Dispute Resolution Mechanisms and Maritime Boundary Settlements

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ABSTRACT

This paper extends the literature on the institutionalization of international cooperation to the Law of the Sea, by focusing on 186 bilateral agreements that settle joint maritime boundaries, necessitated by the creation of the 200-mile Exclusive Economic Zone with the 1982 Law of the Sea Treaty. About half of these agreements include mentions of Conflict Resolution Mechanisms, one measure of institutionalization, but interestingly the vast majority of those specify bilateral negotiations as the starting point for settling conflict. Our key finding is that states pay attention to the cost of conflict resolutions mechanisms and that less wealthy pairs of states are more likely than more wealthy pairs to specify bilateral negotiations, the cheapest and most flexible conflict resolution mechanism.

I. INTRODUCTION

Scholars studying the institutionalization of international cooperation have paid scant attention to the Law of the Sea, a major body of international law framing the relationship between states with regards to the ocean and its resources. Focusing on the settlement of overlapping and adjacent maritime boundaries created by the expansion of states' waters to a 200-mile Exclusive Economic Zone (EEZ), this paper analyzes how the Law of the Sea frames and limits what states can do in settling competing claims, while at the same time creating a fair bit of flexibility for states in deciding on institutional design when it comes to states discussing how they will deal with future conflict.

One important area of the study of institutionalization has focused on whether or not states include specific Conflict Resolution Mechanisms (CRMs), into their agreements or not, and if so to what extent they bind states to specific future actions. Including CRMs in an agreement, specifies how states will deal with future conflicts and thus institutionalizes their interaction. Depending on their design, states can limit their flexibility of how to solve disagreements. In investigating the inclusion of CRMs in bilateral treaties, scholars have chiefly focused on variation in CRMs in Free Trade Agreements (FTAs) (Jo & Namgung, 2012)or in Bilateral Investment Treaties (BITs). For example, in the case of BITs, Allee and Peinhardt argue that when states do not specify the venue for dispute resolution, they ensure maximum flexibility in settling their conflicts. At the same time though, this flexibility can lengthen the time it takes to solve conflicts (T. Allee & Peinhardt, Forthcoming; Jo & Namgung, 2012).

This paper contributes to this debate by looking at the inclusion and exclusion of CRMs in 186 bilateral agreements signed between 1960 and 2010 over the past 40 years and settle competing maritime boundary claims, only 45% of which include CMRs of agreements provide specifics of the mechanism to be used. More interestingly, the vast majority of agreements that include any mention of CRMs, specify that states should negotiate a solution bilaterally. This feature is found in 30% of all agreements. This last point is interesting, and put differently, given that states that face conflict can always seek a negotiated solution, what explains the decision to specify bilateral negotiations as the starting point for conflict resolution?

These agreements are framed by the Law of the Sea, which acknowledges that states often have conflicting interests over maritime uses and where such disputes arise, the agreement encourages the peaceful settlement of conflicts (Article 279). It however leaves the choice of how to solve disagreements to the states (Article 280). Beyond trying to solve conflicts through negotiations, states also have four more formalized and binding ways to solve conflicts. According to Article 287, they can send disputes to the International Tribunal for the Law of the Sea, to the International Court of Justice in The Hague, appoint an arbitral tribunal as laid out in Annex II or a appoint a special arbitral tribunal as laid out in Annex III when the dispute relates to fisheries, protection of the marine environment, marine scientific research or navigation (Article 287).

The choice of a DRM lies along a continuum from bilateral negotiation, to arbitration, to the use of courts. For example, in the case of BITs, which all include CRMs, states have several choices for solving conflicts and which one states choose influences the flexibility and speed of resolution. If states commit to international arbitration, it speeds up the process of solving the conflict compared to trying a case in a home court, but at the same time, it can also increase the uncertainty for both states. In choosing a mechanism for solving future conflicts, two important aspects change: the cost of conflict resolution and the level of uncertainty about the outcome. Two benefits of bilateral negotiations are that they are less costly than more legalistic solutions and states have a greater control over the outcome when they negotiate a solution rather than ask a third party to decide for them.

Comparatively speaking, settling maritime boundaries differs from negotiating Free Trade Agreements (FTAs) or Bilateral Investment Treaties (BITs). For one, maritime boundary agreements differ from BITs as they often do not include any mention of CRMs. In addition, instead of more institutionalized ways of settling disputes found in FTAs and BITs, the range of options states include in maritime boundary agreements includes bilateral negotiations as well as either arbitration or use of courts as specified in the Law of the Sea. With regards to bilateral investment treaties, another category of proliferating bilateral treaties, Allee and Peinhardt (forthcoming) show that DRMs vary among the treaties, with three categories evident. First some states provide advanced consent to international arbitration, some specify specific venues for conflict resolution and finally they note that some of the DRMs are more formalized than other venues. The explanation for this variation in DRMs lies in the preferences of key interest groups as well as the power differential between states. The variation found in the type of conflict resolution mechanisms found in FTAs, ranges from weak commitment to strong commitment. Jo and Namgung (2012) show that pairs of democracies are more likely than autocracies to prefer moderately strict DRMs. They also find that trading partners emulate each other by adopting similar DRMs and finally that the development of the multilateral trading system has led to the diffusion of DRMs (Jo & Namgung, 2012). The third difference lies in how pairs of states are selected into an agreement. When it comes to trade and investment treaties, states can choose with whom to cooperate and each state can theoretically cooperate with every other state in the system. Maritime boundary agreements, on the other hand, have a geographic dimension that restricts the choice to being a neighborhood option only, i.e. you cooperate with states in your near vicinity. The only exception to that is when states negotiate on behalf of their dependencies, which can be far away from the "main land", so to speak. Fourth, maritime boundary agreements are empirically different from FTAs and BITs in that the two latter universally include a mention of dispute resolution mechanisms. Hence studies of CRMs have focused on the choice of different CRMs, while this paper is primarily focused on why these CRMs get included in the first place. Finally, unlike trade and financial agreements, the maritime boundary agreements found here have a significant legal framework guiding states in the terms of conflict. While the Law of the Sea provides several venues for states to solve conflicts, states retain the flexibility in choosing a venue.

Because negotiations are less expensive and the outcome more predictable than using courts or arbitration, specifying negotiations as a starting point for future disputes, we argue that states are

committing to a procedure that maximizes flexibility and predictability for solving the conflict. Of the three options, the use of courts is both very costly and the level of uncertainty about the outcome the highest. This last part is especially true with Law of the Sea cases that find their way to international courts, where scholars of international law have complained that court procedures do not create precedents for future decisions, leaving outcomes shrouded in uncertainty (Prescott, 1986).

Empirically, Conflict Resolution Mechanisms vary a great deal, ranging from negotiation to issuing binding commitments of a court procedure, an example of which is the binding World Trade Organization's Dispute Resolution Mechanism, the dispute resolution mechanism in The North American Free Trade Agreement and the European Court of Justice. While these are multilateral conflict resolution mechanisms, increasingly scholars are looking at the inclusion and exclusion of CRMs in bilateral agreements, which have been proliferating and constitute the bulk of examples of cooperation between states (Koremenos, 2007). Currently, the scholarship has three main strands. The first one focuses on the variety of international legalization (Goldstein, Kahler, Keohane, & Slaughter, 2000; Koremenos, Lipson, & Snidal, 2001a), the second emphasizes the design and development of CRMs (T. Allee & Peinhardt, Forthcoming; Jo & Namgung, 2012; Keohane, Moravcsik, & Slaughter, 2000) and finally, the third strand seeks to explain why and how states even use these mechanisms, given the inability of realists to explain that puzzle (T. L. Allee & Huth, 2006; Davis, 2012).

The explanatory mechanisms scholars identify vary as well and are divided between those who focus on rational institutional design (Keohane et al., 2000; Koremenos, 2007), those who argue that policy diffusion explains institutional variation, i.e. that states adapt and learn from actions by other states (Elkins, Guzman, & Simmons, 2006; Simmons & Elkins, 2004), or that states use CRMs to make credible commitments (T. Allee & Peinhardt, Forthcoming).

Advocates of rational design identify five sources of institutional variation - membership rule, scope of issues covered, centralization of tasks, rules for controlling the institutions and the flexibility of arrangements. Focusing on CRMs in a later paper, Koremenos argues that "proponents of rational design, believing that agreements are tailored to the problems they are trying to solve, would expect more centralized or formalized dispute resolution provisions when

at least one of the above highlighted cooperation problems is present" (Koremenos, 2007). The explanatory variables they identify are distribution problem faced, enforcement (incentive to cheat), the number of actors and asymmetries among them, as well as three types of uncertainty – about behavior of other states, about the state of the world and about the preferences of other states (Koremenos, Lipson, & Snidal, 2001b).

One of the criticisms of the rational design literature is that there are a number of missing independent variables that also might explain variations in institutional structures, including the choice of specific conflict resolution mechanisms, lack of attention to specific interest who have distinct preferences over the outcome, the relevant power capabilities of the states involved, lack of attention to pre-existing institutions that are involved in the issue area, the possible role of institutional path dependence and exclusion of the role of ideas in fostering cooperation (Duffield, 2003). But Duffield's strongest criticism is leveled at the rational design framework being untestable in large-n studies, a criticism Koremenos and Snidal argue is surmountable (Koremenos & Snidal, 2003).

Scholars who have attempted to apply this theoretically rigorous, but empirically untested model have found weak support for its conjectures. These scholars have focused on explaining variation in conflict resolution mechanism as that is one of the more puzzling questions for international politics – why do states agree to limit future options for conflict resolution. One approach has been to look at agreements which cover the same issue area to minimize variation and maximize explanatory power of often limited data, primarily trade and investment.

One way to think about why mechanisms for CRMs vary is to acknowledge that states put different weight on issues relating to their maritime areas based on the domestic saliency of the issue. In their work on issue saliency, Hensel et al. (2008) argue that six indicators matter to explain the saliency in maritime claims: "(1) maritime borders extending from homeland rather than colonial or dependent territory; (2) a strategic location of the claimed maritime zone; (3) fishing resources within the maritime zone; (4) migratory fishing stocks crossing into and out of the maritime zone; (5) the known or suspected presence of oil resources within the maritime zone; and (6) relation of the maritime claim to an ongoing territorial claim (involving maritime areas extending beyond either claimed coastal territory or a claimed island)" (Hensel, Mitchell,

Sowers II, & Thyne, 2008). I.e. the more salient oceans are, the more likely states are to include CRMs. We incorporate these ideas into our empirical analysis as discussed below.

This study adds to the literature on international institutions by focusing on the Law of the Sea, an understudied area within political science. By looking at the institutionalization of an area that has a well-developed body of international law to guide it, it also adds a new dimension to the study of CRMs, which so far has focused on their variation but not their inclusion.

The paper will proceed as by next discussing maritime boundary agreements and the Law of the Sea. We then discuss our data, our hypotheses and methodology before discussing our findings. We finally advance some concluding thoughts.

II. MARITIME BOUNDARY AGREEMENTS

The Third United Nations Convention on the Law of the Sea (LOS) was signed in 1982, after more than a decade of negotiations. It has been described as the best developed body of international law (Burke 1994) and it currently it frames all negotiations around ocean areas. LOS came into force on November 16, 1994, a year after Guyana became the 60th state to ratify the treaty. As of January, 2013, 165 states have ratified it, with a notable exception being the United States.

The Law of the Sea created the 200-mile EEZ, within which a coastal state has sovereign rights to explore and exploit, conserve and manage natural resources in the water, seabed and subsoil (Article 56 and 57). The agreement, however, did not settle the question of what states should do either when EEZs either overlap when states are less than 400 nautical miles apart or when two nations have adjacent economic zones. The treaty recognized the fact that the creation of the 200-mile EEZ had the potential to create conflicts between nations where the EEZs were less than 400 miles apart and where adjacent countries had to extend their physical boundary into the ocean. Specifically Article 15 allows states to claim the median line as the maximum while states are negotiating. The article also envisions historic claims and special circumstances will influence the final boundary, without specifying exactly how states should apply these principles in practice. Hence, given that LOS does not provide a specific solution as to how to divide overlapping maritime claims, most states have chosen to negotiate treaties bilaterally to settle the property rights to specific areas of the ocean. So far, with only a handful of exceptions, states

have negotiated the boundary agreements bilaterally. The handful of exceptions have been settled either by arbitrators, the International Court of Justice in The Hague or more recently the International Tribunal for the Law of the Sea.

Essentially, Article 15 (United Nations, 2013) strongly urges states to cooperate, but leave the specifics of that cooperation on the shoulders of the states, with vague references to equidistance, equality and history. In essence, this is ideal for solutions based on bargaining, which then fosters agreements that vary significantly.

Even though there is a great deal of variation in the content of the agreements, there are certain things that remain constant. Bilateral agreements hold the number of actors constant at two and their goal is essentially to settle the same type of conflict – where to draw a line in the ocean that delineates property rights over resources in the water column, under the ocean floor and mining in the ocean floor. But despite the fact that the agreements have some of the same parameters, they vary a great deal from only really listing a set of coordinates to elaborate discussions of future cooperation over joint resources.

Settling maritime boundaries differs in several fundamental ways from drawing terrestrial boundaries. First, scholars have found that established administrative frontiers influence the settling of land boundaries, by comparison the ocean contains no such visible reference points (Carter & Goemans, 2011). Second, most maritime boundaries have been settled by pairs of independent states, as opposed to being drawn by colonial powers. Third, while there are three ways to solve maritime boundary conflicts, more than 90% of them have been settled through bilateral negotiations. Besides bilateral negotiations, states can either refer their case to the International Court of Justice (ICJ) or they can rely on a third-party arbitrator to reach a solution. Of the settled boundaries in our study, the ICJ decided eleven boundaries and third-party arbitrators helped negotiate nine agreements. One thing to consider though is that even when the agreements were settled either by the ICJ, the International Tribunal for the Law of the Sea or through a mediator, the end result is a negotiated agreement. When conflicts involve a third party – the ICJ, the ITLOS or a mediator/arbitrator, it happens after negotiations begin and the role of the third party is to foster further negotiations. Finally, the number of possible agreements is to a certain extent predetermined by the number of maritime boundaries in the world. In all there are about 417 maritime boundaries and boundary segments in the world, of which 45%, have been settled, primarily though bilateral negotiations.

III. RESEARCH QUESTIONS

So what explains the why some agreements contain a CRM clause, while others do not? Building on the literature discussed above, we identify several possibilities. First, the international political economy literature has identified a pair of democracies as cooperating more often than a pair of states that include authoritarian regimes. Additionally, democracies are also more likely to engage in trade. The underlying logic is that because democratic governance is more transparent than governance in authoritarian states, there are higher levels of trust between democracies (Jo & Namgung, 2012; Russett & Oneal, 1999). Following that, we expect agreements signed between two democracies to be less likely to contain CRMs.

We also think states consider the cost of different options for conflict resolution. Given that bilateral negotiations are the least costly way to settle a conflict, we hypothesize that the wealth of the pair of states matters. That is, while wealthy states can afford more institutionalized CRMs, poorer states will want to ensure that they stay out of the more formalized CRMs identified by the Law of the Sea.

On a related note, we think the difference in wealth might also matter. Economically weaker states have relatively higher stakes in securing the economic benefits from resource exploration in the EEC. They therefore should therefore insist on greater protections for their claims. Thus, greater differences in wealth should make it more likely that a CRM clause is included into the agreement.

We also think the outcome states decide on can predict the inclusion of whether or not states want to specify negotiations as a starting point for conflict resolution. Using a new dataset which measures the distributive outcome of the negotiations vis-à-vis the median line, we predict that as the negotiated boundary moves further away from the median line, states will be more likely to specify negotiations as these divisions might be more contentious than settling along the median line.

Existing and potential resources in the area influence states' valuation of the future, but the main type of resources – fisheries and oil – create different expectations of the future. Given that states cannot really access sub-marine oil deposits until property rights, i.e. an agreed upon maritime boundary, to the area have been settled, we expect agreements that cover areas where the likelihood of finding oil is either high or confirmed to be more sensitive to future conflicts and

hence include CRMs than states without oil. Given the mobile nature of fisheries, state can and do cooperate on managing fisheries resources without settling a boundary. But the quantity of fish states catch varies a great deal, hence we expect states that are significant fishing nations to be more likely to include CRMs. One thing to note is that fisheries data is only reported by the quantity caught, there is little or no information available about the value of the particular catch. As fisheries are very heterogeneous with regards to stock and their price, one cannot assume that fishing state which catch a lot of fish are necessarily making more money of their fisheries.

Settling territorial boundaries has been shown to increase trade (Elkins et al., 2006; Simmons & Elkins, 2004), and trade has been shown to decrease the likelihood of conflict between states (Russett & Oneal, 1999). Trade forges linkages that increase levels of trust and therefore we expect the pair of states who trade more to be less inclined to include CRMs.

While the majority of maritime boundary agreements are signed by independent states, a subset of these agreements includes either one or two dependencies. Negotiating for a home boundary versus a boundary for a dependency affects the salience of the issue for the negotiating state (Hensel et al., 2008). Home boundaries are more salient and states might be more willing to spend resources on more institutionalized CRMs, while states would like to minimize the cost of settling conflict on behalf of dependencies. We therefore expect maritime boundaries that include dependencies to be more likely to include CRMs that specify negotiations.

In some maritime boundary areas, states have active territorial disputes in the area. Where there are such disputes, we expect states to be more pessimistic about the future and therefore include a CRM clause. In addition, we also think that states that have fought wars might have a more difficult relationship and a pair that has fought a war should be more likely to include CRMs in their maritime boundary agreements.

We expect power differentials to matter. In earlier work we have found that relatively weak states tend to hold out for agreements that do not hurt their interests. In the same vein, we expect that weak states seek to protect their gains made by including a CRM into the agreement. We therefore expect that a larger power differential is associated with a greater chance of including a CRM (Ásgeirsdóttir & Steinwand, Working Paper 2013). Hence we expect that with a larger power differential, weaker states will be reluctant to sign agreements that do not contain any safeguards in case of future disputes, which will reduce the uncertainty about the future.

Finally, we expect agreements signed after the Law of the Sea opened for signature in 1982 to be more likely to include CRMs, suggesting that there is some diffusion over time.

IV. CODING OF THE AGREEMENTS

Using a new dataset that codes all content of agreements that settle the location of maritime boundaries, this paper explores factors that influence the inclusion of CRMs. The agreements were coded by one of the authors and two undergraduate students at Bates College. The coders were trained and supervised by the author. During the time of the coding, the students also did regular validity checks on their coding, discussed any discrepancies with their supervisor before making the final coding decision. In addition to coding for the presence or absence of mention of CMRs, the coders also coded for how prescriptive these codes were. For example, did an agreement specify the nature of the CMRs, for example the use of arbitrators, mediators, courts or bilateral bargaining? They also coded for such items as whether or not the agreement mentioned oil and fisheries resources in the area, and if so what (if anything) the states should do with them.

At their core, maritime boundary agreements are relatively simple agreements as the goal is always for the pair of states to decide where to demarcate a line in the water. But beyond that, the agreements show a remarkable variation in what the agreements contain beyond the geographic coordinates. Some agreements are quite sparse and include only a list of geographic coordinates, while others specify how states should solve conflicts over fishing resources, potential oil development and how future conflicts should be handled.

V. METHODOLOGY

A sizable number of agreements mention conflict resolution, and specify some form of strictly bilateral procedure based on negotiations. For example, agreements frequently state that conflicts should be solved by “peaceful means”, or through “negotiations”, or refer to Article 33 of the UN charter (which calls on parties to settle differences with peaceful means). We code these cases as 1. Agreements that do not mention any CRM, we code as zero. There is also a comparatively small number that goes beyond specifying negotiation as main venue for conflict resolution. The gamut of diplomatic tools ranges from forming an ad-hoc “commission of

experts" or an "arbitration tribunal" to referring the conflict to the International Court of Justice.[1] Of the 186 agreements in our dataset, 56, or 30.11%, specify some sort of negotiation procedure as CRM. Twenty agreements in our dataset have provisions that go beyond negotiations (10.75%). As we argue above, the implementation of an institutionalized CRM is costly and reduces flexibility when dealing with future disagreements. We believe that these forms of CRM are systematically different than those calling for negotiations. Owing to this and their small number, we leave these cases out of the analysis. Accordingly, our dependent variable is binary.

The first independent variable captures how the two states draw the boundary line relative to the status quo. As we describe in more detail elsewhere (Ásgeirsdóttir & Steinwand, Working Paper 2013), the LOS provides that absent of a bilateral agreement, the median-distance line acts as recognized boundary between two bordering states. Accordingly, we sum up the percentage of territory that falls to either side of the median line. We code the variable as zero if the new boundary falls entirely to one side of the median line and 100 if there is an even split (i.e. deviations to one and the other side cancel each other out, or the parties agree on the median line).

To capture joint democracy, we rely on Polity IV data. Following the Polity approach, a democracy is defined as having a combined polity score of 5 and higher (Marshall, Jaggers, & Gurr, 2010). We include a dummy when both countries in a dyad meet this cutoff.

Economic self-interest is an important driver of cooperation. We include a variable that measures total trade per capita of both countries in the dyad. The raw trade data stems from the Correlates of War Project Bilateral Trade (v3) data (Barbieri, Keshk, & Pollins, 2008; Barbieri & Keshk, 2012). Next, we use a dummy that takes on a value of 1 if there are hydrocarbons present in the water column. This is a forward looking measure, i.e. it captures the need to cooperate over oil exploration, as opposed to existing oil production. The data is from The Petroleum Dataset (Lujala, Ketil Rod, & Thieme, 2007).

For a variable that captures fishery interests, we use the Food and Agricultural Organization's FISHSTAT database. It contains the type and quantity of catch of each state across time (Food and Agricultural Organization, 2012). Unfortunately this dataset does not provide estimates of

[1] Although we do have the information necessary for constructing a more fine-grained categorization of different forms of conflict resolution mechanisms, there is not enough variation in the data to systematically explore those.

the value of the catch. Accordingly, we include the volume of both countries' fisheries into the analysis. Efforts to enforce agreements are costly, and the provision of dispute resolution mechanisms therefore should be driven by the overall salience of cooperation over maritime boundaries.

Wealthier countries can better afford institutionally articulated CRMs, whereas poorer nations should prefer flexible and less expensive means to deal with disagreements. To capture this, we take GDP data from the World Development Indicators, and calculate the total sum of GDP per capita in the dyad. A somewhat different argument applies to differences in GDP. Economically weaker countries have a lower capacity to monitor agreement implementation than richer countries, and they should assign greater economic salience to compliance. Both should lead them to care more about including CRMs into an agreement. We capture these incentives using the absolute difference in GDP between the countries, normalized by the total sum of their GDPs. This variable can take on values between 0 and 1.

Issues salience can also be affected by governance structure. A number of agreements in our analysis were negotiated by former colonial powers on behalf of a dependency. These metropolitan powers might find it too costly to engage in active conflict resolution. To capture this, we include a dummy variable that takes the value 1 if any of the two countries in a dyad are a dependency.

From a realist perspective, power is a main driver of state behavior. Power differentials raise the issue of commitment problems, especially as stronger countries might be unwilling to stick to the terms of boundary agreements. To measure power differentials, we rely on the National Material Capabilities Version 4 data (Ghosn, Palmer, & Bremer, 2004; Singer, Bremer, & Stuckey, 1972).

Territorial conflict and a history of altercations involving the threat or use of force are impediments to peaceful cooperation. Generally the settlement of international maritime boundaries is relatively peaceful, but some areas exist where territorial disputes include maritime areas, rocks and islands. We therefore include a variable that identifies existing conflicts over maritime claims based on the CIA's World Factbook. Tense security relations between countries will impede cooperation in other issues area. To tap into the track record of bilateral relations, we turn to the Correlate of War Project's Militarized Interstate Dispute data (Ghosn et al., 2004). A

dummy variable is coded as 1 if a MIDs involved the actual use of force over the last 10 years, as opposed to a mere threat or display of force.

The last set of variables relate to the Law of the Seas. The treaty was opened for signature in 1982. Though it only achieved the status of international law with sufficient member countries ratifying it in 1994, we expect that it exerted an influence on settlement practice starting in 1982. To capture this, we include a dummy variable that provides a separate intercept for agreements that were created in 1982 or later. In the next section, we discuss our findings.

VI. FINDINGS

Accounting for missing data in the independent variables and without the handful of cases that feature more articulated CRMs, we have 140 agreements in the analysis. This number drops further to 125 when we include our measure of difference in capabilities. Since the capabilities variable does not substantively change our estimates, and is itself not statistically significant, we report our main results without difference in capabilities.

[Table 1 about here]

Table 1 gives an overview of the estimation results. We begin with the results that are strongest and well in line with our theoretical considerations. Richer pairs of countries are less likely to specify negotiations in boundary agreements. This confirms our expectations that poorer countries seek to prescribe negotiations as CRM in an effort to avoid more costly institutional venues specified in the LOS. In the data, each $1,000 decrease in GDP per capita is associated on average with a 1 percentage point increase in the probability of including a CRM (figure 1). [2]

Power also plays an important role. Agreements that were negotiated by patron governments on part of a dependency are more likely to include a CRM. On average, these agreements have a 23 percent greater chance of requiring negotiations as means to address disagreement. Thus, we have evidence that in delegated negotiations, powerful patrons seek to preserve flexibility for the future and try to avoid the costs of implementing a more detailed conflict resolution mechanism. Our second measure of power differentials, difference in GDP per capita, tells a similar story. Though the variable only achieves moderate statistical significance (p=0.069), a 10 point change

[2] All predicted probabilities are calculated holding the baseline probability of inclusion of a CRM at the observed sample mean, 37.4 percent. Figure 2 shows predicted marginal effects with 90 percent confidence bands.

in the difference of the two countries' GDP per capita (on a 0-100 scale) is associated with a 2.2 percent increase in the likelihood of having a CRM. For example, when we compare a pair of countries with equal GDP per capita (a 0 point difference) and a pair where one country has double the GDP than the other (a 33 point difference), the uneven pair has a 7.3 percentage point greater likelihood of including a CRM into their agreement. Clearly, if the economic power differential is large, the involved parties seek to preserve more flexibility for the resolution of future conflicts.

Turning to how states draw their maritime boundary line, we find that agreements that are closer to the status quo (the geographic median line as mandated by the LOS) tend to include more CRMs. Substantively, for each 10 points move towards the status quo (on 0-100 scale), the probability of a CRM calling for negotiations increases by about 2 percentage points. This runs counter to our initial expectation that agreements that deviate from the status quo are more contentious, and therefore the involved parties want to preserve flexibility and spell out negotiations as default mode of conflict resolution. It is possible that we start from the wrong premise. When countries that have more contentious relations are more likely to hew close to the status quo, status quo outcomes could be associated with more flexibility. However, in previous work we found that agreements are that are further away from the status quo are more difficult to achieve (Ásgeirsdóttir & Steinwand, Working Paper 2013). One challenge in pinning down the causal story lies in the contextual nature of bilateral relations and the strategic logic that often drives observable behavior. While informed observers usually can identify whether a pair of states are friendly or not, finding variables that reliably capture this relationship is difficult.

As last variable, the dummy for years after 1982 misses conventional cut-offs for statistical significance by just a bit (p=0.057). The effect is positive, and substantively important. After 1982, the likelihood of including negotiations as only CRM into boundary agreements increased by 13 percent. This is as we expected. With the signature of the Law of the Sea in 1982 the international regime governing maritime boundaries had taken shape. Its menu of institutional conflict resolution mechanisms established an expectation that conflicts that could not be resolved through bilateral negotiations would be dealt with through binding arbitration or come in front of the International Court of Justice. Our evidence shows that countries sought to preserve flexibility in dealing with future disagreements by increasingly prescribing negotiations as only conflict resolution mechanism in their maritime boundary agreements.

A number of variables did not behave as expected. Economic self-interest does not appear to influence the choice of conflict resolution mechanism. Neither oil in the water column, nor the presence of fisheries, nor overall bilateral trade have a statistically discernible effect on including a CRM. Interestingly, the same is true for variables that are either associated with cooperation or directly capture antagonism. Pairs of democracies are not more likely to require negotiations than pairs of countries including one or more non-democracies. In addition, neither competing territorial claims in the affected sea area, nor a history of recent armed confrontation has an influence on the inclusion of CRMs.

VII. CONCLUSIONS

This paper is the first attempt to explain variation in the inclusion of conflict resolution mechanisms found in agreements that settle competing maritime boundary claims. The study of cooperation around ocean areas is unique in that it is framed by the Law of the Sea. This well-established body of international law both frames the interaction of states around an issue area but also gives states a great deal of flexibility about how to boundary conflicts, while only allowing states to claim the median line in the absence of a settlement. Using a new dataset that includes both the distributional outcome of the negotiations as well as content coding for 186 agreements, we find that states solve these conflicts in a variety of ways. In some cases they decide the median line suffices, while in other cases, the distributive outcome is much more uneven. Content-wise, only about half of the agreements really anticipate the possibility of future conflict over a maritime boundary, and of the agreements that do, states interestingly enough bind themselves to the cheapest and most flexible CRM: bilateral negotiations.

We have three interesting findings. First, under these circumstances, our findings suggest that states think about the cost of different ways of solving conflict resolution, with pairs of poorer states more likely to specify bilateral negotiations as a starting point for conflict resolution rather than wealthier states. The attention to cost is also visible in pairs of states that include dependencies, i.e. states who control dependencies are more likely to want to minimize the cost of conflict resolution by specifying bilateral negotiations. Finally, our finding with regards to the relationship between the distributional outcome and the inclusion of CRMs in agreements runs counter to our hypothesis that more uneven settlement should be more likely to have future conflicts. Instead we find that states who settle along the median line are more likely to include CRMs specifying negotiations.

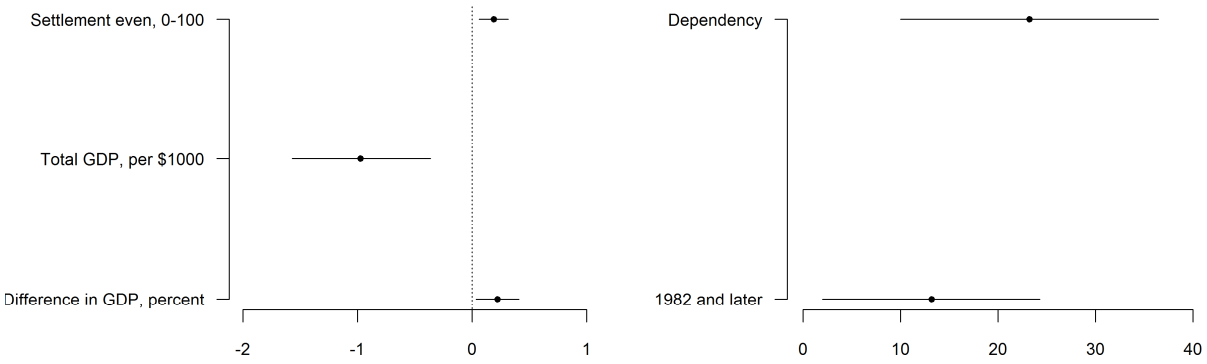
Our research suggests that we should think more about the cost of the various mechanisms for solving international conflict and how states may try to protect themselves from very costly CRMs in the future.

Appendix

Table 1: Probit, inclusion of conflict resolution mechanism

Settlement even, 0–100	**0.00776**	(0.00324)
Two democracies	-0.381	(0.298)
Oil discovered	0.258	(0.296)
Fisheries	-1.01	(1.51)
Bilateral trade	0.363	(0.854)
Total GDP, per $1000	**-4.02e-05**	(1.51e-05)
Difference in GDP, percent	*0.911*	(0.473)
Dependency	**0.958**	(0.337)
Territorial dispute	0.0144	(0.465)
Armed conflict, last 3 years	-0.362	(0.481)
1982 and later	*0.539*	(0.281)
Constant	**-0.719**	(0.295)

Figure 1: Substantive effects of variables



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