

AUTHORS ACCEPTED MANUSCRIPT

Waves of contention: framing the complexity of unresolved EU maritime boundary disputes

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Abstract

EU responses to maritime boundary disputes reveal certain paradoxes of governance. The increasing interest of EU States in controlling larger maritime areas and the public and private exploitation of marine and seabed resources are enhancing the territorialisation of the sea. The EU as a political project claims to transcend state-vested interests, promoting peaceful dispute resolution when it comes to maritime boundary disputes. This article highlights common drivers of maritime boundary disputes involving Member States and the role played by the EU in solving them (or not). Our purpose is to provide an investigative introduction that can aid further analyses, by showing that EU membership is not in itself sufficient to address historical antagonisms, geographical realities and national/economic interests when it comes to the maritime space. However, the EU does have a positive role to play as a facilitator of diplomatic negotiation, potentially holding both stick and carrot. The current Blue Growth agenda naturally calls for the settlement of disputes and the peaceful use of the oceans, but it can also play a role in feeding them via the incentivisation of actors involved in profit-generating activities at sea.

Keywords: Territorialisation of the sea, maritime disputes, maritime boundaries, European borders, maritime policy, Exclusive Economic Zone, Mediterranean Sea.

1. Introduction

The changing geographies of the seas – from their political boundaries and human use to associated economic and ecological impacts – are increasingly dominating international relations (Savoldi, Jancîc, Salvador, 2020). The heightened visibility of States consolidating and extending their sovereignty through the seas parallels the increased competition for natural resources as well as the evolution of aquatic exploration and extraction technologies. The maritime business sector is expanding, not only due to the unprecedented growth of the global shipping industry (almost 90% of international commerce travels by sea) and coastal tourism, but also because of the sheer variety of industries that now depend on the oceans. The OECD report (2018) on the Ocean Economy in 2030 reveals a new global economic frontier — between 2010 and 2030 the ocean economy is predicted to more than double its contribution to global added value. The popularity of the concept of Blue Growth/Blue economy demonstrates that states, the EU and economic stakeholders consider the maritime domain as a priority for economic development (European Commission, 2012).

The sea is resource-rich and various state and non-state actors have developed interests in securing access to these resources and furthering their functional control

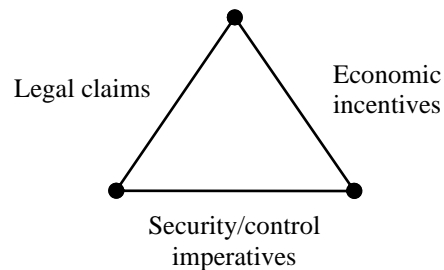
over maritime spaces. Corporative interests are expanding towards the sea, in spite of the tremendous uncertainty regarding the potential impacts that extractive activities can have on ecosystem vulnerability — as with deep-sea mining (Washburn, et., al. 2019) — and the consequent socio-environmental threats they can pose to local coastal communities (Merem et al., 2019). The term “ocean-grabbing” has been coined to account for “actions, policies or initiatives that deprive small-scale fishers of resources, dispossess vulnerable populations of coastal lands, and/or undermine historical access to areas of the sea” (Bennett, Govan and Satterfield, 2015: p.61). Fishing often appears implicated in international maritime boundary disputes – sometimes entangling civilian fishing into the government’s strategy of constructing or enhancing a maritime boundary, politicizing the civil role of fishing (Song, 2015). In recent decades, spatial regulation of the ocean become more visible in fisheries management, often showing a paradoxical situation in which more boundary applications need more transboundary interventions (Song, et. al., 2017).

At the same time, forms of criminality at sea have become more prominent, e.g. illegal fishing, illegal sand mining, human trafficking, drug smuggling, piracy (Germond and Mazaris, 2019; Papastavridis, 2018). Consequently, the maritime domain is increasingly one of control and “territorialisation” (Germond, 2020), and thus of political tensions, where overlapping border claims generate new risks of conflict. Maritime territorialisation accounts for the paradox consisting in treating the sea as ‘land’, where state sovereignty and nationhood is performed (Roszco, 2015). In fact, the current process of territorialisation of the sea refers to States’ increasing functional and policy leverage over maritime space and thus transcends the notion and practice of sovereignty and jurisdictional control (Germond and Smith, 2009). Whereas this highlights the importance of treating the maritime space as if it were land space, sovereignty rights nonetheless play a crucial role in States’ increasing willingness to control the maritime domain.

The intersecting claims of several countries on the East and South China Seas (an area that has intense trade flow and is rich in hydrocarbons and natural gas) and Russia’s controversial military deployment in the Arctic Ocean and the Black Sea are two well-known contemporary examples of how maritime disputes are shifting strategic efforts from land to sea. These shed light on the fact that the rationale for states to securitise and control the maritime domain is primarily based on geo-economic considerations, i.e. controlling important trade routes and/or resource-rich maritime areas. The complexity of existing legal and political mechanisms for dispute settlement provides incentives to those who would like to bypass rules but also offers flexibility for the effective management of disputes. The process of territorialisation of the sea also proceeds from States’ willingness to control the flow of goods and people at, and from, the sea and to address maritime criminality challenges (Germond, 2020).

Legal claims, economic incentives and security/control imperatives form a complex nexus of interrelated and sometimes incompatible interests and practice (see Figure 1), which help explaining territorialisation processes as well as the emergence of maritime boundary disputes.

Figure 1: Interrelated drivers of maritime territorialisation and disputes



The European Union, surrounded by two oceans and five seas, is not immune to maritime boundary disputes. This is the case both among Member States – whose claims on specific seawaters often overlap – and between European countries and third parties. There have been several cases of maritime boundary disputes in the past decades, commonly relating to conflicting definitions of the extension of Exclusive Economic Zones (EEZ) and the access to the high seas. In some cases, these disputes touch on historic controversies that surround certain land/national borders, and which have had an influence on EU integration processes. The resolution of maritime boundary disputes between Member States – or the lack of agreement concerning them – have had and continue to produce serious impacts across the EU’s multi-layered governance system. This is particularly acute given the fact that maritime boundary disputes are frequently connected to fishing disputes.

Within such a complex scenario, maritime affairs have been included in the political agenda of the EU since the mid-2000s, resulting in the launch of the Integrated Maritime Policy (IMP) (2007) and eventually the European Maritime Security Strategy (MSS) (2014). The former, which translates a greater European vision for the oceans and the seas into actual normative frameworks, aims to address “the challenges of globalisation and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability” (EMP, 2007: p.2). The latter directly references the importance of maritime boundary disputes: indeed, the MSS stresses that “the peaceful settlement of maritime disputes in accordance with international law” constitutes a maritime interest of the EU (MSS, 2014: p.6). The MSS considers maritime disputes as a threat, but one that is related to “external aggression” (2014: p.7). This definition might be due to the fact that internal disputes are not seen as threatening, since the EU claims to have mechanisms in place to deal with them (Riddervold, 2018). Thus, “promoting the dispute settlement mechanisms according to the UNCLOS” is directed at third countries (MSS, 2014: p.11). The existing mechanisms have sometime suffered the contradictions deemed to emerge from the apparent dichotomy of national-supranational governance. In reality, the situation is more complex: a variable number of different actors, public and private, operating at supranational, national, regional and local level, are entangled in decision-making within the EU’s maritime domain. Maritime multi-level governance is encouraged by the EU Commission through the Sea Basin Strategy, and implemented

within the territorial framework of “maritime macro regions” (the EU identified five macro-regions: Baltic Sea, Alpine, Danube, and Adriatic and Ionian macro-regions).

Despite the increasing importance of the maritime element within global and European affairs and the existence of unresolved European maritime boundary disputes, there is a substantial lack of academic literature on this subject. This article explores international litigations that involve one or more European country in an attempt to identify and track some of the common features and drivers of such disputes. We concentrate on three significant cases of current controversy within the EU – Greece and Turkey; Spain and Gibraltar (United Kingdom); Slovenia and Croatia. Our objective is to provide an investigative introduction that can aid further analyses of this increasingly crucial area of European policymaking. To what extent can the EU contribute to maritime boundary dispute settlements involving its Member States by impacting on the drivers of such disputes. Yet, before starting our discussion of the different cases, it is necessary to provide an overview of the transforming role of maritime borders.

2. The complex evolution of maritime borders: political and legal dynamics

With the adoption of Hugo Grotius’ doctrine of the free sea, developed at the turn of the 17th century, maritime areas were declared free/non-sovereign “territories”. The sea has gradually been conceived and constructed as an unrestricted space, a void through which States could project power and trade without friction (Steinberg, 2001; Germond, 2020). This created extremely suitable conditions for the expansion of a mercantilist political economy agenda, embraced by several European rising powers at the time. Through the application of state violence they could control major channels of trade, thus generating capital accumulation (Chaudhuri, 1985; Davis, 1962; Nijman, 1994) and contributing to the consolidation of Nation-States in Europe (Glete, 2000).

With the transformations brought about by the Industrial Revolution, the nature of sea-space also changed. The intensification in the use of coastal waters as a source of living and non-living resources and the use of distant waters for the transportation of commodities generated a jurisdictional partition of the ocean between the “deep sea” – where capital could move without hindrance – and “coastal waters” – where territorial States could protect investment and restrict access (Steinberg, 1999).

This definition of coastal waters generated the first contemporary maritime borders and, with them, the first international disputes over the delimitation and use of maritime areas. This contributed to transform the handling of the seas into a sensitive political subject. At the beginning of the 20th century the Scandinavian idea of a standard territorial sea became more widely applied; the cannon-shot rule, defined by the distance of how far a cannon could protect coastal waters, became a common measure to define territorial limits. As a consequence of this customary practice, most maritime countries claimed their three miles of national territorial waters. Yet, the three-mile limit did not become a universally accepted standard, due to the high level of imprecision in defining such limits and to the evolving technologies that contributed to pushing it deeper into the sea (Glassner, 1999).

The crisis of the free sea doctrine further intensified over the first half of the 20th century, when maritime borders came under increased stress because of the development of

the petroleum industry (Nyman, 2015). Motivated primarily by the wartime self-realisation of increasing national dependence on imported oil, the United States, in 1945, was the first to claim the ownership of its continental shelf - aiming to protect potential offshore petroleum resources from foreign exploitation (Glassner, 1990). This type of declaration was quickly replicated by many other States.

Amid the expanding trend to define national rights over seawaters, the international community soon began to work towards a common compromise. After two failed attempts, in 1958 and 1960, to negotiate shared standards for the definition of the right to access and exploit coastal maritime areas, the United Nations Conferences on the Law Of the Sea (UNCLOS III) finally reached a large consensus in 1982. Such agreement was based on a series of conditions: developing countries obtained guarantees in regard to their control over resources in their EEZs, whereas naval powers were reassured that their right of passage was somewhat guaranteed. The agreement defined the limits of the territorial water to 12 nautical miles (nm) from the national shores; 200nm for the EEZ and for the continental shelf – including the possibility to apply for an extension of the latter to up to 350nm away from dry land (UN, 1982). Amid the different approaches to sea governance, a dual regulatory regime was ratified in 1994. Such a shared regulatory tool was characterised by the definition of territorial waters combined with free access to the high seas, and a “free market” approach to the seabed mining issue.

Yet, as Glassner (1990) points out, there is no reason to think of UNCLOS III as the sole or definitive framework regulating national jurisdictions at sea. As observed by Steinberg (1999), UNCLOS III is limited, if not contradictory, with respect to the use of maritime space for capital mobility or as a site of fixed capital investment. Here, these shortcomings reveal both a crisis of regulation and a spatial crisis. The establishment of the 12-mile territorial sea and of the 200nm of EEZ expands the proportion of global seawaters under the jurisdiction of coastal states from 3% to 36% (Glassner, 1999). This jurisdictional and functional expansionism increases the risk of disagreement when determining maritime boundaries. Given technological advancements in the marine extraction industry, this risk is ever-present with the oceans increasingly transformed into new “land” for capitalist exploitation – sidestepping a number of regulatory policies that tend towards corporate environmentalism (Savoldi, Jancíc, Salvador, 2020).

Such tensions become even more significant if we consider three further conditions. First, the current number of un-delimited international maritime boundaries is much larger than the number of maritime border-lines agreed by one or more coastal country (Suárez de Vivero and Rodríguez Mateos, 2007; Prescott and Schofield, 2004). Second, the Convention on the Law of the Sea stipulates that coastal States are legally required to delimit their boundaries “by an agreement on the basis of the international law”; yet, the existing law remains imprecise. This means that States can look at a variety of geographical, historical, political and commercial-economic arguments to advance their stances (Lakićević-Đuranović, 2017). Lastly, there is an inherent tension between the enforcement of fixed legal boundaries and the fluid nature of the sea (embodied by the idea that “fish cross borders”), in the context of land-based practices of security and governance.

In sum, the (legal) history of international attempts to regulate States’ access to/rights on the sea is characterised by a number of reforms that have been based on diverse

sets of principles. This convergence and divergence of doctrines have combined with the changing use of the sea as well as the changing functions of the maritime factor at a national and global level. This helps to understand the basis of a significant number of disputes developed between nations in terms of defining national competences and rights over contested seawaters. This article contends that, despite decades of Communitarian integration, Europe is no exception to such a trend: in fact, several maritime litigations involve EU Member States, between themselves or against neighbouring third countries.

3. EU maritime boundary disputes: significant cases

The cases presented next offer relevant and actual examples of three major disputes relative to maritime boundary disputes between EU Member States, and within a European and a non-European country.

3.1 Aegean Sea: oil, continental shelf delimitation and other historical issues between Greece and Turkey

The recently signed deal between Turkey and Libya to redraw the maritime boundaries in contested waters is reviving the longstanding maritime boundary dispute between Turkey and Greece, turning the eastern Mediterranean into a turbulent region, including recent naval posturing.

However, the Greece-Turkey maritime boundary dispute has deep roots in the historically conflicting relationship between the two Aegean countries. Turkey's evolving relationship with the EU, of which Greece is a member state since 1981, has also influenced the processes at play. Multifaceted disagreements characterise maritime relations between Turkey and Greece, and have produced a series of military incidents that have brought the two countries to the brink of war (Heraclides, 2011). Negotiations involving the EU and UN in 1999 de-escalated animosities between the two countries, bringing about a relatively settled but still unresolved relationship.

Even the definition of what constitutes a dispute is a point of contention between Turkey and Greece. Turkey considers five points of contention: the delimitation of territorial waters; the demarcation of the continental shelf; the status of uninhabited islands; the demilitarisation of other islands; and the delimitation of national airspaces (Başlar, 2001). Greece, meanwhile, considers that the delimitation of the continental shelf constitutes the only unresolved issue (Theodoropoulos, 1997).

According to the Hellenic Republic, the dispute started in November 1973 when the Turkish Government granted its national petroleum company permits to conduct research in, according to Greek authorities, the Greek continental shelf - west of the Greek islands in the eastern Aegean (Ministry of Foreign Affairs, Hellenic Republic, 2018). For Turkey, the beginning of the dispute dates back to the 1913 London Peace Treaty in which the European "Great Powers" decided that all Aegean islands occupied by Greece – except Gokceada (Imbros), Bozcaada (Tenedos), and Meis (Castellorizo, Megisti) – should be ceded by Turkey to Greece. As Turkish authorities claim, the decision was taken with no involvement of the Turkish government, in the context of the dissolution of the Ottoman Empire. As such, Turkey did not formally accept the transfer of islands to Greece until the 1923 Lausanne Treaty, which set the present

border between the two countries (Van Dyke, 2005). To complicate this picture, it must be noted that the Dodecanese remained under Italian sovereignty until the archipelago was ceded to Greece under the Treaty of Paris in 1947 (Kaldis, 1979).

With the Lausanne Treaty, it was agreed that the territorial sea would have an extension of three miles. Later, both Greece and Turkey extended their territorial sea by up to six miles, establishing the current regime whereby 8.8% of the Aegean is under Turkish sovereignty and 35% under Greek sovereignty – leaving 56.2% as high sea (Davutoglu, 2010). Nevertheless, a few years after the 1982 Law of the Sea came into force – a convention not ratified by Turkey – Greece insisted on its aim to extend its territorial sea up to 12 nautical miles. This change would have increased the percentage of Aegean waters under its sovereign control up to around 64%, leaving only 8.3% to Turkish sovereignty and 26% to “high seas” (Papadakis, 2018). Due to the proposed changes, Turkey feared that the extension of Greek waters up to 12 miles would transform the Aegean into a “Greek lake” (Başlar, 2001). With such a proportion of seawaters in Greek hands, Turkey feared that ships coming from the Bosphorus and the Dardanelles, as well as from its eastern coast, would have to cross Greek waters to reach the Mediterranean. This even though, according to the principle of “innocent passage”, there would have been no impact on trade: continuous and peaceful passage is granted without the approval of the coastal state to all but military vessels.

During the 1970s, the Greek-Turkish dispute over the delimitation of the continental shelf was politicised because of oil exploration. While Greece found oil off the northern Aegean coast in 1973, Turkey granted 27 exploration permits in the Aegean to the Turkish Petroleum Company (Vassalotti, 2011). This problem was epitomised by the Turkish publication of a map that divided the Aegean continental shelf with a border line that had not been bilaterally agreed. One year after, Turkey sent an oil-exploring vessel into disputed waters, escalating tensions between the two countries (Ibid).

In 1974, this maritime affair was sidelined by a greater issue that unavoidably complicated relations between the two countries: the military operations in Cyprus, which led to the partitioning of the island. The Bern Agreement of 1976 established a sort of ‘modus vivendi’ between Turkey and Greece that did not last long (Schmitt, 1996). In fact, the matters of contention became soon the contested use of airspace whose delimitation depended on the extension of territorial waters and the re-militarisation of a number of Aegean islands by Greece.

Six year after Greece joined the European Union, in 1981, tensions sparked again when Greek companies began to drill in the northern Aegean. In response these operations, Turkey sent to the area a research vessel accompanied by a warship, putting both armed forces on alert. The crisis was mediated by NATO, rather than the European Union. As Rumelili (2004) claims, the literature in general agrees that the EU failed to exercise a significant influence on Greek-Turkish relations until 1999. Importantly, this is when the Turkish candidacy to join the EU was finally accepted at the Helsinki Summit. The Greek withdrawal of the veto against the integration of the neighbouring state in Europe was decisive for the decrease in bilateral tensions - especially considering Turkey’s acceptance to go to the International Court of Justice. This demonstrates that the EU’s soft power, in the form of conditionality for accession to, or partnership with, the EU, can play a significant role in dispute settlement (Aydin and Acikmese, 2007).

During the last decades the EU has played a constructive role in addressing Greek-Turkish relations, which reflects a form of Europeanisation of the dispute. After few years, cooperation between the two countries improved, developing common agendas with respect to, for instance, trade, tourism and security. However, despite the EU's creation of a common ground for dialogue between the two countries, the dispute is currently unresolved, and recently it became again a delicate matter of contention. In 2017, the Greek coastguard shot at a Turkish vessel; in 2018, tensions further rose after the collision of two patrol boats near the Imia/Kardak isles (Maltezoú, and Kucukgocmen, 2018).

This case study illustrates the way drivers of disputes interact and reinforce each other; in this case the 'historic' legal claims and security considerations in the context of migration. Indeed, at the time of writing, new frictions are arising in the Aegean due to a Memorandum of Understanding signed between Turkey and Libya, which would allow these two countries to drill natural gas in disputed waters next to the Greek island of Crete (Butler and Gumrucku, 2019). This new maritime boundary could also jeopardise plans for the EastMed gas pipeline project, as Greece considers the deal as a provocation. For the Greek government, the new maritime border delineated in the deal would violate the continental shelf and EEZ of its own islands (Psaropoulos, 2019). The European Council recognised the deal as problematic and reaffirmed its solidarity with Greece and Cyprus (Mitsotakis, 2019).

On June 25th 2020 EU foreign policy chief Josep Borrel visited Greece, where he defined Turkey's redrawing of maritime borders as provocative, stressing the EU support to Greek maritime sovereignty. The renewed interest of the EU foreign office in Greece maritime sovereignty indicates how complex the definition of a maritime border is. In July 2020 a floating barrier between the two countries' coastlines was about to be implemented by Greece in the northern coast of Lesbos in order to deter migrants from accessing Greek maritime waters, increasing the danger faced by asylum seekers at sea (which status is theoretically legally protected by EU law), affirming Greek maritime sovereignty on the sea and enacting the EU maritime border.

3.2 The Strait of Gibraltar: a centuries-long dispute

With respect to the definition of the limits of territorial waters and other maritime disputes, most concerns regarding post-Brexit scenarios concentrate on the English Channel and the seawaters surrounding Ireland. This is due to competing fishing interests in both areas. Yet, far away from Britain, there is another maritime space located in the Mediterranean that risks profound transformations when the UK leaves the EU. Despite limited media and political attention, the governance of the waters surrounding the British overseas territory of Gibraltar could change dramatically as a consequence of Britain leaving the EU.

British sovereignty over Gibraltar has been the object of contestation between Spain and Britain for centuries – since the 1704 Treaty of Utrecht ceded “the Rock” (how locals like to call it) to the British Crown. This tiny peninsula in the eastern end of the Bay of Algeciras encloses a gulf of around 8km wide and 11km deep. On one extreme, there is a major Spanish port – the port of Algeciras; on the opposite and western shore, there is the strategically and commercially important port of Gibraltar. Based on what was established in Utrecht, Spain does not recognise any right to territorial waters

for Britain except for the very inner waters of the port of Gibraltar. Yet, in 1967, against such positioning, based on both customary and conventional law Britain claimed full rights over half of the waters of the Bay – delimited by the median line between the two shores (Baeza, 2015).

Tensions between the UK and Gibraltar on the one side and Spain on the other has characterised the entire history of this Mediterranean British colony. Yet, a peak was reached in the second half of the 20th century, when Franco's regime completely shut down all transport links between the Rock and the rest of the Iberian Peninsula – up to the point that Gibraltarians had to first travel south to Morocco and then north across the Strait if they wanted to enter Spain (Canessa, 2019).

However, tensions did not end with the reopening of the land border in the early 1980s, which was a major change for British-Spanish-Gibraltarian relations which many read as the consequence of the 1986 accession of Spain into the EU (Benner et al. 2017; Barbé 1996; Quesada-López et al. 2017). On the contrary, litigations with respect to the access and use of the local seawaters eventually increased. After a few years of growing cross-border cooperation between Spanish and Gibraltarian forces, since the late 1990s the significant increase of incursions of Spanish fishing vessels in Gibraltarian claimed waters brought the issue back to the international arena (Canessa 2018).

As reported by O'Reilly (1999), since 1991 Gibraltarian authorities have established fishing conservation rules over their claimed territorial waters. An area which extend three miles eastwards and two miles westwards, towards the interior of the bay. In contrast to such decision, Spanish vessels kept violating these limits to fish in what Spanish authorities consider their territorial waters. However, given the relatively low frequency of these events, within the spirit of European cooperation Gibraltarian authorities decided to turn a blind eye on these eventually illegitimate incursions. Yet, since 1997, the intrusions of Spanish fishing vessels into what Gibraltar saw as its waters increased despite Gibraltarian authorities' attempts to push them outside the two/three miles limit. A situation which did not change until another agreement was found in 1999 (González García 2011).

Following these turbulences, in 2012 the EU granted Spain “the right to supervise an environmental protection zone within what had traditionally been known as Gibraltarian national waters” (Lundborg 2014: p.150). This increased tensions again. Spain read such a decision as an implicit recognition of its sovereignty over the local seawaters, and began to police the refuelling operations of Gibraltarian fishing vessels. The government of the Rock viewed this move suspiciously, so that in late July 2013 the authorities of the British overseas territory decided to sink an artificial reef made of large concrete blocks into the seawaters off its eastern coast. The official reason for such a move was to allow the growth of corals and, as a consequence, to increase biodiversity. As an immediate response, Spanish authorities tightened controls at the land border, de facto almost closing it, with the official excuse to better control smuggling across it (González García, 2015).

More recently, in 2018, within the Brexit negotiations between the UK and the EU, Spanish and British authorities “adopted four bilateral agreements (or memoranda of understanding) [known as] the Protocol on Gibraltar, [one of which is concerned with] environmental cooperation” (González García 2018-2019: 23). Such document

foresees the creation of a fora (the Technical and Coordination Committee) where all future decisions concerned with the preservation and/or improvement of the environment in the area, must be taken by British, Spanish, Gibraltarian and local municipal authorities. While the validity of such memorandum is anyway subordinate to the actual outcome of Brexit – i.e. with or without an agreement – the EU did constitute the institutional framework within which such scheme on cross-border cooperation develop.

Somehow paradoxically, then, the European integration of the Iberian country worked both to facilitate reconciliation and to increase conflict. In fact, given the complex and unresolved longstanding dispute on the sovereignty of the tiny peninsula, Spanish and British rights over the Gibraltarian waters can only develop if a practical arrangement is reached (Sanchez, 1982). The EU has been essential in creating a better environment for this informal/unofficial cooperation (Orsini, 2019). Yet, as discussed, other communitarian decisions have produced opposite effects. As such, it is possible to imagine new collaborative or conflicting scenarios when Britain – and, with it, Gibraltar – leaves the EU. In Gibraltar, ‘historic’ legal claims and economic drivers (notably fisheries issues) have long interacted and nourished the dispute regardless of the EU’s action. It will thus be interesting to see the extent to which Brexit will actually make a difference (either positive or negative) towards solving this dispute; indeed, although the political setting in which Spain and the UK operate will change (from multilateralism and supranationalism to bilateralism), both sets of drivers are unlikely to be altered.

3.3 Adriatic Sea: fishing rights and access to the high sea, Slovenia-Croatia

The disintegration of former Yugoslavia led to the creation of several coastal states, with redefined and shifted boundaries both on land and at sea. This translated into a sharp increase in the number of potential maritime boundary disputes (Blake and Topalovic, 1996). A yet unresolved dispute of this kind involves Slovenia and Croatia, which both gained independence in 1991. At the time, national borders had to be defined *vis a vis* several cadastral discrepancies of more than 50 meters on land. In 2001, a solution was eventually found concerning the terrestrial border. However, no agreement was reached concerning the delimitation of the boundary of each country’s territorial waters (Slovenian Government, 2018). Disagreements concern the Bay of Piran, where the land border separating the two countries continues into the sea as a maritime boundary of around eight miles.

The crux of the contention lies in Croatian appeals for a maritime boundary based on equidistance (Article 15 of 1982 UNCLOS), while Slovenia invokes Article 12 of the 1958 Convention that regulates countries’ access to the open sea (international waters). According to Slovenian authorities, using Croatia’s standards would hinder the Slovenian economy – in particular with respect to the fishing and tourist industries – and would not enable free passage to or from the Slovenian port of Koper –the only maritime gateway to the country. What’s more, during the era of the Yugoslav Federation, the administrative and legal institutions of the Bay of Piran were predominantly Slovene. In the 1980s, Slovenian fishermen were farming seafood in the bay – namely mussels, clams, and crabs – close to the Croatian coast (Klemencic and Gosar, 2001).

When Slovenia joined the EU in 2004, the disputed maritime boundary was turned into

a tool to block Croatia's accession process. Eventually both countries agreed to hand the matter over to the international tribunal in The Hague following European pressure; a move that allowed Croatia to join the EU in 2013 (Morgan, 2017). In the following years, negotiations continued in the Arbitral Tribunal, but the dispute remains unresolved. Slovenia supports a 2017 ruling by the Permanent Court of Arbitration in The Hague giving Ljubljana 80% of the contested waters. Yet, Croatia has not recognised the decision and has appealed to UNCLOS, which would instead grant only 50% of the bay to Slovenia. As no agreement could be found, the case has also reached the European Commission, with Slovenia accusing Croatia of illegal fishing in its waters – thus in violation of the provisions included in the EU Common Fisheries Policy. For Croatian authorities, this was not a case of illegal fishing, since, according to them, Croatian fishers had the right to fish over that portion of the sea (Bolongaro, 2018).

The disagreement between Slovenia and Croatia is not the only border dilemma in the Adriatic Sea, with Croatia and Montenegro engaged in an unresolved territorial dispute concerning the Prevlanka peninsula. This land conflict extends over the sea, as sovereignty over the peninsula is the precondition for defining maritime boundaries in the Bay of Boka Kotorska. In addition, Croatia has another disagreement with Bosnia and Herzegovina with respect to the Bosnian use of a corridor to access the high sea in Croatia's internal waters. Similarly, other disputes concern maritime delimitations between Montenegro and Albania.

In the Adriatic, potential clashes are not limited to the definition of territorial waters. More recently, problems emerged with respect to the high sea due to coastal states' increased exploitation of offshore hydrocarbon and gas deposits. As for this specific typology of maritime litigation, there is no agreement on the delimitation of continental shelf between former Yugoslavian states, which is fundamental to regulate the access to shared oil and gas fields present below the seabed and subsoil of the Adriatic Sea (Caligiuri, 2016). In sum, legal claims have combined with economic drivers and the EU has not really filled in the gap left by the disintegration of the Yugoslavian sovereignty.

4. The EU in a sea of disputes

The cases discussed above (Aegean, Gibraltar and Adriatic) demonstrate that historical claims and geographical realities entail deeply antagonistic dynamics among states, which transcend the conditions of their membership of the EU. Despite the European narrative on peaceful settlement, to be a Member State of the EU has not prevented claims of sovereign rights over other Member States or prospective EU candidate States. On the contrary, maritime countries seem inclined to exploit EU mechanisms and available policy tools to achieve their goals at the detriment of the objectives of other Member States or partners, in apparent contradiction with the spirit embodied by the European integration process.

That said, EU mechanisms have also succeeded in promoting shared solutions (e.g. Slovenia-Croatia). Indeed, there are mechanisms in place to aid Member States solving their disputes and Member States also face political pressures to solve disputes among themselves. The case of Gibraltar also shows that the EU has the potential to create the political/institutional conditions for peaceful, informal *modus vivendi*. However, it can also complicate the existing situation by promoting policies

that can play to the advantage of one party over another. In the case of non-member states or candidates (i.e. third parties), the EU can obviously put pressure (e.g. Turkey), i.e. conditions for EU membership or for trade deals via various mechanisms such as the ENP (European Neighbourhood Policy). Those various policies and mechanisms fall under the umbrella of the EU liberal project, i.e. fostering economic interdependence, political integration and geopolitical stability. To solve maritime boundary disputes involving its Member States the EU has mainly put in place solutions that have appealed to the conventional goals of trade liberalization and political good will among its members. This, of course, with various degrees of success as shown by the three case studies.

Coming back to the triangle of interrelated and incompatible interests and practices driving maritime boundary disputes that we presented in the introduction, the case studies have shown that the EU has sometimes been in a position to address concerns related to one side of the triangle. But, rarely if ever, the EU has been in a position to address all three of them. For example, in the Aegean, security/control imperatives tend to take precedence over purely economic considerations. It is also worth noting that when the EU has tried to address one side of the triangle (e.g. solving fisheries disputes) this has not automatically enabled Member States to solve their long-term disputes regarding sovereign rights over maritime areas, highlighting a recurring weakness of the EU's political project.

An important process to consider is the interlinkage between the legal (and political) maritime boundary disputes and their economic drivers, such as seabed mining or fishing disputes. As a political actor whose main goal is economic prosperity via cooperation and interdependence within the common market, the EU has the power to smooth over or solve disputes via other mechanisms, such as Maritime Spatial Planning and the Marine Strategy, the Integrated Maritime Policy, and the Maritime Security Strategy. However, these mechanisms also have the potential to create the ground for disputes; for instance, the Blue Growth narrative (European Commission, 2012) has been used by Croatia to justify the exploration for oil in the Adriatic, generating the aforementioned dispute with Montenegro (Savoldi, Jancic, Salvador, 2020).

These cases have also shown that when it comes to regulating human activities at sea, jurisdictions are often superseded by the practical need to monitor and control maritime spaces. As a result, the territorialisation of the sea is a process that supersedes the issue of sovereignty over portions of the maritime domain; it encompasses various legal and political mechanisms applied by a variety of state and non-state actors. In this context, the EU, as an intergovernmental and supranational actor, is well-placed to both initiate, lead and operate the process of territorialisation of the sea that is taking place in its maritime margins.

5. Conclusion

This article has shown how the alteration of maritime borders has become an increasingly delicate political subject. The historical evolution of territoriality at sea and the related fluctuating geography of maritime boundaries is reaching a new phase determined by the expanding interests of states and the business sector at sea. The

current expansion of EEZs in a bid to exploit living and non-living resources and the sea's geopolitical dimensions are creating new overlaps between maritime zones, in some cases reviving historically unsolved disputes.

The management of such disputes on the EU's southern border has been left to negotiation between states, revealing a paradox: despite the EU's narrative of peaceful settlement and the principle of good neighbouring, the EU has not prevented states from claiming sovereignty rights against other member and neighbouring non-member states. On the one hand, the EU has acted as a facilitator in the resolution of the disputes, but on the other it has not stopped EU members involved in the disputes to use their veto as a diplomatic tool. This ambivalent behaviour indicates the lack of a united EU *de facto* when considering maritime boundary disputes. This allows for contradictory and sometimes opaque or ambiguous agendas to be conceived and implemented. The case studies have highlighted that EU membership does not guarantee that disputes will be solved. This is something that also applies to non-maritime boundary disputes and has been recurrently noted as an inherent weakness of the EU project as a whole. The EU is not a State and there is no EU sovereign territory, which helps explaining Member States' contradicting legal claims and territorial objectives. Although this is a known limitation of multi-level governance in the EU, this is less visible on land (where main disputes are settled) and much more striking at sea.

Focusing in particular on three relevant unresolved maritime boundary disputes on the southern frontier of the EU – Greece and Turkey, Spain and Gibraltar/UK, and Slovenia and Croatia – this article has highlighted the complexity and multidimensionality of the subject. The Mediterranean Sea is revealed as an area of fluid tensions, where difficult negotiations over the definition of maritime zones and the shifting dynamics between cooperation and competition between states are taking place. Aside from the three interrelated drivers of the disputes (Fig.1), identified in this paper as economic incentives, security imperatives and legal claims, indications of three further drivers have emerged for further investigation: environmental dynamics, evolving national politics and technological transformation. In order to improve our understanding of the implications of maritime boundary disputes in territorial politics and governance of maritime space, further studies need to analyse the mutual influence and intertwining nature of these six dimensions. To do so, we suggest considering maritime boundary disputes as complex systems, where different stakeholders take part in the intricate environment of the maritime regions' multi-level governance.

The analysis of the evolution of the observed disputes gives us an indication about the regional character of these maritime disagreements, which challenge the vision of a unique "European Sea" mentioned in the Integrated Maritime Policy; it reveals instead the plurality of national visions concerning the use of, and access to, the seawaters surrounding Europe – an approach that can provide a more complex and sensible idea about the EU's contemporary geopolitical configuration. The existence of instruments such as the Integrated Maritime Policy and the Maritime Security Strategy demonstrates the EU's effort to assert its control over the seas surrounding Europe. However, the added value of the EU in terms of the mechanisms it offers for economic cooperation and maritime security does not prevent states from putting sovereignty considerations at the forefront of their maritime policies. Although this paper has considered cases of maritime disputes between EU member states and between an EU member state and a non-member state, further research is still needed to

comparatively analyse the varying role that the EU can play in the case of disputes between member states versus disputes with non-EU countries, in order to identify any potential difference in the EU governance practice in this matter.

Finally, we suggest that further research needs to be carried out in the domain of maritime boundary disputes, in particular focusing on the multidimensional consequences of a disagreement. This helps highlighting how different policies (i.e. energy, economy, security, migration) and multi-scalar interests intertwine in defining national and over-national responses, creating complementarity, as well as contradictions. As Brexit has shown, national borders and the idea of national sovereignty are still important drivers of European politics. Thus, we propose that any improvement of the EU's maritime boundary dispute settlement mechanisms must focus both on the local specificities of each cases and, at a higher level, on the political and economic leverage that can transcend conflicting legal claims.

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