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Article

The parting of the seas: norms, material power and state control over the ocean

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Abstract

The paper argues that the norm of sovereignty was extended to sea areas with only minor adaptations. Using an English School approach, it explores the political evolution of control over the seas, demonstrating why and how the norm of sovereignty prevailed over alternative norms and principles regulating control of the seas. The paper then compares the positions of Brazil, China and the United States on the current international regime of the ocean.

Keywords: Exclusive economic zone; jurisdiction; maritime law; sovereignty; UNCLOS.

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Introduction

Since the end of World War II, states have been progressively extending control over sea areas.[1] This has been a major change in state practice and international law, with states now having jurisdiction over 39% of the oceans. Legal rights over the ocean are, however, different from those over land areas: in most maritime areas under state jurisdiction, there are exclusive rights on economic resources, but not full sovereignty. Under the current United Nations Convention on the Law of the Sea (Unclos), states cannot prevent others from, for example, moving ships and aircrafts in the Exclusive Economic Zone (EEZ). Therefore, the Unclos codified a new type of sovereignty in international law, under which states have exclusive authority over natural resources but not over the territory where they are located. Yet, is this different from previous norms of sovereignty, even if legally distinct? And why did states create such regime?

1 The idea of gradual extension of state sovereignty over the seas is in: Friedmann (1971), Keohane and Nye (1977), Watt (1979), Tuerk (2012), and Booth (2014).

I argue that the law of the sea is a rule of coexistence: governments created an inter-subjective norm on what their rights over the seas should be, aiming at preventing conflict and keeping the international system as a state-centric space. This was done by extending pre-existing conceptions of external sovereignty to sea areas (Westphalian and international legal sovereignty, as defined by Krasner).[2] In this way, sovereignty over land and the seas are, in essence, the same norm: only states have jurisdiction over the seas, jurisdiction is spatial, jurisdiction is mutually exclusive, and coastal states can enforce jurisdiction by force. The norm of sovereignty prevailed over at least two others. First, the norm of freedom, under which jurisdiction over large parts of the seas would not exist, and regulation of maritime areas would be weak or inexistent. This is equivalent to the Grotian proposal of a *mare liberum* and close to the idea of *res nullius*, dominant until World War II. Second, the principle that the seas are a common heritage of mankind. This is equivalent to the idea of *res communis*, in which focus would be on the distribution of sea resources and sustainability of sea exploration.

This article has three sections. Initially, the paper explores what the literature tells us about control over the seas, arguing that the English School approach is helpful to understand why and how norms on the seas are introduced and maintained by states. Next, it explains the political and legal evolution of state control over the seas post-World War II. Finally, it demonstrates that a substantial part of the seas is now under state control, and that states actively seek to expand and consolidate sovereignty using a combination of material power and norms. Three countries are examined as illustrative cases: the United States, Brazil and China.

Norms and material power: an English School approach to understand control of sea areas

Literature in the English School has explored interactions between social norms and material power (Bull et al. 2000, 23). Under an English School perspective, states share identities and norms, which they frequently seek to institutionalize (Buzan 2004, 8). As argued by Bull and Watson (1984, 1), states "have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognise their common interest in maintaining these arrangements." I argue that this was observed in the creation and maintenance of the current ocean's regime. Various states – both developed and developing, as well as from different regions and different levels of material power – shared common interests and were conscious of them. They wanted to keep the system as it was: controlled by states and organised under the norms of state sovereignty, territoriality, diplomacy and international law.

2 Westphalian sovereignty: "political organization based on the exclusion of external actors from authority structures within a given territory." International legal sovereignty: "practices associated with mutual recognition, usually between territorial entities that have formal juridical independence" (Krasner 1999, 4)

This approach is missing in IR and political science literature looking at state control over the seas, which can be divided into four groups. First, there is literature focusing on states' strategic behaviour, stressing the roles of material power and geopolitics. This is broadly part of the realist tradition and includes many "classics," such as Thucydides' *History of the Peloponnesian War* and Mahan's *The Influence of Sea Power upon History*. This perspective lost relative importance in the 1990s, but has regained strength due to what some call "the return of geopolitics" (Mead 2014). Dodds (2010), for example, stressed the expansion of state control over the Arctic through the extension of legal continental shelves. Research has also given emphasis to territorial disputes in the East and South China Seas, stressing the US and China's increasing assertiveness and naval modernization programmes (Beckman 2013; Fravel 2011; Samuels 2013; Yahuda 2013).

Second, there is literature stressing the creation and impacts of international regimes, especially the Unclos, regional regimes and issue-specific agreements. From this perspective, as maritime issues frequently affect more than one nation, governments create rules to deal with practical problems. Cooperation is necessary because, for example, sea resources are finite (Naylor et al. 2009), overfishing can lead to depletion (Mack 1995; Roberts 2002) and many fish species are migratory (Balton 1996). As argued by Ásgeirsdóttir and Steinwand (2015), this type of cooperation occurs because states prefer institutionalized forms of dispute settlement. In another work, Ásgeirsdóttir and Steinwand (2018) demonstrated how regimes shape state behaviour, arguing that the law of the sea created a default mode in disputes over boundaries, making them converge to the median line. The literature also looked at other regimes, regarding for example regulation in the Baltic and Mediterranean seas (Jouanneau and Raakjær 2014; Linke et al. 2014), the European Union (Bigagli 2015; Schaefer and Barale 2011), and the Arctic (Koivurova 2010; Young 2009). Similar approaches have looked at some issue-areas, as the cases of biodiversity beyond national jurisdiction (Harden-Davies 2016), deep-sea mining (Durden et al. 2017), fisheries (Allison et al. 2012; Gulbrandsen 2010), marine pollution (Tan 2005), and climate change (Costanza et al. 1998; Galaz et al. 2012).

Third, there is literature stressing the role of norms, with emphasis on the social construction of maritime areas. Steinberg's seminal work looked at the ocean as part of society, an area where social conflict occurs (Steinberg 2001). In the empirical literature, Roszko (2015, 230) has argued that the South China Sea is being constructed as a national territory, something that is possible due to an early state image of a geo-body, which favours the territorialisation of sea areas. Abdenur and Souza Neto (2014) have argued that Brazil seeks to construct a common identity with countries in Africa by stressing that they share the South Atlantic. The same is valid in some issue-areas, as observed in studies that explored attitudes towards shark conservation (Acuña-Marrero et al. 2018), and the social acceptability of Marine Protected Areas (Voyer et al. 2015). In all these cases, priorities to conserve certain species, spaces or eco-systems were socially constructed.

Fourth, there is literature emphasising North-South dynamics, especially how inequalities are reproduced through control of maritime spaces, governance of the seas and impacts from

climate change, especially on small island-developing states and vulnerable social groups. Part of this literature draws on the world-system theory and some of its predecessors, especially works published by Wallerstein and Braudel, who stressed how control of the seas created imbalances between nations (Braudel 1982; 1981, 402; Wallerstein 1974). Empirically, Pereira and Souza (2007) and Souza (2010) stressed how the area was regulated as a space to be controlled by states and private enterprises rather than a common heritage of mankind. Others emphasised impacts on developing countries due to climate change, especially on sustainable development, effects on coastal communities and increase in the number of climate refugees (Belhabib et al. 2016; Blicharska et al. 2017; Campbell and Barnett 2010).

Although this literature has of course contributed to a better understanding of state control over the seas, norms about rights and behaviour regarding the seas were promoted and turned into international law by states, indicating an interaction between norms and material power. Even though some aspects of these norms have been proposed and discussed by jurists, I argue that they emerged because this was in the interest of various states, some of them with high levels of material power (the United States, for example), but some without (Peru and Chile, for example). The English School has a distinctive contribution to explain this, as it looks at sovereignty as a norm. Various states considered that extending this norm to the seas was in their best interest: stable rules of co-existence could keep at least some level of order in the international system and prevent the possibility of non-state actors controlling resources regardless of states.

The political and legal evolution of an ocean's regime

After the end of World War II, various states started claiming exclusive control over large maritime areas. What happened over the following years was the emergence of the current regime of the seas, constituted by various inter-subjective agreements regulating control of maritime areas. In this regime, the seas were constructed as a continuation of land, under which sovereignty could be extended.

The emergence of this norm was not inevitable and it is not set in stone, having resulted from a specific set of circumstances: discoveries of natural resources in post-World War II; the material power of states interested in controlling them, especially the United States; shared perceptions on the role of norms to govern interstate relations; and the pre-existence of the norm of sovereignty. These factors are explored in the following paragraphs.

In post-World War II, scientific research expanded knowledge about the value, extent and location of marine resources. Oil, gas and other minerals were discovered, as well as technologies to exploit them in areas far from the coast. The world's saltwater fish were no longer perceived as an inexhaustible resource, and a problem of scarcity emerged: as fisheries science advanced, so did the capacity to catch fish in vast quantities, due to the introduction of trawling. Marine research also expanded knowledge on the limits of continental shelves, considered the continuation

of continents in the form of seabed (Friedheim 1993, 16–17; Steinberg 2001, 138). This was used by several states to legitimize claims of jurisdictional waters far beyond the limits of 3 or 6 nautical miles (Buck 1998, 85).

The first country to claim exclusive control over large portions of the sea was the United States. In 1945, the US government issued the Truman Proclamation, stating that its jurisdiction covered the continental shelf up to a depth of 600feet. That decision was motivated by oil discoveries in the Gulf of Mexico, the possibility of exploiting mineral resources, and its interest in controlling fish stocks (Friedheim 1993, 20-21; Keohane and Nye 1977, 85). The decision set a precedent for other countries, and extraction of resources in the seas became ever more a domain of state control: the genie was out of the bottle (Friedheim 1993, 21). In fact, about a month later, Mexico issued a similar statement. Over the following five years, other Latin American countries made claims over large maritime areas, with limits and rights even beyond those of the United States: in 1946, Argentina claimed sovereignty over its continental shelf; in 1947, due to fishing interests, Chile and Peru declared sovereignty over no less than 200 nautical miles, followed in 1950 by Ecuador. Also, in 1949, 10 Arab states or emirates declared sovereignty over resources in their continental shelves (Nandan 1987; Steinberg 2001, 141). In short, in a mere five-year period there was substantial change concerning freedom to explore resources at sea, which occurred not only because of the material power of the United States but also because a norm was considered beneficial by many other countries.

Negotiations to create instruments of international law started only after these unilateral claims were made. This was therefore an inside-out process: practices established domestically were later codified into international law. During the first session of the United Nations' International Law Commission (ILC) in 1949, it was decided that international rules should be elaborated for the high-seas and territorial waters (International Law Commission 1949, 281). Negotiations continued until 1958, when four conventions were opened to signatures at the Unclos I, forming the basis for contemporary international maritime law. In regard to the territorial sea, it was confirmed that states had full sovereignty. On the continental shelf, there was consensus on coastal states' exclusive rights to exploit resources. In practice, the Unclos extended a pre-existing norm – sovereignty – to maritime areas. Although legally distinct, its essence was maintained: control was only for states, boundaries were spatial, control was exclusive, and control could be enforced.

After the failure of the Unclos II in finding consensus, another process began in the late 1960s: negotiations to regulate the use of the seabed and subsoil in areas beyond states' jurisdiction. The regulation of the Area was controversial because developing countries that depended on mineral resources were concerned that deep sea mining might reduce demand for their ores (Charney 1983, 49; Steinberg 2001, 146). Eventually, the convention adopted an intermediate position: exploration could be performed by either countries or the International Seabed Authority (ISA), created by the Unclos III (Pereira and Souza 2007, 15). The United States, however, did not accept some of the central aspects of the treaty, such as the favourable status of the ISA, mandatory

transfer of technology, and sharing revenues from mineral exploitation, which led the country not to sign the Convention (O'Connell and Shearer 1982, 464–466). Once more, the norm of sovereignty prevailed over two alternative forms of regulating resources in the seas: the norm of freedom and the principle that the seas are a common heritage of mankind. Concerning the latter, there was a moment during the negotiations when the principle seemed important and not just a theoretical concept.

In the 1970s, positions upholding exclusive economic rights not only on the seabed and subsoil of the continental shelf but also on the water gained momentum. This was demonstrated in the Montevideo and Lima declarations, in 1970, through which fourteen Latin American countries declared sovereignty over up to 200 nautical miles; also in the US proposal to combine a 12-nautical mile territorial sea to a 188-nautical mile area of fishery rights (Buck 1998, 86; Nandan 1987; O'Connell and Shearer 1982, 561). During the negotiations of Unclos III, a decision would contribute to its outcome: in 1977, the United States extended its exclusive fishing zone to 200 nautical miles. This was a case of convergence between developed and developing countries, with the United States benefitting from a process that was, in part, shaped by "territorialist" developing nations, especially Chile, Ecuador, Peru and some states in Central America (Friedheim 1993, 76).[3] The very limit of 200 nautical miles refers to the limits of fishery resources in the Pacific coast of South America, caused by the Humboldt Current (O'Connell and Shearer 1982, 581; Tanaka 2015, 124). A limit introduced by developing countries became a shared norm and was later codified into international law.

In December 1982, Unclos III was opened for signature. The territorial sea had a limit fixed in up to 12 nautical miles and, in addition, countries would have jurisdiction over resources in an area of up to 188 nautical miles. For some countries, however, this fell short of what was provided by domestic law. According to the Montevideo and Lima declarations (1970), there should be full jurisdiction, in both economic and political senses. Yet, the difference is legal, but not political: in practice, the norm of sovereignty prevailed over the alternatives.

The norm of sovereignty and the partition of the seas

The entry into force of the Unclos III formalized state control over large maritime areas. Currently, 39% of the oceans are part of territorial seas and EEZ, an area covering 140.6 million km², slightly larger than land areas. When it comes to economic resources, most exploitation occurs in areas under state jurisdiction: on fishing, about 90% of the world's catch comes from the area within the 200-nautical mile limit; on non-living resources (oil, gas and others), extraction occurs almost exclusively in areas under state jurisdiction (Steinberg 2001, 13). Therefore, the distinction made by Tanaka (2015, 7; 127) between "complete spatial jurisdiction (=territorial

3 In this paper, the use of the terms "developed" and "developing" is based on the IMF's classification.

sovereignty)" and "limited spatial jurisdiction (=sovereign rights)" is legally correct but politically misleading, as it exaggerates a difference that in practical terms is tiny.

The extension of the norm of sovereignty to maritime areas is observed in at least four ways. First, only states have jurisdiction over the seas, while other actors depend on states' authority to explore resources in maritime areas. Therefore, the seas were *constructed* as a state-centric space.

Second, jurisdiction is spatial, mirroring states' rights over land areas. Although rights beyond the 12-nautical mile limit are fewer than before, both spaces are framed by governments as part of their territories. They frequently present the seas as part of national territories through historical narratives, literary creations, maps, naming of areas, school textbooks and slogans (Roszko 2015; Steinberg 2001, 32–38). As analysed in the case of the South China Sea by Roszko (2015, 230), both China and Vietnam treat maritime areas as though they were land, which is possible because the state image was previously constructed as a geo-body. Furthermore, areas under state jurisdiction are presented as having precise borders: linear borders ("one-dimensional points on the earth's surface, connected by straight lines") became an assumed norm in the late 19th century (Goettlich 2018), and were extended to maritime areas when these were demarcated.

Third, jurisdictions are mutually exclusive: other states or private institutions can exploit resources in the EEZ, but they need the consent of the coastal state, as it happens in land areas. An illustrative case is the Svalbard Fisheries Protection Zone, an international institution that is nonetheless being transformed into *de facto* Norwegian property (Rossi 2017; Tiller and Nyman 2015).

Fourth, coastal states enforce their jurisdiction. Although states formally recognize that rights in most maritime areas are limited to the possession of natural resources, they frequently enforce them by using or displaying force. On occasion, enforcement happens through the presence of military vessels in the EEZ, prohibition of military exercises by other states or use of surveillance systems. Thus, areas on which sovereignty was not previously exerted can now be more effectively controlled (Chan 2018, 243).

Table 1 presents the fifteen countries with the largest EEZ in the world, their land areas and EEZ to land area ratios. This is one among various potential indicators of how much coastal states benefit from the current regime for maritime areas. Due to its relevance and subsequent analyses in this section, China is also in this table.

The countries in this list (excluding China) can be divided into four groups. The first comprises those having both large EEZs and land areas (above or just below 2 million km²): the United States, Australia, Russia, Indonesia, Canada, Brazil and Mexico. The second group comprises New Zealand, Japan and Chile, with much smaller territories but relatively long coastlines, from which stem their large EEZs. The third group comprises France, the United Kingdom and Denmark, which have large EEZs due to extensive overseas territories. The fourth group comprises Micronesia and Kiribati, which have tiny land areas, but extensive EEZs due to their large number of islands spread over a wide area. Leaders of some of these countries have considered their nations "large ocean states" (Chan 2018).

Table 1. Countries with the largest EEZs

		EEZ (million km²)	Land area (million km²)[1]	EEZ to land area ratio
1	United States	12.2	9.8	1.2
2	France	10.2	0.7	15.3
3	Australia	9.1	7.7	1.2
4	Russia	7.5	17.1	0.4
5	United Kingdom	6.8	0.3	21.5
6	New Zealand	6.7	0.3	25.1
7	Indonesia	6.0	1.9	3.1
8	Canada	5.7	10.0	0.6
9	Japan	4.0	0.4	10.7
10	Brazil	3.7	8.5	0.4
11	Chile	3.6	0.8	4.8
12	Kiribati	3.5	<0.1	> 4,000.0
13	Mexico	3.3	2.0	1.7
14	Micronesia	3.0	<0.1	> 4,000.0
15	Denmark	2.5	2.2	1.2
33	*China*	0.9	9.6	0.1
	Total (1-15)	87.7	61.6	–
	Other countries (including China) [2]	61.5	87.3	–
	Total [2]	149.2	148.9	–

Source: Flanders Marine Institute and World Factbook – CIA.

Notes:

[1] Includes internal waters.

[2] Includes Antarctica, with an 'EEZ' of about 8.6 million km² and area of about 14 million km².

In addition to the EEZ, the expansion of state control over the seas is indicated by requests for recognition of extended continental shelves. These totalled, in October 2018, more than 32 million km² (United Nations 2016; 2018).[4] In some cases, submissions covered areas far beyond the 200 nautical-mile limit: Namibia, for example, made requests with limits beyond 800 nautical miles (Namibia 2009).

In the next two subsections, the expansion of sovereignty over the seas is examined in more details, first in areas under state jurisdiction and then in the Area. Focus is on great and regional powers.

Control in areas under state jurisdiction

The Unclos formalized spatial control over large maritime areas, contributing to extend the norm of state sovereignty from land to the seas. Most great and regional powers have benefitted

4 As part of these requests overlap, the total includes a few areas that two or more states concurrently claim.

from its rules, regardless of whether they are developed (France, Japan and the United States, for example) or developing (Brazil and Indonesia, for example). This subsection briefly compares states' interests in maintaining or reforming the international regime of the oceans by examining three illustrative cases: the United States, a developed country with a large EEZ; Brazil, a developing country with a large EEZ; and China, a developing country with a relatively small EEZ. These countries were selected because they have large territories and population, but there is variation in levels of development, size of the EEZ, military power, and involvement in international conflicts. Comparing them demonstrates that developed and developing countries share common interests and understandings on the current oceans' regime, although China seems to be a partial exception. It also demonstrates that states further their interests regarding the seas using a combination of material power and norms.

Examining the United States demonstrates three points: domestic practices were later codified into international law; a country does not necessarily have to sign or ratify an international treaty to follow its rules; and the most powerful country in the world has incentives to comply with the current regime. The United States played a central role in building the current oceans' regime: it was the first country in the 20th century to declare exclusive authority over large parts of the seas (through the Truman Proclamation) and apply the idea that states have sovereignty over the continental shelf. This was a unilateral initiative but converged with positions of other countries, becoming a shared norm.

The United States has benefitted from this regime by expanding authority over large maritime areas and gaining exclusive rights over economic resources. Its EEZ is the largest in the world, about 29% of which around overseas territories, mainly in the Pacific. The Northern Mariana Islands and Guam, for example, have an EEZ of 970,000 km², itself larger than China's. The main economic activity in the US EEZ is the extraction of oil and gas. In 2012-2017, the offshore production was 18% of the total in the country for oil and 6% for gas. In 2017, total offshore reserves were 5 billion barrels of oil (12% of total reserves) and 7 trillion cubic feet of dry natural gas (1.4% of total).[5]

Although the US government has not ratified the Unclos III, this does not imply divergence from the regime, as US law considers the same limits established in the Convention: 12 nautical miles of territorial sea, 12 of contiguous zone, 188 of EEZ and a continental shelf that may be extended beyond these limits. However, there are costs in not being formally part of the treaty: the US cannot request the CLCS the recognition of its continental shelf beyond 200 nautical miles, and it is absent from some discussions regarding exploration of the Arctic's resources (Hudzik 2010, 365–370). Yet, the main point is that the US is part of the current regime even if it has not signed the Unclos III, which is indicated by both domestic law and behaviour.

The case of Brazil demonstrates that developed and developing countries may share an interest in maintaining the current international regime of the oceans rather than proposing

5 Source: EIA (United States 2013).

alternative conceptions or understandings. Similar to the United States, Brazil has been one of the Unclos III's greatest beneficiaries for at least three reasons. First, there are no land areas from other countries within its 200-nautical mile limit, allowing it to add this entire area (different from China or Indonesia, for example). Second, Brazil only has two maritime borders (Uruguay and France), decreasing the likelihood of maritime disputes. Third, most oil and gas reserves in Brazil are under the seabed: out of Brazil's oil reserves of 12.8 billion barrels in 2017, 95% were offshore; in the case of natural gas, out of 369 billion cubic feet in 2017, 82% were offshore (Brazil 2018a; 2018b).

In Brazil, the EEZ and extended continental shelf are frequently presented in official documents and campaigns as an integral part of the country, with almost no distinction from land areas (Brazil 2012, 43). This is observed in the idea promoted by the Brazilian Navy that the country's jurisdictional waters are a "blue Amazon," as rich and large as the "green" Amazon (Abdenur and Souza Neto 2014; Thompson and Muggah 2015). Control is enforced through the presence of vessels and surveillance systems. On the latter, the Brazilian Navy is developing the Blue Amazon Management System (*Sistema de Gerenciamento da Amazônia Azul*), a surveillance system for Brazil's jurisdictional waters. As additional evidence, Brazilian law prohibits military exercises in its EEZ without its prior consent, and official documents state that the EEZ is part of the Brazilian territory (Brazil 2012, 43).[6] Moreover, the Brazilian government maintains a programme aimed at evaluating the potential for deep-sea mining in the Area: the Program for Prospecting and Exploring Mineral Resources in the Equatorial and South Atlantic International Area (Proarea). In December 2013, the Geological Survey of Brazil (CPRM) requested the ISA authorization to explore cobalt-rich ferromanganese crusts in the Rio Grande Rise, the first of its kind in the South Atlantic. This indicates that Brazil seeks to control part of Area's exploration, although also complying with a regime from which it has benefitted.

China has benefitted less from Unclos III than other great or regional powers, creating incentives for it to reform the regime or conduct activities outside it. In fact, China's EEZ is small in comparison to its land area, the size of its economy and importance of maritime trade. This is a major element in the ongoing disputes in the East China Sea and South China Sea. In the East China Sea, China claims that the Senkaku/Diaoyu, currently under Japanese control, should be under its sovereignty. With the hypothetical possession of this territory, China would add 73,000 km² to its jurisdiction, an increase of 8% in its EEZ. In the South China Sea, maritime disputes are complex due to overlapping claims between China, Brunei, Malaysia, Indonesia, the Philippines, Taiwan and Vietnam, as well as US interests in the area. The hypothetical success of China's claims would imply control of approximately 80% of the South China Sea (O'Rourke 2013, 10), including various areas with oil and gas deposits: the US Energy Information Administration has estimated there are 11 billion barrels of oil and 190 trillion cubic feet of natural gas in the South China Sea (United States 2013, 2).[7]

6 Law nº 8,617, January 4th, 1993.

7 The China National Offshore Oil Corporation (CNOOC), however, has estimated that there are 125 billion barrels of oil and 500 trillion cubic feet of natural gas only in undiscovered reserves in the South China Sea (United States 2013, 2).

These elements combined increase China's propensity to expand maritime territories under its jurisdiction, both within and without the current ocean's regime. This is expressed materially and symbolically. Materially, China has increased the allocation of resources to its naval forces and strengthened its presence in claimed areas, especially in the South China Sea (Cole 2012; Till 2017). Symbolically, when claiming rights over the South China Sea, the Chinese government presents a narrative according to which Chinese people have been living and working in that area for about 2,000 years ("Backgrounder: chinese live, work in south China sea since ancient times." 2016). Therefore, the Chinese government treats the seas as "land," seeking to construct them as an integral part of the Chinese society, just as other states have done and still do. These areas would be neither *res nullius* nor a common heritage of mankind.

Yet, even under these circumstances, China has not left the oceans' regime: it wants to keep the ocean as a state-centric space and maintain a set of rules of co-existence. In fact, its claims over the Spratly and Paracel islands aim at using the current regime in its favour, as possession of these islands would legitimize control of a large area of territorial sea and EEZ. Therefore, China is not satisfied with the distribution of rights within the existing regime, but it is with the principle of sovereign authority over the ocean on which the regime is based.

In summary, although legal control over the EEZ and extended continental shelves is economic, there is a fine line separating this from the norm of sovereignty. As it happens in land areas, states have control over it, boundaries are spatial, and control is exclusive and can be enforced. Even regarding the norm of freedom of navigation and overflight, compliance is not always observed. For example, under international law, a coastal state cannot prevent other countries' vessels and aircraft from crossing its jurisdictional waters. However, states such as Brazil and China limit the exercise of this right both *de jure* and *de facto* (Hille 2013; O'Rourke 2014, 4–6).

Control in areas beyond state jurisdiction

The prevalence of the norm of sovereignty over other potential norms and principles is also indicated by rules on the economic exploitation of resources in the Area. After the adoption of the Unclos III, states that opposed the seabed regime started conducting parallel activities to the Convention. The United States, for example, granted licenses for the extraction of polymetallic nodules in the Clarion-Clipperton Fracture Zone, in the Pacific (Pereira and Souza 2007, 18). Furthermore, the United States and other developed countries sought to take part in the governance of the seabed outside the Unclos. The outcome was the adoption in 1994 of the Agreement Relating to the Implementation of Part XI of the Unclos. The agreement eventually weakened the ISA, limiting its role to that of a regulator of activities conducted by states and private institutions. Among others, states would not need to finance the Enterprise's activities – the operational arm of the ISA – or transfer technology (Pereira and Souza 2007, 18).

In this case, the partition of sea areas occurs under rules provided by a set of treaties, based on which exclusive rights to conduct research and exploit resources are assigned. These are: regulations on polymetallic nodules, approved in 2000; regulations on polymetallic sulphides, approved in 2010; and regulations on cobalt-rich ferromanganese crusts, approved in 2012. These rules are of course different from those for areas under state jurisdiction for two reasons: *i*) authorization by an international organization is required before activities can be conducted; and *ii*) private institutions may have rights over parts of the Area. Yet, this resembles more closely the norm of sovereignty than those of freedom or common heritage of mankind: rights are exclusive, spatial and conceded mainly to government institutions (even those conceded to private institutions need a sponsoring state). Therefore, although the Area is legally a common heritage of mankind, there is little in states' practice and international treaties to turn this principle into action.

Since 2000, when the regulations on polymetallic nodules were adopted, the ISA has received requests from various institutions interested in exploring mineral resources. Until November 2018, ISA had granted 14 areas of exploration to governments or state-owned companies, and 7 to private institutions (International Seabed Authority 2016). Currently, there is a rush towards the best areas of exploration, with the first successful applications occupying spaces of greater potential. Concessions are concentrated on a small number of countries, most of them with substantial resources and technological capacity. This implies that they will probably also control spaces of lower potential, reinforcing inequalities in the exploration of the Area. Such concentration is observed not only on deep-sea mining but also on marine genetic resources. As discovered by Blasiak et al. (2018), 74% of gene patents from species associated with deep sea and hydrothermal vents are owned by institutions located in three countries: Germany, Japan and the United States. Furthermore, 47% of them belong to BASF, a chemical company. This imbalance is also visible in negotiations for the creation of a legally binding international instrument on biodiversity beyond areas of national jurisdiction (BBNJ), which started in 2015. At least three aspects make this negotiation process unequal: *i*) some states struggle to participate in the negotiations; *ii*) many states have little technical capacity; and *iii*) priorities are different, with some developing countries and small island nations being interested in a regime based on distribution of resources, while developed countries prefer a "freedom of the seas" type of regime, which in practice would imply their dominance (Blasiak et al. 2018; 2016).

Conclusions

This article has aimed at contributing to a debate on why and how states have extended control over the seas. After the end of World War II, a process of gradual extension of sovereignty over the seas began: from a 3-nautical mile limit of territorial sea, state sovereignty now reaches 12 nautical miles, to which up to 188 nautical miles of EEZ, as well as an

extended continental shelf, can be added. In this way, the seas are no longer a space only of transit of ships and fishing: they are a space where different economic activities take place and where the norm of sovereignty has been extended. This implies the need to look at state spatial control in a different way, as the size of maritime areas under state jurisdiction is now equivalent to the size of land areas under state sovereignty. States with large land areas (such as China) may control relatively small portions of the seas, while small island states (such as Kiribati or Palau) may have exclusive control over large parts of the ocean. This is reinforced by the fact that economic and biodiversity resources in the seas are concentrated in areas under state jurisdiction.

Although state control over the seas is legally distinct from land areas, in practice states have extended the norm of sovereignty to the seas with only minor adaptations. This regime of the oceans was the product of – and reproduced – a certain type of international society, in which inter-subjective agreements between states keep them in control of the system and maintain a certain level of global order. This prevailed over at least two alternative forms of control: the norm of freedom and the principle of common heritage of mankind.

Most major and regional powers have strong incentives to maintain the current regime, as they have substantially expanded control over the seas. Another factor contributing to the stability of the regime is that major developing countries expanded control over sea resources as much as major developed nations. Both Brazil and the United States, for example, have largely benefitted from the current regime. As China is a partial exception, the future of Unclos III might depend on whether other powers and China's neighbours manage to accommodate China's interests into the current international regime of the oceans.

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References

Abdenur, A. E., and D. M. Souza Neto. "O Brasil e a cooperação em defesa: a construção de uma identidade regional no Atlântico Sul." *Revista Brasileira de Política Internacional* 57, no. 1 (2014): 5–21. https://doi.org/10.1590/0034-7329201400101

Acuña-Marrero, D., R. Cruz-Modino, A. N. Smith, P. Salinas-de-León, M. D. Pawley, and M. J. Anderson. "Understanding human attitudes towards sharks to promote sustainable coexistence." *Marine Policy* 91, (2018): 122–28. https://doi.org/10.1016/j.marpol.2018.02.018

Allison, E. H., B. D. Ratner, B. Åsgård, R. Willmann, R. Pomeroy, and J. Kurien. "Rights-based fisheries governance: from fishing rights to human rights." *Fish and Fisheries* 13, no. 1 (2012): 14–29.

Ásgeirsdóttir, Á., and M. C. Steinwand. "Dispute settlement mechanisms and maritime boundary settlements." *The Review of International Organizations* 10, no. 2 (2015): 119–43. https://doi.org/10.1007/s11558-015-9217-9

Ásgeirsdóttir, Á., and M. C. Steinwand. "Distributive outcomes in contested maritime areas: the role of inside options in settling competing claims." *Journal of Conflict Resolution* 62, no. 6 (2018): 1284–313. https://doi.org/10.1177/0022002716677568

"Backgrounder: chinese live, work in south China sea since ancient times." *Xinhua*, April 26, 2016. Accessed September 1, 2016. http://eng.mod.gov.cn/Opinion/2016-04/26/content_4650964.htm

Balton, D. A. "Strengthening the law of the sea: the new agreement on straddling fish stocks and highly migratory fish stocks." *Ocean Development & International Law* 27, no. 1-2 (1996): 125–51. https://doi.org/10.1080/00908329609546078

Beckman, R. "The UN convention on the law of the sea and the maritime disputes in the South China Sea." *American Journal of International Law* 107, no. 1 (2013): 142–63. https://doi.org/10.5305/amerjintelaw.107.1.0142

Belhabib, D., V. W. Lam, and W. W. Cheung. "Overview of west african fisheries under climate change: impacts, vulnerabilities and adaptive responses of the artisanal and industrial sectors." *Marine Policy* 71, (2016): 15–28. https://doi.org/10.1016/j.marpol.2016.05.009

Bigagli, E. "The EU legal framework for the management of marine complex social–ecological systems." *Marine Policy* 54, (2015): 44–51. https://doi.org/10.1016/j.marpol.2014.11.025

Blasiak, R., J. -B. Jouffray, C. C. Wabnitz, E. Sundström, and H. Österblom. "Corporate control and global governance of marine genetic resources." *Science Advances* 4, no. 6 (2018). https://doi.org/10.1126/sciadv.aar5237

Blasiak, R., J. Pittman, N. Yagi, and H. Sugino. "Negotiating the use of biodiversity in marine areas beyond national jurisdiction." *Frontiers in Marine Science* 3, (2016): 1-10. https://doi.org/10.3389/fmars.2016.00224

Booth, K. *Law, force and diplomacy at sea (Routledge Revivals)*. London: Routledge. 2014.

Brazil. *Proved oil reserves, per location (onshore and offshore), by state (2008-2017)*. Brasilia, DF: Agência Nacional do Petróleo Gás Natural e Biocombustível, 2018a

Brazil. *Proved natural gas reserves, per location (onshore and offshore), by state (2008-2017)*. Brasilia, DF: Agência Nacional do Petróleo Gás Natural e Biocombustível, 2018b

Brazil. *Livro branco da defesa nacional*. Brasília, DF: Ministério da Defesa, 2012.

Braudel, F. *The wheels of commerce.* London: Collins, 1982. (Civilization and capitalism, 15th–18th Century, vol. 2.).

Braudel, F. *The structure of everyday life: the limits of the possible.* London: Collins, 1981. (Civilization and capitalism, 15th–18th Century, vol. 1.).

Buck, S. J. *The global commons: an introduction*. Washington, DC: Island Press, 1998.

Bull, H., K. Alderson, and A. Hurrell. *Hedley bull on international society*. Basingstoke: Palgrave Macmillan, 2000.

Bull, H., and A. Watson. *The expansion of international society*. Oxford: Oxford University Press, 1984.

Buzan, B. *From international to world society? English school theory and the social structure of globalisation*. Cambridge: Cambridge University Press, 2004.

Campbell, J., and J. Barnett. *Climate change and small island states: power, knowledge and the South Pacific*. London: Routledge, 2010.

Chan, N. ""Large Ocean States": sovereignty, small islands, and marine protected areas in global oceans governance." *Global Governance: A Review of Multilateralism and International Organizations* 24, no. 4 (2018): 537–55. https://doi.org/10.1163/19426720-02404005

Charney, J. I. "The United States and the law of the sea after UNCLOS III: the impact of general international law." *Law and Contemporary Problems* 46, (1983): 37–54.

Cole, B. *The great wall at sea: China's navy in the twenty-first century*. Annapolis: Naval Institute Press, 2012.

Costanza, R., F. Andrade, P. Antunes, M. Van Den Belt, D. Boersma, D. F. Boesch, F. Catarino, S. Hanna, K. Limburg, and B. Low. "Principles for sustainable governance of the oceans." *Science* 281, no. 5374 (1998): 198–99. https://doi.org/10.1126/science.281.5374.198

Dodds, K. "Flag planting and finger pointing: the law of the sea, the Arctic and the political geographies of the outer continental shelf." *Political Geography* 29, no. 2 (2010): 63–73.

Durden, J. M., K. Murphy, A. Jaeckel, C. L. Van Dover, S. Christiansen, K. Gjerde, A. Ortega, D. O. Jones. "A procedural framework for robust environmental management of deep-sea mining projects using a conceptual model." *Marine Policy* 84, (2017): 193–201. https://doi.org/10.1016/j.marpol.2017.07.002

Friedheim, R. L. *Negotiating the new ocean regime*. Columbia: University of South Carolina Press, 1993.

Friedmann, W. "Selden redivivus: towards a partition of the seas?" *The American Journal of International Law* 65, no. 5 (1971): 757–70. https://doi.org/10.2307/2199356

Galaz, V., B. Crona, H. Österblom, P. Olsson, and C. Folke. "Polycentric systems and interacting planetary boundaries: emerging governance of climate change–ocean acidification–marine biodiversity." *Ecological Economics* 81, (2012): 21–32. https://doi.org/10.1016/j.ecolecon.2011.11.012

Goettlich, K. "The rise of linear borders in world politics." *European Journal of International Relations* 25, no. 1 (2018). https://doi.org/10.1177/1354066118760991

Gulbrandsen, L. H. *Transnational environmental governance: the emergence and effects of the certification of forest and fisheries*. Cheltenham: Edward Elgar Publishing, 2010.

Harden-Davies, H. "Marine science and technology transfer: can the intergovernmental oceanographic commission advance governance of biodiversity beyond national jurisdiction?" *Marine Policy* 74, (2016): 260–7. https://doi.org/10.1016/j.marpol.2016.10.003

Hille, K. "Chinese navy begins US economic zone patrols." *Financial Times*, June 2, 2013.

Hudzik, E. M. "Treaty on thin ice: debunking the arguments against US ratification of the UN convention on the law of the sea in a time of global climate crisis." *Washington University Global Studies Law Review* 9, no. 2 (2010): 353.

International Law Commission - ILC. *Report of the International Law Commission on the Work of its First Session, 12 Apr. 1949, Official Records of the General Assembly, Fourth Session, Supplement No. 10. 1949*. Geneva: United Nations, 1949. (A/CN.4/13 and Corr. 1-3. Extract from the Yearbook of the International Law Commission: 1949 , vol. I)

International Seabed Authority - ISA. *Deep seabed minerals contractors*. Kingston: ISA, 2016.

Jouanneau, C., and J. Raakjær. "'The hare and the tortoise': lessons from baltic sea and mediterranean sea governance." *Marine Policy* 50 part B, (2014): 331–8. https://doi.org/10.1016/j.marpol.2014.03.006

Keohane, R. O., and J. S. Nye. *Power and interdependence: world politics in transition*. Boston: Little Brown, 1977.

Koivurova, T. "Limits and possibilities of the arctic council in a rapidly changing scene of arctic governance." *Polar Record* 46, no. 2 (2010): 146–56. https://doi.org/10.1017/S0032247409008365

Krasner, S. D. *Sovereignty: organized hypocrisy*. Princeton: Princeton University Press, 1999.

Linke, S., M. Gilek, M. Karlsson, and O. Udovyk. "Unravelling science-policy interactions in environmental risk governance of the Baltic Sea: comparing fisheries and eutrophication." *Journal of Risk Research* 17, no. 4 (2014): 505–23. https://doi.org/10.1080/13669877.2013.794154

Mack, J. R. "International fisheries management: how the UN Conference on Straddling and Highly Migratory Fish Stocks changes the law of fishing on the high seas." *California Western International Law Journal* 26, no. 2 (1995): 313-33.

Mead, W. R. "The return of geopolitics: the revenge of the revisionist powers." *Foreign Affairs* 93, no. 3 (2014): 69-79.

Namibia. *Continental shelf submission of Namibia: executive summary*. Geneva: United Nations, 2009.

Nandan, S. N. "The exclusive economic zone: A historical perspective." In *Essays in memory of Jean Carroz: the law and the sea*, edited by Food and Agriculture Organisation of the United Nations. Rome: Food and Agriculture Organization of the United Nations, 1987.

Naylor, R. L., R. W. Hardy, D. P. Bureau, A. Chiu, M. Elliott, A. P. Farrell, I. Forster, D. M. Gatlin, R. J. Goldburg, and K. Hua. "Feeding aquaculture in an era of finite resources." *Proceedings of National Academy of Science of United States* 106, no 36 (2009): 15103-10. https://doi.org/10.1073/pnas.0905235106

O'Connell, D. P., and I. A. Shearer. *The international law of the sea*. Volume 1-2. Oxford: Oxford University Press, 1982.

O'Rourke, R. *Maritime territorial and exclusive economic zone (EEZ) disputes involving China: issues for congress*. Washington, DC: Congressional Research Service, 2014

Pereira, C. V., and K. G. Souza. "Minerais do fundo do mar: avanços e retrocessos das negociações internacionais da Convenção das Nações Unidas sobre o Direito do Mar." *Parcerias Estratégicas* 12, no. 27 (2007): 11–40.

Roberts, C. M. "Deep impact: the rising toll of fishing in the deep sea." *Trends in Ecology & Evolution* 17, no. 5 (2002): 242–5.

Rossi, C. R. "Norway's imperiled sovereignty claim over Svalbard's adjacent waters." *German Law Journal* 18, no. 6 (2017): 1497-530.

Roszko, E. "Maritime territorialisation as performance of sovereignty and nationhood in the South China Sea." *Nations & Nationalism* 21, no. 2 (2015): 230–49. https://doi.org/10.1111/nana.12094

Schaefer, N., and V. Barale. "Maritime spatial planning: opportunities & challenges in the framework of the EU integrated maritime policy." *Journal of Coastal Conservation* 15, no. 2 (2011): 237–45. https://doi.org/10.1007/s11852-011-0154-3

Souza, K. G. "Aspectos políticos-estratégicos dos recursos minerais da área internacional dos oceanos." *Parcerias Estratégicas* 12, no. 24 (2010): 95–114.

Steinberg, P. E. *The social construction of the ocean*. Cambridge: Cambridge University Press, 2001.

Tan, A. K. -J. *Vessel-source marine pollution: the law and politics of international regulation*. Cambridge: Cambridge University Press, 2005.

Tanaka, Y. *The international law of the sea*. Cambridge: Cambridge University Press, 2015.

Thompson, N., and R. Muggah. "The blue Amazon: Brazil asserts its influence across the Atlantic." *Foreign Affairs*, June 10, 2015.

Till, G. *Asia's naval expansion: an arms race in the making?* London: Routledge, 2017.

Tiller, R., and E. Nyman. "Having the cake and eating it too: to manage or own the svalbard fisheries protection zone." *Marine Policy* 60, (2015): 141–8.

Tuerk, H. *Reflections on the contemporary law of the sea*. Leida: Martinus Nijhoff Publishers, 2012.

United Nations. *Submissions to the commission on the limits of the continental shelf*. Geneva: UNEP Shelf Programme, 2016.

United Nations. *Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982*. Geneva: United Nations, 2018

United States. *South China Sea*. Washington, DC: U.S. Energy Information Administration, 2013

Voyer, M., N. Gollan, K. Barclay, and W. Gladstone. "'It's part of me'; understanding the values, images and principles of coastal users and their influence on the social acceptability of MPAs." *Marine Policy* 52, (2015): 93–102. https://doi.org/10.1016/j.marpol.2014.10.027

Wallerstein, I. *The modern world-system: capitalist agriculture and the origins of the european world-economy in the sixteenth centenary*. New York: Academic Press, 1974.

Watt, D. C. "First steps in the enclosure of the oceans: the origins of Truman's proclamation on the resources of the continental shelf, 28 September 1945." *Marine Policy* 3, no. 3 (1979): 211–24. https://doi.org/10.1016/0308-597X(79)90053-8

Yahuda, M. "China's new assertiveness in the South China Sea." *Journal of Contemporary China* 22, no. 81 (2013): 446–59. https://doi.org/10.1080/10670564.2012.748964

Young, O. R. "The arctic in play: Governance in a time of rapid change." *The International Journal of Marine and Coastal Law* 24, no. 2 (2009): 423–42. https://doi.org/10.1163/157180809X421833