generally explain the variation between agreements and impasses. To make matters more complex, the Philippines and China have engaged in detailed exchanges and come to an agreement despite the absence of valid Chinese claims.¹⁷ While China's insistence on invalidated maritime claims in the South China Sea is a central driver in these disputes, this factor alone cannot explain the cases and only adds to the puzzle.

The argument

Claimant states of the East and South China Sea have chosen to consult on a code of conduct, agreements for fisheries regulations, joint development of oil and gas, and other practical measures because the parties have seen little room for compromise on territorial issues and sea boundary delimitation. The parties have sought a code of conduct to define the basic rules for

16 See Chapter II 3.1.

17 See Chapter III 1.



reducing escalatory behaviour and enabling practical cooperation in the South China Sea. In both China Seas, several parties have considered the joint development of hydrocarbon resources as a means to replace highly escalatory, unilateral exploration activities with an agreed legal framework for joint exploration or exploitation. As states do not have reliable information about the potential for recoverable resources without exploratory activities, states require such activities to establish the economic value of an area. As parties have tended to regard fishing incidents as competitions in demonstrating superior jurisdiction and superior claims, fishing activities in disputed areas have repeatedly resulted in clashes with coast guards and law enforcement agencies. The parties have negotiated fisheries agreements to dissociate fishing activities from the escalatory logic of clashing claims. Claimant states have sought to devise crisis communication and incident prevention mechanisms to acquire the capability to de-escalate incidents before action–reaction cycles render incidents unmanageable. Under international law, agreements for practical cooperation are without prejudice to claims.¹⁸ Such agreements affect neither boundary delimitation nor territorial settlements; nor, under these agreements, will states acquiesce in another state's claim. In principle, states could define common rules for specific geographic areas in various ways without an agreement prejudicing a state's claim to that particular geographic area *de jure*.

Several obstacles have resulted in impasses or delays in the claimant states' exchanges and what they have in common is the idea that institutions can ameliorate the options of one disputing actor to make an opponent do what it would not otherwise do. Claimant states have considered that the terms of agreements for voluntary and practical cooperation, even if yielding economic and security benefits, could compromise a claim, expose a claimant to vulnerabilities, or expand a rival's power in the disputes. The claimant states treated the agreements and rules under consideration as incremental steps towards cooperation *and* as a 'trap' or a 'slice of the salami'.¹⁹ The disputing states have realized that some agreements could

18 UNCLOS, articles 74(3) and 83(3); Rainer Lagoni, 'Interim Measures Pending Maritime Delimitation Agreements', *The American Journal of International Law* 78, no. 2 (1984): 345–68; Robert Beckman et al. (eds.), *Beyond Territorial Disputes in the South China Sea Legal Frameworks for the Joint Development of Hydrocarbon Resources*, (Edward Elgar, 2013); Christian Schultheiss, 'Overcoming Violence in Maritime Conflicts with Provisional Arrangements: A Legal Tool for Conflict Resolution', in *International Law and Peace Settlements*, edited by Mark Weller et al. (CUP, 2021), 525–44; The *Minquiers and Ecrehos Case* [Judgment of 17 November 1953] ICJ 47, 58–9.

19 Quotes are from the case studies.

justify and increase an opponent's coast guard or navy patrols in disputed zones. The parties have expected that agreements might 'consolidate' a rival's unilateral advancements and 'cement' a rival's use of unilateral tactics. Various actors were concerned that an opponent's proposed terms would restrict the means the parties rely on to advance or defend their claims. A few actors have seen the possibility that cooperative agreements would allow an opponent to manipulate risk in favour of the opponent's strategy. Some agreements have broken down and others were challenged when the disputing states sensed that the agreement exposed their position to vulnerabilities. Negotiations frequently ended in an impasse when negotiators from all claimant states considered that an agreement could 'recognize', 'validate', or 'legitimise' a rival claim to a particular geographic area such that an opponent could leverage an agreement as 'precedent' in its favour.

Although the agreements under consideration do not prejudice territorial and maritime claims *de jure*, precedent or validation without legal force matters nevertheless. Why precedent without legal force matters is one of the questions that requires a theoretical explanation.²⁰ This negotiation behaviour can be observed across twenty cases, which represent: (i) various subject matters (agreements for fisheries, oil and gas, crisis communication, and code of conduct); (ii) two regions (the East and South China Sea); (iii) bilateral, trilateral, and multilateral negotiations; (iv) different combinations of states including and excluding China; and (v) cases where China is entitled to claim maritime zones and where China lacks legally valid entitlements.

While the literature recognizes that power has a role to play in the theory of institutions, two questions are central to better understanding the implications of the idea that some institutions allow a state to expand its power and to use it as a weapon of coercion. First, by which characteristics could a cooperative agreement of limited scope increase one actor's power? Second, how do disputing actors negotiate about and implement agreements that prescribe common rules on dispute interactions when, at the same time, these agreements could also affect opponents' power in subsequent interactions? This book identifies several characteristics and discusses three in detail that are particularly relevant to the East and South China Sea: (i) focal points as a source of power in interactions; (ii) restrictions on conflict behaviour, on coalition formation, and access; and (iii) the management and the manipulation of risk.

20 See Chapter II 2.



While it is intuitive to assume that relatively smaller states are particularly risk averse²¹ and particularly cautious about giving China opportunities to leverage agreements in disputed seas, China has also rejected several proposed agreements because of similar concerns. This problem has been the rule, not the exception. Nonetheless, this behaviour has not made cooperative institutions less desirable in the eyes of claimant states, nor has it reduced the relevance of these institutions. Claimant states have persistently negotiated about institutions for fisheries, oil and gas, conflict management, and incident prevention. The problem that an opponent can leverage cooperative agreements and that some agreements expose a state to vulnerability has also applied to cases where an agreement was reached. Even when disputing parties have assumed an opponent's bad faith, they have still entered into agreements once they were confident that the opponent could not use institutions as a weapon of coercion. Some implemented agreements have proven resilient against challenges and even against widespread violations of the agreement. An explanation of the East and South China Sea disputes and the actors' interactions that analyses natural resource institutions and rules for conflict behaviour solely in a manipulative perspective cannot explain why the actors have agreed on some institutions and why they have adhered to them despite their shortcomings. At the same time, an explanation that neglects the ways in which institutions are sources of power in interactions cannot explain the course of negotiations and the obstacles the parties encountered within them.

What is at stake in the East and South China Sea disputes?

Territorial disputes – especially when strategic, economic, or ideational interests, or rivalries or questions of reputation are at stake²² – and a rapidly

21 Brantly Womack, *Asymmetry and International Relationships* (CUP, 2016), 44–45.

22 John A. Vasquez and Valeriano Brandon, 'Territory as Source of Conflict and Road to Peace', in *The SAGE Handbook of Conflict Resolution*, edited by Jacob Bercovitch et al. (SAGE, 2009), 193–209; David B. Carter, 'The Strategy of Territorial Conflict', *American Journal of Political Science* 54, no. 4 (2010): 969–87; Paul R. Hensel et al., 'Bones of Contention: Comparing Territorial, Maritime, and River Issues', *Journal of Conflict Resolution* 52, no. 1 (2008): 117–43; Karen A. Rasler and William R. Thompson, 'Contested Territory, Strategic Rivalries, and Conflict Escalation', *International Studies Quarterly* 50, no. 1 (2006): 145–68; Barbara F. Walter, 'Explaining the Intractability of Territorial Conflict', *International Studies Review* 5, no. 4 (2003): 137–53; Paul D. Senese and John A. Vasquez, 'Assessing the Steps to War', *British Journal of Political Science* 35, no. 4 (2005): 607–33; Beth A. Simmons, 'Rules over Real Estate Trade, Territorial Conflict, and International Borders as Institution', *Journal of Conflict Resolution* 49, no. 6 (2005): 823–48;

changing balance of power²³ are primary causes of interstate conflict and war. In the East and South China Seas, all these factors have been present. The literature identifies many interests of the claimant- and non-claimant states and suggests varying descriptions and explanations for China's behaviour in the disputes.

The East and South China Seas are undoubtedly vital areas for world trade. Trade and access to markets via sea routes are also pillars of China's rapid development. Estimates suggest that a third of world trade, and between 60 per cent and 80 per cent of China's, Korea's, and Japan's energy supplies pass through the South China Sea's chokepoints annually, resulting in a total of \$5.3 trillion in trade flows.²⁴ Analyses of trade economics, however, question this figure, and present data according to which half of Japan's energy imports circumvent the South China Sea, and argue that China is the most vulnerable country with respect to the openness of Southeast Asia's sea routes.²⁵ While incidents may disrupt trade, risks to trade routes should be assessed realistically.²⁶

The East China Sea and the South China Sea have both been referred to as new 'Persian Gulfs' in a UN Economic Commission report of 1969 as

Jean-Marc F. Blanchard, 'Linking Border Disputes and War: An Institutional-Statist Theory', *Geopolitics* 10, no. 4 (2005): 688–711; Áslaug Ásgeirsdóttir and Martin Steinwand, 'Dispute Settlement Mechanisms and Maritime Boundary Settlements', *The Review of International Organizations* 10, no. 2 (June 2015): 119–43; Stephen C. Nemeth et al., 'Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones', *International Interactions* 40, no. 5 (2014): 711–36.

23 R. Harrison Wagner, 'Peace, War, and the Balance of Power', *American Political Science Review* 88, no. 3 (1994): 593–607; James D. Fearon, 'Rationalist Explanations for War', *International Organization* 49, no. 3 (June 1995): 379–414; Robert Powell, 'Stability and the Distribution of Power', *World Politics* 48, no. 2 (1996): 239–67; Robert Powell, 'War as a Commitment Problem', *International Organization* 60, no. 1 (2006): 169–203; Matthew O. Jackson and Massimo Morelli, 'The Reasons for Wars: An Updated Survey', in *The Handbook on the Political Economy of War*, edited by Christopher J. Coyne and Rachel L. Mathers (Edward Elgar, 2011), 34–57. In the literature, war needs to be explained. Restraint is not an anomaly as Chin-Hao Huang claims in *Power and Restraint in China's Rise* (Columbia UP, 2022), 13.

24 Robert D. Kaplan, *Asia's Cauldron: The South China Sea and the End of a Stable Pacific* (Random House, 2014); Sarah Raine and Christian Le Mièrè, *Regional Disorder: The South China Sea Disputes*, IISS Adelphi Series (Routledge, 2013); Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (Routledge, 2012).

25 James Laurenceson, 'Economics and Freedom of Navigation in East Asia', *Australian Journal of International Affairs* (2017), 1–13; CSIS, 'How Much Trade Transits the South China Sea?', *ChinaPower Project* (blog), 2 August 2017, <https://chinapower.csis.org/much-trade-transits-south-china-sea/> (last accessed 23 March 2022).

26 Laurenceson, 'Economics and Freedom of Navigation in East Asia'.



well as in several recent works of scholarship,²⁷ suggesting the existence of ‘abundant’ hydrocarbon resources.²⁸ Chinese estimates and estimates of industry sources or of US institutions, however, diverge considerably for both seas. The reports from US institutions are much more pessimistic.²⁹ Proven and probable reserves of oil and gas are mainly in undisputed areas. The estimates for disputed areas are based on geological information about undiscovered resources.³⁰ Given these estimates, the hydrocarbon resources at, for instance, the Spratly Islands, would not be relevant to China’s energy security; in the same way, the Reed Bank would be important only for Philippine energy supply.³¹ China’s unilateral hydrocarbon resource exploitation is still confined to areas on its side of UNCLOS-based median lines. China is not able to develop oil in disputed areas of the East or South China Seas beyond that.³² Chinese and Vietnamese concession blocs overlap widely, but oil and gas are exploited mainly in undisputed areas. The operations of the China National Offshore Oil Company (CNOOC) in the East China Sea (on China’s side of a geographic median line) contribute only 1 per cent to its daily production.³³ This 1 per cent of CNOOC’s total production represents a minuscule fraction of China’s total consumption. Furthermore, fisheries are undoubtedly an important marine natural resource in both China Seas. The growing demand for fisheries in domestic consumption across China and Southeast Asia, as well as changing eating habits, have made fishing a profitable, growing, and most-disputed industry.³⁴ Land reclamation and

27 UN Economic Commission for Asia and the Far East, *Report of the Sixth Session of the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas* (CCOP), E/CN.11/L.239, 26 June 1969, 5.

28 Zhao Huanting et al., *Geomorphology and Environment of the South China Coast and the South China Sea Islands* (Science Press, 1999) (in Chinese), quoted in Keyuan Zou, ‘Joint Development in the South China Sea: A New Approach’, *The International Journal of Marine and Coastal Law* 21, no. 1 (2006): 83–109.

29 US Energy Information Administration, ‘South China Sea’, 7 February 2013; US Energy Information Administration, ‘East China Sea’, September 2014.

30 Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (Yale UP, 2014), chapter 5, 147–50.

31 See Chapter III 1.

32 International Crisis Group, ‘Stirring up the South China Sea (IV): Oil in Troubled Waters’, *Asia Report No. 275*, 26 January 2016, <https://www.crisisgroup.org/asia/north-east-asia/china/stirring-south-china-sea-iv-oil-troubled-waters> (last accessed 23 March 2022); see Chapter IV 1.

33 CNOOC Limited, <http://www.cnooc.com.cn/col/col7311/index.html> (last accessed 23 March 2024).

34 Hongzhou Zhang, ‘Chinese Fishermen in Disputed Waters: Not Quite a “People’s War”’, *Marine Policy* 68 (June 2016): 65–73; Hongzhou Zhang and Sam Bateman, ‘Fishing Militia, the Securitization of Fishery and the South China Sea Dispute’, *Contemporary Southeast Asia*,

antagonistic fishing practices in disputed areas have resulted in depleted fisheries and environmental destruction.³⁵

Beyond economic interests, strategic interests clearly are at stake. The strategic value of disputed islands and land reclamation requires a nuanced assessment. China benefits from building outposts at disputed features for surveillance and for a greater reach and frequency of coast guard, navy, submarine, and air force operations.³⁶ At the same time, these outposts are non-moving targets and extremely vulnerable to attack. The US Navy considers 'taking down small islands' a 'core competency'.³⁷ While the additional military capabilities China derives from the outposts are vulnerable in a wartime scenario, the installations extend Chinese maritime law enforcement capabilities in Southeast Asia into peacetime scenarios.³⁸ China could not otherwise maintain a regular coast guard presence in disputed areas given the distance between the mainland and the claimed waters. Some voices also attribute a military value to the islands in China–US wartime scenarios.³⁹ The apparent consensus, however, insists that the

2017, 288–314; Erica Gies, 'The Consequences of China's Booming Demand for Seafood', *Hakai Magazine*, 28 June 2018, <https://www.hakaimagazine.com/news/the-consequences-of-chinas-booming-demand-for-seafood/> (last accessed 23 March 2022).

35 John W. McManus, 'Offshore Coral Reef Damage, Overfishing, and Paths to Peace in the South China Sea', *The International Journal of Marine and Coastal Law* 32, no. 2 (2017), 199–237; Thang Dang Nguyen, 'Fisheries Co-Operation in the South China Sea and the (Ir)relevance of the Sovereignty Question', *Asian Journal of International Law* 2, no. 1 (2012): 59–88.

36 On the military–strategic value of the island features, see Sarah Kirchberger and Patrick O'Keeffe, 'Military-Strategic Aspects of the South China Sea Issue', in *Traversing the Challenges. Political, Economic and Environmental Dimensions of Maritime and Regional Security*, edited by Benedikt Seemann and Sebastian Bersick (Konrad Adenauer Stiftung, 2017), 27–40. For publicly available imagery of the island-building programs of all claimant states since 2013, see the Asia Maritime Transparency Initiative and Center for Strategic and International Studies, <https://amti.csis.org/island-tracker/> (last accessed 23 March 2024).

37 'U.S. Could Take Down Islands in SCS If it Needed To, Says Pentagon Official', *Newsweek*, 1 June 2018, <https://www.newsweek.com/us-could-take-down-man-made-islands-south-china-sea-if-it-needed-says-pentagon-952451> (last accessed 23 March 2024). The official reassured the audience that this statement is no more 'than a simple statement of historical fact'.

38 David Axe, 'Sunk: How China's Man-Made Islands Are Falling Apart and Sinking Into the Ocean', *The National Interest*, 12 March 2020, <https://nationalinterest.org/blog/buzz/sunk-how-chinas-man-made-islands-are-falling-apart-and-sinking-ocean-132047> (last accessed 23 March 2022); Christian Becker, 'Die militärstrategische Bedeutung des südchinesischen Meeres', *SWP Aktuell* 82, September 2015.

39 Alessio Patalano, 'When Strategy Is "Hybrid" and Not "Grey": Reviewing Chinese Military and Constabulary Coercion at Sea', *The Pacific Review* 31, no. 6 (2 November 2018): 811–39; Michael O'Hanlon and Gregory Poling, 'Rocks, Reefs, and Nuclear War', *AMTI Update*, 14 January 2020, <https://amti.csis.org/rocks-reefs-and-nuclear-war/> (last accessed 23 March 2022).

islands are a strategic liability for China in wartime, not an asset.⁴⁰ It is not the artificial islands but China's technological defence advancements that raise the question of how the US could make combat in the Western Pacific viable.⁴¹ Arguably, the artificial islands do not improve China's sea lane security substantively. Sea lane security is a global problem, not a regional one. Control over the China Seas does not give China control over the sea lanes from its mainland to its major markets in Europe, North America, or the Middle East.

The International Crisis Group questioned whether a coherent picture of China's objectives and behaviour can be identified at all, as a range of different Chinese actors pursue different objectives.⁴² The tense nature of the disputes, though, remains an observable fact. Activities in disputed maritime zones such as fishing, seismic research, marine scientific research, even tourist cruises, coast guard patrols, navy patrols, and overflights have caused many incidents in the last decades. There is some quantitative and qualitative evidence that China's activities in the East and South China Sea are reactions to perceived challenges from other claimant states.⁴³ Although this observation fits to some extent with descriptions of China's security posture as that of a vulnerable nation,⁴⁴ it is doubtful whether the 'defence' of partially invalid legal claims could be considered 'defensive'. The idea of the 'Chinese cult of the defence' and the tendency of Chinese decision-makers to rationalize the uses of violent means as defensive ends may be applicable.⁴⁵ Fravel and Hayer, writing independently, find that China's behaviour in

40 Olli Pekka Suorsa, 'The Conventional Wisdom Still Stands: America Can Deal with China's Artificial Island Bases', *War on the Rocks*, 6 February 2020, <https://warontherocks.com/2020/02/the-conventional-wisdom-still-stands-america-can-deal-with-chinas-artificial-island-bases/> (last accessed 23 March 2022).

41 Michael Beckley, 'The Emerging Military Balance in East Asia: How China's Neighbors Can Check Chinese Naval Expansion', *International Security* 42, no. 2 (November 2017): 78–119. Beckley has referred to the neglect among US analysts for the military potential of East and Southeast Asia states as 'bilateral bias'.

42 International Crisis Group, 'Stirring up the South China Sea (I)', *Asia Report No. 223*, 23 April 2012, <https://www.crisisgroup.org/asia/south-east-asia/south-china-sea/stirring-south-china-sea-i>. See chapter II 3.

43 Ketian Zhang, 'Cautious Bully: Reputation, Resolve, and Beijing's Use of Coercion in the South China Sea', *International Security* 44, no. 1 (July 2019): 117–59; Christopher D. Yung and Patrick McNulty, 'An Empirical Analysis of Claimant Tactics in the South China Sea', in *Strategic Forum* (National Defense UP, 2015), 1–13; Greg Austin, *China's Ocean Frontier: International Law, Military Force, and National Development* (Allen & Unwin, 1998), 300 and 326.

44 Andrew J. Nathan and Andrew Scobell, *China's Search for Security* (Columbia UP, 2015).

45 Andrew Scobell, *China's Use of Military Force: Beyond the Great Wall and the Long March* (CUP, 2003), chapter 2, 15–39.

island disputes differs from behaviour in land border disputes; China has shown a greater willingness to compromise on the latter.⁴⁶ This greater willingness to compromise in land border disputes can be attributed to the domestic security benefits China derives from border settlements – a benefit absent in the case of offshore island disputes.⁴⁷ Regarding the ideational value attached to historic claims, historic studies suggest that the historic element of claims is more imagined than historic.⁴⁸

Tensions have gone up and down periodically, but the number and presence of Chinese patrols and vessels has increased continuously.⁴⁹ China's policy has been characterized as one instance of 'assertiveness'.⁵⁰ Doubts have been raised, however, as to whether assertiveness is an analytically useful concept at all.⁵¹ Relatively mundane – but for the claimant states

46 M. Taylor Fravel, *Strong Borders, Secure Nation. Cooperation and Conflict in China's Territorial Disputes* (Princeton UP, 2008); Eric Hyer, *The Pragmatic Dragon: China's Grand Strategy and Boundary Settlements* (UBC Press, 2015).

47 M. Taylor Fravel, 'Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes', *International Security* 30, no. 2 (2005): 46–83.

48 Ulises Granados, 'As China Meets the Southern Sea Frontier: Ocean Identity in the Making, 1902–1937', *Pacific Affairs* 78, no. 3 (2005): 443–61; Bill Hayton, 'When Good Lawyers Write Bad History: Unreliable Evidence and the South China Sea Territorial Dispute', *Ocean Development & International Law* 48, no. 1 (2 January 2017): 17–34; William Choong, *The Ties That Divide. History, Honour and Territory in Sino-Japanese Relations*, IISS Adelphi Series (Routledge, 2014); Stein Tønnesson, 'Why Are the Disputes in the South China Sea So Intractable? A Historical Approach', *Asian Journal of Social Science* 30, no. 3 (2002): 570–601.

49 Andrew S. Erickson and Joshua Hickey, 'Surging Second Sea Force: China's Maritime Law-Enforcement Forces, Capabilities, and Future in the Gray Zone and Beyond', *Naval War College Review* 72, no. 2 (2019): 1–25; Japan Ministry of Defense, 'China's Activities in East China Sea, Pacific Ocean, and Sea of Japan', March 2024, https://www.mod.go.jp/en/d_act/sec_env/pdf/ch_d-act_a.pdf (last accessed 24 April 2024); Lyle J. Morris, 'Blunt Defenders of Sovereignty: The Rise of Coast Guards in East and Southeast Asia', *Naval War College Review* 70, no. 2 (2017): 75–112.

50 Aaron L. Friedberg, 'The Sources of Chinese Conduct: Explaining Beijing's Assertiveness', *The Washington Quarterly* 37, no. 4 (2014): 133–50; Michael Yahuda, 'China's New Assertiveness in the South China Sea', *Journal of Contemporary China* 22, no. 81 (2013): 446–59; Michael D. Swaine and M. Taylor Fravel, 'China's Assertive Behavior: Part Two: The Maritime Periphery', *China Leadership Monitor* 35 (2011): 1–29; You Ji, 'The PLA and Diplomacy: Unraveling Myths about the Military Role in Foreign Policy Making', *Journal of Contemporary China* 23, no. 86 (4 March 2014): 236–54.

51 Alastair Iain Johnston, 'How New and Assertive Is China's New Assertiveness?', *International Security* 37, no. 4 (2013): 7–48; Dingding Chen et al., 'Debating China's Assertiveness', *International Security* 38, no. 3 (2014): 176–83; Steve Chan, *China's Troubled Waters: Maritime Disputes in Theoretical Perspective* (CUP, 2016). Chan analyses the disputes in broader theoretical perspectives. Also see Andy Yee, 'Maritime Territorial Disputes in East Asia: A Comparative Analysis of the South China Sea and the East China Sea', *Journal of Current Chinese Affairs* 40, no. 2 (2011): 165–93.

serious – incidents escalated to month-long international crises despite crisis management efforts of the involved parties.⁵² The entanglement of territorial disputes with maritime disputes and great power competition⁵³ results in a situation where structural bureaucratic obstacles⁵⁴ and questions of linkage limit effective crisis management.⁵⁵ Officials and scholars have acknowledged that ‘frighteningly mundane’⁵⁶ incidents have escalated and that such incidents have the potential to escalate even to the point of a US–China military confrontation.⁵⁷

While the East and South China Sea disputes are closely linked to China’s regional and geopolitical aspirations, various scholars have also pointed to the contradictions between China’s conflict behaviour and its regional objectives. Undoubtedly, China’s navy and capability to exert control over maritime areas have expanded rapidly over the last two decades.⁵⁸ China’s sea power ambition has affected the regional balance of power in East and Southeast

52 Ja Ian Chong and Todd H. Hall, ‘One Thing Leads to Another: Making Sense of East Asia’s Repeated Tensions’, *Asian Security* 13, no. 1 (2 January 2017): 20–40; Michael Green et al., *Countering Coercion in Maritime Asia The Theory and Practice of Gray Zone Deterrence* (Center for Strategic and International Studies, 2017); Yingxian Long, ‘China’s Decision to Deploy HYSY-981 in the South China Sea: Bureaucratic Politics with Chinese Characteristics’, *Asian Security* 12, no. 3 (September 2016): 148–65.

53 Peter Dutton, ‘Three Disputes and Three Objectives. China and the South China Sea’, *Naval War College Review* 64, no. 4 (2011): 42–67; Patrick M. Cronin and Robert Kaplan, ‘Cooperation from Strength US Strategy and the South China Sea’, in *Cooperation from Strength. The United States, China and the South China Sea*, edited by Patrick M. Cronin (Center for a New American Century, 2012), 3–30.

54 Sanaa Yasmin Hafeez, ‘The Senkaku/Diaoyu Islands Crises of 2004, 2010, and 2012: A Study of Japanese-Chinese Crisis Management’, *Asia-Pacific Review* 22, no. 1 (2 January 2015): 73–99.

55 Wiegand found evidence for linkage in the time period before 2005, but not after 2005. Krista E. Wiegand, ‘China’s Strategy in the Senkaku/Diaoyu Islands Dispute: Issue Linkage and Coercive Diplomacy’, *Asian Security* 5, no. 2 (5 June 2009): 170–93; Krista Eileen Wiegand, *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, and Settlement* (University of Georgia Press, 2011).

56 Graham T. Allison, *Destined for War: Can America and China Escape Thucydides’s Trap?* (Mariner Books, 2017), 167.

57 Charles L. Glaser, ‘A U.S.-China Grand Bargain? The Hard Choice between Military Competition and Accommodation’, *International Security* 39, no. 4 (April 2015): 49–90; Avery Goldstein, ‘First Things First: The Pressing Danger of Crisis Instability in U.S.-China Relations’, *International Security* 37, no. 4 (April 2013): 49–89; Lyle Goldstein, *Meeting China Halfway: How to Defuse the Emerging US–China Rivalry* (Georgetown UP, 2015); also see Kenneth Lieberthal and Wang Jisi, *Addressing U.S.–China Strategic Distrust* (Brookings Monograph Series 4, 2012), https://www.brookings.edu/wp-content/uploads/2016/06/0330_china_lieberthal.pdf (last accessed 23 September 2023).

58 Peter Dutton and Ryan D Martinson, eds., *Beyond the Wall: Chinese Far Seas Operations* (Naval War College Press, 2015); Andrew S. Erickson et al., ‘Surging Second Sea Force: China’s

Asia. China's objectives in the maritime disputes include an intention to realize its maritime claims and replace the US as the dominant power in East and Southeast Asia.⁵⁹ Given the maritime geography of East Asia, the concept of the first island chain, that is, the chain of islands separating the East Asian continent from the Pacific, and the capability to break out of it are focuses for China's sea power strategists not least for sea route security.⁶⁰ Several descriptions of China's dispute behaviour describe attempts to gradually reverse the status quo by using grey-zone strategies creatively while seeking to remain below the level of war⁶¹ and by delaying a resolution.⁶² China's behaviour in the maritime disputes has been one important factor in the US's reassessment of China's global intentions.⁶³ US national security and defence strategy documents have come to regard China's maritime claims

Maritime Law-Enforcement Forces, Capabilities, and Future in the Gray Zone and Beyond', *Naval War College Review* 72, no. 2 (2019): 1–25.

59 Aaron L. Friedberg, 'The Sources of Chinese Conduct: Explaining Beijing's Assertiveness', *The Washington Quarterly* 37, no. 4 (2014): 133–50; Aaron L. Friedberg, *A Contest for Supremacy: China, America, and the Struggle for Mastery in Asia* (Norton, 2012), 142–81; Toshi Yoshihara and James R. Holmes, *Red Star over the Pacific: China's Rise and the Challenge to U.S. Maritime Strategy* (Naval Institute Press, 2013); Tetsuo Kotani, 'China and Russia in the Western Pacific: Implications for Japan and the United States', *Maritime Awareness Project*, 18 April 2019, <https://map.nbr.org/wp-content/uploads/2020/09/Analysis-Kotani-China-and-Russia-in-the-Western-Pacific-Implications-for-Japan-and-the-United-States-041819.pdf> (last accessed 23 September 2023).

60 Leszek Buszynski, 'The South China Sea: Oil, Maritime Claims, and US–China Strategic Rivalry', *The Washington Quarterly* 35, no. 2 (2012): 139–56; Andrew S. Erickson and Joel Wuthnow, 'Barriers, Springboards and Benchmarks: China Conceptualizes the Pacific "Island Chains"', *The China Quarterly* 225 (2016): 1–22; Toshi Yoshihara, 'China's Vision of Its Seascape: The First Island Chain and Chinese Seapower', *Asian Politics & Policy* 4, no. 3 (2012): 293–314.

61 Michael Green et al., *Countering Coercion in Maritime Asia*; Patrick M. Cronin and Robert Kaplan, 'Cooperation from Strength US Strategy and the South China Sea', in *Cooperation from Strength The United States, China and the South China Sea*, edited by Patrick M. Cronin (Center for a New American Century, 2012), 3–30; Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, US Department of State *Testimony Before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific*, 5 February 2014, <https://docs.house.gov/meetings/FA/FA05/20140205/101715/HHRG-113-FA05-Wstate-RusselD-20140205.pdf> (last accessed 23 March 2022).

62 M. Taylor Fravel, 'China's Strategy in the South China Sea', *Contemporary Southeast Asia* 33, no. 3 (2011): 292–319.

63 Michael Green, 'Trump and Asia: Continuity, Change, and Disruption', *ASAN Open Forum*, 18 April 2019, http://www.theasanforum.org/trump-and-asia-continuity-change-and-disruption/?utm_source=CSIS+All&utm_campaign=7f60856cac-EMAIL_CAMPAIGN_2019_04_26_06_46&utm_medium=email&utm_term=0_f326fc46b6-7f60856cac-160737973 (last accessed 23 June 2023); Phuong Nguyen, 'Deciphering the Shift in America's South China Sea Policy', *Contemporary Southeast Asia* 38, no. 3 (31 December 2016): 389–421.



and behaviour in maritime disputes as evidence for China's 'revisionist' designs.⁶⁴ Critiques of the US and the Freedom of Navigation Operations argue that these operations failed to deter China's advancements in the East and South China Sea.⁶⁵ In this view, China's activities in the East and South China Sea are evidence of China's objectives to replace the US in the Asia–Pacific.

Several Chinese scholars maintain that China's claims and activities in the East and South China Sea are a liability for China's regional and global objectives.⁶⁶ China's activities in the China Seas hamper China's sea power transformation and give the US an easy opening to contain China and forge regional alliances. It is China's conflict behaviour that turns Southeast Asian states and Japan into 'enemies' and US allies.⁶⁷ Whether or not China acts with 'strategic confusion',⁶⁸ China has not yet prioritized between the objective to manage its territorial and maritime disputes – thereby reducing Chinese exposure to US coalition building – and the objective to maximise its claims, made possible by the perceived decline of the US.⁶⁹ In this view, China's pursuit of excessive claims, such as the nine-dash line, is

64 The United States of America, 'Summary of the National Defense Strategy Sharpening the American Military's Competitive Edge', 2018; US Department of Defense, 'Indo-Pacific Strategy Report. Preparedness, Partnerships, and Promoting a Networked Region', 1 June 2019.

65 Zack Cooper and Gregory Poling, 'America's Freedom of Navigation Operations Are Lost at Sea', *Foreign Policy*, 8 January 2019, <https://foreignpolicy.com/2019/01/08/americas-freedom-of-navigation-operations-are-lost-at-sea/>; Brahma Chellaney, 'Who Lost the South China Sea?', *The Strategist*, 15 June 2018, <https://www.aspistrategist.org.au/who-lost-the-south-china-sea/> (last accessed 23 March 2022). On US Freedom of Navigation Operations more generally, see Rachel Odell, 'How Strategic Norm-Shaping Undergirds America's Command of the Commons', *MIT Political Science Department Research Paper 23* (2019), <https://doi.org/10.2139/ssrn.3451412>.

66 Zongyou Wei, 'China's Maritime Trap', *The Washington Quarterly* 40, no. 1 (2 January 2017): 167–84, <https://doi.org/10.1080/0163660X.2017.1302745>; Wenjuan Nie, 'Xi Jinping's Foreign Policy Dilemma: One Belt, One Road or the South China Sea?', *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 38, no. 3 (2016): 422–44; Zhengyu Wu, 'Rimland Powers, Maritime Transformation, and Policy Implications for China', in *Beyond the Wall: Chinese Far Seas Operations*, edited by Peter Dutton and Ryan D. Martinson (Naval War College Press, 2015), 13–22; Feng Zhang, 'Assessing China's South China Sea Policy, 2009–2015', *East Asian Policy* 8, no. 3 (July 2016): 100–9; Xiaobo Liu, 'How China Can Resolve the FONOP Deadlock in the South China Sea', *CSIS AMTI Update*, 1 March 2019, <https://amti.csis.org/how-china-can-resolve-fonop-deadlock/> (last accessed 23 March 2022).

67 Hailong Ju, *China's Maritime Power and Strategy: History, National Security and Geopolitics* (Hackensack, World Scientific, 2015), 213. 'If such images [of China's tough activities] become popular in public opinion, then the U.S. ... will be able to effortlessly... destroy the strategic environment of China... there is also the risk of losing Southeast Asia and making Japan a mortal enemy.'

68 Wenjuan Nie, 'China's Domestic Strategic Debate and Confusion over the South China Sea Issue', *The Pacific Review* 31, no. 2 (4 March 2018): 188–204.

69 Ibid.

a liability for the objective of replacing the US in East and Southeast Asia.⁷⁰ China's behaviour has raised the demand for a US presence among East and Southeast Asian smaller and middle powers and has incentivised collaboration between the US, Japan, Australia, and some ASEAN members.⁷¹ This has resulted in a rapprochement between the US and Vietnam,⁷² restored access for US forces to Philippine military facilities,⁷³ and a strengthened the US–Japan alliance.⁷⁴ Japan and ASEAN states also improved coast guard cooperation in response to China's activities.⁷⁵ On the one hand, China has risen and so have the maritime activities of the state, its agencies, and nationals.⁷⁶ Chinese actors have extended their reach over the surrounding seas and their uses. China pursues many strategic, geopolitical, and economic interests and many of these are rooted in China's rapid development. On the other hand, China's attempts to enforce its claims are producing geopolitical blowback in attempts to build countervailing coalitions.⁷⁷

70 Further Chinese scholars make this point. Alexandre Sheldon-Duplax, 'Beyond the China Seas: Will China Become a Global "Sea Power"?', *China Perspectives* 2016, no. 3 (1 September 2016): 43–52.

71 Robert S. Ross, 'The Problem with the Pivot: Obama's New Asia Policy Is Unnecessary and Counterproductive', *Foreign Affairs* 91 (December 2012): 70–78; Sarah Raine and Christian Le Mière, *Regional Disorder: The South China Sea Disputes*, IISS Adelphi Series (Routledge, 2013), 173; Cheng-Chwee Kuik, 'Explaining the Contradiction in China's South China Sea Policy: Structural Drivers and Domestic Imperatives', *China: An International Journal* 15, no. 1 (2017): 163–86.

72 Nguyen, 'Deciphering the Shift in America's South China Sea Policy'.

73 The depth of the Philippines–US alliance was affected, among other factors, by China's presence on features in Philippine waters (Mischief Reef in 1995 and Scarborough Shoal in 2012). Philippine President Duterte had decided to cancel the Visiting Forces Agreement in 2020, but then cancelled the cancellation in the wake of tensions. It will be important to observe the future course of this decision. Renato Cruz De Castro, 'The 21st Century Philippine-US Enhanced Defense Cooperation Agreement (EDCA): The Philippines' Policy in Facilitating the Obama Administration's Strategic Pivot to Asia', *The Korean Journal of Defense Analysis* 26, no. 4 (2014): 427–46; Leszek Buszynski, 'ASEAN, the Declaration on Conduct, and the South China Sea', *Contemporary Southeast Asia* (2003), 343–62. For a description of the fluctuation of the US 'pivot', 'rebalancing', and Asia's maritime disputes, see Michael Green, *By More Than Providence: Grand Strategy and American Power in the Asia Pacific Since 1783* (Columbia UP, 2017), chapter 15, 518–40.

74 Yuichi Hosoya, 'FOIP 2.0: The Evolution of Japan's Free and Open Indo-Pacific Strategy', *Asia-Pacific Review* 26, no. 1 (2 January 2019): 18–28.

75 Ian Storey, 'Japan's Maritime Security Interests in Southeast Asia and the South China Sea Dispute', *Political Science* 65, no. 2 (December 2013): 135–56.

76 On the multiplicity of China's domestic actors in the maritime disputes see Chapter II 3.

77 US Department of State, 'A Free and Open Indo-Pacific Advancing a Shared Vision', 4 November 2019; US Department of Defense, 'Indo-Pacific Strategy Report. Preparedness, Partnerships, and Promoting a Networked Region', 1 June 2019.



Moreover, even as China's reputation among Southeast Asian audiences deteriorates,⁷⁸ Southeast Asian states attempt to evade a choice between the US as a security provider and China as an indispensable economic partner by combining engagement and 'soft balancing'.⁷⁹ Singapore's Prime Minister Lee Hsien Loong stated that Southeast Asian states 'ferverently hope not to be forced to choose between the United States and China'.⁸⁰ While China cannot replace the US as a security provider, not least due to its claims and behaviour in disputes, Southeast Asian states 'cannot afford to alienate China and other Asian countries will try their best not to let any single dispute dominate their overall relationships with Beijing'.⁸¹ Southeast Asian states have adopted diverging approaches to limit the effect of the disputes on their overall relationships with China.⁸² The objective of Southeast Asian states to not be caught in the middle of a US–China confrontation also applies to the South China Sea disputes and appears to limit, to some extent, the receptiveness of some Southeast Asian states to direct military support of the US. Fravel and Glaser suggested that a US Navy presence could counter China's interference in Malaysia's or Vietnam's resource activities in their respective Exclusive Economic Zones (EEZ).⁸³ Malaysia, however, did not welcome US Navy support in its EEZ even as the US Navy came to help Malaysia against Chinese vessels harassing the *West Capella*, a drill ship hired by Malaysia's state-owned Petronas. While this incident was regarded as the

78 Sharon Seah et al., *The State of Southeast Asia: 2023* (Singapore: ISEAS-Yusof Ishak Institute, 2023), <https://www.iseas.edu.sg/wp-content/uploads/2025/07/The-State-of-SEA-2023-Final-Digital-V4-09-Feb-2023.pdf>.

79 Evelyn Goh, *Meeting the China Challenge: The U.S. in Southeast Asian Regional Security Strategies* (East-West Center Washington, 2005); Cheng-Chwee Kuik, 'How Do Weaker States Hedge? Unpacking ASEAN States' Alignment Behavior towards China', *Journal of Contemporary China* 25, no. 100 (3 July 2016): 500–14; Van Jackson, 'Power, Trust, and Network Complexity: Three Logics of Hedging in Asian Security', *International Relations of the Asia-Pacific* 14, no. 3 (2014): 331–56.

80 Hsien Loong Lee, 'The Endangered Asian Century', *Foreign Affairs* 99, no. 4 (August 2020): 51–64, 59.

81 *Ibid.*, 61.

82 Sarah Raine and Christian Le Mière, *Regional Disorder The South China Sea Disputes*, IISS Adelphi Series (Routledge, 2013), chapter 3, 110–128; Ian Storey, 'Malaysia and the South China Sea Dispute: Policy Continuity amid Domestic Political Change', *ISEAS Perspective* 2020, no. 18, 20 March 2020, 1–10, https://www.iseas.edu.sg/wp-content/uploads/2020/02/ISEAS_Perspective_2020_18.pdf.

83 M. Taylor Fravel and Charles L. Glaser, 'How Much Risk Should the United States Run in the South China Sea?', *International Security* 47, no. 2 (2022): 88–134, 130.

US's failure to reassure,⁸⁴ it may be better interpreted as illustrating the limits of Malaysia's receptiveness to US military support. The unresolved and unmanaged maritime disputes challenge the cohesion of ASEAN, 'ASEAN centrality', and the 'ASEAN way' of informality, consensus, and process orientation.⁸⁵

In sum, the change in the regional balance of power, sea routes for trade in goods and energy, sea power competition, access to resources, some strategic value of islands, the future regional order, and a recalibration of China's relations with its neighbours⁸⁶ are at stake in the East and South China Sea. These are important factors for the territorial and maritime disputes and help explain why the claimant states have not even begun negotiation processes on the settlement of sovereignty disputes. These factors, however, do not explain when and why the disputing parties have reached agreements on natural resource cooperation and measures for conflict management, or when and why exchanges have ended in an impasse.

Ocean governance as a step-by-step approach to conflict resolution

Claimant states, officials, and scholars have been very well aware of the fact that ineffective management of disputes is a great impediment to the regions' stability and development, and a potential source for conflict escalation. Existing institutions such as UNCLOS and regional organizations have neither settled disputes nor resulted in effective regional governance of the disputed seas. The idea that institutional processes could socialize China⁸⁷ did not noticeably affect China's conduct in maritime disputes. Attempts, however, to create institutions that reconcile single interests, incentivise cooperation and prevent conflict are virtually as old as the

84 Euan Graham, 'US Naval Standoff with China Fails to Reassure Regional Allies', *Foreign Policy*, 4 May 2020, <https://foreignpolicy.com/2020/05/04/malaysia-south-china-sea-us-navy-drillship-standoff/> (last accessed 23 June 2023).

85 Dylan M. H. Loh, 'The Disturbance and Endurance of Norms in ASEAN: Peaceful but Stressful', *Australian Journal of International Affairs* 72, no. 5 (3 September 2018): 385–402; Shaun Narine, 'ASEAN and the ARF: The Limits of the "ASEAN Way"', *Asian Survey* 37, no. 10 (1997): 961–78; Samuel Sharpe, 'An ASEAN Way to Security Cooperation in Southeast Asia?', *The Pacific Review* 16, no. 2 (1 March 2003): 231–50.

86 Brantly Womack, *Asymmetry and International Relationships* (CUP, 2016); see Chapter II 2.2.

87 Alastair I. Johnston, *Social States: China in International Institutions, 1980–2000* (Princeton UP, 2008).



disputes themselves. The literature proposes virtually all possible instruments of ocean governance for overcoming the disputes.

The South China Sea can be regarded as a common pool of fisheries resources 'because of the combination of highly migratory species and a high degree of larval connectivity'.⁸⁸ It is 'near the world centre of marine biodiversity' by harbouring 22 per cent of fish species in only 8.6 per cent of the ocean's surface.⁸⁹ The member states of ASEAN called for a code of conduct for the South China Sea for the first time in 1992. The idea of a code of conduct is twofold. It could provide the basic political commitments to enable pragmatic governance of single and common issue areas and it could provide rules for managing conflict behaviour. In this vein, ASEAN members and China declared in 2002 to undertake cooperative measures on environmental protection, marine science, search and rescue, the security of shipping lanes, and other issue areas without prejudice to claims.⁹⁰ Proposals about institutions for shared maritime governance include agreements for fisheries, oil and gas, proposals for a marine protected areas network, large marine ecosystems, and the preservation of the marine environment, as well as proposals on maritime security, marine scientific research, and peace parks.⁹¹ Djalal and several others authors make the case that

88 John W. McManus, 'Offshore Coral Reef Damage, Overfishing, and Paths to Peace in the South China Sea', *The International Journal of Marine and Coastal Law* 32, no. 2 (2017): 199–237, 234.

89 Daniel Pauly and Cui Liang, 'The Fisheries of the South China Sea: Major Trends since 1950', *Marine Policy* 121, no. 103584 (November 2020): 1–7; Kent E. Carpenter and Victor G. Springer, 'The Center of the Center of Marine Shore Fish Biodiversity: The Philippine Islands', *Environmental Biology of Fishes* 72, no. 4 (April 2005): 467–480.

90 The 2002 Declaration on the Conduct of Parties in the South China Sea, article 6, adopted at the 8th ASEAN Summit in Phnom Penh, 4 November 2002, accessible at <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/> (last accessed 23 June 2023).

91 Robert C. Beckman et al., eds., *Beyond Territorial Disputes in the South China Sea Legal Frameworks for the Joint Development of Hydrocarbon Resources*, NUS Centre for International Law (Edward Elgar, 2013); Thang Dang Nguyen, 'Fisheries Co-Operation in the South China Sea and the (Ir)relevance of the Sovereignty Question', *Asian Journal of International Law* 2, no. 1 (2012): 59–88; Hai Dang Vu, *Marine Protected Areas Network in the South China Sea: Charting a Course for Future Cooperation* (Brill, 2014); John W. McManus et al., 'Toward Establishing a Spratly Islands International Marine Peace Park: Ecological Importance and Supportive Collaborative Activities with an Emphasis on the Role of Taiwan', *Ocean Development & International Law* 41, no. 3 (2010): 270–80; Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (Routledge, 2012); Shicun Wu and Nong Hong, eds., *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (Routledge, 2014); Gregory B. Poling et al., *Defusing the South China Sea Disputes A Regional Blueprint* (Center for Strategic and International Studies, 2018), <https://www.csis.org/analysis/defusing-south-china-sea-disputes> (last accessed 23 June 2023); James Borton, 'Science Diplomacy and Dispute Management in the

cooperation on functional issue areas should 'start with what is possible and follow a step by step approach'.⁹² The international legal discussion on the joint development of hydrocarbon resources in the South China Sea began in the early 1980s.⁹³ Chinese scholars joined the discussion on the joint development of oil and gas in the early 1990s.⁹⁴ In practice, bilateral and multilateral negotiations involved state actors, national oil companies, fisheries associations, and further non-state actors. Officials and scholars from all claimant states developed, through regional elite networks and track II (expert-level) diplomacy, a long list of policy proposals.⁹⁵ Thirteen different ASEAN-related bodies work on topics related to maritime security.⁹⁶ Numerous bilateral and multilateral diplomatic fora such as the ASEAN Regional Forum (ARF), the South China Sea Initiative, or the Council for Security Cooperation in the Asia Pacific (CSCAP) regularly discuss measures for enhancing confidence building and cooperation.⁹⁷ Claimant states nevertheless could not agree on a greater role for existing

South China Sea', in *Enterprises, Localities, People, and Policy in the South China Sea: Beneath the Surface*, edited by Jonathan Spangler, Dean Karalekas, and Moises Lopes de Souza (Springer, 2018), 195–216. More publications make the case for issue-specific cooperation and conflict management. I can cite only a selection.

92 Hasjim Djalal, 'The South China Sea: The Long Road towards Peace and Cooperation', in *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, edited by Tommy T. B. Koh, Myron H Nordquist, and John Norton Moore (Brill, 2009), 25–50, 47.

93 Rainer Lagoni, 'Interim Measures Pending Maritime Delimitation Agreements', *The American Journal of International Law* 78, no. 2 (1984): 345–68.

94 Keyuan Zou, 'Joint Development in the South China Sea: A New Approach', *The International Journal of Marine and Coastal Law* 21, no. 1 (2006): 83–109. The concept of joint development of hydrocarbon resources in international law is usually traced back to the North Sea Continental Shelf Case, although some agreements existed before. Masahiro Miyoshi, *The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation*, Maritime Briefing v. 2, no. 5 (International Boundaries Research Unit, University of Durham, 1999).

95 Sam G. Bateman and Ralf Emmers, eds., *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (Routledge, 2009); Kun-Chin Lin and Andrés Villar Gertner, *Maritime Security in the Asia-Pacific: China and the Emerging Order in the East and South China Seas*, Research Paper (Royal Institute of International Affairs, 2015); Ramses Amer and Keyuan Zou, *Conflict Management and Dispute Settlement in East Asia* (Ashgate, 2011); Mark John Valencia et al., *Sharing the Resources of the South China Sea* (Martinus Nijhoff Publishers, 1997).

96 'ASEAN Regional Forum Work Plan For Maritime Security 2018–2020', 5, <http://aseanregion-alforum.asean.org/wp-content/uploads/2019/01/ARF-Maritime-Security-Work-Plan-2018-2020.pdf> (last accessed 23 March 2024); also see Christian Bueger, 'What Is Maritime Security?', *Marine Policy*, 53 (2015): 159–64.

97 Hasjim Djalal, 'Indonesia and the South China Sea Initiative', *Ocean Development & International Law* 32, no. 2 (2001): 97–103; Sheldon W. Simon, 'Evaluating Track II Approaches to Security Diplomacy in the Asia-Pacific: The CSCAP Experience', *The Pacific Review* 15, no. 2

regional organisations for fisheries and marine environmental protection. These organisations exclude the South China Sea entirely or in substantial part. The Western and Central Pacific Fisheries Commission (WCPFC), for instance, ‘notionally extends to the east Asian seaboard, [but] it is understood that the Convention Area does not include the South China Sea.’⁹⁸ Regional initiatives such as the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) or the United Nations Environment Programme (UNEP) project on the South China Sea proposed regional approaches to marine environmental protection but focused only on undisputed coastal areas.⁹⁹

In the East China Sea, China and Japan have established, with interruptions, various joint fisheries agreements since the mid-1950s, Japan and Korea since the mid-1960s. All three states negotiated fisheries agreements anew in the late 1990s after they ratified UNCLOS. Attempts to negotiate agreements for the joint development of hydrocarbon resources started in the 1970s between Japan, Korea, and Taiwan.¹⁰⁰ The earliest Sino-Japanese exchanges date back to the 1980s. Negotiations about rules for marine scientific research and conflict management followed the rise of tensions in the 2000s. Scholars refer to these efforts as maritime regime building¹⁰¹ and as ‘alternate means’, a ‘functional’ and ‘creative approach’.¹⁰²

Institutions of ocean governance could subject incident-prone activities such as fishing, seismic research, and others to common rules that, given their transboundary nature, require a common approach. Such institutions could thereby make single steps towards overcoming environmentally destructive and escalatory behaviour.¹⁰³ Under article 123 of UNCLOS, littoral states of a ‘semi-enclosed sea’ should cooperate on the management of living

(2002): 167–200; Mikael Weissmann, ‘The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building’, *Asian Perspective* (2010), 35–69.

98 The Western and Central Pacific Fisheries Commission, ‘Frequently Asked Questions and Brochures’, <https://www.wcpfc.int/doc/commission-faqs> (last accessed 23 March 2024).

99 Sulan Chen, ‘Environmental Cooperation in the South China Sea: Factors, Actors and Mechanisms’, *Ocean & Coastal Management* 85 (2013): 131–40.

100 Hurng-Yu Chen, ‘The Prospects for Joint Development in the South China Sea’, *Issues and Studies* 27, no. 12 (1991): 112–25.

101 Mark J. Valencia, ed., *Maritime Regime Building Lessons Learned and Their Relevance for Northeast Asia* (Martinus Nijhoff, 2001).

102 M. Taylor Fravel, ‘Explaining Stability in the Senkaku (Diaoyu) Islands Dispute’, *Getting the Triangle Straight: Managing China–Japan–US Relations*, Washington, DC: *The Brookings Institution* 159 (2010): 144–64, 160.

103 John W. McManus, ‘Offshore Coral Reef Damage, Overfishing, and Paths to Peace in the South China Sea’, *The International Journal of Marine and Coastal Law* 32, no. 2 (2017): 199–237.

resources, marine science, and the preservation of the marine environment.¹⁰⁴ The proposed instruments could transform the disputed maritime domain from a sea of conflict into a sea of cooperation where maritime commons are governed regionally. Some of the cited works present their proposals as being tailored to the interests, as well as socioeconomic and ecological conditions in the East and South China Sea. Claimant states have negotiated in at least twenty cases about concrete agreements for the governance of marine natural resources, incident prevention, and codes of conduct. This book analyses these cases.

Negotiation and escalation at low levels of violence

The East and South China Sea disputes are coined by the simultaneity of, on the one hand, incidents, crises, coercion, and changes in the territorial status quo and, on the other hand, periods of negotiation. While negotiation attempts are several decades old, China has continuously improved its capabilities to unilaterally enforce claims with coercive means. This raises two questions: Firstly, whether China pursues negotiations with a genuine interest in agreements or whether negotiations are merely a façade to delay reactions; and secondly, and more generally, how negotiations about agreements for natural resources and conflict management interact with escalation at low levels of violence.

To begin with the first question, a few turning points should be summarized. China occupied the Paracel Islands after fighting South Vietnam in 1974. In the ‘race’ to the Spratly Islands in the 1970s and 1980s, China was a latecomer and found itself in the position to claim features already occupied by Southeast Asian states.¹⁰⁵ China took control of several of the Spratly Islands, for instance Johnson Reef, only in 1988 after fighting Vietnam.¹⁰⁶ Further changes to the territorial status quo occurred in 1995 when China erected installations on Mischief Reef and in 2012 when China took control of Philippine-administered Scarborough Shoal. While several claimants built

104 For the legal debate on the extent of the duty to cooperate in semi-enclosed seas, see Erik Franckx and Marco Benatar, ‘The “Duty” to Co-Operate for States Bordering Enclosed or Semi-Enclosed Seas’, in *Chinese (Taiwan) Yearbook of International Law and Affairs, Volume 31* (2013) (Brill Nijhoff, 2016), 66–81.

105 Stein Tønnesson, ‘Why Are the Disputes in the South China Sea So Intractable? A Historical Approach’, *Asian Journal of Social Science* 30, no. 3 (2002): 570–601; Austin, *China’s Ocean Frontier*.

106 Sarah Raine and Christian Le Mièrè discuss various sources regarding battle casualties. *Regional Disorder: The South China Sea Disputes*, IISS Adelphi Series (Routledge, 2013), 42.

smaller structures on features in the 1990s, China's large-scale island-building program started in 2013.¹⁰⁷ China's tactics were variably described as 'grey zone coercion',¹⁰⁸ 'hybrid warfare',¹⁰⁹ action 'little different from that of other countries',¹¹⁰ or as attempts to build a reputation for resolve.¹¹¹ Legally, China's behaviour raises the question under which conditions coercive maritime law enforcement activities amount to the prohibited threat or use of force.¹¹² While parts of the literature suggest China's assertiveness began at various points in the 2000s, China's intent to extend its jurisdiction in the South China Sea originated in the 1970s. Revelations of scientific and oceanographic surveys, UNCLOS negotiations, and the temptation of 'territorialising' maritime spaces, as well as domestic legislation, have contributed to the emergence of a bureaucratically entrenched policy within China.¹¹³ In the East China Sea, China has increasingly challenged Japan's control of the Senkaku/Diaoyu Islands and greatly expanded its navy, coast guard, and air patrols in and over the East China Sea and through several straits.¹¹⁴ Several

107 Armed Forces of the Philippines, *Chronological Development of Artificial Structures on Features*, available in The Republic of Philippines, 'The Memorial of the Philippines Volume IV', (30 March 2014) (Annex 96) <https://files.pca-cpa.org/pcadocs/The%20Philippines%27%20Memorial%20-%20Volume%20IV%20%28Annexes%2061-102%29.pdf> (last accessed 24 April 2024). On the use of documents from the Philippine diplomatic record, see Chapter II 4.

108 Michael Green et al., *Countering Coercion in Maritime Asia: The Theory and Practice of Gray Zone Deterrence* (Center for Strategic and International Studies, 2017); Lyle J. Morris, 'Organizing for the Gray Zone: Assessing the Rights Protection Capabilities of the New China Coast Guard', in *China's Maritime Gray Zone Operations*, edited by Ryan D Martinson and Andrew S. Erickson (Naval Institute Press, 2019), 1–15 (preprint).

109 Alessio Patalano, 'When Strategy Is "Hybrid" and Not "Grey": Reviewing Chinese Military and Constabulary Coercion at Sea', *The Pacific Review* 31, no. 6 (2 November 2018): 811–39; Chiuyuki Aoi et al., 'Introduction "Hybrid Warfare in Asia: Its Meaning and Shape"', *The Pacific Review* 31, no. 6 (2 November 2018): 693–713. For a critique of the term 'hybrid threat', see Michael Rühle, 'Deterring Hybrid Threats: The Need for a More Rational Debate', *NATO Defense College Policy Brief*, no. 15 (July 2019).

110 Austin, *China's Ocean Frontier*, 301.

111 Ketian Zhang, 'Cautious Bully: Reputation, Resolve, and Beijing's Use of Coercion in the South China Sea', *International Security* 44, no. 1 (July 2019): 117–59.

112 Steven Haines, 'War at Sea: Nineteenth Century Laws for Twenty-First Century Wars?' *International Review of the Red Cross* 98, no. 902 (August 2016): 419–47; Wolff Heintschel von Heinegg, 'The Difficulties of Conflict Classification at Sea: Distinguishing Incidents at Sea from Hostilities', *International Review of the Red Cross* 98, no. 902 (August 2016): 449–64.

113 Andrew Chubb, 'PRC Assertiveness in the South China Sea: Measuring Continuity and Change, 1970–2015', *International Security* 45, no. 3 (January 2021): 79–121. On 'territorializing' maritime spaces', see Bernard H. Oxman, 'The Territorial Temptation: A Siren Song at Sea', *American Journal of International Law* 100 (2006): 830–51.

114 Japan Ministry of Defense, 'China's Maritime Expansion', April 2017 (on file with the author); Japan Ministry of Defense, 'China's Activities in East China Sea, Pacific Ocean, and Sea of

crises related to seismic or drilling activities and fisheries have involved clashes between coast guards and navy vessels in the East China Sea.¹¹⁵

In the time between 1990 and 2019, China also entered into eight agreements for natural resource cooperation and conflict behaviour with Japan, South Korea, the Philippines, and Vietnam, *not* counting the ineffective 2002 Declaration on Conduct or any other document in its context.¹¹⁶ Six agreements have been implemented (three fisheries agreements, one boundary plus joint development agreement, the non-binding Code for Unplanned Encounters (CUES), and a previous notice arrangement for marine scientific research).¹¹⁷ A seventh agreement for joint oil and gas exploration was partly implemented until the Philippines let it expire in 2008. China and Japan agreed on the establishment of a crisis communication mechanism in 2019, which is only partially implemented at the time of writing.¹¹⁸ While most of China's agreements were reached before 2010, China adopted CUES in 2014 and the crisis communication mechanism with Japan in 2019. In addition to these agreements, multilateral (code of conduct) and bilateral negotiation processes are ongoing at the time of writing. In some of these cases, an agreement was reached after long and difficult negotiations, providing ample pretexts to sabotage negotiations if this had been the intention. Moreover, the joint fisheries agreements in the East China Sea contain unilateral termination clauses; China or Japan could easily terminate these agreements. Fishing incidents in the East China Sea between 2010 and 2018 would have provided ample excuses to terminate the agreements.¹¹⁹ Neither party did that. China, Korea, and Japan prefer interacting based on these specific agreements. While it could be argued that China delayed negotiations on a code of conduct in some periods, the existing agreements are direct evidence that China negotiated with a genuine interest in the cases where it reached and implemented agreements. As China and the Southeast and East

Japan', March 2024, https://www.mod.go.jp/en/d_act/sec_env/pdf/ch_d-act_a.pdf (last accessed 24 April 2024).

115 Reinhard Drifte, 'The Japan-China Confrontation over the Senkaku/Diaoyu Islands: Between "Shelving" and "Dispute Escalation"', *The Asia-Pacific Journal* 12, no. 30 (2014): 1–26.

116 For an overview of cases, see tables in the appendix. I wrote 'Declaration on Conduct' with capital letters to denote the agreed document, but 'code of conduct' with small letters since no code was agreed upon.

117 Akira Takada, 'Marine Scientific Research in the Exclusive Economic Zone and Japan-China Agreement for Prior Notification (1995–2001)', *Japanese Annual of International Law* (2001), 134–50.

118 I regard this MoU as a case of impasse as implementation has remained controversial after a ten-year negotiation period.

119 Chapter IV 1.4 and 2.2.



Asian claimant states have implemented several agreements and are still negotiating others, the question is not so much whether China really wants agreements. Rather, the question is how negotiations about agreements for natural resources and conflict behaviour relate to coercive activities at low levels of violence. The literature on negotiation and escalation,¹²⁰ as well as the literature on bargaining while fighting¹²¹, identifies several ways in which negotiation and escalation interact.¹²² In this perspective, escalation and bargaining are part of the same structure where conflicting and common interests are mixed.¹²³

First, a straightforward way in which negotiation relates to escalation is that negotiations are a response to instances of escalation. When parties realize that escalatory behaviour does not achieve the desired objectives but entails costs and risks, parties may decide to explore negotiated options.¹²⁴ Additionally, parties to a dispute may realize that single issues of a wider dispute entail escalatory risks that are disproportionate to the attention parties have devoted to the issue. And then this might trigger a search for some common rules for this single issue. Instances of escalation serve as a reminder to involved parties that the absence of effective tools to prevent escalatory action–reaction cycles increases a region’s instability. The case studies will illustrate that, while incidents interrupted exchanges and attempts to negotiate specific agreements for resource sharing and conflict management, they also responded to instances of escalation.

120 I. William Zartman et al., eds., *Escalation and Negotiation in International Conflicts* (CUP, 2005). Zartman and Faure define escalation as ‘a specific increase in conflict, a tactical step that marks a qualitative difference in conflict relations’. Guy Olivier Faure and I. William Zartman, ‘The Dynamics of Escalation and Negotiation’, in *ibid.*, 3–20, 4. The authors suggest conceptual specifications along various dimensions, e.g., escalation of means, ends, space, or risk. They distinguish between, on the one hand, ‘transitive escalation’ as purposeful and deliberate actions and, on the other hand, ‘intransitive escalation’ as the ‘inherent tendency of escalation to proceed on its own’, *ibid.*, 8.

121 R. Harrison Wagner, ‘Bargaining and War’, *American Journal of Political Science* (2000), 469–84; Robert Powell, ‘Bargaining and Learning While Fighting’, *American Journal of Political Science* 48, no. 2 (2004): 344–61; Matthew O. Jackson and Massimo Morelli, ‘The Reasons for Wars: An Updated Survey’, *The Handbook on the Political Economy of War* 34 (2011): 34–57.

122 Note that negotiation and bargaining analysis often focuses on the interplay of bargaining and uses of force at higher levels of violence (war). Applying these insights to disputes at lower levels of violence would require a detailed analysis. Here I can only raise some general points. For a discussion of China’s maritime disputes in the context of the bargaining literature, see Steve Chan, *China’s Troubled Waters: Maritime Disputes in Theoretical Perspective* (CUP, 2016).

123 Thomas C. Schelling, *The Strategy of Conflict*, 2nd ed. (Harvard UP, 1980).

124 I. William Zartman, ‘Structures of Escalation and Negotiation’, in *Escalation and Negotiation in International Conflict* (CUP, 2005), 165–84.

Secondly, one actor may use escalation to hurt and to impose costs on a rival that does not acquiesce in demands and thereby try to coerce this rival into an agreement or compel concessions.¹²⁵ In this vein, worsening one actor's outside option or best alternative to a negotiated agreement (BATNA)¹²⁶ can be part of a bargaining strategy. One strategic use of escalation may occur in cases where actors can only achieve an objective with an opponent's consent but not without it. In this vein, China's coercive interferences in the continental shelf activities of Southeast Asian states have the effect of worsening Southeast Asian states' alternatives to joint oil or gas development. While the use of coercion at sea appears not to be primarily directed at compelling Southeast Asian states' consent to joint development, the coercion has the effect of worsening Southeast Asian prospects of unilaterally exploiting hydrocarbon resources. China has not been able to exploit oil and gas resources in disputed areas beyond UNCLOS-based claims.¹²⁷ China was only able to conduct seismic research. What China can do, however, is to thwart Philippine, Vietnamese, or Malaysian attempts to exploit oil and gas by physically interfering in their continental shelves.¹²⁸ China has offered joint development as a negotiated option, but either the Philippines or Vietnam rejected China's plans for joint development in several cases. China's interferences ensure that the Philippines, Malaysia, or Vietnam would need joint development agreements to begin novel hydrocarbon projects in areas claimed by China.¹²⁹

A third way that escalation and bargaining processes interact is that a party may use coercive means to reveal an opponent's resolve and capability to resist concessions. In the literature that understands war as a bargaining

125 Thomas C. Schelling, *Arms and Influence*, New ed. (Yale UP, 1966), 69–91; Thomas C. Schelling, *The Strategy of Conflict*, 2nd ed. (Harvard UP, 1980), 195–199.

126 John Odell, 'Negotiation and Bargaining', in *Handbook of International Relations*, 2nd ed., edited by Thomas Risse, Walter Carlsnaes, and Beth Simmons (SAGE, 2011), 379–99. On concepts related to a BATNA, see Sally Blount White and Margaret A. Neale, 'Reservation Prices, Resistance Points, and BATNAs: Determining the Parameters of Acceptable Negotiated Outcomes', *Negotiation Journal* 7 (1991): 379–88.

127 International Crisis Group, 'Stirring up the South China Sea (IV): Oil in Troubled Waters', *Asia Report No. 275*, 26 January 2016, <https://www.crisisgroup.org/asia/north-east-asia/china/stirring-south-china-sea-iv-oil-troubled-waters> (last accessed 23 June 2023).

128 CSIS, 'China Risks Flare-Up Over Malaysian, Vietnamese Gas Resources', *AMTI Update*, 16 July 2019, <https://amti.csis.org/china-risks-flare-up-over-malaysian-vietnamese-gas-resources/>; Bill Hayton, 'South China Sea: Vietnam "Scraps New Oil Project"', *BBC*, 23 August 2018, <http://www.bbc.com/news/world-asia-43507448> (last accessed 23 March 2022).

129 Note that this analysis does not apply directly to negotiations on fisheries or a code of conduct.



process,¹³⁰ fighting is ‘considered part of the bargaining process that leads to a negotiated settlement and not as an alternative to it.’¹³¹ Fighting plays a role in screening between strong or weak opponents.¹³² Periods of fighting serve to reveal the actors’ resolve and reservation points. Fighting brings about a (new) understanding of the true balance of power between two or more opponents on an issue. While the escalation of crises in the East and South China Sea remained at low levels of violence, various accounts of the conflict behaviour during several crises – crises at Scarborough Shoal in April 2012, at the Senkaku/Diaoyu Islands in 2010 and 2012, or the oil rig standoff in 2014 – pointed out that the revelation of claimants’ various costs of holding out and levels of resolve was a crucial factor for the outcomes of these crises.¹³³ The escalation during the Scarborough Shoal standoff revealed, for instance, the lack of Philippine resolve and US backing for the Philippines.¹³⁴ This was one factor contributing to China ultimately taking control of the shoal.

A fourth relation between escalation and negotiation is based on the idea that an actor can derive strategic advantages from a negotiated agreement for ameliorating its position and unilateral advancements in a dispute. When escalation and bargaining are part of the same structure of conflict interaction, not only does escalation affect bargaining processes, agreed outcomes of negotiations can also affect, prepare, consolidate, or support escalatory behaviour in some cases. Actors in a dispute seek, for instance, a rival’s consent to agreements that retrospectively consolidate gains made through unilateral escalatory action. When actors can gain strategic advantages from a cooperative agreement, the agreement can represent an incremental step towards cooperation and a tool for the continuation of conflict by other means. This fourth relationship raises the question through which characteristics an institution could increase one actor’s power, and under which conditions a second actor would nevertheless consent to this institution.

130 Dan Reiter, ‘Exploring the Bargaining Model of War’, *Perspectives on Politics* 1, no. 1 (2003): 27–43.

131 R. Harrison Wagner, ‘Bargaining and War’, *American Journal of Political Science* (2000), 469–84, 469.

132 James D. Fearon, ‘Fighting Rather than Bargaining’, in *Annual Meetings of the American Political Science Association* (2013), 1–46.

133 Zhang, ‘Cautious Bully: Reputation, Resolve, and Beijing’s Use of Coercion in the South China Sea’; Michael Green et al., *Countering Coercion in Maritime Asia: The Theory and Practice of Gray Zone Deterrence* (Center for Strategic and International Studies, 2017), chapter 3, cases 2, 3, and 7.

134 Chapter III 1.5.



How this book is organized

The next chapter (Chapter II) begins by conceptualizing the types of agreements the disputing parties in the East and South China Sea negotiate about. This includes fisheries and joint development arrangements – UNCLOS refers to these as ‘provisional arrangements of a practical nature’ – as well as codes of conduct and incident prevention and communication mechanisms. This conceptualization discusses characteristics of incremental approaches to conflict resolution and analyses how the availability of gradual options in an ongoing dispute is likely to affect calculations of disputing parties. Subchapter 2 two addresses the question of how institutions could be sources of power. It identifies how the agreements and institutions under considerations in the East and South China Sea could impact disputing actors’ power in subsequent dispute interactions and how this factor is likely to affect negotiations. Subchapter 3 discusses the impact of alternative variables on the negotiation processes, namely nationalism and domestic politics, the existence (or absence) of legal entitlements and international arbitration, and characteristics of multilateral negotiations.

Chapters III, IV, and V present the case studies. Chapter III offers an analysis of the negotiations about joint development and fisheries agreements in the South China Sea. It begins with an overview of the legal claims in the South China Sea. It then examines the past three decades of interactions between Chinese and Philippine negotiators on a variety of arrangements for oil and gas and for fishing activities (subchapter 1). This is followed by a presentation of the exchanges between Chinese and Vietnamese actors (subchapter 2). Two case studies in chapter III exclude China, namely the negotiations between the Philippines and Taiwan on an arrangement for law enforcement and fishing activities (subchapter 3) and between Brunei and Malaysia on boundary delimitation and resource sharing (subchapter 4). Chapter IV begins with an overview of the legal claims in the East China Sea. It then discusses the two and a half decades-long negotiations between various Chinese and Japanese negotiators about different models for oil and gas sharing in several parts of the East China Sea (subchapter 1). This is followed by an examination of the negotiations leading to a set of four partly overlapping fisheries agreements, namely the fisheries agreements between China and Japan (subchapter 1), South Korea and Japan, South Korea and China (subchapter 2), and Japan and Taiwan (subchapter 3). This chapter concludes with a comparison of the role of fishing incidents and fisheries agreements in the East and South China Sea (subchapter 4). Chapter V deals with the negotiations about codes of conduct and incident



prevention and communication mechanisms. It begins with an analysis of the past thirty years of negotiations on a code of conduct for the South China Sea (subchapter 1). It then examines the exchanges between China and Japan on a communication arrangement. This is followed by an analysis of the Code for Unplanned Encounters at Sea (subchapter 2). Tables with an overview of the cases are provided in the appendix. This book presents synthetic discussions and theoretical implications of the cases in several subchapters, especially in subchapters II 3, III 1.4 and 2.4, IV 4, V 1.4, and V 2.4 and in the conclusions.