Lines at Sea:
Why do States resolve their Maritime Boundary Disputes?

by

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Abstract

This doctoral thesis was written in the period 2015–2019 at the University of British Columbia, Vancouver. It asks: Why are half the world’s maritime boundaries unresolved? How do states delineate such ownership and rights at sea? What does this tell us about international politics concerning the ocean?

Boundaries in the ocean are man-made constructs of importance to everything from oil and gas production, to fisheries and environmental protection. By examining a relatively straightforward and simple question – why do some states settle their maritime boundary disputes whereas others do not? – we can find the factors that underpin dispute settlement at sea.

This doctoral thesis draws on theories and assumptions within both international relations and international law. Employing a previously compiled dataset of 184 maritime boundaries, as well as in-depth analyses of 33 boundaries across four countries – Australia, Canada, Colombia, Norway – I identify the conditions and the causal factors that motivate and enable the resolution of maritime boundary disputes.

I have found it insufficient to study maritime boundary disputes only as individual cases: they must be seen as interdependent complexes. Further, we must conceive of the dependent variable beyond the binary option of settled/not settled. By depicting the outcome as multi-step fluid processes, we can better understand the nuances concerning what drives and what hinders settlement of maritime boundary disputes, at various points in that process. This, in turn, allows a re-think of how states approach maritime space more generally, at a time when oceans are receiving greater political attention.

Beyond relative power concerns and security considerations, states’ concern for legal precedence and the increasing engagement of domestic actors in settlement processes confirms the importance of taking a wider approach, acknowledging several layers of foreign policy-making. This thesis also makes an argument for an ongoing ‘territorialisation’ of ocean space and certain trends that might make maritime boundaries more important for society, and thus also more difficult for states to agree on.
Lay summary

Why do states engage in disputes over who owns what at sea? How do states delineate such ownership and rights? What does this tell us about international politics concerning the ocean? These are the core questions examined in this doctoral thesis, which sets out to show why states settle their maritime boundary disputes. Boundaries in the ocean are man-made constructs of importance to everything from oil and gas production, to fisheries and environmental protection. Understanding what leads states to agree in ongoing disputes, when more than half of all boundaries at sea remain unresolved today, can say something about the international relations of ocean politics. Drawing on political science and international law, this thesis shows why we need understand the interplay between security politics, legal considerations and the domestic audience in order to understand what motivates states to settle maritime disputes.
Preface

This dissertation is predominantly original, unpublished, independent work by the author, A. Østhagen. Small portions – less than 20 percent – of chapters 7 (Canada) and 9 (Norway) of which I am the author were published in a slightly different frame and format in the article: Byers, Michael, and Andreas Østhagen (2017), ‘Why Does Canada Have So Many Unresolved Maritime Boundary Disputes?’ Canadian Yearbook of International Law 54 (October): 1-62; and in the book chapter ‘Settling Maritime Boundaries: Why Some Countries Find It Easy, and Others Do Not’, by Michael Byers and Andreas Østhagen, pp. 162–68 in The Future of Ocean Governance and Capacity Development (2018) from The International Ocean Institute-Canada, Leiden, NLD: Brill Nijhoff. Permission has been obtained from the co-author to utilise the relevant sections. I have consciously utilised only sections written by me for these portions, while also re-writing these substantially. The co-author, Michael Byers, helped develop some of the ideas incorporated in these sections, but I am the author for the text itself.

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To my mother,
for endless encouragement
1. Introduction

1.1. Sea of troubles

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 1,750-kilometre (1,087-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 (Lavrov and Støre 2010, Moe, Fjærtoft, and Øverland 2011). 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 (Holsbø 2011).

However, the presence of oil and gas resources does not always prompt agreement. In the summer of 2019, Cyprus issued arrest warrants for the crew of a Turkish vessel found drilling off the west coast of the island, within what Cyprus deems its Exclusive Economic Zone (EEZ) (Andreassen 2019). The US State Department called the actions by Turkey ‘highly provocative’ and French President Macron ‘urged Turkey to stop ‘illegal activities’’ (Vey 2019). Turkish President Erdogan countered. ‘The legitimate rights of Turkey and the Turkish Republic of Northern Cyprus over the energy resources of the Eastern Mediterranean are not debatable’ (Guggenheim 2019).

Despite having very different origins,¹ the Cyprus maritime dispute in 2019 concerns the same issue that was resolved between Norway and Russia in 2010, namely delimitation of sovereign rights and space at sea. What drove Norway and Russia to agreement in 2010? Why was it not settled in 1977, when the dispute arose, or the late 1990s when negotiations were restarted? Indeed, why is it not, like the case of Cyprus-Turkey, still in dispute?

It is unlikely that Norway and Russia would have been able to reach an arrangement today, nine years later. As put by a former Norwegian foreign minister explaining one of the factors behind the agreement: ‘There must be trust between the negotiating partners’ (Støre 2010).² The

¹ The Cyprus dispute concerns the conflict over the division of Cyprus, and – in an extension – what maritime rights befall the Republic of Cyprus to the south, and the Turkish Republic of Northern Cyprus (not internationally recognised) to the north. The dispute between Norway and Russia concerned the location of a maritime boundary from the border of the two countries on the Eurasian mainland stretching northwards into the Barents Sea.
² Author’s translation.
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. Presently, more than half of all maritime boundaries are still disputed, across all continents. 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’ (Lavrov and Støre 2010). In that case, the resource potential, personal relations between the two foreign ministers, and Russian eagerness to bolster the Law of the Sea in the Arctic have all been ascribed a positive effect on reaching an agreement. But how do we separate and weigh these various causal arguments?

In the case of Cyprus, what might lead the different actors engaged – including Turkey and the European Union (EU) – to reach a compromise? Is a mutually beneficial arrangement even possible? Or are the parties best served by leaving the dispute unresolved for the foreseeable future? To answer these questions, we must examine disputes over maritime boundaries and how these link to international politics over ocean space.

The oceans are the foundation of human life: as a point of origin for the human species, as an essential source of food and oxygen, and as the constant regulator of global climate. At the same time, the oceans are inaccessible and capricious, a domain never permanently conquered or inhabited. The oceans have also been central in the development of civilisations. They have enabled the rapid movement of peoples, goods and ideas amongst countries and between continents. The difference between land and sea is clear; and the maritime domain has been kept separate from land in our attempts at explaining political and economic development.

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3 As Prescott and Schofield (2004, 218) highlight, ‘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 boundaries exist, with varying degrees of specificity. Some estimate that there are approximately 640 maritime boundary disputes, with around half resolved (Cannon 2016). Newman (2018) claims there are 512 maritime boundaries in total, again half of them resolved. See several extensive theses from the University of Tromsø in the period 2006–2013 concerned with the boundary agreement both before and after it was settled in 2010 (Blomqvist 2006; Holsbø 2011; Solstad 2012; Ims 2013), as well as articles by Moe, Fjærot, and Øverland (2011) and Orttung and Wenger (2016).

4 Apart from, perhaps, Plato’s lost civilisation of Atlantis. As Captain Nemo puts it: ‘The sea does not belong to despots. Upon its surface men can still exercise unjust laws, fight, tear one another to pieces, and be carried away with terrestrial horrors. But at thirty feet below its level, their reign ceases, their influence is quenched, and their power disappears. Ah! sir, live – live in the bosom of the waters! There only is independence! There I recognise no masters! There I am free!’ (Verne 1876, 56).

5 See Paine 2013; Steinberg 1999.

6 This thesis employs various terms referring to maritime space, such as ‘sea’, ‘ocean’, ‘maritime domain’, ‘maritime
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 (Benton 2010, 153–54; Steinberg 2001). From the 15th to the 19th centuries, the use of maritime space in exploration, dominance and industrialisation transformed the world (Paine 2013). Since the end of the Second World War, the increase in global trade has had a considerable effect on the use of oceans. Today, some 80% of all global trade and 70% of the value of this trade is transported by sea by a global fleet of some 58,000 ships (WTO 2017, Devabhaktuni and Kennedy 2012, x). The oceans have always been a base for resource extraction, although marine resources are becoming increasingly relevant in the global context. World per capita fish consumption, for example, is rising twice as fast (3.2%) as population growth (1.6%), from an average of 9.9 kg in the 1960s, to preliminary estimates for 2017 indicating growth beyond 20 kg (FAO 2016, 3–5, FAO 2018, 2).

The effects of climate change on the oceans have also become increasingly apparent in recent decades. According to the Intergovernmental Panel on Climate Change, sea levels might rise by at least one meter by the year 2100 (IPCC 2013, 25). That in turn may influence the delineation of maritime space: with changes in the baselines from which boundaries, 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 (Caron 2009, 12–13; Árnadóttir 2016). This could cause further tension, even conflict (Rayfuse 2009; Lusthaus 2010).

Ongoing changes in the oceans further affect states’ access and rights to marine resources which are expected to become increasingly scarce, like fisheries (Pauly and Zeller 2016; Economist 2017d). Most marine living resources are transnational in distribution, forcing states to interact regarding their management, or to pursue delimitation of rights and access (Prescott and...

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8 World trade has grown in real terms from 0.45 trillion constant USD in the early 1960s to 16 trillion in 2017 (Bernhofen, El-Sahli, and Kneller 2016, 36; WTO 2017, 5). This increase is due mainly to the introduction in the 1950s of ‘containerization’: the use of containers to move goods from port to port with cargo vessels.

9 Specific issues like plastic pollution in the oceans have received considerable focus from the media and politicians alike (Harrabin 2017). See also Lejeusne et al. 2010; D. Laffoley and Baxter 2016; Levin and Le Bris 2015.

10 With water temperature and currents changing, conflicts over who gets to fish what, and where, are likely to increase (Pomeroy et al. 2007; VanderZwaag 2010; Spijkers et al. 2018).
Schofield 2004, 216). Linked, there is a widespread reduction in the total biomass of marine resources, predominantly due to human exploitative activities (FAO 2014, IV–IV, 3–9; Russell 2010). According to the United Nation’s (UN) Food and Agriculture Organization (FAO), at least 32% of fish stocks are overexploited (Economist 2017; FAO 2016). In fact, these figures likely to be too low, given under-reporting and inaccurate assessments (L. J. Wood et al. 2008; Pauly and Zeller 2016).

Accordingly, we can observe rapid changes in the maritime domain over the last few decades. Changes deriving from resource pressures, international commodity prices, and new technology are external to the ocean. Rising sea levels and other changes in the oceans resulting from climate change, and changing resource distributions, are happening in the maritime domain, and are to varying degrees the consequences of human behaviour. Particularly ripe for conflict are maritime domains affected by both types of change – like those with great economic potential even as rapid changes are underway in the ocean itself.

In the South China Sea, for example, disputes involving China, Vietnam, the Philippines, Brunei, Taiwan and Malaysia have escalated in recent years, as power relations and other political dynamics change and as marine resources grow in importance and scarcity (Kaplan 2011; Simon 2012; Emmers 2010; Nasu and Rothwell 2014). Similarly, in the Arctic Ocean, the melting of the sea ice and the heightened attention paid to the region have led to a focus on previously neglected maritime disputes in the North (D. Rothwell 1996; Hoel 2009; Byers 2013; Østhagen 2018a).

States are reacting to these trends and developments by engaging in international efforts dealing with the maritime domain. For example, an implementing agreement under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction is currently under negotiation (Lalonde 2010; Prip 2017). Similarly, a new regulatory framework for seabed mining under the International Seabed Authority (ISA) is being developed. On the other hand, states are also encouraging and enabling fishing, oil and gas, and mining companies to engage in greater resource extraction, or are being pressed by these actors to allow commercial activity in areas previously dismissed as uninteresting or off limits.

All these trends are leading to a new ‘era’ for maritime issues and maritime space (Hannigan 2017). As this happens, more and more attention is paid to the question of ‘who owns what’ at sea. 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.

1.2. The Puzzle

With the rapid global economic growth across borders and between continents that has taken place since the end of the Cold War, maritime space has been ascending in importance. This is not an immediate change. Examination of older literature, from Greece to Iceland and China, reveals the prominence of the oceans over the past three millennia (Paine 2013). As put by Mahan and Beresford already in 1984:

Control of the sea, by maritime commerce and naval supremacy, means predominant influence in the world; because, however great the wealth product of the land, nothing facilitates the necessary exchanges as does the sea (1894, 559).

However, 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. When states attempted to legalise the maritime domain in the 20th century, with the Geneva Conventions on the Law of the Sea in 1958 and the UNCLOS regime in the 1970s and 1980s, the relationship between states and ocean space changed. 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 wrote already two decades ago: ‘we are now entering an era when […] human interactions with ocean-space are ever more intense and complex’ (1999, 366).

Today, maritime boundary disputes exist on all continents – and more than half of all

1 See Osgood 1976; Bull 1976; Brown 1981.
3 Keohane and Nye performed the same task in their Power and Interdependence (1977), highlighting all the various ways that human utilisation of the ocean had changed from the 1940s until the 1970s: ‘By 1970, however, technology had increased mankind’s ability to exploit the oceans’ space and resources, thus raising questions of scarcity and stimulating countries’ efforts to widen the area under their jurisdiction in order to exclude other countries from the resources’ (2012, 75).
maritime boundaries remain unsettled (Ásgeirsdóttir and Steinwand 2016, 10). As Prescott and Schofield (2004, 218) note, ‘out of 427 potential maritime boundaries, only about 168 (39%) have been formally agreed, and many of these only partially’. However, scant attention has been paid to the maritime domain as a distinctive site for the study of state behaviour, conflict and international relations (IR).\textsuperscript{14}

Some scholars have argued that various political patterns derive from maritime disputes, such that ‘the political salience of the dispute is generally limited, in contrast with the importance and attention often given to land-based disputes’ (Huth 1998, 26). Similarly, Hensel et al. (2008, 121, 138–40) hold that maritime territory lacks the ‘intangible dimension’ that land territory possesses, and is therefore less likely to reach the top of the political agenda and lead to conflict.

This implies that we are better served by studying territorial disputes on land, and conflict theories in IR have thus often been developed with a focus on disputed land. Despite the trends outlined, ‘the sea has been pushed to the margins of our consciousness’ (Wilson 2014). Maritime disputes have often been dismissed as peripheral in the conflict literature. Research on maritime disputes tends to be case-oriented and is rarely seen in relation to the more general literature on inter-state conflicts. Maritime space is either excluded from such studies or presented as apolitical, with the oceans frequently seen as primarily a resource base, not of existential importance to states (Hensel et al. 2008; Huth 1998; Wiegand 2011a). Maritime space is thus depoliticised, reduced to technical, economic and legal factors. If this is the case, we should assume states would not have a hard time agreeing on a boundary. So why are not more maritime boundaries settled?

The field of maritime disputes and their resolution has been left to the lawyers, who have traditionally taken the view that each boundary dispute (case) is too unique to allow generalisation. After UNCLOS was adopted in 1982 and states began claiming expansive maritime zones, many boundary disputes arose. In turn, scholars approached these disputes from a technical or legal point of view.\textsuperscript{15} As Johnston argues, boundary-making in the ocean is functionalist: it is done with an eye towards the functional usage of the maritime space itself (D. M. Johnston 1988; D. M. Johnston and Valencia 1991). However, many maritime boundaries have been left unresolved for decades (Prescott and Schofield 2004), and today still more than half of all boundaries remain in dispute.

\textsuperscript{14} However, there exist area-specific studies of, for example, the Arctic and the South China Sea, as well as literature concerned with defence, sea power and power-projection (see for example Booth 1985; Till 2004).

\textsuperscript{15} See for example Friedheim 1993; Brown 1981; Irwin 1980; Bailey 1997; Springer 1994; and McDorman 2002.
An unsettled maritime boundary can hinder economic exploitation of offshore resources. 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. If settling an outstanding maritime dispute is done to serve a function, and failure to agree on a boundary can have adverse effects, why, then, are not more boundaries settled? There would seem to be more factors involved than mere function when states consider resolving their maritime boundary disputes.

The notion of a ‘boundary’ in the ocean is in itself a somewhat illusive concept. As will be explored in chapter 2, determining a maritime boundary is inherently a technical process that is usually based on widely accepted legal principles, as merely a line on a map without defined physical markers (in contrast to a border on land). However, because maritime boundaries define the space in which states operate – as do companies and individuals – settling maritime disputes is also a highly political process with potentially far-reaching consequences. It is this politicisation of maritime space that prompts a study of how states approach disputes at sea.

Historic resource conflicts and contemporary boundary disputes all around the world indicate the range of economic and political interests involved in maritime delimitation. Today’s heightened focus on maritime issues is prompting a quest for new approaches to solve the old question of ‘who owns what’ at sea calling into question the assumption, prevalent in studies of international relations and conflict, that maritime space is more prone to dispute resolution and less to escalation and militarisation, due to its limited salience and intangible importance. As Kaplan argues, ‘[t]he sea, unlike land, creates clearly defined borders, giving it the potential to reduce conflict’ (2011, 79). But does it? How? And is the underlying basis for such assumptions stable or changing?

From a political science perspective, the literature on maritime boundary disputes has therefore remained underdeveloped. When politics come into play, the settlement of boundaries is arguably more than just a legal or technical matter. Simply describing maritime disputes as distinct from disputes on land, whose intangible or symbolic value (unlike their material value) tends to

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16 Note that ‘settled’ entails that two states have formally agreed on the exact delineation of a boundary at sea, whether ratified by both countries or as a minimum adhered to as a finalised boundary. When a dispute is ‘unsettled’, the whole area claimed by both states remains disputed. The process from an unsettled boundary dispute to a formally ratified agreement is further explored in chapter 4.1.

17 Note the term ‘salience’, as commonly used in studies of conflict over inter-state issues to describe how much political attention a specific issue attracts. See for example Hensel et al. 2008; Nemeth et al. 2014; Eiran 2017.
be lower, fails to capture the politics involved. Moreover, some assumptions underlying the current conceptualisation of the maritime domain in studies of international conflict – outlined in chapters 2 and 3 – may be changing, due not least to technological progress and the greater political focus on oceans. No studies have systematically explored the causes of agreement on maritime boundary disputes, across cases. And yet, maritime space has become increasingly important. This doctoral thesis examines developments in international politics that enable states to settle maritime boundary disputes, what prevents them from doing so, and why this matters in the first place.

1.3. The Question
As the maritime domain became legalised over the course of the past century, many disputes arose between states, across all continents. Exactly why some states managed to agree on a settlement of a maritime border at a given point, and with what motivation, is unclear. We need to understand the mechanisms involved in maritime disputes – across cases as well as geography. As the maritime domain is growing in political and economic significance worldwide, and a majority of maritime boundaries remain unsettled:

Why do states settle some maritime boundary disputes but not others? Specifically, what factors contribute to a situation where states manage to reach settlement? Why do some maritime boundary disputes escalate into conflict, whereas others are settled peacefully? Why do some disputes remain unaddressed but unproblematic? Can we identify some independent variables, and thus larger causal mechanisms, that determine the likelihood (or not) of a maritime boundary dispute being resolved?

With the answer(s) to these questions come additional questions. How can we explain the processes surrounding maritime dispute resolution, which – according to international law – rests on finding an ‘equitable outcome’? Why do many disputes persist and escalate, given the relatively technical and apolitical characteristics of the international law applicable to the maritime domain? How is the relationship between society and the oceans changing? What are the consequences of these changes for the global governance of maritime space? These questions speak to both international law and international relations. But as yet, none of these academic disciplines have devoted much attention to these questions concerning maritime territory and disputes.

There has, however, been a number of single case studies with various approaches. See chapter 3.3 and for example Okafor-Yarwood 2015; Smith 2012; Bissinger 2010; Oude Elferink 2007; Moe et al. 2011 and Baker & Byers 2012.
This thesis will demonstrate the necessity of studying maritime boundary disputes in their broader political and legal context. For example, a country with several disputes does not approach each dispute as separate from the remaining ones (and its maritime neighbours): rather, the disputes are viewed as being linked, albeit to varying degrees. This situation of individual disputes in their broader context makes it possible to tease out factors and mechanisms that are relevant across cases. By examining a relatively straightforward and simple question – what leads states to settle maritime boundary disputes? – I can uncover the factors that underpin dispute settlement at sea, and also attempt to re-formulate how states relate to the ocean in general, at a time when maritime space is receiving heightened political attention.

The focus in this thesis is thus not on the impact of maritime space on the state (or its security), but on the relations among states as they engage over rights to maritime space. The emphasis is on structural relations between states – as distinct social entities – as they engage in interactions over ocean space, as well as how states approach this space, legally and politically, and how this interaction has evolved since the idea of extended maritime zones was introduced in the 20th century.

In sum, this doctoral thesis seeks to explain why some states settle their maritime boundary disputes whereas others do not, and how this can help us to understand what changes currently underway in the world may facilitate or complicate the resolution of maritime boundary disputes. Studying how states deal with disputes over the delineation of maritime rights offers insights into the broader relationship between states and the sea – which is of relevance to understanding of international relations, state behaviour and spatial domains more generally. Further, this will help us better understand the nuances pertaining to conflict prevention and resource management at sea, at a time when these issues are ascending on the agenda around the globe.

1.4. Approach and framework

This thesis draws primarily on two fields of study: international relations – IR – (as a subfield of political science) and the law of the sea (as a subfield of international law). In an interdisciplinary approach grounded in political science, international law is utilised as one causal logic of relevance to IR. This rests on other scholars having ventured across this interdisciplinary divide: lawyers

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19 This argument builds on a study conducted by Byers and the author (2017).
applying IR theory, or political scientists making use of international law. This thesis falls somewhere in-between the system and the group levels in its approach, along the lines of the ‘level-of-analysis problem’ as first identified by Singer (1961). It includes the individual level, as maritime boundaries can be seen as determined by engaged foreign ministers or expert bureaucrats. However, for the sake of the larger question at hand, and the end-goal of not only identifying state behaviour as regards individual maritime boundaries but also ocean space at large, the emphasis is placed on the state as a unit of analysis.

Just as there are many ways of conceptualising international relations, various theoretical pathways offer different approaches to this topic. I adhere to a pragmatic approach to theories and theoretical frameworks. Admittedly, mixing too many approaches and explanatory models based on competing ontological and epistemological views can be detrimental to the applicability and leverage of the findings (Hollis and Smith 1996, 112). I maintain focus on uncovering causal mechanisms but recognise there are structures and relationships that cannot be directly observed (Wendt 1999, 92). Causal relationships are in focus, while including the role of unseen structures in social interactions and consequently allowing for more than just the core observable truths to figure in the causal logics (Furlong and March 2002, 20). The end-goal is thus to identify causal mechanism that do lend themselves to some form of generalisation. In other words, it is probably unlikely to reveal infallible natural laws that will determine when states escalate a dispute over maritime space. What we can do is to seek to identify conditions under which it is more or less probable that states will do so.

Theory in IR (and social studies at large) is seen as providing crucial guidance through studies of ‘social kinds’, providing a starting point for enquiry (Wendt 1999). The findings in this thesis aim not only to advance theory, but to have practical relevance as well (Hurd 1999, 396).


Does the international system shape states, or do states shape the system? Moreover, how to include the individual and the group (bureaucratic) levels in an international study (Hollis and Smith 1990), while still retaining a focus on the international?

As succinctly put by Lake (2011), the -isms that developed in the post-war era of IR studies (neo/realism, neo/liberalism, and later constructivism) pitted scholars against each other to such an extent that debate across paradigms became stifled. Paradigmatic theories accompanied by ever more complex and extreme acronyms rendered debate impossible. As a counter-reaction to these debates within the IR field – and the increasing amount of inter-paradigm specialisation – one approach has been to focus on output. Some scholars, like Katzenstein and Sil (2008; 2011) and Shapiro (2002), have argued for a problem-driven research orientation, and an ‘eclectic’ approach to theory. This means pragmatically utilising theoretical constructs across the range of paradigms. It is the problem at hand that determines the approach.

This thesis consciously adheres to a ‘critical realist’ ontology as well as epistemology (D. March, Ercan, and Furlong 2018).
Moreover, both a rational and ideational approach to theory will be utilised, rather ‘eclectically’ (Katzenstein and Sil 2008). Rationalist approaches place emphasis on the goal-seeking rational behaviour of states, driven and constrained by material factors as well as institutional structures.\textsuperscript{25} Systemic and/or domestic structures constrain state action and induce certain observable patterns of behaviour under specific conditions. Ideationalist approaches take into consideration ideational factors as well.\textsuperscript{26} These include the conceptualisation of identity, the role of historical images, and the mutually constitutive and socialising processes that occur amongst actors.\textsuperscript{27} The observable patterns and/or causal logics of these processes might be harder – and at times almost impossible – to observe, although that does not discount their relevance for the question(s) at hand.

Turning to explicit work dealing with borders and boundaries, studies have shown that throughout human history, territorial disputes have been the primary source of inter-state conflict (Holsti 1991; Zacher 2001). Concepts such as ‘salience’, ‘urgency’ and ‘value’ recur in studies of inter-state conflict over issues ranging from territory to resources.\textsuperscript{28} A maritime dispute with ‘high’ scores on all those accounts is more likely to be settled than one with ‘low’ scores.\textsuperscript{29} But what determines ‘salience’? Why do some states perceive a dispute as more ‘urgent’ than others? And what makes a maritime domain ‘valuable’? Further, what are the processes that link, for example, urgency or value to actual settlement? How do the legal factors come into play here? This demands that we determine the complexity of each dispute on its own, delving beyond initial (and superficial) explanations that hinge on factors general to all disputes.

By drawing on literature concerned with maritime disputes within both international law and international relations, this thesis identifies a gap in the literature on interstate relations and maritime conflict (to be explored and outlined in chapter 3). Settling a maritime dispute is inherently based on political notions within the framework of international law – a process that has, however, been ignored within political science.\textsuperscript{30}

\textsuperscript{26} As outlined by Checkel 2008, 52–53.
\textsuperscript{28} Linked to the Correlates of War project: \url{http://www.correlatesofwar.org/}
\textsuperscript{29} See Hensel et al. 2008 and Nemeth et al. 2014.
\textsuperscript{30} This thesis builds partly on an article in the \textit{Canadian Yearbook of International Law} that asked: ‘Why does Canada have so many unresolved maritime boundary disputes?’ By comparing and contrasting the approaches of Canada and Norway to dispute settlement, Michael Byers and the present author found that it is crucial to place the relevant disputes in the larger context of a country’s foreign policy interests, as well as examining domestic interest groups.
Settling a maritime dispute entails a willingness in both parties to compromise. However, the literature offers competing explanations of the context in which states choose to compromise in a dispute. On the one hand, it is argued that states devote attention and resources to settling disputes only when they become sufficiently politicised and reach the top of the political (and economic) agenda (Hensel et al. 2008). In other words, a dispute will be settled only when it is deemed sufficiently worthwhile.

On the other hand, it has also been argued that states (and their leaders) manage to settle a dispute only when the ‘salience’ of the dispute is low and it is kept out of the political limelight (Weil 1989; Prescott and Schofield 2004; Wiegand 2011a). In other words, the fact that the dispute does not figure on the political agenda makes settlement possible, as high salience makes compromise more difficult to achieve. An additional (and interlinked) explanation is that states will tend to resolve those disputes which are relatively uncomplicated (legally or otherwise) (Byers and Østhagen 2017). Which of these causal logics hold true?

The gaps in literature and the theoretical approaches to maritime boundary disputes are further outlined in chapters 3 and 4. Here suffice it to say that three groups of hypotheses further guide this study: (1) systemic relations, (2) legal characteristics, and (3) domestic factors.

If the key determinant of state behaviour is the systemic relations among states, we should expect power balance (Mearsheimer 2001), the strategic value of the maritime space involved (Fearon 1995), and patterns of enmity/amity to determine state behaviour and dispute outcomes (Buzan, Wæver, and Wilde 1998). Systemic relations thus entail three sub-dimensions: power differentials between states in a dispute; the strategic value of the maritime area; and regional patterns of amity/enmity.

If legal characteristics are the key determining factor, we should expect variation within a given state’s approach to various maritime disputes to be explained by differences in the legal status of the disputes. Legal characteristics entail two sub-dimensions: where the claim derives from in the first place (Byers and Østhagen 2017); and the country’s concern about legal precedence in relation to its remaining unsettled disputes/other interests (Oxman 1995). Returned to in chapter 4.3., it must be noted that although precedence does not hold the same role in

and the legal origins of the dispute (Byers and Østhagen 2017). Additionally, a workshop in May 2017 in Canada gathered experts concerned with maritime disputes from both legal and political disciplines. Through this workshop some of the arguments and hypotheses outlined in this thesis were tested and developed further.
international law as it does in various national legal systems, states are concerned about and sensitive to how their actions and agreements align vis-à-vis customary international law and their outstanding disputes, where relevant (Cohen 2015; De Brabandere 2016).

Thirdly, Putnam’s (1988) approach, seeing domestic and international bargaining as a two-level game, may prove fruitful here. If the key explanatory factor is the presence and potential of marine resources within the disputed area, interests within the state should emerge as the determining factor of state behaviour. Domestic opinion in tandem with states’ fear of losing out from future economic gains can help explain their reluctance to concede maritime space. Domestic characteristics involve three sub-dimensions: institutional ratification and implementation process within each state; broader domestic opinion and engagement in a dispute (Ásgeirsdóttir 2016); and the role and engagement of specific groups with economic interests in a given area/resources (Moravcsik 1997).

We thus have several differing – and at times competing – explanatory models that describe what factors are most prominent when pursuing dispute settlement (systemic, legal, and/or domestic). These broad hypotheses involve a range of causal mechanisms, which cannot all be equally valid, although they are not mutually exclusive. The various hypotheses and sub-components that form the basis of this study are further explored in chapter 4.

This is a thesis within the realms of foreign policy and IR, yet with deep appreciation of the role and importance of international law as well as domestic/national politics in affecting outcomes in the international arena. Further, this study is concerned with bilateral negotiations and outcomes, not disputes that are brought before international courts and tribunals. However, the process leading up to the decision to bring the dispute to an international tribunal is, in itself, relevant for this study. And finally, the temporal scope is ‘modern times’, i.e. from the first major codification of the law of the sea in 1958, up until the time of this writing (2019).

1.5. Methodology

This thesis employs both inductive and deductive approaches. According to Popper and a majority of social scientists, the deductive approach is preferable: ‘Let scientists get their ideas in the bath rather than in the laboratory, from imagination rather than statistics’ (Hollis and Smith 1990, 53). However, it is a stylised illusion to hold that pure deduction exists.31 We are all influenced by our

experiences and knowledge, and the background we bring into any study.

Returning to the question – why do states settle some maritime boundary disputes but not others? – it can be reasonable to expect causal heterogeneity across the empirical data, given the variation in context and case-types. A crucial question is whether each case is too unique and separate from other cases. As VanderZwaag (2010, 260) argues, ‘the specific circumstances of each boundary dispute make regional comparison of limited use…’. In that case, then generalising findings from one group of disputes, or one case, to the larger population of settlements and disputes might prove challenging, if not impossible.

This study seeks to shed light on certain relevant dimensions of maritime dispute management that have been largely ignored. It is unreasonable to expect that each case will be equally defined by the causal mechanisms put forth here: there will be outliers and/or cases that do not fit within the theoretical scope. Only some dimensions are likely to have some degree of relevance across cases. However, the aim is to prove the relevance of these specific dimensions, which in turn can add another piece to the jigsaw of our theoretical understanding of maritime disputes in general.

In order to strike a balance between a large number of possible cases and the desire to examine a few cases in depth, this study employs a two-step structure, involving both quantitative and qualitative methods (Fearon and Laitin 2008). Although such a mixed-method approach is becoming increasingly popular, it needs to be placed within a structured framework. Lieberman’s (2005) work on what he terms ‘nested analysis’ can offer a starting point. First, a preliminary large-N analysis is performed with the help of quantitative methods (regression analysis, descriptive graphs, etc.). Here, this thesis makes use of descriptive graphs and overviews, drawing on a dataset produced by Ásgeirsdóttir and Steinwand (2015, 2016) which contains 417 bilateral maritime boundaries, out of which 189 have been settled, ranging in time from 1960 to 2008. Although not directly focused on the questions put forth here, this dataset provides a starting point for a limited analysis of factors relevant to settlement.

However, the preliminary analysis of this work cannot provide conclusive answers the questions in this thesis, a point to which we return in chapter 5. As put by Goertz:

For multimethod researchers, showing a significant causal effect in a cross-case analysis is not sufficient; one needs to provide a causal mechanism and evidence for it.
Demonstrating a causal effect is only half the job; the second half involves specifying the causal mechanism and empirically examining it, usually through case studies. (2017, 2)

The second step therefore involves selecting a small group of cases. Ideally, these are cases that can shed light on the hypotheses that have been mentioned already, as further outlined in chapter 4. As Lieberman (2005) terms it, the cases may be either ‘off-the-line’ or ‘on-the-line’. In a study of maritime disputes, consideration must be given to the focus on single disputes (between two countries), or on bundles of disputes pertaining to a specific country.

Arguably, studying how countries approach maritime disputes can offer additional insights. This goes one step beyond the approach taken by Ásgeirsdóttir and Steinwand (2016) of coding each dispute individually and correlating it with several relevant variables. Instead, building on the article ‘Why does Canada have so many unresolved maritime boundary disputes?’ (Byers and Østthagen 2017), I ask a related question: does the approach of one country to its maritime boundaries differ from that of other countries? Further, when there are several maritime boundaries with different neighbouring countries, does the approach differ or remain stable across its various disputes?

It is also crucial to examine countries with variation on several factors (independent variables) as well as variation on whether the outcome (settlement) occurred or not. Although this is a study of a binary outcome (settled/not settled), as shown in chapter 4.1. and Figure II, by seeing this as a process that has at least four distinct steps, I open up for a better understanding of what actually determines the willingness of state to embark on negotiations in the first place, and what hampers or drives negotiations forward.

Key factors for selection of countries are those with a high enough yet manageable number of boundaries (more than 5, less than 15). Ideally, the countries are not situated in the same region (security environment) and are of relatively similar size. Based on these criteria, this study is based on four countries, out of a possible range of 39: Australia, Canada, Colombia and Norway. All four countries have large maritime domains, bordering multiple other neighbours. They vary in their domestic set-ups, their reliance on maritime industries, as well as the status of their maritime boundary disputes. Further, they are situated in different regions, with a different set of (multiple) neighbouring states.
Among the candidate countries for study (those with more than 5 and fewer than 15 maritime boundaries), the average rate of settlement in 2008 was 47%. By contrast, amongst the four countries selected in this study, the settlement rate as of 2019 was 66% fully resolved, 9% not ratified, 6% only partially resolved, and 18% not settled at all. Thus, settled boundary disputes are overrepresented in the case selection. However, studying countries (and cases) where the outcome did not occur at all (no process to be studied), makes it more difficult to say something about which factors and processes actually led to settlement. We could of course say something limited about which factors were not present in that specific case – but if the aim is to show how the various factors operate at different stages in the process, the usefulness of this approach becomes inadequate:

If the main goal of a case study is to investigate causal mechanisms then one should look for a good example of that causal mechanism in action... The logic is quite intuitive: if you want to see the causal mechanism in action you should choose cases where it is present, that is, X = 1, and where it generates the outcome Y = 1. (Goertz 2016, 14)

Thus, in this thesis, there is an explicit bias towards countries with a high number of settled disputes, in order to provide a range of relevant factors in each individual dispute, and room for comparison across context. In turn this enables in-depth examination of the factors that explain the settlement of disputes.

Having selected these four countries and the related 33 maritime boundaries (cases), one specific qualitative method – process tracing – is applied. Since the causal mechanisms explored are relatively complex with factors that are both difficult and futile to quantify in a direct relationship, the core component of the study is this in-depth process tracing within several specific maritime boundary disputes in these four countries only. Briefly put, process tracing is a method within the social sciences where the researcher performs a study of a specific process, attempting to uncover evidence (observable implications) of a causal mechanism (or causal logic) (Bennett and Checkel 2015). In process tracing, the logic of inference does not derive from observing variation, and thus correlation, across cases (as is the case with quantitative approaches) (G. King, 32

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32 See Goertz’ article (2016) and monograph (2017) on the rationale behind selecting cases where the outcome did occur in order to study underlying causal mechanisms.
Keohane, and Verba 1994). Instead, we are interested in within-case analysis.

For each theory utilised, I spell out the causal logic that connects the independent and the dependent variable (outcome); likewise, what we would expect to observe if the theory is correct (Bennett 2015). These observable implications structure the search for evidence within the given case:

[Process tracing] attempts to trace the links between possible causes and observed outcomes. In process tracing, the researcher examines histories, archival documents, interview transcripts, and other sources to see whether the causal process a theory hypothesizes or implies in a case is in fact evident in the sequence and values of the intervening variables in that case. (George and Bennett 2005, 6)

The various ways of conceiving why and how states achieve dispute settlement, as outlined in chapter 4, provides us with several hypotheses. By leaning on the theoretical frameworks developed and deriving observable implications from these hypotheses, I can search for causal process observations within each case that reduce or strengthen the belief in each hypothesis. This allows us to confirm and add to findings across the cases, ultimately coming up with a sound answer to the question of why states settle maritime boundary disputes.

Data come from multiple sources, including public records, secondary literature and interviews with key actors. This thesis is not based primarily on interview material, but draws on a range of background interviews conducted over an extended period (2016–2019) to supplement and confirm findings acquired through public documents, other academic work and news outlets.33 This thesis also draws on international law, with treaties, customary international law, and the case law of international courts and tribunals forming the bases on which parts of the examination are undertaken.

Taking the results from the process tracing, I turn to a comparative study of the various findings. This comparative case-study analysis is important. Intensive qualitative studies invite or even force researchers to ‘examine cases as wholes, not as collections of variables’ (Ragin 1987, 52), sensitive to how a set of factors interact to co-produce a certain outcome. This interest in causal configurations also involves paying attention to context (Stokke 2007), which in turn can

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33 See full interview list at the end.
help us to better understand an important policy decision by situating it in a larger and more complex political setting – such as the broader political relationships among the states involved in negotiations (Stokke and Underdal 2015).

Finally, this comparative approach based on both the quantitative and qualitative analysis (chapters 4 and 6 to 9) makes it possible not only to answer the specific question ‘under what conditions do states settle maritime boundary disputes?’, but also allows the final part of this thesis to tackle the broader topic of international relations and maritime space. Answering questions about maritime space more generally, and exploring its changing dynamics, requires some theoretical abstraction and will be based on both international relations and international law. Figure I summarises the methodological steps.

One final set of caveats: First, this is a study of the process leading up to an agreement on a maritime boundary, and the related reasons why an agreement might not have been achieved. It is not a study of the actual maritime boundary line itself, or an attempt at explaining why states choose to delineate the line as they do. Although considerations of outcomes do figure in the case studies, they are not the primary focus. Further, the cases concern specific boundaries (settled/not settled), but these cannot be disentangled from the country in which they are located. This interplay between case and national context is crucial, and guides the study. Finally, it should be noted that the primary level of analysis is the state, and state-to-state interactions concerning maritime space.
That does not, however, discount the role of individuals – such a prime minister, president or chief negotiator.

1.6. Next steps
The remainder of this thesis follows a straightforward structure. In chapter 2, I delve deeper into the foundations of states, territory, borders and boundaries. This provides the empirical and analytical structure underlying the thesis, which must be in place before the general review of literature dealing with the specific question in focus. This might not amount to a traditional doctoral thesis structure, but it is essential to grasp the concept of maritime boundaries before we can review scholarly work that has dealt specifically with their settlement.

In chapter 3 there follows an overview of literature that has attempted to deal with the same question as this thesis. This includes political scientists and legal scholars, as well as interdisciplinary work in these fields and from other fields such as geography and economics. While I find that these works insufficient to answer the questions put forth here, they provide a starting point for analysis and a wide range of relevant factors worth further examination.

Chapter 4 draws on the findings in chapters 2 and 3, as well as more general scholarship within international relations and international law, to specify various approaches to the questions at hand. This in turn makes it possible to formulate clear hypotheses with slightly competing causal mechanisms, to guide the ensuing case chapters.

With chapter 5 comes the empirical analysis. This begin with a limited quantitative overview based on a previously assembled dataset. From this dataset, I derive tables and graphs that make clear both the magnitude of the issue (unsettled maritime boundaries) and the justification for case selection. Moreover, a critique of this quantitative approach showcases the complexity of the causal mechanisms explored, in turn providing the reasoning for the second phase of the empirical work: the specific country and case studies.

The case studies of maritime boundary dispute (chapters 6 to 9) are divided according to country: Australia (chapter 6), Canada (chapter 7) Colombia (chapter 8) and Norway (chapter 9). Each chapter offers a description of the country, how it came to acquire/develop the territory it currently holds, and the specific cases of maritime boundaries (settled/outstanding), as well as how and why it came to settle its boundaries – where this is applicable.

Thereafter, chapter 10 gives an empirical overview of the data reviewed in the four
previous chapters, which is then utilised in chapter 11 where I examine the hypotheses presented in chapter 5. Chapter 12 aims to answer the main question of this thesis – *why states settle maritime boundary disputes* while also explaining the ramifications and shortcomings of this study, before Chapter 13 addresses the larger topic of international relations and maritime space.

Finally, Chapter 14 provides a brief conclusion summarising the main findings and topics discussed in this thesis.
2. States, Borders and Maritime Boundaries

This section examines how the concept of territorial ownership and boundaries between communities came about, and has been implemented, over the last centuries. Here I will also examine how the idea of sovereignty entered the maritime domain, in turn leading to the creation of a legal regime for the oceans. The notion of maritime rights came as a consequence of this ‘legalisation’ of maritime space, in turn creating the need to delineate maritime zones between states. It is this legal regime that defines the parameters for states when they engage in dispute resolution over maritime boundaries.

2.1. 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 and its relations to others (Krasner 1999; Zacher 2001; Buchanan and Moore 2003). As states formed, developed, and expanded, the need to define and uphold territorial boundaries became increasingly relevant (Tilly 1990, 131). As Kratochwil (1986, 32) argues: ‘boundaries are points of contact as well as of separation between a social system and an environment’. In the 14th and 15th centuries, European states had begun consolidating around permanent military establishments, and the external boundaries of the states became more significant (Tilly 1990, 46). As these states engaged in war, the demand for state-making prompted resource extraction from a given territory. In turn, the focus on taxes created administrative structures that required clearly delineated boundaries. As Tilly (1990, 131) argues: ‘Armed men form states … by defining boundaries, and by exercising jurisdiction within those boundaries.’

A distinction in early boundary setting involves the difference between *frontiers* and *boundaries*. As Kratochwil (1986, 37) argues, frontiers were buffers, protectorates, or spheres of influence that were seldom clearly defined. Tilly (1990, 70) describes them as resulting from the desire by state leaders to create buffer zones to protect the inner area of their territory. According

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34 Spruyt (1994) takes Tilly’s argument and qualifies it. He holds it was not war, but the underlying capacities of states that determined their success and path towards the ‘national state’. This capacity was determined by trade, which had come as an ‘exogenous shock’ between 1000 and 1400, in turn leading to various forms of class alliances that determined the abilities of states in an increasingly competitive environment (1400-1600). Both Tilly and Spruyt argue that by the Peace of Westphalia (1648), the sovereign state system had taken root and the ‘national state’ model had become the norm.
to Ruggie (1993, 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 (1986, 33) in turn holds that the 1659 Treaty of the Pyrenees between France and Spain established the first modern state boundary.\textsuperscript{35}

When the emphasis was placed on delimitation of all territory (terrestrial) in the 19\textsuperscript{th} and 20\textsuperscript{th} centuries, these ‘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.\textsuperscript{36} Even today, related border disputes exist. Among the reasons for this are the ‘costs of demarcation in an uncharted and hostile environment’ (Kratochwil 1986, 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 (Elden 2013; Agnew 1994; Sack 1986). ‘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’ (Storey 2012, 45). Borders (on land) play an integral part in explaining African state formation, or lack thereof,\textsuperscript{37} as well as the various state

\textsuperscript{35} Expanding beyond Europe, a few scholars have shown how the conceptions of European state establishment according to Tilly do not fully explain state formations and their relations to territory elsewhere. \textsuperscript{35} Centeno (1997, 1598–99) examines 11 Latin American countries, concluding that the impact of colonialism led to ‘premature’ statehoods, as countries acquired independence in the late 19\textsuperscript{th} century. Many of the states were not internally consolidated to stimulate both administrative capabilities and social cohesion, as war had yet to ‘make them’. In Africa, colonization took place at a later stage in history, with the creation of a range of (artificial) boundaries at the 1884/85 Conference of Berlin. These boundaries were kept in place as a range of African countries achieved independence from the late 1950s onwards, allowing state leaders to neglect building internal cohesion and consolidate the given territory (Herbst 2000). As Jackson and Rosberg argue (1982), African states therefore had juridical statehood (external recognition) without the attributes of empirical statehood (Weber’s monopoly on legitimate violence).

\textsuperscript{36} For a lengthy examination of the concept of territoriality and fixed territory, see for example Elden 2013; Agnew 1994; Storey 2001. 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’ (Storey 2012, 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 ‘socialised territoriality’ is relevant also for discussions of the maritime domain, as it enables the role of territory to be conceived more broadly. Sack (1986, 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’ (Storey 2012, 20; see also Paasi and Prokkola 2008).

\textsuperscript{37} As the European colonial states had largely destroyed indigenous political structures, setting up only rudimentary ‘Western’ state-structures and then left behind a limited administrative infrastructure, newly independent African states were not able to effectively control their territory and the attributes generally associated with statehood (Jackson 1987, 526–28).\textsuperscript{37} They therefore obtained ‘judicial statehood’, which implies negative sovereignty, instead of empirical statehood (positive sovereignty) previously associated with states and their territory. Leaders of the newly
Structures developed in Asia. Disputes emerged – and still emerge – as states seek to expand their territory and define their external boundaries. The link between territory, sovereignty and conflict has been extensively proven (Holsti 1991; Goertz and Diehl 1992; Vasquez 1993; Forsberg 1996; Huth 1998; Wiegand 2011a). Vasquez, for example, shows how at least 79% of all wars between 1648 and 1990 were fought over territory-related issues (Vasquez 1995; Carter 2010). 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 (Huth 1998, 20–23).

Krasner (1999) further divides the concept of sovereignty into four ideal types: legal, Westphalian, domestic and independence sovereignty. Legal sovereignty involves the practices associated with mutual recognition between states. Most rulers want recognition because it provides them with material as well as normative resources. Westphalian sovereignty refers to political organisation based on the exclusion of external actors from a given territory. Domestic sovereignty is the organisation of political authority within the state. Finally, interdependence sovereignty concerns the ability of the authorities to regulate cross-border flows (Krasner 1999, 4–7). These various types are not mutually exclusive, as some actors may hold several simultaneously. In turn, Krasner argues that the international embrace of sovereignty is characterised by a pervasive hypocrisy; the international community claims to be upholding sovereign rights, boundaries, and responsibilities – but it often violates them in the name of upholding these very conditions.

A dispute over territory and/or sovereignty can be resolved when (1) the occupation of the territory is formally recognized in a treaty or an agreement; (2) an agreement is reached between independent countries in the 1950s and 60s chose to (or had to) keep their somewhat artificial boundaries, as they lacked the means to consolidate state territory properly. The point here is that the timing of independence from European colonizers, the access to foreign capital, and the interference by European/Western powers are all important dimensions related to state formation. These factors had not been present in the European experience half a century earlier.

38 In Asia, studies by Hui (2014) have contrasted the European experience of inter-state war with China’s intra-state war, and how this led to a different outcome in terms of state capacity. Scott (2009) argues that population density was a strong determinant for the trajectory in South East Asia, as it was not territory itself, but the size of the population that was deemed important for state formation.
states over the disputed territory; or (3) the challenger(s) agree(s) to abide by a ruling by the International Court of Justice (ICJ) or another international court or arbitration tribunal. Scholars thus agree that boundaries and the integrity of territory constitute a pillar of the modern state-system.

As Tilly (1990, 203) argues in his account of European state formation: ‘With a few significant exceptions, military conquest across borders has ended, states have ceased fighting each other over disputed territory, and border forces have shifted’. Tracing the development of the norm of ‘territorial integrity’ in recent centuries, Zacher (2001) shows how the norm has undergone three phases: emergence, acceptance, institutionalisation. 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.

However, territorial disputes still occur on the international arena. According to Wiegand (2011a), territorial disputes concern 41% of all sovereign states today. Hensel (1999, 137) holds that interstate rivalry is still twice as likely to escalate into war when territory is involved. In a study of 89 ongoing interstate disputes across the world in 2015, 51 were found to involve territory (Oosterveld, De Spiegeleire, and Sweijs 2015, 6). Territory and where to draw related borders have not lost their importance.

To sum up: Territory has been the primary source of conflict between states over the last millennium, as states grew into existence, developed and matured. As noted by Weber (1946), 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 (Elden 2013).

2.2. Maritime space and maritime boundaries

From the 15th century onwards, European powers pursued colonisation in waters outside Europe. This sparked debate 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 the best-known proponent of the idea of a natural law: that the right to peaceful commerce and passage at sea is natural to the ‘need of all men to ensure their survival’ (Maier 2016, 33). Grotius had originally argued for the freedom

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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 opposite shorelines (Theutenberg 1987, 481). In the 15th century, a version of this stance was advanced by Britain, in response to Dutch attempts at dominion of nearby seas. As Maier (2016, 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.

Lawyers 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.

From 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 (Anand 1983, 138). The League of Nations further attempted to codify international law concerning the oceans in The Hague in 1930, but never managed to reach agreement (Friedheim 1993). In 1945, US President Truman declared – inconsistent with contemporary international law – that the natural resources of the continental shelf were under the exclusive jurisdiction of the coastal state (United States 1945). 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

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40 One nautical mile (n.m.) is 1852 metre / 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.
not depend on occupation (Byers 1999b, 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 (Convention on the Continental Shelf 1958).

After the Second World War, some states started expanding their territorial seas from three to twelve n.m., as negotiations of an international regime for the oceans were underway. 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 rights extending further (Anand 1983). 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 (Harrison 2011).

Already in 1952, Peru, Chile and Ecuador had made claims out to 200 n.m., seeking to reap benefits of an expansion in fisheries (Chile 1952). When it was agreed, UNCLOS ended up providing the legal rationale for states to expand their maritime zones from 12 n.m. (territorial sea), to 200 n.m. (what became termed the Exclusive Economic Zone – EEZ). The international community followed suit, 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 (Brown 1981; Friedheim 1993).

Additionally, under UNCLOS it was concluded that states can extend their continental shelves by proving the prolongation from its land territory and submitting this information on the limits to the Commission on the Limits of the Continental Shelf (CLCS) (UN General Assembly 1982, article 76 (8)). The limit of such claims is up to 350 n.m. from a country’s baseline (the line drawn along the coast from which the seaward limits are measured), or not exceeding 100 n.m. beyond the point where the seabed is at 2,500-metre depth (2,500-metre isobath) (Busch 2018, 321).

With 168 state ratifications as of 2019, UNCLOS has become part of the larger legal-political reality in international politics (Finnemore and Toope 2001). Most of its provisions have entered customary international law, as one of the sources of international law, and are thus applicable to all states whether they have ratified UNCLOS (Roach 2014).
Illustration I: The maritime zones of a state under UNCLOS

![Illustration of maritime zones](Image)

Source: Wikimedia. An overview of the different maritime zones awarded to states by UNCLOS. Note that the extended continental shelf is not included here.

**2.3. Resolving maritime boundary disputes**

In the maritime domain, as opposed to land, conflict over boundaries and sovereignty have generally been resolved peacefully through negotiations and adjudication/arbitration. A key component here has been the development of an international legal regime for the oceans, as described. Entitlement to maritime space through agreements – in contrast to the control of transit and resource exploitation in maritime space through navies – is, however, a fairly modern phenomenon, developed in tandem with states’ growing technological ability to monitor and enforce sovereign rights in an expanded maritime domain.

Different states developed different interpretations of how to draw maritime boundary lines (Forbes 1995, 13). 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 of the coastal front and the weight given to islands and submarine features; and which portion of the coast is relevant to delimitation (Bailey 1997; Bateman 2007; Nemeth et al. 2014).

When states expanded their maritime zones to 200 n.m. in the post-war period (some as late as the 1980s and 1990s), existing maritime boundary disputes were enlarged as the disputed
areas grew in size. New disputes also arose where state boundaries overlapped or intertwined. 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 (Illustration II) display how the EEZs of countries bundled together are contiguous and thus also need a clear boundary.

**Illustration II: The Exclusive Economic Zones in Oceania/the South Pacific**

[Image of map showing EEZs in the South Pacific]

Source: [Wikimedia](https://commons.wikimedia.org/wiki/File:EEZs_in_oceania.png). 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.

As with traditional disputes on land, states may agree on a mutual solution after bilateral negotiations; they can make use of the ICJ or another international court like ITLOS (International Tribunal for the Law of the Sea) or the Permanent Court of Arbitration (PCA); or they can use third-party arbitration. Principles codified in the 1958 Geneva Convention on the Continental Shelf and later UNCLOS have thus been utilised by international courts to make rulings concerning maritime boundaries.

As maritime zones and states interests in these rose on state agendas in the middle of the 20th century, and these needed delimitation (see Illustration II), the concept of ‘equidistance’ came
to fore. This guiding principle encountered another principle, namely that of *equity*. The balance between these two principles has shifted over the last half-century, crucial in understanding *how* states settle their maritime boundary disputes. Equidistance entails a boundary that corresponds with the median line at an equal distance (equidistance) at every point from each state’s shoreline. 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 (Franck 1995, 62). As St-Louis (2014, 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 (Byers 1999b). The attention given to ‘relevant’ or ‘special’ circumstances led to debate in the international community. In addition to coastal length and other geographical variables, security interests and the location of natural resources have at times been accorded weight in international court rulings. This has been termed ‘equity’, as a principle distinct from ‘equidistance’. In general, equity provides one of the foundations for national law, as well as one of ‘the general principles of law recognized by civilized nations’ (United Nations 1946, art. 38 ICJ statute). Equity is often coupled with, or explained as, ‘fairness’ (Franck and Sughrue 1993, 564). As Haywood Jefferson Powell (1993, 8) states it, ‘law … is suffused with traditionally equitable invocations of fairness and conscientious behavior’.

Equity acquired importance in the maritime domain, and was utilised by the ICJ in delimiting disputes on the basis of the Geneva Convention in 1958 (Cottier 2015). 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 (Oude Elferink 2013). 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’ (ICJ 1969, 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 (Kaye 2001, 15). Although the ICJ specified that there was ‘no legal limit’ to the number of factors that were relevant to delimitation, these were initially defined as geology,
desirability of maintaining unity of natural resource deposits, and proportionality (ICJ 1969, 51–52). As Franck (1995, 63) holds: ‘The Court, through the parties, had completed an exercise in corrective equity, introducing a notion of distributive justice into the allocation without seeming to depart from the conventional rule’.

States were thus not deemed to be obliged to apply the equidistance principle: equity was seen as extending beyond mere equidistance (Oude Elferink 2013; St-Louis 2014). This entails that not equidistance, but fairness on its own was introduced as a guiding principle for maritime dispute resolution.

In the 1977 Anglo-French Continental Shelf case, for example, the ICJ included factors well beyond equidistance. As Thomas Franck (1995, 64) argues in *Fairness in International Law*:

In interpreting ‘special circumstances’ to include such factors as the islands’ populousness and political and economic importance as well as defense considerations, the arbitrators were able to claim that they were applying normative principles of justice. To protect against allegations of unbridled subjectivity, they brandished their overall reliance on the equidistance rule, from which departure was made only to take into account special circumstances.

Another relevant case arose in 1980, when Denmark extended its 200-mile fisheries zone northwards along the east coast of Greenland, creating an overlap with the Norwegian zone on the northwest side of the island of Jan Mayen (Churchill 2001). 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 (Churchill 1994). 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; and that the line should be shifted somewhat eastwards to allow Denmark equitable access to fish stocks (Hoel 2014, 55; Churchill 1994). However, the Court also rejected other arguments concerning population and socio-economic conditions as being relevant for the verdict. Further, even if the Court appeared to view ice in the disputed area as a potential relevant/special circumstance, they rejected that as well in this particular case (Churchill 1994, 8). Robert Kolb (2003, 108) thus argues that the ICJ’s rulings in the 1960s and 1970s changed the jurisprudence from method (equidistance) to objective (equity). Equity as a principle was explicitly
incorporated in 1982 UNCLOS article 59 (*basis for resolution of conflict*), article 74 (*delimitation of the exclusive economic zone*), and article 83 (*delimitation of the continental shelf*).

As these cases and developments show, how states divide maritime space amongst themselves, and when this occurs, have become questions where maritime law rests on the principles of *both* equity and equidistance. Thus, the process of settling a maritime boundary was not as straightforward as some had believed with the utilisation of equidistance, when the concept of extended maritime zones first arose in the 1960s and 1970s. As put by Finnemore and Toope (2001, 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.

Moreover, the ICJ’s use of the principle has not remained consistent. The dissenting opinion of Judge Gros in the United States of America (USA)–Canada Gulf of Maine case asserted: ‘… equity left, without any objective elements of control, to the wisdom of the judge reminds us that equity was once measured by ‘the Chancellor’s foot’**41** (Harris and Sivakumaran 2015, section 2-045). Similarly, Brownlie (1980, 288) argued: ‘… as a general reservoir of ideas and solutions for sophisticated problems it offers little but disappointment’.

In the case of Tunisia v. Libya in 1982, the ICJ explicitly rejected equity-based claims founded on relative poverty and redistribution (Harris and Sivakumaran 2015, 7–210). Equity as a guiding principle has found its way into maritime delimitation, albeit without a clear operating definition, and has for that reason been criticised for being a ‘unduly subjective and uncertain element’ (Harris and Sivakumaran 2015, section 2-045).

Kaye (2001, 16) shows 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. ‘The result was an acceptable (if fragile) compromise, but one that did little to clarify the method by which delimitation was to take place’ (Kaye 2001, 16). The

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**41** ‘The "Chancellor's foot" has … become proverbial shorthand for the argument that equity is an unjustified and unfortunate interference in the regular course of the rule of law’ (Powell 1993, 7).
UNCLOS regime consequently does not specify how states are to settle maritime boundary disputes – it merely calls for ‘an equitable solution’ (UN General Assembly 1982, article 74).42

Presently, the pendulum might be said to have swung back towards the equidistance principle, although it is not as straightforward. In rulings in recent decades, the ICJ has favoured a stricter interpretation of which relevant circumstances to include, placing emphasis on geographical factors (Oude Elferink, Henriksen, and Busch 2018a).

Today, the ICJ employs a three-stage approach in delineating maritime boundaries, as outlined in the Black Sea Case between Romania and Ukraine in 2009. 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’. Third, the Court evaluates whether the provisional line would entail any ‘marked disproportion’, taking the coastal lengths of the states into consideration (ICJ 2009, paras 116–122).

Equity in terms of maritime boundary disputes has become operationalised as a principle within the second and third steps, subject to the judges’ discretion, where more than just geographical facts are taken into consideration. What constitutes equity has become a highly complex topic, subject to the states and those acting on their behalf, as well as international judges. As St-Louis (2014, 50) states: ‘[e]quity is defined, not in the context of justice, but in the context of what is just’. The widening of the concept to include societal and political factors – feared by some, applauded by others – has, however, been slightly abandoned to ensure greater consistency in maritime law (Harrison 2011).

Nevertheless, ‘while equidistance seemingly has moved centre-stage, relevant circumstances continue to exercise an influence in the background’ (Oude Elferink, Henriksen, and Busch 2018a, 381). That being said, law is not in stasis, and new challenges deriving from physical, political, technological and economic changes enter the picture.43

It should be noted that the process of settling a seabed boundary is included in the discussions here, as the EEZ boundary and the continental shelf boundary have generally been treated as interrelated. Initially, it was the specific aspects concerning the ‘natural prolongation’ of the continental shelf that served as the impetus for states’ newfound rights over the seabed.

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42 UNCLOS Article 74 concerning the EEZ has wording similar to that of the Continental Shelf, Art. 83.
43 See for example Árnadóttir 2016.
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 200nm EEZ concept, where states, regardless of submarine features, immediately acquired rights over the seabed and water column out to 200 n.m. from shore. This does not mean, however, that the idea of natural prolongation has become totally irrelevant. As Kaye (2001, 19) argues, it has relevance if the feature is ‘vast and significant’:

It would appear then that without the presence of a major trench or some other equally vast and significant submarine feature, natural prolongation will have little role in delimitating the maritime boundaries. This was expressly spelt out by the ICJ in the Libya/Malta Case.

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. Thus, 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 Chapter 13, I return to this growing interest in extended seabed claims; let me simply note that the primary focus here is on delineation of maritime space that includes both seabed and the water column, and not – except in a few instances – the extended continental shelf. However, the findings and results presented here do have a bearing on that process as well.

Turning to how – practically – states manage to agree on boundary disputes, because of the need to compromise, disputes are generally settled through bilateral negotiations without the use of international courts (D. M. Johnston 1988, 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 (Prescott and Schofield 2004, 245), albeit less so than outright conflict between an opposing state. Consequently, more than 90% of maritime boundaries have been settled through bilateral negotiations (Ásgeirsdóttir and Steinwand 2015, 131).
In summary: as states expanded their maritime zones to 200 n.m. in the post-war period, existing maritime boundary disputes were enlarged as the disputed areas grew. Several disputes became entrenched, as states leaned on historical, legal and economic arguments to support their positions (Wiegand 2011a). The concept of boundary-making at sea (and on the seabed) is in itself based on abstract lines on the map, and not borders that physically separate the maritime domains of two countries (Weil 1989; D. M. Johnston and Saunders 1988).

When a maritime boundary is to be drawn between two disputing nations, finding what can be deemed the equitable solution seems to constitute the heart of the problem – a problem of both legal and political character. As put by legal scholar Lasswell (1936), politics is a matter of ‘who gets what, when and how’. Many maritime boundaries have been left unresolved for decades, because of incompatible and entrenched legal positions and/or limited political and commercial interest (Prescott and Schofield 2004).

Today, less than half of all maritime boundaries have been settled, either bilaterally or through court proceedings (Prescott and Schofield 2004, 218; Cannon 2016; Ásgeirsdóttir and Steinwand 2016, 1293; Newman 2018). Albeit central in the process, international law does not provide a clear pathway to settling maritime boundaries. This leads to the question: why do some states settle their maritime boundary disputes, whereas others do not? Specifically, which factors contribute to achieving settlement?
3. Maritime Disputes Across Paradigms

We have seen how the contemporary concept of a *boundary* at sea came to the fore in the international system. By linking it to state formation itself and the idea of borders on land delineating territory, I displayed how boundaries at sea are related to, yet different from, similar concepts on land. The legal regime that took shape in the course of the past century came to define precisely what rights states could claim at sea, so processes were developed for settling the disputes that inevitably arose. Because these hinge on political considerations and context beyond purely legal principles and/or geography, we need to employ a wider lens in exploring maritime boundaries. This chapter outlines how political scientists and lawyers have approached the topics of maritime space and settling maritime boundary disputes, followed by a summary of the most relevant factors found across a range of studies, and some current shortcomings.

3.1. Political science and maritime disputes

Much ink has been spilled on conceptualising the sea as a domain for power projection and sovereignty. In 1976, scholars contributed to a re-examination of sea power, the role of marine resources in the international system, and the ‘new ocean politics’ (Bull 1976; Osgood 1976; Moberg 1976). ‘The old ocean regime … is obsolete because the old era of ocean politics has been suspended by new patterns of conflict and alignment, and new instruments of national policy’ (Osgood 1976, 10). Further, Osgood notes that the ocean has always held a crucial role for military power projection, but that is non-military utilisation of the ocean that has led to its primacy – in 1976 – in national and thus also international affairs (ibid., 10–12).

In *Law, Force and Diplomacy at Sea* (1985) Booth similarly argues for the growing importance of the sea as an arena for power. He is concerned with the projection of power and capabilities in the maritime domain and how this is central to the security (and thus the sovereignty) of states. Building on such accounts of the ocean, Till (2004) describes oceans as having growing relevance as a dominion of power through two complementary variants of sovereignty: instrumental and expressive. Maritime sovereignty may be integral to the state’s survival (the former); or upholding sovereignty over a maritime domain may become an expression of ‘national
pride and effectiveness’ (the latter) (Till 2004, 289).\textsuperscript{44}

These works, however, as well as more recent conceptions of the ocean as a power-base or as a strategic domain,\textsuperscript{45} are limited to two interrelated relationships. First, they are concerned with how oceans influence the security outlook of states: the ‘geopolitics’ of oceans. Second, they are interested in how states utilise the ocean for the same purposes, for boosting their geopolitical standing vis-à-vis other states. In these accounts the ocean is arguably no different from other spatial domains – it is depicted as interesting due to its special characteristics:

It is no coincidence that so many of the great national enterprises of the past two thousand years were influenced by sea power, and that continues to be true today. The sea is one indeed, particularly as a geopolitical entity, and will continue to exert an enormous influence on how global events unfold. (Stavridis 2017, 3–4)

In this thesis, however, the focus is not on the impact of maritime space on the state (or its security), but on the deeper relationship between states – as a distinct social entity – and the ocean as a space that relates to, but is distinct from, land, when states engage in interactions amongst themselves over rights and access to maritime space. The emphasis is on how states approach this space, legally and politically, vis-à-vis each other, and how this interaction is changing. Studying how states deal with disputes over where to delineate rights in this space offers insights into the larger relationship between society and ocean as a spatial domain, beyond historic arguments or the importance of the ocean for state power.

Conceptions of the relationship between states and the maritime domain do exist. Several historically oriented works focus on how the oceans have influenced state development and general history.\textsuperscript{46} Keohane and Nye in their *Power and Interdependence* (originally published in 1977) cite ocean politics to prove their concept of ‘complex interdependence’. They hold that the role of oceans in international affairs has changed: ‘as underlying power resources (naval force) became constrained under conditions of complex interdependence, the procedures of international

\textsuperscript{44} Mearsheimer (2001), however, argues that water actually serves to impede power relations: that power dynamics become reduced over bodies of water.


\textsuperscript{46} See Redford 2014; Finamore 2004; B. Klein and Mackenthun 2004; Paine 2013.
organization [in the oceans] became more important’ (Keohane and Nye 2012, 138).

Steinberg (2001), in his The Social Construction of the Ocean, examines how the idea of maritime space has changed throughout history. There are many ways of thinking about the ocean: as a territorialisied extension of land; as a domain where only limited control can be exercised; and as a great void (Steinberg 2001, 18–25). In turn, he argues, states have desired to keep the oceans free of conflict. Baker (2013, 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’.

Despite these findings, the oceans have – in general – been seen as the antithesis of land: opposite and inherently different. Such conceptions are not predetermined: ‘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’ (Steinberg 2001, 191). Steinberg conclude 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’. This adds to the over-simplified conception of the ocean as a trade-off between Grotius and Selden: there are many more ways of conceiving and constructing ocean space.

Although the above-mentioned works discuss maritime space, and state practices within maritime space are highly relevant for an overarching discussion about international politics concerned with oceans, they fail to deal with the specificity of disputes at sea. Nor do they attempt to uncover causal relationships that can explain state behaviour in such disputes.

Infusar as scholarship within IR more broadly has grappled with boundary disputes specifically, the focus has been on land-based conflicts (beyond limited case studies, to which we will return). A thorough account is found in Huth’s Standing Your Ground from 1998, which studies territorial disputes on land from 1950 up until 1995. Huth examines several variables in a quantitative analysis divided into the effect on (1) states’ probability of disputing territory, (2) the level of conflict over the disputed territory, and (3) the probability of the challenger compromising (settlement). However, he discounts the maritime domain, holding that although offshore disputes are ‘an important and frequent source of conflict between states’ (Huth 1998, 26), such disputes are not sufficiently similar to be included in his analysis.
Similar disregard can be seen in the larger body of literature that studies conflict and territory. Vasquez (1993, 2009) does not tackle the maritime domain as a source of conflict in his work on what drives states to war. Neither do Tilly (1990), Holsti (1991), Albert (1998), Hensel (1999), Zacher (2001), Tir and Diehl (2002), Allee and Huth (2006), Frazier (2006), Kahler (2006), Huth, Croco and Appel (2011), nor Carter (2010, 2017). Surprisingly, most of these authors fail to even recognise the maritime domain, or the conflict potential deriving from boundary disputes at sea. In all fairness, it should be noted this is also not what they set out to do: their focus is explicitly on territorial disputes. That being said, however, the maritime domain is not completely removed or separate from disputes that take place on land.

Several other studies have noted the potential for maritime conflict over resources and/or the symbolic value of maritime territory – but only to highlight the importance of territorial disputes (over land), without offering further examination or differentiation. Wiegand’s (2011a) study of entrenched territorial disputes is probably the one work that most resembles this thesis. Asking why some territorial disputes are settled, whereas others become entrenched, she explains the variance between linkage and coercive bargaining. Weigand employs ‘uninhabited islands’ as a category in her overview, and the Senkaku/Diaoyu dispute as a case study, while explicitly stating that ‘the real dispute over islands is usually not about the islands themselves, but about the maritime borders that result from sovereignty of certain islands, as well as maritime resources such as oil, natural gas, fish, and minerals’ (Wiegand 2011a, 7). However, the maritime domain is not dealt with. There is no discussion concerning the difference between maritime and terrestrial disputes, and Wiegand never mentions maritime boundary disputes in and of themselves: the focus is explicitly on land-based disputes. That provides a rationale for investigating precisely that puzzle – why are some disputes settled whereas others not? – as regards the maritime domain.

Hensel et al. (2008) examine how certain issues have higher priority than others for states in the international environment. Employing a division between tangible and intangible values, they distinguish between salient tangible (economic, strategic) and salient intangible (prestige, identity) issues. Basically, they argue that issues concerning rivers and the maritime domain are tangible but lack the intangible dimension which territorial (terrestrial) disputes possess. That in turn makes maritime issues less likely to reach the top of the political agenda and lead to conflict (Hensel et al. 2008, 121, 138–40).

47 See for example Wiegand 2011b, 2011a; Kaplan 2011; Carter 2010; Diehl et al. 2006.
Two patterns have emerged from the current literature relevant to the topic of international relations and maritime boundaries. On the one hand, there are scholars such as Huth and Hensel who argue that disputes over maritime zones are very different from those on land. Different political patterns derive from maritime disputes; for instance, disputes over maritime zones ‘do not involve any competing claims to national territory’; and ‘the political salience of the dispute is generally limited, in contrast with the importance and attention often given to land-based disputes’ (Huth 1998, 26). On the other hand, scholars such as Wiegand, Goertz and Diehl (amongst others) do not tackle the distinction between the maritime and land domains at all, although they sometimes cite maritime disputes to illustrate the relevance of their work.

Finally, a few works within IR do deal with maritime boundaries and/or disputes explicitly – like those of Ásgeirsdóttir and Steinwand (2015, 2016) and Nemeth and colleagues (2014) – but on a rather restricted scale with limited scalability, seeking to uncover a specific dimension related to their final location, distribution, or linkage to UNCLOS. Nyman (2013, 2015) also explores what drives conflict over maritime issues more generally, and finds that states do indeed engage in conflict when resources are involved – a point highly relevant to this study as well – although maritime boundaries are not the primary concern for her. Like Kleinsteiber (2013), she focuses on both the resource dimension and the domestic and national interests in maritime disputes, advancing our understanding beyond merely dismissing the maritime as limited in salience.

Adopting a constructivist approach to international studies, Forsberg (1999) has argued for the introduction of norms to the discussion of territorial disputes and conflict, albeit without tackling the maritime domain. The idea of norms and their normative power (that of ‘justice’ in particular) should be incorporated in the debate about territorial disputes (Forsberg 1996). This is similar to the role of ‘equity’ described above, in that outcomes cannot be understood as merely a function of power and material capabilities (Price 1998). Like Steinberg’s (2001) ‘social construction’ of the ocean, Baker’s 2013 study follows up on this idea of normative conditioning, showing how the norm of ‘territorial integrity’ extends from land to the ocean.

To sum up, most of the IR literature insufficiently addresses the dynamics within the maritime domain, including the Law of the Sea. The role of international law as a guiding principle for outcomes is noted within a few approaches, accorded varying degrees of weight. Some argue states are not constrained by the quest for equity and/or equidistance, unless there are powerful interests backing it. Other approaches hold that both domestic actors and international institutions
(e.g. international law) can influence states and their behaviour (see Young 2011, 1986).

However, most of the literature has avoided grappling with international law when discussing boundary disputes. Concepts such as equidistance and equitable outcomes are not mentioned, or only insofar as achieving equitable results enables gains for the states in question. Especially for those few works that examine maritime disputes this is a remarkable omission, in view of the importance of the legal framework that has been developed for maritime dispute management. A few ‘constructivist’ studies have examined the broader normative and socially constructed aspects of states’ relations to the ocean – without detailing causal mechanisms or elaborating on exactly what determines various state behaviours at sea.

3.2. Legal studies and maritime disputes

Whereas the literature within political studies has tended to neglect the maritime domain or focus only on certain limited dimensions and/or geographical areas, international legal scholars have thoroughly grappled with the development of the Law of the Sea. Here, I will briefly discuss those specific to the question of why states settle their boundary disputes, while acknowledging the extensive body of literature that examines maritime law in itself, or the process of establishing boundaries from a legal point of view, that has helped to form the deeper understanding of the surrounding law.48

In The Delimitation of International Maritime Boundaries, the two geographers-turned-lawyers Prescott and Schofield (2004, 217) hold that the main driver behind dispute settlement has been maritime resources, with fisheries in particular, as states expanded their maritime economic zones in the post-World War II era. They note that ‘political considerations are fundamental to the maritime boundary delimitation’ (2004, 246). However, this work is not primarily concerned with the political motivations and processes around settlement, and quickly moves into the more familiar terrain of explaining the various legal, technical, and procedural processes necessary for delimitation to occur:

[T]here is ample scope for differing interpretations as to which factors are applicable to a

particular case and therefore potential for dispute and deadlock in delimitation negotiations. In a similar fashion, there is much potential conflict in the stances of states as to the emphases to be afforded to the principles or rules that might be applicable to a particular delimitation. The clear distinction between the factors considered before international courts and tribunals and those raised in the course of negotiations should, however, be understood. (Prescott and Schofield 2004, 222)

Similarly, in the comprehensive collection *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* (2009), Hong and Van Dyke have assembled multiple studies dealing specifically with maritime dispute settlements. Schofield’s (2009) chapter on the difficulties in defining islands and their relevant boundaries relates to the growing number of island disputes around the world. The volume also presents specific case studies that describe technical, legal, and economic aspects of maritime boundaries. These include the North Pacific boundary disputes between Canada and the USA, managing hydrocarbon resources in the Gulf of Mexico, the Antarctic Treaty, and how states make use of tribunals and international law in the maritime domain (S.-Y. Hong and Dyke 2009). However, neither the chapters, nor the introduction, tackle the underlying question of what motivates states to pursue settlements and why such settlements occur when they do. This omission recurs in works that examine the Law of the Sea, or the process of establishing boundaries.

A more recent edited volume – *Maritime Boundary Delimitation: The Case Law – Is It Consistent and Predictable?* (Oude Elferink, Henriksen, and Busch 2018b) – discuss the process of how states reach agreement on their various maritime spatial disputes and issues. The contribution by Vidas (2018) recounts some of the processes mentioned here in chapter 2, adding further depth and nuance to the topic of delimitation of various zones, whereas Busch (2018) examines the increasingly relevant issue of delimitations of extended continental shelves. The list of other scholarly work ranges from case-specific studies to legal studies examining a part of the framework governing maritime boundary disputes at large (St-Louis 2014; Nelson 1990; Gray 1997; Kwiatkowska 2004; Ravin 2005).

However, as noted in the brief discussion of the concepts of equidistance and equity in chapter 2, the outcomes of maritime disputes are by no means merely a technical or legal process. Also highly relevant are the political questions of ‘who get what, when, and how’.

Perhaps not surprisingly, this lack of attention to political considerations characterises
various specific case studies of maritime boundaries, as well as studies that examine regions and how to overcome potential conflict through shared resources agreements and innovations in international law.\textsuperscript{49} As argued in \textit{Maritime Boundary} by Jagota (1985, 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’. But what are the consequences and features of this ‘political sensitivity’? ‘As with all boundary disputes, there are underlying factors that contribute to each state’s position’ (Renouf 1988, 25). But which factors?

As Weil (1989, 30–31) further argues in \textit{The Law of Maritime Delimitation – Reflections}: ‘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.’ Similarly: ‘The exclusive economic zone concept does not rest in any way on a fact of nature. It is a legal institution, deriving entirely from the political will’ (Weil 1989, 29). However, \textit{what} this political will or context consists in, and \textit{how} it impacts the process surrounding dispute settlement, are not discussed. Much recent work suffers from the absence of extensive discussion around the question of why states manage (or fail) to reach settlement in the first place. The political context of maritime disputes (and the political processes leading to their resolution – or not) has remained unexplored by legal scholars, even as they highlight its importance.

A few international lawyers have attempted to outline the relevant political dimensions. As put by Oxman (1995, 294): ‘There is no doubt that political factors influence whether, and if so when, a maritime boundary is negotiated or submitted to a tribunal for determination’. In his \textit{International Maritime Boundaries: Political, Strategic, and Historical Considerations}, Oxman (1995) lays out, in a fairly straightforward way, the various political dimensions that might impact boundary-making at sea. He explains the importance of having a specific interest (by economic groups) in a given area and subsequent moves by a given state to ‘stimulate uses’ (Oxman 1995, 247), and then lists four political factors/decisions that define maritime boundaries: ‘[T]he decision to negotiate, the decision to propose a particular boundary, the decision to make concessions with a view to reaching agreement, and the decision to agree on a particular boundary’ (Oxman 1995, 255). Oxman stops short there, but this provides a starting point for an enquiry.

Another study highly relevant for this thesis is D.M. Johnston’s \textit{The History and Theory of

\textsuperscript{49} See for example Beckman et al. 2013 and N. Hong 2010.
*Ocean Boundary-Making* (1988). Written as a comprehensive overview of all factors of relevance to maritime boundaries and boundary dispute settlement, it tackles the topics here, discussed from the political and legal angles. In many ways, the present thesis builds on Johnston’s work and aspires to emulate it. As Johnston explains (1988, 1), the purpose of his work is twofold: ‘[F]irst, to trace the history of all modes of boundary-making in the ocean, and, second, to provide a conceptual framework for the analysis and evaluation of all ocean boundary claims, practices, arrangements, and settlements’, using what he calls a ‘functional’ approach:

> [T]he theory of ocean boundary-making should be developed in the light of the theory of ocean management; that the primary, if not exclusive, purpose of ocean boundaries should be to delimit administrative zones of one kind or another; and that this approach to the theory of boundary making should be designated the ‘functional’ approach. (D. M. Johnston 1988, 7)

Although offering a good starting point for enquiry (to which we return in the next sub-chapter), Johnston does not actually explain all the processes that produce the outcome he seeks to explain: ocean boundary-making. The problem with that approach is the lack of specificity and causal explanations. Building on this work, that is where this thesis can take one step further.51

To sum up, legalist approaches to maritime disputes are often exceedingly functionalist. Outcomes in the maritime domain are explained as a function of the international legal regime in which the dispute is located. International law, as well as the particularities of each case, can help explain variation in outcomes. Equity – a normative and fluid principle – can be reduced to considerations within each outcome. It is thus a matter of ‘reaching’ an outcome – and one deemed to be in accordance with the equity and/or equidistance principles – through deliberation and application of the law. Over time, decisions of the ICJ might alter the use of this principle, although most case studies of contemporary maritime disputes have been restricted to the bilateral level between the states concerned. Legal scholarly works seldom go into the political dimensions of

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50 It can be discussed whether Johnston’s work should be placed in the legal or political section, as Johnston was a political scientist who ventured into the realms of international law and UNCLOS in his work at the Schulich School of Law at Dalhousie University.

51 Several works provide guides to the practice of agreeing on maritime boundaries, like *A Practitioner's Guide to Maritime Boundary Delimitation* (Fietta and Cleverly 2016), or *Maritime Border Diplomacy* (M. H. Nordquist and Moore 2012).
dispute resolution, although many recognise the inherently political dimension of maritime boundary delimitation. Nor do they tackle the interests that underpin any agreement between two states. The legalistic approach is concerned with the process itself, ignoring many factors within the international system that are pertinent to the outcome (Hafner-Burton, Victor, and Lupu 2012).

3.3. Case studies

Finally, there are also specific case studies of single maritime boundary disputes, countries, or maritime regions/domains, where various dimensions are discussed, also of relevance to the why-states-settle-question. Perhaps the most comprehensive single case study of a boundary delimitation is Oude Elferink’s (2013) The Delimitation of the Continental Shelf between Denmark, Germany and the Netherlands: Arguing Law, Practicing Politics?. It provides a detailed account of the 1969 North Sea Cases, showing how the outcomes were not just a matter of international law and the ICJ ruling: it was also heavily influenced by political aspirations and decisions in the three countries involved.

Another in-depth case study is McDorman’s Salt Water Neighbours (2009), on the relationship between Canada and the USA with regard to the maritime domain. Interestingly, McDorman (2009, 3) finds that ‘[o]ne of the reasons for the pragmatism of the two States in avoiding legal and political confrontation is the fear of resolving a dispute’. In other words, the two states are concerned with negative domestic public responses to a possible resolution and would thus prefer to keep the dispute pragmatically managed, for the time being.

Further, in Norway and the Law of the Sea, Ø. Jensen (2014a) examines Norway’s approach to maritime boundaries and maritime space. He finds that Norway has employed a particularly proactive approach to the UNCLOS regime, attempting to settle disputes as they appeared, in order to avoid protracted litigation or negotiation – but was challenged when it came to Russia and their Arctic dispute (Ø. Jensen 2014a, 50–55). Other works examine specific regions and how to overcome potential conflict through agreement on shared resources and innovations in international law (Beckman et al. 2013; N. Hong 2010; Byers 2013).

Moreover, several single-boundary case studies exist. Baker and Byers (2012) examine the Beaufort Sea dispute between Canada and the USA, which arose in 1976 and has remained unsettled. They hold that the increasing attention given to the Arctic region and potential marine resource extraction has raised this dispute on the agenda (Baker and Byers 2012), and outline
possible strategies for how settling the dispute. Siousiouras and Chrysochou (2014) study the complexities of the Aegean Sea disputes between Greece and Turkey. They hold that the best approach to solving the issues concerning continental shelf extensions and exclusive economic zones would be to deal with them simultaneously, should the issue reach the ICJ (Siousiouras and Chrysochou 2014, 40).

Schopmans (2018) examines cooperation on marine resources concerning the Falkland Islands; Wiegand (2012) explains a dispute concerning islands between Bahrain and Qatar; Eiran (2017) compares the differing conceptions of sovereignty relating to land and to sea in the ongoing conflict between Israel and Lebanon; Song (2015) examines how fishing vessels are used in the ongoing dispute between North and South Korea; Vidas (2009) shows how Croatia, Italy and Slovenia managed to resolve a longstanding dispute in the Adriatic Sea; Supancana (2015) explores the maritime boundary dispute between Indonesia and Malaysia, focusing on an area rich in resources and possible resolution mechanisms; Hong Thao and Amer (2007) examine Vietnam’s multiple maritime boundary issues, many of which have remained unresolved; Qiu and Gullett (2017) perform a quantitative analysis aimed at improving on the ITLOS verdict concerning Bangladesh and Myanmar; Hasan and Jian (2019) explores the long-standing boundary dispute in the Bay of Bengal between Bangladesh, India and Myanmar; and Walker (2015) surveys the numerous African boundary disputes, and makes the overarching claim that settling them would be good for the individual countries. Similar ideas are taken up in greater depth by Okonkwo:

Lack of such certainty [over maritime boundaries] has led to persistent disputes between neighbouring African states over access to the control and ownership of natural resources, thus, resulting in security challenges within the region, which are likely to adversely affect the marine environment and in certain cases result in open conflicts (2017, 76).

Only a few attempts have been made to study the connection between domestic interests and boundary disputes, especially within the maritime domain. Bissinger (2010), in a study of a maritime dispute between Bangladesh and Myanmar, examines what motivated the two states to seek settlement when the dispute arose on the bilateral agenda in 2007. He takes a functional approach, arguing that the economic potential from gas prospects drives state interests (Bissinger 2010, 104). His discussion largely ignores other possible explanatory variables in the political
realm, focusing solely on the potential for hydrocarbon extraction and the need to reach agreement in order to develop these gas fields (Bissinger 2010, 129).

Another study has focused on the 2010 Barents Sea delimitation agreement between Norway and Russia. Moe, Fjærtoft and Øverland (2011) ask the pertinent question: Why did the agreement come at this specific point in time? They note various relevant explanations – like Russian efforts to tidy up border disputes, Russia’s desire to be perceived as a constructive international actor, and its desire to reaffirm the UNCLOS regime (Moe, Fjærtoft, and Øverland 2011). These findings were replicated in a similar article by Orttung and Wenger (2016). However, neither of these sought to connect the findings to the topic of maritime boundaries more generally, or to engage with scholarship focused on the same issues. A related study by some of the same authors has examined exactly how the two states developed a joint regime for oil and gas in the formerly disputed area (Fjærtoft et al. 2018).

The South China Sea has also attracted many case studies, ranging from elaborations on the complexities of the disputes (Berakit 2011; Ong 2015; N. Hong 2010; Davenport 2013), explanations of Chinese perspectives and positions (Zaibang 2012; Jianfei 2012; Junhong 2012), and proposed solutions to future challenges in the region (Beckman et al. 2013; Beckman and Schofield 2009; Kleine-Ahlbrandt 2012; Cheng and Paladini 2014; Mishra 2017; Schofield, Sumaila, and Cheung 2016). The East China Sea dispute over the Senkaku (Japan)/Diaoyu (China) Islands, as well as the Japan/Russia dispute over the Kuril Islands, are also often cited to underscore the relevance of the topic of territorial disputes (S. A. Smith 2012; Hirano 2014; Kaczynski 2007; Wiegand 2011a; Cui 2014).

In most of these instances, however, the authors do not examine the differences and/or similarities between the terrestrial and the maritime domain, or specific aspects pertinent to the latter and how their findings might translate across contexts and domains. Although sometimes excellent in describing the political and legal context, as well as the process in the negotiations, these case studies are limited to singular cases, and rarely attempt to say anything more general about why states sometimes manage to agree on their maritime boundaries.

3.4. Relevant factors

Few scholars have grappled consistently with which factors influence the decision by states to settle a maritime boundary dispute, across contexts. As described in the two previous sub-chapters,
these can roughly be divided into the academic fields of international law and international relations, and related case studies. We can also include geographic and economic attributes, as well as a range of factors relevant to several fields in social sciences in general. In this section the aim is to recapitulate those studies that – spanning law, politics, geography and economics – have attempted to identify relevant factors when settling maritime disputes.

Johnston (1988) is one of few authors to attempt to formulate a general list of factors relevant to the process of ‘boundary-making’: Values, Interests, Attitudes (national, cultural, ideological), Relationships, Milieu, Physical setting, Technology, and Time. A further attempt to form an exhaustive list of these factors is bound to be fail, given the number of potential factors that might have an impact. However, his rough categorisation provides a starting point for analysis. The problem is its limited specificity. Concepts like as ‘milieu’ and ‘values’ cover everything and nothing, making the list difficult to operationalise. Also, Johnston does not specify how these factors operate: what are the causal mechanisms that enable ‘technology’, for example, to lead to settlement and/or conflict over maritime boundaries?

From the literature on maritime boundaries and maritime disputes, it is, however, possible to piece together a range of more specific factors pertinent to the question asked in this study. Nyman (2013, 8–11) separates the relevant factors in maritime disputes into ‘fish’, ‘oil and gas’, ‘minerals’, ‘pollution’, ‘climate change’, and ‘island and rocks’. Asgeirsdottir (2016, 191) borrows from Hensel (2008) and argues that ‘one would expect the benefit of settling a boundary to be higher than the cost of negotiating if the maritime boundary is contiguous to the homeland, if it is strategically important, if there are valuable resources in the area and if there are no ongoing territorial claims’. In their study of the Barents Sea dispute between Norway and Russia, Moe et al. (2011, 148) outline six broad categories that help to explain that specific case:

There are several possible explanations as to why the Russian authorities decided to end the dispute in the Barents Sea in 2010 and not earlier or later: (1) the gradual evolution of international law changed the premises for negotiations, (2) improvements in Norwegian-Russian bilateral relations made a solution possible, (3) the desire to start extracting the oil and gas in the disputed area was a major driver, (4) the cost of being involved in manifold unresolved territorial disputes was rising for Russia, and the agreement with Norway represents part of a general effort to finalize as many territorial negotiations as possible, (5) Russia had entered a phase where it wanted to be seen as a constructive international actor,
and (6) Russia wanted to bolster the UN Convention on the Law of the Sea (UNCLOS) as the framework for Arctic governance, in order to avert the involvement of non-littoral states in the region.

Antunes’ (2002, 182) listing of relevant factors is divided into ‘political, economic, security, and historical considerations’. Asgeirsdottir (2016, 190), in her article on the USA’s outstanding maritime boundary cases, distinguishes between ‘economic’ and ‘political’ motivations for settling an outstanding dispute. Bissinger adds ‘legal’ factors to this (2010). Asgeirsdottir (2016, 191) also discusses a crucial point concerning animosity and its ability to act as a driver for settlement:

Paradoxically, the decision to cooperate could also be driven by animosity, i.e. settling a conflict where leaving it unsettled could be more costly than leaving the maritime boundary unsettled.

According to Prescott and Schofield (2004, 247), on the other hand ‘it seems clear that a lack of formal relations between coastal states, or poor relations between them, often forestalls the start of negotiations in the first place’. Similarly, examining the South China Sea disputes, Kleinsteber (2013, 18) emphasises domestic audience factors:

While the control of resources plays a role in these territorial disputes, the key factors contributing to the periodic re-emergence of aggressive actions and enhanced rhetoric are the domestic political climate, rising nationalism through domestic political manipulation, and the use of a narrative of irredentism and historical animosities.

These are inconsistencies worth exploring further. Lacking in all these studies is an attempt to say something more general about the conditions under which states settle maritime boundary disputes, and what this means for how states relate to the ocean as both a conceptual and functional space. There exist no exhaustive overviews or lists that attempt to explain why states settle their maritime boundary disputes. Table I represents an attempt to piece together the elements of these various writings on the topic, under the labels geographic, economic, political, and legal. These factors cover a broad spectrum. My goals are to find whether some of these factors are more
relevant than others; and to identify some independent variables, and thus causal mechanisms, that explain why states settle their maritime boundary disputes.

Table I: List of factors described as relevant in maritime boundary outcomes

<table>
<thead>
<tr>
<th>Category</th>
<th>Factor</th>
<th>Specified</th>
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<tbody>
<tr>
<td>Geographic:</td>
<td>• Size of the disputed area</td>
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<td></td>
<td>• Distance of disputed area</td>
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<td></td>
<td>from capital cities</td>
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<td></td>
<td>• Island or exclave located</td>
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<td></td>
<td>near other state(s)</td>
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<td></td>
<td>• Population in the coastal</td>
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<tr>
<td></td>
<td>area</td>
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<td></td>
<td>• Climate conditions</td>
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<tr>
<td>Economic:</td>
<td>• Presence of marine resources</td>
<td>Fisheries</td>
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<td></td>
<td>• Minerals</td>
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<td></td>
<td>• Hydrocarbons</td>
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<td></td>
<td>• Importance for shipping</td>
<td>International strait</td>
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<tr>
<td></td>
<td>• Cost of dispute</td>
<td>Resources needed for negotiations/adjudication</td>
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<tr>
<td></td>
<td>• Domestic audience cost</td>
<td>Local/regional interest in the dispute</td>
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<tr>
<td>Political:</td>
<td>• Security relevance of</td>
<td>Features in national security policies</td>
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<tr>
<td></td>
<td>maritime domain</td>
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</tr>
<tr>
<td></td>
<td>• Presence of military bases</td>
<td>Presence of military bases/resources</td>
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<tr>
<td></td>
<td>• Domestic audience cost</td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>General national interest/sentiment concerning the dispute</td>
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<td>----------------------------------------------------------------------</td>
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<tr>
<td>• Power relations between actors</td>
<td>Measured in military capabilities</td>
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<td></td>
<td>Measured in economic terms (prosperity/GDP)</td>
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<tr>
<td>• Patterns of amity/enmity with dispute party</td>
<td>Historical relations/alliances</td>
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<td></td>
<td>Previous disputes/conflict</td>
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<td></td>
<td>Ongoing disputes/conflict</td>
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<tr>
<td></td>
<td>Cultural/historical relations</td>
<td></td>
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<tr>
<td>• Trade between disputing states</td>
<td>Concerning the dispute itself</td>
<td></td>
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<tr>
<td>• Presence of regional organisations for cooperation, both disputing</td>
<td>Concerning other issues related to the dispute</td>
<td></td>
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<tr>
<td>states participating</td>
<td></td>
<td></td>
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<tr>
<td>• Individual leaders</td>
<td>Concerning unrelated issues</td>
<td></td>
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<tr>
<td>• Domestic political system</td>
<td>References to the disputing partner and/or dispute in policy statements</td>
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<tr>
<td></td>
<td>Relationship/contact between leaders of disputing states</td>
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<td>Level of democracy</td>
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<td>Existence of veto players</td>
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<td></td>
<td>Structure of governance (unitary – federal)</td>
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<tr>
<td>Legal:</td>
<td>• Member of UNCLOS</td>
<td>Signed</td>
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<td></td>
<td>• Number of disputes in total</td>
<td>Outcome of previous disputes</td>
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<td>• Concern about legal precedents</td>
<td>Legal issues involved in other outstanding disputes</td>
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<td>• Legal origin of the dispute</td>
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<td></td>
<td>• General legal principles/position of the disputing states concerning maritime disputes/law</td>
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<td></td>
<td>• International jurisprudence</td>
<td>Court rulings with relevance for the dispute at hand</td>
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### 3.5. What’s missing?

From the review of the literature concerned with terrestrial and maritime disputes alike, some conclusions can be drawn. First, there seems to be no unified approach for dealing analytically with maritime disputes and delimitation. Some authors hold that the maritime domain is less likely to cause conflict, and is thus less interesting as an object of study. Others recognise that the maritime domain is becoming increasingly relevant for states, so maritime disputes are becoming more salient. This divergence seems to indicate a gap in our understanding of the mechanisms and processes in this domain.

Nor does the literature (within both international relations and international law) on territorial disputes and settlement outcomes provide consistent answers. We lack extensive studies of how the factors behind maritime boundary disputes and settlements operate. From an IR perspective, the maritime domain is often conceptualised as inherently different from traditional (terrestrial) and politicised boundary conflicts, and gets reduced to the sum of economic interests and technical arguments. Conclusions like ‘[t]he main driver for drawing a maritime boundary is...
to reduce legal uncertainty that prevents the exploitation of economic resources, particularly oil’
are made (Ásgeirsdóttir and Steinwand 2015, 123) – but not further outlined, elaborated or proven.

The maritime domain warrants also attention on its own through the lenses of the UNCLOS
regime and state practice. However, that approach is dominated by legal studies that fail to ask the
why question: Why do states settle boundary disputes in the first place? Legal questions concerning
precedent and process – the how question – can take us only so far.

Finally, there is a growing body of case studies that examine factors pertaining to specific
cases. However, these studies fail to produce comprehensive and testable theoretical implications
relevant beyond the dispute at hand, as they also offer a whole range of differing (and competing)
explanations.

There thus remain several unanswered questions in the literature. Studies of territorial
disputes are substantially developed, but not extended to the maritime domain. Whereas the IR
literature has neglected the maritime domain or dismissed it as a less relevant field for studies, the
international law literature has dealt extensively with boundaries but ignored the wider political
context in which any settlement necessarily takes place.

There may be several reasons for this. Maritime boundaries gained importance only with
the formalisation of UNCLOS and the extension of boundaries in the post-war period. However,
a more static international system throughout the Cold War might have kept maritime disputes
from escalating and attracting attention. Similarly, one of the main drivers behind disputes over
maritime boundaries is the presence of marine resources. Many of these resources – minerals, fish
stocks and hydrocarbons – have become scarce or commercially viable only in recent decades. Nor
should the dominance of legal studies be discounted. Being rather technical and juridical matters,
maritime boundary delimitation and negotiations may initially appear to be a topic for, and
dominated by, legal scholars. However, as noted by means of several examples and case studies,
it is essential to consider political factors at both the domestic and the international levels.

This chapter has highlighted how some very simple but highly relevant questions
concerning maritime boundary disputes have remained unanswered. Most of the literature that
directly grapples with maritime space and disputes has touched upon them, but the field itself
appears to be dominated by legal approaches or literature unable to account for the process of
settling disputes. Here the present thesis seeks to contribute by asking: Why do states settle some
maritime boundary disputes, but not others?
4. Approaches to Explaining Maritime Boundary Dispute Settlement

The literature on territorial disputes on land is broad and well established, arguably constituting its own subfield of conflict studies and/or international relations. It covers various ways of conceptualising foreign policy and the international system (across theoretical paradigms), and also grapples with the continuing challenge of how to bridge the international and domestic levels of analysis. Concerning the maritime domain, however, the gap between international relations and international law is wide: the legal literature is disinterested in the why-question; and the political science literature neither examines the maritime domain spatially nor explores its connection to international law.

Which causal factors and related mechanisms prompt states to settle maritime boundary disputes? Before embarking on a study of different countries and how they have approached their sets of maritime boundary disputes, I need to spell out exactly how causal mechanisms might operate within each case. Without clear points of reference, examining cases as merely a collection of data is not very constructive. After outlining the policy process itself, the following section pits the relevant theoretical literature to date against the question of dispute settlement, categorised into the distinction between systemic, institutional (legal), and domestic factors.

4.1. Policy process

As La Pradelle (1928, 11) argued, ‘[t]here is no boundary which is not political’. First and foremost, for a maritime boundary to be settled, it needs to be on the agenda and thus in the ‘policy process’ of the relevant states. That is not always the case. Initially, when states enlarged their maritime zones after the Second World War, disputes emerged. UNCLOS articles 74 and 83 regarding the EEZ and the continental shelf specifies that states ‘shall make every effort’ to settle outstanding disputes (United Nations 2002). However, as history has shown, when states are unable to settle disputes immediately, they often became entrenched, or simply neglected (Wiegand 2011a). Now and again such disputes re-surface on the policy agenda and may be settled – or fuel conflict.

Why do some disputes reach the political agenda, whereas others are kept out of the (political) limelight? This is not the core question asked in this thesis, but it figures as a component of it. The focus here will be on agenda-setting, as a specific part of the traditional policy cycle in
studies of policy-making. Within the field of IR studies, ‘agenda-setting’ often refers to the role of the media in defining the agenda of states and their elected politicians (Manheim and Albritton 1984; Scheufele and Tewksbury 2007; Robinson 1999, 2008; Livingston 1992). We can progress beyond this focus by examining literature within the field of public policy. Initially, the political agendas of states were thought to be a product of their economic environment and level of industrialisation. Policies of industrialised countries were thought to converge on the same policy mix (Howlett, Ramesh, and Perl 2009, 94).

As scholars came to recognise the importance of ideas and beliefs, new theories of agenda setting emerged. Goldstein and Keohane (1993) showed how worldviews, principled beliefs, and causal ideas are all relevant to policy-making. The sentiments and beliefs (or identities) held within a community may be shaped by, and shape, the agenda of that community (Campbell 1998). Similarly, the political discourse used within a community is central to understanding where the ‘policy problem’ has come from (Foucault 1972). Not all actors within a community hold the same beliefs to the same degree, so agenda-setting often entails a clash between different beliefs and convictions.

In response to the focus on structural and economic factors, scholars in the 1970s developed the ‘funnel of causality’ – a concept including all the variables of socio-economic environment, distribution of power, prevailing ideas and ideologies, the institutional framework of government, and the decision-making processes (A. King 1973; Howlett, Ramesh, and Perl 2009, 99). Although this concept has been criticised for including too much and thereby becoming too context-specific, the greatest strength of the ‘funnel’ is its causal variance and capacity to explore the relationships between different sets of variables (Mazmanian and Sabatier 1980). 52

Further, Kingdon (1984) identified what he termed ‘policy entrepreneurs’ and ‘policy windows’. Identifying the former is essential to understanding an issue and where it comes from. The latter concerns whether or not entrepreneurs are successful in their efforts, and the ability to explain why some issues (and not others) reach the agenda (B. D. Wood and Peake 1998). 53

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52 Beyond these initial conceptions, various modes and cycles have been identified by public policy and agenda-setting scholars. Downs (1972) argues that issues that arise on the government’s agenda behave similarly to the media’s news cycle: they fade as the issue at hand becomes more complex than initially thought when it was first sensationalised. Later, this proposition was further specified into cycles initiated by external events (such as war) termed a ‘crisis cycle’; and cycles initiated by the political leadership, termed ‘political cycles’ (Howlett, Ramesh, and Perl 2009, 101).

53 Cobb, Ross, and Ross identified different models of agenda-setting. The outside initiation model is found predominantly within a liberal pluralist society, when an issue is brought to the agenda by an interest group external
windows are fairly predictable (e.g. legislative sessions); others are random (e.g. catastrophes). In any case, open windows are ‘small and scarce’ (Kingdon 1984, 213).

Howlett et al. (2009, 105) has described four types of windows: routinised political windows defined by institutionalised and procedural events; discretionary political windows defined by individual initiative; spill-over problem windows defined by issues drawn into already existing open windows; and random problem windows defined by random events or crises. Baumgartner and Jones (1991) include the ‘image’ of a policy problem in explaining agenda-setting. Technical issues tend to be kept at the expert level; when larger societal questions or ethics are involved, a broader range of participants will become engaged in the policy process (Baumgartner and Jones 1991, 1047).

Are foreign-policy issues different from those of domestic public policy? This question speaks to the core of international relations, and the question of where state policies and interests derive from. I limit this debate by stating that, in discussing maritime boundary disputes, I recognise that agenda-setting power and influence may derive from both levels. In other words, foreign policy outcomes are a result of relevant factors at both the domestic and the international levels.

As to territorial disputes specifically, the question is to what extent these reach the political agenda at all. Wiegand (2011a) argues that one problem is that some territorial disputes fail to reach the political agenda because they lack salience, and no real attempts to initiate settlement occur. Disputes may also become linked to other issues, making them more difficult to solve. Therefore, we need to distinguish not only among different sources of policy initiatives and their ‘windows’, but also among the issues involved. ‘Because diverse issues are valued differently by states, this also means that the degree of salience varies depending on the issue and whether it has low or high salience for states’ (Wiegand 2011a, 46).

Where do maritime boundary issues fall within these categories? What is the ‘salience’ of maritime boundary disputes in general – and why and when do they find their way onto the political
agenda? This is a component of the larger question this study sets out to answer. A preliminary hypothesis – based on the literature reviewed above – can be outlined. An inherent recognition is that any given state’s resources to spend on bilateral negotiations on maritime boundaries are bound to be limited, in terms of capital but even more so in terms of highly qualified senior diplomats and legal experts with the skills and capacity for these processes. Therefore, the fundamental premise of this study is that *states will engage in maritime boundary dispute negotiations only when they perceive there to be significant gains to be had.*

Accepting the wider ‘funnel of causality’ approach, we must also recognise that there may be more than *one* reason why a dispute receives political attention. It is essential to comprehend the broader context in which a given dispute arose on the political agenda, and the processes that determine the outcomes we study. This brings us to the crucial distinction between the *impetus* of negotiations in the first place, and what *drives* or *hinders* the settlement of a boundary dispute. We can then nuance the somewhat simplified dichotomy between settled/not settled as regards maritime boundary disputes. Figure II envision instead a range of options, as ordinal categories:

**Figure II: The process of settling a maritime boundary**

1. No negotiations / dormant
2. Ongoing negotiations / active (negative or positive interaction)
3. Tentative agreement / not ratified
4. Settled / ratified

Conceiving of outcomes as a *process* enables us to identify the impetus for negotiations, and distinguish this from what affects states’ willingness to compromise and concede in these negotiations; and to distinguish those factors that might drive negotiations forward, step by step, from those that might obstruct the process moving along the same path.

I now turn to hypotheses that can help to explain the various steps taken by states. These hypotheses are based on a range of different theories relevant to the question at hand. A feature of some of the literature reviewed is the use of ‘middle-range’ theorising. This entails moving away from broad paradigms and instead employing models and causal mechanisms aimed at explaining specific aspects of territoriality and conflict management, without necessarily participating in the larger paradigm-centred debate. This does not mean that middle-range theories do not derive from
larger epistemological assumptions inherent in various strand of IR theories.

However, as described by Katzenstein and Sil (2008; 2011), by eclectically choosing relevant components from many paradigms, we can attempt to provide the best possible answer to the question at hand. ‘Compared to the flaws of clashing dogmatisms, the flaws of analytical eclecticism are small indeed and well worth the costs’ (Katzenstein and Sil 2008, 126). This approach is utilised by scholars like Huth, Wiegand, and Allee and others, as well as in certain case studies. The drawback of it is the lack of connection to the larger literature and aspirations of wider theoretical impact. On the other hand, given the nature of the issue, middle-range theorising might be appropriate for explaining the complexities of maritime boundary delimitation.

4.2. System approach

Traditional system approaches54 to international relations are based on two assumptions: that states are goal-seeking, operating on the basis of a given set of preferences; and that they behave rationally in their approach to achieving these goals (Snidal 2013, 87–89). Conflict is a natural part of international affairs, where states seek to optimise their standing vis-à-vis each other in the international system.55 Inter-state cooperation is inherently a product of conflicting interests and/or policies which get brought into alignment as states engage in bargaining and cost-benefit calculations according to fixed preferences along the lines of a ‘logic of consequences’ (J. G. March and Olsen 1998). Institutions – as tools set up by states to manage potential disputes – are thus rational-design consequences of states’ interests and a result of a bargaining process between these states (Fearon 1998; Koremenos et al. 2001).

Maritime space is of varying importance within these paradigms. In a realist account of world affairs, normative concerns and principles like equity play a limited role. Basically, outcomes are a result of power relations, which are determined by material capabilities (Morgenthau 1948; Mearsheimer 1995). ‘The strong do what they can and the weak suffer what they must’ (Thucydides 1910, originally c. 400 BC). Morgenthau and Carr, for example, were not concerned with maritime space, or oceans, beyond their ‘isolating factor’ (Morgenthau 1948, para. 124; Carr 1946). Geography, however, is an important source of state power for both authors, as

54 The term ‘system approach’ covers a range of different approaches to international studies, some that are not necessarily perfectly aligned. In order to be able to utilise a wide range of approaches sufficiently covering most aspects of maritime boundary delimitation, general categories will be employed here.

states pursue moves to enhance their relative position in a continuing ‘balance of power’.

Similarly, the neorealist approach is not particularly concerned with bilateral spatial disputes as such: it is the properties of the system that are relevant to outcomes. Disputes may be used to showcase structural power balancing and constraints (Tunsjø 2018). As states operate in a system of anarchy, maritime boundary disputes are inherently left to the states themselves to solve. International authorities and/or courts do not have significant roles in mitigating or handling such disputes, although great powers may be involved in managing order in a regional system (Waltz 1979, 204–9). International cooperation is constrained by states’ concerns about cheating, and by continuous considerations as to relative gains (Strange 1982; Mearsheimer 1995).

State survival takes primacy, so strategic/security considerations concerning the given territory become paramount (Gilpin 2001, 19). Further, strategic rationales concerning the security value of a territory tend to be a key driver of conflict over territory. Carter (2010) argues that particularly weak states often use territorial consolidation for strategic advantages to improve their relative position in an inferior power-balance. Thus, when the territory in question gives the state a strategic security advantage, the likelihood of conflict will be high (Oosterveld, De Spiegeleire, and Sweijns 2015, 21).

In a different but similarly rationalist approach, scholars separate drivers of conflict and/or settlement into tangible and intangible values (Nemeth et al. 2014; Hensel et al. 2008). The former concerns the economic and strategic value of a territory. Specifically, economic value is dependent on the presence of natural resources or other high-value commodities, the ability of the state to extract them, and their overall impact on the state’s economy (Wiegand 2011a). Intangible values concern the ethnic and cultural aspects, but also the symbolic and nationalistic dimensions of territory. When territory plays a role in the national identity of a state, reaching a settlement that involves division will often be very difficult (Wiegand 2011a). Issues that are intangible, like identity or culture, are thus less likely to lead to conflict resolution, whereas tangible issues can be settled more easily (Vasquez 1995; Vasquez and Valeriano 2009; Hensel et al. 2008).

Also relevant is whether the issue is divisible – whether states can separate the conflictual issue from other issues. Finally, reputation matters for states, related to how the issue is framed both domestically and internationally. As put by Vasquez & Valeriano (2009, 194):

A conflict spiral can transform concrete and tangible stakes, such as territory, by infusing
them with symbolic and even transcendent qualities. Symbolic stakes are more intractable because giving in implies giving in on all the other stakes they represent or, at minimum, setting a precedent that will lead to a slippery slope of losses (here is where a reputation effect is most relevant). Transcendent stakes involve a further and different transformation. Here, the conflict process makes the stake representative of very salient (typically moral) values, like freedom, honor, and identity.

Regional Security Complex Theory (RSCT) developed by Buzan and Wæver (2003) adds a further level of system analysis well suited for explaining the post-Cold War era (Kelly 2007). RSCT departs from IR orthodoxy in the assertion that when the systemic overlay recedes, *regional* dynamics become a key component of the international system (Buzan and Wæver 2003, 47–50). These regions are formed by ‘patterns of amity and enmity’ between neighbouring states, with the limits of the Complex being defined by the power-projection capabilities of the states in question (Buzan 1991, 190). Interactions (positive and negative) between geographically proximate states will be more intense, compounding over time, in turn forming these complexes.

Based on these various notions of why and how maritime space and maritime boundary disputes might matter for states, my first overarching hypothesis is:

**Hypothesis Systemic (HS):** systemic interactions on the international level between the disputing states determine the likelihood of settlement.

From the outlined systems literature, I can extrapolate some assumptions relevant for maritime boundary disputes. First, as states operate in a system of anarchy, maritime boundary disputes are left to the states themselves to solve. We can assume that the UNCLOS regime is only a reflection of the interests of powerful states; similarly, that when settlements are made, the influence of this legal regime will be limited. States will agree to settlement when more powerful states coerce favourable outcomes. Achieving equity is not a primary concern, insofar it entails concessions. The existence of maritime borders that are not recognised *de jure* by all parties, but serve as *de facto* boundaries, is one indication of such an outcome.

Therefore, we should expect that, when there is marked power asymmetry between states involved in a maritime dispute, the inferior state will have little choice but to accept an imposed settlement, regardless of the principle of equity or equidistance. The superior state will pursue a
strategy aimed at achieving a favourable dispute settlement, using the coercive tools at its disposal. Wiegand (2011a) calls this ‘bargaining leverage’, as states link the territorial dispute with other relevant issues to gain the upper hand in negotiations. The inferior state is forced to yield, acknowledging the need accommodate the superior state for fear of losing in an outright conflict over the territory itself, or suffering losses in other issues that have become linked to the dispute.

Second, we can extrapolate that states are set to compete over strategically relevant maritime space, as they are driven by a desire to expand their relative power (Morgenthau 1948, 5). As the interests of states – and of their leaders – centre on maximising their relative position in the international system, we should expect that the role of the maritime territory in question for each state to determine the willingness of leaders to concede territory. Scholars argue that the political salience of maritime disputes is ‘generally limited, in contrast with the importance and attention often given to land-based disputes’, as maritime disputes have nontangible dimensions (Hensel et al. 2008, 121, 138–40; Huth 1998, 26). Here it should be acknowledged that maritime territory does not hold the same role for each state involved in dispute over the same territory (Till 2004, 289). When both states involved in the maritime dispute have high strategic interests in the given disputed area, settlement would be unlikely.

Third, what Buzan and Wæver (2003, 45) term ‘patterns of amity and enmity’ enter the picture, as regional historical relations between countries are an element in influencing what kind of security environment – conflict formation, security regime or security community – in which they operate (Oskanian 2013, 18). Relations determined by conflict and war will naturally lead to an environment less conducive to agreement on resolving a dispute:

> [S]tates are much more threatening to their near neighbors than to others. The security dilemma's geographical unevenness creates intense local histories. The same cluster of states will interact with each other again and again through time, creating patterns of amity and enmity (history). (Kelly 2007, 208)

This links with some ideationalist approaches: the form of ‘anarchy’ for each state comes into play, determining outcomes of disputes (Wendt 1992). When pursuing settlements, states are thus constrained not only by their relative abilities and structural position, but also constrained (and influenced) by the social environment they operate in. As states engage in cooperation to
build trust/mutual relations, the likelihood of settlement increases (A. I. Johnston 2001). This derives from the assumption that states (and their bureaucracies) develop relations when they cooperate on various issues, whether or not these are related to the specific dispute (Checkel 2005). They operate in what Wendt terms a ‘Kantian’ culture of anarchy (1999), where states cooperate and build trust, sometimes even developing security partnerships or communities.56

Eclectically leaning on these different notions of systems IR-theory, I can identify three related sub-components of the systemic hypothesis:

**HS1:** power relations between the states in a dispute are likely to influence the chances of settlement.

**HS2:** the strategic value of the maritime area in question will influence states’ willingness to settle the dispute.

**HS3:** regional patterns of amity/enmity between disputing states will determine the likelihood of settlement.

### 4.3. International institutions: Law

In contrast to traditional system approaches to international relations, ‘institutionalist’ approaches place emphasis on group interests and the constraining and/or enabling traits of the institutional structures (formal or informal) that states have established in order to jointly manage problems in the international sphere (Young 1986, 2011; Tarrow 2001; Keohane and Nye 2012). International law – or specific aspects of it – are seen as international regimes,57 with the ability to constrain and alter the behaviour or otherwise independent states (Finnemore and Toope 2001; Reus-Smit 2004). Central points here are the conceptualisation of interests driven by factors beyond (or in spite of) security, as well as the influence of international regimes and institutions on the states involved. Institutionalist approaches see international regimes as helping to stabilise the contractual environment while also enabling states to implement agreements (Young 1989, 2012; Levy,

56 See for example Adler 1997; Adler and Barnett 1998; Acharya 2001; or Rieker 2016.
57 Krasner’s (1983, 2) edited volume defines an international regime as ‘a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actor expectations converge in a given area of international relations’.
Maritime disputes are no exception, as formalised cooperative structures might help the settlement process along. For example, a coerced outcome to a maritime boundary dispute would be contrary to Article 2(4) of the UN Charter, and would therefore lack international legitimacy. The point here is that the use of sheer power in determining the limits of state jurisdiction has been ruled out in the post-Second World War order. It is within this environment that the Law of the Sea have developed and serves as framework – or international regime – with approaches and tools for settling boundary disputes (Keohane and Nye 2012, chap. 4). The Law of the Sea is thus part of this larger legal-political reality. As Keohane and Nye (2012, 56) put it: ‘[T]here 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’. The UNCLOS regime plays a vital role in managing maritime disputes, by providing the mechanisms and procedures for states to manage and conclude agreements.

For example, focusing on territorial land disputes, Allee and Huth (2006) question why states choose to pursue territorial dispute settlement through legal institutions in the first place. They note that states have complied with virtually every ruling made by the ICJ and its predecessor, the Permanent Court of International Justice (Allee and Huth 2006, 286). They conclude that leaders are more likely to make use of international legal institutions when they face strong domestic opposition to bilateral concessions in a settlement: the legal bodies can provide ‘political cover’ (Allee and Huth 2006, 300–301). Okafor-Yarwood (2015) also holds that international law will almost always uphold colonial maritime borders. Joint management agreements may offer an alternative to maritime delimitation, which is often time-consuming and difficult to achieve (Okafor-Yarwood 2015, 289).

Moreover, testing their hypotheses on a large number of cases, Huth, Croco and Appel (2011) have shown how leaders with strong legal claims are more likely to push for negotiations to reach a settlement, and more likely to avoid the use of force if they are dissatisfied with negotiation outcomes. Asymmetry between legal claims of states are also more likely to lead to a settlement than are situations where the claims are balanced. Further, and supporting the ‘domestic cover’ theorem, leaders with weak legal claims are more likely to seek settlement through formal dispute resolution. In sum, these authors find strong support for the argument that ‘international
law matters’, in contrast to the traditional realist theorem that state actions are guided by power 
and interests chiefly (Huth, Croco, and Appel 2011, 433).

Thus, the question is what effect international law (UNCLOS) has on state behaviour 
concerning the settlement of specific maritime disputes. As shown in the chapters 2 and 3, most 
states today have agreed to the formalisation of practice in customary international law and treaties 
(Geneva Convention and UNCLOS), as well as granting some additional rights and duties to 
maritime states through those treaties. My second overarching hypothesis is therefore:

**Hypothesis Legal (HL):** the legal characteristics of the dispute determine the likelihood of 
settlement.

This hypothesis seems relatively straightforward. However, in studies of dispute 
resolution, international law is far too often ignored or insufficiently considered. There is also a 
fundamental assumption underlying this hypothesis – ‘[a]lmost all nations observe almost all 
principles of international law and almost all of their obligations almost all of the time’ (Henkin 
1979, 4). However, it is important to understand the legal status of the disputes themselves, and 
the status of each of the claims relevant to the dispute. I.e. what are the ‘legal characteristics’ of a 
dispute, and how do they influence the likelihood of settlement?

From the extensive scholarly work looking at the Law of the Sea outlined in chapter 3.2., 
I can extrapolate some assumptions relevant for maritime boundaries. First, a crucial component 
of the legal hypothesis is the origin of the claims. When one country’s position is based on an old 
treaty or arbitral decision, that gives it a different legal character from the position of the other 
state, which might be based on a general principle like equidistance. This was proven in the 
comparison of Canada and Norway by Byers and Østhagen (2017).

Moreover, as displayed in Chapter 2.2.-2.3., in the maritime domain, both states may have 
valid legal titles 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’ (Weil 1989, 91–92). Arguably, disputes are 
easier to resolve when the two positions are grounded in the same legal foundation rather than 
separate legal foundations; i.e. historic rights and/or treaties. The origins of a boundary dispute 
may thus range from specific to general. The more specific the origins of the boundary position, 
the more inflexible will a given country be in negotiations (Byers and Østhagen 2018, 167-168).
Second, states are concerned with jurisprudence in international law, which is not static. International law is not a clearly defined set of concrete rules, but an ever-evolving process. Bilateral negotiations between states also do not occur in a vacuum. The interplay between jurisprudence and dispute negotiations is essential to the outcome, as states can be presumed to push for settlement without adjudication or arbitration when they hold a ‘strong legal claim’ (Huth, Croco, and Appel 2011).

Here the notion of legal precedence, as separate from jurisprudence, warrants further explanation. The sources of international law are (1) treaties and conventions signed amongst states, (2) international custom, and (3) general principles of law. In contrast to various national legal systems, customary international law does not derive from judicial decisions by the ICJ, ITLOS, PCA or the International Criminal Court (ICC), as these are deemed subsidiary sources (Goldsmith and Posner 2005). However, customary international law is still – albeit less directly – informed by case-law and to a lesser extent state practice (Cohen 2015; De Brabandere 2016). It is these dimensions that states are sensitive to, as they go about settling their maritime boundaries. This is also related to how states view – generally – their maritime boundary disputes as interlinked complexes, where actions taken regarding one might impact another (as described in Chapter 1.5.).

Further, this sensitivity to legal precedence and jurisprudence also concerns larger considerations of international law. As Moe and colleagues argue (2011, 148) concerning the 2010 Norway–Russia maritime agreement: ‘Russia wanted to bolster the UN Convention on the Law of the Sea (UNCLOS) as the framework for Arctic governance, in order to avert the involvement of non-littoral states in the region’. Thus, Russia’s willingness to settle this specific maritime dispute was predicated on its desire to reinforce the legal status of its position in the Arctic regarding its claims to an extended continental shelf (Hønneland 2016; Sergunin and Konyshev 2014). In other words, how the claim stands in relation to contemporary jurisprudence is another central component of the legal hypothesis.

These two hypotheses are closely linked to traditional Law of the Sea literature and the positivistic approach where a legal outcome can be explained by investigating the subcomponents of the legal argument and jurisprudence. We can attempt to go beyond this by imagining legal status as an independent variable that varies from dispute to dispute. In turn, I formulate two related sub-components of the legal hypothesis:
**HL1:** the origins of the boundary claim determine the flexibility of each state, in turn determining the scope for negotiated outcomes.

**HL2:** concern about a legal precedent and its impact on other disputes determines a state’s willingness to concede in negotiations on a given maritime boundary dispute.

### 4.4 Domestic factors

The third and final approach to the question at hand is to ‘take preferences seriously’ (Moravcsik 1997), by focusing on domestic preference formation within states and its relevance for outcomes at the international level. As several scholars have shown, the interaction between the domestic and the international levels of analysis runs both ways. Gourevitch (1978) showed that the international system impacts domestic set-ups and the development of states. Putnam (1988) theorises a two-level game between the domestic and the international level in terms of international negotiations. Garrett (1998) argues that the greater globalisation of the international economy has effects on domestic institutions and interest formation. Milner (1998) argues the need to move beyond the concepts of the state as a unitary actor and also the sole actor on the international arena.

Globalisation has also eroded the distinction between the domestic and international (Milner 1998). Keohane and Nye (2012, org. 1977) note that the growing numbers of transnational actors operating beyond the realms of the state have led to challenges for state autonomy in the international realm. As shown by Keck and Sikkink (1998) and Tarrow (2001), transnational advocacy groups and international networks have become increasingly important for any issue on the domestic level. Similarly, many multinational companies today have operating budgets larger than those of some small states, and wield considerably greater leverage in the international system.

From a foreign policy perspective, state leaders make the final decisions regarding when to push for, and accept, boundary settlements. It is thus reasonable to assume that why settlement occurs relates to a change in the utility of options available to the domestic leadership, rendering agreement more advantageous than status quo (no settlement). Asgeirsdottir (2016, 195) proves this displaying the importance of domestic public opinion in settling boundary disputes when examining US maritime boundaries specifically. Domestic structures have an impact on states’
preference formation, and thus the outcomes of negotiation. My third overarching hypothesis therefore is:

**Hypothesis Domestic (HD):** the domestic environment in which state leaders operate determines the scope for possible negotiated outcomes.

I can extrapolate some additional hypotheses relevant for maritime boundary disputes. First, the specific domestic political system within which state leaders (and negotiators) operate will have an impact on their chances of finalising agreements that have been negotiated internationally. This point specifically concerns the domestic set-up for ratification of agreements between state leaders and third parties. The character of the ratification procedures in each country may determine the flexibility available to negotiators, but this hypothesis also holds true for authoritarian regimes, although the mechanism might operate slightly different (Wiegand 2011a, 33). As Putnam (1988, 460) argues, ‘central decision-makers strive to reconcile domestic and international imperatives simultaneously’. Leaders must take into consideration how a negotiated outcome will be ratified through mechanisms such as a parliamentary vote or judicial rulings.

Each national system is different, and it becomes essential to identify what Tsebelis (1995, 293) has termed ‘veto players’: ‘[A]n individual or collective actor whose agreement is required for a policy decision’. A pertinent example is the USSR–USA maritime boundary agreement concerning the Bering Sea/Bering Strait (the border is also known as the Baker-Shevardnadze line) signed in 1990, before the collapse of the USSR (Delimitation Treaty 1990). Later, however, the Russian Duma was unwilling – and still is at the time of writing – to ratify the final agreement (Østhagen 2016), although both countries abide by it.

Second, and related, is how a domestic audience more generally reacts to the possible concessions given when settling maritime disputes. This may determine the scope for possible settlement. Beyond institutional ratification procedures, opposition may take the form of lobbying by interest groups, loss of popular vote/confidence, and/or strong media opposition. Here are also the ethnic, cultural and local/regional interests concerned with a maritime boundary involved. If concessions in negotiations (an inherent feature of any maritime boundary delimitation) are not perceived as acceptable domestically, settling the dispute will be challenging even if leaders and foreign policy elites have achieved a suitable outcome through bilateral negotiations. When leaders
face heavy opposition at what Putnam terms Level II (domestic), the likelihood of settlement decreases.

Further, regional governments and/or local governance structures might have a vested interest in the outcome of a maritime boundary dispute. Perceptions of the national government ‘selling out’ regional interests might prompt strong domestic opposition to an agreement. Such opinions might correlate with notions of local and national ‘identity’ and ideas of a ‘national interest’ (Campbell 1998). Such notions have been identified as a key factor in conflict escalation when it comes to territorial conflicts (Oosterveld, De Spiegeleire, and Sweij 2015, 24). These specific interests may pose considerable hurdles for state leaders, who may choose to defer settlement, or – as Allee and Huth (2006) argue – make use of international bodies to settle the matter, thereby divert responsibility away from themselves.

Finally, economic interests in a disputed maritime area may outweigh other concerns. High economic value of a given territory promotes cooperation and can trump rivalry (Huth 1998; Vasquez 2005). Economic/commercial liberalism also holds that greater interconnectivity between states can act as a counterweight to security concerns (Doyle 2008, 66–67). Economic incentives related to territorial disputes may induce conflict in certain instances, if states are willing to enter conflict to protect sovereign interests and rights. However, history has shown that, over time, economic rationales serve to reduce rather than inflame territorial disputes, as states are more likely to cooperate in order to reap the economic benefits of a disputed territory (on land) (Huth 1998; Vasquez 2009). Economic value hinges on the presence of natural resources or other high-value commodities, the ability of the state to extract them, and their overall impact on the state’s economy (Wiegand 2011a, 23).

For the maritime domain specifically, this has been proven in several instances. Bissinger (2010, 104) argues that the economic potential from gas prospects was the main driver of the interests of Bangladesh and Myanmar in reaching an agreement in 2007. Similarly, Okafor-Yarwood (2015, 289) holds that it is the economic potential in the Gulf of Guinea that drives the settlement process between the states there. First, the economic potential of offshore industries (like oil and gas, fisheries, and minerals) related to the specific disputed maritime area increases. This is conditioned by factors such as the price of oil and gas on the world market, the distribution of fish stocks in the given area, or that the potential of the area itself has been revealed through new technology and/or surveys.
However, as long as the maritime area in question remains disputed, the political risks associated with investment and economic activity will dissuade commercial actors from engaging (Moe, Fjærtoft, and Øverland 2011; Orttung and Wenger 2016). Companies and states are interested in the disputed area but unwilling to invest as long as the economic and political risks are deemed too high due to the ongoing dispute. The state thereby loses the potential economic benefits of economic development and the accompanying tax revenues. State leaders of the states, acknowledging the greater potential of the area, may shift their preferences away from status quo, towards willingness to cede territory in return for dispute settlement. They recognise that the ongoing dispute constrains potential investors and reduces the state’s access to the maritime area in dispute. Thus, both states are interested in conceding territory.

Therefore, when the economic potential of a disputed maritime area increases, the loss of ceding parts of the same area might be deemed less significant than the potential gains of new economic activities. This rise in economic potential could derive from higher commodity prices or the discovery of new resources in the area. The economic benefits are seen as outweighing other concerns, and state leaders actively pursue settlement. In sum, then, the cost-benefit utility calculations made by the decision-makers determine the outcome.

Economic potential is likely to derive from access to marine resources, like fisheries, hydrocarbon and minerals. Fisheries in particular, but also oil/gas and mineral deposits, can be transboundary resources that require states to cooperate across disputed borders. Thus, when the potential of a region is uncovered and/or favourable market conditions occur, states can be expected to pursue boundary settlement actively (Bissinger 2010, 129). We should expect economic actors with an interest in the disputed area to play a role in persuading state leaders of the advantages of settlement. I can now formulate three related sub-components of the domestic hypothesis:

**HD1**: the domestic ratification procedures in a state determines the ability of that state’s leaders to finalise boundary agreements.

**HD2**: in face of popular domestic opposition, leaders are likely to avoid bilateral settlement altogether, perhaps deferring to international institutions.

**HD3**: states are more likely to pursue settlement when there is economic interest in the disputed area.
4.5. Hypotheses and their interaction

Table II: Overview of hypotheses

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Systemic (HS)</strong>:</td>
<td>Systemic interactions on the international level between the disputing states determine the chance of settlement.</td>
</tr>
<tr>
<td>HS1:</td>
<td>Power relations between the states in a dispute are likely to influence the chance of settlement.</td>
</tr>
<tr>
<td>HS2:</td>
<td>The strategic value of the maritime area in question will influence states’ willingness to settle the dispute.</td>
</tr>
<tr>
<td>HS3:</td>
<td>Regional patterns of amity/enmity between disputing states determine the likelihood of settlement.</td>
</tr>
<tr>
<td><strong>Legal (HL)</strong>:</td>
<td>The legal characteristics of the dispute determine the likelihood of settlement.</td>
</tr>
<tr>
<td>HL1:</td>
<td>The origins of the boundary claim determine the flexibility of each state, in turn determining the scope for negotiated outcomes.</td>
</tr>
<tr>
<td>HL2:</td>
<td>Concern about a legal precedent and its impact on other disputes determines a state’s willingness to concede in negotiations on a given maritime boundary dispute.</td>
</tr>
<tr>
<td><strong>Domestic (HD)</strong>:</td>
<td>The domestic environment in which state leaders operate determines the scope for possible negotiated outcomes.</td>
</tr>
<tr>
<td>HD1:</td>
<td>The domestic ratification procedures in a state determine the ability of that state’s leaders to finalise boundary agreements.</td>
</tr>
<tr>
<td>HD2:</td>
<td>In face of popular domestic opposition, leaders are likely to avoid bilateral settlement altogether, perhaps deferring to international institutions.</td>
</tr>
<tr>
<td>HD3:</td>
<td>States are more likely to pursue settlement when there is economic interest in the disputed area.</td>
</tr>
</tbody>
</table>

The relationships between these hypotheses are not straightforward, although some interaction effects can be identified. For example, one observable indication of HS (systemic) would be settlement outcomes skewed in favour of the more powerful state. Evidence indicating this could be found in the final distribution of maritime territory after settlement, or special arrangements...
related to the dispute. As Wiegand (2011b) notes, outcomes could be linked to issues beyond the dispute itself, as states seek bargaining leverage. Beyond unequal distribution of the area, there could be evidence that other forms of concessions had been made in favour of the powerful state, perhaps in the form of an unequal share of rights to resources in the area. However, observing equal outcomes would not necessarily corroborate the transformative role of asymmetric power relations; and finding evidence could be difficult if the states had chosen to agree on an equal territorial settlement, while conceding in other areas linked to settlement itself.

Should the second (legal) or third (domestic) hypotheses hold true, however, it is highly unlikely that we should observe this type of evidence. Skewed outcomes indicate that one state has been willing to concede territory, at a relative loss, to the other state. If, for example, economic interests in the given area are the main driver of settlement (and not systemic relations), we should not expect states to give away willingly any relative gains (maritime space), as both sides wish to maximise their potential outcomes, and thus end up with an equal share of the space.

Also, legal precedent developed over the past half-century regarding methods for how states delineate maritime boundaries (see 2.3 above) tends to produce outcomes where the allocation of maritime space is somewhat distributive. As noted in the presentation of equity and equidistance principles, these ideas have become an established feature of the UNCLOS regime. In turn, specific references to the three-stage approach by states, as in the Black Sea Case between Romania and Ukraine in 2009 (ICJ 2009), when settling disputes bilaterally would indicate an effect of international law on the final outcome beyond what the systemic hypothesis (HS) would predict.

Another possible observable indication of the systemic hypothesis (HS) would be the presence of military units in the disputed waters. Evidence here would take the form of the physical presence of naval vessels, as the superior state could be expected to take advantage of its supremacy by a show of force in the disputed territory. This behaviour is often termed ‘gunboat diplomacy’ (Mière 2011), as states intimidate inferior states by showing off their capabilities and naval power (Till 2004, 242). However, such use of naval vessels is unlikely to occur frequently, as states are concerned about escalating actions and reactions from other states to aggressive military manoeuvres.

The connection between this type of evidence and the legal and domestic hypotheses seems ambiguous. Military action and the show of force generally do not go well with economic activity
and commercial interests (HD3). If the domestic hypothesis concerned with economic gains holds true, states will be worried about the effects of the dispute on potential investors. In some cases, however, public opinion might support the use of naval vessels and military force in order to ‘defend’ the ‘core interests’ of the nation (Campbell 1998). Ethnic, cultural and historical interests – what some scholars see as intangible features – may also provoke domestic reactions, in turn prompting support for military action to uphold the state’s interests at sea.58

Further, military action does not necessarily contradict the relevance of legal factors. A state may deem it necessary to defend its legal position through military presence. Leaders (of states) are also more likely to utilise force in disputes where they have weak legal backing for their territorial claims (Huth, Croco, and Appel 2011). The exact relationship and interaction between these two hypotheses need to be explored further in each distinct case.

One observable indication of the legal hypothesis (HL), in addition to clear references in the boundary agreements to legal methods and jurisprudence, would be outcomes (agreements) that are correlated or in line with other maritime boundary disputes where the same state is included. This would indicate that decision-makers are consciously working to ensure legal consistency and have appreciation for legal precedents and how one maritime boundary agreement might impact additional outstanding disputes (HL2). Further, inflexible positions and arguments made by state officials concerning the origins of the boundary position in a dispute would be an observable indication of the importance of historic origins of the claim (HL1), as hypothesised under the HL hypothesis.

An additional observable indication of the domestic hypothesis (HD) would be stated economic interests in the disputed maritime area by commercial actors and/or governments in the relevant states. Such statements would concern the economic potential of operations that could take place in the disputed maritime area. Statements could be made through public speeches, press releases, interviews with media, or by companies themselves expressing interest. Statements are also expected to target the disputed maritime area explicitly, while emphasising the economic potential of the area itself.

This is derived from a causal mechanism that posits that companies and/or states will express an active interest in the disputed territory (HD3). Evidence should not be very hard to find,

58 Relevant historical examples include the UK/Iceland Cod Wars in the 1960s and 1970s, and the Canada/Spain Turbot War in the 1990s (Missios and Plourde 1996; Kristensen 2005; Børresen 2011).
as companies often have an interest in promoting their activities to increase share value, and states are interested in attracting commercial actors to exploit the economic potential of their resources. Such evidence could also be related to a change in the appreciation of the economic value of the maritime area closely linked temporally to settlement itself. Such change in potential economic profitability could be found in specific evidence surveying marine resources.

Should the *systemic* hypothesis (HS) hold true, however, we are probably less likely to observe this type of evidence. Given that a more powerful state may coerce a weaker state towards settlement, fear of conflict over the area, combined with high uncertainty concerning the actual outcomes of negotiations, may be assumed to restrain states from pursuing or highlighting their own economic interests. Particularly for the inferior state, promoting economic interests might reduce its bargaining leverage vis-à-vis the superior state.

In sum, although these various hypotheses are not entirely mutually exclusive, they are based on different causal mechanisms and have occasionally competing explanations. From the outline in this chapter, it is possible to apply process tracing (as described by George and Bennett 2005) to show specifically which hypothesis seems to have greatest explanatory power.
5. Quantifying Maritime Disputes

The previous chapters outlined various approaches to the study of territorial disputes and maritime space; the international law that has emerged as settlement procedures have developed over the past half-century; as well as various approaches for explaining the dynamics involved when states negotiate over maritime boundaries. Turning to the empirical data, this section will first give an overview of maritime disputes globally, based on a specific dataset. Then it will explore one attempt at a quantitative study of maritime boundaries conducted on the basis of the same dataset. Next, the quantitative approach in general, its limitations, and its underlying assumptions regarding maritime disputes are discussed, and finally, how to select case studies/countries from this material.

5.1. Overview of maritime boundaries

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 ones. Prescott and Schofield (2004, 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 boundaries exist, with varying degrees of specificity. Some estimate that there are approximately 640 maritime boundary disputes, with around half resolved (Cannon 2016). Newman (2018) claims there are 512 maritime boundaries in total, again half of them resolved.

In their ‘Distributive outcomes in contested maritime areas: The role of inside options in settling competing claims’, Ásgeirsdóttir and Steinwand (2016, 1293) present a data-set of what they consider to be all maritime boundaries: ‘Our data set contains 417 bilateral maritime boundaries and boundary segments and 189 agreements’. This study shows 21 more agreements and 10 fewer boundaries than that of Prescott and Schofield, although both draw on basically the same data-material: ‘the agreements detailed in the International Maritime Boundaries series […] excluding] multiple delimitations relating to the same maritime boundary situation and internal delimitations’ (Prescott and Schofield 2004, 218). 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.
Because of the detail, relevance, reliability and availability\(^{59}\) of the data provided by Ásgeirsdóttir and Steinwand, I have chosen to use this dataset, to provide a more general overview of the total number of disputes (settled/not settled by 2008) per country and per continent.\(^{60}\) 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. The results are displayed below; the maximum number of boundaries is 47 (France) and the lowest is 1 (Bosnia, Sri Lanka, Monaco, Yugoslavia, DRC, Palau, Slovenia).

### Table III: Total number of maritime boundaries as dyads, per continent

<table>
<thead>
<tr>
<th></th>
<th>countries</th>
<th>boundaries</th>
<th>settled</th>
<th>% settled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>39</td>
<td>87</td>
<td>23</td>
<td>26%</td>
</tr>
<tr>
<td>Asia</td>
<td>34</td>
<td>87</td>
<td>42</td>
<td>48%</td>
</tr>
<tr>
<td>Europe</td>
<td>34</td>
<td>84</td>
<td>55</td>
<td>65%</td>
</tr>
<tr>
<td>North America</td>
<td>23</td>
<td>88</td>
<td>35</td>
<td>40%</td>
</tr>
<tr>
<td>Oceania</td>
<td>16</td>
<td>47</td>
<td>18</td>
<td>38%</td>
</tr>
<tr>
<td>South America</td>
<td>10</td>
<td>24</td>
<td>16</td>
<td>67%</td>
</tr>
<tr>
<td>Total</td>
<td>156</td>
<td>417</td>
<td>189</td>
<td>45%</td>
</tr>
</tbody>
</table>

Based on dataset by Ásgeirsdóttir and Steinwand. Note that in some instances, a dyad might consist of countries from two different continents (i.e. Africa and Europe in the Mediterranean). In those instances, allocations to a specific continent were made on a case-by-case basis, at the discretion of the author.

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\(^{59}\) Courtesy of Asgeirsdottir and Steiwand, obtained through email correspondence.

\(^{60}\) ‘Continent’ here refers to the world's seven main continuous expanses of land (Europe, Asia, Africa, North and South America, Australia, Antarctica).
**Figure III: Maritime boundaries per continent**

Based on dataset by Ásgeirsdóttir and Steinwand.

**Illustration III: World map of countries with maritime boundaries**

Made with Microsoft Word, based on dataset by Ásgeirsdóttir and Steinwand. Ranging from 0 to 47 boundaries.
Perhaps more interesting are the countries with *outstanding* disputes:

**Illustration IV: Countries with outstanding maritime boundary disputes per 2008**

![Map showing countries with outstanding maritime boundary disputes per 2008](image)

Made with Microsoft Word, based on dataset by Ásgeirsdóttir and Steinwand. Ranging from 0 to 21.

These maps and tables 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. The question remains: What factors help to explain why these 189 disputes were settled, while 228 remain unresolved?

**5.2. A quantitative study**

Although it is challenging to generalise across *all* disputes – both ongoing and previously settled – it is not sufficient to hold that each dispute is *sui generis* and thus cannot be put in context with other disputes. With more than 400 maritime boundary disputes across all continents, some general
traits should be evident. With a large number (large-N) of cases (417) over an extended period where the outcome is dichotomous (settled/not settled), and several independent variables (factors) have a potential effect on the outcome, the logical next step is a quantitative analysis.

Ásgeirsdóttir and Steinwand (2016, 1285) take up a related but somewhat different question: ‘what happens to bargaining outcomes when an international regime provides states with an institutionalized alternative to a negotiated agreement that levels the playing field between states?’. Utilising the aforementioned dataset, they investigate why states choose to settle disagreements bilaterally, and how the UNCLOS regime affects the final demarcation of the line itself. For my study, it is the first question that is the most relevant.

Ásgeirsdóttir and Steinwand goes on to argue that states settle maritime boundary disputes to provide legal certainty to ensure potential oil and gas resource development:

In order to recoup their investments, oil companies depend on legal clarity about the status of the maritime area they are working in. Therefore, the presence of offshore oil or gas deposits will be associated with relatively large expected gains from cooperation. (2016, 1290)

Further, when gains from settling a given dispute are not evenly distributed (asymmetric), the boundary line itself will deviate from the median line in favour of the disadvantaged state. In turn, they argue that the effect of the established UNCLOS regime is a ‘reverse logic of bargaining’ where the disadvantaged state is actually compensated (Ásgeirsdóttir and Steinwand 2016, 1286). Theirs is the first, and to date only, study where all maritime boundary disputes are used in an attempt at saying something general about why states settle their disputes when they do (and the way the they do it).

The authors utilise a range of traditional dependent variables from IR theory concerning power asymmetry, regime character, trade, and history of territorial conflict. As these authors show in a probit analysis, some variables seem to have a direct effect on the chances of reaching an agreement (Ásgeirsdóttir and Steinwand 2016, 1299). Most significant is the discovery of oil and gas resources in the disputed area, in both or one of the countries. Similarly, existing oil production, as well as discovery combined with existing oil production, has effects on the dependent variable (chance of settlement). Also positively correlated with settlement are trade between the countries involved, whether both are democracies, and their previous record of
agreements.

Negatively correlated are variables concerning a previous territorial dispute and whether one or both countries are negotiating on behalf of a dependency. However, limited effects are found from fisheries in the disputed area, differences in Gross Domestic Product (GDP) between the two states, whether they have aligned voting in the UN, and differences in relative power capabilities (Ásgeirsdóttir and Steinwand 2016, 1299).

5.3 Finding a middle path

The findings of Ásgeirsdóttir and Steinwand give rise to several questions concerning quantitative approaches and maritime boundaries. The first concerns explaining the workings of the causal mechanisms outlined. Why do the factors work the way they do? The authors conclude:

The empirical analysis shows that the presence of offshore oil and gas deposits matters more than political factors of either the liberal institutionalist or the realist type. This suggests that economic interests are the most important driver in settling maritime boundaries. (Ásgeirsdóttir and Steinwand 2016, 1306)

What of the alternative argument: that oil and gas resources offshore make a disputed area more valuable and thus costlier to give up, since almost any maritime boundary resolution involves compromise? This argument, whether accurate or not, deserves discussion. It is also frequently invoked when scholars and media alike highlight the potential for ‘geopolitical conflict’ in maritime areas with resource abundance, be it the Arctic (Raspotnik 2018), the South China Sea (Kleine-Ahlbrandt 2012), or the Caspian Basin (Manning and Jaffe 1998; Kuniholm 2000).

Moreover, the other factors employed in the Ásgeirsdóttir and Steinwand study – like ‘relative capabilities’, ‘joint UN voting’, or ‘fishery total’ – are explained even more scantily. This is not a criticism of those authors and their work per se; however, it brings up a point crucial to this thesis: the need to examine what lies behind these variables when considering maritime disputes and their possible resolution. Given the complexity of the topic itself – as shown in chapters 3 and 4 – an in-depth analysis of how the various factors operate through causal mechanisms is called for.

Further, what is the relationship between the different variables? The details are naturally not dealt with in a straightforward quantitative study like that of Ásgeirsdóttir and Steinwand.
However, we may well ask how, for example, ‘joint UN voting’ interacts with the presence of oil and gas. Is it easier for states to agree on a maritime boundary that would enable shared exploitation of resources if they are already what can be considered ‘allies’? As Ásgeirsdóttir (2016, 191) maintained in an earlier article, in the case of US maritime boundaries a negative security relationship can actually act as a trigger for settlement. This has also been shown by Moe et al. (2011) concerning the 2010 agreement between Norway and Russia in the Barents Sea, and discussed more generally when Canada and Norway are compared (Byers and Østhagen 2017).

How do such factors come into play in a quantitative study?

Finally, there is another crucial point concerning the study of maritime boundaries and state behaviour: how it relates to international law. There seems to exist an invisible fence between the disciplines of international relations and international law, making the two areas of study difficult to combine. In a quantitative study that employs the above-mentioned factors, how can the legal dimension be incorporated?

In the study by Ásgeirsdóttir and Steinwand, the only ‘legal’ factor included is whether a state is party to UNCLOS. However, most states – and almost all the coastal states – have ratified UNCLOS, in turn making the effect of the variable definitely limited. On the other hand, there are other various legal factors that might influence state behaviour in negotiations, and thus also the chances of reaching settlement. How, then, can we include issues such as contemporary international jurisprudence concerning maritime boundary dispute resolution, or a country’s concern over legal precedents when negotiating a specific boundary agreement?

Legal precedent, and how states (and their officials) perceive the totality of maritime boundary disputes in which their state is involved, seem particularly relevant. However, Ásgeirsdóttir and Steinwand (2016, 1292) argue for examining boundary disputes individually, rather than viewing them as a set of disputes pertaining to each state:

When dealing with pairs of states that share more than one boundary, we treat each section as an independent boundary, which in practice they often are. For example, the United States has only settled one of its four boundaries with Canada. In bilateral discussions, the United States has insisted on treating each boundary independently.

This neglects the fact that, in the example given, Canada actually preferred to settle all
disputes with the USA as a package deal in 1977 (McDorman 2009, 119). The argument for treating each boundary dispute individually could easily be reversed, as several states view their boundary disputes as a collection of disputes and not individual ones. Moreover, although the USA insisted on this approach with regard to Canada in this particular instance, it still views each dispute in relation to its other disputes, for fear of setting an unfavourable legal precedent (Oxman 1995, 251, 264).

The focus in this study is on how states solve maritime boundary disputes. Given the tendency of states to see their own maritime boundaries as a whole from both a legal and political point of view (Byers and Østhagen 2017, 50–59), it is logical to see each dispute as separate but connected to the totality of disputes. We should therefore study a country’s approach to maritime boundary disputes and dispute resolution, which may or may not be related to the total number of disputes which that country is dealing with (Byers and Østhagen 2018). Viewing a country’s disputes as a totality is a central element in this doctoral study.

This approach makes it difficult to perform a quantitative analysis with a wide range of independent variables. Instead, we need to examine specific countries in order to understand the unique context of each maritime dispute, the causal mechanisms present (or not) within each dispute, and the linkage of singular dispute to that country’s other dispute. This does not necessarily validate the lawyers’ argument that each case is too unique for generalisation. Where this study seeks to contribute is in finding a middle way between the overarching quantitative approach – which has proven valuable but has its limitations – and historic, legal and technical specificity – where generalisation is not aspired to. As put by Goertz:

> For multimethod researchers, showing a significant causal effect in a cross-case analysis is not sufficient; one needs to provide a causal mechanism and evidence for it. Demonstrating a causal effect is only half the job; the second half involves specifying the causal mechanism and empirically examining it, usually through case studies. (2017, 2)

5.4. Case selection
Criteria for case selection were briefly outlined in Chapter 1.5. When studying maritime boundaries there are multiple ways to go about selecting cases. One approach would be to look at boundaries as single data points. Alternatively, the study could involve only one boundary dispute
between two parties, comparing and contrasting it with other similar or dissimilar disputes. Another approach would be to examine specific regions – whether oceans, seas, or regional domains – where boundary disputes have been settled, or persist.

However, as explained, the *state* is the primary focus in this study. The first step is then to choose states worth further scrutiny. However, when delving into process-tracing within each country, it is not the country itself that is of main concern, but its maritime boundaries. These two aspects cannot be disentangled. Therefore, this study examines countries *and* their respective specific maritime boundaries, with the latter specifically termed ‘cases’.

In order to have sufficient case material to examine boundary disputes without being overwhelmed, I set the range when selecting countries to those with ‘less than 15 but more than 5’ maritime boundaries in total. That reduced the number of relevant countries from 157 to 39 (see Illustration V and Table IV).

**Illustration V: Map of countries within the set range**

![Map of countries with 6-14 maritime boundaries](image)

Range: 6-14 maritime boundaries. Based on dataset by Ásgeirsdóttir and Steinwand.
Table IV: Overview of countries and their maritime boundaries within set range

<table>
<thead>
<tr>
<th>Country</th>
<th>Maritime Boundaries</th>
<th>Settled Boundaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Indonesia</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Netherlands</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Turkey</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Colombia</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Sweden</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Egypt</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Iran</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Malaysia</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Thailand</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Morocco</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Kiribati</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Honduras</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Italy</td>
<td>3</td>
<td>3</td>
</tr>
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<td>Australia</td>
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<td>Trinidad and Tobago</td>
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<td>India</td>
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<td>St. Vincent and Grenadines</td>
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<td>Equatorial Guinea</td>
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<td>Mexico</td>
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<td>Costa Rica</td>
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<td>2</td>
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<tr>
<td>Germany</td>
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<td>1</td>
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</tbody>
</table>

Total number of maritime boundaries and settled boundary disputes per country, within the set range (6–14 maritime boundaries) as of 2008, based on dataset by Ásgeirsdóttir and Steinwand.
The overview provides insights into the 39 relevant countries within the range set. The countries are spread across all continents, albeit not evenly: mostly in Asia, North America and Europe. In order to have enough data for comparison, this study focuses on four countries with more than 30 maritime boundaries between them.

This doctoral work has drawn on a preliminary study – *Why Does Canada Have So Many Unresolved Maritime Boundary Disputes?* (2017) – comparing Canada and Norway in their approaches to maritime boundaries. The two were both interesting in their own right, and well matched for comparison. The goal then is to find other countries of relatively similar size, population and international posture, but located on continents other than Europe and North America, with a different set of neighbours and regional relationships. Further, these countries would ideally have both settled and unsettled maritime boundaries, as variation on the dependent variable in this study would leave more room for analysis and comparison within each country, as well as across countries.

However, selecting countries with few or no settled maritime boundaries would probably lead to less data and thus, while interesting, would be less suitable for comparison. This is a crucial point. Although this is a study of binary outcomes (settled/not settled), as shown in chapter 4.1. and Figure I, constructing this as a study of a process involving a minimum of three distinct steps should open the way to a better understanding of what actually determines states’ willingness to start negotiations in the first place, and what hinders or drives negotiations onwards. Choosing countries (and cases) where the outcome did not occur at all (i.e. no process to be studied), would not shed light on the factors and processes that actually lead to settlement.

Thus, in this thesis, there is an explicit bias towards countries with a high number of settled disputes, in order to provide a range of relevant factors in each individual dispute, and room for comparison across context. In turn this produces a strong positive bias towards factors that can explain the settlement of disputes.

Setting aside countries in North America and Europe, as well as those with no or few boundaries settled, *Australia, Colombia, India, Indonesia, Iran, Malaysia, New Zealand, Saudi Arabia, Tukey* and *Yemen* all stood out as suitable cases. In view of language competence as well as the likelihood of gaining access to key decision-makers and experts across all four cases within a relatively limited timeframe, Australia and Colombia were selected as the two final cases.
There are similarities between Canada, Norway and Australia: all three are developed democracies with a high GDP per capita (see Table V), limited conflict within society, US military allies, relatively long coastlines, regional but not global stature, and strong supporters of international governance – some might deem them ‘middle powers’. Further, Australia and Canada are former British colonies. On the other hand, the three are located on different continents with a different set of neighbours (and thus sets of maritime boundary disputes), which arguably makes them interesting to compare and contrast.

Colombia is of a slightly different character in terms of GDP per capita (see Table V), income equality, conflictual societal relations, and colonial history. However, its regional position, geographical size, and number of maritime boundary disputes with a range of different countries make it especially pertinent for this study. Its relative difference compared to the other three cases also provides an interesting point for comparison and can help to place some of the findings in a wider non-‘Western’ context.

Table V presents general statistics on the four cases. Using process-tracing, as described in Chapter 1.5., I now turn towards a specific analysis in each of these four countries and across their various maritime boundaries.

Table V: Overview of the four countries on a range of metrics

<table>
<thead>
<tr>
<th></th>
<th>Australia (Commonwealth of Australia)</th>
<th>Canada (Dominion of Canada)</th>
<th>Colombia (República de Colombia)</th>
<th>Norway (Kongeriket Norge)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continent</td>
<td>Oceania</td>
<td>North America</td>
<td>South America</td>
<td>Europe</td>
</tr>
<tr>
<td>Size (landmass, km²)</td>
<td>7,682,300</td>
<td>9,984,670</td>
<td>1,038,700</td>
<td>304,282</td>
</tr>
<tr>
<td>Population</td>
<td>23,232,413 (July 2017 est.)</td>
<td>35,623,680 (July 2017 est.)</td>
<td>47,698,524 (July 2017 est.)</td>
<td>5,320,045 (July 2017 est.)</td>
</tr>
<tr>
<td>GDP total (PPP)</td>
<td>USD 1.235 trillion (2017 est.)</td>
<td>USD 1.764 trillion (2017 est.)</td>
<td>USD 712.5 billion (2017 est.)</td>
<td>USD 375.9 billion (2017 est.)</td>
</tr>
</tbody>
</table>

62 The maritime space and boundaries in Antarctica pertaining to Australia and Norway are excluded from this thesis. The dynamics around Antarctica and the related Treaty System, as well as how to delineate maritime boundaries between competing Antarctic claims, falls outside the scope of this thesis due to the complexity of that issue and its rather different nature from the other maritime boundaries examined here.
| (ppp - 2018)\(^63\) | | | | |
|---|---|---|---|
| **HDI ranking** \(^{64}\) (2017) | #3 | #12 | #90 | #1 |
| **Democracy index ranking** \(^{66}\) | #9 | #6 | #51 | #1 |
| **Government type** | Federal parliamentary democracy under a constitutional monarch | Federal parliamentary democracy under a constitutional monarch | Presidential republic | Parliamentary constitutional monarchy |
| **Capital** | Canberra | Ottawa | Bogota | Oslo |
| **Administrative division (2017)** | 6 states and 3 territories | 10 provinces and 3 territories | 32 departments | 18 counties |
| **Coastline** | 25,760 km | 202,080 km | 3,208 km | 25,148 km |
| **Number of maritime boundaries** | 8 | 8 | 10 | 8 |
| **Outstanding boundary disputes per 2019** | 0 | 4/5 | 2 | 0 |
| **Offshore / onshore petroleum production** | Both | Both | Onshore | Offshore |
| **Crude oil production** | 289,700 bbl/day (2016 est.) | 3,679,000 bbl/day (2016 est.) | 886,000 bbl/day (2017 est.) | 1,648,000 bbl/day (2016 est.) |
| **Natural gas production** | 67.2 billion cu m (2015 est.) | 149.9 billion cu m (2015 est.) | 11.91 billion cu m (2015 est.) | 117.2 billion cu m (2015 est.) |
| **Military expenditure** \(^{67}\) | 1.9% of GDP (2018) | 1.3% of GDP (2018) | 3.2% of GDP (2018) | 1.6% of GDP (2018) |

\(^{63}\) From the World Bank: [https://data.worldbank.org/indicator/NY.GDP.PCAP.CD](https://data.worldbank.org/indicator/NY.GDP.PCAP.CD)


\(^{66}\) 1 – 167, [https://www.eiu.com/topic/democracy-index](https://www.eiu.com/topic/democracy-index)

\(^{67}\) From the World Bank: [https://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS](https://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS)
6. Australia

The first humans are believed to have arrived in Australia, crossing from South-East Asia some 60,000 to 40,000 years ago (Lines 1991, 9; Macintyre 1999, 4). Up to one million Aborigines inhabited Australia and Tasmania, predominantly along the more fertile and hospitable east-south-east areas (Lines 1991). The first Europeans to arrive and interact with the indigenous population were the Dutch, who named the territory New Holland in the 17th century. In 1770, James Cook explored the southeast coast of the same land, claiming it on behalf of Britain and naming it New South Wales (Macintyre 1999). The contemporary name – Australia – comes from the Greek *Terra Australis Incognita*, an unknown land (*terra*) located to the south (*australis*), which became the popular name for the ‘new continent’ in the late 18th century (Lines 1991). By 1788, Britain had established a permanent presence in Sydney through penal institutions – ‘the most striking penal experiment in history’ (Frost 2011, 227).

In the early 19th century Britain established several additional colonies: in Tasmania, Western Australia (Swan River Colony), South Australia, Victoria and Queensland deriving from the original territory New South Wales, and finally, the Northern Territory which broke loose from South Australia. In the period from 1820 to 1850, Australia saw one of the most rapid colonisations in human history at the expense of the aboriginal population, as British settlers spread from Sydney and Hobart across the whole continent (Ford and Roberts 2013).

Having established dominance on the Australian mainland, Britain initiated the ‘era of Pacific sub-imperialism’ (Schreuder 2013, 514). New Zealand, parts of Malaysia, Fiji, North Borneo, Sarawak, Brunei and the Cook Islands, as well as the southern half of what is today Papua New Guinea (then British New Guinea), all became British colonies or protectorates in the course of the 19th century. Australia served as a base for expansion in the Pacific, initiated to reap the benefits of the resources of numerous Pacific islands (Schreuder 2013, 515, 523–24).

In contrast to the British experience in North America, this expansion – on land in Australia and in the Pacific – was largely unopposed by other European powers. At the same time, the distance from Britain entailed less direct control by Whitehall, and groups demanding greater autonomy for Australia became prevalent in the early 19th century (Curthoys and Mitchell 2013). ‘During the nineteenth century and well into the twentieth, the sentiment of colonial nationalism served the desire to mark Australia off from Britain and Europe’ (Macintyre 1999, 3). Spurred on
by a gold rush in the late 19th century, by 1901 the states federated to the Commonwealth of Australia and chose to become a dominion of the British Empire, retaining the British monarch as the head of state.

Further, as independence materialised, Australia’s own imperial ambitions in the Pacific grew, centred mainly around Melanesia (Thompson 1980). Together with New Zealand, Australian leaders set out to create dependencies among the nearby Pacific islands (M. Lake 2013, 551). ‘Like the United States, the Australians wanted to keep their region free from European powers, to forestall and resist rival empires so that they might more easily consolidate their own’ (M. Lake 2013, 556).

British New Guinea is a special case, as the regional government in the state of Queensland chose to annex this part of the island of New Guinea in 1883 – without support from Britain – to pre-empt German occupation at the time. By 1902, Australia had gained autonomy, and this territory was transferred to Australia as the ‘Territory of Papua’. In the aftermath of the First World War, Australia was mandated to administer the German part as well, eventually combining (in 1945) the two into Papua New Guinea. Not until 1975 did Australia grant independence to the territory (Brett 2013).

As Australia came to develop its own identity and eventually break away from the UK, it also feared its regional neighbours:

If nationalism rests in an ‘imagined community’, then Australians saw themselves within that global Britannic polity. An acute sense of ethnic vulnerability came to the Anglo settlers of Australia with the rise of Japanese power and a Chinese presence in the Pacific. (Schreuder 2013, 532)

China and growing Chinese immigration to Australia began to threaten the 19th-century notion of ‘White Australia’, becoming a source of tension, which still – in a different shape – lingers today.68

68 For more on contemporary Asia–Australia relations, see Akami and Milner 2013.
It was as much the perceived peril of proximity to Asia as the imagined tyranny of distance from Europe that defined Australia’s colonial experience and shaped the character of its nation building. (M. Lake 2013, 540)

Today, Australia consists of six states (New South Wales, Queensland, Victoria, Tasmania, South Australia, and Western Australia), as well as three territories (Northern Territory, Australian Capital Territory and Jervis Bay Territory) and seven external territories (islands in administrative clusters located some distance from the Australian mainland).

**Illustration VI: Map of Australia’s territory, including external territories**

Source: [Wikimedia](https://commons.wikimedia.org).

### 6.1 Australia’s Maritime Boundaries

‘Australia is an island continent, the only nation-state to have a major landmass to itself’ (McCreery and McKenzie 2013, 560). This simple fact removes the need to delineate maritime space where two borders on land meet and a line is extended into sea. Thus, the maritime domain
has in many ways served primarily as a buffer against potential security threats originating in the near Pacific (D. Lowe 2013). Australia borders or has access to several oceans and seas: the Tasman Sea to the southeast, the Java, Timor, Arafura and Solomon Seas to the north, the Coral Sea to the northeast, as well as more generally the Indian Ocean to the west, the Pacific Ocean to the east, and the Southern Ocean to the south.

This relates to Australian concerns over the stability in near-neighbouring states just across the various seas north of the Australian mainland. ‘As one specialist on Asian relations observed in 1991, ‘the leverage of Australia in foreign affairs, or the credibility of Australia in foreign affairs, is substantially diminished if there is a mess in Melanesia’’ (Akami and Milner 2013, 553). This thinking expanded in Australian defence policies from the 1950s, as British ability to provide security guarantees on the other side of the world diminished after the Second World War (D. Lowe 2013).

The initial drive for marine resources in Australian waters was due to the abundance of whales. As explained by Gaynor (2013, 275): ‘The industrial revolution in Britain had given rise to an insatiable demand for whale oil: the spinning frames of northern England were lubricated with it, and lamps burning it illuminated factories long into the night’. As whale stocks in northern waters became depleted, the industry shifted its focus south towards species that migrate to and from Antarctica. However, having expanded rapidly, the whaling industry was in decline by the 1860s due to overharvesting. It is reckoned that the whale population has still not regained pre-18th century levels (Gaynor 2013, 277). The regional seal population faced a similar fate. Consequently, industrial ventures turned their focus inland towards mining (predominantly of gold) and pastoral activities (Gaynor 2013, 280–85).

It was not until 1990 that Australia extended its territorial sea to 12 n.m., though it announced an intention to establish a full EEZ just one year later (Burmester 1995, 52). Australia implemented an EEZ in 1994, having preferred until then to refer to it as an ‘Australian Fishing Zone’ (Forbes 1995, 101). This fishing zone, based on the same principles as an EEZ, had been established in 1979 (Kaye 2001, 11). Schofield (2008, 4–5) describes the Australian approach as ‘conservative, cautious and orthodox, largely because of the relatively slow pace at which Australia has adopted extended claims to maritime jurisdiction’. This is also related to fear of opposition from third parties to Australia’s long baselines and historic claims, as well as the relative remoteness of most of its maritime space (Schofield 2008).
Australia has entered into maritime boundary treaties with Indonesia, Timor-Leste, Papua New Guinea, Solomon Islands, New Zealand and France, in effect settling all its maritime boundaries with its neighbours, with the latest settlement coming as recently as 2018, with Timor-Leste. However, this overall achievement did not come without costs. It was also the result of continuous efforts at pursuing settled maritime zones that started in the early 1970s.

Illustration VII: Map of Australia’s maritime zones

Source: Australian Government, Geoscience Australia.

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69 This does not include the boundaries surrounding Antarctica, which are not dealt with here.

In 1945, with the Japanese surrender in the Second World War, Indonesia declared independence from the Netherlands. Four years of armed conflict ensued, but by 1949 Indonesia was an independent state. What was known as the Netherlands New Guinea (the western part of the island of New Guinea) remained under Dutch control until 1962, becoming part of Indonesia only in 1963. As this part of the island borders directly on Papua New Guinea (then governed by Australia), as well as the Australian mainland across the Arafura Sea, this – together with developments in the Law of the Sea at the time – prompted demands to engage in maritime boundary-making.

As the concept of extended maritime zones entered the international agenda in the late 1960s, Indonesia engaged with its neighbours pre-emptively to settle maritime boundary disputes. In 1971, Indonesia and Australia agreed on a seabed boundary only, delineating the boundary between Papua New Guinea (then administered by Australia), Australia and Indonesia itself. This boundary must be seen as a result of Indonesia’s deliberate strategy of pressing for settlement, and thus also compromise, regarding all its maritime boundaries in the 1960s and 1970s – with Malaysia and Singapore, as well as Australia (Prescott 1993b, 1196).

Equidistance was the principle method utilised for boundary drawing, as referred to in the Treaty itself (Australia–Indonesia 1971; Kaye 2001, 46). The 1971 Agreement specifies a provisional joint regime for equitable exploitation of straddling seabed resources, when needed. As there were no known resources in that area, this was probably not the primary motivating factor in the delimitation (Prescott 1993b, 1197).

The following year, the two countries agreed on an extension of this continental shelf boundary, stretching through the Timor Sea from the agreed point in the Arafura Sea. This included a delineation between the various Indonesian islands in the northern part of the Timor Sea, including the island of Timor itself. The agreement, which was negotiated in 1972, was influenced by the outcome in the 1969 North Sea Cases, as Australia leaned on the ICJ’s verdict to argue for a larger share of the maritime space up to the point where the shelf drops into the Timor Trough at 3000 metres depth (Prescott 1993f, 309), and not the median line as argued for by Indonesia. The concept of natural prolongation, as applied by the ICJ in 1969, was thus a key element in persuading Indonesia to accept that Australia gained a larger share of the total outcome (Prescott 1993f, 307).
This included an area – Kelp – where hydrocarbons were expected. Indeed, oil and gas exploratory licenses had already been granted by Australia in what became Indonesian seabed. The agreement covered these licenses, and gave companies nine months to apply to Indonesian authorities to renew them under conditions similar to those held by comparable ventures in Indonesia (Australia–Indonesia 1972). They also agreed on provisions for consultations when managing straddling resources. When the agreement was signed in 1972, knowledge about the hydrocarbon potential was limited, although it probably played a part in the considerations of both countries (Prescott 1993c, 1209).

Further, Australia (on behalf of Papua New Guinea) and Indonesia concluded an agreement on a small remaining gap between land and a point where the 1971 seabed boundary started, as there had been some uncertainty as to the point on land from which to delineate the territorial waters. By 1973, this had been settled (Australia–Indonesia 1973).

These agreements did, however, cause negative reactions in Indonesia. Australia was perceived as gaining the most through the negotiations. As the former Indonesian foreign minister put it, Indonesia had been ‘taken to the cleaners’ (Kaye 2001, 21). Australia had made use of the immediate legal aftermath of the North Sea Cases to reap benefits from the new concept of ‘natural prolongation’ in its negotiations with Indonesia (Kaye 2001, 49; Prescott 1995). However, this idea lost some of its relevance over time, which might have put the agreed outcome in an unfavourable light (as seen from Jakarta). With subsequent developments in the case between Timor-Leste and Australia, questions have been asked about the permanency of the boundaries agreed in the early 1970s (Kaye 2001, 58). I will return to this point in the final chapters.

With the drawing of a maritime boundary between Australia and the Indonesian part of Timor and the Indonesian islands to the east of the then-Portuguese Timor, the Timor Gap was created. The Portuguese authorities were reluctant to negotiate closing this gap, but by 1975, when Indonesia acquired Portuguese Timor through annexation (fearing a communist takeover as Portugal abandoned its colonies after the revolution in 1974), Indonesia agreed to a joint development zone covering the gap (Prescott 1993f, 310). I return to this development in section 6.8 on the Timor Gap.

Although seabed issues had been settled in the agreements discussed above, fisheries relations remained as a separate issue. Indonesian fishers had a history of fishing close to Australia:

From at least the mid-1660s until 1907, fishing fleets from present-day Indonesia sailed to the northern coast of Australia in search of edible *trepand* – also known as bêche de mer, or sea cucumber – which had a high value in the Chinese markets. (Veth and O’Connor 2013, 40)

In 1979, Australia declared a 200-n.m. fisheries zone that overlapped with the zones of some of its neighbours. In those cases, strict equidistance was applied, which led to a discrepancy with the already agreed seabed boundaries (mentioned above). Australia also claimed full zonal effect of the uninhabited Ashmore and Cartier islands located close to Timor, to which Indonesia objected. This created a disputed maritime zone between the outcomes preferred by the two states.

Already, in 1974, the two countries had signed a Memorandum of Understanding (MoU) concerning traditional fisheries in the maritime areas around the Ashmore, Cartier and Browse islands (Australia–Indonesia 1974). This agreement was aimed at allowing ‘traditional’ Indonesian fishers to fish without motorboats or electric fishing equipment and to make use of the islands for water supplies. ‘Traditional fishers’ were defined as those who took fish using traditional fishing methods over decades.

From the Indonesian perspective, fisheries were a considerable motivating factor in pursuing an agreement (Kaye 2001, 50). Prescott (1993a, 1233) holds that the agreement itself was a sign of the cooperative relations between the two parties, as it was aimed at solving a specific problem between two nations. However, during the 1970s and early 1980s, several negative incidents involving overfishing and breach of the MoU damaged fisheries relations in the area (Prescott 1993a, 1234), in turn prompting further negotiations on a final maritime boundary.

In 1980/1981, Australia and Indonesia agreed in two rounds of negotiations on a provisional line for their fisheries zones. This agreement was signed on 29 October 1981, and came into effect on 1 February 1982. Prescott (1993a, 1230) holds that, because there was limited Australian interest in fishing in the area, and the issues concerning traditional access had been dealt with in 1974, no serious barriers existed and the negotiations could be completed rapidly. It has also been noted that the provisional nature of the agreement might have dampened possible
domestic opposition (Prescott 1993a). Additionally, ‘Australia was particularly anxious that acceptance of the equidistance line through the Timor Gap should not be seen to weaken Australia’s case in that dispute’ (Prescott 1993a, 1230–31).

In sum, this agreement concluded a highly complex boundary-making exercise in the Timor and Arafura Seas between Indonesia and Australia (Timor-Leste was later added to the mix). By first agreeing on a seabed boundary – legal precedent for this having solidified with the 1969 North Sea Cases – where, due to the shape of the continental shelf, Australia was awarded a line north of an equidistant line, and only later provisionally agreeing on a fisheries zone based on equidistance with no effect given to Australian islands close to Timor, the two maritime boundary lines diverge. The agreements separated the fisheries boundary, which favoured Indonesia, and the seabed boundary, which favoured Australia (Prescott 1993f, 308; Kaye 2001, 54). Then, in 1989, a special joint zone of cooperation was eventually instilled in the Timor Gap (see section 6.8 below).

However, the problems around traditional fisheries in the boundary area did not disappear. At times forceful behaviour, with the Australian authorities burning Indonesian boats, has caused outcry and media headlines. As Stacey (2007, 2) writes:

The issues are part of a complex, tangled web of legal, political, economic and historical trajectories. Since the late 1980s, the problem has at times posed a serious impediment to diplomatic relations between Australia and Indonesia. It will continue to pose a serious challenge for both countries until a suitable and appropriate policy and management response is devised.

Since the 1981 agreement set only a provisional boundary, several attempts were made to revisit and finalise it. There also remained overlapping claims west of the line in the Indian Ocean as well as around Christmas Island – a small Australian island just off the coast of Indonesian Java. The island had received its name on Christmas Day by William Mynors in 1643, and was settled in the late 19th century. It was transferred by Britain from Singapore to Australia in 1958. Indonesia did not consider the island as meriting a full EEZ.

Prescott (2002a) argues that the amicable relations between the two countries in the 1990s – despite the aforementioned fisheries problems – made the chances of a final settlement on the issue high. This came, however, only after UNCLOS entered into effect in 1994. The agreement
was signed on 14 March 1997, concluding almost 30 years of negotiations between the two neighbours (Australia–Indonesia 1997).

The Treaty finalised the provisional fisheries boundary that had favoured Indonesian traditional fishers and turned it into an EEZ. It also set out specific provisions for how to manage the discrepancy between the fisheries boundary and the seabed boundary, which had been created with the 1981 agreement. As Prescott explains:

Article 7 begins by asserting that Indonesia exercises the sovereign rights and jurisdiction associated with the exclusive economic zone throughout the water column, while Australia possesses equivalent rights associated with the continental shelf on the seabed. It is perhaps fortunate that within the areas of overlapping jurisdiction, fishing for sedentary species is unimportant. (Prescott 2002a, 2700)

Moreover, according to the Treaty, nothing agreed upon in it is to infringe on the positions of the two parties regarding the Timor Gap. Economic considerations concerning straddling resources (minerals and hydrocarbons) were obvious factors of relevance (Prescott 2002a). In the end, a compromise was reached regarding Christmas Island, and Indonesia gained a larger share of the disputed maritime zone (Kaye 2001, 57), Australia perhaps acquiescing to giving Indonesia two thirds of the disputed zone showcasing eagerness to settle the dispute (Prescott 2002a, 2703). The decision was also influenced by the Norway (Jan Mayen)–Denmark (Greenland) ICJ case from 1993, where Greenland’s longer coastline compared to that of Jan Mayen had led to the Court granting Denmark a larger maritime zone. The ratio in the Greenland–Jan Mayen case was 9:1, whereas the ratio in this instance between Java (Indonesia) and Christmas Island was 35:1 (Prescott 2002a, 2703). As Prescott explains:

In creating this treaty the Australian and Indonesian authorities have demonstrated again their ability to produce innovative solutions to boundary delimitation problems. The boundary arrangements fashioned over a period of 26 years through about 1300 n.m. of the Arafura and Timor Seas include EEZ boundaries based on equidistance, separate boundaries to divide the water column and the seabed, a zone of cooperation for seabed mining and a zone within Australian waters which may be fished by traditional Indonesian fishermen. (Prescott 2002a, 2710)
Independence in East Timor in 1999 overtook the Treaty. As of this time of writing, it has still not entered into force, as both countries have yet to ratify it. However, both countries act according to it. The Timor Gap, also mentioned in the Treaty, is another story. With the agreement between Timor-Leste and Australia in 2018, there has been discussion as to whether this maritime boundary should be re-visited in a package deal together with the seabed boundary, although no official statements have been made by either party (Australian Government Official II 2019; Former Australian Government Official I 2019).


Papua New Guinea is one of Australia’s closest neighbours, in terms of geography and international relations. In 1828, the western part of the island of New Guinea was occupied and claimed by the Dutch. As noted, due to fears in Australia/Queensland of possible German occupation of the entire eastern part of the island, Australia initiated a pre-emptive annexation in 1883, confirmed by Britain and delineated by 1887 (Prescott 2012, 69). In 1879, Australia had claimed all islands south of the coast of Papua Guinea and north of Cape York, which is the northernmost tip of the Australian mainland. The German north-eastern part of the island was ceded to Australia after the First World War. The Japanese invaded Papua New Guinea during the Second World War, but were driven out by 1946 (Prescott 2012, 70).

In 1971, before Papua New Guinea became independent, Indonesia and Australia agreed on a maritime boundary that derives from the border on land (6.2.) that delineated the seabed between Indonesia and Papua New Guinea. When Papua New Guinea gained independence from Australia in 1975, an agreement on a maritime boundary between the two countries was needed. Negotiations had in fact been initiated in 1972 and started in 1973, as independence was imminent (Kaye 2001, 102; Forbes 1995, 120). The Treaty was signed on 18 December 1978, but entered into force only on 15 February 1985, after both the Australian Parliament and the Parliament of the Australian state Queensland, as well as the Parliament in Papua New Guinea, had examined the agreement and deliberated it (Australia–Papua New Guinea 1978).

The treaty took over six years to negotiate and is highly complex – or as Oxman (1995, 249) terms it: ‘unusually sophisticated’ – with several distinct elements. This package deal
involved drawing four different boundaries at various locations: a seabed boundary; a fisheries jurisdiction boundary; a combination of the two; and a Protected Zone (Willheim 1989; Kaye 1994).

In the west in the Arafura Sea, a regular maritime boundary is based on equidistance, starting from the point agreed on by Indonesia and Australia in 1971 (C. Park 1993b, 931). However, where the boundary line enters the Torres Strait (the narrow strait between Papua New Guinea and the northern islands off Queensland), the two parties have agreed on a fisheries boundary that diverges from the continental shelf boundary: it juts northwards to include coastal areas and the northernmost islands of Australia lying just off the coast of Papua New Guinea. The boundary thus includes the Australian island of Saibai, eight kilometres from the Papua New Guinean coastline, and the island of Boigu, only six kilometres off the coast of Queensland.

Simultaneously a seabed boundary was drawn south of these islands, although each of the Australian islands could claim 3-n.m. territorial seas. Such separation of the seabed and the fisheries boundary was relatively uncommon at the time (C. Park 1993b, 931), and still is today. Then the two lines join again. From there onwards the boundary is an ordinary multipurpose boundary, deviating from the equidistance principle by slightly favouring first Papua New Guinea and then Australia (C. Park 1993b, 931).

In addition, a Protected Zone was created, which includes all the aforementioned fisheries/seabed deviation, as well as a wider area to the west, east and south, in Australian as well as Papua New Guinean waters. The Protected Zone created around the islands off the coast of Papua New Guinea was deemed important to protect both local inhabitants and the environment:

The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement. (Australia–Papua New Guinea 1978, para. 10)

The concept and implementation of the Protected Zone, which encompasses all the reserve land of the Torres Strait, provides an opportunity for the indigenous culture of the Torres Strait Islanders to be preserved. (Forbes 1995, 122)
As Australia had already issued licences for oil and gas exploration in the area, and there were expectations of straddling deposits, explicit provisions were made to protect economic activity and rights in the Treaty (Australia–Papua New Guinea 1978, para. 5).

Naturally enough, the initial impetus for boundary negotiations came from Papua New Guinea’s aspirations of achieving independence from Australia. Even before this was achieved in 1975, negotiations were underway:

Negotiations continued for the next few years with little public interest, other than occasional newspaper headlines of disputes between the Australian and Queensland governments, the latter seeing itself as guardian of the islanders' interests. (Burmester 1982, 326)

However, despite the good will on both sides, it rapidly became clear that Australia was unwilling to draw an all-purpose boundary – which Papua New Guinea preferred – south of the northernmost islands. In particular, opposition from Queensland, unwilling to abandon its inhabitants on the small islands close to Papua New Guinea, was seen as central (Burmester 1982, 327). Queensland thus played a considerably role in finding a solution (Forbes 1995, 120), both during and after negotiations, as an example of active regional participation in settling a boundary dispute (Kaye 2001, 104).

Similarly, yielding sovereignty over territory was seen as constitutionally difficult in Australia. Only after national elections in both countries in 1977, and with Papua New Guinea expanding its territorial waters to 12 n.m. and implementing a 200-n.m. EEZ in 1977, did the two countries push the issue forward. In advance of the final settlement in December 1978, the decision by Australia to affirm sovereignty over the above-mentioned islands was made public, without giving rise to strong counter-reactions (Burmester 1982, 327).

Another notable feature was the willingness of Papua New Guinea to comprise by claiming only a 3-n.m. territorial sea limit, or even less. From 1977, Papua New Guinea claimed a 12-n.m. zone, whereas Australia had claimed only a 3-n.m. zone. This must be seen in the context of amicable relations and the willing of the two countries to compromise to find the pragmatic solutions needed in such close proximity (C. Park 1993b, 933). At the same time, Papua New Guinea gained affirmation of its claims over three small islands – Kawa, Mata Kawa and Kussa –
which Queensland had claimed since 1879 (Forbes 1995, 120). This was particularly important for Papua New Guinea, given the colonial history and what Kaye (2001, 103) describes as fears of a ‘geographic hegemony to replace the political overlordship from which PNG had only recently been removed’.

Forbes (1995, 122) holds that this illustrates how ‘by mutual agreement, countries are able to reconcile their differences when there are benefits to be gained in determining the most appropriate means of sharing the resources of the seabed adjacent to their respective coastlines’. However, despite its innovative approach, the Torres Strait Treaty has been criticised. For instance, Schug writes:

The result of the lack of opportunities for traditional inhabitants to participate directly in the administration of the Treaty has been that Treaty arrangements have generated disaffection, confusion, frustration, and ill-will among the indigenous residents of the region. When the Torres Strait Treaty was signed in 1978 it was hailed by its architects as an innovative exercise in diplomacy. Ten years later one observer remarked that the Treaty ‘is now widely recognized as unworkable’. (Schug 1996, 218)

Schug concludes that the reason for the failure of the Torres Strait Treaty was the limited inclusion of local and indigenous voices in the set-up of the border regime itself:

…the imposition of an arbitrarily drawn fisheries jurisdiction line and adoption by the Treaty of a definition of tradition that conflicts with local residents’ own perceptions of their more than 100 year involvement in commercial fishing has placed communities and Treaty administrators in adversarial positions and hindered attempts to manage and conserve the region’s marine resources. (ibid., 222)

Today, both Australia and Papua New Guinea have liaison officers, based on Thursday Island (Australia) and Daru (PNG). ‘Day-to-day negotiations on border issues are conducted by treaty liaison officers appointed by each country’ (Bergin and Bateman 2018). Bergin and Bateman (2018) argue that, in turn, this area itself has become a security risk for Australia: ‘Australia will need to maintain its efforts to work collaboratively with PNG on border security. PNG is a key strategic interest for Australia that has been underappreciated since its independence’.

What appears to be one of the least challenging maritime boundaries for Australia to settle came with France in 1982, when the two countries agreed on two boundaries simultaneously. This ‘Agreement on Maritime Delimitation’, was signed on 4 January 1982, and entered into force on 9 January 1983 (Australia–France 1982).

In the context of the third round of UNCLOS negotiations and the realisation that 200 n.m. was becoming a widely accepted limit, both France and Australia showed interest in concluding maritime boundaries with their neighbours. The agreement deals first with the maritime boundary between the French overseas territory of New Caledonia and the Australian mainland, as well as the Australian island of Norfolk. The outcome was a partially modified equidistance line. France recognised the baseline starting point of Australia as being Middleton Reef, a tiny reef 125 n.m. off the Australian coast, thereby giving Australia a larger share of the maritime zone (C. Park 1993a, 906). ‘Because of the political will of the parties to conclude these agreements in most cases negotiations were carried on quite smoothly’ (C. Park 1993a, 906). This, coupled with the view, at that time, of the limited economic value in the area in question, can help to explain why France agreed to Middleton Reef as a basepoint. Park further notes that there were no economic aspects to the negotiations, which was why the parties managed to conclude the agreement in the course of only three days.

The second boundary established with the Treaty was between Heard and McDonald Islands (Australia) and Kerguelen Island (France) in the southern Indian Ocean. These islands are located in relatively extreme environments, with little or no permanent human settlement (Gullett and Schofield 2007, 547). Again, the boundary was based on equidistance. This boundary settlement seems to have come about predominantly as a consequence of the two countries’ establishing their extended zones (Kaye 2001, 153). According to Prescott (1993e, 1186): ‘The only political consideration involved appears to relate to the onset of negotiations. France made a determined attempt to draw maritime boundaries for its overseas territories in the period 1980-4 and Australian authorities were willing to join in what turned out to be simple negotiations’.

The boundary was drawn between the Australian fishing zone and the French EEZ, as well as delineating the continental shelf between the two parties. There is no provision for potential mineral or hydrocarbon fields that might straddle the agreed boundary, which adds weight to the
argument that economic considerations – as in the case with New Caledonia – played a limited role in shaping the final outcome. Also, given the proximity to Antarctica of these southern islands, their use for research purposes was deemed more important than economic ventures (Prescott 1993e, 1186).

Prescott notes that the Kerguelen-Gaussberg Ridge located in the area in question might be of interest in terms of hydrocarbons, but uncertainty at that time (the 1980s) as to its potential, as well as the remoteness of the area, made this aspect less relevant for the negotiations. ‘In short it does not appear that France, which might have argued in favour of a larger share of the intervening area, was sufficiently concerned to risk the negotiations by proposing some provisional division of waters and seabed of small economic potential’ (Prescott 1993e, 1187). It has also been argued that France’s larger maritime strategy concerned with settling boundaries, combined with the fact that neither resources nor principles were involved in these cases, helped spur agreement. As put by Gullett and Schofield (2007, 549): ‘The remoteness of the islands and lack of apparent fisheries and seabed resource potential may have contributed to the parties’ preference for a relatively straightforward application of a strict equidistance line.’

However, after the boundary was settled, fisheries have become more of an issue regarding Heard and McDonald Islands, and Kerguelen Island. In particular, Patagonian Toothfish became a commercially important species from the late 1990s onwards, spurring a number of Illegal, Unreported and Unregulated (IUU) vessels in the area. Arrests were made by both France and Australia, eventually prompting two rather extensive and unique agreements in 2003 and 2007 between the two countries to allow ‘hot pursuit’ of targeted vessels in each other’s territorial waters (Gullett and Schofield 2007). In turn, it can be argued that the relatively uncomplicated establishment of a maritime boundary in 1982 paved the way for deeper cooperation between the two states as fisheries improved in the area and marine resources became more relevant.


Australia and the Solomon Islands declared 200-n.m. fisheries zone and EEZ in 1979, one year after the latter had gained independence from Britain. Negotiations on a maritime boundary had already started in 1978, but it took a decade to reach an agreement, because the other countries involved – Papua New Guinea to the north and France (New Caledonia) to the southeast – had an
impact on where to draw the exact boundary. The boundary itself is not very long, only 150 n.m. (C. Park 1993c, 978).

The Agreement was signed on 13 September 1988, and entered into force on 14 April 1989 (Australia–Solomon Islands 1988). It was based on equidistance from the basepoints of each state, and serves as an all-purpose boundary delimitating both the EEZ and the continental shelf (Kaye 2001, 142). Economic interests do not appear to have played a decisive role in the negotiations or the outcome, as there was and still is only limited economic interest in this specific maritime area (C. Park 1993c).

This agreement, as well as the 1989 agreement between Papua New Guinea and Solomon Islands, created a ‘grey zone’ triangle beyond the 200-n.m. zones, open for possible extension of the actors’ continental shelves (C. Park 1993c, 980). Only three pages long, the agreement contains no special provisions, beyond a provision for reaching an agreement on ‘equitable sharing’ of straddling resources deposits (Australia–Solomon Islands 1988).

In sum, this – together with the above-mentioned boundaries with France – seems the simplest of Australia’s maritime boundaries, as it was settled in the wake of nearby agreements with France (New Caledonia) and Papua New Guinea, as well as with more distant Indonesia. Park, however, holds that for Solomon Islands, this agreement – as the first before tackling more complicated boundaries with Papua New Guinea and France (Vanuatu) – created a positive momentum for future negotiations with its other neighbours (C. Park 1993c, 980). Moreover, there were concerns at the time regarding IUU fisheries. Kaye argues that part of the motivation behind the agreement was in fact the desire to hinder such activity through an agreement that indicated jurisdiction – albeit with some lack of clarity – in the Coral Sea (Kaye 2001, 143–44).

New Zealand claimed an EEZ in 1977, while Australia waited until 1994 to do so. The distance between Australia and New Zealand is about 1200 n.m., across the Tasman Sea. Because of Norfolk and Lord Howe islands (Australia) and Three Kings Island (New Zealand) to the north, and Macquarie Island (Australia) and Auckland and Campbell islands (New Zealand) to the south, there arose a need to delimit EEZs as well as continental shelves. Australia and New Zealand had, however, informally agreed to an equidistant maritime boundary between their overlapping zones since the 1970s (Fyfe and French 2005, 2759).
Negotiations hinged on submissions for an extended continental shelf to the UN CLCS, due within 10 years of UNCLOS entering into force in a country (Australia: 1994, New Zealand: 1996). By 1999, as efforts were underway to finalise these submissions, the two countries officially started negotiations and agreed to complete their boundary negotiations by 2003. The relations between the two parties were good, due to historic reasons and cultural affinity. As stated in the preamble to the Treaty: ‘Conscious of their geographic proximity, long-standing friendship, and close historic, political and economic relationship’ (United Nations 2004, 40). Attesting to this close relationship, a key point here is the fact that, although both countries had claimed extensive maritime zones at an earlier point, a ‘gentleman’s agreement’ existed whereby both states respected the median-line without a formally declared agreement (Kaye 2001, 159). The Australian Department of Foreign Affairs and Trade aptly summarises the key concerns for negotiations:

During negotiations, the relevant issues included the relative length of coastlines, the effect of islands, and the distances from relevant coastlines, as well as geomorphological factors such as natural prolongation and the legal and technical case for connectivity of the continental shelf (DFAT 2004).

The Treaty was signed on 25 July 2004, with entry into force on 25 January 2006. It sets out a relatively straightforward division of the EEZs which are derived largely from the above-mentioned islands and not the mainland of the two countries. The islands on each side were comparable in size and distance from their respective mainland, which made it easy to apply the equidistance method. ‘In fact, the agreement on the application of the median line for EEZ delimitation served to confirm a limit that ‘has been observed de facto by the two countries for more than two decades’” (Schofield 2008, 6).

The Treaty also divided the extended continental shelves before final submissions were made to the UN CLCS. Indeed, this element served as the rationale for agreement between the two neighbours:

A major impetus behind the successful negotiation of the maritime boundary agreement with New Zealand was Australia’s desire to have a boundary line in place for both EEZ and extended continental shelf rights, prior to making a submission to the CLCS. In this
context Australia and New Zealand agreed that ‘both countries will be supportive of each other’s forthcoming submissions’ to the CLCS. (Schofield 2008, 8)

Further, the Treaty specifies in article 4 that any straddling seabed resources should be exploited most effectively and shared in an equitable manner (United Nations 2004, 43). However, expectations of hydrocarbons were limited, due in part to the distance of the maritime areas in question from the coastline of either party. The sole exception concerned the Lord Howe Rise, though this area is also far removed from both states (Kaye 2001, 168–69). Moreover, fisheries in the area were not a significant factor, though it has been noted that this agreement would prevent future disputes over resources (Fyfe and French 2005, 3761; DFAT 2004; Schofield 2008, 8). Perhaps the most remarkable feature of this agreement was the large amount of ocean and seabed space involved, as well as its delineating of a continental shelf extension that had not yet been submitted to the UN.

As previously described, when Australia and Indonesia settled a continental shelf boundary as well as a fisheries zone boundary in the early 1970s, a gap was created where the Portuguese colony of East Timor had claims to a maritime zone. In 1975, East Timor was annexed by Indonesia, and Australia decided to not interfere:

Indonesia’s 1975 military annexation of East Timor coincided with the internal throes of the Whitlam government and Fraser’s caretaker period. Both Labor and the Coalition acquiesced in Indonesia’s takeover, placing preservation of harmonious relations with Jakarta above the principle of self-determination for the East Timorese. (Strangio 2013, 158)

Australia in particular was eager to close the Timor Gap. However, by the time negotiations with Indonesia commenced, Indonesia was unwilling to accept a continuation of the previously agreed end-points on each side, because domestic opposition to the 1971/72-agreements was strong, and because international legal precedence seem to have had shifted in favour of Indonesia (Schofield 2007, 193). Consequently, the Indonesian and Australian governments signalled their
intention to develop a zone of cooperation in the Timor Gap area after 1975, though it was not until 1989 that an actual agreement was announced.

This delay can be explained by Australian hesitation regarding the status of East Timor up until 1985. Official negotiations started in 1978 and by 1979 Australia had recognised Indonesian sovereignty over the area (Kaye 2001, 65). However, there were groups in Australia who were critical of the government for accepting Indonesian rule in the former Portuguese colony, citing human rights abuses by Indonesian authorities (Kaye 2001, 64–65; Prescott 1993d, 1246–47). Kaye (2001, 65), among others, argues that it was in part Australia’s desire to close the Timor Gap that prompted the recognition of Indonesian sovereignty in the first place. By 1985, as ambiguity concerning Australian recognition had disappeared, and suggestions of a joint development zone appeared, it became possible to negotiate the details of the Timor Gap Zone (Kaye 2001, 69).

The Treaty concerning the Zone was signed on 11 December 1989, was ratified by both countries, and entered into force on 9 February 1991 (Australia–Indonesia 1989; Forbes 1995). The Zone established was divided into three parts. In the northern part, Indonesia would supervise the exploration and production of hydrocarbons and pay 10% of the tax it collected to Australia. The same arrangement applied to the southern part of the zone, here with Australia granting licences and Indonesia receiving 10% of tax revenues. The middle zone was to be administered and licenced jointly through ‘a ministerial council and joint authority on which both countries will be equally represented’ (Prescott 1993d, 1246).

Oil and gas resources were the most obvious driver of this maritime boundary agreement. As specifically mentioned in the preamble to the Treaty (Australia–Indonesia 1989):

DESIRING to enable the exploration for and exploitation of the petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and northern Australia yet to be the subject of permanent continental shelf delimitation between the Contracting States;

CONSCIOUS of the need to encourage and promote development of the petroleum resources of the area;

DESIRING that exploration for and exploitation of these resources proceed without delay (…)
Prescott (1993d, 1249) argued in 1993 that Australia in particular was eager to pursue this agreement, as demand for oil and gas was rising whereas production on the main offshore fields was declining. At that time, 87% of Australia’s oil and gas production took place offshore and it was expected that this new area could significantly contribute to Australian production volumes. Already in 1974, the Sunrise and Troubadour gas and condensate fields had been discovered. Collectively known as the Greater Sunrise fields, they are located approximately 150 kilometres southeast of Timor-Leste and 450 kilometres northwest of Darwin. Most of these fields are outside of the joint zone developed with the 1989 Treaty and in what became exclusively Australian continental shelf.

Indonesia, however, was not in the same hurry, due to larger proven reserves in other areas of development (Prescott 1993d, 1249). Moreover, as Prescott suggests, the ultimate distribution of the disputed zone may reflect Australia’s eagerness to reach an agreement:

The fact that Area B from which Australia will pay revenue to Indonesia is nearly 3.5 times larger than Area C from which Indonesia will make payments to Australia suggests that Australia was particularly enthusiastic for the treaty to be settled (Prescott 1993d, 1249).

The Treaty itself is detailed and complex, setting out provisions that include exact specifications of the boundaries of the zone and its internal division, to the setting up of a ministerial council and joint authority concerning the zone and hydrocarbon extraction, as well as dispute settlement and other cooperative mechanisms ranging from scientific research to pollution prevention (Australia–Indonesia 1989).

When the Treaty was announced, it was criticised by Portugal, which argued for the right of self-determination by East Timor, as well as the inclusion of Portugal in the negotiations. Portugal referred to the fact that the UN General Assembly and the Security Council did not fully recognise the Indonesian sovereignty in East Timor (Prescott 1993d, 1248). Australia rejected this, and in 1991, Portugal commenced proceedings against Australia in the ICJ, which, however, in 1995 ruled that the Court did not have jurisdiction in the matter because Indonesia was not one of the parties before the Court. Simultaneously, domestic opposition in Australia, driven in part by
Timorese refugees, stirred sentiments against the Indonesian governance of East Timor (Kaye 2001, 87–89).

In sum, the agreement solved a problem of boundary delimitation in an area expected to hold large hydrocarbon reserves by not imposing a clear boundary, but instead developing a highly innovative and complex joint zone. This was made possible by amicable neighbourly relations and years of negotiations between the parties, as well as eagerness amongst both parties – Australia in particular – to pursue economic ventures in the area (Prescott 1993d, 1253). As put by Forbes (1995, 119), ‘the time taken to reach agreement in principle may be ascribed to other political differences between the two countries’. These relate to, as mentioned, the status of the territory of East Timor. In the mid-1990s, unrest in East Timor eventually led to a Security Council resolution authorising a self-determination referendum in 1999 (Kaye 2001, 92), which then had consequences for this 1989-agreement.


By the 1990s, the independence movement in East Timor was gaining traction, as the scope of Indonesian atrocities against the local population became clear. The Dili Massacre in 1991 helped to galvanise international support for the independence movement (Dunn 2003). In 1999, the UN supervised a popular referendum on independence after an agreement with Portugal and Indonesia. A clear majority (78.5%) favoured independence, though this led to counter-reactions and civil war. The UN-authorized International Force for East Timor (INTERFET) entered the country, led by Australia. On 25 October 1999, the United Nations Transitional Administration in East Timor (UNTAET) was established. And in Australia, the mood had shifted:

In 1999 both the Coalition government and the Labor Opposition changed course, the prime minister declaring that he had been concerned about the ‘disconnect between the goals [of foreign policy] and the aspirations of the Australian people’. The Australian military played a leading role in the UN force, which supervised the transition to independence. Its role was popular with the Australian public but less so in many quarters in Asia (Akami and Milner 2013, 559).

On 10 February 2000, Australia and UNTAET had an exchange of notes as well as a Memorandum of Understanding concerning the Timor Gap and the 1989-agreement with
Indonesia. These statements underscored that the new administration in Dili would continue with the arrangements specified in the 1989-agreement, replacing Indonesia as the contracting party (Prescott 2002b, 2762). By 20 May 2002, a new government of East Timor was in place, and in September that year, the country was renamed Timor-Leste.

A new Timor Sea Treaty was negotiated and signed on 20 May 2002 (Australia–East Timor 2002). This Treaty did not establish a new maritime boundary in the former Timor Gap, but merely replaced Indonesia with East Timor as party to the Treaty, and upheld previously agreed commitments and provisions. The joint zone was re-named the Join Petroleum Development Area (JPDA), and it was now decided that Australia would get only 10% of the share of production in the JDPA and Timor-Leste 90% (Schofield 2007, 195). The Treaty was negotiated by UNTAET, in preparation for the ensuing independence of East Timor.

A key driver of this treaty, as with previous agreements concerning the Timor Gap, was the potential for oil and gas development. The Greater Sunrise fields had been discovered, approximately 20.1% of which lie within the JPDA (Prescott and Triggs 2005, 3809). The other 79.9% lies on the Australian side of the 1972-agreed seabed boundary with Indonesia. For this reason, giving Timor-Leste 90% of the 20.1% was possible for Australia.

However, the new government in Timor-Leste rejected the treaty negotiated by ENTAET. It argued that the 1972 agreement and the coordinates of the JPDA were inconsistent with international law (Schofield 2007, 198–99), and that the seabed boundary should have been based on equidistance instead of taking into consideration the nature of the continental slope (Prescott and Triggs 2005, 3809). The motivation for these arguments was seen to be the Greater Sunrise fields, which – according to Timor-Leste’s arguments – would lie within Timor-Leste’s zones.

Australia proposed a unitisation agreement with Timor-Leste – referred to as Sunrise International Unitisation Agreement (Sunrise IUA) – which would ‘validate existing production sharing contracts granted by Australia and enable exploitation to proceed’ (Prescott and Triggs 2005, 3810). This was signed on 6 March 2003 but not ratified until 23 February 2007, due to controversies over boundaries and ownership. Also, in 2002, Australia withdrew disputes over maritime zones from the terms of its acceptance of compulsory jurisdiction in the ICJ and under UNCLOS, thereby ensuring that all maritime disputes would have to be negotiated directly between the parties.
Soon, however, another agreement was in place concerning revenue sharing. The Treaty with the short form ‘CMATS’ was signed on 12 January 2006, and ratified on 23 February 2007 (Australia–Timor Leste 2006). This agreement resolved some outstanding issues concerning the unitisation of Greater Sunrise, setting out an equal sharing agreement (50/50) over the field. This increased Timor-Leste’s portion and reduced that of Australia. CMATS also set out provisions that temporarily postponed the rights of the two countries to pursue maritime boundary claims in the area in question (Timor Gap), while affirming each state’s right to unilaterally exploit continental shelf resources within its maritime domain outside the disputed area (Derek and Tyndall 2011, 4369).

Schofield (2007, 204) holds that the main driver for this new agreement, which took considerable time and resources to negotiate, were economic interests in the Greater Sunrise fields on both sides. Timor-Leste was seen as especially requiring an agreement, so as to avoid becoming a ‘failed state’ due to declining revenues from oil and gas production. As Derek and Tyndall (2011, 4370) argue: ‘Although political and strategic considerations played a role in the development of the CMATS agreement, it is clear that economic considerations were the primary impetus for the agreement.’ Schofield further explains that:

An additional motivating factor for Australia, albeit an apparently relatively minor one, was the fact that reaching a negotiated agreement with East Timor would remove an embarrassing dispute with a small developing neighbour which, rightly or wrongly, Australia is perceived by many outside observers as treating unfairly. Certainly Australia’s apparently hard-line position on the Timor Sea dispute has resulted in considerable international criticism and negative press, as well as unfavourable comment from pro-East Timorese pressure groups. (Schofield 2007, 204)

Not everything was settled, however. In Timor-Leste, opposition to the agreement increased the following year:

Leaders began agitating for the delimitation of maritime boundaries, co-opting narratives within Timorese civil society that the settlement of maritime boundaries was essential to complete national sovereignty, as part of a public diplomacy campaign to push Australia back to the negotiating table. (Strating 2018)
The government in Timor-Leste was under domestic pressure to obtain concessions from Australia. It was criticised due to ‘continuing perceptions that East Timor should have secured a significantly larger share of the seabed resources at stake’ (Schofield 2007, 209). Such criticism gained further momentum when, in 2012, a former Australian secret service operative revealed espionage by Australia that had allegedly started in 2004, aimed at ensuring a favourable outcome of the negotiations on the Timor Gap and the CMATS agreement (Belot and Stewart 2017). This news prompted Timor-Leste to reject the Timor Sea Treaty altogether and refer the matter to the ICJ (Cannane 2016). In 2014, the ICJ ordered Australia to halt spying on Timor Leste. In 2015, the former Prime Minister of Timor-Leste Rui Maria de Araujo commented with regard to the espionage: ‘Having that as an advantage for you to negotiate something that is a matter of death and life for a small country, I think it's – at least morally – it's a crime’ (Cannane, Koloff, and Andersen 2015).

By early 2017, Timor-Leste had left the CMATS agreement. It had also taken the case concerning the maritime boundaries to arbitration at the PCA, only dropping the case after the Australian Government agreed to renegotiate the boundaries (Doherty 2017). Australia agreed to negotiate under an UNCLOS conciliation committee – the first of its kind to be used for such issues. After one year of negotiations, the parties signed a new agreement on 6 March 2018. This new Treaty set out a completely new regime in the former Timor Gap, finally instilling an all-purpose maritime boundary for both the EEZ and the continental shelf (Australia–Timor Leste 2018). The boundary, which had previously been separated into a seabed and a fisheries boundary, was aligned at the point of the southern boundary of the JDPA. However, the boundary agreements with Indonesia from the early 1970s remain, creating an abrupt rectangle in the boundary line in the Timor Sea (see Illustration VIII).

The agreement was hailed as signalling reconciliation between Timor-Leste and Australia after years of troubled relations. Moreover, for Timor-Leste, it was deemed essential for the local economy. Up to 90% of the country’s revenues were derived from petroleum exploitation (Strating 2018). Ramos Horta, the former president and prime minister of Timor-Leste, declared to the media that the development of Greater Sunrise was ‘an absolute necessity for the future wellbeing of this country’ (Davidson and Knaus 2018).
However, some issues remained. One point of contention was where the products from the Greater Sunrise fields would be landed with a pipeline from the field. Timor-Leste argued that this pipeline should go northwards, which is the shorter distance. For this, Timor-Leste would be willing to retain only 70% of the revenues from the fields. Australia wanted the pipeline to go to Darwin on the Australian mainland, to connect to infrastructure already in place, in turn with 80% of the revenue of the fields falling to Timor-Leste (Belot and Stewart 2017; Davidson 2018). During the negotiations, the lead negotiator and former Timorese president Gusmao accused Australia of colluding with oil companies to get the Darwin pipeline, as well as accusing the UN committee of being biased against Timor-Leste (Davidson 2018).

The Treaty has not yet been ratified by the two countries and is thus not officially in force, at the time of this writing. Although these issues remain to be resolved, the agreement did provide a final solution to the delimitation of a maritime boundary in the Timor Sea, a process which had started in the early 1970s.

In general, Australian decision-makers and former negotiators describe an ambiguous relationship. It seems clear that consecutive Australian governments desired to reach a ‘fair’ deal with Timor-Leste – partly to ensure the stability of the latter, given its high reliance on revenues from oil and gas extraction, and partly to appease its own domestic public as well as an international audience concerned with the extreme power disparity between the two countries in negotiations (Burmester 2019; Australian Government Official II 2019).

Speaking to this is the role played by Australian-based NGOs working in favour of Timor-Leste. These include journalists who had been in the Timor struggle for independence, in which some journalists were killed; the Catholic Church in Australia, because of its links with the Catholic Church in Timor-Leste (Timor-Leste is approximately 97% Catholic); and the Return Services League (RSL) – the veterans’ organisation in Australia – which was motivated by the part played by Timorese soldiers during WWII (Australian Government Official I 2019; Burmester 2019). The roles played by these domestic pressure groups in Australia, favouring a generous outcome in the maritime boundary negotiations, seem both consequential and relatively unique, related to the image of Australia as a ‘good international citizen’ (Former Australian Government Official II 2019; Former Australian Government Official I 2019).
6.10. Conclusions

Australia’s process of settling its maritime boundaries has alternated between relatively straightforward and obstacle-free agreements, and complex arrangements that have led to challenges and, in one instance, re-negotiation. The initial need to clarify maritime boundaries, including continental shelf and fisheries boundaries, arose when the 200-n.m. limit became widely accepted in the 1960s and 1970s. The fact that none of these boundaries derived from borders on land also helped to remove a potential source of friction.

The simplest boundary agreements were made between Australia and small islands in the Pacific and the Indian ocean: with France over New Caledonia and Kerguelen, which lie on opposite sides of Australia (1982); and with the Solomon Islands (1988). These processes were rather unassuming and easy, where neither economic interests nor historical relations obstructed a mutually advantageous outcome based predominantly on equidistance delimitation in open ocean space. The same can be said for the 2004 boundary agreement with New Zealand, which also seems to indicate the relevance of close ties and cultural/historic bonds in facilitating processes (as
specified in the Treaty itself), prompting the two countries to agree on an extended continental shelf boundary in advance of submissions to the UN CLCS.

Otherwise, there have been boundary issues with only three other countries – and Australia has spent considerable time reaching and developing agreements with them. The boundary with Papua New Guinea, a former colony of Britain and Australia, proved the simplest to agree, but difficult to manage in practice. Signed in 1978 and in force by 1985, a complex regime was created by the division between a fisheries zone stretching to the shores of Papua New Guinea, but wherein Papua New Guinean traditional fishermen have rights, and the seabed boundary. Since that time, there have been challenges in upholding this regime on a daily basis, with adverse consequences for local fishermen in Papua New Guinea.

The other complex regime involves Indonesia and East Timor/Timor-Leste. With Indonesia, reaching an agreement was – as in the other cases – achieved rather quickly in the 1970s, and later in 1981 after extended maritime zones were implemented. However, the separation between a seabed boundary and fisheries zone, as well as a zone where Indonesian fishers could continue ‘traditional fishing’, has led to difficulties as well as negative publicity for the Royal Australian Navy, which has burned Indonesian fishing boats deemed unfit for sailing. Highlighting the complexity of these arrangements, and relations more generally, former Australia Prime Minister Keating stated:

[A]s prime minister, I probably spent more time dealing with the complex, psychologically sensitive bilateral relationship with Papua New Guinea than with any other relationship, apart from Indonesia. (quoted in Akami and Milner 2013, 553)

Moreover, these challenges link up with the Timor Gap created in the negotiations between Indonesia and Australia in the 1970s. The zone of cooperation in that area that came into being in 1989 – after Indonesia had annexed the former Portuguese colony in 1975 – temporarily solved the problem, but in a complex and – some would later argue – unfair manner. By 2002, the newly independent East Timor/Timor-Leste wanted a better deal than that which had been negotiated with Indonesia. Public resentment in Timor-Leste as well as in Australia led to a new Treaty that was negotiated under a UN conciliation committee and finally signed in 2018.
A few points stand out from Australia’s experiences and efforts at completing its maritime map. First, all boundaries are negotiated bilaterally. Australia has deliberately chosen not to use international bodies to adjudicate maritime disputes. On 21 March 2002, it even decided to exclude all disputes related to maritime zones from the compulsory jurisdiction of the ICJ and under UNCLOS. In other words, Australia has insisted that all its maritime disputes should be handled by negotiation and not litigation (Prescott and Triggs 2005, 3814). In the view of one former Australian official, keeping negotiations bilateral allowed for the kind of flexibility that Australia needed in dealing with its northern neighbours (Burmester 2019; Australian Government Official III 2019).

Resources seem to have been involved in several of the negotiations. This leads to several insights: First, one must not underestimate the desire of states to settle their maritime boundaries so as to avoid future disputes should the disputed area develop more relevance. This was the explicit – as stated in the treaties – rationale for the relatively simple boundary agreements with France, the Solomon Islands, and New Zealand, which all coincided with developments in international law. The former came as a consequence of expanded EEZs, whereas the latter came as a consequence of impending submissions concerning extended continental shelves. These points seem to confirm the hypotheses concerned with international law (HL), and counter those that argue that relative power balance considerations are the central concerns of states in these interactions (HS).

Resources also enter the picture regarding Australia’s maritime boundary settlements, as hypothesised in HD3. The potential for hydrocarbons seems to have been a crucial factor in Australia’s efforts to find compromise, especially with Indonesia, Papua New Guinea and Timor-Leste, even if that meant giving up a larger share of the fisheries zone than might perhaps have been obtained through a principled stance. Thus, the domestic hypotheses ranging from ratification procedures to especially large public engagement and the driving force of economic interests have all materialised in Australia’s maritime boundary cases.

This speaks to two additional points. First, separating a fisheries boundary from a seabed boundary is in itself an innovative approach to ensure agreement. This must be understood in the context of fishing interests in the areas disputed by Papua New Guinea and Indonesia, where Australia did not hold such interests. Second, although this acquiescence to ‘traditional fisheries’ might be interpreted as a way of removing impediments to agreement, the ensuing difficulties that
Australia has encountered as regards everything from illegal fisheries and migration to criticism for being too hard on traditional fishers, indicates that matters were not as straightforward as first thought in the 1970s. In other words, the fact that the Law of the Sea developed and matured eventually posed some problems for solutions that – albeit innovative at the time – later became outdated or in dispute (as in the case of Timor-Leste).

Another characteristic concerning the mentioned boundaries is the power disparity between the parties involved. Australia has arguably been the dominant state in all negotiations – apart from those with France and perhaps Indonesia, although the gap with the latter in the level of economic development and prosperity was wide in the 1970s and has remained so (Australia USD 53,799 per capita in 2017; Indonesia, USD 3,846). It is reasonable to ask whether this disparity played a role in the final outcomes. In the cases of both Papua New Guinea and Indonesia, Australia has been criticised for the outcome being too much in favour of Australian interests, and Australian governments have also been concerned with being perceived as obtaining too much (Burmester 2019; Australian Government Official I 2019; Australian Government Official II 2019).

This also concerns the fact that two of the maritime boundaries were negotiated with newly independent states – Papua New Guinea and Timor-Leste – where Australia played a role in their independence struggles and subsequent development, as well as providing aid to these countries through its wider Pacific aid policy (Wade 2018). One cannot help noting the contradiction between Australia’s highly developed aid policies abroad – such as the Pacific Regional Programme, aimed at advancing development in the much poorer neighbouring states – and its apparent efforts in maritime boundary negotiations to achieve as favourable an outcome as possible for itself. Moreover, Australia was involved in administering Papua New Guinea during some of the years leading up to the 1978 agreement, and it was also highly influential for East Timor regarding the transfer of authority first to the UNTAET and then to the East Timorese self-government.

The interconnections between Australia and its neighbours tie into the idea of a wider security context and relations between the actors involved (HS3). However, there does not appear to have been a particularly strong military or security component in any of the boundary negotiations examined here. Although security matters have been discussed concerning the

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70 From the World Bank: https://data.worldbank.org/indicator/NY.GDP.PCAP.CD
boundary with Papua New Guinea and to some extent with Indonesia, these issues are concerned more with safety and softer security issues, not traditional military alliances or outright conflict. None of the disputes has played a direct role in armed conflicts or great power games, although the issue of freedom of navigation through the Torres Strait and the Arafura and Timor Seas is relevant. Amicable relations seem to have dominated relations between Australia and all the countries in question, even in the case of the protracted negotiations and final conciliation with Timor-Leste.

Thus, instead of the traditional theorems arguing for relative power considerations and strategic concerns (HS1 and HS2), in the case of Australia politicians and the public opinion were concerned with being perceived as too ruthless in negotiations with more vulnerable (at the time) negotiating partners (Australian Government Official II 2019). This speaks the regional patterns of interaction – HS3 – that developed over a century from Australia’s independence to that of Papua New Guinea in 1975 and Timor-Leste in 1999. These benign interactions and the relative power disparity between the negotiating partners actually worked in contradiction to the HS1 and HS2 hypotheses, although the HS3-hypothesis can be said to more accurately capture the dynamics involved.

In sum, Australia’s maritime boundaries – all having been settled at various intervals with different degrees of complexity – show strong support for the power of the domestic audience and local/regional interests when engaging in maritime boundary disputes and their ongoing negotiations. Further, some of these cases highlight that there must not be resources or an active conflict at play for states to find it mutually beneficial to settle their boundaries, as a step in a larger strategy to complete their maritime maps and implement authority and control for the sake of just that. However, for Australia questions remain about the permeance of the boundary arrangements to its north, due to the mix of different interests and activities. Australia has not had a particularly maritime outlook in its domestic and foreign policies – according to some interviewees – and has still managed to settle all its boundaries at sea. With the increasingly apparent effects of climate change on Australian coastal environments (like the Great Barrier Reef) and expectations of an even further growth in fisheries and petroleum production offshore in its waters, the value of these efforts might just become more apparent in the years to come.

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7. Canada

Canada emerged as an independent state in 1867, after settlers from Europe – predominantly France and England – had colonised land along the St. Lawrence river and the Great Lakes from the 16th century onwards. The indigenous peoples that had been living there since around 12,000 BC were driven away from their lands, killed, or confined to ‘reserves’ as the colonies continued to grow west and northwards, eventually covering the whole of Northern North America. Ultimately the north and the prairies to the west – what had been Prince Rupert’s Land – became the North-West Territories, in turn broken up into several provinces and three territories to the north (the last territory – Nunavut – was established as recently as 1999). Canada achieved complete independence from the UK in 1931, although it has retained the British monarch as the official head of state.

The border with the USA was agreed to the south (much of it along the 49th parallel) with the Oregon Treaty in 1846, and to the north between Yukon and Alaska when the USA purchased Alaska from Russia in 1867 (although that border itself was initially agreed in 1825 in a treaty between the UK and Russia). A dispute remained over the border of the Alaskan Panhandle, which was settled by arbitration in 1903, mostly in favour of the USA. Canada has two other European neighbours in addition to the USA. The small islands of Saint Pierre and Miquelon lie off the coast of Newfoundland and are still part of France as an overseas territory, making France a neighbour state (via the sea).

Denmark (Greenland) is the other neighbour just across the Davis Strait, Baffin Bay, and Nares Strait, opposite of the territory of Nunavut. Initially a Norwegian colony, Greenland became part of the Realm of Denmark when Norway became joined to Denmark. It still belongs to the Realm of Denmark (despite Norwegian attempts to re-claim it in the 1930s and growing discussions amongst Greenlanders on the possibility of full independence). In 2009, Greenland acquired Home Rule, with only security and foreign affairs decided in Copenhagen (Erdal 2013).

Today, Canada comprises ten provinces and three northern territories. A recurrent theme in Canadian history, the Arctic played an important role in nation-building during the twentieth century (Huebert 1995). The Arctic in Canada is generally defined as the three federal territories above the 60th parallel (Government of Canada 2009). This massive swathe of land and water encompasses 40% of Canada’s landmass and 25% of the global Arctic, but is home to only 110,000
people. The idea of ‘the North’ figures prominently in Canadian identity, although distances from Canadian urban centres – most of which are located close to the US border – to the Canadian Arctic are considerable in any context.

The importance the Canadian government attaches to questions of sovereignty has led to some questionable policy decisions in the past (Huebert 2011), such as the forced relocation of Inuit families from northern Québec to the High Arctic Archipelago in the 1950s in order to ‘give evidence of ‘occupation’ as well as the ‘presence of authority’ that could be used to support Canadian sovereignty claims’ (Shadian 2007).

Arguably the greatest ‘threat’ to Canada’s territorial sovereignty in modern times has been the disputed status of the Northwest Passage (Howson 1987; Byers and Lalonde 2009; F. Griffiths 2011). Canada treats it as internal waters subject to Canadian jurisdiction, whereas the USA and others have maintained that it is an international strait where foreign vessels, also military ones, have the right to transit passage (Pharand 2007). In 1985, the US Coast Guard icebreaker, *Polar Sea*, passed from Greenland to Alaska on a resupply mission without seeking permission from the Canadian government. The Canadian government had been informed of the voyage, but had severely underestimated the public outcry that was to ensue (D. M. Johnston 2002).

The 1988 Agreement on Arctic Cooperation, drafted in response, ‘pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada’ (Canada–United States 1988). In the words of then-Prime Minister Brian Mulroney, this represented ‘a practical solution that is consistent with the requirements of Canadian sovereignty in the Arctic’ (quoted in Lajeunesse 2008).

Even though relations with Canada’s two neighbours – Alaska in the west and Greenland in the east – are amicable, there are still two outstanding disputes with both parties, in addition to several outstanding maritime boundary disputes with the USA further south. Denmark (on behalf of Greenland) and Canada disagree over the relatively insignificant Hans Island/Hans Ø (Byers 2013, 10-16). A second dispute, with the USA, concerns the dividing line in the Beaufort Sea (to which I return below). Together, these two Arctic disputes have contributed to what has been called ‘sovereignty anxiety’ in the North: the perception that Canada is struggling to uphold its sovereignty in the Arctic and is thus vulnerable to security threats in the region (Lackenbauer 2011). These notions also play into the larger relationship between Canada and the USA.
Illustration IX: Map of Canada

7.1. Canada’s Maritime Boundaries

Canada has the world’s longest coastline, facing three oceans: the Northeast Pacific, the Arctic, and the Northwest Atlantic (Statistics Canada 2016). The Canadian coastal areas in the Pacific and Atlantic hold – or have held – some of the richest fish resources in the world (Applebaum 2001). In 1969, the discovery of a major oil field at Prudhoe Bay, Alaska, also raised the prospect of oil and gas deposits in the Beaufort Sea, where the USA and Canada disagree on the location of the maritime boundary.

When international negotiations on UNCLOS started in 1973, Canada was interested in protecting its extensive fisheries to the east and west, especially in view of the importance of the
Grand Banks fishing area off the coast of Newfoundland (Applebaum 2001). Between 1956 and 1977, Canada shifted from claiming the traditional 3-n.m. territorial sea to claiming a 12-n.m. territorial sea and exclusive jurisdiction over fisheries within 200 n.m. of its coast, as well as over mineral resources on its continental shelf. In 1977, the extension of fisheries jurisdictions by Canada gave rise to several boundary disputes in the Northeast Pacific, the Northwest Atlantic and the Arctic, predominantly with the USA but also with France (over Saint Pierre and Miquelon) and with Denmark (the waters between Greenland and Canada).

In 1977, Canada and the USA opened negotiations with a view to resolving all four of their maritime boundary disputes; in Juan de Fuca, Dixon Entrance, Beaufort Sea and the Gulf of Maine. Prominent at the time was the dispute in the Gulf of Maine, in the middle of a rich fishery that had previously been located in international waters (McRae 1989, 145–47). Canada began by expressing a willingness to grant concessions in the Beaufort Sea (Arctic) in return for US concessions seaward of Juan de Fuca Strait (Pacific) and, especially, in the Gulf of Maine (Atlantic) (Kirkey 1995, 55). It also sought a hydrocarbon-sharing regime for the Beaufort Sea, so that oil and gas would not ‘become a political or economic issue between the two countries because there would be joint access’ and ‘where the line was wouldn’t make any difference’ (Kirkey 1995, 55–56).

This attempt at a package deal failed because the USA insisted on dealing with each of the disputes independently and because Canada was concerned that, in the absence of a package deal, a concession in one dispute could weaken its legal positions in the others. The US side was also worried about creating precedents in regard to international law – not necessarily in regard to disputes involving Canada, but in regard to disputes elsewhere. Both countries were also concerned about domestic politics, as Kirkey explained:

Canadian acceptance of the U.S. position on the Beaufort Sea boundary – in the absence of an equitable, comprehensive settlement – would by consequence place the [Pierre] Trudeau government in the politically undesirable position of having to defend an agreement that unquestionably favoured American maritime jurisdictional interests in the North over those

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73 Kirkey (1995, 59–60) argues: ‘U.S. officials were concerned that by deviating from this position, which seeks to delimit wet boundaries according to the principle of equidistance – except in cases where specifically defined circumstances exist – American ability to successfully prevail either in the course of international negotiations over future maritime boundary cases, or regarding those cases brought before the ICJ, would be greatly reduced.’
of Canada. Such an unpalatable scenario could therefore not be permitted by Canadian officials to transpire. (Kirkey 1995, 59)

Similarly, the US negotiating team ‘staunchly believed that even if they agreed to the Canadian proposal [for a package deal], it stood no chance of being politically supported both in the interagency process, and by Congress. Such a proposal, if accepted, would undoubtedly be viewed as predominantly favouring Canadian interests’ (Kirkey 1995, 60). Finding themselves in a standoff, the parties shifted their attention to resolving the dispute in the Gulf of Maine solely, where immediate, competing economic interests made a solution imperative.

Illustration X: Canada’s maritime zones

Source: National Resources Canada
7.2. Canada–USA: Gulf of Maine (partially resolved 1984)

The Gulf of Maine is located southwest of the Canadian provinces of Nova Scotia and New Brunswick and east-southeast of the US states of Maine and Massachusetts. It is a rich fishing area, most notably on the shallow Georges Bank, which historically was located in international waters beyond the territorial sea (Colson 1993, 402). In 1977, Canada and the USA claimed fisheries zones out to 200 n.m. that overlapped on the eastern portion of Georges Bank (McDorman 2009, 135). The 8,648-n.m.² overlap was due to each side preferring a different method for delimiting the maritime boundary. While Canada delimited its zone in the Gulf of Maine through straightforward application of the equidistance principle, the USA drew a modified equidistance line that took into account ‘special circumstances’, especially the shape of the seabed (McDorman 2009, 140–42). In an effort to consolidate their positions, both parties had also made use of oil and gas licencing and seismic surveys in the 1960s and 1970s (Colson 1993, 403).

After three years of intense negotiations, Canadian and US negotiators signed two treaties in 1979 that were then sent to the US Senate for its ‘advice and consent’ to ratification. The East Coast Fisheries Agreement provided a complicated regime of transboundary fishing rights; however, it was never put to a vote, due to opposition from the US fishing industry (McDorman 2009, 137). By contrast, the Agreement to Adjudicate the Maritime Boundary received the Senate’s advice and consent (US Senate 1981). In this second agreement, Canada and the USA agreed to submit the dispute to a chamber made up of five members of the ICJ (Valencia-Ospina 1996, 503), who were to delimit a single maritime boundary for both the continental shelf and the EEZ (1981). Excluded from the chamber’s mandate were the seabed and waters close to shore around Machias Seal Island (discussed below); the chamber was instructed that the delimitation was to begin at a designated point south of that island (Colson 1993, 403).

In 1984, the chamber delimited a boundary out to 200 n.m. from the US coast that divided the disputed zone almost exactly in half (ICJ 1984). However, the end-point of the adjudicated line was only 175.5 n.m. from the Canadian coast; as a result, 163 n.m.² of water column and seabed located within 200 n.m. of the Canadian coast were left unresolved. The USA has still not accepted Canada’s jurisdiction to regulate fishing in that small area, beyond the US 200-n.m. limit but south of the equidistance line (McDorman 2009, 176–78).

According to Kirkey (1995, 64), the decision to focus Canadian–US negotiating efforts on
this dispute was prompted by a series of developments in 1978, including ‘the unrestricted fishing of cod, haddock, pollock and scallop species by U.S. vessels in the Gulf of Maine’ and ‘the reciprocal barring of Canadian and American fishing vessels from the other’s waters’. These developments led to a ‘growing concern about the risk of being plunged into a British–Icelandic type of fish war without either side wishing it’ (Wang 1981, 15).

Another factor was the potential for oil and gas in the Gulf of Maine: indeed, both countries had already issued exploration licenses there (McDorman 2009, 134). All this created a situation in which, according to US negotiator David Colson, ‘an agreement was essential in light of the high level of human activity which occurred in the disputed area’ (quoted in Kirkey 1995, 64). McDorman (2009, 141) holds that the choice of adjudication rather than negotiation was caused, in part, by ‘the unwillingness of either the Canadian or U.S. governments to be tarred by the concerned domestic constituencies with having compromised the national position’.

7.3. Canada–USA: Machias Seal Island (unresolved)
Machias Seal Island is a tiny feature (0.08 km²), located about 8 n.m. from the US state of Maine and 10 n.m. from the Canadian province of New Brunswick. The dispute extends to two nearby islets, Gulf Rock and North Rock, as well as the surrounding water column and seabed, an area of around 210 n.m.² The water column and seabed are at issue because resolving the dispute over the island will determine on which side the maritime boundary is located. The dispute over the island itself dates back to the 1783 Treaty of Paris, which assigned to the newly independent USA all islands within twenty leagues (60 n.m.) of its coast (Treaty of Paris 1783). However, the treaty also excluded any island that was part of Nova Scotia – and a 1621 Letters Patent issued by King James I for the purposes of establishing the colony of Nova Scotia included Machias Seal Island. The western portion of Nova Scotia later became the province of New Brunswick.

In addition to the Treaty of Paris, the USA has based its position on the proximity of Machias Seal Island to the US mainland. In addition to the British land grant, Canada has based its position is based on the presence of a British (later Canadian) lighthouse on the island since 1832 – which the USA did not protest until 1971.

In 1979, the dispute over Machias Seal Island and the surrounding water and seabed was excluded from the mandate of the chamber of the ICJ that had been established to resolve the maritime boundary farther out in the Gulf of Maine. In its judgment, the chamber explained this...
decision as follows: ‘the Parties wish to reserve for themselves the possibility of a direct solution of this dispute’ (ICJ 1984, 265–266).

Machias Seal Island and the surrounding seabed and waters have scant economic value. No oil or natural gas has been discovered in the area. Although the surrounding waters contain lobsters, which have been the subject of friction between Canadian and US fisherman, the potential fishery is not particularly large, and the two governments have exercised restraint, including by adhering to a policy of flag-state enforcement (McDorman 2009, 193–94). These factors help to explain why the dispute has been left unresolved. As McRae told the (Canadian) Globe and Mail in 2012, ‘every now and then it crops up as an issue between the two parties, and then they just simply try to put aside because I don’t think either side is interested in dealing with it’ (quoted in Mackrael 2012).

The ‘possibility of a direct solution’ may not have been the real reason why the dispute over Machias Seal Island, with the surrounding seabed and water, was excluded from the mandate of the ICJ. Governments often find it more difficult to give up (or risk giving up) territory, because land generally has more domestic political significance than seabed or water. Machias Seal Island also constitutes a zero-sum negotiating situation, with most of the foreseeable results involving one country obtaining uncontested title, to the exclusion of the other. This zero-sum outcome could be balanced with concessions elsewhere – for instance, in a multi-boundary package deal – or it could be overcome through the creation of a joint zone, whereby both countries would share sovereignty over the island, enabling the drawing of a maritime boundary up to the low-water mark at both ends. But the USA was opposed to a package deal in 1977–78, and condominiums, although not unprecedented, are rare in international law. 74

Finally, the interests of subnational governments were involved, and still are. Any Canadian concession on Machias Seal Island would diminish the size of New Brunswick, thus bringing the interests (and perhaps constitutional rights) of that province into question. Similar considerations would seem to apply regarding the US state of Maine (Byers and Østhagen 2017).

7.4. Canada–USA: Beaufort Sea (unresolved)
The Beaufort Sea is the shallow portion of the Arctic Ocean located between Alaska’s and Canada’s High Arctic islands, just north of the Mackenzie River delta. The dispute over the

74 One example is Pheasant Island in the middle of the Bidasoa River between France and Spain (Byers 2013, 15).
location of the boundary began in 1976 when the USA protested the line that Canada was using when issuing oil and gas concessions (McDorman 2009, 184). The existence of the dispute was confirmed the following year when both countries delineated fishing zones out to 200 n.m. – using different lines for this purpose (Gray 1997, 62).

The dispute centres on the wording of a treaty concluded between Russia and Great Britain in 1825 (the USA took on Russia’s Treaty rights when it purchased Alaska in 1867; Canada acquired Britain’s rights in 1880) (Great Britain-Russia 1825). This treaty set the eastern border of Alaska at the ‘meridian line of the 141st degree, in its prolongation as far as the frozen ocean’ (Great Britain-Russia 1825, para. 3). Canada claims that this treaty provision established both the land border and the maritime boundary, and that both must follow a straight northern line.

In contrast, the USA holds that the delimitation applies only to land, and that regular methods of maritime boundary delimitation apply beyond the coastline. In the case of the Beaufort Sea, the USA considers an equidistance line to be the legally and geographically appropriate approach (US Department of State 1995). As the coast of Alaska, the Yukon, and the Northwest Territories slants east-southeast from Point Barrow, Alaska, to the mouth of the Mackenzie River, such an equidistance line trends progressively further east of the line that Canada prefers at the 141° W meridian, running in a roughly north-northeasterly direction from the terminus of the land border to the 200-n.m. limit. As a result, within that distance from shore, a pie-shaped disputed sector of approximately 6250 square n.m. was created.75

Canada and the USA sought to resolve the Beaufort Sea dispute along with their other maritime boundary disputes in 1977–78. At the time, Canada indicated its willingness to approach the disputes as a package, expecting to be able to trade losses in the Beaufort Sea for gains elsewhere. However, the USA insisted on treating each dispute separately. Each summer from 2008 through 2011, two icebreakers – one US, the other Canadian – worked together in the Beaufort Sea, gathering information about the shape of the ocean floor and the character and thickness of the seabed sediments (Boswell 2008; S. Griffiths 2010). This was a partnership born of necessity, as neither country had two icebreakers capable of the task and because both countries required a complete scientific picture of the seabed in order to determine the geographic extent of their sovereign rights to an extended continental shelf more than 200 n.m. from shore.

This collaborative mapping beyond 200 n.m. may have also opened the door to resolution

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75 See McDorman 2009, 181–90.
of the boundary dispute, by showing that the continental shelf in the Beaufort Sea might stretch 350 n.m. or even farther from the shore (Baker and Byers 2012). This is because introduction of the extended continental shelf into the equation added a twist to the Beaufort Sea boundary dispute – for if one extends the US-preferred equidistance line beyond 200 n.m., it changes direction and begins tracking towards the northwest. This is the result of a change in direction of the Canadian coast on the eastern side of the Mackenzie River delta and especially because of the presence of Banks Island, a large feature on the Canadian side of the Beaufort Sea (Baker and Byers 2012). This leaves a large and as-yet-unclaimed area of extended continental shelf to the west of the 141°W meridian and east of the equidistance line, essentially the reverse of the disputed sector farther south. In simple spatial terms, the US line appears to favour Canada beyond 200 n.m. (Baker and Byers 2012).

In short, what had appeared to be a zero-sum negotiating situation came to offer opportunities for creative trade-offs – opportunities that resulted in at least some diplomatic re-engagement in 2010 (Byers and Østhagen 2017). In February of that year, an official from the Canadian Department of Foreign Affairs cited a probable overlap in the two states’ views of the areas subject to their extended continental shelf rights as the main reason for renewed efforts at resolving the Beaufort Sea boundary dispute (Boswell 2010a). In the Speech from the Throne in March 2010, the Canadian government signalled its desire to ‘work with other northern countries to settle boundary disagreements’ (Government of Canada 2010b). This was followed by a public invitation to open negotiations specifically on the Beaufort Sea boundary, delivered in May 2010 by Canada’s Foreign Minister Cannon during a speech in Washington, DC (Boswell 2010b).

By the time Cannon released Canada’s Arctic foreign policy statement in August 2010, reiterating the commitment to resolving boundary disputes, at least one meeting between US and Canadian diplomats had already taken place (Government of Canada 2010a; Boswell 2010c). Discussions were suspended at some point in 2011, after the two countries decided they would need more scientific information on the existence and location of hydrocarbon reserves before negotiating a boundary. Other factors probably included Cannon’s departure from the foreign affairs portfolio, the mid-2011 fall in world oil prices, and concerns about Canadian domestic law and public opinion (Byers and Østhagen 2017).

Regarding the resource potential, as far back as the 1970s, seismic surveys and exploratory wells had established that oil and gas were present in the Beaufort Sea. In 2006, Devon Canada
discovered potentially 240 million barrels of oil just to the east of the disputed zone (G. Park 2007). The next year, Imperial Oil and ExxonMobil Canada committed to spending CAN 585 million in return for exploratory rights over a nearby area of seabed (O’Meara 2007). Then, in 2008, British Petroleum agreed to spend CAN 1.2 billion in exploring an area adjacent to the Imperial-ExxonMobil leases (Haggert 2008). In 2010, the three companies concluded a joint venture agreement on exploration for oil and gas in the two offshore parcels (Polczer 2010). On the US side of the disputed zone, in the Chukchi Sea, Shell spent USD 7 billion on an exploratory campaign (Filippone 2015). As a result of all this attention, the disputed boundary became of economic interest.

World oil prices dropped sharply in 2014; and, in 2015, Shell shut down its activity north of Alaska, without having made noteworthy finds (Filippone 2015). Then, in December 2016, both the Canadian and US sides of the Beaufort Sea were put off-limits for further oil and gas development as a result of a moratorium announced by the Obama administration and the new Trudeau government (Reuters 2016b). The 2014 drop in oil prices contributed to this. As for fish, there is currently no commercial large-scale fishery in the Beaufort Sea, though indigenous peoples from both Canada and Alaska engage in some subsistence fishing there.

Moreover, the governments of the Yukon and Northwest Territories in Canada sometimes express concern when the USA makes statements or takes regulatory action with respect to the disputed zone (Forrest 2016). However, neither territorial government has legal rights in the Beaufort Sea. Unlike the maritime areas off Nova Scotia and Newfoundland & Labrador, where federal–provincial agreements exist, the federal government has sole jurisdiction over offshore resources in the Canadian Arctic. Moreover, the economies of the Yukon and Northwest Territories would be likely to benefit if the boundary dispute could be resolved and if this led to oil and gas activity – as some of the infrastructure and services needed to support such offshore operations would be based in Tuktoyaktuk and Inuvik, and traffic on the Dempster Highway would increase. In any event, no public opposition was expressed in 2010 when news reports indicated that Canada–USA discussions were underway (Byers and Østthagen 2017).

The chief domestic impediment to resolution of the boundary dispute could be the 1984 ‘Inuvialuit Final Agreement’, a constitutionally recognized land-claims agreement in which the Canadian government and the Inuvialuit used the 141˚ W meridian to define the western edge of the Inuvialuit settlement region (Inuvialuit Regional Corporation 1984). In the settlement region,
specifically in the Yukon North Slope, which includes the offshore area to the northeast of the terminus of the international land border, Canada recognised Inuvialuit harvesting rights over fish and game, and pledged to protect the area. Under international law, Canada could enter into a maritime boundary treaty with the USA that would probably be valid and binding regardless of the domestic rights of the Inuvialuit (Byers and Østhagen 2017). However, under Canadian law, the federal government is obliged to consult, to limit any infringement of Aboriginal rights as much as possible, to make any such limitation clear through an Act of Parliament, and to provide compensation (Byers and Østhagen 2017).

Finally, concerns about public opinion across the rest of Canada may have contributed to the suspension of discussions. During his nine years as prime minister (2006–2015), Stephen Harper had proclaimed himself a champion of Canadian Arctic sovereignty (Lackenbauer 2013; Byers and Webb 2013). Any concessions, especially to the USA, would have been treated harshly by the Canadian media and opposition parties. If concerns about public opinion existed in 1978, also in the context of a possible package deal, they existed in 2011 as well.

7.5. Canada–USA: Dixon Entrance (unresolved)

In 1903, the USA and Britain established an arbitration panel to delimit the border between the Alaska Panhandle and British Columbia (Canada–United States 1903). At the southern end of the Panhandle, the panel drew a boundary down the middle of Portland Canal to just south of where it opens into the Dixon Entrance, a roughly 75 n.m.-long, 30 n.m.-wide strait that connects the mainland coast to the open sea just to the north of Haida Gwaii (formerly the Queen Charlotte Islands). The panel designated that point just south of the mouth of Portland Canal as Point B, and drew a straight line from there to Point A at Cape Muzon on Dall Island, 72 n.m. distant (Great Britain–United States 1903). The resultant ‘A–B line’ runs along the north side of the Dixon Entrance.

Canada holds that Points A and B are part of the arbitrated boundary delimitation, just like the other turning points, thus giving all of the Dixon Entrance to Canada. However, the USA claims

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76 See Inuvialuit Regional Corporation 1984, para. 12 (2): ‘The Yukon North Slope shall fall under a special conservation regime whose dominant purpose is the conservation of wildlife, habitat and traditional native use’. The Inuvialuit settlement area extends more than 600 n.m. northward into the Beaufort Sea, well beyond Canada’s exclusive jurisdiction over the living resources of the EEZ, although it is unclear whether Canada (in 1984 or at any time since) intends to exercise any exclusive jurisdiction beyond 200 n.m.
that the A–B line allocates title over land, leaving the maritime boundary to be decided in accordance with international law – in the US view, the equidistance principle. In 1977, the USA used the equidistance principle to define a fisheries conservation zone through the length of the Dixon Entrance. The difference between the Canadian and US positions amounts to 828 n.m.², spread over two areas south of the A–B line. Two small areas north of that line but south of the equidistance line have, curiously but logically, not been claimed by either country.

The dispute also has consequences seaward of the Dixon Entrance, because the location of the boundary between the two countries’ 200-n.m. EEZs, which Canada and the USA agree should be delimited according to equidistance, depends on the boundary that is closer inshore for its starting point. Canada’s preferred line starts at Point A, whereas the US-preferred line starts at a point equidistant between Cape Muzon and Langara Island (the northernmost part of Haida Gwaii) (McDorman 2009, 168).

In 1945, Canadian and US negotiators reached a tentative settlement of the Dixon Entrance dispute whereby citizens of both countries would, outside the respective 3-n.m. territorial seas, have the right to fish and navigate on either side of an equidistance boundary. However, the Canadian national government withdrew, following objections from the provincial government of British Columbia (Bourne and McRae 1976, 215). The BC government claims jurisdiction, vis-à-vis the Canadian federal government, over the water column and seabed within the Dixon Entrance, east of a line between Point A on Cape Muzon and Haida Gwaii, on the grounds that these rights had belonged to the colony of British Columbia and were not surrendered when the colony joined Canada in 1871. Further, the BC government claims jurisdiction, on the same basis, over Hecate Strait, Queen Charlotte Sound, Johnstone Strait, and Georgia Strait, plus the Canadian side of Boundary Pass, Haro Strait, and Juan de Fuca Strait (though only to where the latter strait opens into the Pacific Ocean).

In 1984, the Supreme Court of Canada upheld the province’s claims with regard to all these areas except the Dixon Entrance and Hecate Strait, which had not been included in the question put to the court (Canadian Supreme Court 1984). The BC government has thus involved itself in the Dixon Entrance dispute, blocking a tentative settlement in 1945 and issuing a position paper on the dispute in 1977 (British Columbia 1977). It could therefore be expected to challenge any Canada–US resolution of the dispute, both politically and in the Canadian courts, unless it were included in the negotiations. Although the involvement of a provincial government in international
negotiations is certainly possible, that would introduce an additional level of complexity to an already complex dispute.

In 1977, the Dixon Entrance was also one of the disputes included in Canada’s proposal for a package deal involving all four of the Canada-US boundary disputes – a proposal that failed to receive support from the US because of the latter’s refusal to bundle disputes when negotiating. The Dixon Entrance has not been explored for oil and gas, because of the long-standing moratorium on oil and gas drilling off Canada’s west coast and the US focus on proven reserves further north. However, there are rich stocks of salmon and halibut in the area. Over the decades, both Canada and the USA have occasionally arrested each other’s fishing boats in the Dixon Entrance. However, tensions over fisheries have subsided in recent decades, for two reasons. First, in 1980, the two countries agreed, in an exchange of notes, to observe flag-state enforcement (McDorman 2009, 285). Second, in 1985, they concluded the ‘Pacific Salmon Treaty’ and created the bi-national Pacific Salmon Commission to manage the fishery cooperatively, along the entire coast (McRae 1989, 154–55).

US Navy submarines regularly pass through the Dixon Entrance en route to an acoustic testing facility on Back Island, just north of Ketchikan, Alaska. In the early 1990s, Canada accorded navigational permission to the submarines, and the USA may have agreed to provide notice in advance of transits (McDorman 2009, 170–72). However, the USA has never accepted that Canadian permission is required. Naturally enough, the US Navy would prefer not to have to rely on the permission of a foreign government to access one of its own facilities, and that might go a long way towards explaining the US refusal to accept the A–B line as a maritime boundary.

In Canada, the A–B line has great historical significance. It resulted from a four-to-two arbitral decision in which a British-appointed arbitrator broke ranks with his two Canadian colleagues and sided with the three US negotiators to favour the USA on the location of the land border as well as with regard to several islands. Public reaction in Canada was intense: as a result, the position that the A–B line constitutes a maritime boundary – to the disadvantage of the USA – has become a domestic audience rallying point. Even today, more than a century later, any Canadian government would be wary of making concessions in the Dixon Entrance.77

As was the case until recently in the Beaufort Sea, Canada and the USA thus find

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77 See D. M. Johnston and Valencia 1991, 100, on how the ‘symbolic significance’ of the A–B line ‘almost precludes the political possibility of a concession by Canada’.
themselves in zero-sum situation concerning the Dixon Entrance. Moreover, any compromise that resulted in a boundary somewhere between the A–B and equidistance lines would see both countries conceding potentially rich fishing grounds, abandoning firm positions, and creating precedents that might prove damaging with regard to disputes elsewhere.

7.6. Canada–USA: Juan de Fuca (unresolved)
The boundary between Canada and the USA within the Strait of Juan de Fuca was settled in 1846 (Great Britain–United States 1846), but the development of offshore rights in the mid-20th century led to the emergence of a new dispute just west of the strait in the Pacific Ocean. The dispute involves a mere 15.4 n.m.² of EEZ, spread over two lens-shaped areas.

West of Juan de Fuca Strait, the continental shelf is very narrow, and the potential for oil and gas is therefore limited. However, there are salmon and halibut stocks on Swiftsure Bank, part of which falls within the lens-shaped area located closest to shore. Canada and the USA agree that the equidistance principle should be applied. The dispute centres on Canada’s straight baselines, which it adopted along the indented southwest coast of Vancouver Island in 1969. The USA immediately objected, on the grounds that the baselines had been constructed ‘contrary to established principles of international Law of the Sea’ (ICJ 1984, US notes).

The dispute became salient in 1977 when Canada declared a 200-n.m. fishing zone. The zone was delimited using an equidistance line that was based on Canada’s straight baselines to the north and the low-water mark along the US coast to the south. That same year, the USA declared its own fisheries zone, which it delimited using an equidistance line based on the low-water marks of both coasts. In addition to disputing the legality of Canada’s straight baselines, the USA has therefore contested whether straight baselines were used appropriately for delineating an equidistance boundary.

Canada included the dispute within its proposed package deal in 1977, but otherwise no negotiations have taken place. According to McDorman (2009, 175), ‘[t]he small area of disputed waters seaward of the Juan de Fuca Strait has caused little concern and has not been the subject of Canada-U.S. discussions’.

There is no evidence of pressure from the fishing industry to resolve the dispute. As in the case of the Dixon Entrance, the cooperative management of the fishery under the Pacific Salmon Commission, combined with flag-state enforcement, has created a situation that is workable for
both sides (McRae 1989, 154–55). For this reason, public opinion does not play a role: indeed, very few Canadians or US citizens are even aware of the existence of the dispute. There is some degree of regional interest, however, with the province of British Columbia expressing the view in the 1970s that the boundary should follow the underwater Juan de Fuca Canyon and not an equidistance line (British Columbia 1977).

As in the other Canada–USA boundary disputes, both countries seem concerned that compromising on a principle of delimitation in one instance could weaken their position in another. Moreover, the same concern may exist over the law governing straight baselines. The Canada–USA dispute seaward of Juan de Fuca Strait could in fact be linked to a dispute over straight baselines in the Arctic. When Canada adopted straight baselines around its high Arctic archipelagos in 1985, that brought immediate protests from the USA and the European Community (EC – which became the EU) (Byers 2013, 133–34, 137–38). Both Canada and the USA might therefore be concerned that any compromise on straight baselines along Vancouver Island could weaken their positions in the Arctic, where the dispute over straight baselines is linked to the far more significant dispute over the status of the Northwest Passage.

7.7. Canada–Denmark: Greenland (1973)

In 1970, Canada extended its territorial sea from 3 to 12 n.m. (Government of Canada 1970). However, it overlooked the fact that the new limit extended at several points more than halfway across Nares Strait, the narrow channel between Ellesmere Island and Greenland (Gray 1997, 68). Once this consequence was realised, boundary negotiations with Denmark commenced. The boundary under negotiation was potentially quite extensive, because Greenland lies within 400 n.m. of the long eastern coastlines of both Ellesmere Island and Baffin Island, each of which is larger than the UK.

In 1973, Canada and Denmark agreed to divide the ocean floor using an ‘equidistance line’ (Canada–Denmark 1973). Since then, the two countries have also used the resultant 1,450-n.m. boundary to define their fishing zones: the continental shelf delimitation has become an all-purpose maritime boundary (Gray 1997, 68). One provision of the ‘Agreement on the Continental Shelf between Greenland and Canada’ addresses the possibility of hydrocarbon reserves straddling the new boundary (Canada–Denmark 1973). But unlike some more recent maritime boundary treaties, it requires only that the parties negotiate in these circumstances: it does not provide a process or
The treaty does have one unusual element – how it deals with a disputed island located on the equidistance line. Hans Island/Ø, with an area of only 1.3 km$^2$, is not mentioned in the treaty (Byers 2013, 10–16). The maritime boundary stops just short of the south shore of the island and begins again just off the north shore of the island. As a result, the dispute over Hans Island has been rendered almost irrelevant, as it now concerns only a tiny piece of land, with the surrounding seabed and water column having been allocated by treaty (and practice consistent with that Treaty). Although the dispute over the island continues, neither country seems to take it very seriously.\footnote{In 2005, Canada and Denmark issued a joint statement, indicating that their officials would ‘discuss ways to resolve the matter’. In the meantime, ‘all contact by either side with Hans Island will be carried out in a low key and restrained manner’. Canada–Denmark Joint Statement on Hans Island (19 September 2005).}

The parties have also agreed not to extend the boundary beyond Point 127 in the southern Lincoln Sea north of Ellesmere Island and Greenland, due to a separate dispute there (see Chapter 7.8.) (Alexander 1993, 374).

In 1973, there was little commercial fishing in Baffin Bay. The fishery, mostly for turbot and shrimp, has grown in the ensuing decades, leading to several minor disputes between Canada and Greenland over ‘straddling stocks’ – fish stocks that move back and forth between the EEZs of different countries or between an EEZ and the high seas (Mittelstaedt 2010).

There has also been some interest in the potential for oil and gas in Baffin Bay, which is made up entirely of continental shelf. In 1971, Shell obtained exploratory leases from the Canadian government for 860 km$^2$ near the eastern entrance of Lancaster Sound (Ducharme 2016).\footnote{These leases were surrenders by Shell in 2016 in order to facilitate the creation of a marine conservation area.} In the ensuing decades, some exploratory drilling has taken place in Baffin Bay, although only on the Greenland side and, thus far, without any commercially viable deposits being found. The 1973-agreement contains provisions about both parties seeking the agreement of the other and finding the ‘appropriate mechanisms’ if engaging in resource exploitation across the agreed boundary (Alexander 1993, 373). As Oxman (1995, 250) explains: ‘Canada and Denmark are said to have been motivated by the desire to avoid future disputes in a largely unsettled area where Greenland faces the Canadian Arctic’. Similarly, Alexander (1993, 372) writes: ‘The agreement shows a strong effort by both parties to avoid conflict in marine resource exploitation’.

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\footnote{In 2005, Canada and Denmark issued a joint statement, indicating that their officials would ‘discuss ways to resolve the matter’. In the meantime, ‘all contact by either side with Hans Island will be carried out in a low key and restrained manner’. Canada–Denmark Joint Statement on Hans Island (19 September 2005).}

\footnote{These leases were surrenders by Shell in 2016 in order to facilitate the creation of a marine conservation area.}

The Lincoln Sea is the portion of the Arctic Ocean located directly to the north of Greenland and Ellesmere Island. The thickest sea ice in the Arctic is found there, pushed into the space between the two landmasses and held there for years by prevailing winds and ocean currents. In 1973, the negotiators who delimited the maritime boundary between Canada and Greenland stopped at 82°13’ north, where the Nares Strait opens into the Lincoln Sea. Then, in 1977, Canada claimed a 200-n.m. fisheries zone along its Arctic Ocean coastline. The zone was bounded in the east by an equidistance line that used the low-water mark of the coasts of Ellesmere Island and Greenland and several fringing islands as base points (Gray 1997, 68).

Three years later, Denmark adopted its own equidistance line, but only after drawing straight baselines – two of which used Beaumont Island as a base point. Beaumont Island is just over 10 km² in size and is located more than 12 but less than 24 n.m. from the Greenland coast. The first of the resulting baselines was 42.6 n.m. long; the second was 40.9 n.m. long (Byers 2013). The use of straight baselines and Beaumont Island had the effect of pushing the equidistance line slightly westward, adding two lens-shaped areas of 31 n.m.² and 34 n.m.² to the Danish claim.

Canada objected to the Danish straight baselines, in particular to the use of Beaumont Island as a base point, for four reasons: ‘Beaumont Island is somewhat west of the other islands, thus it is not part of a fringe of islands; the straight baselines are long; they do not follow the trend of the coast; they do not cross the mouths of the intervening fjords but are farther offshore’ (Gray 1997, 68). These reasons seem to be derived from the seminal ICJ decision on straight baselines: the 1951 Anglo-Norwegian Fisheries Case (see Norway Chapter) (Green 1952).

In 1982, Canadian and Danish diplomats met to discuss the Lincoln Sea boundary dispute, ‘with neither side moving from their respective positions’ (Calderbank et al. 2006, 163). In 2004, the scope of the dispute was reduced when Denmark modified its straight baselines, replacing the 40.9 n.m. baseline east of Beaumont Island with a series of shorter baselines, including one that connects Beaumont Island to John Murray Island, the next island in the chain (UN Law of the Sea 2005). The Danish changes reduced the size of the northernmost disputed area almost to the point of eliminating it.

These developments may have contributed to the announcement by the Canadian and Danish foreign ministers in 2012 that negotiators ‘have reached a tentative agreement on where to establish the maritime boundary in the Lincoln Sea’ (Canadian Department of Foreign Affairs
The only issue left for negotiation was a joint management regime for any straddling hydrocarbon deposits. This issue could not be dealt with solely by the Danish and Canadian negotiators, because, although Denmark retains control over Greenland’s foreign policy, the Greenland government has since 2008 exercised control over natural resources, including on the continental shelf (Jacobsen 2015). In 2018, the two countries further established a ‘Joint Task Force on Boundary Issues’ in order to settle the outstanding issues regarding the maritime boundary (Global Affairs Canada 2018).

The Lincoln Sea boundary dispute was of little practical significance, for four reasons: (1) the parties agreed that the equidistance principle should be applied; (2) the dispute concerned a very small area of EEZ; (3) any resources discovered in the disputed zones would have been exceedingly difficult to access and therefore unlikely to become commercially viable; and (4) there was never any difference of opinion over the location where the adjoining Canadian and Danish jurisdictions would meet at 200 n.m. from shore, which meant that any dispute with 200 n.m. of shore was of no legal relevance to a delimitation of the extended continental shelf beyond 200 n.m. Like the 1973 boundary Treaty between Canada and Greenland, the main reason for seeking to resolve this dispute seems to have been the desire to deal with a situation before any problems arose.

The dispute was also of little political significance. From the Canadian perspective, the area in question was located within exclusive federal jurisdiction and in the most remote part of the Arctic, which meant virtually no public knowledge or engagement concerning the matter. Finally, the opening of negotiations was related to Canada’s 2010 Arctic Foreign Policy Statement, which expressed the intent to resolve all the country’s Arctic boundary disputes – not just in the Beaufort Sea, where interest in oil and gas was growing (Government of Canada 2010a). The negotiations with Denmark and the USA were launched at about the same time (Boswell 2010b), which indicates that resolving the easier dispute in the Lincoln Sea might have been seen as a way to create some momentum for the more difficult dispute in the Beaufort Sea.

St. Pierre and Miquelon is an archipelago of eight islands with a total landmass of 242 km². Located just 13 n.m. from the coast of Newfoundland, the islands were claimed by Jacques Cartier on behalf of France in 1536. They changed hands several times during wars between France and
Britain, but have remained uncontested French territory since 1815. The islands support a population of around 6,000 people, with an economy based on fishing and tourism.

The dispute over maritime zones around St. Pierre and Miquelon began in 1966, when the Canadian and French governments exchanged diplomatic notes setting out their positions with respect to the delimitation of the continental shelf (Canada–France 1992). The exchange of views was prompted by both countries granting oil and gas exploration licenses in the area (Canada–France 1992). In 1970, Canada extended its territorial sea from 3 to 12 n.m.; one year later, France did the same.

In 1972, the two countries concluded a maritime boundary treaty resolving overlaps within 12 n.m. of the coasts of Newfoundland on the one hand, and St. Pierre and Miquelon on the other (Canada–France 1972). Canada and France then spent years negotiating an extension of the boundary out to 200 n.m. (the EEZ) before agreeing in 1989 to send the matter to an ad hoc arbitral tribunal.

In 1992, the tribunal issued a highly unusual decision (Canada–France 1992). It awarded France a 24 n.m.-wide band around the seaward side of the islands, plus a 10.5 n.m.-wide corridor extending 188 n.m. southwards from the islands. If the corridor had been intended to allow France access to its territorial sea and EEZ without having to pass through Canada’s EEZ, it failed to accomplish this, as Canada’s zone extends farther offshore, around the stem of the mushroom-shaped French zone (Byers and Østhagen 2017, 32).

Fisheries provided the principal motivation for the negotiations and the eventual recourse to third-party dispute settlement (Saunders and VanderZwaag 2010, 209). In 1972, Canada and France agreed to phase out fishing by vessels from metropolitan France in Canadian waters in the Gulf of St. Lawrence and to limit (not phase out completely) fishing by vessels from St. Pierre and Miquelon (Canada–France 1972, 570–72). French fishers responded by spending more time in the disputed waters around St. Pierre and Miquelon (McDorman 1990, 357–58). The two countries also disagreed over the quantities of fish that could be caught sustainably in the area. As McDorman (1990, 359) explains:

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80 The situation today is further complicated by the fact that the continental shelf in this area extends well beyond 200 n.m.. In 2013, Canada filed a submission concerning the seabed along the entire coast of Newfoundland, including offshore from St. Pierre and Miquelon, with the CLCS. The next year, France included an area of seabed offshore St. Pierre and Miquelon within its submission to the same body. Canada responded by reiterating that France has no rights to an additional EEZ or extended continental shelf beyond those awarded by the tribunal in 1992.
With the expansion of French fishing effort in the disputed zone in the early 1980s Canada became increasingly concerned about the health of the fish stocks upon which the fishermen of Newfoundland, Canada’s poorest province and a province heavily reliant upon the fishing industry, depend. Couple this with a Canadian confidence of a favourable outcome, and an adjudicated ocean boundary was seen as the final option.

McDorman (1990, 359) also argues that ‘Canada had to provide an enticement in order to get the French to agree to adjudicate’ in the form of three years of access to 2,950 tonnes of cod in undisputed Canadian waters. The possibility of oil and gas reserves added a further motivation. Hydrocarbons had already been discovered on either side of the disputed zone, and, as noted, the two countries had independently issued overlapping exploration licenses in the zone itself. As McDorman explains, the potential for hydrocarbons was ‘of particular interest to France, which is overwhelmingly dependent upon imported oil and gas’ (1990, 358–59).

7.10. Conclusions
Most of Canada’s maritime boundary disputes remain unresolved or are only partially resolved. At present, there are few economic incentives for settling these unresolved disputes. In the cases of the Lincoln Sea, Machias Seal Island, and seaward of Juan de Fuca Strait, the resources located within the disputed zones are speculative, commercially unviable, or relatively small. There is considerable hydrocarbon potential in the Beaufort Sea, but this has not been realised due to high operating costs and the easier availability of comparable resources elsewhere. In the Dixon Entrance, Canada and the USA have worked out an arrangement allowing fishers from each side to access the disputed zone, subject to flag-state enforcement. Thus, this aligns with the hypothesis concerned with the resource potential and its link with a country’s interest in pursuing delimitation (HD3).

Significantly, while negotiations on the Beaufort Sea boundary were initiated after oil prices rose, they were suspended when prices fell. In the Gulf of Maine and around St. Pierre and Miquelon, relatively high levels of economic activity and the potential for a ‘cod war’ scenario involving repeated and reciprocal arrests of fishing boats eventually pushed the disputing parties into adjudication and arbitration. In the Beaufort Sea, uncertainty about the existence and location of hydrocarbons played a role. After initiating boundary negotiations with the USA in 2010, uncertainty concerning the existence and location of hydrocarbons seems to have contributed to
the suspension of the talks. Efforts were made to resolve the uncertainty through seismic mapping of the disputed zone, but the resultant delay coincided with a change of Canadian foreign ministers and a sharp drop in world oil prices.

Sometimes the absence of economic interests may facilitate an agreement, as Oxman explains (1995, 251) about the US success in settling maritime boundary disputes far from home: ‘The most obvious explanation is that it is easiest to reach agreement in the case of small islands surrounded by the deep waters of the Caribbean Sea or the Pacific Ocean where the boundary regions are unlikely to contain hydrocarbons or localized fisheries’. In Canada, the same factor may have contributed to the conclusion of the tentative agreement in the Lincoln Sea, where the area in dispute was small and the prospects of economic activity were very low. In this manner we see how the hypothesis HD3 does not hold true, but adheres to reversed causal logic. A question that will be examined later is what the determining factor for this is. In other words, why does the presence of resources at times have contradictory effects?

One central notion, as in the case of Canada, is the difficulties of reaching an international agreement acceptable to a domestic audience when the issues has become politicised: i.e. when issues reach the policy agenda of certain actors (chapter 4.1.) that might hold contrarian positions. When economic interests required a settlement, as occurred in the Gulf of Maine and around St. Pierre and Miquelon, Canada did find its way to a boundary resolution – in both cases, by outsourcing the actual drawing of the line to objective and disinterested third parties. This is in line with the second domestic hypothesis (HD2) concerning public engagement in the disputes and leaders’ tendency to make use of third-party dispute resolution when faced with domestic opposition to concessions.

Canada has also been cautious about compromising on its legal position in the Beaufort Sea because of concerns that this might detrimentally affect its position on other boundary disputes. This is why it sought a ‘package deal’ in 1977 (Kirkey 1995, 58–59). In 1977–78, Canada and the USA found themselves in a zero-sum negotiating situation in the Beaufort Sea: either Canada would have to surrender on the 141st meridian, or the USA would have to surrender on the equidistance principle. Concerns about precedents made these options even less palatable. Canada was seeking a way out of the zero-sum scenario when it proposed a package deal – one that, for instance, could have allowed a US ‘win’ in the Beaufort Sea in return for a Canadian ‘win’ in the Gulf of Maine. And if Canada could resolve all four disputes with the USA simultaneously,
its concerns about a precedent would disappear. That was not the case with the USA, however, since its concerns about setting a precedent extended to disputes with other countries beyond Canada. In turn, this corroborates the latter legal hypothesis (HL2), concerning countries’ sensitivities to legal precedent and its additional outstanding disputes.

Further, there can be little doubt that Canada’s key concern in connection with its maritime boundaries is its relations with its powerful southern neighbour that goes beyond only concern for legal precedent (McDorman 2009). This is where again the notion of regional and local patterns of interaction come into play (HD3). In the other boundary instances – with France and Denmark/Greenland – solutions, albeit tricky and time-consuming, were eventually found (Byers and Østhagen 2018). It is with the USA that all of Canada’s outstanding boundary disputes remain: that speaks to the complexities of this relationship. This relationship is intricate on its own – and the USA, with its resources and leverage, is no easy negotiating partner (Ásgeirsdóttir 2016), even for close allies.81

Several other features of Canada and its maritime boundaries, settled as well as unsettled, should be taken into account. Canada’s federated system makes it complicated for any Ottawa-based government to conclude negotiations without consent from the regional and local level, especially when provinces are involved, showcasing the relevance of the first domestic hypothesis (HD1). Some of Canada’s maritime boundary disputes are also based on historic treaties or claims, in contrast to a ‘simple’ boundary dispute that arises when two states expand their zones based on previously settled borders/boundaries. This links to states’ limited flexibility due to legal rationales as hypothesised (HL1).

Further, we should note some factors that are not evident in Canada’s maritime boundary disputes. Oil and gas activity, real or potential, seems modest. Security concerns are almost completely absent, even in relation to small-scale issues such as IUU fisheries and clashes between fishers from opposing countries. A pure geographic fact, namely remoteness as well as limited access to some of the maritime domains in question, especially concerning the Arctic, has also figured in the limited attention devoted to maritime boundary settlement until only recently. Finally, despite Arctic involvement under the Harper government from 2006, the maritime domain is not central to Canada’s policy thinking, nor its economic outlook. The absence of these factors also helps to explain why so many of Canada’s maritime boundaries still remain disputed.

81 See also McDorman 2009; Gray 1997; Cook 2005; and Byers and Østhagen 2017.
8. Colombia

In pre-colonial times, the largest indigenous civilisations in what is today Colombia were the Muisca, Zenú, Quimbaya, and Tairona (López 2007, 27). The Incas also expanded to the western coastal parts of present-day Colombia. The Spanish arrived in 1499 and started exploring the area along the Caribbean coast in the early 1500s. With the arrival of the Spanish, the exploitation of the indigenous groups commenced; first with an eye towards resource extraction for the Spanish Kingdom, and later aimed at building a European-style state. Colombia became the staging ground for the further Spanish conquest and colonisation of South America (LaRosa and Mejía 2012).

The territory of Colombia is based on the initial Spanish administrative colonial structure established in the 16th century as a subdivision of the Viceroyalty of Peru, which governed all Spanish South America. Bogota (initially Santafé de Bogotá) was established as the administrative centre in 1538, close to the main settlement Bacatá of the indigenous Muisca, after the Spanish conquistadors had taken control of Colombia’s coastline and ventured into mountainous highlands of the interior. In 1717, the Viceroyalty of New Granada was established, after separating out from the rest of the South American Spanish structure (Palacios 2006).

Colombia eventually gained independence from Spain, after violent struggles led by Simon Bolivar from 1810 to 1819. Gran Colombia (1819–1831), a federal structure which included not only present-day Colombia, but also Panama, Venezuela, Ecuador, northern Peru, western Guyana and northwest Brazil, was formed but quickly fell into internal disarray. The contemporary territory of Colombia stems from the creation of this structure.

Gran Colombia dissolved as a loose federation in 1831, and the territory of the new Republic of New Granada (1831–1858) was drastically reduced in size (see Illustration XI). This was the first entity resembling modern-day Colombia; it consisted of present-day Colombia and Panama as well as smaller portions of the nearby states. New Granada was formally declared the República de Colombia in 1866. The initial 70 years of independence that followed were marked by wars, internal and external, amongst the former Spanish colonies (Centeno 1997, 1517). In addition to several civil wars throughout the 19th century, Colombia fought a limited war with Ecuador over territory (the Cauca region) in 1863.

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82 Distinct from Central America (north of Panama), where all Spanish territory was a separate entity titled ‘New Spain’.
Panama eventually seceded in 1903, after pressure from the USA related to the construction of the Panama Canal (LaRosa and Mejía 2012). Colombia did not recognise the new state until 1921, when the USA agreed to pay a considerable sum for its role in Panamanian independence. Colombia continued to cede territory to its neighbours through negotiations and limited disputes. In the late 19th century, small parts of eastern Colombia were lost to Venezuela. In 1907 and in 1928, Brazil acquired a part of the interior Amazonian territory. In 1916, Ecuador acquired a small section to the southwest. In 1922, Peru acquired a portion in the south.  

Illustration XI: Maps of Colombia (historic)

Source: Wikimedia. From left to right showing the reduction in territory: Map of the territory of Gran Colombia (1819–1831), Republic of New Granada (1831–1858) and present-day Colombia.

Concerning territory and land, a bone of contention has been Costa de Mosquitos, a stretch of land along the Caribbean Sea in what is predominantly Nicaragua today. In 1803, a Royal Decree by Spain awarded these territories to the Viceroyalty of New Granada (the precursor to independent Colombia) (Pineda 2006). Although another Royal Decree from Spain reversed the decision in 1806 and returned the territories to the Captain General of Guatemala, vacillation and uncertainty concerning the Royal Decree led the different configurations Gran Colombia/Republic of New Granada/Republic of Colombia to claim Costa de Mosquitos as Colombian (Pineda 2006; Sandner and Ratter 1991).

This was also linked to debates regarding the Panama Canal, where the USA, the UK and

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83 For a more extensive history of Colombia, see LaRosa and Mejía 2012.
France were all engaged. In 1826, US officials began negotiations with Gran Colombia over the rights to build a canal. These eventually proved unsuccessful, after multiple attempts and additional French involvement. By 1903, Panama had ceded from Colombia with the help of the USA (Martin and Parkhomenko 2018). In 1910, Panama and Costa Rica submitted their border claims to the US Chief Justice for arbitration, which in turn rejected Colombian claims to the Mosquito Coast in a 1914 decision but affirmed Colombia’s sovereignty over a group of islands off the Nicaraguan coast: the Archipelago of San Andrés, Providencia and Santa Catalinas (administered as Intendencia de San Andrés y Providencia). Colombia permanently occupied the islands from 1916 (Pineda 2006). On the Pacific side, Colombia has sovereignty over Malpelo Island. A tiny uninhabited barren rock, it lies in waters within Colombia’s 200-n.m. EEZ.

In 1928, Colombia and Nicaragua signed the Esguerra–Bárcenas Treaty, where Colombia relinquished its claim to the Costa de Mosquitos, and Nicaragua recognised Colombian sovereignty over the Archipelago of San Andrés (Nieto-Navia 2015; Sandner and Ratter 1991). This was later ratified through an exchange of diplomatic notes in 1930 (known as the Managua Treaty). By 1930, modern-day Colombia had emerged on the map. Today, Colombia is a republic, with Bogotá as the capital, and the country is organised into 32 departments and one Capital District.84

What remained, however, was to define clear maritime boundaries with the neighbours, as well as the exact status of the various islands, cays and banks around the San Andrés Archipelago (Bekker 2013). Moreover, when the concept of 200-n.m. zones arose in the 1950s/1960s in South America, a larger dispute emerged, as Nicaragua deemed the Esguerra–Bárcenas Treaty void and laid claim to whole of the San Andrés Archipelago as well as its maritime zones (Bekker 2013). The specific case of the San Andrés, including the maritime boundary dispute, will be reviewed more closely in the sub-chapter dealing with Nicaragua (8.9.). Here it is important to note the background of this dispute, as it sets the frame for much of Colombia’s subsequent efforts at establishing maritime boundaries and engaging in agreements with other surrounding states such

84 In the post-war period from the 1940s, Colombia experienced considerable internal violence and upheaval among various political factions (Palacios 2006). When the conflict between the Conservative Party and the Liberal Party ended with a political compromise (National Front), other fringe groups on the left and the right of the political spectrum continued to wage guerrilla wars against the governments in Bogotá, with various motivations. In 2012, the government, under President Juan Manuel Santos, initiated peace talks with the largest guerrilla group FARC, held in Cuba. By 2016, a peace agreement had been agreed on, although this was later rejected in a popular referendum by 50.2% against and 49.8% in favour. A revised peace agreement was sent to Congress and ratified in late 2016 (Casey 2016; Mitchell 2017), but at the time of writing the ‘peace’ is still frail.
as Panama (8.3.), Costa Rica (8.4.), Haiti (8.6.), Honduras (8.7.), and the Dominican Republic (8.5.).

8.1. Colombia’s Maritime Boundaries

In general, Latin American countries were vigorous in establishing extended maritime zones as the international legal regime developed from the 1950s and onwards. An approach where settlement of maritime rights preceded economic activity or conservation was prevalent amongst these countries: they were among the first in the world to establish the ‘patrimonial sea’, later termed the EEZ (Nweihed 1980, 1993f, 275).

Colombia was also party to the American Treaty on Pacific Settlement, signed by the independent republics of America in Bogota, Colombia, on 30 April 1948. Known as the Bogota Pact, 21 countries signed it to establish channels of communication for territorial disputes, among other things. Colombia, however, left in 2012, following the ICJ decision in the maritime dispute with Nicaragua (BBC News 2012), a point to which I return later.

Colombia approached its maritime neighbours in the 1960s and 1970s to settle boundaries before any serious disputes could emerge. In the late 1960s, negotiations started with Venezuela over the presumably oil-rich northwestern corner of the Gulf of Venezuela (Nweihed 1980). As described by former Colombian Foreign Minister Londoño:

Negotiations with Venezuela regarding the delimitation of the marine and submarine areas in the Gulf of Venezuela served to pull Colombia out of its traditional condition as the apathetic country distant from the sea, and lead it to project its maritime rights in both seas [Caribbean Sea and Pacific Ocean]. (2015, 219)85

Negotiations were also initiated with Nicaragua, although the related maritime boundary concerns the larger issue of the 1928 Esguerra–Bárcenas Treaty and the subsequent dispute over the San Andrés Archipelago and surrounding waters, which was eventually brought before the ICJ. That situation is still unresolved. However, in the 1970s Colombia managed to settle several boundaries: with Ecuador (1975), Panama (1976), Costa Rica (in the Caribbean, 1977), the Dominican Republic (1978) and Haiti (1978). It was not until 1978 that Colombia claimed its full

85 Author’s translation, with assistance from Victoria Rose Dalgleish Lindbak.
EEZ through a legal act – somewhat late in the South American context (Government of Colombia 1978). Then, after a decade of negotiations, the maritime boundaries with Costa Rica (in the Pacific, 1984), Honduras (1986) and Jamaica (1993) were concluded. Here it should be noted that some of these boundary agreements were not ratified until later, due to domestic political considerations in one or both of the respective countries, and the 1977-agreement with Costa Rica has still not been ratified. In all these negotiations and – when applicable – agreements, an ‘all-purpose’ boundary was employed delineating the continental shelf, economic zones, fishery zones and possible other zones (Nweihed 1993f, 276).

Illustration XII: Colombia and its maritime zones

Source: Wikimedia. Note the Intendencia de San Andrés y Providencia (far left-hand corner).

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86 Efforts by Colombia and the UK concerning a possible boundary between the Serranilla Bank and related waters and the British Grand Cayman Islands will not be discussed here, due to the very limited scope of the boundary and negotiations (Londoño 2015, 287–88).
8.2. Colombia–Ecuador (1975)

As UNCLOS proceedings seemed to be solidifying around a 200-n.m. economic zone, Colombia began to realise that negotiating maritime boundaries would become increasingly important (Londoño 2015, 247). It was recognised that a dispute might ensue, in tandem with preliminary talks with both Nicaragua and Venezuela in the late 1960s and early 1970s. Consequently, Colombia wanted to ‘establish maritime borders with all neighbours and in that way consolidate our [Colombia’s] jurisdiction both in the Caribbean and the Pacific’ (Londoño 2015, 247).87

In general, maritime boundaries did not rank high on the government’s agenda at the time. The Pacific in particular had been neglected in maritime policies, with most attention being paid to the Caribbean (Londoño 2018). However, some of Colombia’s regional neighbours with a Pacific coastline were amongst the first countries in the world to expand their maritime zones up to 200 n.m.: Chile, Peru and Ecuador all declared extended zones to protect national fisheries. In 1952, delegations from the three countries met in Santiago and signed the Declaración sobre Zona Marítima (‘the Santiago Declaration’) in which they proclaimed 200-n.m. zones in order to ‘assure their people the necessary conditions of subsistence and to procure the means for their economic development’ (Chile 1952).

The border region between Colombia and Ecuador had experienced some instability in terms of unlicensed trade and unregistered movement of people due to the limited state presence in this inhospitable terrain. At times, this had complicated relations between the two countries (Londoño 2015, 247). However, ‘[t]he countries had similar approaches to maritime delimitation, and never had any serious issue arise between them. Both countries therefore agreed to take a first step in avoiding future problems by agreeing on a maritime boundary sooner rather than later’ (Londoño 2018). Subsequently, Ecuador became the first country with which Colombia settled a maritime boundary. This is also one of only three maritime boundaries on the Pacific side of Colombia, whereas eight are in the Caribbean.

Colombia decided to adhere to the same principles as set out in the Santiago Declaration concerning maritime zonal claims and delimitation. This meant fixing the maritime boundary on a parallel to the latitude from where the land border between two states ends (Aréchaga 1993, 810). The starting point for this maritime boundary was agreed to be the mouth of the Mataje River (Londoño 2015, 248). Although equidistance was becoming the preferred starting point for

87 Author’s translation, with assistance from Victoria Rose Dalgleish Lindbak.
negotiations in such boundary delimitations, both Colombia and Ecuador chose to forgo this principle in favour of the parallel method. Colombia thus gained a larger share of the maritime space than with equidistance (Aréchaga 1993, 810). Under this method, Ecuador gained a small portion at the end of the boundary, but far less than Colombia’s gain in the initial sections of the parallel.

The boundary agreement was signed on 23 August 1975 and entered into force on 22 December that year (Colombia–Ecuador 1975). Afterwards, showcasing the limited public conceptualisation of maritime boundaries at the time, the Colombian government was in fact criticised for the futile effort of drawing an ‘imaginary line in the sea’ (Londoño 2015, 248). It was also criticised, as a democratic country, for concluding an agreement with the then-authoritarian Ecuadorian regime (Londoño 2015, 248). In the end, the Treaty was signed, and helped to establish a precedent in the Pacific, despite being accorded minimal attention in Colombia.

The boundary was designated as an all-purpose delimitation line, without an agreement on joint development or management of transboundary resources. In view of the prevalence of fisheries in the area, and fears that fishermen might accidentally find themselves on the wrong side of the invisible boundary, a fisheries buffer zone of 10 n.m. on either side of the agreed boundary was established (Aréchaga 1993, 810). This did not mean, however, that any agreement on cross-boundary fisheries was made. Similar zones were also established in the region between Chile and Peru, and Peru and Ecuador. As put by Jiménez de Aréchaga (1993, 810–11): ‘[T]he agreement refers to preservation, conservation and utilisation of resources in the marine and submarine areas, although this does not seem to have had any effect beyond the statement, i.e. in special provisions or the shape of the boundary line.’

8.3. Colombia–Panama (1976)
One year after the agreement with Ecuador, Colombia concluded the first agreement in South America involving a ‘double frontage’ – in two maritime domains at once. This concerned the larger sovereignty dispute between Colombia and Nicaragua, as the boundary defined in the Caribbean would be influenced by the outcome of that dispute. It thus fell ‘within the strategy set by Colombia in the 1970s aimed at completing its maritime map’ (Nweihed 1993e, 520).

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88 Author’s translation, with assistance from Victoria Rose Dalgleish Lindbak.
Panama seceded from Colombia in 1903 due to US pressure for developing the Panama Canal. As noted, Panama and Colombia had been united for three centuries under colonial rule. As Nweihe (1993e, 520) argues, the very idea of Panama as a separate country relates to a maritime issue: the Canal. Relations between the two countries normalised after Colombia recognised Panama’s independence in 1921; relations since then have been generally amicable (Londoño 2018). Wanting to protect its national fisheries, Panama extended its maritime zones to 200 n.m. already in 1967 (Nweihe 1993e, 522).

The maritime boundary dispute with Colombia concerned the maritime areas related to the Panama Canal, in turn making it strategically significant for not only Colombia and Panama, but also other states concerned with the Canal. In the 1970s, Panama focused on nationalising the Panama Canal, which had been under US jurisdiction since 1904. In 1977, a treaty settled the status of the Canal, which was to be completely returned to Panama by 1999 (United States–Panama 1977). In this process, Colombia had signalled to both Panama and the USA that Colombian rights regarding the Canal would have to be respected and upheld (Londoño 2015, 252). As described by Londoño (2018):

> All the efforts of the Panamanian government were on the negotiations with the US. In this moment, the government of Colombia proposed to Panama to avoid future problems by performing maritime delimitations in both seas. Without any kind of problems or controversies between the two states.

The Treaty between Colombia and Panama was signed on 20 November 1976 (Colombia–Panama 1976), and entered into force on 30 November 1977. The text specifically refers to the good-neighbourly relations between the two countries and the importance of international cooperation. Additionally, mention is made of the ‘resources which exist in the waters’, although no joint development zones were constituted through the Treaty. The parties emphasised UNCLOS principles such as freedom of navigation, innocent passage and free traffic, in line with concerns with regard to the Panama Canal (Nweihe 1993e, 523; Colombia–Panama 1976).

When the 1976 Treaty was agreed, a joint statement from both countries emphasised their success in reaching it, and their adherence to international law. According to the scholar Ayala Jiménez, this relates to the dispute between Colombia and Venezuela over the Gulf of Venezuela,
where Venezuela had unilaterally claimed the Gulf. Colombia thus showcased how it had managed to reach an agreement with Panama over the Gulf of Panama in line with principles set out in international law (Jiménez 1978). The dispute also concerned the disagreement between Colombia and Nicaragua over the Archipelago of San Andrés, Providencia and Santa Catalinas.

As to the actual boundary, the equidistance method is applied only partially. The agreed boundary also follows longitudes and latitudes, and specific reference points made by the two states (Londoño 2015, 254–55). In the Pacific, the Gulf of Panama, Malpelo Island and historical agreements related to the border on land determined the maritime boundary (Londoño 2015, 254–55). In the Caribbean, a practical solution was favoured, where – surprisingly – the disputed Colombian Caribbean islands and cays were accorded full weight equal to that of the Panamanian continental landmass (Londoño 2015, 255). The agreement encountered some domestic opposition in Panama, as it was seen as favouring Colombia. In the end, the Treaty was ratified by both countries, as the authoritarian regime in Panama at the time put pressure to bear on the Panamanian Congress (Nweihed 1993e; Londoño 2015, 256).


One year after the agreement with Panama, Colombia and Costa Rica negotiated a maritime boundary in the Caribbean. This is one of the two domains (the other being in the Pacific) where the Costa Rican and the Colombian EEZs meet. Although the two countries have no land border, Colombian sovereignty over islands in both the Pacific (Malpelo) and the Caribbean (the Archipelago of San Andrés) led to the need for maritime delimitation. Efforts with Costa Rica also followed Colombia’s systematic attempts to settle its maritime boundaries in the late 1970s, as the third UNCLOS conference proceeded (Nweihed 1993a, 463).

The Treaty concerning both the boundary and maritime cooperation was signed on 17 March 1977 (Colombia–Costa Rica 1977). As with Colombia’s previously settled maritime boundaries (Ecuador and Panama), the delimitation concerned a ‘total boundary’ that included both an EEZ boundary and the continental shelf boundary. Similar to the other boundary agreements, ‘maritime cooperation’ was emphasised, although in connection with the Costa Rican boundary in the Caribbean the Treaty goes further, putting in place five frameworks for cooperation: on the protection of renewable and non-renewable resources, conservation measures, scientific research, reduction and control of pollution, and promotion of navigation in the
respective areas (Colombia–Costa Rica 1977).

The economic incentives for the Treaty were seen as being limited at the time, despite some fisheries in the relevant maritime domain (Nweihed 1993a, 469). The line itself was based on equidistance, while deviating at times to compensate both countries on various positions.

The Treaty links directly with Colombia’s dispute with Nicaragua, as it explicitly recognises the full maritime zone of the San Andrés Archipelago up to the 82nd meridian. Costa Rica’s acquiescence to this boundary agreement was thus seen as taking sides in the dispute between Colombia and Nicaragua (Londoño 2015, 257). The Colombian government managed to achieve ratification only seven months after signing the Treaty, despite domestic opposition in Bogota because of its overt infringement on Nicaragua’s position in the dispute (Londoño 2015, 260).

The Nicaraguan government immediately found itself faced with domestic opposition that blamed it for not doing enough to obstruct the agreement between Costa Rica and Colombia. Nicaragua then protested against the Treaty and started applying pressure on Costa Rica not to ratify it (Londoño 2015, 258). The Costa Rican government delayed, and then in 1983 the ratification process was withdrawn. In part, this was due to strong domestic opposition and lobby efforts against the Treaty, where interest groups questioned its usefulness and its potentially ruinous effects on relations with neighbouring Nicaragua (Nweihed 1993a, 464).

For consecutive Costa Rican governments, performing a balancing act under pressure from Nicaragua has obstructed final ratification of the Treaty, which has still not been ratified by the Legislative Assembly of Costa Rica. In 1997, the Costa Rican government stated that it would not ratify the 1977-agreement until Nicaragua and Colombia had sorted out their differences (Londoño 2015, 259).

In 1984, the two countries negotiated their second maritime boundary in the Pacific. The two boundaries were initially combined for the Costa Rican ratification process – without success. The agreement was signed on 6 April 1984. The main impetus for this second agreement was protection of national fisheries in both countries, Costa Rica in particular (Aréchaga 1993, 810). The agreement delineates the maritime boundary between Isla del Coco (Costa Rica) and the island of Malpelo (Colombia).

As with the 1977 Treaty, the 1984 agreement encountered domestic opposition in Costa Rica. It took considerable political handiwork and several governments to get it ratified in 2001 –
only after it had been decoupled from the 1977-agreement. On 20 February 2001, the 1984 Pacific boundary was ratified in both countries, but (as mentioned) the 1977 Caribbean boundary has remained unratified due to the disagreement with Nicaragua (Charney and Smith 2002). However, the two countries operate with the 1977 boundary as the de-facto boundary (Londoño 2015, 261).

8.5. Colombia–Dominican Republic (1978)

In 1978, Colombia and the Dominican Republic agreed on a single maritime boundary in the Caribbean. This came at the same time as Colombia claimed its own EEZ through a legal act. As with the previous agreements settled by Colombia:

[T]he agreement constitutes another link in a chain of maritime delimitation treaties concluded in the Caribbean in the second half of the 1970s. It must be viewed within its regional context as a move to achieve defined maritime boundaries prior to further economic development of marine resources and not as a consequence of traditional activities (Nweihed 1993b, 484–85).

The Agreement concerning both maritime delimitation and cooperation was signed on 13 January 1978 (Colombia–Dominican Republic 1978). It came into force on 2 February 1979, after both countries had ratified it. The Agreement refers to equidistance between the two countries’ landmass, as well as their good relations (Colombia–Dominican Republic 1978).

As with Colombia’s three previous agreements, the emphasis was on bilateral cooperation under the framework of UNCLOS in order to protect regional and national fisheries (and other related resources). As argued by Nweihed (1993b, 478), it followed a ‘trend in the UNCLOS conference [ongoing at the time] of safeguarding resources through cooperation’. The agreement adds a research and fisheries zone between countries, the first used by Colombia in a bilateral maritime treaty, named ‘Joint Scientific Research Area and Common Fishing Exploitation Zone’. However, this is not a joint zone where each state has equal rights: the maritime boundary delineates the sovereign rights of the respective states, and any joint activity requires a consensual bilateral agreement beforehand. The Zone itself is also somewhat precarious, as it may be unilaterally rescinded with 90-days notice.

Nweihed (1993b, 480, 1983) holds that this Agreement was more important to the Dominican Republic due to its dependence on regional fisheries in the area, and was less important
– from an economic point of view – for Colombia. However, it holds another form of significance for Colombia. The maritime boundary relates to the second of Colombia’s complicated maritime relationships: with Venezuela in the Gulf of Venezuela (Londoño 2015, 265). Whereas Points 1 and 2 in the boundary itself are established primarily by means of equidistance between Colombia and the Dominican Republic, Point 3 (the final point of the boundary) depends on the location of a hypothetical maritime boundary between Colombia and Venezuela, which has yet to be determined.

The agreement between Colombia and the Dominican Republic led to protests by the Venezuelan Deputy Foreign Minister (Nweihed 1980, 11–12). Venezuela also put considerable diplomatic pressure to bear on the Dominican Republic through official letters and private negotiations (Londoño 2015, 267). Complicating matters further, in 1979, the Dominican Republic had agreed its maritime boundary with Venezuela, partly ignoring the agreement with Colombia. In a diplomatic note dated 16 January 1982, the Foreign Minister of the Dominican Republic stated that the country was willing to make the necessary adjustments with both countries to settle the issue (Londoño 2015, 267). However, the situation has remained unresolved. The boundary between Colombia and the Dominican Republic remains in place, although its final part is still contingent on an agreement with Venezuela.

8.6. Colombia–Haiti (1979)
Following the four previous maritime boundary agreements, Colombia continued its quest to settle all related EEZ boundaries in the Caribbean and the Pacific. As with the Dominican Republic, Colombia’s EEZ (deriving from its Caribbean coast) meets the EEZ of the Caribbean island of Haiti. The boundary line in question, however, is considerably shorter than that of the line between the Dominican Republic and Colombia.

The maritime area concerns the shipping lane to and from the Panama Canal, making it of strategic importance to more actors than just Haiti and Colombia. By concluding this delimitation, Colombia also sought to solidify its boundaries and develop a case vis-à-vis Venezuela (Nweihed 1993c, 491). Both Colombia and Haiti considered themselves allies of the USA, which at the time had a considerable naval presence in the region (Nweihed 1993c, 492). The delimitation also contributed to ‘strengthening the bonds already existing’ between the two countries (Colombia–Haiti 1978).
The Agreement was signed on 17 February 1978, and came into force on 16 February 1979 (Colombia–Haiti 1978). The line itself is generally based on equidistance. The agreement did not create a common functional zone, as in the case of the Dominican Republic. By design, the two countries agreed that it would correlate with the previously agreed line with the Dominican Republic, following from that boundary (Londoño 2015, 268).

The provisions of the Agreement focus on avoiding marine pollution and taking measures to protect migratory (marine) species, such as fish stocks. The two countries declare: ‘close collaboration is essential for the preservation, conservation and use of existing resources’ (Colombia–Haiti 1978). By establishing clear state jurisdiction and sovereign rights, the two countries enable – in theory – improved resource management and environmental protection, including pollution control. However, writing in 1991, Nweihe’d (1993c, 494) argued:

Twelve years after the agreement entered into force … there is little reliable information on such goals having been carried out on a bilateral scale. Once again, it seems that the economic and environmental aims announced at the time of signature fell second in line behind the political motivation to delimit maritime space.

It is questionable how relevant the statements concerning functional cooperation and environmental efforts are to actions following the agreement. Yet, as some authors have held, the fact that they are mentioned in the first place highlights the context in which the boundaries were agreed, as the conclusion of the UNCLOS process in the 1960s and 1970s had placed considerable weight on environmental concerns and the ‘preservation of resources’ (Nweihe’d 1980). This emphasis was prominent in South American and Caribbean countries, which were among the first to adopt 200-n.m. zones and were highly active in the international negotiations pushing for environmentally orientated regulations in the new Law of the Sea regime.

8.7. Colombia–Honduras (1986)
Colombia had seized some of the ‘low-hanging’ opportunities in the Caribbean and the Pacific, but a few difficult maritime boundaries remained. The boundary with Honduras in particular had the potential to cause public concern and international tension, due to its link to the dispute with Nicaragua. In 1980, the new left-wing Sandinista regime in Nicaragua declared the Esguerra-Bárcenas Treaty invalid, as Nicaragua had been under US occupation at the time it was agreed (in
1928) (Alvarado 2014). By 1980, the completion of maritime boundary agreements that could bolster Colombian claims concerning the San Andrés Archipelago and limiting the Nicaraguan maritime space to the 82nd meridian therefore became even more important for the government in Bogota.

Colombia had been exchanging notes with Honduras since 1970 concerning the various islands and cays around San Andrés, after Nicaragua had granted (unused) exploratory hydrocarbon licences on the continental shelf east of the 82nd meridian in 1967 (Nweihed 1993d, 505). Officially, however, negotiations started in 1982, when in a surprise move Honduras included the (Colombian) bank of Serranilla as a part of its territory in a constitutional reform (Londoño 2015, 271). Moreover, in 1982 the new President of Colombia, Belisario Betancur, initiated a turn in Colombian foreign policy (Londoño 2015, 269), which coincided with a new US approach to Nicaragua and Latin America to combat rising drug trafficking to the USA.

In addition to Colombia’s desire to bolster its case against Nicaragua, it was thought that the maritime domain in question held considerable oil and gas resources, a point that gave economic impetus to the negotiations (Nweihed 1993f, 279). Moreover, the area in question was important for Honduran fishers. By 1978, Honduras had some 260 fishing vessels, and was slowly expanding its fleet to catch shrimp, pelagic stocks, and lobster (Nweihed 1993d, 509).89 These various factors opened a policy window for the two states, which spent several years, starting in 1982, negotiating an agreement.

The Treaty was signed on 2 August 1986, although it did not enter into force until 20 December 1999. The Treaty explicitly notes the ‘friendship bonds that rule their relationship’ (Colombia–Honduras 1986). Concerning oil and gas resources, the Treaty sets provisions for unitisation of hydrocarbon and natural gas development, to ensure equal exploitation of potentially straddling resources (Colombia–Honduras 1986). The boundary itself is based on an equidistance line with the San Andrés Archipelago and the Honduran Caribbean coastline as starting points.

The agreement was promoted by Colombian President Betancur, who as president-elect had visited the Serranilla Bank and launched Colombia’s new Caribbean policy on the island of San Andrés in May 1982. Thereafter, his administration worked actively to achieve settlement.

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89 Nweihed (1993d, 509), however, concludes: ‘Nevertheless, it cannot be argued that these factors had a significant impact on the delimitation’. This seems somewhat unfounded, or at least unexplained, given his lengthy discussion about oil and gas prospects and fisheries in the formerly disputed area.
with Honduras – which came in 1986, a mere five days before the end of his four-year term (Sandner and Ratter 1991, 299; Londoño 2015, 277).

Importantly, this agreement recognises Colombian sovereignty, not only over the island of San Andrés and the Archipelago, but also the various banks and cays located north of the Archipelago. It provides explicit recognition of the Colombian interpretation of the 1928 Treaty between Nicaragua and Colombia, as the boundary is based on the 82nd meridian (Londoño 2015, 277; Nweihed 1993d, 509). Although Honduras had historically claimed the Serranilla Bank (as stated in its 1982 constitution), through this agreement it relinquished that claim (Londoño 2015, 274–77).

The agreement caused reactions in several countries, first and foremost Nicaragua, which protested against the bilateral decision and what it saw as infringement of Nicaraguan sovereignty (Londoño 2015, 248). There was domestic opposition in Honduras as well. The main concern was that giving away the Serranilla Bank was contrary to Honduras’ 1982 constitution (Sandner and Ratter 1991, 299). Further, Colombia heightened its naval presence in the area and actively prevented Honduran fishermen from accessing it. There were additional fears that Honduras had conceded too much to Colombia. Although equidistance had guided most of the boundary-making, there was a deviation for the Serranilla Bank, where 75% of its economic potential was ceded to Colombia, as well as the entire Bajo Nuevo Bank (Nweihed 1993d, 513).

In the end, the agreement was pushed through, with arguments that each side was entitled to an equal share of potential resources. As described by Sandner and Ratter (1991, 300):

President Azcona [of Honduras] defended himself, stating that Honduras had never been present on the islands and cays, and that the treaty would guarantee the use of fishing grounds, avoiding future quarrels with Jamaica and Nicaragua.

Despite such assurances, the agreement was not ratified by Honduras. Moreover, Nicaragua and Honduras had agreed in 1991 that they would not make an agreement with a third party that could affect either of the two countries (Londoño 2015, 280). By 1999, however, Honduras had given up hopes of reaching a maritime boundary agreement with Nicaragua. Domestic opposition had waned, and the executive branch of the Honduran government was able to push the agreement with Colombia through the legislature. Nicaragua responded by stationing
military forces along the Honduran border and directing diplomatic protests and trade blockades at both Honduras and Colombia (Londoño 2015, 282–83). Nicaragua also started proceedings in the ICJ against the two countries (a development that relates to the dispute between Nicaragua and Colombia, examined below).

In Colombia, there was further opposition to the agreement. Some argued it was contradictory to Colombia’s commitment to peaceful settlement of disputes with other Latin American countries, as per the Bogota Pact. There was also controversy concerning the installation of a US military radar base on the island of San Andrés, which in the end was rejected by Colombia in 1986. The radar base had been intended to help fight drug trafficking, but also to monitor activities in Nicaragua after the left-wing revolution in 1979 (Sandner and Ratter 1991, 300; Nweihed 1993d, 507). The Colombian Senate, however, approved the maritime boundary agreement only two months after its signing, on 23 October 1986.

In addition, the agreement caused opposition in Jamaica, where domestic groups argued that Jamaica was losing out on valuable fishing grounds. Jamaica and Colombia had negotiated a fisheries agreement in 1982; it came into force in 1984, allowing Jamaican fishermen to fish for two years around Serranilla Bank and Baja Nuevo Bank. The Colombian agreement with Honduras over the same banks was in turn criticised in Jamaica for being a ‘de facto’ recognition of Colombian claims to these valuable fishing grounds (Nweihed 1993d, 509). In the end, the agreement was brought before domestic decision-makers in Colombia and Honduras:

Defending it before the Colombian Senate, Foreign Minister Londoño recognized that hydrocarbon deposits may be found in the area. He added that this potential could not constitute an additional advantage for either of the parties since extraction would be proportional to the amount of deposits found on each side of the border (Nweihed 1993d, 510).

In sum, although the agreement was signed – symbolically, on the island of San Andrés – in 1986 and ratified in Colombia two months later, it did not come into force until 1999, when it was ratified by Honduras. As described by former Colombian Foreign Minister Londoño:

Honduras had claims to the San Andrés Archipelago. In the end, its Government recognised the sovereignty of Serranilla and Baja Nuevo. Notwithstanding, the
Government of Nicaragua pressured the Honduran Government by threatening with the use of force if they agreed with Colombia. The situation lasted for 13 years, but in one moment the Government [of Honduras] presented the Treaty [for ratification]. The change came as the Honduran Government realised that maritime delimitation negotiations with Nicaragua was impossible. (Londoño 2018)


The final building block in Colombia’s proverbial ‘Caribbean house’ involved settling a maritime boundary with Jamaica. This concerned a boundary deriving from the Caribbean coast of Colombia as well as the San Andrés Archipelago. Negotiations started in 1973, but lasted for 20 years (Londoño 2015, 291). According to Nweihed (1998, 2180), the initial impetus for reaching agreement came when it became evident in the early 1990s that UNCLOS would enter into force (as it did in November 1994, following ratification by the 60th state).

The 1993-agreement with Colombia was the first boundary agreement to be concluded by Jamaica. Jamaica had initially been one of the states opposed to the growing ‘territorialisation’ of the maritime domain through the codification of sovereign rights extending all the way out to 200 n.m. in the 1960s and 1970s. In the Santo Domingo Conference on the Law of the Sea in 1972, Jamaica voted for ‘matrimonial sea’, i.e. regional seas instead of individual seas appropriated to one state (Nweihed 1998, 2183). This did not, however, gain support in the face of ‘advancing state jurisdiction’ (Rattray, Kirton, and Robinson 1974).

Jamaica was later chosen as the location for final session of the UNCLOS conferences when Venezuela decided against having it held in Caracas. Jamaica was also chosen as the location for International Seabed Authority (ISA), a body under UNCLOS set up to deal with mining on the seabed beyond national jurisdiction. In the end, although Jamaica was not enthusiastic about extended maritime jurisdictions, it could not afford to lose out when the legal regime solidified in the 1980s (Miyoshi 1999). In 1991, Jamaica followed its neighbours and proposed a legal act implementing its EEZ; by 1993 it had concluded its first maritime boundary agreement. The agreement with Colombia thus set the path for Jamaica’s future boundary delimitations.

The Treaty was signed on 12 November 1993 (Colombia–Jamaica 1993), and entered into force only four months later, on 14 March 1994. The agreed-upon maritime boundary entered the picture with Colombia’s previously agreed boundaries with Haiti, Honduras and the Dominican Republic. It also connected with Colombia’s dispute with Nicaragua, in affirming Colombian
sovereignty over the Serranilla Bank and Bajo Nuevo.

At the time of this agreement, the Honduras government was unable to convince its domestic opposition that the 1986 maritime agreement was not a sell-out and had therefore not ratified the 1986-agreement (that happened only in 1999). Scholars have therefore argued that the agreement between Colombia and Jamaica can be seen as a Colombian alternative to the Honduras agreement, as it achieved the same goals as the agreement signed in 1986: affirming Colombian sovereignty in the maritime zone in the area claimed by Nicaragua (Londoño 2015, 291–93; Nweihed 1998, 2180).

One dimension of this maritime boundary agreement that has received considerable attention was the creation of a ‘Joint Regime Area’ (JRA). The JRA is a triangular zone between the two countries stretching from Serranilla Bank and Bajo Nuevo Bank in the north towards a specific point further south. Although the Treaty affirms Colombian sovereignty over the structures above water, the JRA is ‘internally undelimitated’ (Colombia–Jamaica 1993, 2183). The JRA specifies several joint activities in which the states may engage, ranging from establishing artificial islands to economic ventures.90 The agreement also established a Joint Commission tasked with implementing activities in the JRA. Relating to Jamaica’s initial positions concerning ‘regional seas’ instead of EEZs, this might be seen as a localised solution to the problem of clear delimitation. Thus, concerning rights and access to disputed areas: ‘[T]he innovation brought forward by this agreement may prove to be a precedent in the practice of states with regard to maritime delimitation’ (Nweihed 1998, 2181).

Legal scholars have taken note of this innovation, questioning whether it actually holds up according to contemporary international law:

What is most interesting and may constitute a serious challenge to established international law, is the establishment of a dual jurisdiction area that is neither legally

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90 Colombia-Jamaica Treaty 1993: ‘In the Joint Regime Area, the Parties may carry out the following activities:
(a) Exploration and exploitation of the natural resources, whether living or non-living, of the waters superjacent to the seabed and the seabed and its subsoil, and other activities for the economic exploitation and exploration of the Joint Regime Area;
(b) The establishment and use of artificial islands, installations and structures;
(c) Marine scientific research;
(d) The protection and preservation of the marine environment;
(e) The conservation of living resources;
(f) Such measures as are authorized by this Treaty, or as the Parties may otherwise agree for ensuring compliance with and enforcement of the regime established by this Treaty.’
defined by its authors nor corresponds to a previously established regime under
international law. The Joint Regime Area, established and delimited by virtue of this
treaty, becomes a virtual economic condominium whose status vis-à-vis third party states
and the international community as a whole was established without any legal precedent.
(Nweiheh 1998, 2185)

The JRA resembles a condominium, although the parties are not external to the area in
question. Third parties in the area would be bound by a regime that is bi-national, neither
international nor national, as a rather innovative solution in international law (Nweiheh 1998,
2186).

As regards incentives for agreeing beyond the factors already mentioned, access to
important fisheries for Jamaica seems to have been a priority (Londoño 2015, 291). Colombia
negotiated and signed a fisheries agreement with Jamaica in 1982, in force from 1984, at the same
time as negotiating with Honduras. Although an agreement was reached with Honduras in 1986,
the lack of ratification might have led Colombia to pursue a broader agreement with Jamaica.
Pressure from Jamaican fishermen to gain access to these waters also contributed to the outcome:
the JRA.

In addition, the area is thought to hold oil and gas resources, although the exact potential
is unclear. Article 2 in the Treaty concerns the exploitation of hydrocarbons, ensuring an equal
share to the parties in case of straddling fields (Colombia–Jamaica 1993), as an ‘unitisation clause
in a simplified form’ (Miyoshi 1999, 22). This is similar to other provisions used by Colombia in
the previously agreed maritime boundaries: the oil and gas potential does not seem to be the main
impetus behind the agreement. Colombian presence in the region had been mainly political
(Nweiheh 1998, 2187), as there had been considerable friction over the fishing grounds between
the Colombian Navy and Jamaican fishermen. Thus, fisheries played a considerable role both in
pushing for an agreement, as well as determining the final outcome of the agreement, albeit less
for economic reasons and more for security and jurisdictional reasons (Londoño 2015, 293–95).

In sum, Colombia achieved affirmation of sovereignty over the Serranilla Bank and Bajo
Nuevo, and Jamaica gained joint rights to exploit marine resources of Alice Shoals and the
surrounding waters – but Jamaica had to accept that the JRA covered a small area that would
‘normally’ be considered Jamaican (Nweiheh 1998, 2187). Colombia on its side was driven by
considerations of legal precedence – securing its case against Nicaragua (and Honduras).
8.9. Colombia–Nicaragua (1928/2012 – unresolved)

In 1928, Colombia and Nicaragua concluded the Esguerra–Bárncenas Treaty, and later, in 1930, by exchange of notes (known as the Managua Treaty), had agreed on a border along the 82° W meridian. As noted, this inferred sovereignty over the Intendencia de San Andrés y Providencia to Colombia (Nieto–Navia 2015; Sandner and Ratter 1991). However, citing the 1865 Guano Act, the USA also claimed the Serrana and Roncador cays, located just north of the San Andrés Archipelago, as well as the Quitasueno Bank, in 1919.

In 1967, Nicaragua granted oil exploration licenses around Quitasueno Bank – east of 82° W – which led to diplomatic protests from Colombia (Nweihed 1993e, 524). There was underlying resentment in Nicaragua against the 1928 agreement. Colombia followed up by initiating negotiations over the issue in 1969 (Londoño 2018). With the 1972 Saccio–Vásquez Treaty between the USA and Colombia, which came into force in 1985, the USA withdrew its claims in the area (United States–Colombia 1972). This agreement was met with protests from Nicaragua (Nweihed 1993d, 506).

In 1979, the left-leaning Sandinistas had come to power in Nicaragua in a coup. In 1980, the government denounced the 1928–30 Treaty because (1) it had been imposed on Nicaragua under the US occupation from 1909 to 1933, (2) although the Colombian executive had agreed to it, the Colombian Congress had never ratified it, and (3) the San Andrés and Providencia Archipelago, as well as the Serrana Cay and Quitasueno Bank, emerge from what is basically an extension of the Nicaraguan landmass (Nweihed 1993d, 506). Nicaragua thus argued it was entitled to a full 200-n.m. EEZ deriving from its Caribbean coast, not restricted by the 82° W meridian (Alvarado 2014). By 1980, Nicaragua had therefore denounced the whole agreement, arguing that it should enjoy full sovereignty over both the San Andrés Archipelago and related islands and reefs, as well as the maritime zone.

Colombia responded with a White Paper arguing its sovereignty, and consequently stepped up its military presence in the area (Sandner and Ratter 1991, 299). The sovereignty of the islands and the sovereign rights in the waters around the San Andrés Archipelago have since remained disputed. Colombia has maintained a naval presence, as well as presence on the various islands and cays. In 1991, the intendencia was elevated in Colombia’s new Constitution to the status of a Department (Palacios 2006).
Back in the 1980s, Colombia and Nicaragua had initiated talks on the matter. However, it quickly became clear that the two positions were far from each other. Colombia agreed – at least in theory – that the 82° W meridian was not an exact maritime boundary, only a reference point (Londoño 2018). However, the Nicaraguan claim to the island of San Andrés made it a ‘non-negotiable issue for Colombia’ (Londoño 2018). Other developments in the neighbourhood – especially the Colombia–Honduras agreement of 1986 and its subsequent ratification in 1999, and the Colombia–Jamaica agreement of 1993 – spurred resentment in Nicaragua and lay the ground for the ensuing court proceedings.

On 6 December 2001, Nicaragua initiated proceedings against Colombia at the ICJ, requesting that the Court declare Nicaraguan sovereignty of the islands of Providencia, San Andrés and Santa Catalina, in addition to nearby islands and keys like the Serranilla (ICJ 2018). In addition, Nicaragua asked the Court to determine a single maritime boundary between Colombia and Nicaragua. Colombia filed preliminary objections.

In a preliminary ruling of 13 December 2007, the ICJ held that the issue of sovereignty over the islands of Providencia, San Andrés and Santa Catalina had been settled by the 1928 Treaty (ICJ 2007). Not included in that Treaty were the sovereignty over the smaller islands and cays in the San Andrés Archipelago, as well as the establishment of a maritime boundary. These were matters left for the ICJ to decide at a later date (ICJ 2018). By 2010, both Honduras and Costa Rica had applied to the ICJ to intervene in the case, arguing that the maritime space in question was also part of their maritime areas. The Court, however, found that neither claims were relevant (ICJ 2018).

On 19 November 2012, the judgment was released (ICJ 2012). The Court held that, by virtue of the 1928 Treaty between Colombia and Nicaragua, Colombia had sovereignty over islands and reefs belonging to the San Andrés Archipelago. The question then became how to define where this jurisdiction ends, geographically. While recognising that the geographical boundaries were not clearly set out in 1928, the Court held that Colombia had:

continuously and consistently acted à titre de souverain in respect of the maritime features in dispute. This exercise of sovereign authority had been public and there was no evidence that it had met with any protest from Nicaragua prior to 1969, when the dispute had crystallized (ICJ 2018).
The practice of third states concerning the Archipelago further supported Colombia’s claim. The Court had also concluded that Colombia had sovereignty over the islands/cays of Albuquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla (ICJ 2012). Concerning the maritime boundary, however, the Court rejected the original 82° W meridian and awarded Nicaragua the full 200-n.m. EEZ, with only limited maritime zones attributed to the Archipelago of San Andrés and the other islands, cays and reefs. The Court could not, however, rule on Nicaragua’s request for extended continental shelf out to 350 n.m., as sufficient technical evidence had not been provided.

In total, the verdict transferred some 75 000 km² of maritime area to Nicaragua, an area rich in fisheries and thought to hold hydrocarbon deposits (Economist 2012). The ruling turned the uninhabited Colombian islands of Quitasueño and Serrana into isolated enclaves, and left the rest of the San Andrés Archipelago extending into Nicaragua’s newly expanded maritime area.

**Illustration XIII: Decision made by ICJ in 2012**

Colombia responded by rejecting the decision. President Santos refused to withdraw the Colombian Navy and argued that the ruling was full of ‘omissions, mistakes, excesses [and] inconsistencies that we cannot accept’ (Economist 2012). Nine days later, Colombia withdrew from the Pact of Bogota, through which it had pledged to resolve disputes through the ICJ. Santos declared: ‘Never again should we have to face what happened to us on November 19th [the date of the ICJ verdict]’ (Economist 2012).

Lawyers and scholars engaged with UNCLOS, however, were of another opinion (Galvis and Arévalo 2018). Colombian legal scholars who were close to the government and the preparatory work for the case itself held that the view that Colombia had ‘lost’ was based on a misconception. The 82nd meridian had never been the actual maritime boundary between the two states, as per international law. The problem was that it had been marketed domestically in Colombia as a given (Londoño 2018). As put by Galvis and Arevalo (2018): ‘The State believe it lost, but from many perspectives it had actually won. The mistake was political, as it [the State] had sold the idea domestically that the 82nd was a boundary’.

The ‘win’ described concerns the ruling’s affirmation of Colombian sovereignty over the San Andrés Archipelago, an issue which had been undefined and at times disputed since 1930. Moreover, the ruling ascribed all the islands – if some can even be defined as such – to Colombia, giving it surrounding maritime zones equivalent of territorial seas (Martin and Parkhomenko 2018). Quitasueño, for example, is only a tiny rock, barely above sea-level at low tide (Tanaka 2013, 910–11; Galvis and Arévalo 2018). Moreover, full weight was given to San Andrés and Providencia in determining their maritime zones vis-à-vis the Nicaraguan zone (Khan and Rains 2013).

In sum, the maritime zones awarded and the final determination of sovereignty of these Caribbean islands to Colombia could be seen as victory for Colombia in a dispute ongoing since 1980 (Rogers 2012). As argued by Londoño (2018): ‘The position of Nicaragua is not supported by oil. What matters is sovereignty of the islands and the sea. The area is not very important in fisheries either.’ The boundary with Nicaragua had, however, become politicised. When Colombian President Santos withdrew from the Bogota Pact in 2012, public opinion was strongly in favour of the move:
In an opinion poll published on November 29th, 85% of respondents said the government should reject the ruling [by ICJ], even if it means there is a risk of a military confrontation with Nicaragua. (*Economist* 2012).

From 2012 onwards, the Colombian government, with Santos in the lead, reiterated its non-acceptance of the ruling and its willingness to ‘fight for its rights’, through press releases, public statements and media articles.91 The underlying issue here concerns national pride, and not limited fisheries or potential hydrocarbon resources (Galvis and Arévalo 2018; Londoño 2018). Prior to the May 2018 presidential elections in Colombia – in which President Santos was replaced after two terms – all the front-runner candidates denounced the ICJ decision and promoted various options for ‘defending’ Colombian interests (EFE 2018). ‘Fish is undoubtedly important for those living on the related islands, but the real issue here concerns national pride’ (Foreign Diplomat, Colombia I 2018).

However, Colombia’s actions concerning the maritime area in question tell another story. Colombian fishermen have kept away from the areas awarded to Nicaragua; and Colombia continued to participate in ICJ proceedings related to the case up until 2016 (Galvis and Arévalo 2018). In a follow-up on Colombia’s decision to leave the Bogota Pact, Nicaragua requested the ICJ to determine whether it had jurisdiction concerning a verdict over the continental shelf as well (Vega-Barbosa 2018), and to clarify the legality of Colombia’s refusal to accept the 2012 ruling. The ICJ responded in March 2016, arguing it had jurisdiction concerning the continental shelf and that Colombia could not withdraw retroactively from the Pact of Bogota (ICJ 2016). President Santos responded by announcing that Colombia would no longer participate in Court proceedings related to the case (Buckley 2016).

It thus seems that two narratives, or approaches, have characterised Colombia’s response to the ICJ ruling and this boundary issue. On the one hand, Colombian leaders and officials pander to public consciousness and nationalist sentiment concerning the San Andrés Archipelago by stating their rejection of the ruling in the domestic media. Withdrawing from the Bogota Pact in 2012 and the ICJ proceedings in 2016 play into this, as does the legal argument used by Colombian leaders that only the Colombian Congress has the constitutional authority to determine Colombia’s boundaries, so the ICJ ruling cannot be implemented (Buckley 2016; ICJ 2016).

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91 See BBC News 2012; Khan and Rains 2013.
On the other hand, Colombia has been consistent in its international behaviour, not employing the type of ‘rogue’ behaviour that some statements from its leaders might imply. Interestingly, several interviewees in Colombia highlighted this duality with two narratives or approaches as defining Colombia’s dealings with maritime boundaries specifically, but also with political decision-making in Bogotá more generally (Foreign Diplomat, Colombia I 2018; Galvis and Arévalo 2018). As succinctly summarised by Londoño (2018):

The problem was that in Colombia different governments sustained that the meridian 82 was the border with Nicaragua, notwithstanding that the government understand perfectly what the situation in Nicaragua was. But for political aspects, the government of Colombia sustained the meridian 82. The foreign minister and the President understood perfectly well that it was difficult to obtain the 82nd meridian in the Court of Justice. After the ICJ decision, there was a general reaction against the position of the Court and the government took the position that according to the Constitution of Colombia, it is impossible establish a border based on an international court decision. Instead, it must be agreed bilaterally with Nicaragua.

And:

At one point, years ago, we presented the option of a joint zone similar to that of Jamaica [to Nicaragua]. However, the situation was very difficult. In both Colombia and Nicaragua the population had been told something different. This resembles the situation with the Gulf of Venezuela.

8.10. Colombia–Venezuela (unresolved)

When Colombia and Venezuela gained independence from Spain in the period 1810–1819, they were initially joined under the structure of Gran Colombia (until 1831). When this federation dissolved, and Venezuela became an independent country, the precise border on land in the Gulf of Venezuela remained undefined. As the colonial power, Spain had never properly determined the border between the colonies of Santa Marta (Colombia) and New Andalucía (Venezuela), encountering severe resistance locally from the indigenous peoples in the area. Despite attempts to settle the land border in the 19th century, the final border was not agreed until 1941, with the
Lopez de Mesa–Gil Borges Treaty that set the demarcation of the Colombia–Venezuelan border (Colombia–Venezuela 1941).

However, Venezuela claims the Gulf of Venezuela as historic waters, and considers the Gulf as closed by a line drawn in 1939 across its mouth from the Castilletes point where the land boundary ends. Also the status of the Los Monjes islets is disputed, Colombia holding that they belong to Colombian territorial seas, whereas Venezuela considers them to be an extension of its continental shelf (Nweihed 1980, 9). Initially ceded to Colombia by Venezuela in a diplomatic note in 1952, the decision was never ratified by the Colombian Congress (Londoño 2015, 220–21).

Since then, negotiations have taken place on various occasions, starting in 1965 (Londoño 2018). When UNCLOS was adopted, the dispute developed from merely delimitating internal seas (the Gulf) to encompassing the issue of the boundary of the EEZs as well, stretching towards the island of Hispaniola (Haiti/Dominican Republic) (Londoño 2015, 219). The focus also turned to the petroleum resources in the area. This in turn brought into view two divergent legal positions. Colombia claimed that, although Los Monjes could be considered Venezuelan, the islands would not generate any territorial waters or impact the delimitation of the maritime boundary. Venezuela, however, claimed the full impact of the islands, as well as a much sharper line cutting across most of Colombian waters and stretching northwards, delineating the two countries’ EEZ further to the west and thus giving Venezuela a larger portion of the sea (Londoño 2015, 223–24). Colombia eventually conceded that Los Monjes had some maritime zone, as long as it did not impede on Colombia’s zones (Londoño 2015, 225). However, negotiations failed in 1973.

In 1975, the Presidents of Colombia and Venezuela submitted to their respective congresses a proposal for resolution of the issue. Known as the López-Pérez hypothesis, it proposed the delimitation of marine areas and the joint exploitation of resources in the submarine areas (Nweihed 1980, 9). Petroleum resources and an agreement in order to enable them was the initial impetus for this new round of negotiations (Londoño 2015, 226–29). This agreement had also been triggered by Colombia’s ensuing efforts at attempting to settle its maritime boundaries, starting with the conclusion of the Treaty with Ecuador in 1975 (Nweihed 1980, 11; Aréchaga 1993). After several rounds of negotiations, the agreement with Venezuela failed to achieve support in the Venezuelan Congress and was rejected (Nweihed 1993f, 282; Londoño 2015, 235;). As Nweihed (1980, 9) described the situation:
In spite of all the goodwill in both countries, it has not been possible to reach an agreement that would be readily acceptable to public opinion on both sides, especially the Venezuelan which has not been able to delete the somber memories of past land delimitation negotiations that ended up by shifting the border.

After the late 1970s, Venezuela initiated boundary negotiations with other countries, due to Colombian activity on this matter. In 1981, Venezuelan President Luis Herrera Campins announced that it was not possible to reach an agreement with Colombia (Londoño 2015, 236). The dispute peaked in 1987, when Colombia positioned two naval vessels in the disputed waters. Venezuela reacted by launching naval vessels and fighter aircraft towards Colombia, and massing ground troops along the border (Tovar 2015). The risk of conflict was resolved by diplomacy and the Colombian vessels leaving the waters, but it showed the potential significance of this limited maritime boundary dispute in relations between the two countries (Londoño 2015, 242–43). ‘Still these anti-Colombian sentiments are present in sectors of the military forces of Venezuela’, former Colombian Foreign Minister Londoño (2015, 236) has argued.92

In the 1990s, relations between the two countries improved, and bilateral cooperation was expanded to trade, anti-terrorism, and border affairs (LaRosa and Mejía 2012). Relations took a negative turn, however, when Hugo Chavez took over the Venezuelan Presidency in 1999. Negotiations on the maritime boundary were then blocked in 2009, when the Chavez government dissolved the boundary negotiation commission (Tovar 2015).

On 26 May 2015, the government of Nicolás Maduro approved and published executive order 1787 creating Operating Zones of Integral Maritime and Insular Defence, or Zodimain, intended to bolster Venezuela’s national defence system. Included in one of the four zones was an area in the Gulf which both Colombia and Venezuela claim due to the ongoing maritime boundary dispute (Bocanegra and Garcia 2015). Similarly, Venezuela closed the Táchira border crossing in August 2015, on grounds of security concerns regarding attacks on Venezuelan military and various illegal activities (Londoño 2015, 246).

Other incursions by military units from both countries have led to diplomatic protests, and sometimes military posturing (Tovar 2015; Caro 2017). However, the maritime boundary between

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92 This author’s translation, with assistance from Victoria Rose Dalgleish Lindbak.
the two countries does not top their bilateral agenda. From 2017, a refugee crisis of hundreds of thousands of Venezuelans crossing the border into Colombia has dominated the relationship, with the humanitarian situation deteriorating further in 2018 and 2019 (Casey and González 2019). According to Londoño, Colombia has long been willing to take the matter of the maritime dispute to the ICJ, but Venezuela has wished to keep it bilateral:

Venezuela also took the position that it is impossible to negotiate with Colombia since there is nothing to negotiate about, since the Gulf of Venezuela is Venezuelan. Oil is essential in the Gulf of Venezuela. But we do not have any clear idea of how much. The problem, however, is not oil, it is the fact of the name…

The position of Venezuela was always very difficult because they thought that the Gulf of Venezuela belongs to Venezuela due to the name…When the agreement in 1980 was ready to be signed, the military took a very strong position against the government and threatened a military coup… Today, this dispute is not a very important issue for the Government of Colombia (Londoño 2018).

In the end, the former Colombian Foreign Minister concludes:

How good it would be to finally reach a solution based on respect of the delimitation of the maritime space between the two countries, in this way eliminating a fundamentally negative sentiments […] that have contributed to the unstable situation that has characterised the relations […] and have produced the recent crisis (Londoño 2015, 246).93

8.11. Conclusion
Colombia’s approach to determining its maritime boundaries seems to have followed a relatively strategic plan. From negligence and disinterest in the 1960s and early 1970s, the maritime domain attracted interest once it became apparent what rights Colombia might derive from the developing international legal regime. The country’s previous lack of interest in maritime affairs might be explained by its relatively low dependence on the ocean as regards fisheries and oil/gas

93 Author’s translation, with assistance from Victoria Rose Dalgleish Lindbak.
exploitation. Most of Colombia’s saltwater fisheries have been limited in scale, particularly after the Second World War – in contrast to neighbouring Peru, Chile and Ecuador. Similarly, its petroleum industry has focused on resources more readily available onshore. Only recently have both offshore fisheries and petroleum attracted attention (Foreign Diplomat, Colombia I 2018).

When it became apparent that maritime boundaries would have to be adjudicated, Colombia acted rapidly. In the early 1970s, it instigated negotiations with both Nicaragua and Venezuela to scope the possibilities for a maritime boundary agreement, although these two disputes have proven the hardest nuts to crack. Speaking clearly to the second legal hypothesis (HL2), the initial spark seems to have come from the agreement in 1975 with Ecuador – which already had been proactive with the Santiago Declaration in 1952 – which in turn triggered a series of agreements in the Caribbean:

The first bilateral treaty [of Colombia] was negotiated in 1975 with Ecuador, one of the three pioneers of the 200-mile limit in 1952. By virtually adhering, off her Pacific coast, to the principles set forth in the Santiago Declaration, Colombia was able to transfer the pattern – if not the delimitation method – to the Caribbean and thus start a series of delimitation negotiations with Panama, Costa Rica, Haiti, and the Dominican Republic (Nweihed 1980, 11).

Thereafter, one maritime boundary agreement was signed with a different neighbour each year for five years in a row, from 1975 to 1979. With a new and ocean-focused government taking office in Colombia in 1982, another two agreements were signed in 1984 and 1986 respectively. The 1986 agreement sparked a process that eventually also led to the final agreement (to date), signed in 1993. There remain only two disputes, both of which are complex and difficult.

Colombia appears has taken a particularly proactive approach to maritime boundary delimitation, viewing them as a regional complex linked through precedence and practice in accordance with the second legal hypothesis (HL2). This is confirmed by former Colombian Foreign Minister Londoño, who was involved in most of these early negotiations (Londoño 2018). As also highlighted by Nweihed (1993a, 523):

The view that prevailed in the Caribbean during the latter seventies was that delimitation itself constituted the first step towards economic development. Thus, it was regarded as
more of a casual stimulant than a consequent response to current or potential economic activities.

Has Colombia’s pre-emptive approach to settling disagreements to avoid future conflict changed, with regard to current disputes? I will return to this question later in this thesis. For now, suffice it simply to note that the traditional argument positing that economic opportunities – hypothesis HD3 – lead to maritime boundary agreements does not seem to hold true in Colombia’s settlement processes from the late 1970s until the mid-1990s.

For the other parties in Colombia’s maritime boundary agreements, however, economic opportunities appear to have had motivating effects to varying degrees. With Ecuador, Costa Rica, the Dominican Republic, Haiti, Jamaica and Honduras, access to fisheries that were already important to local fishermen (and to some extent the governments) may have been a motivating factor, although Colombia had less stakes in fisheries compared to its negotiating partners as regards the various Caribbean islands. Moreover, oil and gas prospects seem to have been involved in the case of Honduras, albeit not as the primary reason for settlement, and as a factor in driving negotiations with Venezuela.

Some states appear to have had ‘fears of losing out’. Jamaica, in particular, was forced to adapt to the new legal regime, although it was not enthusiastic about extended maritime jurisdictions in the first place (Nweihe 1998; Davis-Mattis and Young 2001). Again, this showcases a state’s sensitivity to developments in international law. One approach that Colombia have favoured to alleviate such concerns is the use of joint zones/regimes, although these have characteristics that vary with each specific boundary agreement. Regardless, Colombia was willing to employ such mechanisms quite early in the international context, as a way of achieving the goal of boundary delimitation despite uncertainty over where potential resources might be located.94

Another point concerns the frequent mention of environmental protection and resource management. Most of the treaties reviewed here contain references to such issues,95 and this must be seen in relation to views prevalent in the UNCLOS conferences at that time (Nweihe 1980; Kwiatkowska 1993, 101–2; Oxman 1995). However, to what extent are these statements reflected in the ensuing actions taken? Does mentioning such issues in the boundary agreements have any

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94 See McDorman 2009; VanderZwaag 2010; and Hønneland 1999 for more general literature on the use of such mechanisms concerning fisheries and oil / gas.
95 See Colombia-Ecuador 1975; Colombia-Dominican Republic 1978; Colombia-Haiti 1978; Colombia-Jamaica 1993.
discernible impact on policies for the maritime regions in question?

Concerning Colombia, there is a simple explanation for its strategic approach to maritime boundary dispute settlement: the dispute between Nicaragua and Colombia which emerged as early as 1969. Colombia intentionally sought to build its case through legal precedents against Nicaragua’s claims – but the ICJ verdict in 2012 did not – perhaps – favour the Colombian position (Tanaka 2013). However, the mere fact that Colombia was able to affirm sovereignty over not only the San Andrés Archipelago, but also the surrounding islands and cays, while also achieving affirmation of limited maritime zones, could be seen as success, if compared to the starting point of the Colombian strategic approach in the early 1970s.

Surely the domestic audience component enters here (HD2), as a way of explaining exactly why the Colombian government reacted as strongly as it did to the 2012 ICJ ruling. As otherwise argued by Galvis and Arévalo (2018), ‘the decision of President Santos [to withdraw from Pact of Bogota and the ICJ proceedings] was an anomaly in Colombia’s approach to international law’.

This component – domestic opposition to treaties agreed by governments behind closed doors (HD3) – emerges in most of the disputes described here. In an extreme case, Colombia’s first boundary with Ecuador led to the government being criticised for drawing an ‘imaginary line in the sea’ (Londoño 2015). This speaks to the limited conception of the maritime domain at the time. At the other end of the spectrum, when Colombia agreed its final (to date) maritime boundary with Jamaica in 1993, some domestic actors criticised the agreement for ‘giving away’ maritime space that was supposedly Colombian. As Londoño (2015, 296) notes, it was once widely held that everything in the Caribbean stretching northwards of Colombia’s mainland is Colombian. In 20 years, the public discourse concerning maritime space had changed.

Engagement of domestic sentiment can be seen in the proceedings after the agreement with Panama, which domestic opposition criticised as being too favourable to Colombia; with Costa Rica, where fears of damaging relations with Nicaragua were voiced; with the Dominican Republic, where similar fears of the impact on relations with Venezuela were brought forward; with Honduras, where fear of losing rights as well as relations with Nicaragua came to fore; and with Jamaica, where fishing interests voiced their concerns. This is also a key component in the Nicaragua dispute and the unresolved Venezuelan boundary issue.

An additional component is the cultural and historical affinity between the countries in question. All the nine states with which Colombia has negotiated were, like Colombia itself,
Spanish colonies at one point. Today, only two of the nine have a different national language than Spanish (French in Haiti, English in Jamaica). The emphasis that the various agreements place on ‘cultural bonds’ or ‘friendly relations’ speaks to this cultural and historic affinity. This, in turn, speaks to the importance of regional complexes in terms of systemic relations, and patterns developed through compounded interaction, as posited by the third system-hypothesis (HS3).

In conclusion, the case of Colombia displays how one state can take on a highly active approach to settling its maritime boundary disputes with an eye towards a larger geopolitical and legal goal. Whether or not Colombia can be deemed successful in the dispute with Nicaragua depends on the position of the beholder. Colombia did, however, manage to settle all its other maritime boundaries – except for Venezuela – in a rather complex web across the Caribbean and Pacific.
9. Norway

Norway became a loosely knit kingdom through unification as early as in 872, as the Viking kings were set on expansion. Several variants of the Viking kingdom – predominantly in southern and central parts of what is Norway today – lasted until 1397, when Norway was joined in the Kalmar Union with Sweden and Denmark (Stenersen and Libæk 2007). Throughout this period, which peaked in the 13th–14th centuries, Norway ruled an area that comprised contemporary Norway, Iceland, the Faroe Islands, Greenland, and northern parts of Scotland and Ireland (including several North Sea islands), and had also established brief settlements in Newfoundland (Krag 2000).

When the Kalmar Union was disbanded in 1521, Norway remained under direct Danish rule until 1814, serving mainly as a resource base neglected by the Danish rulers. In 1814, Norway was given to Sweden as war spoils when Denmark ended up on the losing side in the Napoleonic wars. Norway managed to set up its own Parliament (the Storting) and draft a Constitution in this process. Instead of becoming a Swedish dominion, Norway entered an (enforced) union with Sweden, under a Stockholm-based king. It was not until 1905 that Norway acquired complete independence from Sweden as well, and chose – through popular vote – its own monarch (Stenersen and Libæk 2007; Riste 2005).

The land border with Sweden was settled between Denmark-Norway and Sweden by treaty in 1751. Later, in 1810, the triparty border between Finland, Norway and Sweden in the north was set; and in 1826, the land border with Russia in the Far North was agreed (Riste 2005, 34). Although it has remained in place since then, this shared border with Russia has been the main security consideration for Norway in modern times (Tamnes 1997; Riste 2007). Since the end of the Second World War, Norwegian security policy has focused on managing relations with its eastern neighbour through membership in NATO and a bilateral relationship with the USA (Tamnes 1997, L. Rowe 2015).

‘Norway’ includes the Svalbard Archipelago, which provides direct access to the Arctic Ocean. Norway was granted sovereignty over the Archipelago during the 1920 Versailles negotiations, with the signing of the Spitsbergen Treaty, which came into force in 1925. According to Art. 3 of the Treaty, Norwegian exercise of its sovereignty is subject to certain conditions concerning taxation and non-use of the islands for military purposes, as well granting equal access for economic activities to nationals of the parties.
Despite this early 20th-century diplomatic compromise (Anderson 2009a), diverging views on the geographical scope of the Spitsbergen Treaty have persisted among legal experts concerning the status of the maritime zones beyond Svalbard’s territorial sea. While some hold that the Treaty applies in these maritime areas, others say it does not, and the disagreement is as yet unresolved (Pedersen and Henriksen 2009a; Churchill and Ulfstein 2010a; Molenaar 2012; Raspotnik and Østhagen 2014).

At the time of writing, Norway consists of 18 counties (fylker) which are currently undergoing a process of mergers, including the capital region of Oslo. As with Canada, the Arctic holds an integral position in Norway; it is termed *nordområdene – High North*, and covers everything north of the Arctic Circle (66°33′ N) (Støre 2012; Skagestad 2014). With half a million residents, Norway’s High North is sparsely populated by European standards but densely populated when compared with the North American Arctic. As one third of Norway’s territory and 80% of its maritime zones lie within the region, the Arctic is not isolated from larger national security and defence policies: quite the contrary, the High North is central to Norwegian policies, and to its maritime policies in particular.

**Illustration XIV: Map of Norway**

Source: [Wikimedia](https://commons.wikimedia.org/wiki/File:Norway_map.png).
9.1. Norway’s Maritime Boundaries

As put by a former lead negotiator of Norway’s maritime boundaries: ‘Norway is located strategically between great powers, separated by the sea. The ocean is therefore everything’ (Norwegian Diplomat I 2017). In general, the northern European countries around the North Sea – Norway, the UK, Netherlands, Denmark – were amongst the first to push for an extension of maritime zones in the post-war period, as this was becoming accepted around the globe. In addition to the North Sea, Norway has access to the Norwegian Sea and the Barents Sea, as well as the Arctic Ocean through the Svalbard Archipelago in the north.

As early as 1812 (when under Danish rule) Norway had established 4-n.m. territorial waters from the outermost limit of its many islands and reefs (Riste 2005, 63). In the 1860s, Norway drew a straight baseline across the Vestfjord (between the city of Bodø and the Lofoten Archipelago) to protect local fisheries against French fishers, which caused outcry in France (Riste 2005, 63). By 1935, Norway had established straight baselines more generally north of the Arctic Circle, to the irritation of British fishers who objected to being excluded from Norwegian waters (Harsson and Preiss 2012). In the end, the UK took the case to the ICJ, which in 1951 with the Anglo-Norwegian fisheries case upheld the Norwegian approach regarding straight baselines (Green 1952).

In the post-war period, Norway placed emphasis on its maritime domain as a source of fisheries and shipping – historically the backbone of its economy. Norway was also among the countries that took the lead in efforts at the UN to develop a comprehensive approach to the oceans, which led to the Geneva Convention in 1958 and later UNCLOS (Retzer 2017). The ‘Evensen group’ – named after the Norwegian Minister of Maritime Affairs, Jens Evensen – became central in finding compromises during UNCLOS-negotiations in the 1970s (Retzer 2017; Harsson and Preiss 2012). Norway was also active in pushing for an extension of the continental shelf beyond 200 n.m. (Ø. Jensen 2014, 41), later enshrined in UNCLOS Article 76 (1).

Negotiations between Norway and its maritime neighbours on how to delineate maritime space began in the 1960s when the oil and gas potential of the North Sea became apparent. In 1962, the US-based Phillips Petroleum Company approached the Norwegian government with a request to initiate drilling (Norwegian Ministry of Petroleum and Energy 2016). The next year, the

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96 The Swedish–Norwegian maritime boundary which was determined in 1909 through international arbitration is not dealt with here. See Permanent Court of Arbitration 1909 for more information. The boundary is limited in legal, political and economic importance, and settlement took place outside the temporal scope of this thesis (1960 – current date). See Ø. Jensen 2014, 62-63.
government issued a royal decree stating that the seabed and subsoil of the submarine areas off the Norwegian coast were under its jurisdiction with regard to natural resources (Norwegian Petroleum Directorate 2017). This move provided the impetus to delimit Norway’s seabed boundaries with the UK and Denmark in areas of the North Sea that had previously been considered high seas (see 9.2.). A dispute also arose in the 1960s when both Norway and the Soviet Union drew on the 1958 Geneva Convention on the Continental Shelf in claiming offshore rights (Henriksen and Ulfstein 2010). The dispute in the Barents Sea with the USSR expanded in geographical scope when Norway established its 200-n.m. EEZ in 1976 and the USSR established its zone in 1977 (discussed in Chapter 9.6.).

Having established an EEZ along its entire coast in 1976, Norway also decided to establish a Fisheries Protection Zone (FPZ) around the Svalbard Archipelago in 1977, arguing that the 200-n.m. maritime zone around Svalbard is not subject to the Spitsbergen Treaty (Ø. Jensen 2014a, 102). To avoid an outright challenge to the Norwegian claim and to protect and manage what is the central spawning area for the northeast Atlantic Cod stock, the Norwegian government opted to establish the FPZ instead of an EEZ (Ø. Jensen 2014a, 103). Thus far, the other Spitsbergen Treaty signatories have accepted this, although Russia, Iceland and (at times) the EU have been outspokenly critical of what they perceive as Norwegian Coast Guard discrimination against their fishing vessels (Pedersen 2009, 2017; Molenaar 2012; Østhagen 2018b; Østhagen and Raspotnik 2018). Note that the current dispute concerning the status of the maritime zone around Svalbard will not be dealt with here as it is not a boundary dispute per se, although it will be touched on in boundary discussions concerning Denmark/Greenland (9.5.) and Russia (9.6.).

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97 For more on this dispute, see Pedersen 2008 and Østhagen and Raspotnik 2019.
Illustration XV: Norway’s maritime zones

Source: Norwegian Government. Separation between Norwegian EEZ (‘Norges økonomiske sone’), Fisheries Protection Zone around Svalbard (‘Fiskevernsonen ved Svalbard’), and the Fisheries Zone around Jan Mayen (‘Fiskerisonen ved Jan Mayen’).


One challenge facing Norway concerned the 1958 Geneva Convention, the first article of which defines the continental shelf as ‘the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the suprajacent waters admits of the exploitation of the natural resources of the said
areas’ (United Nations 1958). Norway had chosen not to sign the Convention because of its wording regarding this 200-metre limit. It was concerned that the UK and Denmark might argue that the Norwegian shelf was bounded by the Norwegian Trench, which drops to 350 metres just off the west coast of Norway and to 700 metres just off the south coast (Ryggvik 2014).

However, none of the states around the North Sea wished to base a boundary regime on the 200-metre limit (Ryggvik 2014). This limit was rendered conditional and therefore uncertain by the subsequent clause within Article 1: ‘to where the depth of the suprajacent waters admits of the exploitation of the natural resources of the said areas.’ As offshore drilling technology was certain to improve over time, the question became not whether the Norwegian Trench constituted a limiting factor, but whether the equidistance principle or some other criterion would be applied to delimit the opposing continental shelves and EEZs (Ø. Jensen 2014a, 66). See chapter 6.2. for how Australia used this principle in its favour in negotiations with Indonesia.

A key development occurred in 1964, when the UK informed Norway that it wished to start negotiations based on the equidistance principle (Ø. Jensen 2014a, 66). The UK wanted an agreement with Norway before dealing with other, more complicated boundary issues further south, involving Denmark, Germany, the Netherlands, Belgium, and France (Ryggvik 2014). Offering to use the equidistance principle was a major concession, because the UK ratified the Geneva Convention that same year. Norway’s response to the British offer was immediate and positive.

The Norwegian side was also pleased at the willingness of the British negotiators to accept a boundary calculated from straight baselines drawn between outer islands and reefs along Norway’s highly fragmented west coast (Kindingstad 2002). The UK had previously challenged those straight baselines before the ICJ, which had ruled in Norway’s favour in the 1951 Anglo-Norwegian Fisheries Case (Green 1952). That said, the UK benefitted from the fact that the Shetland and Orkney Islands were likewise granted full effect with regard to calculation of the equidistance line.

The agreement between Norway and the UK was concluded in 1965, just one year after negotiations began (Norwegian Petroleum Directorate 2017). Jensen (2014a, 66) argues that it was not only prospects of oil and gas that drove the British and Norwegian interest in maritime delineation in the North Sea, but also clarity around sedentary species due to the importance of fisheries in the area. Any knowledge about oil and gas in the area was, in any event, limited at the
Negotiations with Denmark proved more difficult. Denmark had ratified the Geneva Convention in 1963 and could have been expected to argue that Norway’s continental shelf was bounded by the Norwegian Trench (McHarg et al. 2010), the deepest part of which lies between Norway and Denmark. However, Denmark had a strong interest in seeing the equidistance principle applied in the south, to define its boundary with West Germany. The latter held that the location of the boundary should not be based on a simple application of the equidistance principle but should take into account the length of the coastline (Oude Elferink 2013, 74–86). The West Germans took this position because the German coast of the North Sea is concave in shape, whereas the Danish and Dutch coasts on either side are convex.

Denmark would have also been aware that an argument based on coastal length was equally available to Norway, as the length of the Norwegian coast facing Denmark greatly exceeds the length of the Danish coast facing Norway. Accepting the application of the equidistance principle with Norway enabled Denmark to be consistent in its legal arguments and to avoid the worst-case scenario of having to make concessions based on coastal length in both the south and the north. Norway and Denmark concluded their boundary agreement in 1965 (Oude Elferink 2013, 74–86).

Denmark was also interested in a quick settlement of the boundary with Norway so that oil exploration in the northern portion of its North Sea continental shelf could begin (Ryggvik 2014). Oil exploration in the southern portion had to wait, however, because West Germany was unwilling to make concessions with regard to its legal position. Eventually, West Germany, Denmark and the Netherlands agreed to send the matter to the ICJ, which – surprisingly for Denmark – ruled largely in favour of West Germany in the 1969 North Sea Cases (Oude Elferink 2013, 80–90).

The Norway–Denmark boundary agreement was a win–win result for both countries. Denmark was able to secure a straightforward application of the equidistance principle in the north before being forced to accept qualifications to that principle in the south. Norway avoided any challenge to its position that might have been based on the Geneva Convention, and gained jurisdiction over a portion of the North Sea equal in size to its entire land mass (Ryggvik 2014). Rapid resolution of the dispute enabled both countries to open their portions of the previously disputed area to oil and gas exploration.

It bears repeating that Denmark, in particular, saw strategic legal value in supporting
equidistance as a principle of international law. As Oxman (1995, 265) explained:

Others may wish to use one or more agreements to influence an outstanding delimitation either directly or indirectly. The classic example of this approach is the equidistant line drawn by Denmark and the Netherlands as part of a more general implementation of the equidistance principle in Article 6 of the Convention on the Continental Shelf in the North Sea that included, in addition to these two states, Norway and the United Kingdom. It represented not only an attempt to reinforce the use of equidistance in the North Sea but, by extending the line to a point equidistant from their coasts and the German coast, an effort to apply equidistance directly to their respective boundaries with Germany.

Years later, the historian Tage Kaarsted argued that the Danish foreign minister at the time, Per Hækkerup, had conceded too much to the Norwegians in negotiations (crucially, the major Ekofisk oilfield located just on the Norwegian side of the 1965 boundary which was undiscovered at the time) due to alcohol problems (Ø. Jensen 2014a, 68; Kaarsted 1992). Such descriptions ignore the larger legal and political context of the negotiations, as well as wider Danish interests in the North Sea.

Having agreed to a straightforward application of the equidistance principle in 1965, Norway and Denmark had no difficulty agreeing to do so again when, in 1979, they settled the very short maritime boundary between Norway and the Faroe Islands, which involved a relatively straightforward application of the principle (Kindingstad 2002).

Summing up: As of 1965, the maximum breadth of coastal state jurisdiction over the continental shelf had not yet been clearly defined. The 1958 Geneva Convention was unclear on the point, as it contained both a depth-based limitation of 200 metres and a technology-based limitation that would allow increasingly-expanding claims as offshore drilling technology improved (United Nations 1958). Norway seized the opportunity to conclude maritime boundary agreements with the UK and Denmark that took a highly expansive view of international law, dividing large portions of the North Sea between them using the equidistance principle.

Other countries could have challenged these actions – but then they would have been arguing not for their own rights, but for the rights of all states to access the ‘high seas’ areas in question. Moreover, most of those areas were in deep water, beyond the reach of the drilling technologies of the time. For these reasons, the Norway–UK and Norway–Denmark boundary
treaties went unchallenged, gradually becoming firmly entrenched.

Norway’s new boundaries were reinforced when international oil companies began drilling under leases granted by the Norwegian government (Kindingstad 2002; Ulleland 2008; Ryggvik 2014). Given the balance of power in international politics at the time, it was probably to Norway’s advantage that most of the oil companies involved were US-based (Hanisch and Nerheim 1992; Tamnes 1997).

9.3. Norway (Jan Mayen)–Iceland (1981/2008)

Jan Mayen is a small island located roughly 250 n.m. east of Greenland and 360 n.m. northeast of Iceland. It has belonged to Norway since 1930, when Norway claimed sovereignty through historic title. There is no permanent population on Jan Mayen (apart from a few scientists on rotation from the Norwegian Meteorological Institute), but the EEZ around the island supports a sizeable fishery. In June 1979, Iceland adopted a 200-n.m. EEZ, just as Norway had done along the coast of its mainland three years earlier (Churchill 2001, 118). The new Icelandic zone came within 200 n.m. of Jan Mayen, so Norway responded by declaring its own 200-n.m. maritime zone (Fisheries Zone) around the island, creating an overlap (Churchill 2001, 118).

Norway then took the view, consistent with its approach to other maritime boundaries at the time, that the equidistance principle was an appropriate solution. Iceland, in contrast, held that it should have a greater proportion of the disputed zone, given that the rights of the two states in this instance were generated by a small, remote, uninhabited island, on the one hand, and a significantly larger, populated island-nation, on the other (Ryggvik 2014).

The dispute between Norway and Iceland was resolved through a conciliation committee consisting of three members: one from Norway, one from Iceland, and one from the USA, as a neutral third party (Linderfalk 2016). An agreement was in turn signed in 1981 whereby the Icelandic continental shelf was recognised as extending a full 200 n.m. from the Icelandic coast in the area between Jan Mayen and Iceland, notwithstanding the proximity of the Norwegian island (Norway–Iceland 1981; Ø. Jensen 2014a, 72–73).

Iceland thus gained a much larger continental shelf than it would have had under the equidistance principle. At the same time, a resource-sharing regime was incorporated into the new boundary agreement. Norway gained the right to participate in 25% of the oil and gas exploration on a portion of Iceland’s continental shelf just south of the new boundary, while Iceland gained
the right to participate in 25% of the oil and gas exploration on a portion of Jan Mayen’s continental shelf just north of the new boundary (Norway–Iceland 1981).

Norway’s willingness to concede to Iceland’s position was based on several political and economic considerations. First, insisting on the equidistance principle in the context of a small, remote and unpopulated island would have damaged relations between Norway and its smaller Nordic neighbour (Ryggvik 2014). Second, Norway had already discovered large oil fields in the North Sea, whereas Iceland had no equivalent resources (Kindingstad 2002). Third, the most promising oil and gas prospects between Iceland and Jan Mayen were located close to the latter, in an area that Norway had received despite its concession (Linderfalk 2016; Ryggvik 2014).

Still, the Norwegians made sure that the boundary treaty provided them with a 25% share of oil and gas development on the Icelandic side (Norway–Iceland 1981). They also insisted that the waiver of the equidistance principle would not serve as a precedent for other negotiations (Ryggvik 2014). The dispute has also been connected to larger considerations regarding NATO membership and anti-NATO sentiment in Iceland at the time (Jóhannesson 2013). Thus, we cannot discount the broader security context given the Cold War and Iceland’s role in the Greenland–Iceland–UK (GIUK) gap vis-à-vis the USSR\(^98\), although this does not seem to have been the primary impetus for the agreement.

In 2008, as oil prices peaked and prospects of actual oil and gas activity came into view, Norway and Iceland concluded a follow-up treaty that provided a more detailed framework for cooperative exploration of straddling deposits and deposits within the two zones of 25% participation (Iceland–Norway 2008). According to Norwegian foreign minister at the time Jonas Gahr Støre, the arrangement provided the predictability that the oil companies needed (Karlsbakkk 2008).\(^99\) This joint hydrocarbon regime, although not unprecedented (McDorman 2009, 333–37), was the first to be established in Arctic waters. Regardless of these developments, the area around Jan Mayen is relatively inhospitable to petroleum development, with difficult ice conditions and deep water (Churchill 1994, 6), and no large-scale drilling has since commenced.

As for fisheries related to the initial Norway–Iceland boundary, Icelandic fishermen had

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\(^{98}\) The maritime space in the Northeast Atlantic between the UK, Greenlandic and Iceland, important for denial of USSR access to the Atlantic during the Cold War.

\(^{99}\) According to the same report, the new treaty was signed just three days after the Bank of Norway granted the Icelandic government a loan of approximately €1 million as part of Norway’s assistance to Iceland during the global financial crisis.
been pursuing capelin southeast of Jan Mayen for some time, whereas Norwegian fishing in the disputed zone had only just begun at the time of settlement (Churchill 1994, 3).

9.4. Norway (Jan Mayen)–Denmark (Greenland (1995))

Another boundary dispute was created in 1980 when Denmark extended its 200-n.m. fisheries zone northwards along Greenland’s east coast, creating an overlap with the Norwegian zone on the northwest side of Jan Mayen (Churchill 2001). Denmark argued that it deserved a larger proportion of this disputed zone because the coast of Greenland is much longer than that of Jan Mayen, and because the population of Greenland, living much closer to the area, deserved privileged access to the fish stocks located there (Churchill 1994). Norway, in contrast to its Jan Mayen dispute with Iceland, held firmly to the equidistance principle. After years of unsuccessful negotiations, Denmark submitted the dispute to the ICJ in 1988 (Churchill 1994).

In this Norway–Denmark dispute, the ICJ delimited a single maritime boundary between Greenland and Jan Mayen in 1993 (ICJ 1993). The court began with an equidistance line on a provisional basis and then considered whether ‘special circumstances’ justified any adjustments in order to achieve an ‘equitable result’. The court concluded that the longer length of the Greenland coast required a delimitation that tracked closer to Jan Mayen, and that the line should also be shifted slightly eastwards, to allow Denmark equitable access to fish stocks. Norway and Denmark implemented the judgment through a boundary treaty concluded in 1995 (Hoel 2014, 55; Churchill 1994).

Fisheries interests played a role in the dispute, although these were mostly on the side of Norway’s negotiating partners. To some degree, this was recognised in the ICJ judgement, which adjusted the Norway–Denmark boundary to accommodate Greenland’s interest in a potential capelin fishery (Churchill 1994, 3–6). However, Norway did not acquiesce to the Danish claim as it had in the case of Iceland. Perhaps fears of creating a legal precedent, as well as larger power-relations (Denmark and Norway are more evenly matched along this parameter than are Iceland–Norway), entered the picture. Interestingly, as Jensen (2014a, 69) highlights, this was the first time the ICJ had to take sea-ice into consideration, although it was given no effect. Denmark/Greenland had argued that this was a relevant factor to consider due to inaccessibility for fisheries in areas covered by ice.
9.5. Norway (Svalbard)—Denmark (Greenland) (2006)

As previously outlined, Norway’s sovereignty over the Svalbard archipelago was recognised by the 1920 Spitsbergen Treaty. In 1977, Norway claimed a 200-n.m. Fisheries Protection Zone around Svalbard and argued that this zone is not covered by the treaty because such zones did not exist in maritime law in 1920 (Pedersen and Henriksen 2009b; Churchill and Ulfstein 2010b).

To avoid escalating the dispute with other countries over the scope of the treaty and possible rights of access to offshore oil and gas resources, Norway has not claimed an EEZ around Svalbard (Hønneland 2013). However, under international law, a state does not need to claim a continental shelf, as that is automatically generated by the adjoining territory (McDorman 2009, 21–34). Norway claims that Svalbard does not have a continental shelf in its own right (legally – of course it has one in the physical sense) and that the continental shelf around Svalbard, as an extension of the mainland’s continental shelf of the Norwegian mainland, is solely under Norwegian jurisdiction.

Although other countries dispute this (Pedersen 2008; Anderson 2009b), the Norwegian view received some support from the CLCS, which, in 2009, issued recommendations that recognised the existence of a Norwegian extended continental shelf to the north of Svalbard (Pedersen and Henriksen 2009b; Nilsen 2009). In 2015, the Norwegian government launched a licensing round for oil and gas exploration and production that included blocks on what would otherwise be Svalbard’s continental shelf. Russia delivered a diplomatic protest. As yet, no activity has commenced in those blocks (Hammerstrøm 2015).

Norway drew straight baselines around Svalbard in 2001; Denmark drew straight baselines around Greenland in 2004 (Anderson 2009b, 373–84). Then, in 2006, Norway and Denmark concluded an all-purpose maritime boundary between Svalbard and Greenland (Denmark–Norway 2006). Roughly 430 n.m. long, the boundary is based on an equidistance line, adjusted slightly to take into account the presence of Denmark’s Tobias Island some 38 n.m. off the Greenland coast (Oude Elferink 2007).

By concluding the treaty, Denmark implicitly recognised that Svalbard generates both fishing and continental shelf rights, although not taking a position on the question of whether these are covered by the Spitsbergen Treaty. The boundary treaty includes a provision on straddling mineral deposits, whereby either party can initiate negotiations on possible cooperative solutions without committing both parties to any result. The preamble of the Svalbard–Greenland
Delimitation Agreement also specifies that the treaty does not set the boundary between their respective extended continental shelves that stretch northwards towards the North Pole – a matter that the parties will need to address sometime in the future (Thomassen 2013, 30).

Economic interests seem to have provided some motivation for the Norway–Denmark negotiations. Oude Elferink (2007, 376) explains how the 2006 treaty’s provisions on straddling mineral deposits are based on the 1995 treaty on the boundary between Jan Mayen and Greenland, with further details with regard to how exploitation would occur. The inclusion of these detailed provisions anticipates oil and gas activity along the new boundary at some point.

The utilisation and affirmation of the equidistance principle helped spur an agreement (Oude Elferink 2007, 376). Also, the Norwegian submissions to the CLCS that same year (the agreement was finalised in January, the submission was in November) was a motivating factor as Norway was eager to finalise its maritime map. For Norway, an additional goal was the international recognition for its position that Svalbard is indeed entitled to a fishing zone and continental shelf, although the status of the waters and seabed around Svalbard is not yet settled. Norway thus managed to establish a clear maritime and seabed boundary concerning the western part of the Svalbard archipelago. This agreement was Norway’s second last boundary agreement, with only the long-standing and difficult boundary with Russia remaining.


The Barents Sea is located north of the Norwegian and Russian mainland, just off the Arctic Ocean itself. The Sea is named after the Dutch explorer Willem Barentsz, who ventured northwards in search of a sea route to Asia via the northern hemisphere in the late 16th century. Roughly 500,000 square n.m. in size, it has an average depth of only 230 metres. The entire seabed constitutes a continental shelf, making the Barents Sea a prime location for fishery, oil, and gas activity.

This specific dispute arose in the 1960s when Norway and the Soviet Union both drew on the 1958 Geneva Convention to claim continental shelf rights (United Nations 1958; Henriksen and Ulfstein 2010). It acquired greater consequence in 1977 when both countries had asserted 200-n.m. EEZs encompassing both fish and seabed resources (Henriksen and Ulfstein 2010). An agreement concerning the disputed area, the ‘Grey Zone Agreement’, was signed in 1978 and was renewed annually up until 2010 (Riste 2005, 250). It recognised rights of Norway and of the USSR/Russia to fisheries in the area, without tackling the boundary dispute as such (Stabrun
The Barents Sea thus became central in relations between the two countries. As noted, this concerns a maritime domain integral to the security of both states, as well as to regional economic development in North Norway and North-West Russia (Østhagen 2016).

For more than four decades, Oslo and Moscow contested roughly 175,000 km², or about 10%, of the Barents Sea. Leaning on the ‘sector’ principle – i.e. the use of meridians to determine a boundary instead of equidistance – Moscow argued that various ‘special circumstances’ were relevant to the boundary delimitation: the length and shape of Russia’s coast; the size of the respective populations in the adjacent areas; ice conditions; fishing, shipping, and other economic interests; and strategic concerns (Østreng and Prydz 2007; Moe, Fjærtøft, and Øverland 2011; Byers 2014; Hoel 2014). It also argued that the 1920 Spitsbergen Treaty prevented any points on the Svalbard archipelago from influencing the delimitation. In Moscow’s view, all these factors combined to justify a sector line along the 32˚, 04', 35'' E meridian, with that line being adjusted east of Svalbard only, so as not to infringe on the area defined under the Svalbard Treaty (Churchill and Ulfstein 1992, 63).

Oslo responded that the Soviet Union had drawn the line in 1926 for the sole purpose of defining the territorial status of several offshore islands, without any intention of delimiting maritime zones. It argued that a median line should instead be drawn from the mouth of the Varangerfjord, a narrow inlet between Finnmark and the Kola Peninsula, within which a territorial sea boundary had been agreed in 1957 (Churchill and Ulfstein 1992, 47). Such a line would be equidistant, at all points, from the Norwegian and Soviet mainland coasts; further out, it would be equidistant from Svalbard in the west and Novaya Zemlya and Franz Josef Land in the east (Churchill and Ulfstein 1992, 63).

Negotiations over the Barents Sea boundary continued for almost four decades, after being informally initiated in Oslo in 1970 (Ø. Jensen 2014a, 75), and formally launched in 1974 (Moe, Fjærtøft, and Øverland 2011, 47). The talks gained momentum in 1988, when a provisional line between the two positions was drawn and Soviet Prime Minister Rysjkov announced that a settlement was possible – if agreement could be reached on joint exploitation of resources in the disputed area (Bakken and Aanensen 2010). However, talks came to a standstill after the Soviet Union collapsed. Moreover, Norway insisted on a settled boundary before implementing any shared resource scheme (Norwegian Diplomat I 2017).

In 1996 and 1997, respectively, Norway and Russia ratified UNCLOS, Article 76 of which
recognises that a coastal state may exercise sovereign rights over an extended continental shelf more than 200 n.m. from shore, if and where it can demonstrate a ‘natural prolongation’ of its land mass (see Chapter 2.2.) (Zia, Kelman, and Glantz 2015, 132). However, UNCLOS Article 83 stipulates that continental shelf delimitation between states with opposite or adjacent coasts ‘shall be affected by agreement on the basis of international law … in order to achieve an equitable solution’. Norway and Russia started the process of preparing submissions to the CLCS – due ten years after the respective ratifications – where both could potentially gain recognition of sovereign rights over large portions of extended continental shelf area in the Arctic Ocean.

In 2002, the new Russian President Putin visited Oslo and agreed with the Norwegian Prime Minister Bondevik that boundary dispute negotiations should be continued in order to find a solution rapidly (Ø. Jensen 2014a, 82). Three years later, they announced that their countries would initiate ‘strategic cooperation’ on petroleum development in the Barents Sea (Bakken and Aanensen 2010). Negotiations on the boundary dispute were resumed later that year, when a new government had taken office in Oslo.

Jonas Gahr Støre, then Norwegian foreign minister, placed the Arctic on the top of the political agenda in 2005-2006 (Støre 2012; Østhagen, Sharp, and Hilde 2018). This included, in particular, the Barents Sea dispute and Norway’s relations with Russia. As the lead Norwegian negotiator at the time explained: ‘Every Norwegian government has been preoccupied with the dispute, but Støre especially’ (Norwegian Diplomat I 2017). In 2007, the two countries signed a revision of the 1957-agreement on the boundary within the Varangerfjord (Russia–Norway 2007). This revision provided a clear starting point for the boundary farther out, and was an essential step towards full resolution of the dispute (Norwegian Government 2007).

The breakthrough on the remaining boundary issues came in 2010, when the two countries committed to an all-purpose boundary that would be drawn ‘on the basis of international law in order to achieve an equitable solution’, recognising ‘relevant factors ... including the effect of major disparities in respective coastal lengths’ while dividing ‘the overall disputed area in two parts of approximately the same size’ (Norwegian Government 2010). The resulting treaty, with geodetic lines connecting eight defined points, was ratified by the Norwegian and Russian governments after the Norwegian Storting and the Russian Duma gave their consent in 2011 (Gibbs 2010; T. Neumann 2010; United Nations 2010).

The 2010-treaty sets a single maritime boundary, delineating both the EEZ and continental
shelf within 200 n.m. from shore and the extended continental shelf beyond that. It is only of limited interest as to ‘whether the agreed boundary is best described as a modified median line (as argued by Norway) or a modified sector line (as argued by Russia)’ (Henriksen and Ulfstein 2010, 7), as the treaty divides the previously disputed sector almost in half (Norwegian Diplomat I 2017). It also includes provisions on co-management of any hydrocarbons that straddle the boundary, through the conclusion of a ‘unitization agreement’ for the exploitation of any such deposits and on the access of private companies to drilling rights on either side of the boundary (Byers 2013, 43–44; Fjærtoft et al. 2018).

That the dispute could finally be settled was due to several factors, not least the potential for oil and gas (Moe, Fjærtoft, and Øverland 2011; Hoel 2014; Claes and Moe 2018). In 1975, the two countries agreed on a moratorium on oil and gas exploitation in the area (Østreng and Prydz 2007). Notwithstanding the moratorium, some seismic surveying did take place in the disputed zone on the Russian side (Bakken and Aanensen 2010); and exploratory wells had been drilled – and oil and gas discovered – in the undisputed waters on either side.

However, low prices and high costs combined to restrain development until the 2000s, when several large projects were realised. On the Norwegian side, the Snøhvit gas field and the Goliat oil field came on stream in 2006 and 2016, respectively. There has been less activity on the Russian side, as there are more easily accessible resources on shore or closer to shore in the Yamal/Nenets region further east (Claes and Moe 2014, 102–10). However, both sides of the Barents Sea are thought to contain considerable hydrocarbon reserves (Claes and Moe 2014, 102–10). Moreover, ice-free conditions, a relatively hospitable climate (compared with other offshore parts of the Arctic at similar latitudes), and relatively good coastal infrastructure (especially compared to the North American Arctic) make the Barents Sea attractive for oil companies (Harsem, Eide, and Heen 2011).

In 2007, Gazprom entered a consortium with Norway’s Equinor (then StatoilHydro) and France’s Total to develop the massive Shtokman gas field that had been discovered in 1988 on the Russian side of the Barents Sea. Technical problems, disagreements among the partners, and declining prices (especially due to the ‘fracking revolution’ in the USA) eventually led to the project being shelved (Claes and Moe 2018). However, the development phases of the Shtokman field correlated with the signing of the 2007 Varangerfjord Agreement and provided impetus for the 2010 Boundary Treaty (Henriksen and Ulfstein 2010, 1–2). Since 2010, petroleum-related
cooperation between Norway and Russia has expanded; and the Russian companies Lukoil and Rosneft have both become licensed to operate on the Norwegian continental shelf (Staalesen 2016).

Although the prospects for oil and gas were an important driver in getting the boundary issue onto the bilateral political agenda, the presence of resources probably also made the topic more sensitive. ‘The negotiations would have been easier if there was no suspicion of oil and gas resources in the area’, the lead negotiator on the Norwegian side told a Norwegian business newspaper in 2005 (Dagens Næringsliv 2005; Blomqvist 2006). Additionally, the negotiator highlighted energy and fisheries as the most central points in the negotiations. Yet, as Blomqvist (2006, 60) shows through a discourse analysis concerning the boundary before it was settled: ‘It seems that until the debate over petroleum increased, the unresolved boundary was at large seen as unproblematic.’ Oil and gas seem to have had multiple effects here – contributing to the push to find a solution, while also making it challenging for the negotiators.

In addition to oil and gas, fisheries have long been at the forefront of the cooperative maritime relationship between Norway and Russia (Hønneland 2012). The Barents Sea is home to the world’s largest cod fishery (Stokke, Anderson, and Mirovitskaya 1999; Stokke 2000; Hønneland 2013). Over the last decade, effective management cooperation has enabled Norway and Russia to increase their science-based quotas – to the point where the cod stock provides more than 2 USD billion in sustainable annual catches (Hønneland and Jørgensen 2015).

However, fisheries did not serve as an incentive for concluding the boundary treaty in 2010. As explained by Geir Hønneland (2013; see also Solstad 2012), some Russian fishermen voiced concerns, both before and after, that a clear delineation would deny access to some historically important fishing grounds. Also in Norway, there were concerns over losing access, in tandem with domestic pressure to ensure that quotas remained at pre-agreement levels (Solstad 2012, 78–82). Moreover, the annually updated Grey Zone agreement provided the access for fisheries that local fishing interests wanted (Stabrun 2009). Since the signing of the boundary treaty in 2010, critical voices at the local level in northwest Russia have continued to question the wisdom of the decision. Thus far, however, both countries have enforced the treaty through their respective coast guards (Østhagen 2016), as well as initiating discussions on unitisation in the case of any discovery of transboundary hydrocarbons (Holsbø 2011; Reuters 2016a, Fjærtoft et al. 2018).

Moe, Fjærtoft, and Øverland (2011), as well as Holsbø (2011) and Solstad (2012) hold that,
beyond economic interests, Russia’s desire to affirm the primacy of the UNCLOS regime and also ‘tidy up its spatial fringes’ help to explain the 2010-settlement. Indeed, Russia has benefited greatly from the right of every state to an EEZ, because of its extremely long coastline. And the shallow nature of the Arctic Ocean means that Russia will also benefit from the UNCLOS rules on extended continental shelves, perhaps more than any other country. Eliminating the legal and political uncertainties associated with unresolved maritime boundary disputes is one way of securing these benefits vis-à-vis third parties that might challenge Russian positions in the Arctic (Holsbø 2011; Moe, Fjærtoft, and Øverland 2011).

Moreover, the maturation of international law/precedence concerned with maritime boundaries over the four decades that the dispute lasted helped to soften the Russian stance concerning its position. As Jensen (2014a, 88) argues, the compromise solution offered by Norway in 1975 resembles the final outcome achieved in 2010. What had changed over those 35 years was Russia’s willingness to accept a compromise between the two positions. The relatively amicable relations at the time between Norway and Russia (which later deteriorated from 2014 onwards due to events in Ukraine) (L. Rowe 2018), undoubtedly played a considerable role in allowing for a compromise in the first place (Ø. Jensen 2014a, 92). Regional relations, starting with active efforts by both parties to improve cross-border cooperation and trade since the dissolution of the USSR, had thus thawed sufficiently by 2010.

Further, the lead negotiator for Norway has argued that, although economic interests were relevant, the core concern was related to security policy considerations and larger foreign policy relations (Norwegian Diplomat I 2017). For Russia, this part of the Barents Sea was not seen as crucial to its economy, or even its emerging Arctic policy. Instead, it was the desire to showcase the Arctic as an area of low tension and cooperation, governed by UNCLOS (which affirms the expansive rights of the Arctic states themselves in the region) that was probably equally consequential in tipping the scale towards settlement (Norwegian Diplomat I 2017). Here the fear of an emerging Chinese interest in the Arctic, potentially challenging the interests of littoral Arctic states also comes into play (E. W. Rowe and Lindgren 2013; E. W. Rowe 2018).

In sum, Russia’s interest in resolving its disputes, and thus strengthening the UNCLOS
regime, may have been influenced by the fact that non-Arctic countries have been effectively excluded from the Arctic’s vast continental shelves as a result of these rules. In both Russia and Norway, the newfound emphasis on Arctic affairs as well as the desire to reaffirm the Arctic maritime legal regime came to act as additional drivers of dispute settlement.

9.7. Conclusions
From the 1960s onwards, successive Norwegian governments have maintained a policy of actively seeking to resolve maritime boundary disputes. This policy has emerged as the result of several factors. The first, identified by Oxman (1995, 254) with regard to boundaries worldwide, is ‘the desire to ‘consolidate’ coastal state jurisdiction newly acquired under international law’, which ‘appears to be particularly true in enclosed and semi-enclosed seas where the peaceful enjoyment of extended maritime jurisdiction is especially dependent upon arrangements with one’s neighbors.’

In the North Sea, Norway sought rapid settlements with the UK and Denmark after the Geneva Convention, and parallel developments in state practice made it possible to present credible claims for a 200-n.m. continental shelf (and EEZ) (Ryggvik 2014). In addition to consolidating new rules on coastal jurisdiction that favoured their interests, the three states were keen to apply the equidistance method (Oxman 1995, 254). Norway and the UK both benefitted from the equidistance principle: it was relatively easy to apply, and gave each country vast, uncontested, and potentially oil-and-gas rich portions of the continental shelf. And Denmark sought to benefit elsewhere, by creating a precedent for its boundary with West Germany.

As assumed by the second legal hypothesis (HL2), Norway was also thinking strategically – beyond the North Sea to its contested Barents Sea boundary with the Soviet Union. As Norway’s position in the Barents Sea was based upon equidistance, any new state practice in favour of that principle in the North Sea could be seen as bolstering its claim in the High North. In any event, a more general desire to consolidate rights was apparent in the Barents Sea, where economic interests combined with security interests motivated the negotiation of a clearly defined boundary with the Soviet Union and later Russia. Norway first requested such negotiations in 1967 (Moe, Fjærtoft, and Øverland 2011, 147). The adoption of the 2010 Barents Sea Boundary Treaty came as the result of more than four decades of continuous effort by Norwegian diplomats. The challenge was to persuade the Soviet Union/Russia to engage and likewise compromise on the matter (Moe,
Fjæroft, and Øverland 2011, 159). Thus, the *interplay* between securing gains and rights through the utilisation of developing international law (HL2) and economic interests (HD3) cannot be underestimated.

Economic interests have thus long been a factor in Norway’s efforts to resolve boundary disputes. The negotiations with the UK and Denmark came in relation to the possibility of substantial hydrocarbon reserves in the North Sea. The motivation provided by economic interests was powerful enough to overcome concerns about incomplete knowledge as to exactly where those resources were located. Although this uncertainty loomed large in the negotiations (Ryggvik 2014), the influx of interested foreign companies and the prospect of win–win outcomes carried the negotiations forward. Economic interests in both hydrocarbons and fish also motivated Norway’s decades-long effort to resolve the Barents Sea boundary dispute.

Similarly, maritime space has arguably been a constitutive part of the modern Norwegian state. For a country with maritime zones seven times the size of its landmass, the ocean has been and remains integral to economic and security interests. Providing stable legal frameworks for the exploitation of marine resources and the maintenance of national sovereignty has thus been a priority for successive Norwegian governments (Tamnes 1997). In the post-Cold War era, a renewed interest in Arctic affairs also played a role, especially in the resolution of the Barents Sea boundary dispute. This renewed interest can be traced to the ‘Red–Green’ coalition, which took office in Norway in 2005 shortly after the publication of several reports that highlighted the economic potential of the Barents Sea. These studies were driven by the oil and gas industry, which was shifting its attention northwards as fields in the North Sea were becoming depleted (Brunstad et al. 2004; ECON 2005). We therefore cannot discount the role of special interests (HD3), as well as, to some extent, the larger domestic audience and regional interests in northern development in tandem with the government’s Arctic focus (HD2).

This renewed interest in Arctic affairs was linked to developments in Norway–Russia relations (Østhagen 2018b). Economic interests cannot fully account for Norway’s policy of actively seeking to resolve boundary disputes. That policy should be seen as the result of economic

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101 When it became apparent that the field that stimulated the Norwegian oil boom in the 1970s – *Ekofisk* – was located on the Norwegian side of the tri-point where the Norwegian, British, and Danish continental shelves meet in the North Sea, questions were raised in the UK and Denmark about the 1964 and 1965 agreements. However, the newly agreed boundaries were never challenged.

102 Red/Green: the Labour Party (red), the Left Socialist Party (red/green), and the Centre Party (agrarian/green).

incentives aligning with broader foreign policy goals: safeguarding Norwegian sovereignty and ensuring stability in regional relations. Norway, as a relatively small state, has long pursued stable relations with its neighbours, relations governed by international law and institutions (I. B. Neumann and Gstöhl 2006; I. B. Neumann et al. 2008; Haraldstad 2014). This general policy was motivated by the experiences of the First World War and, especially, the Second World War when neutral Norway was occupied by Nazi Germany (Riste 2007). Norway’s geographic proximity to the Soviet Union, which made it vulnerable during the Cold War, further contributed to defining foreign policy goals of stability and conflict avoidance (L. Rowe 2015).104

The new focus on the Arctic was coupled with a long-standing policy of pragmatic cooperation with Russia on transboundary issues ranging from fish stocks, to migration and trade (Hønneland 1999; Østhagen 2016). Norway began putting more effort into the bilateral relationship, concentrating on environmental management and people-to-people cooperation on the local and regional levels (Leland et al. 2008, L. Rowe 2018). Again, we see the regional security patterns and complexes (HS3), in this case that of the Russia/NATO/Norway relations in the Northeast Atlantic/European Arctic, playing out. Proactively settling maritime boundaries became more than a technical, legal, or economic issue for Norway: it emerged as a core element of Norwegian foreign policy.

These factors placed Norwegian efforts to settle the Barents Sea boundary dispute within a larger and essentially positive foreign policy context. However, the final step towards the 2010 treaty was Russia’s decision to work together with Norway in finding a solution. Russia reinvigorated its Arctic policy in 2004–5 (Zysk 2013; Konyshev and Sergunin 2014). This new political and strategic orientation correlated with economic interests, especially in offshore oil and gas. It thus became more important for Russia to ‘tidy up its spatial fringes’, as Moe, Fjærtoft, and Øverland put it (2011, 158).

Finally, it is noteworthy that Norway was willing to depart from the equidistance principle in negotiating certain boundaries, while maintaining its commitment to the principle more generally. The Jan Mayen–Iceland boundary provides one example of this, with concessions being made in light of Iceland’s dependence on fisheries and Norway’s positive disposition towards its smaller Nordic neighbour (Oxman 1995, 259; Churchill 1994). However, when similar arguments

104 That does not imply that Norway does not make use of power politics, as an active NATO member dependent on the USA for security assurances. See L.C. Jensen 2012; Hilde 2014; Østhagen, Sharp, and Hilde 2018).
were raised by Denmark concerning the Jan Mayen–Greenland boundary, Norway was unrelenting until the ICJ delimited the boundary in 1993. Relations (or historically developed patterns of amity/enmity) are central here.

These were arguably calculated moves that allowed Norway to settle individual disputes amicably while preserving its general negotiating position in favour of equidistance – not least in the Barents Sea. At the same time, Norway used resource-sharing/joint-development regimes in the Iceland–Jan Mayen, Greenland–Svalbard, and Barents Sea boundary treaties. These arrangements differ in their detail, but they were all intended to overcome the uncertainty barrier – the unwillingness of states to settle boundaries because of concern that they might be surrendering access to still-undiscovered seabed resources.

In sum, Norway’s policy of actively seeking to resolve maritime boundary disputes can be explained by a combination of factors reinforcing each other. First, the desire to ‘lock in’ gains that followed the development of new rules of international law was paramount in the 1960s and 1970s. Then Norway continued with the support of the equidistance principle through state practice in an effort to strengthen its legal position with regard to still-unresolved disputes elsewhere. Moreover, a core component has been – also related to Norway’s limited size and international posture – to avoid tensions and obtain legal certainty over readily exploitable resources, and promote its larger foreign policy goals of stability and security obtained through international law and other forms of cooperation. This is especially relevant vis-à-vis the Soviet Union and later Russia; and, more recently, linked to the goals of promoting stability, security, and economic development in the Arctic through dispute resolution.
10. Maritime Boundaries Across Cases: A Summary

Drawing on the previous four case chapters, I now turn to a comparison of the cases, and offer some conclusions on commonalities and differences between the cases and the related maritime boundary disputes. Table VI summarises the findings from each of the maritime boundaries across the four countries in focus (Australia, Canada, Colombia and Norway). In total, 33 maritime boundaries are included (where some might include multiple actual boundaries), 22 of which are fully settled, 3 settled but not ratified/in force, and 2 partially resolved. With each boundary, relevant factors are included, classified as either a driver for, or barrier to, reaching agreement: 75 drivers and 75 barriers spread across the 33 boundaries. Although additional factors beyond those highlighted here may well be relevant for each boundary, this overview attempts to distil Chapters 6 to 9 for the purpose of summary as well as comparison.

Table VI: Overview of each maritime boundary

<table>
<thead>
<tr>
<th>Dispute</th>
<th>Status</th>
<th>Impetus</th>
<th>Drivers</th>
<th>Barriers</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia I (seabed)</td>
<td>• Various parts agreed in 1971, 1972 and 1973 (in force by 1973/1974)</td>
<td>• Legal precedent from 1969 North Sea case</td>
<td>• Oil and gas resources (unknown)</td>
<td>• East Timor / Timor Gap</td>
<td>• Includes provisions for straddling resources</td>
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<tr>
<td></td>
<td></td>
<td>• Independence of Indonesia (1949) / western New Guinea (1963)</td>
<td>• Amicable relations</td>
<td>• Uncertainty concerning location of seabed resources</td>
<td></td>
</tr>
<tr>
<td>Indonesia II (maritime zones)</td>
<td>• Provisionally agreed in 1982</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• UNCLOS in force in 1994</td>
<td>• East Timor / Timor Gap</td>
<td>• Includes special zone for Indonesian traditional fishers</td>
</tr>
<tr>
<td></td>
<td>• Finally agreed in 1997 (not in force)</td>
<td>• Australian recognition of Indonesia’s</td>
<td>• Amicable relations</td>
<td>• Fishing interests (in Indonesia)</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Agreement Date</td>
<td>Implementation of 200 n.m. Zones</td>
<td>French Efforts to Settle Boundaries Across Territories</td>
<td>Local (PNG) Fisheries</td>
<td>Separation of Seabed and Fisheries Boundary</td>
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<tr>
<td>Papua New Guinea I</td>
<td>• Agreed in 1978 (in force 1985)</td>
<td>• Independence of PNG (1975)</td>
<td>• Amicable relations / Colonial Rule</td>
<td>• Already Issued Oil and Gas Licenses</td>
<td>• Separation of seabed and fisheries boundary</td>
</tr>
<tr>
<td>France I (New Caledonia)</td>
<td>• Agreed in 1982 (in force 1983)</td>
<td>• Implementation of 200 n.m. Zones</td>
<td>• French Efforts to Settle Boundaries Across Territories</td>
<td>• Regional Interests (Queensland)</td>
<td>• Developed ‘Protected Zone’</td>
</tr>
<tr>
<td>France II (Kerguelen)</td>
<td>• Agreed in 1982 (in force 1983)</td>
<td>• Implementation of 200 n.m. Zones</td>
<td>• French Efforts to Settle Boundaries Across Territories</td>
<td>• Constitution (Giving Away Land)</td>
<td>• Separation of Seabed and Fisheries Boundary</td>
</tr>
<tr>
<td>Solomon Islands I</td>
<td>• Agreed in 1988 (in force 1989)</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• Setting positive legal precedent (esp. Solomon)</td>
<td>• Ensuring control over fisheries (potential IUU)</td>
<td>• Includes provisions for straddling resources</td>
</tr>
<tr>
<td>New Zealand I</td>
<td>• Agreed in 2004 (in force 2006)</td>
<td>• Submissions to the CLCS</td>
<td>• Submissions to the CLCS</td>
<td>• Amicable relations</td>
<td>• Weight given to various islands / reefs</td>
</tr>
<tr>
<td>East Timor / Timor-Leste I</td>
<td>• Agreed with Indonesia in 1989 (in force 1991)</td>
<td>• Agreements with East Timor / Timor-Leste in 2002, 2003, 2006 and 2018 (not in force)</td>
<td>• Timorese independence (1999)</td>
<td>• Timorese claims of unfair deal (2007–2008 onwards)</td>
<td>• Oil and gas resources (initially unknown, developing later)</td>
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<tr>
<td>Dispute</td>
<td>Status</td>
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<td>Drivers</td>
<td>Barriers</td>
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<tr>
<td>USA (Gulf of Maine) I</td>
<td>• Sent to ICJ in 1981, judgement in 1984</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• Oil and gas resources (unknown)</td>
<td>• Fishing interests</td>
<td>• US fishing industry lobbied against the initial agreements</td>
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<td></td>
<td>• Mostly resolved</td>
<td>• Unrestricted fishing</td>
<td>• Concerns over conflict</td>
<td>• Public opinion in both Canada and the USA</td>
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<td></td>
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<td>• Clarification for fisheries</td>
<td>• US Senate ratification process</td>
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<tr>
<td>USA II (Machias Seal Island)</td>
<td>• Unresolved</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• Fishing interests</td>
<td></td>
<td>• Left unresolved after the Gulf of Maine case</td>
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<td></td>
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<td></td>
<td>• Regional interests (island part of Canadian province of New Brunswick (or US state of Maine))</td>
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<td>• Disagreement over territory (islands)</td>
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<td>• Dispute originates from Treaty</td>
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<tr>
<td>USA III (Beaufort Sea)</td>
<td>• Unresolved (negotiations in 2010–11)</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• Oil and gas resources (unknown)</td>
<td>• Oil and gas resources (unknown)</td>
<td>• Holds win–win with the extension of the shelf and zone</td>
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<td>• Regional interests in economic development</td>
<td>• Public opinion</td>
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<td></td>
<td>• Arctic Policy engagement (esp. in. Canada)</td>
<td>• Domestic law (Inuvialuit Final Agreement)</td>
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<td>• Concerns about precedent/</td>
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<td>Location</td>
<td>Status</td>
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<tr>
<td>USA IV (Dixon Entrance)</td>
<td>• Unresolved</td>
<td>• Clarification for fisheries</td>
<td>• US security interests (access to submarine-testing facility)</td>
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<tr>
<td>USA V (Strait of Juan de Fuca)</td>
<td>• Unresolved</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• Concerns about precedents /position elsewhere</td>
<td></td>
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<tr>
<td>Denmark I (Greenland)</td>
<td>• Agreed in 1973 (except for Hans Island/Hans Ø)</td>
<td>• Implementation of 200 n.m. zones</td>
<td>• Initially status of territory (Hans Island/Hans Ø)</td>
<td></td>
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<tr>
<td>Denmark II (Greenland/Lincoln Sea)</td>
<td>• Tentative agreement in 2012</td>
<td>• Arctic policy in Canada</td>
<td>• Political hesitation of compromising in the Arctic</td>
<td>• Ties into the two governments’ focus on the Arctic</td>
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<td>Dispute</td>
<td>Status</td>
<td>Impetus</td>
<td>Drivers</td>
<td>Barriers</td>
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<tr>
<td>France I (St. Pierre and Miquelon)</td>
<td>Initial agreement in 1972</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Public opinion</td>
<td>Regional interests, Fishing interests</td>
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<td></td>
<td>Maritime boundary resolved through arbitration in 1992</td>
<td></td>
<td>Clarification for fisheries</td>
<td></td>
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<td>Colombia</td>
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<tr>
<td>Ecuador I</td>
<td>Agreed in 1975 (in force 1975)</td>
<td>Implementation of 200 n.m. zones</td>
<td>Fishing interests, Showcasing cooperation</td>
<td>Limited public interest/support</td>
<td></td>
</tr>
<tr>
<td>Panama I</td>
<td>Agreed in 1976 (in force 1977)</td>
<td>Implementation of 200 n.m. zones</td>
<td>Panama Canal negotiations with the USA (Panama), Colombian desire to bolster its case vis-à-vis third parties (Venezuela and Nicaragua)</td>
<td>Neighbour relations (Nicaragua)</td>
<td>Colombian cays and islands given full effect</td>
</tr>
<tr>
<td>Costa Rica I (Caribbean)</td>
<td>Agreed in 1977 (not ratified)</td>
<td>Implementation of 200 n.m. zones</td>
<td>Colombian desire to bolster its case vis-à-vis third party (Venezuela), Fishing interests</td>
<td>Nicaraguan opposition, Domestic opposition (damaging relations with neighbours), Pressure from Nicaragua on Costa Rica, Encompassing cooperation on resources and environment, Gives full zone to San Andrés Archipelago</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Year Agreed</td>
<td>Year in Force</td>
<td>Implementation</td>
<td>Fishing Interests</td>
<td>Link to Caribbean Agreement</td>
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<tr>
<td>Costa Rica II</td>
<td>Agreed in 1984 (in force 2001)</td>
<td>Implementation of 200 nautical miles</td>
<td>Fishing interests</td>
<td>Link to Caribbean agreement (Colombia)</td>
<td>Ratified only after decoupling from 1977 agreement</td>
</tr>
<tr>
<td>Dominican Republic I</td>
<td>Agreed in 1978 (in force 1979)</td>
<td>Implementation of 200 nautical miles</td>
<td>Colombian desire to bolster its case vis-à-vis third party (Venezuela)</td>
<td>Venezuelan opposition and pressure on Dominican Republic</td>
<td>Created a fisheries zone, albeit limited in scope/function</td>
</tr>
<tr>
<td>Haiti I</td>
<td>Agreed in 1978 (in force 1979)</td>
<td>Implementation of 200 nautical miles</td>
<td>Colombian desire to bolster its case vis-à-vis third party (Venezuela)</td>
<td>Neighbor relations (Venezuela)</td>
<td>Relatively short boundary</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Oil and gas resources (unknown)</td>
<td>Fishing interests (esp. Honduras)</td>
<td>Honduras relinquished its claim on Serranilla</td>
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<td>Push by Betancur administration to focus on Caribbean/ocean politics</td>
<td>Nicaraguan opposition/pressure on Honduras</td>
<td>Colombian use of naval forces to uphold fishing rights in 1980s</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Agreement Details</td>
<td>Implementation Details</td>
<td>Key Issues and Events</td>
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</table>
| Jamaica I    | • Agreed in 1993 (in force 1994) | • UNCLOS in force in 1994 | • Colombian desire to bolster its case vis-à-vis third party (Nicaragua)  
• Fishing interests (esp. Jamaica)  
• Oil and gas resources (unknown)  
• Fishing interests (esp. Jamaica)  
• Colombian alternative to the Honduras agreement  
• Joint Regime Area for joint activity (regional seas) |
| Nicaragua I  | • Unresolved (ICJ verdict in 2012) | • Implementation of 200 n.m. zones  
• Fishing interests  
• Oil and gas resources (unknown)  
• ICJ verdict (2012) | • Treaty from 1928  
• Implementation of 200 n.m. zones  
• Disagreement over territory (San Andrés)  
• Colombian efforts to bolster its case vis-à-vis Nicaragua  
• Oil and gas resources (unknown)  
• Domestic narrative/opposition  
• Nicaragua granted oil and gas exploration licenses 1967  
• US claims, withdrawn in 1972  
• Colombian naval presence (San Andrés)  
• Colombia left Court proceedings concerning the case in 2016 |
<table>
<thead>
<tr>
<th>Dispute</th>
<th>Status</th>
<th>Impetus</th>
<th>Drivers</th>
<th>Barriers</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venezuela I</td>
<td>Unresolved</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Oil and gas resources (unknown)</td>
<td>Multiple attempts to negotiate from the 1960s</td>
</tr>
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<td></td>
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<td>Disagreement over territory (islands)</td>
<td>Disagreement over territory (islands)</td>
<td>Continuous reference to conflict in public discourse, especially in Venezuela</td>
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<td>Domestic opposition (esp. Venezuela)</td>
<td>Domestic opposition (esp. Venezuela)</td>
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<td>Military/strategically important area with negative historical relations</td>
<td>Military/strategically important area with negative historical relations</td>
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<td>Norway</td>
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<tr>
<td>United Kingdom I</td>
<td>Agreed in 1965</td>
<td>Geneva Convention/implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Uncertainty over location of resources</td>
<td>Came before/in conjunction with ICJ North Sea Cases (1969)</td>
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<td>(North Sea)</td>
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<td>Fishing interests</td>
<td>Uncertainty over legal developments</td>
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<td>Desire to bolster case vis-à-vis third parties in the North Sea</td>
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<tr>
<td>Denmark I</td>
<td>Agreed in 1965</td>
<td>Geneva Convention/implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Uncertainty over location of resources</td>
<td>Came before/in conjunction with ICJ North Sea case (1969)</td>
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<td>(North Sea)</td>
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<td>Fishing interests</td>
<td>Uncertainty over legal developments</td>
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<td>Desire to bolster case vis-à-vis third parties in the North Sea</td>
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<tr>
<td>Denmark II</td>
<td>Agreed with Denmark (on</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources</td>
<td>Very limited boundary</td>
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<td>(Faroe Islands)</td>
<td>500 km)</td>
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<td>Fishing interests</td>
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<tr>
<td>Country/Region</td>
<td>Agreement Date</td>
<td>Implementation Details</td>
<td>Resource Details</td>
<td>Other Details</td>
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<tr>
<td>Faroe Islands</td>
<td>1979</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Amicable relations/ asymmetry</td>
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<tr>
<td>Iceland I (Jan Mayen)</td>
<td>1981, revised 2008</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Fishing interests</td>
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<td>Conciliation committee, USA as third member</td>
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<td>Agreement gave full effect to 200 n.m. for Iceland</td>
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<td>Agreement giving 25% participation in each shelf</td>
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<td>Denmark III / Greenland (Jan Mayen)</td>
<td>1995, decision in 1993 (sent in 1988)</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources (unknown)</td>
<td>Fisheries interests</td>
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<td>Norwegian fear of legal precedent</td>
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<td>Denmark argued for the size of Greenland vs Jan Mayen</td>
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<tr>
<td>Denmark IV / Greenland (Svalbard)</td>
<td>2006</td>
<td>New baselines for Svalbard and Greenland (2001 and 2004)</td>
<td>Oil and gas resources (unknown)</td>
<td>Norwegian interest in securing legal precedent Svalbard</td>
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<td>Norway’s Arctic policy focus</td>
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<td>Relevant for Svalbard and the surrounding zone/shelf</td>
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<tr>
<td>Russia I</td>
<td>2010 (initial related agreement 1957)</td>
<td>Implementation of 200 n.m. zones</td>
<td>Oil and gas resources (partly known)</td>
<td>Fishing interests</td>
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<td>Domestic opinion (Russia)</td>
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<td>Security relations/history</td>
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<td>Includes provisions for straddling resources</td>
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<td>Concerns two highly asymmetric relationships</td>
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Converging in legal precedence around equidistance

<table>
<thead>
<tr>
<th>33 cases</th>
<th>22 fully settled (3 not in force /2 partially resolved), 1965–2019</th>
<th>75 factors</th>
<th>75 factors</th>
</tr>
</thead>
</table>

Based on Chapter 6-9. With details, impetus, drivers, hinders and specific notes.

10.1. Categorising Factors

From this extensive overview, we can note several points. First, it is of interest to compare when the agreed boundaries in question were settled. Figure IV shows boundaries, by decade.

Figure IV: Timing of agreement

Decade in which the maritime boundaries examined (22 + 3 +2 out of 33) were agreed.

This distribution matches that found by Ásgeirsdóttir and Steinwand (2016, 1293): most of the maritime boundaries that were agreed occurred in the period 1970–1990. This can be explained largely by the development of international law and UNCLOS, as it was during this period that the precedent for 200-n.m. maritime zones developed and solidified. In 1982, UNCLOS was agreed
by international conference, and it came into force in 1994 after the 60th country (Guyana) had ratified it. Some boundaries, however, did not become settled with the implementation of new maritime zones. Either they remain unsettled or, for various reasons, they were settled at a later date. Moreover, in those instances where the implementation of a 200-n.m. zone or the extension of the continental shelf prompted negotiations and settlement, there were often more factors involved than merely putting in place new zones, as shown in Table VI.

For example, in the simplest or least consequential of maritime boundary delimitations – like that of Australia and France (Kerguelen), Colombia and Haiti, or Norway (Svalbard) and Denmark/Greenland – factors beyond the development of UNCLOS and new ocean space rights were relevant. These include amicable relations between the parties, a desire to bolster maritime claims elsewhere, and the larger political context in which the boundary issue was placed. Thus, it is not sufficient to cite only the development of international law as the explanatory factor.

This brings us to one crucial distinction between the impetus of negotiations in the first place, with the possibility of nuancing the somewhat simplified dichotomy between settled/not settled as regards maritime boundary disputes, and what drives and hinders the settlement of a boundary dispute once negotiations have been initiated. Returning to the policy process, I depict the range of options as ordinal categories in a policy process (Fig. V).

Figure V: The process of settling a maritime boundary

From Figure I, Chapter 4.1.

Conceiving an outcome as a process instead of a binary result achieves two things. First, it allows me to identify the impetus for negotiations and distinguish this from what affects the willingness of states to compromise and concede in the same negotiations. Second, this distinction accounts for the varying degrees of finality seen across the 33 boundaries in question. Having a tentative agreement on a boundary with related provisions is very different from the case of a
boundary between two states where no negotiations or attempts at settlement have been made, although both might be classified in a strict sense as ‘unsettled’. Thus, it is helpful to have a wider view and conception of the various outcomes.

Further, those agreements where a tentative solution has been found are here deemed ‘settled’, as the boundary agreed upon is in most instances taken for the *de facto* boundary, despite the lack of finalisation or ratification. We see this with Canada and Denmark/Greenland (2012), Colombia and Costa Rica (1977) and Australia and Indonesia (1997). Thus, it is essential to recognise that what triggers negotiations (moving from 1 to 2 in Fig. V) is not necessarily what triggers moving from negotiations to an agreement (2 to 3), and possibly a ratified and implemented boundary (4). Different factors may have different effects at different stages in the process, hindering or enabling further movement along the path towards finalised settlement.

Based on Table VI, as well as the factors laid out in Chapter 3.4., I can summarise factors of relevance for settlement across the 33 boundaries into eight categories. These categories are evident from the different cases and the mentioned table, as a way of acquiring a simpler overview than the complexities of Table VI show. The categories are further divided into a positive or a negative effect: did this specific factor or issue act as driver for settlement or a barrier to settlement? All the issues listed above have at least at one time acted as one or the other, apart from ‘territorial issues’, which have solely a negative effect when relevant in the 33 cases examined:

- oil and gas issues (positive or negative effect)
- fisheries issues (positive or negative effect)
- legal issues (positive or negative effect)
- security issues (positive or negative effect)
- domestic issues (positive or negative effect)
- international contextual issues (positive or negative effect)
- territorial issues (only negative effect)

Despite difficulties or limitations in categorising 150 factors across 33 boundaries, simple graphs outlining the prevalence of factors can be drawn up. Two dimensions in particular are relevant: factors influencing boundary negotiations and settlement (settled/not settled); and which factors were relevant for settled boundaries, before and after the introduction of UNCLOS in 1985. (See Fig. VI, Fig. VII.)
Figure VI: Factors influencing outcome, all boundaries

Prevalence of factors (Table VI) of relevance to the settlement of a boundary, distinguishing factors prevalent in settled (orange) and not settled (blue) boundaries.

Figure VII: Factors influencing outcome, settled boundaries

Prevalence of factors (Table VI) of relevance to the settlement of a boundary, separated in boundaries settled before/after 1985.
This categorisation entails a relatively large leap in generalisation – from the specific characteristics of a maritime boundary dispute to a larger more general category which might not embody the nuances and context-specific traits of the initial event. In the case of oil and gas resources, for example, or fisheries interests, this is not a great concern. Either there is the presence of oil and gas resources and related interests in their development, in turn acting as a driver for a boundary settlement – as in the case of Norway and the UK, Australia and Indonesia, Canada and Greenland, or Colombia and Jamaica – or the resources/interests are simply not present.

With legal characteristics, however, it becomes more difficult to generalise. Legal factors here refer to specific concern for legal issues, such as legal precedent and legal characteristics of the dispute. This further includes the larger effect of states agreeing on the UNCLOS regime, as well as specific developments (such as extended continental shelf submissions) within that regime that might have affected a specific maritime boundary dispute.

How to compare the concern with legal precedents and/or an eye towards other maritime boundary disputes when settling a specific dispute? For example, Colombia actively sought to settle maritime boundary disputes with Panama, Costa Rica, Jamaica, Honduras, and the Dominican Republic partially because of strategic legal considerations regarding the pending dispute with Nicaragua. Or take the case of Norway: it was wary of relenting on the equidistance principle (and stated that directly) in the cases with Denmark (Greenland) and Iceland, fearing that it might have a bearing on the long-standing dispute with Russia in the Barents Sea. These legal characteristics may entail different aspects and different behaviour in various contexts, although they are all linked to the concept of international law and legal considerations.

Even more disparate are events such as the effect of independence of Papua New Guinea in 1965 – which was undoubtedly a driver for negotiations with Australia; the amicable relations between Norway and Iceland in tandem with Norwegian fears of being seen as exploitative in negotiations in the 1980s; or the effect of the political emphasis on the Arctic by Canadian politicians in prompting renewed efforts to settle outstanding Arctic disputes in 2009-2010. Categorising these issues as relating to the international context (how states stand vis-à-vis each other and interact as units in a system), arguably makes sense. Here the inherent problem of taking contextual or different events and forcing them into the same category becomes evident. However, the international context-factor holds relevance across many boundaries – ranging from the effect of the Timor Gap, to French efforts to settle across its maritime domains, or Nicaraguan pressure
on several of its neighbours to avoid settling a dispute with Colombia, and to the regional influence of the USA concerning the Panama Canal. This category thus contains *sui generis* issues otherwise impossible to categorise, yet still important for the process of settling the respective boundary.

Another example is the case of Norway and Russia, where both *international context* and *security* factors were involved. International contextual considerations are applicable here, as more broadly conceived views in both Norway and Russia in 2005–2006 of affirming sovereignty in the Arctic at a time when international attention shifted northwards (Hilde 2013). Security factors/issues can be defined more narrowly than issues related to states as part of a larger international system, i.e. along the lines of bilateral or regional rivalry, or issues related to the maritime space in question concerning military strategy or military forces. Until the 2010 agreement, Norway and Russia had been on opposing sides of the political security spectrum. The end of the Cold War helped to reduce tensions, but events in Ukraine in 2014 and later have again imposed strains on this bilateral security relationship (Østhagen, Sharp, and Hilde 2018). Despite these overarching concerns, the countries managed to agree on a long-disputed boundary in 2010.

Or, put differently, precisely *because* of the security concerns related to the boundary – an irritant that did not serve any larger strategic purpose – the two states saw it as in their interest to work towards, and finally achieve, settlement, once relations had thawed sufficiently. Thus, security factors can play both a negative and positive role in achieving settlement.

Generalising across these 33 instances of maritime boundaries and negotiations further entails considering how the same dimension/factor might have different effects at various times. For example, the linkage made between the two different boundaries in the Pacific and the Caribbean in the Colombia–Costa Rica negotiations (1977/1984) initially enabled negotiations, but later obstructed settlement (ratification in particular). Colombia was eager to engage in dispute settlement in the Pacific because that could be linked to the maritime boundary in the Caribbean, with hopes of achieving favourable package deal. By contrast, Costa Rica was not able to get this deal through domestic ratification procedures. Thus, we see the both the negative and positive effect of the same legal factor, at different temporal points.

Similarly, concerning Colombia and Nicaragua, the development of the Law of the Sea and extended maritime zones in the 1970s prompted Nicaraguan opposition to the 1928 Treaty and demands for a revision of the 82° meridian concept. However, it is also reasonable to argue that implementation of the same zones by both Colombia and Nicaragua had prompted the rationale
for negotiations in the 1960s (a ‘driver’) in the first place. In the same case, legal attributes played opposing roles. The 1928 Treaty, as well as Colombian efforts to reinforce that arrangement by attempting to establish a regional legal precedent, negatively affected the chances of settling the maritime boundary dispute when it first arose. However, the ICJ ruling from 2012 could arguably be seen as promoting or driving the two countries towards negotiations and settlement by providing what was in theory a mutually acceptable solution, while also placing the issue on the political agenda.

Thus, some factors may have dual effects at different time-points. This is also true as regards resources. In the cases of Norway and Iceland, Norway and Russia, Australia and East Timor/Timor-Leste, and Colombia and Venezuela, oil and gas resources spurred these states’ interest in negotiations, as well as compromise. Without clearly delineated maritime space, investments in petroleum exploration and production would be highly unlikely. However, the recognition that there were resources to be divided also made compromise or settlement difficult – still unobtainable in the case of Colombia–Venezuela. In most of those boundary disputes where oil and gas played an important role in motivating settlement, this duality was solved through the implementation of various resource-sharing regimes (to which I return in chapter 12.2). By contrast, with fisheries, agreements on clearly delineated maritime boundaries usually meant exclusion of some fishers where access had previously been undefined, thus at times sparking opposition amongst fishers (a point to which I return in Chapter 12.4.).

These graphs do not provide a complete picture of why states settle their maritime boundary disputes, nor are they intended to: the selection of cases as well as the number of variables included is not sufficiently representative. However, these graphs do help to sort the disparate number of factors relevant to a broad survey of 33 boundaries in four countries. They also help to show some trends and patterns that need to be analysed further, to which I now turn.
11. Systemic, Legal and Domestic Factors in Ocean Boundary-Making

This chapter returns to the initial question set forth in this doctoral thesis – why do some states settle their maritime boundary disputes whereas others do not? Drawing on the cases presented in Chapters 6 to 9, and the summary in Chapter 10, I return to the hypotheses put forth in Chapter 4 and discuss their relevance and effect across cases, mindful of the distinction between factors that might initiate negotiations (sparking an interest in delimiting maritime boundaries) and those that contribute to the final settlement of a dispute as such.

11.1. Systemic aspects

Hypothesis Systemic (HS): systemic interactions on the international level between the disputing states determine the likelihood of settlement.

As shown in Table VI and Figure VI and VII in Chapter 10, the effect of the international system seems relatively obvious across the boundaries examined here. A total of 19 international context (+/-) factors were present in the overview of cases, almost equally distributed between drivers and barriers. But how can we understand the specific causal mechanisms that enable compromise between states? The security (+/-) factors are also relevant for this hypothesis, 15 in all, with 10 counting as drivers and 5 as barriers, as well as the territory (-) factor, totalling 5 acting as barriers to settlement.

HS1: power relations between the states in a dispute are likely to influence the chances of settlement.

First, regarding HS1 (power relations), this is a fundamental premise for realist/neorealist IR thinking, as well as systems theory more broadly. We would thus assume that power relations are central in determining the outcome of maritime disputes between states – but what shape would this effect take? Do asymmetrical relations confer ability on the superior state to coerce a favourable outcome? Or do they have the opposite effect: that the power disparity leads the inferior state to fear being coerced by the superior state, thereby making it less willing to compromise?
Several cases examined here have involved relations that were asymmetrical in terms of state-centred ideas of power.\textsuperscript{105} This is relevant for Norway–Russia (settled 2010), Norway–UK (settled 1965), Australia–Papua New Guinea (settled 1978), Australia–Solomon Islands (settled 1988), Australia–East Timor (settled 2018), \textit{all} of Canada’s boundaries with the USA, and to varying degrees all maritime boundaries of Colombia, except with Venezuela.

However, there does not appear to be strong supporting evidence for this hypothesis, whether positive or negative. No clear patterns emerge. The USA does not seem to have been able to utilise its favourable power disparity vis-à-vis Canada to coerce a positive outcome. Further, Canada’s unwillingness to settle with the USA (or the US unwillingness to settle with Canada) cannot be fully explained by Canadian fears of being coerced because of the disparity in power (McDorman 2009). Notably, the willingness of Norway and Russia to settle did not derive from a change in power relations, or from Russian efforts to coerce Norway (Byers and Østhagen 2017). According to several scholars, Norway had been more willing than Russia to compromise on the issue, for decades (Henriksen and Ulfstein 2010; Holsbø 2011; Moe, Fjærtoft, and Øverland 2011). The change came about because of factors like shifts in regional relations and domestic interests, not because of the balance of power between the actors.

However, in some of the cases involving Colombia or Australia – both having been the larger actor vis-à-vis most other countries in which they share a maritime boundary – there do seem to be indications of the role played by power disparity. Concerning boundaries with smaller states where Colombia sought to bolster its legal position vis-à-vis Nicaragua regarding the San Andrés Archipelago, Colombia actively pushed for an agreement as part of a larger regional strategy. In some instances, Colombia utilised naval superiority to enforce its sovereign rights: the boundaries were agreed despite the protests of local fishers from the opposing state. These fishing interests seem to have been less important for Colombia, trumped by the importance of implementing boundaries. We see this in the cases of Jamaica (1994), Honduras (1986), Dominican Republic (1978) and to some extent Costa Rica (1977/1984). Colombia also ended up – in many instances – with rather favourable outcomes in terms of full weight to various cays and islands, as well as the recognition of the San Andrés Archipelago and its full effect in terms of

\textsuperscript{105} Note that power in this context refers to the traditional parameters often used such as size (population, economy) and military capabilities (Mearsheimer 1995).
maritime zones. Thus, we cannot rule out the possibility that that power asymmetry \textit{did} play a role as Colombia pursued settlement vigorously with its smaller Caribbean neighbours, although the final outcomes of these boundary agreements were rather equal divisions of the disputed maritime space.

Similarly, negotiating with Indonesia and Papua New Guinea in the early 1970s, Australia ended up with maritime and seabed boundaries that fully favoured its position and interests. Concessions can be seen in allowing Indonesian and Papua New Guinean fishers access to Australian waters – although, as pointed out by Prescott (1993d, 2002a), Australian interests in these waters have been limited, and the actual benefit for the other party can be questioned. Further, in negotiations with Timor-Leste, Australia seems to stand firm for decades as regards what it prized most highly: gaining access and privileges concerning the Greater Sunrise hydrocarbon fields. However, in that case, as well as with Papua New Guinea, the extreme disparity between the countries in terms of power, as well as wealth, level of development, and dependence on oil and gas industry, seem to have had an opposite effect: Australian governments feared being seen as taking advantage of their superior position (Burmester 2019; Kaye 2001; Australian Government Official II 2019).

Consequently, we cannot completely discount the influence of power relations (HS1) in determining or influencing outcomes, although it does not – across the 33 boundaries – seem to have had an obvious discernible effect. But, as seen in the cases of both Australia and Colombia, when power disparity is combined with an \textit{active} superior state pursuing boundary settlement, the asymmetry in the relationship may well serve as a way of fast-tracking the boundary negotiations – not necessarily due to direct use of force or threats in negotiations, but due to the superior state’s ability to offer additional benefits, like side-payments or issue-linkage (see Wiegand 2011a, 5, 44), and pressure in other ways. If, for instance, the USA at some point had decided to implement an active policy or strategy similar to that of Colombia or Australia in settling its maritime boundaries, Canada might have found it easier to achieve momentum in negotiations and might have been persuaded through various other means to accept compromise. Although this does not mean that Canada is completely beholden the interests of its larger neighbour. As the various boundary disputes outlined here between the USA and Canada have shown, Canadian unwillingness to yield – perhaps particularly \textit{vis-à-vis} the USA – is not to be underestimated (McDorman 2009, 3).

Smaller and less influential states have more limited possibilities to engage in such an
active push vis-à-vis its neighbours. When Norway re-focused on its maritime boundaries in 2005/2006 in conjunction with its Arctic policy agenda, it found amenable partners in Reykjavik and Copenhagen/Nuuk, but was dependent on Moscow accepting the proposed compromise in the Barents Sea. In its special relationship with the USA, Canada experienced the same when, in 2006, Canadian Prime Minister Stephen Harper put Arctic sovereignty at the centre of his election strategy. However, Harper’s political focus on the Arctic may have become a double-edged sword with regard to dispute settlement, as his strong rhetoric contributed to what has been called ‘sovereignty anxiety’ – the idea that Canada is struggling to uphold its sovereignty in the Arctic and is thus vulnerable to security threats in the region (see Griffiths, Huebert, and Lackenbauer 2011). This anxiety, in turn, would have made it politically more difficult to accept concessions as part of a boundary settlement, especially when the USA was the negotiating partner.106

For Canada in the Beaufort Sea and Norway in the Barents Sea, achieving a settlement was thus highly contingent on the preferences of the more powerful neighbour. The Barents Sea dispute was resolved when Russia became willing to make concessions – motivated by a desire to achieve legal certainty with regard to oil and gas and the development of its larger Arctic strategy. The USA did not show a comparable willingness to compromise, because its economic interests were less involved and perhaps because of concerns that moving away from equidistance in the Beaufort Sea would weaken its legal position in Dixon Entrance, seaward of Juan de Fuca Strait, and elsewhere in the world (Byers and Østhagen 2017, 59).

However, the Norwegian and Canadian contexts are quite different from one another. Norway sought to secure its sovereignty through the settlement of its boundaries – particularly with Russia – in a situation where the existence of a dispute posed security risks. By contrast, Canada’s anxiety about its own sovereignty acted played the opposite role, acting as a barrier to settlement, even when managing ongoing disputes was a viable option because of the amicable nature of its relationship with the USA (Byers and Østhagen 2017; Østhagen, Sharp, and Hilde 2018). Only one Canada–USA boundary dispute has involved an explicit security dimension: the passage of US submarines through Dixon Entrance. In this case, the two countries have essentially agreed to disagree, with Canada granting blanket permission for such passage, and the USA insisting that permission is not required, while the issue itself is not of any real significance.

106 McDorman (2009, 3) refers to the ‘emotional freight’ of sovereignty disputes, especially for Canada via-à-vis the USA.
This is not to discount the potential effects and relevance of such efforts by weaker states in negotiations with a more powerful partner. However, it does show – as could be extrapolated from HS1 – that the capacities and capabilities of states do matter for maritime boundary negotiations, albeit often indirectly.

**HS2:** the strategic value of the maritime area in question will influence states’ willingness to settle the dispute.

The hypothesis concerned with strategic value of a maritime area (HS2) holds varying degrees of discernible relevance for the question at hand. How to define ‘strategic value’? The traditional approach places emphasis on the relevance of a domain for the security of the state – whether for the military itself (a certain piece of land might be strategically advantageous) or because of the general advantage of that territory to the state that holds it. With the implementation of 200-n.m. zones, states’ strategic interest in ocean space mushroomed, and it became increasingly important to protect sovereign rights in this newly acquired domain.

However, with maritime space, the strategic value itself becomes more challenging – given its physical nature and the limited possibilities for human presence at sea or for utilising ocean space itself beyond resource extraction, or as an arena for encounters often related to non-ocean-based disputes. Taking this point further, Till (2004, 42) quotes Hughes: ‘[T]here is no naval strategic warfare…A maritime campaign by a maritime nation aims at sea control as the means not end, because strategy prescribes wartime goals and missions governed by purposes on the land.’

Here we must return to the difference between land and maritime space. The concept of occupation – pivotal in establishing title to land territory – holds no relevance in the maritime domain. This is a vital point, as 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. We must bear in mind the crucial difference between sovereign rights (EEZ, continental shelf) and complete sovereignty as per Krasner’s (1999) accounts. States cannot deny passage through their EEZs; they may only deny actors access to marine resources and apply environmental regulations in their maritime zones.

The strategic value of ocean space is therefore predominantly conceived in terms of
resources, as well as navigational interests of states. Yet, as discussed in the next sections, the main driver for settlement concerning resources does not seem to be the assumed value as such, but interests in making use of relevant resources. That being said, awareness of a maritime area thought to hold considerable resources – even without interest and/or capacities as regards exploiting those – can act as a major impediment to settlement. We must thus distinguish between the drivers for settlement and against it, where high strategic interests in terms of known or unknown resource value may hinder settlement, but – when acting as a driver – must be seen in conjunction with economic interests (HD3).

This relates to Table VI and Figure VI and VII in Chapter 10 that highlight how oil and gas resources are present in most of the 33 maritime boundaries examined, and how the presence of these resources acts as both a driver and a barrier to agreement. In maritime boundary delimitations like that of Australia–Indonesia (1971–73), Australia–East Timor (2018), Canada–USA (Beaufort Sea), Colombia–Venezuela, Norway–UK (1965), or Norway–Russia (2010), the known or suspected presence of resources and uncertainty over where the resources might be located in relation to the implemented maritime boundary acted as a negative factor in settlement proceedings. On the other hand, the (suspected) presence of such resources initially spurred the negotiations. This duality will be further elaborated in the following chapter and in 11.3.

In some instances, the maritime area in question has indeed figured in larger strategic and/or security relations, as in the Colombia–Panama case related to the Panama Canal (1976), Canada–USA (Dixon Entrance – unresolved) related to US submarines, Norway–Russia (2010) related to the Barents Sea and the Russian bastion defence concept in that area, or Australia–Papua New Guinea (1978) related to immigration and movement of people. However, all these contexts or relations have concerned more the specific bilateral or regional relationship between the actors involved (the following hypothesis) than the strategic value of the maritime space in question.

Finally, the idea of territorial conflict in itself has been relevant in some of the maritime boundaries examined. As scholars have shown (Holsti 1991; Vásquez and Valeriano 2009; Nemeth et al. 2014), the inclusion of territory in any inter-state conflict makes resolution less likely and an armed conflict more likely. In all 33 disputes examined here, land territory itself has not figured prominently – hardly surprising, as this study has focused on maritime space. In some instances, maritime boundary disputes are part of a larger disagreement over territorial ownership (islands), or have a territorial component, but there does not seem to be a uniform trend across these cases.
In the case of Australia–Papua New Guinea (1978), sovereignty over a few small islands was in question; this posed a barrier to settlement, but was resolved in the end. In the case of Canada–Denmark/Greenland (1973) the maritime boundary was concluded without settling the sovereignty dispute over the miniscule Hans Island/Hans Ø – a quarrel that today seems to supply comic relief in the bilateral relationship (Byers 2013, 3; Hoel 2014). The dispute between Canada and the USA over Machias Seal Island has not been settled; it might have larger implications than the Hans Island/Ø dispute, but probably not large enough to spur conflict escalation or attempts at reaching a final agreement. In the cases of Colombia–Nicaragua and Colombia–Venezuela, however, the dispute over territory (the San Andrés Archipelago and the Los Monjes islands) has fuelled tensions, making settlement less likely.

Governments often find it more difficult to give up (or risk giving up) land territory, because land generally holds greater domestic political significance than the seabed or the ocean column (Hensel et al. 2008). It is worth noting that, despite not figuring prominently in the cases examined (or indeed being the main focus of this study), the inclusion of territorial ownership or control in the disputes examined here has had negative consequences for boundary delimitation. Inherently, maritime zones and their related boundaries derive from sovereignty over land, making this a crucial point for any potential settlement of maritime boundaries. As we have also seen in other maritime disputes, like that of Cyprus-Turkey-EU in 2019, if the land itself is disputed, that will render agreeing on a maritime boundary difficult, if not impossible. However, as seen in the Canada–Denmark case, there are sometimes ways of avoiding the territorial dispute and still establishing a full maritime boundary.

In sum, across the boundaries examined in this study, strategic value in terms of security and military factors has been less relevant than for territorial disputes on land. We must recognise the intrinsic difference between the rights that states have in extended maritime zones, and the territorial sea (12 n.m.). Resources may make a specific maritime domain strategically important, although ‘value’ on its own is not enough to enable settlement. (I return to this point in the domestic hypothesis section.) It may obstruct settlement if uncertainty over where the resources are located or potential losses in a compromise trump the potential domestic gains of resource extraction. Moreover, as in five of the cases examined here, the inclusion of a territorial dimension is a complicating factor. Beyond the territorial dimension, the HS2 hypothesis on its own is insufficiently specific to offer explanations relevant to the main research question of this thesis.
HS3: regional patterns of amity/enmity between disputing states will determine the likelihood of settlement.

The final system hypothesis (HS3) concerning regional or localised patterns between disputing states is slightly different from the two previous hypotheses. First, it does not concern larger systemic relations and related asymmetry, although any power disparity within regional patterns of interaction is of course relevant. Second, it does not relate to the strategic value of a given disputed area, although we cannot completely disentangle how a maritime dispute over a specific area might impact, or be impacted by, relations between the disputing states. Consequently, some overlap is natural, but not enough to render this hypothesis superfluous.

In several boundary disputes, emphasis was placed on ‘good neighbourly relations’ or ‘strong bonds of friendship’ in the wording of many of the agreements themselves – when settled – or in the statements surrounding them. However, we may question the relevance of such statements made when agreement had already been achieved. Initially, HS3 also concerns ideas such as ‘allies’ and ‘security relations’,107 indicating that, for instance, NATO members should have an easier time settling maritime boundary disputes than long-term rivals like non-NATO-member Russia and NATO-member Norway. However, I do not find any clear pattern concerning this, deriving from the 33 boundary issues examined. Norway and Russia did manage to agree on a boundary dispute that had dogged the bilateral security relationship for almost four decades. However, the two arguably closest allies in this study – Canada and the USA – have not agreed on a single maritime boundary through bilateral negotiations.108 Australia and New Zealand managed to agree on their extended boundary, although the maritime space in question was relatively

107 Adler and Barnett (1998) define a ‘security community’ in terms of expectations of peaceful change among its members. This expectation comes about through a causal process. First, there are several ‘precipitating conditions’ that enable states to cooperate on security issues in the first place. These entail technological change, external threats, and ‘new interpretations’ of social reality. As states (and individuals representing these states) start to interact more frequently, this interaction transforms their ‘possible roles and possible worlds’.

108 In terms of actual military cooperation, the two countries maintain close ties, with the Canadian military placing great importance on interoperability with US forces. The North American Aerospace Defence Command (NORAD), established in 1957 to provide joint surveillance of potential air-space threats in North America, further testifies to the close security relationship between the two countries. NORAD has become one of the foundations of US/Canadian defence collaboration, with the surveillance of the maritime domain added in 2006 (Jockel and Sokolsky 2012). However, these arrangements are what Jockel and Sokolsky (2009) see as ‘remarkably informal’ within the broader context of North Atlantic security.
uncontentious. Colombia, however, has struggled with Venezuela and Nicaragua because of regional security relations, and legal reasoning and domestic interest groups.

A more interesting exercise involves attempting to uncover historical patterns of interaction between the two actors, and how these have fluctuated and shifted, at times creating room for ‘friendly’ relations, and at other times deteriorating. Leaning on Buzan and Wæver, we can note that regional relations between actors – in this case, bilaterally – may compound over time, giving rise to patterns that might not make sense from a purely systemic point of view (D. Frazier and Stewart-Ingersoll 2010; Kelly 2007). That, in turn, have helped to shape the identity of the relevant state and how it (its leaders and/or population) sees itself vis-à-vis others (L. C. Jensen 2017; Campbell 1998). Also important is the historical component involved, as relationships may shift over time as various events impact relations (Hopf 2002).

For example, in the case of Australia–East Timor (2018), Australia was in the 1970s already deeply engaged in the processes that led to Timorese independence and the eventual re-visit of an already settled maritime arrangement. From having been less vocal against Indonesia’s annexation of East Timor in 1975 than some in Australia would have liked (Former Australian Government Official I 2019), to taking the lead of the UN force sent to prevent a civil war and facilitate the transition of the former colony into an independent state, relations deteriorated after 2006, with the Timorese now wanting a ‘better deal’ (Doherty 2017). Although regional relations can generally be said to have been positive between these two states, they turned sour as regards the maritime boundary dispute. In this case, the negative context acted as a hinder to settlement, which was not settled until the two countries took the step of making use of the UNCLOS conciliation mechanism.

Another example is the Norway–Russia (2010) boundary. Although security relations bilaterally and in the Barents Sea specifically never truly ‘warmed’ after the end of the Cold War, developments in Russia in the early 2000s and the decision of both countries to focus on Arctic cooperation (including joint oil and gas ventures) helped to improve relations sufficiently to bring a compromise on the largest Arctic maritime boundary dispute within reach. That would hardly have been possible only a few years later, when relations deteriorated drastically with Russia’s 2014 annexation of Crimea and engagement in the conflict in Ukraine, and the Norwegian response of imposing sanctions, in line with the EU and the USA. A policy-window where historic patterns of enmity were improved had opened, but then shut almost as quickly as it opened. So here,
regional patterns of enmity acted as a barrier whose removal could facilitate settlement, and not as a driver of settlement itself.

Unsurprisingly, negative regional relations with the opposing state have an impact on the willingness to settle an ongoing maritime boundary dispute. We see this in the above-mentioned cases, as well as with Colombia–Venezuela and Colombia–Nicaragua. We can question whether the possibility of settlement of the maritime boundary dispute is influenced by the larger negative relations, or whether – as in the case of Colombia–Nicaragua – the maritime boundary is at the heart of the larger dispute itself, and thus fuelling the negative relations further. The cases of Canadian–US boundaries and those between Norway and Denmark that took considerable time and even an ICJ ruling to settle show that the driver-element of positive regional relations and historic patterns is limited. In these two instances, the countries are deemed close neighbours and culturally alike, yet achieving agreement on maritime boundaries has not been easy. Consequently, what drives settlement has less to do with historical patterns and regional relations, and more with other factors, such as domestic interests and legal considerations.

Beyond doubt, patterns of amity or enmity between disputing states do have an effect on the chance of states agreeing on a maritime boundary dispute. This hypothesis holds true, with varying degrees of relevance and more as a barrier than a driver of settlement. With regard to the latter point, one prerequisite is not to have a long history of negative relations between the actors involved. That, however, is not a sufficient condition for enabling settlement. This is an important distinction, separating between regional relations as a barrier (with an obvious discernible effect across the 33 boundaries) and as a driver (less of an effect). In other words: states do not settle maritime boundaries because they have close/amicable regional relations, but having a negative interaction makes it less likely that they will settle anything.
11.2. Legal aspects

Let us return to the initial hypothesis:

_Hypothesis_ Legal (HL): the legal characteristics of the dispute determine the likelihood of settlement.

As Table VI and Figure VI and VII in Chapter 10 show, the effect of legal factors is relevant in connection with most of the boundary cases examined. In all, 27 legal (+/-) factors were present – 16 drivers and 13 barriers.

**HL1**: the origins of the boundary claim determine the flexibility of each state, in turn determining the scope for negotiated outcomes.

First, examination of the origins of a boundary dispute can provide information about how willing a state is to yield on its position. Most of the maritime boundaries examined here originated with the implementation of the 200-n.m. maritime zones from the 1960s until the mid-1980s. As noted, this innovation in international law provided the main impetus for the emergence of maritime boundary disputes in the first place. In many cases, as shown by Table VI, the ensuing disputes over where to delineate the exact boundary between opposing or adjacent coastlines became a simple matter of negotiations driven by a legal rationale – UNCLOS Art. 74 and Art. 83 – employed when the zones were first established.109

Consequently, we need to consider the timing of maritime boundary agreements as well, and distinguish (see Figure V) between two groups of maritime boundaries: (1) those that were settled/negotiated as a result of developments in international law in the general period 1960–1985; and (2) those that remained disputed for various reasons and may or may not have been settled in the period 1985–2019.

The former group of boundaries can to some extent be explained in conjunction with developments in international law. This we can see in the cases of Australia and Indonesia/Solomon Islands/France; Colombia and Ecuador/Panama/Costa Rica; Canada and

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109 It may be discussed whether ‘dispute’ is in itself an accurate description of these boundary issues, as states negotiated and settled rather quickly when the zonal overlaps emerged.
Denmark/France; as well as Norway and Denmark/UK/Iceland. International law was not the sole rationale for agreeing on a maritime boundary in these instances, but it was arguably the main impetus and, in some cases, also driver for settlement. As in the case of Norway–UK (1965) or Canada–Denmark (1973) the desire to secure a clearly demarcated maritime boundary rapidly, so as to enable oil and gas exploration and/or expanded fisheries, weighed more than uncertainty over the exact location of the same resources.

In such instances, the driver of settlement was a combination of an interest in resources (to which I return in the next hypothesis section) and the desire to implement extended maritime zones quickly, before possible challenges to the new rules – internationally – or to the exact boundary – by third parties regionally – developed. This latter point was especially prominent in the North Sea maritime boundary disputes between Norway, the UK, Denmark, the Netherlands, Belgium and West Germany (Oude Elferink 2013), and for Colombia in its disputes with the Dominican Republic, Haiti, Jamaica, Honduras and Costa Rica (Londoño 2015). Thus, the emerging need to delineate space – through the implementation of 200-n.m. zones – made settlement a relatively simple affair, as the precedent of extended maritime zones was solidifying.

However, in those cases where the implementation of extended maritime zones amplified an already underlying disagreement as to where to delineate between adjoining territorial seas, a dispute arose in which compromise was difficult. We see this in the case of Canada–USA in the Beaufort Sea, where the dispute stemmed from diverging interpretation of the 1825 Treaty between Russia and the UK; in the case of Canada–USA in the Dixon Entrance where the two states disagreed over the meaning of an arbitration decision in 1903; and in the case of Colombia–Venezuela over the status of the Gulf of Venezuela, where the land border had been settled in 1941, but not the maritime boundary. In both the Beaufort Sea and Dixon Entrance, Canada’s legal position hinges on what might be called ‘hard points’ (Byers and Østhagen 2017, 60): the treaty concluded between Britain and Russia in 1825 and the A–B line drawn by an arbitration tribunal in 1903.

The same can be said about the Colombia–Nicaragua dispute. Although there was not initially an underlying disagreement (as the spatial extent of the maritime zones had been agreed in 1928), the maturation of international law and domestic politics (discussed below) combined to cast the pre-UNCLOS agreement from 1928 in a negative light. This eventually led Nicaragua to reject that treaty, in turn resulting in three decades of Colombian efforts to secure maritime claims.
against Nicaragua through state practice with its other neighbours.\footnote{This point also concerns the dispute over the maritime zones around Svalbard – not directly dealt with in this thesis – which hinges on the Spitsbergen Treaty from 1920, a time when the concept of extended maritime zones around the Archipelago had not been developed.}

However, in other cases where the origin was not fixed to a specific historic decision or treaty, but was due to differing legal interpretations or practices at the time of the 200-n.m. expansion, more flexibility was afforded in negotiations. In the case of Norway–Russia, the Varangerfjord Agreement was signed in 1957 concerning territorial waters between the two countries, and the divergence in positions on the EEZ boundary was due to each state favouring a different legal principle in its expansion. Eventually compromise became possible, as equidistance gradually gained international acceptance through ICJ rulings and state practice. That weakened Russia’s adherence to the sector principle, and Russia could relinquish its stance, now able to gain more of less half of the disputed area without reneging on its legal position or earlier treaties (Moe, Fjærtoft, and Øverland 2011). Further, Russia stood to gain enormously from submissions for an extended continental shelf under Art. 76 in UNCLOS, making adherence to UNCLOS in the Arctic a beneficial strategy.

Similar conclusions can be drawn from the case of Australia–East Timor, where the boundary positions were not grounded in previous treaties, or historical decisions, but instead awarded the states enough flexibility to alter the conditions for the boundary and the joint zone from 1999 onwards. The same goes for Canada’s negotiations with Denmark over Greenland, which, in contrast to many of its boundaries with the USA were not based on a colonial period agreements; and for Norway’s dispute with Denmark over Jan Mayen, where Norway refused to relent on the equidistance principle despite the differences between the opposing coasts, but agreed to send the case to the ICJ and abide by its verdict.

In sum, the boundaries agreed in the 1960s–1980s have generally involved fairly straightforward applications of the equidistance delimitation method, or a variant thereof, as states now found themselves in the fortunate position of being able to claim extended maritime zones. There was thus an inherent win–win situation in the negotiations that followed at that time – a point I return to in Chapter 12. Disputes over those boundaries that remained without agreement, or became settled only after the legal regime had solidified in the 1990s–2010s, seem to be largely the result of diverging interpretations of delimitation methods, treaties or historical decisions that
originated *before* the concept of extended maritime zones came into being.

Clearly, then, the legal origins of a boundary dispute have considerable influence on the flexibility afforded to states when negotiating where to demarcate a given boundary. However, we must again distinguish between what acts as a barrier to settlement (e.g. treaty origins) and what acts as a driver to settle (e.g. desire to consolidate UNCLOS or affirm boundaries regionally vis-à-vis other states). This latter point is the basis of the second legal hypothesis discussed below. We can argue that not having boundary positions that are bound to historic agreements predating UNCLOS is not necessary to achieve settlement, although it certainly seems to be an advantage.

**HL.2:** concern about a legal precedent and its impact on other disputes determines a state’s willingness to concede in negotiations on a given maritime boundary dispute.

Second, a crucial legal component of any settlement or dispute, as shown in Table VI and Figure VI and VII, is *legal precedence*. This is a concept that differs in nature between international law and national law, but holds relevance as studies have shown how states *are* concerned with international legal precedence on issues ranging from human rights to international trade (Byers 2000; Lang and Beattie 2009; De Brabandere 2016).

Most of the legal factors across the 33 cases in this study concerned this dimension of a maritime dispute. That is also an argument for viewing a country’s maritime boundaries and disputes as a collection, in order to comprehend how that country views each dispute in relation to the others and whether this has any impact on negotiations. In the cases reviewed, it is apparent that Australia, Canada, Colombia and Norway have all considered how their boundary agreements stand vis-à-vis both international legal precedent and the status of their own outstanding boundaries.

In some cases, like that of Australia–Solomon Islands (1988), Australia–New Zealand (2004), Norway–UK (1965), or Norway–Denmark (1965), the desire to set a legal precedent, whether regionally or regarding another specific outstanding maritime dispute, acted as a motivating factor for settlement in that specific case. The same can be said of the special case of Svalbard, where Norway has been attempting to build the legal case for its position through the boundary agreement with Denmark–Greenland (2006). As explained by Oxman (1995, 265):
Others [states] may wish to use one or more agreements to influence an outstanding delimitation either directly or indirectly. The classic example of this approach is the equidistant line drawn by Denmark and the Netherlands as part of a more general implementation of the equidistance principle in Article 6 of the Convention on the Continental Shelf in the North Sea that included, in addition to these two states, Norway and the United Kingdom. It represented not only an attempt to reinforce the use of equidistance in the North Sea but, by extending the line to a point equidistant from their coasts and the German coast, an effort to apply equidistance directly to their respective boundaries with Germany.

The clearest example of the driving power of this factor is the case of Colombia’s Caribbean ‘Labyrinth’ (Londoño 2015). The desire to build regional legal practice concerning the zone around the San Andrés Archipelago (and surrounding islands/cays/reefs) with regard to the dispute with Nicaragua, as well as the dispute with Venezuela in the Gulf of Venezuela, spurred Colombia into settlement with Panama, Costa Rica, the Dominican Republic, Haiti, Jamaica and Honduras. However, the desire to bolster a particular method of delimitation does not have solely a positive or enabling effect for maritime boundaries. In some instances, Colombia’s strategy backfired – as with Honduras (due to domestic opposition and Nicaraguan pressure) and Costa Rica (where the Pacific 1984 agreement had to be decoupled from the 1977 Caribbean agreement to avoid domestic opposition).

A similar concern for legal precedence is found in the case of Canada–USA (Juan de Fuca) and in the Norway–Denmark ICJ case, where one or both parties proved unwilling to settle for fear of establishing a legal precedent unfavourable in other remaining disputes. More generally, many of Canada’s unresolved maritime boundary disputes seem related to concerns about legal consistency and the creation of precedents, in addition to having historic origins. In the Gulf of Maine case, Canada was concerned that advancing an equidistance-based argument would weaken its position in the Beaufort Sea and Dixon Entrance disputes. It therefore reframed the argument to focus on equity considerations – which, not coincidentally, led to an equidistant result (McRae 1989, 155). The dispute seaward of Juan de Fuca Strait touches on the legality of Canada’s straight baselines, which is also a central issue in the Canada–USA dispute over the status of the Northwest Passage (Byers and Lalonde 2009). Canada might worry that a compromise seaward of Juan de Fuca Strait would weaken its position in the Arctic.
These examples show how having multiple boundary disputes with the USA has posed a sequencing problem for Canada, as resolving any given dispute almost always requires concessions from both sides. In 1977, Canada sought to solve the sequencing problem by offering to negotiate a ‘package’ deal – an offer refused by the USA, which probably calculated that dealing with each boundary dispute in turn would work to its overall advantage. Norway’s sequencing problem has always concerned its dispute with Russia, which could be resolved only on the basis of some negotiated version of ‘equity’. Norway dealt with the problem by resolving its other boundaries first, thereby freeing it to offer concessions on equidistance during negotiations over the Barents Sea boundary. Whether Canada and Norway were right to be concerned about creating of legal precedents in these disputes, and therefore the sequencing of their resolution efforts, is another matter.

In the case of Colombia–Nicaragua, however, we see the effect of both positive and negative legal factors. Colombian efforts to undermine the Nicaraguan position and uphold the 1928 Treaty by co-opting neighbouring states to support its position spurred resentment and opposition in Nicaragua, as well as amongst its own domestic audience (to which I return below). Thus, Colombia’s political efforts to set a positive legal precedent – which in turn spurred many of Colombia’s own maritime boundary negotiations in the 1970s and 1980s – proved to be a major barrier to settlement with Nicaragua.

In sum, I find that states are concerned with both (1) how their maritime claims and disputes stand in accordance to international jurisprudence, and (2) how their maritime disputes relate to each other in terms of legal precedence. This hypothesis thus holds true across most of the cases examined here, perhaps more clearly than any other hypothesis. Moreover, the question is whether we can identify some general trends in this behaviour that can be generalised across the 33 boundaries examined in this study. I return to this in Chapter 12.
11.3. Domestic aspects

The initial hypotheses was stated as:

*Hypothesis* Domestic (HD): *the domestic environment in which state leaders operate determines the scope for possible negotiated outcomes.*

As displayed by Table VI and Figure VI and VII, the effect of domestic factors has been shown to be relevant across the boundaries examined. A total of 29 domestic (+/-) factors were present in the overview of cases, distributed between 9 drivers and 20 barriers. The *oil and gas* (+/-) and *fisheries* (+/-) factors are also relevant for this hypothesis, with a tally of 17 oil and gas and 13 fisheries as drivers, and 11 oil and gas and 12 fisheries as barriers. We can elaborate how these factors work by utilising the three developed sub-hypotheses.

- **HD1**: the domestic ratification procedures in a state determines the ability of that state’s leaders to conclude boundary agreements.

  First, the ratification procedures must be clearly distinguished from the second domestic hypothesis concerned with public opposition at large. Here, the focus is on the explicit veto-players involved in the process when a boundary is being negotiated. The core difference between these interests and – as outlined in the second domestic hypothesis – more general popular opposition is the *role* these specific regional or domestic actors have in the ratification procedures in each country. Thus, it is not sufficient to explain the interests themselves and whether they are active in a given dispute: we must examine the political system and power structure in each of the countries in question.

  There is a clear divide between Australia and Canada on the one hand, as federated countries where the states/provinces have an active say in matters of domestic and foreign policy, and Colombia and Norway on the other hand, as relatively centralised and/or unitary states where the departments/counties are less autonomous or active in (inter)national politics. Using Lijphart’s (1989) federal–unitary spectrum, we can depict this as Canada – Australia – Colombia – Norway, where Norway is the most unitary of the four countries in question.

  Therefore, it is not surprising that in all questions concerning Norway’s maritime
boundaries, from the 1960s up until 2010, the relevant county governments in the south and the north are absent in terms of ratification procedures and/or vetoing potential agreements. And while the Saami people have significant rights under Norwegian law, none of those rights extend beyond the territorial sea (Ravna 2012). The Norwegian Parliament (the Storting) is required to ratify any agreement made by the government, but since governments derive from a parliamentary majority or can act only if supported by the majority, it would take extraordinary circumstances for a boundary agreement not to be ratified. The only issue here arose with Russia in 2010, when Russian regional opposition to the agreement almost toppled it in the Russian Parliament (Duma) (Hønneland 2016).

The same set-up concerning the national legislature applies to Australia and Canada, where governments are based on a parliamentary majority, although regional governments also have a say. As to the cases at hand, the most blatant example concerns the region of Queensland, and how it was involved in the process of negotiations between Australia and Papua New Guinea in the mid-1970s. Queensland acted as both as a proponent and as a hurdle, as the regional government had strong interests in preserving the economic interests of its northern inhabitants (Burmester 1982). In that boundary dispute, the Australian Parliament also played an active role in deliberating the legality of the settlement with reference to the Constitution, as Australia was ‘giving away’ its northernmost islands to Papua New Guinea (Willheim 1989; Kaye 1994). Park (1993b) argues that elections taking place in both countries in 1977, which re-affirmed voter confidence in the sitting government in Canberra and gave the first democratic mandate to the Pangu Party in Papua New Guinea, helped to enable the governments to agree on a boundary.

Canada has several maritime boundary disputes that are complicated by provincial claims and perhaps even constitutionally entrenched rights. It is difficult to imagine the governments of British Columbia and New Brunswick standing by quietly while the national government of Canada negotiates with the USA over Dixon Entrance or Machias Seal Island. Similarly, the ‘Inuvialuit Final Agreement’ represents a complication for Canada in the Beaufort Sea boundary dispute.

In Canadian–US negotiations over the Gulf of Maine before the submission to the ICJ in 1981, it became clear that the US Senate as well as the Canadian provinces of Nova Scotia and New Brunswick were opposed to a compromise that would mean giving away maritime space (and resources). With the US Senate, formal approval was needed for ratification of a signed agreement.
between the two countries. Thus, the countries agreed to send the dispute to the ICJ. For Canada, the same engagement of regional veto-players was evident in the Machias Seal Island dispute, in the dispute with France over St. Pierre and Miquelon, in the Juan de Fuca dispute and in the Dixon Entrance dispute (Byers and Østhagen 2018).

In the two latter cases, the provincial government of British Columbia has been highly active, even issuing a statement of its own position on the disputes (British Columbia 1977). The Machias Seal Island dispute involved the same actors as those in the Gulf of Maine dispute. And in the dispute with France over St. Pierre and Miquelon, the province of Newfoundland had strong interests. This stands in contrast to the disputes with Denmark/Greenland (1973/2012), where the regional interests of the territory of Nunavut were less engaged in the disputes, also due to the sheer distance from local communities to the maritime boundaries in question, as well as the fact that Nunavut only came into existence in 1999. The difference must be understood as relating to the difference in regional autonomy awarded to Canada’s three northern territories, in contrast to the relatively autonomous southern provinces. The Beaufort Sea dispute stands out. It is not the regional government (the territory of Yukon) that is directly involved, although it holds interests. In the that dispute, the Inuvialuit Settlement Region as an indigenous governance structure has a considerable say on the final rejection or acceptance of any agreement, alongside the US state of Alaska.

In Colombia, the executive branch (the president) and the Parliament are separated in the typical presidential-style system (Lijphart 1989). Thus, despite limited regional autonomy in terms of maritime boundaries and dispute agreements, the Colombian Parliament could pose a challenge to the agreements made by a sitting president. This was evident in some of Colombia’s maritime boundary agreements, although that has been in connection with general public dissatisfaction with the agreements (see below), and not system-specific processes like those seen in Australia and Canada.

In sum, it is the structure of the state itself – the domestic institutional set-up – that determines a country’s ability to get a maritime boundary agreement with a third country ratified and in force. As per Putnam’s (1988) two-level games, state leaders must balance ‘veto-players’ against their preferred outcome in international negotiations (Tsebelis 1995). Regional governments in particular may have considerable influence in these processes, if the political system allows for it. In systems where regional governments have less autonomy or influence,
there is considerably less flexibility to thwart or influence boundary arrangements.

In turn, this domestic-institutional factor is predominantly a barrier to settlement. In none of the instances examined in this study did the systemic set-up and ratification procedures prompt states to pursue maritime boundary agreements. This is yet another factor which state leaders must bear in mind and – in some instances – overcome, to be able to reach an agreement.

- **HD2**: in face of popular domestic opposition, leaders are likely to avoid bilateral settlement altogether, perhaps deferring to international institutions.

Second, expanding beyond institutional procedures, states and their leaders are highly sensitive to public opinion and political pressure. Naturally, this varies from country to country and context to context. An authoritarian regime might be less influenced by public opinion concerning its maritime boundary agreements. However, even autocrats are sensitive to public pressure, and may be wary of causing too much dissatisfaction with a political outcome (see Wiegand 2011b; Hensel et al. 2008).

This is also why negotiations are often kept secret when states embark on them, for fear of arousing public engagement thus side-tracking further negotiations before a final deal can be made. We have seen this in the case of Norway–Russia (2010), the case of Canada–USA over the Beaufort Sea, and the case of Australia–Timor-Leste (2018). Although state leaders and/or lead negotiators may confirm to the media or through official channels that negotiations are underway or taking place, the point is to avoid having explicit details of the agreement leaked before a final agreement is achieved.

Public engagement and/or pressure can interfere later in the ratification processes. Politicians have no way of avoiding the formalised set-up, which can act as a barrier to settlement. Whereas those processes are structured, public engagement in the matter is informal. Politicians and state leaders may utilise this engagement to their advantage, stirring up positive or negative sentiments to reinforce certain positions. There is thus an interplay between hypotheses 3.1. and 3.2.: strong popular engagement might influence the chance of ratification through official structures, or regional governments’ active participation in boundary processes may spur further

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111 See, for example, analyses of statements made by negotiators in the Norway–Russia (2010) case (Blomqvist 2006; Solstad 2012).
popular engagement. However, it still makes sense to keep these as separate hypotheses concerned with different, albeit related, causal mechanisms.

In the boundary disputes examined here, the public engagement factor has been evident to varying degrees. In the case of Australia–Papua New Guinea (1978) the (re)election of governments already engaged in boundary-making helped to prod the process to finalisation. Another straightforward impact of popular engagement was seen in the case of Australia–East Timor, in the process starting with Timorese independence in 1999 and ending with a new agreement in 2018. Public outcry and domestic pressure in both countries, also relating to the espionage revelations in 2012, led the Timorese government to negate the previous agreements and start ICJ proceedings against Australia (former Australian Government Official I 2019; former Australian Government Official II 2019). By 2017, domestic opinion in both countries had succeeded in spurring the Australian government to re-negotiate, demanding a fairer agreement for Timor-Leste.

Canada has also experienced the pressures of popular engagement in its boundary negotiations. There was a spill-over effect from the power of Canada’s provinces and local structures (in the case of the Beaufort Sea) to thwart eventual agreements and their ability to foster public support for their positions. Further, there was public opposition to settlement in the Gulf of Maine case, the Dixon Entrance case, and the St. Pierre and Miquelon case. Here two interrelated issues entered the picture. First, the economic interests of the affected provinces/regions helped to spur negative public engagement, marked by fears of losing access to local resources (fisheries). This is discussed further in the next hypothesis (HD3), but we should note the link between specific economic interest groups and broader popular engagement.

Second, general popular opposition to agreements – between Canada and the USA in this instance – tie into the system hypothesis concerned with regional patterns of amity and enmity (HS3) and identity politics with another state. As explained by Kirkey (1995, 56):

Canadian acceptance of the U.S. position on the Beaufort Sea boundary – in the absence of an equitable, comprehensive settlement – would by consequence place the [Pierre] Trudeau government in the politically undesirable position of having to defend an agreement that unquestionably favoured American maritime jurisdictional interests in the North over those of Canada. Such an unpalatable scenario could therefore not be permitted by Canadian officials to transpire. As Blair Hankey indicated, ‘we were concerned about
the supposed political sensitivity of the 141st meridian ... we understood that to compromise the line would be politically delicate’.

Further, the political sensitivity of Canadians to the power differential with the USA should not be underestimated, linking with HS1. Many of the great political debates of Canadian history have involved proposals to connect Canada more closely to its southern neighbour – whether through trade and investment agreements, improved access for US cultural industries, or closer military cooperation (Brooks 2010, 379). This complicated history of how Canada and the USA relate and have interacted over decades also shapes the reactions of the general public to possible boundary agreements. For Canadian politicians, compromising with the USA – or being seen as giving in to US pressure – is unpalatable, and this factor helps to explain several of the outstanding maritime boundary disputes with the USA. Thus, it is arguably not so much the actual power asymmetry as *perceptions* of this amongst the general public (and thereby national politicians as well) that enter the picture. In comparison, Canada’s boundaries with Denmark/Greenland, agreed in 1973 and 2012, generated limited public interest and could be concluded rather easily.

Similar factors have been prominent in Colombia’s disputes. Whereas its first settled maritime boundary with Ecuador in 1975 was criticised for being irrelevant – a sign of the limited public interest in maritime domain at the time – negative conceptions of the ‘other’ in especially the maritime boundary negotiations with Nicaragua and Venezuela have led to heavy public opposition to a compromise over the San Andrés Archipelago and Gulf of Venezuela respectively. These sentiments, noted in Chapter 8, seem to be strong in both Colombia and the opposing states, not allowing much leeway in negotiations. State leaders in all these countries have used the ongoing disputes in their domestic political campaigns to foster public support – a sign that there has been a considerable change in public engagement in maritime boundary disputes since the boundary with Ecuador was criticised for being ‘inconsequential’ four decades earlier.

Indeed, these boundary disputes have become so politicised that Colombia’s efforts to secure related boundary agreements have encountered another form of domestic popular opposition, due to the potentially harmful effects of the agreements on relations with Nicaragua (Londoño 2018). This has been evident especially in the cases of Colombia–Honduras (1986) and Colombia–Costa Rica (1977/1984). Domestic audiences can thus set limitations for what their governments are able to achieve in negotiations, or how easily the results can be ratified. Similarly,
Russian leaders faced strong domestic opposition in 2010 after the agreement with Norway, as well as regional attempts to block the agreement – though not enough to stop the process.

Finally, we should not discount the effect of domestic policy pushes or efforts which in turn influence the settlement of maritime boundary disputes. In the case of Canada–Denmark (tentative agreement 2012) the dispute was part of a broader Arctic policy ‘push’ on the part of the Harper government, aimed at settling outstanding disputes. We can note similar dynamics in Colombia’s maritime disputes – particularly with Honduras in 1986, when the government instituted an active policy towards the Caribbean, which in turn led to a focus on bolstering maritime claims and settling disputes. In Norway, the government’s Arctic focus from 2005 prompted a desire to settle disputes with both Denmark/Greenland (2006) and Russia (2010), which in turn reaped acclaim from the Norwegian public (L. C. Jensen 2017).

In sum, while national ratification procedures and veto-players can be an effective barrier (HD1) to final settlement of a maritime boundary, larger popular engagement in maritime boundary disputes (HD2) can alter an already-agreed boundary settlement, engage politicians in seeking settlement (as a way of gaining favour amongst the domestic audience), or dissuade them from doing so at all. The lines between national ratification procedures (HD1), popular awareness and engagement at large (HD2), and economic interest (HD3), are not crystal-clear. However, it is important to understand why, in some instances, state leaders make use of maritime boundaries for political election purposes, despite limited economic or regional interest in the issue. And why, in other instances, settling a boundary may prove impossible, due to strong domestic opposition. There is an interplay between leaders and their domestic audiences when engaging in maritime boundary-making – which also explain why negotiations are often kept out of the public view.112

- **HD3**: states are more likely to pursue settlement when there is economic interest in the disputed area.

I turn to the final domestic hypothesis which covers an area that the two previous hypotheses have ignored: economic interests concerned with the maritime domain specifically. There is linkage between economic interests and the ability of a province, state or region to block a boundary agreement, and it is not clear where to draw the exact line between these various forms

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of domestic influence. What is clear, however, is that a central aspect of boundary-making at sea concerns economic interests. In Table VI and Figure VI and VII in Chapter 10, this includes the categories *oil and gas* (+/-) and *fisheries* (+/-), as well as where the *domestic* (+/-) concerns specific economic local/regional interests.

Here I note a paradox regarding economic activity and special interests in a maritime domain. Does this factor lead to a greater likelihood of settlement – or does it hinder settlement, as states are eager to maximise their potential gains? I examine the various related causal mechanisms related to both oil and gas and fisheries in Chapter 12.2 and 12.4. Here it suffices to point out that oil and gas have featured repeatedly in this study of maritime boundaries. Access to resources are frequently used in the literature as an argument for why states engage in settling disputes, despite the uncertainty as to exactly what causal mechanisms are involved. And I have noted the variation in the extent to which economic interests in hydrocarbon resources play an *active* part in prompting boundary settlement. Three different patterns can be identified:

In the North Sea disputes between Norway–UK/Denmark in the mid-1960s, hydrocarbon resources were an obvious factor in driving negotiations forward. The same applies to the negotiations between Australia and Indonesia in the early 1970s, the failed Beaufort Sea negotiations between Canada and the USA around 2010, the case of Australia–East Timor 2000–2018, and the cases of Norway with Russia (2010) and with Iceland (1981).

In some other cases, oil and gas resources and related interests were involved but were not the major factor. This applies to Canada and the USA over the Gulf of Maine, Canada with France over St. Pierre and Miquelon, Canada with Denmark over Greenland in both 1973 and 2012, Norway’s boundary agreements with Denmark/Greenland over both Jan Mayen (1995) and Svalbard (2006), and Colombia’s agreements with Honduras (1986) and Jamaica (1993).

In the final category of cases where oil/gas was a relevant factor, the presence of resources acted as a *barrier* to reaching an agreement, unlike the two categories delineated above. This concerns in particular the case of Papua New Guinea, where oil and gas licences had already been awarded by Australia and thus had to be dealt with in the negotiations. In several other boundary agreements, such as Norway–Russia (2010), Canada–USA (Beaufort Sea), and Colombia’s ongoing disputes with both Nicaragua and Venezuela, oil and gas have played a negative role in barring final agreement, despite also spurring the countries onwards.

Important here, however, is not the fact that there are resources located in a given area, but
that there is a marked interest in resource development. For such resources to hold considerable relevance, there must be special interests that are concerned with this resource. These may range from oil and gas companies themselves to regional or local businesses or governance structures. For example, there might be oil and gas resources located on the continental shelf between Australia and New Zealand in the Tasman Sea, where a boundary was drawn in 2004. Limited knowledge of the seabed in this part of the world, combined with extreme remoteness, depths of more than 5000 metres, and limited infrastructure, made potential oil and gas resources almost irrelevant in the boundary negotiations. And in the case of Canada–USA in the Beaufort Sea, negotiations on the boundary were initiated after oil prices rose in the 2000s, but were suspended when prices fell.

As pinpointed, in many cases where oil and gas have been involved, they have also constituted a barrier, due to uncertainty over the exact location of the resources. One measure frequently applied to alleviate such concerns has been the use of resource-sharing agreements concerning straddling deposits. This is further discussed in the next chapter; here let us simply note the frequency of this mechanism in almost all the boundary agreements examined here.

As to fisheries, there seems to be a divergence between oil/gas and fishing interests. This relates to the specific nature of fisheries as an economic activity very different from oil and gas extraction. The scale, history, and sustainable nature of fisheries have made it an activity already existing in most maritime domains around the world, and thus highly relevant as regards any extension of maritime zones and subsequent delineation of rights and access.

For example, in the case of Canada in the Gulf of Maine (1984) and around St. Pierre and Miquelon (1992), relatively high levels of fisheries and the potential for a ‘cod war’ scenario involving repeated and reciprocal arrests of fishing boats eventually pushed the disputing parties into adjudication and arbitration. Similar aspects have at times been relevant for Canada’s unresolved disputes with the USA over Machias Seal Island, Juan de Fuca and the Dixon Entrance, where fisheries have acted as a hurdle to overcome.

We see the same barrier-elements of fishing interests in almost all of Colombia’s maritime boundaries in the Caribbean Sea; in Norway’s boundary agreements with Denmark (Jan Mayen), Iceland and Russia; and in Australia’s maritime boundaries with Papua New Guinea and Indonesia. In these cases, fishers in one or both disputing countries fear that a boundary will exclude them from important fishing grounds which, prior to the introduction of extended maritime zones, were
open for all, without clear regulation. In contrast to the oil and gas industry, fishers have sometimes seen establishing a maritime boundary as a *negative* development.

Especially in the cases of Colombia’s agreement with the Dominican Republic (1978) and Jamaica (1993), fishers from the two latter countries had to concede fishing grounds when the San Andrés Archipelago was given full effect in terms of maritime zones. This led to hostile encounters between the Colombian Navy and fishers in those areas, although Colombia eventually gave concessions in the boundary agreements allowing for a joint zone/access to fishers. Australia employed similar methods in its agreements with Indonesia (1982) and Papua New Guinea (1978) to allow local/traditional fisheries from those countries to access newly delineated Australian waters.

The link between specific fisheries interests and their impact on political leaders should not be underestimated. In the case of Norway–Russia (2010), regional fishing interests in Murmansk almost obstructed ratification of the agreement in the Russian Duma in 2011 (Hønneland 2013).113 In several of the other boundary disputes examined, fishing interests have blocked agreements or been a factor that had to be overcome in negotiations. The more important the industry for a specific region or country, the stronger the domestic opposition to ‘giving away’ maritime space and subsequent fishing rights.

In contrast to oil and gas interests, which have generally served as drivers for an agreement, the interests of the fisheries industry have thus tended to be a hindrance. To argue that fisheries have no effect on a maritime boundary dispute and its outcome (see, e.g., Ásgeirsdóttir and Steinwand 2016) ignores the multifaceted effect of this activity. However, for the healthy management of fish stocks, in particular those that are transboundary in nature, the extension of maritime zones and the clear delineation of boundaries have generally been positive developments. Here we consequently have cases where fisheries have acted as a barrier to settlement but have also – due to need for clarification if fisheries and/or economic zones expand – sometimes prompted negotiation. This duality is particularly interesting, returned to in chapter 12.4.

On the basis of the evidence provided, it is clear that economic interests concerned with the specific maritime space in question have had considerable impacts on maritime boundary

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113 Albeit beyond the scope of this study, in the case of Svalbard, from 2015 the problem was exacerbated when Norway and the EU became involved in a dispute over rights to licence snow-crab fisheries, where specific industry interests in EU-member Latvia had hijacked the entire EU fisheries system (Østhagen and Raspotnik 2018).
disputes. However, the effects of fisheries and oil/gas interests are diverging, if not completely opposed. These industries also differ in their relations to local and regional interests, linking up within to the two above-mentioned hypotheses. Chapter 12 will undertake a further analysis of the specific causal mechanisms involved concerning resources and their effects. Here it must still be noted that this hypothesis (HD3) – together with states’ concern for legal precedence (HL2) – is repeatedly relevant across the 33 boundary cases examined. This gives credibility to the functional argument that states settle their maritime boundaries in order to reap economic benefits from resource extraction (D. M. Johnston 1988). Although as shown through this in-depth process study, that simple causal logic needs elaboration and further nuance.

To conclude this chapter more generally: comparison of the various maritime boundaries and their relation to the hypotheses formulated in Chapter 4 has revealed important differences across countries and maritime domains. It seems evident that there is not one answer to some of the questions asked in this thesis. However, a few key findings have become clear, and there are some reasons more relevant than others for why states settle their maritime boundary disputes. I now turn to a final discussion of why states settle maritime boundary disputes when they do, and what these findings entail for the international politics concerned with oceans more generally.
12. Why do States resolve their Maritime Boundary Disputes?

This thesis started by asking why, given the fact that half of the world’s boundaries at sea remain unresolved, do some states resolve their maritime boundary disputes? As shown through the discussions and review of the various hypotheses in the previous chapter, this is a complex question with no straightforward answer. However, that should not discourage enquiry into the various mechanisms involved when states dispute, and – at times – decide to settle their maritime boundaries.

The end-results described here speak to this. Important are the breadth in cases – 4 countries with 33 maritime boundaries that included 21 additional third-party countries – and the rationale for their selection. Settled boundary disputes are over-represented in the case selection. However, by studying outliers – Australia, Norway and to some extent Colombia – I can say something about why other countries (like Canada) are less successful in settling their maritime boundary disputes. Moreover, the focus has been on hard cases, like Norway–Russia, Canada–USA (Beaufort Sea), Colombia–Nicaragua and Australia–East Timor. I have found studying these cases, where governments spent considerable time and resources, and where numerous different factors and issues were involved, the most fruitful for revealing some answers to the larger question of maritime boundary settlement.

12.1. A three-step process with barriers and drivers

It has become clear that the reasons why states decide to settle their maritime boundary disputes are not the same as why they engage in negotiations in the first place. Under international law (UNCLOS) states are obligated to engage in dispute resolution when in a dispute, although this seems to have had scant impact on actual state behaviour as examined in this thesis. In other words, the mere fact that UNCLOS says that states must settle their disputes is not the reason why states do so. However, UNCLOS does provide impetus for state negotiations – not because this is set out in its various articles, but because, for states to be able to fully utilise the rights awarded them through this development in international law, clear boundaries must be in place.

Moreover, I find that the factors that enable negotiations are not the same ones that enable final agreement. Examination of the policy-process shows those factors that make it possible to reach an agreement are not the same as those that enable ratification. There are at least three steps
in the boundary settlement processes examined here. Reiterating the steps from Chapter 4 in Figure VIII, I pinpoint exactly where the various factors as examined and described in the last two chapters are located in that process.

**Figure VIII: The policy process when settling maritime boundaries with hypotheses**

As the first step in the path towards a settlement, negotiations must be initiated between the disputing parties (Step 1 – Negotiations). What triggers negotiations? In the cases examined, a dividing line seems to fall between those boundary negotiations that occurred as a result of the institutionalisation of extended maritime zones in the period from the 1960s to the late 1980s, and those boundaries that were left unresolved until later. This relatively long timespan (three decades) in which states delimited maritime zones has to do with the fact that countries established EEZs and/or extended fishery zones at different times, due to both domestic and regional reasons.

The claiming of continental shelves tended to follow the aforementioned zones, sometimes even pre-empting it (as in the case of Australia–Indonesia) or prompting a ‘package deal’ that set a multi-purpose boundary (as in the case of Norway and the UK/Denmark in the North Sea). In Latin America and the North Sea, some countries took the lead in expanding their zones, which in
turn influenced regional practice and prompted neighbouring states to do the same. Other countries – like some Caribbean states – were more reluctant or hesitant, awaiting the maturation of UNCLOS or the behaviour of their regional counterparts.

Regardless, the outcome was the same: the establishment of extended maritime zones, in the form of fishery zones, continental shelves, or EEZs, was the primary – sometimes the only – reason why states engaged in negotiations over maritime boundaries in the first place. Here, UNCLOS played an essential role in spurring state behaviour.

However, an examination of the second group of boundary disputes (1985–2018) – where unsuccessful attempts had been made at negotiation in the period 1960s–1980s, or where negotiations were not even attempted, shows that other aspects are relevant for explaining why negotiations were initiated. Here factors similar to those that contribute in the later stages of the settlement process (Step 2 and 3) enter the picture. We have seen how a sudden interest in resource extraction (oil and gas, not fisheries) sparked engagement from companies and/or governments. Longer-term changes in security relations between countries may also have an impact, in tandem with domestic policy agendas that shift the focus towards the ocean, regional relations, or maritime boundaries specifically.

The second central step concern moving from negotiations to an agreement (Step 2 – Agreement). The existence of UNCLOS cannot account for why some states manage to reach an agreement; neither can long-term changes in regional relations. Rather, I find that the same economic interest (HD3) that might spur negotiations also help move the process towards an agreement: thus, domestic (or international) economic interests that have political influence in one or both disputing states play a role throughout the process.

In the negotiations phase, the legal factors discussed in this thesis also have considerable influence. The origin of the dispute (HL1) as well as the relevance of its legal issues to other disputes (HL2) enter the picture, determining the willingness of the parties to grant concessions, as we have seen how states have been concerned with how their maritime claims stand in accordance to international jurisprudence, and how their disputes relate to each other in terms of legal precedents. Changes in international jurisprudence might therefore have direct impact on the willingness of states to settle and compromise in their maritime disputes.

Moreover, at Step 2, power disparity or more general power relations between the parties can impinge on the possibility of reaching an agreement (HS1), whereas both the strategic value
of the given area (HS2) and regional patterns (HS3) can frame negotiations and/or contribute to inability to reach agreement.

Moving into the third and final stage of the process (Step 3 – Ratification), we see that some of the aforementioned factors lose their relevance. Once agreement has been reached on a tentative boundary or with a settlement waiting to be ratified, the legal and systemic factors have limited influence. When states have already agreed on a boundary line, international law has played its part. Systemic concerns over power balance and/or regional relations are similarly less relevant.

However, the domestic level becomes increasingly relevant, as domestic ratification procedures (HD1) and more generally public opinion (HD2) can – and often do – prevent the ratification of boundary agreements. As the public becomes aware of the outcome, general opposition to the terms of the agreement may be voiced by the media, by opposition parties, or general public opinion. Here again economic interests are involved, as a strong interest in resource extraction (oil and gas – HD3) can help to persuade the local or national legislature, or public opinion, to support (or oppose) ratification, whereas in some cases fisheries interests do the opposite. In some cases, however, the latter interests are coupled with greater security concerns, and thus prompt settlement and ratification (a point returned to in chapter 12.4.).

These stylised conceptions of factors and levels in the process are naturally not watertight compartments. The outcomes of step 2 must – as per Putnam’s logic – be acceptable to the wider domestic audience. Such acceptance hinges not only on material outcomes and preferences, but also on the factors relevant for the first step: the state’s relations with the opposing state (HS3) and the strategic value of the maritime domain (HS2). These processes do not occur in clearly defined steps, but as a fluid constitutive processes reinforcing each other. However, for the sake of clarity it is useful to divide them into distinct steps taken towards final settlement (Figure VIII and IX). For example, we can note how, at this third stage, factors such as legal origins (HL1), legal precedence (HL2) or power asymmetry (HS1) have limited relevance for the final settlement.
How the various cases are relevant at different steps in the settlement process. Note that in some instances it can be difficult to categorise certain cases since they might be partially resolved (Can-US I: Gulf of Maine), or might have recently been in the ‘active negotiations’-phase (Can-US III: Beaufort Sea/Col-Nica I).
This conceptualisation enables a more nuanced approach to the question of settlement/not settlement, and which factors play relevant, even decisive, roles at different points in the process. To answer why states settle maritime boundary disputes, we therefore need to be able to take into account various layers of explanatory factors, ranging from the international to the domestic, and how, at various temporal points in a complicated policy process, these factors hold altering degrees of relevance.

There is a further important distinction: the difference between factors that hinder and those that enable agreement. Most of the factors identified in the earlier chapters concern what hinders agreement, not what enables it. For example, we can surmise that systemic factors – the effects of the international system and how states stand vis-à-vis each other – will enter the picture when states attempt to settle maritime boundary disputes. As shown here through the use of three sub-hypotheses (power disparity, strategic value, and regional patterns), systemic factors seem less directly relevant for why states settle maritime boundary disputes when they do. However, these factors are part of the context that enables states to start negotiations in the first place. If there is negative systemic interaction between the disputing states, it is highly unlikely that a settlement will be achieved, or even that negotiations will progress as far as to a tentative settlement.

Further, the legal origins of the various positions in a dispute (HL1) may also work against settlement, in many cases posing severe barriers. The same goes for two of the three domestic factors: ratification process (HD1) and public opinion (HD2). In other words, these factors – although highly relevant in explaining why a maritime boundary dispute was not settled – are not sufficient when explaining why settlement was achieved. They act, not as drivers of settlement, but as obstacles that must be tackled in the process towards a solution.

In sum, I have not found definite evidence that power relations (coercion and asymmetry) are a clear determinant of why states settle their maritime boundary disputes. Further, the ‘strategic value’ of a maritime domain – unlike territory on land\(^{114}\) – has not been shown to have any significant impact across cases. Legal origin may be a major barrier to settlement, but this was evident in only a few cases. The same goes for the veto dimensions of institutional set-ups and procedures domestically in the disputing nations. Although these hypotheses undoubtedly have some relevance for the question at hand, they cannot explain the larger patterns examined here.

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\(^{114}\) See Carter 2010.
Turning to what enables settlement specifically, as shown in the preceding chapters, several of the initial hypotheses have proven relevant across cases. Obviously, the eight hypotheses cannot all be equally valid simultaneously. This is where the idea that different hypotheses are relevant in different contexts, and – crucially – at different times, enters in. The main factors that stand out across cases are regional patterns of enmity/amity (HS3), concern for legal precedent (HL2), public opinion (HD2), and economic interest groups (HD3). These have been shown to be highly relevant across all 33 cases. More specifically, these have been found to involve three causal mechanisms, to which I now turn in order to further elaborate their logic and the multiple inherent paradoxes that characterise them:

I. the desire to create favourable conditions for future oil and gas industry;
II. states’ interest in legal precedent and linking the outcome in one maritime dispute with potential outcomes in other outstanding disputes;
III. the desire to remove sources of low-level friction particularly related to fisheries where potential incidents can have an escalating or spiralling effect in conjunction with regional patterns.

12.2. Oil and gas: Do we need a boundary?

We start with the most significant factor for resolution of a maritime boundary dispute: the presence of oil and gas resources. However, it is not always clear in the literature, or in the general conception of boundary-making at sea, how the presence of hydrocarbons influences the willingness of states to make concessions – or not. Here a paradox emerges.

On the one hand, we could assume that the presence or expectations of hydrocarbons would make states less willing to compromise, attempting instead to claim as much as possible of the disputed area. Take the US–Canada Beaufort Sea case: boundary negotiations were initiated in 2010, but uncertainty concerning the existence and location of hydrocarbons seems to have contributed to the suspension of the talks. An effort was made to resolve the uncertainty through seismic mapping of the disputed zone, but the resultant delay coincided with a change of Canadian foreign ministers and a sharp drop in world oil prices. As Antunes (2002, 182) puts it regarding maritime boundary delimitation:
Competing outlooks on the balance to be struck as to, \textit{inter alia}, political, economic, security, and historical considerations, require a compromise. States unavoidably have to relinquish partially their potential entitlements; i.e. they must be prepared to accept an 'amputation' thereof. Insofar as each state is certain to attempt to minimise its 'losses', this 'amputation' is likely to produce political tension.

In fact, the \textit{absence} of economic interests may facilitate an agreement, as Oxman (1995, 251) notes, concerning the US success in settling maritime boundary disputes far from home: ‘The most obvious explanation is that it is easiest to reach agreement in the case of small islands surrounded by the deep waters of the Caribbean Sea or the Pacific Ocean where the boundary regions are unlikely to contain hydrocarbons or localized fisheries’. In Canada, that same factor may have contributed to the conclusion of the tentative agreement in the Lincoln Sea with Denmark/Greenland, where the area in dispute was small and the prospects of economic activity were very low.

On the other hand, a clear boundary is usually needed if the state is to reap the benefits of potential resources in a disputed zone, and that could be assumed to prompt states to settle more readily. Compare the above-noted case of Canada with that of Norway, which was willing to concede a large area of contested seabed to Iceland in the 1980s because it knew that the greatest potential for oil and gas lay close to Jan Mayen. In such instances, the presence of resources plays a part in explaining why settlement was obtained.

As put by Renouf (1988, iii): ‘The resolution of offshore boundary disputes must first be attained before managed development of the offshore region under dispute may begin.’ Governments do not directly engage in oil and gas exploitation themselves: they benefit through private or state-owned companies and the economic benefits these companies produce. Companies need stable operating environments, and will be reluctant to invest in exploration and production if there is uncertainty as to which country has sovereign rights over which resources. This is particularly relevant for the oil and gas industry, given the extremely costly investments and sunk costs in licenses and infrastructure, in contrast to, say, fisheries.

This speaks to a crucial component of the early-stage maritime boundary delimitations as well as international law and international politics more broadly: the potential positive-sum dimension of delimiting maritime zones. From having only 12-n.m. (in some instances even
smaller) maritime zones, states suddenly acquired expansive zones with rights to marine living and sedentary resources in the period 1960s-1980s. In many instances, ensuring that these zones became established to the maximum extent possible took primacy over limited disputes over baselines and equidistance. As put by one scholar:

The view that prevailed in the Caribbean during the latter seventies was that delimitation itself constituted the first step towards economic development. Thus, it was regarded as more of a casual stimulant than a consequent response to current or potential economic activities (Nweihed 1993e, 523).

Some of this behaviour occurred a few decades later as well, when states were getting ready to submit claims to the CLCS for extended continental shelves due to the 10-year deadline after each of their individual ratifications of UNCLOS. Australia and New Zealand agreed on a continental shelf boundary in 2004 in advance of their submissions, in the hope that this would help to ensure their rights. Similarly, the Norway/Denmark agreement on the seabed and EEZ boundary between Greenland and Svalbard in 2006 would seem to be connected to these countries’ submissions to the CLCS.

Uncertainty is therefore not an absolute barrier to a boundary agreement. In the North Sea in the 1960s, Norway, Denmark and the UK decided that the cost of leaving boundaries unresolved was higher than any potential losses resulting from uncertainty as to who would get the greatest share of the seabed resources. If, in some cases, states agree on maritime boundaries because of an economic interest in the disputed area, whereas in other cases they do so because of limited economic interests, which mechanism holds true, and when?

Most states (and their leaders) negotiate with an eye towards the future and are inherently risk-adverse when giving away space and rights that might prove valuable in the long term.¹¹⁵ A key difference, however, between for example Norway and Canada in the aforementioned cases has been the willingness of Norway to use hydrocarbon cooperation regimes as a way of reaching

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¹¹⁵ Here we can note the view, held by some, that Denmark was ‘tricked’ by Norway into conceding what become one of the world’s largest offshore oil fields at the time. In 1992, the historian Kaarsted argued that the Danish foreign minister at the time, Hækkerup, had conceded too much to the Norwegians in the negotiations (crucially the considerable Ekofisk-oil field located just on the Norwegian side of the 1965 boundary) due to alcohol problems (Ø. Jensen 2014a, 68; Kaarsted 1992). However, that account seems to ignore the larger legal and political context of the negotiations, as well as wider Danish interests in the North Sea.
final settlements. Although there is a provision on hydrocarbon sharing in the 1973 Canada–Greenland boundary treaty, it does not commit the parties to any procedures or outcomes. And whereas the 2012 tentative agreement between Canada and Denmark on the Lincoln Sea foresees the inclusion of rules on hydrocarbon cooperation, that part of the treaty has yet to be finalised (Global Affairs Canada 2018). By contrast, Norway has hydrocarbon sharing mechanisms built into most of its boundary treaties, including, most significantly, in the Barents Sea with Russia.

A key measure employed to alleviate concerns over exactly where resources are located on the seabed – uncertainty – is thus the use of resource-sharing agreements concerning straddling deposits, as with many boundary disputes examined in this thesis. However, that mechanism cannot solve the issue if the dispute concerns a relatively large area, as both parties would still have an interest in moving the boundary maximally to their advantage before agreeing to a ‘straddling deposits’ agreement. One way of circumventing this problem was applied in the case of Norway–Russia (2010): any resources developed within the whole formerly disputed area would be shared equally. This can mean a relatively large concession for both parties, if they believe staunchly that their own claim is more legitimate. At the same time, it makes the demand for a maritime boundary less immediate, perhaps even dispelling the need for it altogether.

Thus, we can note positive-sum outcomes to instilling cooperation across maritime boundaries. By settling maritime ‘territorial’ disputes, states can engage in previously risky resource development and possible joint extraction. Clear jurisdictions as to who has which rights enable states to cooperate. Although the loss of space is in itself a zero-sum game due to the nature of delineation (if one state acquires more of a given maritime territory, the other necessarily loses the same amount), joint management of transboundary resources that enable further development of these constitute positive-sum situations with mutual gains (VanderZwaag 2010; Ásgeirsdóttir and Steinwand 2016).

It is therefore obvious that the presence of hydrocarbon resources in a maritime area plays a central role in explaining both why the area itself attracts political attention, and why states are willing to concede spatial claims in favour of a demarcated domain. However, we cannot equate the presence of hydrocarbons with the settlement of a boundary. First and foremost, there must be interest in developing the resources in question. Otherwise, the resources themselves will have no effect.

Next, we must see the function of these resources in conjunction with other factors,
particularly when separating between drivers or barriers to settlement. Domestic opinion concerned with ‘giving away’ rights, the active involvement of fishers afraid of losing their livelihoods due to ‘big oil’ interests, security relations between the disputing states as well as within the regional or even global context, and finally the legal status of, and justification for, the dispute, may all constitute significant challenges that the existence of potential resources may not be sufficient to overcome. Especially positive regional relations (i.e. the context) between the two negotiating states seem – across these 33 boundaries – to be a crucial component for settlement to be obtained.

Finally, I note a shift as between the boundaries that were settled in the 1960s–1980s, and those settled later, some of which are still disputed. From being able to accept the inherent uncertainty pertaining the location of seabed resources, and settling a boundary regardless – at times with an eye towards larger political or legal aspirations – states seem to have become less willing to forgo potential economic gains by granting concessions in a boundary negotiation. Only when highly advanced resource-sharing agreements have been developed to overcome the uncertainties are states willing to accept an agreement – and sometimes not even then.

Interestingly, the feat of turning a formerly disputed maritime area into a shared regime makes the maritime boundary itself less relevant, for oil and gas extraction at least. In some of the cases outline here – notably Colombia–Jamaica (1993) and Australia–Timor Leste (2018) – a joint zone or regime replaced the need for a boundary. Although in the latter case, dissatisfaction with that arrangement eventually prompted a regular maritime boundary between both parties. Others have argued for similar zones to be developed in order to avoid conflict over the exact location of a maritime boundary, most noticeably in the dispute between Guinea-Bissau and Senegal (Okafor-Yarwood 2015), and in the South China Sea (Beckman et al. 2013).

That being said, and as shown throughout this thesis, states do care about the actual location of the ‘invisible’ boundary at sea. As put by the Norwegian lead negotiator (2017) of the Russia negotiations: ‘It is inherently difficult with a condominium. We need a proper border in place in case of future problems arising, and then we can develop solutions within the formerly disputed area. This helps reduce conflict.’

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116 ‘Vi kan jo ikke se den grensen under vann!’ In a comical sketch: the answer to being asked whether it is punishable to fish – from a submarine – in Norwegian waters. ‘Vi kan jo ikke se den grensen under vann!’ Harald Heide Steen Jr. ‘Ubåtkapteinen’: https://www.youtube.com/watch?v=kaw3EqzxVbA
Again, we see the relevance of not only the resource potential, but the interplay between resources and the regional patterns in relations between the two countries in dispute. The one cannot be disentangled from the other. In other words: Whether a joint resource regime is an available option depends not only on the presence of resources, but also on the power dynamics between the actors involved and on the historic relations between these.

12.3. Legal characteristics: Is context everything?

As maritime boundaries are a modern invention of international law, which is itself constantly (if usually slowly) evolving, the legal factors discussed here are also central to understanding the causal mechanisms behind dispute settlement. We may surmise that legal factors – the effects of international law and the legal aspects of how disputes stand vis-à-vis each other – are highly influential in driving as well as, in other instances, obstructing the settlement of maritime boundary disputes between states.

Which of these, will depend on the context of the boundary itself, as regards international law and the other boundaries of the disputing states, as well as the origin of the boundary in question. Without confirming that argument, they help to support the view that the legal context does matter for states’ behaviour concerning maritime boundaries. At the same time, by utilising legal factors such as origin (HL1) or precedent (HL2) in explaining political outcomes, we can advance our understanding of these factors in relation to those outlined in the systemic (HS) and domestic (HD) sections. Can we, on the basis of these 33 cases, say something more general about legal precedent and concern for this amongst states?

Although precedence does not hold the same role in international law as it does in various national legal systems, states are concerned about, and sensitive to, how their actions and agreements align vis-à-vis customary international law, and their other outstanding disputes where relevant (Cohen 2015; De Brabandere 2016). We see this across the states studied here. Perhaps the clearest example of how legal motivation spurs a state into willingness to compromise is Colombia. Noting its significant and complex land and sea dispute with Nicaragua over the 1928 Esguerra–Bárcenas Treaty, Colombia sought to bolster its sovereignty over both the San Andrés Archipelago and its maritime zones by rapidly settling all its maritime boundaries with nearby states, except that with Nicaragua. Similarly, to bolster it claims vis-à-vis Venezuela in the dispute over the Gulf of Venezuela, it sought settlements with Haiti and the Dominican Republic.
Further, I note a similar concern for legal precedent (related to the tendency to regard maritime boundaries in conjunction) in Norway, Canada and Australia. Australia developed its whole northern maritime frontier in relation to other states (Indonesia, East Timor, Papua New Guinea). Canada still fears that abandoning its stance in one of its unsettled maritime boundary disputes with the USA might impact its position in the other remaining disputes. Norway made explicit efforts to safeguard its stance concerning the use of equidistance, with the Barents Sea dispute with Russia in mind. As explained by the lead Norwegian negotiator for the maritime boundary with Russia in 2010:

> We built the compromise [in 2010] around mechanisms concerning resource sharing, which were based on the previously revised agreement with Iceland in 2008. This, in turn, was built on decades of cooperation with the UK on resource sharing in the North Sea. (Norwegian Diplomat I 2017)

When a state has its eyes set on larger legal-political objectives in conjunction with developments in international law, it may be willing to forgo some of the underlying uncertainty inherent in any maritime boundary compromise, in order to reap the benefits of securing larger gains in terms of a finalised boundary that seems, at the time, the best outcome available.

However, it is interesting to note that with legal practice developing and the politics surrounding maritime space also adapting, some of those quickly agreed boundaries might appear less favourable than at the time of agreement. The cases studied here offer many examples. In the case of Norway and Denmark (1965), Danish politicians of the time have been criticised for giving away oil and gas resources (Kaarsted 1992). In the case of Australia and Indonesia (1971–73/1982), the Indonesian foreign minister spoke of his country as ‘being taken to the cleaners’ in connection with the seabed agreements of the early 1970s (Kaye 2001, 21). In the case of Timor-Leste, the boundary arrangements agreed had been heralded as a fair compromise, but were later – in light of resource and political developments – deemed so unfavourable to Timor-Leste that it withdrew from the whole arrangement and forced Australia to compromise in another agreement (2018) through an UNCLOS conciliation process. In turn, there have been discussions about the possibility that the agreement with Timor-Leste could cause Indonesia to question its agreements with Australia in the same area. In the case of Colombia and Honduras/Costa Rica, we see that Colombia’s eagerness to finalise boundaries in the late 1970s in order to reap the benefits of recent
development in international law and to bolster its case vis-à-vis Nicaragua led to resentment afterwards, when the political fallout became apparent.

States also try to influence regional customary international law through negotiated settlements, as seen in the North Sea and in the Caribbean Sea cases. This help to explain more fundamental questions over why states choose to take issues of maritime boundaries to international courts in the first place. How successful this strategy has been, however, can be questioned. In the case of Colombia, there was a strong belief that four decades of developing a regional legal precedence as regards the dispute with Nicaragua would lead to a favourable ICJ verdict. (Whether the outcome was in fact favourable, however, is a different debate.)

Regional customary international law is not that straightforward (Cohen 2015). As explained in Chapter 4.3., customary international law does not simply derive from state actions or judicial decisions by international courts. Denmark experienced the same as Colombia in the North Sea Cases with West Germany, where its bilateral agreements with the UK and Norway on equidistance boundaries did not in the end sway the ICJ to accept a regional precedence-argument in favour of equidistance.

Moreover, we see signs – as also theorised by Huth, Croco and Appel (2011) and Allee and Hurth (2006) – that states turn to international courts in order to find a suitable outcome when domestic opposition to concessions is too great. This could be said to have been the case in Norway’s boundary arrangements with Iceland (1981) and Denmark (1995); in Canada’s arrangements with the USA over the Gulf of Maine (1984) and with France (1992); and in Colombia’s case with Nicaragua. A crucial point that arises from these cases is the extent to which states have concern for international law. If an ICJ decision or international arbitration proves unfavourable to states in maritime boundary disputes, will states accept that the ruling? And with what consequences?

In the 1984 Gulf of Maine ICJ case, the 1985 Iceland–Norway arbitration, and the 1993 Norway–Denmark ICJ case, the parties chose to adhere to the outcome of the adjudication/arbitration. Australia, however, has chosen to withdraw maritime disputes over maritime zones from the terms in its acceptance of the ICJ and UNCLOS, although it did engage with Timor-Leste under UNCLOS conciliation in 2017. More extreme, in the 2012 Colombia–Nicaragua case, Colombia chose to ignore the ruling and even withdrew from further proceedings in the Court, due to distrust and discontent with the outcome. In another case from worth noting,
the Philippines initiated arbitration proceedings in 2013 under Annex VII to UNCLOS against China’s ‘nine-dash line’ in the South China Sea. China declared it would not participate in the arbitration nor adhere to its rulings. On July 12, 2016, the arbitration tribunal ruled in favour of the Philippines, but the ruling was in turn was rejected by China (PCA 2016).

A relevant question in this regard, beyond the scope of this study, is whether we are witnessing increasing distrust international arbitration and adjudication when it comes to maritime boundary disputes? Such a trend might go in tandem with growing public awareness about maritime issues and outstanding maritime disputes (Kleinsteber 2013; Nyman 2913). As also put by Oude Elferink, Henriksen and Busch (2018a, 399): ‘The analysis and conclusions of some of the chapters of this volume [on maritime boundaries] do suggest that normativity in the delimitation process extends beyond the basic rule as contained in Articles 74 and 83 of the LOSC [Law of the Sea Convention] as reflected in customary international law.’ Individual states might indeed refer to this ‘normativity’ when dissatisfied with the outcome of international processes, or as a bargaining strategy for future negotiations (Goldstein et al. 2000, 396), as noted in the case of Australia–Timor-Leste and Colomba–Nicaragua. The alternative then is simply to keep the dispute unsettled, as with several cases between Canada and the USA, characterised by unwillingness to utilise third-party dispute resolution mechanisms. Or, another possible explanation is that there might just be more maritime boundary cases being discussed or brought before courts as maritime issues ascend on political agenda, and not more distrust in international proceedings.

To conclude, there cannot be any doubt that international law sets the parameters for maritime boundaries and related dispute resolution. What is sometimes not specified, however, is how these effects are evident across cases – a dimension often ignored in much of the political literature on disputes, boundaries and the maritime domain. This indicates how political and legal scholars do not always speak the same language.117 To grasp the importance and effect of the legal regime for the oceans, we must study how the Law of the Sea sets the parameters for bilateral state negotiations (Nemeth et al. 2014). Even when the dispute is kept out of international courts and tribunals, contemporary legal precedence has been shown to impact bilateral negotiations, as states

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117 The dilemma is that international relations is concerned with why questions, while neglecting the role of law, whereas international law is focused on the content of law itself, while ignoring its political context (Snow 1913; Byers 2000; Hafner-Burton, Victor, and Lupu 2012).
lean on legal arguments in the reasoning behind their claims (Prescott and Schofield 2004; Weil 1989; Allee and Huth 2006; Ásgeirsdóttir and Steinwand 2016).

We have also seen that states conceive of their maritime boundaries as a set of boundaries, not as single data points. The countries examined here – especially Canada, Colombia and Norway – exhibit a strong desire to bolster the legal precedents of their approach when settling maritime boundaries, because of some other more complicated or sensitive boundary in need of settlement. Further, we have seen that states are not only concerned with, or aware of, current precedence – they also actively attempt to shape it through their bilateral settlement proceedings. However, questions remain as to the effect of these efforts on customary international law, as well as exactly how far states are willing to yield to international law when faced with an unfavourable ruling.

12.4. Fisheries and conflict: The neglected dimension of boundary disputes?

Beyond natural resources on the seabed and concern for legal precedence, a key finding regarding why states settle their maritime boundary disputes when they do, relates to the link between regional security issues and the risks of low-level conflicts over fisheries. This is a way to further nuance the hypotheses that both concerned regional patterns of amity/enmity (HS3) and that concerned with economic interests (HD3).

Hostile encounters over fisheries – mostly between one state and fishers from another state – are frequent occurrences across the globe, but often do not escalate further (Nyman 2013, 6). Although the chances of a dispute occurring at sea are relatively high due to states’ limited ability to exercise complete control over that domain, the chances of such a dispute escalating into a larger international conflict are fairly low (Tunsjø 2018, 128-130). It may be easier to limit disputes and clashes at sea as regards the wider ramifications because disputes concerning access to fisheries are usually seasonal (Salayo et al. 2006); and resolution is often possible due to their limited salience, tangible nature, and the fact that they are divisible (Hensel et al. 2008). States have often managed to compartmentalise rather limited disputes over access to fisheries, settling them (or

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118 Examples include incidents between the Russian Border Guard (coast guard) and Japanese fishers around the Kuril Islands (Kaczynski 2007); between Vietnamese and Philippine fishers and the Chinese Coast Guard in the South China Sea (De Treglode and Buchanan 2016); between the Norwegian Coast Guard and Russian fishers in the Barents Sea around Svalbard (Østhagen 2018b); and between the US Coast Guard and Russian fishers in the Bering Sea in the 1990s (Conley, Melino, and Østhagen 2017). All these unfolded in the context of larger maritime disputes concerning access to fishing zones and/or maritime boundaries, with varying degrees of escalation, related to the regional patterns of relations between the states involved.
not) often without affecting their relations otherwise.

The Cod Wars and the Turbot War provide recent historical examples of rather severe conflict erupting over straddling fish stocks. In the case of the Cod Wars, access to fishing grounds was the initial cause for contention between the UK and Iceland. In the case of the Turbot War, excessive Spanish fishing in international waters just outside of the Canadian EEZ caused an ensuing conflict. These examples took place at a time when fisheries increased in magnitude and geographical scope, followed by an extension of the international legal regimes in the same domain (Swartz et al. 2010). Despite being rather prominent examples of fisheries conflicts, they did not escalate further.

When such incidents are taking place in the context of disputes over maritime space (in contrast to when states engage in conflict in the maritime domain), the question is what strategic value the ocean ‘territory’ holds. Limited encounters at sea often concern maritime space itself (fishing rights) – but much depends on whether it is deemed expedient to escalate in order to achieve a strategic goal that might expand beyond the immediate dispute. It is therefore largely the context in which the fisheries incidents occur that determines the possible escalation of an incident.

Here the idea of regional security complexes, or regional patterns of enmity and amity as explored previously, enters the picture (see hypothesis HS3). Proximity is important. Interactions (positive and negative) between geographically proximate states will be more intense and will compound over time. This translates into regional security dilemmas – where the actions of another state are interpreted as offensive when they in fact might be of defensive nature, and thus prompts defensive countermeasures which in turn might be interpreted by the other state as offensive (Jervis 1978) – informed by shared histories (Buzan and Wæver 2003, 46). These ideas have been proven crucial for maritime boundary disputes across this study, which are inherently geographically and regionally bounded constructs between neighbouring states. In turn, the regional relations that ‘compound’ over time set the parameters for how states negotiate ongoing disputes.

It is in this context that fisheries often play a relevant role in the disputed maritime domain.

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119 Regional studies again became popular with the end of the Cold War and the collapse of bipolarity. As noted by Young (1992, 244): ‘Short of becoming a locus of regional conflict, a geographically defined area may achieve the status of a distinctive region for purposes of policy analysis and public decision making when it enters a period of political turmoil or flux as a result of the impact of realigning forces.’
Multiple dynamics are at play. On the one hand, fishers are not always interested in the clear delineation of maritime space that might lead to spatial exclusion. On the other hand, states and their officials are often interested in delineation of the same space in order to uphold sovereign rights and hinder IUU fisheries, avoiding the uncertainty over who has authority and mandate (Australian Government Official III 2019). When this tension comes to the foreground in a disputed maritime domain, the conflict potential increases, thus also prompting further efforts by states to attempt to settle the boundary dispute in order to install clear jurisdictions. We have seen this explicitly across cases examined: in Australia’s boundaries with France, Solomon Islands, Papua New Guinea and Indonesia; in Canada’s boundaries with the USA (Gulf of Maine in particular); in Colombia’s boundaries with the Dominican Republic, Haiti, Honduras and Jamaica; and Norway’s boundaries with Iceland, Denmark (Jan Mayen-Greenland) and Russia.

For example, fisheries played a considerable role in the Barents Sea dispute – initially as a barrier to settlement, especially on the Russian side (Norwegian Diplomat I 2017). However, coupled with this were the underlying frictions and risks of a serious incident over fisheries and fishing access, which had been a constant fear in Norway from 1977 onwards (Holtsmark 2015). The Elektron-incident (see footnote 119) highlights the conflict potential inherent in state-to-state interactions concerning disputes over maritime space. In turn, these interactions within this specific maritime domain where the boundary dispute played a key part are crucial in explaining Norwegian sensitivities regarding Russian maritime actions in the region, but also why Norway and eventually Russia were keen to remove this thorn in their bilateral relations. Norway’s relatively high tolerance for uncertainty as to the existence and location of hydrocarbons when settling the 2010 Russia agreement can be explained, in part, by the counterbalancing desire to reduce uncertainties and risks of another kind: tensions and possible conflicts with a much more powerful country over competing claims to seabed resources in the Barents Sea.

One way of seeing it is thus that settling boundary disputes can reinforce sovereignty by

120 In 2005, Norwegian fisheries inspectors from the Coast Guard boarded the Russian vessel Elektron in the Fisheries Protection Zone around Svalbard, where Norway and Russia hold opposing views on the status of that zone. The captain of Elektron, in agreement with the Russian owners, decided to flee – with the Norwegian fisheries inspectors on board (Åtland and Ven Bruusgaard 2009, 339). From 16 until 19 October, four Norwegian Coast Guard vessels, as well as a maritime surveillance aircraft and several helicopters, tailed the trawler as it headed for Russian waters. The Norwegian Coast Guard considered boarding the vessel, but bad weather intervened (Åtland and Ven Bruusgaard 2009, 341). It is also highly likely that Norwegian authorities were concerned with the escalation effects that an action like boarding the Russian vessel could have vis-à-vis Russia (Fermann and Inderberg 2015, 389, 395). On 20 October, the two fisheries inspectors were released by the Russian Border Service, which had arrived to escort Elektron to Murmansk after ‘intense dialogue’ between the Russian and Norwegian governments (Skram 2017, 168).
removing sources of tension and potential conflict. This was Norway’s view in the Barents Sea, where the 2010-agreement removed one source of tension and potential conflict with Russia. The annual Grey Zone agreement set out provisions for how to manage fisheries in the area without escalating incidents, although a more permanent framework was wanted and needed by Norwegian authorities (Norwegian Diplomat I 2017). This desire for risk reduction has seen Norway undertake ongoing efforts to ‘tidy up its spatial fringes’\(^{121}\) – especially regarding Russia, where it has been deemed in the national interest to settle a spatial dispute for fear of the inherent potential for escalation. Any conflict with Russia would necessarily threaten Norwegian sovereignty, given the power disparity between the two countries.

In Canada, however, where all of the boundaries are with NATO allies, there seems to have been greater tolerance for uncertainty over political relations with neighbours, as manifested in the ‘management’ of disputes over maritime space. Canada–USA relations involve a similar power disparity as the Norway–Russia case, but is otherwise quite different. Canada and the USA are partners in NATO and the North American Aerospace Defense Command (NORAD) (Zyla 2009; Jockel and Sokolsky 2012). This greatly reduces the stakes involved in their boundary disputes and creates the sense that these disputes are ‘manageable’: there is no underlying security or political imperative for them be resolved, at least not in the same manner. Also note that the fisheries issues between the two countries have more or less been settled through bilateral mechanisms. As McDorman (2009, 195) argues: ‘[T]he allocation of government resources, both human and political, inevitably flows to the immediate and urgent’ – even if it would be logical to resolve boundary dispute in the absence of ‘immediate friction’.

Turning further south: in most of Colombia’s maritime boundary disputes in the Caribbean, fishing interest in the opposing state proved to be a significant hurdle for settlement. For instance, with Honduras, acquiescence to the Colombian stance on the status of the San Andrés Archipelago meant giving away access to fishing grounds of importance of local fishers. At the same time, Colombia seem to have been willing in most cases (except with regard to Nicaragua and Venezuela) to compromise on fishing zones in order to achieve larger legal-political goals as regards the unresolved disputes, or made use of joint zones where fishing rights were shared through some bilateral mechanism.

The Australian approach with both Indonesia and Papua New Guinea, and later East Timor,

\(^{121}\) Paraphrasing Moe, Fjærtoft and Øverland (2011, 158).
also speaks to the relevance of security interests coupled with local fisheries and recognition of the advantages of removing this potential source of friction. Australia has had limited interest in fisheries in the maritime domains bordering these countries to the north. For local fishers in the area, however, these waters are essential in sustaining livelihoods, building on centuries of traditional fishing that has traversed the recently introduced and invisible maritime boundary. Consequently, in the agreements with Indonesia (1982) and Papua New Guinea (1978), special provisions were made for traditional fishers to be able to access Australian waters. These arrangements have occasionally proven controversial, ranging from criticism of the Australian Navy’s heavy-handed rule enforcement to potential security challenges arising from a fluid border arrangement. Nevertheless, the main underlying incentive was precisely the desire to remove sources of friction related to both security and local fishers when the concept of a maritime boundary between the states was established.

In most cases in this study where fisheries have been a considerable factor, this has acted as a barrier to settlement, as fishers have been concerned with the loss of fishing grounds and being spatially restricted, compared to the previous situation where no proper boundary and/or regulation were in place. However, as discussed, when fisheries are coupled with a state’s larger concerns over friction due to an ongoing or unresolved maritime boundary dispute, the addition of security concerns can act as a strong incentive to pursue boundary agreement. A central factor in explaining why states settle maritime boundaries is therefore the interplay between fisheries and security interests, in turn linking with the concepts of regional security complexes and states’ desire to implement clear zones of jurisdiction.

Another central aspect of fisheries is the contrast with oil and gas resources. Often lumped together as ‘resources’, these two types of maritime economic activity have diverging effects on the process of settling maritime boundary disputes. Whereas oil and gas conflicts generally provide strong incentives for settlement, due to oil and gas companies’ limited tolerance for uncertainty over who owns the seabed where they operate, fishers seem to have high tolerance for uncertainty due to the shifting nature of fisheries in general. Only, as shown here, when coupled with a country’s desire to install clear jurisdiction and authority, have fisheries acted as an impetus for boundary agreements.

With the effects of climate change on migratory fish stocks (Gänsbauer, Bechtold, and Wilfing 2016; Spijkers and Boonstra 2017), concerns over disputes arising over fish stocks as well
as the need to delineate sovereign rights might further increase. The world’s oceans are now being impacted in an unprecedented way, adding another layer to the challenge of international cooperation over fisheries. Wild fisheries are increasingly fully exploited, decreasing the total available biomass of marine resources (FAO 2016). At the same time, stocks are changing their migratory patterns because of changes in the geophysical marine environment (Allison et al. 2009; Brander 2010). Those changed conditions are particularly troubling for international management of transboundary fish stocks, i.e., fish stocks that move between and across neighbouring EEZs and high seas. Scholars foresee an increase in the failure of cooperation globally, as the impact of climate change on fish stocks becomes increasingly apparent (Pinsky et al. 2018; Shearman and Smith 2007, 49–55; Cheung et al. 2016).

With more than half of all maritime boundaries worldwide still unsettled, numerous contexts exist where conflictual incidents at sea occur between states and foreign fishing vessels, as the clear jurisdiction of sovereign rights and inspection authority are not delineated.
13. The Future of Ocean Politics and Maritime Boundary Disputes

Having explored the different mechanisms that lead states to settle maritime boundaries, I can conceptualise a broader understanding of how changes at sea influence and determine the international relations of ocean space, as well as state behaviour in the same domain. How has the growing focus on maritime space, as shown through this study of the various maritime boundary disputes, led to changes in the way states view and utilise the maritime domain for political purposes? In turn, this can help comprehend not only why states settle their maritime boundary disputes, but also what the future brings for disputes over maritime space. Three trends in particular deserve further consideration: (1) the continued institutionalisation of ocean space; (2) the growing symbolic relevance of the maritime domain; and (3) increasing environmental awareness and concern over the same domain.

Maritime space and its value for states have been defined as inherently functional. As Steinberg (2001, 58) wrote describing the Micronesian approach to ocean space prior to the arrival of the first Europeans: ‘[T]erritoriality [at sea] is driven by function’. When the function (resource base, strategic point, etc.) had ceased to exist, maritime ‘territory’ was not worth protecting or upholding a form of limited sovereignty within. That may make it seem tempting simply to equate the value and importance of maritime space (and subsequent disputes over such space) to the functional value of that space. This appears to be the general trend in studies of territorially based conflict, as one of the rationales behind excluding maritime space in the first place. However, further nuancing is needed, not least concerning the distinction between land and sea.

The oceans have generally been seen as the antithesis of land: opposite and inherently different – or as a void (Steinberg 2001). Precisely because it has qualities different from land, maritime space has been subject to extensive legalization and a rights-based regime in favour of maritime states. A change began when all coastal states were awarded 200-n.m. EEZs. The

122 Central here is the concept of territoriality: 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’ (Storey 2012, 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 ‘socialised territoriality’ is relevant also for discussions of the maritime domain, as it enables the role of territory to be conceived more broadly. Sack (1986, 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’ (Storey 2012, 20; see also Paasi and Prokkola 2008).
expansion from 12-n.m. zones to 200-n.m. zones ensured that everybody (apart from landlocked states) won (Bailey 1997; Brown 1981; D. R. Rothwell 2012). Maritime space previously dismissed as uninteresting suddenly became an entitlement in need of ‘protection’.

The role of oceans in international affairs changed with the introduction and adoption of UNCLOS. Some hailed a new era: ‘The old ocean regime … is obsolete because the old era of ocean politics has been suspended by new patterns of conflict and alignment, and new instruments of national policy’ (Osgood 1976, 10). Booth (1985) predicted that UNCLOS would ‘blur the boundaries between land and ocean, leading nations to feel protective and sensitive about their maritime spaces’ (quoted in Baker 2013, 152).

Crucial to this expansion of the role of the ocean in international politics has been the decoupling of geophysical attributes from states’ rights at sea. The 1969 North Sea Cases had introduced the relevance of natural prolongation and the idea that states must take into consideration the attributes of the seabed when delineating maritime space. Then, with the conclusion of UNCLOS in the early 1980s, states no longer had to prove how the seabed pertained to them up until 200 n.m. in order to obtain rights to the resources in this domain (Kaye 2001, 20–21).

From being an area of what Ruggie (1993, 165) called ‘shared [political] spaces’, the maritime domain became legalised, internationally as well as under the jurisdiction of maritime states. This means a continued transfer of rights, from international society to the individual states, by processes unfolding on the international stage. Hurd (1999, 382) terms this the ‘institutionalisation’ of the norm of territorial sovereignty, which can here also be applied to the oceans. ‘[J]ust as medieval villages were eventually fenced off in response to economic change, so states in the 1970s ‘fenced off’ larger parts of the oceans as technological and economic change increased the uses of the oceans’ (Keohane and Nye 2012, 75). Only the high seas remain a commonly administered heritage for mankind.

The EEZ thus became the key contributing factor for maritime disputes, both as a rationale for several new disputes and as a domain where states suddenly had to defend newly acquired sovereign rights. With an international legal regime that awarded states extensive rights at sea, states themselves also became eager to uphold and defend that regime.\(^\text{123}\) Engaging in disputes

\(^{123}\) See for example studies of Arctic maritime boundaries and disputes (Moe, Fjærtoft, & Øverland, 2011; Tamnes & Offerdal, 2014; Byers, 2017; Claes & Moe, 2018).
that might challenge aspects of specific UNCLOS-principles might prove to be a poor long-term strategy for any coastal state that benefits from the collection of these principles. Baker (2013, ii) therefore argues that, as on land, states are conditioned behaviourally by an international norm against the ‘forceful acquisition of maritime spaces and resources of other states’. States have ensured a ‘lock-in’ of their sovereign rights at sea, while technological developments as well as resource demand continue to prompt greater functional use of maritime space.

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 this legal process. Note that the concept of occupation – crucial in establishing title to land territory – does not hold 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 (St-Louis 2014, 16). A marked separation between land and sea thus also became enshrined 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. Here, ‘spatial exclusion’ enters the picture. As described by Adler (1997, 251):

The modern territorial sovereign state has rested on the principle of spatial exclusion, which entailed that ‘[i]dentification of citizenship with residence in a particular territorial space became the central facet of political identity’-or, in Alexander Wendt's terms, of the corporate identity of the state.’ … Politics, ‘in the sense of the pursuit of justice and virtue, could exist only within territorial boundaries.

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’ (Weil 1989, 91–92), or even joint sharing – as with oil and gas resources or a joint fisheries zone. We are also discussing two different forms of ‘rights’ by states: ‘… in contrast to land boundaries which separate sovereignties in their totality, maritime boundaries (with the exception of those of the territorial sea) separate only sovereign rights with a functional, and hence limited, character’
(Weil 1989, 93). We must bear in mind the crucial difference between sovereign rights (EEZ, continental shelf) and complete sovereignty as per Krasner’s (1999) accounts. As Asgeirsdottir (2016, 190) puts it:

Maritime boundaries differ from terrestrial boundaries in important ways. While terrestrial boundaries are often the legacy of colonial times, most current maritime boundaries have been settled by independent states. And while issues of islands and rocks in a disputed area can arouse nationalistic tendencies very few people live in the disputed areas lessening the likelihood of increased tensions. Additionally, there are often few landmarks to serve as easy reference points and there are no previously established administrative frontiers that can guide the division.

However, Weil (1989, 93–94) warns against exaggerating the difference between land and sea. Zacher (2001) argues that the value of territory (on land) can change, especially in terms of its economic significance. The same can arguably be said of maritime space. The ‘entry of security considerations’ into the delineating process of maritime space, as well as a general trend of ‘territorialisation’ of the 200-n.m. zone, Weil (1989, 93–94) noted, speaks to the growing importance of the maritime domain, as well as the expanding capacity of states to enforce and uphold their rights within this space. States and the international community at large have increasingly focused on ocean resources and rights in recent decades. It is this growing preoccupation (by states) with maritime space that has brought the topic of maritime dispute resolution forward in international politics, as has also been shown throughout this thesis.

In other words: The institutionalisation of the maritime domain described here continue to prompt changes in how states engage with and perceive ocean space. From having been a ‘void’ to becoming a legalised space for resource exploitation and protection, the trend emanating from the maritime boundary disputes studied here is the ‘territorialisation’ of the maritime domain as a continuing process. This process did not come to an end with the legalisation of this domain in the 1980s: it is still underway today as states utilise more and more of their maritime space for resource as well as political purposes. In turn, maritime space and spatial rights have become central components of the modern state.

This process of legalisation (or territorialisation) of maritime space for states in the 21st century is coupled with, or fuelled by, a second trend which affects how states and their leaders
view and relate to the ocean: namely, that disputes over maritime space are increasingly entangled in *domestic* politics. Vasquez and Valeriano (2009, 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 (1998, 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, as shown throughout this thesis, 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’ (Hønneland 2013). Beyond institutional ratification procedures, opposition to concessions in the maritime domain takes the form of lobbying by powerful interest groups, loss of popular vote/confidence, or strong media opposition (Byers and Østhagen 2017). If concessions in negotiations (inherent to any maritime boundary delimitation) are not perceived as acceptable domestically, settling the dispute will prove challenging, even if leaders and foreign policy elites have reached agreement through bilateral negotiations.

Whether concessions to another state are deemed acceptable will also depend on the identity of the given state: the conception of friend or foe begins ‘at home’ (Hopf, 2002). Maritime disputes are not devoid of the intangible and symbolic elements that can lead to conflicts escalating beyond the initial dispute itself. 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.

For example, in bilateral Norwegian-Russian relations over fisheries around Svalbard from the 1990s onwards, the domestic audience has played a central role in relations. Officials in Murmansk and representatives of the fisheries industry have attempted to infuse an intangible dimension to the underlying conflict of interests, arguing that, as compared to Soviet times, Russia was now ‘weak’, failing to ‘protect its rights’ (Åtland and Ven Bruusgaard 2009; Hønneland 2013). These attempts at agenda-setting did not succeed in spurring Moscow to escalatory actions – but they show how maritime disputes are not devoid of intangible, symbolic elements that can

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124 Interestingly, this was a prominent part of the campaign to leave the EU during the BREXIT-referendum in the UK in 2016, despite fisheries only accounting for 0.05% of the country’s GDP (Lichfield 2018).
result in conflicts escalating beyond the dispute at hand (Østhagen, 2018).

Similarly, when in 1975 Colombia agreed on its first maritime boundary with Ecuador, the government was criticised for ‘wasting time’ on the maritime domain, and for its futile efforts at drawing an ‘imaginary line in the sea’ (Londoño 2015, 248). Four decades later, however, in the 2018 Colombian presidential elections, the maritime boundary disputes between Nicaragua and Colombia over the San Andrés Archipelago (and the 2012 ICJ ruling) were used by candidates to stir up popular support (Al Dia 2018). Subsequently, Nicaraguan President Ortega used the same conflict to suggest that Colombia was supporting a coup d’état, as a way of diverting domestic efforts to get him removed from office (Rico 2018).

If the dispute in question has not attracted public attention (and domestic opposition), governments may achieve settlement, as Canada and Denmark did in 1973. However, 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’. These dynamics can be observed in Colombia’s maritime boundary disputes with Nicaragua, Venezuela and Honduras, where public engagement in both Colombia and the opposing state has effectively limited the range of options available to state leaders, as well as their ability to compromise. Any concession is seen as be directly opposed to the interests of that country. As Kleinsteiber (2013, 18) has also 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.

This demonstrates how disputes over maritime space can acquire importance in national campaigns aimed at rallying domestic support. Additionally, as states enhance their naval capabilities in line with technological developments, their capacities for monitoring and controlling their maritime zones have expanded. To a greater extent than before, events at sea

125 Author’s translation, with assistance from Victoria Dalgleish Lindbak.
trigger immediate response and attention. Kleinsteiber (2013, 15) argues that ‘[t]he fundamental drivers behind the disputes in the East and South China Seas are not potential or claimed natural resources, but rather domestic politics, rising nationalism, and irredentism’. When in 2005 a Russian trawler ‘kidnapped’ two Norwegian Coast Guard Officers and fled towards Russian waters after fishing in the waters around Svalbard, the Norwegian media were quick to broadcast the event live on national television, in turn helping to spur politicians into action (Fermann and Inderberg 2015). The role of maritime space in domestic politics has changed over the course of four 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. Several trends worth highlighting are fuelling this functional expansion. Total volumes transported by sea in 2016 were 10.3 billion tons of cargo, more than double the 4 billion tons in 1990 (WTO 2017). A considerable amount of the gas that is expected to replace oil consumption will be found in offshore reservoirs (International Energy Agency (IEA) 2017), while offshore wind-farms are increasingly becoming a source of global investment (Corberita, Ho, and Pineda 2015, 7). Seabed minerals are also coming to fore (Levin et al. 2016; Jacekel, Gjerde, and Ardron 2017).126 Using ship-based extraction technology, Japan successfully mined metals from its seabed in 2017, and expects large-scale commercialisation of several offshore deposits from 2020 onwards (Kyodo 2017).127 Finally, straddling (and high seas) fish stocks constitute a shared resource,128 but as Wood et al. (2008) emphasise, global fish stocks are decreasing due to overfishing, in international waters and within national EEZs.

One the one hand, we therefore have the idea of the ocean and states’ ocean space as a legalised, institutionalised and governed domain, where states tend to abide by the rules set forth

126 By 2017, the International Seabed Authority had granted 28 contracts to mining companies, giving them exclusive rights to explore large parts of the continental shelf beyond national jurisdiction in the Pacific, Atlantic and Indian Oceans (Woody 2017). However, there are serious concerns about the environmental impacts of such activities and the lack of transparent and sufficient regulation (Jaeckel 2016; Levin et al. 2016), and calls to develop an ‘exploitation code regulation’ by 2020 (Woody 2017).

127 Other potentially valuable deposits have recently been discovered across the world ocean. In the Atlantic, British scientists discovered minerals that ‘contain the scarce substance tellurium in concentrations 50,000 times higher than in deposits on land’ (Shukman 2017).

128 As an object that cannot be appropriated to any individual group and is therefore vulnerable to overexploitation by self-interested/uncoordinated individual profit-seeking behaviour (the classic ‘tragedy of the commons’) (Hardin 1968, Crowe 1969, 1103–4; Stuart 2013).
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. We have witnessed this in the cases examined here, where maritime boundary disputes that have appeared on agendas more recently (in the past two decades) have involved a wider range of relevant factors and seem to foster broader public engagement than maritime disputes tackled in the 1970s and 1980s. As put by the lead negotiator of Norway’s latest rounds of negotiations: ‘A boundary itself is just one element. More important are those normative factors increasingly related, such as military interests, economy and larger security considerations’ (Norwegian Diplomat I 2017). Greater utilisation of oceans, or national maritime zones, in domestic politics is a trend likely to increase as ocean space continues to rise on the agenda.

When UNCLOS negotiations were underway, there were critical voices arguing for a ‘global commons’ approach to the oceans (Vogler 2000, 48–63): that states should manage the oceans jointly (under the UN), to avoid disastrous consequences ‘for the future of mankind’ (Pardo 1968, 223).¹²⁹ Fuelled by the increasingly evident effects of climate change, this conception of ocean space is now also on the rise, coupled with the original/traditional view of the maritime domain as a void or domain separated from society, faced with the effects of human activity ranging from matters directly concerned with the ocean itself, to the general consequences of industrial activity, global trade and a growing global population. Greater ‘territorialisation’ (for exploitative purposes) will necessarily clash – on the conceptual level – with the stewardship ideas featured on the agenda today. The question is to what extent these trends are compatible. Steinberg (2001, 176) holds that we are witnessing a clash of ‘social constructions’ of the ocean, as the ‘capitalist’ or ‘materialist’ trends in the maritime domain outlined are fuelling this clash.

The various areas of jurisdiction under the legal regime developed for the oceans are subsequently facing new challenges. Examples here ranging from efforts to implement MPAs in parts of Antarctica to the Intergovernmental Conference on an international legally binding

¹²⁹ However, argumentation was used during the UNCLOS negotiations in the 1970s that favoured the economic interests of states while using language that emphasised environmental concerns: ‘Within the framework of the [UNCLOS] Conference, Latin Americans, Africans, Arabs, and Asians found in some Western nations, led by environment conscious Canada and Norway, strong allies that began to rationalize and sell the EZ concept in language well understood by the maritime powers of the West and at least not misunderstood by the Soviet Union.’ (Nweihed 1980, 7)
instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBJN). As shipping is increasing in territorial waters across the globe, issues of access rights, status of sea-lanes, and environmental protection are also at the forefront of international debates (Oude Elferink and Rothwell 2004; Jaeckel, Gjerde, and Ardron 2017). Climate change and other environmental factors are further causing variability in the spatial distribution of fish stocks, challenging established management regimes or prompting new Regional Fisheries Management Organisations (RFMOs) (Stokke 2017, 2000). And the processes for determining the limits of continental shelves beyond 200 n.m. are becoming increasingly relevant and potentially conflictual (Busch 2018).

However, proponents of the Law of the Sea regime and the increasing legalisation of maritime space would argue that this offers best framework for dealing with the issues arising over how to manage ocean space. Measures ranging from MPAs to RFMOs are indeed developed provide mechanisms for tackling the growing number of ocean-based environmental issues. However, are these mechanisms sufficiently able to tackle the rapidly changing climatic conditions in the oceans? And are states willing to forgo potential economic benefits in order to deal with these challenges?

In sum, states are concerned with their maritime space, and increasingly so. Also from a purely functional perspective, maritime ‘territory’ has become more valuable for states. In all four countries examined in this thesis it has figured in some form of domestic/foreign policy agenda aimed at national development in recent decades. In all four countries, maritime disputes – settled or outstanding – have topped the policy agenda at some point in the last decade. 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.

Back in the 1960s and 1970s, when states were implementing extended maritime zones, the idea that maritime space and the location of an (invisible) and slightly arbitrary boundary at sea should hold such significance as has been proven in this thesis, would probably have been unimaginable. However, returning to the idea of ‘territorialisation’, this development is not a
dichotomous option of either/or: it is a process in which states’ relationships to ocean space are fluctuating and shifting. The maritime domain as such continues to be distinct from land in terms of sovereignty and sovereign rights, and more generally as a spatial domain – but it is also acquiring characteristics resembling those of politics over land.

How, then, do these trends fit with the findings in this thesis concerning maritime boundaries and why states agree on maritime boundaries? Many predictions have been made about the future of human interaction with ocean space, also concerning maritime boundaries specifically:

It seems likely that future approaches to ocean boundary-making will place less emphasis on permanent and inflexible settlements, and more emphasis on imaginative and sophisticated arrangements for the allocation and administration of ocean space. With further scientific and technological advances in ocean management, it may be expected that the concept of boundary maintenance inherited from the land will yield to an increasing diversity of post-settlement ocean-boundary-related arrangements (D. M. Johnston 1988, 18).

Today, three decades later, as confirmed throughout this thesis, maritime boundaries have not lost their relevance or importance. Despite Douglas M. Johnston’s prediction, states still care quite a lot about where to delineate maritime space. It also seems reasonable to expect that as maritime space becomes increasingly relevant for states, related outstanding boundary disputes will be more difficult to settle. The preoccupation of states and state leaders 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. Changes in technology and state capacities to monitor and be present in the maritime domain may engender greater risks of conflicts emerging over ocean space. Increased use of oceans as a resource base, for everything from seabed minerals to fisheries, has further heightened the ‘salience’ of maritime space for states.

Additionally, as maritime disputes become infused with intangible dimensions and issues concerning symbolism and engaged domestic audiences, the characteristics of dispute ‘containment’ at sea could be changing. Contrary to popular belief, 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.

The conceptualisation of the maritime domain as a ‘conflict reducer’ might therefore be questioned: Indeed, it might be said that maritime disputes are coming to resemble traditional territorial conflicts on land. Especially in bilateral relations that are already fraught, as with Colombia–Venezuela or Norway–Russia (over Svalbard), maritime disputes may prove to hold latent conflict potential.

However, 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, as shown throughout this thesis, 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.

If, as predicted by FAO (2016), fisheries continue to grow in importance in terms of livelihoods and a source of protein, certain characteristics of fisheries and maritime boundaries might also become more pronounced, spurring cooperation. As states fulfil their UNCLOS obligation to manage transboundary fish stocks, the continued development of multinational management regimes might render the exact location of a maritime boundary less important for this specific purpose, in a short version of Johnston’s prediction. In the case of Norway–Russia (2010) for example, fishers from both countries traverse the maritime boundary to catch various stocks that are jointly managed in the Barents Sea (Hønneland and Jørgensen 2015; Østhagen 2018b).

Further south, however, in the North-East Atlantic, maritime boundaries and zones are used in arguing for higher shares of the total allowable catch of both herring and mackerel, in turn leading to overexploitation of the shared stocks (Ørebech 2013; Spijkers and Boonstra 2017). The current UNCLOS regime was developed at a time when resource extraction from the continental shelf was gearing up. Although this matter is beyond the scope of this thesis, we could question to what extent this overarching regime is adequate and sufficiently adaptable to handle the changes occurring both in the oceans themselves, and with the politics surrounding these processes, as environmental changes grow exponentially.

Settling maritime boundary disputes does not seem to become an easier process with the
trends described. The barriers identified in this thesis – like domestic audiences and security relations – will remain relevant, perhaps even more so. Moreover, potential distrust, or limited utilisation, of international adjudication and arbitration might not make it easier to settle maritime boundaries. On the other hand, the use of complex resource-sharing mechanisms, or the increasing focus on developing adequate RFMOs concerned with various transboundary fish stocks, as well as the establishment of MPAs in tandem with greater environmental awareness concerning 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 these 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. That being said, it does not seem likely that maritime boundaries – settled or unsettled – and related issues of resource management, ownership and access are likely to become less relevant in years to come.
14. Concluding Remarks

When the international community agreed on an international legal framework for the oceans, all coastal states were granted the right to extended maritime zones. This innovation did not only secure sovereign rights to the resources on the seabed and in the water column further offshore than thought possible a few decades earlier: it also created a problem. Suddenly the oceans were being carved up into various national zones, just as European states had carved up ‘free’ land on other continents centuries earlier. In contrast to delineating borders on land, this new ocean imperialism was based on geometric propositions, the shape of the relevant coastline, and international law.

Although it served as the impetus for implementing extended maritime zones across the world, the Law of the Sea Convention did nothing to help to solve the problem that arose as a consequence: overlapping maritime claims and boundary disputes between states. In some instances, states managed to agree rather quickly on where to delineate the maritime boundary between opposing or adjacent coastlines, as the issue came to fore on national agendas in the period 1960–1980. However, more than half of boundaries at sea were not agreed in that period. Some took years of negotiations to settle. Some lay dormant for decades before suddenly emerging in the limelight. Most still remain in dispute.

Although always of existential importance to humans, the oceans have been on a slow political ascent since the early 2000s. Environmental concern and engagement, coupled with greater utilisation of the oceans for economic purposes through resource exploitation and transport, have propelled previously dormant or inconsequential maritime disputes onto the political agenda. At the outset, it seems that the benefits of agreeing on a clear boundary marking the jurisdiction and sovereign rights of each coastal state would greatly outweigh the costs of concessions made through negotiations. However, this has not been the case, and more than half of all maritime boundaries remain disputed. This thesis has examined why states settle their maritime boundary disputes, and why some of them do not.

Seeking to avoid a dogmatic approach to international relations, this thesis has applied eclectic and middle-range theorising from various strands of political science in combination with international law to delve more deeply into the processes that determine the outcomes of maritime boundary disputes, across contexts. Instead of pre-defining an answer to the question and using
case studies to prove the accuracy or relevance of that answer, the approach here involved mixing inductive and deductive reasoning. Theories, assumptions and arguments concerned with state behaviour and maritime boundaries, territory, conflict and international law have been crucial in negotiating the masses of empirical data. I have aimed to let such data material speak for itself across four countries and 33 maritime boundaries, in order to extract out some general features or trends that go beyond the context-specific.

Why do states settle their maritime disputes? One approach would be to argue that every boundary dispute at sea is contextually unique and dependent on the geographic, legal and political circumstances specific to the case. Given the complexity of the hypotheses and their interaction, every dispute might risk becoming beholden to its specific context and timing. That could prompt a circular argument where settlement is always a function of the ‘right’ conditions – which themselves are simply a list of the conditions at that specific point in time. If so, attempting to say something more general about maritime disputes at large could be futile. Alternatively, it could be argued that the only thing that matters is the presence of resources, and interest in them, so when states are eager to exploit resources, they settle a dispute with their eyes on the prize.

However, as is often the case, the ‘truth’ lies somewhere in between. Not even the allure of oil and gas exploitation is sufficient to overcome legal and domestic barriers when these are present, or to obliterate the legacy of negative historic relations with the opposing state. I have opted for accuracy and relevance (generalisability), rather than attempting to conjure up a neat, parsimonious and simple answer to the question at hand. And so the answer that emerges is a complex one. In turn, there are patterns and trends that can be discerned across the various instances. Further, the results shown here do lend themselves to some form of generalisation, as well as falsification. Examining other countries and other cases in different regional contexts could provide greater validation.

First, it is not sufficient to study maritime boundary disputes solely as individual cases. How each dispute relates to other disputes involving the same countries, in the same maritime region, must be taken into consideration. Second, we need to conceive of the dependent variable beyond the binary settled/not settled. By opening up the outcome and depicting it as a process with various steps, we can understand the nuances in what drives and what hinders settlement of maritime boundary disputes, at different points in that process.

Three broad strands of hypotheses – system, legal and domestic – have been shown to hold
varying degrees of relevance to the different steps in the process of settling maritime boundary disputes. Crucially, traditional theorems concerned with power disparity and asymmetry, as well as the relevance of a given boundary for the core security concerns of a state, do not seem to hold up under scrutiny here. However, a more nuanced approach to regional patterns of historic interactions can set the frame – or strategic environment – for what can be achieved between two disputing states.

Moreover, this study has unpacked two apparent contradictions when it comes to why states settle maritime boundary disputes. It has been argued that the presence of oil and gas resources can enable, or hinder, states to settle boundary disputes. Fisheries have similarly been portrayed as the primary reason for boundary agreements, or it has been discarded as having limited relevance. A more nuanced and complex picture has emerged here by exploring these causal logics across cases, where I have found other variables that condition the effect of hydrocarbon and living marine resources on boundary disputes.

What is further clear, is the importance of the legal characteristics of a maritime boundary dispute. That is hardly surprising, as a boundary at sea is a legal construct in and of itself (in contrast to, say, borders between states due to the separating force of a river or a mountain chain). What is novel in this thesis is the attempt to view legal characteristics in conjunction with other political explanatory factors, in essence using international law to help explain a complex outcome in international relations.

A maritime boundary is inherently a compromise whereby each state usually concedes at least some part of its maximum zonal claim. ‘Hard points’ such as treaties or court/arbitration decisions before the arrival of the UNCLOS confer less flexibility in negotiating positions (Byers and Østhagen 2017). The same goes for a state’s concern over legal precedent, when the dispute at hand is seen in conjunction with other outstanding disputes. Concern for precedent can also – as seen in some cases here – serve as an enabler for settling disputes.

Finally, the domestic dimension is a neglected aspect of maritime boundary settlement processes; one that this thesis has explored. Separating this aspect into three different strands – ratification procedures, public engagement, and economic interests – has shown that the domestic-audience component of maritime disputes is not only highly relevant to understanding why settlement efforts are halted or not ratified: it is also becoming increasingly important.

States and their political leaders therefore at times deliberately focus on the ocean and
related disputes. That means that states are not bound to look towards the sea as a response to systemic changes, they choose to do so in order to advance their own interests. Canada put ocean issues at the top of the agenda during its Group of Seven (G7) Presidency in 2018. Norway has chosen to focus on ocean growth from 2017 onwards as a way of transcending its dependency on oil and gas exports.

In other instances, previously ‘managed’ or ‘frozen’ boundary disputes demand attention. Australia’s dispute with Timor-Leste was forced on the agenda by public discontent in 2017. The maritime dispute with Nicaragua was centre stage in Colombia’s 2018 Presidential election. And in the summer of 2019, the drilling for oil and gas by Turkish vessels in Cypriot waters propelled the larger dispute over Cyprus, as well as the multiple unresolved boundary disputes in the eastern Mediterranean, onto the international agenda.

This speaks to the growing importance of maritime space for states and their interest groups, as well as the infusion of symbolic and/or intangible elements into boundary negotiations – neither of which was particularly prominent in the 1960s and 1970s. Moreover, the domestic-audience component of an initially legal and technical exercise might make it difficult for states to yield maritime space in bilateral negotiations. A trend emerging through this study is thus the ‘ politicisation’ of the ocean – or the ‘territorialisation’ of maritime space.

The expansion in human utilisation of the oceans due to transportation and resource needs, as well as greater awareness of what is occurring at sea from both an economic and science perspective, have resulted in greater attention and value being given to maritime space. Maritime boundaries and related disputes are thus likely to continue to appear on the political agenda. This also brings with it the realisation that the specific location of the boundary might sometimes be less important when mechanisms for resource sharing can be used.

These points are relevant not only for straddling hydrocarbons or fish stocks, but also managing the latent conflict potential between states at sea. As states and companies continue to develop technology to further expand their ability to utilise ocean space and resources, the question of maritime rights and responsibilities will only become more important to human society. As Arthur C. Clarke succinctly put it: ‘How inappropriate to call this planet Earth, when clearly it is Ocean.’

\[130\] Lovelock (1990, 102) quoting Clarke. Perhaps equally fitting is Clarke’s warning in the foreword of his novel 2001: A Space Odyssey: ‘[P]lease remember: this is only a work of fiction. The truth, as always, will be far stranger.’
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Appendix I: List of Author’s Background Interviews

Australia
- Henry Burmester (Former Lead Negotiator, Attorney-General’s Department), Canberra, January 2019.
- Australian Government Official III (Geoscience Australia), Canberra, January 2019.
- Former Australian Government Official I (Former Lawyer, Attorney-General’s Department), Canberra, January 2019.

Canada
- Lawrence Cannon (Former Foreign Minister of Canada), Vancouver, April 2017.
- Canadian Government Official I (Global Affairs Canada), Ottawa, May 2016.
- Canadian Government Official II (Global Affairs Canada), Ottawa, May 2016.
- Canadian Government Official III (Global Affairs Canada), Ottawa, May 2016.
- Foreign Diplomat Canada I (Norwegian Embassy to Canada), Ottawa, February 2017.
- Former Ambassador Canada (Global Affairs Canada), Ottawa, October 2018.

Colombia
- Julio Londoño Paredes (Former Foreign Minister of Colombia), Bogota, May 2018.
- Ricardo Abello Galvis and Walter Arévalo (Legal advisors/Professor), Universidad del Rosario, Bogota, May 2018.
- Colombian Government Official I (Global Affairs Canada), Bogota, May 2018.
- Colombian Government Legal Advisor I (Cancillería, Ministerio de Relaciones Exteriores), Bogota, May 2018.
- Foreign Diplomat Colombia I (Norwegian Embassy to Colombia), Bogota, May 2018.

Norway
- Jonas Gahr Støre (Former Foreign Minister of Norway), Bodø, Norway, April 2017.
- Foreign Diplomat Norway I (Canadian Embassy to Norway), Oslo, June 2018.