Capitalism and the Sea: Sovereignty, Territory and Appropriation in the Global Ocean

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Abstract

This paper introduces the term 'terraqueous territoriality' to analyse a particular relationship between capitalism as a social formation, and the sea as a natural force. It focuses on three spaces – exclusive economic zones (EEZs), the system of 'flags of convenience' (FOC), and multilateral counter-piracy initiatives – as instances of capitalist states and firms seeking to transcend the geo-physical difference between firm land and fluid sea. Capital accumulation, it is argued here, seeks to territorialise the sea through forms of sovereignty and modes of appropriation drawn from experiences on land, but in doing so encounters particular tensions thereby generating distinctive spatial effects. By exploring the articulation between sovereignty, territory and appropriation in the organisation of spaces where land meets sea, the article seeks to demonstrate the value of an analytical framework that underlines the terraqueous nature of contemporary capitalism.

Keywords: oceans; capitalism; piracy; fisheries; territoriality

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From its inception as an historically distinctive social form in the long sixteenth-century, capitalism has developed an ambiguous relationship with the seven tenths of the planet we call the sea. Present at capitalism's foundation, principally as a trade route, the sea has nonetheless regularly posed geo-physical challenges to the expanded reproduction of capital. It has presented specific risks, created unique logistical difficulties and set singular geographical obstacles in the way of capitalist

accumulation. At the same time, the oceans have acted not just as a flat plane of transit – a great highway and wide common, as Alfred Thayer Mahan would have it – but also as a lucrative location for the extraction of natural resources and crucial theatre of geopolitical rivalry and domination (both in the high seas and in coastal waters). This ambivalence has generated particular spatial effects which we aim to expound in this article under the guise of 'terraqueous territoriality' – the distinctly capitalist articulation of sovereignty, territory and appropriation in the capture and coding of maritime space and how environmental conditions matter to these incursions of capital.[1] Of course our planet has for most of its existence been characterised by the separation between firm land and fluid sea. Different human societies have from the beginning been drawn to coastal settlement where they have negotiated, created and changed diverse terraqueous spaces, institutions and cosmologies (Gillis, 2012). We consider here the historical specificity of that interaction under capitalism. The advent of this distinctive mode of social reproduction has arguably intensified the relationship between land and sea, especially with industrial capital's rapid transformation of the oceans through global warming for instance, while the sea has facilitated the speeding up of the global capitalist circuit since the seventeenth century. We use the term 'terraqueous' to describe a geo-physical condition of our planet which we argue has been transformed and itself transforms certain organisations of space (i.e. territorialities) under capitalism.

In what follows, we explore the tensions and contradictions inherent in capital's attempt at transcending the land–sea distinction, working on the assumption that, while there are irreducible material properties attached to land and sea, these change in time and place. We are therefore necessarily addressing a socio-natural relation between the terrestrial and the marine which capital has sought to both channel and

[1] We are indebted to James Dunkerley introducing the term 'terraqueous' to our research in response to a presentation on piracy some years ago, at Queen Mary University of London. It simply means 'consisting of land and water'. In chapter 14 of Melville's *Moby-Dick* we are told 'two-thirds of this terraqueous globe are the Nantucketer's'. We gratefully acknowledge the three peer reviewers and the editorial team at EPD for their thoughtful and constructive suggestions for improvements to the paper. We would also like to thank participants at seminars for their comments and discussion where earlier versions of this work were presented, including Environment and Development Studies research seminar, Department of Geography, Birkbeck, University of London, March 2016; School of Geography research seminar, Queen Mary University of London, October 2016; and the Development Studies Seminar Series, School of Oriental and African Studies, March 2017, where Juan Grigera acted as an excellent discussant.

overcome in different spatio-temporal contexts. It is a connection, moreover, shaped by both socio-political contestation and cooperation (involving state agencies, trade unions, companies and international organisations, among other bodies) over the occupation, delimitation and appropriation of oceanic resources – but rarely under geographical conditions of their own choosing. Plainly, various capitalist states and firms have engaged differently with specific seas at particular times – geopolitical, technological, ideological and bio-physical factors have all influenced the capitalist valorisation of the abstraction that is 'the global ocean' in complex ways. Inspired by pioneering work on terraqueous territorialities by, among others, Gilroy (1995), Ong (2006), Steinberg (2001), Steinberg and Peters (2015), Rediker and Linebaugh (2002) and Taussig (2000), the sea is for us emphatically a place where social relations interact unevenly with natural forces to generate often contingent and unexpected outcomes. Our starting point is the 'territorial political economy' perspective first systematically articulated in relation to the 'ocean-space' by Phil Steinberg (2001). Yet we depart from Steinberg's 'constructivist' sensibilities in our emphasis upon the very material geo-physical attributes of the sea, which arguably make it more resistant than land to being transformed into a 'second nature', and therefore imbue our use of 'terraqueous territoriality' with a degree of environmental determinism. We certainly acknowledge that elemental properties can be and are shaped by human intervention, and that they are therefore not essentially invariant. But such interventions come at a cost – social, environmental, monetary and political – thus revealing unequal power relations both within and between society and nature. In making our case, we concentrate in this paper on the post-war period, and consider exclusive economic zones (EEZs), the system of open registries (or 'flags of convenience'), and multilateral counter-piracy initiatives as characteristic instances of capitalist states and firms seeking to transcend or sublate the geo-physical difference between firm land and fluid sea, thereby generating distinctive forms of terraqueous territoriality.

Our three illustrations are not merely representations of hybrid or liminal spaces (although they are this too). They offer concrete – if always contested and therefore unstable – expressions of how, in encountering bio-physical challenges to its own reproduction at sea, capitalism has used the oceans as a laboratory to experiment with, and generally enforce novel combinations of sovereignty, territory and appropriation. Throughout, drawing on David Delaney's (2005) suggestive formulation, we

emphasise the fertile interaction between 'territoriality' as a relation (or transitive verb), and 'territory' as a thing (or noun): the former denoting the wider range of strategies aimed at producing and regulating space(s), the latter referring to a more specific bounded space, of which the sovereign territorial state has been the dominant form in the modern period. The contribution is pitched principally in theoretical terms, building on our own and others' original research. We draw here and there on elements of our own fieldwork, including by Campling on the global tuna industry which has involved interviewing over 600 people representing capital, states and labour, as well as scientists and NGOs in over a dozen countries, and Colás' work on historical piracy and maritime empires.

Our argument is that each of the three spaces where land meets sea highlights certain experimental dynamics in capitalist development and its particular relationship to the global ocean. These are all, to be sure, fleeting moments in the constant metamorphosis of capital, but they might be seen as snapshots of places where commodity, productive and money capital are respectively reproduced. Once again, there is no mechanical or static correlation here as all of these terraqueous spaces – the EEZ, the FOC vessel and piratical area – combine distinctive expressions of sovereignty, territory and appropriation (of law, politics and economics). But for purposes of exposition it might be helpful to think of the EEZ as a specifically capitalist form of *appropriation* (property), the FOC ship of *sovereignty* (jurisdiction), and the piratical waters, of *territory* (spatial governance). What we offer below is an analytical framework, built around concrete illustrations, which identifies some continuities in the fraught spatial relationship between capitalism and the sea. Before doing so, the next section expands briefly on the theoretical assumptions guiding our analysis.

Capitalism and the sea: A terraqueous territoriality

The sea has been a protagonist in the development of capitalism from the very beginning. For one school of thought – most clearly associated to the work of Fernand Braudel – capitalism is a world-system emerging out of maritime trade during the long sixteenth century (1450-1650), premised on the accumulation of mercantile wealth in seaports like Venice, Genoa, Amsterdam and London. This is the historical

moment that witnessed not just the circumnavigation of the globe, but also the consolidation of a world market with financial and commercial institutions which – in their use of words like 'flotation', 'liquidity', 'flows' and 'ventures' – invoke all the movement and risk of the sea. Marx's own famous statements on the primitive or previous accumulation of capital underline the place of overseas conquest, the Atlantic slave trade and commercial wars among Europe's naval powers in the 'rosy dawn of the era of capitalist production' (Marx, 1976: 915). Even staunch critics of 'neo-Smithian' conceptions of capitalism like Robert Brenner (2001) or Ellen Meiksins Wood (2002) acknowledge that, although capitalist social-property relations may have first crystallised in the English countryside, they were subsequently integrated into overseas commercial networks which bolstered and nourished the growth of English and later, British capitalism. Brenner readily accepts that the world market played a significant role in stimulating demand for manufactured goods and staples produced under capitalist social-property relations, while Wood has no problem in recognising that 'a great deal still needs to be said about how England's particular insertion into the European trading system determined the development of English capitalism' (2002: 64).

In the specific relation between land and sea, commercial capitalism (Banaji, 2016) valorised the oceans principally as a trade route – a surface that accelerates the circulation of precious commodities, and channels access to distant markets. The sea also acted as a venue for the trade in enslaved humans. But this was never a simple or automatic 'flow' and was instead characterised by friction, resistance and uncertainty (Rediker, 2007). The associated delays and risk demanded the development of more sophisticated institutions of finance, insurance and information so central to the origins of commercial capitalism, and were important antecedents for contemporary financialisation (Baucom, 2005). Moreover, as Lauren Benton's (2010) path-breaking work has illustrated, the maritime basis of commercial capitalism challenged any straightforward application of exclusive sovereign territoriality, creating overseas enclaves, corridors and brackish zones characterised by variegated, overlapping and plural legal geographies which in turn often influenced the organisation of sovereignty, territory and appropriation on land (the City of London's continued operation as a tax-haven 'city within a city' is a good example of this). The advent of industrial capitalism gave such exchange and mobility a fresh impetus as the sea itself

became both driver and site for the generalised production of value (ship building and timber and steel industries, the mass employment of seafarers with disposable incomes, industrial fishing and whaling, mineral extraction) and, through technologies like refrigeration or telegraphy, deepened the integration between the circuits of production, trade and credit. Moreover, facilitating these new processes of wealth-creation and accumulation there emerged in the course of the nineteenth and twentieth-centuries a host of domestic, bilateral and multilateral institutions, as well as a body of public international and mercantile law, and conventions specifically aimed at regulating the global ocean.

The combination of these socio-economic and political activities in and about the sea has generated a particularly capitalist form of terraqueousness. It is characterised by an attempt to harness the constant circulation of 'value in motion' to the need of investing in fixed logistical and social infrastructure that can facilitate and smoothen such mobility. Whereas commercial capitalism relies overwhelmingly on commodity circuits ('differential accumulation' or 'buying cheap and selling dear'), industrial capitalism requires a more systematic integration of the three circuits of productive, commodity and money capital. The realisation of value under industrial capitalism thus necessitates the coordination of flows and stocks – managing the turnover time of capital – so that commodities can be produced, stored and distributed as well as exchanged and consumed (Marx, 1992; Newsome, 2010). These logistical operations have tremendous spatial implications, as transport geographers have amply shown through the years.

In the popular imagination, the oceans seem to serve as the domain of commodity and money circuits *par excellence*, whereas land operates as the principal abode of productive capital. But this bypasses the centrality of the sea as a *place* where social relations are *productive* of surplus value in sectors like fishing and maritime transport which from the early eighteenth century represented a significant part of the capitalist labour force (second only to agricultural labourers and textile workers in eighteenth-century England) (Linebaugh, 2003). Such dense interconnections between peoples and places across commodity chains and frontiers gave meaning to the notion that 'Amsterdam is standing on Norway' (Moore, 2010). Further, technological transformations accompanying the industrialisation of capitalism since the mid-

nineteenth century – from steam ships to containerisation and food canning to deep-freezing – drastically reduced turnover time and enhanced the durability of internationally traded food, compressing the space and risk between points of production and consumption. For our purposes, the upshot of these tendencies – however uneven in their manifestation – is that the fluid sea and firm land cannot be so readily distinguished in terms of their perceived qualities. Yet at the same time, the irreducibly geo-physical attributes of earth and water complicate any attempt at simply demarcating the sea along terrestrial lines that characterise the exercise of state sovereignty and accumulation of capital on land. These tensions and contradictions convey the form of terraqueous territoriality we are seeking to explore: a distinctively capitalist articulation of sovereignty, territory and appropriation which tries to transcend the land-sea dualism though a periodic enclosure and parcelisation of the sea, but which constantly encounters in the geo-physical force of the ocean a seemingly insurmountable obstacle that often resolves itself in the creation of amphibious and zonal organisations of space such as the EEZ, the High Risk Zone or indeed the ship flying a 'flag of convenience'. We turn now to our three illustrations of how capitalist states and firms mobilise and combine different conceptions and practices of law, politics and economics (or sovereignty, territory and accumulation) in an attempt at forging a terraqueous territoriality that can manage the existing world order.

Appropriating the sea: Exclusive economic zones

The EEZ is emblematic of the terraqueous territoriality we are positing in that it incorporates sovereignty (exclusive), appropriation (economic) and territory (zone) in its very title. The codification of the EEZ under UNCLOS III in 1982, after a period of acceptance in customary international law from the mid-1970s, was the single greatest enclosure in human history. EEZs cover 35 percent of the total area of the seas, and contain around 90 percent of the world's fish stocks (De Fontaubert and Lutchman, 2003). They emerged as a terraqueous space during the postwar years, partly in response to capitalist innovation and development of distant-water fisheries and offshore resource extraction, but mainly as a result of Cold War geopolitical considerations, including the Third Worldist campaign for a New International Economic Order (NIEO). The outcome was a distinctive legal framework allowing

coastal states to claim special sovereign *rights* (but not territorial sovereignty) over a given EEZ.

The sophisticated separation of the political (sovereign powers) from the economic (property rights) enshrined in the EEZ regime neatly reflects a capitalist logic where the sea is functionally exploited as a resource, rather than politically occupied as a territory. In a 1971 White House exchange between President Nixon and Secretary of State Kissinger over a fisheries dispute with Brazil, the US President is reported to have asserted: 'Navigation we want. Let them fish if they want' (Kraska, 2011: 140). The implication being (more or less sustained by the USA and other powers since then) that so long as the principles of freedom of navigation and innocent passage for the world's largest fleets are upheld, coastal states can do with their marine resources as they please. But this stands only as long as these resources remain faithfully fenced-in by the lines in the sea drawn by the capitalist state system. 'Highly-migratory' species transcend these borders and made a muddle of Nixon's distinction. The wide geographical flow of tuna species led to their categorisation as a 'highly migratory species' under UNCLOS III: 'stocks or stocks of associated species occurring both within the exclusive economic zone and in an area beyond and adjacent to the zone' (UNCLOS 1982, Part V, Art. 63, see also Art. 64). Therefore, while there is some empirical truth in the category of 'highly migratory', it is more of a politico-legal distinction rather than a biological one because of the definitional centrality of the territorial boundary of EEZs. As tuna straddle a range of international legal boundaries the biomass cannot be unilaterally controlled by a single state in the system of (legally) equal states: as such, highly migratory species like tuna can only be nobodies' property. The US instead relied on its geo-economic leverage to muscle its way into fishing grounds on behalf of the US tuna industry, which was a politically powerful player, punching well above its economic weight (Campling et al., 2007). But coastal states resisted. In 1984, the Solomon Islands state enforced its sovereign rights – landed-property – and arrested and confiscated US tuna boats fishing in its EEZ. The US response was to compensate boat owners and deduct the costs from Overseas Development Assistance previously committed to the Solomon Islands (Van Dyke and Nicol, 1987). Kiribati upped the ante in 1985 when it signed a deal with the Soviet Union over access to tuna in its EEZ (Teiwaki, 1987), which would have given the USSR a strategic foothold in the Western Central Pacific Ocean – a sphere of US

influence. The US acquiesced and negotiated what for many years was seen as the world's most stable and lucrative tuna access agreement with all 14 independent Pacific Island countries, albeit continuing to refuse to sign-up to UNCLOS III.

As we'll shortly see, neutral, functionalist conceptions of the law of the sea generally, and the EEZ in particular mask the socio-economic contestation and (geo)political power dynamics that underpin this legal-property regime. The socio-spatial form of the EEZ also challenges a common view of the global ocean as a lawless frontier. Popular books such as William Langewiesche's *The Outlaw Sea* (2005) or John Urry's (2014) *Offshoring* present the sea as a place where the state ceases to be. But in international law at least, the sea is spliced into multiple jurisdictions: states enjoy sovereign rights to marine resources in the EEZ as just noted; the High Seas are 'nobodies property' (i.e. *not* a 'commons'); while the seabed – the Area – is the 'common heritage of [hu]mankind', among other jurisdictions.[2] While there is debate on the interpretation of this latter notion (Hannigan, 2015, pages 65-69), the creation of the International Seabed Authority in 2011 to regulate access to deep-sea mining is an important hurdle to sovereign claims and private appropriation. Even in the least constituted of these jurisdictions – the High Seas – fishing activities are governed by complex layers of international law (if not enforcement capacity in practice), including regional fisheries management organisations' partial regulatory reach over fish stocks, the International Maritime Organisation's authority over shipping pollution, and the International Labour Organisation's over the pay, working conditions, and occupational health and safety of crew on boats.

There are, then, plenty of examples of how diverse global governance regimes and institutions seek to manage the global ocean in its surface, deepwater and sub-sea totality. The difficulty for many of these multilateral agencies lies in conjugating the liberal principle of the 'freedom of the seas' with the drive to secure sovereign property rights over, and the capture of ground-rent through these resources. The EEZ represents one such attempt at marrying unfettered mobility and legal appropriation, albeit with the sea in this instance serving as a laboratory in the experimentation with forms of overlapping governance that have subsequently been applied on land (Haas,

[2] The list also includes the 12 nautical mile territorial seas, the contiguous zone, the continental shelf and archipelagic waters.

1990). In this regard, it is helpful to understand the EEZ not just as an area or zone but also, as Gavin Bridge has suggested, to consider it in volumetric terms 'as a spatial form of property through which the circulation of resources and commodities is controlled' (Bridge, 2013: 57). In contrast to a static, purely grounded conception of resources as 'fixed territory', Bridge enjoins us to think of 'quanta-based' rights to fish, water or other biomass as the principal way that capital can 'secure flow' (page 57). On our reading, the EEZ represents exactly one such spatial form, born from the desire to reconcile the private appropriation of nature under and through the sea, with the reinforcement of the public authority of state sovereignty on land.

The particular form of property rights that states have over fisheries production is a good instance of this confluence. The differentiation in types and degrees of surplus appropriation produced in fisheries systems depend, first and foremost, upon politics. Distributional struggles can take place at different points in the commodity chain, including: on boats – between boat owners and crew over profit and wages respectively (Howard, 2012); in the capture of ground rent from fishing firms by coastal states or 'communities' (de Alessi, 2012); via state revenue from the taxation of fishing and processing firms and their workers (Havice and Reed, 2012); and/or the provision of fisheries subsidies by 'home' and/or 'host' states (Campling and Havice, 2013). Some of these antagonisms (and compromises) revolve around turn-over time, such as maximising the number of 'fishing days' spent appropriating nature over 'steaming days' spent both travelling to and from the fishery and landing the catch onshore (Campling, 2012). This is a prime example of how the terraqueous conditions accumulation strategies. Straightforward geographical considerations like land location shape patterns of surplus appropriation in fisheries, with Port Victoria, Seychelles for instance acting as the epicentre of the Western Indian Ocean tuna industry because of its proximity to the major points in the annual tuna migratory cycle for that region.

In all these cases, the politics that unfolds between, across and within states is compromised by inescapable natural factors that affect global fisheries. The abundance of nutrients and biodiversity in coastal areas is one such factor, accounting for the concentration of fish stocks within the limits of EEZs. The reproduction cycles of fish further complicate attempts at capturing this resource through static, terrestrial

mechanisms of control. Thus as Longo and Clark (2012) have demonstrated, experiments in bluefin tuna ranching – growing the fish in fattening pens to enable a more efficient management of the production and marketing process – are fraught with ecological contradictions including the decline in rates of reproduction under captivity and the sharp rise in calorific requirements of ranched tuna.

This complex interaction between natural and social forces is reduced by institutions like the World Bank that manage ocean exploitation to a seemingly disinterested, managerial and economising logic, turning the governance of natural resources in the oceans into a de-politicised, technical fix. The Bank (2009) argues that the institutionalisation of property rights in the sea will save annually USD50 billion in lost 'wealth'. But it idealizes capitalist relations of accumulation and property in the sea. It assumes that optimal bio-economic conditions can be realised where property rights are managed so that 'biomass (the fish stock) and the capital stock (fleet) are in equilibrium' (2009: 40). Here, the Bank is taking what (it thinks) it has learned on the land and applying it to the sea. In doing so, it ignores the politics of property relations. Marx's critique of classical political economy (especially of Ricardo) makes clear that ground-rent is a re-distributive portion of wealth (the surplus value produced in fishing activities) rather than a 'thing' or a techno-managerial issue that can be identified and 'solved' through policy. Like on land, oceanic property is contested, but under the novel spatial-juridical form of the EEZ the sea and its agents (human and non-human alike) do not conform to the 'jural forms' dominant on land (Bear, 2012).

Similar functional idealisations of the EEZ as another sovereign space of purely technical, 'frictionless' accumulation are discernible in the extraction of resources under the seabed. In contrast to fisheries, the challenge for the capitalist valorisation of offshore energy and minerals is not so much one of mobility across jurisdictions, but rather the articulation of land and sea *within* a given coastal state's sovereignty. The EEZ offers coastal states a legal framework to nationalise the rent accrued from offshore fossil fuel and mineral extraction, as well as bio-prospecting, much in the same way that states own the subsoil resources within their sovereign territory on land. To that extent, the EEZ does in effect act as maritime prolongation of the coastal state's landed property. Yet the combination of geo-physical constraints and limits to

territorial sovereignty we have been exploring also pose unique challenges and opportunities for resource extraction at sea. The technical and operational complexity involved in prospecting and exploiting offshore oil and gas places high barriers to entry which only powerful states (through National Oil Companies) and multinational corporations can afford to meet. Thus relative newcomers to offshore hyrdocarbons like Ghana and Equatorial Guinea rely overwhelmingly on foreign companies to deliver the costly infrastructure required for exploring, drilling, extracting and transporting deepwater crude and gas. The resource flows at sea are replicated in the mobility of both maritime installations (in the shape of mobile deepwater drill rigs, and floating production storage and offloading vessels, FPSOs) as well as in the rotating multinational workforce. 'The result', Brenda Chalfin (2015: 104) suggests speaking of the western Gulf of Guinea, 'is an oil complex sustained by onshore goods and services yet fundamentally rooted in ocean space'. However, these formidable logistical and engineering feats – 'saturation' diving capsules which allow pipeline and rig repair and maintenance at 1,000 feet below sea level, or airlifting of personnel onto FPSOs (Rich, 2013) – also offer the possibility of displacing the social and environmental costs attached to such processes by literally expelling them out to sea. In her rich ethnographic account of offshore oil work in Equatorial Guinea, Hannah Appel (2012) captures the utopian aspiration of 'frictionless profit' among Equatoguinean government officials who conceive of offshore as a secure, apolitical space: 'off the shores of political entanglements, community entitlement, discernable forms of pollution in inhabited areas, or militant attacks and bunkering focused on accessible pipelines' (page 698).

Allied to the legislative hyperactivity that surrounds foreign investment in offshore energy – including laws seeking to ensure 'local content' and 'local participation' in the new extractive ventures – as well as NGO involvement through corporate social responsibility projects, it is clear that these transactions, far from being purely technical and economic, are deeply enmeshed in political power relations (Chalfin, 2015: 113). Rethinking the rent-capture inherent in such activities as part of a broader set of struggles over surplus thus introduces a more complex understanding of the socio-natural relations at stake in EEZs. It forces us to reflect on the EEZ as a sovereign mechanism for extracting ground-rent, where the coastal state assumes the 'class function' of modern landed property because, as with private property over

landed-resources, access rights to fish, or exploration and extractive concessions are 'separated from capital: it is merely the jural form and social location of ownership that has changed' (Capps, 2012: 318). Furthermore, re-conceptualising the sovereign rights encapsulated in EEZ's as a legal basis for the capture of ground-rent once again underscores the peculiarly terraqueous territoriality at play here: not only is the exploitation of marine resources reliant on land-side infrastructure and property regimes (that much is fairly obvious), but the forms of surplus appropriation adopted by land-based sovereign states and capitalist firms are strongly conditioned by the socio-natural cycles and forces at sea.

Mobile Sovereignty: The flag of convenience ship

By 2014, the owners of well over 70 percent by deadweight tonnage of the world fleet chose to use flags other than their own, many of which are considered flags of convenience (FOC) (UNCTAD 2014: 55). To tell the history of the open vessel registry is to trace an incremental but very deliberate series of capitalist strategies to avoid business tax and to bypass years of seafarers' struggle to institutionalise decent pay and working conditions. The legal innovation of the modern FOC originated in Panama. Designed to short-circuit US law on workers' rights and prohibition, Panama gave legal and illicit US enterprises the ability to register vessels under its flag in return for a small fee. 'Flagging out' was ratcheted up during the global stagflation of the 1970s and the frantic hunt for improved profitability among boat-owners (Walters and Bailey, 2013). Fiscally squeezed post-colonial countries such as Liberia, Republic of the Marshall Islands and the Bahamas joined Panama as leading FOC states. In using their newfound sovereignty as a going concern, these governments capture rents from vessel registration powers as a form of state-property.

When sociologist John Urry (2014: 161) typifies FOC ships as 'a neo-liberal paradise' he is presenting only a half-truth. First of all, it is a misconception to suggest there is no regulation in the shipping industry – as we shall see, FOC ships remain subject to (inter-)state regulation and political contestation, including that initiated by trade unions. Second, and moreover, such emphasis on offshoring as a facilitator of '"post-national" systems of contemporary mobility' underplays the fundamental role of state

power in authoring globalisation through practices and policies of *re*regulation[3] (Panitch and Gindin, 2012, page 9). We deal only with the first of these directly here, but in doing so pick up on some reinforcement of the second claim. As with the EEZ, the relationship between sovereignty, territory and appropriation for FOC boats is full of nuance and complexity.

Drawing on ideas in Barkan's *Corporate Sovereignty* (2013), it is helpful to conceptualise FOC vessels as terraqueous territories in two senses: as sovereign spaces and as a strategy of accumulation. First, when a sovereign is outside its territorial limits and meets another sovereign, the potential conflict of laws that ensues is mediated by the concept of comity, wherein deference or courtesy is show between sovereigns. While sovereignty is normally associated with an exclusive territory, comity provides a way for sovereigns to interact in shared space and settle disputes 'over the application of territorial laws in an international context' (Barkan, 2013, page 89) such as the high seas. In this way, the law of the flag state establishes borders and territorialises space on board the boat even when steaming through another state's sovereign waters. 'The story of comity' Barkan suggests, 'explains how companies [including shipping firms] carved out legal autonomy by inhabiting the negative spaces of the international state system' (Barkan, 2013, page 108). Here the particular relation between land and sea becomes sharply apparent, as legal principles like comity stitch together sovereignty, territory and appropriation in a global ocean otherwise deemed to be lawless and unruly. And it is perhaps this relation that leads Steinberg (2009, page 467) to argue that '[m]ovement, beyond and across, as well as within a bounded territory, serves to reproduce the territory that is being bounded'. Even when falling under another state's 'static' domain of sovereign rights in an EEZ, the principle of comity means that the boat owner/captain are subject principally to the regulations of the flag state (at least in regard to labour standards on the boat).

Second, given that a characteristic of the open registry is the ability of shipowners to 'buy' a sovereign and thus the legal jurisdiction that regulates their activities, shipowners *produce* territory as an accumulation strategy. Shipowners use sovereignty invested in state jurisdiction to cut crew costs and undermine the self-

[3] At sea this is often manifest in the almost farcical cases of home governments subsidising FOC ships that are trying to avoid government quotas and/or regulations (De Sombre and Barkin, 2011: 69).

organisation of labour, as well minimising tax bills and avoiding agreements on fishing quotas. Fishers and seafarers started and ended the twentieth century working in the world's most dangerous jobs (Walters and Bailey 2013). Both fall easily between the cracks of regulatory jurisdiction: flag state, port state, vessel owner, crew agency, national waters, high seas. Given the jurisdictional complexity of maritime labour regimes it is no surprise that they are among the first examples of *international* labour regulation, and have more occupation-specific regulation at the International Labour Organisation than for any other job (Couper et al., 1999). It is impossible to avoid the rich irony accompanying a system of 'open' registers camouflaging some of the world economy's worst working practices and most opaque ownership and taxation structures; the FOC regime underwrites all the surface speed, flexibility and mobility privileged by capital whilst condemning those who work and live in the ship's lower quarters to confinement, regimentation and domination. As Leon Fink puts it in his book *Sweatshops at Sea*, for workers the FOC regime is 'a stunningly unique economic phenomenon. In one sweep of a pen …an entire ship's labour force could be transferred overnight to the jurisdiction and sovereignty of a new national "master"' (Fink, 2014: 178). While Elizabeth De Sombre's study of the application of international regulation to FOC vessels found a 'race to the middle' in terms of environmental and safety standards, this was less the case for labour standards (De Sombre, 2006: 260-63). To take the example of work on fishing boats that is symptomatic of open registries: reliable data on deaths and injuries do not exist because most countries fail to systematically report them (Couper et al. 1999; Walters and Bailey, 2013). In contrast to factories and fields, fishing circumscribes physically the labour process to floating platforms of production that can transcend jurisdictions in various ways (e.g. legally through FOC and/ or geographically following the fish between EEZs and the legal grey zone of the high seas). The ship in this regard becomes what Jonathan Bach (via Bruno Latour) calls an 'immutable mobile' (2011) – an object that moves through space without thereby losing its property as a site of production. This makes one of the world's most dangerous jobs also among the most weakly regulated, both in policy and practice.[4] While the close working environment of a fishing boat can spur solidarity among crew, this is often countered by boat owners pitting different nationalities of crew against each other such as on board the

[4] For example, fishing crew were explicitly excluded from the 2006 ILO Maritime Labour Convention, Article II (4).

boats of the EU tuna fleet in the Western Indian Ocean where French able-bodied crew receive a basic salary (e.g. without catch share) of €1,100 per month while Malagasy and Seychellois crew receive only €207 and basic pay for Senegalese crew is reportedly somewhere in-between the two.[5] Restriction to a space that is only ever contiguous with other jurisdictions and workers while on-shore, limits the organisational power of labour, despite the crew's spatial proximity – even though this in turn creates difficulties for management of labour control such as different languages and cultures of work onboard.

Despite these constraints, it is organised labour, not states, that has part-blocked the anti-labour tide of open registries. The FOC is not an automatic or smooth strategy for capitalist accumulation. It is contested by considerable sources of countervailing power, such as the International Transport Workers' Federation (ITF) FOC campaign. For example, the proportion of FOC ships with ITF agreements grew from less than 8 percent in 1990 to over 30 percent in 2000 (Lillie, 2005; Fink, 2014). Notwithstanding this impressive gain, it must be remembered that ITF agreements are only with particular flags and for specific periods (2000 was a particularly 'good year'); that secondary action (i.e. port worker solidarity with FOC crew) is only legal in very few places now; and, related, that 'traditional' dock workers' unions – the ITF's 'industrial muscle' – are on the decline in many places.[6]

The flags of sovereign states produce a mobile border onboard, which in turn reproduces distinctive terraqueous territorialities on land. The motley crews on contemporary FOC vessels form part of a much longer history of mobile hierarchies on ships, leading to all sorts of contradictory spatial forms onshore: from the polyglot and multi-ethnic neighbourhoods of port towns to the legal challenges posed by the status of foreign seafarers resident in metropolitan lands. The dialectic of circulation and accumulation so intrinsic to the history of capitalism and the sea has been accompanied by conflicting spatial phenomena such as the pioneering role of seafarers and dockworkers in working-class internationalism on the one hand (Linebaugh, 2003; Featherstone, 2015), and the most rigid racial segregation and

[5] Personal communications, multiple representatives of EU fleets and crew, Madagascar (December 2013) and Seychelles (January 2014).
[6] Personal communication, ITF representative December 2014.

domination of maritime workers reflected in the distribution of space and rights both aboard and ashore on the other (Balachandran, 2012). Like their so-called 'lascar' predecessors, Filipino, Burmese, Cambodian or Bangladeshi seafarers today occupy the lower rungs of the industry, working under murky terms and conditions facilitated by the FOC regime, and driven to sea by prospects of repatriating remittances to their grossly unequal homelands. As in other sectors highly reliant on migrant labour, the shipping and fishing industries exploit the flexible, low cost but highly-controlled labour process afforded by the open registry system. Yet the difference is that, at sea, it is the floating capital that is in constant movement; labour remains relatively static within the factory ship, and the possibilities of shore leave are highly restricted. In extreme, though hardly rare cases, seafarers are in effect imprisoned for years on ships, acting as bonded and even slave labour tied by land-side debts and obligations to shipowners and operators (McDowell et al., 2015). The integrated network of legal-bureaucratic and market power sustaining the open registry regime from land thus contrasts – and has a corollary – in the isolation, precariousness and vulnerability of fishers and seafarers working on FOC ships at sea. These uniquely terraqueous organisations of space deliver distinctive geographies of labour exploitation, identity and solidarity.

In sum, the 'open registry' regime illustrates how fishing vessels in particular are never far off land when they're at sea: they carry with them all of the characteristics of a land-based labour process associated to say, mining – ethnic segmentation of the workforce, strict labour discipline, repetitive tasks, combination of workplace and lifeworld in a single confined space. Similarly, the open registry ship carries the jurisdiction of its purchased sovereignty in the FOC. Yet, while on the high seas, the ship is also a space within a space, moving the economic activity within its hull across a limitless surface. Workers producing value within and across these spaces, on the other hand, are subject to an altogether narrower territoriality – one defined by the contained, restricted and deeply hierarchical workplace that is the factory ship.

New territorialities of Ocean Governance: Counter-piracy

At first sight, the choice of piracy as an illustration of capitalist territoriality at sea might appear perverse. Piracy – and its legitimate sibling, privateering – are after all

phenomena chiefly associated to non-capitalist, mercantilist empires. Despite its concentrated occurrence today in hotspots off western Africa, the Malacca Straits, Celebes and Sulu Seas and, since the 2000s, the north and western Indian Ocean, piracy remains a relatively marginal practice in global politics. Yet the incidence of piracy in the Gulf of Aden and its environs has in the past couple of decades occasioned much geopolitical anxiety, and produced multilateral counter-piracy initiatives which are noteworthy in understanding the terraqueous territoriality of capitalism today.

Contemporary piracy is significant chiefly because it challenges the capitalist world order in at least three kinds of ways (Glück, 2015). First, it can block access through some of the key maritime chokepoints in the global economy – most obviously the Suez Canal and the Malacca Straits. As we have seen, oceanic sea-lanes continue to act as the main conduits for non-bulk international trade, and delays in the transit of goods can cost firms very dearly at all stages of the commodity chain (Bensassi and Martínez-Zarzoso, 2012). Second, maritime piracy presses on an Achilles' heel of the capitalist world order, namely the ambiguous jurisdiction on the high seas. On the one hand, piracy is clearly an outlawed practice in public international law, yet on the other hand, even the most powerful states – America, China, EU members and Russia – constantly run into juridical complications in combating maritime piracy. Washington and other western capitals have signed bilateral conventions with Kenya and Seychelles to avoid processing alleged pirates through their own domestic laws, instead outsourcing the task to courts in Mombasa, while China and Russia have been forced to deploy counter-piracy forces in the western Indian Ocean in defence of their own cargo fleets. Contemporary piracy has thus turned parts of the ocean-space into a laboratory for new multilateral forms of governance and force that are largely absent on land (Dua, 2015). Finally, the experience of Somali piracy in particular has driven home the point that the high seas and unpoliced EEZs act as the dumpsite (both literally and figuratively) of land-side crises and pathologies – be they so-called collapsed states or the illegal disposal of toxic waste (Schneider and Winkler, 2013). The ocean-world appears in these cases as the space of exception, where the laws and powers of the sovereign state are seemingly suspended in order to address the peculiar challenges of sea-borne violence and illegal practices. To that extent, the sea presents itself to the dominant powers as a disorderly geopolitical sphere in dire need of

regulation, policing and management so that the uninterrupted and unimpeded flow of commodities across the planet can be guaranteed. Let us briefly consider each of these three challenges by way of specifying how the relationship between contemporary piracy and global capitalism has forged distinctive expressions of a terraqueous territoriality.

In August 2011, a group of maritime industry organisations, including the International Chamber of Shipping as well as the ITF, issued the fourth version of guidelines entitled 'Best Management Practices for Protection Against Somalia Based Piracy' (BMP4).[7] The document produces an explicit territorialisation of a High Risk Area in the Gulf of Aden defined as 'an area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E'.[8] This particular area is one of several zones in the north and western Indian Ocean (the Internationally Recommended Transit Corridor – IRTC – and the Extended Risk Area are two others mapped in Figure 1) that have over the past decade or so been delimited, monitored and patrolled by a combination of diverse state and private organisations – from the UK Maritime Operations (UKMO) office in Dubai, to the Maritime Security Centre, Horn of Africa (MSCHOA), 'an initiative established by EU NAVFOR with close co-operation from industry' (EU NAVFOR, 2016). Such exercises have adopted some of the core characteristics of transnational governance – multilateralism, 'hybrid' (military-civilian) mandates and public-private partnerships. The UN's 2008 Security Council Resolution 1816, the first of several such resolutions on Somali piracy, occasioned the establishment of the EU NAVFOR (initially Operation ATALANTA, and from 2009 complemented by NATO's 'Operation Ocean Shield' and Combined Task Force-151), ostensibly to protect World Food Programme (WFP) and African Union Mission in Somalia (AMISOM) vessels from piratical attacks both in Somali and international waters. This humanitarian mandate was, however, from the beginning informed by a wider commercial concern, clearly (if somewhat surreptitiously) stated in the IMO's Resolution A1002 adopted in November 2007, which called on the UN to recognise 'the strategic importance of the navigational routes along the coast of Somalia for regional and global seaborne trade and the need to ensure that they

[7] Available, *inter alia*, on the NATO Shipping Centre website: http://www.shipping.nato.int/Pages/BMP.aspx

[8] Revised from December 2015 to a reduced area encompassing a Red Sea latitude of 15°N; latitude 22°N in the Gulf of Oman; an Eastern limit at longitude 065°E; and a southern limit at latitude 5°S.

remain safe at all times' (IMO, 2017). There is therefore no mystery to the motivation behind this (re)territorialisation of the north and western Indian Ocean: as the reach of the Extended Risk Zone indicates, even if its origins lie in the WFP and AMISOM humanitarian effort in Somalia, counter-piracy in the Gulf of Aden has plainly become a policing and governance exercise aimed at securing the maritime circulation of commodity capital through that strategic region.

Figure 1: International Bargaining Forum Map of Warlike and Risk Areas and Zones, as of July 2014

[FIGURE 1 HERE PLEASE]

Much of this is uncontroversial, but the distinctive terraqueousness of these counter-piracy initiatives is perhaps less obvious. For a start, because most piratical attacks take place outside of territorial waters it is almost impossible to patrol the whole extent of the designated risk areas. Instead the latter are monitored, controlled and supported from strategic coastal bases and offices in Djibouti, Dubai or Seychelles (the operational HQ of MSCHOA is further inland, in Northwood, Herefordshire!). The contemporary attempt at policing the flowing sea from fixed land thus generates new imperial geographies as counter-piracy campaigns re-colonise older imperial outposts and recharge these locations with the mission of rendering the unruly seas stable and secure. Moreover, for all their high-tech attempts at delimiting the sea as authorities try to do on land, the distinctive geo-physical features of the ocean remain stubbornly resistant to governance regimes seeking to guarantee a 24/7, 365-days a year passage through the perilous waters of the Gulf of Aden. Transit through the IRTC is statistically safest at night-time, while the BMP4 itself recognises that seasonal weather conditions can significantly affect the patterns of pirate activity.[9] Finally, and perhaps most importantly, the efforts at territorialising sections of the ocean through counter-piracy regimes create new valorisations of risk that bind land and sea in peculiar ways. The incidence of piracy increases the risk and therefore the costs – labour, insurance, fuel – of transit across the Gulf of Aden. The mapping of

[9] 'Pirate activity generally reduces in areas affected by the South West monsoon, and increases in the period following the monsoon. The onset of the North East monsoon generally has a lesser effect on piracy activity than the South West monsoon'. (BMP4, 2011: 3).

High Risk Areas has direct implications for the terms and conditions of seafarers working on vessels in those areas. The International Bargaining Forum (IBF), the union-employer negotiating body for the maritime industry, has agreed to a series of bonuses, compensation packages and rights to refuse sailing within those designated areas. Similarly, on some calculations, the excess costs of insurance premiums resulting from Lloyds Market Association declaring the Gulf of Aden a 'War Risk Area' in 2008 amount to anything between US$ 460 million to US$ 3.2 billion a year (One Earth Future, 2012).

None of these phenomena – remote control and command, the 'friction' of weather patterns, the increased premiums in high risk zones – are necessarily unique to the high seas. But they are distinctive as the scale and fluidity of the global ocean precludes the traditional terrestrial response to such predicament: occupation through settlement. Multilateral governance initiatives like those off the coast of Somalia that try to make the sea safe for commodity circulation, have to battle with the challenge of enforcing the monopoly over the means of violence within designated high risk areas that are in constant motion. The attempts at transcending the sea-land divide through the delimitation and pacification of maritime zones in fact generate new spatial configurations which in many respects reinforce that very duality (whilst acknowledging their interconnection): counter-piracy takes on a multilateral character at sea, but regional states and their onshore coastal facilities acquire a critical geopolitical role; the supposedly free seas become increasingly regulated and enforced from land by regimes of risk such as insurance premiums, special employment terms and conditions, or corporate security-proofing.

In the past few decades, states and capital interests have struggled to give greater definition to this legal ambiguity through the (re)regulation of maritime space. In the case of contemporary piracy, as we have seen, a combination of multilateral counter-piracy initiatives and the invocation of universal jurisdiction has resulted in attempts at territorialising the sea, thereby securing safe and uninterrupted passage of commercial traffic through the Gulf of Aden. The experiments in global governance have however come across geo-physical obstacles in the flowing sea and in forms of land-based territoriality (essentially sovereign control), which create distinctive problems for those seeking to police the seas – most obviously, how to process

suspected pirates captured in the high seas. The result has in most cases been a reconfiguration of the relationship between sovereignty, territory and appropriation that renders piratical waters off the coast of Somalia as a terraqueous zone: both delimited and patrolled, yet also associated to high risk and lawlessness. Responses to contemporary piracy, then, illustrate the tensions and contradictions in creating a world order that (in Carl Schmitt's sense) aligns order and orientation by securing the seaborne circulation of commodities through land-based systems of sovereign rule.

Conclusions

The sea is both a crucial site for the valorisation of capital – be it through extraction or transport – and a major bio-physical obstacle to its reproduction. It is simultaneously a natural resource and an arena of contested social relations; a realm of movement and freedom which nonetheless has been host to the most sophisticated regimes of hierarchical captivity – be these slaving vessels of the past or today's factory fishing ships. We have explored these tensions between capitalism and the sea through the prism of the terrestrial-maritime divide, suggesting that the distinctive features of capitalism as a mode of production constantly seek to transcend the land-sea binary, thereby producing new configurations of space which we have analysed under the label of terraqueous territoriality. Although diverse human societies have through time engaged in different conceptions and practices of terraqueous territoriality, it is the advent of industrial capitalism which has in our view intensified the relationship between land and sea, attempting in the process to 'flatten' the geo-physical division between solid ground and fluid water.

Carl Schmitt (2003) claimed that world orders are sustained by the convergence of order and orientation in a sequence of political occupation, legal delimitation and economic appropriation. We have given this schema a Marxist twist by focusing instead on the interaction between sovereignty, territory and appropriation in the global ocean. By exploring the (re)configuration of these three domains of power in the practices of EEZs, open registers and counter-piracy we have sought to demonstrate how capital's encounter with the sea generates all kinds of complex, contradictory and often conflictual attempts at resolving the inherent tension between

a mode of production reliant on commodity circulation, yet also radically dependent on fixed social and technical infrastructure for its own reproduction. More concretely, this tension manifests itself in the multi-layered territorialisation of the ocean through the EEZ, which facilitates the appropriation of marine resources via state-landed property whilst also turning these waters and their resources into a class-antagonistic domain of wealth distribution. Similarly, the open registry ship exemplifies how the competitive imperatives of the capitalist market at sea led to the invention of a 'legal fiction' of the FOC as a mechanism exploiting the vessel's 'immutable mobility' in an ocean-space whose vast geophysical and jurisdictionally open properties facilitate poor or weak regulation of ships as sites of commodity production. Finally, we also considered the experience of contemporary counter-piracy in the Gulf of Aden as yet another instance where the critical role of the high seas as a surface of commodity circulation is compromised by the threat of blockages, inflated risk and an ambiguous jurisdiction over alleged pirates. As in the case of the ocean enclosures, counter-piracy has yielded new regimes of multilateral governance and control of the high seas aimed fundamentally at securing the existing world order.

For all their differences, all these cases indicate the various ways in which the relation between capitalism and the sea creates distinctive spatial and juridical forms aimed at reconciling the production, appropriation and distribution of value in our terraqueous world. These are always political in the sense that they involve disputes over power (even when agreement is reached) – be they among states, between capital and labour, firms and campaign groups, or a combination of all these. But these political antagonisms over wealth and power, we have argued, acquire a specific character when land meets sea. They are conditioned by the particular interaction between natural forces of the global ocean (its movements, currents, weather-patterns and geographical features) and the social forms typical of industrial capitalism (the integration of the circuit of capital). The terraqueous character of their relationship is both cause and effect of capital's distinctive organisation of sovereignty, territory and appropriation at sea.

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