

## Article

# Why International Conciliation Can Resolve Maritime Disputes: A Study Based on the Jan Mayen Case

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**Abstract:** The settlement of maritime disputes is an important issue faced by many countries. Choosing an appropriate settlement method is the primary task of policy makers. International conciliation, which results from careful and systematic evaluation, could become the primary choice of dispute settlement. During conciliation, parties have dominant and final decision-making power over the settlement of disputes, and there is flexibility in the application of law and procedural rules. The Conciliation Commission provides independent third-party advice, and the political and time costs of dispute settlements are relatively low. These are core advantages of conciliation that attract the attention of decision makers. The willingness and diplomatic relations of disputing parties, existence of external pressure, economization of delimitation, and capacity of the Commission are key factors that affect the success of conciliation. The roles these factors play depend on their controllability and the strength of the disputing parties. The effects of dispute settlement with the assistance of the Conciliation Commission are systemic. The successful settlement of maritime disputes between Norway and Iceland in the context of the Cold War not only demonstrated that conciliation is of great value in resolving maritime disputes and promoting inter-state relations but also had considerable uniqueness. Many questions regarding international conciliation cannot be clearly answered by the Jan Mayen Case. Increased state practice and further in-depth research are needed.

**Keywords:** maritime dispute; international conciliation; continental shelf; system effects



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## 1. Introduction

Along with the development of human marine activities, the number and complexity of maritime disputes have increased rapidly. Dispute settlement has become an important issue that many countries must face. In order to promote the peaceful settlement of disputes, the international community has explored methods such as negotiation, investigation, conciliation, arbitration, and litigation. Among them, international conciliation, which was conceived in the late 19th and early 20th centuries, represents an important achievement. The Charter of the United Nations specifically stipulates conciliation as one of the main methods of dispute settlement. The United Nations Convention on the Law of the Sea has also incorporated it into its dispute settlement mechanism. After long-term exploration, international conciliation has developed into voluntary conciliation and compulsory conciliation. However, both methods were not given sufficient attention in practice for a long time until Timor-Leste and Australia successfully resolved their maritime dispute through compulsory conciliation in 2018 when the method received attention again. As many countries are suffering from rigid, inflexible, and time-consuming arbitration and litigation procedures, the value of conciliation needs to be reawakened. Although dispute settlements depend on professional investigation and the conclusion of facts and legal issues, it should be noted that choosing an appropriate method still represents an important political decision for the involved parties. In terms of its procedural value, how can international conciliation become a key option for policy makers? As a non-confrontational, cooperative approach, does the success of conciliation depend on other factors? Can the

parties ensure they play a positive role? What are the implications of resolving disputes with the assistance of the Conciliation Commission? The systematic assessment of these issues is the prerequisite for decision makers in choosing this method. As early as the 1980s, Norway and Iceland resolved a maritime dispute through conciliation. The success of the Jan Mayen Conciliation, which occurred during the Cold War, not only demonstrated the value of conciliation in resolving maritime disputes and promoting inter-state relations; it was also inseparable from the international political background of the time, the friendly relations between the two parties, and other factors, which were quite unique. However, it is also one of the few international conciliation cases to have been made public and one of the few successfully resolved maritime disputes in recent decades, providing important empirical materials for academic research. According to Jean-Pierre Cot, the classical model of conciliation is defined as a non-compulsory procedure. Compulsory conciliation is quite contrary to the initial philosophy of it. Compared with the Timor-Leste/Australia compulsory conciliation case, the Jan Mayen Case is more capable of reflecting the core characteristics of the procedure [1]. Scholars have carried out rich discussion on the latter case, mainly from the perspective of international law [2,3]. From the perspective of political decision making, studying this case can also provide assessment approaches for decision makers who intend to initiate international conciliation voluntarily. This article attempts to answer the above-mentioned questions based on an analysis of the Jan Mayen Conciliation, providing new ideas and possibilities for countries that are struggling to find a suitable dispute settlement method.

## 2. Jan Mayen Conciliation

### 2.1. Background of the Dispute and the Establishment of the Conciliation Commission

Jan Mayen is a small island in the Arctic that belongs to Norway. The shortest distance between the island and Iceland is approximately 292 nautical miles. In the 1960s and 1970s, with the development of the international law of the sea, Norway and Iceland began to claim exclusive economic zones and continental shelves [4,5]. Since the distance between Jan Mayen and Iceland is less than 400 nautical miles, the maritime claims of the two countries overlapped, which led to a demarcation dispute. The two sides negotiated and reached the Agreement Between Norway and Iceland on Fishery and Continental Shelf Questions on 28 May 1980.

The agreement resolved the delimitation of the exclusive economic zone between Iceland and Jan Mayen. However, the two countries still disputed the delimitation of the continental shelf. They agreed to submit the dispute to a Conciliation Commission and made specific provisions in Article 9 of the Agreement. According to these provisions, the Commission consisted of three conciliators. Each side appointed one conciliator of their own nationality. The chairman of the Commission was jointly appointed by two countries. Iceland appointed Ambassador Hans G. Andersen as conciliator, who was also head of the Icelandic delegation to the third UN Conference on the Law of the Sea. Norway appointed Ambassador Jens Evensen, head of the country's delegation to the Conference, as its conciliator. By unanimous agreement between the two countries, Elliot Richardson, head of the U.S. delegation to the Conference, was selected as chairman. The Conciliation Commission was officially announced on 16 August 1980. Afterward, the Commission held meetings with both parties in Washington, New York, Geneva, and London to actively promote the dispute's resolution.

### 2.2. Dispute Investigation and Resolution

#### 2.2.1. Conciliation Commission Conducts Independent Investigation

The independent investigation of disputes is an important responsibility of the Conciliation Commission [6]. In the Jan Mayen Case, the legal status of Jan Mayen Island and whether the disputed continental shelf was a natural extension of Jan Mayen Island or Iceland had a key impact on the settlement of the delimitation. These also represented the

main disputes between the two parties. The Commission conducted an investigation into this.

First, the Commission investigated and concluded the legal status of Jan Mayen Island. With the development of the international law of the sea, the legal status of islands can have a key impact on the delimitation of continental shelves [7]. In the Jan Mayen Case, Iceland and Norway had a difference of opinion on the legal status of the island and its ability to have an exclusive economic zone and continental shelf. Iceland maintained that Jan Mayen Island was a rock that could not have an EEZ or continental shelf. Even if the island could claim them, it could not be given the same status as Iceland. Norway, on the other hand, maintained an exclusive economic zone and continental shelf could be claimed for Jan Mayen. Accordingly, the legal status of Jan Mayen Island became the first issue to be investigated and determined by the Commission. The Commission investigated the location, size, physical geography, and human activities of Jan Mayen Island. It concluded that Jan Mayen was an island that could have an exclusive economic zone and continental shelf in accordance with Article 121 of the United Nations Convention on the Law of the Sea [8].

Second, the Commission investigated and concluded that the disputed continental shelf was not a natural extension of Iceland or Jan Mayen. In the case, the failure of the parties to reach an agreement on the application of the principle of natural extension and the delimitation of the continental shelf was the main reason they submitted the dispute to the Commission. Based on the principle of natural extension, Iceland maintained that the seabed between the country and Jan Mayen was a natural extension of Iceland's land territory and formed part of the Icelandic continental shelf. The outer limit of it exceeded 200 nautical miles [9]. Norway, on the basis of the same principle, maintained that this part of the seabed was a natural extension of Jan Mayen Island. Determining the geological relationship between the Jan Mayen Ridge, Iceland, and Jan Mayen Island was the key to deciding on the application of the natural extension principle. The Commission established a working group of scientists. The working group was responsible for investigating and submitting a report to the Commission, which included two parts. First, they investigated and determined whether the ridge was a natural extension of Iceland or Jan Mayen. Second, they used the existing geological and geophysical data to analyze the distribution of resources on the disputed continental shelf. After investigation, the working group concluded that the Jan Mayen Ridge was neither Iceland's nor Jan Mayen Island's natural extension. Based on this, the Commission believed that the principle of natural extension could not be used as the basis for the delimitation of the continental shelf in the case.

#### 2.2.2. Commission Recommendations and Dispute Resolution

The Agreement required the Commission to try to make recommendations within five months of its establishment. On the basis of the investigation into the dispute, the Commission finally submitted a report to Iceland and Norway in May 1981. It made two recommendations and pointed out that they constituted a method of resolving the dispute.

First, the Commission proposed that the two countries could jointly develop resources in the disputed area. Based on the resources assessment of the Jan Mayen Ridge by the working group, it designated a special area of 45,474 square kilometers in total as a joint development zone. Moreover, the Commission also provided recommendations on cooperation models, including the jurisdiction of resource exploration and development activities in the development zone; the development cooperation of transboundary resources within the zone; resource cooperative development methods across the zone; and benefit sharing.

Second, the Commission suggested that the delimitation of the continental shelf in this area should be consistent with the exclusive economic zone previously reached in the Agreement. Accordingly, the central and northern sides of the joint development zone were under the jurisdiction of Norway and included 32,750 square kilometers (accounting for 72% of the total area of the joint development zone), and the area under the jurisdiction of Iceland on the southern side was 12,725 square kilometers (28% of the total area of the joint

development zone). These recommendations were eventually accepted by both parties. On the basis of this proposal, the two countries formally signed a delimitation agreement on 22 October 1981.

### 3. Why Conciliation Could Be the Option for Disputing Parties

When Norway and Iceland could not resolve their dispute through negotiation, what were the reasons they finally chose conciliation? The success of the Jan Mayen Case allows us to investigate this. The dominant power over the dispute settlement process; the flexibility in the application of law and procedural rules; the independent third-party advice provided by the Commission; and the relatively low cost of conciliation create key attractions. These elements have general implications for other countries that opt for conciliation to resolve maritime disputes.

#### 3.1. *The Parties Have Dominant and Final Decision-Making Power over the Settlement of Disputes*

According to the logic of classical realist international relations theory, the pursuit of power is at the core of national interests [10]. When making a decision on choosing a dispute settlement method, countries must take dominance and final decision-making power as the primary consideration. In the Jan Mayen Case, the Conciliation Commission involved in the settlement of the dispute was a third party; however, considering the initiation of the procedure, the non-judgmental nature of the Commission's functions, and the fact that the results were only recommendations, Norway and Iceland were always able to make the final decision. Apparently, both countries were happy with the outcome.

The initiation of the procedure and the establishment of the Commission by Norway and Iceland were entirely voluntary. Voluntariness is a core principle of international conciliation. Accordingly, the initiation of the procedure must be based on the willingness of the parties. This principle has been guaranteed by many important international institutions. According to the Regulations on the Procedure of International Conciliation promulgated by the Institute of International Law, the Conciliation Commission has the power to hear disputes only with the consent of the parties [11]. The United Nations Model Rules for the Conciliation of Disputes between States adopted by the UN General Assembly requires that conciliation can only be initiated with the written consent of the disputing parties [12]. The Optional Conciliation Rules formulated by the Permanent Court of Arbitration stipulate that the initiation of conciliation proceedings requires the consent of the parties to dispute [13]. Iceland and Norway reached the Agreement through consultation, confirming that they would submit the maritime disputes to conciliation. Moreover, a Conciliation Commission is also established by the joint appointment of both parties; it is clear that, from the beginning of the conciliation, the two countries had absolute dominance during the process.

The core responsibility of a Conciliation Commission is to promote the peaceful settlement of disputes. This not only differentiates the procedure from the highly adversarial nature of arbitration and litigation, but also further ensured Norwegian and Icelandic dominance. The emergence of international conciliation largely stems from the fact that the international community considers some disputes to be legally non-judgmental, and thus regards conciliation as an alternative method to resolve them [14,15]. Lauterpacht points out that the fundamental feature of conciliation is not the implementation of the law; its existence means that some international disputes are recognized as non-judgmental [16]. Max Huber also believes that since political disputes are legally non-judgmental, they cannot be resolved by resorting to international adjudication. Conciliation provides new possibilities for the peaceful settlement of international disputes [17]. Considering the complexity of maritime delimitation and in the interest of maintaining friendly relations, Iceland and Norway did not intend to refer the dispute to an arbitral tribunal or court. Instead, they appointed a Conciliation Commission to provide recommendations. The Commission investigated legal and factual issues, such as the status of Jan Mayen and

whether the disputed continental shelf was a natural extension of Iceland or Jan Mayen. However, it was emphasized that the Commission's role was to propose a solution that was fair and acceptable to both countries rather than adjudicate the maritime dispute strictly in accordance with the law. Compared with arbitration and litigation, the Conciliation Commission, Iceland, and Norway established and maintained close cooperation throughout the dispute resolution process. They held conciliation meetings in many places. The Commission also sought the views of the two parties on the report and recommendations. To the greatest extent, Norway and Iceland's dominating power over the dispute settlement was guaranteed.

According to the rules of international conciliation, as a third party, the Commission has the right to intervene in the settlement of disputes and make recommendations. However, its recommendations are not legally binding on the parties. This is the core feature that distinguishes conciliation from arbitration and litigation. It ensures that parties have the final decision on the dispute settlement. In the Jan Mayen Case, Iceland and Norway clearly stipulated in the Agreement that the recommendations and reports of the Commission would not be legally binding. This meant that the final settlement of the dispute still depended on the willingness of both parties, and that even if they accepted the recommendations, this would not change the legal nature of the recommendations themselves. In the Maritime Delimitation Case between Greenland and Jan Mayen, the International Court of Justice pointed out that the success of the Jan Mayen Conciliation was the result of political compromise between the two parties. Hence, it rejected the request to set the case as a precedent in the sense of international law [18]. This judgement reaffirmed the final decision-making power of the parties in resolving disputes through conciliation. Norway and Iceland regarded conciliation as part of a negotiated settlement of disputes between them. Based on the Commission's recommendations, they continued to negotiate and finally signed a demarcation agreement. It is worth noting that disputing parties hold dominating power, which is not only an advantage of conciliation, but is also an important cause of the shortcomings of the method. The initiation and outcomes of conciliation depend largely on the will and cooperation of the parties. This means that without them, the procedure is easily at risk of failure. The uncertainty arising from the Conciliation Commission recommendations' lack of a legally binding nature is also prone to inviting concerns that parties may still be unable to resolve disputes after time and effort have been devoted to conciliation. With these considerations in mind, it is not difficult to understand why some countries prefer to settle maritime disputes through arbitration and litigation.

### *3.2. The Commission Can Apply Law and Procedural Rules in A More Flexible Way*

The development of international conciliation has largely been influenced by arbitration procedures. The Agreement reached by Iceland and Norway provided the procedures to be followed in a dispute settlement. They include the composition of the Conciliation Commission, rights and responsibilities of the Commission, decision-making rules, submission dates, legal effects of the recommendations, etc. Nevertheless, the Commission and parties are less tightly bound by legal and procedural rules than in arbitration and litigation. The flexibility of the political dispute resolution method is maintained. This was of great significance in guaranteeing the dominance of Norway and Iceland throughout the dispute settlement process.

The basic idea of conciliation is that international disputes are the result of various factors combined, such as law, politics, economy, history, etc. International law is only one of the problems faced in resolving disputes. When parties are choosing a settlement method, international law cannot always be the primary consideration [19]. In order to achieve the amicable settlement of disputes and meet the real interests of parties, the recommendations made by the Commission may not be strictly limited by the law and rules of evidence. It was this factor that led Norway and Iceland to choose conciliation. In making proposals for maritime delimitation, the disputing parties requested the Commission would fully

consider the following factors: Iceland's significant economic interests, the geographical and geological conditions of the disputed area, and other special circumstances. Accordingly, the Commission focused on the following factors in making its recommendations: Iceland's energy sources are completely imported; scientific research estimates that the resource reserves on the Icelandic continental shelf are extremely low; the Jan Mayen Ridge is the only place where resources are likely to be stored; and the development of the Jan Mayen Ridge's resources is technically important. Moreover, the Commission also concerned itself with the uncertainty regarding the resources of the continental shelf in the disputed area leading to a need for continued research and exploration; and the promotion of friendly relations between Iceland and Norway. The Commission did not make recommendations dogmatically based on legal provisions, but made some practical arrangements after the comprehensive consideration of variable factors, including political, economic, diplomatic, and legal factors. These arrangements did not necessarily strictly conform to the principle of law. However, they could be accepted by the parties and were better equipped to ensure the equity of the demarcation [20].

Although Iceland and Norway reached procedural rules through the Agreement, the case showed that the Commission could still adjust flexibly according to the needs of the dispute settlement. For example, the Commission had flexibility in following the procedural rules. Since the two conciliators appointed by the parties had participated in previous negotiations and had a full understanding of the case, the Commission determined that there was no need to provide further written or oral opinions. The members of the Commission were experts in the international law of the sea. They did not have professional knowledge on topography or the geological relationship of the disputed continental shelf, nor on the resource reserves in the area. Therefore, the Commission set up a scientist working group that was required to investigate and report on the scientific issues.

According to the Agreement, the Commission had to submit recommendations within five months of its establishment. However, it did not submit recommendations until May 1981, which apparently exceeded the time limit. Neither Iceland nor Norway disputed this. Moreover, the content of the Commission's recommendations went beyond the scope of the parties' request. According to Article 9 of the Agreement, the parties merely requested the Commission's assistance in resolving the dispute over the delimitation of the continental shelf. The recommendations went beyond this since they also proposed that the two countries jointly develop resources in the area, emphasizing that these two proposals together constituted a solution. The joint development proposal clearly exceeded the scope of the request. Iceland and Norway did not dispute this and accepted both proposals in their 1982 demarcation agreement.

### *3.3. The Commission Provides Independent Third-Party Recommendations*

For the settlement of maritime disputes, direct negotiation by the parties is the first choice of many countries. They are often cautious about the method of third-party intervention. Since Norway and Iceland were unable to resolve their dispute through negotiation, they decided to submit it to the Conciliation Commission. In turn, the recommendations made by the Commission provided a new possibility. The Agreement also stressed that the Commission's recommendations would be given due consideration in future negotiations. Of course, this also demands the high competency of the Commission. As the Commission stated, a solid factual and legal basis are key for the parties to accept the recommendations. Therefore, conclusions on issues of fact and law should be able to withstand challenges from both sides. The Commission's investigation and determination of the legal status of Jan Mayen Island was based on Article 121 of the United Nations Convention on the Law of the Sea. Their conclusion on the topographical and geological relationship of the disputed continental shelf with Iceland and Jan Mayen Island was based on the scientific working group's report. These conclusions were sufficiently authoritative to be respected by both Norway and Iceland.

Although the recommendations were not legally binding, this did not prevent them from having a critical impact in achieving the dispute settlement. Iceland and Norway continued to negotiate on the basis of the recommendations and eventually reached a demarcation agreement [21]. The provisions on the delimitation of the continental shelf and the joint development zone in this agreement were consistent with the recommendations. It can be said that, when Iceland and Norway could not resolve the dispute through bilateral negotiation, the intervention of the Commission became key to its final solution. Moreover, whether disputes were resolved through negotiation or conciliation, it was inevitable that the parties would exchange interests or compromise. This led them to potentially facing enormous domestic pressure. Based on strategic considerations, Norway needed to take Iceland's special economic interests into account. Thus, the government faced doubt from various domestic interest groups and the public. Since the recommendations were proposed by the Commission, this overtly shifted the focus to a third party and helped ease the pressure on the Norwegian government.

#### *3.4. The Political and Time Costs of Dispute Settlement Are Relatively Low*

The settlement of international disputes is a process of a game focused on national interests, which is bound to consume a lot of resources from all parties involved. Countries need to conduct a cost and benefit analysis when choosing a dispute settlement method. Compared with arbitration and litigation, conciliation has obvious advantages with respect to controlling political and time costs, which is an important reason why Iceland and Norway resorted to it.

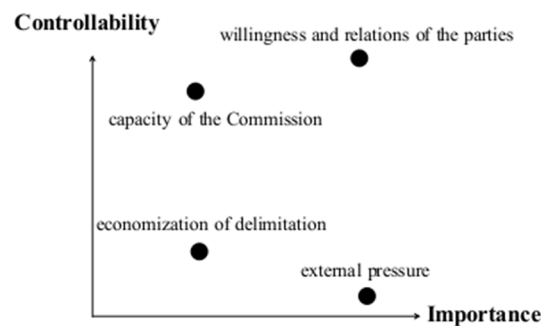
Arbitration and litigation have traditionally been viewed as highly adversarial methods. When parties submit disputes to these adjudicating bodies, their diplomatic relations could be negatively affected. During the South China Sea arbitration, relations between China and the Philippines were directly affected. Timor-Leste and Australia's relations have also been influenced since they initiated an arbitration under the Timor Sea Treaty in 2013 [22]. If Norway and Iceland had chosen arbitration or litigation, the two countries would have inevitably been in a state of confrontation with each other. This might have negatively affected their diplomatic relations. The political costs were broader and difficult to calculate precisely. Conciliation is a cooperative method. With the assistance of the Commission, the two countries resolved their differences through consultation and cooperation, effectively reducing or even avoiding the political costs.

Conciliation can also control the time costs of parties, which is an important reason why the method is largely welcomed. In order to facilitate the settlement of disputes within a short period of time and to avoid procedural abuses and delays in dispute settlement, the working time of the Commission is usually limited [23]. In the Jan Mayen Case, it took only one year and two months from the establishment of the Commission to the final signing of the delimitation agreement. Even the Timor-Leste/Australia compulsory conciliation took less than two years. Since the entry into force of the United Nations Convention on the Law of the Sea, a total of 11 disputes involving the law of the sea have been submitted to the International Court of Justice. Among them, nine cases involved maritime delimitation disputes. Six cases in which the Court rendered judgments, including the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras); Territorial and Maritime Dispute (Nicaragua v. Colombia); Maritime Delimitation in the Black Sea (Romania v. Ukraine); Maritime Dispute (Peru v. Chile); Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua); and Maritime Delimitation in the Indian Ocean (Somalia v. Kenya). These trials took at least four years. The longest one lasted for 11 years. It has been nearly 10 years since the dispute on the delimitation of the continental shelf between Nicaragua and Colombia was submitted to the Court [24]. The International Tribunal for the Law of the Sea took three and four years to hear the maritime delimitation disputes between Bangladesh and Myanmar in the Bay of Bengal and between Ghana and Côte d'Ivoire in the Atlantic Ocean, respectively [25]. The ongoing maritime dispute between Mauritius and Maldives in the

Indian Ocean was submitted to the ITLOS three years ago. According to the records of the Permanent Court of Arbitration, it takes three to five years for UNCLOS Annex VII arbitral tribunals to hear cases [26]. By comparison with maritime delimitation disputes submitted to the International Court of Justice, the International Tribunal for the Law of the Sea, and arbitral tribunals, international conciliation's advantage with respect to time costs is even more apparent.

#### 4. Key Factors Affecting the Success of Conciliation

The above content combined with the Jan Mayen Case shows that conciliation, with its four advantages, could become an option for countries. Logically, the next question rests on how to ensure the success of conciliation. In other words, in addition to the procedure itself, does the resolution of maritime disputes through conciliation depend on other factors? Could the parties control them? There were four key drivers of dispute settlement in the Jan Mayen Case (Figure 1). Among them, the willingness and diplomatic relations of the parties; economization of the dispute; and composition of the Commission were more controllable by the disputing parties. External pressure was less controllable. It should be pointed out that the Jan Mayen Case was quite unique, and the factors that promoted its success may not have universal relevance.



**Figure 1.** Key Factors Affecting the Success of Conciliation.

##### 4.1. The Willingness and Diplomatic Relations of Disputing Parties

Since the parties held the dominating power, the will of Norway and Iceland and their relationship became the fundamental factors affecting the settlement of the dispute. Undoubtedly, both the factors were precisely controlled by the parties. Since the two countries negotiated and submitted the dispute to conciliation voluntarily, there is no doubt that they had a strong will to resolve it.

Iceland and Norway are Nordic countries. They have close ties on various levels, including politics, economy, culture, diplomacy, and military. Both sides wanted to maintain traditional relations, regional peace, and stability. This is an important basis for their cooperation in resolving disputes. Norway is a major Nordic power. Strengthening interdependence with other countries in the region was a key priority of its foreign policy in the 1970s and 1980s. The country had already made some compromises with its neighbors when resolving disputes over maritime delimitation and dealing with issues such as energy development. As early as the 1960s and 1970s, Norway had already taken Iceland's interests into consideration when it claimed the exclusive economic zone and continental shelf of Jan Mayen. The 1958 Convention on the Continental Shelf allowed contracting parties to designate the outer limits of a continental shelf using the "200 m isobaths criterion" or "resource exploitation capacity criterion" [27]. Accordingly, Norway promulgated a decree in 1963 declaring that the country had sovereignty over all the natural resources of the seabed and subsoil adjacent to its coast. Its outer limits were determined by the "resource exploitation capacity criterion". The decree also stipulated that the outer limits of Norway's continental shelf should not exceed the median line with other countries. This left room for the cooperation required to resolve the continental shelf delimitation dispute with Iceland.



On 17 December 1976, Norway promulgated the Economic Zone Decree, declaring it had the right to establish a 200 nautical mile exclusive economic zone. It then established an exclusive economic zone and a fishery protection zone in the Norwegian mainland and the waters off the Spitzbergen Islands. However, Norway had not yet claimed an exclusive economic zone in the waters near Jan Mayen Island. In 1978, important fishery resources were discovered in the waters southwest of Jan Mayen. Under pressure from fishermen, the country announced that it had the right to claim an exclusive economic zone in the waters near Jan Mayen [28]. At this time, Norway still took the interests of Iceland into account. It stated that it would only issue the decree to claim an exclusive economic zone in this area if Iceland did not object. When deciding to submit the dispute to conciliation, Norway also explicitly requested that the Commission take Iceland's special interests into account.

Being a Nordic country, seeking to maintain good relations with neighboring Nordic countries is a key goal of Iceland's foreign policy [29]. This apparently has implications for its cooperative approach to resolving maritime disputes with Norway. Conciliator Jens Evensen noted that Norway and Iceland had a close partnership based on history and ethnicity, which provided the basis for the negotiation and the success of the conciliation [30]. It is not difficult to imagine that, should parties lack the necessary will or their diplomatic relations not provide sufficient support for the settlement of disputes, even if conciliation were initiated it would be unlikely to succeed.

#### 4.2. External Pressure

The Jan Mayen Case occurred during the Cold War. The settlement of the maritime dispute between Norway and Iceland was not only related to the relationship between the two countries. It may have also been impacted by the military deployment of NATO and even the overall strategic competition between the United States and the Soviet Union. At the time, Norway and Iceland were highly dependent on the United States for security, diplomacy, and economy [31]. This increased the latter country's ability to influence the two Nordic countries. External pressures, such as the United States, NATO, and even the Soviet Union, therefore played key roles in the case.

Norway and Iceland are members of NATO. They were at the forefront of strategic confrontation during the Cold War. Specifically, the ocean area from Greenland to Iceland and the United Kingdom was the only passage for the Soviet Navy and Air Force to enter the Atlantic Ocean, namely the G-I-UK Gap. Iceland, along with Greenland and the United Kingdom, was regarded as a natural barrier for the early warning and interception of the ships and aircraft of the Soviet Union. The country is also at the center of the gap. Its strategic location was therefore extremely important [32]. In order to detect and monitor information on Soviet military activities, the United States deployed a radar station in Keflavik, Iceland. Under the circumstance of increasing confrontation between the East and West, the strategic value of Iceland was self-evident. As a result, maintaining a military presence in Iceland became a priority of U.S. foreign policy in the 1970s and 1980s [33]. The support of the U.S. and NATO boosted Iceland's leverage in negotiations with Norway. To safeguard its interests, Iceland will likely use its position to seek compromises from other countries. For example, before the Jan Mayen Case, Iceland had already demanded pressure from NATO and the United States on the grounds of withdrawing from the organization and terminating its radar stations, which eventually forced Britain to make concessions in a fisheries dispute with Iceland [34,35]. If Iceland had failed to achieve its goals in the dispute settlement with Norway, it would have used this tactic again. Moreover, if the maritime dispute had become out of control and escalated into a fierce fight, it would have directly affected the overall situation of cooperation among NATO allies and the strategic competition with the Soviet Union. Thus, the United States and NATO needed to contain this dispute at an early stage and pushed for a quick settlement. Norwegian Foreign Minister Knut Frydenlund acknowledged that there were strategic considerations in the Jan Mayen Conciliation. The country tried to avoid or minimize any negative impact on Iceland's relations with NATO and the United States [36].

In addition, concerns about the Soviet Union taking the opportunity to strengthen relations with Iceland were an important source of external pressure for Norway [37]. In the 1970s and 1980s, Iceland viewed the Soviet Union not as a major security threat but as its trading partner. Strengthening ties with Iceland was an important strategy for the latter country during the Cold War. The Soviet Union supported Iceland during its fishing dispute with Britain. For strategic purposes, the Soviet Union deliberately exaggerated the differences between the two countries and supported Iceland. Facing this pressure, Norway had to compromise in its dispute settlement with Iceland to prevent Soviet goals from being achieved.

Norway and Iceland are small and medium-sized countries with limited strength. They were caught in the middle of a strategic competition between great powers. Their foreign policy was inevitably influenced by these powers. Although Iceland and Norway were completely disproportionate in power, the latter was under pressure from the United States, NATO, and even the Soviet Union. This was the key to its compromise in the dispute settlement. In this dispute, the role external pressure played in facilitating a final settlement cannot be underestimated. This pressure was clearly well beyond the control of Norway and Iceland. The two countries were undoubtedly fortunate; after all, the external pressure played a positive role in the dispute resolution. For states trying to resolve maritime disputes through conciliation, close attention must be paid to external factors and players. If the resolution of disputes is not in their interests, they may also cause unmanageable disruptive effects.

#### *4.3. Economization of Maritime Delimitation*

There are many types of maritime disputes, among which boundary disputes are the most difficult. Boundary disputes always involve factors such as history, international law, national feelings, resource ownership, and international politics. A Conciliation Commission can consider these factors more flexibly and resolve disputes fundamentally.

At the heart of the maritime delimitation dispute between Norway and Iceland was the competition for the continental shelf. The continental shelf is an important source of oil and gas production. The concept of a continental shelf in the sense of the international law of the sea was first proposed by the Truman government in 1945 and had a strong resource attribute [38]. Since then, the exclusive jurisdiction of coastal states over natural resources on their continental shelf has been recognized by the United Nations Convention on the Law of the Sea [39]. The fundamental reason for the dispute over the delimitation of the continental shelf between Norway and Iceland was competition for resources. As a result, the Conciliation Commission proposed a joint development zone in the disputed area and a benefit-sharing mechanism so as to transform the complex demarcation issue into an economic issue. This not only reduced the sensitivity of dispute but also fundamentally eliminated the possibility of disputes between the two sides over the ownership of resources. The recommendations made the delimitation itself irrelevant and thus reduced the difficulty of the dispute. There is no doubt that the economization of maritime delimitation has played an important role in facilitating the settlement of disputes; this approach has been increasingly practiced in resolving other maritime disputes [40,41]. It should be noted that the success of such a solution depends not only on the will of the parties but also on the nature of the dispute itself, the coordination capacity of the Conciliation Commission, and other accidental factors. Thus, although the disputing parties have some control over these factors, the extent of their control is relatively low.

#### *4.4. Composition and Coordination Capacity of the Commission*

The procedural advantages of conciliation only create the formal conditions for dispute settlement. Whether they can be fully utilized depends not only on the willingness of the parties but also on the capabilities of the Commission. The appointment of conciliators and the composition of the Commission are important prerequisites for the achievement of dispute settlement, which are entirely in the hands of the parties and are highly controllable.

The success of the Jan Mayen Case is inseparable from the careful arrangements of the Commission. The dispute was closely related to the international law of the sea. Thus, the conciliators appointed by the two countries had a legal background and also played a key role in the negotiations of the third United Nations Conference on the Law of the Sea. More importantly, they also had the diplomatic experience required for negotiation, which laid the foundation of coordinating the interests of the two parties. The investment of Norway and Iceland in establishing the Commission ultimately paid off. First, the Commission conducted a serious investigation into the dispute. It noted that its recommendations could be accepted by both parties only if they had a conclusive legal and factual basis [42]. Second, the Commission made full use of the flexibility of the procedure, including setting up a working group of scientists, extending the deadline for submitting recommendations, and making proposals beyond the scope of the request. It also contributed to the complete settlement of the dispute by economizing complex delimitation issues, actively safeguarding relations between Norway and Iceland, and giving special care to the interests of the latter as required.

### 5. Systemic Effect of Resolving Maritime Disputes through Conciliation

For political decision makers, achieving dispute settlement is the central objective. However, in order to make the best choice, they must undertake a systematic assessment of the impact of the dispute settlement in advance. The influence of resolving disputes through cooperative conciliation is necessarily different from that of highly confrontational arbitration and litigation. It has a direct impact on policy makers' choice of procedure. Using the system effect analysis framework by Robert Jervis [43], this section of the article intends to reveal the possible impact of resolving maritime disputes through conciliation (Table 1). It is important to note that the following analysis is based on the case study of the maritime delimitation dispute between Norway and Iceland; the particularity of this case still cannot be ignored.

**Table 1.** The systemic effects of the Jan Mayen Conciliation.

	Direct Effects	Indirect Effects
<b>Intentional Effects</b>	Disputes are resolved; the interests of both parties and friendly relations are maintained	Lays the foundation for cooperation in resource development and governance in the disputed sea area
<b>Unintentional Effects</b>	The stability of the regional power structure is promoted	Promotes the practice and development of international conciliation

#### 5.1. Direct and Intentional Effects: Resolved Disputes, Maintained Interests, and Good Relations

Resolving disputes, safeguarding the interests of the parties, and maintaining friendly relations are the most direct and primary objectives of countries facing maritime disputes. With the assistance of the Conciliation Commission, Norway and Iceland worked closely together to finally demarcate the maritime boundary and enact a plan to establish a joint development zone. This brought the decades-long dispute between the two countries to a complete settlement.

At the request of the parties, the joint development zone proposed by the Commission took special consideration of Iceland's economic interests. The country's maritime and economic interests were largely maintained. In the JDZ, the continental shelf under the jurisdiction of Norway is 32,750 square kilometers. This is much more than the 12,725 square kilometers under the jurisdiction of Iceland. The two countries also made favorable arrangements for Iceland in terms of resource exploration and cost and benefit sharing. It was agreed that the cost of geological exploration would be borne by Norway, but the results would be shared by the two countries. Iceland was given more freedom of choice in the commercial development of resources, meaning it faced less risk than Norway. The

economic compromise made by Norway was highly welcomed in Iceland. However, the Norwegian government faced much doubt domestically [44]. At the same time, Iceland's strategic importance was again confirmed by the United States and NATO.

Although economic compromises were made, Norway's substantive interests were not seriously affected. In fact, under the active coordination of the Commission, Iceland also adjusted some of its own positions. This included accepting that Jan Mayen was an island with the right to claim an exclusive economic zone and continental shelf, abandoning the proposal that all the waters surrounding Jan Mayen Island were under the joint jurisdiction of the two countries, and no longer claiming the continental shelf beyond 200 nautical miles. It also no longer insisted that the mineral resources of the waters around Jan Mayen Island were completely shared by both parties. This satisfied Norway's maritime and economic interests. More importantly, Norway had broader strategic and military objectives. As a major Nordic power, it was committed to maintaining regional peace and stability. By resolving maritime disputes with Iceland, traditional friendly relations were strengthened between the two countries. According to Frydenlund, the former Norwegian Foreign Minister, Iceland is an important member of the Nordic society. This is the main reason for Norway to avoid conflicts with Iceland and maintain relations between the two sides [45]. Former Norwegian Prime Minister Odvar Nordli also admitted that the maritime dispute with Iceland would affect the relationship between the two countries in other areas, which was an issue that the Norwegian government needed to face. Because of the concessions made by Norway, Icelandic nationals' favorability towards Norway improved [46]. This continued to consolidate the friendly relations between them, thereby promoting regional peace and stability. Furthermore, if the maritime dispute between the two countries had not been well resolved, Iceland may have requested the withdrawal of United States military bases and radar stations. Norway had to offer an alternative solution. It is worth noting that in order to not provoke the Soviet Union, Norway did not allow other countries, including allies, to deploy troops in its country at that time [47,48]. The settlement of the maritime dispute also lifted the threat of changing its military policy.

### *5.2. Direct but Unintentional Effects: Promoting the Stability of the Regional Power Structure*

The intervention of the United States and NATO was an important driving force for Norway and Iceland to achieve the settlement of maritime disputes through conciliation. Its direct result was that the NATO alliance was further maintained, which ensured the stability of the regional power structure in the context of the Cold War. Norway and Iceland are Nordic countries and they are both NATO members. The maritime dispute settlement deepened the interdependence between the two countries [49]. Since the further escalation of the dispute may have threatened the relationships of NATO alliances, resolving the dispute limited contradictions to a controllable range and removed such a threat.

The relationship between the United States, Norway, and Iceland was consolidated. Norway's foreign and security policy was closely influenced by the United States, focusing on the maintenance of Western cohesion. The country complied with the will of the United States and made a compromise to Iceland in the Jan Mayen Case. It was once regarded as the soundest partner in NATO [50]. As Norway resolved its maritime dispute with Iceland, the United States signed a memorandum with Norway providing military equipment to help the country counter the rising Soviet threat [51]. In order to strengthen the security of Norway, some scholars in the United States even proposed to deploy radar stations on Jan Mayen Island to provide early warning of Soviet missiles and aircraft [52]. Due to the United States' pressure on the dispute settlement, Iceland's relations with US and NATO were also consolidated. This led to the country playing a more critical role in the implementation of the Reagan administration's ocean strategy in the early 1980s [53].

Although Norway and Iceland are important NATO members, the strategic landscape of East–West confrontation is far beyond their control. When they submitted their dispute to the Conciliation Commission, promoting the stability of regional power structures was not their original intention. However, the two sides chose to resolve the dispute through

conciliation, avoiding a negative impact on the strategic layout of their allies. Other countries should likewise act more cautiously when great powers' strategic competition and traditional security are highly valued. Compared with adversarial arbitration and litigation, resolving disputes through conciliation can effectively alleviate confrontation between parties. It can also reduce the risk of reshuffling the regional power structure due to the intervention of external forces.

### *5.3. Indirect but Intentional Effects: Laying the Foundation for Resource Development and Governance in Disputed Sea Area*

The essence of the dispute between Iceland and Norway in Jan Mayen was competition over the ownership of resources. Although the two parties only requested the Conciliation Commission to assist in resolving the delimitation dispute, they still put forward a proposal to establish a joint development zone. Along with this, the Commission also proposed rules for exploration and benefit sharing. These recommendations were ultimately accepted by the two countries. The dispute settlement therefore laid the foundation for further cooperation in resource development and governance in this area.

Specifically, Iceland and Norway agreed that after the signing of the delimitation agreement, a preliminary geological survey would be carried out in the joint development zone. The cost was borne by Norway. However, the results and data were shared by both parties. As for the continental shelves under the separate jurisdictions of Norway and Iceland in the development zone, once development activities were permitted, the other country had the right to participate and share 25% of the profit [54]. In 1985, the National Energy Agency of Iceland and the Norwegian Ministry of Energy jointly conducted a preliminary survey of the joint development zone [55]. In 2007, the Icelandic government decided to offer exploration and production licenses of hydrocarbons in the Dreki area of the joint development zone. The area's oil reserves may exceed 10 billion barrels at most, which has attracted the attention of many companies [56,57]. The country then officially offered exploration licenses in the Dreki area in 2013 to companies from Denmark, Iceland, and China. According to the previous agreement, Norway decided to participate and obtained a 25% stake in the profits [58]. However, due to factors such as high development costs and high risks, exploration has been stopped [59]. In a broader sense, types of maritime disputes are not limited to delimitation. However, involvement from the Conciliation Commission often helps push the parties to de-escalate tensions. Where the Commission can further propose a cooperation model that is in line with the interests of all parties involved, it can lay the foundations for marine resource development and even governance cooperation.

### *5.4. Indirect and Unintentional Effects: Promoting Development of International Conciliation*

States are rational actors. When policy makers seek the settlement of disputes, they consider their own interests more than the development of international law. Norway and Iceland chose to refer their disputes to the Conciliation Commission with no intention of promoting the development of international conciliation. However, it is precisely the increase in state practice that is the main driver behind the continued progress of various dispute resolution methods, including conciliation, arbitration, and litigation.

The Jan Mayen Case, which occurred between 1980 and 1981, coincided with the convening of the third United Nations Conference on the Law of the Sea. The members of the Commission were all representatives of the Conference. This led to its significant impact on the negotiation of the UNCLOS conciliation procedures. Moreover, the settlement of the dispute also had significance for the further practice and development of conciliation after the Convention came into force. The practices of the Jan Mayen Case, including the voluntary initiation of the procedure, the composition of the Commission, the flexible application of procedures and laws, etc., are all regarded as important references for the formulation of the annex V conciliation rules of the UNCLOS [60]. The Commission's approach to legal issues was also used to model the first compulsory conciliation case after the UNCLOS

came into force—the East Timor and Australia compulsory conciliation. In this case, the parties reminded the Commission to pay attention to the difference between conciliation and arbitration. During the investigation of the dispute, the Commission realized that East Timor and Australia had serious differences of opinions on issues of international law. It was not conducive to the settlement of the dispute if the Commission expressed a clear opinion. Accordingly, the Commission ultimately chose to avoid commenting on the issue. In order to achieve a complete settlement of the dispute, the joint development zone proposed by the Commission beyond the scope of the request was also affected by the compulsory conciliation of East Timor and Australia. In this case, in addition to making recommendations on the delimitation of the Timor Sea at the request of parties, the Commission also proposed a special arrangement for the cooperative management of marine resources in the area [61]. This recommendation was eventually accepted by the parties. When Norway and Iceland submitted their maritime dispute for conciliation, it may have been difficult to imagine that as the procedure has attracted more and more attention, the practices of the Jan Mayen Case are still of great value after more than 40 years.

## 6. Conclusions

In comparison to the settlement of maritime disputes themselves, choosing a suitable method is an important political decision. Such a choice directly affects the result of the dispute and even the maintenance of national interests. Thus, it must be made with great caution. Due to their constant rigidity and complexity in practice and development, arbitration and litigation have been questioned all over the world. It is urgent that countries search for and develop alternative dispute settlement methods. As such, can international conciliation attract the attention of policy makers and become a key option? Of course, the further consideration of conciliation requires careful assessment. The Jan Mayen Case shows that international conciliation has at least four advantages, including guaranteeing the parties' ultimate decision-making power over the dispute settlement; the flexible application of laws and procedures; providing recommendations without increasing the pressure on disputing parties; and relatively low political and time costs. The settlement of disputes does not need to necessitate adjusting to third-party tribunals. The willingness and friendly relations of the parties; the existence of external pressure; the economization of delimitation; and the capacity of the Conciliation Commission can also play important roles in dispute settlement. It is worth noting that the parties have varying degrees of control over these factors. Resolving disputes in a cooperative manner with the assistance of a Conciliation Commission is of great benefit to maintaining the interests of and friendly relations between parties; the stability of the regional power structure; the cooperative governance of disputed waters; and the practice and development of international conciliation itself. Given the many advantages of the procedure, how can international conciliation become more attractive to states? International organizations, states, and scholars have in fact made great efforts on this front. In order to reduce uncertainty about the outcome of conciliation, the United Nations General Assembly adopted a convention (Singapore Convention on Mediation) on 20 December 2018. It established a framework for the enforcement and invocation of international settlement agreements resulting from conciliation. Although the Convention applies only to commercial disputes, it may provide new ideas and directions for the development of the method. The Organization for Security and Co-operation in Europe (OSCE) had already established the Court of Conciliation and Arbitration in 1995. Recently, China also decided to initiate an international court of conciliation. With the growing demand for international conciliation, more and more platforms dedicated to conciliation should be established. There is no doubt that the settlement of the maritime dispute between Norway and Iceland in the context of the Cold War was quite unique. Constrained by the fact that there are very few cases voluntarily initiated, it is difficult to escape the drawbacks of solitary evidence in the analysis of international conciliation. Many other questions have not yet been clearly answered. Why are opinions on the role of the

method polarized in academia? Is the success of conciliation relevant to the nature of the dispute itself? If external forces are not willing to see the settlement of disputes, how great a negative impact can they exert? For scholars, further in-depth research is needed. With the active promotion of international organizations, countries, and scholars, international conciliation could play a more important role in future maritime dispute settlements.

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