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Maritime boundary disputes: What are they and why do they matter?

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ABSTRACT

When states legalised the maritime domain in the 20th century, the relationship between states and maritime space changed. Since the turn of the millennium, certain global trends have further amplified the role of the oceans in international affairs. This has led to a renewed focus on maritime space, as well as states' rights and responsibilities within this domain, delineated through the concept of a 'boundary' at sea. What, in essence, is a maritime boundary? Why do states end up disputing them? Perhaps more important, how do states go about settling such disputes, and how can we better understand the development of the legal and political principles that frame such endeavours? These are the questions examined in this article, which sets out to examine the concept of maritime boundaries and related disputes. Leaning on political science, international law and political geography, it reviews how the idea of a maritime boundary came about; what principles govern how they are drawn; how they at times are resolved; and possible future trends that might impact boundary-making at sea.

1. Introduction[1]

In 2010, Norway and Russia agreed on a maritime boundary in the Arctic, stretching from the Eurasian landmass almost all the way to the North Pole. The new 1750-km (1087-mile) boundary was ten times the length of the land border between the two countries and it was hailed as a sign of a new 'era' in Norway–Russia relations, as well as Arctic governance more broadly [1,2]. Pundits were quick to argue that the primary reason for the maritime boundary agreement must have been the presence of oil and gas resources, not least as resource extraction figured prominently in the two countries' newly launched Arctic strategies [3].

However, it is unlikely that Norway and Russia would have been able to reach an arrangement today, a decade later. As the former Norwegian foreign minister highlighted explaining one of the factors behind the agreement: 'There must be trust between the negotiating partners'.[2] The worsening in relations between the two countries after the Russian annexation of Ukraine in 2014 have made bilateral relations resemble those of the Cold War when the two countries were on opposing sides in the larger 'East West' dispute.

This speaks to the challenge of settling boundary disputes. Boundaries in the ocean are man-made constructs of importance to everything from oil and gas production, to fisheries and environmental protection. Presently, more than half of all maritime boundaries are still disputed, across all continents [4,5]. As put by the Norwegian and Russian foreign ministers in 2010: 'unresolved maritime boundaries can be among the most difficult disputes for states to resolve' [1]. Timing, in other words, is everything, when it comes to settling maritime boundaries.

This begs the question: What, in essence, is a maritime boundary, and why do states end up disputing them? Perhaps more important, how do states go about settling such disputes, and how can we better understand the development of the legal and political principles that frame such endeavours?

It is only recently – in an extended view of history – that states' ability to uphold sovereignty at sea has led to oceans becoming subject to explicit international jurisdiction. How states have viewed and utilised the sea – eventually attempting to control and develop a legal order for it – has varied and changed over the past millennium [6], pp. 153–154], [7]. From the 15th to the 19th centuries, the use of maritime space in exploration, dominance and industrialisation transformed the world [8].

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When states legalised the maritime domain in the 20th century, with the Geneva Conventions on the Law of the Sea in 1958 and the UNCLOS regime in 1982, the relationship between states and ocean space changed.[3] Since the turn of the millennium, certain global trends have further amplified the role of the oceans in international affairs. Technological developments, increased seaborne trade, growing demand for marine resources, and climate-change effects on the oceans and the location of those resources are all factors that have led to a renewed focus on maritime space, as well as states' rights and responsibilities within this domain. As Steinberg [9], p. 366] wrote already two decades ago: 'we are now entering an era when […] human interactions with ocean-space are ever more intense and complex'.

The effects of climate change on the oceans – provoking sea level rise and in turn, coastal erosion – have also become increasingly apparent in recent decades. That in turn may influence the delineation of maritime space: with changes in the baselines from which boundaries are determined, or in the characteristics of islands and territory, states may find themselves faced with new challenges, or be forced to re-visit old and unresolved disputes [10], pp. 12–13], [11]. This could cause further tension, even conflict [12,13].

As this happens, more and more attention is paid to the question of 'who owns what' at sea. Writing about the *Political Geography of Oceans* in 1975, Victor Prescott argued that '[s]tates seek to use the oceans for precisely the same reasons as they use their territory: to provide security and the opportunity for development' [14], p. 30]. This simple fact has not changed. States have rights and duties regarding maritime space, and, as this space gains attention, the delineation of ownership and rights is already rising to the fore of domestic and international politics.

In turn, these trends require that we better examine the notion of boundary-making at sea, and why states engage in disputes over these more generally. This article does exactly that, by investigating the notion of maritime boundaries more generally, and how states go about managing and settling related disputes, before discussing the future of maritime boundary disputes. It draws on the fields of political science, international law, and political geography, as well as scholarly work that has dealt with maritime boundaries specifically, in order to outline *what* maritime boundaries are, and *why* they matter, at a time when questions of ocean governance are increasingly on the political agenda.[4]

2. States and territory

As a consequence of European state formation and finite territorial space, the concepts of territorial sovereignty and boundaries have come to define the modern state [15–17]. As states formed, developed, and expanded, the need to define and uphold territorial boundaries became increasingly relevant [18], p. 131]. As Kratochwil [19], p. 32] argues: 'boundaries are points of contact as well as of separation between a social system and an environment'. According to Ruggie [20], p. 150], '[t]he notion of firm boundary lines between the major territorial formations did not take hold until the thirteenth century; prior to that there were only 'frontiers', or large zones of transition'. Kratochwil [19], p. 33] in turn holds that the 1659 Treaty of the Pyrenees between France and Spain established the first modern state boundary.

When the emphasis was placed on delimitation of all territory (terrestrial) in the 19th and 20th centuries, 'frontier' regions became a source of inter-state friction, as they lacked clear demarcation. Disputes emerged as states sought to expand their territory and define their borders.[5] Even today, related border disputes exist [19], p. 37].

The concept of territoriality developed slowly in what has become the international system. Because of European state formation and the finite territorial space in this part of the world, the concept of territorial sovereignty and boundaries have come to define the modern state and its relations to other states across the globe [21–23]. 'The rise of the bounded state as a political unit necessitated a concern with the drawing and redrawing of political borders and the formalization of territorial arrangements' [24], p. 45].

Scholars thus agree that boundaries and the integrity of territory constitute a pillar of the modern state-system. Tracing the development of the norm of 'territorial integrity' in recent centuries, Zacher [16] shows how the norm has undergone three phases: emergence, acceptance, institutionalisation.[6] Examining all territorial conflicts between 1946 and 2000, he finds that the norm has indeed been commonly accepted through efforts and statements from the 1970s onwards.

The link between territory, sovereignty and conflict has been extensively proven [25–30]. Vasquez, for example, shows how at least 79% of all wars between 1648 and 1990 were fought over territory-related issues [31,32]. Disputes emerged – and still emerge – as states seek to expand their territory and define their external boundaries. The classic territorial dispute involves two states that disagree on where a border should go, either because one state does not recognise another state's border derived from a previously signed treaty, or because no treaty exists at all. More complicated disputes concern situations where a state has occupied the territory of another state, where a state does not recognise the sovereignty of another state, or where a state does not recognise the independence *and* sovereignty of a seceding state [29], pp. 20–23].

Territory has been the primary source of conflict between states over the last millennium, as states grew into existence, developed and matured. Territory and where to draw related borders have also not lost their importance. According to Wiegand [30], territorial disputes concern 41% of all sovereign states today. Hensel [33], p. 137] holds that interstate rivalry is still twice as likely to escalate into war when territory is involved. As noted by Weber [34], it is the monopoly on the use of force in a given *geographical area* that has come to characterise the modern state. The notion of territoriality has come to define the very idea of statehood [21].

[3] See Ref. [43,93,94].

[4] The United Nations has dedicated the period 2021–2030 as 'Ocean Science for Sustainable Development', linked to Sustainable Development Goal #14: to conserve and sustainably use the oceans, seas and marine resources for sustainable development.

[5] For an examination of the concept of territoriality and fixed territory, see for example [21,22,24]. Territoriality can be defined as the process whereby territory (here: the ocean) is claimed by individuals or groups. 'Territoriality can be seen as the spatial expression of power and the processes of control and contestation over portions of geographic space are central concerns of political geography' [24, p. 8]. Studies of territory and territoriality are primarily concerned with land and the human need/desire to inhabit and control land. However, the idea of 'socialized territoriality' is relevant also for discussions of the maritime domain, as it enables the role of territory to be conceived more broadly. Sack [23, p. 219] sees territoriality as a 'device to create and maintain much of the geographic context through which we experience the world and give it meaning'. In turn, once 'territories have been produced, they become spatial containers within which people are socialized' [24, p. 20], [95].

[6] Zacher adapts from Finnemore and Sikkink [96].

3. Maritime space and boundaries at sea

At sea, however, 'territoriality' and the rights of states take on a different form. Inherently a distinct domain altogether, the way in which society has viewed, legalised, and utilised the ocean has evolved through history. In the 15th century, as European powers pursued colonisation in waters outside Europe, a debate was sparked concerning the status of oceans and what rights nations could have at sea. Ideas of a natural law of nations were retrieved from antiquity and the Middle Ages and used by scholars to argue for various understandings. Grotius became a frequently cited proponent of the right to peaceful commerce and that passage at sea is natural to the 'need of all men to ensure their survival' [35], p. 33]. Grotius argued for the freedom of the seas in order to counter Portuguese and Spanish claims to trade monopolies in the world outside Europe, when they divided the non-Christian world between themselves with the 1494 Treaty of Tordesillas.

The principle of the oceans as global commons came to clash with the idea that nations had rights and sovereignty in nearby waters. For example, Norwegian kings around AD 1000 had claimed sovereignty in waters adjacent to Norway stretching all the way to the British shorelines [36], p. 481]. In the 15th century, a version of this position was advanced by Britain, in response to Dutch attempts at dominion of the North Sea. As Maier [35], p. 37] describes it:

> The Dutch sent a fishing fleet of two thousand ships protected by an armed squadron to the North Sea waters off the east coast of Britain; and John Selden argued that the ocean's bounty of cod was no more a public good, replenished by nature, than the land, and like the land it could be assigned to particular owners.

Legal scholars like Hugo Grotius (*mare liberum* – freedom of the seas) and John Selden (*mare clausum* – closed seas) have become symbols for two opposing ways of grappling with questions of maritime ownership and rights. These conceptions of the ocean, which also hold varying degrees of relevance for different maritime spaces (open seas and/or coastal zones), came to dominate approaches to the sea in the subsequent centuries, until the international community began negotiating a legal framework for the oceans in the 20th century.

Already in the 18th century, the territorial waters of states were defined as being a 'cannon shot' from land, an idea developed by van Bynkershoek in 1703, and later defined as three nautical miles (n.m.) by Galiami [37], p. 138].[7] The League of Nations attempted to codify international law concerning the oceans in The Hague in 1930, but never managed to reach agreement [38].

Then, in 1945, US President Truman declared that the natural resources of the continental shelf were under the exclusive jurisdiction of the coastal state [39]. This rapidly advanced discussions on what rights states have beyond a limited (3 n.m.) territorial sea. Central to the success of this declaration was not only the US position of strength after the Second World War, but also how the principle entitled every coastal state to similar rights, and the fact that these sovereign rights did not depend on occupation [40], pp. 91–92]. This was later codified in the 1958 Geneva Convention on the Continental Shelf, which preserved the prospect of exclusive coastal state jurisdiction over offshore seabed resources [41].

At the same time, some states started expanding their territorial seas from three to twelve n.m., as negotiations of an international regime for the oceans were underway. This led to conflict around adjacent and overlapping maritime spaces. The first and second Law of the Sea Conferences were held in 1956–1958 and 1960, without reaching final agreement on the extent of the territorial sea or the extension of State rights and jurisdiction extending further offshore, beyond the territorial sea [37]. Then followed decades of negotiations aimed at developing a coherent international legal framework for the oceans; in 1982, most states agreed on a comprehensive legal regime: the United Nations Convention on the Law of the Sea – UNCLOS [42].

When it was agreed, UNCLOS provided the legal rationale for states to implement new maritime zones in addition to the 12-n.m. territorial sea, with a 200 n.m. 'resource' or 'fisheries' zone (what became termed the Exclusive Economic Zone – EEZ), driven largely by growing awareness of the possibilities for marine natural resource extraction (hydrocarbons, fisheries, minerals) and the desire of states to secure potential future gains [38,43].

Already in 1952, Peru, Chile and Ecuador had made claims of exclusive rights out to 200 n.m., seeking to reap benefits of an expansion in fisheries [44]. These initial claims wetted the appetite of many coastal States and after a diversity of claims were put forward – because other states also claimed resource zones, including exclusive fishery zones in the 1950s, 60s and 70s – the international community agreed on the legal regime of the EEZ as defined under Part V of UNCLOS.

When states began expanding their maritime zones, the notion of straight baselines also came to the fore. This is the line drawn along the coast from which the seaward limits are measured. Instead of drawing the baseline of a country's maritime zone along its coast following all features, some states with indented coastlines or with multiple fringing islands started to draw *straight* lines along the coast, in essence claiming more maritime space (territorial sea) than a country with an even coastline. The UK took a case against Norway concerning this practice to the ICJ, which in 1951 endorsed the Norwegian approach regarding straight baselines with the *Anglo-Norwegian fisheries case* [45].

In consequence, states had in the span of a few decades gone from having control over a relatively limited (often just 3 n.m.) maritime domain, to having an international agreement on expanding the length of the territorial sea where states have full sovereignty to a maximum of 12 n.m., while also adding an EEZ where states have certain sovereign rights for an additional 188 n.m.

Moreover, with UNCLOS it was concluded that states have sovereign rights on the continental shelf up to 200 n.m., and, when relevant, beyond 200 n.m. where the shelf is a prolongation from the land mass of the coastal state by submitting this information on the limits to the Commission on the Limits of the Continental Shelf (CLCS) [46]. The limit of such claims was determined to be up to 350 n.m. from a country's baseline, or not exceeding 100 n.m. beyond the point where the seabed is at 2500-m depth (2500-m isobath) [47], p. 321].

With 168 ratifications as of 2020, UNCLOS has become part of the larger framework of international politics and law [48]. Many of its provisions today reflect customary international law, which is universally binding on all states, and not limited to UNCLOS parties only [49]. This legal-political regime that took decades to develop, has enabled states to reach a relative agreement on how to tackle issues that first arose centuries ago. As Keohane and Nye [50], p. 56] put it in 1977: 'there is very little direct functional relationship between fishing rights of coastal and distant-water states and rules for access to deep-water minerals on the seabed; yet in conference diplomacy they were increasingly linked together as oceans policy issues'.

However, a central bone of contention that remained – and remains – is how and where to delineate maritime space and related rights to resources on the seabed and in the water column.

4. The process of drawing lines at sea

As states expanded their maritime zones, a number of maritime boundary disputes between neighbouring states emerged. Different states have developed different interpretations of how to draw boundary lines at sea [51]. These relate to which map projection to use when drawing the boundary; whether or not to base the boundary on a median principle or a sector principle; the shape of the geographical attributes of the land from which the maritime boundary is derived – i.e. the direction

[7] One nautical mile (n.m.) is 1852 m/approx. 1.15 miles, and this has become the standard unit of measurement for both marine and air navigation, as well as zones at sea.

of the coastal front and the weight given to islands and submarine features; and which portion of the coast is relevant to delimitation [52–54].

When states expanded their fisheries zones or EEZs to 200 n.m., existing maritime boundary disputes were enlarged as the disputed areas grew in size. Boundary disputes also arose or became more significant between the maritime zones of 'adjacent' or 'opposing' coastal states. Some of these boundary disputes were settled immediately, but a large number remain today. The map (Fig. 1) display how the EEZs of countries bundled together are contiguous and thus also need a clear boundary.

As maritime zones and state interest in them rose on political agendas in the middle of the 20th century and the need for their delimitation increased, the concept of 'equidistance' came to the fore. This guiding principle encountered another principle, namely that of equity. The balance between these two principles has shifted over the last half-century, and this tension is crucial in understanding how states settle their maritime boundary disputes (and the principles that guide such processes).

Equidistance entails a boundary that corresponds with the median line at an equal distance (equidistance) at every point from each state's shoreline. Some scholars have taken the position that this was codified under Article 6 (2) of the 1958 Geneva Convention on the Continental Shelf (Geneva Convention), which directs states to settle overlapping claims by reference to the equidistance principle [55], p. 62]. As St-Louis [56], p. 26] points out, with the Geneva Convention, states 'intended to have equidistance applied as the basic principle, to be deviated from only in the case of special circumstances'.

However, international law is not a static set of rules, but rather a process that evolves through time [40]. The attention given to 'relevant' or 'special' circumstances led to varying interpretations among states. In addition to coastal length and other geographical variables, security interests and the location of natural resources have at times been accorded weight in a few international court rulings. This has been termed 'equity', as a principle distinct from 'equidistance'.

Equity thus acquired importance in delimiting disputes the maritime domain [57]. In particular, the North Sea Continental Shelf Cases between Denmark, West Germany and the Netherlands from 1969 pitted the principle of equity and equidistance against each other [58]. Denmark and the Netherlands argued for the use of equidistance, whereas West Germany argued for a 'just and equitable share' of the disputed area. Outlining its approach to maritime boundary dispute settlement in general, the Court held that delimitation must be 'effected in accordance with equitable principles … taking account of all the relevant circumstances' [59], p. 53].

In addition, the Court introduced the concept of the 'natural prolongation' of the continental shelf – that also the geophysical attributes of the shelf in question matter for delineation between states [60], p. 15]. Although the ICJ specified that there was 'no legal limit' to the number of factors that were relevant to delimitation of the shelf, these were initially defined as geology, the desirability of maintaining unity of the natural resource deposits, and proportionality (the ratio between the water and shelf areas attributed to each state and the length of their coastline) [59], pp. 51–52].

States were thus not deemed to be obliged to apply the equidistance principle: equity was seen as extending beyond mere equidistance [56, 58]. Robert Kolb [61], p. 108] argues that the ICJ's rulings in the 1960s and 1970s changed the jurisprudence from method (equidistance) to objective (equity). This entails that not equidistance, but fairness on its own was introduced as a guiding principle for maritime dispute resolution.

A case that exemplifies this came about in 1980, when Denmark extended its 200-mile fisheries zone northwards along the east coast of Greenland (Denmark being the colonial power operating on behalf of Greenaldn), creating an overlap with the Norwegian zone on the northwest side of the island of Jan Mayen [62]. Denmark argued that it deserved a larger proportion of this disputed zone because Greenland's coast is longer than that of Jan Mayen, and because the population of Greenland deserved privileged access to fish stocks [63]. Norway held firm to the equidistance principle; after years of unsuccessful negotiations, Denmark submitted the dispute to the ICJ in 1988.

The Court concluded that the longer length of the Greenland coast required a delimitation that tracked closer to Jan Mayen [64]; and that the maritime boundary line should be shifted somewhat eastwards to allow Greenland equitable access to fish stocks [63,65], p. 55]. However, the Court rejected other arguments concerning population size and socio-economic conditions, declaring them irrelevant to the final determination of the boundary line.

Scholars have outlined how UNCLOS negotiations in the late 1970s concerning maritime boundary dispute resolution reached a compromise between two groups of states: those that wanted the equidistance principle enshrined, and those that wanted equity as the guiding principle without specifying any particular method [43,52,60,66]. Equity as a principle was incorporated in 1982 UNCLOS article 74 (*delimitation of the exclusive economic zone*) and article 83 (*delimitation of the continental shelf*), with the wording: 'The delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law … in order to achieve an equitable solution' [46]. Kaye argues that 'The result was an acceptable (if fragile) compromise, but one that did little to clarify the method by which delimitation was to take place' [60], p. 16]. The UNCLOS regime consequently does not specify *how* states are to settle maritime boundary disputes – it merely calls for 'an equitable solution' [46].[8]

As these cases and developments show, how states initially divided maritime space amongst themselves became questions where maritime law rested on the principles of both equity and equidistance. Thus, the process of settling a maritime boundary has not very straightforward As Finnemore and Toope put it in 2001 [48], p. 748]:

> If one considers the decisions of the International Court of Justice in boundary delimitation cases, for example, the results are clearly legal, influential, and effective in promoting compliance, but they are highly imprecise.

However, in rulings in recent decades, the ICJ has favoured a stricter interpretation of which relevant circumstances to include, placing emphasis on geographical factors in a three-stage approach in delineating maritime boundaries, as outlined in the Black Sea Case between Romania and Ukraine in 2009 [67], p. 381]. First, a 'provisional delimitation line' between the disputing countries is established, based on equidistance. Second, consideration is given to of 'relevant circumstances' that might require an adjustment of this line to achieve an 'equitable result'. This is where 'equity' is considered. Third, the Court evaluates whether the provisional line would entail any 'marked disproportion', taking the coastal lengths of the states into consideration [68], Paras. 116–122].

Concerning the continental shelf vis-à-vis the EEZ, initially, the rules/process to settle the two kinds of boundaries were different. The emphasis on 'natural prolongation' and the scientific elements to prove it involved using a different approach for continental shelf delimitation. However, as state practice and court rulings developed after the 1969 North Sea Continental Shelf Cases, the principle of natural prolongation lost its hold. The main reason was the introduction of the 200-n.m. concept, where states, regardless of submarine features, immediately acquired rights over the seabed and water column out to 200 n.m. from shore. With the new rules in UNCLOS and the move away from 'natural prolongation' as a basis of entitlement to the continental shelf, courts have adopted a uniform approach to maritime boundary delimitation for

[8] UNCLOS Article 74 concerning the EEZ has wording identical to that of the Continental Shelf, Art. 83.

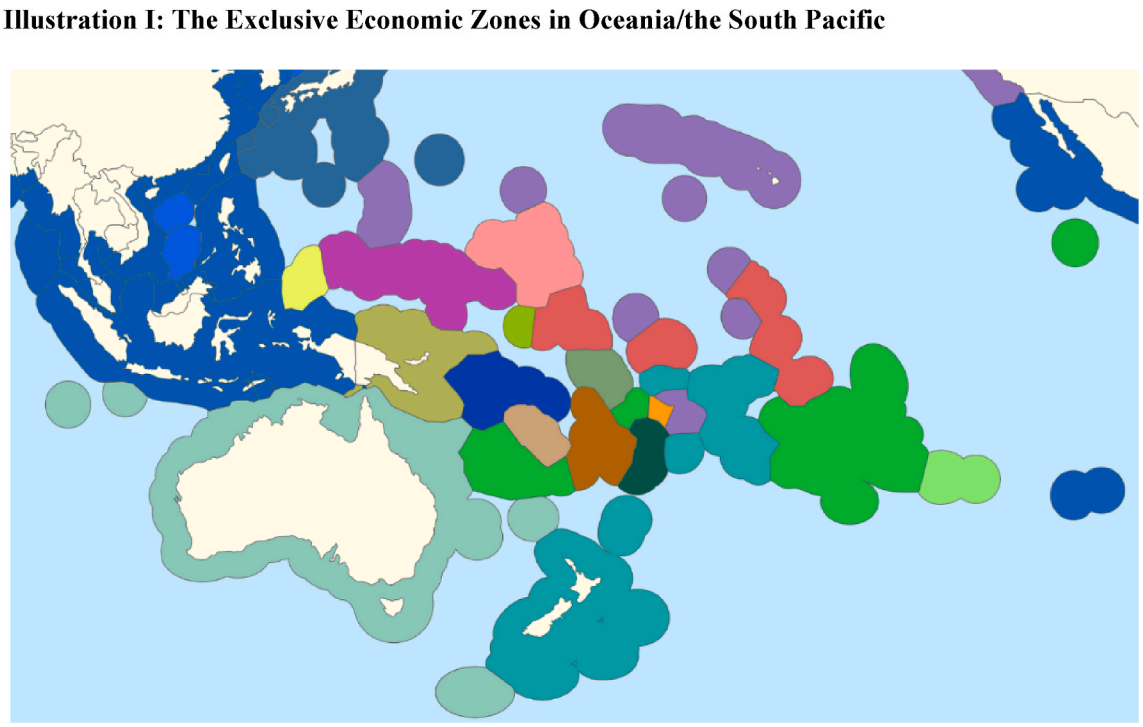

Fig. 1. Displaying the numerous EEZs in the South Pacific and how these are adjacent/overlapping and thus have been – at various times – in need of delimitation. Source: Wikimedia.

both the water column and seabed.

This does not mean, however, that the idea of natural prolongation has become totally irrelevant. As Kaye [60], p. 19] argues, it has relevance if the submarine feature is 'vast and significant'. Further, the notion of natural prolongation has remained the determining factor concerning 'extended' continental shelves, as states must use scientific data concerning the seabed in its submission to the CLCS as described in section 3. Then the geomorphology (and to a lesser extent, the geology) of the seabed and the ability of states to prove their natural extension come into play.

In summary: The concept of boundary-making at sea is in itself based on abstract lines on the map, and not borders that physically separate the maritime domains of two countries. States have leaned on – albeit often deviated from – legal principles set out in international Court rulings as well as UNCLOS as they attempt to agree on how to draw lines at sea [69].

5. Maritime boundary disputes today

The principles that guide the drawing of maritime boundaries are one thing, how states go about settling maritime boundary disputes is something rather different. Turning to how – practically – states manage to agree on boundary disputes, states may agree on a mutual solution after bilateral negotiations; or after having attempted to negotiate in good faith, they can submit the case for adjudication at the ICJ or another international Court like ITLOS (International Tribunal for the Law of the Sea); or they can use third-party arbitration like the Permanent Court of Arbitration (PCA).

However, because of the need to compromise, disputes are generally settled through bilateral negotiations without the use of international courts [70], pp. 14–15]. The uncertainty as to outcome of international adjudication and arbitration does not inspire states to bring cases before courts and tribunals. Resolving a dispute bilaterally leaves states with the option of a creative resolution not confined by the international rules applied by courts and tribunals. Moreover, litigation is costly and in the maritime domain, the process often requires a great deal of scientific data, making it expensive for states to pursue delimitation actively [71], p. 245].

Consequently, more than 90% of maritime boundaries have been settled through bilateral negotiations [72], p. 131], where states are free to choose whichever approach they prefer when delineating maritime space. However, studies show that although states choose bilateral negotiations to avoid the shackles of international adjudication/arbitration, they still lean on, and mostly adhere to, the legal principles as set out by international court rulings [54,72,73].

Furthermore, if we compare with how the state emerged as geographical unit, in the maritime domain, as opposed to land, conflict over boundaries, sovereignty and jurisdiction have generally been resolved peacefully through negotiations and adjudication/arbitration. As outlined in the previous section, international law provides the framework for settling maritime disputes. The use of pure power in determining the limits of state jurisdiction at sea has in practice been ruled out in the post-World War II order [74], also because few states have the military and economic capacity for protracted conflict at sea (or see the benefit from such efforts).

This does not, however, mean that all disputes over maritime space and maritime resources are settled in an orderly way [75]. Albeit central in guiding the process, as shown here international law does not always provide a clear pathway to settling maritime boundaries. As argued by Jagota [76], p. 4]: 'Maritime boundary, like territorial or land boundary, is a politically sensitive subject, because it affects the coastal State's jurisdiction concerning the fishery, petroleum and other resources of the sea as well as concerning the other uses of the sea'. As Weil [77], pp. 30–31] further argues: 'Maritime boundaries, like land boundaries, are the fruit of the will of States or the decision of the international judge, and neither governments nor judges limit themselves simply to scientific fact.'

Historic resource conflicts and contemporary disputes around the world make clear the economic and political interests involved in maritime space. An unsettled maritime boundary can hinder economic exploitation of offshore resources [70,78]. Similarly, it may complicate the management of transboundary fish stocks. At times, states engage in

indirect conflict over such disputes, whether by arresting fishing vessels from the other party to the dispute, or by engaging with navy or coast guard vessels directly. Several disputes became entrenched, as states leaned on historical, legal and economic arguments to support their positions [30].

Therefore, today maritime boundary disputes exist on all continents. Settlement of outstanding disputes continues to take place, but many disputes remain, ranging from active and conflictual to dormant, or successfully managed. Prescott and Schofield [71], p. 218] highlight that 'out of 427 potential maritime boundaries, only about 168 (39%) have been formally agreed, and many of these only partially'. Other figures concerning the total number of maritime boundary disputes exist, with varying degrees of specificity. Some estimate that there are approximately 640 maritime boundary disputes, with around half resolved [79]. Newman [80] claims there are 512 maritime boundaries in total, again half of them resolved.

A dataset by Ásgeirsdóttir and Steinwand[9] provides a more general overview of the total number of disputes (settled/not settled by 2008) per country and per continent [4].[10] These figures give a rough idea of the global outreach of this phenomenon, not confined to one part of the world or a specific group of states. Unsurprisingly, large countries with more access to maritime space have a larger number of maritime boundaries. Russia, China, Canada, and Australia have long coasts, resulting in multiple neighbours and in turn multiple maritime boundaries. Also, areas like the Mediterranean and the Caribbean, where numerous small states are clustered together – such as Turkey, Italy, Greece, and Egypt; or Colombia, Venezuela, and Cuba – have a large number of maritime boundaries. Moreover, countries with overseas colonies and/or dependencies – such as France, the United Kingdom (UK), Spain and the USA – have multiple maritime boundaries, settled as well as unsettled.

This help to pinpoint exactly how common maritime disputes – settled as well as unsettled – are around the world. Most countries (157 to be exact) have had a maritime boundary in need of settlement at one point since 1950. In 2008, there were still 228 disputes (54.7%) that remained unsettled, out of a total of 417 [4]. If compared to borders on land, an interesting paradox emerges: Although the chance of outright conflict at sea over where to delineate boundaries is rather low, the political, economic and historic interests in the same boundaries have made it difficult for states to concede in bilateral negotiations. Consequently, more than half of all boundaries at sea are still disputed.

6. The future of maritime boundary disputes

Maritime boundary disputes are acquiring rising importance for states in the 21st century, as human interactions with ocean-space are becoming ever more intense and complex. Exogenous and endogenous changes are underway in the maritime domain. Changes deriving from resource pressures, international commodity prices, and new technology are exogenous to the ocean, driven by economic developments.

Rising sea levels and other oceans changes resulting from climate change, and changing resource distributions, are endogenous to the maritime domain, with a specific geographic component. Disputes over maritime boundaries, access rights and interpretation of legal treaties or of UNCLOS have been left unresolved for decades. These are now being brought to the agenda by the mentioned trends, at times even leading to direct clashes at sea between the involved states.

For example, with shipping increasing in territorial waters across the globe, issues concerning access rights, status of sea-lanes, and environmental protection are at the forefront of international debates. Within and across EEZs, climate change and other environmental factors are causing variability in the spatial distribution of fish stocks, challenging established management regimes [81]. The processes for determining the limits of continental shelves beyond 200 nautical miles are becoming increasingly relevant [69]. And in the high seas, there are ongoing international negotiations to develop legal instruments for designating and managing MPAs beyond national jurisdiction [82]. New political challenges are consequently emerging, as states hold differing views on access rights, marine environmental protection and how to exploit and manage marine resources.

Steinberg [7], in his *The Social Construction of the Ocean*, shows how the idea of maritime space has changed throughout history. There are many ways of thinking about the ocean: as a territorialised extension of land; as a domain where only limited control can be exercised; and as a great void [7], pp. 18–25]. In particular, the role of oceans in international affairs changed with the introduction and adoption of UNCLOS. Steinberg argues that states have desired to keep the oceans free of conflict. Baker [74], p. ii] supports this, finding that states have become behaviourally conditioned by an international norm *against* the 'forceful acquisition of maritime spaces and resources of other states'.

However, the way we see maritime space and the related boundary-making is not static. 'The social construction of ocean-space, like that of land-space, is a process by which axes of hierarchy, identity, cooperation, and community are contested, establishing bases for both social domination and social opposition' [7], p. 191]. Steinberg conclude – in 2001 – by arguing that ocean space today is under pressure, as the various ways of conceiving it are clashing. Greater territorialisation (for exploitative purposes) clashes with the idea of oceans as free for all, as well as the increasingly prevalent ideas of 'stewardship'.

From a purely functional perspective, maritime 'territory' has become more valuable for states. With the sea having emerged from being literally a great blue empty space to an institutionalised policy domain, the expansion of activities taking place at sea and the growing reliance on maritime activities have resulted not only in greater importance being placed on the outcome of maritime boundary disputes, but also in shifts in the political relevance and usage of the maritime domain. Today, oceans matter more than before for states in their power-relations vis-à-vis other states, as well as for political leaders seeking to sway domestic audiences.

Does that mean that maritime space has indeed come to take on the characteristics of traditional territory on land? It is essential to understand the difference between land and maritime space in the legal process of settling a maritime dispute. The concept of occupation – crucial in establishing title to land territory – does not hold the same relevance in the maritime domain. Occupation of the continental shelf itself could not separately lead to acquisition of the shelf, contrary to sovereignty over land territory [56], p. 16]. A marked separation between land and sea thus became apparent with UNCLOS, as rights to the latter derive from the former.

Consequently, what we are discussing with regard to states and maritime space are *sovereign rights* to resources in the water column or on the seabed, not exclusive rights to the entire maritime 'territory' in question, apart from their territorial sea. States cannot deny passage through their EEZs; they may only deny actors access to marine resources and apply environmental regulations in their maritime zones. For delimitation in the maritime domain, both states may have valid legal claims to a given area, in which case it becomes a matter of 'reasonable sacrifice such as would make possible a division of the area of overlap' [77], pp. 91–92], or even joint sharing – as with oil and gas resources or a joint fisheries zone.

Still, states' and state leaders' preoccupation with marine resources as well as the general strategic value of extended maritime space, together with technological developments that enable greater control over the maritime domain (coast guard vessels, satellites, drones, subsea installations, etc.) will not render current disputes over the same space any less relevant [83]. It could be reasonable to expect that as maritime

[9] Courtesy of Ásgeirsdóttir and Steinwand, obtained through email Correspondence.

[10] 'Continent' here refers to the world's seven main continuous expanses of land (Europe, Asia, Africa, North and South America, Australia, Antarctica).

space becomes increasingly relevant for states, related outstanding boundary disputes will be more difficult to settle.

Additionally, as maritime disputes become infused with intangible dimensions and issues concerning symbolism and engaged domestic audiences [84,85], the characteristics of dispute 'containment' at sea could be changing. Vasquez and Valeriano [86], p. 194] describe a conflict as spiralling when it becomes infused with symbolic qualities. It might be assumed that maritime disputes – whether concerned with fishing rights or boundaries – would be a simple matter of delineating rights and ownership, given the tangible character of such disputes. Huth [29], p. 26], for example, has argued that 'the political salience of the [maritime] dispute is generally limited, in contrast with the importance and attention often given to land-based disputes'.

However, when a maritime dispute reaches the political agenda, there are (domestic) actors who stand to benefit from infusing it with intangible dimensions like 'national pride' or 'being cheated out of what is ours' [87]. Contrary to popular belief [33,88], maritime disputes may assume some of the same characteristics as disputes on land. Although disputes over ocean space may initially be more concerned with tangible questions of resource delimitation and 'who owns what', they too can become infused with symbolism and intangible characteristics [5].

This concerns not only the economic interests of the actors involved, but also wider ideas of symbolism and identity. States (and their inhabitants) *do* care about their maritime disputes, even those of limited economic value, and increasingly so. Once a dispute has become politicised, any resolution of the dispute carries domestic political risk. Indeed, even undertaking negotiations may be risky, which explains why government officials sometimes refer to negotiations as 'discussions' [5]. As Kleinsteiber [84], p. 18] has noted, regarding disputes in the South and East China Seas:

> While these disputes have the potential to die down if they are 'shelved' in favour of pursuing more mutually beneficial goals, they can flare up at any time, especially when driven by nationalist sentiments. This has the potential to be the troubling future of maritime conflict, when conflicts in question may be impossible to separate from national identity.

In a study of a 2005-incident between the Norwegian Coast Guard and a Russian trawler, Fermann and Inderberg [89] show the effect of the Norwegian media as they were quick to broadcast the event live on national television, in turn helping to spur politicians into action. The role of maritime space in domestic politics has arguably changed over the course of decades – from a functional space that inspired limited engagement, to that of a national space requiring 'protection' and defence. In conjunction with this, the function of ocean space itself has expanded, with more and more resources being harvested at sea, ranging from fisheries to hydrocarbons.

One the one hand, we therefore have the idea of the ocean and states' maritime space as a legalised, institutionalised and governed domain, where states tend to abide by the rules set forth by UNCLOS because it is in their common interest to do so. On the other hand, greater domestic engagement is also spurred by recognition of the ocean as a policy issue in need of common efforts to combat everything from sea-level rise to plastic pollution. As put by a Norwegian official from the 2010-rounds of negotiations with Russia: 'A boundary itself is just one element. More important are those normative factors increasingly related, such as military interests, economy and larger security considerations' [90]. Greater utilisation of oceans, or national maritime zones, in domestic politics is a trend likely to increase as maritime space continues to rise on the agenda.

The maritime domain has certain characteristics that nevertheless keeps it separate from the terrestrial domain. There are geographical barriers that hinder prolonged interaction between the actors concerned. Maritime boundaries are also a construct of international law: and (coastal) states seem to depend on the UNCLOS regime, and also desire to apply the regime to their own advantage. Also, as fisheries continue to grow in importance in terms of livelihoods and a source of protein [91], certain characteristics of fisheries and maritime boundaries might become more pronounced, spurring cooperation. As states fulfil their UNCLOS obligation to manage transboundary fish stocks, the continued development of management regimes might render the exact location of a maritime boundary less important for this specific purpose. Further, the use of complex resource-sharing mechanisms, or the increasing focus on developing adequate management solutions concerned with transboundary fish stocks, as well as the establishment of protected areas in tandem with greater environmental awareness over the state of the oceans, might make the exact location of the maritime boundary itself (if not the maritime domain) less important.

Establishing agreements on such mechanisms is still necessary, but perhaps with a slightly different focus than when settling maritime boundaries in the traditional sense. Managing the disputed maritime area might also, in some instance be an easier, and even preferred, solution, when tensions are low and relations stable.[11] That being said, it does not seem likely that international ocean politics and related issues of resource management, sovereignty, and rights at sea are likely to become less relevant in years to come.

This article was solely written, developed and submitted by the author, Andreas Østhagen.

Statement

This academic article has not been published previously, or submitted to any other journal.

Appendix A. Supplementary data

Supplementary data to this article can be found online at https://doi.org/10.1016/j.marpol.2020.104118.

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