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GUEST EDITOR'S NOTE

The Resurgence of Territorial and Maritime Issues in the Post-Modern Era

Chae-Han Kim
Professor of Political Science, Hallym University, Korea

As the launch of *The Journal of Territorial and Maritime Studies* demonstrates, there has been a recent resurgence of territorial and maritime issues that have plagued both ancient and modern societies for centuries. Territorial borders have evolved over time: pre-modern, modern and post-modern. Most literature concerning border issues, however, is just about modern borders. Recent territorial disputes have been undertaken with the assumption that all boundaries are clear.

Figure 1
Clear Boundary versus Unclear Boundary

However, pre-modern boundaries were never made clear. The two circles in Figure 1 are drawn to the same size. As the periphery of the right circle is colored too pale, it looks smaller than the left. *De facto* jurisdiction does not reach the periphery of the right circle. Therefore pre-modern borders may be expressed as the circle on the right in Figure 1.

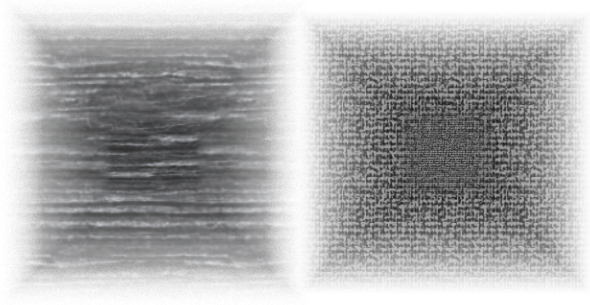


Figure 2
Pre-Modern Borders and Peripheries

Figure 2 shows the characteristics of pre-modern borders and peripheries. The boundaries were rarely made clear. Even when the boundaries were defined, they did not work well as real boundaries. Thus, the peripheries were autonomous and did not belong to any centralized entity. There have been many armed clashes in peripheral areas. Most of these clashes were not made between two central governments, but between a central government on one side and a local entity on the other. These conflicts did not come from the fact that the central governmental jurisdictions overlapped. Instead, they became conflicts over peripheries that were not controlled completely by central governments.

Borders are also disputed historically. It should be noted that pre-modern residents, not directly related to modern nations, are not eligible to compose borders of modern states. Modern borders and pre-modern borders do not necessarily coincide.

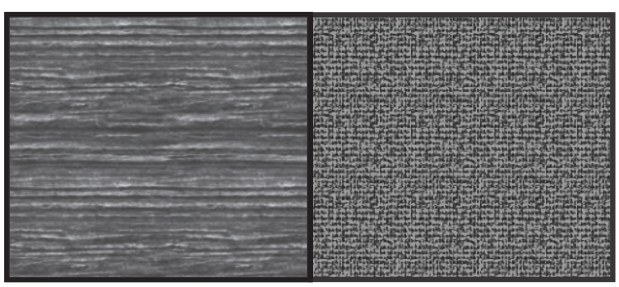


Figure 3
Modern Borders and Peripheries

As shown in Figure 3 of the modern era, nation-states have sought to expand their jurisdiction by making their boundaries clear. National borders have become

clear as nation-states have tried to maximize the size of their jurisdiction. In modern border disputes, the issue of borders has been perceived as a zero-sum situation in which if one wins an amount then the other loses the same amount.

Maritime boundaries have not been fixed even in the modern era since the sea remained outside modern peripheries. Many current border disputes are maritime ones. Modern peripheries did not tend to be friendly to foreign nations. Even though some peripheries were forced to belong to a specific centralized nation, their residents did not feel a sense of belonging to their nation and tended to dismiss their central government as an outsider as well. This is because the interests of peripheries were not well represented by their central government. The term frontier is regarded as being positive and can be compared to the term pioneer by central governments, but it is seen negatively as an imperialistic penetration by local societies.

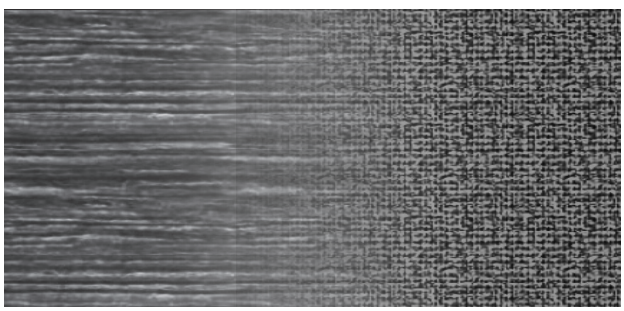


Figure 4
Post-Modern Borders and Peripheries

Figure 4 symbolizes post-modern borders and peripheries in comparison to modern as well as pre-modern ones. International flows are connected through borders and various governance works across borders. The interests and concerns of post-modern peripheries are well represented. Non-national actors such as international organizations and non-governmental organizations work as actors for peripheries, which have not been acceptable in the modern era. This change is called glocalization. The lives of peripheries belong to their local residents and are led by local as well as global interests without respect to their nationality.

This order of time-series sequence is not always true everywhere. The pre-modern, modern, and post-modern characteristics are mixed in current territorial and maritime issues. Therefore, to understand current territorial and maritime issues, we need a conceptual map of borders that includes all three eras.

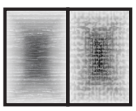
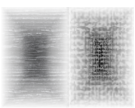
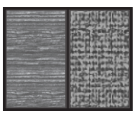
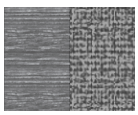
	Line (Wall)	Area (Route)
Edge (Unilateral, Centripetal)	Delimitation 	Periphery 
Boundary (Bilateral, Centrifugal)	Demarcation 	March 

Table 1
Four Conceptual Borders

Table 1 distinguishes among four kinds of borders through two criteria. First, a border may be considered as either the edge of a political entity or as the boundary between two political entities. The edge is far from the center of a centripetal entity while the boundary distinguishes two different centrifugal entities.

Second, a border may be either a line or an area. A line may be an impassable wall or protector distinguishing between in and out while an area may be a passable route or window mixing in and out. This wall is a jurisdiction over people, resources and money. The wall controls their passage and protects against disease and other damage. If a wall is said to be a modern border, a route may be a post-modern border.

A border between militarily or ideologically warring neighbors is a 'demarcation' as seen in Table 1. In some cases, residents of border districts show more of an adversarial attitude toward neighboring nations than do those of central districts. If this is applied to Figure 1, the periphery of the circle is darker than its center. These are observed in border districts of on-going wars or ideological confrontations. This is the phenomenon of 'demarcation'.

On the other hand, a border may yield mutual interests if it works as a path for human and ecological interchange instead of exclusive ownership. Inhabitants of a 'periphery' in Table 1 do not distinguish between their own nation and neighboring nations. Trans-boundary Biosphere Reserves containing sparse populations are an important route for ecological values. For example, the Crown of the Continent (Glacier National Park of the US and Waterton National Park of Canada) lies in the center of the Rocky Mountains where Albert, British Columbia, and Montana meet. Glacier-Waterton was designated in 1932 as the first international peace park in the world before Glacier and Waterton were registered as a Biosphere Reserve in 1976

and 1979, respectively. This is the case of a 'periphery' in Table 1. Similarly, the International Sonoran Desert Alliance is a successful border cooperation between the US and Mexico. The ISDA is not a bilateral, but a tri-lateral or tri-cultural organization with Native American (O'odham) Reservations included.

'Delimitation' and 'march' are intermediate modes of borders between 'demarcation' and 'periphery'. If a border as a clear boundary line has a strong characteristic of an edge differentiated from its center, then it may be called 'delimitation'. As more people are settled into a 'delimitation' border by some central governments, the border tends to take on a characteristic of 'demarcation'.

Last, if a border is a non-edge of a relatively large size across a boundary, then it may be called a 'march'. South African rivers are de *jure* borders. However, there are frequent trans-boundary activities which may or may not be cooperative. A border of 'march' with a relatively dense population is not differentiated from its center.

Under this framework of border concept shown in Table 1, border cooperation is more likely in the 'periphery' as an edge area. Such actors as international organizations, non-governmental organizations, and local societies seem to play a more positive role in border cooperation than do national governments. Border cooperation is more likely to be achieved when local interests as well as global needs are satisfied. Such cooperation may ease confrontation between central governments. JTMS will deal with post-modern borders as well as modern.

The first issue of any journal shows what its aims are. The titles of the articles included in this issue vary. This issue covers almost all continental areas across the world such as the Middle East, Africa, Latin America, and East Asia. Territorial and maritime topics are approached very differently by using such frameworks as selectorate theory, functionalism, colonialism, divided nation diplomacy, Islamic law, and ICJ rulings. Colonial rule, domestic institution, and bilateral non-Western law seem to matter in the following articles while functionalism and ICJ ruling are criticized by some authors of this issue. The forthcoming issues of JTMS are expected to discuss any territorial and maritime subject through various research methods.

The editorial board of JTMS is composed of world-class scholars in political science, sociology, international law, international relations, peace science, and history. As shown in its editorial board, JTMS accepts different perspectives both traditional and new, left or right. Indeed contradictory arguments over peace and sovereignty have been made by parties concerned; however, logical reasoning is required. Finally, it should be noted that any article, including this guest editor's note, does not necessarily represent the publisher's view.

Territorial Change and Selection Institutions

James D. Morrow

A.F.K. Organski Collegiate Professor of World Politics, University of Michigan, USA

Abstract

States have fought over territory for centuries, and continuing territorial conflicts remain the most intractable conflicts in world politics. Different territories produce different gains for the countries gaining them, and the selection institutions of the state influence what sort of gains their leaders seek. Leaders who answer to a large winning coalition will aim at territorial gains that produce public goods for their supporters, primarily through the strategic value of the territory. Leaders who answer to a small winning coalition will seek valuable territory to increase state resources, and allow them to increase the private benefits they provide to their supporters. This paper finds support for this argument by examining territorial changes over the last two centuries. States whose leaders answer to a small winning coalition are more likely to take large territories with a substantial resident population, while states whose leaders answer to a large winning coalition are more likely to add small territories detached from their homeland.

Keywords

territorial change, winning coalition, selectorate theory, strategic territory

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Territory has been a primary source of conflicts of interest in world politics and a primary reason for violent conflict (Vasquez, 1993). Military power is useful for gaining and holding control of territory, making violence and the threat of violence often present in conflicts over territorial control. Territorial gain has been a primary outcome of many interstate wars; sometimes resolving the conflict over the territory and prolonging it in others.

Territory is valuable to states for many reasons. Geography alone can make territory valuable. States have sought to place their borders on geographical features that are easy to defend, such as mountain ranges and major rivers. These defensive advantages can reduce the risk of a sudden attack. Islands can allow the controlling state to project naval and air power to control sea lanes and extend its territorial waters. Areas with valuable natural resources improve a state's economy and government revenue, which historically has been a basis of national power. The population residing on the territory is the primary source of value for that territory. A more productive population produces more revenue for their government. When the resident population is from the same ethnic group as a neighboring state, their co-ethnics in that state may wish to unify under one state. Territories with multiple ethnic groups can then produce conflicts over their control when the different ethnicities are represented in different states, as was common in Eastern Europe during the 20th century. As a state's population and economy are the primary elements of potential power, larger, more populous states are more powerful and so have dominated world politics over time. Two hundred and fifty years ago, European kings fought over territory because the number of people they ruled determined their wealth and power. Wars over territorial control are less common now, but territorial conflict still lies at the heart of some of the most difficult international conflicts in the world today, such as between India and Pakistan over the control of Kashmir.

National leaders operate in the nexus between international and domestic politics. They hold their position through domestic politics and are concerned about international politics in part because what happens internationally affects their supporters in domestic politics. National leaders then view international politics through a lens of domestic politics. They still must be concerned with the success of their strategies internationally, but the values of success and failure are measured largely in their hold on power at home. This paper uses selectorate theory (Bueno de Mesquita, Smith, Siverson, & Morrow, 2003) to assess how domestic politics as assessed by the selection institutions of the state influences how national leaders value territory. Leaders who answer to a large number of supporters are more likely to seek strategically valuable territory, while those who answer to a small set of supporters are more likely to seek economically valuable territory. I present this

argument and test it against the record of territorial changes in the international system over the last two hundred years.

Selectorate Theory

All political systems have ways of removing leaders and selecting their replacement (Bueno de Mesquita et al., 2003). Selectorate theory provides a general explanation of selection processes and how they influence the public policies that leaders adopt. All leaders answer to a *support coalition*, the set of people in the country who keep them in power. For a challenger to come to power, she needs to reduce the current leader's support coalition below a critical threshold, called the size of the *winning coalition* or *W*, and create a support coalition of her own at least as large as *W*. The winning coalition gives the minimal number of supporters needed to hold power.

The *selectorate* is the set of people from whom a support coalition can be constructed. They are the politically relevant class of the society, those who have the power to make and break leaders. Individual selectors are assumed to be identical in their attributes, so any of them can replace any other. The size of the selectorate is referred to as *S*. In order to compare to *W*, coalition politics in selectorate theory focuses on the size of the support coalition compared to *W* and *S* and how leaders and challengers use public policy in their efforts to retain sufficient support to hold power or to bring down the current leader by pulling off enough supporters.

Some examples can clarify these three concepts. In a modern mass democracy, such as the United States or South Korea, the electorate is the selectorate. Ultimately, democratic leaders answer to voters, and they build a support coalition from the voters. Even when a democratic leader is removed through a non-electoral process, such as a vote of no confidence, those who remove and replace the leader do so out of a concern that the leader's support coalition has been reduced to the point where he or she would be likely to lose the next election. The exact size of the winning coalition in a democracy depends on the specific electoral rules of the country, but it ranges between one-quarter and one-half of the electorate. For South Korea, *W* is somewhere between 8 million and 16 million people, based on the number of voters in the 2012 Presidential election. In democracies, *W* is a large proportion of the population.

In non-democratic systems, the winning coalition and the selectorate are much smaller. In a traditional monarchy, the aristocracy is the selectorate, but the monarch relies on a small proportion of the aristocracy to maintain himself in power against revolts or other plots against him. Traditional monarchs and tyrants often held court so that they could monitor those who might be plotting against them

(Myerson, 2009). Military dictatorships also limit political power to those in the military, with the officers at the top holding the most power, and other groups they need to run the country, such as industrialists. These systems have small selectorates, and *W* is a fraction of that selectorate. Assessing the true size of *W* is difficult in closed political systems, where political competition and coalition formation take place in secret. Further, autocrats typically oversize their support coalition, so that even when we can judge the size of that support coalition, *W* may be significantly smaller. Additional supporters beyond those needed to hold power create a cushion in case some supporters defect to a challenger.

Modern autocracies are often based on a single party which holds power, with the Communist Party in such states being the initial historical example. These autocracies have larger selectorates than traditional monarchies, aristocracies, or military dictatorships; the party and all its members are the selectorate in those countries. The support coalition is the critical elements within the party that keep the specific leader in power. That support coalition is often a small fraction of the party's membership as many may join the party for personal advancement outside of politics. The size of the winning coalition is even smaller, although it is difficult to tell how small a fraction it is. The leader's critical supporters may reach down into the depths of the party from patronage relations between the higher levels of the party and local cadres. In all cases, the selectorate in one-party states is larger than in other forms of autocracy. We think that the size of the winning coalition is likely to be larger, but those figures cannot be estimated easily, as they can for democracies. To provide an idea of the relative sizes of the selection institutions across autocracies, about one million people benefited from Saddam Hussein's personalist dictatorship out of a population of 22 million Iraqis, the aristocracy of Louis XIV's France is estimated at 3-7% of the population, and there are about 80 million members of the Chinese Communist Party out of a population of 1.2 billion Chinese. In all cases, both the selectorate and the winning coalition are much smaller than in modern, mass democracies.

National leaders use public policy and state resources to hold the loyalty of their support coalition. They become vulnerable if sufficient members of their support coalition defect to a challenger and reduce their support coalition below *W*, the size of the winning coalition. Broadly speaking, leaders can create two types of benefits for their supporters. *Private benefits* are targetable to individuals, allowing the leader to direct these benefits solely to his or her supporters. The Byzantine Empire took this form of benefit to its clearest extreme as the Emperor once a year would summon the provincial governors to Constantinople, the capital, and reward each with a large sum of money directly from the Emperor's hands in a public ceremony. Military revolts were common in the Empire, with the governors able

to use their provincial armies to support or oppose a rebellion by another. These payments both helped the Emperor hold the loyalty of the governors and allowed him to monitor their allegiance to him. *Public goods* benefit all in society; they are produced by the state, and no one can be excluded from them. The leader's support coalition benefits from the public goods produced by the leader just as all in society are, including those outside the selectorate. These public goods can cover a wide range of the public goods familiar to political scientists. This dichotomy between private benefits and public goods is clearer in theory than in practice. Most government programs and policies create a mixture of private benefits and public goods, with the exact mix depending on the program or policy in question.

The fundamental result of selectorate theory is that *as the size of the winning coalition increases, leaders will shift the efforts away from the production of private benefits and towards the production of public goods*. This result is a price effect; the size of the winning coalition—the minimal number of supporters whose loyalty the leader must hold—is the price of providing private benefits to supporters. As that price rises, leaders will shift their policies and efforts towards producing public goods that benefit all in society, simply because it is a more efficient way to reward supporters. Larger *W*s correlate with a higher provision of a wide range of public goods and a lower provision of private benefits (Bueno de Mesquita et al., 2003; Morrow, Bueno de Mesquita, Siverson, & Smith, 2009).

There are two important qualifications to this general result. First, all political systems produce both private benefits and public goods. The need to satisfy a larger winning coalition inclines leaders towards producing more public goods and fewer private benefits; it does not force the mix of goods provided. Second, leaders who answer to small winning coalitions have the freedom to use state resources as they choose. The private benefits they provide hold the loyalty of their supporters and leave them with substantial resources which they can use at their discretion. Some autocrats use those discretionary resources to carry out projects of self-aggrandizement and self-glorification. Others are the true benevolent despots, who use their discretion to improve and advance their societies. The variation in state policies is greater across autocracies than it is across democracies. Democratic politicians compete over who can do the best job of providing public goods. This competitive pressure forces them to do so or lose office. Autocrats, on the other hand, can use public policy to advance their societies once they have secured their position by rewarding supporters. This pattern shows up in the economic growth of countries, where there are autocracies that perform very well and others that are a disaster, while economic growth in democracies avoids disaster but does not achieve the highest growth rates found in a few, lucky autocracies (Clark, Poast, Flores, & Kaufman, N.d.).

In systems with small winning coalitions, the size of the selectorate also influences public policy. Because leaders in such systems rely on private benefits to hold the loyalty of their supporters, those supporters worry about whether they will be excluded from those benefits if they support a challenger. As the selectorate increases, the pool of candidates from which a support coalition can be constructed increases with it. A member of the current support coalition who is considering defecting to a challenger has to wonder whether that challenger will continue to provide the private benefits she is accustomed to receiving from the current leader. The larger the selectorate, the more other candidates are available for the challenger to use in his support coalition after coming to power. Consequently, supporters become more loyal to the leader as the selectorate expands while the winning coalition remains the same. The risk of exclusion from the next support coalition increases as the number of candidates for that new support coalition increases. Supporters become more loyal because they fear they will be excluded from private benefits if a challenger comes to power. In turn, the leader then needs to provide less private benefits to hold their loyalty. In systems with small winning coalitions, where leaders retain power by providing private benefits to their supporters, larger selectorates mean more loyal supporters who receive fewer benefits, giving the leader more discretion over state resources.

Territory as Producing Private Benefits and Public Goods

Selection institutions affect the external aims of the state by inclining leaders toward producing public goods or private benefits. Territorial gain, as an aim of the state, does not directly map onto these goods. Some territorial gains produce public goods, while others increase the ability of the leader to provide private benefits to his supporters. To show the effects of selection institutions on territorial aims and change, we need to think clearly about types of territorial change and how they help leaders produce private benefits and public goods (Bueno de Mesquita et al., 2003, ch. 9; Morrow, Bueno de Mesquita, Siverson, & Smith, 2006).

Security of citizens and their property is the fundamental public good in international politics produced by governments for their citizens. All governments seek to keep their people and property secure against threats from outside the country. Historically, the protection of territory from outside predation from invasion or raiding was a primary reason for the consolidation of state power, even if only to preserve the people and their wealth for the leader to prey upon. Modern governments seek to protect their citizens at home and abroad from attack. When a state can guard its borders and so protect its people from external threats, the resulting

security extends to all within its borders, making it a public good. Indeed, national defense is often used as the example of a public good in economics.

How can territorial change increase the security of the people of a state? It depends on what territory is gained. Strategic territory, that which conveys military advantages during wartime, increases the ability of a state to win wars, which in turn helps to secure its people through defense and deterrence of them. Great Britain, for example, sought to secure the keys to its empire: Gibraltar, Suez, the Cape of Good Hope, and Singapore, to name four. These territories had little intrinsic value in terms of the resident population or their ability to produce valuable goods. But their strategic position allowed the British Navy to dominate the seas and so secure commerce on the oceans, particularly the commerce of the merchant elite that played a large role in British politics even before universal suffrage. Similarly, the United States has kept territories outside its territory when it has significant military bases on them, such as Guam. Strategic territorial acquisition can enhance the ability of the leader to produce the public good of personal and national security.

The wealth of a territory can be converted into private benefits for the leader's supporters. Loot was the primary motivation for cross-border raids through much of history. Armies have plundered and extorted to reward their soldiers, and their officers, who were supporters of the leader, often got wealthy off of these ill-gotten gains. The most recent example was the plunder of Kuwait by Iraq during the six months that Iraq controlled the country before the Gulf War in 1991. When plunder is systematic, conquest can produce substantial rewards for followers. Colonial territory was valuable to the European powers during the 19th century because governments could allocate the benefits of economic activity in those territories to supporters of the government even if the colony in question was a net drain on the treasury, as many colonies were. The Congo Free State was the extreme example of this; it was the private property of King Leopold II and run to maximize the revenue he could extract from it at the great expense of the local population (Bueno de Mesquita et al., 2003, pp. 208-213).

Adding valuable territory increases state resources through taxation of the resident population and revenue collection from economic activity on the territory. The value of the territory is the economic activity on the territory, so it increases with the size and productivity of the resident population. The ability of the government to extract a portion of that activity for state resources also affects the attraction of adding valuable territory.

How the leader uses the added resources from gaining control of valuable territory depends on the selection institutions of the state. Leaders who answer to a small winning coalition will use those added resources to increase private benefits to their supporters. This addition makes their hold on power stronger. A challenger

can also promise more as state resources increase, but the risk of exclusion creates doubts among supporters that she courts that they will continue to receive those benefits should she come to power. Better to stay with the current leader. A leader who answers to a small winning coalition benefits in a second way from increased state resources. He is a residual claimant; he can use any remaining resources as he chooses. These pet projects could benefit society generally or just erect magnificent edifices to his glory. Leaders who answer to a large winning coalition benefit less from increasing state resources through territorial expansion. Political competition in such systems is a competition over competence in producing public goods, rather than the purchase of loyalty through private benefits. Greater state resources allow the leader to expand public goods, but the challenger can also promise the same increase, leading to no advantage to the current leader. Further, the residual claim for a leader who answers to a large winning coalition is smaller because he must commit a larger proportion of state resources to retaining power than does a leader who answers to a small winning coalition. Consequently, expansion into territory that increases state resources is more attractive to leaders in small *W* systems than those in large *W* systems.

There is an important qualification in the tendency of large-*W* leaders away from expansion into territory that increases state resources. When the state has a long-term rival with greater potential power, taking territory which produces resources from the latter can shift the balance of power between the two and increase the national security of the former. When a country is weaker than its rival, taking economically valuable territory increases its ability to generate military power and reduces that of its rival. This shift in military capabilities can increase national security, a public good.

In addition to national and personal security and increasing state resources, foreign policy can advance other public goods and private benefits. Policies which benefit particular supporters produce private benefits, such as trade protection does for the owners and workers of industries receiving the protection. Territorial gain could do so if the leader allocates the benefits of state control to particular supporters, with colonial concessions as an example. This effect depends on how access to territory is allocated. The westward expansion of the United States across North America added vast amounts of sparsely populated territory. Through the Homestead Act of 1862, U.S. citizens could claim and own tracts of this land if they agreed to live on it and farm it. Because this benefit was open to all U.S. citizens, it produced a public good rather than a private benefit. Ideological aims of foreign policy operate like public goods because no one in society can be excluded from their benefits if realized. The incorporation of territory occupied by co-ethnics into the state acts as a public good as an aim of foreign policy. France's claim over

Alsace-Lorraine during the times that those provinces were incorporated into Germany is an example of such a territorial public good. No French citizen could be excluded from the nationalist benefit of regaining those provinces, even if some citizens did not value that benefit highly.

In summary, leaders who answer to small winning coalitions are more likely to seek territory that increases state revenues, while those who answer to large winning coalitions are more likely to seek strategic territory. These are tendencies, not iron-clad rules. All leaders produce a mix of public goods and private benefits through their policies. Some small-*W* leaders may seek strategic territory with little material value, and some who answer to a large *W* may seek to expand state resources. We expect these patterns to happen on average, not in every single case.

Measuring the Winning Coalition and Selectorate

To assess whether changes in the control of territory support these conclusions from selectorate theory, we will examine the Territorial Change data set collected by the Correlates of War (henceforth COW) project (Tir, Schafer, Diehl, & Goertz, 1998). I will discuss that data set when presenting the results in order to examine the correspondence between the expectations of selectorate theory and the ways that data set records territorial changes. Before then, I will explain the measures of the sizes of *W* and *S* used to produce the statistical results (Bueno de Mesquita et al., 2003). These measures are designed to allow comparisons across the roughly two hundred year period covered by the COW data sets. The measures use the components of the Polity IV data set (Marshall & Jaggers, 2007) to assess who may attempt to lead each state, how wide the set of people who participate in that process are, and how competitive the process is. These measures are broad-gauge and allow us to make comparisons across time and space. They predict a wide range of public policies across time and space that produce public goods and private benefits (Bueno de Mesquita et al., 2003; Morrow et al., 2009).

The measure of *W*, the size of the winning coalition, combines four indicators of coalition size to produce a five-point ordered scale. From Arthur Banks' data (1996), one point is recorded if the regime type is not military or military/civilian (REGTYPE ≠ 2 or 3). The other three indicators come from Polity 4. When the competitiveness of executive recruitment is not hereditary or conducted through rigged, unopposed elections, another point is awarded (XRCOMP > 1). When the openness of executive recruitment is more open than heredity, another point is scored (XROPEN > 2). Another point is scored if the competitiveness of participation has "relatively stable and enduring political groups which regularly compete

for political influence at the national level (PARCOMP = 5)." *W* is the sum of these four indicators, which is then normalized between 0 and 1, so that the five levels are 0, .25, .5, .75, and 1. The scale is ordinal but not a ratio scale because the differences between levels are not the same. I will refer to any system with $W \geq .75$ as a large winning coalition system, and those with $W \leq .5$ as small winning coalition systems (see Bueno de Mesquita et al., 2003, pp. 133-143 for a detailed discussion of these measures).

The measure of *S*, the size of the selectorate, is based on the selectiveness of the members of the country's legislature found in Polity. If there is no legislature, S = 0 (LEGSELEC = 0). If the legislature is chosen by heredity, ascription, or appointed by the leader, S = .5 (LEGSELEC = 1). If the legislature is selected directly or indirectly by popular election, S = 1 (LEGSELEC = 2). Like *W*, the measure of *S* is normalized and ordinal, not ratio.

The Patterns of Territorial Change

The Correlates of War (henceforth COW) project has collected data on territorial changes for members of the interstate system from 1816 to 2008. The Territorial Change dataset (Tir et al., 1998) tracks gains and losses of territory by nation-states. Territory above the Arctic Circle and south of the Antarctic Circle are excluded as are territorial changes between political units that are not members of the interstate system as coded by COW. They collected information on the gaining state, the losing state, the territory that changed hands, and the year and month (if known) when the change occurred. Key characteristics of the territory—its area in square kilometers, its population when known, and whether the whole or a part of the territory was transferred—as well as the territory's relationship to the gaining state—whether the territory was part of its homeland or dependent and whether the territory was contiguous using the standard definition of either sharing a common border or a water separation of 150 statute miles or less—was recorded. The process of change was coded as one of conquest, annexation, cession, secession, unification, or a mandate granted by the League of Nations or United Nations. Whether military conflict between the organized forces of both sides occurred connected to the transfer was also coded. Similar information was collected on the relationship of the territory to the state losing it.

The argument above concerns territorial acquisition and how selection institutions influence what type of territory states will seek to add. The Territorial Change data set seeks to track each transfer of territory separately even when multiple territories are transferred to the same country through the same process. For the

purposes of testing the arguments from selectorate theory concerning territorial change, I have consolidated territorial changes where one state acquires multiple territories through the same process at around the same time. For instance, the Territorial Change data set separates Israel's territorial gains from the Six Day War in 1967 into three observations, one for the gain of the Gaza Strip and Sinai from Egypt, one for the gain of the West Bank and East Jerusalem from Jordan, and a third for the conquest of the Golan Heights from Syria. It does so because it tracks which country lost control of each of these territories. I consolidate all three into one observation by adding the population and area gained as all three occurred from the same event. The appendix to this paper lists all of these consolidations of multiple observations into one with a brief explanation of each.

I compare the types of territorial gain for states with small winning coalitions to the territories acquired by states whose leaders answer to large winning coalitions. I do not examine data about opportunities for territorial change, which would be useful for judging whether territorial conflict is receding in world politics over time. For other analyses that test whether and when states pursue territorial aims in disputes, see Bueno de Mesquita et al. (2003, pp. 427-432), Morrow et al. (2006), and Morrow (2013). If the arguments of selectorate theory about the value of territorial gain for national leaders are correct, then leaders who answer to small winning coalitions are more likely to acquire valuable territory than those who answer to large winning coalitions, which the reverse is true for strategic territory of little value. These patterns are tendencies; they are not iron-clad rules. All national leaders produce a mix of private benefits and public goods, so sometimes leaders who answer to a large winning coalition will seek to add valuable territory while those who answer to a small winning coalition add strategic territory. Because increasing the size of the winning coalition inclines policy away from the provision of private benefits and toward that of public goods, we expect that leaders with small winning coalitions are more likely to gain valuable territory and less likely to add strategic territory.

The Territorial Change data does not provide direct measures of the value of the territory gain. It does not provide figures for the revenue generated by territorial gains nor for their strategic value. Instead, we will infer their value using the size of the territory, its population when available, and whether it is part of the gaining country's homeland or is dependent territory. The added population should be more valuable to the gaining state as it increases compared to the state's population before the territorial gain. Adding 10,000,000 to the population of South Korea increases the revenue of the state more than the same gain would to the population of the United States. To judge the size of the population residing on the added territory to the population, I compare it to the population of the gaining state in the

year before the acquisition; this data is taken from the total population figure in the Composite Capabilities data collected by COW (Singer, Bremer, & Stuckey, 1972; Singer, 1987). The figures for area and populations have long tails; a few large acquisitions have much higher values than typical cases. To reduce this spread, I take the natural logarithm of many measures. I explain each of these measures when I discuss the results generated by them.

What are the patterns in territorial changes over the last two centuries? Figure 1 shows the spread of values of the area of homeland territory gained divided by small and large sizes of winning coalitions. Leaders who answer to a small winning coalition add larger tracts of land to their homeland than those who answer to a large winning coalition. For those unfamiliar with box plots, the line in the center of each box gives the median value of the area gained. The boxes show the range of values that fall between the 25th and 75th percentiles of each, and so give the spread of the central half of the values of each. The whiskers at the top and bottom show the extreme values of each. The mean of the area of homeland territory gained by leaders who answer to a small winning coalition is greater than that gained by leaders who answer to a large winning coalition, and the difference is statistically significant at the .002 level. This pattern does not hold across all territorial gains, that is, including gains detached from homeland territory, such as colonial acquisitions. Given the historical expansion of the colonial empires of Britain and France during the 19th century—two systems whose leaders answered to large winning coalitions, it is not surprising that there is no meaningful difference in the willingness of states whose leaders answer to small and large winning coalitions to add substantial tracts of land.

This pattern does not hold for the population residing in gains in homeland territory. Figure 2 shows the spread of values of the natural logarithm of the popu-

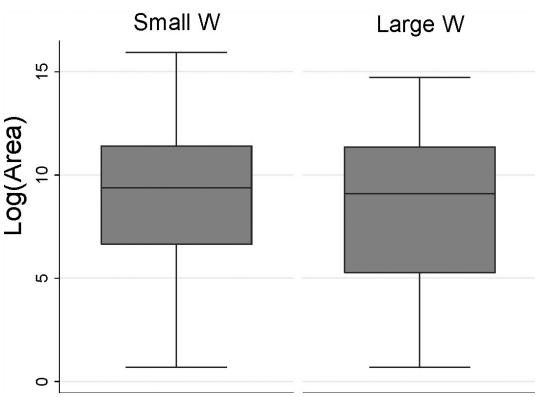

Figure 1
Natural Logarithm of Area of Homeland Territory Gained by Size of Winning Coalition

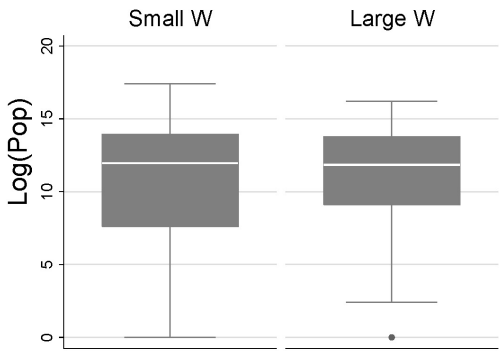

Figure 2
Natural Logarithm of Area of Population Gained by Size of Winning Coalition

lation in the territory added for gains in homeland territory. The means are very close, and the difference is not statistically significant. The results do not change if we include all territorial gains.

These patterns describe the full range of territorial changes; most of which do not increase state resources or the security of its citizens greatly. Increases in homeland territory do not typically increase the population of the state by much. The median value of the population gain produced by an increase in homeland territory is under .6 percent. The distribution of population gains, however, has a long tail on the upside as the mean population gain is about 10 percent. Rather than look at the entire distribution of territorial gains to see if states with small winning coalitions seek to increase the resources of the state while those with a large winning coalition aim to control strategic territory, we need to look at the extreme changes that have large effects on both aims, not the typical territorial changes that have little effect. Only the large changes in territory produce the effects predicted by selectorate theory.

What constitutes a territorial gain that could increase state resources substantially, enough to tempt a leader who answers to a small winning coalition? The territorial change data does not include information on the production or taxes produced by the region that changed hands, and we also lack information on state budgets from which we could assess the increase in state revenue caused by the change. Nor do we have systematic information on natural resources in the territory and whether they were economically profitable at the time of the gain. Instead, I examine the combination of area and population in several ways. The most valuable territories will be large with a substantial population residing on them, one that the new government can tax. I will judge a gain to be large if it exceeds the mean by one standard deviation. Because the distribution of gain in population is skewed left, the number of territorial changes to the homeland considered large is

less than ten percent, with the exact percentage depending on the precise measure of the value of the territory.

The strongest results are found by measuring the value of the territory as the sum of the natural logarithm of its area and of its population, which is equivalent to the logarithm of their product. Judging a large gain as one standard deviation above the mean of this measure, Figure 3 shows the relative rates of valuable territorial gains of homeland territory by the size of the winning coalition. Using this measure, valuable gains are rare; only six percent (15 out of 268 gains of homeland territory) qualify as a valuable gain. States with small winning coalitions add valuable territory more often when they expand—just under nine percent of their gains are valuable, while states with large winning coalitions almost never add valuable territory—about one percent of their gains are valuable by this measure. This difference is statistically significant at the .005 level.

Other measures of the value of territory do not produce results as strong as this one. Population density should be correlated with more productive populations because population density increases with economic development. The same population on a smaller area should be more productive. A second measure of the value of a territory multiplies the population by its density to capture both the number of people and their density, and hence productivity, on the territory. As with other measures, I take its natural logarithm to reduce its spread and consider observations above the mean plus one standard deviation to be a valuable gain. Figure 4 shows the rate of such valuable gains by the size of the winning coalition. Although states with small winning coalitions add valuable territory as a greater proportion of their territorial gains than those with large winning coalitions, this difference is not statistically significant at any commonly recognized level.

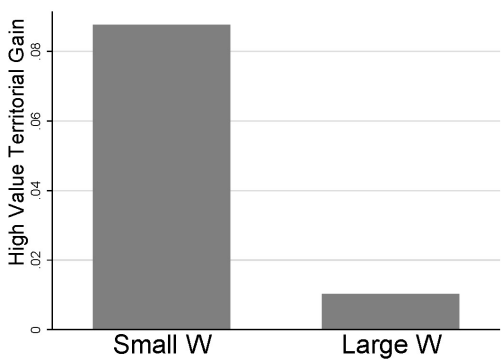

Figure 3
Frequency of Valuable Territorial Gain by Size of Winning Coalition

Value of the territory measured by the natural logarithm of A (area) times B (population gained), with a high value gain being at least one standard deviation greater than the mean.

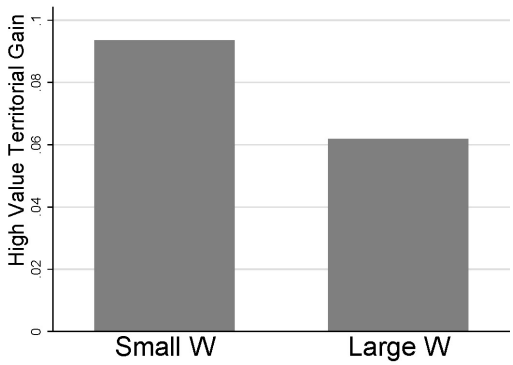

Figure 4
Frequency of Large Population Gain by Size of Winning Coalition

Value of the territory measured by the natural logarithm of B (population gained) times C (population density), with a high value gain being at least one standard deviation greater than the mean.

Colonial acquisitions pose a challenge to the argument that states whose leaders answer to a large winning coalition are less likely to seek valuable territory than leaders who answer to a small winning coalition. The European states that built their colonial empires in Africa and Asia in the second half of the 19th century were often democracies, particularly Great Britain and France. Judging significant colonial gains as those which qualify as an addition of dependent territory whose product of population gained times area added exceeds the mean by one standard (the same as Figure 3), there are only six such acquisitions by states with large winning coalitions. Of these six, only one takes place after the country in question has universal adult suffrage, which substantially expands the size of the winning coalition; the acquisition of Okinawa by the United States after World War II—a gain motivated by strategic military bases rather than value of the territory. Colonial expansion ended before universal adult suffrage expanded the size of the winning coalition in these democracies.

The differences are most clear when the conditions to judge whether a territorial gain is valuable are stringent. If we relax the threshold from the mean plus one standard deviation to just above the mean, even the differences reported in Figure 3 disappear. The number of gains in valuable territory by states with large winning coalitions rises from one to forty-one. But selectorate theory does not predict that leaders who answer to a large winning coalition will never add valuable territory; it contends that those leaders seek to produce public goods through their foreign policy. Consequently, they can seek change on valuable territory when the object of that change is increasing state security, reducing the power of a rival, or advancing an ideological goal such as regaining previously taken homeland territory or

incorporating co-ethnics into their state. Table 1 lists the thirteen additional cases of territorial expansion by states with the largest winning coalitions (W = 1) and identifies how each could have produced public goods for the population of the gaining state. As can be seen from Table 1, inclusion of co-ethnics is the common motivation for states with large winning coalitions to add valuable territory. Among the cases of high value territorial gains by states with large winning coalitions (W = .75), there are instances of gain to increase national security, such as Israel's gains in the Six Day War, efforts to reduce a rival, such as the gains of Yugoslavia and Czechoslovakia from Hungary after their war in 1920 (although the third ally, Romania, gained the most territory and people from Hungary and had a small winning coalition), and recoveries of homeland territory, such as France's reacquisition of Alsace-Lorraine after World War I. Still, there are examples of expansion for the economic value of the territory; in particular, Chile's gains in the Atacama Desert from Bolivia and Peru after the War of the Pacific, which contained valuable phosphate deposits which continue to be mined today.

States whose leaders answer to large winning coalitions should be more interested in acquiring strategic territory that increases national security, the preeminent public good of foreign policy. The Territorial Change dataset does not directly code for such value, so again I judge it from the size and population of the territory

Gaining State	Year	Acquisition	Improved Security?	Reduced a Rival?	Returned Homeland Territory?	Incorporated Co-ethnics?
United States	1845	Texas				x
	1846	Oregon Territory				x
	1848	Mexican Cession		x		x
Greece	1881	Gains from Turkey		x		x
	1913	Gains from Turkey and Bulgaria				x
	1913	Annexation of Crete				x
Denmark	1920	Plebiscite on Schleswig-Holstein				x
Colombia	1935	Gains from Peru				
France	1947	Acquisition of Saar		x		
Canada	1948	Annexation of Newfoundland			x	x
West Germany	1957	Acquisition of Saar			x	x
Malaysia	1963	Acquisition of Sabah from UK				x
Japan	1972	Return of Okinawa			x	

Table 1
List of Public Goods Motivations for Acquisitions of Valuable Territory for Large-W States

gained. Any gain of less than 500 square kilometers with less than 10,000 people is judged to be a strategic gain;[1] the acquisition of Wake Island by the United States in 1898 is an example of such a strategic gain. Additionally, gains less than 500 square kilometers where the population was missing data is also judged to be a strategic gain. This coding rule does include small acquisitions of territory, such as those gained through the clarification of a shared boundary, but such adjustments reduce the chance of future conflict over that border. It also includes islands, which can increase the territorial waters of the gaining country.

Figure 5 compares the rates of acquisition of strategic territory for large and small winning coalition systems. States with large winning coalitions are more likely to add strategic territory than those with small winning coalitions, and the difference is statistically significant at the .02 level. The pattern of results does not depend on the threshold of size of territory acquired; alternative codings that judged strategic gains to be less than 100, 1,000, or 2,000 square kilometers produced results similar to those reported in Figure 5.

The relationship between the size of the winning coalition and strategic territorial gain becomes stronger if we do not consider gains of homeland territory to be strategic. Figure 6 compares the frequency of gains of strategic dependent territory by the size of the winning coalition. States whose leaders answer to a large winning coalition add such territory as a larger percentage of their territorial gains

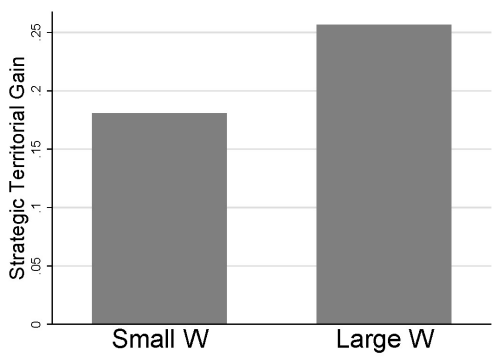

Figure 5
Frequency of Gain of Strategic Territory by Size of the Winning Coalition

Strategic value of the territory judged as those of less than 500 square kilometers with less than 10,000 people or missing data for the population.

1 The distribution of area gained has a large spike below 100 square kilometers and is relatively flat above that level. I test whether the coding of 500 square kilometers as the threshold between strategic and non-strategic territorial gains matters by also conducting analysis where the threshold in the coding is 100 square kilometers, 1,000 square kilometers, and 2,000 square kilometers.

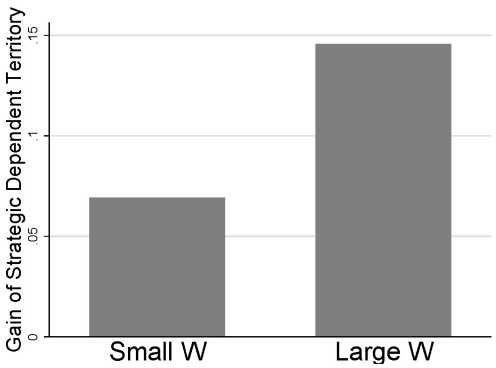

Figure 6
Frequency of Gain of Dependent Strategic Territory by Size of the Winning Coalition

Strategic value of the territory judged as those of less than 500 square kilometers with less than 10,000 people or missing data for the population. Dependent territory from Territorial Change dataset.

than do those who answer to a small winning coalition. This difference is statistically significant at the .003 level. Again, the pattern of results does not depend on the threshold of size of territory acquired; alternative codings that judged strategic gains to be less than 100, 1000, or 2000 square kilometers produced results similar to those reported in Figure 6.

In summary, the patterns of territorial gains reflect how selection institutions induce leaders to pursue territorial gain for material benefit or public goods. The effects of selection institutions on territorial change are most pronounced at the extremes of large gains of valuable territory and small gains of strategically important territory. Most territorial changes do not fall into either group, and selection institutions do not influence which leaders pursue such gains. Small winning coalitions induce leaders to seek substantial gains to state resources, and such states are more likely to make such gains. Large winning coalitions induce leaders to ensure national security, and such states are more likely to realize small gains of strategic territory. Selection institutions, and domestic politics more generally, do not force leaders to act in particular ways; they shape their foreign policy judgments and incline them in what territorial gains they seek.

Conclusion

Territory has been a source of recurring conflict in world politics, but domestic institutions influence what sort of territory states seek in their conflicts. The COW Territorial Change data set allows for rough tests of the implications of selectorate

theory for the types of territorial change. Unfortunately, that data was not collected with the direct purpose of testing selectorate theory, and so I have had to rely on the crude measures of the strategic or material value of the territory that changed hands used in this paper. There is room to improve the measures of material and strategic value and so improve the tests. Material value resides primarily in the people residing on the territory and what they produce. Measures of their product would improve the accuracy of the measure of material value, as would indirect measures of the added state revenue after the gain, such as change in government revenues. Although one often thinks of natural resources as being the primary value of a territory, this is only true for sparsely populated areas with little production from that population. Measures of the strategic value of territory could include whether the gaining state established military bases on the new territory. Better measures of the public goods produced through territorial gain could focus on cross-border populations and ideological aims such as liberation of captive nations. There is an opportunity for important data collection here on the characteristics of territory that has changed hands.

Territory is receding as a source of international conflict. Zacher (2001) contends that a norm of territorial integrity—that borders should not be changed by force—has grown over time since its initial statement in the UN Charter. While I believe this is part of the story of the decline of territorial conflict, international norms are undergirded by incentives that lead actors to comply with them (Morrow, 2014). Domestic politics induces national leaders to create and then comply with international norms. The growth of territorial integrity and its relative success depend in part on the spread of democracy since the end of the Second World War. Democracies promulgated the norm of territorial integrity because they sought to remedy the conflicts that had brought war to Europe over the centuries. Democratic leaders then found it easier to live under that norm than leaders of other systems. International norms, including territorial integrity, rest on a foundation of domestic politics.

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Appendix

Changes Made to Territorial Change Dataset

Observations were combined when all of the acquisitions occurred from one event by the acquiring state. They must have the same year of acquisition.

1. 47 and 48 combined (British acquisition of Singapore and Malaya)
2. 125 and 126 combined (Turkish gains at end of Crimean War)
3. 144 through 148 combined (Italian unification of 1860)
4. 163 and 164 combined (Prussia's gains from Denmark in 1864)
5. 171 through 175 combined (unification of North German Confederation under Prussia in 1866)
6. 182 through 194 combined (consolidation of North German Confederation in 1867)
7. 206 through 209 combined (creation of German Empire by including southern German states and annexation of Alsace-Lorraine)
8. 235 through 237 combined (Austria-Hungary gains from Ottoman Empire in Balkans)
9. 266 and 267 combined (British gains in South Africa)
10. 275 and 277 combined (British gains in South Africa)
11. 286 and 287 combined (German acquisition of Pacific islands)
12. 285 and 288 combined (German acquisitions in East Africa)
13. 296 and 297 combined (British acquisitions in South Pacific)
14. 304, 306, 308, and 309 combined (British expansion in Malaya)
15. 321 and 325 combined (British expansion in Kenya)
16. 355, 357, and 358 combined (British expansion in West Africa)
17. 367 through 370 combined (U.S. gains from Spanish-American War)
18. 371 and 373 combined (British concessions in China)
19. 388 and 389 combined (German acquisitions of Pacific islands)
20. 397 and 398 combined (British gains at end of Boer War)
21. 407, 408, and 410 combined (British concessions to France in West Africa)
22. 413 through 416 combined (Japan's gains from Russo-Japanese War)
23. 439 and 440 combined (Italian gains from Italo-Turkish War)
24. 442 and 443 combined (Serbian gains from Second Balkan War)
25. 445 through 447 combined (Greek gains from Second Balkan War, earlier gains from First Balkan War not included)
26. 474 and 475 combined (British Mandates in West Africa from Germany after World War I)
27. 478 and 479 combined (French Mandates in West Africa from Germany after World War I)
28. 484 and 485 combined (creation of Poland from Germany and Austria-Hungary in 1919)
29. 489 and 490 combined (Italian gains after World War I)
30. 491 and 492 combined (Yugoslav gains from Austria-Hungary and Bulgaria after World War I)
31. 498 through 500 combined (British Mandates in the Middle East)
32. 513 through 516 combined (Soviet Union reincorporating territories at the end of the Rus-

sian Civil War in 1920)

33. 562 and 564 combined (Japanese gains in Manchuria and China from 1931-1933 war)
34. 585 through 587 combined (Soviet annexation of Baltic states)
35. 597 through 599 combined (Soviet gains in Eastern Europe at end of World War II)
36. 601 and 602 combined (China regains its territory from Japan at end of World War II)
37. 731 through 733 combined (Malaysia acquires territories outside Malaya)
38. 748 through 750 combined (Israeli conquests in Six Day War)

Resolution of Border Disputes in the Arabian Gulf

Krista E. Wiegand

Associate Professor of Political Science, Georgia Southern University, USA

Abstract

In a region inundated with armed conflict and critical natural resources, it is interesting to observe that with a few minor exceptions, the Arab Gulf states have sought peaceful dispute resolution methods to resolve their border and territorial disputes and have effectively done so for the most part. Many of these disputes involved boundaries with Saudi Arabia and former British colonies due to poorly delimited boundaries or a lack of demarcation. Saudi Arabia has effectively resolved the majority of its territorial disputes through bilateral negotiations, a peaceful resolution method. What explains Saudi Arabia's choice of bilateral negotiations, much less legally binding compared to other resolution methods of arbitration, and adjudication? This paper provides a review of Saudi Arabia's border and island disputes and the peaceful resolution of most of these disputes. An assessment of these border disputes demonstrates that in addition to realist power politics, Islamic law has heavily influenced the dispute strategies of Saudi Arabia and the successful resolution of the disputes.

Keywords

territorial disputes, dispute resolution, negotiations, Islamic law, Saudi Arabia

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In a region inundated with armed conflict and critical natural resources, it is interesting to observe that with a few minor exceptions, the Arab Gulf states have effectively used peaceful dispute resolution methods to resolve their territorial disputes. Of all the Gulf states, Saudi Arabia has been literally and figuratively at the center of these border and island disputes. Saudi Arabia has not only played a role as mediator in other disputes, but it has had boundary disputes with all of its neighbors. Fortunately for Saudi Arabia and its neighbors, eight out of its nine territorial disputes initiated since 1922 have been successfully and peacefully resolved. The means of resolution sought by Saudi Arabia in all its boundary disputes has been bilateral negotiations, the least legalized and formalized form of dispute resolution. Unlike other regions of the world where mediation, arbitration, and adjudication are fairly common in interstate dispute resolution, the states in the Gulf region, particularly Saudi Arabia, have shunned attempts at resolution through third parties, particularly legally binding methods.

What explains the choice of bilateral negotiations, and more interestingly, the avoidance of legally binding resolution methods of arbitration and adjudication? This research examines border disputes in the Gulf region involving Saudi Arabia, and attempts to provide an explanation for its dispute strategies. An analysis of Saudi Arabia's border disputes shows that realism and power politics can help to explain some disputes, but the major factor that seems to have influenced the choice of Saudi Arabia's dispute strategies is the strict adherence of Islamic law and distrust of Western legal traditions practiced by legally binding arbitration panels and international courts.

Saudi Arabia's Border Disputes

Borders in the Middle East, particularly in the Gulf region, are often referred to as lines drawn in the sand. In the Gulf region, European colonizers literally drew lines the sand, but not always clearly and not always to the satisfaction of the Gulf states, particularly Saudi Arabia. In a region where oil and natural gas resources are the predominant source of revenue for states, it is critical to know exactly where one state's oil field starts and another ends. Most of the border disputes, as well as maritime boundaries and island disputes in the Gulf region have been due to the potential of oil and natural gas resources or strategic location. Sovereignty in the Gulf region is not just about territorial integrity and jurisdiction, but about billions of dollars of oil and gas revenue. Where the line is drawn in the sand is extremely important to these states. Ambiguous or disputed borders are problematic; without clearly delimited and demarcated borders, the Gulf states would not be able to se-

curely and ethically access oil and natural gas resources without potentially hurting their neighbors' economies.

Since the collapse of the Ottoman Empire and the start of European colonization in the Middle East in 1922, the Gulf region—which includes Kuwait, Saudi Arabia, Bahrain, Qatar, Oman, the United Arab Emirates (U.A.E.), and Yemen—has experienced 15 territorial and maritime disputes, most involving only Gulf states, and a handful involving Iraq, Iran, and Egypt. Of these 15 disputes, only two are still outstanding, both over islands and territorial waters: a dispute between Iran and the U.A.E. regarding the Abu Musa islands, and a dispute between Saudi Arabia and Egypt over the Tiran and Sanifar Islands at the narrowest part of the Straits of Tiran, the opening of the Gulf of Aqaba into the Red Sea. As the largest, most central, and most powerful state in the Gulf, it should not be surprising that nine of the 15 Gulf disputes since 1922 have involved Saudi Arabia. Despite the fact that Saudi Arabia was never colonized by the British or French, all of Saudi Arabia's neighbors were colonized by the British, who delineated their boundaries with Saudi Arabia, leading to disagreements about delimitation and demarcation that were not resolved until the latter 20th century.

Saudi Arabia – Jordan/Iraq/Kuwait Boundaries

In the northern part of the country, Saudi Arabia contested territory with Jordan, Iraq, and Kuwait and these border disputes were not resolved until 1965, 1981, and 2000 respectively. In 1922, even before the creation of the new state, Ibn Saud, the leader of the territory of Najd (the bulk of what makes up Saudi Arabia today), issued a claim against the British along the borders of what is now Iraq, Kuwait, and Jordan after the British took over territory in that area formerly controlled by the Ottoman Empire. In the northwest region of Najd, the boundary with Transjordan, a British mandate territory later to become Jordan, was poorly delimited and areas including Wadi-i-Sirhan, Maan, and the port of Aqaba were disputed and claimed by both Najd and Transjordan. Although the Hadda Agreement of November 1925 delimited the central and northern parts of the boundary, the two states continued to dispute the southern part of the boundary, particularly around Aqaba, until August 1965 when a final agreement delimited the territory. After a series of bilateral negotiations, the outcome of the 1965 agreement was concessions by both states, and full Jordanian control of Aqaba (Schofield, 1992).

In May 1922, the British high commissioner for Iraq signed a treaty with Ibn Saud assigning certain tribes to Iraq and others to Najd, but the treaty did not actually define any boundary. The boundary of Iraq and Najd was delimited in a treaty, the Uqair Convention, signed in December 1922. Yet a neutral zone along the eastern border established in the treaty was never delimited and the entire border was

not demarcated until December 1981. The neutral zone, about 2,500 square miles, was to "remain neutral and common to the two governments of Iraq and Najd who will enjoy equal rights to it for all purposes," so that wells in the area would be accessible to tribesmen from both sides (Calvert, 2004). Not only did this neutral zone leave territorial boundaries between Iraq and the future state of Saudi Arabia ambiguous, but Ibn Saud then conquered and annexed the Hijaz region, nestled between Najd and Transjordan, which was ruled by King Abdullah, brother of King Faisal of Iraq. As the protectorate of the Hijaz region, the British conceded to Ibn Saud and recognized his rule of Hijaz through the Treaty of Jeddah in May 1927. Besides a 1938 agreement about the administration of the neutral zone, no discussions or actions were taken by either Saudi Arabia or Iraq regarding the zone until 1975, when the two states agreed to divide the neutral zone equally by drawing a straight line through the zone (Day, 1987).

However, despite the apparently equal distribution of the territory to each state, the agreement was not ratified and several years passed before action was taken regarding the delimitation of the neutral zone (Abu-Dawood & Karan, 1990). Motivated by the mutual concern regarding the threat of Iran after the Islamic Revolution in Iran in 1979 and the invasion of Iraq by Iran in 1980, Saudi Arabia and Iraq finally sought to delimit the neutral zone. Bilateral negotiations were held and the result was a treaty signed in December 1981 between Saudi Arabia and Iraq, delimiting the neutral zone in an equal division, with ratifications exchanged in February 1982.

Similar to the neutral zone created between Iraq and Najd, the Uqair Convention of 1922 also established a neutral zone along the border of Najd and the British ruled area that would become Kuwait. As with the zone between Iraq and Najd, the Kuwait-Najd zone was also about 2,500 square miles of desert. It was decided that "until through the good offices of the government of Great Britain a further agreement is made between Najd and Kuwait," both states would have equal access to the neutral zone, including any future resources found there, particularly oil (Calvert, 2004). After oil was discovered in the neutral zone in 1938, both states granted concessions to foreign oil companies, but it was not until the late 1950s that Saudi Arabia and Kuwait started bilateral negotiations on sovereignty rights to the zone, as well as maritime rights in the offshore area (about 40 miles). In late 1960, the two states came to an agreement to equally divide the neutral zone and a committee of boundary experts pursued delimitation for a number of years. In July 1965 Saudi Arabia and Kuwait signed a Partition Agreement in which the neutral zone was equally divided, extending out to six miles of each annexed section with regard to maritime rights. Demarcation formally occurred in December 1968, with the land boundary dispute resolved, but the maritime dispute unresolved.

The maritime boundary dispute not only included water rights, but also sovereignty over two islands, Qaru and umm al-Maradim, located respectively about 23 and 16 miles away from the former neutral zone. Neither state took any actions with regard to their maritime boundary or rights to the islands until in January 2000 when Iran began to drill in an offshore gas field that was claimed by both Saudi Arabia and Kuwait. This mutual threat motivated Saudi Arabia and Kuwait to sign an agreement in July 2000 to delimit their maritime boundaries, giving Kuwait sovereignty of the two disputed islands, with natural gas reserves in the area to be shared equally by the two states.

Saudi Arabia – Qatar, UAE, Oman, Yemen

In the southern part of Arabia, the British and Ottoman governments delimited their mutual borders in 1913-1914, known as the "Blue Line" and "Violet Line," which partially determined the borders of the new state of Saudi Arabia when it was officially founded in 1926. Saudi Arabia was unwilling to accept the Blue Line and Violet Line, insisting in 1935 on an additional 200,000 square miles in parts of today's Qatar, Abu Dhabi, Oman, and Yemen. In response to this demand, in 1935 the British conceded territory they thought was merely empty desert, giving Saudi Arabia some of this land by moving the boundaries slightly. This border, which became known as the "Riyadh Line," became part of the de facto border of Saudi Arabia and though it was slightly changed in 1937 and 1955, it was never fully accepted by Saudi Arabia (Downing, 1980). As a result of this rejection of the boundaries, a number of border disputes in the southern Gulf were created.

Though the border between Saudi Arabia and Qatar was somewhat demarcated in 1965, tensions between the two states led to a border clash in September 1992, resulting in the deaths of one Saudi soldier and two Qatari soldiers. The border clashes continued on and off for some time, and even after Qatari Crown Prince Shaikh Hamad bin Khalifah al Thani seized power from his father in June 1995, tensions between the two states continued (Heard-Bey, 2006). Full demarcation of the Saudi Arabia-Qatar boundary was finally agreed upon in April 1996, and completed in March 2001, though maritime boundaries were not delimited until 2008 (Kingdom of Saudi Arabia, 2008).

Further south, Saudi Arabia maintained territorial claims against Oman from 1934 to 1990, Abu Dhabi from 1952 to 1974, and Yemen from 1934 to 2000. The Oman v. Saudi Arabia dispute dated back to 1933 when Saudi Arabia granted oil concessions to oil companies in an area bordering Oman and there was uncertainty about where the border lay. The British claimed the boundaries were delimited according to the Violet Line and the Blue Line, but Saudi Arabia disagreed, laying claim in 1949 to the al-Buraimi oasis, containing nine villages and five tribes, an oil

rich area nestled between Saudi Arabia, Oman, and Abu Dhabi (Kechichian, 1995; Wilkinson, 1991). The British maintained rights to the oasis villages on behalf of Oman until Oman's independence in 1971, when Oman issued a counter claim against Saudi Arabia. Initially, no talks occurred between Saudi Arabia and Britain since Ibn Saud "did not want to negotiate with Britain over its borders with Oman," but eventually between 1949 and 1952, Saudi Arabia agreed to talks with the British, but without success (Kechichian, 1995, p. 40). Bilateral negotiations between Saudi Arabia and Oman began in the 1970s, with several rounds of talks held and little progress. The two states signed a final agreement in March 1990 in which Saudi Arabia withdrew its claim to the oasis villages while they agreed on mutual concessions along other sections of the Saudi-Omani border.

The dispute between Abu Dhabi, later part of U.A.E., and Saudi Arabia also regarding the Buraimi oasis villages, differentiated itself from the dispute with Oman when Saudi Arabian troops occupied the oasis in August 1952. In 1954, Saudi Arabia initially agreed to arbitration of the dispute after a meeting between the British and Saudi Arabia in Geneva, but then talks collapsed in 1955 and arbitration was thrown out as a resolution option. Though the Saudi forces were evicted by the British and local forces in 1955, Saudi Arabia continued to maintain its claim of ownership for the oasis, mainly because Saudi Arabia sought a land corridor to the waters of the Persian Gulf southeast of Qatar. Though Saudi Arabia did consider issuing a formal protest against Britain at the United Nations Security Council, the idea was dropped after only a short period of consideration (Kechichian, 1995). Further talks occurred in 1963 between Saudi Arabia and Britain on behalf of Oman and Abu Dhabi, but to no avail (al-Bahama, 1975). In 1974, Saudi Arabia agreed through secret bilateral negotiations with U.A.E. to concede its claim to six of nine villages in the oasis in exchange for a land corridor to the coastline and for Saudi Arabia to control all revenue from another oil field that straddled the Saudi-U.A.E. boundary (Seddiq, 2001).

In the southwest part of the Gulf, Saudi Arabia and Yemen disputed their border as well as three small islands in the Red Sea. The dispute dated back to 1926 when Saudi Arabia annexed territory long claimed by Yemen, leading to an armed conflict that ended with the Taif Treaty of May 1934. This agreement delimited the 1,800 mile long boundary of the two states, but as with many other Gulf disputes, the border was never demarcated and was fairly ambiguous in many areas of the desert boundary. The two states battled over the border in a number of armed clashes, most recently in 1995, 1997, and 1998, finally resolving the border and island dispute in June 2000 through bilateral negotiations. In the Jeddah Treaty, the border was clearly delimited and plans for demarcation were established, Yemen dropped its claims to the regions annexed by Saudi Arabia in 1926, and the mari-

time boundary was clearly delimited (Dzurek, 2001).

In sum, Saudi Arabia has been able to effectively resolve eight of its nine territorial disputes, and all the disputes with neighboring Gulf states. Though Saudi Arabia briefly considered arbitration in one case and mediation in another, the Saudi government decided to pursue only bilateral negotiations and not involve any third parties in the resolution process, meaning that all of these disputes were resolved through the use of bilateral negotiations. Despite the availability of several other dispute resolution methods, Saudi Arabia has demonstrated a preference for bilateral negotiations and avoidance of nonbinding and binding third party interventions, discussed in the next section.

Methods of Dispute Resolution

States involved in territorial disputes have several options regarding dispute strategies. For the challenger state, the objective is to acquire the claimed territory, whether through peaceful methods or through conquering the territory by force. For the target state, the objective is to maintain the status quo and retain sovereign rights to the disputed territory. Both states in a dispute can choose to actively or passively maintain a territorial dispute, the challenger by making official claims and protests, the target state by rejecting such claims or denying a dispute even exists. Disputes can go on for decades in this manner, with one state claiming the territory, the other state rejecting the claim, and nothing really happening except maintaining the status quo of the dispute. If one of the states wants to change the status quo and attempt to end the territorial dispute, one or both states can attempt peaceful dispute resolution or use force or defend the territory using force (Wiegand, 2011).

Fortunately for international relations, when states involved in territorial disputes have attempted to change the status quo, it has been mainly through peaceful attempts, which include bilateral negotiations, nonbinding third party good offices or mediation, and binding third party arbitration or adjudication by an international court, mainly the International Court of Justice (ICJ). Bilateral negotiations, direct talks between the disputing states, are the most common method of peaceful dispute resolution (Powell & Wiegand, 2010). They are the least formalized, least legalized, and most flexible method of dispute resolution. Negotiations can take place over a long time period, in a series of rounds of talks, some procedural, some directly involving discussion of sovereignty. Through bilateral negotiations, disputing states attempt to resolve their grievances without involving any third parties (Shaw, 2003). An advantage of bilateral negotiations is that disputing states are able to have direct control of the proceedings and not have to rely on potentially

biased third parties or previously established legal guidelines that arbitration or adjudication would involve (Powell & Wiegand, 2010). The major disadvantage of bilateral negotiations is that they are not legally binding, making it difficult not only for resolution to be achieved, but also for enforcement of any agreement to occur. Another disadvantage is that because there are no third parties involved to help with procedures, communications, and building common ground, it often takes many rounds of negotiations for adversarial states to agree to anything and many negotiations are merely procedural to decide the content of the next round of talks, for example.

Nonbinding third party methods, which include good offices, inquiry, conciliation, and mediation, are the next level of resolution methods states can pursue. These methods, of which mediation is most common in territorial disputes, are somewhat more formalized and involve third parties who set up rules and procedures about the resolution process (Kratochwil, 1985). In mediation, the disputing states invite a third party to become involved in the resolution method, intervening with a more objective view. The intention is generally that the mediator will help to influence perceptions or behavior regarding the dispute so that the disputants can move toward an agreement and resolution (Bercovitch & Rubin, 1992). The benefit of mediation is that an unbiased third party is able to help the adversarial states with confidence building, procedural details, and reducing tensions between the two states. The disadvantage is that mediation is not legally binding, so at any time, one or both of the disputants can withdraw from the resolution proceedings or reject the findings of the mediator.

More formalized and legally binding dispute resolution methods include arbitration and adjudication, which both apply international law. In both methods, by submitting the dispute to an arbitration panel or the ICJ, the disputants agree in advance to accept the award (arbitration) or judgment (adjudication). The rules of arbitration are more flexible than rules of adjudication (Simmons, 2002; Shaw, 2003); this is mainly because the ICJ is a permanent court with procedures and judges are mainly fixed, though on a rotating basis. In arbitration, the disputants select the third parties that will serve as an arbitrator or panel of arbitration judges. In some cases, the arbitrator is one person, such as the Pope, or a regional organization like the Organization of American States (OAS). In other cases, a panel of judges or lawyers from states not involved in the dispute or from outside the region agrees to review the merits of each state's case. Both types of resolution methods involve international law and principles accepted by both disputants, yet the ICJ specifically follows the rules set out in Article 38 of its Statute regarding treaties, custom, and general principles of law (Shaw, 2003). An important point about international law used by the ICJ and other international courts is that the principles,

customs, and procedures are based on Western legal traditions, common law and civil law.

The benefit of arbitration and adjudication is that they are legally binding and widely respected since rulings are based on international law. Unlike bilateral negotiations or nonbinding third party mediation, where disputants can back out of agreements easily, legally binding resolution places more pressure on states to agree to the rulings. Even though there is no practical enforcement of international law and rulings of arbitration and adjudication in the international system, states generally comply with rulings mainly due to reputation and respect for international law. In the 15 territorial disputes examined by the ICJ, the disputants have complied with all but two of the rulings (Nigeria and El Salvador later requested the Court to revisit the cases, which the Court rejected). The overall implication of legally binding resolution methods is that states that are willing to pursue arbitration or adjudication have a respect for international law and are willing to allow unbiased third parties to make binding decisions regarding the outcome of territorial disputes.

Explaining Saudi Arabia's Dispute Resolution Attempts

Saudi Arabia has never sought the legally binding methods of arbitration or adjudication for resolution over disputed sovereignty, nor has it sought mediation. As discussed in the cases above, Saudi Arabia has resolved eight of its nine territorial disputes through bilateral negotiations. Overall, with the exception of Qatar and Bahrain, which resolved its territorial dispute with a ruling from the ICJ (Wiegand, 2012), Gulf states including Saudi Arabia have shied away from third party intervention from states or institutions outside of the Arab region. When third party intervention did occur, it was by another Arab state, leader, or institution, not by an arbitration panel of neutral judges or an international court. What explains Saudi Arabia's lack of third party involvement in dispute resolution and preference for bilateral negotiations? Two potential explanations stand out: realism and Islamic law.

Realism

The realist explanation is based on the concept of power politics in the Gulf region. In international relations, realism asserts that states always prioritize their self interest, whether it is protection of sovereign territory, increased relative economic or military capabilities, or maintaining power preponderance. With regard to territorial dispute resolution, realism would predict first of all that peaceful resolution is difficult, but if it does occur states seek to maximize relative gains, meaning that they would seek higher levels of material and economic concessions than their

opponent (Waltz, 1979). Realism can explain to some degree Saudi Arabia's preference for bilateral negotiations. As the major power in the Gulf region and the state with the highest level of economic and military capabilities, Saudi Arabia seeks to maintain its power position, and will seek strategies that benefit the state in this way. This theory helps to explain the relatively equal concessions that Saudi Arabia received in all of its resolved disputes. In other words, Saudi Arabia either never lost territory or gained non-territorial concessions, such as the access to the sea through a land corridor provided by Abu Dhabi.

Realism can also partly explain why Saudi Arabia never engaged a third party actor as a mediator for its own border disputes. Though Egypt acted briefly as a mediator in the Saudi Arabia v. Qatar dispute, it was only to diffuse the 1992 border clash, not to resolve the sovereignty question. Islamic law is compatible with mediation, so there is no basis in Islamic law for Saudi Arabia not to pursue mediation. In fact, Saudi Arabia acted as a mediator for the Qatar v. Bahrain dispute for 10 years. Yet, when third parties have been brought in to help mediate territorial disputes in the Islamic world, they have almost always been other Islamic state mediators. In a study of territorial disputes in the latter 20th century, Powell and Wiegand (2010) found that when Islamic law states sought third party intervention in their territorial disputes, 78 percent of the time they sought Islamic third parties, including leaders, envoys, and institutions such as the Arab League, the Islamic Conference Organization, and the Gulf Cooperation Council (GCC).

As the major power in the region, it is highly unlikely that Saudi Arabia would turn to another Arab or Islamic state or actor such as the GCC. The GCC certainly did not have the institutional capability to act as an effective third party mediator in Gulf boundary disputes, particularly since Saudi Arabia has politically dominated the GCC for decades (Okruhlik & Conge, 1999). Therefore, the choice to avoid mediation for its own disputes is mostly due to power politics, but Islamic law has played a role as well.

At least two territorial disputes were resolved through bilateral negotiations because of the looming relative threat of Iran and the Islamic revolution. Dispute resolution with Iraq and Kuwait was apparently viewed in the self interest of Saudi Arabia, mainly because Saudi Arabia wanted to prevent Iranian claims or threats to the neutral zone with Iraq and the maritime zone bordering Kuwait. Realism can provide a strong explanation for why Saudi Arabia sought resolution with its Arab Gulf neighbors in these two disputes since relative capabilities were influential. The explanation may explain the bilateral negotiations in the other disputes given that weaker states in the Gulf felt pressured by Saudi Arabia's preferences based on its relative power and influence in the region, but it cannot sufficiently explain Saudi Arabia's avoidance of legally binding methods.

Islamic Law

Building on realism by examining Saudi Arabia's reliance on various aspects of Islamic law helps to explain Saudi Arabia's avoidance of legally binding methods, providing a fuller picture. In the Gulf region specifically, where Islamic legal traditions are practiced more widely than elsewhere in the Arab and Islamic world, particularly in Saudi Arabia, Islamic law has influenced the predominance of bilateral negotiations as a dispute resolution method. This pattern has occurred mainly because of 1) Saudi Arabia's distrust of international law used in legally binding methods and 2) its preference for informal negotiating procedures.

As an Islamic law state, from Saudi Arabia's perspective, it is best to avoid international arbitration panels and courts that use Western influenced legal traditions of common and civil law. In an examination of all 83 contentious cases at the ICJ from its inception to 2006, only two judgments even mentioned Islamic law and only seven involved dissenting opinions (often from a judge from the Islamic world) discussing Islamic law (Lombardi, 2007). With such a poor record of Islamic law being used at the ICJ, it is no wonder that states that adhere strictly to Islamic law would be cautious of the Court and its rulings. A study of Islamic law states and the ICJ found that states practicing Islamic law based systems, as Saudi Arabia does, are 15 times less likely to use the compulsory jurisdiction of the ICJ (Powell, 2013). Similarly, in states where holy oath is required in the constitution, as is certainly the case with Saudi Arabia, Islamic law states were 21 times less likely to agree to compulsory jurisdiction of the ICJ (Powell, 2013). What these findings suggests is that states that use Islamic law like Saudi Arabia have not only been hesitant to take border disputes to the ICJ or any other international courts or arbitration, but it was actually very unlikely that the these states would choose a binding dispute resolution strategy at all, choosing instead to resolve disputes through bilateral negotiations.

Not only is Saudi Arabia not a member of the Court's compulsory jurisdiction clause, but the only time that Saudi Arabia has ever participated in any aspect of the Court's business was in 2004 when a Saudi ambassador made an oral presentation to the court, along with many other Arab states, on behalf of the Palestinians regarding the building of a security wall by Israel. In the presentation, the Ambassador noted that this was the first time Saudi Arabia had ever spoken at an ICJ hearing (Burgis, 2009). As a further indicator of Saudi Arabia's concern that Islamic law is not used or well known in the Court, in a 2013 meeting with the president of the Court, Prince Bandar bin Salman noted that training courses for judges about Islamic law was available if the Court were interested.

In all of Saudi Arabia's attempts to resolve its border disputes, in only one case did the Saudi government consider arbitration—in 1954 in its case against Abu

Dhabi (with Britain representing Abu Dhabi), but Saudi Arabia quickly changed its mind and arbitration never occurred. In putting together the arbitration panel of five agents who would delimit the boundary, Saudi Arabia and Britain each chose their own respective representatives, then requested that of the remaining three neutral arbitrators, one be a "Moslem" and one be a "European" respectively, with the fifth arbitrator not decided (Arbitration agreement, 1954). This was of concern to Saudi Arabia, who clearly had a preference for Islamic arbitrators. The only other border dispute that potentially involved arbitration was the Saudi Arabia v. Yemen dispute, when Yemen periodically called for an international arbitrator, which Saudi Arabia "outright rejected" (Okruhlik & Conge, 1999).

There are a number of specific aspects of Islamic law that differ from Western international law, which likely influence states like Saudi Arabia to prefer not to seek the assistance of international legal institutions in territorial dispute resolution. These particular components of Islamic law include: a different approach to adjudication clauses, a different relationship between law and religion, and the religious affiliation of judges in the international courts (Powell, 2013). In contrast to Western law, which is mainly secular, Islamic law is based on Islamic faith, traditions, and infallible religious sources like the Quran and Sunna (Cravens, 1998; Glenn, 2007; Powell, 2013). This distinction is critical for Islamic law states like Saudi Arabia because Islamic law is considered to be divine and no other legal order can be recognized, particularly Western secular law that has no reference to Islamic law.

Another major component of Islamic law has to do with the respective treatment of territoriality and sovereignty. Unlike Western law, which places significant value on specified territory as a determinant of sovereignty, in Islamic legal traditions, sovereignty was traditionally based on people rather than territory, similar to the East Asian tributary system and the medieval Papal system. To demonstrate sovereignty, Muslims paid zakat, religious taxes, and performed the hajj, the pilgrimage to Mecca, so that regardless of where they lived, Muslims were always under the sovereign rule of the Muslim ruler. As a result, sovereignty focused on tribal allegiance rather than specific territory, particularly applicable to Bedouin tribes common in Arabia (Bidwell, 1987; Cravens, 1998). As a result, the focus on territoriality was minimal, especially since the priority was access to water wells and freedom for tribal movement. The fact that Islamic law traditions developed separately over one thousand years and that sovereignty is more personal than about territory, Islamic law is "inapplicable in a world comprised of independent nation-states and governed by concepts of territorial rather than personal sovereignty" (Cravens, 1998, p. 530). Though the idea of territorial sovereignty became important in the 20th century with the discovery of oil, and Western imperial powers, Britain in the

case of the Gulf states, emphasized the "international concept of precise territorial boundaries" (Okruhlik & Conge, 1999, p. 233), this legal tradition of focusing on people rather than territoriality influenced Saudi Arabia in how it viewed its border disputes, particularly in the case of the Buraimi Oasis disputes with Abu Dhabi and Oman, as well as with tribes along the Saudi-Iraqi earlier in the 20th century.

Another component of Islamic law is the preference for informal resolution procedures, which can also help to explain Saudi Arabia's use of bilateral negotiations. According to Islamic beliefs, formalized and legal adjudication used by the Western courts can "breed hatred between parties while reconciliation brings them together" (Iqbal, 2001, p. 1040). This attitude suggests why Saudi Arabia would avoid Western influenced courts like the ICJ. One way to think of Islamic and Western legal traditions is to consider them as different ways of ordering the international system: "Islam provides the sole coherent, non-liberal world view of any political significance, and consequently the only vital external perspective on the liberal project of public international law" (Westbrook, 1993, pp. 820-821). In fact, states like Saudi Arabia using Islamic law have fairly negative views toward international courts (Brower & Sharpe, 2003).

Saudi Arabia has significant influence on its neighboring states; especially since Qatar turned to the ICJ after 10 years of Saudi mediation had failed, the last thing Saudi Arabia wanted to do was encourage the other Gulf states to seek dispute resolution through formalized methods: "As the big sister to which the other Gulf states defer to various extents, Saudi Arabia does not want to see itself defending its borders at the ICJ, and would rather reach solutions by mutual consent through direct and candid negotiations" (Mideast Mirror, 2000). Not only does Saudi Arabia prefer the use of Islamic law, but it disapproves of the Western formality of dispute resolution, instead replacing it with an emphasis on acknowledgment, apology, and forgiveness (Irani & Funk, 1998). This emphasis is demonstrated by Saudi Arabia in bilateral treaties about its boundaries signed with its neighbors. In these agreements, the focus is on brotherly cooperation by Islamic states that are ready to move forward in their bilateral relations. In dispute resolution using Islamic law, very little procedural law is applied, while instead, the achievement of consensus or reconciliation between the disputants is emphasized (Glenn, 2007). In fact, dispute resolution in Islamic law usually involves simple proceedings without much formal documentation, formal procedures, or rules of evidence (Iqbal, 2001). This approach to dispute resolution based on Islamic law helps explain why Saudi Arabia has avoided legally binding methods in its boundary disputes and instead used bilateral negotiations.

Conclusions

With such distinctions between Islamic law and Western influenced international law, leading to Saudi Arabia's skepticism of Western legal traditions inherent in arbitration and adjudication, and the state's preference for informal procedures as outlined in Islamic law, it is no surprise that Saudi Arabia has shunned legally binding dispute resolution methods in favor of bilateral negotiations with its neighbors. Even though bilateral negotiations and mediation are not legally binding dispute resolution methods, in the case of Gulf boundary and island disputes including Saudi Arabia's approach, the influence of Islamic law has taken precedence over the significance of "legally binding." Not only have all the boundary agreements been enforced by the former disputants, but regional cooperation in the Gulf has increased as a result of the resolved disputes.

This research addressed the question of why Saudi Arabia has used only bilateral negotiations and not mediation to resolve its boundary disputes with its Gulf neighbors, and stayed away from any legally binding methods of arbitration and adjudication. Though realism can somewhat explain Saudi Arabia's dispute strategies and lack of mediation, Saudi Arabia's strong adherence to Islamic law can more fully explain its avoidance of legally binding methods, its unwillingness to seek mediation from a non-Islamic law state, and, the use of bilateral negotiations. The lack of use of Islamic law in the ICJ and the application of Western, secular law, which places more emphasis on the division of territorial sovereignty compared to traditional Islamic law have influenced Saudi Arabia to shy away from international arbitration and adjudication. Without an effective mediator in the region and Saudi Arabia's relative power status, the only option that Saudi Arabia has really had has been to use bilateral negotiations. Because of the inherent principles of Islamic law applied in Saudi Arabia, the Saudi government has demonstratively preferred more informal resolution methods with its neighbors using principles, customs, and traditions from Islamic law.

Fortunately for Saudi Arabia and its Gulf neighbors, negotiations have resulted in positive outcomes, with agreements made between Saudi Arabia and all its Gulf neighbors, as well as Iraq and Jordan. As the major power in the region, Saudi Arabia's strategies in dispute resolution influence smaller Gulf states. In future disputes, whether territorial or over other issues, it is very likely that Saudi Arabia and other states that strongly practice Islamic law will avoid legally binding dispute resolution and instead pursue bilateral negotiations that are influenced by Islamic law.

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Tourism and Cross-Border Conflict: An Empirical Analysis of the Israeli-Palestinian Case

Anna Getmansky

Lecturer, Lauder School of Government, Diplomacy, and Strategy, Interdisciplinary Center Herzliya, Israel

Abstract

How does tourism affect conflict, and how is it affected by conflict and violence? Tourism is often proposed as a way to manage and resolve conflicts, especially those between close neighbors. Drawing on theories of economic cooperation and conflict, and using data from the Israeli-Palestinian case, this paper finds no strong evidence that tourism has a pacifying effect on conflict: regions that host more tourists, and that have a stronger tourism potential, are not more peaceful than other regions. Furthermore, hosting more tourists from the other side of the border does not affect violence. Finally, although tourism is sensitive to violence, this sensitivity is short-term and often conditional on other factors. These findings suggest that we should moderate our expectations about the potential effect of tourism on conflict resolution.

Keywords

tourism, conflict, cross-border, economic exchange, Israel, Palestine

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"What I have seen is that peace works better than conflict, and one of the best manifestations of it is in travel and tourism"[1]

How does tourism affect conflict? Can cross-border tourism contribute to conflict resolution and peace building, as the quote above suggests? It is a well-established empirical regularity that tourism is adversely affected by conflict and violence. However, the effect of tourism on conflict, and especially the role of tourism in promoting conflict resolution has been under-explored.[2] In this paper, I use data from the Israeli-Palestinian conflict to examine the effect of tourism on patterns of conflict and violence, and to test several hypotheses about the relationship between cross-border flows of people and conflict. Specifically, I explore how tourism is associated with the patterns of suicide attacks initiated by Palestinians against Israeli civilian targets. I also explore hypotheses about the sensitivity of tourism to violence.

A dominant view in the literature as well as in policy circles maintains that conflict and tourism are substitute phenomena. This view is based on the assumption that people prefer traveling to peaceful destinations, where their risk of exposure to violence is low, and where they can easily access tourist attractions or reach their destination in a predictable manner. Thus, conflict is believed to have a negative effect on cross border movement of people.

Causality, however, can also run in the opposite direction. Since cross border flows of people often generate revenues, they may also increase the opportunity cost of conflict, thereby making violence more costly and less likely. Moreover, revenues generated by cross border flows of people improve the local economy, and improved economic conditions are negatively related to some forms of violence, such as civil wars (Fearon & Laitin, 2003; Collier & Hoeffler, 2004; Miguel, Satyanath, & Sergenti (2004). For these reasons, investment in tourism is often being proposed as an indirect way to manage and even resolve conflicts.[3] Thus, the negative correlation between tourism and conflict can be due to the negative effect

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1 Former US President Bill Clinton at the 13th annual World Travel & Tourism Council Global Summit in Abu Dhabi, UAE, April 9, 2013, http://www.wttc.org/events/abudhabi-2013/global-summit-news/day-one/presidential-prospective (Retrieved on September 21, 2013).

2 As I will discuss below, there are many studies that theoretically explore the role of economic exchanges, cross-border movement, and tourism in promoting cooperation. However, very little empirical evidence has been provided to demonstrate the pacifying role of these exchanges. For example, Enders and Sandler (1991) find no effect of tourism on conflict between 1970 and 1988 using data from Spain.

3 The US Secretary of State John Kerry emphasized the role of tourism in promoting peace in the Middle East in his address in the World Economic Forum in Jordan on May 26, 2013, http://www.weforum.org/news/kerry-announces-us4-billion-economic-plan-break-israeli-palestinian-impasse (Retrieved on September 21, 2013).

of tourism on conflict, and not just the negative effect of conflict on tourism.

Despite the logical appeal and the evidence that tourism and conflict are substitutes, there is also evidence that conflict and tourism can be complementary. Terrorists often strike popular and crowded locations to maximize the impact of their attacks, and sometimes they specifically target tourists. Thus, an increase in tourism can also lead to an increase in terrorism, especially if it is directed against foreigners and tourists.[4] Additionally, there is evidence that some types of tourists are attracted to areas of conflict precisely because of the risks involved in traveling to these destinations or because they are interested in understanding these conflicts.[5] Thus, conflict may not necessarily affect the overall level of cross border flows, but instead the type of travelers.

In this paper, I explore several hypotheses about the relationship between tourism and terrorism using data from the Israeli-Palestinian conflict. I use a fine-grained dataset that contains monthly and geographically-disaggregated data on tourist arrivals in Israel and the Palestinian Authority (West Bank and Gaza strip), as well as locations of terrorist attacks conducted by Palestinians against Israeli targets, and the attackers' geographic origin.

Overall, I find little evidence that cross-border movement of tourists decreases conflict. Initially, there is a negative association at the macro-level between prior tourist flows and current attacks, consistent with the dominant view of tourism and conflict as substitutes. However, this association disappears at the micro-level, and after controlling for alternative explanations for attacks. Specifically, I find that Palestinian regions that have greater tourist potential do not differ from other regions in the number of suicide attacks launched from their territory. Likewise, Palestinian regions that host more tourists are not more peaceful compared to regions that host fewer tourists. Furthermore, religious holidays that are associated with tourist arrivals do not seem to affect the patterns of violence, not even when it comes to regions with religious sites.

My findings also indicate that under some conditions tourism is sensitive to violence. First, I find that tourism in Israel decreases by 3% to 7% in the month following a suicide attack, however this effect lasts only for one month and dissipates afterwards. Attacks in Israel affect all Israeli touristic destinations, and not only the cities in which these attacks take place (thus there is no local effect of terrorism on

4 The Luxor massacre in Egypt in 1997 that killed 62 people, most of whom were tourists, is a case in point.

5 Tourists traveling to Syria and Afghanistan, http://www.washingtonpost.com/blogs/worldviews/wp/2013/01/03/war-tourism-a-thrill-seeking-japanese-trucker-in-syria/ (Retrieved on September 21, 2013). Alternative Tourism Group in the Israeli-Palestinian context, http://electronicintifada.net/content/visit-palestine-says-west-banks-growing-alternative-tourism-industry/8343 (Retrieved on September 21, 2013).

tourism). Tourist arrivals in Palestinian territories, however, are less sensitive to attacks against Israelis. The effect of terrorist attacks on tourism is conditional on Israeli countermeasures against Palestinians: tourism in Palestinian regions decreases only when Israel uses military force in response to suicide attacks by Palestinians. Without such countermeasures, tourist arrivals in Palestinian areas are not associated with suicide attacks against Israelis that originate from these areas. Taken together, my findings suggest caution in response to claims that tourism can be useful for managing and resolving cross-border conflicts.

The paper is organized as follows. In the next section, I briefly outline the historical background of the Israeli-Palestinian case. Then, I review literature on economic ties and conflict, and formulate eight hypotheses about the expected relationship between tourism and patterns of violence. Afterwards, I describe the data and the empirical strategy. Then, I present the empirical results, and conclude with a discussion of the potential role of tourism in solving cross-border conflicts.

Historical Context: Tourism and the Israeli-Palestinian Conflict

Israel captured the West Bank and Gaza strip (WBG) during the Six Days War in 1967, and imposed a military rule in these territories. Figure 1 shows a map of Israel and the WBG. The light gray areas represent the pre-1967 Israeli territory, and the darker grey areas show the Palestinian regions (also labeled North, Middle, Jerusalem, South, and Gaza).

Following the first Palestinian uprising (*Intifada*) in 1987, Israel started negotiating with the Palestinian leadership, and signed the Oslo accords in 1993, followed by several interim agreements. The basic principle underlying these agreements was the land for peace formula: Israel agreed to withdraw from part of the lands it occupied in 1967 in exchange for the Palestinian recognition of Israel's right to exist and their cooperation in counterterrorism against the hardline Palestinian organizations.

Although the interim agreements have not led to the establishment of a Palestinian state, they allowed the Palestinians for the first time to control parts of the disputed territory, and establish an administrative infrastructure to govern these areas. The territory that came under Palestinian control includes the cities of Bethlehem, Hebron, and Jericho that contain many sites of religious and historical importance. Other areas in the Palestinian territories, such as the city of Ramallah as

Figure 1
Map of Israel and the Palestinian Regions with Main Touristic Sites

well as Gaza strip also have touristic potential.[6]

Israel hosts numerous sites that attract many tourists from around the world—Jerusalem, Tel Aviv, the Dead Sea, and the Gulf of Eilat (see Figure 1).[7]

Despite the initial progress in the 1990s, talks over the permanent agreement between Israel and the Palestinians came to a halt in 2000. Violence had resumed with the outbreak of the second Intifada in September 2000, and the subsequent wave of suicide attacks that targeted Israeli cities until the end of December 2006. Israel has used military force, as well as targeted assassinations, house demolitions, and curfews, whereas the Palestinians resorted to terror attacks, including suicide bombings. According to the Israel Security Agency, there were about 30,000 Palestinian attacks against Israeli targets between September 2000 and December 2006 that resulted in over 1,000 Israeli fatalities.

6 Palestinian official website describes several places with touristic potential: http://travelpalestine.ps/destinations/ (Retrieved on September 21, 2013).

7 See Israeli official website, http://www.goisrael.com/Tourism_Eng/Pages/home.aspx (Retrieved on September 21, 2013).

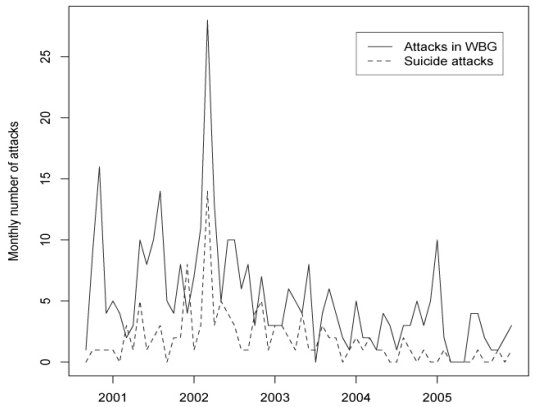

Figure 2
Suicide Attacks Carried Out by Palestinians against Israeli Targets

Figure 2 shows the number of suicide attacks conducted by Palestinians against Israeli targets. Suicide attacks peaked in March 2002, and became significantly less frequent afterwards.

Tourism in Palestinian areas and in Israel surged in the wake of the Oslo accords and the peace talks, but steeply declined after the eruption of violence. Figures 3 and 4 depict the changes in tourist arrivals in Palestinian and in Israeli hotels, respectively. The number of tourists staying in Palestinian hotels has plummeted following the outbreak of the second Intifada, and has never recovered to its previous level. There has been a slight recovery since 2004, but it is due mostly to domestic tourism, as shown by the solid line (total number of tourists) and the dashed line (foreign tourists) in Figure 3. Israel has also experienced a decline in

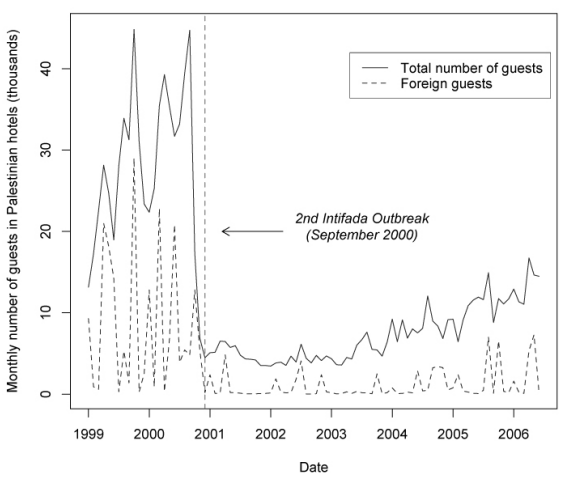

Figure 3
Hotel Guests in Palestinian Regions

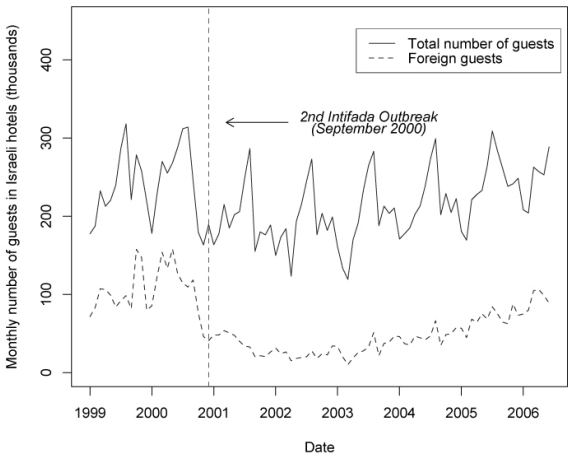

Figure 4
Hotel Guests in Israel

foreign tourist arrivals, but the overall number of tourists has remained largely the same due to domestic tourism, as shown by the solid line in Figure 4. Foreign tourist arrivals have been recovering since 2003, but the overall number has not returned to the pre-Intifada levels, as depicted by the dashed line in Figure 4.

Tourism and Conflict: Extant Literature and Hypotheses

The Effect of Tourism on Conflict

The relationship between tourism and conflict is situated within a broader context of the effect of economic ties on political conflict. The extant literature in this area offers three alternative views: One perspective asserts that cross-border economic exchanges inhibit conflict, leading to a more peaceful world. A second view holds that economic exchanges are positively associated with conflict because they generate discord between countries. A third argument posits that economic ties do not affect conflict, and that the apparent correlation is spurious.

The argument that economic ties reduce conflict is associated with the liberal approach to international relations, and it has gained prominence in both academic and policy circles, as the quote in the beginning of this paper suggests. This perspective traces back to Immanuel Kant, who envisioned free trade to be one of the key ingredients to a world peace (Crescenzi, 2005). Several studies find an empirical support for the pacific impact of cross-border economic exchanges (Domke, 1988; Mansfield, 1994; Polanchek, 1978; Oneal & Russet, 1997; cited in Mansfield & Pollins, 2003; and in Crescenzi, 2005). Some of these findings have been called

into question, among other things based on methodological grounds (Beck, Katz, & Tucker, 1998).

One explanation for the pacifying effect of economic exchanges suggests that as such exchanges intensify, potential belligerents become better positioned to achieve their political goals using other, nonviolent means, thereby making military conquest and territorial expansion unnecessary (Rosencrance, 1986). Cross-border tourism in particular has been linked to economic stability, development of infrastructure, foreign currency earning, and an increase in employment, all of which contribute to a greater satisfaction with the status quo, and reduce the incentives to engage in conflict. Applying this argument to the Israeli-Palestinian context suggests that we should expect less violence by Palestinians following periods of higher tourist inflows, since tourism revenues are expected to boost the economy, make Palestinians more satisfied with the status quo, and less likely to resort to violence.

Hypothesis 1: Fewer Palestinian attacks against Israelis are expected in period t if Palestinians host more tourists in period t-1.

An additional reason for their pacifying effect is that economic exchanges generate revenue for individuals and groups that develop vested interest in maintaining the status quo, and avoiding situations that can disrupt future flow of income. These groups restrain their governments from using force because conflict reduces revenue from cross-border economic exchange (Mansfield & Pollins, 2003; Domke, 1988; cited in Crescenzi, 2005).

In the Israeli-Palestinian context, Bueno de Mesquita (2009) proposes an arrangement involving tourism that would provide incentives to both sides to avoid violence. In this arrangement, Israel and the Palestinians would share tax revenue from tourism in a way that would enhance income for both sides, and in the case of the Palestinians this mechanism might result in a ninefold increase in tax revenue. Since tourism is sensitive to violence, both sides would lose if the conflict reignites. Thus, both Israel and the Palestinians, under this arrangement, would have strong incentives to maintain stability and avoid escalation in order to secure tourism revenue. If the argument that higher costs of losing economic ties make violence less likely is correct, then those who profit from tourism, and thus have vested interest in avoiding disruption of cross-border flows, should oppose violence, and try and restrain those who engage in it. In the Israeli-Palestinian context, this explanation would imply that Palestinian regions that benefit more from tourism should be less likely to contribute to violence.

Hypothesis 2: Palestinian suicide bombers are less likely to originate in period t from Palestinian regions that host more tourists in period t-1.

Another causal mechanism that is suggested in the literature to explain why economic ties can reduce the likelihood of conflict is that economic exchanges

increase the frequency of interaction and communication between potential belligerents, and contribute to mutual understanding, reduce uncertainty, and ultimately lower the likelihood of violence outbreak. Karl Deutsch's research on security communities, whose members have a "real assurance that the members of that community will not fight each other physically," emphasizes transaction flows that incrementally lead to "mutual sympathy and localities," and a "we feeling" (cited in Kupchan, 2010, pp. 22-23).

In the Israeli-Palestinian conflict this explanation implies that higher frequency of interactions between Israelis and the Palestinians, especially in the context of economic exchanges, should lower the likelihood of violence by increasing mutual understanding and reducing miscommunication. This logic implies the following hypotheses:

Hypothesis 3: Palestinian suicide bombers are less likely to emerge in period t from regions that host more Israeli tourists in period t-1.

A number of studies have asserted various domestic and international factors mediate the effect of economic exchanges on conflict.[8] In the Israeli-Palestinian context, religious holidays could be a mediating factor that shapes the impact of tourism on conflict. Religious tourism is especially important in the context of Israel and the Palestinian regions, and thus it is logical to suggest that the effect of dependence on tourism might be contingent on proximity to religious holidays, and that Palestinians are less likely to initiate attacks prior to such holidays in order to avoid losing revenue from tourism. This should be especially true for Palestinian regions with religious sites, such as the cities of Jerusalem and Bethlehem. This implies the following hypotheses:

Hypothesis 4: Palestinians from regions with religious sites are less likely to initiate attacks against Israelis before Christian holidays.

The Sensitivity of Tourism to Conflict

One of the arguments in favor of the pacifying effect of tourism on conflict is that tourism is sensitive to violence, and parties have an incentive to avoid fighting to preserve tourism revenue. The tax revenue sharing arrangement proposed by Bueno de Mesquita (2009) and discussed earlier rests on the premise that tourism

8 For example, Mansfield (2004) posits that economic ties inhibit conflict only in the presence of preferential trade arrangements. Liberman (1999) reports that the effect of economic ties on conflict is conditional on the offense-defense balance. Papayoanou (1996) and Hegre (2000) show that domestic characteristics (such as the effect of the economic interests on policy-making and the level of industrial development) affect the role of economic interdependence in preventing conflict.

is sensitive to violence, and that tax revenues would decrease if violence erupts, thus leading both sides to lose. Bueno de Mesquita provides some evidence that tourist arrivals decrease both in Israel and in Palestinian regions following terrorist attacks, but this evidence is based on data that are aggregated both spatially as well as temporally.

Several other studies provide evidence of the negative effect of conflict on tourism. Enders and Sandler (1991) find a significant negative effect of terrorism on the number of tourists visiting Spain from 1970 through 1988 using monthly data and a vector autoregressive analysis. Enders, Sandler, and Parise (1992) report a negative effect of terrorism on tourism in Greece, Austria, and Italy from 1974 through 1988. Moreover, using data from Western Europe they report that tourist substitute away from countries that experience attacks to other, more peaceful countries. Pitzam and Fleischer (2009) report an adverse effect of terrorism on tourism based on data from Israel between 1991 and 2001. They note that the frequency of attacks, rather than their lethality, is the best predictor of tourism decline. In a more recent study, Enders and Sandler (2006) find that both domestic and international terrorism adversely affected foreign tourism to Italy between 1995 and 1997. Finally, using data from Greece, Israel, and Turkey, Drakos and Kutan (2003) also find evidence that tourists substitute away from high-risk places. Unlike other studies, Yaya (2008) finds a negative, but relatively small effect of domestic terrorism on tourists' arrival in Turkey.

The view that parties abstain from violence out of fear of losing profits from their economic exchange has been criticized by Barbieri and Levy (1999), who show that interstate wars do not always halt trade, and that conflict presents only short-term costs to parties that engage in trade.

In order to investigate whether terrorism indeed imposes costs by reducing the number of tourists following attacks, I investigate the following hypotheses:

Hypothesis 5: Fewer tourists arrive in Israel in period t if there is a terrorist attack in period t-1.

Hypothesis 6: Israeli cities that experience an attack in period t-1 should have fewer tourists in period t.

Hypothesis 7: Fewer tourists arrive in a Palestinian region in period t if a suicide bomber originated from that region in period t-1.

Finally, some studies conclude that there is no systematic relationship between economic exchanges and political conflict. This view is characteristic of neorealist approaches that maintain that the distribution of power is the key determinant of conflict, and that it trumps the importance of economic gains (Waltz, 1979; Buzan, 1984; Gilpin, 1987; quoted in Crescenzi, 2005). To the extent that this argument is correct, we should not observe any relationship between tourism and terrorism in

the hypotheses specified above.

Data

The dataset contains geographically-disaggregated monthly data on tourism and conflict in Israel and the Palestinian territories from 1999 through 2006.

Tourism Data

To measure flows of tourists, I use data provided by the Palestinian Central Bureau of Statistics and the Israeli Central Bureau of Statistics.[9] The measure that is available for both entities is that of the number of guests staying in hotels in every Palestinian region i in month t ($Tourists^{PAL}_{i,t}$), and in every Israeli tourist destination j in month t ($Tourists^{ISR}_{j,t}$). The data on guests staying in Palestinian and Israeli hotels is available on a monthly basis for each Palestinian region and each Israeli tourist destination. There is also information on the origin of the guests, and I explore this data in my tests.

Palestinian territories are divided into 5 regions depicted in Figure 1. The Israeli data covers the main tourist destinations in Israel: Jerusalem Tel Aviv, Haifa, Tiberias, Netanya, Herzliya, and Eilat, as well as the Dead Sea resorts that are also represented in Figure 1.

Conflict Data

The measure of terrorism is Palestinian suicide attacks against Israeli targets. I use a detailed dataset, originally constructed by Benmelech and Berrebi (2007) and recently used in Benmelech, Berrebi, and Klor (2010), based on the annual reports of the Israeli Security Agency. This dataset identifies all Palestinian suicide attacks that were carried out from September 2000 through December 2006, and the home district of the perpetrators. The dataset contains 143 suicide attacks involving 157 suicide terrorists. Based on these data, I create a variable $Suicide\ attacks_{i,t}$ that count the number of suicide attacks originating from each Palestinian region i in month t.

Controls Variables

I employ several control variables to account for alternative explanations for attacks or for tourist arrivals.

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9 These data are available here: http://www.pcbs.gov.ps/site/lang__en/507/site/688/default.aspx (Palestinian data, retrieved on September 21, 2013) and here http://www.cbs.gov.il/reader/?MIval=cw_usr_view_SHTML&ID=432 (Israeli data, retrieved on September 21, 2013).

In models where the dependent variable is attacks, I control for Palestinian unemployment, Palestinian population size, and Israeli settler population size in every Palestinian region, since these factors might affect the likelihood and the intensity of violence. These variables are available on an annual basis for each Palestinian region. In my tests, I use the log-transformed value for Palestinian population and settler population.

Attacks as well as tourist arrivals can be affected by proximity to religious holidays. *Religious holiday*$_{t-1}$ and *Religious holiday*$_{t+1}$ are equal to 1 if there is a religious holiday in the preceding and in the following month, respectively. These variables are otherwise coded 0. I consider Christian, Jewish, and Muslim religious holidays.[10]

Another factor that might affect the likelihood and the intensity of attacks and tourism is proximity to elections (Aksoy, n.d.). To control for elections, I include two binary variables—*Election*$_{t-1}$ and *Election*$_{t+1}$ that are equal to 1 if there are elections either in Israel or in the Palestinian regions in the preceding or in the following month, respectively. I consider parliamentary elections in Israel, as well as the 2001 direct election of the prime minister. In the Palestinian regions, I account for the Palestinian Legislative Council, presidential elections, and local (municipal) elections.[11]

Attacks and tourism are affected by developments in the Israeli-Palestinian peace talks (Kydd & Walter, 2002). I use data from the Levant Reuters CAMEO data collected by the Penn State Even Data Project to code positive and negative developments in negotiations.[12] *Positive event in negotiations*$_t$ measures a number of events in month *t* the parties (formal Israeli and Palestinian representatives) negotiated, expressed an intent to engage in cooperation, made optimistic comments, or provided concessions. *Negative event in negotiations*$_t$ counts that number of times in month *t* the parties halted negotiations, threatened to use force, imposed sanctions on each other, or made pessimistic comments about the prospects of the talks.

Finally, attacks and tourism can also be affected by the use of military force by

10 Christian holidays are New Year's eve, Christmas, Ash Wednesday, and Easter, both western and Orthodox dates. Jewish holidays are Rosh Hashana, Yom Kippur, Sukkot, Chanuka, Purim, Pessach, and Shavuot. Muslim holidays are Ramadan, Eid al Fitr, Day of Arafat, and Eid al Adha. The dates of these holidays are available here http://www.timeanddate.com/holidays.

11 Dates of Israeli parliamentary elections: 5/17/1999, 1/28/2003, 3/28/2006. Direct prime minister election: 2/6/2001. Palestinian presidential election was held on 1/9/2005, and Palestinian parliamentary election took place on 1/25/2006. Palestinian local elections were held in several rounds in the following months: 12/2004, 1/2005, 5/2005, 9/2005, and 12/2005.

12 The dataset is available here http://eventdata.psu.edu/data.dir/Levant.Reuters.CAMEO.1111.zip (Retrieved September 21, 2013).

Israel. To control for this, I create a variable *Military force by Israel*$_t$ which counts the number of times in month t Israeli used tanks, artillery, or aerial weapons against the Palestinians, based on the Penn State's Levant Reuters CAMEO data.

Empirical Method

I use a time-series cross-section dataset to explore the relationship between conflict and tourism.

Hypothesis 1 is tested using the following equation:

$$Suicide\ attacks_t = Tourists^{PAL}_{t-1} + Suicide\ attacks_{t-1} + \gamma X_{t-1} + \varepsilon_t, \quad (1)$$

where Suicide *attacks*$_t$ is the number of all Palestinian suicide attacks in month t. $Tourists^{PAL}_{t-1}$ is the logged number of tourists staying in Palestinian hotels in the preceding month, *Suicide attacks*$_{t-1}$ is the number of Palestinian suicide attacks in the preceding month, and γX_{t-1} is a vector of control variables, as explained above. Finally, ε_t are robust standard errors.

The following equations are used to test hypothesis 2:

$$Suicide\ attacks_{i,t} = Tourists^{PAL}_{i,t-1} + Suicide\ attacks_{i,t-1} + \gamma X_{i,t-1} + \eta_t + \varepsilon_{i,t} \quad (2)$$

$$Suicide\ attacks_{i,t} = Tourists^{PAL}_{i,t-1} + \gamma X_{i,t-1} + \mu_i + \eta_t + \varepsilon_{i,t} \quad (3)$$

Suicide attacks$_{i,t}$ is the number of suicide attacks originating from Palestinian region i in month t. The main independent variable is the logged total number of tourists in Palestinian region i in month t-1.

Equation 2 refers to the lagged dependent variable linear model,[13] and in equation 3 I include Palestinian regions fixed effects μ_i that capture time-invariant region level factors, such as topography, distance from Israel, and distance from borders. These region fixed effects are in leu of the lagged dependent variable. Equation 3 also includes month dummies η_t that capture temporal trends. Finally, I allow for correlated errors within regions over time by clustering the regressions at the region level ($\varepsilon_{i,t}$).

Hypothesis 3 is tested using the models in equations 1 and 2, and the only difference is that the main independent variable is the logged number of tourists from Israel in Palestinian region i in month t-1—*Israeli Tourists*$^{PAL}_{i,t-1}$.

To test hypothesis 4, I use the following models:

$$Suicide\ attacks_{i,t} = Christian\ holiday_{t+1} + Religious\ site_i + Christian\ holiday_{t+1} \times Religious\ site_i + Suicide\ attacks_{i,t-1} + \gamma X_{i,t-1} + \eta_t + \varepsilon_{i,t} \quad (4)$$

$$Suicide\ attacks_{i,t} = Christian\ holiday_{t+1} + Religious\ site_i + Christian\ holiday_{t+1} \times Religious\ site_i + \gamma X_{i,t-1} + \mu_i + \eta_t + \varepsilon_{i,t} \quad (5)$$

13 For the discussion of analyzing time-series—cross section data, see Beck and Katz (2009).

where *Christian holiday*$_{t+1}$ is equal to 1 if there is a Christian religious holiday in the following month, and 0 otherwise. Religious *site*$_i$ is equal to 1 if there is a site of religious importance in Palestinian region *i*.

The model used to test hypothesis 5 is again similar to the one in equation 1. The dependent variable is *Tourists*$^{ISR}_t$ that measures the logged number of tourists staying in Israeli hotels in month *t*, and the dependent variable is the total number of suicide attacks against Israelis in month *t-1*—*Suicide attacks*$_{t-1}$.

Finally, the models used to estimate hypotheses 6 and 7 are similar to equations 2 and 3. Here the dependent variables are *Tourists*$^{ISR}_t$ and *Tourists*$^{PAL}_t$ for hypothesis 6 and hypothesis 7, respectively. The main independent variable is *Suicide attacks*$_{i,t-1}$ that measures the number of suicide attacks in city *i* in month *t-1* for hypotheses 6, and the number of suicide attacks originating from Palestinian region *i* in month *t-1* for hypothesis 7.

Results

Does Tourism Reduce Conflict?

I start the empirical tests by asking whether Palestinian attacks are affected by the tourist arrivals in Palestinian regions in the previous period. Results are presented in Table 1. The unit of analysis in this test is month. The dependent variable is the logged number of suicide attacks initiated by Palestinians against Israelis in month *t*.[14] The main independent variable is *Tourists*$^{PAL}_{t-1}$ that is equal to the logged number of guests staying in all Palestinian hotels in a preceding month.

I begin with a simple linear regression of the number of attacks on the logged number of tourists, including a lagged dependent variable to account for temporal dependence,[15] and month dummies to address secular trends. The results in column 1 suggest that past tourism is negatively associated with present number of suicide attacks. Existing literature suggests that economic conditions are an important potential determinant of violence. To ascertain whether these results are affected by changes in the economy, in column 2, I control for the Palestinian unemployment

14 I logged the number of attacks and added 1 to transform it to a continuous variable suitable for an OLS regression. The other alternative would be to use a count model to accommodate a count dependent variable (number of attacks), but such model would be problematic since it is a time-series dataset, and there is no good way of accounting for temporal dependence with a count model (see Brandt and Williams, 1998). In a robustness test (not reported here), I repeat this estimation using a probit model with a binary variable and binary time-series corrections as in Beck, Katz, and Tucker (1998), and the results are substantively the same as in Table 1.

15 Not including the lagged dependent variable will be equal to assuming that attacks in month *t* are uncorrelated with attacks in month *t-1*.

Variable	(1)		(2)		(3)	
	Coef.	Std. err.	Coef.	Std. err.	Coef.	Std. err.
$Tourists^{PAL}_{t-1}$	-0.55***	[0.08]	0.42***	[0.12]	-0.31**	[0.14]
$Unemployment^{PAL}_{t-1}$			1.86	[1.18]	4.32**	[1.86]
$Population^{PAL}_{t-1}$					-1.60	[1.66]
$Settler\ population_{t-1}$					-0.22	[0.15]
$Religious\ holiday_{t-1}$					-0.11	[0.13]
$Religious\ holiday_{t+1}$					-0.20	[0.14]
$Election_{t-1}$					0.26*	[0.14]
$Election_{t+1}$					-0.08	[0.17]
$Positive\ events\ in\ negotiation_{t-1}$					-0.01	[0.02]
$Negative\ events\ in\ negotiation_{t-1}$					0.00	[0.03]
$Military\ force\ by\ Israel_{t-1}$					0.02	[0.03]
$Suicide\ attacks_{t-1}$	0.07**	[0.03]	0.06**	[0.03]	0.04	[0.03]
Constant	5.59***	[0.72]	4.00***	[1.28]	29.22	[23.42]
Month dummies	yes		yes		yes	
R^2	0.55		0.55		0.56	
No. of obs.	89		89		88	

* p<0.10, ** p<0.05, *** p<0.01

Table 1
Tourism and Palestinian Suicide Attacks: Pooled (Palestine)-Level Regressions (Hypothesis 1)

rate in a preceding month. The coefficient of $Tourists^{PAL}_{t-1}$ is still negative and statistically significant. Finally, in column 3 I include additional control variables—proximity to religious holidays and to elections, developments in the Israeli-Palestinian negotiations, and the use of force by Israel in the preceding month. The coefficient of $Tourists^{PAL}_{t-1}$ is still negative, although its statistical significance drops from 99% to 95%. This implies that the number of tourists is negatively associated with the number of suicide attacks originating from Palestinian regions. Substantively, since both the dependent and the independent variables are log-transformed, the coefficient implies that a 1% increase in the number of tourists in Palestinian hotels in month *t-1* is associated with a 0.31% decrease in the number of suicide attacks in month *t*.

One potential problem with the results in Table 1 is that they might be driven by omitted variables, some of which might be unobservable, but also correlated with the number of tourists. Thus, these results cannot be interpreted causally. To further explore the relationship between tourism and conflict, I use a geographically-disaggregated dataset where the unit of analysis is Palestinian region-month. This allows exploration of the connection between tourism and violence, and control of alternative region-level explanations that can affect violence.

As hypothesis 2 suggests, groups that benefit from tourism should be less likely to participate in conflict because they have more to lose if violence disrupts economic exchange. This hypothesis is tested in Table 2.

In column 1, I again start with a simple linear regression of the dependent variable (suicide attacks originating from Palestinian region *i* in month *t*) on the logged number of guests staying in hotels in region *i* in month *t-1*. I include a lagged dependent variable and month dummies to account for temporal dependence and trends, respectively. The results suggest that there is a negative and statistically significant relationship between tourism and the number of attacks launched in and from Palestinian regions. I proceed with the tests, and include control variables in column 2. The relationship between tourism and attacks remains negative, though the level of statistical significance drops from 95% to 90%. The coefficient size is also smaller. Finally, in column 3 I include also region fixed effect to control for time-invariant observable and unobservable region-level characteristics (and drop the lagged dependent variable). The statistical significance no longer holds, and the coefficient size becomes much smaller.

This suggests that the initial negative association between tourism and vio-

Variable	(1)		(2)		(3)	
	Coef.	Std. err.	Coef.	Std. err.	Coef.	Std. err.
$Tourists^{PAL}_{i,t-1}$	-0.09**	[0.02]	-0.05*	[0.02]	-0.01	[0.04]
$Unemployment^{PAL}_{i,t-1}$			1.13	[0.61]	2.30	[1.32]
$Population^{PAL}_{i,t-1}$			0.08	[0.07]	-1.00	[0.63]
$Settler\ population_{i,t-1}$			0.04*	[0.02]	0.01*	[0.00]
$Religious\ holiday_{t-1}$			-0.05	[0.03]	-0.05	[0.04]
$Religious\ holiday_{t+1}$			-0.09	[0.08]	-0.08	[0.07]
$Election_{t-1}$			0.04	[0.07]	0.05	[0.05]
$Election_{t+1}$			-0.03	[0.06]	-0.03	[0.08]
$Positive\ events\ in\ negotiation_{t-1}$			0.00	[0.01]	-0.00	[0.01]
$Negative\ events\ in\ negotiation_{t-1}$			-0.00	[0.00]	0.00	[0.00]
$Military\ force\ by\ Israel_{t-1}$			0.01	[0.01]	0.01	[0.01]
$Suicide\ attacks_{i,t-1}$	0.30**	[0.10]	0.22**	[0.05]		
Constant	0.73**	[0.18]	-1.09	[1.09]	12.99	[8.02]
Month dummies	yes		yes		yes	
Region fixed effects	no		no		yes	
R^2	0.26		0.31		0.20	
No. of obs.	440		440		440	

* p<0.10, ** p<0.05, *** p<0.01

Table 2
Tourism in Palestinian Regions and Palestinian Suicide Attacks Originating from These Regions: Region-Level Regressions (Hypothesis 2)

lence disappears once we control for region-level time-invariant factors, such as terrain and distance from borders and Israel, as well as other unobservable time-invariant region-level factors. When we account for an alternative explanation, it seems that previous violence trends and the size of the settler population in a Palestinian region are better predictors of suicide attacks than tourism. Based on the results in Table 2, I reject hypothesis 2.

I now turn to examine whether Palestinian regions hosting more Israeli tourists are less likely to be home-regions of suicide bombers (hypothesis 3). Results are reported in Table 3. Column 1, as before, shows a simple linear regression with lagged dependent variable and month dummies. The results suggest a negative correlation between Israeli tourists in a Palestinian region in month *t-1* and suicide attacks launched from that region or attacks in that region against Israelis in month *t*. However, this result is not robust to the inclusion of control variables and region fixed effects in columns 2 and 3—the coefficient of interest remains negative, but it is no longer significant. As before, the lagged dependent variable and the demographic variables are better predictors of where suicide bombers are more likely to originate from. Despite the initial appearance, there is no evidence that Palestinian

Variable	(1)		(2)		(3)	
	Coef.	Std. err.	Coef.	Std. err.	Coef.	Std. err.
Israeli Tourists$^{PAL}_{i,t-1}$	-0.04***	[0.01]	-0.01*	[0.01]	-0.01	[0.03]
Unemployment$^{PAL}_{i,t-1}$			1.16	[0.71]	2.31	[1.39]
Population$^{PAL}_{i,t-1}$			0.12	[0.06]	-1.10*	[0.41]
Settler population$_{i,t-1}$			0.04*	[0.02]	0.01*	[0.01]
Religious holiday$_{t-1}$			-0.05	[0.03]	-0.05	[0.04]
Religious holiday$_{t+1}$			-0.09	[0.07]	-0.08	[0.07]
Election$_{t-1}$			0.04	[0.07]	0.05	[0.05]
Election$_{t+1}$			-0.04	[0.06]	-0.02	[0.07]
Positive events in negotiation$_{t-1}$			0.00	[0.01]	-0.00	[0.01]
Negative events in negotiation$_{t-1}$			-0.00	[0.01]	-0.00	[0.00]
Military force by Israel$_{t-1}$			0.02	[0.01]	0.01	[0.01]
Suicide attacks$_{i,t-1}$	0.34**	[0.11]	0.24***	[0.04]		
Constant	0.25**	[0.07]	-1.91	[1.00]	14.22	[5.28]
Month dummies	yes		yes		yes	
Region fixed effects	no		no		yes	
R^2	0.23		0.31		0.20	
No. of obs.	445		440		440	

* p<0.10, ** p<0.05, *** p<0.01

Table 3
Israeli Tourism in Palestinian Regions and Palestinian Suicide Attacks Originating from These Regions: Region-Level Regressions (Hypothesis 3)

regions hosting more tourists from Israel are less likely to be home-bases for suicide bombers. I, therefore, reject hypothesis 3.

I now turn to test hypotheses 4, according to which there should be fewer suicide attacks coming from Palestinian regions that have religious sites prior to Christian holidays. Table 4 reports the results of this hypothesis test. I do not include region fixed effects here because I am interested in the effect of having a religious site (a fixed effect) on attacks. I include a lagged dependent variable to account for time dependence. The dependent variable is the number of suicide attacks that originate from Palestinian region i in month t. The main independent variables are *Religious site*$_i$, *Christian holiday*$_{t+1}$, and the interaction of the two. The effect of a Christian holiday, conditional on having a religious site, is the sum of the coefficients of *Christian holiday*$_{t+1}$ and the interaction term *Religious site*$_i$ × *Christian holiday*$_{t+1}$.

Column 1 suggests that a month prior to a Christian holiday is not less peaceful in terms of suicide attacks originating from Palestinian regions (the coefficient is positive, though not statistically significant). Furthermore, a month prior to a Christian holiday is also not less violence in Palestinian regions with Christian reli-

Variable	(1)		(2)	
	Coef.	Std. err.	Coef.	Std. err.
Religious site$_i$	-0.09	[0.08]	-0.06	[0.05]
Christian holiday$_{t+1}$	0.04	[0.08]	-0.04	[0.10]
Religious site$_i$ *x Christian holiday*$_{t+1}$	-0.02	[0.05]	-0.02	[0.06]
Unemployment$^{PAL}_{i,t-1}$			1.22	[0.58]
Population$^{PAL}_{i,t-1}$			0.13	[0.06]
Settler Population$_{i,t-1}$			0.04*	[0.02]
Election$_{t-1}$			0.04	[0.06]
Election$_{t+1}$			-0.05	[0.07]
Positive events in negotiation$_{t-1}$			0.00	[0.00]
Negative events in negotiation$_{t-1}$			0.00	[0.00]
Military force by Israel$_{t-1}$			0.02	[0.01]
Suicide attacks$_{i,t-1}$	0.40**	[0.10]	0.23***	[0.03]
Constant	0.12**	[0.08]	-2.25	[0.86]
Month dummies	yes		yes	
Region fixed effects	no		no	
R^2	0.17		0.26	
No. of obs.	440		440	

* p<0.10, ** p<0.05, *** p<0.01

Table 4
Religious Sites, Christian Holidays, and Palestinian Suicide Attacks: Region-Level Regressions (Hypothesis 4)

gious sites that are frequented by tourists. This result does not change when control variables are added in column 2. I, therefore reject hypothesis 4.

To summarize my findings so far—despite the initial results that suggested a negative relationship between tourism in month *t-1* and suicide attacks in month *t*, this relationship disappears when we control for additional explanations.

Does Conflict Affect Tourism?

I now turn to examine whether tourism is sensitive to violence. Table 5 reports the results of a linear regression of tourists staying in Israeli hotels in month *t* on the number of suicide attacks in Israel in month *t-1*. The regression includes control variables, a lagged dependent variable, and month dummies. The results provide support for the argument that tourism is affected by terrorism. There is a negative and statistically significant relationship between the number of tourists and suicide attacks in the preceding month, except for domestic tourism that does not seem to be affected by terrorism.[16] Specifically, one suicide attack decreases the overall number of tourists in the next month by 3%, the number of foreign tourists by 7%, and the number of tourists from the Americas and Europe by 6% and 7%,

Variable	Total		Foreign		Domestic	
	Coef.	Std. err.	Coef.	Std. err.	Coef.	Std. err.
Suicide attacks$_{t-1}$	-0.03***	[0.01]	-0.07***	[0.02]	0.01	[0.02]
Religious holiday$_{t-1}$	-0.08*	[0.04]	0.03	[0.10]	-0.04	[0.04]
Religious holiday$_{t+1}$	-0.03	[0.04]	-0.19*	[0.10]	-0.01	[0.05]
Election$_{t-1}$	-0.01	[0.05]	-0.09	[0.12]	0.05	[0.05]
Election$_{t+1}$	0.03	[0.04]	0.14	[0.11]	-0.00	[0.05]
Positive events in negotiation$_{t-1}$	0.01*	[0.01]	0.02*	[0.02]	-0.02***	[0.01]
Negative events in negotiation$_{t-1}$	-0.02**	[0.01]	-0.04**	[0.02]	-0.00	[0.01]
Military force by Israel$_{t-1}$	-0.01	[0.01]	-0.01	[0.02]	0.01	[0.01]
US global tourism$_{t-1}$	0.00**	[0.00]	0.00	[0.00]	0.00	[0.00]
Tourists$^{ISR}_{t-1}$	-0.02	[0.02]	0.66***	[0.08]	0.03	[0.03]
Constant	12.73**	[0.34]	4.41***	[0.78]	12.06***	[0.35]
Month dummies	yes		yes		yes	
R^2	0.64		0.71		0.65	
No. of obs.	88		88		88	

* p<0.10, ** p<0.05, *** p<0.01

Table 5
Suicide Attacks and Tourism in Israel: State-Level Regressions (Hypothesis 5)

16 I also tested the sensitivity of tourism to terrorism fatalities. The results are substantively similar: one fatality due to suicide terrorism reduces the number of tourists by 1% in the following month. Domestic tourism in Israel is not affected by terrorism fatalities.

Variable	Coef.	Std. err.
Suicide attack$_{t-1}$	-0.03**	[0.01]
Suicide attack$_{t-2}$	0.01	[0.01]
Suicide attack$_{t-3}$	0.01	[0.01]
Suicide attack$_{t-4}$	-0.01	[0.02]
Suicide attack$_{t-5}$	0.0	[0.01]
Suicide attack$_{t-6}$	-0.01	[0.01]
Religious holiday$_{t-1}$	-0.06	[0.05]
Religious holiday$_{t+1}$	-0.04	[0.04]
Election$_{t-1}$	-0.02	[0.06]
Election$_{t+1}$	0.02	[0.04]
Positive events in negotiation$_{t-1}$	0.01	[0.01]
Negative events in negotiation$_{t-1}$	-0.02	[0.01]
Military force by Israel$_{t-1}$	-0.02**	[0.01]
US global tourism$_{t-1}$	0.00	[0.00]
Tourists$^{ISR}_{t-1}$	0.05	[0.03]
Constant	12.01***	[0.46]
Month dummies	yes	
R^2	0.64	
No. of obs.	83	

* p<0.10, ** p<0.05, *** p<0.01

Table 6
Suicide Attacks and Tourism in Israel: State-Level Regressions (Hypothesis 5)

respectively.[17]

The effect of violence on tourism does not depend only on the immediate association between these variables, but also on how long-lasting this association is. I explore this in Table 6, where I regress the number of tourists staying in Israeli hotels in month *t* on the number of attacks in month *t-1* through *t-6*. The results show that there is an immediate negative association between the number of suicide attacks and subsequent number of tourists. However, this relationship dissipates after one month. Two months after a suicide attack the number of tourists goes back to its normal level.

Based on the results in Tables 5 and 6, I conclude that there is evidence in favor of the argument that tourism and terrorism are substitutes. However, the negative relationship lasts for a very short period. I therefore accept hypothesis 5,

17 The dependent variable is log transformed, and the main independent variable is in its original form—the number of suicide attacks. The interpretation of the coefficient is thus one unit change in the independent variable (one attack) is associated with 100 × coefficient percent change in the dependent variable (see Wooldridge, 2003, p. 187).

Variable	(1)		(2)	
	Coef.	Std. err.	Coef.	Std. err.
Local suicide attack$_{t-1}$	-0.02	[0.03]	-0.06	[0.03]
National suicide attack$_{t-1}$	-0.03***	[0.00]	-0.06**	[0.02]
Religious holiday$_{t-1}$	-0.03	[0.02]	-0.08*	[0.04]
Religious holiday$_{t+1}$	-0.08**	[0.03]	-0.06***	[0.01]
Election$_{t-1}$	-0.05**	[0.02]	-0.05	[0.05]
Election$_{t+1}$	0.02	[0.01]	0.03	[0.04]
Positive events in negotiation$_{t-1}$	-0.00	[0.00]	0.02*	[0.01]
Negative events in negotiation$_{t-1}$	0.00	[0.01]	-0.03***	[0.01]
Military force by Israel$_{t-1}$	-0.00	[0.00]	-0.01	[0.01]
US global tourism$_{t-1}$	-0.39***	[0.04]	0.39	[0.18]
Tourists$^{ISR}_{t-1}$	0.96***	[0.01]		
Constant	6.21***	[0.71]	4.66	[2.59]
Month dummies	yes		yes	
Region fixed effects	no		yes	
R^2	0.94		0.45	
No. of obs.	392		392	

* p<0.10, ** p<0.05, *** p<0.01

Table 7
Suicide Attacks and Tourism in Israel: City-Level Regressions (Hypothesis 6)

and now turn to explore this relationship using a geographically-disaggregated data on Israeli cities hosting tourists.

Table 7 reports the results of two linear regressions of the logged number of tourists staying in Israeli hotels in month *t* on the number of suicide attacks in month *t-1*, both at the local level (attacks in city *i* in month *t*), as well as at the national level (all suicide attacks in Israel in month *t*). Column 1 reports the results of a linear model with controls, a lagged dependent variable, and month dummies, and column 2 reports the results of the same model, but with city fixed effects instead of the lagged dependent variable. In both models, local and national attacks have a negative association with the subsequent number of tourists, but only the relationship with attacks on the national level is statistically significant at acceptable levels. The implication is that an attack in city *j* affects city *i* to the same extent as if it happened in city *i*. In substantive terms, a suicide attack anywhere in Israel leads to a decrease of 3% or 6% (depending on the model) in the number of tourists in all Israeli touristic hubs. This result is consistent with the national effect of suicide attacks estimated in Table 5. Based on this evidence I reject hypothesis 6, since there is no evidence of a stronger local effect of an attack.

I now proceed to examine the effect of violence on tourist arrival in Palestinian

regions. Table 8 reports the results of hypothesis 7 tests that predict that Palestinian regions from which suicide attacks originated in month *t-1* should host fewer tourists in month *t*. Column 1 starts with a simple linear regression, without controls but with a lagged dependent variable and month dummy. It shows that suicide attacks are negatively associated with the subsequent number of tourists, but the coefficient is not statistically significant. Adding control variables (in column 2) and region fixed effects (in column 3) do not change these results. I therefore conclude that Palestinian attacks against Israelis have no direct relationship with subsequent arrivals of tourists to Palestinian regions.

Interestingly, the use of military force by Israel has a negative and statistically significant association with the number of tourists. Since military force is often employed in retaliation to attacks, the relationship between tourism and attack might be conditional on Israeli responding with military force. Such a response, rather than the attacks themselves, might prevent tourists from arriving. To investigate if

Variable	(1)		(2)		(3)		(4)	
	Coef.	Std. err.	Coef.	Std. err.	Coef.	Std. err.	Coef.	Std. err.
Suicide attack$_{t-1}$	-0.09	[0.05]	-0.07	[0.04]	-0.05	[0.04]	-0.21**	[0.07]
Unemployment$^{PAL}_{i,t-1}$			0.12	[0.31]	-5.90**	[1.51]	-5.71**	[1.61]
Population$^{PAL}_{i,t-1}$			-0.20**	[0.07]	1.53	[1.73]	1.63	[1.61]
Settler population$_{i,t-1}$			0.01	[0.01]	0.06*	[0.02]	0.06*	[0.02]
Religious holiday$_{t-1}$			-0.14**	[0.05]	-0.18	[0.09]	-0.18	[0.09]
Religious holiday$_{t+1}$			-0.16	[0.09]	-0.11	[0.08]	-0.11	[0.08]
Election$_{t-1}$			-0.04	[0.07]	-0.00	[0.12]	-0.01	[0.11]
Election$_{t+1}$			0.10*	[0.04]	0.10	[0.07]	0.10	[0.07]
Positive events in negotiation$_{t-1}$			0.01	[0.01]	0.04**	[0.01]	0.04**	[0.01]
Negative events in negotiation$_{t-1}$			-0.06	[0.03]	-0.10*	[0.04]	-0.09*	[0.04]
Military force by Israel$_{t-1}$			-0.03***	[0.01]	-0.12**	[0.04]	-0.14**	[0.04]
Military force by Israel$_{t-1}$ x Suicide attacks$_{t-1}$							0.05	[0.02]
Tourists$^{PAL}_{i,t-1}$	0.92***	[0.03]	0.85***	[0.04]				
Constant	0.67**	[0.17]	3.94**	[0.94]	-12.27	[22.86]		[21.26]
Month dummies	yes		yes		yes			
Region fixed effects	no		no		yes			
R^2	0.88		0.89		0.39			
No. of obs.	445		440		440			

* p<0.10, ** p<0.05, *** p<0.01

Table 8
Suicide Attacks, Israeli Military Response, and Tourism in Palestinian Regions: Region-Level Regressions (Hypothesis 7)

this is the case, on column 4 of Table 8 I interact the attacks variable with the military use variable. The overall association between attacks and subsequent tourism is the sum of the attack coefficient with the interaction term coefficient.

The results that suggest that when conditioning on the use of military force by Israel, suicide attacks are associated with a 21% decrease in the fixed effects model (column 2).[18] Based on these results, I accept hypothesis 7, but add that the negative effect of suicide terrorism on tourism in the regions of origin of suicide bombers depends on a military response by Israel.

Discussion

Tourism is believed to promote peace by reducing poverty, enhancing mutual understanding, and increasing economic incentives of individuals, groups, and governments to maintain peace. Tourism is often proposed as a strategy of conflict resolution in several cross-border conflicts.

However, despite the logical appeal of these proposals, the relationship between tourism and conflict, and especially the effect of tourism on conflict, has been under-studied empirically.

In this paper, I use data from one conflict—the Israeli-Palestinian case, and explore how conflict is associated with tourism. My findings suggest that tourism might not be the panacea to solving this conflict. First, despite the initial evidence at the macro level that an increase in the number of tourists is associated with less violence, this relationship does not hold at a geographically-disaggregate level. Specifically, this relationship is not robust when we account for local characteristics of Palestinian communities that might affect the level of violence. Second, the assumption that underlies the argument about the pacifying impact of tourism—namely that tourism is sensitive to violence—is not fully supported by the data from this particular conflict. As reported above, the decrease in tourism following attacks is short-lived, and sometimes conditional on other factors, such as military response by the government. This raises the question of whether temporary loses are enough to make it worthwhile for both parties to avoid violence. Thus, in terms of policy implications these findings suggest that investing in tourism may not be as effective as some people hope for reducing violence and promoting conflict resolution, at least in the context of this case.

18 These results were obtained using the **margins** command in Stata that estimates the marginal effect of a variable. I also tested a model without region fixed effects, but with a lagged dependent variable, and there a suicide attack reduced tourism to regions of origin of the attackers by 7% conditional on a use of force by Israel.

Despite this conclusion, there are several caveats to these findings. First, this paper focuses on one case—the Israeli-Palestinian conflict, and thus it is possible that tourism has a different effect in other settings. The benefit of focusing on one case is that we can use disaggregated data and explore the relationship between tourism and violence in a more nuanced way, and using more consistent definitions of the variables of interest than what is possible in a cross-national dataset. The disadvantage of using data from one case is the uncertainty about the external validity of the results, and their applicability beyond this particular case. Although the Israeli-Palestinian conflict shares many similarities with other cross-border disputes, the evidence reported here applies only to this setting.[19]

A second reason why these findings should not lead us to discard the idea that tourism could be useful to mitigate violence is that so far tourism has played a limited role in the economy of both sides, and especially in the Palestinian economy. From 2000 through 2007, accommodation and food services contributed from 0.5% to 1.2% to the Palestinian GDP.[20] In Israel, trade, accommodation, and restaurants constituted from 8.5% to 10% of the total GDP in 2000 through 2007.[21]

This relatively modest contribution to the GDP, especially in the Palestinian side, might explain why we do not detect an effect of tourism on patterns of violence. It is possible, though, that if the share of tourism in the local economy increases, and if specific arrangements, such as those proposed in Bueno de Mesquita (2009) are put in place, both sides would have stronger incentives to refrain from violence, and enjoy the profits from tourism.

19 The Israeli-Palestinian conflict evolves around a dispute over territory, and also has ethnic and religious dimension, something that is also present in other conflicts, such as the former conflict in Northern Ireland, the conflict in Kashmir, or the Turkish conflict with the PKK. Moreover, due to availability of data, the Israeli-Palestinian case has been used to explore other questions related to conflict, and lessons derived from this setting have later found support in other cases as well. For example, the effect of exposure to terrorism on voting has been studied in the Israeli context by Berrebi and Klor (2008) and Gould and Klor (2010), and the results were later confirmed also in the Turkish case (Kibris, 2011).

20 See Table 1-1 in http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/book1441.pdf and in http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/book1547.pdf.

21 http://www1.cbs.gov.il/publications13/1514/pdf/t15.pdf.

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Colonialism and Border Disputes in Africa: The Case of the Malawi-Tanzania Dispute over Lake Malawi/Nyasa

Mi Yung Yoon
Professor of International Studies, Hanover College, USA

Abstract

This study examined how the colonial partition of Africa has become the source of border disputes in Africa with a case study on the Malawi-Tanzania dispute over Lake Malawi/Nyasa—which has been ongoing since 1967. There is no convention governing the delimitation of international lakes like Lake Malawi/Nyasa. Therefore, the study predicts that if the current third-party mediation fails and the disputants decide to submit the case to the International Court of Justice (ICJ), the colonial treaty that delimited the border between the two territories is likely to prevail; thereby upholding Malawi's position on the lake border on the basis of the principle of uti possidetis.

Keywords

Africa, colonialism, border dispute, Lake Malawi/Nyasa, Malawi, Tanzania

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European colonialism in Africa, from the mid-19th century to decolonization in the 1960s and 1970s, left many indelible legacies in the continent. One of the legacies concerns the borders drawn by the European colonial powers. According to Herbst (1989), "between 1885 and 1904 most of the present political map was drawn, a process practically complete by 1919" (p. 674). However, the way in which the African borders were drawn has become the major source of border disputes. The European colonial powers drew the boundaries based on their limited knowledge about the precolonial history, ethnicity, and geography of Africa (Kapil, 1966, p. 659; Herbst, 1989, p. 674). Worse, they left some borders, particularly in areas difficult to gain access to or insignificant to their interests, only partially defined, if not undefined altogether. Eventually, African countries inherited the borders with a strong potential for later disputes.

Despite their faults, African borders have remained almost unchanged to this day (Brown, 1980, p. 575; Herbst, 1989, p. 673). Although there were some pressures for border adjustments when the Organization of African Unity (OAU) was created in 1963, member states decided to abide by the principle of uti possidetis (the principle of inheriting the colonial territory in its entirety). Considering the complexity of African states and the challenges new states faced at that time, redrawing the borders was viewed as difficult, if not impossible. Nonetheless, many inherited colonial borders have been disputed since decolonization. In fact, most interstate disputes in Africa have been border disputes. Some border disputes have even led to war, as seen in the cases of Morocco-Algeria (1963), Somalia-Ethiopia (1976-1978), Burkina Faso-Mali (1985), Libya-Chad (1973-1988), and Ethiopia-Eritrea (1998-2000) (Yoon, 2009, p. 77). According to Chiozza and Choi (2003), "international disputes over territory are more likely to involve the use of military force, to escalate to war, and to reach higher levels of severity than nonterritorial disputes" (252). In Africa, however, the number of territorial disputes that escalated into war is surprisingly small, despite the large number of such disputes. The practically unchanged African borders and the small number of border wars have mostly been attributed to the OAU/African Union (AU)'s adherence to the principle of uti possidetis and the principle of peaceful settlement of dispute.

The purpose of this article is to examine how the colonial partition of Africa has contributed to border disputes in the continent with a case study of the Malawi-Tanzania dispute over Lake Malawi/Nyasa. This dispute is one of the longest border disputes in Africa. Nevertheless, it has received almost no attention in the extant territorial dispute literature. A notable scholarly work on this dispute is Mayall's article in 1973, which focused on the sources of the dispute and the position of each disputant. This study expands the scope of his work by including other issues associated with the dispute. Specifically, apart from what Mayall (1973) discussed

earlier, this study includes the role of the lake's oil and natural gas potential in the dispute, the recent settlement efforts, and the relevance of contemporary international law to the dispute, none of which Mayall discussed. What follows next is a discussion of the colonial partition of Africa, often referred to as the "scramble for Africa." This is followed by the OAU/AU positions on border issues, regarded as the key factor of the almost unaltered African borders and the small number of border wars in Africa. The case study then demonstrates how the colonial partition has become the main source of the border dispute between Malawi and Tanzania, and discusses the issues complicating the dispute as well as the settlement efforts. It also offers some probable outcomes and implications of the dispute.

The Colonial Partition of Africa and Problems of African Borders

The industrial Revolution in Europe, which triggered mass production of machine-made cheap goods, accelerated the European search for colonies for raw materials and markets. Though most of Africa was partitioned between the Berlin Conference (November 15, 1884–February 26, 1885) and 1904 as aforementioned, the partition had begun before the conference, particularly in West Africa, and accelerated after the conference as the European powers competed to augment their territorial possessions. To secure their territorial claims, they ratified numerous delimitation treaties between them (Yoon, 2010, p. 55). Many colonial claims to African territories and subsequent delimitations were based on prior treaties between Europeans and African rulers, in which Africans ceded their rights to Europeans for protection and/or economic gains (Touval, 1966, p. 283; Yoon, 2010, p. 56). According to Touval (1966), the European powers obtained those treaties "through the combined effect of coercion and inducement" (p. 283). They then utilized those treaties to support their claims (Kapil, 1966, p. 661; Touval, 1966, pp. 279-280; Ajala, 1983, p. 179; Griffiths, 1986, p. 207). Therefore, Africans also played a role in the partition process, though inadvertently.

A boundary, to be complete, requires delimitation and demarcation (Brownlie, 1979, p. 3). While delimitation signifies "description of the alignment in a treaty or other written source, or by means of a line marked on a map or chart," demarcation means marking the border site in the ground (Brownlie, 1979, p. 3). The African Union Border Programme (AUBP) estimates that "less than a quarter of African borders have been [clearly] delimited and demarcated" (African Union, 2008a). The lack of delimitation and demarcation created porous borders no one is in charge of securing. This situation has posed many security risks to the continent (e.g., cross border criminal and terrorist activities, and spill-over of intra-state conflicts to their

neighboring countries). Even the delimited colonial borders were drawn in Europe by government representatives who had little or no geographical knowledge about the territories concerned (Brownlie, 1979, p. 6; Ajala, 1983, p. 180; Griffiths, 1986, p. 205). As a result, colonial delimitation treaties left out many details, and were therefore incomplete.

According to Touval (1966), "30% of the total length of African borders follow straight lines; 70% of the total length of African borders which do not follow straight lines were defined mostly in terms of geographical features" (p. 291). Borders defined by geographic features, such as rivers and watersheds, tend to shift due to fluctuating water levels. Natural features, therefore, are not precise delimitation tools to utilize (Brownlie, 1979, p. 4). In addition, African borders, defined with no regard to ethnic boundaries, divided the same ethnic groups into multiple states—which has become a source of ethnic tension in those countries.

OAU/AU Positions on Border Issues

From the beginning, the OAU upheld the borders at the time of independence, despite their shortcomings. Article III (3) of the OAU Charter identified "respect for the sovereignty and territorial integrity of each state" as one of the principles of the organization. The Resolution on the Intangibility of Frontiers [Resolution AGH/Res. 16 (1)], adopted in 1964 by the Assembly of Heads of State and Government,[1] recognized the inherited borders as "a tangible reality" and declared the member states' pledge to respect the frontiers upon national independence. Like the OAU Charter, the resolution called for the peaceful settlement of dispute between African states. Since the resolution, the principle of uti possidetis has become "the legal basis for determining territorial questions on the continent" (Kapil, 1966, p. 671).

The AU—which replaced the OAU in 2002—reiterated the OAU position on border issues. Article 4 (b) of its Constitutive Act denotes "respect of borders existing on achievement of independence" as one of the principles of the organization (African Union, 2000). The AU, however, launched the AUBP in 2007 to "address the problems posed by the lack of delimitation and demarcation" (African Union, 2013). The primary mission of the AUBP is to prevent and resolve border disputes by facilitating delimitation, demarcation, and boundary management. It follows the principles of both uti possidetis and the negotiated settlement of border disputes (African Union, 2008a).

The OAU/AU's adherence to the principle of uti possidetis stemmed from the

1 The full text is available in Gino Naldi (1992).

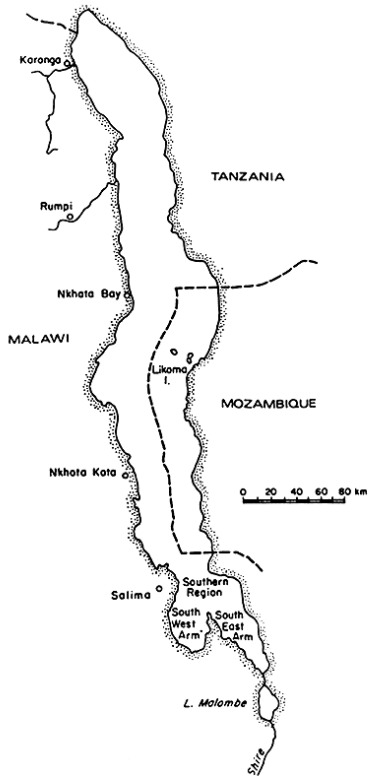
complex circumstance of African states—socially diverse, and economically and politically weak. In fact, there appears to be no better alternative to the inherited colonial borders. First, given the large number of ethnic and cultural groups in Africa, redrawing borders based on ethnic and cultural boundaries would create numerous small, weak states. Second, African states have faced bigger challenges, such as weak economies and government institutions. Third, according to Jackson and Rosberg (1982, p. 19), territorial integrity was essential for the survival of weak African governments apprehensive about external interference, particularly by other African states.

The Lake Malawi/Nyasa Border Dispute: A Case Study

Lake Malawi borders three countries: Malawi in the west, Tanzania in the east, and Mozambique in the south. It is the third largest lake in Africa after Lake Victoria and Lake Tanganyika. It had been known as Lake Nyasa until Malawi changed its name to Lake Malawi in 1967 (Brownlie, 1979, p. 957). However, it is still known as Lake Nyasa in Tanzania. According to Bootsma and Jorgensen (2006), the lake is "the most species-rich lake in the world containing an estimated 500 to 1000 species" (p. 261). It has provided a livelihood to fishermen living alongside the lake on both sides, as well as "water for irrigation, transportation, and hydroelectric generation" (Bootsma & Jorgensen, 2006, p. 259). The lake is also a tourist attraction. Several major rivers, including the Songwe River, which separate Malawi and Tanzania in the north, and the Rovuma River, which forms the border between Tanzania and Mozambique, flow into the lake, but only the Shire River drains the lake water to the sea (the Indian Ocean).

The Lake Malawi/Nyasa border dispute accords with Brownlie's (1979) claim that "the concept of a dispute involves a disagreement between two states on a point of law or fact, which disagreement is normally manifested by the making of a claim or protest" (p. 13). Tanzania and Malawi have disagreed on their border in Lake Malawi/Nyasa since the Tanzanian government, in 1967, formally questioned the border (Day, 1987, p. 154). According to Malawi, the Tanzanian shore of the lake is the border. According to Tanzania, however, the median line of the lake, not the shore, forms the border. While Malawi bases its claim on the 1890 Anglo-German Agreement, Tanzania relates its claim to the customary state practice of using the median line of a body of water as the border, and the historical evidence it possesses.[2]

2 Interview with a member of parliament, Dodoma, Tanzania, June 3, 2013.



Map 1. Lake Malawi/Nyasa

Source: Fisheries and Aquaculture Department,
Food and Agriculture Organization of the United Nations

Colonization of Malawi and Tanzania

The root of this dispute dates back to complex European colonialism in East Africa. The Portuguese were the first Europeans who explored East Africa. They controlled most of the East African coast by 1506 and ruled Zanzibar, off the coast of Tanganyika (present-day mainland Tanzania), for about 200 years from the early 15th century until they were ousted in the late 17th century by Omani Arabs ("Tanzania Profile," 2013). Other Europeans followed suit, and the European competition in East Africa began, only intensifying after the Berlin Conference. In 1884, Germany claimed Zanzibar as its protectorate, but it remained under the rule of the Sultan of Zanzibar (Stoecker, 1986, p. 95). In 1885, Tanganyika became a part of German East Africa, which encompassed present-day Rwanda, Burundi, and Tanzania. With the incorporation of those Great Lakes territories, the German conquest in East Africa was complete (Sunseri, 2005, pp. 1537-1538). The Anglo-German Partition Agreement of 1886 and the German-Portuguese Agreement of 1886 then fixed the boundaries of the German protectorate in East Africa (Stoecker, 1986,

p. 95). Shortly afterwards in 1891, Britain established the Nyasaland and District Protectorate (present-day Malawi). The name of the protectorate changed to the British Central Africa Protectorate in 1893, and then to the Nyasaland Protectorate in 1907 (Day, 1987, p. 154). Nyasaland was part of the Federation of Rhodesia and Nyasaland for the period 1953-1963 (Brownlie, 1979, p. 957).

Germany lost its colonial possessions after its defeat in World War I by Article 119 of the 1919 Treaty of Versailles (Reyner, 1962, p. 21). Britain and Belgium, whose troops occupied German East Africa during the war, took over the German colonies in East Africa under the League of Nations mandate system (Shillington, 1995, p. 346). Specifically, Belgium got Rwanda and Burundi, while Britain was awarded Tanganyika. Britain's role as the administering power of Tanganyika officially began in 1922. Due to this change, Tanganyika's border with Nyasaland became an internal administrative division like the administrative divisions in French West Africa (eight French colonies) and French Equatorial Africa (four French colonies). After World War II, Tanganyika became a trust territory of the United Nations (UN), which inherited the territories under the League's mandate system. Tanganyika and Zanzibar became independent from Britain in 1961 and 1963, respectively. They united in 1964 and became the United Republic of Tanzania. The Nyasaland Protectorate changed its name to Malawi when it became a self-governing protectorate in 1963, and became independent in 1964 as Malawi. When Tanganyika and Malawi became independent, the internal administrative division under British rule transformed back to an international border.

The Anglo-German Agreement (Heligoland-Zanzibar Treaty) of 1890: The Origin of Controversy

The Anglo-German Agreement of 1890—also known as the Heligoland-Zanzibar Treaty—defined the spheres of influence of Britain and Germany in East Africa (Articles I & II), Southwest Africa (Article III), and West Africa (Article IV) (Anglo-German Treaty, 1890). Germany agreed to withdraw its claims to Zanzibar and offered Britain Lake Nyasa, Malawi's northern province, and Uganda in exchange for Britain's concession of Heligoland in the North Sea (Che-Mponda, 1972, p. 242; Kennedy, 1980, p. 205). As a result, Zanzibar became a British protectorate in 1890. The agreement was signed by the two governments in Berlin in 1901 (Brownlie, 1979, p. 958).

This is the agreement that delimited the border between Nyasaland and Tanganyika to the eastern shore of the lake, which Tanzania disputes. Specifically, Article I (2) of the agreement demarcates the area as running "To the south by the line that starts on the coast of the northern border of Mozambique Province and follows the course of the Rovuma River to the point where the Messinge flows into

the Nyasa. Turning north, it continues along the eastern, northern, and western shores of the lake until it reaches the northern bank of the mouth of the Songwe River" (Anglo-German Treaty, 1890). However, the agreement also includes some room for future adjustments of the border. Article VI states, "Any correction of the demarcation lines described in Articles 1 to IV that becomes necessary due to local requirements may be untaken by agreement between the two powers" (Anglo-German Treaty, 1890). To support their respective positions, Malawi and Tanzania have each singled out a different provision of the treaty. While Malawi has used Article I (2) to keep the eastern shore line border, Tanzania has emphasized Article VI to move the border to the median line through negotiations with Malawi.

Inconsistent Evidence Regarding the Border

While the 1890 Anglo-German Agreement leaves no doubt about the eastern shoreline border, historical documents and maps issued afterwards are inconsistent about the border. While some indicate the median line, others indicate the eastern shoreline of the lake as the boundary between the two territories. For example, according to Day (1987), "official British sources for the period 1916-1934 showed the western border of the [Tanganyika] territory as being the median line through Lake Nyasa" (p. 154). However, "British [annual] reports to [the UN General Assembly and Trusteeship Council] issued between 1947 and 1961 for Tanganyika and Nyasaland generally abandoned the median-line alignment and showed the boundary between the two territories as being the eastern shore of Lake Nyasa in accordance with the 1890 Anglo-German Agreement" (Day, 1987, pp. 154-155). Thus, as Brownlie (1979) succinctly states, "[T]he evidence certainly does not point unequivocally in one direction" (p. 959).

Malawi and Tanzania have utilized different evidence, respectively, that can suit their positions. Particularly, they have based their claims on different maps. However, according to legal scholars and the ICJ, the role of maps in settling boundary disputes is limited, due mainly to the lack of clarity. The ICJ (1986), concerning the territorial dispute between Burkina Faso and Mali in 1986, noted that "in frontier delimitations, maps merely constitute information, and never constitute territorial titles in themselves alone. They are merely extrinsic evidence which may be used, along with other evidence, to establish the real facts. Their value depends on their technical reliability and their neutrality in relation to the dispute and the parties to that dispute; they cannot effect any reversal of the onus of proof."

The Role of the Oil and Natural Gas Potential in the Dispute

The dispute over the lake-border had been relatively calm for years. However, the oil and natural gas potential in the lake and Malawi's decision to explore those

resources have intensified the dispute in recent years by elevating the value of the lake. The Malawi Geological Survey of 1970 indicated that sedimentary rocks which could bear hydrocarbon formation and accumulations are present in the northern Lake Malawi area and the lower Shire Valley in the southern region (Mattick, 1984, p. 3). Subsequent geological investigations by various sources have supported these findings. In addition, the discovery of oil in nearby Kenya and Lake Albert of Uganda has led Malawi to believe that Lake Malawi might also have oil. To prospect for oil and gas, Malawi awarded a license to the British company Surestream Petroleum in 2011, and to a subsidiary of the South African firm SacOil in 2012. Both Malawi and Tanzania are listed among the UN's "least developed country list." According to the World Bank (2013), the 2012 gross national income per capita in Malawi and Tanzania was $320 and $570, respectively. In addition, both countries import oil. Thus, if the prospect of oil becomes a reality, the oil and gas in the lake would significantly benefit the lake's owner. This potential economic benefit has raised the stakes of the dispute, and has strengthened the position of each disputant. A member of the Tanzanian parliament who had participated in an earlier negotiation with Malawi stated that if the lake had only fish, the border might not be such a tense issue between the two countries,[3] which have shared the lake's water and marine resources for decades with no controversy.

Settlement Efforts

A series of bilateral meetings have been held to review the facts associated with the dispute and to find mutually acceptable solutions. Though the dispute has strained the relationship between the two countries, neither party has expressed an intention to use force to settle it, despite harsh rhetoric from both parties. As their bilateral negotiations reached a deadlock, the two countries asked, in January 2013, the Forum of Former African Heads of State and Government of the Southern African Development Community (SADC) to mediate the dispute. The chairperson of the forum, Joaquim Chissano of Mozambique, created a mediation team, which consists of Thabo Mbeki of South Africa, Festus Mogae of Botswana, and Chissano himself. Both countries are members of the SADC, and decided to utilize the dispute settlement mechanism of the organization before considering taking the case to the ICJ. In June 2013, the forum laid down steps for its mediation, which will end in September 2013 (Chikoko, 2003). Both parties of the dispute have submitted their respective evidence to the forum to make their cases.

3 Interview with a member of parliament, Dodoma, Tanzania, June 3, 2013.

International Law and Lake Delimitation

What does international law say about the delimitation of an international lake like Lake Malawi/Nyasa, which borders multiple states? There is no convention like the United Nations Convention on the Law of the Sea of 1982 (UNCLOS III) concerning international lakes (Janusz, 2005, p. 4). As Vinogradov & Wouters (1995) elaborate, "the delimitation of international lakes is not at present governed by an established set of rules, nor are there universally accepted customary norms based on uniform state practice" (p. 615). At present, only specific treaties form the basis for delimiting international lake borders. Therefore, a shared ownership of an international lake is not automatic unless specified by a treaty (Lee, 2005, p. 39).

One may question whether UNCLOS III, then, can be applicable to the Lake Malawi/Nyasa case. In fact, Tanzanian government officials, according to Tanzanian media sources, have related the convention—which provides an equitable solution for delimitation of the ocean areas between states with opposite or adjacent coasts—to the Tanzanian claim to the median line border. However, the equitable solution rule is not applicable to this dispute, because Lake Malawi/Nyasa is not a sea. The convention provides rules delimiting the territorial sea (Article 15), the exclusive economic zone (Article 74), and the continental shelf (Article 83), but has no provision for delimiting lakes between states opposite or adjacent to each other.[4] There are various ways to delimit international lakes, and state practices for doing so have varied: the middle of the water, the thalweg,[5] the banks of the lake, or no particular way (Janusz, 2005, p. 4). Of these ways, the middle-line method has been most frequently practiced (Janusz, 2005, p. 4). Due, perhaps, to its frequency, Tanzania views the middle-line method as customary, though it has never been codified to a multilateral treaty like UNCLOS III. Therefore, Tanzania's claim to the median-line border in Lake Malawi/Nyasa based on international law appears to be baseless.

Prospects

Considering Malawi's unfaltering stance on the shoreline border, a border adjustment to the median line is unlikely to materialize through current mediation. On July 1, 2013, the Malawi Minster of Information, Moses Kunkuyu, reiterated his country's position by stating that Tanzania owns no part of the lake, and that the oil explorations will proceed despite Tanzania's protests ("Malawi minister describes," 2013). Why, then, has Malawi participated in negotiations with Tanzania? Malawi's

4 For the complete text of the treaty, see UN law of the sea treaty (1982).

5 The thalweg means "the median line of the principal channel of navigation" (Brownlie, 1979, p. 17).

intention is to prove its ownership of the lake by offering Tanzania more facts. According to the government spokesperson of Malawi, the country's acceptance of negotiation does not mean its acknowledgement of the validity of Tanzania's claim (cited in "Malawi minister describes," 2013). Rather, the country is more resolute than ever before to settle this long drawn-out dispute once and for all to prevent Tanzania from making the same claim in the future.

If the current mediation fails, the dispute is likely to move forward to the ICJ, as Malawi's president, Joyce Banda, has repeatedly mentioned. If that is the case, this study cautiously predicts, the court is likely to affirm Malawi's sovereignty over the lake based on the principle of uti possidetis unless the (unrevealed) historical evidence Tanzania possesses has legal significance, and can legally supersede the Anglo-German Agreement of 1890, which granted Malawi a title to Lake Malawi/Nyasa. This prediction is drawn from the outcome of the Nigeria-Cameroon dispute over the Bakassi Peninsula. Nigeria, like Tanzania, did not accept the validity of the delimitation treaty between Britain and Germany, which colonized Nigeria and Cameroon, respectively. The ICJ awarded the peninsula to Cameroon in 2002 based on the Anglo-German Treaty of March 11, 1913, which placed the peninsula on the German side. By the principle of uti possidetis, Cameroon inherited the peninsula.

The principle, which has played such a large role in settling border issues in decolonized areas, is not absolute, however. As Ratner (1996) states, "It is not a norm of jus cogens, and precludes states neither from altering their borders nor even from creating new states by mutual consent" (p. 600). In other words, states can change their inherited borders by mutual agreement. However, in the absence of agreement between disputants, no matter how poorly defined the inherited borders in Africa might be, colonial delimitation treaties are still binding to this day based on the principle of uti possidetis. Therefore, while ICJ adjudication is a more favorable settlement option to Malawi, bilateral negotiation or third-party mediation, if successful, is a better option for Tanzania to achieve its desired outcomes. In the case of ICJ adjudication, even if the court affirms Malawi's sovereignty over the lake, it is likely to rule that the lake's water resources be shared by both countries. As Tanzania argues, much of the lake's water comes from Tanzania's rivers. In addition, other international lakes in East Africa are shared. For example, Lake Tanganyika is shared by Tanzania and the Democratic Republic of Congo. Lake Victoria is shared by Tanzania, Kenya and Uganda, though not evenly. Lake Jipe is shared by Tanzania and Kenya. Above all, the lake communities in both countries have earned their livelihood from the lake.

Map 1 (p. 80) shows that while Malawi has sovereignty over the entire northern part of the lake, it shares the southern part of the same lake with Mozambique.

The middle of the lake is the border between Malawi and Mozambique until the middle line reaches the Southern Region, which Malawi owns. One may question why there is such a difference between Malawi's two borders in the same lake. Portugal—which ruled Mozambique until 1975—and Britain had readjusted the Nyasaland-Mozambique boundary multiple times through treaties since the initial Anglo-Portuguese Treaty of 1891, which defined their spheres of influence in Africa (Office of the Geographer, 1971, p. 5). The initial treaty defined the eastern shore of Lake Nyasa, known as Lago Niassa in Mozambique, as the border between Nyasaland and Mozambique. The Anglo-Portuguese Agreement of 1954, however, moved the border "from the eastern shore to the median line annexing 2,471 square miles of water surface to Mozambique" (Office of the Geographer, 1971, p. 5).

In the case of Tanzania, due to the German loss of Tanganyika after World War I, its colonial power, responsible for the 1890 delimitation agreement with Britain, was no longer a legitimate party to make any adjustment, as provided by Article VI of the 1890 agreement. Commissioners of the two signatories of the 1890 Anglo-German Agreement had never met to undertake such a task. Some evidence suggests that before Tanganyika became a British protectorate in 1922, Germany had exercised its sovereignty up to the median line of Lake Nyasa (Brownlie, 1979, p. 959). Thus, one could assume that if Germany had not lost Tanganyika, it might have adjusted Tanganyika's boundary with Nyasaland. Britain, which replaced Germany in Tanganyika, only produced inconsistent evidence of the border between the two territories, as addressed above. Perhaps, Britain did not see any need to adjust the border, considering that the lake had been used by both sides without restrictions.

Conclusion

This study discussed the colonial partition of Africa as the source of border disputes in Africa with a case study on the Malawi-Tanzania dispute over Lake Malawi/Nyasa. Though the OAU/AU's consistent adherence to the principles of uti possidetis and peaceful settlement of dispute has prevented territorial issues from evolving into crises, the creation of the African Union Border Programme in 2007 speaks volumes for the urgency of working out the details left out, or ambiguously addressed, by colonial delimitations. African leaders set 2012 as the deadline for completing delimitation and demarcation of boundaries. This target date, however, has already proven unrealistic. The tasks of delimitation and demarcation are costly both in time and resources. It is particularly difficult to delimit and demarcate river and lake boundaries, let alone mine-infested border areas (African Union, 2008b).

The Malawi-Tanzania dispute, though still ongoing, has the following implications. A disputant whose claim is based on a colonial delimitation treaty is less likely to concede in bilateral negotiations and third party mediations, and is likely to choose ICJ adjudication for resolution. Potential oil and natural gas reserves are likely to spark new border disputes or rekindle old ones. They also affect the intensity and duration of border disputes, by elevating the economic value of the disputed territories. What has been missed in the border debate is the possible impact of future drillings on the livelihood of the communities adjacent to the disputed site. Potential economic gains from the disputed territories, therefore, tend to dominate the concerns affecting the lives of people.

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Maritime and Territorial Boundary Disputes in Latin America: Regional Implications of the 2012 ICJ Ruling in Nicaragua v. Colombia

Richard J. Kilroy, Jr.
Professor, National Defense University, USA

Abstract

This paper examines the International Court of Justice ruling in favor of Nicaragua over Colombia, regarding the long-standing maritime and territorial dispute in the Caribbean Sea. The ruling sets a precedent for disregarding previous international treaties and agreements in Latin America and could threaten already negotiated decisions to resolve territorial and maritime disputes, as well as challenge diplomatic solutions to outstanding disputes in the region. It may also impact the willingness of states to submit to ICJ adjudication in the future and choose instead to seek self-help remedies that may lead to conflict, particularly over disputes concerning access to economic resources.

Keywords

Latin America, International Court of Justice, territorial disputes, maritime disputes, conflict, resources, treaties, international law

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In 2001, Nicaragua took Colombia to the International Court of Justice (ICJ) over a territorial and maritime dispute in the Caribbean Sea involving islands claimed by both countries. At stake were the delimitation of territorial seas and exclusive economic zones surrounding the islands. Both countries were bound by the 1948 American Treaty of Pacific Settlement (or Pact of Bogotá as it is more commonly known), to agree to adjudication by the ICJ to settle disputes peacefully. Furthermore, the ICJ had already decided in 2007 that it did not have jurisdiction over part of the dispute, since a 1928 treaty signed by Nicaragua and Colombia, already settled the question of sovereignty over three of the disputed islands (San Andrés, Providencia, and Santa Catalina) named in the dispute (*M2 Presswire*, 2012). After 11 years, the ICJ finally ruled in 2012, that Colombia did, in fact, have sovereignty over all the disputed islands; however, in its attempt to practice the wisdom of Solomon, the Court awarded Nicaragua exclusive economic rights to 75,000 square kms of sea previously controlled by Colombia: areas rich in fishing and potential oil reserves (*Economist*, 2012).

This article provides an examination of the territorial and maritime dispute between Nicaragua and Colombia and its implications for other outstanding disputes in the region, as well as its potential impact on previously decided cases. It begins by examining the historical context of territorial and maritime disputes in Latin America and the resort to force vs. peaceful conflict resolution. Next, it explores the role of the ICJ and the acceptance of its adjudication process by states in the region. The article then provides a case study of Nicaragua v. Colombia and their specific dispute over maritime and territorial issues in the Caribbean Sea. The article concludes by examining other outstanding disputes in the region and the implications of the ICJ ruling on these disputes as well as other "settled" disputes in the region. This article argues that although Latin America has had a history of settling disputes between states peacefully and accepting the Court's rulings, this recent case may change state perception of the need for adjudication, and instead may usher in a new era of "self-help" that risks conflict, especially when critical economic and resource issues are at stake.

Historical Context of Territorial and Maritime Disputes in Latin America

Compared to other regions of the world, Latin America has seen less international conflict over territorial disputes between states (Kacowicz, 2005; Bercovitch & Fretter, 2004). Most conflicts, particularly those in the 20th century, have been of the intrastate variety with nationalism, revolutionary ideologies, and insurgencies posing the greatest threats to states, rather than military confrontations with neigh-

boring states (Hrsgroup.org, 2013). Occasionally, states within the region have resorted to armed conflict to force a resolution to a territorial claim, such as the 1995 border dispute between Ecuador and Peru (Kilroy, 2010).

Latin America's history, as primarily Spanish colonies, with similar political, religious, and cultural institutions, helped to reduce conflict between states, after the colonial Viceroyalties gave way to newly independent states with recognized borders, governments, and people groups. Although interstate conflict did occur, often along the lines of the old Spanish Viceroyalty system (e.g., War of the Pacific and War of the Triple Alliance), the international legal principle of *uti possidetis* served as a basis for helping to resolve conflicts in the region (Lalonde, 2002).[1] Such principles failed to prevent conflict in cases involving other colonial powers in the region, such as Great Britain, and unresolved disputes based on issues of continuous occupation and sovereignty claims, such as the ongoing dispute with Argentina over the Malvinas-Falkland Islands (Gustafson, 1988). Argentina continues to stake its claim to the islands based on nationalist arguments; however, the real incentive for continuing to press its claims appears to be economic and the potential for vast oil deposits in the South Atlantic within the surrounding waters of the islands (Neild & Gilbert, 2013).

The last major inter-state conflict within Latin America occurred during the Chaco War (1928-1935) between Bolivia and Paraguay. The war was fought over a contested region, the Chaco Boreal, which Bolivia sought from Paraguay in order to gain access to a fluvial route to the Atlantic Ocean. Bolivia had previously lost its access to the Pacific Ocean to Chile, during The War of the Pacific (1879-1883), a conflict fought over resources (primarily nitrate deposits) and access to trade routes (Burns, 1990, p. 104).[2]

There are currently a number of outstanding territorial and maritime disputes in the region, to include the following:

Argentina – Chile: Southern Ice Fields
Guatemala – Belize: Guatemala claims half of Belize's territory
Nicaragua – Costa Rica: access to Rio San Juan
Dominica, et al. – Venezuela: Aves Island
El Salvador – Honduras: Conejo Island
Guyana – Venezuela: Essequibo River border

1 The principle of uti possidetis is based on decolonization, primarily in Latin America, where new states accepted the international boundaries based on the lines of colonial administrations.

2 There have been other conflicts in the region that led to limited wars, such as the Soccer War between El Salvador and Honduras in 1969 and the Peru-Ecuador War of the Upper Cenepa in 1995.

Bolivia – Chile – Peru: access to Atacama and Pacific Ocean
Chile – Peru: contested territorial waters (CIA, 2013a)

In the last case, both Chile and Peru have taken a keen interest in the ICJ ruling in Nicaragua v. Colombia, since the stakes are high for both countries. If Peru wins its case currently before the ICJ, Chile stands to lose over 34,000 square kms of sea as part of its 200 mile Exclusive Economic Zone (EEZ). Chile believes it has the stronger argument in the case since it has controlled the contested waters since the 1800s; however, after the ICJ ruling giving Nicaragua access to waters that had been controlled by Colombia for decades, Chile is not so sure the ICJ ruling will go in its favor (*América Economía*, 2012).

Disputes over contested territories or maritime boundaries between countries within Latin America have rarely resorted to military force as a means to settle the dispute. The most recent example of a dispute that did lead to a military confrontation, occurred in 1995 between Ecuador and Peru, where a resort to force actually helped produce a settled outcome, which favored the aggressor, Ecuador, in this case (Kilroy, 2010). By invoking the 1942 Rio Protocol under the auspices of the Four Guarantor nations (Argentina, Brazil, Chile, and the United States), Ecuador and Peru did support a diplomatic outcome, in the end. Yet, the actual results and what really changed is debatable. What is significant in this case is that what David Mares calls "militarized bargaining" on the part of Ecuador did work, to some extent, in addressing the country's historical grievances (Mares, 2001). Also, this case reflected a change in a disputed territorial boundary that had previously been settled by an international treaty in 1942. Although Ecuador had always maintained that it agreed to the previous demarcation reluctantly, nonetheless, the provisions of the treaty had remained in effect for over 50 years and were recognized by all other parties to the agreement.

Territorial and maritime disputes in Latin America can have their roots in colonial legacies, due to previous Spanish colonial jurisdictions, revolutionary changes, or even geological shifts. For example, "A number of territorial disputes emerged as a result of the break-up of the Spanish colonial empire, many following the administrative boundaries of the Spanish Viceroyalty structure: an example being the border between Ecuador and Peru, the former as part of the Viceroyalty of New Granada and the later, the Viceroyalty of New Castile" (Kilroy, 2010, p. 87). Following independence from Spain, Latin American states sought to consolidate their new national territories, carved out of the colonial jurisdictions, such as the United Provinces of Central America which emerged from the Captaincy General of Guatemala, and later fragmented into 5 independent countries (Guatemala, Honduras, Nicaragua, El Salvador, and Costa Rica). In some cases, "Territorial consolidation

often followed political consolidation, as regions then opted to stake their identities with one new nation over the other, as in the case of Chiapas, deciding to join with Mexico, rather than Guatemala, or Panama remaining part of Grand Colombia, rather than Central America" (p. 87). For the most part, however, states have been hesitant to risk a military confrontation over a continuing territorial dispute, even those rooted in these colonial legacies, unless they feel directly threatened by issues of governance or loss of sovereignty.

Today, much of Latin America remains ungoverned spaces, which are often where the disputed lands are located. Since these areas are typically located along borders, a state's inability to control its border can also lead to conflict, as in the case of Colombia and Ecuador in 2008, when the Colombian military made an incursion into Ecuador pursuing elements of the Revolutionary Armed Forces of Colombia (FARC). Colombia argued that Ecuador's failure to police its border allowed the terrorist group unencumbered ingress and egress, necessitating the cross-border action. Ecuador identified the incursion as an act of aggression that warranted a regional response, soliciting the support of countries like Venezuela. At a meeting of the Organization of American States and the Rio Group, tensions were lessened and a potential military confrontation averted (Walser, 2008).

In the case of Nicaragua v. Colombia and the dispute over the contested islands and territorial seas, both countries showed constraint by allowing the ICJ process to proceed for 11 years before a decision was rendered. Yet, that did not mean that both countries waited passively. Each country made its position clear and attempted to sway both public opinion and the Court's decision in its favor. In agreeing to accept adjudication by the Court, both countries followed a tradition in the region of recognizing the role of the Court in settling disputes as a juridical arm of the United Nations system which seeks to prevent conflict. The Court has also been viewed as exercising its jurisdiction equitably, without prejudice toward either party to a dispute.

The Role of the ICJ in Settling Territorial and Maritime Disputes in Latin America

Since its inception in 1946, there have been 18 cases referred to the ICJ representing disputes between countries within Latin America. Not all of these, however, have involved territorial or maritime disputes between states. Of the 18 cases, all but 6 have been decided by the Court. All six of the pending cases do involve outstanding territorial or maritime (ICJ Website, 2013). Of the 12 cases decided by the Court, the states were signatories to the ICJ Statute and accepted the compulsory

jurisdiction of the Court to hear the case, render an opinion, and be bound by the decision of the Court. Only in the recent case of Nicaragua v. Colombia, did a party to the ICJ adjudication process (Colombia) not agree to be bound by the Court's decision, after it was rendered, and take the unprecedented step of withdrawing Colombia from the 1948 Pact of Bogotá, which obligated signatories to be bound by ICJ decisions (Hsf-arbitrationnotes, 2012).[3] Colombia's refusal to accept the ICJ ruling sets a new precedent for countries in Latin America, but also for the jurisdiction of the Court.

The ICJ can and does hear cases referred by states in Latin America that are signatories to the ICJ Statute or other treaties that support ICJ jurisdiction, even when the plaintiff state is not a signatory, or has a reservation clause. An example of this would be the 1984 case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, including the mining of harbors, arming rebels, etc. (ICJ Cases, 1984). In this case, the United States argued that by virtue of its reservation clause to the 1946 ICJ Statute, it was not bound to accept the Court's ruling regarding "disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction" (paras, 36-56). The United States argued that it was exercising the right of collective self-defense, in support of El Salvador (due to Nicaragua's support of the insurgent Farabundo Martí National Liberation Front–FMLN) which would be endorsed by the United Nations Charter (Art. 51) and the OAS Charter (Art. 21). The ICJ, however, countered that the United States was in violation of the OAS Charter itself by supporting and arming guerrillas (the Contras) in Nicaragua. The Court, therefore, took the position that the case had standing for both Nicaragua and the United States and agreed to adjudicate it. "In its Judgment of 26 November 1984 the Court found, on the basis of Article 79, paragraph 7, of the Rules of Court, that the objection to jurisdiction based on the reservation raised 'a question concerning matters of substance relating to the merits of the case' and that the objection did 'not possess, in the circumstances of the case, an exclusively preliminary character.' Since it contained both preliminary aspects and other aspects relating to the merits, it had to be dealt with at the stage of the merits" (paras, 36-56).

In 1986, the Court ruled on the case that the United States was in violation of both international treaties in existence and customary international law and the collective self-defense argument used by the United States in its defense was not valid. The Court ordered the United States to cease and desist from all acts of mili-

3 It should be noted that despite Colombian President Juan Manual Santos's decision to immediately withdraw from the Pact, given the provisions of the Treaty, this can only take place after 12 months.

tary aggression against Nicaragua and to make reparations for damages. The United States did not accept the Court's ruling and continued to support the counterinsurgency against the Nicaraguan government, maintaining that US actions were in defense of El Salvador and the threat Nicaragua's Sandinista regime posed to its neighbor (Turner, 1987).

In light of its win in the ICJ, Nicaragua launched two additional cases in 1986 against Costa Rica and Honduras, making similar arguments against both countries, for their support of the Contras and allowing their territory to be used as staging areas for military interventions into Nicaragua. The ICJ accepted jurisdiction in both cases, arguing that the Pact of Bogotá did provide grounds for the Court hearing the cases, and that the parties to the Pact were bound to accept compulsory jurisdiction of the Court (Dipublico.com, 1988). Honduras attempted to negate the provisions of the Pact for signatories to accept the Court's jurisdiction by citing Article II and the on-going Contadora peace process as a 'special procedure' to resolve the Central American conflict, and that the current negotiations took precedence over any previous agreements (para, 60). The Court took the position that the Contadora process did not negate the provisions of the Pact of Bogotá; ruling in favor of the Court's jurisdiction to adjudicate Nicaragua's case against Honduras in 1988. The case against Costa Rica, however, was dropped by Nicaragua and the Court accepted its dismissal in August 1987 (ICJ, 1987).

In later cases brought before the Court between states in Latin America that were party to the Pact of Bogotá, the ICJ has consistently ruled that it did have standing to adjudicate the case and states were obliged to accept the compulsory jurisdiction of the Court. An example is *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, December 1999. In this case, Nicaragua argued that,

> the Court is asked to determine the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.
>
> This request for the determination of a single maritime boundary is subject to the power of the Court to establish different delimitations, for shelf rights and fisheries respectively, if, in the light of the evidence, this course should be necessary in order to achieve an equitable solution (ICJ, 1999, p. 6).

This case followed the ratification of the López-Ramirez Treaty between Colombia

and Honduras in 1999 which codified maritime boundaries that Nicaragua did not accept as settled disputes (Diemer & Šeparović, 2006, p. 168).

The Court rendered an opinion on the case in 2007, using the principle of finding equitable solutions laid out in the United Nations Conference on Law of the Sea (UNCLOS) as the primary means of demarcation of maritime borders. The Court opinion, however, did not apply the precedent of *uti possidetis* or the equidistance principle, which placed one judge in opposition to the ruling, due to concern over the impact on third parties, such as Colombia, and previous maritime treaties. Judge Torres Bernárdez was particularly concerned with how this ICJ ruling on maritime boundaries between Honduras and Nicaragua could impact future territorial and maritime rulings in the area (ICJ, 2007, p. 44).

Territorial and Maritime Dispute (Nicaragua v. Colombia)

On 6 December 2001, Nicaragua presented a case before the ICJ making an argument, under the provisions of *uti possidetis*, that a group of Caribbean islands and keys around San Andrés, Santa Catalina, and Providencia, owned by Colombia, were the property of Nicaragua (see figure 1). Despite the existence a 1928 Treaty awarding control of the islands to Colombia, Nicaragua argued that the treaty was executed when Nicaragua was effectively under U.S. control by virtue of a U.S. Marine occupation, and as such, the treaty was null and void. The application by Nicaragua for adjudication before the Court requested the following:

> First, that the Republic of Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueno keys (in so far as they are capable of appropriation);
>
> Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary (ICJ, 2001, p. 8).

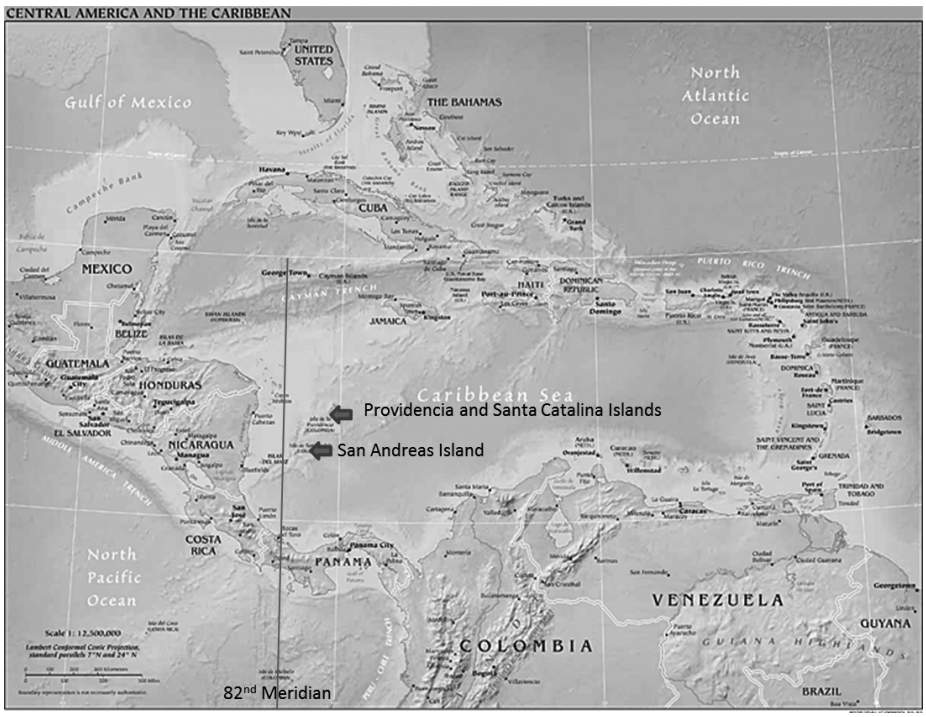

Figure 1
CIA World Fact Book, 2013b ("The Caribbean and Disputed Islands")

Nicaragua's case before the ICJ rested on a presumptive argument that the 1928 Barcenas-Esguerra Treaty was invalid, due to the fact that it was negotiated by a government that then President Arnoldo Alemán of Nicaragua declared illegitimate in 2001, when application was made to the ICJ. He was making the case that the international legal principle of *rebus sic stantibus* (things thus standing) was applicable to a change in government due to a revolution, which should then be considered paramount to another international legal principle of *pacta sunt servanda* (treaties made must be obeyed). Yet, most international legal scholars argue that changes in the form of government alone, or from one ruler to a different administration, do not meet the criteria of *rebus sic stantibus* and necessarily invoke the termination of treaty obligations made by previous administrations (Bishop, 1971, p. 220). If such were the case, every treaty made would become invalid when a change of administration, even a democratic election, would take place. The most pertinent examples of where treaties made can be subject to review and revision deal with the termination of a state or creation of a new state. The break-up of the former Soviet Union (USSR) in 1991 and creation of the Russian Federation and other newly independent states in Eastern Europe and the Caucasus is an example of such an event. Even that major realignment of global geopolitics did not auto-

matically terminate many of the treaties negotiated between the United States and the USSR; e.g., the Anti-Ballistic Missile (ABM) Treaty, negotiated in 1972, lasted until 2002, when it was unilaterally terminated by the United States (Perez-Rivas, 2001).

Nicaragua's case for territorial control of the contested islands and a remarking of maritime boundaries also rests on a reinterpretation of the colonial borders established after independence from Spain in the 1800s, using the principle of *uti possidetis*. Under this principle, the borders that were in place when the Federation of Central American States (or United Provinces of Central America) gained independence in 1821 would align with the original boundaries under the Captaincy General of Guatemala. Nicaragua argues that at this time, the contested islands were part of the Captaincy General and thus became the property of the newly formed Central America. However, in 1803, Carlos IV of Spain ordered that San Andrés Island and the Mosquito Coast of Central America belonged to the Viceroyalty of New Granada, which included the contemporary states of Colombia and Panama (Woodward, 1985, pp. 291-292).

In 1838, the Federation was dissolved and the break-up led to the creation of the five independent Central American nations of Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica. At that time, Nicaragua claims that the contested islands of San Andrés, Providencia, Santa Catalina, and the surrounding cays and islets came under its sovereign control (ICJ, 2001, p. 1). However, historical records show that in the 1840s, Colombia laid claim to the islands and the Mosquito Coast based on the original Spanish colonial borders between the Viceroyalty of New Grenada and the Captaincy General of Guatemala. It was Costa Rica that had to give up claims to San Andrés and Providencia islands to Colombia in order to gain sovereign control over its Caribbean coastline (Woodward, 1985, p. 135). Thus, Nicaragua's argument that *uti possidetis* supports its claim to the contested islands and associated maritime boundaries is specious at best.

In 1928, the Barcenas-Esguerra Treaty settled the dispute between the two countries over the contested islands, awarding control to Colombia, acknowledging, "the full and entire sovereignty of the Republic of Colombia over the islands of San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago." (Diemer & Šeparović, 2006, p. 171). The treaty confirmed all previous decisions and historical documentation over Colombia's effective control of the islands for over 200 years (the customary international law of effectiveness-*effectivités*). In exchange for this recognition by Nicaragua, Colombia gave up any territorial claims to the Mosquito Coast. The fact that the law was not contested by Nicaragua until 1980, when the Sandinistas took control of the country by military revolution, also reinforces another custom-

ary international law principle of estoppel. Nicaragua acted in a way, "giving the impression to Colombia over a period of more than 50 years that it had accepted the provisions of the treaty without any reservation. Colombia therefore had reason to place trust in the territorial delimitation imposed by said treaty. It appears, as a result, that Nicaragua is estopped from making any territorial claims with respect to the San Andrés archipelago" (p. 176).

While the Barcenas-Esguerra Treaty dealt with the major islands in the San Andrés archipelago, it failed to address some of the smaller, uninhabited islets that geographically are considered part of the archipelago. The United States staked a claim to the islands under the 1856 Guano Islands Act (as *tierra nullus*), in order to establish navigation aids in that part of the Caribbean. It allowed Colombia access to the fishing grounds around the islands and in the Vásquez-Saccio Treaty with Colombia, ratified in 1981, the United States acknowledged that these islands are regarded as an integral part of the Colombian "Departamento de San Andrés y Providencia" (p. 176).

The issue of maritime demarcation of boundaries and territorial seas does come into play, however, when one considers the physical geography of the disputed region. The San Andrés archipelago clearly lies on the Continental Shelf, within Nicaragua's 200 nautical mile (nm) EEZ. The Barcenas-Esguerra Treaty declared the meridian 82°00'00" W longitude as the maritime boundary, with the area west assigned to Nicaragua and the area east to Colombia (see Figure 1). There is legal precedent under customary international law to apply various interpretations of equidistance and equity in determining maritime boundaries in cases such as this where islands belonging to one state reside within the territorial waters of another state. Since Colombia and Nicaragua are not conjoined or have shared territorial waters based on their geographical locations, there is not an obvious solution. Instead, the 82nd meridian has served as the maritime boundary for over 50 years in and around the islands. This accepted determination is further supported by customary international law, where archipelagos, such as San Andrés are treated as contiguous for purposes of delimitation of both territorial seas (and EEZs), thus avoiding the need for convoluted demarcations that only lead to further conflict and dispute.

Taking all these factors into consideration, Colombia had every right to believe that when Nicaragua took its case before the ICJ in 2001, that the Court would rule in its favor. In the interim, however, both Nicaragua and Colombia have acted out their national interests, with leaders making public statements for their position, as well as taking what the other would view as provocative actions to reaffirm each other's rights to the disputed islands and maritime regions. For example, in June 2002, Nicaraguan president Enrique Bolaños issued a call for bids for foreign oil

companies to explore parts of the Caribbean that were in the contested regions with both Honduras and Colombia. Both Honduran and Colombian governments vigorously protested Nicaragua's decision, arguing that each had a right to take actions to protect their maritime territories (Ferrer, 2002). Nicaragua's announcement occurred shortly after Colombia's national oil company, Ecopetrol, announced its intention to begin oil exploration in the contested waters, which Colombia claimed. Both Nicaragua and Colombia were taking actions to secure their claims to maritime regions that oil industry experts estimate could hold up to 4.3 billion barrels of oil, which is three times what Colombia currently has in proven reserves (Ferrer, 2002).

In 2006, on the heels of Daniel Ortega's reelection victory in Nicaragua, renewed tensions arose over the contested maritime regions. Ortega had been a leader in the Sandinista revolution which brought the leftist regime to power in 1979. It was the Sandinista regime that first made the claim that the 1928 Barcenas-Esguerra Treaty with Colombia was invalid, since it was negotiated by a government under U.S. occupation. Ortega was expected to renew Nicaraguan claims to the contested islands and waters (Oxford Analytica, 2007). There had been a series of recent actions of provocation in the disputed region where Nicaraguan coast guard vessels had confronted Colombian fishing boats, as well as renewed bids by both Nicaragua and Colombia to allow foreign firms to conduct oil explorations. Both countries were facing an uncertain future with regard to energy resources—Nicaragua experiencing oil shortages and rising import bills and Colombia also concerned that it would become a net importer of oil (Oxford Analytica, 2007).

Both countries have contributed to the escalation of tensions. In July 2007, Colombian president Alvaro Uribe celebrated Colombia's independence day on San Andrés island. At a following meeting of Central American leaders, Nicaragua president Daniel Ortega made it clear that President Uribe was not welcome to attend (Kraul, 2007, p. A4). Complicating the matter even further is the status of the 80,000 inhabitants of San Andrés and surrounding islands, which is comprised of different ethnic groups. A third of the population is part of the black Raizal people group, which reject Colombian government control of the islands and are petitioning for recognition as an independent nation. They argue that they have been mistreated by the Colombians, had their land expropriated, and are relegated to second-class citizen status on the islands (A4). The Raizal do not, however, want to be annexed by Nicaragua, rejecting the possibility of a change of government over the islands.

Thus, prior to the ICJ ruling in 2012, both Colombia and Nicaragua pursued policies that supported their claims to control of the contested islands, as well as the maritime boundaries surrounding the islands. Colombia maintained its posi-

tion of effective control of the islands for over 200 years and legal authority by virtue of the bilateral 1928 Barcenas-Esguerra Treaty granting Colombia sovereign control of the islands and the surrounding waters. Nicaragua's case has always been more circumspect, relying on a pretty loose interpretation of *uti possidetis* and, more importantly, *rebus sic stantibus*, and the illegitimacy of the treaty itself. What has changed, however, are the high-level stakes involving access to resources, such as hydrocarbons and fisheries. Nicaragua stood much to gain, should the ICJ move beyond customary international law interpretations of the dispute and rule in favor of equity issues, particularly with regard to the maritime boundaries and access to the contested 200 nm EEZ of Nicaragua, which the islands lie within. Colombia stood much to lose as maritime areas under its effective control for the last 80+ years hold promise of development of resources and revenues.

The November 2012 ICJ Ruling and Its Consequences

After 11 years of deliberation, the ICJ finally rendered its decision on Nicaragua v. Colombia. To no one's surprise, the Court determined that all contested islands within the San Andrés archipelago, to include the major islands of San Andrés, Providencia, and Santa Catalina, belonged to Colombia. To most everyone's surprise the Court determined that new methods of boundary adjudication should be applied in determining the maritime boundaries surrounding the islands, reneging on the previously agreed to 82nd meridian in the 1928 Barcenas-Esguerra Treaty, and instead awarding EEZ control over regions of the surrounding Caribbean Sea to Nicaragua. Colombia would be limited to retaining control to the 12 nm of territorial sea surrounding the islands of Providencia and Santa Catalina, and the broader swath around the islets and cays in the San Andrés archipelago, but still much smaller than it previously controlled, almost 75,000 square kms (*Economist*, 2012).

Nicaragua's president, Daniel Ortega, celebrated the ICJ ruling as a victory, sending his navy into the new Nicaraguan waters in a show of force and stating, "The court has given to Nicaragua what belonged to us: thousands of kilometers of natural resources" (*BBC News*, 2012). Colombia's president, Juan Manual Santos, responded by refusing to withdraw the Colombian navy, and more significantly, threatened to withdraw Colombia from the Pact of Bogotá, signaling his country's refusal to abide by the ICJ ruling, or subsequent rulings impacting Colombia (*Economist*, 2012). Since the initial saber-rattling both leaders have taken a step back and pledged to not resort to any military actions.

The Court's action may appear to evince Solomon-like wisdom, in trying to appease both parties, applying both standing treaty law and customary law, with

regard to territorial sovereignty disputes, but it opened up new legal precedence by applying principles of equity with regard to EEZs, that completely negated previously agreed to boundaries. Under international law, Article 38 (1) of the Statute of the International Court of Justice, the following are to be recognized as grounds for juridical opinions:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice of law;
c. the general principles of law recognized by civilized nations;
d. subject to the provision of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

In theory, there is no hierarchy among these sources of international law; however, in practice, there has been deference by international lawyers to look toward existing treaties first, then customary law, and finally general principles. There is another stipulation in the Statute, Article 38 (2) that states, "this provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto." This criterion would allow the Court to consider a decision that was "fair and equitable" as long as both parties agreed to allow the Court to do so. In the case of Nicaragua v. Colombia, it appears that the Court took it upon itself to determine what was "fair and equitable" without giving the parties an option of deciding whether they were in agreement, knowing full well that Colombia would not accept the decision. Instead, it appears that the Court invoked the criteria of the Pact of Bogotá which required the parties to accept the compulsory jurisdiction of the Court and to accept the decision as binding, without recourse or redress.

For the nations in Latin America, the ICJ ruling had both domestic and international consequences. Domestically, Colombia's embattled president, Juan Manual Santos, saw his approval ratings fall 15 percent, while 85 percent of the population agreed with the former president, Álvaro Uribe, that the ICJ ruling should be ignored (Shifter & Combs, 2012). In Nicaragua, President Daniel Ortega received a boost in his support, reviving Nicaraguan nationalism. Internationally, the ruling impacted the maritime jurisdiction over sea-lanes which are heavily used by fishermen, but also drug traffickers. Nicaragua does not have the naval assets that Colombia possesses to be able to enforce security in its newly acquired EEZ and extended authorization for U.S. vessels to access the waters on drug patrols (Shifter & Combs, 2012).

The ICJ ruling also has a number of implications for on-going territorial and

maritime disputes in Latin America. Peru and Chile currently have a case before the ICJ (*Maritime Dispute Peru v. Chile*), which Peru began proceedings in January 2008. In its petition, Peru argued that the current maritime border between the two countries, based on the outcome of a treaty signed at the end of the War of the Pacific in 1879, granting Chile control of the maritime region once held by Peru, is invalid, despite Chile having controlled the maritime region as part of its EEZ for over 130 years (*América Economía*, 2012). Peru is seeking redress through the Court, based on both parties being signatories to the 1948 Pact of Bogotá, and accepting of the compulsory jurisdiction of the Court (as in Nicaragua v. Colombia). Prior to the Court's recent ruling overturning Colombia's historical claims to established maritime boundaries, Chile felt its position was pretty solid, and was not threatened by the Peruvian action. Now, Chile's leaders are expecting a likely rendering by the Court in favor of Peru and the potential loss of 37,500 square kilometers of its EEZ (*América Economía*, 2012). While the actual territorial implications are minimal, the political impact is substantial as the precedence of applying "fair and equitable" principles in Court rulings trumps established treaties and historical outcomes of previous territorial disputes.

As an example of the fallout, Bolivia filed a new petition in April 2013, taking Chile to the ICJ over its territorial loss during the War of the Pacific in 1879, demanding a "useful and sovereign outlet to the sea" (*MercoPress*, 2013). Bolivia lost its access to the Pacific Ocean, as a result of the outcome of the War, with Chile and Peru possessing the 400 kilometers of coastline that had belonged to Bolivia. Numerous attempts had been made by both Bolivia and Peru to regain lost territory to Chile, to include important resource-rich areas around the cities of Tacna and Arica in the Atacama Desert region. From Chile's perspective, the issue was resolved in 1904 with the signing of the Peace, Commerce, and Friendship Treaty with Bolivia. An agreement allowed Bolivia commercial access to the Chilean port of Arica, by virtue of a railroad that was completed in 1913 (St. John, 1994, p. 17). Like the Nicaragua v. Colombia, case, the Bolivian government argument is that the treaty signed in 1904 was signed "under duress" and is therefore not a legitimate treaty (*MercoPress*, 2013). Interestingly, Bolivia tried to make a similar argument in 1921, taking the case before the newly established League of Nations after World War I, only to have the case rejected by the League, arguing that the dispute had been settled by the 1904 Treaty and the League had no grounds to modify an existing treaty (St. John, 1994, p. 18).

As a result of the November 2012 ICJ ruling in Nicaragua v. Colombia, it is conceivable that the Court could expect a number of other new cases brought by Latin American states, in particular, seeking redress of previous border and maritime disputes, which had been settled by treaties, banking on the Court's applica-

tion of "fair and equitable" principles for settlement, in lieu of respecting existing international treaties, or even established principles of customary international law. The primary factor that is compelling states to push for an ICJ judgment appears to be the possibility of gaining access to resources in the disputed regions, such as fisheries and hydrocarbons in the Caribbean Sea, or nitrate deposits in South American deserts. The vehicle which allows for the ICJ to take on these disputes is the 1948 Pact of Bogotá, where 16 nations had signed and ratified the Treaty, agreeing to compulsory jurisdiction of the ICJ to settle disputes peacefully and accept the ICJ determination. Before the decision in Nicaragua v. Colombia, only one state had denounced its membership in the Treaty (El Salvador in 1973), arguing that since all signatory nations had yet to ratify the Treaty after 25 years, it was an insufficient means by which to resolve disputes in Latin America (OAS, 1948). El Salvador did not reject the principle of resolving disputes peacefully in the Americas. Rather, it stated a position whereby if all states in the region did not agree to the provisions of the Treaty, those states that had, put themselves at risk by accepting the Court's jurisdiction in a case, while other states did not. Colombia's denouncement of the Treaty in 2012 communicated a lack of confidence in the ICJ itself and its willingness to uphold standing international treaties and respect the traditions and norms established within Latin America to resolve disputes and avoid conflict.

Whether there exists an international society of nations in Latin America is more a question of international relations theory, leaning toward the constructivist argument; however, there is evidence to support the existence of certain norms for avoiding conflict and preferring peaceful settlement of disputes. Traditions such as convivencia (peaceful coexistence) and concertación (consensus-building) do characterize the interaction of states in the region, and more often than not, states have agreed to the acceptance of a normative justification for conflict avoidance (Kacowicz, 2005). To this end, Latin American states have generally agreed to a dispute settlement mechanism involving third states (United States, United Kingdom, Spain, Contadora Group, etc.), permanent or ad hoc courts or tribunals (ICJ), or other international government or non-government organizations (United Nations, League of Nations, Organization of American States, the Catholic Church, etc.) over the resort to force to settle their disputes. And when the outcome favors one party over the other, the loser rarely takes up arms to seek redress, generally accepting the norms of peaceful settlement of disputes, respect for sovereignty, and respect for the rule of law, as expressed in existing treaty obligations.

What is challenging these accepted norms of state behavior in Latin America and may impact the continued willingness of states to seek redress through adjudication is the concern that: 1) the International Court of Justice continues to apply

its interpretation of "fair and equitable" rulings over established treaties, laws and customs; 2) access to resources, such as fisheries, hydrocarbons, or minerals, will accelerate conflict in a strained international political economy; and 3) the lack of a regional hegemon (such as the United States) or any perceived threat to states within the region, may contribute to the increase of more self-help solutions in the future.

Conclusion

This article was written shortly after the ICJ ruling on Nicaragua v. Colombia in 2012. It remains to be seen whether the ruling will have a long-term impact on the community of nations within Latin America and their willingness to continue to accept ICJ adjudication regarding territorial and maritime boundary disputes. One possibility would be for nations to eschew the ICJ in favor of other means of arbitration and redress.

In 2004, two Caribbean nations, Trinidad and Tobago and Barbados, agreed to submit their dispute over contested waters and access to resources such as fisheries and hydrocarbons to the Permanent Court of Arbitration (PCA) Tribunal established under the United Nations Convention on the Law of the Sea (UNCLOS), of which both Trinidad and Tobago and Barbados were signatories. Despite years of trying to resolve their dispute bilaterally, through diplomatic means, both nations were at an impasse and were concerned that conflict could occur due to both nations' economic needs and access to the resource-rich waters (Griffin, 2007, pp. xiv-xviii). The regime set in place under UNCLOS established the mechanisms states agree to abide by when confronting a maritime dispute. Both nations followed their interpretation of the "rules" set forth in Article 51 with regard to "existing agreements, fishing rights and existing submarine cables" (p. xv). Yet, the lack of a formal bilateral agreement to govern fishing rights, access to hydrocarbon reserves, and ultimately a proposed pipeline between Trinidad and Tobago and Venezuela, that would encroach on Barbados' EEZ, led to the decision to accept PCA adjudication and "an affirmation of their faith in the process" (p. viii).

The UNCLOS Treaty and arbitration mechanisms established proved successful in helping Trinidad and Tobago and Barbados settle their dispute: however, as Glenn Gifford notes, just in the Caribbean alone, there are many more existing disputes and "whether countries should wait until a conflict erupts or until resources are discovered remains an open question" (p. 155). The recent ICJ ruling in Nicaragua v. Colombia throws another wrench in the process, should states "lose faith" in legal proceedings and no longer believe that international tribunals will, in

fact, serve as "honest brokers" in the process. The status quo state in a dispute will always want the judges to respect the established treaties or conventions in place, regardless of the circumstances of their origin, while the revisionist state hopes for a redress from the judges that will seek a "fair and equitable" solution. In the end, "dividing the baby" does not always work, and states with the most to lose may not be as accommodating as the real mother of the child was in Solomon's case (*NASB*, 1973, p. 251).

Territorial and maritime boundary disputes are often complex issues. If they were not, then most would have been settled by now. Since many remain, particularly in Latin America, any act of final agreement, whether through adjudication rendered by the International Court of Justice, arbitration by the Permanent Court of Arbitration under UNCLOS, or dispute settlement through the efforts of a third party, is going to be watched carefully by international jurists, legal scholars, and most importantly by states themselves. International law remains a field of jurisprudence where international norms and rules of state behavior continue to evolve, and until the day that some supranational enforcement regime comes into existence to punish violators, states are bound to accept the rulings on these international legal bodies only in as far as they view it to be in their long-term self-interest to do so.

Colombia's decision to remove itself from the 1948 Pact of Bogotá and to no longer be compelled to accept the compulsory jurisdiction of the ICJ to settle disputes between states that are signatories to the Pact is a political reaction that plays to the domestic audience, reflecting the state's nationalist sentiments. If the ICJ were to rule in favor of Peru in its current dispute with Chile before the Court (which is very likely), and Chile were to follow suit, for similar reasons, in either ignoring the ruling or also pulling out of the 1948 Pact of Bogotá, then a dangerous precedent would be established. Latin America may no longer be looked at as a region that has evolved into an international society where the existence of norms and behaviors has helped to avoid conflict. Instead, states with contests over resources in disputed territories or maritime zones, may forego international legal mechanisms, having lost faith in the process.

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Territorial Disputes and Taiwan's Regional Diplomacy: The Case of the Senkaku/Diaoyu/Diaoyutai Islands

Barthélémy Courmont

Associate Research Fellow, Institute of International and Strategic Relations IRIS, France

Abstract

In the territorial dispute over the Senkaku/Diaoyu islands between Tokyo and Beijing, Taiwan also claims what it calls the Diaoyutai, and Taiwan's President, Ma Ying-jeou, reaffirmed in August 2012 that these islands should legitimately be under Taipei's control. The ROC did not however join the dispute but chose instead to propose a plan to reduce the tension by implementing both solid bilateral talks and a multilateral approach at the regional level that will involve the three parties. This initiative symbolizes Taiwan's attempts to increase its diplomacy in the East China Sea, by using its good relations with both Tokyo and Beijing, and Taipei's potential implications in a regional security dialogue. It also suggests new approaches in engaging the territorial disputes in East Asia. This article explores Taiwan's position in the dispute, its basis as well as its philosophy; the emergence of a new diplomacy for the Republic of China, its impact and its limits; and questions the possibility of implementing a comprehensive security dialogue. It also suggests new orientations in Taiwan's diplomacy regarding its territorial and maritime claims, and raises the question of the relation with Mainland China.

Keywords

China, Taiwan, Japan, Senkaku, Diaoyu, Diaoyutai, territorial dispute, East China Sea

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The territorial dispute in the East China Sea has been the source for increased tension in the region between the People's Republic of China (PRC), Japan, and the Republic of China (ROC, Taiwan) in recent months. It had been particularly sensitive in 2012, consecutively to Japan's decision to nationalize three of the islands known as Senkaku, Diaoyu or Diaoyutai (Hongo, 2012). This case of territorial and maritime dispute, although not unusual in East Asia (Huth, 1996), has the characteristics not only to concern more than two actors—which is also the case of the Paracels in the South China Sea, for instance—but to oppose one state on one side (Japan) and two separate, and also rival entities on the other (China and Taiwan). This situation generates therefore a unique example of tensions at different levels, and implies a multiplicity of understandings, to the point that it may be considered, both at the legal and the political levels, as the most complicated territorial dispute in East Asia, and one that international law fails to solve (Ramos-Mrosovsky, 2008). One of its consequences is that "without a proper treatment of the status, it is impossible for China and Japan to draw a maritime delimitation line in the East China Sea" (Pan, 2009, p. 29).

The island group—Diaoyutai in Chinese, usually known as Diaoyu in Beijing and Diaoyutai in Taipei, Senkaku in Japanese and sometimes referred to as the Pinnacle islands in English—is composed of eight small, uninhabited islets, sitting roughly 160 kilometers northeast of Taiwan and 400 kilometers west of Okinawa (Japan). The largest of these islets is only four square kilometers in area. However, the waters in the area are rich fishing grounds and the seabed below the waves could potentially contain minerals and/or oil.

The current dispute dates back to 1972, when the U.S. transferred the authority over the islands to Japan, while both Chinas have claimed its control. We may however consider that Japan's annexation of the Ryukyu Archipelago, including although neither Beijing, nor Taipei after 1949 has laid claims over the sovereignty

Japanese name	Chinese name	Area (km²)
Uotsuri-shima (魚釣島)	Diaoyu Dao (釣魚島)	4.32
Taisho-to (大正島)	Chiwei Yu (赤尾嶼)	0.0609
Kuba-shima (久場島)	Huangwei Yu (黃尾嶼)	1.08
Kita-kojima (北小島)	Bei Xiaodao (北小島)	0.3267
Minami-kojima (南小島)	Nan Xiaodao (南小島)	0.4592
Oki-no-Kita-iwa (沖ノ北岩)	Da Bei Xiaodao (大北小島/北岩)	0.0183
Oki-no-Minami-iwa (沖ノ南岩)	Da Nan Xiaodao (大南小島/南岩)	0.0048
Tobise (飛瀬)	Fei Jiao Yan (飛礁岩/飛岩)	0.0008

Table 1
The Eight Islands: Names and Areas

of the islands until the U.S. occupation, which began in 1945, came to an end, and Washington returned the islands to Tokyo (Lee, Furness, & Schofield, 2002, pp. 10-13; Charney, Colson, & Smith, 2005). It is usually assumed that the biggest reason for this dispute is the release in 1969 of a study by the United Nations Economic Commission for Asia and the Far East suggesting that vast quantities of oil and gas might lie beneath the East China Sea (Emery, 1969, p. 3). Little actual drilling has taken place to this day, but some estimates suggest that as many as 100 billion barrels of oil and 200 trillion cubic feet of gas may be at stake (Harrison, 2005).

On top of the Beijing-Tokyo dispute that has been particularly vivid since 1996 when, during the most sensitive Cross-Strait crisis since the 1950s, Tokyo reaffirmed its sovereignty over the islands (Dzurek, 1996; Suganuma, 2000), the ROC also claims what it calls the Diaoyutai. Taiwan's current President, Ma Ying-jeou, reaffirmed in August 2012 that based on history, geography and geology, these islands should legitimately be under Taipei's control. The ROC did not however join the dispute and, unlike Japan and China, attempted to avoid a nationalist rhetoric. Taipei proposed instead a plan to reduce the tension by implementing both solid bilateral talks and a multilateral approach at the regional level that would involve the three parties. This initiative symbolizes Taiwan's attempts to increase its diplomacy in the East China Sea, by using its current good relations with both Tokyo and Beijing, and Taipei's potential implications in a regional security dialogue, in order to serve its own objectives (Hui, 2012; Jacobs, 2013). It also suggests new approaches in engaging the territorial disputes in East Asia, notably by leaving the door to cooperation with Beijing open, and therefore adjusting the official four principles' posture.

Focusing on the evolution of the recent crisis, this article evaluates Taiwan's position in the dispute, the emergence of a new diplomacy for the ROC, its impact and its limits; and questions the possibility of implementing a comprehensive security dialogue. It also suggests new orientations in Taiwan's diplomacy regarding its territorial and maritime claims, and raises the question of the relation with Mainland China on a case of territorial dispute. The first chapter explores Taiwan's arguments in the maritime dispute, in comparison with Japan's and China's claims. The second chapter introduces the question of the control of the oil reserves and the U.S. implications, and its perception in Taiwan. In the third chapter, Ma Ying-jeou's plan and its consequences are described, while the fourth chapter presents Beijing's strategic calculations.

Taipei's Arguments in the Territorial and Maritime Dispute

Although using a different formulation, Taiwan's claims in the Diaoyutai islands mostly meet those of China, with a few additional elements. Like Beijing, Taipei also rejects Japan's arguments.[1]

With no surprise, the historical arguments are similar in China and Taiwan. According to Beijing, Chinese historical records detailing the discovery and geographical feature of these islands date back to 1403. China and Taiwan, both claiming the same historical heritage, assert that the Ming dynasty (1368-1644) considered the islands part of its maritime territory and included them on maps and documents of areas under the authority of the Ming coastal defenses. They also claim that the Qing dynasty (1644-1911) went further and placed the islands under the jurisdiction of Taiwan, which had, until 1885, the status of a territory, not a province. However, it seems that the Qing dynasty never established a permanent settlement of civilians or military personnel on the islands, and apparently did not maintain permanent naval forces in adjacent waters (Cheng, 1974, pp. 244-246). For several centuries the islands have also been used by Taiwanese fishermen as an operational base, while no official ever travelled in the area. In 1874, Japan took the Liu Chiu islands from China by force. The Senkaku/Diaoyutai, however, seemed to have remained under the administration of Taiwan until it was ceded to Japan in 1895 after the first Sino-Japanese War. Originally, during the Japanese occupation of Taiwan (1895-1945), the Senkaku/Diaoyutai archipelago came under the jurisdiction of Taipei Prefecture. After the end of World War II, when the U.S. troops were stationed on the Ryukyu and the Senkaku/Diaoyutai archipelagoes, the Kuomintang (KMT) government which officially ruled China and had recovered its sovereignty over Taiwan did not ask the U.S. to include the islands (Chiu, 1999).

After Japan's surrender, the islands have been placed under the administration of the U.S. as part of the Nansei Shoto Islands, in accordance with Article III of the

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1 Japan claimed the islands as official Japanese territory in 1895. From 1885 on, surveys had been thoroughly made by the Government of Japan through the agencies of Okinawa Prefecture and by way of other methods. Through these surveys, it was confirmed that the islands had been uninhabited and showed no trace of having been under the control of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on January 14, 1895, to erect a marker on the islands to formally incorporate the islands into the territory of Japan. Since then, the islands have continuously remained as an integral part of the Nansei Shoto islands which are the territory of Japan. These islands were neither part of Taiwan nor part of the Pescadores islands (or Penghu) which were ceded to Japan from the Qing dynasty of China in accordance with Article II of the Treaty of Shimonoseki which came into effect in May 1895. Accordingly, the islands are not included in the territory which Japan renounced under Article II of the San Francisco Peace Treaty. They came under the U.S. control after World War II. The U.S. kept that group of small islets for occasional bombing practice targets, largely for its Liu Chiu based Air Force. Japan claimed that the islands are part of Liu Chiu (Moteki, 2010).

1952 San Francisco Treaty. The administrative rights were reverted to Japan in accordance with the Agreement between Japan and the U.S. Concerning the Ryukyu Islands and the Daito Islands signed on June 17, 1971. It was not until the question of the development of petroleum resources on the continental shelf of the East China Sea came to the surface that the governments of China and Taiwan began to raise questions regarding the islands (Sutter, 2013).

President MaYing-jeou, in an August 2012 speech, argued that various international agreements after World War II "confirmed that Taiwan has been returned to the Republic of China." He added that "the Diaoyutai Islands, an island group part of Taiwan prior to World War II, naturally should have been returned to the ROC along with Taiwan after the war." This posture is a response to Japan's argument formulated in 1972 that states that "the fact that China expressed no objection to the status of the Islands being under the administration of the United States under Article III of the San Francisco Peace Treaty clearly indicates that China did not consider the Senkaku Islands as part of Taiwan" (Ministry of Foreign Affairs of Japan, 1972). This attitude is described as a "judicial trend of putting increasing emphasis on the absence of rival acts or claims of sovereignty" (Sharma, 1997, pp. 47-48).

The Ma government's posture does not differ from the previous administrations in Taiwan. Four principles regarding the islands were established by former Taiwanese president Lee Teng-hui (1988-2000), and followed by his successor, Chen Shui-bian (2000-2008). First, the sovereign rights of the Diaoyutai islands belong to the ROC. Second, the issue should be handled "peacefully and rationally." Third, there should be no cooperation with Beijing. Finally, Taipei must protect the rights and interests of the Taiwanese fishermen. For the past four decades, the ROC has been maintaining that it "regained" sovereignty over Taiwan upon Japan's surrender at the end of World War II and also should have regained the Diaoyutai islands (Shih, 2012). Like the PRC, the ROC Foreign Ministry has asserted that the islands first appeared in China's historical records under the Ming dynasty, and argues that the Ryukyus was then a kingdom and a vassal state of China. The Emperor Hong-wu of the Ming dynasty proclaimed China's suzerainty over the tiny but prosperous kingdom by sending an imperial commissioner to perform the first investiture of the king. During the Qing dynasty, no less than eight investitures were held, the last one in 1866. The Japanese on the other side claimed suzerainty after Shimazu Iehisa, a daimyo of Kagoshima, invaded the Ryukyus and took its king hostage in 1609, and the kingdom remained a vassal to its two big neighbors until Japan annexed it as a prefecture of Okinawa in 1879. However, the relevant material provides little information and mostly likely is false since Taiwan had no permanent Chinese communities until the Dutch brought in Chinese labor after

their arrival in 1624. Chinese records did not even mention Taiwan until the 17th century during late Ming dynasty (Thompson, 1964, p. 163). The Diaoyutai/Senkaku Islands were also much smaller than Taiwan, uninhabited and far from the Chinese coast, which may explain the little interest China had in these islands. However, it may be pointed out that the lack of relevant historical records is a major source of dispute.

In a 1999 publication, Han-yi Shaw also makes a claim for China's Ming dynasty ownership, by reaffirming that the Ryukyu Kingdom became a tributary state of the Ming in 1372 (Shaw, 1999, pp. 42-69). Shaw does not however make any mention of the fact that the Ryukyu Kingdom simultaneously was also a tributary of Japan. Nor does he mention that tributary nations conducted "tribute missions" with China primarily for trade purposes. Another problem with the tributary argument is that the Ma government now states that the U.S. Occupation Forces made a mistake in considering the Diaoyutai as part of the Ryukyu archipelago because a huge trench separates the Diaoyutai from the Ryukyus. Thus, according to the ROC, the islands should not have been returned to Japan when the Ryukyus reverted to Tokyo in 1972. Yet, if one wants to argue that the tributary relationship between the Ryukyus and the Ming was of vital importance in the history of the Diaoyutai, then the claim that the Diaoyutai/Senkaku islands are not part of the Ryukyus must fail. Ironically, in a more recent piece, Shaw argues:

> So instead of proving the islands belonged to Ming China, this historical record proves the opposite. The Chinese should recognize that records from the Qing dynasty alone are sufficient to demonstrate Chinese ownership. Chinese envoy records place the islands within the "border that separates Chinese and foreign lands," with official gazetteers further recording "Diaoyu Island accommodates ten or more large ships" and placing it under the jurisdiction of Taiwan (Shaw, 2012).

Geographically, China and Taiwan argue indeed that the Okinawa Trough in the ocean floor separates the Senkaku/Diaoyu/Diaoyutai and China's continental shelf from Japan's Ryuku Islands. In his thesis, Han-yi Shaw refers to what he calls the "Black Water Ditch" (黑水溝) where there is a "sudden change in the color of sea water from dark blue to dark black" (Shaw, 1999, p. 48). As he writes, "this sudden change of sea water color was known to create a strong sense of fear and unpredictability among those who set sail across it, since reaching this area meant exiting familiar Chinese waters" (Shaw, 1999, p. 49). Shaw argues this Black Water Ditch refers to the trench between China and the Ryukyu Islands, but according to other sources, it is actually in the Taiwan Strait to the west of Taiwan, not far from Penghu

archipelago (Keliher, 2003, p. 39). Shaw's placement of the Black Ditch to the east of Taiwan is therefore disputed by other scholars. According to Shaw, the islands do however present some geological characteristics in common with Taiwan, which justifies both in Taipei and Beijing that they belong to the Taiwan province. Considering the dispute between the ROC and the PRC over the sovereignty of this province, there is a major divergence between both sides of the Taiwan Strait regarding the authority over the islands.

As a response to Tokyo's argument, China argues that Okinotorishima island, the southernmost islet in the Japanese archipelago, is merely a rock, not an island, in an attempt to nullify Japan's claim of an exclusive economic zone around the small island, which is under Tokyo jurisdiction (Donaldson & Williams, 2005). The Chinese said they had "differences of opinion," citing Okinotorishima and the Senkaku/Diaoyutai Islands (Helflin, 2000). While Beijing acknowledges that Okinotorishima belongs to Japan, it stressed that it did not fall under the classification of an island as defined by the UN Convention on the Law of the Sea, but is instead a rock, which cannot be used to designate an exclusive economic zone, as the Japanese government has done (Ramos-Mrosovsky, 2008). Taipei remains more silent on this issue.

Taiwan and China also differ at the level of the objectives they pursue in this crisis. For Beijing, the rivalry with Tokyo over the regional hegemony is the central element of the dispute. In the past two decades, China has taken any opportunity to criticize Japan, and this crisis appears to be a test aimed at analyzing Tokyo's diplomatic margin. The Chinese authorities have also excelled in the art of mobilizing the public opinion in spectacular anti-Japanese nationalist demonstrations through intense media campaigns (Downs & Saunders, 1998; Chung, 1998; Deans, 2000; Stockmann, 2010). For Taipei, it is important to reaffirm its territorial sovereignty—and therefore send a message to Tokyo, but also to Beijing—but at the same time to keep close relations with the two other actors, particularly Japan. To preserve this balance, Taipei favors a constant dialogue, with Beijing and even more with Tokyo, in order to avoid an escalation, based on the assertion that a lack of communication usually favors territorial disputes (Sartori, 2002). On top of this diplomatic calculation, the Taiwanese population is not particularly concerned with the dispute, and pays more attention to the fishing agreements than a territorial claim which is considered less valuable than a close partnership with Tokyo. China also has a particular interest in the potential oil reserves, while Taiwan seems to pay less attention to this rather important aspect of the dispute.

Questions about the Control of the Oil Reserves and the U.S. Implications

Like most territorial and maritime disputes, the Senkaku/Diaoyu/Diaoyutai case is a combination of various elements including historic and geographic tensions, unsolved sovereignty issues, and a temptation to consolidate nationalist movements. It also incorporates a strong dispute over the control of potential oil reserves that has increased considering the parties important and growing needs of energy supplies. The control of the islands would grant the owner a large area of the continental shelf that may have rich sources of gas and oil. Such a dispute is obviously related to the interest in developing offshore energy resources to meet the economic demand (Pan, 2009, p. 140). According to China specialists however, even if oil resources did not exist, China would not give up one inch of what is considered its territory, pointing out that the symbolic value "far outweighs the commercial value the islands may hold" (Suganuma, 2000, p. 11; Shaw, 1999, p. 5). The dispute is also mostly symbolic for the ROC, and the importance given to the resources is limited for Taipei. One may, therefore, consider that the control of potential oil reserves is not the most important factor in the dispute, but just comes as an addition to the tensions among the three actors, particularly between Japan and China.

As it has been noted, a report released in 1969 by the United Nations Economic Commission for Asia and the Far East (ECAFE) indicated the possibility of large reserves of oil in the vicinity of the Senkaku/Diaoyu/Diaoyutai archipelago (Emery, 1969, p. 3). This report introduced a new dimension to the dispute that includes the possibility to exploit such reserves. In the early 1970s, Beijing started its claim to the Senkaku Islands for the first time in 1970, after the Japanese government protested to the government in Taiwan about its allocation of oil concessions in the East China Sea, including the area of the islands (Drifte, 2012, p. 49; Psyop Intelligence, 1972). Before that, neither China nor Taiwan had taken up the question of sovereignty over the islands until the latter half of the 1970s when evidence relating to the existence of oil resources deposited in the East China Sea surfaced. For some scholars, this clearly indicates that neither China, nor Taiwan had regarded the islands as a part of Taiwan (Lee, 2002, p. 11).

An early estimate of potential oil deposits in the disputed zone was 7.5 billion barrels (Stuckey, 1975, p. 47), while a more recent estimate is 100 to 200 billion barrels (Curtin, 2005). Because Japan currently controls the islands, unless China takes the islands by force or drops its territorial claim, Beijing will continue to forfeit access to the oil resources. Unilateral attempts to acquire oil resources inside the disputed zone have been risky (Stuckey, 1975, p. 55), and therefore have not occurred. China cannot drill for oil in the disputed zone on its own without pro-

voking Japan and risking an escalation. In recent years, Japan has protested Chinese drilling in an area that is clearly Chinese territorial waters, but is relatively near the disputed zone. Japan was particularly annoyed because the Japanese government had reserved allowing Japanese companies to explore and develop oil resources in Japanese waters near the disputed zone, fearing it would negatively affect relations with China (Valencia, 2005).

Japan has constantly objected to Chinese development of natural gas resources in the East China Sea in an area where the two countries Exclusive Economic Zone (EEZ) claims overlap. Tokyo claims a division of the EEZ on the median line between the countries' coastlines. About 40,000 square kilometers of EEZ are in dispute. China and Japan both claim 200 nautical miles EEZ rights, but the East China Sea width is only 360 nautical miles. China claims an EEZ extending to the eastern end of the Chinese continental shelf which goes deep into the Japanese EEZ beyond the median line. Taiwan's claims regarding the EEZ meet with those of China, but differ in the importance given to the unilateral exploitation of the oil resources. Therefore, it gives Taiwan a margin in potential negotiations.

Under the UN Convention on the Law of the Sea (UNCLOS), when there is a disagreement on the demarcation of EEZs, part V of the law stipulates that the parties concerned should avoid anything that could undermine an eventual agreement. China's gas field drilling near the median line between the two countries is also regarded by Japan as an obvious infringement of part II of the law (UNCLOS, 1982). Tokyo's proposal, which has not been accepted by Beijing, is to divide the sea equally between the two countries, which would put China's Chunxiao claim only five kilometers from Japanese territory.

Washington's role is also particularly important in this prospect, considering the occupation of the islands for more than 25 years. In 1969, when the Okinawa Reversion Treaty was signed between the U.S. and Japan, it included the islands,[2] which have been under the administrative control of the Japanese government since. On April 9, 1971, the U.S. State Department issued a statement that President Nixon and Japanese Prime Minister Sato Eisaku had reached an agreement, by which the U.S. would return Okinawa and the "South-western islands" which included the Senkaku, to Japan, in 1972 (Upton, 1972). In his letter of October 20, 1971, Acting Assistant Legal Adviser Robert Starr stated:

2 The Okinawa Reversion Treaty, which was signed on June 17, 1971, and entered into effect on May 15, 1972, provided for the return to Japan of "all and any powers of administration, legislation and jurisdiction" over the Ryukyu and Daito islands, which the United States had held under the Japan Peace Treaty. Article I of the Okinawa Reversion Treaty defines the term "the Ryukyu Islands and the Daito Islands" as "all territories with their territorial waters with respect to which the right to exercise all and any powers of administration, legislation and jurisdiction was accorded to the United States of America under Article 3 of the Treaty of Peace with Japan...."

> The Governments of the Republic of China and Japan are in disagreement as to sovereignty over the Senkaku Islands. You should know as well that the People's Republic of China has also claimed sovereignty over the islands. The United States believes that a return of administrative rights over those islands to Japan, from which the rights were received, can in no way prejudice any underlying claims. The United States cannot add to the legal rights Japan possessed before it transferred administration of the islands to us, nor can the United States, by giving back what it received, diminish the rights of other claimants. The United States has made no claim to the Senkaku Islands and considers that any conflicting claims to the islands are a matter for resolution by the parties concerned (U.S. Congress, 1971, p. 91).

Successive U.S. administrations have restated this position of neutrality regarding the claims, particularly during periods of high tensions, as in 1996 and 2010, when the U.S. State Secretary Hillary Clinton stated that "We have certainly encouraged both Japan and China to seek peaceful resolution of any disagreements that they have in this area or others. It is in all of our interest for China and Japan to have stable, peaceful relations. And we have recommended to both that the United States is more than willing to host a trilateral, where we would bring Japan and China and their foreign ministers together to discuss a range of issues" (Clinton, 2010). The 2012 crisis did not change the U.S. posture in its call for a peaceful resolution of the dispute (Manyin, 2012). More recently however, the U.S. posture has been revised, avoiding the option of trilateral talks and warning China against any use of force, but reaffirming at the same time Washington's will to support a peaceful resolution. The Foreign Affairs Committee of the Senate unanimously supported an amendment in November 2012 that "supports a collaborative diplomatic process by claimants to resolve territorial disputes without coercion, and opposes efforts at coercion, the threat of use of force, or use of force by any claimant in seeking to resolve sovereignty and territorial issues in the East China Sea" (U.S. Senate, 2012). A more recent resolution also mentions "dangerous and destabilizing incidents," including the alleged focusing of a weapons-targeting radar from a Chinese vessel on a Japanese warship. Sending an explicit message to Beijing and warning against any unilateral action, it also states that the U.S. government accepts and acknowledges that the Senkakus are under the administration of Japan and that any move to threaten that will be opposed by the U.S. military, under the Treaty of Mutual Cooperation and Security. But the resolution also urges all parties concerned to "exercise self-restraint" because the U.S. has a "a national interest in freedom of navigation and overflight in the Asia-Pacific maritime domains."

The interesting aspect in Washington's call for negotiation is, besides the revi-

sion and the fact that the U.S. wants to avoid an escalation between China and Japan at any cost, that it favors an agreement that potentially fits with Taiwan's official approach of the dispute. This implicit support to the ROC initiative, if it does not suggest any particular role for the ROC, highlights the difficulties Tokyo and Beijing meet in order to implement a dialogue.

Taipei's position regarding the oil reserves favors a pragmatic approach reflected in Ma Ying-jeou's plan, and shared by the majority of political leaders and the public opinion in Taiwan. The ROC also understands that although improbable, a multilateral approach is the best official posture, in order to both boost Taiwan's image and keep all bilateral options on the table. The balance between a tough posture that reaffirms Taiwan's claim and a plan aimed at taking benefits from the dispute is the consequence of this understanding, and can therefore be seen as an opportunity.

Ma Ying-jeou's Plan and Its Implications for Taiwan's Regional Diplomacy

Ma Ying-jeou is very familiar with the territorial dispute. He participated in the Diaoyutai movement in 1970, when he was only about twenty years old, and his interest in the islands grew as he wrote his doctoral thesis specifically on the topic (Ma, 1984). Therefore, with no surprise, it became very clear that Ma himself runs Taiwan's Diaoyutai policy after a September 2012 visit to the Ministry of Foreign Affairs in Taipei (Jacobs, 2013).

One of the primary arguments that Ma made regarding the Treaty of Taipei signed by Japan and the ROC in 1952 and ownership of the islands is Article 4 of the treaty: "It is recognized that all treaties, conventions and agreements concluded before December 9, 1941, between China and Japan have become null and void as a consequence of the war."

However, there are several issues regarding this specific article of the treaty that the ROC president cannot ignore:

- First, the ROC argues that by becoming a signatory to this treaty, Japan agreed to nullify prior treaties between the two parties. However, the ability to abrogate prior treaties that have been acknowledged previously by both parties does not fall under accepted international law, although the ROC argument is considered by some scholars relevant from the perspective of pure theory of law (Liang, 2013);
- Second, the treaty does not specify any transfer of the Senkaku islands to another sovereign state;

- Third, following the same practice of abrogating treaties, the Japanese government did as much with the Treaty of Taipei in 1972, following its diplomatic switch in recognition from the ROC to PRC;
- Last, the ROC and the PRC believe that the Diaoyutai islands were ceded to Japan in 1895 under the Treaty of Shimonoseki.[3] However, the islands were not specified in the treaty, and Japan claimed the islands in 1885 under the notion of terra nullius, or unclaimed territory.

Furthermore, Ma Ying-jeou cannot deny the previous ROC acceptance of Japan's sovereignty over the islands. As the Japanese Unryu Suganuma recalls, "the first volume of *Shijie Dituji* (*The World Atlas*), published by the Taiwan Defense Ministry and the Institute of Physical Geology in 1965, records the Diaoyu Islands with Japanese names: Gyochojima (Diaoyu Islands), Taishojima (Chiwei Island), and Senkaku Gunto. In addition, a high school textbook in Taiwan uses the Japanese name to identify the Diaoyu Islands" (Suganuma, 2000, p. 126). These books were modified in the late 1970s, but they suggest an approach of the dispute that cannot match Beijing's arguments and tactic. Ma Ying-jeou is aware of these books published under the leadership of the KMT, his own party, and must therefore focus on other arguments since he cannot remain silent, and consider a diplomatic approach instead of territorial claims comparable to the ones stressed by the PRC.

The Taiwanese president is also in a particular position. Strongly advocating a spectacular engagement of a closer economic and trade partnership with Beijing, at a level unseen since 1949, he has also maintained extremely close relations with Tokyo. In order to reaffirm the ROC position regarding the disputed islands, he used this position halfway between Japan and China. Ma Ying-jeou proposed the East China Sea Peace Initiative on August 5, 2012, based on the principle of "safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development." He called upon all parties concerned to demonstrate restraint and avoid escalating confrontational acts, to shelve controversies and not abandon dialogue, to respect international law and deal with disputes through peaceful means, to seek consensus and draft a East China Sea Code of Conduct, and to establish a mechanism for cooperation on exploring and developing resources in the East China Sea based on the hereafter guidelines officially presented by Taiwan's Ministry of Foreign Affairs:

3 This treaty is declared invalid by both the ROC and PRC.

I. Implementation

The East China Sea Peace Initiative is to be implemented in two stages:

1. Peaceful dialogue and mutually reciprocal negotiation

This stage involves promoting the idea of resolving the East China Sea dispute through peaceful means, and establishing channels for Track I and Track II dialogue and encouraging all parties concerned to address key East China Sea issues via bilateral or multilateral negotiation mechanisms in order to bolster mutual trust and collective benefit.

2. Sharing resources and cooperative development

This stage involves institutionalizing all forms of dialogue and negotiation and encouraging all parties concerned to implement substantive cooperative projects and establish mechanisms for joint exploration and development of resources that form a network of peace and cooperation in the East China Sea area.

II. Key issues

1. Fishing industry

Convening bilateral and multilateral fishing industry meetings and other forms of fishing industry cooperation and exchange, and establishing a mechanism for fishing industry cooperation and administration.

2. Mining industry

Promoting joint exploration in the territorial waters to the north of Taiwan and establishing a mechanism for joint exploration, development and management.

3. Marine science research and maritime environmental protection

Conducting multi-national marine and ecological research projects pertaining to the East China Sea.

4. Maritime security and unconventional security

Implementing bilateral and multilateral law enforcement exchanges and marine rescue agency cooperation, and establishing a collaborative marine security and crime-enforcement mechanism.

5. East China Sea Code of Conduct

Implementing mechanisms for Track I and Track II dialogue and negotiating mechanisms for resolving disputes through peaceful means that will bolster mutual trust and encourage all parties concerned to sign the East China Sea Code of Conduct.

III. Implementation Objectives

In its role as a facilitator of peace in the international community, the govern-

> ment of the ROC (Taiwan) has proposed the East China Sea Peace Initiative and its implementation guidelines in the sincere hope that all parties concerned replace confrontation with negotiation, and set aside their controversies by means of temporary measures, so as to maintain peace and stability in the region. Over the long run, we can move from three parallel tracks of bilateral dialogue (between Taiwan and Japan, Taiwan and the Chinese mainland, and Japan and the mainland) to one track of trilateral negotiations and realize peace and cooperation in the East China Sea (MOFA, 2012).

If implemented, the East China Sea Peace Initiative and its five points would put Taiwan at the same level as China and Japan in joint management of East China Sea resources and eventually as a partner in a trilateral Code of Conduct. The main challenge is quite clear: Taiwan will find it difficult to draw attention to the initiative, as China considers Taiwan to be a renegade province and Japan does not maintain official relations with the ROC. This obstacle can be managed on bilateral levels, however, on a multilateral level Taiwan's efforts encounter stiff resistance from China. From Beijing's perspective, there is a significant lack of incentive to give Taiwan the status of an independent—or autonomous—party in a multilateral agreement.

For these reasons, it is hard to believe that both Beijing and Tokyo can accept the terms proposed by Ma, and a multilateral is simply unlikely—if not impossible—to be reached. This posture may therefore be evaluated in its capacity to improve bilateral talks, but also—and perhaps more importantly—at the domestic level. Ma Ying-jeou must acknowledge existing divergences regarding the way the Taiwanese look at the dispute. Recently, a group of scholars at Academia Sinica, using official ROC maps, have demonstrated that the Chiang Kai-shek government did not claim the islands until 1971 (Yap, Chen, & Huang, 2012, pp. 90-105), and met with the arguments generally developed in Japan. Thus, the government's efforts to demonstrate that the Diaoyutai/Senkaku islands belong to the ROC suffer from huge political flaws as well as scientific opposition in Taiwan (Jacobs, 2013).

At the same time, the question of Taiwan's diplomatic margin has been exposed by various critics. Professor Lin Ting-hui from the Department of Maritime Police of the Central Police University notes that "only when the strength of China surpasses that of the United States will the government of Taiwan think about cooperation with the mainland" (Hui, 2012). Meanwhile, Taiwan should not rely too much on a hypothetical and obviously calculated support from Beijing. Other scholars such as Professor Wang Kao-cheng, from Tamkang University, believe that "Taipei may do well to side itself with Beijing verbally, as both sides consider the islands part of a greater historical and political China that includes both Taiwan and

the mainland. But it is still unwise for Taiwan to cooperate with China since support from the United States and Japan is crucial to the island" (Hui, 2012).

At the political level, the Democratic Progressive Party (DPP, the main opposition party) meets with Ma's claim and argues that the islands are a natural extension of Taiwan's part of the continental shelf and thus belong to Taiwan under current international law. Both major parties compete for support among Taiwanese fishermen and cannot ignore their voices asking for freedom of fishing in adjacent waters. However, the fishermen do not show much interest in the sovereignty issue as long as there is an arrangement allowing them to freely fish in the area. Ownership of the islands is therefore as good as reaching an agreement with Japan that is practically acceptable for both Tokyo and Taipei. Nor is anti-Japanese rhetoric particularly appealing among the majority of Taiwanese, whether they support the KMT or the DPP. In fact, the anti-Chinese rhetoric appears to be usually much more popular in Taiwan, while the relations with Japan, as well as the attraction of Japan, do not seem to have been affected by this crisis. The recent deal between Taipei and Tokyo confirms this reality and the fact that Taiwan does not want to jeopardize its relation with Japan over the Diaoyutai dispute, which also indicates that its claim is not a priority.

Therefore, "it would be misleading to disconnect the debate in Taiwan from local interests which care little about the question of sovereignty over the islands. Ma may personally want to see Taipei cooperate more closely with Beijing but he must be also aware of public opinion, which is not supportive of such a prospect and does not embrace inflammatory anti-Japanese rhetoric" (Thim, 2013). In other words, one may not compare the debates within the democratic society of Taiwan and the official position in Beijing. Re-elected for a second term in January 2012, Ma Ying-jeou suffers from an important unpopularity. Although Ma, considering the two term limit in Taiwan, won't be able to take part in the next presidential election scheduled in 2016, the government faces important challenges and tries to improve its popular support.

At the international level, the crisis offers Taiwan a double opportunity. First, as Ma's plan explicitly states, the fishing industry is the main priority for Taiwan, which means that the ROC gives more importance to the waters surrounding the islands than the islands itself. Second, considering the difficulties for the ROC to define a coherent and active diplomacy, at the international level but also at the regional level, this tension between Tokyo and Beijing puts Taiwan in a particular position. These two different levels of opportunities converge in the potential gains the ROC can get from the crisis.

These gains are focusing on the fishing rights, which are the only thing the Taiwanese population really cares about in the Diaoyutai case, considering the prox-

imity with Taiwan's shore. It is also one of the four principles of the ROC regarding the claims over the islands. It is therefore not totally surprising that Japan and Taiwan concluded a fisheries agreement in Taipei on April 10, 2013, after officials from both sides formally resumed negotiations for the first time in four years. The deal allows Taiwanese trawlers to operate in part of Japan's exclusive economic zone near the disputed islands. Under the deal, Japan and Taiwan designate an area in Japan's EEZ as jointly managed waters where fishing by both Japanese and Taiwanese boats will be allowed. The agreement contains these points:

- intervention-free fishing zone for Taiwanese fishing boats in waters between 27° north latitude and the Sakishima islands, Okinawa Prefecture;
- Taiwan is given an additional fishing zone of 4,800 square km outside Taiwan's temporary enforcement line;
- fishermen from both countries can operate in a large area within the designated zone without being subject to the jurisdiction of the other side;
- smaller area of the zone, where Japanese fishing vessels frequently operate, is under joint management by the two governments;
- provisions under the agreement do not apply to waters within 12 nautical miles (i.e. territorial waters) surrounding the Senkaku/Diaoyutai islands;
- Article 4 of the agreement states that agreed conditions have no effect on each side's sovereignty claims over the islands.

The last point is particularly important, as it does not affect both sides official posture. It is therefore a "face saving" formula that was probably implemented at Taipei's request, and will at the same time reduce Taiwan's claims. This deal finally confirms the ROC pragmatism in the crisis considering its lack of diplomatic power to claim sovereign rights to the islands, establishes a clear separation with Beijing's claims, and preserves the Tokyo-Taipei partnership. One may therefore consider this deal a victory for the Taiwanese diplomacy, which managed at the same time to reaffirm the ROC sovereignty, and thus its political identity, to unite its often divided population, to send a positive signal to Beijing, and to keep its extremely important close relation with Japan. Considering the difficulties, if not the impossibility, to implement a multilateral dialogue, Taipei favored a bilateral approach and came to an acceptable agreement with Tokyo.

Beijing's Strategic Calculation

Taiwan's diplomatic margin remains however extremely limited considering the

particular status of the island, its lack of international recognition, and of course the difficult relationship with Beijing. For instance, because China bars Taiwan from international treaties, the ROC cannot ratify the UNCLOS. Like most of the other treaties, Taipei follows the convention's principles anyway, but this situation is a reminder of the particular position in which the ROC remains when it comes to addressing a diplomacy based on the respect of treaties, agreements and conventions, and thus multilateral mechanisms.

While some observers have stated that any form of joint-cooperation between the PRC and Taiwan regarding the dispute could be seen as a single joint claim, the Ma government has looked to distance itself from such a perception. Taiwan's Minister of Foreign Affairs spokesperson, Steve Hsia stated for instance that due to the PRC's derecognition of the Sino-Japanese Treaty, "there is no basis for cross-strait cooperation."

The Ma government has repeatedly stated that its claims to the Diaoyutai are not the same as those of China. Yet, many of the arguments are similar, and based on the same references. The Ma government also claims that it desires peace around the islands, yet when some hotheads from Taiwan tried to go to the Diaoyutai/Senkaku Islands on a fishing boat with a statue of Matsu on January 24, 2013, the government escorted the boat with four Coast Guard ships. The Coast Guard escort made government claims that "the voyage was a voluntary action by private citizens" look silly (Jacobs, 2013).

In order to understand how similar are the arguments defended by Beijing and Taipei, one may compare the statement by the Ministry of Foreign Affairs of the ROC of June 12, 1971, declaring that "the islets are affiliated with the Province of Taiwan and constitute a part of the territory of the Republic of China," and the statement of the Ministry of Foreign Affairs of the PRC of December 30, 1971, declaring that the islands are "islands appertaining to Taiwan. Like Taiwan, they have been an inalienable part of Chinese territory since ancient times.... The Chinese people are determined to liberate Taiwan! The Chinese people are determined to recover the Diaoyu and other islands appertaining to Taiwan!" In other words, Taipei claims that the islands belong to Taiwan, and Beijing stays on its position that Taiwan belongs to the PRC.

In 2003 China and Taiwan asserted their claims to the islands with increased media coverage and protest actions, although the then ROC President, Chen Shuibian, was a pro-independence leader and Beijing's enemy, which tends to indicate that the ROC and the PRC's convergence on the islands goes beyond traditional political disputes. On June 22, 2003, a group of protestors from China and Hong Kong attempted to land on the Senkaku Islands using a small fishing vessel. The vessel did not reach the islands themselves and nobody got onshore. However, it

did according to Tokyo violate Japanese territorial waters. Therefore, the Japanese Coast Guard took appropriate action to send them out of Japanese territorial waters.

On August 10, 2005 President Chen Shui-bian reiterated Taiwan's sovereignty claim over the islands, and was the first ROC President to visit Pengjia islets, Taiwan's northernmost territory. Chen was accompanied by both the Minister of National Defense Lee Jye and the chief of the Coast Guard Administration Hsu Hui-yu. On top of this political maneuver, Taiwan fishermen held a large-scale demonstration in July 2005 to protest what they called unfair treatment at the hands of the Japanese coast guard.

On top of convergent official posture, private Chinese and Taiwanese organizations have made repeated attempts to land on the islands and clashed with the Japanese Coast Guard (Mainichi Daily News, 2006). It is well known that appeals to sovereignty and territorial integrity have "intense symbolic value" in China and Japan (Downs & Saunders, 1998, p. 114). But it also does in Taiwan, particularly considering the possibility to mobilize the public opinion in order to protect the territorial sovereignty, mostly against Beijing's claims. The Taiwanese aware however that "nationalism and political legitimacy have been and will continue to be closely linked in China" (Downs & Saunders, 1998, p. 114). One may however, as mentioned above, establish a clear distinction between demonstrations aimed at reaffirming the territorial sovereignty in Taiwan and nationalist protests orchestrated by the Communist Party in China.

Although important, this difference does not mean that unlike the Chinese, the Taiwanese may not be tempted by a nationalist rhetoric. The shooting on May 9, 2013, of a 65-year-old Taiwanese fisherman by a Philippine coastguard provoked a deep crisis between the two countries and revived a strong feeling of nationalism in Taiwan that benefited from the support of both major political parties. China saw this new crisis as an opportunity to reaffirm its support for Taiwan. The Chinese Foreign Minister was quick to condemn what he called a "barbaric act." The Global Times dutifully recalled that Taiwan is in China's eyes a province-in-waiting, deserving of its protection. The paper quoted Zhuang Guotu of Xiamen University, in Fujian Province: "China has reiterated over time that Taiwan is an integral part of China. Now is a good opportunity to show that China will not tolerate the shooting of our fishermen, whether they are from the mainland or Taiwan, and that our government is determined to protect the life of its people" (Long, 2013). For the first time, the Chinese Communist Party, the KMT and the DPP have simultaneously shared a common approach on an important diplomatic issue. But they do certainly not share the same objectives, as the fishing agreement between Taipei and Tokyo clearly shows. This new crisis indicates that Taiwan and China usually agree on

territorial disputes, and thus seems to reinforce the idea of "One China", notably as Beijing makes its support for Taipei public, and loud. But at the same time, one cannot be mistaken about the very different interests both parties defend, both in the case of the crisis with the Philippines and in the dispute with Japan. Although Beijing attempts to reaffirm its position by "taking the defense" of Taiwan, it therefore confirms the idea of a "One China, several interests," not only at the domestic, but also at the diplomatic level.

Conclusion

Besides the notorious rivalry between China and Japan, the Senkaku/Diaoyu/Diaoyutai maritime and territorial dispute reveals the importance of Taiwan's regional diplomacy, its complex definition in order to establish a difference with China's claims, and the opportunities that may result from an active engagement toward a bilateral dialogue. In this prospect, the Ma government's response to the current crisis and the negotiations between Taipei and Tokyo offer an interesting example of how the Taiwanese diplomacy uses the ROC particular status in order to serve clear objectives.

The balance between a nationalist rhetoric and a pragmatic approach of the dispute, which significantly contrasts with the attitude observed in Beijing and Tokyo, is also a characteristic of the ROC management of the dispute and the support of the Taiwanese public opinion. Its relative success, considering the fishing agreement signed with Japan and at the same time the reaffirmation of the territorial claim based on the four principles, and in accordance with Beijing's claims, may be the prelude to a new, proactive ROC diplomacy with significant gains.

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REVIEW

Features of Territorial Disputes in Northeast Asia

Sangtu Ko
Professor of Area Studies, Yonsei University, Korea

Bukh, Alexander (2012). Constructing Japan's 'Northern Territories': Domestic Actors, Interests, and the Symbolism of the Disputed Islands. *International Relations of the Asia-Pacific, 12*.

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Belated Territorial Disputes

Although territorial expansion was an idea common in the past century in Europe, territorial disputes are still taking place today in Northeast Asia. Great Britain—once a colonial giant that expanded its territory by 100 times—has today returned to an island state. Germany twice used military power to pursue its hegemony, but ended up facing defeat and national division. As the territorial disputes in Northeast Asia have heightened the security tensions, the economic dynamics in the region have created an unstable security base. This asymmetry exacerbates the security dilemma because the economy effectively contributes to fueling an arms build-up. To address the territorial issue, we need to identify the specific characteristics of the problem in Northeast Asia. Several recent studies can help in undertaking this task.

An interesting publication in this regard is Dr. Richard Bush's book *The Perils of Proximity: China–Japan Security Relations*. Dr. Bush, director of the Center for Northeast Asian Policy Studies at the Brookings Institution in Washington, DC, served almost five years as the chairman of the American Institute in Taiwan. He has sought to find the reason behind the territorial disputes between China and Ja-

pan by exploring each nation's domestic politics. He has approached the issue from an institutional perspective. Meanwhile, Chien-Peng Chung's article "Resolving China's Island Disputes: A Two-Level Game Analysis" focuses on the role of actors, with particular reference to their interactions at both the international and domestic levels. Alexander Bukh's article, titled "Constructing Japan's 'Northern Territories': Domestic Actors, Interests, and the Symbolism of the Disputed Islands," also deals with actors, but focuses on the domestic purview. He used a constructivist perspective to address the ideational aspect of Japanese demand concerning the Kuril territorial dispute.

These publications reflect two mainstream approaches dealing with social phenomena in contemporary academia—namely, structure and actor. The set of factors related to the structural approach includes geography, history, and institution, among others. Structure is considered a long-term factor that plays a role in the environmental influence of the behavior of actors. The set of actor-related factors includes central and local governments, nationalist NGOs, and international mediators. Accordingly, the unique features of territorial disputes in Northeast Asia can be explained from these two perspectives.

Maritime Disputes

The territorial issues in Northeast Asia have the characteristics of maritime disputes. Land borders are marked by mountains or rivers that more or less clearly separate two countries whereas no natural frontier is evident in the sea. Not surprisingly, no serious territorial issues exist among Korea, China, and Russia, and the territorial dispute between China and Russia has been successfully settled. Meanwhile, Japan as a maritime state has territorial disputes with all of its neighboring states.

The importance of islands has considerably increased since the enactment of the UN Convention on the Law of the Sea (UNCLOS) in 1994. This treaty permits states to claim up to 200 miles around islands as their territorial waters or exclusive economic zones (EEZ). Yet Article 121 of the UNCLOS states that rocks that cannot sustain human inhabitation or economic life have no EEZ. Maritime territory is also important for making sea lanes secure, which is especially important for Korea, Japan, and China as they are all heavily dependent on international trade.

Divergent Regime Types of Conflicting Parties

The regime types of Northeast Asian countries are so diverse that democratic and

authoritarian states exist together. Dr. Bush has broadly surveyed the domestic politics of China and Japan, including their military institutions, bureaucratic organizations, and government's decision-making processes. Based on these divergent features, he has argued that these institutional factors significantly influence the perilous relationship between the two countries. With regard to civil–military relations, Northeast Asian countries show intriguing contrasts in such a way that the military has too much autonomy in China, has too little autonomy in Japan, and controls the state in Russia.

Although the regime types converge on democracy, the security tension concerning territorial disputes might not be likely to diminish. Chung argued that, due to the developing pluralism, it will be more difficult to make and conduct foreign policy in China in the future, especially with regard to sensitive issues like territorial disputes. He contrasted the recurrent bargaining failures over Diaoyu/Senkaku with successful bargaining with Russia over the Zhenbao/Damansky border area, finding an explanation for the dispute settlement between China and Russia in the possible disconnection between governments and their domestic nationalist groups.

After the Soviet government expressed willingness to yield the disputed islands along the Ussuri River to China, the border negotiations proceeded rather smoothly and achieved results within four years because the central government in the Soviet period exercised its ruling power effectively whereas the sub-state nationalist groups such as local governments or nationalist NGOs were not yet accustomed to influencing foreign policies. In the case of the Diaoyu/Senkaku dispute, Deng Xiaoping could shelve the territorial claim when China established diplomatic relations with Japan in 1972. As the political system is becoming more pluralistic today it is difficult for the Chinese government to suppress the growing voices on sovereignty issues in society.

Chung explained Chinese behavior toward its territorial disputes based on Robert Putnam's two-level games framework. According to the two-level games theory, foreign policy makers involved in international bargaining have to negotiate not only with their foreign negotiating counterparts (level 1), but also with domestic constituents (level 2) who can block the deal at home. He explained that the territorial dispute between China and Russia was successfully settled because the negotiation was a one-level game taking place at the international level. In contrast, the dispute between China and Japan has begun to take on the aspect of a two-level game. In this case, the size of the win-sets in the international negotiation has been reduced by domestic-level interests shaping state leaders' foreign policy choices with respect to territorial disputes.

Dr. Bush agreed with Chung's view, observing that under pressure from the

public, the Chinese leadership has increasingly reacted to the Diaoyu/Senkaku dispute in a vigorous fashion. Thus, democratization in China would play a counterproductive role in preventing the escalation of any clash from the current island dispute.

These findings from the Northeast Asian cases study challenge the theory of democratic peace. According to this theory, political leaders in democracies are more responsive to public opinion than their authoritarian counterparts, especially on sensitive issues like territorial sovereignty, which triggers nationalistic groups to politically mobilize people negatively affected by any compromise.

Economic Interdependence of Conflicting Parties

In addition to the democratic peace theory, the theory of economic interdependence does not account for the Northeast Asian puzzle of why territorial conflicts have worsened as cooperative economic efforts have increased over the last decades. The increasing trade and investment in the region and the collective efforts of economic integration seeking a trilateral FTA today have not helped reduce the security tension. This disproves the liberal argument that economic interactions should bring peace to international relations because no country is willing to carry out a war with its economically important partners.

Nevertheless, the deepening economic interdependence among the Northeast Asian states is likely to have some positive effect of limiting the damage of their broader relationship. It is expected that the risk of a territorial dispute escalating into a military conflict will remain relatively small because increasing economic interdependence will induce not only political leaders, but also domestic groups to prefer cooperation to confrontation.

Nationalistic Sentiment

The main reason why both the theory of democratic peace and the theory of economic interdependence can hardly be applied to the territorial dispute in Northeast Asia lies in the prevailing public nationalism. The territorial conflicts in the region were created by the occupation and return of Japan. In China and Korea, anti-Japanese nationalism strongly influences policy outcomes. People in these countries have particularly negative historical memories due to tragic experiences in the past century. In the long term historically, a Sino-centric World Order locating China in the center and Korea in the semi-periphery has been established in Northeast Asia.

The Chinese and Korean people feel a deep sense of national humiliation because they were defeated by the peripheral Japan and their weakness was exploited.

Interestingly, the defeated nationalism also plays a role in the Japanese territorial claim. Japan persistently demanded the return of four of the Kuril Islands occupied by the Soviet Union in the aftermath of its defeat in the Asia-Pacific War. They wrapped the territorial issue in national identity so that the four islands came to be known in Japan as the Northern Territories from 1960 onwards. Bukh explored the formation process of the idea of the Northern Territories and sought to contribute to constructivist study devoted to the role of the ideational factor in foreign policy.

The symbolic meaning attached to the islands was generated by the fusion of different interests of various domestic actors. The Hokkaido Prefecture advocated the return of all the Kuril Islands whereas the conservative Liberal Democratic Party (LDP) government supported the return of the four islands in the struggle with the Socialist opposition party. The local NGOs were interested in improving their economic conditions and, thus, were occasionally engaged in the territorial claim.

After the idea of the Northern Territories was entrenched in the domestic discourse, it became a national mission. Consequently, the stance of the Japanese government in the territorial dispute with Russia became consistently non-compromising. Therefore, Japan's refusal to accept a compromising solution to the dispute cannot be explained by material interests, but rather by the ideational value.

The history of Europe is a history of territorial war. After this long experience of war, Europe overcame the nationalistic sentiments and today enjoys peace and prosperity by removing borders. Northeast Asia needs to share such values as transnational cooperation. Generally, no country is willing to make the slightest concessions in territorial issues. Thus, the revision of borders cannot be a solution to territorial disputes. In Northeast Asia, we first need to respect the principle of territorial integrity. The European experience shows that ending territorial disputes helps move on to regional integration.