PUBLISHER: Rhonda Herman
McFarland & Company, Inc., Publishers

STAFF: Adam Phillips (Business Manager); Layla Milholen (Editorial); Phyllis Efford (Production)

Journal of Territorial and Maritime Studies is edited by YINKS and published twice a year—Winter/Spring and Summer/Fall—by McFarland & Company, Inc., Publishers, Box 611, Jefferson, North Carolina 28640 U.S.A., 336-246-4460. ISSN 2288-6834. Rhonda Herman, president. Robert Franklin, founder and editor-in-chief. Steve Wilson, vice president and editorial director. Karl-Heinz Roseman, vice president, sales and marketing. Lisa Camp, executive editor. Kathi Price, finance officer. Kim Hadley, general manager.

Annual subscription rates are $125 for institutions and $50 for individuals. Subscribers outside the United States add $20 for additional postage. Subscription inquiries and back issue requests to McFarland by mail at Box 611, Jefferson NC 28640, by phone at 800-253-2187, by fax at 336-246-5018, or online at www.journalofterritorialandmaritimestudies.net.

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For additional information, visit www.journalofterritorialandmaritimestudies.net.

Indexed and abstracted in Current Geographical Publications, Searchworks, the Digital Library of Korean Studies, OCLC WorldCat, SUNCAT and Researchgate.

Published by McFarland & Company, Inc., Publishers, December 30, 2016

Journal of Territorial and Maritime Studies

McFarland
ISSN 2288-6834 (Print)

연세대학교 통일연구원
Yonsei Institute for North Korean Studies

동북아역사재단
NORTHEAST ASIAN HISTORY FOUNDATION

Vol. 4, No. 1 WINTER/SPRING 2017

Journal of Territorial and Maritime Studies

Volume 4, No. 1
WINTER/SPRING 2017

Contents

Managing Editor's Comments

Dear *JTMS* Readers,

It is difficult to believe that a year has passed and another issue of *JTMS* is in the books. The learning curve coming to a new journal is always steep but I think we have managed to get over most of the major hurdles. As most of you know, we have a new website, Twitter feed, Facebook page, and are slowly adding some new names to the editorial board. In addition, we are working on creating content for our blog as part of the website and are also looking forward to contributions from our readers on that front as well.

Regarding this issue, it is my pleasure to bring you some great research on a variety of topics including a special section from the recent 22nd International Seminar on Sea Names in Jeju Island, South Korea, that includes several interesting offerings.

First, Géraldine Giraudeau brings us an interesting discussion of the legality of shark control policy through the case of the French island of La Réunion. Shark attacks on this island have led to concerns over how to deal with the problem and local policy initiatives that face the difficulty of protecting both people and sharks. The research demonstrates that the legal framework aimed to protect sharks has been substantially developed, but is still incomplete, fragmented, and suffers a low enforcement rate. Therefore, this study reminds us that even if it is legitimate to react to situations of danger, as in the "shark crisis" of La Réunion, public authorities must take into account the international, regional and national laws regarding the environment.

Next, Xuechan Ma offers an interesting perspective on the concept "historic title" under two different spatial frameworks of land and sea. She shows that "historic title" has separate and independent development paths under the frameworks of land and sea, which indeed mirrors the historical development of these two corresponding spatial orders. Furthermore, she shows that the norm of "*effectivité*" over land territory and "historic title" over maritime territory share the same legal structure but "historic title" over land territory has the distinct problem of lack of applicability in practice. Through this discussion Ma brings new perspective on territorial disputes.

Michelle Rubido Palumbarit makes an interesting assertion that even historical and political enemies can overcome their sense of territoriality. She argues that even states that are hostile toward each other due to historical rivalries and differing political ideologies, like those in the Mekong Basin region, can deal with their territoriality

by cooperating with each other in managing a shared resource, so long as economic gains can be obtained and that there is a presence of a water regime. Through her discussion of the role of the Mekong regime as an arbiter, data collector and disseminator, fundraiser, project manager and coordinator, Palumbarit shows that a water regime can be useful in mitigating, if not entirely resolving, conflicts between riparian states.

The content of the special section deals with the naming of islands and places and other toponymy-related issues. The specifics of the conference and the articles selected for the special section are dealt with in Nash's review of the 22nd International Seminar on Sea Names. For the sake of not stealing the thunder of his review, I shall leave my introduction of these articles brief. He introduces and discusses both Steven M. Radil's article on the many issues of place naming in Cyprus from a theoretical perspective and Peder Gammeltoft's offering on the Northern European dispute over how to spell Skagerrak properly. Nash's own article regarding the toponymies of Pitcairn Island—both onshore and offshore—is also included in this section.

To conclude, I would like to thank all of our readers for your continued support and wish you a safe and happy start to the New Year. We look forward to bringing you even more great research and the ongoing improvement of *JTMS*. Your readership is sincerely appreciated.

Best Wishes for 2017,
Lonnie Edge
Co-Managing Editor

Sharks Need Protection and Surfers Want Security: The Recent Shark Control Program of *La Réunion* in the Context of the International Legal Framework

Géraldine Giraudeau

Structured Abstract

Article Type: Research Paper

Purpose—There are few studies about the protection of sharks and international law, and new measures have recently been enacted. While efforts have been made to change the negative image of the species in public opinion, it is a delicate matter to treat the legal framework aimed to protect sharks and the response to shark attacks simultaneously. However, recent Shark Control Programs, as in the French Island of La Réunion, raise new legal issues regarding their conformity to international law.

Design, Methodology, Approach—This study was undertaken by listing and organizing international, regional and national legal frameworks aimed to protect the elasmobranchs species. It was then possible to draw a conclusion about applicable measures and to compare them to the new programs developed to face the "shark risk" in La Réunion. The comparison was also made to other countries with such programs.

Findings—The research demonstrates that the legal framework aimed to protect sharks has been substantially developed, but it is still very incomplete, fragmented, and suffers a low enforcement rate. Even if the Shark Control Program of La Réunion

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 5–30 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

concerns unprotected species, the tiger shark and bull shark are listed in the IUCN red list as "near threatened." The measures taken, such as the authorization of mass capture and the installation of nets, could have a negative impact on these protected species, and on the global environmental balance. To conform with international law, the effects of shark nets should be evaluated by scientific and transparent studies.

Practical Implications—This study highlights that even if it is legitimate to react to situations of danger, such as in the "shark crisis" in La Réunion, public authorities must take into account the international, regional and national laws regarding the environment. It also demonstrates that the rise of shark attacks can be at least partly explained by pollution, climate change and overfishing. Measures for protection of the environment then constitute an efficient long-term solution.

Originality, Value—These findings can be of interest for a comparative study of shark control programs, and are new in their approach from the perspective of international environmental law.

Keywords: environment, law of the sea, protection of sharks, shark control program, sharks

"The ocean is a mighty harmonist"—William Wordsworth, "On the Power of Sound," st. 12 (1828)

Introduction

Sharks were put under the spotlight during the last several years, but for different reasons. On one hand, the international community has started to realize the importance of appropriate protection for this increasingly threatened group of fishes. Scientists and academics have been calling for efficient measures for a long time, and the existing norms are far from being sufficient. However, substantial developments have occurred, as the result of the Second Meeting of the Signatories to The Memorandum of Understanding on the Conservation of Migratory Sharks (Sharks MOU), held in February 2016, which led to the addition of 22 species of sharks and rays to the list of the species protected by the text. On the other hand, media all over the word has covered several shark attacks in the last few years. One of them was spectacular, occurring during a famous surf competition in South Africa, and watched live by thousands of amazed people. Fortunately, the surfer remained unharmed.[1] Other attacks were dramatic, and the "shark crisis" that started a few years ago on the small French island of "La Réunion" in the Indian Ocean is a grim demonstration of that. Between 2011 and 2015, 20 attacks were reported, including seven fatal ones. The tragic situation—some of the victims were teenagers—required the intervention of public authorities and the prohibition of aquatic activities in all the open waters of the island. Sharks first represent a threatened group of animals before being a source of risk, and for that reason it is difficult to address both considerations. Especially when associations have worked for years to fight against the negative image

of the shark in public opinion. The risk that is present during the meeting between human and shark is insignificant according to statistics. The Sea Shepherd Conservation Society recalls, for instance, that more people are killed each year by falling vending machines than by shark attacks—about ten a year[2]—when at least 100 million sharks are killed annually for their fins.[3] However, the need to protect the population from shark attacks was legally raised in La Réunion, and it opened new questions as to the conformity of the measures adopted by international law. The purpose of this study is to show why sharks need protection, to present which rules of international law participate in protecting sharks, and to consider the national measures taken against the "shark risk," as in the French territory of La Réunion, regarding their conformity with these rules.

Why Sharks Need Protection

In scientific and legal studies, the word "sharks" is frequently used out of ease to include all of the elasmobranchs, a group of species encompassing sharks, rays, skates, and chimeras.[4] It will also be used in this way in this article. They are also known as cartilaginous fishes, as their skeletons are made of cartilage rather that bone.[5] The group is particularly diverse, and one of the oldest in the world.[6] They can be found in the majority of marine ecosystems and several freshwaters river systems.[7] Nearly 1,200 species of elasmobranchs are globally recognized,[8] but new species are discovered nonstop by researchers.

Three main considerations explain the fundamental need to protect sharks in the world. First, sharks are particularly vulnerable. They grow slowly, have a late age of sexual maturity, a low fecundity and long gestation periods.[9] Depending on the type of shark, their reproduction can be oviparous (depositing eggs on the floor), ovoviviparous (live birth with eggs developing in a shark's body), or viviparous (live birth), with fecundity being lower for the viviparous species.[10] Regarding the period of reproduction, some species need more than one year to engage in a new cycle.[11] They also produce few offspring.[12]

Second, sharks are suffering from overexploitation. Institutional publications point out how alarming the situation has become. In 2014, the IUCN Shark Specialist Group (SSG) published a study demonstrating that a quarter of sharks and rays are threatened with extinction.[13] This analysis has been confirmed by several sources.[14] In 1,041 species reported, 249 are classified as threatened (24 percent); and among the species with sufficient data, 14 species of sharks and 11 species of rays are classified as critically endangered.[15] According to the study, rays are particularly threatened, and, generally, the highest risk for extinction are large-bodied species that live in shallow coastal waters and/or fresh waters.[16] One of the facts underlined by IUCN is that at least 28 populations of sharks and rays have already disappeared locally or regionally.[17]

Overfishing is the main threat to the species, along with bycatch, and intentional killing due to the perceived risk sharks pose to people.[18] They also suffer habitat loss

and/or habitat degradation.[19] The market for fins, used in shark fin soup, which is particularly appreciated in China, has been denounced as a reason for the depletion of sharks and rays for a long time. Other products are made with elasmobranchs, such as main dishes comprised of shark meat or a Chinese tonic made from manta and devil ray gills,[20] while some pharmaceuticals are made from deep sea shark livers.[21] These products turn sharks and rays into valuable targets. It is estimated that 63 to 273 million sharks are killed per year for these commercial reasons.[22] Although finning is banned in a large number of states, law enforcement is very low. Among the zones where the situation is the most dramatic, we find the most violations in the Gulf of Thailand, the Red Sea, and the Mediterranean Sea.[23] Climate change and global warming also have an impact on shark species, as demonstrated in several scientific studies. A group of researchers from an Australian University published an article in which they assert that "the hunting ability and growth of sharks will be dramatically impacted by increased CO2 levels and warmer oceans."[24]

Finally, sharks are highly important, first of all for the sake of biodiversity, but also for the economic interests sharks represent. In ecological terms, "eliminating the largest animals in any ecosystem can have complex, sometimes counter-intuitive effects," and "may result in unpredictable ecosystem cascades and a damaged environment."[25] As predators, they exert control on smaller organisms, can prevent changes such as algal overgrowth of coral reefs and declination in food fisheries, and the largest predatory sharks hold the bulk of some nutrients which would be otherwise transferred to land.[26] The economic value of sharks is considerable, and is a strong argument for the governments in providing substantial efforts for their conservation. Tourism centered on sharks, such as shark watching, represents 314 million dollars in economic benefit per year and could reach 780 million dollars in 20 years if sharks were efficiently protected.[27] The Convention on Conservation of Migratory Species of Wild Animals (CMS) gives a measure of the wide range of interests involved when it mentions "the ever-growing value of wild animals from environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic points of view."[28]

The Legal Framework Protecting Sharks

Measures protecting sharks exist, but they are ensured by different conventions and institutions; some of them are binding, while others are not, and they all suffer a low level of enforcement. Hence, the legal framework protecting sharks is complex and fragmented. Efforts are now being made in terms of efficiency of measures, raising awareness of governments and professionals, and coherent articulation between regulations and actors.

The International Conventions

UNCLOS. The United Nations Convention on the Law of the Sea (UNCLOS) provides general dispositions on the preservation of the marine biodiversity. States must protect marine living resources near their coasts, and also in their Exclusive Economic Zone.[29] It also especially promotes national and international cooperation for the protection of the highly migratory species, and sharks are considered as such in Annex I of the Convention. Article 64.1 UNCLOS provides:

> The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex 1 shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

According to the Convention, States also have a duty of cooperation to manage and conserve living resources in the areas of the high seas.[30]

In 1995 the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) was also signed. It created obligations for States to cooperate within Regional Fisheries Management Organizations (RFMOs) to do so, in the application of Article 64 of the Convention already quoted.[31]

Several other international treaties complete these general obligations. Three international binding agreements with universal scope are of particular importance: the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Convention on Migratory Species (CMS), and the Convention on Biological Diversity (CBD).

CITES. CITES is an international governmental agreement, which entered into force in 1975, and whose aim is "to ensure that international trade in specimens of wild animals and plants does not threaten their survival."[32] There are currently 182 state parties to the agreement, which meet every two or three years to review implementation of the agreement. For the species identified, international trade requires special control. That means that all import, export, re-export and introduction from the sea requires a license provided by the entities designated by each State.[33] Three appendices list the species according to the degree of protection they need. Parties to CITES have been concerned with shark protection since some species were officially identified as threatened in 2000.[34] At the time of this writing, all sawfish species are listed in Appendix I (species threatened with extinction, trade can only be permitted in exceptional circumstances), and all manta ray species are listed in Appendix II (species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival). The listing

of manta rays in Appendix II was decided during the 16th Conference of the Parties in 2013. This Conference of 2013 also decided to add five shark species in Appendix II[35] and conserved the already classified ones.[36] None are mentioned in Appendix III (species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade).[37] Biological and trade criteria determine classification in Appendix I or II,[38] while Appendix III can be unilaterally amended by a State.[39]

CMS. The application of the Convention on the Conservation of Migratory Species (CMS) is also based on listings and concerns "the species that migrate across or outside national jurisdictional boundaries."[40] Endangered species are listed in Appendix I, which implies that parties that are range states "to conserve and, where feasible and appropriate, restore habitats of those species…,"[41] "to prevent, remove, compensate to minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species,"[42] and "to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species…."[43] These dispositions, as we can observe, give a certain margin for interpretation by the parties concerned. Appendix II is related to species with unfavorable conservation which require international agreements.[44] It is then possible for some species to be listed both in Appendix I and II.[45] Several species of sharks are mentioned in these two lists: for example white sharks and basking sharks are listed in Appendix I and II, while whale sharks, and dogfish sharks are listed in Appendix II only. A special agreement was signed in 2010—the "Memorandum of Understanding on the Conservation of Migratory Sharks" (CMS Sharks MOU) covers "any of the migratory species, subspecies or populations in the class Chondrichthyes included in Annex I of the MOU."[46] In 2016, it concerns 29 species of sharks. It is a non-binding instrument, but very important for its material scope. Any state or organization exercising jurisdiction over any part of the range of migratory sharks can sign it. So can any state whose flag vessels engage in taking migratory sharks outside national jurisdictional limits.[47] There are currently 39 member states and two special entities members of the MOU.[48] Some of them, like the United States, are not parties to the CMS Convention. Others, such as France, are parties to the CMS but not to the Memorandum. MOU members first met in September 2012 and decided on a plan of action. The second meeting took place in San Jose, Costa Rica, where new measures were approved. The most important decision was the addition of 22 species of sharks and rays to Annex 1 of the MOU.[49] Parties also voted in favor of an annual voluntary contribution, to make the implementation of the MOU effective,[50] new rules of procedure, and some measures to properly organize the actions taken.[51] The CMS secretariat became the permanent secretariat of the Sharks MOU, the Parties decided on a triennium program of work (2016–2018), focus was also put on the cooperation with Regional Seas Conventions and Actions Plans, Regional Fisheries Management Organizations, and fisheries-related organizations.[52] A list of experts specialized in the conservation of sharks was appointed to support the work under the MOU.[53]

CBD. The CBD was agreed upon in 1992 under the auspices of United Nations

and now includes 196 Parties.[54] The Cartagena Protocol on Biosafety (2000) and the Nagoya Protocol on Access and Benefit-Sharing (2014) complete the text.[55] It promotes the use of resources in terms of the environment[56]; it recommends, for instance, the implementation of protected areas (as Marine Protected Areas—MPA).[57] Cooperation is organized between CBD programs and the United Nations Strategic Plan for Biodiversity (2011–2020). Various decisions and recommendations concern the elasmobranchs subclass. For instance, the presence of sharks is an important and frequent factor taken into account when considering the ecological criteria justifying the creation of an MPA.[58]

The Institutional Support and the Plans of Action

As already mentioned, the United Nations is a key organization in providing general conservation measures that concern sharks, through the UNCLOS and the CBD.[59]

Incuding conservation of sharks in the laws regarding fisheries is fundamental, and the UN Food and Agriculture Organization (FAO) has such a cornerstone mission. Under the 1995 FAO Code of Conduct for Responsible Fisheries—a non-binding agreement that lists principles and international standards of behavior, of which one of the purposes is to facilitate the formulation of other legal instruments for conservation and management of fisheries—an International Plan of Action for the Conservation and Management of Sharks (IPOA Sharks) was decided in 1999.[60] It applies to all species of sharks, skates, rays and chimaeras, and also to all types of catches (directed, bycatch, commercial, recreational or others).[61] It has a very large scope and concerns waters under its jurisdiction, but also international waters when flag vessels catch sharks. It encourages regulation and cooperation in all forms, as the implementation of National Plans of Action for the Conservation and Management of Sharks (NPOAS Sharks).[62] It has come a long way since 1999, and the study published in 2012 underlines the progress of the IPOA implementation regarding the "26 top shark-fishing countries."[63] A lot of policy efforts were institutionally developed, and regular evaluation and formulation of recommendations allowed substantial progress.[64]

Also relevant is the very active concern of the International Union for Conservation of Nature (IUCN) regarding the protection of sharks. The well-known organization specialized in the conservation of biodiversity founded a special group named the Shark Specialist Group (SSG). This was motivated by the mention of several shark species in the "UICN red list." The SSG publishes scientific studies, as the one previously quoted that contains alarming information about the current situation of elasmobranchs.[65] The technical and legal support provided constitutes a real motor in the promotion of conservation and management of sharks, as the IUCN reports the benefit of wide recognition.

The IUCN is also a cooperation effort between international organizations and NGOs, whose role is essential. This general overview wouldn't be complete without mentioning the incredible efforts civil society has made to try to promote the protection of sharks, to enforce international conservation law, and to contribute to

giving them a better image with the public. They are too numerous to all be listed, but some of them certainly should be include Sea Shepherd,[66] Requins en peril,[67] and ASPAS.[68]

The Regional Frameworks

Numerous regional plans of action for the conservation and management of sharks (RPOA-Sharks) have been created. The FAO website mentions, as an example, the UNEP/IUCN Action Plan for the Conservation of Chondrichthyes in the Mediterranean Sea (2003), the CPPS Regional Plan of Action for the Conservation of Sharks, Rays and Chimeras in the South East Pacific (2010), the shark finning ban by the Central American Integration System (SICA, 2012), the Central American Fisheries and Aquaculture Organization (OSPESCA) Regional Plan of Action on Shark Conservation (Plan de Acción Regional para la Ordenación Conservación de los Tiburones en Centroamérica—PAR-TIBURON, 2011), the Pacific Island RPOA (2009, a collaborative effort by the Pacific Island Forum Fisheries Agency, Secretariat of the Pacific Regional Environmental Programme, Secretariat of the Pacific Community and WCPFC), and the CSRP and International Foundation for the Banc d' Arguin Sub-Regional Plan of Action on the Conservation and Sustainable Management of Shark Populations in West Africa.[69]

Shark fisheries represent a great volume of the catch in Europe. According to the European Union, in the 2000s, the EU fleet took around 100,000 metric tonnes of sharks and related species each year, and shark meat entered the EU market.[70] Sharks are caught in the North Sea and in the North East Atlantic, near Norway and the Faroe Islands.[71] The EU has its own plan of action, voted in by the commission in February 2009. It is based on the 1999 FAO IPOA Sharks and offers a framework for catch limits, as well as for the collection of data regarding shark populations, through different legislative and strategic measures.[72] It also aims to strengthen control of the EU ban on shark finning as decided in the Council Regulation of 2003.[73] The plan requires the cooperation with other involved entities such as RFMOs.[74] The EU plan of action applies to fisheries located in Community waters, to waters covered by agreement or partnership between the Community and third countries, to international waters, and to waters covered by a Regional Fishery Management Organization (RFMO).[75]

The measures fit into the international legal framework already mentioned, but some European conventions are applicable, such as the Bern Convention and the Barcelona Convention. The Bern Convention on the Conservation of European Wildlife and Natural Habitats is a legally binding agreement signed in 1979 under the auspices of the Council of Europe and entered into force into 1982, so it has a wider geographical scope that the EU plan of action. It even extends to some States of Africa.[76] Its aim is to protect nature, to conserve wild flora and fauna species and their habitats. Fifty countries, including four African States (Burkina Faso, Morocco, Senegal and Tunisia) and the European Union, have signed the Convention.[77] Their obligations are to promote conservation policies, to consider the environmental

impact of planning and development, to promote education and information in that field, to share practice and expertise on biodiversity management, to harmonize legislation on biodiversity protection, and to coordinate environmental research.[78] Several elasmobranchs species, such as basking sharks, are listed in Annex II of "strictly protected fauna species."[79] Others, like blue sharks, are listed in Annex III of "protected fauna species."[80] All forms of deliberate capture and keeping and deliberate killing of Annex II species are prohibited, including "the deliberate damage to or destruction of breeding or resting sites, the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, in-so-far-as disturbance would be significant in relation to the objectives of this Convention, the deliberate destruction or taking of eggs from the wild or keeping these eggs even if empty, the possession of and internal trade in these animals, alive or dead, including stuffed animals…."[81] Regarding species in Annex III, the "Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species, and in particular, the means specified in Appendix IV."[82] Special dispositions for migratory species are set by for Article 10 of the Convention.

The Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (originally named the Barcelona Convention for the Protection Mediterranean Sea against pollution) has 22 members. Under the 1995 "Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean," several shark species are listed in Annex II (species endangered or threatened)[83] and Annex III (species whose exploitation is regulated).[84]

Other European texts of interest that should be mentioned include the OSPAR Convention for the Protection of the Marine Environment of the Northeast Atlantic,[85] the Helcom Convention on the Protection of the Marine Environment of the Baltic Sea,[86] and the Black Sea Convention on the Protection of the Black Sea.[87]

Another essential way of protecting sharks is the body of quotas and measures decided through the Regional Fisheries Management Organizations (RFMOs). These are international organizations created by states that have fishing interests in a special maritime area; some have a mere advisory mission, but most of them can set limits to the catches, as well as controls, in order to guarantee the conservation of the fisheries stocks. Several RFMOs are involved with shark protection issues: the FAO lists the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the General Fisheries Commission for the Mediterranean (GFCM), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), the Northwest Atlantic Fisheries Organization (NAFO), the North East Atlantic Fisheries Commission (NEAFC), the Southeast Atlantic Fisheries Organization (SEAFO), and the Western and Central Pacific Fisheries Commission (WCPFC).[88] The coordination of shark protection measures through RFMOs is of great importance, because their scope of action is wide, and most of their decisions compulsory.

The National Frameworks

National plans of action (NPOAs), including national legislation, obviously represent an important level of enforcement of measures, even if they cannot be sufficient by themselves. They normally fit into regional and international programs and must be reported to the involved institutions. The previously quoted report published under FAO offers an interesting review of these national tools.[89] It is not within our scope to list them, and this would be impossible in the space available here, but some useful representative examples can be mentioned.

A member of several RFMOs (as the International Commission for the Conservation of Atlantic Tuna or the Inter-American Tropical Tuna Commission), the United States adopted a National Plan of Action and special regulations to protect sharks in 2001. The 1996 Magnuson-Stevens Fishery Conservation and Management Act (amended in 2006) is the main framework of shark management and conservation. Shark finning is prohibited[90] and measures of control and collection of data are specified in the Shark Conservation Act, the High Seas Driftnet Fishing Moratorium Act, the Endangered Species Act, and the National Marine Fisheries Service By-Catch Plan.[91] The National Marine Fisheries Service Agency is in charge of the institutional aspects and fixing quotas.[92]

Such types of initiatives and management can be found worldwide. For an Asian example, the 2011 National Plan of Action of the Republic of Korea is of interest. The country reports an average of 12,242 metric tonnes of sharks harvested every year (31,325 in the United States for a comparison) in the last decade. The plan refers to international legislation, and includes a commitment for biennial review.[93] Fisheries management is endorsed by the Ministry for Food, Agriculture, Forestry and Fisheries, based on the 2009 Fisheries Act and 2009 Fisheries Resources Management Act.[94] Finning is not prohibited in the EEZ, but endangered species are protected under CITES.[95]

In Europe, the volume of shark catches is very high, even if they have been reduced due to the effect of the efforts in their regulation. According to FAO, in 2010, members of the European Union together, declared almost 130,000 tonnes harvested,[96] Spain being responsible for half of this volume, followed by France.[97] The data is important to understand the situation regarding La Réunion.[98] EU Member States are subject to the European legislation previously mentioned.[99]

Critical Approach of the Legal Framework

Three main observations can be formulated to qualify the existing legal framework protecting sharks.

First, the existing regulation is far from sufficient. Such a statement can appear to be an exaggeration after going over the extensive list of international conventions, plans, regional and national actions. It is true that the international community has made some strong progress in the last decade, especially as the point of departure

was that regulation was almost non-existent. The vulnerability of sharks became public, and a wide range of measures was created. Interstate cooperation was promoted by the enormous economic actors at stake. However, many of these measures are not directly binding,[100] and, above all, have to be analyzed in the context of the alarming disappearance of the elasmobranchs. The fact, as previously mentioned, is that one-quarter of the 1,200 known species of this group of animals is in danger,[101] and a massive mobilization for their protection is required. The scope of the existing legal framework is much narrower. It covers only a small portion of these endangered species. As an example, the CMS Sharks MOU concerns only 29 species, is not binding and includes "only" 39 Member States.[102] Among the binding agreements mentioned earlier in this article, many are applied "late," in the sense that they concern already extinct species.

Second, applicable law for the protection of sharks is especially fragmented. The multiplicity of sources is not only due to the different international, regional and national levels but also to different aspects of environmental law involved. The useful legal agreements deal with the law of the sea, fisheries management, protection of fauna, and migratory species. Some shark species can migrate thousands of miles,[103] others less, but the protection, to be efficient, always needs to be enforced in national waters, in the EEZs, and on the high seas. Different institutions (United Nations, FAO, IUCN, Regional Institutions, RFMOs, Secretariats of the different conventions, national agencies, etc.) have a key role in the collection of data and the efficiency of the regulation. This requires huge efforts in terms of coordination.[104]

Finally, the level of enforcement of this legal framework is low. Issues regarding the enforcement of environmental law are not new, but they are particularly pronounced in this sphere. The fragmentation of regulations is one explanation, but not the only one. Some convention dispositions are too general and some dispositions are only recommendations. They require the governments' efforts and collaboration. For instance, in 2009, the Oceana report underlined that that very few parties to the Barcelona Convention had implemented national measures to protect the sharks listed in the Barcelona Protocol or the Action Plan.[105] Studies also demonstrate that "Fisheries compliance is particularly difficult."[106] It requires flag-state enforcement, and measures of control in the high seas.[107] Efficient enforcement of the protection of sharks is also dependent on the existence of tools to recognize the protected species. New technological instruments should offer better short-term solutions, as the iSharkFin, which is "an innovative new system that uses machine learning techniques to identify shark species from shark fin shapes."[108] It works by uploading a photo of the shark fin to the internet and should soon be developed as a mobile application.

There is no doubt that the strong need for legislative and institutional cooperation has been recognized. Official initiatives and regulation increasingly mention the existence of a global framework. So do the resolutions of the General Assembly of the United Nations[109] or the European regulations.[110] Some inter-institutional workshops are also being organized. The FAO/CITES/CMS workshops are a good example of these kinds of projects.[111] The whole mechanism would probably gain in

efficiency if collaboration could be managed in a unified structure. Some specialists pleaded for the creation of a special commission (International Commission for the Conservation and Management of Sharks) such as the one that exists concerning whales.[112] There is no such equivalent at the moment, but this option could permit a better level of enforcement, even if any improvement in that sense first relies on the state's will.

In this complex legal landscape, RFMOs are often appointed as important tools. They present the advantage, for most of them, of providing for binding and concrete measures, and are able to have a real impact on shark populations. That's why they are mentioned in the official texts, such as in the European regulations, the resolutions of the General Assembly of the United Nations,[113] or the CITES Conference of Parties Resolution.[114] It is important to insist on the key role they have, and how their action could be improved through the strengthening of their structure, their participation in agreements, and the use and share of good practices and management tools.[115]

The Questionable Legality of the French "Shark Control Program" in La Réunion

Sharks have been suffering from a negative image for a very long time. They appear to the public as dangerous, and this reputation as predators doesn't help them in the fight for their protection. NGOs specialized in the defense of sharks have done very important work in order to recall the truth: sharks are in danger because of human activity; humans are not in danger because of sharks. Elasmobranches' disappearance is a massive phenomenon, while attacks on humans by sharks can be considered exceptional cases. For that reason, studies dedicated to environmental considerations don't mention any risk induced by the presence of sharks, nor the measures governments are taking to try to keep sharks away from the coasts. However, several countries, such as Australia, South Africa, or France (in La Réunion), have adopted "shark control programs." These measures must be connected with environmental considerations, first, because climate change and pollution have an influence on shark behavior and can, at least partly, explain the rise of attacks in some areas. Second, because states must consider their legal obligations when they take such measures.

The Impact of Environment on Shark Behavior

According to different sources, attacks by sharks have slightly risen in the world in the last few years.[116] From a few attacks in the beginning of the 80s, we have reached one hundred annual attacks since 2000, 10 of them being fatal.[117] Three main international files offer some data regarding shark attacks: the Shark Attack Survivors,[118] the International Shark Attack File (ISAF),[119] and the Global Shark Attack File (GSAF)[120]—none of them being official or exhaustive. However, these numbers

must be read while keeping in mind that the attacks are probably much more easily reported nowadays, that the world population has significantly risen since the 80s (more than threefold), and that the number of nautical sports and swimmers has multiplied, too. At the same time, the population of sharks has considerably diminished.

Among the worldwide panorama, La Réunion appears as a "hotspot" for shark attacks. Since 1980, this small territory in the Indian Ocean is overrepresented in terms of the numbers of attacks. The frequency of attacks and their rate of mortality once compared with the population and area sets the island ahead of places as Florida, Hawaii or Australia.[121] In recent years, most of the attacks occurred in a marine reserve, on the west side of the island, along a 40-kilometer portion of the coastline. La Réunion is a French overseas territory of 2,512 square meters, located in the Indian Ocean, near Madagascar, and has about 840,000 inhabitants who live mostly on the west coast of the island. Sharks have been present near the west coast for a very long time, but a higher concentration of attacks began to be reported in the 1980s. In 1997, the French Institute for the Exploitation of the Sea (IFREMER) published a longitudinal study in which it recommended the adoption of a prevention program, including the implementation of several physical barriers, in order to avert shark attacks. Despite the study, such measures were not adopted. In 2011 there began what has come to be known as the "shark crisis" by the official institutions, with "an exceptional concentration of attacks in the west part of the island."[122] Between 2011 and 2015, there were 21 shark attacks, including seven fatal ones. The public was highly startled by the deaths of swimmers, which included teenagers. Above the human tragedy, the media coverage of the attacks had a very strong impact on the island economy, which has a substantial basis in tourism and ocean sports like surfing.[123] The magnitude of the phenomenon required the reaction of the authorities to protect the population.[124] It appeared that the sharks involved in the attacks were almost always bull sharks and perhaps tiger sharks in a few of them. To get more data, a global scientific study of the bull shark and tiger shark's behavior was undertaken by the Research Institute for Development within the program "CHARC" between 2011 and 2014 and was published in April 2015.[125]

Several explanations were advanced to try to explain this incredible rise of attacks. It is still not possible to give a singular answer, and it is true that aquatic activity has considerably increased on the island. However, many sources appoint environmental causes as an explanation. The creation of a marine reserve—officially inaugurated in 2007 to fight against environmental degradation[126]—on the west coast has frequently been denounced, as it would constitute a great reserve of food for sharks.[127] According to specialists, the reserve does not explain it all. The impact of pollution, climate change, and overfishing has been pointed out as other major causes.[128] The consequence of excessive fishing results in insufficient presence of predators of juvenile bull sharks.[129] Bull sharks are responsible for most of the nearshore attacks in the world. They have the particularity of osmoregulation; which means they can survive both in salt and fresh water. That explains why bull sharks can be found in rivers several hundreds of kilometers away from the coast.[130] They

particularly suffer from the consequences of pollution and global warming, which modifies the feeding behavior of sharks.[131] According to the ICUN red list on bull sharks, "(t)he location of nursery areas in estuarine and freshwater systems makes the species vulnerable to pollution and habitat modification."[132] The IRD report of April 2015 also reports that the west part of the island is an area of reproduction for the bull sharks, above all between March and June.[133] These considerations demonstrate that an appropriate plan of action cannot ignore protection of the environment and global ecosystem management must be a necessity.

The French Interministerial Shark Control Program

To face this atypical situation, the French government decided to create a "special plan for prevention of the shark risk,"[134] which relies on different structures and measures.

The Creation of the Plan and Its Institutional Framework

From the collaboration between government and local authorities a plan was brought forth against the shark crisis, and was officially announced in July 2013.[135] It was the result of an interministerial mission dedicated to the issue raised by the rise in shark attacks, and was signed by the Minister of Ecology, Sustainable Development and Energy, the Minister of the Overseas Territories, the Minister of Sport for Youth, Popular Education and Associative Life, and the Minister delegated to Transport, Sea, and Fisheries.[136] The objectives that had already been identified—scientific knowledge of the coastal sharks of La Réunion, reinforcement of conveying the information to the population, reinforcement of alarm operational management, and guidance of the most vulnerable aquatic activities—were conserved. The plan added four main directives: "the operational prevention through innovative technologies and study of the need for evolution in the regulation of aquatic activities," "evaluation of the surveillance stance and professionalization of the involved agents," "improvement of the knowledge of the shark population and the risk for people," and "reasoned management of the fisheries stocks connected to the Marine Reserve."[137] To enable the enforcement of the plan, a fund of one million Euros each year for the period 2015–2020 has been allocated to the collection of data, the measures of prevention and securitization, as well as the support for tourism in La Réunion.[138]

The fulfillment of such directives requires the collaboration of the State, the region, local authorities, academic and scientific communities, as well as local associations. Two local steering committees about the shark crisis had already been created before the official creation of the plan: the C4R and the C04R. The C4R (Réunion's Committee for the reduction of the shark risk) was established in 2012 by Prefectural Order to gather the main actors interested in the plan of action, and to discuss the strategic orientations and the effects of the measures taken. It is presided over by the prefect, and its members are representatives of state services, rescue services, territorial collectivities, sea users, the scientific community, associ-

ations and qualified leaders.[139] The C04R is an operational unit for the reduction of the shark risk created in September 2012, headed by the local authority of Saint Paul. The field actors meet twice a month under this structure to share technical information.[140]

Despite this important institutional structure, it appeared that more information was needed about scientific and technical issues. In April 2016, an Association for the Centre for Resources and Support on the Shark Risk was created by a constitutive general assembly.[141] In the framework of the National Plan of Action, this partnership between State, Region, the University of La Réunion, and five littoral municipalities of the west coast of the island, aims to offer a consultation and collaboration space for all the members, including tourism and surf professionals.[142]

It appears then that massive financial and administrative efforts were displayed to manage this crisis. Maybe it should not be surprising in such a society turned toward security issues. The multiplication of tools supposes efficiency, but only with good coordination between the different structures—some of them seem to have at least partly similar missions—and the various geographical scales—municipality, region, state—involved. They all tend to ensure the establishment of concrete measures.

The Measures of Reduction of the Shark Risk

Since the beginning of the shark crisis, a large range of measures were taken. Different regulatory decisions were published in order to deal with the crisis. In a first instance, when the situation became critical, water activities were prohibited, until a prefectural decision of February 2015 allowed municipal authorities to permit their restart in the ZONEX[143] (special zones of operational experimentation, where some nets were installed).[144] Six plans of action can be seen as the crux of the Shark Control Program. They are listed in accordance their spatial position from land to sea.[145] The first measure is the surveillance of bathing zones by lifeguards and rescuers. The second is the creation of some bathing areas protected by drumlines and shark nets. The third is underwater surveillance performed by divers in the water column. The fourth and fifth ones are respectively based on prevention and notification of sea users by agents present near the seaside on speed boats, and the installation of a system of listening stations in order to track the marked sharks. The last one is part of the program "Cap Requins" consisting of the preventive marking of sharks and the selective capture of the species involved in the attacks (bull sharks and tiger sharks) to limit the population of the "dangerous" sharks near the coast. It is based on drumlines and bottom longline fishing. Different scientific studies were completed to design these measures,[146] and the research is on-going, through cooperation with the University of La Réunion and scientific agencies as IFREMER.

Therefore, these measures can be divided into the ones that are non-invasive for the environment, as the non-invasive techniques of surveillance, and measures that are invasive and potentially damaging to the environment. The latter are obviously the ones generating legal issues. For that reason, their efficiency and their conformity with the law must be discussed.

The Legal Issues at Stake

The legal aspects of measures invasive for the environment concern at the same time internal, European and international frameworks. The very specific issue of liability between the different public entities according to French law will be here left out, as it is not the point of this article.[147] Globally, the question of the legality of the Plan of Action cannot receive a simple answer. A difficult balance must be reached between considerations of security for persons and the preservation of the environment. In its ordinance of 13 August 2013, the French Council of State (the supreme administrative Court), admitted the emergency of the shark crisis and the deficiency of the administrative authority in taking appropriate measures on the basis of the fundamental right to life consecrated in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedom.[148] There was no doubt that, regarding the tragic consequences of the numerous shark attacks, the protection of people was a necessity. There was an obligation to address the crisis and to inform people about it, even if it was not possible to completely eradicate it. On the other hand, considerations about the environment cannot be ignored, and legal obligations also exist regarding its protection. Furthermore, as we have explained, the negative impact on the environment can—at least partly—explain the occurrence of the attacks. The question is about the impact of the captures and the installations on the shark populations and other species. Several observations can be formulated to address this issue.

First, the national plan of action in La Réunion allows selective capture, as part of the program "Cap Requins 2," of bull sharks and tiger sharks,[149] and that was a controversial point, including in the Marine Reserve. Several associations submitted the prefectural decision of 13 August 2012 for judicial review, arguing that these measures were illegal. In the decision of 30 July 2013, the Administrative Tribunal of Saint-Denis canceled the prefectural decision on the basis that capture of bull sharks and tiger sharks could not be authorized, for reasons different than scientific ones, in the marine reserve.[150] The "Council of State" ordinance of 13 August 2013[151] mentions that the capture of sharks considered dangerous is a possibility, but specifies that, according to international studies, this could only be effective on sedentary species. As a matter of fact, this kind of measure did not demonstrate any effectiveness according to environmental associations and academic studies.[152] At the same time, it is defended as effective by associations of prevention for sea users' safety.[153] A recent decision of May 2016 of the Administrative Tribunal of Saint-Denis, Capital of La Réunion, suspended the permission of capture and the installation of new drumlines, as the Scientific Council of the Marine Reserve had not been consulted by the prefect decision despite the emergency of the environmental impact it could have.[154] Even if the program Cap Requins was then suspended, captures were ongoing, as illustrated by the capture of two tiger sharks in the Saint-Paul Bay on the 1st and 2nd of June 2016. The captures are numerous—thirteen bull sharks and twelve tiger sharks were caught between August and November 2015.[155]

Bull sharks and tiger sharks are not listed as species in danger by the binding

conventions and do not benefit from special measures. They do, however, figure on the red list of IUCN as "near threatened."[156] Their populations are declining, and the existing shark control programs regarding these species did not demonstrate significant results.[157] In the assessment of the balance between risk and protection of the environment, the principle of precaution could be usefully invoked here,[158] regarding the quantity of scientific material on the disappearance of shark populations, its consequences on the global oceanic system, and the lack of certainty about the results of such programs of capture.[159] Recall that UN recommendations push states to "apply the precautionary approach and ecosystem approaches in adopting and implementing conservation and management measures addressing, among other things, bycatch, pollution and overfishing, and protecting habitats of specific concern, taking into account existing guidelines developed by the Food and Agriculture Organization of the United Nations."[160]

Moreover, the operations of fishing and capture can lead to the catch of protected species. As an example, a great white shark was caught and killed in La Réunion in October 2015, although the species is protected under both CITES and the Bonn Conventions.[161] Officially, the techniques used ("smart drumlines" and longline fishing) are supposed to allow the selective capture of the only bull shark and tiger shark species, and the systematic release of protected species.[162] Nevertheless, such incidents tend to plead against the lawfulness of these allowances.

Second, the installation of shark nets initiated by the shark control is also very controversial. Such physical barriers were already established in other tropical areas like Hong Kong, South Africa and Australia. Their purpose is to try to separate sharks from swimmers, and to catch species identified as "dangerous." Here again, there is a question of balance between efficiency and environmental impact, but it also has to be put in perspective with the very high economic cost of the system.

The efficiency of these installations is highly disputed. The French Shark Control Program was based on comparative studies and the other "hot spots" experiences, as the South African Program. The Natal Sharks Board of South Africa considers the nets to have been very efficient.[163] However, regarding various scientific studies, it seems that the effects of the nets on bathers' security are difficult to evaluate and uncertain,[164] especially because of the damage the nets suffer due to tough climatic conditions. Even if their efficiency can be criticized, assuming that they can be frequently checked, they do constitute a barrier and offer the advantage of calming public fears. However, they cannot, in any case, be installed as a magic bullet solution, as it is impossible to net the entire coast, and they are often located before the zone where the waves break. That is why they can, in a certain measure, protect swimmers, but much less surfers and other aquatic sports practitioners. Case in point, in 2015, there was a rise of shark attacks on the north coast of Australia (13) where shark nets are installed.[165]

The impact of shark nets on other species is also difficult to evaluate but is increasingly being denounced. The 1997 IFREMER study on measures to limit shark risks underlined their high cost and the negative impact on other species.[166] A recent and interesting academic study on "the impact of the Queensland Shark Control

Program on local populations of threatened shark species" between 1962 and 2014 gives some clue.[167] Australia is one of many countries that has Shark Control Programs (SCPs). In Queensland, a series of 369 drumlines and 30 shark nets are used in different popular beaches to target "dangerous" sharks.[168] The study points out the inefficiency of the system and the damage caused to the environment,[169] even if it mentions the existence of a new, less invasive system.[170] The fact that other species of animals, including protected ones such as some turtles, are being caught in the nets raises serious issues, including their conformity with the international legal framework prohibiting such catches.[171] It seems that no tribunal had to deal with this delicate issue, but many associations regularly denounce such breaching of the environmental obligations of states. Many have started to ask their governments to remove these nets, for the tragic impact they have on marine life. A press article in Australia recently stated that "it's time to acknowledge they don't work, and instead do much harm to other marine species."[172] Some official voices have started to make themselves heard. For instance, the Australian New South Wales Primary Industries Minister declared in February 2016 that "the shark nets along the east coast of Australia cannot be rolled out elsewhere as they breach Commonwealth environmental laws."[173] Sue Higginson, from the Environmental Defender's Office, commented this declaration about "drumlines, whether they be smart or traditional, and nets in particular," and said that "the evidence suggests that they are having a significant impact on those marine species that we have legal obligations to protect."[174]

While shark nets are controversial in other parts of the world, it is surprising to observe their recent installation in La Réunion. It is important to underline that the state-of-the-art technology nets are supposed to cause less damage to the environment, as they use modern material and a mesh width that allows other marine species to swim through without being trapped.[175] It is, however, difficult to find appropriate information on the nets installed on the west coast of La Réunion, as official publications offer little data. According to the press dossier that public authorities edited in February 2016, the nets were installed by the firm Seanergy OI, and are made of a 12-millimeter polysteel meshing.[176] The local press reported that the installations at Roches Noires and Boucant Canot, which are as long as 120 Olympic swimming pools, would have cost more than 4 million Euros,[177] and they would have to soon be replaced because of the damage suffered from extreme meteorological conditions.[178] However, it is impossible to obtain reports of all species, including protected ones, caught in the nets, and then to properly evaluate the impact on the marine fauna.[179] Although the installations use recent technology, it can be induced from the studies concerning other Shark Control Programs[180] that there is a risk for other species. The catch of protected species is prohibited by legally binding agreements. France is a party to UNCLOS, CITES, CBD, CMS and some other Regional Instruments as the Barcelona Convention.[181] The island is also an Ultra-Peripherical Region according to Article 349 and 355 TFEU, where EU Regulation applies, but eventually with some adaptations.[182] The conformity with environmental law requires at least a strict and transparent evaluation of the impact of the nets installed in La Réunion into the mark of the Shark Control Program.

Conclusion

The international community is slowly becoming conscious of the alarming disappearance of the elasmobranchs species, of the terrible consequences for the ecosystem, and of the potentially disastrous economic impact for many countries. Particularly vulnerable, sharks and rays are victims of overfishing, finning, bycatch and pollution. A growing number of shark species benefit from special status under various international and regional conventions, but that protection is still not enough to address the situation. Governmental efforts need to be displayed to improve existing regulations, to coordinate them, and to improve their enforcement. In that sense, RFMOs play a key role. So do others actors, including regional organizations such as the European Union.

The phrase "shark crisis" can appear inappropriate when so many efforts have been made for years to fight against the negative image of the shark populations and we should recall that they are the ones in danger, by addressing both aspects of sharks protection and attack prevention. However, the existence of Shark Control Programs to secure swimmers and aquatic sports practitioners raises important legal issues. The slight rise of shark attacks in the world, and their concentration in some areas, such as the French island of La Réunion, can at least partly be explained by environmental aspects, degradation of shark habitats, pollution, and global warming. For that reason, management of the uneasy balance between security and protection of the environment, to offer a long-term solution, needs to be focused on environmental considerations.

The invasive environmental measures adopted into Shark Control Programs, including the different methods of "selective" capture and the installation of drumlines and nets, as a comparative overview demonstrates, cannot totally guarantee security and have a negative impact on marine life. The capture of other species, such as protected sharks or protected turtles, is a breach of international law. Even if the recent Shark Control Program of La Réunion uses drumlines and nets of the newest technology, the question of its legality regarding international and European law must be raised. Various aspects do not comply with actual environmental regulation, and some measures ignore the necessary precautionary approach. Non-invasive solutions, such as control by drones, must be prioritized, capture of sharks should be forbidden or at least strictly limited, and the environmental impact of recent drumlines and nets, especially on protected species, should be evaluated through independent and transparent processes.

Notes

1. Emanuella Ginberg and Vasco Cotovio, "Surfer Mick Fanning Escapes Shark Attack,"19 July 2016: http://edition.cnn.com/2015/07/19/world/shark-attack-wsl-mick-fanning-feat/. All the websites mentioned in this article were consulted in May 2016, unless otherwise noted.
2. Seashepherd.org, brochure 2009.
3. Boris Worm, "Global Catches, Exploitation Rates, and Rebuilding Options for Sharks," *Marine Policy* 40 (2013), p. 197. The Convention on Migratory Species website affirms that between 63 and 273 million sharks are killed each year: www.cms.int.

4. A. Herdon, "The Case for an International Commission for the Conservation and Management of Sharks (ICCMS)," *Marine Policy* 34 (2010), p. 1239. https://doi.org/10.1016/j.marpol.2010.05.001.

5. "A Quarter of Sharks and Rays Threatened with Extinction," *News Story*, 21 January 2014.

6. *Ibid.*

7. FAO, *Report of the FAO/CITES Workshop to Review the Application and Effectiveness of International Regulatory Measures for the Conservation and Sustainable Use of Elasmobranchs*. Genazzano, Italy, 19–23 July 2010.

8. FAO Fisheries and Aquaculture Report. No. 984. Rome, FAO. 2012, p. 1.

9. *Ibid.*

10. C.R. Funk, "Sharks on the Precipice of Extinction: A Proposal for National and International Management of Sharks," *Willamette Journal of International Law and Dispute Resolution* 20 (2012), p. 106.

11. *Ibid.*

12. CMS, Memorandum of Understanding on the Conservation of Migratory Sharks (Sharks MOU), Fact sheet, www.cms.int/sharks.

13. The study is the result of the collaboration of 302 experts from 64 countries. It includes the analysis of the conservation status of 1,041 shark, ray and closely-related chimaera species. Nicholas K. Dulvy et al. "Extinction Risk and Conservation of the World's Sharks and Rays," *Elife* 3 (2014): e00590. https://doi.org/10.7554/elife.00590. The main results of the study can be read in the following document: IUCN Red List Assessment Results, *Extinction Risk & Conservation of the World's Sharks and Rays, Analysis from the IUCN Shark Specialist Group*, January 2014, available on the IUCN website.

14. CMS, Memorandum of Understanding on the Conservation of Migratory Sharks (Sharks MOU), Fact sheet, www.cms.int/sharks; Quoting Dulvy et al. (2014).

15. Dulvy et al. (2014).

16. *Ibid.*

17. *Ibid.* The most threatened families are sawfishes, angel sharks, wedgefishes, sleeper rays, whiptail stingrays, guitarfishes, and thresher sharks.

18. *Ibid.*

19. *Ibid.*

20. *Ibid.*

21. *Ibid.*

22. CMS, factsheet, *op. cit.;* quoting Boris Worm et al. "Global Catches, Exploitation Rates, and Rebuilding Options for Sharks." *Marine Policy* 40 (2013), pp. 194–204. https://doi.org/10.1016/j.marpol.2012.12.034.

23. *Ibid.*

24. Jennifer C.A. Pistevos, Ivan Nagelkerken, Tullio Rossi, Maxime Olmos, and Sean D. Connell, "Ocean Acidification and Global Warming Impair Shark Hunting Behaviour and Growth," *Scientific Reports*, 2015; 5: 16293, quoted by www.sciencedaily.com/releases/2015/11/151112055246.htm. https://doi.org/10.1038/srep16293.

25. S. Fowler, "The Conservation of Migratory Sharks and Rays," *Save Our Seas*, Presentation of CMS MOS2, Costa Rica, 15 February 2016, p. 1.

26. *Ibid.* For a complete explanation, see E. Griffin, K.L. Miller, B. Freitas and M. Hirshfield, *Predators as Prey: Why Healthy Oceans Need Sharks Griffin*, July 2008, Oceana, p. 16.

27. *Ibid.*, p. 2. Figures are given in U.S. dollars. See also the publications and statements of the Organization "Divers for Sharks," a global coalition of more than 15,000 diving businesses, professional, and recreational divers concerned with the conservation of sharks and rays "to protect jobs and revenue generated by shark and ray watching and these animals' role in maintaining a healthy marine ecosystem," for instance: CBD document, https://www.cbd.int/cop/cop-12/cop12/vtable/d4s-sharks-en.pdf.

28. CMS Convention, preamble.

29. See article 61 UNCLOS for conservation of living resources in the Exclusive Economic Zone.

30. See article 118 UNCLOS.

31. *Supra*.
32. Website of the Convention: https://cites.org/eng/disc/what.php, accessed November 25, 2016.
33. *Ibid.*
34. J. Fischer, K. Erikstein, B. D'Offay, S. Guggisberg and M. Barone, *Review of the Implementation of the International Plan of Action for the Conservation and Management of Sharks.* FAO Fisheries and Aquaculture Circular No. 1076. Rome: FAO, 2012, p. 4.
35. Oceanic whitetip shark, porbeagle shark, scalloped hammerhead shark, smooth hammerhead shark and great hammerhead shark.
36. Basking shark, whale shark, great white shark.
37. CITES Convention website: https://cites.org/eng/disc/how.php.
38. CITES Resolution Conf. 9.24 (Rev. CoP16). The Conference of Parties Resolutions can be downloaded on the Convention website, *op. cit*.
39. One State can ask the other Parties for assistance in controlling the trade.
40. CMS Convention, preamble.
41. CMS Convention, Article III.4.a.
42. CMS Convention, Article III.4.b.
43. CMS Convention, Article III.4.c.
44. CMS Convention, Article IV.1.
45. CMS Convention, Article IV.2.
46. CMS/Sharks/MOS2/Inf.2.
47. CMS MOU Sharks §3.
48. CMS/Sharks/MOS2/Inf.2.
49. CMS/Sharks/MOS2/Decisions. Rev.2.
50. CMS MOU Sharks, §15 as amended in the 2016 version.
51. CMS/Sharks/MOS2/Decisions. Rev.2.
52. *Ibid.* See *infra*.
53. *Ibid.*
54. www.cbd.int.
55. www.cbd.int.
56. CBD Convention, Article 3.
57. CBD Convention, Article 8.
58. See CBD Document, "Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Eleventh Meeting (Hyderabad, India, 8–19 October 2012)," UNEP/CBD/COP/11/35, p. 173; and "Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Twelfth Meeting," UNEP/CBD/COP/12/29, p. 119.
59. See UNGA A/RES/63/112.
60. Fischer et al. (2012), p. 1. Other agreements were voted in the FAO Framework as The 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement) (partly similar to the UNFSA), and the The 2009 FAO Port State Measures Agreement (PSMA) to fight against illegal fishing.
61. *Ibid.*
62. *Ibid.* The 2000 Technical Guidelines on the Conservation and Management of Shark scan help the States in implementing such measures.
63. *Ibid.*
64. Several CITES-FAO-CMS workshops were organized, for instance: FAO, *Report of the FAO/CITES Workshop to Review the Application and Effectiveness of International Regulatory Measures for the Conservation and Sustainable Use of Elasmobranchs*. Genazzano, Italy, 19–23 July 2010. FAO Fisheries and Aquaculture Report. No. 984. Rome, FAO. 2012.
65. Dulvy et al. (2014).
66. www.seashepherd.org.
67. www.requinsenperil.com.
68. ASPAS: Association pour la Protection des Animaux Sauvages, www.aspas-nature.org., accessed 26 November 2016.
69. Organisation des Nations Unies pour l'alimentation et l'agriculture, http://www.fao.org/ipoa-sharks/national-and-regional-plans-of-action/fr/, accessed 26 November 2016.

70. EU press release, February 2009: http://europa.eu/rapid/press-release_MEMO-09-52_en.htm?locale=en.

71. *Ibid.*

72. See Communication from the Commission to the European Parliament and the Council of 5 February 2009 on a European Community Action Plan for the Conservation and Management of Sharks (COM, 2009) 40 final; and for instance Council Regulation (EC) No. 199/2008 establishing a community framework for the collection, management and use of data in the fisheries sector, which covers sharks issues.

73. Council Regulation (EC) No. 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels.

74. *Infra*.

75. Communication from the Commission to the European Parliament and the Council of 5 February 2009 on a European Community Action Plan for the Conservation and Management of Sharks (COM, 2009) 40 final.

76. See the Convention website: http://www.coe.int/en/web/bern-convention.

77. *Ibid.*

78. Bern Convention, article 3: http://chm.nature.cz/en/other-biodiversity-relating-international-commitments/bern-convention/about-the-convention/.

79. Annex II to the Bern Convention: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680304355.

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81. Bern Convention, Article 6.

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144. There is a bathing net in "Etang Salé," and two others in the beaches called "Boucant-Canot" and "Roches Noires." *Infra*.

145. See the illustrative representation of the measures in the already quoted General Assembly decision creating the Association for the Centre on Resources and Support on Shark Risk: http://www.info-requin.re/IMG/pdf/AG042016.pdf.

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Biographical Statement

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Historic Title Over Land and Maritime Territory

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Structured Abstract

Article Type: Research Paper

Purpose—This article intends to give a better understanding of the theoretical roots and practical operations of the concept "historic title" under two different spatial frameworks of land and sea.

Design, Methodology, Approach—The opinions of publicists and judicial decisions rendered by international courts and tribunals pertinent to "historic title" are examined. Moreover, the analysis adopts comparative approach.

Findings—The concept "historic title" has separate and independent development paths under the frameworks of land and sea which indeed mirrors the historical development of these two corresponding spatial orders. Furthermore, the norm of "*effectivité*" over land territory and "historic title" over maritime territory share the same legal structure. But "historic title" over land territory has a distinct problem, the lack of applicability in practice.

Originality, Value—Few researchers have touched on the topic in comparison of the same concept "historic title" in different spatial contexts, as well as the comparison between "historic title" and "*effectivité*." Therefore, the findings make original contributions to these topics and also have important implications for the states involved in territorial sovereignty disputes.

Keywords: *effectivité*, historic title, history, land territory, maritime territory

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 31–46 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

Introduction

Observation about the history of international jurisprudence shows that historic titles are commonly asserted in territorial sovereignty claims over land and maritime spaces. Historic title, a legal concept demonstrating how history helps shape the legal order of land and maritime territory,[1] provides a particular perspective to observe and reflect the action and reaction between history and international law. This concept seems to develop separately under the frameworks of land and sea. Therefore, this article intends to explore its theoretical evolution separately under these two different frameworks. Opinions of publicists and judicial decisions rendered by the international courts and tribunals are examined in order to give a better understanding of the theoretical roots and practical operations of this concept.

This article begins with tracing the historical development of the historic title concept in terms of land territory. The second part continues to discuss the same topic but in the context of maritime territory.[2] In the third part, the comparison between these two separate evolution paths are discussed. The last part concludes the distinct fates of the same concept in practice under these two different spatial frameworks of land and sea. This study contributes to the growing body of secondary literature on the modes of territorial acquisition, the distinction between the spatial orders of land and sea, as well as the interaction between history and international law.

Historic Title Over Land Territory

Blum gave an authoritative definition for the concept of "historic title": "while all the other titles rest on an instantaneous act having an immediate effect, to which act the origins of such titles can be traced, the historic title is the outcome of a lengthy process comprising a long series of acts, omissions and patterns of behavior."[3] The core of the concept of historic title is "historic." It can be inferred from Blum's definition that the word "historic" refers to the "lengthy process" mentioned above. It underlines the time element of this concept.

When it comes to the time element, a question naturally arising is how "lengthy" the "process" is in order to establish a historic title over land territory. The answer was first given by Grotius in 1625. He held that "as time immemorial … silence for such a length of time appears sufficient to establish the presumption that all claim to a thing is abandoned."[4] This is also called "immemorial possession" which was originated from Roman law. Grotius was the first person to admit the concept of "immemorial possession" into the rules governing international relations between two independent States or Kings. Another question is how to define the term "time immemorial." In the view of Grotius, one hundred years are sufficient enough to be considered as "time immemorial," since this is the term beyond which human existence seldom reaches.[5]

The test of "time immemorial" was also honored by the *Arbitration on Terri-*

torial Sovereignty and Scope of the Dispute (Eritrea and Yemen) case. The Tribunal in this case held that there were various kinds of historic titles, and one of these was called "ancient title," "a title that has so long been established by common repute that this common knowledge is itself a sufficient."[6] It does not specify a term, as long as it leads to the "common repute" or "common knowledge." Moreover, in the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* case, the court held that a period of twenty years was far too short to establish a historic title.[7]

"Time immemorial" indicates that the origin of possession is unknown or deeply obscure, and it is impossible for the possessor to prove whether it has derived its title from the original proprietor or receive its possession from another.[8] However, Vattel asserted that there was another possibility about the status of the original title. The possession may take place under the circumstance that the original title exists but is defective. For example, the original proprietor has neglected his title.[9] In Vattel's word, this kind of possession is called "*usucapio*" or "acquisitive prescription" which he believed to be part of the natural law.[10]

In fact, the only difference between immemorial possession and "*usucapio*" or "acquisitive prescription" is the status of the original titles.[11] They are treated as two separate kinds of prescription by Johnson and Hugh: "Title by prescription arises out of a long-continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so."[12]

In other words, both Grotius and Vattel rely on prescription as the legal root of historic titles. Pursuant to this approach, a State can be entitled to a historic title only when the status of the original title is unknown or defective. This position is supported by the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* case. In this case, Nigeria asserted its territory title over the disputed Lake Chad villages through the process of historical consolidation of title. However, this assertion was rejected by the Court. The Court held that the possession could not prevail a previously established treaty title.[13]

Besides the time element, possession is also the foundation of a historic title. The possession should be completed by a sovereign.[14] This position is well illustrated by the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* case. In this case, El Salvador and Honduras both asserted their titles over some or all of the islands of the Fonseca Gulf on historical basis. Due to the colonial history, both parties contended a title of succession from the Spanish Crown. However, after careful consideration of these arguments as well as the available materials, the Chamber of the International Court of Justice rejected these claims. The Chamber underlined that the title should belong exclusively to the Spanish Crown, rather than the internal administrative subdivisions established by it which were the predecessors of El Salvador and Honduras.[15] In his separate opinion, Judge Torres also agreed with this position that neither El Salvador nor Honduras might have historic title enjoyed by the Spanish Crown, or any international title of Spain's

making. In his view, the moment Spain recognized the Spanish-American Republics, the historic titles lapsed, and this also applies to the cases of El Salvador and Honduras:

> Under the "colonial régime," the original title of the Spanish Crown was an international law title, but it was not shared by the Spanish colonial administrative units in America. Such units did not participate in such a title. It is quite inappropriate, therefore, to invoke in the present case the concept and principle of "historic title" in international law or to use equivocal expressions which could convey the idea that there is floating around some original "historic title" that … could apply to the "island dispute."[16]

He further pointed out that this case was different from the *Minquiers and Ecrehos (France/United Kingdom)* case. In that case, France and the UK did participate in the formation of historic titles as "independent sovereigns and nations."[17]

It is worth noting that in the *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* case, the Court also paid attention to the sovereign status of the Sultanate of Johor before considering whether it could enjoy historic titles. In order to do this, the Court cited a piece of evidence that in the middle of the seventeenth century, the Sultan protested against the Dutch East India Company sending two boats to the waters in the vicinity of the disputed island in order to prevent Chinese traders from entering Johor River. According to the Court, this clearly indicated that the Sultan of Johor considered the seizure of the junks as an infringement of his right as sovereign in the related area.[18]

In addition to being a sovereign, certain extent of the exercise of actual possession is required. In the *Clipperton Island (France v. Mexico)* case, Clipperton Island is an uninhabitable coral reef located in the Pacific Ocean, and Mexico asserted "historic right" over this island. The reference of "historic right" here is tantamount to "historic title."[19] According to Mexico, this island was discovered by Spanish navy and succeeded by Mexico in 1836. But France argued that this island was a *terra nullius* in 1858, and therefore open to occupation. The arbitrator, Victor Emanuel III held that no evidence showed that the island was actually discovered by Spanish navigators. Hence, the arbitrator concluded that Mexico's asserted historic title was not supported by any manifestation of her sovereignty over the island. As regards France's argument, the arbitrator held that due to the small size and uninhabited feature of Clipperton Island, from the moment of the discovery by France, the taking of possession could be considered as having been accomplished and consequently remained perfected.[20]

From the *Clipperton Island* case, it can be concluded that with respect to the uninhabited islands, the requirement of actual occupation can be fulfilled by simply taking possession at the outset without any subsequent administration. However, the opinion of international jurisprudence has changed since this case. Even regarding the uninhabited islands, as long as there are some human activities pertinent to these islands, the international courts and tribunals would require higher extent of the exercise of actual possession. This position is proved by the comparison between the *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* case and

the *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* case. In these two cases, the islands in dispute are uninhabited but visited and used by some local tribes from time to time.

In the former case, Indonesia and Malaysia had a dispute about the territorial sovereignty over two small islands in the Celebes Sea, i.e., Pulau Sipadan and Pulau Ligitan. Indonesia's claim rested primarily on the historic title originally held by the Sultan of Bulungan, which later was transferred to the Netherlands by the Contract dated 12 November 1850, and further transferred to Indonesia by the 1891 Convention between Great Britain and the Netherlands. Or alternatively, Indonesia claimed the historic title as successor to the Sultan of Bulungan or the Netherlands. Malaysia also relied on an unbroken chain of historic titles originally held by the former sovereign, the Sultan of Sulu, and "subsequently passed, in succession, to Spain, to the United States, to Great Britain on behalf of the State of Northern Borneo, to the United Kingdom of Great Britain and Northern Ireland, and finally to Malaysia itself." Regarding Indonesia's claim, the Court first considered the 1891 Convention, and concluded that it could not be interpreted as allocating the sovereignty of the islands. Furthermore, the Court also rejected Indonesia's contention of inheriting title from the Netherlands, since the various contracts of vassalage concluded between the Netherlands and the Sultan of Bulungan showed that the island possessions of the Sultan of Bulungan did not include the disputed islands. With respect to the "chain of title" claimed by Malaysia, the Court found that Malaysia based the possession of the disputed islands by the Sultan of Sulu on the ties of loyalty between the Sultan of Sulu and the Bajau Laut. The Bajau Laut inhabited on the islands off the coast of North Borneo, and might have utilized the two islands in dispute from time to time. However, the Court held that the ties between the Sultan of Sulu and the Bajau Laut were not sufficient to prove that Sultan of Sulu claimed territorial title or exercised authority over Ligitan and Sipadan.[21]

In the latter case, Malaysia and Singapore disputed on the sovereignty over a rock named "Pedra Branca" in Portuguese and "Pulau Batu Puteh" in Malay, together with two associated smaller features called Middle Rocks and South Ledge. In light of Pedra Branca/Pulau Batu Puteh, Malaysia contended that its predecessor, namely the Sultanate of Johor, had original title to Pedra Branca/Pulau Batu Puteh and retained it up to the 1840s. It claimed that the establishment of the original title was from "time immemorial." The Court supported Malaysia's contention. It held that Pedra Branca/Pulau Batu Puteh had always been known as a navigational hazard and thus was impossible to remain unknown or undiscovered by the Sultanate of Johor. And during the entire history of the old Sultanate of Johor, no evidence had shown that there were any competing claims regarding the disputed islands. Besides, in the middle of the seventeenth century, Malaysia showed the manifestation of its authority by protesting against the activities of the Dutch East India Company in the waters around the islands in dispute. In addition, Malaysia claimed that its title was also confirmed by the ties of loyalty between the Sultanate and the Orang Laut. The Orang Laut conducted various activities including fishing and piratical activities in the area of Pedra Branca/Pulau Batu Puteh. The Court found that the Sultan of

Johor had established sufficient political authority over the Orang Laut, and this, in turn, confirmed the historic title of the Sultanate of Johor to Pedra Branca/Pulau Batu Puteh.[22]

From the comparison between these two cases, it can be inferred that now even regarding the uninhabited islands, sovereign administration is required in order to establish actual control. The personal allegiance with the local tribes can only act as a confirming evidence to the title to land territory, rather than a sufficient evidence. Only the actual control over the land territory can establish a valid historic title.

In other words, the establishment of historic title requires the manifestation of State authority. Two conditions need to be satisfied here. The first condition is that the possession shall be completed by a sovereign. The second condition is the exercise of actual possession. Actual control over the territory is needed in order to establish a valid historic title, and the personal allegiance with the local tribes confirms this title.

From the aforesaid discussion, it can be seen that some international judicial cases clearly follow Grotius's theory and Vattel's theory which use prescription as the legal root of historic titles.[23] However, based on Grotius's theory and Vattel's theory, some scholars have developed different theories about historic titles.[24] In 1957, based on the work done by Grotius and Vattel, de Visscher included both immemorial possession and acquisitive prescription under the single heading of "consolidation."[25] In his own words,

> consolidation, which may have practical importance for territories not yet finally organized under a State regime as well as for certain stretches of sea-like bays, is not subject to the conditions specifically required in other modes of acquiring territory. Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State. It is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide *in concreto* on the existence or nonexistence of a consolidation by historic titles.[26]

Seen in this light, de Visscher refuted the position that the passage of a fixed term was the core of a historic title, and deepened his thought to conclude that actually it was the complex of interests and relations behind and represented by the long use that constituted the essence of a historic title. To this extent, de Visscher excluded the formality requirement of time factor, but underlined the substantive requirement of relevant interests.

International courts and tribunals seem to have different views on the validity of de Visscher's consolidation theory. The answer is in the affirmative in the *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* case. In this case, the Tribunal held that there were various kinds of historic titles. One of them can be "consolidated, by a process of prescription, or acquiescence, or by possession so long continued as to have become accepted by the law as a title."[27] However, in the *Land and Maritime Boundary between Cameroon and Nigeria*

(Cameroon v. Nigeria: Equatorial Guinea intervening) case, the Court held that the consolidation theory was highly controversial, and it could not replace the established modes of acquisition of title under international law.[28]

Besides de Visscher's consolidation theory, Blum also developed a new approach in 1965. Instead of using prescription as the legal root of historic title, Blum asserted that acquiescence, rather than prescription, was "the very pillar of the mechanism" that helped historic titles take shape. In his view, the acquiescence theory removes the difficulty which confronts the prescription theory, that is the requirement of a fixed period of time.[29] In fact, the acquiescence theory and the consolidation theory is compatible with each other. Pursuant to de Visscher, the consolidation process can be accomplished by acquiescence where a sufficiently prolonged absence of opposition exists.[30] The *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* case seems to give support to Blum's acquiescence theory. As is shown above, the absence of competing claims regarding Pedra Branca/Pulau Batu Puteh did play an important role in establishing the historic title to this island in dispute.[31]

Historic Title Over Maritime Territory

The legal concept of historic title relates not only to land territory, but also applies to maritime territory. With respect to the United Nations Convention on the Law of the Sea (hereinafter as "UNCLOS"), it simply mentions "historic title" in Article 15 and Article 298. There is no elaboration on this concept in UNCLOS. In fact, "historic title" is categorized as one of the issues that are left out for future resolution during the United Nations Conferences on the Law of the Sea.

Before going into the details, it is worth noting that there are two important legal documents on the topic of historic title over waters. One is the study report titled "*Historic Bays: Memorandum by the Secretariat of the United Nations*" (hereinafter as "1958 Report"). This study was conducted by the Secretariat of the United Nations and intended for the United Nations Conference on the Law of the Sea. Another one is "*Juridical Regime of Historic Waters, Including Historic Bays*" (hereinafter as "1962 Report"). It was drafted by the International Law Commission under the request of General Assembly resolution 1453 (XIV) of 7 December 1959.

The issue whether the regime of "historic waters" is an exceptional regime is analyzed in the 1962 Report. There is a widely held opinion that the regime of historic waters constitutes an exception to the general rules of international law regarding the delimitation of the maritime domain of a State.[32] Based on this presumed opinion, when the historic title has not been expressly reserved in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, and assumed that relevant articles of that Convention have been codified and become general rules of international law, relevant articles of that Convention must prevail as between the parties to the Convention.[33] However, according to the 1962 Report, the aforesaid opinion is criticized because there would arise several difficulties:

> The so-called general rules would then be "general" in the sense only that they would be more generally applicable than the "exceptional" title to "historic waters." But they would not be "general" in the sense of having a superior validity in relation to the "exceptional" historic title. Both the general rules and the historic title would be part of customary international law, and there would be no grounds for claiming *a priori* that the historic title is valid only if based on the acquiescence of the other States.[34]

Hence, this Report suggests that the most realistic view would be "not to relate the claim or right to 'historic waters' to any general customary rules on the delimitation of maritime areas, as an exception or not an exception from such rules, but to consider the title to 'historic waters' independently, on its own merits."[35] This position is also supported by the *Fisheries (United Kingdom v. Norway)* case in which the Court held that the rule of historic titles was not contrary to international law.[36]

Another issue discussed in the 1962 Report is concerning whether the title to "historic waters" is a prescriptive right. As is shown above, historic title over land territory is a prescriptive right. However, this Report holds that the first form of acquisitive prescription, i.e., immemorial possession, applies to historic waters, while the second form, i.e., adverse acquisition, does not apply to historic waters. It is because historic waters are "waters which one State claims to be part of its maritime territory while one or more other States may contend that they are part of high seas."[37] It approximates to the situation of immemorial possession "where the original title is uncertain and is validated by long possession."[38] However, according to this Report, if adverse acquisition applies here, it would mean that "through the effect of time an exceptional historic title to the waters had emerged." It would "embrace the idea that 'historic waters' is an exception to the general rules of international law regarding the delimitation of maritime areas,"[39] which is rejected by this Report. Therefore, it would be better "not to refer to the concept of prescription in connection with the regime of 'historic waters.'"[40]

At the beginning of the 1958 Report, it recognized that "the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of marine areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighboring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies of water. There is a growing tendency to describe these areas as 'historic waters,' not as 'historic bays.'"[41] Nevertheless, the scope of this Report mainly focuses on historic bays.

It further discusses the constituent elements of the theory of historic bays and the conditions for the acquisition of historic title. In this regard, two conceptions are summarized based on domestic and international judicial practice, draft codes and the works of learned authorities.[42]

The first conception is "usage." This is based on the fundamental principle that "this bay belongs to me because it has always belonged to me, or because it has belonged to me for a certain time."[43] Two additional notions, namely "time" and "continuity," are also taken into account. Therefore, the word "usage" is qualified

by "continued and of long standing."[44] Different opinions exist regarding the concept of "usage." Some asserts that "national usage" is a sufficient root of historic title,[45] while some argues that "international usage," i.e., "established usage generally recognized by the nations," is required. In other words, "[t]he national usage must have received international recognition."[46]

The second conception is "the vital interests of the coastal State." It is regarded as perfectly explicable in the case of new nations, "in respect of which the condition of long-established dominion cannot be adduced."[47] This conception corresponds with de Visscher's consolidation theory. According to de Visscher, a complex of interests and relations can have the effect of attaching a territory or an expanse of sea to a certain State.[48] It is also supported by the *Fisheries (United Kingdom v. Norway)* case. The Court gave a clear definition for the concept of "historic waters" in this case. "By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title." Nevertheless, both parties as well as the Court referred to the notion of "historic titles" both in respect of territorial waters and internal waters. According to Norway, it based its claim of historic titles "on the ground that she has exercised the necessary jurisdiction over them for a long period without opposition from other States." In the end, the Court judged in favor of Norway's position, and concluded that "the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law."[49] It is interesting to note that de Visscher was one of the judges in this case. The conclusion about the historic titles here is an exact duplicate of his consolidation theory.

In the 1962 Report, it discusses the elements of titles to "historic waters." "There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States."[50] These elements correspond with the "international usage" in the 1958 Report. But the conception of "the vital interests of the coastal State" is abandoned in this new Report.

Comparison of the Same Concept Under Two Spatial Orders

The concept of "historic title" compared under two different spatial frameworks still shares some similarity. It relies on the exercise of State authority over the land or maritime territory. In other words, the titles to the land or maritime territory are created based on concrete State behavior, will or interest. From the perspective of international law, history is indeed a series of events generating various State behav-

iors, wills and interests, either continuous or successive both in time and in space. Hence, seem in this light, the nature of historic title, either over land territory or maritime territory, is to convert a series of historical events into titles protected by international law.

Nevertheless, there is quite some difference between historic title over land territory and historic title over maritime territory. The formula of historic title over land territory seems to be relatively complex and concrete. In contrast, the formula relating to maritime territory is relatively concise and normative. It is quite understandable when considering the reality that the histories of land territory are usually longer and thus a more complex or concrete regime is needed in order to adapt to various interests generated during history. Moreover, it is also a reflection of different historical development paths of the spatial orders shaped in the land and the sea.

In history, the land territory was allocated mostly at a time when there were no international legal institutions for allocating the titles and rights, and during a time when war was not outlawed, raw physical power was the only consideration. Consequently, the legal regime governing the land is ascending from the reality to norm. The concept of historic title over land territory is not exceptional, thus being complex and concrete due to the diversity and complexity of reality.

In contrast, unlike the land surfaces, for a long time maritime space continued to be characterized as *res communis*. The Grotian dogma of "freedom of the sea" was applied, and it was based on the reality that transient passage was sufficient for the States to get what they wanted from the seas. This prevailed with little change until the years following World War II. With the development of technology and the growth of population, navigation and resources interests from the seas gained more importance for the coastal and marine States. In this particular historical context, States gradually sought to assert increasing control over maritime areas adjacent to their coasts. Hence, the legal regime governing the maritime territory is descending from the norm to the reality, including the rule of historic title, thus being well organized and clearly structured.

Furthermore, as can be seen from the above analysis of judicial practice, while most of the States claiming historic titles over land territory are new countries that have become independent sovereign in recent history, the States asserting historic titles over maritime territory are usually old countries with a long history and were able to assert influence over the maritime areas in a relatively early time. This exerts some impact on the consideration of historic titles. In the case of land territory, it usually resorts to the practice of the ancestor or predecessor. However, in event of maritime territories, it relies on the practice of the claimant States themselves. In this sense, the legal regime of historic titles over maritime territory is more similar to the legal regime of "*effectivité*" over land territory.

The norm of "*effectivité*" can be stated as: territorial sovereignty can be inferred from the effective manifestation of State authorities over the territory as long as the prior title is absent or uncertain.[51] There are two constituent elements to "*effectivité*," i.e., "the intention and will to act as sovereign, and some actual exercise or display of such authority."[52] Same as the norm of historic title over maritime territory, *effec-*

tivité requires the actual control by the claimant State itself over land territory. To this extent, these two norms seem to share the same legal structure. But this same legal structure is applied to spatial frameworks of land and sea under these two different names, i.e., "*effectivité*" over land territory and "historic title" over maritime territory.

In fact, the relationship between "historic title" and "*effectivité*" in the context of land territory is also very interesting. The norm of "*effectivité*" is only applied in the case of land territory but not maritime territory. In the context of land territory, unlike the norm of "historic title" which was first raised at the time of Grotius, "*effectivité*" is a latecomer which came into existence as a specific norm under international law not until twentieth century. However, the norm of "*effectivité*" enjoys the latecomer's advantage. In light of the history of international jurisprudence, the norm of "*effectivité*" is more frequently applied than the norm of "historic title" when it comes to the issue respecting the acquisition of land territory.[53] This position is well demonstrated in cases where it is difficult and impossible to deduce direct presumptions from the events in history. Under this circumstance, the courts and tribunals will attach decisive importance to the evidence that relates directly to the possession of the disputed territory in relatively recent times, i.e., "*effectivité*." This position is supported by the *Minquiers and Ecrehos (France/United Kingdom)* case, as well as the *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* case.

In the *Minquiers and Ecrehos (France/United Kingdom)* case, the islets and rocks of the Minquiers and Ecrehos groups are located between the British Channel of Jersey and the French coast. Both France and the UK asserted ancient titles to the Ecrehos and the Minquiers. The UK derived its "ancient title" from the conquest of England in 1066 by William, Duke of Normandy. However, in 1204, the then French King drove the Anglo-Norman forces out of Continental Normandy. Nevertheless, the UK contended that the Ecrehos and the Minquiers remained united with the UK on a legal basis of subsequent Treaties concluded between the English and French Kings. But France argued that after 1204, these two islet and rock groups should belong to the King of France. France also based its claim on the same medieval treaties that were invoked by the UK. As to the ancient titles asserted by both parties, Judge Alvarez held that they were indeed historic titles. After examining all the relevant medieval treaties between the English and French Kings, the Court concluded that the Ecrehos and the Minquiers were never specifically mentioned in these treaties, and thus the Court could not draw any definitive conclusion as to the sovereignty over these two groups from these treaties. Furthermore, the Court concluded that there were many historical controversies in this case, and it was difficult to figure out the real situation in the remote feudal epoch. In the end, the Court decided to give up the consideration of historic titles, and instead resorted to the activities in relatively recent times. The Court held that "[w]hat is of decisive importance … is not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups."[54]

This formula is also followed by the *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* case. In this case, Eritrea and Yemen referred their dispute to arbitration according to an Arbitration Agreement dated 3 October 1996. Pursuant to Article Two of this Arbitration Agreement, the Tribunal was requested to provide rulings in two-stages. The first stage was related to territorial sovereignty and the definition of the scope of the dispute between these two States, while the second stage was on the delimitation of maritime boundaries. On 9 October 1998 the Tribunal rendered an Award on the first stage. The disputed islands and islets can be divided into four subgroups, namely the Mohabbakahs, the Haycocks, the Zuqar-Hanish Group, and Jabal al-Tayr along with the Zubayr group of Islands. In its Award, the Tribunal used one whole chapter to discuss the historic titles and other historical considerations. With respect to the sovereignty over these islands and islets, both Eritrea and Yemen primarily relied on historic titles. The Tribunal first admitted that "the notion of an historic title is well-known in international law." Eritrea based its sovereignty on the historic consolidation of title by Italy during the inter-war period, and this title was effectively transferred to Ethiopia after the defeat of Italy in the Second World War. In contrast, Yemen asserted its historic title dated back to the middle ages, when the islands were asserted to belong to the *Bilad el-Yemen*. Yemen further contended that this ancient title predated the several occupations by the Ottoman Empire, and it should revert to modern Yemen after the collapse of the Ottoman Empire at the end of the First World War.[55]

The Tribunal first considered Yemen's claim. It found that medieval Yemen was mainly a mountain entity with little sway over the coastal areas, and the coastal areas essentially served for the maritime trade. The medieval Yemen was unfamiliar with the concept of territorial sovereignty. Nevertheless, it is worth noting that these historic considerations were still given some legal significance by the Tribunal. In fact, based on such historic facts or evidences, the Tribunal confirmed the existence of certain historic rights enjoyed by Yemen in this area. As regards the historic title asserted by Eritrea, the Tribunal admitted that in the inter-war period Italy did have territorial ambitions regarding the Red Sea islands. However, the effect of Article 16 of the Treaty of Lausanne of 1923, the effects of the provisions of the Italy Peace Treaty of 1947, and the constant and consistent specific assurances given by the Italian government to the British government led to the situation that the territory sovereignty of those islands should stay unsettled and be decided in the future. In the end, the Tribunal concluded that "neither Party has been able to persuade the Tribunal that the history of the matter reveals the juridical existence of an historic title, or of historic titles, of such long-established, continuous and definitive lineage to these particular islands, islets and rocks as would be a sufficient basis for the Tribunal's decision." Therefore, the Tribunal decided to follow the formula of the *Minquiers and Ecrehos (France/United Kingdom)* case, agreeing that "it is the relatively recent history of use and possession that ultimately proved to be a main basis of the Tribunal decisions."[56]

The aforementioned cases, in addition to other cases in which the norm of *effectivité* has been applied, show a trend that international courts and tribunals tend to

attach more importance to the norm of *effectivité* rather than the norm of historic title when it comes to the acquisition of land territory.[57] Though in theory the norm of historic title over land territory is still a valid international law, in practice it is not favored. Reasons may be diverse. Nevertheless, as discussed above, one of the most important reasons may be that unlike the norm of *effectivité*, this norm is full of complexity and lack of normativity since it depends on concrete interests generated during history. Consequently, it fails to obtain the same clarity and certainty as the norm of *effectivité*. Hence, the preference of the norm *effectivité* is understandable when taking account of the nature of international law in preserving its normativity and ensuring its certainty.[58]

Conclusion

From the above discussion, it can be seen that the same concept "historic title" has distinct legal structures under different spatial frameworks of land and sea. *Inter alia*, "historic title" over maritime territory has an equivalent norm in the context of land territory, i.e., "*effectivité*." They can be treated as a same legal structure applied to different spatial frameworks of land and sea under two different names. In the context of maritime territory, "historic title" is not only a valid international rule in theory but also active in practice. The most recent case is the 2016 *South China Sea Arbitration (the Philippines v. China)* in which the tribunal admitted the validity of the norm "historic title" in light of asserting territorial sovereignty over certain maritime spaces.[59]

In contrast, the norm of "historic title" over land territory seems to have a distinct fate. Though being a valid international rule in theory, "historic title" over land territory is rarely applied in the practice of the recent international jurisprudence. However, the norm of "*effectivité*" tends to enjoy the latecomer's advantage, being more competitive and favored. It is worth noting that international law is subject to constant changes. Lack of applicability in practice may in the end have some impact on the validity of a theory. Nevertheless, it may be too earlier to say whether the norm of "historic title" over land territory will lose its validity in the future. The final answer to this question is dependent on the observation and analysis of the future State practice.

Notes

1. Yehuda Zvi Blum, *Historic Titles in International Law* (The Hague: Nijhoff, 1965), p. 330. https://doi.org/10.1007/978–94-015–0699–1.

2. Maritime territory refers to the maritime spaces in which States exercise the territorial sovereignty. It usually includes internal waters and territorial seas. See Yoshifumi Tanaka, *The International Law of the Sea*, 2d ed. (Cambridge, UK: Cambridge University Press, 2015), p. 70.

3. Blum (1965), p. 335.

4. Grotius, Hugo. *The Rights of War and Peace*, book II, chap. IV, sec. VII, https://babel.hathitrust.org/cgi/pt?id=wu.89058311184;view=1up;seq=7, accessed 21 November 2016.

5. *Ibid.*

6. *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* (1998), Award on the First Stage, *PCA Award of the Arbitral Tribunal*, para. 106.

7. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* (2002) Judgment of 10 October 2002, *I.C.J. Reports*, p. 352.

8. Emer de Vattel, *The Law of Nations,* book II, chap. XI, para. 143, http://files.libertyfund.org/files/2246/Vattel_1519_LFeBk.pdf, accessed 21 November 2016.

9. *Ibid.*, para. 142.

10. *Ibid.*

11. For avoidance of any doubt, it is necessary to discuss the difference between two concepts, i.e., "ancient title" and "original title." In the context of historic title, "ancient title" is considered as one kind of historic title which has been established by common repute or common knowledge, while "original title" refers to the original source of historic title which is either unknown or defective.

12. David H.N. Johnson, "Consolidation as a Root of Title in International Law," *C.L.J.* 13(2) (1955), p. 218; W.E. Hall, *A Treatise on International Law*, 8th. ed. (Oxford: Clarendon, 1924), p. 118.

13. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* (2002) Judgment of 10 October 2002, *I.C.J. Reports*, pp. 350–352.

14. Jennings, Robert Yewdall, *The Acquisition of Territory in International Law* (Manchester: Manchester University Press, 1963), p. 26.

15. *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (1992) Judgment of 11 September 1992, *I.C.J. Reports*, paras. 340–345.

16. *Ibid.*, p. 672, para. 85.

17. *Ibid.*, p. 672, para. 86.

18. *Ibid.*, paras. 52–55.

19. Historic rights can be divided into two kinds, i.e., historic rights proper and non-exclusive historic rights. The reference of "historic right" here is related to historic rights proper, i.e., historic title. See Yehuda Zvi Blum, *Historic Titles in International Law* (The Hague: Nijhoff, 1965), p. 58.

20. *Clipperton Island (France v. Mexico)* (1932) *Cumulative Digest* Vol. 2 (42 & 43), pp. 96–97.

21. *Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* (2002) Judgment of 17 December 2002, *I.C.J. Reports*, pp. 638–675.

22. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (2008) Judgment of 23 May 2008. *I.C.J. Reports*, pp. 31–39.

23. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* (2002) Judgment of 10 October 2002, *I.C.J. Reports*; *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* (1998) Award on the First Stage, *PCA Award of the Arbitral Tribunal*.

24. Charles De Visscher, *Theory and Reality in Public International Law* (Princeton, NJ: Princeton University Press 1957); Blum (1965).

25. De Visscher (1957), p. 200; David Hugh Neville Johnson, "Consolidation as a Root of Title in International Law," *C.L.J. 13*(2) (1955), p. 219; Jennings (1963), pp. 24–25.

26. De Visscher (1957), p. 200.

27. *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* (1998) Award on the First Stage, *PCA Award of the Arbitral Tribunal*, p. 239.

28. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* (2002) Judgment of 10 October 2002, *I.C.J. Reports*, p. 352.

29. Blum (1965), p. 59.

30. De Visscher (1957), pp. 200–201.

31. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (2008) Judgment of 23 May 2008. *I.C.J. Reports*, p. 35.

32. Juridical Regime of Historic Waters Including Historic Bays—Study Prepared by the Secretariat (1962) U.N. Doc. A/CN.4/143, para. 42.

33. *Ibid.*, para. 75.

34. *Ibid.*, para. 55.

35. *Ibid.*, para. 58.

36. *Fisheries (United Kingdom v. Norway)* (1951) Judgment of 18 December 1951, *I.C.J. Reports*, p. 139.

37. Juridical Regime of Historic Waters Including Historic Bays—Study Prepared by the Secretariat (1962) U.N. Doc. A/CN.4/143, para. 65.

38. *Ibid.*, para. 66.

39. *Ibid.*, para. 67.

40. *Ibid.*, para. 68.

41. Historic Bays: Memorandum by the Secretariat of the United Nations (1958) U.N. Doc. A/CONF.13/1, para. 8.

42. *Ibid.*, para. 138.

43. *Ibid.*, para. 137.

44. *Ibid.*, para. 141.

45. *Ibid.*, paras. 140–143.

46. *Ibid.*, paras. 144–150.

47. *Ibid.*, para. 153.

48. De Visscher (1957), p. 200.

49. *Fisheries (United Kingdom v. Norway)* (1951) Judgment of 18 December 1951, *I.C.J. Reports*, pp. 130–131, 139.

50. Juridical Regime of Historic Waters Including Historic Bays—Study Prepared by the Secretariat (1962) U.N. Doc. A/CN.4/143, para. 80.

51. *Frontier Dispute (Burkina Faso/Republic of Mali)* (1986) Judgment of 22 December 1986. *I.C.J. Reports*, para. 63; Nico Schrijver and Vid Prislan, "Cases Concerning Sovereignty Over Islands Before the International Court of Justice and the Dokdo/Takeshima Issue," *Ocean Development & International Law* 46(4) (2015), pp. 291–292.

52. *Legal Status of Eastern Greenland* (1933) Judgement of 5 April 1933, pp. 45–46.

53. *Minquiers and Ecrehos Case (France v. United Kingdom)* (1953) Judgment of 17 November 1953, *I.C.J. Reports*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar V. Bahrain)* (2001) Judgment of 16 March 2001, *I.C.J. Reports*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* (2002) Judgment of 17 December 2002, *I.C.J. Reports*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (2007) Judgment of 8 October 2007. *I.C.J. Reports*; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (2008) Judgment of 23 May 2008. *I.C.J. Reports*.

54. *Minquiers and Ecrehos Case (France v. United Kingdom)* (1953) Judgment of 17 November 1953, *I.C.J. Reports*, pp. 53–57.

55. *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* (1998) Award on the First Stage, *PCA Award of the Arbitral Tribunal*, pp. 215–241.

56. *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* (1998) Award on the First Stage, *PCA Award of the Arbitral Tribunal*, pp. 244, 247–248, 311–312.

57. *Minquiers and Ecrehos Case (France v. United Kingdom)* (1953) Judgment of 17 November 1953, *I.C.J. Reports*; *Arbitration on Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)* (1998) Award on the First Stage, *PCA Award of the Arbitral Tribunal*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* (2001) Judgment of 16 March 2001, *I.C.J. Reports*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* (2002) Judgment of 17 December 2002, *I.C.J. Reports*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (2007) Judgment of 8 October 2007. *I.C.J. Reports*; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (2008) Judgment of 23 May 2008. *I.C.J. Reports*.

58. Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, 2d ed. (Cambridge: Cambridge University Press, 2007), p. 17.

59. However, the tribunal did not go further to discuss the applicability of the norm "historic title" in this case since it concluded that China did not intend to claim "historic title" over the maritime space within the South China Sea area. Instead, it concluded that what China intended to claim was non-exclusive historic rights. See *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)* (2016) Award of 12 July 2016, paras. 217–229, 232.

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Overcoming Territoriality Through Water Regime: The Case of the Lower Mekong (1957–1977)

Michelle Rubido Palumbarit

Structured Abstract

Article Type: Research Paper

Purpose—Despite being at each other's throats from 1957 to 1977 when the Vietnam War was raging, this study aimed to show that even historical and political enemies can overcome their sense of territoriality.

Design, Methodology, Approach—This article argues that even countries hostile toward each other due to historical rivalries and differing political ideologies in a region can deal with their territoriality by cooperating with each other in managing a shared resource so long as economic gains can be obtained and that there is a presence of a water regime. Available newspaper articles/summaries/abstracts from 1952 to 1977 and annual reports of the Mekong Committee were examined. Content analysis of the minute interactions over water management of the four riparian states found in the newspaper articles studied was performed.

Findings—Findings reveal that the four states overcame their territoriality because of the following two reasons: first, they realized they could benefit more from jointly developing the river than developing it independently, and second, the Mekong regime contributed greatly toward overcoming it by performing crucial roles as the arbiter, data collector and disseminator, fundraiser, and project manager and coordinator.

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 47–66 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

Practical Implications—Indeed, water regime can be useful in mitigating, if not entirely solving, conflicts between riparian states.

Keywords: cooperation, Mekong regime, Mekong River,
river basin, territoriality

Introduction

Why would a state share a portion of its territory with others? More so, when it just redeemed itself from being a colony and then involved itself in a war it knew would be very costly? This is the case not of one state alone but of the countries in the Mekong River Basin found at the heart of mainland Southeast Asia. The case in point is none other than the riparian states of the Lower Mekong River (Cambodia, Laos, Thailand, and South Vietnam) during the decolonization period of the 1950s until the end of the Vietnam War in the mid–1970s. Before going further into the details, a discussion of important concepts needs to be presented, particularly the terms "territoriality," "overcoming territoriality," and "Mekong regime."

Territoriality is defined here as "any issue associated with a proclivity to occupy and defend territory."[1] In the context of water politics, the issue of territoriality here means "unilateral action" of one state in developing a portion of its own basin. It recognizes that states have the exclusive control over their territory and that they can do whatever they want with it. "Unilateral action" refers to "no cooperation, not even communication or information exchange, over the management and development of the shared river"[2] with other riparian states which can likely lead to water-related conflict. Given the monopoly of benefits that can be derived from developing one's portion of the basin, unilateral development was a rational move for the riparian states of the lower Mekong. Plus the fact that that they were politically and militarily hostile toward each other means that there should not be any obstacle that could hinder them from utilizing and developing the river on their own. Interestingly, however, despite and in the midst of this turmoil, countries decided to cooperate. In other words, they decided to deal with their territoriality by forgoing to develop the said resource independently but instead chose to do so jointly through cooperation. They allowed themselves to be subject to a water regime by allowing entry and survey of, and by providing data and information about, their portion of the basin.

The Mekong regime, following Krasner's (1982[3]) and Kranz et al.'s (2010[4]) definitions is defined in this study as the "norms, rules, decision-making procedures and organizational structure that govern the riparian states of the lower Mekong that aimed at collectively managing the Mekong River considering the role of international actors." Norms include rights and obligations, rules of specific prescriptions and proscriptions, and decision-making procedures of practices that make collective choices.[5] The four riparian states are at the center of this organizational structure.

As for "overcoming territory," the concept does not mean an absence of an

attempt or attempts at asserting control over a particular territory. There were actually border conflicts between the four neighbors such as the Thai-Lao border conflicts over islands in the Mekong River. An example of which was when security was on high alert when both claimed sovereignty over two islands in the Mekong River in 1977.[6] This issue, however, was in a way de-coupled from the issue of joint management by both countries. Thus, violence over water management was avoided primarily because management of the Mekong River matter most to both. As Vasquez argues, "if territorial issues are de-coupled from other issues, the probability of violence will drop significantly."[7] In fact, both countries along with the unified Vietnam decided to reactivate the Mekong River Development Project in the following month of the same year.[8] In this regard, economic interests took precedence over territorial issues.

In a nutshell, this study argues that the four riparian states decided to deal with their territoriality by forgoing to develop the Mekong River independently because economic interests also matter as much as political ideologies do. What made this possible was the crucial roles the Mekong regime played in facilitating both such interests and their decision to overcome their territoriality in the form of cooperation over water management. Specifically, it acted as an arbiter, data collector and disseminator, fundraiser, and project manager and coordinator.

Central to this study are the following questions: One, what exactly does "overcoming territoriality" mean to the four in this context? Two, despite the political and military hostilities raging in the region which the four are seriously involved in, why did the lower riparian states of the Mekong decide to "overcome their territoriality" in terms of water management? How did they manage to do so? Finally, what role or roles did the Mekong regime play in the process?

Literature Review

Consolidating territorial borders was a way former colonial states could exercise their newly found independence. Thinking of sharing a piece of their land seems impossible. But water treaties prove otherwise. Water agreements between India and Pakistan (Indus River Basin) between the Central Asian republics (Isfara River Basin), and between Mozambique, Swaziland, and South Africa (Incompati and Maputo River Basin) show that states are willing to share a part of their claim over the basin with other riparian states by allowing inspection of, and voluntarily sharing information, about it with other riparian states. Why would countries do that?

One reason that prompted riparian states to come to the table and sign agreements is the threat of interstate conflict such as the case of states sharing Aral Sea Basin.[9] States try to avoid conflicts with each other. In fact, even during conflicts and wars, states can continue cooperating over water. For example, the Indus Waters Treaty "survived two major Indo-Pakistani wars in 1965 and 1971"[10] and the Mekong Committee (hereafter MC) between Cambodia, Laos, Thailand, and Vietnam pulled through the Vietnam War (1955–1975).[11] One factor that prevents this "water war"

from happening is the social ingenuity of humans in intervening between scarcity and violence.[12] An example that displays such human ingenuity is the use of issue linkage between the U.S. and Mexico on the Rio Grande, Colorado and Tijuana Rivers in resolving their conflicts.[13] Also, the presence of a hydro-hegemon discourages resistance, thereby avoiding conflicts over water.[14]

Another reason states are motivated to cooperate with each other is the presence and arbitration of a third party such as international institutions and water regimes that not only mitigate conflicts but also encourage cooperation.[15] The UN and the World Bank (hereafter WB) played important roles in fostering cooperation between riparian states. Specifically, the United Nations Truce Supervision was crucial in the establishment of the Joint Water Committee (hereafter JWC) between Israel and Jordan in 1994, which took more than forty years of negotiations. Meanwhile, the WB had a significant role in the signing of the Indus Water Treaty between India and Pakistan, which took about thirty years to conclude. In the case of the Nile River riparian states, it was both the WB and the UN that helped them foster cooperation. The former facilitated the founding of the Nile Basin Initiative (NBI) in 1999, which took twenty years to materialize. After ten years of further negotiations, they signed the Nile River Basin Cooperative Framework Agreement (CFA) in 2010. This was greatly influenced by the United Nations Water Convention (UNWC).[16]

But the most important reason that drives states to cooperate over water is the economic benefits that can be obtained from developing it multilaterally. Not only can it accumulate capital and investment among riparian states but also from other states, banks and international organizations as well. The visible presence of the United Nations, World Bank (WB), and Asian Development Bank (ADB) in many river basins should not come as a surprise given their crucial financial roles.

Compared with other countries sharing a river, the Mekong River Basin poses an interesting case to be examined for two main reasons. First, it is "the first instance of the UN direct involvement in a continuing program of planning and development of an international river … on a continuous basis."[17] Along with the UN, about twenty countries and other various international organizations also participated. Thus, there was a strong involvement of the international community in the development of the Mekong River. Second, the Mekong River Basin is a region where countries of historical rivals for supremacy in the mainland Southeast Asian region (Vietnam versus Thailand) and opposing political ideologies (communist Laos and North Vietnam versus democratic Cambodia and Thailand) live. Countries in this part of the world were heavily embroiled in their own respective domestic conflicts and were seriously involved in wars with great powers such as China, France, the United States, and the Union of Soviet Socialist Republics not merely for a short period of time, but for decades. Nevertheless, despite being in the midst of these political, military and historical animosities between the lower riparian states of Mekong particularly during the Cold War era, it is interesting to note that they decided to jointly manage the Mekong River during these periods of turmoil. Other riparian states in other regions also decided to cooperate but it took them many years to sign water agreements. For examples, the Indus Treaty (1960) between India

and Pakistan took ten years, the Indo-Bangladesh Ganges Water Treaty (1996) took thirty years, and the Israel-Jordan Treaty of Peace (1996) took forty years.[18] In the case of the Mekong, however, it took only a few years for the four to sign the 1957 Agreement. More interestingly, the so-called "Mekong cooperation" has existed for more than five decades since 1957 and has been hitherto thriving.[19]

With conflicts and confrontations with France and growing conflicts over differing political ideologies brewing in the Mekong region, the lower riparian states were not in a position to cooperate with each other. It could even be said they were at each other's throats. Yet, it is interesting to note that the four decided to agree on managing the Mekong River by signing an agreement in 1957, during the period of intensifying of the "cold" war between the U.S. and China and the USSR but was translated into a "hot" war between Vietnam and the U.S. in the lower Mekong region.

The UN and the U.S. successfully convinced the lower Mekong riparian states to jointly develop the basin for the great potential it can provide them. This cooperation has existed in the region for more than fifty years.[20] Financially, it is mainly the UN assistance, other donors and development banks that have kept the four riparian states together all throughout.[21] Institutionally, the presence and "resiliency" of the Mekong regime, or its capacity to adjust to the change of time, contributed to "the lack of interstate conflict over water resources in the Mekong since 1957,"[22] created spill-over effects in other areas such as infrastructure development and environmental protection[23] and even maintained a sub-regional order in the Mekong region during the period from 1952 through 2001.[24]

It is within this context of a water regime involving the lengthy support of the international community in facilitating the four riparian states to overcome their territoriality that this study makes its way in the literature of water politics. It is interesting to pay close attention to neighbors, who without reasons to cooperate because of their deep involvement in the Vietnam War (1955–1975) that was going on, still decided to jointly manage the river. Thus, conflicts over water were avoided and cooperation was fostered through the Mekong regime.

Research Method

In studying how territoriality was dealt with by the lower Mekong riparian states throughout a two-decade period, content analysis was employed. Contents of minute interactions and meetings of the earliest newspaper articles online dated from 1957 until 1977 were examined. News summaries of articles were obtained from those gathered by Wolf and his colleagues[25] and full articles and news abstracts were downloaded from FACTIVA, a "source of news, data, and insight … with access to thousands of premium news and information sources on more than twenty-two million public and private companies"[26] by the researcher. Also, annual reports of the Mekong Committee which were obtained from the website of the Mekong River Commission (MRC) and personal correspondence with the head librarian of the

MRC, Miss Phaporn Sirimongkol, were studied. Finally, studies on various river basins were also examined. With this in mind, this research now turns to the case in question.

Mekong River Basin: A Profile

Named differently in the countries that share it, the Mekong River is *Lan Xang* (瀾沧江, 瀾滄江) in China meaning Turbulent River, *Tônlé Thum* (ទន្លេធំ) in Khmer meaning Great River, *Mae Nam Khong* both in Lao (ແມ່ນ້ຳຂອງ) and Thailand (แม่น้ำโขง), *Mae Kong Myit* (မဲခေါငမြစ်), in Myanmar which means Mother of Water in all three countries and *Sông Cửu Long* in Vietnam meaning Nine Dragons River. It is considered the eighth largest river in the world with the annual flow of 475 billion m^3 (385 million acre-feet) (Browder and Ortolano, 2000: 501).[27] The basin area totals to 795,000 km^2 where 21 percent (165,000 km^3) is located in China, 3 percent (24,000 km^2) in Myanmar, 25 percent (202,000 km^2) in Laos, 23 percent (184,000km^2) in Thailand, 20 percent (155,000 km^2) in Cambodia and 8 percent (65,000km^2) in Vietnam. About 1 percent (165,000km^2) of China's, 3 percent (24,000 km^2) of Myanmar's, 85 percent (155, 000 km^2) of Cambodia's, 85 percent (202, 000 km^2) of Laos', 35 percent (184, 000km^2) of Thailand's, and 19 percent (65,000 km^2) of Vietnam's territories are located in the basin.[28]

Table 1. Share of the Basin in Each Riparian State

Country	Percentage of Territory in the Basin
Cambodia	20% (155,000 km^2)
China	21% (165,000 km^2)
Laos	25% (202,000 km^2)
Myanmar	3% (24,000km^2)
Thailand	23% (184,000 km^2)
Vietnam	8% (65,000 km^2)
Total:	**100% (795,000 km^2)**

In terms of population in the basin, around 10 million Chinese, less than 1 million Burmese, about 21 million Thais, 17 million Vietnamese and about the entire population of Laos and Cambodia live in the basin. About 85 percent of the total population living in the basin is engaged in agriculture mainly on rain-fed paddy cultivation.[29] Just like all rivers that are crucial to the emergence and survival of civilizations, so is the Mekong River to the people that share it.

Why Cooperate?

With conflicts and confrontations against France and growing conflicts over differing political ideologies brewing in the Mekong region, the Indochinese states and Thailand were not in a position to cooperate with each other. They were at odds

The Mekong River basin (Mekong Annual Report).

with each other. Yet, it is interesting to note that the four decided to agree on managing the Mekong River by signing an agreement in 1957, the period of the "cold" war intensifying between the U.S. against China and the USSR but was translated into a "hot" war between Vietnam and the U.S. in the Mekong region. The signing of this agreement in theory and their commitment toward fulfilling it in practice in

twenty hostile and turbulent years showed that economic interests also mattered in as much as political ideologies did. The River was (and is) a significant source of survival of the people and economic development for the country.

In the 1950s, riparian states grappled to find ways to feed the rising population of 3 per cent every year, low per capita income (less than USD 100 for Thailand which was considered to be the most economically advanced among the four) and expensive power rates (between USD 11–15 cents per kilowatt hour [kwh] in Laos and between USD 2–10 cents in Thailand) in the region.[30] The need to provide for these basic needs of the population was also a matter of primary importance to the governments of these states. For how else could they sustain conflicts and wars with a hungry and growing population heavily dependent on agriculture in which the Mekong River is so crucially vital?

Tonle Sap is the lake that supports the staple food of Cambodians, rice and fish. From July to October when the Mekong water is high, the water flows into the lake but reverses its flow from November when the water is low. The main interest for which Cambodia wishes the MC to provide is the protection and sustainability of the Tonle Sap. The water flows which from the Tonle Sap into the Mekong Delta in Vietnam plays a crucial role in the agricultural economy of Vietnam.

Considered as the "rice bowl" of Vietnam, about 50 percent of rice is produced from the Mekong Delta region. Vietnam's stake in the Mekong River includes continuous flow of water for its rice production and for combatting salinity intrusion in the Mekong Delta. Like Vietnam, which is considered one of the world's top rice exporters, Thailand, too, considers the Mekong River very significant to its rice production.

The river is Thailand's eighth major river sub-basin among its 25 sub-basins where 6.25 percent of its area is equipped for irrigation. In fact, Thailand has always been determined to utilize the river for its people living in the Northeast where the river is located. It is an arid region which has the "largest rural population and the greatest agricultural development"[31] and considered to be the poorest in the country. Thailand needs water supply for agricultural production and electricity for the inhabitants of this region. Laos, its land-locked neighbor, has the potential to provide further for this electricity.

Laos, among its fellow lower Mekong riparian states, is considered to have the most "favorable physical features of tributaries for hydropower production and water storage."[32] It aims to be the "Kuwait of hydroelectricity," the "Kuwait of mainland Southeast Asia,"[33] and the "battery of Southeast Asia."[34] It is interested in building more dams for hydroelectricity production that it can then distribute to neighboring riparian states and this energy serves as the primary source of its foreign currency. As Saop Tainglim, vice chairman of Cambodia's National Mekong Committee puts it, "Hydro-power is our national treasure. It's like oil or gold."[35] Of further importance, too, as a landlocked country, it also aims to ensure the navigability of the Mekong River during dry season.[36]

And Why with Fellow Hostile Riparian States?

Developing the river independently can create further frictions to the already volatile situation in the region. Doing so can "heighten tensions and regional instability, requiring years or decades to resolve"[37] and can "forgo the opportunity to secure gains."[38] If develop bilaterally, transactions can prove costly[39] which the newly independent states of Indo-China with fledgling economies wished to avoid. However, if developed multilaterally, "transaction costs associated with bilateral contracting" can be reduced.[40] More so, centralization of activities such as "the diffusion of information"[41] found in multilateral groupings/organizations can increase the efficiency of collective activities."[42] In fact, scholars and experts agree that a "regional approach to the problem of Southeast Asia offers a much greater prospect of success than a country-by-country approach, and that international aid can be administered more effectively on a multilateral, regional basis than other bases."[43] Thus, for rational actors like those which need financial resources and technical expertise, cooperation with their fellow riparian states seems to be a rational thing to do.[44]

Developing the river, however, requires a general consensus to confront territorial issues and share cross-border benefits. The 1955–56 U.S. Bureau of Reclamation Report called for a basin-wide development approach and urged the riparian states to jointly manage developing the river. It needed to plan, develop and collect basic data on water, soil and fisheries that "would be located at points where the Mekong forms a boundary between two countries sharing the Basin."[45] Thus, to avoid territorial confrontations, solidarity between them would facilitate the smooth implementation of the projects envisaged by the report. If these projects then materialize, benefits could not only be enjoyed by one country but could be shared between them such as "providing hydroelectric power or irrigation water, or by regulating flows, which might permit increased power production downstream, reduce flood losses, and improve navigation."[46]

In order to obtain such benefits, however, the four needed huge financial resources, technical expertise and modern technology. With economies struggling and preoccupied with conflicts within, on and outside their respective borders, none could afford to provide such needs. Thus, when the UN and the U.S. to some extent offered to explore the potential the Mekong could offer, no one dared turn down such an offer.

The Birth of the Mekong Regime

From 1951 to 1956, the UN Economic and Social Commission for Asia and the Far East (ESCAFE, the predecessor of ESCAP and hereafter UN-ESCAFE) worked with experts in investigating the Mekong River with the cooperation of the riparian states. These were considered the "first attempts at a systematic study of the water resource potential of the Lower Mekong."[47] The huge benefits the Mekong River could offer was "virtually unknown until 1957 when the Bureau of Flood Control of

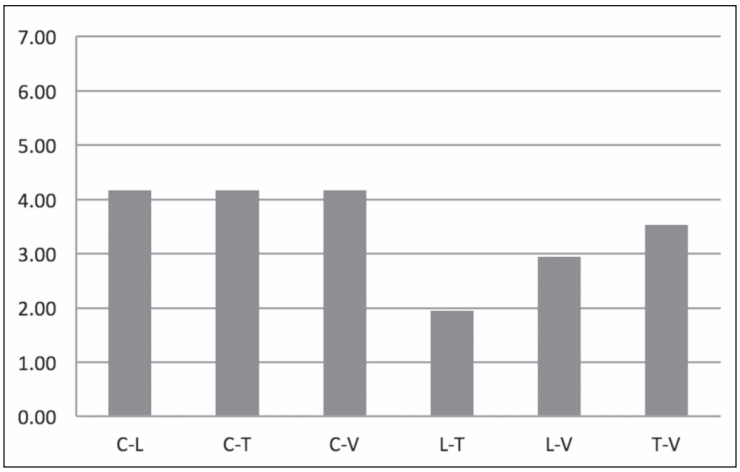
the UN-ESCAFE made its first studies and investigations."[48] Positive results of these studies "aroused the interest of the four Lower riparian countries."[49] Through the efforts and encouragement of the UN-ESCAFE for almost six years from 1951 to 1956,[50] and motivated by the realization of the potential benefits that can be derived from continued studies and joint development (Statute of the Committee for Co-ordination of Investigations of Lower Mekong Basin, Chapter 1, hereafter the 1957 Agreement), and despite being in the midst of, conflicts in the region (the on-going Vietnam War which started in the early 1950s), the lower riparian states of Mekong remarkably signed the 1957 Agreement on 31 October.

The statute was drafted by the Office of Legal Affairs at the United Nations headquarters, which emphasized that the MC was "established" by the four riparian states and acknowledged that it must belong to and be controlled by, them.[51] This agreement was their response to a recommendation adopted by the UN-ESCAFE at its Thirteenth Session in March of that year. Specifically, it was agreed upon by Thailand and the newly independent states of Cambodia, Laos and the Republic of Vietnam (South Vietnam). The 1957 Agreement led to the establishment of the MC on the "basis of equality of rights of the four riparian states" and became "an autonomous organization of sovereign states."[52] Thus, the birth of the Mekong regime was founded on the shared interests of the four, premised on a respect for their respective sovereignty and facilitated by the UN, specialized agencies, organizations and other countries. In the process of facilitating cooperation and river development, the Mekong regime performed crucial tasks by acting as an arbiter, data collector and disseminator, fundraiser, and manager and coordinator of projects.

Arbiter

Despite the political and military hostilities in the region, the Committee met sixty-nine times from 1957 to 1975.[53] Furthermore, analysis of the records revealed that that they cooperated with each other using the Water Event Intensity Scale (WEIS) using a range of -7 to +7 values. Negative values mean conflicts, positive ones mean cooperation and 0 means neutral. On average, scores of the riparian states was 3.49**,** mild cooperation on the level between cultural, scientific agreement/support and non-military economic, technological or industrial agreement. The consistent meetings and cooperation reflects a kind of "sustained shared political action" as Makim points out, and can be considered "an achievement by itself."[54]

It should be noted, however, that the UN, specifically the Executive Agent (EA), played a significant role in these meetings. Two examples can illustrate this point. One case is the 1958 meeting that was to be held in Bangkok on that year. Hostilities between Thailand and Cambodia were serious to the point where ambassadors were recalled and commercial air services halted.[55] However, with the efforts primarily of the UN-ESCAFE Secretariat in Bangkok, the meeting convened on schedule and with full attendance by the four member states. Another noteworthy example is the agreement between Thailand and Laos in 1965. Both countries agreed on establishing the Nam Ngum project along the Mekong River where both countries promised to



Average Score of Cooperation/Conflict Values, 1957–1977. Note: Values taken from Wolf and others, supplemented and calculated by the researcher.

C = Cambodia, L = Laos, T = Thailand, V = Vietnam (South)

exchange power between them. During the construction, Thailand would supply electricity to Laos but once the project is finished, the latter would return the power to the former. Transmission lines found between the countries are their own properties but the lines across the Mekong River would be the property of the MC. This agreement is considered to be "the first agreement of its type ever to have been counter-signed anywhere by the downstream riparian countries—Cambodia and Vietnam—and by the UN as parties directly interested in the comprehensive development of the Lower Mekong Basin for the benefit of all the people of the Basin without distinction as to politics or nationality."[56] Water provided the four hostile parties an incentive to cooperate: "a dam built in one country to supply nearly 80 percent of its energy to its neighbor"[57] in the midst of political and military hostilities. This merely proves that even political and historical enemies cooperate once their economic interests are at stake.

Through the Secretariat, the Mekong regime became a conflict mediator able to facilitate agreement on water management such as those cited above. It became an arena of numerous meetings and discussions between them. This iterated behavior effect expanded the possibilities of further interactions that "would ultimately create predictability, stability, and habits of trust."[58]

Data Collector and Disseminator

During the formative years of the Mekong regime, scientific knowledge about the Mekong River through the international donor community was collected and provided to the four riparian states. Haas defines knowledge as "the sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy

designed to achieve some social goal."[59] Provision of this objective information by experts "enables the improvement of trust on data and other decision support tools, so that disputes over the validity of technical data related to controversial projects are less likely."[60] Data that were collected involves the potentials of the Mekong significantly useful to the economic interests of the riparian states such as hydrology, soil and fisheries of the Mekong basin.

The four riparian states were actively involved in the planning and data collection activities soon after the agreement had been signed in 1958. Their participation can be seen in the studies and projects recommended by Generals Wheeler and White. In addition to the four, in fact eighteen countries participated in the Mekong development project.

The following countries that took responsibility for the following tasks: Japan with reconnaissance survey of the major tributaries; India with hydrologic and meteorological observations; Canada with aerial photography and mapping; Italy with preliminary planning of mainstream projects; Belgium, Netherlands, and New Zealand with hydrographic survey; China, Denmark, Finland, Israel, Norway, and Sweden with other related studies; France with hydrologic and meteorological observations and soil surveys; United Kingdom with hydrologic and meteorological observations and hydrographic survey; the Philippines with aerial maps and preliminary planning of mainstream projects; and the U.S. with hydrologic and meteorological observations, leveling and ground controls, preliminary planning of mainstream projects and hydrographic survey. Meanwhile, the International Atomic Energy Agency (IAEA) and the World Meteorological Organization (WMO) contributed to the planning of mainstream projects, UNDP (Special Fund) with hydrographic survey and the Food and Agriculture Organization (FAO), International Labor Organization (ILO), UNDP, World Health Organization (WHO) with other related studies. These agencies were joined by the Ford Foundation, Resources for the Future, Inc., and Shell Oil Company. Five projects were completed while four were in progress as of 1965. Despite not being on the list, it is interesting to note that the USSR was also involved in technical assistance in at least one of the riparian states.[61]

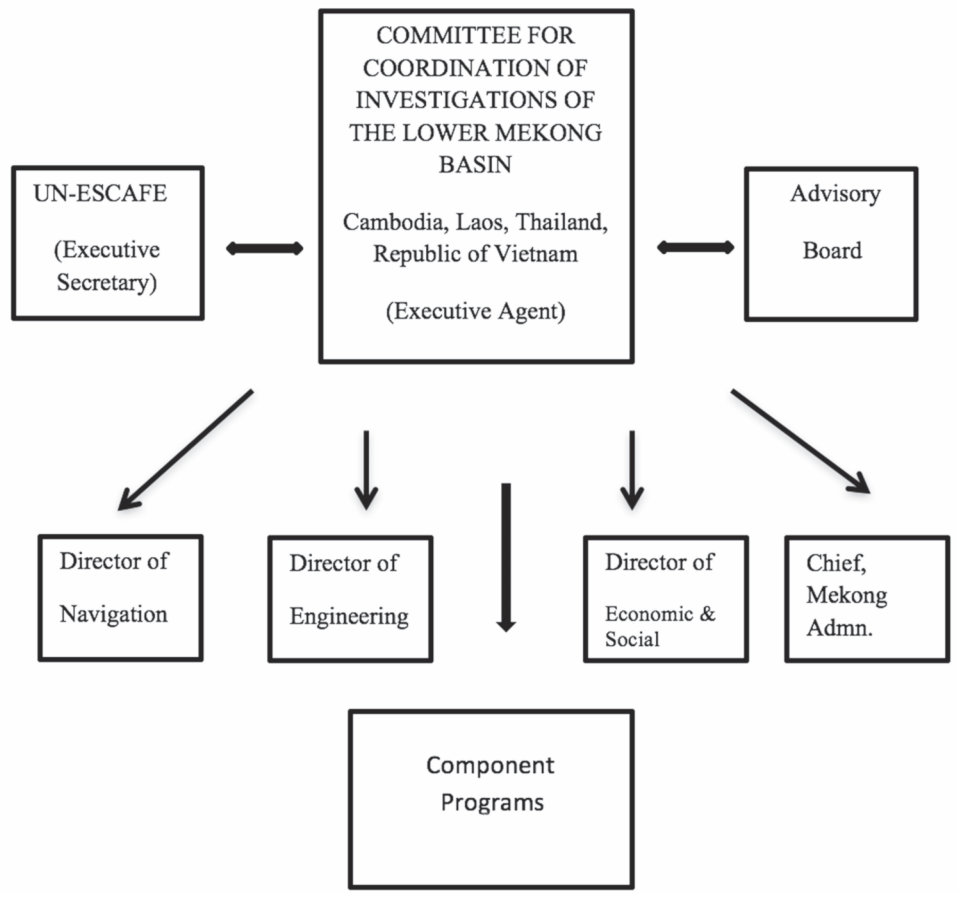
Three years later, the Ford Foundation sponsored Gilbert White to conduct economic and social studies. However, due to the political and military confrontations that were intensifying in the Mekong region, only four countries besides the riparian states participated. Italy took the responsibility of studying the administrative and legal problems, France on domestic power markets and adjustments to floods, the U.S. on fisheries and development (along with India) and on preparations of an atlas of resources and resource use. Meanwhile, the UN-ESCAFE, (ILO), and (FAO) worked closely with the riparian states on the remaining studies.

Data and information that were gathered were given to the Committee. This information and knowledge was then disseminated to the riparian states and participating countries and agencies through the publications of documents such as the Annual Reports in accordance with the Article 6 of the MC's Statute. Moreover, progress of the activities, funds obtained and spent, and minutes of the meetings were included in the said reports. This provided a sense of transparency and further

enhancement of "habits of trust"[62] between them. In addition, operations of the projects and data obtained were turned over to them as well. The statute empowered the Committee to "…take title to such property as may be offered under the technical assistance programmes of the UN, specialized agencies, friendly governments or other organizations."[63] This gave the Committee a sense of ownership and control over such knowledge and projects, one of the many benefits they reaped by virtue of their being members of the Committee. Examples include feasibility reports on tributary projects, hydrographic surveys, and Mathematical Model of the Delta in Cambodia and Vietnam.[64]

Fundraiser

Of central interest about the Mekong regime is its role as a "fundraiser," obtaining aid abroad and using such aid for projects which are distributed between the four member states. The Mekong Secretariat under the Executive Agent (EA) has



Organization of water resources of the Lower Mekong basin (Mekong Annual Report, 1967: 178).

the responsibility of procuring aid abroad and managing projects. The procured aid alongside members' contributions is then used to fund projects for each member state. Activities governing the Mekong are centered on the Mekong Secretariat. This centralization of activities enables the regime to function efficiently and is less costly when compared to unilateral or bilateral transactions. As regime theorists point out, "regimes reduce the transaction costs associated with bilateral contracting"[65] or that they are "organizationally less expensive than is the development of many bilateral contracts."[66] Moreover, like international organizations, this centralization enhances its "ability to affect the understandings, environment, and interests of states."[67] Moreover, the participation of the UN and its related agencies provides a "catalytic role" in mobilizing funds. Like international financial institutions, the involvement of the U.S. and the UN "provide a 'good housekeeping seal of approval' or 'confidence signal' to the foreign aid and investment market."[68] This provided the flow of additional huge funds from other institutions.

The U.S. as a donor country contributed the most to the committee while Thailand as a riparian member state gave the most. Specifically in the mid–1960s, President Johnson supported efforts on developing the River saying "the Mekong River can provide food and water and power on a scale to dwarf even our TVA."[69] He called on the support of the U.S. Congress and encouraged the UN, other industrialized countries and even the Soviet Union to contribute to the efforts as well.[70]

It is also interesting to note that during the turbulent years from 1960 to 1975, aid increased, too. This counters other studies that claim that conflict tends to decrease the provisions of aid.[71] Bilateral aid, too, revealed an interesting revelation. Vietnam, the country most embroiled in conflict in the Mekong region, received the most bilateral aid during the 1960s. Since the U.S. was heavily involved in this turmoil, it is not a surprise that it is the biggest donor country to none other than South Vietnam itself. It also gave aid to Laos (specifically the Hmong ethnic group) and Thailand, its allies against North Vietnam. Meanwhile, France provided aid only to its former colonies while Japan gave to all four member states. Despite the political turmoil in the region, both the continuous provision of aid and contributions from the donor countries/agencies to the MC showed the importance of the Mekong to the lives of the people of the riparian countries cannot be dismissed. Just like political ideologies, benefits from the river also matter.

From its inception in 1957 until 1983, donor support amounted to more than a quarter of a billion dollars.[72] This support enabled the committee to conduct planning activities and start various projects in four different states. Main projects included the Pa Mong, Sambor and Tonle Sap as the first priority investigation (Mekong Annual Report, 1967: 23) with the Khemarat and Khone Falls projects as the second priority (Annual Report, 1969: 20).

Manager and Coordinator

Development of major projects was of great importance to each riparian state so that on 31 January 1975, they signed the "Joint Declaration of Principles for Uti-

lization of the Waters of the Lower Mekong Basin (hereafter the 1975 Declaration). The core of this agreement is the joint management of not only the "mainstream but also the major tributary projects."[73] Article X states that "Mainstream waters are a resource of common interest not subject to major unilateral appropriation by any riparian state without prior approval by the other basin states through the committee." And these projects, according to Article XVII, must be presented "well in advance to the other basin states for formal agreement prior to the project implementation." Thus, each riparian state "could effectively veto another country's water projects."[74] Just as stipulated in the 1957 Statute, decisions must also be unanimous.

Table 2. Completed Projects (1957–1977)[75]

Country/Project	Purpose	Year Completed
Cambodia		
Prek Thnot	Power	Interrupted since 1975
Laos		
Lower Se Done (Selabam)	Power	1970
Nam Dong	Power	1971
Nam Ngum	Power	1971
Thailand		
Nam Pung	Power	1965
Nam Pong	Power, Irrigation	1966
Lam Phra Plemg	Irrigation	1967
Lam Pao	Irrigation	1968
Lam Takong	Irrigation	1970
Lam Dom Noi	Power, Irrigation	1971
Nam Phrom	Power	1972
Nam Don	Irrigation	1973

It can be seen from Table 2 that projects are located in the four countries but mostly concentrated in the three except Vietnam. Factors such Vietnam's direct involvement in the war, the recommendations of the Advisory Board (AB) and the amount of contributions of the riparian states themselves heavily influence this scenario.

Vietnam was heavily affected as it was the battleground of the war between big powers, the U.S. and the United Soviet Socialist Republics (USSR) with China. Operations of the MC in the Mekong Delta located in South Vietnam were hindered by military operations along the Cambodia-Vietnam border. This is not to imply that the other countries were not at all affected. They were affected, too, as they were also involved in the war that was going on in Vietnam during this time. However, operations of the committee were not as hindered as those in South Vietnam.

The recommendations of the advisory board composed of experts, pertaining to suitable locations of the projects, are also a factor to be considered. As for technical knowledge, this group of experts wielded influence in the sense that they were consulted and listened to by the four. As can be seen in Table 3, mainstream projects envisaged by the advisory board are located in Cambodia, Laos and Thailand but particularly between the last two. Take the Pa Mong which is located some fifteen

Table 3. Possible Mainstream Projects on the Mekong River

Project	Purpose	Location	Estimated Installed Capacity (kilowatts)	Estimated Irrigated Area (hectares)	Possible Upstream Navigation Improvement (kilometers)
Pak Beng	PNF	Laos	1,450,000	—	280
Luang Prabang	PN	Laos	560,000	—	110
Pak Lay	PN	Laos	60,000	—	100
Pa Mong	PINF	Laos/Thailand	1,800,000	1,500,000	340
Thakhek	PIN	Laos/Thailand	500,000	50,000	160
Khemarat	PIN	Laos/Thailand	1,450,000	50,000	260
Khone	PN	Laos/Cambodia	1,000,000	50,000	50

miles from Vientiane "where the Mekong forms the boundary between Laos and Thailand"[76] as an example. Once a dam is constructed in the Pa Mong site, it can produce power, control flood, and water for irrigation of about "2 million acres in Thailand and 500,000 acres in Laos."[77] Moreover, as a dam that can regulate for projects downstream, "…the installation at the Sambor project can be increased from 400,000 to 625,000 kw and power costs significantly reduced. Power from the Sambor project could be used for drainage pumping in the Plaine des Joncs region in the wet season and for irrigation pumping in the dry season, using water drawn from the Great Lake and the Mekong River."[78] By the 1970s, it is estimated that there were fourteen hydropower projects that could be found between these two countries.[79]

Another factor that should not be overlooked is the amount of contributions by the riparian states themselves. Of the four, Thailand contributed the most. Of course, it was and is the most developed among them and it is natural to think that it has the capability to do so. More so, given the serious conflicts which were ravaging the still economically fledgling newly independent Indochinese states, it was placed in a much more conducive position to focus on its economic stake over the Mekong. Thailand's economic capability, internal political stability, manageable conflicts with the communist Thais within, being a staunch ally of the U.S., plus being the "house" of the United Nations Economic and Social Commission in Asia and the Far East (UN-ESCAFE) enabled it to benefit from the abundant available resources the UN, the U.S. and other countries/organizations were willing to offer. Thailand was thus grabbing the opportunities at hand to eagerly develop its own river resource. In fact, about two years prior to the formal signing of the 1957 Agreement, Thailand conducted its own survey of the Mekong River within its territory with the U.S.[80] It should be no surprise that it poured its own resources into the coffers of the MC. This huge contribution can be aptly construed in two ways. One, as a manifestation of its eagerness to develop its poorest Northeast region and obtain sources for its growing energy needs and two, of its confidence for benefits in return which is seen in the many projects it was willing to participate particularly in Laos. Thus, many projects can be found in these two.

Conclusion

The Mekong riparian states were driven to come together and signed an agreement in 1957 to maximize the potentials of the River. In order to do so, they had to cooperate. But their cooperation did not happen smoothly due to the irritants affecting their relations brought about by historical, political and military hostilities. Nevertheless, available data show that they cooperated with each other. They met consistently (69 times) and the degree of their cooperation was quite relatively strong based on the WEIS scale (3.49). Even after a radical change in their ruling ideologies in 1975, communist countries of Laos and unified Vietnam continued cooperating. The Mekong regime was present all throughout during this period of cooperation (and even conflict). It performed crucial roles by mediating conflicts, data gathering and disseminating these knowledge and information along with the progress of the projects and obtaining funds abroad while respecting the authority and sovereignty of the riparian states. Indeed, the signing of the 1957 Agreement, the meetings convened and agreements made during these years by the riparian governments clearly showed that even political enemies in the midst of military confrontations can deal with territoriality in a positive way so long as economic gains can be obtained from developing a shared resource with the help of a water regime.

What this study implies is that a water regime is useful in mitigating, if not entirely solving, conflicts between riparian states. Its presence is helpful particularly in riparian states with histories of political, historical and military hostilities with each other. As the story of the Lower Mekong shows, it can help countries not only mitigate conflict but can also provide economic and technological benefits. Should riparian countries see the economic benefits it can provide, establishing one is not a bad idea.

Despite the best efforts exerted to show how territoriality was overcome by the four riparian states through the Mekong regime, this paper has its own limitations in terms of access mainly to one news database where newspaper articles are only in English language and focus only during the Cold War period. It could have been enriched by the following: first, access to newspaper articles in full text from 1957 from other search engines would be very useful in consistently tracing the history of cooperation (and conflict) of the Lower Mekong riparian states even including North Vietnam; second, knowledge of any of at least four languages of the Lower Mekong (Khmer, Lao, Thai and Vietnamese) would truly enrich the data; and finally, this study focused only during the Cold War era (1957–1977) where the UN and the U.S. were aggressively involved. It would be interesting to explore the post–Cold War (1990s and present) period, where China, the rising "hydro-hegemon," started to assert its own right in developing the Mekong. How China has affected the dynamics of cooperation between the riparian states of the Lower Mekong given its existing and planned hydropower projects in the Upper Mekong since the 1990s will be of great contribution to the field of hydro-politics.

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Conflicts, Names and Sea Space: A Review of the 22nd International Seminar on Sea Names

Joshua Nash

Abstract

This critical commentary and special section editorial reflects on the recent twenty-second installment of the International Seminar on Sea Names held from 23–26 October 2016 in Jeju Island, South Korea. A brief history of the seminar series is proffered in light of several of the evolving political and academic developments that surround the *East Sea–Sea of Japan* naming dispute. The three papers in the special section are summarised in terms of their relevance to a Korean and international take on this germane Northeast Asian maritime and territorial issue. In summary, the papers and the seminar series are submitted as a key intellectual environment where future inroads into critical political and maritime toponymy and geography, sea and island toponymy, and sea and island studies in general can be examined and teased out.

Keywords: critical geography, critical toponymy, *East Sea–Sea of Japan* naming dispute, islands

Toponymic Skirmishes and Marine Encounters

On invitation I recently had the pleasure to attend the 22nd International Seminar on Sea Names from 23 to 26 October 2016. This seminar series co-sponsored by The Society for East Sea and The Northeast Asian History Association has since its inception attracted attention from South Korean academics, scholars, journalists,

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 67–71 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

and people involved in Northeast Asian politics. Its most recent installment saw South Korea's tourism mecca Jeju Island as its backdrop. It also witnessed the development of a more obvious bilateral presence than hitherto with the attendance for the first time of both Korean and Japanese delegates. In addition to these Northeast Asian representatives, the seminar series has most definitely cultivated an international flavour with speakers from Algeria, Australia, Austria, Denmark, Finland, France, UK, and USA. While the academic and intellectual force which has evolved through the seminar series has primarily focused on the politics and geography of the *East Sea–Sea of Japan* naming dispute, the spread of presentations and panel discussions in the 2016 event demonstrates how broad the range of possible takes on sea naming has and might become. With the added presence of linguists, onomasticians, historians, and cartographers to the already well-founded geographical focus of the seminars, the relevance of the Korean-Japanese sea naming dispute specifically and sea naming matters in general continues to be made more relevant to a wider audience.

As an academic researcher, the position I take in this critical commentary and special section editorial is primarily theoretical. Additionally, there is the possibility that several of the raised issues are relevant to a more practical set of political solutions related to the naming issue. I wish to accomplish several tasks: first, to summarise the present historical and intellectual context of the presented papers and some of the associated administrative setting; second, to tease out an editorial core around the papers in the special section and propose their significance to sea naming in general; third, to illustrate how the sea naming series encourages a more critical position on critical political and toponymic geographies and to propose how possibilities arising from these seminars are germane to advancing research agendas in several disciplines including political geography, analytical and political cartography, and toponymy, linguistics, and ethnography.

The Seminar

A summary from a pamphlet published by The Society for East Sea (2014: 3) summarizes well the philosophy behind the 22-year established seminar series:

> The Republic of Korea—South Korea—and Japan are yet to agree upon a common name for the sea area between the Korean Peninsula and the Japanese Archipelago. Japan claims that the name "Sea of Japan" is the only internationally established name for the body of water concerned and rejects the accommodation of any other name. Meanwhile, based on the fact that the 75 million residents of North and South Korea are using the name "East Sea" and as leading cartographers and mass media around the world are increasingly choosing to employ both names, the Korean government advocates for the concurrent use of the "East Sea" and the "Sea of Japan" until an agreement is reached upon a single common name.

Although the hydronym—name for a body of water—*Sea of Japan* is more widely used internationally, Korean academicians have tried to find solutions to this

long-term dispute and to provide regular academic fora to discuss this issue. As a result, the sea names seminars have been developed to focus on the history and politics of the *East Sea–Sea of Japan* issue while at the same time being arguably one of the most significant international meetings dedicated entirely to toponymy and especially the topic of sea names. The fact that this year's seminar took place in Jeju Island, the Korean Peninsula's most significant southerly land mass and a large island holding a strategic historical and geographical position relating to South Korea, Japan, and China, is noteworthy; because of its location, Jeju, the island so well endowed with a role for keeping peace in the area, seemed like a fitting place for the possibility of a reconciliation of conflict, sea, and names, hence the subtitle of the seminar: Names of Islands and Seas: Connecting People, Culture, History and the Future.

Apart from the dialogue between Korean and Japanese participants, which could most definitely be increased in forthcoming versions of the seminar, and which took place relating to more technical and political details of the naming issue, the academic thrust of the presentations was strong. From more general work on teaching, education, and geographical naming through exo-endo (external-internal) nomenclature to Artic and European sea and land naming case studies, the breadth of the intellectual push was vast. Coupled with this were some passionate positions, particularly from several Japanese delegates who claim that this sea naming issue is almost a non-issue in Japan and in its media. Any future solution or work-in-progress outcome to the name, at least from the South Korean side, would be a long-standing concern. Some posit the naming conflict is political rather than legal while on the academic front scholars addressed the *East Sea–Sea of Japan* debate from historical, cartographic, and more personal perspectives. It arose that any consideration and possible need for a result to the naming question would have to involve at least some Russian influence and consideration because Russia has coastal claim to this linguistically and toponymically contentious body of water.

What became clear over the two days of presentations and discussions is that any nomenclature-based reconciliation would concurrently have to involve academic, politico-legal, and ultimately human representation. While any one perspective may be directed toward finalizing such matters, I believe the academic power of these dialogues lies in the acknowledgment of the fuzziness of boundaries and the observance that perhaps people do not necessarily want results or even to listen to others. I now summarize three of these academic studies on sea and land names presented at the Jeju seminar and condense their methodological and theoretical relevance to the broader field of sea naming and critical and conflict-focused toponymy.

The Special Section

Taking this historical background and applying it to the present set of papers, there arise several pertinent characteristics applicable to the study of island toponymies, sea names, and marine territories. Radil takes the stance of a political

geographer and delivers a strong argument delineating how the geopolitics of toponymy can be seen in terms of their movement from the theoretical to the practical. By observing placename changes and by realising how such toponymic variation can be used to appreciate geographic concepts like scale and name change motivation, the eastern Mediterranean island nation of Cyprus, with its Greek and Turkish linguistic and cultural influence, is used to apply theoretically relevant positions relating political, geographical, and linguistic territoriality and conflict to a contested island toponymy. Cypriot toponymy within its divided island spaces exists as a vehicle for deciphering differently embedded political and economic relationships. The stance Radil takes is enticing in terms of its offering of future possibilities relating size and scale in place, islands, territoriality, and a new theoretical turn in toponymy. He ends by suggesting that such a critical take on naming and place proposes a reinvigorated toponymy, which can easily be integrated with more orthodox and mainstream political geography.

These musings on scale, islands, and territory prepare a germane segue into Nash's treatment of a small scale example of sea naming and its possible relationship to larger magnitude. Using the results of documenting fishing ground naming history on and around three islands in Oceania—Norfolk Island (South Pacific), Dudley Peninsula, Kangaroo Island (South Australia), and Pitcairn Island (South Pacific)—and placenaming practices more generally encompassing islands, insularity, isolation, and the sea, Nash argues that small scale fishing ground names as sea names are not only stark examples of maritime and aquatic cultural heritage, but they provide a microscope for observing interaction involving micro sea names and sea space and marine names as folk capital. Because the Pitcairn Island example in particular is hyper isolated, involves both land and sea, and is minute in comparison to larger disputes such as the *East Sea–Sea of Japan* issue, it is presented as a possible case in point for the possibility for creating a peaceful reconciliation not only between the naming sea and land, which was the focus of the Jeju Island seminar, but for larger scale sea naming disputes in general.

Radil's more theoretically driven position through to Nash's scale-focused deliberation leads to Gammeltoft's practically and historically focused consideration of the "one letter war" and the naming of Skagerrak or Skagerak, the strait running between the southeast coast of Norway, the southwest coast of Sweden, and the Jutland peninsula of Denmark. What may appear as a minor spelling convention hangover between these three Nordic countries, with Norway opting for the single –r– option while Denmark and Sweden persisted with the double –rr– choice, is presented as a window into more general sea naming conventions and possibilities. Gammeltoft illustrates how what may appear as an unlikely and seemingly trivial disagreement can assist in arriving at an understanding of how sea naming questions become politicized and eventually (somewhat) resolved. The Skagerrak–Skagerak hydronymic contention and conflict depicts beautifully the effectiveness of the marine environment for revealing the fuzziness of technical, cultural, and territorial debates.

The Future

In looking to the future regarding both the prospect of a resolve regarding the naming issue and managing a continuing intellectual debate on sea naming and critical political toponymy, I wish to draw on the summary of the final panel discussion moderated by Professor Sungjae Choo, President of The Society for East Sea. While there was overwhelming consensus that any continued conversation should involve both South Korean and Japanese experts and that any naming solution should take a humanistic approach in that it should be equitable and just, the potential continuing role of the seminar series in expanding academic debate in critical political geographies, marine toponomastics, and island studies is vast. Topics such as geographical names as cultural heritage, the human-human interface in sea name research, economic roles of the sea and its names, and intra- and extra-linguistic aspects of names are all welcome in this eclectic forum. Where a politico-legal perspective may be focused primarily on solution-based outcomes, conflicts and disputes provide fertile environments for intellectual maturation. Geographically diverse excursions into Mediterranean, Nordic, North African, Northeastern Asian, and South Pacific sea naming examples, all with differing spatial and scale considerations and linguistic complexities, make for a ripe academic milieu to harness apparently disparate opinions into a more cogent interdisciplinary nucleus.

Ways forward for using the lens of the *East Sea–Sea of Japan* naming dispute and this seminar series involve assessing the effectiveness and understandability of the dual naming context, the establishment of equitable naming and social justice possibilities, addressing the benefits to both Korea and Japan of a dual name, understanding the possibility of a win-win outcome, and predicting the reality of using maps in education to spread knowledge about politicized and dynamic processes of and in toponymy. In conjunction with these what appear to be perennial discussions in any future formats of this seminar series, new blood and novel perspectives would benefit the now well established section of bedrock and its bearing on maritime and territorial studies. It is my wish that upcoming semblances of this series attend to attracting these hopeful, new, and energetic members to the fold so that (Northeast Asian) sea naming and its home within critical political toponymy can remain agreeable bedfellows.

The opinions expressed in this critical commentary and special section editorial are the solely the author's. They should not in any way be considered to be aligned with or to represent those of The Society for East Sea, any other Korean agency or the Journal of Territorial and Maritime Studies. *Many thanks to all the seminar delegates, especially to Sungjae Choo, Peder Gammeltoft, and Steven Radil.*

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The Multi-Scalar Geographies of Place Naming: The Case of Cyprus

Steven M. Radil

Structured Abstract

Article Type: Research Paper

Purpose—Toponymy has long been marginalized within human geography despite the obvious salience of place names to the study of places themselves. This has been attributed to a lack of toponymic theory but new theoretical efforts (the so-called "critical" turn in toponymy) have explicitly drawn on notions of place in human geography and emphasized the processes behind place naming rather than on cataloguing names themselves. This paper builds on these efforts to introduce the utility of the concept of spatial scale for place naming studies through the example of the political divided island of Cyprus.

Design, Methodology, Approach—The literature documenting place name changes in Cyprus after independence (1960) and partition (1974) was reviewed to assess if different naming processes could be identified.

Findings—Different processes in name changes are found in the north and south after partition. Scale is used to highlight these differences which, in turn, is used to introduce the notion of top-down and bottom-up place naming processes.

Practical Implications—The concepts of spatial scale and top-down/bottom-up naming have utility for new insights for many other toponymic issues and conflicts.

Originality, Value—The paper concludes with a discussion of the value of this approach to other place naming issues, including maritime and territorial disputes.

Keywords: Cyprus, place names, place naming, scale

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 72–85 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

Introduction

Toponymy, or the study of place names, deals with what should be geographic subject matter. For example, the field of human geography focuses on how people make places and how human interaction occurs both within and between places.[1] Despite the obvious salience between place names and place making, toponymy has long been a marginalized topic within human geography.[2] This may be a consequence of the fact that human geography has been a theory-driven field since the early 1970s[3] while toponymy has been critiqued as having a lack of theory, largely focused on cataloguing lists of place name changes rather than emphasizing the causes of such changes.[4] Whether entirely fair or not, such a perception has kept toponymy on the margins of human geography. For example, since 2010 roughly only 4 percent of all articles (10 in total) published in *Political Geography* (the most important journal for issues of politics in human geography) deal directly with toponymy.

With these circumstances in mind, this paper advocates for a new direction in toponymy in a twofold way. The first move involves embracing recent efforts that attempt to shift the emphasis in toponymy studies from place names *per se* to the processes behind place name changes. This is a welcome shift as it creates opportunities to develop theories of the processes themselves. The second move leverages key geographic concepts, like the idea of spatial scale, which can stimulate more interest in toponymy within contemporary human geography. In this paper, I apply this twofold approach to the case of the politically divided island of Cyprus to explore how spatial scale adds to the understanding of two different types of place name changes occurring there. Using spatial scale to reflect on these changes leads to the introduction of a new theoretical perspective on place naming, which I call either *top-down* or *bottom-up* naming.

The rest of the paper is organized as follows. First is a review of new directions in the toponymy literature followed by a presentation of the geographic concept of spatial scale. These ideas are then applied to the case of Cyprus followed by a discussion of the top-down and bottom-up typologies. The paper concludes with a discussion about the utility of this overall approach to other cases of place name changes.

Place Names or Place Naming?

The study of toponymy has been something of a scattershot field and the scholarship that forms the core literature has originated across a handful of academic disciplines, including anthropology, legal studies, political science, linguistics, and human geography.[5] This diversity of approaches has not lent itself to a clear or consistent theoretical framework from which to approach the subject matter. The result has been a long-standing discontent captured by Wilber Zelinsky's observation that "the study of names leaves much to be desired."[6] Zelinsky's discontent has been echoed by many others and a persistent theme among these critiques is the atheo-

retical nature of the field. For example, Berg and Vuolteenaho argued that "toponymic research have typically adopted [a] theoretically (and politically) naïve empiricist foci on the nomenclatures of specific localities" and that researchers have avoided "theoretically grounded approaches."[7] In other words, the field has been quite disconnected with trends in social science toward critical engagements with social theory and in dealing with issues of power.

This disconnect is telling when considering the content of the typical place name study, which Berg and Vuolteenaho assert is little more than a cataloguing of existing, historic, or disputed place names for whatever location is being considered. They advocate for a different approach, one that draws on the literature in place within human geography to understand place naming practices as part of the way in which places are made or constructed by human activity.[8] Their argument drew heavily on writings on place by theorists in geography like Doreen Massey, whose emphasis on the social construction of place provided an inspiration to see place names as part of the way in which places are socially constructed and given social meaning.[9]

The argument about drawing on geographical theory to reimagine toponymy studies has been reflected in recent calls to shift studies away from name cataloging and toward investigating the processes that lead to place name changes. For example, Rose-Redwood et al. detect a "critical turn" in toponymy leading to a new wave of scholarship on the "critical interrogation of the politics of place naming" that is grounded in "an explicit engagement with critical theories of space, place, and landscape" in geography.[10] Most recently, Giraut and Houssay-Holzschuch (2016, 2) have taken this a step further by proposing a new framework for toponymy that emphasizes *place naming* processes in order to better grasp the "variegated ways in which places are named."[11]

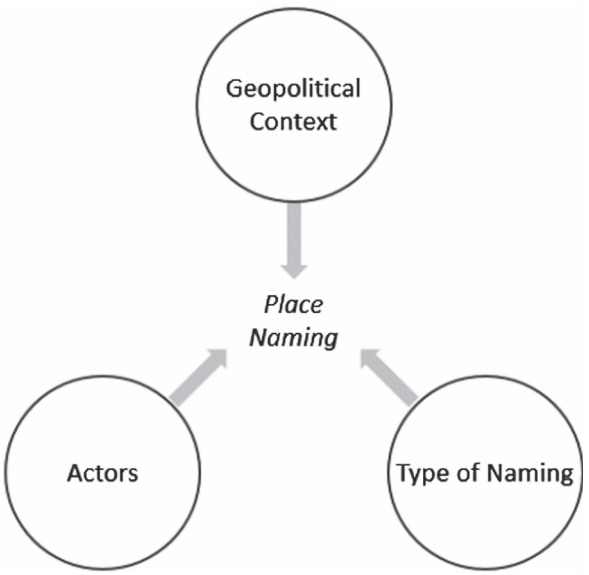

Figure 1. Diagram of the place naming process which occurs in particular geopolitical contexts, involves the actions of specific actors, and strives for certain types of changes (adapted from Giraut and Houssay-Holzschuch [2016]).

Giraut and Houssay-Holzschuch argue that attention to place naming necessarily involves a set of three different elements at the center of which reside what they call the place naming process (Figure 1).[12] The first element is the geopolitical context within which places are situ-

ated which broadly refers to concerns over the politics of control of a particular place. The second element is concerned with the specific actors that are involved in the naming process. The third element is concerned with what they call the "technologies of naming," which has to do with the type of naming that is occurring (whether names are being restored, replaced, or created altogether new). This is an interesting start towards a new theory of place naming as it makes at least two important moves. First, it recognizes that place naming is an act of politics which offers opportunities to consider whose agendas are being advanced with respect to pressing for or resisting against place name changes. Second, it is aligned with much of critical social theory in human geography in that it expressly gives attention to the agency involved in the process and to the context in which human activity occurs.

However, this framework is also incomplete from the perspective of human geography. Any interest in the processes of place naming must also consider the spatial complexity of the processes in question. For example, place naming may reflect the dominance of a group of actors or the salience of a specific issue within a particular place but also may involve actors or issues that are external to the place where the name is to be assigned or changed. The idea that the social relations that help to make places what they are may not be simply contained by or present within the place or locality itself is an important window on this theoretical deficiency. As Massey puts it, when considering why a particular place is the way it is, one must recognize that important constitutive social relations may be "contained within the place [itself]; others will stretch beyond it, trying any particular locality into wider relations and processes in which other places are implicated too."[13] From this perspective, it is not sufficient to simply consider just a place where naming occurs in isolation but to consider how those places are connected to (or not) wider spatial contexts. This need lends itself to consideration of yet another geographical concept, that of spatial scale.

Spatial Scale

Scale is treated as a foundational concept in human geography and yet is also the subject of a great deal of contemporary debate. For example, in introducing scale in a volume dedicated to the concept alone, Sheppard and McMaster wrote that "conceptions of geographic scale range across a spectrum of almost intimidating diversity."[14] As scale primarily concerns space in geography, this discussion will specifically focus on spatial scale even though there are other interrelated meanings of scale in social science, such as temporal or thematic scales.[15]

At its most basic, scale in human geography is a referent to the spatial size or extent, either relative or absolute, of some phenomenon or process.[16] Most often, the conceptualization of scale in human geography refers to a "nested hierarchy of differentially sized and bounded spaces."[17] With this in mind, a typical classification of human geographical scales includes (but is not limited to) "the body; the household; the neighborhood; the city; the metropolitan area; the province or state; the

nation-state; the continent; and the earth as a whole."[18] This perspective can lead to an understanding of scale as simply a list of analytic or observational levels with an implied spatial hierarchy. However, as Sayre points out, much of the contemporary literature on scale in human geography involves questioning the "stability of these categories … how they are produced, reproduced, or transformed … or [if] multiple levels interact."[19]

The idea of scale as a spatial hierarchy undoubtedly rests on the work of Peter Taylor, who introduced a three-tiered (urban, nation-state, global) scalar hierarchy onto Immanuel Wallerstein's notion of a single economic world system. Important to note is the primacy given to the global scale in Taylor's framework—he called it the scale that "really matters" reflecting the notion of a single global economic system that produced effects and phenomena observed at other scales.[20] Since Taylor's foundational work, human geographers in general (but mostly economic and political geographers in specific) have worked to expand and diversify the concept. For instance Neil Smith's work on the geography of capitalist production emphasized how particular scales are made by observing that scale is "produced in and through social activity."[21] Smith notes that the patterns of daily commuting from home to work and back helps constitute the urban scale while capital circulation within an interconnected international economy helps constitutes the global scale. This has led geographers to pay closer attention to the processes behind the creations of particular scales rather than to take any one scale for granted.

Building from Taylor and Smith, contemporary debates about scale have attempted to break away from the notion of spatial hierarchy, particularly from the implication that larger spatial scales are somehow more important than smaller spatial scales. For example, Marston follows Smith by pointing out that what seems to be a large scale phenomena, such as a capitalist consumptive economy, is really an aggregation of individual activity focused through the "small" scale setting of a household.[22] This constructivist notion of scale is also reflected in the growing literature on the "politics of scale" which draws on the idea that scales and scalar relations are shaped by the interactions between powerful actors and those that seek to resist them. As described by MacKinnon, powerful actors "seek to command 'higher' scales such as the global and national and strive to disempower the [less powerful] by confining them to 'lower' scales like the neighbourhood or locality, something which may be resisted by subaltern groups."[23] This then leads to efforts at "scale jumping" or attempts by certain social groups and organizations to move to higher levels of activity (such as from the neighborhood to the urban) in pursuit of their political interests.

Spatial scale is an evolving concept in geography and the debates are too voluminous to be adequately captured here. However, the current dominant conceptualization (though not uncontested) of scale rests on the following principles which I have adapted following Sayre.[24] First, scales are made by human activity (as well as by biological and geophysical processes). Second, scales are relational in the sense that they are produced by people working in relation with and to each other and that scales simultaneously exists and can interact with each other. Third, there is no

proper or correct scale to understand a given human activity or process; however, there may be certain scales with more relevance than others. Fourth and last, research on scale should reflect on the processes that make scales rather than by taking any given scale for granted.

From these principles, scale is a meaningful lens on the issue of place naming, especially given the recognition that place naming is a human *process*. Therefore, each case of place naming will have spatial scales associated with it that reflect the full set of activities that constitute the specific processes behind any place naming or name changes. Furthermore, each case of naming will likely involve different scales; if this is not the case, it is a significant clue that multiple cases are caused or shaped by the same process that is operating at a large(r) scale. Consequently, tracing the scale of the processes behind a specific case should provide some clues as to the key actors that constitute the process and that are making the scale what it is. Lastly, the presence of scale jumping by any of the actors involved in the naming process is likely a result of power differentials within a given setting. I use these ideas together to reflect on the contentious politics of place naming and place names changes in the politically divided island of Cyprus.

Name Changes in Cyprus

The island of Cyprus is located in the eastern Mediterranean off the southern coast of Turkey (Figure 2) and is among the largest and most populated islands in the entire region. Cyprus has also been an arena for communal strife between peoples of Greek descent (roughly 80 percent of the population) and Turkish descent (20 percent) since the late 1950s. As a political entity, Cyprus has had a long history of external political domination. For example, despite the predominately Greek heritage of its people, from the mid–1500s until the late 1800s Cyprus was part of the Ottoman Empire which introduced Turkic people onto the island. Greek Cypriots were politically restive under the Ottomans in the early 1800s as they closely identified with the efforts at the time of Greece to wrest itself free of Ottoman control. Although Greece achieved independence from the Ottomans in the 1830s, Cyprus traded one external dominion for another as the Ottomans ceded control of Cyprus to the British in 1878 in exchange for British support for the Ottomans against Russia. Cyprus would remain part of the British Empire until formal independence was granted in 1960.[25]

At the time of Cypriot independence from Britain, the dual ethnic nature of the population was formalized into a constitution that shared power between the two groups. This ethnic power sharing arrangement was short-lived and undone in a series of constitutional amendments in 1963 that reserved political power for Greek Cypriots alone. This was accompanied by waves of intercommunal violence between the majority Greek and the minority Turkish Cypriots. These patterns of violence continued into the early 1970s and culminated in an attempted overthrow of the Cypriot government in 1974 by Greek Cypriots acting in conjunction with support

from a military-led government in Greece. In response to the violence against Turkish Cypriots and the aggressive move by the Greek government just off the coast of Turkey, the Turkish military invaded the island and occupied the northeastern part of Cyprus. During this period, most Turkish Cypriots fled north to the Turkish military controlled areas; similarly, most Greek Cypriots fled south. The result was a de facto spatial split in the ethic patterns of residency on the island which persists to this day (see Figure 3).

In response to the attempted Greek-led coup and the counter-invasion by Turkey, the United Nations established a buffer zone between the two sides which remains in place today. The United Kingdom also maintains two large military bases on the island, part of the deal struck in the process of independence in 1960. In 1983 the Turkish-occupied northern part of Cyprus proclaimed its formal independence from the rest of the island, calling itself the Turkish Republic of Northern Cyprus. Only Turkey has formally recognized Northern Cyprus and remains its only political and economic patron. The rest of the island is constituted as the Greek Cypriot-dominated Republic of Cyprus and was granted membership into the European Union in 2004. The status of Northern Cyprus and Turkey's role in continued Cypriot political disunity remains an enduring obstacle to Turkey's interest in joining the EU.[26]

As should be expected in a politically and ethnically partitioned landscape, place

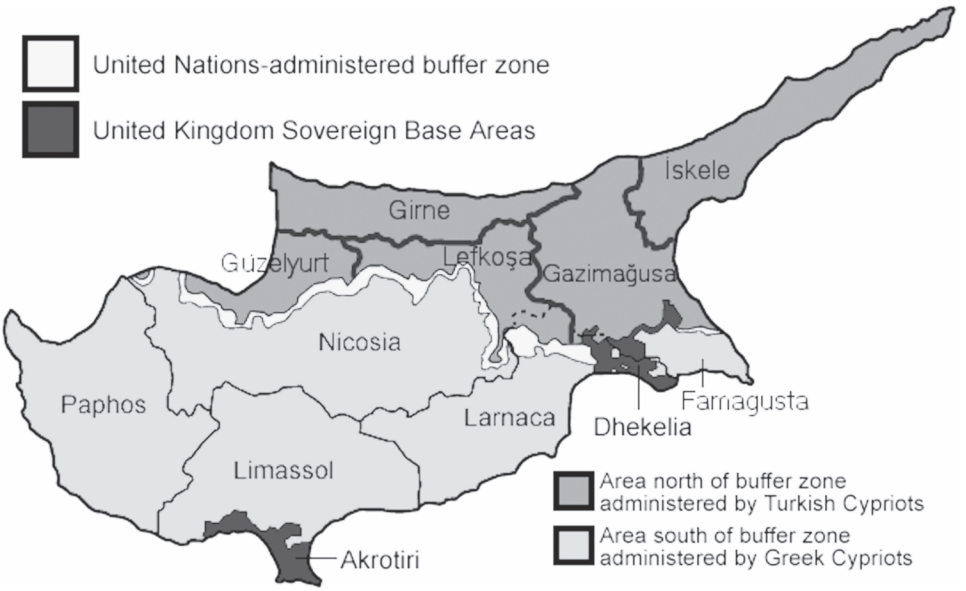

Figure 3. Map of the current political and ethnic geographies of Cyprus. The UN buffer zones and UK military bases are enduring features of the post–civil war political landscapes (https://commons.wikimedia.org/w/index.php?curid=4810067).

Opposite: **Figure 2. Located in the Eastern Mediterranean, Cyprus is near the coastlines of Turkey, Syria, and Lebanon (Google Maps).**

names have become the source of friction between the two Cypriot polities and within specific communities. But place names themselves have long been the source of confusion and political effort on the island long before the civil war.[27] For example, traditional place names were the subject of several British-led "standardization" projects beginning in the 1870s and continuing through independence. This involved transliteration or Anglicization of Greek names into English equivalents which introduced alternative spellings and pronunciations for nearly every town and village on the island. Such standardization efforts resumed again in the late 1960s, this time under UN-led cartographic efforts.[28] These cumulative naming efforts created a complex toponymic landscape, with many populated places simultaneously carrying names recognized only by locals and those only recognized by national authorities or external organizations. This state of affairs culminated in local protests once UN-approved names started to appear on road signs in the 1990s. In at least two cases, leaders of municipalities used the protests as political leverage to change their city names into something different from those adopted by UN cartographic standards.[29]

Taken together, many of the place naming activities in southern Cyprus have constituted what Giraut and Houssay-Holzschuch would call restoration[30]: efforts to return to traditional Greek place names and rejecting the Anglicization of place names imposed by the British beginning in the late 1800s and continued by the UN after Cypriot independence.[31] The politics involved appear at multiple scales (local, national, international) and demonstrate at least a few cases of scale jumping by local authorities in an attempt to resist the imposition of names from afar.

Place naming has also been present within Northern Cyprus following the partition of the island. Greek and Turkish were both officially recognized languages in the Cypriot constitution of 1960 and Turkish language place names were widely used. This was the case despite the fact that while a few place names had Turkish roots, most in Cyprus did not, including in Northern Cyprus. However, following the invasion and occupation, language usage became highly politicized[32] and Northern Turkish authorities have replaced most traditional Greek place names with new Turkish language names.[33]

The Turkish military occupation of the island in the 1970s quickly gave way to what Ram has described as a conventional colonial enterprise which involves "seizing, delimiting, and asserting control over a physical geographical area—of writing a new set of social and spatial relations on the ground."[34] Following this argument, place names can then be understood as an important signifier of political control and a crucial way in which new political realities, such as colonial control, are made into geographic realities. Predictably, Ladbury and King reported that nearly every town or village in Northern Cyprus was renamed by officials shortly after the creation of the de facto state there.[35] Navaro-Yashin describes this as a tightly controlled process, often led by Turkish military officers or government officials that were given important positions in the new Northern Cypriot government.[36]

The changing of traditional Greek names in Northern Cyprus remains a consistent grievance for Greek Cypriots. Following the admission of the Republic of Cyprus into the European Union in 2004, the issue has been periodically raised by Cypriot

MPs in the European Parliament and remains a key obstacle to the sporadic talks about reunification.[37] Nonetheless, the name changes are now deeply embedded in the Northern Cypriot landscape given the relative lack of Greek speaking Cypriots living in the north and the elevation of Turkish as the only official language used there.[38]

Just as in the south, the toponymic landscape in Northern Cyprus is complex as many maps and atlases preserve the previous Greek place names. However, the process of place name changes in the north is quite different than in the south. The imposition of Turkish language place names by officials with more connection to Turkey than to Cyprus is a clear example of Giraut and Houssay-Holzschuch's notion of a particular "technology" of name replacement instead of restoration.[39] The politics involved in this case are somewhat different as well as there is little recorded activity at the local scale. The national scale is most prominent (within both Northern Cyprus and Turkey) and the few mild attempts at scale jumping by Greek Cypriot officials through appeals to the EU have had little impact on Turkish policy within the occupied north.

Top-Down and Bottom-Up Naming

These two different types of naming in Cyprus have some similarities in that they both reflect efforts to spatialize political authority in the landscape. However, some attention to scale suggests very different types of processes at work. For example, the place names changes in the (southern) Republic of Cyprus are connected to the processes of geopolitical hegemony by the British empire in the 1800s and 1900s which itself had an enormous geographical scope. As part of the provisions of political domination and control of distant lands and peoples came the logics of standardization.[40] Control entailed cataloging that connected not just to the needs of the British within Cyprus but to the needs of the empire more broadly. In other words, maps that displayed the Anglicized place names of Cyprus were of use to British efforts that moved people, goods, and capital all around the empire, particularly following the completion of the nearby Suez Canal.[41] In other words, the alternative names of Cypriot villages were connected to similar processes of standardization elsewhere in the empire.

The attempt to de–Anglicize place names in Cyprus also traces a much larger footprint than is suggested by a discussion of local or even national interpretations of such histories of external domination. In the same vein, the UN-led cartographic standards and membership in the EU create a particular set of scales at which place naming occurs. In such cases, the expression of Greek Cypriot identity is also shaped by the demands of international membership in larger political bodies. The agents involved in such outcomes are move than just those in the places directly affected by such changes. To fully understand how these changes work, we must also look beyond the island to places like New York and Brussels.

With regard to the examples in Northern Cyprus, scale is also present but in a very different way. The relative isolation of the north, its lack of connections to

other places and other polities, suggests a much smaller scale to the process of name changes and one that implicates largely only its neighboring Turkish patrons. Although the suggestion by some that the continued partition of Cyprus has stood in the way of Turkish integration into the EU, the politics of place naming in the north are largely the province of Turkish Cypriots and Turkey alone. That is not to say that the effects of these changes do not have a larger impact. For example, in 2013 the southern Greek Cypriot government passed legislation banning alternative place names in response to the continued retrenchment of Turkish identity in the north. And yet, this process has not yet been linked to the wider relationships that Turkey itself is engaged in, such as NATO. In this sense, the scale of the process in the north has been much more limited than that in the south and the agents less likely to be found elsewhere.

These scalar differences suggest very different politics of place naming in the two parts of the island. Further, by recognizing place naming as an expressly political activity it is also meaningful to use ideas about politics itself to consider these differences between north and south. For instance, the relatively constrained scale of naming in the north (both in terms of limited overall extent and interactions between scales) may be described as a *top-down* political process. Political theorist Michael Mann's work on nationalism has described a top-down process as one that is "controlled from above in authoritarian and semi-authoritarian regimes."[42] The scalar implications of a top-down political process are that it will be dominated by "official" state actors at the national scale with little appeal or concern for actors at other scales (either above or below) and little opportunity for other actors to engage in "scale jumping." Conversely, a *bottom-up* political process is one in which other types of actors at different scales work to achieve their preferred outcomes and where scale jumping is possible as a political strategy to deal with opposition from national scale authorities.

These scale-sensitive top-down and bottom-up conceptualizations of political activity are reflected in the different place naming processes occurring on the island of Cyprus. The activities in the south have been, at times, top-down (British- and UN-standardization), but have given way to more bottom-up approaches with the attendant examples of scale jumping by some municipalities during the standardization debates of the 1990s or in the appeals to the EU regarding naming changes in the north. A bottom-up approach also necessarily involves multiple scales through the act of scale jumping and, therefore, more complexity in the types of actors and the geopolitical contexts involved in the issue. On the other hand, the place naming in Northern Cyprus have been solidly top-down, with fewer actors and a scalar simplicity not present in the example of the south.

Conclusion

Interpretations like this that draw not just on the nascent critical theorization of place naming processes but on the specific ideas and concepts of contemporary

human geography can provide the foundation to revitalize scholarship in toponymy. For example, what are the key agents that are involved in the separate yet interconnected place naming processes in the divided island of Cyprus? Reflecting on scale helps to draw our attention to relationships and places outside and well beyond Cyprus on the one hand (British Empire, UN, EU) and to a much more limited set of relationships on the other (Turkey). It also suggests that some types of naming technologies might necessarily involve larger scale processes than others. For instance, restoring names implies a change in political control over the places being renamed; this itself implies the restoration of localized control rather than external domination. However, a place name replacement process may operate at different scales for the opposite reasons. Such approaches also open new avenues for scholars to more explicitly link toponymic studies to concerns about politics and power that animate much of contemporary social science. The top-down/bottom-up framework advanced here is but one possible way to do this but it is one that draws directly from the ideas of scale.

Although grounded in the unique case of the island of Cyprus, this overall approach seems fruitful for other cases as well. Contested place names in East Asia (East Sea–Sea of Japan, etc.) are not just localized or even regionalized affairs; they also navigate the politics of U.S. hegemony, the rising regional status of China, the historical geopolitics of empire, and so on. From this perspective, the optimism of many about the critical turn in toponymy studies seems warranted: there are a wealth of new questions and answers waiting for exploration. Doing so through the lens of concepts like spatial scale promise to provide a richer appreciation of how place naming works and in the ways in which place naming practices in one setting are just one part of a variable set of other political practices, histories, and agendas.

Acknowledgments

This paper was initially presented at the 22nd International Seminar on Sea Names and I extend my thanks to the attendees that offered comments. I also thank the editor and two anonymous reviewers for their suggestions to improve the paper. Any remaining deficiencies are my responsibility alone.

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Biographical Note

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Pitcairn Island, Island Toponymies and Fishing Ground Names: Toward the Possibility of a Peaceful Onshore and Offshore Reconciliation

Joshua Nash

Structured Abstract

Article type: research paper

Purpose—This article reflects on the results of documenting fishing ground naming history on and around three islands—Norfolk Island (South Pacific), Dudley Peninsula, Kangaroo Island (South Australia), and Pitcairn Island (South Pacific)—and placenaming practices more generally encompassing islands, insularity, isolation, and the sea. The major study is Pitcairn Island.

Design, Methodology, Approach—There are more than 500 placenames contained within and just offshore five-kilometre square Pitcairn Island, a volcanic outcrop famed as the home of the descendants of the British mutineers of the *Bounty* and their Polynesian entourage. The Pitcairn Islanders have named hydronyms (names for water bodies) surrounding their island primarily as utilitarian linguistic and historical tools used for locating fishing grounds. These sea names are not only stark examples of maritime and aquatic cultural heritage; they illustrate how perceptions and processes of naming the marine environment relate to and can inform terrestrial naming.

Findings—The interaction involving small-scale sea names and names as folk

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 86–96 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

capital is presented as a possible mandate for creating a peaceful reconciliation between naming sea and land.

Practical Implications—The Pacific example is extended to the ongoing dispute between Korea and Japan regarding naming the *East Sea–Sea of Japan*.

Keywords: Kangaroo Island (South Australia), naming and politics, Norfolk Island (South Pacific), onomastics, Pitcairn Island (South Pacific), placenames, sea names, South Korea

Fishing Ground Names, Contested Sea Space and Island Toponymies

This exploratory article attempts to reconcile several political, linguistic, and ethnographic aspects associated with island toponymy (placenaming) and the naming of contested sea space. It reviews the author's nearly 10-year toponymic field investigation with island populations in Australia and the South Pacific. An integral aspect of this research has involved documenting offshore fishing ground names, their locations, and their histories. This previous enquiry[1] should be of interest to linguists, toponymists, and island studies scholars, as well as to researchers and policy makers engaging in the industry of assessing how smaller scale studies of names of islands and sea could be put into practice in more large scale political work intended to connect people, culture, history, and the future, as the title of the recent 22nd International Seminar on Sea Names on Jeju Island, South Korea, proposed.[2]

The position taken assesses the role of smaller micro fishing ground name nexuses situated around islands in possibly contributing to understanding larger macro issues of sea naming. Because sea and land are so closely linked in the three small island situations detailed, it is posited that this sea and land connectivity might be linked to the sea–land contention involved in more general and larger scale explications of sea naming. While the linguistics and politics of naming fishing grounds around islands are not comparable in size with the issues of, for example, the naming of the *East Sea* and the *Sea of Japan*, the matters at hand are alike. The application of the most recent documentation and results from Pitcairn Island fishing ground naming and island toponymy should be applicable enough to the higher order international issue of naming larger areas of sea and assessing relationships between island places, placenames, and people and their sea-based livelihoods.

It is not essential to present the basis and history of the contention of the naming of the *East Sea–Sea of Japan* to a readership informed about such topics. Interested readers are referred primarily to the writings of Choo[3] and any number of papers dealing with the *East Sea–Sea of Japan* naming dispute found in the 2015 *Proceedings of the 21st International Seminar on Sea Names*,[4] among other versions of this seminar. What is essential is to detail the philosophical relevance and basis upon which this article draws and how it is related intellectually and politically to broader hydronymic and toponymic controversies. In addition to work on fishing ground

placenaming, the author is a world expert in a novel subfield of island studies and toponymy called *island toponymy*. On the back cover blurb to the author's 2013 book about Norfolk Island (South Pacific) and Dudley Peninsula (Kangaroo Island) toponymy, the following questions were posed:

> How do people name places on islands? Is toponymy in small island communities affected by degrees of connection to larger neighbours such as a mainland? Are island (contact) languages and mainland languages different in how they are used in naming places? How can we conceptualise the human-human interface in the fieldwork situation when collecting placenames on islands?[5]

Having returned three months ago from three months of detailed linguistic and toponymic fieldwork on Pitcairn Island, a 5 km^2 island and Britain's last remaining overseas territory in the remote South Pacific with a human population of around 50 and a toponymic citizenry of more than 500, it is clear the answers to these queries remain unanswered. The questioning in this direction which began in March 2007 with fieldwork on Norfolk Island associated with the author's Ph.D. research on the placenames of this island external territory of Australia. In a probing piece, the chief conclusion remains somewhat unconvincing:

> It is claimed the principal difference which distinguishes island people from non-island people is island people's self-perceived difference. It is speculated this difference and awareness can be observed and demonstrated in island toponymies, both through distinction based on belonging to an island-specific language group and through knowledge and use of locally peculiar eponymous toponyms.[6]

The unresolved claim that island toponymies are somehow distinct from other toponymies was the major motive which drove the rationale for the recently published thematic section "Island Toponymies" in *Island Studies Journal*.[7] The basis of island toponymy was borne out of "dirty" and people-involved toponymic work across many visits with the community of Norfolk Island, approximately 1,700 kilometers east of Sydney, and with residents of Dudley Peninsula, Kangaroo Island, South Australia[8] (see Nash 2013 for a detailed summary of this research). These more nascent ideas were cultivated more recently in the fertile soil and the toponymically high-yielding incident seas around Pitcairn Island.

Pitcairn Island Toponymy

Pitcairn Island is a small, remote volcanic island in the South Pacific noted for its famed connection to the mutiny on the *Bounty* and the settlement in 1790 of British mutineers and a larger group of Polynesian women and men (Figure 1).

What is significant to a study of Pitcairn Island toponymy is that there is placenaming within the bounds of this steep and rocky landmass in at least three languages, namely English, Polynesian languages, and Pitcairn, the Pitcairn Island language, a highly endangered contact language, which developed as a result of contact between European and non–European influences. Because there are more than

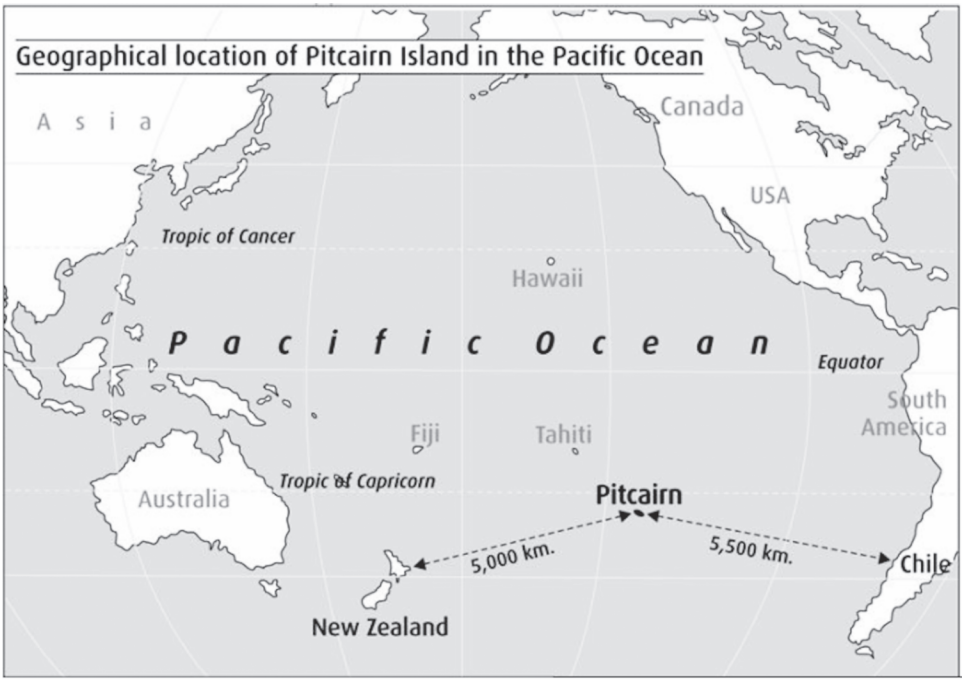

Figure 1. Location map of Pitcairn Island (http://gerardoneil.blogspot.com.au/2014/01/exercise-66-pitcairn-island.html).

500 placenames contained within this small space and in incident near offshore zones, Pitcairn Island's toponymy is highly dense and historically complex. Moreover, the population of Pitcairn Island is small and has been so for many years. Much of the placename knowledge no longer exists orally; historical records and maps are essential to compile something nearing to a complete toponymic history.

A large majority of Pitcairn Island toponyms are pristine. Dealing with a colleague's Pitcairn Island toponymic data from the 1940s, Ross[9] (1958, 333) considers a toponym pristine "if, and only if, we are cognizant of the actual act of its creation." Never having made it to the island, Ross's entry into the toponymic imaginary of these placenames was limited to the depths that his student Moverley, who died before he completed his Ph.D. on the Pitcairn Island language, had attained during his almost-three-year tenure as the island's first non-islander school teacher. Since this time and apart from descriptive morsels about placenames associated with fish and fishing in Götesson[10] and several maps[11] detailing how heavily populated this toponymic space actually is, the world knows little beyond the history and etymology of many of these quirky and emplaced monikers.

Pitcairn Islanders have named both toponyms and hydronyms surrounding their island primarily as practical linguistic and historical tools used for narrating stories, utilitarian situating within landscape, and locating fishing grounds. These geographical names and offshore fishing grounds are not only astute examples of land and sea based cultural heritage; they illustrate how perceptions and processes

of naming an island with no toponymic record prior to the arrival of the *Bounty* has taken place and changed over time. How are these names any different from patterns of continental placenaming? What can islands tell us, if anything, about how island people and hence island toponymies are dissimilar or distinctive from other mainland toponymies? And in line with what is at the heart of a more aesthetic appreciation of islands, island toponymies, and island languages: How do creative and artistic takes help us to measure scientifically the reality of the effectiveness and distinguishing nature of island toponymies?

Because the population of the island who speak Pitcairn and who have access to large amounts of this knowledge is even smaller than the island's population, around 20, admission into what can be argued is a sketchiness of community memory is often the only means of documenting extant data. These recollections may not be as reliable as one would expect:

> Sometimes the original story can only be conjectured. *Tati-nanny*: Tati must have been a Polynesian and *nanny* is a nanny-goat, so we must suppose that a Tahitian kept one here. By no means all the names can be explained and some will certainly be wrongly explained by the islanders in a few years [*sic*—no possessive] time.[12]

While much of the locational, spatial, and historical information concerning these toponyms has been documented,[13] what has not been considered in any significant detail is the pragmatics of the modern use of these placenames and how maps, names, people, and trust interact in synchronic placename practice on contemporary Pitcairn Island. Additionally, although several of the offshore fishing ground names still known have been mapped most recently by Evans[14] and initially by Gathercole,[15] the coordinates and locations of these places and the importance of this ill-documented aspect of the island's toponymy to broader investigations into the Pitcairn Island language has not hitherto been emphasised. The taxon of fishing ground names is an opportune feature of Pitcairn Island language and culture for understanding and realizing not only toponymic truth and placename trust, but also how the reliability of linguistic data in general can be tested across informants. Additionally, because of its small people numbers, Pitcairn Island offers an apt example in examining small community languages and how language change, nostalgia, and evolving linguistic priorities evolve in environments where the language competency of each individual has marked affects on an entire and specific linguistic and social landscape.

Realizing how dependent we are on belief and the bestowal of trust to what Stolz and Warnke[16] refer to in one of the subheadings of their article as potential "little white lies" and how maps may tell lies, more popular takes on the toponymy of Pitcairn Island give a direct sense of fading community memory:

> There are many other places on the island with names which remain long after the circumstances of the naming are forgotten, such as Allen's Stone, Hole For Matts, Tati-Nanny, Bitey-Bitey, Rat's Hole, Old Man's Fishing Place and there is no reason ever to use any other name.[17]

The concern here is with the toponymic truth and placenaming trust the author has had to place on those interviewed relating to their knowledge of offshore fishing ground toponymy on Pitcairn Island. Moreover, the specialized, gender-specific, and almost mythical nature of fishing ground toponymy makes this section of the island's placenaming history highly effective at depicting change and variation. Such names depict the ways names cling to landscape and reveal the shaky grip language and knowledge have on spaces and how humans strive against all odds to describe and work the specific environments they inhabit.

Whether or not Pitcairn Island placenames are pristine or transparent in their meaning, location, or use does not in any way mean that they are truthful and that these names give a more accurate rendition of the present sociocultural landscape than any other account might. While many use the common "oh, that was way before my time" or "that's what the old people used to say" when asked about the history and who of toponyms, one is left to *trust* the several maps which have been compiled and completed. In the absence of people on contemporary Pitcairn Island who remember the rationale or history for many of these names, one relies justifiably on accessible contemporary accounts which are the only accounts one can go by. One is forced to *trust* informants. With respect to fishing ground names and those interviewed recently on Pitcairn Island, the oldest was 90 and the youngest was around 60.

The Names Which Remain

None of the four people who have shared fishing ground knowledge is younger than 60. While most of the grounds the author has obtained offshore locations for are plotted on Evans's[18] and the Hardwicke Knight map published in Gathercole,[19] documenting the little known triangulation coordinates of these grounds is wholly new. Unlike Pitcairn Island's seemingly countless terrestrial names, the close-in offshore marine environment is less toponymically populated. "In 1965 when canoe-fishing was practised every Tuesday, the islanders had five different offshore fishing grounds to choose from: Nellie, Headache, Oh Dear, Where Johnny Fall, and Minnie Off."[20] There are now upwards of 20 locations islanders know and use. There is no other possibility than to trust those who speak about the locations and nature of the fishing grounds. Although it might be possible to carry out reliability tests with different people about the location of different places and the history of names, one is largely dependent on their stories. To document matters accurately, one must trust islanders are telling some kind of toponymic truth, which, it is certain, they are. For example, all four knew the following fishing ground and its location:

> Out Ha Bear (Out at the Bear): first triangulation mark—use the small stone which comes over the bank down at Glenny's Harbour on the north eastern coast; second triangulation mark—line up the stone called Tanema along with the inside stone of the two stones known as Young's Rock. The ground is about 150 feet out. The fish caught there are ulwa, nanwi, redfish, tiwo (tu'o), jackass (dog-tooth tuna).

Were anyone telling me "little white (toponymic) lies," any of other people involved might have either informed the author of any errors or corrections or told that the others were misinformed. The author began to trust the locations, knowledge, and opinions of the people with whom they were working. Another example known to all four is:

> Out Ha Spot (Out at the Spot); alternate name is Out Ha Speckle Side (Out at the Speckled Place): first triangulation mark—bring the palm at Jim's Ground with the bank at Christian's Cave; second triangulation mark—line up the yellow dirt up at The Lime, on the side of Longridge, in Tedside (western end of the island). The alternate name—Out Ha Speckle Side—refers to the sandy, speckled seaweed like coral at the bottom of the sea at this location. The rocks are visible from a boat and they appear to move around on the bottom when you look down. This is a great place to catch red snapper and faafaiya. This sea area must be large, because trawling and dragging in a boat leads to catching large amounts of fish.

A lesser-known place, the following fishing ground and its exact location was known only to two people recently interviewed:

> Out Ha Side fer Parkins's: only one mark: line up the stone at Ginser Valley with a small cave to the right of Gudgeon. Because this location is close in shore, there is only one mark. On this run at about 80 feet deep, you can drag and come to different fishing bumps. The area is so shallow you can see the fish taking your line. There are plenty of places in this whole area for fishing. There are other marks for these alternate places, but most of these have been forgotten. This is generally a nanwi spot, but red snapper are also caught here. It is named after Parkins Christian.

In the absence of those who named the places, one can develop across interviews and people a large amount of toponymic trust in people's seemingly un-white lies.

More than 50 years ago it was apparent "that [Pitcairn Island] place names are shifting, due perhaps to the absence of sufficient numbers of persons of middle age now living on the island to maintain a sacrosanct [oral] tradition."[21] This tradition implies a need to believe the reliability and truthfulness of and in the tales and stories of those who came before, particularly if people are dependent on the accuracy of these names and their locations for livelihood. Nowhere is the need for trusting in old legend and storied yet practical landscape particulars more demanded than when subsistence and preservation are at stake.

Whether or not the information Pitcairn Island fishers imparted is wholly truthful, and whether what has been mapped previously is trustworthy as mapped territory, there is a degree of testable reliability relating to how we can make sense of such a multiplex of names. Relationships involving truth-falsehood, social construction through naming and power, and the need for accuracy and belief across generations and landscape uses when applied to a placenaming tapestry echoing past survival skills converge on the largely unofficial toponymy. Documenting the current day reality of the amalgam of names and action requires not only an appreciation of the social and ecological functioning of the Pitcairn language, but how layering

of placenames and toponyms as a significant almost-separate linguistic level operates in everyday language-and-life on Pitcairn Island.

Sea Names and Land Names: A Reconciliation?

In order to reflect on the subtitle of this article—toward the possibility of a peaceful onshore and offshore reconciliation between (terrestrial) island toponymies and fishing ground names—it is necessary to present data from the three island case studies. In Tables 1 (Norfolk Island), 2 (Dudley Peninsula), and 3 (Pitcairn Island) the listed fishing ground names all use terrestrial locations in their names:

Table 1: Norfolk Fishing Grounds Named After Terrestrial Features (Nash, 2016)

Ar House fer Ma Nobby's (Ma Nobby's House)	Dar Hog (The Hog)
Horse and Cart	Out orn ar Melky Tree (Out on the Milky Tree)
Dar Fig Valley (The Fig Valley)	Down ar Graveyard (Down at the Graveyard)
The Crack	Ar Convict Store (The Convict Store)
Ar Saddle (The Saddle)	The Thumb
Whale's Hump	Dar Boomerang (The Boomerang)

Table 2: Dudley Peninsula (Kangaroo Island) Fishing Grounds Named After Terrestrial Features (Nash, 2016)

Haystack Ground	The Fence Ground
Pig Sty Ground	The Burnt Out House
The Waterworks	The Halfwindow Patch
Alex Boat Harbour	Middle Terrace Patch
Between the Tits	Mirror Rock Patch
The Old Road	Cable Hut Patch
Fig Tree Patch	Snapper Point

Table 3: Pitcairn Island Fishing Grounds Named After Terrestrial Features (Nash, 2016)

Out Glenny	Out Headache
Out Marloo	Out Flatcher
Out Glenny	Out Rope
Soeja's (Soldier's)	Out ha Point (Out on the Point)
Timiti's Crack	Out ha Palm (Out on the Palm)
Out Tautama	Down Chair
Oh Dear	

It should be remembered that all fishing ground names use terrestrial features when they are triangulated. That is, the locating of offshore seamarks always implies the use of geographical markers known by fishers.

Instead of dissecting the data linguistically or geographically in order to ascertain how these names operate formally, it seems more advantageous in closing to speculate about how sea and land names interact on three distinct ethnographical levels: fishing ground names and memory; fishing ground names and time-space; fishing ground names and nostalgia.

Fishing Ground Names and Memory

People who have died, houses which are no longer there, and landmarks which are long gone such as trees comprise the seaward–landward axis between fishing ground names and their landed connectivity. People persist in names despite their demise, monikers which recollect the unknown hydronymic expanse in terms of the known terrestrial. There is a safety in talking about seaspace in terms of shore and coast. Norfolk Island's Dar Hog (The Hog) is a well-remembered land feature which looks like a hog when seen from offshore; Dudley Peninsula's The Waterworks is 100 meters offshore directly out from the newly established desalination plant near the cemetery; Out Flatcher is offshore from the onshore stone Flatchers, an orthographic execution more in line with the Pitcairn language pronunciation of the famous Fletcher of Fletcher Christian and *Bounty* fame. Human memory might be fickle but toponymic and cartographic retention perseveres.

Fishing Ground Names and Time-Space

Names can create and destroy absolute and temporal time-space. Building on the memory driven aspect of sea–land memorialization, time–space renders some names close and other far. Norfolk Island's Ar Convict Store (The Convict Store) reminds the viewer of the convict period (1825–1855) on the island; The Burnt Out House was a house which burnt down several decades ago which remained with only walls and nothing else and is still used as a mark for several people's fishing grounds. Out Glenny connects the viewer with George "Glenny" Adams born in 1804 who had a harbor on the north-eastern coast of Pitcairn Island named after him. Although distant in time-space, Glenny is brought into the present through bridging fluid and solid toponymic expression.

Fishing Ground Names and Nostalgia

Nostalgia and naming appear to amalgamate memory and time-space with emotional sentiment. Where several fishing ground names could be singled out in the three data sets, there seems to be little need; all these names are nostalgic, implicating the sensibility of toponymic relics in a compound of the flowing—sea—and the solid—land. All these maps within these micro corpora are representative of more substantial imaginaries, name-focused visions of the merging of walkable and sailable open spaces.

There is a possibility of a peaceful onshore and offshore reconciliation between

(terrestrial) island toponymies and fishing ground names. Where islands and their incident seas may be isolating in terms of how toponymies are accessed,[22] what these examples from Oceania suggest is certain compromises can be met; offshore names do not have to be far away geographically or politically. Perhaps it is in the closeness and intimacy of memory, time-space, and nostalgia that small islands can help scholars in understanding the more intricate hyper political and international nature of the naming of the *East Sea–Sea of Japan*.

While there is much more at stake in this much larger scale transnational issue of Northeast Asian sea naming than exists in the presented examples from Oceania, associating small island territories like Norfolk Island and Pitcairn Island with their political connection to Australia and Britain, respectively, could inform how the apparent boundlessness of close and faraway seas and their landed territories are managed. This organization is as much an issue of delineating maritime territories as it is of naming circumscription. If what is offered in this paper provides in some way any kind of resolution and thought provocation, it should be the case that the cultural and toponymic priorities of several Australian and South Pacific islands have come into contact with those political and governmental concerns of South Korea and Northeast Asia.

Acknowledgment

Thanks to all the people of Pitcairn Island for their assistance, insight, and passion regarding my research. Appreciation specifically to the four fishers who provided much information of offshore fishing ground toponyms and history. Especial thanks to Sungjae Choo and all participants in the 22nd International Seminar on Sea Names on Jeju Island, South Korea, October 23–26, 2016.

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Biographical Statement

Joshua Nash is a linguist and an environmentalist. His research intersects ethnography, the anthropology of religion, architecture, pilgrimage studies, and language documentation. He has conducted linguistic fieldwork on Norfolk Island, Pitcairn Island, and Kangaroo Island, environmental and ethnographic fieldwork in Vrindavan, India, and architectural research in outback Australia. He is a postdoctoral research fellow in linguistics at the University of New England, Armidale, Australia.

The "One-Letter War"— or, How *Skagerrak* Became a Disputed Name

Peder Gammeltoft

Structured Abstract

Article Type: Research Paper

Purpose—The resolution of the naming dispute between Denmark, Norway and Sweden over the sea name Skagerrak has been hailed as a prime example of how a naming dispute between countries over joint geographical name features should be handled and solved. This is a search into the story behind the dispute and how the geographical name Skagerrak came to be named, disputed and finally settled upon for national and international use.

Design, Methodology, Approach—Based on the extensive correspondence of almost fifty letters in the Danish Place-Name Commission's journal archive on the Skagerak-Skagerrak dispute, this article reviews the naming process and concludes future approaches based on the dispute.

Findings—The solving of the naming dispute did not come directly from the national geographical names committees, although their deliberations paved the way for the final resolution by the national mapping agencies. Thus, this article shows that the dispute was of a rather different nature and resolution than has hitherto been believed.

Practical Implications—The findings of this article can give indications as to how international naming disputes arise, develop and may be resolved in the future.

Originality/Value—For institutions seeking name dispute resolution, the article provides suggestions for resolution.

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 97–108 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

Keywords: Geographical names, geographical names standardization, naming disputes, political toponymy, Skagerrak

Introduction

In late 1967, the Norwegian State Name Consultants and the Norwegian Place-Name Archives called for a joint inter–Nordic and international spelling of the water *Skagerrak* between Denmark, Norway and Sweden. The reason for the call was that there was no fixed standard for the name. In fact, there were three spelling conventions, one with –r– only, *Skagerak* (Norway), one with –k– at the end, Skagerack (Sweden), and one with –rr–, *Skagerrak* (Denmark). Norway argued for their form, *Skagerak*, to be the joint inter–Nordic and international name form, whereas Sweden and Denmark used *Skagerack* and *Skagerrak*. This is the story about how a geographical place came to be named, disputed and finally settled for national and international use.

One Sea, Many Names

As already touched upon in my earlier article in this forum on the naming of seas,[1] Skagerrak is a geographical name of Dutch origin. However, the name Skagerrak is far from the only name of this water, historically speaking. There was an array of different name forms which differed in time and user groups. The oldest known reference to the stretch of water between Denmark, Norway and Sweden is *Codanus Sinus* by the Roman geographer Pomponius Mela.[2] Whether that name includes all of what is now Skagerrak is uncertain, but it seems to include at least the southeastern parts of the sea, as it is termed "a mighty bay," seemingly referring to the outer Baltic sea and coastal Eastern Denmark.

The first purely Scandinavian reference to Skagerrak—and probably also Kattegat—is from a Skaldic poem, in the heroic Viking-Age tradition, by the renowned Skald Þorleikr fagri in a poem presented to the Danish king Sven Estridsen in 1051. Here the sea is called *Jótlandshaf*, The Sea of Jutland:

Fengr varð Þrœnda þengils	All the loot of the Þrœndir lord
—þeir léttu skip fleiri—	had to float on the
allr á éli sollnu	hail-swollen Jutland Sea
Jótlandshafi fljóta.	they emptied more ships.[3]

Shortly thereafter in the 1070s, the great German chronicler, Adam of Bremen terms the sea part of the *Mare Barbaricum* "Barbarous Sea" with that particular stretch of water being called [*Mare*] *Nordmannos* "Sea of the Norwegians."[4]

In the early days of mapping, Dutch cartographers used the term *Oceani Germanici pars* or *Nordzee* "North Sea," or *Mare Balticum*.[5] In fact, it was not until well into the 17th century that the name *t'Schager Rack* occurs on maps. The first to term

this sea Skagerrak were Willem Blaeu in 1618 and Jan Janssonius in 1647 (see Figure 1).[6] However, the name Skagerrak and the neighboring Kattegat remained largely used exclusively in the international (Dutch-inspired) sphere, not regionally as a name used by Danes, Norwegians or Swedes. It was not until the late 18th century that we see these names used in a Scandinavian context. But from then on, these names were the generally accepted names of the waters north and east of Jutland, nationally as well as internationally.

As is clear from the above, the context of the name Skagerrak is entirely Dutch—it first occurred in the heyday of Dutch mapping and there are no previous or contemporary Danish, Swedish or Norwegian name forms of Skagerrak. From a research perspective, the Dutch origin of the name has been alluded to in a few publications at the turn of the 19th century, such as Edvard Erslev's book on Jutland[7] and Johannes Steenstrup's work on Danish place-names,[8] but the first scientific research into the name only appeared around 1920 with van den Meulen in the Netherlands[9] and Johannes Knudsen in Denmark.[10]

The name itself, Skagerrak, is formally a secondary name, i.e., a geographical name which contains another geographical name as it specific element. In this case, it is the name of *Skagen* (locally pronounced *Skagi*), the northern most point and city of Jutland, albeit declined with a Dutch –ar declension. The generic, or second, element is the Dutch noun *rak* "straight (line)." The meaning of the name is thus something like "The way straight past Skagen."

The Dispute—Skagerrak or Skagerak

In the 20th century, Skagerrak had a number of differing forms: Skagerrak (authorized by Denmark and used on international maps), Skagerack (Sweden), whereas Norway authorized the form Skagerak in 1959.

In late November 1967, The Norwegian Geographical Survey announced that "the name Skagerak will be published with one 'r' on the international maps we publish ourselves. This form has been determined by the State Name Consultants; we have also notified the Danish Geodetic Institute." This message was subsequently forwarded to the Royal Swedish Place-Name Commission on 8 December 1967, who notified the Danish Place-Name Commission, Helge Lindberg, on 5 January 1968. From the Royal Swedish Place-Name Commission to the Danish Place-Name Commission:

> The Place-Name Commission has, from the Swedish Ordnance Survey received (in xerocopy) a letter concerning a change of the spelling of "Skagerack" on the international world map at a scale 1:1.000.000. It would be appreciated if Denmark, Norway and Sweden could agree on a joint spelling. […]
>
> Regarding the second element, perhaps –rak could become the one of the three of us accepted spelling. What sets us apart is the Danish spelling of –r in the first element, supposedly an adjective in –r formed of Skagen [Hald, Vore Stednavne (1965), p. 245].
>
> Could we possibly agree on a spelling Skagerak?

How do you spell "Kattegatt" officially in Denmark?

The Place-Name Commission is concurrently contacting the Norwegian Place-Name Archives in Oslo.

The Commission is looking forward to a response with thanks. As the Swedish Ordnance Survey has announced that this name question is very urgent, we ask that the Commission respond before 16 January.[11]

With the short response time given, the Danish Place-Name Commission wrote to question the commission members as to whether to accept the Norwegian request or not. Professor Anders Bjerrum of the Danish Place-Name Commission forwarded an outline answer to the Royal Swedish Place-Name Commission to all the members of the Danish Place-Name Commission on 9 January 1968:

To the members of the Place-Name Commission

The Royal Swedish Place-Name Commission in Uppsala has sent the Institute for Name Research a question about spelling of Skagerrak and Kattegat for use by the Swedish Ordnance Survey (3 photocopies enclosed).

The Place-Name Commission has adopted the, Denmark-authorized, form Skagerrak, which is also used by the Swedish Navigation Pilot and Swedish Aviation. However, for the sake of Nordic Cooperation the institute is willing to accept a change to Skagerak.

Please inform the institute your viewpoint to the enclosed draft response.[12]

Anders Bjerrum received replies from all the members of the commission and although the majority agreed to the text, there was a also a number of persons which would only agree if the suggested form *Skagerak* was philologically correct—the fact that the form *Skagerrak* was already in use was also given as an argument against accepting Norwegian demands. However, within a week, Anders Bjerrum, on behalf of the Danish Place-Name Commission, replied to the Royal Swedish Place-Name Commission on 12 January 1968:

[…] The Danish Place-Name Commission has adopted the name forms Skagerrak and Kattegat, authorized by the Ministry of State. The majority of the Commission is—after writing to all members—willing, for the sake of Nordic cooperation, to change the name Skagerrak to Skagerak. However, a minority of the Commission have forwarded strong reasons for maintaining the agreed form of writing double r:

1. The old written forms from the 17th century have Schager Rack (the first element is a Dutch form in –er of the town of Skagen, originally Skagi);
2. the name written with double r occurs in all official publications such as charts and sailing directions published by almost all seafaring nations (Great Britain, USA, France, the Netherlands, Denmark, Sweden, Poland, USSR); Norway appears to be the only exception.

I, therefore, propose that a decision be postponed so that we can have time for proper consideration.[13]

The Norwegian Place-Name Archive did not respond to the Royal Swedish Place-Name Commission within the given date of 16 January—the reply was sent on 28 January—too, late for the commission's reply to the Swedish Ordnance Survey:

> In reference to the Swedish Ordnance Survey's query No. A 601 from 8 December 1967 regarding a suggested change in spelling of "Skagerack" on the international world map in the scale 1:1 million, the Place-Name Commission wishes to give the following statement.
>
> The Commission has requested written statement from the Danish Place-Name Commission (Institute for Name Research) in Copenhagen and the Norwegian Place-Name Archives in Oslo. Replies were received from the Danish Place-Name Commission (see attached copy), but not from Norwegian Place-Name Archives. The Commission had requested a response prior to 16 January.
>
> The Commission has no objection, neither to the name form Skagerrak, the Danish official spelling, nor to Skagerak, which seems to be the official Norwegian spelling. However, the name form Skagerrak appears to be the most preferable one. As emphasized in the letter from the Danish Place-Name Commission, the form is based on the forms of the 16th century, and is used by almost all seafaring nations and is also found on the Swedish charts. It may be added that even Petter Gedda, *Chartbook Öfwer Oster Zion*, in 1695, spells the name Skager-rack (and Skager reef), i.e., with two "r"s.
>
> Commission requests to receive the decision in the case.

The Norwegian Place-Name Archive's response was sent on 28 January, and thus received late. It was, however, circulated and reconfirmed the previous Norwegian viewpoint:

> The name Skagerak on the world map 1: 1 million.
>
> We have long been aware of the, unfortunate, different spellings of the name Skagerak in our three Nordic countries and are pleased that this question has been raised.
>
> 1. We are fully aware that the Danish spelling with –rr– goes back to older "unfortunate" spellings of the name. To a time when authors or cartographers did not take much care in name form spellings and the like.
> 2. These older names forms can still not lie about the fact that the spelling with –rr– is not in accordance with the origin. The first element in the name goes to the name of Skagen in Jutland and a spelling in –rr– is thus rather misleading.
> 3. The official spelling in our country has since long been SKAGERAK, which is also in accordance with the origin. In all our maps, ICAO and the world map included, the form SKAGERAK is used, with the exception of Chart no. 302, whose name form is Skagerrak. In the correction list of the map, the name is written with –r–.
>
> We cannot advise to use another form than Skagerak and it would be very much desired if all the Nordic countries would adopt this name form which also suits the origin best.

The Royal Swedish Place-Name Commission asked the Danish Place-Name Commission to present their viewpoints on the Norwegian reply and that the case be referred in order to have more thorough considerations.[14]

The Danish Place-Name Commission discussed the matter on its ordinary commission meeting on 2 May 1968:

3. Discussion of the issue Skagerrak: Skagerak.

Professor Bjerrum pointed out that the letter of the Head of the Norwegian Place-Name Archive, Per Hovda, (Annex 2 c) was highly misleading. Firstly, the most likely etymology of the name was, that it was given by Dutch or Germans to the place-name Skagi. Secondly, the name first appears on Dutch maps and figure only quite late (c. 1800) on the Danish maps.

Professor Aksel E. Jørgensen agreed that there could hardly be any doubt about the accuracy of the, by Professor Bjerrum listed, etymology, and that in Danish the old spelling was with –rr–.

Professor Aksel E. Christensen stressed that internationally, there was a strong tradition of spelling with –rr–, which was the only one used.

The commission decided to retain the spelling Skagerrak.[15]

Since the initial contact from the Royal Swedish Place-Name Commission in the matter, The Danish Place-Name Commission had changed its viewpoint from being in favor of a spelling in –rr– at the same time as being able to accept a spelling with one –r– in order to secure and maintain the Nordic cooperation, to definitely favoring the already authorized (by Denmark) spelling: Skagerrak.

This decision was forwarded to the Royal Swedish Place-Name Commission on 14 May 1968:

To the Royal Swedish Place-Name Commission.

In a letter dated 12 January 1968, I informed you that some of the Place-Name Commission members had given convincing reasons against a change of spelling of Skagerrak to Skagerak, namely that the name is undoubtedly of Dutch origin, and the name of the form with double r is used in official publications such as charts and pilot guides published by almost all seafaring nations. At the same time, I suggested that the decision should be suspended so that the Place-Name Commission would have time for proper consideration.

Such consideration took place during a meeting of the commission on 2 May 1968. The Commission did not agree with the reasoning given from the Norwegian side for a spelling with a single –r–, but decided unanimously to maintain the spelling with double –rr–, both for etymological considerations and in adherence to international tradition.[16]

With the reply from the Danish Place-Name Commission received, the Royal Swedish Place-Name Commission forwarded a letter giving the Norwegian State Name Consultants notice of the Danish position in the matter on 21 May 1968. The Commission also noted that the Swedish Ordnance Survey requested a joint spelling of names in Denmark, Norway and Sweden.[17] There was seemingly never a reply to this request from Norway, and on 11 October 1968 the Royal Swedish Place-Name Commission resubmitted its query with the request from the Swedish Ordnance Survey that the three countries should agree on a joint spelling.[18] The letter was this time augmented by the additional information that the form Skagerrak was preferred in Norwegian seafaring circles and the additional request by the Royal Swedish Place-Name Commission to specify what the Norwegian State Name Consultants meant with "the spelling 'Skagerrak' is not consistent with the origin, while the spelling Skagerak most consistently is." The Norwegian State Name Consultants replied on 27 November:

The name SKAGERAK

We refer to our previous information about the spelling of the name Skagerrak, where we mentioned that the official spelling in our country is SKAGERAK.

The reason for this is: The old Norwegian skjalds uses the name Jótlandshaf about both Kattegat and Skagerrak (see e.g., Saga Haralds Hardráða, Codex Frisianus, Christiania, 1871, pp. 213, 214). Old Danish sources used among others "Noregshaf" as a joint name for these two sea passages. In Saxo Grammaticus we otherwise find "Noricum fretum" (The Norwegian Strait) used as a name for the same.

In old Dutch maps from the 17th century, new names crop up for these sea tracts. In Atlas major, page Regni Norvegia v/ F de Witt gives the name Schagerack and also F. Doncker, Pascaarte van de Noord Zee (1694) has the name form Schager rack. This name is at the time used for both waters. It is not until the 18th century that the name Kattegat (among others in the form Cattegath) is to be found in charts. A more fixed application of these two names is not until the 19th century.

There is thus no doubt that the current name use originates from old Dutch charts and maps.

[…]

The first element in Skagerak is related to the name of the northern point of Jutland, Skagen, Old Norse skagi m. used about a protruding headland, ness, and the last element is Dutch rak which was also used in the meaning "straight water," cf. Damrak in Amsterdam.

When it comes to the spelling it is worth noting that the name in the oldest maps and charts is written with both –r– and –rr–. Here it is the spelling with –r–: Skagerak, which is historically correct. Whether a singular or plural form is the basis of the compound, it would yield Skage– (from Old Norse *Skaga–) in both Danish and Norwegian. From the rather diverting spellings in old maps, the spelling with –rr– became the most widely used name form by foreign nations, even if this form lacks historical precedence in the Nordic languages. Norwegian does not have the nominative plural of the composition form of the first element, cf. a possible * Holmar-sund, which could yield a possible Skager-rak.

Norwegian charts use the Skagerak, which is also in accordance with the Norwegian pronunciation of the name.

The name form Skagerak is in accordance with Norwegian (and Nordic) name formation and we cannot advise to change this form [Skagerak] against a form, Skagerrak—which is not.[19]

This letter is later in the year, in December 1968, followed by a letter from the Norwegian Ministry for Church and Education endorsing the letter from the State Name Consultants.[20] By now a certain amount of fatigue seems evident in the case, the correspondences between the Danish and Swedish commissions die out and it is not until 31 March 1969 that the Danish Place-Name Commission replies to a request from the Royal Swedish Place-Name Commission to reconsider its stand in relation to the letters from the Norwegian State Name Consultants and its governmental department. And the reply is rather short and formal:

In reply to the Royal Swedish Place-Name Commission's letter of 20/1 1969 notifying us the Norwegian Ministry of the Church and Education's viewpoint on the

spelling of Skagerrak: Skagerak. The case has been discussed at the Place-Name Commission's plenary meeting on 21/3 this year.

The Commission decided to maintain its previous viewpoint that the correct spelling of the name should be Skagerrak, not least from the wish to retain the continuity from old maps.[21]

The Resolution—Skagerrak!

By now the case was in a deadlock—the Norwegian name authorities demanded the form Skagerak to be the joint form, the Danish name authorities wanted to retain their form, Skagerrak. The Royal Swedish Place-Name Commission was not fixed on any particular form; either Skagerak or Skagerrak was acceptable for them. However, with no resolution to the question in sight, particularly with the strong Norwegian and Danish views in mind, the Royal Swedish Place-Name Commission did not foresee a resolution if they went along with either side, as the minority side would not be likely to accept the majority decision. The commission's move was, however, very shrewd. They simply conferred the matter back to the Swedish Ordnance Survey—the original organization requesting a resolution on the matter—and its sister organizations in Denmark and Norway to resolve the question in between them:

Re.: The proposed change of the spelling of "Skagerack" on international world maps, scale 1:1,000,000 (Swedish Ordnance Survey's orginal request No. A 601, 8 December 1967)

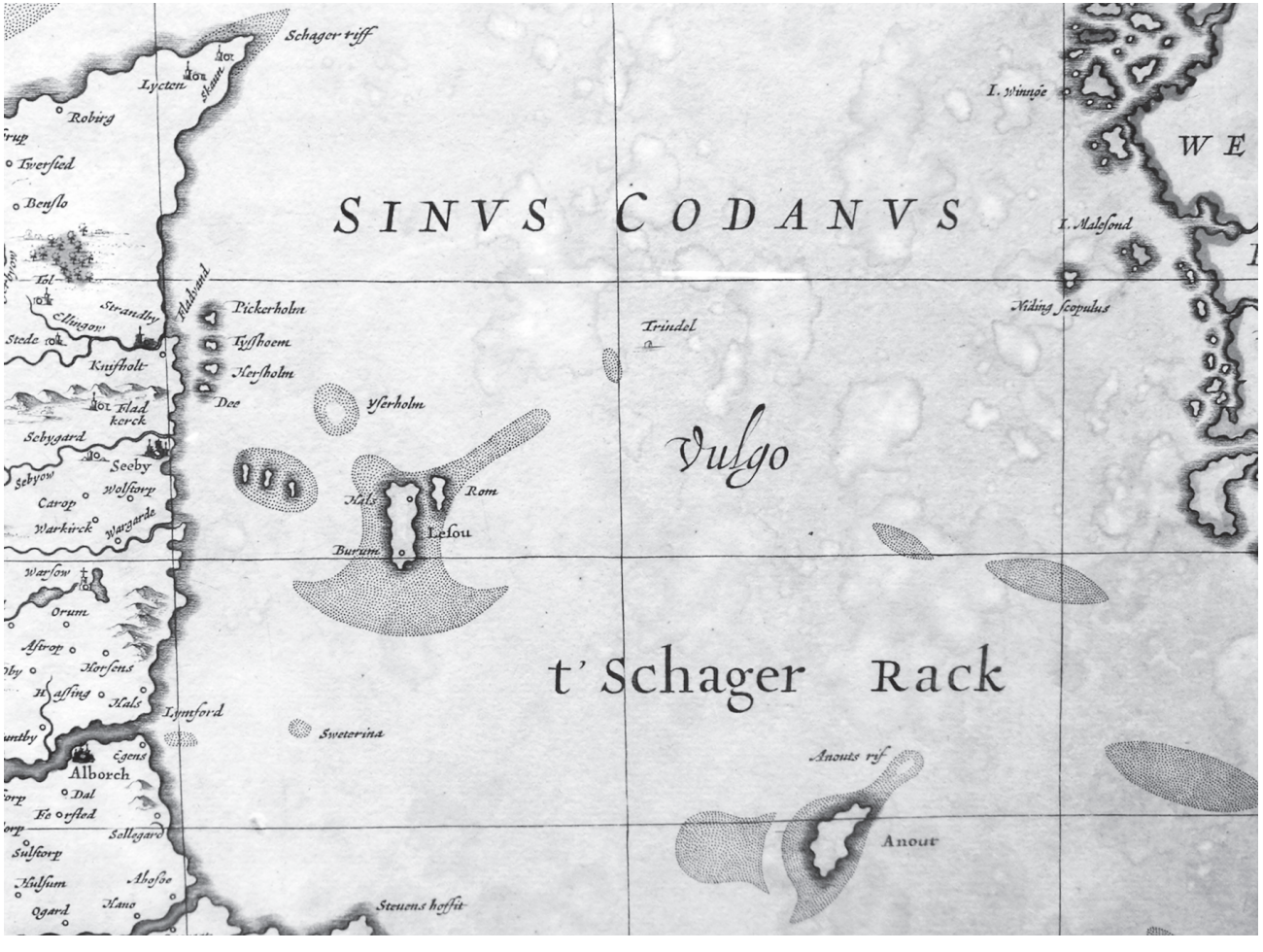
We have, in the above cases, carried out an extensive prolonged correspondence with the Danish Place-Name Commission (Institute for Name Research) in Copenhagen and the (Norwegian) State Name Consultants, through the Norwegian Place-Name Archive in Oslo, a correspondence which the commission has continuously kept the Ordnance Survey informed about.

The Place-Name Commission maintains its opinion on 25 January 1968 that it does not have anything against accepting the name form of Skagerrak, the by the Danish Place-Name Commission authorized form, or Skagerak, the form authorized by the Norwegian State Name Consultants and the Ministry of the Church and Education in Norway. However, the commission does regard the form Skagerrak to be the preferred form, partly because, as stated in the letters by the Danish Place-Name Commission, it originates from 17th century name forms, and partly because it is used by almost all seafaring nations and even on Swedish sea charts. Worthy of note is also that Petter Gedda, in his *Chartbook öfwer Östersiön*, 1695, spells the name Skager rack (and Skager reef), i.e., with –rr–.

As far as the commission can see, the final treatment of this case should be undertaken by the Swedish Ordnance Survey conferring with corresponding institutions in Denmark and Norway, and in this way attempts to reach an agreement in this name question.

The commission requests to be informed about the decision the matter.[22]

The Swedish Ordnance Survey took the matter to its Danish and Norwegian sister institutions. From the Royal Swedish Place-Name Commission they had a mandate that was something like 55–60 percent in favor of a spelling in –rr–, i.e., Skagerrak,



from the three Nordic geographical names authorities, because of Sweden's undecided opinion albeit slightly favoring of the form authorized by Denmark. The subsequent negotiations ended with the three Nordic mapping authorities accepting the name form *Skagerrak*. Two years after the case had left the domain of the geographical name commissions, the Norwegian Ministry of the Church and Education endorsed the form Skagerrak on 12 October 1972, according to a "Nordic agreement" on the name form.[23]

A Model to Follow?

The Nordic agreement on a common name form for the international water of Skagerrak has been hailed as a model for solving name conflicts—the three countries discuss pros and cons of either name form, Skagerak or Skagerrak, and reached an agreement in unison. The reality, however, is somewhat different, though. After having gone through the rather lengthy correspondences, 47 in total in the Danish Place-Name Commission's archive alone, a rather different picture emerges. The three geographical names authorities could not agree on a joint name form—in spite of initial acceptance of the considerations of Nordic cooperation. As the case evolved, the initial goodwill of the wish for a resolution turned into strong views in favor of either name form.

Part of the reason seems to lie in the very insistent position of Norway in favor of its own authorized form, and the insistence that the name was of Scandinavian origin. This particularly seems to have annoyed the Danish Place-Name Commission, who countered with insisting on their own form, Skagerrak, on the basis of it being, correctly, of Dutch origin. Sweden was prepared to completely skip their own form, Skagerack at the outset but could not agree internally, it seems, on neither the Norwegian nor the Danish suggestion. The end result was a split decision that had to be solved externally by the three countries' national mapping agencies. As such, the Skagerrak case stands as a somewhat messy example.

What can be learned from this "one-letter-war," then? I think there are several points to be made here. The first one is how to approach a naming situation of international character. The Skagerrak case shows very well how even uncomplicated cases can become politically and nationally invested and thus not become resolved as quickly as the magnitude of the case (or lack of the same) furthers. If anything, this case shows that the matter must be approached with a large amount of humility. The 180° turn of the Danish Place-Name Commission in the matter can only be seen as a direct reaction to the rather arrogant stance of the Norwegian State Name Consultants. Not only did they not reply in time, they were also somewhat liberal with the truth, in as much as the etymology of the name is concerned. Provocative arguments were met by counter arguments, and did in the end result in an agreement which went directly against Norwegian demands. And this can only be ascribed to Norway's own actions in the matter.

Opposite: **Figure 1: Section of Jan Janssonius' map *Toitus Iutiæ* (1647) showing the Latin and Dutch name forms of Skagerrak (author's collection).**

Secondly, the process of the case is vital. As is visible in particularly the first correspondences, the case was very compressed and resolution was attempted within a very short time span. Again the Danish Place-Name Commission objected to this—although the commission actually performed what was required of it within the stated timeframe. The decision was postponed because of these objections, resulting in a better investigation of the naming situation. With the extended time frame, the origin of the name, its manifestations from the very earliest to current usage nationally and internationally was thoroughly examined. This established without a doubt the Dutch origin of the name, as well as determining which of the name forms, Skagerrak or Skagerak, had the highest frequency in international use.

Even so, this was not enough to come to an agreement among the three Scandinavian geographical names authorities, Norway remained adamant that Skagerak should be the form, Denmark demanded Skagerrak because of the origin of the name and international usage of this name form, and Sweden was undecided. The resolution to this was to engage the national mapping agencies of Denmark, Norway and Sweden to find a solution. Although this seems like an unusual way to let third-party organizations work out a solution, this was a very shrewd move by the Royal Swedish Place-Name Commission. Since the conflict arose from the wish to have a uniform Scandinavian spelling on the individual national mapping agencies' 1:1,000,000 scale maps, they were the ones with both the greatest interests in the matter and with the greatest knowledge of international usage. As such, the resolution from the national mapping agencies was not surprising. At the outset, there was a slim majority in favor of the form Skagerrak from the deliberations of the geographical names authorities of Denmark, Norway and Sweden, and with international maps favoring this name form also, this was the natural outcome of the case. Whether this was anticipated by the Royal Swedish Place-Name Commission or not is impossible to see from the correspondences, albeit not entirely inconceivable.

However, the most noteworthy point to make with this case is the fact that the name form, once determined as being Skagerrak, has never since been challenged by any of the three countries. This illustrates the most important issue when it comes to determining a joint name form in a naming dispute—make sure that the agreed name is sustainable. Granted, in the case of Skagerrak versus Skagerak, the dispute is merely one of spelling and not of different name forms, but in order to reach a permanent and acceptable name; it has to be neutral and non-offensive and to all involved parties. In the above case, the dispute was over spelling and thus the name could, effectively, be retained—albeit in a different form for two of the countries. Where the case concerns different name forms, it is worth considering if any of the name forms of the dispute are suitable, or if a third way—a new, third name—would be more acceptable?

Notes

1. Peder Gammeltoft, "Why Is the North Sea West of Us?: Principles Behind Naming of the Seas." *Journal of Maritime and Territorial Studies* 3(1) (2016), pp. 103–122.

2. Pomponius Mela, *De Situ Orbis,* 3.31, 3.54, https://archive.org/stream/pomponiimelaede00olivgoog#page/n6/mode/2up, accessed November 26, 2016.

3. Kari Ellen Gade, ed., *Poetry from the Kings' Sagas 2: From c. 1035 to c. 1300. Skaldic Poetry of the Scandinavian Middle Ages*, vol. 2 (Brepols: Turnhout, 2009), p. 320. http://www.abdn.ac.uk/skaldic/db.php?id=4297&if=default&table=verses, accessed November 26, 2016.

4. Adam of Bremen, c.1076, "Descriptio Insularum Aquilonis." *Gesta Hammaburgensis Ecclesiae Pontificum*, ch. 10, http://hbar.phys.msu.su/gorm/chrons/bremen.htm, accessed November 26, 2016.

5. Geradus Mercator, 1595, *Atlas Sive Cosmographicae Meditationes De Fabrica Mvndi Et Fabricati Figvra* (Duisburg), plate XX.

6. Willem J. Blaeu, 1618, "Het Licht der Zeevaert." In Bo Bramsen, *Danmarks Kortlægning* (Copenhagen, 1965), fig. 48: *Het Schager Rac;* Jansonius J., 1647 "Atlas." In Bo Bramsen, *Danmarks Kortlægning* (Copenhagen, 1965), fig 61: t'*Schager Rack*.

7. Edvard Erslev, 1886, *Jylland, Studier og Skildringer til Danmarks Geografi* (Copenhagen), p. 295.

8. J. Steenstrup, 1908, *De Danske Stednavne* (Copenhagen), p. 51, https://archive.org/stream/dedanskestednav00steegoog#page/n55/mode/2up, accessed November 26, 2016.

9. R. Van den Meulen, "Over den Nederlandschen oorsprong der aardrijkskundige namen *Skagerrak* (Skagerak) en *Kattegat*." *Tijdschrift voor Nederlandse Taal-en Letterkunde*. Jaargang 38 (Leiden, 1919), pp. 113–132.

10. Johannes Knudsen, "Hollandsk Indflydelse paa Navngivningen I Farvandene omkring Danmark." *Historisk tidsskrift* 9(1) (Copenhagen, 1920), pp. 398–420.

11. Royal Swedish Place-Name Commission Journal No. 69/67, author's translation.

12. Unless otherwise noted, all translations are by the author.

13. Danish Place-Name Commission Journal No. 2/68.

14. Royal Swedish Place-Name Commission, 5 February 1968.

15. Minutes of the *92. Plenary Meeting in the Danish Place-Name Commission*, 2 May 1968, agenda item 3.

16. Danish Place-Name Commission Journal No. 56/68.

17. Correspondence, Danish Place-Name Commission Journal No. 56/68.

18. Correspondence, Danish Place-Name Commission Journal No. 16/69 and Journal No. 59/69.

19. The Norwegian Ministry for Church and Education, Cultural Section, Journal No. 07736.

20. The Norwegian Ministry for Church and Education, Cultural Section, Journal No. 07736-Ku-68, part of correspondence, Danish Place-Name Commission, Journal No. 16/69.

21. Danish Place-Name Commission Journal No. 16/69.

22. Royal Swedish Place-Name Commission, Journal No. 69/67, part of correspondence, Danish Place-Name Commission, Journal No. 59/69.

23. Norwegian Mapping Authority Journal No. 788024/1/2-Skagerrak: "Spelling Determined According to Nordic Agreement by the Ministry of the Church and Education 12.10.1972." http://faktaark.statkart.no/?stedsnummer=788024, accessed November 26, 2016.

Biographical Note

Peder Gammeltoft is an associate professor in name research at Copenhagen University. Through his engagement in The Danish Place Name Commission and the UN Expert group UNGEGN, he has great knowledge in geographical names standardization. He has worked with geographical names from a scientific perspective for 20 years, and has published numerous articles, including in the *Oxford Handbook of Names and Naming*.

Book Review

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The books currently up for review are as follows and suggestions for books to review are always welcomed.

Carcano, Andrea. *The Transformation of Occupied Territory in International Law*. Leiden: Brill Nijhoff, 2015.

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Journal of Territorial and Maritime Studies / Volume 4, Number 1 / Winter/Spring 2017 / pp. 109–116 / ISSN 2288-6834 (Print) / © 2017 Yonsei University

Understanding the Cooperation Between the Rivalry: Eclectic Analysis on the Sino-Japanese Maritime Relations

Bridging Troubled Waters: China, Japan, and Maritime Order in the East China Sea

James Manicom, Washington, D.C.: Georgetown University Press, 2014. 266 pages.

East China Sea: A Sea of Turmoil?

Is maritime space in East Asia doomed for conflict? The growing tensions in both East and South China Sea due to proactive expansion of Chinese naval powers in the region, and the fierce competition among the regional actors on the maritime resources make readers ponder about the possibilities of conflicts, either diplomatic or military, in East Asia. The recent tension in the sea brings a great deal of alarm to scholars studying international relations as the global economy is highly dependent on the sea lanes of communication. Notwithstanding the concerned states are the major economic powers: China and Japan. Gradual expansion of naval forces of People's Liberation Army Navy (PLAN), and Japanese efforts to utilize its Self-Defense Forces' (SDF) capability of overseas operations add to mounting concerns. Even worse, the deployment of Terminal High Altitude Area Defense (THAAD) on the Korean Peninsula also induces more cautious behavior on the part of China, which makes the order in East Asia more vexing in terms of peace.

Of course, the recent disputes on the "nine-dash line" promoted by China in the South China Sea bring a warning of potential additional disputes among the regional states over maritime jurisdiction, and even further, national sovereignty. In both regional and international senses, the growing tensions surrounding the maritime space rally concerns over the stability and peace in East Asia. However, in sub-regional level, East Asia can be divided into Northeast Asia and Southeast Asia. In contrast to Southeast Asia, where countries formed a regional institution called ASEAN, such an institution is absent in Northeast Asia. This is in spite of the fact that it includes major Asian economies which are robustly cooperative in an economic sense. Many scholars blame the historical and structural confrontation among the three major countries, China, Japan and Korea. Some also argue the regional hegemonic race between China and Japan is a hindering factor for cooperation.

These assertions which diagnose the current situation of Northeast Asia seem somewhat fair as can be seen from the news stories upon bilateral disputes on the territories and maritime jurisdiction among Northeast Asian states. Nevertheless, one may have difficulty in answering the previous question above: is the conflict always the constant variable in Asian maritime space? James Manicom's book, *Bridging Troubled Waters: China, Japan, and Maritime Order in the East China Sea*, introduces different perspectives towards the maritime issues in the East China Sea. The focus of the book is not on conflicts but on several different cases of cooperation. From this book, readers can understand that there could be opportunities for cooperation, rather than conflicts in the maritime domain of Northeast Asia. The book's contribution is primarily the purpose of the research, which is about understanding the cooperation in East China Sea between China and Japan. Compared to previous studies on maritime relations in East Asia, it is free from dichotic concept of either conflict or cooperation. Instead, the book focuses only on cases of cooperation. To be more specific, the different levels of cooperation depending on the circumstances.

The Salience of Maritime Relations Between China and Japan

The author provides interesting insights through making a framework that focuses on the degree of cooperation between China and Japan. Pointing out that the maritime jurisdiction cannot be determined in a clear-cut way by unilateral actions, the author starts with the core assumptions that China and Japan cooperate for status quo. This book's contribution is significant in understanding the Sino-Japanese maritime relations, especially around the disputed waters. Sino-Japanese relations and clashes therein are one of the alarming topics for international relations scholars. However, it is quite insightful to see that two rivals competing for regional hegemony tried to form a cooperative relationship with each other. This book shows that the Sino-Japanese relationship does not always imply confrontational aspects but also cooperative aspects and this should be assessed by process and degree of cooperation instead of the dichotomy of conflict and cooperation. This in turn could give insight into the future of Sino-Japanese relations and perhaps eventually contribute to fostering peace and stability in the East China Sea.

The contents of the book satisfy theoretical and empirical needs for any scholars who wish to observe the maritime cooperation between China and Japan. The structure of the book consists of introduction, 6 main chapters for his argument, and conclusion chapters. In the Introduction, the author raises a puzzle that stems from the importance of the maritime space for individual nation states, and elaborates the value of gains from the sea. From his understanding on diverse maritime value, the author emphasizes research on cooperation. Then, in chapter 1, he elaborates his framework, "maritime value matrix," to analyze the levels of cooperation through material and ideational factors. More specific explanations on the framework would be followed the later chapter.

From chapters 2 to 5, four major cases are introduced to show the degrees of Sino-Japanese cooperation in the disputed waters. Chapter 2 starts with the development of the Senkaku/Diaoyu disputes until 2000. This chapter introduces the change in the paradigm of both states on the East China Sea. It was not so recent that these islands have been the major source of conflict between China and Japan. Deng's Modus Vivendi on the disputed island quelled such confrontation until 1996. However, the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1996 for both China and Japan demanded both of the states to change their perspective to the issue. The paradigm had to change from disputed islands to contested maritime space (pp. 54–55).

After the ratification of the UNCLOS, the first case of cooperation was about the negotiation process on the fishery agreement between China and Japan from 1997 to 2000. New rounds of negotiation were demanded by both parties to resettle the maritime jurisdiction in the East China Sea. The expansion of Chinese capacity in fishing and Japanese intention to protect their traditional fishing grounds brought about the mutual and reciprocal need for renegotiation of the 1975 fisheries agreement. The result turned out to be "explicit, formal, reciprocal cooperation that is durable. (p. 85)" Such a result was possible because both parties were aware that there needed to be a new set of rules based on the new system that would peacefully alleviate minor quarrels between two countries. As dividing the fishing zones was considered as intrinsic-tangible issue, the two parties were able to conclude the agreement with much ease.

Compared to the fisheries agreement, the result of the negotiation on marine research was vividly different. "Sino-Japanese interaction over marine surveys was colored by mistrust (p. 113)." Unlike the previous case, the salience of marine survey was interpreted as competing value for both of countries. Despite the fact that marine scientific research itself does not pose any threat to neighboring countries, China's active engagement in marine research could be seen as China's maritime expansion in Northeast Asia. This interpretation is highly likely since China has been increasing its governmental budget on marine research and naval capacities (pp. 95–96). Japan considered the benefits from this research to be relational, rather than intrinsic. Thus, it resulted in a tacit agreement with little enforcement, and unwarranted durability.

After 3 years, cooperation on the resource development in the East China Sea continental shelf was discussed between the two countries. The geological characteristics of continental shelf substantiate the reasons for both conflict and cooperation because of the great potential for oil and natural gas production. Compared to fisheries, the existence of fossil fuel brings both economic and strategic values for all parties. Because of ambivalent aspects, there are also concerns over the possibility of maritime conflict due to "resource-related sovereignty."[1] However, the nature of the hydrocarbon deposits, which creates concerns over the "straw effect" from directional drilling, functions as one of the structural and inevitable reasons for cooperation in East China Sea. The hydrocarbon deposits in the continental shelf can be understood "as engines that are put into operation by releasing the pressure trapped inside."[2] Moreover, combined with strategic consideration, the oil wells are also intertwined with nationalistic sentiments. Especially, China, which had been utilizing its domestic opinions for negotiation leverage, could not fully control nationalistic oppositions throughout the negotiation. It was eventually Japan's idea to jointly develop the disputed area that drove China to concede (pp. 145–147). In conclusion, the cooperation was forced cooperation where fear of the straw effect was intermingled with nationalistic jargons and activities.

Based on the case studies, the prospects for Sino-Japanese relations are elaborated in chapter 6. The book's prospects about the maritime order in the East China Sea are not so promising as the salience of maritime space to both China and Japan is stained with relational concerns rather than intrinsic prospects. As Japan takes an assertive stance compared to the past and China's international influence grows, the confrontation between these two seems inevitable. Domestic reforms which try to consolidate maritime jurisdiction also function as an institutional foundation of the disputes. Nevertheless, the author concludes that this growing tension is actually an opportunity for China and Japan to overcome future challenge via strengthening their maritime relations. From the overall contents and arguments, it can be inferred that the future of Sino-Japanese maritime relations is partially optimistic as they already have experience in cooperation. The books expertise and in-depth investigation on the cases of cooperation can surely provide policy implications.

Maritime Value Matrix: Eclectic Approach

Aside from the rich information and analysis, the key significance of the book lies in its unique and bold framework to assess the degree of cooperation depending on the four possible circumstances. Departing from the dichotic distinction of conflict and cooperation, the book's framework aims to observe the degree of cooperation. According to the author, such degree of cooperation can be specified into three categories: origins, depth, and durability. The origin of cooperation explains how the agreement was forged between the two parties in terms of whether it was reciprocal or coerced. If both of the parties had mutual understandings on the need for cooperation, the cooperation would be reciprocal. However, if one of the parties has more at stake, then it would coerce other party to agree. Depth of the cooperation would determine the legal nature of the agreement. In this category, whether the agreement between two parties is legally binding or not is important. Lastly, durability is observed to see how the promises made from the agreement were followed by each party and whether the agreement is expected to be sustained or not.

Distinctions on the level of cooperation are quite necessary for determining the density of cooperation between two parties. If the parties cooperate based on reciprocal origin, formal agreements and long duration, the cooperation would be considered as explicit cooperation which can be guaranteed by both good wills and institutionalized enforcements. However, if the case is the opposite, the cooperation would be tacit, and should only resort to the good wills of each nation without enforcement. However, based on the three categories, the characteristics of cooperation vary in degree, not in dichotomy of conflict and cooperation. After all, as the author mentions in his introduction, cooperation is a process, not a result. The degree of cooperation may vary depending on the different situations that may or may not be closely related with the specific issue.

The independent variables of this framework are also interesting as the author distinguished four different circumstances through his "maritime value matrix." The distinction of four possible cases can be organized into two axes: tangible/intangible values, and shared/relational values. Whether the disputed issue is tangible or not determines whether the negotiations can lead to divisible outcomes. If the dispute derived from tangible reasons, like economic benefits from fishing, determining separate fishing grounds could lead to satisfactory results for both parties. On the other hand, if the issue stemmed from symbolic value, like territorial sovereignty or regional maritime hegemony, it would be difficult to clearly divide the benefits for mutual satisfaction.

Another axis is whether the understanding of the issue is mutually intrinsic or not. If an issue is perceived as intrinsically beneficial for both of the parties, then there would be lesser disagreement between the two. However, if the benefits are to be expected to be distributed at one's own expense, the agreement may be more difficult to acheive. By combining these two variables, four different types are formulated to understand each party's perception on the issue. As a result, Manicom tested three hypotheses below to see whether his framework is feasible or not (pp. 31–33):

> *H1: Cooperation over intrinsic-tangible (economic) issues will be pursued reciprocally, and will result in a formal and enforceable agreement that will yield lasting cooperation*
>
> *H2: Cooperation over relational-intangible (contested symbolic) issues will be pursued reciprocally, result in informal cooperation with little enforcement, and be tenuous at best.*
>
> *H3: Cooperation over relational-tangible (strategic) issues will be pursued coercively, result in informal agreements, and be short-lived.*

Based on these hypotheses, his analysis of three major cases of Sino-Japanese maritime cooperation is elaborated throughout his book.

The framework has its strengths in providing a comprehensive overview of the cases. It is thus more prone to elaborate policy-wise implications for the future. Though it is not one of the major international relations theories, there are scholars who tried to tackle the shortcomings of single paradigm-based perspectives, and to accommodate more synthesized overlook on certain phenomena and called this approach "analytical eclecticism." According to Sil and Katzenstein (2010), eclectic approach is defined as "any approach that seeks to extricate, translate, and selectively integrate analytic elements—concepts, logics, mechanisms, and interpretations—of theories or narratives that have been developed within separate paradigms but that address related aspects of substantive problems that have both scholarly and practical significance."[3]

Analytic eclecticism's contribution to international relations is through illustrating the full context of the issue. By distinguishing itself from the paradigmatic assumptions of other traditional theories, analytic eclecticism supplements those theories' limitations by converging epistemological insights.[4] Moreover, analytic eclecticism "makes its distinctive contribution as social scientists seek to contend with the complexity of social phenomena that bear on the practical dilemmas and constraints faced by decision makers and other actors in the 'real' world."[5] Despite the complexity of real world cases, theories tend to build on single paradigmatic assumptions, which ignore such complexity. However, analytic eclecticism aims to unravel such complexity through dismantling the cases through multiple variables, instead of neglecting it. After all, analytic eclecticism pursues problem-driven approach, which is "bringing the theory down to earth" for real-life understanding. Manicom provided eclectic explanations by combining the material dimension and ideational dimension of the East China Sea conflict between China and Japan. His value matrix contains strategic concerns (realism), economic concerns (liberalism), and symbolic concerns (constructivism) as the factors determining the cooperation outcomes. This epistemological consideration thus provides overarching illustration of issues and circumstances, which lead to different variation of cooperation.

Possible Limitations and Prospects for Cooperation

Still the criticism exists for alternative explanations for cooperation. The author bluntly mentions such concerns in his first chapter. Despite his effort to alleviate such concerns for alternative explanations, there are still two questions for his explanatory variables. First is the existence of external actors, in other words, the power structure surrounding the issue area. According to neorealist approach, the increasing interdependence promotes war as well as peace. Though increased interdependence can foster more engagement between parties, thus have more opportunities for both conflict and cooperation. Assuming states are sovereign and power-maximizers, the decision to cooperate with a certain state is merely one of the means to be autonomous and secure. If there are other independent means or partners to do so, a state can deviate from such cooperation. Thus, if there is cooperation among nations, there needs to be a certain power structure to enforce and sustain such decisions for states to do so.[6]

As one of the explanations, the existence of a hegemon, a preponderant power, can make the power structure more feasible for cooperation. For hegemon, in order to preserve its status and capabilities as a hegemon, it is important to set some settings for other states to be permissive to the hegemonic order.[7] Selfishly, the hegemon attempts to formulate institutional settings for such cause. The preponderance of power makes other states to oblige to the institution for the fear of disadvantages caused from deviation. Thus, as the power structure is starkly asymmetrical, the likelihood of cooperation among states is higher. However, what could happen when such hegemonic status is in jeopardy? As the hegemon declines, the power structure becomes more symmetrical. As the symmetry intensifies, the previous order set by the hegemon is more likely to be challenged.[8] As a result, previous cooperative events would be tempered by other decisions of individual actors, returning back to the state of nature, anarchy.

In East China Sea context, the presence of the United States as the preponderant superpower in the region may function as the hegemonic order in the region. The change of foreign policy of the U.S. can also affect the payoff structures for both China and Japan. As the U.S. was more with issues other than the rise of China, China had more freedom in engaging with Japan. Japan, as well, could have more diverse options for engagement with China due to lack of intervention by the U.S., Japan's number one ally. However, if the U.S. strengthens its influence with its allies, Japan would have a narrow range of options when deciding whether or not to cooperate with China. This kind of phenomenon provides a competing explanation for the ups-and-downs of cooperation in the region. However, in the book, the circumstances for cooperation are treated as insulated from U.S. behavior towards Northeast Asia.

Another factor that can raise questions is about the relationship between the policy decision by leaders and public opinion. Though the agreements can be started in good will, domestic support for a government's decision can manipulate the degree of commitment to international arrangements.[9] In any political system, domestic support serves a crucial role in establishing foreign relations. For democracies, voters' resentment of a certain treaty or promise to other countries can eventually lead to a change of administration; while authoritarian states would have second thoughts about their commitment in case of social unrest and possible uprising from the bottom. Since Sino-Japanese relations are intermingled with historical memories, which could invoke nationalist and even anti-governmental movements, the importance of domestic discourse whether there were much opposition or not would be one of the sensitive factors in determining the actions of states.

Conversely, political leaders also have tendency to take advantage of public opinion. Puchala (1984) defined such a situation as "issue politicization."[10] Whenever some issues are to be perceived as influential in domestic power, political leaders may attempt to "politicize" it in order to take advantage of the situation.[11] If a certain issue is perceived to be related to nationalism, leaders may actively mobilize nationalistic voices to change public opinion. "The closer that issues come to affecting participants' status and power, actually or perceptibly,

the more highly politicized they become and the less relevant become technical considerations."[12] In the end, certain issues which are capable of reaching an institutionalized arrangement, can be entangled with symbolic and sensitive issues due to exclusive nationalism and domestic issue politicization either from the top or from the bottom. In this case, it is quite questionable whether symbolic values and considerations actually exist or are made for political convenience.

Nevertheless, the book still has its strength in understanding the experiences and opportunities for cooperation in Northeast Asia. Cooperation is not a result but a process. Understanding the different strands of cooperation can provide implications to the future cases that cooperation can exist despite the conflictual nature of certain issues. Most of the works in the field of international relations on the maritime issues in Northeast Asia tend to rely on paradigmatic approaches based on a single variable. Because of such approaches, the studies tend to understand cooperation as a mere opposite to conflict. It is not so different in the field of international law, because the focus is on technical terms of law and the mechanism in applying such laws. It cannot grasp the full picture on how the promises for the cooperation resulted in havoc, and why the implementation of such arrangements was not made apropos. Pragmatically, to prevent and resolve future maritime conflicts in Northeast Asia, comparative and comprehensive approaches to see how the cooperation was able to be initiated and why the implementation failed are essential for further policy making in individual nations.

Regarding the "Asian Paradox," Manicom's multi-dimensional understanding on Sino-Japanese relations can also be expanded to other bilateral relations like China-Korea, Korea-Japan, and U.S.-China. By accumulating such data and information on bilateral relations of Northeast Asian nations, a great trove of maritime value matrix data of Northeast Asia can be drawn as well. It is commonly known that Northeast Asian nations have difficulty in cooperation due to nationalistic sentiments formulated by the historical memories of colonization and exploitation. However, based on their own national interests, each government finds it a necessity to engage with neighboring countries in cooperative manners. The analysis from chapter 2 showed that in order to induce durable cooperation, the governments should have the political capacity to prevent domestic nationalistic sentiment from escalating into hostile and even violent movements, and political will to comply with such agreements.

The recent power struggles between China and Japan for regional hegemony makes cooperation in Northeast Asia more difficult. If these two countries continue to perceive each other as rivals for competition, not partners for cooperation, it is difficult to expect deeply engaged cooperation in Northeast Asia. However, it is not only these governments' roles to foster harmonious atmosphere in the region. As it was illustrated in the analysis, exclusiveness and violence caused from nationalism can develop autonomously resulting in negative effects on negotiation processes. Thus, on the societal level, there should be acknowledgment that exclusive nationalism cannot provide any solutions for the regional conflicts. Instead, there should be more open opportunities to expand intrinsic values so that there would be some space for the parties to consider more explicit cooperation.

In sense of policy making, politicians should also be careful when politicizing nationalistic sentiments. Though it is much easy to mobilize voters through nationalistic issue framing, it is not helpful at all when it comes to fostering deeper level of cooperation in the region. As mentioned in chapter 6, Japanese right-wing nationalist politicians ignited a new stage of Senkaku/Diaoyu Islands dispute to get in office (p. 166). Therefore, there should be mutual considerations to induce win-win situations by wisely dividing issues that are capable of cooperation from ones that are not.

Concluding Remarks

The prospects for the maritime issues in Northeast Asia may look pessimistic. However, unlike the issue of Senkaku/Diaoyu Islands, there have been possibilities and experiences of cooperation. Rather focusing only on the maritime hegemony in East Asia, there should also

be recognition that cooperation in non-traditional security areas can happen. This book can be a start to find possibilities for better relations between China and Japan, and even more, among NEA countries. The book thoroughly traced and illustrated the backgrounds and events between China and Japan to see the comprehensive overview. The Sino-Japanese maritime relationship is surely one of the liabilities that can threaten the stability of Northeast Asia. Nevertheless, by unraveling the complex parts of various cases of cooperation, the vision of a cooperative regime of the sea of peace and co-prosperity may not be a fairy tale after all.

—Chun Young Park,
Dokdo Research Institute of Northeast Asian History Foundation

Notes

1. Refer to Elizabeth Nyman, "Oceans of Conflict: Determining Potential Areas of Maritime Disputes." *SAIS Review* 33(2) (2013), pp. 5–14. https://doi.org/10.1353/sais.2013.0025; Elizabeth Nyman, "Offshore Oil Development and Maritime Conflict in the 20th Century: A Statistical Analysis of International Trends." *Energy Research & Social Science* 6 (2015), pp. 1–7. https://doi.org/10.1016/j.erss.2014.10.006.
2. Vasco Becker-Weinberg, *Joint Development of Hydrocarbon Deposits in the Law of the Sea* (Dordrecht: Springer Heidelberg, 2014), p. 8.
3. Rudra Sil and Peter J. Katzenstein, *Beyond Paradigms: Analytic Eclecticism in the Study of World Politics* (New York: Palgrave Macmillan, 2010), p. 10.
4. *Ibid.*, pp. 24–43.
5. *Ibid.*, p. 9.
6. Yusin Lee and Sangjoon Kim, "Dividing Seabed Hydrocarbon Resources in East Asia: A Comparative Analysis of the East China Sea and the Caspian Sea." *Asian Survey* 48(5) (2008), pp. 794–815. https://doi.org/10.1525/AS.2008.48.5.794.
7. Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), pp. 1–15; 39–44.
8. Refer to A.F.K. Organski and Jacek Kugler, *The War Ledger* (Chicago: University of Chicago Press, 1980), pp. 60–63.
9. Il Hyun Cho and Seo-Hyun Park, "Domestic Legitimacy Politics and Varieties of Regionalism in East Asia." *Review of International Studies* 40(3) (2014), pp. 591–592. https://doi.org/10.1017/s0260210513000399.
10. Donald Puchala, *Fiscal Harmonization in the European Communities: National Politics and International Cooperation* (London: Frances Printer, 1984), p. 3.
11. Li Chenghong, "Two-Level Games, Issue Politicization and the Disarray of Taiwan's Cross-Strait Policy After the 2000 Presidential Election." *East Asia* 22(3) (2005), p. 45. https://doi.org/10.1007/s12140–005-0014–6.
12. Puchala (1984), p. 3.

Style Guide

General Guidelines

JTMS is a scholarly journal. Paragraphs must be fully developed without contractions, first and second person pronouns, repetition, jargon, sexist language, awkward syntactical constructions. Use a limited number of succinct headings and subheadings that is underlined or italicized as appropriate. Carefully honed style that is in a mellifluous prose is as important as substantive content. *JTMS* recommends attaining asking colleagues whose writing style you respect for review and revision. Please note that all accepted material is subject to editorial emendation.

Length: Research articles should be no more than 9,000 words, commentary essays no more than 4,000 words and book reviews no more than 2,000 words.

Format: Research should be saved as Microsoft Word document formatted Times New Roman, 12-point font, double-spaced. There should be generous margins, no right-hand justification, and pages numbered consecutively.

Title Page: Title page must include: (1) the title of the article; (2) author's contact information including name, affiliation, address, phone number, fax number, email address; (3) a structured abstract (see samples below) and a few keywords for the article.

Biography: Author's biographical statement (75 words or less) must be underneath his/her contact information. This will be edited and published in the *Journal of Territorial and Maritime Studies*.

Headings: *JTMS* uses three levels of headings. Major headings (heading level 1) is left justified in bold with the first sentence following the heading indented. Secondary heading (heading level 2) is left justified in italic with the first sentence after the heading indented. Tertiary heading (heading level 3) is left justified in italic with the first sentence after the heading beginning on the same line.

Tables & Figures: Insert each table or figure on a separate page at the end of the text. Indicate the position of the table or figure in the text (e.g., Insert Table 2 here). The page containing the table or figure should be placed after the page that first references the table/figure in the text. Authors are responsible for providing high quality image files. Supporting materials may be submitted as hard copies or scanned and sent through e-mail submission. Please forward all materials to the editor.

Endnotes: Use full citation endnotes with no bibliography or reference list. End-

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notes should be brief, used sparingly, and consecutively numbered with subscript Arabic numbers. Please convert all footnotes to endnotes.

Book

1. Robert Jervis, *The Meaning of the Nuclear Revolution: Statecraft and the Prospect of Nuclear Armageddon* (Ithaca, NY: Cornell University Press, 1989), p. 167.

Journal

2. David Karl, "Proliferation Pessimism and Emerging Nuclear Powers," *International Security* 21(3) (1996–97), p. 89.

Website

3. Sangwon Yoon and David Lerman, "Hagel Calls on North Korea to Tone Down Rhetoric," *Bloomberg News*, April 11, 2013, http://www.bloomberg.com/news/2013-04-10/south-korea-braces-for-possible-missile-test-from-north-today.html, accessed January 21, 2014.

Newspaper Article

4. Andrei Lankov, "Stay Cool. Call North Korea's Bluff," *New York Times*, April 9, 2013.

Discursive Note

5. The classic optimist-pessimist debate can be found in Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons: An Enduring Debate*, 3d. ed. (New York: W.W. Norton & Company, 2013). For detailed surveys of the literature more generally, see Peter Lavoy, "The Strategic Consequences of Nuclear Proliferation: A Review Essay," *Security Studies* 4(4) (1995), pp. 695–753; and Francis Gavin, "Politics, History and the Ivory Tower–Policy Gap in the Nuclear Proliferation Debate," *The Journal of Strategic Studies* 35(4) (2012), pp. 573–600.

One File: Submit the article as one file in the following order: Title, Structured abstract, Keywords, Contact information, Text, Endnotes, Biographical statement, and Tables and figures.

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Article Classification: JTMS categorizes articles into 6 of the following classifications: Research Paper, Viewpoint, Technical Paper, Conceptual Paper, Case Study, and General Review. Please write *one* of the categories in which your paper belongs on the article title page.

The article title page must include a structured abstract with 4–5 of the following subheadings: (1) Purpose; (2) Design/Methodology/Approach; (3) Findings; (4) Practical Implications; (5) Originality/Value. The structured abstract, including keywords and article classification, must be 200 words or less.

Structured Abstract Samples

Article Type: Research Paper I

Purpose—Some scholars imprint an academic discipline by their contribution to the manner in which people think and research, namely, by putting forward novel concepts and insights. The purpose of this paper is to examine the impact of Sumantra Ghoshal's work on the study of subsidiaries and multinational enterprises and organizational formats for foreign operations.

Design, Methodology, Approach—A bibliometric study on Bartlett and Ghoshal's well-known book *Managing Across Borders: The Translational Solution* is performed to assess its impact in international business (IB) research. The entire record of publications in the top leading IB journal, *Journal of International Business Studies* (*JIBS*), is examined.

Findings—Theoretically supported, Ghoshal's work was keenly influenced by his corporate experiences and his constant questioning of the dominant theories and assumptions. The analyses in this paper show the impact of the work on the "transnational solution," namely, on the understanding of multinationals and subsidiaries, thus being one of the most notable contributions for IB research over the past 20 years.

Practical Implications—Useful for graduate students and in writing a literature review, this paper presents an interesting manner to examine a scholar's and a theory's impact on a discipline.

Originality, Value—This paper presents an extensive bibliometric analysis of research published over a time-span of 22 years in international business studies.

Article Type: Research Paper II

Purpose—While many studies on institutional environment have primarily focused on the influence of the host country environment, limited insights have been offered on how the different dimensions of home institutions affect firm internationalization. This paper aims to fill this gap by investigating the effects of regulatory institutions at home.

Design, Methodology, Approach—Using country governance quality to proxy quality of regulatory institutions, this study attempts to reveal how regulatory institutions at home facilitate a multinational enterprise's (MNE's) international expansion and why the influence differs in different country clusters. Using hierarchical linear modeling and cluster analysis, proposed hypotheses were tested with a three-year panel 511 firms from 38 countries.

Finding—The results provide substantial support for authors' hypotheses that MNEs with high governance quality at home are more engaged in internationalization than those with low governance quality at home. Moreover, differences in institutional effect do exist between country clusters.

Practical Implications—This study provides evidence that while country difference exists, governance quality at home can facilitate MNE's expansion into foreign markets. This finding will help managers of any MNEs to consider country-level factors and evaluate the governance quality at home before committing resources into foreign operations.

Originality, Value—Building on the institutional environment literature, this theory and results make original contributions by underscoring how the consideration of regulatory institutions at home can significantly improve understanding of institutional influence on MNEs. The findings have important implications for both international business researchers and managers of MNEs.

JTMS Summer/Fall 2017 Issue Call for Papers

The *Journal Territorial and Maritime Studies* (*JTMS*) is soliciting submissions for its Summer/Fall 2017 issue. In the interest of increasing submissions for this recently launched publication, *JTMS* is offering authors of articles that successfully pass peer review and are selected for publication in the Summer/Fall 2017 issue an honorarium of $1,000.

JTMS is an interdisciplinary journal of research on territorial and maritime issues sponsored by the Northeast Asia History Foundation with editorial offices hosted by Yonsei University in South Korea. The journal provides an academic medium for the announcement and dissemination of research results the fields of history, international law, international relations, geography, peace studies, and any other relevant disciplines. The journal covers all continental areas worldwide, and it discusses territorial and maritime subjects through the various research methods from different perspectives; moreover, practical studies as well as theoretical works, which contribute to a better understanding of territorial and maritime issues, are encouraged.

Manuscripts should be submitted electronically to jtms@yonsei.ac.kr. Submitted papers should include four major sections: the title page, structured abstract, main body, and references. The title page should contain the title of the paper, the authors name, the institutional affiliation and keywords. To be considered, manuscripts must follow the *JTMS* style guide available on our website. A length of maximum 9,000 words is preferred for an article, including endnotes, and approximately 2,000 words for a review. Submissions wishing to be considered for the Summer/Fall issue must submit their manuscripts by no later than April 1, 2017. Inquiries may be sent to the email address provided above.

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