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A taxonomy of maritime disputes as a foundation for mediation

Report from the MediMare project

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1 Purpose

The MediMare project aims to build a strong and qualified list of mediators that may act in maritime disputes. Thus, the project develops an academic-practical course for mediators of maritime disputes, targeting both inexperienced and experienced mediators. In the training, empirical cases will play a central role. To systematize the empirical field of disputes, a taxonomy was established that can support the course development and the students of the courses.

The proposed taxonomy will be important for the MediMare project, but also for the overall handling of maritime disputes. As a start, the taxonomy of maritime disputes will be a basis for the coming development of mediation scenarios for the workshops and Intensive Course on Maritime Mediation included as outputs in the MediMare project. It will also be useful for targeting the right curriculum in maritime mediation. On top of this, the taxonomy will increase knowledge and governance in the maritime field, contribute to understand the more recurring types of disputes and characterizing their traits.

This can further be analysed from the point of view of social sciences, aiming at a better understanding and growing knowledge of the sea and its social, economic, and cultural phenomena. Indeed, sea is not only a natural environment, but much more than that since it allows for the development of economic and social systems that are different from those on land and that need to be analysed more closely.

The fact that the Sea is a wide area in which several interests and projects interact, sometimes pointing out in different directions, shows that knowledge and dissemination of knowledge on maritime issues is tantamount to its dimension and importance as a vital life support system. The project aims to address this, by performing a research taxonomy that gives visibility to the main conflict situations at Sea or related to the Sea, and linking them with the possibility for mediation to take place.

Indeed, Mediation finds in the maritime area a particularly rich field for development, but that is still underexplored. The purpose of this project is to unlock the potential of mediation in maritime issues as to promote an equitable and safety culture for all involved.

2 Basic framework

The taxonomy of maritime disputes intends to cover a wide number of disputes, for instance:

- circulation of vessels and coastal transport
- boundary disputes and use of marine resources by coastal countries
- environmental disasters at sea
- pollution related to ship traffic and fuel types
- contractual disagreements regarding provision of services
- liability for non-performance

- labour and disciplinary disagreements
- fishing quotas adjudication
- co-existence of activities, for instance location of fishing farms or other installations and different types of fishing gear as well as tourism and other recreational uses
- offshore investments conflicts
- disputes between seafarers
- because of internal crew related issues
- because of larger sectorial or political issues
- safety management
- discrimination and harassment claims
- seismic activity
- migration and salvage at sea

Most of these disputes, will be reconfigured and analysed under the MediMare framework and respective taxonomy.

However, some issues that are more akin to public international law and instruments (for instance the delimitation of boundaries) will be excluded from the analysis, since there are already established legal mechanisms applicable.

Also, the conflictual interests between sea and shore will be only partially covered by the analysis, since they are *prima facie* unlimited, and refer only to a very small area covered by sea.

3 Taxonomy overview

Based on the assumption that there are *classes of cases* that differ from each other both with respect to the *actor landscape* and the *severity* of the disputes, a taxonomic system of disputes is constructed (see Figure 1).

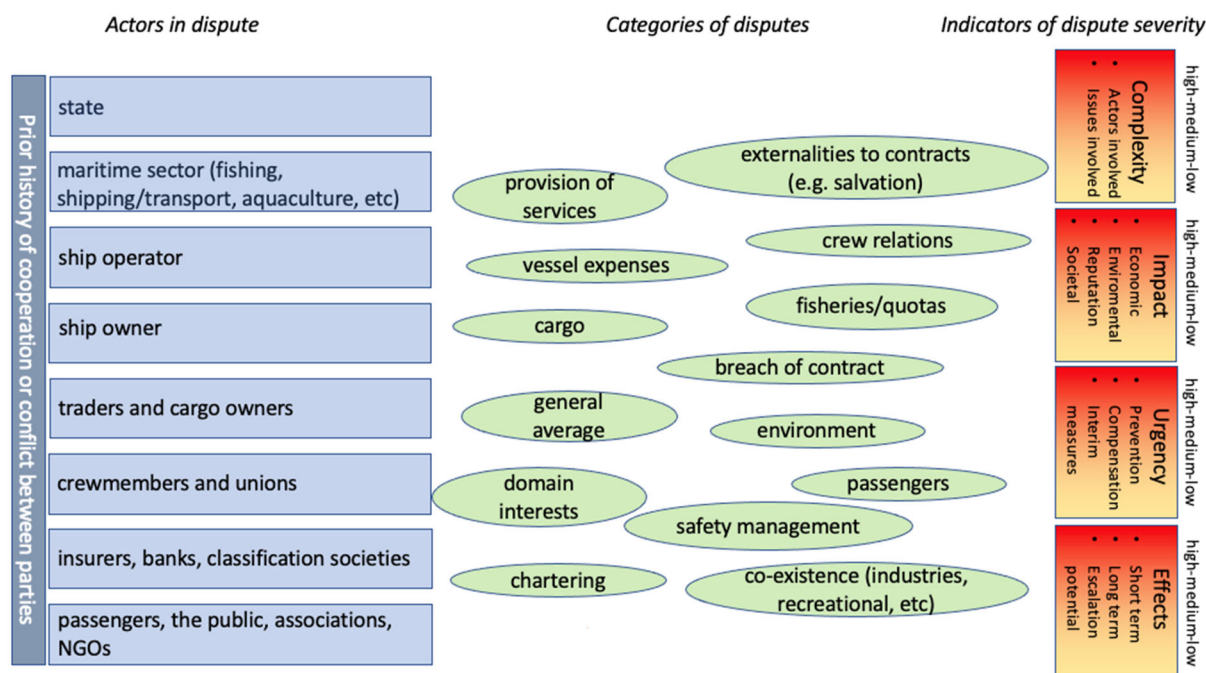


Figure 1. A taxonomy of disputes

This taxonomy will be an important reference for the framing of the courses on maritime mediation, both in terms of content and structure, but also for the sake of presenting the course in a synoptic and communicative manner to potential course participants.

3.1 Construction of the model

The taxonomy (Figure 1) is constructed from three main elements:

- Categories of disputes (green ovals in the middle) sharing characteristics with regard to their empirical nature. For example, different disputes related to sharing costs in case of sacrificing of cargo for a greater good are grouped under ‘general average’. Further, disputes among crews may have several different causes, but are still grouped together since they share this dimension of dispute. The classes are not mutually exclusive and might well be overlapping. This classification is greatly important, since it shows the multiplicity of disputes that may arise in the maritime field; also, the characterisation of the dispute needs to be produced at the beginning of a mediation process, therefore having a repository of categories of disputes helps to configure and delimit the concrete dispute to be mediated.
- Actor landscape (blue rectangles to the left) represent the different types of actor configurations involved in maritime conflicts. By linking a concrete case from one of the categories of disputes to a certain actor configuration, the difference within classes of disputes will become visible. In one of the examples, we have linked a dispute associated with environment to “ship operator/nation”, indicating that it is on the high end of the actor landscape scale. This does not have to be the case with all environmental conflicts, however, since they may involve environment associated actors and private companies, for example, and not just the state. In any case, an approximate indication of the actors

involved is of great importance to mediation, since it is a dispute resolution mechanism that depends on the involvement of the most relevant parties. It should be highlighted that the list of actors provided is not exhaustive and that there may be disputes that involve similar actors (for instance disputes between several forms of fishing).

- The severity of the dispute is an important parameter, and in the taxonomy we have decomposed this into four sub-types: Complexity, which includes both the issue complexity and the actor complexity; Impact, which is a grouped parameter translating several kinds of *stakes* or interests involved; Urgency, which says something about the need to solve the dispute within a certain timeframe; and Effects, stating the consequences foreseen (short term and long term) if the disputes are not being solved.

Additionally, a dimension that is relevant to characterise disputes is the previous history of conflict or cooperation between the parties. This will be relevant for the purposes of conducting mediation, mainly in the definition of the mediation model to be followed.

3.2 Importance of the model

As explained, the taxonomy model is of particular importance for mediation development in the maritime area. Mediation is a relevant alternative or extrajudicial dispute resolution mechanism that has gained international and national attention over the past decades, given its ability to solve highly technical disputes and other conflicts that do not find in Courts a proper or adequate seat for resolution. Mediation is also a mechanism that promotes a self-composition of interests from the several parties (public or private) involved. It aims therefore at a greater change of behaviour and of governance standards than the one that could be prompted by the intervention of Courts (even arbitral Courts).

As seen above, maritime disputes are of great diversity and can span from contractual to extracontractual issues, as well as from commercial and civil disputes to ones relating to public international law and European Union law. Also, maritime disputes are of great complexity given the fact that:

- They may involve the application of different laws, since most are of international nature – different locations, different parties from diverse areas of the world;
- They may imply the application or consideration of several professional, corporate, ethical and behavioural rules;
- They may be relevant, at the same time, for different stakeholders (shipping companies; cruise companies, seafarers), but also for the wider public and citizens.

The purpose of the taxonomy is to explore the usage of mediation in all of the illustrated situations, from multi-jurisdictional disputes to internal disputes, from bilateral mediation to multilateral mediation; from private disputes to publicly informed disputes; from simpler forms of mediation to highly complex technical mediation.

4 Application of the model

Some examples of disputes to operationalize the taxonomy are included in Table 1 below. This includes illustrative situations that could be a reference base for course-developers and for students. Also, it can be used as a tool for discussing empirical cases and thereby a further taxonomy.

The aim is that the taxonomy could be a tool for describing and framing conflicts prior to mediation, as a preparatory step to decide upon a suited mediation strategy.

Topics involved in the dispute	Characterization (short description)	Actors involved	Complexity	Impact	Urgency	Effects
General average	Case: Dispute due to compensation for cargo thrown overboard to save a ship from grounding	Ship owner(s), ship operator, cargo owners	Medium	Medium	Low	Medium
Provision of services	Case: The fire extinguishment system retrofitted on a ship does not function appropriately	Ship owner(s), ship operator, system manufacturer	Low	Low	High	Medium
Fisheries quotas	Case: Fishing quotas were changed, and part of the maritime sector is unsatisfied	State, Maritime sector (not always with converging views), associations	High	Medium	Medium	High
Co-existence	Case: A company developed a wave energy technology located in a fishing domain (claim for compensation)	Maritime Sector (not always with converging views); eventually the State	High	Medium	Low	Medium
Environmental disasters at sea	Case: An oil ship (cargo) has an accident at sea and leaks oil affecting the coasts of three countries	States Maritime sector Cargo owners NGOs General public	High	High	High	High
Safety Passenger	Case: Due to Covid (or other illness) a cruise ship was stranded in one port and could not let its	State Ship owner Passengers Insurances (eventually)	Medium	Medium	High	Medium

Topics involved in the dispute	Characterization (short description)	Actors involved	Complexity	Impact	Urgency	Effects
	passengers out or set sail for another port					
Domain interests	Case: Conflict between manager and users (fisherman's) due to disagreements on regulation of Marine Protected Area	State Manager of the Protected areas (Public Administration) and Maritime sector (Artisanal Fisherman's) Ship owners (small scale owners)	High	Low	Medium	High
Co-existence (ii)	Case: Shellfish gatherers activities and practice of wind sports in the same area (incompatibility of uses, safety issues)	Shellfish gatherers Wind sports users and promoters	Medium	Medium	Medium	High

Table 1. Examples of tabularisation of disputes

Within this taxonomy, any dispute can be characterised in three dimensions: Categories of disputes; Actors; Severity. It is thus quite a powerful tool, or method for framing the nature of a specific problem, in the consideration of what type of mediation would fit a certain conflict. This can be a support in teaching mediation, but also show potential for mediation in real life.

Each dispute can be mapped onto the taxonomy, as illustrated below.

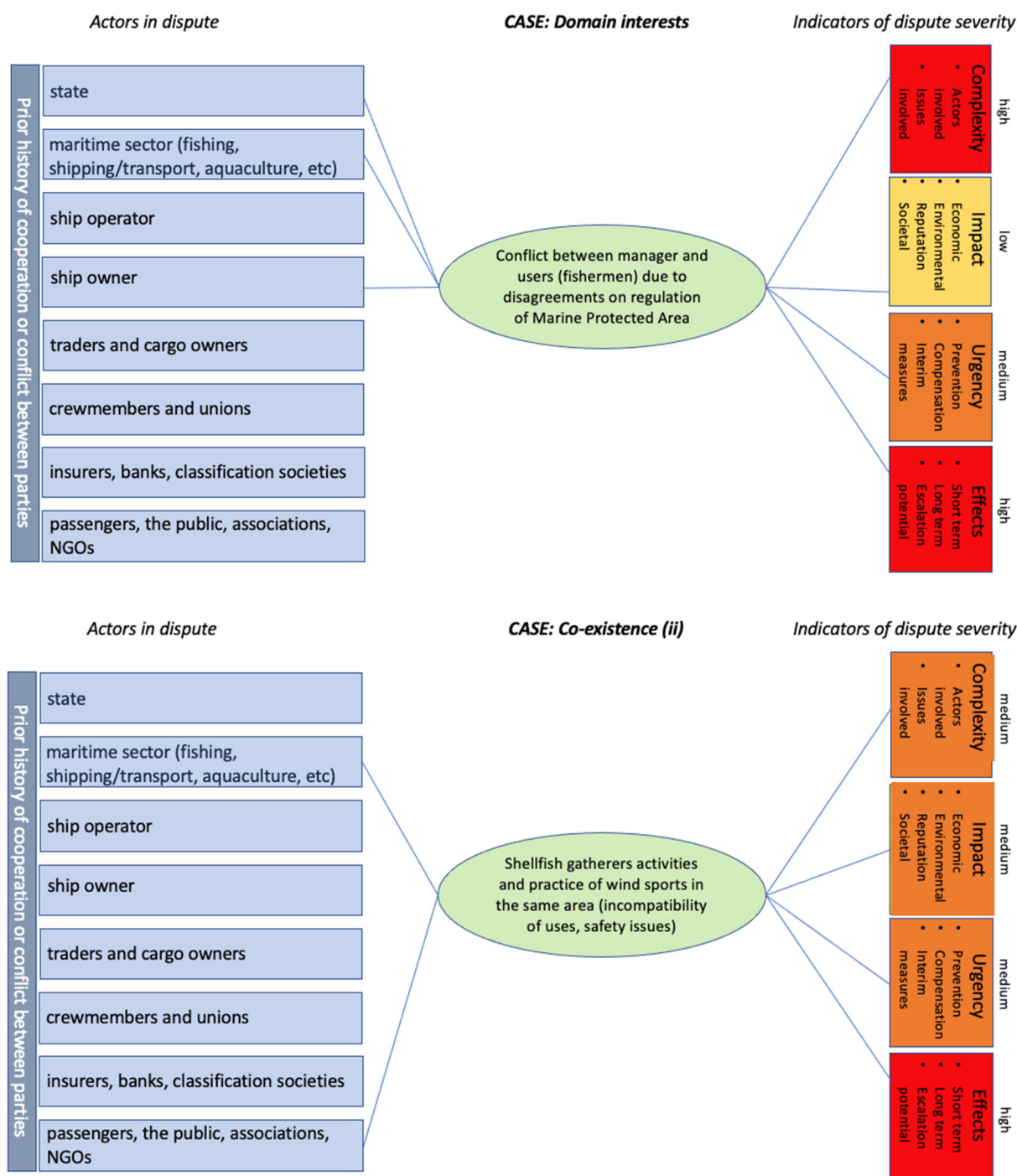
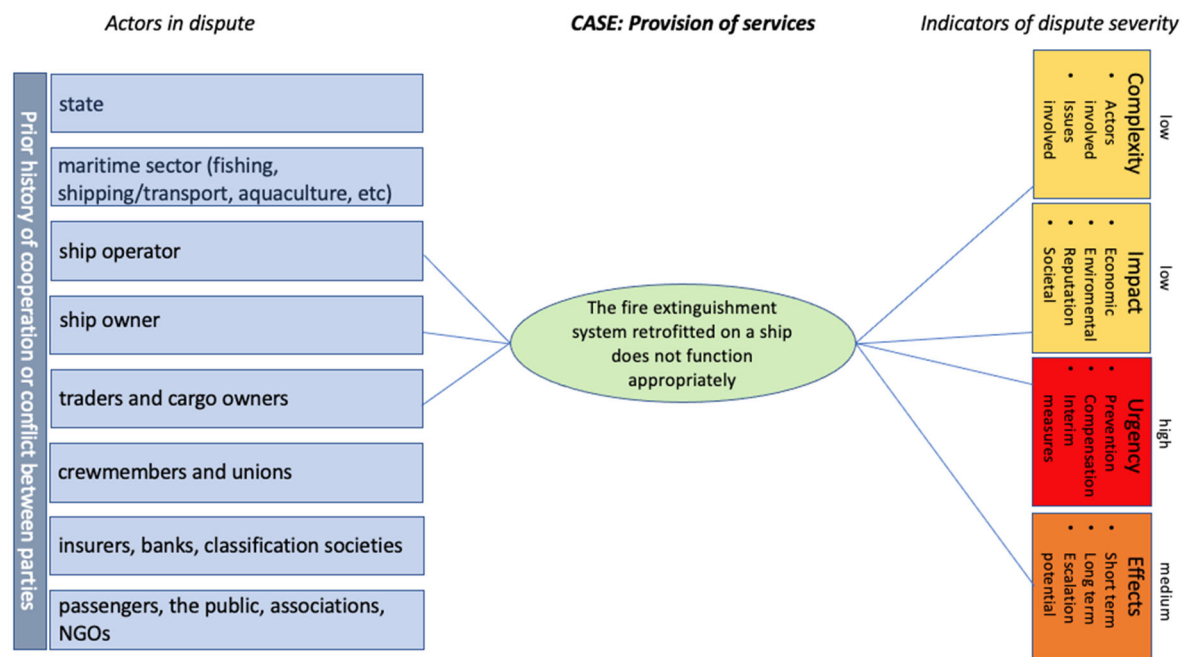
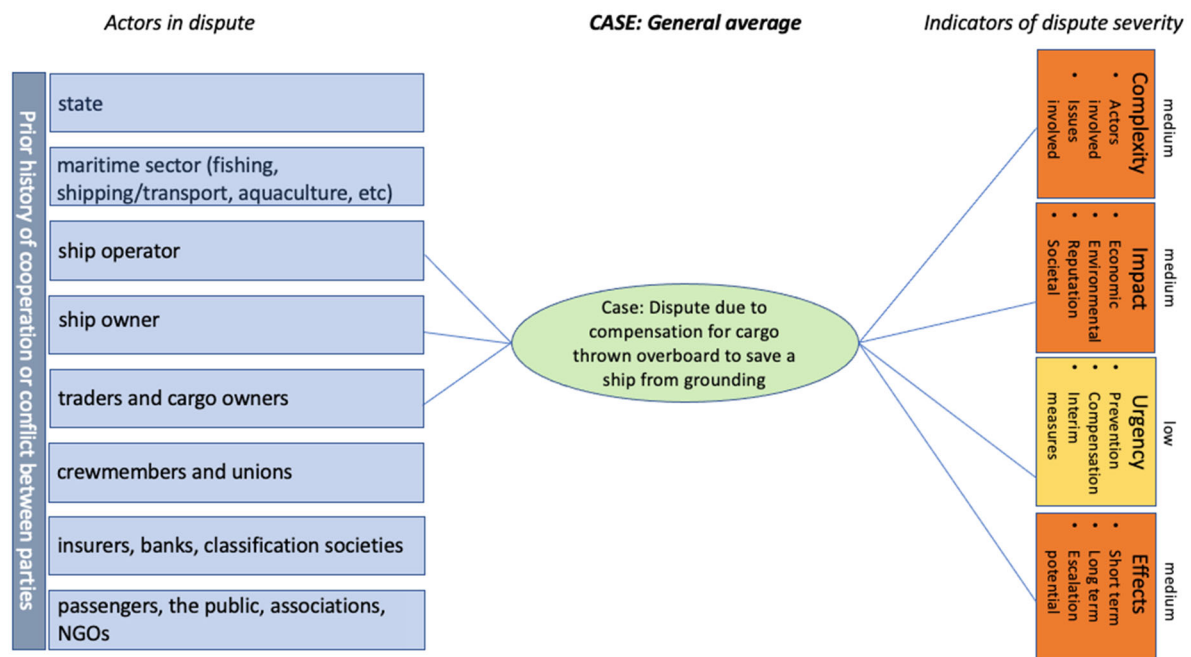
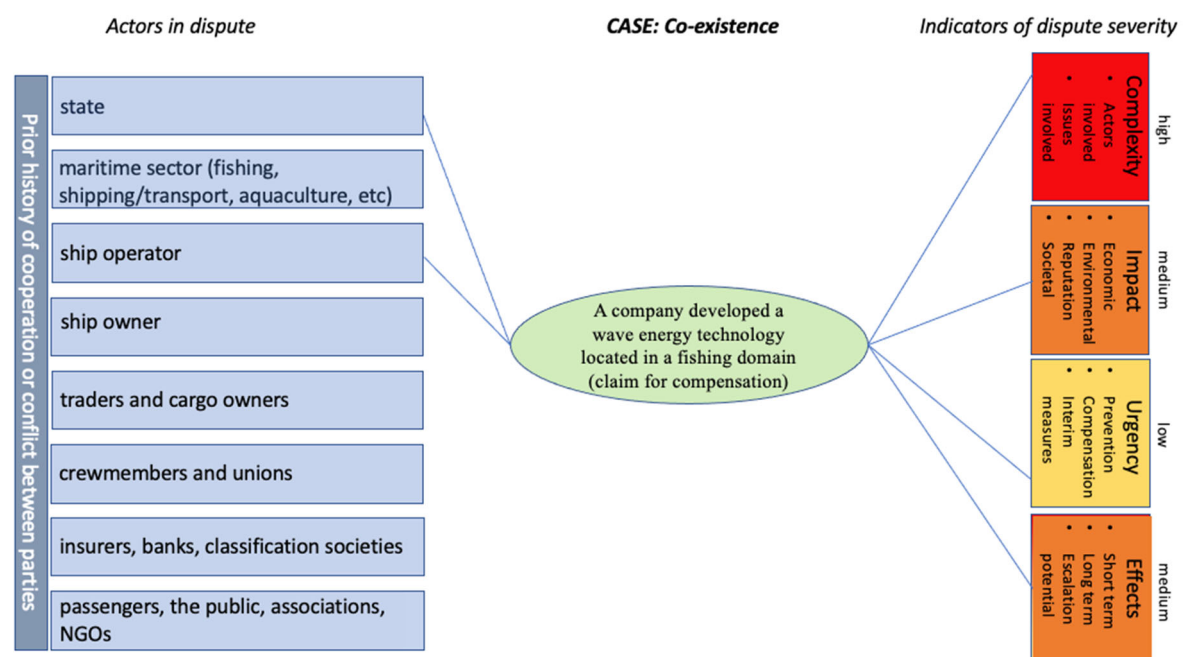
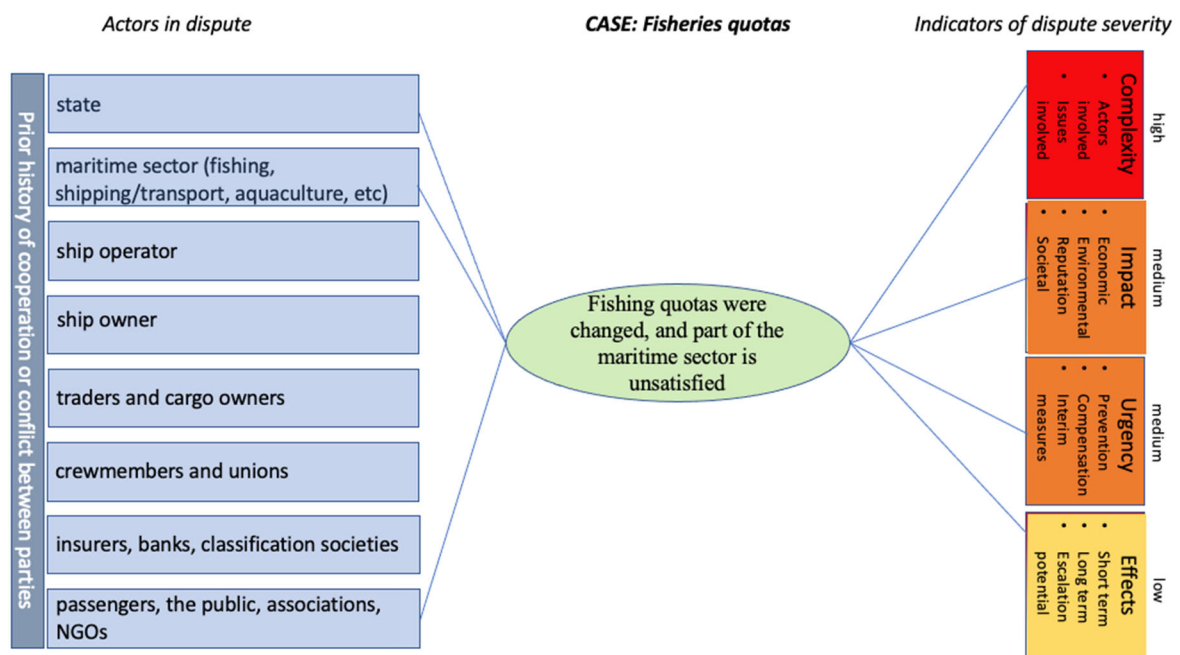
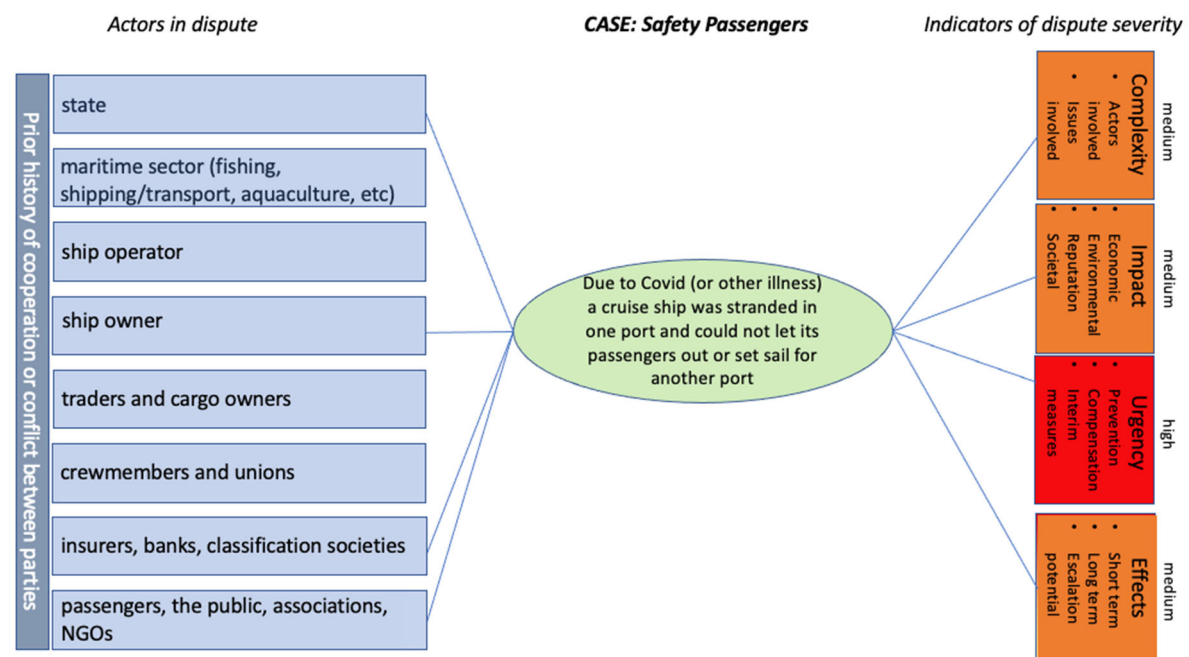
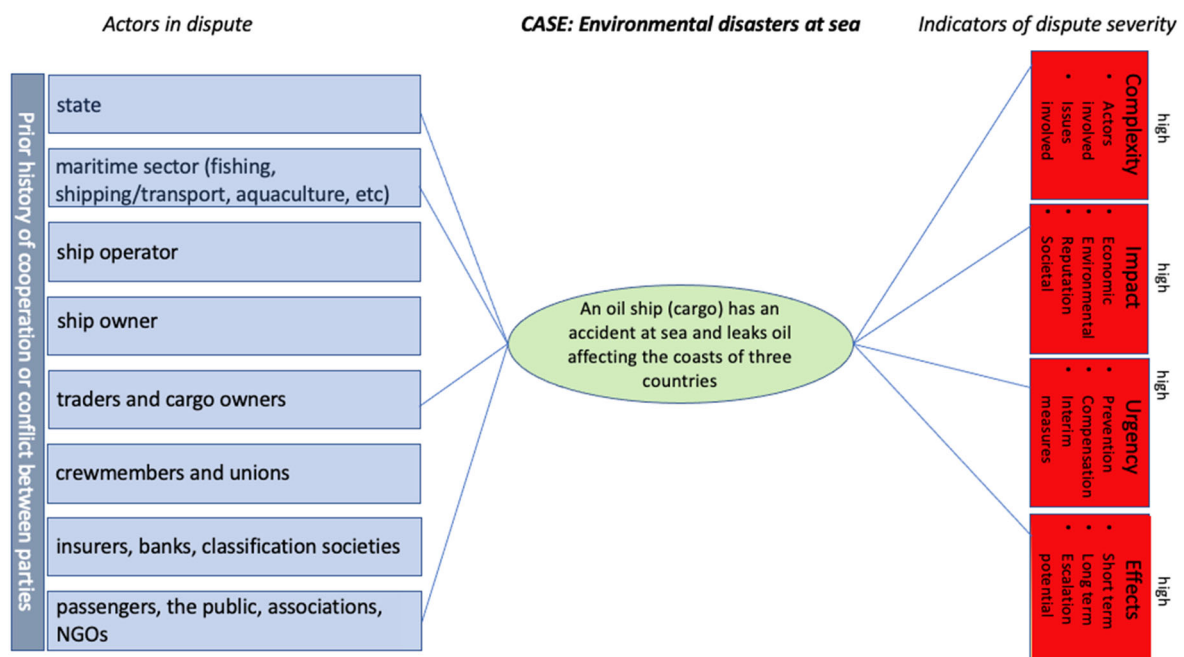


Figure 2







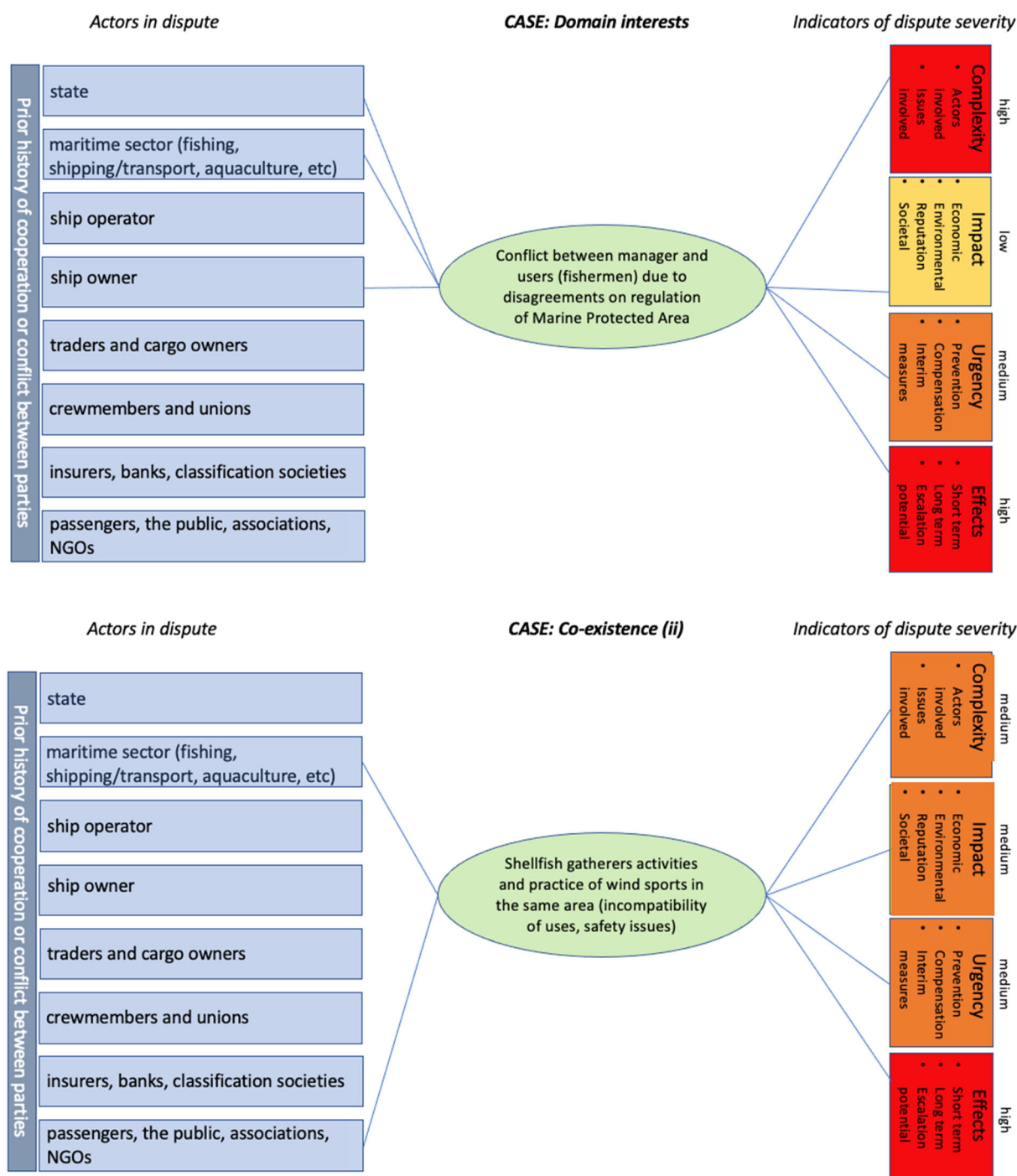


Figure 2. Examples of disputes mapped onto the taxonomy.

5 Next steps

The taxonomy developed still needs to be evaluated and validated by external experts with experience from the maritime mediation domain. Validation tests have been performed during the development of this taxonomy proposal. Advice has been taken from with several researchers, in project group workshops and in conversations with external researchers. A semi-structured interview has been performed, with a Norwegian ship-owner and navigator (May 12, 2022). This has led to improvements of the taxonomy structure, and thus the current proposal. The next validation phase of the present taxonomy will take place in two steps: a first, with the participation of non-beneficiary partners to the MediMare project; the second through external expert interviews, that will be oriented by an interview guide that is being developed under the project scope.